

This agreement prepared by:

Sarah Taitt
Assistant City Attorney
Orlando City Hall
400 S. Orange Ave.
Orlando, Florida 32801

Orange County Parcel Identification Number:
26-22-29-1853-03-000

Development Agreement for Creative Village Parcel M

This Development Agreement for Creative Village Parcel M (the “Development Agreement”) is made and entered into as of the Effective Date (as hereinafter defined), by and between the **City of Orlando, Florida**, a Florida municipal corporation having its principal place of business at Orlando City Hall, 400 S. Orange Ave., Orlando, Florida 32801 (the “City”), **Creative Village Development, LLC**, a Florida limited liability company having its principal place of business at 800 N. Orange Ave., Suite 200, Orlando, Florida 32801 (“CVD”), and **Creative Village Parcel M Owner, LLC**, a Delaware limited liability company having its principal place of business at 800 N. Orange Ave., Suite 200, Orlando, Florida 32801 (“Developer”).

WITNESSETH

WHEREAS, as of the Effective Date, the City is the owner and contract seller of approximately 1.59 acres of real property generally located north of Federal Street, east of N. Parramore Avenue, south of W. Amelia Street, and west of N. Terry Avenue, and being more precisely described by the legal description attached hereto as **Exhibit A** (“Parcel M”); and

WHEREAS, Parcel M is in the Creative Village development in Downtown Orlando and is being sold for the development of a high-rise multi-family residential building with ground floor commercial uses and parking garage consistent with land development orders issued by the City of Orlando including the Creative Village Planned Development zoning ordinance (City of Orlando Ordinance No. 2012-19, adopted August 20, 2012, as amended), Framework Master Plan approval of Case No. MPL2018-10044 (City of Orlando Documentary No. 180904C12, issued by the Orlando City Council on September 4, 2018), Specific Parcel Master Plan approval of Case No. MPL2018-10053 (City of Orlando Documentary No. 181022C03, issued by the Orlando City Council on October 22, 2018), and the Certificate of Appearance Approval for Case No. ARB2018-10029 (City of Orlando Documentary No. 181022C03, issued by the Orlando City Council on October 22, 2018), with the project containing up to 409 residential units and approximately 5,899 square feet of ground floor commercial space and an integrated parking garage (the “Parcel M Apartments”); and

WHEREAS, CVD entered into that certain *Purchase Agreement* for the acquisition of Parcel M by and between the City and CVD and dated as of August 28, 2017, which was assigned by CVD to Ustler Development, Inc., (“UDI”) on or about August 28, 2017, and amended on August 29, 2018 and October 17, 2018, with closing expected to occur pursuant to the Purchase Agreement and corresponding amendments on or about November 30, 2018; and

WHEREAS, CVD is also the “Master Developer” of the Creative Village pursuant to that certain *Master Development Agreement for Creative Village Orlando between City of Orlando, Florida, and Creative Village Development, LLC*, dated as of February 25, 2011, and corresponding *Purchase Option Agreement*, as amended (the “Master Development Agreement” and the “Purchase Option Agreement”); and

