

AFTER RECORDING, RETURN TO:

City Secretary  
City of McKinney  
P.O. Box 517  
222 N. Tennessee Street  
McKinney, Texas 75069

**City of McKinney, Texas**  
**FACILITIES AGREEMENT**  
*(Defer Construction of Required Improvements)*

***Parcel 1017-1018 Addition***

THIS AGREEMENT, entered into effective the 1st day of March, 2014, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **CPF ENTERPRISES, INC.**, a Texas Corporation, whose address is 4868 Normandy Drive, Frisco, Texas 75034, ("DEVELOPER") witnesseth that:

WHEREAS, the Subdivision Regulations of the City of McKinney, Texas contained in Chapter 142 of the Code of the City of McKinney, Texas (the "Subdivision Regulations") establish procedures and standards for the development and subdivision of real estate and for the surveying and platting thereof, requiring the installation of adequate public facilities to serve the subject property and providing penalties for violations, among other things; and

WHEREAS, Section 142-76(b)(10) of the Subdivision Regulations requires the execution of a Facilities Agreement prior to the issuance of a Development Permit for the clearing, grading, filling, dredging, or construction of public streets, utilities, or drainage, or other improvements which may affect adjacent or surrounding properties in certain circumstances described in Section 142-37 of the Subdivision Regulations, as amended; and

WHEREAS, the development of the subdivision to be known as **Parcel 1017-1018 Addition** involves certain pro rata payments, city participation in cost, escrow deposits or other future considerations, and/or other nonstandard development regulations, that trigger the requirement for a Facilities Agreement by and between the CITY and the DEVELOPER in accordance with Section 142-37 of the Subdivision Regulations, as amended; and

WHEREAS, the Subdivision Regulations also prohibit recording the Final Plat of a subdivision within the incorporated area of the City until the DEVELOPER has completed all of the public facilities required to serve the property being developed that must be dedicated to the City ("Public Improvements") or

has entered into a Facilities Agreement and guaranteed to the satisfaction of the CITY such improvements will be installed; and

WHEREAS, CITY entered into a Facilities Agreement with DEVELOPER's predecessor-in-interest in the "Property," as that term is hereinafter defined, (Developer's Predecessor") dated on or about March 19, 2008, to allow the recording of the Record Plat of the **Parcel 1017-1018 Addition** (the "Plat") prior to the completion and acceptance of the Public Improvements required to serve the subdivision and which Public Improvements are identified in attached Exhibits "B" and "C" (the "Required Improvements"); and

WHEREAS, Developer's Predecessor posted a letter of credit in the amount One Hundred Sixty Thousand Nine Hundred Fifty-Three and Forty-Two/One Hundredths Dollars (\$160,953.42) in favor of the CITY as assurance that the Required Improvements would be constructed in accordance with the terms and provisions of the March 19, 2008, Facilities Agreement"; and

WHEREAS, Developer's Predecessor defaulted on the March 19, 2008, Facilities Agreement with the CITY and the City made presentment upon the letter of credit and collected the proceeds of such letter of credit (the "Default Proceeds"); and

WHEREAS, DEVELOPER plans to complete development of the Property including the completion and acceptance of the Required Improvements that Developer's Predecessor failed to timely construct and install; and

WHEREAS, DEVELOPER has requested that the CITY allow DEVELOPER to utilize the Default Proceeds to offset the costs of constructing and installing the Required Improvements defaulted upon by Developer's Predecessor; and

WHEREAS, DEVELOPER has agreed to pay, at its sole cost and expense, any and all amounts in excess of the Default Proceeds that may be required for the completion and acceptance of the Required Improvements; and

WHEREAS, DEVELOPER agrees that the Required Improvements identified in attached Exhibits "B" and "C" will be installed under the guarantees provided to the CITY as set forth herein.

NOW THEREFORE, in consideration of the intent and desire of the DEVELOPER, as set forth herein, and to gain approval of the CITY to record said Plat, the DEVELOPER and CITY agree as follows:

#### A. PROPERTY

This Agreement is for Property located in the City of McKinney, on and about the southeastern quadrant of Eldorado Parkway and Stonebridge Drive in

Stonebridge Ranch containing approximately 6.75 acres of land, more fully described in Exhibit A attached hereto and fully incorporated herein by reference (the "Property").

## B. PUBLIC IMPROVEMENTS

DEVELOPER agrees to complete the Required Improvements for the subdivision to be known as **Parcel 1017-1018 Addition** within one (1) year(s) from and after the date of this Agreement, unless required sooner as provided herein below in this Agreement and the attached Exhibits, according to the construction plans regarding the construction of Required Improvements for said subdivision, which construction plans are on file with and approved by the City Engineer (the "Plans").

Nothing contained in this Agreement is intended to waive, nor shall it be interpreted as waiving, DEVELOPER's obligation to provide all Public Improvements, including utilities, drainage easements, sidewalks, street lighting, street signage, park land dedication and all other required improvements and dedications, at no cost to CITY, in accordance with the CITY's Subdivision Ordinance and as approved by CITY Engineer, prior to issuance of any Certificate of Occupancy. Any required engineering studies, plan/profile sheets, and other construction documents shall be provided by DEVELOPER as required by the Subdivision Ordinance. Such plans shall be approved by CITY Engineer or his agent prior to the issuance of a Development Permit.

