

**UTILITY IMPACT FEE CREDIT AGREEMENT**

**CROSS DEVELOPMENT, LLC**

**Water Line Construction on Lots 1 and 2, Block A of the  
Caliber Collision Northwest Addition**

STATE OF TEXAS                   §  
   §                   KNOW ALL BY THESE PRESENTS:  
COUNTY OF COLLIN           §

The **CITY OF MCKINNEY** ("City"), a home rule municipal corporation situated in Collin County, Texas, and **CROSS DEVELOPMENT, LLC** ("Developer"), make and enter into this Utility Impact Fee Credit Agreement ("Agreement"), dated as of the date of execution and effective as of the Effective Date (defined herein).

**RECITALS**

WHEREAS, the City's Water and/or Wastewater Improvement Plans (hereinafter referred to singly and collectively as the "Master Plan") require the construction of certain Utility Improvements upon and across Developer's property known as Lots 1 and 2, Block A of the Caliber Collision Northwest Addition, which is located on the east side of Custer Road in an area north of W. University Drive as reflected in Exhibit A, which Exhibit is attached hereto and incorporated herein by reference for all purposes allowed by law, (the "Property") to serve future development in the area specifically including the Property; and

WHEREAS, Developer has constructed or agreed to construct certain Utility Improvements upon 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 impact fee credits that shall be applied to the Property; and

WHEREAS, City has agreed that Developer shall construct the Oversize Line required by the City's Master Plan (the "Utility Project"); and

WHEREAS, Developer has dedicated to the City the necessary easements and/or right-of-way for the Utility Project; and

WHEREAS, City has identified the Oversize Line on the City's Master Plan, which is a part of the City's Utility Impact Fee Ordinance; and

WHEREAS, for the construction of the Utility Project, Developer shall receive impact fee credits, calculated in accordance with the Ordinance, which shall attach to the Property,

**NOW THEREFORE**, in consideration of these premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which both Parties acknowledge, the City and Developer agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

#### **A. Definitions.**

1. *City* means the City of McKinney, a Texas home-rule city and municipal corporation situated in Collin County, and includes its representatives, agents, assigns, inspectors, contractors, employees and consultants.
2. *Developer* means Cross Development, LLC, its representatives, agents, contractors, employees, and consultants.
3. *Effective Date* means the date on which City accepts the construction of the Oversize Line and all related appurtenances thereto.
4. *Notice* means any formal notice or communication required or permitted to be given by one Party to another by this Agreement.
5. *Ordinance* means the “McKinney Utility Impact Fees Article” as set forth in Section 130-19, *et seq.*, of the Code of Ordinances, City of McKinney, Texas, and as it may further be amended, including any schedules or exhibits attached thereto.
6. *Oversize Line* means a water or wastewater line that is larger than the City’s minimum standard diameter water or wastewater mains, and which is also larger than the water or wastewater main required to serve the subdivision in question, as determined by the City.
7. *Parties* means the City and Developer.
8. *Property* means Developer’s property known as **Lots 1 and 2, Block A of the Caliber Collision Northwest Addition**, a depiction of which is attached hereto as Exhibit A.
9. *Utility Improvements* means storm water permitting, erosion control, easement preparation, excavation, trench safety, construction of water / wastewater lines, backfill, compaction, re-establishment of ground cover,

and any other improvements necessary for a complete water / wastewater system, and all engineering, surveying, inspection and permit fees for the construction of an Oversize Line, together with all related appurtenances thereto, upon and across the Property, that is the subject of this Agreement in accordance with all City, state and federal standards.

10. *Utility Project* means the Utility Improvements required to be constructed upon and across the Property by the City's Master Plan as reflected in Exhibit B and more specifically described in Exhibit C, which such Oversize Lines are eligible for impact fee credits and as approved by the CITY Engineer.
11. *Service Unit* means the applicable standard unit of measure that serves as the standardized measure of consumption, use or generation attributable to the new unit of development. The service unit for water and wastewater is a  $\frac{3}{4}$ -inch water meter which is the typical water meter used for a single-family detached living unit and is commonly referred to as the single family living unit equivalent (SFLUE). The number of service units used for water and wastewater by a particular land use is determined by the water meter size and water meter type employed by such land use.

