

AFTER RECORDING, RETURN TO:

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

City Of McKinney, Texas
FACILITIES AGREEMENT
*(Escrow for Required Improvements and
License Agreement for Rail Crossing)*

Willow Wood

THIS AGREEMENT, entered into effective the ___ day of _____, 20___, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and McKinney Partners 306, LP, a Delaware Limited Partner whose address is 5055 Kellersprings Rd, Suite 505, Addison Texas 75001, ("DEVELOPER") witnesseth that:

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

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

WHEREAS, the development of the subdivision to be known as **Willow Wood** involves certain pro rata payments, city participation in cost, escrow deposits or other future considerations, and/or other nonstandard development regulations, that trigger the requirement for a Facilities Agreement by and between the CITY and the DEVELOPER in

accordance with Section 142-37 of the Subdivision Regulations, as amended; and

WHEREAS, the DEVELOPER has requested to connect to the Clemmon's Creek Interceptor Sewer in lieu of constructing an aerial crossing over the East Fork of the Trinity River; and

WHEREAS, the City of McKinney has an agreement with the City of Melissa to utilize the Clemmon's Creek Interceptor Sewer; and

WHEREAS, DEVELOPER requests the recording of the Record Plat of the **Willow Wood** subdivision (the "Plat") prior to the completion and acceptance of certain of the public facilities required to serve the subdivision as are identified herein below; and

WHEREAS, the Subdivision Regulations prohibit recording the Final Plat of a subdivision within the incorporated area of the CITY until the DEVELOPER has completed all of the public facilities that must be dedicated to the CITY or has entered into a Facilities Agreement and guaranteed to the satisfaction of the CITY such improvements will be installed.

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

A. PROPERTY

This Agreement is for Property located in the City of McKinney, on the East side of SH 5 in an area South East of the Willow Wood Development containing approximately 0.277 acres of land, more fully described in Exhibit A attached hereto and fully incorporated herein by reference (the "Property").

B. ESCROW FOR SANITARY SEWER METERING STATION

1. DEVELOPER shall escrow a cash deposit with the CITY in the amount of Thirty Thousand Dollars (\$30,000.00) for the DEVELOPER's estimated proportionate share of the total cost associated with the design and construction of a new metering station for the metering of sanitary sewer flows along and through the sanitary sewer main adjacent to Clemmons Creek ("Metering

Station”). The CITY shall hold these funds in an interest-bearing escrow account in accordance with this Agreement. These funds, together with any interest on the escrow account, shall be used by the CITY to cover the design and construction of said Metering Station, including the CITY’s administrative expenses.

2. DEVELOPER agrees and understands that the CITY makes no assurances or representations that the Metering Station will be constructed and accepted prior to any date certain or in conjunction with the completion or acceptance of any particular phase of the **Willow Wood** subdivision. The CITY shall be allowed to undertake the design, construction and acceptance of the Metering Station at such time as the CITY deems it desirable or necessary, and in the sole discretion of the CITY. DEVELOPER shall not be delayed in the filing of any plats based on the completion schedule of the Metering Station.
3. The CITY may at its sole option and discretion enter into one or more agreements with third parties who shall be authorized to design and/or construct and install the Metering Station at the CITY’s direction.
4. DEVELOPER specifically authorizes the CITY to utilize the funds escrowed pursuant to this Paragraph B of the Agreement to pay for the design and construction of the Metering Station and all necessary appurtenances thereto. CITY shall have no responsibility to track the payments and contributions of other parties for the design and construction of the Metering Station or to refund any portion of the escrowed funds to DEVELOPER. If the Metering Station is constructed by others, at no cost to CITY, the CITY shall utilize the funds for the Metering Station construction to pay for additional years of the “License Agreement” (defined herein-below) as stated in Section C of this agreement.
5. In the event that DEVELOPER’s proportionate share of the cost to design and construct the Metering Station is more than the amount escrowed by DEVELOPER hereunder, DEVELOPER shall have no obligation or responsibility to reimburse the CITY for any additional costs and expenses (“Underpayment”) associated with the design and construction of the Metering Station.

