



CITY OF MCKINNEY, TEXAS

Agenda

City Council Regular Meeting

Tuesday, August 15, 2017

6:00 PM

Jack Hatchell Collin County
Administration Building
4th Floor – Commissioners Court
2300 Bloomdale - McKinney, TX

CALL TO ORDER

INVOCATION AND PLEDGE OF ALLEGIANCE

Invocation given by Pastor DeWayne Owens, Kingdom Faith Bible Church

INFORMATION SHARING

17-814 [Proclamation Proclaiming Hannah Falk Day](#)

Attachments: [Proclamation](#)

17-815 [Recognition of McKinney's First Place Finish at the 2017 Texas State Lifeguard Competition](#)

CITIZEN COMMENTS

CONSENT AGENDA

These items consist of non-controversial or housekeeping items required by law. Items may be considered individually by any Council member making such request prior to a motion and vote on the Consent Items.

MINUTES

17-816 [Minutes of the City Council Regular Meeting of July 31, 2017](#)

Attachments: [Minutes](#)

17-817 [Minutes of the City Council Budget Work Session of August 4, 2017](#)

Attachments: [Minutes](#)

- 17-735 [Minutes of the Board of Adjustment Meeting of May 31, 2017](#)
Attachments: [Minutes](#)
- 17-736 [Minutes of the Board of Adjustment Meeting of June 28, 2017](#)
Attachments: [Minutes](#)
- 17-732 [Minutes of the Library Advisory Board Meeting of June 15, 2017](#)
Attachments: [Minutes](#)
- 17-792 [Minutes of the McKinney Armed Services Memorial Board Meeting of June 14, 2017](#)
Attachments: [Minutes](#)
- 17-738 [Minutes of the McKinney Convention and Visitors Bureau Board Meeting of May 23, 2017](#)
Attachments: [Minutes](#)
- 17-739 [Minutes of the McKinney Convention and Visitors Bureau Finance Committee Meeting of May 22, 2017](#)
Attachments: [Minutes](#)
- 17-740 [Minutes of the McKinney Convention and Visitors Bureau Board Special Meeting of June 6, 2017](#)
Attachments: [Minutes](#)
- 17-795 [Minutes of the Parks, Recreation and Open Space Advisory Board Meeting of June 8, 2017](#)
Attachments: [Minutes](#)
- 17-782 [Minutes of the Planning and Zoning Commission Regular Meeting of July 25, 2017](#)
Attachments: [Minutes](#)

RESOLUTIONS

- 17-818** [Consider/Discuss/Act on a Resolution Authorizing the Execution and Sale to the North Texas Municipal Water District of a Water Line Easement Consisting of Two Parts, 0.570 Acres of Land with a 0.774 acre Temporary Construction Easement and 0.386 Acres of Land with a 1.176 Acres Temporary Construction Easement in the John R. Jones Survey, Abstract No. 497, Collin County, Texas, and Generally Located in the Vicinity of Redbud Boulevard and Bloomdale Road in the amount of \\$108,948.00; and Authorizing the City Manager to Execute Easements and Documents Regarding the Sale of Said Easements Across City-Owned Property to the North Texas Municipal Water District](#)
- Attachments:** [Resolution](#)
 [Location Map](#)
- 17-819** [Consider/Discuss/Act on a Resolution Approving Freese & Nichols, Inc. as a Qualified Firm to Provide Construction Inspection Services](#)
- Attachments:** [Resolution](#)
- 17-820** [Consider/Discuss/Act on a Resolution Authorizing the City Manager to Execute a Contract and All Necessary Supplemental Agreements with Freese and Nichols, Inc., to Conduct a Drainage Study of the Stover Creek Watershed](#)
- Attachments:** [Resolution](#)
 [Location Map](#)
- 17-821** [Consider/Discuss/Act on a Resolution Recommending City Council to Reject all Proposals Received for 17-64RFP Vision Benefits](#)
- Attachments:** [Resolution](#)
- 17-822** [Consider/Discuss/Act on a Resolution Authorizing an Interlocal Agreement with Collin County for Jail Services](#)
- Attachments:** [Resolution](#)
 [Interlocal Jail Agreement](#)

17-823 [Consider/Discuss/Act on a Resolution of the City of McKinney, Texas, Authorizing the City Manager to Amend the Project Agreement with the Texas State Soil and Water Conservation Board \(TSSWCB\) for State Funding for the Dam Rehabilitation Project \(CIP # DR5093\) at United States Department of Agriculture \(USDA\) Natural Resources Conservation Service \(NRCS\) East Fork Above Lavon \(EFAL\) Floodwater Retarding Structure \(FRS\) Site 4, Also Known as Brinkmann Ranch Lake](#)

Attachments: [Resolution](#)
 [Location Map](#)
 [Amendment](#)
 [Original Agreement \(for reference only\)](#)

17-824 [Consider/Discuss/Act on a Resolution of the City of McKinney, Texas, Authorizing the City Manager to Amend the Project Agreement with the NRCS for the Lake 2A Dam Rehabilitation Project](#)

Attachments: [Resolution](#)
 [Amendment 4 to NRCS Project Agreement 69-7442-14-985](#)
 [Location Map](#)

END OF CONSENT

REGULAR AGENDA AND PUBLIC HEARINGS

This portion of the agenda consists of items requiring individual consideration by the Council.

17-825 [Conduct a Public Hearing to Consider/Discuss/Act on a Resolution Approving the 2017-2018 Community Development Block Grant \(CDBG\) Annual Action Plan](#)

Attachments: [Resolution](#)
 [Substantial Amendments to the Consolidated Plan](#)
 [2017-18 Annual Action Plan](#)

- 17-201A** [Conduct a Public Hearing to Consider and Discuss the 2017 Municipal Annexation Plan, Including the Proposed Annexation of Approximately 218 Acres of Land, of Which 49 Acres is Generally Located North of CR 857 and East of Custer Road \(and is Referred to as Sub-Area 17-1\) and 169 Acres is Generally Located Along the North Side of US Highway 380 \(University Drive\) and is East of FM 1827 \(New Hope Road\) and West of CR 337 \(and is Referred to as Sub-Area 17-2\)](#)
- Attachments:** [Location Map and Aerial Exhibit](#)
 [2017 Municipal Annexation Policy](#)
 [Proposed Service Plan](#)
 [Presentation](#)
- 17-826** [Conduct First Public Hearing on Proposed Tax Rate for Fiscal Year 2017-18 \(Tax Year 2017\)](#)
- Attachments:** [Presentation](#)
- 17-827** [Consider/Discuss/Act Upon Adoption of a Resolution Determining a Public Necessity to Acquire Certain Properties for Public Use by Eminent Domain for Right-of-Way \(in Fee Simple\), Drainage Easements, Water Line Easements, Access Easements and Temporary Construction Easements for the Construction, Access and Maintenance of the Trinity Falls Parkway Project and Related Infrastructure Commencing in the Vicinity of its Intersection with FM 543 and Continuing Southwesterly Along Trinity Falls Parkway to the Existing Connection to Laud Howell Parkway; Authorizing the City Manager to Establish Procedures for Acquiring the Right of Way \(in Fee Simple\) and Easements on Said Properties, and Take All Steps Necessary to Acquire the Needed Property Rights in Compliance with all Applicable Laws and Resolutions](#)
- Attachments:** [Resolution](#)
 [Location Map](#)
- 17-828** [Consider/Discuss/Act on an Amendment to Section 122-4 of the Code of Ordinances Pertaining to Permitting in the Extraterritorial Jurisdiction \(ETJ\)](#)

- Attachments:** [Ordinance No. 2015-03-015](#)
[Proposed Changes to Sec 122-4](#)
[Proposed Ordinance for Adoption](#)
- 16-052DA** [Consider/Discuss/Act on a Resolution Approving Chapter 380 Economic Development Agreement Between the City of McKinney, Texas, and McKinney SH I, LTD, for the Construction of a Portion of Bois D' Arc Road, Generally Between U.S. Highway 380 and Crowe Lane](#)
- Attachments:** [Resolution](#)
[Location Map and Aerial Exhibit](#)
[Overall Pavement Plan](#)
- 17-050DA** [Consider/Discuss/Act on a Resolution Authorizing the City Manager to Execute an Interlocal Cooperation Agreement between the City of McKinney and the North Texas Municipal Water District \(NTMWD\), for the Construction and Connection of a NTMWD Meter Vault and Related Improvements, Generally Located on the West Side of Redbud Boulevard and Approximately 1,400 Feet South of Bloomdale Road](#)
- Attachments:** [Resolution](#)
[Proposed NTMWD Agreement](#)
[Location Map and Aerial Exhibit](#)
[NTMWD Meter Vault Location Exhibit](#)
- 17-829** [Consider/Discuss/Act on a Resolution Authorizing the City Manager to Execute a Chapter 380 Agreement with Independent Bank Group, Inc.](#)
- Attachments:** [Resolution](#)
[Independent Bank 380 Agreement](#)
- 17-830** [Consider/Discuss/Act on an Amended and Restated Lease Agreement with DSE Hockey Centers, L.P. for an Expansion of the McKinney StarCenter](#)
- Attachments:** [StarCenter Amended Lease Presentation](#)

CITIZEN COMMENTS**COUNCIL AND MANAGER COMMENTS**

Council and Manager Comments relating to items of public interest: Announcements regarding local or regional civic and charitable events, staff recognition, commendation of citizens, traffic issues, upcoming meetings, informational update on City projects, awards, acknowledgement of meeting attendees, birthdays, requests of the City Manager for items to be placed on upcoming agendas, and condolences.

EXECUTIVE SESSION

In Accordance with the Texas Government Code:

A. Section 551.071 (2). Consultation with City Attorney on any Work Session, Special or Regular Session agenda item requiring confidential, attorney/client advice necessitated by the deliberation or discussion of said items (as needed) and legal consultation on the following item(s), if any:

B. Section 551.071 (A) Pending or contemplated litigation

- Arch Resorts, LLC v. the City of McKinney, Texas, and Rick Herzberger, Chief Building Official of the City of McKinney, Texas, v. Collin County, Texas, No. 219-01855-2015, 219th District Court of Collin County, Texas
- Petition of the Cities of Garland, Mesquite, Plano, and Richardson Appealing Wholesale Water Rates Implemented by North Texas Municipal Water District, PUC Docket No. 46662, Public Utility Commission of Texas
- Application of Brazos Electric Power Cooperative, Inc. for Amendment to its Certificate of Convenience and Necessity for a 138-KV Transmission Line in Collin County, PUC Docket No. 46429, Public Utility Commission of Texas
- City of McKinney v. Newland Communities/Club Corp.

C. Section 551.072. Deliberations about Real Property

- Municipal Facilities

D. Section 551.087 – Discuss Economic Development Matters

- Project A146 – Project Frost
- Project A171 – Project Skywalker
- Project A179 – Project Summit

ACTION ON EXECUTIVE SESSION ITEMS**ADJOURN**

Posted in accordance with the Texas Government Code, Chapter 551, on the 11th day of August, 2017 at or before 5:00 p.m.

Sandy Hart, TRMC, MMC
City Secretary

In accordance with the Americans with Disabilities Act, it is the policy of the City of McKinney to offer its public programs, services, and meetings in a manner that is readily accessible to everyone, including individuals with disabilities. If you are a person with a disability and require information or materials in an appropriate alternative format; or if you require any other accommodation, please contact the ADA Coordinator at least 48 hours in advance of the event. Phone 972-547-2694 or email contact-adacompliance@mckinneytexas.org. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility. ADA grievances may also be directed to the ADA Coordinator or filed online at <http://www.mckinneytexas.org/ada>.

17-814



TITLE: Proclamation Proclaiming Hannah Falk Day

SUPPORTING MATERIALS:

[Proclamation](#)



City of McKinney Proclamation

- WHEREAS,** On Saturday, June 17th, 2017, Hannah Falk, in the performance of her duty as a lifeguard, vigilantly monitored and scanned the leisure pool at the Hidden Creek Community Pool; and
- WHEREAS,** Hannah noticed an adult male jump into the pool. She then observed a child not moving on the bottom of the pool. The adult male was the child's father; and
- WHEREAS,** Hannah immediately put her training and practice to test and quickly responded to a life threatening emergency; and
- WHEREAS,** Hannah assisted the father, who removed a four year-old, unresponsive boy. With the assistance of the child's father, Hannah immediately began life saving medical efforts to re-establish the child's breathing; and
- WHEREAS,** the aquatic staff cleared the pool, secured the pool deck, and provided support and assistance until McKinney Fire/EMS arrived on site; and
- WHEREAS,** McKinney Fire/EMS arrived on scene within minutes to assist in stabilizing the child and to transport him to the hospital; and
- WHEREAS,** The City of McKinney hereby recognizes Hannah Falk for her quick and courageous actions to help save a human life, especially during her first week of duty.

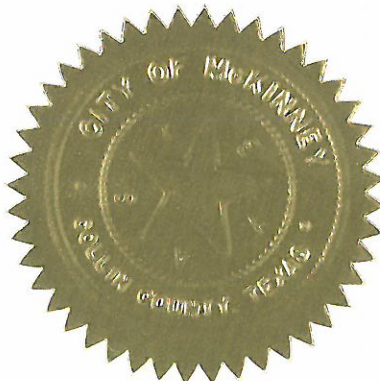
NOW, THEREFORE, I, GEORGE FULLER, BY THE POWER VESTED IN ME AS MAYOR OF THE CITY OF MCKINNEY, TEXAS, DO HEREBY ACKNOWLEDGE AND SINCERELY THANK HANNAH FALK FOR HER LIFESAVING EFFORTS AND HER SERVICE TO OUR COMMUNITY AND PROCLAIM JUNE 17, 2017 AS

Hannah Falk Day

WITNESS MY HAND AND SEAL THIS THE 15th DAY OF August, 2017.

ATTEST:


Denise Vice, Assistant City Secretary




George Fuller, Mayor

17-815



TITLE: Recognition of McKinney's First Place Finish at the 2017 Texas State Lifeguard Competition

SUPPORTING MATERIALS:

17-816



TITLE: Minutes of the City Council Regular Meeting of July 31, 2017

SUPPORTING MATERIALS:

[Minutes](#)

CITY COUNCIL REGULAR MEETING

JULY 31, 2017

The City Council of the City of McKinney, Texas met in regular session in the Jack Hatchell Collin County Administration Building at 2300 Bloomdale Road, McKinney, Texas on July 31, 2017 at 6:00 p.m.

Council Present: Mayor George C. Fuller, Mayor Pro Tem Rainey Rogers, Council members: Chuck Branch, Scott Elliott, Charlie Philips, Tracy Rath, and La'Shadion Shemwell.

Staff Present: City Manager Paul Grimes; Assistant City Manager Steve Tilton; Assistant to the City Manager Trevor Minyard; City Attorney Mark Houser; City Secretary Sandy Hart; Executive Director of Development Services Michael Quint; Planning Manager Samantha Pickett; Planning Manager Jennifer Arnold; Chief of Police Greg Conley; McKinney Economic Development Corporation President Darrell Auterson; Director of Engineering Gary Graham; IT Helpdesk Technician Nicholas Martin; Chief Financial Officer Mark Holloway; Police - Randy Haak, Trent Davis, Jimmy Thomas, Bruno Siqueira, Hilary Barham, and Lari Weaver; Director of Parks and Recreation Mike Kowski; and Civil Engineer II Robyn Root.

There were twenty seven guests present.

Mayor Fuller called the meeting to order at 6:00 p.m. after determining a quorum was present.

Invocation was given by Dr. Tommy Brumett, Senior Pastor, First United Methodist Church. Mayor Fuller led the Pledge of Allegiance.

17-769 Presentation of GFOA Distinguished Budget Award for FY2017 Budget. Chief Financial Officer Mark Holloway presented the GFOA Distinguished Budget Award for FY2017 Budget.

17-770 National Night Out Proclamation. Mayor Fuller presented the National Night Out Proclamation to Police – Randy Haak, Trent Davis, Jimmy Thomas and Chief Greg Conley.

Mayor Fuller called for Citizen Comments.

The following individuals spoke about the City's Enforcement in the ETJ.

Mr. Alan Hoffman, 7010 Groveland, Dallas

Mr. Harlan Stauffer, 3804 Hackberry Lane, Bedford

Mr. David Lehde, 5816 W. Plano Parkway, Plano

Council unanimously approved the motion by Council member Branch, seconded by Councilwoman Rath, to approve the following consent items:

- 17-771** Minutes of the City Council Special Meeting of July 17, 2017
- 17-772** Minutes of the City Council Regular Meeting of July 18, 2017
- 17-773** Minutes of the City Council Work Session of July 24, 2017
- 17-673** Minutes of the Main Street Board Meeting of June 8, 2017
- 17-774** Minutes of the McKinney Housing Authority Meeting of June 27, 2017
- 17-767** Minutes of the Planning and Zoning Commission Work Session of July 11, 2017
- 17-768** Minutes of the Planning and Zoning Commission Regular Meeting of July 11, 2017
- 17-679** Minutes of the Reinvestment Zone Number One Meeting of April 3, 2017
- 17-775** Consider/Discuss/Act on a Resolution Authorizing the Purchase of Body Worn Cameras for the McKinney Police Department from Watch Guard of Allen, Texas, Additional Storage from EST Group, of Arlington, Texas and Workstations from Dell, of Round Rock, Texas Utilizing the Texas Department of Information Resources' Contracts. Caption reads as follows:

RESOLUTION NO. 2017-07-146 (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING THE PURCHASE OF BODY WORN CAMERAS FOR THE MCKINNEY POLICE DEPARTMENT FROM WATCH GUARD OF ALLEN, TEXAS, ADDITIONAL STORAGE FROM EST GROUP, OF ARLINGTON, TEXAS AND WORKSTATIONS FROM DELL, OF ROUND ROCK, TEXAS, UTILIZING THE TEXAS DEPARTMENT OF INFORMATION RESOURCES' CONTRACTS

- 17-776** Consider/Discuss/Act on a Resolution Authorizing the City Manager to Execute a Contract with Kimley-Horn and Associates, Inc. for Professional Engineering Design Services to Update the Intelligent Transportation System (ITS) Master Plan of the City of McKinney.

Caption reads as follows:

RESOLUTION NO. 2017-07-147 (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH KIMLEY-HORN AND ASSOCIATES, INC., FOR PROFESSIONAL ENGINEERING DESIGN SERVICES TO UPDATE THE INTELLIGENT TRANSPORTATION SYSTEM (ITS) MASTER PLAN OF THE CITY OF MCKINNEY, TEXAS, AND ALL RELATED DOCUMENTS

- 17-777** Consider/Discuss/Act on a Resolution Approving the Seventh Amended and Restated Bylaws of McKinney Economic Development Corporation.

Caption reads as follows:

RESOLUTION NO. 2017-07-148 (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, APPROVING THE SEVENTH AMENDED AND RESTATED BYLAWS OF THE MCKINNEY ECONOMIC DEVELOPMENT CORPORATION; AND PROVIDING AN EFFECTIVE DATE

END OF CONSENT

- 17-778** Mayor Fuller called for Consideration/Discussion/Action on Fiscal Year 2017-18 Proposed Tax Rate, Take Record Vote and Set Public Hearing and Adoption Dates. Chief Financial Officer Mark Holloway stated this item will set the two dates for public hearings on our tax rate and setting the ceiling for the FY18 tax rate. This year the ceiling rate is set at \$0.562600. The rate proposed in the City Manager's budget is lower at \$0.540199, which is \$0.0328 lower than the current rate at \$0.573000, however it is 1.92% above the effective rate this year. The taxable values are up significantly at about 13.7% over last year. Approximately 4.1% is new construction and annexation of properties that were added to the tax roll and existing property values were up about 9%. The tax rate is two parts, I&S, or debt service rate, and M&O (maintenance and operations). History shows that the tax rate decreased in 2015 by about a quarter of a cent, decreased by one cent in 2017, and this year the City Manager is proposing a decrease in the tax rate of just over three cents.

The first public hearing on the tax rate will be held on August 15th, followed by the second public hearing on the tax rate and first public hearing on the budget on September 5th and the second public hearing on the budget followed by adoption of the budget and the tax rate on September 19th. Council unanimously approved the motion by Mayor Fuller, seconded by Mayor Pro Tem Rogers, to adopt a Fiscal Year 2018 Total Tax Rate of \$0.562600, which is higher than the Fiscal Year 2018 Effective Tax Rate of \$0.526703, and call for two public hearings; the first public hearing to be held on August 15, 2017 at 6:00 p.m. and the second public hearing to be held on September 5, 2017 at 6:00 p.m. Further, a Record Vote on the tax rate adoption will be held on September 19, 2017 at the regular City Council Meeting. All meetings will be held at the Collin County Jack Hatchell Administration Building, 2300 Bloomdale Road, Collin County Commissioners Court, 4th Floor, McKinney, Texas 75071 with the following record vote:

Mayor Fuller – For

Mayor Pro Tem Rogers – For

Council member Philips – For

Council member Elliott – For

Councilwoman Rath – For

Council member Branch – For

Council member Shemwell – For

14-297Z5

Mayor Fuller called for a Public Hearing to Consider/Discuss/Act on a Request to Rezone the Subject Property from "AG" - Agricultural District, "PD" - Planned Development District, and "CC" - Corridor Commercial Overlay District to "C2" - Local Commercial District, "SO" - Suburban Office District and "CC" - Corridor Commercial Overlay District, Located on the Southeast Corner of Meadow Ranch Road and U.S. Highway 380 (University Drive). Planning Manager Samantha Pickett stated that staff recommends that Council continue the public hearing and table this item

to the August 15th meeting per the applicant's request. Mayor Fuller called for public comments.

The following individuals spoke in opposition of the rezoning:

Mr. Chuck Howard, 1810 Meadow Ranch Road, McKinney

Ms. Debbie Martinez, 1920 Meadow Ranch Road, McKinney

Mr. Mike Gorman, 1910 Meadow Ranch Road, McKinney

Mr. Stephen Martinez, 1920 Meadow Ranch Road, McKinney

Ms. Sandy Hanson, 1800 Meadow Ranch Road, McKinney

The following individuals did not wish to speak but wanted their opposition to the rezoning read into the record:

Ms. Jan Howard, 1810 Meadow Ranch Road, McKinney

Ms. Liz McElhaney, 1811 Meadow Ranch Road, McKinney

Mr. William Smith, 1811 Meadow Ranch Road, McKinney

Mr. Vincent Gunn, 1911 Meadow Ranch Road, McKinney

Ms. Jan Gunn, 1911 Meadow Ranch Road, McKinney

Ms. Kari McDaniel, 1841 Meadow Ranch Road, McKinney

Council unanimously approved the motion by Councilwoman Rath, seconded by Mayor Pro Tem Rogers, to close the public hearing and table this item to the August 15th meeting. Mayor Fuller called for reconsideration of the item due to notification requirements. Council unanimously approved the motion by Mayor Fuller, seconded by Council member Branch, to close the public hearing and table the item indefinitely.

17-779

Mayor Fuller called for Consideration/Discussion/Action on a Resolution Authorizing the City Manager to Enter Into an Interlocal Agreement with Collin County for Funding the Extension of Bloomdale Road from Community Avenue to CR 164. Director of Engineering Gary Graham, stated that this item is for an Interlocal Agreement with Collin County to help fund the improvements for the extension of Bloomdale Road from Community to County Road 164. Staff is about 60% complete with the

design of the bridge over the NRCS Lake just to the west of Community. The project budget is about \$10 million and we are asking Collin County to use \$4 million of the 2007 Collin County bond money that was allocated to McKinney for the project. The bond program allows for the County to pay up to 50% of the total project cost. Once we determine how much money is needed for the right-of-way, we will be able to determine the project limits as far as four-lane versus two-lane and tying back to County Road 164. Mr. Graham stated that the Timbercreek subdivision has the obligation to build Hardin Road up to Bloomdale Road and the future two lanes of Bloomdale Road. Council unanimously approved the motion by Council member Branch, seconded by Council member Shemwell, to approve a Resolution authorizing the City Manager to enter into an Interlocal Agreement with Collin County for funding the extension of Bloomdale Road from Community Avenue to CR 164. Caption reads as follows:

RESOLUTION NO. 2017-07-149 (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH COLLIN COUNTY FOR FUNDING THE DESIGN AND CONSTRUCTION OF BLOOMDALE ROAD FROM COMMUNITY AVENUE TO CR 164

- 17-780** Mayor Fuller called for Consideration/Discussion on the Growth and Annexation Program in McKinney. Long Range Planning Manager Jennifer Arnold stated that the purpose of this item is to give Council an overview of what the program looks like and where we've been. The City today is about 68 square miles, however our ultimate city limits will be about 116 square miles, with about 41% of our area left to grow. In 2015-16, the City started to reevaluate its 1999 annexation policy in conjunction with the Comprehensive Plan update and the Northwest Sector Study and initiated two involuntary annexations within the clause of the Local Government Code. Those two areas, one on the northern end of the city limits around Laud Howell Parkway and Highway 75 and

the other in areas around the airport. In conjunction with that, the City also adopted a new annexation policy in January of this year. It included the 2017 annexation plan which identified areas to be annexed on the third anniversary of adoption of the policy document and are identified as the Northwest corner of US 380 and Custer Road and on the northern end of US 380 east side of New Hope Road. One of the things that is included in the municipal annexation plan is the fact that properties identified are not annexed immediately; it is a three-year timeframe. We will be working on developing the service plan and conducting inventory services that are required by state law. Ms. Arnold stated that any properties included in the annexation plan have to meet certain criteria of the Local Government Code before they are included in the annexation plan. Specifically, the area on the northeast corner of US 380 and Custer Road, this is an area where there is a large residential neighborhood and there really isn't much of an impetus for those property owners to want to be annexed into the City so the only way to get them incorporated would be to pursue involuntary annexation. One of the reasons the City might do that is because of services being extended to that area without regaining that tax revenue. According to the Local Government Code, once the plan was adopted in January, we submitted notice to the property owners within 60 or 90 days. We also had to notify any service providers such as the County, TxDOT, water corporations and they are asked to send us information about services they provide to the areas. Once we have an inventory of services, we will hold the public hearings. Public hearings are tentatively scheduled for the August 15th City Council meeting. With any involuntary annexation, State law requires a City offer a pre-annexation agreement to any property owner that has an agricultural exemption on their property and the agreement says the City will not annex them for a stated period of time as long as they use their property the way it is currently being used. Our stated period of time is

ten years. There are two issues at the State legislature that have our attention, the tax rate caps and annexation bills. The annexation bill is at the heart of what local government is trying to do in their communities and that is accommodate growth. The Mayor and Mr. Minyard will be in Austin later this week meeting with the Governor to try to impress upon them that we understand the concerns about annexation but there's a lot of misinformation out there and our ability to control our destiny and set the course for the community is fundamentally important. We will keep you apprised. If the City can't control its own growth and growth of its utilities, streets and rights-of-way, then it invites other ways in which to develop likely through MUDs and PIDs.

Mayor Fuller called for Citizen Comments and there were none.

Mayor Fuller called for Council and Manager Comments.

Council member Phillips did not have any comments.

Council member Elliott congratulated Mr. Graham on his promotion, noting that it was well deserved.

Mayor Pro Tem Rogers stated we had the opportunity to attend an event on Saturday where a citizen in McKinney donated an amazing piece of history, an old fire truck. His passion was fire trucks and it was amazing to listen to this individual's family talk about what he did. I was talking with the Mayor about it, I realized that is what makes McKinney great is the individuals that live here, the individual contributions. He bought this old fire truck that was used by McKinney around the turn of the century and he worked on restoring it and ultimately it was restored through several entities in McKinney. It was great to be a part of that and recognize that McKinney is a very unique place to live. About a year and a half ago, I was out jogging and there was a guy I would see coming in and out of the road as I'm jogging. As I got closer to him, I realized he was picking up trash along Hardin Road. His name was Wendell; an older, retired gentleman, but every morning you see him walking around with a bag of trash and as he walks and gets his exercise, he picks up trash. I love that about McKinney. It's made up of great people doing a little bit to improve it and that's what makes the community great. I want to recognize Jack Moss' family and their contribution. Mr.

Moss passed away a few years ago but his legacy still lives because of the things he did that were important in his life, making a little bit of a difference.

Mayor Fuller stated that what Mr. Rogers didn't tell you is during that event, somebody was speaking and from our vantage point you could see out the fire station door to Highway 5. Before anyone knew it, there was a little boy three years old running toward Highway 5 and you could not see parents or anyone else. Mayor Pro Tem Rogers took off in a 100 yard dash, sprinting, to go after this child that he saw running toward the road. Luckily, there was a parent that came from where we could not see but I want to commend you on your speed and your awareness. It was extremely impressive and I want to complement you on that.

Council member Shemwell gave a shout out to Habitat for Humanity. He attended two wall raisings where Habitat is rehabbing east McKinney and turning vacant lots into someone's dream home, so I appreciate the work they are doing.

Council member Branch stated he is excited for tomorrow night, National Night Out. We have 46 events going on across the City so I appreciate the citizens getting involved and participating. Thank you to the police officers and Officer Randy Haak for taking the lead role in this. He told me this evening he's handing the baton off but we appreciate the work and efforts over the years. Thank you to all of the officers who participate and help us get there safely and be a part of the community.

Councilwoman Rath stated that MCDRC met in their regularly scheduled meeting last week. They approved their promotional community event grants. The total requested was more than \$71,000 and the amount available for funding to many groups in McKinney was \$50,000. I would like to congratulate Mr. Grimes who will celebrate his one year anniversary tomorrow. As you did last year, I believe it was on day two of your employment, you will spend your one year anniversary not at a fancy dinner but at National Night Out, so thank you so much.

City Manager Grimes noted that these announcements are for the general public as well as the City Council. Mr. Mayor, City Council, thank you, staff is currently polling the McKinney Urbanized Transit District Board for a board meeting that is tentatively scheduled for August 30th. We will have data from the provider, DCTA, and will be informing the Board on usage, patterns, etc. and get further direction and feedback from

the Board for any programmatic changes. I want to remind the Council that North Texas Municipal Water District is providing guided tours of the water treatment facility in Wylie on August 11th from 1:30 to 4:00 p.m. Let us know if you would be interested in attending. Our finance folks were recognized for the 33rd straight year for budgeting excellence. They also received the 2017 Annual Achievement of Excellence in Procurement Award from the National Procurement Institute. McKinney is one of only 50 agencies in Texas and one of only 68 in the U.S. and Canada to receive that award. This is the second consecutive year and fifth time overall that the City has achieved this honor. I will be attending my second National Night Out tomorrow. Most of the National Night Out events are static and at a designated location like a park or municipal center, but this is a treat where you have neighboring competing block parties and it's truly a community event. For residents who may not be scheduled this year, if you are interested in registering your block party for this or any other event, you can go to mckinneytexas.org/nno or your crime watch captain to find out about events in your neighborhood. One other public service announcement, in order to provide safe electric service, Oncor Electric is performing regular tree trimming maintenance throughout our service area. You may see trucks trimming trees. They will not cut them down but they have to trim them for safety purposes. We have a reliable electrical grid for a reason because we do not allow vegetation to encroach on the lines.

Council member Philips stated he is excited about tomorrow night and getting to ride in the front of a police car. It's better to be in the front than the back.

Mayor Fuller recessed the meeting into executive session at 7:18 p.m. per Texas Government Code Section 551.071 (2) Consultation with City Attorney on any Work Session, Special or Regular Session agenda item requiring confidential, attorney/client advice necessitated by the deliberation or discussion of said items (as needed), Section 551.071 (A). Litigation / Anticipated Litigation, Section 551.072 Discuss Real Property, and Section 551.087 Discuss Economic Development Matters as listed on the posted agenda. Mayor Fuller recessed back into open session at 7:30 p.m.

Council unanimously approved the motion by Council member Branch, seconded by Council member Elliott, to adjourn. Mayor Fuller adjourned the meeting at 7:35 p.m.

GEORGE C. FULLER
Mayor

ATTEST:

SANDY HART, TRMC, MMC
City Secretary



17-817

TITLE: Minutes of the City Council Budget Work Session of August 4, 2017

SUPPORTING MATERIALS:

[Minutes](#)

CITY COUNCIL BUDGET WORK SESSION

AUGUST 4, 2017

The City Council of the City of McKinney, Texas met in budget work session in the John and Judy Gay Library, 6861 Eldorado Parkway, McKinney, Texas on August 4, 2017, at 8:30 a.m.

Council Present: Mayor George C. Fuller, Mayor Pro Tem Rainey Rogers, Council members: Chuck Branch, Scott Elliott, Tracy Rath, and La'Shadion Shemwell. Council Absent: Council member Charlie Philips.

Staff Present: City Manager Paul Grimes; Deputy City Manager Jose Madrigal; Assistant City Manager Barry Shelton; Assistant City Manager Steve Tilton; Assistant to the City Manager Trevor Minyard; City Attorney Mark Houser; City Secretary Sandy Hart; Executive Director of Development Services Michael Quint; Planning Director Brian Lockley; Assistant Director of Public Works Paul Sparkman; Director of Parks and Recreation Mike Kowski; Assistant Director of Parks and Recreation Ryan Mullins; Fire Chief Danny Kistner; Chief of Police Greg Conley; McKinney Economic Development Corporation President Darrell Auterson; McKinney Community Development Corporation President Cindy Schneible; Airport Executive Director Ken Wiegand; Interim Director of FBO James Loomis; Director of Engineering Gary Graham; Director of Human Resources Ike Obi; Risk Manager Kristina Peters; Chief Information Officer Sid Hudson; Housing and Community Services Manager Janay Tieken; Director of Library Services Spencer Smith; McKinney Convention and Visitors Bureau Director Dee-dee Guerra; Chief Financial Officer Mark Holloway; Director of Finance Trudy Mathis; Budget – Lisa Koslan, Donna Chamberlain, Eric Corder; Communications and Marketing - CoCo Good; and Video Producer Joey Barr.

There were six guests present.

Mayor Fuller called the meeting to order at 8:30 a.m. after determining a quorum present.

Council member Philips entered the meeting at 8:35 a.m.

Mayor Fuller called for discussion on the following work session items with no action taken:

Mayor Fuller recessed the meeting into executive session at 12:05 p.m. per Texas Government Code Section 551.071 (2) Consultation with City Attorney on any Work Session, Special or Regular Session agenda item requiring confidential, attorney/client advice necessitated by the deliberation or discussion of said items (as needed), Section 551.071 (A). Litigation / Anticipated Litigation, and Section 551.087 Discuss Economic Development Matters as listed on the posted agenda. Mayor Fuller recessed back into open session at 12:18 p.m.

Council unanimously approved the motion by Council member Elliott, seconded by Council member Branch, to adjourn. Mayor Fuller adjourned the meeting at 12:19 p.m.

GEORGE C. FULLER
Mayor

ATTEST:

SANDY HART, TRMC, MMC
City Secretary

17-735



TITLE: Minutes of the Board of Adjustment Meeting of May 31, 2017

SUPPORTING MATERIALS:

[Minutes](#)

BOARD OF ADJUSTMENT REGULAR MEETING

MAY 31, 2017

The Board of Adjustment met in regular session in the Council Chambers, 222 N. Tennessee Street, McKinney, Texas, on May 31, 2017 at 5:30 p.m.

Board members Present: Scott Jacoby, Patrick Cloutier, Kimberly Davison, Randall Wilder, Brad Taylor and Betty Petkovsek. Absent: Brian White.

Staff present: Chief Building Official, Rick Herzberger; City Secretary, Sandy Hart; Landscape Architect, Emily Braht; City Attorney, Alan Lathrom; Attorney for Board, Rebecca Hendricks Brewer; Assistant City Engineer, Michael Hebert and Administrative Assistant, Dee Boardman.

17-547 Minutes of the Board of Adjustment Meeting of March 29, 2017

The first agenda item is BOA 17-547, approval of the minutes of the Board of Adjustment's meeting March 29, 2017. Are there any changes to the minutes as prepared by the city staff? Do I have a motion to approve the minutes as presented?

MR. WILDER: I move that the minutes be approved as printed.

MR. JACOBY: Thank you, Randall.

Do I have a second?

MS. DAVISON: I'll second.

MR. JACOBY: Thank you, Kim.

Any discussion? Nope. All in favor?

MR. WILDER: Aye

UNKNOWN SPEAKER: Aye.

UNKNOWN SPEAKER: Aye.

MR. JACOBY: The minutes are approved. Sign this before I forget it.

17-548 Conduct a Public Hearing to Consider/Discuss/Act on the Request by Andres A. Gonzalez for a Proposed Patio Cover, a 2' Variance from the Ordinance from the Minimum Rear Yard Setback of 20' for the Property Located at 12200 Buffalo Gap Drive, McKinney, Texas.

Next we have BOA 17-548, Conduct a public hearing to consider/discuss/act on the request by Andres A. Gonzalez for the proposed patio cover, a 2-foot variance from the Ordinance from the minimum rear yard setback of 20 feet for the property located at 12200 Buffalo Gap Drive, McKinney, Texas.

I'd like to give an opportunity to Mr. Gonzalez or his representative to make comments about this item. And actually, first, I'm going to let Rick speak. Sorry about that.

Rick, if you could please present it for us.

MR. HERZBERGER: I guess you all are familiar with the agenda process so the building official statement, I'll just read it for the record. The request has been validated and the board has the authority to consider this variance request. Over the last two months I've been working with the applicant to try and find a setback solution to covering the poured patio area with an attached cover. The applicant's hardship could be looked at since the patio foundation was poured in conjunction with the

house in cutting approximately 2 foot of the foundation to meet the 20-foot setback is not advised by the applicant's contractor.

MR. JACOBY: I'd like to give an opportunity to Mr. Gonzalez or his representatives to make any comments about this item. And if you would, please come up and state your name and address for us and you have ten minutes, please.

MR. GONZALEZ: Andres Gonzalez, 12200 Buffalo Gap Drive, McKinney, Texas. Just a couple comments that weren't on the instruction or form that I submitted. Basically, I requested the builder to build the patio cover when I had the cement poured and everything and they told me that it would delay the construction of the house by two months or so because they would have to resubmit to the city and do all kinds of other paperwork. And we were already going behind by -- took a year to get the house. So he told me, no, you'll have no problem building it after the fact. Once I found out about the variance and the problems, that's when I ran into this. I'd like it to be approved because eventually I'm going to wind up in a wheelchair and I'd like to have that area so I can maneuver. Other than that, thank you, Rick, very much for your assistance.

MR. JACOBY: Does the board have any questions? Is there anyone here that would like to speak on this outside of Mr. Gonzalez? We did receive two letters I'll go ahead and read it. The first one was handed in today that they approved of the variance. It's from an Allen, last name is K-O-C-H and a Jane K-O-C-H, 1000 Asheville Lane. The second one was also an approval of the request and it was from a Nancy and her last name is S-U-E-S-S at 908 Ayres Drive.

We've all had an opportunity to consider this request. Do I have a motion regarding this item?

MR. CLOUTIER: I move that this item -- we vote on this item. It be approved as applied for.

MR. JACOBY: Thank you, Patrick.

Do I have a second?

MR. TAYLOR: A second.

MR. JACOBY: Thank you, Brad.

It has been moved and seconded that we approve. Is there any discussion? All in favor.

UNKNOWN SPEAKER: Aye.

UNKNOWN SPEAKER: Aye.

UNKNOWN SPEAKER: Aye.

MR. JACOBY: The motion has been approved.

17-549 Conduct a Public Hearing to Consider/Discuss/Act on the Request by Eric & Heather Hollister for a 2' Variance from the Ordinance from the Minimum Side Yard Setback of 7' and for a 1-6" Variance from the Minimum Front Yard Setback of 25' for the Property Located at 702 W Louisiana Street, McKinney, Texas

All right. Next we have BOA 17-549. Conduct a public hearing to consider/discuss/act on the request by Eric and Heather Hollister for a 2-foot variance from the ordinance from the minimum side yard setback of 7 feet and for a 1- to 6-foot variance from the minimum front yard setback of 26 feet for their property located at 702 W. Louisiana Street, McKinney, Texas.

Rick, if you'd please like to present on this.

MR. HERZBERGER: Once again the request has been validated and the board has authority to consider this variance request. The applicant has stated that the addition of an attached garage could only be done on this side of the house by way of demolishing an existing addition and incorporating a two-car garage into the matching Victorian-style roof lines. Other locations would require greater variance to either side, rear, front setbacks. And I just call your attention to the applicant's basis for variance on the front of the agenda there.

MR. JACOBY: I'd like to give an opportunity to the Hollister's or their representatives to make comments about this item. If you would, please come forward and state your name and address for us and you will have ten minutes.

MS. HOLISTER: I'm Heather Holister and the address is 702 W. Louisiana, McKinney.

MR. JACOBY: Thank you.

MS. HOLISTER: So just to clarify, that front setback is a 1 foot 6 inch.

MR. JACOBY: Oh, 1 and -- Okay. Sorry.

MS. HOLISTER: So not that much. We are in the historic area of McKinney. We have put in our certificate of appropriateness with Guy Giersch (phonetic) and we have received our approval for that. So he says that it's totally fine to do. Because it's historic, the land was chopped up in such a manner that they were not clearly thinking about modern ordinances and numerous houses in the area require setbacks or already have them because the land was apportioned up later. So we don't feel that we are asking for too much. There are a number of addresses I believe I submitted that do also have smaller or larger setbacks than what we are looking for (audio cuts out) what exactly it is we are trying to do. The original attachment to the house was put on probably sometime in the 1970's based on maps that I can find and it was extremely poorly done. There's no ventilation in what's currently a bathroom. There's wood rot throughout so pulling it down and doing something else with the home is really in the best interest of the building in general. As with the driveway as well, Louisiana, I'm sure you understand, is an extremely busy street so having a wide driveway is going to be really much safer for everyone.

MR. JACOBY: Questions?

MR. CLOUTIER: So this is going to be a garage and attached room on top?

MS. HOLISTER: Yes. Yes.

MR. CLOUTIER: Kind of like a garage apartment type?

MS. HOLISTER: Well, no. It is going to connect to the home so it is an attached garage. We're going to use the space that the house already has. We're not changing anything to the original home, but that attachment that's not original is going to instead become a two-car garage and then above it the master seat that you will enter in the actual home from a landing upstairs.

MR. CLOUTIER: Oh, okay.

MS. HOLISTER: The only other thing I would add is I don't know if my neighbor sent in anything in the mail, but they did provide us with letters - - two of our neighbors provided us with letters prior to our application. I do have those if they didn't mail anything in.

MS. DAVISON: Excuse me. Does the wood deck already exist?

MS. HOLISTER: A wood deck does already exist and part of that will come down and that one also needs to be redone. It's extremely old. (Audio cuts out) The back deck needs to be redone. The front portion that you see in gray on the screen right now is the original front porch and that's staying put.

MR. JACOBY: Thank you very much. See if we've had any -- is there anyone else who would like to speak on that topic? Seeing none.

We have received six letters after the notices went out. I'm going to read them as they have come in. The first one is (inaudible) Cheramy Rusbuldt

at 616 West Virginia Street in which they have protested. They stated the authenticity of the historic district must be protected from the Mc-mansions cropping up all along the streets and homes already. Part of our special district. The second one is for. I cannot read their name, but it is at 704 West Louisiana Street. Patrick Madrigal (phonetic) and they approved. As direct neighbors, we are not opposed to the proposed changes. Additionally, the proposed changes would lower the back deck below our fence line. The third letter from Justin McKinney, 107 North Bradley Street. They approve. As an immediate neighbor, I believe the proposed project will benefit both the owners and the surrounding community. The fourth one is also for an approval. From Cabe (phonetic) Chadick at 620 West Virginia Street. I believe property owners should be able to build what they want. And the next one is from Pat Dowell. It's also an approval. It appears to blend with the original style as to height. And the last one is from 614 West Louisiana Street. It's also an approval. Is there any further discussion?

UNKNOWN SPEAKER: I would like to say that we always look at the protests and try to understand because this is a serious matter, but the wording of the protest deals with Mc-mansions cropping up all over which is beyond the scope of this request. It doesn't address this request. The immediate neighbors indicate that it fits in well and, you know, Guy gave his okay through the historic district which is a higher hurdle than most other neighborhoods have, so I have a tough time applying the protest very accurately to this request.

MR. JACOBY: We've all had an opportunity to consider this request. Do I have a motion to close the public hearing and approve or deny the agenda item?

MS. DAVISON: I move approval for this agenda item.

MR. JACOBY: Thank you, Kim.

Do I have a second?

MR. WILDER: I second.

MR. JACOBY: Thank you, Randall. It's been moved and seconded that we approve. Is there any discussion? All in favor?

UNKNOWN SPEAKER: Aye.

UNKNOWN SPEAKER: Aye.

UNKNOWN SPEAKER: Aye.

MR. JACOBY All opposed? The item has been approved.

Thank you, guys.

Board members unanimously approved the motion by Board member Kimberly Davison, seconded by Board member Randall Wilder, to approve the request by Eric & Heather Hollister for a 2' Variance from the Ordinance from the Minimum Side Yard Setback of 7' and for a 1-6" Variance from the Minimum Front Yard Setback of 25' for the property located at 702 W Louisiana Street, McKinney, Texas.

- 17-550** Conduct a Public Hearing to Consider/Discuss/Act on the Request by Justin Nunn for Opportune Development LLC - Barnes Series for a 6.6" Variance from the Minimum Front Yard Setback of 25' for the Main

House and 3.8" Variance from the Minimum Rear Yard Setback of 10'
for the Detached Garage at the Duplex Property Located at 802/804
Barnes Street, McKinney, Texas

Next item on the list is BOA 17-550.

Conduct a public hearing to consider/discuss/act on the request by Justin Nunn for Oppertune Development, LLC Barnes Series for a 6.6-foot variance from the minimum front yard setback of 25 feet for the main house and 3.8-foot variance from the minimum rear yard setback of 10 feet for the detached garage at the duplex property located at 802/804 Barnes Street, McKinney, Texas.

Rick, would you like to present for the board, please.

MR. HERZBERGER: I would call your attention to existing conditions in the applicant's basis for variance which is taken from the application and information provided that's on the first page of the agenda. The building official statement, the question has been validated and the board has authority to consider this variance request. The replat process requires the creation of nonconforming lots so the variances must be considered before the replat is considered by the city. The replat has been filed and it is part of your packet. If a recommendation is made to approve the various, I suggest you make the motion that said variance approval is only applicable to the submitted plat which is one of the exhibits. The reason for that is, if the plat changes by way of the plat process replat, then your approval would be invalidated.

MR. JACOBY: Thank you.

I'd like to give an opportunity to Mr. Nunn or his representations to come up and make comments about this item. If you could please state your name and address and you have ten minutes, sir. Thank you.

MR. LOWENTHAL: My name is Andy Lowenthal.

I live at 508 Broadly Fin, McKinney. I'm Justin's partner on this project. Basically, in a nutshell, we are just trying to replat these two lots. There's two duplexes that are side by side and currently the property line goes lengthwise through -- through the middle of both structures so you can see there that the dotted line going up and down the -- the dividing line between the lots go through the two houses. And so what we are proposing and trying to accomplish is to replat it so that the property line goes in between the two structures separating them. We don't intend to change the footprint or add anything that would make it any closer to the street than it already is. We are just trying to separate the properties that are conjoined, if you will, because of the property lines right now.

MR. JACOBY: Can you stop at that one,

Rick, for a second go back up a little bit.

So right now, if I'm looking at it right, the green -- whoops -- the green line going -- is that the current property line and you're wishing to flip it to the red line?

MR. LOWENTHAL: Yes, sir, that's correct.

MR. JACOBY: So it goes right through both homes?

MR. LOWENTHAL: Currently it does.

MR. JACOBY: Okay.

UNKNOWN SPEAKER: Would it change the address on them because one of them seems to certainly be a Barnes Street address right now because the one up at the top doesn't have any frontage --

Rick, can you go back down, just kind of leave it where it was --

Doesn't have any frontage to Rains, right?

So that's a Barnes Street address. Then the other one, is that now or will that remain a Barnes Street address?

MR. LOWENTHAL: I believe it will remain. Both duplexes, both structures both front doors, the front of both houses face Barnes Street currently.

UNKNOWN SPEAKER: Okay.

MR. LOWENTHAL: So I think they would both still have a Barnes address. Did I answer that?

UNKNOWN SPEAKER: Well, Rick, could you just leave it right there. Thank you. If we honor this request to go as I see it north/south, the one on the left is not going to have any affiliation with Barnes Street anymore, is it?

Wait.

MS. DAVISON: Vice versa.

UNKNOWN SPEAKER: I'm sorry. Forgive me. I get it. Okay. Yep. Thank you. You answered my question.

MR. LOWENTHAL: Okay.

MS. DAVISON: So historically what happened is the same person owned both lots and then they just built on top of whatever they owned.

MR. LOWENTHAL: Yes, ma'am. When these structures were built in 1960, I think both lots were owned and they just built them the way they wanted them to be at that point.

MR. JACOBY: So if you wanted to sell them right now, would you have to sell both lots and all two houses at the same time?

MR. LOWENTHAL: Yes.

MR. JACOBY: Wow. Any other questions? Thank you.

MR. LOWENTHAL: Thank you for your time.

MR. JACOBY: No problem.

Do I have anyone that would like to speak on this additionally? Nope. We did receive five letters. I'll go ahead and read those in. The first one is from Robert McClintock at 1005 Raines Street. He approved this variance. The next one is from Barbara Ann White at 811 1/2 South Cedar Street, McKinney, Texas. She wishes to protest. Integrity of a historical district, loss of open land and trees, damage to streets, et cetera. The next one is from Kenny Elder at 809 1/2 Cedar Street. They also protest. Part of the beauty of homes in the area is the lot. Building this close to the street and property affects the looks of everyone in a negative manner and affects how others can also build on adjacent properties and would set a bad precedent. The last one is from also Barbara Ann White at 811 1/2 South Cedar Street which she protested. The City of McKinney prides itself in historical district. City of officials in the past have had the foresight to protect McKinney's historical areas. I would hope our present and future city officials would also show the same respect for our historical areas. The variance requested will in no way better our historical districts. It is strictly for monetary value for private development companies. The storm drainage in the area is already overwhelmed. This variance will open the way to even more flooding of homes on Cedar

Street, Baker Street, Pine Street and Rains Street, just to name a few. The integrity of our historical district is at danger.

Is there any discussion on these?

MS. DAVISON: Just a point of clarification. There's no new building, so I am not sure how storm drainage is affected at all. Right?

MR. LOWENTHAL: That's correct. Yeah, the footprints of these buildings will not change. There's going to be no --

MR. JACOBY: The only thing you're changing is just the property line - - or wishing to change is the --

MR. LOWENTHAL: Correct.

MR. JACOBY: The property line?

MR. LOWENTHAL: Correct.

UNKNOWN SPEAKER: Have you talked to any of these neighbors about this? Have you got any – have you explained to them what's going on?

MR. LOWENTHAL: Not specifically about just changing the replat. Again, there's going to be no physical changes being made.

UNKNOWN SPEAKER: Right.

MR. LOWENTHAL: It's just an invisible property line that goes lengthwise that we just want to be crosswise now.

UNKNOWN SPEAKER: It just seems to be a chasm of misunderstanding here then –

MR. LOWENTHAL: I would agree.

UNKNOWN SPEAKER: -- of being on the same page --

MR. LOWENTHAL: Yeah, I don't --

UNKNOWN SPEAKER: -- that, you know, and, again, I've got to filter this through, but I'm trying to figure out where is the harm and I'm having --

MR. LOWENTHAL: That drainage, irrigation, none of that is, to my knowledge, will be affected.

UNKNOWN SPEAKER: Okay.

MS. DAVISON: And no open space issues?

MR. LOWENTHAL: Yeah, the structures are there existing, the positioning of them will not change.

UNKNOWN SPEAKER: Right.

UNKNOWN SPEAKER: Just so I'll understand, you're the partner of the owner of this particular property?

MR. LOWENTHAL: Justin and I, we co-own it.

UNKNOWN SPEAKER: Okay. So would Justin then be the one that would property have more of a relationship with the different neighbors around the area or do you have any familiarity with any of the people that live in this area?

MR. LOWENTHAL: We've only owned this property for a few months. We've introduced ourselves as we've been around the property. If someone's out, we'll walk up and say "hello" to them; but we haven't made it a case to knock on doors and propose this idea. We haven't done that. And to my knowledge, Justin hasn't done that without me. So, no, the short answer to your question is I don't think Justin would be in any more of a position to know that.

UNKNOWN SPEAKER: Okay. Because I think I'm pretty much in the same boat as Patrick of not really making the connection between some of the comments here and what's --

MR. LOWENTHAL: Yeah, when I heard you reading them back, those were my thoughts also.

MR. JACOBY: Thank you. We've all had an opportunity to consider this request. Do I have a motion to close the public hearing and approve or deny the agenda item?

MR. CLOUTIER: So moved.

MR. JACOBY: Thank you, Patrick.

Do I have a second?

UNKNOWN SPEAKER: Second.

MS. DAVISON: We need to make it...

MR. JACOBY: I'm sorry? Okay. This motion --

UNKNOWN SPEAKER: Motion to approve the variances applied for.

MR. JACOBY: Sorry about that. Okay.

UNKNOWN SPEAKER: I recommend we approve the variance to the replat document as submitted.

MR. JACOBY: Got a second?

MR. TAYLOR: Second.

MR. JACOBY: Thank you, Brad. It has been moved and seconded that we approve that we approve the variance on its application for the replat document as it is submitted. All in favor?

MR. WILDER: Aye.
MS. DAVISON: Aye.
UNKNOWN SPEAKER: Aye.
MR. JACOBY: Opposed? The motion has been approved

Board members unanimously approved the motion by Board member Patrick Cloutier, seconded by Board member Brad Taylor, to approve the request by Justin Nunn for Opportune Development LLC - Barnes Series for a 6.6" Variance from the Minimum Front Yard Setback of 25' for the Main House and 3.8" Variance from the Minimum Rear Yard Setback of 10' for the Detached Garage at the duplex property located at 802/804 Barnes Street, McKinney, Texas.

17-551 Conduct a Public Hearing to Consider/Discuss/Act on the Request by Justin Nunn for Opportune Development LLC - Barnes Series for a 6.4" Variance from the Minimum Front Yard Setback of 25' for the Main House and 5.1" Variance from the Minimum Rear Yard Setback of 10' for the Detached Garage at the Duplex Property Located at 806/808 Barnes Street, McKinney, Texas

On to BOA 17-551.

Conduct a public hearing to consider/discuss/act upon the request by Justin Nunn for Opportune Development, LLC Barnes Series for 6.4-foot variance from the minimum front yard setback of 25 feet for the main house and 5.1-foot variance from the minimum rear yard setback of 10 feet for the detached garage at the duplex property located at 806/808 Barnes Street, McKinney, Texas.

Rick, would you please like to present to the board.

MR. HERZBERGER: Once again, I call your attention to the existing conditions in the applicant's basis for variance. We looked at this plat and its two properties so we split this to two considerations and this is the second one for 806 and 808. The request has been validated and the board has the authority to consider this variance request. This replat process requires the creation of conforming lots so the variance must be considered before the replat is considered by the city. The replat has been filed. If a recommendation is made to approve the variance, I suggest you make the motion of said variance only applicable to the submitted plat, the exhibit.

MR. JACOBY: Thank you. I'd like to give an opportunity to Mr. Nunn or his representatives to make comments about this item if they would like? Nope.

Do we have any discussion?

UNKNOWN SPEAKER: No.

MR. JACOBY: Nope. I do have one letter in protest. It is from Barbara Ann White, 811 1/2 South Cedar Street, McKinney, Texas 75069. She protests. The City of McKinney prides itself in its historical districts. City

officials in the past have had the foresight to protect McKinney's historical areas. I would hope our present and future city officials would also show the same respect for our historical areas. The variance requested will in no way better our historical district. It is strictly for monetary value for private development companies. The storm drainage in the area is already overwhelmed. This variance will open the way to even more flooding of our homes on Cedar Street, Baker Street, Pine Street, and Rains Street just to name a few. The integrity of our historical district is at a danger.

Do we have any further discussion?

UNKNOWN SPEAKER: No.

MR. JACOBY: Do we have any motions?

UNKNOWN SPEAKER: I move that we recommend -- I move that we approve the variance and it will be only applicable on the submitted plat.

MR. JACOBY: I'm sorry, first we need to close the public hearing.

UNKNOWN SPEAKER: Oh, I'm sorry.

MR. JACOBY: Sorry about that. I moved my notes. All right. We've all had an opportunity to discuss this request. Do I have a motion to close the public hearing and approve or deny the agenda item?

