



HARDEE COUNTY
ECONOMIC DEVELOPMENT COUNCIL



HARDEE COUNTY
INDUSTRIAL DEVELOPMENT AUTHORITY

AGENDA

Economic Development Council/Industrial Development Authority

EDC/IDA REGULAR MEETING

October 19, 2023, at 2:00 PM

**COMMISSIONER CHAMBERS, 412 WEST ORANGE STREET, ROOM 102,
WAUCHULA, FL 33873**

BOARD MEMBERS

Chairman Lee Mikell

Vice-Chairman Barney Cherry

Gene Davis

Calli Ward

Courtney Green

John Gill

Chris Idsardi

1. CALL TO ORDER

2. APPROVAL OF AGENDA

3. AGENDA ITEMS

1. SARAH EVERS-MANCINI BRAND'S LANDLORD'S CONSENT AND AGREEMENT

ACTION RECOMMENDED: Motion to approve the landlord's consent and agreement with Mancini Brand's and authorize the Chair or Vice Chair to sign.

2. SARAH EVERS- CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR BOSTICK RD INFRASTRUCTURE CONTRACT WITH LM PROPERTIES OF POLK COUNTY, INC

ACTION RECOMMENDED: Motion to approve the contract for construction management at risk services for Bostick Rd infrastructure with LM Properties of Polk County, Inc and authorize the Chair or Vice Chair to sign.

4. ANNOUNCEMENTS/OTHER BUSINESS/PUBLIC COMMENTS

5. ADJOURNMENT

LANDLORD'S CONSENT AND AGREEMENT

THIS LANDLORD'S CONSENT AND AGREEMENT (this "**Agreement**") is made effective this ____ day of October, 2023, by and between **HARDEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY**, a dependent special district and body politic and corporate of the State of Florida ("**Landlord**"), and **HANCOCK WHITNEY BANK**, a Mississippi state chartered bank ("**Lender**").

RECITALS

- A. Landlord is the owner of certain premises known as 3500 Mancini Place, Zolfo Springs, Florida 33890 (the "**Premises**").
- B. **MANCINI BRANDS, LLC**, a Florida limited liability company ("**Tenant**") leases the Premises from Landlord, pursuant to a Commercial Lease Agreement dated October 31, 2022 (as amended, the "**Lease**").
- C. **MANCINI BRANDS, LLC**, a Florida limited liability company ("**Borrower**") has applied to Lender for a U.S. Small Business Administration ("**SBA**") guaranteed loan (the "**Loan**") which will be secured by certain personal property of Borrower, including, without limitation, furniture, trade fixtures, equipment, inventory, machinery, chattel paper, accounts, instruments, general intangibles (collectively, the "**Collateral**"). Specifically excluded from the definition of "Collateral" are the following: Tenant's right to and interest in the option to purchase the Premises (set forth in the Lease); sublease revenue (if any); Landlord facilitated Tenant-improvements to the Premises; Tenant's interest in building service equipment or fixtures of the Premises; any fixture, equipment, machine, system or other item nor part thereof that is integral to the Premises or which would cause material damage to the Premises upon its removal; and cash or cash equivalents. For avoidance of any doubt, in no situation shall electrical or plumbing facilities or systems, air conditioners or HVAC systems, irrigation systems, fire suppressant systems, or any parts of the foregoing constitute Collateral subject to removal by Lender.
- D. Borrower and/or Tenant operates its business on the Premises and the Collateral is or will be located on the Premises.
- E. Landlord's execution of this Agreement is a condition precedent to Lender making the Loan to Borrower.

AGREED

- 1. Borrower/Tenant has pledged and granted a security interest in and to the Collateral to Lender as security for the Loan. Landlord hereby waives any and all rights, including, but not limited to, the rights of foreclosure, levy, execution, sale and distraint for unpaid rent or other rights arising under real property law or by contract, which Landlord now has or may hereafter acquire on or in any of the Collateral presently and hereafter located at the Premises, and Landlord hereby agrees that the foregoing rights of Landlord shall at all times, until the Loan is paid in full, be subordinate and inferior to the rights of Lender with respect to the Collateral.

