

**Developer Participation Agreement for the Construction of  
Certain Sanitary Sewer Infrastructure Improvements**

*(Park Ridge)*

This Developer Participation Agreement for the Construction of Sanitary Sewer Lines and Related Infrastructure Improvements (the “Agreement”) is made and entered into as of this \_\_\_\_ day of October, 2014 (the “Effective Date”), by and between ***M/I HOMES OF DFW, LLC***, a Delaware limited liability company, whose address is 405 Highway 121, Suite A-210, Lewisville, Texas 75067, (“Developer”) and the ***CITY OF MCKINNEY, TEXAS*** (“McKinney” or the “City”) on the terms and conditions hereinafter set forth.

WHEREAS, Developer is developing property known as Park Ridge lying on the north side of Virginia Parkway and the west side of Hardin Boulevard in the City of McKinney, Texas; and

WHEREAS, Developer is constructing certain items of public infrastructure including certain public streets together with associated storm drainage and water improvements (the “Developer’s Public Improvements”); and

WHEREAS, Developer has entered into agreements with a General Contractor for the construction of the Developer’s Public Improvements necessary for its development of the Property (the “Contract”), which improvements when completed will be dedicated to the public; and

WHEREAS, City desires that certain sanitary sewer improvements necessary to improve service to an adjacent development and a future City fire station, (the “McKinney Public Improvements”) identified in Exhibit A attached hereto and incorporated herein by reference be constructed by Developer and has requested that the scope of work under the Contract be modified to include the McKinney Public Improvements; and

WHEREAS, Developer’s Engineer has prepared a Preliminary Opinion of Probable Costs for the construction of the McKinney Public Improvements based on a contractor’s bid, a copy of which Preliminary Opinion of Probable Costs is attached hereto as Exhibit B; and

WHEREAS, the construction of the Developer’s Public Improvements together with the McKinney Public Improvements (collectively referred to as the “Public Improvements”) by Developer will benefit McKinney and improve the ability to provide necessary services to the properties located adjacent thereto; and

WHEREAS, Texas Local Government Code, Section 212.071, et seq., authorizes McKinney to contract with a developer and participate in the cost of construction for public improvements so long as the limit of participation does not exceed thirty percent (30%) of the total contract price and the improvements are related to the development; and

WHEREAS, McKinney has determined that the cost of the McKinney Public Improvements when added to the cost of the Developer's Public Improvements (the sum of which is referred to herein as the "Total Contract Price") does not exceed thirty percent (30%) of the Total Contract Price.

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. Addendum to Contract to include McKinney Public Improvements.

This Agreement, when executed by Developer and McKinney, will constitute an addendum to the Contract so that the scope of work set forth in Exhibit A for the McKinney Public Improvements will be added to and incorporated in the scope of work set forth in the Contract, for which McKinney shall share responsibility for payment. Developer and McKinney agree that the McKinney Public Improvements shall be constructed in accordance with the design plans approved by the City Engineer.

3. Public Improvements to be Constructed by Developer.

Within thirty (30) days from the Effective Date of this Agreement and in coordination with the construction of the Developer's Public Improvements, Developer shall commence construction of the McKinney Public Improvements. All Public Improvements shall be constructed in accordance with plans and specifications therefor which conform to the ordinances and regulations of, and are approved by, McKinney. During the construction process, Developer shall comply with all ordinances and regulations governing the installation of the Public Improvements. 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 any of the Public Improvements.

4. Participation by McKinney in Cost of Public Improvements.

The Total Contract Price for the Public Improvements to be constructed by Developer under the Contract, after the inclusion of the McKinney Public Improvements, is One Million Three Hundred Ninety-Nine Thousand Three Hundred Seventy-One and 50/100 Dollars (\$1,399,371.50) (the "Total Contract Price"), which includes the costs incurred, or to be incurred, by Developer for testing, surveying and constructing the Public Improvements. McKinney agrees to participate in the cost of the Public Improvements as more fully described in the attached Exhibit B, which is incorporated herein for all purposes, up to and not to exceed Ninety-Five Thousand and no/100 Dollars (\$95,000.00) (the "McKinney Share"), and which amount is a portion of the estimated construction cost of the McKinney Public Improvements. Developer shall provide the City prior written notice if the cost of the McKinney Public Improvements 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 McKinney Public Improvements and the Total Contract Price, including, but not limited to, its books and records relating to all expenditures related to the Public Improvements.

