



# CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		12/14/15			
Department:		City Manager			
Department Head		P. Jarrell - Special Projects			
Agenda Coordinator (include phone #): <b>M. Martinez - 7122</b>					
<b>CAPTION</b>					
A Resolution of the City of Plano, Texas, approving the amended terms and conditions of a development agreement by and between the City of Plano and 14 <sup>th</sup> and J, LLC for development of Municipal Center South; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>2015-16; 2016-17; 2017-2018</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget		0	8,769,601	0	<b>8,769,601</b>
Encumbered/Expended Amount		0	0	0	<b>0</b>
This Item		0	-2,150,000	0	<b>-2,150,000</b>
BALANCE		0	6,619,601	0	<b>6,619,601</b>
<b>FUND(S):    TIF2 FUND</b>					
<p><b>COMMENTS:</b> Funding for this agreement was identified in the TIF2 Project and Financial Plan. This item, in the amount not to exceed \$2,150,000, will leave a current year balance of \$6,619,601 available for other TIF2 expenditures.</p> <p><b>STRATEGIC PLAN GOAL:</b> Facilitating redevelopment in and around Downtown Plano relates to the City's goal of Exciting Urban Centers - Destination for Residents and Guests.</p>					
<b>SUMMARY OF ITEM</b>					
Please see attached memo.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Resolution, Agreement					

**Date:** December 3, 2015

**To:** Bruce D. Glasscock, City Manager  
Frank F. Turner, Deputy City Manager

**From:** Phyllis M. Jarrell, Special Projects Director

**Subject:** Municipal Center South Redevelopment

Attached for City Council's consideration is a revised development agreement outlining the City's arrangement with 14th and J, LLC (a subsidiary of Southern Land Company) for the redevelopment of the Municipal Center South and the Christie properties at the northwest corner of 14th Street and K Avenue. The City Council initially approved the development agreement in April, 2015. The revised agreement extends various dates and deadlines for the construction and completion of the project, increases the minimum value of the project, and increases the penalty payment if the developer does not proceed with the project. Under the terms of the amended agreement, demolition will begin by the end of February 2016 and construction will commence by July, 2016 with completion in August, 2018.

The redevelopment site consists of approximately 1.6 acres and includes the Municipal Center South building and parking lot and the Christie property (acquired by the City in 2013), which faces the J Avenue and McCall Plaza parking lot.

The developer is proposing two five story buildings with commercial/restaurant and live/work space on the first floor and apartment units on the upper floors. The buildings will wrap a parking garage consisting of three underground levels and one at-grade level.

The major provisions of the development agreement are as follows:

### **Southern Land's Obligations**

- Construct a mixed-use development of a minimum of 200,000 square feet and structured parking, with a minimum of 175 units and 12,800 square feet of non-residential use, exclusive of the leasing office and other support space. The minimum private investment value of the development shall be \$27,000,000.
- The average unit size shall be 700 square feet, and no more than 80% of the units shall have one bedroom or less.
- Finish out two separate lease spaces for restaurant use.
- Design live/work/flex spaces with taller minimum floor to ceiling heights to support future conversion to commercial use.
- Construct and convey to the City by easement 120 spaces in the parking garage for public parking. 70 public parking spaces are now located in the parking lot on the property.
- Obtain a Certificate of Appropriateness for demolition and approval of the façade and building design of the new structure to replace the Christie buildings.
- Obtain approval of a preliminary site plan.
- Lease a minimum of 400 square feet of space to the City for storage of equipment and supplies for activities and events in the McCall Plaza and J Place parking lot.

- Convey an easement to the city for a new location for a public trash compactor, dumpsters and recycling containers. The existing facility will be relocated during construction and then rebuilt as part of the new development.
- Agree to not make application for ad valorem tax exemptions provided through the Heritage Tax Exemption program.
- Provide documentation of the company's financial ability to complete the development.
- Provide locations for video cameras for security surveillance of the public parking garage and surrounding streets.
- Comply with the timing of commencement of construction and completion of public improvements and the buildings as required in the agreement.

### **The City's Obligations**

- Convey the Municipal Center South and Christie properties to Southern Land, based on their value of \$1.7 million.
- As authorized by Neighborhood Empowerment Zone #1, waive all plan review, permit and building inspection fees, with an estimated value of \$150,000.
- Where necessary, relocate and rehabilitate utility lines on the property and relocate overhead electric lines underground.
- Reimburse Southern Land for eligible expenses for public improvements in an amount not to exceed \$1,250,000.
- Reimburse Southern Land for the cost of 50 spaces in the parking garage that are in excess of the 70 spaces that now exist in the surface lot. The reimbursement shall not exceed \$14,000 per space or a total cost of \$700,000.
- Reimburse the developer for demolition of the buildings on the property, including environmental remediation, up to a maximum of \$200,000. Costs exceeding this amount will be shared equally by the City and the developer.
- Reimburse the developer for the costs of installing conduit and power for security cameras and equipment.

### **Other Provisions**

Provisions for non-performance include a \$200,000 payment to the city if Southern Land does not move forward with the project and close on the properties. After closing, the developer must pay an amount equal to the reimbursement from the City plus the \$1.7 million value of the property if the project is terminated prior to completion of the improvements or if the developer fails to commence construction. If the parking garage is damaged or destroyed, the developer must pay a fee to the city until the garage is restored or provide 120 surface parking spaces. If the garage is not repaired or reconstructed, the developer must pay the City for the appraised value of the property (minus improvements) or convey the property itself.

### **Funding**

The City's financial participation in the project is primarily through TIF2 funds. The Christie property was purchased using TIF funds, and reimbursements for public improvements, demolition costs and the payment for 50 additional parking spaces will also be from TIF2. The value of the Municipal Center South property was transferred from the TIF2 account to the General Fund and was used to partially fund construction of the new Parks and Recreation Department offices. Neighborhood Empowerment Zone fee waivers represent funds not collected for the General Fund.

Please let me know if you have questions.

XC: Jack Carr, Assistant City Manager  
Peter Braster, Assistant Director of Special Projects

**A Resolution of the City of Plano, Texas, approving the amended terms and conditions of a development agreement by and between the City of Plano and 14<sup>th</sup> and J, LLC for development of Municipal Center South; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.**

**WHEREAS**, the City of Plano (“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**, on April 13, 2015, the City Council approved Resolution No. 2015-4-8(R) for the purpose of approving a development agreement between the City of Plano (the “City”) and 14<sup>th</sup> and J, LLC, hereto referred to as “Developer”, to set forth the terms and conditions for redevelopment of City-owned land located at the northwest corner of K Avenue and 14<sup>th</sup> Street; and

**WHEREAS**, the City Council has now been presented with an amended development agreement between the City and the Developer, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference as “Agreement”; and

**WHEREAS**, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and 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 authorized designee is hereby authorized to execute the Agreement between 14<sup>th</sup> and J, LLC and the City 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 14<sup>th</sup> and J, LLC.

