



CITY OF PLANO COUNCIL AGENDA ITEM

| | | | | |
|--|----------------|----------------------------------|--|-------------------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 09/09/13 | | |
| Department: | | Economic Development | | |
| Department Head | | Sally Bane | | |
| Agenda Coordinator (include phone #): Linda Thomason x8301 | | | | |
| CAPTION | | | | |
| A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Agreement for Public Improvements by and between Rent-A-Center Texas, L.P., a Texas limited partnership, and the City of Plano, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | 2015-16 | Prior Year (CIP Only) | Current Year | Future Years |
| | | TOTALS | | |
| Budget | | 136,648 | 174,000 | 100,000 |
| Encumbered/Expended Amount | | -136,648 | -70,851 | 0 |
| This Item | | 0 | 0 | -28,000 |
| BALANCE | | 0 | 103,149 | 72,000 |
| FUND(S): STREET IMPROVEMENT CIP | | | | |
| COMMENTS: Funds will be budgeted in the 2015-16 Street Improvement CIP. This item, in the amount of \$28,000, is anticipated to leave a balance of \$72,000 for Oversize Participation projects in the 2015-16 CIP. Strategic Plan Goal: Encouraging businesses to expand operations in Plano through reimbursing a portion of street and sidewalk improvements associated with business expansion relates to the City's Goal of Strong Local Economy. | | | | |
| SUMMARY OF ITEM | | | | |
| This relates to a Rent-A-Center, L.P., a Texas limited partnership, request to construct street and sidewalk improvements on Reinvestment Zone 136 and adjacent to Dominion Parkway. | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | |
| Resolution Economic Development Agreement Public Improvements | | | | |

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Agreement for Public Improvements by and between Rent-A-Center Texas, L.P., a Texas limited partnership, and the City of Plano, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Agreement for Public Improvements by and between Rent-A-Center Texas, L.P. and the City of Plano, Texas, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 9th day of September, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**ECONOMIC DEVELOPMENT AGREEMENT
PUBLIC IMPROVEMENTS**

This Economic Development Agreement ("Agreement") is made and entered into by and between the City of Plano, Texas, a home-rule municipal corporation (the "City") and Rent-A-Center Texas, L.P., a Texas limited partnership, (the "Company").

WHEREAS, Company plans to add Eight Million Dollars (\$8,000,000) of Real Property improvements and Seven Hundred Fifty Thousand Dollars (\$750,000) of Business Personalty property on their real property located in the City of Plano, Collin County, Texas, more particularly described on Exhibit "A" attached hereto and incorporated herein (the "Property"); and

WHEREAS, the City has authorized the Company to construct street and sidewalk improvements on and adjacent to Dominion Parkway parallel to the Property, more particularly shown on Company's preliminary site plan attached hereto as Exhibit "B" and incorporated herein (the "Public Improvements"); and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company for a portion of the costs of constructing the Public Improvements in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and its citizens and will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I
CONSTRUCTION AND COMPLETION
OF PUBLIC IMPROVEMENTS

1.01. Construction of Improvements

On or before December 31, 2015, Company shall construct the Public Improvements consisting of sidewalk and street improvements on and adjacent to Dominion Parkway as shown on Exhibit "B" in accordance with the Company's Engineering Plans that must be submitted and approved by the City on or before construction of the Public Improvements commences. A copy of Company's Engineering Plans shall be available in the City's Engineering Department and, upon submittal to the City, are incorporated herein and made a part hereof by reference ("Engineering Plans"), and in accordance with the City's Standard Specifications for Public Works Construction, a copy of which is available in the City's Engineering Department and which are incorporated herein and

made a part hereof by reference ("Standard Specifications"). No change in the Engineering Plans shall be made by Company without the prior written consent of the City Engineer. The entire cost of the construction of the Public Improvements shall be the responsibility and obligation of Company, except for the portion of costs to be reimbursed by the City to Company pursuant to Article III herein.

1.02. Contracting Requirements

Company shall contract with a qualified contractor to construct the Public Improvements in accordance with the Standard Specifications and Engineering Plans. Prior to the Company executing a construction contract with the contractor or beginning construction of the Public Improvements, the Company shall submit the contract documents, including all cost estimates, to the City Engineer for written approval. Once such construction contract documents are approved by the City, the Company will not amend or change them without prior written approval by the City, which approval shall not be unreasonably withheld. Company shall be solely responsible to make all payments for construction of the Public Improvements to the contractor subject to reimbursement to the Company from the City pursuant to Article III herein.

