



**POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES
WITH ADDITIONAL PAYMENT OF INDEPENDENT CONSIDERATION**

STATE OF TEXAS	§	ROW CSJ: 1392-03-015
	§	Parcel No.: 2
COUNTY OF COLLIN	§	Project No.: N/A

This Possession and Use Agreement For Transportation Purposes (the “Agreement”) between the State of Texas, acting by and through the Texas Department of Transportation (the “State”) , and The City of McKinney, a Texas Municipal Corporation (the “Grantor” whether one or more), grants to the State, its contractors, agents and all others deemed necessary by the State, an irrevocable right to possession and use of the Grantor’s property for the purpose of constructing a portion of Highway No. FM 1461 (the “Highway Construction Project”). The property subject to this Agreement is described more fully in field notes and plat map (attached as “Exhibit A”) and made a part of this Agreement by reference (the “Property”).

1. For the consideration paid by the State which is set forth in Paragraphs 2 and 3 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, sells and conveys to the State of Texas the right of entry and exclusive possession and use of the Property for the purpose of constructing a highway and appurtenances thereto and the right to remove any improvements. Authorized activities include surveying, inspection, environmental studies, archeological studies, clearing, demolition, construction of permanent improvements, relocating, replacing, and improving existing utility facilities, locating new utility facilities, and other work required to be performed in connection with the Highway Construction Project. This Possession and Use Agreement will extend to the State, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the State in the future, and all others deemed necessary by the State for the purpose of the Highway Construction Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.
2. In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the State will tender to the Grantor the sum of Zero Dollars (\$0.00). The Grantor agrees that this sum represents adequate and full compensation for the possession and use of the Property. The State will be entitled to take possession and use of the Property upon tender of payment. The parties agree that the sum tendered represents Zero percent of the State's approved value, which assumes no adverse environmental conditions affecting the value of the Property. The approved value is the State’s determination of the just compensation owed to the Grantor for the real property interest to be acquired by the State in the Property, encumbered with the improvements thereon, if any, and damages to the remainder, if any, save and except all oil, gas and sulphur. The parties agree that the sum tendered to Grantor will be deducted from any final settlement amount, Special Commissioners’ award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount the State has paid for the possession and use of the Property, then the Grantor agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the

State, the Grantor will promptly refund the overpayment to the State.

3. As additional consideration, the State will tender to the Grantor the sum of Seven Thousand Eight Hundred Seventy-Three and 30/100 Dollars (\$7,873.30), the receipt and sufficiency of which is acknowledged. The parties agree that the sum tendered under this Paragraph 3:
 - (i) is independent consideration for the possession and use of Grantor's Property and represents no part of the State's compensation to be paid for the anticipated purchase of the Property; and
 - (ii) will not be refunded to the State upon any acquisition of the Property by the State.
4. The effective date of this Agreement will be the date on which payment pursuant to Paragraphs 2 and 3 above was tendered to the Grantor by the State, or disbursed to the Grantor by a title company acting as escrow agent for the transaction, (the "Effective Date").
5. The Grantor warrants and represents that the title to the Property is free and clear of all liens and encumbrances or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the State from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.
6. The parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired by the State in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date of this Agreement.
7. This Agreement is made with the understanding that the State will continue to proceed with acquisition of a real property interest in the Property. The Grantor reserves all rights of compensation for the title and interest in and to the Property which the Grantor holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Grantor's rights to receive full and just compensation as allowed by law for all of the Grantor's interests in and to the Property to be acquired by the State, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Grantor's interest in any larger tract of which the Property is a part (the "Remainder"), if any; all as the Property exists on the Effective Date of this Agreement. The State's removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to the Grantor in the eminent domain proceedings. There will be no project impact upon the appraised value of the Property. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.
8. In the event the State institutes or has instituted eminent domain proceedings, the State will not be liable to the Grantor for interest upon any award or judgment as a result of such proceedings for any period of time prior to the date of the award. Payment of any interest may be deferred by the State until entry of judgment.
9. The purpose of this Agreement is to allow the State to proceed with its Highway Construction Project without delay and to allow the Grantor to have the use at this time of a percentage of the estimated compensation for the State's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Highway Construction Project is for a valid public use and voluntarily waives any right the Grantor has or may have, known or unknown, to

