

**TAX INCREMENT REINVESTMENT ZONE
REIMBURSEMENT & CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT**

This Tax Increment Reinvestment Zone Reimbursement & Chapter 380 Economic Development Agreement (“**Agreement**”) is made and entered into by and between the City of Mansfield, Texas, a Texas home rule municipal corporation of the State of Texas (the “**City**”), the Board of Directors (the “**Board**”) of Reinvestment Zone Number One, City of Mansfield (the “**Zone**”), and Chisolm Flats, LLC, a Texas limited liability company (“**Developer**”). The City, the Board, and Developer are individually referred to as a “**Party**” and collectively as the “**Parties**.” The City and the Board are collectively referred to as the “**Public Parties**.”

WHEREAS, Developer owns approximately 54 acres of land located at the northeast corner of the intersection of Lonestar Road and U.S. Highway 287 within the City of Mansfield, the (“**Property**”), as depicted in **Exhibit A** attached hereto; and

WHEREAS, Developer is considering building a mixed-use development consisting of urban residential, corporate office, medical office, retail and restaurants on the Property (the “**Project**”); and

WHEREAS, the City seeks to incentivize the Project; and

WHEREAS, the Zone (hereinafter defined) is a tax increment reinvestment zone created by the governing body of the City (the “**City Council**”) in accordance with the Tax Increment Financing Act, Chapter 311, Texas Tax Code, as amended (the “**Act**”), by Ordinance No. 1608 on December 13, 2006, establishing the Zone; and

WHEREAS, it is understood that the City intends to consider extending the term of the Zone a minimum of an additional 15 (fifteen) years, and in doing so, this Agreement would continue for the extension term of the TIRZ; and

WHEREAS, the City Council approved the Final Project and Finance Plan for the Zone through the adoption of Ordinance No. 1655-07 on November 28, 2007; and

WHEREAS, the Act authorizes agreements to implement the Project and Finance Plan; and

WHEREAS, in accordance with Section 311.010(h) of the Act, the City Council and the Board, as necessary or convenient to implement the Project and Finance Plan, and achieve its purposes, may establish and provide for the administration of one or more programs for the public purposes of developing and diversifying the economy of the Zone, eliminating unemployment and underemployment in the Zone, and developing or expanding transportation, business, and commercial activity in the Zone, including programs to make grants and loans from the TIRZ Fund of the Zone.

WHEREAS, by approval of the City Council, the Board has all the powers of a city under

Chapter 380, Texas Local Government Code; and

WHEREAS, in accordance with the Project and Finance Plan, the Public Parties find that reimbursements to Developer are in compliance with the Act and will be made in furtherance of economic development programs authorized under Chapter 380, Texas Local Government Code, and the Project to be built by Developer is one which contains retail businesses that will result in investments that support the placemaking goals of the Project and Finance Plan, and is a project that offers a high likelihood of repayment to encourage the regeneration of public funds; and

WHEREAS, the Public Parties find that the grants provided to Developer under this Agreement are for the public purposes of: (i) developing and diversifying the economy of the Zone and the state; (ii) eliminating unemployment and underemployment in the state and Zone; (iii) developing and expanding commerce in the state; (iv) stimulating business and commerce within the Zone; and (v) promoting development and redevelopment within the Zone; and

WHEREAS, the Public Parties have an interest in creating jobs and expanding the tax base which accomplish a public purpose; and

WHEREAS, the Public Parties have ensured that the public will receive benefits for the grants provided imposing on Developer performance standards and penalties for any failure to meet the standards.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

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

“Affiliate” means any Person or entity requiring the faithful performance of the delivery of infrastructure, directly controlling or controlled by Developer, or any Person controlling or controlled by the same Person who is controlling or is controlled by Developer. As used in this definition, the term “control” means the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise.

“Annual Payment Date” shall mean October 1 of each calendar year during the term of this Agreement, except the first Annual Payment Date shall be October 1 of the calendar year following the Commencement Date and Core Civic Space Completion Date.

“Captured Appraised Value” means the total appraised value of all real property taxable by the City and located in the Zone for the calendar year less the Tax Increment Base.

“City Impact Fees” means water, sewer, and roadway impact fees assessed by the City and which are attributable to the construction of the Project.

“Commencement Date” shall mean the date an office tenant or operator of a Destination Retailer/Restaurant, hereinafter defined, has received a certificate of occupancy for a Commercial Improvement located in area 1 or 5 of the Project, as shown in the attached Exhibit B.

“Commercial Improvement” shall mean a commercial building that is privately owned and not built specifically for public use nor for future dedication to the City.

“Construction Costs” shall mean the actual cost of all hard construction including but not limited to material, labor, equipment, contractor’s payment and performance bond, contractor’s maintenance bond, contractor’s general liability insurance, and such other reasonable industry-standard costs attributable to the construction of the Infrastructure Improvement Segments, including actual financing/carrying costs, and actual soft costs such as landscape architecture, engineering and other professional design fees, construction staking fees, and materials testing. Land or marketing costs, legal fees, other than those associated with land acquisition for right-of-way and easements necessary for Off-Site Infrastructure Improvement Segments, engineering review and Inspection fees are not included in Construction Costs.

“Core Civic Space(s)” shall mean park, landscape and public amenity improvements built for public use that are, or are intended to be, made publicly accessible through a perpetual public access easement, as shown in Exhibit I, Block 5. Public amenity improvements include a water wheel, water tower, windmill, sculptures, decorative lighting and other features for public use.

“Core Civic Space Completion Date” shall mean the date the Core Civic Space has reached Substantial Completion.

“Destination Retailer/Restaurant” shall mean retailers/restaurants that (i) do not have a strong presence in other locations in the Dallas-Fort Worth metroplex; or (ii) have the capability to attract customers from outside the area; or (iii) fit well into the existing retail/restaurant economy to provide new and different shopping, dining, and/or entertainment experiences. It is in the City Manager’s sole and reasonable discretion, which shall not be unreasonably withheld or delayed, to determine if a retailer or restaurant shall meet this definition. Examples include, but are not limited to:

- Mexican Sugar
- Whiskey Cake
- The Ranch
- Lululemon
- Trader Joe’s
- Whole Foods
- Royal Blue Grocery
- HG Supply
- Del Frisco’s
- Chuy’s
- Taco Diner
- Anamia’s
- Winery/Café

- Fireside Pie's
- Kendra Scott
- Mi Cocina
- Mi Dia
- The Rustic
- Ascension Coffee
- Haywire

“Developer’s Reimbursement” means the payment to the Developer of an amount not to exceed the On-Site Infrastructure Grant paid pursuant to Article 4, Paragraph 2.

