

RESOLUTION NO. 2021-09-XXX (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ADOPTING A POLICY ESTABLISHING MINIMUM REQUIREMENTS FOR THE EVALUATION AND CONSIDERATION OF PUBLIC IMPROVEMENT DISTRICTS (PID) IN THE CITY OF MCKINNEY AND WITHIN ITS EXTRATERRITORIAL JURISDICTION

WHEREAS, Chapter 372 of the Texas Local Government Code, entitled "Improvement Districts in Municipalities and Counties," specifically grants municipalities the authority to consider and approve a Public Improvement District (PID) and further outlines applicable statutory requirements; and

WHEREAS, the City recognizes that a PID can serve as a powerful tool with which to fund public improvements, as defined in the statute, that confer special benefits to properties located within the PID's boundaries; and

WHEREAS, the City recognizes that if PIDs are to be considered for approval, the minimum requirements for PIDs should be standardized and transparent, to the extent possible;

WHEREAS, the City Council of the City of McKinney, Texas, has reviewed the proposed policy establishing minimum requirements for evaluating PIDs and hereby adopts said policy.

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

Section 1. The Public Improvement District (PID) Policy for the City of McKinney is hereby adopted and shall read as specified in Exhibit "A" attached hereto.

Section 2. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 7TH DAY OF SEPTEMBER, 2021.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER, Mayor

ATTEST:

EMPRESS DRANE, City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER, City Attorney

EXHIBIT A



PUBLIC IMPROVEMENT DISTRICT (“PID”) POLICY

Adopted on September 7, 2021 via Resolution No. 2021-09-_____(R)

I. Overview.

The City of McKinney, Texas (“the City”) has adopted this Public Improvement District Policy (“Policy”) in order to outline conditions that must be satisfied by a Developer seeking to establish a public improvement district (“PID”). For the purposes of this Policy, the terms “Petitioner” and “Developer” may be used interchangeably and shall refer to any person(s) or entity(ies) which is responsible for requesting the PID’s creation and for managing the development of the property within the limits of the PID.

PIDs are development financing tools authorized pursuant to Chapter 372 of the Texas Local Government Code (the “LGC” or the “Act”) that allow for the costs of certain public improvement projects in a designated area to be paid through a special assessment against properties within the District to pay for improvements benefitting the properties within the PID. A PID may provide a means to fund certain public improvements that meet community needs and that might not otherwise be constructed as quickly, or at all, by levying assessments on property that directly benefit from the public improvements.

The purpose of this Policy is to outline the conditions that must be addressed before the City Council will consider acting on a petition for the establishment of a PID proposed by a Developer. Even if all conditions of this Policy are satisfied, the City Council, in its sole discretion, may choose to approve, modify, or deny a Developer’s proposed PID. This Policy also addresses PID administration requirements, which requirements may exceed the requirements contained in the LGC and other statutes. The Policy shall serve to supplement all other applicable City rules, regulations, and policies.

This Policy has been prepared and approved to guide the operations and management of a PID, and the guidelines set forth herein are not intended to be an all-inclusive list. The LGC, this Policy, and City staff are the primary sources of information regarding PIDs in the City.

II. Minimum requirements for a PID to be considered for creation.

1. As of the date of any petition or application, a proposed PID shall:
 - a. Consist of property which is wholly-located within the full-purpose corporate boundaries of the City; and
 - b. Consist of at least 1,000 gross acres of land area;
OR
 - c. Consist of property which is wholly-located within the City’s ETJ and/or limited-purpose corporate limits of the City; and
 - d. Consist of at least 200 gross acres of land area; and