UNKNOWN SPEAKER: I move that we approve the item only on the submitted plat.

MR. CLOUTIER: Second.

MR. JACOBY: Thank you, Patrick. It has been moved and seconded that we approve to -- is there any discussion? All those in favor?

UNKNOWN SPEAKER: Aye.

UNKNOWN SPEAKER: Aye.

MR. JACOBY: Opposed? The motion has passed. Thank you very much.

Board members unanimously approved the motion by Board member Brad Taylor, seconded by Board member Patrick Cloutier, to approve the request by Justin Nunn for Opportune Development LLC - Barnes Series for a 6.4" Variance from the Minimum Front Yard Setback of 25' for the Main House and 5.1" Variance from the Minimum Rear Yard Setback of 10' for the Detached Garage at the duplex property located at 806/808 Barnes Street, McKinney, Texas.

- 17-552** Conduct a Public Hearing to Consider/Discuss/Act on the Request by McKinney Entertainment, LLC, 110 E Louisiana Street, McKinney, Texas 75069 for an Appeal of an Administrative Official's Decisions Regarding the Enforcement of Section 146-136 - Tree Preservation on Property Identified as Legal Description - 16.784 Acres at Eldorado Parkway & College, McKinney, Texas 75069, McFarland Survey, Abstract 558

All right. Finally, we have BOA 17-552.

Conduct a public hearing to consider/discuss/act on the request of McKinney Entertainment LLC, 110 East Louisiana Street, McKinney, Texas 75069, for an appeal of an administrative' s official 's decision

regarding the enforcement of Section 146-136, tree preservation on property identified as legal description 16.784 acres at Eldorado Parkway & College, McKinney, Texas, 75069, McFarland survey, Abstract 558.

Rick, could you please present this to the board.

MR. HERZBERGER: Thank you, Chairman. I'll call your attention, which I've sure you've already read, the agenda item on the existing conditions. I'm sure you've read through that and the applicant's basis for the appeal. There is an appeal letter that you'll see with -- and then you'll also see the city's response to the appeal.

The board authority was placed on here because this is the first appeal since I've been here in four years so I wanted to make sure that you had the full information for your authority and when it comes to a point where you consider a motion or anything, I just call your attention to the second page, Decision by Board, what you may or may not do. You may reverse or affirm wholly or partly or may modify the order, etcetera, et cetera.

Building official's statement. The appeal application has been accepted by the building official and the board has authority to hear the appeal.

The city enforcement action has been stayed as no eminent peril to life or property exists. The applicant bears the burden of proof regarding the appeal of the city official's determination. The board does not have the authority to revise the zoning ordinance. It must apply the zoning ordinance as written. The board does have the authority to consider the validity of the determination made by the city officials based on the applicant's appeal statement.

I think you'll note that there's one item that is part of the appeal -- applicant's appeal letter and I wanted to call your attention to it. It is on that second page and it actually shows or there's a request that from the applicant that the board give the authority to issue the permits and I just want to let you know that's not part of your authority. So that's basically it.

MR. JACOBY: Thank you. And just to rectify that --

MR. HERZBERGER: Oh, one last thing.

MR. JACOBY: Yes.

MR. HERZBERGER: We are -- we have -- we have the applicants on that side and we have the city on his side so you'll know who to call up And we have Emily and Mr. Roeder and then we also have assigned to the board tonight attorney, so if you have any questions.

MR. JACOBY: Thank you. And just to clarify, on the appeal letter, what Rick was talking about where McKinney Entertainment request that the board overturn these decisions and require the city to issue the appropriate construction and building permits to allow McKinney Entertainment to return to work on the site, this board cannot order the city to issue these appropriate constructions and building permits. The only thing we can actually discuss here is the actual appeal itself. As far as the permits, we do not make those guidelines.

With that being said, we'd like to go ahead and move into it. I would like to give an opportunity from the representative of McKinney Entertainment, LLC, to make comments about this item. And if you could, please, state your name and address and you will have 15 minutes to please help us learn more.

Thank you, Mr. Chairman, Members of the Board of Adjustment. My name is Bob Roeder. I'm an attorney here in McKinney at 1700 Red Bud, Suite 300. I'm joined in my presentation by my partner Ross Wells. And so I know that the information that you have received regarding this item is voluminous. I hope that you've had a chance to read it and I hope that you've had a chance to look at the pictures. What I want to do is start with a little bit of an overview about why we think this appeal is important and recognize the fact that you have not been involved in an appeal from a city official's decision and so this is significantly different, I think, than

listening to the hardship variance cases that you had earlier this evening. So if at any time you are confused or you want to ask a question, not only about the content but about where we are in the process, feel free to interrupt me and do that. We are not here today to dispute, argue about, and try to recons true the Tree Preservation Ordinance, which is Section 146-136 of the McKinney Code of Ordinances. And in both our appeal letter and the response from the city, you will see a number of sections or number of provisions from that ordinance section recited and those are very important in your understanding of what -- of what our points are and what our argument is.

To start with, I think that the Tree Preservation Ordinance is really the city's attempt to balance the desires of the public to have healthy large trees with the rights of the landowner to maintain and operate his property and so it's that balancing act that we find ourselves in in this kind of a situation.

And I would submit to you that as you consider what will be presented to you today, that if there's any erring on the side of one party or the other that it would be most appropriate to err on the side of the landowner's rights.

The other thing I want to point out to you is, while there's a lot of talk in these documents about cutting down trees and about tree measurements and whatnot, unless you went out to the property and looked at it today, you would draw, I think, a clear conclusion that what was once a very wooded forestry area is now a field and that is not the case. In fact, what you have out there today is a very, very attractive park-like setting.

Now, with regard to the tree ordinance itself or the Tree Preservation Ordinance itself, I'd like to talk for a minute about some critical definitions and they have to do with the concept of what trees are under the ordinance. To start with, we have the concept of a quality tree and as has been pointed out in both our appeal letter and the response, a quality tree is a tree that is at least 6 inches in diameter measured at the breast height at 4.6 feet above the ground that falls on a list in an appendix in the ordinance. And so pecan trees, elm trees, those kinds of trees are quality trees. Bodarks, Hackberries, Honey Locusts, those are not quality trees. And you will see -- you will know that they're not quality trees not because there's a specific provision in the appendix that says these aren't quality trees but because they're not listed as a quality tree. So a tree species by omission fails the test of a quality tree. And one of the important aspects of a quality tree is the ordinance only regulates activities that relate to quality trees.

Now, in addition to the quality tree, you've got a protected tree and a protected tree is that quality tree that then is 6 inches or greater at 4 and a half feet above the ground. And so while you might have a quality tree that's less than 6 inches DBH, or at breast height, if it's less than 6 inches, it doesn't matter if it's a quality tree. It is not protected and the ordinance does not apply to it. I know those are distinctions, but they are distinctions that are important in the understanding of the ordinance. A couple other terms that you have read in the -- especially the response and that is the concept

of clear-cutting and clear-cutting is a very specifically defined term in the ordinance that basically says it is the removal of ten or more trees within a 90-day period that are protected trees. And interestingly -- again, when I think about this ordinance from a much larger scope, interestingly, it doesn't matter whether there are 10 trees out of 20 trees on a one city lot or 10 trees out of 1200 trees of a 17-acre tract. It is just ten trees, okay. So keep in mind that we are not also as artful in our drafting as we should be in considering the consequences of that drafting.

I think another important term to understand is the concept of grubbing and that's a defined term in the ordinance also. And grubbing means -- I want to read it here -- excavating or removing a significant part of a tree's root system. And remember, that's not just running on top of the ground and that kind of stuff, but it is actually digging in and removing a significant part of the tree's root system.

Now, important to the allegations made by the city are that my client should have obtained a tree permit for work that was done about which this appeal applies. And as we pointed out in our appeal letter that you have all read, there are exceptions to when a tree permit is required; but before I get to the exception, let me take you through the tree permit requirements and what their process are.

The ordinance says a tree permit is required when you -- when you begin the construction of any building, paving, grading of a subdivision, a public improvement or a building. And I think our appeal letter to you was very specific in that this activity was not done in furtherance of creating a building -- pardon me -- in furtherance of creating a subdivision or in furtherance of putting in any type of infrastructure. This was a clearing activity of underbrush.

So in our -- from our position, a tree permit was not required for our client to go out and do the work that he did. But if a tree permit were required, here are the steps you've got to go through to get a tree permit. And this is important because I want to contrast what is required to obtain a tree permit to some of the activities that the city has complained that my client did.

In order to get a tree permit, you've got to fill out an application like you do for anything in the city, right. You pay a fee, but you have to then go and get a tree survey performed and that tree survey must locate every protected tree on your property and must put those trees on a drawing and that work has to be done by an arborist, a licensed surveyor, or a landscape architect.

So you and I, unless you are one of those, can't go out and do a tree survey. And anecdotally, I will tell you that I have a number of clients who have done tree surveys in preparation for subdivisions or buildings and the cost sometimes is in the hundreds of thousands of dollars. Think about it. You've got to go through a wooded area. You've got to mark every tree. You've got to put it down with a GPS calculator on a map. You've got to reduce that to a drawing. That is a time consuming and a very expensive task.

And then once you get through doing that, you've got to put together a tree preservation plan. And then you submit all that to the city landscape administrator for review and that review comes back with either a permit or a permit with conditions or no permit.

Now, why do I make a point about what is required to do a permit? And that is, I think the ordinance and the drafters of the ordinance anticipated that there were going to be situations in which having to go through those steps to require a tree permit is overkill. It's perhaps unnecessary. Here is an example. One of the trees that we are at odds about in the appeal is a tree that has been demonstrated -- is demonstrated to have been rotten and you have seen one of the pictures. Ross is going to get up and go through those with you in some detail, but you'll see a picture in which we have put a ruler down in the hollowed-out rotten part of that trunk. Under the landscape administrator's interpretation of this Tree Preservation Ordinance, if that were the only tree we wanted to takedown -- we can see that its trunk is larger than 6 inches in diameter at breast height; but if we wanted to go out there and take that tree down, we would have to have done a tree survey of 1200-plus trees, hired a third party to do that, filed a tree preservation plan in order to get a permit just to take out that rotten stump. So I'm just telling you that there are excesses here and I think that's why some of the exceptions are important.

There is an exception to the requirement of getting a tree permit if all you are going to do is clear underbrush. Now, unfortunately, the term "underbrush" is not defined in this ordinance; but if you go online and go to Webster's Dictionary or whatnot, underbrush is generally defined as shrubs, bushes, small trees underneath the canopy of a wooded area or a forest. And so no permit is required for a landowner to go out there and conduct that underbrush clearing activity.

Now, you will note in the response from the landscape administrator that you've got to have a permit to clear and grub under a tree line of a protected tree; but remember the definition of grubbing and that is removing a significant part of the root system. And so, I think there are different parts of that ordinance that if you're not careful in your reading, you can clearly mistake what is required and what is not required.

So I want to walk you very quickly through our fact pattern, our fact set. I don't think there's a lot of dispute on that. Am I down to two minutes? Oh. Okay. Then what I'm going to do is yield my time to Ross. Sorry.

MR. WELLS: My name is Ross Wells and I'm Mr. Roeder's partner. My address is also 1700 Red Bud, Suite 300, McKinney, Texas 75069. Mr. Herzberger, if you could, please, go to the last page of our appeal letter, please. There are basically three sets of issues. The last document, the last exhibit, the last picture, the last picture on our document, Your Honor. I'm a litigator. I say "Your Honor" a lot, so I'll refer to you as a judge. It looks like this. It's labeled "24-B."

So what this picture is going to show you, like I said, there's basically issues we have here: One is, we're being punished for removing dead trees. The second is, we're being punished for removing logs that have fallen off of limbs high up in trees, and the final issue is that the trees that -- the smaller trees that we removed were less than 6 inches at breast height but more than 6 inches at the ground level. So this photograph right here depicts where one branch fell.

As you can see, this is a heavily-wooded area. It's also in the floodplain so a lot of dead trees and large limbs flow in times of flooding and then when the flood recedes, the wood stays there. And so what my client did was remove some of that including --and you can see on this tree here where several branches fell down. The city landscape administrator went out and saw those tree limbs that we had picked up, saw they were larger than 6 inches and has sought to punish us for removing those trees. In addition --

MR. JACOBY: Well, I got a couple questions, if that's all right, real quick. One of the things that you mentioned, not yourself but Mr. Roeder, excuse me, you guys mentioned that you-all were just clearing underbrush and that you don't need a permit if you're just clearing underbrush as long as you're not grading, pouring -- what was it -- grading, building a structure and I think I'm missing something else. Is that pouring concrete?

UNKNOWN SPEAKER: Infrastructure.

MR. JACOBY: Infrastructure. So I understand you guys weren't doing that at that time --

MR. WELLS: Right.

MR. JACOBY: -- but what are you preparing the land for?

MR. WELLS: For future development.

MR. JACOBY: Would that include infrastructure, buildings, or any type of grading?

MR. WELLS: It might in the future. I take that back. The area where we were doing it -- so as you know, my client is Don Day. Mr. Day is obviously well forced in the city ordinances and so he acquired the property. He looked at the ordinance and he instructed his workers to comply with the ordinance.

MR. JACOBY: Okay.

MR. WELLS: Only after that did the city receive some complaints and the city administrator came out and said you've done it all wrong. And so the area where we were removing these dead trees and small trees was in the floodplain and is not going to be developed.

MR. JACOBY: Rick, can you put the picture of the property up there so maybe you can show us like where -- we don't have a picture of where the floodplain is and where the floodplain is not. And I'll ask the same thing of the city because it might be an interpretation issue. If you can do that aerial photo with the --

MR. WELLS: Be the dash lines.

MR. JACOBY: Okay.

MR. WELLS: I can't read it from here, but one of those lines will be the floodplain. And this is the creek that I referred to that floods.

MR. JACOBY: Yes, very much so.

MR. WELLS: Right. And so if you've been around creeks, there are large dead trees, limbs, and things like that that wash up and then the flood waters recede.

MR. JACOBY: I can see it now.

MR. WELLS: And so we were in this area cleaning up -- I would paraphrase it as cleaning up the property.

MR. JACOBY: Okay. And removing the underbrush and the dumping stuff?

MR. WELLS: Right. Weeds, thorn bushes, things like that that are, you know, in areas that aren't being maintained.

MR. JACOBY: So down in the floodplain there was no grading -- or there will be no future grading, no future infrastructure, no future buildings built below that line of where you guys were removing trees?

MR. WELLS: That's correct.

MR. WILDER: I've got a question. Who determined that they were dead? Did you have a study made or -- and you talked about this 6 inches. Is this a tree that would be 6 inches later on in its life?

MR. WELLS: Let's look at this photograph right here. If you don't mind, Mr. Herzberger. If we look at picture labeled 29.

MS. DAVISON: Can I ask why some of these pictures are sort of black and white? Really -- it's really hard to tell --

MR. WELLS: Right. And so let's take this picture just while we are here, for instance. What this is a photograph of is a piece of tree limb about that thick that's laid down on some leaves and so it wasn't an actual tree stump. It looks like a tree stump. So here you can see, if you'll scroll down a little more, these -- you see those cutouts or disks, some of those had been laid flat down on the leaves and then a picture taken of them. So some of these pictures are from the city landscape administrator. Some of them are from my client.

I would like to show you the hole in the ground, but one of the members of the public who would like to speak has to leave at 6:20 and so we'd ask permission for him to speak now if that's okay.

MR. WILDER: But my question was who determined that these trees were dead?

MR. WELLS: Well --

MR. WILDER: How that study was made.

MR. WELLS: Sure. I'll show you this hole in the ground. I have a picture of it here. This part of my submittal. We made that decision and I can show you this picture. I don't think you need -- there it is. That's one of them. That was declared to be a tree. It wasn't a tree. It was a dead hole in the ground. Frankly, you don't need to be an arborist to identify a hole in the ground as opposed to a tree. It just wasn't a tree. Did I answer your question?

MR. WILDER: Kind of.

MR. WELLS: I am a lawyer.

MR. WILDER: I just wanted to know if you had an expert look at these trees and determine they were dead.

MR. WELLS: The ones that were dead were clearly dead. They were either on their side --

MR. WILDER: But the ones you chopped down --

MR. WELLS: Those were less than 6 inches at the diameter breast height as required by the ordinance. Does that answer your question?

MR. WILDER: Well, kind of. I'll let it go.

MR. WELLS: Would it be okay if the member of the public gives his talk at this time?

MR. JACOBY: Is that all right with you? I'm sorry? So we need to go -- Because of the rules that we have, we have your 15 minutes banked up and then we have the city and they have 15 minutes and then there will be rebuttal time and then after that, they're letting the public speak. So I believe I have to follow that order. I'll get a clarification clear.

MR. LATHROM: Mr. Chairman, I'm not this is an unusual role for me because. Usually I'm advising the board.

MR. JACOBY: Yes.

MR. LATHROM: Board of adjustments.

Ms. Rebecca Brewer is here this evening to advise the board if you have any questions procedurally speaking; but on behalf of the city, I would say that we don't have any objection to allowing a resident to speak.

MR. JACOBY: Okay.

MR. LATHROM: If they need to speak now at this time before the city makes its response to this presentation.

MR. JACOBY: Then we'll be more than happy to let the public or the person who needs to leave, if he would like to come up and speak, we'd be more than happy --

(Audio cuts out.)

UNKNOWN SPEAKER: No problem. Thank you.

MR. RICK WELLS: Chairman Board of Adjusters, Rick Wells, 670 Windy Lane, Lucas, Texas. I'm partner with Don on several things in the city. I can tell you that -- can I hand out a few pictures to you guys? I can tell you that -- (audio cuts out.)

MR. JACOBY: I'm sorry, Mr. Wells. I forgot to tell you, you have three minutes. Sorry about that.

MR. RICK WELLS: I've never seen Don stumped on an ordinance before and we've built a lot of things together and, you know, our goal from the very beginning as we walked these 17 acres, I'm a little different than you. I have been able to walk the property and I have put a pair of boots and jeans on and walked through that underbrush. And so our intent is to leave this property much better than we found it, A.I consider myself somewhat of an environmentalist. I make my living off the land because obviously I own restaurants and I live on an organic farm. So it is very important to me from an environmental standpoint to keep things and make sure they are better than what we found them and I really believe that's where we're headed on this property. We want to make sure that we leave it better than we found it.

A lot of you guys have been in McKinney for a long time and if you drive down Highway 5, you can see the flood that always floods. Sometimes at a 2-inch,3-inch rain, you have that standing water by the storage facility on one end and on the other side where Don's property is. And so a tremendous amount of down trees, tremendous down amount of brush and so forth on that property and I really believe his focus was to get that cleaned up. And if there's anything that we misstepped on, it was certainly because maybe the ordinance in the city is just not very clear about what we need to do or what he needed to do.

But I can tell you that, you know, our hope is -- (audio cuts out) -- leave it better than we found it and to make sure that we comply with the things that we need to, but I can assure you that if you start looking at where it

is today and where it was about six or seven months ago, it is a quantum leap in the right direction and I think that if there's anything that was misstepped it's because if -- if we have to get attorneys up here to a Board of Adjustments to talk about the understanding of an ordinance, then we probably need to take a step back to relook at that to make sure that from a property owner that we can understand that so we kind of stay out of harm's way. Thank you for what you do. I appreciate it.

MR. JACOBY: Thank you. I have a couple more questions, if that's okay, for Mr. Roeder or Mr. Wells. Do you guys have any pictures of before?

MR. ROEDER: No. No. We didn't think there were any reason to take them.

MR. JACOBY: Just out of curiosity I needed to ask does anyone else have any questions before we ask for the city?

MS. DAVISON: When you walk through the process of removing the trees, can you tell us just what steps were taken.

MR. ROEDER: May I call on Mr. Nye who is here that was actually the party that undertook that work?

MS. DAVISON: Sure.

MR. GORELANGTON: Nye Gorelangton, 909 North Waddill Street (phonetic), McKinney, Texas 75069.

MR. JACOBY: Thank you.

MR. GORELANGTON: The question, I'm sorry?

MS. DAVISON: Can you walk through the process of what you did to remove the trees and your qualifications, that kind of thing.

MR. GORELANGTON: Just a laborer. I go out there. We couldn't walk through the place. We went in there at breast height 4 foot 6 inches off the ground, if it was under 6 inches was good to cut. We followed the ordinance to a T. Don made sure without a doubt that we didn't cut anything that didn't need to be cut, wasn't allowed to be cut, shouldn't have been cut. And I think we followed that as plain as we could. It was allowed to be cut at 4 foot 6 inches. We got rid of it. It was in the floodplain.

He paid to get this stuff cleared that we can't build in there. There was no reason for him to spend his own money to cut these trees down to clear the underbrush, to cut the logs, the branches, the stumps to the ground that just catch debris. There was no reason to spend money cutting them so -- but he did to clear it up. It's still -- there's still -- it looks like that on an aerial picture today, exactly like that, short of the homeless shelters we got out of there, the brush that was on the ground, the trees that were dead, the trash, the mattresses, things like that, we hauled off. So my - we went in there -- I went up there with 4 foot sticks and if it was there, we just cut it with chainsaw to the ground. We stacked them up. Any limbs that were in the way that were already down or broken that were larger, we cut up so we could maneuver them and that was it.

MS. DAVISON: When did you start your work?

MR. GORELANGTON: I'm thinking maybe August of last year. Maybe August of last year.

MS. DAVISON: And how much time did you spend?

MR. GORELANGTON: About -- well, from then up until we got a shutdown notice from the City of McKinney.

MS. DAVISON: So what size crew did you have?

MR. GORLANGTON: Three guys.

MS. DAVISON: Working all week every week from August to...

MR. GORELANGTON: No. No. Probably, you know, five days a week probably but some days we knocked off early. If it was raining, you couldn't get down there and we were shut down for two weeks at a time and equipment sitting there. You couldn't do anything. It was a mud hole, you know, and then all of the sudden things get caught up in all the underbrush and the debris all over again and then we're back to square one.

MS. DAVISON: Essentially three or four months?

MR. GORELANGTON: Yeah, something like that. I can't remember the actual date we got the stop work order. Any other -- I mean, as far as your question, sir, how do we determine if it was dead? It was already on the ground, laying over rotting or it was broken off and no limbs on it and just 1 foot, a 3 foot, a 12 foot stump that was just rotten. And if there was branches that were this big -- which there definitely were beautiful branches this big that were already falling off of trees that were out there. And if the branches on the ground I determined it to be dead because it wasn't connected to a tree, if it was a stump that had a rotting hole down the center of it, I assumed it was dead. That was my call. I made all those calls of a dead tree being a dead tree.

There's no sense in spending money to cut down a live tree unless it was under 6 inches that we're allowed to cut to clear the underbrush and open it up so everything else could live and, you know, stop catching trash and people wouldn't sleep overnight in there and burn fires and things like that. So I made the call if it was down, it was dead. If there was nothing growing on a stump that might have been 12-foot high, but it was a stump where the rest of the branch was already broken off and lightning hit it or something, we cut it down. If it was 1 foot, we cut it down. If it was 1 foot off the ground or already broken and rotten, we cut it.

So a lot of these look like all real live massive stumps, but they might have been struck by lightning 12-foot high just hadn't had enough time to rot yet, but I made that call. And, no, I'm not a licensed anything, but I wouldn't cut down a tree that's to me -- the trees make the property. And what we tried to do was clear it out so you could see the beauty of what was there is all we really did. And Don was there pretty much daily making sure we weren't doing things -- you know, I mean, there's -- spending time and energy out of your pocket to pay for getting trees cut just, you know, you can't do -- just doesn't make sense. We tried to follow the ordinance without -- to a T.

MS. DAVISON: Thank you.

MR. GORELANGTON: Any other questions?

MR. JACOBY: Not at this time. Thank you.

All right. I would like to give the opportunity for the representative from the City of McKinney to make public comments about this. If you could please state your name and you will have 15 minutes to present please.

MS. BRAHT: Yes, sir. My name is Emily Braht. I'm the landscape architect for the City of McKinney. In this role I am charged with the responsibility to administer the provisions of the Section 146.136 of the Tree preservation Code of Ordinances. A little background about me.

I'm Kay(phonetic) state grad and obtained a degree in landscape architecture. It's a five-year program. I became licensed through the Texas Board of Architecture Examiners and I have practiced landscape architecture within architecture firms and landscape firms for ten years. I had my own private firm Braht plus Icer(phonetic) Group for 16 and then came to the city and have been here since 2008. I've been practicing as a professional landscape architect for, yes, plus 35 years.

I would like to do a little background and then tend to the preservation ordinance. The primary intent of the Tree Preservation Ordinance is specifically to prohibit indiscriminate clear-cutting of trees and protect and health quality trees and promote the natural ecological, environmental and esthetic qualities of the trees. For clarification, clear-cutting, I think already went through, is any ten or more trees of protected trees within 90 days. And, of course, the quality tree list is within our ordinance and protected trees are those trees 6 inches or greater that are considered quality trees and protected trees. When are tree permits required? Before clear-cutting, before selectively thinning a densely forested area, a tree permit is required per the ordinance. Before critically altering a diseased tree, a tree permit is required. And let me also say

very quickly on that, it is a limited tree permit. People call in all the time saying they have a diseased tree on a piece of property. They just get a permit. They do not have to do a tree survey and the whole presentation as stated earlier. And before any protected tree is critically altered, you also need a tree permit. Critically altering simply means killing the tree by either removing it, damage to the root systems because of work done, et cetera. And before any building, paving, grading or construction on the property, but also before grubbing under drip lines, which is the canopy of the trees, of protected trees. Please note, they have stated one definition but within our ordinance Section F.13(d)9, it also states that grubbing is also noted as -- is to remove brush located within or under the drip lines of protected trees. So going in there and removing the brush with equipment also disturbs these trees and you do have to receive a tree permit to do so. Within your packet is a bunch of background information.

Let's go to some slides, Rick. Slides.

The timeline, you know, that I sent may assist in placing the enforcement action and contact given that McKinney Entertainment did not perform a tree survey or obtain any development permits for work on the property before initiating development-related activities including but not limited to clearing and grubbing of brush located within or under the drip lines of protected trees and selective thinning of densely-forested areas, both of which activities require a tree permit.

Can you go to the...

Some key events.

Just go to the photos. Photos.

Around December 14th, 2006, erosion control noticed that dirt was being stockpiled on the property and a truck was on a site dumping. The truck driver was asked to stop by the erosion control investigator and asked who hired and who owned the property. He indicated that Mr. Day did.

Continue on, Rick.

So that's a picture of them dumping on the site. All that is being dumped at pretty much out of the floodplain. It is out of the floodplain, but please note also that trees -- once that we were out there, we also noticed that trees were -- had been removed not only within the floodplain which has limitations of but also up top. We -- the erosion inspector, myself visited the property the following day and it also appeared that some of the trunks and limbs of their moved trees had already been sold for firewood and hauled away as there was a sign posted on a fence around the property advertising firewood for sale on the property with a contact telephone number.

A letter was sent to McKinney Entertainment representative Mr. Don Day. A meeting was consequently held with all parties and one of the items mentioned was that McKinney Entertainment had hired a certified arborist. McKinney Entertainment's representatives forwarded a copy of that report by request of us to us and it is included within our packet. They did not include it.

We returned to the property. We reviewed it. We returned to the property and we wanted to be as fair as we possibly could. We did make adjustments as needed and sent a revised letter to Mr. -- McKinney Entertainment.

So the appeal. The appeal follows in several different areas. McKinney Entertainment, please note McKinney Entertainment, not their professional arborist that had hired, called 11 trees saplings and complains that the city measured the trees at ground level instead of at the correct 4 foot 6 inches above the ground. They also stated that Tree No. 29 was not a healthy quality tree. McKinney Entertainment states this, not the professional arborist. He states there's advanced decay. Very much the case but it still requires a tree permit to be removed. Tree No. 26 was a dead tree. McKinney Entertainment states this, not their

professional arborist report. Tree Nos. 14, 19, and 23 are all logs from the same dead tree. McKinney Entertainment states his, not their professional arborist. Tree No. 30 was a dead fallen tree. McKinney Entertainment states this, not the professional arborist. And tree No. 24 is a limb that fell from a dead tree. McKinney Entertainment states this, not the professional arborist.

The city response. McKinney Entertainment asserts that it only cleared decades of accumulated weeds, underbrush, trash, fallen limbs, and dead trees as well as saplings, less than 6 inches in diameter measured at 4 foot 6 inches above the ground as allowed in the Tree Preservation Ordinance and that no permit from the city is required because the McKinney code states that the removal of underbrush, not including grubbing under drip lines, please note that, shall not require a permit. However, McKinney Entertainment's assumption that this one section provides an exemption from a compliance with the Tree Preservation Ordinance is flawed. First, the work that was performed by McKinney Entertainment on the property was performed in a densely-wooded area that contained, as they state, in excess of 1200 trees. Large portions of the work were performed under the drip line of these canopies and of other adjacent trees that are still in place.

And so once again, the landscape administrator shall issue a limited purpose tree permit allowing the clearing and grubbing of brush located within or under the drip lines of protected trees.

McKinney Entertainment should have obtained a permit for the work it performed on the property and if McKinney Entertainment had simply inquired as to whether the tree permit was required, they would have learned that it was indeed necessary.

They also state that there were measurement issues. McKinney Entertainment's actions in removing the trees without first obtaining a tree permit and performing the tree survey required in support of such a tree permit prevented the city from being able to measure the diameter of the removed trees at the 4-foot6-inch ground level -- and I'll just refer to it as "DBH" -- in accordance with the ordinance.

The landscape administrator, myself, either had to, one, ignore the fact that protected trees were removed without a tree permit or make a reasonable interpretation of the Tree Preservation Ordinance and apply it to the tree removal that occurred on the property given that the trees were removed without the preparation of a tree survey or an application for tree removal.

Consequently, I evaluated the only evidence that was readily available. The remaining tree stumps that had been cut off the property at ground level. The city simply could not go through the stacks of woods in hopes of piecing together all the pieces of trees removed in proper sequence to be able to measure each removed tree's diameter at breast height. This process of measuring the diameter of removed trees at ground level to determine the breast height was further affirmed by the consultant's report from their certified arborist Ronnie Nelson who McKinney Entertainment hired to evaluate the city's January 18th letter.

In his consultation report, the arborist not only measured the stumps of the removed trees but he also increased the diameter of 10 of the 26 trees which the city asked McKinney Entertainment to mitigate by either payment into the Tree Reforestation Fund or planting additional trees.

Despite this difference in measurement, the city kept the size of its original measurement and did not assess McKinney Entertainment for caliber size indicated by McKinney Entertainment's own hired arborist consultation report. There were a couple trees as noted by Mr. Nelson stated that it appeared to be a certain species, a differing species than I had. The city also accommodated McKinney Entertainment and removed these two trees where the particular species identified by

Mr. Nelson which he said appeared to be a certain species were not a protected species. We removed them.

In addition, as noted above, there were four trees within the 6- to 7-inch caliber size. The city even removed these four trees stating for the required mitigation because they were so close to the minimum 6-inch caliber of protected trees at the cutoff that it was possible that these trunks of these four trees might have been less than 6 inches in diameter at DBH. We removed them. McKinney Entertainment created this need by its own unilateral decision to cut down protected trees without a tree permit or even performing a tree survey and that would have specifically identified the exact diameter and species of each tree. In addition, the diameter of these 11 trees width or is smaller than the diameter of all these same trees as measured by McKinney Entertainment's own arborist. Healthy quality trees? Well, the tree removal on No. 29 because it was not a healthy tree is flawed. A tree permit is required per ordinance dead tries. The city landscape administrator determined that all the trees which are listed within the mitigation list were alive and at the time of removal. Nothing contained in the consultation report indicates that Mr. Nelson, also a professional, believed any trees were dead prior to the removal. If an arborist is going to state a condition of a tree in their consultation report, certainly dead is a condition of a tree that should have been reported.

The city of landscape administrator determined that the logs identified as tree Nos. 14, 19 and 23 were different trees. The consultation report prepared by Mr. Nelson does not indicate that the trees 14, 19, 23 were all part of the same tree either. And rather, Mr. Nelson's report indicates these exact trees are three different trees and the trees were alive at the time of removal by McKinney Entertainment.

Unreasonable tree mitigation charges. We don't set those. Those are within our ordinances. And I would like to quickly mention the following item: The recommendations from their own consultation report was, 1, submit this report to the City of McKinney. 2, review and negotiate for a mitigation option. 3, apply for permitting with the city prior to removing any trees on the site. And, 4, contract a certified arborist to create a tree protection plan.

In conclusion, the forgoing reasons, City of McKinney respectfully requests that the Board of Adjustments uphold the decisions of the administration official for the Tree Preservation Ordinance and they may pay within the mitigation in the amount of \$44,800 into the Tree Reforestation Fund or plant mitigated trees on-site. Thank you.

MR. JACOBY: A few questions, if that's okay.

MS. BRAHT: Yes, sir.

MR. JACOBY: I've become very familiar with Section 146-136 of tree preservations for the City of McKinney. Much more than I ever thought I would and I've lived here for ten years. Actually longer than that, but anyways.

In this 146-136, when I read it all the way through Section K is on violations, I never saw how you came up with how you are mitigating it. Is there a --

MS. BRAHT: That's within our fees. It's in a whole other section.

MR. JACOBY: Because the only --

MS. BRAHT: It's a section of fees within our city.

MR. JACOBY: Because the only thing here that I could find was for was under Section K, Violations, Point No. 4 -- it is either 3 or 4, where it spoke that fined \$100 per caliber inch at a tree critically altered not to exceed \$500 per incident.

MS. BRAHT: Right. There's a Tree Reforestation Fund section within the Tree Preservation Ordinance and the numbers are within the fee schedule for the city.

MR. JACOBY: Okay. The other question I had when I read this is, you know, it talks about measuring a tree at breast height --

MS. BRAHT: Yes, sir.

MR. JACOBY: Between 4 and --

MS. BRAHT: 6 inches, correct.

MR. JACOBY: When I was reading this, it never mentioned if a tree is on the ground, if it's already been cut down, if it's been moved, if it's been chopped up --

MS. BRAHT: Absolutely.

MR. JACOBY: How do you determine what the tree was? I know the tree's gone. I know that there's a stump there. There used to be a tree there. I can see the ruler on the ground, but I have nothing to say how high a tree was, how wide a tree was. How am I supposed to know what that definition is or -- so help me.

MS. BRAHT: Very good question. The issue is that this property -- evidence to this property. Either by choice or by not. Had evidence removed. What is left is a stump and this stump was measured professionally by me and by --

MR. JACOBY: The arborist.

MS. BRAHT: -- the registered arborist from what is left and that is how we did it. If you could find a log, I guess like a puzzle of puzzles in the stacks --

And if you would go back to the pictures, Rick.

MR. JACOBY: There's lots of stacks.

MS. BRAHT: There are a lot of stacks and they're all stacked up. Some of the trees -- keep going -- keep going -- you know, like -- like that, you know -- (audio cuts out) -- like that, you're going to have issues.

Please go back a few -- go back. Right in here.

It's hard to tell by these pictures, but you're going to see a lot of damage to the trees that are already existing on the trunks of these trees also. That's because of the equipment that was in there that was grubbing at the time. That is why we do have a permit required for it and a tree preservation and things like that.

Questions?

UNKNOWN SPEAKER: I do have a question, Ms. Braht. With all the development going on in our city, you must talk to a number of developers and would you say that -- if this is a fair question. If you don't think it is a fair question --

MS. BRAHT: Absolutely. Go ahead.

UNKNOWN SPEAKER: Say you don't want to answer it. Okay.

Do you think you get over asked by developers with respect to trees they are going to be planning to removed, under asked or do you think developers generally do a pretty good job of asking you when there's really an appropriate situation?

MS. BRAHT: (Audio cuts out) do a great job. I will tell you that because they follow a process. They follow a process. If they're going to develop, they turn in site plans, they turn in tree surveys, they turn in the tree preservation plan. All of this is approved through a process through our city and through our civil engineering process and it just goes through a process.

We have a very lenient ordinance. You know, you may remove all trees within pad sites, roads, utilities, you know, right-of-ways, all sorts of things; but there is a process to go through. And if a permit had been pulled, we could have gone through a process with them. Also, a concern of this is a majority of these trees -- and trees were taken on all over the site, not just within the floodplain. But the key thing was a lot were removed in the floodplain and within our ordinance, only 30 percent of our quality trees on a site may be removed from the floodplain. Don't think that that happened and -- but the reason we get permits is to make sure that that doesn't happen because the greatest beauty within our city

are the trees that are within our floodplains and the Parks Departments and, etcetera, use these floodplains for their trails.

MR. JACOBY: Rick, on Page 26, is there any way you can -- this is the picture I'm looking for. Keep going. It's Exhibit 12. Okay. On this picture right here, I see that the dirt that's been dumped there -- and if I'm correctly -- I'm looking down towards the creek, so I would infer -- and please help me because I have never walked this property, never been out to this property. I've driven by it because it is on a main road, but is that in the floodplain there?

MS. BRAHT: No, I don't think so it is.

MR. JACOBY: Is that a tree that's been cut down right beside that's been stacked up?

MS. BRAHT: Yes, that is a tree right there. So that is a tree line -- one of these tree lines --

MR. JACOBY: Yeah.

MS. BRAHT: -- that go like that, that is one of the tree lines.

MR. JACOBY: Okay.

MS. BRAHT: Okay And the dirt is all on the other side of those tree -- that square tree line. It was dumped within the probably -- we don't know.

MR. JACOBY: Correct.

MS. BRAHT: -- what's going there. Particularly, the only thing that's been supplied to the city at this point after all this occurred was a grading plan.

MR. JACOBY: You guys have the arborist report?

MS. BRAHT: Yes, we do and it is included within your --

MR. JACOBY: Okay. Just making sure.

MS. BRAHT: Yes. We requested it.

MR. JACOBY: I read it too. So just have to ask.

Any other questions?

MS. BRAHT: Thank you.

MR. JACOBY: Thank you.

UNKNOWN SPEAKER: Thank you.

MR. JACOBY: I've lost my notes I would now like to give the applicant an opportunity to respond to the City of McKinney representatives, if you guys would like, and you will have ten minutes to respond.

MR. ROEDER: Thank you. I want to start by addressing the arborist report that we had done because it is -- it's apparent that Ms. Braht did not closely read the arborist report. There is no finding in the arborist report as to whether a tree was alive or dead. The only thing that we asked the arborist to do in terms of the report was to check both the species and to check the measurements and to help us ascertain if we could infer a DBH diameter from a stump.

So while she says that the arborist would surely have called a tree dead if it was dead, that is not the fact, that is not the case and there's nothing in that report that says live or dead. The arborists imply took the pictures that we had received from the city. We went out and found those logs or found those stumps and we had the arborist verify or un verify that information.

Interestingly, we found a lot of discrepancies from that first report -- the first accusation and that was what was in the arborist's report. The arborist also made or helped us come to conclusions about if you have an 8-inch cedar tree stump at the ground, it's probably not going to be 6 inches DBH. Just that's the way those trees grow.

So the measurements that you see that she refers to that are 18 inches and 12 inches, those are not measurements -- those are not representations by the arborist that those are measurements of live trees. Those are measurements, in our opinion and based upon our witnesses, of dead limbs, dead stumps, and dead trees. So I want to make sure that that is -- that that's a clarification.

The other thing about the dirt -- and let's not get confused about the dirt. It's our reading of the city's ordinance that you can have dirt stockpiled

on your property without having to get any type of permit for doing that. It's when you start spreading it out and start putting it in lift sand stuff that you're required to get a permit. And so if somebody comes by and says, "Do you need this dirt?" And you say, "Yes, I do," and they -- and you allow them to dump it on your property, you are not required to go get a permit. That is not dirt-disturbing activity. And so from the very outset, again, I want to make clear, the intent here was to follow the ordinance. The intent here was to grub the underbrush. I don't think there's any evidence that we -- that we violated that. I think you heard from the person that actually did the work that they were very careful about the trees they cut down. Is there a lot of wood and stacks out there? Absolutely. And I submit to you that you can go to any floodplain area and stack lots and lots of wood without ever cutting anything except to size it so you can pick it up and move it.

The last thing about this general concept of grubbing under a drip line -- and then I'm going to let Ross have the rest of my time -- (audio cuts out) I'm just going to talk here because these folks have all read the stuff.

Grubbing is grubbing and grubbing is defined and that's removing or destroying tree roots. And, yes, grubbing is not allowed under a drip line of a protected tree, of course, but there's nothing to prevent you from removing underbrush under the drip line of a tree as long as you are not grubbing the roots.

So, again, our concern here is that the city approached this from the attitude that we -- So, again, our concern here is that the city approached this from the attitude that we had done something wrong, not the attitude of, well, maybe you followed the ordinance. The city approached this from the standpoint if you get in any treed area and do any activity at all, you've got to get a tree permit and we are not talking in this case about that limited permit. We're talking about the full-blown tree survey and all that kind of stuff.

So, again, what I started in my opening remarks, there's a balancing act here. And in this case I think the evidence clearly before you is no big live trees cut, only dead trees, no grubbing, no soil removing activities and that the arbor -- and that the city's report just absolutely missed the mark.

Ross.

MR. JACOBY: Mr. Wells, can you give me one second?

MR. WELLS: Sure, of course.

MR. JACOBY: Sandy, can you pause the time for a second. Can I ask Mr. Roeder a quick question? Sorry. You were just talking about grubbing and one of the things that the city brought up and just a point of clarification is on Section 146-136 under F, No. 9, where it says, "Grubbing under drip lines, the landscape administrator shall issue a limited-purpose tree permit allowing the clearing and grubbing of brush located within or under the drip lines of protected trees." And going back on what you just said, where you said if you're just clearing the brush underneath the drip line that you don't need a permit. So can you clarify where you're going with that so I can just -- I have it clear in my head?

MR. ROEDER: Yes. One of the reasons that the city has used for a requirement that we have a permit is that we cleared and grubbed under a drip line. And remember, grubbing is a defined term, okay.

MR. JACOBY: Correct. So if you're just clearing the brush --

MR. ROEDER: So if we are just clearing and we are not disturbing the root system, we are not grubbing.

MR. JACOBY: Okay. Thank you.

MR. ROEDER: That's the distinction there.

MR. JACOBY: Thank you very much.

Do you have a question? Okay. Have another question?

MS. DAVISON: I did. I'm sorry. I was looking at your arborist report.

MR. ROEDER: Yes.

MS. DAVISON: And under the purpose of the report, the arborist said -- actually, it's next under the site visit. It says, "My assignment as a consulting arborist is to review the trees on this site and determine if there are any errors with the mitigation report. I performed a basic visual assessment of the trees using proper arboricultural methods to measure the trees and to determine if the trees in the mitigation report are correct."

MR. ROEDER: That's correct. And what we asked him to do, and I think what that correctly states is, we asked him to review what the city gave us in terms of those pictures. We asked him to check the measurements. We asked him to check the species and that's what he did.

MS. DAVISON: Well, the city's report pretty clearly states that the trees were alive. And if the arborist was supposed to be validating whether or not the city's report was correct, it seems like that should have been described and outlined.

MR. ROEDER: I think -- do you have the January letter from the city? I know you have the March 31 letter.

MR. JACOBY: We have lots of letters.

MR. ROEDER: Just as a point of clarification, the arborist would not opine on live or dead because he said you really can't tell. How long does a tree have to have been cut before you know whether it's alive or dead? You can't tell. And so for the city to make that assertion is as unfounded as, according to our arborist, because you can't tell. The best evidence we have is what our expert or what our eyewitness people tell us.

MS. DAVISON: It seems like that is a big silent item that the arborist should have said, "I can't tell," "Nobody can tell," or should have addressed it in some way; but to just be silent on whether or not their opinion was on whether the trees are alive or dead, that seems to be a really big hole.

MR. ROEDER: Well, it would seem to me that at least with a couple of situations that were pretty obvious and the arborist didn't comment on those obvious situations either. So, again, the limited scope of his engagement was to check the city's work and we focused on size, we focused on species.

MS. DAVISON: Okay.

MR. JACOBY: Thank you.

MR. WELLS: I'm only going to speak briefly, but I think that segues nicely into the point that I was going to make and that is, as to the measurement and as to most of these issues, the landscape administrator has taken the position that she looked at the only evidence that there was and that is simply not true because there was evidence in the form of the worker or the landowner and she made no effort to interview the landowner. She made no effort to ask -- to see the worker, to walk the property with the worker, to walk the property with the landowner, where did you put this tree, where did this tree come from. None of that happened. And that lays bear the intent behind this action and that is to punish the landowner for preparing this property.

I'm going to pass my time to Mr. Day at the time.

MR. JACOBY: Thank you.

MR. DAY: Don Day. I live in downtown McKinney at 110 East Louisiana Street. Before we started this cleanup operation, I read the ordinance. I instructed my guys to cut no trees larger than 6 inches at breast height and to clean up the underbrush and dead trees. I realized there were weeds here that were 10 feet tall. This property had not been touched in decades. Her argument is that we cut 18 quality trees; but if you go through the pictures, 11 of those trees by her pictures, she's measuring up to ground level. My guys measured them at 4 foot 6. Now, her argument is, well, they're not fair so I can only measure at the ground level. I understand her argument, but the ordinance doesn't give her that right. We followed the ordinance.

We measured and then we cut and what we have found is trees at ground level are about twice as large as they are at 4 foot 6. We followed the ordinance on 11 trees. The other trees when you're talking about dead trees, there was four dead trees that make up the other seven -- well, one's a limb. Other six the other parts. One was a rotten hole in ground. There was no tree there.

Two of them I saw personally had broken off. I don't know if it was lightening or if it blew over, but the crown of the tree was laying on the ground and the stump was freestanding and it was dead. Now, I'm not an arborist, but I know when a tree breaks and falls off, it is not a quality tree. So we cut up the dead trees and dead stumps.

There was one tree -- and I have a picture of it -- that was laying on the ground. When it blew down, it took two other trees in front of it. When we got there, all three of those trees were on the ground. The last one that she cited is a limb off of the big pecan tree that was shown.

So you have 11 trees re measured correctly. She's measuring at the ground. You have five trees and limbs that were on the ground. We didn't cut them down. They were there before we got there. That's the whole crux of this case. I can't see how fallen trees can be called quality trees and I don't believe the ordinance allows her to measure at the ground when we followed the ordinance and measured at the 4 foot 6 level. Thank you.

MR. JACOBY: Thank you. Is there any other questions for them?

UNKNOWN SPEAKER: I have a question, Mr. Day. What -- go through your thinking a little bit as to why you -- at this piece of property you wouldn't make a call to Ms. Braht. With all the trees that are there and having that heavy equipment down there and everything doing this, why not ever make that call?

MR. DAY: First off, I read the ordinance. The ordinance says to do the kind of cleanup we did, there's no permit required. I realize there are 4 acres out of the floodplain. There are 13 acres in the floodplain. On the 4 acres out of the floodplain, we had planned on and still planned on putting in an equestrian center and we will have horses there. The horses couldn't get into the floodplain it was so cluttered with debris and trash and leaves going back years. So we were just doing a cleanup operation and that's why we -- nothing in the ordinance indicated a permit was needed. So why apply for one if it doesn't say it's needed.

UNKNOWN SPEAKER: I didn't try to build it to the level of getting a permit, but just a phone call to her to a say, hey, this is a piece of property, got all this stuff out there, is there anything I need to do.

MR. DAY: It just didn't cross my mind.

UNKNOWN SPEAKER: Okay. Thank you.

MR. DAY: And one other comment. You mentioned the heavy equipment. What we have were bobcats. These are fairly small pieces of equipment. These are not big pieces of equipment. I believe also say that after we cleaned it up so the city could get in there, public work sent in their trucks and cleaned out about eight loads of logs that had fallen in the creek that was very similar to the same logs that we cut up. Thank you.

UNKNOWN SPEAKER: Thank you.

MR. JACOBY: Thank you. Any other questions? I now give the representative from the City of McKinney an opportunity to respond to the applicant's comments. You have ten minutes to present your responses.

MR. LATHROM: Thank you, Mr. Chairman. What we really have here is a situation where the property owner chose to selectively clear an area that is densely forested. Most of the trees that were cleared were located in the floodplain. A number of the trees that were cleared were outside of the floodplain. Clearing selectively thinning trees, even if they are in the floodplain, requires a tree permit. That was the choice that was made.

Tree No. 14 of which you saw the measurement, that tree was not located in the floodplain. That tree was located outside of the floodplain where that particular log was situated.

Responding to council member Day's comments with respect to Public Works going in and clearing out eight truckloads full of debris out of a creek, there's a road that runs alongside the creek that affords the Public Works Department an opportunity to get in alongside the creek and to clear it out because there is an aerial crossing of a city line that goes across the creek at that location. So there is access there that affords the city staff, city of Public Works Department the ability to get into that creek bottom area. They do not have to drive through the area that was cleared by McKinney Entertainment's staff.

If I can point to the report that was done by McKinney Entertainment's arborist. It's on Page 44 of the city's response. I would just note that with respect to Tree No. 29 and Tree No. 30, the arborist went into some detail about how the tree had extensive amounts of internal decay. If all we're looking at is just measuring the size of the tree and just, you know, trying to determine the species of the tree, there would be no need for those kinds of comments there.

Again, if it's something that if the trees were dead at the time of cutting, you know, if the arborist can sit there and point to the stump and say this tree had lots of internal decay, it seems to me that that same arborist could point to that stump and point out that that tree was dead if that were the case.

The appeal this evening is not a trial of the Tree Preservation Ordinance. The case as seen in the appeal is a question of whether the landscape administrator's determination was accurate or not, was it flawed, was it mistaken. We will agree that the Tree Preservation Ordinance anticipates that when you come in and you obtain a permit for the removal of trees that you measure those trees 4 foot 6 inches above the ground in order to determine the diameter of those trees. Mr. Nye talked about how they removed the trees. You know, some of them had been damaged, some of them were dead, some of them were laying over. And you've heard that on a number of occasions that they were dead, they were laying over, they were dropped down on their sides. You know, all we had to look at to determine the diameter of those trees and try to project what the height -- what the diameter of those trees were at that 4-foot 6-inch level was the trunk. Because the way that these logs were all stacked, some of the logs, we would assume, because of the sign that was selling wood, firewood had already been removed from the side. So it would be very difficult to go back in and try to pull these logs out of these different stacks around the property and put them back together in order to determine where you are 4 foot 6 inches above the ground.

There's a concept, if you will, in courts of law where if someone damages or destroys evidence that's necessary to prove a point, then you have the ability to offer in evidence that will help provide the answer for the missing evidence. It's dealt with in terms of spoliation of evidence in the courts.

Here we think it was a reasonable interpretation and a reasonable application of the Tree Preservation Ordinance to measure the diameter of the trunks of the stumps of those trees in order to try to establish what trees were actually 6 inches or greater in size, 4 foot 6 inches aboveground level.

We went back in after the first round after the first correspondence with McKinney Entertainment and we removed those trees that we believed there was a possibility they may not have been 6 inches in diameter at 4 foot 6 inches above the ground. We also modified based upon the arborist report from McKinney Entertainment, were moved those other trees that were identified as being a species that was not a quality tree. Or if they identified a lesser diameter for a particular tree, we reduced

the diameter. And so in some instances, it shifted trees from being subject to a higher mitigation requirement down into the 6-inch diameter or over 6-inch diameter range because there are two thresholds that we deal with in looking at tree mitigation. So we made those changes trying to give McKinney Entertainment the benefit of the doubt if there was some question with respect to a particular tree.

It is difficult to determine the exact species of a tree when you are forced to look at the stump of a tree and look at the rings of that tree. You can determine generally if it's a quality tree what type of tree it is. There are a number of changes that the arborist -- the landscape administrator made based on the arborist report where it was just one quality tree for another quality tree. It wasn't -- there were a couple of trees that were identified that were not quality trees. Those were removed from the list. Those are not trees for which the city has sought recompense.

We believe that the city has made every effort to try and avoid punishing the landowner. We all make mistakes. Mr. Nye, who was here and spoke earlier, talked about measuring the trees; but we don't know how he measured the trees. We don't know what that process was. There was nothing offered up regarding those measurements or if the measurements were actually taken tree by tree by tree. If we had a tree survey, we would know the answers to those questions. We could address those. But, again, you're still required to have a tree preservation or tree permit in order to selectively thin a densely forested area and you're required to have a tree permit before you go in and you grub, remove underbrush, and/or damage the root system of trees or you cut down streets and remove them. You're required to have that tree permit.

So with that, we would ask that you uphold the landscape administrator's findings and determination and interpretation of the ordinance. With that, I'll be happy to answer any questions if you have any.

MR. JACOBY: I'm going to ask the same question that I asked earlier under this 146-136 --sorry -- Section F, Paragraph 9, the grubbing under the drip lines. Same question I asked earlier. The landscape administrator shall issue a limited purpose tree permit allowing the clearing and grubbing of brush located within or under the drip lines of protected trees.

MR. LATHROM: Yes, sir.

MR. JACOBY: If they did not do any grubbing, if they were just cleaning up the debris, removing the crud from the floods down there, as they've stated, if they're just doing that, if they're not actually entering the soil, if they are just clearing the debris out of there, do they have to have a permit?

MR. LATHROM: If they are doing is removing dead wood that is laying on the ground --

MR. JACOBY: And trash.

MR. LATHROM: And trash --

MR. JACOBY: Yes.

MR. LATHROM: -- mattresses --

MR. JACOBY: Correct.

MR. LATHROM: -- tent cities, if that's all they're doing, then a tree permit would not be required.

MR. JACOBY: Okay.

MR. LATHROM: But the evidence that we've seen, the photographs that have been presented to you, the testimony that's been provided by Ms. Braht indicates that they were doing more than just removing dead trees that had fallen over or mattresses and trash.

MR. JACOBY: So the question really becomes the intent -- so the question that we're trying to determine up here is the scope of work that was done down there, you know, we have two theories of the scope of work done. We have evidence of trees that had been removed. We have

evidence of trees that have been cut up and we don't know if those had already been fallen. Like you said, had we had the tree -- if we could have gone back in time and the tree survey been done, we would know these answers; but we don't know these answers so that's where we're coming from now. So that's why I was trying to clarify, if they're just clearing trash, tree limbs that have already fallen down, small saplings, if that's all they're doing and weeds because we've all been through those thick forests where you can't walk through it without falling, if that's all you're clearing and with cats, then that's what I was just trying to clarify.

MS. BRAHT: I will say that when we went down there, there was not a blade of grass in large portions of the area. It had been so torn up by equipment removing trees. Also, as I showed you on the one of the --

MR. JACOBY: Pictures.

MS. BRAHT: -- pictures high up, there was issues with scrapings of trees due to the equipment and everything. There was definitely equipment down there being used for grubbing to get it cleared out.

MR. JACOBY: Okay. Okay.

MR. LATHROM: And I would also point out just for my own purposes here, just because a deciduous tree does not have leaves on it in the fall and winter does not mean it's dead.

MR. JACOBY: Correct.

Questions?

MS. DAVISON: I have a question for the city about the meetings that were held with Mr. Day before all this got to this point.

MR. LATHROM: Yes, ma'am.

MS. DAVISON: Can you talk to me about what those discussions were like and what the outcomes of those conversations were? Obviously we didn't get anywhere, but can you just tell me about -- (audio cuts out.)

Okay. I just was curious.

MR. LATHROM: There is a technical legal issue here that Mr. Roeder and I need to talk about before we answer those questions. I think it will be fair to look at the response letter, the January letter from the city to McKinney Entertainment and I think that will provide you with what information we could actually share with you at this point.

MS. DAVISON: My question was that -- okay.

MR. JACOBY: As you can tell, we're not a -- we're not legal.

MR. LATHROM: There was one meeting the staff had with Mr. Day and there was one meeting in which Mr. Roeder or Mr. Wells, Mr. Day, myself, Ms. Braht, city manager Paul Grimes, and I can't remember who else was in attendance at that meeting and then city engineer Mark Hines was at that meeting. And, you know, we had a very cordial meeting and we listened to the presentation and the statements that were made by McKinney Entertainment and their representatives and then the city staff went back and reevaluated and reexamined its inspection and review of the situation there on the property.

MS. DAVISON: Okay. What I was trying to get at is that the comment was made that no conversations that Ms. Braht had not in part of her -- as part of her investigation talked to Mr. Day or the gentleman who actually did the tree removal, but that's not exactly true because you did have conversations with Mr. Day, right?

