

St. Petersburg City Council  
Meeting of May 21, 2020  
Report Item

To: The Honorable Ed Montanari, Chair and Members of City Council

Subject: Approving the Pre-Development Agreement between the City of St. Petersburg, Florida and Safe Harbor Development, LLC d/b/a Safe Harbor Development FL, LLC (“Safe Harbor”) for Safe Harbor to provide a development concept plan for a full renovation of the St. Petersburg Municipal Marina; authorizing the city attorney to make non-substantive changes to the pre-development agreement; authorizing the Mayor or his designee to execute the pre-development agreement; approving a supplemental appropriation in the amount of \$50,000 from the unappropriated balance of the Marina Capital Projects Fund (4043) to the Marina Pre-Development Project (TBD); and providing an effective date.

**BACKGROUND:** In 2016, the City engaged Moffatt & Nichol (“M&N”), a global infrastructure advisory firm, to perform a Condition Assessment and develop a Master Plan for the St. Petersburg Municipal Marina located in the Central and South Yacht Basins in downtown St. Petersburg (“Marina”). The Condition Assessment Report was completed in September 2016 and concluded that several components of the Marina (e.g. walkways and finger piers) were in extremely deteriorated condition and needed to be removed from service until repairs were completed. Short term repairs were initiated to stabilize the failing systems. The preliminary master plan report from M&N was received by the City in November 2017. Due to the aging and failing existing systems, the plan calls for a phased replacement of the Marina’s docks, walkways, finger piers, utility systems, and auxiliary support facilities. The projected price for these renovations varies (depending on type of dock system installed – floating/fixed/mixed) but is estimated to be approximately \$50 Million without the inclusion of any seawall or breakwater improvements.

In December 2018, the City received an unsolicited offer from Safe Harbor Marinas, LLC, a Delaware company, to privately finance the Marina renovations in return for a lease agreement to manage and operate the facility.

On February 21, 2019, City staff presented a Marina Overview and Update report to City Council which included a discussion of the current physical condition of the Marina, the short-term repair project designed to mitigate some of the findings in the M&N Condition Assessment Report, the on-going master plan process, and a review of estimated cost for the renovations. At the conclusion of the report, staff informed City Council of the unsolicited offer from Safe Harbor Marinas and explained that since the Marina is within the Intown Redevelopment area of the City, a public notice of the unsolicited offer needed to be published.

The Notice of Intent to Lease City-Owned Real Estate was published in the Tampa Bay Times on April 5, 2019 inviting any alternative proposals to be submitted by June 7, 2019. The Notice resulted in 3 additional proposals to renovate the Marina being received by the City. A thorough review of all proposals was performed by City staff with the strengths and weaknesses of each proposal presented to the Mayor. Formal presentations by the proposers to the Mayor and City staff were held and these were followed up with a series of questions and answers designed to clarify and confirm the information presented.

In January 2020, the Mayor selected Safe Harbor Development, LLC (“SHD”), a Tennessee company, as the best proposal based upon the company’s qualifications, history of development, financial benefit to the City and their broader vision for the St. Petersburg Marina project.

SHD is one of the largest marina operators in the U.S. Additionally, SHD has acquired, developed, and operates a variety of unique public spaces that attract over 5 million guests annually. Their resume includes marinas, water parks, hotels, RV resorts, entertainment venues, residential developments, retail centers, restaurants and event centers across the Northeastern and Southeastern United States.

SHD looks to integrate the Marina into the fabric of the surrounding area including the new St. Pete Pier and the downtown waterfront parks. Because of SHD's hospitality and marina development background, they placed an emphasis on quality with attention to Marina elements visible and accessible to not only Marina users but the general public. Their goal is to provide an attractive physical environment that is uniquely St. Petersburg recognizing the City's passion for its downtown waterfront.

While not part of the Pre-Development Agreement, the financial considerations proposed by SHD (which would be part of a Development, Operating, and Lease Agreement should the City move forward with the project) provide the City both a fixed base rent amount of \$250,000 per year plus 25% of gross Marina revenues. Over a 20-year timeframe, this could generate approximately \$19 Million of revenue to the City (based upon SHD Pro-Forma information).

Additionally, the required Termination Fee, payable to Safe Harbor if the Development, Operating, and Lease Agreement is not in place for at least 20 years (the time required by SHD to amortize their project investment) was slightly lower, at \$37.75 Million, than the other proposers including Safe Harbor Marinas, LLC. A copy of the SHD proposal to Lease and Operate the Marina is included as an attachment to this Memo.

The SHD proposal calls for the creation of a Pre-Development Agreement allowing the developer to create a Development Concept Plan for the full renovation of the Marina. This Concept Plan will include conceptual design documents and narratives, identification of engineering and other professional services needed to assure compliance with permitting requirements, cost estimation documents covering all soft and hard costs for the project within an estimated budget of \$30 Million, and proposed project schedule.

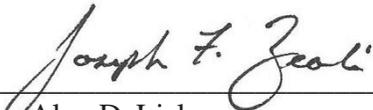
SHD will have 120 days to deliver the Development Concept Plan to the City. The City and SHD will then review the Concept Plan and decide whether or not to move forward with the renovation project. If the City and SHD agree to move forward, a Development, Operating and Lease Agreement ("Lease Agreement") will be created consistent with the business points included in the SHD proposal. The Lease Agreement will then be brought forward to City Council for approval.