2. Landlord agrees that the Collateral shall at all times be considered personal property and shall not constitute fixtures or become a part of the Premises. Lender may enter upon the Premises accompanied by Landlord's representative to inspect the Collateral upon prior written notification to Landlord's representative, which notification shall be provided a minimum of 72 hours in advance. Nothing herein or elsewhere shall be deemed to prevent Lender from abandoning to Landlord or to Tenant all or any part of the Collateral that cannot, in the opinion of Lender, be economically removed from the Premises.
3. Landlord will make reasonable efforts to provide written notice to Lender of any default by Tenant under the terms of the Lease, and will permit Lender to cure such default during the thirty (30) day period following Lender's receipt of notice of the default; provided that nothing shall obligate Lender to cure such default of Tenant.
4. In the event of default by Borrower under the Loan or any of the other documents evidencing, securing or executed in connection with the Loan, or any extensions of renewals thereof, Lender shall take possession and remove the Collateral, or any part thereof, from the Premises. Lender shall not enter upon the Premises to inspect, take possession of, or remove the Collateral without 72-hour prior written and telephonic notification to Landlord. Following expiration of the 72-hour notice to Landlord, Lender shall have a period of no more than thirty (30) days to remove Collateral from the Premises (the "**Removal Period**") during which time Lender shall not be obligated to pay rent under the Lease to Landlord. For avoidance of any doubt, Lender shall not bar, prohibit, or otherwise frustrate Landlord's presence at the Premises at any time. Any Collateral remaining after expiration of the Removal Period shall be considered abandoned, and Lender hereby waives all right, title, or interest to such abandoned Collateral, and Landlord may thereafter dispose of such abandoned Collateral without any liability to Lender whatsoever.
5. The rights under Section 4 shall in no event extend beyond the stated expiry date of the Lease or the earlier termination of the Lease, and upon expiration or earlier termination of the Lease, Landlord may take possession of the Premises, remove Tenant's possessions and Collateral from the Premises, and either dispose of, sell or transfer such possessions and Collateral without any liability to Lender whatsoever.
6. Lender is fully responsible for repair of any damage done to the Premises related to or arising out of Lender's possession and removal of Collateral. Lender shall abide by all reasonable safety and fire regulations during Lender's presence, use, or control of the Premises and shall ensure that its contractors, agents, or representatives do the same. Lender shall remove and dispose of any debris or trash, including construction and demolition debris, at the Premises caused by or related to its Collateral-removal efforts. Lender shall indemnify and hold Landlord harmless from and for any and all liability, claims, damages, expenses (including attorneys' fees and costs for trial or appeal), proceedings, and causes of action of every kind and nature arising out of or connected with Lender's presence on or use, operation, or control of the Premises, except to the extent due to the intentional misconduct or gross negligence of Landlord.

7. Landlord represents to Lender that Tenant is not in default under the Lease, and that Landlord has full right, power and authority to execute and perform this Agreement without the necessity of obtaining the consent of any person.
8. Any notice or demand required or permitted by this Agreement shall be deemed to have been sufficiently given or served by sending such notice in writing by certified or registered mail, postage prepaid to the parties hereto as follows:

Landlord: Hardee County Industrial Development Authority
c/o The Development Group
Attn: Chief Executive Officer
107 East Main Street
PO Box 458
Wauchula, Florida 33873
Telephonic: 863-773-3030

With copy to Landlord's legal counsel:

Swaine, Harris & Wohl, P.A.
Attn: Shannon L. Nash
425 S. Commerce Avenue
Sebring, Florida 33870

Lender: Hancock Whitney Bank
Attention: SBA Division
2202 N. Westshore Boulevard, Suite 150
Tampa, Florida 33607

The above addresses may be changed by written notice as provided herein to the other party.

9. Landlord will notify any purchaser or transferee of Landlord's interest in the Premises of the existence of this Agreement.
10. This Agreement shall remain in full force and effect until the Loan is repaid in full and all obligations of Borrower to Lender are satisfied in full. Lender shall provide notice to Landlord upon full and complete satisfaction of the Loan by Borrower. This Agreement is assignable by Lender and Lender shall provide prompt notice to Landlord of such assignment. This Agreement shall be binding upon the executors, administrators, representatives, agents, successors, transferees or assignees of the parties.
11. This waiver by Landlord is a material inducement for the Lender's making of the Loan.
12. This Agreement shall be governed by the law of the State of Florida. The parties agree that venue for any litigation arising out of or related to this Agreement shall be in and for the courts of competent jurisdiction in and for Hardee County, Tenth Judicial Circuit, State of Florida.