“Effective Date” means the date this Agreement has been executed by all Parties.

“Force Majeure” means any contingency or cause beyond the reasonable control of Developer created by acts of God or the public enemy, war, pandemic, riot, terrorism, civil commotion, insurrection, fire, explosion, flood, strikes, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of Developer); provided, however, that (a) the event giving rise to Force Majeure was not caused by the act or omission of Developer and makes the performance of any obligation created under this Agreement illegal or impossible; and (b) Developer gives reasonable notice of the event giving rise to Force Majeure and exercises all reasonable diligence to remove the cause of Force Majeure.

“Incentive Cap” means Ten Million Dollars (\$10,000,000).

“Incentive Payment(s)” means the annual payment to Developer from the Property TIRZ Fund, as set forth herein, payable on an annual basis through the duration of the Zone, but not beyond calendar year 2052. Each payment is further outlined in Section 4.3 of this Agreement.

“Infrastructure Improvement Segment(s)” shall mean all of the infrastructure improvement segments referred to in this Agreement collectively.

“Off-Site Infrastructure Grant” means the payments to be made by the City to Developer pursuant to this Agreement as reimbursement for the Construction Costs of the Off-Site Infrastructure Improvement Segments upon the terms, conditions and provisions set forth herein, which shall be in the aggregate the lesser of (a) 100% of the Construction Costs incurred by Developer, or (b) Three Million Five Hundred Thousand Dollars (\$3,500,000.00).

“Off-Site Infrastructure Grant Payment Request” means a written request from Developer to the City for a reimbursement payment for each Off-Site Infrastructure Improvement Segment accompanied by copies of invoices, bills, receipts and such other information as may be reasonably requested by the City to document Construction Costs. Once the Developer has submitted copies of invoices, bills, and receipts for eligible Construction Costs equal to, but not to exceed, the Off-Site Infrastructure Grant, Developer is not required to include such materials in any subsequent payment request(s).

“Off-Site Infrastructure Improvement Segment(s)” shall mean separate infrastructure improvements and/or other improvements built for public use that are, or are intended to be, dedicated to the City or encumbered with a public access easement. The Off-Site Infrastructure Improvement Segments are further defined in Article 3, Paragraph 1 and shown in Exhibits C, D, and E.

“On-Site Infrastructure Grant” means the payments to be made by the City to Developer pursuant to this Agreement as reimbursement for the Construction Costs of On-Site Infrastructure Improvement Segment(s) upon the terms, conditions and provisions set forth herein, which shall be in the aggregate the lesser of (a) 70% of the Construction Costs incurred by Developer, or (b) Nine Million Five Hundred Thousand Dollars (\$9,500,000.00).

“On-Site Infrastructure Improvement Segment(s)” shall mean separate infrastructure improvements and/or other improvements built for public use that are, or are intended to be, dedicated to the City or encumbered with a public access easement. The On-Site Infrastructure Improvement Segments are further defined in Article 3, Paragraph 2 and shown in Exhibits F, G, H, and I.

“On-Site Infrastructure Grant Payment Request” means a written request, from Developer to the City, subsequent to the Commencement Date, for a reimbursement payment for each On-Site Infrastructure Improvement Segment accompanied by copies of invoices, bills, receipts and such other information as may be reasonably requested by the City to document Construction Costs. Once the Developer has submitted copies of invoices, bills, and receipts for eligible Construction Costs equal to, but not to exceed, the On-Site Infrastructure Grant, Developer is not required to include such materials in any subsequent payment request(s).

“Person” means an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other legal entity.

“Plans and Specifications” shall have the meaning set forth in Section 3.4 of this Agreement.

“Project Costs” mean the following actual costs attributable to the construction of any Commercial Improvement(s) located in area 1 or 5 of the Project, as shown in the attached Exhibit B: all development cost, including, without limitation, all land; all hard cost of construction; the costs of construction materials, building systems installation; contractor fees; architectural, engineering, design, and planning costs; development fees; insurance; financing costs; permit fees; and testing fees.

“Property” shall have the meaning set forth in the recitals of this Agreement.

“Property TIRZ Fund” means a sub-account within the TIRZ Fund consisting of Tax Increment contributed by the City on that portion of Captured Appraised Value solely attributable to the Property.

“Substantial Completion” means the City has reviewed the completed construction of the

Infrastructure Improvement Segment(s) to determine the validity and quality of the work performed, to be subsequently owned, operated and maintained by the City, and has acknowledged through a letter of acceptance by the City Engineer that the Infrastructure Improvement Segment(s) meet the City standards and regulations. The City Engineer will not unreasonably withhold a letter of acceptance.

“TIRZ Fund” means the funds deposited by the City in the Tax Increment fund for the Zone.

“Tax Increment” means the total amount of property taxes levied and collected by the City for a calendar year on the Captured Appraised Value of real property taxable by the City and located in the Zone. The amount of Tax Increment contributed by the City shall be limited to any maximum amount or other terms set forth in the participation amount established by ordinance.

“Tax Increment Base” means the total appraised value of all real property taxable by the City and located in the Zone for the calendar year in which the Zone was designated by the City.

ARTICLE 2. TERM

This Agreement shall be effective as of the Effective Date and shall continue until the earlier occurrence of (a) final payment of the Off-Site Infrastructure Grant, On-Site Infrastructure Grant, and Incentive Payments due to Developer hereunder; (b) termination of the Zone; or (c) earlier termination as provided hereunder.

ARTICLE 3. DEVELOPER’S COMMITMENTS

The Parties acknowledge and agree that Developer is not obligated to build the Project or the Infrastructure Improvement Segment(s).

1. Off-Site Infrastructure Improvement Segments. The following individual infrastructure improvement segments:

- a. **Off-site Sewer** shall mean the sewer line and associated construction to be delivered by the Developer that will provide additional sewer capacity for the Property as well as sewer capacity for unserved private land north of the Property, conceptually shown in Exhibit C.
- b. **Off-site Water** shall mean the water transmission line(s) ranging in size from 12” to 24” and associated construction to be delivered by the Developer that will provide additional water service for the Property as well as water service for unserved private land north of the Property, conceptually shown in Exhibit D.
- c. **Off-site Roads and Storm Sewer** shall mean the road paving and storm drainage utilities and associated construction to be delivered by the Developer that will provide vehicular access through and adjacent to, and storm water drainage for the Property as well as vehicular access and storm water drainage for unserved private land north of the Property, conceptually shown in Exhibit E.

