

## **Management and Improvement Services Agreement**

### **South Pointe Public Improvement District**

This MANAGEMENT AND IMPROVEMENT SERVICES AGREEMENT (“Agreement”) is **made and entered into by and between the City of Mansfield, Texas (“the City”) and FirstService Residential Texas, Inc., a Texas corporation doing business as FirstService Residential (“Contractor”).**

#### **RECITALS**

The following statements are true and correct and constitute the basis upon which the City and Contractor have entered into this Agreement:

**WHEREAS**, pursuant to Chapter 372 of the Texas Local Government Code on February 22, 2016, the City adopted Resolution RE-3214-16 creating South Pointe Public Improvement District (the “District”); and

**WHEREAS**, the City is authorized to utilize the District to undertake improvements and/or services that confer special benefits on the part of the Mansfield within the District; and

**WHEREAS**, the City is authorized to levy and collect special assessments on property in the District, based on the special services conferred by the improvements and services, to pay the cost of such improvements and services; and

**WHEREAS**, the City desires to enter into a written agreement with Contractor for the provision of certain improvements and services in the District, as more specifically set forth in this Agreement; and

**WHEREAS**, such improvements and services constitute a supplement to standard City services and an added increment of service to provide other special benefits and services which will enhance the vitality and quality of the District; and

**WHEREAS**, Contractor wishes to assist the City by providing, furnishing, or performing such improvements and services;

**NOW, THEREFORE**, for and in consideration of the mutual covenants, promises, and agreements contained herein, the City and Contractor do hereby covenant and agree as follows:

#### **AGREEMENT**

##### **1. ENGAGEMENT OF CONTRACTOR**

The City hereby engages the Contractor, and the Contractor hereby agrees to provide, furnish, oversee or perform in accordance with this Agreement the improvements and services set forth in Section 2.

## **2. IMPROVEMENTS AND SERVICES FOR THE DISTRICT**

### **2.1. Scope of Contractor's Duties**

Contractor shall provide or cause to be provided those improvements and services (the “Improvements and Services”) set forth in this subsection and subject to the Service Plan and Budget for the District attached hereto as Exhibit “1” as approved by the City for the term of this Agreement, or as may subsequently be amended. Contractor shall also comply with the following related duties and responsibilities:

- (a) Oversee the bidding and awarding of any subcontracts for the Improvements and Services;
- (b) Monitor work performed by any subcontractors for any of the Improvements and Services to ascertain that all such work is performed completely, professionally, and with the appropriate level of quality and to make whatever changes are necessary to achieve these objectives;
- (c) Obtain, maintain and pay for insurance necessitated by the Improvements and Services, as may be directed or reviewed by the City Administrator as herein defined or other designee;
- (d) In accordance with Section 372.013 of the Texas Local Government Code, prepare a Service Plan and Budget Plan for approval as set forth in Section 3;
- (e) Maintain a full and accurate accounting of disbursements for reimbursement from District revenues and provide the City with a monthly accounting statement;
- (f) Participate in meetings of individual departments within the City, as required, to coordinate District activities;
- (g) Participate in all meetings required by the City for assistance in the preparation of the Service Plan and Budget for the District, and update the City as to authorized District projects and other pertinent matters;
- (h) Establish means of communication for citizen input to report problems and make suggestions to the District; coordinate responses to citizens, with input from the City, when appropriate;
- (i) Monitor recurring expenses and perform comparative analyses to identify emerging trends and real or potential problems. Notify the City of trends and unusual or excessive expenses; and
- (j) Maintain a complete set of historical records of all District activity to include but not limited to minutes of meetings, and agreements/contracts with other entities, grant applications, etc. from the beginning of the District to present.

## 2.2. Contractor Compensation

As full compensation for the provision of all Improvements and Services during the Term of this Agreement, the City shall pay Contractor a management fee as per the schedule below. The budgeted amount for each year shall be reflected in the Service Plan and Budget as "General and Administrative," which amount shall be paid in monthly installments in accordance with Section 7 hereof.