### 1. THOROUGHFARES

Nothing contained in this Agreement is intended to waive, nor shall it be interpreted as waiving, DEVELOPER's obligation to: (a) dedicate, as a part of the Public Improvements and at no cost to CITY, that amount of right-of-way along perimeter roadways adjacent to the PROPERTY (as reflected on the plat heretofore approved by the CITY) which dedication will yield one-half (½) of the ultimate right-of-way width that is not already dedicated by plat or legal instrument as road right-of-way at such time as the PROPERTY is platted or developed, or upon receipt of the written request of the CITY's Engineer; and (b) dedicate all right-of-way for the interior streets serving the PROPERTY at the time of development. Specific uses may require additional right-of-way dedication at the time of site plan approval.

Nothing contained in this Agreement is intended to waive, nor shall it be interpreted as waiving, DEVELOPER's obligation to construct, as part of the Public Improvements and at no cost to CITY, roadway improvements in accordance with the CITY's Subdivision Ordinance and Street Design Standards then in effect. No Roadway Improvements are being deferred by this Agreement.

## 2. UTILITIES

DEVELOPER shall dedicate all easements and construct, at no cost to CITY, all necessary utility lines specifically including, but not limited to, any necessary off-site and oversize utility improvements to provide service to the PROPERTY in accordance with CITY standards, at such time as demand of the development on the PROPERTY requires or concurrent with the development of the PROPERTY, as determined by CITY. DEVELOPER shall construct all necessary utility lines to serve the interior of the PROPERTY; said lines shall be at least eight inches (8") in diameter or larger as demand of the development on the PROPERTY requires. All utility plans and improvements are subject to the approval of CITY's Engineer. The Utility Improvements that are being deferred by this Agreement to allow the early recording of the Record Plat are described on the attached Exhibit C, which is fully incorporated herein by reference.

## 3. HIKE AND BIKE TRAILS

Nothing contained in this Agreement is intended to waive, nor shall it be interpreted as waiving, DEVELOPER's obligation to dedicate the easement or right-of-way for and construct, at no cost to the CITY, all required concrete hike and bike trail improvements in accordance with the CITY's Subdivision Ordinance and Master Trail Plan and subject to review and approval by the Director of Parks and Recreation.

## C. PERFORMANCE BOND; LETTER OF CREDIT

1. The DEVELOPER, in accordance with the requirements established by the Subdivision Ordinance of the CITY and this Agreement, tenders to the CITY a guarantee of surety, specifically identified as: Bond for Water, Sanitary Sewer, and Storm Sewer Improvements for the **Parcel 1017-1018 Addition** ("Required Improvements"), in the amount of Eighty-Seven Thousand Seven Hundred Forty-Nine Dollars and Forty-One Cents (\$87,749.41), **Bond No.** \_\_\_\_\_ **dated** \_\_\_\_\_, 20\_\_\_\_, with \_\_\_\_\_ (*Insurance Company Name*), as Surety, by order of the CITY, a copy of which is attached hereto as Exhibit D and fully incorporated herein by reference.

In the alternative, DEVELOPER may provide a standby Letter of Credit ("LOC") issued by a state or national banking association acceptable to CITY in an amount equal to Eighty-Seven Thousand Seven Hundred Forty-Nine Dollars and Forty-One Cents (\$87,749.41), which shall be in the form attached hereto as Exhibit D, assuring completion of the Required Improvements prior to the issuance of any Certificate of Occupancy for any Lot within the Property.

The only requirements for presentment of any Bond or LOC accepted hereunder by CITY shall be the presentation of the original thereof, together with an affidavit executed by the City Manager stating that DEVELOPER is in default under the terms of this Agreement. CITY shall require a local banking association to be named as a confirming bank for purposes of presentment and collection. **The Bond and/or LOC shall be returned to DEVELOPER upon CITY's acceptance of the Required Improvements.** The amount of the Bond or LOC pursuant to this Agreement was computed as follows: The total cost of constructing the Required Improvements as reflected in the construction contract between DEVELOPER and a contractor, a copy of which contract is attached hereto as Exhibit E and fully incorporated herein by reference, (the "Construction Contract") plus at least twenty percent (20%) of the Construction Contract cost, such additional amount to cover unexpected or incidental costs of completion, including administrative expenses and less the amount of the Default Proceeds. The Construction Contract shall be assigned to City, as security only, by Contractor's execution hereafter which assignment, attached hereto as Exhibit F, shall grant the City rights, but not obligations thereunder, to require the Contractor's performance under the Construction Contract.

2. In the event the DEVELOPER shall fail or neglect to fulfill its obligations under this Agreement and as required by the Subdivision Ordinance, the DEVELOPER as Principal, and the Guarantor of Surety on the Bond shall be liable to pay for the cost of construction and installation of the Required Improvements, including but not limited to, engineering, legal, administrative and contingent costs together with any damages, either direct or consequential, which the CITY may sustain as a result of the failure of the DEVELOPER to carry out and execute all of the provisions of this Agreement and the provisions of the Subdivision Ordinance.
3. The DEVELOPER and the Surety further jointly and severally agree that the CITY, at its option, shall have the right to enter upon DEVELOPER'S property and construct and install, or pursuant to public advertisement and receipt of bids, cause to be constructed and installed the Required Improvements in the event the DEVELOPER fails or refuses to do so in accordance with the terms of the Agreement. The DEVELOPER shall be liable hereunder to reimburse the CITY the total cost to complete the Required Improvements plus such other and further costs and expenses enumerated in Paragraph 2 herein above. The Surety shall be liable in the amount of the Bond attached hereto.
4. If the DEVELOPER provides a LOC rather than a Bond then the DEVELOPER shall be solely liable to pay for the cost of construction and installation of the Required Improvements, including but not limited to,