C. LICENSE AGREEMENT AND ESCROW FOR RAIL CROSSING

1. DEVELOPER plans to convey sanitary sewer from the Property through a 15-inch diameter sanitary sewer line ("Sewer Line") in a southeasterly direction to tie in to the CITY's sewer main adjacent to Clemmons Creek. This route avoids an aerial crossing by the Sewer Line over the East Fork of the Trinity River, which route is not in the best interests of the CITY or the DEVELOPER. However, this route does require that the Sewer Line cross a railroad line owned by the Dallas Area Rapid Transit ("DART"), and upon which railroad line freight railroad operations are carried on by the Dallas, Garland and Northeastern Railroad Company pursuant to an agreement with DART (the "Sherman Line").
2. The CITY has negotiated a license agreement with DART ("License Agreement") to allow the Sewer Line to cross the Sherman Line approximately 590 feet north of McIntyre Road (aka Collin County Road 274) at Mile Post 299.51, in McKinney, Collin County, Texas. A copy of the License Agreement is attached hereto and incorporated herein by reference for all purposes allowed by law as Exhibit B. The License Agreement requires the CITY to pay DART a fee in the amount of \$1,800 per year ("License Fee"), payable in advance, as consideration for the granting of such License Agreement. The License Fee shall be adjusted annually by DART based on increases and decreases in the Consumer Price Index for All Urban Consumers – (CPI-U), Dallas-Fort Worth, TX., "All Items", as published by the Bureau of Labor Statistics, U.S. Department of Labor (the "CPI Index"). Notwithstanding the foregoing, the License Agreement provides that the License Fee shall never be less than \$1,800 per year. The License Agreement also sets out specific requirements for the design, construction and maintenance of the Sewer Line at and about its crossing of the Sherman Line.
3. The DEVELOPER hereby agrees that it shall escrow the one-time amount of One Hundred Thirty-Five Thousand Dollars (\$135,000.00) ("One-Time DART Escrow") with the CITY for the payment of the License Fee required by DART in perpetuity. CITY shall thereafter be responsible for annual payments of the License Fee to DART from such escrowed amount or otherwise renegotiating a one-time license fee that will satisfy DART's License Fee in perpetuity. DEVELOPER shall pay the One-Time DART Escrow to the CITY

within ten (10) calendar days of the CITY's approval of this Agreement.

4. The DEVELOPER also hereby agrees that it will design and construct the Sewer Line at no cost to CITY in strict conformity to the design, construction and maintenance requirements set forth in the License Agreement, and as such standards or requirements may be modified by DART during the DEVELOPER's design and construction of the Sewer Line including, but not limited to, the design and construction of cathodic protection for the Sewer Line. **DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees do hereby agree to fully indemnify, protect and hold CITY harmless from and against any and all claims, suits, judgments, and demands asserted by DART, including its reasonable attorney's fees, arising out of the DEVELOPER's design, construction and maintenance (during the maintenance bond period) of the Sewer Line as required by the License Agreement, and as such standards or requirements may be modified by DART during the design and construction of the Sewer Line.**
5. If DART terminates the License Agreement after the CITY has final accepted the Sewer Line, the DEVELOPER specifically agrees that the CITY may use so much of the One-Time DART Escrow as may be remaining to offset the cost and expense to the CITY of relocating the said Sewer Line.

D. CITY DEVELOPMENT ORDINANCES

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

E. NO WAIVER

DEVELOPER expressly acknowledges that by entering into this Agreement, DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any

Exhibits as waiving any of the requirements of the Zoning Ordinance or Subdivision Ordinance or any other ordinance of the CITY except as herein specifically agreed.

F. VARIANCES

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

G. INDEMNITY AND HOLD HARMLESS AGREEMENT

DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees do hereby agree to fully indemnify, protect and hold CITY harmless from all third-party claims, suits, judgments, and demands, including its reasonable attorney's fees, arising out of the sole or concurrent negligence of DEVELOPER, and only to the extent or percentage attributable to DEVELOPER, in the subdividing, development, or construction of public improvements – save and except the Metering Station - including the negligent maintenance thereof. DEVELOPER shall not be responsible for or be required to indemnify CITY from CITY'S own negligence. The indemnity contained in this Paragraph shall expire five (5) years from the date of final acceptance of each phase of the improvements.

H. REMEDIES

If the DEVELOPER fails or refuses to escrow the Thirty Thousand Dollar (\$30,000.00) cash deposit for the Metering Station and/or fails or refuses to escrow the One Hundred Thirty-Five Thousand Dollar (\$135,000.00) cash deposit for the One-Time DART Escrow with the CITY within ten (10) calendar days of the approval of this Agreement by the CITY Council then this Agreement shall be wholly void and unenforceable.

