

RESOLUTION NO. 17-2022

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 ECONOMIC DEVELOPMENT PROGRAM CHAPTER 380 AGREEMENT FOR SUCH PURPOSES WITH SRPF C/TRINITY POINTE PHASE I, L.P., FOR THE DEVELOPMENT OF APPROXIMATELY 283 ACRES OF REAL PROPERTY LOCATED AT 12855 FM 2932 IN THE CITY OF MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE, AND ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (the “**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 SRPF C/TRINITY POINTE PHASE I, L.P., (the “**Developer**”), for the development of real property, a copy of said agreement being attached hereto as Exhibit 1 and incorporated herein by reference (the “**Agreement**”); and

WHEREAS, the proposed development is located on an approximately 283 acres of real property, as more particularly described and/or depicted in Exhibit A to the Agreement, and generally located at 12855 FM 2932, City of Mesquite, Dallas County, Texas (the “**Property**”); and

WHEREAS, the City would like to encourage the development of the Property by granting certain economic development incentives to the Developer; and

WHEREAS, development of the Property will increase the taxable value of the Property thereby adding value to the City’s tax rolls and increasing the ad valorem property taxes and sales taxes to be collected by the City, along with increasing employment opportunities in the City; 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 Developer, a copy of which is attached hereto as Exhibit 1 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 Developer 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.

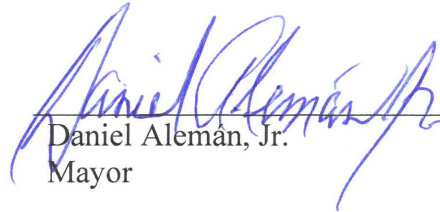
SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

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.

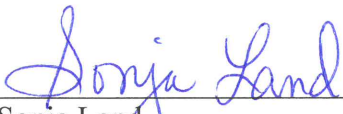
SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided 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.

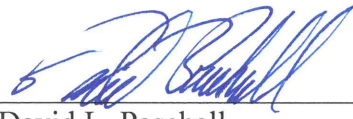
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 21st day of March 2022.

  
\_\_\_\_\_  
Daniel Alemán, Jr.  
Mayor

ATTEST:

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

APPROVED AS TO LEGAL FORM:

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

**EXHIBIT A**

**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

**(CHAPTER 380 AGREEMENT)**

**BETWEEN**

**THE CITY OF MESQUITE, TEXAS,**

**AND**

**SRPF C/TRINITY POINTE PHASE I, L.P.**

**CITY OF MESQUITE, TEXAS  
AND  
SRPF C/TRINITY POINTE PHASE I, L.P.**

**CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AND AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (hereinafter referred to as the “**Agreement**”) is made and entered into by and between the **CITY OF MESQUITE, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “**City**”), and **SRPF C/TRINITY POINTE PHASE I, L.P.**, a Texas limited partnership, (hereinafter referred to as the “**Developer**”), for the purposes and considerations stated below:

**WHEREAS**, the Developer agrees to construct or cause to be constructed a minimum of 3,000,000 square feet of commercial space consisting of multiple commercial buildings grouped as the Phase One Buildings and the Phase Two Buildings (as defined herein) constructed in the 20 East Business Park, located on approximately 283.5-acre tracts of land in the John Moore Survey, Abstract No. A0309, Tracts 131.00 and 131.01, at the SW corner of IH-20 and FM 2932, City of Mesquite, Kaufman County, Texas, as more particularly described and/or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes, and having a street address of 12855 FM 2932, Mesquite, Texas 75126 (such property hereinafter referred to as the “Property; and such project (including the FM2932 Project) hereinafter referred to as the “Project”); and

**WHEREAS**, the Developer agrees to reconstruct and improve F.M. 2932 by widening said road and adding a turn lane as depicted in *Exhibit C* of this Agreement, which is attached hereto and is incorporated herein for all purposes; and

**WHEREAS**, the Developer desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code an incentive to Developer to develop the Property as defined below; and

**WHEREAS**, the City represents that it possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Mesquite, Texas; and

**WHEREAS**, the City has determined that a grant of funds to the Developer will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement promotes economic development in the City, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and the Developer; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement promotes economic development in the City, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

**SECTION 1. FINDINGS INCORPORATED.**

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.

**SECTION 2. TERM.**

This Agreement shall be effective as of the Effective Date of this Agreement, and shall continue thereafter until **December 31, 2028**, unless terminated sooner under the provisions hereof or extended due to Force Majeure.

**SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- (a) **Affiliate.** The words “Affiliate” or “Affiliates” means any person directly controlling, or directly controlled by or under direct common control with the Developer. As used in this definition, the term “control” “controlling” or “controlled by shall mean the possession, directly, of the power to direct or cause the direction of management or policies of the Developer, whether through ownership of voting securities, interests, by contract or otherwise, and which may be subject to “major decisions” approval or veto rights customarily provided to limited partners or non-managing members, excluding in each case, any lender of the Developer or any affiliate of such Developer.
- (b) **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program and Agreement, authorized by Chapter 380 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any.

- (c) **Building.** The term “Building” or “Buildings” means any of buildings 1, 2, 3, 4, 5, or 6 as identified in *Exhibit B*, which is incorporated herein by reference, and/or any other configuration of commercial buildings on the Property.
- (d) **Building Official.** The words “Building Official” means the Building Official of the City as defined in Section 202, “Definitions,” of Chapter 2, “Definitions,” of the International Building Code, 2015 Edition, a publication of the International Code Council, adopted and designated as the official building code of the City, as such definition may hereafter be amended by the adoption of a later edition of the International Building Code as the official building code of the City.
- (e) **Building Permit.** The words “Building Permit” shall mean a written permit or authorization issued by the City, after review and verification of code compliance, by the Building Official, or the Building Official’s designee, to the Developer allowing the Developer to proceed with construction of one or more Buildings, and includes but is not limited to any construction related permit required under Section 105, “Permits,” of Part 2, “Administration and Enforcement,” of Chapter 1, “Scope and Administration,” of the International Building Code, 2015 Edition, a publication of the International Code Council, adopted and designated as the official building code of the City, as such definition may hereafter be amended by the adoption of a later edition of the International Building Code as the official building code of the City.
- (f) **Capital Investment Certificate.** The words “Capital Investment Certificate” means a certificate in such form as is reasonably acceptable to the City executed by the Developer certifying the amount of expenditures made by the Developer in connection with the construction of the Qualified Expenditures as of the date of such certificate (each a “**Capital Investment Certificate**”) provided, however, the Parties agree that only Qualified Expenditures shall be included in the expenditures reported in each Capital Investment Certificate.
- (g) **City.** The word “City” means the City of Mesquite, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City’s address is 1515 N. Galloway, Mesquite, Texas 75149.
- (h) **City Regulation(s).** The word “City Regulations” shall mean any ordinance, rule, regulation, standard, policy, order, guideline or other City-adopted or City-enforced requirement, as amended and adopted by the City and as are applicable to the Property, including but not limited to the Mesquite City Code of Ordinances, the City of Mesquite’s Engineering Design Manual.
- (i) **Commence Construction.** The words “Commence Construction” or “Commencement of Construction” shall mean with respect to Phase One Buildings: (i) all Phase One Building plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained to begin construction of the Buildings and improvements, (ii) all necessary Building Permits and other permits to begin

construction of the Phase One Buildings and improvements have been issued by the applicable governmental authorities; and (iii) actual vertical construction of the Phase One Buildings and improvements has commenced. The words “Commence Construction” or “Commencement of Construction” shall mean with respect to each Building in the Phase Two Buildings: (i) the applicable Building plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Building(s) and improvements (ii) all necessary Building Permits and other permits for the construction of the Building and improvements have been issued by the applicable governmental authorities; and (iii) actual horizontal or vertical construction of such Building has commenced. The words “Commence Construction” or “Commencement of Construction” shall mean with respect to the FM2932 Project mean that: (i) plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained to begin construction of the FM2932 Project, (ii) necessary permits to begin construction of the FM2932 Project improvements have been issued by the applicable governmental authorities; and (iii) actual horizontal construction of the FM2932 Project improvements has commenced.

- (j) **Completion of Construction.** The words “Completion of Construction” or “Complete Construction” with respect to Phase One Buildings means the Developer must obtain from the City a shell certificate of occupancy for each of the Phase One Buildings which shall be constructed as provided herein. The words “Completion of Construction” or “Complete Construction” with respect to each Building in Phase Two Buildings means the Developer must obtain from the City a shell certificate of occupancy for such Building, which shall be constructed as provided herein. The words “Completion of Construction” or “Complete Construction” with respect to the FM2932 Project shall mean (i) actual construction of the FM2932 Project is complete and (ii) the City and other applicable government agencies have inspected, approved, and accepted all of the FM2932 Project improvements.
- (k) **Developer.** The word “Developer” means SRPF C/TRINITY POINTE PHASE I, L.P., a Texas limited partnership, whose address for the purposes of this Agreement is 2001 Ross Avenue, Suite 400, Dallas, Texas 75201. Telephone (214) 267-0400.
- (l) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and Developer.
- (m) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth in the section entitled “Events of Default” in this Agreement.
- (n) **Exterior Finish Board.** The words “Exterior Finish Board” mean the exterior finish board for any Building, attached hereto as *Exhibit E* of this Agreement and incorporated herein for all purposes.
- (o) **Façade/Elevation Plan.** The words “Façade/Elevation Plan” mean the building



façade/elevation plan for the contemplated Buildings, attached hereto as *Exhibit F* of this Agreement and incorporated herein for all purposes.

- (p) **Force Majeure.** The words “Force Majeure” as used in this Agreement shall mean a major unforeseeable act or event that: (i) prevents a party from performing its obligations under this Agreement; (ii) is beyond the reasonable control of the party; (iii) is not caused by any act or omission on the part of the party; and (iv) could not have been prevented or avoided by the exercise by the party of such diligence and reasonable care as would be exercised by a prudent person under similar circumstances. An event of Force Majeure must satisfy each of the above requirements and includes but is not limited to: (a) natural phenomena and acts of God such as lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters; (b) explosions; (c) fires; (d) wars, acts of terrorism, and civil disturbances; (e) strikes, labor shortages, or shortage of materials or equipment, that delay construction for a minimum of thirty (30) consecutive days; (f) abnormal weather based on the 5-year NOAA climatic average weather days for North Texas; (g) delays in the issuance of Building Permits except for delays caused in whole or in part by any act or omission of the Developer, their consultants, contractors, or subcontractors; (h) changes in applicable law that materially impact the design or construction of the Project; and (i) pandemics, epidemics, or public health crisis declared by the United States Center for Disease Control and Prevention ("CDC") on or after the Effective Date of this Agreement.; Notwithstanding the foregoing, a Force Majeure event does not include: (1) any financial or economic hardship; (2) changes in market or economic conditions; (3) any default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the affected party; (4) insufficiency of funds; (5) any delay of the general contractor or any subcontractor, vendor or supplier, except for delay(s) as a result of an act or event defined herein as Force Majeure; or (6) a governmental order that prevents Developer or their contractors or subcontractors, from proceeding with the construction of any portion of the Project, as a result of the Developer’s, or their contractors’ or subcontractors; failure to comply with Applicable Law.
- (q) **FM2932 Project.** The term “FM2932 Project” means the reconstruction or improvements to F.M. 2932 by widening said road and adding a turn lane as more specifically depicted in *Exhibit C* of this Agreement.
- (r) **General Conditions Precedent.** The words “General Conditions Precedent” shall have the meaning described in Section 4 of this Agreement.
- (s) **Incentive Grant(s).** The words “Incentive Grant(s)” shall have the meaning described in Section 7 of this Agreement.
- (t) **Incentive Grant Payment(s).** The words “Incentive Grant Payment(s)” Shall mean the Phase One Grant Payment and/or Phase Two Grant Payments to be made under this Agreement as further described by Section 4 and Section 7 of this Agreement.

