

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN ECONOMIC DEVELOPMENT PROGRAM CHAPTER 380 AGREEMENT WITH LANDMARK AT THE MEADOWS, LLC, FOR THE CONSTRUCTION AND DEVELOPMENT OF THE PROPERTY LOCATED AT 2401 TO 2601 EAST MEADOWS BOULEVARD, IN THE CITY OF MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE AND ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (the “**City**”), and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, Landmark at the Meadows, LLC, a Florida limited liability company, (the “**Company**”), agrees to construct or cause to be constructed approximately 355,000 square feet of industrial space located on approximately 25.3884-acre tracts of land consisting of Tracts 17 and 18 of the W.O. Abbott Survey, Abstract No. 34, Page 240, City of Mesquite, Dallas County, Texas, and Block A, Lot 1 of the East Meadows Apartments Addition, an addition to the City of Mesquite, Dallas County, Texas, and having a street address of 2401 to 2601 East Meadows Boulevard, Mesquite, Dallas County, Texas 75150, as more particularly described and/or depicted in Exhibit A to the Agreement as defined below (the “**Property**”); and

WHEREAS, the development of the Property will substantially increase the taxable value of the Property thereby adding value to the City’s tax rolls and increasing the ad valorem property taxes and sales taxes to be collected by the City, along with increasing employment opportunities in the City; and

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to the Company for the proposed construction and development of the Property, a copy of said agreement being attached hereto as Exhibit 1 and incorporated herein by reference (the “**Agreement**”); and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters related thereto, the City Council finds that the Agreement will assist in implementing a program promoting local economic development, stimulating business and commercial activity in the City, and benefiting the City and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council finds that the terms of the proposed Agreement, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference, will benefit the City and its citizens and will serve the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Company as more fully set forth in the Agreement.

SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement.

SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000; (iii) approve or deny any matter in the Agreement requiring the consent of the City with the exception of any matter requiring the consent of the City Council pursuant to the terms of the Agreement; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term, or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials, and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

SECTION 6. That the sections, paragraphs, sentences, clauses, and phrases of this Resolution are severable and, if any phrase, clause, sentence, paragraph, or section of this Resolution should be declared invalid, illegal, or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect the validity, legality, or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal, or unenforceable provision had never been included in this Resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 16th day of August 2021.

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Bruce Archer  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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Sonja Land  
City Secretary



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David L. Paschall  
City Attorney

**EXHIBIT 1**

**CHAPTER 380 AGREEMENT BETWEEN**

**THE CITY OF MESQUITE AND  
LANDMARK AT THE MEADOWS, LLC.**

**CITY OF MESQUITE, TEXAS  
AND  
LANDMARK AT THE MEADOWS, LLC**

**CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AND AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (hereinafter referred to as the “**Agreement**”) is made and entered into by and between the **CITY OF MESQUITE, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “**City**”), and **LANDMARK AT THE MEADOWS, LLC**, a Florida limited liability company (hereinafter referred to as the “**Developer**”), for the purposes and considerations stated below:

**WHEREAS**, the Developer agrees to construct or cause to be constructed approximately 355,000 square feet of industrial space located on approximately 25.3884-acre tracts of land consisting of Tracts 17 and 18 of the W.O. Abbott Survey, Abstract No. 34, Pg. 240, City of Mesquite, Dallas County, Texas, and Block A, Lot 1 of the East Meadows Apartments addition, an addition to the City of Mesquite, Dallas County, Texas, as more particularly described and/or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes, and having a street address of 2401 to 2601 East Meadows Boulevard, Mesquite, Texas 75150 (hereinafter referred to as the “**Property**”); and

**WHEREAS**, in addition, the Developer agrees to construct or cause to be constructed the East Meadows Boulevard from U.S. 80 to Northern Truck Entry; and

**WHEREAS**, the Developer desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code, an incentive to Developer to develop the Property as defined below; and

**WHEREAS**, the City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Mesquite, Texas; and

**WHEREAS**, the City has determined that a grant of funds to the Developer will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City of Mesquite, Texas; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Mesquite, Texas, and, as such, meets the requisites

under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and the Developer; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Mesquite, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

**SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

**SECTION 2. TERM.**

This Agreement shall be effective as of the Effective Date of this Agreement, and shall continue thereafter until **December 31, 2029**, unless terminated sooner under the provisions hereof.

**SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program and Agreement, authorized by Chapter 380 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **Capital Investment Certificate.** The words “Capital Investment Certificate” means a certificate in such form as is reasonably acceptable to the City executed by the Developer certifying the amount of expenditures made by the Developer in connection with the construction of the Qualified Expenditures and the East Meadows Boulevard Improvements as of the date of such certificate (each a “**Capital Investment Certificate**”) provided, however, the Parties agree that only expenditures capitalized as capital assets on the books of the Developer in accordance with generally accepted accounting principles shall be included in the expenditures reported in each Capital Investment Certificate.
- (c) **City.** The word “City” means the City of Mesquite, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City’s address is 1515 N. Galloway, Mesquite, Texas 75149.

