



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:		1/11/16			
Department:		City Manager			
Department Head		P. Jarrell - Special Projects			
Agenda Coordinator (include phone #): M. Martinez - 7122					
CAPTION					
A Resolution of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano and SWC Tollway & 121, LLC, a Delaware limited liability company, for the construction and installation of certain public infrastructure and improvements within the public rights-of-way and private property near the Legacy West development; 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		0	10,000,000	5,000,000	15,000,000
Encumbered/Expended Amount		0	-117,258	0	-117,258
This Item		0	-8,500,000	0	-8,500,000
BALANCE		0	1,382,742	5,000,000	6,382,742
FUND(S): SEWER CIP					
<p>COMMENTS: Funding is available in the 2015-16 Sewer CIP for this item. This development agreement for sewer infrastructure and improvements, in the amount of \$8,500,000, will leave a current year balance of \$1,382,742 available for future expenditures related to the Indian Creek Basin Capacity project.</p> <p>STRATEGIC PLAN GOAL: Partnering with private developers to construct and install public infrastructure relates to the City's goals of a Financially Strong City with Service Excellence and Partnering for Community Benefit.</p>					
SUMMARY OF ITEM					
This development agreement provides the terms and conditions for funding a new sanitary sewer lift station and all necessary sanitary sewer mains and laterals needed to connect to the Preston Road Lift Station, thereby providing relief to the near capacity Indian Creek Lift Station. The Legacy West developer will install the improvements and provide \$2.5 million in funding towards the total project cost of \$11 million. The project costs include design, construction, and easement acquisition.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Resolution, Development Agreement					

A Resolution of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano and SWC Tollway & 121, LLC, a Delaware limited liability company, for the construction and installation of certain public infrastructure and improvements within the public rights-of-way and private property near the Legacy West development; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented an economic development incentive agreement between the City of Plano (the “City”) and SWC Tollway and 121, LLC, (the “Developer”) a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference as “Agreement;” and

WHEREAS, the City has determined funding certain 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, will promote local economic development, and will stimulate business and commercial activity in the City; 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 the City Manager or his authorized designee shall be authorized to execute the Agreement on behalf of the City of Plano.

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

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 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. The City Manager, at his discretion, is hereby authorized to extend the deadline dates contained within the Agreement upon the written request of SWC Tollway & 121, LLC.

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

DULY PASSED AND APPROVED THIS THE 11TH DAY OF JANUARY, 2016.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and SWC Tollway & 121, LLC, a Delaware limited liability company (“Owner”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, the Owner of Legacy West owns approximately 92+/- acres, located west of the Dallas North Tollway between Legacy Drive on the south and Sam Rayburn Tollway on the north, in Plano, Texas (the “Property”), with a variety of office, commercial and residential uses and is in the process of retaining and securing business enterprises at the Property; and

WHEREAS, the development of the Property requires additional public infrastructure to adequately serve the proposed uses; and

WHEREAS, the City of Plano finds that the development of the Property and installation of public infrastructure is a vital part of the City’s economy, and recognizes that action to build and diversify the area will achieve an important public benefit and stimulate the local economy; and

WHEREAS, the City has adopted programs for promoting economic development; 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 funding certain 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, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Owner” shall mean SWC Tollway & 121, LLC, a Delaware limited liability company.

“Effective Date” shall mean the last date on which all of the parties hereto have executed this Agreement.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation: acts of God or the public enemy; war; riot; civil commotion; government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party claiming the force majeure); fires or explosions; floods; strikes, slowdowns or work stoppages, shortages of labor and materials, any of the above which would directly and significantly impact the Owner’s operations in the City. Neither an economic down turn nor lack of funds shall constitute an event of force majeure.

“Project” shall mean the design and construction of a sanitary sewer lift station and all necessary sanitary sewer mains, lateral lines, landscaping and screening, and all necessary easements as further illustrated in Exhibit “A”, attached hereto.

“Property” shall mean approximately 92+/- acres located west of the Dallas North Tollway between Legacy Drive on the south and the Sam Rayburn Tollway on the north, Plano, Texas, also known as Legacy West which is to be served by the Project, as outlined on the site plan attached hereto as Exhibit “A”.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until December 5, 2017, subject to extension for Events of Force Majeure, unless terminated earlier as provided herein.

