

RESOLUTION NO. 35-2024

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, EXECUTE, AND ADMINISTER AN ECONOMIC DEVELOPMENT PROGRAM CHAPTER 380 AGREEMENT FOR SUCH PURPOSES BY AND BETWEEN THE CITY OF MESQUITE AND PALLADIUM BRUTON ROAD, LTD., FOR THE CONSTRUCTION OF AN APPROXIMATELY 288 UNIT AFFORDABLE MULTIFAMILY RENTAL HOUSING COMPLEX TO BE LOCATED AT 2255 WEST BRUTON ROAD IN MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTIONS AND EXECUTE SUCH DOCUMENTS AS ARE NECESSARY OR ADVISABLE TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, 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 Palladium Bruton Road, Ltd., a Texas limited partnership (“**Company**”), for the construction of an approximately 288 unit affordable multifamily rental housing complex, a copy of said agreement being attached hereto as Exhibit 1 and incorporated herein by reference (the “**Agreement**”); and

WHEREAS, the proposed development is to be located at 2255 West Bruton Road in the City of Mesquite, Dallas County, Texas (the “**Property**”), and as more particularly described and/or depicted in Exhibit A to the Agreement; and

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

WHEREAS, development of the Property will provide housing at rental rates that meet the City’s goals for affordability and quality, will increase the taxable value of the Property thereby adding value to the City’s tax rolls and increasing the ad valorem property taxes to be collected by the City, and will result in improved roadways and traffic flow in the area; 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.

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

SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City and the Company, a copy of which is attached hereto as Exhibit 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 Company and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

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

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

SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$100,000; (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.

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DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 15th day of July 2024.

DocuSigned by:

Daniel Aleman Jr.

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Daniel Alemán, Jr.
Mayor

ATTEST:

DocuSigned by:

Sonja Land

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Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:

DocuSigned by:

David L. Paschall

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David L. Paschall
City Attorney

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

(Chapter 380 Agreement)

This Economic Development Program Agreement (“**Agreement**”) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (“**City**”), and Palladium Bruton Road, Ltd., a Texas limited partnership (“**Company**”). City and the Company shall be referred to herein individually from time to time as a “**Party**” and collectively as the “**Parties**”

W I T N E S S E T H:

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

WHEREAS, Company owns a certain tract of real property located in the City of Mesquite near the intersection of Bruton Road and Sam Houston Road and consisting of approximately 9.620 acres and being commonly known as **2255 W. Bruton Road, Mesquite, Texas 75149** and being depicted in **Exhibit A** attached hereto and made a part hereof for all purposes (the “**Company’s Land**”); and

WHEREAS, Company has agreed to construct a multifamily housing complex of approximately 288 units to be known as Palladium Carver Living on Company’s Land referenced herein as the “**Building Improvements**”; and

WHEREAS, Company will be making at least SEVENTY MILLION and 00/100 DOLLARS (\$70,000,000.00) of capital improvements to the Company’s Land in connection with the construction of the Building Improvements and exclusive of land values; and

WHEREAS, the Parties expect the Building Improvements will provide housing at rental rates that meet the City’s goals for affordability and quality and increasing the real property taxes to be collected by the City thereby adding value to the City’s tax rolls; and

WHEREAS, the parties expect the construction of the Building Improvements will benefit the area by promoting local economic development and stimulate business and commercial activity in the area; and

WHEREAS, Company will design and construct, at its cost, improvements to drainage structures referenced herein as the “**Drainage Improvements**” in the area generally located between Sam Houston Road and Peachtree Road for the purpose of creating additional drainage capacity in the area and directly impacting the drainage of the Company’s development; and

WHEREAS, the Drainage Improvements will be located on property owned by and under the control of the City as depicted in **Exhibit A** hereto and referenced herein as the “**City Land**”; and

WHEREAS, the City shall make improvements to the intersection of Bruton Road, Sam Houston Road and Peachtree Road (the “**Intersection Improvements**”) and Company shall deposit funds with the City (the “**Intersection Improvement Funds**”) to assist with payment for the Intersection Improvements; and

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

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

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company’s performance of its obligations set forth in this Agreement will promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its residents.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Parties agree as follows:

ARTICLE I
Incorporation of Recitals

The foregoing recitals (“**Recitals**”) are incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

ARTICLE II
Definitions

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

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

“Building Improvements” shall have the meaning set forth in the Recitals.

“Certificate of Compliance” shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of the Company by a duly authorized Company Representative certifying to the City: (i) that the applicable Conditions Precedent have been satisfied; and (ii) that no Company Default (as hereinafter defined) then exists under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement.

“Certificate of Occupancy” or “CO” shall mean a final certificate of occupancy issued by the City to the Company after the construction of Building Improvements, as applicable, has been

completed in compliance with the City's building, health, safety, fire and other codes and authorizing Company to occupy, lease and operate a businesses from the applicable Building Improvements.

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

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

“City Default” shall have the meaning set forth in Article X of this Agreement.

“City Regulations” mean all ordinances, rules, regulations and zoning of the City, as may be amended from time to time, including, without limitation, City codes, design standards, engineering standards, engineering design manual, drainage requirements, uniform and international building and construction codes duly adopted by the City, all of which shall be applied to development of the Project.

“City's Land” shall have the meaning set forth in the Recitals to this Agreement.

“Commencement of Construction” shall mean that (i) the plans have been prepared and the approvals required by applicable governmental authorities have been obtained for construction of the applicable improvement; and (ii) all necessary permits for initiation of construction of the improvement pursuant to the respective plans have been issued by the applicable governmental authorities.

“Company” shall mean Palladium Bruton Road, Ltd., its successors and assigns only as permitted by this Agreement.

“Company Default” shall have the meaning set forth in Article X of this Agreement.

“Company Representative” shall mean any duly authorized officer of Company.

“Company's Land” shall have the meaning set forth in the Recitals to this Agreement.

“Completion of Construction” shall mean that that (i) the construction of the applicable improvement has been substantially completed pursuant to the City's determination; and (ii) if the improvement is a private improvement then a Certificate of Occupancy has been issued and if the improvement is a public improvement then the City has accepted the public improvement.

“Concept Plan” shall mean the concept plan for the Building Improvements attached hereto as **Exhibit B** and incorporated herein by reference. Any material substantive change to the Concept Plan requires the written consent of both Parties.

“Drainage Improvements” shall mean the improvements to be constructed by Company on the City's Land to provide additional drainage capacity for the Building Improvements as generally described and depicted on **Exhibit C** hereto, incorporated herein by reference. The Drainage

Improvements shall be constructed in accordance with City Regulations, including but not limited to the City’s drainage ordinance, and the Drainage Plan.

“Drainage Plan” shall mean the engineering drawings, studies and documents detailing the location and manner of construction of Drainage Improvements, all as approved by the City.

“Effective Date” shall mean the date the Parties execute this Agreement if the Parties all execute this Agreement on the same date. If the Parties execute this Agreement on different dates, any reference to the “Effective Date” shall mean the date this Agreement is executed by the last Party.

“Escrow Account” shall mean the account set up by the City of Mesquite to hold funds paid by Company in trust to be allocated and used by the City for the construction of the Intersection Improvements.

“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.

“Exterior Finish Plan” shall mean the exterior finish depiction for the Building Improvements attached hereto as **Exhibit D** and incorporated herein by reference. Any changes to the Exterior Finish Plan require the written consent of both Parties.

“General Conditions Precedent” shall have the meaning set forth in Article VIII of this Agreement.

“Impact Fees” shall mean the Water, Wastewater and Roadway Impact Fees.

“Impositions” shall mean all valid taxes, assessments, use and occupancy taxes, sales taxes, charges, excises, license and permit fees, Impact Fees and other charges by public or governmental authority, which are or may be assessed, charged, levied or imposed by any public or governmental authority on Company, or on any property or any business owned by Company with City, so long as such Impositions are not illegal exactions, illegal fees or illegal taxes.

“Incentive Grant” shall mean the economic development incentive grant described in Article IX of this Agreement.

“Incentive Grant Conditions Precedent” shall have the meaning set forth in Article IX of this Agreement.

“Intersection Improvements” shall mean the improvements to the intersection of Bruton Road, Sam Houston Road and Peachtree Road that the City is required to construct in Article VII of this Agreement.