MR. LATHROM: We did have conversations with Mr. Day. And as I understand it, when -- one of the occasions when Ms. Braht was there at the property, she visited with Mr. Nye. And I apologize. I don't remember his last name. My apologies.

MR. WELLS: May I just clarify?

MS. DAVISON: Sure.

MR. WELLS: I meant before issuing the letter --

MS. DAVISON: Okay.

MR. WELLS: -- she didn't say can we talk about this.

MS. DAVISON: Okay.

MR. WELLS: She issued the letter AND we got the letter and said holy cow -- I'm paraphrasing.

MS. DAVISON: Got it.

MR. WELLS: And then we wrote a letter and asked for a meeting.

MS. DAVISON: Got it. Okay. Thank you for the clarification. That's all right. Thank you.

MR. JACOBY: Any other questions? We do have some people signed up to speak. I'm just going to call you up. When you do come up, you will have three minutes to address and everyone's already completed these. If you have not and you need to, please, if you don't mind, bringing it up.

The first gentleman I have up here is Steven and I apologize -- I'm sorry?

MR. SPAINHOVER: Spainhover.

MR. JACOBY: Spainhover. Thank you.

MR. SPAINHOVER: (Audio cuts out.)

MS. ALCANTARA: Thank you for letting me speak. My name's Jill Alcantara and I live at 2837 DogLeg Trail. I can actually see this property from my backyard. Has anybody ever said that before? I noticed all the work going on this property in November, dump trucks and that is heavy equipment. The stockpiling of dirt and I was actually excited. I had thought that possibly the city -- that the parks department had acquired that property and was beginning the development of a piece of property that would become attached to what used to be the golf course at McKinney.

I picked up the phone and called the engineering department and I was told that, no, there was no building permit, nothing was happening on that property. Well, I knew better. So I was a little bit persistent and I said, well, something is happening and so I was told that, well, yes, but the project is shut down and there's no building permit.

Further follow-up calls on my part revealed the cutting of the trees without the permit and that the project was shut down. It's been said that all the trees cut above 6 inches in diameter were dead. Actually, it was the dead of winter. All the trees looked dead. Those are all deciduous trees. They all look the same. It showed the same in the pictures we've seen tonight. You would have to be an expert. You would have to do something to find out if the trees were dead.

It's also been said that the owner was doing the city a favor for cleaning up the trash that was dumped illegally on that site. This property is protected by a fence with a locked gate and satellite views from 2013 through today 2017 show no trash.

Yes, there have been homeless people that have lived in those woods. There was a guy had himself quite of an encampment for a while, but that's not the same thing as dumped trash through a locked gate.

To me these city ordinances and this tree ordinance -- and, yes, I stand before you a tree hugger -- they restrict us all. They protect us all and they benefit us all. I ask that this tree ordinance been forced as it was written and as I've listened here tonight, it sounds to me that every concession has been made to fairness that the city could make.

MR. JACOBY: Thank you, ma'am. And last I have Mr. George Fuller, Good evening.

MR. FULLER: George Fuller, 6801 Dalmatian Drive, McKinney, Texas 75070. I know a little bit about this property, as well. I looked at this property in depth a while back when I was asked to look at it for some small residential development. And although I can't say what satellite pictures show from 2013, I can say what George Fuller saw as he tried to walk back to the creek area to get a feel for that property. From trees knocked over, blown over, stepping over as much large tree branch debris as you see in any property that's been unattended to for 100 years, that's what was there, No. 1.

No. 2, I think what we have is an ordinance that is not clear. I don't think anyone would disagree with that. The ordinance calls for a tree to be healthy, but it doesn't identify how to you determine if it's healthy. It doesn't state that Mr. Day has to get an arborist to determine if it's healthy or not. There's no criteria. So you can say that he should have done this and he might say he should have not done this. I think the issue is the ordinance. It is one of the primary reasons that I ran for office. We have a lot of ordinances like this that need revamping and clarification, but to penalize and assess such punitive damages to somebody who has not operated outside of the ordinance and is only being accused of operating a very specific interpretation of the ordinance, that's not fair.

So in short, I saw that property. I know what was there. I know the -- I certainly didn't take a full inventory; but when I hear Mr. Day or the other gentleman talk about truckloads of limbs and big debris, I saw it with my own eyes. With regard to measuring, to say that you can't measure a tree at 4 foot 6 after it's cut down, that's correct; but we can make some reasonable assumptions. If I walk outside on the square outside of -- I can't remember the name of the -- of the store, you've got a tree there that's 14 inches at the base, 6 inches at 4 foot 6. It is very normal to have a tree maybe double in diameter at the base as it is at 4foot 6. So to unilaterally apply that measurement would be inappropriate and unjust. Thanks.

MR. JACOBY: Thank you. I have one quick clarification question I just need to ask of Mr. Wells, if you don't mind, or Mr. Nye. You guys started doing the work clearing the debris, clearing the undergrowth because I know these pictures were taken in December. I understand December in Texas everything is dead, the grass is dead, everything else is dead; but when you started work on that, what was -- was it August, September, when things were alive? That's -- sorry, one last question I just wanted clarification on.

(Audio cuts out.)

Yes, understand. That was my last question.

MR. WELLS: And again, if you go back to look at the pictures, I mean, one of the things we're being punished for, it was literally a hole in the ground.

MR. JACOBY: I understand that. I was just wanting to know when you started the work, I know -- I know you didn't start in December. That's -- I was just trying to find a time line of when you started.

Are there any other questions of the board?

Is there anyone here that would like to speak that hasn't spoken?

All right.

We do not have any letters related to this item so there's nothing for me to read into record. We've all had an opportunity to consider this request.

Do I have a motion to close the public hearing?

MR. CLOUTIER: So moved. I move to close the public hearing.

MR. JACOBY: Thank you, Patrick.

Do I have a second?

MR. TAYLOR: I second.

MR. JACOBY: Thank you, Brad.

All in favor of closing public hearing?

UNKNOWN SPEAKER: Aye.

UNKNOWN SPEAKER: Aye.

UNKNOWN SPEAKER: Aye.

MR. JACOBY: Any opposed? All right. Do I have -- I'm sorry. One last legal question I have. So when we make a motion to approve or deny this, a motion to approve is a motion to -- can you clarify that real quick? If approved -- (audio cuts out.)

Okay. And if we deny, we're citing that the administrator is correct?

UNKNOWN SPEAKER: Upholding (inaudible.)

MR. JACOBY: Okay. Thank you.

This isn't a normal one, everyone. Sorry about that.

All right. We've all had opportunity to discuss this request. We've already closed public hearing.

Do I have a motion to approve or deny the of an administrator's official decision regarding enforcement of Section 146-136 tree preservation on property identified as legal description 16.784 acres at Eldorado Parkway & College, McKinney, Texas 75069, McFarland Survey Abstract 558?

MR. TAYLOR: You have to repeat all that or can I just say I so move that we vote on it?

MR. JACOBY: Do you want to make a motion to approve or deny?

MR. TAYLOR: I make a motion that we approve.

MR. JACOBY: Make a motion to approve?

MR. TAYLOR: Yes.

MR. JACOBY: Thank you, Brad.

Do I have a second? (Audio cuts out.)

Okay. Do I have a (audio cuts out) --correct. The motion dies. So I will repeat. Do I have a motion to approve or deny the appeal of an administrative official's decision regarding enforcement of Section 146-136 tree preservation on property identified as Legal Description 16.784 acres at Eldorado Parkway & College, McKinney, Texas 75069, McFarland Survey Abstract 558?

MR. COULTIER: I'll make a motion that we deny the appeal.

MR. JACOBY: I have a motion to deny by Patrick.

MR. WILDER: Second.

MR. JACOBY: And I have a second by

Randall. It has been moved and seconded that we deny this request. Is there any discussion?

UNKNOWN SPEAKER: I have to look at this as is it reasonable to have expected that some due diligence be done, is the burden on the due diligence to get done before everything's destroyed in there and I have to -- I have not seen that the -- that McKinney Entertainment met that burden to do the due diligence.

MR. WILDER: Yeah, and I think Ms. Braht, her testimony just reigned volumes with her being an expert in my opinion.

MR. WELLS: I guess my point of view on here is whenever you're looking at something from a legal standpoint, Wells you have to look at facts and we're also having to look at a lot of assumptions here and my problem is, when you're going to hold someone accountable and basically say you're guilty and you did it wrong, not because I'm absolutely positive that you violated the law but I think I can put together a lot of pieces and interpret it in certain way to be able to make my case, that's simply where I have the problem of it.

I know just from your general knowledge from a legal standpoint is that there has to be a preponderance of the evidence of a certain direction and in my belief, I don't disagree with what Patrick says. I actually agree with that concept; but when it comes to holding a decision on which direction we are going to go in, I'm just simply looking at it as it doesn't seem like there's a preponderance of strong evidence saying that they violated this -- that they violated this, that they're having to really twist and interpret it in a very tight way in order to be able to make the case and I just can't -- I just can't believe that that's kind of the way our legal system is set up to where we're going to hold someone guilty when we are not absolutely sure that they violated the law, that we're going to have to try to figure it out and try to piece it together to say they did.

MR. JACOBY: I would also say that after reading Section 146-136, there's a ton of ambiguity all over this section. There's a lot of ambiguity about what the definition of "is" is, in the words of former President Clinton. It's hard for me -- I have a farm, not in this state but in another state. It's on a river. Guess what? There's crap all over it. And guess

what? There's dead trees all over it. And guess what? It's not a nice, easy thing to go in there and do. There's no good way or wrong way to do it. I understand the trees were cut. I got proof that trees were cut, but I don't know how big those trees were.

There's no way for me to determine, me, average person living McKinney, Texas, to be able to determine that. I didn't put my boots on the ground. We're not supposed to go out and walk the property. We're not supposed to look at anything other than the evidence that is presented to me.

It's hard because I can see it both ways; but with all that being said, I guess it's time for us to vote.

Do you have anything, Kim?

Okay. So we have a motion to deny. All in favor of the motion to deny the appeal for an administrative official's decision regarding the enforcement of Section 146-136 tree preservation on property identified as Legal Description 16.784 acres at Eldorado Parkway & College, McKinney, Texas 75096 McFarland Survey Abstract 558?

UNKNOWN SPEAKER: Say aye.

UNKNOWN SPEAKER: Aye.

UNKNOWN SPEAKER: Aye.

MR. JACOBY: All opposed?

UNKNOWN SPEAKER: Nay.

MR. JACOBY: Nay.

So the motion has failed. It was two to three. Two to three the motion failed. So I'm sorry?

(Audio cuts out.)

No. We had three deny, two affirm. (Audio cuts out.)

Correct. (Audio cuts out.)

Wait. I'm sorry. Clarification.

UNKNOWN SPEAKER: What we are doing is, there's only a motion of the affirmative and if it does not pass with a 4 to 1 at least or more, then it is --there doesn't need to be a motion to deny it.

MR. JACOBY: Which way is this going?

(Audio cuts out.)

Go for the city? Okay. Sorry about this.

MS. BREWER: No, that's okay. It's difficult because.

MR. JACOBY: I know it's a four -- I know we have to have four votes out of five in order for anything the so that's why I'm just --

MS. BREWER: Look at it in this context. The appellate wants you to approve what they've asked for.

MR. JACOBY: Correct.

MS. BREWER: Right? So in order for that to occur, it takes four affirmative votes. So in other words, I move to approve the appellant's request. Second, it takes four votes to in favor of that motion.

MR. JACOBY: Okay.

MS. BREWER: If there is no -- if you do not receive four affirmative votes to approve the request, it is denied even without an active motion and vote.

MR. JACOBY: So the motion to deny of two to three is still -- it is not a motion to approve.

UNKNOWN SPEAKER: It is kind of irrelevant.

MR. JACOBY: So it's an irrelevant factor.

MS. BREWER: It is.

MR. JACOBY: So at this point in time --

MS. BREWER: One is more of an affirmative action, an affirmative vote.

MR. JACOBY: Correct.

MS. BREWER: And the other is the effect --the net effect is it's denied by silence or the failure of a vote.

MR. JACOBY: Understood. So in this case we didn't even need to make a motion to deny because we didn't get a motion to approve.

MS. BREWER: Well, if you don't, you can certainly come up -- and Mr. Roeder says he doesn't agree. Let me tell you where I'm reading just so you know.

MR. JACOBY: Well, I noted on here that out of a panel of five, you have to have four votes to approve.

MS. BREWER: It says approval of any request shall require four affirmative votes.

MR. JACOBY: Yes. And if there's ever --if not four affirmative votes, then the appeal is denied.

MS. BREWER: Any request not approved by affirmative vote of four or more members shall be considered denied.

MR. JACOBY: Correct. We've run into this twice.

MS. BREWER: Now, if you want to be more specific.

MR. LATHROM: Let me jump in real quick. Ms. Brewer is actually correct in what she's telling you. What would help us, first of all, if you make a motion or you second a motion, you are not obligated to vote in favor of that motion.

MR. JACOBY: Yes.

UNKNOWN SPEAKER: (Audio cuts out.)

MR. LATHROM: Then there is a vote taken and you have another split vote and you don't have four affirmative votes in favor of it, then that item automatically fails.

UNKNOWN SPEAKER: On record we just need to vote?

MR. LATHROM: On the record. That's the thing, we just need to have a clean record or a clear record.

MR. JACOBY: Let's just go ahead and let me reread it again. Thank you very much. Hope you've enjoyed my reading tonight. My wife would be proud of me.

MR. WILDER: I promise to --

MR. JACOBY: Yes, we'll make -- yes.

MR. WILDER: Even though I'm going to vote against it, I promise to say again.

MR. JACOBY: Do I have a motion to approve the appeal of an administrative official's decision regarding the enforcement of Section 146-136 tree preservation on property identified as legal description 16.784 acres at Eldorado Parkway & College, McKinney, Texas 75069, McFarland Survey Abstract 558. Do I have a motion to approve that?

MR. TAYLOR: I move that we approve.

MR. WILDER: Second.

MR. JACOBY: Thank you, Brad, and it has been seconded by Randall.

All right. Is there any more discussion?

No. Okay All in favor?

UNKNOWN SPEAKER: Aye.

MS. DAVISON: Aye.

UNKNOWN SPEAKER: Aye.

MR. JACOBY: All opposed?

UNKNOWN SPEAKER: Nay.

UNKNOWN SPEAKER: Nay.

MR. JACOBY: This item has not been approved. This concludes the business for tonight's meeting.

Do I hear a motion to adjourn?

MR. TAYLOR: I move we adjourn.

MR. JACOBY: Thank you, Brad.

Do I have a second?

MS. DAVISON: Second.

MR. JACOBY: Thank you, Kim. All in favor? I'm sorry?

UNKNOWN SPEAKER: Aye.

UNKNOWN SPEAKER: Aye.

UNKNOWN SPEAKER: Aye?

MR. JACOBY: Any opposed? We are adjourned
at 7:48 p.m. Thank you, guys, and you-all have a great evening.

SCOTT JACOBY
Chairman

17-736



TITLE: Minutes of the Board of Adjustment Meeting of June 28, 2017

SUPPORTING MATERIALS:

[Minutes](#)

BOARD OF ADJUSTMENT REGULAR MEETING

JUNE 28, 2017

The Board of Adjustment met in regular session in the Council Chambers, 222 N. Tennessee Street, McKinney, Texas, on June 28, 2017 at 5:30 p.m.

Board members Present: Patrick Cloutier, Randall Wilder, Brad Taylor, Betty Petkovsek, Brian White. Absent: Scott Jacoby, Kimberly Davison.

Staff Present: Chief Building Official Rick Herzberger, Administrative Assistant Dee Boardman.

Vice Chairman Patrick Cloutier called the meeting to order after determining a quorum was present.

- 17-647** Conduct a Public Hearing to Consider/Discuss/Act on the Request by Bryant Knepp, North Collin County Habitat for Humanity for a Proposed New Residential Single Family Model Home, a 3' Variance from the Ordinance from the Minimum Side at Corner Setback of 15' for the Property Located at 1001 Canal Street, McKinney Texas. Chief Building Official Rick Herzberger read the Building Official Statement from Agenda Item 17-10. North Collin County Habitat for Humanity representative, Bryant Knepp, 2060 Couch Drive, McKinney was given five minutes to make comments about the item. Mr. Knepp mentioned because of the capital campaign improvements on Canal Street, it took some property on this lot which created a need for a variance for the side at corner setback property line. One of the many challenges Habitat is faced with when acquiring lots are the size versus the limited number of models. It is also finding that line between accommodating low income families and abiding by the different rules. Board member White asked whether the rear entry that had an old garage previously was to be taken out and a sidewalk put in. Mr. Knepp says typically they don't due to cost however some models will have rear entries and sometimes those side aprons help. If that is something that the Board would like to see that then it would not be a deterrent. Board member White asked if it played into the

variance request. Knepp says no and technically he was only lacking 6” but requested for 3’ because sometimes his concrete guys don’t get the placement exactly where they were supposed to. Vice Chairman Cloutier mentioned for discussion purposes the house next door on Center Street is supposed to front Canal but at some point back then they matched. Guess it will be up to the homeowner if there will be a value or not. Board members unanimously approved the motion by Board member Petkovsek, seconded by Board member Wilder, to approve the request by Bryant Knepp, North Collin County Habitat for Humanity for a proposed new residential single family model home, a 3’ variance from the Ordinance from the Minimum Side at Corner Setback of 15’ for the property located at 1001 Canal Street, McKinney, Texas.

Board members unanimously approved the motion by Board member Wilder, seconded by Board member Taylor, to adjourn. Vice Chairman Cloutier adjourned the meeting at 5:38 p.m.

PATRICK CLOUTIER
Vice Chairman

17-732



TITLE: Minutes of the Library Advisory Board Meeting of June 15, 2017

SUPPORTING MATERIALS:

[Minutes](#)

McKINNEY PUBLIC LIBRARY SYSTEM ADVISORY BOARD

JUNE 15, 2017

The McKinney Public Library System Advisory Board met in regular session in the Meeting Room of the John and Judy Gay Library, 6861 W. Eldorado Parkway, McKinney, Texas on June 15, 2017 at 5:00 p.m.

Board members Present: Joann Pond, Amanda Hamilton, Peter Samsury, Cheryl Darveaux, Lauren Smith-Carter.

Absent: Coretta Lule, Joseph Closs.

The meeting was called to order at 5:00 p.m. after determining a quorum was present.

There was one guest present.

17-602 Minutes of the Library Advisory Board Meeting of May 18, 2017. Board members unanimously approved the motion by Board member Darveaux, seconded by Board member Smith-Carter, to approve the minutes of the Library Advisory Board Meeting of May 18, 2017.

17-603 Chairman Samsury called for the Tech Services Report. Librarian Mike Smith, presented the Tech Services Report: The Technology Librarian's duties include oversight of the library's websites (public website, City intranet page for the library department, and Wiki website for library policies and procedures). Duties also include assistance with evaluating and implementing digital resources (such as ReferenceUSA, NoveList, or Atomic Training) as well as helping the public with eContent (eBooks, eAudiobooks, eMagazines). Responsibilities at the John & Judy Gay Library include reference and circulation assistance to the public, ordering of reference and adult nonfiction materials for both libraries, and supervision of three part-time shelvers. Recent Website Projects - A Summer Reading Program web page was developed with all relevant information for the public in one place; this information is also linked from the Children's and Teen pages. Web pages for the 2017 Read Across McKinney selection sponsored by the Friends (The Book That Matters

Most by Ann B. Hood) was developed. Policies and procedure changes on the library's Wiki, especially for useful Koha information as we move forward with our Koha ILS and learn more about upgrades, reports, and customization were updated/added. The Library will be able to customize its website for a somewhat different look and functionality, though it will still be recognizably part of the City's website. As we move forward with this project, suggestions of examples of other libraries' successful websites are welcome. eContent - Though all staff are encouraged to help with patron eBook/eAudiobook/eMagazine questions, the Technology Librarian can provide more in-depth assistance to the public via email, phone, or in person. We've noted over the past few years that patron questions are becoming more geared to using the library's eContent as opposed to "How do I use my device?" Thus patrons seem to be mastering their tablets and smartphones and less basic help is needed. Recorded Books - parent company of OneClickDigital eAudiobooks and Zinio eMagazines, is merging those two platforms into a new one called Rbdigital. The vendor's target date for the platform merge is June 27. Library staff have previewed the new app and the prototype RBdigital website; the two are designed to look and function similarly, and staff have been impressed with the improvements and ease of use. The OneClickdigital app will be upgraded to the new Rbdigital app; users of the Zinio app will get a notice that they can download the new app. The new consortium among area libraries for sharing cloudLibrary eBooks and eAudiobooks: CloudLink (cloudLibrary shared collections) is moving forward (contract is going through [City] Document Control), and the target date for going live is mid-June. Several libraries have joined CloudLink. This will substantially increase the number of eBooks and eAudiobooks our patrons can access through cloudLibrary, as anything owned by other CloudLink libraries not currently checked out will show as available to our patrons. Shelves at John & Judy Gay

Library - Lauren Dehdari, our excellent shelver who also happens to be in library school, will be leaving June 26 and we've started the process for filling this position as quickly as possible, given the high summer demand for library materials and the resulting shelving workload. A recent enhancement to the shelving procedure has the JJGL check-in staff keeping the sorting carts in order immediately after checking materials in, instead of leaving unorganized carts that shelvers or other staff must sort before wheeling out to the stacks. Thus we can concentrate forty-five hours a week of shelver time (each of the three working fifteen hours a week) on actual shelving, as opposed to first sorting and then shelving. The downside is that this takes more time for the check-in staff, and to this end we've shortened the check-in process by not mandating deep inspection of returned books, though true damage still gets sent to Steve Sexton, our Circulation Supervisor, for later patron contact. In addition, we plan to pull phone answering duties from the check-in staff by obtaining a cell or wireless phone which we can assign to other staff. We are working with City IT on this project.

17-604 Chairman Samsury called for the Director's Report. Library Director Spencer Smith, presented the Director's Report: Before I discuss the Director's report I would like to mention that our busiest month at John and Judy Gay, in its history, was last June where we checked out 105,000 items in circulation and so far for the first half of this month of June we are on pace of 110,000. The one thing that is down significantly is our attendance per Adult program. One of the reasons for this is due to our ESL classes being very sparse. Our attendance per Children's program is down. Part of this is due to last May we presented our Perot Truck and this year it was in June. So we had a huge May boost and we thought we could replicate it, but we did not. Our PC hours per use was not on target. We had a lot of hours of usage, but it was down from what we anticipated. A basic breakdown of computer usage is Hall Library has

more users and they utilize the longer per session option. Each session averages a little over 65 minutes. At John and Judy Gay Library the average computer use is 38 minutes per session. We do have more computers available at Hall than we do at John and Judy Gay. Patrons bring in their wireless devices, but we do not have the option to track wireless usage at this time. This Fiscal Year our Teen programs are actually surpassing our Adult program usage. We are still tweaking our Youth services programs. At the last Board meeting we introduced Gary Landeck as the Interim Youth Manager. Some of the dip in Youth Programs should be rectified under his leadership. Our turnover rate was higher than we thought which makes sense since we surpassed overall circulation compared to what last year was and items are continuing to checkout.

Board members unanimously approved the motion by Board member Pond, seconded by Board member Darveaux to adjourn. Chairman Samsury adjourned the meeting at 5:29 p.m.

PETER SAMSURY
Chairman

17-792



TITLE: Minutes of the McKinney Armed Services Memorial Board Meeting of June 14, 2017

SUPPORTING MATERIALS:

[Minutes](#)

McKINNEY ARMED SERVICES MEMORIAL BOARD

JUNE 14, 2017

The McKinney Armed Services Memorial Board met at the Parks, Recreation, and Open Space Conference Room, 1611 North Stonebridge Drive, McKinney, Texas on June 14, 2017 at 6 p.m.

Board members Present: Chairman Barry Brown, Vice Chairman Colin Kimball, Andrew Hudson, and Marlene Bockler. Absent: George Lodge, James Creedon, and Matthew Parker.

Staff members Present: Tim White, Parks Maintenance Superintendent; Melissa Lee, Parks Executive Assistant and Flora Ray, Parks Administrative Assistant.

- 17-605** Chairman Brown called for approval of the Minutes of the Armed Services Memorial Board Meeting of May 10, 2017. Board members unanimously approved the motion by Board member Kimball, seconded by Board member Hudson, to approve the Minutes of the Armed Services Memorial Board Meeting of May 10, 2017.
- 17-606** Chairman Brown called for discussion on the Memorial Day Ceremony Events of 2017 at the Veterans Memorial Park in McKinney, Texas.
- 17-607** Chairman Brown called for discussion on the Veterans Day Ceremony of 2017 at the Veterans Memorial Park in McKinney, Texas.
- 17-608** Chairman Brown called for Consideration/Discussion/Action on the McKinney Armed Services Memorial Board Budget for Fiscal Year 2018. Board members unanimously approved the motion by Board member Hudson, seconded by Board member Kimball, to approve the McKinney Armed Services Memorial Board Budget for Fiscal Year 2018 in the amount of \$6,000.00.
- 17-609** Chairman Brown called for Consideration/Discussion/Action on the Gold Star Monument. No action taken.

Chairman Brown asked for any Board comments, Board member Kimball discussed the discovery of two new names for the Veterans Memorial wall and the upcoming dedication ceremony for the Collin County Fallen Warrior Portrait Project on Veterans Day.

Board members unanimously approved the motion by Board member Bockler, seconded by Board member Hudson, to adjourn. Chairman Brown adjourned the meeting at 6:28 p.m.

BARRY BROWN
Chairman

17-738



TITLE: Minutes of the McKinney Convention and Visitors Bureau Board Meeting of
May 23, 2017

SUPPORTING MATERIALS:

[Minutes](#)

MCKINNEY CONVENTION AND VISITORS BUREAU BOARD

REGULAR MEETING

MAY 23, 2017

The McKinney Convention and Visitors Bureau Board met in regular session at the Collin County Historical Museum, 300 E. Virginia, McKinney, Texas on May 23, 2017 at 7:30 a.m.

Board Chair Hill called the meeting to order at 7:42 a.m. after determining a quorum was present.

Board members present: Sally Huggins, Hal Harbor, Jennifer Estes, Wayne Hill, Jim Bressler, Bryan Perkins, and Connie Gibson. Absent: None.

Staff present: Executive Director Guerra, staff members Sue Davis, Ashley Ford, Beth Shumate and Vanesa Rhodes.

Guests present: McKinney City Manager Paul Grimes, Assistant to the City Manager Trevor Minyard, McKinney Main Street/MPAC Director Amy Rosenthal and City of McKinney Financial Analyst Eric Corder.

Board members unanimously approved the motion by Board member Jim Bressler, seconded by Board member Connie Gibson, to approve the following minutes:

- 17-524** Minutes of the McKinney Convention and Visitors Bureau Board Meeting of April 25, 2017.
- 17-525** Minutes of the McKinney Convention and Visitors Bureau Finance Committee Meeting of April 24, 2017.
- 17-526** Update on The Sport Source December Event from Lisa Lavelle and Dee Maher. Lisa Lavelle made a presentation about The Sport Source. This is a college bound Showcase that offers first class recruiting by college coaches representing men's and women's collegiate soccer programs. Last year, she reported that The Sport Source worked directly with the MCVB and McKinney hotels to secure 402 room nights for which the MCVB provided approximately 300 goodie bags. Additionally, hospitality

director Dee Maher addressed other opportunities and economic impact that their event will bring to McKinney.

17-527 Executive Director's Report – Executive Director Guerra presented her staff report and second quarter recap. In April, staff conducted site visits including Taiwanese Chamber of Commerce and Texas Agriculture. She also shared that staff member Beth Shumate did a podcast promoting National Tourism Week and upcoming events. Additionally, she updated board members about National Travel & Tourism Week including Public Safety Appreciation Day and the remote broadcast with KLAK radio station. Mayor Brian Loughmiller read a proclamation during the broadcast.

17-528 Board & Liaison Reports

City of McKinney – City Manager Paul Grimes provided an update on the strategic plan and budget planning. He also reported that Mayor-elect George Fuller will take the Oath of Office prior to the Work Session on Monday, June 5. Mr. Grimes shared that an announcement is coming soon about the new Park & Recreation Director. Additionally, he updated Board members on the status of the Resort Hotel at Craig Ranch.

MainStreet/MPAC – Executive Director Amy Rosenthal reviewed upcoming events including Bike the Bricks (May 26) and an art exhibit, “Hues and Blues” (June 16 through August 11). Director Rosenthal reported Historic Downtown McKinney competed in the 2017 “America’s Main Street” contest for a prize of \$25,000. Voting ends May 28.

Chair Report – Board chair Wayne Hill reported that the MCVB Board will not meet in June 2017.

Finance Committee – Board member Jim Bressler provided a budget update for next year and reported the hotel reports for April showed excellent occupancy levels.

17-529 Consider/Discuss/Act on Approval of Proposed FY 2017-2018 MCVB Budget. Board members unanimously approved the new fiscal year on a motion by Board member Jim Bressler, seconded by Board member Sally Huggins.

17-530 Consider/Discuss/Act on Directing the Corporation Attorney to Prepare a Sixteen (16) Month Lease Agreement Beginning June 1, 2017 through September 30, 2018 By and Between the MCVB and The McKinney Shop Pursuant to the Finance Committee's Recommendation for the Designated Retail Space at 200 W. Virginia and Authorizing Executive Director Guerra to Execute said Lease Agreement. Board members unanimously approved the motion by Board member Jim Bressler, seconded by Board member Jennifer Estes.

Board Chair Hill adjourned the meeting at 8:38 a.m.

WAYNE HILL
Chair

17-739



TITLE: Minutes of the McKinney Convention and Visitors Bureau Finance Committee Meeting of May 22, 2017

SUPPORTING MATERIALS:

[Minutes](#)

MCKINNEY CONVENTION AND VISITORS BUREAU BOARD

Finance Committee Meeting

May 22, 2017

The McKinney Convention & Visitors Bureau Finance Committee met on May 22, 2017 at 200 W. Virginia Street, McKinney Texas.

In attendance were Board members: Jim Bressler, Hal Harbor & Bryan Perkins.

Staff: Executive Director Dee-dee Guerra.

The meeting was called to order at 8:38 am.

The Committee discussed the following items:

1. Retail/Store Space-The Committee discussed the recommendation they will be sharing with the MCVB Board at the May 23, 2017 Board meeting. The Finance Committee is recommending that the Board allow E.D. Guerra to have the City attorney execute a contract with The McKinney Shop at 200 W. Virginia.
2. MCVB March 2017 Financials- Director Bressler asked if the Funds would be transferred to cover the Polaris Gem fees from the Fund Balance. E.D. Guerra explained that the money has been requested and will be reallocated as needed.
3. FY 17-18 MCVB Budget-Director Bressler asked that E.D. Guerra speak to the FY 17-18 Budget to let all the other Board members know about the Supplemental Items and request for the FY 17-18 Budget. No further discussion.
4. STR Report-Director Bressler stated that it seemed that too many of the hotels were more worried about Occupancy over ADR and that the focus should be on the revenue rather than filing the hotel. No further discussion.

The MCVB Finance Committee meeting was adjourned at 9:30 am.

Jim Bressler
MCVB Finance Committee

17-740



TITLE: Minutes of the McKinney Convention and Visitors Bureau Board Special Meeting of June 6, 2017

SUPPORTING MATERIALS:

[Minutes](#)

MCKINNEY CONVENTION AND VISITORS BUREAU BOARD

SPECIAL MEETING

JUNE 6, 2017

The McKinney Convention and Visitors Bureau Board met in special session at the MCVB Conference Room, 200 W. Virginia, McKinney, Texas on June 6, 2017 at 7:30 a.m.

Board Chair Wayne Hill called the meeting to order at 7:38 a.m. after determining a quorum was present.

Board members present: Sally Huggins, Hal Harbor, Jennifer Estes, Wayne Hill, Jim Bressler and Bryan Perkins. Absent: Connie Gibson.

Staff: Executive Director Guerra, staff members Sue Davis, Ashley Ford, Beth Shumate and Vanesa Rhodes.

17-589 Consider/Discuss/Act on Approval of the Incentive Letter to The Sports Source for their December 1-3, 2017 event. Board members unanimously approved the motion by Board member Hal Harbor, seconded by Board member Jennifer Estes.

17-590 Consider/Discuss/Act on Authorizing Executive Director Guerra to Execute Incentive Agreements for Qualified Expenditures Up to \$2500 Per Agreement, With Any Agreement Requiring an Expenditure Over \$2500 to be Approved by the MCVB Board. Board members unanimously approved the motion by Board member Bryan Perkins, seconded by Board member Jennifer Estes.

Board Chair Hill adjourned the meeting at 8:22 a.m.

WAYNE HILL
Chair

17-795



TITLE: Minutes of the Parks, Recreation and Open Space Advisory Board Meeting of June 8, 2017

SUPPORTING MATERIALS:

[Minutes](#)

PARKS, RECREATION AND OPEN SPACE ADVISORY BOARD

JUNE 8, 2017

The Parks, Recreation, and Open Space Advisory Board met in regular session at the Parks, Recreation, and Open Space Conference Room, 1611 North Stonebridge Drive, McKinney, Texas on June 8, 2017 at 5:00 p.m.

Board members Present: Chairman Larry Pereira, Vice Chairman Richard Moreno, Melanie Butler, Kip Dixon, Boyd Pelley, Richard Szecsy and Leslie Warren.

Staff Present: Ryan Mullins, Interim Director of Parks and Recreation; Tim White, Parks Maintenance Superintendent; Jenny Baker, Parks Planning & Development Manager; Teresa Thomason, Apex Centre Manager; Melissa Lee, Executive Assistant for Parks; Flora Ray, Parks Administrative Assistant and Steve Tilton, Assistant City Manager.

- 17-595** Welcoming Remarks from the New Assistant City Manager Steve Tilton.
- 17-532** Chairman Pereira called for the Minutes of the Joint Meeting of McKinney Community Development Corporation and the Park, Recreation and Open Space Advisory Board Meeting of April 13, 2017. Board members unanimously approved the motion by Board member Warren, seconded by Board member Pelley, to approve the Minutes of the Joint Meeting of McKinney Community Development Corporation and the Park, Recreation and Open Space Advisory Board Meeting of April 13, 2017.
- 17-596** Chairman Pereira called for the Minutes of the Parks, Recreation and Open Space Advisory Board Meeting of May 11, 2017. Board members unanimously approved the motion by Board member Warren, seconded by Board member Dixon, to approve the Minutes of the Parks, Recreation and Open Space Advisory Board Meeting of May 11, 2017.
- 17-597** Chairman Pereira called for discussion on the Stonebridge Ranch Community Association Maintenance Reimbursement Agreement. Contract terms and services provided were discussed.

17-598 Chairman Pereira called for discussion on Plans for a Summer 2017 Parks Tour. Tour dates and destinations were discussed.

17-599 Chairman Pereira called for an Update on Apex Centre. Teresa Thomason, Apex Centre Manager, provided a current overview of Apex.

Chairman Pereira asked for any Board comments. Board member Moreno discussed the community benefits of a McKinney Parks Foundation. Board member Pelley requested an update on the Bonnie Wenk Phase II enhancements. Jenny Baker, Parks Planning & Development Manager, provided an overview. Board member Butler inquired as to the status of the Grady Littlejohn dedication ceremony. Ryan Mullins, Interim Director of Parks and Recreation responded that a date had not been finalized at this time.

Board members unanimously approved the motion by Board member Szecsy, seconded by Board member Warren, to adjourn. Chairman Pereira adjourned the meeting at 6:09 p.m.

C. LARRY PEREIRA
Chairman

17-782



TITLE: Minutes of the Planning and Zoning Commission Regular Meeting of July 25, 2017

SUPPORTING MATERIALS:

[Minutes](#)

PLANNING AND ZONING COMMISSION

JULY 25, 2017

The Planning and Zoning Commission of the City of McKinney, Texas met in regular session in the Jack Hatchell Collin County Administration Building, 4th Floor, Commissioners Court, 2300 Bloomdale, McKinney, TX, on Tuesday, July 25, 2017 at 6:00 p.m.

Commission Members Present: Chairman Bill Cox, Vice-Chairman Eric Zepp, Janet Cobbel, Deanna Kuykendall, Cameron McCall, Pamela Smith, and Mark McReynolds - Alternate

Commission Member Absent: Brian Mantzey

Staff Present: City Secretary Sandy Hart, Planning Manager Matt Robinson, and Administrative Assistant Terri Ramey

There were two guests present.

Chairman Cox called the meeting to order at 6:00 p.m. after determining a quorum was present.

Chairman Cox continued the meeting with the Consent Items.

The Commission unanimously approved the motion by Commission Member Smith, seconded by Commission Member McCall, to approve the following two Consent items, with a vote of 7-0-0.

17-767 Minutes of the Planning and Zoning Commission Work Session of July 11, 2017

17-768 Minutes of the Planning and Zoning Commission Regular Meeting of July 11, 2017

END OF CONSENT

Chairman Cox continued the meeting with the Regular Agenda Item and Public Hearing on the agenda.

17-180SP Conduct a Public Hearing to Consider/Discuss/Act on a Site Plan for a Retail/Office/Hotel and Parking Garage Building, Located at 205 W. Louisiana Street

Mr. Matt Robinson, Planning Manager for the City of McKinney, explained the proposed site plan request. He stated that the applicant proposed to construct a 44,000 square foot retail, office, and hotel building with an underground parking garage on approximately 0.348 acres, located at the southeast corner of Louisiana Street and

Church Street. Mr. Robinson stated that site plans could typically be approved by Staff; however, the applicant was requesting a design exception to allow driveway access along a Pedestrian Priority "A" Street (Louisiana Street) to accommodate an underground parking garage. He stated that the request was mainly due to the odd configuration of the property, limited frontage along Church Street, and the proximity of the driveway from the intersection of Church Street and Louisiana Street and the adjacent property to the south. Mr. Robinson stated that Staff had evaluated the request and had no objections to the proposed design exception. He stated that Staff recommends approval of the design exception to allow driveway access along Louisiana Street and proposed site plan as conditioned in the Staff Report. Mr. Robinson offered to answer questions. There were none.

Mr. Don Day, DFA, Ltd, 110 E. Louisiana Street, McKinney, TX, explained the request. He stated that they were asking to have the garage entrance off of Louisiana Street, which would allow them to have an additional ten parking spaces compared to if the entrance ramp was located on Church Street. Mr. Day explained that there were concerns with the historic building located next door and that Church Street being narrow, especially when someone parks on the street. He offered to answer questions.

Commission Member Smith asked if they had anticipated at the beginning of the project needing this design exception. Mr. Day stated that he was unaware of it at the beginning of the project. He stated that Mr. Robinson explained that they would need the variance for the entrance to the garage. Mr. Day stated that they were not required to have parking; however, he wanted to provide additional parking in Downtown McKinney.

Commission Member McCall asked if the parking provided in the proposed garage would be public or private parking. Mr. Day stated that it would be private parking for the people in the building.

Commission Member Smith stated that she appreciated the historic preservation effort and was aware of the need for additional parking in Downtown McKinney.

Chairman Cox opened the public hearing and called for comments. There being none, on a motion by Commission Member Cobbel, seconded by Alternate Commission Member McReynolds, the Commission unanimously voted to close the public hearing and

approve the proposed site plan as recommended by Staff with the conditions listed in the Staff Report, with a vote of 7-0-0.

END OF THE REGULAR AGENDA ITEMS AND PUBLIC HEARINGS

Commission Member Cobbel stated that she was excited to see something being built at 205 W. Louisiana Street.

Chairman Cox thanked Staff for their hard work.

There being no further business, Chairman Cox declared the meeting adjourned at 6:09 p.m.

BILL COX
Chairman



17-818

TITLE: Consider/Discuss/Act on a Resolution Authorizing the Execution and Sale to the North Texas Municipal Water District of a Water Line Easement Consisting of Two Parts, 0.570 Acres of Land with a 0.774 acre Temporary Construction Easement and 0.386 Acres of Land with a 1.176 Acres Temporary Construction Easement in the John R. Jones Survey, Abstract No. 497, Collin County, Texas, and Generally Located in the Vicinity of Redbud Boulevard and Bloomdale Road in the amount of \$108,948.00; and Authorizing the City Manager to Execute Easements and Documents Regarding the Sale of Said Easements Across City-Owned Property to the North Texas Municipal Water District

COUNCIL GOAL: Financially Sound Government

MEETING DATE: August 15, 2017

DEPARTMENT: Development Services / Engineering

CONTACT: Gary Graham, PE, Director of Engineering

RECOMMENDED CITY COUNCIL ACTION:

- Approval of Resolution.

ITEM SUMMARY:

- This item authorizes the sale, at fair market value, to the North Texas Municipal Water District (NTMWD) of a water transmission pipeline easement. The proposed easement property is described in two Parts. Part 1 being a 0.570 acre permanent water transmission pipeline easement and 0.774 acre temporary construction easement, and Part 2 being a 0.386 acre permanent water transmission pipeline easement and 1.176 acre temporary construction easement, all generally located in the vicinity of Redbud Boulevard and Bloomdale Road, and further authorizes the City Manager to execute all necessary easements and documents for the sale of said land rights to NTMWD.

BACKGROUND INFORMATION:

- NTMWD provides potable water to many cities, including the City of McKinney.

- NTMWD is planning to construct a water transmission pipeline to provide additional treated water capacity to the NTMWD North Transmission System.
- NTMWD contacted City staff to discuss the purchase of the subject Easement which will connect to NTMWD's North Transmission System near the McKinney No. 1 Delivery Point and to the proposed City of McKinney No. 4 Delivery Point and Pump Station at Redbud Boulevard and Bloomdale Road.
- The Easement is necessary to provide for the rapid growth in the north and northwest sectors of the McKinney service area.
- The proposed easement consists of Part 1 being a 0.570 acre permanent water transmission pipeline easement and 0.774 acre temporary construction easement, and Part 2 being a 0.386 acre permanent water transmission pipeline easement and 1.176 acres temporary construction easement.
- The City had an appraisal report completed by JLL Valuation & Advisory Services, LLC which determined the fair market value of \$108,948.00 for the proposed Easement.
- This agenda item authorizes the sale of the Easement to NTMWD for the fair market value and further authorizes the City Manager to execute all documents necessary for the sale of said Easement on City-Owned land to NTMWD.

FINANCIAL SUMMARY:

- \$108,948.00 received from the sale of the Easement will be placed in the Water/Wastewater Fund.

BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[Resolution](#)

[Location Map](#)

RESOLUTION NO. 2017-08-_____ (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING THE SALE OF A WATER LINE EASEMENT WITH TEMPORARY CONSTRUCTION EASEMENTS TO THE NORTH TEXAS MUNICIPAL WATER DISTRICT, WHICH EASEMENT CONSISTS OF TWO PARTS, PART ONE BEING 0.570 ACRES FOR A WATER LINE EASEMENT WITH A 0.774 ACRES TEMPORARY CONSTRUCTION EASEMENT AND PART TWO BEING 0.386 ACRES FOR A WATER LINE EASEMENT WITH A 1.176 ACRES TEMPORARY CONSTRUCTION EASEMENT SITUATED IN THE JOHN R. JONES SURVEY, ABSTRACT NO. 497, CITY OF MCKINNEY, COLLIN COUNTY, TEXAS GENERALLY LOCATED NEAR REDBUD BOULEVARD AND BLOOMDALE ROAD IN THE AMOUNT OF \$108,948.00; AND AUTHORIZING THE CITY MANAGER TO EXECUTE EASEMENTS AND DOCUMENTS REGARDING THE SALE OF SAID EASEMENTS ACROSS CITY-OWNED PROPERTY TO THE NORTH TEXAS MUNICIPAL WATER DISTRICT; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF

WHEREAS, the North Texas Municipal Water District (“NTMWD”), a governmental entity with eminent domain authority, has requested a water line easement consisting of two parts, part one being 0.570 acres for a water line easement with a 0.774 temporary construction easement and part two being 0.386 acres for a water line easement with a 1.176 acres temporary construction easement (“Easements”) from the City of McKinney under and across certain land owned by the City of McKinney, which land is generally located south of Bloomdale Road in the vicinity of Redbud Boulevard, for the construction and installation of a water transmission pipeline to provide additional treated water capacity to the NTMWD North Transmission System, which serves many cities, including McKinney; and

WHEREAS, the NTMWD has made a request to purchase the Easements from the City for a proposed water transmission pipeline; and

WHEREAS, City Council has determined that the Property will be utilized by a governmental entity in carrying out a use that benefits the public interest; and

WHEREAS, Texas Local Government Code Section 272.001(b)(5) authorizes a city to convey property to a governmental entity having the power of eminent domain, such as NTMWD, for the fair market value of such property without complying with the notice and bidding procedures set forth in Texas Local Government Code Section 272.001; and

WHEREAS, the City of McKinney obtained an appraisal of the Easements by a licensed real estate appraiser confirming the fair market value of the Easements thereby meeting the requirements of Texas Local Government Code Section 272.001(b); and

WHEREAS, NTMWD will pay the City of McKinney the appraised fair market value for the Easements; and

WHEREAS, City Council has determined that it would be in the best interest of the City to convey the Easements to the NTMWD.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and they are hereby approved, ratified and incorporated into the body of this Resolution as if copied in their entirety.

- Section 2. The Easements should be sold to NTMWD, for the total amount of One Hundred Eight Thousand, Nine Hundred Forty-eight and 00/100 Dollars (\$108,948.00), which amount is the appraised fair market value of the Easements.
- Section 3. The funds collected from the sale of the Easements to NTMWD should be placed in the Water/Wastewater fund.
- Section 4. The City Manager is hereby authorized to execute all documents necessary for the sale and conveyance of the Easements, fully described on Exhibit B, attached hereto, to NTMWD.
- Section 5. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 15th DAY OF AUGUST 2017.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

ATTEST:

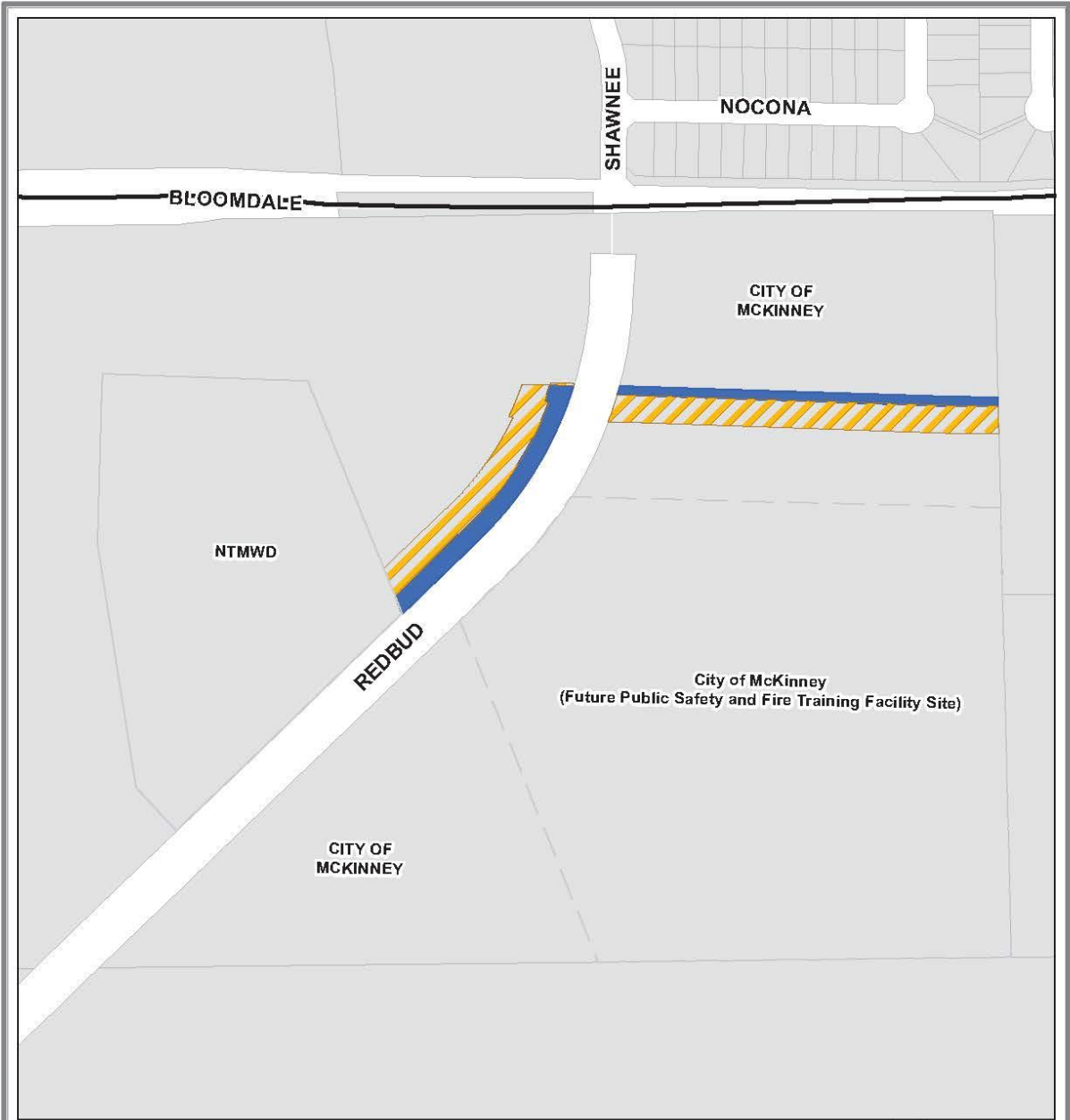
SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

APPROVED AS TO FORM:

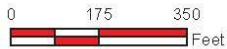
MARK S. HOUSER
City Attorney

EXHIBIT "A"



Location Map

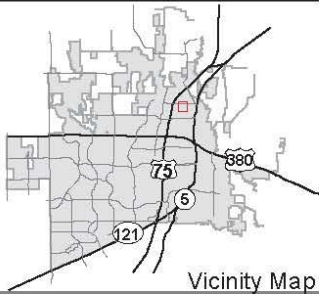


Path: C:\Users\jcarmona\Desktop\Engineering\City Real Estate\NTMWD Water Line Easement.mxd



NTMWD Water Line Easement

-  Temporary Construction Easement
-  Water Easement



DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of McKinney. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of McKinney, its officials or employees for any discrepancies, errors, or variances which may exist.

EXHIBIT "B"

Legal Description of the Property

**EXHIBIT "A"
NORTH TEXAS MUNICIPAL WATER DISTRICT
NORTH MCKINNEY PIPELINE PHASE III
PROJECT NO. 431**

**HDR PARCEL NO. 2
OWNER: CITY OF MCKINNEY
20.0' & 40.0' PERMANENT WATERLINE EASEMENT
JOHN R. JONES SURVEY, ABSTRACT NO. 497
COLLIN COUNTY, TEXAS**

Part 1

BEING a 40.0' permanent waterline easement situated in the John R. Jones Survey, Abstract No. 497, Collin County, Texas, being a portion of a called 103.241 acre tract of land described in General Warranty Deed to the City of McKinney, as recorded in Instrument No. 20070727001038430 of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod found at the southwest corner of said City of McKinney tract;

THENCE North 89 degrees 00 minutes 40 seconds East, with the south line of said City of McKinney tract, a distance of 614.48 feet to the northwest line of Redbud Boulevard (100-foot right-of-way), as recorded in Declaration of Right of Way to the City of McKinney, as recorded in Instrument No. 20140822000905830, O.P.R.C.C.T.;

THENCE North 46 degrees 05 minutes 45 seconds East, with the northwest line of said Redbud Boulevard, a distance of 1,138.47 feet to the POINT OF BEGINNING, (Grid N=7,138,170.34 E=2,542,260.66);

THENCE North 22 degrees 20 minutes 24 seconds West, departing the northwest line of said Redbud Boulevard, a distance of 43.01 feet;

THENCE North 46 degrees 05 minutes 45 seconds East, a distance of 220.68 feet to the point of curvature of a curve to the left, having a radius of 760.00 feet and a central angle of 25 degrees 16 minutes 27 seconds;

THENCE with said curve to the left, an arc distance of 335.25 feet (Chord Bearing North 33 degrees 27 minutes 31 seconds East - 332.54 feet) to the point for corner.;

THENCE North 69 degrees 48 minutes 00 seconds West, a distance of 10.00 feet to the point of curvature of a curve to the left, having a radius of 750.00 feet and a central angle of 02 degrees 52 minutes 34 seconds;

THENCE with said curve to the left, an arc distance of 37.65 feet (Chord Bearing North 18 degrees 58 minutes 44 seconds East – 37.64 feet) to the south line of a Greater Texoma Utility Authority (G.T.U.A.) Easement, as recorded in Instrument No. 20060328000398980, O.P.R.C.C.T.;

THENCE South 88 degrees 06 minutes 00 seconds East, with the south line of said G.T.U.A. Easement, a distance of 52.18 feet to the northwest line of said Redbud Boulevard, being on a curve to the right, having a radius of 800.00 feet and a central angle of 29 degrees 10 minutes 33 seconds;

THENCE departing the south line of said G.T.U.A. Easement and with the northwest line of said Redbud Boulevard and with said curve to the right, an arc distance of 407.37 feet (Chord Bearing South 31 degrees 30 minutes 28 seconds West – 402.99 feet) to the point of tangency;

THENCE South 46 degrees 05 minutes 45 seconds West, continuing with the northwest line of said Redbud Boulevard, a distance of 236.48 feet to the POINT OF BEGINNING and containing 25,215 square feet or 0.5788 acres of land.

60.0' TEMPORARY CONSTRUCTION EASEMENT

The above described 40.0' permanent water line easement is also subject to 60.0' temporary construction easement being parallel and adjacent to the 40.0' permanent water line easement and a 5.0' temporary construction easement parallel with and north of the permanent waterline easement both located and shown on the accompanying survey plat and contains 0.774 acres of land. The 60.0' temporary construction easement shall expire as noted in the easement agreement.

Part 2

BEING a 20.0' permanent waterline easement situated in the John R. Jones Survey, Abstract No. 497, Collin County, Texas, being a portion of a called 103.241 acre tract of land described in General Warranty Deed to the City of McKinney, as recorded in Instrument No. 20070727001038430 of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being more particularly described as follows:

COMMENCING at a 5/8-inch iron rod with cap found at a southeast corner of a Right of Dedication for Bloomdale Road (variable width right-of-way), as recorded in Instrument No. 20100628000657730, O.P.R.C.C.T.;

THENCE North 88 degrees 54 minutes 07 seconds West, with the south line of said Bloomdale Road, a distance of 38.16 feet to the west line of a called 47.608 acre tract of land described in Special

Warranty Deed to Seminole BloominFive LP, as recorded in Instrument No. 20080317000317660, O.P.R.C.C.T.;

THENCE South 01 degree 42 minutes 20 seconds East, with the west line of said Seminole BloominFive tract, a distance of 167.02 feet;

THENCE South 01 degree 08 minutes 20 seconds East, continuing with the west line of said Seminole BloominFive tract, a distance of 163.75 feet to the POINT OF BEGINNING, (Grid N=7,138,649.96 E=2,543,581.54), being the southeast corner of said G.T.U.A. easement;

THENCE South 01 degree 08 minutes 20 seconds East, continuing with the west line of said Seminole BloominFive tract, a distance of 20.01 feet;

THENCE North 89 degrees 49 minutes 17 seconds West, departing the west line of said Seminole BloominFive tract, a distance of 110.96 feet;

THENCE North 88 degrees 06 minutes 00 seconds West, a distance of 732.50 to the east line of said Redbud Boulevard, being on a non-tangent curve to the left having a radius of 900.00 feet and a central angle of 01 degrees 18 minutes 44 seconds;

THENCE with the east line of said Redbud Boulevard and with said curve to the left, an arc distance of 20.61 feet (Chord Bearing North 15 degrees 52 minutes 28 seconds East – 20.61 feet) to the south line of said G.T.U.A. easement;

THENCE South 88 degrees 06 minutes 00 seconds East, departing the east line of said Redbud Boulevard and with the south line of said G.T.U.A. easement, a distance of 727.22 feet;

THENCE South 89 degrees 49 minutes 17 seconds East, continuing with the south line of said G.T.U.A. easement, a distance of 110.20 feet to the POINT OF BEGINNING and containing 16,808 square feet or 0.386 acres of land.

60.0' TEMPORARY CONSTRUCTION EASEMENT

The above described 20.0' permanent water line easement is also subject to a 60.0' temporary construction easement being parallel and adjacent to the 20.0' permanent water line easement, located and shown on the accompanying survey plat and contains 1.176 acres of land. The 60.0' temporary construction easement shall expire as noted in the easement agreement.


