CITY SECRETARY
CONTRACT NO. 45582

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** (**"Agreement"**) is entered into by and between the **CITY OF FORT WORTH, TEXAS** (the **"City"**), a home rule municipality organized under the laws of the State of Texas, and **CLEARFORK DEVELOPMENT COMPANY, LLC** (**"Developer"**), a Texas limited liability company.

RECITALS

The City and Developer hereby agree that the following statements are true and correct and constitute the basis upon which the City and Developer have entered into this Agreement:

A. Cassco Development Company, Inc. and Clearfork MF1, LP, as Affiliates of Developer, currently each own tracts of real property comprising in total approximately 44 acres of land in the City in the vicinity of West Vickery Boulevard and South Hulen Street (the **"Development Property"**), as more specifically depicted and described in **Exhibit "A"**, attached hereto and hereby made a part of this Agreement for all purposes. The Development Property currently consists of vacant land.

B. Developer, either itself or through an Affiliate, wishes to construct a mixed-use development on the Development Property in stages at three potential levels of investment, as more specifically set forth herein (all of which is included as part of the definition of "Development" set forth in Section 2 of this Agreement). The proposed Development is generally depicted in the schematic attached hereto as **Exhibit "B"**, which is hereby made a part of this Agreement for all purposes. Developer has represented to the City that the Development will not be feasible financially without public assistance due to, among other things, insufficient infrastructure on and around the Development Property and the need for the construction of parking garages for the benefit of the Development, which are necessary to achieve the public purpose of making the Development more dense, consistent with recommendations set forth in the Comprehensive Plan for mixed-use growth centers, as outlined more specifically in Recital C hereof.

C. The 2014 Comprehensive Plan, which was adopted by the City Council pursuant to Ordinance No. 21164-03-2014 (the **"Comprehensive Plan"**), includes recommended future land uses and land use policies for each of sixteen (16) sectors of the City. The future land use map for the Arlington Heights Sector includes the Development Property and recommends that the Development Property be developed as part of and in a manner that is consistent with a mixed-use growth center. The Comprehensive Plan defines a mixed-use growth center as a relatively small urbanized area that contains a concentration of jobs, housing units, schools, parks and other public facilities, public transportation hubs and pedestrian activities. Among the potential

benefits of mixed-use growth centers cited by the Comprehensive Plan are economic development; the development of multifamily housing at appropriate locations; efficiency in the provision of public facilities and services; reduced reliance upon single-occupancy vehicles; and the protection of the environment. Accordingly, the Comprehensive Plan cites the promotion of mixed-use growth center development patterns as a goal that the City should embrace.

D. As recommended by the Comprehensive Plan and in accordance with Resolution No. 3716-03-2009, adopted by the City Council on March 10, 2009, the City has established an economic development program pursuant to which the City will, on a case-by-case basis, offer economic incentive packages authorized by Chapter 380 of the Texas Local Government Code that include monetary loans and grants of public money, as well as the provision of personnel and services of the City, to businesses and entities that the City Council determines will promote state or local economic development and stimulate business and commercial activity in the City in return for verifiable commitments from such businesses or entities to cause specific infrastructure, employment and other public benefits to be made or invested in the City (the **"380 Program"**).

E. The City Council has determined that by entering into this Agreement, the potential economic benefits that will accrue to the City under the terms and conditions of this Agreement are consistent with the City's economic development objectives and that promoting mixed-use development in the Central City will further the goals espoused by the Comprehensive Plan for positive growth in the City. In addition, the City Council has determined that the 380 Program is an appropriate means to achieve the construction of the Development, which the City Council has determined is necessary and desirable, and that the potential economic benefits that will accrue to the City pursuant the terms and conditions of this Agreement are consistent with the City's economic development objectives as outlined in the Comprehensive Plan. The Agreement is authorized by Chapter 380 of the Texas Local Government Code.

F. The City has determined that the feasibility of the Development is contingent on Developer's receipt of the Program Grants, as provided in this Agreement. The City's analysis is specifically based on financial information provided by Developer.

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, the parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

The City Council has found, and the City and Developer hereby agree, that the recitals set forth above are true and correct and form the basis upon which the parties have entered into this Agreement.

2. DEFINITIONS.

In addition to terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

380 Program has the meaning ascribed to it in Recital D.

Affiliate means any entity, incorporated or otherwise, under common control with, controlled by or controlling Developer and shall include Cassco Development Company, Inc., Clearfork MF1, LP, Clearfork Retail 1, LP, and Clearfork Office 1, LP. For purposes of this definition, "control" means fifty percent (50%) or more of the ownership determined by either value or vote.

Affordable Housing Deduction has the meaning ascribed to it in Section 5.3.1.7.

Aggregate Sales Tax Base means the sum of the Sales Tax Bases of all Relocated Development Property Sales Entities, as set forth in Sales Entity Certificates issued in accordance with Section 5.2.

Annual Sales Entity Report has the meaning ascribed to it in Section 4.7.2.1.

Certificate of Completion has the meaning ascribed to it in Section 5.1.

Commercial/Retail means and includes retail, restaurant, theater, health club, entertainment, and similar services.

Completion Deadline means the Level 1 Completion Deadline, Level 2 Completion Deadline or Level 3 Completion Deadline, depending on the context, and is a general term used herein to refer to such various Completion Deadlines.

Comprehensive Plan has the meaning ascribed to it in Recital C.

Comptroller means the Texas Comptroller for Public Accounts.

Consent to Collateral Assignment Agreement has the meaning ascribed to it in Section 10.

Construction Costs means the aggregate of Hard Construction Costs, Tenant Improvement Costs, and the following costs directly expended or caused to be expended by Developer or by third parties other than Developer for the Development: engineering fees; architectural and design fees; real estate commissions; costs of third party consultants, including attorneys and environmental consultants; developer fees; zoning fees; insurance and taxes directly related to the construction of the Development; and financing costs, including capitalized interest.

Development means all improvements on the Development Property, including, but not limited to, the Level 1 Development, the Level 2 Development and the Level 3 Development.

Development Property has the meaning ascribed to it in Recital A.

Development Property User means any person or entity, and any employee, agent, tenant, or invitee thereof, that has the legal right to use or occupy any portion of the Development for Commercial/Retail, office, residential or other lawful purposes, including without limitation, Developer, its Affiliates, contractors and subcontractors; and New Development Property Sales Entities and Relocated Development Property Sales Entities.

Development Real Property Tax Revenues means ad valorem taxes on the Development and the Development Property, *minus* the amount of ad valorem taxes payable on the Development Property and any improvements located thereon for the 2014 tax year based on the taxable assessed value of the Development and the Development Property for the 2014 tax year; provided, however, that Development Real Property Tax Revenues specifically ***excludes*** all revenues from any portion of the Development Property that is zoned for single-family residential uses. The taxable appraised value of the Development and Development Property for any given year will be established solely by the appraisal district that has jurisdiction over the Development Property at the time.

Development Sales Tax Revenues means revenues received by the City from the one percent (1%) available City sales tax that is presently in effect pursuant to Texas Tax Code §§ 321.101(a) and 321.103, resulting from (i) taxes collected by New Development Property Sales Entities on Sales transacted on the Development Property and (ii) incremental taxes collected by Relocated Development Property Sales Entities on Sales transacted on the Development Property in excess of the Aggregate Sales Tax Base calculated for a given tax year, as reflected in the Sales Entity Certificate issued in accordance with Section 5.2; provided, however, that Development Sales Tax Revenues specifically ***excludes*** all revenues from (*a*) the Crime Control District Sales Tax imposed by the City pursuant to Texas Tax Code § 323.105 and Texas Local Government Code § 363.005, as may be amended, and (*b*) the Transit Authority Sales Tax paid to the City by the Fort Worth Transportation Authority pursuant to City Secretary Contract No. 19689, as previously or subsequently amended or restated, from the sales tax imposed by the

Fort Worth Transportation Authority pursuant to Texas Tax Code Chapter 322. If the City's sales tax rate is ever decreased to the extent that the City receives available sales tax revenues based on less than a one percent (1%) sales tax, then the meaning of Development Sales Tax Revenues shall automatically be adjusted to equal that lesser percentage. If the City's sales tax rate is ever decreased to the extent that the City receives available sales tax revenues based on less than a one percent (1%) sales tax and is then increased to a higher percentage whose use is not otherwise controlled, regulated, restricted or otherwise dedicated to a specific use by the City, then Development Sales Tax Revenues shall be computed to reflect that increased percentage up to a maximum aggregate of one percent (1%).

Director means the director of the City's Housing and Economic Development Department.

Effective Date has the meaning ascribed to it in Section 3.

Employment Goal has the meaning ascribed to it in Section 4.4.

First Operating Year means the first full calendar year following the year in which the Level 1 Completion Deadline occurs.

Fort Worth Certified M/WBE Company means a minority or woman-owned business that (i) has received certification as either a minority business enterprise (MBE), a woman business enterprise (WBE) or a disadvantaged business enterprise (DBE) by the North Central Texas Regional Certification Agency (NCTRCA); (ii) has a principal business office located within the corporate limits of the City; and (iii) from such principal business office performs a function or provides a service useful or necessary for the Development for which Developer is also seeking credit under this Agreement.

Fort Worth Company means a business that has a principal office located within the corporate limits of the City that performs a commercially useful function and that provides the services for which Developer is seeking credit under this Agreement.

Fort Worth Construction Commitment has the meaning ascribed to it in Section 4.2.

Fort Worth Construction Percentage has the meaning ascribed to it in Section 5.3.1.2.

Fort Worth Supply and Service Percentage has the meaning ascribed to it in Section 5.3.1.4.

Fort Worth Supply and Service Spending Commitment has the meaning ascribed to it in Section 4.5.

Full-time Job means a job on the Development Property provided to one individual by a Development Property User for at least forty (40) hours per week.

Hard Construction Costs means the aggregate of the following costs expended or caused to be expended by Developer for the Development: actual site development and construction costs, contractor fees, and the costs of supplies and materials, but excludes land acquisition costs paid by Developer for the various parcels that make up the Development Property. Hard Construction Costs specifically excludes Tenant Improvement Costs and any Construction Costs expended for the Development by third parties other than Developer and its contractors and subcontractors.

Level means the Level 1 Development, the Level 2 Development, or the Level 3 Development, depending on the context, and is a general term used herein to refer to such various levels of the Development.

Level 1 Completion Deadline means December 31, 2016.

Level 1 Development means the expenditure of at least One Hundred Eighty Million Dollars ($180,000,000.00) in Construction Costs for construction on the Development Property of, at a minimum, the following improvements: (i) at least 300,000 square feet of Commercial/Retail space or office space (or a combination thereof), the entirety of which must have a certificate of occupancy for shell building space issued by the City, and (ii) Residential Units comprising at least 300,000 square feet, the entirety of which must have a temporary or final certificate of occupancy issued by the City for residential operations, all as verified in a Certificate of Completion issued by the City in accordance with Section 5.1.

