

COPY

**ADMINISTRATIVE AND MANAGEMENT
SERVICES AGREEMENT FOR 2014**

This Administrative and Management Services Agreement (this "Agreement") is entered into by and between the **Westchase District** (the "District") and **District Management Services, L.L.C.** ("Consultant") effective January 1, 2014. The District is engaging Consultant to provide consulting services to act as general manager of the operations and management of the District in accordance with the Westchase District Policy Handbook as it may be amended from time to time (the "Handbook"). The District and Consultant agree that this Agreement constitutes the entire agreement between them.

- I. **SERVICES TO BE PROVIDED BY CONSULTANT.** Pursuant to the terms and conditions set out in this Agreement, the District hereby engages Consultant, and Consultant agrees to perform the consulting services for the operations and management of the District in accordance with the Handbook as it may be amended from time to time ("Services"). Consultant's representative to provide the Services will be Jim Murphy, unless otherwise agreed to by the parties. Consultant shall perform or furnish the Services for the District as set out herein and will give professional consultation and advice to the District in his capacity as the Consultant. The District has requested that Consultant perform those certain special projects listed on **Exhibit "A,"** attached hereto and incorporated herein (the "Special Projects") for which Consultant will be compensated

- II. **COMPENSATION.** The District agrees to pay Consultant for the Services a fixed fee of \$24,417.00 per month. The District will pay Consultant for each of the Special Projects the compensation shown on **Exhibit "A."** As an Independent Contractor, Consultant is solely and exclusively responsible for all taxes owed on the compensation paid under this Agreement, including without limitation all related interest, penalties and fines, and he fully understands that the District will make no withholdings on his behalf. In addition, the District will pay Consultant's actual out-of-pocket expenses reasonably incurred in the performance of the Services. All reimbursements for travel expenses outside the City of Houston must be approved by the Board of Directors of the District (the "Board"). Consultant will invoice for such reimbursable expenses and shall provide to the District documentation sufficient to support such charges. Notwithstanding the foregoing, Consultant will not be paid for any amounts that exceed the amounts budgeted by the District for the Services and reimbursable costs unless such amount is approved in writing by the Board. Further, if Consultant does not perform all the Services as required by this Agreement, the District shall have the right to adjust the compensation to be paid to Consultant for such month.

- III. **BILLING AND PAYMENT.** The District will pay Consultant monthly the fixed fee portion of the compensation hereunder within thirty (30) days of the District's receipt of an invoice from Consultant. The District will pay Consultant for the reimbursable expenses within thirty (30) days of the District's receipt of the invoice for such costs. The invoice

must contain documentation of the reimbursable costs sufficiently detailed to allow the District to review, understand and approve each invoice. Entries with insufficient detail will not be approved or paid by the District. Consultant will invoice the District upon completion of each of the Special Projects, and the District will pay Consultant the compensation for each Special Project shown on Exhibit "A" within thirty (30) days of approval of the District's Finance Committee of completion of such Special Project.

IV. STANDARD TERMS AND CONDITIONS.

A. STANDARD OF CARE. Consultant's services shall be performed in accordance with the standard of professional practice ordinarily exercised by professional consultants who render the type of services to be provided hereunder at the time and within the locality where the Services are performed.

B. CHANGE OF SCOPE. The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by the District.

C. DELAYS. If events beyond the control of the District or Consultant, including, but not limited to, fire, flood, explosion, riot, stroke, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay.

D. TERM. This agreement shall be in effect for one (1) year, commencing January 1, 2014 and ending on December 31, 2014.

E. TERMINATION/SUSPENSION.

(1) The District may terminate this Agreement upon thirty (30) days written notice to Consultant for any reason, with or without cause.

(2) Consultant may terminate this Agreement upon ninety (90) days notice to the District for any reason, with or without cause.

(3) In the event either party defaults in its obligations under this Agreement (including District's obligation to make the payments required hereunder), the non-defaulting party may suspend performance under this Agreement after seven (7) days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and diligently continued to completion. If such default is not remedied to the reasonable satisfaction of the non-defaulting party within 30 days, the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party.