The annual monthly management fee is as follows: \$700 for homes 0-200; the greater of \$1,500 or \$4.50 per home for homes 201-550; the greater of \$2,500 or \$4.25 per home for homes 551 to 900; the greater of \$3,900 or \$3.85 per home for homes 901-1294. Half of the management fee will be charged to the South Pointe Homeowners Association. The management fee covers fees for routine services, including overhead expenses and salaries of Contractor's corporate employees, general and administrative expenses, financial management, general administration and operations management.

If on-site administrative, maintenance and housekeeping personnel are required, they shall be employees of Contractor. Half of the costs related to their employment shall be charged to the South Pointe Homeowners Association. The District shall reimburse for actual wages paid plus a labor burden of 25% for administrative personnel and 35% for all other personnel. Labor burden includes social security tax, federal/state unemployment tax, workers compensation insurance, Contractor's contribution to employee 401(k) benefit, drug testing, Texas criminal background checks, single PPO medical benefits, payroll processing and human resource administration.

Exhibit 2 to this Agreement further describes administrative expenses for certain periodic routine services related to mailings, photocopying, sending of registered notices to members and other items, the cost of which shall be billable in accordance with this Agreement. Fee for periodic routine services are due and payable within thirty days of billing and shall be billed in accordance with Exhibit 2.

## 2.3. Standard of Care; Nature of Relationship

Contractor shall commence, carry on, and provide the Improvements and Services with all practicable dispatch, in a sound, economical, and efficient manner, in accordance with this contract and its attachments and all applicable laws. Contractor shall ensure that any work on the Improvements and Services is properly coordinated with possible related work being performed by the City. Unless otherwise specifically provided herein, all of the Improvements and Services will be performed by the Contractor or under the Contractor's supervision. All personnel engaged by the Contractor shall be fully qualified to perform those Improvements and Services delegated to them.

## 2.4. Security Services

Nothing in this Agreement shall preclude the Contractor from providing, as part of its Improvements and Services, additional security services to the District. Unless otherwise specifically provided herein, all of the Improvements and Services related to Security Services will be performed by the Contractor or under the Contractor's supervision.

### **3. ANNUAL SERVICE AND BUDGET PLAN REVIEW PROCESS**

The Contractor will submit an annual plan of service and budget and an updated five-year plan of service and budget for review by the City on the date set by the City Administrator. Prior to presenting each annual plan of service and budget to the City, the Contractor will submit the annual plan to the Board of Directors of the South Pointe Property Homeowners Association for the Board's review and will conduct a public hearing within the District at which time the proposed annual plan of service and budget (including any comments from the Board review) will be presented and property owners within the District will be given an opportunity for public comment. The Contractor will give individual written notice to the City's City Manager and to each property owner within the District not less than 15 days before the date of the hearing, which notice will be accompanied by an outline of the proposed annual plan of service and budget or revisions thereto, as the case may be. This public hearing is in addition to the public hearing that will be held by the City Council as required by the Section 372.013 of the Texas Local Government Code before approving and adopting an annual plan of service and budget for the District.

### **4. THE CITY'S DUTIES AND RESPONSIBILITIES**

The City shall provide the following services in connection with operation of the District and the Contractor's performance under this Agreement:

- (a) Levying and collecting, through the City's agreement with the County Tax Assessor/Collector, assessments and recording the same in a separate revenue account;
- (b) Making payments to Contractor from special assessment revenues and other District revenues;
- (c) Maintaining complete and detailed records concerning any expenditure of special assessment revenues and other District revenues, which are made through the City departments, boards, or agencies;
- (d) Retaining and expending revenues from special assessments, penalties, interest, and investment income thereon solely in the District;
- (e) Preparing an annual report of delinquent property assessments and liens thereon to be assigned to the City's delinquent tax collection attorney;
- (f) Making periodic reports to Contractor concerning delinquent assessments and making billings thereon as necessary; and,
- (g) Producing an annual assessment roll of property owners and property within the District.

The City shall have no financial obligation to the District other than levying and

collecting, through its agreement with the County Tax Assessor/Collector, the assessments levied by the District, and, pursuant to and in accordance with this Agreement, paying for Improvements and Services that Contractor performs in the District, according to the terms of this Agreement.

**5. AMENDMENTS**

This Agreement may not be amended unless executed in writing by both parties.

**6. TERM**

This Agreement shall commence on March 1, 2016, (the "Effective Date") and, unless terminated earlier in accordance with this Agreement, expire September 30, 2017 (the "Term").

