

**Developer Participation Agreement for the Construction of  
An Oversized Wastewater Main  
And Related Infrastructure Improvements**

*Tucker Hill Addition, Phase 4*

This Developer Participation Agreement for the Construction of an Oversized Wastewater Main and Related Infrastructure Improvements (the "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2017 (the "Effective Date"), by and between **SLC MCKINNEY PARTNERS, L.P.**, a Delaware limited partnership, whose address is 1550 W. McEwen Drive, Suite 200, Franklin, Tennessee 37067, ("Developer") and the **CITY OF MCKINNEY, TEXAS** ("McKinney" or the "City") on the terms and conditions hereinafter set forth.

WHEREAS, Developer is developing approximately 37.2758 acres of land, known as the Tucker Hill Addition, Phase 4 ("Subdivision"), along the east and west sides of Tremont Road and along the north side of Darrow Drive in an area that is south and west of Wilson Creek as more fully described in Exhibit "A," which exhibit is attached hereto and incorporated herein by reference for all purposes allowed by law (the "Property"); and

WHEREAS, the City's Wastewater Collection System Master Plan (the "Master Plan") requires the extension of a wastewater main that is twenty-four inches (24") diameter that is larger than the City's minimum standard twelve-inch (12") diameter wastewater mains, and which is also larger than the wastewater main required to serve the Subdivision, in order to serve future development in the area specifically including around the Property (the "Oversized Line"); and

WHEREAS, Developer has agreed to extend the Oversized Line and all necessary appurtenances related to the Oversized Line (collectively the "Oversized Main") to and across the Property as reflected in Exhibit B and more specifically described in detail in Exhibit C, which exhibits are attached hereto and incorporated herein by reference for all purposes allowed by law, in exchange for reimbursement of the difference in cost to construct the Oversized Main as compared to the cost to construct the City's minimum standard twelve-inch (12") diameter line which latter size would be sufficient to serve the Subdivision;

WHEREAS, City has agreed that Developer shall construct the Oversized Main required by the City's Master Plan; and

WHEREAS, the construction of the Oversized Main by Developer will benefit McKinney by significantly increasing the wastewater capacity associated with such public improvements project in anticipation of other future development in the area specifically including around the Property; and

WHEREAS, Texas Local Government Code, Section 212.071, *et seq.*, authorizes McKinney to contract with a developer and participate in the cost of oversizing public improvements so long as the limit of participation does not exceed 100 percent of the total cost for any oversizing of improvements required by the municipality, including but not limited to increased capacity of improvements to anticipate other future development in the area.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, McKinney and Developer agree as follows:

1. Recitals Incorporated.

All of the foregoing recitals are hereby found to be true and correct and they are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

2. Oversized Main to be Constructed by Developer.

Within thirty (30) days from the Effective Date of this Agreement, and in coordination of the construction of the Developer's subdivision improvements, Developer shall commence construction of the Oversized Main. The Oversized Main shall be constructed in accordance with plans and specifications therefor which shall conform to the ordinances and regulations of, and are approved by, McKinney. The Oversized Main shall be completed and finally accepted by the City within twelve (12) months of beginning construction, subject to force majeure delays. During the construction process, Developer shall require its general contractor to comply with all ordinances and regulations governing the installation of the Oversized Main. This Agreement shall in no manner be construed as an exemption or waiver by McKinney in favor of Developer, or its contractors, subcontractors, and/or suppliers, of any of the ordinances or regulations relating to the design, construction or warranty of the Oversized Main.

3. Participation by McKinney in Cost of Oversized Main.

The Total Contract Price for the Oversized Main to be constructed by Developer under the Contract is Two Hundred Thirty-Five Thousand Four Hundred Twenty-One Dollars and Eighty-Nine Cents (\$235,421.89) (the "Total Contract Price"), which amount includes the costs incurred, or to be incurred, by Developer for testing, surveying and constructing the Oversized Main. McKinney agrees to participate in the cost of the Oversized Main as more fully described in the attached Exhibit C, which is incorporated herein for all purposes, up to the amount of One Hundred Forty-Seven Thousand Two Hundred Sixty-Eight Dollars and Fifty-Seven Cents (\$147,268.57) (the "McKinney Share"), and which amount is the estimated difference between the construction cost of the Oversized Main and the cost to construct the City's minimum standard twelve-inch (12") diameter main and necessary appurtenances thereto that would otherwise be sufficient to