- e. Be proposed by a property owner who agrees to voluntarily annex (full-purpose) the entire property into the City's corporate limits concurrent with the City Council's consideration of a proposed PID.
2. Any proposed PID shall not overlap the boundaries of any other existing PID.
3. The Developer shall demonstrate to the City that it has the financial capability and expertise to complete the new development that the PID will support (the "PID Development"). At a minimum, the Developer must provide:
 - a. Comparable project examples that have successfully used a PID; and
 - b. The names of the persons or firms designated by the Developer who will serve as a "Project Team" for the PID Development that includes members with PID and related development experience.
4. A "Master Developer" or a "Master Development Entity" shall be designated for the PID Development. This Master Developer may be the same person or entity as the Developer. For the purposes of this Policy, the designated Master Developer or the Master Development Entity shall solely responsible for items including but not limited to serving as a primary point of contact for City personnel, assist the City with resolving issues with the PID Development, ensuring that obligations of any applicable agreements are being satisfied, ensuring that all applicable development requirements are being satisfied, establishing a set of consistent development principles spanning all phases of development, and coordinating development efforts among multiple layers of construction, builders, contractors, architects, engineers, and other development professionals.
5. The PID Development's public improvement components must be consistent with the zoning entitlements on the property. If the zoning on the property is not consistent with the proposed improvements in the PID Development, a (re)zoning request for the entire property that will be within the proposed limits of the PID must be submitted for the City's review and consideration before or concurrent with the City's review and consideration of the PID request. All required zoning entitlements for the entire portion of the property that will be within the proposed limits of the PID must be in place prior to the issuance of any PID bonds.
6. A proposed PID shall consist of land owned by (i) a single entity or (ii) multiple entities that are under "Common Ownership or Control." For the purposes of this Policy, Common Ownership or Control shall mean an entity structure wherein more than 50% of each entity is subject to the same ownership and control structure.
7. Creation of a PID shall be supported by 100% of the owners of property situated within the area of the proposed PID as determined from the Developer's (i) submission of a current tax roll identifying each owner of property liable for assessment and (ii) the verified signature of each owner affirming its support of the petition.
8. To avoid the over-proliferation of special districts, a PID petition must clearly identify an extraordinary benefit to the entire property and a distinct public purpose. These extraordinary benefits and distinct purposes could include, but are not limited to, enhanced landscaping, additional open spaces, improved city parks, unique/iconic development entries and monumentation, and additional or enhanced recreational amenities.
9. PID-funded public improvements shall be restricted solely to "Major Improvements," defined below, that are built to City standards and specifications. For the purposes of this Policy, the phrase Major Improvements means:
 - a. Landscaping and irrigation within the right-of-way;
 - b. Erection of fountains, distinctive lighting, and signage;
 - c. Construction or improvement of pedestrian malls;
 - d. Acquisition and installation of public art;
 - e. Acquisition, construction, or improvement of libraries;
 - f. The establishment or improvement of parks;
 - g. Acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;

- h. Acquisition, construction, or improvement of “Arterial Roadways,” having an ultimate roadway cross-section of 6-lanes or more, as reflected on the City’s Master Thoroughfare Plan;
 - i. Acquisition, construction, or improvement of sanitary sewer and water mains that are over 12-inches in diameter;
 - j. Acquisition, construction, or improvement of enhanced drainage improvements;
 - k. Acquisition, construction, improving, widening, narrowing, closing, or rerouting of public sidewalks and trails (or their easements);
 - l. Acquisition, construction, improvement, or rerouting of public mass transportation facilities; and
 - m. The development, rehabilitation or expansion of “affordable housing,” as such phrase is defined by the City.
10. If the proposed debt obligations secured by and payable from PID assessments are to be issued to reimburse the Developer for Major Infrastructure that a Developer would ordinarily fund at its own cost, the petition must demonstrate how creation of the PID and the proposed financing of the infrastructure provides an extraordinary benefit to the City overall and to the property in the PID in particular, such as accelerated development, unique residential or commercial structures, or furtherance of a major City policy objective.
11. A petition to create a PID must identify all methods to be deployed to ensure that sales of assessable property in the PID will include disclosure of the proposed special assessments on the property, specifically including the amount of such special assessments cumulatively and on a lot-by-lot/square footage basis. Petitioners must acknowledge and agree that, at a minimum, (i) all initial sales by home builders or developers will include a “title encumbrance” notifying any prospective buyer(s) regarding the assessment on the lot or tract in which the prospective buyer(s) is(are) interested; (ii) all closing statements will specify who is responsible for payment of the PID assessment or a pro rata share thereof; and (iii) all marketing and sales materials will include notice of the assessment and its estimated amount and length of duration.
12. All estimated costs must be identified within a preliminary financing plan before a decision is reached on a request to establish a PID. Costs to be identified include, but are not limited to, costs related to establishing the PID (including the City’s cost, both staff and outside consultants, in all review and analysis of the PID); costs for the construction and installation of the designated public improvements; costs for the maintenance, operation, and administration of the PID; and costs for future revision, repair or replacement of any public improvements funded by and through the PID assessment.