“Intersection Improvement Funds” shall mean the funds that are provided by the Company to the City for the purpose of paying for the construction and completion of the Intersection Improvements as provided in Article V of this Agreement.

“Park Land Dedication Fee” shall mean the amount required by the City according to Mesquite City Code to offset the cost of additional parkland needs for the community based on the impact the Building Improvements will have on the community as provided in Article VI of the City’s Subdivision Ordinance, Appendix B to the City’s Code of Ordinances, collected at closing of Company’s Land. The total amount of Park Land Dedication Fee payable by Company to City is \$776,799.00, less the Park Land Dedication Fee Credit of \$250,000.00, equating to \$526,799.00.

“Party” shall mean either Company or the City.

“Parties” shall mean Company and the City.

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

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

“Recitals” shall have the meaning set forth in Article I of this Agreement.

“Roadway Impact Fees” means all roadway impact fees charged by the City to fund construction of roads, collected at closing of Company’s Land, in accordance with Texas Local Government Code Chapter 395 and the City Regulations, as may be hereafter amended or replaced. The total amount of Roadway Impact Fees payable by Company to City for the Building Improvements is \$554,976.00.

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

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

“Water and Wastewater Impact Fees” shall mean all water and wastewater impact fees to fund the construction of water and wastewater improvements, collected at the closing of the Company’s Land, in accordance with Texas Local Government Code Chapter 395 and the City Regulations, both as may be hereafter amended or replaced. The total amount of Water and

Wastewater Impact Fees payable by Company to City for the Building Improvements is \$522,876.00.

ARTICLE III Authority for Agreement

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

ARTICLE IV Term

The Term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) all conditions of the Agreement have been met; or (ii) the date this Agreement is terminated by any Party pursuant to a right to terminate as expressly provided herein (the "**Term**").

ARTICLE V Affirmative Obligations of Company

In consideration of the City's agreement to grant the Incentive Grant to Company upon the terms and conditions more fully set forth herein and for other good and valuable consideration, Company represents, covenants and agrees to each and all of the following:

1. Construction of Building Improvements. Company covenants and agrees to cause Commencement of Construction of the Building Improvements by October 1, 2024 and Completion of Construction of the Building Improvements and obtain a Certificate of Occupancy by November 1, 2026. Company agrees that completion of the Drainage Improvements in compliance with this Agreement is a condition precedent to any obligation of the City to issue a Certificate of Occupancy for the Building Improvements. The Building Improvements shall be constructed in compliance with the Concept Plan, Exterior Finish Plan and City Regulations.

2. Construction of Drainage Improvements. Company covenants and agrees to design and cause Commencement of Construction of the Drainage Improvements by twelve (12) months from the Effective Date, to cause Completion of Construction of the Drainage Improvements by November 1, 2026 and prior to application for a final Certificate of Occupancy for the Building Improvements, and to dedicate the Drainage Improvements to the City with the City's acceptance evidenced in writing. Company shall comply with the applicable City Regulations, including the City's Engineering Design Manual. Company agrees to acquire, at Company's expense, any and all easements, rights-of-ways or other property interests necessary for construction of the Drainage Improvements, if any, that are not to be constructed on land owned by the City.

3. Additional Construction Requirements for the Drainage Improvements.

A. Prior to Commencement of Construction of the Drainage Improvements, Company shall:

- (i) make, or cause to be made, application for any necessary permits and approvals required by the City Regulations and any other applicable governmental authorities to be issued for the construction of the Drainage Improvements;
- (ii) obligate each general contractor, architect, and consultants performing work in connection with such Drainage Improvements to obtain all applicable permits, licenses or approvals as required by City Regulations;
- (iii) submit to the City unit prices for the work to be performed pursuant to the construction contract(s) for the Drainage Improvements and the City shall have approved such unit prices in writing as being reasonable; and
- (iii) cause the contractors and subcontractors performing work in connection with the construction of such Drainage Improvements to purchase and maintain a Payment and Performance Bond, as well as a two-year maintenance bond (the “**Bonds**”) in the penal sum which covers 100% of the amount set forth in the construction contract for the Drainage Improvements. The Bonds shall be written on forms approved for use by the City and satisfactory to the City Attorney; provided however a Payment and Performance Bond that is required by Company’s lender, including the Department of Housing and Urban Development (“HUD”) shall be a form deemed acceptable to the City. Any surety company through which a bond is written shall be a surety company 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 company regardless of such company’s authorization to do business in Texas (unless it is a surety company which is approved by Company’s construction lender and HUD). 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 Company furnish additional or substitute surety through an approved surety company 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.

B. Company 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 Drainage Improvements.

C. Company shall require or cause the design, inspection, and supervision of the construction of the Drainage Improvements to be undertaken in accordance with all City Regulations.

D. The following requirements apply to construction contracts for the Drainage Improvements:

- (i) All plans and specifications for the Drainage Improvements shall comply with all City Regulations and 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 contractor is responsible for retaining, and shall retain, the services of necessary and appropriate architects and engineers;
- (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) Company shall cause all of its contractors, architects, engineers, and consultants to agree in writing that they will look solely to Company, not to the City, for payment of all costs and claims associated with construction of the Drainage Improvements.

E. Company shall ensure at all times during construction of the Drainage Improvements that access to Bruton Road, Peachtree Road and Sam Houston 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.

F. Subject to the terms of this Agreement, The City hereby grants and conveys to the Company (a) a temporary non-exclusive easement (the "Temporary Easement") over, upon and across the City Land. The Temporary Easement may be used only by the persons and for the purposes of construction of the Drainage Improvements on the City Land. The Temporary Easement shall be used only by the Company's contractor or such contractor's affiliates and subcontractors, at the sole cost and expense of the Company for the purposes of (i) construction and installation of any lines and other facilities for drainage related to the Building Improvements and, (ii) as a staging area for the development, construction and installation of the Building Improvements. The Temporary Easement shall cease to exist upon completion of the Drainage Improvements, the dedication of the Drainage Improvements to the City and the City's acceptance thereof. Excepting changes made as a result of the Drainage Improvements, Company must restore all areas of the City's Land to its pre-existing condition or better, which restoration shall be a condition to City's acceptance of the Drainage Improvements.

F. Upon Completion of Construction of the Drainage Improvements, Company shall:

- (i) provide the City with a final cost summary of the improvements project costs incurred and paid in connection with the construction of the Drainage Improvements;

- (ii) provide the City with proof that all amounts owing to contractors, subcontractors, suppliers, laborers and materialmen for all labor and materials have been paid in full, except for any retainage required by Company's Lender and HUD, evidenced by "all bills paid" affidavits executed by Company and/or its contractors with regard to the Drainage Improvements;
- (iii) comply in all respects with the Project Closeout and Acceptance Requirements set forth in **Exhibit E** attached hereto and made a part hereof for all purposes (the "**Closeout and Acceptance Requirements**"); and
- (iv) comply in all respects with the Requirements for Record Drawings and Plats for Private Development Projects attached hereto as **Exhibit F** and made a part hereof for all purposes (the "**Record Drawings and Plat Requirements**").

G. Company shall provide the City with reasonable advance notice of any regularly-scheduled construction meetings regarding the Drainage 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.

H. Unless otherwise approved in writing by the City, all Drainage Improvements shall be constructed and dedicated to the City in accordance with City Regulations. Company agrees the Drainage Improvements shall not have a superior lien or cloud on title upon their dedication and acceptance by the City.

I. To the extent fee title is owned by Company, Company 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 Drainage Improvements constructed by Company at the completion of construction of such Drainage Improvements and upon acceptance by the City. To the extent fee title is owned by any other third party, the Parties will reasonably cooperate in causing the foregoing to occur.

J. It is understood and agreed by and among the Parties that Company is acting independently in the design, construction and development of the Drainage Improvements and the City assumes no responsibility or liability to any third parties or Company in connection with Company's obligations hereunder.

K. V.T.C.A., Local Government Code, § 212.904 and V.T.C.A., Local Government Code § 395.023 Not Applicable. The Parties agree that the Company covenants contained in this Article were not a condition of approval of the Building Improvements but are only condition precedents to the payment of the Incentive Grant and Park Land Dedication Fee credit 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 of the Incentive Grant and Park Land Dedication Fee credit shall satisfy all requirements under

V.T.C.A., Local Government Code §212.904 and V.T.C.A., Local Government Code § 395.023.

