



CITY OF MANSFIELD

1200 E. Broad St.
Mansfield, TX 76063
mansfieldtexas.gov

Meeting Agenda

City Council

Monday, June 10, 2024

2:00 PM

Council Chambers

REGULAR MEETING

1. 2:00 P.M. - CALL MEETING TO ORDER

2. RECESS INTO EXECUTIVE SESSION

Pursuant to Section 551.071, Texas Government Code, the Council reserves the right to convene in Executive Session(s), from time to time as deemed necessary during this meeting for any posted agenda item, to receive advice from its attorney as permitted by law.

A. Consultation with City Attorney to Seek Advice About Pending or Contemplated Litigation, a Settlement Offer, or on a Matter in Which the Duty of the City Attorney to the City's Governmental Body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas Clearly Conflicts with Chapter 551 of the Texas Government Code Pursuant to 551.071

Seek Advice of City Attorney Regarding Legal Issues Pertaining to Economic Development Projects Listed in Section 3.D of the Agenda

B. Discussion Regarding Possible Purchase, Exchange, Lease, or Value of Real Property Pursuant to Section 551.072

Land Acquisition for Future Development

C. Personnel Matters Pursuant to Section 551.074

Board Appointments

D. Deliberation Regarding Commercial or Financial Information Received From or the Offer of a Financial or Other Incentive Made to a Business Prospect Seeking to Locate, Stay or Expand in or Near the Territory of the City and with which the City is Conducting Economic Development Negotiations Pursuant to Section 551.087

Economic Development Project #15-02

Economic Development Project #21-33

Economic Development Project #22-27

Economic Development Project #23-15

Economic Development Project #24-01

3. WORK SESSION

Discussion Regarding Roadway Capital Improvement Projects

Discussion Regarding Land Use Regulations Pertaining to Retail Sales of Alcoholic Beverages for Off-Premise Consumption

Discussion Regarding the Fiscal Year 2025 Budget

Discussion Regarding the June 10, 2024 Consent Agenda Items

4. RECESS INTO EXECUTIVE SESSION

Pursuant to Section 551.071, Texas Government Code, the Council reserves the right to convene in Executive Session(s), from time to time as deemed necessary during this meeting for any posted agenda item, to receive advice from its attorney as permitted by law.

5. 6:00 PM OR IMMEDIATELY FOLLOWING EXECUTIVE SESSION - RECONVENE INTO REGULAR BUSINESS SESSION

6. INVOCATION

7. PLEDGE OF ALLEGIANCE

8. TEXAS PLEDGE

"Honor the Texas Flag; I Pledge Allegiance to Thee, Texas, One State Under God; One and Indivisible"

9. RECOGNITION

Recognition of Re-Elected and Newly Elected Council Members by Representative David Cook

Employee Recognition

10. CITIZEN COMMENTS

Citizens wishing to address the Council on non-public hearing agenda items and items not on the agenda may do so at this time. Due to regulations of the Texas Open

Meetings Act, please do not expect a response from the Council as they are not able to do so. THIS WILL BE YOUR ONLY OPPORTUNITY TO SPEAK UNLESS YOU ARE SPEAKING ON A SCHEDULED PUBLIC HEARING ITEM. After the close of the citizen comments portion of the meeting only comments related to public hearings will be heard. All comments are limited to five (5) minutes.

In order to be recognized during the "Citizen Comments" or during a Public Hearing (applicants included), please complete a blue or yellow card located at the entrance of the Council Chambers. Please present the card to the Assistant City Secretary prior to the start of the meeting.

11. **COUNCIL ANNOUNCEMENTS**

12. **STAFF COMMENTS**

In addition to matters specifically listed below, Staff comments may include updates on ongoing or proposed projects and address of posted agenda items.

A. **City Manager Report or Authorized Representative**

Current/Future Agenda Items

100 Hours of Play Challenge

B. **Business Services Department Report**

[24-6027](#) Monthly Financial Report for the Period Ending April 30, 2024

Presenters: Bryan Rebel

Attachments: [April 2024 Monthly Financials](#)

13. **TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION**

14. **CONSENT AGENDA**

All matters listed under consent agenda have been previously discussed, require little or no deliberation, or are considered to be routine by the council. If discussion is desired, then an item will be removed from the consent agenda and considered separately. Otherwise, approval of the consent agenda authorizes the City Manager to implement each item in accordance with staff's recommendation.

ITEMS TO BE REMOVED FROM THE CONSENT AGENDA

[24-6035](#) Resolution - A Resolution of the City of Mansfield, Texas Appointing the Presiding Judge of the Mansfield Municipal Court of Record NO. 1: Approving a Contract Appointing the Presiding Judge of the Mansfield Municipal Court of Record NO. 1; Finding that the Meeting as which this Resolution is Passed is Open to the Public as Required by Law; and Declaring an Effective Date

Presenters: Troy Lestina

Attachments: [Resolution](#)
[Exhibit A](#)

[24-6036](#) Resolution - A Resolution to Consider Awarding an Annual Contract to Green World Care in the Amount of \$337,740.37 for Grounds Maintenance of Medians and Rights-of-Way

Presenters: Brian Coatney

Attachments: [Resolution](#)
[Bid Tab](#)

[24-6040](#) Resolution - A Resolution Authorizing a Change Order and Providing Additional Funds for Day Miar Road Improvements (East Broad St. to 700 ft South of Seeton Rd.) with McMahan Contracting in the amount of \$395,466.33 (Street Bond Fund)

Presenters: Raymond Coffman

Attachments: [Resolution](#)
[Proposal](#)

[24-6044](#) Resolution - A Resolution of the City Council of the City of Mansfield, Texas, Approving the City Manager or His Designee to Negotiate, Finalize, and Execute a Professional Services Contract with Stantec Consulting Services, Inc. in an Amount Not to Exceed \$1,681,947 for Design and Engineering Services Related to the Downtown Main Street Project; Finding that the Meeting at Which this Resolution is Passed is Open to the Public as Required by Law; And Declaring an Effective Date (Issuance of Bonds)

Presenters: Matt Jones

Attachments: [Resolution](#)
[Exhibit A](#)

[24-6020](#) Minutes - Approval of the May 13, 2024 Regular City Council Meeting Minutes

Presenters: Susana Marin

Attachments: [5-13-24 DRAFT Meeting Minutes](#)

[24-6028](#) Minutes - Approval of the May 20, 2024 Regular City Council Meeting Minutes

Presenters: Susana Marin

Attachments: [5-20-24 DRAFT Meeting Minutes](#)

END OF CONSENT AGENDA

15. PUBLIC HEARING AND FIRST READING

[24-6003](#) Ordinance - Public Hearing Continuation and First Reading on an Ordinance Approving a Change of Zoning from PR, Pre-Development

District to PD, Planned Development District for Mixed Uses on Approximately 134.8 Acres of Land Situated in the J. Lawrence Survey, Abstract No. 616, the M. Gregg Survey, Abstract No. 385, J. Lawrence Survey, Abstract No. 616, and the H. Henderson Survey, Abstract No. 432; City of Mansfield, Ellis County, Texas, Located Approximately 1500 Feet East of State Highway 360, South of Lone Star Road, and South of Britton Road (ZC#24-009)

Presenters: Jason Alexander

Attachments: [Ordinance](#)

[Maps and Supporting Information](#)

[Exhibit A - Legal Description](#)

[Exhibit B - Draft PD, Planned Development District Standards and Diagrams](#)

16. **NEW BUSINESS**

[24-6042](#)

Resolution - A Resolution of the City Council of the City of Mansfield, Texas, Approving the Award of a Construction Manager at Risk (CMAR) Contract to Moss Construction for the Harvest Point Public Infrastructure Project; Finding that the Meeting at Which this Resolution is Passed is Open to the Public as Required by Law; And Declaring an Effective Date (TIRZ #4)

Presenters: Jason Moore

Attachments: [Resolution](#)

[CMAR Agreement](#)

[General Conditions](#)

[Exhibit B](#)

[Exhibit E](#)

17. **ADJOURN**

CERTIFICATION

THIS IS TO CERTIFY THAT A COPY OF THE NOTICE OF the June 10, 2024 Regular City Council Agenda was posted on the City Hall bulletin board, a place convenient and readily accessible to the general public at all times, and to the City's website, mansfieldtexas.gov, on Thursday, June 6, 2024 prior to 5:00 p.m., in compliance with Chapter 551, Texas Government Code.

Susana Marin, City Secretary

This facility is ADA compliant. If you plan to attend this public meeting and have a disability that requires special arrangements, please call (817) 473-0211 at least 48 hours in advance. Reasonable accommodation will be made to assist your needs. PLEASE SILENCE CELL PHONES WHILE THE CITY COUNCIL MEETING IS IN SESSION.



CITY OF MANSFIELD

1200 E. Broad St.
Mansfield, TX 76063
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STAFF REPORT

File Number: 24-6027

Agenda Date: 6/10/2024

Version: 1

Status: To Be Presented

In Control: City Council

File Type: Consideration Item

Agenda Number:

Title

Monthly Financial Report for the Period Ending April 30, 2024

Requested Action

Attached is the Monthly Financial Report for the period ending April 30, 2024 for Council's review.

Recommendation

Review the Financial Statement for the period ending April 30, 2024.

Description/History

Monthly Financial Report

Justification

To advise the Council of the city's financial condition.

Funding Source

N/A

Prepared By

Bryan Rebel, Assistant Director of Finance
817-276-4296



FINANCIAL REPORT

Ending April 30, 2024

City of Mansfield, Texas

Financial Report Issued by:
The City of Mansfield - Business Services Department



mansfieldtexas.gov

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Please see the appendix for unaudited financial statements and detailed sales tax information

HIGHLIGHTS

Financial Highlights

The City of Mansfield, Texas is in solid financial condition as of April 2024, or 58.33% of the budget year with revenues within or exceeding expectations in the major funds and expenditures within or lower than budgeted expectations. On February 26th, 2024, the City presented to the City Council its audited financial statements for the fiscal year ending September 30, 2023, in accordance with national guidelines.

Capital Highlights

The following major projects are active with the table below displaying current year (CY) and life-to-date (LTD) expenditures.

Project Name	Expenditures CY (millions)	Expenditures LTD (millions)
Police Headquarters	\$13.37 CY	\$26.95 LTD
Equipment Replacement	\$3.32 CY	-

Debt Summary (year to date issuance)

FY2024	Purpose	GO	CO	Tax & Revenue COs	Total Issued (millions)
Series 2024	Public infrastructure and facilities design, development, and construction	-	\$58.56	-	\$58.56
Series 2024* (GO Refunding Bonds)	Refund previously issued debt	\$11.29	-	-	\$11.29
Series 2024	Waterworks and Sewer Revenue Bond: construction of public infrastructure	-	-	\$44.96	\$44.96
Total Debt Issued		\$11.29	\$58.56	\$44.96	\$114.81

General Obligation Bonds (GO), Certificates of Obligation Bonds (CO)

* The total economic gain resulting from the refunding = \$1,096,734

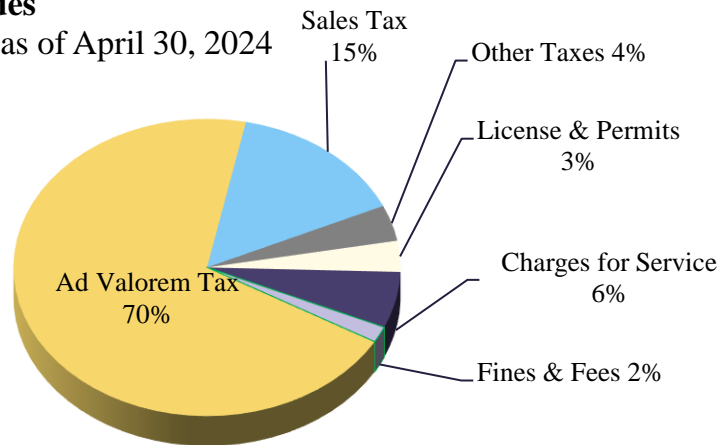
GENERAL FUND FINANCIAL SUMMARY

Overall, the operating revenues exceeded operating expenses by \$26,992,630 at the end of the reporting period. With operating revenues totaling \$76,291,341 or 84.86% of the budget and operating expenses totaling \$49,298,711 or 56.58% of the budget.

General Fund Charts (revenues & expenditures)

General Fund Revenues

Allocation of Receipts as of April 30, 2024



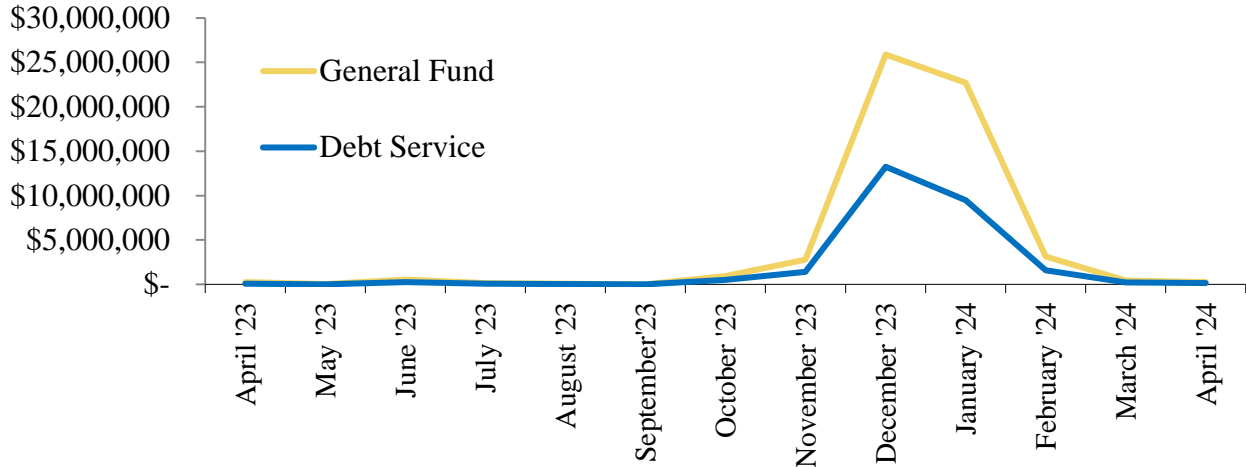
Major Revenues

Property Tax Collections

Most of the City's property tax is collected in the first four or six months of the fiscal year as property tax bills are generally due within the first four months of the City's fiscal year. Ad Valorem Tax Collections is comprised of two parts with the operations (M&O) portion recorded in the General Fund and the interest & sinking (I&S) portion recorded in the Debt Service Fund. The M&O portion of property tax collections as recorded in the General Fund through April 30, 2024, total \$52,453,397. Last year's collections were \$42,101,033 for the same period, an increase of 24.59% over the prior year.

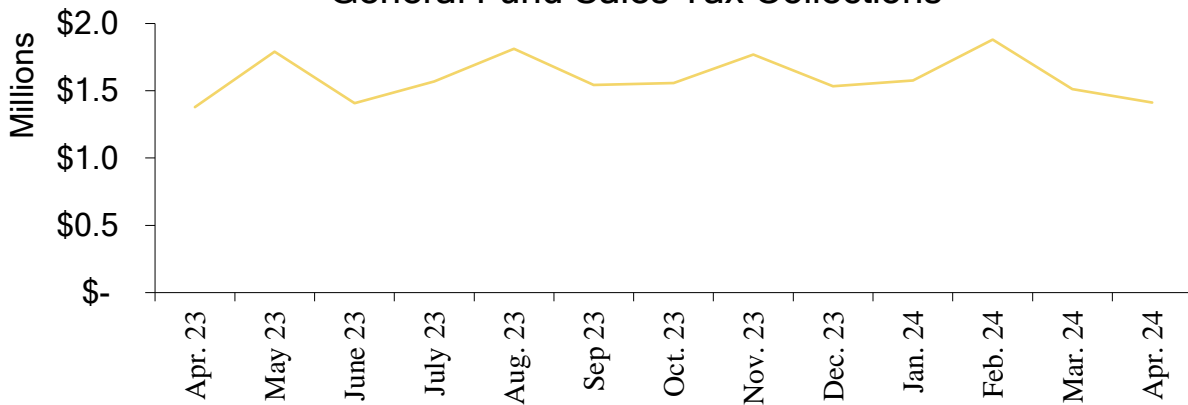
The I&S portion as recorded in the Debt Service Fund collected through April 30, 2024, totaled \$24,671,866. Property tax collections by month are depicted on the subsequent chart.

Ad Valorem Tax Collections by Month



Sales tax is reported on a cash basis with a two-month lag in collections from the actual purchase date. Citywide sales tax is 2¢ for every dollar of sales tax assessed. The General Fund receives 1¢ of sales taxes collected and the City’s Type 4A and Type 4B corporations each receive ½ ¢ of collections. In April 2024, the General Fund portion of sales tax collected totaled \$1,412,626 which is \$34,028 or 2.47% more than the same period last year. On an annual basis, sales tax collections are down by 1.25% or \$142,444 as compared to last year. For additional information on sales taxes, please see the full sales tax discussions and charts on page 14 of this report and in appendix A32-A35.

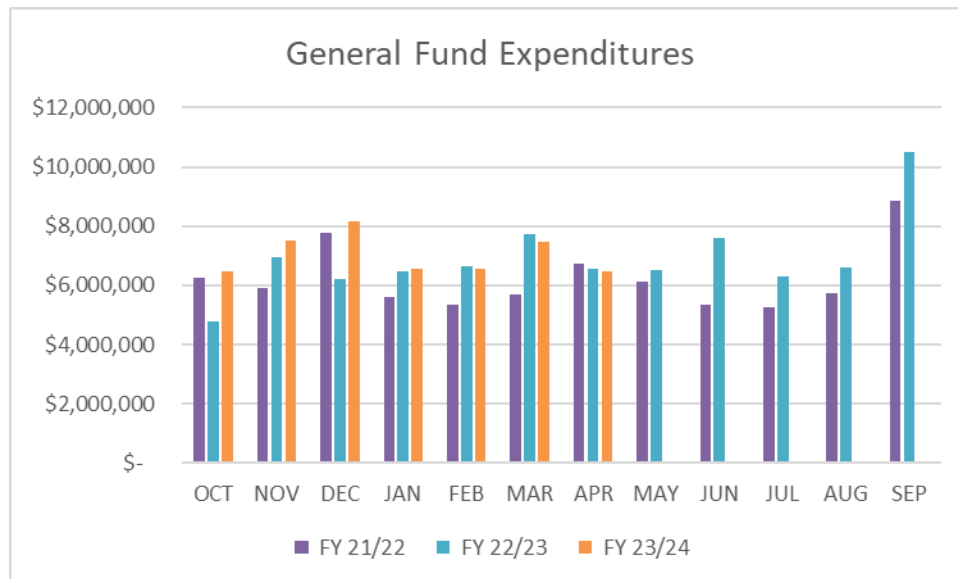
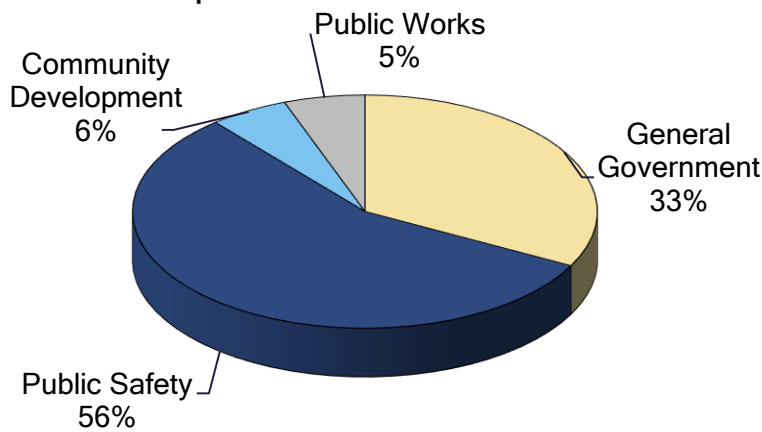
General Fund Sales Tax Collections



Expenditures

The chart below shows year-to-date expenditures by functions of the General Fund with public safety (police and fire activities) comprising 56% of all budgeted operational expenditures year to date. The total year-to-date operating expenditures of the fund are \$49,298,711 or 56.58% of budgeted expenditures of \$87,137,575. April 2024 expenditures were \$6.47 million.

FY24 YTD Actual Expenses



ENTERPRISE FUNDS FINANCIAL SUMMARY

The two major enterprise funds are the Utility Fund and the Drainage Utility Fund which both account for activities associated with delivering services to the paying public. For the Utility Fund, the operating revenues exceeded operating expenses by \$10,241,302 at the end of the reporting period. With operating revenues totaling \$28,355,999 or 56.59% of the budget and operating expenses totaling \$18,114,697 or 48.83% of the budget excluding depreciation. Non-operating activities such as interest revenue, debt expenses, and interest expenses due to borrowing totaled (\$2,333,771) resulting in a total change in net position of \$7,907,531.

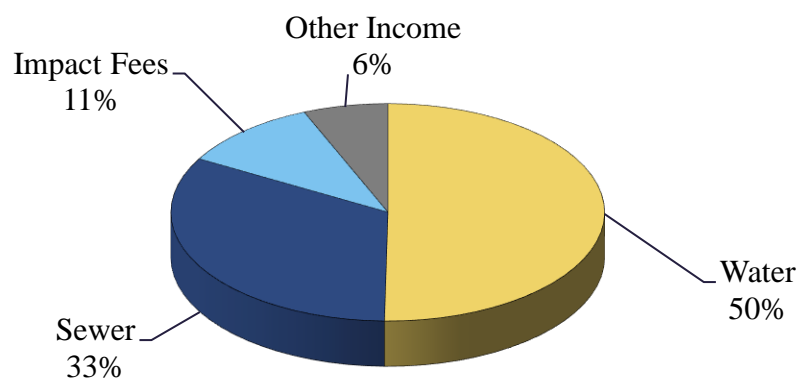
UTILITY FUND

Major Revenues

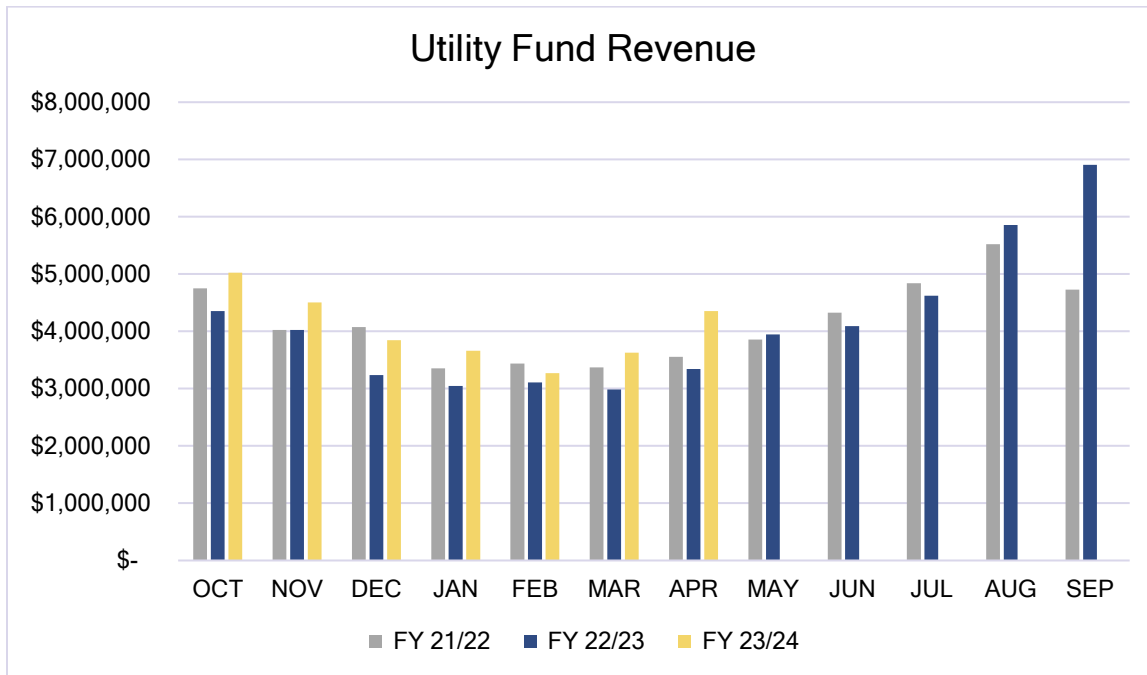
Water & Sewer Service Fees

Water and Sewer service fees year-to-date revenue is \$24,358,408 or 48.61% of the overall budget. The revenues have a direct relationship with consumption in this fund as higher consumption in the summer months yields higher revenue or seasonal rain in the spring yields lower revenues with these seasonal patterns displayed in the revenue collections chart below.

Revenues

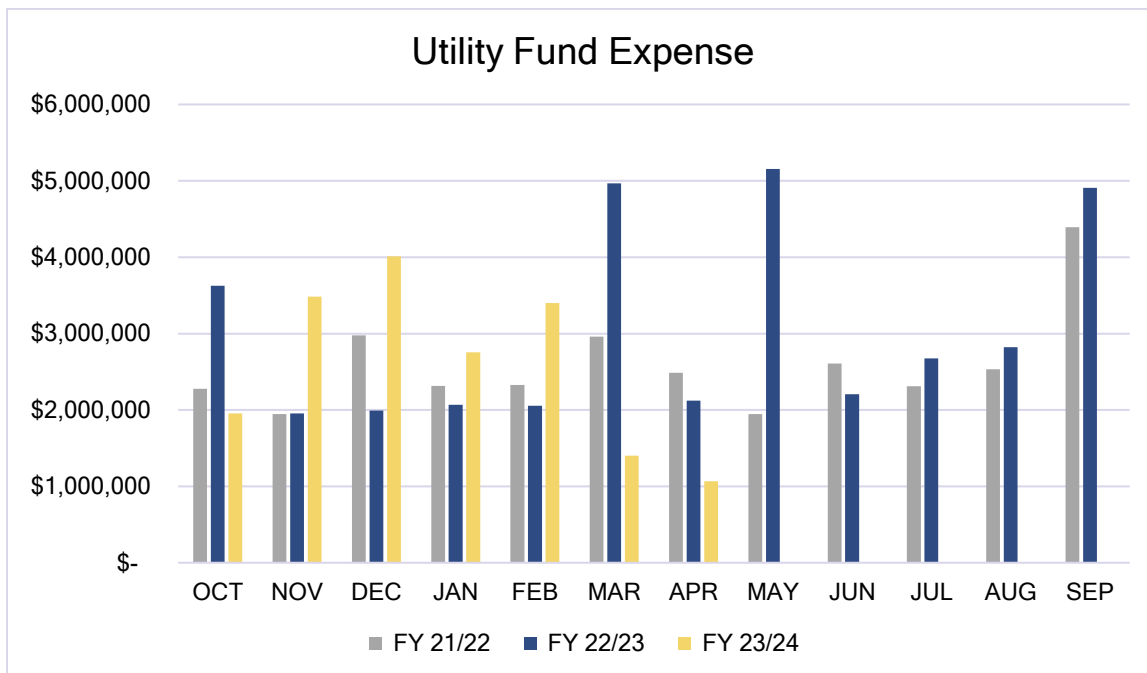


Utility Fund Charts



Expenses

The chart below shows expenses of the Water & Sewer Fund by department. The year-to-date activity of the fund (excluding depreciation) is 48.83% of budgeted expenditures. The costs of raw water and sewer treatment are slightly above budgeted estimates.



DRAINAGE UTILITY FUND

The Drainage Utility Fund is used to account for the administration of the City's stormwater program and environmental services including planning, engineering, operations & maintenance. The year-to-date operational revenues collected a total of \$1,718,402 and the operational expenditures related to administration and general maintenance total \$902,043 to date. The total change in net position is \$234,738. The ending net position totals \$14,366,735 at the end of the reporting period.



SPECIAL REVENUE FUNDS FINANCIAL SUMMARY

(This section provides details on substantial special revenue funds)

MANSFIELD PARKS FACILITY DEVELOPMENT CORPORATION FUND

The operating fund accounts for the construction and development of sports and recreation facilities, equipment, and miscellaneous improvements to the City's Park System. Funding for the activities of the MPFDC is supported by ½ cent sales tax. The year-to-date revenues collected total \$5,727,992, 59.42% of the budget, and the operating expenditures total \$4,072,964 which is 41.97% of the budget. Revenues exceed expenditures by \$1,655,028 which increases the fund balance. The ending fund balance totals \$18,216,684 at the end of the period.

MPFDC DEBT SERVICE FUND

The MPFDC also has a debt service fund that accounts for the debt obligations because of developing sports and recreation facilities, equipment, and miscellaneous improvements to the City's Park System. A portion of the MPFDC's sales tax collections is transferred to support the debt activities. The year-to-date revenues collected total \$1,859,073 which is 58.33% of the budget and the expenditures total \$570,030 which is 18.02% of the budget. Revenue exceeds expenditures by \$1,289,043. The ending fund balance totals \$1,807,240 at the end of the period.

THE MANSFIELD ECONOMIC DEVELOPMENT CORPORATION FUND

This fund is used to account for the promotion of Economic Development activities of the city. Funding for the activities of the MEDC is supported by ½ cent sales tax. The year-to-date operating revenues collected a total of \$5,633,526, which is 55.79% of the budgeted amount. Operating expenditures at the end of the reporting period totaled \$5,870,458 which is 83.44% of the budgeted expenditures. Operating expenditures exceeded operating revenue by (\$236,932) which decreased the fund balance. The total net change including non-operating activities is a decrease of \$121,351 at the end of April 2024.



Tax Increment Reinvestment Zones (TIRZs)

In accordance with Texas Local Government Chapter 311, a local government can designate a geographic area that needs improvement as a TIRZ. The funding to pay for improvements within the zone is derived from the ad valorem taxes collected from increased value within the zone. The chart below shows the current activity for all City TIRZs. The revenue recorded is interest income received year-to-date and property tax. Any negative balances reflect inter-fund commitment for reimbursements.

Fiscal Year 2024 YTD Summary	TIRZ #1	TIRZ #2	TIRZ #4	TOTAL ALL TIRZ
Revenues	820,954	240,993	-	1,061,947
Expenditures	262,937	228,299	966,294	1,457,530
Net Change From Operating: Gain (loss)	558,017	12,694	(966,294)	(395,583)
Other Financing Sources (Uses)	(2,946,202)	(3,729,723)	-	(6,675,925)
Fund Balance Beginning	8,361,799	(2,688,961)	(805,415)	4,867,423
Fund Balance Ending	5,973,614	(6,405,990)	(1,771,709)	(2,204,085)

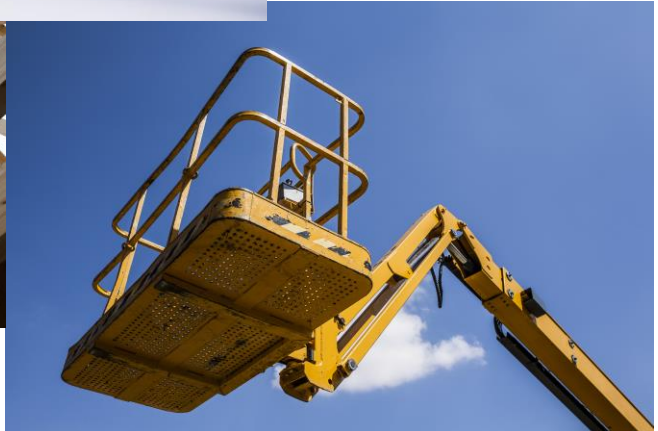
HOTEL/MOTEL TAX FUND

The Hotel/Motel fund is used to account for the occupancy taxes generated from the local hotels within the city. Funds collected are used to promote the City of Mansfield as a travel destination. The year-to-date revenues collected total \$563,778 which is 56.1% of the budget and the expenditures collected to date total \$742,888 which is 73.92% of the budget. Expenditure exceeds revenue by (\$179,110) which decreases the fund balance. The ending fund balance totals \$2,256,738 at the end of the reporting period.

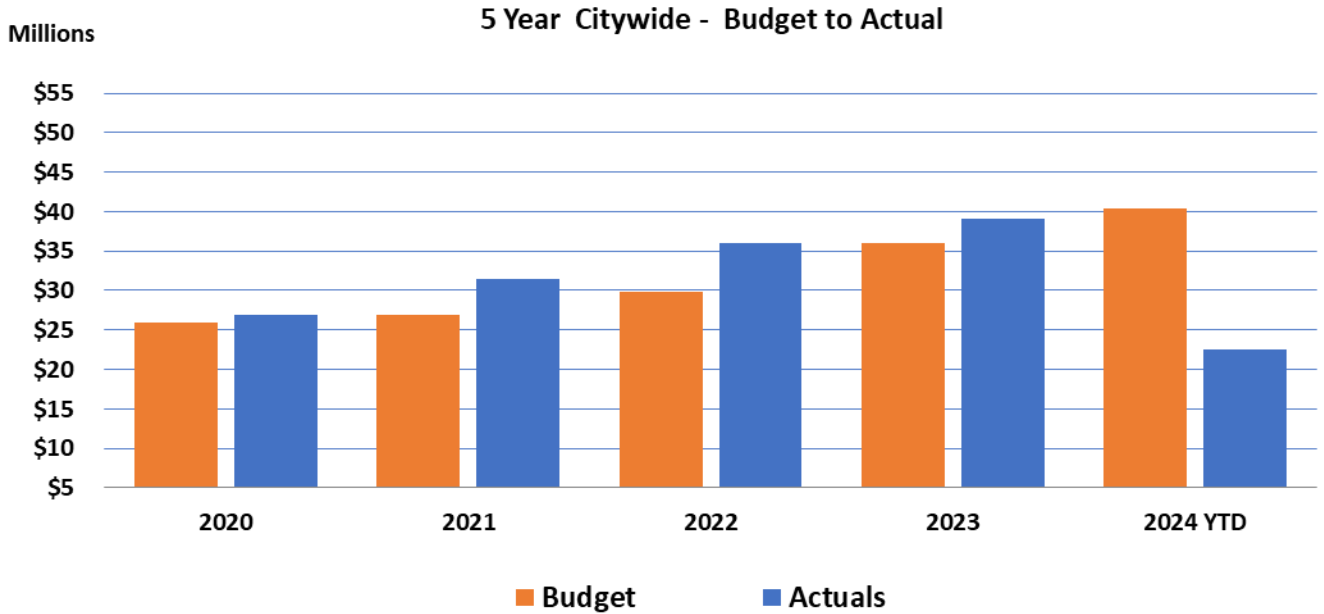
CAPITAL PROJECT FUNDS

The table below shows a summary of the revenues, expenditures, other financing sources, and ending fund balance for all Capital Project funds. Other financing sources include proceeds from bond issuances or transfers if applicable.

Fiscal Year 2024 YTD Summary	Street Construction Fund	Building Construction Fund	Equipment Replacement Fund	Parks Construction Fund	TOTAL CAPITAL FUNDS
Revenues	2,966,222	1,599,191	90,191	4,995	4,660,599
Expenditures	11,363,047	15,191,785	3,307,210	(59,798)	29,802,244
Net Change from Operating: Gain (loss)	(8,396,825)	(13,592,594)	(3,217,019)	64,793	(25,141,645)
Other Financing Sources (Uses)	18,967,999	43,578,089	2,449,092	-	64,995,180
Fund Balance Beginning	40,913,425	34,381,912	1,248,437	(374,304)	76,169,470
Fund Balance Ending	51,484,599	64,367,407	480,510	(309,511)	116,023,005



GLOBAL SALES TAXES



City of Mansfield Sales Tax Fiscal Year 2024 as of April 2024 (Cash Basis)								
Fiscal Year	0.01	0.005	0.005	Total 2¢	Collection Ratio and Budget			
	General Fund	MEDC Fund	MPFCDC Fund	Total	Y/Y % Chg.	Budget	% of Budget	
2020	13,472,576	6,736,288	6,736,288	26,945,152	8.3%	25,889,650	104.08%	
2021	15,744,052	7,872,026	7,872,026	31,488,104	16.9%	26,925,236	116.95%	
2022	17,983,225	8,991,613	8,991,613	35,966,450	14.2%	29,903,214	120.28%	
2023	19,508,041	9,754,021	9,754,021	39,016,083	8.5%	36,010,548	108.35%	
2024 YTD	11,242,716	5,621,358	5,621,358	22,485,432	-42.4%	40,330,288	55.75%	

● See the Appendix pages A32-A35 for detailed sales tax information.

INVESTMENTS

Monthly Investment Performance Summary: Month Ending April 30, 2024

Financial Market Outlook

The regional economy continues to expand; however, economic growth has been slightly downgraded from growth to moderate by many economists. Factors such as high inflation, housing market corrections, interest rate increases, and concerns over the federal funds rates. However, the regional economy continues to outperform the U.S. economy. Likewise, the City of Mansfield's economy is strong and continues to grow. The table below shows a comparison of both cash and investments from the prior month. Cash in consolidated accounts totals \$98.32 Million and investments total \$235.24 Million.

Citywide Cash & Investment Performance Summary

	March 31, 2024		April 30, 2024		Month-to-Month Change	
	Book Value	Average Yield	Book Value	Average Yield	Dollar (\$)	Percentage (%)
Demand Accounts	102,522,445	3.62%	98,322,701	3.62%	(4,199,743)	-4.10%
Local Government Investment Pool	207,115,333	5.46%	208,041,480	5.44%	926,147	0.45%
Money Market	27,075,973	4.69%	27,195,269	5.18%	119,296	0.44%
Total	336,713,751	4.84%	333,559,450	4.88%	(3,154,301)	-0.94%

- See the Appendix pages A24-A31 for investment information.

Report Certification: This report is prepared in accordance with the Public Funds Investment Act - "PFIA", Chapter 2256 Title 10 of the Texas Local Government Code.

Report Certification:

Troy Lestina

Signed by: Troy Lestina, CFO/DCM, Investment Officer

Bryan Rebel

Bryan Rebel, Assistant Finance Director, Investment Officer

APPENDIX (Unaudited Statements)

- General Fund Statement of Activities A17
- Utility Fund Statement of Activities A18
- Drainage Fund Statement of Activities A19
- MPFDC Fund Statement of Activities A20
- MPFDC Debt Fund Statement of Activities A21
- MEDC Statement of Activities A22
- Hotel Occupancy Tax Statement of Activities A23
- Detailed Investment Statements A24
- Detailed Sales Tax Statements A32

City of Mansfield, Texas

**Summary Statement of Activities
For the Month and Seven Months Ended April 30, 2024 and 2023 (Unaudited)**

General Fund	FY24	FY23	FY24	FY23	FY24	FY24	FY24
	MONTH TO DATE	MONTH TO DATE	YEAR TO DATE	YEAR TO DATE	ORIGINAL BUDGET	POSITIVE (NEGATIVE) BUDGET	PERCENT COLLECTED TO BUDGET
REVENUES:							
Property Tax	\$ 258,774	\$ 238,963	\$ 52,453,397	\$ 42,101,033	\$ 52,820,733	\$ (367,336)	99.30%
Sales Tax	1,412,626	1,378,598	11,242,715	11,385,161	20,165,144	(8,922,429)	55.75%
Other Taxes	965,256	824,979	2,929,127	3,970,858	4,284,328	(1,355,201)	68.37%
License And Permits	446,437	286,854	2,530,136	1,666,603	2,771,994	(241,858)	91.27%
Grant Revenue	8,571	77,627	32,640	207,481	250,000	(217,360)	13.06%
Charges For Services	731,399	568,538	4,586,897	4,566,342	7,111,342	(2,524,445)	64.50%
Fines And Fees	79,890	90,886	1,303,131	1,419,484	2,124,809	(821,678)	61.33%
Interest Earnings	41,291	84,752	523,106	498,677	150,000	373,106	348.74%
Miscellaneous	54,468	66,721	690,192	385,610	221,044	469,148	312.24%
Total Revenues	3,998,712	3,617,918	76,291,341	66,201,249	89,899,394	(13,608,053)	84.86%
EXPENDITURES:							
General Government	2,321,520	2,288,539	16,116,805	13,832,794	26,610,380	10,493,575	60.57%
Public Safety	3,536,002	3,337,642	27,688,795	25,792,712	47,311,702	19,622,907	58.52%
Public Works	245,602	690,811	2,780,605	3,311,799	7,442,084	4,661,479	37.36%
Community Development	364,664	378,847	2,712,506	2,699,695	5,773,409	3,060,903	46.98%
Total Expenditures	6,467,788	6,695,839	49,298,711	45,637,000	87,137,575	37,838,864	56.58%
EXCESS REVENUES OVER(UNDER) EXPENDITURES	(2,469,076)	(3,077,921)	26,992,630	20,564,249	2,761,819		
OTHER FINANCING SOURCES (USES)							
Reserve/Contingency	-	-	-	-	(2,069,123)	(2,069,123)	0.00%
Sale of Capital Assets, net	4,313,726	1,750	6,241,991	15,507	20,000	(6,221,991)	31209.96%
Financing, net	-	-	-	-	-	-	0.00%
Sources	-	-	-	-	4,826,403	4,826,403	0.00%
(Uses)	-	(450,000)	(982,300)	(5,294,621)	(5,539,099)	(4,556,799)	17.73%
Total Other Financing Sources (Uses)	4,313,726	(448,250)	5,259,691	(5,279,114)	(2,761,819)	(8,021,510)	-190.44%
EXCESS OF REVENUES AND OTHER FINANCING SOURCES OVER (UNDER) EXPENDITURES AND OTHER FINANCING USES	1,844,650	(3,526,171)	32,252,321	15,285,135	-		
FUND BALANCE							
BEGINNING	63,009,245	50,550,047	32,601,574	31,738,741			
ENDING	\$ 64,853,895	\$ 47,023,876	\$ 64,853,895	\$ 47,023,876			

City of Mansfield, Texas

Statement of Activities - Budget and Actual
For the Month and Seven Months Ended April 30, 2024 and 2023 (Unaudited)

Utility Fund	FY24 MONTH TO DATE	FY23 MONTH TO DATE	FY24 YEAR TO DATE	FY23 YEAR TO DATE	FY24 ORIGINAL BUDGET	FY24 POSITIVE (NEGATIVE) BUDGET	FY24 PERCENT COLLECTED TO BUDGET
OPERATING REVENUES:							
Water Service	\$ 1,899,360	\$ 1,671,548	\$ 14,715,354	\$ 13,264,116	\$ 30,369,793	\$ (15,654,439)	48.45%
Sewer Service	1,343,468	1,209,984	9,643,054	8,470,077	16,311,279	(6,668,225)	59.12%
Impact Fees	888,000	340,200	3,074,700	1,555,707	2,500,000	574,700	122.99%
Other Income	220,373	161,801	922,891	829,732	927,874	(4,983)	99.46%
Total Revenues	\$ 4,351,201	\$ 3,383,533	\$ 28,355,999	\$ 24,119,632	\$ 50,108,946	\$ (21,752,947)	56.59%
OPERATING EXPENSES:							
Administration	76,867	108,832	742,442	817,854	1,129,194	386,752	65.75%
Billing And Collection	73,892	63,673	400,008	414,425	1,028,472	628,464	38.89%
Meter Reading/Repairs	80,600	92,963	608,217	531,505	1,618,245	1,010,028	37.58%
Water Distribution	93,741	300,399	699,986	688,662	1,164,288	464,302	60.12%
Wastewater Collection	69,742	894,790	6,312,898	5,831,780	11,315,825	5,002,927	55.79%
Water Treatment	256,086	282,070	6,528,762	5,893,185	14,910,266	8,381,504	43.79%
Water Quality	40,332	42,739	226,654	323,288	580,940	354,286	39.02%
Water Demand Management	13,110	10,090	65,230	71,957	167,877	102,647	38.86%
Depreciation	361,500	350,001	2,530,500	2,471,848	-	(2,530,500)	0.00%
Total Operating Expenses	1,065,870	2,145,557	18,114,697	17,044,504	31,915,107	13,800,410	56.76%
OPERATING INCOME (LOSS)	3,285,331	1,237,976	10,241,302	7,075,128	18,193,839	(7,952,537)	
NONOPERATING REVENUES (EXPENSES):							
Non-Departmental	(45,065)	(71,733)	(3,671,431)	(558,528)	(10,568,863)	6,897,432	34.74%
Interest Revenue	343,058	133,442	1,848,718	773,946	24,000	1,824,718	7702.99%
Debt Service	(73,008)	(83,438)	(511,058)	(584,063)	(876,100)	365,042	58.33%
Bad Debt Expense	-	-	-	-	(48,000)	48,000	0.00%
Net Nonoperating Revenues (Expenses)	224,985	(21,729)	(2,333,771)	(368,645)	(11,468,963)	9,135,192	20.35%
INCOME (LOSS) BEFORE OPERATING TRANSFERS	3,510,316	1,216,247	7,907,531	6,706,483	6,724,876	1,182,655	117.59%
OPERATING TRANSFERS:							
Transfers In (Out)	-	-	-	-	(6,724,876)	6,724,876	0.00%
Net Operating Transfers	-	-	-	-	(6,724,876)	6,724,876	0.00%
CHANGE IN NET POSITION	3,510,316	1,216,247	7,907,531	6,706,483	-		
NET POSITION, BEGINNING	275,288,136	256,269,824	270,890,921	250,779,588			
NET POSITON, ENDING	\$ 278,798,452	\$ 257,486,071	\$ 278,798,452	\$ 257,486,071			

City of Mansfield, Texas

Comparative Statement of Activities
For the Month and Seven Months Ended April 30, 2024 and 2023 (Unaudited)

Drainage Utility Fund	FY24 MONTH TO DATE	FY23 MONTH TO DATE	FY24 YEAR TO DATE	FY23 YEAR TO DATE	FY24 ORIGINAL BUDGET	FY24 POSITIVE (NEGATIVE) BUDGET	FY24 PERCENT COLLECTED T BUDGET
OPERATING REVENUES:							
Drainage Fee	\$ 247,670	\$ 237,794	\$ 1,718,402	\$ 1,644,500	\$ 2,764,336	(1,045,934)	62%
Total Operating Revenues	247,670	237,794	1,718,402	1,644,500	2,764,336	(1,045,934)	
OPERATING EXPENSES:							
Administration & General Maintenance	99,591	88,603	766,943	694,628	2,046,822	1,279,879	37%
Depreciation	19,300	18,640	135,100	131,471	-	(135,100)	
Total Operating Expenses	118,891	107,243	902,043	826,099	2,046,822	1,144,779	
OPERATING INCOME (LOSS)	128,779	130,551	816,359	818,401	717,514	98,845	
NONOPERATING REVENUES (EXPENSES):							
Interest Revenue	14,113	4,061	150,009	23,979	-	(150,009)	
Other Income	-	440	100	7,404	-	(100)	
Interest and fiscal charges	(3,020)	(4,348)	(21,730)	(32,126)	(693,245)	(671,515)	
Net Nonoperating Revenue	11,093	153	128,379	(743)	(693,245)	(821,624)	
INCOME (LOSS) BEFORE OPERATING TRANSFERS	139,872	130,704	944,738	817,658	24,269	(722,779)	
OPERATING TRANSFERS							
Operating Transfers In/(Out)	(210,000)	-	(710,000)	-	(24,269)	(685,731)	
Net Operating Transfers	(210,000)	-	(710,000)	-	(24,269)	(685,731)	
CHANGE IN NET POSITION	(70,128)	130,704	234,738	817,658			
NET POSITION, BEGINNING	14,436,863	13,461,942	14,131,997	12,774,988			
NET POSITION, ENDING	\$ 14,366,735	\$ 13,592,646	\$ 14,366,735	\$ 13,592,646			

City of Mansfield, Texas

Statement of Activities - Budget and Actual
For the Month and Seven Months Ended April 30, 2024 and 2023 (Unaudited)

Mansfield Parks Facility Development Corporation	FY24	FY23	FY24	FY23	FY24	FY24	FY24
	MONTH TO DATE	MONTH TO DATE	YEAR TO DATE	YEAR TO DATE	ORIGINAL BUDGET	POSITIVE (NEGATIVE) BUDGET	PERCENT COLLECTED TO BUDGET
REVENUES:							
Sales Tax Revenue	\$ 444,142	\$ 426,082	\$ 3,779,413	\$ 3,852,618	\$ 6,934,495	\$ (3,155,082)	54.50%
Other Income	44,609	25,715	448,833	149,030	50,500	398,333	888.78%
MAC Revenue	56,498	57,181	423,035	400,130	793,300	(370,265)	53.33%
Lease Revenue and Royalties	47,362	141,392	714,761	826,904	1,861,800	(1,147,039)	38.39%
Park Land Dedication Revenue	116,250	26,250	361,950	475,500	-	361,950	0.00%
Total Revenues	708,861	676,620	5,727,992	5,704,182	9,640,095	(3,912,103)	59.42%
EXPENDITURES:							
Administration	120,029	126,820	788,302	743,428	1,748,790	960,488	45.08%
Field Operations	118,135	84,985	673,632	503,610	1,637,768	964,136	41.13%
Community Park Operations	73,838	78,549	519,675	594,397	1,086,077	566,402	47.85%
Nature Education Operations	8,886	16,342	91,950	104,936	247,930	155,980	37.09%
Recreational Center	74,719	70,916	523,371	479,807	1,161,625	638,254	45.06%
Neighborhood Park Operations	55,061	45,414	359,996	184,959	888,185	528,189	40.53%
Projects	8,380	134,940	1,056,942	314,987	-	(1,056,942)	0.00%
Non-Departmental	5,518	13,135	59,096	92,571	2,933,678	2,874,582	2.01%
Total Expenditures	464,566	571,101	4,072,964	3,018,695	9,704,053	5,631,089	41.97%
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	244,295	105,519	1,655,028	2,685,487	(63,958)	1,718,986	-2587.68%
OTHER FINANCING SOURCES (USES):							
Operating Transfers In	-	-	-	-	309,975	(309,975)	0.00%
Operating Transfers (Out)	-	-	-	-	(246,017)	-	0.00%
Total Other Financing Sources (Uses)	-	-	-	-	63,958	(309,975)	0.00%
EXCESS (DEFICIENCY) OF REVENUES AND OTHER FINANCING SOURCES OVER EXPENDITURES AND OTHER FINANCING USES	244,295	105,519	1,655,028	2,685,487			
FUND BALANCE, BEGINNING	17,972,389	14,802,072	16,561,656	12,222,104			
FUND BALANCE, ENDING	\$ 18,216,684	\$ 14,907,591	\$ 18,216,684	\$ 14,907,591			

City of Mansfield, Texas

**Statement of Activites - Budget and Actual
For the Month and Seven Months Ended April 30, 2024 and 2023 (Unaudited)**

Mansfield Parks Facility Development Corp. Debt Service	FY24 MONTH TO DATE	FY23 MONTH TO DATE	FY24 YEAR TO DATE	FY23 YEAR TO DATE	FY24 ORIGINAL BUDGET	FY24 POSITIVE (NEGATIVE) BUDGET	FY24 PERCENT COLLECTED TO BUDGET
<u>REVENUES:</u>							
Taxes, Penalties, And Interest	\$ 263,673	\$ 263,153	\$ 1,845,711	\$ 1,842,077	\$ 3,164,077	\$ (1,318,366)	58.33%
Other Income	-	-	13,362	-	-	-	0.00%
Total Revenues	263,673	263,153	1,859,073	1,842,077	3,164,077	(1,318,366)	58.33%
<u>EXPENDITURES:</u>							
Debt Service							
Principal Retirement	-	-	-	-	2,030,000	2,030,000	0.00%
Interest And Fiscal Charges	-	-	570,030	599,415	1,134,077	564,047	50.26%
Non-departmental	-	-	-	-	-	-	0.00%
Total Expenditures	-	-	570,030	599,415	3,164,077	2,594,047	18.02%
Excess Of Revenues Over (Under) Expenditures	263,673	263,153	1,289,043	1,242,662			
<u>OTHER FINANCING SOURCES (USES):</u>							
Bond Proceeds	-	-	-	-			
Total Other Financing Sources (Uses)	-	-	-	-			
FUND BALANCE, BEGINNING	1,543,567	1,494,925	518,197	515,416			
FUND BALANCE, ENDING	\$ 1,807,240	\$ 1,758,078	\$ 1,807,240	\$ 1,758,078			

City of Mansfield, Texas

**Comparative Statement of Activities
For the Month and Seven Months Ended April 30, 2024 and 2023 (Unaudited)**

Mansfield Economic Development Corporation	FY24		FY23		FY24		FY24	
	MONTH TO DATE	MONTH TO DATE	YEAR TO DATE	YEAR TO DATE	ORIGINAL BUDGET	POSITIVE (NEGATIVE) BUDGET	PERCENT COLLECTED BUDGET	
OPERATING REVENUES:								
Sales Tax Revenue	\$ 708,643	\$ 690,626	\$ 5,633,526	\$ 5,703,925	\$ 10,098,572	\$ (4,465,046)	55.79%	
Miscellaneous	-	-	-	-	-	-	-	
Total Operating Revenues	708,643	690,626	5,633,526	5,703,925	10,098,572	(4,465,046)	55.79%	
OPERATING EXPENDITURES:								
Administration	270,362	175,095	1,005,912	933,984	1,440,994	435,082	69.81%	
Promotions	3,150	34,671	63,542	56,635	100,000	36,458	63.54%	
Development Plan	-	53	-	53	28,000	28,000	0.00%	
Projects	1,494,525	221	4,764,197	144,774	5,444,577	680,380	87.50%	
Non-Departmental	800	1,498	36,807	10,485	22,361	(14,446)	164.60%	
Total Operating Expenditures	1,768,837	211,538	5,870,458	1,145,931	7,035,932	1,165,474	83.44%	
OPERATING INCOME	(1,060,194)	479,088	(236,932)	4,557,994	3,062,640	(3,299,572)	-7.74%	
NONOPERATING REVENUES (EXPENSES):								
Interest Revenue	53,387	21,814	457,869	141,944	60,000	397,869	763.12%	
Gain or (loss) on sale of property	-	-	-	388,612	-	-	-	
Interest and fiscal charges	-	(500)	(342,288)	(377,198)	(2,660,028)	2,317,740	12.87%	
Total Nonoperating Revenue	53,387	21,314	115,581	153,358	(2,600,028)	2,715,609	-4.45%	
INCOME BEFORE OPERATING TRANSFERS	(1,006,807)	500,402	(121,351)	4,711,352	462,612	(583,963)	-26.23%	
OPERATING TRANSFERS:								
Operating Transfers In (Out)	-	-	-	-	(462,612)	462,612	0.00%	
CHANGE IN NET ASSETS	(1,006,807)	500,402	(121,351)	4,711,352				
NET ASSETS, BEGINNING	17,613,684	17,005,860	16,728,228	12,794,910				
NET ASSETS, PROJECTS	-	*	-	*				
NET ASSETS, ENDING	\$ 16,606,877	\$ 17,506,262	\$ 16,606,877	\$ 17,506,262				

**Project Fund Balance represents funds that have been contractually obligated by the City Council and MEDC. These expenses will be recognized upon realization of the expense.