serve the Subdivision. If the actual cost of the Oversized Main exceeds the estimated McKinney Share, McKinney will agree in writing, subject to the availability of funds, to an increased level of participation in an amount up to the actual cost of the Oversized Main. **Notwithstanding the foregoing, in no event shall the McKinney Share exceed the difference between the cost to construct the City's minimum standard twelve-inch (12") diameter line and the cost to construct the Oversized Main.** Developer shall require its general contractor to provide Developer and through Developer the City prior written notice if the cost of the Oversized Main is going to exceed the McKinney Share. Developer shall submit to McKinney such documentation as McKinney shall reasonably request, from time to time, to evidence the actual cost of the Oversized Main and the Total Contract Price, including, but not limited to, its books and records relating to all expenditures related to the Oversized Main.

4. Payment by McKinney for the Oversized Main.

Following completion and final acceptance by McKinney of the Oversized Main, the Developer shall submit an original written invoice to McKinney for the cost of oversizing associated with the construction of the Oversized Main including a certification by Developer that the amount of such invoice relates only to the cost of oversizing the Oversized Main, and the Contractor's final signed contract unit prices and quantities for construction of the Oversized Main. The total of the invoice submitted by Developer shall not exceed the McKinney Share agreed upon and shall be signed and sealed by a Professional Engineer registered in the State of Texas certifying to the validity of the contract prices and quantities. The final invoice amount will be subject to McKinney's concurrence. Developer understands that reimbursement for change orders or additions shall only be made for items which have received prior written approval from McKinney.

Provided that all conditions of this Agreement have been satisfactorily met, McKinney shall within 30 days of receipt of the invoice issue payment to Developer for the amount of the final invoice, save and except any disputed items, subject to the limits of the McKinney Share. During said thirty (30) day period, McKinney shall have the right to verify that the invoice submitted to the City for payment relates to the cost of oversizing the Oversized Main and otherwise conforms to the conditions set forth in this Agreement, and McKinney agrees to give written itemized notice of any objections thereto to Developer within said thirty (30) day period.

5. Default.

In the event any party fails to comply with the terms of this Agreement, the other party has the right to enforce the terms of this Agreement by specific performance or by any other remedy available to it at law or in equity; provided,

however, in no event shall any party be liable for speculative, consequential or punitive damages.

6. Notice.

Any notice to be given or to be served upon a party hereto in connection with this Agreement must be in writing and may be given by certified or registered mail, recognized overnight carrier, such as Federal Express, hand delivered with a signed receipt reflecting such hand delivery, or by facsimile transmission ("Fax") and shall be deemed to have been given and received when a certified or registered letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail, and if given otherwise than by certified or registered mail, it shall be deemed to have been given and delivered to and received by the party (or such party's agent or representative) to whom it is addressed, upon delivery to the address specified below. All notices shall be given to the parties hereto at the address set forth below. Any party hereto may, at any time by giving two (2) days written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice shall be given.

*If Notice to Developer:*

SLC McKinney Partners, L.P.  
1550 W. McEwen Drive  
Suite 200  
Franklin, Tennessee 37067  
Phone: 615-778-3150 Fax: 615-778-2876

*If Notice to McKinney:*

Paul G. Grimes  
City Manager  
City of McKinney  
P.O. Box 517  
222 N. Tennessee St.  
McKinney, Texas 75069  
Phone: 972-547-7510 Fax: 972-547-2607

7. Venue.

This Agreement shall be construed under and in accordance with the laws of the State of Texas and is specifically performable in Collin County, Texas. Exclusive venue shall be in state district court in Collin County, Texas.



8. Severability.

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

9. No Waiver of Governmental Immunity.

Nothing contained in this Agreement shall be construed as a waiver by McKinney of its governmental immunity with regard to any matter other than City's obligations to Developer that are specifically enumerated in this Agreement.

10. Indemnity.

**DEVELOPER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE CONSTRUCTION OF THE OVERSIZED MAIN AND THAT ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF THE DEVELOPER, OR ANY OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH DEVELOPER IS LEGALLY RESPONSIBLE.**

**DEVELOPER SHALL ALSO REQUIRE ITS GENERAL CONTRACTOR TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE CONSTRUCTION OF THE OVERSIZED MAIN OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF THE GENERAL CONTRACTOR, ITS CONTRACTORS, SUBCONTRACTORS, OR ANY OFFICERS, AGENTS OR EMPLOYEES OF THE GENERAL CONTRACTOR, ITS CONTRACTORS, SUBCONTRACTORS AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH THE GENERAL CONTRACTOR IS LEGALLY RESPONSIBLE.**

**BY WAY OF EXAMPLE, THE INDEMNITY PROVIDED HEREIN MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY. THE INDEMNITY PROVIDED HEREIN SHALL ALSO INCLUDE ATTORNEYS'**

EXECUTED as of the date first above written.