2. On-Site Infrastructure Improvement Segments. The following individual infrastructure improvement segments:

- a. **On-site Water, Sewer and Storm Sewer** shall mean all public water, sanitary sewer and storm sewer utilities and associated construction, within the Property, to be delivered by the Developer for future dedication to the City, conceptually shown in Exhibits F-1, F-2 and F-3.
- b. **On-site Roads** shall mean road paving and associated construction within the Property to be delivered by the Developer for future dedication to the City, conceptually shown in Exhibit G.
- c. **On-site Right-of-Way Landscaping** shall mean all landscape and irrigation improvements, including planting, street lighting and landscape feature such park benches, trash receptacles, and associated construction within the Property to be delivered by the Developer for future dedication to the City, conceptually shown in Exhibit H.
- d. **Core Civic Space** shall mean park, landscape and public amenity improvements and associated construction within the Property to be delivered by the Developer and built for public use that are, or are intended to be, dedicated to the City or made publicly accessible through a perpetual public access easement, as shown in Exhibit I.

3. Completion of Off-Site Infrastructure Improvement Segments. Developer shall reach Substantial Completion of the Off-Site Infrastructure Improvement Segments, within 36 (thirty-six) months of the Effective Date, subject to the City's timely acquisition of easements and right-of-way outside of the Property necessary for said construction, as described further in Section 6.16.

4. Design of Infrastructure Improvement Segments. Developer shall commission the design and preparation of all necessary plans and specifications for the Infrastructure Improvement Segments (the "Plans and Specifications"). The Plans and Specifications must be reviewed and approved by the City and shall conform to all City regulations and specifications. The City's approval of the Plans and Specifications and issuance of construction permits shall not be unreasonably withheld, conditioned or delayed.

5. Construction of Infrastructure Improvement Segments. Developer shall comply with all local, state, and federal laws and regulations regarding the design and construction of the Infrastructure Improvement Segments. Construction of the Infrastructure Improvement Segments shall be subject to inspections by the City to confirm compliance with the City-approved Plans and Specifications. Developer shall be responsible for completing and/or correcting any work not constructed in accordance with the City-approved Plans and Specifications. Any change in the design of the Infrastructure Improvement Segments during the construction stage must first be approved by City staff. Prior to initiating any construction for the Infrastructure Improvement Segments, Developer must cause its contractor for the Infrastructure Improvement Segments to provide performance, payment, and maintenance bonds as specified in the City's Subdivision Control Ordinance. The City's approval of Substantial Completion of the Infrastructure Improvement Segments shall not be unreasonably withheld, conditioned or delayed.

6. Dedication of Infrastructure Improvement Segments. Developer shall dedicate or convey

the Infrastructure Improvement Segments to the City, with the exception of the Core Civic Space, as required by the City's Subdivision Control Ordinance, conveying good and indefeasible title in fee simple to the Infrastructure Improvement Segments, free and clear of any and all liens and of any encumbrances, conditions, assessments, and restrictions, other than those of record that: (a) are not attributable to any action on the part of Developer; and (b) with regard to On-Site Infrastructure Improvement Segments, will not interfere with or prohibit the City's right to maintain, reconstruct, or enlarge, within the dedicated right-of-way area, said On-Site Infrastructure Improvement Segments subsequent to Developer's dedication. At the time of such dedications or conveyances, Developer shall deliver to the City releases from the contractors, subcontractors, and suppliers of materials who have provided labor and materials for the Infrastructure Improvement Segments showing that they have been paid for such labor and materials.

7. Compliance with Laws. Construction of the Project must be done in accordance with all applicable federal, state and local laws, codes, and regulations, including but not limited to regulations for the Zoning District, as well as any concept plans or phasing plans approved by City as required by the Zoning District regulations.

8. Regulations Regarding Building Products, Materials, or Methods. The Parties hereto find that the Property constitutes an area of architectural importance and significance and the City Council hereby designates it as an area of architectural importance and significance for purposes of Chapter 3000 of the Texas Gov't Code (the "**Code**"). In consideration for the mutual covenants and conditions contained herein and pursuant to §3000.002(d) of the Code, Developer voluntarily consents to the application of all City rules, charter provisions, ordinances, orders, building codes, and other regulations existing as of the Effective Date hereof (the "**Regulations**") that govern the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building on the Property, regardless of whether a different building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. In addition, Developer voluntarily consents to the application of the Regulations that establish a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building, regardless of whether the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. The Parties agree that: (a) the City will not issue any permits for the Property in violation of this section; (b) the covenants contained within this section constitute a material term of this Agreement; (c) Developer's voluntary consent to the application of the Regulations to the Property, as described in this section, constitutes a material inducement for the City to authorize the On-Site Infrastructure Grant and Incentive Payments described herein; (d) the covenants contained herein shall run with the land and shall bind Developer and all successors and assigns; and (e) this section shall survive termination or expiration of this Agreement.

9. Property Maintenance.

a. It is understood that the City will consider creating a Public Improvement District ("**PID**")

per Developer's PID Petition that will provide: (i) operations and maintenance of the Core Civic Space, (ii) enhanced Right-of-Way Landscaping, and (iii) general upkeep and security, as needed, on the Property. Upon receipt and acceptance of such petition, the City shall hold a public hearing to consider creation of the PID in accordance with Chapter 372, Texas Local Government Code, as amended.

- b. Developer agrees to create a professional owner's association, or other appropriate entity ("**Association**"), to assume and be responsible for the continuous and perpetual operation, maintenance, and supervision of Core Civic Space: structures, parks, landscaping systems or landscape elements or features (including fountains and statues), landscape irrigation systems, screening walls, living screens, buffering systems, entryway features, including monuments or other signage, or other physical facilities or grounds held in common and necessary or desirable for the welfare of the Property, or that are of common use or benefit and that are not or cannot be satisfactorily maintained by the City. It is understood that the cost of these obligations are the primary obligations of the PID, when created. A copy of the agreements, covenants and restrictions establishing and creating the Association must be approved by the City Attorney and City Council prior to the approval of the record plat of the subdivision for the Property and must be filed of record with such record plat in the map and plat records of the appropriate county. All facilities, structures, improvements, systems, areas or grounds that are to be operated, maintained and/or supervised by the Association, other than those located in public easements or rights-of-way, which are intended to be located within the PID, shall be under the control of such Association.
- c. At a minimum, the agreements, covenants and restrictions establishing and creating the Association must contain or provide for the following:
 - (1) Definitions of terms contained therein;
 - (2) Provisions acceptable to the City for the establishment and organization of the Association and the adoption of bylaws for such Association, including provisions requiring that the owner of any lot within the Property and any successive buyer shall automatically and mandatorily become a member of the Association;
 - (3) The initial term of the agreements, covenants and restrictions establishing and creating the Association shall be for a 50-year period and shall automatically renew for three successive ten-year periods, unless after the initial term, an instrument executed and duly acknowledged by owners owning, in the aggregate, at least a majority of the gross acreage (exclusive of acreage in the streets) in the Property has been recorded in the Real Property Records of the appropriate county abolishing this Declaration; and
 - (4) Provisions acceptable to the City to ensure the continuous and perpetual use, operation, maintenance, and/or supervision of all facilities, structures, improvements, systems, areas or grounds that are the responsibility of the Association and to establish a reserve fund for such purposes.