City of Mansfield, Texas

**Comparative Budget and Cash Analysis
For the Month and Seven Months Ended April 30, 2024 and 2023 (Unaudited)**

Hotel/Motel Occupancy Tax Fund	FY24 MONTH TO DATE	FY23 MONTH TO DATE	FY24 YEAR TO DATE	FY23 YEAR TO DATE	FY24 ORIGINAL BUDGET	FY24 POSITIVE (NEGATIVE) BUDGET	FY24 PERCENT COLLECTED TO BUDGET
REVENUES:							
Hotel Occupancy Tax	\$ 110,151	\$ 101,338	\$ 514,423	\$ 459,041	\$ 1,005,000	\$ (490,577)	51.19%
Rental of Facilities	820	1,400	3,480	7,370	-	3,480	0.00%
Interest Income	2,775	2,375	45,875	14,027	-	45,875	-
Total Revenues	113,746	105,113	563,778	480,438	1,005,000	(441,222)	56.10%
EXPENDITURES:							
Discover Historic Mansfield - Farr Best Concerts	68	213	318	4,005	-	(318)	0.00%
Mansfield Tourism	60,770	33,801	370,692	236,739	662,201	291,509	55.98%
Pickled Mansfield Society	-	73,200	-	73,200	-	-	0.00%
Mansfield Commission for the Arts	-	75,106	-	121,947	-	-	0.00%
Historic Landmark Commission	-	-	-	-	-	-	0.00%
Desert Love Film Festival	-	-	-	-	-	-	0.00%
Man House Museum	-	-	-	-	-	-	0.00%
Tommy King Foundation	-	-	-	-	-	-	0.00%
The LOT Downtown	-	2,400	-	2,400	-	-	0.00%
Wayfinding Program	-	-	-	-	-	-	0.00%
Friends of the Library	-	-	-	-	-	-	0.00%
Championship Basketball	-	-	10,000	10,000	10,000	-	100.00%
Projects	299,329	-	361,878	-	259,000	(102,878)	139.72%
Promotion	-	-	-	7,500	-	-	0.00%
Reserve	-	-	-	-	73,799	73,799	0.00%
Total Expenditures	360,167	184,720	742,888	455,791	1,005,000	262,112	73.92%
Revenues / (Expenditures)	(246,421)	(79,607)	(179,110)	24,647	-	(179,110)	
FUND BALANCE, BEGINNING	2,503,159	2,064,301	2,435,848	1,960,047			
FUND BALANCE, ENDING	\$ 2,256,738	\$ 1,984,694	\$ 2,256,738	\$ 1,984,694			

City of Mansfield
Portfolio Holdings
Tracker Portfolio Set Up - by Portfolio (Fund)
Report Format: By Transaction
Group By: Portfolio Name
Average By: Face Amount / Shares
Portfolio / Report Group: All Portfolios
As of 4/30/2024

Description	CUSIP/Ticker	Security Type	Settlement Date	YTM @ Cost	Face Amount/Shares	Cost Value	Book Value	Market Value	Maturity Date	Days To Maturity	Accrued Interest	% of Portfolio
1001 - General Fund												
CLASS LGIP	CLASS-GENOP	Local Government Investment Pool	5/11/2023	5.429	2,450,524.84	2,450,524.84	2,450,524.84	2,450,524.84	N/A	1		1.04
LOGIC LGIP	LOGIC	Local Government Investment Pool	5/28/2022	5.454	1,460,354.39	1,460,354.39	1,460,354.39	1,460,354.39	N/A	1		0.62
Nations Funds MM	MF0008	Money Market	10/25/1999	5.180	4,502,575.36	4,502,575.36	4,502,575.36	4,502,575.36	N/A	1		1.91
TexStar LGIP	TEXSTAR	Local Government Investment Pool	11/2/2012	5.306	954,514.48	954,514.48	954,514.48	954,514.48	N/A	1		0.41
Sub Total / Average 1001 - General Fund				5.301	9,367,969.07	9,367,969.07	9,367,969.07	9,367,969.07		1	0.00	3.98
2003 - Tree Mitigation												
Nations Funds MM	MF0008	Money Market	10/25/1999	5.180	28,730.46	28,730.46	28,730.46	28,730.46	N/A	1		0.01
Sub Total / Average 2003 - Tree Mitigation				5.180	28,730.46	28,730.46	28,730.46	28,730.46		1	0.00	0.01
2006 - Hotel												
TexStar LGIP	TEXSTAR	Local Government Investment Pool	11/30/2014	5.306	639,215.20	639,215.20	639,215.20	639,215.20	N/A	1		0.27
Sub Total / Average 2006 - Hotel				5.306	639,215.20	639,215.20	639,215.20	639,215.20		1	0.00	0.27
2104 - ARPA												
CLASS LGIP	CLASS-SLFRF	Local Government Investment Pool	5/27/2021	5.429	543,430.13	543,430.13	543,430.13	543,430.13	N/A	1		0.23
Sub Total / Average 2104 - ARPA				5.429	543,430.13	543,430.13	543,430.13	543,430.13		1	0.00	0.23
2301 - Mansfield Parks 1/2 Sales Tax												
CLASS LGIP	CLASS-GENOP	Local Government Investment Pool	5/11/2023	5.429	1,055,289.45	1,055,289.45	1,055,289.45	1,055,289.45	N/A	1		0.45
Nations Funds MM	MF0008	Money Market	10/25/1999	5.180	2,475,830.86	2,475,830.86	2,475,830.86	2,475,830.86	N/A	1		1.05
TexStar LGIP	TEXSTAR	Local Government Investment Pool	11/2/2012	5.306	2,676,469.38	2,676,469.38	2,676,469.38	2,676,469.38	N/A	1		1.14
Sub Total / Average 2301 - Mansfield Parks 1/2 Sales Tax				5.276	6,207,589.69	6,207,589.69	6,207,589.69	6,207,589.69		1	0.00	2.64
2302 - Mansfield Parks Land Dedication												
CLASS LGIP	CLASS-GENOP	Local Government Investment Pool	5/11/2023	5.429	2,110,578.90	2,110,578.90	2,110,578.90	2,110,578.90	N/A	1		0.90

Description	CUSIP/Ticker	Security Type	Settlement Date	YTM @ Cost	Face Amount/Shares	Cost Value	Book Value	Market Value	Maturity Date	Days To Maturity	Accrued Interest	% of Portfolio
Nations Funds MM	MF0008	Money Market	10/25/1999	5.180	655,388.52	655,388.52	655,388.52	655,388.52	N/A	1		0.28
TexStar LGIP	TEXSTAR	Local Government Investment Pool	11/2/2012	5.306	1,165,580.62	1,165,580.62	1,165,580.62	1,165,580.62	N/A	1		0.50
Sub Total / Average 2302 - Mansfield Parks Land Dedication				5.351	3,931,548.04	3,931,548.04	3,931,548.04	3,931,548.04		1	0.00	1.67
3001 - Equipment Replacement												
LOGIC LGIP	LOGIC-CO2024	Local Government Investment Pool	1/10/2024	5.454	1,657,564.59	1,657,564.59	1,657,564.59	1,657,564.59	N/A	1		0.70
TexStar LGIP	TEXSTAR	Local Government Investment Pool	1/8/2014	5.306	5,301.94	5,301.94	5,301.94	5,301.94	N/A	1		0.00
Sub Total / Average 3001 - Equipment Replacement				5.454	1,662,866.53	1,662,866.53	1,662,866.53	1,662,866.53		1	0.00	0.71
3201 - Street Construction												
CLASS LGIP	CLASS-GENOP	Local Government Investment Pool	5/11/2023	5.429	2,110,578.90	2,110,578.90	2,110,578.90	2,110,578.90	N/A	1		0.90
Nations Funds MM	MF0008	Money Market	10/25/1999	5.180	3,631,142.89	3,631,142.89	3,631,142.89	3,631,142.89	N/A	1		1.54
TexStar LGIP	TEXSTAR	Local Government Investment Pool	11/2/2012	5.306	2,144,087.96	2,144,087.96	2,144,087.96	2,144,087.96	N/A	1		0.91
Sub Total / Average 3201 - Street Construction				5.281	7,885,809.75	7,885,809.75	7,885,809.75	7,885,809.75		1	0.00	3.35
3202 - Streets Construction												
LOGIC LGIP	LOGIC-CO2024	Local Government Investment Pool	1/10/2024	5.454	18,780,308.42	18,780,308.42	18,780,308.42	18,780,308.42	N/A	1		7.98
Sub Total / Average 3202 - Streets Construction				5.454	18,780,308.42	18,780,308.42	18,780,308.42	18,780,308.42		1	0.00	7.98
3212 - 2016 Streets Construction												
Nations Funds MM	MF0008	Money Market	8/1/2016	5.180	1,665,814.86	1,665,814.86	1,665,814.86	1,665,814.86	N/A	1		0.71
TexStar LGIP	TEXSTAR	Local Government Investment Pool	8/31/2016	5.306	1,065,502.11	1,065,502.11	1,065,502.11	1,065,502.11	N/A	1		0.45
Sub Total / Average 3212 - 2016 Streets Construction				5.229	2,731,316.97	2,731,316.97	2,731,316.97	2,731,316.97		1	0.00	1.16
3213 - 2017 Streets Construction												
Nations Funds MM	MF0008	Money Market	12/1/2017	5.180	28,041.59	28,041.59	28,041.59	28,041.59	N/A	1		0.01
Sub Total / Average 3213 - 2017 Streets Construction				5.180	28,041.59	28,041.59	28,041.59	28,041.59		1	0.00	0.01
3218 Issue 2022A - Streets												
LOGIC LGIP	LOGIC-CO2022A	Local Government Investment Pool	12/15/2022	5.454	18,886,361.40	18,886,361.40	18,886,361.40	18,886,361.40	N/A	1		8.03

Description	CUSIP/Ticker	Security Type	Settlement Date	YTM @ Cost	Face Amount/Shares	Cost Value	Book Value	Market Value	Maturity Date	Days To Maturity	Accrued Interest	% of Portfolio
Sub Total / Average 3218 Issue 2022A - Streets				5.454	18,886,361.40	18,886,361.40	18,886,361.40	18,886,361.40		1	0.00	8.03
3401 - Building Construction												
LOGIC LGIP	LOGIC-CO2024	Local Government Investment Pool	1/10/2024	5.454	21,863,581.92	21,863,581.92	21,863,581.92	21,863,581.92	N/A	1		9.29
TexStar LGIP	TEXSTAR	Local Government Investment Pool	11/2/2012	5.306	87,237.62	87,237.62	87,237.62	87,237.62	N/A	1		0.04
Sub Total / Average 3401 - Building Construction				5.454	21,950,819.54	21,950,819.54	21,950,819.54	21,950,819.54		1	0.00	9.33
3410 - PD Headquarters												
LOGIC LGIP	LOGIC-CO2022A	Local Government Investment Pool	12/15/2022	5.454	18,371,511.48	18,371,511.48	18,371,511.48	18,371,511.48	N/A	1		7.81
Sub Total / Average 3410 - PD Headquarters				5.454	18,371,511.48	18,371,511.48	18,371,511.48	18,371,511.48		1	0.00	7.81
3411 - Joint Fire/PD Training Facility												
LOGIC LGIP	LOGIC-CO2024	Local Government Investment Pool	1/10/2024	5.454	1,525,366.18	1,525,366.18	1,525,366.18	1,525,366.18	N/A	1		0.65
Sub Total / Average 3411 - Joint Fire/PD Training Facility				5.454	1,525,366.18	1,525,366.18	1,525,366.18	1,525,366.18		1	0.00	0.65
3412 - ACO/Service Center												
LOGIC LGIP	LOGIC-CO2024	Local Government Investment Pool	1/10/2024	5.454	20,093,140.24	20,093,140.24	20,093,140.24	20,093,140.24	N/A	1		8.54
LOGIC LGIP	LOGIC-CO2022A	Local Government Investment Pool	12/15/2022	5.454	454,459.26	454,459.26	454,459.26	454,459.26	N/A	1		0.19
Sub Total / Average 3412 - ACO/Service Center				5.454	20,547,599.50	20,547,599.50	20,547,599.50	20,547,599.50		1	0.00	8.73
3608 - LINEAR PARK TRAIL												
CLASS LGIP	CLASS-GENOP	Local Government Investment Pool	5/11/2023	5.429	2,110,578.90	2,110,578.90	2,110,578.90	2,110,578.90	N/A	1		0.90
Sub Total / Average 3608 - LINEAR PARK TRAIL				5.429	2,110,578.90	2,110,578.90	2,110,578.90	2,110,578.90		1	0.00	0.90
3901 - TIF												
LOGIC LGIP	LOGIC	Local Government Investment Pool	5/28/2022	5.454	3,275,797.22	3,275,797.22	3,275,797.22	3,275,797.22	N/A	1		1.39
LOGIC LGIP	LOGIC-CO2024	Local Government Investment Pool	1/10/2024	5.454	2,179,239.81	2,179,239.81	2,179,239.81	2,179,239.81	N/A	1		0.93
TexStar LGIP	TEXSTAR	Local Government Investment Pool	11/2/2012	5.306	1,626,595.06	1,626,595.06	1,626,595.06	1,626,595.06	N/A	1		0.69
Sub Total / Average 3901				5.420	7,081,632.09	7,081,632.09	7,081,632.09	7,081,632.09		1	0.00	3.01

Description	CUSIP/Ticker	Security Type	Settlement Date	YTM @ Cost	Face Amount/Shares	Cost Value	Book Value	Market Value	Maturity Date	Days To Maturity	Accrued Interest	% of Portfolio
- TIF												
4001 - Debt Services												
Nations Funds MM	MF0008	Money Market	10/25/1999	5.180	481,254.25	481,254.25	481,254.25	481,254.25	N/A	1		0.20
TexStar LGIP	TEXSTAR	Local Government Investment Pool	11/2/2012	5.306	59,017.00	59,017.00	59,017.00	59,017.00	N/A	1		0.03
Sub Total / Average 4001 - Debt Services				5.194	540,271.25	540,271.25	540,271.25	540,271.25		1	0.00	0.23
4501 - Economic Development												
CLASS LGIP	CLASS-GENOP	Local Government Investment Pool	5/11/2023	5.429	6,331,736.73	6,331,736.73	6,331,736.73	6,331,736.73	N/A	1		2.69
LOGIC LGIP	LOGIC	Local Government Investment Pool	5/28/2022	5.454	4,367,729.60	4,367,729.60	4,367,729.60	4,367,729.60	N/A	1		1.86
Nations Funds MM	MF0008	Money Market	10/25/1999	5.180	164,385.85	164,385.85	164,385.85	164,385.85	N/A	1		0.07
TexStar LGIP	TEXSTAR	Local Government Investment Pool	11/2/2012	5.306	912,921.08	912,921.08	912,921.08	912,921.08	N/A	1		0.39
Sub Total / Average 4501 - Economic Development				5.425	11,776,773.26	11,776,773.26	11,776,773.26	11,776,773.26		1	0.00	5.01
4502 - MEDC I&S Fund												
TexStar LGIP	TEXSTAR	Local Government Investment Pool	11/2/2012	5.306	253,788.62	253,788.62	253,788.62	253,788.62	N/A	1		0.11
Sub Total / Average 4502 - MEDC I&S Fund				5.306	253,788.62	253,788.62	253,788.62	253,788.62		1	0.00	0.11
5101 - Drainage Utility Fund												
CLASS LGIP	CLASS-GENOP	Local Government Investment Pool	5/11/2023	5.429	2,110,578.90	2,110,578.90	2,110,578.90	2,110,578.90	N/A	1		0.90
TexStar LGIP	TEXSTAR	Local Government Investment Pool	11/2/2012	5.306	1,092,753.08	1,092,753.08	1,092,753.08	1,092,753.08	N/A	1		0.46
Sub Total / Average 5101 - Drainage Utility Fund				5.387	3,203,331.98	3,203,331.98	3,203,331.98	3,203,331.98		1	0.00	1.36
5201 - Water & Sewer												
CLASS LGIP	CLASS-GENOP	Local Government Investment Pool	5/11/2023	5.429	5,276,447.26	5,276,447.26	5,276,447.26	5,276,447.26	N/A	1		2.24
LOGIC LGIP	LOGIC	Local Government Investment Pool	5/28/2022	5.454	5,459,662.02	5,459,662.02	5,459,662.02	5,459,662.02	N/A	1		2.32
Nations Funds MM	MF0008	Money Market	10/25/1999	5.180	10,311,898.92	10,311,898.92	10,311,898.92	10,311,898.92	N/A	1		4.38
TexStar LGIP	TEXSTAR	Local Government Investment Pool	11/2/2012	5.306	2,038,136.06	2,038,136.06	2,038,136.06	2,038,136.06	N/A	1		0.87
Sub Total / Average 5201 - Water & Sewer				5.313	23,086,144.26	23,086,144.26	23,086,144.26	23,086,144.26		1	0.00	9.81
5211 - Revenue Bond Reserve												

Description	CUSIP/Ticker	Security Type	Settlement Date	YTM @ Cost	Face Amount/Shares	Cost Value	Book Value	Market Value	Maturity Date	Days To Maturity	Accrued Interest	% of Portfolio
Nations Funds MM	MF0008	Money Market	4/11/2012	5.180	3,250,205.31	3,250,205.31	3,250,205.31	3,250,205.31	N/A	1		1.38
Sub Total / Average 5211 - Revenue Bond Reserve				5.180	3,250,205.31	3,250,205.31	3,250,205.31	3,250,205.31		1	0.00	1.38
5224 - Utility WTP												
LOGIC LGIP	LOGIC-WS2024	Local Government Investment Pool	1/10/2024	5.454	50,845,539.32	50,845,539.32	50,845,539.32	50,845,539.32	N/A	1		21.61
Sub Total / Average 5224 - Utility WTP				5.454	50,845,539.32	50,845,539.32	50,845,539.32	50,845,539.32		1	0.00	21.61
Total / Average				5.411	235,236,748.94	235,236,748.94	235,236,748.94	235,236,748.94		1	0.00	100

City of Mansfield
Portfolio Holdings
Tracker Portfolio Set Up - by Issuer
Report Format: By Transaction
Group By: Issuer
Average By: Face Amount / Shares
Portfolio / Report Group: All Portfolios
As of 4/30/2024

Description	CUSIP/Ticker	Settlement Date	YTM @ Cost	Face Amount/Shares	Cost Value	Book Value	Market Value	Maturity Date	Days To Maturity	Accrued Interest	% of Portfolio	Portfolio Name
CLASS												
CLASS LGIP	CLASS-GENOP	5/11/2023	5.429	5,276,447.26	5,276,447.26	5,276,447.26	5,276,447.26	N/A	1		2.24	5201 - Water & Sewer
CLASS LGIP	CLASS-GENOP	5/11/2023	5.429	2,110,578.90	2,110,578.90	2,110,578.90	2,110,578.90	N/A	1		0.90	3201 - Street Construction
CLASS LGIP	CLASS-GENOP	5/11/2023	5.429	2,450,524.84	2,450,524.84	2,450,524.84	2,450,524.84	N/A	1		1.04	1001 - General Fund
CLASS LGIP	CLASS-GENOP	5/11/2023	5.429	6,331,736.73	6,331,736.73	6,331,736.73	6,331,736.73	N/A	1		2.69	4501 - Economic Development
CLASS LGIP	CLASS-GENOP	5/11/2023	5.429	2,110,578.90	2,110,578.90	2,110,578.90	2,110,578.90	N/A	1		0.90	2302 - Mansfield Parks Land Dedication
CLASS LGIP	CLASS-GENOP	5/11/2023	5.429	2,110,578.90	2,110,578.90	2,110,578.90	2,110,578.90	N/A	1		0.90	5101 - Drainage Utility Fund
CLASS LGIP	CLASS-GENOP	5/11/2023	5.429	2,110,578.90	2,110,578.90	2,110,578.90	2,110,578.90	N/A	1		0.90	3608 - LINEAR PARK TRAIL
CLASS LGIP	CLASS-GENOP	5/11/2023	5.429	1,055,289.45	1,055,289.45	1,055,289.45	1,055,289.45	N/A	1		0.45	2301 - Mansfield Parks 1/2 Sales Tax
CLASS LGIP	CLASS-SLFRF	5/27/2021	5.429	543,430.13	543,430.13	543,430.13	543,430.13	N/A	1		0.23	2104 - ARPA
Sub Total / Average CLASS			5.429	24,099,744.01	24,099,744.01	24,099,744.01	24,099,744.01		1	0.00	10.24	
LOGIC												
LOGIC LGIP	LOGIC	5/28/2022	5.454	5,459,662.02	5,459,662.02	5,459,662.02	5,459,662.02	N/A	1		2.32	5201 - Water & Sewer
LOGIC LGIP	LOGIC	5/28/2022	5.454	1,460,354.39	1,460,354.39	1,460,354.39	1,460,354.39	N/A	1		0.62	1001 - General Fund
LOGIC LGIP	LOGIC	5/28/2022	5.454	4,367,729.60	4,367,729.60	4,367,729.60	4,367,729.60	N/A	1		1.86	4501 - Economic Development
LOGIC LGIP	LOGIC	5/28/2022	5.454	3,275,797.22	3,275,797.22	3,275,797.22	3,275,797.22	N/A	1		1.39	3901 - TIF
LOGIC LGIP	LOGIC-CO2024	1/10/2024	5.454	21,863,581.92	21,863,581.92	21,863,581.92	21,863,581.92	N/A	1		9.29	3401 - Building Construction
LOGIC LGIP	LOGIC-CO2024	1/10/2024	5.454	1,525,366.18	1,525,366.18	1,525,366.18	1,525,366.18	N/A	1		0.65	3411 - Joint Fire/PD Training Facility
LOGIC LGIP	LOGIC-CO2024	1/10/2024	5.454	2,179,239.81	2,179,239.81	2,179,239.81	2,179,239.81	N/A	1		0.93	3901 - TIF
LOGIC LGIP	LOGIC-CO2024	1/10/2024	5.454	18,780,308.42	18,780,308.42	18,780,308.42	18,780,308.42	N/A	1		7.98	3202 - Streets Construction
LOGIC LGIP	LOGIC-CO2024	1/10/2024	5.454	1,657,564.59	1,657,564.59	1,657,564.59	1,657,564.59	N/A	1		0.70	3001 - Equipment Replacement
LOGIC LGIP	LOGIC-CO2024	1/10/2024	5.454	20,093,140.24	20,093,140.24	20,093,140.24	20,093,140.24	N/A	1		8.54	3412 - ACO/Service Center
LOGIC LGIP	LOGIC-WS2024	1/10/2024	5.454	50,845,539.32	50,845,539.32	50,845,539.32	50,845,539.32	N/A	1		21.61	5224 - Utility WTP
LOGIC LGIP	LOGIC-CO2022A	12/15/2022	5.454	18,886,361.40	18,886,361.40	18,886,361.40	18,886,361.40	N/A	1		8.03	3218 Issue 2022A - Streets

Description	CUSIP/Ticker	Settlement Date	YTM @ Cost	Face Amount/Shares	Cost Value	Book Value	Market Value	Maturity Date	Days To Maturity	Accrued Interest	% of Portfolio	Portfolio Name
LOGIC LGIP	LOGIC-CO2022A	12/15/2022	5.454	18,371,511.48	18,371,511.48	18,371,511.48	18,371,511.48	N/A	1		7.81	3410 - PD Headquarters
LOGIC LGIP	LOGIC-CO2022A	12/15/2022	5.454	454,459.26	454,459.26	454,459.26	454,459.26	N/A	1		0.19	3412 - ACO/Service Center
Sub Total / Average LOGIC			5.454	169,220,615.85	169,220,615.85	169,220,615.85	169,220,615.85		1	0.00	71.94	

Nations Funds

Nations Funds MM	MF0008	10/25/1999	5.180	10,311,898.92	10,311,898.92	10,311,898.92	10,311,898.92	N/A	1		4.38	5201 - Water & Sewer
Nations Funds MM	MF0008	10/25/1999	5.180	3,631,142.89	3,631,142.89	3,631,142.89	3,631,142.89	N/A	1		1.54	3201 - Street Construction
Nations Funds MM	MF0008	10/25/1999	5.180	4,502,575.36	4,502,575.36	4,502,575.36	4,502,575.36	N/A	1		1.91	1001 - General Fund
Nations Funds MM	MF0008	10/25/1999	5.180	164,385.85	164,385.85	164,385.85	164,385.85	N/A	1		0.07	4501 - Economic Development
Nations Funds MM	MF0008	10/25/1999	5.180	28,730.46	28,730.46	28,730.46	28,730.46	N/A	1		0.01	2003 - Tree Mitigation
Nations Funds MM	MF0008	10/25/1999	5.180	481,254.25	481,254.25	481,254.25	481,254.25	N/A	1		0.20	4001 - Debt Services
Nations Funds MM	MF0008	10/25/1999	5.180	655,388.52	655,388.52	655,388.52	655,388.52	N/A	1		0.28	2302 - Mansfield Parks Land Dedication
Nations Funds MM	MF0008	10/25/1999	5.180	2,475,830.86	2,475,830.86	2,475,830.86	2,475,830.86	N/A	1		1.05	2301 - Mansfield Parks 1/2 Sales Tax
Nations Funds MM	MF0008	4/11/2012	5.180	3,250,205.31	3,250,205.31	3,250,205.31	3,250,205.31	N/A	1		1.38	5211 - Revenue Bond Reserve
Nations Funds MM	MF0008	8/1/2016	5.180	1,665,814.86	1,665,814.86	1,665,814.86	1,665,814.86	N/A	1		0.71	3212 - 2016 Streets Construction
Nations Funds MM	MF0008	12/1/2017	5.180	28,041.59	28,041.59	28,041.59	28,041.59	N/A	1		0.01	3213 - 2017 Streets Construction
Sub Total / Average Nations Funds			5.180	27,195,268.87	27,195,268.87	27,195,268.87	27,195,268.87		1	0.00	11.56	

TexStar

TexStar LGIP	TEXSTAR	11/2/2012	5.306	253,788.62	253,788.62	253,788.62	253,788.62	N/A	1		0.11	4502 - MEDC I&S Fund
TexStar LGIP	TEXSTAR	11/2/2012	5.306	2,038,136.06	2,038,136.06	2,038,136.06	2,038,136.06	N/A	1		0.87	5201 - Water & Sewer
TexStar LGIP	TEXSTAR	11/2/2012	5.306	87,237.62	87,237.62	87,237.62	87,237.62	N/A	1		0.04	3401 - Building Construction
TexStar LGIP	TEXSTAR	11/2/2012	5.306	2,144,087.96	2,144,087.96	2,144,087.96	2,144,087.96	N/A	1		0.91	3201 - Street Construction
TexStar LGIP	TEXSTAR	11/2/2012	5.306	954,514.48	954,514.48	954,514.48	954,514.48	N/A	1		0.41	1001 - General Fund
TexStar LGIP	TEXSTAR	11/2/2012	5.306	912,921.08	912,921.08	912,921.08	912,921.08	N/A	1		0.39	4501 - Economic Development
TexStar LGIP	TEXSTAR	11/2/2012	5.306	1,626,595.06	1,626,595.06	1,626,595.06	1,626,595.06	N/A	1		0.69	3901 - TIF
TexStar LGIP	TEXSTAR	11/2/2012	5.306	59,017.00	59,017.00	59,017.00	59,017.00	N/A	1		0.03	4001 - Debt Services
TexStar LGIP	TEXSTAR	11/2/2012	5.306	1,165,580.62	1,165,580.62	1,165,580.62	1,165,580.62	N/A	1		0.50	2302 - Mansfield Parks Land Dedication
TexStar LGIP	TEXSTAR	11/2/2012	5.306	1,092,753.08	1,092,753.08	1,092,753.08	1,092,753.08	N/A	1		0.46	5101 - Drainage Utility Fund
TexStar LGIP	TEXSTAR	11/2/2012	5.306	2,676,469.38	2,676,469.38	2,676,469.38	2,676,469.38	N/A	1		1.14	2301 - Mansfield Parks 1/2 Sales Tax

Description	CUSIP/Ticker	Settlement Date	YTM @ Cost	Face Amount/Shares	Cost Value	Book Value	Market Value	Maturity Date	Days To Maturity	Accrued Interest	% of Portfolio	Portfolio Name
TexStar LGIP	TEXSTAR	1/8/2014	5.306	5,301.94	5,301.94	5,301.94	5,301.94	N/A	1		0.00	3001 - Equipment Replacement
TexStar LGIP	TEXSTAR	11/30/2014	5.306	639,215.20	639,215.20	639,215.20	639,215.20	N/A	1		0.27	2006 - Hotel
TexStar LGIP	TEXSTAR	8/31/2016	5.306	1,065,502.11	1,065,502.11	1,065,502.11	1,065,502.11	N/A	1		0.45	3212 - 2016 Streets Construction
Sub Total / Average TexStar			5.306	14,721,120.21	14,721,120.21	14,721,120.21	14,721,120.21		1	0.00	6.26	
Total / Average			5.411	235,236,748.94	235,236,748.94	235,236,748.94	235,236,748.94		1	0.00	100	

**CITY OF MANSFIELD, TEXAS
SALES TAX REPORT**

FISCAL YEAR 2024

CITYWIDE SALES TAX (\$0.02)

Collections by Calendar Month	Actual Prior Year	Actual Current Year	Dollar Variance	Percentage Variance
October (PY)	\$ 2,982,257	\$ 3,115,490	\$ 133,233	4.47%
November (PY)	\$ 3,471,547	\$ 3,536,268	\$ 64,721	1.86%
December (PY)	\$ 3,453,085	\$ 3,069,000	\$ (384,084)	-11.12%
January	\$ 3,074,428	\$ 3,154,498	\$ 80,070	2.60%
February	\$ 4,146,611	\$ 3,760,901	\$ (385,709)	-9.30%
March	\$ 2,885,197	\$ 3,024,021	\$ 138,824	4.81%
April	\$ 2,757,197	\$ 2,825,254	\$ 68,057	2.47%
May	\$ -	\$ -	\$ -	0.00%
June	\$ -	\$ -	\$ -	0.00%
July	\$ -	\$ -	\$ -	0.00%
August	\$ -	\$ -	\$ -	0.00%
September	\$ -	\$ -	\$ -	0.00%
Total	\$ 22,770,321	\$ 22,485,433	\$ (284,889)	-1.25%

**CITY OF MANSFIELD, TEXAS
SALES TAX REPORT**

FISCAL YEAR 2024

GENERAL FUND (\$0.01)

Collections by Calendar Month	Actual Prior Year	Actual Current Year	Dollar Variance	Percentage Variance
October (PY)	\$ 1,491,129	\$ 1,557,745	\$ 66,617	4.47%
November (PY)	\$ 1,735,774	\$ 1,768,134	\$ 32,360	1.86%
December (PY)	\$ 1,726,542	\$ 1,534,500	\$ (192,042)	-11.12%
January	\$ 1,537,214	\$ 1,577,249	\$ 40,035	2.60%
February	\$ 2,073,305	\$ 1,880,451	\$ (192,855)	-9.30%
March	\$ 1,442,598	\$ 1,512,010	\$ 69,412	4.81%
April	\$ 1,378,598	\$ 1,412,627	\$ 34,028	2.47%
May	\$ -	\$ -	\$ -	0.00%
June	\$ -	\$ -	\$ -	0.00%
July	\$ -	\$ -	\$ -	0.00%
August	\$ -	\$ -	\$ -	0.00%
September	\$ -	\$ -	\$ -	0.00%
Total	\$ 11,385,161	\$ 11,242,716	\$ (142,444)	-1.25%

MANSFIELD ECONOMIC DEVELOPMENT CORPORATION FUND (\$0.005)

Collections by Calendar Month	Actual Prior Year	Actual Current Year	Dollar Variance	Percentage Variance
October (PY)	\$ 745,564	\$ 778,873	\$ 33,308	4.47%
November (PY)	\$ 867,887	\$ 884,067	\$ 16,180	1.86%
December (PY)	\$ 863,271	\$ 767,250	\$ (96,021)	-11.12%
January	\$ 768,607	\$ 788,625	\$ 20,018	2.60%
February	\$ 1,036,653	\$ 940,225	\$ (96,427)	-9.30%
March	\$ 721,299	\$ 756,005	\$ 34,706	4.81%
April	\$ 689,299	\$ 706,313	\$ 17,014	2.47%
May	\$ -	\$ -	\$ -	0.00%
June	\$ -	\$ -	\$ -	0.00%
July	\$ -	\$ -	\$ -	0.00%
August	\$ -	\$ -	\$ -	0.00%
September	\$ -	\$ -	\$ -	0.00%
Total	\$ 5,692,580	\$ 5,621,358	\$ (71,222)	-1.25%

MANSFIELD PUBLIC FACILITIES DEVELOPMENT CORPORATION FUND (\$0.005)

Collections by Calendar Month	Actual Prior Year	Actual Current Year	Dollar Variance	Percentage Variance
October (PY)	\$ 745,564	\$ 778,873	\$ 33,308	4.47%
November (PY)	\$ 867,887	\$ 884,067	\$ 16,180	1.86%
December (PY)	\$ 863,271	\$ 767,250	\$ (96,021)	-11.12%
January	\$ 768,607	\$ 788,625	\$ 20,018	2.60%
February	\$ 1,036,653	\$ 940,225	\$ (96,427)	-9.30%
March	\$ 721,299	\$ 756,005	\$ 34,706	4.81%
April	\$ 689,299	\$ 706,313	\$ 17,014	2.47%
May	\$ -	\$ -	\$ -	0.00%
June	\$ -	\$ -	\$ -	0.00%
July	\$ -	\$ -	\$ -	0.00%
August	\$ -	\$ -	\$ -	0.00%
September	\$ -	\$ -	\$ -	0.00%
Total	\$ 5,692,580	\$ 5,621,358	\$ (71,222)	-1.25%



CITY OF MANSFIELD

1200 E. Broad St.
Mansfield, TX 76063
mansfieldtexas.gov

STAFF REPORT

File Number: 24-6035

Agenda Date: 6/10/2024

Version: 1

Status: Consent

In Control: City Council

File Type: Resolution

Agenda Number:

Title

Resolution - A Resolution of the City of Mansfield, Texas Appointing the Presiding Judge of the Mansfield Municipal Court of Record NO. 1: Approving a Contract Appointing the Presiding Judge of the Mansfield Municipal Court of Record NO. 1; Finding that the Meeting as which this Resolution is Passed is Open to the Public as Required by Law; and Declaring an Effective Date

Requested Action

Approve the Resolution appointing Judge Cass Robert Callaway as presiding judge of the Mansfield Municipal Court of Record No. 1.

Recommendation

Staff recommends that the City Council of the City of Mansfield, Texas approve the resolution appointing Judge Cass Robert Callaway as presiding judge of the Mansfield Municipal Court of Record No. 1.

Description/History

On December 14, 2020, the City Council appointed Judge Cass Robert Callaway to serve as the presiding judge for the Mansfield Municipal Court of Record for a term expiring on July 1, 2022. In June 2022, the City Council appointed Judge Cass Robert Callaway to serve as the presiding judge for the Mansfield Municipal Court of Record for a second term expiring on July 1, 2024.

Justification

Pursuant to Chapter 30 of the Texas Government Code and Section 8.02 of the City Charter of Mansfield, Texas, the City Council of the City of Mansfield, Texas shall have the right and authority to name judges to preside over the judicial functions for the Mansfield Municipal Court of Record No. 1.

Funding Source

General Fund, Municipal Court Budget

Prepared By

Troy Lestina, 817-276-4258

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF MANSFIELD, TEXAS APPOINTING THE PRESIDING JUDGE OF THE MANSFIELD MUNICIPAL COURT OF RECORD NO. 1; APPROVING A CONTRACT APPOINTING THE PRESIDING JUDGE OF THE MANSFIELD MUNICIPAL COURT OF RECORD NO. 1; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND DECLARING AN EFFECTIVE DATE

WHEREAS, the City of Mansfield is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and,

WHEREAS, the City Council of the City of Mansfield has created a municipal court of record pursuant to Chapter 30 of the Texas Government Code; and,

WHEREAS, pursuant to Section 8.02 of the City Charter of Mansfield, Texas, the City Council shall have the right and authority to appoint the presiding judge of the Mansfield Municipal Court of Record No. 1 (“the Court”); and,

WHEREAS, the appointee is a resident of this state, is a citizen of the United States, is a licensed attorney in good standing, and has two or more years of experience in the practice of law in this state; and,

WHEREAS, the City Council seeks to appoint Cass Robert Callaway to serve as the Presiding Judge of the Court.

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

SECTION 1.

The findings and recitations set out in the preamble are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2.

In accordance with state law and the Code of Mansfield, Texas, Cass Robert Callaway is hereby appointed as Presiding Judge of the Court, effective July 1, 2024. This appointment shall be for a term of office of two years expiring on June 30, 2026, or until resignation or removal, whichever is earlier.

SECTION 3.

The Professional Judicial Services Agreements in substantially the same form as attached Exhibit A to appoint Cass Robert Callaway as the Presiding Judge of the Court is hereby approved.

SECTION 4.

It is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION 5.

This Resolution shall be effective from and after its passage.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
MANSFIELD THIS 10TH DAY OF JUNE, 2024.**

Michael Evans, Mayor

ATTEST:

Susana Marin, City Secretary

THE STATE OF TEXAS §
COUNTY OF TARRANT §

**CITY OF MANSFIELD
PROFESSIONAL JUDICIAL SERVICES AGREEMENT
PRESIDING JUDGE**

This Professional Judicial Services Agreement (“Agreement”) for Presiding Municipal Court Judge of the Mansfield Municipal Court of Record No. 1 (“Court”) is made and entered into by and between the City of Mansfield, Texas, a home-rule municipal corporation of the State of Texas (“City”), and Cass Robert Callaway (“Callaway”). The City and Callaway hereafter are each a “party” and collectively referred to as “parties”.

WHEREAS, the City Council of the City of Mansfield, Texas (“City Council”) desires to engage the services of Callaway as an independent contractor and not an employee, to serve as the presiding judge of the Court, as provided for by the City Charter and state law; and

WHEREAS, Callaway desires to provide services to the City as presiding judge of the Court, in accordance with the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
EFFECTIVE DATE AND APPOINTMENT OF PRESIDING JUDGE

- A. **Appointment.** On June 11, 2024, the City Council appointed Callaway as presiding judge for the City of Mansfield, Texas (“Presiding Judge”) under the laws of the State of Texas, beginning on July 1, 2024, with all powers, rights and duties of said appointment and as provided by the City Charter and subject to the terms and conditions herein.
- B. **Duties.** The Presiding Judge shall perform duties in compliance with the City Charter, specifically but not limited to: Section 8.01, Section 8.02, and Section III of this Agreement.

ARTICLE II
TERM AND TERMINATION

- A. **Term.** This Agreement shall be for a term of two (2) years, beginning on July 1, 2024, and ending on June 30, 2026, unless sooner removed by the City Council.

- B. **Will of Council/Termination.** The Presiding Judge shall serve at the pleasure of the City Council and may be removed with or without cause, at any time by the affirmative vote of a majority of the City Council present.
- C. **Notice of Termination.** If the Presiding Judge desires to terminate this Agreement, a minimum thirty (30) day written notice shall be provided to the City to ensure no interruption of judicial services already committed/scheduled for the Court.

ARTICLE III
SCOPE OF SERVICES

- A. **General Duties.** The Presiding Judge agrees to preside over all municipal court proceedings which shall include plea or arraignment dockets, non-jury dockets, jury dockets, and enforcement dockets, as well as such other special dockets as may be scheduled from time to time by the City. The Presiding Judge shall perform such other legally permissible and proper duties and functions as the City shall assign from time to time, including but not limited to keeping the policies and procedures of the Court up to date. As an appointed official, the Presiding Judge agrees to perform all administrative duties and responsibilities that are necessary and incidental to the position of the Presiding Judge of the Court and is not limited to a preset number of hours per week to perform such services.
- B. **Docket Schedule.** The Presiding Judge shall establish the times and days for the court dockets with the Court Administrator. The Presiding Judge shall perform the services required herein at the dockets so established and to which he/she may be scheduled. The Presiding Judge shall periodically review/assess the performance of docketing, promoting practices that increase participation/compliance giving consideration to docket loads (number of defendants per time period), frequency of dockets, dates and times of dockets, notification methods, and other relevant factors. The Presiding Judge shall preside over court dockets (juvenile, pretrial, motions, attorney, stolen/abandoned property hearing, emergency protective order modification hearing, dangerous dog determination hearing, cruelty to animal determination hearing, etc.) as needed. If the Presiding Judge is unavailable to complete these services, it shall be the duty of the Presiding Judge to seek an alternative method of fulfilling these duties through any other City appointed Judge.
- C. **Magistrate/Arraignment/Warrant Duties.** The Presiding Judge shall perform all duties of a Magistrate as outlined under the laws of the State of Texas, including but not limited to issuing search and arrest warrants, administering magistrate warnings to adults and juveniles, and arraigning individuals arrested for misdemeanor and felony offenses. Such duties shall be performed on an as-needed basis. The Presiding Judge shall perform jail magistrations (Texas Code of Criminal Procedure Chapter 15.17 hearings) on a daily (Monday through Friday) basis, and as needed on weekends/holidays, serving all police agencies housing inmates at the Mansfield jail for Tarrant, Johnson, and Ellis counties. The

Presiding Judge shall develop and maintain policies and procedures for the holding of court in the jail, in close coordination with the police department staff. The Presiding Judge shall serve as a liaison between the jail and the probation departments/district attorneys' offices and courts of Tarrant, Johnson, and Ellis counties on issues of bond conditions, bail bond forfeiture, bond hearings, and general procedures. Should the services outlined in this section be required, the Presiding Judge shall complete such services in a timely manner, within the constraints required by the law. If the Presiding Judge is unavailable to complete these services, it shall be the duty of the Presiding Judge to seek an alternative method of fulfilling these duties through any other City appointed Judge.

- D. **Standing Orders.** The City Council desires uniformity and consistency in the implementation of judicial policy in accordance with state law and local ordinances and for the efficient operation of routine transactions and processes of the Court. As such, the Presiding Judge shall issue and maintain standing orders to address the daily administration of court procedures and processes, for matters such as dismissals, time payment plans, deferred disposition, driver safety courses, and continuances. Any changes to these standing orders must be in writing and acknowledged by the Presiding Judge.

- E. **Availability.** The Presiding Judge shall be available for any and all duties according to the monthly schedule prepared by the Court, including after hours, weekends, and holidays, as agreed. The Presiding Judge shall also be on call weekly (Monday through Friday), twenty-four hours a day, to review and sign search and arrest warrants. The Presiding Judge shall commence court sessions promptly for scheduled docket times on designated court dates. The Presiding Judge shall make every effort to take the bench and convene court dockets at the designated docket time.

- F. **Office Hours.** The Presiding Judge shall spend fifteen (15) hours each month (above and beyond court dockets) present at the Court, as office hours to assist the Court personnel, police department, and related staff with any court related matters, to work on court policy and special projects, to participate in trainings, and to see walk-in defendants.

- G. **Paperwork/Signing.** The Presiding Judge shall review and respond/reply to any correspondence related to pending cases and return same to the Court staff for disposition, sign judgments, dismissals, driver safety orders, deferred disposition orders, orders setting hearing, closed cases, time payment plans, and other paperwork in a timely manner.

- H. **Administration.** The Presiding Judge shall administer the Court's operation, including coordination of his/her schedule with the schedules of the Associate Judges, at any days of court for which he/she is not personally presiding, or where he/she cannot serve as Judge for any case(s) for other reasons, such as conflict of interest. The Presiding Judge shall consult with City employees concerning the Court operation, and arrange for special court settings as necessitated by circumstances. Such special court settings shall only be for dire and unforeseen circumstances and only when a set docket date cannot otherwise be utilized

and/or such duties cannot be performed by the Presiding or Associate Municipal Judge who from time to time may be appointed by the City Council.

- I. **Efficiency of Court.** The Presiding Judge shall consult and cooperate with the Associate Judges, City Manager or designee, the City's prosecutor, Court Administrator, and municipal court clerks as to operational methods and procedures, and on efforts to improve the operations of the Court all with the goal of promoting speedy and efficient justice within the Court system.
- J. **Reports.** The Presiding Judge, at any such times and in such forms as the City may require, shall furnish such periodic reports as may be requested pertaining to the work or services undertaken pursuant to this Agreement.
- K. **Contact Information.** The Presiding Judge shall keep the Court, jail staff, and police department (dispatch) informed of his/her current contact information.

ARTICLE IV **COMPENSATION**

- A. **Compensation.** As compensation for all required services herein, including administrative work, during the term of this Agreement, the City agrees to pay the Presiding Judge, a monthly flat fee of Six Thousand Two-Hundred Fifty and no/100 dollars (\$6,250.00).
- B. **Invoice.** The Presiding Judge shall send an invoice to the Court Administrator by mail or email once per month not later than the 10th day of each month. The invoice shall indicate each date the Presiding Judge performed a duty outlined in Section III above. The invoice shall also provide the amount of time spent on each duty and the total number of hours for the month.
- C. **Payment.** The City shall pay the monthly invoice within thirty (30) days from the date the invoice is received by the City.
- D. **No Compensation.** The Presiding Judge will not be compensated for state required training, travel expenses related to his/her duties to the Court, state bar license dues/fees, state attorney occupation fee, local bar association dues, or any and all other professional/licensure related fees/dues.
- E. **Independent Contractor.** It is understood and agreed by and between the parties that all services performed by the Presiding Judge pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. The Presiding Judge shall supervise the performance of his/her services and shall be entitled to control the manner and means by which his/her services are to be performed, subject to the terms of this Agreement. The foregoing constitutes all the benefits and forms of

compensation due to the Presiding Judge for the services rendered herein and the Presiding Judge will not receive any City benefits, retirement, health, or otherwise.

ARTICLE V
GENERAL PROVISIONS

- A. **Judicial Conduct.** The Presiding Judge shall adhere to all canons of the Texas Code of Judicial Conduct, the City Charter, Chapter 30 of the Texas Government Code, and all other applicable laws pertaining to the operations of the Court, and duties as a magistrate. The Presiding Judge shall maintain him/herself publicly to bring respect and honor to the Court, serving with a judicial temperament rooted in fairness, consistency, and patience.

- B. **Judicial Discretion.** The Presiding Judge is required to keep abreast of state law, legal opinions, and local ordinances, including state-mandated fine and fee amounts for the Court. Although a recognized function of judicial discretion, the Presiding Judge shall endeavor to enforce the law consistently and within suggested state guidelines and pursuant to the rules adopted by the City and shall be uniform and consistent in the implementation of judicial policy in accordance with state law and local ordinances. The Presiding Judge shall apply the law and enter judgments in accordance with state law and local ordinances, shall abide by all mandatory provisions of the law, and shall not create or apply exceptions where none exist under law. Judicial discretion shall only be applied where allowed under law.

- C. **Judicial Education/Attorney Licensure.** The Presiding Judge shall, at all times during this Agreement, be a member in good standing with the State Bar of Texas, current on all licensing requirements of a lawyer of the State of Texas. The Presiding Judge shall also be in strict compliance with the state-mandated minimum requirements for judicial education set by the Texas Supreme Court for Texas judges. The Presiding Judge currently participates as a presentation speaker for TMCEC (teaching judges across the state on issues of the law, ethics, and judicial conduct), as a guest speaker to local lawyer groups/associations, and as a mentor to new municipal judges. The Presiding Judge is encouraged to remain involved in these efforts as a function of his responsibilities to the Court.

- D. **Conflict.** The Presiding Judge shall refrain from any activity or employment that might place him/her in a position of conflict of interest with his/her duties for the City.

- E. **Limitation on Law Practices.** The Presiding Judge agrees that he/she shall not engage in the practice of law in an adversarial capacity before the City Council of the City of Mansfield, before any of its courts, agencies, boards or commissions, or in any other court or administrative proceeding involving the City during his/her tenure in office.

F. **Entire Agreement.** This Agreement represents the entire and integrated agreement between the City and the Presiding Judge and supersedes all prior negotiations and representations and/or agreements either written or oral. This Agreement may be amended only by written instrument signed by both parties.

G. **Notice.** Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be hand-delivered, mailed by certified or registered mail addressed as set forth below or at such other address as may be specified by written notice, or via email:

If intended for City, to: Mansfield Municipal Court
Attn: Heather Leonard, Court Administrator
1305 East Broad Street
Mansfield, Texas 76063
heather.leonard@mansfieldtexas.gov

If intended for Presiding Judge, to: Cass Robert Callaway

cass.callaway@mansfieldtexas.gov

H. **Severability.** If one or more of the provisions of this Agreement or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this Agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

I. **Non-Waiver.** The failure on the part of any party herein at any time to require the performance by the other party of any portion of this Agreement shall not be deemed a waiver of or in any way affect that party's rights to enforce such provision or another provision in the future. Any waiver by any party of any provision herein shall not be taken or held to be a waiver of any other provision hereof or any other breach hereof.

J. **Sovereign Immunity.** By this Agreement, the City does not consent to litigation and expressly revokes any consent to litigation that it may have granted by the terms of this Agreement, any charter, or applicable state law. Furthermore, nothing contained herein shall be construed so as to limit or waive the City's sovereign immunity.

K. **No Assignment.** The Presiding Judge shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of the City.

L. **Construction of Agreement.** Each provision and clause required by law to be inserted into this Agreement shall be deemed to be included herein and this Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

- M. **Choice of Law and Venue.** This Agreement is performed and performable in Tarrant County, Texas, State of Texas, and shall be interpreted, construed, and enforced in accordance with the laws of the State of Texas and before the Courts of the State of Texas in the County of Tarrant.
- N. **Agreement Read.** The Parties acknowledge that they have read, understand, and intend to be bound by the terms and conditions of this Agreement.
- O. **Headings.** The section headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation.
- P. **Ambiguity.** In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party either did or did not author the same.
- Q. **No Third-Party Beneficiaries.** This Agreement shall not bestow any rights upon any third party, but rather, shall bind and benefit the Presiding Judge and the City only.
- R. **Counterparts.** This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the City and Presiding Judge have executed this Agreement this the _____ day of June 2024.

CITY OF MANSFIELD, TEXAS

MICHAEL EVANS, MAYOR

ATTEST:

SUSANA MARIN, CITY SECRETARY

PRESIDING JUDGE:

CASS ROBERT CALLAWAY



CITY OF MANSFIELD

1200 E. Broad St.
Mansfield, TX 76063
mansfieldtexas.gov

STAFF REPORT

File Number: 24-6036

Agenda Date: 6/10/2024

Version: 1

Status: Consent

In Control: City Council

File Type: Resolution

Agenda Number:

Title

Resolution - A Resolution to Consider Awarding an Annual Contract to Green World Care in the Amount of \$337,740.37 for Grounds Maintenance of Medians and Rights-of-Way

Requested Action

Approve a Resolution to Consider Awarding an Annual Contract to Earthworks, Inc. of Lillian, Texas in the Amount of \$337,740.37 for Grounds Maintenance of Medians and Rights-of-Way

Recommendation

Approve resolution

Description/History

In a continuing effort to provide grounds maintenance services for City property in the most cost-effective manner, the Parks and Recreation Department has gradually outsourced grounds maintenance services for park and municipal properties since 2005. The contract mowing program has allowed the City to increase the level of service to the citizens by using contractors to mow, edge, and blow turf areas while in-house staff concentrates on high end maintenance such as chemical applications, fertilization, botanical, and irrigation.

This contract is for weekly/bi-weekly grounds maintenance of approximately 33 miles of medians and 90 miles of rights-of-way. Services include mowing, trimming, edging and litter removal, as well as bi-weekly maintenance of landscape beds on ten thoroughfares. City staff will be responsible for monitoring contractor performance on a daily basis to ensure compliance with maintenance standards and specifications.

Requests for bids were advertised in the Star Telegram on April 18, 2024 and April 25, 2024. Eight professional landscape maintenance companies attended the mandatory pre-bid meeting on May 3, 2024, with seven companies submitting sealed bids on May 15, 2024. Staff reviewed and evaluated the bids and worked with the Legal Department to ensure all bid requirements were met. It was determined that Green World Care was the successful "best value" bidder. The initial contract term is for one year and will be reviewed annually to determine subsequent renewal terms. At the City's option, this contract shall be renewable for four (4) additional one-year renewal periods.

Justification

Contracting with Green World Care to maintain medians and rights-of-way will free up staff and

allow them to concentrate on other high end maintenance areas. This allows the City to be able to maintain current and future facilities without the cost of adding personnel and equipment.

Funding Source

General Fund

Prepared By

Brian Coatney, Interim Assistant Director of Parks and Recreation

Brian.Coatney@mansfieldtexas.gov

817-728-3391

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, AWARDED AN ANNUAL CONTRACT TO GREEN WORLD CARE IN THE AMOUNT OF \$337,740.37 FOR GROUNDS MAINTENANCE OF MEDIANS AND RIGHTS-OF-WAY; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ANY DOCUMENTS NECESSARY TO IMPLEMENT THIS RESOLUTION; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND DECLARING AN EFFECTIVE DATE. (GENERAL FUND)

WHEREAS, the City of Mansfield (the “City”) is a municipal corporation and political subdivision of the State of Texas authorized to finance its activities by issuing obligations; and,

WHEREAS, the City continues to improve its roadways with medians and sidewalks and municipal facilities to enhance the aesthetics and services of the community; and,

WHEREAS, these improved areas must be maintained and hiring this service out will allow staff to concentrate on high end maintenance areas; and,

WHEREAS, the City of Mansfield has publicly advertised and requested competitive bids for contract mowing in April 2024; and,

WHEREAS, all constitutional and statutory prerequisites for the approval of this resolution have been met, including but not limited to the Open Meetings Act; and,

WHEREAS, after review of the bids received, City Council has determined that it is in the best interest of the citizens of Mansfield to award a contract to Green World Care for contractual grounds maintenance.

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

SECTION 1.

The findings and recitations set out in the preamble are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2.

An annual contract with Green World Care for grounds maintenance of City medians and rights-of-way in the amount of \$337,740.37 hereto is hereby approved.

SECTION 3.

The City Manager, or his designee, is authorized to execute any documents necessary and take such actions as are necessary to implement this Resolution.

SECTION 4.

It is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION 5.

This Resolution shall be effective from and after its passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MANSFIELD THIS 10TH DAY OF JUNE, 2024.

Michael Evans, Mayor

ATTEST:

Susana Marin, City Secretary



BID OPENING FORM

Owner: City of Mansfield

Project: Medians, Rights-of-Way, and Municipal Sites Mowing Services

Bid No.: 2024-23-01-06

Date: 05/15/24 @ 10:00 a.m.

Name of Bidder	Bid Type	Bid Bond Attached	Bid Amount	Comments
Earthworks Inc PO Box 199 Lillian, TX 76061		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$591,788.86	Received on 5/14/24 @ 2:47pm by KB
Yellowstone Landscape 8360 Old Denton Rd. Fort Worth, TX 76244		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$365,927.74	Received on 5/15/24 @ 9:00 a.m by KB
Brightview Landscape Services 2315 Southwell Road Dallas, TX 75229		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$438,245.70	Received on 5/15/24 @ 9:10 a.m. by KB
Emerald Landscaping LLC. 10709 CR 507 Venus, TX 76084		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$490,794.00	Received on 5/15/24 @ 9:15 a.m. by KB
NTSM LLC 5501 Fishtrap Rd. Denton, TX 76208		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$150,042.00	Received on 5/15/24 @ 9:23 a.m. by KB
Green World Care 11518 Newberry St. Dallas, TX 75229		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$337,740.37	Received on 5/15/24 @ 9:30 a.m. by KB
Guerrero's Landscape 8648 Reese Rd. Alvarado, TX 76009		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$504,000.00	Received on 5/15/24 @ 9:46 a.m by KB
		<input type="checkbox"/> Yes <input type="checkbox"/> No		
		<input type="checkbox"/> Yes <input type="checkbox"/> No		
		<input type="checkbox"/> Yes <input type="checkbox"/> No		
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		<input type="checkbox"/> Yes <input type="checkbox"/> No		
		<input type="checkbox"/> Yes <input type="checkbox"/> No		



CITY OF MANSFIELD

1200 E. Broad St.
Mansfield, TX 76063
mansfieldtexas.gov

STAFF REPORT

File Number: 24-6040

Agenda Date: 6/10/2024

Version: 1

Status: Consent

In Control: City Council

File Type: Resolution

Agenda Number:

Title

Resolution - A Resolution Authorizing a Change Order and Providing Additional Funds for Day Miar Road Improvements (East Broad St. to 700 ft South of Seeton Rd.) with McMahon Contracting in the amount of \$395,466.33 (Street Bond Fund)

Requested Action

Consider the Resolution authorizing a Change Order to the contract of McMahon Contracting, LLC in the amount of \$395,466.33.

Recommendation

The Engineering Staff recommends approval of the Resolution.

Description/History

The Day Miar Rd. project includes the reconstruction and signalization of the intersection with Seeton Rd. The main entrance for the MISD Lakeridge High School is currently located just north of this intersection. During design, it was determined the best configuration for operation of the intersection as well as the school driveway was for the driveway to be relocated to be part of the signalized intersection. This will entail reconstruction of a portion of the MISD parking lot.

A change order has been negotiated with McMahon Contracting for \$395,466.33 to complete this work and is attached for reference. The MISD will reimburse the city for these costs. This expenditure has been approved by the MISD Board of Trustees and will be formalized through an interlocal agreement.

Justification

It was determined that this work should proceed during the summer to minimize disruption to school traffic. To practically facilitate this specific schedule as well as minimize cost, it is in both the city's and the MISD's best interest for McMahon Contracting, the contractor for Day Miar Rd., to complete this work.

This change order is to provide the additional funds in the amount of \$395,466.33 to complete this work. The MISD will reimburse the city for this cost.

Funding Source

Street Bond Fund

Prepared By

James M. Rogge, P.E, Transportation and Mobility Engineer, Engineering Services,
817-276-4233

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING A CHANGE ORDER AND PROVIDING ADDITIONAL FUNDS FOR DAY MIAR ROAD IMPROVEMENTS (EAST BROAD ST. TO 700 FT SOUTH OF SEETON RD.) WITH MCMAHON CONTRACTING; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND DECLARING AN EFFECTIVE DATE. (STREET BOND FUND)

WHEREAS, the City of Mansfield (City) is a home rule municipality operating under and governed by the laws and Constitution of the State of Texas; and,

WHEREAS, the City of Mansfield has awarded a contract for the construction of Day Miar Road Improvements (East Broad St. to 700 ft South of Seeton Rd.); and,

WHEREAS, it is necessary to add other needed improvements; and,

WHEREAS, McMahon Contracting has provided a proposal for the MISD drive and parking reconstruction in an amount not to exceed Three Hundred Ninety-Five Thousand Four Hundred Sixty-Six and 33/100 Dollars (\$395,466.33); and,

WHEREAS, after review of the proposal City staff recommends approving a change order with McMahon Contracting; and,

WHEREAS, the expenditure of the funds stated herein will be secured from the Street Bond Fund; and,

WHEREAS, it is recognized that it is in the best interest of the citizens of the City of Mansfield that the construction provided for herein be started at the earliest possible date to ensure necessary service and delivery.

