

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement ("Agreement") is entered into by and between the City of Lewisville, Texas, a home rule city and municipal corporation of Denton County, Texas, duly acting by and through its City Manager ("City"); and BIOR SX, LLC, duly acting by and through its acknowledging member, Dr. Miguel Castro ("Company") (collectively, "Parties").

WITNESSETH:

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as "Statute"), the City adopted an Economic Incentive Policy for making economic development incentives and grants on June 7, 2021 (hereinafter referred to as "the Policy Statement"); and

WHEREAS, the Policy Statement constitutes appropriate guidelines and criteria governing economic development agreements to be entered into by the City as contemplated by the Statute; and

WHEREAS, in order to maintain and/or enhance the commercial, economic, and employment base of the Lewisville area to the long-term interest and benefit of the City, in accordance with said Statute, the City desires to enter into this Agreement; and

WHEREAS, on the ____ day of ____, 2021, the City Council of the City of Lewisville, Texas, authorized this Agreement pursuant to the Statute; and

WHEREAS, the Company has, for over thirty years, owned property which is located at 612 Main Street, Lewisville, Texas, further described on Attachment "A" attached hereto (the "Current Property"); and

WHEREAS, the City desires to provide, pursuant to the Statute, an incentive to the Company to expand in Lewisville and to complete construction of a new facility within the City by a date certain in order to rapidly accommodate the growth and expansion of the Company; and

WHEREAS, the Company agrees to complete its expansion in the City, at a site on Mario Court, described in Attachment "B" attached hereto (the "Land"), and occupy a new facility to accommodate the growth and expansion of the Company in a manner consistent with the City of Lewisville zoning ordinance and in compliance with all City rules, regulations and guidelines pertaining to development; and

WHEREAS, the Company agrees to occupy or cause to be occupied the new facility and maintain a certain minimum level of on-site full-time employment thereon for a period of time as set forth herein;

WHEREAS, Company's completion of construction of certain Real Property Improvements (hereinafter defined) as further illustrated in Attachment "C" attached hereto, will provide major capital investment on the Land; and

WHEREAS, Company's contemplated use of the Premises, as hereinafter defined, and the other terms of this Agreement are consistent with encouraging development of the Land in accordance with the purposes stated and are in compliance with the intent of the Statute, the Policy Statement and similar guidelines and criteria adopted by the City and all applicable laws; and

WHEREAS, the City finds that the administration of an economic development agreement to provide incentives to the Company in return for expanding its facility and employment within the City will promote local economic development and stimulate business and commercial activity within the municipality and would directly establish a public purpose; and

WHEREAS, the City has determined that the said Agreement contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources.

NOW THEREFORE, the City, in consideration of the mutual benefits and promises contained herein and for good and other valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties hereto do mutually agree as follows:

ARTICLE I TERM

This Agreement shall be effective on the date that this Agreement is executed by the Parties ("Effective Date") and shall continue in effect until the date of final disbursement under Article IV, unless sooner terminated as provided for herein ("Term").

ARTICLE II DEFINITIONS

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Agreement" has the meaning set forth in the introductory paragraph of this document.

"Annual Grant" shall have the meaning set forth in Article IV of this Agreement.

“Building Permit Fee Grant” shall have the meaning set forth in Article IV of this Agreement.

“Capital Recovery Fee Grant” shall have the meaning set forth in Article IV of this Agreement.

“Certificate of Occupancy” shall mean a certificate of occupancy permit issued by the City to the Company for the Premises.

“City” has the meaning set forth in the introductory paragraph of this Agreement.

“Company” has the meaning set forth in the introductory paragraph of this Agreement.

“Current Property” has the meaning set forth in the recitals to this Agreement.

“Effective Date” shall mean that point in time established in Article I of this Agreement.

“Event of Bankruptcy” shall mean the dissolution or termination of the Company’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Full-Time Employee” shall mean any individual employed on a full-time basis by the Company whose assigned work location is on the Premises.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of the Company created by acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of the Developer), fire, explosion or flood, strikes; provided, however, that (a) the event giving rise to Force Majeure was not caused by the act or omission of the Company and makes the performance of any obligation created under this Agreement illegal or impossible; and (b) the Company gives reasonable notice of the event giving rise to Force Majeure and exercises all reasonable diligence to remove the cause of Force Majeure.

“Land” has the meaning set forth in the recitals to this Agreement.

