



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: | | 4/11/16 | | | |
| Department: | | City Manager | | | |
| Department Head | | P. Braster - Special Projects | | | |
| Agenda Coordinator (include phone #): M. Martinez - 7122 | | | | | |
| CAPTION | | | | | |
| <p>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 Carl Franklin Homes, L.C., a Texas limited liability company, for the construction and installation of certain public infrastructure and improvements within the public rights-of-way and private property near 18th Street and K Avenue; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p> | | | | | |
| FINANCIAL SUMMARY | | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | | |
| FISCAL YEAR: | 2016-2017 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | | 0 | 0 | 500,000 | 500,000 |
| Encumbered/Expended Amount | | 0 | 0 | 0 | 0 |
| This Item | | 0 | 0 | -500,000 | -500,000 |
| BALANCE | | 0 | 0 | 0 | 0 |
| FUND(S): TIF #2 | | | | | |
| <p>COMMENTS: Funding is available in the TIF #2 Fund.</p> <p>STRATEGIC PLAN GOAL: Entering into an economic development agreement to improve Downtown Plano relates to the City's goals of Exciting Urban Centers - Destination for Residents and Guests and Strong Local Economy.</p> | | | | | |
| SUMMARY OF ITEM | | | | | |
| <p>This development agreement provides the terms and conditions for funding a new street, sidewalks, streetlights, landscaping, water and sewer utilities, and all necessary public infrastructure to support the Project. The developer will install the improvements as part of the overall project. The project costs include design, construction, and easement acquisition.</p> | | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | | |
| Memo, Resolution, Development Agreement | | | | | |



Memorandum

Date: March 30, 2016

To: Bruce D. Glasscock, City Manager
Jack Carr, Deputy City Manager

From: Peter J. Braster, Assistant Director of Special Projects

Subject: Christie North Project aka 17th Street Townhomes/ Ecovillage Project
Development Agreement between the City Of Plano and Carl Franklin Homes, L.C.

In Downtown Plano, the City has long encouraged the assemblage of properties that could be redeveloped for housing, not only for urban apartments, but owner-occupied patio homes, townhomes and condominiums. The creation of an owner-occupied residential development in close proximity to the DART rail station will have a significant economic impact which greatly benefits Downtown. In addition, the inclusion of both market rate units and units for low and moderate income households is also desirable for long term sustainable growth.

The Christie North Project, now called the 17th Street Townhomes, is a project comprised of twenty-one for-sale townhomes that meets these goals. Of those twenty-one townhomes, seven will be set aside for first time low and moderate income buyers. Each townhome will have their own parking garages and additional visitor parking will be constructed along J Avenue. The project also includes a new mews street which is an extension of 17th Street, providing access and improving walkability between J Avenue and K Avenue. City Council approved a zoning change for this project at its March 14, 2016 meeting. The project is consistent with the goals and objectives set forth in the Downtown Plano Vision and Strategy Update and the City of Plano's 2015-2019 Consolidated Plan.

The attached development agreement between the City of Plano and Carl Franklin Homes, L.C. outlines the terms and conditions for city incentives to support the development. TIF #2 funds will be used to reimburse the developer for certain public improvement costs associated with the project. Those costs include the new street; sidewalk improvements on J Avenue and K Avenue; on-street parking along J Avenue, streetlights, landscaping, and utilities. The reimbursement costs are limited to an amount not to exceed \$500,000.

As stated above, Carl Franklin Homes has agreed to sell the seven units to low and moderate income buyers. Those low and moderate income buyers will be prequalified using the standards of the City's First Time Homebuyers program or another established program. In addition, the agreement requires that at least two of those low-moderate income purchasers utilize the City's First Time Homebuyers program.

Construction will be conducted in three phases: public infrastructure; buildings 1 and 2; followed by buildings 3 and 4. Construction should begin this summer. The infrastructure phase should take approximately three months and the other two phases are conservatively estimated to be fifteen months each. In addition, Carl Franklin Homes will participate in a veteran's job training program during construction.

