

RESOLUTION NO. 17-2023

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 LCG2i MESQUITE LONG CREEK, LLC, FOR THE CONSTRUCTION AND DEVELOPMENT OF TWO COMMERCIAL BUILDINGS LOCATED AT 200 LONG CREEK ROAD AND 450 STATE HIGHWAY 352 IN THE CITY OF MESQUITE, DALLAS COUNTY, 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 LCG2i Mesquite Long Creek, LLC (the “**Developer**”), for the construction and development of two commercial buildings, 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 approximately 48.356 acres of real property, as more particularly described and/or depicted in Exhibit A to the Agreement, and located at 200 Long Creek Road and 450 State Highway 352 in the 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

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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 17th day of April 2023.

DocuSigned by:

Daniel Aleman Jr.

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Daniel Alemán, Jr.
Mayor

ATTEST:

DocuSigned by:

Sonja Land

C2518095973F46A...

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:

DocuSigned by:

David Paschall

666E18891208434...

David L. Paschall
City Attorney

EXHIBIT 1

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

**Between the City of Mesquite and
LCG2i Mesquite Long Creek, LLC**

CITY OF MESQUITE, TEXAS
AND
LCG2i MESQUITE LONG CREEK, LLC

CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT

This CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT (“Agreement”) is made and entered into by and between the CITY OF MESQUITE, TEXAS, a Texas home-rule municipality (“City”), and LCG2i MESQUITE LONG CREEK, LLC, a Texas limited liability company (“Developer”), for the purposes and considerations stated below:

WHEREAS, the Developer covenants and agrees to construct or cause to be constructed two (2) commercial buildings having a cumulative minimum of 400,000 square feet located on property at 200 Long Creek Road and 450 State Highway 352 in Mesquite, Dallas County, Texas, as more particularly described in *Exhibit A* of this Agreement incorporated herein by reference (such property hereinafter referred to as the “Property”); and the two (2) commercial buildings (hereinafter referred to as the “Buildings”); and

WHEREAS, the Developer covenants and agrees to reconstruct Long Creek Road to the standards identified in the Mesquite Engineering Design Manual and Mesquite Thoroughfare Plan, as amended, from State Highway 352 to and including the eastern most drive approach to the Property as depicted in *Exhibit B* of this Agreement incorporated herein by reference; 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 and Buildings as provided 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 **September 30, 2025**, unless terminated sooner under the provisions hereof or extended due to Force Majeure. In the event this Agreement is not fully executed within sixty (60) days after approval by the City Council of the City of Mesquite, Texas, then this Agreement shall be null and void, and shall have no effect on either party. This Agreement may be terminated by the City if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement, or any part thereof, invalid, illegal or unenforceable.

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) **Buildings.** The term “Building” or “Buildings” means the buildings to be constructed on the Property and identified in *Exhibit C*, which is incorporated herein by reference.
- (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 IBC.
- (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 Application,” of the IBC.
- (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) **Certificate of Occupancy.** The words “Certificate of Occupancy” mean a final Shell Certificate of Occupancy for the Buildings issued by the City to the Developer after the construction of the Qualified Expenditures located on the Property as required by Section 4(b) of this Agreement, in compliance with the City’s building, health, safety, fire and other codes.
- (h) **City.** The word “City” means the City of Mesquite, Texas, a Texas home-rule municipality and a party to this Agreement. For the purposes of this Agreement, City’s physical address is 1515 N. Galloway, Mesquite, Texas 75149.
- (i) **City Regulation(s).** The words “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 and/or Buildings, including but not limited to the Mesquite City Code of Ordinances and the City of Mesquite’s Engineering Design Manual.

- (j) **Commence Construction.** The words “Commence Construction” or “Commencement of Construction” shall mean with respect to the Buildings: (i) all 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 Buildings and improvements have been issued by the applicable governmental authorities; and (iii) actual vertical construction of the Buildings and improvements has commenced. The words “Commence Construction” or “Commencement of Construction” shall mean with respect to the Road Project that: (i) plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained to begin construction of the Road Project; (ii) necessary permits to begin construction of the Road Project improvements have been issued by the applicable governmental authorities; and (iii) actual horizontal construction of the Road Project improvements has commenced.
- (k) **Completion of Construction.** The words “Completion of Construction” or “Complete Construction” with respect to the Buildings means the Developer must obtain from the City a Certificate of Occupancy for each of the Buildings which shall be constructed as provided herein. The words “Completion of Construction” or “Complete Construction” with respect to the Road Project shall mean (i) actual construction of the Road Project is complete and (ii) the City and other applicable government agencies have inspected, approved, and accepted all of the Road Project improvements.
- (l) **Developer.** The word “Developer” means LCG2i Mesquite Long Creek, LLC, a Texas limited liability company and a party to this Agreement. For the purposes of this Agreement, the Developer’s physical address is 3500 Maple Avenue, Suite 1600, Dallas, TX, 75219.
- (m) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and Developer.
- (n) **Event of Bankruptcy or Insolvency.** The words “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.
- (o) **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.

- (p) **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 by reference.
- (q) **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.
- (r) **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 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.
- (s) **General Conditions Precedent.** The words “General Conditions Precedent” shall have the meaning described in Section 4 of this Agreement.
- (t) **IBC or International Building Code** means the International Building Code, 2018 Edition, a publication of the International Code Council, adopted by the City with local amendments 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 IBC as the official building code of the City.

- (u) **Incentive Grant.** The words “Incentive Grant” shall have the meaning described in Section 7 of this Agreement.
- (v) **Incentive Grant Payment.** The words “Incentive Grant Payment” shall mean the Incentive Grant Payment to be made under this Agreement as further described by Sections 4 and 7 of this Agreement.
- (w) **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).
- (x) **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 Buildings, exclusive of the (i) land value, (ii) land acquisition costs, (iii) the Road Project, and including such other information as may reasonably be requested by the City for verification.
- (y) **Property.** The word “Property” means the approximately 29.058 and 19.298-acre tracts of land in the Thomas Scott Survey, Abstract No. 1353, City of Mesquite, Dallas County, Texas, as more particularly described in *Exhibit A* of this Agreement, and having street addresses of 200 Long Creek Road and 300 E. Main Street, Mesquite, Texas 75149.
- (z) **Qualified Expenditures.** The words “Qualified Expenditures” for a particular Building mean those expenditures relating to such Building consisting of 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 and regulations, including the City’s zoning ordinance and landscape plan requirements. The term “Qualified Expenditures” does not include land acquisition costs or costs associated with the Road Project.
- (aa) **Road Project.** The term “Road Project” means the reconstruction of and improvements to Long Creek Road to the standards identified in the Mesquite Engineering Design Manual and Mesquite Thoroughfare Plan, as amended, from State Highway 352 to and including the eastern most drive approach to the Property as more specifically depicted in *Exhibit B*

of this Agreement.

- (bb) **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, 4756 and 4993 and Chapter 7.5 of the City’s Code of Ordinances as now and hereafter amended. “Roadway Impact Fees” do not include water and wastewater impact fees.
- (cc) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. CONDITIONS TO INCENTIVE GRANT PAYMENT

Developer (1) agrees to each of the following, and (2) agrees that the obligation of the City to pay the 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.** The Incentive Grant Payment is conditioned upon the compliance and satisfaction of the following (the “General Conditions Precedent”):
 - i. Developer Commences Construction of the Buildings by **May 1, 2024**;
 - ii. Developer Commences Construction of the Road Project by **November 1, 2024**;
 - iii. There is Completion of Construction of both Buildings by **June 30, 2025**;
 - iv. The Qualified Expenditures for the Buildings shall equal \$30,000,000.00 or more;
 - v. The minimum aggregate square footage of the Buildings shall equal 400,000 or more;
 - vi. The Buildings are constructed in accordance with the City’s Zoning Ordinance, including but not limited to Ordinance Nos. 4753 and 4962 approved by the City Council on January 6, 2020 and June 20, 2022, respectively.
 - vii. There is Completion of Construction of the Road Project by **June 30, 2025**;
 - viii. On or after Completion of Construction of the Buildings and Completion of

Construction of the Road Project, the Developer shall submit a Payment Request and a Capital Investment Certificate for payment of the Incentive Grant Payment.

- ix. 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
- x. 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 including, but not limited to, the Property.

