



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:		May 12, 2014		
Department:		City Manager		
Department Head		P. Jarrell		
Agenda Coordinator (include phone #): S. Jackson - 7122				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Restated and Amended Development Agreement between the City of Plano and Southern Land Company, LLC for Development of Junction15 Plano; 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: 2013-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	260,000	0	260,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-60,218	0	-60,218
BALANCE	0	199,782	0	199,782
FUND(S): POLICE & COURT FACILITIES CIP				
<p>COMMENTS: Funds are currently available in the Police & Courts Facilities CIP. This item, in the amount of \$60,218, will leave a current year balance of \$199,782 available for improvements related to the Police Parking Expansion Project.</p> <p>STRATEGIC PLAN GOAL: Amending an existing agreement to provide for cost effective improvements to Police Facilities relates to the City's goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>This new development at 15th Street and I Avenue includes a parking garage reserved for use by the Police Department. The original development agreement with Southern Land Company anticipated the city installing the gates, fencing, equipment room and conduit for the garage. However, it is more practical for Southern Land to install these features as they complete other construction work on the project. The amended development agreement will allow Southern Land to install these items and for the city to reimburse them for the cost of construction.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution Amended Development Agreement				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Restated and Amended Development Agreement between the City of Plano and Southern Land Company, LLC for development of Junction15 Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

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, Southern Land Company, LLC is developing approximately 3.0 acres located at the southeast corner of 15th Street and I Avenue (“the Property”); and

WHEREAS, on May 27, 2008, the City Council adopted Resolution No. 2008-5-34(R) approving an Agreement between the City and Southern Land Company, LLC, formerly Pinnacle, as assigned by Resolution No. 2008-12-20(R) for the development of Eastside Station-Plano and as further amended by Resolution Nos. 2008-12-24(R), 2009-5-5(R), and 2010-9-15(R); and

WHEREAS, in order to consolidate all the prior amendments of the Agreement into one document and to further amend the terms, the City approved Resolution No. 2011-11-22(R) on November 28, 2011 consolidating the prior agreements into one document and superseding and replacing the documents referenced in the preceding paragraph; and

WHEREAS, the Agreement adopted by Resolution No. 2011-11-22(R) was amended on November 14, 2013 by letter agreement to revise the completion dates for the Development; and

WHEREAS, “Exhibit E” of the Agreement is a Parking Easement Agreement for parking spaces dedicated to use by the City of Plano Police Department Police and which detailed responsibilities for construction and maintenance for the security features, gates, light fixtures, fire sprinklers and other appurtenances; and

WHEREAS, the City and Southern now wish to amend certain sections of the Agreement and the Parking Easement Agreement to address responsibilities for installation and cost reimbursement of security features, gates, and other equipment necessary for the operation and safety of the Police parking spaces, and

WHEREAS, this Agreement (attached hereto as Exhibit “A”) restates, amends, supersedes and replaces only the specific sections of the Agreement and the Parking Easement Agreement as follows and that other sections of the Agreement and Parking Easement Agreement remain in place as approved by Resolution No. 2011-11-22(R) and the subsequent Letter Agreement.

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

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

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

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

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

DULY PASSED AND APPROVED THIS THE 12TH DAY OF MAY, 2014.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

RESTATED AND AMENDED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PLANO, TEXAS AND SOUTHERN LAND COMPANY, LLC. FOR DEVELOPMENT OF JUNCTION15

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the City of Plano, a Texas home rule municipal corporation of Collin County, Texas (the “City”), acting by and through its duly authorized officers, and Southern Land Company, LLC a Tennessee limited liability company (“Southern”);

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, Southern is developing approximately 3.0 acres located at the southeast corner of 15th Street and I Avenue as shown in Exhibit “A” attached hereto (“the Property”); and

WHEREAS, the Development is consistent with the goals and objectives as set forth in Downtown Plano, A Vision and Strategy for Creating a Transit Village which was adopted by the City Council by Resolution No. 99-5-14, dated May 10, 1999, and the Downtown Plano Vision and Strategy Update, adopted by the City Council by Resolution No. 2013-2-20(R); and

WHEREAS, the Development will contribute important direct and indirect economic and social benefits to the City including, but not limited to, the creation of a mixed-use, pedestrian oriented, residential development in close proximity to the DART railway station, and

WHEREAS, the City will lease a portion of the parking garage serving the development for use as a secured parking area for use by the Police Department; and