III. Petition requirements.

1. In addition to the requirements set forth in the LGC, all petitions requesting establishment of a PID shall include at a minimum the following additional requirements, the satisfaction of which shall be determined in the sole discretion of the City:
- a. Demonstration of long-term financial capital for the PID Development in the form of a cash deposit, proof of financing and/or equity capital from an investment grade financial institution, or letter of credit in favor of the City with an amount confirmed by an engineer’s opinion of probable costs, or other commitments from verified funding sources which funding sources are subject to approval by the City.
 - b. Evidence that the petition’s signatures meet the requirements of the LGC and this Policy. If the Petitioner fails to provide sufficient evidence, the Petitioner shall reimburse the City’s costs of signature verification.
 - c. If a Developer submits a petition that seeks to add to or expand an existing PID, the petition will be treated as a new PID and such petition shall be subject to this Policy.

- d. Contingency plans to address how, if a PID is dissolved, the PID improvements and any property belonging to the PID that have not been dedicated to the public will be maintained or disposed of upon such dissolution. A PID cannot be dissolved as long as debt obligations secured by the PID's assessments remain outstanding.
 - e. A map of the proposed area together with the legal description of the boundaries of the PID, and a commonly known description of the area to be included in the PID.
 - f. A section that clearly, and in detail, identifies the extraordinary benefit of the PID to the affected property owners (for use in public hearings) and to the City in general (i.e., distinct public purpose).
 - g. Identification of all land within the proposed PID that is, or will be, publicly owned including, but not limited to, sites for public schools, fire stations, police stations, other public safety facilities, libraries, or parks.
 - h. Description of all City-owned and City-maintained land within the PID as well as any project costs for which the City is expected to be responsible.
 - i. A budget, including the PID's revenues in addition to the assessments, and how all funds will be managed.
 - j. Specified procedure for eventual termination of the PID.
 - k. Statement that the Petitioner understands the annual budget for the PID is subject to review by City staff with final approval by the City Council.
 - l. A professional management plan detailing who will be responsible for addressing problems and corrective actions to be taken, including a comprehensive list of financial, management and legal consultants and their respective qualifications.
2. In addition, the following shall occur before the City Council may take action on a petition:
- a. Petitioner shall pay a non-refundable application fee of \$50,000, in full, at the time the petition is submitted to the City for its evaluation. City staff will not begin evaluating a PID request until the application fee has been paid. The application fee is intended to offset the City's costs incurred for internal evaluation of the petition that are associated with establishing the PID, including but not limited to salaries for City staff and all other reasonable and appropriate expenses. The City may draw from the deposit to pay City's ongoing internal expenses under this subsection as such costs and expenses are incurred. The payment of an application fee does not, and shall not be interpreted as, guaranteeing in any way or implying or otherwise suggesting that any petition for a PID request will be approved in whole or in part at the time of submittal or any future date.
 - b. Petitioner shall make an initial cash deposit of \$200,000 to reimburse the City for the costs incurred by City for the external evaluation of the petition by third-parties retained for such purpose by City. This cash deposit must be paid in full when the petition is submitted to the City for evaluation and review. The City may draw from the deposit to pay ongoing external expenses under this subsection.
 - i. Payment is considered a prepayment for the City's costs associated with PID consultant fees, bond and PID attorney fees, independent appraisal fees, engineering costs, financial advisor, and all other reasonable and appropriate expenses associated with the creation of the PID.