- (u) **Maximum Lawful Rate.** The words “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).
- (v) **Payment Request.** The words “Payment Request” with respect to an Incentive Grant mean a complete written request from the Developer to the City, accompanied by copies of the Building Permit(s), certificate of occupancy, contract(s) for construction of such Buildings and improvements, and copies of invoices, bills, and receipts in order to demonstrate a cost incurred by Developer with respect to such Building, exclusive of the (i) land value, (ii) land acquisition costs, (iii) the FM2932 Project, and including such other information as may reasonably be requested by the City for verification.
- (w) **Phase One Buildings.** The words “Phase One Buildings” means Buildings, having a minimum aggregate square footage of 1,600,000 or more.
- (x) **Phase One Conditions Precedent.** The words “Phase One Conditions Precedent” shall have the meaning described in Section 4 of this Agreement
- (y) **Phase One Incentive Grant Payment.** The words “Phase One Incentive Grant Payment” shall have the meaning described in Section 7 of this Agreement.
- (z) **Phase Two Buildings.** The words “Phase Two Buildings” means Buildings built after the Completion of Construction of Phase One Buildings and which when combined with Phase One Buildings has a minimum aggregate square footage of 3,000,000.
- (aa) **Phase Two Conditions Precedent.** The words “Phase Two Conditions Precedent” shall have the meaning described in Section 4 of this Agreement
- (bb) **Phase Two Incentive Grant Payment(s).** The words “Phase Two Incentive Grant Payment(s)” shall have the meaning described in Section 7 of this Agreement
- (cc) **Property.** The word “Property” means the approximately 283.5-acre tracts of land in the John Moore Survey, Abstract No. A0309, Tracts 131.00 and 131.01, City of Mesquite, Kaufman County, Texas, as more particularly described and/or depicted in Exhibit A of this Agreement, , and having a street address of 12955 F.M. 2932 , Mesquite, Texas 75126.
- (dd) **Qualified Expenditures.** The words “Qualified Expenditures” for a particular Building mean those expenditures relating to such Building consisting of (hard and soft costs) capitalized as capital assets on the books of the Developer in accordance with generally accepted accounting principles. The Qualified Expenditures shall comply with all City, county, state and federal development standards, architectural standards,

and applicable law, including City’s zoning ordinance and landscape plan requirements. The term “Qualified Expenditures” does not include land acquisition costs or costs associated with the FM2932 Project.

- (ee) **Roadway Impact Fees.** The words “Roadway Impact Fees” mean the impact fees charged by the City to the Developer to fund or recoup all or part of the cost of roadway capital improvements or roadway facility expansions necessitated by and attributable to the Qualified Expenditures located on the Property pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756 as now and hereafter amended.
- (ff) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

#### **SECTION 4. CONDITIONS TO INCENTIVE GRANT PAYMENTS**

Developer (1) agrees to each of the following, and (2) agrees that the obligation of the City to pay each Incentive Grant Payment hereunder, shall be conditioned upon the compliance and satisfaction of each of the terms and conditions of this Agreement by the Developer, in addition to each of the terms and conditions as set forth below:

- (a) **General Conditions Precedent.** Each Incentive Grant Payment is conditioned upon the compliance and satisfaction of the following (the “General Conditions Precedent”):
  - i. Developer Commences Construction of at least one Building by **July 1, 2022;**
  - ii. Developer Commences Construction of the FM2932 Project by **December 1, 2022;**
  - iii. There is Completion of Construction of the FM2932 Project by **December 31, 2023;**
  - iv. The Developer timely pays to the City all impact fees, permit fees, development fees, review fees and inspection fees, including, without limitation, all Roadway Impact Fees in connection with the Project; and
  - v. Developer must be in full compliance with this Agreement, City Regulations, and must be current on the payment of all taxes owed on any property owned in whole or in part by Developer in the City.
- (b) **Phase One Conditions Precedent.** In addition to the General Conditions Precedent, the Phase One Incentive Grant Payment is conditioned upon the compliance and satisfaction of the following (the “Phase One Conditions Precedent”):
  - i. Developer shall Complete Construction of the Phase One Buildings on or before **December 31, 2023;**

- ii. The Qualified Expenditures for all Phase One Buildings shall be at least equal to \$100,000,000.00;
  - iii. Upon Completion of Construction, the minimum aggregate square footage of the Phase One Buildings is 1,600,000 or more; and
  - iv. On or after Completion of Construction of the Phase One Buildings and Completion of Construction of the FM2932 Project, the Developer shall submit a Payment Request and a Capital Investment Certificate, for payment of the Phase One Incentive Grant Payment provided for in Section 7 of this Agreement.
- (c) **Phase Two Conditions Precedent.** In addition to the General Conditions Precedent, each of the Phase Two Incentive Grant Payments are conditioned upon the compliance and satisfaction of the following (the “Phase Two Conditions Precedent”):
- i. Developer shall have completed all requirements and conditions precedent to receive the Phase One Incentive Grant Payment;
  - ii. Developer shall Commence Construction of at least one Building in the Phase Two Buildings by **May 1, 2026**; and
  - iii. On or after Completion of Construction of each Building in the Phase Two Buildings, Developer shall submit a Payment Request and a Capital Investment Certificate, for payment of each Phase Two Incentive Grant Payment provided for in Section 7 of this Agreement.

**SECTION 5. CONSTRUCTION OF THE FM2932 PROJECT**

- (a) The Parties agree that the FM2932 Project was not a condition of approval of the Qualified Expenditures Project but is (as is described above) only a condition precedent to the payment of the economic development incentive pursuant to this Agreement and accordingly V.T.C.A., Local Government Code §212.904 and V.T.C.A., Local Government Code §395.023 do not apply provided, however, in the event a court of competent jurisdiction determines that V.T.C.A., Local Government Code §212.904 and/or V.T.C.A. Local Government Code §395.023 apply, the Parties agree that payment by the City to the Developer of said economic development incentive shall satisfy all requirements under V.T.C.A., Local Government Code §212.904 and V.T.C.A., Local Government Code §395.023.
- (b) The Developer shall have: (i) submitted to the City unit prices for the work to be performed pursuant to the construction contract(s) for the FM2932 Project and the City shall have approved such unit prices in writing as being reasonable; (ii) submitted to the City a payment bond and a performance bond in form reasonably acceptable to the City Attorney in the amount equal to one hundred percent (100%) of the contract amount for the construction of the F.M. 2932 Project; (iii) complied in all respects with the

Closeout and Acceptance Requirements set forth in *Exhibit G* attached hereto and made a part hereof for all purposes (the “**Closeout and Acceptance Requirements**”); (iv) complied in all respects with the Requirements for Record Drawings and Plats for Private Development Projects attached hereto as *Exhibit H* and made a part hereof for all purposes (the “**Record Drawings and Plat Requirements**”); and (v) paid in full all contractors, subcontractors, suppliers, laborers and materialmen for all labor and materials in connection with the construction of the FM2932 Project.

- (c) Prior to Commencement of Construction of any improvements as to the FM2932 Project, the Developer shall make, or cause to be made, application for any necessary permits and approvals required by the City and any other applicable governmental authorities to be issued for the construction of the improvements and shall obligate each general contractor, architect, and consultants performing work in connection with such improvements to obtain all applicable permits, licenses or approvals as required by City Regulations. Developer shall require or cause the design, inspection, and supervision of the construction of the improvements to be undertaken with respect to the FM2932 Project to be in accordance with all City Regulations.
- (d) Prior to Commencement of Construction of the FM2932 Project, the Developer shall cause the contractors and subcontractors performing work in connection with the construction of such improvements to purchase and maintain payment, performance and two-year maintenance bonds (the “**Bonds**”) in the penal sum of 100% of the amount set forth in each construction contract for the improvements. The Bonds shall be written on forms approved for use by the City and satisfactory to the City Attorney. Any surety Developer through which a bond is written shall be a surety Developer duly authorized to conduct an insurance business in the State of Texas and licensed to issue surety bonds in the State of Texas, provided that the City Attorney has the right to reject any surety Developer regardless of such Developer’s authorization to do business in Texas. Should it appear to the City that, at any time during the existence of this Agreement, the surety on the Bonds has become insolvent, bankrupt, or otherwise financially unable to perform its obligations under the Bonds, the City may demand that Developer furnish additional or substitute surety through an approved surety Developer satisfactory to the City Attorney; the act of the City with reference to demanding additional or substitute surety shall never be construed to relieve the original surety of its obligations under the Bonds. The Bonds issued with respect to the construction of the improvements shall be delivered to the City prior to the commencement of construction of the improvements.
- (e) Developer shall design and construct or cause the design and construction of the FM2932 Project, together with and including the acquisition, at its sole cost, of any and all easements or fee simple title to land necessary to provide for and accommodate the improvements that are not to be constructed on land owned by the City.
- (f) Developer shall comply, or shall use commercially reasonable efforts to cause its contractors to comply, with applicable state and federal laws and City Regulations regarding the design and construction of the FM2932 Project.

- (g) The following requirements apply to construction contracts for the FM2932 Project:
  - i. Plans and specifications for the FM2932 Project shall comply with all City regulations and applicable laws. Such plans and specifications shall be subject to the review and approval of the City prior to the issuance of any permits; and
  - ii. Each construction contract as to the FM2932 Project shall provide that the contractor is an independent contractor, independent of and not the agent of the City, and that the contractor is responsible for retaining, and shall retain, the services of necessary and appropriate architects and engineers; and
  - iii. Each construction contract as to the FM2932 Project shall provide that the contractor shall indemnify the City and City related parties for any costs or liabilities thereunder and for the negligent acts or omissions of the contractor and the contractor's agents.
- (h) Developer shall ensure at all times during construction that access and use of FM2932 is maintained for the public and emergency responders and that such access complies with all City Regulations and applicable state and federal laws and regulations.
- (i) Upon Completion of Construction of the FM2932 Project, Developer shall provide the City with a final cost summary of the improvements project costs incurred and paid in connection with the construction of the improvements and provide proof that all amounts owing to contractors and subcontractors have been paid in full evidenced by "all bills paid" affidavits executed by Developer and/or its contractors with regard to the improvements.
- (j) Developer shall provide the City with reasonable advance notice of any regularly-scheduled construction meetings regarding the improvements, and shall permit the City to attend and observe such meetings as the City so chooses in order to monitor the project, and shall provide the City with copies of any construction schedules as are discussed and reviewed at any such regularly-scheduled construction meeting.
- (k) Unless otherwise approved in writing by the City, all improvements shall be constructed and dedicated to the City in accordance with City Regulations. Developer agrees the improvements shall not have a lien or cloud on title upon their dedication and acceptance by the City.
- (l) With respect to the FM2932 Project, to the extent fee title is owned by Developer, Developer shall dedicate or convey by final plat or separate instrument, without cost to the City and in accordance with City Regulations, the rights-of-way and easements necessary for the construction, operation, and maintenance of the road, water, drainage and sewer improvements constructed by Developer at the Completion of Construction of such improvements and upon acceptance by the City. To the extent fee title is owned by the City or any other third party, Developer will reasonably cooperate in causing the foregoing to occur.

- (m) It is understood and agreed by and among the Parties that Developer is acting independently in the design, construction and development of the FM2932 Project\and the City assumes no responsibility or liability to any third parties or Developer in connection with Developer's obligations hereunder. Developer shall cause all of its contractors, architects, engineers, and consultants to agree in writing that they will look solely to Developer, not to the City, for payment of all costs and claims associated with construction of the FM2932 Project.

## SECTION 6. INSURANCE AND INDEMNIFICATION

- (a) **Insurance.** With no intent to limit any contractor's liability or obligation for indemnification, the Developer shall maintain or cause to be maintained, by the contractor(s) constructing the FM2932 Project, the types of coverage and amounts of insurance set forth in *Exhibit D* attached hereto and made a part hereof for all purposes, such insurance shall contain such terms and provisions as set forth on *Exhibit D* and shall be in full force and effect at all times during construction of the FM2932 Project.
- (b) **Waiver of Subrogation.** The worker's compensation, employers' liability and general liability insurance required pursuant to this Agreement with respect to the FM2932 Project shall provide for waivers of all rights of subrogation against the City as more fully set forth in *Exhibit D*
- (c) **Additional Insured.** As more fully set forth in *Exhibit D*, the general liability and auto liability insurance coverage required pursuant to this Agreement with respect to the FM2932 Project shall include and name the City as an additional insured.
- (d) **Written Notice of Cancellation.** Each policy required by this Agreement with respect to the FM2932 Project, except 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.
- (e) **Policies, Endorsements and Certificates of Insurance.** The Developer 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 FM2932 Project and within ten (10) days before expiration of coverage, the Developer shall cause each contractor to deliver renewal policies or certificates of insurance evidencing renewal and payment of the renewal premium. In addition, the Developer 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.
- (f) **Carriers.** All policies of insurance required to be obtained by the Developer and its contractors pursuant to this Agreement with respect to the FM2932 Project 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-" or "VII" 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 Developer's and its contractors' insurer or broker. Certificates of insurance and policy endorsements received from any other source will be rejected.