4. Insurance and Indemnification.

A. Insurance. With no intent to limit any contractor's liability or obligation for indemnification, the Company shall maintain or cause to be maintained, by the contractor(s) constructing the Drainage Improvements the types of coverage and amounts of insurance set forth in **Exhibit G** attached hereto and made a part hereof for all purposes. Such insurance shall contain such terms and provisions as set forth on **Exhibit G** and shall be in full force and effect at all times during construction of the Improvements.

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

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

D. Written Notice of Cancellation. Each policy required by this Agreement, 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 Company shall cause each contractor to deliver to the City the policies, copies of policy endorsements, and/or certificates of insurance evidencing the required insurance coverage before the commencement of construction of the Drainage Improvements and within ten (10) days before expiration of coverage, the Company shall cause each contractor to deliver renewal policies or certificates of insurance evidencing renewal and payment of the renewal premium. In addition, the Company shall cause each contractor to provide the City with the Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies) within ten (10) business days after written request by the City.

F. Carriers. All policies of insurance required to be obtained by the Company and its contractors pursuant to this Agreement shall be maintained with insurance carriers that are satisfactory to and as reasonably approved by City, and lawfully authorized to issue insurance in the State of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A-" 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 Company's and its contractors' insurer or broker. Certificates of insurance and policy endorsements received from any other source will be rejected.

G. **INDEMNIFICATION. THE COMPANY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, THE CITY'S COUNCIL MEMBERS, OFFICERS, AGENTS, EMPLOYEES, INSURERS AND RISK POOLS (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL THIRD PARTY 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 OTHER PROPERTY ARISING FROM ANY ACT OR OMISSION ON THE PART OF THE COMPANY AND COMPANY'S 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 DRAINAGE IMPROVEMENTS (EXCEPT WHEN SUCH THIRD PARTY 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 OR ANY ACTIONS OF ANY INDEMNITEE FOLLOWING ANY PUBLIC DEDICATION AND ACCEPTANCE OF PUBLIC IMPROVEMENTS CONTEMPLATED HEREBY BY INDEMNITEE). NOTHING CONTAINED IN THIS SECTION 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, COMPANY SHALL BE REQUIRED ON NOTICE FROM INDEMNITEE, TO DEFEND SUCH ACTION OR PROCEEDING AT COMPANY'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO INDEMNITEE. THE PROVISIONS OF THIS SECTION 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 SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

5. Payment of Intersection Improvement Funds. Within ninety (90) days of the Closing of Company's Land , Company shall pay to the City, to be held in escrow by the City and applied as required by Article VII of this Agreement, the sum of TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00). ("**Intersection Improvement Funds**"). Company further agrees that if and when it earns the Incentive Grant provided in Article IX of this Agreement that the Incentive Grant payment is to be added to and becomes a part of the Intersection Improvement Funds and the City is hereby instructed by Company to transfer the Incentive Grant to the Intersection Improvement Funds escrow account held by the City instead of paying the Incentive Grant to Company. Company acknowledges: (a) the Intersection Improvement Funds are representative of the value of the Park Land Dedication Waiver, funds received by Company from Dallas County for the purpose of making the Intersection Improvements and use of the City's Land at no cost to Company for constructing the Drainage Improvements; (b) that the Intersection Improvements are necessary as a result of the impacts of the Building Improvements and

materially benefit the Building Improvements; and (c) that the cost of the Intersection Improvements exceed the amount of the Intersection Improvement Funds and Roadway Impact Fees paid by Company.

ARTICLE VI Company's Additional Covenants

In consideration of the City's agreement to grant the Incentive Grant to Company upon the terms and conditions more fully set forth herein and for other good and valuable consideration, Company represents, covenants and agrees to each and all of the following:

1. Timely Payment of Impositions. Company shall timely pay to the City all Impositions in connection with the Building Improvements, provided however if such Impositions have been deposited with Company's construction lender, such Impositions shall be paid as required by the construction lender.

2. Records and Reports. During the Term of this Agreement and during the time any provision of this Agreement survives the Term, Company shall deliver to the City within forty-five (45) days after written request such documentation as the City may reasonably request to confirm compliance by Company with the representations, covenants and agreements set forth in this Agreement.

3. Timely Payment of Taxes. Company shall timely pay or cause to be paid, all ad valorem taxes assessed during the Term of this Agreement and during the time any provision of this Agreement survives the Term prior to the date such taxes become delinquent.

4. Maintenance Obligations. Company shall comply with all building codes, zoning ordinances and all other codes, ordinances and City Regulations at all times during the Term of this Agreement and during the time any provision of this Agreement survives the Term and shall, at Company's sole cost and expense, maintain the Building Improvements in good repair at all times during the Term of this Agreement.

5. Compliance with Laws. Company shall comply with all federal, state and City Regulations relating to the ownership and operation of the Building Improvements during the Term of this Agreement and during the time any provision of this Agreement survives the Term.

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

7. Performance of Other Agreements. Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by Company under the terms of all other agreements now or hereafter existing between Company and the City, if any, during the Term of this Agreement and during the time any provision of this Agreement survives the Term.

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

9. No Conviction for Undocumented Workers. As of the date of the Payment Request, and at all times during the Term prior to the Payment Request, the Company and each branch, division and department of the Company, shall not have been convicted of knowingly employing Undocumented Workers.

ARTICLE VII

Affirmative Obligations of the City

1. Park Land Dedication Fee Credit. In consideration of the obligations imposed on Company by this Agreement, as well as the public purpose served by the Building Improvements for providing work-force housing in the City, the City Council's approval of this Agreement shall constitute the City Council's finding that because of the foregoing factors it is clearly in the best interest of the City to allow a credit at the Closing of the Company's Land, in the sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) against and fee in lieu of Park Land Dedication Fee requirement of Company under the requirements Article VI, Conveyance of Land for Parks, of Appendix B, Subdivisions, of the City's Code of Ordinances,.

2. Construction of the Intersection Improvements. City covenants and agrees to cause Completion of Construction of the Intersection Improvements within forty-eight (48) months after the City's issuance of a building permit for the Building Improvements. The Intersection Improvements shall be constructed in compliance with applicable state and federal laws, regulations and standards and City Regulations.

3. Payment for Construction of the Intersection Improvements. Other than payment of the Intersection Improvement Funds to the City, transfer of the Incentive Grant into the Intersection Improvement Funds and payment of Roadway Impact Fees, Company has no obligation to pay for any costs or expenses for construction of the Intersection Improvements, which shall be paid entirely by the City. The City shall place the Intersection Improvement Funds in a dedicated fund within the City's Accounting/Finance Department and shall hold the Intersection Improvement Funds in escrow only to be used for payment of costs and expenses incurred by the City in constructing the Intersection Improvements. In the event not all of the Intersection Improvement Funds are used to pay for costs and expenses for construction of the Intersection Improvements, the Parties agree the City may transfer such funds to the City's Capital Reserve Fund .

4. Payment of Incentive Grant. Provided the General Conditions Precedent and Incentive Grant Conditions Precedent contained in Article VIII of this Agreement are satisfied, then the City shall provide Company the Incentive Grant provided in Article IX of this Agreement by transferring the Incentive Grant amount to the Intersection Improvement Fund escrow account held by the City.

ARTICLE VIII
Conditions Precedent to Payment of the Incentive Grant

1. General Conditions Precedent to Payment of the Incentive Grant. Company and the City hereby expressly acknowledge and agree that the City's obligation to pay each and any Incentive Grant shall expressly be conditioned upon the satisfaction of the following conditions precedent (individually a "**General Condition Precedent**" and collectively the "**General Conditions Precedent**"):

- a. Payment of Impositions. Company shall have timely paid to the City all Impositions and the City shall have confirmed receipt of all such Impositions.
- b. Records and Reports. Company shall have delivered to the City copies of such invoices, paid receipts, payment records and such other documentation as the City may reasonably request to confirm compliance by Company with the Conditions Precedent and Company's obligations in this Agreement.
- c. Taxes. Company shall have timely paid all ad valorem taxes assessed and then due and owing against the Company's Land and Building Improvements and business personal property located on the Company's Land as of the date of any Payment Request.
- d. Performance of this Agreement. Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by Company under the terms of this Agreement and no Company Default shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement.
- e. Performance by Company of other Agreements. Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by Company under the terms of all other agreement(s) now and hereafter existing between Company and the City, if any, and no default shall then exist under the terms of such agreement(s) and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by Company under the terms of such agreement(s).