13. In any action brought by either party for interpretation or enforcement under this Agreement, including Landlord's right to indemnification, the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees, paralegal fees, court and other costs, whether incurred before or during litigation, on appeal, in bankruptcy, or in post-judgment collections.
14. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, LANDLORD AND LENDER, BY EXECUTION HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO MAKE THE LOAN.
15. Nothing in this Agreement shall be deemed or treated as a waiver by Landlord of any defense or immunity to which it is entitled by law, including but not limited to sovereign immunity, and Landlord's liability, if any, shall be subject to the limitations set forth in Section 768.28, Florida Statutes.
16. Lender and Landlord may execute this Agreement in any number of counterparts. Each such counterpart, when executed and delivered, shall be an original, but all such counterparts together shall constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single original of this Loan Agreement to physically form one document.
17. No amendment, modification, or alteration in terms shall be binding unless in writing duly executed by the parties.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective the day and year first above written.

LANDLORD:

**HARDEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY,**

a dependent special district and body politic
and corporate of the State of Florida

By: _____
 Print Name: _____
 Its: _____
 Date: _____

LENDER:

HANCOCK WHITNEY BANK, a Mississippi
state chartered bank

By: _____

Print Name: _____

Its: _____

Date: _____

CONTRACT FOR CONSTRUCTION MANAGEMENT AT RISK SERVICES
(BOSTICK ROAD INFRASTRUCTURE PROJECT)

THIS AGREEMENT is made by and between the **HARDEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY**, a dependent special district with an address at 107 E. Main Street, Wauchula, Florida 33873 (the “IDA”) and **LM PROPERTIES OF POLK COUNTY, INC.**, a Florida corporation, with an address at 1925 E. Edgewood Drive, Suite 100, Lakeland, Florida 33803 (herein called “Contractor”).

1. **Premise.**

1.1. IDA solicited responses to RFQ 2023-03 for a qualified construction management firm to provide construction management services at risk for an anticipated residential infrastructure project on/around Bostick Road, Hardee County, Florida (the “Project”). Contractor submitted the response that was determined to be the highest ranked proposal. IDA would like Contractor to provide construction management services and Contractor would like to provide such services on the terms and conditions set forth herein.

1.2. The “Contract Documents” that constitute the entire agreement between the IDA and Contractor shall consist of: this Agreement and all exhibits hereto, RFQ 2023-03, IDA issued Notices to Proceed, proposals (including Guaranteed Maximum Price) submitted by Contractor and accepted by IDA, written amendments to this Agreement that are validly executed by IDA and Contractor, and IDA approved change orders.

1.3. Contractor represents that it is thoroughly familiar with and understands the requirements of the Project scope and that it is experienced in the administration and construction of projects of the type and scope contemplated for the Project. Contractor represents to IDA that Contractor has all necessary construction education, skill, knowledge, and experience required for the Project and will maintain, at all times during the term of this Agreement, such personnel on its staff to provide the services contemplated hereby within the time periods required hereby. In addition, Contractor represents that it has, and all of the subcontractors performing services under this Agreement will have, all applicable licenses required by the State of Florida to perform such services.

2. **Work.**

2.1. Contractor, in consideration of the premises and mutual covenants herein contained, agrees to furnish at its own cost and expense, all labor, tools, materials, equipment, superintendence, security, insurance, testing, and all other accessories and services necessary to provide professional construction management at risk services for the Project as separated into the phases described herein (herein collectively called the “Work”).

2.2. It is anticipated that the Work will proceed in four main phases as set forth in the Contract Documents: Phase I - Pre-Construction; Phase II – Procurement (Bid and Awards); Phase III – Construction; and Phase IV – Close-Out. General construction management services shall be provided by Contractor incidental to the activities of each phase.

2.3. A Notice to Proceed issued by IDA is required to begin each phase and no work shall begin and no fees/costs shall be incurred as to a particular phase unless and until the IDA issues an applicable Notice to Proceed. IDA is under no obligation to issue any Notice to Proceed. If IDA does not issue a Notice to Proceed or chooses not to award in one or more phases, there will be no recovery of any monetary awards, including cost and/or anticipated profit. A Notice to Proceed may be issued on behalf of the IDA by the Chief Executive Officer of The Hardee County Economic Development Council, Inc., d/b/a The Development Group, or her authorized designee (the "IDA Project Manager").

