

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “Memorandum”) is entered into as of the _____ day of September, 2021, by and between THE CITY OF PENSACOLA, FLORIDA, a political entity, (hereinafter referred to as the “City”) and CARSON LOVELL COMPANY, a Florida limited liability company, (hereinafter referred to as “CL”).

WHEREAS, the City issued its “Disposition of Real Property Redevelopment – Lots 4 and 5 at Vince Whibbs Sr. Community Maritime Park, 300 Block West Main Street” (the “Request for Qualifications”) dated April 22, 2021, File #21-00349, seeking a development team for the properties; and

WHEREAS, CL did submit a proposal in accordance with the Request for Qualifications issued by the City; and

WHEREAS, the City Council has selected CL to potentially provide the design-build-development services subject to negotiation and approval by the City and CL of a Definitive Development Agreement (hereinafter referred to as “Development Agreement”) with respect to the design, construction, financing, and operation for the Project which may include any combination of a municipal parking garage, conference/convention facility, multifamily dwelling structure, and misc. retail space (which is subject to refinement) referred to in the Request for Qualifications; and

WHEREAS, the City and CL have agreed to execute this Memorandum for the purpose of gathering due diligence and creation of a preliminary site masterplan, budgets, schedules, and defining the services and responsibilities to be provided by CL and the City, for the City’s review and consideration prior to execution of the Development Agreement between the City and CL.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration as further described herein, the mutual receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. **Project Description**, The Project (West Main parcel 4 & 5) shall mean the design, construction, and to be determined financing, with potential operations of any combination of municipal parking garage, conference/convention/banquet/museum facility, multifamily rent-targeted dwellings, and misc. retail/entertainment space, generally located on Parcels 4 and 5, West Main, Street, Pensacola, Florida 32502 (to be identified by formal survey).

B. **Project Documentation**. The City and CL agree to negotiate in good faith and execute a Development Agreement with respect to Project West Main parcel 4 & 5.

C. **Project - West Main parcel 4 & 5.**

1. The City and CL agree that Project West Main parcel 4 & 5 will be on a fast-track schedule. The City and CL agree to use their best efforts to execute a Development Agreement with respect to Project West Main parcel 4 & 5 within sixty (60) days of the date of this Memorandum.
2. The City and CL have mutually agreed to proceed to the first phase study under this MOU to further pursue the development of Project West Main parcel 4 & 5. Upon completion of the first phase study and within one hundred eighty (180) days, CL will present to the City the following deliverables:
 - a. Initial Architectural Masterplan including a site plan and preliminary layouts.
 - b. Initial Project Cost Analysis;
 - c. Initial Timeline for Development;
 - d. Preliminary Financing Structure.

(NOTE: City to provide any existing due diligence materials in its possession and pertinent to developments on parcels 4 and 5 within 10-days of request from CL)

3. It is agreed that the City, CL, or an CL affiliated developer may conduct an independent Economic and Financial Feasibility Study ("Feasibility Study") to determine the economic viability of any portion of Project West Main

parcel 4 & 5. This Feasibility Study may be done simultaneously with the first phase study.

4. Upon both parties signing this MOU, CL and its partners will begin the first phase study. Provided that information requested by CL is obtained in a reasonable time, CL will provide to the City the deliverables described herein.
5. Both Parties shall, within forty-five (45) calendar days after presentation of the Phase One Study by CL, notify the other in writing whether they wish to proceed with Project West Main parcel 4 & 5.
6. After completion of the first phase study, if the parties decide to proceed with development and construction of any portion of Project West Main parcel 4 & 5, the City and CL will enter into Development Agreement(s).
7. If the Parties decide to proceed with the Project, the CL costs incurred in first phase study will be included within the overall total development cost of Project West Main parcel 4 & 5. Current planned duration of this pre-development phase is six (6) months. If first phase study extends beyond six (6) months, parties agree to renegotiate a fair extension period and retainer agreement.
8. In the event the City unilaterally decides not to continue this project, City agrees to reimburse CL for identified costs incurred in completing the first phase study. Both City and CL mutually agree and accept all first phase study costs to be paid by the City will not exceed one hundred thousand dollars (\$100,000.00)
9. In the event CL unilaterally decides not to continue with this project, CL will be responsible for all costs not approved as reimbursable and as involved in the completion of the Phase 1 Study.

D. **Hold Harmless and Indemnification.** CL covenants and agrees that it will indemnify and hold harmless the City and all of its officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by CL, whether direct or indirect, or whether to any person or

property to which the City or said parties may be subject, except that neither CL nor any of its subcontractors will be liable under this Section for damages arising out of injury or damage to persons or property directly caused by or resulting from the sole negligence of the City or any of its officers, agents, or employees.

- E. **Governing Law.** Any agreement resulting from this Memorandum shall be governed by the laws of the State of Florida and the venue for any legal action relating to such agreement will be in Escambia County, Florida.
- F. **Independent Contractor.** CL will conduct business as an independent contractor under the terms this Memorandum. Personnel services provided by CL shall be by employees of CL and subject to supervision by CL, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Memorandum shall be those of CL.
- G. **Further Assurances.** The City and CL will (i) furnish, upon request to each other, further information, (ii) execute and deliver documents to each other, and (iii) do other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Memorandum and the documents referred to in this Memorandum.
- H. **Notices.** A notice communication and delivery under this Memorandum will be made in writing signed by the person making it and will be delivered only in person or by a nationally recognized next business day delivery service.

Accepted and Agreed:

CITY OF PENSACOLA, FLORIDA

CARSON LOVELL, LLC

By: _____

By: _____

Its: _____

Its: _____

Date: _____.

Date: _____.