Level 2 Completion Deadline means December 31, 2018.

Level 2 Development means the aggregate expenditure of at least Two Hundred Forty Million Dollars ($240,000,000.00) in Construction Costs for construction on the Development Property of, at a minimum, the following improvements: the Level 1 Development, plus at least 200,000 square feet of Commercial/Retail space, office space, or Residential Units (or any combination thereof), the entirety of which must have a certificate of occupancy for shell building space or a temporary or final certificate of occupancy issued by the City for residential operations, as applicable, issued by the City, all as verified in a Certificate of Completion issued by the City in accordance with Section 5.1.

Level 3 Completion Deadline means December 31, 2020.

Level 3 Development means the aggregate expenditure of at least Three Hundred Million Dollars ($300,000,000.00) in Construction Costs, for construction on the Development Property of, at a minimum, the following improvements: the Level 1 Development and the Level 2 Development, plus at least 200,000 square feet of Commercial/Retail space, office space, or Residential Units (or any combination thereof),

the entirety of which must have a certificate of occupancy for shell building space or a temporary or final certificate of occupancy issued by the City for residential operations, as applicable, issued by the City, all as verified in the Certificate of Completion issued by the City in accordance with Section 5.1.

M/WBE Construction Commitment has the meaning ascribed to it in Section 4.3.

M/WBE Construction Percentage has the meaning ascribed to it in Section 5.3.1.3.

M/WBE Supply and Service Percentage has the meaning ascribed to it in Section 5.3.1.5.

M/WBE Supply and Service Spending Commitment has the meaning ascribed to it in Section 4.6.

New Development Property Sales Entity means any person, entity, Commercial/Retail business or operation, regardless of legal ownership or organizational structure, that conducts Sales on the Development Property and that is not a Relocated Development Property Sales Entity, as confirmed by the Director in a Sales Entity Certificate issued in accordance with Section 5.2.

Notice of Completion has the meaning ascribed to it in Section 4.7.1.

Overall Construction Percentage has the meaning ascribed to it in Section 5.3.1.1.

Program Cap means the maximum number of gross dollars comprising the sum of (i) the aggregate amount of all Program Grants paid by the City pursuant to this Agreement ***plus*** (ii) the aggregate amount of the Affordable Housing Deductions made to those Program Grants pursuant to Section 5.3.1.7, as follows:

(*a*) If the Level 1 Development occurs by the Level 1 Completion Deadline, as verified in the Certificate of Completion for that Level issued by the City in accordance with Section 5.1, the Program Cap shall equal Twenty-three Million Dollars ($23,000,000.00), gross.

(*b*) If the Level 1 Development occurs by the Level 1 Completion Deadline and the Level 2 Development occurs by the Level 2 Completion Deadline, as verified in the Certificate of Completion for those Levels issued by the City in accordance with Section 5.1, the Program Cap shall be increased to equal Thirty-four Million Dollars ($34,000,000.00), gross.

(*c*) If the Level 1 Development occurs by the Level 1 Completion Deadline, the Level 2 Development occurs by the Level 2 Completion Deadline, and the

Level 3 Development occurs by the Level 3 Completion Deadline, as verified in the Certificate of Completion for those Levels issued by the City in accordance with Section 5.1, the Program Cap shall be increased to equal Forty-eight Million Dollars ($48,000,000.00), gross.

Program Grants means the annual economic development grants paid by the City to Developer in accordance with this Agreement and as part of the 380 Program.

Program Source Funds means an amount of City funds available for inclusion in a Program Grant that is payable in a given Program Year, which shall equal the following:

(*a*) for Program Years 1-5, eighty percent (80%) of the Development Real Property Tax Revenues, plus eighty percent (80%) of the Development Sales Tax Revenues which were received by the City during the Twelve-Month Period ending in the same Program Year in which the Program Grant for that Program Year is payable; and

(*b*) for Program Years 6-10, seventy-five percent (75%) of the Development Real Property Tax Revenues, plus seventy-five percent (75%) of the Development Sales Tax Revenues which were received by the City during the Twelve-Month Period ending in the same Program Year in which the Program Grant for that Program Year is payable; and

(*c*) for Program Years 11-15, seventy percent (70%) of the Development Real Property Tax Revenues, plus seventy percent (70%) of the Development Sales Tax Revenues which were received by the City during the Twelve-Month Period ending in the same Program Year in which the Program Grant for that Program Year is payable.

Program Year means a calendar year in which the City is obligated pursuant to this Agreement to pay Developer a Program Grant, beginning with the second full calendar year following the Level 1 Completion Deadline (which is also defined herein as the "Second Operating Year") (Program Year 1).

Records has the meaning ascribed to it in Section 4.8.

Relocated Development Property Sales Entity means, without limitation and in the broadest sense, any person, entity, Commercial/Retail business or operation, regardless of legal ownership or organizational structure, that conducts Sales on the Development Property and that relocated to the Development Property from another location in the City, as determined pursuant to the process outlined in Section 4.7.2 and certified by the Director in a Sales Entity Certificate issued in accordance with Section 5.2.

Residential Property Taxes means the amount of ad valorem taxes on all Residential Units and condominiums on the Development Property that are owed to the City for a given tax year.

Residential Units means residential rental apartments located anywhere on the Development Property and shall not include residential condominiums.

Sales means all sales of merchandise (including gift and merchandise certificates), services and other receipts whatsoever of all business conducted in, on or from the Development Property, whether cash or credit, including mail, telephone, telefax, telegraph, internet or catalogue orders received or filled at or from the Development Property, deposits not refunded to purchasers, orders taken (although such orders may be filled elsewhere), sales to employees, sales through vending machines or other devices. Sales will not include (i) any sums collected and paid for any sales or excise tax imposed by any duly constituted governmental authority, (ii) the exchange of merchandise purchased on and returned to the Development Property, (iii) the amount of returns to shippers and manufacturers or (iv) the sale of any fixtures.

Sales Entity Certificate has the meaning ascribed to it in Section 5.2.

Sales Tax Base for a Relocated Development Property Sales Entity means the amount of taxes paid to the Comptroller by a Relocated Development Property Sales Entity on Sales transacted at the location in the City that was occupied and utilized by that Relocated Development Property Sales Entity in the last full calendar year prior to the Relocated Development Property Sales Entity's relocation to the Development from such location.

Second Operating Year means the second full calendar year following the year in which the Level 1 Completion Deadline occurs.

Supply and Service Expenditures means all expenditures by or caused by Developer, whether pursuant to a written contract or on an ad hoc basis, expended directly for the operation and maintenance of the Development, including amounts paid to third parties for the provision of personnel services, but excluding amounts paid for electric, gas, water and any other utility services.

Tenant Improvement Costs means all costs associated with the design, construction, and fixturization within a tenant's premises, including, but not limited to, architectural, contractor, and design fees, building materials and work on a tenant's behalf, and other work performed within the tenant's premises along with the tenant's permanent fixtures, as well as any other costs directly expended for improvements on the Development Property, but outside of the tenant's premises, pursuant to the tenant's lease, including, but not limited to, common areas.

Term has the meaning ascribed to it in Section 3.

Twelve-Month Period means the period between February 1 of a given year and January 31 of the following year.

3. TERM.

This Agreement shall take effect on the date as of which both the City and Developer have executed it (the **"Effective Date"**) and, unless terminated earlier in accordance with this Agreement, shall expire on the earlier of (i) the date as of which the City has paid all Program Grants required hereunder or (ii) the date as of which the amount of aggregate Program Grants paid by the City equals the applicable Program Cap (the **"Term"**).

4. DEVELOPER OBLIGATIONS, GOALS AND COMMITMENTS.

4.1. Real Property Improvements.

The Level 1 Development must occur on or before the Level 1 Completion Deadline.

4.2. Construction Spending Commitment for Fort Worth Companies.

Developer, either itself or through an Affiliate, must make or cause to be made the following minimum expenditures in Hard Construction Costs with Fort Worth Companies for each Level of the Development (the **"Fort Worth Construction Commitment"**). Payments to a general contractor which is a Fort Worth Company shall be counted toward the Fort Worth Construction Commitment, regardless of whether any subcontractors of such general contractor are themselves Fort Worth Companies.

4.2.1. For Level 1.

By the Level 1 Completion Deadline, Developer must have expended or caused to be expended at least thirty percent (30%) of all Hard Construction Costs for the Level 1 Development, regardless of the total amount of such Hard Construction Costs, with Fort Worth Companies.

4.2.2. For Level 2.

If the Level 2 Development occurs by the Level 2 Development Deadline, as verified in the Certificate of Completion for that Level issued by the City pursuant to Section 5.1, the Fort Worth Construction Commitment shall increase, as follows: By the Level 2 Completion Deadline, Developer must have expended or caused to be expended at least thirty percent (30%) of the sum of all Hard Construction Costs for the Level 1 Development and the Level 2 Development, regardless of the total amount of such Hard Construction Costs, with Fort Worth Companies.

4.2.3. For Level 3.

If the Level 3 Development occurs by the Level 3 Development Deadline, as verified in the Certificate of Completion for that Level issued by the City pursuant to Section 5.1, the Fort Worth Construction Commitment shall increase, as follows: By the Level 3 Completion Deadline, Developer must have expended or caused to be expended at least thirty percent (30%) of the sum of all Hard Construction Costs for the Level 1 Development, the Level 2 Development, and the Level 3 Development, regardless of the total amount of such Hard Construction Costs, with Fort Worth Companies.

4.3. Construction Spending Commitment for Fort Worth Certified M/WBE Companies.

Developer, either itself or through an Affiliate, must make or cause to be made the following minimum expenditures in Hard Construction Costs with Fort Worth Certified M/WBE Companies for each Level of the Development (the **"M/WBE Construction Commitment"**). Dollars spent with Fort Worth Certified M/WBE Companies shall also count as dollars spent with Fort Worth Companies for purposes of the Fort Worth Construction Commitment outlined in Section 4.2. Payments to a general contractor which is a Fort Worth Certified M/WBE Company shall be counted toward the M/WBE Construction Commitment, regardless of whether any subcontractors of such general contractor are themselves Fort Worth Certified M/WBE Companies.

4.3.1. For Level 1.

By the Level 1 Completion Deadline, Developer must have expended or caused to be expended at least twenty-five percent (25%) of all Hard Construction Costs for the Level 1 Development, regardless of the total amount of such Hard Construction Costs, with Fort Worth Certified M/WBE Companies.

4.3.2. For Level 2.

If the Level 2 Development occurs by the Level 2 Development Deadline, as verified in the Certificate of Completion for that Level issued by the City pursuant to Section 5.1, the M/WBE Construction Commitment shall increase, as follows: By the Level 2 Completion Deadline, Developer must have expended or caused to be expended at least twenty-five percent (25%) of the sum of all Hard Construction Costs for the Level 1 Development and the Level 2 Development, regardless of the total amount of such Hard Construction Costs, with Fort Worth Certified M/WBE Companies.