If the City decides not to move forward with the project, it will reimburse SHD for up to \$50,000 of out-of-pocket costs incurred by SHD in its preparation of the Development Concept Plan. If SHD decides not to move forward with the project, they shall be solely responsible for all costs incurred in the preparation of the Concept Plan.

**RECOMMENDATION:** City Administration recommends approval of the attached Resolution approving the Pre-Development Agreement between the City and Safe Harbor Development for Safe Harbor to provide a development concept plan for a full renovation of the St. Petersburg Municipal Marina; authorizing the city attorney to make non-substantive changes to the pre-development agreement; authorizing the Mayor or his designee to execute the pre-development agreement; approving a supplemental appropriation in the amount of \$50,000 from the unappropriated balance of the Marina Capital Projects Fund (4043) to the Marina Pre-development Project (TBD); and providing an effective date..

COST/FUNDING/ASSESSMENT INFORMATION: The City could be responsible for up to \$50,000 of reimbursement to SHD if the City decides not to move forward with a Lease Agreement at the conclusion of the pre-development activities. Funding will be available after approval of a supplemental appropriation in the amount of \$50,000 from the unappropriated balance of the Marina Capital Projects Fund (4043) to the Marina Pre-Development Project (TBD).

Approvals:

  
\_\_\_\_\_  
For: Alan DeLisle  
City Development Administration

  
\_\_\_\_\_  
Budget

Attch: Resolution  
Marina Pre-Development Agreement  
Safe Harbor Development, LLC Proposal

**RESOLUTION NO. 2020-\_\_\_**

**APPROVING THE PRE-DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ST. PETERSBURG, FLORIDA AND SAFE HARBOR DEVELOPMENT, LLC D/B/A SAFE HARBOR DEVELOPMENT FL, LLC (“SAFE HARBOR”) FOR SAFE HARBOR TO PROVIDE A DEVELOPMENT CONCEPT PLAN FOR A FULL RENOVATION OF THE ST. PETERSBURG MUNICIPAL MARINA; AUTHORIZING THE CITY ATTORNEY TO MAKE NON-SUBSTANTIVE CHANGES TO THE PRE-DEVELOPMENT AGREEMENT; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE PRE-DEVELOPMENT AGREEMENT; APPROVING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$50,000 FROM THE UNAPPROPRIATED BALANCE OF THE MARINA CAPITAL PROJECTS FUND (4043) TO THE MARINA PRE-DEVELOPMENT PROJECT (TBD); AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City owns the St. Petersburg Municipal Marina located at 500 1st Ave SE, St. Petersburg, FL (“Marina”) that because of its age and condition is in need of major renovation; and

WHEREAS, the City received an unsolicited offer from a private entity to renovate and operate the Marina; and

WHEREAS, the City issued a notice inviting alternative proposals for the lease and operation of the Marina with a deadline of 10:00 A.M. (ET) June 7, 2019; and

WHEREAS, the notice was advertised in the Tampa Bay Times on April 5, 2019; and

WHEREAS, the Mayor selected the proposal submitted by Safe Harbor Development, LLC d/b/a Safe Harbor Development FL, LLC; and

WHEREAS, City Administration and Safe Harbor Development, LLC d/b/a Safe Harbor Development FL, LLC have negotiated the proposed pre-development agreement for City Council approval.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, that the Pre-Development Agreement between the City of St. Petersburg, Florida and Safe Harbor Development, LLC d/b/a Safe Harbor Development FL, LLC (“Safe Harbor”) for Safe Harbor to provide a development concept plan for a full renovation of the St. Petersburg Municipal Marina is hereby approved by this Council.

BE IT FURTHER RESOLVED that the City Attorney is authorized to make non-substantive changes to the Pre-Development Agreement.

BE IT FURTHER RESOLVED that the Mayor or his designee is authorized to execute the Pre-Development Agreement.

BE IT FURTHER RESOLVED that there is hereby approved from the unappropriated balance of the Marina Capital Projects Fund (4043) the following supplemental appropriation for FY20:





**Proposal to Lease and Operate (“Letter of intent”)**

*Between*

THE CITY OF ST. PETERSBURG, FLORIDA, (“City”)

*And*

SAFE HARBOR DEVELOPMENT, LLC a Tennessee limited liability company (“SHD, LLC”)

**GENERAL TERMS:**

The City and SHD will enter into a pre-development agreement to finalize the design, engineering, required permitting, and cost elements of the project which will be accomplished over a 90-day time period. SHD will pay for all pre-development cost.

