



CITY OF MANSFIELD

Economic Development
301 South Main Street,
Suite 100
Mansfield, TX 76063
www.mansfield-texas.com

Meeting Agenda

Mansfield Economic Development Corporation

Tuesday, March 6, 2018

5:30 PM

City Hall - Council Chambers

1. **CALL MEETING TO ORDER**

2. **PUBLIC COMMENTS**

Citizens wishing to address the Board on non-public hearing agenda items and items not on the agenda may do so at this time. Once the business portion of the meeting begins, only comments related to public hearings will be heard. All comments are limited to 5 minutes. Please refrain from "personal criticisms."

In order to be recognized during the citizens comments or during a public hearing (applicants included), please complete a blue or yellow "appearance card" located at the entry to the city council chambers and present it to the board president.

3. **APPROVAL OF MINUTES**

[18-2619](#)

Approval of Regular Meeting Minutes for January 22, 2018

Attachments: [MeetingMinutes 1-22-18.pdf](#)

4. **FINANCIALS**

[18-2648](#)

Presentation of Monthly Financial Report for Period Ending 12/31/2017

Attachments: [Copy of MEDC Cash Report 12-31-2017.xlsx](#)

[18-2637](#)

Presentation of Monthly Financial Report For Period Ending 01/31/2018

Attachments: [Copy of MEDC Cash Report 1-31-2018.xlsx](#)

5. **RECESS INTO EXECUTIVE SESSION**

Pursuant to Section 551.071, Texas Government Code, the Board 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. **ADVICE FROM ITS ATTORNEY**

Pursuant to Sec. 551.071 of the Texas Government code, the Board 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. In addition the Board may convene in executive session to discuss the following:

1. **Pending or contemplated litigation or a settlement offer including:**

2. A matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the chapter.

B. REAL ESTATE DELIBERATION

Pursuant to Sec. 551.072, deliberation regarding the purchase, exchange, lease or value of real property.

C. PERSONNEL MATTERS

Pursuant to Sec. 551.074, deliberation regarding the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee.

D. SECURITY DEVICES

Pursuant to Sec. 551.076, deliberation regarding security personnel or devices.

E. ECONOMIC DEVELOPMENT

Pursuant to Sec. 551.087, deliberation regarding Economic Development Negotiations including (1) discussion or deliberation regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic negotiations; OR (2) deliberation of a financial or other incentive to a business prospect described in (1) above.

Project 18-02, Deliberate and Discuss New or Amended Economic Development and Performance Agreement, Including Amended Financial and Business Incentives.

F. CRITICAL INFRASTRUCTURE

Pursuant to Sec. 418.183(f) of the Texas Government Code (Texas Disaster Act) regarding critical infrastructure.

6. RECONVENE INTO REGULAR SESSION

7. TAKE ACTION PURSUANT TO EXECUTIVE SESSION

8. OLD BUSINESS

[18-2647](#)

Staff Update and Board Discussion on Project 17-19, Development of MEDC 170 Acres-Mansfield International Business Park; Possible Action to Approve Agreement with United Properties Southwest, LLC and Pacheco Koch Regarding Engineering Services.

Attachments: [MEDC Three Party Agreement.pdf](#)

9. NEW BUSINESS

[18-2652](#)

Possible Action to Approve Agreement With GeoPics, Inc. Regarding
Commercial Real Estate Property Data.

Attachments: [Geo Pics Agreement MEDC.doc](#)

10. **BOARD MEMBER COMMENTS**

11. **STAFF COMMENTS**

12. **ADJOURNMENT**

CERTIFICATION

I certify that the above agenda was posted on the bulletin board next to the main entrance of the City Hall building, 1200 East Broad Street, of the City of Mansfield, Texas, in a place convenient and readily accessible to the general public at all times and said Agenda was posted on the following date and time: Friday, March 2, 2018, and remained so posted continuously for at least 72 hours preceding the schedule time of said meeting, in accordance with the Chapter 551 of the Texas Government Code.