SECTION 5. CONSTRUCTION OF THE ROAD PROJECT

In connection with construction of the Road Project and subject to Developer's right of termination in subparagraph (n) below, the Developer agrees to the following:

- (a) The Parties agree that construction of the Road Project was not a condition of approval of the Buildings but is (as is described above) only a condition precedent to the payment of the Incentive Grant pursuant to this Agreement and accordingly V.T.C.A., Local Government Code §§ 212.904 and 395.023 do not apply provided, however, in the event a court of competent jurisdiction determines that § 212.904 and/or § 395.023 apply, the Parties agree that payment by the City to the Developer of the Incentive Grant shall satisfy all requirements under §§ 212.904 and 395.023.
- (b) The Developer shall: (i) submit to the City unit prices for the work to be performed pursuant to the construction contract(s) for the Road Project and the City, subject to City's reasonable discretion, shall have approved such unit prices in writing as being reasonable; (ii) comply in all respects with the Closeout and Acceptance Requirements set forth in **Exhibit G** attached hereto and incorporated herein by reference (the "**Closeout and Acceptance Requirements**"); (iii) comply in all respects with the Requirements for Record Drawings and Plats for Private Development Projects attached hereto as **Exhibit H** and incorporated herein by reference (the "**Record Drawings and Plat Requirements**"); and (iv) pay in full all contractors, subcontractors, suppliers, laborers and materialmen for all labor and materials in connection with the construction of the Road Project.
- (c) Prior to Commencement of Construction of any improvements as to the Road 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 Road Project to be in accordance with all City Regulations.

- (d) Prior to Commencement of Construction of the Road Project, the Developer shall 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 through which a bond is written shall be a surety 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 regardless of such surety’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 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 Road Project, together with and including the acquisition, at its sole cost, of any and all easements or fee simple title to the land necessary to provide for and accommodate the improvements contemplated by the Road Project.
- (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 Road Project.
- (g) The following requirements apply to construction contracts for the Road Project:
 - i. Plans and specifications 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 shall provide that the contractor is an independent contractor, independent of and not the agent of the City, and that the Developer is responsible for retaining, and shall retain, the services of necessary and appropriate architects and engineers; and
 - iii. Each construction contract 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; and

- iv. Each construction contract shall provide that all contractors, architects, engineers, consultants and suppliers will look solely to Developer, not to the City, for payment of all costs and claims associated with construction of the Road Project.
- (h) Developer shall ensure at all times during construction that access and use of Long Creek Road 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 Road 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 Road 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 for the Road Project 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 Road 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 Road Project and the City assumes no responsibility or liability to any third parties or Developer in connection with Developer’s obligations hereunder.
- (n) Subject to the conditions of this subparagraph and notwithstanding any other provision of this Agreement, Developer may terminate this Agreement on or before May 1, 2024 if the City does not have all easements or fee simple title to the land necessary to provide for and

accommodate the improvements contemplated by the Road Project. To be valid, Developer shall provide the City with written notice of any such termination.

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 Road Project, the types of coverage and amounts of insurance set forth in *Exhibit D* attached hereto and incorporated herein by reference. 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 Road Project.
- (b) **Waiver of Subrogation.** The worker's compensation, employers' liability and general liability insurance required pursuant to this Agreement with respect to the Road 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 Road 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 Road 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 Road 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 Road 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 ROAD 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, and an Event of Default has not occurred, 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 the maximum amount of which shall not exceed the lesser of (1) Five Hundred Thousand and 00/100 Dollars (\$500,000.00) or (2) the total amount of Roadway Impact Fees imposed by the City and paid by the Developer pursuant to City policy and Chapter 395 of the Texas Local Government Code, as amended, as to the Buildings (“**Incentive Grant**”). The Incentive Grant is not payable from the actual Roadway Impact Fees paid by the Developer to the City and shall rather be paid from the City’s general revenues.

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

SECTION 8. CESSATION OF PAYMENT.

The City shall have no obligation to disburse any financial assistance under this Agreement, including payment of the Incentive Grant Payment, if the following occurs prior to payment: (i) an Event of Bankruptcy or Insolvency occurs; or (ii) an Event of Default occurs with respect to the Developer.

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) **Event of Bankruptcy or Insolvency.** The occurrence of an Event of Bankruptcy or Insolvency of either party.
- (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, Dallas County Central Appraisal District, or Dallas Central Appraisal District, as applicable.
- (e) **Developer Fee Payments.** Developer does not timely pay 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 Road 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) **Assignment.** Developer assigns this Agreement, in whole or in party, in violation of this Agreement.
- (h) **General Conditions Precedent.** Developer does not timely perform each and every General Conditions Precedent provided in Section 4(a) of this Agreement.

SECTION 10. EFFECT OF AN EVENT OF DEFAULT.

Excepting and excluding Section 9(c) and Section 9(d), 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 the Incentive Grant Payment to the Developer and the City shall have the right as its sole remedies to: (i) if already

paid, recapture the Incentive Grant Payment 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. Except as provided 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 except in the event Developer asserts a claim for attorneys' fees against City) or consequential, punitive, exemplary or speculative damages. In the event of an uncured Developer default and should the City have already paid the Incentive Grant Payment to Developer, Developer shall immediately pay to the City, at the City's address set forth in this Agreement, the amount of the Incentive Grant Payment plus interest at the rate equal to the lesser of: (i) the Maximum Lawful Rate; or (ii) six percent (6%) per annum, such interest rate to be calculated on each Incentive Grant Payment being recaptured from the date such Incentive Grant Payment 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, or (b) recover from the City the amount of any Incentive Grant 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 Grant 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) six percent (6%) 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 it has 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 Dallas County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Dallas 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 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 City’s agreement to pay the Incentive Grant Payment 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, 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) are material to the City's agreement to grant the Incentive Grant 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 and/or certificate or statement required or permitted to be given to any Party under the terms of this Agreement shall be in writing and shall be deemed properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Party at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective and deemed delivered, whether actually received or not, three (3) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective and deemed delivered, whether actually received or not, one (1) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective and deemed delivered only if and 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 the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

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: Attn: Sean Wood
LCG2i Mesquite Long Creek, LLC
3500 Maple Avenue. Suite 1600
Dallas, TX, 75219

- (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 parties.
- (q) **Provision of Documentation.** Developer will deliver to the City within thirty (30) days after written request, copies of such invoices, payment records and other documentation as the City may reasonably request to confirm compliance by the Developer with its covenants in this Agreement.
- (r) **Remedies Cumulative.** The parties hereby agree that each right and remedy of the parties provided for in this Agreement shall be cumulative.
- (s) **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 the debt has been reduced to judgment by a court.

- (t) **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.
- (u) **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.
- (v) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign or governmental immunity by virtue of its execution hereof.
- (w) **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.
- (x) **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 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.

- (y) **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.
- (z) **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.**
- (aa) **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, § 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, § 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.
- (bb) **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 120th day after the date the City notifies Developer of the violation.
- (cc) **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.

- (dd) **Prohibition on Contracts with Certain Companies Provision.** In accordance with § 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 § 2252.153 of the Texas Government Code.
- (ee) **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.
- (ff) **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.
- (gg) **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 § 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).
- (hh) **Force Majeure.** Notwithstanding any provision in this Agreement to the contrary, each time deadline in this Agreement is subject to Force Majeure.
- (ii) **Reservation of Legislative Authority.** Notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit or supplant the City Council's legislative authority or discretion.