5. Payment by McKinney for the McKinney Public Improvements.

Developer shall submit to McKinney draw requests (the “Draw Requests”) and the invoices relating to testing, surveying, construction and other expenses directly incurred by Developer and its contractors in furtherance of the construction of the McKinney Public Improvements (the “Invoices”), no more frequently than monthly, and McKinney agrees to pay each Draw Request within ten (10) days following the receipt thereof, provided that the Draw Request shall be certified by the project engineer and the Draw Request and Invoice shall include a certification by Developer that the amount of such Draw Request and/or Invoice, as the case may be, relates only to the McKinney Public Improvements. During said ten (10) day period, McKinney shall have the right to verify that the Draw Request and Invoice submitted to the City for payment relate to the McKinney Public Improvements and otherwise conform to the conditions set forth in this Agreement, and McKinney agrees to give written itemized notice of any objections thereto to Developer within said ten (10) day period.

6. 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.

7. 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, or hand delivered with a signed receipt reflecting such hand delivery, 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:*

M/I HOMES OF DFW, LLC  
405 Highway 121 A-210  
Lewisville, Texas 75067  
Attn: Louie Ocana  
Area President

*If Notice to McKinney:*

Tom Muehlenbeck  
Interim City Manager  
City of McKinney  
222 N. Tennessee St.  
McKinney, Texas 75069

8. 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.

9. 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.

10. 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.

11. 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 MCKINNEY PUBLIC IMPROVEMENTS 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.**

**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' FEES AND COSTS, COURT COSTS, AND SETTLEMENT**

**COSTS AS WELL AS ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.**

The City shall have the right to reasonably approve counsel to be retained in fulfilling the obligation to defend and indemnify the City. Approved counsel shall be retained for the City within seven (7) business days after receiving written notice from the City that it is invoking its right to indemnification under this Developer Participation Agreement. If approved counsel is not retained for the City within the required time, then the City shall have the right to retain counsel and be reimbursed for all its attorneys' fees and expenses by the party whose acts and/or omissions gave rise to said claim. The City retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so.

12. Authority.

Each of the parties represents and warrants to the other that they have the full power and authority to enter into and fulfill the obligations of this Agreement.

13. Performance and Payment Bonds.

Developer's Contractor must execute a performance bond in the amount of one hundred percent (100%) of the Total Contract Price for the benefit of the City for the construction of the Public Improvements, specifically including the City Share, to ensure the completion of the project. Developer must also execute a payment bond in the amount of one hundred percent (100%) of the Total Contract Price for the benefit of payment bond beneficiaries who have a direct contractual relationship with the Developer and/or the Developer's contractors and subcontractors to provide labor or material for the construction of the Public Improvements including the McKinney Public Improvements. The bonds must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code. Said bonds shall be presented to and approved by the City and the City Attorney before the Developer begins work on the Public Improvements.

14. Maintenance Bond.

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

15. Insurance Requirements.

(a) Before commencing work the Developer's contractor shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to the City of McKinney. The Developer's contractor shall furnish to the City of McKinney Purchasing Manager certificates of insurance executed by the insurer or its authorized agent stating coverages, limits,

expiration dates and compliance with all applicable required provisions. Certificates shall reference the project/contract number and be addressed as follows:

Park Ridge -- Developer Participation Agreement  
City of McKinney  
c/o EBIX BPO  
PO Box 257, REF. 72-483  
Portland, MI 48875-0257  
(Fax: 517-647-7900)