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 Carl Franklin Homes, L.C., a Texas limited liability company, for the construction and installation of certain public infrastructure and improvements within the public rights-of-way and private property near 18th Street and K Avenue; 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 Carl Franklin Homes, L.C., (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 Carl Franklin Homes, L.C.

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

DULY PASSED AND APPROVED THIS THE 11th DAY OF APRIL, 2016.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

STATE OF TEXAS

COUNTY OF COLLIN

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PLANO, TEXAS AND CARL FRANKLIN HOMES, L.C.
FOR THE ECOVILLAGE PROJECT**

This Development Agreement (“Agreement”) is entered into by and between the City of Plano, a Texas municipal corporation (the “City”), acting by and through its duly authorized officers, and Carl Franklin Homes, L.C., a Texas limited liability company (“Franklin”):

RECITALS

WHEREAS, the City is authorized pursuant to the laws of Texas and its Home Rule Charter to enter into agreements with persons or entities intending to undertake any development on real property for the purposes of providing supporting public facilities and services; and

WHEREAS, Franklin desires to develop approximately 1.3 +/- acres located south of 18th Street and between K Avenue and J Avenue (the “Property”) and as shown in Exhibit “A:” attached hereto; and

WHEREAS, Franklin has proposed a development on the Property in substantial compliance with a Preliminary Site Plan prepared by Franklin attached hereto as Exhibit “B” (the “Plan”); and

WHEREAS, Franklin’s proposed development is located in Tax Increment Financing District No. 2 (“TIF 2”) and is in keeping with the intent of that reinvestment zone to promote sound growth; and

WHEREAS, a portion of the proposed public improvements (hereinafter defined as the “Public Improvements”) shown in the Plan are to be funded through the revenue derived by TIF 2 in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311, as amended, to promote development and redevelopment in the area through the use of tax increment financing; and

WHEREAS, the Public Improvements are projects identified in the current *Project Plan and Financing Plan* for TIF 2, for which at least Five Hundred Thousand Dollars (\$500,000) has been budgeted; and

WHEREAS, the termination date for TIF 2 is December 31, 2029; and

WHEREAS, Franklin’s proposed development is consistent with the goals and objectives as set forth in the Downtown Plano Vision and Strategy Update, adopted by the City Council by Resolution No. 2013-2-20(R), dated February 25, 2013, and the City of Plano’s 2015-2019 Consolidated Plan, adopted by the City Council by Resolution No. 2015-3-15(R), dated March 23, 2015; and

WHEREAS, the development of the Property in accordance with the Plan by Franklin will contribute important direct and indirect economic and social benefits to the City, including, but not limited to, the creation of an owner-occupied residential development including both market rate units and units for low and moderate income households in close proximity to the DART rail station; and

WHEREAS, it is essential to the City’s public health, safety and general welfare to assure that the Development is supported by adequate levels of public facilities and services; and

WHEREAS, the City Council has adopted Resolution No. 2016-__-__(R) on_____, approving this Agreement with Franklin and authorizing the City Manager or his authorized designee to execute same.

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

SECTION 1. FRANKLIN'S OBLIGATIONS

- A. Prior to receiving any funding from the City as authorized by this Agreement, Franklin shall:
1. Obtain approval of appropriate zoning , a preliminary site plan, preliminary plat and release of engineering plans for construction of public improvements as required to develop a minimum of 20 single-family attached houses on the Property (the "Development");
 2. Provide documentation to the reasonable satisfaction of the City of financial ability to complete the obligations under this Agreement in the form of a letter from lenders providing financing for the Development or proof of ownership of the Property and verification of construction financing;
 3. Obtain all necessary City permits to begin construction of the Development, which shall not be unreasonably withheld, conditioned or delayed by the City, and begin construction of the Development no later than June 30, 2016; provided that Construction shall be deemed to have begun when Franklin actually commences site work (*i.e.* demolition, grading, clearing or trenching) on the Property;
 4. Complete the design, construction, and installation of the private improvements comprising the Development at its sole cost and expense, and which when completed shall have a private investment value of not less than \$500,000.00;
 5. Complete the design, construction, and installation of all public improvements described in Exhibit "C" attached hereto (the "Public Improvements"). The Public Improvements shall be designed, constructed and installed in a good and workmanlike manner in accordance with all applicable laws, statutes and ordinances, rules and regulations of the City and any other governmental authority having jurisdiction, including, without limitation, the City Right-of-Way Management Ordinance, the City Code of Ordinances and the City Zoning and Subdivision Ordinances. The Public Improvements shall be substantially completed on or before October 31, 2016;
 6. A conveyance of the Public Improvements to the City shall be evidenced by the filing of the final plat for the Development with the Collin County Clerk's office, and any other instrument which the City may reasonably request, and shall include, to the extent assignable, an assignment of all contractors' warranties, if any, and maintenance bonds.
- B. Franklin shall complete construction of 60% of the housing units comprising the Development by April 25, 2018. A unit shall be considered complete with the City's approval of the final building inspection.