Upon completion of the pre-development period, the City and SHD will finalize the scope and cost of the project based upon an expected budget not exceeding \$30,000,000

If, after the pre-development phase the parties desire to move the project forward, an operating Lease/Development agreement will be negotiated (based upon the business terms in this term sheet) and brought forward for City approval

If after the pre-development phase the City decides not to move forward with the project, then the City will pay SHD for the pre-development work accomplished (up to a maximum of \$50,000) and the City is free to complete the project directly

**1. Lease by SHD of SPM from City:**

- a. SHD will initially enter a 5-year lease with City as Landlord.
- b. During the initial 5-year lease term the parties will work together to secure a long-term lease (requiring a public referendum) which would have a term not less than 20 years with up to 3 ten-year options.
- c. The Lease and/or Agreements will provide SHD with necessary parking signage and access rights on and/or across City’s other properties and the right to mortgage its leasehold and will provide for customary leasehold mortgage rights.
- d. SHD shall have the right to set rates initially for the rental of wet slips, It is SHD’s intention to adjust rates to be more in line with the surrounding market rates. Initial rates and allowable increases will be determined at the end of the pre-development phase of the project once final design and project cost information is available. The City and SHD will work cooperatively in establishing the slip rates and related annual adjustments, which will become part of the operating lease/development agreement Once established wet slip rates may only be adjusted beyond the agreed upon increases only with prior approval by City.
- e. SHD shall undertake to offer employment to the existing management and staff.



## 2. Dock Renovations and Placement:

- a. The Lease shall provide for the framework and timing, under which SHD will commit to and fund a phased approach to renovate and replace the docking infrastructure for the South Basin and Central Basin (the "Renovation") for a project budget not to exceed \$30,000,000. HD shall bear responsibility for planning and financing the Renovation and City shall have authority to approve such Renovation plans prior to installation, which approval shall not be unreasonably withheld, conditioned or delayed. HD will commit to be responsible for any cost over the total \$30,000,000 budget.
- b. The design, approvals, permitting and entitlement process is anticipated to be complete within the first 12-18 months of the Lease. City shall cooperate and commit to use commercially reasonable efforts in assisting SHD in obtaining the necessary permits and entitlements mentioned above, at SHD's expense.
- c. Timeline: Yr. 1 (2020) initial engineering and design as well as define scope with City, Yr. 2 (2021) begin construction of seawalls (central) and any required attenuators as well as central basin slip install. Begin upgrades to all land-based utilities as well as renovation or replacement of existing building (bathhouses, etc.) parking lot lighting, landscape and parking upgrades, Yr. 3 (2022) begin reconstruction of south basin slips, electric and water etc. Yr. 4 (2023) any miscellaneous finishes etc. should be totally complete by this yr. 4.
- d. Renovation construction shall commence once the proper approvals and entitlements have been obtained by SHD. HD anticipates a 30-36-month construction timeline after approvals to complete both Basins- South Basin and Central Basin,

## 3. Rent Terms:

From commencement of the Lease and continuing for the entire term of the Lease including all renewals and extensions thereof, HD shall pay City an annual amount (Base rent) of \$250,000.00 subject to annual increases of 2.0%. In addition to Base rent HD proposes to pay percentage rent equal to twenty five percent (25%) of annual Gross Revenues (defined below) collected by SHD, LLC through its operations of SPM, subject to (RENT OFFSETS) defined in 3(a) below. For purposes of the Proposal and the Agreements, Gross Revenues shall be defined as the sum of all monies collected by SHD through operations of SPM, excepting however, that all fuel sales and retail sales shall be calculated at 2.5% of Gross Revenues.

- a. Rent Offsets will be the amortized amount per the level of capital investment required (\$30,000,000) and will apply only to percentage rent (THIS AMOUNT WILL BE CAPPED AT 50% OF TOTAL PERCENTAGE RENT) and no offsets will be applied to Base rent. If capital investment is less than \$30,000,000 then the rent offsets will be based on the lesser amount.



#### 4. Termination and Cancellation:

City shall have the right, (upon payment of Termination Fee described below), to terminate the Lease without cause prior to the expiration of the then current 5 year lease term and or any short term extensions or replacements thereof, subject to termination and cancellation provisions to be further defined in the Agreements (the "Early Termination Right"). If City declines to grant SHD's request to extend/renew the Lease at the end of the then-current 5-year term on the same terms as the original Lease, provided no uncured defaults by SHD then exist under the Lease (beyond any applicable notice and/or cure periods), City shall repay SHD its invested capital plus a 15% ROI (the "Termination Fee"). Any distributions from SPM operations (not including a 5% management fee) will be deducted from the IRR calculation.

EXAMPLE:

Yr. 1- \$1mm spent \*15% =\$150,000 ROI is \$150,000-marina profit \$100,000 = \$50,000  
termination fee + capital invested \$1mm = total \$1,050,000  
Yr 1+2 – total spent \$5mm\*15% \$750,000 ROI is \$750,000-marina profit \$300,000 = \$450,000  
termination fee + invested capital \$5mm for a total \$5,450,000

The Termination Fee shall not apply in the event the early termination is for cause, which language shall be further defined in the Agreements. In no event will the termination fee exceed \$37,750,000, even if the project cost exceeds \$30,000,000. After a referendum approving a longterm lease of SPM with no less 20 years is approved the termination fee will be removed and the normal default language will prevail.

#### 5. Timing

It is anticipated that if this Letter is agreed to by both City Council as well as the Mayor in the first quarter of 2020 then immediately thereafter the parties would begin work and negotiation of the lease as well as the scope of the work to be included in the lease.

SHD would expect this final part of the process to take no more than 90 days (June 2020) which still allows for a mid-2020 start of the design, bidding, engineering and permitting.