WHEREAS, on the closing date under the Purchase Agreement, UDI will assign the Purchase Agreement to Developer as the ultimate prospective owner of Parcel M and developer of the Parcel M Apartments; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, CVD, and Developer (the “parties”) hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are hereby incorporated into this Development Agreement.
2. **Authority.** The City enters into this Development Agreement pursuant to its governmental, corporate, and proprietary powers. This Development Agreement is not a “development agreement” for purposes of the Florida Local Government Development Agreement Act (sections 163.3220 – 163.3242, Florida Statutes).
3. **Putnam Avenue Construction.** Developer, at its expense, shall design, permit, and construct a new segment of Putnam Avenue running from Amelia Street to Federal Street, inclusive of the Putnam Avenue/Federal Street intersection (“Putnam Avenue Segment”). This work shall include all improvements necessary to operate a complete segment of Putnam Avenue as a City-standard street, including without limitation, the road, curbs and gutters, stormwater management, traffic control devices, park strips, and signs. Sidewalks, street lighting and landscaping improvements on the east side of the Putnam Avenue Segment shall be designed and constructed consistent with the adopted Creative Village Streetscape Guidelines and is subject to final review and approval by Certificate of Appearance Approval. The west side of the Putnam Avenue Segment shall only include improvements to “back of curb” to minimize the impact to the Tennis Center. The Putnam Avenue Segment shall be delivered and accepted by the City before any certificate of occupancy is issued by the City for the principal structure of the Parcel M Apartments. If the Putnam Avenue Segment is not completed and open by May 31, 2019, Developer shall, at its sole cost and expense and prior to May 31, 2019, complete the construction of a temporary stabilized surface access road, acceptable to the City in design and construction, suitable to provide emergency vehicles serving the adjacent student housing project an ingress and egress route in lieu of the route identified in the Federal Street permit, to remain open and operating until the Putnam Avenue Segment is completed.
4. **Tennis Center Work.** The City is the owner and operator of a public tennis center located adjacent to Parcel M (currently addressed as and located at 363 N. Parramore Avenue in Orlando). The tennis center is part of the City’s public parks and recreational system and, as of the Effective Date, is generally comprised of: five (5) lighted, outdoor hard-surface tennis courts; nine (9) lighted, outdoor clay-surface tennis courts; an

accessory office and locker room facility; and a storage and maintenance shed (the "Tennis Center"). Development of the Parcel M Apartments will impact the Tennis Center by eliminating the storage and maintenance shed and will require compensating work to certain outdoor parts of the Tennis Center. Developer shall, or shall cause its agents and/or assigns to undertake, at its or their sole time and expense, the following work to the Tennis Center (the "Tennis Center Improvements"):

- a. Installation of a new storage and maintenance shed similar to that being removed in terms of the shed's size, number and style of doors, and utilities;
- b. Addition of a 8-foot-wide driveway from the new shed location to the W. Livingston Street right-of-way and any applicable lighting;
- c. Relocation of fencing around the northeast area of the Tennis Center where Putnam Avenue will be constructed to ensure a secure facility;
- d. To the extent that the Putnam Avenue Segment encroaches into the eastern edge of the Tennis Center parking lot, Developer will make adjustments as needed to the Tennis Center parking lot to ensure safe continued use as necessary, which may include striping, lighting, pedestrian access, or drainage improvements;
- e. As of the Effective Date of this Agreement, the eastern driveway into the Tennis Center parking lot is closed and an unrelated third party is constructing a sewer lift station in the northeast corner of the parking lot. Developer is not responsible for any adjustment or other work needed as a result of such lift station construction.

The Tennis Center Improvements shall be completed and accepted by the City before any certificate of occupancy is issued by the City for the Parcel M Apartments. The Tennis Center Improvements shall be completed in conformance with the Site Alteration Plan attached hereto as **Exhibit B**. All work shall be completed in a workmanlike manner and in accordance with applicable codes, and shall be coordinated with the Tennis Center management to minimize interference with the regular operations of the Tennis Center despite construction of the Parcel M Apartments. The scope of work for the Tennis Center Improvements has been deemed acceptable to the City.

- 5. Transportation Impact Fee Credits.** In accordance with Part I, Chapter 56, Orlando City Code, the Parcel M Apartments will be subject to the City transportation impact fees. Based on the approved development program and applicable impact fee rates as of the Effective Date, transportation impact fees in the amount of **\$1,001,475.60** will be due, such amount being calculated based on an apartment project comprised of up to 409 multi-family units (totaling **\$967,285.00** in impact fees) and 5,899 square feet of retail space (totaling **\$34,190.60**). The City hereby acknowledges and agrees that, in accordance with section 56.11, Orlando City Code, the Parcel M Apartments may be entitled to credit against its transportation impact fee liability in an amount equal to the agreed-upon value of the transportation improvements dedicated to the City for the Putnam Avenue Segment (the "Putnam Credit"). Further, Developer has applied to the City for a reduction in the transportation impact fees owed based on the criteria for a transit oriented development, which could reduce the transportation impact fees owed for the Parcel M Apartment up to \$500,737.80 (the "TOD Reduction").