contest the jurisdiction of the court in any condemnation proceeding for acquisition of the Property related to the Highway Construction Project, based upon claims that the condemning authority has no authority to acquire the Property through eminent domain, has no valid public use for the Property, or that acquisition of the Property is not necessary for the public use.

10. The Grantor reserves all of the oil, gas and sulphur in and under the land herein conveyed but waives all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. The extraction of oil, gas and minerals may not affect the geological stability of the surface. Nothing in this reservation will affect the title and rights of the State to take and use all other minerals and materials thereon, and thereunder.
11. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property, including prorated taxes for the year in which the State takes title to the Property.
12. Notwithstanding the acquisition of right of possession to the Property by the State in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court, less any amounts tendered to the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the State acquires title to the Property either by negotiation, settlement, or final court judgment.
13. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.
14. It is agreed the State will record this document.
15. Other conditions: None.

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the State of Texas and its assigns forever, for the purposes and subject to the limitations set forth above.

GRANTOR:

By: _____

Printed Name: _____

Title: _____
(if GRANTOR is an entity other than an individual person)

Date: _____

Corporate Acknowledgment

State of Texas
County of _____

This instrument was acknowledged before me on _____ day of _____ 2021 by _____
(name), _____ (title), of The City of McKinney, a Texas municipal corporation, on behalf
of said corporation.

Notary Public's Signature

THE STATE OF TEXAS

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____
Craig Dearman, Right of Way Manager

Date: _____

Corporate Acknowledgment

State of Texas
County of

This instrument was acknowledged before me on ____ day of _____ 2021 by Craig Dearman, Right of Way Manager for the Texas Department of Transportation, Dallas District.

Notary Public's Signature

EXHIBIT "A"

County: Collin
Highway: FM 1461
STA. 105+71.99 to STA. 109+23.02
R.O.W. CSJ: 1392-03-015

Page 1 of 5
April 26, 2019

Description for Parcel 2

BEING 37,051 square feet of land situated in the Joel F Stewart Survey, Abstract No. 838, City of McKinney and City of McKinney Extra Territorial Jurisdiction, Collin County, Texas, and being all of the called 0.847 acre tract of land described in the deed to The City of McKinney recorded in Document No. 20120824001057390 of the Official Public Records of Collin County, Texas, said 37,051 square feet (0.8506 acres) of land being more particularly described by metes and bounds as follows:

COMMENCING at a 1/2 inch iron rod found (Controlling Monument (CM)) in the common south line of Lot 6 of Bloomdale Estates, an addition to Collin County, Texas recorded in Cabinet J, Page 981 of the Plat Records of Collin County, Texas, north line of a 60' right-of-way dedication to Collin County, Texas recorded in Cabinet J, Page 981 of said Plat Records of Collin County, Texas, and existing north right-of-way line of County Road 164 (Bloomdale Road) (a variable width right-of-way), from which a calculated point for the common southeast corner of said Lot 6 and southwest corner of Lot 7 of said Bloomdale Estates bears North 89 degrees 58 minutes 57 seconds East, a distance of 100.00 feet;

THENCE, South 89 degrees 58 minutes 57 seconds West, with the common south line of said Lot 6, north line of said 60' right-of-way dedication, and existing north right-of-way line of said County Road 164 (Bloomdale Road), a distance of 444.13 feet to a 1/2 inch iron rod found (CM) for the **POINT OF BEGINNING** and having a surface coordinate of N=7,142,626.81 and E=2,525,265.91, said 1/2 inch iron rod being the common southwest corner of said Lot 6 and northwest corner of said 60' right-of-way dedication, said 1/2 inch iron rod also being in the east line of said 0.847 acre tract of land and being 134.73 feet Right of and at right angles to centerline Station 106+31.91 of said FM 1461;

