

RESOLUTION NO. 2013-154R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH MENSOR CORPORATION PURSUANT TO SECTION 1.4.4.1 OF THE LAND DEVELOPMENT CODE (“LDC”) THAT GRANTS A WAIVER OF THE REQUIREMENT UNDER SECTION 7.4.2.3 OF THE LDC TO INSTALL SIDEWALKS ON BOTH SIDES OF A LOT WITH DOUBLE STREET FRONTAGE AS PART OF THE EXPANSION OF THE MANUFACTURING FACILITY AT 201 BARNES DRIVE; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.


BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached Economic Development Incentive Agreement between the City of San Marcos and Mensor Corporation (the “Agreement”) is hereby approved.

PART 2. The City Manager is hereby authorized to execute the Agreement on behalf of the City.

PART 3. This Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED on October 2, 2013.


Daniel Guerrero
Mayor

Attest:


Jamie Lee Pettijohn
City Clerk

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

Pursuant to Section 1.4.4.1 of the City of San Marcos Land Development Code, this agreement (the "Agreement") is entered into by and between Mensor Corporation, a Texas corporation, 201 Barnes Drive, San Marcos, Texas ("Owner"), and the City of San Marcos, Texas, 630 East Hopkins Street, San Marcos, Texas 78666 (the "City"). The Owner and the City are collectively referred to as the "Parties".

PART 1. RECITALS

Section 1.01. The Owner owns and operates a facility at 201 Barnes Drive (the "Property") where it manufactures high accuracy precision instruments. The company has developed an international reputation for quality products and service.

Section 1.02. The Owner proposes to build a new 45,000 square foot facility adjacent to its existing 26,000 square foot facility. The expansion will help support its growth and help allocate additional resources and personnel to their operations. With the expansion, Owner estimates that it will hire an additional 40 employees over the next 10 years.

Section 1.03. The Property is a lot that has street frontage along both Barnes Drive and Interstate Highway 35 ("IH-35"). The expansion triggers a requirement under Section 7.4.2.3 of the City's Land Development Code ("LDC") to install sidewalks on both sides of the lot that front public streets. The Owner seeks a waiver of this requirement that would allow it to install sidewalks only along Barnes Drive.

Section 1.04. The City seeks to promote local economic development and to stimulate business and commercial activity in the City and wishes to facilitate the Owner's proposed expansion by waiving certain standards for sidewalks under the LDC in furtherance of such objectives of the City.

Section 1.05. In consideration of the mutual benefits stated herein and the promises of the Parties set forth below, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

PART 2. OBLIGATIONS OF OWNER

Section 2.01. Facility Expansion. On or before January 1, 2014 the Owner will commence construction of the new 45,000 square foot facility in accordance with plans and specifications approved by the City in substantial conformance with the plans shown in Exhibit "A," attached hereto and made a part hereof, to expand its existing operations and support the Owner's ability to employ up to 40 additional employees over the next 10 years (the "Project"). For purposes of this section, the date of issuance of building permits by the City for the Project shall be considered the date upon which construction commences.

Section 2.02. Project Completion. The Owner shall complete the Project on or before November 30, 2014. For purposes of this section, the date of issuance of a final Certificate of Occupancy by the City for the Project shall be considered the date upon which the Project is

completed.

PART 3. ECONOMIC DEVELOPMENT INCENTIVES PROVIDED BY THE CITY

Section 3.01. Waiver of Sidewalk Standards under LDC. Pursuant to Section 7.4.2.3 of the LDC the Owner, in connection with the Project, would normally be required to install sidewalks along both Barnes Drive and IH-35 or pay a fee in lieu of such installation. The Owner wishes to install sidewalks only along Barnes Drive. The City agrees to:

a. waive the requirement under Section 7.4.2.3(b)(1) to install sidewalks on both sides of the lot that front along a street such that the Owner shall only be required to install sidewalks along Barnes Drive; and

b. waive the requirement under Section 7.4.2.3(f) to pay a fee in lieu of installation of sidewalks along IH-35.

Section 3.02. Waivers Limited. The above waivers apply only to the Project as described in this Agreement. Except as specifically stated above, the City grants no other waivers of requirements under the LDC and the Project, shall, otherwise, conform in every other respect to the requirements of the LDC and other applicable ordinances, rules, regulations and standards of the City. If the Project is not completed in accordance with the requirements of Part 2 of this Agreement, the waivers granted herein shall expire automatically upon the passage of the date for completion of the Project under Section 2(b).