ARTICLE 4. GRANTS AND INCENTIVES

1. Off-Site Infrastructure Grant. Upon Substantial Completion for each Off-Site Infrastructure Improvement Segment by Developer, Developer shall submit an Off-Site Infrastructure Grant Payment Request to the City whereupon the City shall, after proper review and verification of submitted request, pay the requested portion of the Off-Site Infrastructure Grant to Developer within thirty (30) days of the submittal thereof. The thirty (30) days may be extended if City, in its reasonable discretion, requests additional information for verification purposes of the request.
2. On-Site Infrastructure Grant. Upon the Substantial Completion Date for each On-Site Infrastructure Improvement Segment by Developer, and subsequent to the Commencement Date, Developer shall submit an On-Site Infrastructure Grant Payment Request to the City whereupon the City shall, after proper review and verification of submitted request, pay from available Property TIRZ Funds, according to either Paragraphs 4 or 5 of this Article 4, as applicable, the requested portion of On-Site Infrastructure Grant to Developer within thirty (30) days of the submittal thereof. The thirty (30) days may be extended if City, in its reasonable discretion, requests additional information for verification purposes of the request.
3. Incentive Payments. Subject to the continued satisfaction of all the terms and conditions of this Agreement by Developer, the Public Parties agree to pay Developer Incentive Payments from the Property TIRZ Fund as provided in this Agreement. The Property TIRZ Fund shall only be used to pay Project Costs in accordance with this Agreement and the Act as follows:
 - a. The City shall make Incentive Payments to Developer within thirty (30) days of the Annual Payment Date.
 - b. Notwithstanding any other provision to the contrary, in no event shall the Property TIRZ Fund be used to pay Developer for Project Costs under this Agreement in excess of the Incentive Cap. The obligation of the City to pay Developer the Project Costs is limited to the extent that there are funds in the Property TIRZ Fund available during the term of this Agreement.
 - c. Developer agrees to look solely to the Property TIRZ Fund, not the City's general fund or other funds, for Incentive Payments. Nothing in this Agreement shall be construed to obligate the City to provide Incentive Payments from any other source of funds or to otherwise require the City to pay the Developer Incentive Payments in the event there are insufficient funds in the Property TIRZ Fund to pay Incentive Payments or in the event the Zone terminates prior to payment in full of the accrued Incentive Payments (provided the City shall not adopt an ordinance providing for termination of the Zone on a date earlier than provided in the ordinance that established the Zone unless this Agreement has been terminated). Upon the termination of this Agreement or the expiration of the Zone, any Incentive Payments that remain unpaid, due to lack of availability of funds in the Property TIRZ Fund, or due to the failure of the Developer to satisfy any precondition of payment under this Agreement, shall no longer be considered Incentive Payments or obligations of

the Zone, and any obligation of the Public Parties to provide Incentive Payments to Developer shall automatically expire and terminate on such date.

4. Property TIRZ Fund Priorities without Bond Issuance. The available funds in the Property TIRZ Fund shall be applied and paid out in the following order of priority: (a) first, to the City for the payment of costs associated with the City Impact Fees and Park Development Fees, not to exceed thirty percent (30%) of funds within the Property TIRZ Fund, on an annual basis; (b) second, for the Developer's Reimbursement on an annual basis; and (c) third, Incentive Payments to the Developer.

5. Property TIRZ Fund Priorities with Bond Issuance. In the event the City issues bonds for the payment of Developer's Reimbursement, the available funds in the Property TIRZ Fund shall be applied and paid out in the following order of priority: (a) first, to the City for the payment of costs associated with the Bond Issuance; (b) second, to the City for the payment of costs associated with the City Impact Fees and Park Development Fees, not to exceed (30%) of remaining funds within the Property TIRZ Fund, on an annual basis; and (c) third, Incentive Payments to the Developer.

a. Bond Issuance. The City shall issue Bonds as described below:

- (1) At any time, but no later than sixty days after the date when the annual Property TIRZ Fund is sufficient to service the annual principal and interest of debt service for the Developer's Reimbursement by a debt service coverage factor of 1.25 or greater, the City shall issue debt and pay the Developer's Reimbursement to Developer without prepayment penalty.
- (2) The debt service coverage factor shall be determined based on a fraction, the numerator of which is the available Property TIRZ Fund, and the denominator of which is the "Hypothetical Debt Service Payments" (herein so called). The Hypothetical Debt Service Payments shall be equal to the sum of annual principal and interest payments which would be due for the period in question assuming a principal balance equal to the sum of the On-Site Infrastructure Grant amortized over the period of time equal to the period of maturity for the City Bond (but no less than 20 years) at an interest rate equal to the rate of interest payable with respect to the City Bond.
- (3) The particular terms and provisions regarding the issuance of any bond instruments, certificates or other indebtedness will be subject to the sole discretion of the City Council of the City of Mansfield acting at the time such instruments are issued, not in contravention of the terms of this Agreement, and subject to State of Texas law and approval, as required by the Texas State Attorney General's office.

6. City Impact Fees. Developer will not be obligated to pay the City Impact Fees related to Blocks 1 and 5 as shown in Exhibit B. Such City Fees will be paid from the Property TIRZ Fund in accordance with the priorities set forth in Paragraph 4 of this Article 4 above. This provision is not applicable to any multifamily developments constructed on the Property.

7. Park Development Fees. Park Development Fees will be collected at the time of permit application and will be assessed according to rates in effect on March 15, 2021 ("**Assessed**

Park Development Fees”). The City will be reimbursed by the Property TIRZ Fund, in accordance with the priorities as set forth in Paragraph 4 of this Article 4 above, for the difference between the Assessed Park Development Fees and the Park Development Fees calculated based on rates in effect as of November 8, 2021 with the adoption of Ordinance OR-2227-21.

ARTICLE 5. TERMINATION

1. **Termination.** This Agreement may be terminated upon any one or more of the following:
 - a. by mutual written agreement of the Parties;
 - b. upon written notice by either Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within sixty (60) days after written notice thereof, provided if said default or breach is not reasonably capable of being cured within such sixty (60) day period, the defaulting Party shall have such additional time as is reasonably necessary to cure such default or breach so long as the defaulting Party promptly commences curative actions and thereafter diligently pursues such curative actions;
 - c. upon written notice by City, if Developer suffers an event of bankruptcy or insolvency; or
 - d. upon written notice by either Party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction renders this entire Agreement invalid, illegal, or unenforceable.