Pursuant to section 11.03 of the Master Development Agreement, on February 7, 2011, the City and CVD established a Transportation Impact Fee Credit Account for the Creative Village (the "Creative Village TIFCA"), with such balance in the Creative Village TIFCA being sufficient to offset the transportation impact fees due for the Parcel M Apartments. On or before the date that transportation impact fees are due and payable to the City for the Parcel M Apartments, the City and CVD shall together assign transportation impact fee credits to the Parcel M Apartments, as applicable, from the Creative Village TIFCA in an amount equal to the final transportation impact fee liability as set forth herein. In order to give the parties ample time to negotiate and enter into a transportation impact fee credit agreement for the Putnam Credit and to obtain approval of the TOD Reduction, the City and CVD agree that any assignment from the Creative Village TIFCA will be replenished in accordance with the transportation impact fee credit agreement for the Putnam Credit and in accordance with the final amount of the TOD Reduction. This section shall apply to any future transportation impact fees for interior build-outs (e.g., the ground-floor retail space) at the Parcel M Apartments.

6. **Sewer Benefit Fees.** In accordance with section 30.19, Orlando City Code, the Parcel M Apartments will be subject to the City sewer benefit fees. Based on the proposed development program and applicable sewer benefit fee rates as of the Effective Date, sewer benefit fees in the amount of **\$788,756.50** will be due, such amount being calculated on the basis of the sewer flow generated by the proposed property use.

The City maintains the former Amway Arena credit flow under sewer file number 58/85-13. Pursuant to section 11.03 of the Master Development Agreement, on or before the date that sewer benefit fees are due and payable to the City for the Parcel M Apartments, if requested by Developer, the City agrees to allocate any available credit (or a portion thereof) from the Amway Arena credit flow to offset the sewer benefit fees owed for the Parcel M Apartments, not to exceed the amount of sewer flow generated by the Parcel M Apartments. Developer shall pay any sewer benefit fees owed that are not offset by the Amway Arena credit flow.

7. **Parks Impact Fees.** In accordance with Part II, Chapter 56, Orlando City Code, the Parcel M Apartments will owe the City parks impact fees. The City hereby acknowledges and agrees that, in accordance with subsection 56.37(b), Orlando City Code, the Parcel M Apartments will be entitled to credit against their parks impact fee liability in an amount equal to the agreed-upon value of the park improvements dedicated to the City by CVD and/or Developer as part of CVD's work to design, permit, and construct the Creative Village "Central Park", as generally depicted and described in the Creative Village Planned Development zoning ordinance. In order to give the parties ample time to establish a parks impact fee credit account and negotiate and enter into a parks impact fee credit agreement pursuant to paragraph 56.37(b)6., Orlando City Code, the City hereby agrees to defer the payment of the parks impact fee, if any, until no later than the issuance of the first certificate of occupancy for the Parcel M Apartments.
8. **Fiber Conduit Improvements.** Developer shall install fiber conduit and associated improvements for telecommunications purposes in the right-of-way adjacent to the Parcel M Apartments, in conformance with the Creative Village Specifications attached hereto as **Exhibit C** (the "Fiber Conduit Improvements"). This work shall include

installing conduit along West Amelia Street connecting to the existing underground pull box at the southeast corner of Terry and Amelia, and installing a new underground pull box on the southwest corner of Putnam Avenue and Amelia Street conduit. The City shall review and approve all plans prior to installation of the Fiber Conduit Improvements. Upon completion and acceptance by the City, the City shall pay for all costs associated with the Fiber Conduit Improvements in accordance with the Probable Cost Estimate attached hereto as **Exhibit D**.

9. Environmental Work Credit. At the time of closing under the Purchase Agreement, the City agrees to provide Forty-Two Thousand Five Hundred Dollars (\$42,500.00) credit against the amount owed to the City at closing, such credit representing the City's compensation to Developer for soil management work to be conducted by Developer on Parcel M during development of the Parcel M Apartments.