2. Conditions Precedent to Incentive Grant. Company and the City hereby expressly acknowledge and agree that the City's obligation to pay the Incentive Grant by transferring the Incentive Grant to the Intersection Improvement Funds shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (the "**Incentive Grant Conditions Precedent**") in addition to the General Conditions Precedent stated above:

- a. Satisfaction of Company's Affirmative Obligations as provided in Article V of this Agreement

- b. At the option of the City, the City shall have inspected Building Improvements and Drainage Improvements to confirm Company's compliance with the terms and provisions of this Agreement.
- c. Company shall complete performance of its covenants under Article V
- d. Payment Request. Company shall submit a Payment Request for the Incentive Grant to the City accompanied by any required documentation, and as of the date of such Payment Request, all terms of this Agreement, including applicable conditions precedent set forth herein, shall have been satisfied. Company shall also provide to City any information reasonably requested by the City to verify compliance of Company with this Agreement. A Payment Request shall be submitted to the City's Finance Director at 757 N. Galloway, Mesquite, Texas 75149 within thirty (30) days of Company's entitlement to an Incentive Grant earned herein. The Payment Request shall also instruct the City to transfer the Incentive Grant to the Intersection Improvement Funds escrow account held by the City.
- e. Certificate of Compliance. Each Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request.

ARTICLE IX Incentive Grant

1. Incentive Grant. The City hereby approves, subject to satisfaction of the General Conditions Precedent, Incentive Grant Conditions Precedent and limitations set forth in this Agreement, an economic development grant to the Company in an amount equal to the Water and Sewer Impact Fee to be paid by Company to City in the amount of FIVE HUNDRED TWENTY-TWO THOUSAND EIGHT HUNDRED SEVENTY-SIX AND 00/100 DOLLARS (\$522,876.00). This Incentive Grant shall be paid by City by transferring the Incentive Grant to the Intersection Improvement Funds escrow account held by the City upon satisfaction of all applicable conditions precedent and within forty-five (45) days of Company submitting to City a Payment Request in compliance with this Article.

2. Payment of a Payment Request. The City shall transfer the Incentive Grant to the Intersection Improvement Funds escrow account within thirty (30) days of the Payment Request if the Payment Request was in full compliance with this Agreement and timely received and Company is then in compliance with all terms and conditions of this Agreement.

3. Funds Available for Payment of Incentive Grant. The Incentive Grant payable by the City to Company 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. All Incentive Grant payments payable hereunder shall be paid only from funds of the City authorized by Article, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. Each Incentive Grant payment shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the Incentive Grant payment is to be made. Under no circumstances shall the City's obligations under this Article be deemed to create any debt within the meaning of any constitutional or statutory provision.

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

ARTICLE X Defaults and Remedies

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

2. City Remedies. In the event of a Company Default, the City shall have no obligation to pay the Incentive Grant or repay to Company any of the Intersection Improvement Funds, including the Incentive Grant portion thereof, all of which, upon such Company Default, shall become property of the City. Further, the City shall have the right to: (i) terminate this Agreement immediately by written notice to the Company; and (ii) exercise any and/or all other rights and/or remedies available to the City under this Agreement and/or pursuant to the laws of the State of Texas.

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

4. Company Remedies. Upon the occurrence of a City Default, Company shall have the right to terminate this Agreement by written notice to the City. The City and Company acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Alternatively, if and only in the event a court of competent jurisdiction determines the City's immunity from suit is waived under Subchapter I of Chapter

271, V.T.C.A., Local Government Code, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement, Company's damages shall be limited as follows:

- (a) the balance existing in the Intersection Improvement Funds escrow account held by the City at the time of the City Default;
- (b) Company shall have a right to complete the construction of the Drainage Improvements to the extent not completed at the time of the City Default, and Company shall be entitled to injunctive relief to enforce the temporary construction easement provided by the City to the Company hereunder; and
- (c) the recovery of damages against the City shall not include consequential, punitive, exemplary, or speculative damages.

5. Attorney's Fees. Neither Party hereto shall be entitled to seek or recover attorney's fees (except in the event of the exercise by the City of the remedies set forth in Chapter 2264 of the Texas Government Code).

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

ARTICLE XI

Miscellaneous Provisions

1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of Company may not be assigned or transferred by Company, except to an Affiliate, without the prior written consent of the City, which may be withheld in the City's sole discretion. In the event Company is a real estate investment trust, a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the real estate investment trust, or the sale, transfer or assignment of a controlling interest in the shares of the applicable company, or the sale, transfer or assignment of a controlling interest in the membership interests of the applicable company shall constitute an assignment of this Agreement and the failure of Company to obtain the prior written consent of the City prior to such sale, transfer or assignment unless to an Affiliate shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by Company. In the event Company is a partnership, the sale, transfer or assignment of a controlling interest in the shares of a corporation or the membership interests of a limited liability company or the partnership interests of a partnership that is Company's general or managing partner shall constitute an assignment of this Agreement and the failure of Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares, membership interests or partnership interests unless to an Affiliate shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by Company. Furthermore, neither Company nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, collaterally assign, mortgage, pledge, encumber or otherwise transfer any interest in any receivables under this Agreement or any part hereof, or the interest of Company or any

approved assignee under this Agreement, without obtaining the City’s prior written consent, which may be withheld in the City’s sole discretion. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. 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 Company and in the event Company attempts to assign this Agreement in violation of this Article, the City shall have the right to terminate this Agreement with Company by written notice to Company.

2. 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:

Palladium Bruton Road Ltd. c/o Palladium Bruton Road Ltd.
 13455 Noel Road, Suite 400
 Dallas, Texas 75240
 Attention: Thomas E. Huth
 Email: tom@palladiumusa.com

With a copy to: Coats Rose, PC
 16000 North Dallas Parkway, Suite 350
 Dallas, Texas 75248
 Attention: David E. Brusilow
 Email: brusilow@coatsrose.com

CITY: City Manager
City of Mesquite
1515 N. Galloway Avenue
Mesquite, TX 75149
ckeheley@cityofmesquite.com

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

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

3. Right to Offset. Only in the event of a Company Default which has not been cured, 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 Company to the City, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

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

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

6. Modification. This Agreement may only be revised, modified or amended by a written document signed by all Parties to this Agreement. Oral revisions, modifications or amendments are not permitted.

7. 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 nor against any Party.

8. 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. This Agreement is expressly made subject to City's governmental immunity, including but not limited to the Texas

Civil Remedies Code and all applicable state and federal law. The Parties expressly agree that no provision of the Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the City has by operation of law.

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

10. **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES. THE PARTIES AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, THE PARTIES WAIVE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES INCLUDING BUT NOT LIMITED TO LOST PROFITS.**

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

12. 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.

13. 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.

14. 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.

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

16. Entire Agreement. This Agreement together with the referenced exhibits, sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior

discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. There are no oral agreements between the Parties.

17. Authority. Company represents 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. Company 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 Company has the authority to sign this Agreement on behalf of Company.

18. Anti-Boycott Verification. If Texas Government Code Chapter 2271 [is applicable to this Agreement](#), by signing below, Company hereby represents, verifies, and warrants that Company does not boycott Israel and will not boycott Israel during the term of the Agreement.

19. Iran, Sudan and Foreign Terrorist Organizations. If § 2252.153 of the Texas Government Code is applicable to this Agreement, by signing below Company hereby represents, verifies, and warrants that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under § 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a “foreign terrorist organization” as defined in § 2252.151 of the Texas Government Code.

20. Verification Regarding Firearm Entities or Trade Associations. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under § 2274.002 (b) Tex. Gov’t. Code (a) the Company verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) the Company will not discriminate during the Term against a firearm entity or firearm trade association. The foregoing verification is made solely to comply with Chapter 2274, Tex. Gov’t. Code, to the extent the applicable provision in Chapter 2274.002, Tex. Gov’t. Code does not contravene applicable Texas or federal law. As used in the foregoing verification, “firearm entity or firearm trace association” shall have the meaning assigned to the terms in § 2274.001 (6), (7), Tex. Gov’t. Code. Company understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Company and exists to make a profit.