**7. RELEASE OF FUNDS TO CONTRACTOR**

**7.1. Procedure**

Periodically, but not more frequently than once per month, Contractor shall present to the individual designated by the City to oversee and administer the District (the "Administrator") a report of the Improvements and Services provided by Contractor since (i) for the first report under this Agreement, the Effective Date and (ii) for all subsequent reports, the date of the previous report. All such reports must include documentation sufficient demonstrating to the Administrator that any sums paid or incurred by Contractor have been paid or are due. Provided that all such necessary reports and supporting documentation have been provided to the Administrator, the City shall pay the Contractor for all lawful expenses made or incurred by Contractor within thirty (30) business days of receipt of all such reports and supporting documentation. Notwithstanding anything to the contrary herein, the City shall not be required to pay Contractor any amount that exceeds the then-current balance of District revenues or that is not in accordance with the Service Plan and Budget for the then-current fiscal year.

**7.2. Work Reports**

Contractor shall also submit a periodic work report as requested by the Administrator. This work report shall detail all of the Contractor's significant work activities in the District. The format of the report shall be mutually agreed upon by the Contractor and the Administrator. Notwithstanding anything to the contrary herein, payments to Contractor may be withheld if any such report is not received. The Administrator shall have the right to verify that the report is complete and accurate.

**7.3. Insufficient District Funds**

In the event that District revenues are not available or are insufficient for the City to make any payment to Contractor hereunder, the City will promptly notify Contractor. At Contractor's request, the City and the Contractor shall meet and attempt to negotiate an amendment to this Agreement so that the scope of Improvements and Services may be

reduced to correspond to the amount of District funds that are available or are anticipated to become available. If such an amendment cannot be successfully negotiated, Contractor shall have the right to pay the deficit (on a non-reimbursable basis), in which case this Agreement shall continue in effect. If such an amendment cannot be successfully negotiated and Contractor does not elect to fund the deficit, either party may terminate this Agreement upon thirty (30) days' advance written notice to the other party.

**8. CONTRACTOR LIABILITY**

Contractor hereby assumes full liability for any damages to any public or private property which is due to the gross negligence or willful misconduct of Contractor, its subcontractors, agents, permittees or assigns.

**9. LIABILITY OF THE CITY ; PERSONAL LIABILITY OF PUBLIC OFFICIALS**

No employee of the City, nor any other agent of the City, shall be personally liable for any damages caused by Contractor, its officers, agents, servants, employees, contractors and subcontractors or any other liabilities of Contractor under this Agreement or otherwise related to this Agreement. It is further expressly agreed that the City shall not be liable or responsible for any damages caused by Contractor, its officers, agents, servants, employees, contractors and subcontractors or any other liabilities of Contractor under this Agreement or otherwise related to this Agreement, nor shall the City of City be liable or responsible to Contractor or any other person for or on account of any stoppage or delay in the work herein provided for by injunction or other legal or equitable proceedings, or from or by or on account of any delay for any cause over which the City of City has no control.

**10. INDEMNIFICATION**

CONTRACTOR COVENANTS AND AGREES TO, AND DOES HEREBY, INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL SUITS OR CLAIMS FOR DAMAGES OR INJURIES, INCLUDING DEATH, TO ANY AND ALL PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH ANY GROSSLY NEGLIGENT ACT OR GROSSLY NEGLIGENT OMISSION ON THE PART OF THE CONTRACTOR, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES OR SUBCONTRACTORS, AND THE CONTRACTOR DOES HEREBY ASSUME ALL LIABILITY AND RESPONSIBILITY FOR INJURIES, CLAIMS OR SUITS FOR THE DAMAGES TO PERSONS OR PROPERTY, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, OCCURRING DURING OR ARISING OUT OF THE PERFORMANCE OF THIS CONTRACT AS A RESULT OF ANY GROSSLY NEGLIGENT ACT OR GROSSLY NEGLIGENT OMISSION ON THE PART OF THE CONTRACTOR, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES OR SUBCONTRACTORS. SUCH INDEMNIFICATION SHALL INCLUDE WORKERS' COMPENSATION CLAIMS OF OR BY ANYONE WHATSOEVER IN ANY WAY RESULTING FROM OR ARISING OUT OF CONTRACTOR'S WORK, SERVICES AND OPERATIONS IN CONNECTION HERewith, INCLUDING OPERATIONS

OF SUBCONTRACTORS.