- (d) **Commence Construction.** The words “Commence Construction” mean obtain from the City a building permit for the Property.
- (e) **Developer.** The word “Developer” means Landmark At The Meadows, LLC, a Florida limited liability company, whose address for the purposes of this Agreement is 5900 Balcones Drive, Suite 100, Austin, Texas 78731-4298.
- (f) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and Developer.
- (g) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth in the section entitled “Events of Default” in this Agreement.
- (h) **Exterior Finish Board.** The words “Exterior Finish Board” mean the exterior finish board for the Qualified Expenditures attached hereto as *Exhibit F* of this Agreement, which is attached hereto and is incorporated herein for all purposes.
- (i) **Façade/Elevation Plan.** The words “Façade/Elevation Plan” mean that certain building façade/elevation plan for the Qualified Expenditures, a copy of such building façade/elevation plan being attached hereto as *Exhibit G* of this Agreement, which is attached hereto and is incorporated herein for all purposes.
- (j) **Full-Time Equivalent Employment Positions.** The words “Full-Time Equivalent Employment Position” or “Full-Time Equivalent Employment Positions” mean and include a job requiring a minimum of Two Thousand (2,000) hours of work averaged over a twelve (12) month period with such hours also to include any vacation and sick leave.
- (k) **Maximum Lawful Rate.** The words “Maximum Lawful Rate” shall mean the maximum lawful rate of non-usurious interest that may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).
- (l) **Project.** The word “Project” means the Qualified Expenditures and the East Meadows Boulevard Improvements, as required by this Agreement.
- (m) **Property.** The word “Property” means the approximately 25.3884-acre tracts of land in consisting of Tracts 17 and 18 of the W.O. Abbott Survey, Abstract No. 34, Pg. 240, City of Mesquite, Dallas County, Texas, and Block A, Lot 1 of the East Meadows Apartments addition, an addition to the City of Mesquite, Dallas County, Texas, as more particularly described and/or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes, and having a street address of 2401 to 2601 East Meadows Boulevard, Mesquite, Texas 75150.

- (n) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures consisting of the construction of two (2) industrial buildings with a aggregate total of a minimum of 355,000 square feet of industrial space located on the Property, as generally depicted in *Exhibit B* of this Agreement, which is attached hereto and incorporated herein for all purposes. Building 1 shall be a minimum of 216,000 square feet of industrial space. Building 2 shall be a minimum of 139,000 square feet of industrial space. The Qualified Expenditures shall comply with all City, county, state and federal development standards, architectural standards, and applicable law, including City’s zoning ordinance and landscape plan requirements. The term “Qualified Expenditures” must be capital in nature, and does not include land acquisition costs
- (o) **Roadway Impact Fees.** The words “Roadway Impact Fees” mean the impact fees charged by the City to the Developer to fund or recoup all or part of the cost of roadway capital improvements or roadway facility expansions necessitated by and attributable to the Qualified Expenditures located on the Property pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.
- (p) **Sewer Impact Fees.** The words “Sewer Impact Fees” mean the impact fees charged by the City to the Developer to fund or recoup all or part of the cost for wastewater or sewer facilities necessitated by and attributable to the Qualified Expenditures located on the Property pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.
- (q) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.
- (r) **Water Impact Fees.** The words “Water Impact Fees” mean the impact fees charged by the City to the Developer to fund or recoup all or part of the cost for water facilities necessitated by and attributable to the Qualified Expenditures located on the Property pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.

**SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPER.**

The Developer covenants and agrees with City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Construction of Qualified Expenditures.** Developer covenants and agrees to construct or cause to be constructed the Qualified Expenditures located on the Property. Developer covenants and agrees to Commence Construction of the Qualified Expenditures, consisting of Building 1 and Building 2, by **November 1, 2022**. Further, Developer covenants and agrees to construct or cause to be constructed a living screening wall and twenty-five-foot (25’) wide landscape buffer on the Property between the north and south ends of the Property along East Meadows Boulevard, as depicted in *Exhibit C* of this Agreement, which is attached hereto and is incorporated herein for all purposes. In addition, Developer covenants and agrees to submit to the City a Capital Investment Certificate in a form

acceptable to the City for the Qualified Expenditures made to the Property in the minimum amount of **Eighteen Million and No/100 Dollars (\$18,000,000.00)** by **February 1, 2023**.

- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained from the City a certificate of occupancy for a minimum of 350,000 square feet of industrial space located on the Property by **December 31, 2023**.
  