- (g) **INDEMNIFICATION. THE DEVELOPER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS AND EMPLOYEES, INSURERS AND RISK POOLS (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, DEMANDS, LOSSES, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, FINES, PENALTIES AND COSTS INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND LITIGATION EXPENSES, FOR PERSONAL INJURY (INCLUDING DEATH) OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM ANY ACT OR OMISSION ON THE PART OF THE DEVELOPER AND ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS AND ITS CONTRACTORS' AND SUBCONTRACTORS' OFFICERS, AGENTS AND EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE CONSTRUCTION OF THE FM2932 PROJECT (EXCEPT WHEN SUCH LIABILITY, DAMAGES, CLAIMS, DEMANDS, LOSSES, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, FINES, PENALTIES, OR COSTS ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE). NOTHING CONTAINED IN THIS SECTION 6(G) SHALL CONSTITUTE A WAIVER OF ANY GOVERNMENTAL IMMUNITY OR DEFENSE AVAILABLE TO ANY INDEMNITEE UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST ANY INDEMNITEE, DEVELOPER SHALL BE REQUIRED ON NOTICE FROM INDEMNITEE, TO DEFEND SUCH ACTION OR PROCEEDING AT DEVELOPER'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO INDEMNITEE. THE PROVISIONS OF THIS SECTION 6(G) 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 THIRD PARTY. 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 SECTION 6(G) SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**



## SECTION 7. INCENTIVE GRANT

City covenants and agrees with Developer that, while this Agreement is in effect, and provided Developer has timely complied with all of its obligations under this Agreement, including but not limited to the General Conditions Precedent, Phase One Conditions Precedent, and Phase Two Conditions Precedent, as applicable, it shall comply with the following terms and conditions:

- (a) **Incentive Grant.** The City covenants and agrees to provide Developer, subject to the annual appropriation of funds, an economic development incentive grant in the amount of **one hundred percent (100%)** of the Roadway Impact Fees imposed by the City and paid by the Developer pursuant to the City policy, and Chapter 395 of the Texas Local Government Code, as amended, as to the Project (“**Incentive Grant(s)**”), provided that the maximum Incentive Grants pursuant to this Agreement shall not exceed the lesser of (1) Three Million Seven Hundred Thousand and 00/100 Dollars (\$3,700,000.00) or (2) the total amount of Roadway Impact Fees imposed by the City and paid by the Developer.

The City covenants and agrees, subject to the terms of this Agreement and the annual appropriation of funds, to pay Developer each Incentive Grant within thirty (30) days of receipt of a valid and complete Payment Request consistent with Section 4 of this Agreement.

With respect to the Phase One Buildings, the Incentive Grant is calculated based on total Roadway Impact Fees paid by the Developer to the City with respect to all of the Phase One Buildings but is not payable from the Roadway Impact Fees paid by the Developer to the City (and shall rather be paid from the City’s general revenues).

With Respect to Phase Two Buildings, each Incentive Grant is calculated based on Roadway Impact Fees paid by the Developer to the City with respect to the relevant Building but is not payable from the Roadway Impact Fees paid by the Developer to the City (and shall rather be paid from the City’s general revenues).

Each Incentive Grant payable by the City to the Developer as more fully set forth in this Agreement is 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 but is payable only from funds of the City authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380. Each payment of an Incentive Grant is subject to the City’s appropriation of funds for such purpose to be paid in the budget year for which the payment is to be paid.

- (b) **Incentive Grant Payments.** Provided Developer is in full compliance with this Agreement, including but not limited to the General Conditions Precedent, Phase One Conditions Precedent, and Phase Two Conditions Precedent, as applicable, (i.e., the Phase Two Conditions Precedent do not need to be met before Incentive Grant Payments are made with respect to the Phase One Buildings for which the General Conditions Precedent

and the Phase One Conditions Precedent have been met), and an Event of Default has not occurred, subject to annual appropriation of funds, the City shall make payments to Developer as follows (individually each an “Incentive Grant Payment” and collectively the “Incentive Grant Payments”)

(1) A one-time Phase One Incentive Grant Payment in the amount of the total amount of Roadway Impact Fees imposed by the City and paid by the Developer for Phase One Buildings, shall be paid by the City to the Developer within thirty (30) days of receipt by City of a valid and complete Payment Request from Developer in compliance with this Agreement; and

(2) The Phase Two Incentive Grant Payments, shall be paid on a Building-by-Building basis, each in the amount with respect to each Phase Two Building, equal to the total amount of Roadway Impact Fees imposed by the City and paid by the Developer for each such Building, shall be paid by the City to the Developer within thirty (30) days of receipt by City of a valid and complete Payment Request for such Building from Developer in compliance with this Agreement. . However, in no event shall the cumulative total of Phase One Incentive Grant Payments and Phase Two Incentive Grant Payments under this Agreement, exceed a cumulative total amount of Three Million Seven Hundred Thousand and 00/100 Dollars (\$3,700,000), regardless of the total amount of Roadway Impact Fees imposed by the City and paid by the Developer for the Project.

#### **SECTION 8. CESSATION OF PAYMENT.**

If City has made any commitment to make any financial assistance to the Developer, whether under this Agreement or under any other agreement, then the City shall have no obligation to disburse any financial assistance under this Agreement if: (i) the Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

#### **SECTION 9. EVENTS OF DEFAULT.**

Each of the following shall constitute an “Event of Default” under this Agreement:

- (a) **General Event of Default.** Failure of Developer or City to comply with or to perform any term, obligation, covenant or condition contained in this Agreement, or failure of Developer to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and City.
- (b) **False Statements.** A determination by the City that any warranty representation, or statement made or furnished to the City by or on behalf of Developer under this Agreement is false or misleading in any material respect, either now or at the time made.
- (c) **Insolvency.** Developer’s insolvency, appointment of receiver for any part of Developer’s property, any assignment for the benefit of creditors of Developer, or the commencement

of any proceeding under any bankruptcy or insolvency laws by or against Developer.

- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from City, Kaufman County Central Appraisal District, or Dallas Central Appraisal District, as applicable.
- (e) **Developer Fee Payments.** Developer does not timely pay any City all impact fees, permit fees, development fees, review fees and inspection fees, including, without limitation, all Roadway Impact Fees in connection with the Property and for the FM2932 Project.
- (f) **Developer Contract Compliance.** Developer or City has breached a material provision of this Agreement beyond the notice and cure periods set forth herein.
- (g) **Total Minimum Square Footage.** Developer does not Complete Construction of Buildings totaling a minimum of 3,000,000 square feet on or before **December 31, 2028.**
- (h) **Capital Investment Minimum.** Developer does not provide sufficient proof to City of Qualified Expenditures totaling a minimum of \$200 million on or before **December 31, 2028.**

## **SECTION 10. EFFECT OF AN EVENT OF DEFAULT.**

In the Event of Default under Section 9 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured, the non-defaulting party shall have the right to terminate this Agreement or maintain a cause of action for damages caused by the event(s) of default.

City Remedies. In the event of a Developer default that has continued uncured beyond any applicable grace or cure period, the City shall have no obligation to pay any future Incentive Grant Payment to the Developer and the City shall have the right as its sole remedies to: (i) recapture the Incentive Grant Payments paid by the City to the Developer as more fully set forth herein; and (ii) terminate this Agreement by written notice to the Developer in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement. Notwithstanding anything to the contrary contained herein, in no event will the City 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. In the event of a Developer default, Developer shall immediately pay to the City, at the City's address set forth in this Agreement, the amount equal to the greater of: (i) twenty-five percent of the Incentive Grants previously paid by the City to Developer or (ii) the last Incentive Grant previously paid by the City to the Developer under the terms of this Agreement plus interest at the rate equal to the lesser of: (a) the Maximum

Lawful Rate; or (b) three percent (3%) per annum, such interest rate to be calculated on each Incentive Grant being recaptured from the date such Incentive Grant was paid by the City until the date repaid by the Developer to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. The remedies provided in this section are in addition to any other rights and remedies available to the City under this Agreement and applicable law.

Developer Remedies. Upon the occurrence of a City default that has continued uncured beyond any applicable grace or cure period, Developer shall have the right as its sole remedies to (a) terminate this Agreement by written notice to the City in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement, and (b) recover from the City the amount of any payments then earned, owed and unpaid by the City as damages in accordance with the following provisions. The City and Developer 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 or otherwise to recover damages:

1. the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount not to exceed that of the Incentive Grants provided in Section 7 of this Agreement earned by the Developer, owed and unpaid by City;
2. any incentive payment past due and not paid following the required notice and cure period shall accrue interest at the lesser of: (i) the Maximum Lawful Rate; or (ii) three percent (3%) per annum beginning the day after expiration of the cure period until paid, and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate; and
3. the recovery of damages against the City shall not include attorneys' fees, court costs, or consequential, punitive, exemplary, or speculative damages including, but not limited to, lost profits.

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

## **SECTION 11. DEVELOPER'S AUTHORITY.**

By execution hereof, the Developer warrants and represents that they have the requisite authority to execute this Agreement and the related documents and that the representations made herein, and in the related documents, are true and accurate in all respects.

## SECTION 12. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** No alteration of or amendment to this Agreement shall be effective unless in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Kaufman County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Kaufman County, Texas.
- (c) **Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, except as described below, notwithstanding anything contained herein to the contrary, this Agreement may not be assigned or transferred without the express written consent of the other party. No assignment of this Agreement shall contain any terms in contravention of any provisions of this Agreement. No assignment of this Agreement shall be effective unless: (i) the assignment is in writing signed by the assignor and the assignee; (ii) the assignee assumes the assignor's obligation to timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations of the assignor under the terms of this Agreement; (iii) a true and correct copy of such assignment has been provided to the City; and (iv) the City has approved such assignment in writing. Every assignee shall be subject to and bound by all the provisions, 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 attempted assignment in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement by Developer and in the event Developer attempts to assign this Agreement in violation of this section, the City shall have the right to terminate this Agreement with Developer for cause by written notice to Developer. Notwithstanding the foregoing, subject to written consent by the City not to be unreasonably withheld, Developer may assign (i) its rights and obligations pursuant to this Agreement to any Affiliate of Developer, provided that Developer or its Affiliate remains a party to this Agreement.
- (d) **Authority.** The Developer represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Developer represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Developer has the authority to sign this Agreement on behalf of the Developer.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

- (f) **City Council Authorization.** This Agreement was authorized by resolution of the City Council approved at a duly noticed City Council meeting
- (g) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (h) **Development Standards.** The Parties acknowledge that effective September 1, 2019, the Legislature of the State of Texas enacted HB 2439, codified at V.T.C.A., Government Code, Title 10, Subtitle Z “Miscellaneous Provisions Prohibiting Certain Government Actions”, Chapter 3000 “Governmental Action Affecting Residential and Commercial Construction, regarding the regulation by municipalities of building products, materials, and aesthetic methods for residential and commercial buildings (the “Act”). Specifically, §3000.002 of the Act prohibits cities from adopting or enforcing a rule, charter provision, ordinance, order, building code or other regulation that prohibits or limits the use or installation of certain building products or materials or that establishes certain standards for building products, materials or aesthetic methods. The Developer acknowledges that, notwithstanding the Act, in consideration of the agreement of the City to pay the Economic Development Incentives to the Developer under the terms and subject to the conditions set forth in this Agreement, the Developer is contractually agreeing: (i) to construct the façade and elevations of all of the Buildings to conform substantially to the renderings of the Buildings on the Exterior Finish Board; (ii) to construct the Buildings in compliance with the Exterior Finish Board and the Façade/Elevation Plans including, without limitation, the Developer agrees: (a) to use and install the paint colors, building products and materials as set forth in the Exterior Finish Board and Buildings, Façade/Elevation Plan; and (b) to comply with the elevations, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods as set forth in the Exterior Finish Board and Façade/Elevation Plan. The Parties acknowledge that the provisions of this Section 12(h) is material to the City’s agreement to grant the Economic Development Incentives and is a bargained for consideration between the Parties.
- (i) **Entire Agreement.** This written agreement represents the entire and final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.
- (j) **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.
- (k) **No Acceleration.** All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.