CONTRACTOR SHALL LIKEWISE INDEMNIFY AND HOLD HARMLESS THE CITY OF CITY FOR ANY AND ALL INJURY OR DAMAGE TO CITY PROPERTY ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL GROSSLY NEGLIGENT ACTS OR GROSSLY NEGLIGENT OMISSIONS OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTOR, SUBCONTRACTORS, LICENSEES OR INVITEES.

Insurance coverage specified herein constitutes the minimum requirements and said requirements shall in no way lessen or limit the liability of Contractor under the terms of this contract. Contractor shall procure and maintain, at its own cost and expense, any additional kinds and amounts of insurance that, in its own judgment, may be necessary for proper protection in the prosecution of its work.

#### **11. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City ; that Contractor shall have exclusive control of the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the negligent acts and negligent omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between the City and Contractor, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between the City and Contractor. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the City.

#### **12. INSURANCE**

Contractor shall not commence work under this Agreement until it has obtained and received approval from the City of all insurance coverage required hereunder. Contractor shall be responsible for delivering to the Administrator a certificate or certificates of insurance demonstrating that Contractor has obtained the coverage required under this Agreement. The minimum insurance required of Contractor is as follows:

WORKER'S COMPENSATION INSURANCE: Contractor shall maintain throughout the Term of this Agreement statutory Worker's Compensation Insurance on all of its employees to be engaged in undertaking any Improvements or Services hereunder. In case any class of employees engaged in hazardous work under this Agreement is not protected under the state's Worker's Compensation statutes, Contractor shall provide adequate employer's general liability insurance for the protection of such employees not so protected.

COMPREHENSIVE GENERAL LIABILITY INSURANCE: Contractor shall maintain throughout the Term of this Agreement a commercial general liability insurance policy in an amount of not less than \$1,000,000 covering each

occurrence with an aggregate limit of not less than \$2,000,000.

**AUTOMOBILE INSURANCE - BODILY INJURY AND PROPERTY DAMAGE:** Contractor shall maintain throughout the Term of this Agreement comprehensive automobile liability coverage in an amount not less than \$1,000,000 for each accident. This policy shall cover any automobile used in the provision of Improvements and Services under this Agreement.

The insurance company with whom Contractor's insurance is written shall be represented by an agent or agents having an office located within the Dallas-Fort Worth metropolitan area. Each such agent shall be duly qualified, upon whom service or process may be had, and must have authority and power to act on behalf of the insurance company to negotiate and settle with the City, or any other claimant, any claims that the City, or any other claimant, or any property owner who has been damaged may have against the Contractor or insurance company. The name of the agent or agents shall be set forth on all certificates of insurance. All policies must provide that they may not be changed or canceled by the insurer in less than five (5) days after the City had received written notice of such change or cancellation. Such insurance amounts may be revised upward at the City's request, and Contractor shall revise such amounts within thirty (30) days after receipt of such request.

**13. TAXES**

Contractor shall pay all federal, state and local taxes that may be chargeable on any Improvements and Services provided hereunder or otherwise in relation to Contractor's duties and obligations hereunder.

**14. PERMITS**

Contractor shall and shall cause any of its contractors and subcontractors to obtain and pay for any necessary permits and licenses, whether issued by the state, county or City, before undertaking any work hereunder that requires any such permits.

**15. CHARACTER OF WORK AND OPERATIONS**

Contractor and Contractor's employees, contractors and subcontractors shall be competent and careful workmen skilled in their respective trades. Contractor shall not employ any person who repeatedly engages in misconduct or is incompetent or negligent in the due and proper performance of his duties or has been convicted of any crime of moral turpitude. The City shall retain the right to require the Contractor to remove any employee who is guilty of misconduct toward the public or is in any way discourteous to the public. This work is being performed for the public benefit and it is necessary that it be performed in an acceptable manner and at a satisfactory rate of progress. Contractor shall at all times maintain its equipment in a clean, serviceable condition. All equipment shall be properly licensed and inspected and clearly marked with the Contractor's name and telephone number.