Article III Obligations of Owner

3.01 **Design and Construction of Development and Public Improvements.** At the request of the City, the Owner agrees to facilitate the development of the Property by others with a mix of uses including corporate offices, multi-family units and retail spaces and use its commercially reasonable efforts to secure business enterprises at the Property, and in furtherance thereof to cause to be designed and installed the following public improvements described below:

- (a) A sanitary sewer lift station designed to serve developments within the northern portion of the 92+/- acres north of Headquarters Drive between Leadership Drive and Dallas North Tollway (DNT) as reflected on Exhibit “A” hereto, plus intercept existing and projected flows from the Granite Park area east of DNT, providing a minimum capacity of 3.5 million gallons per day (actual capacity

determined by the design process) per City requirements and approval; and

- (b) Sanitary sewer mains and laterals as required to serve the Property, connect to the lift station, and connect to the Preston Road Lift Station in the location reflected on Exhibit “A”; and
- (c) Provide necessary easement exhibits for the sanitary sewer mains, laterals and force main associated with the Project; and
- (d) Select the contractor and execute a private contract to construct the Project; and
- (e) Manage the construction of the Project; and
- (f) Require that gravity sewer lines are installed by others as the Property develops west of Communications Parkway.

3.02 **Amount**. The Owner agrees to pay 25% of all costs to design, construct and install the Project (including without limitation the costs of insurance and bonds required hereunder and of any documented amounts expended by Owner to up-size the gravity line across the site west of Leadership Drive, known as the Gaedeke Site, whenever said amounts have been incurred) up to a maximum of \$2.5 million (two million and five hundred thousand dollars) as its share of the costs of the Project (said 25% up to the maximum is known as “Owner’s Share”). The Owner is not required to escrow funds in advance for its share of the Project costs.

3.03 **Provision of Land and Easements**. The Owner will provide at no cost to the City:

- (a) A tract of land at the southwest corner of the Sam Rayburn Tollway and the Dallas North Tollway to serve as the location for the sanitary sewer lift station, estimated to be approximately one (1) acre.
- (b) The necessary sanitary sewer utility easements that serve the Property over the Property or property owned by Owner.

3.04 **Timing**. The public improvements must be completed, inspected and accepted by the City by December 5, 2017 , subject to delays for Events of Force Majeure. In the Event of Force Majeure, Owner must give City a written notice, within fifteen (15) days of the Event, which states the basis for an adjustment in time.

Article IV

Obligations of the City

4.01 **Construction of Public Improvements.** The City agrees to:

- (a) Acquire and document all necessary off-site easements for the sanitary sewer main needed for construction and not located on the Property owned by Owner, all at City's sole cost and expense (and not to be included in the costs to be shared by Owner).
- (b) Waive all City fees, including without limitation any permitting fees and costs, inspection fees and any other fees and costs normally charged by the City, associated with the installation, operation or maintenance of the improvements as shown in Exhibit "A"; and
- (c) Serve as the primary contact with the North Texas Municipal Water District and be responsible for any necessary improvements to the Preston Road Lift Station; and
- (d) Operate and maintain the lift station and force main following its construction by the Owner and acceptance by the City.

4.02 **Amount.** The City agrees to fund the remainder of the costs of the design, construction and installation of certain infrastructure improvements described below, inclusive of costs of payment and performance bonds required hereunder, as well as all costs of acquisition and documentation of all necessary easements not located on the Property owned by Owner, in an amount not to exceed \$8.5 million (eight million and five hundred thousand dollars).

4.02 **Items for Reimbursement.** City will reimburse the Owner for the actual cost of design, construction and installation of the Project improvements as described in Article III, inclusive of the costs of insurance and bonds required hereunder and inclusive of any documented amounts expended to up-size the gravity line across the site west of Leadership Drive, known as the Gaedeke Site, whenever said amounts have been incurred by Owner, and that exceed Owner's Share, and as shown in Exhibit "A". Owner will not be required to share in the payment of any costs of acquisition or documentation of any easements required for the Project.

4.03. **Grant Payment Requirements and Schedule.** – Subject to compliance with Article III above, Owner may submit itemized invoices to request grant funds City will reimburse the Owner within thirty (30) days of receipt of appropriate documentation evidencing the requested reimbursement. Reimbursement shall be made no more frequently than monthly. Owner shall pay for the initial costs of design, installation and construction of the Project up to Owner's Share. Thereafter, Owner may submit paid invoices for design plans for reimbursement by City within thirty (30) days of receipt of same. Owner may submit paid invoices for construction of portions of the Project to the extent same are completed, together with an affidavit from its contractor specifying the portions completed and costs for same, and partial lien waivers, and City will reimburse Owner for same within 30 days of receipt of said information with a request for

payment. At such time as the total costs are determined, and Owner's Share is calculated, then City will reimburse Owner for any amounts paid by Owner in excess of Owner's Share, as so finally calculated, within 30 days of Owner's request for same with such calculation, which shall include documented amounts paid by Owner.