10. Monitoring Wells In Area - Notification. Pursuant to the Consent Decree for Remedial Design/Remedial Action (RD/RA) for OU1, Orlando Former Gasification Plant, entered in the United States District Court for the Middle District of Florida, Civil Action No. 6:15-cv-00028 on March 18, 2015 (Consent Decree), groundwater monitoring wells are located on properties in Creative Village. CVD and Developer acknowledge that the City, Atlanta Gas Light Company, Duke Energy Florida LLC, Peoples Gas System, and Continental Holdings, Inc. (collectively, the Group) are responsible for the remedies set forth in the Consent Decree, which includes the installation, monitoring and maintenance of monitoring wells on such properties, and that removal or relocation of existing monitoring wells without approval of the United States Environmental Protection Agency (EPA) could cause the Group to be out of compliance with the Consent Decree. Accordingly, CVD and Developer acknowledge, that any change, removal or alteration of any monitoring wells installed pursuant to the Consent Decree shall require approval from EPA to change, alter, relocate, or remove the wells. The City will cooperate to provide such information to EPA as required by EPA to approve the change, alteration, relocation, or removal. Upon approval of the EPA, the affected property owner shall make such change, alteration, relocation or removal in accordance with applicable state and local procedures, at the affected property owner's sole cost and expense. Any monitoring wells and other equipment related to the Consent Decree remain the property of the Group, and, shall not be disturbed, damaged or destroyed except as provided herein. The foregoing is being provided to ensure knowledge of all property owners in and around the area affected by the Consent Decree. There are no known monitoring wells pursuant to the Consent Decree on Parcel M.

11. Necessary Site Improvements and Ancillary Public Improvements. Pursuant to the Phase I Point of Determination Letter from the City dated May 19, 2016, Parcel M (representing a portion of Creative Village Phase I) has achieved a Point of Determination, subject to completion of any remaining Necessary Site Improvements for Parcel M. The City agrees that completion of the Putnam Avenue Segment described in section 3 of this Development Agreement will constitute completion of all Necessary Site Improvements required for the development of Parcel M, and Developer agrees to complete such work in connection with its construction of the Parcel M Apartments. CVD and Developer have demonstrated that sufficient funds have been obtained to construct such remaining Necessary Site Improvements as required under section 5.1 of

the Purchase Option Agreement. The City agrees that it has no rights or remedies as to Parcel M or its owner under the Master Development Agreement or the Purchase Option Agreement with respect to any Necessary Site Improvements or Ancillary Public Improvements.

- 12. Reconveyance Deed.** Pursuant to section 21 of the Purchase Option Agreement and section 8.1 of the Purchase Agreement, the City agrees that CVD and Developer have achieved Commencement of Construction, in that building permits for vertical construction for the Parcel M Apartments have been applied for and that site clearing work has commenced, meaning that no Reconveyance Deed is required in connection with the sale of Parcel M.
- 13. Development Rights.** Upon acquisition of Parcel M pursuant to the Purchase Agreement, Development Rights under the Master Development Agreement and the Purchase Option Agreement necessary for the Parcel M Apartments are fully assigned and allocated by the City and CVD to Parcel M.
- 14. Assignment of Rights and Obligations.** Except as otherwise expressly provided herein, the rights and obligations incurred by the parties under this Development Agreement may be assigned to third parties and/or successors-in-interest only upon the express written consent of the parties hereto, except that the rights and obligations incurred hereunder by CVD and Developer are freely assignable among these two parties upon express written notice to the City.
- 15. Term of Agreement.** Subject to the matters that survive termination of this Development Agreement as provided herein, this Development Agreement is effective upon the Effective Date and remains in full force and effect for a period of five (5) years following the Effective Date, unless sooner terminated as provided herein. If vertical construction of the Parcel M Apartments is not commenced within three (3) years following the Effective Date, then this Development Agreement shall expire and be of no further force and effect. Within fifteen (15) days following written request of the Developer, the City shall execute a document acknowledging which of the obligations of Developer under Sections 3, 4, and 8 hereof have been completed. Notwithstanding the foregoing, the provisions in Sections 10, 11, 12, 13 and 14 shall survive termination of this Development Agreement, but only if at the time of such termination, construction of the Parcel M Apartments has been completed.
- 16. Applicable Law and Jurisdiction.** This Development Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Each party agrees that any action or proceeding with respect to this Development Agreement may only be brought in a federal or state court situated in Orange County, Florida, and by execution and delivery of this Development Agreement, such party irrevocably consents to jurisdiction and venue in each such court.
- 17. Third Party Beneficiaries.** It is expressly agreed and by this statement specifically intended by the parties that nothing within this Development Agreement shall be construed as indicating any intent by any party to benefit any other entity or person not

a party signatory to this Development Agreement and that nothing herein shall entitle any third party to any right of action on account hereof.