If the DEVELOPER fails or refuses to perform an obligation imposed by this Agreement regarding the design, construction and/or maintenance of the Sewer Line crossing the Sherman Line, as described herein-above, and DART terminates the License Agreement prior to CITY's final acceptance of the Sewer Line, DEVELOPER shall be solely responsible for removing so much of the Sewer Line as may have been installed or constructed across the Sherman Line

and re-routing, re-designing and constructing a sewer line required to serve the Property around the Sherman Line. The CITY will within thirty (30) days following DART's termination of the License Agreement, if and only if such termination occurs prior to CITY's final acceptance of the Sewer Line, return to the DEVELOPER so much of the One-Time DART Escrow as has not been paid to DART. Please note that the CITY's final acceptance of the Sewer Line shall be conditioned upon DART'

I. ROUGH PROPORTIONALITY AND WAIVER OF CLAIMS.

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

It is the intent of this Agreement that the provision for roadway and utility improvements made herein constitutes a proportional allocation of DEVELOPER's responsibility for roadway and utility improvements for the Property. DEVELOPER hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code. DEVELOPER further releases CITY from any and all claims based on excessive or illegal exactions; it being agreed that OWNERS' infrastructure contribution(s) (after receiving all contractual offsets, credits and reimbursements) is roughly proportional or roughly proportionate to the demand that is placed on the roadway and utility systems by DEVELOPER's Property. DEVELOPER further acknowledges that the benefits of zoning and platting have been accepted with full knowledge of potential claims and causes of

action which may be raised now and in the future, and DEVELOPER acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **DEVELOPER shall indemnify and hold harmless CITY from any claims and suits of third parties, including but not limited to DEVELOPER's successors, assigns, grantees, vendors, trustees or representatives, brought pursuant to this Agreement or the claims or types of claims described in this paragraph.**

J. CONTINUITY

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

K. ASSIGNABILITY

This Agreement shall not be assignable by the DEVELOPER without the prior written consent of the CITY, and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, this Agreement may be assigned without the CITY's prior written consent under the following specific conditions and circumstances, which conditions and circumstances shall not be diminished, altered, or waived.

1. The DEVELOPER shall have the right, without the consent of the CITY, to collaterally assign this Agreement or any portion hereof to any lender. Such assignments allow the lender/assignee to step into the shoes of the assignor and to cure any defaults by the assignor under this Agreement without requiring the lender to assume the duties and obligations of the assignor under this Agreement. Written notice of any collateral assignment shall be given to the CITY within ten (10) days after the effective date of the assignment, including the name and contact information for the lender.

2. The DEVELOPER shall also have the right to assign all of its rights and duties under this Agreement that apply to a Development Parcel to the purchaser of the Development Parcel without the consent of the CITY provided: (a) the assignor is not then in default under this Agreement as of the date of the assignment; (b) the assignee is not then in default under this Agreement as of the date of the assignment; (c) the assignment is limited to the Development Parcel that is being conveyed to the assignee; (d) the assignment is in writing and a copy thereof is given to the CITY within ten (10) business days following the execution thereof; (e) the assignment obligates the assignee to be bound by this Agreement; and (f) the assignee provides security for its performance under

this Agreement to the same extent that security was required for the assignor. The assignment shall release the assignor from any liabilities that arise from and after the assignment if and only if the forgoing conditions are strictly fulfilled. However, the assignment does not release the assignor from liabilities that arose before the assignment.

L. TERMINATION AND RELEASE

Upon satisfactory completion by DEVELOPER and final acceptance by CITY of all requirements of this Agreement, this Agreement shall terminate and CITY will execute a release of covenant to DEVELOPER, its heirs, successors, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

M. GENERAL PROVISIONS

1. DEVELOPER hereby relieves CITY of any responsibilities for any inadequacies in the preliminary plans, exhibits and cost estimates (other than the \$30,000 cash deposit required in Section B.1. and the \$135,000 One-Time DART Escrow required by Section C.3.) supplied for the purpose of this Agreement, and further agrees that DEVELOPER will comply with CITY'S Subdivision Regulations, Street Design Standards, Public Improvements Policy and any other applicable policies, rules, regulations and ordinances of CITY regarding development of the Property.
2. DEVELOPER agrees that construction shall not begin on any proposed improvements to the Property prior to City Council approval of this Agreement.
3. DEVELOPER agrees that all coordination required with public and/or private utility agencies to eliminate conflicts with proposed street grades or underground improvements shall be the responsibility of DEVELOPER. Likewise, coordination with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation), if any, shall be the responsibility of the DEVELOPER.
4. CITY agrees to record said Plat at such time as the Plat complies with the requirements set forth by the Subdivision Regulations of CITY, and has been approved in the manner described therein.