Article V Design and Construction; Bonds

5.01. **Design.** Design management for the Project will be provided by a licensed Professional Engineer as shall be mutually agreed to by the parties to this Agreement.

5.02. **Required Permits.** Owner shall obtain any and all required local, state and federal governmental approvals and permits required for construction of the Project. Permits issued by the City of Plano shall not be unreasonably withheld. City will waive all permitting, inspection and any other fees or costs in connection with the inspections and/or issuance of permits.

5.03. **General Contractor's Insurance.** Owner shall require its general contractor to procure and maintain insurance coverage as set forth in Exhibit "B" for the duration of the Project. Owner shall provide their general contractor's signed insurance certificate to the City verifying that they have obtained the required insurance coverage prior to the commencement of construction of the Project and naming the City of Plano as additional insured.

5.04. **Owner's Insurance.** Owner shall procure and maintain insurance coverage as set forth in Exhibit "B" for the duration of the Agreement. Owner shall provide their signed insurance certificate to the City verifying that they have obtained the required insurance coverage prior to the commencement of construction of the Project and naming the City of Plano as additional insured.

5.05. **Payment Bond and Performance Bond.** Prior to the Commencement Date, Owner shall require its general contractor to furnish a payment bond and performance bond to the City by surety companies authorized to do business in the State of Texas, which bonds shall be in the form provided on attached Exhibits "C" and "D". The purpose of such bonds is to insure that construction of the facility is completed and that all bills for material and labor are paid in full upon completion of construction with no cost to the City except as otherwise required herein. Any costs incurred by Owner in connection with the bond will be included in the costs used to calculate Owner's Share.

5.06. **Bond Requirements.** All performance bonds shall comply with the following requirements:

- (a) All performance bonds must be in a form acceptable to the city engineer and the city attorney.
- (b) All performance bonds must be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal

Bonds and as Acceptable Reinsuring Companies", as published in Circular 570, as may be amended, by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury.

- (c) All performance bonds must be signed by an agent, and must be accompanied by a certified copy of the authority for him or her to act.
- (d) All performance bonds shall be obtained from surety or insurance companies that are duly licensed or authorized in the state to issue performance bonds for the limits and coverage required.
- (e) All performance bonds shall guarantee the work in accordance with the plans and specifications for a period of one (1) year after acceptance by the City, and shall provide for repair or replacement of all defects due to faulty material and/or workmanship that appear within a period of one (1) year from the date of acceptance by the City.
- (f) A Payment Bond in the sum of ONE HUNDRED PERCENT (100%) of the total contract price.

5.06. **Maintenance Bond**. Upon completion of the Public Improvements, Owner shall provide a maintenance bond in the amount of ten percent (10%) of the cost of the Public Improvements as provided in the form on attached Exhibit "E".

5.07. **Drawings, Plans and Documents**. All project designs, drawings, site plans and other documents produced for Owner in connection with the Project, including those attached to this Agreement, shall become the property of the City.

Article VI Retention and Accessibility of Records

6.01 Owner shall maintain fiscal records and supporting documentation for expenditures of funds associated with this Agreement. Owner shall retain such records and any supporting documentation for the greater of:

- (a) Two (2) years from the end of the Agreement period; or
- (b) The period required by other applicable laws and regulations.

6.02 Owner gives City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or personal and Real Property belonging to or in use by Owner pertaining to this Agreement. In no event shall City's access to Owner's Records include any access to any personal data of any employees except to confirm payroll information compliance. Owner shall not be required to disclose to the City

any information that by law Owner is required to keep confidential. Any information that is not required by law to be made public shall be kept confidential by City.

Article VII Default

7.01 **Breach of Terms and Conditions.** If either party breaches any of the terms and conditions herein during the term of this Agreement, it shall be an event of default.

7.02 **Violation of Employment Statutes.** If at any time during the term of this Agreement the Owner is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of funds and interest shall be due not later than 120 days after the date the City notifies the Owner of the conviction.

Article VIII Termination

8.01 **Events of Termination.** This Agreement terminates upon any one or more of the following:

- (a) By expiration of the term and where no defaults have occurred; or
- (b) If a party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof by the non-defaulting party unless a longer period is provided. Any default under this provision and right to recover any claims, refunds, damages and/or expenses shall survive the termination of the Agreement;

The City Manager is authorized on behalf of the City to send notice of default and to terminate this Agreement.