- C. Franklin shall make available a minimum of seven (7) of the units to low-moderate income purchasers who qualify for the City's First Time Homebuyers program or another established program approved by the City Manager or his designee. At least two (2) of the low-moderate income purchasers shall utilize the City's First Time Homebuyers program.
- D. Franklin acknowledges the City's right to review the purchasers' qualifications to purchase one of the seven (7) units reserved for to low-moderate income purchasers. Franklin shall include sufficient language in their purchase and sale documents that require prospective low-moderate income purchasers to share their loan packages with the City for purposes of auditing their eligibility to purchase one of the seven (7) reserved units.

SECTION 2. CITY'S OBLIGATIONS

- A. The City shall perform the following obligations:
 - 1. Reimburse Franklin for eligible expenses for "Project Costs" (as defined hereinafter) for any public improvements in an amount not to exceed Five Hundred Thousand Dollars (\$500,000), after final inspection and acceptance of the Public Improvements by the City in accordance with Section 1.A.6 and 1.A.7 above. However, such reimbursement shall exclude "Overhead Costs" (as defined hereinafter).
 - 2. "Project Costs" means actual construction and/or installation costs and design costs for Public Improvements, including but not limited to:
 - i. civil engineering, architecture and landscape architecture fees associated with the public improvements specified in this paragraph;
 - ii. design and construction of storm sewer, drainage, water utilities, paving, lighting, landscape, hardscape and other improvements required by the City, both on-site and off-site, that are described or specified on the project plans approved by the City; and
 - iii. surface and subsurface demolition of the improvements on the Property including, but not limited to, environmental remediation and grading in preparation for construction of the Development.
 - 3. "Overhead Costs" means:
 - i. overhead and management fees of Franklin;
 - ii. financing charges;
 - iii. marketing costs;
 - iv. legal fees; and
 - v. payments made to entities affiliated with or related to Franklin to the extent such payments made to entities affiliated with or related to Franklin do not exceed what is reasonable and customary for such services.

- B. All payments for Public Improvement reimbursement to Franklin under this subsection shall be payable solely from TIF 2 funds as provided by law and shall not be obligated for payment from the City's general fund or any other City fund unrelated to TIF 2 funds;

SECTION 3. DESIGN AND CONSTRUCTION

- A. Design management for the Public Improvements and the Development will be provided by Franklin's designated licensed architect and/or a licensed civil engineer for the Development, or such other party as shall be mutually agreed to by the parties to this Agreement.
- B. Franklin shall obtain any and all required local, state and federal governmental approvals and permits required for construction of the Public Improvements.
- C. Franklin shall require its general contractor to procure and maintain insurance coverage as set forth in Exhibit "D" for the duration of the construction of the Public Improvements at the Property. Franklin 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 Public Improvements and naming the City of Plano as additional insured.
- D. Franklin shall procure and maintain insurance coverage as set forth in Exhibit "D" for the duration of this Agreement. Franklin 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 Public Improvements and naming the City of Plano as additional insured.
- E. Upon completion of the Public Improvements, Franklin shall provide a maintenance bond as provided in the form on attached Exhibit "E" in an amount mutually and reasonably agreed between the City and Franklin.
- F. In accordance with the City's Subdivision Ordinance, Article 5.10c as amended, all electric utility lines and wires, terminals and other facilities and equipment shall be constructed, placed or located underground.
- G. Except as provided herein, all project designs, drawings, site plans and other documents produced by Franklin in connection with the Development, including those attached to this Agreement, shall remain the property of Franklin. In exchange for Franklin's acceptance of the above-described reimbursement from the City, the portion of the plans created for the Public Improvements shall become the property of the City upon dedication as required by Section 1.A.6. of this Agreement.