engineering, legal, administrative and contingent costs together with any damages, either direct or consequential, which the CITY may sustain as a result of the failure of the DEVELOPER to carry out and execute all of the provisions of this Agreement and the provisions of the Subdivision Ordinance. The DEVELOPER further agrees that the CITY, at its option, shall have the right to enter upon DEVELOPER'S property and construct and install, or pursuant to public advertisement and receipt of bids, cause to be constructed and installed the Required Improvements in the event the DEVELOPER fails or refuses to do so in accordance with the terms of the Agreement. The DEVELOPER shall be liable hereunder to reimburse the CITY the total cost to complete the Required Improvements plus such other and further costs and expenses enumerated in this Paragraph. The DEVELOPER shall be entitled to an offset or credit against the costs and expenses enumerated herein for any amount of money paid to the CITY by a financial institution upon presentment, if any, of the LOC.

5. The DEVELOPER agrees to renew the Guaranty of Surety and Bond prior to its expiration so the Guaranty of Surety and Bond shall remain in full force and effect during the entire term of this Agreement, including any extension. If DEVELOPER provides a LOC in lieu of or in addition to the Guaranty of Surety and Bond, DEVELOPER agrees to renew the LOC prior to its expiration so the LOC shall remain in full force and effect during the entire term of this Agreement, including any extension. Upon renewal, the amount of the Bond and/or LOC shall be in its original amount or such lesser amount equal to the sum agreed to by the CITY's Engineer, such amount being sufficient to complete the remaining Required Improvements plus at least twenty percent (20%) of the then remaining construction amount.
6. DEVELOPER shall provide the CITY evidence that the Guaranty of Surety and Bond or LOC has been renewed at least thirty (30) days prior to its scheduled expiration date. If DEVELOPER fails to timely provide CITY with such verification of renewal CITY shall be authorized to immediately, and at any time prior to the expiration date of the Bond and/or LOC, assert a claim against the Bond and/or make presentment of the LOC accepted hereunder by CITY by presenting the original thereof, together with an affidavit executed by the City Manager stating that DEVELOPER is in default under the terms of this Agreement.

D. CASH ESCROW

1. In the further alternative, DEVELOPER shall have the ability to deposit a Cash Escrow with the CITY in lieu of the Bond or LOC identified in Paragraph C of this Agreement ("Paragraph C") as being an acceptable form of assurance that the Required Improvements being deferred hereby will be completed by DEVELOPER in accordance with City's Subdivision

Ordinance and all applicable local, state and federal rules, ordinances, guidelines and regulations. Said Cash Escrow shall be in the amount required for a LOC as calculated under Paragraph C and shall be subject to the provisions of Paragraph C regarding a LOC save and except that presentment shall not be necessary in the event of default by DEVELOPER. Rather than making presentment, CITY shall provide DEVELOPER fifteen days written notice by United States Certified Mail, Return Receipt Requested, of DEVELOPER's default under the terms of this Agreement.

2. DEVELOPER hereby specifically authorizes the CITY following the expiration of fifteen days after the placement of such notice properly addressed and postage prepaid in the United States Mail to utilize the Cash Escrow to pay for the design and construction of the Required Improvements and all necessary appurtenances to said improvements. Upon acceptance of the Required Improvements and the payment of any and all costs and expenses associated with the Required Improvements, any unused amount of the Escrow held by CITY shall be returned to DEVELOPER.
3. In the event that DEVELOPER's Cash Escrow is less than the actual cost and expense of designing and constructing the Required Improvements including, but not limited to, all necessary related costs such as acquiring payment bonds, performance bonds, maintenance bonds and insurance coverage for the design and construction of the Required Improvements, DEVELOPER shall reimburse the CITY for any and all additional costs and expenses ("Underpayment"). DEVELOPER shall reimburse the CITY the total amount of any Underpayment within thirty (30) days after the CITY provides DEVELOPER notice of Underpayment. If DEVELOPER fails to timely reimburse the CITY for any Underpayment, CITY shall be authorized to revoke certificates of occupancy previously issued for the Property and shall further be entitled to issue stop work orders and withhold the issuance of any further permits and certificates of occupancy until DEVELOPER or DEVELOPER's successor-in-interest reimburses CITY for the Underpayment.

E. PARK DEDICATION

Nothing contained in this Agreement is intended to waive, nor shall it be interpreted as waiving, DEVELOPER's obligation to dedicate required parkland, or pay money in lieu of land dedication, concurrent with development of the Property to provide for the recreational needs created by such development as required in all respects by the CITY's Code of Ordinances including, but not limited to, the costs of providing convenient access by improved streets, sidewalks and, adequate drainage improvements so that any parkland is suitable for the purpose intended, and to provide water, sewer and electrical utilities to the

Property in accordance with the procedures applicable to other public improvements as specified in the Subdivision Ordinance of the CITY.

F. CITY DEVELOPMENT ORDINANCES

DEVELOPER shall develop the PROPERTY in accordance with the standards as set forth in City of McKinney zoning, subdivision and land development ordinances, including but not limited to provisions as to drainage, erosion control, pro rata payments, storm water, tree preservation, park land dedication, hike and bike trails, impact fees, Street Design Standards, Public Improvements Policy and construction standards.