4.3.3. **For Level 3.**

If the Level 3 Development occurs by the Level 3 Development Deadline, as verified in the Certificate of Completion for that Level issued by the City pursuant to Section 5.1, the M/WBE Construction Commitment shall increase, as follows: By the Level 3 Completion Deadline, Developer must have expended or caused to be expended at least twenty-five percent (25%) of the sum of all Hard Construction Costs for the Level 1 Development, the Level 2 Development, and the Level 3 Development, regardless of the total amount of such Hard Construction Costs, with Fort Worth Certified M/WBE Companies.

4.4. Employment Goal.

From and after the Level 1 Completion Deadline, Developer will use commercially reasonable efforts to cause at least fifty (50) Full-time Jobs to be provided on the Development Property, whether by Developer or one or more Development Property Users (the **"Employment Goal"**).

4.5. Supply and Service Spending Commitments for Fort Worth Companies.

In the Second Operating Year and each calendar year thereafter, Developer must expend or cause to be expended at least $200,000.00 in annual Supply and Service Expenditures with Fort Worth Companies (the **"Fort Worth Supply and Service Spending Commitment"**).

4.6. Supply and Service Spending Commitment for Fort Worth Certified M/WBE Companies.

In the Second Operating Year and each calendar year thereafter, Developer must expend or cause to be expended at least $100,000.00 in annual Supply and Service expenditures with Fort Worth Certified M/WBE Companies (the **"M/WBE Supply and Service Spending Commitment"**). Dollars spent with Fort Worth Certified M/WBE Companies shall also count as dollars spent with Fort Worth Companies for purposes of the Fort Worth Supply and Service Spending Commitment outlined in Section 4.5.

4.7. Reports and Filings.

4.7.1. Notices of Completion and Final Construction Reports.

When Developer believes that a Level of the Development has occurred, Developer shall provide a written notice to the City (a **"Notice of Completion"**). A Notice of Completion must be filed with the City on or before the Completion Deadline for the Level of Development covered by the Notice. The purpose of a Notice of Completion is to allow the City (i) to assess whether Developer achieved the Level of Development claimed; (ii) to assess the extent to which Developer met the Fort Worth Construction Commitment and the M/WBE Construction Commitment applicable to such Level; and (iii) to establish the amount of the Program Cap under this Agreement. Each Notice of Completion must include a final construction report in a form reasonably acceptable to the Director that specifically outlines the total Construction Costs and Hard Construction Costs expended or caused to be expended for improvements constructed as part of such Level, together with supporting invoices and other documents necessary to demonstrate that such amounts were actually paid, including, without limitation, final lien waivers signed by Developer's or an Affiliate's general contractor, as well as the total Construction Costs and Hard Construction Costs expended for construction of the improvements comprising such Level with Fort Worth Companies and Fort Worth Certified M/WBE Companies, together with supporting invoices and any other documents necessary to demonstrate that such amounts were actually paid to such contractors. ***Commercial/Retail and office improvements constructed on the Development Property that do not have certificates of occupancy for shell building space and Residential Units constructed on the Development Property that do not have certificates of occupancy for residential operations, whether temporary or final (in both cases, for the entirety of such improvements, as of the date of a Notice of Completion), and any Construction Costs and Hard Construction Costs expended for such improvements, shall not be considered for purposes of determining whether the Level of Development covered by the Notice of Completion has been achieved or assessing the extent to which Developer met the Fort Worth Construction Commitment or the M/WBE Construction Commitment applicable to such Level, with the understanding that they will be considered by the City in its evaluation as to whether a subsequent Level of Development has occurred so long as the appropriate certificates of occupancy are in place by the Completion Deadline for that Level.***

4.7.2. Development Property Sales Entities.

4.7.2.1. Annual Sales Entity Report.

On or before February 1 of the First Operating Year and of each year thereafter, Developer must provide the Director with a report in a form reasonably acceptable to the City that lists all of the Development Property Users (by both legal and trade name) that conducted Sales on the Development Property in the previous calendar year (the **"Annual Sales Entity Report"**). The Annual Sales Entity Report will be used by the City as a basis for issuance of Sales Entity Certificates by the Director pursuant to Section 5.2. Sales Entity Certificates will identify both the New Development Sales Entities and the Relocated Development Property Sales Entities that were operating on the Development Property in the previous calendar year. If Developer knows that a Development Property User listed in its report constitutes a Relocated Development Property Sales Entity under this Agreement that has not previously been confirmed by the Director as a Relocated Development Property Sales Entity in any previous Sales Entity Certificate, Developer will use commercially reasonable efforts to include with the Annual Sales Entity Report (i) a statement of the aggregate amount of sales tax paid to the Comptroller by such Relocated Development Sales Entity in the last full calendar year in which such Relocated Development Property Sales Entity conducted Sales at the location in the City from which it relocated to the Development and (ii) copies of the corresponding sales tax reports filed with the Comptroller.

4.7.2.2. Previous Sales Tax Reports for Redevelopment Property Sales Entities.

On the basis of the Annual Sales Entity Report submitted by Developer in accordance with Section 4.7.2.1, as well as any other information available to the City, if the Director determines that any Development Property User that conducted Sales on the Development Property in the previous year is a Relocated Development Property Sales Entity, the City will provide written notice to Developer of such determination. In this event, Developer shall have thirty (30) calendar days from the date of receipt of notice to provide the Director with (i) a statement of the aggregate amount of sales tax paid to the Comptroller by the identified Relocated Development Property Sales Entity in the last full calendar year in which such Relocated Development Property Sales Entity conducted Sales at the location in the City from which

it relocated to the Development; and (ii) copies of the corresponding sales tax reports filed with the Comptroller.

4.7.3. Sales Tax Reports.

To the extent reasonably possible, Developer shall require New Development Property Sales Entities and Relocated Development Property Entities to provide Developer with annual Sales data sufficient for Developer to complete the annual report required by this Section 4.7.3. On or before February 1 of the First Operating Year and of each year thereafter, Developer must provide the City with an annual report that sets forth (i) the aggregate amount of sales tax paid to the Comptroller by New Development Property Sales Entities and Relocated Development Property Entities during the previous year (the **"Aggregate Development Property Sales Tax Payments"**); (ii) the portion of the Aggregate Development Property Sales Tax Payments for which Developer has obtained and possesses copies of the corresponding sales tax reports filed with the Comptroller (**"Comptroller Reports"**) by New Development Property Sales Entities and Relocated Development Property Entities (collectively, **"Verified Aggregate Development Property Sales Tax Payments"**); (iii) a list of the separate amounts of sales tax shown on each respective Comptroller Report to have been paid by New Development Property Sales Entities and Relocated Development Property Entities; and (iv) a list of those New Development Property Sales Entities and Relocated Development Property Entities for which Developer did not obtain a Comptroller Report related to such year. Developer shall keep and maintain copies of all Comptroller Reports that Developer obtains from New Development Property Sales Entities and Relocated Development Property Sales Entities for at least seven (7) years following the end of the year to which such Comptroller Reports relate and shall make such Comptroller Reports available to the City for inspection pursuant to and in accordance with Section 4.8 of this Agreement. If Developer cannot obtain Comptroller Reports or any other Sales data from any given New Development Property Sales Entity or Relocated Development Property Sales Entity in any given year, Developer will provide the City with a list of such Entities, and such action shall satisfy Developer's reporting requirements with respect to such Entities for the year in question. Notwithstanding the foregoing, Developer understands and agrees that the City's calculation of Development Sales Tax Revenues in a given year will be based solely on (i) Verified Aggregate Development Property Sales Tax Payments plus (ii) any additional sales tax payments made by New Development Property Sales Entities and Relocated Development Property Entities in such year, as reflected on Comptroller Reports, that the City is reasonably able to ascertain, in the City's sole but reasonable judgment, are attributable to the Development Property.

4.7.4. Annual Supply and Service Spending Report.

On or before February 1 of the Second Operating Year and of each year thereafter, Developer must provide the Director with a report in a form reasonably acceptable to the City that sets forth the total Supply and Service Expenditures made during the previous calendar year as well as the total Supply and Service Expenditures made during such calendar year with Fort Worth Companies and with Fort Worth Certified M/WBE Companies, together with supporting invoices and any other documents necessary to demonstrate that such amounts were actually paid.

4.7.5. Annual Residential Unit Report.

On or before February 1 of the First Operating Year and of each year thereafter, Developer must provide the Director with a report in a form reasonably acceptable to the City that sets forth the total number of Residential Units located on the Development Property as of December 31 of the previous year.

4.7.6. Annual Employment Report.

On or before February 1 of the First Operating Year and of each year thereafter, in order for the City to assess the degree to the Employment Goal was met in the previous calendar year, Developer must provide the Director with a report in a form reasonably acceptable to the City that sets forth the total number of individuals who held Full-time Jobs on the Development Property as of December 1 (or such other date requested by Developer and reasonably acceptable to the City) of the previous year, together with reasonable supporting documentation. If the Employment Goal was not met in the previous calendar year, Developer shall include an explanation as to why Developer believes the Employment Goal was not met and the efforts that were utilized to meet the Employment Goal.

4.8. Audits.

The City will have the right throughout the Term to audit the financial and business records of Developer that relate to the Development and are necessary to evaluate Developer's compliance with this Agreement or with the commitments set forth in this Agreement, including, but not limited to construction documents and invoices (collectively **"Records"**). Developer shall make all Records available to the City at Developer's offices in the City or at another location in the City acceptable to both parties following reasonable advance notice by the City and shall otherwise cooperate fully with the City during any audit.

4.9. Inspections of Development and Development Property.

At any time during the Development's normal business hours throughout the Term and following reasonable notice to Developer, the City shall have the right to inspect and evaluate the Development Property and any improvements thereon, and Developer will provide reasonable access to the same, in order for the City to monitor or verify compliance with the terms and conditions of this Agreement. Developer will reasonably cooperate with the City during any such inspection and evaluation. Notwithstanding the foregoing, Developer shall have the right to require that any representative of the City be escorted by a representative or security personnel of Developer during any such inspection and evaluation.