- 18. Notices.** Notices and communications given under this Development Agreement must be made in writing and if to (i) the City, then to the address hereinabove set forth, in care of the Chief Administrative Officer, or to such other person and address as may be provided by the City; and if to (ii) CVD or Developer, then to the address hereinabove set forth, or to such other person and address as may be provided by CVD or Developer.
- 19. Entire Agreement; Amendments.** Except as expressly provided herein, this Development Agreement contains the entire agreement between the parties and may not be changed, modified, amended, waived, or cancelled except by an agreement in writing and executed by each of the parties hereto.
- 20. Counterparts and Facsimile Signatures.** This Development Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Development Agreement may be executed by facsimile or .pdf electronic signature by any party and such signature will be deemed binding for all purposes hereof without delivery of an original signature being thereafter required.
- 21. Recording Costs.** This Development Agreement may be recorded in the official records of Orange County, Florida, at the time and expense of CVD or Developer.
- 22. Binding Effect.** This Development Agreement inures to the benefit of and is binding upon the successors or assigns in interest or the legal representatives of the parties hereto, including all the purchasers and subsequent owners of Parcel M.
- 23. Effective Date.** This Development Agreement takes effect upon full execution by all parties, provided, however, that if the closing pursuant to the Purchase Agreement does not occur, then this Development Agreement shall be null and void.

[Signatures to follow]

For the **City of Orlando, Florida:**

BY THE MAYOR OF THE CITY OF
ORLANDO, FLORIDA:

Mayor

Date

ATTEST, BY THE CLERK OF THE
CITY COUNCIL OF THE CITY OF
ORLANDO, FLORIDA:

City Clerk

Print Name

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
CITY OF ORLANDO, FLORIDA:

Assistant City Attorney

Print Name

For **Creative Village Development, LLC**
By: Creative Village Orlando, LLC as its Manager

Craig T. Ustler, Manager

Date

For **Creative Village Parcel M Owner, LLC:**

By: _____

Name: _____

Its: _____

Date

Exhibit A

Legal Description of Parcel M

Lot 3 of the Creative Village – Phase I Plat, as recorded in plat book 93, pages 60-64 of the public records of Orange County, Florida

Exhibit B

Site Alteration Plan

[illegible][illegible]

Exhibit C

Fiber Conduit Improvements

General IT Conduit Specifications

All conduit runs to include – (2) 4" PVC Conduits rated for pulling fiber optic cabling with labeled fish line.

All conduit locations recorded with 811 service.