All bearings for this tract refer to the NAD-83 State Plane Coordinate System, Texas North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Collin County scale factor of 1.000152710 as published by the Texas Department of Transportation, Dallas District was used for this project.

A plat of even survey date herewith accompanies this legal description.

Company Name: DAL-TECH Engineering, Inc.

TBPLS Firm No. 10123500

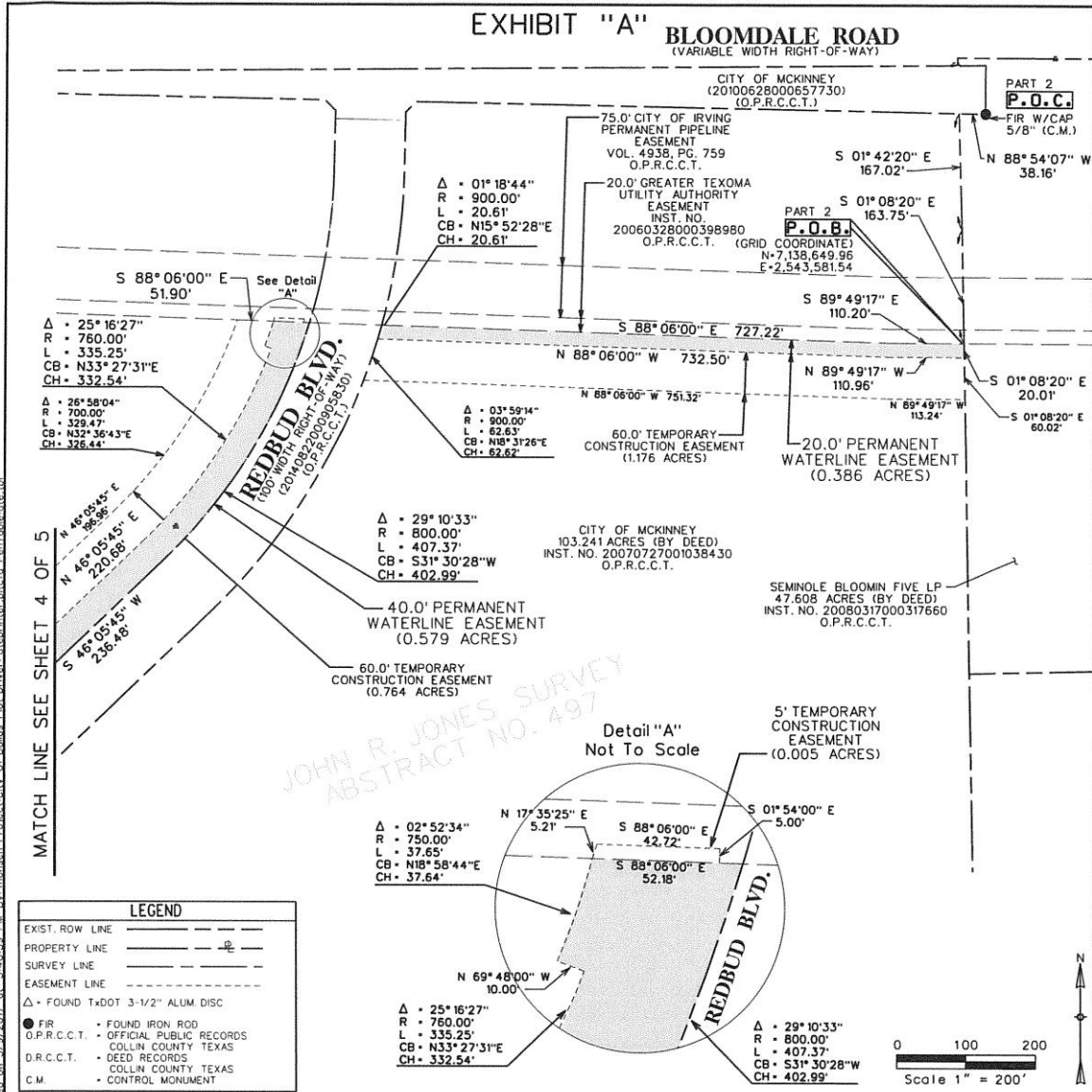


By:  Date: 9 MAY 2017

Surveyor's Name: Gordon N. Anderson
Registered Professional Land Surveyor
Texas No. 5504

EXHIBIT "A" BLOOMDALE ROAD

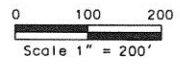
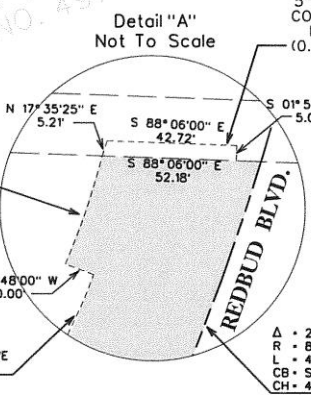
(VARIABLE WIDTH RIGHT-OF-WAY)



MATCH LINE SEE SHEET 4 OF 5

LEGEND	
---	EXIST. ROW LINE
---	PROPERTY LINE
---	SURVEY LINE
---	EASEMENT LINE
Δ	FOUND TxDOT 3-1/2" ALUM DISC
●	FOUND IRON ROD
O.P.R.C.C.T.	OFFICIAL PUBLIC RECORDS COLLIN COUNTY TEXAS
D.R.C.C.T.	DEED RECORDS COLLIN COUNTY TEXAS
C.M.	CONTROL MONUMENT

JOHN R. JONES SURVEY
ABSTRACT NO. 497



NORTH TEXAS MUNICIPAL WATER DISTRICT	
505 E. BROWN ST. P.O. BOX 2408 WYLIE, TEXAS 75098	
<i>North McKinney Pipeline Phase III 72-inch and 84-inch Pipeline</i>	
HDR PARCEL NO.: 2	PROJECT NO. 431
SURVEY: JOHN R. JONES SURVEY, ABST. NO. 497	
LOCATION: COLLIN COUNTY, TEXAS	
SUBJECT TRACT ACREAGE: 103.241 ACRES (BY DEED)	PAGE 5 OF 6
JOB. NO. 1621	DRAWN BY: JC
DATE: 5/9/2017	CHK. BY:
CAD FILE: PARCEL.DGN	
SCALE 1" = 200'	



GORDON N. ANDERSON
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 6617
FIRM NO. 0123500

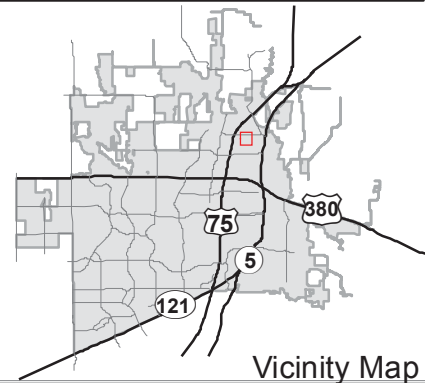
DATE: 9 MAY 2017

P:\1621-HDR-NT-MWD-NMWD-CHN\Forced\Parcel2.dgn Plotted on 5/9/2017 at 3:40:39 PM By: mobasen.Project\Chx_of Dallas_Plot_Driver.dlmainer.olic.n. Rentable.dtc.tbl



NTMWD Water Line Easement

-  Temporary Construction Easement
-  Water Easement



DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of McKinney. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of McKinney, its officials or employees for any discrepancies, errors, or variances which may exist.



17-819

TITLE: Consider/Discuss/Act on a Resolution Approving Freese & Nichols, Inc. as a Qualified Firm to Provide Construction Inspection Services

COUNCIL GOAL: Direction for Strategic & Economic Growth

MEETING DATE: August 15, 2017

DEPARTMENT: Development Services / Engineering

CONTACT: Gary Graham, Director of Engineering
Lisa Littrell, Purchasing Manager

RECOMMENDED CITY COUNCIL ACTION:

- Approval of the Resolution.

ITEM SUMMARY:

- This Resolution approves Freese & Nichols, Inc. (FNI) as the most qualified firm to provide third-party construction inspection services to supplement current Engineering inspection staff.

BACKGROUND INFORMATION:

- The City of McKinney utilizes on-call professional contracts to complete miscellaneous tasks.
- Currently the City has eight (8) engineering inspection staff members who oversee and inspect approximately 160 active construction projects and on average each inspector is responsible for 20-25 projects.
- The hiring of two (2) new City engineering inspection staff positions is being proposed as part of the City's FY 18 budget which, if approved, would bring the total to ten (10) City engineering inspection staff members.
- The Engineering Department has previously identified a need to supplement its current engineering inspection staff with additional third-party construction inspectors to increase the level of inspection provided and to better ensure that new infrastructure is constructed in accordance with the design and City of McKinney requirements.

- Third-party construction inspection would be utilized for Capital Improvement infrastructure projects allowing existing and proposed construction inspection staff to provide a much higher level of inspection on all projects.
- Third-party construction inspection will also be utilized for inspection of public infrastructure associated with the Trinity Falls MUD development in accordance with the existing requirements of that development agreement.
- The City of McKinney issued a Request for Qualifications (RFQ) for Construction Inspection Services (17-58RFQ) in April 2017.
- Thirteen (13) professional services firms submitted their statement of qualifications in response to 17-58RFQ.
- A committee consisting of four (4) staff members from the Engineering Department reviewed and ranked the statements of qualifications based on the following criteria:
 - Project Team
 - Project Approach
 - Similar Project Experience
 - Client Satisfaction
 - Submittal Quality
- Of the thirteen firms that submitted statements of qualifications in response to 17-58RFQ, Freese & Nichols, Inc. was determined to be the most qualified.
- When third-party construction inspection services are required for a specific project, a scope and fee proposal will be obtained from Freese & Nichols, Inc. in accordance with the Purchasing Policy and based on pre-negotiated fixed hourly rates and direct expense costs.
- Once a scope and fee proposal is completed, individual contracts for third-party construction inspection services, per project, will be brought to City Council for approval in accordance with the Purchasing Policy.
- Freese & Nichols, Inc. will remain pre-qualified for construction inspection professional services contracts for three (3) years.

FINANCIAL SUMMARY:

- The individual contracts will be funded through the approved City budget.
- The contracts will be prepared and executed in accordance with the Purchasing Policy.

BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[Resolution](#)

RESOLUTION NO. 2017-08-___ (R)

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY,
TEXAS, APPROVING FREESE & NICHOLS, INC. AS A QUALIFIED FIRM
TO PROVIDE CONSTRUCTION INSPECTION SERVICES**

WHEREAS, the City Council of the City of McKinney, Texas, approved a process to choose professional service providers; and

WHEREAS, the City of McKinney utilizes on-call professional services contracts for construction inspection services; and

WHEREAS, a request for qualifications was issued and one (1) firm has been selected based on their submitted statement of qualifications.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. Freese & Nichols, Inc. was determined to be the most qualified and is hereby approved to provide construction inspection services.

Section 2. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 15th DAY OF AUGUST 2017.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

ATTEST:

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

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney



17-820

TITLE: Consider/Discuss/Act on a Resolution Authorizing the City Manager to Execute a Contract and All Necessary Supplemental Agreements with Freese and Nichols, Inc., to Conduct a Drainage Study of the Stover Creek Watershed

COUNCIL GOAL: Enhance the Quality of Life in McKinney
Operational Excellence

MEETING DATE: August 15, 2017

DEPARTMENT: Development Services / Engineering

CONTACT: Kyle Odom, CFM, Environmental Engineering Manager
Michael Hebert, PE, CFM, Assistant Director of Engineering

RECOMMENDED CITY COUNCIL ACTION:

- Approval of Resolution.

ITEM SUMMARY:

- This Resolution authorizes the City Manager to execute a contract in the amount of \$343,000, and all necessary supplemental agreements thereto, with Freese and Nichols, Inc., to conduct a drainage study of the Stover Creek watershed for an amount not to exceed \$380,000.

BACKGROUND INFORMATION:

- This watershed is being studied as part of the City's Healthy Creeks and Lakes Program.
- In 2013, the City Council appointed a focus group of residents, developers, and engineers to propose changes to the Stormwater Management Ordinance. In 2014, changes were made easing the requirements for land development along creeks and streams. In 2015, the Storm Drainage Utility System fee was increased in part to address creek erosion issues and in part to fund studies such as this.
- The Stover Creek Watershed covers over eight square miles of property in the northwest sector of McKinney. This watershed is located north of U.S. 380 and

west of Lake Forest Drive. Stover Creek and its tributaries account for over 24 miles of streams in McKinney. This watershed was selected for study because it is anticipated to experience rapid growth in coming years.

- The goals of this study are to (1) delineate the existing conditions and fully developed floodplains on Stover Creek and its tributaries, (2) determine what, if any, future improvements are needed at roadway crossings in the watershed to protect against flooding, (3) determine what areas within the watershed are likely to experience increased erosion as this part of McKinney is developed in the future, and (4) present alternatives to address flooding and erosion concerns.
- The study, including all electronic modeling files, will be made available to property owners and land developers. This study will facilitate development in this part of McKinney while better protecting against flooding and erosion hazards.
- Freese and Nichols, Inc., was selected to conduct this watershed study and has submitted an acceptable scope and fee for this work.
- At a City Council meeting on March 3, 2015, Freese and Nichols, Inc., was one of six firms deemed qualified for this type of work based on their response to 15-03RFQ for Miscellaneous Drainage and Floodplain Management Services. Freese and Nichols was selected for this particular project based on their experience with similar projects.

FINANCIAL SUMMARY:

- This Resolution authorizes a contract for \$343,000 and all necessary supplemental agreements with Freese and Nichols, Inc., for an amount not to exceed \$380,000. Funding is available in the CIP in project number DR1645.

BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[Resolution](#)

[Location Map](#)

RESOLUTION NO. 2017-08-___ (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT IN THE AMOUNT OF \$343,000 WITH FREESE AND NICHOLS, INC., FOR A DRAINAGE STUDY OF THE STOVER CREEK WATERSHED AND AUTHORIZING ALL NECESSARY SUPPLEMENTAL AGREEMENTS UNDER SAID CONTRACT FOR AN AGGREGATE CONTRACT AMOUNT, INCLUSIVE OF ANY SUPPLEMENTAL AGREEMENTS, NOT TO EXCEED \$380,000

WHEREAS, the City Council of the City of McKinney, Texas, desires to conduct a Drainage Study of the Stover Creek Watershed; and

WHEREAS, the City has agreed upon a scope and fee and prepared a contract with Freese and Nichols, Inc., to perform said work.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. The City Manager is hereby authorized to execute a contract in the amount of \$343,000 with Freese and Nichols, Inc., for a Drainage Study of the Stover Creek Watershed and authorized to execute all necessary supplemental agreements under said contract for an aggregate contract amount, inclusive of any supplemental agreements, not to exceed \$380,000.

Section 2. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 15th DAY OF AUGUST, 2017.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

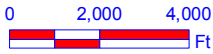
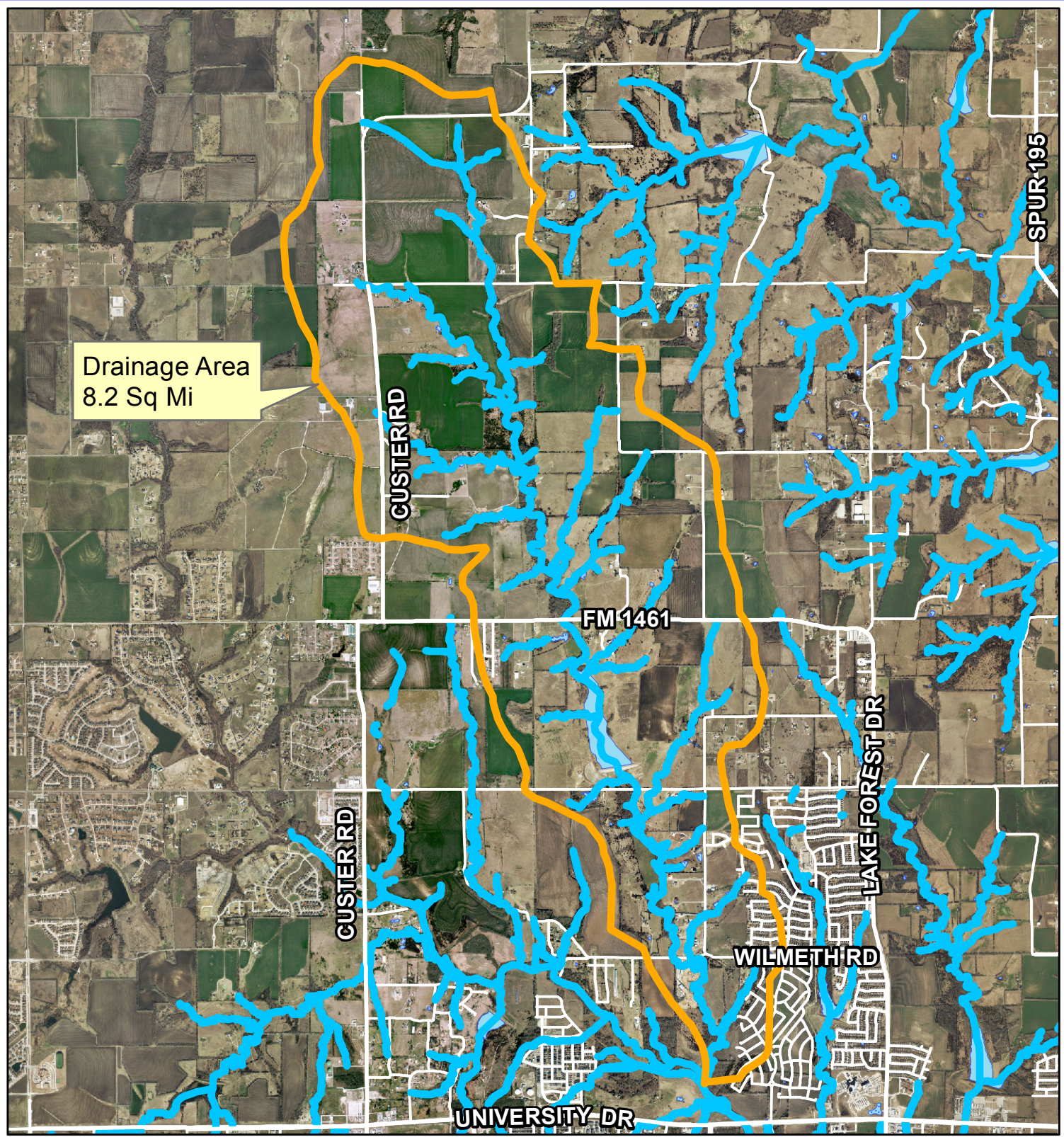
ATTEST:

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

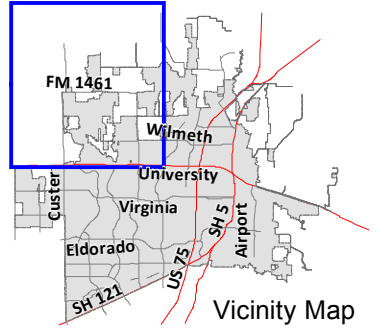
APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

Drainage Area
8.2 Sq Mi



DR 1645 Stover Creek Master Drainage Study Location Map





17-821

TITLE: Consider/Discuss/Act on a Resolution Recommending City Council to Reject all Proposals Received for 17-64RFP Vision Benefits

COUNCIL GOAL: Operational Excellence

MEETING DATE: August 15, 2017

DEPARTMENT: Human Resources

CONTACT: Ike Obi, Human Resources Director
Lisa Littrell, Purchasing Manager
Rosanne Lemus, Contract Administrator

RECOMMENDED CITY COUNCIL ACTION:

- Approval of Resolution.

ITEM SUMMARY:

- This resolution will reject all proposals received for 17-64RFP Vision Benefits.

BACKGROUND INFORMATION:

- Request for Proposals was issued on June 18, 2017 to compare existing voluntary vision program and benefits currently offered to employees and eligible dependents.
- Proposal responses were opened on July 13, 2017 for Vision Benefits. A total of six (6) responses were received.
- All proposal responses resulted in overall higher vision rates compared to the existing vision policy.
- In efforts to sustain the best value for the City, staff recommendation is to remain with the existing vision plan provided by Davis Vision. The City's current vision plan with Davis Vision has a guaranteed rate through 2019.

FINANCIAL SUMMARY:

- N/A

BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[Resolution](#)

RESOLUTION NO. 2017-08-____ (R)

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
McKINNEY, TEXAS, REJECTING ALL PROPOSALS ASSOCIATED WITH
17-64RFP, VISION BENEFITS**

WHEREAS, the City of McKinney issued an RFP to solicit proposals for vision benefits as needed to evaluate the market and ensure the City was receiving services of the highest quality and best value available; and

WHEREAS, the existing contract was executed on January 1, 2016 with rates guaranteed until December 31, 2019; and

WHEREAS, the existing contract is a better value than any of the six proposals received; and

WHEREAS, the City would like to continue using the current contracted provider, Davis Vision, for Vision Benefits.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
McKINNEY, TEXAS, THAT:**

Section 1. The City Council of the City of McKinney, Texas hereby rejects all Proposals associated with 17-64RFP, Vision Benefits. The existing contract for Vision Benefits is determined to be the best value for the City of McKinney.

Section 2. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
McKINNEY, TEXAS, ON THE 15th DAY OF AUGUST, 2017.**

CITY OF McKINNEY, TEXAS

GEORGE C. FULLER
Mayor

ATTEST:

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

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney



TITLE: Consider/Discuss/Act on a Resolution Authorizing an Interlocal Agreement with Collin County for Jail Services

COUNCIL GOAL: Safe and Secure Community

MEETING DATE: August 15, 2017

DEPARTMENT: Police Department

CONTACT: Greg Conley, Chief of Police

RECOMMENDED CITY COUNCIL ACTION:

- Approval of Resolution

ITEM SUMMARY:

- This Resolution authorizes the City of McKinney to obtain jail services from Collin County to insure the confinement of persons accused or convicted of an offense.
- The Agreement shall be for a period of one year ending September 30, 2018 and will renew annually as agreed in writing by both parties.
- The City shall pay Collin County a basic charge of \$69.79 per day per inmate that the City requests be confined and who is confined in the County Jail.
- This Agreement also includes reimbursement to the County for additional charges for expenses associated with providing health care services, including medical, hospital and dental services to inmates.

BACKGROUND INFORMATION:

- In lieu of providing a detention facility, the City contracts with Collin County to provide jail services.

FINANCIAL SUMMARY:

- The Police Department budget 2016-17 included \$122,612 to cover the charges for jail services from the County. The Police Department budget 2017-18 includes \$124,200 to cover the charges for jail services from the County. Account #00131014238516.

BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[Resolution](#)

[Interlocal Jail Agreement](#)

RESOLUTION NO. 2017-08-___ (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF MCKINNEY AND COLLIN COUNTY FOR JAIL SERVICES

WHEREAS, Collin County operates the Collin County Jail for the confinement of persons accused or convicted of an offense; and

WHEREAS, Collin County has been providing this service to the City of McKinney since 1995; and

WHEREAS, the City of McKinney desires to enter into an Interlocal Agreement to continue to insure the confinement of persons accused or convicted of an offense.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. The City Council of the City of McKinney, Texas, hereby authorizes the City Manager to enter into an Interlocal Agreement with Collin County for jail services for a period of one year ending September 30, 2018, and will renew annually as agreed in writing by both parties.

Section 2. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 15th DAY OF AUGUST, 2017.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

ATTEST:

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

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

Interlocal Jail Services Agreement

This agreement is entered into on the _____ day of _____, 201, by and between the City of McKinney ("City") and Collin County, a political subdivision of the State of Texas ("County").

Recitals

1. The County operates the Collin County Jail in accordance with Chapter 351, Texas Local Government Code.
2. The County operates the County Jail for the confinement of persons accused or convicted of an offense.
3. The City desires to obtain certain jail services from the County to be performed for the City to insure the confinement of persons accused or convicted of an offense.

Therefore, under the authority of the Interlocal Cooperation Act., Chapter 791, Texas Government Code, the parties agree as follows:

Section 1. Definitions

1.01 Jail Services

The term "jail services" means all services legally necessary to provide for the confinement in the Collin County Jail of persons accused or convicted of an offense.

Section 2. Term

2.01 Term

The term of this Agreement shall be for a period of one (1) year ending September 30, 201 and may be renewed for an additional one (1) year term as agreed in writing by both parties.

2.02 Termination

Either party may terminate this Agreement by giving ninety (90) days written notice to the other party.

Section 3. Services

3.01 Services to be Provided

The County agrees to provide the City jail services necessary for the confinement of persons accused or convicted of an offense, subject to the availability of space at the County jail at the time the City requests jail services. For the purposes of this Agreement, space shall be deemed to be unavailable when the Collin County Jail is filled to 100% of its capacity.

3.02 Persons Accepted

- (1) The Collin County Sheriff's Office Detention Facility will accept persons arrested via a Class C warrant, if the detainee is presented by a Peace Officer with the

original warrant, a certified or facsimile copy of a valid arrest warrant, or if a Teletype Confirmation of the warrant is received by the Collin County Sheriff's Office.

- (2) The Collin County Sheriff's Office Detention Facility will allow any Peace Officer to execute any Class C warrant on any detainee in our custody, if the warrant being executed by that officer is an original, certified, or facsimile copy, or Teletype Confirmation received by the jail staff.
- (3) The Collin County Sheriff's Office Detention Center will accept all on-view arrests of Class C violators.
- (4) When a defendant has been convicted of a Class C misdemeanor, a Judgment & Sentence is entered against them pursuant to Tex. Code Crim. Proc. Art. 45.041. If that defendant defaults in the discharge of the judgment, a Judge may order the defendant confined in a jail. The Collin County Sheriff's Office Detention Facility will accept such defendants on jail commitments if they are accompanied by a certified copy of the Judgment, Sentence and Order that complies with Tex. Cod Crim. Proc. Art. 45.046, stating in part:
 - a. "the defendant is not indigent and the defendant has failed in good faith to discharge the fines and costs" or
 - b. "the defendant is indigent and has failed to make a good faith effort to discharge the fines and costs under Article 45.049; and could have discharged the fines and costs under Article 45.049 without experiencing any undue hardship."

Section 4. Non-Exclusivity of Service Provision

The parties agree that the County may contract to perform services similar or identical to those specified in this Agreement for such additional governmental or public entities as the County, in its sole discretion, sees fit.

Section 5. Compensation

5.01 Basic Charge

The City shall pay the County a Basic Charge of \$69.79 per day or part of a day per inmate that the City requests be confined, and who is confined, in the County jail.

5.02 Additional Charges

In addition to the Basic Charge, the City shall pay County additional charges to reimburse County for expenses associated with providing jail services to inmates. These charges include, but are not limited to the following: charges for providing health care services, including medical, hospital and dental services to inmates.

5.03 Billing

The County shall bill the City monthly for jail services provided under this Agreement. The City agrees to pay the bills within thirty (30) days of the billing date.

5.04 Cost of Additional Charges

Charges billed to the City for services under Section 5.02 of this Agreement shall be at the cost to the County of providing those services to the inmates.

5.05 Source of Payment

The City agrees that payments it is required to make under this Agreement shall be made out of the City's current revenues.

Section 6. Lawful Arrest and Detention

The parties agree that the City will comply with all federal, state and local laws regarding conditions precedent to arrest and detention including, but not limited to, determinations of probable cause and other requirements necessary for lawful arrest and detention. Further, the parties agree that the City is solely responsible for compliance with pre detention procedures and that the City will hold the County harmless from any liability, including, but not limited to, obligations, costs, claims, judgments, attorneys' fees, and attachments, caused by or flowing from failure by the City to comply with conditions precedent to lawful arrest and detention.

Section 7. Procedures

7.01 Delivery and Release of Inmates

The City agrees to comply with all County rules and procedures regarding jail security in delivering inmates to the Collin County Jail and receiving inmates to be released.

7.02 Removal on Termination

The City agrees to remove all persons confined on the City's behalf in the Collin County Jail pursuant to this Agreement at least one (1) day prior to the date of termination of this Agreement.

Section 8. Civil Liability

Any civil liability relating to the furnishing of services under this Agreement shall be the responsibility of the City. The parties agree that the County shall be acting as agent for the City in performing the services contemplated by this Agreement.

The City shall defend the County with respect to all claims arising out of the County's performance under this agreement. The City will also hold the County free and harmless from any obligation, costs, claims, judgments, attorneys' fees, attachments, and other such liabilities arising from or growing out of the services rendered to the City pursuant to the terms of this Agreement or in any way connected with the rendering of said services, except when the same shall arise because of the willful misconduct or culpable negligence of the County, and the County is adjudged to be guilty of willful misconduct or culpable negligence by a court of competent jurisdiction.

Section 9. Amendment

This Agreement shall not be amended or modified other than in a written agreement signed by the parties.

Section 10. Controlling Law

This Agreement shall be deemed to be made under, governed by, and construed in accordance with, the laws of the State of Texas.

Section 11. Notices

11.01 Form of Notice

Unless otherwise specified all communications provided for in this Agreement shall be in writing and shall be deemed delivered whether actually received or not forty-eight (48) hours after deposit in the United States mail, first class, registered or certified, return receipt requested, with proper postage prepaid or immediately when delivered in person.

11.02 Addresses

All communications provided for in this Agreement shall be addressed as follows:

- | | |
|---|---|
| (a) if the County, to: | (b) if to the County, Copy to: |
| Keith Self, County Judge
Collin County Administration Bldg
2300 Bloomdale Road
McKinney, Texas 75071 | Sheriff Jim Skinner
Collin County Sheriff's Office
4300 Community Ave.
McKinney, Texas 75071 |

- (b) if the City, to:
- _____
- _____
- _____

or to such person at such other address as may from time to time be specified in a notice given as provided in this Section 11. In addition, notice of termination of this Agreement by the City shall be provided by the City to the County Judge of Collin County as follows:

The Honorable Keith Self
Collin County Judge
Collin County Administration Bldg.
2300 Bloomdale Road
McKinney, Texas 75071

Section 12. Resolution of Disputes

Should a dispute arise out of this agreement, County and City shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the disputes will be mediated by a mutually acceptable third party to be chosen by County and City within fifteen (15) days after written notice by one Party to the other demanding mediation under this section. The County and City shall share equally in the costs of the mediation. The purpose of this Section is to reasonably ensure that County and City

shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. A Party's participation in mediation or another non-binding dispute resolution process shall not be construed as a waiver by a Party of (1) any rights, privileges, defenses, remedies or immunities available to a Party; (2) a Party's termination rights; or (3) other termination provisions or expiration dates provided herein.

Section 13. Captions

The headings to the various sections of this Agreement have been inserted for convenient reference only and shall not modify, define, limit or expand the express provision of this Agreement.

Section 14. Counterparts

This Agreement may be executed in counterparts, each of which, when taken separately, shall be deemed an original.

Section 15. Obligations of Condition

All obligations of each party under this Agreement are conditions to further performance of the other party's continued performance of its obligation under the Agreement.

Section 16. Exclusive Right to Enforce this Agreement

The County and the City have the exclusive right to bring suit to enforce this Agreement, and no other party may bring suit, as a third-party beneficiary or otherwise, to enforce this Agreement.

Section 17. Prior Agreements Superseded

This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written oral agreements between the parties respecting the services to be provided under this Agreement.

In witness whereof, the parties hereto have executed this Agreement as of the day and year first above written.

"County"
Collin County, Texas

By: _____
Keith Self, County Judge

Date: _____

"City"
City of _____, Texas

By: _____

Date: _____



17-823

TITLE: Consider/Discuss/Act on a Resolution of the City of McKinney, Texas, Authorizing the City Manager to Amend the Project Agreement with the Texas State Soil and Water Conservation Board (TSSWCB) for State Funding for the Dam Rehabilitation Project (CIP # DR5093) at United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) East Fork Above Lavon (EFAL) Floodwater Retarding Structure (FRS) Site 4, Also Known as Brinkmann Ranch Lake

COUNCIL GOAL: Safe and Secure Community

MEETING DATE: August 15, 2017

DEPARTMENT: Development Services / Engineering

CONTACT: Michael Hebert, PE, CFM, Assistant Director of Engineering
Kyle Odom, CFM, Environmental Engineering Manager

RECOMMENDED CITY COUNCIL ACTION:

- Approval of Resolution.

ITEM SUMMARY:

- This Resolution authorizes the City Manager to amend the Project Agreement with the TSSWCB for state funding to increase the maximum agreement amount from \$179,550 to \$1,617,244.
- The TSSWCB requested this amendment in order to fully utilize available fiscal year 2017 state funds.

BACKGROUND INFORMATION:

- This dam is located north of US 380 between Lake Forest Drive and Hardin Boulevard. The lake is known locally as Brinkmann Ranch Lake.
- The dam does not meet current safety standards. A failure of the dam would result in significant property damage and the potential loss of life.

FINANCIAL SUMMARY:

- At a meeting on January 3, 2017, City Council approved the original TSSWCB

Project Agreement for state funding. The City Manager signed the agreement on February 6, 2017.

- At the time of the original agreement, the TSSWCB preferred to show \$0 for the estimated construction cost then amend the agreement later when more precise construction costs were known. The TSSWCB has now requested this amendment in order to fully utilize state funds available in their fiscal year 2017, which ends August 31.
- As specified in the agreement, the TSSWCB will provide 33.25% of the project funding.
- The estimated cost breakdown is as follows:

Construction:	\$ 5,000,000
Land Rights Acquisition:	\$ 500,000
Contract Administration:	\$ 40,000
Total Cost:	\$ 5,540,000
- Therefore, the final TSSWCB grant amount is estimated to be \$1,842,050 (33.25% of \$5,540,000). If necessary depending on actual project costs, the agreement can be revised again later to add fiscal year 2018 state funds.
- This is one of two grants for this project. The other is also from the TSSWCB, however, it is for the pass through of federal funding from the NRCS. The NRCS is providing 65% of the overall project cost to the TSSWCB. The TSSWCB is passing that on to the City of McKinney by a separate grant. The two grants combined will provide 98.25% of the overall funding for the project.
- The City cost for this project will be approximately \$95,375 (1.75% of the overall project cost).

BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[Resolution](#)

[Location Map](#)

[Amendment](#)

[Original Agreement \(for reference only\)](#)

RESOLUTION NO. 2017-08-___ (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING THE CITY MANAGER TO AMEND THE PROJECT AGREEMENT WITH THE TEXAS STATE SOIL AND WATER CONSERVATION BOARD (TSSWCB) FOR STATE FUNDING FOR THE DAM REHABILITATION PROJECT AT UNITED STATES DEPARTMENT OF AGRICULTURE (USDA) NATURAL RESOURCES CONSERVATION SERVICE (NRCS) EAST FORK ABOVE LAVON (EFAL) FLOODWATER RETARDING STRUCTURE (FRS) SITE 4

WHEREAS, the City Council of the City of McKinney, Texas, desires to rehabilitate the dam at USDA NRCS EFAL FRS Site 4; and

WHEREAS, the City Council of the City of McKinney, Texas, has received from the TSSWCB a proposed amendment to the TSSWCB Project Agreement for State Funding for the Rehabilitation of the Dam at USDA NRCS EFAL FRS Site 4; and

WHEREAS, the proposed amendment increases the maximum amount of state funding from \$179,550 to \$1,617,244.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. The City Council of the City of McKinney, Texas, accepts the proposed amendment to the TSSWCB Project Agreement for State Funding for the Rehabilitation of the Dam at USDA NRCS EFAL FRS Site 4.

Section 2. The City Manager is hereby authorized to amend the TSSWCB Project Agreement for State Funding for the Rehabilitation of the Dam at USDA NRCS EFAL FRS Site 4.

Section 3. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 15th DAY OF AUGUST, 2017.

CITY OF MCKINNEY, TEXAS

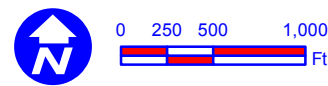
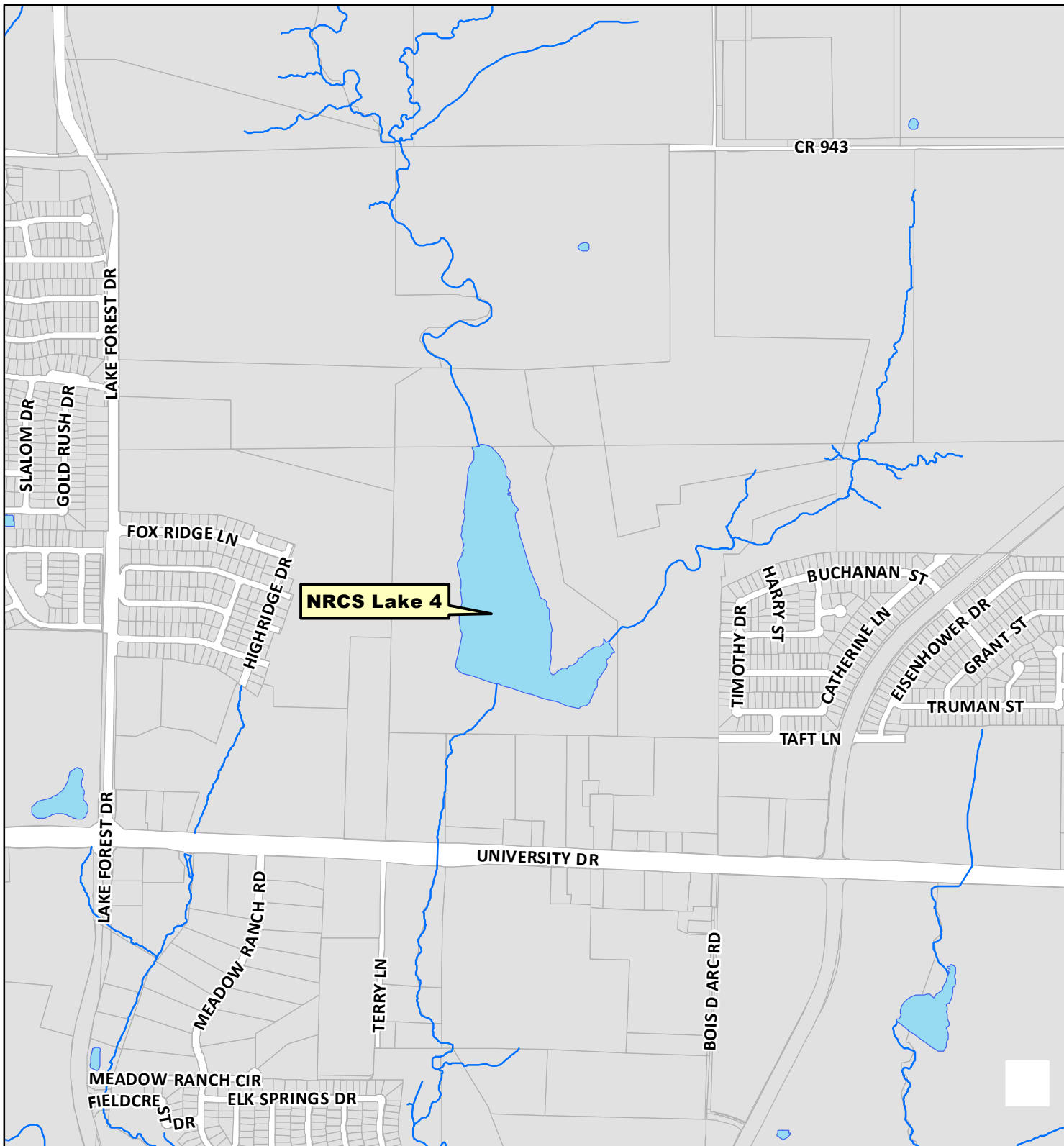
GEORGE C. FULLER
Mayor

ATTEST:

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

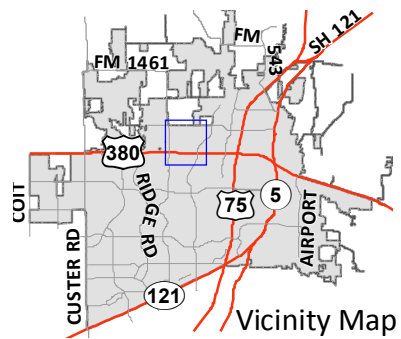
APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney



NRCS Lake 4 Location Map

- NRCS Lake
- Streams



DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of McKinney. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of McKinney, its officials or employees for any discrepancies, errors, or variances which may exist.

Path: Y:\GIS\GISWork\Green\Engineering\NRCS Lakes\Lake 4.mxd

AMENDMENT NO. 1

**TO COOPERATIVE AGREEMENT NUMBER
EFAL4-ST-50035
Between the
TEXAS STATE SOIL AND WATER CONSERVATION BOARD
And
CITY OF MCKINNEY, TEXAS**

It is mutually understood and agreed by and between the Texas State Soil and Water Conservation Board, called the RECEIVING AGENCY; and City of McKinney, Texas, called the PERFORMING AGENCY; to amend said contract as follows:

DELETE:

IV. Consideration/Price:

- a. The RECEIVING AGENCY shall provide the PERFORMING AGENCY reimbursement for approved work at the rates set herein for labor, material, and/or completion of work. Invoices will be reimbursed at a rate of 33.25% of eligible cost, not to exceed a maximum agreement amount of \$179,550.00. Eligible cost includes construction activities, legal and land rights, and administrative cost. The PERFORMING AGENCY shall successfully complete the services specified in Section II "Scope of Work" in accordance with contract requirements and within the ceiling price and budget as specified.
- b. Project Budget.
 - i. Not more than \$0.00 may be expended for construction activities without prior approval by the RECEIVING AGENCY.
 - ii. Not more than \$13,300.00 may be expended for actual administrative costs incurred and documented by PERFORMING AGENCY.
 - iii. Not more than \$166,250.00 may be expended for actual legal services and land rights costs incurred and documented by PERFORMING AGENCY.

INSERT:

IV. Consideration/Price:

- a. The RECEIVING AGENCY shall provide the PERFORMING AGENCY reimbursement for approved work at the rates set herein for labor, material, and/or completion of work. Invoices will be

reimbursed at a rate of **33.25% of eligible cost, not to exceed a maximum agreement amount of \$1,617,244.00**. Eligible cost includes construction activities, **mitigation for 404 permit**, legal fees, land rights, and administrative cost. The PERFORMING AGENCY shall successfully complete the services specified in Section II "Scope of Work" in accordance with contract requirements and within the ceiling price and budget as specified.

- b. Reimbursement to the PERFORMING AGENCY for administrative cost, legal fees and land rights costs shall not exceed the following amounts without prior approval of the RECEIVING AGENCY:
 - i. Administrative Cost: \$13,300.00
 - ii. Legal Fees and Land Rights Cost: \$166,250.00

THIS AMENDMENT shall become effective on the date of approval by both the RECEIVING AGENCY and the PERFORMING AGENCY. All other terms and conditions not hereby amended are to remain in full force and effect.

RECEIVING AGENCY

PERFORMING AGENCY

**Texas State Soil and Water
Conservation Board**

City of McKinney, Texas

By: _____

By: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

Approved By:

COOPERATIVE AGREEMENT

THIS CONTRACT AND AGREEMENT is entered into by and between the parties shown below, pursuant to the authority granted and in compliance with the provisions of: Title 7, Chapter §201, Agriculture Code of Texas, and Title 31, Part 17, Chapter 529, Texas Administrative Code.

I. Contracting Parties:

This Agreement is made and entered into by and between the *Texas State Soil and Water Conservation Board*, hereinafter referred to as “RECEIVING AGENCY” whose principal place of business is located at 1497 Country View Lane, Temple, Texas, 76504 and the *City of McKinney, Texas*, hereinafter referred to as “PERFORMING AGENCY” whose principal place of business is located 222 N. Tennessee Street, McKinney, Texas, 75069, with reference to the following facts:

II. Scope of Work:

- a. The PERFORMING AGENCY shall complete all structural repair activities on flood control dam as follows in Table 1:

Table 1.

National Inventory of Dams Identification Number	Flood Control Dam Common Name	Structural Repair Activity to be Performed
TX01109	East Fork Above Lavon Watershed Site 4	PERFORMING AGENCY costs for construction, contract administration, land rights, and legal fees related to Rehabilitation of the dam according to USDA-NRCS approved rehabilitation plans and specifications.

- b. The PERFORMING AGENCY agrees to complete the structural repair activities listed in Table 1 in accordance with all applicable local, state, and federal laws and rules, including Texas Administrative Code, Title 31, Chapter 529.

- c. The PERFORMING AGENCY agrees to perform all activities within Table 1 in accordance with the “Consideration/Price” specified in Section IV of this cooperative agreement.
- d. The PERFORMING AGENCY agrees to perform all activities within Table 1 in accordance with engineering plans and design specifications provided to the PERFORMING AGENCY by the USDA NRCS. All deviations from the engineering design specifications require approval by the USDA NRCS prior to initiating work.
- e. Upon completion of structural repair activities specified in Table 1, unexpended funds obligated within this cooperative agreement may be used by the PERFORMING AGENCY to conduct operation and maintenance activities as defined by Texas Administrative Code, Title 31, Part 17, Chapter 529. Utilizing unexpended funds from this cooperative agreement for operation and maintenance activities requires prior approval of the RECEIVING AGENCY.

III. Deliverables:

The PERFORMING AGENCY agrees to submit all deliverables as specified or indicated in the “Scope of Work”.

IV. Consideration/Price:

- a. The RECEIVING AGENCY shall provide the PERFORMING AGENCY reimbursement for approved work at the rates set herein for labor, material, and/or completion of work. Invoices will be reimbursed at a **rate of 33.25% of eligible cost, not to exceed a maximum agreement amount of \$179,550.00.** Eligible cost includes construction activities, legal and land rights, and administrative cost. The PERFORMING AGENCY shall successfully complete the services specified in Section II “Scope of Work” in accordance with contract requirements and within the ceiling price and budget as specified.
- b. Project Budget.
 - i. Not more than \$0.00 may be expended for construction activities without prior approval by the RECEIVING AGENCY.
 - ii. Not more than \$13,300.00 may be expended for actual administrative costs incurred and documented by PERFORMING AGENCY.

- iii. Not more than \$166,250.00 may be expended for actual legal services and land rights costs incurred and documented by PERFORMING AGENCY.
- c. The PERFORMING AGENCY's payment requests must comply with the RECEIVING AGENCY's invoice processing procedures. A quarterly invoice and progress report must be completed for the end of each state fiscal quarter – November, February, May, and August – and submitted within 30 days after the end of each quarter. Payment may be withheld by RECEIVING AGENCY until invoice and progress reports are approved.
- d. The RECEIVING AGENCY may reject requests for payment which fail to demonstrate that costs are allowable and eligible for reimbursement or which fail to conform to the conditions in this Agreement. The PERFORMING AGENCY'S costs that are incurred before the beginning date of this agreement are not eligible for reimbursement.

V. Term of Contract:

This contract begins upon execution by both parties and ends June 30, 2018. Contract may be extended, provided both parties agree in writing to do so, prior to the expiration date. Any extensions shall be at the same terms and conditions, plus any approved changes.

VI. Other Administrative Terms:

- a. This contract is subject to cancellation, without penalty, either whole or in part, if funds are not appropriated by the Texas Legislature.
- b. Information, documentation and other material in connection with this contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). If the performing agency receives a request for open records relating to the project, the performing agency will immediately provide a copy of that request to the receiving agency.
- c. The PERFORMING AGENCY hereby assigns to RECEIVING AGENCY, any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States 15 U.S.C.A., Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, Business and Commerce Code, Section 15.01, et. seq. to the extent of RECEIVING

AGENCY's reimbursement provided in accordance with Section IV, *supra*.

- d. The dispute resolution process provided for in Chapter 2260 of Texas Government Code shall be used by the RECEIVING AGENCY and the PERFORMING AGENCY to resolve all disputes arising under this contract.
- e. The PERFORMING AGENCY will, to the extent allowed by the laws and Constitution of the State of Texas, indemnify, defend and hold harmless the RECEIVING AGENCY against any action or claim brought against the RECEIVING AGENCY that is based on a claim that software used by PERFORMING AGENCY to complete the work listed in Section IV, *supra* infringes any patent rights, copyright rights or incorporated misappropriated trade secrets. PERFORMING AGENCY will pay any damages attributable to such claim that are awarded against the RECEIVING AGENCY in a judgment or settlement. If RECEIVING AGENCY's use of the software becomes subject to a claim, or is likely to become subject to a claim, in the sole opinion of RECEIVING AGENCY, PERFORMING AGENCY shall, at its sole expense (1) procure for RECEIVING AGENCY the right to continue using such software under the terms of this Contract; or (2) replace or modify the software so that it is non-infringing.
- f. The PERFORMING AGENCY possesses or will acquire all land rights, easements, licenses, or right-of-ways as will be needed in connection with accomplishing the work outlined in the "Scope of Work".
- g. PERFORMING AGENCY shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of this agreement, including, if applicable, workers compensation laws, compensation statutes and regulations, and licensing laws and regulations. When required, PERFORMING AGENCY shall furnish RECEIVING AGENCY with satisfactory proof of its compliance. The PERFORMING AGENCY shall be responsible for damage to RECEIVING AGENCY's equipment, and/or the workplace and its contents, by its, or its contractors' work, negligence in work, personnel, and equipment. To the extent required by law, and without waiving any governmental immunity available to THE PERFORMING PARTY, the PERFORMING AGENCY shall be responsible and liable for the safety, injury and health of its employees and contractors while they are performing work for

RECEIVING AGENCY under this Contract. The PERFORMING AGENCY shall provide all labor and equipment necessary to furnish the goods or perform the service. All employees shall be a minimum of 17 years of age and experienced in the type of work to be performed. No visitors or relatives of employees and contractors will be allowed on work site unless they are bona fide employees or contractors of the PERFORMING AGENCY under this Contract. PERFORMING AGENCY's liability under this section shall be limited to that authorized by the laws and Constitution of the State of Texas.

- h. The PERFORMING AGENCY shall not assign or subcontract the whole or any part of the contract without RECEIVING AGENCY's prior written consent. The PERFORMING AGENCY may assign its right to receive payment to such third parties as the contractor may desire without the prior written consent of the RECEIVING AGENCY, provided that PERFORMING AGENCY gives written notice (including evidence of such assignment) to the state thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this contract and shall not be made to more than one party.
- i. To the extent allowed by the laws and Constitution of the State of Texas, the PERFORMING AGENCY shall defend, indemnify, and hold harmless the RECEIVING AGENCY, its officers, and employees and contractors from and against all claims, actions, suits, demands, proceedings costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omission of PERFORMING AGENCY or any agent, employee, subcontractor, or supplier of PERFORMING AGENCY in the execution or performance of this contract.
- j. PERFORMING AGENCY shall procure and maintain at its expense during the term of the contract or any extensions thereof, workers compensation and liability insurance as appropriate.
- k. If the PERFORMING AGENCY defaults on the contract, RECEIVING AGENCY reserves the right to cancel the contract without notice and re-award the contract to the next best responsive and responsible respondent. The defaulting PERFORMING AGENCY will not be considered in the re-award and may not be considered in future awards for the same type of work, unless the specification or scope of work is significantly changed. The period of suspension will be determined by the RECEIVING AGENCY based on the seriousness of the default.

- I. PERFORMING AGENCY understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, agency name or any successor agency, to conduct an audit or investigation in connection with those funds. PERFORMING AGENCY further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. PERFORMING AGENCY shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the PERFORMING AGENCY and the requirement to cooperate is included in any subcontract it awards.
- m. RECEIVING AGENCY may grant relief from performance of the contract if the PERFORMING AGENCY is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the PERFORMING AGENCY. The burden of proof for the need of such relief shall rest upon the PERFORMING AGENCY. To obtain release based on force majeure, the PERFORMING AGENCY shall file a written request with RECEIVING AGENCY.
- n. Except as required by the Texas Public Information Act, other applicable state or federal law, or an order of a court of competent jurisdiction, PERFORMING AGENCY will not disclose any information to which it is privy under this Contract without the prior consent of the RECEIVING AGENCY. PERFORMING AGENCY will indemnify and hold harmless the RECEIVING AGENCY, its officers and employees for any claims or damages that arise from the disclosure by PERFORMING AGENCY or its contractors of information held by the State of Texas.
- o. Any software, research, reports studies, data, photographs, negatives or other documents, drawings or materials prepared by contractor in the performance of its obligations under this contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the RECEIVING AGENCY by the PERFORMING AGENCY upon completion, termination, or cancellation of this contract, with the exception of one (1) copy of all work product described above, which may be retained by PERFORMING AGENCY for its records and for compliance with state and federal requirements and its own records retention policy. RECEIVING AGENCY may, at its own expense, keep copies of all its writings for its personal files. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the

works; however PERFORMING AGENCY may copy the work product described above as needed to comply with public information law or to maintain the documents in accordance with its records retention policy. All deliverables, publications, dissemination, and information required as performance of the agreement will require review and approval of RECEIVING AGENCY. Publications outside of the agreement but based on work done through the agreement would be subject to the sixty (60) day review for confidential information.

- p. This contract shall terminate upon full performance of all requirements contained in this contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.
- q. RECEIVING AGENCY reserves the right to terminate the contract at any time for convenience, in whole or in part, by providing thirty (30) calendar days advance written notice (delivered by certified mail, return receipt requested) of intent to terminate. In the event of such a termination, the PERFORMING AGENCY shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. RECEIVING AGENCY name shall be liable for payments limited only to the portion of work authorized by RECEIVING AGENCY in writing and completed prior to the effective date of cancellation, provided that RECEIVING AGENCY shall not be liable for any work performed that is not acceptable to RECEIVING AGENCY and/or does not meet contract requirements. All work products produced by the PERFORMING AGENCY and paid for by RECEIVING AGENCY shall become the property of RECEIVING AGENCY and shall be tendered upon request, but it is expressly agreed that "work product" excludes all physical work done on the flood control dam itself, and no ownership interest in any real property owned by PERFORMING AGENCY shall be created pursuant to this Agreement.
- r. Substitutions are not permitted without the written approval of RECEIVING AGENCY.
- s. PERFORMING AGENCY represents and warrants that, to the extent permitted by applicable competitive bidding laws and without waiving its discretion to utilize public funds in the most efficient way possible, it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable

period of time when compared to non-Texas products and materials.

- t. No public disclosures or news releases pertaining to this contract shall be made without prior written approval of RECEIVING AGENCY.
- u. The PERFORMING AGENCY expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments.
- v. Neither RECEIVING AGENCY nor PERFORMING AGENCY may be liable to the other for any delay in, or failure of performance caused by force majeure. Each party must inform the other in writing, with proof of receipt, within three business days of the existence of such force majeure, or otherwise waive this right as defense.
- w. PERFORMING AGENCY must comply will all applicable State and Federal laws and regulations.
- x. PERFORMING AGENCY represents and warrants that neither the PERFORMING AGENCY nor any person or entity that will participate financially in this agreement has received compensation from the RECEIVING AGENCY for participation in preparation of specifications for this agreement. The PERFORMING AGENCY represents and warrants that it has not given, offered to give, and does not intend to give any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to any public servant or employee in connection with this agreement.
- y. The RECEIVING AGENCY, or designated agents, may review and inspect products and services purchased through this agreement to ensure compliance with specifications. The RECEIVING AGENCY, or designated agents, may also review and inspect products and services before they are purchased under this agreement.
- z. Abandonment or Default. If a PERFORMING AGENCY vendor defaults on a contract, the PERFORMING AGENCY is required to obtain the concurrence of the RECEIVING AGENCY before terminating for default the vendor's right to proceed with some or all of the work or allowing the vendor to complete the work late under

a new delivery schedule with the assessment of damages as may be allowed by the contract.

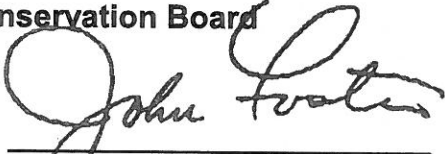
THIS AGREEMENT constitutes the entire Agreement by and between the parties for purposes of accomplishing the results and objectives herein contained and any alteration hereof, or addition, or deletion shall be by addendum hereto in writing and executed by both parties. Furthermore, the undersigned contracting parties do hereby certify that, (1) the services specified are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of State Government, (2) the proposed arrangements serve the interest of efficient and economical administration of State Government, and (3) the services, supplies of materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract to the lowest responsible bidder.