- (c) **Job Creation and Retention.** Developer covenants and agrees by **December 31, 2024**, and during the Term of this Agreement to employ and maintain or ensure tenants occupying the Property within the constructed improvements to employ and maintain a minimum of **seventy-one (71)** Full-Time Equivalent Employment Positions working at the Property. Developer covenants and agrees beginning on **January 1, 2025**, and during the Term of this Agreement, Developer shall deliver or cause to be delivered to the City an annual compliance verification signed by a duly authorized representative of Developer or employer(s) that lease(s) the Property or portion thereof that shall certify the number of Full-Time Equivalent Employment Positions working at the Property (the “**Annual Compliance Verification**”). The Developer covenants and agrees beginning on **January 1, 2025**, and annually thereafter during the Term of this Agreement, there will be a total of **five (5)** Annual Compliance Verifications due and submitted to the City covering the Full-Time Equivalent Employment Positions created and maintained during the Term of this Agreement. All Annual Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports.
  
- (d) **Reconstruction of East Meadows Boulevard from U.S. 80 to Northern Truck Entry.** Developer covenants and agrees to reconstruct or cause to be reconstructed the East Meadows Boulevard from U.S. 80 to Northern Truck Entry, as depicted in **Exhibit D** of this Agreement, which is attached hereto and is incorporated herein for all purposes (hereinafter referred to as the “**East Meadows Boulevard Improvements**”). In addition, Developer covenants and agrees to obtain any and all easements, rights-of-way or other property interests necessary for said reconstruction project. Developer covenants and agrees to dedicate all improvements to the City. Developer covenants and agrees to comply with all applicable development standards, including the City’s Engineering Design Manual in the reconstruction of said roadway. The Parties agree that the East Meadows Boulevard Improvements was not a condition of approval of the Project but is only a condition precedent to the payment of the economic development incentive pursuant to this Agreement and accordingly V.T.C.A., Local Government Code §212.904 and V.T.C.A., Local Government Code §395.023 do not apply provided, however, in the event a court of competent jurisdiction determines that V.T.C.A., Local Government Code §212.904 and/or V.T.C.A. Local Government Code §395.023 apply, the Parties agree that payment by the City to the Developer of said economic development incentive shall satisfy all requirements under V.T.C.A., Local Government Code §212.904 and V.T.C.A., Local Government Code §395.023.
  - (i) **Completion of the East Meadows Boulevard Improvements.** Developer covenants and agrees to complete construction of said East Meadows Boulevard

Improvements by **December 31, 2023**. The East Meadows Boulevard Improvements shall have been: (i) completed in accordance with all applicable City standards, ordinances and regulations; (ii) dedicated to the City; and (iii) accepted in writing by the City, not to be unreasonably withheld.

- (ii) **Requirements.** In connection with the East Meadows Boulevard Improvements and completion thereof, the Developer shall have: (i) submitted to the City unit prices for the work to be performed pursuant to the construction contract(s) for the East Meadows Boulevard Improvements and the City shall have approved such unit prices in writing as being reasonable; (ii) submitted to the City a payment bond and a performance bond in form reasonably acceptable to the City Attorney in the amount equal to one hundred percent (100%) of the contract amount for the construction of the East Meadows Boulevard Improvements; (iii) complied in all respects with the Project Closeout and Acceptance Requirements set forth in *Exhibit H* attached hereto and made a part hereof for all purposes (the “**Closeout and Acceptance Requirements**”); (iv) complied in all respects with the Requirements for Record Drawings and Plats for Private Development Projects attached hereto as *Exhibit I* and made a part hereof for all purposes (the “**Record Drawings and Plat Requirements**”); and (v) paid all contractors, subcontractors, suppliers, laborers and materialmen for all labor and materials in connection with the construction of the East Meadows Boulevard Improvements.
- (e) **Timely Payment of City Development Fees.** The Developer covenants and agrees to timely pay to the City all impact fees, permit fees, development fees, review fees and inspection fees, including, without limitation, all Roadway Impact Fees, Sewer Impact Fees, and Water Impact Fees, in connection with the Project. On or after completion of the Project and receipt of a certificate of occupancy consistent with Section 4(b) of this Agreement, the Developer covenants and agrees to submit proof of payment of said fees and the Capital Investment Certificate to the City for payment of the economic development grant provided for in Section 6(a) of this Agreement (the “**Reimbursement Request**”).
- (f) **Performance.** Developer covenants and agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City and Developer.

