

CONSENT TO SECOND AMENDMENT

This Consent to Second Amendment is executed as of the date set forth below by Fort Bend County, Texas ("County").

RECITALS:

WHEREAS, CFC – Epicenter Properties LLC, an Arizona limited liability company (hereinafter referred to as "Owner"), and Stonehenge Holdings, LLC, a Texas limited liability company (hereinafter referred to as "Developer"), entered into that certain Project Development Agreement dated June 23, 2021, with respect to the development and construction of the "Project" as defined therein (as amended, the "Development Agreement"); and

WHEREAS, under the Development Agreement, Developer agreed to develop and construct the Project for ultimate occupancy by the County; and

WHEREAS, the County has requested that additional work be performed under the Development Agreement; and

WHEREAS, Owner and Developer have agreed to further amend the Development Agreement to accommodate the additional work; and

WHEREAS, a change in the scope of work under the Development Agreement requires the consent of the County; and

WHEREAS, Owner and Developer have executed that certain Second Amendment to Project Development Agreement dated November 28 2022, a copy of which is attached hereto (the "Second Amendment").

NOW THEREFORE, the County, by its execution of this instrument, hereby consents to the Second Amendment and the increased scope of work contained therein.

Executed effective the 3rd day of January, 2023.

Fort Bend County, Texas

By: _____
KP George, County Judge

Attest:

By: _____
Laura Richard, County Clerk

**SECOND AMENDMENT TO
PROJECT DEVELOPMENT AGREEMENT**

This Second Amendment to Project Development Agreement (the “Amendment”) is made effective as of the 28th day of November, 2022, by and between by and between CFC – Epicenter Properties LLC, an Arizona limited liability company (hereinafter referred to as "Owner"), and Stonehenge Holdings, LLC, a Texas limited liability company (hereinafter referred to as “Developer”).

RECITALS:

WHEREAS, Owner and Developer entered into that certain Project Development Agreement dated June 23, 2021, with respect to the development and construction of the “Project” as defined therein, which was previously amended by that certain First Amendment to Project Development Agreement dated March 28, 2022 (as amended, the “Agreement”); and

WHEREAS, Fort Bend County (the “County”) has requested that additional work be performed under the Agreement; and

WHEREAS, Owner and Developer desire to amend the Agreement to accommodate the additional work on the terms and conditions set forth herein.

NOW THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Developer do hereby agree as follows:

1. **Definitions.** All terms used in this Amendment which are defined in the Agreement shall have the same meaning in this Amendment as such terms have in the Agreement, unless the context hereof otherwise requires or provides.

2. **Description of Phase III Work.** The County has requested that the Owner and Developer develop and construct additional improvements under the Agreement. Those improvements are generally described on Exhibit “1” attached hereto (the “Phase III Work”). The Phase II Work is composed of three (3) distinct components, the Fairgrounds Road Extension Project, the RV Space, and the Project Enhancements, as further described on Exhibit “1”.

3. **Plans and Specifications.** Developer will work with the Architect and other design professionals to develop plans and specifications for each project within the Phase III Work (whether one or more, the “Phase III Plans and Specifications”). No Phase III Work shall commence or be performed unless Owner and the County have provided written approval of the Phase III Plans and Specifications or any changes thereto (as applicable) for such Phase III Work, such written approval not to be unreasonably withheld. Any such Phase III Work commenced prior to such written approval shall be at Developer’s risk for all costs required to conform such Phase III Work to the approved Phase III Plans and Specifications. Owner and the County shall have not less than ten (10) Business Days in which to review the 100% complete Phase III Plans and Specifications (or a revision of the complete set of the Phase III Plans and Specifications) and not less than ten (10) Business Days in which to provide written approval of any change thereto. In the case of a change, all such changes shall be clearly identified (by clouding changes in drawings and highlighting changes in text). If the Developer does not receive written approval from Owner and the County within the times required herein after submission thereof to Owner and the County, such Phase III Plans and Specifications, or such changes thereto (as applicable), shall be deemed denied by Owner and the County, respectively, for the purposes hereof.