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

SECTION 1.

The City Manager or his Designee is hereby authorized and directed to execute a change order with McMahon Contracting for construction for an amount not to exceed Three Hundred Ninety-Five Thousand Four Hundred Sixty-Six and 33/100 Dollars (\$395,466.33).

SECTION 2.

This Resolution shall be effective from and after its passage.

PASSED AND APPROVED THIS THE 10TH DAY OF JUNE, 2024.

Michael Evans, Mayor

ATTEST:

Susana Marin, City Secretary

PROPOSAL



3019 ROY ORR BLVD

GRAND PRAIRIE , TX 75050

Contact: Christopher Johnson**Phone:** 972-263-6907**Date:** 4/30/2024Quote To: Mansfield ISDJob Name: Lake Ridge High School Parking ModsDate of Plans: May 2023Phone:Revision Date:Fax:

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
101	Prep ROW/Tree Removals	1.00	LS	9,500.00	9,500.00
102	Remove Exist Conc Street/Drive/Sidewalk	3,366.00	SY	12.97	43,657.02
104	Remove Exist 12" to 27" RCP	28.00	LF	47.26	1,323.28
NEW	Remove Curb Inlet/Plug RCP	2.00	EA	2,975.00	5,950.00
116	Remove Existing Sign	5.00	EA	183.28	916.40
118	Remove Street Light & Pole	2.00	EA	1,566.00	3,132.00
200	Mobilization	1.00	LS	39,546.63	39,546.63
201	Excavation	219.00	CY	35.93	7,868.67
202	Embankment	252.00	CY	13.02	3,281.04
203	6" Lime	1,918.00	SY	4.53	8,688.54
204	Lime Material (8%)	35.00	TN	332.92	11,652.20
207	6" Concrete Pavement	1,414.00	SY	92.51	130,809.14
NEW	5" Concrete Pavement	388.00	SY	90.00	34,920.00
211	Concrete Street Header	50.00	LF	28.48	1,424.00
212	Barrier Free Ramp	2.00	EA	2,755.00	5,510.00
213	4" Concrete Sidewalk	11.00	SY	71.46	786.06
217	4" Topsoil	1,527.00	SY	6.38	9,742.26
219	Hydromulch	1,527.00	SY	3.19	4,871.13
404	18" RCP	48.00	LF	140.41	6,739.68
407	24" RCP	12.00	LF	197.94	2,375.28
413	10' Standard Curb Inlet	2.00	EA	7,696.00	15,392.00
445	Trench Safety	60.00	LF	1.35	81.00
236	Traffic Control	1.00	LS	9,750.00	9,750.00
235	SWPPP	1.00	LS	7,550.00	7,550.00
NEW	Restore Existing Irrigation	1.00	LS	30,000.00	30,000.00

GRAND TOTAL**\$395,466.33****NOTES:**

Price excludes irrigation and landscape repair, safety classes, sales tax on incorporated material and inspection fees.

Price includes Bonds, testing, staking, barricades SWPPP.

Unless the words "Lump Sum" or "LS" appear next to a price for an item, all prices are per unit, and payments will be based upon the actual number of units performed at that price.

All work to be performed in two mobilizations, each additional move in add \$7500.00.

Pricing based on Plans dated May, 2023, changes to plans might result in price change.

Backfilling included for street and parking lot.

Retainage withheld is to be a maximum of 5%, with monthly progress payments.

We will clean, inspect and photograph our paving as completed. McMahon Contracting is not responsible for damages by others.

Subgrade must be performed by McMahon in order to bond pavement.

Striping and new signs to be performed by others.

Payment on final measured quantities.

Paving must be completed before 12-1-24 or concrete escalators will be charged.

QUOTES VALID FOR 20 DAYS FOR ACCEPTANCE FROM 10/17/2023 AND PRICES EXPIRE 12-1-24

THIS PROPOSAL AND CONDITIONS BECOME PART OF ANY WORK ORDER OR CONTRACT ISSUED RELATING TO THIS PROPOSAL.

(X) _____ Date _____

Mansfield I.S.D.

(X) _____ Date _____

McMahon Contracting LP.



CITY OF MANSFIELD

1200 E. Broad St.
Mansfield, TX 76063
mansfieldtexas.gov

STAFF REPORT

File Number: 24-6044

Agenda Date: 6/10/2024

Version: 1

Status: Consent

In Control: City Council

File Type: Resolution

Agenda Number:

Title

Resolution - A Resolution of the City Council of the City of Mansfield, Texas, Approving the City Manager or His Designee to Negotiate, Finalize, and Execute a Professional Services Contract with Stantec Consulting Services, Inc. in an Amount Not to Exceed \$1,681,947 for Design and Engineering Services Related to the Downtown Main Street Project; Finding that the Meeting at Which this Resolution is Passed is Open to the Public as Required by Law; And Declaring an Effective Date (Issuance of Bonds)

Requested Action

Staff is requesting City Council's authorization to continue into the next project phase for the Historic Downtown Streetscape Redesign Project.

Recommendation

Staff recommends approval.

Description/History

The City previously engaged with and completed the schematic design process for the Historic Downtown Streetscape Redesign Project with Speck and Dempsey. Following schematic design, the City received a proposal from Stantec, a consultant from the schematic design team, regarding design and engineering services related to the project.

Justification

The City adopted the Mansfield 2040 Future Land Use Plan on December 11th, 2023, which documented the desire from residents to see Historic Downtown increase its walkability, density, and variety of development while slowing down vehicular traffic. Staff desires to continue working towards those goals by transitioning seamlessly from schematic design to design and construction documents.

Funding Source

Bondage Issuance

Prepared By

Matt Jones, Assistant City Manager

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF MANSFIELD, TEXAS, APPROVING THE CITY MANAGER OR HIS DESIGNEE TO NEGOTIATE, FINALIZE, AND EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH STANTEC CONSULTING SERVICES, INC. IN AN AMOUNT NOT TO EXCEED \$1,681,947 FOR DESIGN AND ENGINEERING SERVICES RELATED TO THE DOWNTOWN MAIN STREET PROJECT; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND DECLARING AN EFFECTIVE DATE. (ISSUANCE OF BONDS)

WHEREAS, The City of Mansfield (City) is a home rule municipality operating under and governed by the laws and Constitution of the State of Texas; and,

WHEREAS, The City Council and Residents of the City have emphasized the importance of investing in Historic Downtown Mansfield (Historic Downtown) to preserve and recognize the City’s history, downtown businesses, and tourism; and,

WHEREAS, The City adopted the Mansfield 2040 Future Land Use Plan on December 11th, 2023, which documented the desire from residents to see Historic Downtown increase its walkability, density, and variety of development while slowing down vehicular traffic; and,

WHEREAS, The City partnered with Speck Dempsey (also known as Speck and Associates) for the schematic design of Main Street and Broad Street, which promotes the goals defined by residents in the Mansfield 2040 Future Land Use Plan; and,

WHEREAS, The City finds that Stantec Consulting Services, Inc. will be in the best interest of Historic Downtown and the City; and,

WHEREAS, funding for this contract is available through the issuance of bonds.

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

SECTION 1.

The findings and recitations set out in the preamble are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2.

An agreement with Stantec Consulting Services, Inc., for the services defined in “Exhibit A” in an amount not to exceed One Million Six Hundred Eighty-One Thousand Nine Hundred Forty-Seven Dollars (\$1,681,947) is approved.

SECTION 3.

It is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION 4.

This Resolution shall be effective from and after its passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MANSFIELD THIS 10TH DAY OF JUNE, 2024.

Michael Evans, Mayor

ATTEST:

Susana Marin, City Secretary

May 6, 2024

Attention: **Matt Jones**
Assistant City Manager
City of Mansfield
1200 E. Broad Street
Mansfield, TX 76063

Reference: **Main Street at Broad Street Roundabout**

Dear Mr. Jones,

We are excited for the opportunity to provide the scope of services outlined below to develop Construction Documents for the Main Street at Broad Street Roundabout in Mansfield, Texas, and provide construction phase services. The project limits are as follows:

- Main Street from 200' North of Van Worth Street to 150' South of Patterson Drive
- Broad Street from 2nd Ave. to Pond Street

Scope of Services

Our project scope includes the Civil Engineering, Landscape Architecture and Construction Phase Services described below for Construction Documents at 30% through 100% design submittals. Stantec will be responsible for the design scope detailed below.

Task 0 – Project Management

Stantec Project Manager will lead, manage and direct design team activities, ensure quality control is practiced, and communicate and coordinate with the City and subconsultants. Project management services include preparation of monthly invoices and progress reports, record keeping and file management, monthly progress meetings, and quality control reviews. In addition, Stantec will attend three (3) in-person meetings with the City. One (1) pre-design kick off meeting and two (2) design review meetings at the 30% and 60% submittals. Attendees at meetings will include, at minimum, the Stantec Project Manager, Deputy Project Manager, Landscape Task Leader and/or Utility Coordination Task Leader.

Task 1 – Survey (Subconsultant to be determined. The City to provide approved vendor list.)

City-approved Survey Subconsultant will perform detailed field surveying in accordance with City survey standards within the project limits including the following:

- Survey 150' Corridor (offset 75' on both sides of the proposed centerline) 0.6 miles of Main Street and 150' in all directions at cross streets
- Survey 150' Corridor (offset 75' on both sides of the proposed centerline) 0.3 miles of Broad Street and 150' in all directions at cross streets
- Obtain cross-sections at 50 ft intervals along proposed centerline of Main Street
- Obtain cross-sections at 50 ft intervals along proposed centerline of Broad Street
- Property pins
- Existing pavement, curbs and sidewalks
- Lane striping
- Driveway(s)
- Existing storm sewer inlets, manholes, and junction boxes
- Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities (will contact Texas 811 to flag existing franchise utilities prior to survey)
- Traffic signal poles, cabinets, and other signal equipment
- Signs (excluding temporary signs)
- Retaining walls
- Fence limits and material types
- Landscaping
- Other applicable physical features that may impact design

Subconsultant will review the final topographic drawing in digital format (including one-foot contours and breaklines) showing the features located in the field as well as right-of-way and easement information.

Subconsultant will prepare a base map utilizing the survey information and record drawings.

Reference: **Main Street at Broad Street Roundabout**

Deliverables

- Digital Terrain Models (DTM) and the Triangular Irregular Network (TIN) files in a format acceptable by the City.
- Maps, plats, plans, sketches, or other documents acquired from utility companies, private corporations, or other public agencies, the contents of which are relevant to the survey.
- Digital copy of Photos and Field survey notes.
- Survey control data sheet for each control point which must include, but need not be limited to, a location sketch, a physical description of the point including a minimum of two reference ties, surface coordinates, a surface adjustment factor, elevation, and the horizontal and vertical datums used. A pre-formatted survey control data sheet form in Microsoft Office Word 2010 format will be provided by Stantec.

Task 2 – Geotechnical Investigations (Subconsultant to be determined. The City to provide approved vendor list.)

City-approved Geotechnical Subconsultant will provide a signed, sealed and dated geotechnical report which contains soil boring locations by proposed centerline station and offset, boring logs, laboratory test results, generalized subsurface conditions, ground water conditions, analyses, and recommendations for pavement design. Sample locations will include existing pavement and new alignment.

Task 3 – Utility Coordination

Stantec Utility Coordination Task Leader will attend one (1) design review meeting. Any field visits required for this task will be done concurrently with the kick-off meeting.

3.1 Approximate location of utilities will be identified during Task 1. Utility coordination services include the following:

- Identify potential utility conflicts
- Evaluate/minimize potential utility adjustments
- Coordinate with utility owners and/or City to resolve utility conflicts.

Deliverables

- Utility Conflict Matrix (in Excel format)

3.2 Subsurface Utility Engineering (SUE) (Subconsultant to be determined. The City to provide approved vendor list.)

City approved SUE Subconsultant will perform SUE Quality Level "A" to identify existing City and franchise utility at critical locations within the limits of the construction by exposing specific utilities. Non-destructive vacuum excavation equipment may be used to expose the utilities at specific points which will then be field surveyed.

If required and authorized by the City,

- Perform SUE, LEVEL A.
- Evaluate the SUE results and provide a summary of potential utility conflicts to the City.

3.3 Utility Plans (If requested)

Utility design services are not provided in the above scope. If required and authorized by the City, upon completion of Task 3.1 and 3.2, utility plans may be developed to be incorporated into the deliverables identified under Task 4.

Task 4 – Roadway

Stantec's Roadway Design Task Leader will attend one (1) design review meeting at the 60% submittal. Any field visits required for this task will be done concurrently with the kick-off meeting or design review meeting. Stantec will collect, review, and evaluate existing data (record drawings, including roadway, utility, traffic signal plans) and develop design criteria. Stantec will use Bentley's OpenRoads (ORD) technology in the design and preparation of the roadway plan sheets.

Stantec will prepare a 30% design identifying limits of construction, typical sections, striping, sidewalk, grading limits, impacts to adjacent property, impacts to existing traffic signals, and easement needs.

Upon City approval of the 30% design, Stantec will prepare plan and profile sheets of the proposed improvements. Plan sheets will consist of a 11"x17" sheet at a scale of 1"=100' horizontal and design cross sections at 50 foot intervals. Plan set is anticipated to include the following plan sheets:

Reference: Main Street at Broad Street Roundabout

Roadway Plans typically include:

- Title Sheet
- Index
- General Notes
- Typical Section
- Summary of Quantities
- Traffic Control Plans
- Roadway Plan and Profile
- SWP3 Plans
- TxDOT and/or City Standard Details

Drainage plans will be provided under Task 5: Traffic plans will be provided under Task 6: Landscape plans will be provided under Task 7:

- | | | |
|---|--|--|
| <ul style="list-style-type: none"> • Hydraulic Data Sheets • Culvert Layout • Storm Sewer Plan & Profile | <ul style="list-style-type: none"> • Traffic Signal Plans • Signing & Marking Plans • Small Sign Summary Charts • Roadway Illumination Plans | <ul style="list-style-type: none"> • Hardscape and Furnishing Site Plan • Site Grading Plan • Pedestrian Lighting Plan • Planting Plan • Tree Preservation & Protection Plan • Notes, Details, and Schedules |
|---|--|--|

Deliverables

All submittals will be delivered in PDF format.

- 30% - preliminary geometric layout and opinion of probable construction cost
- 60% - preliminary plans and opinion of probable construction cost
- 90% - pre-final plans, specifications, and opinion of probable construction cost
- 100% - final plans, specifications, and opinion of probable construction cost (signed & sealed)

Stantec will address comments generated by the City at each submittal and will revise the plans accordingly. We anticipate one (1) round of updates and revisions for each submittal. All requested edits by the City shall be in the form of one consolidated set as redlines, Adobe Acrobat notes, or similar method.

Task 5 – Drainage

Stantec's Drainage Task Leader will collect available applicable data including GIS data and maps. Stantec will evaluate the existing storm sewer system to identify capacity issues using EPA SWMM. Stantec will provide a hydraulic analysis for the existing triple 9x9 concrete box culverts at Broad St and Pond Branch of Walnut Creek. Stantec will develop flow rates for proposed culvert design.

The following plan sheets will be incorporated into the plan set:

- Hydraulic Data Sheets
- Culvert Layout
- Storm Sewer Plan & Profile

Task 6 – Traffic

Stantec's Traffic Design Task Leader will attend one (1) design review meeting. Any field visits required for this task will be done concurrently with the kick-off meeting.

Traffic Signal designs will be identified at the 60% design milestone. Stantec will create signal design documents for up to two (2) intersections. Stantec will conduct a field review to verify existing roadway and above-ground utility information. Stantec will coordinate with the City engineers to discuss signal design requirements in a pre-design kick-off meeting to be held concurrently with the field review. The signals will be designed per City and/or TxDOT standards.

Stantec will prepare plan sheets and details for all small signs, permanent pavement markings and channelization devices.

Stantec will provide a preliminary illumination layout for initial review and approval by the City. Upon approval, Stantec will coordinate with the City and/or Oncor to prepare plans as needed for the installation of luminaries. Existing illumination within the project limits will be integrated into the proposed design to the extent possible.

The following plan sheets will be incorporated into the plan set:

- Traffic Signal Plans
- Signing & Marking Plans
- Small Sign Summary Charts
- Roadway Illumination Plans
- TxDOT and/or City Standard Details

Reference: Main Street at Broad Street Roundabout

Task 7 – Landscape

Stantec's Landscape Task Leader will attend one (1) design review meeting and will participate in virtual meetings/conference calls with the City and Project Team to discuss and coordinate construction documents.

At the 30% submittal, Stantec will prepare a schematic landscape concept plan illustrating site layout in coordination with roadway and civil site improvements and architectural footprint. This will be a refinement of the currently approved concept master plan. Stantec will prepare one (1) preliminary planting plan addressing landscape requirements indicating planting locations. Stantec will prepare initial images of materials for paving options, plant materials, and site furnishings.

Deliverables

- One (1) site schematic hardscape plan
- One (1) schematic planting plan
- Virtual review of initial material selections

Upon City approval of the 30% landscape design, Stantec will prepare 60% landscape construction documents and specifications for landscape architectural elements, including the following:

- Prepare Design Development streetscape drawings for all hardscape elements. Drawings will include preliminary dimensioned site layout and paving material.
- Prepare Design Development grading & drainage plans for all non-roadway improvements tied to the streetscape drawings.
- Prepare Design Development site furnishing plans indicating layout, elevations, and initial review of finishes with City (benches, planters, and pedestrian site lighting).
- Stantec will prepare Design Development planting plans indicating planting locations, complete with initial details, notes, and legends. Planting plans will meet code compliance.

Upon City approval of the 60% landscape design, Stantec will prepare 90% and 100% landscape construction documents and specifications for landscape architectural elements, including the following:

- Prepare final hardscape plans for streetscape construction documents for the Re-Making Downtown Streets in Mansfield Texas. Stantec's scope includes selection of pavers, site furnishing specification, site lighting specification, plant selection.
- Prepare fine grading construction documents for hardscape areas within the streetscape. These plans are intended for coordination with the project civil team in preparing their site grading drawings. Plans will provide spot elevations of tie-in to site elements, drain inlets, etc, and will be ADA compliant.
- Prepare final planting construction documents indicating planting locations, complete with planting details, notes, and legends.
- Prepare final construction document irrigation plans and details indicating general irrigation notes, legends, sprinkler head layout, piping, and POC's, valves, backflow, and irrigation controller locations.
- Coordination only with lighting designer for selection and location of fixtures pedestrian lighting. (Structural footing/mounting details are intended to be per MFG specifications, and this scope does not include structural engineered footings).
- Submit a 90% construction document package for review and a final signed and sealed construction document package to the City for bidding purposes.
- 100% plans to be submitted for RAS review with subconsultant, and upon approval will be submitted for TDLR Registration.

The following plan sheets will be incorporated into the plan set:

- Hardscape and Furnishing Site Plan
- Site Grading Plan
- Pedestrian Lighting Plan
- Planting Plan
- Tree Preservation & Protection Plan
- Notes, Details, and Schedules

Task 8 – Public Outreach

Stantec with Subconsultant Speck-Dempsey will conduct two (2) Public Outreach meetings, one (1) with City Council and one (1) with Stakeholders (impacted business owners) to present project updates. This will be an informal meeting with an open house format that generally lasts up to three hours. No formal presentations are made at these meetings; however, exhibits describing the proposed project and maps showing the proposed project area will be displayed.

Stantec will provide up to nine (9) electronic Construction Milestone Notifications, which will be distributed via e-mail, will include project related information such as project description, project status updates, and project related contact information.

Reference: Main Street at Broad Street Roundabout

Deliverables:

- Electronic copies of any exhibits, handouts, maps and graphics.
- Electronic copies of all Construction Milestone Notifications.

Task 9 – Construction Phase Services

These services shall include the following:

- Stantec will assist the City with the bidding process by responding to bid questions as it relates to scope, and assist in issuing Addendum's for scope clarification that do not require redesign. We have assumed the Bidding Phase not to exceed 2 months.
- Stantec will attend the initial Pre-Construction meeting at project kick-off for coordination with the selected Contractor.
- Stantec will assist the City in making periodic site visits to monitor the progress of the work and determine if the project is proceeding in accordance with the design intent of Stantec's construction documents. We have assumed three (3) one-hour site visits up to for the duration of the project. Stantec will prepare typed field reports indicating the status of construction for each site visit attended.
- We will perform ongoing coordination with the project consultants and Contractors to resolve landscape-related construction installation issues.
- We will review shop drawings.
- We will review and respond to Contractor's RFIs during the course of construction for landscape-related items. We will Prepare clarification drawings, if required, to resolve construction ambiguities. For budgeting purposes, we are assuming to respond to a maximum of 10 RFIs.
- We will perform one (1) final site walk at substantial completion for the development of a final punch list. It will be considered additional services if Contractor requires follow-up punch walks.

Deliverables:

- Notice to Bidders for Advertising by the City
- Addenda as required

Additional Services & Assumptions

Any service not specifically included in Scope of Services is considered an additional service. If services are authorized by the City which exceed those listed under Scope of Services, they shall be compensated hourly at the rates listed below. Such additional expenses shall include, but not be limited to, additional meetings and or additional site visits as requested by the City, revisions in drawings due to causes beyond the control of Stantec, including any revisions requested by the City after approval of Stantec's plans by the City.

- The fees included in this proposal assume continuity of design services. Interruptions in the design services, which necessitate re-assignment of the assembled design team shall be treated as a Change in Service
- Permitting and entitlements will be led by the City, City's attorney and/or City's permitting consultant. Stantec shall provide deliverables in support of the application, as described in the task section of this proposal. Stantec will not be responsible for fees associated with the permitting efforts or submission of the applications.

ASSUMPTIONS:

In preparing this proposal, we have made the following assumptions:

- The project is locally funded and will not require NEPA review.
- The project will be developed as a single phase from design initiation through construction.
- Conceptual master plan is approved and will not require additional effort for a redesign.
- This will be developed as a City of Mansfield R.O.W. project, and not require additional TxDOT coordination, or production of plans, notes, and details that follow TxDOT standards.
- Preparation of "As-Built" drawings are assumed to be prepared and submitted by the Contractor if requested by the City.
- This proposal is based on conventional irrigation design and practices and does not include provisions for water catchment or water reuse through rainwater harvesting or condensate. If such design is needed, Stantec can provide this as an additional service.
- Project will not require coordination for "certification" (ie. LEED, Sites, ENV SP, etc)

Reference: Main Street at Broad Street Roundabout

EXCLUSIONS:

The following services are excluded unless specifically included in this proposal:

- 3rd party Arborist review.
- Plan or other visualization graphic (color) renderings.
- Custom branding or wayfinding signage
- Gateway/Monument signage
- Structural drawings
- Coordination with TxDOT
- NEPA Review
- Permitting review by agencies outside the City of Mansfield.
- Fencing or architectural screens
- Licensing Agreements
- Ordinance Variance Requests

CITY'S RESPONSIBILITIES:

The City will provide existing record drawings and CADD design files from recent projects, including roadway, utility, traffic signal plans, and plats adjacent to the project limits.

The City will coordinate right-of-access for the purposes of field survey, property appraisal, and route walkthrough. The City will provide written right-of-access permission to Stantec prior to the commencement of field work.

Schedule

For a detailed breakdown of the schedule, please see the Project Schedule attached.

Deliverables	Start	Finish
Notice To Proceed	Mon 06/03/24	Mon 06/03/24
Field Survey *	Mon 06/24/24	Mon 08/12/24
30% Submittal	Tue 08/27/24	Mon 10/28/24
SUE *	Mon 08/12/24	Mon 12/09/24
60% Submittal	Mon 11/18/24	Mon 02/24/25
90% Submittal	Thu 03/06/25	Mon 05/05/25
100% Submittal	Mon 05/12/25	Mon 06/16/25

Note: * indicates subconsultant task to be performed by others.

Anticipated Construction Phase Services 18-24 months.

Reference: Main Street at Broad Street Roundabout

Fee

We propose to provide the specific services described above on a Lump Sum fee basis as follows. Tasks will be invoiced monthly on a percent complete basis.

Task Name	Revenue
Project Management	\$97,376
Roadway	\$600,460
Traffic	\$202,439
Drainage	\$48,468
Landscape	\$208,780
Public Outreach	\$32,908
Other Direct Expenses	\$12,000
Construction Phase Services	\$74,980
Subconsultant	Revenue
Speck-Dempsey, LLC	\$110,000
Irrigation (Ecoland)	\$4,950
RAS Review	\$14,586
Subtotal	\$1,406,947

Anticipated subconsultant costs are listed below. The City to provide an approved vendor list. Stantec will coordinate with the approved subconsultants for a detailed fee proposal for their scope of services. The subconsultant fees below and the Grand Total will be adjusted once each subconsultant's fees are approved by the City.

Subconsultant	Revenue
Survey	\$110,000
SUE	\$110,000
Geotech	\$55,000
Subtotal	\$275,000
Grand Total	\$1,681,947

Please note that the above fees are based on a smooth project implementation and have assumed no major changes to the project after the 60% submittal for this project. For a detailed breakdown of the fee, see the Fee Schedule attached. Work provided outside the above scope of services will be billed as an additional service once approved in writing by your office.

Rates for Additional Services on an hourly basis shall be:

Name	Billing Rate
Principal	\$278.00
Project Manager / Deputy PM	\$269.00
Senior Engineer	\$244.00
Project Engineer	\$219.00
Design Engineer	\$170.00
EIT	\$128.00
Senior CAD	\$160.00
CAD	\$117.00
Senior Landscape Architect	\$170.00
Landscape Architect Designer	\$117.00
Senior Public Involvement Officer	\$219.00
Public Involvement Officer	\$170.00

Rates are subject to escalation at the beginning of each calendar year.

Reference: **Main Street at Broad Street Roundabout**

Regards,

STANTEC CONSULTING SERVICES INC.



Digitally signed by Ward, Kari
Date: 2024.05.09 08:30:10
-05'00'

Kari Ward, PE, PMP, ENV SP
Principal, Texas Transportation Operations Leader
Project Manager
Phone: (214) 918-4287
Kari.Ward@stantec.com



Digitally signed by
Carter, Dave
Date: 2024.05.09
08:53:09 -05'00'

Dave N. Carter, PE, PTOE
Principal, Traffic Engineering Manager
Deputy Project Manager
Phone: (972) 983-9493
Dave.Carter@stantec.com

Attachment: Professional Services Agreement for Engineering Services
Project Schedule
Fee Schedule



CITY OF MANSFIELD

1200 E. Broad St.
Mansfield, TX 76063
mansfieldtexas.gov

STAFF REPORT

File Number: 24-6020

Agenda Date: 6/10/2024

Version: 1

Status: Approval of Minutes

In Control: City Council

File Type: Meeting Minutes

Agenda Number:

Title

Minutes - Approval of the May 13, 2024 Regular City Council Meeting Minutes

Requested Action

Action to be taken by the Council to approve the minutes.

Recommendation

Approval of the minutes by the Council.

Description/History

The minutes of the May 13, 2024 Regular City Council Meeting are in DRAFT form and will not become effective until approved by the Council at this meeting.

Justification

Permanent Record

Funding Source

N/A

Prepared By

Susana Marin, TRMC, City Secretary

817-276-4203



CITY OF MANSFIELD

1200 E. Broad St.
Mansfield, TX 76063
mansfieldtexas.gov

Meeting Minutes - Draft

City Council

Monday, May 13, 2024

2:00 PM

Council Chambers

REGULAR MEETING

2:00 P.M. - CALL MEETING TO ORDER

Mayor Evans called the meeting to order at 2:00 p.m.

Absent 1 - Larry Broseh

Present 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Casey Lewis

N/A's 1 - Juan Fresquez

WORK SESSION

Discussion Regarding the May 13, 2024 Consent Agenda Items

There was no discussion.

RECESS INTO EXECUTIVE SESSION

In accordance with Texas Government Code, Chapter 551, Mayor Evans recessed the meeting into executive session at 2:01 p.m. Mayor Evans called the executive session to order in the Council Conference Room at 2:05 p.m. Mayor Evans recessed the executive session at 5:58 p.m.

Consultation with City Attorney to Seek Advice About Pending or Contemplated Litigation, a Settlement Offer, or on a Matter in Which the Duty of the City Attorney to the City's Governmental Body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas Clearly Conflicts with Chapter 551 of the Texas Government Code Pursuant to 551.071

Seek Advice of City Attorney Regarding Pending Litigation Cause No. 348-270155-14

Seek Advice of City Attorney Regarding the Role of Municipal Elected Officials

Seek Advice of City Attorney Regarding Supreme Court Impact Fee Ruling

Seek Advice of City Attorney Regarding Hotel/Motel Occupancy Tax Funds

Seek Advice of City Attorney Regarding Texas Commission on Environmental Quality Rules and Regulations

Seek Advice of City Attorney Regarding Possible Amendment to the Ground Lease and Operating Agreement with STORE Master Funding VIII, LLC

Seek Advice of City Attorney Regarding Legal Issues Pertaining to Economic Development Projects Listed in Section 3.D of the Agenda

Discussion Regarding Possible Purchase, Exchange, Lease, or Value of Real Property Pursuant to Section 551.072

Land Acquisition for Future Development

Right-of-Way Acquisition

Personnel Matters Pursuant to Section 551.074

Board Appointments

Deliberation Regarding Commercial or Financial Information Received From or the Offer of a Financial or Other Incentive Made to a Business Prospect Seeking to Locate, Stay or Expand in or Near the Territory of the City and with which the City is Conducting Economic Development Negotiations Pursuant to Section 551.087

Economic Development Project #15-02

Economic Development Project #21-01

Economic Development Project #21-26

Economic Development Project #21-33

Economic Development Project #23-15

Economic Development Project #24-05

Economic Development Project #24-06

6:00 PM OR IMMEDIATELY FOLLOWING EXECUTIVE SESSION - RECONVENE INTO REGULAR BUSINESS SESSION

Mayor Evans reconvened into regular business session at 6:06 p.m.

INVOCATION

Pastor Daniel Ramos with Harvest Point Church gave the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Tonore led the Pledge of Allegiance.

TEXAS PLEDGE

"Honor the Texas Flag; I Pledge Allegiance to Thee, Texas, One State Under God; One and Indivisible"

Council Member Bounds led the Texas Pledge.

ACKNOWLEDGEMENT OF SERVICE

Council Member Casey Lewis

Mayor Evans and the City Council recognized Council Member Lewis for his six years of service on the City Council.

OATH OF OFFICE

Council Member Brent Newsom
Council Member Julie Short
Council Member-Elect Juan Fresquez

Council Members Newsom and Short, as well as Council Member-Elect Fresquez, took the Oath of Office.

Absent 1 - Larry Broseh

Present 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

ELECTION OF MAYOR PRO TEM

Mayor Pro Tem Tonore was re-elected as Mayor Pro Tem.

CITIZEN COMMENTS

Wayne Wilshire, 1101 Pinehurst - Mr. Wilshire spoke on the upcoming Historic Downtown car show.

COUNCIL ANNOUNCEMENTS

Mayor Evans thanked Troop 1993 for their Eagle Court of Honor and congratulated Christian Jenkins for receiving his Eagle Scout Badge. He also congratulated the students at Jerry K. Knight STEM Academy on their projects based on the United Nations Sustainable Development Goals. Mayor Evans lastly commented on the ceremony he attended honoring the students at the Ben Barber Innovation Academy who were award winners in C-Span's 2024 Student Cam Documentary competition.

SUB-COMMITTEE REPORTS

[24-5990](#)

Minutes - Approval of the April 22, 2024 Tax Increment Reinvestment Zone Number One Board Meeting Minutes (Broseh (Chair), Bounds, Evans, and Tonore)

A motion was made by Mayor Pro Tem Tonore to approve the minutes of the April 22, 2024 Tax Increment Reinvestment Zone Number One Board Meeting Minutes. Seconded by Council Member Bounds. The motion CARRIED by the following vote:

Aye: 3 - Todd Tonore; Michael Evans and Tamera Bounds

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

Non-Voting: 3 - Julie Short; Brent Newsom and Juan Fresquez

STAFF COMMENTS

City Manager Report or Authorized Representative

Current/Future Agenda Items

There were no comments.

TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION

There was no action taken.

CONSENT AGENDA

[24-5994](#)

An Ordinance of the City of Mansfield, Texas, Amending Chapter 93, "Junked Vehicles," of Title IX, "General Regulations," of the Code of Mansfield, Texas, Amending Section 93.01 "Definitions"; Providing That the Ordinance Shall be Cumulative of All Ordinances; Providing a Severability Clause; Providing a Penalty for Violation; Providing a Savings Clause; Providing for Publication as Required by Law; and Providing an Effective Date

A motion was made by Council Member Bounds to approve the following ordinance:

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING CHAPTER 93, "JUNKED VEHICLES," OF TITLE IX, "GENERAL REGULATIONS," OF THE CODE OF MANSFIELD, TEXAS, AMENDING SECTION 93.01 "DEFINITIONS"; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE

(Ordinance in its entirety located in the City Secretary's Office)

Seconded by Council Member Short. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

Enactment No: OR-2363-24

[24-5999](#)

Resolution - A Resolution Authorizing the City Manager and the Police Department to Make Application, Receive and Expend Grant Funding from the Texas Department of Motor Vehicle Crime Prevention Authority to Continue a Multi-Agency Task Force

A motion was made by Council Member Bounds to approve the following resolution:

A RESOLUTION AUTHORIZING THE CHIEF OF POLICE AND THE POLICE DEPARTMENT TO MAKE APPLICATION, RECEIVE, AND EXPEND GRANT FUNDING FROM THE TEXAS DEPARTMENT OF MOTOR VEHICLES MOTOR VEHICLE CRIME PREVENTION AUTHORITY TO CONTINUE A MULTI-AGENCY TASK FORCE

(Resolution in its entirety located in the City Secretary's Office)

Seconded by Council Member Short. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

Enactment No: RE-4195-24

[24-6006](#)

Resolution - A Resolution of the City Council of the City of Mansfield, Texas, Approving an Amendment of Interlocal Agreement for Day Miar Road Widening Between the City of Mansfield, TX and Tarrant County in an Amount

Not to Exceed \$5,405,608.00 for the Cooperative Funding for Day Miar Road (E. Broad St. to Seeton Rd.)

A motion was made by Council Member Bounds to approve the following resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, APPROVING AN AMENDMENT OF INTERLOCAL AGREEMENT FOR DAY MIAR ROAD WIDENING BETWEEN THE CITY OF MANSFIELD, TX AND TARRANT COUNTY IN AN AMOUNT NOT TO EXCEED \$5,405,608.00 FOR THE COOPERATIVE FUNDING FOR DAY MIAR ROAD (E. BROAD ST. TO SEETON RD.); FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND DECLARING AN EFFECTIVE DATE

(Resolution in its entirety located in the City Secretary's Office)

Seconded by Council Member Short. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

Enactment No: RE-4196-24

[24-6007](#)

Resolution - A Resolution of the City Council of the City of Mansfield, Texas, Approving an Amendment of Interlocal Agreement for Dick Price Road Extension Between the City of Mansfield, TX and Tarrant County in an Amount Not to Exceed \$1,584,500.00 for the Cooperative Funding for Dick Price Rd. Improvements (Gertie Barrett Rd. to N. Main St.)

A motion was made by Council Member Bounds to approve the following resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, APPROVING AN AMENDMENT OF AN INTERLOCAL AGREEMENT FOR DICK PRICE RD. EXTENSION BETWEEN THE CITY OF MANSFIELD, TX AND TARRANT COUNTY IN AN AMOUNT NOT TO EXCEED \$1,584,500.00 FOR THE COOPERATIVE FUNDING FOR DICK PRICE RD. IMPROVEMENTS (GERTIE BARRETT RD. TO N. MAIN ST.); FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND DECLARING AN EFFECTIVE DATE

(Resolution in its entirety located in the City Secretary's Office)

Seconded by Council Member Short. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

Enactment No: RE-4197-24

[24-5987](#)

Suspending the Procedural Rules of Council to Reschedule the Regular Scheduled City Council Meeting of May 28, 2024 to May 20, 2024

A motion was made by Council Member Bounds to approve the item. Seconded by Council Member Short. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

[24-5989](#)

Minutes - Approval of the April 22, 2024 Regular City Council Meeting Minutes

A motion was made by Council Member Bounds to approve the minutes of the April 22, 2024 Regular City Council Meeting. Seconded by Council Member Short. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

END OF CONSENT AGENDA

PUBLIC HEARING

[24-6001](#)

Public Hearing and Consideration of a Specific Use Permit for an Automotive Tire Service on 0.734 acres being Lot 1R, Block 3, Oakdale Addition, Tarrant Co., TX, located at 700 W Debbie Ln; Texas Tires, Owner; Nationwide Construction Applicant (SUP#24-001)

Executive Director of Planning and Development Services Jason Alexander requested this item be tabled indefinitely.

A motion was made by Council Member Newsom to table the item indefinitely. Seconded by Council Member Bounds. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

PUBLIC HEARING AND FIRST AND FINAL READING

[24-6013](#)

Ordinance - Public Hearing and First and Final Reading on an Ordinance of the City Council of the City of Mansfield, Texas Approving a Service and Assessment Plan and an Assessment Roll for City of Mansfield Public Improvement District No. 2 ("P.I.D. No. 2"); Levying Special Assessments Against Property within P.I.D. No. 2; Providing for Assessments to be Paid Over a Period of Time in Accordance with the Public Improvement District Assessment Act; Specifying the Method and the Amount of Payment; Providing Penalties and Interest on Delinquent Assessments; Providing for Severability; and Providing an Effective Date

Assistant City Manager Matt Jones presented the item.

Mayor Evans opened the public hearing at 6:44 p.m. With no one wishing to speak, Mayor Evans closed the public hearing at 6:44 p.m.

A motion was made by Council Member Short to approve the following ordinance:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS APPROVING A SERVICE AND ASSESSMENT PLAN AND AN ASSESSMENT ROLL FOR CITY OF MANSFIELD PUBLIC IMPROVEMENT DISTRICT NO. 2 ("P.I.D. NO.2"); LEVYING SPECIAL ASSESSMENTS AGAINST PROPERTY WITHIN P.I.D. No. 2; PROVIDING FOR ASSESSMENTS TO BE PAID OVER A PERIOD OF TIME IN ACCORDANCE WITH THE PUBLIC IMPROVEMENT DISTRICT ASSESSMENT ACT; SPECIFYING THE METHOD AND THE AMOUNT OF PAYMENT; PROVIDING PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

(Ordinance in its entirety located in the City Secretary's Office)

Seconded by Mayor Pro Tem Tonore. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

Enactment No: OR-2364-24

PUBLIC HEARING AND FIRST READING[23-5763](#)

Ordinance - Public Hearing Continuation and First Reading on an Ordinance Approving a Change of Zoning from MH, Manufactured Home District and PR, Pre-Development District to PD, Planned Development District for Attached Single-Family Residential and Manor House Uses on Approximately 11.03 Acres Located at 2600, 2626, and 2628 N. Main Street; Phillips Equity Capital, LLC, Owner/Developer (ZC#22-018)

Jason Alexander presented the item and answered Council questions. Applicant South Cole presented and answered Council questions.

Mayor Evans opened the public hearing at 6:57 p.m.

John Harris, 2571 Nelson Wyatt Road - Mr. Harris spoke in opposition to the item.

Toni Comiskey, 2601 Nelson Wyatt Road - Ms. Comiskey spoke in opposition to the item.

Phillip Gunn, 7612 Cutlass Court, Arlington - Mr. Gunn spoke in support of the item.

Mayor Evans noted the following submitted a non-speaker card in opposition of the item:

Folorunso Kadri, 2636 Main Street

Mayor Evans continued the public hearing at 7:10 p.m.

A motion was made by Council Member Short to approve the first reading of the following ordinance with the two requirements stated by Mr. Alexander previously, which were that the property owner and/or developer will coordinate with the Plat Review Committee on the location and access of the parking intended to directly serve the mixed-use building and the three buildings located directly east that may be designed as manor houses and/or mixed-use buildings, and that the four single-family residential detached units proposed to front street D have a minimum floor area of 2,200 square feet:

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING CHAPTER 155 OF THE CODE OF ORDINANCES, "ZONING," OF THE CITY OF MANSFIELD, AS HERETOFORE AMENDED, SO AS TO CHANGE THE ZONING ON THE HEREINAFTER DESCRIBED PROPERTIES TO A PD, PLANNED DEVELOPMENT DISTRICT FOR ATTACHED SINGLE-FAMILY RESIDENTIAL AND MANOR HOUSE USES, PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE

Seconded by Council Member Bounds. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

Enactment No: OR-2366-24

[24-5889](#)

Ordinance - Public Hearing and First Reading on a Change of Zoning from C-2, Community Business District to PD, Planned Development for Commercial Uses and Car Wash on Approximately 3.382 Acres in the Henry McGehee Survey Abstract No.998, City of Mansfield, Tarrant Co, TX, Located at 585 E Debbie Ln. (ZC#23-025)

Jason Alexander presented the item. Applicant Alan Jacob with Car Wash Pro Designers presented the item. Property owner Douglas Whitley spoke on the item.

Mayor Evans opened the public hearing at 7:31 p.m.

Gene Fichte, 901 Riviera Drive - Mr. Fichte spoke in support of the item.

Mayor Evans noted the following non-speaker card in opposition:

Scot Bowman, 2514 Goodnight Trail

Mayor Evans continued the public hearing at 7:38 p.m.

A motion was made by Council Member Newsom to deny the item. The motion failed for lack of a second. A motion was made by Council Member Short to approve the following ordinance:

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF MANSFIELD, AS HERETOFORE AMENDED, SO AS TO CHANGE THE ZONING ON THE HEREINAFTER DESCRIBED PROPERTY TO A PD, PLANNED DEVELOPMENT DISTRICT; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE

Seconded by Mayor Pro Tem Tonore. The motion tied by the following vote and the item will therefore automatically be carried to the next City Council meeting for reconsideration:

Aye: 3 - Julie Short; Todd Tonore and Juan Fresquez

Nay: 3 - Michael Evans; Tamera Bounds and Brent Newsom

Absent: 1 - Larry Broseh

Abstain: 0

[24-6003](#)

Ordinance - First Reading and Public Hearing on an Ordinance Approving a Change of Zoning from PR, Pre-Development District to PD, Planned Development District for Mixed Uses on Approximately 134.8

Acres of Land Situated in the J. Lawrence Survey, Abstract No. 616, the M. Gregg Survey, Abstract No. 385, J. Lawrence Survey, Abstract No. 616, and the H. Henderson Survey, Abstract No. 432; City of Mansfield, Ellis County, Texas, Located Approximately 1500 Feet East of State Highway 360, South of Lone Star Road, and South of Britton Road (ZC#24-009)

Jason Alexander presented the item. Applicant William Gietema presented the item.

Mayor Evans opened the public hearing at 7:47 p.m. With no one wishing to speak, Mayor Evans continued the public hearing at 7:47 p.m.

A motion was made by Council Member Bounds to table the item to the June 10, 2024 City Council Meeting for the developer and staff to discuss and address these processes and land use mentioned by her colleague. Seconded by Mayor Pro Tem Tonore. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

Non-Voting: 1 - Casey Lewis

[24-6004](#)

Ordinance - First Reading and Public Hearing on an Ordinance Approving a Change of Zoning from A, Agricultural District to PD, Planned Development District for Single-Family Residential Uses on Approximately 3.13 Acres Located at 880 Turner Way; SPAPS, LLC, Owner, and HCE, Inc., Engineer (ZC#23-007)

Jason Alexander presented the item. Mark Novell, 3409 W Hunter Bend Court, made comments on the townhall meeting held for this item. Applicant Daniel Almaguer presented the item.

Mayor Evans opened the public hearing at 8:01 p.m.

Mayor Evans noted the following non-speaker card in support:

Diana Pfau, 3415 W Hunter Bend Court

Mayor Evans continued the public hearing at 8:02 p.m.

A motion was made by Council Member Bounds to approve the first reading of the following ordinance:

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF MANSFIELD, AS HERETOFORE AMENDED, SO AS TO CHANGE THE ZONING ON THE HEREINAFTER DESCRIBED PROPERTIES TO A PD, PLANNED DEVELOPMENT DISTRICT FOR SINGLE-FAMILY RESIDENTIAL USES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO

THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE

Seconded by Council Member Newsom. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

Non-Voting: 1 - Casey Lewis

Enactment No: OR-2367-24

NEW BUSINESS

24-6008

Resolution - A Resolution of the City Council of the City of Mansfield, Texas Approving City of Mansfield Public Improvement District No. 2 Reimbursement Agreement Between the City of Mansfield and Kinney Park, LLC.; And Authorizing the Mayor to Execute

Matt Jones presented the item.

A motion was made by Council Member Short to approve the following resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS APPROVING CITY OF MANSFIELD PUBLIC IMPROVEMENT DISTRICT NO. 2 REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MANSFIELD AND KINNEY PARK, LLC; AND AUTHORIZING THE MAYOR TO EXECUTE

(Resolution in its entirety located in the City Secretary's Office)

Seconded by Council Member Bounds. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

Enactment No: RE-4198-24

24-6002

Review and Consideration of a Detailed Site Plan at Somerset Addition for a Townhouse Development on Approximately 20.362 Acres Being a Tract of Land Situated in the Seth M. Blair Survey, Abstract No. 72, in the City of Mansfield, Johnson County, Texas at 2401 S US 287; Impression

Homes, Builder; MESA Design Group Developer; LJA Engineering, Engineer; and Hanover Services Group, Inc., Owner (DS#24-001)

Jason Alexander presented the item. Applicant Peter Lai with Impression Homes spoke on the item. Applicant Thomas Brown spoke on the item.

Mayor Evans recessed the meeting into executive session at 8:24 p.m. Mayor Evans called the executive session to order in the Council Conference Room at 8:27 p.m. Mayor Evans recessed the executive session at 8:37 p.m. Mayor Evans reconvened into regular business session at 8:39 p.m.

The applicants answered Council questions.

A motion was made by Council Member Short to approve the item. Seconded by Mayor Pro Tem Tonore. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

[24-6014](#)

Board Appointment: Appoint Chairman and Members of the Board of Directors of the Tax Increment Reinvestment Zone Number Two (Historic Mansfield)

Matt Jones presented the item.

A motion was made by Council Member Newsom to maintain the same Chair as the previous year. Seconded by Mayor Pro Tem Tonore. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

ADJOURN

A motion was made by Council Member Newsom to adjourn the meeting at 8:45 p.m.. Seconded by Council Member Short. The motion CARRIED by the following vote:

Aye: 6 - Julie Short; Todd Tonore; Michael Evans; Tamera Bounds; Brent Newsom and Juan Fresquez

Nay: 0

Absent: 1 - Larry Broseh

Abstain: 0

Non-Voting: 1 - Casey Lewis

ATTEST: Michael Evans, Mayor

Susana Marin, City Secretary



CITY OF MANSFIELD

1200 E. Broad St.
Mansfield, TX 76063
mansfieldtexas.gov

STAFF REPORT

File Number: 24-6028

Agenda Date: 6/10/2024

Version: 1

Status: Approval of Minutes

In Control: City Council

File Type: Meeting Minutes

Agenda Number:

Title

Minutes - Approval of the May 20, 2024 Regular City Council Meeting Minutes

Requested Action

Action to be taken by the Council to approve the minutes.

Recommendation

Approval of the minutes by the Council.

Description/History

The minutes of the May 20, 2024 Regular City Council Meeting are in DRAFT form and will not become effective until approved by the Council at this meeting.

Justification

Permanent Record

Funding Source

N/A

Prepared By

Susana Marin, TRMC, City Secretary

817-276-4203



CITY OF MANSFIELD

1200 E. Broad St.
Mansfield, TX 76063
mansfieldtexas.gov

Meeting Minutes - Draft

City Council

Monday, May 20, 2024

3:30 PM

Council Chambers

REGULAR MEETING

3:30 P.M. - CALL MEETING TO ORDER

Mayor Evans called the meeting to order at 3:30 p.m.

Absent 1 - Juan Fresquez

Present 6 - Larry Broseh; Julie Short; Todd Tonore; Michael Evans; Tamera Bounds and Brent Newsom

WORK SESSION

Discussion Regarding the Cost Recovery Program

Interim Recreation Services Manager Coco Garcia presented the item and answered Council questions. She spoke on the financial sustainability project, various case studies of programs offered, pricing considerations for programs, and action items staff would like feedback on from the City Council.

Discussion Regarding the May 20, 2024 Consent Agenda Items

City Manager Joe Smolinski spoke and answered questions regarding agenda item 24-6024.

RECESS INTO EXECUTIVE SESSION

In accordance with Texas Government Code, Chapter 551, Mayor Evans recessed the meeting into executive session at 4:02 p.m. Mayor Evans called the executive session to order in the Council Conference Room at 4:12 p.m. Mayor Evans recessed the executive session at 5:51 p.m.

Consultation with City Attorney to Seek Advice About Pending or Contemplated Litigation, a Settlement Offer, or on a Matter in Which the Duty of the City Attorney to the City's Governmental Body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas Clearly Conflicts with Chapter 551 of the Texas Government Code Pursuant to 551.071

Seek Advice of City Attorney Regarding the Use of City Owned Property

Seek Advice of City Attorney Regarding Rules of Procedure Related to Posted Agenda Items

Seek Advice of City Attorney Regarding Legal Issues Pertaining to Economic Development Projects Listed in Section 3.D of the Agenda

Discussion Regarding Possible Purchase, Exchange, Lease, or Value of Real Property Pursuant to Section 551.072

Land Acquisition for Future Development

Personnel Matters Pursuant to Section 551.074

Board Interviews

Board Appointments

Review of Municipal Court Judge Contract

Deliberation Regarding Commercial or Financial Information Received From or the Offer of a Financial or Other Incentive Made to a Business Prospect Seeking to Locate, Stay or Expand in or Near the Territory of the City and with which the City is Conducting Economic Development Negotiations Pursuant to Section 551.087

6:00 PM OR IMMEDIATELY FOLLOWING EXECUTIVE SESSION - RECONVENE INTO REGULAR BUSINESS SESSION

Mayor Evans reconvened into regular business session at 6:00 p.m.

INVOCATION

Police Chief Tracy Aaron gave the Invocation.

PLEDGE OF ALLEGIANCE

Council Member Newsom led the Pledge of Allegiance.

TEXAS PLEDGE

"Honor the Texas Flag; I Pledge Allegiance to Thee, Texas, One State Under God; One and Indivisible"

Mayor Pro Tem Tonore led the Texas Pledge.

RECOGNITION

Mansfield High School JROTC

Mayor Evans and the City Council recognized the Mansfield High School JROTC for placing first in the Armed Overall division Championships during the Army JROTC National Drill Competition.

MISD High School Students Enlisting in the U.S. Military

Mayor Evans and the City Council recognized MISD High School students who have enlisted in the U.S. Military.

CITIZEN COMMENTS

There were no citizen comments.

COUNCIL ANNOUNCEMENTS

There were no Council announcements.

SUB-COMMITTEE REPORTS

[24-6019](#)

Minutes - Approval of the May 13, 2024 Local Transportation Issues Sub-Committee Meeting Minutes (vote will be only by members of the sub-committee: Tonore (Chair), Bounds, and Fresquez)

A motion was made by Mayor Pro Tem Tonore to approve the minutes of the May 13, 2024 Local Transportation Issues Sub-Committee Meeting. Seconded by Council Member Bounds. The motion CARRIED by the following vote:

Aye: 2 - Todd Tonore and Tamera Bounds

Nay: 0

Absent: 1 - Juan Fresquez

Abstain: 0

Non-Voting: 4 - Larry Broseh;Julie Short;Michael Evans and Brent Newsom

STAFF COMMENTS

City Manager Report or Authorized Representative

Current/Future Agenda Items

National Endowment for the Arts Grant

Tourism Manager Tim Roberts spoke on the \$40,000 National Endowment for the Arts Grant awarded to the City.

Business Services Department Report

[24-6025](#)

Presentation of the Monthly Financial Report for the Period Ending March

31, 2024

Staff was available for questions.

TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION

There was no action taken.

CONSENT AGENDA

[24-5903](#)

Resolution - A Resolution to Consider Amendment Number Six to the Water Park Ground Lease and Operating Agreement Between STORE Master Funding VIII, LLC, and the City of Mansfield to Allow for New Capital Improvements and Expenditures of the Hawaiian Falls Water Park Mansfield; Finding that the Meeting at which this Resolution is Passed is Open to the Public as Required by Law; and Declaring an Effective Date

A motion was made by Council Member Bounds to approve the following resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, APPROVING AMENDMENT NUMBER SIX TO THE WATER PARK GROUND LEASE AND OPERATING AGREEMENT BETWEEN STORE MASTER FUNDING VIII, LLC AND THE CITY OF MANSFIELD TO ALLOW FOR NEW CAPITAL IMPROVEMENTS AND EXPENDITURES OF THE HAWAIIAN FALLS WATER PARK MANSFIELD; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE

(Resolution in its entirety located in the City Secretary's Office)

Seconded by Council Member Broseh. The motion CARRIED by the following vote:

Aye: 6 - Larry Broseh; Julie Short; Todd Tonore; Michael Evans; Tamera Bounds and Brent Newsom

Nay: 0

Absent: 1 - Juan Fresquez

Abstain: 0

Enactment No: RE-4199-24

[24-5985](#)

Resolution - A Resolution Amending the Bylaws for the Mansfield Economic Development Corporation Board to Align its Purchasing Guidelines with State Law

A motion was made by Council Member Bounds to approve the following resolution:

A RESOLUTION APPROVING PROPOSED AMENDMENTS TO THE MANSFIELD ECONOMIC DEVELOPMENT CORPORATION'S BYLAWS; AND PROVIDING AN EFFECTIVE DATE

(Resolution in its entirety located in the City Secretary's Office)

Seconded by Council Member Broseh. The motion CARRIED by the following vote:

Aye: 6 - Larry Broseh; Julie Short; Todd Tonore; Michael Evans; Tamera Bounds and Brent Newsom

Nay: 0

Absent: 1 - Juan Fresquez

Abstain: 0

Enactment No: RE-4200-24

[24-6016](#)

Resolution - A Resolution Authorizing the Purchase of Property Located at 1024 Wilson Drive for the Walnut Creek Linear Park Trail System

A motion was made by Council Member Bounds to approve the following resolution:

A RESOLUTION AUTHORIZING THE PURCHASE OF PROPERTY LOCATED AT 1024 WILSON DRIVE FOR THE WALNUT CREEK LINEAR PARK TRAIL SYSTEM

(Resolution in its entirety located in the City Secretary's Office)

Seconded by Council Member Broseh. The motion CARRIED by the following vote:

Aye: 6 - Larry Broseh; Julie Short; Todd Tonore; Michael Evans; Tamera Bounds and Brent Newsom

Nay: 0

Absent: 1 - Juan Fresquez

Abstain: 0

Enactment No: RE-4201-24

[24-6021](#)

Resolution - A Resolution to Approve a Participation Agreement between Tarrant County and the City of Mansfield, Providing for Tarrant County Participation in the City of Mansfield Tax Increment Reinvestment Zone (TIRZ) #4

A motion was made by Council Member Bounds to approve the following resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, APPROVING A PARTICIPATION AGREEMENT BETWEEN THE CITY OF MANSFIELD, TEXAS, AND TARRANT COUNTY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE, TO EXECUTE SAID AGREEMENT; AND DECLARING AN EFFECTIVE DATE (TIRZ #4)

(Resolution in its entirety located in the City Secretary's Office)

Seconded by Council Member Broseh. The motion CARRIED by the following vote:

Aye: 6 - Larry Broseh; Julie Short; Todd Tonore; Michael Evans; Tamera Bounds and Brent Newsom

Nay: 0

Absent: 1 - Juan Fresquez

Abstain: 0

Enactment No: RE-4202-24

[24-6023](#)

Resolution - A Resolution of the City Council of the City of Mansfield, Texas, Approving an Inter-Local Agreement by and Between the City of Mansfield and the City of Burleson for Use of Mansfield's Gun Range and Driving Track and Authorizing its Execution through its Duly Appointed and Authorized City Managers; and Providing an Effective Date

A motion was made by Council Member Bounds to approve the following resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, APPROVING AN INTERLOCAL AGREEMENT WITH THE CITY OF BURLESON TO PROVIDE THEM FACILITIES ACCESS FOR GUN RANGE AND DRIVING TRACK TRAINING SERVICES; AUTHORIZING THE CITY MANAGER, OR DESIGNEE TO EXECUTE ANY DOCUMENTS NECESSARY TO IMPLEMENT THIS RESOLUTION; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND DECLARING AN EFFECTIVE DATE

(Resolution in its entirety located in the City Secretary's Office)

Seconded by Council Member Broseh. The motion CARRIED by the following vote:

Aye: 6 - Larry Broseh; Julie Short; Todd Tonore; Michael Evans; Tamera Bounds and Brent Newsom

Nay: 0

Absent: 1 - Juan Fresquez

Abstain: 0

Enactment No: RE-4203-24

[24-6024](#)

Resolution - A Resolution of the City Council of the City of Mansfield, Texas, Approving Amendment Number One to a Chapter 380 Economic Development Agreement Between the City of Mansfield and M3 Ranch Development, Inc.; Finding that the Meeting at Which this Resolution is Passed is Open to the Public as Required by Law; And Declaring an Effective Date

A motion was made by Council Member Bounds to approve the following resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, APPROVING AMENDMENT NUMBER ONE TO A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MANSFIELD AND M3 RANCH DEVELOPMENT, INC.; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE

(Resolution in its entirety located in the City Secretary's Office)

Seconded by Council Member Broseh. The motion CARRIED by the following vote:

Aye: 6 - Larry Broseh; Julie Short; Todd Tonore; Michael Evans; Tamera Bounds and Brent Newsom

Nay: 0

Absent: 1 - Juan Fresquez

Abstain: 0

Enactment No: RE-4204-24

END OF CONSENT AGENDA

PUBLIC HEARING AND FIRST AND FINAL READING

[24-6018](#)

Ordinance - Public Hearing and First and Final Reading on an Ordinance for Proposed Amendments to the Master Thoroughfare Plan

Director of Engineering Services Raymond Coffman presented the item.