(4) Either party may terminate this Agreement upon ten (10) days written notice to the other in the event that such party becomes involved in a conflict of interest with the other party.

Copies of all completed or partially completed reports or any other document prepared by Consultant pursuant to this Agreement shall be delivered to the District within fourteen (14) days of the effective date of termination, at no additional cost to the District.

F. OPINIONS OF COST. The District acknowledges that any opinion of costs prepared by Consultant is supplied for the general guidance of the District only. Since Consultant has no control over competitive bidding, if required, or market conditions, Consultant cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to the District.

G. RELATIONSHIP WITH CONTRACTORS. Consultant shall serve as the District's professional representative for the Services and may make recommendations to the District concerning actions relating to the District's contractors, but, unless specifically authorized by the District, Consultant disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of services by the other District contractors. Consultant must receive the approval of the District before hiring any contractor, subcontractor, or consultant in connection with the Services permitted or required by this Agreement. Such approval shall specifically set forth the compensation, if any, to be paid by the District to any such contractor, subcontractor, or consultant, and any compensation to be paid to Consultant in connection therewith. The District shall not be liable for any costs or fees incurred without such prior approval.

H. INSURANCE. Consultant shall be responsible for maintaining commercial general liability insurance with coverage in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, provided that the total annual premium for such coverage is available in an amount not to exceed \$5000.00. Consultant shall provide a certificate of insurance to the District evidencing such coverage and shall have the District named as an additional insured on such policy.

I. INDEMNITY PROVISIONS

TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DISTRICT AND ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (A) FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES AND LIABILITIES ARISING FROM THE ALLEGED NEGLIGENCE, MISCONDUCT OR FAILURE TO ACT OF CONSULTANT OR ANY OF HIS AGENTS OR EMPLOYEES AND (B) FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES AND LIABILITIES ARISING FOR THE ALLEGED NEGLIGENCE IN SUPERVISING OR FAILURE OF THE DISTRICT TO SUPERVISED CONSULTANT IN PERFORMING THE SERVICES HEREUNDER.

TO THE FULLEST EXTENT PERMITTED BY LAW, DISTRICT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CONSULTANT AND HIS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS FROM

AND AGAINST ANY AND ALL CLAIMS, LOSSES AND LIABILITIES ARISING FROM THE ALLEGED NEGLIGENCE, MISCONDUCT OR FAILURE TO ACT OF DISTRICT OR ANY OF ITS AGENTS OR EMPLOYEES, EXCEPT AS SPECIFICALLY PROVIDED IN THE FOREGOING PARAGRAPH OF THIS SECTION IV. I.

J. OWNERSHIP OF PROJECT DELIVERABLES. Original documents, plans, designs, and survey notes belong to and remain the property of the District, provided that Consultant has received full compensation due pursuant to the terms of this Agreement. With the District's written consent, Consultant may retain reproducible copies of such documents at Consultant's sole cost and expense. Consultant shall not reuse any such deliverables without the prior written consent of the District.

K. INDEPENDENT CONTRACTOR. In the performance of work or services herein agreed to, Consultant shall be deemed an independent contractor, and any of his employees performing work required hereunder shall be deemed solely employees of Consultant or his subcontractors where appropriate. Consultant is responsible for all taxes on the compensation he receives under this Agreement, and he is not eligible to participate in any employee benefits plans offered by the District to its employees. In the event that any compensation under this Agreement is subsequently determined by the Internal Revenue Service or any other authority to be taxable as wages and the District is required to pay employment taxes on such amounts, or related interest, penalties or fines, Consultant shall immediately reimburse the District for the entire amounts assessed against the District.

L. ADDRESS OF NOTICE AND COMMUNICATIONS. All notices and communications under this Agreement to be mailed or delivered hereunder shall be to the following addresses:

CONSULTANT
District Management Services, L.L.C.
Attn: Mr. Jim Murphy
1418 West Brooklake Drive
Houston, Texas 77077
Fax: 281-920-3406

DISTRICT
The Westchase District
10375 Richmond, Suite 1175
Houston, Texas
Attention: Mr. Dave Gilkeson
Fax: 713-780-8025

M. COMPLIANCE WITH ALL LAWS. Consultant, in the performance of the Services hereunder, will comply at all times with all applicable laws, rules and regulations applicable to Consultant and to the District.