SECTION 4. DAMAGE, DESTRUCTION, OR FAILURE OF PERFORMANCE

- A. Should Franklin fail to complete installation of the Public Improvements by the date specified in Section 1.A.5. of this Agreement, the City shall have no obligation to expend remaining reimbursement funding to complete the Public Improvements.
- B. If, by the date specified in Section 1.B. of this Agreement, Franklin has not completed 60% of the housing units comprising the Development, it shall refund to the City a percentage of the reimbursement received for Public Improvements. The reimbursement shall be based on the

percentage of 20 housing units that have not been completed by the date specified in Section 1.B. above. For example, if only 5 of the housing units comprising the Development are completed by the date specified in Section 1.B. above, then 15 out of 20 housing units (*i.e.*, 75%) would not be completed, and Franklin would be obligated to repay 75% of the reimbursement funds that it had received under this Agreement.

- C. If Franklin fails to comply with Section 1. C. above in selling a minimum of seven (7) units to qualifying low-moderate income purchasers, then Franklin shall refund the entire reimbursement funding paid by the City.

SECTION 5. FORCE MAJEURE

It is expressly understood and agreed by the parties to this Agreement that if the commencement, progress and/or completion of the construction of any of the Development and Public Improvements contemplated hereunder is delayed by reason by war; civil commotion; acts of God; inclement weather; governmental restrictions, regulations, or interferences; delays caused by the franchise utilities, fire or other casualty; court injunction; necessary condemnation proceedings; or acts of the other party, its affiliates/related entities and/or their contractors, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

SECTION 6. TERM

The term of this Agreement shall begin on the date of execution and end upon the complete performance of all obligations and conditions precedent by parties to this Agreement but in no event later than December 31, 2029. The City Manager or his designee shall have the authority to extend, in writing, the commencement and completion dates contained within the Agreement for an additional period of one year.

SECTION 7. AUTHORITY OF FRANKLIN

Franklin represents and warrants to the City that Franklin is duly formed, validly existing and in good standing under the laws of the State of Texas. Franklin will provide a certificate of status from the Texas Secretary of State's office evidencing Franklin's current legal status and authority to conduct business in Texas. Franklin represents that it has full power, authority and legal right to execute and deliver this Agreement. This Agreement constitutes a legal, valid, and binding obligation of Franklin and the City, enforceable in accordance with its terms.

SECTION 8. EVENTS OF DEFAULT

A default shall exist if any of the following occurs:

1. Either party fails to perform or observe any material covenant contained in this Agreement.
2. Franklin becomes delinquent on ad valorem taxes owed to the City, or any other Collin County taxing unit, provided that Franklin retains the right to timely and properly protest and/or contest any such taxes and during the pendency of such proceedings such taxes shall not be deemed delinquent.

A party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event which would constitute a default by the defaulting party under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the notifying party requires or proposes to require with respect to curing the default.

SECTION 9. REMEDIES

The defaulting party shall have thirty (30) days to cure after receiving written notice of default from a party. If a default shall continue after the thirty (30) days' notice to cure the default, the non-defaulting party may, at its option, terminate the Agreement and/or pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law without the necessity of further notice to or demand upon the defaulting party. However, the non-defaulting party may, at its option, provide written extension for additional time to cure if the defaulting party proceeds in good faith and with due diligence to remedy and correct the default, provided that the defaulting party has commenced to cure such default within 30 days following the original notice.

SECTION 10. BANKRUPTCY

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

SECTION 11. INDEMNIFICATION

FRANKLIN 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 FRANKLIN'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF FRANKLIN, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH FRANKLIN IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE 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. FRANKLIN AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ITS OWN ENTIRE DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF FRANKLIN'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF FRANKLIN'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. FRANKLIN 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 FRANKLIN FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE

RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND FRANKLIN SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

SECTION 12. AFFIDAVIT OF NO PROHIBITED INTEREST

Franklin acknowledges and represents it is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Agreement voidable. Franklin has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "F".

