

RESOLUTION NO. 30-2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT FOR SUCH PURPOSES WITH STALLION TOWN EAST, LLC, FOR THE DEVELOPMENT OF PROPERTY LOCATED ON A PORTION OF THE SOUTH SIDE OF THE 1900 BLOCK OF NORTH TOWN EAST BOULEVARD, IN THE CITY OF MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (“City”), and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to Stallion Town East, LLC (the “Company”), for the proposed development of property located on a portion of the south side of the 1900 Block of North Town East Boulevard, in the City of Mesquite, Texas, a copy of said agreement being attached hereto as Exhibit “A” and incorporated herein by reference (the “Agreement”); and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby local economic development will be promoted, and business and commercial activity will be stimulated in the City.

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

SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City and the Company, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference, will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

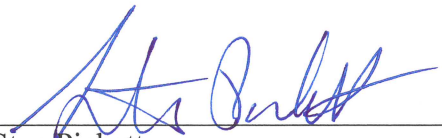
SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement.

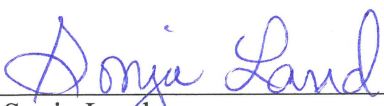
SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

SECTION 6. That the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable and, if any phrase, clause, sentence, paragraph or section of this Resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this Resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this Resolution.

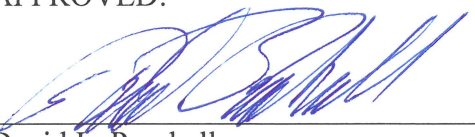
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 1st day of April 2019.

  
\_\_\_\_\_  
Stan Pickett  
Mayor

ATTEST:

  
\_\_\_\_\_  
Sonja Land  
City Secretary

APPROVED:

  
\_\_\_\_\_  
David L. Paschall  
City Attorney

**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

**(Chapter 380 Agreement)**

This Economic Development Program Agreement ("Agreement") is made and entered into by and between the City of Mesquite, a Texas home rule municipality (the "City") and Stallion Town East, LLC, a Texas limited liability company (the "Company").

**WITNESSETH:**

**WHEREAS**, all capitalized terms used herein shall have the meanings set forth in this Agreement; and

**WHEREAS**, the Company is under contract with the Mesquite Independent School District ("MISD") to purchase that certain tract of real property located in the City consisting of approximately 4.71 acres located on a portion of the south side of the 1900 Block of North Town East Boulevard, in the City of Mesquite, Texas and being more particularly described in **Exhibit "A"** attached hereto and made a part hereof for all purposes (the "Land"); and

**WHEREAS**, the Company intends to purchase and develop the Land into four (4) or five (5) pad sites in compliance with Zoning Ordinance No. 4662, approved by the City Council on April 1, 2019, as amended, substantially as set forth in **Exhibit "B"** attached hereto and made a part hereof for all purposes (each individually a "Pad-Site" and collectively the "Pad-Sites"); and

**WHEREAS**, the Land is currently exempt from ad valorem taxes because it is owned by MISD; and

**WHEREAS**, the purchase of the Land by the Company will remove the tax exemption from the Land, thereby increasing the ad valorem real property taxes assessed and collected by the City; and

**WHEREAS**, the future pad-site improvements will increase the taxable value of the Land, thereby adding value to the City's tax rolls and increasing the ad valorem real property taxes assessed and collected by the City; and

**WHEREAS**, the Company has represented to the City that the Company intends to purchase the Land and develop the Pad-Sites sooner if the City provides the Economic Development Incentive to the Company under the terms and subject to the conditions more fully set forth in this Agreement; and

**WHEREAS**, the City has established an Economic Development Incentive Program pursuant to Section 380.001 of the Texas Local Government Code (the "Program") and authorizes this Agreement as part of the Program; and

**WHEREAS**, the Company desires to participate in the Program by entering into this Agreement; and

**WHEREAS**, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company's performance of its obligations set forth in this Agreement will increase the amount of ad valorem real property taxes paid to and collected by the City, promote local economic development in the City, stimulate business and commercial activity in the City, and benefit the City and its citizens.

**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 and confessed, the Parties agree as follows:

**ARTICLE I**

**Incorporation of Recitals**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

## ARTICLE II

### Definitions

As used herein, the following terms shall have the following meanings, to-wit:

“Affiliate” of the Company shall mean any other Person directly controlling, or directly controlled by or under direct common control with the Company. As used in this definition, the term “control,” “controlling” or “controlled by” shall mean the possession, directly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of the Company, or (b) direct or cause the direction of management or policies of the Company, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of the Company or any affiliate of such lender.

“Agreement” shall mean this agreement together with all exhibits attached hereto.

“City” shall mean the City of Mesquite, a Texas home rule municipality.

“City Council” shall mean the City Council of the City.

“City Default” shall have the meaning set forth in Article IX, Section 4 of this Agreement.

“Closeout and Acceptance Requirements” shall have the meaning set forth in Article VI, Section 2 of this Agreement.

“Company” shall mean Stallion Town East, LLC, a Texas limited liability company, its successors and assigns only as permitted by Article X, Section 2 of this Agreement.

“Company Default” shall have the meaning set forth in Article IX, Section 2 of this Agreement.

“Coppell” shall have the meaning set forth in Article VII, Section 8 of this Agreement.

“Coppell Contract” shall have the meaning set forth in Article VII, Section 8 of this Agreement.

“Coppell Insurance Policy” shall have the meaning set forth in Article VII, Section 8 of this Agreement.

“Economic Development Incentive” shall mean the incentive described in Article VIII, Section 1 of this Agreement.

“Effective Date” shall mean the date the Company and the City execute this Agreement if the Company and the City execute this Agreement on the same date. If the Company and the City execute this Agreement on different dates, any reference to the “Effective Date” shall mean the later of the dates this Agreement is executed by the Company and the City.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of a receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, the voluntary commencement of any proceeding under any bankruptcy or insolvency laws by any Party, or the involuntary commencement of any proceeding against any Party under any bankruptcy or insolvency laws and such involuntary proceeding is not dismissed within ninety (90) days after the filing thereof.

“Fill and Rough Grading Scope of Work” shall mean the scope of work described in Exhibit “C” attached hereto and made a part hereof for all purposes.

“Fill and Rough Grading Anticipated Completion Date” shall have the meaning set forth in Article VIII, Section 1 of this Agreement.

“Force Majeure” shall have the meaning set forth in the Lease.

“Indemnitee” shall have the meaning set forth in Article VII, Section 7 of this Agreement.

“Indemnitor” shall have the meaning set forth in Article VII, Section 7 of this Agreement.

“Land” shall have the meaning set forth in the Recitals in this Agreement.

“Lease” shall have the meaning set forth in Article X, Section 1(b) of this Agreement.

“Lot 3 Pad-Site” shall have the meaning set forth in Article X, Section 1(b) of this Agreement.

“Maximum Lawful Rate” shall mean the maximum lawful rate of non-usurious interest that may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).

“MISD” means the Mesquite Independent School District.

“Pad-Site” and “Pad-Sites” shall have the meanings set forth in the Recitals in this Agreement.

“Parties” shall mean the Company and the City.

“Party” shall mean either the Company or the City.

“Performance Bond” shall have the meaning set forth in Article X, Section 1(a) of this Agreement.

“Person” or “Persons” shall mean one or more individual(s) or corporation(s), general or limited partnership(s), limited liability company(s), trust(s), estate(s), unincorporated business(es), organization(s), association(s) or any other entity(s) of any kind.

“Program” shall have the meaning set forth in the Recitals in this Agreement.

“Public Infrastructure” shall have the meaning set forth in Article VI, Section 2 of this Agreement.

“Record Drawings and Plat Requirements” shall have the meaning set forth in Article VI, Section 2 of this Agreement.

“Required Delivery Date” shall have the meaning set forth in Article X, Section 1(b) of this Agreement.

“Surety” shall have the meaning set forth in Article X, Section 1(a) of this Agreement.

“Term” shall have the meaning set forth in Article IV of this Agreement.

“Termination Notice” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Town East/Towne Crossing Traffic Signal Improvements” shall have the meaning set forth in Article VI, Section 4 of this Agreement.

“Undocumented Workers” shall mean: (i) individuals who, at the time of employment with the Company, are not lawfully admitted for permanent residence to the United States or are not authorized under law to be employed in that manner in the United States; and (ii) such other persons as are included within the definition of “Undocumented Worker” pursuant to V.T.C.A., Government Code §2264.001(4), as hereafter amended or replaced, or any other applicable law or regulation.

## ARTICLE III

### Authority for Agreement

This Agreement is authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code. The City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company's performance of its obligations herein will: (i) increase the amount of real property ad valorem taxes assessed and collected by the City; (ii) promote local economic development in the City; (iii) stimulate business and commercial activity in the City; and (iv) benefit the City and its citizens.