21. Verification Regarding Energy Company Boycotts. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under §§ 2276.002(b)(1)-(2) Tex. Gov’t. Code, Company hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, will not boycott energy companies during the Term. The foregoing verification is made solely to comply with § 2274.002, Tex. Gov’t. Code, as amended, to the extent § 2274.002, Tex. Gov’t. Code does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies” shall have the meaning assigned to the term “boycott energy company” in § 809.001, Tex. Gov’t. Code. Company understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Company and exists to make a profit.

22. Undocumented Workers Certification/Prohibition. The Company certifies that the

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

23. Report Agreement to Comptroller's Office. City will report this Agreement to the Texas State Comptroller's office within fourteen (14) days of the Effective Date in accordance with § 380.004 of the Texas Government Code.

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

25. Non-Collusion. Company represents and warrants that neither Company nor anyone on any Company's behalf has given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any employee, agent, representative or official of the City as an inducement to or in order to obtain the benefits to be provided by the City under this Agreement.

26. Form 1295 Certificate. Company agrees to comply with Texas Government Code, § 2252.908 and in connection therewith, Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, § 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.

27. Exterior Finish Plan. 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. Company acknowledges that, notwithstanding the Act, in consideration of the agreement of the City to pay the Incentive Grant to Company under the terms and subject to the conditions set forth in this Agreement and to perform its other obligations hereunder, Company is contractually agreeing to construct the façade and elevations of all of the Building Improvements to conform to the Exterior Finish Plan. The Parties acknowledge that the provisions of this section are material to the City's agreement to grant the Incentive Grant and Park Land Dedication Fee credit and is a bargained for consideration between the Parties.

28. Execution of Agreement by Parties. If this Agreement is not executed by Company and the City on or before sixty (60) days after the date of approval by the City Council, this Agreement will be null and void and of no force or effect.

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

30. Sovereign Immunity. No party hereto waives any statutory or common law right to sovereign or governmental immunity by virtue of its execution hereof.

31. 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.

[Signature Page Follows]

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

ATTEST:

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

By: _____
Sonja Land
City Secretary

By: _____
Name: Cliff Keheley
Title: City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
David L. Paschall, City Attorney

COMPANY:

Palladium Bruton Road, Ltd.

**By: Palladium Bruton Road GP, LLC,
its general partner**

By: _____
Name: Thomas E. Huth, Manager
Title:

Date: _____

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Document</u>
A	Depiction of Company's Land and City's Land
B	Concept Plan for the Building Improvements
C	Description and Depiction of the Drainage Improvements
D	Exterior Finish Plan for the Building Improvements
E	Project Closeout and Acceptance Requirements
F	Requirements for Record Drawings and Plats for Private Development Projects
G	Insurance Requirements

EXHIBIT A

Description and Depiction of Company's Land

PALLADIUM CARVER LIVING - DRAINAGE AREA MAP

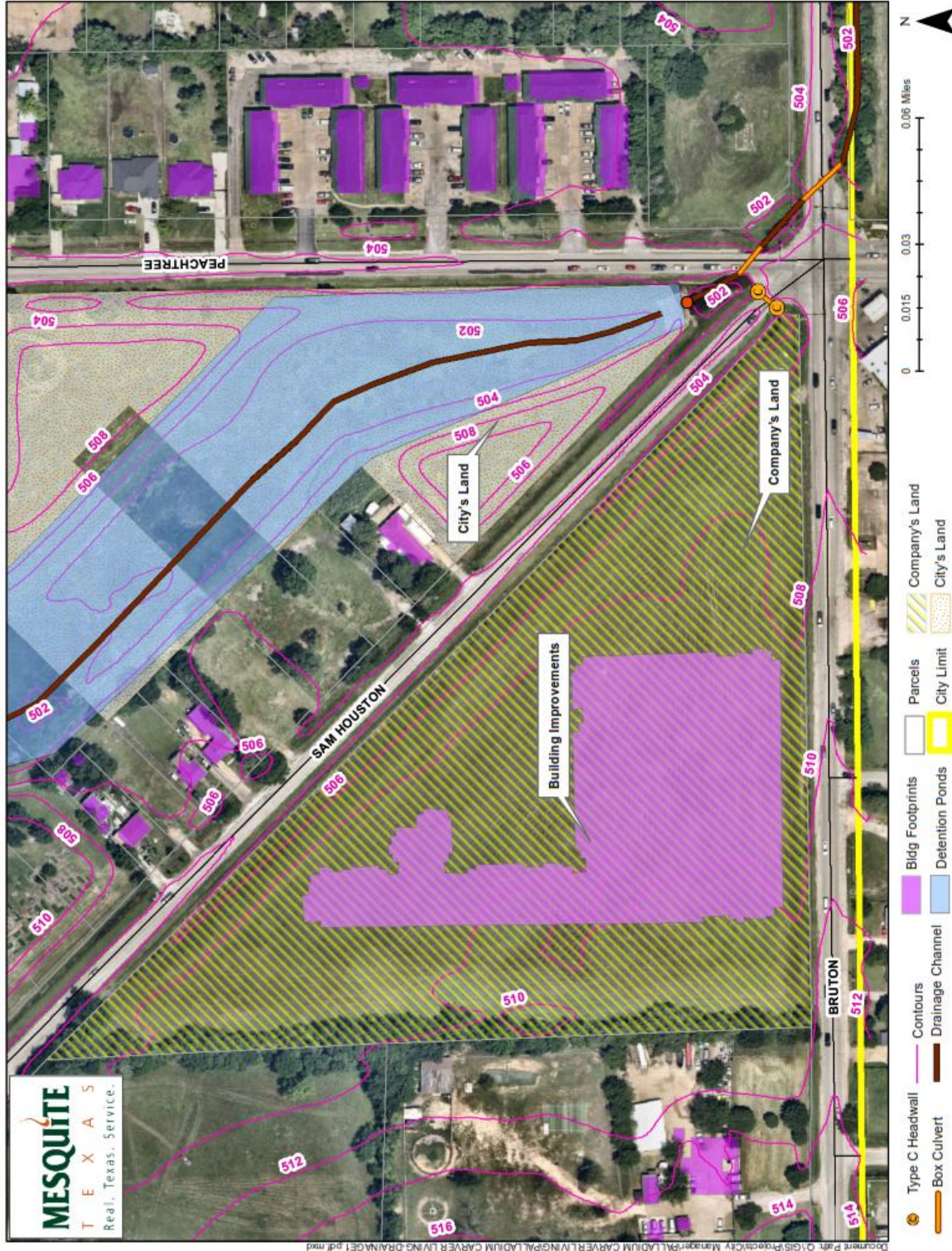
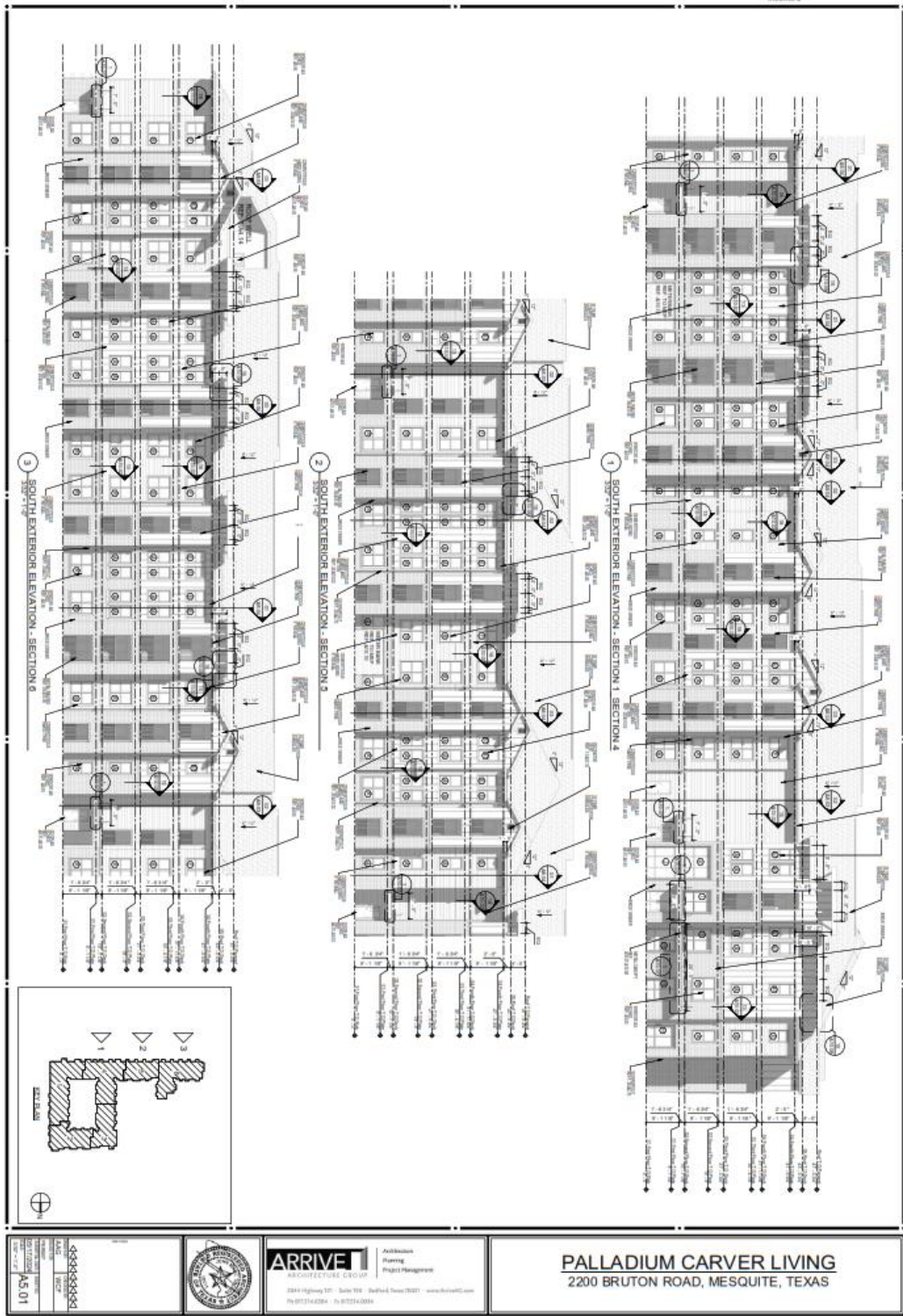