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

**DULY PASSED AND APPROVED** this the 14<sup>th</sup> day of December, 2015.

\_\_\_\_\_  
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 14TH AND J, LLC  
FOR DEVELOPMENT OF MUNICIPAL CENTER SOUTH**

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 14th and J, LLC a Delaware limited liability company (“Developer”);

**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, Developer desires to develop approximately 1.6+- acres located at the northwest corner of 14<sup>th</sup> Street and K Avenue, as shown in Exhibit “A” attached hereto (“the Property”); and

WHEREAS, Developer has proposed a development on the Property in substantial compliance with a preliminary project design and concept plan prepared by Developer attached hereto as Exhibit “B” (which design and concept plan, together with all additions, changes and amendments thereto approved by Developer and the City, is referred to in this Agreement as the “Development”); and

WHEREAS, the Development is located in Tax Increment Financing District No. 2 (TIF #2) and a portion of the proposed public improvements (sometimes referred to herein as the “public improvements” and the “Public Improvements”) at the Development 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 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 in Downtown Plano Vision and Strategy Update, which was 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 is authorized by Tex. Loc. Gov’t Code §380.001 et seq. to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to Developer in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City; 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;

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

## **SECTION 1. DEVELOPER'S OBLIGATIONS**

A. Prior to closing on the Property, Developer shall perform the following obligations:

1. Develop preliminary plans for the Development, which shall contain approximately 175 residential units and 12,800 square feet of floor space designed for non-residential use, net of floor area dedicated to a leasing office, fitness center and other space used for support of the residential units and net of live/work/flex space. The Development shall total approximately 200,000 square feet in gross floor area (excluding the parking garage), and the average residential unit size shall be approximately 700 gross square feet. The number of units with one bedroom or less shall not exceed eighty percent (80%) of the total number of residential units (excluding any live/work units). A minimum of two separate lease spaces shall be designed for restaurant use, with grease traps, ventilation, plumbing and other installations to support food service and preparation. One of the restaurant lease spaces shall be a minimum 3200 square feet in size, exclusive of outdoor dining areas. Individual flex or live/work units must be designed with a minimum 14.5 foot floor-to-ceiling height, with doors opening to the exterior of the building, and must be a minimum of 700 square feet in size. Commercial space in the portion of the Development facing J Avenue must be constructed with a minimum 17 foot floor-to-ceiling height; and
2. Complete and obtain approval of a preliminary site plan as required by the City's Zoning Ordinance; and
3. Provide documentation to the reasonable satisfaction of the City of financial ability to complete the obligations under this Agreement in the form of a detailed financial statement, an external audit report, a commitment for debt and/or equity financing, or other form acceptable to the City.

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

1. Obtain all necessary permits from the City, which shall not be unreasonably withheld, conditioned or delayed by the City, and begin construction of the Development no later than July 1, 2016, subject to Force Majeure (as defined herein below). Construction shall be deemed to have begun when Developer actually commences site work (e.g., grading or excavation) for the parking garage on the Property (the "Commencement Date");

2. With 90 days of closing on the Property, obtain approval of a Certificate of Appropriateness as required by the city's Heritage Preservation Ordinance for demolition of the existing buildings and for the façade and building design of the development located on the portion of the Property located at 1400 J Avenue;
3. Complete demolition of the surface and subsurface improvements on the Property, including environmental remediation and grading in preparation for construction of the Development, by February 28, 2016.
4. Complete the design, construction, and installation of the private improvements at the Property (sometimes referred to herein as the "private improvements" and the "Private Improvements") 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 private investment value of not less than Twenty Seven Million Dollars (\$27,000,000). The portion of the parking garage at the Development to be conveyed to the City by easement shall be completed on or before March 1, 2018 and the remainder of the Development shall also be completed on or before March 1, 2018. 14th and J, LLC may not transfer ownership of the Property until (i) the City issues a Certificate of Occupancy for the last phase of the Development; or (ii) without the City's consent.
5. Complete the design, construction, and installation of all Public Improvements required to serve the Development (but specifically excluding construction of any off-site utilities not required by Exhibit "C") including demolition, abatement, storm sewer, drainage, utility, paving, lighting, landscape, hardscape and other improvements required by the City, both on-site and off-site, that are described or referred to in Exhibit "C" attached to this Agreement. 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 completed on or before March 2, 2018.
6. On or before August 1, 2018, convey the Public Improvements and dedicate the reconstructed mews street/fire lane to the City free and clear of all liens. The mews street/fire lane shall be dedicated to the city in fee simple. A conveyance to the City shall be evidenced by the plat filed for the Development, and any other instrument which City may reasonably request, and shall include, to the extent assignable, an assignment of all contractors' warranties, if any, and all performance, payment and maintenance bonds. Prior to acceptance of such conveyance to the City, Developer shall provide the City with releases from the general contractor for the design, construction and installation of all Public Improvements on the form attached hereto as Exhibit "D".
7. Convey to the City by easement, attached hereto as Exhibit "E" and incorporated herein, one hundred twenty (120) of the spaces in the parking garage at the Property for the exclusive use of the City without compensation, except that as referenced in Sections 2 A, 2 D, and 2 E of this Agreement. The 120 spaces

are in addition to spaces required by the City's Zoning Ordinance for the residential units, commercial space and live/work space included in the Development. The parking spaces including in the easement shall begin with the first space(s) in the at-grade level of the garage and shall be outside of any security gates delineating parking for the Development's tenants. The easement shall be subject and subordinate to the lien of any deed of trust in favor of Developer's lender subject to the City's right to compensation in Section 4 of this Agreement in the event of damage, destruction or failure of performance. City may use the parking spaces for general public parking and municipal purposes. The City shall have the right to enact and enforce time restrictions or other regulations for the parking spaces that are subject to the easement. Notwithstanding the foregoing, the City may not lease or assign the parking spaces for a commercial enterprise. Developer shall execute the Parking Space Easement with the City on or before August 1, 2018. In the event of casualty, Developer shall have the opportunity to restore the private improvements on the Property, as more particularly set forth in (among other documents) the Parking Space Easement and the lease agreement described below.

8. Convey a minimum of 400 square feet of climate controlled lease space for the exclusive use of the City at the Development by separate lease agreement, at a mutually agreeable location on the ground floor to be negotiated between the parties after completion of construction of the Development. Developer agrees to lease the space for a 15 year term to the City at a cost of ten dollars (\$10) annually with two ten year lease renewal options with no increase in the amount of cost to the City on renewal. The City shall not be responsible for taxes, common area insurance or common area maintenance at the Property, but will be responsible for payment of utilities, which shall be separately metered. City shall use the lease space for storage of event equipment and supplies or any other lawful use consistent with these activities of the City. The City agrees to carry renter's insurance on its event equipment and supplies and other property located in the lease space and agrees that Developer shall have no responsibility therefor. The lease shall be subject and subordinate to the lien of any deed of trust in favor of Developer. Developer shall execute a lease agreement for the 400 square feet of lease space with the City on or before the date of substantial completion of the Development.
9. Convey by separate easement space for a public trash compactor, dumpsters and recycling containers on the Property or within the parking garage on or before the date of substantial completion of the Development. The Developer shall construct the enclosure and provide electrical connections and drainage facilities to facilitate its operation. The City shall provide the containers and manage the contract for service with its commercial solid waste contractor. The Developer shall be responsible for the cost of upsizing the containers to manage trash generated by its residential and commercial tenants and for associated disposal fees, as determined by the City's Environmental Waste Division.
10. Provide locations for video cameras for security surveillance of public garage parking and streets.

11. Maintain, repair and replace as needed all common areas, open spaces and landscaping improvements on the Property including all hardscape and landscaping, sidewalks, curbing, paving and related improvements on public property (14<sup>th</sup> Street, K Avenue and J Avenue) adjacent to the Property (including the Public Improvements but, with respect to utility lines, pipes, conduits, cables and/or services, Developer shall only be responsible for maintaining, repairing and replacing those that exclusively serve the Development) and extending to the nearest curb of such public rights-of-way (collectively, the "Public Property") in accordance with the City's existing Right-of-Way Management Ordinance. Landscaping and streetscaping in the Public Property shall also be in accordance with the specifications and standards set forth in "Exhibit C" attached hereto and incorporated herein. Developer shall be responsible for all maintenance and operation expenses associated with the Development, including the Public Improvements as set forth above.
12. Agree to not make application for ad valorem tax exemptions provided through the Heritage Tax Exemption program authorized by Ordinance Number 84-8-24, as existing and as amended, offered by the City of Plano, Plano Independent School District, Collin County and Collin College taxing jurisdictions.