Mayor Evans opened the public hearing at 6:22 p.m. With no one wishing to speak, Mayor Evans closed the public hearing at 6:22 p.m.

A motion was made by Council Member Short to approve the following ordinance:

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING THE MASTER THOROUGHFARE PLAN OF THE CITY OF MANSFIELD; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

(Ordinance in its entirety located in the City Secretary's Office)

Seconded by Council Member Broseh. The motion CARRIED by the following vote:

Aye: 6 - Larry Broseh; Julie Short; Todd Tonore; Michael Evans; Tamera Bounds and Brent Newsom

Nay: 0

Absent: 1 - Juan Fresquez

Abstain: 0

Enactment No: OR-2365-24

PUBLIC HEARING AND FIRST READING

[24-5889](#)

Ordinance - Public Hearing Continuation and First Reading on a Change of Zoning from C-2, Community Business District to PD, Planned Development for Commercial Uses and Car Wash on Approximately 3.382 Acres in the Henry McGehee Survey Abstract No.998, City of Mansfield, Tarrant Co, TX, Located at 585 E Debbie Ln. (ZC#23-025)

Executive Director of Planning and Development Services Jason Alexander presented the item.

Mayor Evans opened the public hearing at 6:24 p.m.

Mary Barkley, 600 W 6th Street, Fort Worth - Ms. Barkley spoke in opposition to the item.

Mayor Evans continued the public hearing at 6:22 p.m.

A motion was made by Council Member Short to approve the item. Seconded by Council Member Broseh. The motion FAILED by a vote of 2-6, with Council Members Broseh and Short voting Yes and Mayor Evans, Mayor Pro Tem Tonore, and Council Members Bounds and Newsom voting No. A motion was made by Council Member Newsom to deny the item. Seconded by Council Member Bounds. The motion CARRIED by the following vote:

Aye: 4 - Todd Tonore;Michael Evans;Tamera Bounds and Brent Newsom

Nay: 2 - Larry Broseh and Julie Short

Absent: 1 - Juan Fresquez

Abstain: 0

PUBLIC HEARING CONTINUATION AND SECOND AND FINAL READING

[23-5763](#)

Ordinance - Public Hearing Continuation and Second and Final Reading on an Ordinance Approving a Change of Zoning from MH, Manufactured Home District and PR, Pre-Development District to PD, Planned Development District for Attached Single-Family Residential and Manor House Uses on Approximately 11.03 Acres Located at 2600, 2626, and 2628 N. Main Street; Phillips Equity Capital, LLC, Owner/Developer (ZC#22-018)

Jason Alexander presented the item and answered Council questions.

Mayor Evans continued the public hearing at 6:33 p.m.

Toni Comiskey, 2601 Nelson Wyatt Road - Ms. Comiskey spoke in opposition to the item.

Mayor Evans closed the public hearing at 6:37 p.m.

A motion was made by Council Member Short to approve the following ordinance:

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING CHAPTER 155 OF THE CODE OF ORDINANCES, "ZONING," OF THE CITY OF MANSFIELD, AS HERETOFORE AMENDED, SO AS TO CHANGE THE ZONING ON THE HEREINAFTER DESCRIBED PROPERTIES TO A PD, PLANNED DEVELOPMENT DISTRICT FOR ATTACHED SINGLE-FAMILY RESIDENTIAL AND MANOR HOUSE USES, PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE

(Ordinance in its entirety located in the City Secretary's Office)

Seconded by Council Member Bounds. The motion CARRIED by the following vote:

Aye: 6 - Larry Broseh; Julie Short; Todd Tonore; Michael Evans; Tamera Bounds and Brent Newsom

Nay: 0

Absent: 1 - Juan Fresquez

Abstain: 0

Enactment No: OR-2366-24

[24-6004](#)

Ordinance - Public Hearing Continuation and Second and Final Reading on an Ordinance Approving a Change of Zoning from A, Agricultural District to PD, Planned Development District for Single-Family Residential Uses on Approximately 3.13 Acres Located at 880 Turner Way; SPAPS, LLC, Owner, and HCE, Inc., Engineer (ZC#23-007)

Jason Alexander presented the item.

Mayor Evans continued the public hearing at 6:43 p.m.

Diana Pfau, 3415 W Hunter Bend Court - Mrs. Pfau spoke in support of the item.

Mayor Evans noted a non-speaker card in support of the item from the following:

Zeno Pfau, 3415 W Hunter Bend Court

Mayor Evans closed the public hearing at 6:45 p.m.

A motion was made by Council Member Bounds to approve the following ordinance:

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING THE

COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF MANSFIELD, AS HERETOFORE AMENDED, SO AS TO CHANGE THE ZONING ON THE HERINAFTER DESCRIBED PROPERTIES TO A PD, PLANNED DEVELOPMENT DISTRICT FOR SINGLE-FAMILY RESIDENTIAL USES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE

(Ordinance in its entirety located in the City Secretary's Office)

Seconded by Council Member Short. The motion CARRIED by the following vote:

Aye: 6 - Larry Broseh; Julie Short; Todd Tonore; Michael Evans; Tamera Bounds and Brent Newsom

Nay: 0

Absent: 1 - Juan Fresquez

Abstain: 0

Enactment No: OR-2367-24

NEW BUSINESS

[24-5974](#)

Resolution - A Resolution of the City Council of the City of Mansfield, Texas, Approving a TIRZ Reimbursement Agreement Between the City of Mansfield, Texas, the Board of Directors of Reinvestment Zone Number One, and Cannon Hospitality, LLC; Finding that the Meeting at which this Resolution is Passed is Open to the Public as Required by Law; Authorizing the City Manager or his Designee and Chairman of TIRZ #1 Board, to Execute Said Agreement; and Declaring an Effective Date (TIRZ #1)

Management Analyst Kristen Petree presented the item.

A motion was made by Council Member Broseh to approve the following resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, APPROVING A TIRZ REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MANSFIELD, TEXAS, THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER ONE, AND CANNON HOSPITALITY, LLC (the "OWNER"); FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE AND CHAIRMAN OF TIRZ #1 BOARD, TO EXECUTE SAID AGREEMENT; AND DECLARING AN EFFECTIVE DATE (TIRZ #1)

(Resolution in its entirety located in the City Secretary's Office)

Seconded by Council Member Bounds. The motion CARRIED by the following vote:

Aye: 6 - Larry Broseh;Julie Short;Todd Tonore;Michael Evans;Tamera Bounds and Brent Newsom

Nay: 0

Absent: 1 - Juan Fresquez

Abstain: 0

Enactment No: RE-4205-24

ADJOURN

A motion was made by Council Member Newsom to adjourn the meeting at 6:49 p.m. Seconded by Council Member Short. The motion CARRIED by the following vote:

Aye: 6 - Larry Broseh;Julie Short;Todd Tonore;Michael Evans;Tamera Bounds and Brent Newsom

Nay: 0

Absent: 1 - Juan Fresquez

Abstain: 0

ATTEST: Michael Evans, Mayor

Susana Marin, City Secretary



CITY OF MANSFIELD

1200 E. Broad St.
Mansfield, TX 76063
mansfieldtexas.gov

STAFF REPORT

File Number: 24-6003

Agenda Date: 6/10/2024

Version: 2

Status: Public Hearing

In Control: City Council

File Type: Ordinance

Agenda Number:

Title

Ordinance - Public Hearing Continuation and First Reading on an Ordinance Approving a Change of Zoning from PR, Pre-Development District to PD, Planned Development District for Mixed Uses on Approximately 134.8 Acres of Land Situated in the J. Lawrence Survey, Abstract No. 616, the M. Gregg Survey, Abstract No. 385, J. Lawrence Survey, Abstract No. 616, and the H. Henderson Survey, Abstract No. 432; City of Mansfield, Ellis County, Texas, Located Approximately 1500 Feet East of State Highway 360, South of Lone Star Road, and South of Britton Road (ZC#24-009)

Requested Action

To consider the subject zoning change request.

Recommendation

The City Council met on May 20, 2024 and voted 7 to 0 to table review, consideration, and possible action on this zoning change request to June 10, 2024. Prior to voting to table, the City Council provided additional direction and guidance on the development regulations for the requested PD, Planned Development District.

The direction and guidance provided by the City Council focused on clarification and refinement of specific standards influencing: (i) the development review and approval process; (ii) the allocation of land uses; (iii) the design of the site; and (iv) the relationship of the PD, Planned Development District as crafted and proposed to other adopted codes, ordinances, and regulations of the City of Mansfield.

The Planning and Zoning Commission met on May 6, 2024 and voted 6 to 0 (with one absence) to recommend approval.

Ayes: 6 - Mainer, Axen, Goodwin, Thompson, Shaw, and Moses

Nays: 0

Abstain: 0

Absent: 1 - Bennett

The Department of Planning and Development Services recommends that the City Council approve the zoning change request to PD, Planned Development District as presented.

Description/History

Existing Use: Vacant and One (1) Existing Gas Well with Specific Use Permit.

Existing Zoning: PR, Pre-Development District

Mansfield 2040 Land Use Designation: Mixed-use Regional and Entertainment District
Special Area Plan

Surrounding Land Use & Zoning:

North: Existing Large Lot Single-Family Home and Vacant, S, South Mansfield
Form-Based Development Districts.

South: Vacant, PR, Pre-Development District and City Limits

East: Existing Single-Family Homes, SF-7.5 / 12, Single-family Residential District

West: Vacant, PR, Pre-Development District

Mansfield 2040 Plan Land Use Designation

The subject property is designated as Mixed-use Regional, under the Mansfield 2040 Plan, and it is also located within the Special Area identified as the Entertainment District. As proposed, the development standards within the PD, Planned Development District intend to deliver a primarily residential urban fabric with a variety of housing types with limited mixed-use intentionally located along the future southern extension of Heritage Parkway.

Goals and Strategies

- MU.1 - Support Vibrant Intensity: Integrate higher-intensity residential uses within mixed-use settings at intentional locations within the City.
- MU.2 - Promote Quality Mixed-use Development: Encourage efficiently shared amenities between a variety of uses and users, including parking improvements, infrastructure, and open spaces.
- MU.2 - Promote Quality Mixed-use Development: Establish a balanced and complementary mixture of uses within buildings and developments.
- RE.2 - Expand Local Employment Opportunities: Integrate small-scale offices and businesses within proximity to residential developments.
- RE.3 - Increase Neighborhood-Centered Retail: Remove barriers to infill neighborhood-serving retail and commercial establishments within residential areas.

Goals and Strategies (Specific to Entertainment District)

- ED.2: Promote mixed-use nodes of development of varying intensities within the district that include a variety of appropriately scaled retail, dining, residential, and office uses.

Department of Planning and Development Services Analysis

General

Generally, the proposed PD, Planned Development District standards will deliver development and growth consistent with the land use policies, recommendations, and strategies contained within the Mansfield 2040 Plan for property designated as Mixed-use Regional and for property located within the Entertainment District. However, some of the provisions, as proposed, can be clarified and refined to ensure ease of interpretation and administration and deliver a predictable and expedient development review process.

The Site

Consisting of approximately 134.8 acres of land generally located to the east of State Highway 360, to the south of Lone Star Road, to the south of Britton Road, and to the east of the future extension of Heritage Parkway, this site is intended to be developed as a primarily residential urban fabric (i.e., the T-4 Transect Zone) with limited opportunities for mixed-use (i.e., the Enhanced Urban Edge or the T-4.5 Transect Zone).

The proposed PD, Planned Development District is generally based on the principles of form-based zoning (i.e., focusing development rules and regulations primarily on the form of buildings rather than the use of buildings and their lots).

Development Standards

As proposed, the development standards contained within this PD, Planned Development District are intended to support a range of land uses that are primarily residential in character (i.e., the “T-4 Transect Zone”) with a defined edge of commercial and / or mixed-use activity along the future extension of Heritage Parkway (i.e., the “T-4.5 Transect Zone” or the “Enhanced Urban Edge”). The intent of the PD, Planned Development District is to enable and to encourage “harmonious and coordinated development” and “walkable pedestrian environments that complement the existing housing stock by offering a variety of building types to serve mixed generations”.

The lot dimensions are generally regulated by EXHIBIT “A”, Building Standards; however, even with various lot dimensions, there are no minimum standards or maximum standards for development intensity or density.

Additionally, building height is also regulated by EXHIBIT “A”, Building Standards, with the maximum height of buildings within the proposed PD, Planned Development District being limited to four (4) stories.

The range of land uses proposed is generally consistent with --- and supportive of --- emerging environments that have buildings and activities of regional significance.

The development standards under the PD, Planned Development District --- as proposed --- have been clarified and refined to entirely achieve the desired (and intended) economic, physical, and social outcomes articulated in the Mansfield 2040 Plan, the City Council’s Strategic Priorities, and community expectations for development and growth.

In particular, those clarifications and refinements addressed (City Council direction and guidance provided on May 13, 2024):

- Ensuring review processes are consistent with traditional policy and practice;
- Ensuring references to other provisions in the Zoning Ordinance are accurate;
- Ensuring building frontage standards are clearly defined;
- Removing provisions for multi-family residential;
- Providing minimum performance standards for manor houses;

- Providing minimum performance standards for row houses;
- Clarifying architectural standards;
- Clarifying the schedule of allowable uses; and
- Eliminating potential conflicts between the owners' association and the standards that are proposed within the PD, Planned Development District.

Prepared By

Department of Planning and Development Services

Attachments:

Ordinance

Maps and Supporting Information

Exhibit A - Legal Description

Exhibit B - Draft PD, Planned Development District Standards and Diagrams

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF MANSFIELD, AS HERETOFORE AMENDED, SO AS TO CHANGE THE ZONING ON THE HEREINAFTER DESCRIBED PROPERTY TO PD, PLANNED DEVELOPMENT DISTRICT FOR MIXED USES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Mansfield, Texas, in compliance with the laws of the State of Texas with reference to the amendment of Chapter 155 “Zoning” of the Code of Ordinances, City of Mansfield, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing opportunity to all property owners generally and to owners of the affected properties, the governing body of the City is of the opinion and finds that the Chapter 155 “Zoning” of the Code of Ordinances and Map should be amended.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS:

SECTION 1.

That Chapter 155 “Zoning” of the Code of Ordinances, City of Mansfield, Texas, be, and the same is hereby, amended by amending the Zoning Map of the City of Mansfield, to give the hereinafter described property a new zoning district PD, Planned Development District for Mixed Uses; said property being described in Exhibit “A” attached hereto and made a part hereof for all purposes.

SECTION 2.

That the use and development of the hereinabove described property shall be in accordance with the development standards shown in Exhibits “B”, attached hereto and made a part hereof for all purposes.

SECTION 3.

That all ordinances of the City in conflict with the provisions of this ordinance be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4.

That the above-described property shall be used only in the manner and for the purposes provided for in the Chapter 155 “Zoning” of the Code of Ordinances, City of Mansfield, Texas of the City, as amended herein by the granting of this zoning classification.

SECTION 5.

That should any paragraph, sentence, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional, and shall not affect the validity of the Chapter 155 “Zoning” of the Code of Ordinances, City of Mansfield, Texas as a whole.

SECTION 6.

That any person, firm or corporation violating any of the provisions of this ordinance or the Chapter 155 “Zoning” of the Code of Ordinances, City of Mansfield, Texas, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the Municipal Court of the City of Mansfield, Texas, shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense, and each and every day any such violation shall continue shall be deemed to constitute a separate offense.

SECTION 7.

This ordinance shall take effect immediately from and after its passage on second and final reading and the publication of the caption, as the law and charter in such cases provide.

FIRST READING APPROVED ON THE 10TH DAY OF JUNE, 2024.

DULY PASSED ON THE SECOND AND FINAL READING BY THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, THIS 24TH DAY OF JUNE, 2024.

Michael Evans, Mayor

ATTEST:

Susana Marin, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Ashley Dierker, City Attorney



ZC#24-009

This information is for illustrative purposes only. Not for design or development purposes. Site-specific studies may be required to obtain accurate feature locations. Every effort is made to ensure the information displayed here is accurate; however, the City of Mansfield makes no claims to its accuracy or completeness.

4/24/2024

Property Owner Notification for ZC#24-009

LEGAL DESC 1	LEGAL DESC 2	OWNER NAME	OWNER ADDRESS	CITY	ZIP
2;PT3 1 O T BRITTON		BRITTON METHODIST CHURCH & BRI	4200 BRITTON RD	MANSFIELD, TX	76063
385 M GREGG 15.81 ACRES		CITY OF MANSFIELD	1200 E BROAD ST	MANSFIELD, TX	76063--180
385 M GREGG 19.1659 ACRES		CITY OF MANSFIELD	1200 E BROAD ST	MANSFIELD, TX	76063--180
4;PT3& 5;6 1 O T BRITTON 2.388 ACRES		MARTIN MARIA E	932 COOK ST	MIDLOTHIAN, TX	76065
432 LOTS 1-3 & PT4 & 10 & 11 & PT 12 BLK 10 432 H HENDERSON		CENTRAL THESIS LLC	12404 PARK CENTRAL DR STE 250S	DALLAS, TX	75251--181
432 H HENDERSON 0.5 ACRES		BALLARD JOE ETAL	1200 N HOUSTON ST	COMANCHE, TX	76442--178
432 H HENDERSON 1.5 ACRES		BRITTON CEMETERY	4510 BRITTON RD	MANSFIELD, TX	76065--400
432 H HENDERSON 65.603 ACRES		ABRAMS MYRNA P	2315 MEADOW DR SOUTH	WILMETTE, IL	60091--220
432 H HENDERSON & 616 J LAWRENCE 69.500 ACRES		MC VEAN MELINDA LOU & FRED BAL	1200 N HOUSTON ST	COMANCHE, TX	76442--178
616 385 J LAWRENCE M GREGG 19.575 ACRES		THREE SIXTY REALTY INC	3311 POLO DR	DELRAY BEACH, FL	33483--733
616 385 J LAWRENCE M GREGG 36.26 ACRES		PHILLIPS FAMILY LIVING TRUST	3320 CHADWELL	DALLAS, TX	75234
616 J LAWRENCE 0.667 ACRES		PHILLIPS JUDITH A	3320 CHADWELL DR	FARMERS BRANCH, TX	75234--512
616 J LAWRENCE 101.284 ACRES		SUNBELT LAND INVESTMENT 360 LT	3015 NEW YORK AVENUE SUITE 201	GRAND PRAIRIE, TX	75052
616 J LAWRENCE; 432 H HENDERSON 5.217 ACRES		GREENWAY TRAILS OWNERS ASSOCIA	5757 ALPHA RD STE 680	DALLAS, TX	75240--478
616 J LAWRENCE, 5.0680 ACRES		TARRANT CO WATER	800 E NORTHSIDE DR	FORT WORTH, TX	76102--101
8 1 O T BRITTON 0.517 ACRES		CLARK RONALD CHARLES	920 NOAH ST	MANSFIELD, TX	76065--902

Wednesday, April 24, 2024

Page 1 of 2

Property Owner Notification for ZC#24-009

LEGAL DESC 1	LEGAL DESC 2	OWNER NAME	OWNER ADDRESS	CITY	ZIP
E 225 OF 110 T BRITTON 1.031 ACRES		MASSEY DANIEL J	4150 BRITTON RD	MANSFIELD, TX	76063--871
GREGG, MELTON SURVEY	A 560	CITY OF MANSFIELD	1200 E BROAD ST	MANSFIELD, TX	76063-1805
LOT 1 BLK 1 CREED CONCEPTS ADDN .408 AC		CREED CONCEPTS LLC SERIES C	1105 HUNTINGTON TRL	MANSFIELD, TX	76063
LOT 10 BLK 1 O T BRITTON-REV 0.516 AC		MIZER BILLY & KIMBERLY KELLY	936 NOAH ST	MIDLOTHIAN, TX	76065
LOT 1R BLK 1 MARANATHA RANCH 5.392 AC		MASSEY DAN J	4000 BRITTON RD	MANSFIELD, TX	76063
LOT 6R1, 6R2 & 6R3 BLK 2 O T BRITTON-REV 0.594 AC		HARTMAN BEN	509 ALVARADO ST	MANSFIELD, TX	76063--193
LOT 7 BLK 2 O T BRITTON-REV 1.085 AC		MASON SANDRA L	936 COPE ST	MIDLOTHIAN, TX	76065
LOT 9 BLK 1 O T BRITTON-REV 0.691 AC		CUEVAS KENEDI H	928 NOAH ST	MIDLOTHIAN, TX	76065
LOT PT 4 BLK 6 O T BRITTON-REV 0.881 AC		MASSEY DAN J	4150 BRITTON RD	MANSFIELD, TX	76063--871
LOT PT 5 BLK 1 O T BRITTON-REV 0.37 AC		STORY HAROLD R & SUE	4224 BRITTON RD	MANSFIELD, TX	76063--872
LOT PT 6 O T BRITTON-REV 0.17 AC		MUWAQUET MARWAN F	9606 FAIRWAY VISTA DR	ROWLETT, TX	75089
LOT PT 7 BLK 1 O T BRITTON-REV .496 AC		TRIPLE K ASSETS LLC	2909 TURNER WARNELL RD	ARLINGTON, TX	76001
NEILL, SAMUEL C SURVEY	A 1159	CITY OF MANSFIELD	1200 E BROAD ST	MANSFIELD, TX	76063-1805
NEILL, SAMUEL C SURVEY	A 1159	BUTLER HERITAGE LLC	PO BOX 297	LANCASTER, TX	75146
W 150 OF 110 T BRITTON 0.689 ACRES		MASSEY FRANK A	3953 BETTY LN	CLEBURNE, TX	76031--000
WPT 51 O T BRITTON 0.5 ACRES		MASSEY DANIEL JAY	4150 BRITTON RD	MANSFIELD, TX	76063--871

METES AND BOUNDS DESCRIPTION – TRACT 1

BEING a tract of land situated in the Milton Gregg Survey, Abstract No. 385, Joseph Lawrence Survey, Abstract No. 616 and the Hugh Henderson Survey, Abstract No. 432 in Ellis County, Texas, being part of a tract conveyed to Phillips Family Living Trust, by deed recorded in Volume 2556, Page 2207 of the Deed Records of Ellis County, Texas, and Melinda Lou McVean by deed recorded in Volume 2392, Page 483 of the Deed Records of Ellis County, Texas, and Myrna Abrams by deed recorded in Volume 2575, Page 2189 of the Deed Records of Ellis County, Texas, and Fred B. Ballard by deed recorded in Volume 1806, Page 2460 of the Deed Records of Ellis County, Texas, with the subject tract being more particularly described as follows:

BEGINNING at the northwest corner of said Ballard tract and lying in the centerline of Britton Road;

THENCE, N 89°14'31" E, 1492.78 feet along said Britton Road to the northwest corner of Lot 1-R, Block 1 of Maranatha Ranch Addition, an addition to Ellis County, Texas, according to the plat thereof recorded in Cabinet D, Page 256 of the Plat Records of Ellis County, Texas;

THENCE along the boundary of said Lot 1-R, Block 1, the following courses and distances:

S 01°17'07" E, 213.06 feet; S 19°48'31" W, 181.44 feet;

N 65°11'29" W, 192.67 feet; S 64°29'31" W, 578.74 feet;

S 30°20'08" E, 320.06 feet to the northwest corner of said Myrna Abrams tract;

N 64°29'31" E, 694.54 feet;

N 16°55'29" W, 125.71 feet;

N 19°48'31" E, 195.03 feet;

N 70°17'29" W, 15.00 feet;

N 01°11'29" W, 106.45 feet;

N 43°48'31" E, 77.78 feet;

N 00°03'49" W, 43.92 feet to the northwest corner of said Abrams tract;

THENCE, N 89°56'11" E, 225.23 feet along said centerline of Britton Road to the northwest corner of The Original Town of Britton Addition, an addition to Ellis County, Texas, according to the plat thereof recorded in Volume 158, Page 45 of the Plat Records of Ellis County, Texas;

THENCE along the southwest line of Original Town of Britton, the following courses and distances:

S 07°00'12" E, 24.57 feet;

S 00°03'49" E, 200.00 feet;

N 89°41'11" E, 300.28 feet;

S 35°18'49" E, 991.11 feet to a northern corner of Corp. of Engineers tract;

April 16, 2024

THENCE, S 17°41'11" W, 423.06 feet to a northern line of Britton Cemetery;

THENCE, S 76°48'57" W, 197.52 feet to a 114 foot x 381 foot save and except tract out of Britton Cemetery;

THENCE, S 11°48'49" E, 381.00 feet along said save and except tract;

THENCE, N 78°11'11" E, 202.02 feet along said save and except tract at a corner of said Corp. of Engineers tract;

THENCE, S 06°34'48" E, 872.63 feet along said western line of said Corp. of Engineers tract to the northeast corner of a tract of land conveyed to Greenway Trails Owners Association, by deed recorded in Instrument No. 2122809 of the Deed Records of Ellis County, Texas;

THENCE, S 89°51'37" W, 780.69 feet to the southwest corner of said Myrna Abrams tract;

THENCE, S 89°14'31" W, 322.22 feet to the northwest corner of said Greenway Trails Owners Association tract and the northeast corner of a tract of land conveyed to Sunbelt Land Investments / 360 Ltd., by deed recorded in Volume 2746, Page 1136 of the Deed Records of Ellis County, Texas;

THENCE, S 61°44'31" W, 741.67 feet to the southwest corner of said Melinda Lou McVean tract;

THENCE, S 62°29'06" W, 399.37 feet to the most southern corner of said Phillips Family Living Trust tract;

THENCE, N 52°26'13" W, 191.08 feet to the east line of an easement granted to Texas Electric Services Co. by deed recorded in Volume 557, Page 59 of the Deed Records of Elis County, Texas;

THENCE, N 03°56'55" W, 2367.96 feet along the east line of said Texas Electric Service Co. easement to the southeast property line of a tract of land conveyed to City of Mansfield, by deed recorded in Instrument No. 2245479 of the Deed Records of Ellis County, Texas;

THENCE, N 60°22'31" E, 88.92 feet;


THENCE, N 30°15'29" W, 800.00 feet to the POINT OF BEGINNING with the subject tract containing 5,871,907 square feet or 134.8 acres of land.

"This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

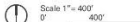
April 16, 2024



Notes



Scale 1" = 400'




Development Team

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 Dallas, TX 75201
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 Spars Engineering & Surveying
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 Contact: Danny McCamish, PE.
 Email: danny.mccamish@sparsengineering.com

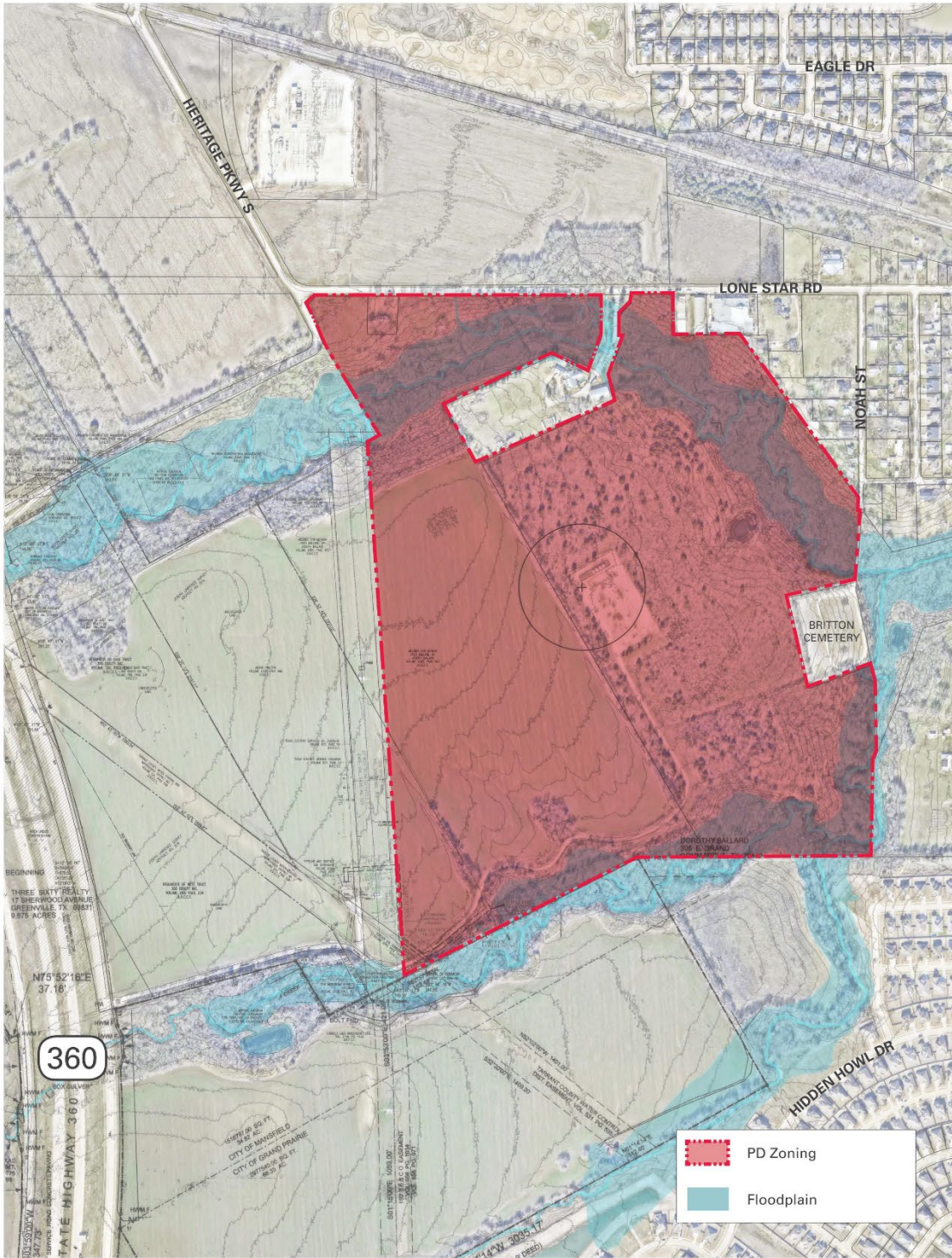



ARCADIA
Lonestar Mansfield


EXHIBIT E LOCATION MAP

Milton Gregg Survey, Abstract No. 385
 Joseph Lawrence Survey, Abstract No. 816
 Hugh Henderson Survey, Abstract No. 432
 City of Mansfield, Ellis County, Texas
 April 16, 2024
 134.8 Acres
 ZC# -

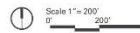
Submittal #1



Notes



Scale 1" = 200'




Development Team

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Engineer / Surveyor:
 Spiers Engineering & Surveying
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Lonestar Mansfield

EXHIBIT F ZONING EXHIBIT

Milton Gregg Survey, Abstract No. 385
 Joseph Lawrence Survey, Abstract No. 616
 Hugh Henderson Survey, Abstract No. 432
 City of Mansfield, Ellis County, Texas
 April 15, 2024
 134.8 Acres
 ZCF

Submittal #1

**EXHIBIT “B” FOR ZC#24-009
Lonestar Mansfield
PD, Planned Development District**

ARTICLE 1. ADMINISTRATION

1.1. Title

This PD, Planned Development District is known as the “Lonestar Mansfield PD, Planned Development District” and may be cited as the “PD, Planned Development District”.

1.2. Purpose and Intent

This PD, Planned Development District is meant to encourage and enable:

- harmonious and coordinated development;
- development that considers natural features, community facilities, pedestrian / vehicular circulation in conformance with the Thoroughfare plan, and land use relationship with surrounding properties; and
- walkable pedestrian environments that complement the existing housing stock by offering a variety of building types to serve mixed generations.

1.2.1. General Intent

The general intent of this PD, Planned Development District is to facilitate a diverse and complementary mixture of residential, and civic uses that will produce authentic, compact, and pedestrian-oriented environments that are worthy of emulation.

1.2.2. Community Intent

This PD, Planned Development District is to be implemented to assure that:

- the community retains its distinct natural and unique visual character;
- green corridors are used to both define and connect urbanized areas;
- compact, mixed-use, mixed generational, and pedestrian-oriented development is generally established as a pattern for development;
- interconnected networks of Thoroughfares are designed to disperse traffic and to reduce the length of vehicle trips;
- a range of residential unit types and sizes are distributed throughout the community;
- civic activities are not isolated in remote, single-use complexes; and
- a range of open spaces, specifically greens, parks, and squares are distributed throughout the community.

1.2.3. Block and Building Intent

This PD, Planned Development District is also to be implemented to provide that:

- block structure and the spatial form of public areas prioritize the pedestrian while adequately accommodating motor vehicles;
- the design of Thoroughfares and buildings reinforce safe environments for pedestrian dominance;
- buildings, streetscapes, and landscaping are designed to contribute to the spatial definition of Thoroughfares;
- building architecture and landscape design grown from local climate, topography, history, and building practice;

- the harmonious and the orderly evolution of urban areas be secured through regulating the form of buildings;
- design is flexible to prevent functional obsolescence; and
- timeless architecture be used to prevent fashion obsolescence and monotony.

1.3. Applicability

1.3.1. Zoning District Applicability

The provisions of this PD, Planned Development District shall only be applied to the parcel(s) of land described in **Exhibit D: Legal Description**, in the location generally shown on **Exhibit E: Location Map**, and the zoning boundaries of which are also shown on **Exhibit F: Zoning Exhibit**. All development shall be in accordance with the rules and regulations of this PD, Planned Development District, and the Regulating Plan(s) recorded hereunder, and shall be binding upon the Developer thereof, and his and all successors and assigns, and shall also limit and control all applications for building permits.

1.3.2. Relationship to the City of Mansfield Code of Ordinances

- 1.3.2.1.** In the event of a conflict between the provisions of this PD, Planned Development District, and any other codes, ordinances, regulations, and standards of the City of Mansfield, Texas, the provisions of this PD, Planned Development District shall control.
- 1.3.2.2.** Provisions of any other codes, ordinances, regulations, and standards of the City of Mansfield, Texas shall continue to be applicable to all issues that are not covered by the provisions of this PD, Planned Development District.
- 1.3.2.3.** The Definitions set forth in Article 10 contain terms that are integral to this PD, Planned Development District. Those terms not defined in Article 10 or in Chapter 155, the Mansfield Zoning Ordinance, shall be accorded their commonly accepted meanings. In the event of a conflict between a definition in this PD, Planned Development District, and a definition in any other codes, ordinances, regulations, and standards of the City of Mansfield, Texas, the definition in this PD, Planned Development District shall control.

1.3.3. Interpretation

- 1.3.3.1.** In the event of a conflict between the provisions of this PD, Planned Development District and any of and the numerical metrics of its tables and the diagrams, photographs, drawings, exhibits, and illustrations, the written text of this PD, Planned Development District shall control.
- 1.3.3.2.** Provisions of this PD, Planned Development District are activated by “SHALL” or “ARE” when required and “MAY” when optional.

ARTICLE 2. APPROVALS PROCESSES

2.1 Development Process

The development process and requirements shall conform to the standards and progression as set forth in this article and where not in conflict with Section 155.066 “PD, Planned Development District Regulations”. The development process for this PD, Planned Development District will be administered by the Director of Planning and requires a Regulating Plan or Regulating Plans for review and approval. No application for a preliminary plat, a final plat, or a building permit may be made prior to review and approval of the Regulating Plan or Regulating Plans.

2.1.2 Regulating Plan

The approval of a Regulating Plan shall be required prior to the development of any tract of land. The submittal of a Regulating Plan is required within 90 days of the zoning approval by the City Council and shall fully satisfy the requirements of the Development Plan for this PD, Planned Development District. The Regulating Plan shall generally conform to the approved Development Agreement, and the provisions of these PD, Planned Development District standards. An approved Regulating Plan is not subject to expiration. A Regulating Plan submitted in accordance with the provisions of this PD, Planned Development District and requiring no Variances may be approved by the Director of Planning if it conforms with this PD, Planned Development District, including any Warrants, the Development Agreement, and all other applicable codes, ordinances, and regulations of the City.

2.1.2.1 Regulating Plan Requirements

A Regulating Plan shall contain the following details if applicable to the proposed development or site conditions:

- PD, Planned Development District Boundaries
- Thoroughfare Network. The Thoroughfare Network shall identify Thoroughfares as shown on **Exhibit B: Thoroughfare Assemblies**.
- Open Space. Open Space meeting the requirements of Section 3.3.
- Terminated Vistas (shall meet the requirements of Section 3.4.1);
- Cross-Block Paseos (shall meet the requirements of Section 3.4.2);
- Protected Trees and tree clusters (if any);
- Trails;
- Each principal building shall be located within 800 feet of Open Space areas;
- Statement that residential building type variety will be met at buildout (shall meet the requirements of Section 4.5.1);
- Table showing compliance with Row House maximums (shall meet the requirements of Section 9.2.6)
- Key focal point(s) or Landmark features;
- Minimum / maximum building heights, building categories, and land use overlay district(s), if applicable;
- Phasing Plan and Transect Zones;
- Any requirements specific to the site based on applicable codes, ordinances, or regulations;
- Any requests for Warrants, if applicable; and
- Any requests for Variances which may only be considered and approved pursuant to the provisions in Section 155.113 of the Mansfield Zoning Ordinance.

2.1.2.2 Site Analysis Exhibit

A Regulating Plan submittal shall include a Site Analysis Exhibit showing the existing site conditions as set forth herein. Depending on site context, the Site Analysis Exhibit may include:

- Existing utility placement;
- Type and location of existing structures;
- View corridors;
- Condition of existing streets;
- Drainage (e.g., drainage courses, floodplain and floodway);
- Existing mature trees and vegetation masses;
- Topography;
- Adjacent publicly owned land, Civic, health facilities, schools, libraries, fire stations, hospitals, churches, et cetera;
- Identification of adjacent uses; and
- Other landmark features within the subject property.

2.1.3 Approval of Regulating Plan

2.1.3.1 Approval of Regulating Plan

The Director of Planning may approve an application for a Regulating Plan if the Regulating Plan meets all requirements of this Section, the Development Agreement, and all other applicable codes, ordinances, and regulations, and there are no Variances requested.

2.1.3.2 Denial of Regulating Plan

The Director of Planning may deny an application for a Regulating Plan if the Regulating Plan fails to meet the requirements of this Section or any other applicable codes, ordinances, and regulations.

2.1.3.3 Notification of Regulating Plan Decision

The Director of Planning shall notify the Developer of his / her decision within forty-five (45) days of the date the application was filed with the Department of Planning and Development Services. If the Director of Planning does not approve or disapprove the Regulating Plan within forty-five (45) days after the Regulating Plan is filed, the Regulating Plan shall be deemed denied and maybe appealed for review pursuant to Section 2.1.3.6.

2.1.3.4 Developer Response to Denial

After the denial of a Regulating Plan by the Director of Planning, the Developer may submit to the Director of Planning a written response that remedies each reason for denial provided in the written statement within 15 days.

2.1.3.5 Developer Response to Denial

If the Director of Planning receives a response under Section 2.1.3.4, the Director of Planning shall determine whether to approve or deny the Developer's previously denied Regulating Plan not later than 15 days after the date the response was submitted. If the Director of Planning does not approve or deny the Regulating Plan within 15 days of submittal, the Regulating Plan shall be deemed denied and may be appealed for review pursuant to Section 2.1.3.6.

2.1.3.6 Appeal

Denial of a Regulating Plan by the Director of Planning may be appealed to the City Manager. The appeal must be filed within 15 days of the date of the Director of Planning's action or the expiration of the Director of Planning's time for taking action on the Regulating Plan or a response. The City Manager may approve, approve with modifications, or deny the Regulation Plan. If the City Manager denies the Regulating Plan or does not take action on the Regulating Plan within 15 days of the filing date for the appeal, the Regulating Plan shall be deemed denied by the City Manager and the Developer may appeal to the City Council for review of the Regulating Plan. The appeal to City Council must be made by filing written notice with the Director of Planning within 15 days of the City Manager's decision to deny the Regulating Plan or the expiration of the City Manager's time for taking action on the Regulating Plan. After considering the Director of Planning's and the City Manager's decisions, the City Council may approve, approve with modifications, or deny the Regulating Plan. If the City Council denies the Regulating Plan, the denial is final.

2.1.4 Modification to an Approved Regulating Plan

2.1.4.1 Thoroughfare Assemblies

The location of any Thoroughfare Assemblies shown on an approved Regulating Plan may be shifted in any direction from the locations shown on the approved Regulating Plan by right provided such modifications do not remove a thoroughfare from the Thoroughfare Assemblies or change a street type. Removal of a thoroughfare from the Thoroughfare Assemblies or a change in a street type may be approved by Warrant.

2.2 Site Plan Approval

2.2.1 General

Application for review and approval of a Site Plan Approval shall be done in accordance with the provisions of this Section. Any required architectural reviews shall run concurrently with the required Site Plan Approval review under this section. Site Plans shall conform to the rules and regulations of this PD, Planned Development District, and the approved Development Agreement, the Regulating Plan, and Preliminary and Final Plats. Approval of civil and utility plans shall not require approval of Site Plans along the adjacent blocks. A Site Plan application is for one or more buildings on a specific block. A Site Plan shall not be required for the submission or approval of a plat or civil engineering infrastructure plans. A separate Site Plan Approval shall only be required for individual tracts constructing building types in Category 4, as indicated in **Exhibit A: Building Standards**.

2.2.2. Site Plan Approval

For all Site Plans, applications submitted for approval shall include the following information and documents and demonstrate compliance with the provisions contained within this PD, Planned Development District and the approved Development Agreement, approved Regulating Plan, and approved plats:

- Proposed building types corresponding to the criteria for Category 4 Buildings in **Exhibit A: Building Standards**;
- Build-to Line in accordance with the respective frontage standards;
- Delineation, by type, of proposed streets, alleys, mews streets, public easements, buildings, parking areas, and landscaped areas;
- All proposed encroachments in right-of-way (ROW) or easements;
- Schematic exterior building elevations indicating materials, colors and other architectural features (as may be required);
- Identification of protected trees and tree clusters as defined in the Code of Mansfield, Texas, and those that that are to be preserved;
- Landscape and streetscape areas identified;
- Identification of Terminated Vista Locations; and
- Warrants, if any (any variation to this Section’s standards must be specifically requested).

2.3 Flexibility

There shall be three types of deviations from the requirements of this Section: Warrants, Special Exceptions in accordance with the requirements of Section 155.082 of the Mansfield Zoning Ordinance, and Variances in accordance with the requirements of Section 155.113 of the Mansfield Zoning Ordinance. Any requests for Warrants, Special Exceptions in accordance with the requirements of Section 155.082 of the Mansfield Zoning Ordinance, or Variances in accordance with the requirements of Section 155.113 of the Mansfield Zoning Ordinance shall not subject the entire application to review and consideration, but only that portion necessary to rule on the specific issue requesting relief.

2.3.1 Warrants

A Warrant is a modification that allows a practice that is not consistent with a specific provision of this PD, Planned Development District that is justified by the intent and purpose of this PD, Planned Development District. Except as otherwise explicitly provided for in the rules and regulations set forth in this PD, Planned Development District, a Warrant may only be requested to allow for one or more of the following practices:

- Dimensional Requirements for Building Setbacks. The Developer or a property owner may request a Warrant for a modification of up to 10 percent of the required building setback.
- Modifications to Approved Site Plans. The Developer or a property owner may request a Warrant for modifications to increase by up to a maximum of 10 percent the lot coverage or other area measurement provided.
- Modifications to Approved Thoroughfare Assemblies to delete a thoroughfare from the Thoroughfare Assemblies or change a street type. The Developer or a property owner may request a Warrant for modifications to a thoroughfare from the Thoroughfare Assemblies.
- Modifications to Building Materials and Configurations. The Developer or a property owner may request a Warrant from the Building Materials and Configurations found in Article 8, provided that such request shall not be used as a request to add materials and configurations that are not allowed by the provisions of this PD, Planned Development District.

The Director of Planning shall have the authority to administratively approve or deny a request for a Warrant. The Director of Planning’s decision to deny a Warrant may be appealed to the City

Manager or his / her designee within 30 days of the Director of Planning's decision. The City Manager's decision to deny a Warrant may be appealed to the City Council, and such appeal must be made within 30 days of the City Manager's decision. The City Council may approve, approve with modifications, or deny a Warrant appeal, and the City Council's decision shall be final. An appeal of a decision by the Director of Planning or the City Manager shall be filed with the Director of Planning.

The following requirements and standards may not be modified by Warrant:

- The required provision of alleys.
- The minimum amount of required Open Space.
- The allowable building uses and the specific uses.

2.4 Owners' Association

2.4.1 All property developed in accordance with the provisions of this PD, Planned Development District shall be included in a mandatory Owners' Association. The mandatory Owners' Association shall be responsible for the maintenance of the private amenities and for all common areas within the PD, Planned Development District (e.g., screening fences, common areas, parks, amenity centers, and landscaping).

2.4.2 The Association Documents must be reviewed by the City Attorney prior to the filing of a final plat. The Association Documents shall be submitted in a timely manner to allow for a minimum of 30 days review prior to submission of a final plat application. Failure to submit the Association Documents or submitting incomplete Association Documents may result in delay of construction, acceptance of the subdivision or delay in approval of a building permit. The City does not accept the responsibility for any delays in construction, approval or acceptance of the subdivision caused by the failure to submit the Association Documents or the inaccuracy of the Association Documents. The Association Documents shall be recorded in the real property records for the appropriate County simultaneously with the recording of the final plat.

2.5 Architectural Pattern Book

This PD, Planned Development District regulates building types, Thoroughfares, massing and placement of buildings, relationship of buildings to the streets, general intensity of development in the Regulating Plan area, allocation of open space, and economic goals of the overall project. The Developer, a property owner, or an Owner' Association may prepare or may have prepared on their behalf, an Architectural Pattern Book as part of the Owners' Association Documents. An Architectural Pattern Book may be submitted to the Director of Planning for review. The review process is to help guide the structure of the Architectural Pattern Book. The intent of the review is to strive to create an authentic Architectural Pattern Book that will guide design and the construction or modification of well-designed and sensible buildings and landscaping that work together harmoniously, while the individual buildings and their landscaping, themselves, are different, and to identify if the Architectural Pattern Book conflicts with any rules and regulations set forth in this PD, Planned Development District. The Director of Planning may only offer advice and recommendations concerning an Architectural Pattern Book. The Owners' Association is not permitted to review and approve any Architectural Pattern Book that conflicts with any of the rules and regulations as set forth under this PD, Planned Development District.

2.5.1 Architectural Review Process

The design and the construction of all buildings shall fully comply with the standards for building materials and configurations as set forth in Article 8. Once a building permit is approved in accordance with the provisions of this PD, Planned Development District and all other applicable codes, rules, and regulations adopted by the City of Mansfield, Texas, it shall be considered complete. The review process for any subsequent permits may not consider items already approved in a previous permit, unless required otherwise by applicable laws, ordinances, and standards.

2.5.2 Approvals for Residential Buildings

Single family residential detached and single-family residential attached (i.e., row house) building plans shall conform to a Master Set of Plans reviewed and approved by the Director of Planning to ensure compliance with the rules and regulations of this PD, Planned Development District, and to include any approved Warrants. The Master Set of Plans shall consist of individual building plans and related elevations. The Master Set of Plans is architectural in nature and will not include mechanical, electrical, plumbing, and other structural details that are required for a building permit submittal. Once approved by the Director of Planning, the individual building plans, including related elevations in the Master Set of Plans, may be repeated without additional Director of Planning review. The collection of original copies of the approved Master Sets of Plans will be maintained by the City for future reference; and all such plans shall be provided in a digital format approved by the Director of Planning. Additional or separate reviews shall not be required on a Master Set of Plans that have been approved and are used as approved. Any changes, as determined by the Director of Planning, shall be reviewed and approved by the Director of Planning.

ARTICLE 3. SITE DEVELOPMENT STANDARDS

3.1 Development Standards Description

Development Standards in the PD, Planned Development District consists of primarily residential uses in the T-4 Transect Zone and the T-4.5 Transect Zone (i.e., the “Enhanced Urban Edge”) providing limited mixed-use in a formal urban fabric, as shown on **Exhibit G: Transect Zone Exhibit**. It must have a diverse range of residential building types to provide housing opportunities to a broad range of household types. The setbacks are tight, and landscaping is formal as typically consistent with traditional neighborhoods. Open space is formal and intentionally implanted in the neighborhood to provide walkable destinations.

3.2 Thoroughfare Standards

All Thoroughfares shall be constructed in accordance with the standards as shown in **Exhibit B: Thoroughfare Assemblies**.

3.2.1. Thoroughfare Modification

Modifications to Thoroughfares to accommodate traffic calming, accommodate pedestrian and bike traffic, modify on-street parking configuration, and provide on-street micro-transit facilities, may be approved by Warrant.

3.2.2. All Thoroughfares shall terminate with other Thoroughfares in intersections, as shown in **Exhibit C: Intersection Assemblies**, to form a network. Cul-de-sacs are prohibited and shall only be approved on a Regulating Plan by Warrant due to a site constraint. Temporary cul-de-sacs and dead ends are

allowed by right as an intermediate, temporary condition between project phases, but the design must be approved by the Department of Engineering Services and the Fire Department.

3.2.3. Block Definition

All Thoroughfares shall define blocks not exceeding the following perimeter lengths, measured as the sum of lot frontage lines:

- 2,100 feet maximum, 750 feet maximum block face.
- For purposes of calculating maximum block length, a block may be defined on one edge by open space, which is not included in the calculation for block face or block perimeter provided that pedestrian connectivity is maintained through the open space. A green street, woonerf, cross-block paseo will qualify as a street in calculating block dimensions.

3.2.4. Utility Placement

- Utility service and distribution lines (public, franchise, irrigation, and private) shall be placed underground within the right-of-way, including traffic lanes and sidewalks, or within an alley containing a utility easement.
- Utilities, franchise utilities, master irrigation, and private utilities shall be allowed in designated easements in open spaces.
- In cases where utility locations shall diverge from typical locations as provided in **Exhibit B: Thoroughfare Assemblies**, utilities should be located where they will not prevent planting of street trees or tree lawns to the extent possible.
- Transformers, switchgear, and electric meters should be installed along alleys, wherever feasible.
- The placement of transformers, switchgears, and electric meters shall comply with the requirements of Section 8.6.1, and may be installed within the right-of-way.
- Placement of transformers, switchgears and meters may be placed in insets of buildings or behind the build-to-line, but shall not be required to be placed in insets of buildings or behind the build-to-line.

3.2.5. Traffic Calming

3.2.5.1. Horizontal Deflection Improvements

Chokers, chicanes, and tapers are permitted by Warrant.

3.2.5.2. Vertical Deflection Improvements

- Traffic calming improvements that use speed bumps, and speed humps, are not permitted.
- Traffic calming improvements that use Speed Tables are permitted where integrated into pedestrian crossings at intersections and may be used to integrate open spaces across a street by Warrant.
- The use of Woonerfs as a traffic calming improvement are permitted as shown on the approved Regulating Plan, or by Warrant.

3.2.6. Private Use of Public Right-of-way (ROW)

- On-street parking spaces may be converted to an extended patio seating area, retail space or open space by Warrant.

- On-street parking spaces may be allocated as designated parking, storage and charging of micro transit (scooters, e-bikes, etc.) as shown in the Regulating Plan.
- Electric car charging stations may be permitted in the right-of-way as shown in the Regulating Plan within the Enhanced Urban Edge only, provided they do not impede required street landscaping, traffic, or pedestrian movement as determined by the Director of Public Works.
- Shore power for food trucks, exterior lighting, and events may be permitted as shown in the Regulating Plan in the right-of-way, provided they do not impede required street landscaping, traffic, or pedestrian movement.
- An Owners' Association may regulate on-street parking relative to the use of its tenants, residents, and invitees through the use of a license agreement with the City, subject to review and approval by the City Manager or his / her designee.
- Food Trucks and similar uses in the right-of-way may be permitted through a license agreement and / or special event permit subject to review and approval by the City Manager or his / her designee.

3.3. Open Space Standards

3.3.1 Site Requirement

Any area to be designated Open Space shall be shown on the Regulating Plan, preliminary plat, and final plat. A minimum of 15 percent of the total project area contained in a Regulating Plan shall be Open Space. Any single phase may be less than 15 percent of Open Space so long as in the aggregate 15 percent of total site area is met by completion of the last phase of the Regulating Plan. Open Space dedicated to the City shall count towards the Open Space requirement. Open Space with minimum size of 2,000 square feet is required within an 800-foot radius of every principal building. Open Space meeting the requirements of this PD, Planned Development District shall be reviewed and approved by the Executive Director of Community Services as a part of approval of the Regulating Plan. Open space shall conform to the provisions set forth in this PD, Planned Development District.

3.3.2 Maintenance of Private Open Space

Any private Open Space and structures thereon shall be maintained by the property owner, the Owners Association, or other owning entity. The property owner, Owners Association, or other owning entity may adopt rules and regulations regarding access, permitted uses, security (i.e., policing) and maintenance responsibilities for the Open Space. Private Open Space not accessible to the public may not count toward the minimum Open Space requirement.

3.3.3 Private Facilities within Public and Private Open Space

Private cafes, beer gardens, recreational facilities, and temporary buildings are allowed to operate within Open Space with the permission of the Owners' Association or other owning entity. No additional parking is required for these uses.

3.3.4 Public Access

Public Open Space shall be accessible to the public from sunrise to sunset. Pedestrian and / or vehicular access to Open Space shall be provided.

3.3.5 Design Criteria

- All areas designated as Open Space shall be designed with benches - the equivalent of one bench every 250 linear feet of trail or sidewalk in the Open Space. These benches may be clustered in areas of interest.
- Open Spaces shall provide shade trees that provide a minimum of 20 percent of the Open Space area to be covered by tree canopy. Shade tree canopy shall be calculated based on average mature tree canopy size. Existing trees shall count towards meeting the 20 percent coverage requirement. Trees shall be prioritized along sidewalks and trails.
- Open Spaces shall be programmed with one or more of the following program elements:
 - Concert space;
 - Farmer's market;
 - Fountain;
 - Outdoor serving;
 - Performance space;
 - Location for Public Art;
 - Water feature;
 - Waterside staircase;
 - Overhead string lighting;
 - Fire pit;
 - Game lawn;
 - Fandango space;
 - Playground;
 - Dog Park facilities; and / or
 - Shore Power for food trucks and events
- Utility easements shall count towards the Open Space requirement provided they are maintained and at least 50 percent of the length of the easement has a building façade(s) oriented towards the space, for lots with buildings oriented towards the Open Space, such that the easement serves as a visible open space. No more than 50 percent of the Open Space requirement shall be met through utility easements.
- Up to 50 percent of a floodplain area, shall count towards the Open Space requirement provided floodplain Open Space programmed in accordance with a Development Agreement and has at least 50 percent of the length of the floodplain has a building façade(s) oriented towards the space, such that the floodplain serves as a visible Open Space from buildings.
- Up to 50 percent of a detention or retention area, subject to review and approval by the Director of Planning, may be designated as Open Space provided that it is programmed in accordance with a Development Agreement without fencing unless such fencing is included in the Open Space design, and designed in a manner that does not call attention to its storm management function and has at least 50 percent of the frontage of the detention or retention area has a building façade(s) oriented towards the space, such that the area serves as a visible Open Space from buildings.

3.3.6 Building Engagement

Where buildings are adjacent to Open Space, Paseo, or trail, the buildings shall be constructed such that Façades are oriented to the Open Space, Paseo, or trail.