## ARTICLE IV

### Term

The Term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) the date that the Company has completed all of the covenants of the Company set forth in Article VI, Sections 1, 2, 3, 4, 6, 7, 8 and 9 of this Agreement; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein (the "Term"). The only terms, provisions, covenants, agreements, obligations, rights and remedies of the City and/or the Company that survive the expiration or termination of this Agreement are those that by the terms of this Agreement expressly survive the expiration or termination of this Agreement.

## ARTICLE V

### Company's Covenant Not to Employ Undocumented Workers

1. Covenant Not to Employ Undocumented Workers. The Company hereby certifies that the Company and each branch, division, and department of the Company does not employ any Undocumented Workers and the Company hereby covenants and agrees that the Company and each branch, division and department of the Company will not knowingly employ any Undocumented Workers during the Term of this Agreement.

2. Covenant to Notify City of Conviction for Undocumented Workers. The Company further hereby covenants and agrees to provide the City with written notice of any conviction of the Company, or any branch, division or department of the Company, of a violation under 8 U.S.C. §1324a (f) that occurs during the Term of this Agreement within thirty (30) days from the date of such conviction.

3. Repayment of Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving the benefit of all or any portion of the Economic Development Incentive under the terms of this Agreement, the Company, or a branch, division, or department of the Company, is convicted of a violation under 8 U.S.C. §1324a (f) that occurs during the Term of this Agreement, the Company shall pay to the City, not later than the 120<sup>th</sup> day after the date the City notifies the Company of the violation, an amount equal to the total amount advanced by the City in connection with the Economic Development Incentive plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on the amount of each advance being recaptured from the date each advance was paid by the City until the date paid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.

4. Limitation on Economic Development Incentives. The City shall have no obligation to pay or perform any Economic Development Incentive if the Company, or any branch, division or department of the Company is convicted of a violation under 8 U.S.C. §1324a (f).

5. Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by the Company to the City pursuant to Article V, Section 3 above including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

6. Limitation. The Company is not liable for a violation of Article V of this Agreement by a subsidiary, affiliate, or franchisee of the Company, or by a Person with whom the Company contracts.

7. Survival. The terms, provisions, covenants, agreements and obligations of the Company and the rights and remedies of the City set forth in Article V of this Agreement shall expressly survive the expiration or termination of this Agreement.

## ARTICLE VI

### Company's Covenants

In consideration of the City's agreement to grant the Economic Development Incentive to the Company upon the terms and subject to the conditions more fully set forth herein, the Company represents, covenants and agrees as follows, to-wit:

1. Purchase of the Land. The Company shall make expenditures in the amount of at least TWO MILLION TWENTY THREE THOUSAND SIX HUNDRED AND SIXTY SIX DOLLARS (\$2,023,666.00) and acquire fee simple title to the Land on or before June 1, 2019;

2. Public Infrastructure. On or before December 31, 2019, the Company shall: (i) at its sole cost and expense, design and construct, or cause to be designed and constructed, within areas dedicated as public rights of way or public easements, all electric, gas, water, sewer and other utilities to each of the Pad-Sites with such capacities as are necessary to develop the Pad-Sites in accordance with Zoning Ordinance No. 4662, approved by the City Council on April 1, 2019, as amended (the "Public Infrastructure") and in compliance with all City ordinances, standards and development review processes including inspections and without limiting the foregoing, the Company shall comply in all respects with (a) the Project Closeout and Acceptance Requirements set forth in **Exhibit "D"** attached hereto and made a part hereof for all purposes (the "Closeout and Acceptance Requirements"); and (b) the Requirements for Record Drawings and Plats for Private Development Projects attached hereto as **Exhibit "E"** and made a part hereof for all purposes (the "Record Drawings and Plat Requirements"); and (ii) dedicate the Public Infrastructure to the City for public use by plat including the dedication of an easement complying with all platting ordinances, rules and regulations of the City including, without limitation, granting to the City and all public utilities the right of access, ingress and egress to, from and upon said easement for the purpose of constructing, reconstructing, inspection, patrolling, maintaining, adding to or removing the Public Infrastructure;

3. Contribution to Stream Bank Stabilization and Bridge Reconstruction Costs. The Company shall pay to the City, on or before the earlier of: (i) May 29, 2019; or within ten (10) days after acquisition of the Land from the MISD, the amount of TWO HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00), to be applied by the City to the costs to be incurred by the City in connection with the stabilization and improvement of a section of South Mesquite Creek in the City of Mesquite between Town East Boulevard and North Mesquite Drive, including the bridge on North Mesquite Drive;

4. Town East/Towne Crossing Traffic Signal Improvements. On or before December 31, 2019, the Company shall, at the Company's sole cost and expense: (i) design and construct all signal modifications and street median modifications deemed necessary or advisable by the City in connection with the development of the Pad-Sites including, without limitation, the addition of a signal and all street light relocations, irrigation and landscaping to the existing traffic signal at Town East Boulevard and Towne Crossing Boulevard (the "Town East/Towne Crossing Traffic Signal Improvements"); and (ii) modify and/or replace existing street signage necessary as a result of the Town East/Towne Crossing Traffic Signal Improvements;

5. Planned Development. Development on the Land shall comply with Zoning Ordinance No. 4662, approved by the City Council on April 1, 2019, as amended. The Parties acknowledge and agree that zoning is a legislative function of the City Council and nothing contained herein shall be construed as requiring the City Council to approve a zoning application or as creating any contractual obligation that controls, waives, or supplants the City Council's legislative discretion and further provided that in the event of any conflict between the terms and provisions of this Agreement and any planned development zoning district for the development of the Pad-Sites approved by the City Council, the planned development zoning district approved by the City Council shall control;

6. Right of Entry, Access and Construction Agreement. Contemporaneously with the execution of this Agreement, the Company shall execute and deliver to the City, to be expressly effective contemporaneously with the closing on the purchase of the Land, a Right of Entry, Access and Construction Agreement in the form attached hereto as **Exhibit "F"** and made a part hereof for all purposes, granting to the City, its employees, agents, contractors, subcontractors, and its contractors' and subcontractors' employees, the right of entry and access in, at, under, over,

upon and across the Land, together with the right to construct and perform the Fill and Rough Grading Scope of Work in, at, under, over, upon and across the Land provided, however, the City agrees the amount of fill material deposited onto the Land will be in accordance with the grades shown on **Exhibit "C-1"** attached hereto and made a part hereof for all purposes and further provided the City will provide the Company with compaction reports within thirty (30) days after completion of the Fill and Rough Grading Scope of Work;

7. Construction and Installation of Fencing Improvements. On or before December 31, 2019, the Company shall construct and install the fencing improvements on the Land in compliance with Zoning Ordinance No. 4662, approved by the City Council on April 1, 2019, as amended;

8. Replat. On or before July 1, 2019, the Company and MISD shall re-plot that certain tract consisting of the Land and property owned by MISD to create a separate plat containing only the Land;

9. Timely Payment of Development Fees. The Company shall timely pay to the City, as and when due, all permit fees, development fees, review fees and inspection fees in connection with the construction of the Public Infrastructure and the Town East/Towne Crossing Traffic Signal Improvements;

10. Records and Reports. The Company shall deliver to the City within thirty (30) days after written request, copies of such documentation of the Company as the City may reasonably request to confirm compliance with the representations, covenants and agreements set forth in this Article VI;

11. Inspection. The Company shall provide the City, its agents and employees with access to the Land at such times as the City may reasonably request to conduct such inspections as the City deems necessary in order to confirm compliance with the representations, covenants and agreements set forth herein provided the City has given the Company at least seventy-two (72) hours prior written notice of such inspection;

12. Representative of Company to Accompany Inspections. Upon request of the City, the Company shall provide a representative of the Company to accompany the City during all inspections conducted by the City pursuant to Article VI, Section 11 above;

13. Timely Payment of Taxes. The Company shall timely pay all ad valorem taxes assessed against all property owned by the Company in the City during the Term of this Agreement prior to the date such taxes become delinquent;

14. Performance of Agreement by the Company. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement;

15. Performance of Other Agreements by the Company. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreements now or hereafter existing between the City and the Company; and

16. No Goods or Services. The Company agrees the performance of any or all obligations of the Company under the terms of this Agreement does not constitute the provision of goods or services to the City.

## ARTICLE VII

### Insurance Indemnification

1. Insurance. With no intent to limit any contractor's liability or obligation for indemnification, the Company shall maintain or cause to be maintained, by the Persons constructing the Public Improvements and the Town East/Towne Crossing Traffic Signal Improvements, the types of coverage and amounts of insurance set forth in **Exhibit "G"** attached hereto and made a part hereof for all purposes, such insurance shall contain such terms and provisions as set forth on **Exhibit "G"** and shall be in full force and effect at all times during construction of the Public Improvements and the Town East/Towne Crossing Traffic Signal Improvements.



2. Waiver of Subrogation. The worker's compensation, employers' liability and general liability insurance required pursuant to this Agreement shall provide for waivers of all rights of subrogation against the City as more fully set forth in **Exhibit "G"**.

3. Additional Insured. As more fully set forth in **Exhibit "G,"** the general liability and auto liability insurance coverage required pursuant to this Agreement shall include and name the City as an additional insured.