WHEREAS, on May 27, 2008, the City Council adopted Resolution No 2008-5-34(R) approving an Agreement between the City and Southern, formerly Pinnacle, as assigned by Resolution No. 2008-12-20(R) for the development of Junction15 (“the Development”, previously referred to as Eastside Station – Plano) and as further amended by Resolution Nos. 2008-12-24(R), 2009-5-5(R), and 2010-9-15(R) (collectively “the Original Agreement”); and

WHEREAS, Resolution No. 2011-11-22(R) was approved by the City Council on November 28, 2011 consolidating the Agreement into one document and superseding and replacing the documents referenced in the preceding paragraph; and

WHEREAS, Resolution No. 2011-11-22(R) was amended on November 14, 2013 by letter agreement to revise the completion dates for the Development; and

WHEREAS, “Exhibit E” of the Agreement is a Parking Easement Agreement for the Police parking spaces which detailed responsibilities for construction and maintenance for the security features, gates, monitoring equipment, light fixtures, fire sprinklers and other appurtenances; and

WHEREAS, the City and Southern now wish to amend certain sections of the Agreement and the Parking Easement Agreement to address responsibilities for installation and cost reimbursement of security features, gates, and other equipment necessary for the operation and safety of the Police parking spaces, and

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree that this Agreement restates, amends, supersedes and replaces only the specific sections of the Agreement and the Parking Easement Agreement as follows and that other sections of the Agreement and Parking Easement Agreement remain in place as approved by Resolution No. 2011-11-22(R) and the subsequent Letter Agreement.

I.

Effective as of the Execution Date, Section 1.B.2. of the Agreement shall be replaced in its entirety by the following text:

SECTION 1. SOUTHERN’S OBLIGATIONS

B. After closing on the Property, Southern shall perform the following obligations:

2. Complete the design, construction and installation of the private improvements at the Property at its sole cost and expense and in conformity with the requirements in Exhibit “B” attached hereto, and which when completed (and when the Public Improvements have also been completed) shall have a net private investment value of not less than Twenty Seven Million Dollars (\$27,000,000). “Private Improvements” shall include the initial installation of fencing, gates, access control equipment room with all HVAC and electrical provisions to house police department provided access control equipment, and conduit raceways for all additional access control devices to be provided by the City for the Easement Parking Spaces referenced in Exhibit “B” to this amended agreement.

II.

Effective as of the Execution Date, Section 2.C. of the Agreement shall be added in its entirety by the following text:

SECTION 2. CITY’S OBLIGATIONS

The City shall perform the following obligations:

C. Reimburse Southern for one hundred percent (100%) of eligible expenses for the installation of fencing, gates, access control equipment room with all HVAC and electrical

provisions to house police department provided access control equipment, and conduit raceways for all additional access control devices to be provided by the City of Plano and other appurtenances required to equip the Police parking garage. Southern is to obtain City's approval and consent to eligible expenses and estimated costs prior to commencing installation.

EXECUTED on the _____ day of _____, 2014 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

SOUTHERN LAND COMPANY, LLC, a
Tennessee limited liability company

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 2014, by Bruce D. Glasscock, City Manager, of **CITY OF PLANO, TEXAS**, a home rule municipal corporation.

Notary Public, State of Texas

My Commission Expires:

STATE OF TENNESSEE
COUNTY OF _____

Before me, _____, a Notary Public in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself (or herself) to be the _____ of Southern Land Company, LLC, the within named bargainer, a corporation, and that he as such _____, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by _____self as such _____.

WITNESS my hand and seal at office, on this the _____ day of _____, 2014.

Notary Public

My Commission Expires:

EXHIBIT "E"

PARKING EASEMENT AGREEMENT

This PARKING EASEMENT AGREEMENT ("Agreement") is made and entered into as of _____, 2014 by and between _____, a _____ ("Southern"), and THE CITY OF PLANO, TEXAS ("City").

WITNESSETH:

WHEREAS, Southern is the owner of the land described on Exhibit "1" attached hereto and incorporated herein by reference (the "Development Tract");

WHEREAS, on _____, 2012, the City conveyed the Development Tract to Southern in connection with a Development Agreement dated _____, 2012 (the "Development Agreement") requiring Southern's development of the Development Tract including construction of a parking garage; and

WHEREAS, part of the consideration for the grant of the Development Tract to Southern from the City included Southern's agreement to grant the City an exclusive Parking Space Easement (defined below) for its use on the Development Tract as further described herein.