1.03. Performance and Maintenance Bonds

Company shall post with the City, or require the Contractor retained to construct or install the Public Improvements to post with the City, a performance and maintenance bond for construction of the Public Improvements to ensure completion of the project, on the forms attached hereto as Exhibits "C" and "D" respectively. The performance and maintenance bonds shall each be in an amount equal to one hundred percent (100%) of the total project cost.

1.04. Inspection

The City Engineer or his designee shall inspect the Public Improvements upon completion of construction of the Public Improvements and prior to acceptance by the City. The City Engineer may also periodically inspect the construction from time to time during construction for conformance with this Agreement, the Standard Specifications and Engineering Plans.

1.05. Insurance

The Company shall require all contractors or subcontractors performing any portion of the work to construct or complete the Public Improvements to meet the insurance requirements of Item 1.26.1 of the special provisions of the Standard Specifications required for heavy construction, and the policy endorsement and special condition requirements of Item 1.26.4 of the Standard Specifications.

1.06. Dedication

Upon completion, the Company shall dedicate the Public Improvements to the City subject to inspection and acceptance of the Public Improvements by the City pursuant to Section 4.3 of the City Subdivision Ordinance. The City's acceptance shall be evidenced by a certificate issued by the City to Company stating that all Public Improvements have been satisfactorily completed and shall include, to the extent assignable, an assignment of all contractors' warranties, if any, and all performance and payment. Prior to acceptance by the City, Company shall provide the City with releases from the general contractor for the design, construction and installation of all Public Improvements on a form to be provided by the City Engineer.

1.07. Rough Proportionality

Company agrees that its portion of the costs or requirements for the Public Improvements do not exceed the amount required for Public Improvements that are roughly proportionate to the development of its Property, and **COMPANY AGREES TO RELEASE, INDEMNIFY AND HOLD HARMLESS THE CITY FROM ANY CLAIMS, LIABILITY AND DAMAGES ASSOCIATED WITH AN EXACTION CLAIM ARISING OUT OF THIS AGREEMENT.**

1.08. INDEMNITY

THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY COMPANY'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE COMPANY, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, CONTRACTORS, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE COMPANY IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES

HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

COMPANY AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF COMPANY'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF COMPANY'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. COMPANY SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF COMPANY FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND COMPANY SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY IN DOING SO.

DEVELOPER DOES HEREBY AGREE TO WAIVE ALL CLAIMS AGAINST, RELEASE, AND HOLD THE CITY AND ITS RESPECTIVE OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES HARMLESS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, DISPUTES, CHALLENGES, DAMAGES OR ATTORNEY FEES, INCLUDING ALL EXPENSES OF LITIGATION OR SETTLEMENT, ARISING OUT OF AN EXACTION CLAIM PURSUANT TO THE OBLIGATIONS, DUTIES OR TERMS OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY MATTERS ARISING OUT OF SECTION 212.904 OF THE TEXAS LOCAL GOVERNMENT CODE OR SECTION 1.12 OF THE CITY OF PLANO SUBDIVISION ORDINANCE.

ARTICLE II **REMEDIES**

2.01. Remedy and Termination

The Company shall remedy all deficiencies in the construction, completion and maintenance of the Public Improvements within thirty (30) days of written notice to Company from the City that a deficiency exists. If the deficiency is of the type that will require additional time in which to remedy, the Company shall specify in writing to the City within said thirty (30) day period the particular reasons why such remedies cannot be completed in said thirty (30) day period. If, in the City's reasonable opinion, such reasons for delay are substantiated, the City may grant the Company additional time to remedy the deficiency. If the City grants additional time, such extension shall be in writing and shall be for a specified period of time.