4. Written Notice of Cancellation. Each policy required by this Agreement, with the exception of worker's compensation and professional liability, shall be endorsed to provide the City sixty (60) days' written notice prior to any cancellation, termination or material change of coverage.

5. Policies, Endorsements and Certificates of Insurance. The Company shall cause each contractor to deliver to the City the policies, copies of policy endorsements, and/or certificates of insurance evidencing the required insurance coverage before the commencement of construction of the Public Improvements and/or the Town East/Towne Crossing Traffic Signal Improvements and within 10 days before expiration of coverage, the Company shall cause each contractor to deliver renewal policies or certificates of insurance evidencing renewal and payment of the renewal premium. In addition the Company shall cause each contractor to provide the City with the Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies) within ten (10) business days after written request by the City.

6. Carriers. All policies of insurance required to be obtained by the Company and its contractors pursuant to this Agreement shall be maintained with insurance carriers that are satisfactory to and as reasonably approved by City, and lawfully authorized to issue insurance in the state of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsements submitted by the Company's and its contractors' insurer or broker. Certificates of insurance and policy endorsements received from any other source will be rejected.

7. INDEMNIFICATION. THE CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF THE COMPANY AND/OR ITS SUCCESSORS OR ASSIGNS (THE "INDEMNITOR," WHETHER ONE OR MORE) PURSUANT TO THIS AGREEMENT. THE INDEMNITOR DOES HEREBY INDEMNIFY AND SAVE HARMLESS THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, DEMANDS, LOSSES, ACTIONS, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, FINES, PENALTIES AND COSTS OF EVERY KIND INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, FOR PERSONAL INJURY (INCLUDING DEATH) OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM: (i) THE INDEMNITOR'S BREACH OF ANY OF THE TERMS, PROVISIONS, AGREEMENTS, COVENANTS OR CONDITIONS OF THIS AGREEMENT; (ii) THE VIOLATION BY THE INDEMNITOR OR THE INDEMNITOR'S OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS OR THE INDEMNITOR'S CONTRACTORS' OR SUBCONTRACTORS' RESPECTIVE OFFICERS, AGENTS OR EMPLOYEES, OF ANY STATE, FEDERAL OR LOCAL LAW OR REGULATION IN THE PERFORMANCE OF THIS AGREEMENT; AND/OR (iii) ANY ACT OR OMISSION ON THE PART OF THE INDEMNITOR, ITS' OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS OR THE INDEMNITOR'S CONTRACTORS' OR SUBCONTRACTORS' RESPECTIVE OFFICERS, AGENTS OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONSTRUCTION OF THE PUBLIC IMPROVEMENTS AND THE TOWN EAST/TOWNE CROSSING TRAFFIC SIGNAL IMPROVEMENTS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE). NOTHING CONTAINED IN THIS ARTICLE VII, SECTION 7 SHALL CONSTITUTE A WAIVER OF ANY GOVERNMENTAL IMMUNITY OR DEFENSE AVAILABLE TO ANY INDEMNITEE UNDER TEXAS LAW. IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH INDEMNITOR AND AN INDEMNITEE, THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO INDEMNITEE AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST ANY INDEMNITEE IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, INDEMNITOR SHALL BE REQUIRED, ON NOTICE FROM

INDEMNITEE, TO DEFEND SUCH ACTION OR PROCEEDINGS AT INDEMNITOR'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO INDEMNITEE. THE PROVISIONS OF THIS ARTICLE VII, SECTION 7 ARE NOT TO BE STRICTLY CONSTRUED, ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON. IF ANY PART OF THIS INDEMNITY IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THE REMAINING PORTION OF THIS INDEMNITY SHALL CONTINUE IN FULL FORCE AND EFFECT. THE PROVISIONS OF THIS ARTICLE VII, SECTION 7 SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

8. Company as Additional Insured under Contractor's Insurance. The City will request Coppell Construction Co., Inc. ("Coppell"), the contractor that is performing the Fill and Rough Grading Scope of Work under that certain construction contract for the Stream Bank Stabilization-Bridge Replacement Project for South Mesquite Creek (City Contract No. 2019-038), between the City and Coppell dated January 7, 2019 ("Coppell Contract"), to add the Company as an additional insured under Coppell's general liability insurance policy covering, among other work, the Fill and Rough Grading Scope of Work ("Coppell Insurance Policy"), for the period of time beginning with the acquisition by the Company of the Land and continuing thereafter until the completion and acceptance by the City of the Fill and Rough Grading Scope of Work. If Coppell adds the Company as an additional insured to the Coppell Insurance Policy, it shall be the responsibility of the Company to satisfy itself as to the types, amounts and effectiveness of such insurance coverage. **The Parties agree that the City has not made and hereby expressly disclaims any representations or warranties, either express or implied, regarding (i) whether Coppell will add the Company as an additional insured to the Coppell Insurance Policy; and (ii) the types, amounts or effectiveness of any insurance coverage provided to the Company. THE COMPANY HEREBY RELEASES AND DISCHARGES THE CITY, AND WAIVES ANY ACTION AGAINST THE CITY, EITHER LEGAL OR EQUITABLE OR CONSTITUTIONAL, THAT MIGHT ARISE OUT OF: (I) THE FAILURE OF COPPELL TO ADD THE COMPANY AS AN ADDITIONAL INSURED TO THE COPPELL INSURANCE POLICY; AND (II) THE FAILURE OF ANY INSURANCE COMPANY TO PAY OR DEFEND ANY CLAIM MADE BY THE COMPANY UNDER THE COPPELL INSURANCE POLICY, OR ANY RENEWAL OR REPLACEMENT THEREOF. THIS RELEASE SHALL SURVIVE AND CONTINUE AFTER THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

## ARTICLE VIII

### Economic Development Incentive

1. Economic Development Incentive. The City, at the City's cost and expense, shall cause one or more contractor(s) to substantially complete the Fill and Rough Grading Scope of Work (the "Economic Development Incentive"). The Parties agree that the City's work on and completion of the Fill and Rough Grading Scope of Work are governmental functions as identified in V.T.C.A., Civil Practice & Remedies Code §101.0215(a). It is anticipated that the Fill and Rough Grading Scope of Work will be completed on or before July 1, 2019 (the "Fill and Rough Grading Anticipated Completion Date") provided, however, in the event the Fill and Rough Grading Scope of Work is not completed on or before the Fill and Rough Grading Anticipated Completion Date, the sole remedy of the Company shall be the right of the Company to extend the performance of the Company's covenants pursuant to Article VI, Sections 2, 4 and 7 of this Agreement by one (1) day for each day that the Fill and Rough Grading Scope of Work is not completed past the Fill and Rough Grading Anticipated Completion Date.

2. Condition Precedent to Economic Development Incentive. The Company expressly acknowledges and agrees that the City's performance of the Fill and Rough Grading Scope of Work shall expressly be conditioned at all times upon the timely performance of all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement and that: (i) upon the occurrence of any event which, but for notice, the passage of time, or both, would constitute a "Company Default" (as hereinafter defined), the City shall have the right, at the City's sole option, to cause the City's contractor(s) to temporarily suspend the Fill and Rough Grading Scope of Work; and (ii) upon the occurrence of a "Company Default" (as hereinafter defined), the City shall have the right, at the City's sole option, to cause the City's contractor(s) to temporarily suspend or permanently discontinue the Fill and Rough Grading Scope of Work.

3. Funds Available for Economic Development Incentive. The funds for the payment of the costs and expenses incurred in connection with the Fill and Rough Grading Scope of Work are not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the

City. Costs and expenses incurred in connection with the Economic Development Incentive shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380 and shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the costs and expenses are incurred. The provisions of this Article VIII, Section 3 shall expressly survive the expiration or termination of this Agreement.

## ARTICLE IX

### Inability to Acquire the Land Defaults Recapture of Incentives Remedies

1. Inability to Acquire the Land. If the Company has not acquired the Land on or before June 1, 2019 as a result of: (i) MISD failing to convey the Land to the Company; or (ii) the Company's lender failing to fund a loan for the purchase of the Land, the Company shall have the right to terminate this Agreement by written notice to the City (the "Termination Notice") provided: (i) the Company provides the Termination Notice to the City on or before July 1, 2019; and (ii) the Company pays the City ONE HUNDRED EIGHTY FIVE THOUSAND AND NO/100 DOLLARS (\$185,000.00) on or before July 1, 2019. In the event the Company timely provides the Termination Notice to the City and pays ONE HUNDRED EIGHTY FIVE THOUSAND AND NO/100 DOLLARS (\$185,000.00) to the City on or before July 1, 2019, this Agreement shall terminate and shall be of no further force or effect and neither Party hereto shall have any further rights or obligations hereunder except for the terms, provisions, covenants, agreements, rights and obligations that by the terms of this Agreement expressly survive the expiration or termination of this Agreement.