(l) **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.

(m) **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.

(n) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by a nationally recognized overnight delivery service with receipt requested, and addressed as follows:

if to the City: City of Mesquite, Texas  
1515 N. Galloway  
Mesquite, Texas 75149  
Attn: City Manager  
Phone Number: (972) 216-6293

And copy to: City of Mesquite, Texas  
1515 N. Galloway  
Mesquite, Texas 75149  
Attn: City Attorney  
Phone Number: (972) 216-6272

if to the Developer: SRPF C/Trinity Pointe Holdings, L.P.  
2001 Ross Avenue, Suite 400  
Dallas, Texas 75201  
Attn: J. Cannon Green, Vice President  
Phone Number: (214) 267-0400

(o) **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.

(p) **Performance.** Developer covenants and agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City and Developer.

(q) **Remedies Cumulative.** The Parties hereby agree that each right and remedy of the Parties provided for in this Agreement shall be cumulative.

- (r) **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 Developer 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.
- (s) **Sell or Assignment of Property or Building(s).** Nothing herein shall be construed in a manner which prohibits the Developer from selling or assigning ownership of the Property or any Building(s), to any individual or entity, provided that Developer remains a party to this Agreement.
- (t) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (u) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign or governmental immunity by virtue of its execution hereof.
- (v) **Time is of the Essence.** Time is of the essence in the performance of this Agreement and each party hereby waives any rule of law or equity which would otherwise govern time of performance.
- (w) **Usury Savings Clause.** The Developer and City intend to conform strictly to all applicable usury laws. All agreements of the City and the Developer are hereby limited by the provisions of this Section 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 City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Section 12(w) 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 Developer 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.

(x) **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 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.

(y) **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES. THE DEVELOPER AND THE CITY 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 SUBSECTION SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

(z) **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer 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.

(aa) **Undocumented Workers Provision.** The Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay to the City the amount of any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120<sup>th</sup> day after the date the City notifies Developer of the violation.

(bb) **Non-Boycott of Israel Provision.** In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2271 of the Texas

Government Code does not apply to a (1) a Developer that is a sole proprietorship; (2) a Developer that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Developer is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Developer verifies that Developer does not boycott Israel and will not boycott Israel during the Term of this Agreement.


- (cc) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- (dd) **Firearm Entity or Trade Association.** Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the governmental entity, the Developer represents that: (i) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) the Developer will not discriminate during the term of the contract against a firearm entity or firearm trade association.
- (ee) **Energy Boycott.** Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the Developer employs at least ten (10) or more full-time employees and this Agreement has value of at least \$100,000 or more that is paid wholly or partly from public funds of the governmental entity, the Developer represents that: (i) the Developer does not boycott energy companies; and (ii) will not boycott energy companies during the term of the Agreement.
- (ff) **Report Agreement to Comptroller's Office.** City covenants and agrees to report this Agreement to the State Comptroller's office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87<sup>th</sup> Tex. Reg. Session (2021) (effective September 1, 2021).
- (gg) **Force Majeure.** Notwithstanding any provision in this Agreement to the contrary, each time deadline in this Agreement is subject to Force Majeure.
- (hh) **Liability Limitation.** Except for the City Remedies provided in Section 10 of this Agreement, the Developer shall not have any liability to the City for any decision by the Developer to elect not to: (1) Commence Construction of the Phase One Buildings; (2) Commence Construction of any Building in the Phase Two Buildings; or (3) Commence Construction of the FM2932 Project.

***[The Remainder of this Page Intentionally Left Blank]***

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

**CITY:**

**CITY OF MESQUITE, TEXAS,**  
A Texas home-rule municipality

  
\_\_\_\_\_  
Cliff Keheley, City Manager

**ATTEST:**

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

**APPROVED AS TO LEGAL FORM:**

David L. Paschall, City Attorney

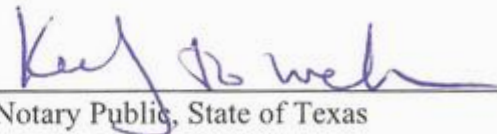
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Senior Assistant City Attorney

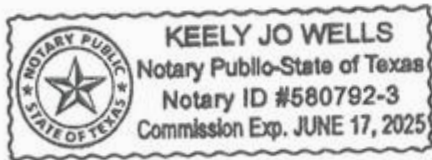
STATE OF TEXAS

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COUNTY OF DALLAS

This instrument was acknowledged before me on the 25 day of April, 2022, by Cliff Keheley, City Manager of the City of Mesquite, Texas, a Texas home-rule municipality, on behalf of said municipality.

  
\_\_\_\_\_  
Notary Public, State of Texas



**DEVELOPER:**

**SRPF C/TRINITY POINTE PHASE I, L.P., a  
Texas limited partnership**

By: SRPF C/Trinity Pointe Phase I GP, L.L.C., a  
Texas limited liability company, its general  
partner

By: [Signature]  
Name: J. Cannon Green  
Title: Vice President  
Date Signed: 4/11/2022

STATE OF TEXAS §  
  §  
COUNTY OF Dallas §

This instrument was acknowledged before me on the 11 day of April, 2022, by J. Cannon Green, Vice President as [VP] of SRPF C/Trinity Pointe Phase I GP, L.L.C., as the general partner of SRPF C/TRINITY POINTE PHASE I, L.P., a Texas limited partnership, on behalf of said partnership.

[Signature]  
Notary Public, State of Texas



*Exhibit A*  
[Legal Description of the Property]

BEING, all of that 283.647 acre (12,355,673 square foot) tract of land situated in the John Moore Survey, Abstract Number 309, in the City of Mesquite, Kaufman County, Texas; being all of that called 283.647 acre tract of land described in Special Warranty Deed with Vendor's Lien to WJ Trinity Pointe LP as recorded in Volume 6607, Page 333 of the Official Public Records of Kaufman County, Texas; said 283.647 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING, at a 1/2-inch iron rod with "DAA" cap found at the most northerly northwest corner of that tract of land described as Tract 4 in Special Warranty Deed to HW Heartland, L.P. as recorded in Volume 3119, Page 158 of the Official Public Records of Kaufman County, Texas; said point being an angle point in the southeast line of that called 41.500 acre tract of land described in Special Warranty Deed to D.R. Horton - Texas, Ltd. as recorded in Volume 5763, Page 43 of the Official Public Records of Kaufman County, Texas; said point being the west corner of said 283.647 acre tract;

THENCE, North 44° 46' 47" East, at a distance of 668.48 feet passing a 5/8-inch iron rod with "PETITT RPLS 4087" cap found at the east corner of said 41.500 acre tract; said point being the south corner of that called 10.312 acre tract of land described in Special Warranty Deed to D.R. Horton - Texas, Ltd. as recorded in Volume 5853, Page 97 of the Official Public Records of Kaufman County, Texas; at distance of 1,898.52 feet passing a 3/4-inch iron pipe found at the east corner of said 10.312 acre tract; said point being an ell corner in the northwest line of that tract of land described as Exhibit A, Tract 2 in Partnership Distribution and Partition Deed to Carolyn Crockett West, et al as recorded in Volume 1636, Page 43 of the Official Public Records of Kaufman County, Texas; continuing in all a total distance of 3,003.41 feet to a point at the most westerly northwest corner of said 283.647 acre tract;

THENCE, South 45° 13' 13" East, with a northeast line of said 283.647 acre tract, a distance of 1,234.20 feet to a point for corner;

THENCE, North 08° 54' 22" East, with a west line of said 283.647 acre tract, a distance of 862.93 feet to a 5/8-inch iron rod with "BGE" cap found for corner in a northeast line of said 283.647 acre tract; said point being in the southwest line of Farm-to-Market Highway No. 2932 (a 100-foot wide right-of-way);

THENCE, South 46° 06' 45" East, with a northeast line of said 283.647 acre tract and the southwest line of said Farm-to-Market Highway No. 2932, a distance of 2,781.07 feet to a point at the east corner of said 283.647 acre tract;

THENCE, South 43° 55' 46" West, departing the southwest line of said Farm-to-Market Highway No. 2932, with the southeast line of said 283.647 acre tract and partially along Griffin Lane (a generally recognized public road, no record of dedication found), a distance of 3,681.29 feet to a point at the south corner of said 283.647 acre tract;

THENCE, North 46° 15' 59" West, at a distance of 44.35 feet passing a 1/2-inch iron rod with "DAA" cap found at the east corner of said Tract 4; continuing with the northeast line of said Tract 4 and the southwest line of said 283.647 acre tract in all a total distance of 3,564.47 feet to the POINT OF BEGINNING and containing an area of 283.647 acres or 12,355,673 square feet of land, more or less.

# Exhibit B [Depiction of Buildings]

**BCE**  
BCE, INC.  
2970 S. UNIVERSITY BLVD., SUITE 200  
DALLAS, TEXAS 75248  
PHONE: 972.841.1000  
FAX: 972.841.1001  
WWW.BCEINC.COM

**TRINITY POINT INDUSTRIAL PARK**  
SITING PLAN SUBMITTAL  
BEING 283.647 ACRES  
CITY OF MESQUITE, KAUFMAN COUNTY, TEXAS

**DEVELOPER**  
SRPF C/TRINITY POINT HOLDINGS, L.P.  
12000 W. CROSS TIMBER DRIVE  
DALLAS, TEXAS 75248  
PHONE: 972.841.1000  
FAX: 972.841.1001  
WWW.BCEINC.COM

**LEGEND**

Phase 1 Warehouse	[Red Shaded Area]
Phase 2 Warehouse	[Blue Shaded Area]
Phase 3 Warehouse	[Green Shaded Area]
Phase 4 Warehouse	[Yellow Shaded Area]
Phase 5 Warehouse	[Purple Shaded Area]
Phase 6 Warehouse	[Orange Shaded Area]
Phase 7 Warehouse	[Brown Shaded Area]
Phase 8 Warehouse	[Pink Shaded Area]
Phase 9 Warehouse	[Light Blue Shaded Area]
Phase 10 Warehouse	[Light Green Shaded Area]

PHASE 1 - WAREHOUSE (1,008,300 SF)		PHASE 2 - WAREHOUSE (2,334,500 SF)		PHASE 3 - WAREHOUSE (837,200 SF)		PHASE 4 - WAREHOUSE (541,500 SF)		PHASE 5 - WAREHOUSE (1,008,300 SF)		PHASE 6 - WAREHOUSE (1,008,300 SF)		PHASE 7 - WAREHOUSE (1,008,300 SF)		PHASE 8 - WAREHOUSE (1,008,300 SF)		PHASE 9 - WAREHOUSE (1,008,300 SF)		PHASE 10 - WAREHOUSE (1,008,300 SF)			
NO.	ACRES	NO.	ACRES	NO.	ACRES	NO.	ACRES	NO.	ACRES	NO.	ACRES	NO.	ACRES	NO.	ACRES	NO.	ACRES	NO.	ACRES		
1	18.40	1	18.40	1	18.40	1	18.40	1	18.40	1	18.40	1	18.40	1	18.40	1	18.40	1	18.40	1	18.40

**CITY OF MESQUITE SITE PLAN NOTE:**

1. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT AND THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

2. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE ZONING ORDINANCES AND THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

3. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

4. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

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8. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

9. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

10. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

11. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

12. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

13. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

14. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

15. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

16. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

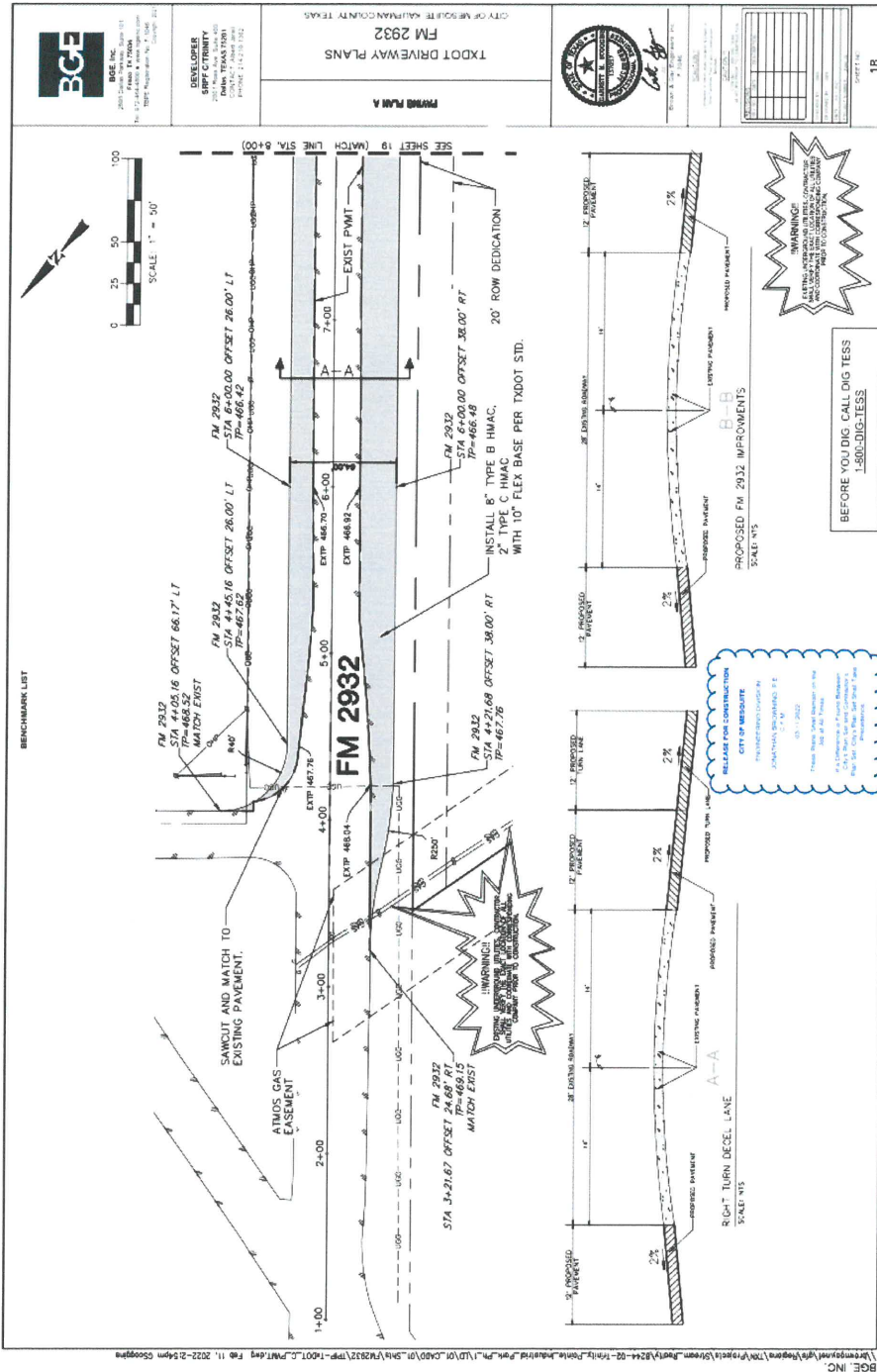
17. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

18. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

19. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

20. THE PROPOSED DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE CITY OF MESQUITE SUBDIVISION MAP ACT RULES AND REGULATIONS.

**Exhibit C**  
[Depiction of FM2932 Project]



**BGE INC.**  
2001 South Loop West, Suite 101  
Houston, TX 77058  
Tel: 713.241.1000  
www.bge.com  
© 2022 BGE Inc. All Rights Reserved.

**DEVELOPER**  
SRPF C/Trinity  
2001 South Loop West, Suite 101  
Houston, TX 77058  
Tel: 713.241.1000  
www.srpf.com

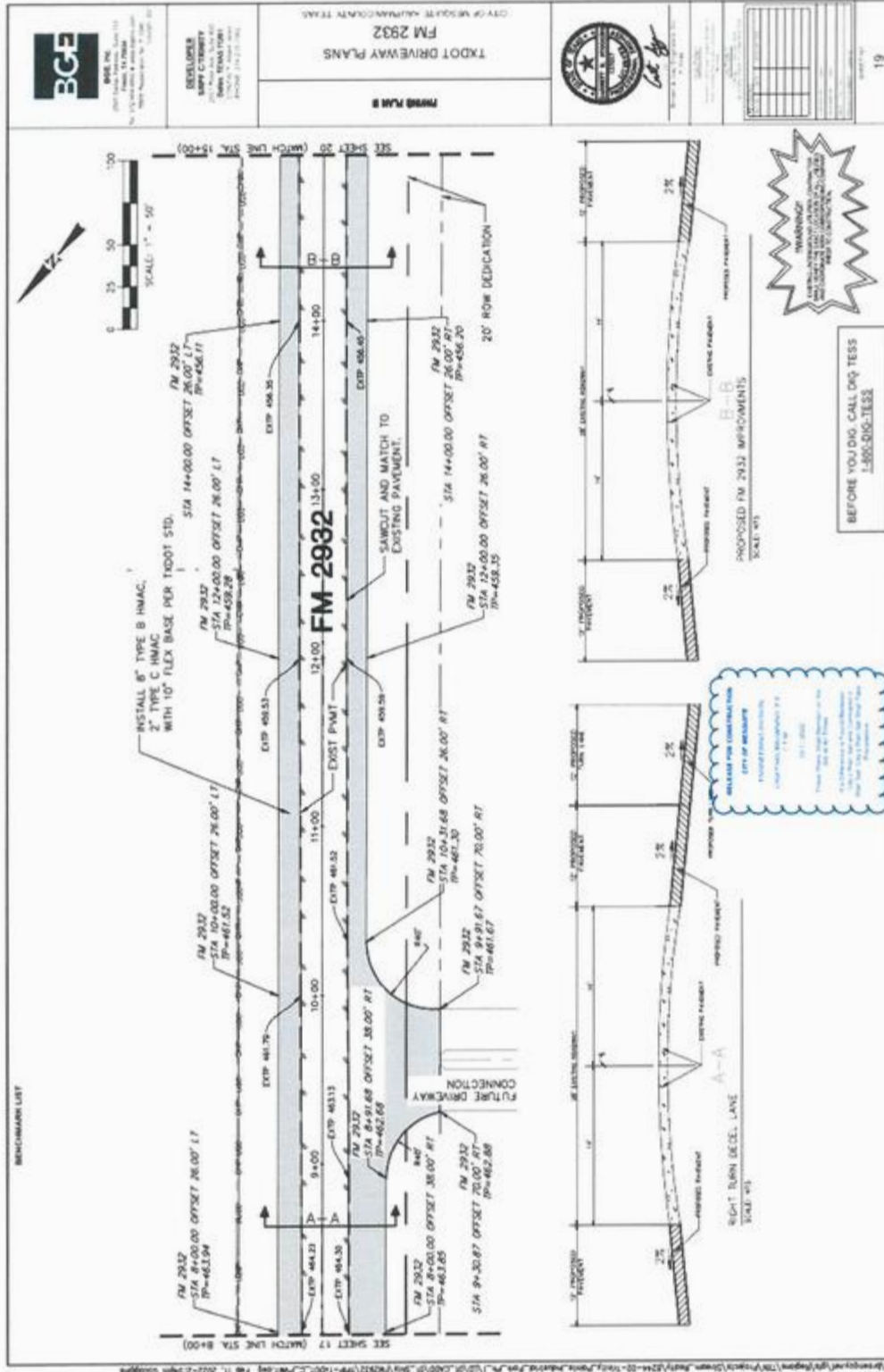
**FM 2932**  
**TxDOT DRIVEWAY PLANS**  
CITY OF MESQUITE, KAUFMAN COUNTY, TEXAS



DATE	DESCRIPTION

18

BGE, INC. \\bge\proj\17\Projects\Stream\_Plan\2932\24-02-TxDOT\Drawings\2932\1701\0400\01\_SHA\FM2932\1701-1401\_C.MPT.dwg File 11, 2022-12-05am 5:50pm



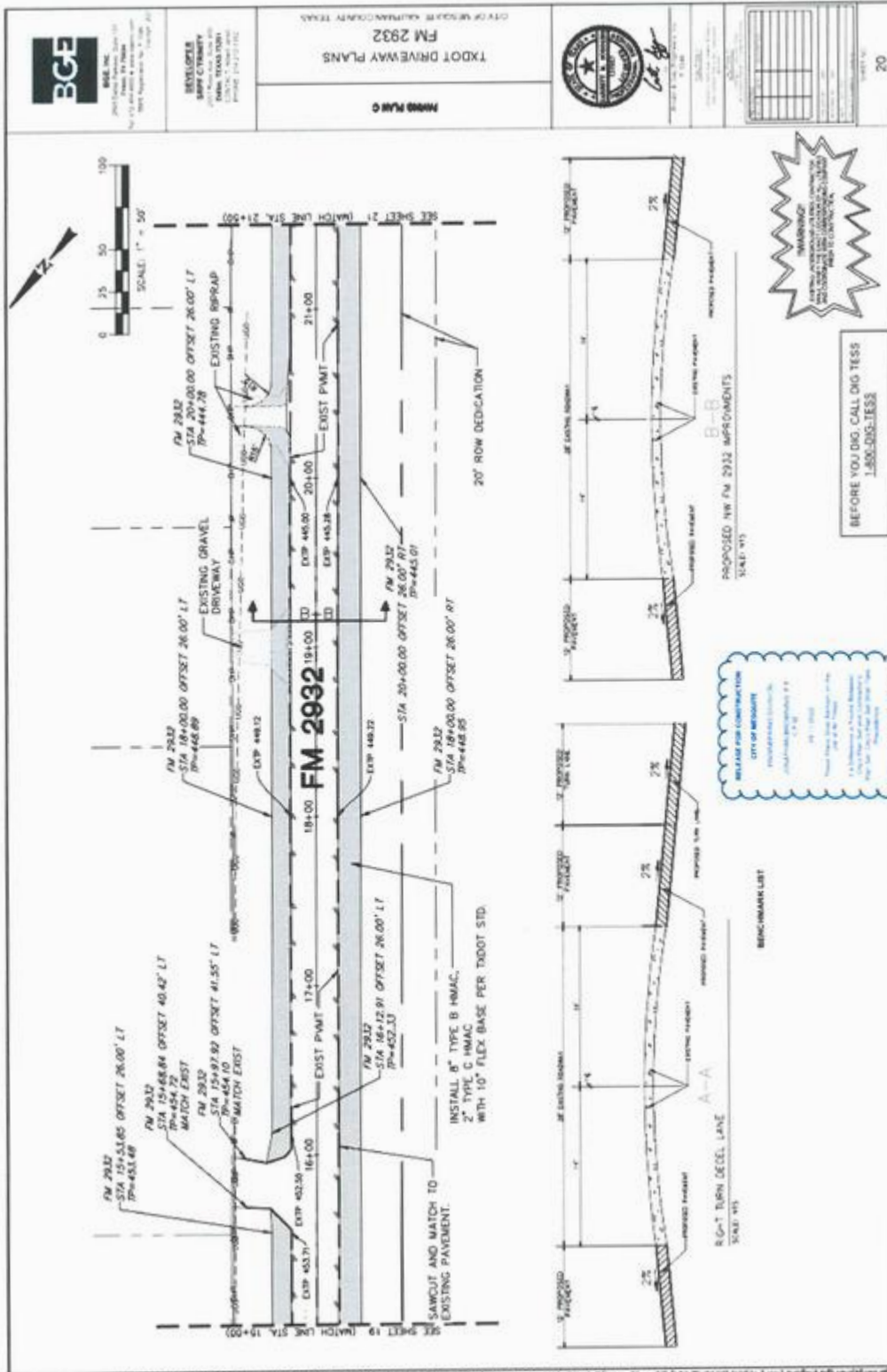
**DESIGNER**  
SRPF C/TRINITY  
2010 Park Ave, Suite 400  
Trinity, TX 76240  
PHONE: 817.333.1155  
FAX: 817.333.1156