EXHIBIT D

Exterior Finish Plan for the Building Improvements



1 EAST EXTERIOR ELEVATION - SECTION 1
35' - 11 1/2"

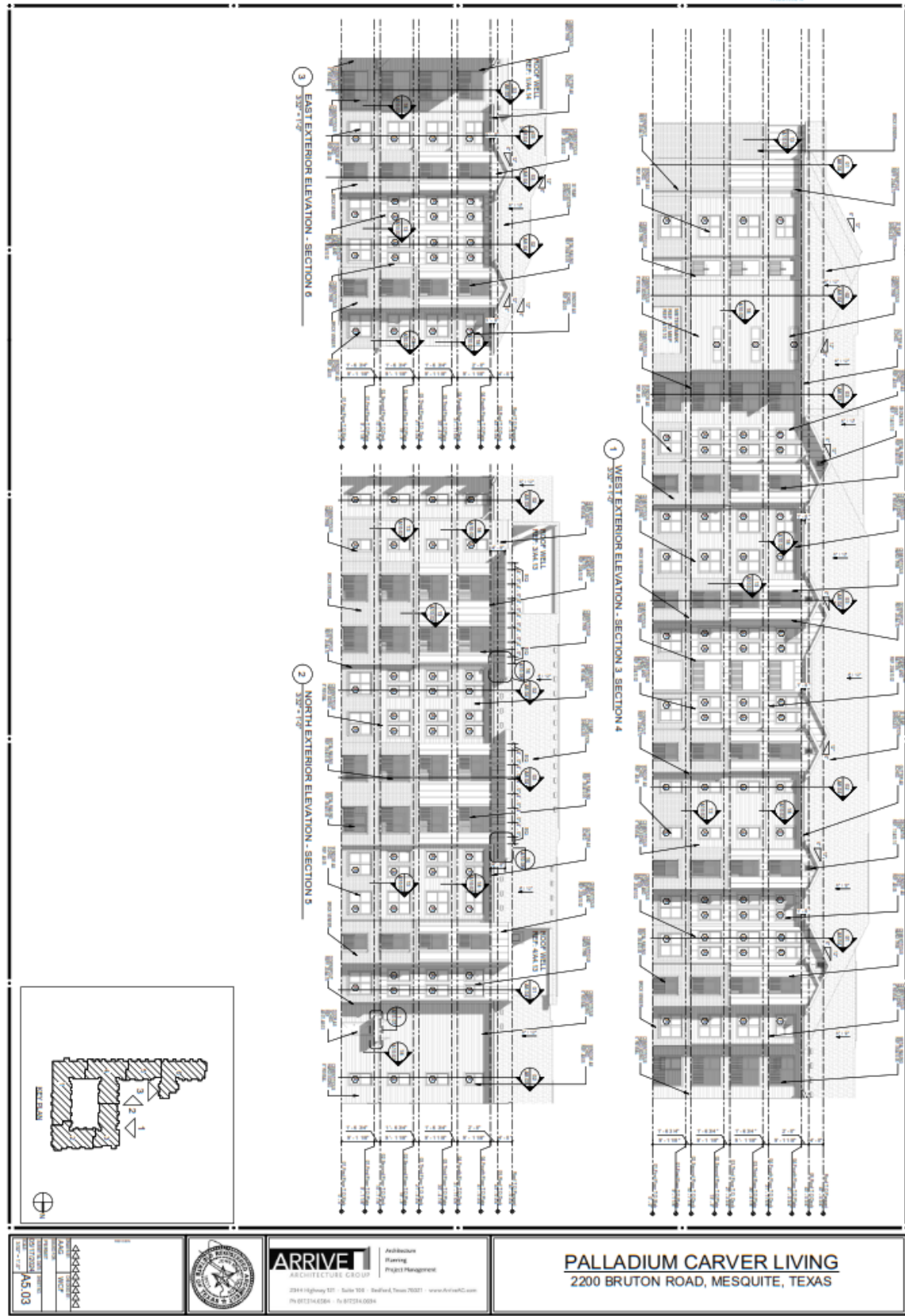
2 EAST EXTERIOR ELEVATION - SECTION 1 SECTION 2
35' - 11 1/2"

3 NORTH EXTERIOR ELEVATION - SECTION 2 SECTION 3
35' - 11 1/2"

ARRIVE 1 ARCHITECTURE GROUP
2214 Highway 57 - Suite 150 - Bedford, Texas 76021 - www.arrive1.com
767.274.4294 - 767.274.4299

PALLADIUM CARVER LIVING
2200 BRUTON ROAD, MESQUITE, TEXAS

AS 02



DATE	11/11/2014
BY	WJW
DESCRIPTION	REVISED
NO.	45.03



ARRIVE 1 Architecture Group
 2044 Highway 127, Suite 100, Bedford, Texas 76021
 PH 817.214.6284 FX 817.214.0094

PALLADIUM CARVER LIVING
 2200 BRUTON ROAD, MESQUITE, TEXAS

2 WEST EXTERIOR ELEVATION - SECTION 6

3 NORTH EXTERIOR ELEVATION - SECTION 6

4 WEST EXTERIOR ELEVATION - SECTION 6

1 NORTH EXTERIOR ELEVATION - SECTION 6

Site Plan

ARRIVE! ARCHITECTURE GROUP
 Architecture
 Planning
 Project Management
 2244 Highway 537, Suite 100 - Bedford, Texas 76021 - www.ArriveAG.com
 Ph: 817.214.4284 - Fx: 817.214.0094

PALLADIUM CARVER LIVING
 2200 BRUTON ROAD, MESQUITE, TEXAS

DATE	1/27/2017
BY	ARRIVE!
PROJECT	ARRIVE!
REVISION	ARRIVE!
SCALE	AS SHOWN
NO.	AS 04

EXHIBIT E

Project 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 F

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 (PWC) 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 PWC. Once approved by the PWC 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 PWC 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 PWC 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.