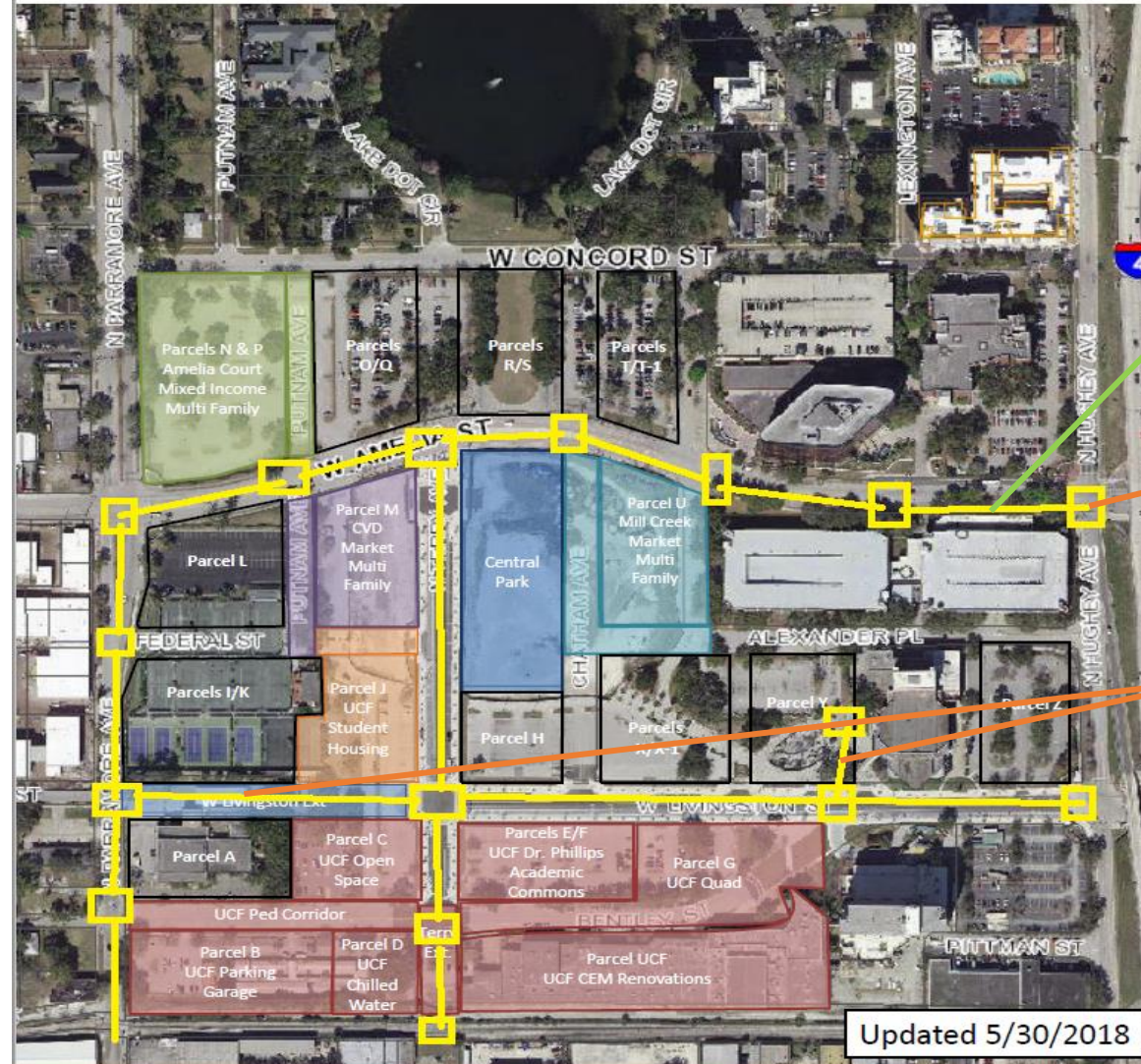
Under Ground Pull boxes – Minimum size should support (4) 8" conduit terminations. Should be tamper protected with lock and key method.

All identified intersections should include a minimum of one underground pull box.



Creative Village - Phase I

Development Parcels and Infrastructure



Creative Village Specifications

Purposed (2) 4" Conduits

Pull Boxes - All major intersections
need underground pull boxes.

Existing Conduit acquired from AT&T
on Livingston to Terry Ave. - should
be verified.

Existing Conduit going to Bob Car –
should be verified

Exhibit D

Probable Cost Estimate

Exhibit D
Probable Cost Estimate - Fiber Conduit Improvements
November 1, 2018

Item		Quantity	Unit	Total Cost
<u>Brasfield & Gorrie Work:</u>				
1	Conduit Along Amelia	475	LF	\$ 19,000.00
2	Tie Into Existing Pull Box	1	EA	\$ 1,500.00
3	New Pull Box at Amelia & Putnam	1	EA	\$ 5,500.00
4	Patching at Conduit Installation Across Terry	100	LF	\$ 3,000.00
5	Equipment	1	MO	\$ 4,500.00
6	Cleanup and Dumpsters	1	LS	\$ 1,500.00
7	General Requirements & Fee	1	LS	\$ 2,250.00
Sub-Total				\$ 37,250.00
<u>GAI Proposal:</u>				
8	Engineering For Conduit			\$ 2,700.00
TOTAL				\$ 39,950.00