ARTICLE 6. MISCELLANEOUS

1. **Indemnification.** DEVELOPER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY, ITS OFFICERS, OFFICIALS, CONSULTANTS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PRIVATE AND OFFICIAL CAPACITIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, AND EXPENSES OF ANY CHARACTER, NAME, AND DESCRIPTION, INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND REASONABLE ATTORNEY'S FEES, ARISING OUT OF, AND TO THE EXTENT CAUSED BY, ANY NEGLIGENT ACT OR NEGLIGENT OMMISSION OF DEVELOPER, ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS IN CONSTRUCTION OR DESIGN OF THE INFRASTRUCTURE IMPROVEMENT SEGMENTS PROVIDED FOR HEREIN, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM, DAMAGE, LOSS OR EXPENSE ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY. NOTHING IN THIS INDEMNITY SHALL WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW. DEVELOPER'S INDEMNITY OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

2. Applicable Laws 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 Tarrant County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Tarrant County, Texas.

3. Assignment. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns. Developer may assign all or part of its rights and obligations hereunder: (a) to any Affiliate effective upon written notice to the City, provided the Affiliate agrees in writing to comply with each and every obligation of Developer in this Agreement and said agreement is delivered to City with the written notice; or (b) to any entity other than an Affiliate with the prior written approval of the City, which approval shall not be unreasonably withheld.

4. Notices. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the City: City of Mansfield, Texas
 Attn: City Manager
 1200 E. Broad Street
 Mansfield, Texas 76063

With a copy to: TOASE, LLP
 Attn: Bradley A. Anderle
 6000 Western Place, Suite 200
 Fort Worth, Texas 76107

If to Developer: David Berzina and Robert Jonas
 6912 Vista Ridge Dr W
 Fort Worth, TX 76132-4572

With a copy to: Kelly Hart & Hallman LLP
 Attn: Jody Walker
 201 Main Street, Suite 2500
 Fort Worth, Texas 76102

5. Attorneys' Fees. In the event any Party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing Party in any such action or proceeding shall be entitled to recover its reasonable costs and attorneys' fees (including its reasonable costs and attorney's fees on any appeal).

6. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

7. Binding Obligation. Upon execution of this Agreement by all signatories hereto, this Agreement shall become a binding obligation on the signatories. The Public Parties warrant and represent that the individuals executing this Agreement on behalf of the Public Parties have full authority to execute this Agreement and bind the Public Parties to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Developer to the same. Further, this Agreement is and shall be binding upon Developer, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

8. Undocumented Workers. During the term of this Agreement, Developer agrees not to knowingly employ any Undocumented Worker as defined herein and according to Tex. Gov't. Code Sec. 2264.001. If after receiving the Economic Development Grant, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), then Developer shall repay the full amount of the payments received in accordance with this Agreement as of the date of such violation not later than one hundred twenty (120) days after the date Developer is convicted.

9. Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of Force Majeure, the Party so obligated or permitted to perform shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such Party was delayed.

10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic copy of this Agreement shall be treated for all purposes as an original.

11. 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.

12. Limitation of Liability. The Parties further agree that neither Party will be liable to the other under this Agreement for consequential damages (including lost profits) or exemplary damages.

13. Right of Offset. The City may offset any amount owed to Developer for an On-Site Infrastructure Grant payment or an Incentive Payment against any amount which is lawfully due to the City from Developer.

14. Non-Waiver. Any failure by a Party to insist upon strict performance by another Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or

condition.

15. Rough Proportionality. As additional consideration for the payments received by Developer under this Agreement, Developer agrees that all dedications, construction costs and other payments made by Developer related to any public improvements are roughly proportional to the need for such public improvements created by the development of the Property and Developer hereby waives any claim therefore that it may have. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to the dedication, construction costs, and other payments for any public improvements are related both in nature and extent to the impact of the Project. Developer waives and releases all claims against the City related to any and all rough proportionality and individual determination requirements mandated by Section 212.904, Texas Local Government Code, or the Texas or U.S. Constitutions, as well as other requirements of a nexus between development conditions and the projected impact of the Project.

16. Easements and Right-of-Way Acquisition. The City will acquire easements and right-of-way outside of the Property necessary for the construction of Off-Site Infrastructure Improvement Segments with the intent to enable the delivery of said Off-Site Infrastructure Improvement Segments within 36 months of the Effective Date. The Developer's commitments for Off-Site Infrastructure Improvement Segments are subject to the timely acquisition of such easements and right-of-way. If City fails to acquire the necessary right-of-way and/or easements for those Off-Site Infrastructure Improvement Segments within 36 months of the Effective Date of this Agreement, then Developer will be released from all obligations for said Off-Site Infrastructure Improvement Segments, and completion of those Off-Site Infrastructure Improvement Segments will not be a condition to qualify for any On-Site Infrastructure Grant payments or Incentive Payments.

[Signature Page Follows]

EXECUTED by the Parties, signing by and through their representatives, duly authorized to execute same.

"City"
CITY OF MANSFIELD, TEXAS

By: _____
Joe Smolinski, City Manager, or designee

ATTEST:

Susana Marin, City Secretary

APPROVED AS TO FORM

Bradley A. Anderle, City Attorney

"Board"
BOARD OF DIRECTORS OF REINVESTMENT
ZONE NUMBER ONE, CITY OF MANSFIELD

By: _____
Larry Broseh, Chairman

"Developer"
CHISOLM FLATS, LLC

By: _____
Name: _____
Title: _____

(CITY OF MANSFIELD)

STATE OF TEXAS §

COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____, 2023, by **Joe Smolinski**, City Manager of the City of Mansfield, Texas, or his designee, on behalf of the City of Mansfield, Texas.

Notary Public in and for the State of Texas

(REINVESTMENT ZONE NUMBER ONE)

STATE OF TEXAS §

COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____, 2023, by **Larry Broseh**, Chairman of the Board of Directors of Reinvestment Zone Number One, City of Mansfield, on behalf of the Reinvestment Zone Number One, City of Mansfield.

Notary Public in and for the State of Texas

(DEVELOPER)

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2023, by _____, _____ of Chisolm Flats, LLC, a Texas limited liability company, on behalf of said company.

