

**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**  
**(Chapter 380 Agreement)**

This Economic Development Program Agreement ("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 Pavilion Properties, a Texas, a non-profit corporation ("Developer") organized and existing pursuant to the laws of the State of Texas, for the purposes and considerations stated below:

**RECITALS:**

**WHEREAS**, Methodist Mansfield Medical Center (the "Hospital") has a full service general acute care hospital licensed by the State of Texas to provide hospital services to the citizens and community of Mansfield, Texas, providing emergency care and critical care services located adjacent to East Broad Street; and

**WHEREAS**, to compliment the hospital services as described above, Developer desires to design, construct, develop and maintain a physicians office building to lease space to medical providers to perform and provide services to meet patients' needs; 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 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**, the City of Mansfield has found that the development which forms the basis of this Agreement will 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.

"Agreement" means this Economic Development Program Agreement.

"Building Permit" means the permit issued by the City of Mansfield authorizing the construction of a 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 owner is authorized to secure full utility service and to permit commercial occupancy of a 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, fire, explosion or flood, and strikes, 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 Developer.

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

"Physicians Office Building" means the physician office building being developed by Developer in proximity to the Hospital and comprising of at least seventy-five thousand (75,000) 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 Physicians Office Building.

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

### **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 Developer fails to commence construction of the Physicians Office Building by December 31, 2016.

### **5. Developer Covenants**

In consideration of the City's incentives under this Agreement and subject to Force Majeure, Developer agrees to take the following actions or cause the following actions to be taken by others:

- i. Obtain a Building Permit and commence construction of the Physicians Office Building no later than December 31, 2016.
- ii. Obtain a Certificate of Occupancy from the City for the shell building and make the Physicians Office Building available for tenants no later than December 31, 2017;
- iii. Operate and actively market the Physicians Office Building for the term of this Agreement;
- iv. Exercise reasonable diligence to secure physicians and supporting medical services to occupy the Physicians Office Building;
- v. 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;
- vi. Remain current on all taxes, subject to lawful appeal, for the term of this Agreement; and
- vii. Developer covenants and certifies that it does not and will not, while this Agreement is in effect, 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 Developer, or its branch, division or department is, during the term of this Agreement, convicted of a violation under 8 U.S.C.

Section 1324a(f), Developer 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 one hundred and twenty (120) days after the date Developer is convicted of a violation under 8 U.S.C. Section 1324a(f).

## **6. City's Development Program Incentives**

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

## **7. 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 Developer shall have a reasonable amount of time to cure the default if Developer demonstrates, to the reasonable satisfaction of the City Manager that the default cannot be cured within 30 days and that Developer is diligently pursuing the cure.

b. Repayment. Developer agrees, that upon an event of default by Developer of this Agreement, and upon receipt of notice from the City, to remit to the City a sum equal to the total payments made by the City to Developer 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 Developer.

## **8. Indemnification**

a. **DEVELOPER 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 DEVELOPER OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING**

**OUT IN THE PERFORMANCE OF THIS AGREEMENT.** 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 Developer and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other Person.

**9. 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 Developer's construction or operation of the Project.

**10. Right to Offset**

City may, at its option, offset any amounts due and payable to Developer under this Agreement against any debt (including taxes) lawfully due to City from Developer, 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.

**11. 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 Developer 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. Developer may assign all or part of its rights and obligations hereunder (a) to any Developer Affiliate effective upon written notice to the City, or (b) to any Person other than a Developer Affiliate with the prior written approval of the City Manager, which approval shall not be unreasonably withheld, conditioned or delayed.

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:

DEVELOPER:

Pavilion Properties  
c/o Michael O. Price  
Chief Legal Officer  
1441 N. Beckley Avenue  
Dallas, Texas 75203-1201

With a copy to:

Barry R. Knight  
Kirk R. Williams  
Winstead PC  
500 Winstead Building  
2728 N. Harwood Street  
Dallas, Texas 75201

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. Developer agrees that City shall not be liable to Developer or any other party for any special or consequential damages, direct or indirect or punitive damages hereof for any act of default by City under this Agreement.

k. Representations. Developer 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

PAVILION PROPERTIES,  
a Texas non-profit corporation

By: \_\_\_\_\_  
Stephen L. Mansfield, Ph.D.  
President