MEDC Staff

Approved as to form



CITY OF MANSFIELD

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

STAFF REPORT

File Number: 18-2619

Agenda Date: 3/6/2018

Version: 1

Status: Approval of Minutes

In Control: Mansfield Economic Development Corporation

File Type: Meeting Minutes

Title

Approval of Regular Meeting Minutes for January 22, 2018

Requested Action

Approve Regular Meeting Minutes for January 22, 2018

Recommendation

Approve Regular Meeting Minutes for January 22, 2018

Description/History

N/A

Justification

N/A

Funding Source

N/A

Prepared By

Natalie Phelps, MEDC



CITY OF MANSFIELD

Economic Development
301 South Main Street,
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Meeting Minutes

Mansfield Economic Development Corporation

Monday, January 22, 2018

5:30 PM

City Hall - City Manager's Large Conference Room

1. CALL MEETING TO ORDER

The meeting was called to order by Larry Klos at 5:32 pm.

Absent 3 - Brian Fuller; John Phillips and Selim Fiagome

Present 4 - Larry Klos; Robert Putman; Randy Hamilton and David Godin

2. PUBLIC COMMENTS

There were no comments.

3. APPROVAL OF MINUTES

[17-2574](#)

Approval of Regular Meeting Minutes for November 7, 2017

**Larry Klos made the motion to approve the November 7, 2017 minutes.
Seconded by David Godin. The motion carried by the following vote:**

Aye: 4 - Larry Klos; Robert Putman; Randy Hamilton and David Godin

Nay: 0

Absent: 3 - Brian Fuller; John Phillips and Selim Fiagome

Abstain: 0

4. FINANCIALS

[17-2570](#)

Presentation of Monthly Cash Report for Period Ending 10/31/2017

[17-2587](#)

Presentation of Monthly Cash Report for Period Ending 11/30/17

There were no comments.

5. RECESS INTO EXECUTIVE SESSION

The meeting did not recess into Executive Session.

A. ADVICE FROM ITS ATTORNEY

1. Pending or contemplated litigation or a settlement offer including:

2. A matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the chapter.

B. REAL ESTATE DELIBERATION

C. PERSONNEL MATTERS

D. SECURITY DEVICES

E. ECONOMIC DEVELOPMENT

F. CRITICAL INFRASTRUCTURE

6. RECONVENE INTO REGULAR SESSION

7. TAKE ACTION PURSUANT TO EXECUTIVE SESSION

8. OLD BUSINESS

[17-2584](#)

Staff Update, Board Discussion and Possible Action on Funding for Proposed Contract with United Properties Southwest to Prepare Construction Documents for Infrastructure to Serve the MEDC 170 Acres Near Easy Drive.

David Godin made the motion for file 17-2584 to approve the design service contract by United Properties Southwest not to exceed \$540,000. The motion was seconded by Randy Hamilton. The motion carried by the following vote:

Aye: 4 - Larry Klos; Robert Putman; Randy Hamilton and David Godin

Nay: 0

Absent: 3 - Brian Fuller; John Phillips and Selim Fiagome

Abstain: 0

[17-2588](#)

Staff Update, Board Discussion and Possible Action on Request from Hightower Salons, Inc.

David Godin made the motion to enter into a new agreement with Hightower Salons and extend the deadline to obtain a new CO by December 31, 2018. There will be no changes to the agreement and the incentive package is \$50,000. Seconded by Randy Hamilton. The motion carried by the following vote:

Aye: 4 - Larry Klos; Robert Putman; Randy Hamilton and David Godin

Nay: 0

Absent: 3 - Brian Fuller; John Phillips and Selim Fiagome

Abstain: 0

9. NEW BUSINESS

[18-2608](#)

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF MANSFIELD ECONOMIC DEVELOPMENT CORPORATION SALES TAX REVENUE BONDS, TAXABLE NEW SERIES 2018; PRESCRIBING THE FORM OF SAID BONDS; PROVIDING FOR THE SECURITY FOR AND PAYMENT OF SAID BONDS; APPROVING EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, PAYING AGENT/REGISTRAR AGREEMENT AND BOND COUNSEL ENGAGEMENT LETTER; APPROVING THE OFFICIAL STATEMENT; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT

Larry Klos made the motion to approve the resolution authorizing the issuance and sale of Mansfield Economic Development Corporation sales tax revenue bonds, taxable new series 2018; prescribing the form of said bonds; providing for the security for and payment of said bonds; approving execution and delivery of a bond purchase agreement, paying agent/registrar agreement and bond counsel engagement letter; approving the official statement; and enacting other provisions relating to the subject. Seconded by David Godin. The motion carried by the following vote:

Aye: 4 - Larry Klos; Robert Putman; Randy Hamilton and David Godin

Nay: 0

Absent: 3 - Brian Fuller; John Phillips and Selim Fiagome

Abstain: 0

[17-2567](#)

Election of MEDC Board Officers

Larry Klos made the motion to retain current officer positions. Seconded by Randy Hamilton. The motion carried by the following vote:

Aye: 4 - Larry Klos; Robert Putman; Randy Hamilton and David Godin

Nay: 0

Absent: 3 - Brian Fuller; John Phillips and Selim Fiagome

Abstain: 0

10. BOARD MEMBER COMMENTS

There were no comments.

11. **STAFF COMMENTS**

There were no comments.

12. **ADJOURNMENT**

Larry Klos adjourned the meeting at 5:52 pm.

Larry Klos, President



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STAFF REPORT

File Number: 18-2648

Agenda Date: 3/6/2018

Version: 1

Status: To Be Presented

In Control: Mansfield Economic Development Corporation

File Type: Financials

Agenda Number:

Title

Presentation of Monthly Financial Report for Period Ending 12/31/2017

Requested Action

Information only

Recommendation

Information only

Description/History

Presentation of Monthly Financial Report for Period Ending 12/31/2017

Justification

N/A

Funding Source

4A

Prepared By

Richard Nevins, Assistant Director, 817-728-3652

Mansfield Economic Development Corporation
Period Ending December 31, 2017

Beginning Cash Balance 12-01-2017 **\$2,282,368**

Revenue:

Sales Tax Revenue	\$409,742
Oil and Gas Royalties	\$0
Interest Income	\$1,854
Misc Income	\$0
Total Monthly Revenue	<u>\$411,596</u>

Adjusted Cash Balance **\$2,693,964**

Operating Expenses:

Administration	\$77,230
Promotion	\$10,452
Retention	\$0
Workforce Development	\$0
Total Operating Expenditures	<u>\$87,682</u>

Debt Expense

Debt Service Payment (Principal & Interest) **\$0**

Project Expenditures:

Southern Champion Tray	\$390,000
American National Bank	\$71,659
Antler Drive	\$17,923
Kimball Property Updates	\$190
MIBP Due Diligence	\$8,870
Heritage Parkway Left Turn	\$35,397
Total Project Expenditures	\$524,039

Total Monthly Expenditures **\$611,721**

Ending Cash Balance 12-31-2017 **\$2,082,243**

Debt Expense

New Annual Total Debt Service - FY18 **\$2,201,040**

(January and August)

Remaining Principal Debt Balance **\$22,030,000**



CITY OF MANSFIELD

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STAFF REPORT

File Number: 18-2637

Agenda Date: 3/6/2018

Version: 1

Status: To Be Presented

In Control: Mansfield Economic Development Corporation

File Type: Financials

Title

Presentation of Monthly Financial Report For Period Ending 1/31/2018

Requested Action

Presentation of Monthly Financial Report For Period Ending 1/31/2018

Recommendation

Information only

Description/History

Presentation of Monthly Financial Report For Period Ending 1/31/2018

Justification

N/A

Funding Source

4A

Prepared By

Richard Nevins, Assistant Director, Econonomic Development

Mansfield Economic Development Corporation
Period Ending January 31, 2018

Beginning Cash Balance 01-01-2018 **\$2,082,243**

Revenue:

Sales Tax Revenue	\$447,549
Oil and Gas Royalties	\$0
Interest Income	\$1,549
Misc Income	\$0
Total Monthly Revenue	<u>\$449,098</u>

Adjusted Cash Balance **\$2,531,341**

Operating Expenses:

Administration	\$66,195
Promotion	\$2,985
Retention	\$0
Workforce Development	\$0
Total Operating Expenditures	<u>\$69,180</u>

Debt Expense

Debt Service Payment (Principal & Interest) **\$373,020**

Project Expenditures:

Antler Drive	\$1,324
Kimball Property Updates	\$1,389
RMA Holdings	\$214,000
Midwest Fasteners	\$250,000
Total Project Expenditures	\$466,713

Total Monthly Expenditures **\$908,913**

Ending Cash Balance 01-31-2018 **\$1,622,428**

Debt Expense

New Annual Total Debt Service - FY18 **\$2,201,040**
(January and August)

Remaining Principal Debt Balance **\$22,030,000**



CITY OF MANSFIELD

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STAFF REPORT

File Number: 18-2647

Agenda Date: 3/6/2018

Version: 1

Status: Old Business

In Control: Mansfield Economic Development Corporation

File Type: Discussion Item

Title

Staff Update and Board Discussion on Project 17-19, Development of MEDC 170 Acres-Mansfield International Business Park; Possible Action to Approve Agreement with United Properties Southwest, LLC and Pacheco Koch Regarding Engineering Services.

Requested Action

Approval of Three Party Agreement with United Properties Southwest, LLC and Pacheco Koch Consulting Engineers, LLC regarding engineering services.

Recommendation

Approval of Three Party Agreement with United Properties Southwest, LLC and Pacheco Koch Consulting Engineers, LLC regarding engineering services.

Description/History

On January 22, 2018 the MEDC Board authorized staff to negotiate a contract for engineering / design services with United Properties Southwest, LLC for preparation of construction documents for the development of the MEDC 170 acres for an amount not to exceed \$540,000. The contract has been negotiated for \$462,000. It is now necessary to enter into a Three Party Agreement between MEDC, United Properties and Pacheco Koch, the civil design and engineering firm engaged by UPS. This agreement will ensure that MEDC has the proper legal protections and rights for the work product produced by Pacheco Koch since we are not contracting directly with Pacheco Koch. Staff recommends approval of this agreement.

Justification

N/A

Funding Source

4A

Prepared By

Richard Nevins, Assistant Director, 817-728-3652

THREE PARTY AGREEMENT

This Three Party Agreement is entered into among Mansfield Economic Development Corporation, a Texas non-profit corporation, hereinafter called "MEDC" or "Owner", United Properties Southwest, LLC, a Texas limited liability company, hereinafter called "Developer" or "UPS", and Pacheco Koch Consulting Engineers, LLC, a Texas limited liability company, hereinafter called "Engineer" to be effective as of February __, 2018 ("Effective Date"). MEDC, Developer and Engineer are individually referred to in this Agreement as a "Party" and collectively as the "Parties".

RECITALS

A. MEDC is the owner of that certain tract of land located in the City of Mansfield ("City"), Johnson County, Texas, more particularly described on Exhibit A, attached hereto and made of a part hereof for all purposes (the "Land"), to be developed as an industrial office-warehouse park to be known as Mansfield International Business Park (the "Project").

B. Developer and MEDC contemplate entering into a Development Services Agreement (herein so called) relating to the Project.

C. Pursuant to a separate written agreement between Developer and Engineer, Engineer has agreed to provide engineering design and consulting services (collectively, the "Services") which include the preparation of construction design plans and specifications for infrastructure improvements for the Park (the "Plans").

D. Engineer, Developer and MEDC desire to enter into this Agreement to agree and confirm the standard of care to be exercised by Engineer in connection with performing the Services, insurance coverage to be provided by Engineer and other matters as set forth below.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows.

1. Recitals. The above Recitals are incorporated in and made a part of this Agreement for all purposes as if fully set forth herein.

2. Standard of Care. Subject to execution and delivery of the Development Services Agreement by Developer and MEDC, Engineer agrees to perform the Services consistent with the professional skill and care ordinarily provided by engineers practicing in the same or similar locality under the same or similar circumstances.

3. Ownership and Use of Instruments of Service.

(a) The Plans, including specifications, are Instruments of Service and Engineer shall be deemed the author and owner thereof, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Engineer.