G. NO WAIVER

DEVELOPER expressly acknowledges that by entering into this Agreement, DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any Exhibits as waiving any of the requirements of the Zoning Ordinance or Subdivision Ordinance or any other ordinance of the CITY except as herein specifically agreed.

H. VARIANCES

It is expressly acknowledged that only those variances to the Zoning Ordinance and Subdivision Ordinance or other applicable CITY ordinances stipulated in attached Exhibit G, if any, are granted by CITY for this subdivision and/or development. If no variances are granted, Exhibit G shall state "No variances for this Property are granted and none shall be allowed."

I. INDEMNITY AND HOLD HARMLESS AGREEMENT

**DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees do hereby agree to fully indemnify, protect and hold CITY harmless from all third-party claims, suits, judgments, and demands, including its reasonable attorney's fees, arising out of the sole or concurrent negligence of DEVELOPER, and only to the extent or percentage attributable to DEVELOPER, in the subdividing, development, or construction of public improvements, including the negligent maintenance thereof. DEVELOPER shall not be responsible for or be required to indemnify CITY from CITY'S own negligence. The indemnity contained in this Paragraph shall expire five years from the date of final acceptance of each phase of the improvements.**

J. REVOCACTION

In the event DEVELOPER fails to comply with any of the provisions of this Agreement, CITY shall be authorized to revoke any and all Certificates of



Occupancy that may have been previously issued in relation to the subdivision and/or development of Property; and CITY shall be further authorized to file this instrument in the records of Collin County as a Mechanic's Lien against DEVELOPER'S property; and in the alternative, CITY shall be authorized to levy an assessment against DEVELOPER'S property for public improvements to be held as a tax lien against the Property by CITY.

K. ROUGH PROPORTIONALITY AND WAIVER OF CLAIMS.

DEVELOPER has been represented by legal counsel in the negotiation of this Agreement and been advised, or has had the opportunity to have legal counsel review this Agreement and advise DEVELOPER, regarding DEVELOPER's rights under Texas and federal law. DEVELOPER hereby waives any requirement that the CITY retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the CITY as a condition of approval for the development of this Property are roughly proportional or roughly proportionate to the proposed development's anticipated impact. (These exactions may include but are not limited to the making of dedications or reservations of land, the payment of fees, the construction of facilities, and the payment of construction costs for public facilities.) DEVELOPER specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with Tex. Loc. Gov't Code § 212.904. However, notwithstanding the foregoing, Developer hereby releases the City from any and all liability under Tex. Loc. Gov't Code § 212.904 regarding or related to the cost of those municipal infrastructure improvements required for the development of the Property.

It is the intent of this Agreement that the provision for roadway and utility improvements made herein constitutes a proportional allocation of DEVELOPER's responsibility for roadway and utility improvements for the Property. DEVELOPER hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code. DEVELOPER further releases CITY from any and all claims based on excessive or illegal exactions; it being agreed that OWNERS' infrastructure contribution(s) (after receiving all contractual offsets, credits and reimbursements) is roughly proportional or roughly proportionate to the demand that is placed on the roadway and utility systems by DEVELOPER's Property. DEVELOPER further acknowledges that the benefits of zoning and platting have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and DEVELOPER acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **DEVELOPER shall indemnify and hold harmless CITY from any claims and suits of third parties, including but not limited to DEVELOPER's successors, assigns, grantees, vendors, trustees or representatives, brought pursuant to this Agreement or the claims or types of claims described in this paragraph.**

L. CONTINUITY

This Agreement shall be a covenant running with the land, and be binding upon DEVELOPER, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

M. ASSIGNABILITY

This Agreement shall not be assignable by DEVELOPER without the prior written consent of the CITY, and such consent shall not be unreasonably withheld, conditioned or delayed.

N. TERMINATION AND RELEASE

Upon satisfactory completion by DEVELOPER and final acceptance by CITY of all requirements of this Agreement, this Agreement shall terminate and CITY will execute a release of covenant to DEVELOPER, its heirs, successors, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future. This Agreement shall not terminate until the requirements of all parties have been fulfilled.

O. MAINTENANCE BOND

Prior to final acceptance of improvements to Property, DEVELOPER has furnished to CITY a good and sufficient maintenance bond in the amount of fifteen percent (15%) of the contract price of such improvements, or in such amount as approved by the City Engineer, with a reputable and solvent corporate surety, in favor of CITY, to indemnify City against any repairs arising from defective workmanship or materials used in any part of the construction of improvements to Property, for a period of two (2) years from the date of final acceptance of such improvements.

P. GENERAL PROVISIONS

1. DEVELOPER hereby relieves CITY of any responsibilities for any inadequacies in the preliminary plans, exhibits and cost estimate(s) supplied for the purpose of this Agreement, and further agrees that DEVELOPER will comply with CITY'S Subdivision Ordinance, Street Design Standards, Public Improvements Policy and any other applicable policies, rules, regulations and ordinances of CITY regarding development of Property.
2. DEVELOPER agrees that construction shall not begin on any proposed building improvements prior to City Council approval of this Agreement.

