

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
(Chapter 380 Agreement)

This Economic Development Program Agreement is made and entered into by and between the City of Mansfield, a municipal corporation, organized under and existing pursuant to the Constitution and laws of the State of Texas, hereinafter "City", and Methodist Mansfield Hospital, a corporation organized and existing pursuant to the laws of the State of Texas, for the purposes and considerations stated below:

RECITALS:

WHEREAS, Methodist Mansfield Hospital has a full service medical facility (the "Hospital") providing medical services to the citizens and businesses of Mansfield, Texas, providing emergency care and highly specialized critical care treatments located adjacent to East B Road; and

WHEREAS, Methodist Mansfield Hospital must design, construct, develop and maintain a facility to house patients and within which to perform and provide services to meet the inpatient and outpatient demands of the community; and

WHEREAS, since its initial commencement of operations within the City of Mansfield, the hospital has increased its patient load and service delivery significantly and it now finds it necessary to expand its existing facilities to support additional services including new medical offices, diagnostic facilities, surgical suites, emergency room treatment facilities and other supporting and ancillary medical facilities; and

WHEREAS, it is recognized that the City of Mansfield is one of the fastest growing residential, business, and industrial cities within the State of Texas and the southwestern portion of the United States and this growth necessitates the need to ensure adequate medical service delivery for the future well being of the community and that additional medical facilities and infrastructure must be developed on a timely schedule meeting the needs of a rapidly growing population; and

WHEREAS, the City's emergency services divisions rely on emergency medical facilities provided by the hospital; and

WHEREAS, the City's many businesses and industries rely on having expert medical care and emergency facilities available to accommodate workers who might be injured or become ill while employed within the boundaries of the community; and

WHEREAS, Methodist Mansfield Hospital has recently presented the City of Mansfield with plans for significant facility expansions in multiple phases that will alter the geographic arrangement of the current hospital complex thereby requiring the relocation of existing street infrastructure now serving the hospital; and

WHEREAS, the proposed expansion plans establish a clear public need and necessity for the abandonment of existing Hospital Drive along its current route in order to maximize the development of the hospital site in the most economical and efficient fashion to support the provision of emergency medical services on the hospital campus; and

WHEREAS, the development of the expanded hospital facility will create numerous new employment opportunities for medical workers and professional staff within the hospital complex thereby significantly enhancing the local economic environment by creating an expansion of an extremely important skilled workforce within the community; and

WHEREAS, the City of Mansfield has found that the hospital expansion which forms the basis of this Agreement will not only create a significant number of new jobs within the community but will also create a medical and health resource asset for the community that will assist the economic development activities of the City in seeking to recruit other industries and corporate headquarters that may be considering locating facilities within the community.

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

1. Authorization

The City has concluded that this Agreement is authorized by Chapter 380 of the Texas Local Government Code.

2. Definitions The following definitions shall apply to the terms used in this Agreement:

“Ad Valorem Tax Revenues” means, with respect to any particular year, the revenues the City actually receives from the ad valorem property taxes for such year from the Physician Office Building.

“Building Permit” means the permit issued by the City of Mansfield authorizing the construction of the building.

“Certificate of Occupancy” means the certificate issued by the City building official reflecting that construction has been completed in conformance with appropriate municipal codes and the owners are authorized to secure full utility service and to permit commercial occupancy of the building.

“City” means the City of Mansfield, Texas.

“Effective Date” means the date that all parties have executed this Agreement.

“Force Majeure” means any acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or defacto governmental action, except actions taken by the City pursuant to or permitted by the terms of this Agreement, and except actions taken as a result of acts or omissions of Methodist Mansfield Hospital, fire, explosion or flood, and strikes.

“FTE” means any employee on a forty (40) hour or more per week schedule or the combination of two (2) or more employees on part-time schedules equaling at least forty (40) hours.

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

“Physicians Office Building” means a physician office building comprising of at least ninety thousand (90,000) square feet for the use by the Mansfield medical community in support of the Hospital.