3.4. Urban Site Design

3.4.1. Terminated Vista

Where a Terminated Vista is indicated on a Regulating Plan, a substantial terminating element on a building must be located opposite the axial termination of the Thoroughfare. The termination will take the form of an Open Space, a framed Paseo, building, or segment of façade being centered on the axial location.

3.4.2. Cross Block Paseo

Where a cross-block Paseo is indicated on a Regulating Plan, a minimum 20-foot-wide pedestrian access shall be reserved between buildings for the cross-block Paseo. Buildings along a cross-block Paseo must have a Primary or Secondary Frontage. Where there is a capped block end the passage shall be treated as a street corner. Every Paseo must be named on a preliminary or final plat. The term “Paseo” must be incorporated in the name of the passage.

3.4.3. Shared Access

Shared access and / or access easements across parcels are permitted and encouraged. Such easements will be indicated on the Regulating Plan. Shared access easements may be required on the Regulating Plan where the Director of Planning determines the easements are necessary to minimize potential congestion, provide, convenient circulation across adjacent properties, reduce the number of curb cuts and conflict points along a street.

- Commercial and mixed-use development shall be designed to provide for shared access with adjacent parcels.
- Provisions shall be made for connection of pedestrian and vehicle circulation systems with adjacent parcels.
- Vehicular access easements from one lot to adjacent lots and for private driveways within a lot may be provided on the subdivision plat or by separate recorded instrument. Such access easements shall be specifically defined.

3.4.4. Green Fronting Lots

- For platting purposes, not all buildings are required to have public street frontage provided they have access to a Thoroughfare or Open Space. Lots may be accessed from a public street, private street, access easement, alley or a common green using a minimum 5-foot public sidewalk easement.
- Emergency service access may be provided through a dry standpipe in an alley or common green, subject to review and approval by the Fire Marshal.

3.5. Lighting

3.5.1 Intent

Lighting shall be provided to provide a level and consistency of illumination that supports pedestrian activity and promotes safety. All public lighting along public access easements and rights-of-way shall be installed, maintained and operated by the City, or the franchise utility provider, in accordance with the existing City franchise agreement with utility providers. The intent of this PD, Planned Development District is to provide even and glare free lighting throughout the district. The mix of uses requires active management of light levels and color temperatures.

3.5.2 Street Lighting Levels

Lighting levels within public rights-of-way and pedestrian areas will be in compliance with the following foot candle (fc) minimum averages:

- Residential .25 fc
- Commercial / Mixed-use / Retail 1 fc
- Institutional and Public Uses 1 fc
- Parking Areas 1 fc
- Approved Locations Within Public Open Space .5 fc (subject to review and approval by the Executive Director of Community Services)

Light levels along sidewalks may be achieved through a combination of both pedestrian-level lights and building-mounted lighting. A streetlight photometric plan shall be included as part of a civil engineering plan set.

3.5.3. Alley Lighting

Alley lighting shall be located on garage walls facing the alley and will be limited to a maximum of two carriage light fixtures mounted at least 7 feet in elevation, and not exceeding the equivalent of 100 watts each. These lights will be controlled by automatic timers and provide dusk to dawn lighting.

3.5.4. Porch, Arcade, and Colonnade Lighting

Lighting fixtures will be located on walls, ceilings, and overhangs and shall not exceed the incandescent equivalent of 100 watts each. These lights will be controlled by automatic timers and provide dusk to dawn lighting.

3.5.5. Lighting Elements

The following lighting elements will be permitted: incandescent, color-corrected LED, metal halide or halogen, or other similar lighting elements approved by the Director, provided, however, all lighting elements shall be contained in the schedule of approved lighting as shown in the City's franchise agreement with the utility provider. All exterior lights shall not exceed 4,000 kelvin on the light color. Exterior string lights are allowed within the public right-of-way and Open Space if within the above color range. The following lighting elements will not be permitted: cobra head, HID – mercury vapor and sodium vapor, HPS and fluorescent lights. Flood type lights and wall packs are not permitted.

3.5.6. Streetlights

Streetlights are required and shall be reviewed and approved by the Director of Planning. Streetlights need to conform to the lighting standards included in the schedule of approved streetlights offered by the electrical provider in reference to the franchise agreement between the utility provider and the City.

3.5.7. Screened Lighting Source

All spot lighting will be focused narrowly on its intended target such as signs.

ARTICLE 4. LOT AND BUILDING STANDARDS

4.1. Lot Standards

4.1.1 All lots shall either front a Thoroughfare, private street, or an Open Space. The portion of the lot fronting a Thoroughfare, private street, or Open Space shall be designated as its Primary Frontage. A corner lot shall have designated a Primary Frontage along the Thoroughfare, private street, or Open Space and a secondary frontage along the remaining frontage. Any lots, other than a corner lot, fronting more than one Thoroughfare, private street, or Open Space shall have a Primary Frontage on each.

4.1.2 There shall be no minimum nor maximum lot width for newly platted lots, newly assembled lots, or subdivisions of existing lots, as measured along their Primary Frontage, except as provided in **Exhibit A: Building Standards**.

4.2. Lot Coverage

Lot Coverage shall not exceed the 85 percent maximum (Impervious cover maximum: 90 percent, Category 4 buildings 100 percent). Lot Coverage shall be calculated as percentage of building footprint covering a lot and shall not include flatwork, allowed encroachments, and Frontage Types.

4.3. Building Standards

All buildings shall conform to the standards, according to **Exhibit A: Building Standards**.

4.3.1 Building Configuration

4.3.1.1 Building height shall be measured in stories for each habitable level above-ground as provided in below:

- Stories are measured from finished floor to finished ceiling.
- For residential functions, all ground floors shall have a minimum story height of nine feet.
- For commercial and mixed-use functions, ground floors shall have a minimum story height of 11 feet and a maximum of 25 feet. A single floor level exceeding 18 feet at the ground floor shall be counted as two stories.

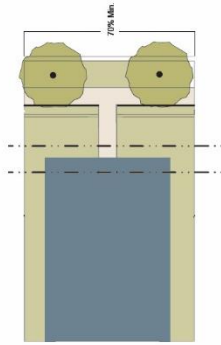
4.3.1.2 Height limits for masts, water towers, belfries, clock towers, chimney flues, or elevator bulkheads shall not count towards building height calculations.

4.3.1.3 Outbuildings are limited to two stories, and they shall be no higher than the principal building on the same lot.

4.3.2 Frontage Requirement

All principal building façades, inclusive of porches, courtyards, and similar encroachments, shall occupy the minimum percentage of the required Primary Frontage within the designated Build-to-Line Zone designated in **Exhibit A: Building Standards** and included in the Regulating Plan as specified below:

- 60 percent min.



60% min.

- The Director of Planning may approve by Warrant, reductions in the Frontage Requirement to accommodate for inset or side private yards.
- Frontage Standards for pie-shaped or irregular shaped lots may be modified due to the size of the building, the percentage of remaining lot space beyond the footprint of the building, and the width of the lot. The excess frontage requires the use of picket fence between buildings or along Secondary Frontages.

4.3.3 Building Entrances

- Buildings are permitted to have a lobby as a secondary entrance in addition to the required principal entrance to the street or Open Space.

4.3.4 Additional Building Criteria

4.3.4.1 Bungalow Court

- Individual dwellings shall require Private Frontages and shall be oriented and built in a way to face each other, perpendicularly or at an angle, around a common green or cap the courtyard fronting on a street.
- Parking may be associated with each unit in the rear or onsite in a common parking area; and parking may also be provided off-site if it is located within 800 feet of the Bungalow Court.
- Dwellings may exist on a single lot or be platted separately with addressing from an alley or from the common green.
- Emergency service may be provided through a dry standpipe in the alley or common green with approval of a Warrant.
- Setbacks shall be calculated at the exterior of the lot, not between individual buildings on a common lot.
- No Bungalow Court shall be located within 800 feet of another Bungalow Court.

4.3.4.2 Outbuildings

- All outbuildings shall comply with the provisions set forth in Section 155.099 of the Mansfield Zoning Ordinance for accessory structures except as provided below.
- Setbacks: The rear setback shall be a minimum of 5 feet from the rear lot line, and the side setback shall be a minimum of 0 feet from the side lot line.

- Outbuilding height shall be limited to 2 stories.

4.4. Frontage Standards

Private frontages shall conform to the requirements provided below.

4.4.1 Primary Frontage Standards

- Lots fronting two or more Thoroughfares or Open Spaces shall utilize frontage types and fences as described in this PD, Planned Development District along each fronting Thoroughfare or Open Space.
- Loading docks, service areas, and utility meters are not permitted along Primary Frontages (this does not apply to designated Loading Areas located along a right-of-way).
- At the principal facade of each building, each first story unit shall provide one of the frontage types described below.
- A front door shall be provided on the street or Open Space frontage.
- Charleston Side Porch building types are a permitted building type. Principal Entrances are permitted along the side of a Charleston Side Porch building, as long as the porch has a door or gate toward the street.
- In support of pedestrian activity, ground floor commercial functions may utilize a portion of the right-of-way for seating, serving, displays of merchandise, temporary signage, or other business-related activities provided there is a minimum 6-foot contiguous clear path maintained within the setback, right-of-way, or any combination of both.
- A dooryard frontage, porch frontage (provided that such frontages consists of stacked porches and is expressly limited to placement in the Enhanced Urban Edge (T-4.5 Transect Zone)), or a stoop frontage shall be provided at the principal entrance of each row house dwelling where fronting on any Thoroughfare or Open Space, including green streets.
- A shopfront frontage shall be required for all ground floor commercial uses.

4.4.2 Allowed Encroachments

Allowed Encroachments are amenities to be chosen by the Developer and are allowed by right. Lot area between the Allowed Encroachments and the street right-of-way line shall be maintained as a landscaped area. Allowed Encroachments are allowed up to two feet of the right-of-way line, unless required otherwise by the Director of Engineering Services.

4.4.3 Private Frontage Types

The private frontages are divided into the following types:

- Yard
- Stoop
- Porch
- Forecourt
- Dooryard
- Shopfront
- Terrace

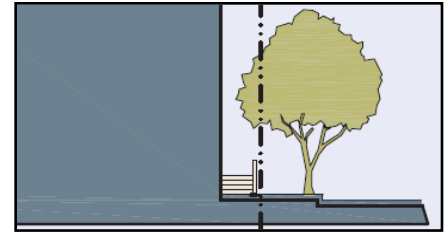
4.4.3.1 Yard Frontages

- Permitted by right as a residential frontage, except within the Enhanced Urban Edge (i.e., the T-4.5 Transect Zone). Yards are prohibited within the T-4.5 Transect Zone.
- Fences and hedges at frontages shall follow fencing standards in Section 4.6.

- Yards may contain landscaping as permitted by this form-based development district and in Section 155.092.

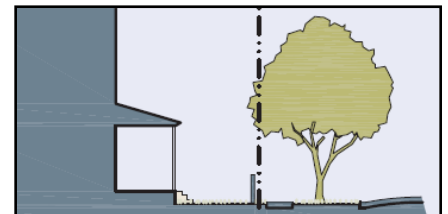
4.4.3.2 Stoop Frontages

- Permitted by right as a residential frontage.
- Stoops may encroach into a front or side street setback to within 2 feet of the right-of-way.
- Stoops may be recessed into the façade.
- Stoop entrances are usually an exterior stair and a landing, but it may be recessed into the volume of the building.



4.4.3.3 Porch Frontages

- Permitted by right as a residential frontage.
- Fences and hedges at frontages shall follow fencing standards in Section 4.6.
- Porches may encroach into a front or side street setback to within 2 feet of the right-of-way.
- Primary Porches shall be no less than 7 feet deep. Door landings and insets are not regulated as porches. Secondary porches limited in depth by setbacks may be shallower.
- A porch shall be measured from nearest adjacent Façade of the building to edge of porch foundation.
- Where porches are used in the Enhanced Urban Edge, they shall be stacked porches (i.e., the porches or balconies on the upper stories encroach into the front setback to the same depth as the porch on the first story).



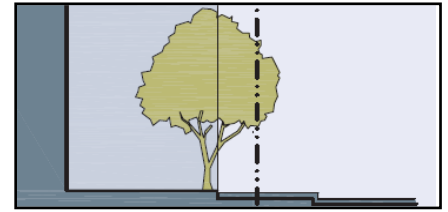
4.4.3.4 Dooryard Frontages

- Permitted by right as a residential frontage.
- Dooryard frontages may encroach into a front or side street setback to within 2 feet of the right-of-way.
- Dooryards shall be a minimum depth of 7 feet measured from the face of the building to the front property line.
- Dooryards shall be fenced or walled; and the required fence or wall shall not exceed 36" in height and the design of fences and hedges at frontages shall follow the applicable standards set forth in Section 4.6.
- Dooryards shall have openings or operable gates to the Thoroughfare or Open Space.



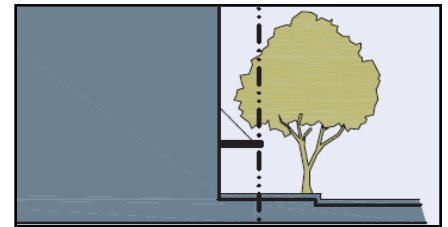
4.4.3.5 Forecourt Frontages

- Permitted by right.
- Forecourts may recess from the frontage line a maximum of 30 feet. Deeper recesses may be allowed by Warrant.
- Forecourts shall be fronted with building frontages.
- Driveways within forecourts shall be limited to 20 feet in width unless required as fire lane.



4.4.3.6 Shopfront Frontages

- Permitted by right.
- All shopfronts shall adhere to the shopfront design criteria in Section 8.7.
- Shopfronts may be freestanding or combined with forecourt frontages.
- The principal entrance shall be at sidewalk grade.
- The principal entrance may be recessed up to eight feet in depth from the building façade.
- Shopfronts may be shaded by awnings as provided in below:
 - Awnings are permitted to encroach into the public right-of-way to within 2 feet of the curb.
 - Awnings shall project horizontally from the building façade a minimum of 6 feet.
 - Awnings may be fixed or movable.
 - Awnings shall provide a minimum vertical clearance of 8 feet.



4.4.3.7 Terrace Frontages

- Permitted by right.
- Terrace frontages may encroach into a front or side street setback to within 2 feet of the right-of-way.
- A terrace may be used to provide outdoor space for units above the first floor.



4.5 Anti-Monotony Standards

4.5.1 Building Type Variety

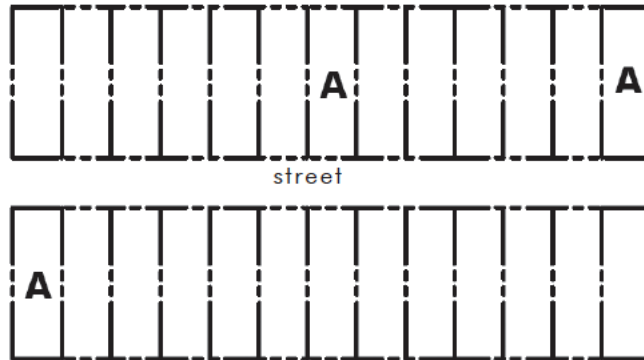
The PD, Planned Development District shall have a minimum residential mix of the following building types as shown in **Exhibit A: Building Standards**:

- Minimum of 15 percent of lots from Category 1.
- Minimum of 15 percent of lots from Category 2.
- Minimum of 15 percent of lots from Category 3.

4.5.2 Façade Variety

Buildings will be subject to the following elevation repeat setbacks. Building Plans with the same elevation will not be repeated within 5 homes on either side of the building in question nor 5 lots on either side of the lot directly across the frontage street or Open Space, as indicated in the graphic

below. Row Houses are not regulated by individual unit façade but by overall building façade. Row House building façades shall not repeat the façade from the buildings on either side or across the street.



4.5.3 Anti-Podding

Residential building types will be spread across a neighborhood and not concentrated in large clusters.

4.6 Fencing Standards

4.6.1 General Standards

4.6.1.1 Materials

Allowed materials include fences made of wood, masonry, quality metal in a variety of styles, tubular steel, and quality wrought iron fencing in a modern style without finials. Examples of prohibited materials include chain link, plywood, particleboard, corrugated metal sheets, and other makeshift materials. High quality plastic fencing may be approved as authorized in the Regulating Plan or by Warrant.

4.6.2 Permitted Fences, Walls, and Hedges

TABLE 1: PERMITTED FENCE, WALL, AND HEDGE STANDARDS

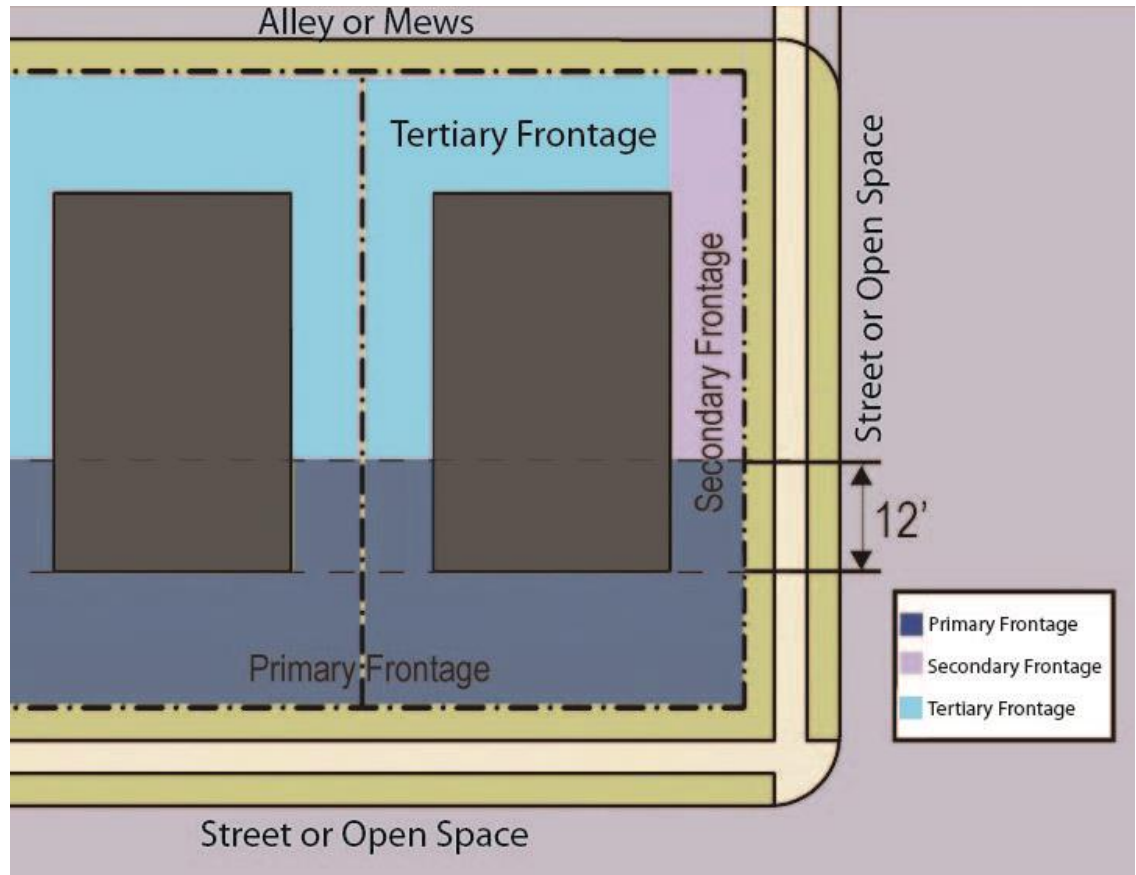
Permitted Fence Area / Purpose	Height*	Minimum Fence Transparency	Acceptable Types/Materials
Primary Frontage: Residential yard facing a front or side street or open space, and within 12 feet behind Build-to-Line between homes.	No more than 40" pickets + 4" for posts. Arbor gateways allowed. Fences shall include planting an adjacent continuous hedge in a minimum 24" wide planting bed alongside street and open space frontages.	25 percent open	Ornamental (metal) Picket (wood) Ranch (wood) Masonry (stone, brick, similar materials) Shrubbery hedge Wood frame wire approved as authorized in the Regulating Plan or by Warrant. These fences shall center on its posts, so the posts are seen from both sides.

Permitted Fence Area / Purpose	Height*	Minimum Fence Transparency	Acceptable Types/Materials
<p>Secondary Frontage: Residential side yard 12 feet behind Build-to-Line fronting a street or open space. No closer than the adjacent enclosed portion of a building facing a side street.</p>	<p>No more than 6 ft in height as measured from the ground. 1) Shall include a top cap 2) Shall include a planting hedge in a minimum 24" bed alongside one fence panel at the corner of alleys</p>	<p>When backing or siding to a trail, fence shall be 75 percent open excluding columns.</p>	<p>Ornamental (metal) Picket (wood) Ranch (wood) Privacy (wood) with a fence cap Masonry (stone, brick, similar materials coordinated with associated building) Shrubbery hedge. Ornamental metal or combination metal and wood shall be used in areas adjacent to common open space to promote views. Wood frame wire approved as authorized in the Regulating Plan or by Warrant All posts shall be oriented towards the inside of the yard.</p>
<p>Tertiary Frontage: Residential side yard 12 feet behind Build-to-Line, fence between lots, rear yard, and alley. (Not fronting a street or open space.)</p>	<p>No more than 6 ft in height as measured from the ground. 1) Shall include a top cap 2) Shall include a planting hedge in a minimum 24" bed alongside one fence panel at the corner of alleys</p>	<p>When facing an alley, the first panel along an alley, When backing or siding to a trail, fence shall be 75 percent open excluding columns. When fence is between homes or along alleys fence shall utilize top cap and may be 0% transparent.</p>	<p>Ornamental (metal) Picket (wood) Ranch (wood) Privacy (wood) with a fence cap Masonry (stone, brick, similar materials coordinated with associated building) Shrubbery hedge. Ornamental metal or combination metal and wood shall be used in areas adjacent to common open space to promote views. Wood frame wire approved as authorized in the Regulating Plan or by Warrant All posts shall be oriented towards the inside of the yard.</p>
<p>Parking area: non-residential and multifamily residential development</p>	<p>No more than 40" pickets + 4" for posts. Fences shall include planting an adjacent continuous hedge in a minimum 24" wide planting bed alongside street, alleys, driveways, and open space frontages.</p>	<p>0 percent</p>	<p>Ornamental (metal) Picket, lattice (wood) with a fence cap Ranch (wood) Bollard and chain Masonry (stone, brick, decorative CMU, similar materials coordinated with associated building) Shrubbery hedge Wood frame wire approved as authorized in the Regulating Plan or by Warrant</p>

Permitted Fence Area / Purpose	Height*	Minimum Fence Transparency	Acceptable Types/Materials
Development perimeter fences and walls	Where provided, shall consist of brick, stacked stone or hedging subject to review and approval by the Director of Planning, provided that no perimeter fence or wall type shall be permitted along any street or Open Space. Wooden Privacy fences shall be permitted when perimeter is adjacent to another privately owned lot, but shall not be allowed adjacent to a lot owned by an Owner's Association.		

*Higher fences are permitted where required to meet pool enclosure requirements.

□



4.6.3 Required Fences, Walls, and Hedges

TABLE 2: REQUIRED FENCE STANDARDS

Required fence Area / purpose	Height	Minimum Fence transparency	Acceptable types/materials
Loading area wing wall	Up to the building parapet, height determined in site plan review	Shall be solid	Masonry (stone, brick, decorative CMU, similar or compatible materials, subject to review and approval by the Director of Planning).
	Shall include the same, similar, or compatible materials, finishes and detailing as the host structure.		

Required fence Area / purpose	Height	Minimum Fence transparency	Acceptable types/materials
Utility substation or facility	6 ft. or sufficient to conceal the substation or minimum height required by the utility provider.	Shall be solid	Masonry (stone, brick, decorative CMU, similar or compatible materials, subject to review and approval by the Director of Planning).

ARTICLE 5. PARKING STANDARDS

5.1 General

The parking requirements shall be determined by the use, as provided below. The parking provided shall include the actual parking spaces provided within the lot and the parking spaces that are along the parking lane corresponding to lot frontages. Tandem parking spaces regardless of configuration shall count towards required parking.

5.2 Off-Site Parking

All required parking shall be on the same lot as the use served, except as follows:

- Up to 100 percent of the required parking may be provided off-site by a parking lot or a parking structure within 800 feet of the subject lot.

5.3 Shared Parking Agreements

Required parking may be provided with shared parking agreements among property owners, tenants, or users. A shared parking agreement shall supersede the single-use parking requirement in Section 5.4. Shared parking standards may be calculated using the 3rd edition (or newer) of the ULI / NPA / ICSC Shared Parking Manual.

- Agreements which share parking between uses with non-conflicting parking demands are encouraged to reduce the amount of land area devoted to parking if the Developer or property owner can demonstrate that shared parking is feasible.
- Where different uses create staggered parking demand periods, shared parking calculations among adjacent parcels and uses is permitted to justify reducing the amount of overall cumulative required parking.

5.4 Parking Requirements

For purposes of the Lonestar Mansfield Planned Development District, minimum parking spaces shall generally not be required, as described in Table 3: PARKING.

TABLE 3: PARKING

Use	Minimum Parking Requirement
Attached and Detached Residential Uses	See Exhibit A: Building Standards .
Lodging	1.0 spaces for each bedroom.

Use	Minimum Parking Requirement
Office	2.0 spaces per 1,000 square feet of gross space.
Restaurant / Retail	2.5 spaces per 1,000 square feet of gross space. A restaurant / retail space under 2,000 square feet shall be exempt from parking requirements. Kiosk, restaurant, retail, food trucks, and recreations uses in ROW and Open Spaces do not require additional parking.
Civic and all Other Functions	Parking requirements for other uses not listed in this PD, Planned Development District shall be in accordance with the provisions for parking requirements in Section 155.091, Off-street parking and loading standards.

5.5 Parking Access

- 5.5.1 All required parking, except for on-street parking, shall be accessed by alleys or private drives and located to the rear or the sides of buildings.
- 5.5.2 All vehicular entrances to parking lots shall be no wider than 24 feet at the Primary Frontage line or the required fire lane width, unless otherwise approved by Warrant.

5.6 Parking and Garage Criteria

5.6.1 Garage Design:

5.6.1.1 Single Family Detached and Row Houses

All garages shall be accessed from an alley or private drive located to the rear or side of the lot.

5.6.1.2 Single Family Detached Lots 60 feet or Wider that share a common rear-yard boundary with private property outside the PD, Planned Development District boundaries.

- **Garage Front Loaded**

A front-loaded garage is permitted in a pull-through configuration if the front of the garage is located in the rear 1/3 of the lot. These shall be shown on the Concept Plan.

- **Garage Side Loaded**

Garages that are side-loaded along a street are permitted at the rear 1/3 of the lot. These require single width garage doors with architectural windows. These shall be shown on the Concept Plan.

5.6.1.3 Carports

All Carports shall be located in the rear 1/3 of the lot provided they are accessed from the alley or a private drive and shall be architecturally consistent in materials and design to the primary building.

ARTICLE 6. LANDSCAPE STANDARDS

6.1 Landscape Standards

All landscaping shall comply with the provisions set forth herein for this Lonestar Mansfield Planned Development District.

6.2 Tree Preservation and Removal

Tree preservation and removal shall follow the standards in Chapter 99, Natural Resources Management, of the Code of Ordinances of Mansfield, Texas. Street Trees shall count towards any tree replacement requirement. Existing trees may be replaced, subject to review and approval by the Landscape Administrator.

6.2.1 Nuisance Trees

Nuisance trees included on the Prohibited Plant List in Section 155.092, Landscaping and Screening Standards, of the Mansfield Zoning Ordinance, may only be removed after tree removal plan has been submitted for review and approval, and a tree removal permit has been issued by the City.

6.2.2 Diseased, Dangerous and Dead Trees

Diseased, dangerous, and dead trees of all species may only be removed after a tree removal plan has been submitted for review and approval, and a tree removal permit has been issued by the City in accordance with all applicable codes, ordinances, and regulations.

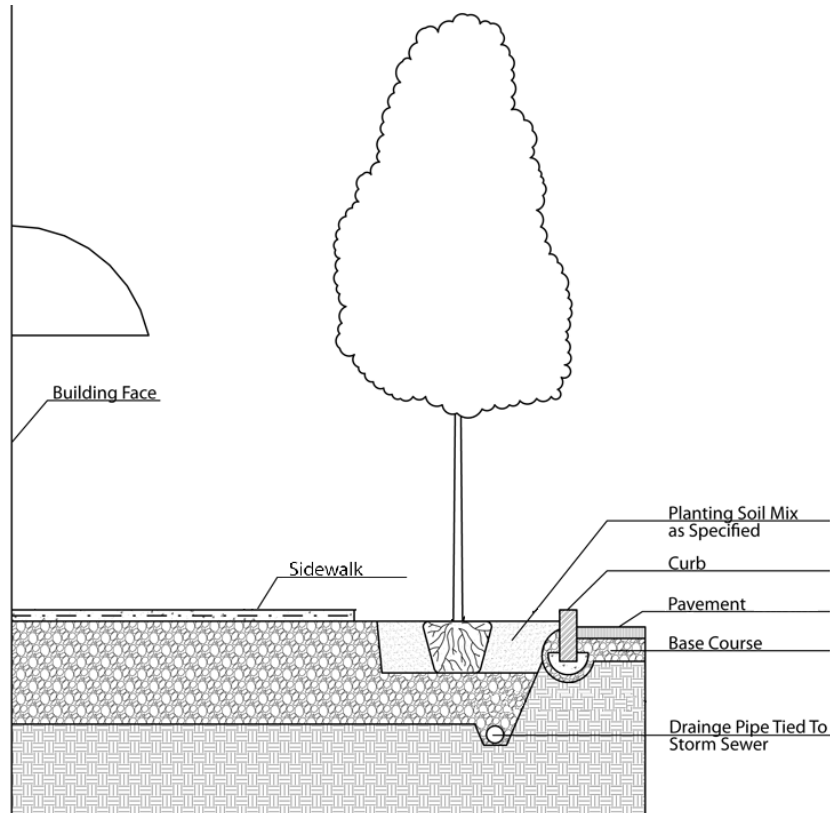
6.3 Street Trees

6.3.1. Street Trees

Street Trees shall be selected from the species list provided in Section 6.3.5 or Section 155.092, Landscaping and Screening Standards, of the Mansfield Zoning Ordinance, and Street Trees shall be planted on center, approximately every 30 feet. Flexibility on planting is permitted to accommodate public and private infrastructure. Street Trees shall be planted prior to the scheduling of a final inspection or issuance of a certificate of occupancy for any structure on each lot.

6.3.2. Installation Criteria

Street Trees from the Approved Street Tree List in Section 6.3.5 or Section 155.092, Landscaping and Screening Standards, of the Mansfield City Code do not require root barriers or structure soil. Trees planted in tree wells shall generally be installed per the standards shown below.



Planting Detail for Tree Wells

6.3.3. Installation Timing

Street trees shall be planted concurrent with vertical development of an adjacent lot by the developer/ builder of the applicable lot.

6.3.4. Maintenance

The obligation to plant, maintain and replace diseased or dead Street Trees within public right-of-way is the obligation of the adjacent property owner unless the responsibility is assumed by an Owners Association. Replacement trees shall be installed within 30 days of notice from the City. At the discretion of the Director of Planning, the time of year may be a mitigating factor for the allowed time to plant replacement trees.

Street trees must be trimmed to a minimum of 7-foot clearance over sidewalks and parking lanes, a minimum of 10-foot clearance over driveways and parking lots, and a minimum of 14-foot clearance over paseos, fire lanes and travel lanes on streets. The age of the tree will be taken into account so early trimming will not result in misshapen trees at maturity.

6.3.5 Approved Street Trees

- Caddo Maple *Acer barbatum* "Caddo"
- Texas Persimmon *Diospyros virginiana*
- Texas Ash *Fraxinus texensis*
- Sweetgum *Liquidambar styraciflua*
- Chinese Pistachio *Pistacia chinensis*
- Texas Pistache *Pistacia texana*

Chinquapin Oak *Quercus muhlenbergii*
Shumard Oak *Quercus shumardi*
Texas Red Oak *Quercus shumardi* "Texana"
Live Oak *Quercus virginiana*
Pond Cypress *Taxodium ascendens*
Bald Cypress *Taxodium distichum*
Winged Elm *Ulmus alata*
Cedar Elm *Ulmus crassifolia*
Lacebark Elm *Ulmus parvifolia*

6.4 Site Landscaping

6.4.1 Landscaping Plant Material

Landscaping plant material shall be selected from the species list provided in Section 6.3.5 or Section 155.092, Landscaping and Screening Standards, of the Mansfield Zoning Ordinance. Flexibility on planting is permitted to accommodate public and private infrastructure. All planting and landscape in the private frontage and private lots shall consist of non-invasive species. Where Canopy and Street trees are required, they shall be a minimum of 3 caliper inches in size at time of planting.

6.4.2 Landscaping Requirements

The landscape requirements shall be regulated by the building frontage type:

6.4.2.1 Yard and Porch Frontage Landscaping Requirements

For lots 60 feet and wider, a minimum of one tree shall be planted on the lot in a location at the discretion of the developer / builder, ensuring to avoid conflicts with existing trees or the required street trees. For lots less than 60 feet wide street trees shall satisfy on-site landscaping requirements.

6.4.2.2 Stoop and Dooryard Frontage Landscaping Requirements

Trees and shrubs shall not be required in the private frontage. Landscaping, where installed, shall consist of durable species tolerant of soil compaction.

6.4.2.3 Forecourt Frontage Landscaping Requirements

Trees and shrubs shall not be required in the private frontage. Landscaping, where installed, shall consist of durable species tolerant of soil compaction. Unless utilized as fire lanes, driveways within forecourts shall be limited to 20 feet in width and portions of driveways in the private frontage may be paved in brick, cobble, stone, or may be paved to match the adjacent public frontage.

6.4.2.4 Shopfront and Terrace Frontage

Trees and shrubs shall not be required in the private frontage. Landscaping, where installed, shall consist of durable species tolerant of soil compaction.

ARTICLE 7. SIGNAGE STANDARDS

7.1 General Standards

- Signage may only be externally lit with full-spectrum source, unless otherwise indicated herein or approved by Warrant.
- Direct lighting, back lighting, and halo lighting is permitted.
- One address number will be attached to the building in proximity to the principal entrance, and one address number shall be installed over the garage or the rear entrance of a building.
- Restaurant and retail areas may have a neon (or LED neon facsimile) or special designed exterior sign if approved by Warrant. In considering the Warrant, such items as its artistic value to the district will be considered.
- Signs that exceed the allowed sign area maximum may be approved by Warrant. In considering the Warrant, such items as architectural and artistic value to the district will be considered.
- All signs shall comply with the provisions of Section 155.090, Sign Standards, of the Mansfield City Code for design, construction, and maintenance, except as provided below.
- Signs permitted by Section 155.090 and signs as identified herein are permitted on the property.

7.2 Prohibited Signs

The following signs will not be permitted:

- Off-Premise signs;
- Internally lit sign boxes;
- Injection-molded and back-lit signage of any type;
- Flashing, animated or running light signs;
- Pole signs;
- Portable signs, except Sandwich/A-frame or similar signs in retail areas;
- Digital signs that change images more frequently than once every 30 seconds;
- Balloon and Inflatable Signs;
- Sail or Feather Signs;
- Spray painted and handwritten signs, except window signs applied in a professional manner to the inside of the window using paints; and
- Billboards.

7.3 Sign Types

7.3.1 Wall Signs

- One Wall Sign will be permitted per occupancy, per street frontage. A single occupancy building may be allowed additional signage by Warrant.
- The maximum size of a Wall Sign will be 30 square feet if located 20 feet or higher above grade and 15 square feet if less than 20 feet above grade.
- There will be a minimum 10-foot distance between Wall Signs (excluding Building Identification Sign or Directory Sign).
- In addition, one Wall Sign, not exceeding 6 square feet in area, will be permitted on any side or rear entrance that is open to the public. Such wall signs may only be lighted during the operating hours of business.

7.3.2 Hanging / Projecting Signs

- Hanging Signs will be a maximum of one per occupancy, per building face.
- Hanging Signs will be a maximum area of 12 square feet per side, per Building Face; and will not exceed 5 feet in width.
- Hanging Signs may be suspended from Awnings, galleries, and arcade ceilings.
- Hanging Signs will be a minimum of 8 feet in distance from the ground to the lower edge of the sign.
- Hanging Signs will have a minimum 15-foot distance between signs.



7.3.3 Home Occupation Signs

- Home Occupation Signs will be a maximum of one per residence.
- Home Occupation Signs will be a maximum area of 3 square feet per Building Face and will not exceed 3 feet in width.
- Home Occupation Signs will be mounted on a Building Face, porch, or on a front fence adjacent to or near an entry.



7.3.4 Building Identification Signs

- Building Identification Signs will be a maximum of one per Building Face.
- Building Identification Signs will be a minimum of 12 feet above sidewalk level.
- Building Identification Signs will be a maximum size of 25 square feet.
- Building Identification Signs will be a maximum height of 24 inches for letters or logos.
- Applied letters will be constructed of painted cast metal, bronze, brass, or anodized aluminum. Applied plastic letters will not be permitted.

7.3.5 Awning Signs

- Awning Signs will be limited to one per occupancy, per Building Face.
- Awning Signs are permitted for ground floor uses only.
- Awning Signs will be a minimum of 8 feet above sidewalk level for pedestrian clearance.
- Awning Signs will not exceed 10 square feet in sign area and will only be located on the face or surface of the awning.
- If acting as the main business sign, Awning Signs will not be in addition to a wall-mounted sign. If an Awning Sign is acting as an auxiliary business sign, it will be located on the valance only, and the height of the lettering will not exceed 8 inches.

7.3.6 Restaurants and Café Signs

In addition to other signage, restaurants and cafes will be permitted the following and will be limited to one of each type of sign per business:

7.3.6.1 Menu Sign

A wall-mounted display featuring the actual menu as used at the dining table, to be contained within a willow wood or metal case and clearly visible through a glass front.

- The display case will be attached to the building wall, next to the main entrance, at a height of approximately 5 feet.
- The Menu Sign will not exceed a total area of 4 square feet and may be lighted.



7.3.6.2 A-Frame / Sandwich Sign

A Sandwich/A-frame sidewalk sign displaying the name of the restaurant, offerings, and hours of operation. A blanket License Agreement from the City to the Owners Association for A-Frame / Sandwich Signs shall be granted for signs that meet the criteria below.

- A-frame signs will not exceed 4 feet in height.
- A-frame signs will not exceed 8 square feet in area per Face.
- A-frame signs may be placed in the amenity zone created by street trees and pedestrian lighting.
- A sign permit will be obtained from the City of Mansfield for use of right-of-way and will not extend closer than one foot from face of curb. A minimum sidewalk width of 6 feet will remain free from intrusion.
- A-frame signs will be limited to one per occupancy.
- A-frame signs will have a temporary duration; they will be permitted during business hours only.



7.3.7 Wayfinding Signs

Wayfinding signs shall be subject to review and approval by the City Manager.

7.3.8 Murals

- Murals are not considered signs.
- Painted murals shall not include any copy for contemporary brands or service providers.
- Painted murals may include copy related to the district, lifestyle, or historic brands.
- Painted murals shall be stylistically compatible with the style of the building it is affixed.
- Murals may be approved by the Owners Association within the Enhanced Urban Edge (i.e., T-4.5 Transect Zone) only.

7.3.9 Curated Signs/Art

Approved by right when approved by the Owners Association. If outside the purview of the Owners Association, may be approved by Warrant so long as it is consistent with adopted cultural plans.

7.3.10 Temporary Signs

Temporary signs are allowed by right during the construction period. In all other cases they shall comply with all the applicable regulations and restrictions found in Section 155.090 of the Mansfield City Code.

7.3.11 District or Neighborhood Signs

These signs will be uniform in material and color to create a sense of place in the district and shall be subject to review and approval by the City Manager.

7.3.21 Development Signs

These signs shall be subject to review and approval by the City Manager.

ARTICLE 8. BUILDING MATERIALS AND CONFIGURATION.

8.1 General

The minimum standards for the architectural design of all buildings pursuant to the provisions under this PD, Planned Development District shall be as provided below. These minimum standards for architecture may be supplemented by an Architectural Pattern Book, provided that the provisions contained in the Architectural Pattern Book shall not conflict with any of the provisions for architecture as set forth herein, and the provisions for architectural design as set forth in this PD, Planned Development District shall prevail.

8.2 Building Walls

8.2.1 Materials

- Exterior finish material for building walls shall be limited to brick, cast stone, stone, stucco, cementitious fiber board. Exterior insulation and finish systems (E.I.F.S.) and vinyl siding are prohibited along all building walls (e.g., front, rear, and side).
- Round columns shall adhere to “The Five Orders of Columns (e.g., Composite, Corinthian, Doric, Ionic, and Tuscan)” and made of concrete, stone or synthetic materials that have the appearance of concrete or stone.
- Foundations and piers shall be made of brick, concrete, or stone. Other materials may be permitted by Warrant.
- Exposed facias of foundations and piers shall be made of brick, concrete, or stone.
- Structural posts along Primary frontages shall be made of metal or wood, simulated wood, or composite wood, or shall be covered in facias of these materials. Bases for structural posts along frontage lines shall be brick, cast stone, or stone, or shall be covered in facias of these materials, and shall match the adjacent exterior wall.
- Outbuildings shall be constructed of materials to match the principal building.
- For Row Houses facing Heritage Parkway only, all such dwellings shall utilize a Brownstone style with a minimum of 80 percent exterior finish comprised of brick, cast stone, or stucco, not including materials on Allowed Encroachments or architectural elements such as bays, balconies, porches, oriels, gable insets, etc.

8.2.2 Configuration

- Where multiple primary exterior materials are used on a single building façade identity, they should be combined horizontally, with the heavier material below the lighter (e.g., stone below brick; brick below stucco; and stucco below cementitious fiber board and wood) except for architectural elements such as bays, balconies, porches, oriels, etc.
- All the exterior walls of a single building (including outbuildings) shall maintain a uniform level of quality in materials as the Primary Frontage (i.e., the rear and side walls shall be constructed of the same materials and quality as the front building façade).
- Architectural detailing on the exterior walls facing Secondary Frontages shall match those on the Primary Frontage in materials and quality.
- All brick shall be appropriately detailed and laid to resemble load-bearing construction. All brick shall course exactly to the top, bottom and sides of all wall openings.
- All stone, excluding cast stone, where used, shall be natural rock of the region, shall be laid dry stack or mortared and shall appear to be weight bearing and not applied.
- All stucco shall be 3-coat or equal cement (or masonry) and shall be integral color or painted, and with smooth or sand-finish.
- All exposed exterior wood shall be painted or stained.
- All structural posts along frontages shall be no less than six inches by six inches nominal dimension. Assemblies of posts using several smaller dimensioned posts are allowed, as long as they cumulatively exceed six inches of nominal dimension.

8.3 Roofs

8.3.1 Materials

- Sloped roofs shall be clad in asphalt shingles, slate, non-injection molded faux slate, terra cotta tile, concrete tile with the appearance of terra cotta tile, and wood shingle. Sloped roof cladding may include metal, provided that it complements an architectural style, and that it meets the following criteria:
 - 22 GA steel.
 - Uplift resistance of prepared roof-covering materials UL 580 Class 90.
 - Impact resistance of prepared roof-covering materials UL2218 Class 4.
 - Fire tests of roof coverings UL 790. Class A, B, C. External fire exposure.
- Flat roofs shall be clad in commercial roofing or similar.
- Flat roofs shall be permitted.

8.3.2 Configuration

- Where used on a building, sloped roofs along frontages shall have pitched roofs with slopes no less than 6:12. Porches, stoops, and dormers may have shed roofs with pitch no less than 3:12.
- Where used on a building, flat roofs shall be surrounded by a horizontal parapet wall no less than 42 inches high on all sides where the roof deck meets the parapet wall. All flat roofs that are the primary roof structure on residential Building Categories 1, 2, and 3 shall be designed to be activated for private use. The primary roof structure does not include bay windows.

8.4 Openings

8.4.1 Materials

- All windows shall be made of painted aluminum, vinyl, resin, fiberglass, or wood.
- All shutters shall be made of wood, metal, composite wood, or polyurethane. Other materials may be approved by Warrant.
- Garage doors shall be made of metal or composite wood or wood. Garage door materials may include glass, provided that it complements an architectural style.
- Residential buildings shall have a limit for building façade openings. A minimum of 15 percent and a maximum of 40 percent of an individual building façade may be used for openings (except where ground floor shopfronts are required or provided). For this provision, glazed bays should be considered as a subordinate part of an overall façade identity and not considered separately. More than 40 percent of the wall can be provided as openings or a glazed feature if approved by Warrant.

8.4.2 Configuration

- All doors and windows shall be appropriately spaced along a building façade to create a harmonious composition, whether evenly spaced, symmetrical, syncopated, or evocative of a specific style or historic precedent.
- All door and window header heights shall be consistent along a building façade with allowances for changes of grade and expression of a historical architectural style.
- All windows along a building façade identity set along a frontage line shall be rectangular in shape and vertically proportioned, with the exception of transom windows. Windows that are square, ovular, or circular in shape may only be utilized if specific to an architectural style and precedent.
- All windows along a building façade shall be recessed at least 2.5 inches in depth in exterior finish material of brick, stone, or stucco; and flush-mounted windows are not permitted.
- Shutters are not required to be operable, and if non-operable, shall be of proportions which are approximate to an operable shutter for the window. Shutters shall be in louvered panel, solid panel, or board-and-batten style of construction.

8.5 Attachments

8.5.1 Materials

- All balcony floors shall be concrete slab, metal, or wood. A vinyl membrane may be used if not visible from the ground. Exposed facias of balcony floors shall be painted concrete, metal, painted wood, or painted products (such as cementitious fiber board) approximating these materials. Synthetic materials and wood may be permitted provided they have the appearance of the materials noted above.
- All porch floors shall be of brick, concrete slab, pavers, or stone. A vinyl membrane may be used if not visible from the ground. Exposed facias of porch floors shall be painted concrete, metal, painted wood, or painted products (such as cementitious fiber board) approximating these materials. Synthetic materials and wood may be permitted provided they have the appearance of the materials noted above.
- All stoops, including the landing and the exterior stairs, shall be vertically clad entirely in brick, stone, parge coat, synthetic stone or thin brick, or part of a larger building bay or oriel paneled assembly incorporated into the building design.

8.5.2 Configuration

- Balconies that cantilever shall be supported by brackets made of concrete beams or profiled sills, or wood beams, or other architectural support appropriate to the architectural style and scale.
- Bay windows shall extend to the ground or be supported by concrete or wood brackets of appropriate scale. Synthetic materials and wood may be permitted provided they have the appearance of the materials noted above. An Oriel is allowed above the first floor.

8.6 Screening

- 8.6.1** Building mechanical equipment such as electric meters, gas meters, water meters, and transformers and refuse storage shall be located on an alley or private drive and shall be visually screened.
- 8.6.2** Rooftop mechanical equipment located on low-slope (i.e., flat) roofs shall be fully screened along by parapet walls on all sides, or opaque screening enclosures both of which shall be at least 12 inches greater in height than the equipment.
- 8.6.3** Outdoor refuse and outdoor recycling collection receptacles shall not be located along frontages. All collection receptacles shall be visually screened on all sides by a solid wall that is a minimum of six feet in height, and constructed of a material matching the adjacent building façade. All access doors into the collection receptacle shall be made of opaque metal matching the height of the solid walls. Lids shall be required on collection receptacles that are not in a roofed enclosure.

8.7 Shopfronts

8.7. Materials

All shopfronts shall be constructed of glass, glass block, brick, stone, stucco, concrete, cast stone, synthetic stone, cementitious fiberboard, wood, or custom metal work.

Bulkheads

Shopfronts may have a recessed bulkhead between 18 and 36 inches in height and be constructed of an opaque material compatible with the adjacent building façade.

8.7. Openings

All Shopfronts shall have openings for display windows and may have transom windows as follows:

- **Display Windows**

Display windows shall be placed above the bulkhead and cover a minimum of 50 percent of the total building wall area between 2 and 8 feet above the adjacent sidewalk.

- **Transom Windows**

Transom windows shall be between 2 and 4 feet in height and may be installed above the display windows. The glazed area over 8 feet shall count toward the minimum required area.

8.7. External Sign Bands

The architectural design of all Shopfronts shall include a portion of the façade above the windows/storefront of first floor where signs can be placed. This can take the form of a band or identified locations on the spandrels/wall of the building. This is not required in the event of use of transom windows.

ARTICLE 9. BUILDING USE

9.1 General

- Building use shall be in accordance with Table 4: Use Table. For purposes of interpreting the Use Table, the Enhanced Urban Edge is depicted as the T-4.5 Transect Zone.
- There shall be no minimum nor maximum density restriction.
- The applicable regulations and restrictions as found in Section 155.099, Special Conditions, of the Mansfield Zoning Ordinance shall apply.

9.2 Additional Rules and Regulations

9.2.1 Bed and Breakfast:

- Food service shall be provided.
- The maximum length of stay shall not exceed 14 days.

9.2.2 Live-Work Unit:

- Live-work units are limited to buildings located within the Enhanced Urban Edge only.
- The building area for commercial activity shall be restricted to the first story and internal loft areas.
- The front 30 feet of depth of the ground floor shall not include a bedroom, kitchen or dining area intended for residential use.
- The maximum number of employees, including the business operator, is three. More than three employees may be permitted by Warrant.
- If there are less than three employees, no off-street parking is required.
- If there are more than three employees, the parking requirements for the commercial function shall be determined by Warrant.

9.2.3 Manor House:

- The minimum habitable area of a single dwelling (i.e., unit) within a Manor House shall be 600 square feet.
- No Manor House shall be located within 800 feet of another Manor House.

9.2.4 Outdoor Private Civic Amenities:

- Food trucks, temporary and seasonal buildings, beer gardens, outdoor cafes, Mobile Food Vendor Parks, walk-up outdoor movie theaters, game, and sports venues that are operated by the Owners' Association are encouraged.
 - These uses are highly recommended to enhance the civic quality of life and emotional place attachments of a neighborhood.
 - They may be within right-of-way or on either public or private Open Space or land held for future development.
 - They may be a place holder on a future development site.
 - If within a ROW or Public Open Space pursuant a duly approved license.
 - Electric Meters and outlets to support these activities and uses can be located on discrete edges of open spaces provided with landscaping or other screening.
- These uses are intended to attract pedestrian traffic and may use existing on-street parking. There will be no additional parking required.

- No additional permanent restrooms are required, provided that restrooms are located within 660 feet of an outdoor private civic amenity. Restrooms may only be shared between amenities and nearby buildings.
- These amenities may only be allowed by Warrant. A Warrant awarded to an Owners Association may be awarded without a time limit. A Warrant awarded to any other party shall be limited in duration in proportion to the investment being made.

9.2.5 Retail Buildings:

- The building area available for retail use is limited to buildings at corner locations within the Enhanced Urban Edge only.
- The hours of operation for an establishment shall be limited from 7:00 a.m. to 10:00 p.m.
- A food service establishment shall be further limited to seating no more than 40 patrons.
- Retail and Restaurant buildings associated with an Owners' Association amenity space are exempt from these additional rules and regulations.

9.2.6 Row Houses:

- Row houses are permitted in the Enhanced Urban Edge.
- Row houses shall transition from the T-4.5 Enhanced Urban Edge through the T-4 Mixed Residential area in an orderly and organic manner from west to east. The total Row Home primary frontage in T-4 shall be limited to 30% of the total primary residential lot frontages in T-4. A minimum of 75% of the Row Homes in T-4 shall be within 1,200 feet of Heritage Parkway. The remaining 25% may be distributed in the balance of the T-4 area.
- All row houses shall have a minimum building height of three (3) stories facing Heritage Parkway and a minimum of two (2) stories elsewhere.
- All row houses shall have a minimum habitable area of at least 1,500 square feet.

9.3 Specific Use Permits

- 9.3.1** Uses of buildings and lots that require a specific use permit are subject to approval in accordance with Section 155.080, Specific Use Permits, of the Mansfield Zoning Ordinance.

9.4 Prohibited Uses

- 9.4.1** The uses of all buildings and their lots shall be expressly limited to those allowable uses by Transect Zone according to Table 4. Any use not listed in Table 4 is expressly prohibited. The following specific uses are not allowed within this PD, Planned Development District:

- Adult entertainment or adult-themed business;
- Automotive sales, automotive repair, or automotive service facility;
- Body piercing parlor or tattoo parlor;
- Car wash;
- Check cashing;
- Drive-through facility;
- Gas station;
- Pawn shop;
- Retail sales of tobacco products as a primary use;
- Wholesale business;
- Warehouse Distribution;

- Industrial Fabrication;
- Outdoor storage; and
- Mini-Warehouse.

9.5 Nonconformities

9.5.1 Where buildings exist on adjacent lots, the Director may require that a proposed building match the setbacks and heights of adjacent buildings rather than the provisions of this PD, Planned Development District.

TABLE 4: USE TABLE.

THIS TABLE DELEGATES SPECIFIC USES WITHIN THE PD DISTRICT.

	T-4	T-4.5
RESIDENTIAL:		
ACCESSORY DWELLING UNIT	■	■
BUNGALOW COURT	■	
HOME OCCUPATION	■	■
ROW HOUSE	■	■
SINGLE-FAMILY RESIDENTIAL (DETACHED)	■	
LODGING:		
BED AND BREAKFAST (UP TO 5 ROOMS)	□	■
OFFICE:		
CO-WORKING SPACE		■
LIVE-WORK UNIT		■

	T-4	T-4.5
RETAIL:		
ARTISAN RETAIL		■
BEER GARDEN OR POP-UP RESTAURANT	□	■
COMMERCIAL KITCHEN	□	■
DISPLAY GALLERY		■
MOBILE FOOD VENDOR PARK	■	■
KIOSK		■
OPEN-MARKET BUILDING		■
PERSONAL SERVICE		■
RESTAURANT		■
RETAIL BUILDING	□	■
TAVERN, BREWPUB, OR DISTILLERY		□
OTHER: CIVIC:		
FOUNTAIN OR PUBLIC ART	■	■
OUTDOOR AUDITORIUM	■	■
RELIGIOUS ASSEMBLY	□	

	T-4	T-4.5
HOA AMENITY CENTER	■	
OTHER: EDUCATION:		
CHILDCARE CENTER	□	□
ELEMENTARY SCHOOL	■	■
INTERMEDIARY SCHOOL	□	□
OTHER: AGRICULTURE:		
COMMUNITY GARDEN	■	
FARMER'S MARKET	■	
GARDEN (PRIVATE FRONTAGE)	■	■

- USE PERMITTED BY-RIGHT
- USE PERMITTED BY APPROVAL OF A SPECIFIC USE PERMIT
- USE NOT PERMITTED

ARTICLE 10. DEFINITIONS.

This PD, Planned Development District provides definitions for terms in this PD, Planned Development District that are technical in nature or that otherwise may not reflect a common usage of the term. If a term is not defined in this PD, Planned Development District, then the existing zoning ordinance definitions shall control. If a term is not defined in either, then the Development Review Committee shall determine the correct definition.

ACCESSORY UNIT: A residential unit not greater than 800 square feet sharing ownership and utility connections with a principal building; and it may or may not be within an outbuilding (SYNONYM: ANCILLARY UNIT).

ALLEY: A private thoroughfare designated to be a secondary means of vehicular access to the rear or side of properties; an alley may connect to a vehicular driveway that is located to the rear of lots

providing access to outbuildings, service areas, and parking; and containing utility easements (SYNONYM: MEWS).

ALLOWED ENCROACHMENTS: Any structural element that encroaches, other than a Frontage Type. Allowed encroachments into setbacks and easements may include eaves, gutters, chimneys, utility meters, planter boxes, porches, stoops, bay windows, balconies, terraces, masonry-clad footed chimneys, sunrooms, attached pergolas, garden room, oriels, and colonnades. Encroachments may encroach beyond the build-to line up to the right-of-way.

ARCHITECTURAL PATTERN BOOK: A graphic and narrative architectural regulatory document which describes how blocks and buildings will be organized vertically, horizontally, proportionally, materially, and by style. It is intended to complement the architectural standards of this form-based development district, and it may also direct wellness, performance, and environmental goals. It may be a public or private document authored, maintained, and managed by a municipal entity or a Property Owner's Association or Homeowner's Association. It describes the design intent of all improvements included within a neighborhood.

ARTISANAL RETAIL: A shop in which goods are custom-prepared, displayed, or sold in small quantities that are often one-of-a-kind items. The use may also include the production, incidental storage, display, and sale of such goods or may be a place where a small number of persons are engaged in arts and crafts activities in a class or studio.

ARTISTIC NEON: The use of neon signs in a manner that is creative beyond a modern use of a conventional neon sign or reminiscent of classic/ iconic neon signs.

ASSOCIATION DOCUMENTS: Consists of the Owner's Association Restrictions and Covenants and related documents required for the creation of an Owners Association.