## **SECTION 2. CITY'S OBLIGATIONS**

The City shall perform the following obligations:

- A. Grant to Developer the Property described in Exhibit "A" in "As Is" condition by Special Warranty Deed. Such transfer shall be consummated at a closing to be held on a date of which Developer may notify the City in writing at least fifteen (15) days in advance, but in no event later than January 1, 2016. The City shall be responsible for obtaining title insurance on the Property, at its expense, based on the value of one million seven hundred thousand dollars (\$1,700,000). Any additional title insurance coverage shall be paid by Developer. The title insurance commitment (and resulting policy) shall insure title to be free and clear of liens, marketable, and not subject to any encumbrances which could interfere with Developer's development of the Development
- B. Waive all plan review, permit and building inspection fees with an estimated value of \$150,000, in accordance with Neighborhood Empowerment Zone #1, in addition to waiver of park impact fees as allowed for new multi-family development.
- C. No later than May 1, 2016, where necessary, complete the relocation and rehabilitation of utility lines located on the property, including existing water, sewer and drainage facilities and relocate existing overhead electric underground and existing transformer boxes provided, however, that Developer retains responsibility for installation of new utility services, transformers and other public improvements required to provide service to the Development.
- D. Within thirty (30) days after request by Developer, reimburse Developer for eligible expenses for "Project Costs" (as defined hereinafter) for any public improvements or such other work in an amount not to exceed One Million Two Hundred Fifty Thousand Dollars (\$1,250,000). However, such reimbursement shall exclude "Overhead Costs" (as defined hereinafter). As part of the above reimbursement, prior to closing, the City shall reimburse Developer for design expenses related to public improvements in an amount not to exceed \$150,000.

1. "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. underground relocation of electrical and communication lines and facilities on the property or adjacent public rights of way, including without limitation, any payments made to entities affiliated with or related to Developer, to the extent that such payments do not exceed what is reasonable and customary for such services;

iii. 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, but specifically excluding construction of any off-site utilities not required by Exhibit "C", that are described or specified on the project plans approved by the City; and

iv. costs associated with land conveyance.

2. "Overhead Costs" means:

i. overhead and management fees of Developer,

ii. financing charges,

iii. marketing costs,

iv. legal fees, and

v. payments made to entities affiliated with or related to Developer to the extent such payments made to entities affiliated with or related to Developer exceed what is reasonable and customary for such services. All payments for Public Improvement reimbursement to Developer under this subsection shall be payable solely from Tax Increment Financing District No. 2 funds as provided by law and the City shall not be obligated for payment from the City's general fund or any other City fund unrelated to the Tax Increment Financing District No. 2 fund;

E. Within thirty (30) days after request by Developer, reimburse Developer for fifty (50) parking spaces being provided in the parking garage that are in excess of the seventy (70) existing surface parking spaces being replaced. The reimbursement shall be based on the actual average cost of all garage parking spaces, but shall not exceed \$14,000 per space or a total cost of \$700,000. Developer shall provide documentation as required to verify the actual cost of construction.

F. Reimburse Developer for surface and subsurface demolition of the improvements on Property, including but not limited to environmental remediation and grading in preparation for construction of the project. The City will reimburse Developer for demolition and abatement costs up to a maximum of \$200,000. Should the cost exceed \$200,000, City and Developer will each pay 50% of the amount exceeding \$200,000.

G. Within thirty (30) days after request by Developer, reimburse Developer for all costs associated with the installation of conduit and power for video cameras and security surveillance equipment for the public parking garage and streets.

H. Convey a temporary construction easement to the Developer for the duration of construction that encompasses the public alley and fire lane.

### **SECTION 3. DESIGN AND CONSTRUCTION; BONDS**

A. In addition to any other approvals required by the City of Plano Code of Ordinances and Zoning Ordinance, Developer shall submit building plans and a site plan for the proposed Public Improvements and Private Improvements at the Property to the City Manager or his designee for written approval of the general design, arrangement, landscaping, materials to be used, and other exterior features and appurtenances that will be used or constructed at the Property. Approval by the City Manager or his designee shall not be unreasonably withheld. Developer shall obtain approval from the City Manager or his designee as required by this section of the Agreement prior to commencing construction of any Improvements at the Property.

B. Design management for the Public Improvements and the Development will be provided by a licensed architect for the Development or such other party as shall be mutually agreed to by the parties to this Agreement.

C. Developer shall obtain any and all required local, state and federal governmental approvals and permits required for construction of the Public Improvements and the Private Improvements at the Property.

D. Developer shall require its general contractor to procure and maintain insurance coverage as set forth in Exhibit "F" for the duration of the construction project at the Property. Developer 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 at the Property and naming the City of Plano as additional insured.

E. Developer shall procure and maintain insurance coverage as set forth in Exhibit "F" for the duration of the Agreement. Developer shall provide their signed insurance certificate to the CITY verifying that they have obtained the required insurance coverage prior to the commencement of construction at the Property and naming the City of Plano as additional insured.

F. Prior to the Commencement Date, Developer 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 "G" and "H". 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.

G. Upon completion of the Public Improvements, Developer 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 "I".

H. 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.

I. All project designs, drawings, site plans and other documents produced by Developer in connection with the Private Improvements at the Property, including those attached to this Agreement, shall remain the property of Developer. However, in exchange for Developer's acceptance of the above-described reimbursement from the City, the rights to that portion of the plans created for the Public Improvements and infrastructure, and all assignable rights in the boundary survey and environmental site assessment of the Property obtained by Developer shall become the property of the City upon dedication as required by Section 1(B) (5) and (6) of this Agreement.

J. On the date of closing, Developer shall deliver an executed Deed of Trust (the "Deed of Trust") to the City. The Deed of Trust shall be immediately released by the City on the Commencement Date or reasonably thereafter. In the event Developer obtains construction financing prior to the Commencement Date, the Deed of Trust lien granted to Developer's construction lender shall be a first lien that is superior to the lien of the Deed of Trust, and the City shall execute and deliver at the closing of Developer's construction loan a subordination agreement mutually acceptable to the City, Developer and Developer's construction lender.

K. All performance bonds shall comply with the following requirements:

1. All performance bonds must be in a form acceptable to the city engineer and the city attorney.
2. 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.
3. 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.
4. 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.

L. As portions of the public improvements are completed in accordance with the approved engineering plans, the applicant may make written application to the city engineer to reduce the amount of the original security. If the city engineer is satisfied that such portion of the public improvements has been completed in accordance with city standards, the city shall cause the amount of the security to be reduced by such amount that it deems appropriate, so that the remaining amount of the security adequately insures the completion of the remaining public improvements.

#### **SECTION 4. DAMAGE, DESTRUCTION, OR FAILURE OF PERFORMANCE**

A. Should Developer not close on the Property as described in Section 2A above due to any reason other than a default by the City, it shall pay the City a total of Two Hundred

Thousand Dollars (\$200,000), such amount being agreed upon as liquidated damages for the failure of Developer to perform the duties, liabilities and obligations imposed upon it hereunder. No other damages, rights or remedies shall in any case be collectible, enforceable or available to the City and the City agrees to accept and take such amount as its total damages and sole relief hereunder.

B. After closing on the Property, and subject to applicable lender notice and cure rights, and any Developer notice and cure rights, in the event this Agreement is terminated based on a default by Developer prior to completion of the Public Improvements and the Private Improvements, or in the event Developer fails to commence construction at the Property on or before July 1, 2016, Developer shall pay to the City:

1. an amount equal to all monies paid by the City for reimbursement to Developer pursuant to this Agreement,
2. the sum of \$1,700,000, representing the purchase price for the Property, and
3. any costs or sums incurred by the City in complying with its obligations under Section 2 of this Agreement,

together with interest at the Wall Street Journal prime rate plus one percent (1%), from the date of termination until paid.

C. In lieu of the reimbursement provided in Subsection B(ii) above, Developer shall have the option of paying the City a total of Two Hundred Thousand Dollars (\$200,000) and conveying the title to the real property described in Exhibit "A" of this Agreement to the City provided that it is free and clear of all liens and encumbrances other than utility and other easements which do not interfere with the development of the Property and returned to (or remains in) the condition it was in at the time the City conveyed it to Developer. Should the Developer fail to complete the parking garage, the excavation shall be filled with material approved by the Director of Engineering and the property regraded.