“Program” means a program to facilitate the expansion of medical facilities within the City of Mansfield for reasons set forth in the recitals to this Agreement.

“Program Grant” means an amount equal to Two Hundred Thousand Dollars (\$200,000) to be paid as set forth in Section 7.

“Program Payment” means the annual payment of the Program Grant made by the City to the Hospital pursuant to Section 7 of this Agreement.

“Project” means the construction of the Tower and Physicians Office Building.

“Term” has the meaning set forth in Section 4 of this Agreement.

“Tower” means the construction of a new bed tower that will provide at least one hundred (100) additional private in patient rooms principally serving the intensive care, cardiology and general medical service areas of the Hospital. The Tower will include two new surgical suites and shell space for future operating rooms.

3. Program Approved

With the approval of this Agreement by the Mansfield City Council, the Program is hereby established pursuant to Section 380.001 of the Texas Local Government Code. The terms, obligations and benefits set forth in this Agreement are intended to implement the Program.

4. Term

This Agreement shall be effective as of the date of execution by all parties and

shall terminate when the Program Grant is paid in full. Provided, however, this Agreement may be terminated by the City in the event Methodist Mansfield Hospital fails to commence construction of the Tower by December 1, 2015.

5. Methodist Mansfield Hospital Covenants

In consideration of the City's incentives under this Agreement, Methodist Mansfield Hospital agrees to:

- i. Obtain a Building Permit and commence construction of the Tower no later than [REDACTED];
- ii. Obtain a Certificate of Occupancy from the City and commence operations of the Tower no later than [REDACTED];
- iii. Obtain a Building Permit and commence construction of the Professional Office Building no later than [REDACTED];
- iv. Obtain a Certificate of Occupancy from the City and make the Professional Office Building available for tenants no later than [REDACTED];
- v. Design and construct all phases of the Project with the criteria and development standards set forth in the ordinances of the City in general conformance to the material presented to the Mansfield City Council in August of 2013 in a document entitled "Methodist Mansfield Medical Center Master Campus Plan, a Proposed Hospital Expansion", attached hereto as Exhibit A and incorporated for all purposes;
- vi. Operate the Tower and actively market the Professional Office Building for the term of this Agreement;
- vii. Use best efforts to secure physicians and supporting medical services to occupy the Professional Office Building;
- viii. Purchase construction material for the construction of the Project from vendors within the City of Mansfield to the extent practicable and if available in Mansfield at a competitive price;
- ix. Create and retain at least [REDACTED] FTE's at the Tower;
- x. Render the Professional Office Building to the Tarrant County Appraisal District and remain current on all taxes, subject to lawful appeal, for the term of this Agreement; and

- xi. Methodist Mansfield Hospital covenants and certifies that it does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Methodist Mansfield Hospital, or its branch, division or department is convicted of a violation under 8 U.S.D. Section 1324a(f), Methodist Mansfield Hospital shall repay the City the full amount of the Program Payment made under this Agreement, plus 10% per annum from the date the Program Payment was made. Repayment shall be paid within on hundred and twenty (120) days after the date Methodist Mansfield Hospital receives notice of violation from the City.

6. City's Development Program Incentives

Subject to Mansfield's performance of its obligations as required by this Agreement, and subject to the provisions of this Section, to promote local economic development pursuant to the Economic Development Program established by Section 2 of this Agreement, the City shall grant Methodist Mansfield Hospital the following incentives:

7. Covenants of the City of Mansfield

a. Physical Improvements or Public Facility Changes

- i. Hospital Drive. The City of Mansfield hereby agrees that it will close the existing Hospital Drive as a public roadway and release its right-of-way easement for the use of that road section as a public roadway (the area to be released is reflected on map Exhibit B attached hereto and incorporated herein for all purposes). The City will be obligated to close the roadway and abandon the right-of-way easement after Methodist Mansfield Hospital receives a Certificate of Occupancy for the Tower from the City. The City Council will begin the consideration of an ordinance to bring about street closure and right-of-way abandonment at the first regularly scheduled council meeting following the issuance of the Certificate of Occupancy. The City will proceed through all required ordinance readings in the regular course of business to ensure that road closure is accomplished in a manner that will not delay construction of the Tower.
- ii. S. Cannon Drive. Within thirty (30) days after the City adopts an ordinance closing Hospital Drive, the City of Mansfield hereby agrees that it will initiate the construction process for S. Cannon Drive on the approximate location reflected on Exhibit B. The road will connect at the turnaround on Matlock Road and will continue

west to its proposed intersection with [REDACTED] Road. S. Cannon Drive will be a [REDACTED] category of street, approximately [REDACTED] feet in width and having [REDACTED] travel lanes. It is the intent of the parties that this new road section be constructed and in service at or about the time the Tower and the Physician Office Building go into operational use.

b. Program Grant. The City will make a Program Grant to Mansfield Methodist Hospital in an amount of Two Hundred Thousand Dollars (\$200,000) annually, commencing the first year Ad Valorem Tax Revenues are owed on the Professional Office Building. After it receives the Ad Valorem Tax Revenues, the City will make a Program Payment to Mansfield Methodist Hospital in an amount equal to One Hundred Percent (100%) of the Ad Valorem Tax Revenues paid, until the Program Grant is paid in full.

8. Covenants Running with the Land

Methodist Mansfield Hospital's covenants, restrictions, burdens, and charges set forth in this Agreement shall exist at all times as long as this Agreement is in effect, and shall be covenants running with the land, binding upon all parties having any right, title or interest in any portion of all the Property. Methodist Mansfield Hospital agrees that the City may file a copy of this Agreement in the deed records of Tarrant County, Texas, for the purpose of providing notice regarding these covenants.

9. Default and Termination

a. Default. If either party should fail to comply with the terms of this Agreement, the party shall have 30 days after delivery of written notice of such default from the other party to cure such default. If the noncompliance is not cured within that period, the non-defaulting party may terminate this Agreement by written notice and shall have no further obligation to the other party; provided that the City may, in its discretion, grant Methodist Mansfield Hospital an extension of 30 days to cure the default if Methodist Mansfield Hospital demonstrates, to the satisfaction of the City Council that: the default cannot be cured by the payment of monies and (2) cannot be cured within 30 days and (3) that Methodist Mansfield Hospital is diligently pursuing cure.

b. Repayment. Methodist Mansfield Hospital agrees, that upon an event of default by Methodist Mansfield Hospital of this Agreement, and upon receipt of notice from the City, to remit to the City a sum equal to the total of all fees waived or credited and the total payments made by the City to Methodist Mansfield Hospital pursuant to this Agreement, plus interest at the highest rate per annum by applicable law from the date payments were made, until repaid to the City by Methodist Mansfield Hospital.

10. Indemnification

a. METHODIST MANSFIELD HOSPITAL EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF METHODIST MANSFIELD HOSPITAL OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT IN THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, GROSS NEGLIGENCE, WRONGFUL ACT, OR FAULT OF THE CITY OR ITS OFFICERS, AGENTS, OR EMPLOYEES, CONTRIBUTES IN ANY WAY TO THE DAMAGE, INJURY, OR OTHER HARM. THE REQUIREMENT OF METHODIST MANSFIELD HOSPITAL TO DEFEND THE CITY ALSO UNCONDITIONALLY APPLIES REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, GROSS NEGLIGENCE, OR FAULT OF THE CITY OR ITS OFFICERS, AGENTS, OR EMPLOYEES CONTRIBUTES IN ANY WAY TO THE DAMAGE, INJURY, OR OTHER HARM. Nothing in this paragraph may be construed as waiving any immunity available to the City under state law. This provision is solely for the benefit of Methodist Mansfield Hospital and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other Person.

b. No Joint Venture. The parties agree that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City, its elected officials, directors, employees and agents do not assume any responsibility to any third party in connection with Methodist Mansfield Hospital's construction or operation of the Project.