## SECTION 5. INSURANCE AND INDEMNIFICATION

- (a) **Insurance.** With no intent to limit any contractor’s liability or obligation for indemnification, the Developer shall maintain or cause to be maintained, by the contractor(s) constructing the East Meadows Boulevard Improvements, the types of coverage and amounts of insurance set forth in *Exhibit E* attached hereto and made a part hereof for all purposes, such insurance shall contain such terms and provisions as set forth on *Exhibit E* and shall be in full force and effect at all times during construction of the East Meadows Boulevard Improvements.

- (b) **Waiver of Subrogation.** The worker’s compensation, employers’ liability and general liability insurance required pursuant to this Agreement shall provide for waivers of all rights of subrogation against the City as more fully set forth in *Exhibit E*.
- (c) **Additional Insured.** As more fully set forth in *Exhibit E*, the general liability and auto liability insurance coverage required pursuant to this Agreement shall include and name the City as an additional insured.
- (d) **Written Notice of Cancellation.** Each policy required by this Agreement, except worker’s compensation and professional liability, shall be endorsed to provide the City sixty (60) days’ written notice prior to any cancellation, termination or material change of coverage.
- (e) **Policies, Endorsements and Certificates of Insurance.** The Developer shall cause each contractor to deliver to the City the policies, copies of policy endorsements, and/or certificates of insurance evidencing the required insurance coverage before the commencement of construction of the East Meadows Boulevard Improvements and within ten (10) days before expiration of coverage, the Developer shall cause each contractor to deliver renewal policies or certificates of insurance evidencing renewal and payment of the renewal premium. In addition, the Developer shall cause each contractor to provide the City with the Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies) within ten (10) business days after written request by the City.
- (f) **Carriers.** All policies of insurance required to be obtained by the Developer and its contractors pursuant to this Agreement shall be maintained with insurance carriers that are satisfactory to and as reasonably approved by City, and lawfully authorized to issue insurance in the State of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A-” or “VII” by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsements submitted by the Developer’s and its contractors’ insurer or broker. Certificates of insurance and policy endorsements received from any other source will be rejected.
- (g) **INDEMNIFICATION. THE DEVELOPER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN “INDEMNITEE”) FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, DEMANDS, LOSSES, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, FINES, PENALTIES AND COSTS INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS AND LITIGATION EXPENSES, FOR PERSONAL INJURY (INCLUDING DEATH) OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM ANY ACT OR OMISSION ON THE PART OF THE DEVELOPER AND ITS’ OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS AND ITS CONTRACTORS’ AND SUBCONTRACTORS’**

OFFICERS, AGENTS AND EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THE CONSTRUCTION OF THE EAST MEADOWS BOULEVARD IMPROVEMENTS (EXCEPT WHEN SUCH LIABILITY, DAMAGES, CLAIMS, DEMANDS, LOSSES, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, FINES, PENALTIES, OR COSTS ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE). NOTHING CONTAINED IN THIS SECTION 5(G) SHALL CONSTITUTE A WAIVER OF ANY GOVERNMENTAL IMMUNITY OR DEFENSE AVAILABLE TO ANY INDEMNITEE UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST ANY INDEMNITEE, DEVELOPER SHALL BE REQUIRED ON NOTICE FROM INDEMNITEE, TO DEFEND SUCH ACTION OR PROCEEDING AT DEVELOPER'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO INDEMNITEE. THE PROVISIONS OF THIS SECTION 5(G) ARE NOT TO BE STRICTLY CONSTRUED, ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY THIRD PARTY. IF ANY PART OF THIS INDEMNITY IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THE REMAINING PORTION OF THIS INDEMNITY SHALL CONTINUE IN FULL FORCE AND EFFECT. THE PROVISIONS OF THIS SECTION 5(G) SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

#### SECTION 6. AFFIRMATIVE OBLIGATIONS OF THE CITY.

City covenants and agrees with Developer that, while this Agreement is in effect, and provided Developer has timely complied with its obligations under this Agreement, it shall comply with the following terms and conditions:

- (a) **Water, Sewer, and Roadway Impact Fee and Building Permit Fee Grant.** The City covenants and agrees to provide Developer, subject to the annual appropriation of funds, an economic development grant in the amount of **one hundred percent (100%)** of the Water Impact Fees, Sewer Impact Fees, and Roadway Impact Fees imposed by the City and paid by the Developer pursuant to the City policy, and Chapter 395 of the Texas Local Government Code for the Qualified Expenditures to be made to the Property and the East Meadows Boulevard Improvements. In addition, the City covenants and agrees to provide Developer, subject to the annual appropriation of funds, an economic development grant in the amount of **one hundred percent (100%)** of City's building permit fees imposed by the City on the Developer for the Property pursuant to City policy. The foregoing grant to be paid by the City to Developer pursuant to this Agreement shall not exceed **Three Hundred Thirty Thousand and No/100 Dollars (\$330,000.00)**. The City covenants and agrees, subject to the annual appropriation of funds, to pay Developer said economic development grant within thirty (30) days of receipt of said Reimbursement Request consistent with Section 4 of this Agreement. The economic development incentive is