5. CITY OBLIGATIONS.

5.1. Issuance of Certificate of Completion for Levels of Development.

Within ninety (90) calendar days following receipt by the City of a Notice of Completion submitted by Developer in accordance with Section 4.7.1, and assessment by the City of the information contained therein, including the final construction report for the Level of the Development in question, if the City is able to verify that, at a minimum, the Level of Development claimed by Developer occurred on or before the Completion Deadline for that Level, the Director will issue Developer a certificate confirming that the Level of the Development claimed by Developer was actually achieved; the amount of Construction Costs and Hard Construction Costs expended on that Level of the Development, including amounts expended specifically with Fort Worth Companies and Fort Worth Certified M/WBE Companies; and the amount of the Program Cap established in accordance with this Agreement based on the Level of the Development that Developer or an Affiliate achieved or caused to be achieved (each a **"Certificate of Completion"**). ***Commercial/Retail and office improvements constructed on the Development Property that do not have certificates of occupancy for shell building space and Residential Units constructed on the Development Property that do not have certificates of occupancy for residential operations, whether temporary or final (in both cases, for the entirety of such improvements as of the date of a Notice of Completion), and any Construction Costs and Hard Construction Costs expended for such improvements, shall not be considered for purposes of determining whether the Level of Development has been achieved or assessing the extent to which Developer or an Affiliate met or caused to be met the Fort Worth Construction Commitment or the M/WBE Construction Commitment applicable to such Level. However, such improvements, and Construction Costs and Hard Construction Costs therefor, may be considered for purposes of evaluating whether a subsequent Level of Development has been achieved, provided that***

appropriate certificates of occupancy were issued on or before the Completion Deadline for the Level in question.

In the event that the City determines, after receipt of a Notice of Completion and assessment of the final construction reports included therein, that the Level of Development claimed by Developer has not occurred, the City shall notify Developer in writing, in which case Developer may file supplemental construction reports in accordance with Section 4.7.1 for the City's consideration at any time prior to the later of (i) the Completion Deadline for the Level in question or (ii) thirty (30) calendar days following notification by the City in accordance with this paragraph that the Level of Development claimed by Developer has not occurred (provided that such supplemental construction reports will be considered only for Construction Costs expended on or prior to the Completion Deadline applicable to the Level in question), and the City will reassess whether Developer subsequently has achieved the Level of Development claimed. So long as the City is able to verify that, on the basis of the Notice of Completion and all associated construction reports filed hereunder, that the Level of Development claimed by Developer occurred on or before the Completion Deadline for that Level, the City will issue a Certificate of Completion for that Level in accordance with this Section 5.1.

5.2. Issuance of Annual Sales Entity Certificates.

Within ninety (90) calendar days following receipt of the Annual Sales Entity Report submitted by Developer in accordance with Section 4.7.2.1, the Director will issue Developer a certificate that identifies all Development Property Users that conducted Sales on the Development Property in the previous calendar year as either New Development Property Sales Entities or Relocated Development Property Sales Entities (a **"Sales Entity Certificate"**). The Sales Entity Certificate will also set forth the Sales Tax Base for each Relocated Development Property Sales Entity and the Aggregate Sales Tax Base for all Relocated Development Property Sales Entities. The Sales Tax Bases and the Aggregate Sales Tax Base will be established from an analysis of the information contained in the sales tax reports submitted by Developer pursuant to Sections 4.7.2.1 and 4.7.2.2 and any other information available to the City regarding the amount of taxes paid to the Comptroller by a Relocated Development Property Sales Entity on Sales transacted at the location in the City that was occupied and utilized by that Relocated Development Property Sales Entity in the last full calendar year prior to the Relocated Development Property Sales Entity's relocation to the Development. Notwithstanding anything to the contrary herein, if Developer fails to submit any of the sales tax reports pursuant to Sections 4.7.2.1 and 4.7.2.2 with respect to a particular Relocated Development Property Sales Entity, then ***no*** revenues on Sales transacted on the Development Property by that Relocated Development Property Sales Entity will be counted as Development Sales Tax Revenues for purposes of calculating any Program Grants that are payable at any time that such sales reports are outstanding.

5.3. Program Grants.

Subject the terms and conditions of this Agreement, provided that the Level 1 Development occurred by the Level 1 Completion Deadline, Developer will be entitled to receive from the City fifteen (15) annual Program Grants, subject to the applicable Program Cap. The amount of each Program Grant shall equal a percentage of the Program Source Funds, which percentage will be based on the extent to which Developer met or caused to be met the various construction and operational expenditures for the Level of Development at the time, less the Affordable Housing Deduction, all as more specifically set forth in this Section 5.3. Notwithstanding anything to the contrary herein, aggregate Program Grants payable under this Agreement shall be subject to and shall not exceed the applicable Program Cap.

5.3.1. Calculation of Each Program Grant Amount.

Subject to the terms and conditions of this Agreement, the amount of a given annual Program Grant shall equal the sum of the Overall Construction Percentage, the applicable Fort Worth Construction Percentage and the applicable M/WBE Construction Percentage, as defined in Sections 5.3.1.1, 5.3.1.2 and 5.3.1.3, respectively, plus, to the extent applicable, the Fort Worth Supply and Service Percentage and the M/WBE Supply and Service Percentage, as defined in Sections 5.3.1.4 and 5.3.1.5, respectively, multiplied by the Program Source Funds available for that Program Grant, less the Affordable Housing Deduction calculated in accordance with Section 5.3.1.7.

5.3.1.1. Completion of Development (50%).

Each annual Program Grant shall include an amount that is based on completion of Level 1 of the Development by the Level 1 Completion Deadline. If, at a minimum, the Level 1 Development occurred by the Level 1 Completion Deadline, as confirmed by the City in the Certificate of Completion issued for Level 1 by the Director in accordance with Section 5.1, each annual Program Grant shall include fifty percent (50%) of the Program Source Funds (the **"Overall Construction Percentage"**). In no event will the Overall Construction Percentage exceed fifty percent (50%). Notwithstanding anything to the contrary herein, if the Level 1 Development did not occur by the Level 1 Completion Deadline, an Event of Default, as more specifically set forth in Section 6.1, will occur and the City shall have the right to terminate this Agreement without the obligation to pay Developer any Program Grants hereunder.

5.3.1.2. **Fort Worth Construction Cost Spending (Up to 25% for Program Year 1; Up to 10% Thereafter).**

Each annual Program Grant shall include an amount that is based on the percentage by which the Fort Worth Construction Commitment, as outlined in Section 4.2, was met (the **"Fort Worth Construction Percentage"**). In accordance with Sections 4.2.2 and 4.2.3, the Fort Worth Construction Commitment will change if the Level 2 Development occurred by the Level 2 Completion Deadline and again if the Level 3 Development occurred by the Level 3 Completion Deadline, as verified in the Certificates of Completion issued for such Levels pursuant to Section 5.1. Accordingly, in such cases, the Fort Worth Construction Percentage will be recalculated. The Fort Worth Construction Percentage for the Program Grant payable in Program Year 1 will equal the product of twenty-five percent (25%) multiplied by the percentage by which the applicable Fort Worth Construction Commitment was met, which will be calculated by dividing the actual Hard Construction Costs expended with Fort Worth Companies by the Completion Deadlines for the applicable Levels of Development by the number of dollars comprising the Fort Worth Construction Commitment, as determined in accordance with Section 4.2. The Fort Worth Construction Percentage for all subsequent Program Grants will equal the product of ten percent (10%) multiplied by the percentage by which the applicable Fort Worth Construction Commitment was met, calculated in accordance with the preceding sentence. For example, if the Fort Worth Construction Commitment at a given time is $42,000,000.00 and only $33,600,000.00 in Hard Construction Costs were expended with Fort Worth Companies by the Completion Deadline for the Level of Development achieved by such time, the Fort Worth Construction Percentage for the Program Grant payable in Program Year 1 would be 20% instead of 25% (or .25 x [$33.6 million/$42 million], or .25 x .80, or .20), and the Fort Worth Construction Percentage for all subsequent Program Grants until the Fort Worth Construction Commitment is recalculated in accordance with this Section 5.3.1.2 would be 8% instead of 10% (or .10 x [$33.6 million/$42 million], or .10 x .80, or .08). If the applicable Fort Worth Construction Commitment is met or exceeded, the Fort Worth Construction Percentage will be twenty-five percent (25%) for the Program Grant payable in Program Year 1 and ten percent (10%) for all subsequent Program Grants. In no event will the Fort Worth Construction Percentage exceed those percentages for the respective Program Year in which a Program Grant is payable.

5.3.1.3. **Fort Worth M/WBE Construction Cost Spending (Up to 25% for Program Year 1; Up to 10% Thereafter).**

Each annual Program Grant shall include an amount that is based on the percentage by which the M/WBE Construction Commitment, as outlined in Section 4.3, was met (the **"M/WBE Construction Percentage"**). In accordance with Sections 4.3.2 and 4.3.3, the M/WBE Construction Commitment will change if the Level 2 Development occurred by the Level 2 Completion Deadline and again if the Level 3 Development occurred by the Level 3 Completion Deadline, as verified in the Certificates of Completion issued for such Levels pursuant to Section 5.1. Accordingly, in such cases, the M/WBE Construction Percentage will be recalculated. The M/WBE Construction Percentage for the Program Grant payable in Program Year 1 will equal the product of twenty-five percent (25%) multiplied by the percentage by which the applicable M/WBE Construction Commitment was met, which will be calculated by dividing the actual Hard Construction Costs expended with Fort Worth Certified M/WBE Companies by the Completion Deadline for the Levels of Development in question by the number of dollars comprising the M/WBE Construction Commitment, as determined in accordance with Section 4.3. The M/WBE Construction Percentage for all subsequent Program Grants will equal the product of ten percent (10%) multiplied by the percentage by which the applicable M/WBE Construction Commitment was met, calculated in accordance with the preceding sentence. For example (and not as a commitment or goal), if the M/WBE Construction Commitment at a given time is $35,000,000.00 and only $26,250,000.00 in Hard Construction Costs were expended with Fort Worth Certified M/WBE Companies by the Completion Deadlines for the applicable Levels of Development achieved by such time, the M/WBE Construction Percentage for the Program Grant payable in Program Year 1 would be 18.75% instead of 25% (or .25 x [$26.25 million/$35 million], or .25 x .75, or .1875), and the M/WBE Construction Percentage for all subsequent Program Grants until the M/WBE Construction Commitment is recalculated in accordance with this Section 5.3.1.3 would be 7.5% instead of 10% (or .10 x [$26.25 million/$35 million], or .10 x .75, or .075). If the applicable M/WBE Construction Commitment is met or exceeded, the M/WBE Construction Percentage will be twenty-five percent (25%) for the Program Grant payable in Program Year 1 and ten percent (10%) for all subsequent Program Grants.