CITY OF MCKINNEY


By: _____
TOM MUEHLENBECK
Interim City Manager

Date Signed: _____

ATTEST:

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

McKinney Partners 306, LP,
by and through its General Partner
TA GP LLC,
a Delaware limited liability company

By:  _____
Name: _____
President
Title: _____
4/8/15
Date Signed:

THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared TOM MUEHLENBECK, Interim City Manager of the City of McKinney, a Texas Municipal Corporation, known to me to be the person

whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

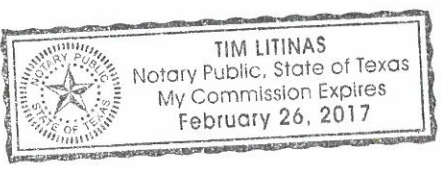
GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 20____.

Texas Notary Public, _____ County, My commission expires _____

THE STATE OF TEXAS, COUNTY OF DALLAS

This instrument was acknowledged before me on the 8TH day of APRIL, 2015, by JON D. HUTCHISON, in his capacity as PRESIDENT of TA GP, 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 corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 8TH DAY OF APRIL, 2015.



[Signature]
Notary Public DALLAS County, Texas My commission expires 2/26/2017

PREPARED IN THE OFFICES OF:

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

EXHIBIT A

DESCRIPTION OF PROPERTY

EXHIBIT "A"
SHEET 1 OF 1
SANITARY SEWER CROSSING
0.127 OF AN ACRE
(DALLAS AREA RAPID TRANSIT)

ALL that certain tract or parcel of land situated in the JOHN HART SURVEY, ABSTRACT NUMBER 423, and the M. CLEMENTS SURVEY, ABSTRACT NUMBER 224, Collin County, Texas, being part of that certain DALLAS AREA RAPID TRANSIT right-of-way described in Volume 5443, Page 5532 of the Land Records of Collin County, Texas, the herein tract being more particularly described as follows:

COMMENCE at a 1/ 2" iron rebar found at the most southerly southeast corner of that certain 306.591 acre tract described in a deed to MCKINNEY PARTNERS 306 L. P., as recorded in Clerk's File Number 20130829001227120 of the Land Records of Collin County, Texas, same being an angle point in a north line of a called 189.07 acre tract described in a deed to LACORE AGRICULTURE, LLC, as recorded in Clerk's File Number 20141017001138080 of the Land Records of Collin County, Texas;

THENCE N 88°20'18" W along the most southerly south line of said MCKINNEY PARTNERS tract, same being a northerly line of said LACORE tract a distance of 293.37 feet to a point;

THENCE S 50°36'20" E a distance of 478.60 feet to the POINT OF BEGINNING of the herein described tract of land in a southeasterly line of said LACORE tract, same being in the curving west line of said DALLAS AREA RAPID TRANSIT tract;

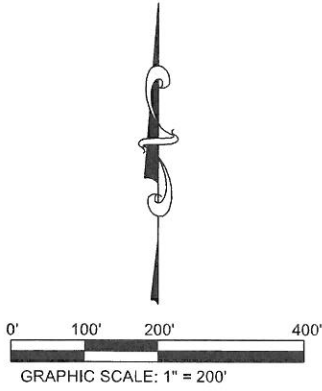
THENCE S 50°36'20" E a distance of 183.95 feet to a point for corner in the curving east line of said DALLAS AREA RAPID TRANSIT tract, which corner is the beginning of a non-tangent curve having a central angle of 0°42'41", a radius of 2555.21 feet and a chord which bears S20°25'50"W, 31.72 feet;

THENCE along said line and the arc of said curve to the left a distance of 31.72 feet to a point for corner at the end of said curve;

THENCE N 50°36'20" W a distance of 184.68 feet to a point for corner in the aforesaid curving west line of DALLAS AREA RAPID TRANSIT tract, same being the aforesaid curving east line of LACORE tract, which corner is at the beginning of a non-tangent curve having a central angle of 0°39'39", a radius of 2730.21 feet, and a chord which bears N21°41'14"E, 31.49 feet;

THENCE along said common line and the arc of said curve to the right a distance of 31.49 feet to the POINT OF BEGINNING, containing 0.127 of an acre (5,529 SQUARE FEET) of land, MORE OR LESS.