4. **Construction Contracts.** Following the approval of the Phase III Plans and Specifications by Owner and the County for each project within the Phase III Work, the Developer will enter into a construction contract with a general contractor for the performance of that portion of the Phase III Work (each such contract being referred to herein as a "Phase III Construction Contract"). Each Phase III Construction Contract, together with the Phase III Plans and Specifications for that component of the Phase III Work are collectively referred to as the "Phase III Contract Documents". Developer may engage and contract with the existing contractor performing the work under the Agreement without the approval of the Owner or the County. If the Developer desires to engage a contractor not already performing work under the Agreement, then Developer shall obtain the approval of the Owner and the County to such contractor, and will not engage a contractor for whom Owner or the County has reasonable grounds for objection. Once engaged by the Developer, each such contractor is referred to herein as a "Phase III General Contractor". The Phase III Construction Contract is subject to the approval of Owner and the County.

5. **Commencement and Completion of Construction.** Following approval of the Phase III Plans and Specifications and the entering into a Phase III Construction Contract for a component of the Phase III Work, the Developer shall cause the Phase III General Contractor to commence that component of Phase III Work, and Developer will diligently cause all necessary labor and materials to be provided in order to develop, construct and install that component of the Phase III Work. Except as provided in Exhibit "1", Developer will cause each component of the Phase III Work to be Substantially Completed on or before the date of Substantial Completion for the primary Project as described in the Agreement. Unless expressly modified by the terms of this Amendment, all of the terms, conditions, covenants, obligations, indemnities and agreements set out in the Agreement shall apply to Developer, the services Developer is providing hereunder and the Phase III Work (and the Phase III Work shall be deemed to be Work as defined in the Agreement). For the avoidance of doubt, Developer shall cause the insurance coverages required under the Agreement to be obtained and maintained with respect to the Phase III Work.

6. **Payment for Phase III Work.**

A. In consideration of the performance of the Phase III Work and all other obligations of Developer hereunder, Owner shall pay from legally available funds provided by the County to Owner a fixed sum of money equal to the cost of the Phase III Work in accordance with the terms hereof which sum includes all amounts required to pay the Phase III General Contractor, the Architect(s), and their respective Subcontractors, and Sub-Subcontractors all costs relating to Phase III Work and the Developer's Fee as set forth on Exhibit "2" attached hereto. The Developer's Fee shall be paid to the Developer in periodic equal payments with each Request for Payment for the Phase III Work to cover Project overhead costs, and costs incurred at the jobsite for supervision and administration.

B. Attached hereto as Schedule I to Exhibit "2" and made a part hereof for all purposes is a schedule of various portions of the Phase III Work aggregating the total Phase III Work budget, divided so as to facilitate progress payments (hereinafter referred to as the "Phase III Schedule of Values"). The Phase III Schedule of Values shall be used as the basis for Developer's Requests for Payment. Notwithstanding anything to the contrary appearing herein, the Schedule of Values is for the purpose of facilitating payments to Developer and to assist Developer, Owner and the Phase III General Contractors in tracking costs. It is understood and agreed that the Phase III Schedule of Values is for accounting purposes only and does not necessarily correspond to the exact costs of the various line items making up the Phase III Schedule of Values. The Phase III Schedule of Values shall not be considered as a line item guarantee by Developer of the costs of any individual line item in the Phase III Schedule of Values.

C. On or before the twenty-fifth (25th) day of each month during the performance of the Phase III Work, the Developer, Owner's Representative and Architect shall inspect the Phase III Work. Subsequent to such inspection, the Developer shall cause the Phase III General Contractor to submit to

Developer an application for payment as set forth in Paragraph F below on or before the Second day of the calendar month subsequent to such inspection. Upon receipt of the Phase III General Contractor's application for payment, Developer shall timely submit to Owner for approval a certified request for payment in the form attached to this Amendment as **Exhibit "3"** (each, a "Phase III Request for Payment"). Each Phase III Request for Payment shall set forth the value of that portion of the Phase III Work completed according to the Phase III Schedule of Values and the sum of all prior payments, and shall request payment in such amount, less the aggregate of all prior payments. Notwithstanding anything to the contrary appearing herein, with respect to Change Orders, if any, Developer's costs shall be segregated and detailed in a manner reasonably satisfactory to Owner.