[The Remainder of this Page Intentionally Left Blank]

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

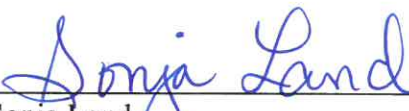
CITY:

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




Cliff Keheley, City Manager

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:

By: 

David L. Paschall
City Attorney

Exhibit A

[Legal Description of the Property]

East Tract

BEING A 29.058 ACRE TRACT OF LAND SITUATED IN THE THOMAS SCOTT SURVEY, ABSTRACT NUMBER (NO.) 1353, AND THE SAMUEL ANDREWS SURVEY, ABSTRACT NO. 39, IN THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS, AND BEING ALL OF LOT 3, BLOCK A, AMBURN SUBDIVISION, AN ADDITION TO THE CITY OF MESQUITE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME (VOL.) 83173, PAGE (PG.) 4667, DEED RECORDS, DALLAS COUNTY, TEXAS (D.R.D.C.T.), AND BEING ALL OF THAT SAME TRACT OF LAND DESCRIBED TO LCG21 MESQUITE LONG CREEK LLC, IN SPECIAL WARRANTY DEED RECORDED IN DOCUMENT (DOC.) NO. 202100369764, OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS (O.P.R.D.C.T.), AND BEING ALL OF THAT SAME TRACT OF LAND DESCRIBED AS "TRACT II", "TRACT IV" & "TRACT III" TO LCG21 MESQUITE LONG CREEK LLC IN SPECIAL WARRANTY DEED RECORDED IN DOC. NO. 202100347549, O.P.R.D.C.T., AND BEING ALL OF THAT SAME TRACT OF LAND DESCRIBED TO RONALD J. DUNCAN & SUZANNE DUNCAN IN WARRANTY DEED RECORDED IN DOC. NO. 201800170567, O.P.R.D.C.T., AND BEING ALL OF THAT SAME TRACT OF LAND DESCRIBED TO 354 LONG CREEK LAND TRUST IN WARRANTY DEED RECORDED IN DOC. NO. 201800336623, O.P.R.D.C.T., AND BEING ALL OF THAT SAME TRACT OF LAND DESCRIBED TO LCG21 MESQUITE LONG CREEK LLC IN SPECIAL WARRANTY DEED RECORDED IN DOC. NO. 202100355623, O.P.R.D.C.T., AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: (BEARINGS AND DISTANCES ARE BASED ON THE STATE PLANE COORDINATE SYSTEM, TEXAS NORTH CENTRAL ZONE (4202), NORTH AMERICAN DATUM OF 1983 (NAD 83) (US FOOT), WITH A COMBINED SCALE FACTOR OF 1.000136506);

BEGINNING AT A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND FOR THE NORTHWEST CORNER OF SAID LOT 3, SAID POINT LYING ON THE SOUTH RIGHT-OF-WAY LINE OF LONG CREEK ROAD (VARIABLE WIDTH RIGHT-OF-WAY), AND BEING AT THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 1462.40 FEET, A CENTRAL ANGLE OF 04 DEGREES 54 MINUTES 24 SECONDS, AND A CHORD BEARING AND DISTANCE OF SOUTH 87 DEGREES 00 MINUTES 58 SECONDS EAST, 125.20 FEET;

THENCE IN A EASTERLY DIRECTION, WITH THE NORTH LINE OF SAID LOT 3, THE CURVING SOUTH RIGHT-OF-WAY LINE OF SAID LONG CREEK ROAD, AND ALONG SAID CURVE TO THE LEFT, AN ARC LENGTH OF 125.23 FEET TO A POINT FOR THE NORTHEAST CORNER OF SAID LOT 3, SAID POINT LYING ON THE WEST LINE OF SAID "TRACT II", AND BEING AT AN ANGLE POINT IN THE SOUTH RIGHT-OF-WAY LINE OF SAID LONG CREEK ROAD;

THENCE NORTH 01 DEGREES 28 MINUTES 54 SECONDS WEST, WITH THE WEST LINE OF SAID "TRACT II", A DISTANCE OF 17.12 FEET TO A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND FOR THE NORTHWEST CORNER THEREOF, AND LYING AT AN ANGLE POINT IN THE SOUTH RIGHT-OF-WAY LINE OF SAID LONG CREEK ROAD;

THENCE NORTH 88 DEGREES 36 MINUTES 31 SECONDS EAST, WITH THE NORTH LINE OF SAID "TRACT II", THE NORTH LINE OF SAID "TRACT IV", THE NORTH LINE OF SAID "TRACT III" AND THE SOUTH RIGHT-OF-WAY LINE OF SAID LONG CREEK ROAD, A DISTANCE OF 420.46 FEET TO A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND FOR THE NORTHEAST CORNER OF SAID "TRACT III", SAID POINT LYING ON THE WEST LINE OF THAT SAME TRACT OF LAND DESCRIBED TO RONALD J. DUNCAN & SUZANNE DUNCAN IN WARRANTY DEED RECORDED IN DOC. NO. 201800170567, O.P.R.D.C.T.;

THENCE SOUTH 03 DEGREES 10 MINUTES 46 SECONDS EAST, DEPARTING THE SOUTH RIGHT-OF-WAY LINE OF SAID LONG CREEK ROAD, WITH THE EAST LINE OF SAID "TRACT III", AND WITH THE WEST LINE OF SAID RONALD J. DUNCAN & SUZANNE DUNCAN TRACT, AND WITH THE WEST LINE OF THAT SAME TRACT OF LAND DESCRIBED TO LCG21 MESQUITE LONG CREEK LLC IN SPECIAL WARRANTY DEED RECORDED IN DOC. NO. 202100355623, O.P.R.D.C.T., A DISTANCE OF 1060.38 FEET TO A 2-INCH IRON PIPE FOUND FOR THE SOUTHWEST CORNER OF SAID "TRACT III", SAME BEING THE NORTHWEST CORNER OF THAT SAME TRACT OF LAND DESCRIBED TO DAL-TILE-CORPORATION IN DEED WITHOUT WARRANTY RECORDED IN DOC. NO. 201400093819, O.P.R.D.C.T.;

THENCE SOUTH 00 DEGREES 13 MINUTES 50 SECONDS WEST, WITH THE WEST LINE OF SAID DAL-TILE-CORPORATION TRACT, A DISTANCE OF 1285.46 FEET TO A POINT FOR THE SOUTHEAST CORNER OF SAID "TRACT", SAID POINT LYING ON THE NORTH RIGHT-OF-WAY LINE OF UNION PACIFIC RAILROAD (VARIABLE WIDTH RIGHT-OF-WAY), AND FROM SAID POINT A 1-INCH IRON PIPE FOUND BEARS SOUTH 00 DEGREES 14 MINUTES, A DISTANCE OF 2.3 FEET;

THENCE NORTH 84 DEGREES 32 MINUTES 41 SECONDS WEST, WITH THE NORTH RIGHT-OF-WAY LINE OF SAID UNION PACIFIC RAILROAD. AND THE SOUTH LINE OF SAID "TRACT III" AND SAID "TRACT II". A DISTANCE OF 530.27 FEET TO A 5/8-INCH REBAR

WITH CAP STAMPED "KHA" FOUND FOR THE SOUTHWEST CORNER OF SAID "TRACT II", SAME BEING THE SOUTHEAST CORNER OF THAT SAME TRACT OF LAND DESCRIBED TO VARUGHESE A. PHILIPSE IN GENERAL WARRANTY DEED RECORDED IN DOC. NO. 201800290980, O.P.R.D.C.T.;

THENCE NORTH 01 DEGREES 22 MINUTES 46 SECONDS WEST, WITH THE EAST LINE OF SAID VARUGHESE A. PHILIPSE TRACT, AND THE WEST LINE OF SAID "TRACT II", A DISTANCE OF 1919.79 FEET TO A POINT FOR THE WESTERNMOST NORTHWEST CORNER OF SAID "TRACT II", SAME BEING THE EASTERNMOST NORTHEAST CORNER OF SAID VARUGHESE A. PHILIPSE TRACT, AND LYING ON THE SOUTH LINE OF SAID LOT 3;

THENCE SOUTH 88 DEGREES 31 MINUTES 06 SECONDS WEST, WITH THE EASTERNMOST NORTH LINE OF SAID VARUGHESE A. PHILIPSE TRACT, AND WITH THE SOUTH LINE OF SAID LOT 3, A DISTANCE OF 15.42 FEET TO A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND FOR THE SOUTHWEST CORNER OF SAID LOT 3, AND AN INTERIOR "ELL" CORNER OF SAID VARUGHESE A. PHILIPSE TRACT;

THENCE NORTH 01 DEGREES 27 MINUTES 57 SECONDS WEST, WITH THE NORTHERMOST EAST LINE OF SAID VARUGHESE A. PHILIPSE TRACT, AND WITH THE WEST LINE OF SAID LOT 3, A DISTANCE OF 354.26 FEET TO THE POINT OF BEGINNING AND CONTAINING 1,265,763 SQUARE FEET OR 29.058 ACRES OF LAND, MORE OR LESS.