- (1) Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
  - (2) Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
  - (3) Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.
  - (4) Umbrella or Excess Liability insurance with minimum limits of \$5 Million each occurrence and annual aggregate for bodily injury and property damage, that follows form and applies in excess of the above indicated primary coverage (1, 2 and 3). The total limits required may be satisfied by any combination of primary, excess or umbrella liability insurance provided all policies comply with all requirements. The Developer's contractor may maintain reasonable deductibles, subject to approval by the City.
- (b) With reference to the foregoing required insurance, the Developer's contractor shall endorse applicable insurance policies as follows:
- (1) A waiver of subrogation in favor of the City and its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.
  - (2) The City and its respective officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy and all other required insurance policies, by using endorsement CG2026 or broader .
  - (3) All insurance policies shall be endorsed to the effect that the City will receive at least thirty (30) days notice prior to cancellation, non-renewal, termination, or material change of the policies.

- (c) All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by the A.M. BEST Company or equivalent.

14. Miscellaneous.

- (a) This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties to this Agreement.
- (b) This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- (c) Time is of the essence in this Agreement.
- (d) This Agreement is not a covenant running with the land and shall not be filed in the Deed Records of Collin County, Texas.

EXECUTED as of the date first above written.

**CITY OF MCKINNEY, TEXAS**

By: \_\_\_\_\_  
Tom Muehlenbeck, Interim City Manager

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

ATTEST:

\_\_\_\_\_  
Sandy Hart, TRMC, MMC  
City Secretary  
Denise Vice  
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 October, 2014.

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

**DEVELOPER:**

*M/I HOMES OF DFW, LLC*, a Delaware limited liability company,

By: \_\_\_\_\_  
Louie Ocana, Area President

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

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

This instrument was acknowledged before me on the \_\_\_\_ day of October, 2014, by Louie Ocana, in his capacity as Area President of *M/I HOMES OF DFW, LLC*, a Delaware limited liability company, 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 limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of October, 2014.

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



**EXHIBIT A**  
**MCKINNEY PUBLIC IMPROVEMENTS**

McKinney Public Improvements consist of approximately 1,238 linear feet of eight-inch (8") diameter sanitary sewer line with all appurtenances necessary for a complete installation as provided by plans consistent with the City's Code of Ordinances and approved by the City Engineer.

**EXHIBIT B**  
**PRELIMINARY OPINION OF PROBABLE COSTS**  
**(McKinney Public Improvements)**

**PARK RIDGE - OFFSITE SANITARY SEWER**

City of McKinney, Collin County, Texas

Preliminary Construction Plans prepared by JBI Partners, dated 6/13/14

Prepared: 10/01/14

Revised: 10/02/14

SANITARY SEWER	UNIT COST	UNIT	QTY	TOTAL
	(\$)	(-)	(± #)	(\$)
SILT FENCE (HIGH FLOW)	\$ 3.00	LF.	1,250	\$ 3,750.00
INLET PROTECTION	\$ 250.00	EA	2	\$ 500.00
CLEARING, GRUBBING & OFFSITE CHIPPING DISPOSAL	\$ 6,000.00	L.S.	1	\$ 6,000.00
8" P.V.C. PIPE (SDR-35) - STEEL/SPEED SHORING (STATIONS 1+00 TO 6+00)	\$ 50.00	LF.	500	\$ 25,000.00
8" P.V.C. PIPE (SDR-35) - BENCH SHORING (STATIONS 6+00 TO 13+37.58)	\$ 55.00	LF.	738	\$ 40,590.00
4' DIAMETER MANHOLE	\$ 3,500.00	EA.	7	\$ 24,500.00
CONNECT TO EXISTING MANHOLE	\$ 5,000.00	EA.	1	\$ 5,000.00
SAWCUT, REMOVE & REPLACE EXISTING PAVEMENT	\$ 200.00	S.Y.	45	\$ 9,000.00
REMOVE, REPLACE & DISPOSE BARRIER FREE RAMP	\$ 1,950.00	EA.	2	\$ 3,900.00
REMOVE EXISTING 4' SIDEWALK & DISPOSE MATERIAL	\$ 4.00	LF.	485	\$ 1,940.00
INSTALL 4' SIDEWALK	\$ 13.40	LF.	485	\$ 6,499.00
LANDSCAPING & IRRIGATION REPLACEMENT (STATIONS 1+20 TO 5+85.09)	\$ 1.50	SF.	9,300	\$ 13,950.00
TRAFFIC CONTROL	\$ 5,000.00	L.S.	1	\$ 5,000.00
REMOVE & REPLACE STOP SIGNS	\$ 1,000.00	EA.	2	\$ 2,000.00
REMOVE & REPLACE STREET SIGNS	\$ 1,000.00	EA.	4	\$ 4,000.00
REMOVE & REPLACE STREET LIGHT	\$ 7,500.00	EA.	1	\$ 7,500.00
TRENCH SAFETY	\$ 0.40	LF.	1,238	\$ 495.20
TESTING & T.V. INSPECTION	\$ 1.50	LF.	1,238	\$ 1,857.00
<b>SUB-TOTAL</b>				<b>\$ 161,481.20</b>