D. Each Phase III Request for Payment shall include the cost of Materials not incorporated in the Work, but delivered and suitably stored at the site of the Project or at some other mutually agreed-upon location. Title to all such Materials shall pass to the County upon payment therefor to the Owner for the benefit of the Developer or incorporation in the Phase III Work, whichever shall Second occur, and Developer shall cause the Phase III General Contractor to prepare and execute all documents necessary to effect and perfect such transfer of title.

E. Each Phase III Request for Payment shall also be accompanied by such evidence reasonably required to demonstrate the amounts claimed are then payable, together with a duly executed waiver of mechanic's lien forms from Developer, Phase III General Contractor, and each Subcontractor providing labor or materials waiving all liens or claims for payment for the work covered by previous Phase III Requests for Payment and waiving all liens or claims for payment for the work covered by the Phase III Request for Payment being submitted, to the extent of payment received. Such lien waiver documents shall be in the form(s) required by the Texas Property Code.

F. Phase III Requests for Payment shall be accompanied by the application for payment submitted to the Developer by the Phase III General Contractor for such Phase III Work, with such supporting documentation as required by the Phase III Construction Documents. Except with the consent of the Owner and the County, no Phase II Request for Payment shall seek payment for retainage Developer is entitled or required to withhold from the Phase III General Contractor under the Phase III Construction Contract. However, retainage, not to exceed five percent (5.0%) of the cost of the materials and labor making up the Phase III Work, shall be paid by Owner to Developer upon Final Completion.

G. Developer shall, on or prior to the fifteenth (15th) day of each calendar month until the Substantial Completion Date of the Phase III Work, cause the respective Phase III General Contractor to further submit a monthly progress report to Owner and the County that shall set forth in detail the status of the Phase III Work as of that date. The exact format of the progress report shall be mutually agreed upon by Developer, the Phase III General Contractor, the County, and Owner prior to submission of the initial Phase III Request for Payment; however, the progress reports shall describe those aspects of the Phase III Work that have been commenced and the status thereof, set forth the schedule for major portions of the Phase III Work for the coming month, include Developer's appraisal of the progress of the Phase III Work and any recommendations as to any action that is required by Owner or the County, and shall, at a minimum include (1) a calculation of the cumulative percentage of completion of the Phase III Work as a whole as of the last day of the immediately preceding month, which shall include (a) the status of the construction of the Phase III Work in accordance with the Phase III Contract Documents, (b) any variances from the Phase III Plans and Specifications, and (2) to the extent that the Phase III Work shall not have proceeded in strict accordance with the Development Schedule to the date of such monthly progress report, a schedule recovery plan designed to bring the Work in conformance with the Development Schedule. Additionally, Developer shall provide Owner and the County with monthly progress photos of the Work.

H. Following Owner's receipt of Developer's fully completed Phase III Request for Payment (unless such date falls on a weekend or holiday, then on the next Business Day), and approval thereof by the Architect and the County, the Owner shall have ten (10) calendar days to review the Phase III Request for Payment and respond with any objections or request for clarifications from Developer or the Phase III General Contractor, or alternatively, to approve the Phase III Request for Payment. Immediately upon the approval of a Phase III Request for Payment, Owner shall requisition the County to timely pay the Phase III Request for Payment in accordance with the terms hereof. Owner agrees to use commercially reasonable efforts to cause an approved Phase III Request for Payment to be paid to Developer no later than fifteen (15) calendar days following Owner's receipt of Developer's fully completed Phase III Request for Payment (unless such date falls on a weekend or holiday, then on the next Business Day).

I. Upon Substantial Completion of the Phase III Work, Developer shall submit a Phase III Request for Payment that shall set forth all amounts due and remaining unpaid, including ninety percent (90%) of funds retained by Owner under Paragraph F hereof, less an amount equal to one hundred fifty percent (150%) of the value of Punch List items. Owner shall make payment upon such Phase III Request for Payment in the manner set forth herein for other Phase III Requests for Payment.