**16. ASSIGNMENT AND SUBCONTRACTING**



Contractor shall have the right to subcontract for the provision of any Improvements and Services authorized hereunder so long as the subcontract is in writing and the Administrator approves such subcontract in writing prior to provision of the subcontracted Improvements and Services, which such approval by the Administrator shall not be unreasonably delayed. The existence of a subcontract shall not relieve Contractor of any responsibility or liability to the City under this Agreement. Otherwise, Contractor may not assign, transfer or convey any of its duties and responsibilities under this Agreement to another party without the advance written approval of the City and execution by such party of a written agreement with the City under which such party agrees to be bound by the duties and obligations of Contractor under this Agreement.

**17. DEFAULT**

All terms, conditions and provisions of this Agreement shall be considered material, and Contractor's failure to perform any part of this Agreement shall constitute an event of default hereunder. Should the Contractor fail to fully cure any default hereunder within fourteen (14) calendar days after receipt from the City of written notice of the default, the City may, at its option and in addition to any other remedies available to it under law or in equity, terminate this Agreement by providing written notice to Contractor. Notwithstanding the foregoing, the City may terminate this Agreement for any reason upon thirty (30) calendar days' prior written notice to Contractor. In the event of any termination, any work in progress will continue to completion unless specified otherwise in the City's termination notice. The City shall pay for any such work in progress that is completed by Contractor and accepted by the City.

**18. COOPERATION WITH THE CITY**

Contractor shall, at such time and in such form as the City may require, furnish periodic information concerning the status of the project and such other statements, certificates and approvals relative to the project as may be requested by the City. Contractor shall meet with the Administrator or other City officials as may be requested to discuss any aspect of this Agreement.

**19. BOOKS AND RECORDS; AUDITING RIGHTS**

Contractor shall maintain complete and accurate records with respect to all expenditures and costs incurred for all Improvements and Services provided hereunder. All such records shall be maintained on a generally accepted accounting basis and shall be clearly identified and readily accessible to the City. Contractor shall provide representatives of the City or its appointees free access to such books and records, at all proper times, in order that they may examine and audit the same and make copies thereof. Contractor shall further allow the City and its representatives to make inspections of all work data, documents, proceedings and activities related to this contract. Such right of access and audit shall continue for a period one (1) year from the date of the final payment under this Agreement.

The City shall also have the right to conduct a performance audit and evaluation of Contractor at such times as the Mansfield deems necessary. Contractor shall fully cooperate with any such performance audit. The City may employ consultants at the City's expense to assist the City in such performance audit. Contractor agrees to give the City and its consultants access to all reports, data, schedules and other relevant information which may be required to conduct such performance audit.

**20. NOTICES**

Any notices, bills, invoices or reports required by this Agreement shall be conclusively determined to have been delivered three (3) business days after it is deposited in the United States mail, in a sealed envelope with sufficient postage attached, to the addresses listed below or such other addresses as may from time to time be provided to the other party:

City:  
City of Mansfield  
Attn: City Manager  
1200 E Broad Street  
Mansfield, Texas 76063

Contractor:  
FirstService Residential  
Attn: Cindy Huey, President  
3102 Oak Lawn Avenue, Suite 202  
Dallas, Texas 75219-4241

**21. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS**

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the City's Charter and ordinances, as amended.

**22. GOVERNMENTAL POWERS**

It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities.

**23. NO WAIVER**

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

**24. VENUE AND JURISDICTION**

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Ellis County, Texas or the United States District Court for the Northern District of Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

**25. NO THIRD PARTY RIGHTS**

The provisions and conditions of this Agreement are solely for the benefit of the City and Contractor and are not intended to create any rights, contractual or otherwise, to any other person or entity.

**26. INTERPRETATION**

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

**27. CAPTIONS**

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**28. ENTIRETY OF AGREEMENT**

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Contractor as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

**29. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED as of the last date indicated below:

CITY OF MANSFIELD:

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

FIRSTSERVICE RESIDENTIAL TEXAS, INC.,  
A Texas corporation d/b/a  
FIRSTSERVICE RESIDENTIAL:

By: \_\_\_\_\_  
Ashlynn Wells, Senior Vice President

Date: \_\_\_\_\_