(b) Upon execution of this Agreement, Engineer grants to Developer and/or MEDC a nonexclusive license to use the Engineer's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. The foregoing license permits

Developer and/or MEDC to authorize a contractor, subcontractors, sub-subcontractors, and material or equipment suppliers, as well as Developer's or MEDC's consultants, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

(c) If MEDC uses the Instruments of Service without retaining Engineer, MEDC shall be deemed to have released Engineer from all claims and causes of action arising from such uses.

4. Compliance with Law. The Plans shall comply, to the best of the knowledge, information and belief of Engineer, with all known applicable local, state and federal laws and with all known applicable rules and regulations promulgated by all local, state and national boards, bureaus and agencies. Approval by MEDC shall not constitute or be deemed to be a release of the responsibility and liability of Engineer, its officers, agents, employees and subcontractors for the accuracy and competency of the services performed hereunder, including but not limited to designs, working drawings and specifications or their engineering documents. Such approval shall not be deemed to be an assumption of such responsibility and liability by MEDC for any error, omission, defect or negligence in the performance of such services, it being the intent of the parties that approval by MEDC signifies MEDC's approval of only the general design concept of the improvements to be constructed.

5. Insurance. Engineer agrees to purchase and keep the insurance in force described on Annex 1 attached hereto and made a part hereof for all purposes.

6. Miscellaneous.

(a) Governing Law/Venue. This Agreement shall be governed by and construed under the laws of the State of Texas without regard to any conflicts of law principles. Venue for any legal action brought to interpret or enforce this Agreement shall lie in a Tarrant County district court.

(b) Entire Agreement. This Agreement, and any exhibit attached hereto, constitutes the entire agreement of the parties hereto and supersedes any prior written or oral agreements of the parties regarding the subject-matter of this Agreement.

(c) Severability. Wherever possible, each provision of this Agreement shall be interpreted so that it is valid under applicable law. If any provision of this Agreement is held to be illegal or unenforceable, that provision will be reformed only to the extent necessary to make the provision legal and enforceable; all remaining provisions of this Agreement shall continue in full force and effect.

(d) Amendment. This Agreement may not be amended except by a written document signed by all parties to this Agreement.

(e) No Waiver of Right to Enforce. If a party fails to insist on strict performance of any provision of this Agreement, such failure shall not be deemed a waiver by such party of its right to insist on strict performance of such provision in the future or strict performance of any other provision of this Agreement.

(f) No Third Party Beneficiaries. This Agreement shall inure to the benefit of and may only be enforced by the parties to this Agreement and their permitted successors and assigns. Except as may be specifically stated and identified in this Agreement, there are no third party beneficiaries of this Agreement.

(g) Notices. Any notice or other communication required by this Agreement to be given, provided, or delivered to a party shall be in writing addressed to the parties as set forth below.

Notices shall be considered "given" for purposes of this Agreement: (a) if sent by certified mail, three business days after being deposited with the U.S. Postal Service, certified mail, return receipt requested; (b) if sent by private delivery service (e.g., FedEx or UPS), on the date delivered to the notice address listed below as evidenced by a receipt signed by any person at the notice address.

If to the MEDC: Mansfield Economic Development Corporation
 Attn: Scott Welmaker
 301 S. Main St.
 Mansfield, Texas 76063

If to Developer: United Properties Southwest, LLC
 17330 Preston Road, Suite 111D
 Dallas, TX 75252
 Attention: Gary D. Pickens, President

If to Engineer: Pacheco Koch, LLC
 7557 Rambler Road, Suite 1400
 Dallas, TX 75231-2388
 Attention: Clayton J. Stolle, P.E.

Either party has the right to change its notice addresses by giving written notice to the other party in accordance with the terms of this paragraph.

(h) *Authorization.* By signing this Agreement, the Parties represent to each other that this Agreement has been duly authorized by their respective governing bodies and that the person signing this Agreement on the party's behalf has been duly authorized to sign this Agreement by and on behalf of their respective party.

(i) *Attorney's Fees.* If it becomes necessary to take legal action to interpret or enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party, the prevailing party's reasonable attorney's fees and costs of court.