Notary Public in and for the State of Texas

Exhibit A
Concept Plan

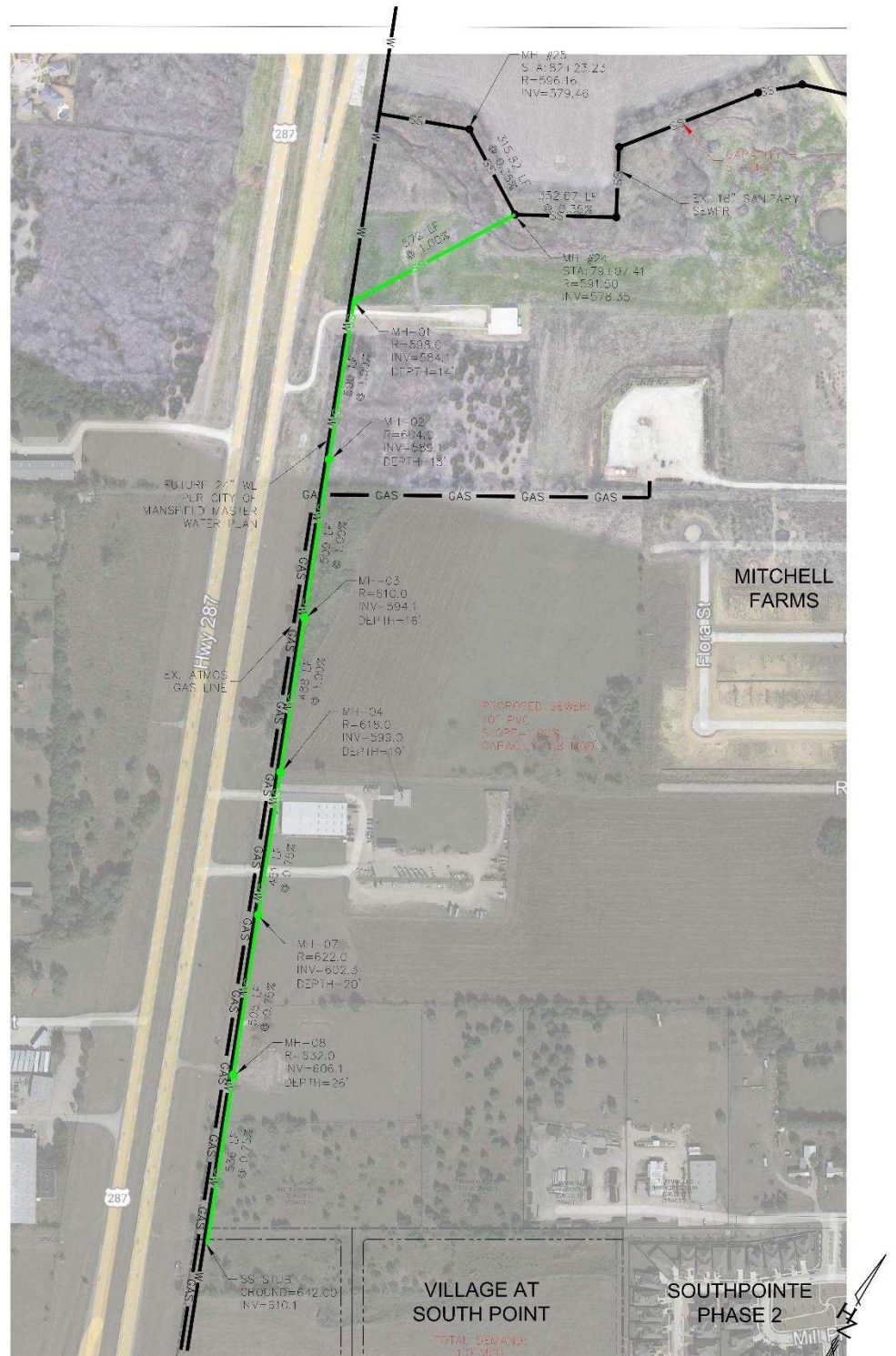


Exhibit B Block Layout Plan



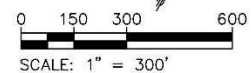
Exhibit C

Off-Site Sewer



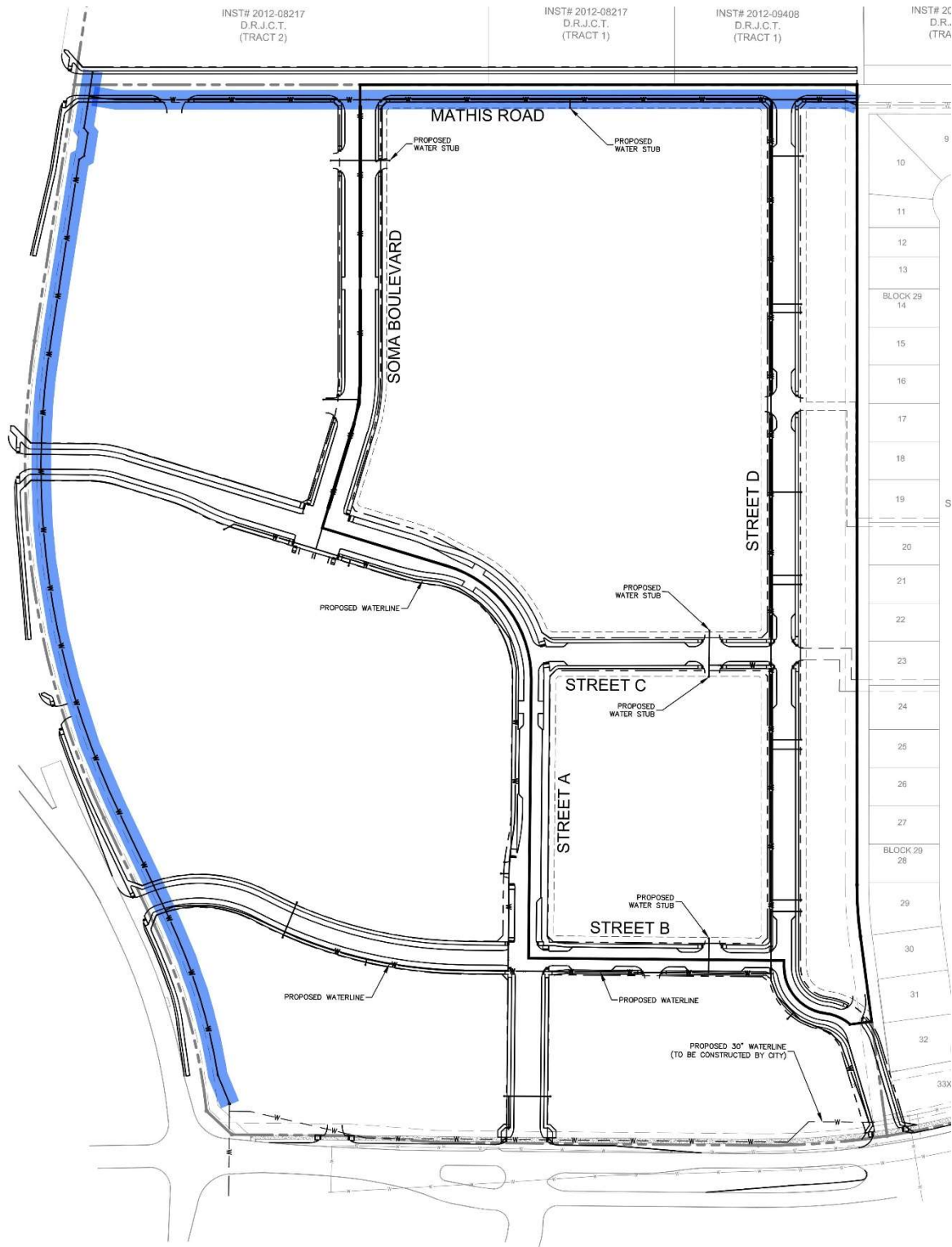
OFFSITE SEWER - WEST EXHIBIT
VILLAGE AT SOUTH POINT

REVISION A
JULY 11, 2022



HUITT-ZOLLARS