calculated based on Water Impact Fees, Sewer Impact Fees, and Roadway Impact Fees, and building permit fees paid by the Developer to the City but is not payable from the Water Impact Fees, Sewer Impact Fees, and Roadway Impact Fees and building permit fees paid by the Developer to the City. The grant of Economic Development Incentive payable by the City to the Developer as more fully set forth in this Agreement is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City but is payable only from funds of the City authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380. The payment of the economic development incentive is subject to the City's appropriation of funds for such purpose to be paid in the budget year for which such installment is to be paid.

- (b) **Performance.** City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and City.

#### SECTION 7. CESSATION OF ADVANCES.

If City has made any commitment to make any financial assistance to the Developer, whether under this Agreement or under any other agreement, the City shall have no obligation to disburse any financial assistance specified in Section 6 of this Agreement if: (i) the Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

#### SECTION 8. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and City is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the City by or on behalf of Developer under this Agreement that is intentionally false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or

contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from City and/or Dallas County Central Appraisal District is an Event of Default.

## **SECTION 9. EFFECT OF AN EVENT OF DEFAULT.**

In the event of default under Section 8 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured, the non-defaulting party shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default.

City Remedies. In the event the Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by the City to Developer pursuant to Section 6 of this Agreement, shall become immediately due and payable by the Developer to the City as follows:

- (a) Fifty percent (50%) of the financial incentive provided by the City to Developer pursuant to Section 6(a) of this Agreement shall be repaid immediately to the City for an Event of Default of Section 4(c) of this Agreement (job creation and retention requirement).

Developer Remedies. Upon the occurrence of a City default that has continued uncured beyond any applicable grace or cure period, Developer shall have the right as its sole remedies to (a) terminate this Agreement by written notice to the City in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement, and (b) recover from the City the amount of any payments then earned, owed and unpaid by the City as damages in accordance with the following provisions. The City and Developer acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Alternatively, if and only in the event a court of competent jurisdiction determines the City's immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement or otherwise to recover damages:

1. the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount of the incentive provided in Section 6(a) of this Agreement earned by the Developer and owed and unpaid by City;
2. any incentive payment past due and not paid following the required notice and cure period shall accrue interest at the lesser of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum beginning the day after expiration of the cure period until paid, and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate; and
3. the recovery of damages against the City shall not include attorneys' fees or consequential, punitive, exemplary, or speculative damages including, but not limited to, lost profits.

## SECTION 10. DEVELOPER'S REPRESENTATIONS.

By execution hereof, each signatory warrants and represents that they have the requisite authority to execute this Agreement and the related documents and that the representations made herein, and in the related documents, are true and accurate in all respects.

## SECTION 11. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Dallas County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Authority.** The Developer represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Developer represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Developer has the authority to sign this Agreement on behalf of the Developer.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Development Standards.** The Parties acknowledge that effective September 1, 2019, the Legislature of the State of Texas enacted HB 2439, codified at V.T.C.A., Government Code, Title 10, Subtitle Z "Miscellaneous Provisions Prohibiting Certain Government Actions", Chapter 3000 "Governmental Action Affecting Residential and Commercial Construction, regarding the regulation by municipalities of building products, materials, and aesthetic methods for residential and commercial buildings (the "Act"). Specifically, §3000.002 of the Act prohibits cities from adopting or enforcing a rule, charter provision,



Austin, Texas 78731-4298

Attn: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

- (k) **Number and Gender.** Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.
- (l) **Right to Offset.** The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by the Developer to the City, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.
- (m) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (n) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign or governmental immunity by virtue of its execution hereof.
- (o) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (p) **Waivers.** All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.
- (q) **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES. THE DEVELOPER AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.**
- (r) **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required

by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

- (s) **Undocumented Workers Provision.** The Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120<sup>th</sup> day after the date the City notifies Developer of the violation.
- (t) **Non-Boycott of Israel Provision.** In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Developer is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Developer verifies that Developer does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (u) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- (v) **Report Agreement to Comptroller's Office.** City covenants and agrees to report this Agreement to the State Comptroller's office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87<sup>th</sup> Tex. Reg. Session (2021) (effective September 1, 2021).

[The Remainder of this Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be duly executed.