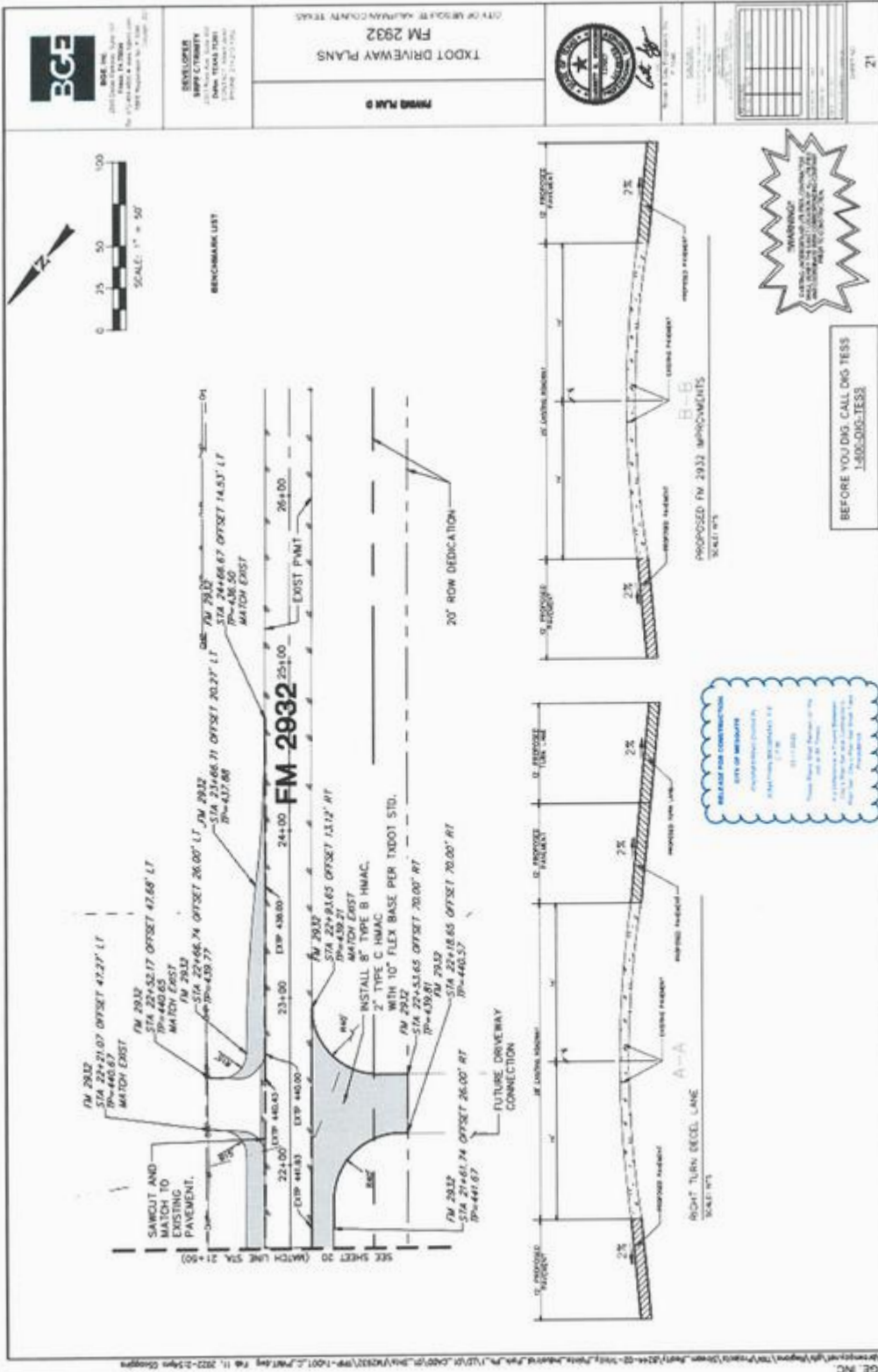
**FM 2932**  
TxDOT DRIVEWAY PLANS  
PHASE PLAN B  
CITY OF MESQUITE ALUMINUM CONTRACT TEAM



NO.	DATE	DESCRIPTION







**Exhibit D**  
[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:**

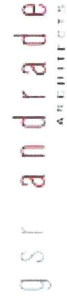
- \* Evidence of Pollution Liability Coverage.

**Exhibit E**  
[Exterior Finish Board]

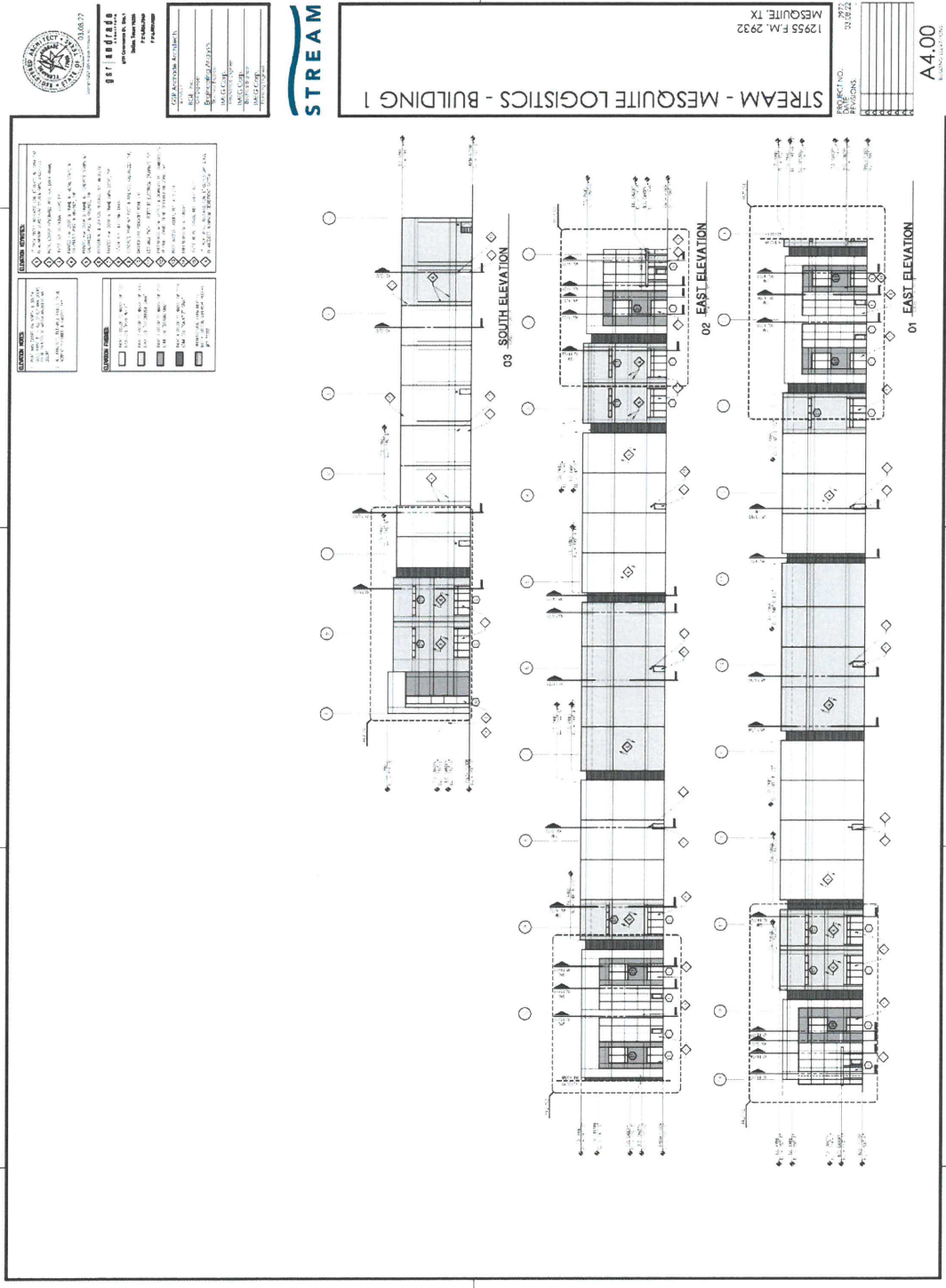


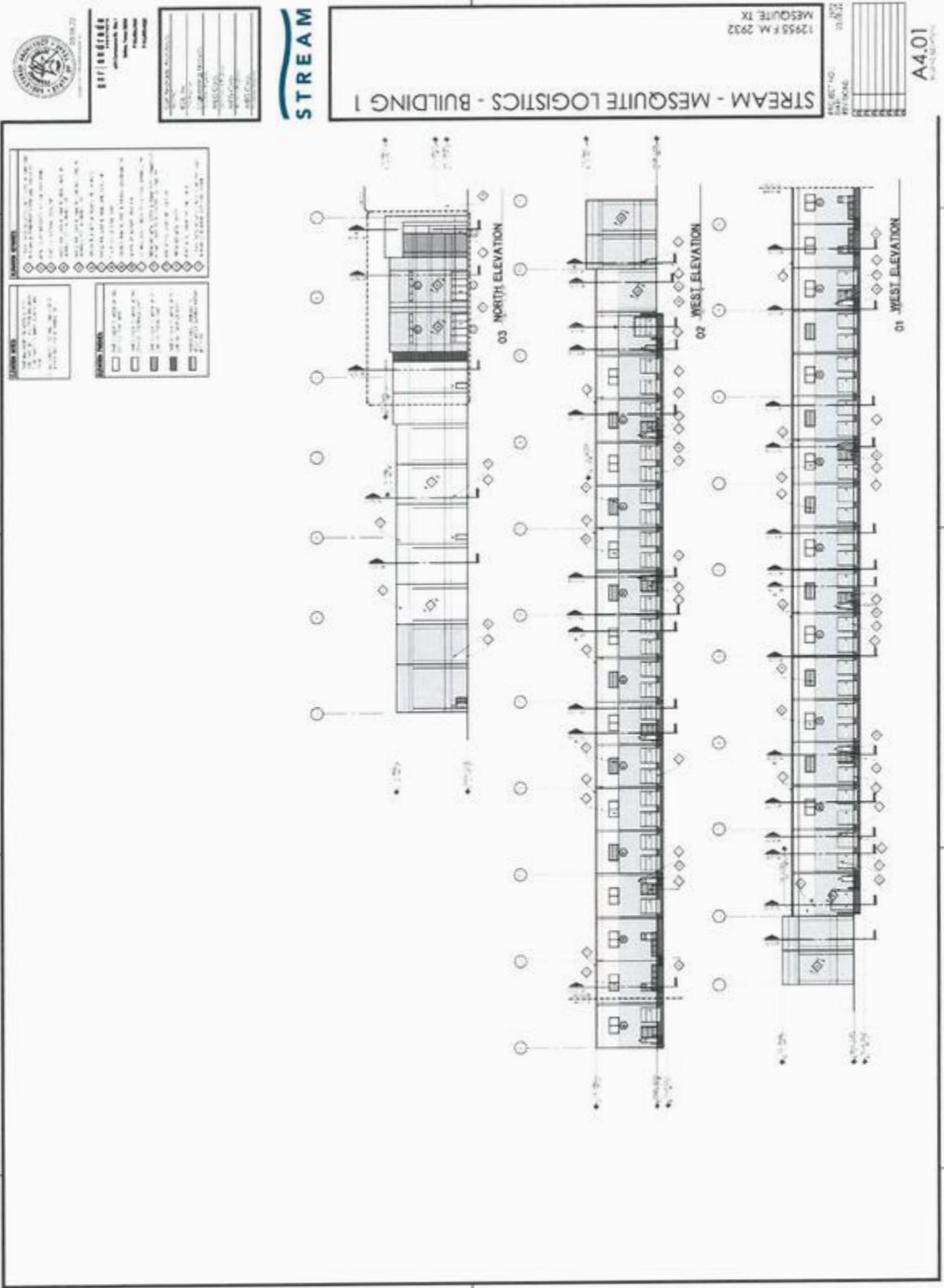
**DIGITAL FINISHES LEGEND:**

1. FRAMES AS ALTERNATE: BLACK ANODIZED AL-2
2. VITRO - SOLARGRAY GL-1
3. PAINT 1- FIELD COLOR TO MATCH SW 7005 (255-C1)
4. PURE WHITE
5. PAINT 2- ACCENT COLOR TO MATCH SW 7641 (283-C2)
6. COLONADE GRAY
7. PAINT 3- ACCENT COLOR TO MATCH SW 7017 (244-C3)
8. DORIAN GRAY.
9. PAINT 4- ACCENT COLOR TO MATCH SW 7019 (244-C6)
10. GAUNTLET GRAY