D. Subject to applicable lender notice and cure rights, and any Developer notice and cure rights, in the event of partial or total destruction of the Private Improvements at the Property subsequent to the Public Improvements and the Private Improvements being fully constructed in accordance with Sections 1(B)(1),(2),(3),(4),(5),(6),(7),(8),(9), and (10) that impairs the use of the parking spaces or lease space pursuant to Sections 1(B)(5) and (6) of the Agreement, the following shall be required of Developer:

1. If Developer reconstructs or repairs the Private Improvements at the Property, the Private Improvements shall be reconstructed or repaired to substantially the same condition as existed immediately before the damage or destruction and otherwise in accordance with the terms of the Agreement. Provided, however, Developer may alter the plan of the replacement Improvements to meet then current building methods and specific development needs and uses, and even change the configuration and access to the Public Improvements or the Private Improvements, so long as the City's practical utilization of the Parking Space Easement is not unreasonably impaired. Subject to availability of casualty insurance proceeds and the approval of the applicable lender, Developer shall commence reconstruction or repair of the Private Improvements at the Property within twelve (12) months of the destruction and

shall complete the Private Improvements at the Property and obtain a Certificate of Occupancy within twenty-four (24) months of the date of commencement of the reconstruction or repair, unless an extension of time is requested by Developer for good cause and agreed to by the City in writing, such agreement not to be unreasonably withheld. Beginning from the date of destruction and until the date of restoration of full and complete use of the parking spaces and lease space pursuant to Sections 1(B)(5) and (6) of this Agreement or until Developer makes payment or dedicates the Property to the City pursuant to Section 4(A) and 4(D)(2) below, Developer shall pay to the City a monthly fee equal to one percent (1%) of the appraised value of the real property as described in Exhibit "A" of this Agreement, excluding the value of any improvements thereon (minus the real property dedicated to the City as part of the Public Improvements pursuant to Section 1(B)(4) of the Agreement) as valued on the date of destruction to compensate the City for loss or impairment of use of its parking and/or lease space at the Property. Provision of one hundred twenty (120) surface parking spaces shall alleviate the requirement to pay a monthly one percent (1%) fee but only on an interim basis, not to exceed thirty six 36 months to allow time for the parking garage to be reconstructed or repaired.

2. If Developer decides against reconstruction or repair of the Private Improvements at the Property, or is unable to reconstruct the Private Improvements due to lack of insurance proceeds or lender consent, Developer shall pay the City, within 30 days of such determination, an amount equal to the appraised value of the real property described in Exhibit A to this Agreement as valued at the time of destruction of the Private Improvements but excluding the value of any improvements thereon (minus the real property dedicated to the City as part of the Public Improvements pursuant to Section 1(B)(4) of the Agreement) plus interest at the Wall Street Journal prime rate plus one percent (1%) from the date of the decision until paid. In lieu of reimbursement of the appraised value of the real property pursuant to this subsection, Developer shall have the option of conveying the title to the real property described in Exhibit A to the City provided that it is free and clear of all liens and encumbrances other than utility and other easements which do interfere with the development of the Property and returned to (or remains in) the condition it was in at the time the City conveyed it to Developer.

The provisions of this Subsection D shall be incorporated into the parking space easement.

E. Any appraised values to be determined pursuant to Section 4 of the Agreement shall be determined by an Independent MAI Appraiser selected by agreement of Developer and by the City. The parties shall bear the cost of the appraisal equally.

F. Any obligations required of Developer pursuant to this Section 4 of the Agreement are binding on any successors or assigns of Developer pursuant to Section 21 of the Agreement.

## **SECTION 5. FORCE MAJEURE**

It is expressly understood and agreed by the parties to this Agreement that if any date for performance hereunder, including the substantial completion of the construction of any 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 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 ("Force Majeure"), 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 substantial completion of the Development.

## **SECTION 7. AUTHORITY OF DEVELOPER**

Developer represents and warrants to the City that Developer is duly formed, validly existing and in good standing under the laws of the State of Delaware. Developer will provide a certificate of status from the Texas Secretary of State's office evidencing Developer's current legal status and authority to conduct business in Texas. Developer 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 Developer 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. Developer becomes delinquent on ad valorem taxes owed to the City, or any other Collin County taxing unit, provided that Developer 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.
3. 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 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. If the default is of such a nature that the same cannot be reasonably cured or remedied within said thirty (30) day period, the defaulting party shall in good faith have commenced the curing or remedying of such default

within such thirty (30) day period and shall thereafter diligently proceed therewith to completion. 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 thirty (30) days following notice.

#### **SECTION 10. BANKRUPTCY**

In the event Developer files for bankruptcy, whether involuntarily or voluntary, Developer shall provide written notice to the City within three (3) business days of such event.

#### **SECTION 11. INDEMNIFICATION**

**DEVELOPER 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 DEVELOPER'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 DEVELOPER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH DEVELOPER 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 SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR THE NEGLIGENCE OF ITS 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. DEVELOPER 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 DEVELOPER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. DEVELOPER 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 DEVELOPER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND DEVELOPER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.**

## **SECTION 12. AFFIDAVIT OF NO PROHIBITED INTEREST**

Developer 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. Developer has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "J".

## **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  
1520 Avenue K  
P. O. Box 860358  
Plano, Texas 75086-0358

If intended for Developer, to:  
14th and J, LLC  
c/o Southern Land Company, LLC  
1550 W. McEwen Drive, Suite 200  
Franklin, Tennessee 37067  
Attn: Brian Sewell

## **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 Developer is required, or whenever the City or Developer 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 Developer shall be by the CEO, CFO or President or any officer of Developer 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 Developer 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 Developer to remove any employee of Developer from the development of the Public Improvements who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Developer as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

## **SECTION 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 Developer and the Plano City Council, which approvals shall not be unreasonably withheld.

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

## **SECTION 22. 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 Developer 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 23. 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 \_\_\_\_\_, 2015, 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 \_\_\_\_\_, 2015, by Bruce D. Glasscock, City Manager, of **CITY OF PLANO, TEXAS**, a home rule municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

**14TH AND J, LLC, a Delaware limited liability company**

By: Southern Land Company, LLC,  
Its Manager

By: \_\_\_\_\_  
Brian S. Sewell, President

**STATE OF TENNESSEE**

**COUNTY OF WILLIAMSON**

Before me, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, personally appeared Brian S. Sewell, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of Southern Land Company, LLC, the Manager of 14th and J, LLC, a Delaware limited liability company, the within named bargainor, a limited liability company, and that he as such President, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as such President.