EXHIBIT "B"
SHEET 1 OF 1

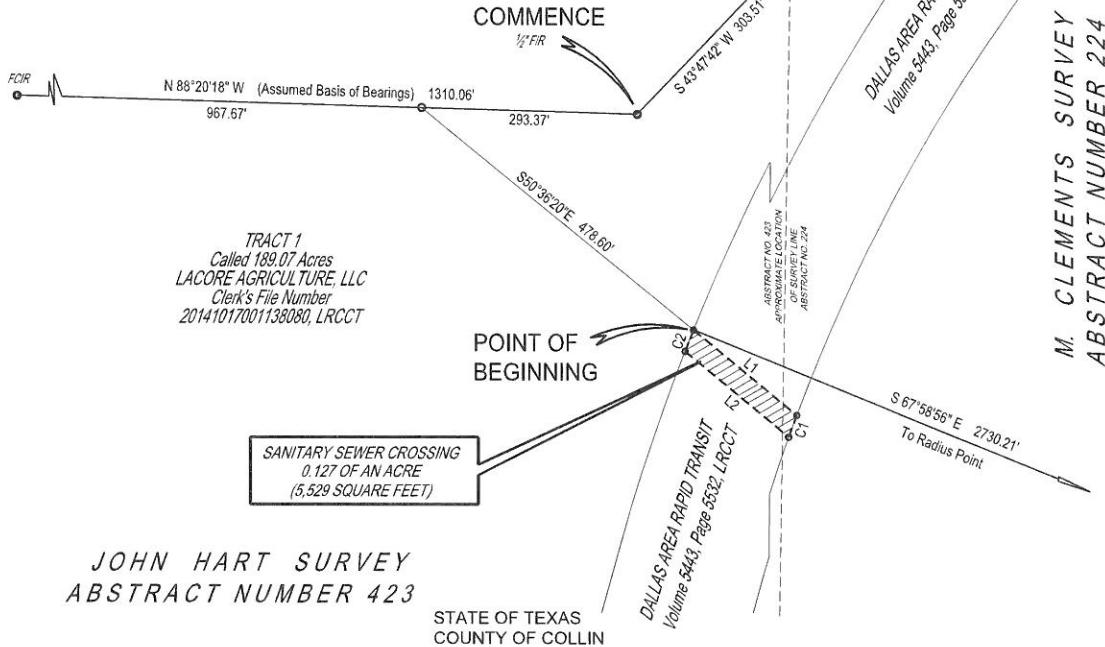


McKINNEY PARTNERS 306, L.P.
306.591 Acres
Clerk's File Number
20130829001227120, LRCCT

TRACT 1
Called 189.07 Acres
LACORE AGRICULTURE, LLC
Clerk's File Number
20141017001138080, LRCCT

CURVE TABLE				
	CENTRAL ANGLE	RADIUS	LENGTH	CHORD BEARS
C1	0°42'41"	2555.21'	31.72'	S20°25'50"W 31.72'
C2	0°39'39"	2730.21'	31.49'	N21°41'14"E 31.49'

LINE TABLE	
L1	S50°36'20"E 183.95'
L2	N50°36'20"W 184.68'



JOHN HART SURVEY
ABSTRACT NUMBER 423

STATE OF TEXAS
COUNTY OF COLLIN

I hereby certify this SKETCH (EXHIBIT "B") and attached DESCRIPTION (EXHIBIT "A") were prepared under my RESPONSIBLE CHARGE during April, 2015, and are true and correct to the best the best of my knowledge and belief.

"PRELIMINARY, THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT".

SCIR SET 1/2" CAPPED IRON REBAR
(PETSCHKE & ASSOC., INC.)

FCIR FOUND 1/2" CAPPED IRON REBAR
(PETSCHKE & ASSOC., INC.)
(OR AS NOTED)

FIR FOUND IRON REBAR
(SIZE NOTED)



SANITARY SEWER CROSSING
0.127 OF AN ACRE
(5,529 SQUARE FEET)

William Boyd Kisinger
State of Texas
Registered Professional
Land Surveyor No. 4352



PETSCHKE & ASSOCIATES, INC.

Professional Engineers - Land Surveyors - Development Consultants
Texas Registered Engineering Firm - F-3252
Texas Registered Surveying License Number - 10091600
2600 Eldorado Parkway, Suite 240, McKinney, Texas 75070 (972) 562-9606

Drawn by: JLB	Date: April, 2015	SCALE: 1"= 200'	JOB NUMBER: 06-224-3	SHEET 1	OF 1
Designed by:	Checked by: wbk				

EXHIBIT B

LICENSE AGREEMENT

2/26/2015 DRAFT

LICENSE AGREEMENT

THIS Agreement ("License"), is made by and between DALLAS AREA RAPID TRANSIT ("Licensor"), a regional transportation authority, created, organized and existing pursuant to Chapter 452, Texas Transportation Code, as amended (the "Act") and CITY OF MCKINNEY ("Licensee"), a Texas Home Rule City acting herein by and through its duly authorized official, whose mailing address is P.O. Box 517, McKinney, Texas 75070.

Pursuant to an agreement between Licensor and Dallas, Garland and Northeastern Railroad Company (hereinafter the "Railroad"), freight railroad operations exist on Licensor's corridor.