ATTACHED GREEN: An Open Space which is located between a residential property and a street with adjacent homes facing or siding to the open space.

ATTACHED PERGOLA: An outdoor structure with columns that support a roofing grid of beams and is attached to the wall of a home or structure often for shade or greenery.

ATTIC: The interior part of a building contained within a pitched roof structure.

AWNING: A fixed or movable shading structure, cantilevered or otherwise entirely supported from a building, used to protect outdoor spaces from sun, rain, and other natural conditions. Awnings are typically used to cover outdoor seating for restaurants and cafés.

BACK BUILDING: A single-story structure that extends to the rear of a principal building and is often connected to an outbuilding.

BALCONY: An open air exterior extension of an upper floor of a building, enclosed up to a height of about three feet by a wall or balustrade

BAY WINDOW: A window projecting outward typically comprised of three parts, with a larger center window unit and two narrow windows on either side.

BED AND BREAKFAST: A lodging type offering 1 to 5 bedrooms and permitted to serve food to guests.

BLADE SIGN: A sign that is made from rigid material mounted perpendicular to a building wall with one side attached or supported by a device extending from a building wall or suspended from an overhang.

BLOCK: The aggregate of all the private lots, open spaces, cross-block passages, and alleys, circumscribed by thoroughfares as the ROW line.

BLOCK FACE: The aggregate of all the building façades on one side of a block.

BUILD-TO-LINE: Is a fixed dimension shown on a final plat and Regulating Plan within the range of the allowed Build -to-Zone of each building type. Each block face on a final plat must show a Build-to-Line or Build-to-Line Zone. Buildings built along a block face must have their principal building facade on the Build-to-Line in the percentage described herein. It is not a setback. Allowed

encroachments are allowed to extend in front of a Build-to-Line. The Allowed Encroachments can be included as part of a structure to comply with the percentage frontage requirement. When several building types share a block face, the dominate building type by frontage dimension shall control.

BROWNSTONE: A style utilized for Row Homes that utilizes a minimum of 80 percent brick, cast stone, stone, and / or stucco exterior finish (not including Allowed Encroachments and architectural elements such as bays, balconies, porches, oriels, gable insets, etc.). The specific architectural style for Brownstones may be determined by Architectural Pattern Book.

BUILD-TO-ZONE: A range containing the Build-to-Line within which a principal building façade shall be built within. Build-to-Zones are indicated by building type. When several building types share a block face, the dominate building type by frontage dimension shall control.

BUILDING CONFIGURATION: The form of a building, based on its massing, on its private frontage, and on its height.

BUILDING DISPOSITION: The placement of a building on its lot.

BUILDING HEIGHT: The vertical extent of a building measured in stories. Other methods of height, such as feet do not apply.

BUNGALOW: a small detached single-family home with a floor area between 500 and 800 square feet. A Bungalow is not required to have an attached garage.

BUNGALOW COURT: A type of residential development which features 6 to 12 small houses that may be detached or may share a party wall with another dwelling, and arranged around a central green on a common lot. Bungalow Courts may be platted on a single lot or individually platted lots. Bungalow Courts may be platted on a single lot or individually plated lots. No Bungalow Court shall be located within 800 feet of another Bungalow Court. See Diagram 1.



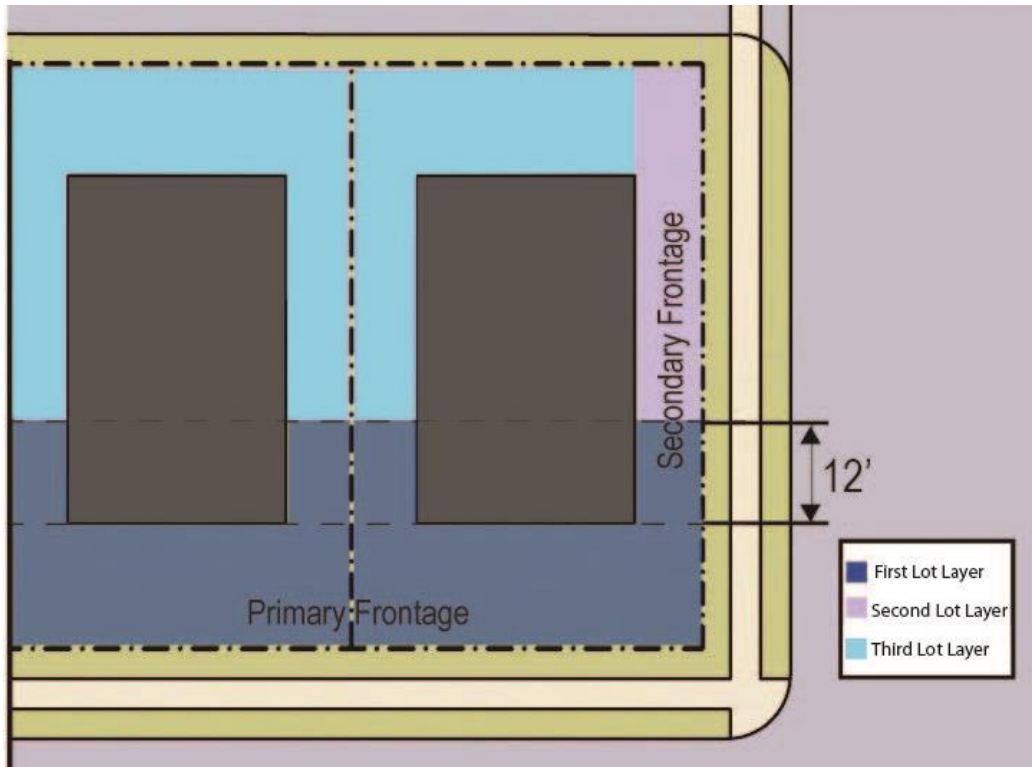
Diagram 1. Photograph of Bungalow Court.

BY RIGHT: Characterizing a proposal or a component of a proposal that complies with this PD and is permitted and processed administratively, without a public hearing (SEE VARIANCE AND WARRANT).

CANAL STREET: A public or private open space that replaces a street with a canal in a neighborhood structure.

- CHARLESTON SIDE PORCH:** A building type in which a side façade, and not the front façade has a long porch parallel to the side façade. The porch may face the internal side lot line or external side lot line.
- CIVIC:** The term defining not-for-profit organizations dedicated to arts, culture, education, government, municipal government, and recreation.
- COLONADE:** A sequence of columns supporting a horizontal member (often an entablature) that are spaced at regular intervals that can be free-standing or part of a building to define a space.
- COMMERCIAL:** The term collectively defining lodging, office, and retail functions.
- CORNER LOT:** A lot or parcel of land abutting two or more thoroughfares, Open Space, Woonerf, Paseo at their intersection.
- COURTYARD:** A disposition where the building occupies the boundaries of its lot while internally defining one or more private spaces.
- CROSS-BLOCK PASSAGE OR PASEO:** A publicly accessible way providing access through a block that is restricted to pedestrian use and limited vehicular access.
- DEVELOPMENT REVIEW COMMITTEE:** The Development Review Committee is comprised of a representative from each of the various departments which have jurisdiction over the permitting of a project as appointed by the City Manager.
- DIRECTOR OF PLANNING:** means the Director of Planning or his / her designee.
- DOORYARD:** A private frontage type with a shallow setback, and front garden or patio, usually with a low wall or a hedge at the frontage line (VARIATION: LIGHT WELL OR LIGHT COURT).
- DRIVEWAY:** A vehicular lane within a lot, often leading to a garage.
- EDGEYARD:** A type of disposition where a building occupies the center of its lot with setbacks on all sides.
- ELEVATION:** An exterior wall of a building that is not along a frontage line (SEE FAÇADE).
- ENCROACH:** To break the plane of either a vertical or horizontal regulatory limit with a structural element, so that it extends into a setback, into the public frontage, or above a height limit.
- ENFRONT:** To place an element along a frontage.
- ENHANCED URBAN EDGE (T-4.5 TRANSECT ZONE):** A transition area between areas of intensity. The Enhanced Urban Edge shall be depicted on the Concept Plan and Regulating Plan and is expressly limited to only those lots to be platted along the future extension of Heritage Parkway.
- FAÇADE:** The exterior wall of a building set along a frontage line.
- FAÇADE IDENTITY:** The increment of a primary frontage distinguished from the adjacent façade increments by the use of architectural style, materials, colors, plane, ornamentation, allowed encroachments, etc. These should be no longer than 300' per primary frontage unless the adjacent façade increment is too small to adequately hold a separate identity. Adjacent corner primary frontages may have the same façade identity.
- FENCE:** A permeable metal or wooden wall, independent of a building, and that is located along a frontage line.
- FORECOURT:** A private frontage wherein a portion of the building façade is close to the frontage line and the central portion is set back.
- FRONT SETBACK:** The distance as measured from the frontage line to the point where a building may be constructed. This area shall be maintained clear of permanent structures with the exception of Allowed Encroachments.
- FRONTAGE:** The area between a building façade and the vehicular lanes and is inclusive of its built and its planted components. A frontage is divided into the private frontage and the public frontage.
- FRONTAGE BUILDOUT:** The percentage of the lot width that is occupied by the building façade within the Primary Frontage.
- FRONTAGE LINE:** A lot line bordering a public frontage.

- FRONTAGE REQUIREMENT:** A minimum amount of a principal building façade width along a Primary Frontage on the designated Build-to-Line expressed as a percentage of the building facade to the Primary Frontage.
- FUNCTION:** the use or the uses accommodated by a building and its lot.
- GARDEN ROOM:** A room constructed into an Allowed Encroachment with windows to maximize natural light and display views of the outdoors (SYNONYM: SUNROOM).
- GREEN:** A open space for unstructured recreation, and that is spatially defined by landscaping rather than building frontages.
- GREEN STREET:** A public or private open space that replaces a street in a neighborhood structure.
- INSET GREEN:** an open space with two or more sides fronted by buildings.
- LIGHT WELL:** A private frontage that is a below-grade entrance or recess designed to allow light into basements (SYNONYM: LIGHT COURT).
- LINER BUILDING:** A building specifically designed to mask a parking lot or a parking structure from a frontage. All liner buildings shall provide a shopfront frontage at a minimum.
- LIVE-WORK UNIT:** A mixed-use unit consisting of a commercial function and a residential function. The commercial function is restricted to the first story of the unit. It is intended to be occupied by a business operator who lives in the same structure that contains the commercial function (SYNONYM: FLEX HOUSE).
- LOADING DOCK:** An area in which goods and products are moved on and off a vehicle, including the stall or berth, apron, and maneuvering room.
- LODGING:** A building function available for daily and weekly renting of bedrooms.
- LOT:** A parcel of land accommodating a building or buildings that are under the same ownership.
- LOT COVERAGE:** The percentage of a lot that is covered by buildings and other roofed structures.
- LOT LAYER:** A range of depth of a lot within which certain elements are permitted to be located.
- LOT LAYER, FIRST:** The area of a lot that is comprised of the area between the Primary Frontage line and 12 feet behind front Build-to Line.
- LOT LAYER, SECOND:** The area of a lot that is comprised of the area 12 feet behind the front Build-to Line along a secondary frontage.
- LOT LAYER, THIRD:** The area behind the outermost rear corner of the primary building and to the rear and side of the primary building.



LOT LINE: The boundary that legally and geometrically demarcates a lot.

LOT OCCUPATION: A category for the area of the lot that may contain buildings, regulated in terms of width and coverage metrics.

LOT WIDTH: The length of the Primary Frontage line of a lot.

MANOR HOUSE: A Building that is similar in character and scale to a single-family house from the street façade but contains two (2) to four (4) individual dwelling units accessible through a single or multiple entrances. A Manor House contains units for rental or sale. Maximum of four (4) dwelling units per building on a single lot.

MASTER SET OF PLANS: Building Plans, including floor plans and elevation plans, approved as a group for Residential Building Types.

MEWS: A private thoroughfare designated to be a secondary means of vehicular access to the rear or side of properties; a Mews may connect to a vehicular driveway that is located to the rear of lots providing access to outbuildings, service areas, and parking; and containing utility easements (SYNONYM: ALLEY).

MIXED USE: Multiple functions that are either located within the same building through superimposition or adjacency.

MOBILE FOOD VENDOR PARK: A property intended for permanent location for 3 or more food trucks. All such properties shall include required infrastructure and public seating for all food trucks serving guests in the park.

MURAL: Any piece of artwork that is painted, tiled, or otherwise applied directly to an exterior wall.

NEIGHBORHOOD ARCHITECT: Is the individual(s) or firm(s) employed by an association to create and manage the application of a private Pattern Book within the borders of the association.

NEIGHBORHOOD: Is a term used to describe any settlement with explicit or implied boundaries. It may have a single use or broad mix of uses. It is an emotional term to describe a feeling of belonging

in a place regardless of use, ownership, or length of stay. It is an affection of place which translates into long-term sustainability.

NONCONFORMITY: An existing function, structure, lot, or site improvement that is in compliance with the zoning regulations that were applicable to it when it was established, and for which all the required permits were issued, but which does not conform in whole or in part to the regulations of this PD, Planned Development District. Such nonconformity is legal and may continue except as regulated by this PD, Planned Development District.

OFFICE: Premises available for the transaction of general business but excluding retail.

OPEN SPACE: An outdoor area permanently dedicated exclusively for private or public use.

ORIEL: A singular bay window (or stack of bay windows) that does not reach the ground.

OUTBUILDING: An accessory building, which is usually located toward the rear of the same lot as a principal building, and that sometimes may be connected to the principal building by a back building.

OWNERS ASSOCIATION: An incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by the dedicatory instrument and through which the owners, Developer, or the board of directors or similar governing body, manage or regulate the residential or nonresidential uses within the property covered by the dedicatory instrument. The property subject to a Lonestar Mansfield Planned Development District may consist of multiple Owners Associations, whether a master association and subsidiary associations or multiple independent associations, which may be characterized as "Property Owners Associations", (POA in the singular, POA's in the plural), or "Homeowners Associations", (HOA in the singular, HOA's in the plural).

PARK: An open space that is a natural preserve and is available for unstructured recreation.

PARKING STRUCTURE: A building containing one or more stories of vehicular parking above or below grade.

PASEO: A publicly accessible way providing access through a block that is restricted to pedestrian use and limited vehicular access. Also referred to as a Cross-Block Passage.

PHASING PLAN: A plan that shows the delivery of infrastructure necessary to serve development within the Property. Phases shown on a Phasing Plan are not required to develop sequentially. This plan is an element of the Concept Plan.

PLANTER: The element of the public frontage which accommodates street trees, whether continuous or individual.

PLAZA: A open space designed for unstructured recreation and civic purposes, and spatially defined by building frontages and consisting of paved surfaces. A piece of civic art may be included as visual terminus. Trees are not often used within the plaza but may be on the edges. If the edge includes an arcade, trees are not allowed.

PORCH: An open-air room that is appended to a building, with a floor and a roof, but no walls on the sides facing frontages. A porch is meant to be furnished as occupiable space.

PRIMARY FRONTAGE: The frontage designated to be the front façade and principal entrance to the building as well as the measure of minimum lot width (SEE FRONTAGE).

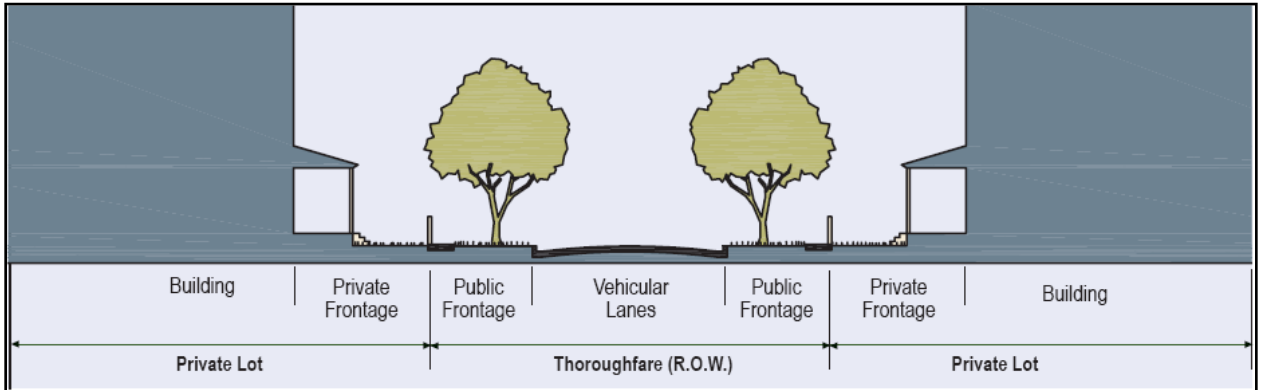
PRIMARY PORCH: The porch at the Primary Frontage of a house.

PRINCIPAL BUILDING: The main building on a lot, and usually located toward the frontage.

PRINCIPAL ENTRANCE: The main point of access for pedestrians into a building.

PRIVATE FRONTAGE: The privately held layer between the frontage line and the principal building façade.

PUBLIC FRONTAGE: The area between the curb of the vehicular lanes and the frontage line or the lot edge of an open space and the frontage line.



PLAYGROUND: A open space that is designed and equipped for the recreation of children. A playground shall be fenced and may include an open shelter.

REAR YARD: A disposition where the building occupies the full frontage, leaving the rear of the lot as the sole yard.

REAR SETBACK: The distance as measured from the rear lot line to the point where a building may be constructed. This area shall be maintained clear of permanent structures with the exception of encroachments.

REGULATING PLAN: A zoning map or set of maps that shows the transect zones, open spaces, thoroughfare assignments, non-conforming districts if any, and Urban Design Requirements if any, of areas that are subject to, or potentially subject to, regulation by this Section.

REQUIRED PARKING: The number of parking spaces needed to accommodate a building or buildings on a single lot according to its function or functions. These may be either on-site, on-street, or remote.

RESIDENTIAL: Characterizing premises available for human dwelling.

RETAIL: Characterizing premises available for the sale of merchandise and food service.

ROW HOUSE: A single-family residential unit sharing a party wall with another of the same type and that occupies the full frontage line. A Row House consists of two or more units. (SYNONYM: TOWN HOUSE).

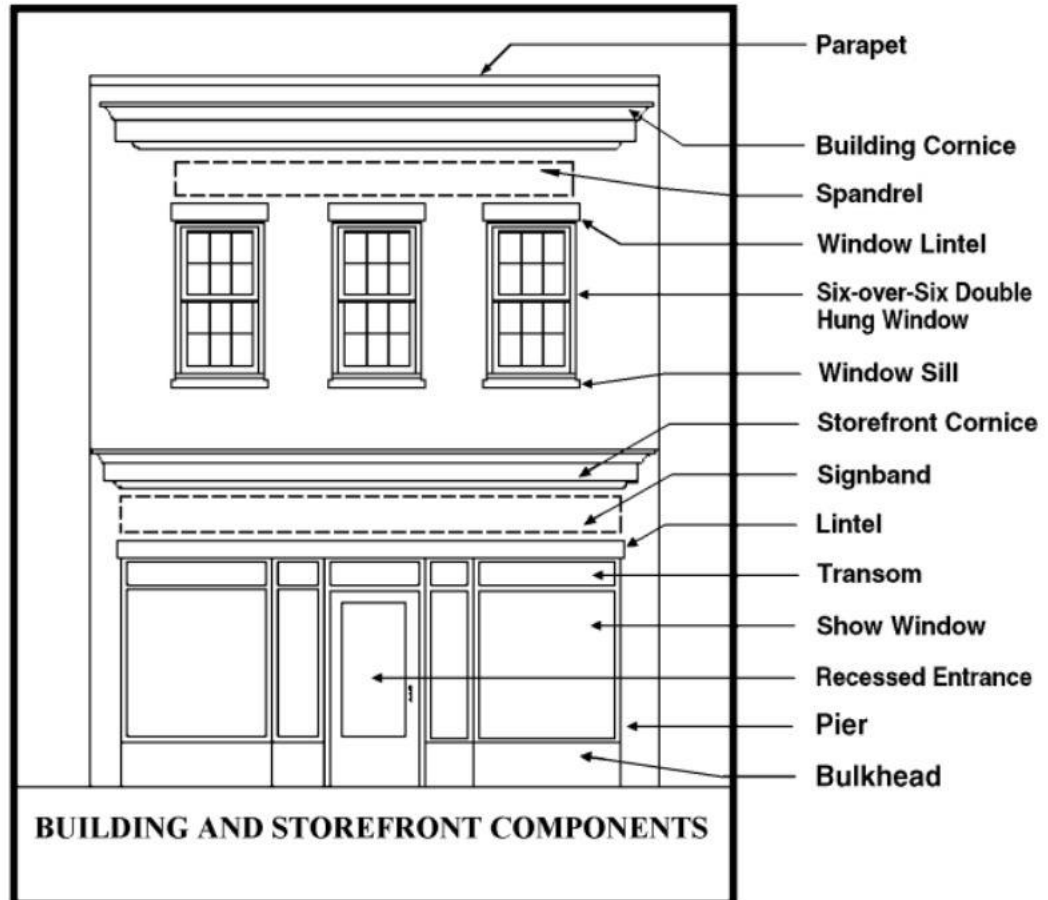
SCHEMATIC BUILDING ELEVATION: An exhibit depicting the design intent of building form, fenestration, and materials. Building materials shall be described as to type and configuration.

SECONDARY FRONTAGE: On corner lots fronting on streets, open space, muse, inset greens, and Paseos, the private frontage not designated as the Primary Frontage. Except for corner lots and lots fronting on streets, open space, muse, inset greens, and Paseos, the Secondary Frontage does not have the same detail as the Primary Frontage, but consists of the same exterior finish material as the Primary Frontage.

SERVICE AREA: The portion of a lot or a building exclusively dedicated to service in the form of shipping and receiving, trash and recycling collection and storage, housing of mechanical equipment and outdoor storage areas.

SETBACK: The area of a lot measured from the lot line to a building façade or a building elevation that is maintained clear of permanent structures, with the exception of Allowed Encroachments (VARIATION: BUILD-TO-LINE).

SHOPFRONT: A private frontage most conventional for retail use with substantial glazing wherein the building façade is aligned close to the frontage line and the building entrance is located at sidewalk grade. Standards for Shopfronts along Commercial and Mixed-use Frontages are provided in this Section. A Shopfront may include some or all of the building façade elements indicated in the image below, except as otherwise required by the architectural standards of this Section:



- SIDEWALK:** The paved section of the public or private frontage that is dedicated exclusively to pedestrian activity (SYNONYM: WALKWAY).
- SIDE YARD:** A disposition where the building occupies one side of the lot with the setback to the other side. If the adjacent building is similar, with a blank side wall, the yard is quite private. May include exclusive-use and maintenance easements.
- SIGN BAND:** A wall area of a non-residential building built along a portion of a Primary or Secondary Frontage allocated for the placement of a sign above a shopfront or at the cornice. A sign band is integral to the architecture of the building.
- SQUARE:** A open space designed for unstructured recreation and civic purposes, and spatially defined by building frontages and consisting of paths, lawns, and trees, all formally disposed. May be any shape.
- STREET TREE GUIDELINES:** Is a primarily graphic document showing the specific placement street trees across all public streets, private streets, green streets, and paseos. It may assign a species or range of species to specific locations in the plan. It will include a table of allowed street trees permitted by this PD. It has a minimum 11"X17" format. It is managed by either a Property Owner's Association or Homeowner's Association.
- STOOP:** A private frontage that is most conventional for residential use wherein the building façade is aligned close to the frontage line with the first story elevated from the sidewalk for privacy, with an exterior stair and a landing at the entrance. Stoops are meant to be entry features as distinguished from porches that are occupiable space.
- STORY:** A habitable level within a principal building and an outbuilding by which height is measured but excluding an attic or a raised basement.

- STREETSCREEN:** A freestanding wall built along the frontage line, or coplanar with a building façade (SYNONYM: STREETWALL).
- SUNROOM:** A room constructed with windows to maximize natural light and display views of the outdoors (SYNONYM: GARDEN ROOM).
- TERRACE:** A private frontage wherein an upper floor building facade is set back from the frontage line by an elevated structure that is an occupiable space.
- TERMINATED VISTA:** A location at the axial conclusion of a thoroughfare or viewshed.
- TERTIARY FRONTAGE:** Frontages not fronting a street or open space including, but not limited to (i) frontages on a residential side yard, 12 feet behind the Build-to-Line, between lots, (ii) frontages on a rear yard, (iii) frontages on an alley, (iv) frontages not visible from Primary and Secondary Frontages, (v) frontages within interior courtyards, (vi) frontages adjacent to or abutting structures including parking garages, (vii) other similar frontage.
- THOROUGHFARE:** A public way for use by vehicular and pedestrian traffic and intended to provide access to lots and open spaces, consisting of vehicular lanes and the public frontage.
- TRAFFIC CALMING:** A method for using either horizontal deflection methods such as bump outs or chicanes or vertical deflection such as speed tables or woonerfs to slow traffic.
- TRANSOM:** A transverse horizontal crosspiece separating a door from a window above it or a section of façade that may or may not contain a window above the course of display windows.
- URBAN DESIGN REQUIREMENTS:** Are provisions of this PD, Planned Development District that modify or extend specific requirements as designated on a Regulating Plan or other map for those provisions.
- VARIANCE:** A ruling that would permit a practice that either is not consistent with a specific provision or the Intent of this PD.
- WARRANT:** A ruling that would permit a practice that is not consistent with a specific provision of this PD, but it is justified by its Intent.
- WINDOW SIGN:** A sign that is plainly visible from the outside of the building and located on either the external surface of the window or within 25 inches of the internal surface of the window.
- WOONERF:** A pedestrian priority street lacking a change in grade at the curb line. Traffic cartways and/or parking lanes are delineated by the use of bollards. The cartway may be colored and impressed to indicate a change in materials and vehicle passage lanes.

EXHIBIT A: BUILDING STANDARDS

	Name	Lot Widths (min. – max.) ⁽¹⁾	Lot Depth (min.)	Side Yard (min.) ⁽²⁾ <small>(3) (10)</small>	Build-to-Zone Front Street (min.-max.) ⁽⁹⁾	Build-to-Zone Side Street (min.-max.)	Rear Setback Alley	Rear Setback No Alley (min.)	Off Street Parking Spaces/ dwelling unit (min.)	Garage / Parking Placement	Height in Stories (min.-max.) ^{(4) (5)}	Area (SF)/ Dwelling Unit (min. – max.)	Allowed Encroachments Permitted (Sec. 4.4.2)	Accessory Unit Permitted ⁽⁶⁾
Category 1 ⁽¹³⁾	Estate	60'+	110'	5' or 3'/7' split	20'-30'	10'	7'-9' or 17' min.	10'	2	Rear / Pull-through	1-2	2500 – No Max	Yes	Yes
	Township	45'-59'	100'	5' or 3'/7' split	15'-25'	10'	7'-9' or 17' min.	-	2	Rear / Pull-through	1-2	2000 - 3000	Yes	Yes
Category 2 ⁽¹¹⁾	Cottage	35'-44'	90'	3'	10'-25'	10'	7'-9' or 17' min.	-	2	Rear	1-2	1500 - 2500	Yes	Yes
	Casita	25'-34'	80'	3'	5'-10'	5'-10'	7'-9' or 17' min.	-	1	Rear	1-2	800 - 1800	Yes	Yes
	Bungalow	No min. or max.	No min. or max.	3'	5'-10'	5'-10'	7'-9' or 17' min.	5'	1	Rear (parking may be offsite)	1-2	500 – 800	Yes	No
Category 3	Row House Wide ⁽¹²⁾	25'-35'	60'	0'	5'-10'	5'-10'	7'-9' or 17' min.	-	2	Rear	2-3	1500 – No Max	Yes	Yes
	Row House Narrow ⁽¹²⁾	16'-24'	50'	0'	5'-10'	5'-10'	7'-9' or 17' min.	-	1	Rear	2-3	1500 – No Max	Yes	Yes
	Manor House	50'-180'	50'	5'	5'-20'	5'-10'	7'-9' or 17' min.	-	1	Rear	2-3	600 – 1500	Yes	Yes
Category 4 ⁽¹⁴⁾	Commercial ⁽¹⁴⁾	No min. - 300'.	No min. or max.	10'	5'-20'	5'-10'	7'-9' or 17' min.	10'	* ⁽⁷⁾	Rear (parking may be offsite)	3-4	-	Yes	No

Additional Criteria:

- (1) The maximum lot width may be increased by 5 feet on corner lots to accommodate wrap around porches, secondary entries, or other Allowed Encroachments.
- (2) Encroachments over a side property line and easements are permitted for eaves, gutters, chimneys, utility meters and other similar features.
- (3) Rear loaded garages may be attached at the side property line.
- (4) Building Height does not include bonus rooms under roof.
- (5) Row House building height shall be a minimum of 2 stories.
- (6) The habitable area of an accessory unit within a principal building or an outbuilding shall not exceed 800 square feet.
- (7) See Parking Requirement in Sec. 5.4.
- (8) Build-to-Zones, and setbacks are calculated from ROW lines or Open Space property lines.
- (9) The Front Build to Zone is permitted to be the least restrictive standard allowed for building types on an individual Block Face to accommodate congruous mixing of building types.
- (10) 3'/7' Spilt refers to a 10' overall building separation with one side yard being 3' to the property line with the adjacent side yard being 7' to the property line.
- (11) Category 2 building types shall maintain a minimum 10' building separation.
- (12) Row Houses shall maintain a minimum 10' building separation between separate Row House buildings.
- (13) Category 1 buildings may be allowed front facing or pull through garages as authorized under Sec. 5.6.1.2 and shown on the approved Regulating Plan.
- (14) Building type may only be utilized on lots designated as Enhanced Urban Edge.

EXHIBIT B: THOROUGHFARE ASSEMBLIES

Where in conflict, criteria in the street sections included shall control over design criteria in other applicable City ordinances.

Type	Name on Diagram	Walks	Parkway	Parking Lane	Travel	Median	Travel	Parking Lane	Parkway	Walks	Curb Return Radii	Bulb Outs	Median	AutoTurn Needed	Parking Type (note 7)	Building Type Adjacent	Transect zone	NOTES		
Urban Avenue I	A	120	84	12	0	19	23	12	23	19	0	12	15'	Yes	No	No	P(8') D(19')	Cm, R, UR	T5, T6	
Urban Avenue II	A	86	62	12	0	19	12	0	12	19	0	12	15'	Yes	No	No	P(8') D(19')	Cm, R, UR	T5, T6	
Urban Avenue III	A	58	34	12	0	8	18		8	0	12	15'	Permitted	No	No	P(8') D(19')	Cm, R, UR	T5, T6		
Avenue I	A	86	60	6	7	8	22	0	22	8	7	6	15'	Yes	No	No	P(8') D(19')	Cm, R, UR	T5, T6	
Boulevard I	B	98	60	6	7	8	22	12	22	8	7	6	15'	Yes	Yes 12' wide	No	P(8') D(19')	Cm, R, UR	T3, T4, T5, T6	
Boulevard II	B	70	36	6	7	8	10	8	10	8	7	6	15'	Yes	Yes 8' wide	No	P(8') D(19')	Cm, R, UR	T3, T4, T5, T6	
Urban Street I	S	60	36	12		8	10	0	10	8	12		15'	Yes	No	No	P(8') D(19')	R	T3, T4, T5	
Urban One Way Street I	SIW	76	52	12	0	19	12		19	0	12		15'	Yes	No	No	D(19')	Cm, R	T4, T5	
Urban One way Street II	S1W	43	20	12		8	12		8	6	5	20' 1 side	Permitted	No	Yes	P(8') D(19')	Cm, R	T4, T5, T6		
Neighborhood Street I	S	61	40	10	0	19	13		19	6	5	15'	Permitted	No	No	P(8')	Cm, R, UR	T4, T5	Needs mid-block choker	
Neighborhood Street II	S	43	21	5	6	8	13		8	6	5	15'	Permitted	No	Yes	P(8')	R	T3	Needs mid-block choker	
Yeild Street I	S	50	27	5	6.5	8	11		8	6.5	5	15'	No	No	Yes	P(8')	R	T3, T4	Needs mid-block choker	
Yeild Street II	S	54	32	5	6	8	8	0	8	8	6	5	15'	Permitted	No	No	P(8')	R	T3, T4, P	
Neighborhood One way Street I	SIW	60	38	10	0	19	12		19	6	5	15'	Permitted	No	Yes	P(8') D(19')	R, P	T3, T4		
Neighborhood One way Street II	S1W	40	18	5	6	8	10		8	6	5	25' 1 side	Permitted	No	Yes	P(8')	R	T3		
Neighborhood Court	C	37	26	5	6	8	18		8	0	0	15'	Permitted	No	Yes	P(8')	R	T3, T4		
Neighborhood One way Court	C1W	35	13	5	6	0	13		0	6	5	15'	Permitted	No	Yes	None	R	T6 through T3		
Parkway	PW	76	36	6	8	0	18	12	18	0	8	6	20' both sides	No	Yes	No	None	R	T4, T5, T6	
One way Parkway I	P1W	59	31	6	8	19	12	0	0	19	8	6	20' both sides	Yes, 1 side	No	Yes	D(19')	R	T3, T4, T5	
One way Parkway II	PIW	40	12	6	8	0	12		0	8	6	20' both sides	Yes	No	No	None	R	T3, T4, T5		
Edge Street	ES	34	23	5	6	8	15		8	0	0	15'	No	No	No	P(8')	R	T3		
Park crossing	PC	46	24	5	6	0	12	0	12	0	6	5	15'	No	No	No	None	OS	T3, T4, T5	
Bridge Street	B	46	34	6	0	6 Bike	11	0	11	6 Bike	0	6	25'	No	No	No	None	N/A	Open Space	

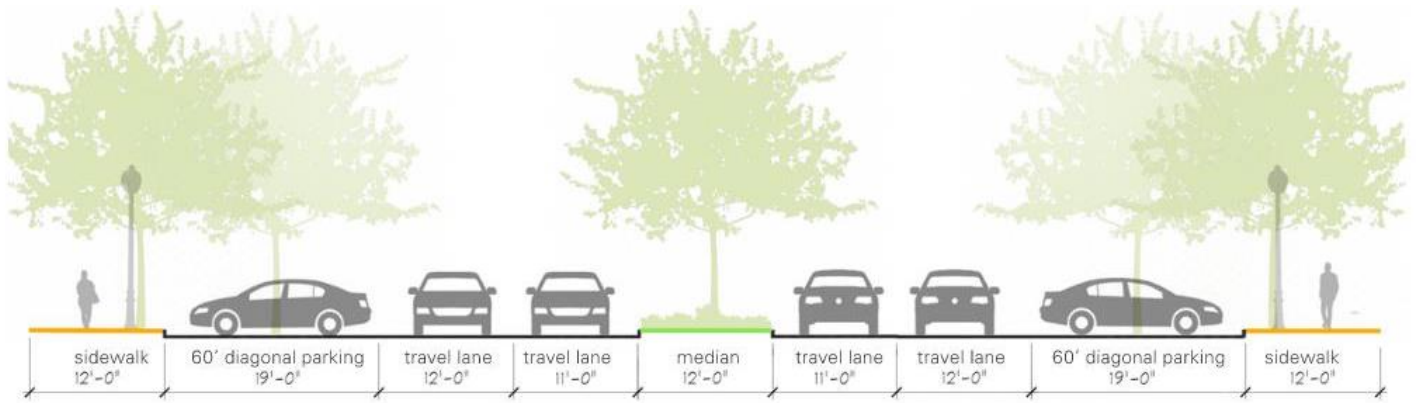
Type					Parking	Parkway	Travel	Parkway	Parking			Curb Return Radii	Bulb Outs	Median	AutoTurn Needed	Parking Type (note 7)	Building Type Adjacent	Transect zone	
Residential Mews	RA	20	16		7' Private	2	16	2	7' Private			15'	No	No	Yes	None	R, Cm	T3, T4, T5	30' clear zone
Residential Alley	RA	14	12		7' Private	2	10	2	7' Private			15'	No	No	Yes	None	R	T3, T4, T5	20' clear zone
Commercial Alley	CA	20	16				20					20'	No	No	Yes	None	Cm	T3, T4, T5	

SPECIAL SECTION: Woonerf, see site specific design.

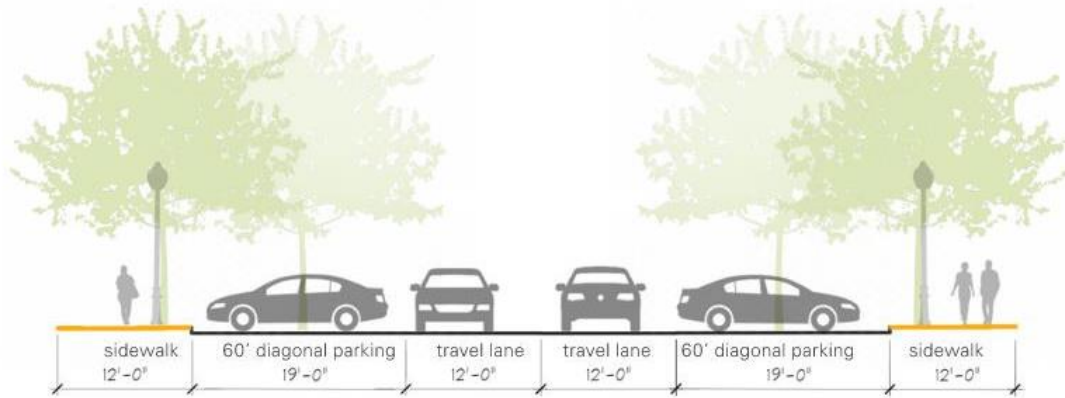
- NOTES:**
- "Permitted" means that if the section is in or adjacent to T4 or T5 bulb outs should be used.
 - An advanced stop bar should be located at least 6 feet in advance of the crosswalk to reinforce yielding to pedestrians.
 - High-visibility ladder, zebra, and continental crosswalk markings are preferable to standard parallel or otherwise noted (T4/T5).
 - Interim curb extensions may be incorporated using flexible posts and epoxied gravel.
 - Accessible curb ramps are required by the Americans with Disabilities Act (ADA) at all crosswalks.
 - Autoturn needed at time of project design to determine geometrics of red curbs. Curb radii may change depending on model results, but shall not exceed 22' radius.
 - P=parallel, D=diagonal 60 degrees Note: for diagonal parking, reverse-in diagonal is allowed.
 - R=residential, Cm=commercial/retail, P=public space w/building, O=Open space, V=varies
 - Trees in curb extensions are to be 3'-6" from travel lane
 - Urban Avenue can convert to Boulevard if insert a minimum 12' median.
 - Diagonal parking in a street section can be convert to parallel Parking and the travel lane adjacent to the parallel parking side can be reduce to 11 ft
 - Minimum lane width at the intersections with bulb-outs shall be 24' for the length of the bulb-out extension from the PCR (point of curb return).

EXHIBIT B: THOROUGHFARE ASSEMBLIES

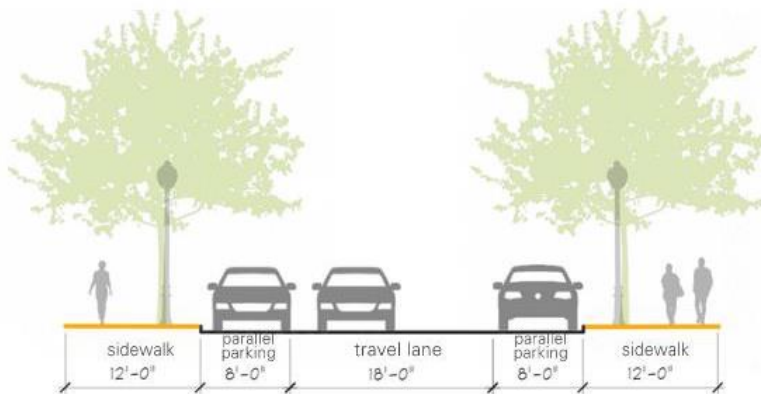
Below are graphic examples of some of the of the sections depicted in the above table, but not every iteration permitted by the table is depicted.



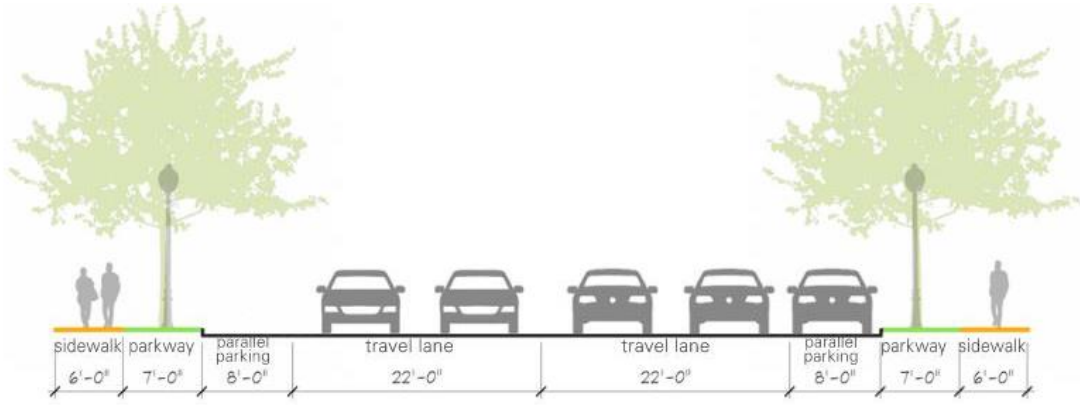
A - 120 - 84
Urban Avenue I



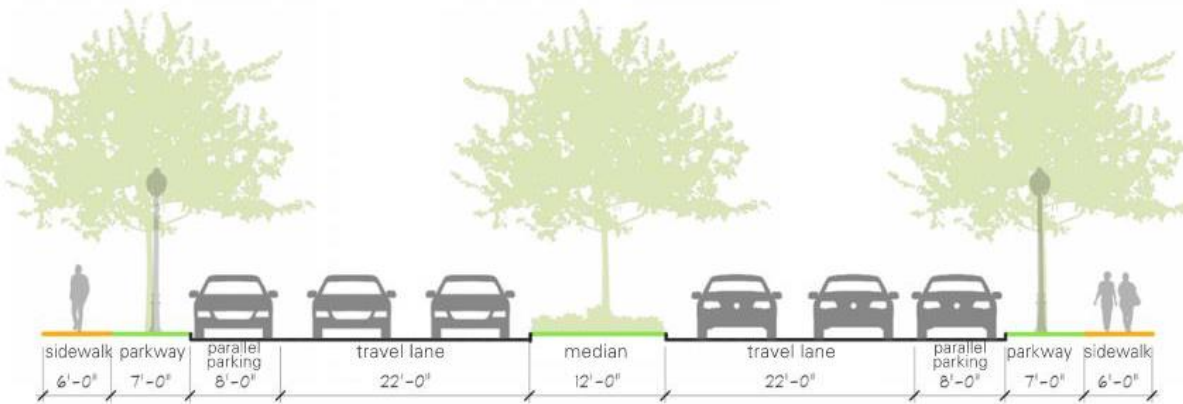
A - 86 - 62
Urban Avenue II



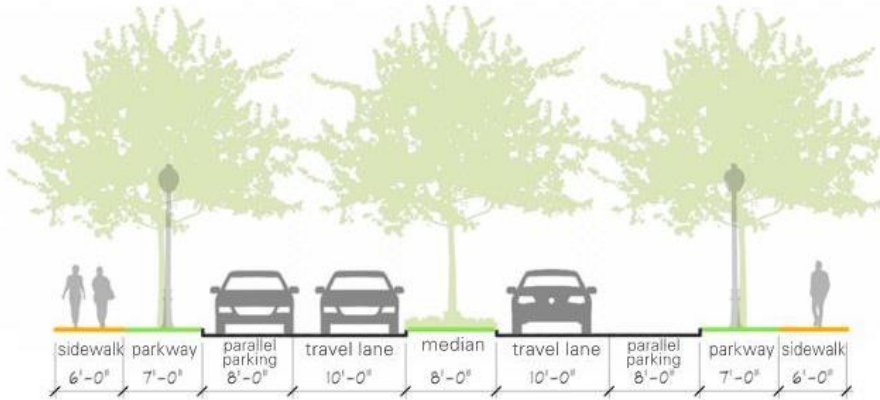
A - 58 - 34
Urban Avenue III



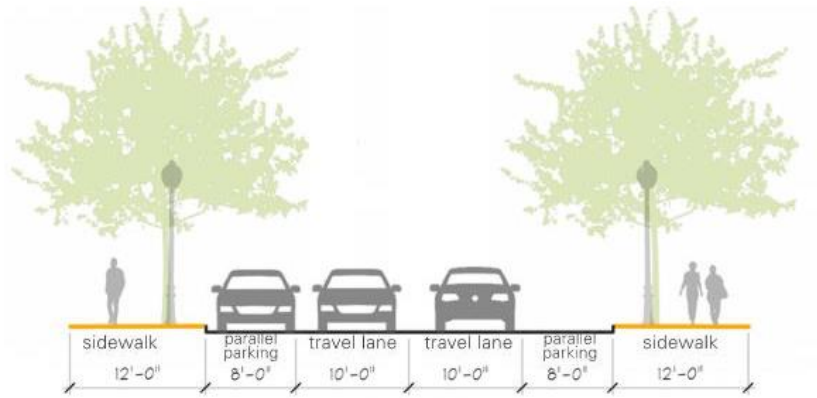
A - 86 - 60
Avenue I



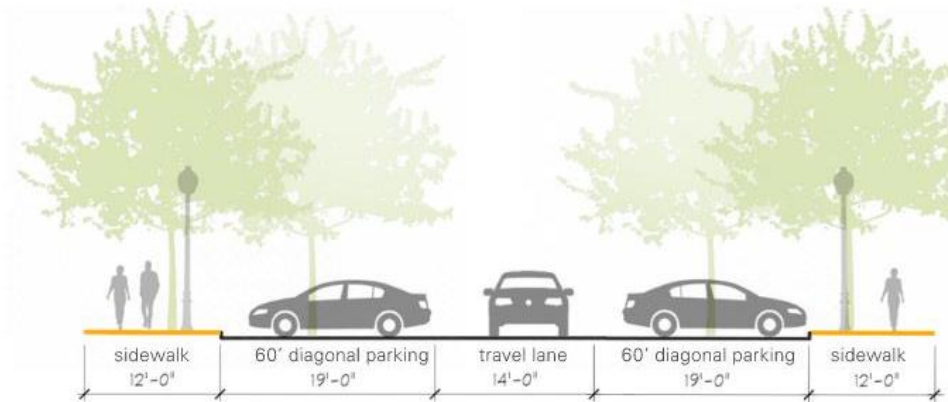
B - 98 - 60
Boulevard I



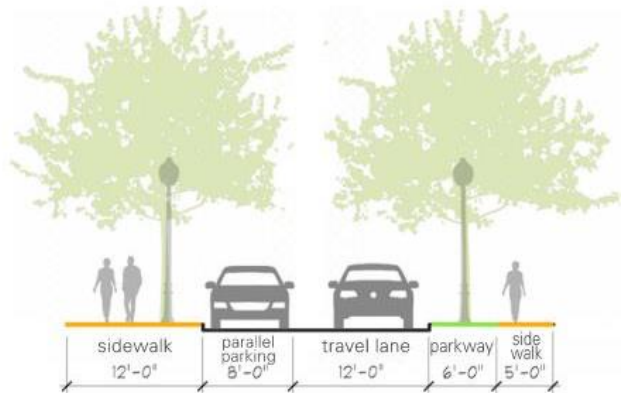
B - 70 - 36
Boulevard II



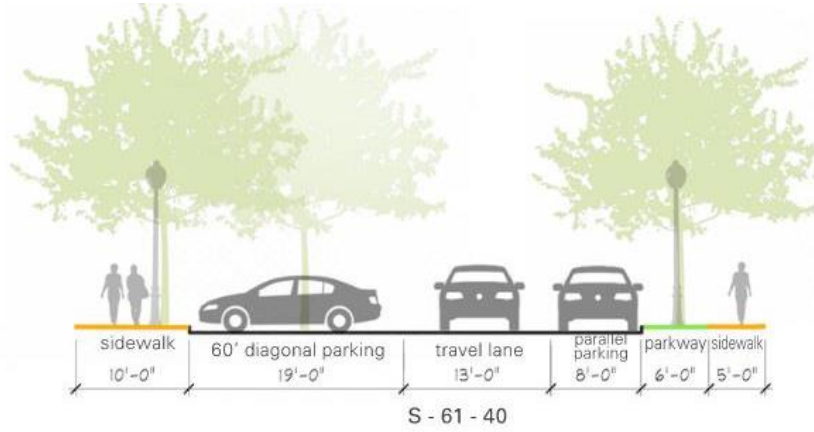
S - 60 - 36
Urban Street I



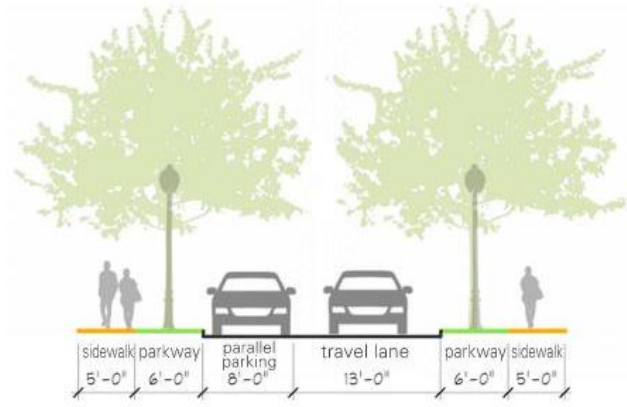
SIW - 76 - 52
Urban One Way Street I



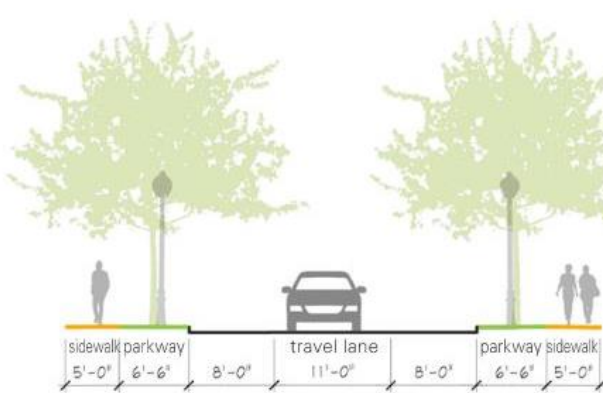
SIW - 43 - 20
Urban One Way Street II



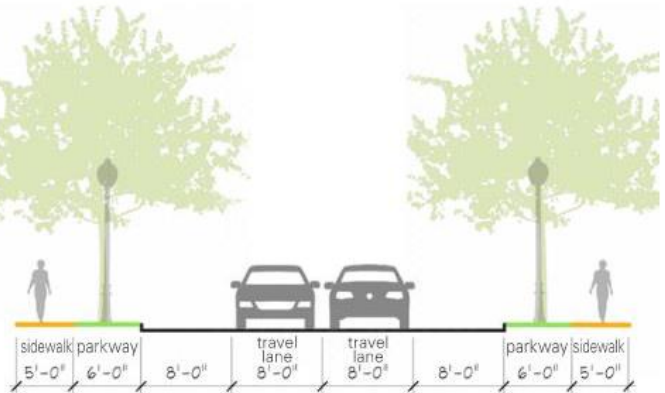
S - 61 - 40
Neighborhood street I



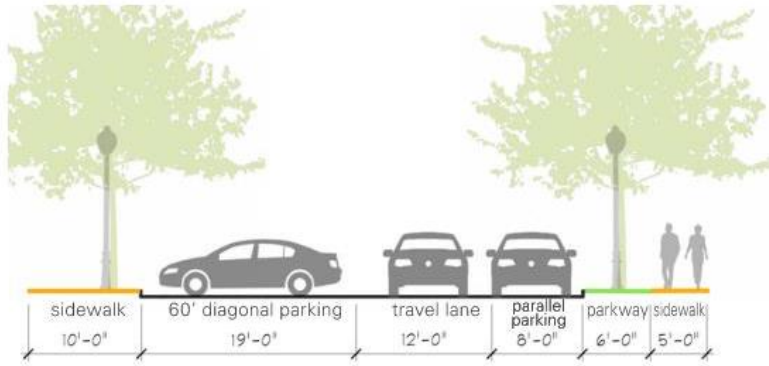
S - 43 - 21
Neighborhood street II



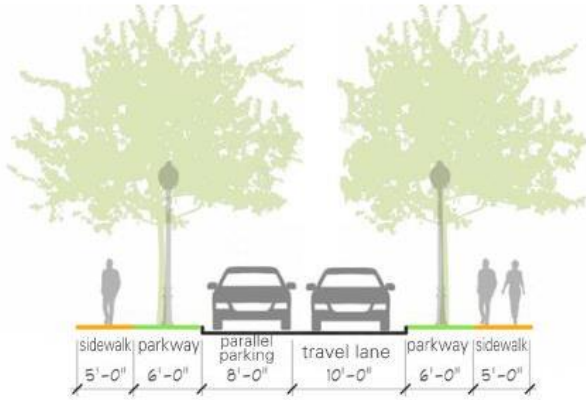
S - 50 - 27
Yield street I



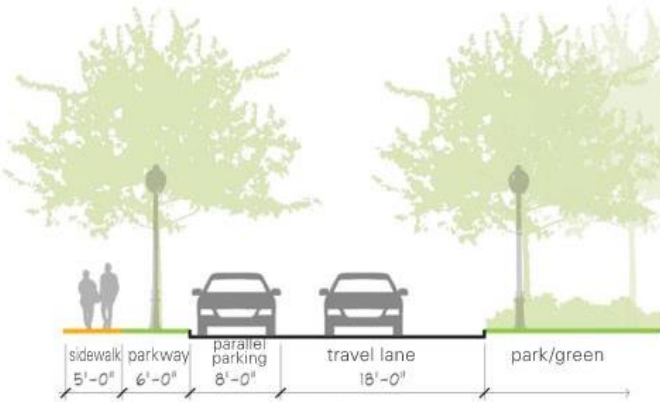
S - 54 - 32
Yield street II



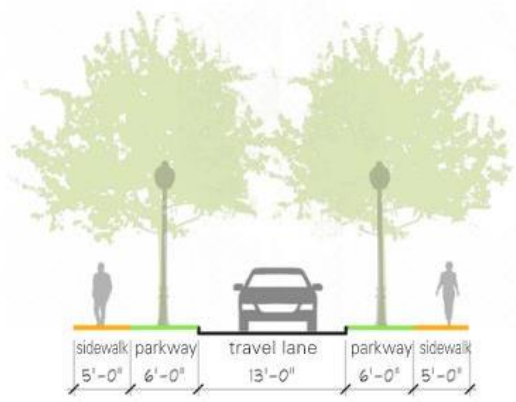
SIW - 60 - 39
Neighborhood One Way Street I



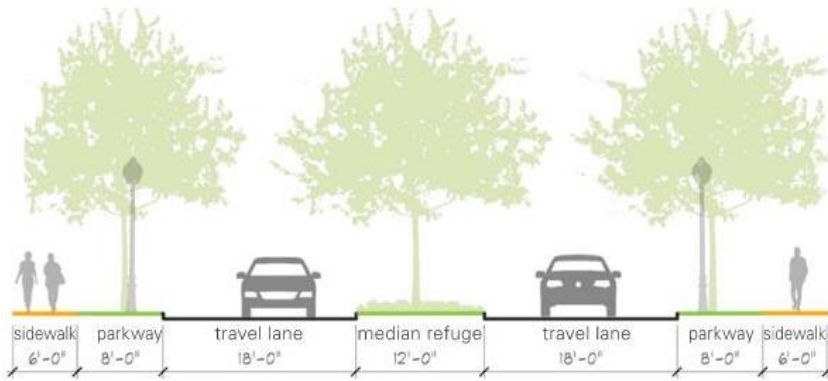
SIW - 40 - 18
Neighborhood One Way Street II



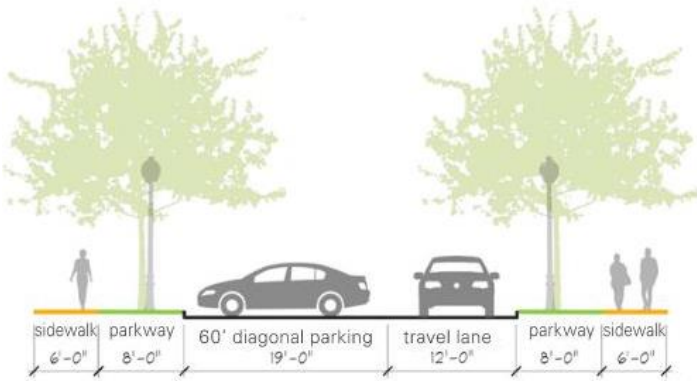
C - 37 - 26
Neighborhood Court



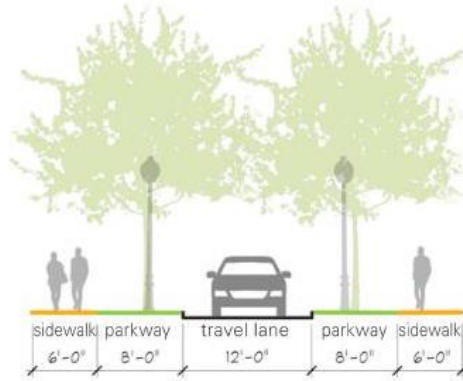
CIW - 35 - 13
Neighborhood One Way Court



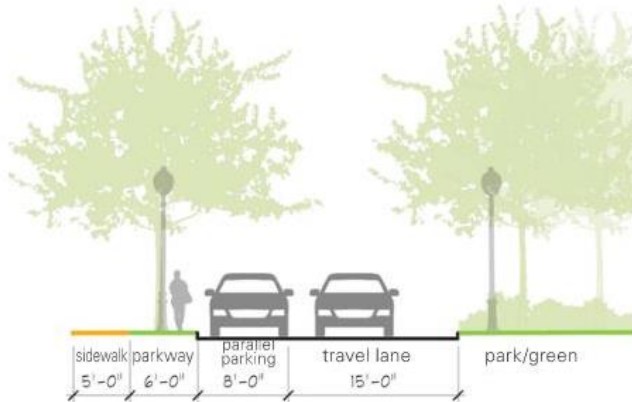
PW - 76 - 36
Parkway



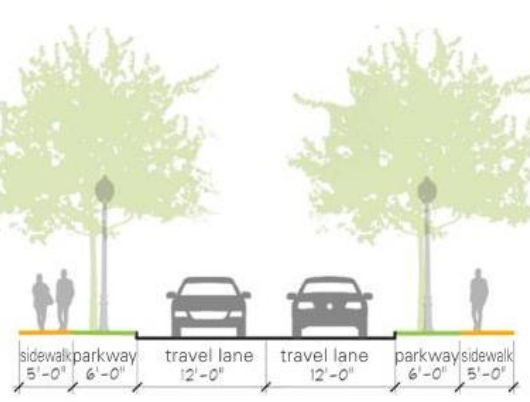
PIW - 59 - 31
One Way Parkway I



PIW - 40 - 12
One Way Parkway II



ES - 34 - 23
Edge Street



PC - 46 - 24
Park Crossing

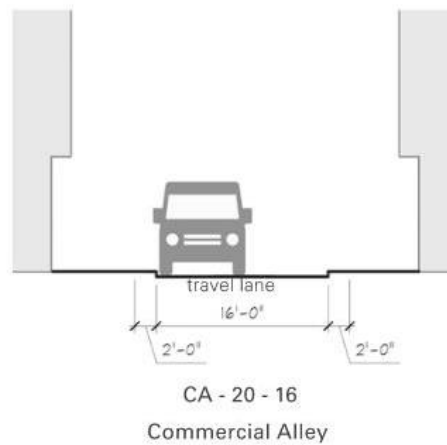
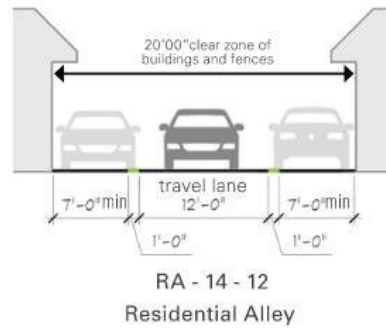
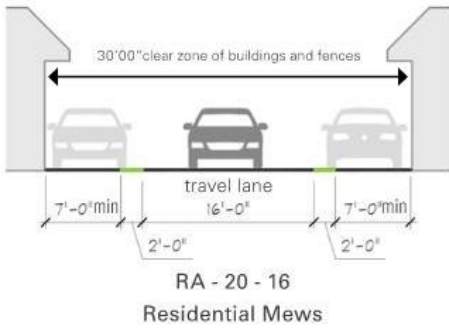
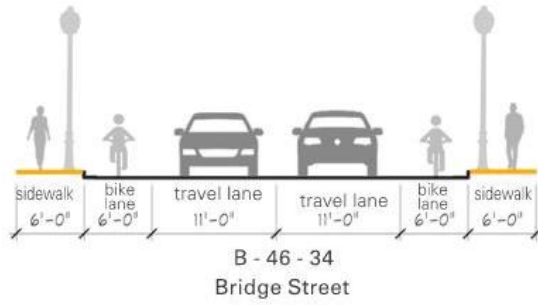


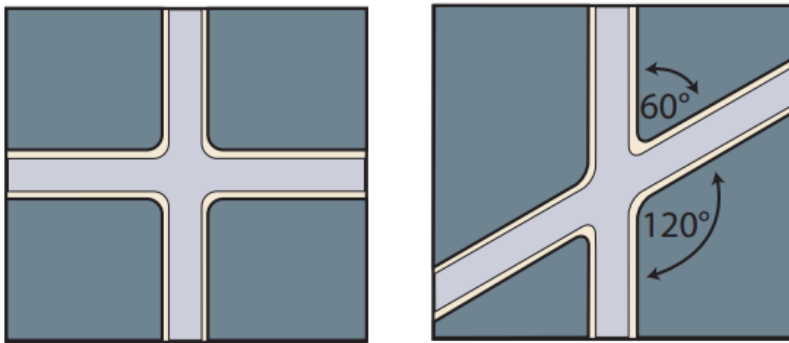
EXHIBIT C: INTERSECTION ASSEMBLIES

Where in conflict, criteria in the intersection assemblies shall control over design criteria in other applicable City ordinances.