J. County, on behalf of the Owner, shall pay the final remaining balance of Developer's Fee to Developer once the Punch List items, if any, are addressed by Developer, subject to the inspection and approval of the County and Owner's Representative. Final payment (including the remainder of the funds retained under Paragraph F and Paragraph I hereof) shall not be made, however, until Developer shall deliver to Owner and cause Phase III General Contractor to deliver to Owner and the County a complete release of all liens arising out of the Phase III Work and an affidavit from Developer and Phase III General Contractor, providing that such release includes and covers all Materials and Services for which a lien could be filed; but Developer may, if any Subcontractor or Sub-Subcontractor refuses to furnish a release in full, furnish a mechanic's lien bond or other indemnification reasonably satisfactory to Owner and the County to indemnify Owner and the County against any lien.

K. Developer shall, and shall cause Phase III General Contractor to, defend, indemnify and hold Owner and the County harmless, including reasonable attorneys' fees, court cost and expenses, for and against any and all lien claims asserted against Owner, the County, the Land and/or the Improvements by the Phase III General Contractor, any Subcontractor or Sub-Subcontractor, or anyone claiming under any of them provided, however, County, on behalf of Owner shall have paid Developer all amounts properly payable under the terms of this Amendment and as set forth in all Requests for Payment for Phase III Work submitted by Developer.

L. In no event shall any interest be due and payable by Owner to Developer, the Phase III General Contractor, any Subcontractor or any other party on any of the sums rightfully retained by Owner pursuant to any of the terms or provisions of the Agreement or any of the Phase III Contract Documents.

M. Any provision hereof to the contrary notwithstanding, Owner may retain such funds from any progress payment for the Phase III work in an amount reasonably sufficient to protect Owner if any one or more of the following conditions exists:

1. After Owner provides reasonable written notice and an opportunity to cure, Developer shall be in material default of any of its obligations hereunder or otherwise shall be in material default under any of the Phase III Contract Documents;

2. Any part of such payment is attributable to Phase III Work that is defective or not performed in substantial accordance with the Phase III Plans and Specifications; provided, however, such payment shall be made as to the part thereof attributable to Phase III Work that is performed in accordance with the Phase III Plans and Specifications and is not defective; or

3. Developer or the Phase III General Contractor has failed to make payments in accordance with its contracts with Developer, the Phase III General Contractor, Subcontractors, or Sub-Subcontractors or for Material or Services for which the County for the benefit of the Owner has made payment to Developer.

N. In the event that Owner elects to withhold from payment to Developer any amounts that Owner may be entitled to withhold as above provided, then Owner shall only withhold the fair market value of such Phase III Work, claims or payments; and in no case, shall it withhold more than such total value.

O. No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the Phase III Work to which such partial payment relates, or relieve Developer of any of its obligations hereunder with respect thereto.

P. If any portion of a fully-completed Phase III Request for Payment meeting all the requirements of this Amendment is not paid within fifteen (15) calendar days after the submission thereof by Developer to Owner and County, and such nonpayment is not permitted under Paragraph M of this Section VII, such failure shall constitute an Excusable Delay, and Developer may, on a temporary basis, stop the Phase III Work without terminating this Agreement until such payment is made to Developer, and any such stoppage by the Developer shall operate to extend the Substantial Completion Date on a day-for-day basis.

Q. Developer shall use the sums advanced to it pursuant to this Section 6 solely for the purpose of performance of the Phase III Work and the design, construction, furnishing and equipping of the Phase II Work in accordance with the Phase III Plans and Specifications. However, no provision hereof shall be construed to require Owner to see to the proper disposition or application of the monies so advanced to Developer.

R. Developer shall, within a reasonable time following receipt of payment from County on behalf of the Owner and within the time period allowed under any applicable contract or agreement, pay all bills for Services and Materials performed and furnished by others in connection with the design, construction, furnishing and equipping of the Phase III Work and the performance of the Phase III Work, and upon written request by Owner shall provide Owner with evidence of such payment.