1. Purpose. Licensor hereby grants a license (the "License") to Licensee for the purposes of constructing, installing, maintaining and operating a 15-inch PVC sanitary sewer line within a 20-inch steel casing pipe (the "Permitted Improvement") crossing the Sherman Line approximately 590 feet north of McIntyre Road (aka Collin County Road 274) at Mile Post 299.51, in McKinney, Collin County, Texas, more particularly described as shown in Exhibit "A", dated September 9, 2014, attached hereto and incorporated herein for all pertinent purposes, (the "Property").

The Property shall be used by Licensee solely for the purpose of operating and maintaining the Permitted Improvement (the "Permitted Use"). Licensee's right to enter upon and use the Property shall be limited solely to the Permitted Use and the Permitted Improvement.

2. Term. This License shall begin on the 1st day of April, 2015 (the "Term") and continue thereafter until terminated by either party as provided herein.

3. Consideration.

3.01. The consideration for the granting of this License shall be (a) payment by Licensee to Licensor the sum of ONE THOUSAND EIGHT HUNDRED AND NO/100 (\$1,800.00) DOLLARS per annum, payable annually in advance (the "License Fee"), and (b) the performance by Licensee of each of the obligations undertaken by Licensee in this License, PROVIDED, HOWEVER, that the "License Fee" shall be adjusted annually as follows:

- a) The adjustment and change in the License Fee shall be determined according to the cost of living changes in the Consumer Price Index for All Urban Consumers – (CPI-U), Dallas-Fort Worth, TX., "All Items", as published by the Bureau of Labor Statistics, U.S. Department of Labor (the "CPI Index").
- b) The CPI Index figure for the month of May 2015 is hereby fixed and established as the Base Index Figure in the computation of adjustment of rentals herein provided. At the commencement of each annual period as provided herein, the CPI Index for the month of March of such year shall be ascertained and noted and the rent for the next annual period shall be adjusted by increasing or decreasing the License Fee, percentage-wise as the CPI Index for the month of March has increased or decreased as compared with the Base Index Figure as herein fixed, PROVIDED HOWEVER, that under no circumstances shall the License Fee ever be less than \$1,800.00 per year.
- c) If any time during the term hereof the U.S. Bureau of Labor Statistics shall discontinue the issuance of the CPI Index, the parties shall use any other standard nationally recognized cost-

of-living index for the Dallas-Fort Worth area then issued and available, which is published by the U.S. Government.

- d) Acceptance of any License Fee by Licensor after written notice of termination or expiration of this License shall not waive, reinstate, continue or extend the terms of this License.

3.02. Any payment not received by Licensor by the 10th day after it is due, shall bear a late charge of \$25.00 to help offset the administrative cost involved in handling such late payment.

3.03. For any payment not received by Licensor by the 15th day after it is due, such payment shall bear interest at the rate of 18% per annum from the date it was due until it is paid, in addition to the late charge.

3.04. Payments by Licensee. Any payments required of Licensee pursuant to this License shall be made from then available funds budgeted for such purpose.

4. Non Exclusive License. This License is non-exclusive and is subject to (a) any existing utility, drainage or communication facility located in, on, under, or upon the Property owned by Licensor, any Railroad, utility, or communication company, public or private; (b) all vested rights presently owned by any Railroad, utility or communication company, located within the boundaries of the Property; and (c) any existing lease, license or other interest in the Property granted by Licensor to any individual, corporation or other entity, public or private.

5. Design, Construction, Operation and Maintenance. Licensor's use of the Property and adjoining property may include the use of electrically powered equipment. Notwithstanding Licensor's inclusion within its system of measures designed to reduce stray current which may cause corrosion, Licensee is hereby warned that such measures may not prevent electrical current being present in proximity to the Permitted Improvement and that such presence could produce corrosive effects to the Permitted Improvement. Licensee waives any claim and releases Licensor with regard to any claim arising from such corrosion.

5.01. All design, construction, reconstruction, replacement, removal, operation and maintenance of the Permitted Improvement on the Property shall be done in such a manner so as not to interfere in any way with the operations of Licensor or other Railroad operations. In particular, cathodic protection or other stray current corrosion control measures of the Permitted Improvement as required shall be made a part of the design and construction of the Permitted Improvement.

5.02. During the design phase and prior to commencing any construction on the Property, a copy of the construction plans showing the exact location, type and depth of the construction, any cathodic protection measures and any working area, shall be submitted for written approval to Licensor and Railroad. Such approval shall not be unreasonably withheld. No work shall commence until said plans have been approved by Licensor.