- (1) **THENCE**, South 00 degrees 21 minutes 26 seconds East, with the common east line of said 0.847 acre tract of land and west line of said 60' right-of-way dedication, a distance of 60.00 feet to a calculated point for the common southeast corner of said 0.847 acre tract of land and southwest corner of said 60' right-of-way dedication, said point also being in the north line of a called 3.920 acre tract of land described in the deed to City of McKinney, Texas recorded in Document No. 20100427000412530 of said Official Public Records of Collin County, Texas, said point being 137.92 feet Right of and at right angles to centerline Station 105+71.99 of said FM 1461;

EXHIBIT "A"

County: Collin
Highway: FM 1461
STA. 105+71.99 to STA. 109+23.02
R.O.W. CSJ: 1392-03-015

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April 26, 2019

Description for Parcel 2

- (2) **THENCE**, South 89 degrees 58 minutes 57 seconds West, with the common south line of said 0.847 acre tract of land and north line of said 3.920 acre tract of land, a distance of 118.51 feet to a calculated point for the common southwest corner of said 0.847 acre tract of land and northwest corner of said 3.920 acre tract of land, said point being in the common east line of a called 2.839 acre tract of land described in the deed to State of Texas recorded in Volume 455, Page 406 of the Deed Records of Collin County, Texas and existing east right-of-way line of FM 1461 (a variable width right-of-way);
- (3) **THENCE**, North 00 degrees 05 minutes 16 seconds East, with the common west line of said 0.847 acre tract of land, east line of said 2.839 acre tract of land, and existing east right-of-way line of said FM 1461, passing at a distance of 18.31 feet, a calculated point for the common northeast corner of said 2.839 acre tract of land and southeast corner of a called 1.186 acre tract of land described in the deed to State of Texas recorded in Volume 455, Page 458 of said Deed Records of Collin County, Texas, in all, a distance of 169.71 feet to a calculated point for the beginning of a non-tangent curve to the right having a radius of 432.53 feet, a central angle of 21 degrees 43 minutes 39 seconds, and a chord that bears North 10 degrees 55 minutes 46 seconds East, a chord length of 163.04 feet, from which a 1/2 inch iron rod found for reference bears North 48 degrees 28 minutes 55 seconds East, a distance of 0.83 feet;
- (4) **THENCE**, Northeasterly, with the common west line of said 0.847 acre tract of land, east line of said 1.186 acre tract of land, and existing east right-of-way line of said FM 1461, an arc length of 164.02 feet to a calculated point for the northwest corner of said 0.847 acre tract of land, said point being in the south line of a called .5 acre tract of land described in the deed to McKinney Independent School District/Collin County/Collin County CCD recorded in Document No. 20091106001360340 of said Official Public Records of Collin County, Texas;
- (5) **THENCE**, North 89 degrees 56 minutes 33 seconds East, with the common north line of said 0.847 acre tract of land and south line of said .5 acre tract of land, passing at a distance of 0.61 feet, a 1/2 inch iron rod found for reference, in all, a distance of 85.28 feet to a 1/2 inch iron rod found (CM) for the common northeast corner of said 0.847 acre tract of land and southeast corner of said .5 acre tract of land, said 1/2 inch iron rod also being in the west line of said Lot 6 and being 99.90 feet Right of and at right angles to centerline Station 109+23.02 of said FM 1461;
- (6) **THENCE**, South 00 degrees 21 minutes 26 seconds East, with the common east line of said 0.847 acre tract of land and west line of said Lot 6, a distance of 269.85 feet to the **POINT OF BEGINNING** and containing 37,051 square feet or 0.8506 acres of land, more or less.