INTERSECTION CHARACTERISTICS

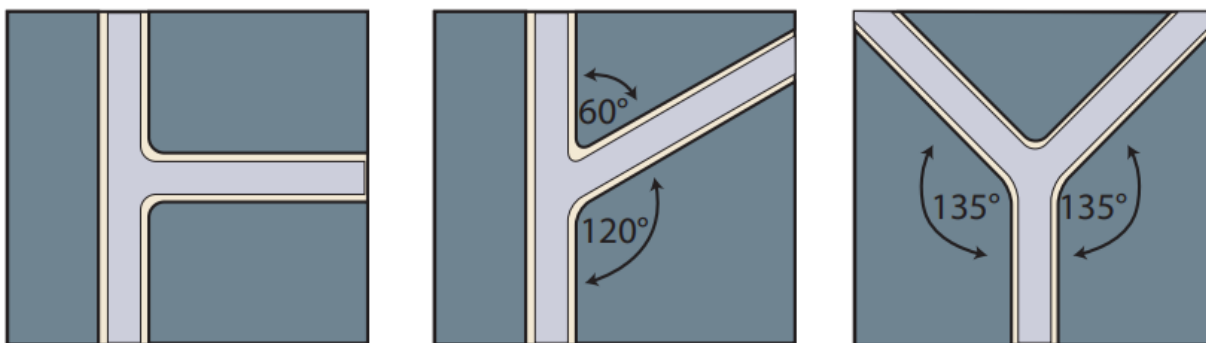
FOUR-LEG INTERSECTIONS

Four-leg intersections can vary from two lightly traveled local roads to a complex intersection of two main roadways. The intersection control can vary from uncontrolled, yield controlled, stop controlled or, for intersections with higher volumes, signal controlled. The type of intersection control varies based on traffic speed, traffic volumes, pedestrian crossing volumes and sight distance. For traffic purposes, intersections function best when designed at 90 degree or perpendicular. However, in urban areas there may be a desire to allow flexibility in intersection approach angles to allow for unique urban design features. This intersection skew should not be less than 60 degrees. If it is less than 60 degrees, then intersection modifications should be implemented to reduce the skew.



THREE-LEG OR T-INTERSECTIONS

Many of the design principles found in four-leg intersections apply to three-leg intersections. Intersection control can vary depending on a number of factors and the intersection skew of a T-intersection should not be less than 60 degrees. For a “Y” intersection the typical approach angles are 135 degrees. These intersections are uncommon but provide urban design features that can add unique architectural and design elements to the area.



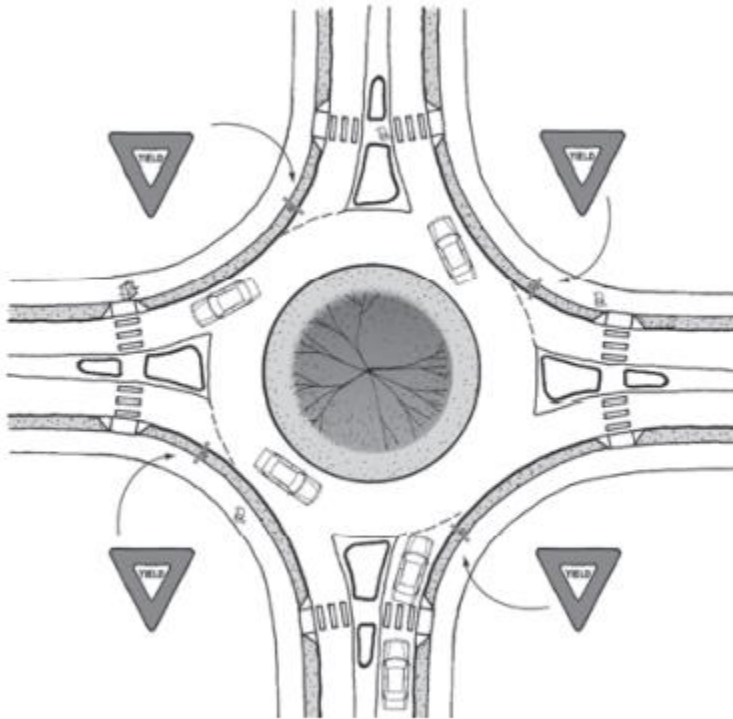
MODERN ROUNDABOUTS

The purpose of a modern roundabout is to increase vehicle capacity at the intersection, slow traffic and reduce the frequency and severity of collisions. They are not generally used to enhance pedestrian and bicycle safety. Roundabouts are not always the appropriate solution. General principles and considerations for the design of modern roundabouts include the following:

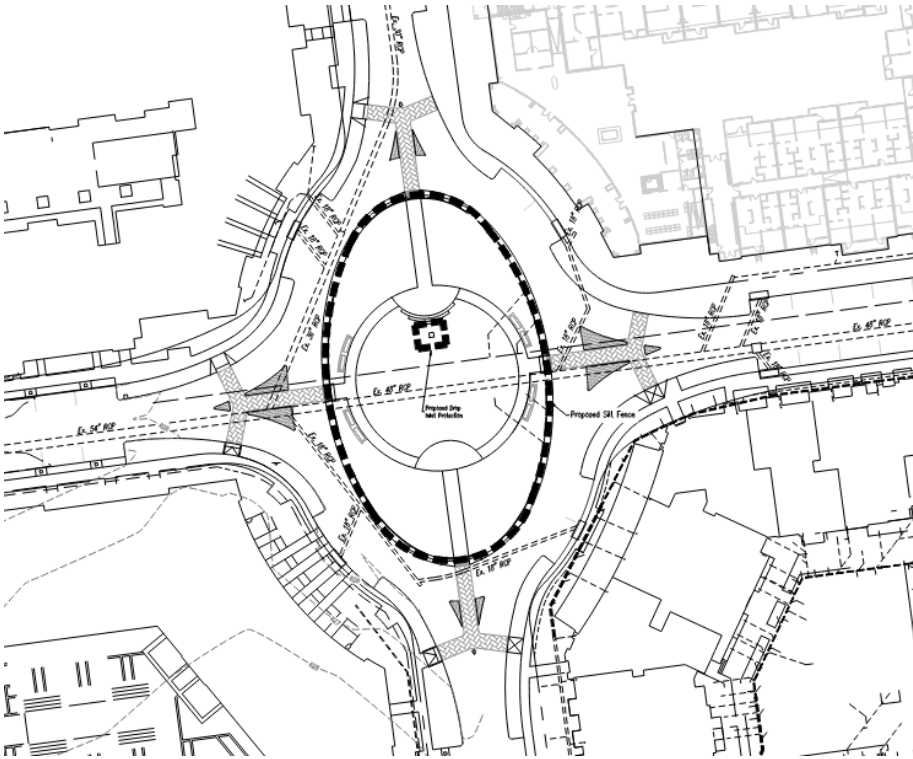
- Type of design vehicle;
- Use by disabled and visually impaired persons; and

- Effects on pedestrian route directness.

A modern roundabout should be designed to reduce the relative speeds between conflicting traffic streams and the absolute speed of vehicles and to improve pedestrian safety. The curved path that vehicles must negotiate slows the traffic. Vehicles entering need to be properly deflected and yield to traffic already in the circulating roadway of the roundabout. Internal speed operating or target speeds shall be between 15 and 19 mph.



A modified version of a modern roundabout, an ovalabout, may also be used.



CURB EXTENSIONS

Curb extensions (also called nubs, bulb-outs, knuckles, or neck-downs) extend the line of the curb into the traveled way, reducing the width of the street. Curb extensions typically occur at intersections but can be used at midblock locations to shadow the width of a parking lane, bus stop, or loading zone. These are called chokers. Curb extensions can provide the following benefits:

- Reduce pedestrian crossing distance and exposure to traffic;
- Improve driver and pedestrian visibility at intersections;
- Separate parking maneuvers from vehicles turning at the intersections;
- Visually and physically narrow the traveled way, resulting in a calming effect;
- Encourage and facilitate pedestrian crossing at preferred locations;
- Keep vehicles from parking too close to intersections and blocking crosswalks;
- Provide wider waiting areas at crosswalks and intersection bus stops;
- Reduce the effective curb-return radius and slow turning traffic;
- Provide space for level landings and clear space required at pedestrian push buttons, as well as double perpendicular curb ramps with detectable warnings; and
- Provide space for streetscape elements if extended beyond crosswalks.

Curb extensions serve to better define and delineate the travelway as being separate from the parking lane and streetside. They are used only where there is on street parking and the distance between curbs is greater than what is needed for the vehicular traveled way.

EXHIBIT D: LEGAL DESCRIPTION

METES AND BOUNDS DESCRIPTION – TRACT 1

BEING a tract of land situated in the Milton Gregg Survey, Abstract No. 385, Joseph Lawrence Survey, Abstract No. 616 and the Hugh Henderson Survey, Abstract No. 432 in Ellis County, Texas, being part of a tract conveyed to Phillips Family Living Trust, by deed recorded in Volume 2556, Page 2207 of the Deed Records of Ellis County, Texas, and Melinda Lou McVean by deed recorded in Volume 2392, Page 483 of the Deed Records of Ellis County, Texas, and Myrna Abrams by deed recorded in Volume 2575, Page 2189 of the Deed Records of Ellis County, Texas, and Fred B. Ballard by deed recorded in Volume 1806, Page 2460 of the Deed Records of Ellis County, Texas, with the subject tract being more particularly described as follows:

BEGINNING at the northwest corner of said Ballard tract and lying in the centerline of Britton Road;

THENCE, N 89°14'31" E, 1492.78 feet along said Britton Road to the northwest corner of Lot 1-R, Block 1 of Maranatha Ranch Addition, an addition to Ellis County, Texas, according to the plat thereof recorded in Cabinet D, Page 256 of the Plat Records of Ellis County, Texas;

THENCE along the boundary of said Lot 1-R, Block 1, the following courses and distances:

S 01°17'07" E, 213.06 feet; S 19°48'31" W, 181.44 feet;

N 65°11'29" W, 192.67 feet; S 64°29'31" W, 578.74 feet;

S 30°20'08" E, 320.06 feet to the northwest corner of said Myrna Abrams tract;

N 64°29'31" E, 694.54 feet;

N 16°55'29" W, 125.71 feet;

N 19°48'31" E, 195.03 feet;

N 70°17'29" W, 15.00 feet;

N 01°11'29" W, 106.45 feet;

N 43°48'31" E, 77.78 feet;

N 00°03'49" W, 43.92 feet to the northwest corner of said Abrams tract;

THENCE, N 89°56'11" E, 225.23 feet along said centerline of Britton Road to the northwest corner of The Original Town of Britton Addition, an addition to Ellis County, Texas, according to the plat thereof recorded in Volume 158, Page 45 of the Plat Records of Ellis County, Texas;

THENCE along the southwest line of Original Town of Britton, the following courses and distances:

S 07°00'12" E, 24.57 feet;

S 00°03'49" E, 200.00 feet;

N 89°41'11" E, 300.28 feet;

S 35°18'49" E, 991.11 feet to a northern corner of Corp. of Engineers tract;

April 16, 2024

THENCE, S 17°41'11" W, 423.06 feet to a northern line of Britton Cemetery;

THENCE, S 76°48'57" W, 197.52 feet to a 114 foot x 381 foot save and except tract out of Britton Cemetery;

THENCE, S 11°48'49" E, 381.00 feet along said save and except tract;

THENCE, N 78°11'11" E, 202.02 feet along said save and except tract at a corner of said Corp. of Engineers tract;

THENCE, S 06°34'48" E, 872.63 feet along said western line of said Corp. of Engineers tract to the northeast corner of a tract of land conveyed to Greenway Trails Owners Association, by deed recorded in Instrument No. 2122809 of the Deed Records of Ellis County, Texas;

THENCE, S 89°51'37" W, 780.69 feet to the southwest corner of said Myrna Abrams tract;

THENCE, S 89°14'31" W, 322.22 feet to the northwest corner of said Greenway Trails Owners Association tract and the northeast corner of a tract of land conveyed to Sunbelt Land Investments / 360 Ltd., by deed recorded in Volume 2746, Page 1136 of the Deed Records of Ellis County, Texas;

THENCE, S 61°44'31" W, 741.67 feet to the southwest corner of said Melinda Lou McVean tract;

THENCE, S 62°29'06" W, 399.37 feet to the most southern corner of said Phillips Family Living Trust tract;

THENCE, N 52°26'13" W, 191.08 feet to the east line of an easement granted to Texas Electric Services Co. by deed recorded in Volume 557, Page 59 of the Deed Records of Elis County, Texas;

THENCE, N 03°56'55" W, 2367.96 feet along the east line of said Texas Electric Service Co. easement to the southeast property line of a tract of land conveyed to City of Mansfield, by deed recorded in Instrument No. 2245479 of the Deed Records of Ellis County, Texas;

THENCE, N 60°22'31" E, 88.92 feet;

THENCE, N 30°15'29" W, 800.00 feet to the POINT OF BEGINNING with the subject tract containing 5,871,907 square feet or 134.8 acres of land.

"This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

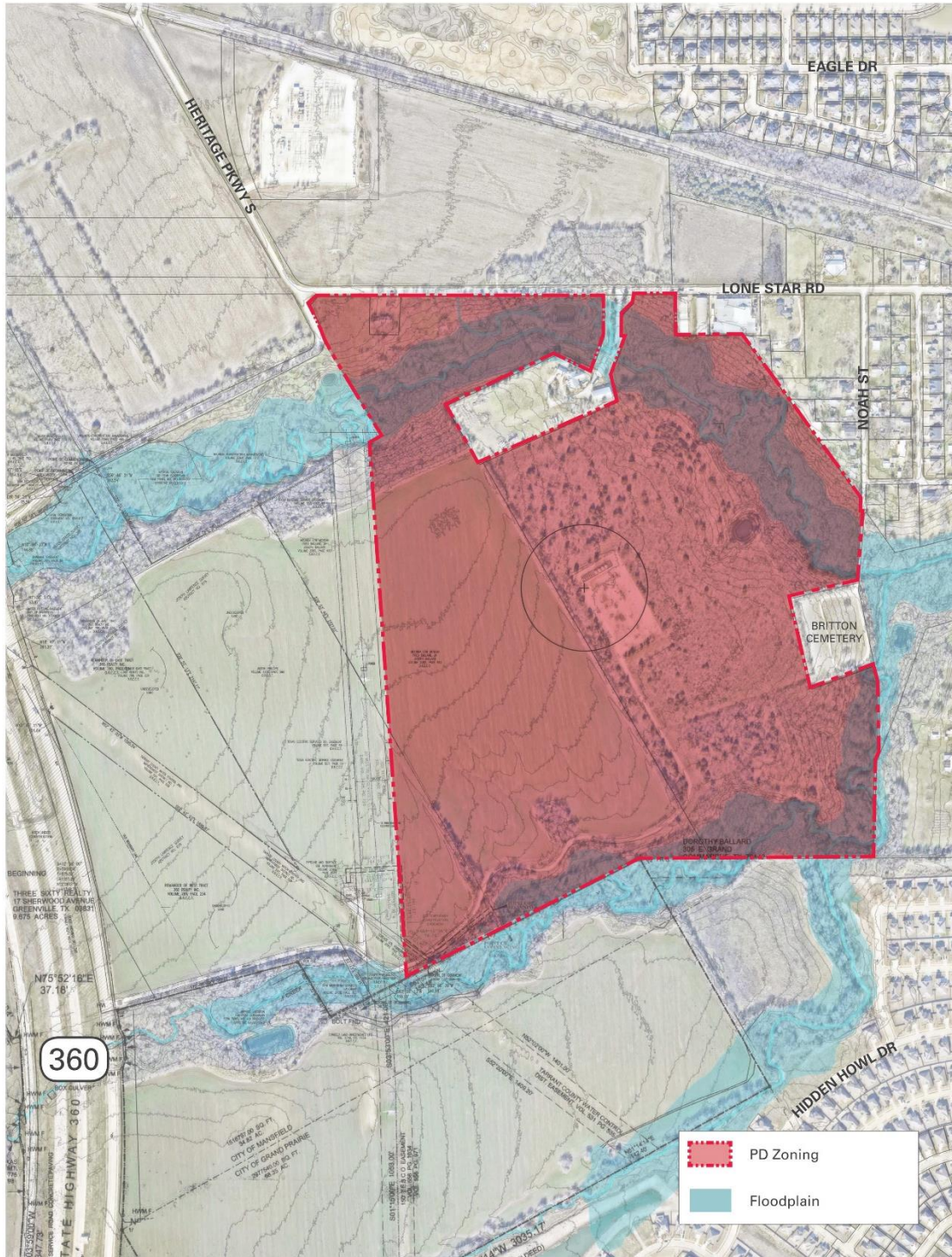
April 16, 2024

EXHIBIT E: LOCATION MAP




Notes	Development Team		Location Map	
 <p>Scale 1" = 400'</p>	<p>Developer: Arcadia Realty Corp. P.O. Box 670269 Dallas, TX 75201 Contact: Bill Gietema Email: bill@arcadirealty.net</p> <p>Attorney: Jackson Walker LLP 2323 Ross Avenue, Suite 600 Dallas, TX 75201 Contact: Bill Dahlstrom Email: wdahlstrom@jw.com</p>	<p>Planner / Landscape Architect: TBG Partners Inc. 2091 Bryan Street, #1450 Dallas, TX 75201 Contact: Yixiao Liu Email: yixiao.liu@tbgpartners.com</p> <p>Engineer / Surveyor: Spiers Engineering & Surveying 3537 Lone Star Circle, Unit 434 Fort Worth, TX 76177 Contact: Danny McCamish, PE. Email: danny.mccamish@spiersengineering.com</p>		 <p>Lonstar Mansfield</p> <p>EXHIBIT E LOCATION MAP</p> <p>Milton Gregg Survey, Abstract No. 385 Joseph Lawrence Survey, Abstract No. 816 Hugh Henderson Survey, Abstract No. 432 City of Mansfield, Ellis County, Texas April 18, 2028 134.8 Acres ZCH</p> <p style="text-align: right;">SUBMITTAL #1</p>

EXHIBIT F: ZONING EXHIBIT

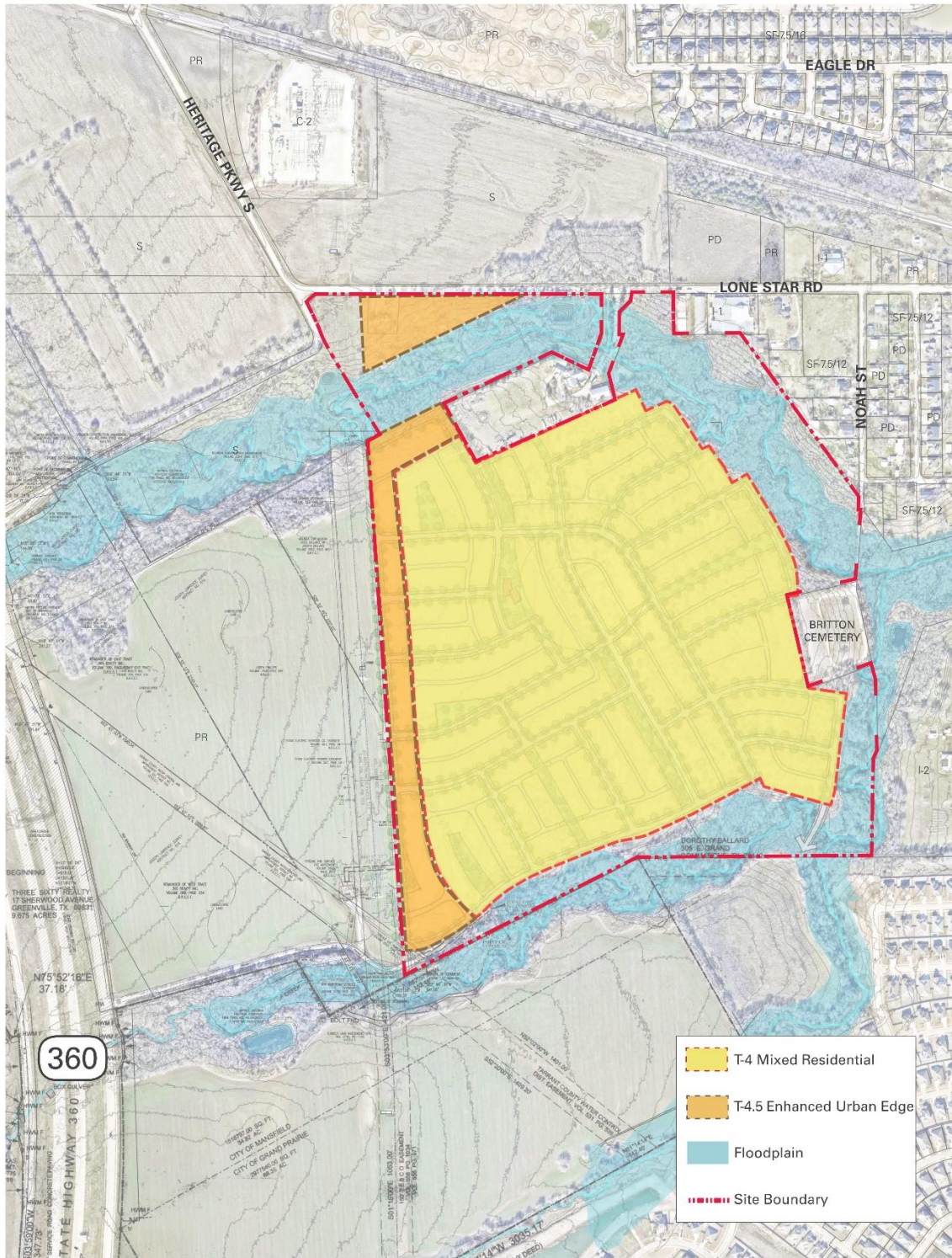


Notes	Development Team		Location Map
 <p>Scale 1" = 200'</p>	<p>Developer: Arcadia Realty Corp. P.O. Box 570099 Dallas, TX 75267 Contact: Bill Grietema Email: bill@arcadiarealty.net</p> <p>Attorney: Jackson Walker LLP 2323 Ross Avenue, Suite 600 Dallas, TX 75201 Contact: Bill Dahlstrom Email: wdahlstrom@jw.com</p>	<p>Planner / Landscape Architect: TBG Partners Inc. 2001 Bryan Street, #1450 Dallas, TX 75201 Contact: Yixiao Liu Email: yixiao.liu@tbgpartners.com</p> <p>Engineer / Surveyor: Spars Engineering & Surveying 3537 Lone Star Circle, Unit 434 Fort Worth, TX 76177 Contact: Danny McCarriah, P.E. Email: denny.mccarriah@sparsengineering.com</p>	


ARCADIA
Lonestar Mansfield
 EXHIBIT F ZONING EXHIBIT
 Milton Gregg Survey, Abstract No. 389
 Joseph Lawrence Survey, Abstract No. 616
 Hugh Henderson Survey, Abstract No. 432
 City of Mansfield, Ellis County, Texas
 April 16, 2024
 134.8 Acres
 ZCA

SUBMITAL #1

EXHIBIT G: TRANSECT ZONE EXHIBIT



Notes

- Site Plan and Phasing subject to change in the Regulating Plan
- All required building metrics are addressed in the PD text and Exhibit A: Buildings Standards

Development Team

Developer:
Arcadia Realty Corp.
P.O. Box 670069
Dallas, TX 75367
Contact: Bill Gietsma
Email: bill@arcadiarealty.net

Planner / Landscape Architect:
TBG Partners Inc.
2001 Bryan Street, #1450
Dallas, TX 75201
Contact: Yixiao Liu
Email: yixiao.liu@tbgpartners.com

Engineer / Surveyor:
Spiars Engineering & Surveying
3837 Lone Star Circle, Unit 434
Fon Worth, TX 76137
Contact: Danny McCamish, PE
Email: danny.mccamish@spengineering.com

Attorney:
Jackson Walker LLP
2323 Rose Avenue, Suite 600
Dallas, TX 75201
Contact: Bill Dahstrom
Email: wdahstrom@jw.com

Location Map



ARCADIA
Lonestar Mansfield
EXHIBIT G CONCEPT PLAN

Milton Gregg Survey, Abstract No. 385
Joseph Lawrence Survey, Abstract No. 615
Hugh Henderson Survey, Abstract No. 432
City of Mansfield, Ellis County, Texas
April 16, 2024
134.8 Acres
ZONING: _____

5/20/24 A: #1



CITY OF MANSFIELD

1200 E. Broad St.
Mansfield, TX 76063
mansfieldtexas.gov

STAFF REPORT

File Number: 24-6042

Agenda Date: 6/10/2024

Version: 1

Status: New Business

In Control: City Council

File Type: Resolution

Title

Resolution - A Resolution of the City Council of the City of Mansfield, Texas, Approving the Award of a Construction Manager at Risk (CMAR) Contract to Moss Construction for the Harvest Point Public Infrastructure Project; Finding that the Meeting at Which this Resolution is Passed is Open to the Public as Required by Law; And Declaring an Effective Date (TIRZ #4)

Requested Action

To Consider the Resolution

Recommendation

To Approve the Resolution

Description/History

On April 22, 2024, City Council approved Resolution #4194-24 to authorize the use of the Construction Manager at Risk (CMAR) procurement delivery method for the construction of the Public Infrastructure at Harvest Point.

In this delivery method, the city contracts separately with an engineer, in this case, Dunaway Associates, to deliver the design and engineering for the construction of the public infrastructure, and then contracts with a construction manager during that design phase, to ensure price, schedule, and constructability are managed prior to construction commencing.

The construction manager is responsible for construction performance and commits to delivering the process within a defined schedule and price, either a fixed sum or a guaranteed maximum price (GMP). The construction manager provides construction input to the owner and design engineers during the design phase and operates as the general contractor during the construction phase.

The City solicited request for proposals (RFP#2024-41-01-02) for CMAR services and received two proposals from qualified firms. Based on the submittals and pricing breakdowns, staff and Vieste recommend Moss Construction as the best value based on the criteria and scoring of the project.

Between the two proposals, Moss Construction put \$2.7 million more toward bid trades than Sundt Construction which means more money for actual construction of materials and labor.

Future steps in this process include setting a guaranteed maximum price (GMP) which will be brought back to city council as an amendment to the contracts at a future council date.

Justification

The Construction Manager at Risk procurement method offers assistance from the general contractor during the design phase to ensure pricing, timing, and constructability are all being considered to protect the city's best interests. Moss Construction provided the overall score and value during the selection process.

Funding Source

TIRZ #4

Prepared By

Jason Moore, Executive Director of Economic Development

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, APPROVING THE AWARD OF A CONSTRUCTION MANAGER AT RISK (CMAR) CONTRACT TO MOSS CONSTRUCTION FOR THE HARVEST POINT PUBLIC INFRASTRUCTURE PROJECT; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND DECLARING AN EFFECTIVE DATE. (TIRZ #4)

WHEREAS, The City of Mansfield (City) is a home rule municipality operating under and governed by the laws and Constitution of the State of Texas; and,

WHEREAS, the City Council previously authorized the use of the CMAR method for the construction of the multipurpose stadium project (Project) in the City of Mansfield, Texas, and found that the CMAR method would provide the best value for the City; and,

WHEREAS, the City issued RFP#2024-41-01-02 seeking a qualified CMAR to provide design phase assistance and complete construction services for the Project; and,

WHEREAS, Moss Construction submitted a response to the RFP showing extensive experience in providing CMAR services; and,

WHEREAS, City staff has reviewed and evaluated all the responses and recommends the selection of Moss Construction for the CMAR on the Project; and,

WHEREAS, funding for this contract is available from the TIRZ #4 Fund.

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

SECTION 1.

The findings and recitations set out in the preamble are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2.

A contract for CMAR services for the Project with Moss Construction is hereby approved.

SECTION 3.

The City Council hereby delegates its authority under Texas Government Code Chapter 2269 to the City Manager, designates the City Manager as its designated representative for purposes related to this Project, and authorizes the City Manager and his designee(s) to take all actions necessary to accomplish the purposes and implementation of this

SECTION 4.

It is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION 5.

This Resolution shall be effective from and after its passage.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
MANSFIELD THIS 10TH DAY OF MAY, 2024.**

Michael Evans, Mayor

ATTEST:

Susana Marin, City Secretary

DRAFT AIA® Document A133™ - 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

« City of Mansfield, Texas »

and the Construction Manager:
(Name, legal status, address, and other information)

« Moss Construction »

for the following Project:
(Name, location, and detailed description)

« Public Infrastructure at Harvest Point »

The Engineer:
(Name, legal status, address, and other information)

« Dunaway Associates, LLC
550 Bailey Ave.
Suite 400
Fort Worth, Texas 76107
»

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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- 12 DISPUTE RESOLUTION
- 13 TERMINATION OR SUSPENSION
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- 15 **SCOPE OF THE AGREEMENT - The following documents comprise the Agreement:**

- .1 AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified and amended herein.
- .2 AIA Document A201– 2017, General Conditions of the Contract for Construction, as modified and amended herein.
- .3 EXHIBITS to the Agreement
 - Exhibit A AIA Document - Guaranteed Maximum Price Amendment(s)
 - Exhibit B AIA Document Insurance and Performance, Payment, and Maintenance Bonds
 - Exhibit C AIA Document E203TM-2013 BIM and Digital Data Exhibit
 - Exhibit D CM Supplemental Scope of Services
 - Exhibit E Key Personnel and Staffing
 - Exhibit F Milestone Schedule
 - Exhibit G Cost Proposal Form and Cost Allocation Summary
 - Exhibit H (Reserved)
 - Exhibit I Preliminary Facility Requirements
 - Exhibit J Project Description
 - Exhibit K Plat of Survey and/or Site Description
 - Exhibit L Geotechnical Investigations
 - Exhibit M Construction Testing and Inspection Matrix
 - Exhibit N Special Development and/or City Requirements
 - Exhibit O Billing Procedures and Waiver of Lien Forms

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as “not applicable” or “unknown at time of execution.”)

§ 1.1.1 The Owner’s program for the Project, as described in Section 4.1.1:

(Insert the Owner’s program, identify documentation that establishes the Owner’s program, or state the manner in which the program will be developed.)

« Reference Exhibit I - Facility Requirements »

§ 1.1.2 The Project’s physical characteristics:

(Identify or describe pertinent information about the Project’s physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

« »

§ 1.1.3 The Owner’s budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

« Reference Exhibit G - Cost Proposal Form and Cost Allocation Summary »

§ 1.1.4 The Owner’s anticipated design and construction milestone dates:

Per Exhibit F – Milestone Schedule

§ 1.1.5 Agreement assumes fast-track scheduling and phased construction as required to meet the schedule as outlined in Exhibit F - Milestone Schedule.

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:

(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

§ 1.1.6.1 [Intentionally Omitted]

« »

§ 1.1.7 [Intentionally Omitted]

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

Owner Representative:
Vieste, LLC
27299 Riverview Center Boulevard, Suite 105
Bonita springs, FL 34134
Attention: Don Currise

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager’s submittals to the Owner are as follows:

(List name, address and other contact information.)

« TBD »

§ 1.1.10 The Engineer or the Owner has retained the following consultants and contractors for the Project:

(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

« »« TBD »
« »
« »
« »
« »

.2 Civil Engineer & Surveyor:

« »« TBD »
« »
« »
« »
« »

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

« TBD »

§ 1.1.11 The Engineer's representative:

(List name, address, and other contact information.)

« TBD »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

« TBD »

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

Refer to this Agreement and Exhibit D – CM Supplemental Scope of Services

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

«Subcontractor procurement by the Construction Manager shall be made in accordance with the Texas Gov't Code Ch. 2269.»

Refer to this Agreement and Exhibit D - CM Supplemental Scope of Services

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The "Contract Documents" or "Contract" consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Engineer and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Engineer and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction (herein after referred to as "A201–2017" in this Agreement), shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 3.18, Indemnification; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Article 11, Insurance and Bonds; Article 13 Miscellaneous Provisions. The term "Contractor" as used in A201–2017 and in this Agreement shall also mean the Construction Manager or the CM.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 and in this Agreement shall also mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. **The Owner and Construction Manager may agree, in consultation with the Engineer, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.** The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager's Preconstruction and Construction Phase Services and responsibilities are further delineated in Exhibit D – CM Supplemental Scope of Services.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Engineer shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Engineer and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Engineer may require, or as required by Texas Business & Commerce Code Ch. 59.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Engineer and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Engineer on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Engineer, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Engineer regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Engineer in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Engineer's review and the Owner's acceptance. The Construction Manager shall obtain the Engineer's approval for the portion of the Project schedule relating to the performance of the Engineer's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Engineer's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Engineer, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Engineer, the Construction Manager shall prepare, for the Engineer's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Engineer or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Engineer progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Engineer, an estimate of the Cost of the Work with increasing detail and refinement. The

Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Engineer's review and the Owner's approval. The Construction Manager shall inform the Owner and Engineer in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 [Intentionally Omitted]

§ 3.1.7 As the Engineer progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Engineer and make recommendations regarding constructability and schedules, for the Engineer's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Engineer regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval attached hereto as Exhibit E - Key Personnel and Staffing.

§ 3.1.10 [Intentionally Omitted]

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 [Intentionally Omitted]

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project in accordance with Texas Gov't Code Ch. 2269. Nothing in this Agreement shall be construed as creating a privity of contract between the Owner and any subcontractor, materialmen, or suppliers, or any other third-party performing Work under the Contract. The Construction Manager shall not assign by power of attorney, pass through agreement, or otherwise, any claims, rights, or causes of action to any subcontractors, materialmen, or suppliers, or any other third-party performing Work under the Contract, without the express written consent of the Owner.

§ 3.1.11.3 [Intentionally Omitted]

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Engineer's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document as described in this Agreement and as further delineated in the attached Exhibit D – CM Supplemental Scope of Services.

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

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§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Engineer's review, and the Owner's acceptance.

The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2., as set forth attached in the Cost of Services hereto as Exhibit G - Cost Proposal Form and Cost Allocation Summary.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, may be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- 1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- 2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- 3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee; attached hereto as Exhibit G - Cost Proposal Form and Cost Allocation Summary;
- 4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- 5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a Construction Manager's contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price, but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Engineer to review the Guaranteed Maximum Price proposal. In the event that the Owner or Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Engineer. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Engineer of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 Subject to Section 3.6 through 3.6.3 of A201-2017, the Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

[Tax Exempt language here?]

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, the Owner’s issuance of a Notice to Proceed, whichever occurs earlier.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Engineer.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Engineer a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, attached hereto as Exhibit F - Milestone Schedule.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Engineer, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Engineer, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Engineer, and shall provide this information in its monthly reports to the Owner and Engineer, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER’S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 [Intentionally Omitted]

§ 4.1.3 The Owner shall establish the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of these costs.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 To the extent available and in the Owner’s possession, the Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. Testing and Inspection responsibilities are as set forth in the Testing and Inspection Matrix attached hereto as Exhibit M.

§ 4.1.4.2 To the extent available and in the Owner’s possession, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. Notwithstanding the forgoing, the Construction Manager shall field verify the information in the surveys provided, as set forth in Exhibit K - Site Description.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations, as set forth in Exhibit L – Geotechnical Investigations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services.

§ 4.1.6 [Intentionally Omitted]

§ 4.2 Owner’s Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner’s representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Engineer does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner’s needs and interests.

§ 4.3 Engineer

The Owner shall retain an Engineer to provide services, duties and responsibilities as required by Texas Gov’t Code Ch. 2269, including any additional services that are necessary for the Preconstruction and Construction Phase services under this Agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager’s Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

« The total compensation for Preconstruction Phase Services for Phase 1 of the project shall not exceed the amount set forth in Exhibit G - Cost Proposal Form and Cost Allocation Summary. The Parties may execute one or more amendments to adjust the Guaranteed Maximum Price, Contract Time, and Scope of Work to facilitate the efficient construction of the entire project, whether constructed in one or more phases. The final Guaranteed Maximum Price shall not exceed the Owner’s total budget for the Project under any circumstances.»

§ 5.1.2 [Intentionally Omitted]

§ 5.1.2.1 [Intentionally Omitted]

§ 5.1.3 [Intentionally Omitted]

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager’s invoice in accordance with Texas Gov’t Code Ch. 2251.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager’s performance of the Contract after execution of the Guaranteed Maximum Price Amendment, in accordance with A201–2017.. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager’s Fee.

§ 6.1.2 The Construction Manager’s Fee shall be as set forth in Exhibit G - Cost Proposal Form and Cost Allocation Summary.

§ 6.1.3 The method of adjustment of the Construction Manager’s Fee for changes in the Work shall be as set forth in Exhibit G - Cost Proposal Form and Cost Allocation Summary.

§ 6.1.4 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:

«Subcontractor’s overhead and profit shall not exceed seven percent (7%) of the cost of the work, applicable to those elements of the Work to be performed by the subcontractor, but shall not include unabsorbed home office overhead»

§ 6.1.5 [Intentionally Omitted]

§ 6.1.6 Terms and conditions for Liquidated damages are applicable in accordance with A201–2017

« TBD »

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)
If the final Cost of the Work plus the Construction Manager’s Fee is less than the final Guaranteed Maximum Price, as adjusted by Change Order, the difference shall be deemed “Savings.” The savings shall accrue to and be retained by Owner.

« TBD »

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions to the extent allowed by Texas Local Gov’t Code Sec. 252.048.. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Engineer may order minor changes in the Work as provided in Article 7 of A201–2017.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of A201–2017.

§ 6.3.3 [Intentionally Omitted]

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 [Intentionally Omitted]

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7., and as set forth in Exhibit G - Cost Proposal Form and Cost Allocation Summary.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

All labor and supervisory cost are to be reimbursed in accordance with Exhibit G - Cost Proposal Form and Cost Allocation Summary.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law, for taxes, insurance, contributions, assessments and benefits and, for personnel, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts this Agreement, and applicable law, including, but not limited to Texas Gov't Code Ch. 2251, 2253, and 2258.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or

value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's Site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Subject to Section 3.6 through 3.6.3 of A201-2017, the sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.[Tax exempt?]

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded by A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 [Intentionally Omitted]

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the Site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 [Intentionally Omitted]

§ 7.6.9 [Intentionally Omitted]

§ 7.6.10 [Intentionally Omitted]

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 [Intentionally Omitted]

§ 7.8 [Intentionally Omitted]

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
Fee and other cost items as further clarified in Exhibit G - Cost Proposal Form and Cost Allocation Summary.
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead, which shall not include unabsorbed home office overhead, and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents and in accordance with Texas Gov’t Code Ch. 2269. The Construction Manager shall deliver such bids to the Engineer and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager’s list of proposed subcontractors and suppliers in consultation with the Engineer and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Engineer, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to

perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 The Construction Manager shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in A201-2017. The Construction Manager may seek to perform portions of the work itself if: (1) the Construction Manager submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and (2) the Owner determines that the Construction Manager's bid or proposal provides the best value for the governmental entity.

If the Construction Manager reviews, evaluates, and recommends to the Owner a bid or proposal from a trade contractor or subcontractor but the Owner requires another bid or proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the Construction Manager incurs because of the Owner's requirement that another bid or proposal be accepted. However, the Owner shall not be required to compensate the Construction Manager under this Section 9.1.1, if an actual or perceived conflict of interest exists under Texas Local Gov't Code Ch. 176, or any other law, rule, or ordinance as determined by the Owner in its sole discretion.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall be awarded in accordance with Texas Gov't Code Chapter 2269.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred, as further provided in Section 13.7 of A201-2017. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of seven (7) years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments, Payment procedures shall comply with Exhibit O Billing Procedures and Waiver of Lien Forms.

§ 11.1.1 Based upon Applications for Payment submitted to the Engineer by the Construction Manager, and Certificates for Payment issued by the Engineer, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

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§ 11.1.3 Provided that an Application for Payment is received by the Engineer not later than the «25th» day of a month, the Owner shall make payment of the amount certified to the Construction Manager in accordance with Texas Gov't Code Ch. 2251. If an Application for Payment is received by the Engineer after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «thirty» («30») days after the Engineer receives the Application for Payment or as required by Texas Gov't Code Ch. 2251.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Engineer to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed

Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Engineer, and the Construction Manager shall obtain approval from Owner prior to the allocation of any amount that exceeds \$50,000. In addition, the contingency shall not be used to fund deficiencies in the cost of General Conditions, Staffing, Insurance, Bonds or the Construction Managers Fee.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing. Stored material must be unique material and equipment specifically for the project (not normal construction items such as drywall, conduit, paint) and be accompanied with a bill of sale, UCC registration, certificate of insurance. This is further clarified in Article 9.3.2 of AIA Document A201–2017;
- .3 That portion of Construction Change Directives that the Engineer determines, in the Engineer's professional judgment, to be reasonably justified subject to the Owner's approval; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Engineer has previously withheld a Certificate for Payment as provided in Article 9 of A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Engineer may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation;
- .6 Retainage withheld pursuant to Section 11.1.8; and

.7 Amounts, if any, withheld by the Owner as liquidated damages under the Contract.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Final Completion of the Work, the Owner may withhold Retainage, from the payment otherwise due, as provided in Section 9.3.4 of A201–2017:

§ 11.1.8.1.1 [Intentionally Omitted]

§ 11.1.8.2 [Intentionally Omitted]

§ 11.1.8.3 [Intentionally Omitted]

§ 11.1.9 If Final Completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of A201–2017.

§ 11.1.10 Except with the Owner’s prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts shall not be greater than the percentage withheld from the Construction Manager by the Owner in accordance with Texas Gov’t Code Ch. 2252, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager’s Applications for Payment the Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Engineer has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Engineer has made exhaustive or continuous on-site inspections; or (3) that the Engineer has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager’s responsibility to correct Work as provided in Article 12 of A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Engineer in accordance with Section 11.2.2.2.

Prior to final payment, the Construction Manager shall also furnish the Owner with the following, which items are in addition to the deliveries required by Section 9.10.2.1 of the General Conditions: (i) an "as built" plan showing the location on the site of all improvements constructed thereon, and showing the location of all water, sewer, gas and electric lines and mains, and of all existing utility easements in hard copy, current version of Auto and PDF formats to the extent such underlying work is within the Construction Manager's scope of Work; (ii) all original maintenance and operating manuals and schematics from all manufacturers of materials and equipment used in the Work which describe the use and maintenance of such materials and equipment; (iii) marked sets of Drawings and PDF/AutoCAD Drawings which accurately reflect the Work as actually constructed and installed, show all field changes and selections affecting all of the general construction, mechanical, and piping systems and other components of the Work, and show any other "as built" changes from the Engineer's drawings and indicate changes in the Work from that described in the Drawings and Specifications; (iv) reproducible AutoCAD and mylar drawings upon which the Construction Manager shall have transferred all changes in the location of any concealed utilities, mechanical or electrical systems and components; (v) originals of any special guarantees or warranties required by the Contract Documents; (vi) original guarantees and warranties from all Subcontractors, vendors, suppliers and manufacturers of materials and equipment used in the Work which have been properly addressed or otherwise assigned and/or transferred to the Owner; (vii) a list of the names, addresses and phone numbers of all Subcontractors and other persons providing guarantees and warranties; (viii) a

complete source listing of all major components and finish materials utilized in the Project, including, without limitation, paint and stain mix specifications; (ix) a complete set of close out documents; and (x) attic stock of materials as per the Project Manual.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Engineer that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Engineer.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Engineer will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Engineer's reasons for withholding a certificate as provided in Article 9 of A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of A201-2017. The Engineer is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Owner shall notify the Construction Manager of the error or disputed amount in a partial or final statement or invoice submitted under this Contract not later than the 21st day after the date the Owner receives the partial or final statement or invoice, and the Owner shall include in such notice a detailed statement of the amount of the partial or final statement or invoice which is disputed, or that a bona fide dispute exists under Texas Gov't Code Ch. 2251.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Engineer's final Certificate for Payment, subject to the Contract Documents and Texas Gov't Code Ch. 2251.

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§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, or to otherwise correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated in Texas Gov't Code Ch. 2251.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201-2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to litigation, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Owner will serve as the Initial Decision Maker pursuant to Article 15 of A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services.

§ 12.2 [Intentionally Omitted]

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201-2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1, subject to the limitations of Texas Local Gov't Code Ch. 271.

§ 13.1.6.1 [Intentionally Omitted]

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of A201-2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of A201-2017, the amount, if any, to be paid to the Construction Manager under Article 14 of A201-2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of A201-2017.

In the event of a conflict between this Section 13.2.2.1 and the termination provisions of A201-2017, the termination provisions of A201-2017 shall control.

§ 13.2.2.2 [Intentionally Omitted]

§ 13.2.3 [Intentionally Omitted]

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of A201–2017; in such case, the Guaranteed Maximum Price and Contract Time may be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 [Intentionally Omitted]

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction and Construction Phase

For all phases of the Project, the Construction Manager shall purchase and maintain insurance as required by Article 11 of A201–2017, and the Construction Manager shall provide performance, payment, and maintenance bonds as set forth in the Contract Documents, including performance and payment bonds as required by Section 2269.258 and Chapter 2253 of the Texas Gov’t Code. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum, or the construction budget as applicable under Section 2269.258 of the Texas Gov’t Code, and shall automatically include any adjustment in time or cost as the Work progresses. The bonds shall be provided on the Owner’s forms, which are attached to this Agreement as Exhibit B.

§ 14.3.1.1 [Intentionally Omitted]

§ 14.3.1.2 [Intentionally Omitted]

§ 14.3.1.3 [Intentionally Omitted]

§ 14.3.1.4 [Intentionally Omitted]

§ 14.3.1.5 [Intentionally Omitted]

§ 14.3.1.6 [Intentionally Omitted]

§ 14.3.1.7 [Intentionally Omitted]

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance or endorsements as may be required by the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 [Intentionally Omitted]

§ 14.3.2.1 [Intentionally Omitted]

§ 14.4 [Intentionally Omitted]

§ 14.5 [Intentionally Omitted]

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ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The documents identified in the Table of Articles (page 2 of this Agreement) comprise the Agreement.

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*

« »

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

« »

(Printed name and title)



DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Public Infrastructure at Harvest Point

THE OWNER:

(Name, legal status and address)

City of Mansfield, Texas

THE ENGINEERARCHITECT:

(Name, legal status and address)

«
Dunaway Associates, LLC
550 Bailey Ave.
Suite 400
Fort Worth, Texas 76107
»

TABLE OF ARTICLES

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ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The “Contract Documents” or “Contract” are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect/Engineer. The Contract Documents also include the advertisement, invitation to bid, or request for proposals, Instructions to Bidders, sample forms, other solicitation information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor’s bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction (the “Contract”). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. As a material consideration for the making of the Contract Documents, modification to this Contract shall not be construed against the maker of said modifications. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect/Engineer or the Architect/Engineer’s consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, materialman, or supplier, (3) between the Owner and the Architect/Engineer or the Architect/Engineer’s consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect/Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect/Engineer’s duties.

§ 1.1.3 The Work

The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, FF&E, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect/Engineer and the Architect/Engineer’s consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2.

§ 1.1.9 Site

The term Site refers to that portion of the property on which the Work is to be performed or which has been otherwise set aside for use by the Contractor.

§ 1.1.10 Punch List

The term Punch List means, collectively, unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment, or decoration remaining to be performed, the non-completion of which would not materially affect the use of the Project, and which are capable of being completed within sixty (60) days of Substantial Completion, subject to the availability of special order parts and materials.

§ 1.1.11 ~~Not Used. Furniture, Fixtures, and Equipment~~

~~“FF&E” means furniture, fixtures, and equipment purchased to be used in the Project. The Contractor shall be responsible for the acquisition, storage, installation, and protection of the FF&E, if any, required for the Project until the date of Final Completion. Thereafter, the FF&E shall be subject to all warranties, guarantees, and maintenance bonds provided in this Contract. The installation of FF&E shall not be considered or construed as evidence of beneficial use of the improvements by the Owner or evidence of Substantial Completion under any circumstances.~~

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

Contractor warrants that it has reviewed the Contract Documents: (i) for compliance with all Legal Requirements for which it is responsible; (ii) to establish construction means, methods, techniques, sequences or procedures; (iii) to confirm safety precautions and programs in connection with the Work; and (iv) to ascertain that it can obtain all permits or other approvals from Governmental Authorities required to perform the Work. On the basis of the Contract Documents and the Work indicated, described or implied in or from the Contract Documents, Contractor shall provide all items required for the proper execution and completion of the Work. The enumeration of particular items of Work in one portion of the Contract Documents shall not be construed to exclude other items reasonably necessary or implied therefrom.

Generally, the Specifications describe work which cannot be readily indicated on the Drawings and indicate types, qualities and locations for the Installation of the various materials and equipment required for the Work. It is not intended that the Specifications will mention every item of Work which can be adequately shown on the Drawings nor is it intended that the Drawings show all items of Work described or required by the Specifications even if they are of such nature that they could have been shown thereon. All materials or labor for Work which is shown on the Drawings or is reasonably inferable therefrom as being part of the Work and necessary to produce a finished job shall be provided by Contractor whether or not such material or labor are expressly covered in the Drawings and Specifications.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 In case of discrepancy between two or more drawings (Architectural, Structural, Mechanical, etc.) or drawings and specifications, the Architect/Engineer shall be the sole judge as to which takes precedence, but in any case it shall be assumed that bids are based on the most expensive procedure shown.

§ 1.2.5 Dimensions found in error should be submitted to the Architect/Engineer for resolution before proceeding with the Work.

§ 1.3 Capitalization

Terms capitalized in the Contract Documents include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents specifically identified in the Contract.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

In the event of a conflict among the various provisions of the Contract Documents, the terms shall be interpreted in the following order of priority:

- .1 Modifications to the Agreement (including any Guaranteed Maximum Price Amendment, if applicable)
- .2 Contractor’s Qualifications and Assumptions
- .3 The Contract
- .4 Special Conditions
- .5 Other General Conditions
- .6 Specifications
- .7 Drawings
- .8 Bid Documents not otherwise incorporated as an Exhibit to the Contract

Specifications shall control over Drawings, and details in drawings shall control over large-scale drawings.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Instruments of Service are the Owner’s exclusive property. The Owner owns all copyrights in and to the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, materialmen, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner’s reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, materialmen, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, materialmen, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify in writing the ~~Architect~~Engineer and Owner, and ~~Architect~~Engineer will issue a written addendum to all parties that is consistent with the Owner’s Scope of the Work.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, (on the date actually received in the office of the representative), by overnight courier, or by email. The date of any notice is deemed to be the earlier of the date of personal delivery, delivery by overnight courier, or the date of delivery by email. An email received after normal business hours shall be deemed to have been received on the next business day.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, email, or by courier providing proof of delivery. An email received after normal business hours shall be deemed to have been received on the next business day.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building

Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§1.9 Property of Political Subdivision

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas. This Section 1.9 serves as notice that liens filed against the Project or any other property of the Owner are unlawful under Texas Property Code Ch. 53, or any other law, and the filing of a lien shall be an act with the intent to defraud under Civil Practice and Remedies Code Ch. 12.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate a representative with respect to the Project. Such representative shall not have authority to make final decisions on behalf of the Owner concerning Change Orders, changing the Guaranteed Maximum Price, extending the date of Substantial or Final Completion, or other items requiring City Council approval; however, the Owner or such authorized representative, shall render decisions in a timely manner in order to avoid unreasonable delay in the service or Work of the Contractor.