**B. Interpretation of Terms, and Incorporation of Exhibits.**

Except where the context otherwise clearly requires, in this Agreement: words imparting the singular will include the plural and vice versa;

1. all exhibits attached to this Agreement are incorporated by reference for all pertinent purposes as though fully copied and set forth at length; and
2. references to any document means that document as amended or as supplemented from time to time; and references to any party means that party, its successors, and assigns.

**ARTICLE II**

**DEVELOPER CONTRIBUTION  
OF UTILITY IMPROVEMENTS**

**A. Utility Improvements**

1. Developer shall construct the Utility Project depicted on the attached Exhibit B and more specifically described in Exhibit C. Developer shall construct all Utility Improvements appurtenant to the Utility Project.



2. At this time, the Utility Project is included in the City's Master Plan. The Utility Project is therefore eligible for impact fee credits as calculated under the Ordinance.

### **ARTICLE III**

#### **IMPACT FEE CREDITS**

##### **A. Assignment and Expiration of Utility Impact Fee Credits**

1. City agrees to grant Developer impact fee credits in conjunction with the acceptance of the Utility Project. The impact fee credits shall vest and attach to the Property upon the City's acceptance of the Utility Project.

2. The Impact Fee Credits granted under this agreement shall only be assigned with the City's consent pursuant to Section 130-29 of the Ordinance. The impact fee credits shall have no expiration; but in any event, the impact fee credits shall only be applied to the Property. Application of the impact fee credits to future developed lots and any reimbursement for unused impact fee credits shall be governed by the Ordinance.

##### **B. Value of Utility Improvements**

1. The City has agreed to reimburse the Developer the actual cost associated with oversizing certain water and/or wastewater lines required to serve the Property by the City's Master Plan as described in detail in Exhibit C.

2. Developer shall provide appropriate cost documentation, as approved by the City Engineer, reflecting the actual expenditures for oversizing the water and/or wastewater lines. The reimbursement costs shall include all items pertinent to construction of the Oversize Line segments but excluding easements dedicated for the construction of such water and/or wastewater lines. The City Engineer shall review the cost documentation and make a final determination regarding those costs that are necessary and attributable solely to the oversizing of the water and/or wastewater lines in question. Said cost documentation shall be attached hereto as Exhibit D and is hereby incorporated herein for all purposes allowed by law.

3. Reimbursement for the cost of oversizing the water and/or wastewater lines shall be made through the grant or award of utility impact fee credits for the Property. Credits shall be calculated and applied based on the Ordinance. Credits shall vest and attach to the Property upon the CITY's acceptance of the Oversize Lines.

4. Developer and City agree that the value of the Oversize Lines shall be expressed in Service Unit Equivalents. The impact fee credits which shall attach to the Property under this Agreement are 62.81 Service Unit Equivalents.

**C. *Use of Impact Fee Credits***

Impact fee credits shall be used only for the Property. Service Unit calculations for proposed uses on the Property shall be in accordance with then existing tables of the Ordinance. Unused impact fee credits shall not be transferable to any other tract or parcel of land and cannot be applied to other fees, or used on other tracts; however, impact fee credits shall be subject to any reimbursements allowed by then existing ordinances after City's final acceptance of the Utility Project as impact fee funds may be available for that purpose. Upon the exhaustion of the impact fee credits by Developer on the Property, any additional development on the Property (such as the creation of additional lots) shall pay then existing utility impact fees or receive credits for construction of additional utility improvements under then existing ordinances.

**D. *Developer Responsibilities under Development Ordinances***

Nothing herein shall relieve the Developer from its responsibilities for construction of public improvements under applicable development ordinances upon development of the Property. Developer shall not be entitled to utility impact fee credits for any line that is not actually constructed or which is not constructed in accordance with the City's Master Plan and development ordinances.