This is a non-binding Letter of Intent and is meant to identify the major terms and conditions of a proposed lease with SHD and City. The lease will have additional terms and conditions to lengthy to include in this "LOI"

If you agree with the basic terms set forth above, please sign the enclosed copy of this letter in the space indicated below.

Sincerely,

The City of St Petersburg

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Darby Campbell  
President  
Safe Harbor Development

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Rick Kriseman  
Mayor

## PRE-DEVELOPMENT AGREEMENT

THIS PRE-DEVELOPMENT AGREEMENT ("Agreement"), made and entered into this \_\_\_\_\_ day of May, 2020 ("Execution Date"), by and between the City of St. Petersburg, Florida ("City") and Safe Harbor Development, LLC d/b/a Safe Harbor Development FL, LLC ("Developer") (collectively, "Parties").

WHEREAS, the City owns the St. Petersburg Municipal Marina located at 500 1st Ave SE, St. Petersburg, FL ("Marina"); and

WHEREAS, the City desires for a private entity to operate the Marina and make improvements to the Marina; and

WHEREAS, the City issued a notice inviting alternative proposals for the lease and operation of the Marina with a deadline of 10:00 A.M. (ET) June 7, 2019; and

WHEREAS, the notice was advertised in the Tampa Bay Times on April 5, 2019; and

WHEREAS, the Mayor selected the proposal submitted by Developer; and

WHEREAS, the Parties desire to enter into this Agreement for Developer to perform pre-development duties with this Agreement.

NOW THEREFORE in consideration of the promises and covenants contained herein, the foregoing recitals which are incorporated into this Agreement as an integral part hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

### SECTION 1.0- PRE-DEVELOPMENT DUTIES OF DEVELOPER

- 1.1 Developer shall provide a development concept plan ("Development Concept Plan") for a full renovation of the Marina ("Project"), which Project (as conceptually depicted in the Development Concept Plan) shall include replacement or reconstruction of all dock components (e.g., main walkways, utilities, and finger piers), replacement or remodeling of support facilities (e.g., bathhouses and laundry facilities), replacement or reconstruction of seawalls as needed, and installation of wave attenuation systems as needed and as mutually agreed by the parties.. The Project scope may be adjusted by mutual agreement of the Parties in order to stay within the agreed-upon Project budget.
- 1.2 The Development Concept Plan shall include the following:

- 1.2.1 Conceptual design documents and narratives which shall include a site plan, identification of materials to be used (concrete, wood, metal), type of dock system to be installed (fixed, floating, combination), planned utility system improvements, location and description of support facilities, sustainability and resiliency opportunities, and a discussion on reuse of any existing infrastructure. If the Parties execute a Development, Operating & Lease Agreement (as defined herein), such agreement shall provide for detailed engineering drawings and design calculations.
- 1.2.2 Documents that identify the preliminary engineering and other professional studies needed to assure compliance with permitting requirements of the City and external parties, sustainability and resiliency measures, and structural evaluations of existing infrastructure.
- 1.2.3 Permitting information which shall include identification of all relevant entities required to approve of the Project, required deliverables to be submitted to relevant entities, and an estimated timeline to accomplish the submittal, evaluation and approval of the permits.
- 1.2.4 Cost estimation documents covering all soft and hard costs directly attributable to the Project within the estimated Project budget of thirty million dollars (\$30,000,000). If the Parties execute a Development, Operating & Lease Agreement such agreement will include an amortization schedule for up to thirty million dollars (\$30,000,000) of investment by Developer. The amortization schedule will cover a time frame mutually agreed upon by the Parties consistent with the terms set forth in Developer's proposal. Such agreement will also provide for repayment obligations of the City in the event that Developer's investment is not fully amortized. The amortization schedule and associated repayment obligations of the City will not apply to any investment by Developer in excess of thirty million dollars (\$30,000,000), unless the City otherwise agrees in writing.
- 1.2.5 Proposed project schedule which shall include start and completion dates, a plan to minimize displacement of existing boats (e.g., temporary docks) and proposed construction staging areas.

## SECTION 2.0– TERM OF AGREEMENT

- 2.1 The term of this Agreement is one hundred twenty (120) days commencing on the Execution Date ("Term"), unless this Agreement is earlier terminated as provided for herein. Notwithstanding the foregoing, the Mayor may extend the Term for a time period up to ninety (90) days if the Mayor determines that such extension is necessary for Developer to complete its duties set forth in this Agreement.

### SECTION 3.0 – REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS

- 3.1 Developer will exercise professional skill and judgment in performance of the duties set forth in this Agreement.
- 3.2 Developer will maintain all licenses, permits or other authorizations which are necessary to perform the duties set forth in this Agreement.
- 3.3 Developer represents that it has or will secure, at its own expense, all personnel required to perform the duties required by this Agreement.
- 3.4 Developer acknowledges that Developer is responsible for the acts and omissions (including negligent, reckless, or intentionally wrongful acts and omissions) of any employee, agent, subcontractor, subconsultant, or other representative of Developer (each a "Developer Representative") in the performance of the duties required by this Agreement.
- 3.5 Developer shall be responsible for the professional quality, technical accuracy and the coordination of all Deliverables (as defined herein) consistent with industry norms and standards.
- 3.6 Developer represents and warrants that it has the right to access and use all equipment, services, software, computer models, data, routines, technology, other intellectual property incident to providing the duties required by this Agreement (collectively, the "Intellectual Property"). Developer is responsible for any infringement or claim of infringement of any patent, trademark, copyright, trade secret, or other proprietary interest arising out of Developer's use of the Intellectual Property.
- 3.7 Developer hereby makes all certifications required under Florida Statute section 287.135.