S. Owner has caused funds being held by the Trustee for construction of the Project to be invested in income and/or interest producing accounts. It is anticipated that such funds will produce excess earnings that may be used to pay Project costs. To the extent these earnings are available, and to the extent permitted by the Loan Agreement, the Indenture, and the other documents executed by Owner in connection with the issuance of the Bonds (as such terms are defined in the Agreement) Owner agrees to make available such earnings for the payment of all or part of the Phase III Work, upon request of the County. Notwithstanding the foregoing, it is understood and acknowledged that the County is primarily responsible for payment of the Phase III Work, and the inability of Owner to deploy such earnings toward the Phase III Work, or the unavailability of such earnings shall not operate to excuse the County from its obligations to pay for the Phase III Work under the terms of this Amendment.

7. **Third Party Beneficiary.** The parties hereto agree that the County is an intended third-party beneficiary to Owner's rights under this Amendment, and, as such, this Amendment shall not be modified or amended, and Owner shall not waive any of its rights hereunder or take any action to terminate this Amendment, unless the County shall have Second consented to such modification, amendment, waiver, termination in writing. The County may exercise any and all rights of Owner hereunder upon a default by Owner under the Facilities Lease, provided that if Developer receives conflicting approvals, requests, consents or instructions from the Owner and the County, then Developer, after providing written notice of such conflict to the Owner and the County, may rely on the communication from the County, and Developer will not be in breach of this Amendment if Developer complies with the communications from the County. Further, Developer agrees to promptly notify the County of any breach of this Amendment by Owner. Owner agrees to promptly notify County of any breach of this Amendment by Developer of which the Owner has actual knowledge.

8. **Owner's Liability.** Owner's sole liability to the Developer with respect to the Phase III Work is to submit applications for payment to the County as set forth above in Paragraph 6, and to pay to Developer the funds received from the County associated with the Phase III Work. In no event shall Owner be liable to the Developer in the event the County fails or refuses to make payment for all or part of the Phase III Work.

9. **Signatures and Counterparts.** This Agreement may be executed electronically (including images of manually executed signatures transmitted by facsimile or other electronic format such as "pdf", "tif" or "jpg", as well as other electronic signatures such as DocuSign and AdobeSign) and each party hereby waives any objection to such electronic signatures and transmittal of signatures. At the request of any party, the parties will confirm facsimile transmitted or other electronic signatures by signing an original document. This Amendment may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Amendment.

10. **Authority and Status of Agreement.** The undersigned represent and warrant to each other that they have the present full authority and power to execute this Amendment on behalf of Owner and Developer, as applicable. All terms, covenants, and conditions of the Agreement not expressly modified herein are hereby confirmed and ratified and remain in full force and effect, and, as further amended hereby, constitute valid and binding obligations of Owner and Developer enforceable according to the terms thereof. All of the covenants contained in this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives and permitted successors and assigns.

11. **Entire Agreement.** The Agreement and this Amendment set forth all of the promises, covenants, agreements, conditions and undertaking between the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and undertakings, inducements or conditions, express or implied, oral or written, except as contained herein. Except as specifically and expressly modified or amended herein, the terms and provisions of the Agreement remain unchanged and shall apply to the Phase III Work. The parties hereto ratify and acknowledge that the Agreement continues in full force and effect, as modified by this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date Second above written.

Owner:

CFC-EPICENTER PROPERTIES LLC, an Arizona
limited liability company

By: Community Finance Corporation, an Arizona
nonprofit corporation, its sole member

DocuSigned by:

Michael Hammond

568C945B3822468...

By: _____

Name: Michael S. Hammond

Its: President

Developer:

Stonehenge Holdings, LLC,
a Texas limited liability company

By: *[Signature]* _____

Name: *KEVIN MATOCHA*

Title: *PRESIDENT*

**EXHIBIT “1”
Scope of Phase III Work**

Fairgrounds Road Project: The Fairgrounds Road project consists of expanding approximately 2900 linear feet of the existing rural two-lane West Fairgrounds Roadway into a four-lane median divided roadway and the addition of a right turn lane on the US 59 north-bound feeder road. The project budget includes all design, utility relocation, and roadway construction necessary for the roadway expansion. The portion of the Fairgrounds Road project included in the Phase III Scope of Work is an increase in cost.