3. **Contract Price.** Contractor shall receive the fixed amount of Fifty Thousand and No/100 Dollars (\$50,000.00) as the total lump sum compensation for completion of the Phase I of the Project, as detailed on Exhibit A, attached hereto and incorporated herein by reference. Completing Phase I will require engaging and incurring the costs of a civil engineer, an environmental engineer, surveyor, attorney and other professional consultants. For each phase subsequent to Phase I, compensation shall be as set forth in the Guaranteed Maximum Price proposal accepted by IDA.

4. **Guaranteed Maximum Price.**

4.1. Contractor agrees to furnish the Work required for completion of the Project on a Guaranteed Maximum Price basis. Contractor shall prepare written a Guaranteed Maximum Price ("GMP") for the Project during Phase I activities in negotiation with IDA. If a GMP proposal cannot be successfully negotiated in a timely fashion, then either party may provide written notice of termination of this Agreement and neither party shall thereafter have any further obligation under this Agreement. In such an event, the IDA may proceed to construct the Project using a party or parties other than Contractor.

4.2. The GMP shall be itemized and shall include all construction, material, labor, and management cost, in detail, per phase, and shall also include the complete and total cost of the Project in accordance with all requirements of the applicable Contract Documents. The GMP shall also set forth the substantial completion date of the Project, which shall be a definite date, and the estimated final completion date. The term "substantial completion" shall mean when the Project is sufficiently complete so that IDA can enjoy beneficial use or occupancy of the Project and can utilize it for its intended purpose. Any change in the GMP shall require written approval of IDA.

4.3. Once the GMP proposal is accepted by IDA, the Contractor shall be entitled to no increase in the GMP unless (i) the increase is due to substantial and unexpected enlargement of the scope of the Project and (ii) Contractor provided written notice to IDA regarding the impact of the adjusted scope to the cost and time of the Project and (iii) IDA has authorized the increase by written change order. Except as set forth in the immediately preceding sentence, all costs or expenses that exceed the GMP shall be borne by the Contractor.

5. **Payment.**

5.1. On or about the first day of each month, Contractor shall make application for payment based upon percentages of completion in the amount of ninety five percent (95%) of the Work completed up to the last day of the previous month, less the aggregate of previous payments. Pursuant to Sec. 255.078(1), Florida Statutes, the remaining five percent (5%) of the Work completed shall be retainage held by IDA until final completion of the Project.. Notwithstanding the foregoing, there will be no retainage on the work performed during Phase I of the Project.

5.2. The IDA Project Manager must approve each payment request. Each payment application shall: (i) detail an explanation of what work was completed by each entity requesting payment; (ii) detail an estimate of the percentage of work performed by any subcontractor in relation to the entire scope of work contained in the subcontractor's contract with Contractor; (iii) include a certification by Contractor that the work performed was in complete accordance with the Contract Documents; (iv) include a certification that the amount of the invoice is accurate in relation to the work performed under any subcontractor contract; and (v) include executed partial and/or final lien waivers from all suppliers and subcontractors that have served a Notice to Owner on IDA or Contractor.

5.3. Neither the final payment nor any part of the retained percentage shall become due until the Contractor shall deliver to IDA a complete release of all liens arising out of this Agreement, or receipts in full in lieu thereof, and an affidavit that so far as the Contractor has knowledge or information the releases and receipts include all the labor and materials for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the IDA's legal counsel to indemnify the IDA against any lien. If any lien remains unsatisfied after all payments are made, Contractor shall refund to the IDA all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorneys' fee.

6. **Term and Termination.** The term of this Agreement shall be for one-year and shall automatically renew on an annual basis until full completion of the Project unless sooner terminated as provided herein.

6.1. During Phase I, either party may terminate this Agreement upon thirty (30) days prior written notice to the other party. IDA may, upon written notice, terminate this Agreement, in whole or in part, at any time due to Contractor's failure to perform any material provision or portion of the Contract Documents. Upon receipt of a termination notice, services shall be immediately discontinued (unless the notice directs otherwise) and all plans and materials as may have been accumulated in performance of this Agreement, whether completed or in process, shall be delivered to the IDA.

6.2. If the termination is for convenience during Phase I, an equitable adjustment in the contract price shall be made based on satisfactory services performed up to the date of notification of termination, but no amount shall be allowed for anticipated profit on unperformed services.

6.3. If the termination is due to Contractor's breach of any covenant set forth herein, the IDA may take over the Work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to the IDA for any additional cost occasioned to the IDA

thereby. If either party determines, in good faith, that the other party has defaulted in any of its obligations hereunder, the non-defaulting party shall send written notice to the defaulting party stating the specific default claimed. Upon receipt of such notice, the defaulting party shall have fifteen (15) days to cure such claimed default before the non-defaulting party can take action to remedy the claimed default.