5.3.1.4. **Fort Worth Supply and Service Spending (Up to 15% after Program Year 1).**

Except for the Program Grant payable in Program Year 1, each annual Program Grant shall include an amount that is based on the percentage by which the Fort Worth Supply and Service Spending Commitment, as outlined in Section 4.5, was met (the **"Fort Worth Supply and Service Percentage"**). The Fort Worth Supply and Service Percentage will equal the product of fifteen percent (15%) multiplied by the percentage by which the Fort Worth Supply and Service Spending Commitment was met, which will be calculated by dividing the actual Supply and Service Expenditures made in the previous calendar year with Fort Worth Companies by $200,000.00, which is the Fort Worth Supply and Service Spending Commitment. For example, if only $180,000.00 in Supply and Service Expenditures were made with Fort Worth Companies in the previous calendar year, the Fort Worth Supply and Service Percentage for the Program Grant payable in the following Program Year (other than Program Year 1) would be 13.5% instead of 15% (or .15 x [$180,000/$200,000], or .15 x .90, or .045). If the Fort Worth Supply and Service Spending Commitment is met or exceeded in any given year, the Fort Worth Supply and Service Percentage for the Program Grant payable in the following Program Year will be fifteen percent (15%). Calculation of the Program Grant payable for Program Year 1 does not include the Fort Worth Supply and Service Percentage because the Fort Worth Supply and Service Commitment does not apply to the First Operating Year.

5.3.1.5. **Fort Worth M/WBE Supply and Service Spending (Up to 15% after Program Year 1).**

Except for the Program Grant payable in Program Year 1, each annual Program Grant shall include an amount that is based on the percentage by which the M/WBE Supply and Service Spending Commitment, as outlined in Section 4.6, was met (the **"M/WBE Supply and Service Percentage"**). The M/WBE Supply and Service Percentage will equal the product of fifteen percent (15%) multiplied by the percentage by which the M/WBE Supply and Service Spending Commitment was met, which will be calculated by dividing the actual Supply and Service Expenditures made in the previous calendar year with Fort Worth Certified M/WBE Companies by $100,000.00, which is the M/WBE Supply and Service Spending Commitment. For example, if only $80,000.00 in Supply and Service Expenditures were made with Fort Worth Certified M/WBE Companies in the previous calendar

year, the M/WBE Supply and Service Percentage for the Program Grant payable in the following Program Year (other than Program Year 1) would be 12% instead of 15% (or .15 x [$80,000/$100,000], or .15 x .80, or .12). If the M/WBE Supply and Service Spending Commitment is met or exceeded in any given year, the M/WBE Supply and Service Percentage for the Program Grant payable in the following Program Year will be fifteen percent (15%). Calculation of the Program Grant payable for Program Year 1 does not include the M/WBE Supply and Service Percentage because the M/WBE Supply and Service Commitment does not apply to the First Operating Year.

5.3.1.6. No Offsets.

A deficiency in attainment of one commitment may not be offset by the exceeding attainment in another commitment. For example, if in a given year Developer failed to meet the M/WBE Supply and Service Spending Commitment by $5,000.00, but exceeded the Fort Worth Supply and Service Spending Commitment by $5,000.00, the Program Grant payable in the following year would still be reduced in accordance with Section 5.3.1.5 on account of Developer's failure to meet the M/WBE Supply and Service Spending Commitment.

5.3.1.7. Affordable Housing Deduction.

Notwithstanding anything to the contrary herein, the amount of each annual Program Grant calculated in accordance with Sections 5.3.1.1 through 5.3.1.5 shall be reduced by a sum equal to the product of the total number of Residential Units located on the Development Property as of December 31 of the previous year in which the Program Grant is payable multiplied by $200.00 (the **"Affordable Housing Deduction"**). For example, if there are four hundred (400) Residential Units located on the Development Property as of February 1 of Program Year 1, the Program Grant for that year, calculated in accordance with Sections 5.3.1.1 through 5.3.1.5, will then be reduced by Eighty Thousand Dollars ($80,000.00). Because Developer has agreed to the Affordable Housing Deduction in lieu of making a commitment to set aside a certain number of percentage of Residential Units exclusively for lease to qualifying households whose adjusted incomes do not exceed the then-current eighty percent (80%) income limits established by the United States Department of Housing and Urban Development (HUD) for the Fort Worth-Arlington HUD Metro FMR Area at rents that are affordable to such households, as defined by HUD, Developer

understands and agrees that the sum of aggregate Affordable Housing Deductions made under this Agreement shall be included in calculating the Program Cap, as defined in Section 2 and further outlined in Section 5.3.3.

5.3.2. Reductions to Program Grants for Condominium Conversion of Residential Units.

Developer understands and agrees that full Program Grants are payable under this Agreement only to the extent that all Residential Units are exclusively rental apartments and not condominiums. Notwithstanding anything to the contrary herein, if any Residential Units are converted to condominiums, for the remainder of the Term each Program Grant payable in accordance with this Agreement shall be reduced by an amount equal to ***all*** Residential Property Taxes owed for the previous tax year, but the amount of any such reduction shall nevertheless be included in calculating the Program Cap. For example, if one-third (1/3) of the Residential Units are converted to condominiums in 2018, the Program Grant otherwise payable in 2019 shall be reduced by an amount equal to all Residential Property Taxes owed for the 2018 tax year. Therefore, by way of example only, if the Residential Property Taxes owed for the 2018 tax year equals $500,000.00, and the Program Grant otherwise payable in 2019 would have been $3 million, the actual Program Grant payable in 2019 would be $2.5 million, but for purposes of calculating the Program Cap, the City will be credited for having made a Program Grant payment of $3 million. If all Residential Units that were converted to condominiums are subsequently leased as rental apartments by Developer or a successor in interest hereunder, then this Section 5.3.2 shall not apply to a Program Grant payable in a given Program Year so long as all Residential Units were used exclusively as rental apartments for the ***entirety*** of the previous calendar year.

5.3.3. Program Cap.

The amount of the Program Cap will increase if the Director issues a Certificate of Completion for the Level 2 Development or Level 3 Development pursuant to Section 5.1 of this Agreement, as more specifically set forth in the definition provided in Section 2 for the term "Program Cap." Once the City has paid Developer annual Program Grants and made annual Affordable Housing Deductions that, in the aggregate, are equal to the applicable Program Cap, the Term of this Agreement shall expire. If in any Program Year the amount of the Program Grant plus the Affordable Housing Deduction would cause aggregate Program Grants paid and Affordable Housing Deductions made by the City pursuant to this Agreement, in the aggregate, to exceed the applicable Program Cap, the amount of the Program Grant payable in that Program Year shall equal

the difference between the aggregate of all Program Grants paid and all Affordable Housing Deductions made by the City as of the previous Program Year plus the Affordable Housing Deduction to be made by the City in the Program Year at hand and the Program Cap, in which case this Agreement shall expire automatically upon payment of such Program Grant.

5.3.4. Deadline for Payments and Source of Funds.

The first Program Grant payable hereunder (in other words, the Program Grant payable for Program Year 1) shall be paid by the City on or before June 1 of the second full calendar year following the Level 1 Completion Deadline (the Second Operating Year). Each subsequent annual Program Grant payment will be made by the City to Developer on or before June 1 of the Program Year in which such payment is due. It is understood and agreed that all Program Grants paid pursuant to this Agreement shall come from currently available general revenues of the City and not directly from Development Real Property Tax Revenues or Development Sales Tax Revenues. Developer understands and agrees that any revenues of the City other than those dedicated for payment of a given annual Program Grant pursuant to this Agreement may be used by the City for any lawful purpose that the City deems necessary in the carrying out of its business as a home rule municipality and will not serve as the basis for calculating the amount of any future Program Grant or other obligation to Developer.

6. DEFAULT, TERMINATION AND FAILURE BY DEVELOPER TO MEET VARIOUS DEADLINES AND COMMITMENTS.

6.1. Failure to Complete Level 1 of the Development.

If the Level 1 Development does not occur by the Level 1 Completion Deadline, the City shall have the right to terminate this Agreement by providing written notice to Developer without further obligation to Developer hereunder. The failure of the Level 2 Development to occur by the Level 2 Completion Deadline or of the Level 3 Development to occur by the Level 3 Completion Deadline shall have no effect on this Agreement or its effectiveness, but shall only affect the amount of the Program Cap, as defined in Section 2 and further set forth in Section 5.3.3.

6.2. Failure to Pay City Taxes.

An event of default shall occur under this Agreement if any City taxes owed on the Development Property by Developer or an Affiliate or arising on account of Developer's or an Affiliate's operations on the Development Property become delinquent and Developer or the Affiliate does not either pay such taxes or properly follow the legal procedures for protest and/or contest of any such taxes. In this event, the City shall notify Developer in writing and Developer shall have thirty (30) calendar days to cure such default. If the default has not been fully cured by such time, the City shall have the right to terminate this Agreement immediately by providing written notice to Developer and shall have all other rights and remedies that may be available to it under the law or in equity.

6.3. Violations of City Code, State or Federal Law.

An event of default shall occur under this Agreement if any written citation is issued to Developer or an Affiliate due to the occurrence of a violation of a material provision of the City Code on the Development Property or on or within any improvements thereon (including, without limitation, any violation of the City's Building or Fire Codes and any other City Code violations related to the environmental condition of the Development Property; the environmental condition other land or waters which is attributable to operations on the Development Property; or to matters concerning the public health, safety or welfare) and such citation is not paid or the recipient of such citation does not properly follow the legal procedures for protest and/or contest of any such citation. An event of default shall occur under this Agreement if the City is notified by a governmental agency or unit with appropriate jurisdiction that Developer or an Affiliate, or any successor in interest thereto; any third party with access to any portion of the Development Property owned or operated by Developer or an Affiliate pursuant to the express or implied permission of Developer or an Affiliate, or any successor in interest thereto; or the City is in violation of any material state or federal law, rule or regulation on account of any portion of the Development Property owned or operated by Developer or an Affiliate, or on account of improvements owned or operated by Developer or an Affiliate or any operations therein on the Development Property (including, without limitation, any violations related to the environmental condition of any portion of the Development Property owned or operated by Developer or an Affiliate; the environmental condition of other land or waters which is attributable to operations on any portions of the Development Property owned or operated by Developer or an Affiliate; or to matters concerning the public health, safety or welfare). Upon the occurrence of any default described by this Section 6.3, the City shall notify Developer in writing and Developer shall have (i) thirty (30) calendar days to cure such default or (ii) if Developer has diligently pursued cure of the default but such default is not reasonably curable within thirty (30) calendar days, then such amount of time as is reasonably necessary to cure such default. If the default has not been fully cured by such time, the City shall have the right to

terminate this Agreement immediately by providing written notice to Developer and shall have all other rights and remedies that may be available to under the law or in equity.

6.4. Foreclosure on Development Property.

Subject to any rights of a lender that is a party to a Consent to Collateral Assignment Agreement executed pursuant to and in accordance with Section 10, upon the occurrence of any of the following events, the City will have the right to terminate this Agreement immediately upon provision of written notice to Developer: (i) the institution of an action to foreclose or otherwise enforce a lien, mortgage or deed of trust on the Development or Development Property; (ii) the involuntary conveyance to a third party of the Development or Development Property; (iii) execution by Developer or an Affiliate of any assignment of the Development or Development Property or deed in lieu of foreclosure to the Development or Development Property; or (iv) the appointment of a trustee or receiver for the Development or Development Property.