WITNESS my hand and seal at office, on this the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## **Exhibit List**

Exhibit A – Metes and Bounds Legal Description of Property

Exhibit B – Design and Concept Plan of Private Improvements

Exhibit C – List of Public Improvements

Exhibit D – Contractor's Affidavit of Final Payment

Exhibit E – Parking Garage Easement

Exhibit F – Contractor's and City's Insurance Requirements Checklist

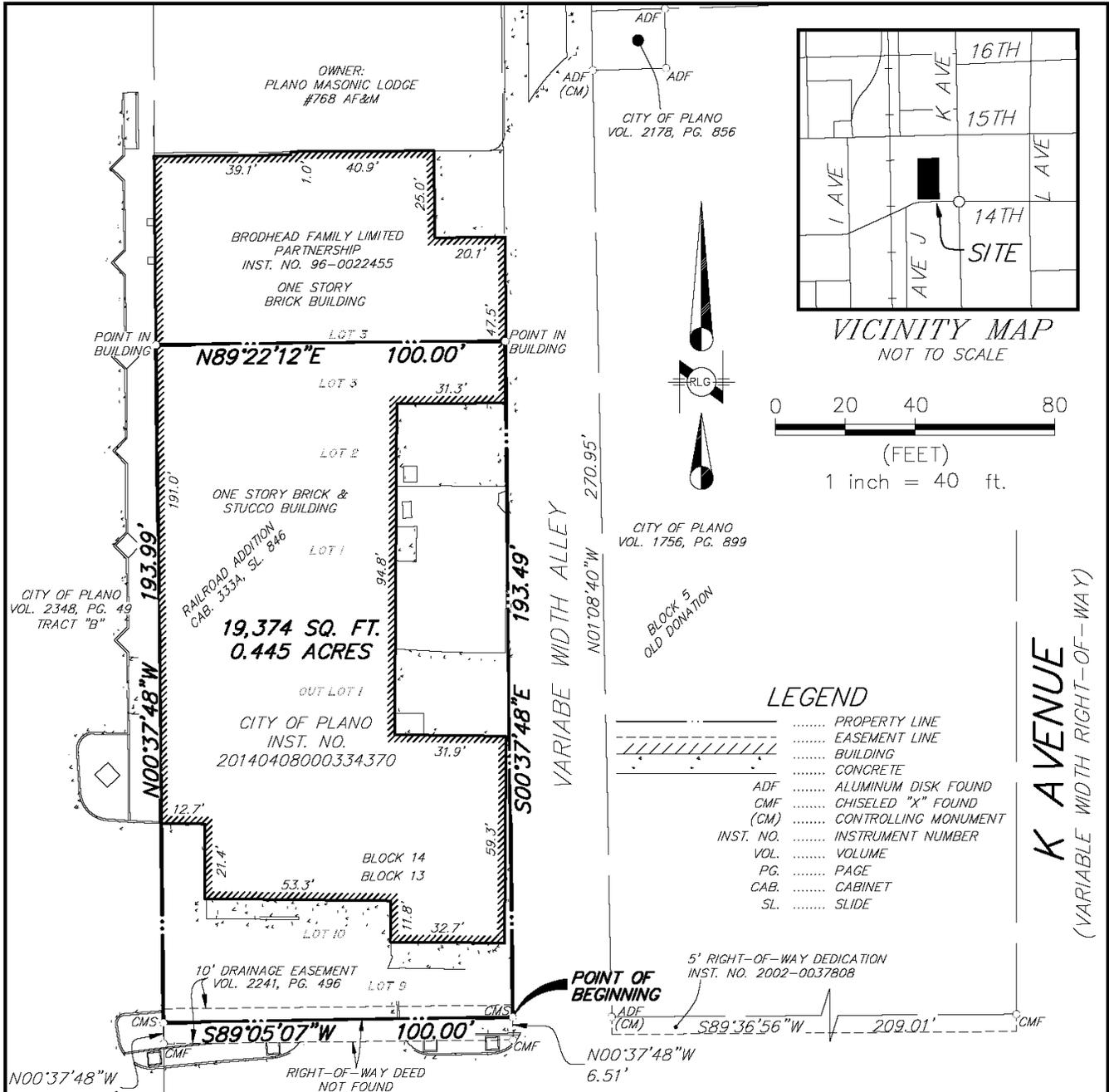
Exhibit G – Payment Bond

Exhibit H – Performance Bond

Exhibit I – Maintenance Bond

Exhibit J – Affidavit of No Prohibited Interest

EXHIBIT A



**14th STREET**  
(VARIABLE WIDTH RIGHT-OF-WAY)

**K AVENUE**  
(VARIABLE WIDTH RIGHT-OF-WAY)

Basis of Bearings: The north line of 14th Street ( $S89^{\circ}05'07''W$ ) per Texas Coordinate System of 1983, North Central Zone, based on the City of Plano Geodetic Control Monument No. 837.

Controlling Monuments: As shown.

RAYMOND L. GOODSON JR., INC.  
5445 LA SIERRA, STE 300, LB 17  
DALLAS, TX. 75231-4138  
214-739-8100  
rlg@rlginc.com  
TEXAS PE REG #F-493  
TBPLS REG #100341-00

**BOUNDARY SURVEY**  
**PART OF BLOCK 13 & 14**  
**RAILROAD ADDITION**  
**JOSEPH KLEPPER SURVEY, ABSTRACT NO. 213**  
**CITY OF PLANO, COLLIN COUNTY, TEXAS**

SCALE	1" = 40'	DATE	12/1/2015	SHEET	1 OF 2
JOB NO.	15142	E-FILE	15142bndy2	DWG NO.	26,274X

Being a tract or parcel of land situated in the Joseph Klepper Survey, Abstract No. 213, City of Plano, Collin County, Texas, being that tract of land conveyed to the City of Plano by Special Warranty Deed recorded in Instrument No. 20140408000334370, Deed Records, Collin County, Texas, and being all of Lots 1, 2, Out Lot 1 and part of Lot 3, Block 14, all of Lot 10 and part of Lot 9, Block 13 of Railroad Addition, an addition to the City of Plano according to the plat recorded in Cabinet 333A, Slide 846, Plat Records, Collin County, Texas, and being more particularly described as follows:

**BEGINNING** at a chiseled "X" in concrete set for corner in the east line of said Lot 9 and the west line of a variable width alley, said "X" being the southeast corner of said City of Plano tract and being North 00° 37' 48" West a distance of 6.51 feet from a chiseled "X" in concrete found at the southeast corner of said Lot 9;

**THENCE** South 89° 05' 07" West along the south line of said City of Plano tract a distance of 100.00 feet to a chiseled "X" in concrete set for corner in the west line of a tract of land (Tract "B") conveyed to the City of Plano by Warranty Deed recorded in Volume 2348, Page 49, Deed Records, Collin County, Texas, said "X" being the southwest corner of said City of Plano tract (20140408000334370) and being North 00° 37' 48" West a distance of 6.01 feet from a chiseled "X" in concrete found at the southwest corner of said Lot 9;

**THENCE** North 00° 37' 48" West along the common line between said City of Plano Tract "B" and said City of Plano tract (20140408000334370), passing at a distance of 63.09 feet the most westerly southwest corner of a one story brick & stucco building, continuing along said common line and generally along the face of said one story brick & stucco building, a total distance of 193.99 feet to a point for corner at the northwest corner of said one story brick & stucco building and the southwest corner of a one story brick building, said point being the northwest corner of said City of Plano tract (20140408000334370);

**THENCE** North 89° 22' 12" East, 20 feet north of and parallel to the south line of said Lot 3, generally along the seam between said one story brick & stucco building and said one story brick building, a distance of 100.00 feet to a point for corner in the east line of said Lot 3 and the west line of said alley, being the southeast corner of said one story brick building and the northeast corner of said one story brick & stucco building, said point being the northeast corner of said City of Plano tract (20140408000334370);

**THENCE** South 00° 37' 48" East along the east line of said City of Plano tract (20140408000334370) and the west line of said alley a distance of 193.49 feet to the **POINT OF BEGINNING** and containing square 19,374 feet or 0.445 acres, more or less.

**SURVEYOR'S DECLARATION**

I hereby declare that this true and accurate survey, made on the ground under my supervision on December 1, 2015, correctly shows the relation of the buildings and other structures to the property lines indicated hereon, and that there are no encroachments or overlaps onto adjoining property of property covered by this survey or of adjoining buildings or structures on said land except as shown, noted or described on the survey. This survey is subject to any easements not visible on the ground.