N. CONFLICTS OF INTEREST. Consultant agrees that neither he nor his employees, will knowingly become involved in any conflict of interest with the District and that if such a conflict of interest arises, he and his employees shall, upon discovery of the same, promptly disclose such conflict to the District. In the event the District believes a conflict has arisen, it shall promptly notify Consultant of such issue in writing. Consultant shall have ten (10) business days to either resolve the conflict or convince the District that there is no conflict. In the event Consultant and the District do not agree as to whether or not a conflict exists, the opinion of the District prevails, and the District may terminate this Agreement upon ten (10) days written notice without having to prove an actual conflict.

O. NONEXCLUSIVITY. The District understands and agrees that Consultant may provide services to other entities as long as such other work does not violate any term or provision of this Agreement or any other obligation owed to the District by Consultant.

P. DISCLAIMER OF POLITICAL SUPPORT OR AFFILIATION. The District expressly disclaims any political support of or affiliation with Consultant. Further, the District hereby prohibits the expenditure of any District funds, directly or indirectly, including any costs to reimbursed to Consultant on any political candidate, party, organization or activity.

Q. AMENDMENT. This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

R. ASSIGNMENT. Except for assignments resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

S. NO WAIVER. No waiver by either party or any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

T. NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including the District's contractors, if any.

U. SEVERABILITY. The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

V. AUTHORITY. The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

THE WESTCHASE DISTRICT

By: 

Printed Name: Mark Taylor

Title: Chairman

DISTRICT MANAGEMENT SERVICES, L.L.C.

By: 

Printed Name: JAMES R. MURPHY

Title: PRESIDENT

EXHIBIT "A"
SPECIAL PROJECTS AND COMPENSATION

1. Secure additional federal funds of at least \$500,000 for Pedestrian Master Plan (PMP) improvements \$3,800
2. Completion of Brays Bayou Connector Trail and hold an opening event \$3,800
3. Complete construction of the CenterPoint trail \$3,800
4. Obtain approvals and funding for the Terry Hershey connector \$3,800
5. Secure agreements to integrate Long Range Plan/ PMP elements into two new developments \$3,800
6. Two redevelopment projects in the 380 Area under design \$3,800
7. First WD 380 project receives final approved by the City of Houston \$3,800
8. Secure at least one new park site \$3,800
9. Complete BW8/Westheimer aesthetic improvements \$3,800
10. Develop a comprehensive redevelopment plan for apartments \$3,800

Special Projects and compensation can be changed if approved by Consultant and the Chairman of the District. Such changes must be documented by execution of a new **Exhibit "A"** to this Agreement by Consultant and the Chairman. Each Special Project must be completed to the reasonable satisfaction of the District's Finance Committee prior to payment of any compensation for such Special Project.

AMENDMENT NO. 1 TO ADMINISTRATIVE AND MANAGEMENT SERVICES AGREEMENT FOR 2014

The Westchase District (the "District") and District Management Services, L.L.C. ("Consultant") entered into an Administrative and Management Services Agreement for 2014, dated January 1, 2014 (the "Agreement"). The District and Consultant now desire to amend the Agreement to extend its term, effective December 8, 2014.

For and in consideration of the promises made herein and other good and valuable consideration, the District and Consultant agree as follows:

Section 1. Subsection D. TERM of Section IV. STANDARD TERMS AND CONDITIONS of the Agreement shall be amended to read as follows:

"D. TERM. This Agreement shall be in effect commencing January 1, 2014, and ending on February 28, 2015."

Section 2. All other terms and conditions of the Agreement shall remain in full force and effect.

THE WESTCHASE DISTRICT

By: 

Printed Name: Philip M. Schweickert

Title: Chairman

DISTRICT MANAGEMENT SERVICES, L.L.C.

By: 

Printed Name: JAMES R MURPHY

Title: PRESIDENT