RV Spaces - The RV Spaces project consists of constructing and installing the necessary parking improvements, utility improvements, transportation and traffic control improvements, to allow for parking of recreational vehicles on the Project site in connection with events being held at the Project site. The substantial completion of the RV Spaces portion of the work will occur on or before January 1, 2024.

Project Enhancements: The Project Enhancement scope includes End Stage Rigging, Escalators, SF increase for escalators (2,000 SF), Pavilion Increases, Ribbon Boards, Divider curtain, Center Stage Rigging, Core Networking Enhancements, Interior Finishes, and Enhanced loading docks.

EXHIBIT “2”
Phase III Work Budget

<u>Item</u>	<u>Cost (\$)</u>	<u>Engineer/Architect</u>
Fairgrounds Road	\$400,000.00	Binkley Barfield
RV Spaces	\$1,200,000.00	
Project Enhancements	\$3,380,000.00	
Subtotal	\$4,980,000	
Developer Fee (8%)	\$398,400.00	
Total	\$5,378,400.00	

EXHIBIT “3”
Form of Request for Payment for Phase III Work

REQUEST FOR PAYMENT FOR PHASE III WORK

Request for Payment No.: _____

_____, 20__

Fort Bend County, Texas
301 Jackson Street
Richmond, TX 77469
Attn: Mr. Ed Sturdivant, County Auditor

Re: Request for Disbursement of Phase III Work

Ladies and Gentlemen:

This Request for Payment for Phase III Work is provided to you pursuant to the Project Development Agreement, dated as of June 23, 2021, between CFC Epicenter Properties LLC (the “Company”) and Stonehenge Holdings LLC (the “Developer”), as amended by that certain First Amendment to Project Development Agreement dated as of _____, 2022, and that Second Amendment to Project Development Agreement, dated as of October __, 2022 (as amended, the “Agreement”) for requesting payment to the Developer or its vendors as provided herein. The capitalized terms used in this Request for Payment for Phase III Work have the same meanings given such terms in the Agreement or in the Loan Agreement dated June 1, 2021 between Greater Texas Cultural Education Facilities Finance Corporation (the “Issuer”) and the Company.

(a) (i) There has been expended, or is being expended concurrently with the delivery of this certificate, on account of Phase III Work, as defined in the Agreement an amount at least equal to the amount requisitioned below for disbursement;

(ii) No Event of Default under the Agreement has occurred and is continuing;

(iii) No other Request for Payment for Phase III Work in respect of the expenditures set forth in clause (i) above is being or has previously been delivered to the Company;

(iv) You are hereby directed to pay the amount of \$_____ from the legally available funds in the amounts and to the parties as set forth in the attached Schedule A. Of such amount, \$_____ shall be held as retainage, resulting in a disbursement amount of \$_____.

(v) Pay to the persons listed on Schedule A amounts not to exceed those set forth on Schedule A, upon receipt of individual invoices.

(vi) Such payment will constitute payment of or reimbursement for a properly incurred obligation, is unpaid or not reimbursed to the Company, and has not been the basis of any previous withdrawal or payment.

(vii) The payment of the amount requested herein will not result in a breach of any covenant of the Developer contained in the Agreement.

(c) All other items required by the Agreement to be delivered to the Company in connection with this Request for Payment for Phase III Work have been delivered to the Company.

(d) To the best of the undersigned's knowledge, there has not been filed with or served upon the Developer or the Company notice of any lien, right or attachment upon, or claim affecting the right of any such Persons to receive payment of the respective amounts stated in this Request for Payment for Phase III Work, which has not been released or will not be released simultaneously with the payment of such obligation.

(e) We further certify that (A) obligations as stated on this Request for Payment for Phase III Work have been properly incurred, (B) such work was actually performed or such materials or supplies were actually furnished or installed, (C) if contested, bond has been made by the Developer and (D) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of this Request for Payment for Phase III Work.

(f) All rights, title and interest to any and all personal property acquired with the proceeds of this disbursement is vested in the County.

STONEHENGE HOLDINGS LLC

By: _____

Name: _____

Title: Authorized Representative

CFC – EPICENTER PROPERTIES LLC

By: _____

Name: _____

Title: Authorized Representative