SECTION 13. NOTICES

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mails by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for City, to:

City of Plano
Attention: City Manager
PO Box 860358
Plano, Texas 75086-0358

If intended for Franklin, to:

Carl Franklin Homes, L.C.
Attention: Steve Brown, President
2320 King Arthur Boulevard
Lewisville, Texas 77007

SECTION 14. WRITTEN NOTICES AND APPROVALS REQUIRED

Whenever under the provisions of this Agreement and other related documents and instruments or any supplemental agreements, any request, demand, approval, notice or consent of the City or Franklin is required, or whenever the City or Franklin is required to agree or to take some action at the request of the other, such request, demand, approval, notice or consent, or agreement shall be in writing. Approval by City, unless otherwise provided herein, shall be by the City Manager or his designated representative and approval by Franklin shall be by the CEO, CFO or President or any officer of Franklin so authorized (and, in any event, the officers executing this Agreement are so authorized); and either party hereto shall be authorized to act in reliance upon any such request, demand, approval, notice or consent, or agreement.

SECTION 15. GIFT TO PUBLIC SERVANT

- A. City may terminate this Agreement immediately if Franklin has knowingly offered, conferred, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.
- B. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.
- C. Notwithstanding any other legal remedies, City may require Franklin to remove any employee of Franklin from the development of the Public Improvements who has violated the restrictions of this section or any similar state or federal law, and City may obtain reimbursement for any expenditures

made to Franklin as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

SECTION 16. 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.

SECTION 17. APPLICABLE LAWS

This Agreement is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable laws of the State of Texas and federal laws.

SECTION 18. VENUE AND GOVERNING LAW

This Agreement is performable in Collin County, Texas and venue of any action arising out of this Agreement shall be exclusively in Collin County, Texas. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

SECTION 19. LEGAL CONSTRUCTION

In case 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 any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

SECTION 20. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

SECTION 21. CAPTIONS

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

SECTION 22. SUCCESSORS AND ASSIGNS

A. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. Provided, however, this Agreement shall not be assigned without the prior consent of Franklin and the City of Plano City Council, which approvals shall not be unreasonably withheld.

B. An assignment or delegation of this Agreement to an Affiliate of Franklin shall not require City Council approval and shall not result in a breach of the Agreement if the Affiliate of Franklin expressly assumes all of the obligations of Franklin under this Agreement for the balance of the term of this Agreement and provides evidence establishing the relationship between Franklin and an Affiliate. Franklin shall notify the City in writing, however, within 30 days of such assignment. "Affiliate", as used herein, includes any parent, sister, partner, joint venturer, equity investor or subsidiary entity of Franklin; any entity in which Franklin is a major shareholder, owns an equity interest or is a joint venturer or partner (whether general or limited). Upon such assignment, Franklin shall be released from all liability hereunder. Additionally, collateral assignment of this Agreement by Franklin in connection with its financing of the Development shall not require City Council approval and shall not result in a breach of this Agreement so long as all obligations of Franklin herein are included in such assignment.

SECTION 23. ENTIRE AGREEMENT

This Agreement embodies the complete agreement of the parties hereto with respect to the Property, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement. This Agreement is the complete and final understanding and agreement between Franklin and the City with respect to the Property. Except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

SECTION 24. INCORPORATION OF RECITALS

The recitals set forth herein are intended, and are hereby deemed to be a part of this Agreement.

EXECUTED on the _____ day of _____, 2016, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. _____ approved by the City Council on _____, acting through its duly authorized officials.

CITY OF PLANO, TEXAS, a home rule municipal corporation

By: _____
Bruce D. Glasscock, City Manager

APPROVED AS TO FORM:

Paige Mims, City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF COLLIN

This instrument was acknowledged before me on the ____ day of _____, 2016, by Bruce D. Glasscock, City Manager, of **CITY OF PLANO, TEXAS**, a home rule municipal corporation.