CITY OF MCKINNEY, TEXAS

By: \_\_\_\_\_  
PAUL G. GRIMES  
City Manager

ATTEST:

\_\_\_\_\_  
Sandy Hart, TRMC, MMC  
City Secretary  
Denise Vice, TRMC  
Assistant City Secretary

APPROVED AS TO FORM:

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

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

BEFORE ME, the undersigned authority, on this day personally appeared Tom Muehlenbeck, known to me to be one of the persons whose name is subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the CITY OF MCKINNEY and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**SLC MCKINNEY PARTNERS, L.P.,**  
a Delaware limited partnership

By: SLC McKinney GP, LLC,  
a Delaware limited liability company,  
its General Partner

By: Southern Land Company, LLC,  
a Tennessee limited liability  
company, its Sole Member and  
Sole Manager

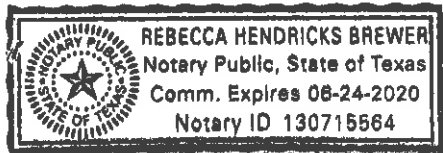
By: [Signature]  
Name: Brian Sewell  
Title: President

Date Signed: October 18, 2017

THE STATE OF TEXAS §  
COUNTY OF §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Brian Sewell, in his capacity as Manager of Southern Land Company, LLC, a Tennessee limited liability company, the Sole Member and Sole Manager of SLC McKinney GP, LLC, a Delaware limited liability company, the General Partner of SLC McKinney Partners, L.P., a Delaware limited partnership, 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 said limited liability companies and limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 18<sup>th</sup>  
DAY OF October, 2017.



Rebecca Hendricks Brewer  
Notary Public [Signature] County, Texas  
My commission expires 10-24-2020

[Handwritten mark]

## EXHIBIT "A"

### *Property Description*

#### RECORD PLAT LEGAL DESCRIPTION (2017-527, Collin County Deed Records)

WHEREAS, SLC McKinney Partners, L.P. is the owner of a 37.2758 acre tract of land situated in the Meriday Ashlock Survey, Abstract No. 20, Collin County, Texas; said tract being part of that certain tract of land described in Special Warranty Deed (with Vendor's Lien) to SLC McKinney Partners, L.P. recorded in Volume 5870, Page 4662 of the Deed Records of Collin County; said 37.2758 acre tract being more particularly described as follows:

BEGINNING, at a 1/2-inch iron rod found at the west end of the north terminus of Tremont Boulevard (an 84-foot wide right-of-way); said point also being Due North, a distance of 12.33 feet from a point at the northeast end of a right-of-way corner clip at the intersection of the west right-of-way line of said Tremont Boulevard and the north right-of-way line of Darrow Drive (a 54-foot wide right-of-way);

THENCE, Due North, a distance of 138.11 feet to a 1/2-inch iron rod with "Westwood" cap set for corner;

THENCE, North 53 degrees, 52 minutes, 48 seconds West, a distance of 18.57 feet to a 1/2-inch iron rod with "Westwood" cap set for corner;

THENCE, North 18 degrees, 18 minutes, 32 seconds West, a distance of 50.00 feet to a 1/2-inch iron rod with "Westwood" cap set for corner; said point also being the beginning of a non-tangent curve to the right;

THENCE, in an easterly direction, along said curve to the right, having a central angle of 01 degrees, 30 minutes, 37 seconds, a radius of 625.00 feet, a chord bearing and distance of North 72 degrees, 26 minutes, 46 seconds East, 16.47 feet, an arc distance of 16.47 feet to a 1/2-inch iron rod with "Westwood" cap set at the end of said curve;

THENCE, North 37 degrees, 03 minutes, 12 seconds East, a distance of 24.89 feet to a 1/2-inch iron rod with "Westwood" cap set for corner;

THENCE, Due North, a distance of 573.80 feet to a 1/2-inch iron rod with "Westwood" cap set for corner;

THENCE, North 45 degrees, 00 minutes, 00 seconds West, a distance of 21.21 feet to a 1/2-inch iron rod with "Westwood" cap set for corner;

THENCE, Due West, a distance of 119.13 feet to a 1/2-inch iron rod with "Westwood" cap set for corner;