6.4. The rights and remedies of the parties provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

7. **Commencement and Completion of Work.** Contractor hereby agrees to commence Work within ten (10) days from receipt of a Notice to Proceed. Contractor hereby agrees to complete Phase I within one hundred eighty (180) days from issuance of the Notice to Proceed. Contractor shall be solely responsible for the means, methods, and techniques utilized in the Work.

8. **Project Time.** The number of calendar days from the date on which the Notice to Proceed with Phase 1 is issued by the IDA, through the required substantial completion date of the Project as subsequently established in the GMP shall constitute the "Project Time." Contractor warrants that the Project shall be substantially complete within the Project Time, provided that there are no unreasonable and unanticipated delays in completion of the design documents, unusual and unreasonable delays in obtaining any approval from a State or local governing agency or authority, or other occurrences which would form the basis for an extension of the Project Time; provided, however, that Contractor shall promptly notify IDA in writing of all anticipated or actual delays. Further, Contractor shall notify IDA in writing of any deadline by which design documents, approvals, or other information from IDA is needed and shall do so sufficiently in advance of such deadline so that any delay can be avoided.

9. **Liquidated Damages.** In the event of any delay in achieving substantial completion resulting from any act or omission of Contractor, the IDA may elect to assess the Contractor the sum of five hundred dollars (\$500.00) per day for each and every calendar day of such delay in achieving substantial completion beyond the Project Time. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the IDA. When the IDA reasonably believes substantial completion will be inexcusably delayed, the IDA shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the IDA to be adequate to recover liquidated damages applicable to such delays.

10. **Change Orders.** The contract prices, IDA-approved GMP, and the Project Time may be changed only by a written change order executed by the IDA Project Manager. IDA, without invalidating this Agreement, may order changes in the Work within the general scope of the Project consisting of additions, deletions, or other revisions, with the contract price and the Project Time being adjusted accordingly.

10.1. The cost or credit to IDA resulting from a change order shall be determined in one or more of the following ways: (a) by mutual acceptance of a lump sum properly itemized; (b) by

unit prices stated in the Contract Documents or subsequently agreed upon; or (c) by cost and a mutual acceptable fixed or percentage fee.

10.2. If none of the methods set forth in Section 10.1 is agreed upon, Contractor shall nonetheless promptly proceed with the Work involved. The costs or credits shall then be determined on the basis of Contractor's reasonable expenditures and savings. In such case, Contractor shall keep and present an itemized accounting together with appropriate supporting data. The amount of credit to be allowed by Contractor to IDA for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease as confirmed by Contractor's records.

10.3. If Contractor claims that additional cost or time is involved because of any unanticipated event outside of Contractor's control, Contractor shall make such claim solely as provided herein and failure to make a claim timely shall be a waiver of any such claim. If Contractor wishes to make a claim for an increase in the contract price, an extension in the Project Time or any change to the GMP, Contractor shall give IDA written notice thereof within seven (7) calendar days after occurrence of the event giving rise to such claim. This written notice shall be given by Contractor before proceeding to execute Work resulting from the event, except in an emergency endangering life or property in which case Contractor shall proceed as necessary under the circumstances. No change orders for time extension for rain or other adverse weather conditions, unless the condition is unusual or unreasonable for the time of year, shall be authorized.

11. **Inspection, Correction, and Warranty.** Contractor shall notify the IDA Project Manager of completion of each phase of the Project within five (5) business days after such completion unless otherwise agreed. The IDA Project Manager or designee will inspect the work and, if he/she finds that it has not been completed in accordance with applicable building codes or the Contract Documents, the Contractor shall cause the work to be promptly corrected at no cost to IDA. However, Contractor shall be responsible for the technical accuracy of the services it performs and documents it prepares, and neither IDA nor its agents shall be responsible for discovering deficiencies in such services or documents. Acceptance of the Work and final payment shall not relieve Contractor of the obligation to remedy Work that does not comply with the Contract Documents. For avoidance of any doubt, the Contractor shall be responsible for the failure of any subcontractors to carry out work in accordance with the applicable Contract Documents. Contractor shall immediately cause defective work to be corrected at no expense to IDA. If, within one (1) year after final completion of a subcontractor's work on the Project, the work is found to be defective or not in accordance with the applicable Contract Documents, the Contractor shall cause such work to be corrected promptly upon receipt of written notice from IDA. The obligations set forth in this paragraph shall survive final payment to Contractor and the termination of this Agreement. The warranties provided in this section shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