### SECTION 4.0– CITY'S RESPONSIBILITIES

- 4.1 The City shall provide Developer a copy of the Marina master plan and all other existing documents and reports within ten (10) days after request from Developer.
- 4.2 The City agrees to promptly respond to Developer's submissions, requests and questions so as not to delay or impair Developer's progress.

### SECTION 5.0– LICENSE; NO VESTED RIGHTS

- 5.1 The City hereby grants to Developer a non-exclusive license during the Term for Developer and any Developer Representative to access restricted areas of the Marina (including Marina facilities (e.g., docks, docking facilities)) in order for

Developer to perform its duties set forth in this Agreement. Developer shall coordinate access with Marina management and provide at least twenty-four (24) hours prior notice. Developer accepts the condition of such areas in an “as-is” condition and waives all Claims (as defined herein) resulting from or arising out of such “as-is” condition. Developer shall not interfere with the activities or otherwise impede the use or enjoyment of the Marina by the City or others. To the extent that Developer or any Developer Representative cause any damage to the Marina or adjoining property, Developer, at its sole cost and expense, shall promptly restore and repair the same to the condition existing before such damage.

- 5.2 Nothing contained in this Agreement shall confer any vested rights upon the Developer with respect to the Marina or confer any interest in the Marina or in any improvements to be undertaken upon the Marina. The Developer’s rights to make improvements are subject to the negotiation and execution of a Development, Operating & Lease Agreement that is subject to approval by the St. Petersburg City Council, compliance with applicable laws (including the City Charter) and all other necessary approvals.

#### SECTION 6.0 – INDEMNIFICATION

- 6.1 Developer shall defend at its expense, pay on behalf of, hold harmless and indemnify the City, its officers, employees, agents, elected and appointed officials, and volunteers (collectively, “Indemnified Parties”) from and against any and all claims, demands, liens, liabilities, penalties, fines, fees, judgments, losses and damages (collectively, “Claims”), whether or not a lawsuit is filed, including but not limited to Claims for damage to property or bodily or personal injuries, including death at any time resulting therefrom, sustained by any persons or entities; and costs, expenses and attorney’s and experts’ fees at trial and on appeal, which Claims are alleged or claimed to have arisen out of or in connection with, in whole or in part, directly or indirectly:

- 6.1.1 The ownership, occupancy or use of the Marina by the City or Developer;
- 6.1.2 The performance of this Agreement (including future changes and amendments thereto) by Developer or any Developer Representative;
- 6.1.3 The failure of Developer or any Developer Representative to comply and conform with any applicable Laws (as defined herein);
- 6.1.4 Any negligent act or omission of Developer or any Developer Representative, whether or not such negligence is claimed to be either solely that of Developer or any Developer Representative or to be in

conjunction with the claimed negligence of others, including that of any of the Indemnified Parties; or

- 6.1.5 Any reckless or intentional wrongful act or omission of Developer or any Developer Representative.
- 6.2 Developer's obligations pursuant to paragraph 6.1 shall not apply to Claims arising from the City's sole negligence.
- 6.3 The provisions of this section are independent of, and will not be limited by, any insurance required to be obtained by Developer or any Developer Representative pursuant to this Agreement or otherwise obtained by Developer or any Developer Representative.

## SECTION 7.0 – INSURANCE

- 7.1 Developer shall obtain and maintain the following types and amounts of insurance throughout the Term at its own expense:
  - 7.1.1 Commercial General Liability insurance in an amount of at least One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate in occurrences form. This policy must include coverage for bodily injury, property damage, personal and advertising injury, products and completed operations, and contractual liability under this Agreement.
  - 7.1.2 Commercial Automobile Liability insurance of One Million Dollars (\$1,000,000) combined single limit covering all owned, hired and non-owned vehicles.
  - 7.1.3 Workers' Compensation insurance as required by Florida law and Employers' Liability Insurance in an amount of at least One Hundred Thousand Dollars (\$100,000) each accident, One Hundred Thousand Dollars (\$100,000) per employee, and Five Hundred Thousand Dollars (\$500,000) for all diseases.
  - 7.1.4 Errors and Omissions or Professional Liability insurance appropriate to the professional services firm's and/or design-build firm's (that being, the professional services firm(s) and/or design-build firm(s) to be hired by Developer) profession with a minimum limit of One Million Dollars (\$1,000,000) per occurrence. If coverage is on a "Claims Made" basis, it must include a retroactive date of coverage beginning no later than the Execution Date. Developer will identify their professional services firm(s) and/or design-build firm(s) by name to the City and provide insurance

certificates from such firm(s) to the City prior to such firm(s) commencing work and services pursuant to this Agreement. Developer will immediately inform City of any changes to the professional services firm(s) or design-build firm(s).