EXHIBIT G

Insurance Requirements



Insurance Requirements
For Contracts / Vendors

CONTENTS

I. MINIMUM INSURANCE REQUIREMENTS MATRIX

II. SCOPE

III. FINANCIAL RATING-INSURANCE COVERAGE

- AUTOMOBILE LIABILITY
- COMMERCIAL GENERAL LIABILITY
- WORKERS' COMPENSATION
- EMPLOYERS' LIABILITY
- PROFESSIONAL LIABILITY

IV. OTHER LINES OF INSURANCE COVERAGE

- UMBRELLA / EXCESS LIABILITY
- PROPERTY
- POLLUTION LIABILITY
- CRIME COVERAGE
- CONTRACT BONDS

V. CERTIFICATES OF INSURANCE AND POLICY ENDORSEMENTS

VI. OTHER KEY CONSIDERATIONS

- GOVERNMENTAL TORT IMMUNITY
- SELF-INSURED CONTRACTORS / VENDORS

CITY OF MESQUITE RECOMMENDED MINIMUM INSURANCE REQUIREMENTS FOR CONTRACTS

Contractor / Vendor Services	A Financial Rating	B Business Auto Liability	C Commercial General Liability	D Workers' Compensation	E Employers' Liability	F Professional Liability
Construction Contractor Controlled	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	Statutory	\$100,000 Limit Ea. Acc/Disease/Aggregate	N/A
Engineering / Architect Design	A- (VII)	\$500,000* CSL	\$1,000,000* Occ/Agg for contracts under \$50K \$2,000,000 Agg for contracts over \$50K	N/A	\$100,000* Limit Ea. Acc/Disease/Aggregate	\$1,000,000 Clims. Made
Building/Equipment IT Tech Outsourced Labor Svcs.	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	N/A*	\$100,000* Limit Ea. Acc/Disease/Aggregate	\$1,000,000* Clims. Made
Information Technology Software	A- (VII)	\$500,000* CSL	\$1,000,000 Occ/Agg	N/A	N/A	\$1,000,000 Clims. Made
Consulting Services Financial/Business/Other	A- (VII)	\$500,000* CSL	\$1,000,000 Occ/Agg	N/A	N/A	\$1,000,000 Clims. Made
Prof. & Licensed Svcs. Survey/Appraisal Real Estate	A- (VII)	\$500,000* CSL	\$1,000,000 Occ/Agg	N/A	N/A	\$1,000,000 Clims. Made
Communications Print/ Media Public Relations	A- (VII)	\$500,000* CSL	\$1,000,000 Occ/Agg	N/A	N/A	\$1,000,000 Clims. Made
Entertainment/Recreation Labor & Services	A- (VII)*	\$500,000* CSL	\$1,000,000* Occ/Agg	N/A*	\$100,000 Limit* Ea. Acc/Disease/Aggregate	N/A

- A: Coverage shall be provided by a carrier approved to do business in the state of Texas and rated at least "A- (VII)" in A.M. Best's Key Rating Guide.
- B: Applies "when" operating vehicles to provide specified service (on City property, as part of service other than meetings, product delivery, etc.) Limits shall be no less than indicated amount, Combined Single Limit Each Occurrence. City is to be an Additional Insured on the AL policy.
- C: Limits shall be no less than indicated amount per Occurrence and Aggregate limits. All insurance policies shall be written on a primary basis and be non-contributory with any other coverages carried by the City. City is to be an Additional Insured on GL and AL policies. City requires the contractor indemnify it from liability arising out of contractor's employee injuries. Must also include a Waiver of Subrogation (W.O.S.) on the GL policies.
- D: Statutory Workers' Compensation coverage is required on all new* Construction Projects including buildings*, Waterworks, Road & Bridge infrastructure, with a "W.O.S.".
- E: Employers' Liability coverage limits of not less than specified amounts. City shall be an Additional Insured with waiver of subrogation. City requires the contractor indemnify it from liability arising out of contractor's employee injuries on City Property and projects.
- F: Professional Liability coverage shall be maintained from project inception and for no less than two years past project completion or termination date.

* The City of Mesquite reserves the right to alter minimum insurance requirements at any time, based on the project or service value, and perceived risk of adverse loss. Crime coverage shall be required if a contractor or vendor directly handles or has access to computer systems that administer City money, securities or other negotiable instruments.

Minimum Insurance Requirements for Contracts

II. SCOPE

The following insurance requirements are designed to facilitate the execution of contracts by duly authorized City of Mesquite staff (hereafter referred to as City). They are to be applied to contracts involving labor, not supplies, entered by the City with entities providing services that include but are not limited to professional services, construction or maintenance of facilities and infrastructure and other services for the City where contractual risk transfer is deemed appropriate (For the purposes of this document, all these entities will be referred to as "contractor / vendor"). Where the following topics only apply in certain situations, it is noted in that section of the document.

III. FINANCIAL RATING-INSURANCE COVERAGE

Insurance coverage serves as part of the financial backing for liability assumed by a contracting party through indemnification language in a contract. Instead of intentionally utilizing its own assets to support liability, the contracting party is transferring risk to the insurance company in return for payment of insurance premium. Without insurance, most contractors / vendors would not be able to meet indemnification obligations when a significant loss occurs.

The City requires all contractor / vendor insurance policies be written on a primary basis and be non-contributory with any other insurance coverages and/or self-insurance carried by the City, meaning, the City and its coverage provider is not to pay first or contribute in any way. Coverage shall be provided by a carrier approved to do business in the state of Texas and rated at least "A- (VII)" in A.M. Best's Key Rating Guide.

The coverages and minimum limits the City require reflect perceived risk potential that activities of the contractor / vendor could impose onto the City, but, in no way limits liability of the contractor/vendor.

For most contractors / vendors, the City will generally require the contract reflect a minimum level of insurance limits on five types of insurance coverage: Commercial General Liability, Workers' Compensation, Employers' Liability, Business Automobile Liability and Professional Liability when appropriate.

Organizations that are totally self-insured are not required to carry insurance but must attest they possess the necessary amount of unencumbered financial assets, acceptable by the City of Mesquite to support their retained risk financing exposure(s).

AUTOMOBILE LIABILITY

Business Automobile Liability insurance covers liabilities assumed by a business when the type of motor vehicles required to be licensed for operation on public roads, or public property, are used during business activities. In situations where the contracting party will be utilizing motor vehicles (owned, hired or borrowed) to perform operations/provide services on City owned property or on behalf of the City, the contracting party will be required to carry Business Automobile Liability insurance, with the City as named as Additional Insured in the contract. If the contractor / vendor will be transporting hazardous substances or passengers for hire, they must meet all State and Federal licensing requirements. Depending on the type and number of hazardous materials transported, the contractor / vendor may be subject to the Federal Motor Carrier Act and required to provide proof of financial responsibility.

COMMERCIAL GENERAL LIABILITY

Commercial General Liability is broad based insurance that covers the liability assumed in performance of the general, non-professional activities of many businesses. In most cases general liability insurance will be the primary policy responding to negligent acts or conditions (e.g., a person that is not an employee, injured from a tool dropped or mishandled by a contractor / vendor).

Contractors, vendors and other outside businesses and organizations that want to do business with the City or otherwise conduct business on City property will be required to provide evidence of commercial general liability insurance naming the City as an additional insured to the organization's insurance policy. (Please see the Certificates of Insurance section below for required wording). Examples of outside businesses and organizations required to meet these standards include but are not limited to consultants; construction contractors and other building services contractors (electricians, plumbers and- HVAC); vendors providing City event activities and services; and non-affiliated organizations using City facilities for meetings, seminars, athletic events, etc.

The amount of insurance required by the City is based on the level of risk involved with the type of service or activity taking place, as well as the scope and nature of the project to be completed (e.g. where negligent work by the contractor / vendor could result in significant damage to City property, business operations or injury to citizens, employees, or visitors), but not less than the amount stated in the previous table (page 2).

WORKERS' COMPENSATION/EMPLOYERS LIABILITY

Workers' Compensation covers an employer's statutory financial obligation to pay costs associated with an employee's medical treatment and lost wages due to a work-related injury or illness. With very limited exceptions, state laws require all businesses performing certain types of work (construction / contractor services) to either purchase workers' compensation coverage or become an authorized self-insurer by statute. **(Exceptions include businesses whose legal status is a Sole Proprietorship, and the business has no employees.)**

In situations where the contractor / vendor will be engaged in services on City-owned property, the contractor / vendor will be required to carry Workers' Compensation and/or Employer's Liability insurance. It is the responsibility of the contractor / vendor to provide proof in the form of acceptable documentation they are exempt from statutory requirements of having Workers' Compensation insurance, if they qualify for such (an example is a "Sole Proprietor without employees).