**Exhibit F**  
[Façade/Elevation Plans]







081861868  
 Travis A. Smith  
 State of Texas  
 Professional Engineer  
 03.08.27

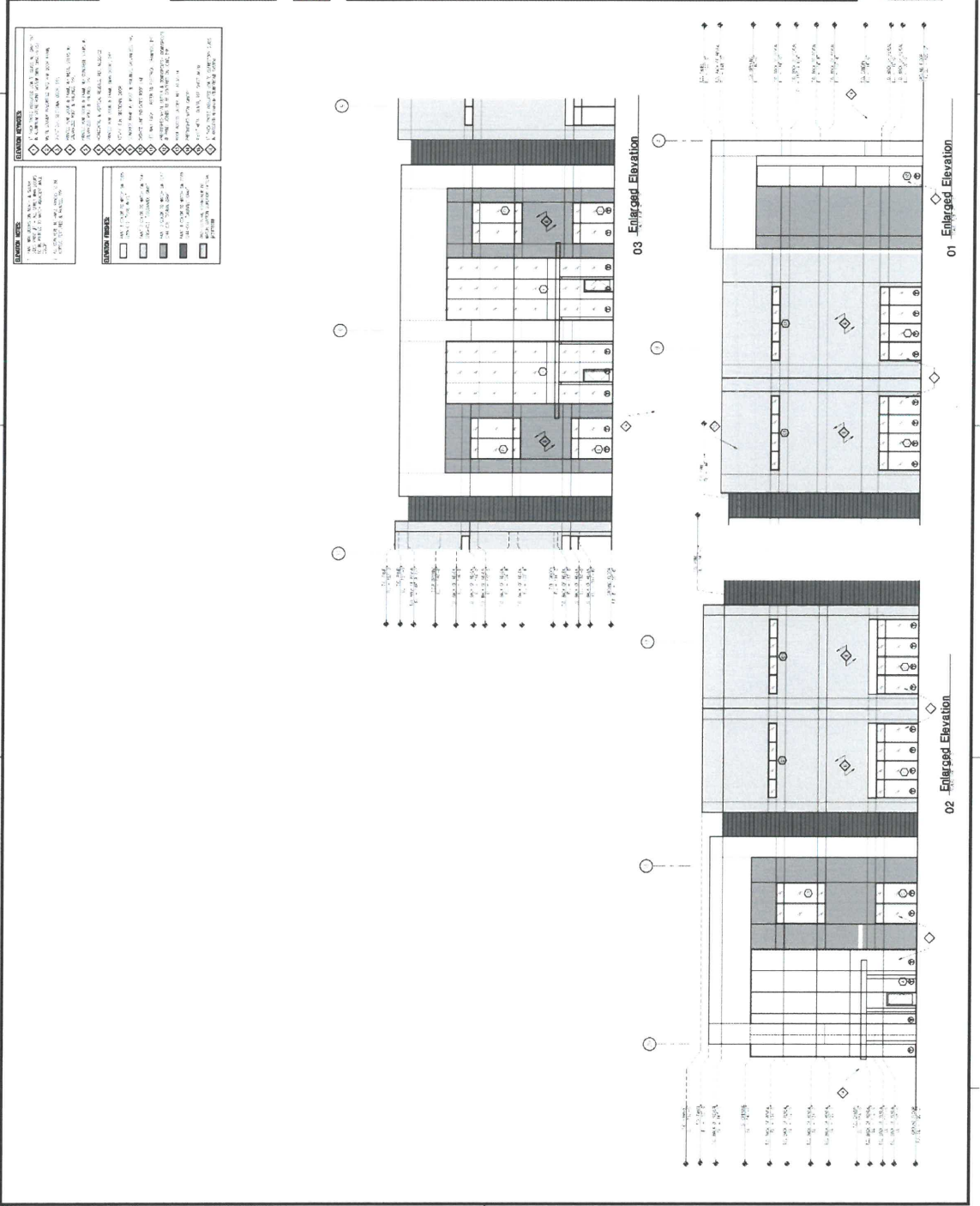
081861868  
 Travis A. Smith  
 State of Texas  
 Professional Engineer  
 03.08.27



STREAM - MESQUITE LOGISTICS - BUILDING 1  
 12955 F.M. 2932  
 MESQUITE, TX

PROJECT NO: 081861868  
 DATE: 03.08.27

A4.21  
 2018.03.27.02.00





PROJECT NO. 2013-12  
 PROJECT NAME  
 DRAWING NO.  
 SHEET NO.

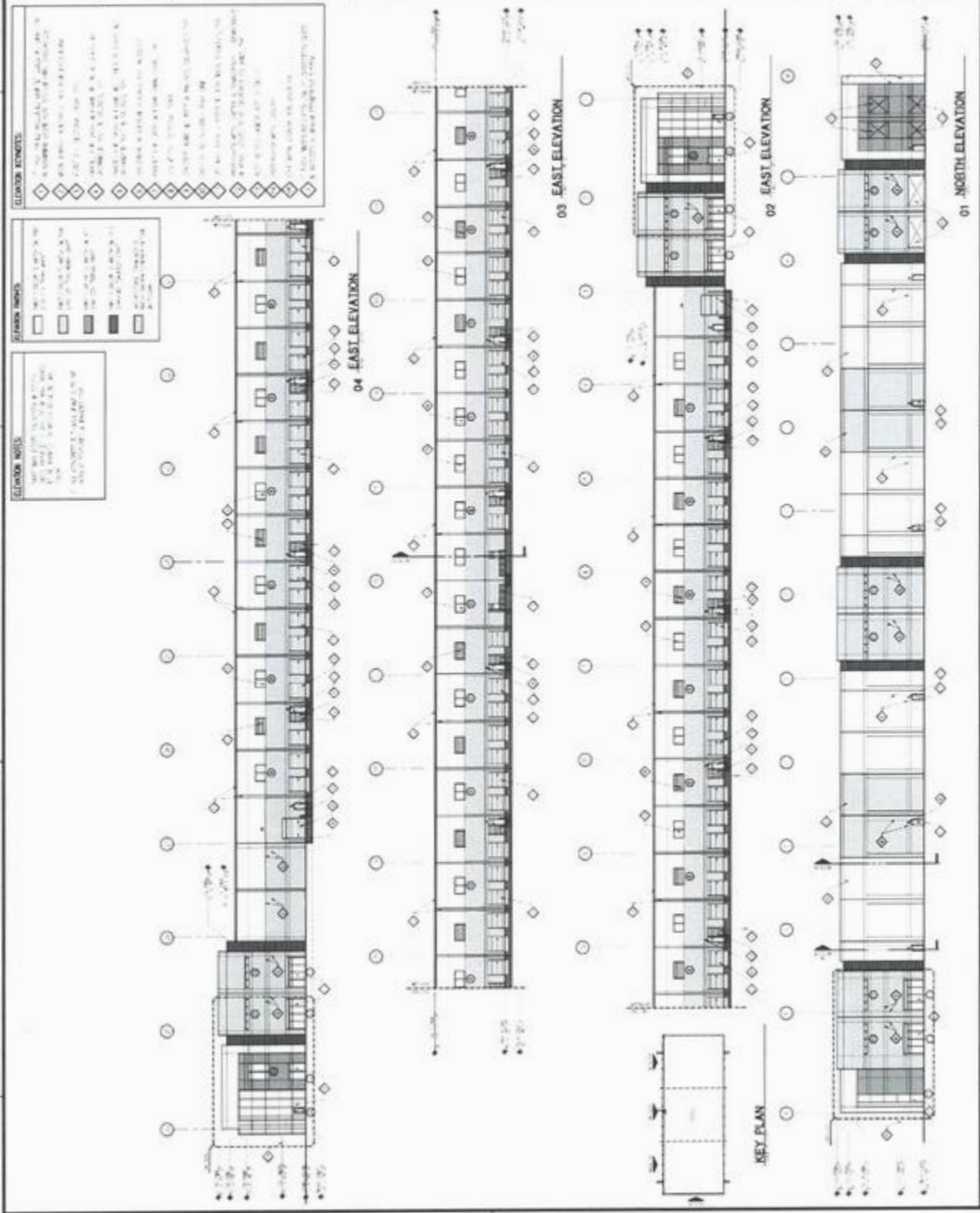
DATE	DESCRIPTION

**STREAM**  
 ARCHITECTS  
 13215 KAPLAN DRIVE  
 SUITE 100  
 DALLAS, TEXAS 75244  
 (214) 343-8800  
 www.streamarchitects.com

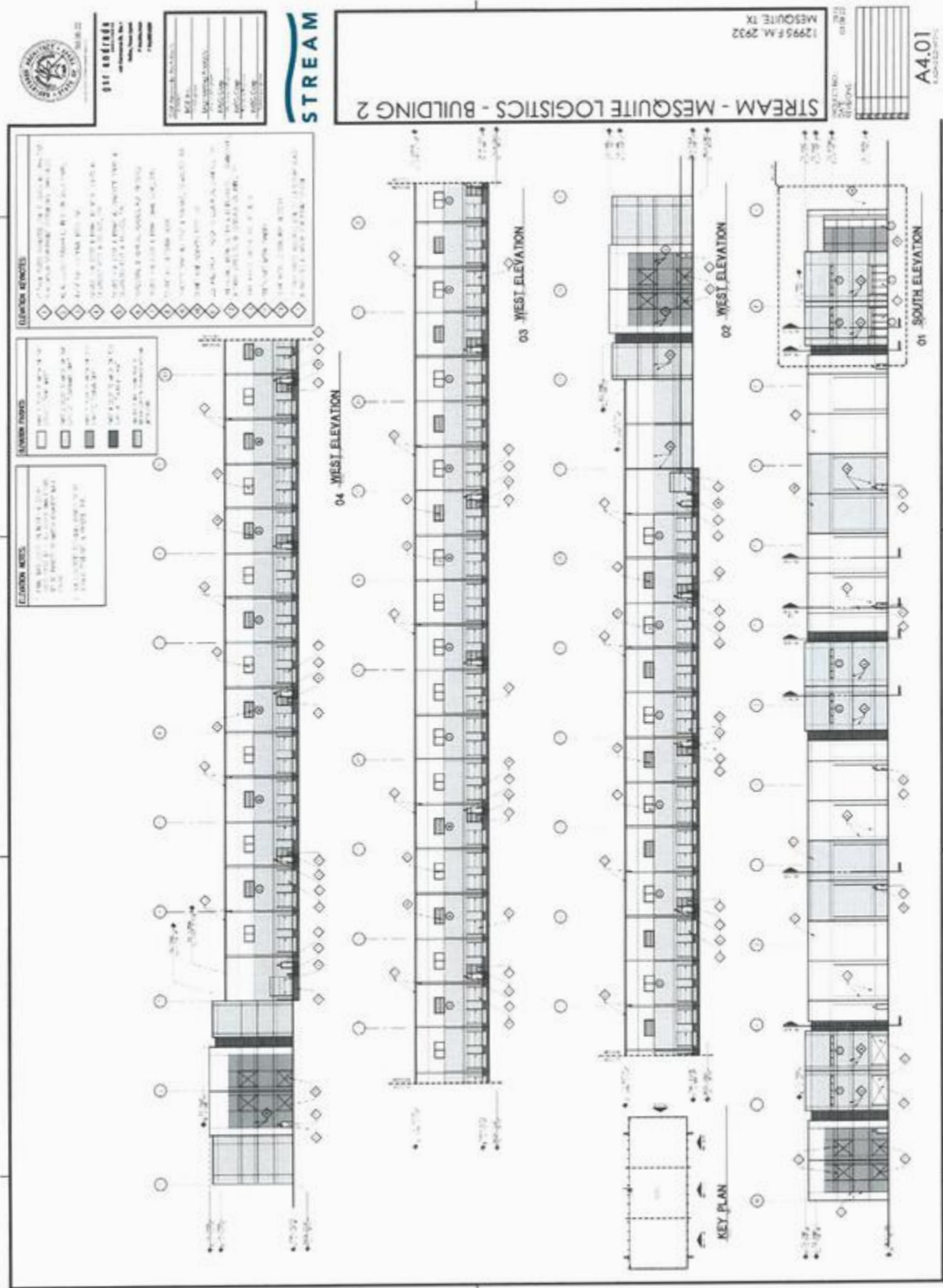
**STREAM - MESQUITE LOGISTICS - BUILDING 2**  
 12995 FM. 2932  
 MESQUITE, TX  
 PROJECT NO. 2013-12  
 DATE: 11/22/13

