

**FIRST AMENDMENT TO**  
**PROJECT DEVELOPMENT AGREEMENT**

This First Amendment to Project Development Agreement (the “Amendment”) is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 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 (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 II 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 II Work”). The Phase II Work is composed of two (2) distinct components, the Offsite Detention Project and the Fairgrounds Road Extension Project.

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 II Work. The plans and specifications for the Offsite Detention Project have been prepared and have been approved by the Owner Developer and the County. Those plans and specifications are described in more detail on Exhibit “1” attached hereto. The plans and specifications for the Fairgrounds Road Extension Project are subject to the approval of Owner and the County. The foregoing plans and specifications for the Offsite Detention Project, and the to-be-prepared and approved plans and specifications for the Fairgrounds Road Extension Project, are individually and collectively referred to as the “Phase II Plans and Specifications”. No Phase II Work shall commence or be performed pursuant to the Phase II Plans and Specifications or any changes thereto unless Owner and the County have provided written approval of such Phase II Plans and Specifications or any changes thereto (as applicable) for such Phase II Work, such written approval not to be unreasonably withheld. Any such Phase II Work commenced prior to such written approval shall be at Developer’s risk for all costs required to conform such Phase II Work to the approved Phase II Plans and Specifications. Owner and the County shall have not less than ten (10) Business Days in which to review the 100% complete Phase II Plans and Specifications (or a revision of the complete set of the Phase II 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 II 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 II Plans and Specifications by Owner and the County for each project within the Phase II Work, the Developer will enter into a construction contract with a general contractor for the performance of that portion of the Phase II Work (each such contract being referred to herein as a "Phase II Construction Contract"). The Phase II Construction Contract, together with the Phase II Plans and Specifications for that component of the Phase II Work are collectively referred to as the "Phase II 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 II General Contractor". The Phase II Construction Contract is subject to the approval of Owner and the County.

5. **Commencement and Completion of Construction.** Following approval of the Phase II Plans and Specifications and the entering into a Phase II Construction Contract for a component of the Phase II Work, the Developer shall cause the Phase II General Contractor to commence that component of Phase II 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 II Work. Developer will cause each component of the Phase II 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 II Work (and the Phase II 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 II Work.

6. **Payment for Phase II Work.**

A. In consideration of the performance of the Phase II 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 II Work in accordance with the terms hereof which sum includes all amounts required to pay the Phase II General Contractor, the Architect(s), and their respective Subcontractors, and Sub-Subcontractors all costs relating to Phase II 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 II 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 II Work aggregating the total Phase II Work budget, divided so as to facilitate progress payments (hereinafter referred to as the "Phase II Schedule of Values"). The Phase II 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 II General Contractors in tracking costs. It is understood and agreed that the Phase II 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 II Schedule of Values. The Phase II 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 II Schedule of Values.

C. On or before the twenty-fifth day of each month during the performance of the Phase II Work, the Developer, Owner's Representative and Architect shall inspect the Phase II Work. Subsequent to such inspection, the Developer shall cause the Phase II General Contractor to submit to Developer an application for payment as set forth in Paragraph F below on or before the first day of the calendar month subsequent to such inspection. Upon receipt of the Phase II 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 II Request for Payment"). Each Phase II Request for Payment shall set forth the value of that portion of the Phase II Work completed according to the Phase II 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 II 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 II Work, whichever shall first occur, and Developer shall cause the Phase II General Contractor to prepare and execute all documents necessary to effect and perfect such transfer of title.

E. Each Phase II 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 II General Contractor, and each Subcontractor providing labor or materials waiving all liens or claims for payment for the work covered by previous Phase II Requests for Payment and waiving all liens or claims for payment for the work covered by the Phase II 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 II Requests for Payment shall be accompanied by the application for payment submitted to the Developer by the Phase II General Contractor for such Phase II Work, with such supporting documentation as required by the Phase II 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 II General Contractor under the Phase II Construction Contract. However, retainage, not to exceed five percent (5.0%) of the cost of the materials and labor making up the Phase II 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 II Work, cause the respective Phase II 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 II Work as of that date. The exact format of the progress report shall be mutually agreed upon by Developer, the Phase II General Contractor, the County, and Owner prior to submission of the initial Phase II Request for Payment; however, the progress reports shall describe those aspects of the Phase II Work that have been commenced and the status thereof, set forth the schedule for major portions of the Phase II Work for the coming month, include Developer's appraisal of the progress of the Phase II 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 II 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

II Work in accordance with the Phase II Contract Documents, (b) any variances from the Phase II Plans and Specifications, and (2) to the extent that the Phase II 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 II 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 II Request for Payment and respond with any objections or request for clarifications from Developer or the Phase II General Contractor, or alternatively, to approve the Phase II Request for Payment. Immediately upon the approval of a Phase II Request for Payment, Owner shall requisition the County to timely pay the Phase II Request for Payment in accordance with the terms hereof. Owner agrees to use commercially reasonable efforts to cause an approved Phase II 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 II 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 II Work, Developer shall submit a Phase II 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 II Request for Payment in the manner set forth herein for other Phase II 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 II General Contractor to deliver to Owner and the County a complete release of all liens arising out of the Phase II Work and an affidavit from Developer and Phase II 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 II 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 II 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 II Work submitted by Developer.

L. In no event shall any interest be due and payable by Owner to Developer, the Phase II 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 II Contract Documents.

M. Any provision hereof to the contrary notwithstanding, Owner may retain such funds from any progress payment for the Phase II 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 II Contract Documents;

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

3. Developer or the Phase II General Contractor has failed to make payments in accordance with its contracts with Developer, the Phase II 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 II 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 II 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 II 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 II 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 II Work and the design, construction, furnishing and equipping of the Phase II Work in accordance with the Phase II 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 II Work and the performance of the Phase II Work, and upon written request by Owner shall provide Owner with evidence of such payment.

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 first 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 II 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 II 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 II 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 undertakings 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 II 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 first above written.

Owner:

**CFC-EPICENTER PROPERTIES LLC**, an Arizona limited liability company

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

By: \_\_\_\_\_  
Name: Michael S. Hammond  
Its: President

Developer:

**Stonehenge Holdings, LLC**,  
a Texas limited liability company

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT “1”**  
**Scope of Phase II 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, ROW acquisition, utility relocation, and roadway construction necessary for the roadway expansion.

**Offsite Detention-** The offsite detention project consists of constructing two detention basins to mitigate increased runoff due to the Epicenter development. The basin requires excavation of approximately 21,000 cubic yards of material to be placed on the Epicenter site. The detention basins will require construction of low flow concrete flumes, overflow spillway structures, and miscellaneous drainage improvements. The smaller basin is located on the County-owned 6.75-acre tract adjacent to the Epicenter development and the other is downstream in the Rosenberg regional detention facility.

**EXHIBIT “2”  
Phase II Work Budget**

<u>Item</u>	<u>Cost (\$)</u>	<u>Engineer/Architect</u>
Fairgrounds Road	\$6,998,925	Binkley Barfield
Offsite Detention	\$950,000	NA (Already designed and paid)
Offsite Subtotal	\$7,948,925	
Developer Fee (8%)	\$635,914	
<b>Offsite Total</b>	<b>\$8,584,839</b>	

**EXHIBIT “3”**  
**Form of Request for Payment for Phase II Work**

REQUEST FOR PAYMENT FOR PHASE II 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 II Work

Ladies and Gentlemen:

This Request for Payment for Phase II 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 the First Amendment to Project Development Agreement, dated as of January \_\_, 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 II 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 II 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 II 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 II 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 II 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 II 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 II 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