8.02 **Effect of Termination/Survival of Obligations.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, any obligation of the City to pay amounts owing to Owner hereunder, maintenance of records, and access thereto

Article IX Assignment

9.01 **Conditions of Assignment.** This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Owner may assign this Agreement without obtaining the City's consent (a) to one of its wholly owned affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, at least fifty (50) percent of the remaining acreage of Owner in the Property of the Owner as long as the Owner gives thirty (30) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

9.02 **Written Approval.** For any assignment not covered by (a) or (b) in the preceding paragraph, the Owner must obtain the written prior approval of the City through its City Manager and the assignee must agree to be bound to all the terms and conditions of this Agreement and to accept all liability for any default that occurred prior to and/or after the assignment.

9.03 **Timing of Agreement.** Any assignment agreement must be furnished in a form acceptable to the City and be provided at least thirty (30) days prior to the effective assignment date. City agrees to notify the potential assignee of any known default, but such notification shall not excuse defaults that are not yet known to the City.

Article X Miscellaneous

10.01 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

10.02 **Notice of Bankruptcy.** In the event Owner files for bankruptcy, whether involuntarily or voluntary, Owner shall provide written notice to the City within three (3) business days of such event. Bankruptcy shall place the Owner in immediate default with the terms and conditions of this Agreement.

10.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

10.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) business days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:

City of Plano, Texas
Attention: Mr. Bruce D. Glasscock

City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention: Ms. Paige Mims
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Owner:

SWC Tollway & 121 LLC
Attention: Fehmi Karahan
7200 Bishop Road, Suite 250
Plano, Texas 75024

With Copy to:
Grogan & Brawner, P.C.
Attention: R. J. Grogan, Jr.
2808 Fairmount, Suite 150
Dallas, Texas 75201

10.05 **Compliance with Equal Rights Ordinance.** Owner agrees to comply with Section 2-11(F) of the City Code of Ordinances, which reads as follows:

“It shall be unlawful for an employer to discriminate against any person on the basis of race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status or United States military/veteran status by the following actions or inactions:

- (a) for an employer to fail or refuse to hire, or to discharge, any person;
- (b) for an employer to discriminate against any person with respect to compensation, terms, conditions or privileges, of employment;
- (c) for an employer to limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee;
- (d) for an employment agency to fail or refuse to refer for employment, or to otherwise discriminate against, any person because of a protected employment characteristic;

(e) for an employment agency to classify or refer for employment any person, on the basis of a protected employment characteristic;

(f) for a labor organization to exclude or expel from its membership, or to otherwise discriminate against, any person because of a protected employment characteristic;

(g) for a labor organization to fail or refuse to refer for employment any person because of a protected employment characteristic;

(h) for a labor organization to limit, segregate or classify its members or applicants for membership, in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee or as an applicant for employment; or

(i) for a labor organization to cause or attempt to cause an employer to discriminate against a person in violation of this subsection;

(j) for an employer, a labor organization or a joint labor-management committee, to discriminate against any person because of a protected employment characteristic in the admission to, or employment in, any program established to provide apprenticeship or other training;

(k) for an employer to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic;

(l) for an employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to membership in or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic; or

(m) for a joint labor-management committee to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic.”

Owner also understands that it is entitled to apply to the City Manager for a waiver from the Equal Rights Ordinance’s application to its business if applying it would conflict with state or federal law. During the review of the waiver request, the Agreement will be placed on hold.

10.06 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or

written agreement between the parties that in any manner relates to the subject matter of this Agreement

10.07 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

10.08 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

10.09 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

10.10 **Recitals.** The recitals to this Agreement are incorporated herein.

10.11 **Authorized to Bind.** The persons who execute their signatures to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

10.12 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

This Agreement shall be effective upon the last date on which all parties have executed this agreement.