- ii. In the event the cash deposit is depleted during the evaluation phase, the Petitioner will be required to deposit an additional amount with the City to continue the external evaluation of the PID. Such additional amount will be calculated solely by City staff and represent the estimate of expenses required to complete the evaluation. In the event that there are insufficient funds to cover the City's external expenses, the City reserves the right to hold the petition indefinitely until all required amounts are paid to the City.
 - iii. The City will refund to the Petitioner any unused balance following the City Council's final determination regarding the requested establishment of the proposed PID.
 - iv. Costs incurred for these services may be allowed to be reimbursed from a debt issuance, if said debt issuance occurs, to the extent allowable by state and federal laws and within the restrictions defined within this Policy.
3. City staff will review all petitions for sufficiency, and its sole determination shall be final.

IV. Establishment.

1. The LGC provides the City Council with the authority to undertake an improvement project that confers a special benefit on a definable area of land if certain procedures in the LGC are met. In establishing a PID, the City will comply with all mandatory procedural requirements set forth in the LGC; provided, however, the City reserves the right to invoke any permissive procedural requirement as it may deem necessary on a case-by-case basis.
2. The Petitioner must submit a proposed service and assessment plan to the City. The City reserves the right to have its own PID consultant finalize the service and assessment plan; and should the City decide to move forward with the PID, the cost of finalization shall be included in the PID budget.
3. There shall be no requirement to establish a statutory advisory body to oversee the development and recommendation of a service and assessment plan.

V. Assessments.

1. The City Council shall apportion the costs of public improvements to be assessed against property in a PID. The apportionment shall be made on the basis of special benefits accruing to the property because of the public improvements. The costs of the authorized public improvements will be assessed in accordance with the LGC, the service and assessment plan, and this Policy.
2. By ordinance, the City shall levy the assessments on the properties in the PID in accordance with the LGC.
3. The City shall contract with the Collin County Tax Assessor's Office for billing and collecting of PID assessments.
4. The City shall have the final authority regarding assessment methodology.
5. It is anticipated that the PID assessment will be billed on each property owner's annual ad valorem tax statement, unless the full PID assessment obligation for a property owner's property is pre-paid.
6. Property that is publicly-owned by a governmental entity (e.g., City, County, State, Federal, or School District) or which will be dedicated to a governmental entity as part of the development process shall not be subject to any assessment by the PID.

7. PID assessments shall only be allowed to be levied for a period of up to 30 years.
8. The cumulative total annual assessment of PID assessments and property taxes (PID and City of McKinney) to property owners within the PID at the time of the PID's creation shall be no more than the equivalent of \$1.05 per \$100 tax rate on the assessed value of their property.
9. Through approval of this Policy, City staff has been delegated authority from the City Council to collect assessments in any manner authorized by the LGC, which provides that assessments may be collected in the same manner as the collection of ad valorem taxes. Such authorized collection efforts include the addition of penalties and interest, initiation of foreclosure proceedings plus costs of court and legal fees on any property delinquent in the payment of the PID special assessment associated with the property.

VI. General on-going requirements.

1. Each PID must be financially self-sufficient and not adversely impact the ordinary service delivery of the City.
2. A PID's budget shall include sufficient funds to pay for all PID-related costs that exceed the City's ordinary operating costs. Examples of costs that must be offset include, but are not limited to, those costs associated with on-going administrative and operational oversight of the PID and with integration of PID-funded infrastructure into the City's operating and administrative systems.
3. The Developer shall provide the City and the PID administrator all data necessary to complete any on-going bond disclosure requirements.
4. PIDs shall not be managed by Developers or their affiliates.
5. If a PID is being managed by a management firm and that entity's performance is determined by the City, in its sole judgment, to be unsatisfactory, the City may exercise its right to assume control, maintain the project, and assess the property owners for their appropriate share of the PID costs or contract with another entity to manage the PID.
6. Developers shall not be required to follow municipal bidding procedures on PID-funded improvements if the expenditure or improvement qualifies for an exemption outlined in Subsection §252.022 of the Texas Local Government Code. Bid tabulations and a recommendation for award of contracts will be brought before the City Council for approval.