RECEIVING AGENCY

PERFORMING AGENCY

Texas State Soil and Water Conservation Board

City of McKinney, Texas

By: 
FOR: REX ISOM,
EXECUTIVE DIRECTOR


By: Paul G. Grimes

Title: Executive Director

Title: City Manager and authorized signatory

Date: 2/13/17

Date: 2/6/17

Approved By: 



17-824

TITLE: Consider/Discuss/Act on a Resolution of the City of McKinney, Texas, Authorizing the City Manager to Amend the Project Agreement with the NRCS for the Lake 2A Dam Rehabilitation Project

COUNCIL GOAL: Safe and Secure Community

MEETING DATE: August 15, 2017

DEPARTMENT: Development Services / Engineering

CONTACT: Michael Hebert, PE, CFM, Assistant Director of Engineering
Kyle Odom, CFM, Environmental Engineering Manager

RECOMMENDED CITY COUNCIL ACTION:

- Approval of Resolution.

ITEM SUMMARY:

- This Resolution authorizes the City Manager to amend the Project Agreement with the NRCS to allow the City of McKinney to get full credit for land rights acquisition.
- The additional value for land rights is \$87,537. Of that, 65% is reimbursable from the NRCS, which means this amendment will allow for an additional \$56,899 in reimbursement to the City.

BACKGROUND INFORMATION:

- Construction for the Lake 2A dam rehabilitation project was successfully completed in November 2016. The proposed amendment to the project agreement is simply to revise the dollar amounts in the agreement.
- In particular, the NRCS has granted a request by the City of McKinney to amend the project agreement to take full credit for the actual value of land rights acquisition. This is possible only because construction costs were lower than anticipated.
- The project agreement expires on 8/30/2017. It must be executed before then by the City of McKinney, the Collin County Soil and Water Conservation District, and the NRCS.

- This dam is located north of County Road 123 between Custer Road and Lake Forest Drive. The lake is known locally as Highland Lake.

FINANCIAL SUMMARY:

- According to the project agreement with the NRCS, the City of McKinney as the sponsoring local agency is responsible for 35% of the overall project costs. The original project agreement executed in 2014 included the following breakdown for McKinney's share of the costs:
 - Construction (Cash Contribution) = \$ 1,472,250
 - Administration (In-Kind) = \$ 50,000
 - Land Rights = \$ 100,000
 - Total Sponsor Cost Share = \$ 1,622,250
- Amendment 1 in 2015 revised the cost sharing breakdown as follows:
 - Construction (Cash Contribution) = \$ 1,175,250
 - Administration (In-Kind) = \$ 50,000
 - Land Rights = \$ 397,000
 - Total Sponsor Cost Share = \$ 1,622,250
- Amendments 2 and 3 made non-financial revisions in 2015 and 2016.
- This final amendment 4 will revise the costs again to account for lower than anticipated construction costs and to get full credit for the actual value of the land rights acquired by the City. The final breakdown is as follows:
 - Construction (Cash Contribution) = \$ 990,675
 - Administration (In-Kind) = \$ 34,197
 - Land Rights = \$ 484,537
 - Total Sponsor Cost Share = \$ 1,509,409

BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[Resolution](#)

[Amendment 4 to NRCS Project Agreement 69-7442-14-985](#)

[Location Map](#)

RESOLUTION NO. 2017-08-___ (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING THE CITY MANAGER TO AMEND THE PROJECT AGREEMENT WITH THE UNITED STATES DEPARTMENT OF AGRICULTURE (USDA) NATURAL RESOURCES CONSERVATION SERVICE (NRCS) FOR THE DAM REHABILITATION PROJECT AT USDA NRCS EAST FORK ABOVE LAVON (EFAL) FLOODWATER RETARDING STRUCTURE (FRS) SITE 2A

WHEREAS, the City Council of the City of McKinney, Texas, desires to rehabilitate the dam at USDA NRCS EFAL FRS Site 2A; and

WHEREAS, the City Council of the City of McKinney, Texas, has received from the NRCS Amendment 4 to Project Agreement 69-7442-14-985 for the Rehabilitation of the Dam at USDA NRCS EFAL FRS Site 2A; and

WHEREAS, Amendment 4 revises project costs to allow the City of McKinney to take full credit for the actual value of land rights acquisition.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

- Section 1. The City Council of the City of McKinney, Texas, accepts Amendment 4 to Project Agreement 69-7442-14-985 for the Rehabilitation of the Dam at USDA NRCS EFAL FRS Site 2A.
- Section 2. The City Manager is hereby authorized to execute Amendment 4 to Project Agreement 69-7442-14-985 for the Rehabilitation of the Dam at USDA NRCS EFAL FRS Site 2A.
- Section 3. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 15th DAY OF AUGUST, 2017.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

ATTEST:

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

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

NOTICE OF GRANT AND AGREEMENT AWARD

1. Award Identifying Number 69-7442-14-985	2. Amendment No. 4	3. Award/Project Period 09/25/2014 through 08/30/2017	4. Type of Award Instrument Cooperative
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5. Agency: Natural Resources Conservation Service (NRCS) (Name and Address) USDA-NRCS Texas State Office 101 South Main Street Temple, TX 76501	6. Recipient Organization: (Name and Address) City of McKinney, Texas (see page 3 for additional partner) 221 N Tennessee McKinney, TX 75069		
	<table border="1"> <tr> <td>DUNS: 102595386</td> <td>EIN: 75-6000599</td> </tr> </table>	DUNS: 102595386	EIN: 75-6000599
DUNS: 102595386	EIN: 75-6000599		

7. NRCS Program Contact: Brian Wenberg, (254) 742-9945 brian.wenberg@tx.usda.gov	8. NRCS Administrative Contact: Dorothea Martinez 803-253-3899 dorothea.martinez@wdc.usda.gov	9. Recipient Program Contact: Danny Still, 972-547-7631 dstill@mckinneytexas.org	10. Recipient Admin Contact: Danny Still, 972-547-7631 dstill@mckinneytexas.org
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11. CFDA Number 10.916	12. Authority 16 U.S.C.1012, Watershed Rehabilitation Program	13. Type of Action ii. Amendment/Revision	14. Project Director Michael Hebert
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15. Project Title/Description:
Watershed Rehabilitation for Site East Fork Above Lavon Site 2A. - Collin County, Texas
Complete agreement includes this NRCS-ADS-093 and attachments listed on page 2.

16. Entity Type: Profit Nonprofit Higher Education Federal State/Local Indian/Native American
Other

17. Select Funding Type:	<input checked="" type="checkbox"/> Federal	<input checked="" type="checkbox"/> Non-Federal	18. Accounting and Appropriation Data				
	Original Funds Total:	\$ 3,012,750.00	\$ 1,622,250.00	Financial Code	Amount	Fiscal Year	Treasury Symbol
	Additional Funds Total:	-\$ 209,561.00	-\$ 112,841.00	1414WSRPF48000A12399	\$ 3,012,750.00	2014	1241002
	Grand Total:	\$ 2,803,189.00	\$ 1,509,409.00				

19. APPROVED BUDGET

Personnel	\$	Fringe Benefits	\$
Travel	\$	Equipment	\$
Supplies	\$	Contractual	\$ 518,734.00
Construction	\$ 3,793,864.00	Other	\$
Total Direct Cost	\$ 4,312,598.00	Total Indirect Cost	\$ 0.00
		Total Non-Federal Funds	\$ 1,509,409.00
		Total Federal Funds Awarded	\$ 2,803,189.00
		Total Approved Budget	\$ 4,312,598.00

This agreement is subject to applicable USDA NRCS statutory provisions and Financial Assistance Regulations. In accepting this award or amendment and any payments made pursuant thereto, the undersigned represents that he or she is duly authorized to act on behalf of the awardee organization, agrees that the award is subject to the applicable provisions of this agreement (and all attachments), and agrees that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by NRCS to have been overpaid, will be refunded or credited in full to NRCS.

(Continuation)

NOTICE OF GRANT AND AGREEMENT AWARD			
Award Identifying Number	Amendment No.	Award/Project Period	Type of Award Instrument
69-7442-14-985	4	09/25/2014 through 08/30/2017	Cooperative

List of Attachments:

Statement of Work

Name and Title of Authorized Government Representative Salvador Salinas, State Conservationist USDA, Natural Resources Conservation Service	Signature	Date
Name and Title of Authorized Recipient Representative Paul G. Grimes, City Manager City of McKinney	Signature	Date

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. Section 522a).

**NOTICE OF GRANT AND AGREEMENT AWARD
 CONTINUATION SHEET**

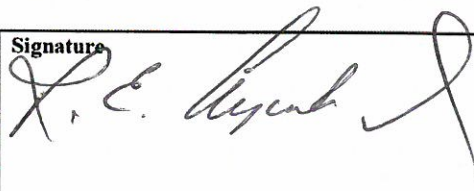
Award Identifying Number	Amendment No.	Award/Project Period	Type of Award Instrument
69-7442-14-985	4	09/25/2014 through 08/30/2017	Cooperative

Name and Title of Authorized Recipient Representative	Signature	Date
PAUL G. GRIMES City Manager CITY OF MCKINNEY		

This action authorized at an official meeting of _____ on the
 _____ day of _____, 20__
 at _____, State of _____

X _____
 (Signature) (Title)

Recipient Organization (Name and Address)	Recipient DUNS: 140702189 Recipient EIN: 75-6003775
Collin County Soil and Water Conservation District 1404 N McDonald St., Suite 100 McKinney, TX 75071	

Name and Title of Authorized Recipient Representative	Signature	Date
R.E. AYCOCK, JR. Chairman COLLIN COUNTY SOIL AND WATER CONSERVATION DISTRICT		8-7-17

This action authorized at an official meeting of Collin County SWCD on the
7th day of August, 2017
 at McKinney, State of _____

X Michael W. Medel Sec.
 (Signature) (Title)

**AMENDMENT NO. 4
To The
STATEMENT OF WORK
by and between
CITY OF MCKINNEY, TEXAS
and
UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE**

PURPOSE

The purpose of this amendment is to realign the allowable in-kind costs, to de-obligate excess funds based on final costs, and to update administrative contacts.

REVISIONS TO THE NOTICE OF AWARD (FORM NRCS –ADS-093)

NRCS Administrative Contact is revised as shown in Block 8.

Select Funding is revised as shown in Block 17.

Approved Budget is revised as shown in Block 18.

REVISIONS TO THE STATEMENT OF WORK OF THE AGREEMENT:

The following section(s) are hereby revised as follows:

(Continued on Page 2)

II. DESCRIPTION OF ESTIMATED COSTS

A. The estimated cost for the Project to the above specified dam is outlined below:

Description of Work	Estimated Federal Cost Share	Estimated Sponsor Cost Share	Estimated Total Cost of Project
Cost Share Items:			
1. Construction (Cash Contr.)	\$2,803,189.00	\$990,675.00	\$3,793,864.00
2. Project Administration (In-Kind)		\$34,197.00	\$34,197.00
3. Construction (In-Kind)			
4. Land Rights		\$484,537.00	\$484,537.00
Total of Project Costs	\$2,803,189.00	\$1,509,409.00	\$4,312,598.00
Non-Cost Share Costs:			
5. Contracting, Engineering & QA services for construction inspection and oversight:			
Total Non-Cost Share		\$0.00	
Agreement Total			\$4,312,598.00

B. COST SHARE

1. Sponsor:

The Sponsor will provide 35 percent of the total eligible project costs for items 1-5 referenced in Section I.A., above. The following estimated in-kind contributions and/or cash cost share are approved for this project:

Cost Share	Value of Cost Share
-Construction (Cash Contribution)	\$990,675.00
-Construction(in-Kind)With Sponsor Forces	
-Project Administration	\$34,197.00
-Land Rights	\$484,537.00
TOTAL Sponsor's Cost Share	\$1,509,409.00

Except as provided herein, all other terms and conditions of the original agreement and any previous amendments remain unchanged and in full force and effect.

Justification Statement

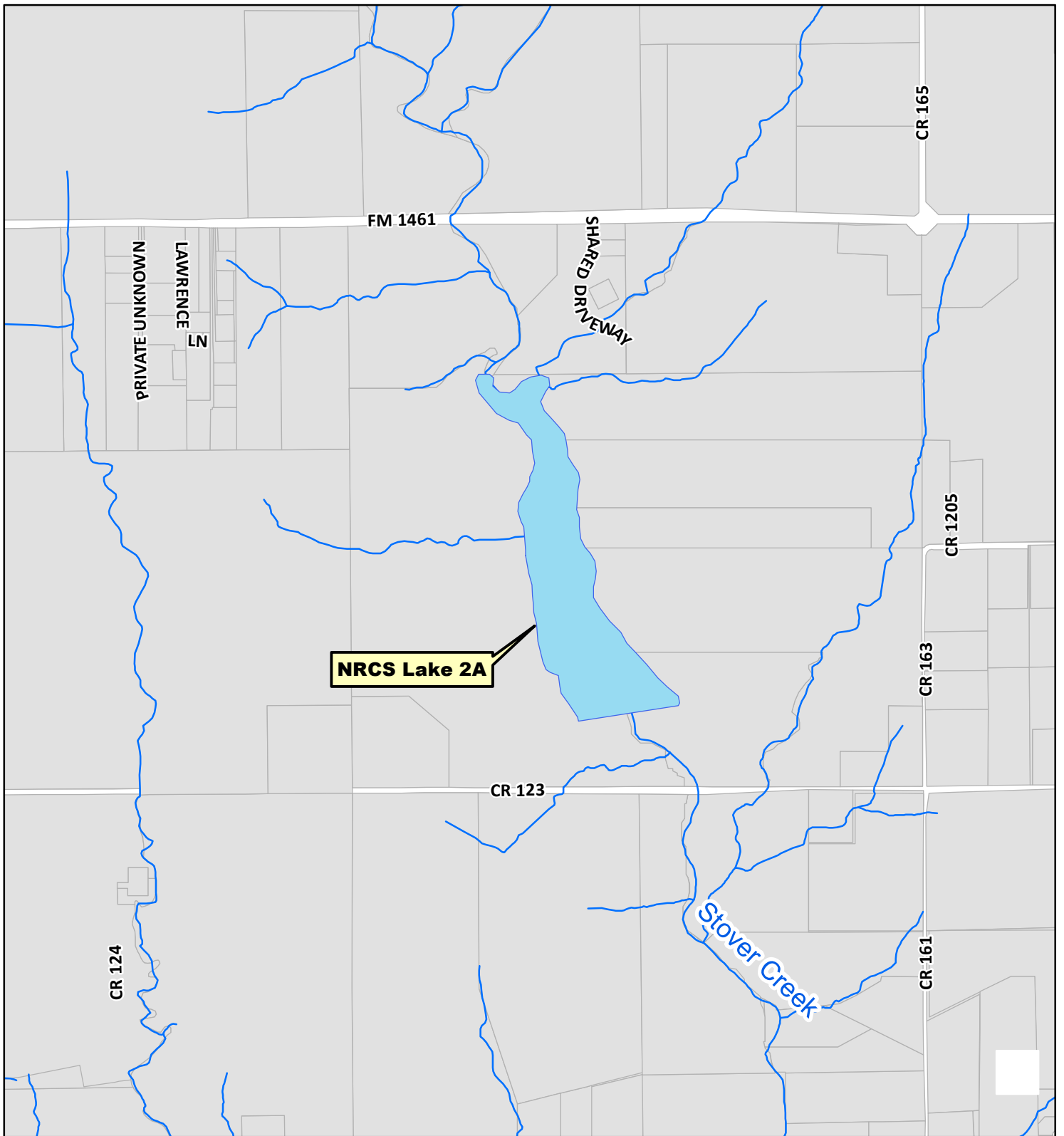
69-7442-14-985 - East Fork Above Lavon Site 2A Watershed Rehabilitation Project

The purpose of this amendment is to realign the allowable in-kind costs in the agreement and deobligate excess funds based on final costs. The overall cost of the project is less than the available amount in the agreement. The only cost that increased was the land rights cost. Therefore, the sponsor is requesting that the allowable in-kind contribution for land rights for this project be increased from \$397,000.00 to \$484,537.00. I have reviewed their request and consider it reasonable. I concur in the change.

They are also finished with construction and ready to prepare their final request for payment. They are ready to decrease the amount in the agreement by \$322,402.00 as shown in the revised tables. The sponsor's cost share percentage (35%) remains the same and this does not affect any of the project milestones. The sponsor is ready to submit their final request for payment as soon as this proposed amendment is executed. The sponsors and I are in agreement with the final numbers and I concur with this change.

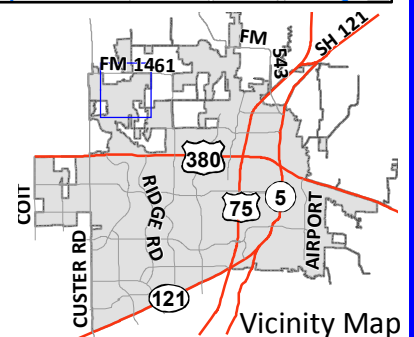


Richard Brian Wenberg, Program Manager



NRCS Lake 2A Location Map

- NRCS Lake
- Streams



01000400
Ft





17-825

TITLE: Conduct a Public Hearing to Consider/Discuss/Act on a Resolution Approving the 2017-2018 Community Development Block Grant (CDBG) Annual Action Plan

COUNCIL GOAL: Enhance the Quality of Life in McKinney

MEETING DATE: August 15, 2017

DEPARTMENT: Housing & Community Development Department

CONTACT: Shirletta Best, Community Services Administrator

RECOMMENDED CITY COUNCIL ACTION:

- Conduct a public hearing to approve the 2017-2018 Annual Action Plan for CDBG funding and approve the resolution.

ITEM SUMMARY:

- The City of McKinney receives funding from the U.S. Department of Housing and Urban Development (HUD) under the Community Development Block Grant (CDBG) for Housing and Community Development activities. The Consolidated Plan is designed to help local jurisdictions assess their affordable housing and community development needs and make investment quality of life impact through that funding. The consolidated planning process serves as the framework for a community-wide dialogue to identify housing and community development priorities that align and focus funding.
- The Consolidated Plan is carried out through Annual Action Plans, which provide a summary of the actions, activities, and the specific federal and non-federal resources that will be used each year to address the priority needs and specific goals identified by the Consolidated Plan. At the end of the program year, the City reports on accomplishments and progress toward Consolidated Plan goals in the Consolidated Annual Performance and Evaluation Report (CAPER).
- The 2017-2018 Action plan is under year three of the five year 2015-2019 Consolidated Plan, a participatory process with the public. The Plan will be

submitted to HUD after August 15 for review and final approval. The program period begins October 1, 2017 to September 30, 2018.

BACKGROUND INFORMATION:

- The City of McKinney has participated as a HUD Entitlement Community recipient since PY 2003. CDBG funded programs must provide community reinvestments through activities that provide and impact quality housing, viable community development, and expand economic opportunities, principally to benefit low-to-moderate income families and households.
- Pre-application meetings and technical assistance sessions to agencies were conducted in April, 2017 prior to public hearing presentations. On May 11 and 12, 2017, the Community Grants Advisory Commission conducted public hearings to consider requests for funding from agencies and to hear proposed funding under City programs. Funding requests were reviewed and considered by the Commission in accordance with the Strategic Plan goals expressed under the Consolidated Plan; federal statutory and program requirements; service impacts to the community; past performance, as applicable; risk assessments, duplication of exact services from other agencies; other sources of agency funding, and presentation critique, as applicable.
- Citizen participation of public stakeholders under the Annual Action process includes one-to-one meetings, public hearings, P.R.I.D.E. (*Promoting Resident Involvement, Development and Enthusiasm*) community meetings, a special 14-day public comment period per HUD requirements, telephone conversations, and other forms of communication. The McKinney City Council will hold a public hearing to hear public comments under the Plan. All comments from the comment period and public hearing received will be submitted with the Annual Action Plan after August 15 to HUD for review. HUD will determine final approval of the Plan for the program period that begins October 1, 2017 - September 30, 2018.
- For all activities and programs undertaken in 2017-2018, the City will report performance to the public in December, 2018. The public has the opportunity to participate in activities and receive updates during the program year through periodic updates, community meetings, and direct interaction.

FINANCIAL SUMMARY:

- The City anticipates receiving an estimated allocation of \$667,906 for the program year. Federal regulation requires no more than 15% of the grant be used for public services funding, and a statutory cap of 20% of the grant be allocated for grant administration and planning. The balance of the funding is used for housing, community development and CDBG economic development activities.
- Under the statutory requirements, the public services grant program will have a

total allocation of \$100,111 in available funding for agencies. The total grant administration budget is \$133,481 and non-public services accounts for the remaining balance of \$433,817 to fund Housing and Community Development activities.

- The City anticipates approximately up to \$500,000 from carryover reallocated CDBG funds previously awarded to be used for Housing Rehabilitation and Community Development activities. The Annual Action Plan also considers use of other community development resources: Leverage of non-federal city and state resources, the City's Community Support Grant, and the use of HOME Investment Partnerships funding from the Texas Department of Housing and Community Affairs (TDHCA).

BOARD OR COMMISSION RECOMMENDATION:

- The Community Grants Advisory Commission met on June 21, 2017, to determine funding recommendations for the 2017-2018 program year.

SUPPORTING MATERIALS:

[Resolution](#)
[Substantial Amendments to the Consolidated Plan](#)
[2017-18 Annual Action Plan](#)

RESOLUTION NO. 2017-08-___ (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, APPROVING THE COMMUNITY DEVELOPMENT BLOCK GRANT 2017-2018 ACTION PLAN, AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council authorizes the City Manager to make application for Community Development Block Grant Funds (CDBG); and

WHEREAS, the U.S. Department of Housing and Urban Development will review and accept the Annual Action Plan providing CDBG funds for the 2017-2018 fiscal year to begin October 1, 2017; and

WHEREAS, the Community Grants Advisory Commission held three public meetings and prepared recommendations for Council acceptance of the Annual Action Plan under the use of Community Development Block Grant Funds, including amendments, allocation and carryover funds; and

WHEREAS, the U.S. Department of Housing and Urban Development will give final approval of the 2017-2018 Annual Action Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. The 2017-2018 Action Plan is hereby adopted with funding allocations as follows:

CASA of Collin County	\$	20,000
Collin County Committee on Aging	\$	17,250
Communities in Schools, Dallas Region	\$	16,250
The Samaritan Inn	\$	17,500
North Collin County Habitat for Humanity	\$	24,167
The Salvation Army	\$	21,138
Wellness Center for Older Adults	\$	8,046
Economic and Community Development	\$	187,231
Housing Rehabilitation	\$	584,140
Grant Administration	\$	133,581

Section 2. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 15th DAY OF AUGUST, 2017.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

ATTEST:

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

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

**Substantial Amendments to the Consolidated Plan, 2015-2019
under the 2017-18 Annual Action Plan (AAP) City of McKinney**

Item 1: Amending the 2016-2017 AAP, Habitat for Humanity of North Collin County was awarded \$24,167 under Annual Action Plan 2016. The agency is unable to complete the activity and requests additional time to complete. Under the plan, carryover funds from the previous grant year are used for Housing Services and Community and Economic Development Programs. However, signed grant agreements enacted under the previous year require amendment.

Proposed: Amending to the 2017-18 AAP, Administrative Grant extension of carryover funds under the 2017-2018 Annual Action Plan to complete the activity to build a home for a low income family by May, 2017. Amendment will meet HUD requirements and reporting will be provided under CAPER 2018.

**PROPOSED
CDBG ANNUAL ACTION PLAN
CDBG Activities
2017-18**

AGENCY	ACTIVITY DESCRIPTION	Recommended	Proposed HUD MATRIX CODE
CASA of Collin County	Support for staff/volunteer training of the court-appointed advocates to benefit abused and neglected children.	\$ 20,000	05N-Abused/Neglected Children
Communities in Schools	Support personnel that serves the needs of at risk children	\$ 16,250	05D – Youth services
Collin County Committee on Aging, Inc.	Homebound senior meals: evening and Weekend Meal Service to eligible McKinney Senior Citizens	\$ 17,250	05A – Senior Services
Samaritan Inn Salvation Army	Case Management Services, Homeless Emergency financial assistance program – Rent and Utilities	\$17,500 \$ 21,138	5 – Public Services 05Q – Subsistence payments
Wellness Center for Older Adults	Gatekeeper: assist at-risk seniors with case management, volunteer assistance, agency referrals	\$ 8,046	05A – Senior Services
CITY PROGRAMS and Carryover Programs	ACTIVITY DESCRIPTION	Funding	Proposed HUD Matrix Code
Grant Administration	Admin, Planning to administer the CDBG Program	\$ 133,581	21 A – General Grant Program Administration
City's Housing Rehabilitation Program	Program Delivery and Eligible Program Activity including Emergency, Small and Home Repairs, and Lead Based Paint Remediation to benefit LMI homeowners and renters.	\$ 434,140 allocation +150,000 carryover	14 – Housing Rehabilitation
Community and Economic Development	Funding pool of eligible activities to benefit low to mod persons and areas, may include but not limited to Façade Improvements, Commercial Rehab and Improvements, Acquisition and Microenterprises activities and activity delivery.	\$187,231 carryover	Various Activity and Program Delivery
Habitat for Humanity, NCC	Complete housing unit	\$24,167 carryover	Acquisition



17-201A

TITLE: Conduct a Public Hearing to Consider and Discuss the 2017 Municipal Annexation Plan, Including the Proposed Annexation of Approximately 218 Acres of Land, of Which 49 Acres is Generally Located North of CR 857 and East of Custer Road (and is Referred to as Sub-Area 17-1) and 169 Acres is Generally Located Along the North Side of US Highway 380 (University Drive) and is East of FM 1827 (New Hope Road) and West of CR 337 (and is Referred to as Sub-Area 17-2)

COUNCIL GOAL: Direction for Strategic and Economic Growth

MEETING DATE: August 15, 2017

DEPARTMENT: Planning Department - Development Services

CONTACT: Jennifer Arnold, Planning Manager
Aaron Bloxham, Planner II
Brian Lockley, AICP, Planning Director
Alan Lathrom, Assistant City Attorney

RECOMMENDED CITY COUNCIL ACTION:

- Conduct the first of two public hearings regarding the proposed annexation of approximately 218 acres of land as part of the 2017 Municipal Annexation Plan.

ITEM SUMMARY:

- In January 2017, the City of McKinney approved a Municipal Annexation Plan, which identifies areas in the McKinney Extraterritorial Jurisdiction (ETJ) to be annexed into the City Limits on the third anniversary of the date the plan was approved (January 17, 2017).
- The identified annexation area includes two sub-areas known as Sub-Area 17-1 and 17-2. Sub-Area 17-1 is 49 acres and is generally located north of CR 857 and east of Custer Road. Sub-Area 17-2 is 169 acres and is generally located along the north side of US Highway 380 between FM 1827 (New Hope Road) and CR 337. A map of the annexation area is included with this Agenda Item for reference.

- In accordance with Section 43 of the Texas Local Government Code, this Public Hearing item is to receive comments on the Municipal Annexation Plan and the proposed annexation of Sub-Area 17-1 and Sub-Area 17-2. A second Public Hearing will be held at the September 5, 2017 Regular Meeting of the City Council.
- As part of this Public Hearing item, Staff is also making available the proposed Service Plan for the provision of services in accordance with Section 43.056(j) of the Texas Local Government Code.
- The proposed Service Plan reflects the standard template used by the City of McKinney when considering annexations. In accordance with State Law, it includes and describes the full municipal services that the City will be required to provide following annexation.
- As part of the regulated process for annexing property under a Municipal Annexation Plan, the Collin County Commissioners Court has been asked to select five representatives to negotiate the provision of services described in the proposed Service Plan. Following selection of these representatives, City Staff will begin the negotiation process.
- As such, the proposed Service Plan may be amended through the negotiation process over the next several months; however, no services identified in the plan may be eliminated. Following the negotiation process, Staff will present the negotiated Service Plan to the Council at a subsequent meeting.
- The final Service Plan will be attached to the ordinance annexing the area and approved as part of the ordinance. Pursuant to State Law, final action on the proposed annexation will not occur until the year 2020.

BACKGROUND INFORMATION:

- The annexation of land into a municipality's corporate limits is authorized and governed by Chapter 43 of the Texas Local Government Code.
- In accordance with Section 43.052 of the Texas Local Government Code, the City of McKinney has initiated the process of annexing properties as part of a Municipal Annexation Plan.
- The 2017 Municipal Annexation Plan was approved by Ordinance No. 2017-01-012 on January 17, 2017.

- The City of McKinney has met all noticing requirements for this Public Hearing item.

FINANCIAL SUMMARY:

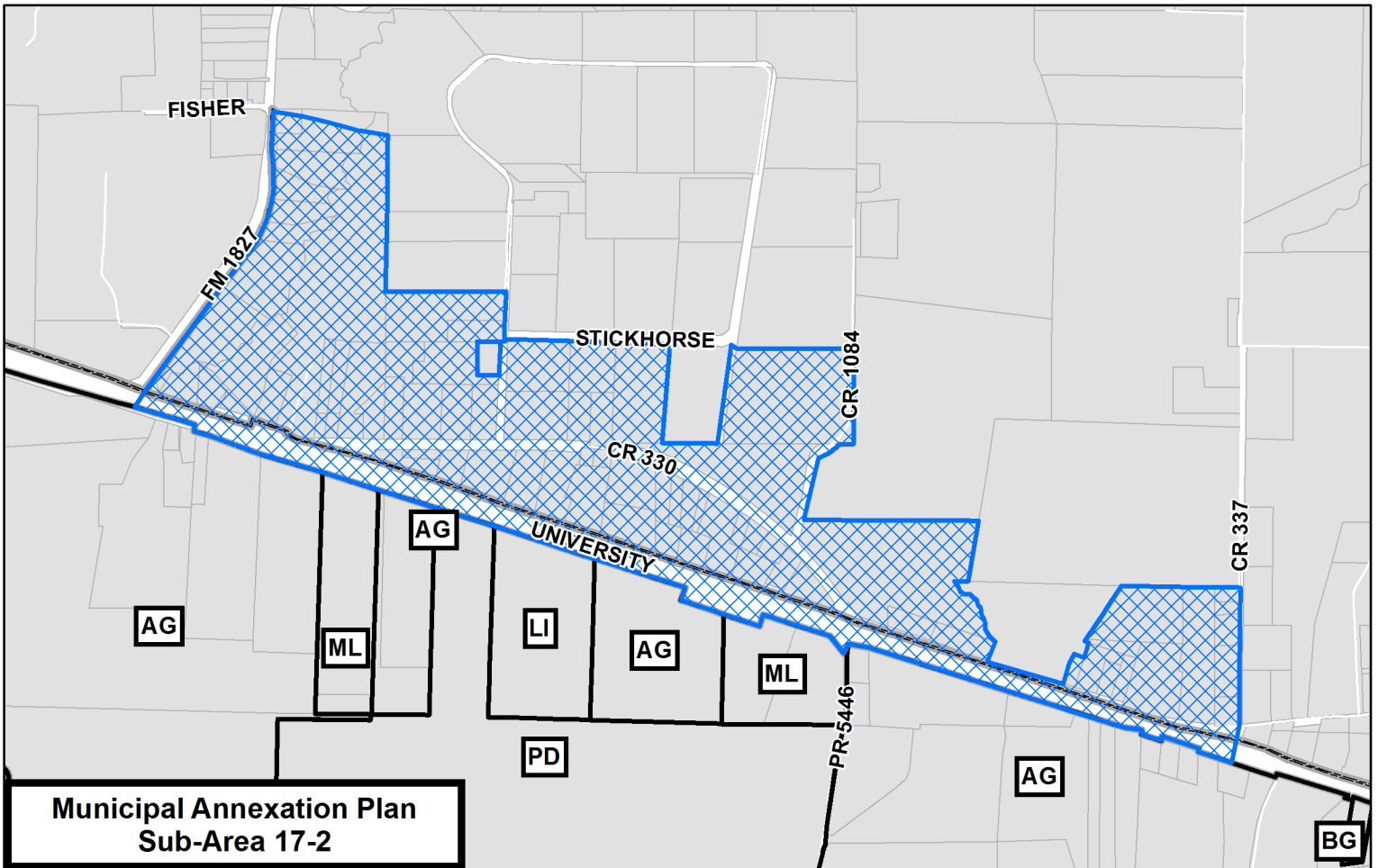
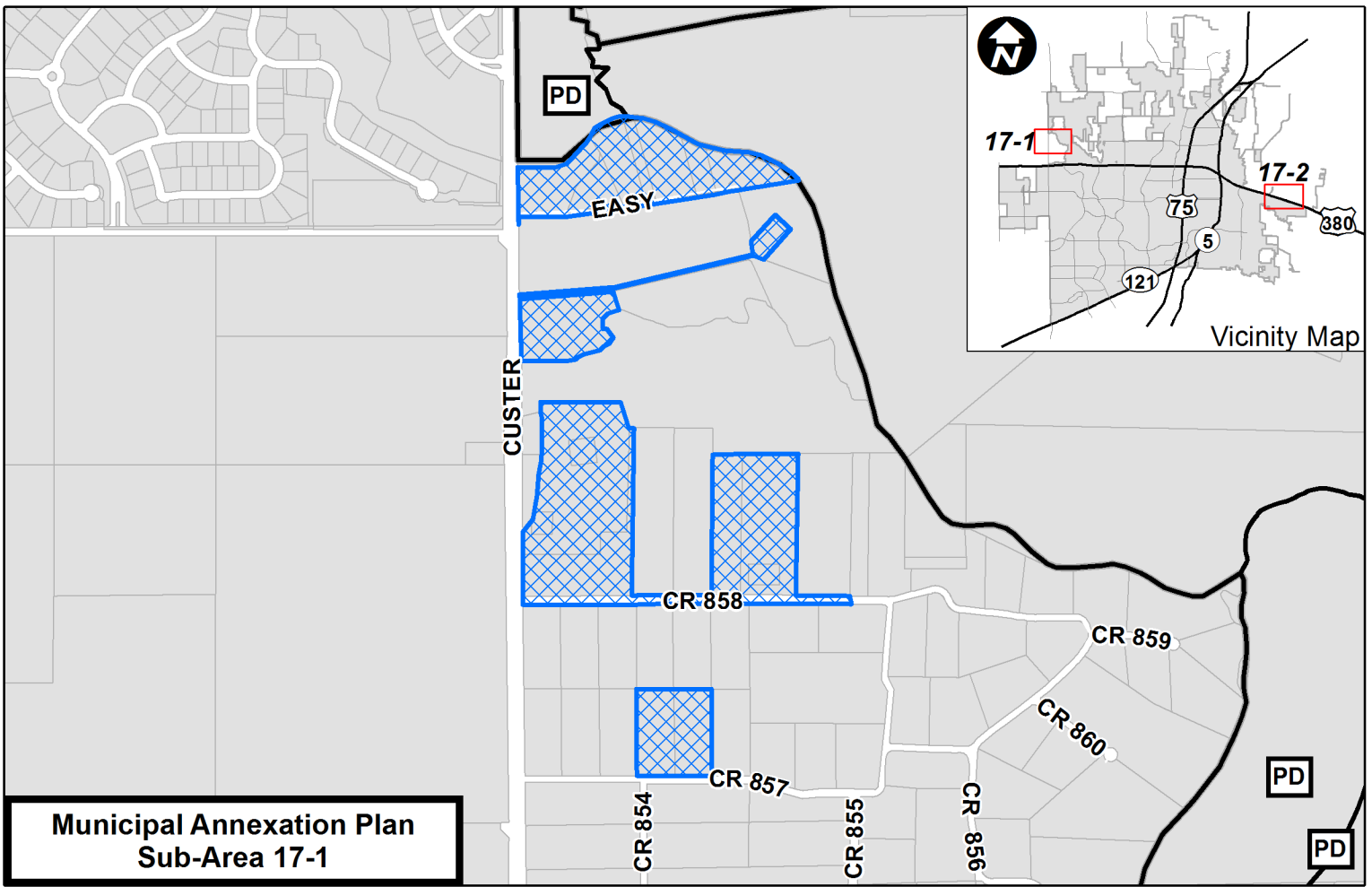
- Annexation of additional property has financial implications for the City.
- Although the ultimate developer(s) of the annexation areas will be responsible for upgrading roads and extending utilities as development occurs, the long-term maintenance of these facilities will be the City's responsibility.
- The ISO rating determines insurance rates in McKinney. Availability of water resources in proposed annexed areas has impacts on ISO ratings.
- An ISO rating is based on a 105 point system:
 - 40 points for water system (supply, distribution, fire flow, hydrants, maintenance, etc.)
 - 50 points for evaluation of the Fire Department itself
 - 10 points for alarm systems
 - 5 points for code enforcement, plan review, etc.
- The effects of additional annexation on ISO ratings are cumulative. The City's current ISO rating is 1 on a scale of 1 to 10, with 1 being the best and 10 being the worst. The latest evaluation was conducted in 2014. An ISO rating of 1 is required to be evaluated every 4 years.
- The Fire Department has indicated that the proposed annexation request may have the potential for a negative impact upon the City's ISO rating due to extended response time to citizens living within the area to be annexed or due to the current water supply and roadway infrastructure to the property which may impact firefighting capabilities.
- Annexed parcels are subject to City property tax. Some of the properties included in the annexation area may currently have an agricultural valuation classification with the Collin Central Appraisal District (CCAD). An AG exemption is given to properties in active agricultural uses, which allows the property to have a lower appraisal value and thus, lower taxes. When property with an AG exemption is developed, it is subject to rollback taxes for each of the previous five years. As such, when/if AG exempt properties in the annexation area develop, the property owner will be required to pay applicable County, ISD, and City taxes which had been exempted during the preceding five-year period.

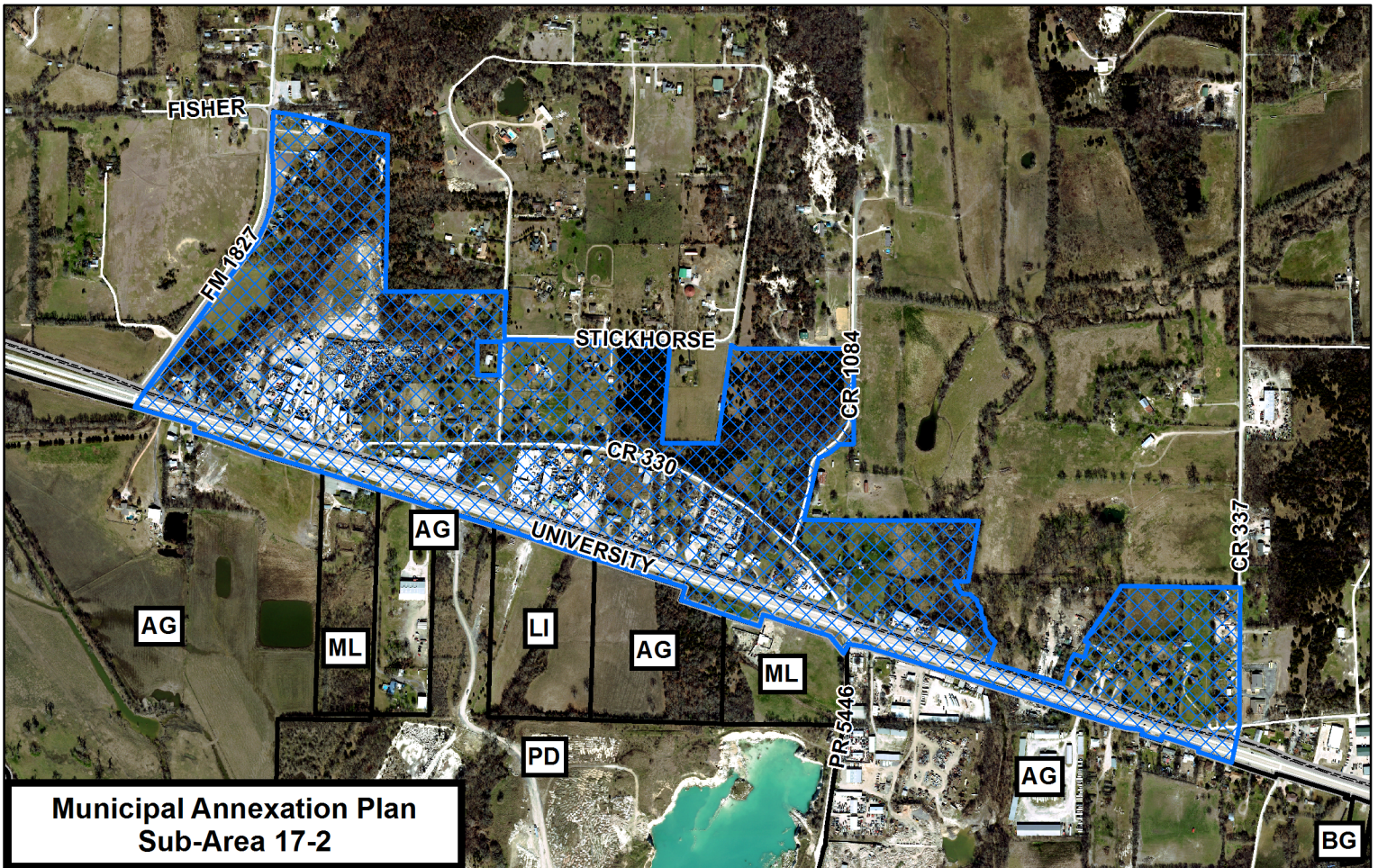
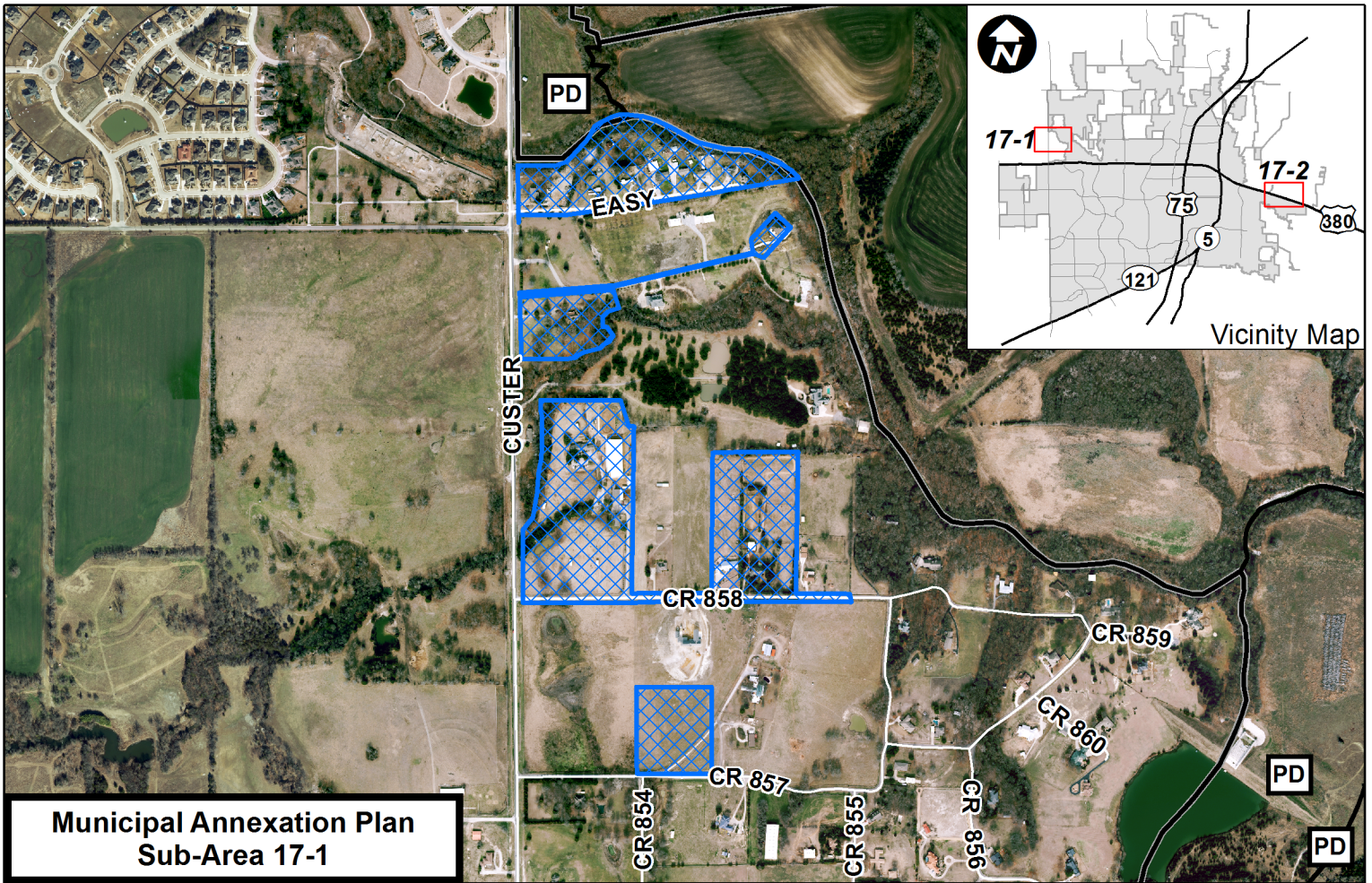
BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[Location Map and Aerial Exhibit](#)
[2017 Municipal Annexation Policy](#)
[Proposed Service Plan](#)
[Presentation](#)





DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of McKinney. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of McKinney, its officials or employees for any discrepancies, errors, or variances which may exist.

2017 MUNICIPAL ANNEXATION POLICY

I. PURPOSE AND INTENT

The purpose of this Annexation Policy is to establish a framework whereby the City of McKinney can proactively identify, analyze, and evaluate areas for potential annexation.

It is the intent of this policy to comply with Chapter 43 of the Texas Local Government Code and to further the stated goals and strategies of the City by:

- a) implementing the City of McKinney Comprehensive Plan;
- b) defining and protecting the ultimate boundaries of McKinney;
- c) ensuring responsible planning; and
- d) ensuring the continued attractive and efficient growth of the City.

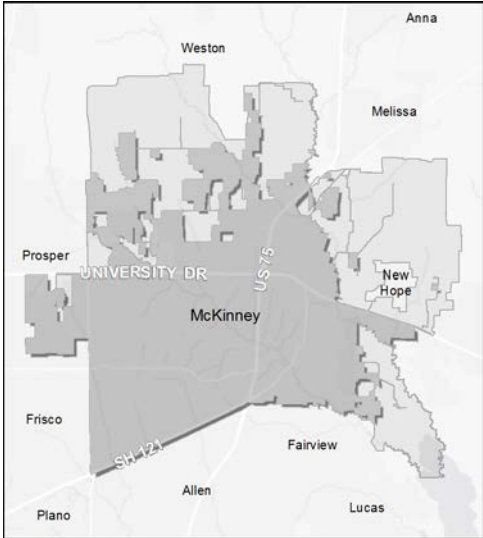
II. BACKGROUND

In the 1999 State of Texas Legislative Session, the State passed Senate Bill 89 which significantly changed the procedures for unilateral annexations initiated by home rule cities. The preparation, adoption, and publication of an Annexation Plan (also referred to as a “Municipal Annexation Plan”) is one of the major items that the State Legislature now requires of all municipalities.

The current Annexation Plan for the City of McKinney was adopted in 1999 and generally states, “the City of McKinney has no plans or intent to annex any property that is required by law to be included in ... [an] Annexation Plan.” The Plan goes on to state that the City reserves the right to involuntarily annex certain properties under the exemption clause of Texas Local Government Code.

As of 2016, the City of McKinney corporate limits is approximately 68 square miles. However, the ultimate area of McKinney is roughly 116 square miles. This means that almost 50 square miles of unincorporated land still currently sits within the City’s Extraterritorial Jurisdiction (ETJ). While the city can exercise subdivision authority within its ETJ, it cannot exercise land use control (i.e. zoning) or taxing authority over those unincorporated areas.

Given the expected growth of the City of McKinney, policy guidance is key to accomplishing and implementing the goals and vision of the City in order to best accommodate anticipated growth.



1 Map of McKinney City Limits and ETJ (2016)

III. PLANNING FOR ANNEXATIONS

When planning for annexations (both voluntary and involuntary), City leaders and decision-makers should consider if the proposed annexation achieves any of the following:

- a) **Economic Development:** Facilitates public-private partnerships intended to stimulate economic growth, diversify the economic base, and/or create job opportunities.
- b) **Long Range Planning:** Accomplishes the goals of the Comprehensive Plan, City Council strategic goals, and/or other city policy documents.
- c) **Protect Future Development:** Protects future development from inadequate design and construction standards through the extension of the City's land use regulations and building codes.
- d) **Capital Investments:** Promotes a sustainable community through the efficient planning and provision of capital investments and the rational extension of public improvements.
- e) **Fiscal Responsibility:** Balances the resources generated by taxes and other revenues to accommodate current needs as well as anticipated future needs.

IV. EVALUATION CRITERIA FOR ANNEXATIONS

Once an area is determined to achieve one of the planning goals described in Section III, city leaders and staff should specifically consider the following when determining if an area located in the Extraterritorial Jurisdiction should be annexed:

- a) Is the area an enclave of the City that would benefit from the systematic and efficient provision of services provided by a city?
- b) Is the City aware of, or anticipate development activity that would require water, sewer, and/or other municipal services to promote public health, safety and welfare in the area?
- c) Is the area identified on the City's Comprehensive Plan as a commercial center, mixed-use center, entertainment center, or professional campus?
- d) Is the City able to provide city services at a level equal to other comparable areas already inside the city limits?
- e) Is there development potential that would benefit from a level of service provided by a city rather than an unincorporated area?
- f) What is the reliability, capacity, and future public cost (if any) of current infrastructure such as roads, drainage, utilities, etc.?
- g) What are the current conditions of existing public services (i.e. police, fire, etc.) as compared to the conditions that currently exist within the City?

V. ANNEXATION PROGRAM

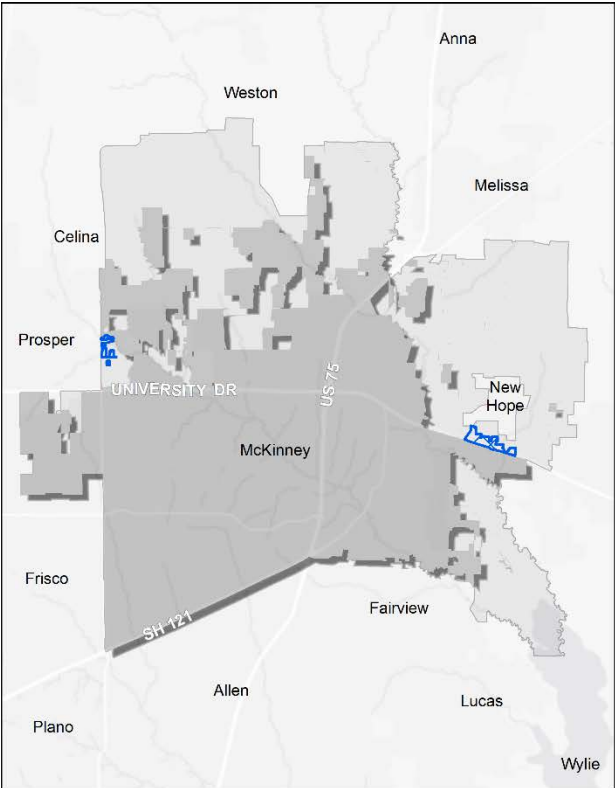
The Annexation Program below outlines the ways in which areas within the Extraterritorial Jurisdiction of McKinney can be annexed.

a) Municipal Annexation Plan (2017)

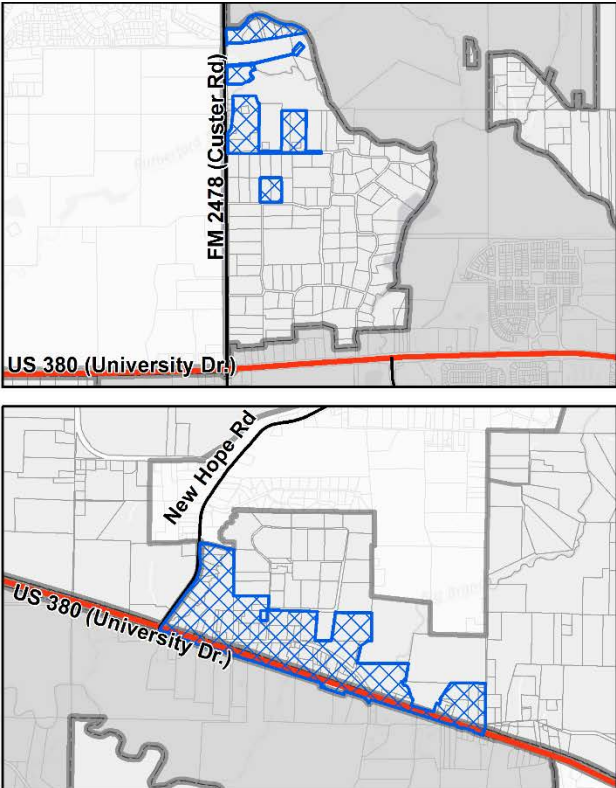
In accordance with Section 43.052 of the Texas Local Government Code, the general purpose of the Municipal Annexation Plan is to identify the areas that the City intends to annex within three years from adoption of the Plan. Below is a table of the areas that have been identified as part of the Municipal Annexation Plan (2017).

Area	Description	Approx. Size	Annexation Year
17-1	Generally located 3,300 feet north of U.S. Highway 380 (University Drive) and east of FM 2478 (Custer Road)	49 Acres	2020
17-2	Generally located north of U.S. Highway 380 (University Drive) and east of New Hope Road	169 Acres	2020

**as depicted on the figures below*



2 Municipal Annexation Plan location map (2017)



3 Enlarged map of Area 17-1 (top) and Area 17-2 (bottom)

Exclusion of an area from the Municipal Annexation Plan does not prevent the city from annexing the area under the exemption qualifications of the Texas Local Government Code.

b) Annexations Exempt from the Municipal Annexation Plan

In accordance with Section 43.052 of the Texas Local Government Code, the City of McKinney may annex certain properties not identified on the 2017 Annexation Plan. The decision to proceed with annexations exempt from the Annexation Plan shall be in conformance with this policy.

c) Voluntary Annexations

In accordance with Section 43.052 of the Texas Local Government Code, a private property owner (or owners) may request to be annexed into a City's corporate limits. Voluntary annexations have led to large expansions and growth of the city and should be evaluated using the planning and evaluation criteria of this policy to ensure that the purpose and intent of this document are being met.

d) Disannexations

In accordance with Chapter 43 of the Texas Local Government Code, real property owners may petition the City Council to disannex from the corporate limits of McKinney. Similarly, the City may seek to disannex an area from the corporate limits of McKinney in accordance with Chapter 43 of the Texas Local Government Code.

DEFINITIONS

- 1) Annexation – The legal process by which a City extends its corporate boundaries.
- 2) Annexation Policy – A set of guidelines for making annexation decisions.
- 3) Disannexation – The process by which territory is removed from the corporate limits of a municipality.
- 4) Enclave - An area within the City’s extraterritorial jurisdiction that is surrounded by the corporate limits of the city and/or the corporate limits or extraterritorial jurisdiction of other municipalities.
- 5) Extraterritorial Jurisdiction (ETJ) – An unincorporated area that is contiguous to, and extends five miles from, the corporate limits of a municipality as determined in Chapter 42 of the Texas Local Government Code.
- 6) Infrastructure – Facilities necessary to provide city services, usually referring to physical assets such as streets and utility lines.
- 7) Municipal Annexation Plan – A document required by Section 43.052 of the Texas Local Government Code that specifically identifies annexations that may occur beginning on the third anniversary of the date the annexation plan is adopted or amended.



**PROPOSED SERVICE PLAN FOR
2017 MUNICIPAL ANNEXATION PLAN
CITY OF MCKINNEY, TEXAS**

ANNEXATION ORDINANCE NO. _____

DATE OF ANNEXATION ORDINANCE: _____

ACREAGE ANNEXED: _____

Introduction:

This Service Plan ("Plan") was prepared by the City of McKinney, Texas ("City") pursuant to Chapter 43 of the Texas Local Government Code. This Plan relates to the annexation of land into the City of McKinney ("Annexation Area") as part of the City's 2017 Municipal Annexation Plan. The annexation area includes approximately 218 acres located in Collin County and more fully described as Sub-Area 17-1, which is 49 acres generally located north of CR 857 and east of Custer Road and Sub-Area 17-2, which is 169 acres generally located along the north side of US Highway 380 (University Drive) between FM 1827 (New Hope Road) and CR 337. This area is currently located within the City's Extraterritorial Jurisdiction ("ETJ") and is adjacent to the full purpose city limits of McKinney.