THENCE, South 43 degrees, 07 minutes, 21 seconds East, a distance of 138.00 feet to a 1/2-inch iron rod with "Westwood" cap set at an angle point;

THENCE, South 42 degrees, 34 minutes, 46 seconds East, a distance of 59.00 feet to a 1/2-inch iron rod with "Westwood" cap set at an angle point;

THENCE, South 43 degrees, 48 minutes, 03 seconds East, a distance of 71.51 feet to a 1/2-inch iron rod with "Westwood" cap set at an angle point;

THENCE, South 43 degrees, 11 minutes, 02 seconds East, a distance of 377.49 feet to a 1/2-inch iron rod with "Westwood" cap set for corner;

THENCE, South 46 degrees, 48 minutes, 58 seconds West, a distance of 185.00 feet to a 1/2-inch iron rod with "Westwood" cap set for corner;

THENCE, North 43 degrees, 11 minutes, 02 seconds West, a distance of 7.73 feet to a 1/2-inch iron rod with "Westwood" cap set for corner;

THENCE, North 87 degrees, 25 minutes, 59 seconds West, a distance of 21.50 feet to a 1/2-inch iron rod with "Westwood" cap set for corner; said point also being the beginning of a non-tangent curve to the right;

THENCE, in a southwesterly direction, along said curve to the right, having a central angle of 40 degrees, 42 minutes, 35 seconds, a radius of 450.00 feet, a chord bearing and distance of South 69 degrees, 38 minutes, 43 seconds West, 313.05 feet, an arc distance of 319.73 feet to a 1/2-inch iron rod with "Westwood" cap set at the end of said curve;

THENCE, Due West, a distance of 271.39 feet to a 1/2-inch iron rod with "Westwood" cap set for corner;

THENCE, South 45 degrees, 00 minutes, 00 seconds West, a distance of 21.21 feet to a 1/2-inch iron rod with "Westwood" cap set for corner;

THENCE, Due South, a distance of 126.39 feet to a 1/2-inch iron rod with "Westwood" cap set for corner in the north terminus of Fitzgerald Avenue (a 64-foot wide right-of-way); said point also being Due West, a distance of 7.00 feet from a 1/2-inch iron rod found at the east end of said north terminus of Fitzgerald Avenue;

THENCE, Due West, along the said north terminus of Fitzgerald Avenue, a distance of 57.00 feet to a 1/2-inch iron rod found for corner; said point also being at the west end of said north terminus of Fitzgerald Avenue;