-----  
 Surveyor's Name, RPLS#

**PRELIMINARY, THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT.**

**BOUNDARY SURVEY  
 PART OF BLOCK 13 & 14  
 RAILROAD ADDITION**

**JOSEPH KLEPPER SURVEY, ABSTRACT NO. 213  
 CITY OF PLANO, COLLIN COUNTY, TEXAS**

RAYMOND L. GOODSON JR., INC.  
 5445 LA SIERRA, STE 300, LB 17  
 DALLAS, TX. 75231-4138  
 214-739-8100  
 rlg@rlginc.com  
 TEXAS PE REG #F-493  
 TBPLS REG #100341-00

SCALE	1" = 40'	DATE	12/1/2015	SHEET	2 OF 2
JOB NO.	15142	E-FILE	15142bndy2	DWG NO.	26,274X





VICINITY MAP  
NOT TO SCALE

CURVE TABLE					
CURVE	DELTA	RADIUS	LENGTH	CH. BRG.	CHORD
C1	86°32'28"	27.33'	41.28'	N42°48'57"E	37.47'
C2	33°42'09"	53.17'	31.27'	S77°03'45"E	30.82'
C3	31°10'16"	65.33'	35.54'	S75°47'48"E	35.11'
C4	30°17'11"	22.34'	11.81'	S75°47'04"E	11.67'

LEGEND

- ..... PROPERTY LINE
- ..... EASEMENT LINE
- ..... BUILDING
- ..... CONCRETE
- ADF ..... ALUMINUM DISK STAMPED "R-DELTA ENGINEERS" FOUND
- YCIRS ..... 1/2" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "RLG INC" SET
- IRF ..... IRON ROD FOUND
- CMS / CMF ..... CHISELED "X" SET / FOUND
- (CM) ..... CONTROLLING MONUMENT
- INST. NO. .... INSTRUMENT NUMBER
- VOL. .... VOLUME
- PG. .... PAGE
- CAB. .... CABINET
- SL. .... SLIDE

Basis of Bearings: The west line of K Avenue (S01°00'22"E) per Texas Coordinate System of 1983, North Central Zone, based on the City of Plano Geodetic Control Monument No. 837.

Controlling Monuments: As shown.

**BOUNDARY SURVEY**  
**PART OF BLOCK 5, OLD DONATION**  
**JOSEPH KLEPPER SURVEY, ABSTRACT NO. 213**  
**CITY OF PLANO, COLLIN COUNTY, TEXAS**

RAYMOND L. GOODSON JR., INC.  
5445 LA SIERRA, STE 300, LB 17  
DALLAS, TX. 75231-4138  
214-739-8100  
rlg@rlginc.com  
TEXAS PE REG #F-493  
TBPLS REG #100341-00

SCALE	1" = 40'	DATE	12/1/2015	SHEET	2 OF 3
JOB NO.	15142	E-FILE	15142bndy1	DWG NO.	26,273X

Being a tract or parcel of land situated in the Joseph Klepper Survey, Abstract No. 213, City of Plano, Collin County, Texas, being a part of Block 5, Old Donation, an addition to the City of Plano, and being a portion of that tract of land conveyed to the City of Plano by Special Warranty Deed recorded in Volume 1756, Page 899, Deed Records, Collin County, Texas, Deed Records, Collin County, Texas, and being more particularly described as follows:

**BEGINNING** at a chiseled "X" found at the intersection of the west line of K Avenue (a variable width right-of-way) and the north line of 14th Street (a variable width right-of-way) said "X" being the northeast corner of that right-of-way dedication recorded in Instrument No. 2002-0037808, Deed Records, Collin County, Texas;

**THENCE** South 89° 36' 56" West along the north line of said 14th Street and the north line of said right-of-way dedication a distance of 209.01 feet to an aluminum disk found at the intersection of the north line of said 14th Street and the east line of a variable width alley;

**THENCE** North 01° 08' 40" West, departing the north line of said 14th Street, along the east line of said variable width alley, a distance of 187.44 feet to a 1/2" iron rod with yellow plastic cap stamped "RLG INC" set for corner;

**THENCE** over and across said City of Plano tract the following courses and distances:

North 03° 21' 23" East a distance of 21.05 feet to a 1/2" iron rod with yellow plastic cap stamped "RLG INC" set for corner;

North 00° 27' 17" West a distance of 23.34 feet to a 1/2" iron rod with yellow plastic cap stamped "RLG INC" set for corner at the beginning of a tangent curve to the right;

In a northeasterly direction along said tangent curve to the right whose chord bears North 42° 48' 57" East a distance of 37.47 feet, having a radius of 27.33 feet, a central angle of 86° 32' 28" and an arc length of 41.28 feet to a chiseled "X" in concrete set for corner at the end of said tangent curve to the right;

North 86° 05' 11" East a distance of 25.05 feet to a 1/2" iron rod with yellow plastic cap stamped "RLG INC" set for corner at the beginning of a tangent curve to the right;

In a southeasterly direction along said tangent curve to the right whose chord bears South 77° 03' 45" East a distance of 30.82 feet, having a radius of 53.17 feet, a central angle of 33° 42' 09" and an arc length of 31.27 feet to a chiseled "X" in concrete set for corner at the end of said tangent curve to the right;

South 60° 12' 40" East a distance of 21.68 feet to a 1/2" iron rod with yellow plastic cap stamped "RLG INC" set for corner at the beginning of a tangent curve to the left;

In a southeasterly direction along said tangent curve to the left whose chord bears South 75° 47' 48" East a distance of 35.11 feet, having a radius of 65.33 feet, a central angle of 31° 10' 16" and an arc length of 35.54 feet to a 1/2" iron rod with yellow plastic cap stamped "RLG INC" set for corner at the end of said tangent curve to the left;

North 88° 37' 04" East a distance of 62.98 feet to a 1/2" iron rod with yellow plastic cap stamped "RLG INC" set for corner at the beginning of a non-tangent curve to the right;

In a southeasterly direction along said non-tangent curve to the right whose chord bears South 75° 47' 04" East a distance of 11.67 feet, having a radius of 22.34 feet, a central angle of 30° 17' 11" and an arc length of 11.81 feet to a 1/2" iron rod with yellow plastic cap stamped "RLG INC" set for corner on the west line of said K Avenue, being the end of said non-tangent curve to the right;

**THENCE** South 01° 00' 22" East along the west line of said K Avenue a distance of 231.95 feet to the **POINT OF BEGINNING** and containing 51,151 square feet or 1.174 acres, more or less.

**SURVEYOR'S DECLARATION**

I hereby declare that this true and accurate survey, made on the ground under my supervision on December 1, 2015, correctly shows the relation of the buildings and other structures to the property lines indicated hereon, and that there are no encroachments or overlaps onto adjoining property of property covered by this survey or of adjoining buildings or structures on said land except as shown, noted or described on the survey. This survey is subject to any easements not visible on the ground.

*"Preliminary, this document shall not be recorded for any purpose and shall not be used or viewed upon as a final survey document."*

Surveyor's Name, RPLS#

**BOUNDARY SURVEY  
PART OF BLOCK 5, OLD DONATION  
JOSEPH KLEPPER SURVEY, ABSTRACT NO. 213  
CITY OF PLANO, COLLIN COUNTY, TEXAS**

RAYMOND L. GOODSON JR., INC.  
5445 LA SIERRA, STE 300, LB 17  
DALLAS, TX. 75231-4138  
214-739-8100  
rlg@rlginc.com  
TEXAS PE REG #F-493  
TBPLS REG #100341-00

SCALE	1" = 40'	DATE	12/1/2015	SHEET	3 OF 3
JOB NO.	15142	E-FILE	15142bndy1	DWG NO.	26,273X

## **EXHIBIT B**

### **DESIGN AND CONCEPT PLAN OF PRIVATE IMPROVEMENTS**

14<sup>th</sup> and J, LLC will construct a mixed-use development consisting of approximately 200,000 square feet of gross floor area, including not less than 175 residential units (including live/work/flex space suitable for residential and non-residential occupancy) and a minimum of 12,800 square feet of floor space for non-residential occupancy. The development will include a parking garage containing not less than 120 spaces secured by easement for public parking purposes, of which none may be counted in meeting the parking requirements for the project. The project will be five stories above grade. The exterior of the building will be masonry, primarily brick, exterior plasters, concrete, stone and cementitious lap siding, with the exception of doors, windows and trim.