Exhibit D Off-Site Water



Off-Site Water

Exhibit E

Off-Site Roads & Storm Sewer

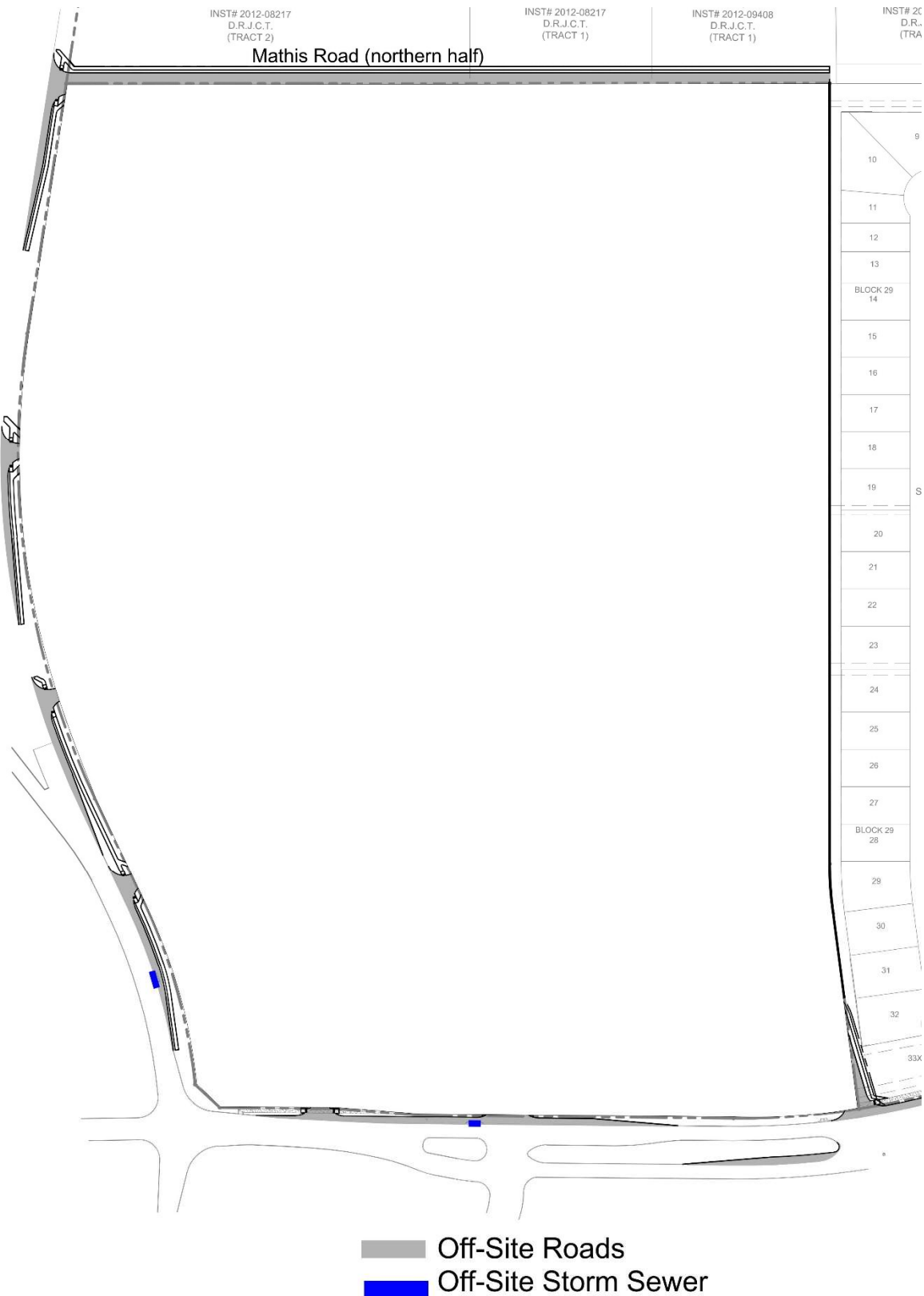
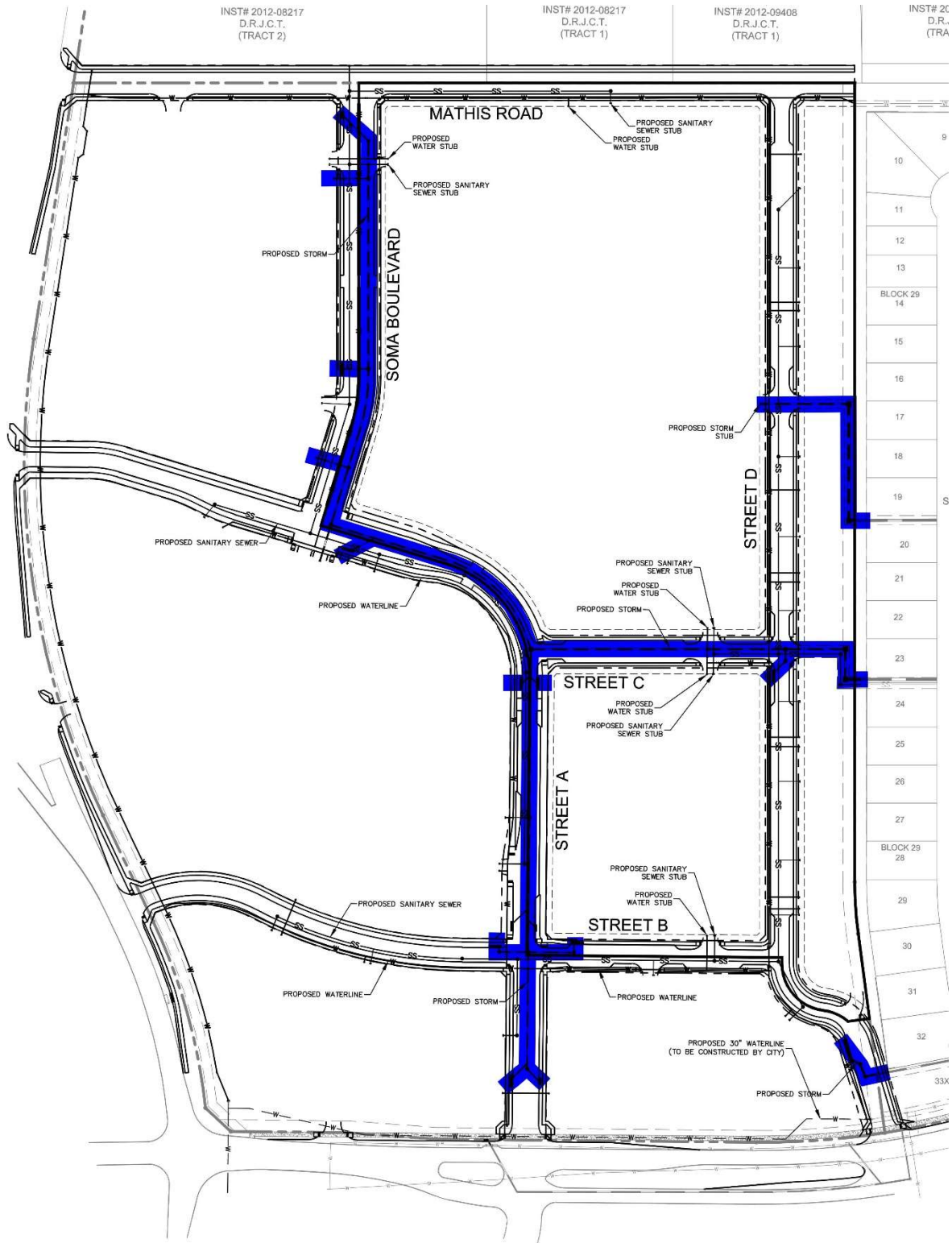
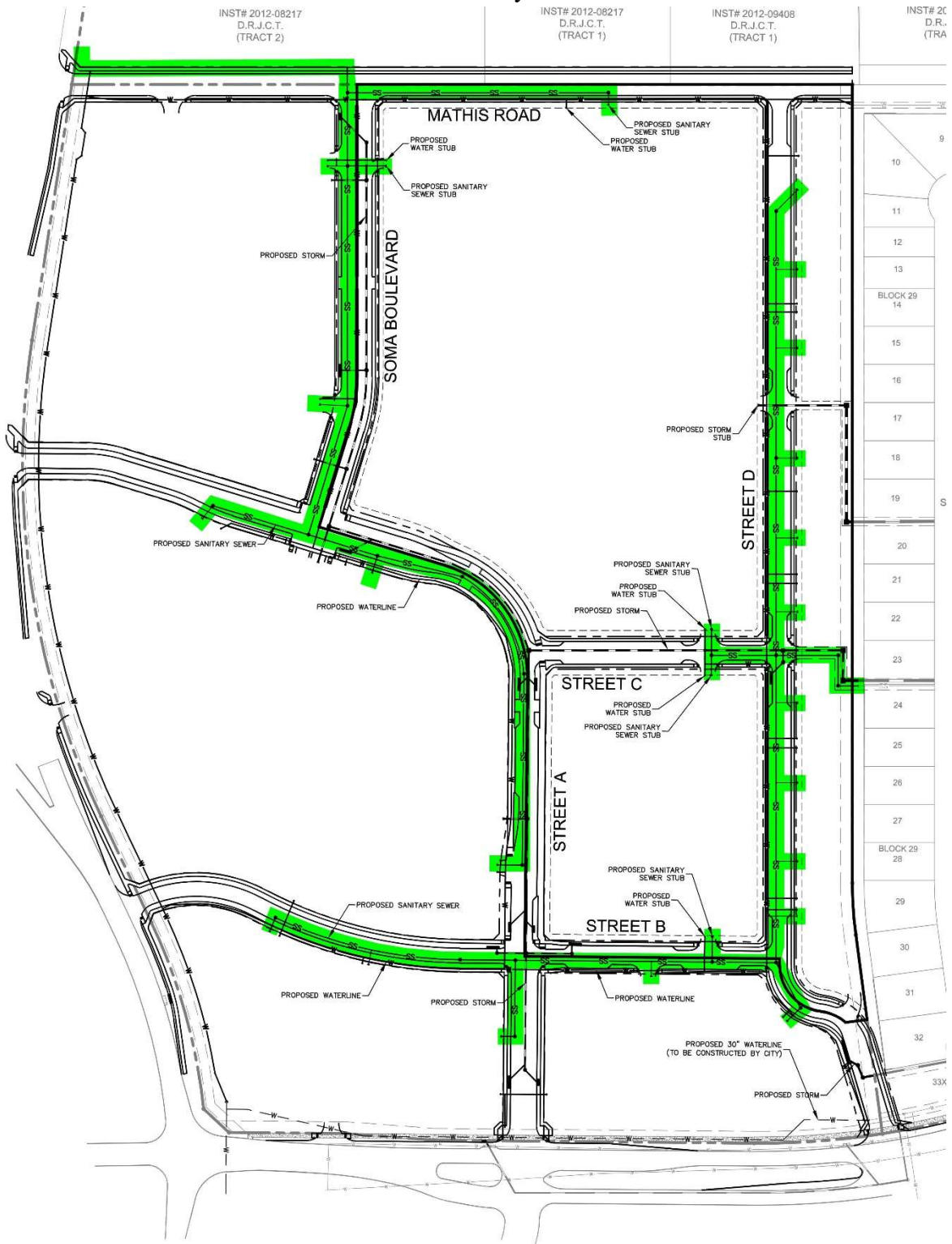


Exhibit F-1 On-Site Storm Sewer



On-Site Storm

Exhibit F-2 On-Site Sanitary Sewer



 On-Site Sewer

Exhibit F-3

On-Site Water



Exhibit G
On-Site Roads

To be inserted by Developer upon review and approval by City Engineer

INST# 2012-09408
D.R.J.C.T.
(TRACT 1)



Exhibit I Civic Space



** Perimeter Park and Pocket Park Space shown above only reflects space available for Civic Space requirements per S District zoning; final definition of spaces will be made upon site plan review of each lot*