3. DEVELOPER agrees that all coordination required with public and/or private utility agencies to eliminate conflicts with proposed street grades or underground improvements shall be the responsibility of DEVELOPER. Likewise, coordination with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation) shall be the responsibility of DEVELOPER.
4. DEVELOPER agrees that improvements to Property as set forth herein shall be completed within one (1) year(s) from the date of approval of this Agreement by the McKinney City Council. Unless otherwise specified in this Agreement or an attachment hereto, it is understood that any obligation on the part of CITY to make any refunds shall cease upon the expiration of the one (1) year(s), except when extended for good cause and agreed to in writing by CITY and DEVELOPER.
5. CITY agrees to release and pay to DEVELOPER the Default Proceeds in the amount of \$160,953.42. The release and payment of such Default Proceeds shall be made at such time as the Required Improvements have been completed by DEVELOPER in strict accordance with this Agreement and all applicable policies, rules, regulations and ordinances of CITY and no later than thirty (30) days after the said Required Improvements have been final accepted by CITY.

**CITY OF MCKINNEY**

By: \_\_\_\_\_  
JOSE MADRIGAL  
Deputy City Manager

Date Signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC,  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney

**CPF ENTERPRISES, INC.**,  
a Texas Corporation

By: \_\_\_\_\_  
HASSAN GOLNABI  
Vice President

Date Signed: \_\_\_\_\_

THE STATE OF TEXAS,  
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared JOSE MADRIGAL, Deputy City Manager of the **CITY OF MCKINNEY**, a Texas Municipal Corporation, known to me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_  
DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public \_\_\_\_\_ County, Texas  
My commission expires \_\_\_\_\_

THE STATE OF TEXAS,  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by HASSAN GOLNABI, in his capacity as Vice President of **CPF ENTERPRISES, INC.**, a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of and as the act of the Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_  
DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public \_\_\_\_\_ County, Texas  
My commission expires \_\_\_\_

PREPARED IN THE OFFICES OF:

*BROWN & HOFMEISTER, L.L.P.*  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081  
214/747-6100  
214/747-6111 Fax

**EXHIBIT A**

DESCRIPTION OF PROPERTY

## **EXHIBIT B**

### PUBLIC THOROUGHFARE IMPROVEMENTS

DEVELOPER is responsible for the construction of the facilities detailed below. Those facilities must be complete and accepted by CITY prior to the issuance of a Final Acceptance letter for the Required Improvements. In the event any public facilities required to serve the development of Property are installed by a party other than DEVELOPER, those facilities must be complete and accepted by CITY prior to the issuance of a Final Acceptance letter for the Public Improvements required herein. No Certificate of Occupancy shall be issued for any building on the Property until Final Acceptance of the Public Improvements.

**THOROUGHFARES.** Construction of thoroughfares includes paving, drainage, striping, street lighting, sidewalks and erosion control.

- a. No thoroughfares are being deferred by this Agreement. Nothing contained in this Agreement is intended to waive, nor shall it be interpreted as waiving, DEVELOPER's obligation to dedicate and construct all other required thoroughfares and necessary internal roadways and appurtenances thereto as may be required by CITY's zoning, subdivision and land development ordinances for the development of the Property.

**HIKE AND BIKE TRAILS.** The following improvements shall be complete and accepted by the CITY prior to recording of the Record Plat.

- a. No hike and bike trails are being deferred by this Agreement. Nothing contained in this Agreement is intended to waive, nor shall it be interpreted as waiving, DEVELOPER's obligation to dedicate and construct all required hike and bike trails as may be required by CITY's zoning, subdivision and land development ordinances for the development of the Property.

## EXHIBIT C

### PUBLIC UTILITY IMPROVEMENTS

DEVELOPER is responsible for the construction of the facilities detailed below. Those facilities must be complete and accepted by CITY prior to a Certificate of Occupancy being issued for any building on the Property. In the event any public utilities required to serve the development of Property are installed by a party other than DEVELOPER, those facilities must be complete and accepted by CITY prior to a Certificate of Occupancy being issued for any building on the Property.

#### Water

- a. Developer shall construct an eight-inch (8") diameter water line together with all necessary appurtenances from a point in or about Eldorado Parkway west of its intersection with Willow Grove Boulevard approximately fifty-seven (57) linear feet in a southerly direction upon and across Lot 4 of the Property and then turning in a westerly direction and running approximately four hundred fifty (450) linear feet, roughly parallel to Eldorado Parkway, across Lots 4 and 3 of the Property to stub-out at or about the boundary line between Lots 3 and 2 of the Property.
- b. Developer shall construct an eight-inch (8") diameter water line together with all necessary appurtenances from a point in or about Willow Grove Boulevard south of its intersection with Eldorado Parkway approximately four hundred (400) linear feet in a primarily westerly direction, roughly parallel to the southern property line of Lot 4, across Lot 4 of the Property to stub-out at or about the boundary line between Lots 4 and 3 of the Property.
- c. DEVELOPER shall also construct all necessary water lines to serve the interior of the Property consistent with City of McKinney standards; said lines shall be at least eight inches (8") in diameter or as otherwise necessary to serve the Property for both domestic and fire flow for the Property. The CITY Engineering Department shall approve the size of the line.

#### Sanitary Sewer System:

- a. Developer shall construct an eight-inch (8") diameter sanitary sewer line together with all necessary appurtenances from a point in or about Willow Grove Boulevard south of its intersection with Eldorado Parkway approximately six hundred eighty (680) linear feet in a westerly direction across Lots 4 and 3 of the Property, roughly parallel to the southern property line of such Lots, to a four-foot (4') diameter sanitary sewer manhole and then in a southerly direction, roughly parallel to the western



property line of Lot 3, to another four-foot (4') diameter sanitary sewer manhole from which the following lines extend: (1) a six-inch (6") diameter sanitary sewer line extends in a westerly direction and is stubbed out to Lot 2 of the Property; and, (2) an eight-inch (8") diameter sanitary sewer line continues in a southerly direction across Lots 3 and 2 of the Property and is stubbed out to Lot 1R of the Property.