6.5. Failure to Submit Reports.

If Developer fails to submit any report required by and in accordance with Section 4.7, the City shall provide written notice to Developer. If Developer fails to provide any such report within thirty (30) calendar days following receipt of such written notice, the City, as a courtesy, will provide Developer with a second written notice. If Developer fails to provide any such report within fifteen (15) calendar days following receipt of the second written notice, the City will have the right to suspend payments of any Program Grants until Developer has provided all required reports or, in the City's sole discretion, to terminate this Agreement immediately by providing written notice to Developer; provided, however, that if Developer fails to submit any sales tax reports for any Relocated Development Property Sales Entity, as required by Sections 4.7.2.1 and 4.7.2.2, such failure shall not constitute a default under this Agreement or provide the City with the right to terminate this Agreement, but, rather, the amount of Development Sales Tax Revenues shall be reduced in accordance with Section 5.2.

6.6. Knowing Employment of Undocumented Workers.

Developer acknowledges that the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. ***Developer hereby certifies that Developer, and any branches, divisions, or departments of Developer, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Developer, or any branch, division, or department of Developer, is convicted of a violation under 8 U.S.C. Section***

1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens), subject to any appellate rights that may lawfully be available to and exercised by Developer, Developer shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of Program Grants received by Developer hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum.

For the purposes of this Section 6.6, **"Simple Interest"** is defined as a rate of interest applied only to an original value, in this case the aggregate amount of Program Grants paid pursuant to this Agreement. This rate of interest can be applied each year, but will only apply to the amount of Program Grants received hereunder and is not applied to interest calculated. For example, if the aggregate amount of Program Grants received by Developer hereunder is $10,000 and it is required to be paid back with four percent (4%) interest five years later, the total amount would be $10,000 + [5 x ($10,000 x 0.04)], which is $12,000. This Section 6.6 does not apply to convictions of any Affiliate of Developer, any franchisees of Developer, or any person or entity with whom Developer contracts. Notwithstanding anything to the contrary herein, this Section 6.6 shall survive the expiration or termination of this Agreement.

6.7. Failure to Meet Construction Cost Spending and/or Supply and Service Spending; Failure to Meet Employment Goal.

The failure to meet the applicable Fort Worth Construction Commitment or the applicable M/WBE Construction Commitment, or the failure to meet the Fort Worth Supply and Service Spending Commitment or the M/WBE Supply and Service Spending Commitment in any given year, such event shall not constitute a default hereunder or provide the City with the right to terminate this Agreement, but, rather, shall only cause the amount of the Program Grants that the City is required to pay pursuant to this Agreement to be reduced in accordance with this Agreement. If Developer fails to meet the Employment Goal in any given year, such event shall not constitute a default hereunder and shall not cause the amount of the Program Grant that the City is required to pay in the following Program Year to be reduced.

6.8. General Breach.

Unless and to the extent stated elsewhere in this Agreement, Developer shall be in default under this Agreement if Developer breaches any term or condition of this Agreement and such breach remains uncured after thirty (30) calendar days following receipt of written notice from the City referencing this Agreement (or, if Developer has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than thirty (30) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure, as determined by both parties mutually and in good

faith), the City shall have the right to terminate this Agreement immediately by providing written notice to Developer.

7. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed that Developer shall operate as an independent contractor in each and every respect hereunder and not as an agent, representative or employee of the City. Developer shall have the exclusive right to control all details and day-to-day operations relative to the Development Property and any improvements thereon and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. Developer acknowledges that the doctrine of *respondeat superior* will not apply as between the City and Developer, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Developer further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and Developer.

8. INDEMNIFICATION.

DEVELOPER, AT NO COST TO THE CITY, AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS SERVANTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO DEVELOPER'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE CITY) OR SUBCONTRACTORS, RELATED TO THE DEVELOPMENT AND ANY OPERATIONS AND ACTIVITIES THEREON OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT.

9. NOTICES.

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand delivery:

City:

City of Fort Worth
Attn: City Manager
1000 Throckmorton
Fort Worth, TX 76102

***with copies to*:**
the City Attorney and
Economic/Community Development
Director at the same address

Developer:

Clearfork Development Company, LLC
Attn: _____
4200 S. Hulen St., Suite 614
Fort Worth, TX 76109

10. ASSIGNMENT AND SUCCESSORS.

Developer may at any time assign, transfer or otherwise convey any of its rights or obligations under this Agreement to an Affiliate that is in good standing to do business in the State of Texas, as determined by the Texas Secretary of State, without the consent of the City Council so long as Developer, the Affiliate and the City first execute an agreement under which the Affiliate agrees to assume and be bound by all covenants and obligations of Developer under this Agreement. In addition, Developer may assign its rights and obligations under this Agreement to a financial institution or other lender for purposes of granting a security interest in the Development and/or Development Property without the consent of the City Council, provided that Developer and the financial institution or other lender first execute a written agreement with the City in substantially the same form as that attached hereto as **Exhibit "C"**, together with such other terms and conditions as may be agreed by the City, Developer and the financial institution or other lender with respect to such security interest (a **"Consent to Collateral Assignment Agreement"**). Otherwise, Developer may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the consent of the City Council, which consent shall not be unreasonably withheld, conditioned on (i) the prior approval of the assignee or successor and a finding by the City Council that the proposed assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with the City under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of Developer under this Agreement. Any attempted assignment without the City Council's prior consent shall constitute grounds for termination of this Agreement following ten (10) calendar days of receipt of written notice from the City to Developer. Any lawful assignee or successor in interest of Developer of all rights under this Agreement shall be deemed "Developer" for all purposes under this Agreement.

11. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the City's Charter and ordinances, as amended.

12. GOVERNMENTAL POWERS.

It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities.

13. NO WAIVER.

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

14. VENUE AND JURISDICTION.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. This Agreement shall be construed in accordance with the laws of the State of Texas.

15. SEVERABILITY.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

16. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the City and Developer, and any lawful assign or successor of Developer, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

17. FORCE MAJEURE.

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, strike, inclement weather, shortages or unavailability of labor or materials, unreasonable delays by the City (based on the then-current workload of the City department(s) responsible for undertaking the activity in question) in issuing any permits, consents, or certificates of occupancy or conducting any inspections of or with respect to the Development, or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed. Notwithstanding anything to the contrary herein, it is specifically understood and agreed that Developer's failure to obtain adequate financing to complete the Development by the Completion Deadline shall not be deemed to be an event of force majeure and that this Section 17 shall not operate to extend the Completion Deadline in such an event.

18. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

19. CAPTIONS.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

20. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Developer, and any lawful assign and successor of Developer, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the City Council of the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

21. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED as of the last date indicated below:

CITY OF FORT WORTH:

By: _____
Fernando Costa
Assistant City Manager

Date: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Peter Vaky
Deputy City Attorney

M&C: _____

CLEARFORK DEVELOPMENT COMPANY, LLC, a Texas limited liability company:

By: _____
Name: Paxton E. Mothecal
Title: Manager

Date: 5/5/14

Attested by:

_____
Mary J. Kayser, City Secretary

CITY OF FORT WORTH TEXAS

OFFICIAL RECORD
CITY SECRETARY
FT. WORTH, TX

EXHIBITS

"A" –Description and Map Depicting the Development Property

"B" – Depiction of Development

"C" – Form of Consent to Collateral Assignment

Exhibit "A"

Description and Map Depicting the Development Property

Description of 44.409 Acres of Land

BEING a portion of that tract of land described by deed to Cassco Development Company, as recorded in Instrument Number D212290570, County Records, Tarrant County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at the northwest corner of Lot 1, Block NW-1, Edward's Ranch Clearfork Addition, an addition to the City of Fort Worth, recorded in Instrument Number D213004312, said County Records, the east right-of-way line of State Highway 121 (a variable width right-of-way), Parcel 91-A, as recorded in Instrument Number D205118475, said County Records, the beginning of a curve to the right;

THENCE with said right-of-way line the following courses and distances:

Continuing with said curve to the right, an arc distance of 610.90 feet, through a central angle of 07°32'19", whose radius is 4643.00 feet, the long chord which bears N 36°15'36"E, 610.46 feet, the beginning of a compound curve to the right;

With said compound curve to the right, an arc distance of 451.85 feet, through a central angle of 10°37'40", whose radius is 2436.00 feet, the long chord which bears N 45°20'29"E, 451.20;

N 50°39'18"E, 533.81 feet, the beginning of a curve to the left;

With said curve to the left, an arc distance of 198.19 feet, through a central angle of 01°28'05", whose radius is 7735.44 feet, the long chord which bears N 49°55'17"E, 198.19 feet, the northeast corner of aforementioned Parcel 91-a, being in the south line of that tract of land described by deed to Texas Electric Service Company as recorded in Volume 2588, Page 562, said County Records;

THENCE N 63°33'07"E, 174.99 feet departing said right-of-way line with the south line of said Texas Electric Service Company to the west right-of-way line of Edwards Ranch Road (a variable width right-of-way) as recorded in Instrument Number D211281093, said County Records;

THENCE with said right-of-way line the following courses and distances:

S 31°31'01"E, 618.05 feet;

S 13°28'58"W, 12.02 feet;

S 31°31'01"E, 102.50 feet;

S 76°31'01"E, 28.99 feet;

S 31°31'01"E, 482.39 feet, the beginning of a curve to the right;

With said curve to the right, an arc distance of 193.23 feet, through a central angle of 92°15'38", whose radius is 120.00 feet, the long chord which bears S 14°36'45"W, 173.02 feet, the northwest right-of-way line of Clearfork Main Street (a variable width right-of-way) as recorded in Instrument Number D211281093, said County Records;