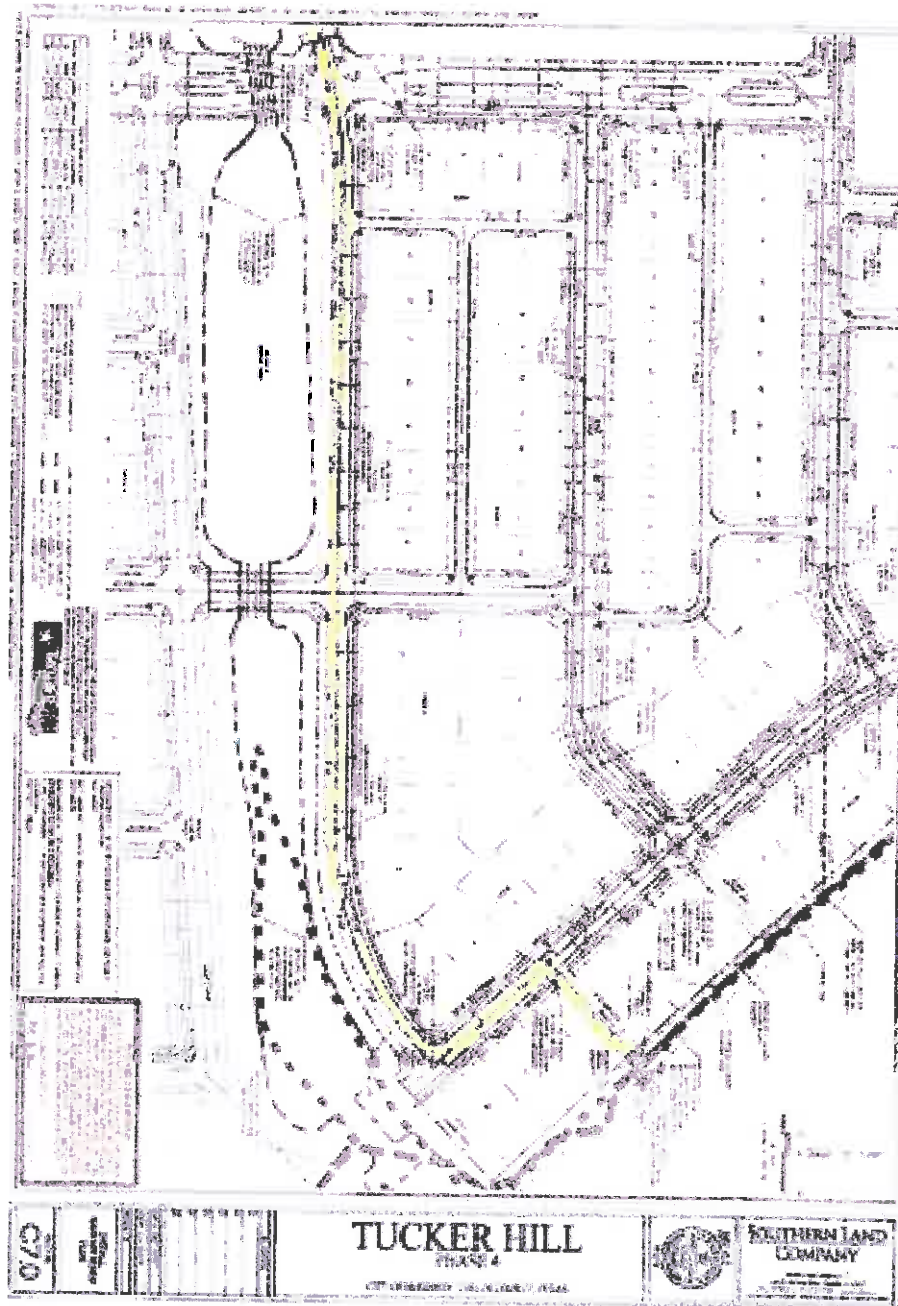
THENCE, Due South, departing the said north terminus of Fitzgerald Avenue and along the west right-of-way line of said Fitzgerald Avenue, a distance of 4.11 feet to a 1/2-inch iron rod found for corner; said point also being at the northeast end of a right-of-way



## EXHIBIT "B"

### *Oversized Main Location and Description*

1. The approved civil drawings regarding the location and description of the Oversized Main are on file with the City Engineer's Office, and are incorporated herein by reference for all purposes allowed by law. Following is a depiction of the general location of the Oversized Main; and a general description of the Project.



**EXHIBIT "C"**

**Oversized Main Cost Projection**

Contractor	Date	Unit Cost	Quantity	Unit	Total	Difference In Cost
<b>SLC McKinney Partners, LP</b>						
<b>Tucker Hill, Phase 4</b>						
<b>Difference in Cost</b>						
<b>Sanitary Sewer Line 24" vs 12"</b>						
<b>10/13/2017</b>						
<b>F. H. Lacy Company, Ltd. - 24" SDR-26</b>	<b>7/7/2016</b>					
Pipe	24"	\$91.00	1762	L.F.	\$160,342.00	
5' Dia. Manholes		5,403.29	6	Ea.	32,419.74	
Corrosion and Exterior Infiltration Protection		4,088.00	6	Ea.	24,528.00	
Testing		1.00	1762	L.F.	1,762.00	
Connect to existing		2,547.54	1	Ea.	2,547.54	
Geotech		2,500.00	1	L.S.	2,500.00	
Inspection fee		3.50%			\$224,099.28	
Maintenance Bond					\$7,843.47	
					\$231,942.75	
			1	L.S.	3,479.14	\$235,421.89
<b>Kodiak Trenching and Boring - 12" SDR-26</b>						
9/23/2015	12"					
Pipe		\$28.85	1762	L.F.	\$50,833.70	
4' Dia. Manholes		3,266.38	6	Ea.	19,598.28	
Exterior Infiltration Protection-4' dia		1,047.20	6	Ea.	6,283.20	
Interior corrosion Protection-4' dia.		1,610.00	1	Ea.	1,610.00	
Testing		1.00	1762	L.F.	1,762.00	
Connect to existing		1,352.00	1	Ea.	1,352.00	
Geotech		2,500.00	1	L.S.	2,500.00	
Inspection fee		3.50%			\$83,930.18	
					\$2,937.87	
Maintenance Bond					\$86,877.05	
Difference in Total Cost 24" vs 12"			1	L.S.	1,276.27	\$88,153.32
						\$147,268.57