14<sup>th</sup> and J, LLC must obtain site plan and plat approval as required by the City's regulations, in addition to a Certificate of Appropriateness for the part of the development that lies within the Downtown Plano Heritage District.

## **EXHIBIT C**

### **LIST OF PUBLIC IMPROVEMENTS**

Demolition and Abatement of existing structures  
Storm sewer and drainage facilities  
Water and Wastewater Utility Lines  
Paving  
Street Lighting  
Landscaping and Street Trees in Public Rights-of-Way  
Sidewalks and related hardscape  
On-street Parking Spaces

**EXHIBIT D**

**CONTRACTOR'S AFFIDAVIT  
CLAIMS AGAINST THE CITY OF PLANO**

**STATE OF TEXAS**                    §  
   §  
**COUNTY OF \_\_\_\_\_**           §

Before me the undersigned authority, on this day personally appeared \_\_\_\_\_ ("Affiant") who, after being duly sworn by me, deposes and says:

I am the \_\_\_\_\_ (Title) of \_\_\_\_\_ (name of business), a \_\_\_\_\_ (State) \_\_\_\_\_ (i.e. corporation/sole proprietorship/limited partnership/limited liability company) of \_\_\_\_\_ (county), \_\_\_\_\_ (city), Texas (hereinafter "Contractor"). Contractor was awarded the contract dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the City of Plano for the construction of the project designated as \_\_\_\_\_ (hereinafter "Contract"). All work under such contract has been satisfactorily completed and Contractor certifies that Contractor has not received notice, whether verbally or in writing, of any outstanding claim(s) or potential claim(s) for damages, including but not limited to claims for personal injury or property damage, against the Contractor, or its subcontractors, agents, or assigns, or the City of Plano arising out of, resulting from, or related to the Contract. If any such claims or potential claims are pending, they are identified as follows:

Name of Claimant	Date of Claim	Nature of Claim

All claims not listed above have been resolved and a full release has been executed thereby releasing the City of Plano of all liability as required by Section 1.24.3 of the City of Plano Special Provisions to North Central Texas Council of Governments Standard Specification for Public Works Construction, as amended. An original of any and all such release(s) is attached hereto.

\_\_\_\_\_  
Signature and Title

**SWORN TO AND SUBSCRIBED** before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas



## EXHIBIT E

### PARKING EASEMENT AGREEMENT

This PARKING EASEMENT AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 2016, by and between 14TH AND J, LLC, a Delaware limited liability corporation ("Grantor") and the CITY OF PLANO, TEXAS ("Grantee").

#### RECITALS

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

WHEREAS, on \_\_\_\_\_, Grantee conveyed the Development Tract to Grantor in connection with a Development Agreement dated \_\_\_\_\_ and attached hereto as Exhibit "B" and incorporated herein by reference (the "Development Agreement") requiring Grantor'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 Grantor from Grantee included Grantor's agreement to grant Grantee an Easement as further described herein.

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

1. Definitions. When used in this Agreement, the following terms shall have the meanings set forth below for such terms:

"Parking Spaces" shall mean 120 parking spaces in the location designated by Grantor, which, after construction of the Parking Structure, will be located in the Parking Structure, will begin with the first space(s) in the at-grade level of the Parking Structure, and will be outside of any security gates delineating parking for the Development's tenants.

"Parking Structure" shall mean the parking garage constructed by Grantor on the Development Tract in connection with the execution of the Development Agreement.

"Parties" shall mean Grantor, and its successors in fee simple ownership of any portion of the Development Tract, and Grantee, each being sometimes referred to individually as a "Party".

2. Easement. Grantor hereby grants and conveys to Grantee, for the exclusive use of Grantee, a perpetual easement (the "Easement") for (a) the parking of motor vehicles within the Parking Spaces, and (b) non-exclusive pedestrian and motor vehicle ingress and egress to and from the Parking Spaces, over and across the driveways, parking ramps, walkways, elevators and stairways from time to time constructed (as the same may be relocated by Grantor from time to time) on the Development Tract that are reasonably necessary to permit vehicular and pedestrian access to and from the Parking Spaces, subject to the terms and conditions of this Agreement. The easements granted herein shall not take effect until the substantial completion of construction of the Parking Structure in accordance with the Development Agreement.

3. Limited Purpose. Nothing contained herein is intended nor shall it be construed as creating any rights in or for the benefit of the general public. Notwithstanding the foregoing, the Easement may be used by Grantee for general public parking and municipal purposes and for no other use whatsoever without the prior written consent of Grantor, which consent may be withheld in Grantor's sole and absolute discretion. Grantee shall have the right to enact and enforce time restrictions or other regulations for the Parking Spaces. Grantee may not lease or assign the Parking Spaces for a commercial enterprise.
4. Maintenance Obligations. Upon completion of the Parking Structure, Grantor shall maintain the Parking Structure for its intended purpose in good condition and repair, in accordance with the standards necessary to comply with all applicable laws, codes, and ordinances. Such responsibilities shall include, without limitation, sweeping, cleaning, repairing, restriping and lighting the parking and drive areas of the Parking Structure, providing sump pump and other storm water drainage systems, maintenance of the Parking Structure's electrical components, and payment of all utilities and other charges related to the operation of the Parking Structure. During any time period that the Parking Spaces consist of alternative parking spaces on the Development Tract or in proximity thereto, as otherwise described herein, Grantor shall have the above-described repair and maintenance responsibilities with respect to provided parking spaces; provided, however, that if the alternative parking spaces are located on property not owned by Grantor, then Grantor's repair and maintenance obligations will be pursuant to any agreement between Grantor and the owner or controller of such property.
5. Easement Runs with the Land. The covenants of Grantor contained herein shall run with and follow the land with regard to the fee simple ownership of the land contained within the Development Tract and shall be binding upon the heirs, executors, successors and assigns of Grantor. The Easement may be assigned by Grantor or its heirs, executors, successors and assigns only with the prior written consent of the Parties. The Easement is personal to Grantee and may not be further assigned by Grantee without Grantor's prior written consent.
6. Casualty, Renovations, Repairs and Rebuilding. If at any time the Parking Structure (or any part thereof) shall be (i) destroyed, in whole or in part, (ii) damaged by fire or other casualty, (iii) closed for renovations for a period in excess of sixty (60) days, or (iv) rebuilt, at Grantor's election, the following shall be required of Grantor:
  - A. In the event of damage or casualty, if Grantor reconstructs or repairs the Parking Structure, the Parking Structure shall be reconstructed or repaired to substantially the same condition as existed immediately before the damage or destruction and otherwise in accordance with the terms of the Development Agreement, provided, however, Grantor may alter the plan of the replacement Parking Structure to meet then current building methods and specific development needs and uses, and even change the configuration and access to the Parking Structure, so long as the Grantee's practical utilization of the Parking Spaces is not unreasonably impaired. Subject to availability of casualty insurance proceeds and the approval of the applicable lender, Grantor shall commence reconstruction or repair of the Parking Structure within twelve (12) months of the destruction and shall complete the Parking Structure and obtain a Certificate of Occupancy within twenty-four (24) months of the date of

commencement of the reconstruction or repair, unless an extension of time is requested by Grantor for good cause and agreed to by the Grantee in writing, such agreement not to be unreasonably withheld. Beginning from the date of destruction and until the date of restoration of full and complete use of the Parking Spaces or until Grantor makes payment or dedicates property to Grantee pursuant to the provisions of the Development Agreement, Grantor shall pay to the Grantee a monthly fee equal to one percent (1%) of the appraised value of the real property as described in Exhibit "A" of the Development Agreement, excluding the value of any improvements thereon (minus the real property dedicated to the Grantee as provided in the terms of the Development Agreement), as valued on the date of destruction to compensate Grantee for loss or impairment of use of its parking and/or lease space at the Property. Provision of one hundred twenty (120) surface parking spaces shall alleviate the requirement to pay a monthly one percent (1%) fee but only on an interim basis, not to exceed thirty six 36 months to allow time for the Parking Structure to be reconstructed or repaired.