- 7.2 All of Developer's insurance policies, except Workers' Compensation and Professional Liability, shall name the Indemnified Parties as additional insureds.
- 7.3 All policies shall provide that the City will be provided notice at least thirty (30) days prior to any cancellation, reduction or material change in coverage.
- 7.4 Developer shall provide the City with Certificates of Insurance on a standard ACORD form, or similar form acceptable to the City, reflecting all required coverage. At the City's request, Developer shall provide copies of current policies with all applicable endorsements.
- 7.5 All insurance required shall be on a primary and noncontributory basis and shall be provided by responsible insurers licensed in the State of Florida and rated at least A- in the then current edition of AM Best's Rating Services, or similar rating agency acceptable to the City.
- 7.6 If the insurance carried by Developer has broader coverage than required in this Agreement, then that broader coverage, including but not limited to additional insured requirements, shall be the applicable insurance to this Agreement. If Developer's insurance limits are greater than the minimum limits set forth herein, then Developer's insurance limits shall be the applicable limits to this Agreement.
- 7.7 Developer hereby waives all subrogation rights of its insurance carriers in favor of the Indemnified Parties. This provision is intended to waive fully, and for the benefit of the Indemnified Parties, any rights or claims which might give rise to a right of subrogation in favor of any insurance carrier.

#### SECTION 8.0– OWNERSHIP OF DELIVERABLES

- 8.1 The City shall solely own all data, reports, calculations, studies, correspondence, schematic design documents, the Development Concept Plan, and all other materials produced and developed by Developer pursuant to this Agreement (collectively, "Deliverables"), including the copyright and all other associated intellectual property rights.

#### SECTION 9.0– SUBCONTRACTS

- 9.1 Developer may hire or use subcontractors or subconsultants in connection with the performance of Developer's duties set forth this Agreement. Unless context clearly

indicates otherwise, the terms “subcontractor” and “subconsultant” shall be interchangeable in this Agreement, and the terms “subcontract agreement” and “subconsulting agreement” shall likewise be interchangeable in this Agreement.

- 9.2 Developer shall be responsible for negotiating the terms and conditions of each subcontract agreement. Developer is also solely responsible for ensuring that each subcontractor acts in a manner consistent with and in accordance with the terms and conditions of this Agreement. Developer shall require each subcontractor to (i) obtain the same types and amount of insurance and comply with all insurance provisions that are required of Developer pursuant to this Agreement and (ii) indemnify and hold harmless the Indemnified Parties to the same extent as Developer under this Agreement. Developer’s retention of a subcontractor does not relieve Developer of any of its duties, obligations, or representations under this Agreement.

#### SECTION 10.0– FUTURE DEVELOPMENT, OPERATING & LEASE AGREEMENT

- 10.1 Within forty-five (45) days after Developer submits the Development Concept Plan to the City, the Parties shall meet to discuss such plan and whether or not to move forward with a development, operating and lease agreement (“Development, Operating & Lease Agreement”) consistent with the terms set forth in Developer’s proposal.
- 10.2 If after reviewing the Development Concept Plan, the Parties opt to move forward with the Project, the Parties will negotiate a Development, Operating & Lease Agreement consistent with the terms set forth in Developer’s proposal and present such agreement to the St. Petersburg City Council.
- 10.3 If after reviewing the Development Concept Plan, the City decides not to move forward with a Development, Operating & Lease Agreement, the City shall reimburse Developer for out-of-pocket costs and expenses incurred by Developer for duties performed pursuant to this Agreement, provided, however that such reimbursement shall not exceed fifty thousand dollars (\$50,000). Developer shall provide the City all completed or partially completed Deliverables within fifteen (15) days after the City notifies Developer that it does not want to move forward with a Development, Operating & Lease Agreement, along with an itemized invoice of out of pocket costs and expenses, and the City shall pay Developer within thirty (30) days after receipt of such invoice and all completed or partially completed Deliverables. Except for the foregoing payment, the City shall have no other liability to Developer related to termination of this Agreement by the City for convenience. Without limiting the generality of the foregoing, the City shall have

no liability to Developer for lost profits or lost opportunity costs in the event of termination of this Agreement by the City for convenience.

- 10.4 If after reviewing the Development Concept Plan, the Developer decides not to move forward with the Project pursuant to a Development, Operating & Lease Agreement, the Developer shall be solely liable and responsible for all costs and expenses incurred by Developer for duties performed pursuant to this Agreement. Developer shall provide the City all completed or partially completed Deliverables within fifteen (15) days after it notifies the City that it does not want to move forward with the Project.
- 10.5 Nothing contained in this Agreement shall create or be construed to create an expressed or implied contract obligating the City and Developer to proceed with the Project or to enter into a Development, Lease & Operating Agreement. Each party expressly waives, releases and covenants not to sue the other based on failure of that party to move forward with the Project pursuant to a Development, Operating & Lease Agreement.