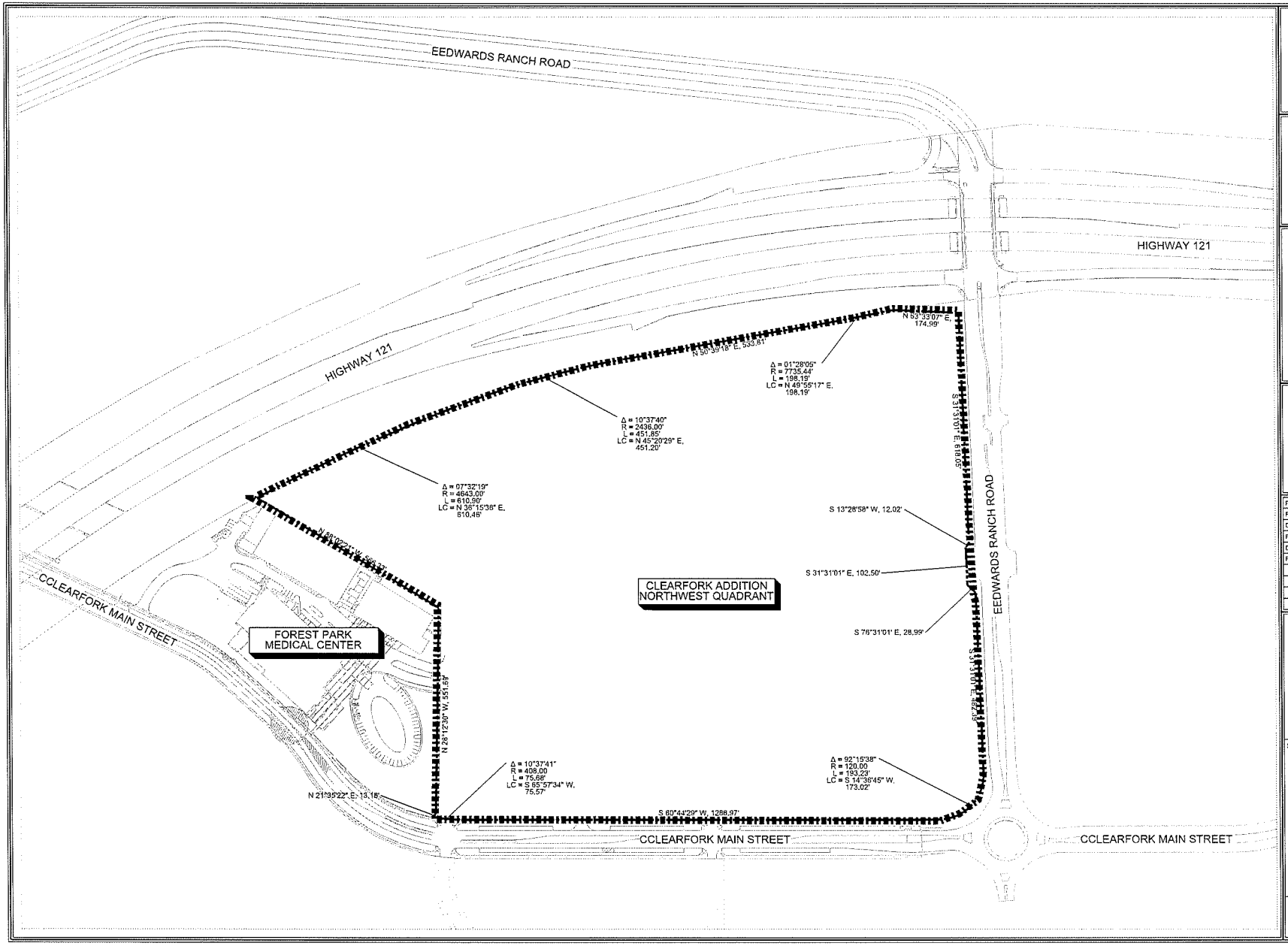
THENCE S 60°44'29"W, at a distance of 50.46 feet, the southwest terminus of said Clearfork Main Street, in all a distance of 1286.97 feet, the beginning of a curve to the right;

THENCE with said curve to the right, an arc distance of 75.68 feet, through a central angle of 10°37'41", whose radius is 408.00 feet, the long chord which bears S 65°57'34"W, 75.57 feet, the southeast corner of said Lot 1, Block NW-1;

THENCE N 21°35'22"E, 13.18 feet, with the east line of said Lot 1;

THENCE N 28°12'30"W, 551.69 feet continuing with said east line to the northeast corner of said Lot 1;

THENCE N 88°02'21"W, 566.33 feet with the north line of said Lot 1to the **Point of Beginning** and containing 1,934,435 square feet or 44.409 acres of land more or less.



EDWARDS RANCH CLEARFORK ADDITION

NORTHWEST QUADRANT

CASSCO DEVELOPMENT COMPANY, INC.
4200 SOUTH HULEN, SUITE 614
FORT WORTH, TEXAS 76109
817-731-7396

PELOTON LAND SOLUTIONS
5751 KROGER DRIVE
SUITE 185
KELLER, TX 76244
PHONE: 817-562-3350

TEXAS FIRM NO. 12207

PROPERTY BOUNDARY

PROJECT NO: TWS12002	
FILE PATH: TWS12002_Clearfork_NW_Tract/Site...	
DRAWN BY: KAK	
REVIEWED BY: PCF	
DATE: APRIL 2014	
REV:	

NORTH

0 120' 240' 360'

GRAPHIC SCALE

SHEET CONTENT

NORTHWEST QUADRANT EXHIBIT

Exhibit "B"

Depiction of Development

Depiction of Development

Depiction of Development

Depiction of Development

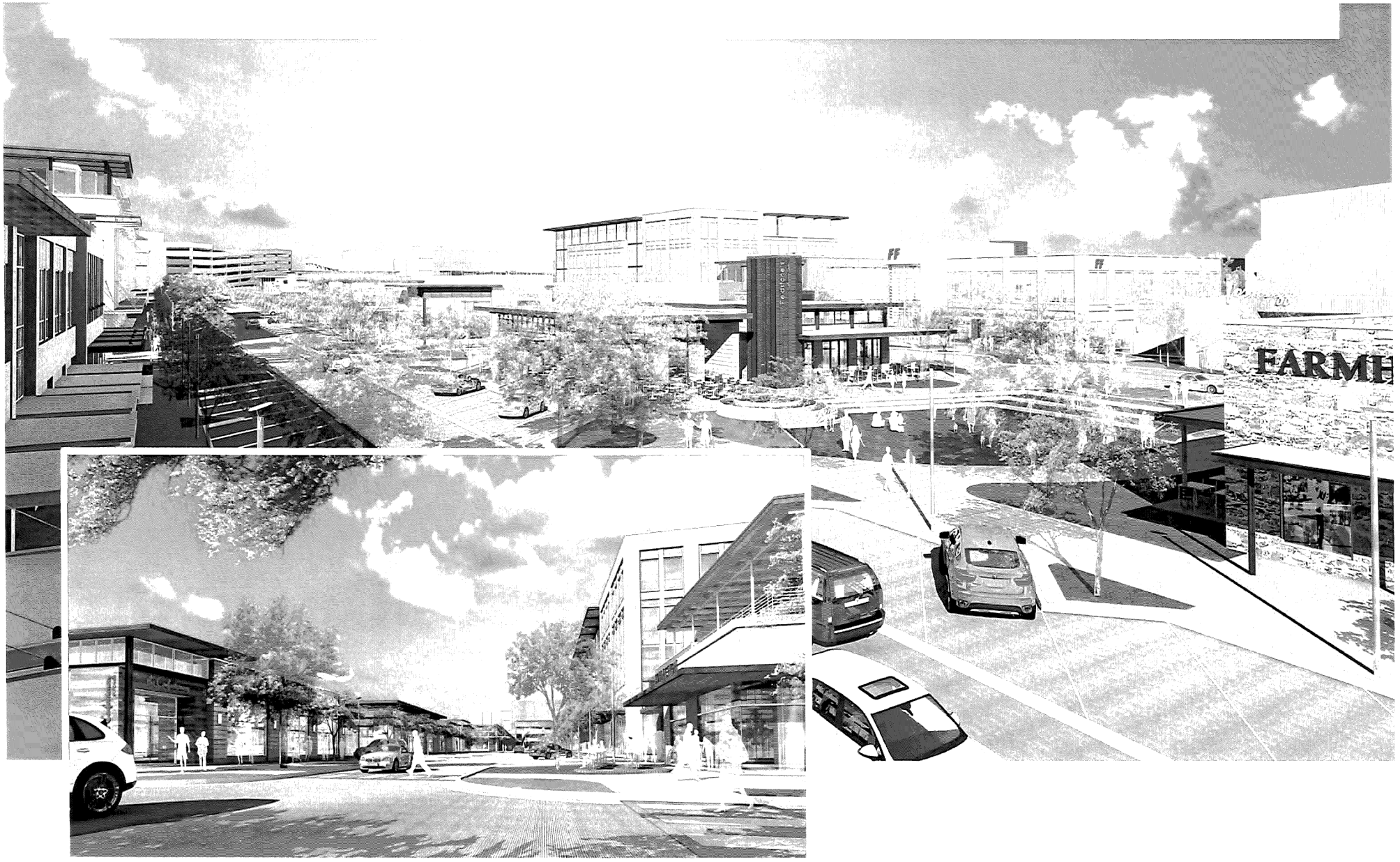


EXHIBIT "C"

Form of Consent to Collateral Assignment

CONSENT TO ASSIGNMENT FOR SECURITY PURPOSES OF ECONOMIC DEVELOPMENT PROGRAM AGREEMENT BETWEEN CITY OF FORT WORTH AND CLEARFORK DEVELOPMENT COMPANY, LLC (CITY SECRETARY CONTRACT NO. _____)

This **CONSENT TO ASSIGNMENT FOR SECURITY PURPOSES OF ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** (**"Consent"**) is entered into by and between the **CITY OF FORT WORTH** (**"City"**), a home rule municipal corporation organized under the laws of the State of Texas; and **CLEARFORK DEVELOPMENT COMPANY, LLC** (**"Developer"**), a Texas limited liability company; and _____(**"Lender"**), a _____.

RECITALS

The City, Developer and Lender hereby agree that the following statements are true and correct and constitute the basis upon which the parties have entered into this Consent:

A. The City and Developer previously entered into that certain Economic Development Program Agreement, dated as of _____, 2014 (the **"EDPA"**) pursuant to which the City agreed to pay Developer certain Program Grants in return for Developer's construction of a mixed-use development in the City in the vicinity of West Vickery Boulevard and South Hulen Street, as more specifically outlined in the EDPA (the **"Development"**). The EDPA is a public document on file in the City Secretary's Office as City Secretary Contract No _____.

B. Section 10 of the EDPA allows Developer to assign its rights and obligations under the EDPA to a financial institution or other lender for purposes of granting a security interest in the Development and/or Development Property without the approval of the City Council, provided that Developer and the financial institution or other lender first execute a written agreement with the City governing the rights and obligations of the City, Developer, and the financial institution or other lender with respect to such security interest.

C. Developer wishes to obtain a loan from Lender in order to [*state reason for loan*] (the **"Loan"**). As security for the Loan, certain agreements between Developer

and Lender governing the Loan and dated _____, including, but not limited to, that certain Loan Agreement and [*list other related documents*] (collectively, the **"Loan Documents"**) require that Developer assign, transfer and convey to Lender all of Developer's rights, interest in and to the EDPA until such time as Developer has fully satisfied all duties and obligations set forth in the Loan Documents that are necessary to discharge Lender's security interest in the EDPA (the **"Assignment"**).

D. The City is willing to consent to this Assignment specifically in accordance with the terms and conditions of this Consent.

AGREEMENT

1. The City, Developer and Lender hereby agree that the recitals set forth above are true and correct and form the basis upon which the City has entered into this Consent.