**CITY:**

**CITY OF MESQUITE, TEXAS,**  
A Texas home-rule municipality

\_\_\_\_\_  
Bruce Archer  
Mayor

**ATTEST:**

**APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
Sonja Land  
City Secretary

\_\_\_\_\_  
David L. Paschall  
City Attorney

**STATE OF TEXAS**

§

**COUNTY OF DALLAS**

§

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2021, by Bruce Archer, Mayor of the City of Mesquite, Texas, a Texas home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas



***Exhibit A***

[Legal Description and/or Depiction of the Property]



**Exhibit B**

[Qualified Expenditures]



<b>EXHIBIT B</b>
<b>Qualified Expenditures</b>

	216,000 gsf Building 1	139,000 gsf Building 2	Reconstruction of East Meadows	Totals
Design/Pre-Development	\$ 3,859,989	\$ 2,684,487	<--- included	\$ 6,544,476
Construction	\$ 11,370,246	\$ 8,269,238	\$ 752,136	\$ 20,391,620
Permits	\$ 35,000	\$ 25,000	<--- included	\$ 60,000
Impact Fees	\$ 218,000	\$ 148,000	not applicable	\$ 366,000
<b>Total Estimated Costs</b>	<b>\$ 15,483,235</b>	<b>\$ 11,126,725</b>	<b>\$ 752,136</b>	<b>\$ 27,362,096</b>

*\* figures exclude land and closing costs*

Exhibit C

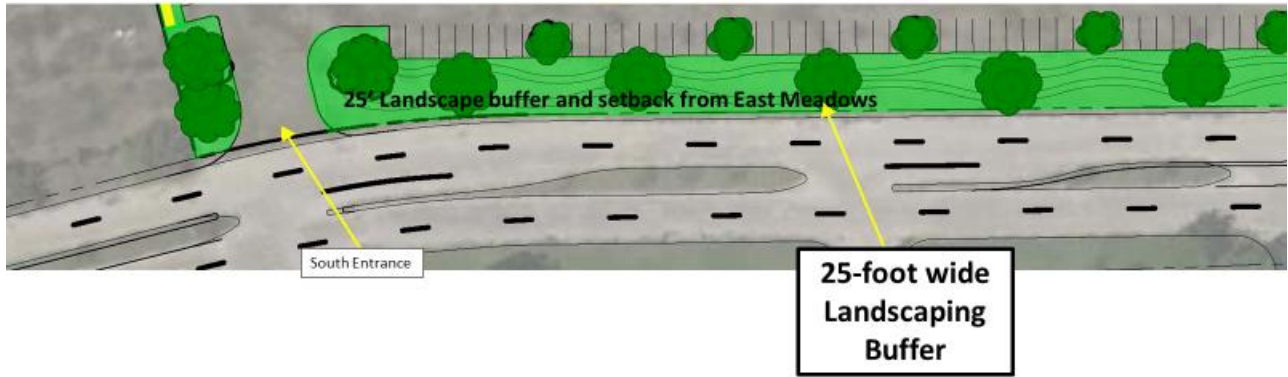
[Depiction of Screening Wall and Landscape Buffer]