CONDUIT & PULL BOXES



CREATIVE VILLAGE LOT M

Ustler Development & The Allen Morris Company
Orlando, FL
October 30, 2018

ITEM		QUANTITY	UNIT	TOTAL COST	COMMENTS
CITY CONDUIT AND PULL BOXES					
1					
2	CONDUIT ALONG TERRY	0	XX	\$0	
3	CONDUIT ALONG AMELIA	475	LF	\$19,000	
4	TIE INTO EXISTING PULL BOX	1	EA	\$1,500	
5	NEW PULL BOX AT AMELIA & PUTMAN	1	EA	\$5,500	
6	PATCHING AT CONDUIT INSTALLATION ACROSS TERRY	100	LF	\$3,000	
7	EQUIPMENT	1	MO	\$4,500	
8	CLEANUP AND DUMPSTERS	1	LS	\$1,500	
9	GENERAL REQUIREMENTS & FEE	1	LS	\$2,250	
TOTAL COST				\$37,250	

*Costs above assume work can be completed during construction of the building while site utility work is occurring.



Orlando Office
618 East South Street
Suite 700
Orlando, Florida 32801

T 407.423.8398
F 407.843.1070

October 29, 2018

GAI Project No. A180534.01

Mr. Craig Ustler
CV – Parcel M Partners, LLC
800 N. Orange Avenue, Suite 200
Orlando, Florida 32801

**Proposal for Professional Services – Supplemental Agreement No. 2
Creative Village Putnam Avenue
Orlando, Florida**

Dear Mr. Ustler:

GAI Consultants, Inc. ("GAI" or "the Consultant") is submitting this Supplemental Request to the original Agreement dated October 1, 2018, for Professional Services to CV – Parcel M Partners, LLC ("the Client") for the above-referenced project. This proposal reflects the anticipated Scope and related costs for services to be provided.

Supplement Understanding

The City of Orlando has requested that the Creative Village Parcel M project include infrastructure for the City's buried communication system. GAI will revise the Parcel M plans to include the 2-4" conduits along Amelia Street and Terry Avenue within the project limits.

Scope of Services

Based on our understanding of the project requirements/criteria provided to date by the Client, GAI will perform the following described Scope of Services:

Task 1 – City of Orlando Communication Infrastructure

This task includes revision of plans to include infrastructure for the City of Orlando buried communication lines. Per City request, the plans will include two – 4" conduits along Amelia Street and Terry Avenue and associated pull boxes.

- The following plan sheets are anticipated to be revised:
 - Site Plan
 - Grading and Drainage Plan
 - Utility Plan
- GAI will distribute an electronic set of revised plans for review, and prepare one revision of the plans related to the buried communication infrastructure.

Compensation

Compensation for services rendered by GAI will be on a lump sum basis in accordance with the rates agreed to and incorporated into the Agreement between GAI and the Client dated October 1, 2018. The fees are not meant to be all inclusive or exhaustive and are estimates that are highly dependent on the level of effort required and/or requested by the Client.

Task	Method of Payment	Total
1.0: City of Orlando Communication Infrastructure	Lump Sum	\$2,700
Total Section Fee (excluding expenses)		\$2,700

Schedule

GAI will begin upon receipt of a copy of this Supplement Proposal executed and authorized below. GAI will endeavor to complete its Scope of Services and deliver the project deliverable within a timeframe agreed to by the Client, subject to excused delay occasioned by factors beyond GAI's reasonable control. Project deliverable will include revised construction documents.

Closing

Please do not hesitate to contact me at 321.319.3041 if you have any questions or wish to discuss this Proposal. If this Proposal is acceptable, please sign where indicated below and return one copy for our file. This will also serve as authorization for GAI to proceed. GAI's performance of the Scope of Services will be governed by the previously agreed to terms and conditions set forth in the Agreement between GAI Consultants and CV - Parcel M Partners, LLC dated October 1, 2018.

REQUESTED AND AUTHORIZED BY:

CV – Parcel M Partners, LLC

Sincerely,

GAI Consultants, Inc.

Aimee Shields

Aimee J. Shields, P.E.
Senior Engineering Manager

Kathleen Leo

Kathleen S. Leo, P.E.
Vice President

AJS/KSL/bry

BY: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____