“OTMU2” means the Old Town Mixed Use 2 zoning classification as described in the City of Lewisville Zoning Ordinance.

“Policy Statement” shall have the meaning given in the recitals to this Agreement.

“Premises” shall mean the Land and the Real Property Improvements constructed or placed thereon.

“Real Property Improvements” shall mean all improvements, as classified by the Denton Central Appraisal District, that are constructed or otherwise located on the Land following the execution of this Agreement, including a building to be completed on the Land as illustrated in Attachment “C” attached hereto which shall be occupied by the Company, and other ancillary facilities such as required parking and landscaping more fully described in the submittals filed with the City.

“Required Use” shall mean the continuous operation of a headquarters office and manufacturing of nucleic acids, peptides and other molecular biology products for the research, diagnostic and therapeutic industries at the Premises.

“Statute” shall have the meaning given in the recitals to this Agreement.

“Substantial Completion” shall mean the issuance of a certificate of occupancy by the City to the Company for the Premises.

ARTICLE III

GENERAL PROVISIONS

3.1 The Company shall complete the construction of the Real Property Improvements and reach Substantial Completion by December 31, 2022.

a. Subject to an extension as provided herein, failure to complete the construction of the Real Property Improvements and reach Substantial Completion by December 31, 2022 shall constitute a breach of this Agreement.

b. In the event of Force Majeure or, if in the reasonable opinion of the City Manager, the Company has made substantial progress toward Substantial Completion by the above date, additional time may be granted at the City Manager’s discretion.

3.2 During the period of the Agreement herein authorized, the Company shall be subject to all applicable City taxation not specifically abated or exempted by this or another agreement, including but not limited to, sales tax and ad valorem taxation, inventory and supplies.

3.3 Prior to Substantial Completion, the Company shall submit a rezoning application to the City requesting that the Current Property be rezoned to OTMU2.

ARTICLE IV
ECONOMIC DEVELOPMENT INCENTIVES

4.1. Annual Grant. Subject to the terms and conditions of this Agreement, the City agrees to provide to Company an economic development grant in an amount equal to fifty percent (50%) of the ad valorem property taxes owed and paid to the City by Company on the Real Property Improvements located on the Land (the "Annual Grant"). For clarity, property taxes paid on the value of the Land is not included in the Annual Grant calculation. Company will be paid the Annual Grant by the City in accordance with this Agreement on an annual basis subject to the timing referenced in Section 4.4, below. Subject to the terms and conditions of this Agreement, the Annual Grant shall be available for a period of ten (10) consecutive years during the Term, beginning on January 1 of the year following the date of Substantial Completion. The Company shall pay all applicable taxes in accordance with state and local regulations.

4.2 Building Permit Fee Grant. Subject to the terms and conditions of this Agreement, the City agrees to provide an economic development grant in an amount equal to one-hundred percent (100%) of the total fees paid by the Company to the City for building permits for the Premises ("Building Permit Fee Grant"). Notwithstanding any fee grant, the Company must obtain all permits required by City ordinance.

4.3 Capital Recovery Fee Grant. Subject to the terms and conditions of this Agreement, the City agrees to provide to the Company an economic development grant in an amount equal to fifty percent (50%) of the water and sanitary sewer capital recovery fees paid by the Company to the City on the Premises ("Capital Recovery Fee Grant"). Notwithstanding any fee grant, the water and sanitary sewer capital recovery fee shall be paid to the City, as required by the City ordinance.

4.4 Timing of Grants. The Company acknowledges that this Agreement makes an allowance for the grants provided for herein to be paid, subject to the terms and conditions of this Agreement, upon completion of submittal of documents to the City in accordance with this Agreement. Subject to the terms and conditions of this Agreement, the City agrees that the grants will be paid in full to the Company within forty-five (45) days of the timely and satisfactory receipt of the below-listed items. **Failure to timely submit the required documentation may delay payment at the City's discretion.** Grant funds shall be disbursed as follows:

- a. Annual Grant: The Company shall be paid the Annual Grant by the City in accordance with this Agreement on an annual basis. At the close of each calendar year during the Term following Substantial Completion, prior to the City's payment of the Annual Grant

earned during such calendar year, the Company shall submit to the City, no later than March 30th of the following calendar year, all of the following: (i) proof of payment of its subject tax liability for its Real Property Improvements; (ii) its Annual Compliance Report shown in Attachment "D"; (iii) a letter of request for payment; and (iv) any other documentation or information required by the City.

b. Building Permit Fee Grant and Capital Recovery Fee Grant. The Company shall be paid the Building Permit Fee Grant and Capital Recovery Fee Grant by the City in accordance with this Agreement following Substantial Completion and the submission of required documents to the City. Within forty-five (45) days following the date of Substantial Completion, the Company shall submit to the City, all of the following: (1) a letter of request for payment, and (2) proof of payment for all permits and capital recovery fees, and any other documentation or information required by this Agreement.