**E. *Reimbursement of Excess Impact Fee Credits***

It is anticipated that the development of the Property, as currently proposed, will only require the use of 4.4 Service Unit Equivalents based on the assumption that the Property when fully developed will only require one 1" diameter water meter, one 3/4" diameter water meter and one 1" diameter irrigation water meter. It is specifically understood and agreed that the number of Service Unit Equivalents actually used may increase or decrease based on the number and sizes of the water meters actually required in the development of the Property. Based on the foregoing assumption that 4.4 Service Unit Equivalents will be used by Developer it is anticipated that 58.41 Service Unit Equivalents having a cash value of up to \$75,625.82 may remain following the full development of the Property.

Notwithstanding anything to the contrary contained herein the City will, following City's final acceptance of the Utility Project, reimburse to Developer the proportionate cash value of any unused Service Unit Equivalents that have not otherwise been assigned by Developer to any other person, lot or property



pursuant to Paragraph A of this Article III. In no event shall City be obligated to reimburse Developer (a) in the absence of impact fee revenues available for such purpose and (b) any amount greater than the proportionate remainder of \$75,625.82 after all used Service Unit Equivalents in excess of 4.4 Service Unit Equivalents have been deducted from such amount. (If, however, Developer pays the impact fees due and owing for a one 1" diameter water meter, one ¾" diameter water meter and one 1" diameter irrigation water meter in conjunction with its development of Lot 1 of the Property prior to earning the impact fee credits set out herein, the City may also reimburse Developer for the amount of impact fees attributable thereto in an amount equal to 4.4 Service Unit Equivalents for an additional reimbursement not to exceed an additional amount of up to \$5,696.68. It is specifically agreed and understood by Developer that should Developer request reimbursement of the unused Service Unit Equivalents prior to the full development of the Property that Developer shall be required to pay the then applicable impact fees for the development of the Property.

#### **ARTICLE IV**

##### **AGREEMENT MAY NOT BE PLEDGED AS COLLATERAL**

Developer may not pledge this Agreement, or any credits granted hereunder, as collateral for purposes of securing financing for development of the Property.

#### **ARTICLE V**

##### **GENERAL PROVISIONS**

###### **A. Notice of Default; Opportunity to Cure; Remedies**

1. Should any Party allege that the other has defaulted in the performance of any obligation hereunder, it will provide at least thirty (30) days written notice to the other Party specifying the nature of the alleged default and opportunity to cure the default before exercising any remedy related to the alleged default.
2. Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond the thirty (30) day notice and cure period provided above, the other Party shall have the right to enforce the terms and provisions of this Agreement by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled.
3. Any remedy or relief described in this Agreement shall be cumulative of and in addition to any other remedies and relief available at law or in equity.

4. The foregoing notwithstanding, it is understood and agreed that in addition to any other remedy which the City may have upon default by Developer under this Agreement, should Developer fail to comply with the Subdivision Ordinance or any City development regulation, the City may terminate this Agreement. Upon termination pursuant to this subsection, all impact fee credits shall terminate.

**B. *Entire Agreement; Interpretation of this Agreement***

1. This Agreement including any attached exhibits is the entire agreement between the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein. If there is a conflict between this Agreement and prior written or verbal representations, this Agreement shall control.
2. This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for or against either Party.

**C. *Amendment***

No amendment of this Agreement will be effective unless it is in writing and signed by the duly authorized representatives of the Parties hereto, which amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

**D. *No Amendment of Other Agreements***

Unless otherwise expressly stipulated herein, this Agreement is separate from and will not constitute an amendment or modification of any other agreement between the Parties.

**E. *Other Instruments, Actions***

The Parties hereto agree that they will take such further actions and execute and deliver such other and further consents, authorizations, instruments, or documents as are necessary or incidental to effectuate the purposes of this Agreement.

**F. *No Third Party Beneficiaries***

Except as expressly provided herein, nothing herein shall be construed to confer upon any person other than the Parties hereto any rights, benefits or remedies under or because of this Agreement.

**G. *Applicable Law; Venue***

This Agreement shall be construed under and according to the laws of the State of Texas. Personal jurisdiction and venue for any suit arising hereunder shall be in Collin County, Texas.