- b. DEVELOPER shall also construct all necessary sanitary sewer lines to serve the interior of the Property consistent with City of McKinney standards; said lines shall be at least eight inches (8") in diameter or as otherwise necessary to serve the Property. The CITY Engineering Department shall approve the size of the line, based upon the design slope and drainage basin size.

Storm Sewer System:

- a. Developer shall construct a thirty-six inch (36") diameter storm sewer line together with all necessary appurtenances from a point in or about Willow Grove Boulevard south of its intersection with Eldorado Parkway approximately six hundred ninety-three (693) linear feet in a westerly direction across Lots 4 and 3 of the Property, roughly parallel to the southern property line of such Lots, to six-foot (6') diameter storm sewer manhole from which the following lines extend: (1) a twenty-four inch (24") diameter storm sewer line continues in a westerly direction approximately twenty-two (22) linear feet to a four foot (4') Wye inlet on Lot 2 of the Property; and, (2) a twenty-four inch (24") diameter storm sewer line extends approximately seventy-four (74) linear feet in a southerly direction across Lots 3 and 2 of the Property and is stubbed out to Lot 1R of the Property. Said storm sewer system also contains an extension of twenty-one inch (21") diameter storm sewer line extending approximately forty-eight (48) linear feet in a northerly direction from the eastern end of the thirty-six inch (36") diameter storm sewer line to a three foot (3') Wye inlet upon and along the eastern side of Lot 4 of the Property.
- b. DEVELOPER shall also construct all necessary storm sewer lines to serve the interior of the Property consistent with City of McKinney standards; said lines shall be at least eight inches (8") in diameter or as otherwise necessary to serve the Property. The CITY Engineering Department shall approve the size of the line, based upon the design slope and drainage basin size.

**EXHIBIT D**

**PERFORMANCE BOND**

Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:**

That **CPF ENTERPRISES, INC.**, a Texas Corporation, (hereinafter referred to as "Principal"), as Principal, and \_\_\_\_\_, a surety company organized and existing under the laws of the State of \_\_\_\_\_ with its principal office in the City of \_\_\_\_\_, and authorized to do business in the State of Texas (hereinafter referred to as "Surety"), as Surety, are held and firmly bound unto the **City of McKinney, Texas**, a Texas municipal corporation (hereinafter referred to as "Obligee"), in the full and just sum of Eighty-Seven Thousand Seven Hundred Forty-Nine Dollars and Forty-One Cents (\$87,749.41), lawful money of the United States of America, to the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents:

WHEREAS, THE ABOVE BOUNDED PRINCIPAL as a condition precedent to the approval by Obligee of the plat for that certain subdivision known as **Parcel 1017-1018 Addition**, has entered into that certain Construction Facilities Agreement for Required Improvements with Obligee dated the 1st day of March, 2014, (attached hereto and hereinafter referred to as the "Agreement"), pursuant to which Principal is required to be responsible for arranging and contracting for the construction of certain required improvements in accordance with the plans, specifications and contract documents set forth or referred to in the Agreement (hereinafter referred to as the "Improvements");

WHEREAS, it was one of the conditions of said Agreement that this bond be executed:

NOW, THEREFORE, the conditions of this obligation are such that if the above bounded Principal shall in all respects comply with the terms and conditions of said Agreement, within the time therein specified, and shall in every respect fulfill its obligations thereunder, and under the plans, specifications and contract documents referred to and made a part thereof, **and shall indemnify, and hold harmless Obligee from and against all claims, costs, expenses, demands, damages, injuries and losses, including, but not limited to, engineering, legal, administrative and other contingent cost to carry out and execute all the provisions of said Agreement, within the time therein specified**, then this obligation shall be void; otherwise to remain in full force and effect.

THE SURETY UNCONDITIONALLY COVENANTS AND AGREES that if the Principal fails to fulfill all of any portion of its obligations under the Agreement, within the time specified in the Agreement, the Surety, upon fifteen (15) days written notice from Obligee, or its authorized agent or officer, of Principal's default, shall forthwith perform and complete the obligations imposed by the aforesaid Agreement and pay the cost thereof, including, but not limited to, engineering, legal, administrative and other contingent costs. Should the Surety fail or refuse to perform and complete Principal's obligations under the Agreement, Obligee, in view of the public interest, safety, health and welfare factors involved and the inducement in approving and filing the said subdivision plat, shall have the right to resort to any and all legal remedies against the Principal and Surety, or either, both at law and in equity, specifically including specific performance, to which the Principal and Surety unconditionally agree.

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

THE PRINCIPAL AND SURETY FURTHER JOINTLY AND SEVERALLY AGREE, that, as set forth in the Agreement, Obligee, at its option, shall have the right to construct and install, or pursuant to public advertisement and receipt of bids, cause to be constructed and installed, the aforesaid Improvements in case the Principal should fail or refuse to do so in accordance with the terms of said Agreement, and in the event Obligee should exercise and give effect to such right, Principal shall be liable to reimburse the Obligee for the total cost thereof and Surety shall be liable for the amount set forth above, both including, but not limited to, engineering, legal, administrative and other contingent costs, together with any damages, either direct or consequential, which may be sustained on account of failure of the Principal to carry out and execute all of the provisions of said Agreement.