ARTICLE V AGREEMENT CONDITIONS

5.1 Required Use Condition. During the Term of this Agreement following Substantial Completion and continuing thereafter until expiration of this Agreement or earlier termination of same, the Company shall continuously own and fully occupy or cause to be fully occupied a building on the Premises; and the Premises shall not be used for any purpose other than the Required Use. The Company shall not allow the operation of the Premises in conformance with the Required Use to cease except to the extent of an event of Force Majeure.

5.2 Minimum Taxable Value. During the Term of this Agreement, the minimum taxable value for the Premises, as assessed by the Denton Central Appraisal District, shall be four million five hundred thousand dollars (\$4,500,000.00). For clarity, the taxable value of the Premises includes both real property value and land value.

5.3 Minimum Employment Condition. To be eligible for the Annual Grant, the Company shall meet the following minimum employment conditions:

a. At all times during the Term of this Agreement beginning on the date of Substantial Completion and continuing for five (5) years, the Company shall employ a minimum of sixty (60) Full-Time Employees at the Premises.

b. At all times during the Term of this Agreement beginning on the fifth (5th) anniversary of the date of Substantial Completion, the Company shall employ a minimum of one hundred (100) Full-Time Employees at the Premises.

5.4 Certification. Throughout the Term following the date of Substantial Completion, the Company must certify annually to the governing body of the City as to its attainment of the stated performance measures described herein by submitting an Annual Compliance Report (Attachment "D") and appropriate support documentation as requested by the City to the City's Director of Economic Development no later than March 30th of each year.

5.5 Employment of Undocumented Workers. During the term of this Agreement, the Company agrees not to knowingly employ any undocumented workers as defined in TEX. GOVT. CODE §2264.001. If convicted of a violation under 8 U.S.C. §1324a(f), the Company shall repay the amount of the grants and any other funds received by the Company from the City as of the date of such violation not later than one hundred and twenty (120) days after the date the Company is notified by the City of a violation of this section, plus interest from the date the grants were paid to the Company, at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate. The payment of interest shall be as if it had been accruing from the date the grants were paid to the Company until the date the grants are repaid to the City. Pursuant to Section 2264.101(c), TEX. GOV'T CODE, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

ARTICLE VI

TERMINATION

6.1 This Agreement may be terminated upon any one of the following:

- a. by written agreement of the Parties;
- b. expiration of the Term;
- c. by the City, if the Company breaches any material terms or conditions of this Agreement and such breach is not cured within sixty days (60) days after receipt of written notice thereof and the Company has not commenced curative action within such 60-day period and has not diligently pursued such curative action to a satisfactory completion;

- d. by the City, if the Company suffers an Event of Bankruptcy;
- e. by the City, if any taxes or fees owed to the City or the State of Texas by the Company shall become delinquent and payment of delinquent amounts is not made within sixty (60) days after receipt of written notice thereof (provided, however the Company retains the right to timely and properly protest and contest any such taxes or fees);
- f. by the Company upon sixty (60) days prior written notice to the City; and
- g. by the City, within thirty (30) days of providing written notice, if the Company is convicted of a violation of 8 U.S.C. §1324a(f) as determined by a court of competent jurisdiction or other competent authority.

6.2 Refund of Grants.

- a. In the event the Agreement is terminated by the City pursuant to Section 6.1(c), (d), or (e), or by the Company pursuant to Section 6.1(f), the Company shall immediately pay the City, within sixty (60) days of notice from the City, an amount equal to the grants received by the Company, if any.
- b. In the event the Agreement is terminated by the City pursuant to Section 6.1(g), the Company shall, within one-hundred twenty (120) days after the date the Company is notified by the City of a violation, pay to the City the amounts specified in Section 5.5 of this Agreement.