2. The City hereby consents to the Assignment at the request of Developer and Lender solely for the purpose of Lender's securing the Loan pursuant to and in accordance with the Loan Documents. Notwithstanding such consent, the City does not adopt, ratify or approve any of the particular provisions of the Loan Documents and, unless and to the extent specifically acknowledged by the City in this Consent, does not grant any right or privilege to Lender or any assignee or successor in interest thereto that is different from or more extensive than any right or privilege granted to Developer under the EDPA.

3. In the event that the City is required by the EDPA to provide any kind of written notice to Developer, including notice of breach or default by Developer, the City shall also provide a copy of such written notice to Lender, addressed to the following, or such other party or address as Lender designates in writing, by certified mail, postage prepaid, or by hand delivery:

_____
_____
_____
_____

or such other address(es) as Lender may advise City from time to time.

4. If Developer fails to cure any default under the EDPA, the City agrees that Lender, its agents or designees shall have an additional thirty (30) calendar days or such greater time as may specifically be provided under the EDPA to perform any of the obligations or requirements of Developer imposed by the EDPA and that the City will accept Lender's performance of the same as if Developer had performed such obligations or requirements; provided, however, that in the event such default cannot be cured within such time, Lender, its agents or designees, shall have such additional time as may be

reasonably necessary if within such time period Lender has commenced and is diligently pursuing the remedies to cure such default, including, without limitation, such time as may be required for lender to gain possession of Developer's interest in the Developer property pursuant to the terms of the Loan Documents.

5. If at any time Lender wishes to exercise any foreclosure rights under the Loan Documents, before taking any foreclosure action Lender shall first provide written notice to the City of such intent (a **"Notice"**). Lender shall copy Developer on the Notice and deliver such Notice to Developer by both first class and certified mail return receipt concurrent with its transmittal of the Notice to the City and represent in the Notice that it has done so. Notwithstanding anything to the contrary herein, unless Lender enters into a written agreement with the City to assume and be bound by all covenants and obligations of Developer under the EDPA, Lender understands and agrees that the City shall not be bound to pay Lender any Program Grants pursuant to the EDPA. In addition, Lender understands and agrees that if Lender wishes to sell all or any portion of the Development Property or improvements thereon to a third party following Lender's exercise of any foreclosure rights under the Loan Documents, the City shall not be bound to pay such third party any Program Grants pursuant to the EDPA unless Lender and such third party comply with the procedure for assignment set forth in Section 10 of the EDPA, including the obligation of such third party to enter into a written agreement with the City to assume and be bound by all covenants and obligations of Developer under the EDPA. In the event that payment of any Program Grants are withheld by the City pursuant to this Section 5, any rights to receipt of those Program Grants are hereby waived, but the number and amount(s) of any such Program Grant(s) shall nevertheless be counted for purposes of calculating the Term of the EDPA, as set forth in Section 3 of the EDPA.

6. In the event of any conflict between this Consent and the EDPA or any of the Loan Documents, this Consent shall control. In the event of any conflict between this Consent and any of the Loan Documents, this Consent shall control. In the event of any conflict between the EDPA and any of the Loan Documents, the EDPA shall control.

7. This Consent may not be amended or modified except by a written agreement executed by all of the parties hereto. Notwithstanding anything to the contrary in the Loan Documents, an amendment to any of the Loan Documents shall not constitute an amendment to this Consent or the EDPA.

8. Once Developer has fully satisfied all duties and obligations set forth in the Loan Documents that are necessary to discharge Lender's security interest in the EDPA and such security interest is released, Lender shall provide written notice to the City that Lender has released such security interest, in which case this Consent shall automatically terminate.

9. This Consent shall be construed in accordance with the laws of the State of Texas. Venue for any action arising under the provisions of this Consent shall lie in state courts located in Tarrant County, Texas or in the United States District Court for the Northern District of Texas, Fort Worth Division.

10. Capitalized terms used but not specifically defined in this Consent shall have the meanings ascribed to them in the EDPA.

11. This written instrument contains the entire understanding and agreement between the City, Developer and Lender as to the matters contained herein. Any prior or contemporaneous oral or written agreement concerning such matters is hereby declared null and void to the extent in conflict with this Consent.

12. This Consent shall be effective on the later date as of which all parties have executed it. This Consent may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. The failure of any party hereto to execute this Consent, or any counterpart hereof, shall not relieve the other signatories from their obligations from their obligations hereunder.

EXECUTED as of the last date indicated below:

[SIGNATURES IMMEDIATELY FOLLOW ON NEXT PAGE]

CITY OF FORT WORTH:

By:_____
Name:
Assistant City Manager

Date:_____

APPROVED AS TO FORM
AND LEGALITY:

By: _____
Name:
Assistant City Attorney

M&C:___none required_____

CLEARFORK DEVELOPMENT COMPANY, LLC, a Texas limited liability company:

By:_____
Name:
Title:

Date:_____

Official site of the City of Fort Worth, Texas

CITY COUNCIL AGENDA

COUNCIL ACTION: Approved on 2/18/2014

DATE:	2/18/2014	**REFERENCE NO.:**	C-26672	**LOG NAME:**	17CLEARFORK380EDPA
CODE:	C	**TYPE:**	NON-CONSENT	**PUBLIC HEARING:**	NO

SUBJECT: Authorize Execution of Economic Development Program Agreement with Clearfork Development Company, LLC, or an Affiliate Related to a Mixed-Use Project to be Constructed Near the Southwest Intersection of West Vickery Boulevard and South Hulen Street due South of Chisholm Trail Parkway (COUNCIL DISTRICT 3)

RECOMMENDATION:

It is recommended that the City Council:

1. Authorize the City Manager to execute an Economic Development Program Agreement with Clearfork Development Company, LLC, or an affiliate (subject to subsequent, non-material changes agreed to by the parties) related to Clearfork, a mixed-use project to be constructed near the southwest intersection of West Vickery Boulevard and South Hulen Street due south of Chisholm Trail Parkway; and

2. Find that the terms and conditions of the Agreement, as outlined below and in the Agreement, constitute a custom-designed economic development program, as recommended by the 2013 Comprehensive Plan and authorized by Chapter 380 of the Texas Local Government Code.

DISCUSSION:

Under the proposed Economic Development Program Agreement, Clearfork Development Company, LLC, or any affiliate (Developer), has committed to construct a mixed-use development consisting of residential units, office space, retail space, and a hotel on property due south of Chisholm Trail Parkway near the southwest intersection of West Vickery Boulevard and South Hulen Street. In return, the City will pay the Developer fifteen annual economic development program grants, as authorized by Chapter 380, Texas Local Government Code.

The project will be constructed in phases, and the aggregate amounts of the grants will be tied to the amount of project investment made by the Developer. The minimum investment levels (exclusive of land costs), maximum incentive schedule, and required improvements for each phase are summarized as follows:

Phase I:

Minimum investment of $180 million
At least 300,000 SF of retail, commercial, or office space
At least 300,000 SF of multi-family rental residential space
Must be complete by December 31, 2016
If Phase I is completed, but neither Phase II nor Phase IIII are completed, aggregate grants will be capped at $23 million real gross dollars ($18 million Net Present Value)

Phase II:

Minimum investment (including Phase I investment) of $240 million
Additional 200,000 SF (at a minimum) of retail, commercial, office, or multi-family rental residential space
Must be complete by December 31, 2018
If Phases I and II are completed, but Phase III is not, aggregate grants will be capped at $34 million real gross dollars ($24 million Net Present Value)

Phase III:

Minimum investment (including Phase I and Phase II investment) of $300 million

Additional 200,000 SF (at a minimum) of retail, commercial, office, or multi-family rental residential space
Must be complete by December 31, 2020
If all 3 phases are completed, aggregate grants will be capped at $48 million real gross dollars ($30 million Net Present Value)

The first grant will be payable in the first or second full calendar year following completion of Phase I, at the Developer's option. If the Developer fails to complete Phase I by December 31, 2016, an event of default will occur and the City will have the right to terminate the Agreement.

In exchange for achieving the specified levels of investment, the Developer will be eligible to receive up to 15 annual economic development grants, equal to a percentage of the City's incremental real property taxes from the Clearfork development site and one percent sales taxes paid to the City and attributable to sales from the City (excluding any sales tax revenues generated by any entity relocating to the development from another location in the City), based on the following schedule:

Year	Maximum Grant Payments
1-5	Equal to 80 Percent of Real Property and Sales Tax
6-10	Equal to 75 Percent of Real Property and Sales Tax
11-15	Equal to 70 Percent of Real Property and Sales Tax

M/WBE OFFICE - To receive the maximum grant percentages above, for each phase the Developer must spend 30 percent of hard construction costs with Fort Worth contractors, and 25 percent of the hard construction costs with certified Fort Worth M/WBE contractors. In addition, beginning in the second year following the completion of Phase I, the Developer must spend at least $200,000.00 on annual discretionary service and supply contracts with Fort Worth companies and at least $100,000.00 with certified Fort Worth M/WBE companies. Failure to meet any of these commitments will result in a reduction to the grants in proportion to the percentage by which the commitments were not met, weighted in accordance with the following chart:

Developer Commitment	Percentage of Available Grant Funds
Minimum Project Investment	50 Percent
Fort Worth Construction Spending	25 Percent first year; 10 Percent thereafter
M/WBE Construction Spending	25 Percent first year; 10 Percent thereafter
Fort Worth Supply and Service Spending	15 Percent (commencing in second year)
M/WBE Supply and Service Spending	15 Percent (commencing in second year)

The Developer will also have an annual goal for at least 50 new full-time jobs to be provided at the site.

The City currently has required a 20 percent set-aside of affordable units for developments containing multi-family housing as part of its economic development incentives programs. However, Staff proposed an alternative to the 20 percent set-aside at the February 4, 2014, City Council Housing and Economic Development Committee meeting. The alternative allows for a charge of $200 per multi-family unit/per year for the term of the incentive Agreement. The proceeds will be deposited by the City into a housing trust fund administered by the Fort Worth Housing Finance Corporation for the development or renovation of low and moderate income housing for 15 years, which is the term of this Agreement. The Developer has selected to proceed with the alternative option, and Staff accordingly recommends allowing the $200.00 per unit/per year alternative instead of the 20 percent set aside for this project.

The Clearfork project is located in COUNCIL DISTRICT 3, Mapsco 75W.

FISCAL INFORMATION/CERTIFICATION:

The Financial Management Services Director certifies that this action will not increase the total appropriations on City funds.

TO Fund/Account/Centers **FROM Fund/Account/Centers**

Submitted for City Manager's Office by:	Fernando Costa (6122)
Originating Department Head:	Cynthia Garcia (8187) Jesus Chapa (5804)
Additional Information Contact:	Jesse Madsen (7337)

ATTACHMENTS

Clearfork_map (3).pdf

Clearfork Development – Council District 3