West Tract

BEING A 19.298 ACRE TRACT OF LAND SITUATED IN THE THOMAS SCOTT SURVEY, ABSTRACT NUMBER (NO.) 1353, IN THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS, AND BEING PART OF LOT 1, AND ALL OF LOT 2, BLOCK A, HARRIS INDUSTRIAL PARK, SECTION 2, AN ADDITION TO THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME (VOL.) 85169, PAGE (PG.) 2618, DEED RECORDS, DALLAS COUNTY, TEXAS (D.R.D.C.T.), AND BEING ALL OF LOT 1, BLOCK A, AMBURN SUBDIVISION, AN ADDITION TO THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOL. 78007, PG. 370, D.R.D.C.T., AND BEING ALL OF THAT SAME TRACT OF LAND DESCRIBED AS "TRACT I" TO LCG21 MESQUITE LONG CREEK LLC IN SPECIAL WARRANTY DEED RECORDED IN DOCUMENT (DOC.) NO. 202100347549, OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS (O.P.R.D.C.T.), AND BEING ALL OF THAT SAME TRACT OF LAND DESCRIBED TO SETH M. WYATT & MARY LUCY WYATT IN WARRANTY DEED RECORDED IN VOL. 86190, PG. 5614, D.R.D.C.T., AND BEING ALL OF THAT SAME TRACT OF LAND DESCRIBED TO L.M. WALTERS, INC. IN GENERAL WARRANTY DEED RECORDED IN DOC. NO. 201500146223, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: (BEARINGS AND DISTANCES ARE BASED ON THE STATE PLANE COORDINATE SYSTEM, TEXAS NORTH CENTRAL ZONE (4202), NORTH AMERICAN DATUM OF 1983 (NAD 83) (US FOOT), WITH A COMBINED SCALE FACTOR OF 1.000136506);

BEGINNING AT A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND FOR THE EASTERMOST CORNER OF THAT SAME TRACT OF LAND DESCRIBED AS "PARCEL 1" TO THE STATE OF TEXAS IN DONATION DEED RECORDED IN VOL. 91103, PAGE 311, D.R.D.C.T., SAID POINT LYING ON THE EAST LINE OF SAID HARRIS INDUSTRIAL PARK ADDITION, AND LYING ON THE SOUTHEAST RIGHT-OF-WAY LINE OF STATE HIGHWAY 352 (VARIABLE WIDTH RIGHT-OF-WAY);

THENCE SOUTH 05 DEGREES 44 MINUTES 24 SECONDS EAST, DEPARTING THE SOUTHEAST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 352, WITH THE EAST LINE OF SAID HARRIS INDUSTRIAL PARK ADDITION, A DISTANCE OF 1380.60 FEET TO A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND FOR CORNER;

THENCE SOUTH 00 DEGREES 58 MINUTES 25 SECONDS EAST, CONTINUING WITH THE EAST LINE OF SAID HARRIS INDUSTRIAL PARK ADDITION, A DISTANCE OF 381.80 FEET TO A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND FOR THE SOUTHEAST CORNER THEREOF, SAID POINT LYING ON THE NORTH RIGHT-OF-WAY LINE OF UNION PACIFIC RAILROAD (VARIABLE WIDTH RIGHT-OF-WAY);

THENCE NORTH 84 DEGREES 32 MINUTES 41 SECONDS WEST, WITH THE NORTH RIGHT-OF-WAY LINE OF SAID UNION PACIFIC RAILROAD, AND WITH THE EASTERNMOST SOUTH LINE OF SAID HARRIS INDUSTRIAL PARK ADDITION, A DISTANCE OF 317.58 FEET TO A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND AT AN INTERIOR "ELL" CORNER OF SAID HARRIS INDUSTRIAL PARK ADDITION, AND BEING AT AN ANGLE POINT IN THE NORTH RIGHT-OF-WAY LINE OF SAID UNION PACIFIC RAILROAD;

THENCE SOUTH 02 DEGREES 55 MINUTES 23 SECONDS WEST, WITH THE SOUTHERNMOST EAST LINE OF SAID HARRIS INDUSTRIAL PARK ADDITION, A DISTANCE OF 49.95 FEET TO A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND FOR THE SOUTHERNMOST SOUTHEAST CORNER THEREOF, SAID POINT BEING AN ANGLE POINT IN THE NORTH RIGHT-OF-WAY LINE OF SAID UNION PACIFIC RAILROAD;

THENCE NORTH 84 DEGREES 34 MINUTES 46 SECONDS WEST, WITH THE NORTH RIGHT-OF-WAY LINE OF SAID UNION PACIFIC RAILROAD, AND WITH THE SOUTHERNMOST SOUTH LINE OF SAID HARRIS INDUSTRIAL PARK ADDITION, A DISTANCE OF 151.73 FEET TO A "PK" NAIL FOUND FOR THE SOUTHERNMOST SOUTHWEST CORNER THEREOF;

THENCE NORTH 13 DEGREES 56 MINUTES 52 SECONDS EAST, DEPARTING THE NORTH RIGHT-OF-WAY LINE OF SAID UNION PACIFIC RAILROAD, AND WITH THE SOUTHERNMOST WEST LINE OF SAID HARRIS INDUSTRIAL PARK ADDITION, A DISTANCE OF 15.52 FEET TO A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND FOR CORNER;

THENCE SOUTH 84 DEGREES 48 MINUTES 08 SECONDS EAST, WITH A NORTH LINE OF SAID HARRIS INDUSTRIAL PARK ADDITION, A DISTANCE OF 124.00 FEET TO A "PK" NAIL FOUND FOR AN INTERIOR "ELL" CORNER OF SAID HARRIS INDUSTRIAL PARK ADDITION;

THENCE NORTH 01 DEGREES 03 MINUTES 08 SECONDS WEST, WITH THE SOUTHERNMOST WEST LINE OF SAID HARRIS INDUSTRIAL PARK ADDITION, A DISTANCE OF 477.08 FEET TO A POINT FOR AN INTERIOR "ELL" CORNER OF SAID HARRIS

INDUSTRIAL PARK ADDITION, FROM SAID POINT A 1/2-INCH REBAR FOUND BEARS NORTH 39 DEGREES 41 MINUTES, A DISTANCE OF 0.3 FEET;

THENCE NORTH 82 DEGREES 43 MINUTES 22 SECONDS WEST, WITH THE WESTERNMOST SOUTH LINE OF SAID HARRIS INDUSTRIAL PARK ADDITION, A DISTANCE OF 578.10 FEET TO A POINT FOR THE WESTERNMOST SOUTHWEST CORNER THEREOF;

THENCE NORTH 01 DEGREES 26 MINUTES 15 SECONDS WEST, WITH THE WESTERNMOST LINE OF SAID HARRIS INDUSTRIAL PARK ADDITION, A DISTANCE OF 214.41 FEET TO A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND FOR THE SOUTHERNMOST CORNER OF THAT SAME TRACT OF LAND DESCRIBED AS "PARCEL 2" IN SAID STATE OF TEXAS TRACT, AND LYING ON THE SOUTHEAST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 352;

THENCE NORTH 55 DEGREES 36 MINUTES 11 SECONDS EAST, WITH THE SOUTHEAST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 352, AND WITH THE SOUTHEAST LINE OF SAID "PARCEL 2", OVER ACROSS AND UPON SAID HARRIS INDUSTRIAL PARK ADDITION, PASSING AT A DISTANCE OF 36.36 FEET A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND FOR THE EASTERNMOST CORNER OF SAID "PARCEL 2", SAME BEING THE WESTERNMOST SOUTHWEST CORNER OF SAID L.M. WALTERS, INC. TRACT, AND CONTINUING WITH THE WEST LINE THEREOF FOR A TOTAL DISTANCE OF 61.46 FEET TO A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND FOR CORNER;

THENCE NORTH 38 DEGREES 09 MINUTES 28 SECONDS EAST, CONTINUING WITH THE SOUTHEAST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 352, AND WITH THE WEST LINE OF SAID L.M. WALTERS, INC. TRACT, A DISTANCE OF 103.36 FEET TO A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND FOR CORNER;

THENCE NORTH 28 DEGREES 38 MINUTES 59 SECONDS EAST, CONTINUING WITH THE SOUTHEAST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 352, AND WITH THE WEST LINE OF SAID L.M. WALTERS, INC. TRACT, A DISTANCE OF 178.06 FEET TO POINT FOR CORNER;