5.03. Licensee agrees to design, construct and maintain the Permitted Improvement in such a manner so as not to create a hazard to the use of the Property, and further agrees to pay any damages which may arise by reason of Licensee's use of the Property.

5.04. Licensee covenants and agrees to institute and maintain a reasonable testing program to determine whether or not additional cathodic protection of its Permitted Improvement is necessary and if it is or should become necessary, such protection shall be immediately instituted by Licensee at its sole cost and expense.

5.05. Licensor makes no warranty regarding subsurface installations on the Property. Licensee shall conduct its own inspection of same and will not rely on the absence or presence of markers.

5.06. Licensee shall provide to Licensor final construction drawings ("as-builts") that are signed and sealed by a Texas Professional Engineer within sixty ("60") days of completion of the project.

6. Governmental Approvals. Licensee, at its sole cost and expense, shall be responsible for and shall obtain, any and all licenses, permits, or other approvals from any and all governmental agencies, federal, state or local, required to carry on any activity permitted herein.

7. Licensor's Standard Contract and Insurance. No work on the Property shall be commenced by Licensee or any contractor for Licensee until such Licensee or contractor shall have executed Licensor's Construction Agreement and Contractor's Right of Entry covering such work, and has furnished insurance coverage in such amounts and types as shall be satisfactory to Licensor. A company-issued photo identification of Licensee's employees, contractors or agents shall be required to work on the Property.

8. Duty of Care in Construction. Licensee or its contractor shall use reasonable care during the construction period and thereafter, to avoid damaging any existing buildings, equipment and vegetation on or about the Property and any adjacent property owned by or under the control of Licensor. If the Licensee or its contractor causes damage to the Property or any adjacent property, the Licensee and/or its contractor shall immediately replace or repair the damage at no cost or expense to Licensor. If Licensee or its contractor fails or refuses to make or effect any such repair or replacement, Licensor shall have the right, but not the obligation, to make or effect any such repair or replacement at the sole cost and expense of Licensee, which cost and expense Licensee agrees to pay to Licensor upon demand.

9. Environmental Protection.

9.01. Licensee shall not use or permit the use of the Property for any purpose that may be in violation of any local, state or federal laws pertaining to health or the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Water Act ("CWA") and the Clean Air Act ("CAA").

9.02. Licensee warrants that the Permitted Use of the Property will not result in the disposal or other release of any hazardous substance or solid waste on or to the Property, and that it will take all steps necessary to ensure that no such hazardous substance or solid waste will ever be discharged onto the Property by Licensee or its Contractors.

9.03. The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in the RCRA; PROVIDED, HOWEVER, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and PROVIDED FURTHER, that to the extent that the laws of the State of Texas establish a meaning for "hazardous substance", "release", "solid waste", or "disposal", which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

9.04. Licensee shall, to the extent allowed by Texas law without a special fund therefore, indemnify, defend and hold Licensor and Railroad harmless against all cost of environmental clean up to the Property resulting from Licensee's use of the Property under this License.

10. Mechanic's Liens Not Permitted. Licensee shall fully pay for all labor and materials used in, on, or about the Property and will not permit or suffer any mechanic's or materialmen's liens of any nature to be affixed against the Property by reason of any work done or materials furnished to the Property at Licensee's instance or request.

11. Maintenance of Completed Improvements. The Permitted Improvement shall be maintained by the Licensee in such a manner as to keep the Property in a good and safe condition with respect to Licensee's use. In the event the Licensee fails to maintain the Property as required, upon discovery, Licensor shall notify Licensee of such occurrence in writing. In the event Licensee shall not have remedied the failure within ten (10) days from the date of such notice, Licensor shall have the right, but not the obligation to remedy such failure at the sole cost and expense of Licensee. In the event Licensor exercises its right to remedy Licensee's failure, Licensee agrees to immediately pay to Licensor all costs incurred by Licensor upon demand.

12. Future Use by Licensor.

12.01. This License is made expressly subject and subordinate to the right of Licensor to use the Property for any purpose whatsoever.

12.02. In the event that Licensor shall, at any time subsequent to the date of this License, at its sole discretion, determine that the relocation of the Permitted Improvement shall be necessary or convenient for Licensor 's use of the Property, Licensee shall, at its sole cost and expense relocate said Permitted Improvement so as not to interfere with Licensor 's or Licensor 's assigns use of the Property. In this regard, Licensor may, but is not obligated to, designate other property for the relocation of the Permitted Improvement. Licensor shall give a minimum of thirty (30) days written notice of any required relocation. Licensee shall promptly commence to make the required changes thereafter and shall diligently complete the relocation as required within a reasonable period.