**H. *Severability***

The provisions of this Agreement are severable, and if any court shall ever hold any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application of it to any person or circumstance of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected by that and this Agreement will be construed as if it had never contained such invalid or unconstitutional portion therein.

**I. *Counterparts***

The Parties may execute this Agreement in one or more duplicate originals each of equal dignity.

**J. *Notices***

For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be as follows:

**DEVELOPER:**

**Cross Development, LLC**  
4336 Marsh Ridge  
Carrollton, Texas 75010

**CITY OF MCKINNEY:**

Office of the City Manager  
222 N. Tennessee Street  
McKinney, Texas 75069

The Parties will have the right from time to time to change their respective addresses upon written notice to the other Party. If any date or notice period described in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the Notice will be extended to the first business day following such Saturday, Sunday or legal holiday.

**K. *No Waiver of Development Ordinances***

No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this



Agreement; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. Nothing herein shall waive any obligations of Developer under applicable ordinances, including but not limited to the subdivision ordinance, the sewer and water impact fee ordinance, or the roadway impact fee ordinance.

**L. Attorney's Fees**

Should either Party be required to resort to litigation to enforce the terms of this Agreement, the prevailing Party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other Party. If the court awards relief to both Parties, each will bear its own costs in their entirety except as otherwise specified by the court.

**M. Governmental Authority**

Nothing in this Agreement shall be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the facilities and utility improvements contemplated by the terms of this Agreement except as specifically waived or modified herein or by specific action of the City Council, nor the City's duty to provide for the public health, safety, and welfare in the construction or maintenance of the same.

**N. Assignability**

This Agreement shall not be assignable by Developer without the prior written consent of the City.

**O. Binding Obligation**

This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, successors, and assigns.

**P. Waiver of Claims.**

Developer has voluntarily agreed to undertake the construction of the Utility Improvements for the Utility Project in exchange for impact fee credits to be applied to the Property. The construction of the Utility Project is not a condition of approval or acceptance of the development of the Property. **Developer waives any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code and any federal constitutional claims. Developer further releases City from any and all claims based on excessive or illegal exactions. 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.

**CITY OF MCKINNEY**

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

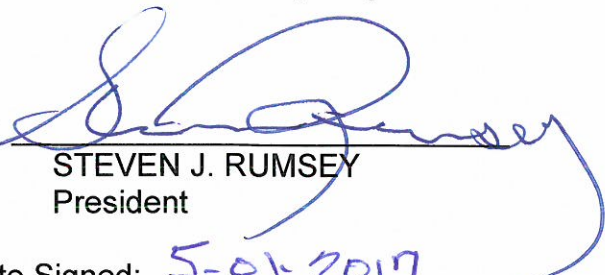
ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE, TRMC  
Assistant City Secretary

APPROVED AS TO FORM:

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

**CROSS DEVELOPMENT, LLC.,  
A Texas limited liability corporation**

By:   
STEVEN J. RUMSEY  
President

Date Signed: 5-01-2017

THE STATE OF TEXAS,  
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared PAUL G. GRIMES, 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\_\_\_\_\_.

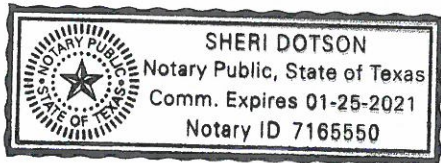
\_\_\_\_\_  
Notary Public \_\_\_\_\_ County, Texas  
My commission expires \_\_\_\_\_

THE STATE OF TEXAS,  
COUNTY OF COLLIN

This instrument was acknowledged before me on the 1st day of MAY, 2017, by STEVEN J. RUMSEY, in his capacity as President of **CROSS DEVELOPMENT, LLC.**, a Texas limited liability 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 **CROSS DEVELOPMENT, LLC.**

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 1st  
DAY OF MAY, 2017.