(j) *Counterparts.* This Agreement may be executed in any number of identical counterparts, each of which is deemed to be an original instrument. All counterparts hereof taken together constitute a single instrument. A facsimile copy (or other digital image) of an executed counterpart of this agreement is binding on the party whose signature appears thereon.

Executed to be effective as of the Effective Date.

SIGNATURE PAGE FOLLOWS

MEDC:

MANSFIELD ECONOMIC DEVELOPMENT CORPORATION
a Texas non-profit corporation

By: _____
Larry Klos, President

DEVELOPER:

UNITED PROPERTIES SOUTHWEST, LLC
a Texas limited liability company

By: _____
Gary D. Pickens, President

ENGINEER:

PACHECO KOCH CONSULTING ENGINEERS, LLC, a Texas limited liability company

By: _____
James A. Koch, P.E., R.P.L.S.

EXHIBIT A

PROJECT LEGAL DESCRIPTION



ANNEX 1
REQUIRED INSURANCE

Engineer agrees to purchase and keep the following insurance in force during the term of the work performed and, in respect of Professional Liability, to purchase and maintain that insurance for at least one year beyond completion of work.

Required Insurance with minimum acceptable limits of liability:

1. Workers Compensation and Employers Liability. Statutory coverage with Employer's Liability limits of at least \$100,000 for each accident, \$100,000 disease – each employee, \$500,000 disease – policy limit.
2. Commercial General Liability, with minimum limits of \$500,000 CSL per occurrence / aggregate with endorsements providing waiver of subrogation in favor of MEDC and stipulating coverage is primary and non-contributory as respects MEDC. Such policy shall name MEDC as an Additional Insured.
3. Automobile Liability, with minimum limits of \$500,000 CSL, covering owned (if any), hired and non-owned vehicles. Such policy shall name MEDC as Additional Insured.
4. Professional Liability, with minimum limits of \$500,000 per claim / aggregate and coverage shall be maintained for at least one year following completion of project.

Please know that the terms Mansfield Economic Development Corporation, Mansfield EDC, and MEDC shall include “all authorities, boards, bureaus, commissions, divisions, departments, and offices of MEDC and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of MEDC.”

All policies shall be written through carriers authorized to operate in the State of Texas and each policy shall provide a 30 day notice of cancellation, nonrenewal, or material change in coverage to MEDC.

Pacheco Koch Consulting Engineers, LLC agrees to cause its insurance agent to issue an Insurance Certificate detailing coverage in place to both Mansfield EDC and United Properties Southwest, LLC.

The Certificate Holder/Additional Insured (as appropriate) shown as:

Mansfield Economic Development Corporation
301 S. Main St
Mansfield, Texas 76063

The certificate should reference: Mansfield International Business Park, and be sent to the attention of: Richard Nevins / MEDC at richard.nevins@mansfield-texas.com with a copy to Gary Pickens at gdpickens@unitedpropertyessw.com.

Engineer also agrees to cause its insurance agent issue a second certificate to United Properties Southwest, LLC, showing the same coverage, having Commercial General Liability and Automobile Liability name United Properties Southwest, LLC as an Additional Insured with Certificate Holder / Additional Insured (as appropriate) shown as:

United Properties Southwest, LLC
17330 Preston Road, Suite 111D
Dallas, Texas 75252

The certificate should reference: Mansfield International Business Park and should be sent to the attention of Gary Pickens at gdpickens@unitedpropertyessw.com.



CITY OF MANSFIELD

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

STAFF REPORT

File Number: 18-2652

Agenda Date: 3/6/2018

Version: 1

Status: New Business

In Control: Mansfield Economic Development Corporation

File Type: Discussion Item

Agenda Number:

Title

Possible Action to Approve Agreement With GeoPics, Inc. Regarding Commercial Real Estate Property Data.

Requested Action

Approve the License Agreement with GeoPics, Inc. and authorize staff and MEDC Attorney to finalize prior to execution.

Recommendation

Approve the License Agreement with GeoPics, Inc. and authorize staff and MEDC Attorney to finalize prior to execution.