VII. PID bond financing.

1. All PIDs established by the City with the intent to fund improvements through bond financing shall be limited by the following restrictions and requirements:
 - a. Bond financing will only be considered for PIDs with a qualified project(s) of five million dollars (\$5,000,000) or more. This amount shall be the minimum amount to be financed, excluding cost of issuance, capitalized interest, and debt service reserves.
 - b. The terms of repayment for any bonds issued for PIDs shall specify a maturity date not longer than thirty (30) years from the date of issuance, and:
 - i. The final maturity date for any bond issued shall not exceed the useful life of any assets constructed with such bond funds, recognizing that a bond issuance may be allocated to multiple assets with different useful lives;

- ii. The final maturity date for any bond issued shall not exceed the initial authorization term of the PID;
 - iii. After any capitalized interest or major construction period, the debt service payments for the life of the debt shall be generally level from year-to-year taking into consideration funding of reserves as required by the bond indentures and administrative expenses; and
 - iv. Repayment of any debt is limited to the pledge of revenue derived from the PID including assessments derived from property owned by the Developer; and
 - v. Revenues of the City will not be used to pay debt service on PID bonds.
2. Debt obligations secured by and payable from PID assessments used to reimburse for Major Infrastructure in the PID shall be limited to a single issuance or tranche, and no more than three (3) years of interest may be capitalized. Additional tranches shall be prohibited if the Developer has defaulted (lack of performance) on a previous tranche.
3. The City shall ensure that the record of proceedings authorizing any revenue bonds issued for a PID (by the City, and any other entity controlled by the City or any other entity authorized to issue bonds) are submitted to the attorney general for examination.
4. Proceeds of PID bonds may not be used to reimburse costs incurred prior to the twentieth (20th) day after such resolution is published.
5. Not more than 70% of the total cost of improvements may be included in any debt issuance.
6. At least 25% of the direct transactional costs of debt issuance shall be paid by the Petitioner without remuneration or inclusion in the debt financing.
7. The estimated appraised value to lien ratio with proposed improvements, as determined by an independent third-party approved by the City, shall be no less than 3:1 on a parcel-by-parcel basis.
8. PID bonds shall only be issued on a reimbursement basis for approved project expenditures already incurred by the Developer. The City will not issue PID bonds to pay for future PID improvements or future expenditures anticipated by the Developer. Reimbursements through PID bonds shall not be made for the Developer's interest on its debt capital. The City will not issue or sell bonds to reimburse Developers for the cost of public improvements that have been previously acquired by the City.
9. Excess proceeds, if any, from a debt issuance must be applied to outstanding debt payments of that issuance.
10. The Petitioner shall establish a Debt Service Reserve Fund and it shall be maintained by the City in an amount equal to the lesser of:
 - a. 1.25 times the average annual debt service payments of the PID bonds,
 - b. 1.0 times the maximum annual debt service payment of the PID bonds, or
 - c. 10% of the principal amount of the PID bonds.
11. Pursuant to the LGC, the interest rate for assessments may exceed the interest rate of the bonds by no more than one half of one percent (0.50%). The City may allocate up to 0.50% of the interest rate component to fund a delinquency reserve, prepayment reserve, or for any other purpose authorized by the LGC.

12. A Service and Assessment Plan and related agreements for any debt issuance must be submitted and approved by City staff before consideration of debt financing.
13. All costs incurred by the City that are associated with the administration of the PID shall be paid out of special assessment revenues levied against property within the PID. City administration costs shall include but are not limited to those costs and expenses associated with continuing disclosure, consultant and agent fees, attorneys' fees, staff time, reporting requirements, and any other related expenses.
14. The City may hire its own financing team, including, but not limited to, bond and other legal counsel, financial advisors, and underwriters related to bond financing proceedings. Costs associated with the financing team shall be negotiated by the City and paid out of the developer-paid cash deposit as well as PID bond proceeds and then subsequently paid or reimbursed by bonds or special assessment revenue levied against the property within the PID.
15. Petitioners requesting establishment of a PID with bond financing must participate in the City's continuing annual financial disclosures. The City may assess penalties, at its sole discretion, for non-compliance with continuing disclosure undertakings.
16. In the event of a default on bonds issued for PIDs, all associated parties, subsidiaries, or their affiliates shall be barred indefinitely from submitting a petition to the City requesting establishment of any other or future PIDs.
17. Unless otherwise approved by the City Council, the City shall not refund or refinance any bonds issued for PIDs.
18. The City will determine, in its sole discretion, the credit criteria/quality, market suitability, debt structure, continuing disclosure requirements, and investor suitability requirements of the bonds.