EXHIBIT "A"

County: Collin
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R.O.W. CSJ: 1392-03-015

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Description for Parcel 2

NOTES:

The basis of bearing is the Texas State Plane Coordinate System of 1983 North Central Zone (4202), North American Datum (NAD83), 2011 adjustment, EPOCH 2010. All distances and coordinates shown are surface, unless otherwise noted, and may be converted to grid by dividing by the TXDOT combined scale factor of 1.000152710. Unit of measurement is U.S. Survey Feet.

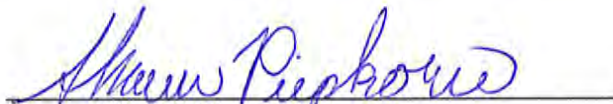
** This monument may be replaced by TXDOT Type II Right-of-Way Marker upon completion of the highway acquisition project under the supervision of a Registered Professional Land Surveyor either employed or retained by TXDOT.

A plat of same date accompanies this description.

This survey was performed without the benefit of a title report. There may be easements of record that affect.

All stations and offsets shown are calculated relative to the project centerline (FM 1461 centerline).

I, Shaun Marvin Piepkorn, a Registered Professional Land Surveyor, do hereby declare that this description and accompanying plat is true and correct to the best of my knowledge and belief and that the property described herein was determined by survey made on the ground under my direction and supervision.



Shaun Marvin Piepkorn
Registered Professional Land Surveyor No. 6432
Date: April 26, 2019



1519 Surveying, LLC
11498 Luna Road, Suite 203
Farmers Branch, Texas 75234
Office 214-484-8586
Texas Firm No. 10194283

CITY OF MCKINNEY

STATE OF TEXAS
VOLUME 455, PAGE 458
D.R.R.C.T.
CALLED 1.186 ACRES

EXHIBIT "A"
PAGE 4 OF 5

CURVE TABLE					
CURVE	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH	ARC LENGTH
C1	432.53'	21°43'39" (RT)	N 10°55'46" E	163.04'	164.02'

105+00
STATE OF TEXAS
VOLUME 455, PAGE 406
D.R.R.C.T.
CALLED 2.839 ACRES

N 00°05'16" E 169.71'

FM 1461
(A VARIABLE WIDTH RIGHT-OF-WAY)

LINE TABLE		
L1	S 00°21'26" E	60.00'
L2	S 89°58'57" W	118.51'
L3	N 89°56'33" E	85.28'

CENTERLINE CURVE DATA
PI STATION = 41+65.72
PI NORTHING = 7,010,856.72
PI EASTING = 2,607,883.15
DELTA = 61°41'06.65" (LT)
DEGREE OF CURVE = 4°35'01.18"
TANGENT = 746.41
LENGTH = 1,345.76
RADIUS = 1,250.00
PC STATION = 34+19.31
PT STATION = 47+65.07
CHORD BEARING = N 29°54'33" E
CHORD DISTANCE = 1,281.70'

ANDREW STAPP SURVEY
ABSTRACT NO. 833

CITY OF MCKINNEY, TEXAS
DOCUMENT NO.
20100427000412530
O.P.R.C.C.T.
CALLED 3.920 ACRES

STA 105+71.99
137.92' RT

P.O.B.
PARCEL 2

FOUND 1/2"
IRON ROD (CM)
N=7,142,626.81
E=2,525,265.91
STATION -106+31.91
134.73' RT

OWNER:
CITY OF MCKINNEY
DOCUMENT NO.
20150330000344760
O.P.R.C.C.T.
CALLED 0.141 ACRES

P.O.C.
PARCEL 2
FOUND 1/2"
IRON ROD (CM)

COUNTY ROAD 164
(BLOOMDALE ROAD)
(A VARIABLE WIDTH RIGHT-OF-WAY)

60' RIGHT-OF WAY
DEDICATION
CABINET J, PAGE 981
P.R.C.C.T.

LOT 7
BLOOMDALE ESTATES
CABINET J, PAGE 981
P.R.C.C.T.