2.02. Failure of Company to Remedy Deficiency

If the Company fails to remedy the deficiency pursuant to Section 2.02 above, it shall be considered in default and the City, at its option, may:

- (a) Contract with another party for the repair work for which the Company shall reimburse the City within thirty (30) days of written invoice by the City to Company for the actual costs to correct the deficiencies;
- (b) Complete the repair work with City crews for which the Company shall reimburse the City within thirty (30) days of written invoice by the City to Company for the actual costs to correct the deficiencies;
- (c) Demand that the Surety on the bonds required by Section 1.03 herein, complete construction or maintenance of the Public Improvements in conformance with this Agreement.
- (d) Exercise any other available remedy at law or in equity.

2.03. Termination

- (a) Failure of Company to submit Engineering Plans to the City and obtain approval as required by Section 1.01 on or before July 31, 2015 shall be an event of default and subject this Agreement to termination by the City.
- (b) Failure of Company to commence construction of the Public Improvements on or before October 1, 2015 shall be an event of default and subject this Agreement to termination by the City.

If an event of default pursuant to this Section 2.03 is not cured within thirty (30) days after written notice thereof by the City, the City Manager is authorized on behalf of the City to terminate this Agreement by written notice to the Company with no further liability or obligation of the City.

ARTICLE III **REIMBURSEMENT FOR** **OVERSIZE IMPROVEMENTS**

The City shall reimburse the Company for a portion of the costs for constructing the Public Improvements in an amount not to exceed Twenty-Eight Thousand Dollars (\$28,000).

Upon completion, dedication and acceptance of the Public Improvements, the City agrees to reimburse Company in accordance with Article III herein. The City shall pay the Company in a lump sum payment within thirty (30) days of the date of receipt of an itemized invoice from the Company for the completion of the Public Improvements.

ARTICLE IV
ASSIGNMENT

This Agreement may not be assigned without the express written consent of the City. However, the City shall consent to such an assignment if all of the following conditions are satisfied:

- (a) Company is not in default;
- (b) The assignment is to a new owner of the Property;
- (c) Company provides the City with written evidence satisfactory to the City Attorney that the new owner is the record owner of the Property; and
- (d) Company delivers to the City a letter to be signed by the new owner stating that the new owner agrees to assume and perform all obligations of the Company under this Agreement and to be bound by the terms and conditions of this Agreement.

The City Manager is authorized to approve assignments on behalf of the City pursuant to this Agreement.

ARTICLE V
MISCELLANEOUS PROVISIONS

5.01. Entire Agreement

This Agreement contains the entire agreement between the City and the Company, and cannot be varied except by written agreement executed by the parties hereto. This Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the Parties.

5.02. Notices

Unless instructed otherwise in writing, Company agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano, Texas
Attention: Gerald Cosgrove, Public Works Director
P.O. Box 860358
Plano, TX 75086-0358

City agrees that all notices or communications to Company permitted or required under this Agreement shall be addressed to Company at the following address:

Rent-A-Center Texas, L.P.
Attention: V.P. Real Estate
5501 Headquarters Dr.
Plano, TX 75024

With a copy to:
Rent-A-Center Texas, L.P.
Attention: General Counsel
5501 Headquarters Dr.
Plano, TX 75024

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

5.03. Nonwaiver

No waiver of the City's rights under this Agreement shall be deemed to have been made unless expressed in writing and signed by an authorized representative of the City. No delay or omission in the exercise of any right or remedy accruing to the City upon a breach of this Agreement by the Company or its Sureties will impair its right or remedy or be construed as a waiver for any such breach theretofore or thereafter occurring. The waiver by the City of any breach of any term, covenant or conditions shall not be deemed to be a waiver of any other or subsequent breach of this same or any other term, covenant or condition herein contained.

5.04. Recitals and Headings

Recitals contained at the beginning of this Agreement shall be construed as a part of this Agreement. However, headings used throughout this Agreement have been used for administrative convenience only and do not constitute matter to be considered in interpreting this Agreement.

5.05. Successors and Assigns, Covenants with the Land, and Subordination by Lienholders

This Agreement shall be binding upon the successors and assigns of the Company and shall be covenants running with the land described herein as the Property and be binding upon all future owners of the Property. This Agreement or a memorandum thereof, may be recorded in the Land Records of the county in which the Property is located. All

existing lienholders shall be required to subordinate their liens to the covenants contained in this Agreement.