NOW, THEREFORE, for and in consideration of the mutual and dependent covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Easement. Southern hereby grants and conveys to City, for the exclusive use by City and its employees, invitees, agents, successors and assigns ("Parking Users"), a perpetual easement for ingress, egress and for ninety two (92) parking spaces at or below grade in the parking garage on the Development Tract in the location designated on Exhibit "2" attached hereto and incorporated herein by reference (the "Easement Property"). Nothing contained herein is intended nor shall it be construed as creating any rights in or for the benefit of the general public. The easements granted herein shall not take effect until the completion of construction of the parking garage in accordance with the Development Agreement. Nothing contained herein is intended nor shall it be construed as creating any rights in or for the benefit of the general public.
2. Limited Purpose. City may use the parking spaces for police vehicle parking and any other lawful uses consistent with the activities of the City, so long as such uses are not inconsistent with, or detract from the attractive residential community atmosphere of the development on the Development Tract (for example, noise, odors or noxious activities). The Parking Space Easement may be utilized by the Parking Users for ingress and egress for vehicular and pedestrian use and access for fire department and emergency use in,

along, upon and across the Easement Property. Notwithstanding the foregoing, the City may not lease or assign the parking spaces for a commercial enterprise.

3. Maintenance Obligations.

(a) City's Obligations. Subject to Southern's obligations as described in Section 3(b) herein, City shall be responsible for all costs and expenses of maintaining the Easement Parking Spaces, including but not limited to (i) all electrical costs related to the Easement Parking Spaces via a dedicated electrical meter provided by Southern (ii) light bulb fixture replacements above the Easement Parking Spaces (iii) City's pro rata share (defined as the number of Easement Parking Spaces [92] divided by the total number of parking spaces in the parking garage), payable within thirty (30) days of City's receipt of invoice from Southern, of all parking garage fire sprinkler testing and maintenance, including repairs and replacements (iv) all striping and restriping of the Easement Parking Spaces, (v) all initial installation and ongoing maintenance of access control equipment, wiring and devices and (vi) any damages arising out of maintenance or repairs to common building systems within the City's Easement Property caused by the City.

(b) Southern's Obligations. Southern shall be responsible for all costs and expenses of maintaining the area of the parking garage outside the City's Parking Easement and for the following maintenance costs and expenses within the City's Parking Easement including (i) all cracking, spidering or potholing of at-grade easement parking surfaces during the first year following construction of the parking garage, (ii) structural support of columns and decks, (iii) ongoing maintenance of storm water drainage systems above and below the Easement Parking Spaces, and (iv) all initial installation and ongoing maintenance of fencing, access control equipment room with all HVAC and electrical provisions to house police department provided access control equipment, and conduit raceways for all additional access control devices to be provided by Police Department for the Easement Parking Spaces.

4. Easement Runs with the Land. The covenants of Southern contained herein shall run with and follow the land with regard to the fee simple ownership of the land contained within the Parking Easement Property and shall be binding upon the heirs, executors, successors and assigns of Southern. The Parking Easement is personal to the City and the Parking Users, and may not be further assigned without Southern's prior written consent. Any purported assignment in violation of the immediately preceding sentence shall be null and void.

5. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

6. Amendment; Termination. This Agreement and the easement granted hereunder may be terminated or amended by an instrument in writing executed jointly by all of the owner or owners of the Development Tract and City and recorded in the Real Property Records of Collin County, Texas.

7. Severability. 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 hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

8. Subordination. This Agreement and the easements contained herein shall be deemed automatically subordinated to any mortgage or deed of trust now or hereafter granted or entered into with respect to the Development Tract subject to the City's right to compensation in Section 4 of this Agreement in the event of damage, destruction or failure of performance. Grantee agrees to promptly execute any additional agreements reasonably required in order to effect or confirm such subordination subject to the City's right to compensation in Section 4 of this Agreement in the event of damage, destruction or failure of performance.

SOUTHERN:

Southern Land Company, LLC, a
Tennessee limited liability company

By: _____
Name: _____
Title: _____

STATE OF TENNESSEE §
 §
COUNTY OF WILLIAMSON §

This instrument was ACKNOWLEDGED before me on the ___ day of _____, 20___, by _____, the _____ of Southern Land Company, LLC, a Tennessee limited liability company, on behalf of said limited liability company.

[S E A L]

Notary Public - State of Tennessee

My Commission Expires:

Printed Name of Notary Public

CITY:

THE CITY OF PLANO, TEXAS

Attest:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was ACKNOWLEDGED before me on the __ day of _____, 20__, by _____ and _____, the _____ and _____, respectively, of the City of Plano, Texas, a home rule municipal corporation, on behalf of said corporation.

[S E A L]

Notary Public - State of Texas

My Commission Expires:

Printed Name of Notary Public