THENCE NORTH 38 DEGREES 53 MINUTES 27 SECONDS EAST, CONTINUING WITH THE SOUTHEAST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 352, AND WITH THE WEST LINE OF SAID L.M. WALTERS, INC. TRACT, AND WITH THE NORTHWEST LINE OF SAID AMBURN SUBDIVISION ADDITION, A DISTANCE OF 444.38 FEET TO A POINT FOR THE NORTH CORNER THEREOF, SAME BEING THE WESTERNMOST NORTHWEST CORNER OF SAID HARRIS INDUSTRIAL PARK ADDITION, FROM SAID POINT A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND BEARS SOUTH 22 DEGREES 55 MINUTRS, A DISTANCE OF 0.5 FEET;

THENCE NORTH 38 DEGREES 55 MINUTES 57 SECONDS EAST, CONTINUING WITH THE SOUTHEAST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 352, AND WITH THE NORTHWEST LINE OF SAID HARRIS INDUSTRIAL PARK ADDITION, A DISTANCE OF 435.84 FEET TO A POINT FOR CORNER LYING ON THE SOUTHEAST LINE OF SAID "PARCEL 1"; FROM SAID POINT A 5/8-INCH REBAR WITH CAP STAMPED "KHA" FOUND BEARS NORTH 44 DEGREES 01 MINUTES, A DISTANCE OF 0.8 FEET;

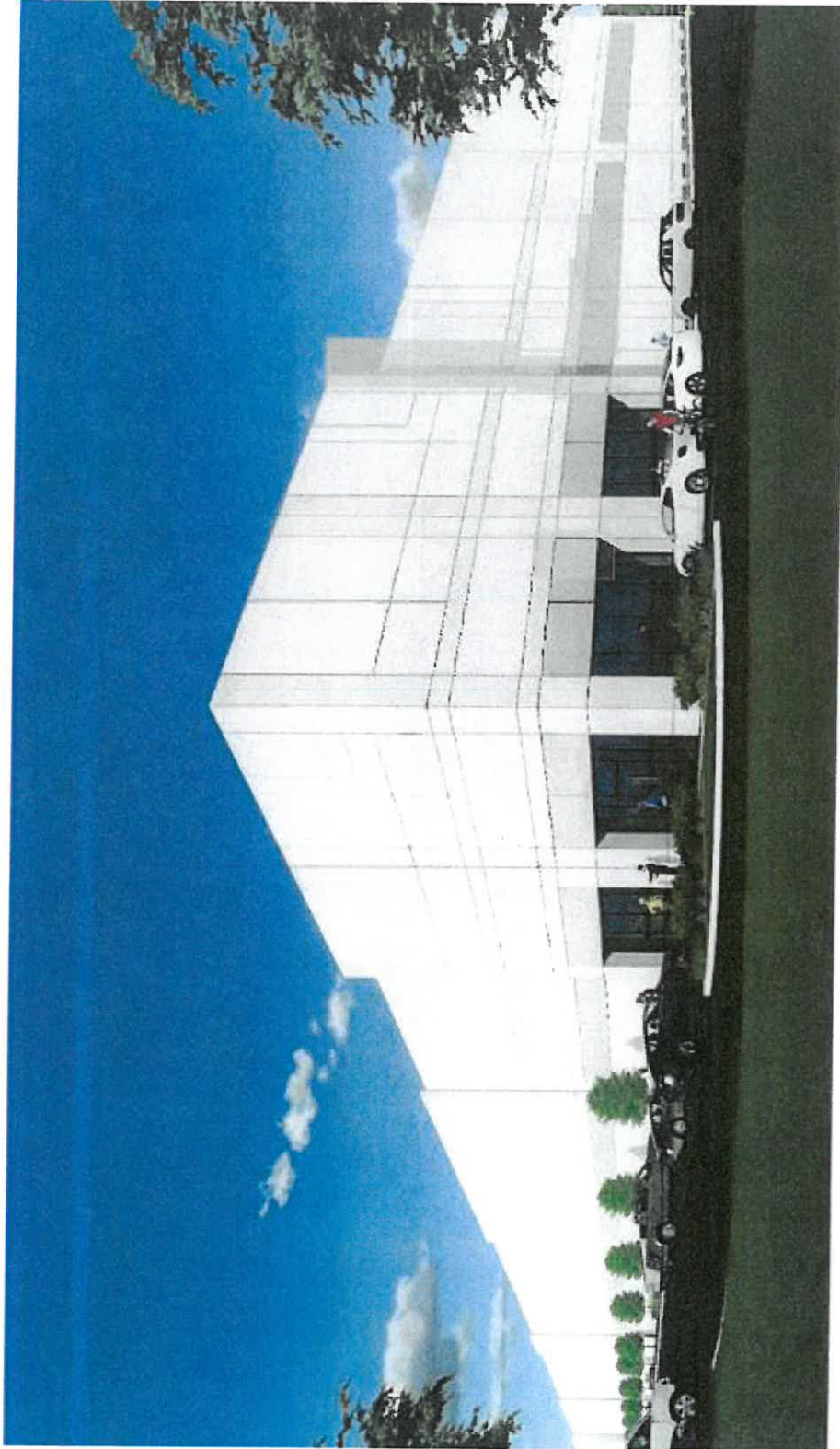
THENCE NORTH 42 DEGREES 53 MINUTES 43 SECONDS EAST, CONTINUING WITH THE SOUTHEAST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 352, AND WITH THE SOUTHEAST LINE OF SAID "PARCEL 1", OVER, ACROSS, AND UPON SAID HARRIS INDUSTRIAL PARK ADDITION, A DISTANCE OF 48.06 FEET TO THE POINT OF BEGINNING AND CONTAINING 840,621 SQUARE FEET OR 19.298 ACRES OF LAND, MORE OR LESS.

Exhibit B

[Depiction of Long Creek Road Project]

Exhibit C

[Depiction of Buildings]