12. **Performance.** Contractor shall, in good workmanlike manner, perform all Work. Contractor shall not bid on or perform any of the trade construction work or professional services; this restriction includes entities in which Contractor or any of its principals hold an ownership interest. Should the Contractor fail to provide prudent and competent professional services, the

IDA may notify the Contractor in writing stating the IDA's intention to terminate the Agreement and stating the reasons therefore. Unless Contractor remedies such default or has made satisfactory arrangements with the IDA for such remedy within fifteen (15) days after service of said notice upon Contractor, this Agreement may be terminated by the IDA. In the event of such termination, the IDA may take over and complete the work at the expense of the Contractor. Contractor shall be liable to the IDA for any excess costs the IDA incurs. For the purposes of this Agreement, "excess costs" means costs that exceed the GMP the parties have agreed upon.

13. **Independent Contractor.** The parties expressly recognize that the relationship between the IDA and the Contractor is that of independent contractors, and that neither Contractor, nor any of its servants, agents, or employees shall ever be considered to be an agent, servant or employee of the IDA.

14. **Insurance.** Contractor shall obtain and maintain, at Contractor's expense, the following insurance and shall not commence Work hereunder until such insurance is obtained and provided to the IDA:

COMPREHENSIVE GENERAL LIABILITY: Contractor shall maintain commercial general liability (CGL) insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location/project in the amount of \$4,000,000. CGL insurance shall be written on an occurrence form and shall include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury and advertising injury.

COMMERCIAL AUTOMOBILE LIABILITY INSURANCE: Contractor shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos.) The policy shall be endorsed to provide contractual liability coverage.

WORKERS' COMPENSATION: Coverage is to apply for all employees for statutory limits in compliance with the applicable state and federal laws.

Contractor shall furnish the IDA with Certificates of Insurance. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Hardee County Industrial Development Authority is to be specifically included as an additional insured on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the Project, a renewal certificate shall be issued prior to said expiration date. All certificates of insurance must be on file with and approved by the IDA before the commencement of any work activities.

15. **Indemnification.** Contractor shall, in addition to any other obligation to indemnify IDA to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the IDA, its directors, employees, agents and volunteers, specifically including The Development Group and its directors, employees, agents, and volunteers, from and against all claims, actions, liabilities, losses (including economic losses), costs, including attorneys' fees and all costs of litigation, and judgments of every name and description arising out of or incidental to the performance of this contract, unless caused by the sole negligence of the IDA, its directors, employees, representatives, agents, or volunteers. Any cost or expenses, including attorneys' fees (including appellate, bankruptcy or patent counsel fees), incurred by the IDA to enforce this Agreement shall be borne by the Contractor. This indemnification shall also cover all claims brought against the IDA, its directors, employees, representatives, agents, or volunteers, specifically including The Development Group and its directors, employees, agents, and volunteers, by any employee of Contractor, subcontractor, or anyone directly or indirectly employed by any of them. The Contractor's obligation under this paragraph shall be limited to \$10,000,000.00 and shall not be limited in any way to the agreed upon contract price or the Contractor's limit of all services, obligations, and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this paragraph shall survive indefinitely.

16. **Subcontracts.** A portion of the Project may be performed under subcontracts, and Contractor shall require that each subcontractor agree to the provisions of this Agreement applicable to the work performed by such subcontractor, including, but not limited to, insurance requirements (except for excess/umbrella coverage), compliance with laws, and indemnification of IDA. IDA retains the right to refuse a subcontractor for reasonable cause, to review Contractor's agreements with subcontractors upon request, and require changes to such subcontractor agreements as IDA deems necessary. IDA shall not be obligated to pay any subcontractor under any circumstance. Contractor shall be responsible to IDA for the acts and omissions of all its employees and all subcontractors, their agents and employees, and all other persons performing any of the Work by, through, or under Contractor.