#### SECTION 11.0 – TERMINATION

- 11.1 The City may terminate this Agreement with or without cause upon fifteen (15) days prior written notice to Developer. Additionally, the City may terminate this Agreement as provided in Florida Statute section 287.135.
- 11.2 In the event of termination for convenience pursuant to this section 11.1, the City shall reimburse Developer for out-of-pocket costs and expenses incurred by Developer for duties performed pursuant to this Agreement, provided, however that such reimbursement shall not exceed fifty thousand dollars (\$50,000). Developer shall provide the City all completed or partially completed Deliverables within fifteen (15) days after the effective date of termination, along with an itemized invoice of out of pocket costs and expenses, and the City shall pay Developer within thirty (30) days after receipt of such invoice and all completed or partially completed Deliverables. Except for the foregoing payment, the City shall have no other liability to Developer related to termination of this Agreement by the City for convenience. Without limiting the generality of the foregoing, the City shall have no liability to Developer for lost profits or lost opportunity costs in the event of termination of this Agreement by the City for convenience.
- 11.3 In event of termination for cause or as provided in Florida Statute section 287.135, the City shall not be liable or responsible to reimburse the Developer for out-of-pocket costs and expenses incurred by Develop for duties performed pursuant to this Agreement. Additionally, the City shall have no liability to Developer for lost profits or lost opportunity costs in the event of termination of this Agreement by the City for cause or as provided in Florida Statute section 287.135. Developer shall

provide the City all completed or partially completed Deliverables within fifteen (15) days after the effective date of termination.

#### SECTION 12.0—CONFIDENTIAL & EXEMPT RECORDS

12.1 Subject to the requirement of Florida laws regarding public records and section 16.0 of this Agreement, all Deliverables produced or developed by Developer or any City data available to Developer pursuant to this Agreement shall not be made available to any individual or organization, other than Developer or any Developer Representative, by Developer without prior written consent from the City.

#### SECTION 13.0 COMPLIANCE WITH LAWS

13.1 Developer shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations; the federal and state constitutions; and orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "Laws"), including those related to licensing and permitting, the Americans with Disabilities Act, the Florida Building Code, and Florida laws regarding public records.

13.2 Developer agrees to be subject to and shall comply with the applicable requirements for incorporating sustainable design practices in accordance with the Envision gold standard, or a comparable replacement standard as mutually agreed by the Parties, as those requirements are set forth in Chapter 2, Article V, Division 5 of the St. Petersburg City Code, as may be amended from time to time ("collectively "Green Certification Requirements"). Without limiting the generality of the foregoing, Developer shall appoint a qualified person and shall provide the required documentation in accordance with the applicable Green Certification Requirements.

#### SECTION 14.0— GENERAL PROVISIONS

14.1 Should any section or portion of any section of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other section or portion of this Agreement.

14.2 Each party to this Agreement that is not an individual represents and warrants to the other party that (i) it is a duly organized, qualified and existing entity authorized to do business under the laws of the State of Florida, and (ii) all appropriate authority exists so as to duly authorize the person executing this Agreement to so execute the same and fully bind the party on whose behalf he or she is executing.

- 14.3 Developer shall make no assignment of any of its rights, duties, or obligations under this Agreement without the City's prior written consent, which consent may be withheld by the City in its sole and absolute discretion.
- 14.4 This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida and shall inure to and be binding upon the Parties, their successors and assigns. Venue for any action brought in state court shall be in Pinellas County, St. Petersburg Division. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division shall be created in St. Petersburg or Pinellas County, in which case the action shall be brought in that division. The Parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.
- 14.5 This Agreement has been prepared by the City and reviewed by Developer and its professional advisors. The City, Developer, and Developer's professional advisors believe that this Agreement expresses their agreement and that it should not be interpreted in favor of either the City or Developer or against the City or Developer merely because of their efforts in preparing it.
- 14.6 The headings are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.
- 14.7 Developer shall keep accurate books, records and documentation related to this Agreement at the address for delivery of notices set forth in this Agreement. All such books, records and documentation shall be kept by Developer at Developer's sole expense and shall be open to examination, audit and copying by the City at the City's sole expense during the Term and for the retention periods set forth in the most recent General Records Schedule GS1-SL for State and Local Government Agencies, following termination or expiration of this Agreement. Developer shall bear the costs associated with the retention of books, records and documentation. Nothing in this section 14.7 shall be construed to allow destruction of records that may be required to be retained longer by the statutes of the State of Florida.
- 14.8 All obligations and rights of any party arising during or attributable to the period prior to expiration or earlier termination of this Agreement, including but not limited to those obligations and rights related to indemnification, shall survive such expiration or earlier termination.
- 14.9 This Agreement may be amended only in writing executed by the Parties.
- 14.10 This Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, whether oral or written, between them.

- 14.11 Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties, it being understood and agreed that nothing contained herein, nor any acts of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of independent contractors and principals of their own accounts.
- 14.12 No term or condition of this Agreement shall be deemed waived, and no breach of this Agreement excused, unless the waiver or consent is in writing signed by the party granting such waiver or consent.
- 14.13 In the event that either party is delayed in the performance of any act or obligation pursuant to or required by this Agreement by reason of an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo (each a "Force Majeure Event"), the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such party is actually delayed by such Force Majeure Event, plus a reasonable re-mobilization period for the delayed party. The party seeking delay in performance shall give notice to the other party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any party seeking delay in performance due to a Force Majeure Event shall use best efforts to rectify any condition causing such delay and shall cooperate with the other party to overcome any delay that has resulted.
- 14.14 Developer shall not take any action that will result in a lien being placed against the City or to any services or Deliverables being provided to the City. In the event the City is placed on notice of an intent to lien or placed on notice of a lien by Developer or any Developer Representative, Developer will take immediate action at Developer 's expense to respectively prevent or remove and discharge the lien.
- 14.15 Subject to the requirements of Florida laws regarding public records, neither party shall use the other party's name in conjunction with any endorsement, sponsorship, or advertisement without the prior written consent of the named party.
- 14.16 The obligations of the City as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget, appropriate and pay from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations

heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.