PROVIDED, HOWEVER, that both Principal and Surety agree and acknowledge that this bond is not executed pursuant to the provisions of VERNON'S TEXAS GOVERNMENT CODE ANN. Art. 2253.021, since said agreement is not between the Obligee and the prime contractor responsible for the construction of said Improvements and since the amount of this bond is in excess of the total costs of construction as set forth in the construction contract(s) for said Improvements.

FURTHERMORE, no extension of time or other waiver or amendment of the terms of said Agreement or any change in the method or amount of payment stipulated to be made by Obligee under the Agreement shall relieve Surety of its obligations hereunder and the Surety waives notice of any such extension, waiver, amendment, or change. The bond shall be automatically extended in time without formal and separate amendment to cover full and faithful performance of the Agreement modifications, regardless of the amount of time involved.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and the undersigned

Surety solemnly warrants and represents that it is duly authorized to do business in the State of Texas.

**PRINCIPAL:**

**CPF ENTERPRISES, INC.,**  
a Texas Corporation

By: \_\_\_\_\_  
HASSAN GOLNABI  
Vice President

Date Signed: \_\_\_\_\_

**ATTEST:**

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

SEAL

**SURETY:** \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SEAL

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
MARK S. HOUSER  
City Attorney, City of McKinney

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

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** that \_\_\_\_\_, a surety company organized and existing under the laws of the State of \_\_\_\_\_ does hereby make, constitute and appoint,

its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$\_\_\_\_\_, \_\_\_\_\_ Dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Vice President, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, \_\_\_\_\_ has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

SEAL

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGEMENT**

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, personally came \_\_\_\_\_ to me known, who being duly sworn, did depose and say that he is the President of \_\_\_\_\_, the corporation described in and which executed the above Instrument; that he executed said Instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

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

**CERTIFICATE**

I, the undersigned, Secretary of \_\_\_\_\_, a \_\_\_\_\_ insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at \_\_\_\_\_, \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

**ACKNOWLEDGMENT OF SURETY**

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to me to be the person who executed the said instrument on behalf of the said corporation and who stated that he/she executed the within and foregoing instrument in his/her capacity as the Attorney-in-Fact of \_\_\_\_\_, the corporation described in the original Power of Attorney.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires on \_\_\_\_\_

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

-----  
(Surety/Insurance Company Name)

**IMPORTANT NOTICE:**

To obtain information or make a complaint:

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance at:

P.O. Box 149104  
Austin, TX 78714-9104  
FAX # 1-512-475-1771

Your notice of claim against the attached bond may be given to the surety company that issued the bond by sending it to the following address:

Physical Address: \_\_\_\_\_ Insurance Company Claims  
\_\_\_\_\_  
\_\_\_\_\_

You may also contact the \_\_\_\_\_ Insurance Company Claims office by  
telephone at: Telephone Number: \_\_\_\_\_

**PREMIUM OR CLAIM DISPUTES:**

If you have a dispute concerning a premium, you should contact the agent first. If you have a dispute concerning a claim, you should contact the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

**ATTACH THIS NOTICE TO YOUR BOND:**

This notice is for information only and does not become a part or condition of the attached document.

**EXHIBIT D**

**LETTER OF CREDIT FORM**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_ **[##]** \_\_\_\_\_

APPLICANT:  
CPF ENTERPRISES, INC.  
4868 Normandy Drive  
Frisco, Texas 75034

INITIAL EXPIRATION DATE:  
[Month] [day], 20\_\_\_\_\_

BENEFICIARY:  
The City of McKinney  
222 N. Tennessee Street  
McKinney, Texas 75069  
Attn: Jose Madrigal  
Deputy City Manager

AMOUNT: \$87,749.41  
Eighty-Seven Thousand Seven Hundred  
Forty-Nine Dollars and Forty-One Cents

[Month] [day], 20\_\_\_\_\_

Gentlemen:

We hereby establish our irrevocable Letter of Credit No. \_\_\_\_\_ **[##]** \_\_\_\_\_ in favor of the City of McKinney, Texas ("Beneficiary") at the request and for the account of **CPF ENTERPRISES, INC.**, for the amount of Eighty-Seven Thousand Seven Hundred Forty-Nine Dollars and Forty-One/One Hundredths Dollars (\$87,749.41). This Letter of Credit is available by your draft drawn at sight on [Financial Institution Name] accompanied by the following documents:

1. Beneficiary's manually signed statement on its letterhead reading exactly as follows:

"We hereby certify that a default has occurred under the Facilities Agreement dated [Month] [day], 20\_\_\_\_\_, and we have notified \_\_\_\_\_, by certified letter of such default."

2. A copy of the certified letter of such default sent to \_\_\_\_\_, dated at least fifteen (15) days prior to this drawing.

The undersigned shall have no obligation or duty to investigate whether or not an event of default has occurred and shall have no liability to \_\_\_\_\_, in such regard.

All drafts under this Letter of Credit shall be marked "Drawn Under Irrevocable Letter of Credit No. \_\_\_\_\_ **[##]** \_\_\_\_\_ dated [Month] [day], 20\_\_\_\_\_ issued by [Financial Institution Name], [City, State]."



This Letter of Credit sets forth in full the terms of our undertaking to you. Such undertaking shall not in any way be modified, amended, or amplified by reference to any document or instrument referred or related to herein and any such reference shall not be deemed to incorporate herein by reference any such document or instrument.