PROFESSIONAL, MISCELLANEOUS & CITY FEES	UNIT COST	UNIT	QTY	TOTAL
	(\$)	(-)	(± #)	(\$)
DAA PRELIMINARY ENGINEERING - CONSTRUCTION ESTIMATE & DESIGN REVIEW	\$ 3,500.00	L.S.	1	\$ 3,500.00
CONSTRUCTION STAKING	\$ 3,000.00	L.S.	1	\$ 3,000.00
MATERIAL TESTING	\$ 2,500.00	L.S.	1	\$ 2,500.00
INSPECTION FEES (3.5%)	\$ 5,651.84	PERCENTAGE	1	\$ 5,651.84
<b>SUB-TOTAL</b>				<b>\$ 14,651.84</b>

GRAND TOTAL \$ 176,133.04

CITY OF MCKINNEY \$ 95,000.00

MI HOMES \$ 81,133.04

**NOTES:**

- ESTIMATE IS BASED ON PRELIMINARY CONSTRUCTION PLANS BY JBI, DATED 6/13/14. OVERALL COST COULD VARY.
- UNIT PRICES ARE BASED ON PROJECT BID BY RKM UTILITIES AND PAVING. RKM WILL BE DOING THE PARK RIDGE ONSITE UTILITIES AND PAVING.
- UNIT PRICES ASSUME THEY WILL BE BUILT AT THE SAME TIME AS THE PARK RIDGE ONSITE IMPROVEMENTS.

**COST EXCLUSIONS & ASSUMPTIONS:**

- ESTIMATE ASSUMES THE CITY OF MCKINNEY WILL DIRECTLY HANDLE ALL COORDINATION WITH THE INWOOD HILLS HOA AND AFFECTED HOMEOWNERS.
- ESTIMATE ASSUMES THE CITY WILL PROVIDE ANY REQUIRED TREE SURVEYS, PRESERVATION PLANS AND/OR TREE PERMITTING.
- ESTIMATE ASSUMES THE CITY WILL PAY 100% OF THE REQUIRED TREE MITIGATION COST FOR THE TREE REMOVALS REQUIRED ALONG THIS OFFSITE SEWER LINE.
- ASSUMES THE CTY WILL PREPARE AND RECORD A SEPARATE INSTRUMENT SANITARY SEWER EASEMENT FOR THE PORTION OF SEWER LINE OUTSIDE THE PROPERTY LIMITES OF PARK RIDGE.
- ASSUMES PIPE SPOILS WILL REMAIN ONSITE.
- ASSUMES THE TOWN WILL PAY JBI PARTNERS DIRECTLY FOR ALL PROFESSIONAL FEES RELATED TO THE PREPARATION OF CONSTRUCTION DOCUMENTS.