ARTICLE VII MISCELLANEOUS

7.1 The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by the Company unless written permission is first granted by the City Manager, which consent shall not be unreasonably withheld. Any assignment without such permission shall be void. Any Company assignee must agree to be bound by all terms and conditions of this Agreement.

7.2 It is understood and agreed between the parties that the Company, in performing its obligations thereunder, is acting independently, and the City assumes no responsibility or liabilities in connection therewith to third parties; it is further understood and agreed between the parties that the City, in performing its obligations hereunder, is acting independently, and the Company assumes no responsibilities in connection therewith to third parties.

7.3 The Company further agrees that the City, its agents and employees, shall have reasonable rights of access to the Premises for inspection purposes in order to ensure that the construction of the Real Property Improvements on the Premises as well as the use and maintenance of the Premises are in accordance with all applicable agreements with the City, including this Agreement, and all applicable state and local laws and regulations, as well as the continuing right, subject to the Company's reasonable security requirements, to inspect the Premises to ensure that the Premises are thereafter maintained, operated, and occupied in accordance with all applicable agreements with the City, provided that with respect to matters concerning this Agreement (i) the City must give the Company reasonable prior telephone or written notice of any such inspection, and (ii) a representative of the Company shall have the right to accompany the agent or employee of the City when conducting such inspection. The notice requirements and right to accompany shall not apply to inspections to ensure compliance with applicable state and local laws and regulations, including any inspection necessary to issue required permits.

7.4 The City represents and warrants that the Premises does not include any property that is owned by a member of the City Council having responsibility for the approval of this Agreement.

7.5 Notices required to be given to any party to this Agreement shall be given personally or by mail addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered three (3) days after the date deposited in the United States' mail:

For the City by notice to:

City of Lewisville
Attn: Economic Development Director
151 W. Church Street
P.O. Box 299002
Lewisville, Texas 75057

For Company by notice to:

BIORSX, LLC
612 Main Street
Lewisville, Texas 75057

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

7.6 This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which in the aggregate shall constitute one agreement.

7.7 If any provision contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. In lieu of each invalid, illegal or unenforceable provision, there shall be added a new provision by agreement of the parties as similar in terms to such invalid, illegal or unenforceable provision as may be possible and yet be valid, legal and enforceable.

7.8 Whenever the context requires, all words herein shall be deemed to include the male, female, and neuter gender, singular words shall include the plural, and vice versa.

7.9 THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY COMPANY'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT OF COMPANY, ITS AFFILIATES, OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE COMPANY AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE COMPANY'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

7.10 Venue for any litigation arising from this Agreement shall lie in Denton County, Texas.

7.11 This Agreement may be modified or rescinded only by a writing signed by both of the Parties or their duly authorized agents.

7.12 This Agreement was authorized by action of the City Council, authorizing the City Manager to execute the Agreement on behalf of the City.

7.13 Submitted herewith is a completed Form 1295 generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "**Form 1295**"). The City hereby confirms receipt of the Form 1295 from the Developer, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Parties understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Developer; and, neither the City nor its consultants have verified such information.

DATED this the _____ day of _____, 2021.

CITY OF LEWISVILLE, TEXAS

Donna Barron, City Manager

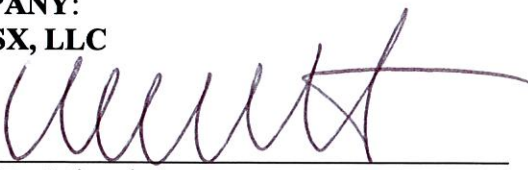
ATTEST:

Julie Worster, City Secretary

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

COMPANY:
BIORSX, LLC

By: 

Name: Dr. Miguel Castro

Title: Acknowledging Member

ATTACHMENT "A"