[Signature]  
\_\_\_\_\_  
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 PROPERTY

**CONVEYANCE PLAT**  
 CALIBER COLLISION NORTHWEST ADDITION  
 LOT 1 & 2, BLOCK A

THE CITY OF MARIETTA, GEORGIA  
 COUNTY OF MARIETTA  
 CIVIL DIVISION

REGISTERED IN THE PUBLIC RECORDS OF THE COUNTY OF MARIETTA, GEORGIA, BOOK 100, PAGE 100.

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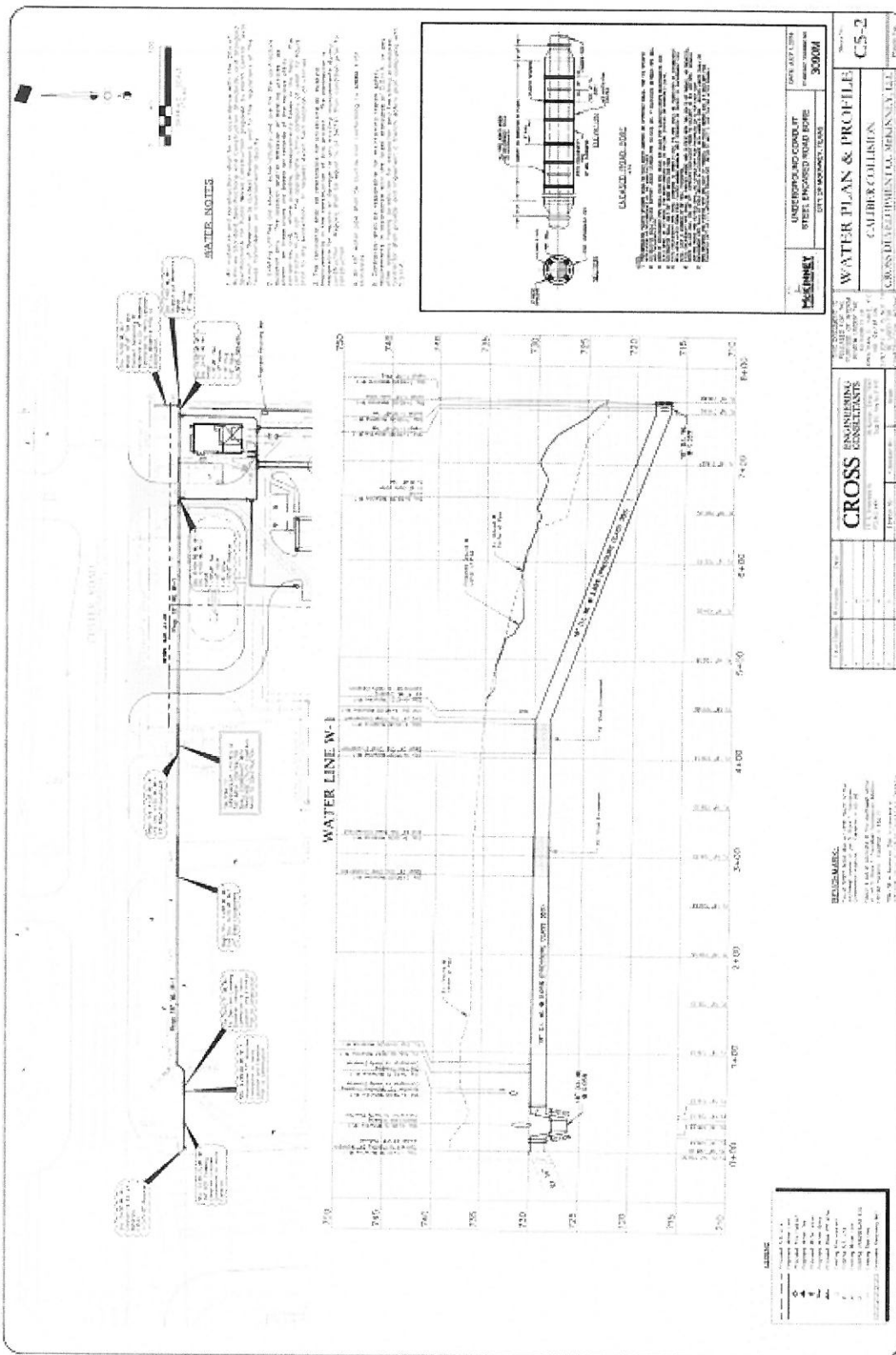
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# Exhibit B