Highlights of Concept Plan

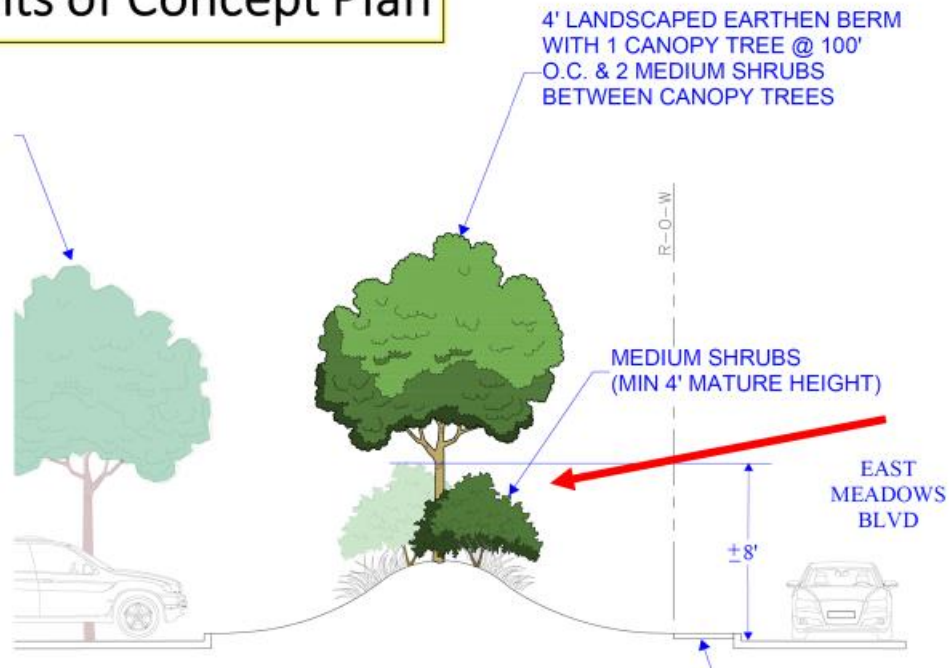


# Highlights of Concept Plan



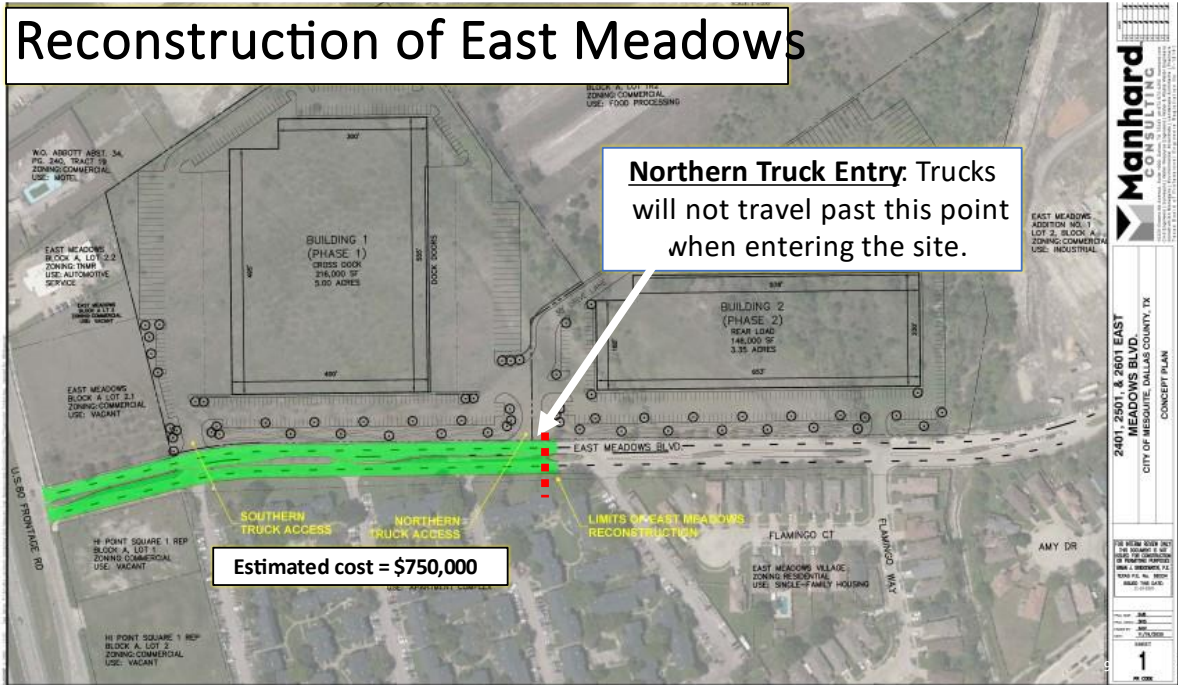
6

# Highlights of Concept Plan



*Exhibit D*

[East Meadows Boulevard Improvements]



## *Exhibit E*

### Insurance Requirements

#### **MESQUITE BASIC**

##### **CITY OF MESQUITE REQUIREMENTS:**

- \* General Liability with minimum limits of \$1,000,000 per Occurrence, \$1,000,000 General Aggregate, \$1,000,000 Products/Completed Operations Aggregate.
- \* General Liability must include coverage for Premises and Operations, Products and Completed Operations, Contractual Liability, Independent Contractors, Broad Form Property Damage, and Personal/Advertising Injury.
- \* Auto Liability with minimum limits of \$500,000 Combined Single Limit.
- \* Certificate must include a statement listing **\*\*The City of Mesquite, Texas\*\*** as additional insured on the General Liability and Auto coverages. Blanket Endorsements are acceptable in meeting this requirement if copies of the endorsements are provided along with the certificate. If using a form that has specific boxes labeled for additional insured, checking those specific boxes is acceptable in meeting this requirement as well.
- \* Employers Liability with minimum limits of \$100,000 Occupational Disease, \$100,000 per Accident, and \$100,000 per Employee.
- \* Workers Compensation providing statutory coverage limits.
- \* Certificate must include a statement providing a Waiver of Subrogation on the Workers Compensation, Employers Liability as well as the General Liability coverage. Blanket Endorsements are acceptable in meeting this requirement if copies of the endorsements are provided along with the certificate. If using a form that has specific boxes labeled for waiver of subrogation, checking those specific boxes is acceptable in meeting this requirement as well.

#### **MESQUITE POLLUTION LIABILITY**

##### **City of Mesquite Requirements:**

- \* Evidence of Pollution Liability Coverage.