2. Company Default. The Company shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the Company; (ii) upon any assignment of this Agreement by the Company in violation of Article X, Section 2 of this Agreement; and/or (iii) if the Company fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the Company under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the City to the Company (each a "Company Default").

3. City Remedies. In the event of a Company Default, the City shall have the right, at the City's sole option, to: (i) cause the City's contractor(s) to temporarily suspend or permanently discontinue the Fill and Rough Grading Scope of Work; (ii) terminate this Agreement by written notice to the Company; and (iii) exercise any and/or all other rights and/or remedies available to the City under this Agreement and/or pursuant to the laws of the State of Texas subject, however, to the liquidated damages cap on the Company's liability as more fully set forth in Article IX, Section 7 below, provided however, the City shall not be entitled to the recovery of attorneys' fees [except in the event of the exercise of the City of the remedies set forth in Chapter 2264 of the Texas Government Code] or consequential, punitive, exemplary or speculative damages.

4. City Default. The City shall be in default of this Agreement if the City fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the City under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the Company to the City (a "City Default").

5. Company Remedies. Upon the occurrence of a City Default, the Company shall have the right to terminate this Agreement by written notice to the City as the Company's sole remedy provided, that the Company shall be entitled to bring an action for specific performance against the City to enforce the City's obligations under Article X, Section 1 of this Agreement. The Parties agree that the Company shall not recover attorney's fees against the City under any circumstance including, without limitation, in any suit against the City for specific performance. The City and the Company acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Alternatively, if and only in the event a court of competent jurisdiction determines the City's immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:

- (i) the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount not to exceed ONE HUNDRED ELEVEN THOUSAND AND NO/100 DOLLARS (\$111,000.00);
- (ii) the recovery of damages against the City shall not include consequential, punitive, exemplary, or speculative damages;
- (iii) the Company shall not recover attorney's fees; and
- (iv) the Company shall not be entitled to specific performance or injunctive relief against the City.

6. Recapture of Economic Development Incentive. In the event of a Company Default, the Company shall immediately pay to the City, at the City's address set forth in Article X, Section 3 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the amount of ONE HUNDRED EIGHTY FIVE THOUSAND AND NO/100 DOLLARS (\$185,000.00). In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Article IX, Section 6, the Company shall be in breach of this Agreement and the City shall have the right, without further demand or notice to the Company, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas including, without limitation, institution of a suit in a court of competent jurisdiction, to collect such sums.

7. Liquidated Damages Cap on Company's Liability. The Parties acknowledge that non-compliance by the Company of any one or more of the covenants set forth in this Agreement will result in the loss of tax revenue to the City, the amount of which is incapable or difficult of estimation. Accordingly, the Parties agree that the damages recoverable by the City from the Company in the event of a Company Default shall be the amounts set forth below. The Parties agree that the amounts set forth below are: (i) liquidated damages; (ii) not a penalty; and (iii) are a reasonable forecast of just compensation to the City.

Accordingly, notwithstanding anything to the contrary contained in this Agreement, the maximum liability of the Company under this Agreement in the event of a Company Default will not exceed the following:

- (i) For the Public Infrastructure under Section 2 of Article VI, \$436,932.60;
- (ii) For the contribution to the stream bank stabilization and bridge reconstruction costs under Section 3 of Article VI, \$250,000.00;
- (iii) For the Town East/Towne Crossing Traffic Signal Improvements and signage required under Section 4 of Article VI, \$291,463.45;
- (iv) For the fencing improvements required under Section 7 of Article VI, \$88,226.78; and
- (v) For the recapture of the Economic Development Incentive under Section 6, Article IX, \$185,000.00.

If the Company partially completes any of the foregoing items, or totally completes one or more of the items but not all, the maximum liability will be correspondingly reduced to reflect the portion of the items so completed provided the Company provides to the City, within sixty (60) days after a Company Default, evidence reasonably satisfactory to the City of the expenditures made by the Company in the performance or partial performance of any one or more of such items. For example, if, at the time of a Company Default, the Company (i) has completed a portion of the Public Infrastructure under Section 2, Article VI, and provides the City, within sixty (60) days after the Company Default, evidence reasonably satisfactory to the City that the Company has expended \$336,932.60 towards the costs of the Public Improvements; (ii) has paid \$200,000.00 for the stream bank stabilization and bridge reconstruction costs under Section 3 of Article VI; (iii) has completed the Town East/Towne Crossing Traffic Signal Improvements and signage required under Section 4 of Article VI and the City has either (a) accepted such improvements; or (b) the Company provides the City with evidence reasonably acceptable to the City that the Company has expended \$291,463.45 in connection with such improvements; and (iv) has not made any expenditures or fails to provide evidence reasonably acceptable to the City of any expenditures made by the Company in connection with the fencing improvements required under Section 7 of Article VI, the maximum liability of the Company will be \$423,226.78, being the sum of the amounts owed for such remaining items (\$100,000, \$50,000, 88,226.78) plus the recapture of the Economic Development Incentive.

8. Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of each Party pursuant to this Article IX shall expressly survive the expiration or termination of this Agreement.

## ARTICLE X

### Miscellaneous Provisions

1. Filing of Claim under the Performance Bond/Liquidated Damages Under Coppel Contract. (a) The City agrees to file a claim against Arch Insurance Company (the "Surety") under that certain Performance Bond No. SU1155133 dated January 7, 2019, executed by Coppel and the Surety (the "Performance Bond") relating to that certain contract between the City and Coppel dated January 7, 2019, for Stream Bank Stabilization and Bridge Replacement Project, South Mesquite Creek (City Contract No. 2019-038) and to take such additional steps to pursue such claim as the City reasonably deems appropriate if the City determines, in its reasonable discretion, that there is a defect in the Fill and Rough Grading Scope of Work due to faulty materials and workmanship that appear within a period of one (1) year from the date of completion and acceptance by the City of the Fill and Rough Grading Scope of Work provided, however, notwithstanding the foregoing, the Parties agree that the City shall not be required to file any civil action, pursue any arbitration or incur any litigation costs, court costs, expert witness fees or any other costs or expenses in connection with the performance of the City's obligations under this Article X, Section 1(a) unless the Company pays the City's litigation costs, court costs, expert witness fees and all other costs, expenses and attorneys' fees associated therewith within thirty (30) days from receipt of each invoice. **The Parties agree that the City has not made and hereby expressly disclaims any representations or warranties, either express or implied, regarding the enforceability of the Performance Bond or whether the Surety will perform or pay or defend the claim. THE COMPANY HEREBY RELEASES AND DISCHARGES THE CITY AND WAIVES ANY ACTION AGAINST THE CITY, EITHER LEGAL OR EQUITABLE OR CONSTITUTIONAL, THAT MIGHT ARISE OUT OF: (I) THE UNENFORCEABILITY OF THE PERFORMANCE BOND; AND (II) THE FAILURE OF THE SURETY TO PERFORM OR PAY OR DEFEND THE CLAIM, UNLESS IN EITHER CASE SUCH UNENFORCEABILITY OF THE PERFORMANCE BOND OR SURETY'S FAILURE TO PERFORM OR PAY IS CAUSED BY THE CITY'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS SUBSECTION. THIS RELEASE SHALL SURVIVE AND CONTINUE AFTER THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

(b) Under the Coppel Contract, the City is to recover liquidated damages in the event that Coppel fails to timely complete the Fill and Rough Grading Scope of Work by July 1, 2019. The Company intends to enter into a ground lease with a national restaurant chain (the "Lease") that will require the Company to deliver a Pad-Site on Lot 3 of the Land as depicted on Exhibit "B" (the "Lot 3 Pad-Site") to the tenant under the Lease no later than December 31, 2019 (the "Required Delivery Date"), as such date may be extended for "Force Majeure" (as defined in the Lease) in accordance with and subject to the terms of the Lease. In the event that: (i) Coppel fails to complete the Fill and Rough Grading Scope of Work by July 1, 2019; and (ii) the Company fails to deliver the Lot 3 Pad-Site to the tenant under the Lease by the Required Delivery Date, as such date may be extended by "Force Majeure" (as defined in the Lease) as a result of the failure of Coppel to complete the Fill and Rough Grading Scope of Work by July 1, 2019, the City will pay to the Company the sum equal to the liquidated damages paid by Coppel to the City or offset by the City as a result of Coppel's failure to complete the Fill and Rough Grading Scope of Work by July 1, 2019 (and the City agrees to use the same or substantially similar procedures and diligence to collect or offset such liquidated damages as it would for liquidated damages owed by Coppel to the City under the Coppel Contract provided the Company pays the City's litigation costs, court costs, expert witness fees and all other costs, expenses and attorneys' fees associated therewith within thirty (30) days from receipt of each invoice) provided, however, the Parties agree that notwithstanding the foregoing, the amount of liquidated damages payable to the Company under this subsection will not exceed the *lesser* of (i) \$2,000.00 per day times the number of days from July 1, 2019 until the Fill and Rough Grading Scope of Work is completed [for example, if the Fill and Rough Grading Scope of Work is completed on July 5, 2019, the amount under this subsection (i) would be \$8,000.00]; (ii) \$120,000.00, representing a maximum of sixty (60) days of liquidated damages under the Coppel Contract relating to Coppel's failure to timely complete the Fill and Rough Grading Scope of Work; or (iii) the sum of (A) the documented costs incurred by the Company to complete the Fill and Rough Grading Scope of Work plus (B) the per diem late delivery penalties credited by the Company against rent owed by the tenant under the Lease as a result of the Company failing to deliver the Lot 3 Pad-Site to the tenant under the Lease by the Required Delivery Date, as such date may be extended by "Force Majeure" (as defined in the Lease), provided such failure to timely deliver the Lot 3 Pad-Site to the tenant under the lease is caused by the failure of Coppel to complete the Fill and Rough Grading Scope of Work by July 1, 2019. **The Parties agree that the City has not made and hereby expressly disclaims any representations or warranties, either express or implied, regarding the enforceability of the liquidated damages provision of the Coppel Contract.**