Description/History

MEDC needs to enter into agreement with GeoPics, Inc. to provide a web based real property search tool on the MEDC website. Previously this service was provided by a company called Xceligent. Xceligent has ceased operations and filed for bankruptcy at the end of last year. Staff believes that GeoPics can provide similar service and pricing and therefore recommends subscribing to the service at a cost of \$500 per month for a period of one year pending final review of the agreement by MEDC legal counsel.

Justification

MEDC needs a property search database on it's website to assist brokers, consultants and business owners searching for real estate in Mansfield.

Funding Source

4A

Prepared By

Scott Welmaker, Director Economic Development, 817-728-3652

LICENSE AGREEMENT SUBSCRIPTION ORDER FORM

Customer: Mansfield Economic Development Corporation	Contact: Richard Nevins
Address: 301 South Main	Phone: 817-728-3650
	E-Mail: rnevins@mansfield-texas.com
Services: <i>Available commercial real estate property data in the City of Mansfield as collected by GeoPics, Inc.</i> (the "Service(s)").	
Services Fees: \$500.00 per month, payable in advance, subject to the terms of Section 4 herein.	Initial Service Term: Twelve (12) Months
Service Capacity: In the event of DDOS attacks, Company reserves the right to unilaterally suspend service.	
Implementation Services: Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work ("SOW") attached as Exhibit A hereto ("Implementation Services"), and Customer shall pay Company the Implementation Fee in accordance with the terms herein. Implementation Fee (one-time): \$0.00	

LICENSE AGREEMENT SUBSCRIPTION

This License Agreement Subscription ("Agreement") is entered into on this _____ day of _____, 2018 (the "Effective Date") between GeoPics, Inc. with a place of business at 8217 Mosstree Dr, Arlington, TX 76001 ("Company"), and the Customer listed above ("Customer"). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

GeoPics, Inc.:

Mansfield Economic Development Corporation:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

TERMS AND CONDITIONS

1. SUBSCRIPTION SERVICES AND SUPPORT

1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services in accordance with the Service Level Terms attached hereto as Exhibit B. As part of the registration process, Customer will identify an administrative user name and password for Customer's Company account. Company reserves the right to refuse registration of, or cancel passwords it deems inappropriate.

1.2 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the terms set forth in Exhibit C.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels.

2.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

2.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company's standard published policies then in effect (the "Policy") and all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of

Services. Although Company has no obligation to monitor Customer's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Company shall own all right, title and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the Services. Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary, Company shall have the right collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and

technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

4. PAYMENT OF FEES

4.1 Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

5. TERM AND TERMINATION

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement which by their nature should survive termination will survive termination, including, without

limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. INDEMNITY

Company shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of

any prepaid, unused fees for the Service.

8. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or

registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of Texas without regard to its conflict of laws provisions.

EXHIBIT A

Statement of Work

Available commercial properties within the City of Mansfield displayed on a map and searchable.

Data includes: Photos of property signs located within the city, contact information from signs, available building size, available land size

Searchable fields include: Contact information from signs, available building size, available land size.

Data that has changed will be updated as needed, but no less than monthly.

EXHIBIT B

Service Level Terms

The Services shall be available 99.9%, measured monthly, excluding holidays and weekends and scheduled maintenance. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Company's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than one hour, Company will credit Customer 5% of Service fees for each period of 30 or more consecutive minutes of downtime; provided that no more than one such credit will accrue per day. Downtime shall begin to accrue as soon as Customer (with notice to Company) recognizes that downtime is taking place, and continues until the availability of the Services is restored. In order to receive downtime credit, Customer must notify Company in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred. Company's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Company to provide adequate service levels under this Agreement.

EXHIBIT C

Support Terms

Company will provide Technical Support to Customer via both telephone and electronic mail on weekdays during the hours of 9:00 am through 5:00 pm Central time, with the exclusion of Federal Holidays (“**Support Hours**”).

Customer may initiate a helpdesk ticket during Support Hours by calling 817-995-3447 or any time by emailing info@geopics.us.

Company will use commercially reasonable efforts to respond to all Helpdesk tickets within one (1) business day.