*Exhibit F*

[Exterior Finish Board]



*Exhibit G*

[Façade/Elevation Plan]



*Exhibit H*

[Closeout and Acceptance Requirements]

**City of Mesquite - Engineering Acceptance of Civil Construction:**

June 30, 2015

**In addition to proper completion of the construction shown on the engineering plans, there are several important administrative items that must be submitted and approved prior to City acceptance of the improvements and issuance of a Certificate of Occupancy for a project. These administrative items include:**

- Record Drawings.** If changes to the “released” set of Engineering Plans are needed during construction, they must be submitted to the City Engineering Division for review and release. Both hard copy and electronic copy of record drawings are required prior to final acceptance. Requirements for records drawings can be obtained on the Engineering Division web page at:  
<http://www.cityofmesquite.com/DocumentCenter/Home/View/417>
- Maintenance Bond** – a one-year maintenance bond for 10% of the cost of the public improvements (or a minimum of \$500.00) must be submitted to your assigned Engineering Division Public Works Construction Inspector.
- Acceptance Letter Request Form** – fill out this form and turn into your assigned Engineering Division Public Works Construction Inspector. This form is available at:  
<http://www.cityofmesquite.com/DocumentCenter/Home/View/5128>
- All required **construction and material tests reports** have been successfully completed and witnessed by your inspector and related documentation of these tests submitted to your assigned Engineering Division Public Works Construction Inspector.
- All other project documentation complete, City invoices paid, etc.

*Exhibit I*

[Record Drawings and Plat Requirements]

**Interoffice**  
MEMORANDUM

Updated: March 5, 2015

**To:** Private Developers, Consulting Engineers, Contractors and Engineering Division Staff

**From:** Matthew Holzapfel, P.E. - City Engineer

**Subject:** Requirements for Record Drawings and Plats for Private Development Projects

The contractor shall arrange an appointment with the assigned City Public Works Construction Inspector (PWCi) to review his "marked-up" field set of civil drawings prior to submitting to the consulting engineer. This "marked-up" field set should have notes and changes identified for all deletions, additions, change orders, addendums and other changes to the plans. This "marked-up" field set must be approved by the assigned PWCi. Once approved by the PWCi the contractor shall submit the "marked-up" field set to the consulting engineer who prepared the plans for preparation of record drawings and digital files that meet the below requirements.

Engineering Firms for Private Development Projects shall submit the following to the assigned City Public Works Construction Inspector:

**Record Drawings (As-Builts):**

- 2 Blackline (24" x 36" or 22" x 34") Copies & Associated Electronic Files.
- These record drawings shall be sealed by the engineer of record in accordance with the Texas Board of Professional Engineers Policy Advisory Opinion Regarding Record (As-Built) Drawings – Issued February 8, 2007, available at web address (<http://www.tbpe.state.tx.us/nm/pa18.pdf>).
- All sheets of the approved civil drawings with all details shall be included.
- All changes shall be shown and noted in the revision block.
- Revisions shall be drawn using accepted drafting standards and shall be neat and easily read and interpreted.
- Line work and notes related to work deleted or changed shall be omitted from the drawing. **All information on the blackline copies shall be crisp with well defined lines and lettering. The information shall have high contrast and be capable of producing a high quality, legible microfilm and scanned image.**
- An electronic copy of the record drawings shall be submitted on CD-ROM, DVD or flash drive in all the following digital formats:
  - AutoCAD (.dwg file format) - The .dwg files for the plan set may be in either model or paper space.
  - TIFF Class IV, 400 dpi format.
  - pdf format
- The City Public Works Construction Inspector shall check that the above digital images are complete and correct and copy all the digital files to the network Q: drive in the project digital folder under a separate folder labeled *.rcd dwgs*.
- The PWCi shall give the two blackline record drawing copies to the Engineering Division GIS staff for indexing, filming, scanning and placement in the City record drawing database. The GIS staff member receiving the blackline drawings and digital files on CD-ROM, DVD or flash drive from the PWCi shall sign and date the Project Final Acceptance Check-Off List. The Engineering Division GIS staff will also distribute one copy of the blackline record drawings to the Fire Marshall.

**Plats:**

- An electronic copy of the Final Plat (without signatures) must be submitted to the **Planning and Zoning Office** on CD-ROM in AutoCAD 2006 or later in .dwg file format. The AutoCAD drawing must be in "model-space". The plat must show two property corners in **grid coordinates**. Grid coordinates must be referenced to a City GPS point. The grid coordinates must be in North American Datum (NAD) 83, Texas State Plane, North Central FIPS Zone 4202. This electronic copy does not need a seal. This copy will be used by the GIS technicians to place the plat properly on the updated street maps.

**No Certificate of Occupancy of any sort shall be approved by the Engineering Division until an acceptable set of record drawings and associated digital files are received and approved.**