2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of the Company hereunder may not be assigned or transferred by the Company to any Person other than an Affiliate of the Company without the prior written consent of the City which may be withheld in the City's sole discretion. In the event the Company is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares of the Company or the sale, transfer or assignment of a controlling interest in the membership interests of the Company to any Person other than an Affiliate of the Company shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares or membership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. In the event the Company is a partnership, the sale, transfer or assignment of a controlling interest in the shares of a corporation, or the membership interests of a limited liability company, or the partnership interests of a partnership, that is the Company's general or managing partner to any Person other than an Affiliate of the Company shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares, membership interests, or partnership interests, shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. Furthermore, neither the Company, nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise collaterally transfer this Agreement or any part hereof, or the interest of the Company, or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any consent by the City to any assignment of this Agreement shall apply only to the specific transaction authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. The consent by the City to any assignment of this Agreement by the Company shall not relieve the Company from any liabilities or obligations of the Company under the terms of this Agreement unless the written consent of the City expressly states otherwise. Every assignee shall be subject to and bound by all the provisions, terms, agreements, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City with respect to any future or further assignment. Any assignment in violation of the terms and provisions of this Agreement shall be void and of no force or effect.

3. Notices. Any notice and/or certificate or statement required or permitted to be given under the terms of this Agreement shall be in writing and shall be considered properly given if mailed by United States mail, certified mail, return receipt requested, in a postage paid envelope addressed to the Party at the address set forth below, or by delivering same in person to the intended addressee by hand delivery or by a nationally recognized courier service such as Federal Express or United Parcel Service. Notices mailed by certified mail as set forth above shall be effective and deemed delivered, whether or not actually received, one (1) business day after deposit in the United States mail. Notices by a nationally recognized courier service shall be effective and deemed delivered, whether or not actually received, one (1) business day after deposit with the nationally recognized courier service. Notice by hand delivery shall be effective and deemed delivered when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving each other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

COMPANY: Stallion Town East, LLC  
8750 N. Central Expressway, Suite 1740  
Dallas, Texas 75231  
Attention: Scott Woodruff

CITY: City of Mesquite  
1515 N. Galloway Avenue  
Mesquite, TX 75149  
Attention: City Manager

With a copy to: City Attorney  
City of Mesquite  
1515 N. Galloway Ave.  
Mesquite, Texas 75149

4. Legislative Discretion. As a matter of law, a city by contract cannot bind its current or future city councils in the exercise of the council's legislative discretion or the performance of its legislative functions including,

without limitation, the zoning of property. Nothing contained in this Agreement shall be construed as creating a contractual obligation that controls, waives, or supplants the City Council's legislative discretion.

5. Right to Offset. The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by the Company to the City, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

6. Remedies Cumulative. Except as expressly provided herein, each right and remedy of the Parties provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for in this Agreement.

7. Captions. The descriptive captions of this Agreement are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Agreement.

8. Modification. This Agreement may only be revised, modified or amended by a written document signed by the City and the Company. Oral revisions, modifications or amendments are not permitted.

9. 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.

10. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a Default of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.

11. Governing Law; Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas (without giving effect to any conflict of law principles that would result in the application of the laws of any state other than Texas). The Parties agree that venue of any suit to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas. This provision shall expressly survive the expiration or termination of this Agreement.

12. **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.** THE COMPANY AND THE CITY EACH AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES. This provision shall expressly survive the expiration or termination of this Agreement.

13. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and, if any phrase, clause, sentence, paragraph, or section of this Agreement should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid provision had never been included in the Agreement. This provision shall expressly survive the expiration or termination of this Agreement.

14. No Partnership or Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership or joint venture between the Parties.

15. No Third Party Beneficiaries. The Parties to this Agreement do not intend to create any third party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No Person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third party beneficiary.

16. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

17. Counterparts. This Agreement may be executed in any number of original, facsimile or electronically-scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

18. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. There are no oral agreements between the Parties. This provision shall expressly survive the execution or termination of this Agreement.

19. Authority. The Company represents that it is duly formed, validly existing and in good standing under the laws of the State of Texas, that this Agreement has been duly authorized by the Company, that the Company has authority to enter into and fulfill its obligations under this Agreement and that the person signing this Agreement on behalf of the Company has authority to execute this Agreement and bind the Company.

20. City Council Authorization. This Agreement was authorized by resolution of the City Council approved at a City Council meeting.

21. Usury Savings Clause. The Company and the City intend to conform strictly to all applicable usury laws. All agreements of the City and the Company are hereby limited by the provisions of this Article X, Section 21 which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under the terms of this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to the City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Article X, Section 21 and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to the Company or applied to the reduction of the principal amount owing under this Agreement or such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate. This provision shall expressly survive the expiration or termination of this Agreement.

22. Form 1295 Certificate. The Company agree to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

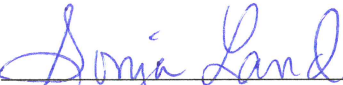
23. Execution of Agreement by Parties. If this Agreement is not executed by the Company and the City on or before May 7, 2019, this Agreement shall be null and void and of no force or effect.

24. Time is of the Essence. EXCEPT AS OTHERWISE SET FORTH HEREIN, THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents, officers and/or officials on the dates set forth below.

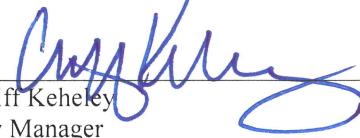
**ATTEST:**

By:   
Name: Sonja Land  
Title: City Secretary

Date: 4.19.19

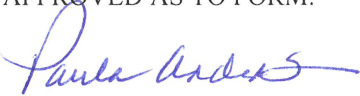
**CITY:**

**CITY OF MESQUITE,**  
a Texas home rule municipality

By:   
Name: Cliff Keheley  
Title: City Manager

Date: 4-19-19

**APPROVED AS TO FORM:**

  
City Attorney or his Designee

**COMPANY:**

Stallion Town East, LLC,  
a Texas limited liability company

By: Stallion TE Manager, LLC,  
a Texas limited liability company  
Its Sole Manager

By:   
\_\_\_\_\_  
R. Scott Woodruff  
President

Date: 5/3/19

**EXHIBIT "A"**  
**TO**  
**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

**Legal Description of Land**

BEING a 4.71 acre tract of land situated in the JOHN T. NELMS SURVEY, ABSTRACT NUMBER 1095, and the ISHAM THOMAS SURVEY, ABSTRACT NUMBER 1501, City of Mesquite, Dallas County, Texas, being a part of Lot 1, Block A of North Mesquite High School Addition, an addition to the City of Mesquite, Texas, according to the plat thereof filed for record in Instrument Number 201000076841, Official Public Records of Dallas County, Texas, (O.P.R.D.C.T.), and being conveyed to Mesquite Independent School District by the Warranty Deeds filed for record in Volume 124, Page 1639 and Volume 124, Page 1643, Deed Records of Dallas County, Texas, (D.R.D.C.T.) and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found in the Southerly right-of-way line of Town East Boulevard (a variable width right-of-way), being the North line of said Lot 1, Block A, and being at the beginning of a curve to the right, with a radius of 440.00 feet, delta angle of 19°42'49", chord bearing and distance of South 87°37'56" East, 150.64 feet;

THENCE with the Southerly right-of-way line of said Town East Boulevard and the common North line of said Lot 1, Block A, the following courses and distances:

Along said curve, an arc distance of 151.39 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found at the end of said curve.

South 77°42'26" East, a distance of 249.27 feet to a 1/2-inch iron rod with plastic cap stamped "NDM" found at the beginning of a curve to the right, with a radius of 1372.40 feet, delta angle of 17°03'11", chord bearing and distance of South 69°20'12" East, 406.97 feet;

Along said curve, an arc distance of 408.47 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found at the end of said curve.