5.06. Venue

This Agreement shall be construed under and in accordance with the laws of the State of Texas and is fully performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

5.07. Severability

In case any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or un-enforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.08. No Waiver of Governmental Immunity

Nothing contained in this Agreement shall be construed as a waiver of the City's sovereign or governmental immunity.

5.09. Company's Authority

The Company represents and warrants to the City that it has full power and authority to enter into and fulfill the obligations of this Agreement.

5.10. Benefits Inure to the Parties

The benefits of this Agreement inure solely to the City and the Company, not to any third parties such as lot purchasers, subcontractors, laborers, and suppliers.

5.11 Effective Date

This Agreement shall be effective from and after the date of execution by the last signatory hereto as evidenced below.

CITY OF PLANO, TEXAS, a home-rule
municipal corporation

Date: _____

By: _____
Bruce D. Glasscock, CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

RENT-A-CENTER, TEXAS, L.P., a Texas
limited partnership

Date: _____

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2013, by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

--- AND ---

STATE OF TEXAS §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2013, by _____, _____ of **RENT-A-CENTER, TEXAS, L.P.**, a Texas limited partnership, for and on behalf of said limited partnership.

Notary Public, State of Texas

EXHIBIT "A"

LEGAL DESCRIPTION

BEING of a tract of land out of the Sam Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being part of the 18.32 acre tract of land described as Tract 2 in deed to West Plano Land Company, LP, recorded in Instrument No. 20060920001358250 of the Land Records of Collin County, Texas, being part of Lot 1, Block A, Rent-A-Center Addition, an addition to the City of Plano according to the plat thereof recorded in Cabinet 2006, Page 836 of the Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at an aluminum monument found at the northwest corner of said Lot 1;

THENCE the following courses and distances to wit:

North 57°13'32" East, a distance of 413.62 feet to a 5/8" iron rod set with KHA cap for corner;

North 67°02'50" East, a distance of 10.00 feet to a 5/8" iron rod set with KHA cap for corner;

North 22°57'10" West, a distance of 24.00 feet to a 5/8" iron rod set with KHA cap for corner;

North 67°02'50" East, a distance of 150.50 feet to a 5/8" iron rod set with KHA cap for the beginning of a tangent curve to the left with a radius of 20.00 feet, a central angle of 23°34'41", and a chord bearing and distance of North 55°15'30" East, 8.17 feet;

Northeasterly, with said curve, an arc distance of 8.23 feet to a 5/8" iron rod set with KHA cap for corner in the west right-of-way line of Dominion Parkway (92' ROW at this point);

THENCE with said west right-of-way line, the following courses and distances to wit:

South 22°57'10" East, a distance of 75.98 feet to a point for corner;

South 67°02'50" West, a distance of 12.00 feet to a point for corner;

South 22°57'10" East, a distance of 158.85 feet to a point for the northeast corner of a Firelane, Access and Utility Easement shown on the plat of said Rent-A-Center Addition;

THENCE with the north line of said Firelane, Access and Utility Easement, the following courses and distances to wit:

South 67°08'28" West, a distance of 457.91 feet to a point for the beginning of a non-tangent curve to the right having a radius of 30.00 feet, a central angle of 113°08'11", a chord bearing and distance of North 56°29'39" West, 50.07 feet;

Northwesterly, with said curve, an arc distance 59.24 feet to a point for corner;

North 00°04'26" East, a distance of 90.65 feet to a point for the beginning of a non-tangent curve to the left having a radius of 54.44 feet, a central angle of 95°28'24", a chord bearing and distance of North 47°51'40" West, 80.58 feet;

Northwesterly, with said curve, an arc distance 90.71 feet to a point for corner;

North 89°52'36" West, passing the northwest corner of said Firelane, Access and Utility Easement at 132.92 feet, in all a total distance of 183.42 feet to a point for corner in the west line of said Lot 1;

THENCE with the west line of said Lot 1, North 00°04'26" East, a distance of 226.86 feet to the **POINT OF BEGINNING** and containing 6.76 acres of land.