Employers Liability covers an employer's liability for bodily injury to employees occurring within the scope of their employment **when that liability is not covered by workers' compensation** (i.e., claims of emotional stress or psychological damage, etc.). This coverage generally applies when an employee alleges the employer's negligence or failure to provide a safe workplace was the cause of the employee's injury or illness.

Employer's liability is normally provided in conjunction with workers' compensation coverage in a single unified policy, but Texas allows for rejection of the Workers' Compensation Act. **Contractors / Vendors that have rejected the Texas Workers' Compensation Act, and are not providing new construction work, must provide evidence of a Workers' Compensation Alternative program/policy at the contractually indicated requirements. This includes but is not limited to service and repair HVAC, Electrical, Mechanical, Carpentry, Painting, and installation contractors.**

PROFESSIONAL LIABILITY / ERRORS & OMISSIONS INSURANCE

The liability exposures created by an improper act, error, or omission in performance of professional services can be very significant. Without insurance, nearly all professional services contractors / vendors would not be able to meet their indemnification obligations when a significant loss occurs. The coverage must be on a claims made basis and maintained during the term of the contract.

Certain types of contractors / vendors perform highly specialized professional services and are not fully covered under a typical Commercial General Liability policy. In lieu of or addition to basic coverages previously described, these contractors / vendors are required to carry Professional / Errors & Omissions Liability insurance. Contractors / vendors required to carry Professional / Errors & Omissions Liability insurance **include but are not limited to:** Law Firms, Architects, Engineers, Environmental Consultants, Surveyors, Appraisers, Real Estate Professionals, IT Software Service Providers, Security Companies, Accountants, Business/Financial Consultants, Medical Professionals, and Insurance Brokers. *[Note: Although these vendors are required to obtain Professional Liability/Errors & Omissions Insurance, these services may not be deemed "Professional Services" and exempt from bidding under state law. Contact the Legal Department if procuring these or similar services.]*

IV. OTHER LINES OF INSURANCE COVERAGE

Certain types of contracts and activities will result in additional required insurance coverages for the contractors / vendors performing them. The additional coverages include but are not limited to:

UMBRELLA / EXCESS LIABILITY

The minimum required limits may be increased if the project value, scope and/or risk associated with the contractor / vendor activities are greater than usual City activities/projects. For example, services with a value more than \$1,000,000, or services where governmental immunities do not apply. Umbrella / Excess Liability insurance provides additional coverage limits over a primary (GL) insurance policy. Excess Liability only applies to a single policy. An Umbrella Liability policy can apply to multiple policies. A standard umbrella liability policy generally provides additional limits to a business's Commercial General Liability, Business Automobile Liability and Employer's Liability policies.

A contractor / vendor's Primary and Excess Umbrella Liability limits can be added together to meet the City's contractually required limit(s) for an individual line of coverage. For example, if the contractor / vendor is required to carry \$1m in Commercial General Liability limits and the insurance certificate shows \$500,000 Commercial General Liability and \$500,000 or more in Umbrella Liability limits, this would comply with the required \$1m limit.

PROPERTY INSURANCE

Requirements for insurance, as determined by exposure to loss for the City of Mesquite, as determined by extent of exposure to loss, subject to approval and recommendation by the City Insurance Committee. Property insurance reimburses the policyholder for damage to or theft of their real and personal property (buildings, contents and other items of property not specifically excluded). It can also protect against extra expenses and lost business income resulting from the damage to or theft of insured property. The minimum limit for property coverage is based on reasonable appraised/replacement/comparable values.

Requirements to carry property insurance will generally be limited to lease agreements with commercial tenants. Mesquite Metro Airport is an example with commercial tenants. The tenant will be required to carry "Broad Form" property insurance on all property of the tenant, including all improvements and betterments made to the building by the tenant, in an amount equal to the replacement cost value of the property. Property insurance is also required of the contractor/vendor if they will have care, custody, or control of City-owned personal property (Office equipment, artwork, antennas, materials handling-----

-equipment, etc.) City Property Insurance does not respond to losses for non-owned property (borrowed, leased, etc.) unless the City has assumed liability by way of a written contract or agreement.

POLLUTION LIABILITY INSURANCE

If the contracting party engages in work or uses a material, produces a product or waste considered to be a “hazardous material or waste” under local, state or federal law, (which includes but is not limited to: flammable explosives, known carcinogenic materials, volatile chemicals and biological contaminants) they are required to carry Pollution Liability insurance coverage at limits dictated by the exposure to loss that is appropriate and acceptable to the City of Mesquite. The policy must cover the Contractor’s completed operations. This insurance must include sudden and gradual coverage for third-party liability including defense costs and completed operations. The coverage must be maintained during the term of the contract/lease. The City of Mesquite is to be named as an additional insured in the Contract.

CRIME INSURANCE

When a contractor / vendor’s services include handling or having access to City money, securities and other negotiable instruments, the contractor / vendor is required to have a Commercial Crime (Fidelity) policy or if they are a financial institution, a Financial Institution Bond. Limits are commensurate with the associated dollar value, as determined by the City of Mesquite Insurance Council and managing Departments. The City will be named as an additional insured in the Contract. The coverage amount is determined by the value of accessible assets at risk and deemed acceptable by the City of Mesquite.

CONTRACT BONDS

Contract Bonds provide a financial guarantee that a contractor / vendor will provide the service or product promised in a contract. The most common type is a Performance Bond. A Performance Bond provides financial guarantee that the contractor / vendor will provide the service per the terms in the contract. The City of Mesquite, by statute, must require a performance bond for a construction contract greater than \$100,000 and a payment bond on a construction contract greater than \$50,000.

V. CERTIFICATES OF INSURANCE AND POLICY ENDORSEMENTS:

A Certificate of Insurance (COI) is a simple, standardized way of documenting proof of insurance coverages. Although a certificate of insurance is not legally binding and does not impose any obligation onto the insurance company(s) listed, it does serve to identify key information about the contractor’s / vendor’s insurance.

Prior to finalizing the contract, the contractor / vendor will be required to deliver an acceptable COI and endorsement evidencing the required coverages and limits to the appropriate City Department(s), and any agent working on the City’s behalf. The COI shall provide for:

- a. Coverages represented on the certificate must identify insurer/coverage provider names, policy numbers, policy dates and limits.
- b. Except for Workers’ Compensation and Professional Liability coverage, the COI must state that “The City of Mesquite-Texas, its trustees, officers, agents and employees are Additional Insureds as their interests appear relating to the contractually stipulated service, project or product.”
- c. A minimum of thirty (30) days written notice of cancellation, non-renewal or material restriction of coverage terms or limits from the insurance company by signed receipt delivery.

DETERMINING COVERAGE TYPES, LIMITS, AND EXCEPTIONS

The types and amounts of insurance coverage must be determined before any solicitation is issued. An Insurance Committee consisting of representatives from the Manager’s Office, City Attorney’s Office, Purchasing Division, and Risk Management may deviate from the required insurance minimums upon a justified request of the soliciting department. A simple majority of the Insurance Committee may approve an insurance deviation.

VI. OTHER KEY CONSIDERATIONS

GOVERNMENTAL TORT IMMUNITY

The City of Mesquite enters many contracts with other governmental entities (States, Cities, Towns, Housing Authorities, Transit Authorities, School Districts, etc.). Governmental entities are generally **immune** from liability for lawsuits in accordance with the principle of sovereign immunity. However, many states, including Texas, have enacted statutes providing for waiver of such immunity for certain types of tort actions by government employees (operating a motor vehicle within course and scope is an example). Additionally, Texas state statutes may prohibit the City from enforcing the indemnification clause in the contract. If this situation arises, the Insurance Committee shall be consulted to determine the most appropriate course of action for the City.

SELF INSURED CONTRACTORS/VENDORS

Contractors/Vendors that have implemented a formal, structured self-insurance program (e.g. captive insurance company, risk retention group) or carry a deductible/ retention greater than \$250K per claim on any required coverage shall attest, in writing, they have excess insurance or reinsurance (acceptable to the City of Mesquite), as well as possess a necessary amount of unencumbered financial assets deemed appropriate by the City of Mesquite, to support their retained risk financing exposure(s).