17. **Notices.** Whenever any notice is required or permitted by this Agreement to be given, such notice shall be by certified mail or overnight delivery addressed to:

If to Contractor:

LM Properties of Polk County, Inc.
Attn: Austin Evans, Land Dev. Manager
1925 E Edgewood Drive, Suite 100
Lakeland, Florida 33803
austin@lm-prop.com
863-667-2700

If to IDA:

Hardee County Industrial Development Authority
c/o The Development Group
attn: Denise Grimsley, CEO
107 East Main Street
P.O. Box 458
Wauchula, FL 33873
863-773-3030

Notice shall be considered given upon receipt when sent using the U.S. Postal Service, return receipt requested or commercial overnight delivery service, postage prepaid. In the event an address refuses delivery or delivery fails due to a change in the address of an addressee that has

not been communicated to the sender, the notice shall be deemed received as of the date of such refusal or failure of delivery. Each party will be responsible for notifying the other of any change in their address in the manner set out in this paragraph for notices at least ten (10) days prior to such new address being effective.

18. **Permits and Licensure.** Contractor shall hold all licenses, registrations, certifications, or permits necessary to complete the services, and shall require the same of its subcontractors, agents, and those performing work. Contractor shall be responsible for acquiring all applicable Federal, State, County, and City licenses and permits and pay local business tax as may be appropriate. Contractor shall pay all sales, consumer, use and other similar taxes required by law resulting from the Work, and such costs shall not be considered in addition to the contract price.

19. **Laws and Regulations.** All services and Work shall be performed pursuant to applicable law, rule, or regulation and pursuant to applicable policy of the IDA. Contractor shall comply with all laws, ordinances, rules, orders and regulations relating to performance of the work and the protection of persons and property.

20. **Safety and Health Regulations.**

20.1. Contractor shall comply with the Department of Labor Safety and Health Regulations promulgated for construction under the Occupational Safety and Health Act and such other rules and regulations as may be applicable to this Project. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (a) all employees on the Work and all other persons who may be affected thereby; (b) all the Work, all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Contractor or any of its subcontractors or sub-subcontractors; and (c) property adjacent to the Project site, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

20.2. Contractor shall ensure the Project site is maintained in a clean and orderly condition, free from all refuse, rubbish, scrap materials, and debris not otherwise contained within a designated refuse container. Any injury to persons or damage to property shall be immediately repaired or remedied by Contractor, subject to the limits of indemnification provided by Contractor herein, and Contractor further agrees that IDA may withhold payment hereunder until the damage is repaired or the property is replaced. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property. Contractor shall ensure that all reasonable safeguards for safety and protection are erected and maintained as required by existing conditions and progress of the Work.

21. **Public Records.** Contractor shall comply with public records laws, including Chapter 119, Florida Statutes. Contractor shall: (1) Keep and maintain public records required by the IDA to perform the services herein. (2) Upon request, provide the IDA with a copy of the

requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law. (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Project Time and following completion of the Project if the Contractor does not transfer the records to IDA. (4) Upon completion of the Project, transfer, at no cost, to IDA all public records in possession of the Contractor or keep and maintain public records required by IDA. If the Contractor transfers all public records to IDA upon completion of the Project, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements except those records the Contractor is required to maintain as part of its ongoing business. If the Contractor keeps and maintains public records upon completion of the Project, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to IDA, upon request, in a format that is compatible with the information technology systems of IDA.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 863-773-3030 or kristi.schierling@thedevelopmentgroup.net or 107 EAST MAIN STREET, PO BOX 458, WAUCHULA, FLORIDA 33873.

22. **OFAC List.** Contractor hereby represents, warrants and covenants to IDA that neither Contractor nor any person or entity that directly or indirectly (i) controls Contractor or (ii) has an ownership interest in Contractor of twenty-five percent (25%) or more, appears on the list of Specially Designated Nationals and Blocked Persons published by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

23. **Public Entity Crime.** Contractor certifies that neither it nor an affiliate have been placed on the convicted vendor list following conviction for a public entity crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. (*Section 287.133(3)(a), Florida Statutes.*)

24. **Discrimination.** Contractor certifies that neither it nor an affiliate have been placed on the discriminatory vendor list. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for

the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. (*Section 287.134, Florida Statutes.*)

25. **Scrutinized Companies.** Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria, and that the respondent is not participating in a boycott of Israel. Respondent shall immediately notify IDA if its certification set forth in this paragraph changes at any point during the proposal process or term of any contract. IDA may terminate any contract if respondent is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria or is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel. (*Section 287.135, Florida Statutes.*)

26. **Governing Law and Venue.** This Agreement shall be interpreted under and its performance governed by the laws of the State of Florida without regard to conflict of law principles. In the event of litigation between the parties related to or arising out of this Agreement, venue shall be in Hardee County, Florida and no other place, and Florida law shall apply. IDA does not waive sovereign immunity and its liability, if any, is limited by law, including Section 768.28, Florida Statutes.