This Letter of Credit shall be deemed automatically extended without amendment for up to an additional \_\_\_\_\_ period(s) of one (1) year each from the present expiry date to [Month] [day], 20\_\_\_\_, unless thirty (30) days prior to any expiration date we shall notify you in writing, by registered mail or overnight courier at the address contained herein that we elected not to renew this Letter of Credit.

Except as expressly provided herein, this Letter of Credit is subject to the Uniform Customs and Practice for documentary credits (1993 Revision), International Chamber of Commerce Publication No. 500.

We hereby engage with you that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented at our counter at [Financial Institution Street Address], [Financial Institution City, State & Zip].

Sincerely,

[Name of Financial Institution Officer or  
Employee Authorized to Bind the Institution]  
[Financial Institution Officer or  
Employee's Title]

**EXHIBIT E**

CONSTRUCTION CONTRACT

1. The Construction Contract is on file with the City Engineer's Office.

**EXHIBIT F**

**ASSIGNMENT OF CONSTRUCTION CONTRACT**

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN

THIS ASSIGNMENT OF CONSTRUCTION CONTRACT (this "Assignment") is made as of the 1st day of March, 2014, by **CPF ENTERPRISES, INC.**, a \_Texas Corporation, whose address is 4868 Normandy Drive, Frisco, Texas 75034, (hereinafter referred to as "Owner" and "Developer") to the **CITY OF MCKINNEY**, a Texas municipal corporation ("City").

**RECITALS**

- A. On or about the 1st day of March, 2014, City entered into a Construction Facilities Agreement with **CPF ENTERPRISES, INC.**, ("Developer") for the construction of certain infrastructure improvements including the construction of water, sanitary sewer and storm sewer improvements and related appurtenances ("Required Improvements"). To secure Developer's obligations under the Construction Facilities Agreement, Developer Provided a performance bond with City in the amount of Eighty-Seven Thousand Seven Hundred Forty-Nine Dollars and Forty-One Cents (\$87,749.41) issued by \_\_\_\_\_ (*Insurance Company/Financial Institution Name*) ("Performance Bond or LOC").
- B. Owner has entered into construction contracts for the required improvements under the Construction Facilities Agreement with PCI Construction (*Kevin Gerstenkork*) (the "Construction Contracts").
- C. Owner has agreed to conditionally assign to City the Owner's rights under the Construction Contracts.
- D. As a condition to its agreements under the Construction Facilities Agreement, City has required the execution and delivery of this Assignment by Owner.

NOW, THEREFORE, in order to further secure the obligations of Owner under the Construction Facilities Agreement, the parties hereby agree as follows:

- 1. Deposit of Cash. Owner agrees to tender the Performance Bond referenced herein in the amount of Eighty-Seven Thousand Seven Hundred Forty-Nine Dollars and Forty-One Cents (\$87,749.41).

2. Assignment of Construction Contracts. As additional security for the performance of Owner's obligations under the Construction Facilities Agreement, Owner hereby transfers and assigns to City and grants City a security interest in all of Owner's rights and interest, but not its obligations in, under, and to the Construction Contract upon the following terms and conditions:

Owner represents and warrants that the copies of any Construction Contract it has furnished or will furnish to City are a true and complete copy thereof and that Owner's interest therein is not subject to any claim, setoff, or encumbrance.

**Neither this Assignment nor any action by City shall constitute an assumption by City of any obligation under the Construction Contract, and Owner shall continue to be liable for all obligations of Owner thereunder, Owner hereby agrees to perform all of its obligations under the Construction Contract. Owner further agrees to indemnify and hold City harmless against and from any loss, cost, liability or expense (including but not limited to attorneys' fees and expenses) resulting from any failure of Owner to so perform.**

**City shall have the right at any time (but shall have no obligation) to take in its name or in the name of Owner such action as City may at any time determine to be necessary or advisable to cure any default under the Construction Contract or to protect the rights of Owner or City thereunder. City shall incur no liability if any action so taken by it or in its behalf shall prove to be inadequate or invalid, and Owner agrees to hold City free and harmless against and from any loss, cost, liability or expense (including but not limited to attorneys' fees and expenses) incurred in connection with any such action.**

Owner hereby constitutes and appoints City as Owner's attorney-in-fact, in Owner's name or in City's name to enforce all rights of Owner under the Construction Contract.

Prior to the occurrence of a default, Owner shall have the right to exercise its rights as owner under the Construction Contract provided that Owner shall not cancel or amend the Construction Contract or do or suffer to be done any act which would impair the security constituted by this Assignment without the prior written consent of City.

3. Termination of Assignment. Upon completion of the improvements required by the Construction Facilities Agreement and acceptance thereof by City, this Assignment shall terminate. City shall return the cash deposit to Owner within ten (10) days of the termination of this Assignment.

4. Representations of Owner. Owner covenants and represents to City that (i) Owner has full right, title, power, and authority to assign the Construction Contract; (ii) no other assignment or interest therein has been made; and (iii) there are no existing defaults under the provisions of this Construction Contract.
5. Successors and Assigns. This Assignment shall inure to the benefit of Owner and City and shall be binding upon such successors and assigns.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first written above.

**OWNER:**

***CPF ENTERPRISE, INC.,***  
a Texas Corporation

By: \_\_\_\_\_  
Hassan Golnabi, Vice President

Date Signed: \_\_\_\_\_

**ACCEPTED AND AGREED:**

***PCI CONSTRUCTION CO.***

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

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

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

Date Signed: \_\_\_\_\_

**EXHIBIT G**

VARIANCES

No variances for this Property are granted and none shall be allowed.