- B. If Grantor decides against reconstruction or repair of the Parking Structure or to raze the Parking Structure, or is unable to reconstruct the Parking Structure due to lack of insurance proceeds or lender consent, Grantor shall pay Grantee, within thirty (30) days of such determination, an amount equal to the appraised value of the real property described in Exhibit A to the Development Agreement as valued at the time of destruction of the Parking Structure, excluding the value of any improvements thereon (minus the real property dedicated to Grantee as part of the Public Improvements pursuant to the terms of the Development Agreement), plus interest at the Wall Street Journal prime rate plus one percent (1%) from the date of the decision until paid. Upon payment of the appraised value of the real property to Grantee, Grantee shall terminate the Easement and this Agreement. In lieu of reimbursement of the appraised value of the real property pursuant to this subsection, Grantor shall have the option of conveying the title to the real property described in Exhibit A to Grantee provided that it is free and clear of all liens and encumbrances and returned to (or remains in) the condition it was in at the time Grantee conveyed it to Grantor.
- C. In the event it is necessary for Grantor to close the Parking Structure in excess of sixty (60) days for renovations or repairs, or in the event Grantor elects to rebuild the Parking Structure, the Parking Structure shall be renovated, repaired or rebuilt in accordance with the terms of the Development Agreement, provided, however, Grantor may alter the plan of the renovated, repaired or rebuilt Parking Structure to meet then current building methods and specific development needs and uses, and even change the configuration and access to the Parking Structure, so long as the Grantee's practical utilization of the Parking Spaces is not unreasonably impaired. Grantor shall complete any renovations, repairs or rebuilding of the Parking Structure and obtain a Certificate of Occupancy within twenty-four (24) months of the date of commencement of the renovations, repairs or rebuilding, unless an extension of time is requested by Grantor for good cause and agreed to by the Grantee in writing, such agreement not to be unreasonably withheld. Beginning thirty (30) days after the date Grantee is unable to use the Easement because of renovations, repairs or rebuilding of the Parking Structure by Grantor, and until

the date of restoration of full and complete use of the Parking Spaces or until Grantor makes payment or dedicates property to Grantee pursuant to the provisions of the Development Agreement, Grantor shall pay to the Grantee a monthly fee equal to one percent (1%) of the appraised value of the real property as described in Exhibit "A" of the Development Agreement, excluding the value of any improvements thereon (minus the real property dedicated to the Grantee as provided in the terms of the Development Agreement), as valued on the date Grantor commenced renovations, repairs or rebuilding of the Parking Structure, to compensate Grantee for loss or impairment of use of its parking and/or lease space at the Property. Provision of one hundred twenty (120) surface parking spaces shall alleviate the requirement to pay a monthly one percent (1%) fee but only on an interim basis, not to exceed thirty six (36) months to allow time for the Parking Structure to be renovated, repaired or rebuilt.

7. Rules and Regulations. Grantor reserves the right to ticket, demobilize, or tow at the owner's expense any vehicle parked on the Development Tract, other than in the Parking Spaces, in violation of the terms hereof or in violation of the rules and regulations imposed by Grantor upon other parkers on the Development Tract.
8. Non-Exclusive Rights. The easements and other rights and benefits herein created are not exclusive, except to the extent of the parking rights with respect to the Parking Spaces, and Grantor expressly reserves the right, without the need to obtain the consent of Grantee, to grant such other easements, rights, benefits, or privileges to such persons and for such purposes as Grantor, in its sole and absolute discretion, may elect, so long as such grant does not unreasonably interfere with the easements and other rights and benefits granted herein.
9. 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 construction financing or permanent financing by the original Grantor herein in connection with the Development Tract, subject to Grantee's right to compensation in Section 6 of this Agreement in the event of damage, destruction or failure of performance. This Agreement, as well as the easements, rights, benefits and obligations created thereby, is not subordinated to any other mortgage or deed of trust absent a separate written agreement memorializing same, and the easements, rights, benefits and obligations created by this Agreement shall not be otherwise extinguished or impaired. Grantee agrees to promptly execute any additional agreements reasonably required in order to effect or confirm such subordination subject to Grantee's right to compensation in Section 6 of this Agreement in the event of damage, destruction or failure of performance.
10. Notices. All notices, demands, or other communications of any type (herein collectively referred to as "Notices") given under this Agreement shall be void and of no effect unless given in accordance with the provisions of this Section 10. All notices shall be in writing and delivered to the person to whom the notice is directed, either in person (provided that such deliver is confirmed by the courier delivery service), or by nationally recognized expedited delivery services, with proof of delivery, or by United States Mail, postage prepaid, as a Registered or Certified item, Return Receipt Requested. Notices delivered by personal delivery shall be deemed to have been given at the time of such delivery, notices delivered by mail shall be effective when

deposited in a Post Office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed, and notice by expedited delivery service shall be deemed to have been given on the day deposited with such delivery service, and addressed as provided below. Notice may additionally be provided by facsimile transmission or by digital scan so long as a copy of such notice is simultaneously forwarded by one of the other means described above.

The proper address for Grantor is as follows:

14th and J, LLC  
c/o Southern Land Company, LLC  
1550 W. McEwen Drive, Suite 200  
Franklin, Tennessee 37067  
Attention: President

The proper address for Grantee is as follows:

The City of Plano  
1520 K Avenue  
Plano, TX 75074  
Attention: City Manager

Any Party hereto may change the address for notice specified above by giving the other party ten (10) days advance written notice of such change of address in the manner provided above. In the event that any Party to this Agreement should sell, convey, or otherwise assign its rights under this Agreement or its fee ownership interest in any part of the Development Tract, it must provide the other Party ten (10) days advance written notice of such change and provide the address of the individual or entity to whom such sale, conveyance, or other assignment is to be made.

11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
12. 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 within.
13. Entire Agreement. This Agreement embodies the entire agreement between the parties relating to the subject matter hereof, supersedes all prior agreements and understandings, if any, relating to the subject matter hereof.
14. Amendment; Termination. This Agreement and the easements granted hereunder may be terminated or amended by an instrument in writing executed jointly by all of the owner(s) of the Development Tract and Grantee and recorded in the Real Property Records of Collin County, Texas.

15. Miscellaneous. A waiver or breach or breaches, default or defaults hereunder shall not be construed to be a continuing waiver of any such breach or default, nor as a waiver of or permission, express or implied, for any subsequent breach or default.

IN WITNESS WHEREOF, this Agreement has been executed and delivered effective as of the day and year first above written.

**GRANTOR:**

14th and J, LLC  
a Delaware limited liability corporation

By: Southern Land Company, LLC,  
Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TENNESSEE  
COUNTY OF WILLIAMSON

Before me, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, personally appeared Brian S. Sewell, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of Southern Land Company, LLC, the Manager of 14th and J, LLC, a Delaware limited liability company, the within named bargainor, a limited liability company, and that he as such President, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as such President.

\_\_\_\_\_  
Notary Public – State of Tennessee

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary Public

**GRANTEE:**

THE CITY OF PLANO, TEXAS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This instrument was ACKNOWLEDGED before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Bruce D. Glasscock, City Manager, of **CITY OF PLANO, TEXAS**, a home rule municipal corporation, on behalf of said city.

\_\_\_\_\_  
Notary Public – State of Texas

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary Public

## EXHIBIT F

### 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 G**

**PAYMENT BOND**

**STATE OF TEXAS**

§

**KNOW ALL MEN BY THESE PRESENTS:**

**COUNTY OF COLLIN**

§

§

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: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.



**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 I**

**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: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 J

### 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\_\_.

\_\_\_\_\_