PART 4. DEFAULT AND TERMINATION

Section 4.01. Default and Termination. The City Manager may declare a default under this Agreement and may terminate this Agreement if the Owner:

a. fails to commence and complete the Project within the time specified or according to the specifications in Part 2, subject to events of *force majeure*;

b. made or makes any representation relied upon by the City in entering into this Agreement or in any request or submission to the City relating to this Agreement or the Project that is false or misleading in any material respect;

c. assigns this Agreement without the consent of the City;

d. allows ad valorem taxes on the Property or other property in the City owned by Owner to become delinquent;

Section 4.02. Notice of Default and Termination. If the City Manager reasonably determines that the Owner is in default under Sections 4.01 (a) or (d), the City Manager will notify the Owner in writing of such default, and if the default is not cured within 30 days from the date of the notice, the City Manager may terminate this Agreement, unless reasonable efforts are being made to cure said default and said default cannot reasonably be cured within 30 days.

For any other default under this Agreement, the City Manager may terminate the Agreement by sending written notice of termination to the Owner.

Section 4.03. Status of Waivers Upon Termination. Upon termination of this Agreement due to default by the Owner, the Owner agrees that the waivers granted by the City shall automatically expire and the Property and any development on the Property shall be subject to the requirements of Section 7.4.2.3 of the LDC or applicable successor provisions.

Section 4.04. Remedies not Exclusive. In the event of default, either party may exercise its remedies hereunder together with any other statutory or common law remedies, including applicable penal and civil enforcement provisions of the City's Land Development Code or successor provisions, or other ordinances. Any failure by one party to enforce this Agreement with respect to one or more defaults by the other party will not waive that party's ability to enforce the Agreement after that time. In the event litigation is commenced under the terms of this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorney fees and costs.

PART 5. MISCELLANEOUS

Section 5.01. Notices. All notices required by this Agreement will be delivered to the following by certified mail, hand-delivery or, email:

Owner:

Lee Graham
President
201 Barnes Drive
San Marcos, Texas 78666
E-mail: Lee.Graham@mensor.com

City:

City Manager
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666
E-mail: citymanagerinfo@sanmarcostx.gov

Each party may notify the other party in writing of any change in information required for notice under this paragraph.

Section 5.02. Assignment. The Owner may not assign this Agreement or any of its rights, or delegate or subcontract any of its duties under this Agreement, in whole or in part, without the prior written consent of the City, which shall not be unreasonably withheld.

Section 5.03. Applicable Law and Venue. This Agreement will be construed under the laws of the State of Texas. This Agreement is performable in Hays County, Texas. Mandatory venue for any action under this Agreement will be in the state court of appropriate jurisdiction for the action in Hays County, Texas. Mandatory venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

Section 5.04. No Liability. The Owner agrees that City assumes no liability or responsibility by approving plans, issuing permits or approvals or making inspections related to the Project.

Section 5.05. Force Majeure. A *force majeure* event means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

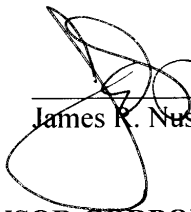
Section 5.06. No Waiver of Immunity or Liability. Nothing in this Agreement, and no action of the City under this Agreement, will constitute a waiver of any immunity of the City to suit or to liability or of any limitations on liability granted by law or the Texas Constitution.

Section 5.07. No Joint Venture. It is understood and agreed between the parties that the City and the Owner, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture. **THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT, AND THE OWNER AGREES TO INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY SUCH LIABILITIES.**

EXECUTED in duplicate originals to be effective the date of the last signature below.

CITY OF SAN MARCOS:

By:




James R. Nuse, P.E., City Manager

Date: October 17, 2013

MENSOR CORPORATION:

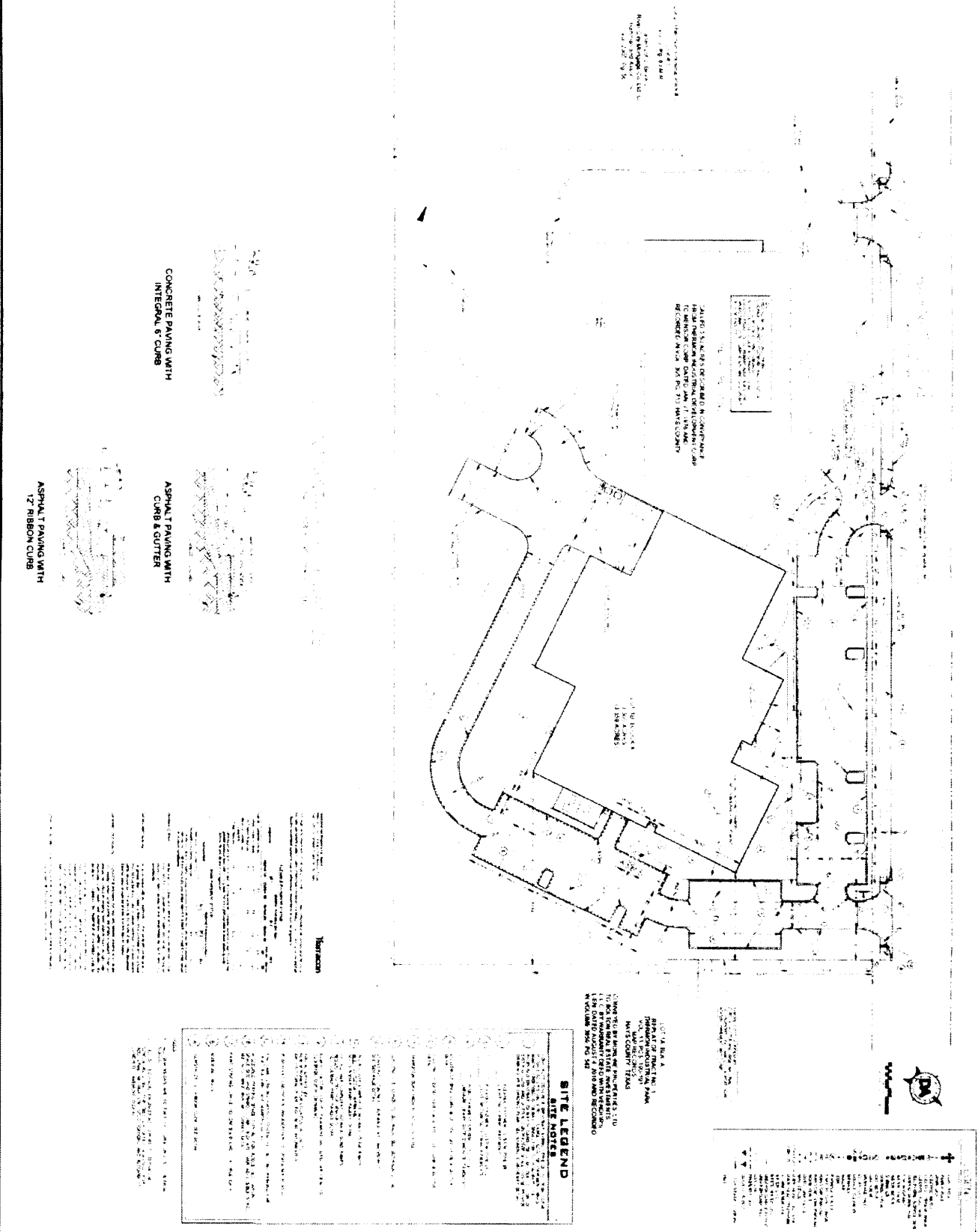
By:



Lee Graham, President

Date: Oct. 21, 2013

EXHIBIT “A”
Project Plans
(next page)



SITE LEGEND

- 1. EXISTING BUILDING
- 2. NEW BUILDING
- 3. EXISTING DRIVEWAY
- 4. NEW DRIVEWAY
- 5. EXISTING SIDEWALK
- 6. NEW SIDEWALK
- 7. EXISTING CURB
- 8. NEW CURB
- 9. EXISTING GUTTER
- 10. NEW GUTTER
- 11. EXISTING PAVEMENT
- 12. NEW PAVEMENT
- 13. EXISTING UTILITIES
- 14. NEW UTILITIES
- 15. EXISTING LANDSCAPE
- 16. NEW LANDSCAPE
- 17. EXISTING FENCE
- 18. NEW FENCE
- 19. EXISTING SIGNAGE
- 20. NEW SIGNAGE
- 21. EXISTING LIGHTING
- 22. NEW LIGHTING
- 23. EXISTING SECURITY
- 24. NEW SECURITY
- 25. EXISTING ACCESSORIES
- 26. NEW ACCESSORIES

mentor INDUSTRIAL MANUFACTURING
 201 BARNES DRIVE
 SAN MARCOS, TEXAS

SITE PLAN

DA DOUCET & ASSOCIATES
 Civil Engineering, Planning, Surveying/Mapping
 3603 N. Highway 71 W. Suite 300
 Austin, Texas 78721 Phone: (512) 845-3445
 www.doucetandassociates.com
 New Englander Building 1997

7
 2017