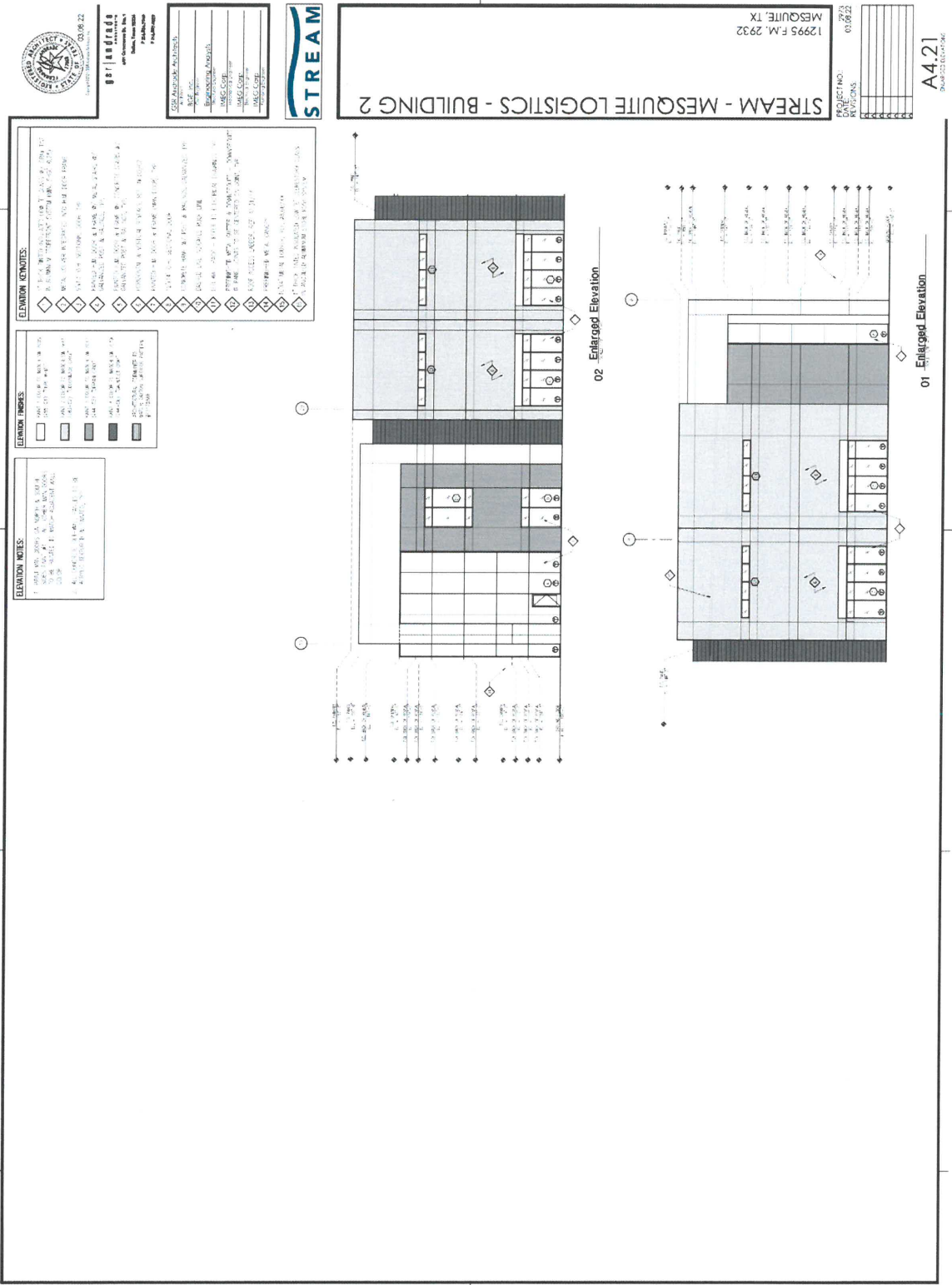
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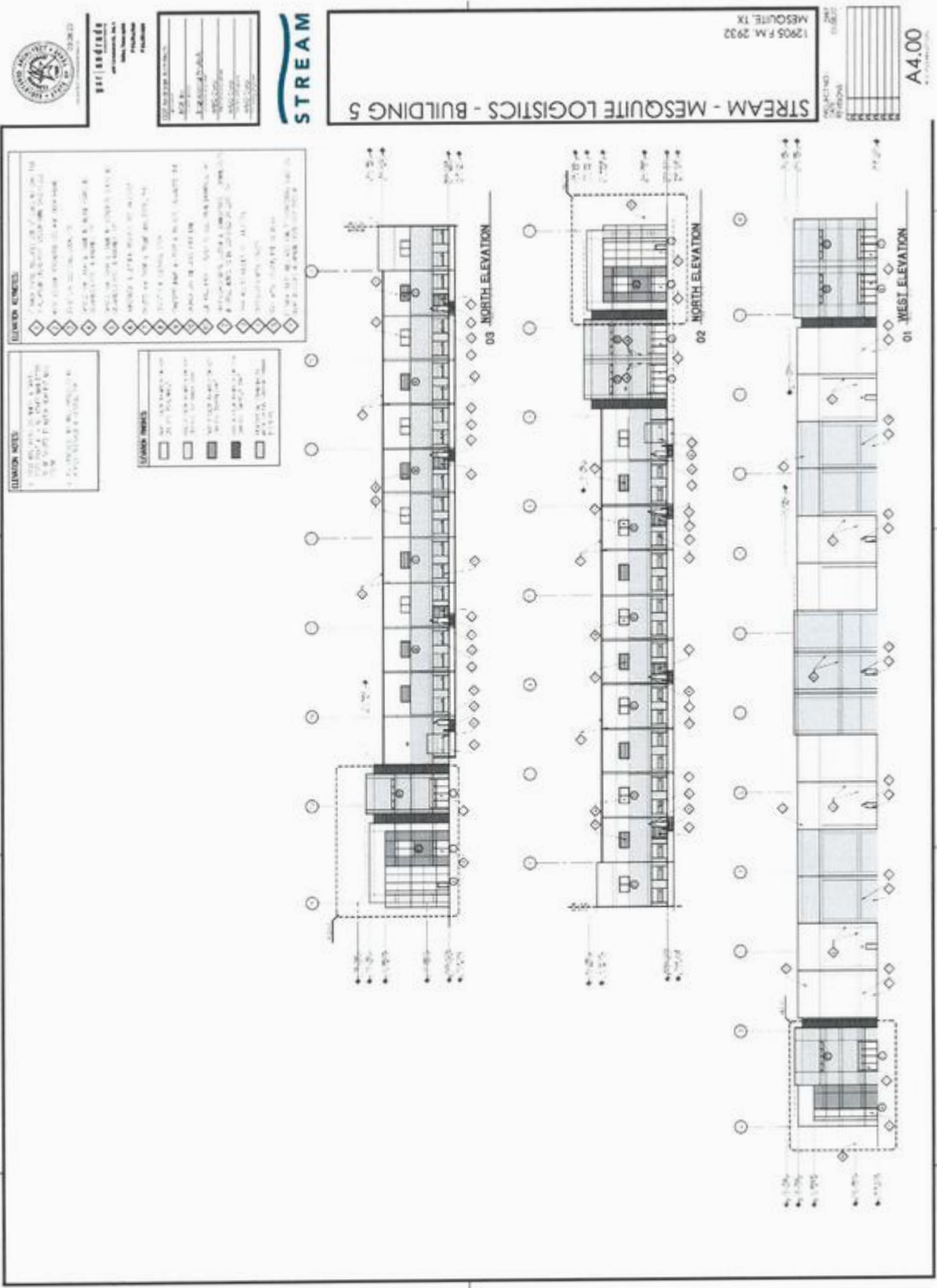
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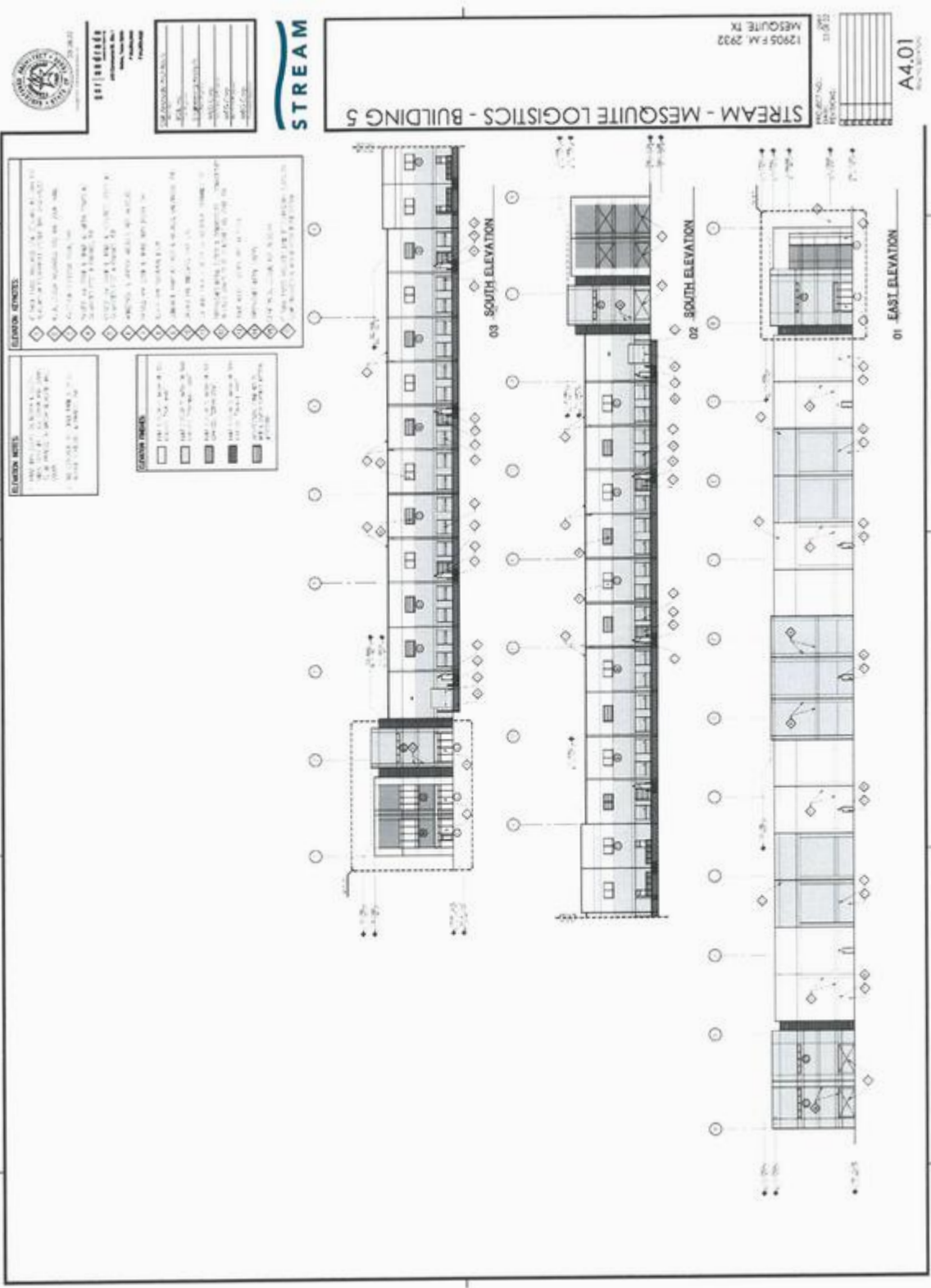












*Exhibit G*  
[Closeout and Acceptance Requirements]

**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 H*  
[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.**