14.17 All Deliverables shall be made available to the City upon request and shall be considered public records unless they are exempt from disclosure under Florida laws regarding public records.

14.18 Time is of the essence of this Agreement and each of its provisions.

14.19 For purposes of this Agreement, any required written permission, consent, acceptance, approval, or agreement by the City means the approval of the Mayor or his authorized designee, unless otherwise set forth in this Agreement or unless otherwise required to be exercised by the City Council pursuant to the City Charter or applicable Laws.

#### SECTION 15.0– NOTICE

15.1 Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be given by either party to the other shall be in writing and shall be deemed given and delivered on the date delivered in person, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested to the address provided below, or upon the date delivered by overnight courier (signature required) to the address provided below.

**CITY:**

City of St. Petersburg  
City Development Administration  
P. O. Box 2842  
St. Petersburg, FL 33731  
Attention: Joe Zeoli  
Phone: (727) 892-5065  
Email: [Joe.Zeoli@stpete.org](mailto:Joe.Zeoli@stpete.org)

**DEVELOPER:**

Safe Harbor Development, LLC.  
d/b/a Safe Harbor Development FL, LLC  
308 Letterman Rd  
Knoxville, TN 37919  
Attention: Darby Campbell  
Phone: (865) 588-0321  
Email: [Darby@safeharbordev.com](mailto:Darby@safeharbordev.com)

15.2 Either party may change its authorized representative or address for receipt of notices by providing the other with written notice of such change. The change shall become effective five (5) days after receipt by the non-changing party of the written notice of change. Unless otherwise agreed to by the Parties in writing, electronic submission of notices does not relieve either party of the requirement to provide notice in writing as required in section 15.1 above.

#### SECTION 16.0- PUBLIC RECORDS

16.1 Developer shall (i) keep and maintain public records (as defined in Chapter 119, Florida Statutes) required by the City to perform the services pursuant to this Agreement; (ii) upon request from the City Clerk's Office, provide the City (at no cost to the City) 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 under Florida laws regarding public records or other applicable Laws; (iii) ensure that public records in Developer's possession that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable Laws for the Term and after the expiration or earlier termination of this Agreement; and (iv) after the expiration or earlier termination of this Agreement, at the City's request, either transfer, at no cost, to the City all public records in Developer's possession within ten (10) days following the City's request and/or keep and maintain any public records required by the City to perform the services pursuant to this Agreement. If Developer transfers all public records to the City upon the expiration or earlier termination of this Agreement, Developer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Developer keeps and maintains public records upon the expiration or earlier termination of this Agreement, Developer shall meet all applicable requirements for retaining public records in accordance with this Agreement and all applicable Laws. At the City's request, all public records stored electronically by Developer shall be provided to the City in a format approved by the City.

**16.2 IF DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY CLERK'S OFFICE (THE CUSTODIAN OF PUBLIC RECORDS) AT (727) 893-7448, CITY.CLERK@STPETE.ORG, OR 175 FIFTH ST. N., ST. PETERSBURG FL 33701.**

16.3 Nothing contained herein shall be construed to affect or limit Developer's obligations including but not limited to Developer's obligations to comply with all other applicable Laws and to maintain books and records pursuant to this Agreement.

[Signature page follows]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement on the day and date first above written.

SAFE HARBOR DEVELOPMENT, LLC.  
d/b/a Safe Harbor Development FL, LLC.

Sign: *[Signature]*

Print: Darby Campbell

Title: President

WITNESSES

Sign: *[Signature]*

Print: Danielle Harris

Sign: *[Signature]*

Print: Christopher

CITY OF ST. PETERSBURG, FLORIDA

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST

\_\_\_\_\_  
City Clerk

(SEAL)

Approved as to Content and Form

\_\_\_\_\_  
City Attorney (Designee) 00507644

(Acknowledgment of Developer)

State of Tennessee )

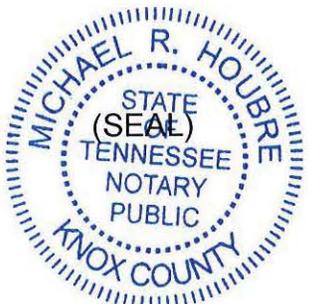
County of Knox ) ss:

City of Knoxville )

The foregoing Agreement was acknowledged before me this 7<sup>th</sup>, day of May, 2020, by Darby Campbell, President  
(Name and Title)

of Safe Harbor Development, LLC. d/b/a Safe Harbor Development FL, LLC ("Company"), on behalf of the Company. He She is personally known to me or has produced N/A, as identification and appeared before me at the time of notarization.

Darby Campbell warrants that he/she is authorized by the Company to execute the foregoing Agreement.



NOTARY PUBLIC: \_\_\_\_\_

[Signature]

My commission expires: 10/2/2021