VIII. PID management.

1. The City may contract with a private firm to manage the PID, subject to administrative oversight by City staff. Management includes but is not limited to the responsibility of continuing disclosure requirements and arbitrage calculations associated with any outstanding debt for the PID. The Developer, Petitioner, or any of their affiliates shall not contract to manage any proposed PID located within the City. The cost of hiring the private firm shall be borne by the PID.
2. The management company will coordinate development of the annual Budget ("Budget") and Five-Year Service Plan ("Plan"), which Budget and Plan will then be submitted to the City Council for consideration following a public hearing conducted in accordance with the LGC.
3. The PID management company will communicate to all property owners within the PID, regarding pertinent information for the property owners and the PID.
4. Costs associated with the management company will be paid from the PID's annual assessment revenue.

IX. Service and assessment plan.

Each Petitioner shall submit an initial Service and Assessment Plan and an annual update shall be completed by the City that complies with the LGC and this Policy.

X. Expenditure reimbursements.

1. In order to ensure that the PIDs continue to operate without cost to the City, the City shall charge a fee to each PID for the annual costs associated with administering the PID. This fee will be calculated annually for each PID to be the greater of:
 - a. Two percent (2%) of the projected externally-generated PID revenue for that year, to include special assessments and any City contributions; or
 - b. Two Thousand Dollars (\$2,000); or
 - c. Actual incurred costs.
2. Expenditures shall fall within the general categories established in the LGC and this Policy.

XI. Financial reporting.

The City shall make PID financial statements (balance sheet, income statement, and general ledger) available on a periodic basis for the Petitioner to review and inspect.

XII. Dissolution of a PID.

PIDs may be dissolved in accordance with the procedures set forth in the LGC. If a PID is dissolved, the PID shall remain in effect for the purpose of meeting obligations of indebtedness of the PID. PIDs will not be dissolved until all outstanding associated PID debt has been retired.

XIII. Miscellaneous.

1. Severability. If any section, subsection, sentence, clause, phrase, or word of this Policy is declared unconstitutional or invalid for any purpose, the remainder of this Policy shall not be affected.
2. Waivers. Waivers to or deviations from this Policy may only be approved by the City Council, unless otherwise stated herein.
3. No Personal Liability of Public Officials. No public official or employee shall be personally responsible for any liability arising under or growing out of any approved or disapproved PID or petition for the formation of a PID. Any obligation or liability of the Petitioner or Developer whatsoever that may arise at any time under the approved PID or obligation or liability which may be incurred by the Petitioner or Developer pursuant to any other instrument transaction or undertaking as a result of the PID shall be satisfied out of the assets of the Petitioner or Developer only, and the City shall have no liability.
4. Indemnification. All PID agreements shall include Indemnification language as follows:

“Indemnification. DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS CITY (AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, ATTORNEYS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PRECEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD-PARTY AND RELATING TO DEVELOPER’S ACTIONS ON THE PROJECT INCLUDING, BUT NOT LIMITED TO PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR

RELATED TO DEVELOPER OR DEVELOPER'S AGENTS' OR REPRESENTATIVES' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR DEVELOPER'S AGENTS OR REPRESENTATIVES, AND ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANTS OR SUBCONSULTANT OF DEVELOPER OR DEVELOPER'S AGENTS OR REPRESENTATIVES, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER STATE LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER STATE LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S AGENTS' OR REPRESENTATIVES' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE DEVELOPER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH A DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF ANY AGREEMENT TO WHICH THE DEVELOPER OR ITS AGENTS OR REPRESENTATIVES ARE A PARTY RELATED TO THE PID AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND / OR THEIR OFFICERS, ATTORNEYS, EMPLOYEES AND ELECTED OFFICIALS PERMITTED BY LAW."