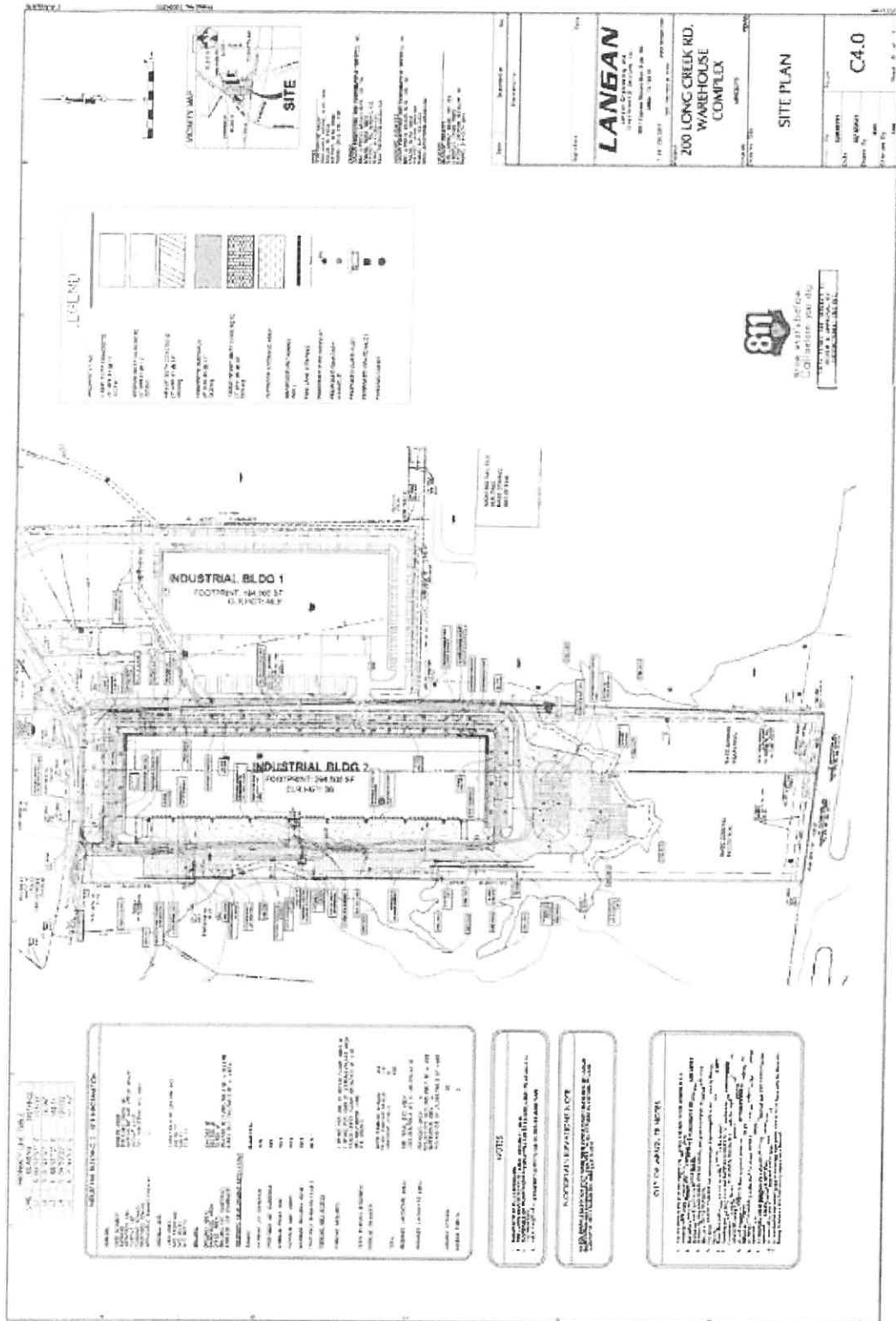


Exhibit D

[Insurance]

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.

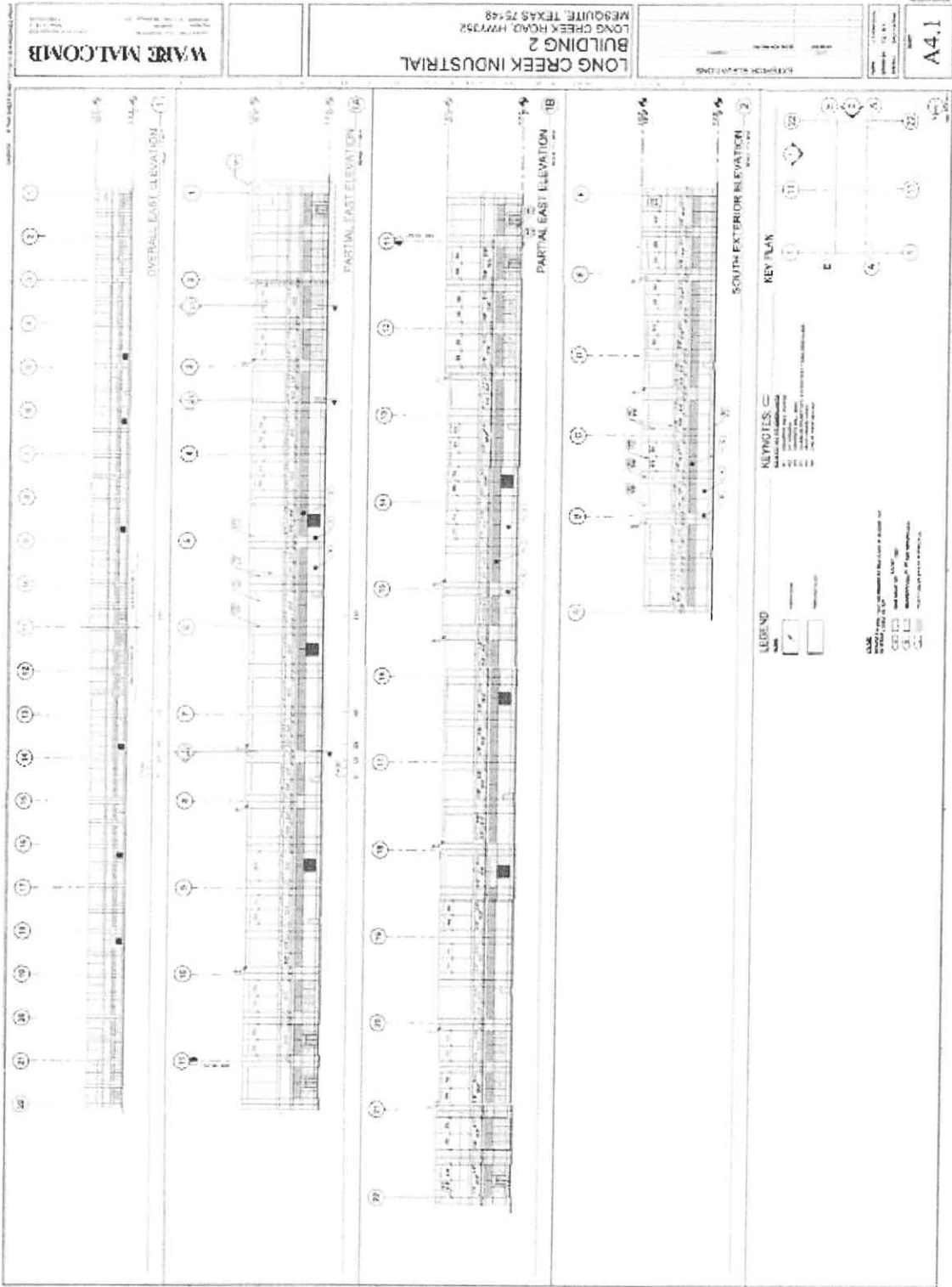
MESQUITE POLLUTION LIABILITY

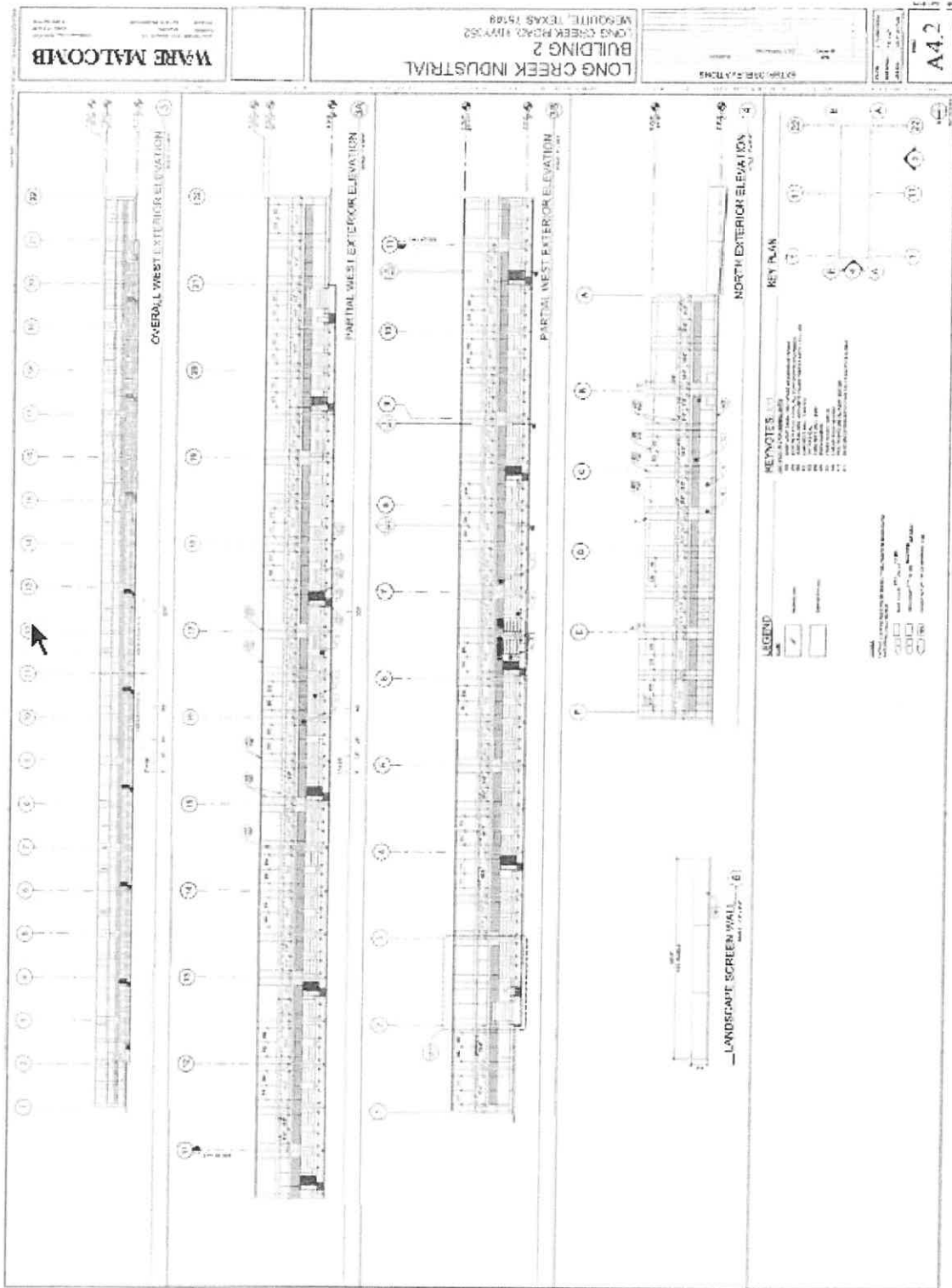
City of Mesquite Requirements:

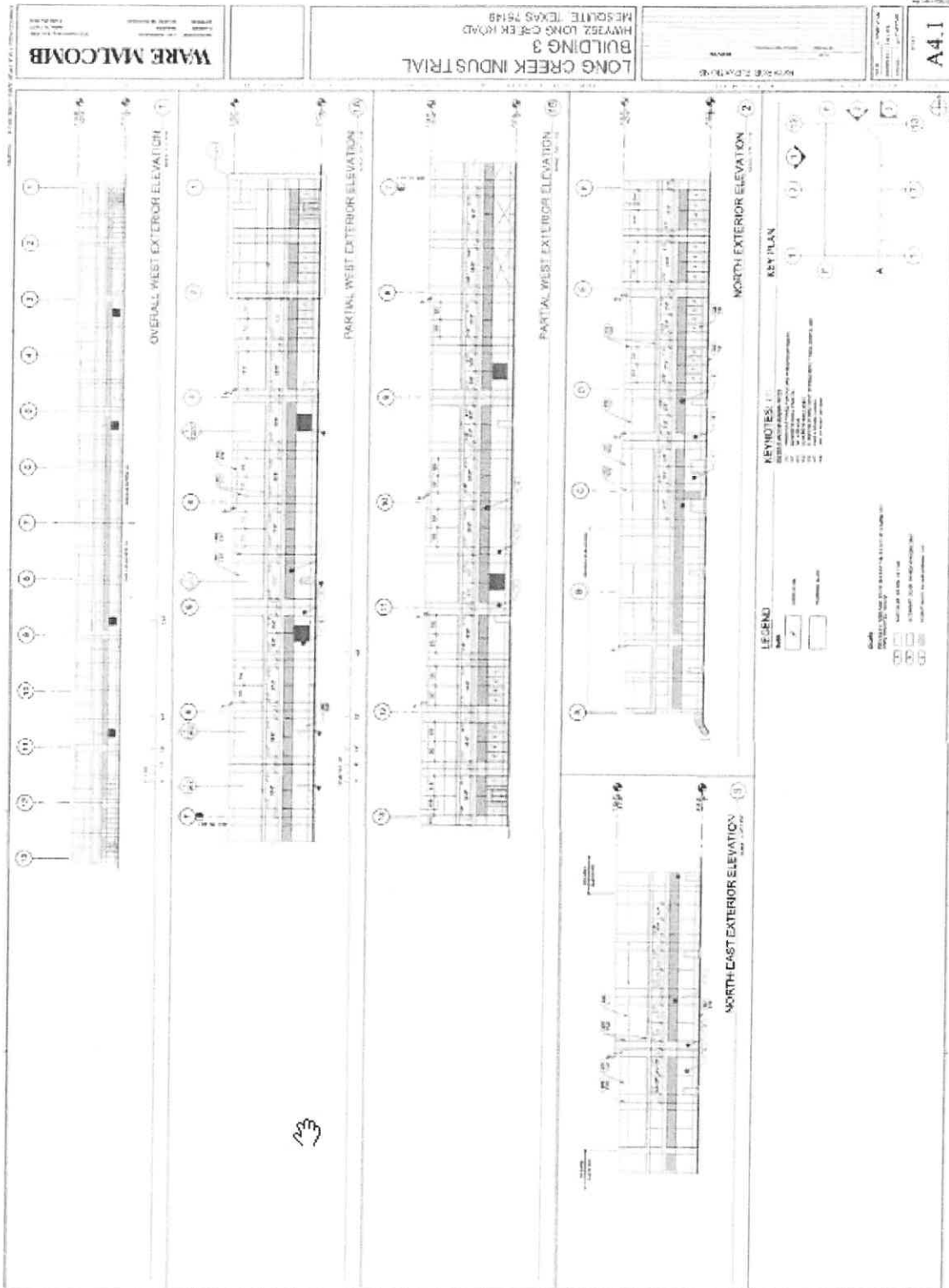
- * Evidence of Pollution Liability Coverage.

Exhibit E

[Exterior Finish Board]