13. Relocation Benefits. The parties hereto agree that the construction of the Permitted Improvement on the Property shall be subsequent to the acquisition of the Property by Licensor and that Licensee does hereby waive any and all claim that it may have under the Act, or otherwise, regarding the payment of any and all relocation benefits and that all costs associated with any relocation of such Improvements shall be borne by Licensee.

14. Duration of License. This License shall terminate and be of no further force and effect (a) in the event Licensee shall discontinue or abandon the use of the Permitted Improvement; (b) in the event Licensee shall relocate the Permitted Improvement from the Property; (c) upon termination in accordance with paragraph 19 of this License, whichever event first occurs.

15. Compliance With Laws and Regulations. Licensee agrees to abide by and be governed by all laws, ordinances and regulations of any and all governmental entities having jurisdiction over the Licensee and by railroad regulations, policies and operating procedures established by the Railroad, or other applicable railroad regulating bodies, and Licensee agrees to indemnify and hold Licensor harmless from any failure to so abide and all actions resulting therefrom to the extent allowed by Texas law without a special fund therefore.

16. Indemnification. Licensee shall, to the extent allowed by Texas law without a special fund therefore, at all times protect, indemnify, defend and hold Licensor and the Railroad harmless against and from any and all loss, cost, damage or expense, including attorney's fees and including, without limitation, claims of negligence, arising out of this License (including by example and not limitation, Licensee's acts or failure to act hereunder), Licensee's use in any way of the Property, or arising from any accident or other occurrence on or about the Property,

resulting in personal injury, death, or property damage, except to the extent fault is judicially determined against Licensor.

17. Termination of License. At such time as this License may be terminated or canceled for any reason whatsoever, Licensee, upon request by Licensor, shall remove all improvements and appurtenances owned by it, situated in, on, under or attached to the Property, regardless of whether or not such improvements were placed thereon by Licensee, and shall restore the Property to a condition satisfactory to Licensor, at Licensee's sole expense. In the event that Licensor terminates or cancels the License, the unused portion of the annual consideration set forth in Paragraph 3.01, supra, will be refunded to Licensee on a pro rata basis.

18. Assignment. Licensee shall not assign or transfer its rights under this License in whole or in part, or permit any other person or entity to use the License hereby granted without the prior written consent of Licensor which Licensor is under no obligation to grant.

19. Methods of Termination. This License may be terminated in either of the following ways:

19.01. By written agreement of both parties; or

19.02. By either party giving the other party thirty (30) days written notice.

20. Miscellaneous.

20.01. Notice. When notice is permitted or required by this License, it shall be in writing and shall be deemed delivered when delivered in person or when placed, postage prepaid, in the U.S. Mail, Certified, Return Receipt Requested, and addressed to the parties at the following addresses:

LICENSOR:	Dallas Area Rapid Transit 1401 Pacific Avenue Dallas, Texas 75202-7210 ATTN: Railroad Management	Or	P. O. Box 660163 Dallas, Texas 75266-7210
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LICENSEE:	City of McKinney 222 N. Tennessee McKinney, Texas 75070	P.O. Box 517 McKinney, Texas 75070
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Either party may from time to time designate another and different address for receipt of notice by giving written notice of such change of address.

20.02. Governing Law. This License shall be construed under and in accordance with the laws of the State of Texas.

20.03. Entirety and Amendments. This License embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Property and the matters addressed herein, and may be amended or supplemented only by a written instrument executed by the party against whom enforcement is sought.

20.04. Parties Bound. This License shall be binding upon and inure to the benefit of the executing parties and their respective heirs, personal representatives, successors and assigns.

20.05. Number and Gender. Words of any gender used in this License shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

20.06. No Joint Enterprise. The parties do not intend that this License be construed as finding that the parties have formed a joint enterprise. The purposes for which each party has entered into this License are separate and distinct. It is not the intent of any of the parties that a joint enterprise relationship is being entered into and the parties hereto specifically disclaim such relationship. This License does not constitute a joint enterprise, as there are no common pecuniary interests, no common purpose and no equal right of control among the parties hereto.

20.07. Counterparts. The parties may execute this Agreement in multiple originals and when taken together, those originals constitute a whole.

IN WITNESS WHEREOF, the parties have executed this License on the date last signed.

LICENSOR: DALLAS AREA RAPID TRANSIT

BY: _____
MAUREEN MCCOLE
Vice President, Commuter Rail
& Railroad Management

Date: _____

LICENSEE: CITY OF MCKINNEY

BY: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT C

VARIANCES

1. No other variances for this Property are granted and none shall be allowed by this Agreement.