EXHIBIT "C"

PERFORMANCE BOND

STATE OF TEXAS §
§
COUNTY OF COLLIN §

KNOW ALL MEN BY THESE PRESENTS:

That _____ hereinafter called "**Principal**", and _____, a corporation organized and existing under the laws of the State of _____, and fully licensed to transact business in the State of Texas, hereinafter called "**Surety**", are held and firmly bound unto the **CITY OF PLANO, TEXAS** a home-rule municipal corporation, hereinafter called "City", and _____ hereinafter sometimes called "Owner" (the City and Owner are collectively called "Obligees") in the penal sum of _____ **DOLLARS** (\$_____) in lawful money of the United States, to be paid in Collin County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain written Contract with Owner (the "Contract"), dated the _____ day of _____, _____, A.D. which is made a part hereof by reference, wherein the City is a third party beneficiary with regard to the completion of certain public improvements (as defined therein); said Contract calling for the completion of the public improvements among other things.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of said Contract in accordance with the plans, specifications and contract documents during the original term thereof and any extension thereof which may be granted by the Obligees, with or without notice to the Surety, and during the life of any guaranty or warranty required under this Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; and, if the Principal shall fully indemnify and save harmless the Obligees from all costs and damages which Obligees may suffer by reason of failure to so perform herein and shall fully reimburse and repay Obligees all outlay and expense which the Obligees may incur in making good any default or deficiency, then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, exclusive Venue shall lie in Collin County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work or to the Specifications.

This Bond is given pursuant to the provisions of Texas Government Code Section 2253.001, et seq., and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Collin County or Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Texas Insurance Code Section 3503.003.

IN WITNESS WHEREOF, this instrument is executed in ____ copies, each one of which shall be deemed an original, this, the ____ day of _____, _____.

PRINCIPAL:

Address: _____

Tel. No. _____

ATTEST:

BY: _____

TITLE: _____

SURETY: _____

Address:

Tel. No. _____

ATTEST:

BY: _____

TITLE: _____

The Resident Agent of the Surety in Collin County or Dallas County, Texas, for delivery of notice and service of process is:

NAME: _____
STREET ADDRESS: _____
CITY, STATE, ZIP: _____

For additional information on the above named Surety company you may contact the Texas Department of Insurance at (800)578-4677.

NOTE: Date on **Page 1** of Performance Bond must be **same date as Contract**. Date on **Page 2** of Performance Bond must be **after the date of Contract**. If Resident Agent is not a corporation, give a person's name.

EXHIBIT "D"

MAINTENANCE BOND

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

KNOW ALL MEN BY THESE PRESENTS:

That _____ of the City of _____, County of _____ and State of Texas, (called "Principal"), and _____, a corporation organized and existing under the laws of the State of Texas to act as surety on bonds for principals,(called "Surety"), are held and firmly bound unto the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation (called "City"), in the amount of _____ **DOLLARS** (\$_____), in lawful money of the United States, to be paid in Plano, Collin County, Texas for the payment of which, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, the Principal has entered into a contract (called "Contract") with _____ (called "Company") dated the _____ day of _____, _____, which among other things calls for the construction of certain public improvements (called "Work"), which inure to the benefit of the City, such public improvements being in connection with development of _____, an addition or subdivision incorporated hereby reference and which public improvements are listed on Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, under the terms of the specifications of the Work, the Principal is required to give a bond in the amount specified hereinabove to guarantee the replacement and repair of defective or faulty workmanship furnished or installed by the Principal for a period of one (1) year, from and after the date the Work is completed by Principal and accepted by the City.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall for a period of one (1) year, from and after the date the Work is completed by the Principal and accepted by the City, replace and repair any and all defective or faulty workmanship in the Work, then the above obligation shall be void; otherwise, the said obligation shall remain in full force and effect.

Venue for any action to enforce this Bond shall be Collin County, Texas.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this ____ day of _____, _____.

| Principal | | Surety | |
|-----------|-------|----------|-------|
| By: | _____ | By: | _____ |
| Title: | _____ | Title: | _____ |
| Address: | _____ | Address: | _____ |
| | _____ | | _____ |
| | _____ | | _____ |

The name and address of the Resident Agent of Surety is:

Name: _____
Address: _____
City, State, Zip _____

For additional information on the above named Surety company you may contact the Texas Department of Insurance at (800)578-4677.

NOTE: Date on Page 1 of Maintenance Bond must be same date as Contract. Date on Page 2 of Maintenance Bond must be after the date of Contract. If Resident Agent is not a corporation, give a person's name.