South 30°23'43" West, a distance of 10.00 feet to a 1/2-inch iron rod with plastic cap stamped "NDM" found;

South 58°23'59" East, a distance of 27.91 feet to a TxDOT right-of-way monument found;

South 51°10'32" East, a distance of 74.80 feet to a TxDOT right-of-way monument found at the beginning of a curve to the left with a radius of 314.99 feet, delta angle of 02°20'05", chord bearing and distance of South 52°18'27" East, 12.83 feet;

Along said curve, an arc distance of 12.84 feet to feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found;

THENCE South 07°46'35" East, departing the Southerly right-of-way line of said Town East Boulevard, over and across said Lot 1, Block A, a distance of 72.34 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found;

THENCE over and across said Lot 1, Block A the following courses and distances:

South 82°23'10" West, a distance of 186.17 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found;

North 07°19'20" West, a distance of 58.51 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found;

South 82°11'55" West, a distance of 221.71 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found;

North 62°40'49" West, a distance of 70.93 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found;

North 77°03'10" West, a distance of 123.35 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found;

North 78°39'13" West, a distance of 30.79 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found;

North 89°05'11" West, a distance of 269.19 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found;

North 00°54'49" East, a distance of 150.44 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found;

North 08°52'07" East, a distance of 129.90 feet to the POINT OF BEGINNING, containing 4.71 acres of land, more or less.

**EXHIBIT "B"  
TO  
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

**Depiction of Pad-Sites**



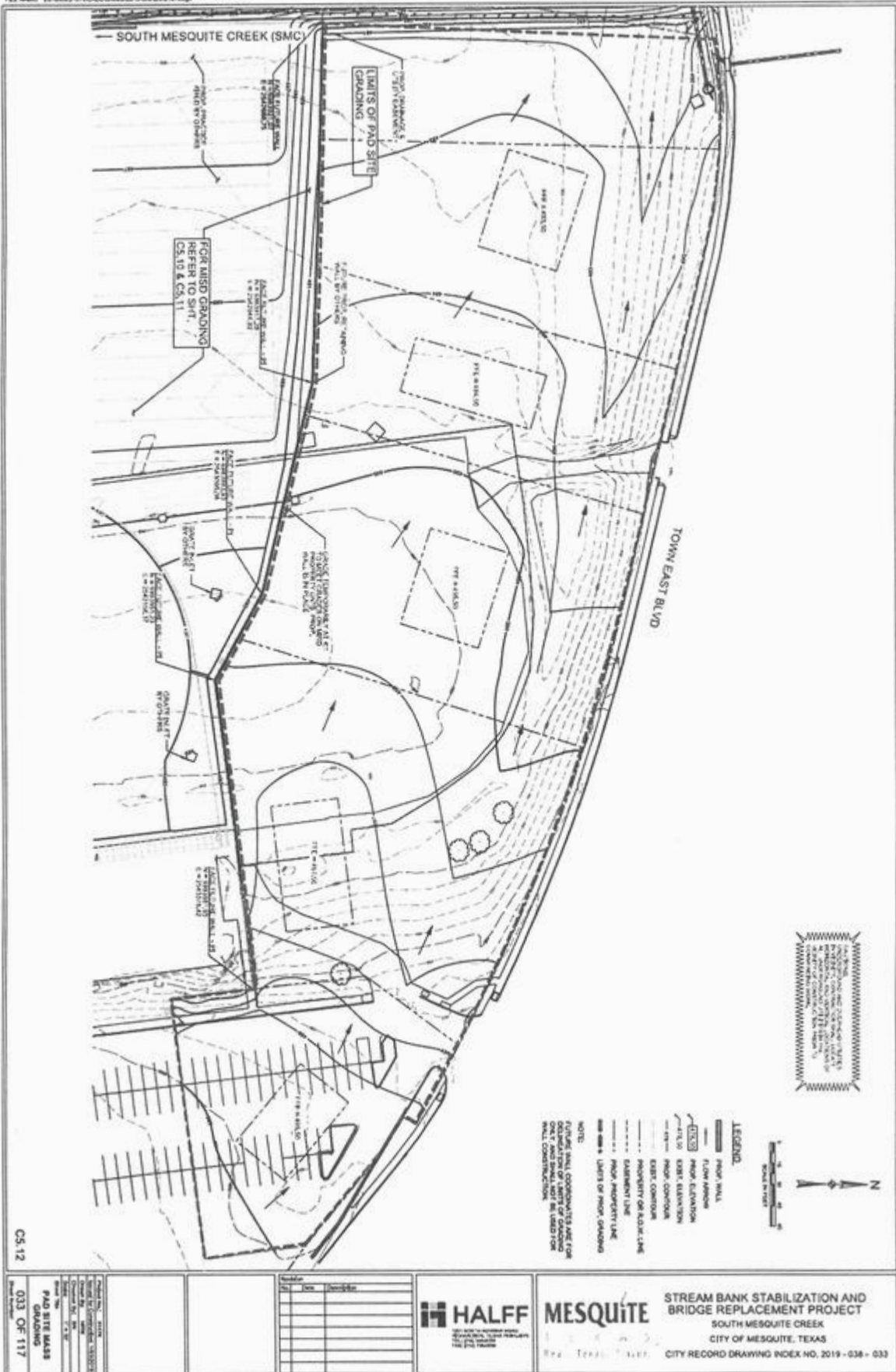
**EXHIBIT “C”  
TO  
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

**Fill and Rough Grading Scope of Work**

- The Pad-Sites will be stripped of top soil and organic materials, scarified to a minimum depth of 6 inches and recompact to a minimum 95 percent standard proctor density per ASTM D698;
- Material suitable for fill will be placed on the Pad-Sites and compacted to the lines and grade sections shown on Sheet C5.12 – Pad Site Mass Grading of the Plans and Specifications for the Stream Bank Stabilization and Bridge Replacement Project for South Mesquite Creek City of Mesquite, Texas (City Contract No. 2019-038), prepared by Half Associates, Inc., dated January 2019, a copy of which is attached hereto as Exhibit “C-1” and made a part hereof for all purposes; and
- The Pad-Sites will be rough graded.

**EXHIBIT "C-1"**  
**TO**  
**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

DATE: 10/27/11  
 TIME: 10:00 AM  
 USER: jhuff  
 FILE NAME: C:\PROJECTS\2011\2011-10-27\2011-10-27.dwg



**EXHIBIT "D"**  
**TO**  
**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

Closeout and Acceptance Requirements

**City of Mesquite - Engineering Acceptance of Civil Construction:**

June 30, 2015

**In addition to proper completion of the construction shown on the engineering plans, there are several important administrative items that must be submitted and approved prior to City acceptance of the improvements and issuance of a Certificate of Occupancy for a project. These administrative items include:**

- Record Drawings.** If changes to the "released" set of Engineering Plans are needed during construction, they must be submitted to the City Engineering Division for review and release. Both hard copy and electronic copy of record drawings are required prior to final acceptance. Requirements for records drawings can be obtained on the Engineering Division web page at:  
<http://www.cityofmesquite.com/DocumentCenter/Home/View/417>
- Maintenance Bond** – a one-year maintenance bond for 10% of the cost of the public improvements (or a minimum of \$500.00) must be submitted to your assigned Engineering Division Public Works Construction Inspector.
- Acceptance Letter Request Form** – fill out this form and turn into your assigned Engineering Division Public Works Construction Inspector. This form is available at:  
<http://www.cityofmesquite.com/DocumentCenter/Home/View/5128>
- All required **construction and material tests reports** have been successfully completed and witnessed by your inspector and related documentation of these tests submitted to your assigned Engineering Division Public Works Construction Inspector.
- All other project documentation complete, City invoices paid, etc.



EXHIBIT "E"  
TO  
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Record Drawings and Plat Requirements

**Interoffice  
MEMORANDUM**

Updated: March 5, 2015

**To:** Private Developers, Consulting Engineers, Contractors and Engineering Division Staff  
**From:** Matthew Holzapfel, P.E. - City Engineer  
**Subject:** Requirements for Record Drawings and Plats for Private Development Projects

The contractor shall arrange an appointment with the assigned City Public Works Construction Inspector (PWCi) to review his "marked-up" field set of civil drawings prior to submitting to the consulting engineer. This "marked-up" field set should have notes and changes identified for all deletions, additions, change orders, addendums and other changes to the plans. This "marked-up" field set must be approved by the assigned PWCi. Once approved by the PWCi the contractor shall submit the "marked-up" field set to the consulting engineer who prepared the plans for preparation of record drawings and digital files that meet the below requirements.