ATTEST:

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

Lisa Henderson, CITY SECRETARY

Bruce D. Glasscock, CITY MANAGER

Date: _____

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

ATTEST:

SWC TOLLWAY & 121, LLC, a Delaware
limited liability company

By: Team Legacy Land, LLC,
a Texas limited liability company,
its Manager

By: _____
Fehmi Karahan, President

Date: _____

ACKNOWLEDGMENTS

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2016, by **Bruce Glasscock, City Manager** of the **City of Plano, Texas**, a Home Rule Municipal Corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on this _____ day of _____, 2016, by **Fehmi Karahan, President of Team Legacy Land, LLC.**, a Texas limited liability company, Manager of SWC Tollway & 121 LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public in and for the State of Texas

My Commission Expires:

EXHIBIT "A"



EXHIBIT "B"

**CITY OF PLANO
GENERAL CONTRACTUAL INSURANCE REQUIREMENTS**

Vendors/Contractors performing work on City property for the City of Plano shall provide the City a certificate of insurance evidencing the coverage's and coverage provisions identified herein. Vendors/Contractors shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of insurance as required herein or that the subcontractors are included under the vendors/contractor's policy. The City, at its discretion, may require a certified copy of the policies, including all relevant endorsements.

All insurance companies must be authorized by the Texas Department of Insurance to transact business in the State of Texas, must be acceptable to the City of Plano and be placed with an insurer possessing an A-VII A. M. Best rating or better.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and higher limits of coverage or provisions depending on the nature of the work.

1. The following insurance requirements, coverage's and limits apply to most minor construction (Non-CIP), renovation, service provider, installation and maintenance services, work on City property and professional service contracts.
2. Purchases of non-hazardous commodities, equipment, materials and products from distributors and retailers do not require any specific insurance.
3. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment or property may require customized insurance requirements in addition to the general requirements listed.

Commercial General Liability Insurance—(Required for all minor construction, renovation, service provider contracts involving installation, maintenance or work on City property)

Commercial general liability insurance shall be written on an ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-complete operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability policy, including coverage for City with respect to liability arising out of the completed operations.

\$1,000,000 Limit per Occurrence/Aggregate

\$1,000,000 Limit for Personal/Advertising Injury and Products/Completed Operations

Commercial Automobile Liability—(Required for all contracts involving the use of vendor/contractor owned, non-owned or hired automobiles)

Vendor/contractor shall maintain business automobile liability insurance with a limit of not less than \$500,000 each accident or Combined Single Limit.

Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles). Vendor/contractor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability obtained by vendor/contractor pursuant to this section or under any applicable automobile physical damage coverage.

Workers' Compensation & Employer Liability—(Required for all vendors/contractors with employees who perform work or contract services on City property)

Vendor/contractor shall maintain workers' compensation insurance in the amounts required by appropriate state workers compensation statutes. The employer's liability limit shall not be less than \$500,000.

Vendor/contractor waives all rights against City, the City Council and its members, the City's agents, officers, directors and employees for recovery of damages under vendors/contractor's workers' compensation and employer's liability. Vendor/contractor must cause a waiver of subrogation to be effected under its workers' compensation coverage.

Sole Proprietors and companies with no employees may be exempt from this requirement.

Professional Liability (E&O) Insurance--(Required for all Professional Service contracts including but not limited to: architects, engineers, consultants, counselors, medical professionals, attorneys, accountants, etc.)

Professional Liability Coverage (E&O) may be written on a claims made basis but must include an extended reporting period of at least three years after contract completion.

City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the E&O policy, including coverage for City with respect to liability arising out of all errors and omissions of vendor/contractor.

Minimum Limit of \$1,000,000 Each Claim and \$1,000,000 Aggregate

General Requirements Applicable to All Insurance

1. The vendor/contractor shall obtain and maintain the minimum insurance coverage set forth in this section during the entire contract period.
2. The vendor/contractor agrees that the insurance requirements specified herein do not reduce the liability vendor/contractor has assumed in any indemnification/hold harmless section of the contract.
3. Coverage shall be on a primary basis and non-contributory with any other insurance coverage and/or self-insurance carried by City.
4. Vendor/contractor is responsible for providing the City a minimum of 30 days' notice of a material change or voluntary cancellation of insurance coverage required under this contract and notice within 10 days of any notice of termination no matter the cause.

Evidence of Insurance Required

Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this contract, vendor/contractor shall furnish City a Certificate(s) of Insurance (COI) on a form approved by the Texas Department of Insurance and signed by an authorized representative of each insurer.

The COI shall List each insurer's NAIC Number or FEIN and list the City of Plano, Risk Management Division, 1520 K Avenue, Suite 117, Plano, Texas, 75074 in the Certificate Holder Section.