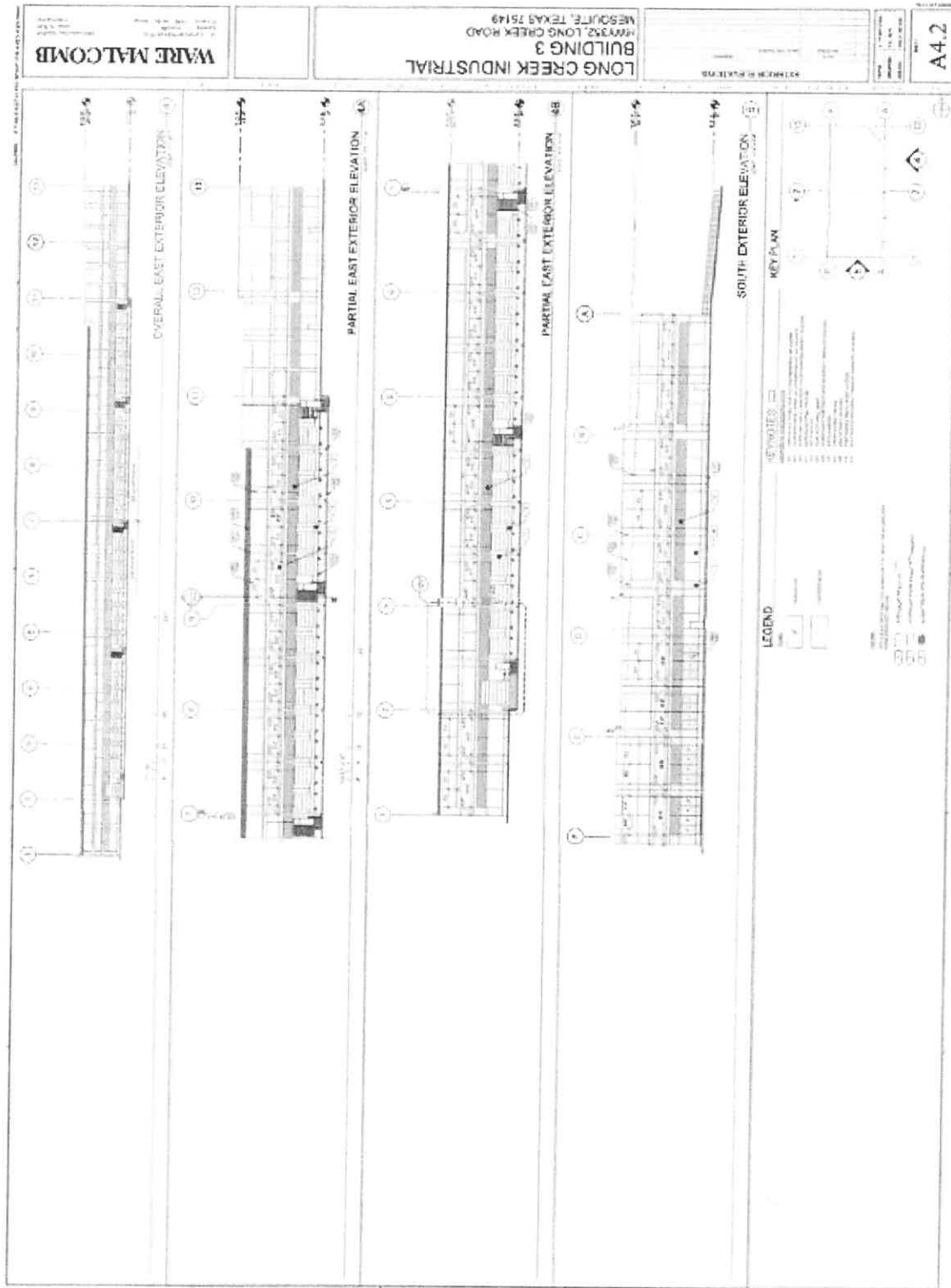
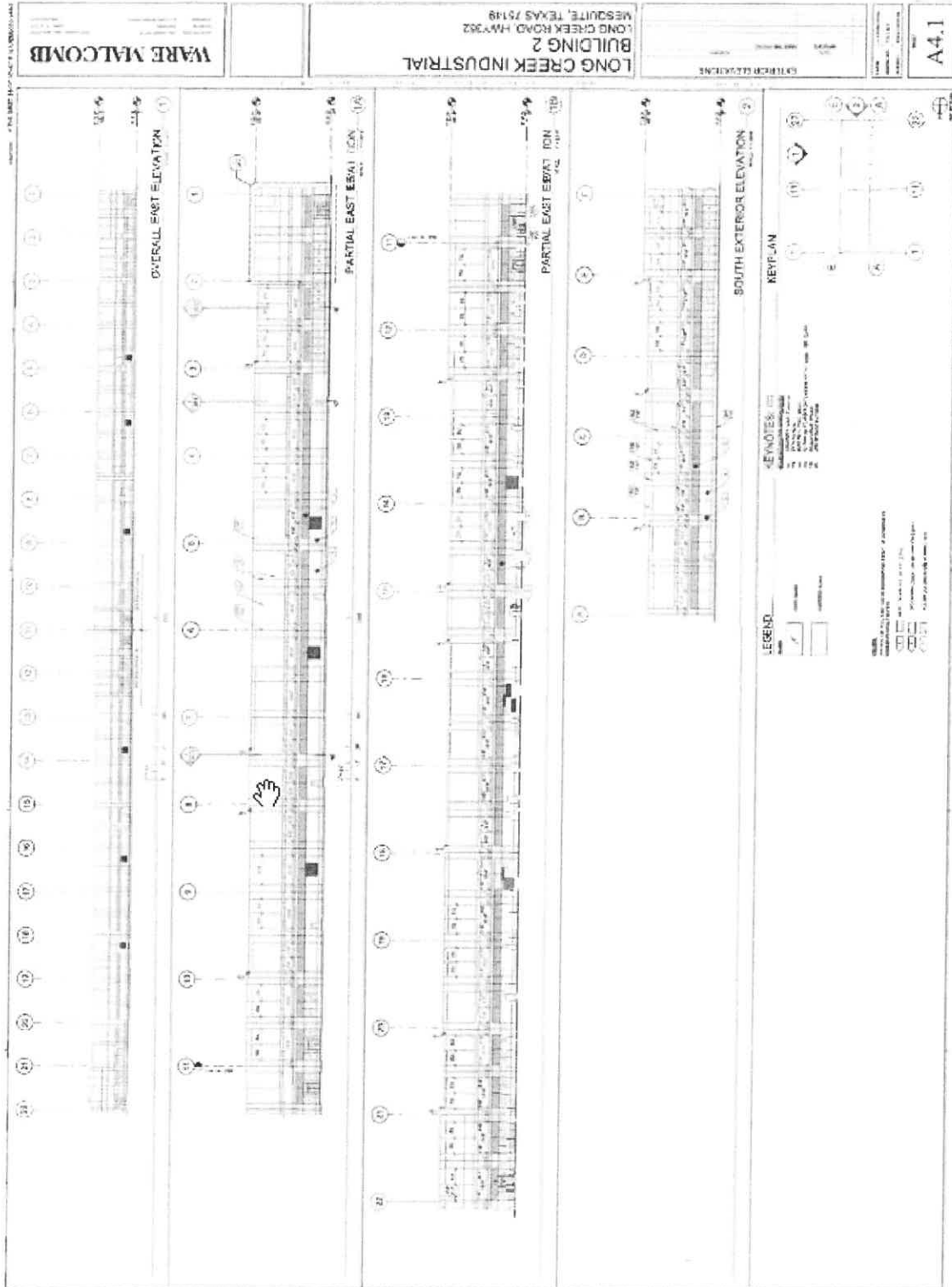


Exhibit F

[Façade/Elevation Plan]



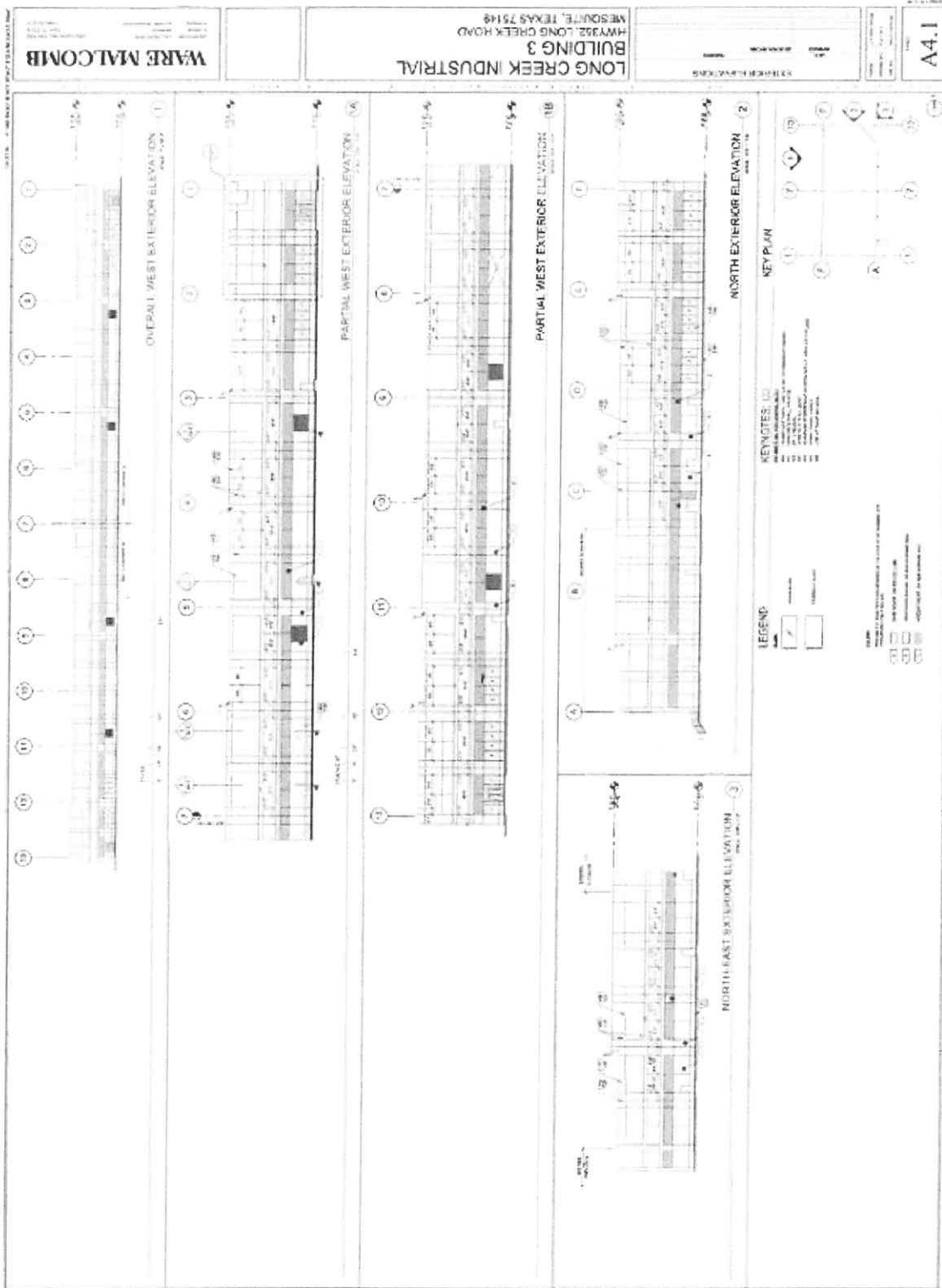


Exhibit G

[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.

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