Engineering Firms for Private Development Projects shall submit the following to the assigned City Public Works Construction Inspector:

Record Drawings (As-Builts):

- 2 Blackline (24" x 36" or 22" x 34") Copies & Associated Electronic Files.
  - These record drawings shall be sealed by the engineer of record in accordance with the Texas Board of Professional Engineers Policy Advisory Opinion Regarding Record (As-Built) Drawings – Issued February 8, 2007, available at web address (<http://www.tbpe.state.tx.us/nm/pa18.pdf>).
  - All sheets of the approved civil drawings with all details shall be included.
  - All changes shall be shown and noted in the revision block.
  - Revisions shall be drawn using accepted drafting standards and shall be neat and easily read and interpreted.
  - Line work and notes related to work deleted or changed shall be omitted from the drawing. All information on the blackline copies shall be crisp with well defined lines and lettering. The information shall have high contrast and be capable of producing a high quality, legible microfilm and scanned image.
  - An electronic copy of the record drawings shall be submitted on CD-ROM, DVD or flash drive in all the following digital formats:
    - AutoCAD (.dwg file format) - The .dwg files for the plan set may be in either model or paper space.
    - TIFF Class IV, 400 dpi format.
    - pdf format
  - The City Public Works Construction Inspector shall check that the above digital images are complete and correct and copy all the digital files to the network Q: drive in the project digital folder under a separate folder labeled *.rcd dwgs*.
  - The PWCi shall give the two blackline record drawing copies to the Engineering Division GIS staff for indexing, filming, scanning and placement in the City record drawing database. The GIS staff member receiving the blackline drawings and digital files on CD-ROM, DVD or flash drive from the PWCi shall sign and date the Project Final Acceptance Check-Off List. The Engineering Division GIS staff will also distribute one copy of the blackline record drawings to the Fire Marshall.

Plats:

- An electronic copy of the Final Plat (without signatures) must be submitted to the Planning and Zoning Office on CD-ROM in AutoCAD 2006 or later in .dwg file format. The AutoCAD drawing must be in "model-space". The plat must show two property corners in grid coordinates. Grid coordinates must be referenced to a City GPS point. The grid coordinates must be in North American Datum (NAD) 83, Texas State Plane, North Central FIPS Zone 4202. This electronic copy does not need a seal. This copy will be used by the GIS technicians to place the plat properly on the updated street maps.

**No Certificate of Occupancy of any sort shall be approved by the Engineering Division until an acceptable set of record drawings and associated digital files are received and approved.**



201900151836

AGREE 1/8



City's Mailing Address:

City of Mesquite  
1515 N. Galloway  
Mesquite, Texas 75149  
Attention: Sonja Land, City Secretary

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER**

**RIGHT OF ENTRY, ACCESS AND CONSTRUCTION AGREEMENT**

STATE OF TEXAS                   §  
   §  
COUNTY OF DALLAS           §

As of the "Effective Date" (as hereinafter defined), Stallion Town East, LLC, a Texas limited liability company ("Stallion") will be the sole owner of that certain property consisting of approximately 4.71 acres located on a portion of the south side of the 1900 Block of North Town East Boulevard, in the City of Mesquite, Texas and being more particularly described in **Exhibit "A"** attached hereto and made a part hereof for all purposes (the "Property").

The City of Mesquite, a Texas home rule municipality ("City") has entered into a contract (City Contract No. 2019-038) dated January 7, 2019 with Coppell Construction Co., Inc. ("Coppell") for construction work in and around the South Mesquite Creek (the "City-Coppell Contract") generally described as stream bank stabilization-bridge replacement and including, without limitation, certain fill and rough grading work to be performed on the Property as more particularly described in **Exhibit "B"** attached hereto and made a part hereof for all purposes (the "Fill and Rough Grading Scope of Work").

Stallion hereby approves the Fill and Rough Grading Scope of Work including, without limitation, the amount of fill material and the compaction as more fully set forth on Sheet C5.12 – Pad Site Mass Grading of the Plans and Specifications for the Stream Bank Stabilization and Bridge Replacement Project for South Mesquite Creek City of Mesquite, Texas (City Contract No. 2019-038), prepared by Halff Associates, Inc., dated January 2019, a copy of which is attached hereto as "**Exhibit B-1**" and made a part hereof for all purposes.

That Stallion, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) to Stallion in hand paid by the City, and the further consideration of the benefits to be derived by Stallion from the Fill and Rough Grading Scope of Work, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, convey and extend to the City, its officers, employees and agents (collectively the "City") and to the City's contractors, subcontractors, and contractors' and subcontractors employees, including but not limited to Coppell and its employees, (collectively the "City Workers"), the right of entry in, at, under, over, upon and across the Property and the right to construct and perform the Fill and Rough Grading Scope of Work in, at, under, over, upon and across the Property.

RETURN TO: CITY SECRETARY  
CITY OF MESQUITE  
P.O. BOX 850137  
MESQUITE, TX 75185-0137

Stallion hereby executes this Right of Entry, Access and Construction Agreement (this "Agreement") for the consideration herein stated and further agrees that the Fill and Rough Grading Scope of Work is full, fair and adequate consideration for this Agreement. Stallion agrees the City and City Workers shall have the right of access and entry to the Property to perform the Fill and Rough Grading Scope of Work from the Effective Date and thereafter until and including September 1, 2019.

**STALLION AGREES TO RELEASE THE CITY AND CITY WORKERS FOR DAMAGES OF ANY KIND EITHER TO THE PROPERTY OR ANY PERSONS SITUATED THEREON AND DOES FURTHER HEREBY RELEASE AND DISCHARGE THE CITY, AND WAIVE ANY ACTION AGAINST THE CITY, EITHER LEGAL OR EQUITABLE OR CONSTITUTIONAL, THAT MIGHT ARISE OUT OF THE FILL AND ROUGH GRADING SCOPE OF WORK, INCLUDING ANY COSTS, EXPENSES, HAZARDS OR CONDITIONS THAT MAY ARISE DURING THE COURSE OF OR AFTER COMPLETION OF THE FILL AND ROUGH GRADING SCOPE OF WORK. THIS RELEASE SHALL SURVIVE AND CONTINUE AFTER THE COMPLETION OF THE FILL AND ROUGH GRADING SCOPE OF WORK AND AFTER THE EXPIRATION OF THIS AGREEMENT. THIS RELEASE SHALL EXPRESSLY SURVIVE THE EXPIRATION OF THIS AGREEMENT. THE FOREGOING RELEASE DOES NOT RELEASE ANY CLAIMS UNDER ANY OTHER AGREEMENTS BETWEEN THE CITY AND STALLION.**

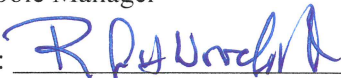
This Agreement shall be a covenant running with the land and shall be binding on Stallion, its agents, representatives, successors and assigns. It shall serve as a contract with legal consequences and is entered into freely and without coercion. Stallion affirms that Stallion has had the opportunity to consult and discuss the provisions of this Agreement with legal counsel and fully understands the legal effect of each provision. This Agreement may not be modified orally. Every term and provision of this Agreement is intended to be severable. If any one or more of the provisions are found to be unenforceable or invalid, that shall not affect the other terms and provisions, which shall remain binding and enforceable. Nothing herein shall constitute or be deemed a waiver of any immunities or defenses otherwise enjoyed by the City.

This Agreement shall be effective immediately upon the acquisition of the Property by Stallion (the "Effective Date"). This Agreement will expire upon the earlier of (i) completion of the Fill and Rough Grading Scope of Work or (ii) September 1, 2019.

For the cause, consideration, and purposes set forth herein, Stallion hereby executes this Agreement on the date set forth below.

Stallion Town East, LLC,  
a Texas limited liability company

By: Stallion TE Manager LLC,  
a Texas limited liability company  
Its Sole Manager

By:   
R. Scott Woodruff  
President

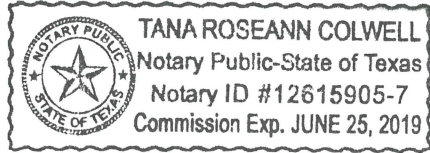
Date: 5/31/19

RETURN TO: CITY SECRETARY  
CITY OF MESQUITE  
P.O. BOX 850137  
MESQUITE, TX 75185-0137

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

This instrument was acknowledged before me on this 3rd day of May, 2019, by R. Scott Woodruff, President of Stallion TE Manager, LLC, a Texas limited liability company, as Sole Manager of Stallion Town East, LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Seal



Tana Roseann Colwell  
NOTARY PUBLIC, State of Texas

RETURN TO: CITY SECRETARY  
CITY OF MESQUITE  
P.O. BOX 850137  
MESQUITE, TX 75185-0137

EXHIBIT A

Legal Description

BEING a 4.71 acre tract of land situated in the JOHN T. NELMS SURVEY, ABSTRACT NUMBER 1095, and the ISHAM THOMAS SURVEY, ABSTRACT NUMBER 1501, City of Mesquite, Dallas County, Texas, being a part of Lot 1, Block A of North Mesquite High School Addition, an addition to the City of Mesquite, Texas, according to the plat thereof filed for record in Instrument Number 201000076841, Official Public Records of Dallas County, Texas, (O.P.R.D.C.T.), and being conveyed to Mesquite Independent School District by the Warranty Deeds filed for record in Volume 124, Page 1639 and Volume 124, Page 1643, Deed Records of Dallas County, Texas, (D.R.D.C.T.) and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found in the Southerly right-of-way line of Town East Boulevard (a variable width right-of-way), being the North line of said Lot 1, Block A, and being at the beginning of a curve to the right, with a radius of 440.00 feet, delta angle of 19°42'49", chord bearing and distance of South 87°37'56" East, 150.64 feet;

THENCE with the Southerly right-of-way line of said Town East Boulevard and the common North line of said Lot 1, Block A, the following courses and distances:

Along said curve, an arc distance of 151.39 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found at the end of said curve.