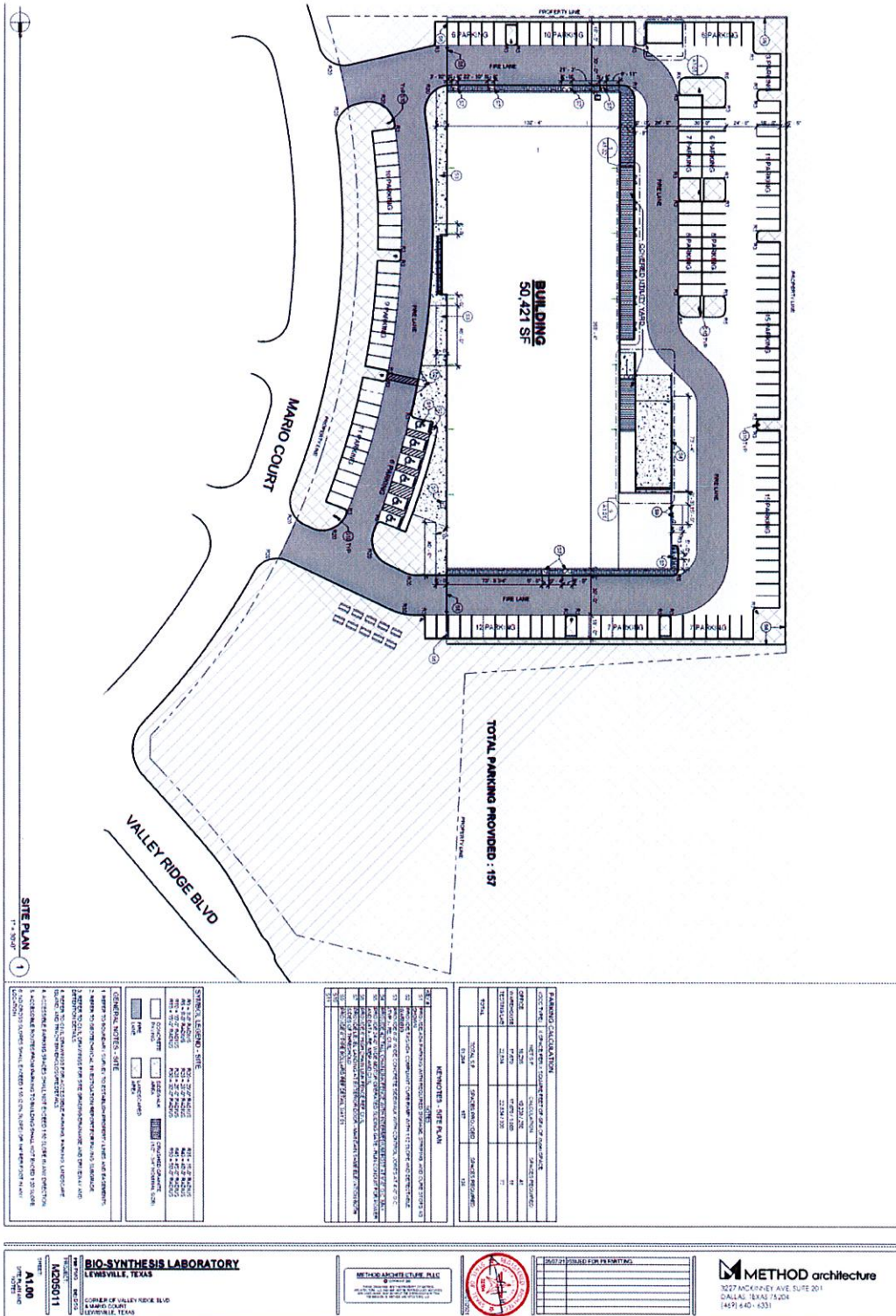
Current Property

Lot 2, Block A, Castro Addition, Lewisville, Texas

ATTACHMENT "B"

The Land

Lot 1R, Block A, Artx Park Addition, Lewisville, Texas



ATTACHMENT "D" **Annual Compliance Form**

Please complete what is applicable to your agreement.

Company Name: _____

Company Address: _____

Date on which Certificate of Occupancy was received:

Please list the dollar amount for the following:

Current Year Appraised Real Property Value from Notice of Appraised Value issued by the Appraisal District – Land	
Current Year Appraised Real Property Value from Notice of Appraised Value issued by the Appraisal District – Real Property Improvements	
Property Taxes Paid – Real Property	
# Full Time Employees at the Premises	

Has construction/installation of planned improvements commenced? Yes No

Has construction/installation of planned improvements been completed? Yes No

Additional Information to be Attached:
Brief Narrative Highlighting the Progress of the project
If Applicable, a Statement Addressing any Failure to Meet Requirements of the Economic Development Agreement
Letter of Request re: the Economic Development Agreement grants plus supporting documents

I certify that, to the best of my knowledge, the information and attachments provided herein are true and accurate and in compliance with the terms of the Economic Development agreement with the City of Lewisville.

Name of Certifying Officer

Title

Signature of Certifying Officer

Date