Notwithstanding the foregoing, the Parties acknowledge that Owner is a home-rule municipality, and that some decisions or approvals relating to the Contract may be required by law or policy to be submitted to its governing body, the City Council (the "Council"), for a decision by majority vote. In addition, the Parties acknowledge that the Council is required by law to comply with the requirements of the Texas Open Meetings Act in providing notice to the public of the date, time, location and subject matter of its meetings which, unavoidably, can prevent a decision with the immediacy of an owner not constrained by such obligations. For these reasons, any representation in the Contract indicating that an authorized representative of Owner has unilateral authority to make decisions or grant approvals or authorizations on behalf of Owner with respect to the Contract is subject to those restrictions, and it shall not be considered a breach of the Contract or an unreasonable delay when a decision of the Council must first be obtained on matters relating to the Contract.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits waived by the Owner, it shall be the obligation and of the Contractor to secure and pay for all necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architectEngineer lawfully licensed to practice engineeringarchitecture, or an entity lawfully practicing engineeringarchitecture, in the State of Texas. That person or entity is identified as the ArchitectEngineer in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the ArchitectEngineer terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the ArchitectEngineer.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. Owner does not guarantee the accuracy of the survey as describing the site of the Project and Contractor should determine the sufficiency of same before beginning the work. The Owner does not guarantee the utility lines to be in the exact locations as shown on plans and surveys. Contractor

shall verify with the utilities the location of utility lines. Any water, gas or sewer line, telephone, telegraph or electric wire, or cable broken or cut which had been previously identified and known by the Contractor or any of his workmen or subcontractors, shall be replaced by the Contractor at his own expense, or by the responsible subcontractor at its own expense, and will not be paid for by the Owner. Repairs shall be made immediately and no other work shall be done until breaks or damages have been repaired and service restored. Any delay caused by the cut or break of a previously identified line shall be solely attributed to the Contractor.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. Absent such written request, any Claim based upon lack of such information or service shall be waived.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. The Contractor may purchase additional copies at the cost of reproduction, plus postage and handling, if any.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a five-day period after receipt of notice from the Owner, or such shorter time as may be reasonable under the circumstance, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the ~~Architect~~Engineer's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner, or the Owner may retain amounts due to the Owner, or withhold or nullify a Certificate of Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the State of Texas. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the ~~Architect~~Engineer in the ~~Architect~~Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.3 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

- .2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and
- .4 that the execution of the Contract and its performance thereof are within its duly authorized powers.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions, and assumes responsibility for differing Site conditions, under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect/Engineer of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

§ 3.2.2 Because the Contract Documents are complementary, Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect/Engineer any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect/Engineer may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor must make frequent inspections during the progress of the Work to confirm that the Work previously performed by the Contractor is in compliance with the Contract Documents and applicable laws and regulations bearing on the performance of the Work and that portion of the Work previously performed by the Contractor or by others are in proper condition to receive subsequent Work.

§ 3.2.4 If the Contractor believes that any portion of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors, the Contractor must promptly notify the Owner and the Architect/Engineer of the non-compliance and request direction before proceeding with the affected Work.

§ 3.2.5 The Contractor must promptly notify the Owner and the Architect/Engineer in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect/Engineer timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed, including differing Site conditions before performing the Work.

§ 3.2.6 The Contract Documents shall be read and construed in compliance with Texas Business & Commerce Code Ch. 59, as amended, and the Contractor must, within a reasonable time of learning of a defect, inaccuracy, inadequacy, or insufficiency in the plans, specifications, or other design documents, disclose in writing to the Owner the existence of any known defect in the plans, specifications, or other design documents that is discovered by the Contractor, or that reasonably should have been discovered by the Contractor using ordinary diligence, before or during construction. The Contractor shall be liable for the consequences of defects that result from the Contractor's failure to disclose as authorized by Texas Business & Commerce Code Ch. 59.

§ 3.2.7 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect/Engineer issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect/Engineer, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect/Engineer shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect/Engineer objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work performed by all trades and sub-contractors.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect/Engineer in accordance with Section 3.12.8 or ordered by the Architect/Engineer in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect/Engineer and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Persons permitted to perform Work under Contractor or any Subcontractor or Sub-Subcontractor shall meet all employment eligibility, safety training, security or drug/alcohol notice and testing requirements required by law or Owner. Any person not complying with all such requirements shall be immediately removed from the Site.

§ 3.4.4 Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor and upon any subcontractor under him to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the Contract. No claims for additional compensation shall be considered by the Owner because of payments of wage rates in excess of the applicable rate provided herein. Pursuant to Texas Gov't Code Ch. 2258, the Contractor shall forfeit, as a penalty to Owner, sixty dollars (\$60.00) for each laborer, workman, or mechanic employed for each calendar day, or portion thereof, in which such laborer, workman, or mechanic is paid less than the stipulated prevailing wage rates for any work done under this Contract by the Contractor or any subcontractor employed on the project.

To ensure compliance with the inspection of books, records, and audit provisions required in this Contract, the Owner

may elect to apply, to the greatest extent possible, Davis Bacon and Related Act provisions to this Contract. If the Owner elects to apply Davis Bacon and Related Act provisions to this Contract, Contractor shall complete and submit to the Owner certified weekly payroll records on Form WH-347 or a similar form acceptable to the Owner to satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to Davis Bacon and Related Acts.

§ 3.4.5 The Owner reserves the right to receive and review payroll records, payment records, and earnings statements of employees of Contractor, and of Contractor's Subcontractors, and of Sub-Subcontractors.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect/Engineer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 Except where otherwise stipulated in the Contract Documents, and in addition to the maintenance bond required by this Contract, the Contractor shall, as per its Contract, warranty all materials and workmanship furnished under this Contract for a period of one (1) year after the date of Substantial Completion and shall repair and make good, without expense to the Owner, any and all defects in his work which may develop within that time. The Owner may require additional special warranties in connection with the approval of "or-equals" or substitutions, allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12. The warranty provisions in this Contract shall be considered an additional obligation of the Contractor and are not a limitation on the City's rights, remedies, or obligations under Texas Civil Practice and Remedies Code Ch. 16, or any other law.

§ 3.5.4 All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect/Engineer on the manufacturer's or supplier's approved forms at the time of Substantial Completion.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.1 The Owner enjoys tax exempt status as a municipal corporation, and qualifies for exemption from state and local use taxes pursuant to the provisions of Section 151.309 of the Texas Tax Code. This Project is eligible for exemption from the State Sales Tax on materials incorporated in the Project, provided that the Contractor fulfills the requirements of State Tax Laws. For the purpose of establishing exemption, it is understood and agreed that the Contractor will be required to segregate materials and labor costs at the time a Contract is awarded, and will accept a Tax Exemption Certificate from the Owner. The Contractor shall pay any taxes otherwise assessed because of the Contractor's failure to comply with the requirements of State Law to qualify for that tax exemption. The Contractor will pass on all savings for the tax-exempt status to the Owner. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

§ 3.6.2 The Contractor will require all Subcontractors and bidders to provide cost information for materials separate from other costs for labor, profit, overhead, which shall not include unabsorbed home office overhead, etc. to allow the Owner to verify that no taxes are to be paid on material procurement and that such savings shall be passed on to the Owner.

§ 3.6.3 The Contractor will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable time frame after receipt of such

request, the Owner to audit such records to verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Contractor will be liable to the Owner for those amounts and the Owner may back-charge the Contractor for those amounts if a balance of funds due and payable remains at the time of such discovery.

.1 The Contractor will require all Subcontractors of any tier maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Contractor will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Contractor's records.

.2 The Contractor will ensure its Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as Contractor is bound to the Owner.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect/Engineer before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Architect/Engineer will promptly investigate such conditions and, if the Architect/Engineer determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect/Engineer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect/Engineer shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect/Engineer's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect/Engineer. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, which shall not include unabsorbed home office overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent must provide his or her email address and cell phone number to Owner and Architect/Engineer and must be available to be contacted during all business hours, and outside of business hours in the event of an emergency. The superintendent must be fluent in all languages necessary to effectively communicate with Contractor's staff assigned to the Project, and with all Subcontractors, in order to supervise and direct the Work and assist emergency responders.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect/Engineer of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect/Engineer may notify the Contractor, stating whether the Owner or the Architect/Engineer (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect/Engineer to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect/Engineer has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, within ten (10) days after the effective date of the Contract, shall submit for the Owner's and Architect/Engineer's approval a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work; (4) indication of critical path; and (5) Owner decision-making dates as applicable. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. Thereafter, the Contractor shall prepare and update the construction schedule on a monthly basis ("Current Construction Schedule"), if not more frequently at the Contractor's discretion, to be submitted in writing to the Owner with each Application for Payment. Each Current Construction Schedule update shall include a narrative including:

1. A description of the status of the schedule;
2. A discussion of current and anticipated delays;
3. A discussion of progress of critical path activities;
4. A discussion of the critical path for the remainder of the project; and
5. A listing and discussion of logic changes and duration changes.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit the submittal schedule for the Owner's and Architect/Engineer's approval. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner and Architect/Engineer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules approved by the Owner and Architect/Engineer.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain, at the Project Site, the Current Construction Schedule and the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, specifications, addenda, and similar required submittals. These shall be in electronic form or paper copy, available to the [ArchitectEngineer](#) and Owner, and delivered to the [ArchitectEngineer](#) for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall display a Current Construction Schedule at the Site for reference and reliance by the Owner and [ArchitectEngineer](#).

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the [ArchitectEngineer](#) is subject to the limitations of Section 4.2.7. Informational submittals upon which the [ArchitectEngineer](#) is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the [ArchitectEngineer](#) without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the [ArchitectEngineer](#), Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the [ArchitectEngineer](#) or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. The Contractor must provide the Owner and [ArchitectEngineer](#) with copies of all submittals made to regulatory agencies.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and [ArchitectEngineer](#) that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the [ArchitectEngineer](#). The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the [ArchitectEngineer](#)'s approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the [ArchitectEngineer](#) of such deviation at the time of submittal and (1) the [ArchitectEngineer](#) has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the [ArchitectEngineer](#)'s approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the [ArchitectEngineer](#) on previous

submittals. In the absence of such notice, the Architect/Engineer's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect/Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to reasonably rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect/Engineer. The Owner and the Architect/Engineer shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect/Engineer have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect/Engineer will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect/Engineer at the time and in the form specified by the Architect/Engineer.

§ 3.12.11 The Architect/Engineer's review of the Contractor's submittals will be limited to examination of an initial submittal and one (1) resubmittal. The Owner is entitled to obtain reimbursement from the Contractor for amounts paid to the Architect/Engineer for evaluation of additional submittals.

§ 3.13 Use of Site

The Contractor shall confine operations at the Site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and ArchitectEngineer with access to the Work in preparation and progress wherever located. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords the Owner reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the Site of the Work shall be free from all debris, building material and equipment likely to cause hazardous conditions. The Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the site of the Work, or the building, in the event of partial occupancy. The presence of the Owner, the ArchitectEngineer or their representatives does not constitute acceptance or approval of the Work.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay and be liable for all royalties and license fees related to Contractor's use, manner, and method of construction, and shall provide for the use of any design, device, materials or process covered by letter patent or copyright by suitable legal agreement with the patentee or owner. The Contractor warrants the accuracy, adequacy, sufficiency, or suitability of plans, specifications, or other design documents provided to the Contractor by the Contractor's agents, contractors, fabricators, or suppliers, or its consultants, of any tier. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and ArchitectEngineer harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or ArchitectEngineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or patent, the Contractor shall be responsible for the loss unless the information is promptly furnished to the ArchitectEngineer.

§ 3.18 Indemnification

TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, AND ITS AGENTS AND EMPLOYEES (THE "INDEMNIFIED PARTIES"), IN THEIR OFFICIAL AND REPRESENTATIVE CAPACITIES, FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY ONE OF THE INDEMNIFIED PARTIES. SUCH OBLIGATIONS REFERENCED HEREIN SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18. THIS PROVISIONS SHALL SURVIVE THE EXPIRATION OR EARLY TERMINATION OF THE AGREEMENT.

ARTICLE 4 ARCHITECTENGINEER

§ 4.1 General

§ 4.1.1 The ArchitectEngineer is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the ArchitectEngineer as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and ArchitectEngineer.

§ 4.2 Administration of the Contract

§ 4.2.1 The ArchitectEngineer will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the ArchitectEngineer issues the final Certificate

for Payment. The Architect/Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect/Engineer will visit the Site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect/Engineer will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.2.1 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect/Engineer for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 4.2.3 On the basis of the site visits, the Architect/Engineer will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect/Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect/Engineer will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Contractor shall include the Architect/Engineer in all communications that relate to or affect the Architect/Engineer's services or professional responsibilities. The Contractor shall promptly notify the Owner of the substance of any direct communications between the Architect/Engineer and the Contractor otherwise relating to the Project. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect/Engineer's evaluations of the Contractor's Applications for Payment, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect/Engineer has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable, the Architect/Engineer will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect/Engineer to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect/Engineer will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer's action will be taken in accordance with the submittal schedule approved by the Architect/Engineer or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect/Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect/Engineer's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect/Engineer will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect/Engineer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect/Engineer agree, the Architect/Engineer will provide one or more Project representatives to assist in carrying out the Architect/Engineer's responsibilities at the site. The duties, responsibilities and limitations of authority of the Project representatives shall be set forth in the agreement between Owner and Architect/Engineer.

§ 4.2.11 The Architect/Engineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect/Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect/Engineer will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect/Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. The Architect/Engineer shall be the sole interpreter of the design intent with respect to such matters, but the Architect/Engineer's authority with respect thereto shall not contravene any other rights of the Owner ascribed to the Owner by other provisions of the Contract.

§ 4.2.14 The Architect/Engineer will review and respond to requests for information about the Contract Documents. The Architect/Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect/Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has no privity of contract with the Owner, but has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect/Engineer of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect/Engineer may notify the Contractor whether the Owner or the Architect/Engineer (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect/Engineer to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall update this list throughout the Project and keep Owner and the Architect/Engineer advised of any new Subcontractors employed, and no change of Subcontractors shall be made without the notification and approval of the change by the Owner and Architect/Engineer.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or ArchitectEngineer has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or ArchitectEngineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or ArchitectEngineer has no reasonable objection. If the proposed but rejected Subcontractor met all criteria set forth in the Contract Documents and was qualified to perform the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or ArchitectEngineer makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and ArchitectEngineer. Each subcontract agreement shall preserve and protect the rights of the Owner and ArchitectEngineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1 Contractor shall promptly notify Owner and ArchitectEngineer of any material defaults by any Subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor or other materialman or workman employed by Contractor the right to obtain a personal judgment or to create a lien against Owner for the amount due from the Contractor.

§ 5.3.2 In the event of any termination of the Contract in accordance with Article 14, Owner shall not be liable to any subcontractor. Contractor shall be responsible for any claim of a subcontractor for Work executed under the Contract.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work may be assigned by the Contractor to the Owner, provided that assignment is effective only after unnecessary delay by the Contractor, abandonment of the Work by the Contractor, or termination of the Contract by the Owner for cause pursuant to Section 14.2, and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing. Except as authorized by the Owner in writing, the Contractor shall not assign by Power of Attorney, pass through agreement, or otherwise, or sublet this Contract, without the written consent of the Owner. This section expressly prohibits the assignment or pass through of claims, rights, or causes of action between the Contractor and any subcontractors, materialmen, or suppliers, or any other third-party performing Work under the Contract against the Owner.

§ 5.4.2 Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable. Owner shall only be responsible for compensating subcontractors for Work performed or material furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect/Engineer of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect/Engineer of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect/Engineer will allocate the cost among those responsible, in the Owner's sole discretion.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents, and only to the extent allowed by Texas Local Gov't Code Sec. 252.048.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect/Engineer. A Construction Change Directive requires agreement by the Owner and Architect/Engineer and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect/Engineer alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect/Engineer and signed by the Owner, Contractor, and Architect/Engineer stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 **Change Proposals.** The Contractor must submit change proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect/Engineer or within ten (10) days of the event giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes and site-specific overhead, but shall not include unabsorbed home office overhead, and general conditions) in an amount reasonably agreed upon by the parties. Change proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor to proceed with the Work involved in the change proposal in accordance with Section 7.3 without accepting the change proposal in its entirety. The requirements of this paragraph are subject to Article 2.

§ 7.2.3 If the Owner determines that a change proposal is appropriate, the Architect/Engineer will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect/Engineer sign the Change Order.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect/Engineer (after having been approved in writing by the Owner) and signed by the Owner and Architect/Engineer, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;

- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Architect/Engineer shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead, which shall not include unabsorbed home office overhead, and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, an amount determined by the Owner. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect/Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect/Engineer;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, and permit fees, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect/Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect/Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead, which shall not include unabsorbed home office overhead, and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect/Engineer will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect/Engineer determines, in the Architect/Engineer's professional judgment, to be reasonably justified. The Architect/Engineer's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect/Engineer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect/Engineer will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 Contractor shall have no obligation to proceed on any Construction Change Directive when the total amount of outstanding and unresolved Construction Change Directives and other Change Orders exceeds ½ of 1% of the GMP. Changes Orders that are being resolved in good faith shall not count towards the cap stated herein. Contractor shall not be liable for damages associated with the election not to proceed.

§ 7.4 Minor Changes in the Work

The ArchitectEngineer may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The ArchitectEngineer's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the ArchitectEngineer and the Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the ArchitectEngineer's order for a minor change without prior notice to the ArchitectEngineer and the Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Final Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the ArchitectEngineer in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of the insurance required to be furnished by the Contractor to the Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the Contract Time.

§ 8.2.4 If the Contractor's progress is not maintained in accordance with the approved Construction Schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Construction Schedule, the Contractor must, promptly and at no additional cost to the Owner, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the Owner. Contractor shall add additional workers or shifts, and/or work overtime as necessary to maintain the Construction Schedule and at no additional cost to the Owner.

§ 8.2.5 The Owner reserves the right to issue a written directive to accelerate the Work that may be subject to an appropriate adjustment, if any, in the Contract Sum. If the Owner requires an acceleration of the Construction Schedule and no adjustment is made in the Contract Sum, or if the Contractor disagrees with any adjustment made, the Contractor must file a claim as provided in Article 15 or the same will be deemed to be conclusively waived.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or ArchitectEngineer, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, acts of terrorism, any form of cyber- attack, adverse weather conditions documented in accordance with Sections 8.3.6 and 15.1.6.2, a pandemic, or any other causes beyond the Contractor's control; (4) by delay authorized by the Owner; (5) by occurrences beyond the Contractor's control and without the fault or negligence of the Contractor; or (6) by other causes that the Contractor asserts, and the ArchitectEngineer determines, justify additional costs and delay, then the Contract Sum shall be increased for a reasonable amount as the Owner and ArchitectEngineer may determine and the Contract Time shall be extended for such reasonable time Owner and ArchitectEngineer may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 The Contractor must provide written notice of any actual or prospective delay promptly, and in no event later than ten (10) days after the occurrence of the event giving rise to such delay. The notice must be given to the Owner and Architect/Engineer within the specified time. In the case of a continuing delay, the Contractor must provide an initial notice and a further notice at each progress meeting throughout the duration of the delay. The notice must contain all of the specific information required in Section 8.3.5. The Contractor's failure to provide the written notice containing the information specified in Section 8.3.5 within the ten (10) days prescribed above will be conclusively deemed a waiver of any claim for delay arising from such occurrence.

§ 8.3.5 The Contractor's notice must identify those portions of the Construction Schedule affected by the delay.

§ 8.3.6 In order for the Contractor to be entitled to an extension of the Contract Time for unusually severe weather, the following conditions must be satisfied:

- .1 The weather experienced at the Site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month;
- .2 The unusually severe weather must delay Work which at the time of the unusual severe weather was a critical path activity as shown on the most recently approved Construction Schedule and which prevents the Contractor from achieving Final Completion before expiration of the Contract Time. The delay must be beyond the control and without the fault or negligence of the Contractor. For example, the impacted critical activity must not have occurred during unusually severe weather due to previous unexcused delays; and
- .3 The Contractor must have provided written notice of the weather-related delay complying with Sections 8.3.4 and 8.3.5 above.

§ 8.3.7 Upon receipt of a notice from the Contractor of the occurrence of a delay complying with Sections 8.3.4 and 8.3.5, the Owner will review the most recently approved Construction Schedule to determine (i) whether the delay is in fact an excusable or compensable delay, and (ii) whether any adverse effects of the delay can be overcome by an adjustment in the Construction Schedule. The Owner may require the Contractor to submit a more detailed Construction Schedule than previously required in order to permit the Owner to evaluate the delay. Based on such review, the Contractor must, if required by the Owner, submit for the Owner's approval a revised Construction Schedule which minimizes the adverse effects of the delay.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect/Engineer before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect/Engineer. This schedule, unless objected to by the Architect/Engineer, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect/Engineer and supported by such data to substantiate its accuracy as the Architect/Engineer may require, and unless objected to by the Architect/Engineer, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect/Engineer an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect/Engineer require, such as copies of requisitions, and releases and unconditional waivers of liens from Subcontractors and suppliers, and shall reflect Retainage as provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect/Engineer, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Stored Materials. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance in writing by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Partial or complete payment for materials and equipment stored off site shall not be construed as relieving the Contractor of its responsibility for the care and protection of such materials and equipment used. Contractor shall be responsible for any and all damage to such materials and equipment occurring prior to the incorporation of such materials and equipment into the Work on the Project site, and Owner shall have the right, in addition to all other remedies available to Owner under the Contract, to reject any such materials and equipment damaged prior to the incorporation thereof into the Work on the Project site. Materials and equipment stored off site requiring protection from weather, heat, cold or moisture shall be suitably protected by Contractor as required by the material manufacturer. The materials and equipment shall be labeled as the property of the Owner and shall be accessible to the Owner for inspection at all times and shall be segregated from other materials and equipment at the storage facility.

§ 9.3.2.1 The Owner shall only consider payment for the storage of materials that are unique and fabricated specifically for the Project. In no event shall the Owner be obligated to pay for the storage of typical building materials (for example, drywall, conduit, paint, masonry).

§ 9.3.2.2 Contractor shall also comply with the following specific requirements related to stored material:

- .1 The aggregate cost of material stored off site shall not exceed the aggregate amount which has been approved in writing by Owner under this Section 9.3.2 above;
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's construction lender, if any, including, without limitation, recorded financing statements, UCC filings and UCC searches;
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof;
- .4 The Contractor shall provide an observation report confirming that a Contractor has viewed and confirmed material, quantities and conditions at the stored location and that representatives of the Owner shall have the right to make inspections of the storage areas at any time; and
- .5 Such materials shall be (a) protected from diversion, destruction, theft and damage to the satisfaction of the Owner (b) specifically marked for use on the Project, and (c) segregated from other materials at the storage facility.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 **Retainage.** "Retainage" means the percentage of the payment withheld in this Contract by the Owner to secure performance of the Contract. The Owner may withhold Retainage in the amount of five percent (5%) of the total Contract Price, and the rate of Retainage may not exceed five percent (5%) for any item in a bid schedule or schedule of values for the Project, including materials and equipment delivered on site to be installed. The percentage of retainage held on Subcontracts by the Contractor shall not be greater than the percentage withheld from the Contractor by the Owner in accordance with Texas Gov't Code Ch. 2252.

Until the conditions set forth for Final Payment have been satisfied by the Contractor, the amount of each monthly Application for Payment must include the value of each line item as indicated on the approved Schedule of Values, to the extent completed, less Retainage of five percent (5%). Retainage will not be released to the Contractor before Substantial Completion, but may be withheld by the Owner until Final Completion. If no bona fide dispute exists and no liquidated damages or other amounts are owed to the Owner, then Retainage will be released to the Contractor with Final Payment after all of the following conditions relating to Final Payment have been satisfied: (A) the Contractor has fully performed the Contract; (B) the Contractor has completed all Punch List items to the satisfaction of the Owner and the Architect/Engineer; (C) the Contractor has delivered to the Owner all Project close-out documents in duplicate, including (1) all maintenance and operating manuals; (2) marked sets of as-built drawings; (3) all guarantees and warranties required under the Contract Documents; (4) a list of names, addresses, and telephone numbers for all subcontractors and others providing guarantees and warranties; (5) an electronic (PDF) bookmarked single file containing the information required in C (1-4) above, that is indexed and searchable; and (D) the applicable governmental authorities have issued to the Owner the final use and certificate of occupancy for the Project.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect/Engineer will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect/Engineer determines is properly due, and notify the Contractor and Owner of the Architect/Engineer's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect/Engineer's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect/Engineer's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect/Engineer. However, the issuance of a Certificate for Payment will not be a representation that the Architect/Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect/Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect/Engineer's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect/Engineer is unable to certify payment in the amount of the Application, the Architect/Engineer will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect/Engineer cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Architect/Engineer is able to make such representations to the Owner. The

ArchitectEngineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the **ArchitectEngineer**'s opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the **ArchitectEngineer**'s decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the **ArchitectEngineer** withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to the Surety to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the **ArchitectEngineer** and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Owner may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding such payment.

§ 9.6 Progress Payments

§ 9.6.1 After the **ArchitectEngineer** has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the **ArchitectEngineer**.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The **ArchitectEngineer** will, on request, furnish to a Subcontractor the information required by Texas Gov't Code Sec. 2253.026.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor **ArchitectEngineer** shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors or materials properly provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed the Work

or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

§ 9.6.8 The Contractor shall defend indemnify, and hold the Owner harmless from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Owner does not pay the Contractor within sixty (60) days after the Contractor submits an Application for Payment to , the ArchitectEngineer and no bona fide dispute exists, the Contractor may, upon seven additional days' notice to the Owner and ArchitectEngineer, stop the Work until payment of the amount owing has been received and file a claim in accordance with Article 15 of this Contract.

§9.7.1 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to the Owner, or the Owner incurs any costs and expense to cure any default of the Contractor or to correct defective Work, pursuant to the Contract, the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

- .1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to the Contractor from the Owner, or
- .2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents, as determined by the Owner in the Owner's sole discretion, such that only final punch-list items or minor work remains, and the Contractor can achieve Final Completion within the time period approved in the Certificate of Substantial Completion, or sixty (60) days, whichever is less.

§ 9.8.2 When the Contractor considers that the Work is substantially complete and that items remaining to be completed or corrected can be accomplished within no more than sixty (60) days, subject to the availability of special order parts and materials, the Contractor must give written notice to the Owner and the ArchitectEngineer and request an inspection of the Work as provided in Section 9.8.4. The Contractor's notice and request for an inspection must be accompanied by a comprehensive Punch List describing all items to be completed or corrected before Final Completion and the submittals required by Section 9.8.3. The Contractor must proceed promptly to complete and correct items on the list. Failure to include an item on such Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 In addition to the Punch List, the Contractor must submit all of the following with its request for a determination of Substantial Completion:

- .1 a use and occupancy permit;
- .2 final test reports as required by the Contract and certificates of inspection and approval required for use and occupancy;
- .3 Fire Marshal's report;
- .4 approvals from, and transfer documents for, all utilities; and
- .5 schedule to complete the Punch List and value of Work not yet complete.

§ 9.8.4 Upon receipt of the Punch List, the ArchitectEngineer will make an inspection to determine whether the Work and whether remaining items can be completed or corrected within sixty (60) days subject to the availability of special order parts and materials. If the ArchitectEngineer's inspection discloses any item, whether or not included on the

Punch List, which is not sufficiently complete in the opinion of the Owner, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect/Engineer. In such case, the Contractor shall then submit a request for another inspection by the Architect/Engineer to determine Substantial Completion.

§ 9.8.4.1 The Architect/Engineer will perform no more than two (2) inspections to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect/Engineer for any additional inspections.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Architect/Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the Punch List accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 9.8.6.1 The application for payment to release Retainage will not be approved by the Architect/Engineer until the completed and corrected closeout documents are provided to the Architect/Engineer by the Contractor. Closeout documents shall be delivered to the Architect/Engineer under conditions and times set forth in the Contract Documents and specifications.

§ 9.8.7 Notwithstanding any provision contained within this Article, if the work has not attained Substantial Completion with the contract time, subject to extensions of time allowed under these Conditions, Owner may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of Application for Payment and to the time it is reasonably anticipated that Final Completion will be achieved.

§ 9.8.8 At the time of Substantial Completion, in addition to removing rubbish and leaving the building clean, the Contractor must replace any broken or damaged materials, remove stains, spots, marks and dirt from decorated Work, clean all fixtures, vacuum all carpets and wet mop all other floors, replace HVAC filters, clean HVAC coils, and comply with such additional requirements, if any, which may be specified in the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by the Owner. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, Retainage, if any, or reduction in liquidated damages, if appropriate, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect/Engineer as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect/Engineer.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect/Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 "Final Completion" means total (100%) completion of the Work in accordance with the Contract, and as finally determined in writing by the Owner in the Owner's sole discretion. When the Contractor has completed or

corrected all items on the final Punch List and considers that the Work is complete and ready for final acceptance, the Contractor must give written notice to the Owner and the Architect/Engineer and request a final inspection of the Work as provided in Section 9.10.2. The Contractor's notice and request for a final inspection must be accompanied by a final Application for Payment and the submittals required by Section 9.10.2.

§ 9.10.1.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect/Engineer will promptly make such inspection. When the Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect/Engineer's knowledge, information and belief, and on the basis of the Architect/Engineer's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect/Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.2 The Contractor's notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Architect/Engineer will promptly notify the Contractor if the Owner or the Architect/Engineer do not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any additional services of the Owner or the Architect/Engineer until the Work is determined to be finally complete. The Architect/Engineer will perform no more than one (1) inspection to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect/Engineer for any additional inspections.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect/Engineer all of the following:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied submitted on AIA Document G706, Affidavit of Payment of Debts and Claims (latest edition) or such other form as may be prescribed by the Owner;
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force and effect during the one-year correction period following Final Completion;
- .3 a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .4 unconditional releases or waiver of liens on behalf of the Contractor and a similar unconditional releases or waivers on behalf of each Subcontractor, materialman, and supplier, accompanied by AIA Document G706A, Affidavit of Release of Liens (latest edition) or such other form as may be prescribed by the Owner;
- .5 documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties; and notice to surety of final payment, submitted on AIA Document G707 (latest edition) or other form prescribed by the Owner;
- .6 a certified building location survey and as-built site plan in the form and number required by the Contract Documents;
- .7 all Project close-out documents in duplicate, including (1) all maintenance and operating manuals; and (2) a list of names, addresses, and telephone numbers for all subcontractors and others providing guarantees and warranties; and
- .8 if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

If the Contractor is unable to secure from any Subcontractor, materialman, or supplier an unconditional release or waiver or other final payment and closeout documents required under the Contract, the Contractor must furnish a bond satisfactory to the Owner to indemnify, defend, and hold the Owner and any co-obligees harmless under the bond against any lien or claim from such Subcontractor, materialman, or supplier.

§ 9.10.2.1 Final Completion of the Work shall be further conditioned upon satisfaction of the following minimum criteria:

- .1 All Work shown and described in the Contract Documents is complete, including all punch list items;
- .2 Record as-built drawings and documentation has been submitted and approved by the Owner;
- .3 Operations and maintenance manuals for all products and equipment, as required, have been submitted and approved by the Owner;
- .4 Equipment or product testing required by the Contract Documents or by regulatory agencies has been completed, submitted and approved (and recorded in O&M Manuals);
- .5 All required Owner training has been completed and documented;
- .6 All regulatory agency certifications have been submitted or received by the Owner; and
- .7 All areas have been cleaned pursuant to the terms herein.

§ 9.10.3 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting Final Completion, and the ~~Architect~~Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the ~~Architect~~Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than Retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the ~~Architect~~Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall not constitute a wavier of any Claims by the Owner.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.11 Time and Liquidated Damages

The Contract Time is of the essence and will be strictly enforced. Liquidated damages will be assessed against the Contractor for failure to achieve Substantial Completion by the date established by the parties for Substantial Completion of the Work. The Contractor and surety agree that the liquidated damages provisions in this Contract are reasonable, facially valid, are not a penalty, and do not otherwise operate as a penalty.

For each and every calendar day that any Work shall remain incomplete after the expiration of the date established by the parties for Substantial Completion of the Work as specified in the Contract Documents, including any time extension authorized in writing by the Owner, the sum of \$1,000.00 per calendar day may be deducted from the moneys due to the Contractor, or may be charged against the Contractor, not as a penalty, but as liquidated damages. The Contractor agrees that for purposes of Texas Gov't Code Ch. 2252, a bona fide dispute exists if liquidated damages are assessed under this Contract and the Owner may withhold Retainage to satisfy liquidated damages owed to the Owner hereunder.

The sum of money thus deducted or charged as liquidated damages is not to be considered as a penalty, but shall be deemed, taken, and treated as reasonable liquidated damages, representing a reasonable estimate of damages, or a reasonable forecast of just compensation, because the harm caused by the breach is incapable or extremely difficult of estimation due to the public nature of the work and the likely loss to be sustained by the Owner and the general public, estimated at or before the time of executing this Contract.

Further, the parties acknowledge the Owner's paramount purposes and duty to protect the "public fisc" and the general health, safety, and welfare of the public, and the parties agree that any alleged disparity between actual and liquidated damages shall be construed as bridgeable and acceptable as a matter of law and public policy and shall be calculated and construed in favor of the Owner.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and Site and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18. This obligation is in addition to, and not in limitation of, the Contractor's obligations for indemnification under the Contract and the Contractor's responsibility to repair and or replace that portion of the Work and any materials and equipment to be incorporated therein which are damaged as a result of deliberate acts or criminal mischief as specified in Section 10.2.9.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and [Architect/Engineer](#).

§ 10.2.7 The Contractor shall not permit any part of the construction or Site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Contractor is responsible for taking all reasonable and necessary precautions to secure and protect the Site, the Work, materials and equipment to be incorporated therein, and any tools or equipment of the Contractor necessary or beneficial to the performance of the Work from damage due to vandalism, theft, or other criminal mischief. The Contractor must repair and/or replace that portion of the work and any materials or equipment to be incorporated therein and any tools or equipment of the Contractor necessary or beneficial to performance of the Work which are damaged or stolen due to vandalism, theft or any other criminal mischief at its expense whether or not covered by insurance. No extension of the Contract Time or increase in the Contract Sum will be granted to the

Contractor as a consequence of any delay, impacts or inefficiencies resulting from any act of vandalism, theft or other criminal mischief whether or not caused or contributed to by the Contractor's negligence.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and ~~Architect~~Engineer of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and ~~Architect~~Engineer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the ~~Architect~~Engineer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or ~~Architect~~Engineer has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the ~~Architect~~Engineer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall release and hold harmless the Contractor, Subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking the same.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 THE CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD THE OWNER HARMLESS FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE AND NEGLIGENTLY HANDLES, OR (2) WHERE THE CONTRACTOR FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.1, EXCEPT TO THE EXTENT THAT THE COST AND EXPENSE ARE DUE IN WHOLE TO THE OWNER'S FAULT OR NEGLIGENCE.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. The Contractor must promptly, but in all events within twenty-four (24) hours of the emergency, report such action in writing to the Owner and ~~Architect~~Engineer. If the Contractor incurs additional costs on account of or is delayed by such emergency, the Contractor may request a change in the Contract Sum or Contract Time to account for such additional costs or delay in accord with Articles 7, 8 and 15. The Contractor must file any such request within ten (10) days of the emergency or it is deemed waived. Any adjustment in the

Contract Sum or Contract Time shall be limited to the extent that the emergency work is not attributable to the fault or neglect of the Contractor or otherwise the responsibility of the Contractor under the Contract Documents.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 Prior to the commencement of work under this Contract, Contractor shall obtain and shall continue to maintain at no cost to the Owner, in full force and effect during the term of this Contract, insurance policies with companies licensed to do business in the State of Texas and rated not less than "A" in the current Best Key Rating Guide, which shall include commercial general liability, automobile liability and worker's compensation coverage, in accordance with any Owner ordinance or directive. The minimum limits for this coverage shall be \$1,000,000.00 per occurrence / \$2,000,000 aggregate for general liability, \$1,000,000 combined single limit for automobile liability and Texas statutory limits for workers' compensation, unless modified in accordance with any ordinance or directive. Contractor shall also maintain cyber liability (or equivalent) insurance providing limits of no less than \$1,000,000 per occurrence (inclusive of any amounts provided by an umbrella or excess policy). The Contractor shall maintain excess insurance of at least \$6 million/claim above the primary policy limits provided in this Article 11, including builders risk coverage, and shall maintain the required levels of insurance for at least three years following the date of Final Completion. Coverage shall be sufficiently broad to respond to the duties and obligations as undertaken by the Contractor. Insurance obtained by Contractor shall be primary and noncontributory, and Owner shall be named as an additional insured under the general liability and automobile policies. The Owner shall be given at least thirty (30) days prior notice of any material change in coverage or of cancellation of such policies, and Contractor shall provide the Owner with a copy of any such notice of material change in coverage or cancellation of any such policies, within three (3) business days of its receipt of such a notice. For purposes of this section, a material change in coverage includes, but is not limited to, a reduction in coverage below the amounts required under this agreement. Contractor shall provide a waiver of subrogation in favor of the Owner on all coverages where available and represents that it has taken all actions necessary under the policy or policies for the Owner to have the status of additional insured and to effectuate any required waiver of subrogation. Contractor shall furnish the Owner with original copies of the policies or certificates evidencing such coverage prior to commencement of any work under this Contract.

§ 11.1.1.1 In addition to any other requirement of this Article, Contractor shall provide Owner with the certifications relating to workers' compensation coverage in accordance with Section 406.096 of the Texas Labor Code, for itself and for each of its subcontractors on the Project. Specifically, Contractor shall certify to Owner in writing that the Contractor provides workers' compensation insurance coverage for each employee of the Contractor on the Project, and shall provide the same certification from each of its subcontractors relating to coverage of subcontractor's employees on the Project.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents and Texas Gov't Code Ch. 2253. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the State of Texas.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished, as required by Texas Gov't Code Ch. 2253.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner as additional insured for claims caused in whole or in part by the Contractor's negligent act or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is

representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor for administrative penalties, criminal penalties, civil penalties, or other civil actions.

§ 11.1.6 The Contractors' failure to comply with any of these provision is a breach of contract by the Contractor which entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

§11.1.7 Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, or volunteers.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner is a Texas home-rule municipality and is insured in accordance with Texas law.

§ 11.2.2 – 11.3.2 [Intentionally Deleted]

§ 11.4 Contractor's Bonds

§ 11.4.1 With the execution and delivery of the Contract, the Contractor shall furnish and file with the Owner, the surety bonds specified in this Section. Without exception, the Owner's bond forms must be used, and exclusive venue for any lawsuit in connection with the bonds shall be Tarrant County. The surety bonds shall be in accordance with the provisions of Chapter 2253, Government Code, Vernon's Texas Codes Annotated. These bonds shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract Sum with or without notice to the surety, but in no event shall a change which reduces the Contract Sum reduce the penal amount of such bonds.

§ 11.4.2 The Contractor shall provide a good and sufficient performance bond in an amount not less than one hundred (100%) percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with the Contract Documents, including any extensions, for the protection of the Owner. This bond shall provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of two years from the date of completion and acceptance of the improvement by the Owner or such lesser or greater period as may be designated in the Contract Documents.

§11.4.2.1 A Maintenance Bond shall be provided by the Contractor in an amount equal to one hundred percent of the total Contract Price. The Maintenance Bond shall be for a period of one (1) year from and after the date of Final Completion. The Contractor shall perform all necessary repairs, reconstruction, and renewal of any part of the Work covered by the Maintenance Bond and furnish the labor and materials to make good and to repair any defective condition growing out of, or on account of, the breakage or failure of any material or substance of improper function of the Work. The Maintenance Bond includes the complete restoration of the Work to a use acceptable to the Owner, in the Owner's sole discretion.

§11.4.3 The Contractor shall provide a good and sufficient payment bond in an amount not less than one hundred (100%) percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise guaranteeing the full and proper protection of all claimants supplying labor and material in the execution of the Work provided for in this Contract and for the use of each claimant.

§11.4.4 No sureties shall be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation against the Owner. All bonds shall be made on forms furnished by the Owner, and shall be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the Owner. Each bond shall be executed by the Contractor and surety. Each surety shall designate an agent resident in the Owner's jurisdictional area acceptable to the Owner to whom any requisite notices may be delivered and on whom service of process may be obtained in matters arising out of the suretyship.

§11.4.5 If at any time the Owner determines that the Contractor's surety has experienced financial losses such that

the Owner's ability to enforce the bond obligations is substantially at risk, the Contractor shall within thirty (30) days after notice from the Owner to do so, substitute an acceptable bond (or bonds), or provide an additional bond, in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bonds shall be paid by the Contractor without recourse to the Owner. No further progress payments under the contract shall be deemed due or payable until the substitute or additional bonds shall have been furnished and accepted by the Owner; however, in such event, final payment shall be due and payable as provided in this Contract whether or not such additional bonds are obtained, to the extent that the project is complete and the Owner is not exposed to liability for payment bond claims.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the ArchitectEngineer's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the ArchitectEngineer, be uncovered for the ArchitectEngineer's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the ArchitectEngineer has not specifically requested to examine prior to its being covered, the ArchitectEngineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the ArchitectEngineer or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the ArchitectEngineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such nonconforming or defective condition. The Owner shall give such notice promptly after discovery of the nonconforming or defective condition and give the Contractor an opportunity to make the correction. If the Contractor fails to correct any nonconforming or defective Work within a reasonable time during that period after receipt of notice from the Owner or ArchitectEngineer, the Owner may correct it in accordance with Section 2.5. The warranty provided in this section is a guarantee by the Contractor that is made in addition to the Maintenance Bond, and the warranty shall not limit the Owner's rights or remedies under the Maintenance Bond.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.2.4 Upon request by the Owner or prior to the expiration of one year from the date of Substantial Completion, the ArchitectEngineer will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 If the Contractor fails to correct defective or nonconforming Work within a reasonable time, the Owner may correct it in accordance with the Contract Documents. If the Contractor does not proceed with the correction of such defective or nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect/Engineer's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law rules. The provisions and obligations of this Contract are performable in Tarrant County, Texas, such that exclusive venue for any action arising out of this Contract shall be in Tarrant County, Texas.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their agents, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. No party to the Contract shall assign the Contract without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect/Engineer, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor must schedule all tests, inspections or specific approvals required by law or applicable ordinance, regulation, or the Contract Documents so as to avoid any delay in the Work. The Contractor shall give the Architect/Engineer timely notice of when and where tests and inspections are to be made so that the Architect/Engineer may be present for such procedures. The Owner

shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the ~~Architect~~Engineer, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the ~~Architect~~Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the ~~Architect~~Engineer of when and where tests and inspections are to be made so that the ~~Architect~~Engineer may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the ~~Architect~~Engineer's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the ~~Architect~~Engineer.

§ 13.4.5 If the ~~Architect~~Engineer is to observe tests, inspections, or approvals required by the Contract Documents, the ~~Architect~~Engineer will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.4.7 In addition to the tests required by this Section 13.4, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Contractor must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is overdue, at the rate provided by Section 2251.025, Texas Government Code.

§ 13.6 Equal Opportunity

§ 13.6.1 The Contractor shall maintain policies of employment as follows:

§ 13.6.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies.

§ 13.6.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

§ 13.7 DOCUMENT RETENTION AND AUDIT PROVISIONS

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that this Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. Upon request by the Owner, the Contractor shall promptly provide to the Owner any Contracting Information related to the Contract that is in the custody or possession of the Contractor; and on completion of the contract, provide at no cost to the Owner all Contracting Information related to the Contract that is in the custody or possession of the Contractor.

Contractor shall keep, maintain, and account for all "Contracting Information" as that term is defined in Texas Government Code Ch. 552, including, but not limited to all communications, books, documents, accounting records, materials, equipment, and labor related to the Work, and must keep such full and detailed records as may be necessary

for proper financial management pursuant to the Contract for a period of seven (7) years after final payment, or until any pending litigation or claims are resolved, whichever is later. Furthermore, the Owner has the right to examine the Contractor's and its Subcontractors' and suppliers' records directly or indirectly pertaining or relating to the Work or the Contract and the Contractor must grant the Owner access to and an opportunity to copy such records at all reasonable times during the Contract period and for seven (7) years after final payment, or until any pending litigation or claims are resolved, whichever is later.

The Owner may conduct an audit or investigation of any entity receiving funds from the Owner directly under this Contract, or indirectly through the Contractor or a subcontractor, materialman, or supplier. Acceptance of funds directly under this Contract, or indirectly through the Contractor or a subcontractor, materialman, or supplier under this Contract acts as acceptance of the authority of the Owner to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the Owner with access to any information the Owner considers relevant to the investigation or audit without delay.

§ 13.8 Compliance with Texas Accessibility Standards and ADA.

The Contractor shall construct the Work in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336).

§ 13.9 Additional Verifications.

To the extent required by Texas law, the Contractor verifies that: (1) It does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined in Texas Government Code § 2274.001, and that it will not during the term of the Contract discriminate against a firearm entity or firearm trade association; (2) It does not "boycott Israel" as that term is defined in Texas Government Code § 808.001 and 2271.001, and it will not boycott Israel during the term of the Contract; (3) It does not "boycott energy companies," as those terms are defined in Texas Government Code §§ 809.001 and 2276.001, and it will not boycott energy companies during the term of the Contract; (4) It does not engage in scrutinized business operations with Sudan, Iran, or designated foreign terrorist organization as defined in Texas Government Code, Chapter 2270; and (5) It is not owned by or the majority of its stock or other ownership interest is held or controlled by i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country as defined by Texas Government Code § 2275.0101; or ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; nor is it headquartered in China, Iran, North Korea, Russia, or a designated country.

§ 13.10 No Waiver of Immunity or Defense.

Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

To the extent, if any, that this Contract imposes an obligation on the Owner to make a payment or other expenditure of any sort, such payment or expenditure shall be payable solely from current revenues that are immediately available for such purposes, and no debt is or is intended to be created by reason of this Contract. No ad valorem tax revenue or other revenues of the Owner shall in any manner be pledged or be deemed to have been pledged to the payment of any amounts under this Contract nor shall any other Party have the right to demand payment of any amounts under this Contract be paid from funds raised or to be raised from ad valorem taxation from Owner. The obligations under this Contract shall never be construed to be a debt or pecuniary obligation of the Owner of such kind as to require the Owner to levy and collect ad valorem taxes to discharge its obligations and no obligation of the Owner to make a payment or other expenditure under this Contract shall be payable through funds raised by taxation. The Owner has not created and is not required to create any sort of sinking fund to secure the obligations of payment or other expenditure under this Contract. To the extent not otherwise covered in this Contract, the Owner retains its governmental and sovereign immunities and its limitations of liability. The parties agree that the Owner is entering into this Contract in its governmental capacity pursuant to its governmental functions and the subject and nature of this Contract are governmental rather than proprietary. The procedures and limitations of Chapter 271, Texas Local Government Code apply to this Contract.

§ 13.11 Counterparts.

This Contract may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

§ 13.12 Non-collusion.

Contractor represents and warrants that Contractor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the Work to be provided to the Owner under this Contract. Contractor further agrees that Contractor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the Owner under this Contract) for any of the services performed by Contractor under or related to this Contract. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the Owner and, at the sole option of the Owner, the Owner may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under this Contract.

§ 13.13 Severability.

If any term or provision of this Contract is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Contract shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Contract a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable. Provided, however, that if the illegality, invalidity or unenforceability of any term or terms renders the basic purposes of this Contract illegal, invalid or unenforceable or otherwise materially and adversely affects the utility or financial parameters of this Contract, then either party, upon written notice to the other, terminate this Contract and the parties agree to enter into good faith negotiations to replace this Contract with a contract as similar to the terms and conditions of this Contract as legally permissible.

§ 13.14 Third-Party Beneficiaries.

There are no third-party beneficiaries to this Contract and no third-party beneficiaries are intended by implication or otherwise.

§ 13.15 Interpretation.

The terms and conditions of any exculpatory or indemnity provisions in the Contract shall construed in favor of the party being protected and shall survive the termination and completion of the Contract. The judicial doctrine that provides that documents or exculpatory provisions are to be construed against the drafter or provider of such documents or provisions does not apply to this Contract, as each party has had a reasonable opportunity to obtain and consult with their own legal counsel regarding this Contract.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the ~~Architect~~Engineer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and ArchitectEngineer, terminate the Contract and recover from the Owner payment for Work executed, through the date of termination, subject to Texas Local Gov't Code Ch. 271.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the ArchitectEngineer, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the law prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .7 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the ArchitectEngineer that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor seven days' notice, terminate employment of the Contractor and may:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished and the costs for completion have been determined by the Owner.

§ 14.2.4 If the unpaid balance of the Contract Sum, less amounts which the Owner is entitled to offset from the unpaid Contract balance including actual or Liquidated Damages, exceeds the costs of finishing the Work, including compensation for the ArchitectEngineer's services and expenses made necessary thereby, and other damages incurred by the Owner, such excess may be paid to the Contractor, surety, or any replacement, completion, or take-over contractor if the Contractor refuses or fails to complete the Work within the Contract Time, as determined by the Owner. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 In completing the Work following termination, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such replacement, completion, or take-over work and related services on the basis of sole source procurement and negotiated compensation without any duty to mitigate damages or costs to the surety or the Contractor, because time is of the essence and such replacement, completion, or take-over work and related services are immediately necessary to preserve or protect the public health or safety of the City's residents under Texas law.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time may be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract, or any part or portion thereof, for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease operations as directed by the Owner in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner and the ~~Architect~~/Engineer to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of the Work any stored materials and equipment; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In the case of such termination for the Owner's convenience, the Contractor shall only be entitled to receive payment for work properly executed through the date of termination.

§ 14.4.4 Owner shall be entitled to delete or terminate any portion of the Contract bid as an alternate component, at any time at the Owner's convenience and without cause. In the event of such termination, the Contractor shall only be entitled to receive payment for Work executed on the alternate component, if any, through the date of termination, subject to the limitations of Texas Local Gov't Code Ch. 271.

The Contractor conclusively and irrevocably waives its right to any other compensation or damages (compensatory or punitive) arising from termination of the Contract, including any claims in quantum meruit and specific performance. No other cost, damages or expenses may be claimed or paid to the Contractor or considered as part of the Claim, the same being hereby conclusively and irrevocably waived by the Contractor. Any such Claim must be delivered to the Owner within thirty (30) days of the termination of the Contract and must contain a written statement setting forth the specific reasons and supporting calculations and documentation as to the amounts the Contractor claims to be entitled to under this Subsection as a result of the termination of the Contract. This paragraph and Section 14.4 are subject to the limitations of Texas Local Gov't Code Ch. 271.

§ 14.4.5 The Contractor's obligations surviving final payment under the Contract, including without limitation those with respect to records retention (audit), insurance, indemnification, and correction of Work that has been completed at the time of termination, remains effective notwithstanding termination for convenience of the Owner.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a written demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages, or withhold payment or Retainage, in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the time period permitted by applicable law.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Notice of circumstances that could give rise to a Claim must be given to the other party as soon as possible, to enable that party to take action as appropriate to lessen the impact of the potential Claim. The party recognizing a potential Claim shall also explore all options and generate suggestions of how to avoid or overcome the impact of the circumstances. Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the [Architect/Engineer](#). Claims by the Contractor under this Section 15.1.3.1 shall be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to pay undisputed amounts in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The [Architect/Engineer](#) will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the critical path of scheduled construction. Notwithstanding anything to the contrary in the Contract Documents, claims for additional time due to adverse weather conditions shall be made within seven (7) days of the date of the delaying adverse weather condition. The Contractor warrants and represents that the Project Schedule shall contain allowances for delay caused by adverse weather conditions under normal seasonal conditions and no claim for increased time will be made or recognized as a result of such normal adverse weather conditions.

§ 15.1.6.3 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

§ 15.1.6.4 Extension of time for completion of the work on account of weather or other circumstances beyond the Contractor's control will be subject to submission of verifiable data. Request for extension of time shall be submitted in writing with each Request for Payment. If the Contractor fails to submit a timely request, time extension will not

be approved for the pay period.

§ 15.1.6.5 No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of the Contractor or the Contractor's Subcontractors or under the Contractor's control. Claims for extension of time may only be considered because of rain delays, or hindrances or delays which are the fault of the Owner and/or under the Owner's control, but only to the extent that Final Completion of the Project is adjusted beyond the original Final Completion date. City Council approval may be required for any extension of time. No damages shall be paid for Contractor caused delays. The Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

§ 15.1.7 Waiver of Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3 and 10.4, shall be referred to the Initial Decision Maker for initial decision. The Owner will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten (10) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the **Architect/Engineer** of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to appeal to the Owner's City Manager, or the City Manager's designee, whose decision shall be final.

§ 15.2.6 Either party may file appeal to the City Manager, or the City Manager’s designee, of an initial decision within 30 days from the date of receipt of an initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor’s default, the Owner may, but is not obligated to, notify the surety and request the surety’s assistance in resolving the controversy.

§ 15.3 Dispute Resolution

§ 15.3.1 Any claims, disputes, or other matters in controversy arising out of or related to the Contract may be subject to litigation in accordance with Texas law, and nothing in this Agreement shall be construed as a condition precedent to litigation.

EXECUTED this _____ day of _____, 2024.

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____



EXHIBIT B
Performance, Payment, and Maintenance Bonds
(Date of all Bonds must not be prior to date of the Contract)

PERFORMANCE BOND

BOND No. _____

STATE OF TEXAS
COUNTY OF TARRANT

§
§

KNOW ALL PERSONS BY THESE PRESENTS: That _____
(contractor's company) of the City of _____ County of _____, and the State of _____, as Principal, and _____ (surety company) authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bond unto City of Mansfield (Owner), in the penal sum of _____ Dollars (\$ _____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written Contract with the Owner, for the _____ (name of project) which Contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the said Contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions, and agreements in and by said Contract agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Contract and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect:

"PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code for Public Works, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein."

Surety, for value received, stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____ 20_____.

Principal
By _____
Title _____
Address _____

Surety
By _____
Title _____
Address _____

The name and address of the Resident Agent of Surety is:

PAYMENT BOND

BOND No. _____

STATE OF TEXAS
COUNTY OF TARRANT

§
§

KNOW ALL PERSONS BY THESE PRESENTS: That _____
(contractor's company) of the City of _____ County of _____, and the State of _____, as Principal, and _____ (surety company) authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bond unto the City of Mansfield (Owner), in the penal sum of _____ Dollars (\$_____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written Contract with the Owner, for the _____ (name of project) which Contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and material to Principal, or a subcontractor, in the prosecution of the work provided for in said Contract, then, this obligation shall be void; otherwise to remain in full force and effect:

"PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code for Public Works, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein."

Surety, for value received, stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this
_____ day of _____ 20_____.

Principal

By _____
Title _____
Address _____

Surety

By _____
Title _____
Address _____

The name and address of the Resident Agent of Surety is: _____

MAINTENANCE BOND

BOND No. _____

STATE OF TEXAS
COUNTY OF TARRANT

§
§

KNOW ALL PERSONS BY THESE PRESENTS: That _____ (contractor's company) of the City of _____ County of _____, and the State of _____, as Principal, and _____ (surety company) authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bond unto the City of Mansfield (Owner), in the penal sum of _____ Dollars (\$ _____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written Contract with the Owner, for the _____ (name of project) which Contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

WHEREAS, under the plans, specifications, and Contract, it is provided that the Principal will maintain and keep in good repair, the work herein contracted to be done and performed, for a period of one (1) year from the date of the acceptance of said work by the Owner, and to do all necessary repairing and/or reconstructing in whole or in part of said improvements that should be occasioned by settlement of foundation, soil conditions, defective workmanship or materials furnished in the construction or any part thereof or any of the accessories thereto constructed by the Principal. It being understood that the purpose of this bond is to cover said defective work, material, and other conditions and charge the same against the said Principal, and Surety on this bond obligation, and the said Principal and Surety hereon shall be subject to the liquidated damages mentioned in said Contract for each day's failure on its part to comply with the terms of said provisions of said Contract. Now, therefore, if the said Principal shall keep and perform its obligation to maintain said work and keep the same in repair for the maintenance period of one (1) year, as provided, then these presents shall be null and void, and have not further effect, but if default shall be made by the Principal in the performance of its Contract to so maintain and repair said work, then these presents shall have full force and effect, and the City of Mansfield shall have and recover from the Principal and Surety damages in the premises, as provided; and it is further agreed that this obligation shall be continuing one against the Principal and Surety, hereon, and that successive recoveries may be and had hereon for successive breaches until the full amount of this bond shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or in any manner affected from any cause during said time.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____ 20_____.

Principal

By _____
Title _____
Address _____

Surety

By _____
Title _____
Address _____

The name and address of the Resident Agent of Surety is: _____

Exhibit E – Key Personnel

Jim Cuddihee – Sr. Vice President

Ryan Carter – Project Executive

Mike Kuzenski – General Superintendent