As noted above, the annexation area is included in the City's 2017 Municipal Annexation Plan that was adopted by Ordinance No. 2017-01-012 on January 17, 2017. Pursuant to the Plan and the Texas Local Government Code, annexation of the area described above will occur no later than thirty (30) days after the third anniversary of the adoption date of the 2017 Municipal Annexation Plan.

Effective Term:

This Service Plan shall be in effect for a ten-year period commencing on the effective date of the annexation.

Municipal services will be provided to the annexed tract(s) of land, by the City in accordance with the following provisions and Texas Local Government Code Section 43.065.

A. POLICE PROTECTION:

1. Police personnel and equipment from the McKinney Police Department will be provided to the area annexed on the effective date of this ordinance.
2. Police protection services will be provided at a level of service equal to current services available in the City, or equal to the level of services available in other parts of the City with topography, land use and population density similar to those contemplated or projected in the annexed area, whichever is applicable.

B. FIRE PROTECTION:

1. Fire protection and Emergency Medical Services (EMS) from the McKinney Fire Department will be provided to the area on the effective date of this ordinance.
2. Fire protection services will be provided at a level of service equal to current services available in the City, or equal to the level of services available in other parts of the City with topography, land use and population density similar to those contemplated or projected in the annexed area, whichever is applicable.

C. FIRE PREVENTION:

The services of the City of McKinney Fire Marshal will be provided to the area upon the effective date of this ordinance.

D. SOLID WASTE COLLECTION:

1. Solid waste collection will be provided to the area annexed upon the effective date of this ordinance. However, for the first two years following annexation, residents who lived in the area prior to the effective date of the annexation may continue to utilize the services of privately owned solid waste providers in accordance with the provision of the Texas Local Government Code.
2. Solid waste collection services will be provided at a level of service at least equal to current services available in the City, or equal to the level of services available in other parts of the City with topography, land use and population density similar to those contemplated or projected in the annexed area, whichever may be applicable.

3. The collection of refuse from individual properties will be made in accordance with the usual Sanitation Department scheduling. Residential customers may utilize the North Texas Municipal Water District - McKinney Landfill in accordance with City ordinances.

E. WATER SERVICE:

1. For portions of the annexed area within the City of McKinney legally certificated area (CCN), the City of McKinney will provide water services to the area by any of the methods by which it extends the services to any other area of the municipality. For portions of the annexed area within the City of McKinney legally certificated area (CCN), water services will be provided at a level of service at least equal to current services available in the City, or equal to the level of services available in other parts of the City with topography, land use and population density similar to those contemplated or projected in the annexed area, whichever may be applicable.
2. When new development occurs, the City of McKinney requires a developer to construct the necessary infrastructure to meet the needs of the development. This requirement may also include off-site improvements.
3. The responsibility for construction of the infrastructure by a developer is described in the City's Subdivision Regulations.
4. For portions of the annexed area within the City of McKinney legally certificated area (CCN), the City of McKinney will allow the provision of extensions of water facilities to the areas annexed on the effective date of this ordinance. Such extensions shall be in accordance with Section 110-1 through 110-165 of the Code of Ordinances, City of McKinney, and as amended.
5. Connection to existing city water mains for water service will be provided in accordance with existing City Policies. Upon connection to existing mains, water will be provided at rates established by City Ordinance.
6. Water mains installed or improved to City standards within the annexed area which are part of the City of McKinney water system and are located within dedicated easements, rights-of-way, or any other acceptable location approved by the City Engineer, will be maintained by the City of McKinney upon the effective date of this ordinance.
7. Maintenance of private lines shall continue to be the responsibility of the owner or occupant.

8. Where other water districts provide water service, any development that occurs will still meet the City of McKinney standards for the sizing and construction of utilities.
9. For portions of the annexed area which are not solely within the City of McKinney's legally certificated area (CCN), water services shall continue to be provided in the same manner that is described in an approved Judgment, Agreement, Decree or other legal document as of the effective date of this ordinance and as it may thereafter be adopted or amended.

F. SANITARY SEWER SERVICE:

1. The City of McKinney will provide sewer services to the annexed area by any of the methods by which it extends the services to any other area of the municipality. Upon annexation, sanitary sewer services will be provided at a level of service at least equal to current services available in the City, or equal to the level of services available in other parts of the City with topography, land use and population density similar to those contemplated or projected in the annexed area, whichever may be applicable.
2. When new development occurs, the City of McKinney requires a developer to construct the necessary infrastructure to meet the needs of the development. This requirement may also include off-site improvements.
3. The responsibility for construction of the infrastructure by a developer is described in the City's Subdivision Regulations.
4. The City of McKinney will allow the provision of extensions of sanitary sewer facilities to the areas annexed upon the effective date of this ordinance. Such extensions shall be in accordance with Section 110-1 through 110-165 of the Code of Ordinances, City of McKinney, and as amended.
5. Connection to existing city sanitary sewer mains for sewage service will be provided in accordance with existing City Policies. Upon connection to existing mains, sanitary sewer collection will be provided at rates established by City Ordinances.
6. Sanitary sewer mains and lift stations installed or improved to City Standards within the annexed area which are located within dedicated easement, rights-of-way, or any other acceptable location approved by the City Engineer, will be maintained by the City of McKinney upon the effective date of this ordinance.

G. STREETS:

1. Emergency street maintenance will be provided for publicly dedicated streets or roads within the areas annexed upon the effective date of this ordinance. Routine maintenance will be scheduled as part of the City's annual street maintenance program in accordance with the then current policies and procedures defined by ordinance.
2. Street services will be provided at a level of service at least equal to current services available in the City, or equal to the level of services available in other parts of the City with topography, land use and population density similar to those contemplated or projected in the annexed area, whichever may be applicable.

H. PARKS AND RECREATION:

1. The City of McKinney will provide parks and recreation services to this annexed area by any of the methods by which it extends the services to any other area of the municipality. When new development occurs, the City of McKinney requires a developer to construct hike/bike trails in keeping with the Parks Master Plan. Additionally, new developments must still satisfy the parkland dedication requirements that call for the dedication of land or the payment of fees in lieu of land for park uses.
2. Residents within the areas annexed may utilize all existing park and recreation facilities upon the effective date of this Ordinance. Fees for such usage shall be in accordance with current fees established by ordinance.
3. Additional park and recreation facilities will be constructed based on Park policies defined in the approved Comprehensive Plan and/or the Parks Master Plan, as such plans may be amended from time to time. The general planned locations and classifications of parks will ultimately serve residents from the current city limits and residents from areas being considered for annexation.

I. ENVIRONMENTAL HEALTH AND CODE ENFORCEMENT SERVICES:

1. Enforcement of current environmental health ordinances and regulations, including but not limited to, weed and brush ordinances, junked and abandoned vehicles ordinances and animal control ordinances, will begin within this area upon the effective date of this annexation ordinance.
2. Inspection services, including but not limited to, the review of building plans, the issuance of permits and the inspection of all buildings, plumbing, mechanical, and electrical work to ensure compliance with City

Codes and Ordinances will be provided within this area upon the effective date of this ordinance.

3. The City will provide the level of Environmental Health and Code Enforcement Services equal to current services available in the City, or equal to the level of services available in other parts of the City with topography, land use and population density similar to those contemplated or projected in the annexed area, whichever may be applicable.

J. PLANNING AND ZONING:

The annexed area shall be zoned in conjunction with the annexation pursuant to the City's Comprehensive Zoning Ordinance (Chapter 146 of the McKinney Code of Ordinances, as amended). The Future Land Use Plan and Future Land Use Plan Modules Diagram contained within the Comprehensive Plan, as amended, will serve as a guide for consideration of future (re)zoning requests.

K. MISCELLANEOUS:

Any city owned facility, building, or service located within the annexed area will be operated and maintained by the City upon the effective date of the annexation ordinance.

L. CAPITAL IMPROVEMENTS PROGRAM

If this area is annexed, such areas are immediately eligible for Capital Improvement Program consideration.

M. OTHER MUNICIPAL SERVICES

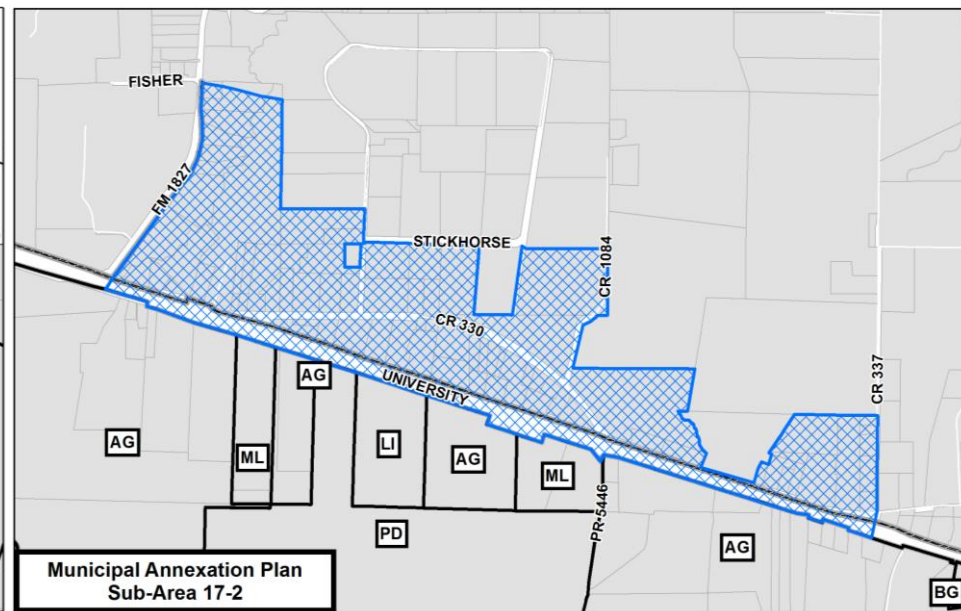
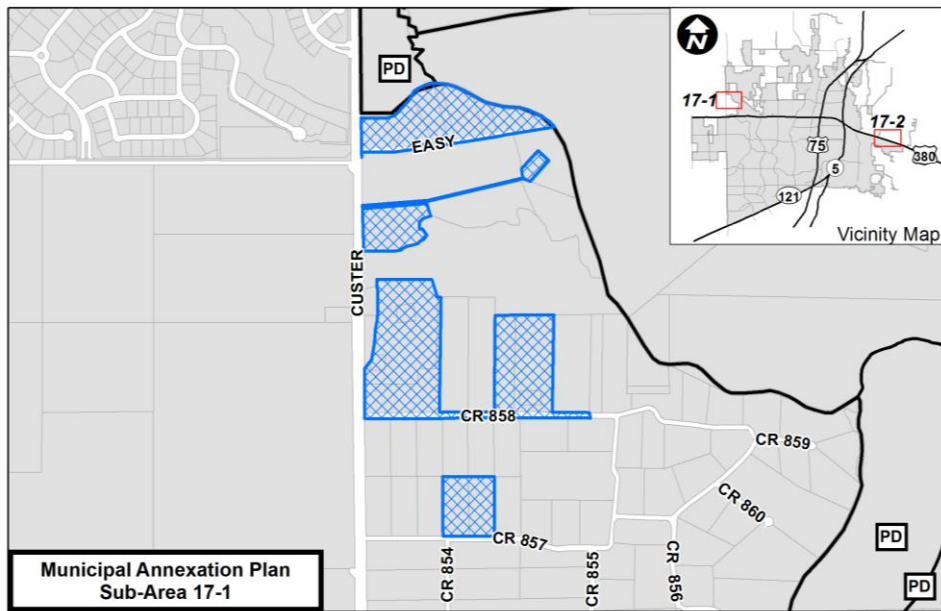
Other municipal services for areas not specifically listed in Sections A-K shall be provided to an annexed area no later than two and one-half years after the effective date of the annexation, unless certain services cannot reasonably be provided within two and one-half years. In that case, the City shall propose a schedule for providing certain services, and the schedule shall provide for the provision of full municipal services no later than four and one-half years after the effective date of the annexation.

Proposed Annexation of Areas Identified in 2017 Municipal Annexation Plan

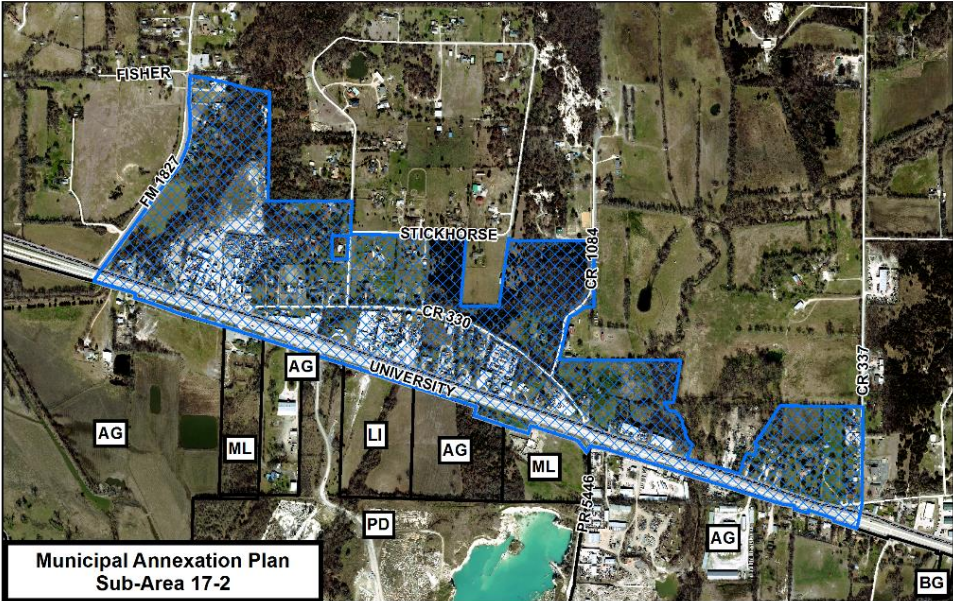
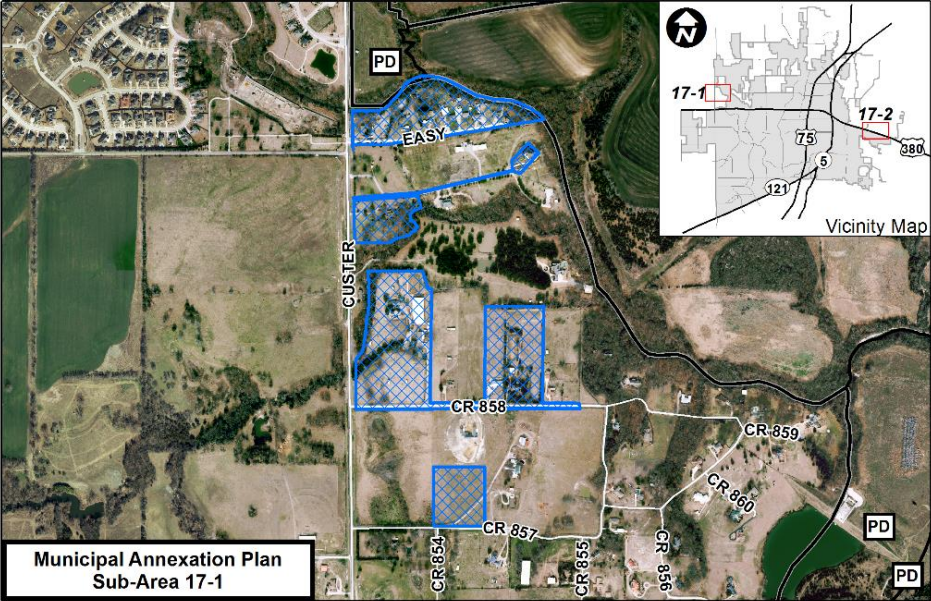
17-201 A



Location Map



Aerial Exhibit



Proposed Annexation: Proposed Service Plan

(Sub-Area 17-1 and Sub-Area 17-2)

- Police Protection
- Fire Protection and Emergency Medical Services
- Fire Prevention
- Solid Waste Collection
- Water Service
- Sanitary Sewer Service
- Streets
- Parks and Recreation
- Environmental, Health, and Code Enforcement Services
- Planning and Zoning
- Miscellaneous (City owned facility, building, or service)

**the City is required to provide the annexed area with a level of service that is comparable to the level of service available in other parts of the City with topography, land use and population density similar to those contemplated or projected in the annexation area.*

Proposed Annexation: Proposed Service Plan

(Sub-Area 17-1 and Sub-Area 17-2)

▪ Water and Sanitary Sewer Services

- provided to the area by any of the methods by which we extend the services to any other area of the municipality
- will be provided at a level of service at least equal to current services available in the City, or **equal to the level of services available in other parts of the City with topography, land use and population density** similar to those contemplated or projected in the annexed area
- For new development, the City of McKinney requires developers to construct the necessary infrastructure to meet the needs of the development. This requirement may also include off-site improvements.

▪ Capital Improvements Program

- Upon annexation, the area becomes eligible for Capital Improvement Program consideration.



Municipal Annexation Plan Timeline

2017

2020

- [2017] Draft/adopt Municipal Annexation Plan
- [2017] Notify property owners included in the Municipal Annexation Plan
- [2017] Collect inventory of public services and publish findings for inspection
- [2017] Create Proposed Service Plan
- [2017] Conduct public hearings for persons interested in the annexation
- [2017] Negotiate and Finalize Service Plan
- [2020] Complete annexation proceedings within 30 days of the third anniversary of the adopted/amended Municipal Annexation Plan

What happens during the 3 years before annexation?

During the three years prior to annexation, properties identified in the annexation plan are still considered part of the ETJ and may continue to legally operate as they currently do.



17-826

TITLE: Conduct First Public Hearing on Proposed Tax Rate for Fiscal Year 2017-18
(Tax Year 2017)

COUNCIL GOAL: Financially Sound Government

MEETING DATE: August 15, 2017

DEPARTMENT: Financial Services

CONTACT: Mark Holloway, Chief Financial Officer

RECOMMENDED CITY COUNCIL ACTION:

- Conduct the first public hearing on the FY2017-18 proposed tax rate.
- Announce:
 - Second Public Hearing: September 5, 2017, 6:00 p.m. at the Jack Hatchell Collin County Administration Building, 4th Floor-Commissioners Court, 2300 Bloomdale Rd.
 - Tax Rate Adoption Date: September 19, 2017, 6:00 p.m. at the Jack Hatchell Collin County Administration Building, 4th Floor-Commissioners Court, 2300 Bloomdale Rd.

ITEM SUMMARY:

- The proposed tax rate is \$0.540199 based on 100% market ratio on each \$100 of all taxable property within the City. The proposed tax rate is 0.032801 cents lower than last year.
- The rate for Maintenance and Operations (M&O) is \$0.375611 per \$100 valuation.
- The rate for Interest and Sinking Funds (I&S) is \$0.164588 per \$100 valuation.
- The tax rate ratio is 70% for M&O and 30% for I&S.
- The proposed tax rate exceeds the effective tax rate of \$0.526703.
- The proposed tax rate will raise more taxes for M&O than last year's tax rate.
- The amount of taxes imposed this year on the average home value of \$324,636 would be \$1,754.

BACKGROUND INFORMATION:

- State law requires an entity to hold two public hearings before adopting a tax rate.
- On July 31, 2017, the City Council took a roll call vote on the tax rate.
- The two public hearings are on August 15, 2017 and September 5, 2017.
- The tax rate adoption date is September 19, 2017, which must be a record vote, and at least 60 percent of the members of the governing body must vote in favor of the Ordinance.

FINANCIAL SUMMARY:

- Estimated tax revenues of \$72,467,604 (100% collection rate) for FY 2017-18 are based on this tax rate.

SUPPORTING MATERIALS:

[Presentation](#)

First Public Hearing – Tax Rate

City of McKinney
Budget Department



FY2018 Taxes

- Tax rate of \$0.540199 proposed for FY18
- Existing values have increased 9% over FY17
- New values account for 4.6% of taxable roll

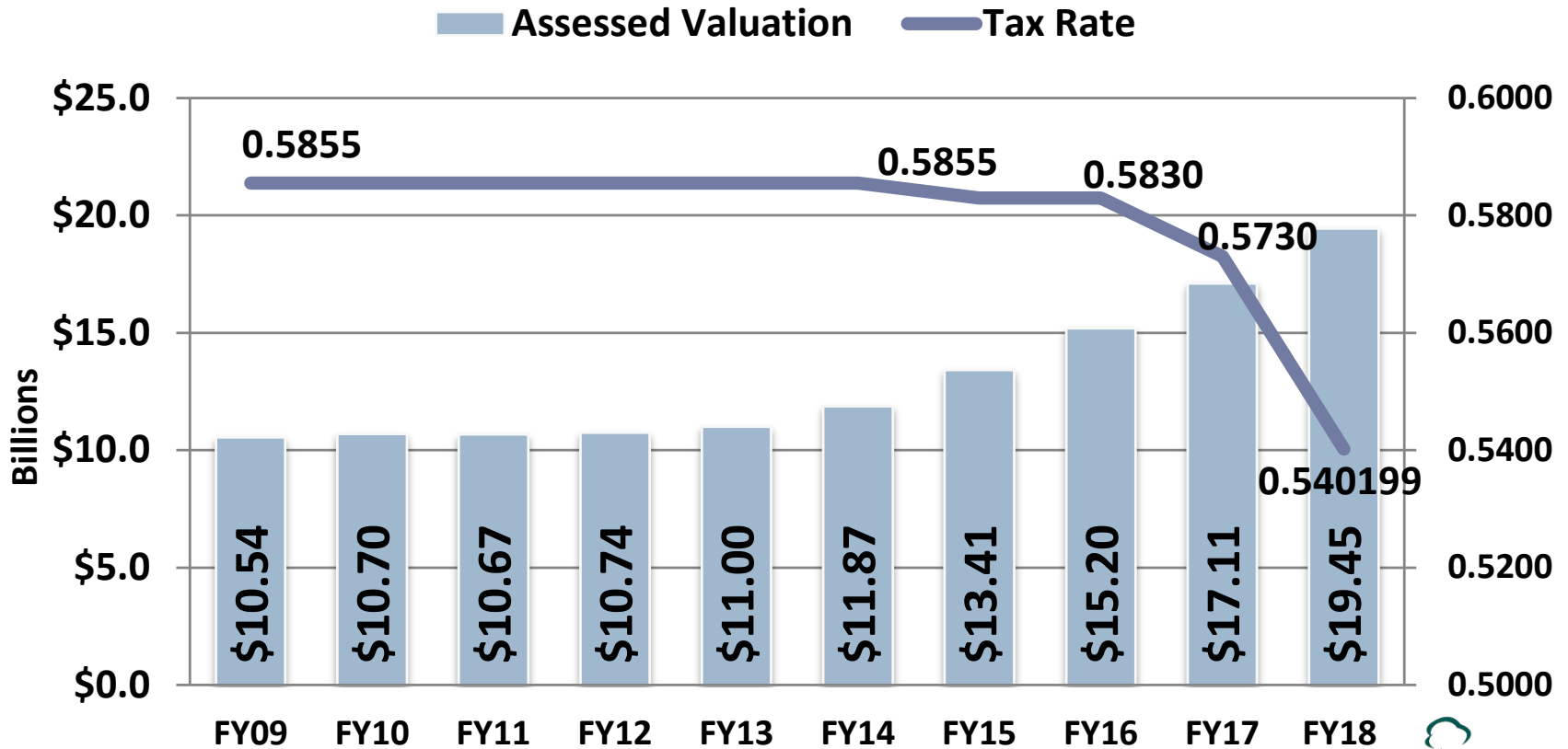


Tax Rates

	2016-2017	2017-2018
Property Tax Rate	\$0.573000	\$0.540199
Debt Rate	\$0.171231	\$0.164588
M&O Rate	\$0.401769	\$0.375611
Effective Tax Rate	\$0.534543	\$0.526703
Rollback Rate	\$0.577210	\$0.562605



Taxable Value History



Upcoming Events

Sept. 5

- Tax Rate – Second Public Hearing
- Budget – First Public Hearing

Sept. 19

- Budget – Second Public Hearing
- Ratification of Property Tax Revenue Increase
- Adopt Budget, Tax Rate, and Fee/Rate Ordinance



TITLE: Consider/Discuss/Act Upon Adoption of a Resolution Determining a Public Necessity to Acquire Certain Properties for Public Use by Eminent Domain for Right-of-Way (in Fee Simple), Drainage Easements, Water Line Easements, Access Easements and Temporary Construction Easements for the Construction, Access and Maintenance of the Trinity Falls Parkway Project and Related Infrastructure Commencing in the Vicinity of its Intersection with FM 543 and Continuing Southwesterly Along Trinity Falls Parkway to the Existing Connection to Laud Howell Parkway; Authorizing the City Manager to Establish Procedures for Acquiring the Right of Way (in Fee Simple) and Easements on Said Properties, and Take All Steps Necessary to Acquire the Needed Property Rights in Compliance with all Applicable Laws and Resolutions

COUNCIL GOAL: Direction for Strategic Growth

MEETING DATE: August 15, 2017

DEPARTMENT: Development Services / Engineering

CONTACT: Gary Graham, PE, Director of Engineering

RECOMMENDED CITY COUNCIL ACTION:

- Approval of Resolution using a motion in a form substantially similar to the following:

“I move that the City of McKinney, Texas, City Council approve this item as written and adopt the Resolution described in this agenda item and authorize the use of the power of eminent domain to acquire for public use all necessary right-of-way (in fee simple) and easements from the owners of the properties depicted on and described by metes and bounds attached to said Resolution, said depictions and descriptions being incorporated in their entirety into this motion for all purposes including the construction, access and maintenance of the Trinity Falls Parkway Project and related Infrastructure commencing in the vicinity of its intersection with FM 543 and continuing southwesterly to the existing connection to Laud Howell Parkway.”

ITEM SUMMARY:

- This Resolution provides authority to the City Manager to execute documents for the acquisition of right-of-way (ROW) and easements; and the use of Eminent Domain to condemn property rights to construct Trinity Falls Parkway commencing in the vicinity of its intersection with FM 543 and continuing southwesterly to the existing connection with Laud Howell.

BACKGROUND INFORMATION:

- The City entered into a Development Agreement (Agreement) with the developers of the Trinity Falls Subdivision (Owner). Per the Agreement, Owner agreed to acquire the necessary property rights to construct certain capital improvements, including but not limited to roadways, waterlines and drainage facilities.
- In accordance with the Agreement, if after using reasonable efforts Owner is unable to acquire certain property rights, the City will cooperate with Owner, at the sole cost and expense of the Owner, to acquire the needed property rights including, but not limited to, exercising the City’s power of eminent domain. The decision to exercise such power to be within the sole discretion of the City.
- Owner has been unsuccessful in securing all necessary property rights and has subsequently requested assistance from the City.
- Appraisals were completed and offer letters sent to the property owners, affected by the project, by the Law Firm of Brown & Hofmeister (B&H) on behalf of the Owner.
- In light of the counteroffers and responses received from the property owners, the City anticipates resistance in acquiring the necessary property rights.
- Negotiations have been ongoing with the property owners and Owner has been successful in acquiring a few of the necessary land rights.
- There are eight remaining property owners, identified below and in the attached Resolution as Exhibits B-1 through B-8, for which Owner has requested acquisition assistance from the City to purchase the necessary property rights in order to construct the project.
- Should the City agree to acquire the remaining ROW and easements through the initiation of eminent domain, the following is a list of the property owners and needed property rights (see attached project location map):

#	Property Owner	Description	Area/Acres	Exhibit
1	RL Trust	Drainage Easement	0.343	B1
		Temporary Construction Easement (TCE)	0.574	• •

2	Estate of Tom B. Wilson, Sr.	Right of Way	0.087	B2
		Drainage Easement	0.336	•
		Water Line Easement	0.195	•
		TCE	0.617	•
3	Arch Resorts	Drainage Easement	0.367	B3
		TCE	0.635	•
4	NJV	Drainage Easement	0.334	B4
		TCE	0.530	•
5	Augspurger	Drainage Easement	0.498	B5
		Water Line Easement	0.345	•
		TCE	1.146	•
6	Monty Jackson	Right of Way	1.156	B6
		Drainage Easement	1.583	•
		Water Line Easement	0.690	•
		TCE	2.929	•
7	Nyberg	Drainage Easement	0.099	B7
		Drainage Easement	0.089	•
		Water Line Easement	0.239	•
		TCE	0.708	•
8	Grogean	Drainage Easement	0.006	B8
		Water Line Easement	0.011	•
		Water Line Easement	0.153	•
		TCE	0.771	•

- SB 18 allows a single resolution to be adopted if: (a) the motion indicates that the first record vote applies to all units of property to be condemned; and (b) the minutes of the City reflect that the first vote applies to all of those units. If two or more members of the City Council object to adopting a single resolution for all of the units of property, then a separate vote must be made for each unit.
- The City will continue to attempt to amicably acquire the necessary property rights from the landowners voluntarily through negotiations prior to filing an action in Eminent Domain.

FINANCIAL SUMMARY:

- In accordance with the Development Agreement, funds for the acquisition of land rights will be provided for by the Owner.

BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[Resolution](#)

[Location Map](#)

RESOLUTION NO. 2017-08-____ (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, DETERMINING A PUBLIC NECESSITY TO ACQUIRE CERTAIN PROPERTIES FOR PUBLIC USE BY EMINENT DOMAIN FOR RIGHT OF WAY (IN FEE SIMPLE) AND DRAINAGE, WATER, ACCESS AND TEMPORARY CONSTRUCTION EASEMENTS FOR THE CONSTRUCTION, ACCESS AND MAINTENANCE ASSOCIATED WITH THE TRINITY FALLS PARKWAY PROJECT AND ASSOCIATED INFRASTRUCTURE COMMENCING IN THE VICINITY OF ITS INTERSECTION WITH FM543 AND CONTINUING SOUTHWESTERLY ALONG TRINITY FALLS PARKWAY TO THE EXISTING CONNECTION TO LAUD HOWELL PARKWAY; AUTHORIZING THE CITY MANAGER TO ESTABLISH PROCEDURES FOR ACQUIRING THE RIGHT OF WAY (IN FEE SIMPLE) AND EASEMENTS ON SAID PROPERTIES, OFFERING TO ACQUIRE THE RIGHT OF WAY (IN FEE SIMPLE) AND EASEMENTS VOLUNTARILY FROM THE PROPERTY OWNERS THROUGH THE MAKING OF BONA FIDE OFFERS, AND TAKE ALL STEPS NECESSARY TO ACQUIRE THE NEEDED PROPERTY RIGHTS

WHEREAS, the City Council of the City of McKinney, Texas, has determined that a public need and necessity exists for the construction of the Trinity Falls Parkway Project and associated infrastructure, commencing in the vicinity of its intersection with FM543 continuing southwesterly along Trinity Falls Parkway to the existing connection to Laud Howell Parkway, the location of which is generally set forth in the map attached hereto as Exhibit A; and

WHEREAS, the City Council has considered this project and has determined that a public necessity exists for the acquisition of right of way (in fee simple), along with drainage, water line, access and temporary construction easements, as described on Exhibits B1 – B8, attached hereto and incorporated herein for all purposes (“Properties”).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

- Section 1. All of the above premises to be true and correct legislative and factual findings of the City Council, and they are hereby approved, ratified and incorporated into the body of this resolution as if copied in their entirety.
- Section 2. That the City Council of the City of McKinney, Texas hereby authorizes the City Manager to execute documents, as needed, to acquire the necessary Properties for the Trinity Falls Parkway Project.
- Section 3. That the City Council hereby finds and determines that a public use and necessity exists for the City of McKinney for the construction of the Trinity Falls Parkway Project and to acquire the necessary Properties in those certain tracts or parcels of land deemed necessary for that construction as identified in the construction plans and specifications as amended, together with all necessary appurtenances, additions and improvements on, over, under, and through those certain lots, tracts or parcels of land described in Exhibits B1 – B8.
- Section 4. That the City Manager is authorized and directed to negotiate for and to acquire the required Properties for the City of McKinney, and to acquire said rights in compliance with State and Federal law. That the City Manager is specifically authorized and directed to do each and every act necessary to acquire the needed Properties including, but not limited to, the authority to negotiate, give notices, make written offers to purchase, prepare contracts, to designate a qualified appraiser of the Properties to be acquired when such appraisal is necessary and, where necessary, the use of Eminent Domain to condemn the Properties.

Section 5. That the City Manager, or any individual he may so designate, is appointed as negotiator for the acquisition of the Properties and, as such, the City Manager is authorized and directed to do each and every act and deed hereinabove specified or authorized by reference, subject to the availability of funds appropriated by the City Council for such purpose. That the City Manager is specifically authorized to establish the just compensation for the acquisition of the Properties. That, if the City Manager or his designee determines that an agreement as to damages or compensation cannot be reached, then the City Attorney or his designee is hereby authorized and directed to file or cause to be filed, against the owners and interested parties of the subject Properties, proceedings in eminent domain to acquire the above-stated interest in the Properties.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 15th DAY OF AUGUST 2017.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

ATTEST:

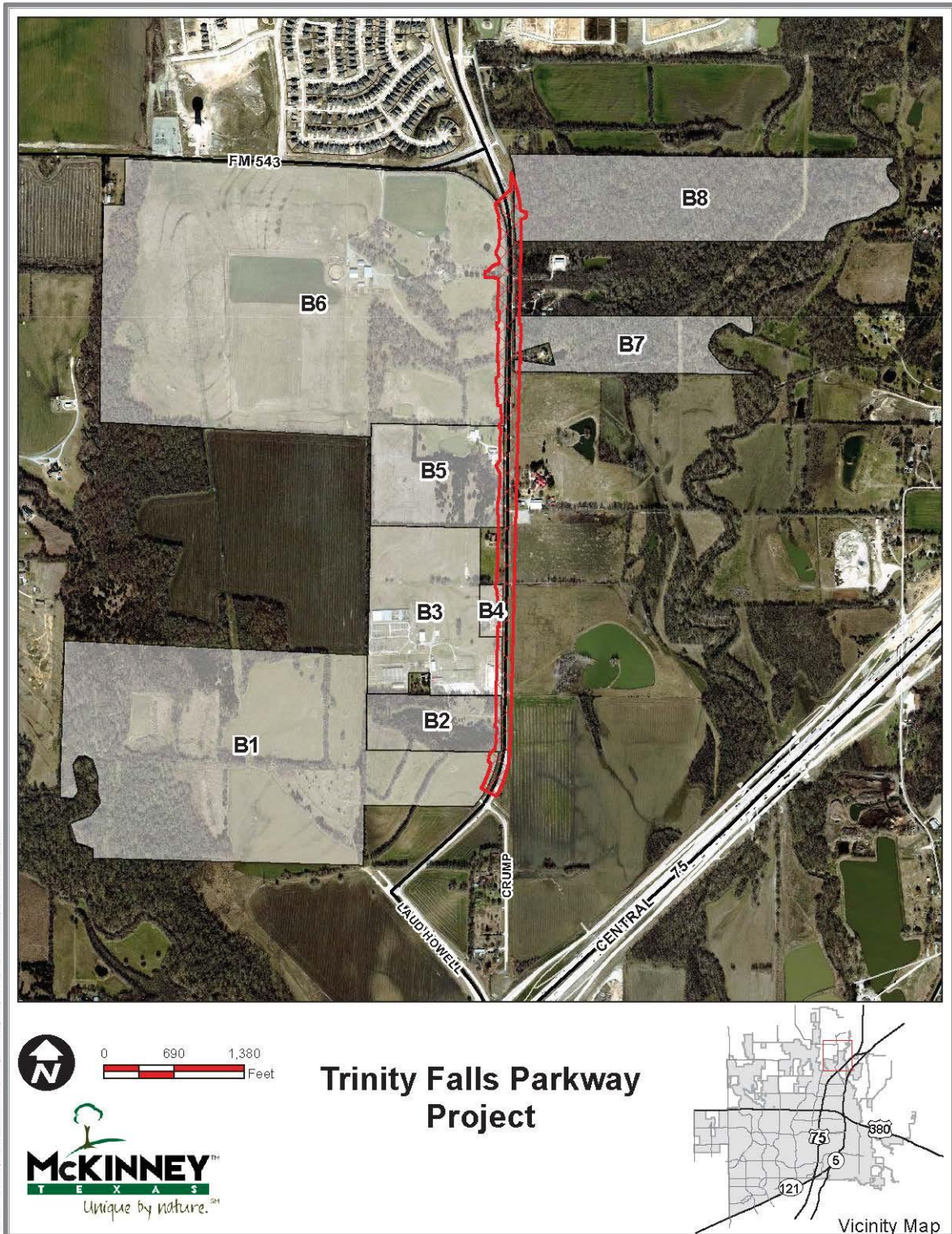
SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

EXHIBIT "A"

Location Map



Path: C:\Users\cammona\Desktop\Engineering\City Real Estate\Trinity Falls Parkway.mxd

DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of McKinney. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of McKinney, its officials or employees for any discrepancies, errors, or variances which may exist.

EXHIBIT "B-1"

Depiction and Description of Drainage Easement & Temporary Construction Easement on Roger Lawler, Trustee of RL Trust Property

LEGAL DESCRIPTION

0.343 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, City of McKinney, Collin County, Texas, and being a portion of a called 153.125 acre tract of land described in a Special Warranty Deed to Roger Lawler, Trustee of RL Trust under agreement dated July 17, 2013, as recorded in Instrument No. 20140314000241690 of the Official Public Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod found for the northeast corner of a called 1.2141 acre tract of land described in a deed to City of McKinney, as recorded in Instrument No. 20130418000524570 of the Official Public Records of Collin County, Texas, common to the southeast corner of a called 16.857 acre tract of land described in a deed as Tract 1-C to Tom B. Wilson, Sr., as recorded in Volume 935, Page 598 of the Land Records of Collin County, Texas, being on the westerly right-of-way line of FM 543 (Weston Road), a variable width right-of-way as dedicated by Volume 516, Page 47, 540, 547, 553, 555, and 563 of the Deed Records of Collin County, Texas, and conveyed to City of McKinney in a Transfer of Right-of-Way as recorded in Instrument No. 20140217000146290 of the Official Public Records of Collin County, Texas, from which an iron pipe found for witness bears North 89°52' West, 1.7 feet;

THENCE North 88°25'34" West, departing the westerly line of said FM 543, along the northerly line of said 1.2141 acre tract and the southerly line of said 16.857 acre tract, a distance of 24.35 feet to a point at the beginning of a non-tangent curve to the right, for the northwest corner of said 1.2141 acre tract, the northeast corner of said 153.125 acre tract, and for the **POINT OF BEGINNING** of the herein described easement tract;

THENCE in a southwesterly direction, departing the southerly line of said 16.857 acre tract, along the easterly line of said 153.125 acre tract, along the westerly line of said 1.2141 acre tract, with said curve to the right, having a radius of 990.00 feet, a delta angle of 22°35'48", an arc distance of 390.44 feet, and a chord bearing South 18°25'53" West, a distance of 387.92 feet to a point for corner at the end of said curve;

THENCE North 60°16'41" West, departing the easterly line of said 153.125 acre tract and the westerly line of said 1.2141 acre tract, and crossing said 153.125 acre tract, a distance of 39.87 feet to a point at the beginning of a non-tangent curve to the left;

THENCE in a northeasterly direction and continuing across said 153.125 acre tract, with said curve to the left, having a radius of 950.00 feet, a delta angle of 21°30'11", an arc distance of 356.54 feet, and a chord bearing North 18°58'13" East, a distance of 354.45 feet to a point for corner at the end of said curve;

THENCE South 82°59'15" East, continuing across said 153.125 acre tract, a distance of 15.21 feet to a point for corner;

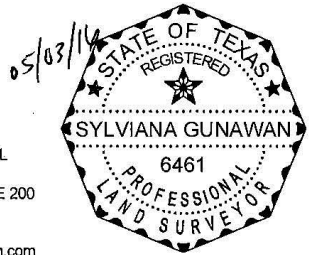
THENCE North 7°00'45" East, continuing across said 153.125 acre tract, a distance of 15.72 feet to a point for corner on the northerly line of said 153.125 acre tract and the southerly line of said 16.857 acre tract;

THENCE South 88°25'34" East, along the northerly line of said 153.125 acre tract and the southerly line of said 16.857 acre tract, a distance of 25.04 feet to the **POINT OF BEGINNING** and containing 0.343 of an acre (14960 square feet) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.


 SYLVIANA GUNAWAN
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 6461
 5750 GENESIS COURT, SUITE 200
 FRISCO, TEXAS 75034
 PH. 972-335-3580
 sylviana.gunawan@kimley-horn.com



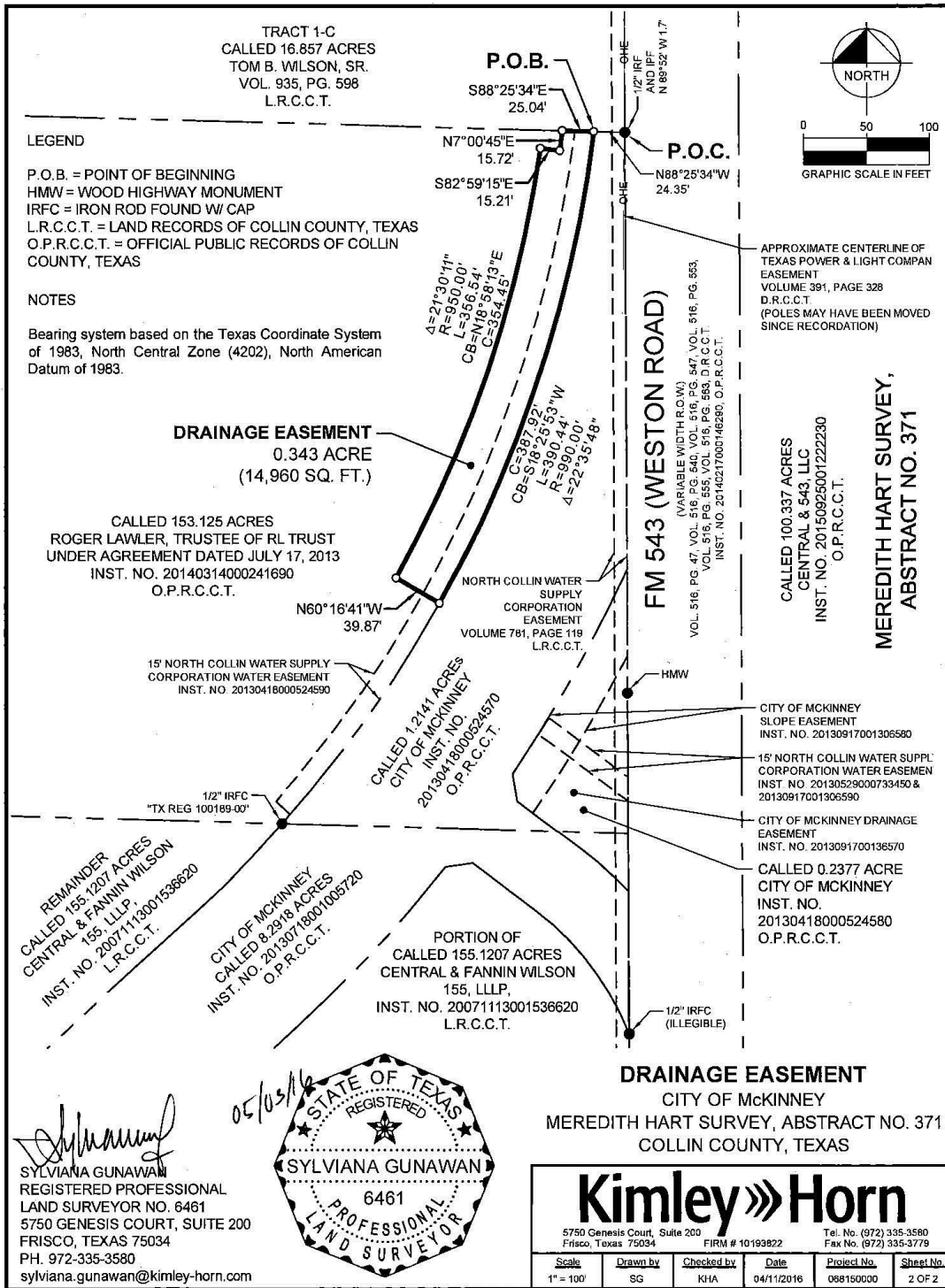
DRAINAGE EASEMENT
 CITY OF MCKINNEY
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	04/11/2016	068150000	1 OF 2

GUNAWAN, SYLVIANA 5/3/2016 11:48 AM K:\FRL_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\RL TRUST\RL TRUST DE.DWG



LEGAL DESCRIPTION

0.574 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, City of McKinney, Collin County, Texas, and being a portion of a called 153.125 acre tract of land described in a Special Warranty Deed to Roger Lawler, Trustee of RL Trust under agreement dated July 17, 2013, as recorded in Instrument No. 20140314000241690 of the Official Public Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod found for the northeast corner of a called 1.2141 acre tract of land described in a deed to City of McKinney, as recorded in Instrument No. 20130418000524570 of the Official Public Records of Collin County, Texas, common to the southeast corner of a called 16.857 acre tract of land described in a deed as Tract 1-C to Tom B. Wilson, Sr., as recorded in Volume 935, Page 598 of the Land Records of Collin County, Texas, being on the westerly right-of-way line of FM 543 (Weston Road), a variable width right-of-way as dedicated by Volume 516, Page 47, 540, 547, 553, 555, and 563 of the Deed Records of Collin County, Texas, and conveyed to City of McKinney in a Transfer of Right-of-Way as recorded in Instrument No. 20140217000146290 of the Official Public Records of Collin County, Texas, from which an iron pipe found for witness bears North 89°52' West, 1.7 feet;

THENCE North 88°25'34" West, departing the westerly line of said FM 543, along the northerly line of said 1.2141 acre tract and the southerly line of said 16.857 acre tract, a distance of 24.35 feet to a point at the beginning of a non-tangent curve to the right for the northwest corner of said 1.2141 acre tract, common to the northeast corner of a called 153.125 acre tract of land described in a deed to Roger Lawler, Trustee of RL Trust under Agreement dated July 17, 2013, as recorded in Instrument No. 20140314000241690 of the Official Public Records of Collin County, Texas, and for the **POINT OF BEGINNING** of the herein described easement tract;

THENCE in a southwesterly direction, departing the southerly line of said 16.857 acre tract, along the westerly line of said 1.2141 acre tract and the easterly line of said 153.125 acre tract, with said curve to the right, having a radius of 990.00 feet, a delta angle of 22°35'48", an arc distance of 390.44 feet, and a chord bearing South 18°25'53" West, a distance of 387.92 feet to a point for corner at the end of said curve;

THENCE departing the westerly line of said 1.2141 acre tract and the easterly line of said 153.125 acre tract, and crossing said 153.125 acre tract, the following courses:

North 60°16'41" West, a distance of 59.87 feet to a point at the beginning of a non-tangent curve to the left;

In a northeasterly direction, with said curve to the left, having a radius of 930.00 feet, a delta angle of 16°05'14", an arc distance of 261.12 feet, and a chord bearing North 21°40'42" East, a distance of 260.26 feet to a point for corner at the end of said curve;


North 51°11'40" West, a distance of 29.95 feet to a point for corner;

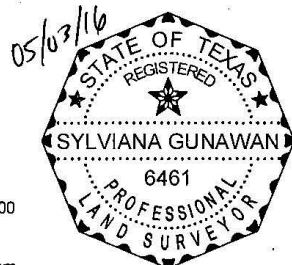
North 10°20'52" East, a distance of 81.43 feet to a point for corner on the northerly line of said 153.125 acre tract and the southerly line of said 16.857 acre tract;

THENCE South 88°25'34" East, along the northerly line of said 153.125 acre tract and the southerly line of said 16.857 acre tract, a distance of 87.25 feet to the **POINT OF BEGINNING** and containing 0.574 of an acre (24,998 square feet) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.


SYLVIANA GUNAWAN
REGISTERED PROFESSIONAL
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**TEMPORARY CONSTRUCTION
EASEMENT**
CITY OF MCKINNEY
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn
5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	04/25/2016	068150000	1 OF 2

GUNAWAN, SYLVIANA 5/3/2016 11:54 AM K:\FRI_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\RL TRUST\RL TRUST TCE.DWG

EXHIBIT "B-2"

Depiction and Description of Fee Simple Right of Way, Drainage Easement, Water Line Easement and Temporary Construction Easement on Estate of Tom B. Wilson, Sr. Property

LEGAL DESCRIPTION

0.087 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas and being a portion of a tract of land described in Warranty Deed to Tom B. Wilson, Sr., recorded in Volume 935, Page 598, Land Records, Collin County, Texas, and being more particularly described as follows:

COMMENCING at a 2 inch iron pipe (bent) found for the northwest corner of said Wilson tract, common with the southwest corner of a called 43.416 acre tract of land described in Warranty Deed with Vendor's Lien to Arch Resorts, LLC, recorded in Instrument No. 20140910000982880, Official Public Records, Collin County, Texas;

THENCE South 89°13'13" East, along the common line of said Wilson tract and said Arch Resorts tract, a distance of 1322.08 feet to the northeast corner of said Wilson tract, common with the southeast corner of said Arch Resorts tract, and for the **POINT OF BEGINNING** of the herein described right-of-way dedication tract, being on the westerly right-of-way line of Farm to Market (FM) Road No. 543 (known as Weston Road, a variable width right-of-way);

THENCE South 0°13'33" East, along the common line of said FM 543 right-of-way and said Wilson tract, a distance of 564.70 feet to a 1/2 inch iron rod found for the southeast corner of said Wilson tract, common with the most easterly northeast corner of a called 1.2141 acre tract of land described in a deed to City of McKinney, as recorded in Instrument No. 20130418000524570, said Official Public Records, from which an iron pipe found for witness bears North 89°52' West, 1.7 feet;

THENCE North 88°25'34" West, departing the westerly right-of-way line of said FM 543 right-of-way, along the common line of said Wilson tract and said City of McKinney tract, a distance of 24.24 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 0°06'36", a radius of 990.00 feet, a chord bearing and distance of North 7°04'03" East, 1.90 feet, for the northwest corner of said City of McKinney tract and the northeast corner of a called 153.125 acre tract of land described in a deed to Roger Lawler, Trustee of RL Trust under agreement dated July 17, 2013, recorded in Instrument No. 20140314000241690, said Official Public Records;

THENCE in a northeasterly direction, departing the south line of said Wilson tract and crossing said Wilson tract, with said curve to the left, an arc distance of 1.90 feet to a point for corner at the end of said curve to the left;

THENCE North 7°00'45" East, continuing across said Wilson tract, a distance of 76.48 feet to a point for corner at the beginning of a tangent curve to the left having a central angle of 6°14'15", a radius of 990.00 feet, a chord bearing and distance of North 3°53'38" East, 107.72 feet;

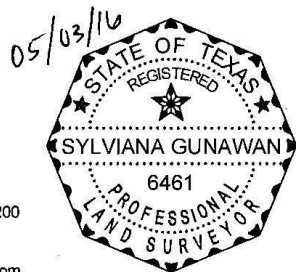
THENCE in a northeasterly direction, continuing across said Wilson tract and with said curve to the left, an arc distance of 107.77 feet to a point for corner at the end of said curve to the left;

THENCE North 0°46'30" East, continuing across said Wilson tract, a distance of 378.79 feet to the **POINT OF BEGINNING** and containing 0.087 of an acre (3,784 sq. ft.) of land, more or less.

NOTES

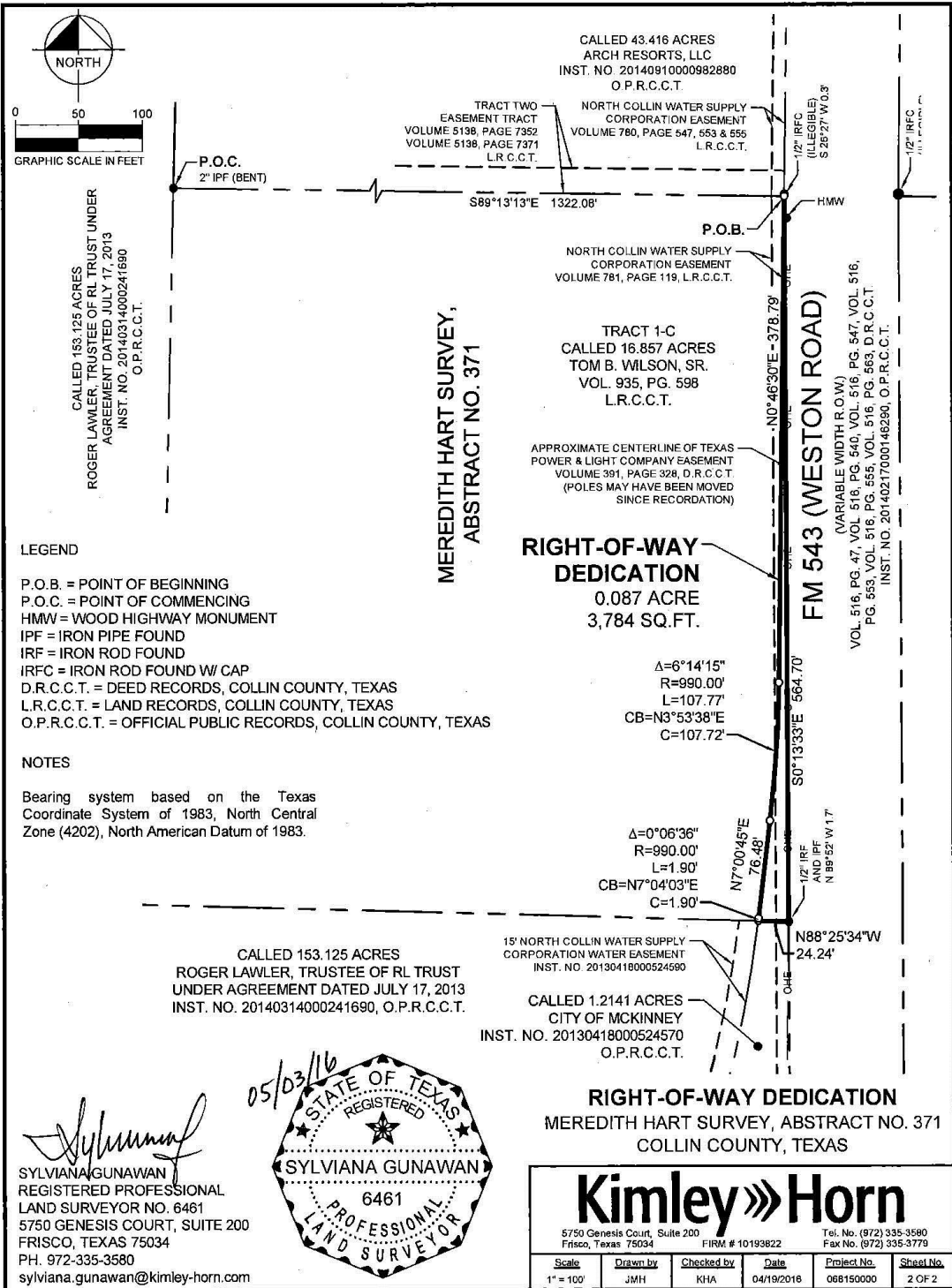
Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.


 SYLVIANA GUNAWAN
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RIGHT-OF-WAY DEDICATION
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

		5750 Genesis Court, Suite 200 Frisco, Texas 75034		FIRM # 10193822		Tel. No. (972) 335-3580 Fax No. (972) 335-3779	
		Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JMH	KHA	04/19/2016	068150000	1 OF 2		



GRAPHIC SCALE IN FEET

0 50 100

CALLLED 153.125 ACRES
ROGER LAWLER, TRUSTEE OF RL TRUST UNDER
AGREEMENT DATED JULY 17, 2013
INST. NO. 20140314000241690
O.P.R.C.C.T.

MEREDITH HART SURVEY,
ABSTRACT NO. 371

CALLLED 43.416 ACRES
ARCH RESORTS, LLC
INST. NO. 20140910000982880
O.P.R.C.C.T.

TRACT TWO
EASEMENT TRACT
VOLUME 5138, PAGE 7352
VOLUME 5136, PAGE 7371
L.R.C.C.T.

NORTH COLLIN WATER SUPPLY
CORPORATION EASEMENT
VOLUME 780, PAGE 547, 553 & 555
L.R.C.C.T.

1/2" IRFC
(ILLEGIBLE)
S 25°27' W 0.3'

P.O.C.
2" IPF (BENT)

S89°13'13"E 1322.08'

P.O.B.