## UTILITY PROJECT MAP



## Exhibit C

### IMPACT FEE CREDIT ELIGIBLE UTILITY IMPROVEMENTS

**CROSS DEVELOPMENT, LLC** (“Developer”), shall design and construct approximately 765 linear feet of 18” diameter AWWA C151 ductile iron water line, rather than a 12” diameter water line, together with all related appurtenances including, but not limited to, all necessary fittings and connectors, two (2) 18” butterfly valves, approximately 25 linear feet of 8” diameter water line, testing, trench safety, and bonds, in strict accordance with the Master Plan and all applicable requirements of the City of McKinney’s Code of Ordinances and Engineering Design Standards and criteria all upon, over, under and across the Property in or about the location identified in Exhibit B, all in accordance with and subject to the final approval and acceptance of the City Engineer.



**Exhibit D**

**COSTS FOR ELIGIBLE PROJECTS**



ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
<b><u>WATER - 18" LINE</u></b>					
1	18" Ductile Iron CL. 350	765	LF	\$ 106.50	\$ 81,472.50
2	8" DR 14	25	LF	\$ 25.00	\$ 625.00
3	18" Gate Valve	2	EA	\$ 9,100.00	\$ 18,200.00
4	8" Gate Valve	3	EA	\$ 1,650.00	\$ 4,950.00
5	24" Fitting	1	EA	\$ 1,950.00	\$ 1,950.00
6	18" Fittings	12	EA	\$ 1,825.00	\$ 21,900.00
7	8" Fittings	2	EA	\$ 850.00	\$ 1,700.00
8	30" Steel Encasement Pipe	70	LF	\$ 180.00	\$ 12,600.00
9	18" Line Lowering at RCP	1	EA	\$ 2,000.00	\$ 2,000.00
10	Barricades/Road Plates	1	LS	\$ 3,000.00	\$ 3,000.00
11	Connect to 24" Stubout	1	EA	\$ 2,000.00	\$ 2,000.00
12	Cut/Connect to Existing 8" Line	1	EA	\$ 1,600.00	\$ 1,600.00
13	Remove/Replace Concrete Drive Pavement	640	SF	\$ 18.00	\$ 11,520.00
				<b>TOTAL</b>	<b>\$ 163,517.50</b>
 <b><u>WATER - 12" LINE</u></b>					
1	12" PVC DR 18	765	LF	\$ 35.00	\$ 26,775.00
2	8" DR 14	25	LF	\$ 25.00	\$ 625.00
3	12" Gate Valve	2	EA	\$ 2,675.00	\$ 5,350.00
4	8" Gate Valve	3	EA	\$ 1,650.00	\$ 4,950.00
5	24" Fitting	1	EA	\$ 1,900.00	\$ 1,900.00
6	12" Fittings	12	EA	\$ 1,050.00	\$ 12,600.00
7	8" Fittings	2	EA	\$ 850.00	\$ 1,700.00
8	24" Steel Encasement Pipe	70	LF	\$ 130.00	\$ 9,100.00
9	12" Line Lowering at RCP	1	EA	\$ 1,075.00	\$ 1,075.00
10	Barricades/Road Plates	1	LS	\$ 3,000.00	\$ 3,000.00
11	Connect to 24" Stubout	1	EA	\$ 2,000.00	\$ 2,000.00
12	Cut/Connect to Existing 8" Line	1	EA	\$ 1,600.00	\$ 1,600.00
13	Remove/Replace Concrete Drive Pavement	640	SF	\$ 18.00	\$ 11,520.00
				<b>TOTAL</b>	<b>\$ 82,195.00</b>

Difference in cost      \$      81,322.50

Please call me if you have any question about this proposal.  
David Lippert

2138 CalHar Drive

Melissa, TX 75454

Bus: 972-838-2888

Fax: 972-838-2299