Notary Public, State of Texas

My Commission Expires: _____

CARL FRANKLIN HOMES, L.C. a Texas limited liability company

By: _____
Steve Brown, President

STATE OF TEXAS

COUNTY OF DENTON

This instrument was acknowledged before me on the ____ day of _____, 2016, by Steve Brown, President of **Carl Franklin Homes, L.C.** a Texas limited liability company.

Notary Public, State of Texas

My Commission Expires: _____

EXHIBIT A

Legal Description

SITUATED in the City of Plano, in the Joseph Klepper Survey, Abstract No. 213, of Collin County, Texas, and being all of Lots 4 and 6A, Block 2 of the Original Donation to the City of Plano and also being that same tract of land described as "Tract 2 and Tract 3" in a Warranty Deed to First CMC Properties, L.L.C., dated December 9, 2005 and recorded in Volume 6062, Page 2141 of the Deed Records of Collin County, Texas (DRCCT) and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod, topped with a red plastic cap, stamped "RPLS 4701" found on the west right-of-way line of Avenue 'K' (100 feet wide right-of-way) for the northeast corner of said Lot 4 and the same being the southeast corner of Lot 3, Block 2, as described in a deed to Cecil M. Parsons, recorded in Volume 1170, Page 592, DTCCT;

THENCE, South 87°01'32" East a distance of 50.00 feet to a point on the centerline of Avenue K;

THENCE, South 02°58'28" West along the said centerline of said Avenue K, a distance of 102.92 feet to a point;

THENCE, North 88°04'55" West, (reference bearing) departing from said Avenue K, a distance of 50.01 feet passing an "X" in concrete found for the southeast corner of Lot 4, and THENCE along the south line of said Lot 4 and the north line of Lot 5R, Block 2, according to the Plat thereof recorded in Cabinet 2010, Page 20 of the Plat Records of Collin County, Texas, a distance of 188.27 feet passing a 1/2-inch iron rod topped with a red plastic cap stamped "RPLS 4701" found for the southwest corner of said Lot 4 and being on the east line of Lot 6, Block 2, described as "Tract 3" in a warranty deed to First CMC Properties, L.L.C., recorded in Volume 6062, Page 2,141, DRCCT, continuing along the common line of Lot 6A and 5R for a total distance of 243.81 feet to a 1/2-inch rod found for the northwest corner of said Lot 5R, Block 2;

THENCE, South 01°54'25" West, (reference bearing) along the occupied west line of said Lot 5R, a distance of 104.03 feet to a 1/2-inch rod found for the southeast corner of said Lot 6A and the northeast corner of Lot 6E, Block 2 as described in a deed to Second Chance SPCA, recorded in Document No. 20130411000491500, DRCCT;

THENCE, North 86°35'50" West, along the common line of said Lot 6A and Lot 6E, a distance of 211.78 feet passing a 5/8-inch iron rod topped with a yellow plastic cap stamped "RPLS 3949" found on the east right-of-way line of Avenue J and D.A.R.T. Railway for the southwest corner of said Lot 6A and the same being the northwest corner of the above described Lot 6E, Block 2 to the centerline of said Avenue J for a total distance of 227.78 feet;

THENCE, North 03°14'19" East, along the centerline of Avenue J, a distance of 168.85 feet to a point;

THENCE, departing said centerline South 86°39'08" East, along the common line of said Lot 6A and Lot 1, at a distance of 72.00 feet passing a 1/2-inch rod found for the southeast corner of said Lot 1 and the southwest corner of Lot 17, Block 2, as described in a deed to Tenth Street Investments, L.P., recorded in Document No. 20070831001217040, DRCCT, continuing along the common line of said Lot 6A and Lot

17, at 142.00 feet passing a tree found for the southeast corner of said Lot 17 and the southwest corner of Lot 2, Block 2, as described in a deed to Cecil M. Parsons, recorded in Volume 1025, Page 107, DRCCT, continuing along the common line of said Lot 6A and Lot 2, for a total distance of 232.83 feet to a 1/2-inch iron rod found for the northeast corner of Lot 6A and the southeast corner of said Lot 2, on the west line of Lot 4, Block 2, described as "Tract 2" in the above mentioned warranty deed to First CMC Properties, L.L.C., recorded in Volume 6,062, Page 2,141, DRCCT and said point being North 83°32'22" East a distance of 1.84 feet from a 5/8-inch iron rod found topped with a yellow plastic cap stamped "RPLS 3949";