NORTH COLLIN WATER SUPPLY
CORPORATION EASEMENT
VOLUME 781, PAGE 119, L.R.C.C.T.

TRACT 1-C
CALLLED 16.857 ACRES
TOM B. WILSON, SR.
VOL. 935, PG. 598
L.R.C.C.T.

APPROXIMATE CENTERLINE OF TEXAS
POWER & LIGHT COMPANY EASEMENT
VOLUME 391, PAGE 328, D.R.C.C.T.
(POLES MAY HAVE BEEN MOVED
SINCE RECORDATION)

RIGHT-OF-WAY
DEDICATION
0.087 ACRE
3,784 SQ.FT.

FM 543 (WESTON ROAD)
(VARIABLE WIDTH R.O.W.)
VOL. 516, PG. 47, VOL. 516, PG. 540, VOL. 516, PG. 547, VOL. 516,
PG. 553, VOL. 516, PG. 555, VOL. 516, PG. 563, D.R.C.C.T.
INST. NO. 20140217000146250, O.P.R.C.C.T.

N0°46'30"E - 378.79'

Δ=6°14'15"
R=990.00'
L=107.77'
CB=N3°53'38"E
C=107.72'

S0°13'33"E 564.70'

Δ=0°06'36"
R=990.00'
L=1.90'
CB=N7°04'03"E
C=1.90'

N7°00'45"E
76.48'

1/2" IRFC
N 88°52' W 1.7'

N88°25'34"W
24.24'

LEGEND

- P.O.B. = POINT OF BEGINNING
- P.O.C. = POINT OF COMMENCING
- HMW = WOOD HIGHWAY MONUMENT
- IPF = IRON PIPE FOUND
- IRF = IRON ROD FOUND
- IRFC = IRON ROD FOUND W/ CAP
- D.R.C.C.T. = DEED RECORDS, COLLIN COUNTY, TEXAS
- L.R.C.C.T. = LAND RECORDS, COLLIN COUNTY, TEXAS
- O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS

NOTES

Bearing system based on the Texas
Coordinate System of 1983, North Central
Zone (4202), North American Datum of 1983.

CALLLED 153.125 ACRES
ROGER LAWLER, TRUSTEE OF RL TRUST
UNDER AGREEMENT DATED JULY 17, 2013
INST. NO. 20140314000241690, O.P.R.C.C.T.

15' NORTH COLLIN WATER SUPPLY
CORPORATION WATER EASEMENT
INST. NO. 20130418000524590

CALLLED 1.2141 ACRES
CITY OF MCKINNEY
INST. NO. 20130418000524570
O.P.R.C.C.T.

RIGHT-OF-WAY DEDICATION
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Sylviana Gunawan

SYLVIANA GUNAWAN
REGISTERED PROFESSIONAL
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Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 100'	JMH	KHA	04/19/2016	068150000	2 OF 2

GUNAWAN, SYLVIANA 5/3/2016 1:42 PM K:\FRI_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\TOM B. WILSON\ROW DEDICATION.DWG

LEGAL DESCRIPTION

0.336 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas and being a portion of a tract of land described in Warranty Deed to Tom B. Wilson, Sr., recorded in Volume 935, Page 598, Land Records, Collin County, Texas, and being more particularly described as follows:

COMMENCING at a 2 inch iron pipe (bent) found for the northwest corner of said Wilson tract, common with the southwest corner of a called 43.416 acre tract of land described in Warranty Deed with Vendor's Lien to Arch Resorts, LLC, recorded in Instrument No. 20140910000982880, Official Public Records, Collin County, Texas;

THENCE South 89°13'13" East, along the common line of said Wilson tract and said Arch Resorts tract, a distance of 1297.08 feet to the **POINT OF BEGINNING** of the herein described easement tract;

THENCE South 89°13'13" East, continuing along the common line of said Wilson tract and said Arch Resorts tract, a distance of 25.00 feet to a point for the northeast corner of said Wilson tract, common with the southeast corner of said Arch Resorts tract, same being on the westerly right-of-way line of Farm to Market (FM) Road No. 543 (known as Weston Road, a variable width right-of-way);

THENCE departing the westerly right-of-way line of said FM 543 and the easterly line of said FM 543, and crossing said Wilson tract, the following courses and distances:

1. South 0°46'30" West, a distance of 378.79 feet to a point for corner at the beginning of a tangent curve to the right having a central angle of 6°14'15", a radius of 990.00 feet, a chord bearing and distance of South 3°53'38" West, 107.72 feet;
2. In a southwesterly direction, with said curve to the right, an arc distance of 107.77 feet to a point for corner at the end of said curve to the right;
3. South 7°00'45" West, a distance of 76.48 feet to a point for corner at the beginning of a tangent curve to the right having a central angle of 0°06'36", a radius of 990.00 feet, a chord bearing and distance of South 7°04'03" West, 1.90 feet;
4. In a southwesterly direction, with said curve to the right, an arc distance of 1.90 feet to a point for corner at the end of said curve to the right, for the northeast corner of a called 153.125 acre tract of land described in a deed to Roger Lawler, Trustee of RL Trust under agreement dated July 17, 2013, recorded in Instrument No. 20140314000241690, said Official Public Records, common with the northwest corner of a called 1.2141 acre tract of land described in a deed to City of McKinney, as recorded in Instrument No. 20130418000524570, said Official Public Records, from which a 1/2 inch iron rod found for the southeast corner of said Wilson tract, common with the northeast corner of said City of McKinney tract bears South 88°25'34" East, 24.24 feet;

THENCE North 88°25'34" West, along the common line of said Wilson tract and said Lawler tract, a distance of 25.11 feet to a point for corner;

THENCE departing the common line of said Wilson tract and said Lawler tract, and crossing said Wilson tract, the following courses and distances:

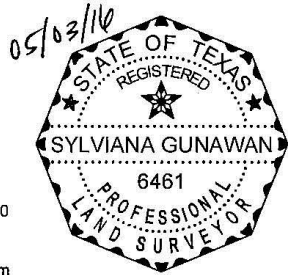
1. North 7°00'45" East, a distance of 80.77 feet to a point at the beginning of a tangent curve to the left having a central angle of 6°14'15", a radius of 965.00 feet, a chord bearing and distance of North 3°53'38" East, 105.00 feet;
2. In a northeasterly direction, with said curve to the left, an arc distance of 105.05 feet to a point for corner at the end of said curve to the left;
3. North 0°46'30" East, a distance of 72.96 feet to a point for corner;
4. North 89°13'30" West, a distance of 12.00 feet to a point for corner;
5. North 0°46'30" East, a distance of 43.00 feet to a point for corner;
6. South 89°13'30" East, a distance of 12.00 feet to a point for corner;
7. North 0°46'30" East, a distance of 262.83 feet to the **POINT OF BEGINNING** and containing 0.336 of an acre (14,636 sq. ft.) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

DRAINAGE EASEMENT
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Sylviana Gunawan
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JMH	KHA	04/25/2016	068150000	1 OF 2

LEGAL DESCRIPTION

0.195 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas and being a portion of a tract of land described in Warranty Deed to Tom B. Wilson, Sr., recorded in Volume 935, Page 598, Land Records, Collin County, Texas, and being more particularly described as follows:

COMMENCING at a 2 inch iron pipe (bent) found for the northwest corner of said Wilson tract, common with the southwest corner of a called 43.416 acre tract of land described in Warranty Deed with Vendor's Lien to Arch Resorts, LLC, recorded in Instrument No. 20140910000982880, Official Public Records, Collin County, Texas;

THENCE South 89°13'13" East, along the common line of said Wilson tract and said Arch Resorts tract, a distance of 1,307.08 feet to the POINT OF BEGINNING of the herein described easement tract;

THENCE South 89°13'13" East, continuing along the common line of said Wilson tract and said Arch Resorts tract, a distance of 15.00 feet to a point for the northeast corner of said Wilson tract, common with the southeast corner of said Arch Resorts tract, same being on the westerly right-of-way line of Farm to Market (FM) Road No. 543 (known as Weston Road, a variable width right-of-way);

THENCE departing the westerly right-of-way line of said FM 543 and the easterly line of said Wilson tract, and crossing said Wilson tract, the following courses and distances:

1. South 0°46'30" West, a distance of 378.79 feet to a point for corner at the beginning of a tangent curve to the right having a central angle of 6°14'15", a radius of 990.00 feet, a chord bearing and distance of South 3°53'38" West, 107.72 feet;
2. In a southwesterly direction, with said curve to the right, an arc distance of 107.77 feet to a point for corner at the end of said curve to the right;
3. South 7°00'45" West, a distance of 76.48 feet to a point for corner at the beginning of a tangent curve to the right having a central angle of 0°06'36", a radius of 990.00 feet, a chord bearing and distance of South 7°04'03" West, 1.90 feet;
4. In a southwesterly direction, with said curve to the right, an arc distance of 1.90 feet to a point for corner at the end of said curve to the right for the northwest corner of a called 1.2141 acre tract of land described in a deed to City of McKinney, as recorded in Instrument No. 20130418000524570, said Official Public Records, common with the northeast corner of a called 153.125 acre tract of land described in a deed to Roger Lawler, Trustee of RL Trust under agreement dated July 17, 2013, recorded in Instrument No. 20140314000241690, said Official Public Records, from which a 1/2 inch iron rod found for the southeast corner of said Wilson tract, common with the northeast corner of said City of McKinney tract bears South 88°25'34" East, 24.24 feet;

THENCE North 88°25'34" West, along the common line of said Wilson tract and said Lawler tract, a distance of 15.14 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 5°01'27", a radius of 38.09 feet, a chord bearing and distance of North 8°19'06" East, 3.34 feet;

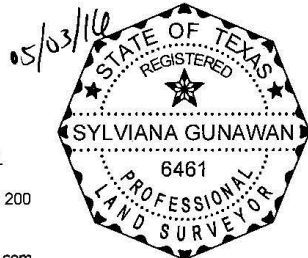
THENCE departing the common line of said Wilson tract and said Lawler tract, and crossing said Wilson tract, the following courses and distances:

1. In a northeasterly direction, with said curve to the left, an arc distance of 3.34 feet to a point for corner;
2. North 7°00'45" East, a distance of 76.48 feet to a point at the beginning of a tangent curve to the left having a central angle of 6°14'15", a radius of 975.00 feet, a chord bearing and distance of North 3°53'38" East, 106.09 feet;
3. In a northeasterly direction, with said curve to the left, an arc distance of 106.14 feet to a point for corner;
4. North 0°46'30" East, a distance of 378.79 feet to the POINT OF BEGINNING and containing 0.195 of an acre (8473 square feet) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

Sylviana Gunawan
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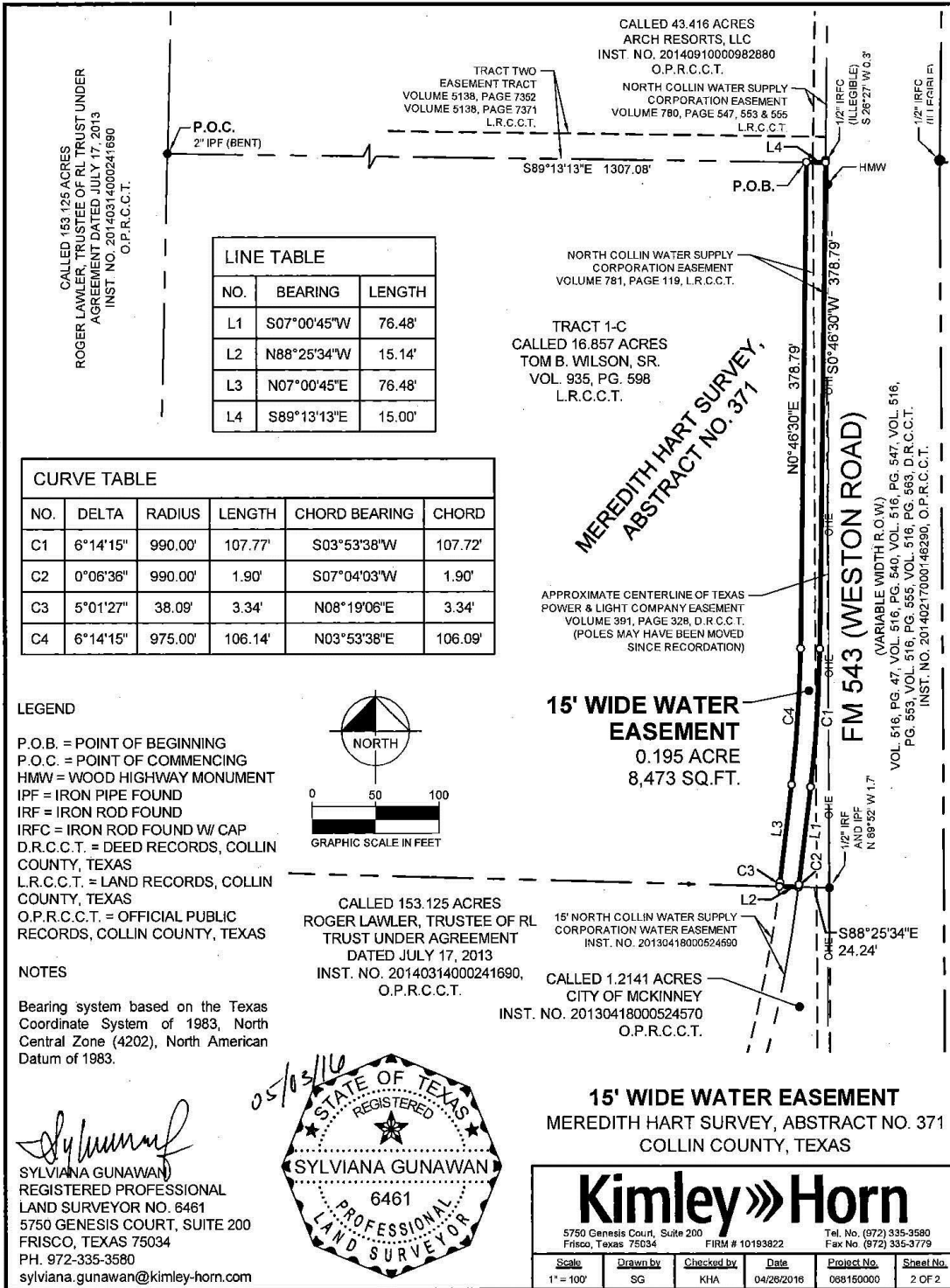


15' WIDE WATER EASEMENT
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

Kimley»Horn
 5750 Genesis Court, Suite 200 | Frisco, Texas 75034 | FIRM # 10193822 | Tel. No. (972) 335-3590 | Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	04/26/2016	068150000	1 OF 2

GUNAWAN, SYLVIANA 5/3/2016 1:47 PM K:\FRI_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\TOM B. WILSON\WATER ESMT.DWG



LINE TABLE

NO.	BEARING	LENGTH
L1	S07°00'45"W	76.48'
L2	N88°25'34"W	15.14'
L3	N07°00'45"E	76.48'
L4	S89°13'13"E	15.00'

CURVE TABLE

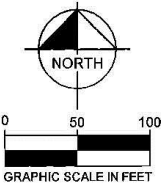
NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	6°14'15"	990.00'	107.77'	S03°53'38"W	107.72'
C2	0°06'36"	990.00'	1.90'	S07°04'03"W	1.90'
C3	5°01'27"	38.09'	3.34'	N08°19'06"E	3.34'
C4	6°14'15"	975.00'	106.14'	N03°53'38"E	106.09'

LEGEND

P.O.B. = POINT OF BEGINNING
 P.O.C. = POINT OF COMMENCING
 HMW = WOOD HIGHWAY MONUMENT
 IPF = IRON PIPE FOUND
 IRF = IRON ROD FOUND
 IRFC = IRON ROD FOUND W/ CAP
 D.R.C.C.T. = DEED RECORDS, COLLIN COUNTY, TEXAS
 L.R.C.C.T. = LAND RECORDS, COLLIN COUNTY, TEXAS
 O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.



CALLLED 153.125 ACRES
 ROGER LAWLER, TRUSTEE OF RL TRUST UNDER AGREEMENT DATED JULY 17, 2013
 INST. NO. 20140314000241690
 O.P.R.C.C.T.

15' NORTH COLLIN WATER SUPPLY CORPORATION WATER EASEMENT
 INST. NO. 20130418000524690

CALLLED 1.2141 ACRES
 CITY OF MCKINNEY
 INST. NO. 20130418000524570
 O.P.R.C.C.T.

15' WIDE WATER EASEMENT
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3590 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 100'	SG	KHA	04/26/2016	068150000	2 OF 2

GUNAWAN, SYLVIANA 5/3/2016 1:48 PM K:\FRI_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\TOM B. WILSON\WATER ESMT.DWG

LEGAL DESCRIPTION

0.617 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas and being a portion of a tract of land described in Warranty Deed to Tom B. Wilson, Sr., recorded in Volume 935, Page 598, Land Records, Collin County, Texas, and being more particularly described as follows:

COMMENCING at a 2 inch iron pipe (bent) found for the northwest corner of said Wilson tract, common with the southwest corner of a called 43.416 acre tract of land described in Warranty Deed with Vendor's Lien to Arch Resorts, LLC, recorded in Instrument No. 20140910000982880, Official Public Records, Collin County, Texas;

THENCE South 89°13'13" East, along the common line of said Wilson tract and said Arch Resorts tract, a distance of 1274.60 feet to the **POINT OF BEGINNING** of the herein described easement tract;

THENCE South 89°13'13" East, continuing along the common line of said Wilson tract and said Arch Resorts tract, a distance of 47.48 feet to a point for the northeast corner of said Wilson tract, common with the southeast corner of said Arch Resorts tract, same being on the westerly right-of-way line of Farm to Market (FM) Road No. 543 (known as Weston Road, a variable width right-of-way);

THENCE departing the westerly right-of-way line of said FM 543 and the easterly line of said Wilson tract, and crossing said Wilson tract, the following courses and distances:

1. South 0°46'30" West, a distance of 378.79 feet to a point for corner at the beginning of a tangent curve to the right having a central angle of 6°14'15", a radius of 990.00 feet, a chord bearing and distance of South 3°53'38" West, 107.72 feet;
2. In a southwesterly direction, with said curve to the right, an arc distance of 107.77 feet to a point for corner at the end of said curve to the right;
3. South 7°00'45" West, a distance of 76.48 feet to a point for corner at the beginning of a tangent curve to the right having a central angle of 0°06'36", a radius of 990.00 feet, a chord bearing and distance of South 7°04'03" West, 1.90 feet;
4. In a southwesterly direction, with said curve to the right, an arc distance of 1.90 feet to a point for corner at the end of said curve to the right for the northwest corner of a called 1.2141 acre tract of land described in a deed to City of McKinney, as recorded in Instrument No. 20130418000524570, said Official Public Records, common with the northeast corner of a called 153.125 acre tract of land described in a deed to Roger Lawler, Trustee of RL Trust under agreement dated July 17, 2013, recorded in Instrument No. 20140314000241690, said Official Public Records, from which a 1/2 inch iron rod found for the southeast corner of said Wilson tract, common with the northeast corner of said City of McKinney tract bears South 88°25'34" East, 24.24 feet;

THENCE North 88°25'34" West, along the common line of said Wilson tract and said Lawler tract, a distance of 87.32 feet to a point for corner;

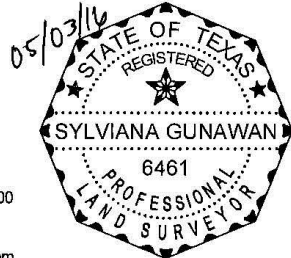
THENCE departing the common line of said Wilson tract and said Lawler tract, and crossing said Wilson tract, the following courses and distances:

1. North 51°49'34" East, a distance of 69.36 feet to a point for corner;
2. North 2°53'08" East, a distance of 202.33 feet to a point for corner;
3. North 36°56'22" West, a distance of 26.61 feet to a point for corner;
4. North 1°12'34" East, a distance of 20.14 feet to a point for corner;
5. North 19°09'55" East, a distance of 22.27 feet to a point for corner;
6. North 1°11'56" East, a distance of 150.39 feet to a point for corner;
7. North 1°12'34" East, a distance of 104.57 feet to the **POINT OF BEGINNING** and containing 0.617 of an acre (26,855 sq. ft.) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

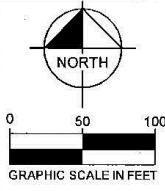
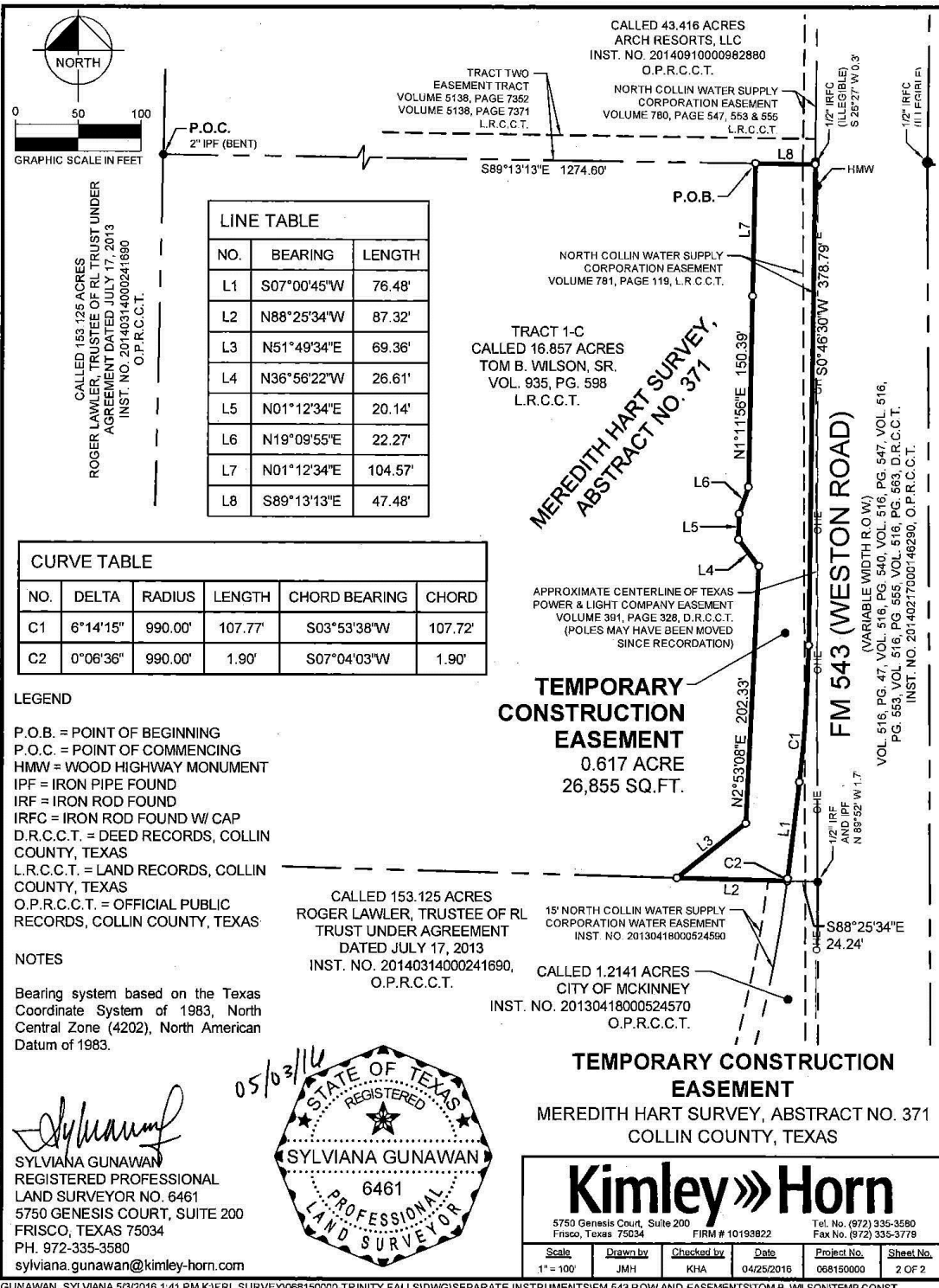
Sylviana Gunawan
 SYLVIANA GUNAWAN
 REGISTERED PROFESSIONAL
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 FRISCO, TEXAS 75034
 PH. 972-335-3580
 sylviana.gunawan@kimley-horn.com



**TEMPORARY CONSTRUCTION
 EASEMENT**
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

Kimley»Horn
 5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3590 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JMH	KHA	04/25/2016	088150000	1 OF 2



LINE TABLE		
NO.	BEARING	LENGTH
L1	S07°00'45"W	76.48'
L2	N88°25'34"W	87.32'
L3	N51°49'34"E	69.36'
L4	N36°56'22"W	26.61'
L5	N01°12'34"E	20.14'
L6	N19°09'55"E	22.27'
L7	N01°12'34"E	104.57'
L8	S89°13'13"E	47.48'

CURVE TABLE					
NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	6°14'15"	990.00'	107.77'	S03°53'38"W	107.72'
C2	0°06'36"	990.00'	1.90'	S07°04'03"W	1.90'

LEGEND
 P.O.B. = POINT OF BEGINNING
 P.O.C. = POINT OF COMMENCING
 HMW = WOOD HIGHWAY MONUMENT
 IPF = IRON PIPE FOUND
 IRF = IRON ROD FOUND
 IRFC = IRON ROD FOUND W/ CAP
 D.R.C.C.T. = DEED RECORDS, COLLIN COUNTY, TEXAS
 L.R.C.C.T. = LAND RECORDS, COLLIN COUNTY, TEXAS
 O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS

NOTES
 Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

CALLED 153.125 ACRES
 ROGER LAWLER, TRUSTEE OF RL TRUST UNDER AGREEMENT DATED JULY 17, 2013
 INST. NO. 20140314000241690,
 O.P.R.C.C.T.

15' NORTH COLLIN WATER SUPPLY CORPORATION WATER EASEMENT
 INST. NO. 20130418000524590

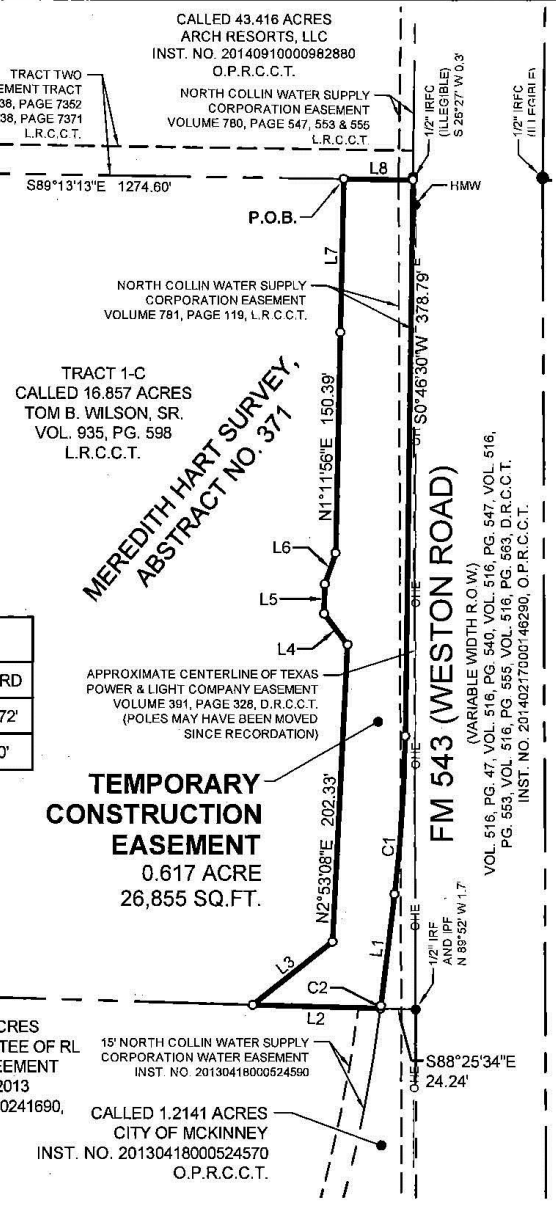


EXHIBIT "B-3"

**Depiction and Description of Drainage Easement & Temporary Construction Easement on
ARCH Resorts, LLC Property**

LEGAL DESCRIPTION

0.367 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, City of McKinney, Collin County, Texas, and being a portion of a called 43.416 acre tract of land described in a Warranty Deed with Vendor's Lien to ARCH Resorts, LLC, as recorded in Instrument No. 20140910000982880 of the Official Public Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found for the southerly northeast corner of said 43.416 acre tract, common to the southeast corner of a called 2.646 acre tract of land described in a deed to NJV Investors, LLC, as recorded in Instrument No. 20150130000109420 of the Official Public Records of Collin County, Texas, being on the westerly right-of-way line of FM 543 (Weston Road), a variable width right-of-way as dedicated by Volume 516, Page 47, 540, 547, 553, 555, and 563 of the Deed Records of Collin County, Texas, and conveyed to City of McKinney in a Transfer of Right-of-Way as recorded in Instrument No. 20140217000146290 of the Official Public Records of Collin County, Texas;

THENCE South 00°46'30" West, along the westerly right-of-way line of said FM 543 and the easterly line of said 43.416 acre tract, a distance of 610.82 feet to a point for corner, from which a 1/2 inch iron rod with plastic cap (illegible) found for witness bears South 26°27' West, 0.3 feet;

THENCE South 00°13'33" East, continuing along the westerly right-of-way line of said FM 543 and the easterly line of said 43.416 acre tract, a distance of 1.97 feet to a point for the southeast corner of said 43.416 acre tract, common to the northeast corner of a called 16.857 acre tract of land described as Tract 1-C in a deed to Tom B. Wilson, Sr., as recorded in Volume 935, Page 598 of the Land Records of Collin County, Texas;

THENCE North 89°13'13" West, departing the westerly right-of-way line of said FM 543, along the southerly line of said 43.416 acre tract and the northerly line of said 16.857 acre tract, a distance of 25.03 feet to a point for corner;

THENCE departing the southerly line of said 43.416 acre tract and the northerly line of said 16.857 acre tract, and crossing said 43.416 acre tract, the following courses:

North 00°46'30" East, a distance of 534.69 feet to a point for corner;

North 89°13'30" West, a distance of 15.00 feet to a point for corner;

North 00°46'30" East, a distance of 43.00 feet to a point for corner;

South 89°13'30" East, a distance of 15.00 feet to a point for corner;

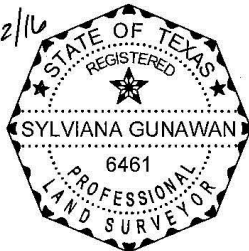
North 00°46'30" East, a distance of 35.13 feet to a point for corner on the northerly line of said 43.416 acre tract and the southerly line of aforesaid 2.646 acre tract;

THENCE South 89°08'24" East, along the northerly line of said 43.416 acre tract and the southerly line of said 2.646 acre tract, a distance of 25.00 feet to the **POINT OF BEGINNING** and containing 0.367 of an acre (15,965 square feet) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

Sylviana Gunawan 05/02/16
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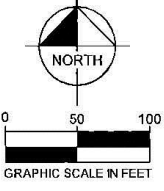
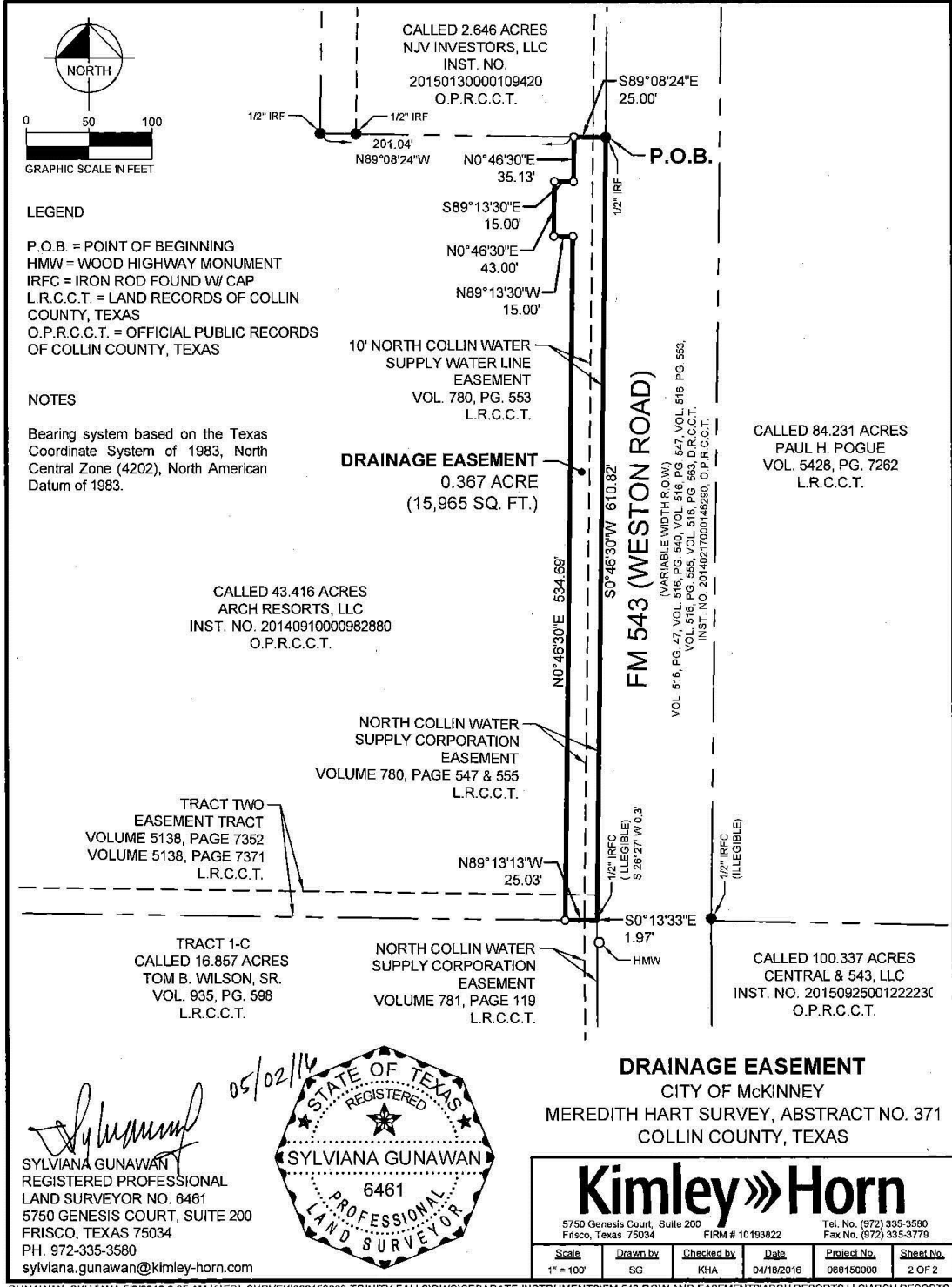
DRAINAGE EASEMENT
 CITY OF MCKINNEY
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	04/18/2016	068150000	1 OF 2

GUNAWAN, SYLVIANA 5/2/2016 9:25 AM K\FRI SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\ARCH RESORTS LLC\ARCH RESORTS DE.DWG



LEGEND

P.O.B. = POINT OF BEGINNING
 HMW = WOOD HIGHWAY MONUMENT
 IRFC = IRON ROD FOUND W/ CAP
 L.R.C.C.T. = LAND RECORDS OF COLLIN COUNTY, TEXAS
 O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

CALLED 43.416 ACRES
 ARCH RESORTS, LLC
 INST. NO. 20140910000982880
 O.P.R.C.C.T.

NORTH COLLIN WATER SUPPLY CORPORATION EASEMENT
 VOLUME 780, PAGE 547 & 555
 L.R.C.C.T.

TRACT TWO EASEMENT TRACT
 VOLUME 5138, PAGE 7352
 VOLUME 5138, PAGE 7371
 L.R.C.C.T.

TRACT 1-C
 CALLED 16.857 ACRES
 TOM B. WILSON, SR.
 VOL. 935, PG. 598
 L.R.C.C.T.

NORTH COLLIN WATER SUPPLY CORPORATION EASEMENT
 VOLUME 781, PAGE 119
 L.R.C.C.T.

CALLED 84.231 ACRES
 PAUL H. POGUE
 VOL. 5428, PG. 7262
 L.R.C.C.T.

CALLED 100.337 ACRES
 CENTRAL & 543, LLC
 INST. NO. 2015092500122223C
 O.P.R.C.C.T.

Sylviana Gunawan
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05/02/16



DRAINAGE EASEMENT
 CITY OF MCKINNEY
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

Kimley»Horn

Scale 1" = 100'	Drawn by SG	Checked by KHA	Date 04/18/2016	Project No. 068150000	Sheet No. 2 OF 2
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GUNAWAN, SYLVIANA 5/2/2016 9:25 AM K\FRI_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\ARCH RESORTS LLC\ARCH RESORTS DE.DWG

LEGAL DESCRIPTION

0.635 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, City of McKinney, Collin County, Texas, and being a portion of a called 43.416 acre tract of land described in a Warranty Deed with Vendor's Lien to ARCH Resorts, LLC, as recorded in Instrument No. 20140910000982880 of the Official Public Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found for the southerly northeast corner of said 43.416 acre tract, common to the southeast corner of a called 2.646 acre tract of land described in a deed to NJV Investors, LLC, as recorded in Instrument No. 20150130000109420 of the Official Public Records of Collin County, Texas, being on the westerly right-of-way line of FM 543 (Weston Road), a variable width right-of-way as dedicated by Volume 516, Page 47, 540, 547, 553, 555, and 563 of the Deed Records of Collin County, Texas, and conveyed to City of McKinney in a Transfer of Right-of-Way as recorded in Instrument No. 20140217000146290 of the Official Public Records of Collin County, Texas;

THENCE South 00°46'30" West, along the westerly right-of-way line of said FM 543 and the easterly line of said 43.416 acre tract, a distance of 610.82 feet to a point for corner, from which a 1/2 inch iron rod with plastic cap (illegible) found for witness bears South 26°27' West, 0.3 foot;

THENCE South 00°13'33" East, continuing along the westerly right-of-way line of said FM 543 and the easterly line of said 43.416 acre tract, a distance of 1.97 feet to a point for the southeast corner of said 43.416 acre tract, common to the northeast corner of a called 16.857 acre tract of land described as Tract 1-C in a deed to Tom B. Wilson, Sr., as recorded in Volume 935, Page 598 of the Land Records of Collin County, Texas;

THENCE North 89°13'13" West, departing the westerly right-of-way line of said FM 543, along the southerly line of said 43.416 acre tract and the northerly line of said 16.857 acre tract, a distance of 47.52 feet to a point for corner;

THENCE North 01°12'34" East, departing the southerly line of said 43.416 acre tract and the northerly line of said 16.857 acre tract, and crossing said 43.416 acre tract, a distance of 612.86 feet to a point for corner on the northerly line of said 43.416 acre tract and the southerly line of aforesaid 2.646 acre tract, from which a 1/2 inch iron rod found for the southwest corner of said 2.646 acre tract bears North 89°08'24" West, 183.21 feet;

THENCE South 89°08'24" East, along the northerly line of said 43.416 acre tract and the southerly line of said 2.646 acre tract, a distance of 42.84 feet to the **POINT OF BEGINNING** and containing 0.635 of an acre (27,675 square feet) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

Sylviana Gunawan
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sylviana.gunawan@kimley-horn.com

05/02/16



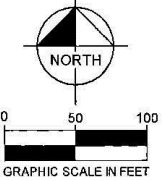
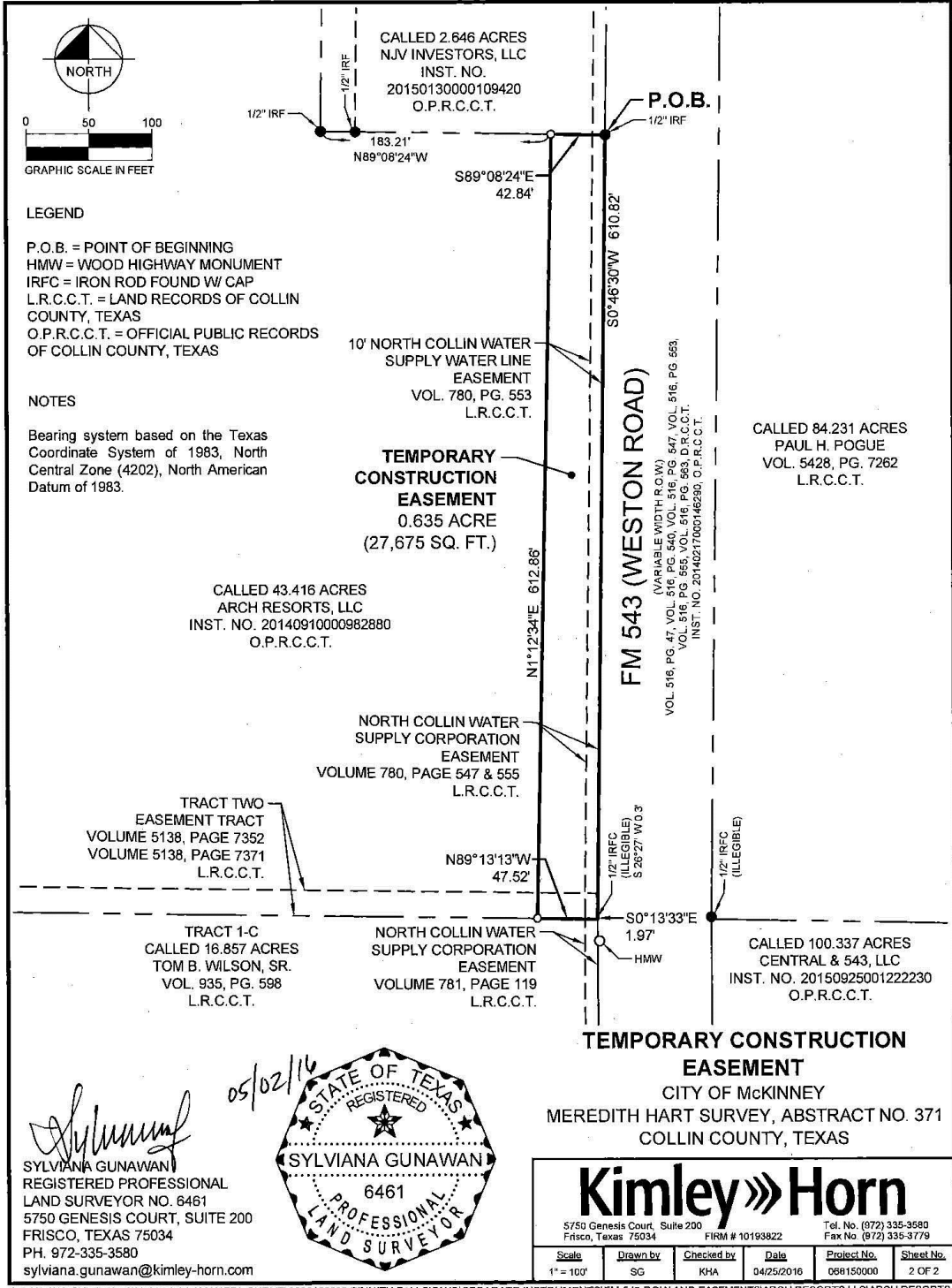
**TEMPORARY CONSTRUCTION
EASEMENT**
CITY OF MCKINNEY
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	04/25/2016	088150000	1 OF 2

GUNAWAN, SYLVIANA 5/2/2016 9:34 AM K:\FR1_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\ARCH RESORTS LLC\ARCH RESORTS TCE.DWG



LEGEND

P.O.B. = POINT OF BEGINNING
 HMW = WOOD HIGHWAY MONUMENT
 IRFC = IRON ROD FOUND W/ CAP
 L.R.C.C.T. = LAND RECORDS OF COLLIN COUNTY, TEXAS
 O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

CALLLED 43.416 ACRES
 ARCH RESORTS, LLC
 INST. NO. 20140910000982880
 O.P.R.C.C.T.

NORTH COLLIN WATER
 SUPPLY CORPORATION
 EASEMENT
 VOLUME 780, PAGE 547 & 555
 L.R.C.C.T.

TRACT TWO
 EASEMENT TRACT
 VOLUME 5138, PAGE 7352
 VOLUME 5138, PAGE 7371
 L.R.C.C.T.

TRACT 1-C
 CALLLED 16.857 ACRES
 TOM B. WILSON, SR.
 VOL. 935, PG. 598
 L.R.C.C.T.

NORTH COLLIN WATER
 SUPPLY CORPORATION
 EASEMENT
 VOLUME 781, PAGE 119
 L.R.C.C.T.

CALLLED 84.231 ACRES
 PAUL H. POGUE
 VOL. 5428, PG. 7262
 L.R.C.C.T.

CALLLED 100.337 ACRES
 CENTRAL & 543, LLC
 INST. NO. 20150925001222230
 O.P.R.C.C.T.

**TEMPORARY CONSTRUCTION
 EASEMENT**
 CITY OF MCKINNEY
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

Sylviana Gunawan
 05/02/16
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Scale 1" = 100'	Drawn by SG	Checked by KHA	Date 04/25/2016	Project No. 089150000	Sheet No. 2 OF 2
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GUNAWAN, SYLVIANA 5/2/2016 9:34 AM K:\FRI_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\ARCH RESORTS LLC\ARCH RESORTS TCE.DWG

EXHIBIT "B-4"

Depiction and Description of Drainage Easement & Temporary Construction Easement on NJV Investors, LLC Property

LEGAL DESCRIPTION

0.334 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas, and being a portion of a called 2.646 acre tract of land described in a Warranty Deed with Vendor's Lien to NJV Investors, LLC, recorded in Instrument No. 20150130000109420 of the Official Public Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found for the southeast corner of said 2.646 acre tract, common to the southerly northeast corner of a called 43.416 acre tract of land described in a deed to ARCH Resorts, LLC, as recorded in Instrument No. 20140910000982880 of the Official Public Records of Collin County, Texas, being on the westerly right-of-way line of FM 543 (Weston Road), a variable width right-of-way as dedicated by Volume 516, Page 47, 540, 547, 553, 555, and 563 of the Deed Records of Collin County, Texas, and conveyed to City of McKinney in a Transfer of Right-of-Way as recorded in Instrument No. 20140217000146290 of the Official Public Records of Collin County, Texas;

THENCE North 89°08'24" West, departing the westerly right-of-way line of said FM 543, along the southerly line of said 2.646 acre tract and the northerly line of said 43.416 acre tract, a distance of 25.00 feet to a point for corner, from which a 1/2 inch iron rod found for the southwest corner of said 2.646 acre tract bears North 89°08'24" West, 201.04 feet;

THENCE departing the southerly line of said 2.646 acre tract and the northerly line of said 43.146 acre tract, and crossing said 2.646 acre tract, the following courses:

North 00°46'30" East, being 25 feet west of and parallel with the easterly line of said 2.646 acre tract, a distance of 445.43 feet to a point for corner;

North 89°13'30" West, a distance of 31.56 feet to a point for corner;

North 00°46'30" East, being 56.56 feet west of and parallel with the easterly line of said 2.646 acre tract, a distance of 58.00 feet to a point for corner;

South 89°13'30" East, a distance of 31.56 feet to a point for corner;

North 00°46'30" East, being 25 feet west of and parallel with the easterly line of said 2.646 acre tract, a distance of 5.12 feet to a point for corner on the northerly line of said 2.646 acre tract and the southerly line of a called 1.6974 acre tract of land described in a deed to William R. Crump as recorded in Volume 4869, Page 727 of the Land Records of Collin County, Texas, from which a 1/2 inch iron rod found for the northwest corner of said 2.646 acre tract bears North 89°01'06" West, 200.83 feet;

THENCE South 89°01'06" East, along the northerly line of said 2.646 acre tract and the southerly line of said 1.6974 acre tract, a distance of 25.00 feet to a point for the northeast corner of said 2.646 acre tract, common to the southeast corner of said 1.6974 acre tract;

THENCE South 00°46'30" West, along the westerly right-of-way line of said FM 543 and the easterly line of said 2.646 acre tract, a distance of 508.50 feet to the **POINT OF BEGINNING** and containing 0.334 of an acre (14,544 square feet) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

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 sylviana.gunawan@kimley-horn.com



DRAINAGE EASEMENT
 CITY OF MCKINNEY
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

Kimley»Horn		5750 Genesis Court, Suite 200 Frisco, Texas 75034		FIRM # 10192822		Tel. No. (972) 335-3590 Fax No. (972) 335-3779	
		Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	04/11/2016	068150000	1 OF 2		

GUNAWAN, SYLVIANA 5/3/2016 8:31 AM K:\FRI_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\NJV INVESTORS LLC\NJV DRAINAGE EASEMENT.DWG

LEGAL DESCRIPTION

0.530 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas, and being a portion of a called 2.646 acre tract of land described in a Warranty Deed with Vendor's Lien to NJV Investors, LLC, recorded in Instrument No. 20150130000109420 of the Official Public Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found for the southeast corner of said 2.646 acre tract, common to the southerly northeast corner of a called 43.416 acre tract of land described in a deed to ARCH Resorts, LLC, as recorded in Instrument No. 20140910000982880 of the Official Public Records of Collin County, Texas, being on the westerly right-of-way line of FM 543 (Weston Road), a variable width right-of-way as dedicated by Volume 516, Page 47, 540, 547, 553, 555, and 563 of the Deed Records of Collin County, Texas, and conveyed to City of McKinney in a Transfer of Right-of-Way as recorded in Instrument No. 20140217000146290 of the Official Public Records of Collin County, Texas;

THENCE North 89°08'24" West, departing the westerly right-of-way line of said FM 543, along the southerly line of said 2.646 acre tract and the northerly line of said 43.416 acre tract, a distance of 42.84 feet to a point for corner, from which a 1/2 inch iron rod found for the southwest corner of said 2.646 acre tract bears North 89°08'24" West, 183.21 feet;

THENCE departing the southerly line of said 2.646 acre tract and the northerly line of said 43.146 acre tract, and crossing said 2.646 acre tract, the following courses:

North 01°12'34" East, a distance of 61.41 feet to a point for corner;

South 88°47'24" East, a distance of 11.97 feet to a point for corner;

North 02°45'07" West, a distance of 360.97 feet to a point for corner;

North 23°11'03" West, a distance of 38.34 feet to a point for corner;

North 01°12'34" East, a distance of 32.53 feet to a point for corner;


North 34°27'16" East, a distance of 23.39 feet to a point for corner on the northerly line of said 2.646 acre tract and the southerly line of a called 1.6974 acre tract of land described in a deed to William R. Crump as recorded in Volume 4869, Page 727 of the Land Records of Collin County, Texas;

THENCE South 89°01'06" East, along the northerly line of said 2.646 acre tract and the southerly line of said 1.6974 acre tract, a distance of 54.96 feet to a point for the northeast corner of said 2.646 acre tract, common to the southeast corner of said 1.6974 acre tract, being on the westerly right-of-way line of aforesaid FM 543;

THENCE South 00°46'30" West, along the westerly right-of-way line of said FM 543 and the easterly line of said 2.646 acre tract, a distance of 508.50 feet to the **POINT OF BEGINNING** and containing 0.530 of an acre (23,087 square feet) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.


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05/03/14

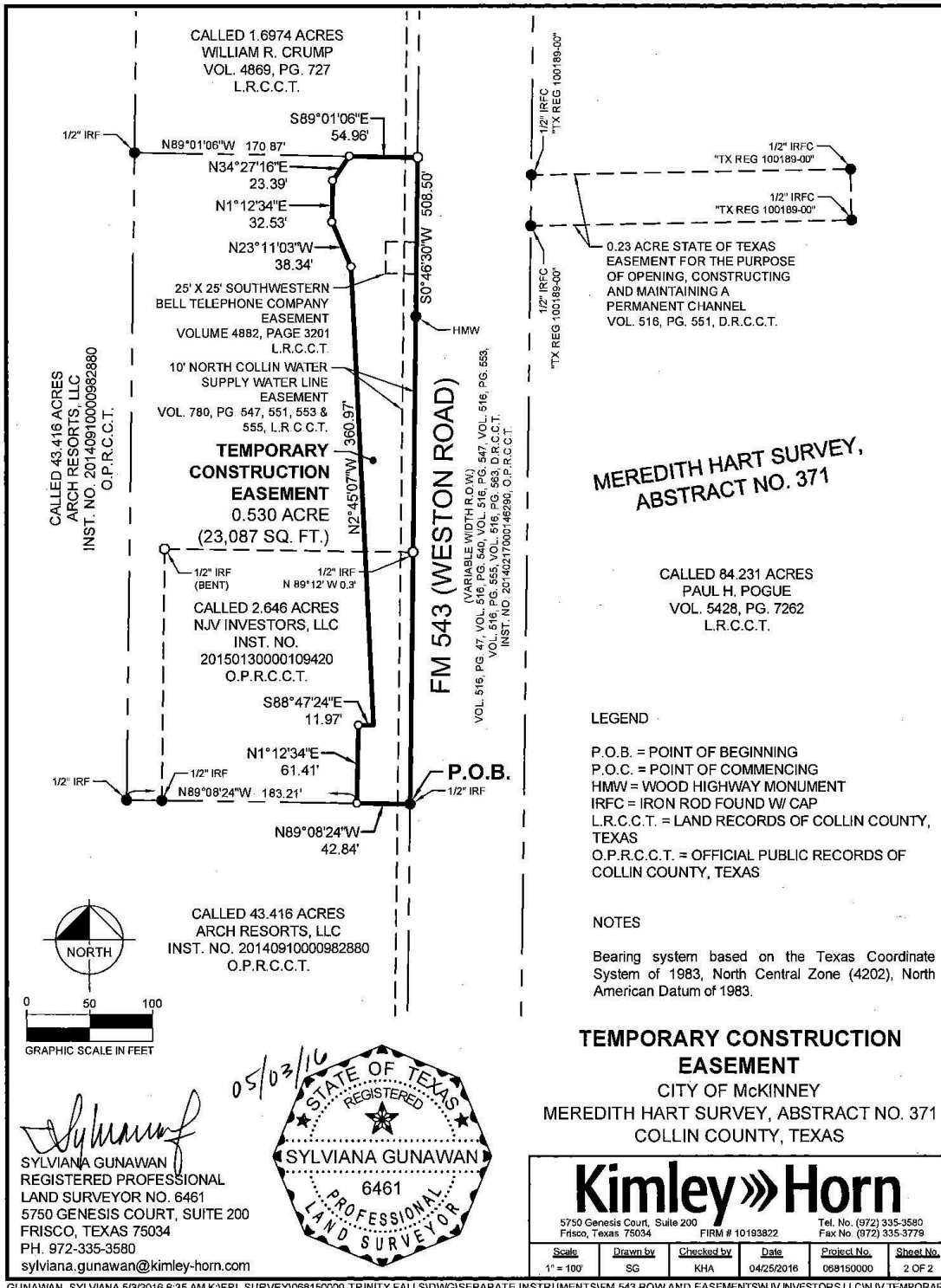


**TEMPORARY CONSTRUCTION
EASEMENT**
CITY OF MCKINNEY
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200
Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580
Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	04/25/2018	098150000	1 OF 2



CALLED 1.6974 ACRES
WILLIAM R. CRUMP
VOL. 4869, PG. 727
L.R.C.C.T.

CALLLED 43.416 ACRES
ARCH RESORTS, LLC
INST. NO. 20140910000982880
O.P.R.C.C.T.

25' X 25' SOUTHWESTERN
BELL TELEPHONE COMPANY
EASEMENT
VOLUME 4882, PAGE 3201
L.R.C.C.T.

10' NORTH COLLIN WATER
SUPPLY WATER LINE
EASEMENT
VOL. 780, PG. 547, 551, 553 &
555, L.R.C.C.T.

**TEMPORARY
CONSTRUCTION
EASEMENT**
0.530 ACRE
(23,087 SQ. FT.)

CALLLED 2.646 ACRES
NJV INVESTORS, LLC
INST. NO.
20150130000109420
O.P.R.C.C.T.

FM 543 (WESTON ROAD)

(VARIABLE WIDTH ROW)
VOL. 516, PG. 47, VOL. 516, PG. 540, VOL. 516, PG. 547, VOL. 516, PG. 553,
VOL. 516, PG. 555, VOL. 516, PG. 563, D.R.C.C.T.
INST. NO. 20140217000146290, O.P.R.C.C.T.