INSURANCE REQUIREMENT AFFIDAVIT

(SUPPLEMENTAL INFORMATION RFP# _____)

(To be completed by appropriate Vendor/Contractor Insurance Agent)

I, the undersigned agent, certify that the insurance requirements contained in this proposal document have been reviewed by me with the below identified vendor/contractor. If the below identified vendor/contractor is awarded this contract by the City of Plano, I will be able, within ten (10) working days after being notified of such potential award or at contract renewal, to furnish a valid Certificate of Insurance to the City meeting all of the requirements contained in this proposal.

Agent's Printed Name

Agent's Signature

Name of Insurance Agency

Address of Agency

City, State, Zip

Phone number where Agent may be contacted

E-Mail address of Agent

Vendor/Contractor Name:

SUBSCRIBED AND SWORN to before me by the above named

on this the _____ day of _____, 20____.

Notary Public in and for the State of _____

NOTE TO INSURANCE AGENT:
IF THIS TIME REQUIREMENT IS NOT MET, THE CITY HAS THE RIGHT TO DECLARE THIS VENDOR NON-RESPONSIVE AND AWARD THE CONTRACT TO THE NEXT LOWEST PROPOSER MEETING THE SPECIFICATIONS. IF YOU HAVE ANY QUESTIONS CONCERNING THESE REQUIREMENTS, PLEASE CONTACT THE CITY OF PLANO PURCHASING DIVISION AT 972-941-7557.

EXHIBIT "C"

PAYMENT 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 "**Surety**", are held and firmly bound unto the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, hereinafter called "Beneficiary", and unto all persons, firms, and corporations who may furnish materials for, or perform labor upon the building or improvements described below, 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 the Beneficiary, dated the _____ day of _____, _____, A.D. which is made a part hereof by reference, for the construction of certain public improvements that are generally described as follows:

_____.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and/or material in the prosecution of the Work provided for in said Contract and any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modification to the Surety is hereby expressly waived, 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 Contract,

or to the Work performed thereunder, or the Plans, Specifications, Drawings, etc., accompanying the same, shall in anyway 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 to be performed thereunder.

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 Article 3503.003.

IN WITNESS WHEREOF, this instrument is executed in counterparts, 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 the 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 Payment Bond must be same date that City Council awarded Contract. Date on Page 2 of Payment Bond must be after the date that City Council awarded the Contract. If Resident Agent is not a corporation, give a person's name.

EXHIBIT "D"

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 "**Beneficiary**", in the penal sum of _____ **DOLLARS**

(\$_____) plus fifteen percent (15%) of the stated penal sum as an additional sum of money representing additional court expenses, attorneys' fees, and liquidated damages arising out of or connected with the below identified Contract 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 the Beneficiary, dated the _____ day of _____, _____, A.D. which is made a part hereof by reference, for the construction of certain public improvements that are generally described as follows:

_____.

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 Beneficiary, 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 repair and/or replace all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final completion and final acceptance of the Work by Beneficiary; and, if the Principal shall fully indemnify and save harmless the Beneficiary from all costs and

damages which Beneficiary may suffer by reason of failure to so perform herein and shall fully reimburse and repay Beneficiary all outlay and expense which the Beneficiary 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.

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 that City Council awarded Contract.** Date on **Page 2** of Performance Bond must be **after the date that City Council awarded the Contract.** If Resident Agent is not a corporation, give a person's name.

EXHIBIT "E"

MAINTENANCE 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 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 "Beneficiary", 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 sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors and assigns, jointly and severally, and 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 the Beneficiary, dated the _____ day of _____, _____, A.D. which is made a part hereof by reference for the construction of certain public improvements that are generally described as follows:

NOW, THEREFORE, if Principal will maintain and keep in good repair the work herein contracted to be done for a period of one (1) year from the date of final acceptance and do and perform all necessary work and repair any defective condition, it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective materials, work or labor performed by Principal; then this obligation shall be void, otherwise it shall remain in full force and effect; and in case Principal shall fail to do so it is agreed that the City may do such work and supply such materials and charge the same against Principal and Surety on this obligation.

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

PROVIDED FURTHER, that 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 performed thereunder, or the plans, specifications, drawings, etc. accompanying same shall in any way 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 to be performed thereunder.

The undersigned and designated agent is hereby designated by Surety as the resident agent in either Collin or Dallas Counties to whom all requisite notice may be delivered and on whom service of process may be had in matters arising out of this suretyship.

IN WITNESS WHEREOF, this instrument is executed on 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 the 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 Maintenance Bond must be same date that City Council awarded Contract. Date on Page 2 of Maintenance Bond must be after date of Contract. If Resident Agent is not a corporation, give a person's name.