THENCE, North 02°16'40" East, along the common line of said Lot 4 and Lot 2, a distance of 42.39 feet to a chain link fence corner post found for the northwest corner of said Lot 4 and the southwest corner of said Lot 3;

THENCE, South 87°01'32" East, along the common line of said Lot 4 and Lot 3, a distance of 186.51 feet to the POINT OF BEGINNING and CONTAINING 63,510 square feet or 1.458 acres of land.

EXHIBIT C

Description and Cost Estimates of Public Improvements

SUMMARY DESCRIPTION AND CONSTRUCTION COST ALLOWANCE OF PUBLIC IMPROVEMENTS

| Eligible Scope items: | Cost Estimate |
|--|---------------|
| A. Erosion Control, Demolition, Site Clearing, Site Grading, Site Preparation and Clean Up | \$ TBD |
| B. Onsite Paving, Concrete, Sidewalks, Curb and Gutter Improvements | \$ TBD |
| C. Water, Sanitary Sewer and Storm Sewer Construction | \$ TBD |
| D. Electric Utilities and Antique Style Street Lights | \$ TBD |
| E. Street Trees, Tree Grates, Irrigation Systems, Landscape and Hardscape Improvements | \$ TBD |
| F. Civil Engineering and Surveying, Materials Testing | \$ TBD |
| G. General Conditions, Mobilization, Traffic Control and Street Cleaning | \$ TBD |

SUBTOTAL \$ _____

H Construction contingency (12%)

TOTAL \$500,000.00

The above cost estimate is not based on final design or specific quantities and is subject to change once a final design has been completed and specific quantities and pricing have been determined.

The total cost estimate is for all items for eligible for reimbursement agreement. It is understood that this estimate may exceed the total allowable Project Costs identified in Section 2.1 of this agreement.

EXHIBIT D

Contractor's and Franklin's Insurance Requirements

**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

EXHIBIT E

Maintenance Bond

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.

EXHIBIT F

Affidavit of No Prohibited Interest

AFFIDAVIT OF NO PROHIBITED INTEREST AND COMPLIANCE WITH CITY OF PLANO'S EQUAL RIGHTS ORDINANCE

A. No Prohibited Interest

I, the undersigned, declare that I am authorized to make this statement on behalf of _____, a _____ organized under the laws of the State of _____, and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of _____, is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

B. Equal Rights Compliance

1. Section 2-11(F) of the City Code of Ordinances 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.”

2. I am aware that my company, its directors, officers and employees must comply with Section 2-11(F) of the City Code of Ordinances unless an exclusion applies, as indicated below. Further, I understand that if Section 2-11(F) applies, I am entitled to apply to the City Manager for a waiver from signing this section of the affidavit based on a conflict with state or federal law. The contract will not be executed prior to the waiver issue being resolved.

Having made reasonable inquiry, I affirm that my company, its directors, officers and employees agree to comply with Section 2-11(F); or my company is excluded from this Ordinance based on the following: **[PLEASE CHECK BELOW, IF APPLICABLE]**

_____ A religious organization.

_____ A political organization.

_____ An educational institution.

_____ A branch or division of the United States government or any of its departments or agencies.

_____ A branch or division of the State of Texas or any of its departments, agencies or political subdivisions.

_____ A private club that is restricted to members of the club and guests and not open to the general public.

_____ Is not an “employer” under Section 2-11(F) because it has not had 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

[THIS SPACE INTENTIONALLY LEFT BLANK]

I also understand and acknowledge that a violation of Section 11.02 of the City Charter or Section 2-11(F) of the City Code of Ordinances, if applicable, at any time during the term of this contract may render the contract voidable by the City.

Company Name

By: _____
Signature

Print Name

Title

Date

STATE OF TEXAS §
 §
COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20__.

Notary Public, State of Texas