South 77°42'26" East, a distance of 249.27 feet to a 1/2-inch iron rod with plastic cap stamped "NDM" found at the beginning of a curve to the right, with a radius of 1372.40 feet, delta angle of 17°03'11", chord bearing and distance of South 69°20'12" East, 406.97 feet;

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South 51°10'32" East, a distance of 74.80 feet to a TxDOT right-of-way monument found at the beginning of a curve to the left with a radius of 314.99 feet, delta angle of 02°20'05", chord bearing and distance of South 52°18'27" East, 12.83 feet;

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CITY OF MESQUITE  
P.O. BOX 850137  
MESQUITE, TX 75185-0137

THENCE South 07°46'35" East, departing the Southerly right-of-way line of said Town East Boulevard, over and across said Lot 1, Block A, a distance of 72.34 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found;

THENCE over and across said Lot 1, Block A the following courses and distances:

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North 00°54'49" East, a distance of 150.44 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" found;

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RETURN TO: CITY SECRETARY  
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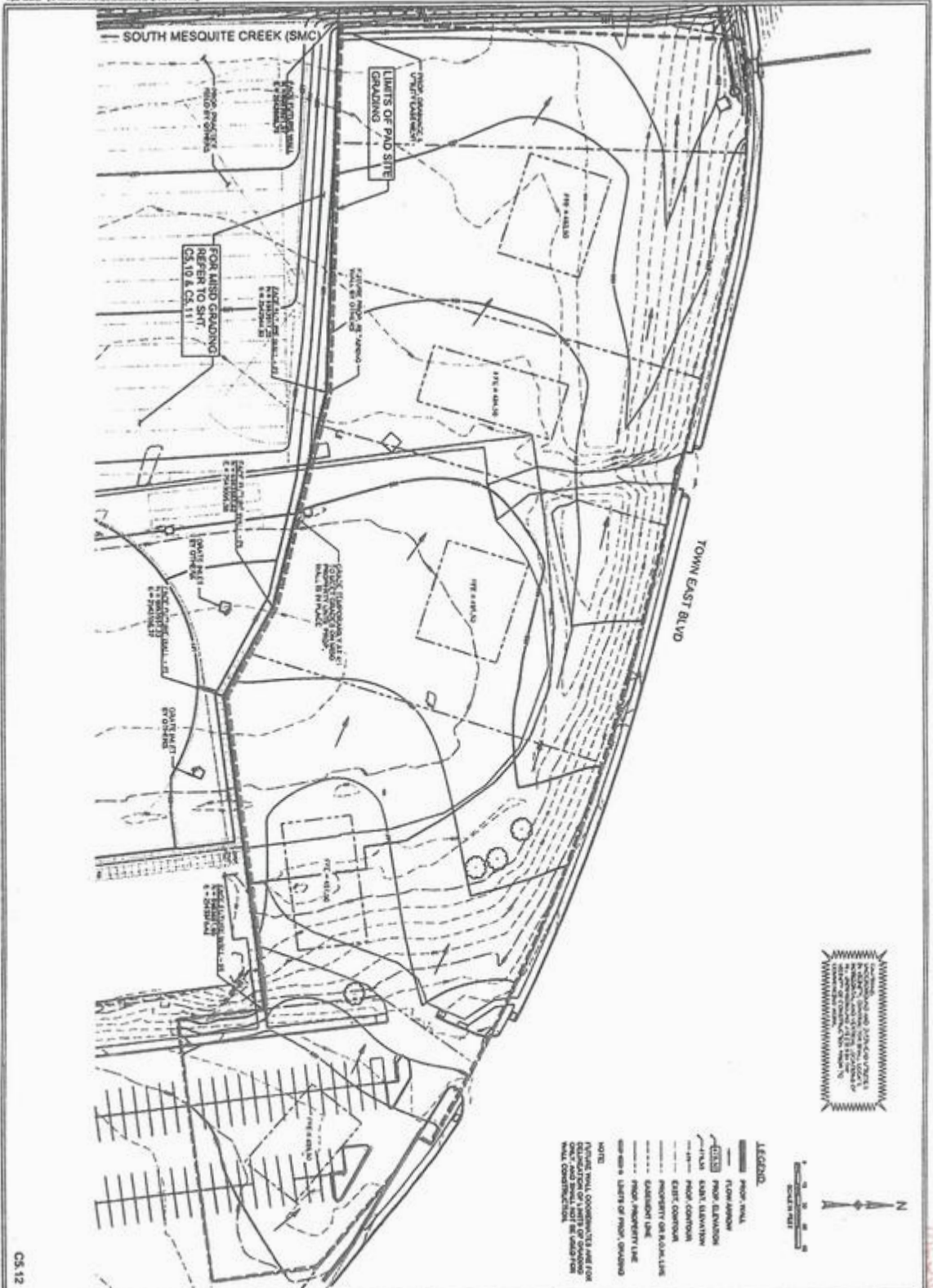
## EXHIBIT B

### Fill and Rough Grading Scope of Work

- The Property will be stripped of top soil and organic materials, scarified to a minimum depth of 6 inches and recompact to a minimum 95 percent standard proctor density per ASTM D698;
- Material suitable for fill will be placed on the Property and compacted to the lines and grade sections shown on Sheet C5.12 – Pad Site Mass Grading of the Plans and Specifications for the Stream Bank Stabilization and Bridge Replacement Project for South Mesquite Creek City of Mesquite, Texas (City Contract No. 2019-038), prepared by Halff Associates, Inc., dated January 2019, a copy of which is attached hereto as **Exhibit “B-1”** and made a part hereof for all purposes; and
- The Property will be rough graded.

EXHIBIT B-1

DATE: 05/12/11  
 DRAWN BY: J. H. HALFF  
 CHECKED BY: J. H. HALFF  
 PROJECT NO.: 2019-058-033



CS 12

<p>PROJECT NO. 2019-058-033          SHEET NO. 033 OF 117          DRAWN BY: J. H. HALFF          CHECKED BY: J. H. HALFF          DATE: 05/12/11</p>	<p><b>HALFF</b>          ENGINEERS &amp; ARCHITECTS          1100 WEST 19TH STREET          MESQUITE, TEXAS 75150          TEL: 972-241-1100          FAX: 972-241-1101          WWW.HALFF.COM</p>	<p><b>MESQUITE</b>          TEXAS          Near Texas, Face</p>	<p><b>STREAM BANK STABILIZATION AND          BRIDGE REPLACEMENT PROJECT</b>          SOUTH MESQUITE CREEK          CITY OF MESQUITE, TEXAS          CITY RECORD DRAWING INDEX NO. 2019-058-033</p>
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RETURN TO: CITY SECRETARY  
 CITY OF MESQUITE  
 P.O. BOX 850137  
 MESQUITE, TX 75185-0137



Filed and Recorded  
Official Public Records  
John F. Warren, County Clerk  
Dallas County, TEXAS  
06/13/2019 08:52:50 AM  
\$50.00



A handwritten signature in black ink, appearing to be "JFW", is written over the seal.

201900151836

**EXHIBIT "G"**  
**TO**  
**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

**Insurance Requirements**

**MESQUITE BASIC**

**CITY OF MESQUITE REQUIREMENTS:**

- \* General Liability with minimum limits of \$1,000,000 per Occurrence, \$1,000,000 General Aggregate, \$1,000,000 Products/Completed Operations Aggregate.
- \* General Liability must include coverage for Premises and Operations, Products and Completed Operations, Contractual Liability, Independent Contractors, Broad Form Property Damage, and Personal/Advertising Injury.
- \* Auto Liability with minimum limits of \$500,000 Combined Single Limit.
- \* Certificate must include a statement listing **\*\*The City of Mesquite, Texas\*\*** as additional insured on the General Liability and Auto coverages. Blanket Endorsements are acceptable in meeting this requirement if copies of the endorsements are provided along with the certificate. If using a form that has specific boxes labeled for additional insured, checking those specific boxes is acceptable in meeting this requirement as well.
- \* Employers Liability with minimum limits of \$100,000 Occupational Disease, \$100,000 per Accident, and \$100,000 per Employee.
- \* Workers Compensation providing statutory coverage limits.
- \* Certificate must include a statement providing a Waiver of Subrogation on the Workers Compensation, Employers Liability as well as the General Liability coverage. Blanket Endorsements are acceptable in meeting this requirement if copies of the endorsements are provided along with the certificate. If using a form that has specific boxes labeled for waiver of subrogation, checking those specific boxes is acceptable in meeting this requirement as well.

**MESQUITE POLLUTION LIABILITY**

**City of Mesquite Requirements:**

- \* Evidence of Pollution Liability Coverage.