11. Right to Offset

City may, at its option, offset any amounts due and payable to Methodist Mansfield Hospital under this Agreement against any debt (including taxes) lawfully due to City from Methodist Mansfield Hospital, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.

12. Rough Proportionality

Methodist Mansfield Hospital agrees that all property dedicated to the City and all public facilities constructed pursuant to this Agreement are reasonably necessary to serve the development and are roughly proportional to the need generated by the subdivision for such land and facilities. Methodist Mansfield Hospital acknowledges its right to seek a variance to the dedication and/or construction requirements and that it

has voluntarily chosen not to pursue such remedies and waives any claim for a taking of property, or any other constitutional or statutory claim, that it may have under either the Texas or United States Constitutions or statutes.

13. Miscellaneous Matters

a. Section or Other Headings. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

b. Attorneys Fees. The prevailing party in the adjudication of any proceeding relating to this Agreement shall be authorized to recover its reasonable and necessary attorney's fees pursuant to Section 271.159 of the Texas Local Government Code.

c. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transactions contemplated herein.

d. Amendment. This Agreement may only be amended, altered, or revoked by written instrument signed by Methodist Mansfield Hospital and the City.

e. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. Methodist Mansfield Hospital may assign all or part of its rights and obligations hereunder (a) to any Methodist Mansfield Hospital Affiliate effective upon written notice to the City, or (b) to any Person other than a Methodist Mansfield Hospital Affiliate with the prior written approval of the City.

f. Notice. Any notice and/or statement required and permitted to be delivered shall be deemed delivered by hand delivery, depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

METHODIST MANSFIELD HOSPITAL:

{INSERT NAME AND ADDRESS}

With a copy to:

{INSERT NAME AND ADDRESS}

CITY:

City Manager
City of Mansfield
1200 E. Broad Street
Mansfield, Texas 76063

With a copy to:

Taylor, Olson, Adkins, Sralla &
Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Attention: Betsy Elam

g. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

h. Applicable Law and Venue. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and is fully performable in Tarrant County, Texas, and venue of any dispute relating to this Agreement shall lie in Tarrant County, Texas.

i. 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.

j. Limitation on Liability. Methodist Mansfield Hospital agrees that City shall not be liable to Methodist Mansfield Hospital or any other party for any special or consequential damages, direct or indirect, punitive damages, interest, or cost of court or expenses related to litigation other than reasonable and necessary attorney's fees, as provided in subsection b. hereof for any act of default by City under this Agreement.

k. Representations. Methodist Mansfield Hospital represents and warrants to the City that it has the requisite authority to enter into this Agreement.

THE CITY OF MANSFIELD

By: _____
Clay Chandler, City Manager

ATTEST:

CITY SECRETARY

APPROVED AS TO FORM:

CITY ATTORNEY

HOSPITAL

By: _____
_____, its _____

THE STATE OF TEXAS
COUNTY OF TARRANT

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BEFORE ME, the undersigned authority, on this day personally appeared Clay Chandler, City Manager of the CITY OF MANSFIELD, a municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he was duly authorized to perform the same by appropriate resolution of the City Council of the City of Mansfield and that he executed the same as the act of the said City for the purposes and consideration therein expressed and in the capacity therein stated..

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2013.

Notary Public in and for the State of Texas

Notary's Printed Name

My Commission Expires: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said instrument was signed on behalf of said corporation, and said _____ acknowledged said instrument to be his free act and deed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE in said County and State
this _____ day of _____, 2013.

Notary Public in and for the State of Texas

Notary's Printed Name

My Commission Expires: _____

EXHIBIT A

**Methodist Mansfield Medical Center Master Campus Plan,
a Proposed Hospital Expansion**

EXHIBIT B

Map