OWNER:
THE CITY OF MCKINNEY
DOCUMENT NO.
20120824001057390
O.P.R.C.C.T.
CALLED 0.847 ACRES

FOUND 1/2"
IRON ROD BEARS
N 48°28'55" E
0.83'

0.8506 ACRES OR
37,051 SQ. FT.

JOEL F STEWART SURVEY
ABSTRACT NO. 838

S 00°21'26" E 269.85'

10' BUILDING LINE
CABINET J, PAGE 981
P.R.C.C.T.

10' DRAINAGE AND
UTILITY EASEMENT
CABINET J, PAGE 981
P.R.C.C.T.

FOUND 1/2"
IRON ROD (CM)
STA 109+23.02
99.90' RT

RIGHT-OF-WAY EASEMENT
STATE OF TEXAS
VOLUME 455, PAGE 426
D.R.C.C.T.

RIGHT-OF-WAY
EASEMENT
STATE OF TEXAS
VOLUME 455
PAGE 391
D.R.C.C.T.

25' EASEMENT
SOUTHWESTERN BELL
TELEPHONE COMPANY
VOLUME 393, PAGE 353
D.R.C.C.T.

35' BUILDING LINE
CABINET J, PAGE 981
P.R.C.C.T.

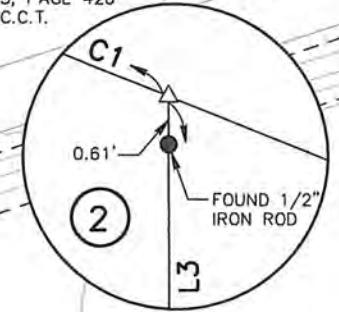
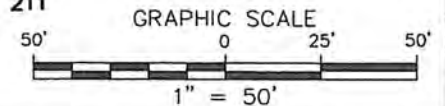
LOT 6
BLOOMDALE ESTATES
CABINET J, PAGE 981
P.R.C.C.T.

15' UTILITY EASEMENT
CABINET J, PAGE 981
P.R.C.C.T.

A PLAT OF A SURVEY OF
PARCEL 2 FOR FM 1461
R.O.W. C.S.J. 1392-03-015
(0.8506 AC.) PARCEL OF LAND
IN THE JOEL F STEWART SURVEY
ABSTRACT NUMBER 838
CITY OF MCKINNEY &
CITY OF MCKINNEY
EXTRA TERRITORIAL JURISDICTION
COLLIN COUNTY, TEXAS

CITY OF MCKINNEY
EXTRA TERRITORIAL
JURISDICTION

COLLIN COUNTY
TALTON CUNNIUS
SURVEY
ABSTRACT NO. 211



DETAIL "A"
NOT TO SCALE

EXHIBIT "A"
PAGE 5 OF 5

NOTES:

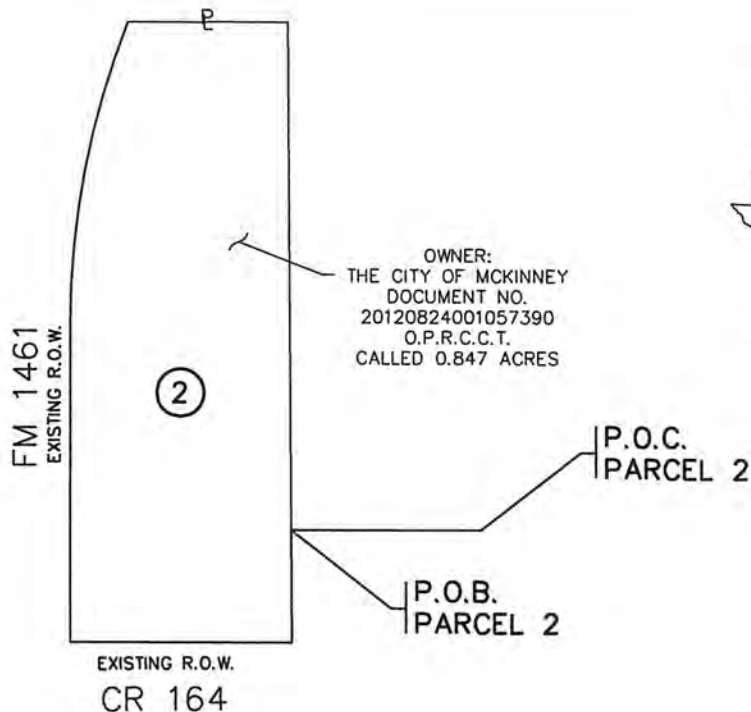
1. THE BASIS OF BEARING IS THE TEXAS STATE PLANE COORDINATE SYSTEM OF 1983, NORTH CENTRAL ZONE (4202), NORTH AMERICAN DATUM (NAD 83), 2011 ADJUSTMENT, EPOCH 2010. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE, UNLESS OTHERWISE NOTED, AND MAY BE CONVERTED TO GRID BY DIVIDING BY THE TXDOT COMBINED SCALE FACTOR OF 1.000152710. UNIT OF MEASURE IS U.S. SURVEY FEET.
2. ** THIS MONUMENT MAY BE REPLACED BY TXDOT TYPE II RIGHT-OF-WAY MARKER UPON COMPLETION OF THE HIGHWAY ACQUISITION PROJECT UNDER THE SUPERVISION OF A REGISTERED PROFESSIONAL LAND SURVEYOR EITHER EMPLOYED OR RETAINED BY TXDOT.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT. THERE MAY BE EASEMENTS OF RECORD THAT AFFECT.
4. A LEGAL DESCRIPTION OF SAME DATE ACCOMPANIES THIS PLAT.
5. ALL STATIONS AND OFFSETS SHOWN ARE CALCULATED RELATIVE TO THE PROJECT CENTERLINE (FM 1461 CENTERLINE).

LEGEND:

SURVEY LINE	
EXISTING TXDOT R.O.W. LINE	
PROPERTY LINE	
NEW CENTERLINE	
NEW R.O.W. LINE	
NEW TXDOT EASEMENT LINE	
EXISTING EASEMENT LINE	
BROKEN LINE	
LAND HOOK (SAME OWNER)	
TXDOT TYPE I MONUMENT FOUND (UNLESS OTHERWISE NOTED)	
MONUMENT FOUND (SIZE & TYPE NOTED)	
CALCULATED POINT	
5/8" IRON ROD WITH A PINK 1-3/4" PLASTIC CAP STAMPED "TXDOT SURVEY MARKER RIGHT OF WAY MONUMENT" SET (UNLESS OTHERWISE NOTED)	
(CM)	
DEED RECORDS OF COLLIN COUNTY, TEXAS EASEMENT	(E)
FARM TO MARKET ROAD LEFT	FM
OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS PLAT RECORDS OF COLLIN COUNTY, TEXAS	LT
POINT OF BEGINNING	O.P.R.C.C.T.
POINT OF COMMENCING	P.R.C.C.T.
RIGHT	P.O.B.
RIGHT-OF-WAY	P.O.C.
SQUARE FEET	RT
STATE HIGHWAY	R.O.W.
	SQ. FT.
	SH

PARENT TRACT INSERT
(NOT TO SCALE)

AREA TABLE (ACRES)			
EXISTING	ACQUISITION	REMAINDER (CALCULATED)	
		LEFT	RIGHT
0.847 (DEED)	0.8506	-	0.000



A PLAT OF A SURVEY OF
PARCEL 2 FOR FM 1461
R.O.W. C.S.J. 1392-03-015
(0.8506 AC.) PARCEL OF LAND
IN THE JOEL F STEWART SURVEY
ABSTRACT NUMBER 838
CITY OF MCKINNEY &
CITY OF MCKINNEY
EXTRA TERRITORIAL JURISDICTION
COLLIN COUNTY, TEXAS
APRIL 26, 2019



SHAUN MARVIN PIEPKORN, R.P.L.S.
TEXAS REGISTRATION NO. 6432