27. **Prevailing Party.** Subject to the limitations of Section 768.28, Florida Statutes, in any action brought by either party for the interpretation or enforcement of the obligations of the other party, including IDA's right to indemnification, the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees, paralegal fees, court and other costs, whether incurred before or during litigation, on appeal, in bankruptcy, or in post judgment collections.

28. **Assignment.** Other than contracting with subcontractors in the normal course of business, Contractor shall not assign, in whole or in part, this Agreement or any monies due or to become due hereunder, without the written consent of IDA.

29. **Severability.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included, and if, through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon application of either party, this Agreement shall forthwith be physically amended to make such insertion or correction.

30. **Binding Effect.** This Agreement shall bind and inure to the benefit of the successors and assigns of each of the parties.

31. **Time.** Time is of the essence of this Agreement.

32. **Multiple Originals; Amendment.** This Agreement is executed in multiple copies, each of which shall be deemed an original. No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by each party.

AGREED TO as of the date last executed as set forth below.

SIGNATURE PAGE TO CONTRACT FOR CONSTRUCTION MANAGEMENT
AT RISK SERVICES
(BOSTICK ROAD INFRASTRUCTURE PROJECT)
Between Hardee County Industrial Development Authority and LM Properties of Polk County, Inc.

**HARDEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY**

By: _____
Lee Mikell, Chair

Date: _____

Attest:

By: _____

Witnesses as to Contractor:

**LM PROPERTIES OF POLK COUNTY,
INC.,** a Florida corporation

Witness #1: Kaitlyn Truesdell

By: Austin Evans

Print Name: Kaitlyn Truesdell

Name: AUSTIN EVANS

Witness #2: Holly C. Hooper

Title: LAND DEVELOPMENT MANAGER

Print Name: Holly C. Hooper

Date: 10/17/23

(corporate seal)

HARDEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

NOTICE TO PROCEED / CHANGE ORDER

DATE: _____

TO: LM PROPERTIES OF POLK COUNTY, INC.

CONTRACT: Construction Management at Risk Services (Bostick Road Infrastructure Project)

This document constitutes your Notice to Proceed with the following:

- Phase I - Pre-Construction
- Phase II – Procurement (Bid and Awards)
- Phase III – Construction
- Phase IV – Close-Out

This document constitutes a CHANGE ORDER regarding: _____

Additional Instructions: _____

Please review the application section of the Contract Documents for further details. If you have any questions, please contact: _____ at 863-773-3030.

Sincerely,

Denise Grimsley
CEO, The Development Group

EXHIBIT A
PHASE I SCOPE OF WORK

Construction Management Services for Pre-Construction Phase:

- a) Work and coordinate with Professional Consultants and develop review reports to support the design effort.
- b) Assist the IDA and the Professional Consultants during the scope development, preliminary design, and design development phases in evaluation of options for the project.
- c) Develop with the IDA and Professional Consultants applicable cost and time reducing design alternatives.
- d) Establish the master project schedule identifying all different phases and all milestone items.
- e) Develop a project budget and itemized Guarantee Maximum Price (GMP) upon negotiations with the IDA. The GMP shall include the substantial completion date of the project or phases of the project.
- f) Review and familiarize itself with all reports, surveys, drawings, tests and results concerning the condition of existing facilities, systems, structures, and sites.
- g) Work with and coordinate activities with any other Workers that the IDA contracts work with for the project.
- h) Familiarize itself thoroughly with the design documents and provide value engineering recommendations in all disciplines.
- i) Conduct and participate in field surveys to evaluate non-concealed conditions and concealed conditions to fullest extent possible while minimizing destructive activities.
- j) Review all applicable documents to ensure constructability and to minimize change orders.
- k) Review all applicable documents to help minimize scope-gaps, omissions, and conflicts.
- l) Prepare in CSI format, detailed estimates of probable cost of construction and update as needed prior to establishing the GMP.
- m) Review the project design to identify long-lead procurement items and equipment/materials which are eligible to be purchased by IDA as a direct material purchases.
- n) Coordinate with the Professional Consultants to finalize construction documents and develop bid packages.
- o) Coordinate with the Professional Consultants and prepare permitting applications and agency submittal documents as required for the project.
- p) Prepare progress reports during the Pre-Construction Phase documenting value engineering, budget, and scope issues.