**MEREDITH HART SURVEY,
ABSTRACT NO. 371**

CALLLED 84.231 ACRES
PAUL H. POGUE
VOL. 5428, PG. 7262
L.R.C.C.T.

LEGEND

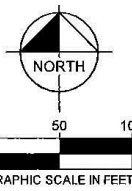
- P.O.B. = POINT OF BEGINNING
- P.O.C. = POINT OF COMMENCING
- HMW = WOOD HIGHWAY MONUMENT
- IRFC = IRON ROD FOUND W/ CAP
- L.R.C.C.T. = LAND RECORDS OF COLLIN COUNTY, TEXAS
- O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

**TEMPORARY CONSTRUCTION
EASEMENT**

CITY OF MCKINNEY
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS



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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
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GUNAWAN, SYLVIANA 5/3/2016 8:35 AM K:\FRL_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\NJV INVESTORS LLC\NJV TEMPORARY CONSTRUCTION EASEMENT DWG

EXHIBIT "B-5"

Depiction and Description of Drainage Easement, Water Line Easement & Temporary Construction Easement on James Alan Augspurger Property

LEGAL DESCRIPTION

0.498 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas, and being a portion of a called 30.164 acre tract of land described in a General Warranty Deed to James Alan Augspurger recorded in Volume 4988, Page 2791 of the Land Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING at a point for the northeast corner of said 30.164 acre tract, common to the southeast corner of a called 210.817 acre tract of land described in a deed to Monty J. Jackson and wife, Sallie R. Jackson, as recorded in Volume 1197, Page 885 of the Land Records of Collin County, Texas, being on the westerly right-of-way line of FM 543 (Weston Road), a variable width right-of-way as dedicated by Volume 516, Page 47, 540, 547, 553, 555, and 563 of the Deed Records of Collin County, Texas, and conveyed to City of McKinney in a Transfer of Right-of-Way as recorded in Instrument No. 20140217000146290 of the Official Public Records of Collin County, Texas, from which a 5/8 inch iron rod with an illegible plastic cap (bent) bears North 88°50' West, 0.7 feet;

THENCE along the westerly right-of-way line of said FM 543 and the easterly line of said 30.164 acre tract, the following courses:

South 00°46'30" West, a distance of 142.03 feet to a point for corner, from which a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found for witness bears North 43°30' East, 0.2 feet;

South 09°18'21" West, a distance of 101.12 feet to a 3/8 inch iron rod found for corner;

South 00°46'30" West, a distance of 100.00 feet to a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found for corner;

South 03°30'51" East, a distance of 200.56 feet to a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found for corner;

South 00°46'30" West, a distance of 457.43 feet to a point for the southeast corner of said 30.164 acre tract,

common to the northeast corner of a called 1.00 acre tract of land described in a deed to William R. Crump and Ruby N. Crump, as recorded in Instrument No. 20130809001130860 of the Official Public Records of Collin County, Texas, from which a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found for witness bears South 71°55' West, 2.2 feet;

THENCE North 88°55'02" West, departing the westerly right-of-way line of said FM 543, along the southerly line of said 30.164 acre tract and the northerly line of said 1.00 acre tract, a distance of 25.00 feet to a point for corner, from which a 3/8 inch iron rod found for the northwest corner of said 1.00 acre tract bears North 88°55'02" West, 182.61 feet;

THENCE departing the southerly line of said 30.164 acre tract and the northerly line of said 1.00 acre tract, and crossing said 30.164 acre tract, the following courses:

North 00°46'30" East, a distance of 337.37 feet to a point for corner;

North 89°13'30" West, a distance of 11.00 feet to a point for corner;

North 00°46'30" East, a distance of 43.00 feet to a point for corner;

South 89°13'30" East, a distance of 11.00 feet to a point for corner;

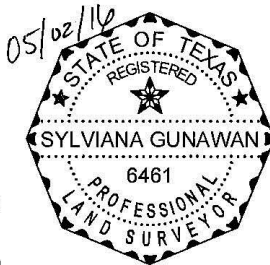
North 00°46'30" East, a distance of 619.20 feet to a point for corner on the northerly line of said 30.164 acre tract and the southerly line of aforesaid 210.817 acre tract;

THENCE South 88°39'11" East, along the northerly line of said 30.164 acre tract and the southerly line of said 210.817 acre tract, a distance of 25.00 feet to the **POINT OF BEGINNING** and containing 0.498 of an acre (21,711 square feet) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

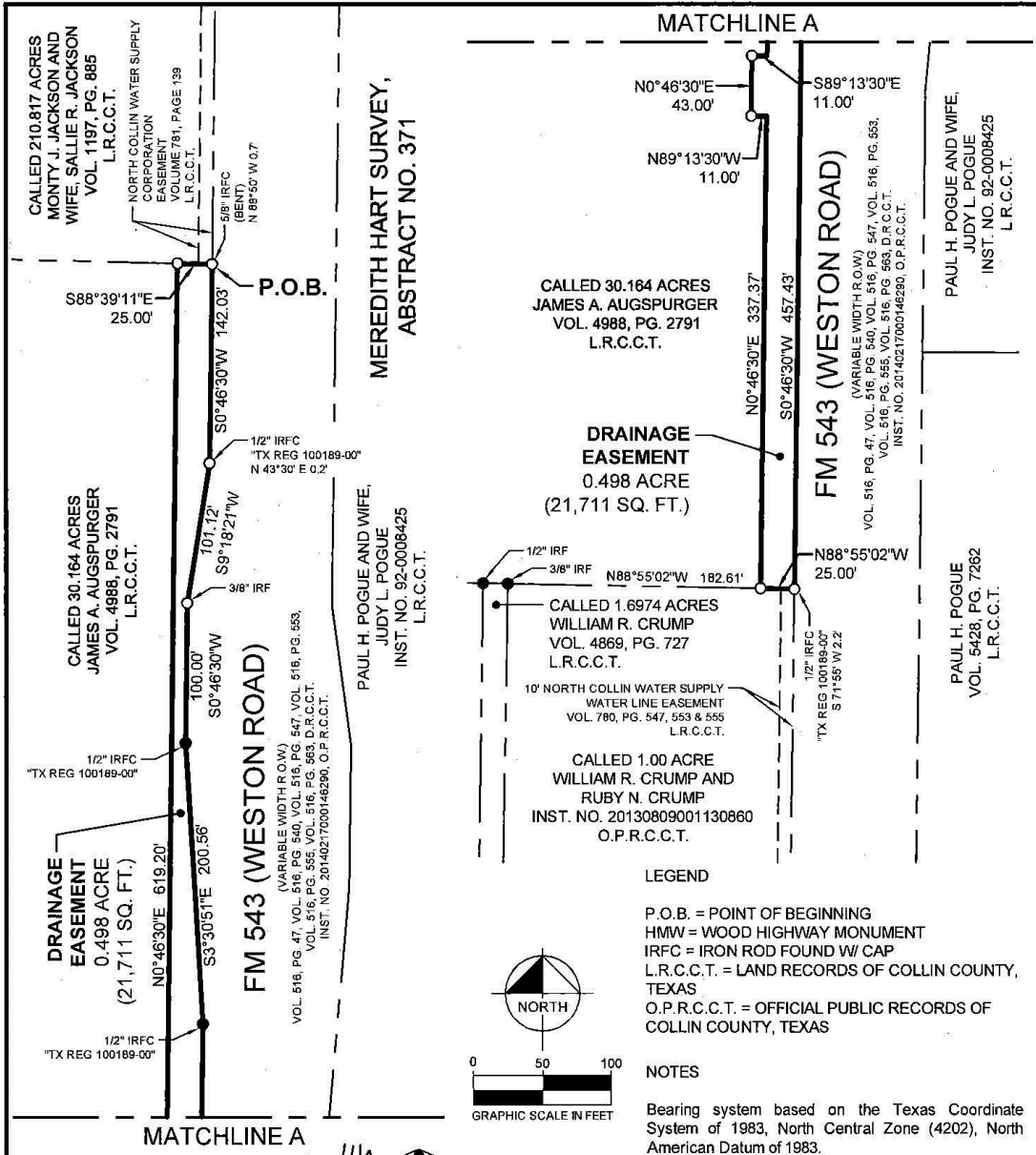

 SYLVIANA GUNAWAN
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DRAINAGE EASEMENT
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

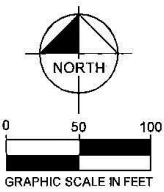
Kimley»Horn					
5750 Genesis Court, Suite 200 Frisco, Texas 75034		FIRM # 10193822		Tel. No. (972) 335-3580 Fax No. (972) 335-3779	
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	04/08/2016	068150000	1 OF 2

GUNAWAN, SYLVIANA 5/2/2016 12:58 PM K:\FRL SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\JAMES A. AUGSPURGER\AUGSPURGER DRAINAGE EASEMENT.DWG



LEGEND

P.O.B. = POINT OF BEGINNING
 HMW = WOOD HIGHWAY MONUMENT
 IRFC = IRON ROD FOUND W/ CAP
 L.R.C.C.T. = LAND RECORDS OF COLLIN COUNTY, TEXAS
 O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS



NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

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DRAINAGE EASEMENT
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

Kimley»Horn

5760 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 100'	SG	KHA	04/08/2016	068150000	2 OF 2

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LEGAL DESCRIPTION

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas, and being a portion of a called 30.164 acre tract of land described in a General Warranty Deed to James Alan Augspurger recorded in Volume 4988, Page 2791 of the Land Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING at a point for the northeast corner of said 30.164 acre tract, common to the southeast corner of a called 210.817 acre tract of land described in a deed to Monty J. Jackson and wife, Sallie R. Jackson, as recorded in Volume 1197, Page 885 of the Land Records of Collin County, Texas, being on the westerly right-of-way line of FM 543 (Weston Road), a variable width right-of-way as dedicated by Volume 516, Page 47, 540, 547, 553, 555, and 563 of the Deed Records of Collin County, Texas, and conveyed to City of McKinney in a Transfer of Right-of-Way as recorded in Instrument No. 20140217000146290 of the Official Public Records of Collin County, Texas, from which a 5/8 inch iron rod with an illegible plastic cap (bent) bears North 88°50' West, 0.7 feet;

THENCE along the westerly right-of-way line of said FM 543 and the easterly line of said 30.164 acre tract, the following courses:

South 00°46'30" West, a distance of 142.03 feet to a point for corner, from which a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found for witness bears North 43°30' East, 0.2 foot;

South 09°18'21" West, a distance of 101.12 feet to a 3/8 inch iron rod found for corner;

South 00°46'30" West, a distance of 100.00 feet to a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found for corner;

South 03°30'51" East, a distance of 200.56 feet to a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found for corner;

South 00°46'30" West, a distance of 457.43 feet to a point for the southeast corner of said 30.164 acre tract, common to the northeast corner of a called 1.00 acre tract of land described in a deed to William R. Crump and Ruby N. Crump, as recorded in Instrument No. 20130809001130860 of the Official Public Records of Collin County, Texas, from which a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found for witness bears South 71°55' West, 2.2 feet;

THENCE North 88°55'02" West, departing the westerly right-of-way line of said F.M. 543, along the southerly line of said 30.164 acre tract and the northerly line of said 1.00 acre tract, a distance of 15.00 feet to a point for corner, from which a 3/8 inch iron rod found for the northwest corner of said 1.00 acre tract bears North 88°55'02" West, 192.61 feet;

Continued on Sheet 2

**15' WIDE WATER EASEMENT
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS**

Kimley»Horn

5760 Genesis Court, Suite 200
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FIRM # 10193822

Tel. No. (972) 335-3580
Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	01/17/2017	068150000	1 OF 3

GUNAWAN, SYLVIANA 1/18/2017 8:10 AM K:\FRL_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\JAMES A. AUGSPURGER\AUGSPURGER WATER EASEMENT.DWG

Continued from Sheet 1

THENCE departing the southerly line of said 30.164 acre tract and the northerly line of said 1.00 acre tract, and crossing said 30.164 acre tract, being 15 feet west of and parallel with the westerly right-of-way line of said F.M. 543, the following courses:

North 00°46'30" East, a distance of 456.78 feet to a point for corner;

North 03°30'51" West, a distance of 200.56 feet to a point for corner;

North 00°46'30" East, a distance of 101.68 feet to a point for corner;

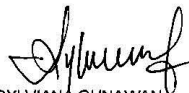
North 09°18'21" East, a distance of 101.12 feet to a point for corner;

North 00°46'30" East, a distance of 141.06 feet to a point for corner on the northerly line of said 30.164 acre tract and the southerly line of aforesaid 210.817 acre tract;

THENCE South 88°39'11" East, along the northerly line of said 30.164 acre tract and the southerly line of said 210.817 acre tract, a distance of 15.00 feet to the **POINT OF BEGINNING** and containing 0.345 of an acre (15018 square feet) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.



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15' WIDE WATER EASEMENT
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn

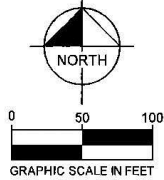
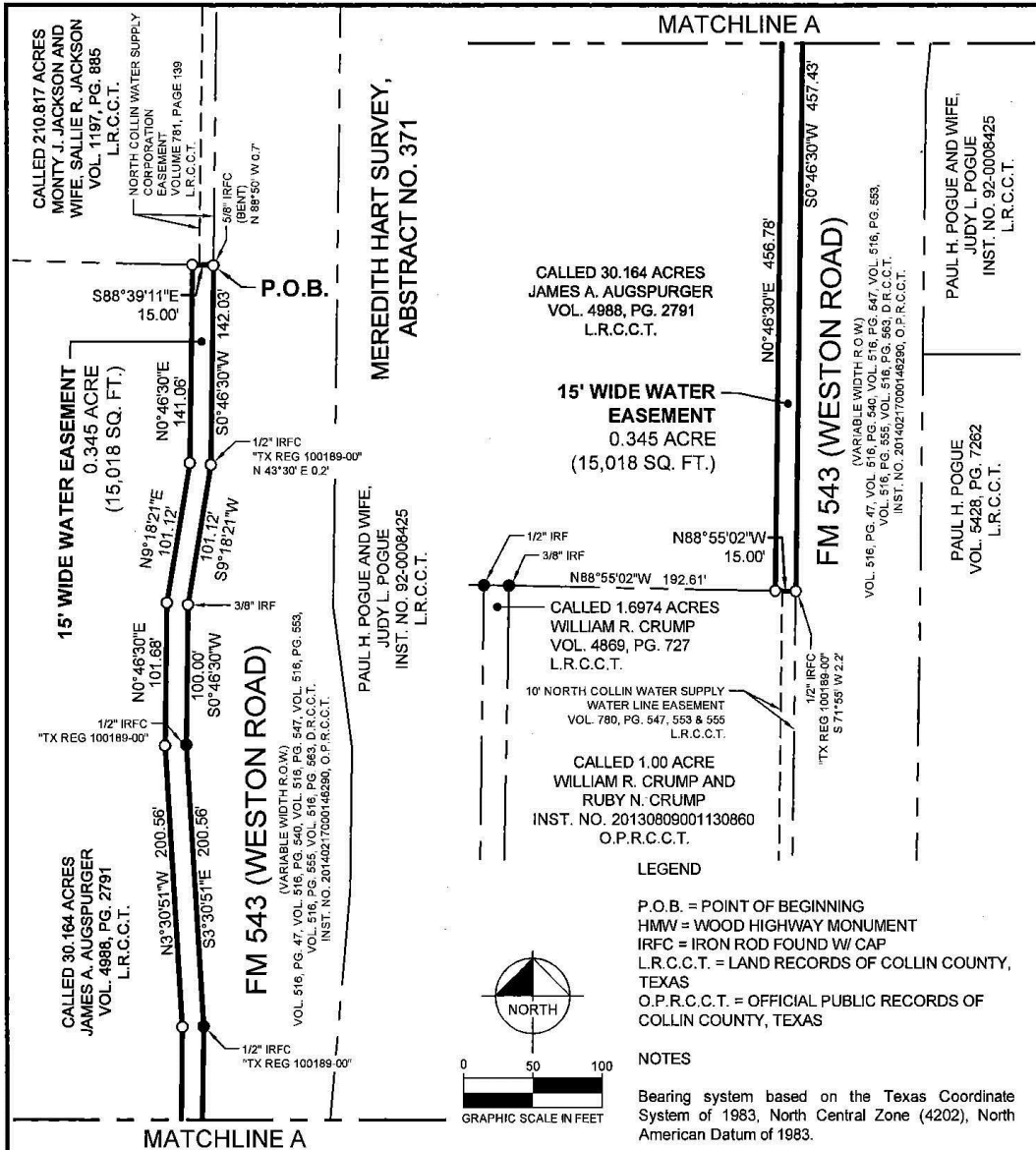
5750 Genesis Court, Suite 200
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FIRM # 10183822

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Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	01/17/2017	056150000	2 OF 3

GUNAWAN, SYLVIANA 1/18/2017 8:10 AM K:\FRI_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\JAMES A. AUGSPURGER\AUGSPURGER WATER EASEMENT.DWG



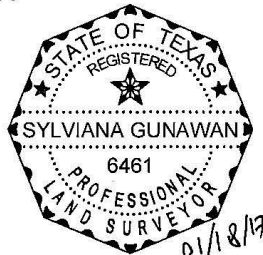
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P.O.B. = POINT OF BEGINNING
 HMW = WOOD HIGHWAY MONUMENT
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NOTES

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15' WIDE WATER EASEMENT
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 100'	SG	KHA	01/17/2017	068150000	3 OF 3

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LEGAL DESCRIPTION

1.146 Acres

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas, and being a portion of a called 30.164 acre tract of land described in a General Warranty Deed to James Alan Augspurger recorded in Volume 4988, Page 2791 of the Land Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING at a point for the northeast corner of said 30.164 acre tract, common to the southeast corner of a called 210.817 acre tract of land described in a deed to Monty J. Jackson and wife, Sallie R. Jackson, as recorded in Volume 1197, Page 885 of the Land Records of Collin County, Texas, being on the westerly right-of-way line of FM 543 (Weston Road), a variable width right-of-way as dedicated by Volume 516, Page 47, 540, 547, 553, 555, and 563 of the Deed Records of Collin County, Texas, and conveyed to City of McKinney in a Transfer of Right-of-Way as recorded in Instrument No. 20140217000146290 of the Official Public Records of Collin County, Texas, from which a 5/8 inch iron rod with an illegible plastic cap (bent) bears North 88°50' West, 0.7 feet;

THENCE along the westerly right-of-way line of said FM 543 and the easterly line of said 30.164 acre tract, the following courses:

South 00°46'30" West, a distance of 142.03 feet to a point for corner, from which a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found for witness bears North 43°30' East, 0.2 foot;

South 09°18'21" West, a distance of 101.12 feet to a 3/8 inch iron rod found for corner;

South 00°46'30" West, a distance of 100.00 feet to a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found for corner;

South 03°30'51" East, a distance of 200.56 feet to a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found for corner;

South 00°46'30" West, a distance of 457.43 feet to a point for the southeast corner of said 30.164 acre tract, common to the northeast corner of a called 1.00 acre tract of land described in a deed to William R. Crump and Ruby N. Crump, as recorded in Instrument No. 20130809001130860 of the Official Public Records of Collin County, Texas, from which a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found for witness bears South 71°55' West, 2.2 feet;

THENCE North 88°55'02" West, departing the westerly right-of-way line of FM 543, along the southerly line of said 30.164 acre tract and the northerly line of said 1.00 acre tract, a distance of 52.78 feet to a point for corner;

THENCE departing the southerly line of said 30.164 acre tract and the northerly line of said 1.00 acre tract, and crossing said 30.164 acre tract, the following courses:

North 02°19'16" West, a distance of 241.76 feet to a point for corner;

North 10°47'47" East, a distance of 80.39 feet to a point for corner;

North 01°12'34" East, a distance of 47.92 feet to a point for corner;

North 11°10'32" East, a distance of 35.61 feet to a point for corner;

Continued on Sheet No. 2

**TEMPORARY CONSTRUCTION
EASEMENT**
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	05/03/2016	098150000	1 OF 3

GUNAWAN, SYLVIANA 5/3/2016 11:37 AM K:\FRI_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\JAMES A. AUGSPURGER\AUGSPURGER TEMPORARY CONSTRUCTION EASEMENT.DWG

Continued from Sheet No. 1

North 01°12'34" East, a distance of 126.59 feet to a point for corner;

North 28°04'57" West, a distance of 86.51 feet to a point for corner;

North 34°19'09" East, a distance of 67.54 feet to a point for corner;

North 01°12'34" East, a distance of 167.85 feet to a point for corner;

North 16°14'15" East, a distance of 5.36 feet to a point for corner;

North 01°12'34" East, a distance of 127.50 feet to a point for corner;


North 45°27'52" West, a distance of 21.14 feet to a point for corner;

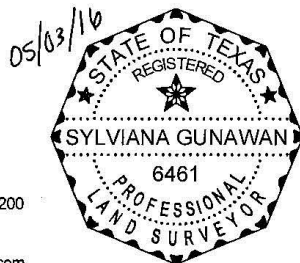
North 01°12'34" East, a distance of 22.47 feet to a point for corner on the northerly line of said 30.164 acre tract and the southerly line of aforesaid 210.817 acre tract;

THENCE South 88°39'11" East, a distance of 59.95 feet to the **POINT OF BEGINNING** and containing 1.146 acres (49,902 square feet) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.


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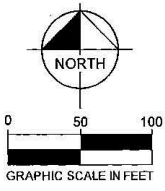
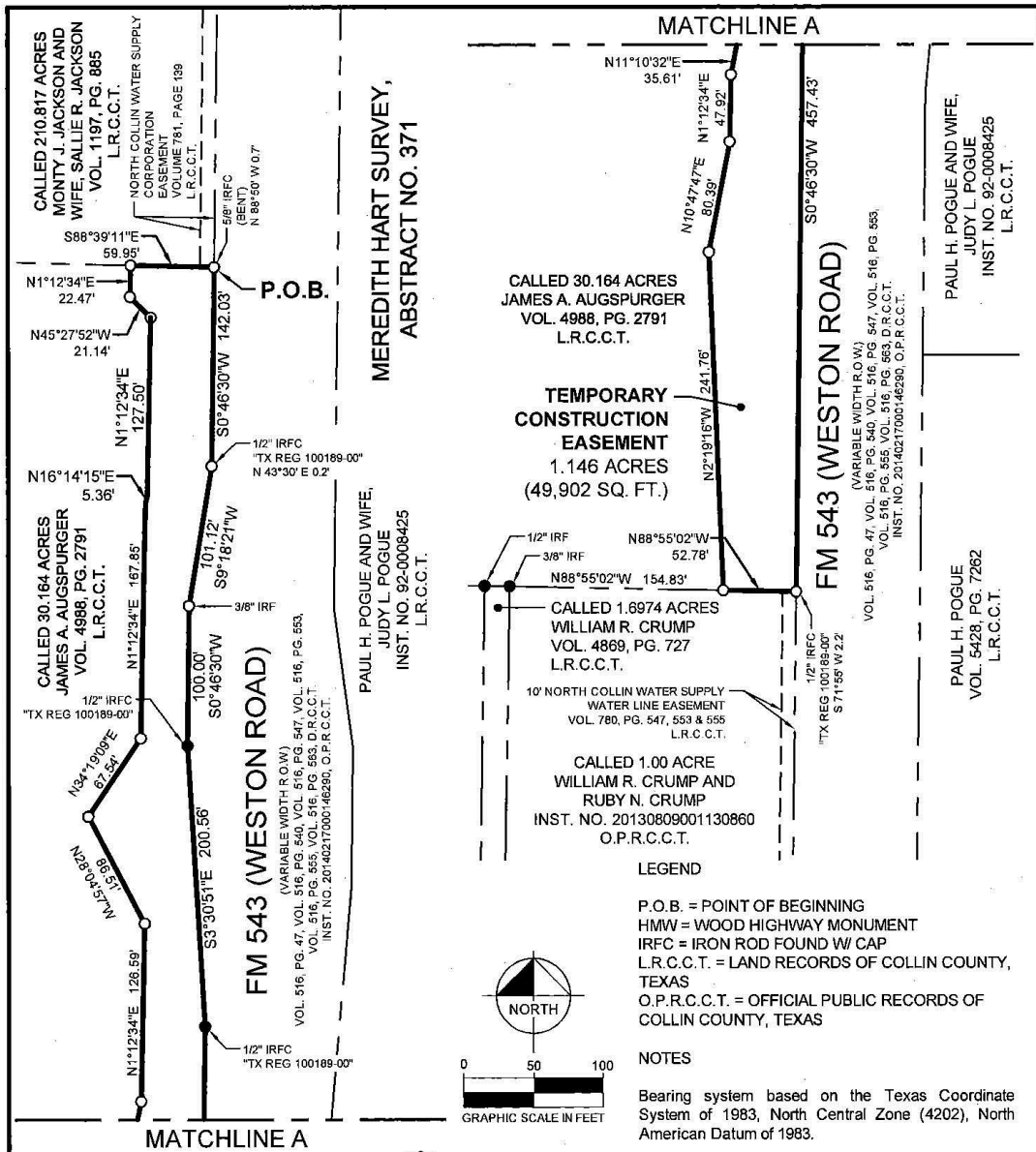
**TEMPORARY CONSTRUCTION
EASEMENT**
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	05/03/2016	068150000	2 OF 3

GUNAWAN, SYLVIANA 5/3/2016 11:37 AM K:\FRI_SURVEY\1068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\JAMES A. AUGSPURGER\AUGSPURGER TEMPORARY CONSTRUCTION EASEMENT.DWG



LEGEND

P.O.B. = POINT OF BEGINNING
 HMW = WOOD HIGHWAY MONUMENT
 IRFC = IRON ROD FOUND W/ CAP
 L.R.C.C.T. = LAND RECORDS OF COLLIN COUNTY, TEXAS
 O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

TEMPORARY CONSTRUCTION EASEMENT
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

Sylviana Gunawan
 SYLVIANA GUNAWAN
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 6461
 5750 GENESIS COURT, SUITE 200
 FRISCO, TEXAS 75034
 PH. 972-335-3580
 sylviana.gunawan@kimley-horn.com



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EXHIBIT "B-6"

Depiction and Description of Right of Way in Fee Simple, Drainage Easement, Water Line Easement and Temporary Construction Easement on Monty J. Jackson and Sallie R. Jackson Property

LEGAL DESCRIPTION
1.156 Acres

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, City of McKinney, Collin County, Texas, and being a portion of a called 20.007 acre tract of land described in a Warranty Deed to Monty J. Jackson and wife, Sallie R. Jackson, as recorded in Volume 1197, Page 882 of the Land Records of Collin County, Texas, same being a portion of a called 210.817 acre tract of land described in a Warranty Deed to Monty J. Jackson and wife, Sallie R. Jackson, as recorded in Volume 1197, Page 885 of the Land Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found at the beginning of a curve to the right, for the northwest corner of a called 15.7401 acre tract of land described in a Transfer of Right-of-Way to City of McKinney, Texas, as recorded in Instrument No. 20140217000146290 of the Official Public Records of Collin County, Texas, same being on the westerly right-of-way line of FM 543 (Weston Road), a variable width right-of-way as dedicated by Volume 516, Page 47, 540, 547, 553, 555, and 563 of the Deed Records of Collin County, Texas, and on the easterly line of said 210.817 acre tract;

THENCE in a southeasterly direction, along the westerly right-of-way line of said FM 543 and the easterly line of said 210.817 acre tract, with said curve to the right, having a radius of 671.18 feet, a delta angle of 18°03'38", an arc distance of 211.57 feet, and a chord bearing South 27°06'24" East, a distance of 210.69 feet to a point for corner at the end of said curve and for the **POINT OF BEGINNING** of the herein described easement tract;

THENCE continuing along the westerly right-of-way line of said FM 543, the easterly line of said 210.817 acre tract and the easterly line of said 20.007 acre tract, the following courses:

In a southeasterly direction, with said curve to the right, having a radius of 671.18 feet, a delta angle of 18°51'05", an arc distance of 220.83 feet, and a chord bearing South 08°39'02" East, a distance of 219.84 feet to a point for corner at the end of said curve;

South 00°46'30" West, a distance of 1773.48 feet to a point at the beginning of a non-tangent curve to the left;

THENCE departing the westerly right-of-way line of said FM 543 and the easterly line of said 210.817 acre tract, and crossing said 210.817 acre tract and said 20.007 acre tract, the following courses:

In a northwesterly direction, with said curve to the left, having a radius of 1,540.00 feet, a delta angle of 05°17'29", an arc distance of 142.22 feet, and a chord bearing North 01°52'14" West, a distance of 142.17 feet to a point for corner at the end of said curve;

North 04°30'58" West, a distance of 177.43 feet to a point at the beginning of a tangent curve to the right;


In a northwesterly direction, with said curve to the right, having a radius of 1,660.00 feet, a delta angle of 05°17'29", an arc distance of 153.30 feet, and a chord bearing North 01°52'14" West, a distance of 153.25 feet to a point for corner at the end of said curve;

North 00°46'30" East, a distance of 1,409.86 feet to a point at the beginning of a tangent curve to the left;

In a northwesterly direction, with said curve to the left, having a radius of 987.25 feet, a delta angle of 06°19'19", an arc distance of 108.93 feet, and a chord bearing North 02°23'09" West, a distance of 108.88 feet to the **POINT OF BEGINNING** and containing 1.156 acres (50,346 square feet) of land, more or less.


NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.



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05/02/16



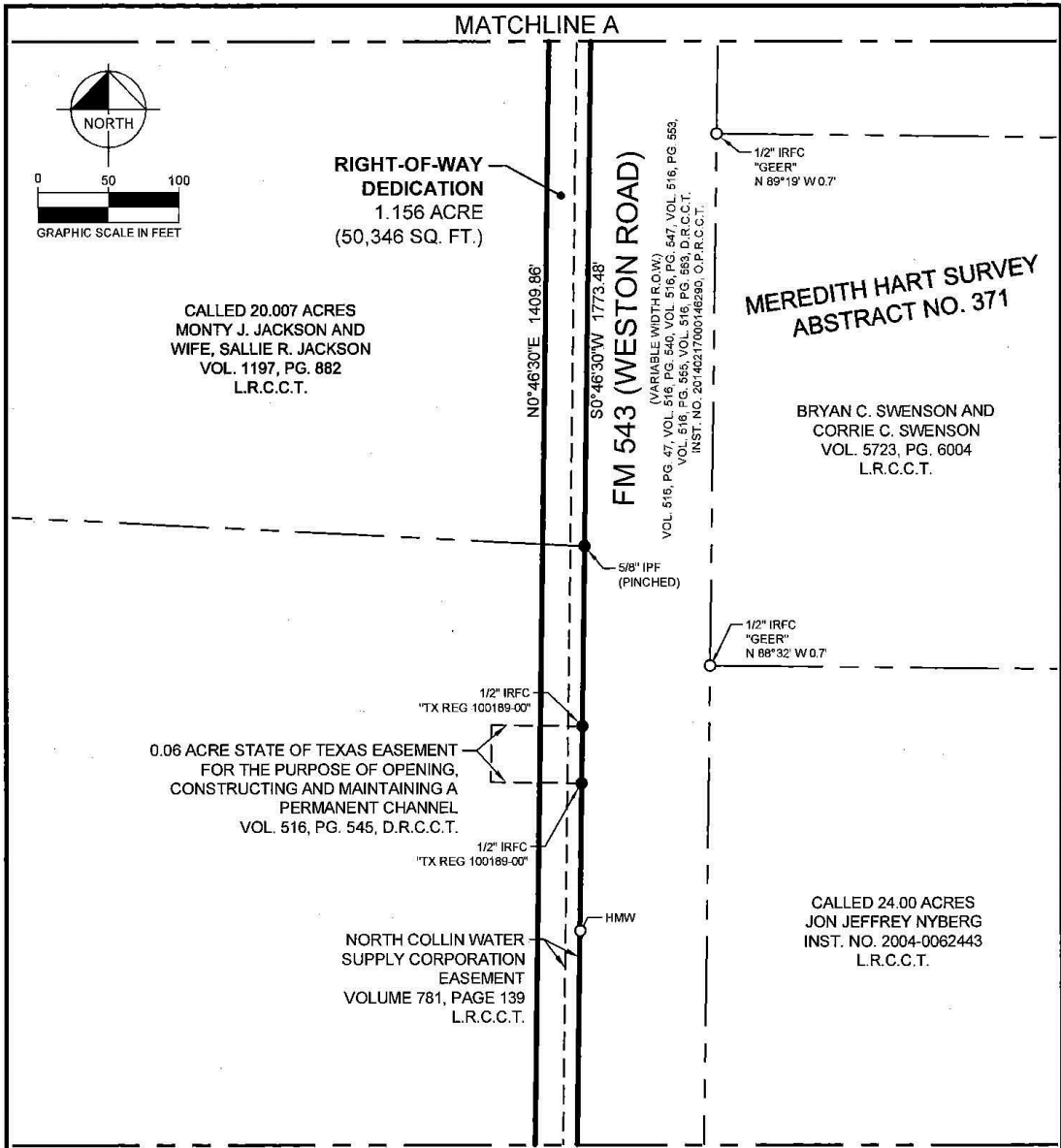
RIGHT-OF-WAY DEDICATION
1.156 ACRES
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

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N/A	SG	KHA	04/19/2016	068150000	1 OF 4

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NOTES

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RIGHT-OF-WAY DEDICATION
1.156 ACRES
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

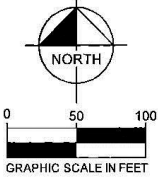
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MATCHLINE B



RIGHT-OF-WAY DEDICATION
1.156 ACRE
(50,346 SQ. FT.)

CALLED 24.00 ACRES
JON JEFFREY NYBERG
INST. NO. 2004-0062443
L.R.C.C.T.

**MEREDITH HART SURVEY,
ABSTRACT NO. 371**

3/4" IPF
N 85°48' W 1.0'
(DISTURBED)

$\Delta=5^{\circ}17'29''$
 $R=1660.00'$
 $L=153.30'$
 $CB=N1^{\circ}52'14''W$
 $C=153.25'$

CALLED 210.817 ACRES
MONTY J. JACKSON AND
WIFE, SALLIE R. JACKSON
VOL. 1197, PG. 885
L.R.C.C.T.

PAUL H. POGUE AND WIFE,
JUDY L. POGUE
INST. NO. 92-0008425
L.R.C.C.T.

FM 543 (WESTON ROAD)

(VARIABLE WIDTH R.O.W.)
VOL. 516, PG. 47, VOL. 516, PG. 540 VOL. 516, PG. 547 VOL. 516, PG. 553,
VOL. 516, PG. 555, VOL. 516, PG. 563 D.R.C.C.T.
INST. NO. 20140217000146290, O.P.R.C.C.T.

N4°30'58"W 177.43'

NORTH COLLIN WATER
SUPPLY CORPORATION
EASEMENT
VOLUME 781, PAGE 139
L.R.C.C.T.

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$\Delta=5^{\circ}17'29''$
 $R=1540.00'$
 $L=142.22'$
 $CB=N1^{\circ}52'14''W$
 $C=142.17'$

NOTES

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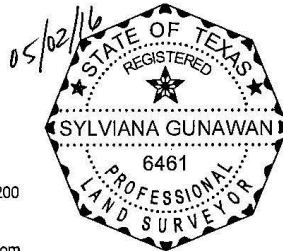
CALLED 30.164 ACRES
JAMES A. AUGSPURGER
INST. NO. 2001-0105673
L.R.C.C.T.

5/8" IRFC
(BENT)
N 88°50' W 0.7'

**RIGHT-OF-WAY DEDICATION
1.156 ACRES**

MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

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LEGAL DESCRIPTION

1.583 Acres

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, City of McKinney, Collin County, Texas, and being a portion of a called 20.007 acre tract of land described in a Warranty Deed to Monty J. Jackson and wife, Sallie R. Jackson, as recorded in Volume 1197, Page 882 of the Land Records of Collin County, Texas, same being a portion of a called 210.817 acre tract of land described in a Warranty Deed to Monty J. Jackson and wife, Sallie R. Jackson, as recorded in Volume 1197, Page 885 of the Land Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found at the beginning of a curve to the right, for the northwest corner of a called 15.7401 acre tract of land described in a Transfer of Right-of-Way to City of McKinney, Texas, as recorded in Instrument No. 20140217000146290 of the Official Public Records of Collin County, Texas, same being on the westerly right-of-way line of FM 543 (Weston Road), a variable width right-of-way as dedicated by Volume 516, Page 47, 540, 547, 553, 555, and 563 of the Deed Records of Collin County, Texas and the easterly line of said 210.817 acre tract;

THENCE in a southeasterly direction, along the westerly right-of-way line of said FM 543 and the easterly line of said 210.817 acre tract, with said curve to the right, having a radius of 671.18 feet, a delta angle of 06°08'07", an arc distance of 71.87 feet, and a chord bearing South 33°04'09" East, a distance of 71.84 feet to a point at the beginning of a curve to the right and for the **POINT OF BEGINNING** of the herein described easement tract;

THENCE, in a southeasterly direction, continuing along the westerly right-of-way line of said FM 543 and the easterly line of said 210.817 acre tract, with said curve to the right, having a radius of 671.18 feet, a delta angle of 11°55'30", an arc distance of 139.69 feet, and a chord bearing South 24°02'20" East, a distance of 139.44 feet to a point at the beginning of a non-tangent curve to the right;

THENCE departing the westerly right-of-way line of said FM 543 and the easterly line of said 210.817 acre tract, and crossing said 210.817 acre tract and said 20.007 acre tract, the following courses:

In a southeasterly direction, with said curve to the right, having a radius of 987.25 feet, a delta angle of 06°19'19", an arc distance of 108.93 feet, and a chord bearing South 02°23'09" East, a distance of 108.88 feet to a point for corner at the end of said curve;

South 00°46'30" West, being 30 feet west of and parallel with the easterly line of said 210.817 acre tract and said 20.007 acre tract, a distance of 1409.86 feet to a point at the beginning of a tangent curve to the left;

In a southeasterly direction, with said curve to the left, having a radius of 1,660.00 feet, a delta angle of 05°17'29", an arc distance of 153.30 feet, and a chord bearing South 01°52'14" East, a distance of 153.25 feet to a point for corner at the end of said curve;

South 04°30'58" East, a distance of 177.43 feet to a point at the beginning of a tangent curve to the right;

In a southeasterly direction, with said curve to the right, having a radius of 1,540.00 feet, a delta angle of 05°17'29", an arc distance of 142.22 feet, and a chord bearing South 01°52'14" East, a distance of 142.17 feet to a point for corner at the end of said curve on the westerly right-of-way line of said FM 543 and the easterly line of said 210.817 acre tract;

THENCE South 00°46'30" West, along the westerly right-of-way line of said FM 543 and the easterly line of said 210.817 acre tract, a distance of 24.59 feet to a point for the southeast corner of said 210.817 acre tract, common to the northeast corner of a called 30.164 acre tract of land described in a deed to James A. Augspurger, as recorded in Instrument No. 2001-0105673 of the Land Records of Collin County, Texas, from which a 5/8 inch iron rod with an illegible plastic cap (bent) bears North 88°50' West, 0.7 feet;

Continued on Sheet No. 2

DRAINAGE EASEMENT
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

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Continued from Sheet No. 1

THENCE North 88°39'11" West, departing the westerly right-of-way line of said FM 543, along the southerly line of said 210.817 acre tract and the northerly line of said 30.164 acre tract, a distance of 30.00 feet to a point for corner;

THENCE departing the southerly line of said 210.817 acre tract and the northerly line of said 30.164 acre tract, and crossing said 210.817 acre tract and aforesaid 20.007 acre tract, the following courses:

North 00°46'30" East, a distance of 24.29 feet to a point at the beginning of a tangent curve to the left;

In a northwesterly direction, with said curve to the left, having a radius of 1,510.00 feet, a delta angle of 05°17'29", an arc distance of 139.45 feet, and a chord bearing North 01°52'14" West, a distance of 139.40 feet to a point for corner at the end of said curve;

North 04°30'58" West, a distance of 39.77 feet to a point for corner;

South 85°29'02" West, a distance of 30.00 feet to a point for corner;

North 04°30'58" West, a distance of 137.65 feet to a point at the beginning of a tangent curve to the right;

In a northwesterly direction, with said curve to the right, having a radius of 1,720.00 feet, a delta angle of 04°24'25", an arc distance of 132.30 feet, and a chord bearing North 02°18'46" West, a distance of 132.27 feet to a point for corner at the end of said curve;

North 87°55'18" East, a distance of 35.02 feet to a point at the beginning of a non-tangent curve to the right;

In a northeasterly direction, with said curve to the right, having a radius of 1,685.00 feet, a delta angle of 00°50'36", an arc distance of 24.80 feet, and a chord bearing North 00°21'12" East, a distance of 24.80 feet to a point for corner at the end of said curve;

North 00°46'30" East, a distance of 135.12 feet to a point for corner;

North 89°13'29" West, a distance of 25.00 feet to a point for corner;

North 00°46'31" East, a distance of 50.00 feet to a point for corner;

South 89°13'29" East, a distance of 5.00 feet to a point for corner;

North 00°46'30" East, a distance of 270.13 feet to a point for corner;

North 89°13'29" West, a distance of 5.00 feet to a point for corner;

North 00°46'31" East, a distance of 50.00 feet to a point for corner;

Continued on Sheet No. 3

DRAINAGE EASEMENT
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Continued from Sheet No. 2

South 89°13'29" East, a distance of 25.00 feet to a point for corner;

North 00°46'30" East, a distance of 131.89 feet to a point for corner;

North 89°13'30" West, a distance of 10.00 feet to a point for corner;

North 00°46'30" East, a distance of 35.00 feet to a point for corner;

South 89°13'30" East, a distance of 15.00 feet to a point for corner;

North 00°46'30" East, a distance of 502.73 feet to a point for corner;

North 89°13'29" West, a distance of 24.50 feet to a point for corner;

North 00°46'31" East, a distance of 45.00 feet to a point for corner;

South 89°13'30" East, a distance of 24.50 feet to a point for corner;

North 00°46'30" East, a distance of 190.00 feet to a point at the beginning of a tangent curve to the left;

In a northwesterly direction, with said curve to the left, having a radius of 967.25 feet, a delta angle of 04°01'40", an arc distance of 67.99 feet, and a chord bearing North 01°14'19" West, a distance of 67.98 feet to a point for corner at the end of said curve;

South 85°07'17" West, a distance of 15.01 feet to a point at the beginning of a non-tangent curve to the left;

In a northwesterly direction, with said curve to the left, having a radius of 952.25 feet, a delta angle of 10°18'10", an arc distance of 171.23 feet, and a chord bearing North 08°22'42" West, a distance of 171.00 feet to the **POINT OF BEGINNING**, and containing 1.583 of an acre (68,973 square feet) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.


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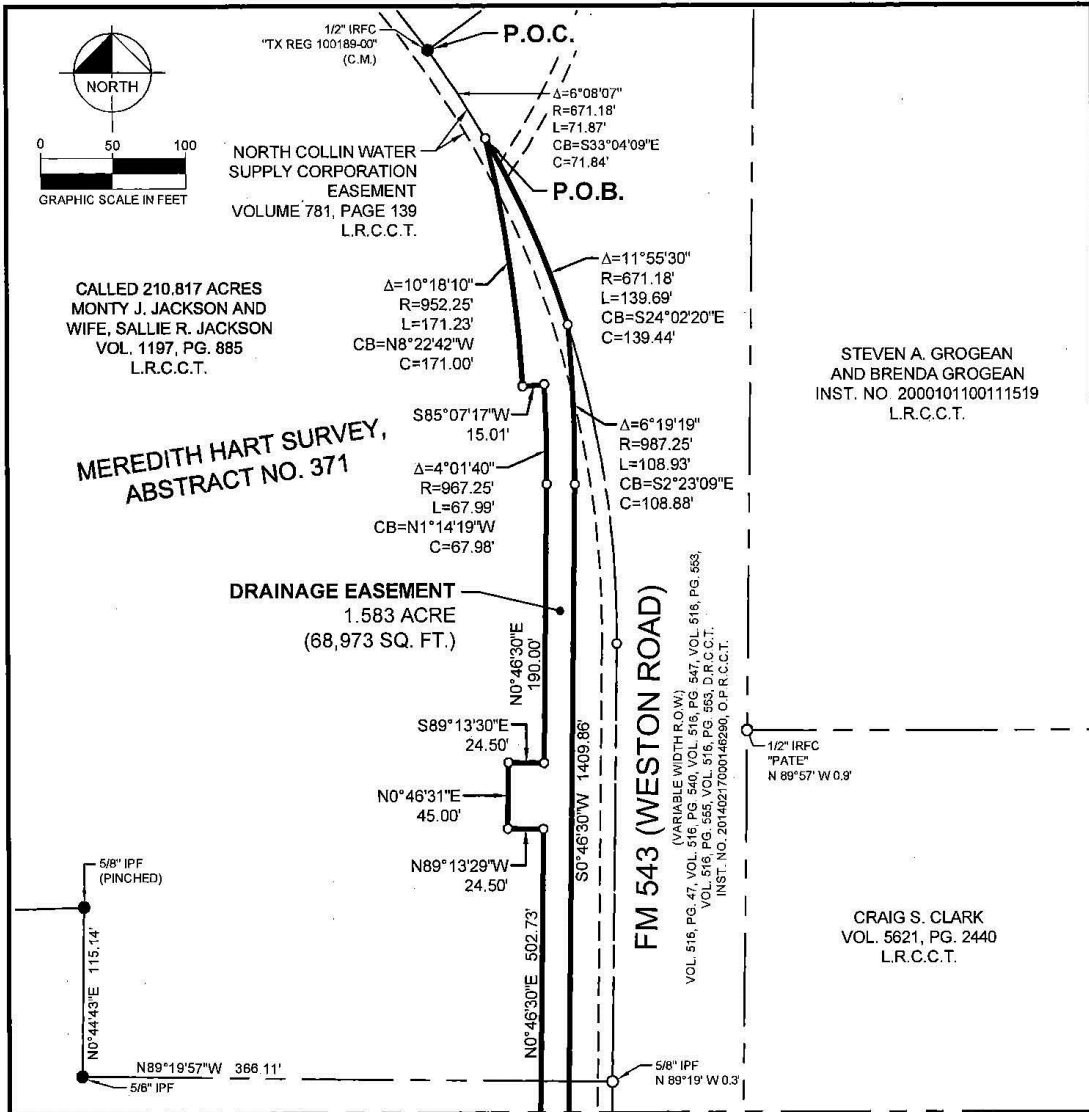
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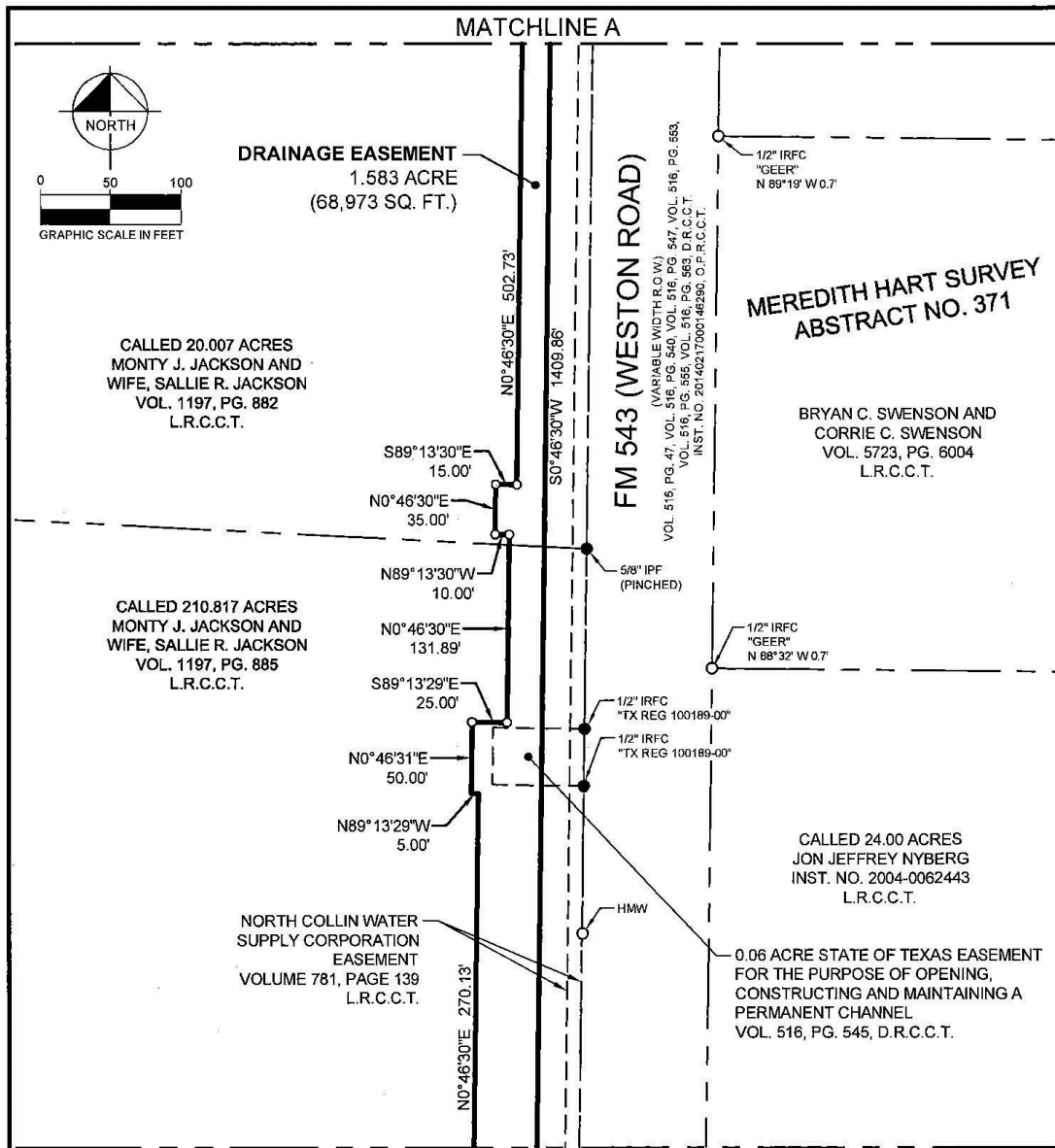
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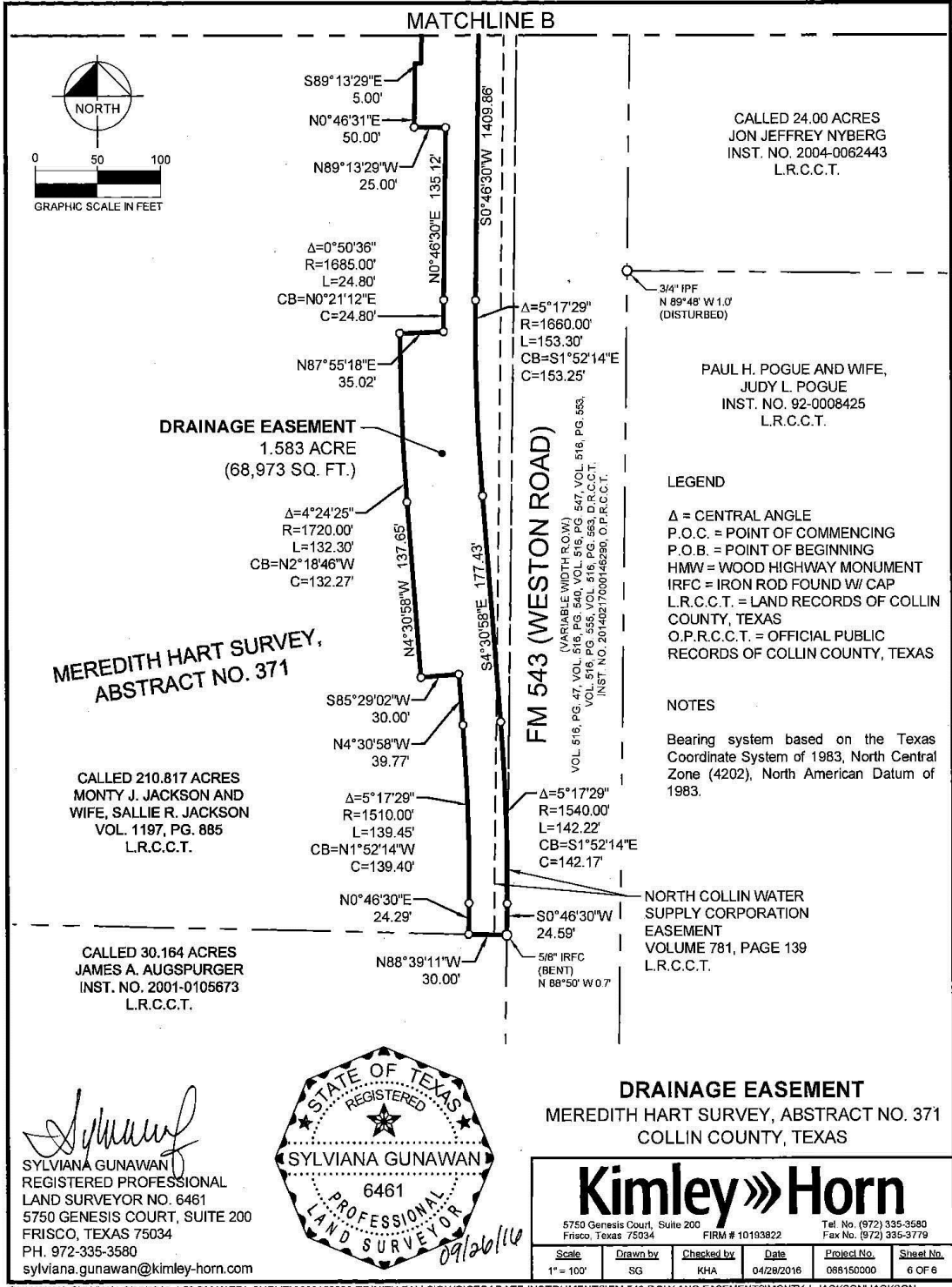
MATCHLINE B

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Sylviana Gunawan
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LEGAL DESCRIPTION

0.690 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, City of McKinney, Collin County, Texas, and being a portion of a called 20.007 acre tract of land described in a Warranty Deed to Monty J. Jackson and wife, Sallie R. Jackson, as recorded in Volume 1197, Page 882 of the Land Records of Collin County, Texas, same being a portion of a called 210.817 acre tract of land described in a Warranty Deed to Monty J. Jackson and wife, Sallie R. Jackson, as recorded in Volume 1197, Page 885 of the Land Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found at the beginning of a curve to the right, for the northwest corner of a called 15.7401 acre tract of land described in a Transfer of Right-of-Way to City of McKinney, Texas, as recorded in Instrument No. 20140217000146290 of the Official Public Records of Collin County, Texas, same being on the westerly right-of-way line of FM 543 (Weston Road), a variable width right-of-way as dedicated by Volume 516, Page 47, 540, 547, 553, 555, and 563 of the Deed Records of Collin County, Texas, the easterly line of said 210.817 acre tract, and on the easterly line of a North Collin Water Supply Corporation Easement, as recorded in Volume 781, Page 139 of the Land Records of Collin County, Texas;

THENCE in a southeasterly direction, along the westerly right-of-way line of said FM 543, the easterly line of said 210.817 acre tract, and the easterly line of said easement, with said curve to the right, having a radius of 671.18 feet, a delta angle of 16°02'28", an arc distance of 187.91 feet, and a chord bearing South 28°06'58" East, a distance of 187.30 feet to a point for corner at the end of said curve;

THENCE South 69°52'41" West, departing the westerly right-of-way line of said FM 543, the easterly line of said 210.87 acre tract, and the easterly line of said easement, crossing said 210.817 acre tract and said easement, a distance of 10.00 feet to a point on the westerly line of said easement for the **POINT OF BEGINNING** of the herein described easement tract;

THENCE continuing across said 210.817 acre tract, the following courses:

In a southeasterly direction, along the westerly line of said easement and with said curve to the right, having a radius of 661.18 feet, a delta angle of 06°06'00", an arc distance of 70.39 feet, and a chord bearing South 17°02'43" East, a distance of 70.36 feet to a point at the beginning of a non-tangent curve to the right;

In a southeasterly direction, departing the westerly line of said easement and with said curve to the right, having a radius of 987.25 feet, a delta angle of 03°30'29", an arc distance of 60.45 feet, and a chord bearing South 00°58'44" East, a distance of 60.44 feet to a point for corner at the end of said curve;

South 00°46'30" West, being 30 feet west of and parallel with the easterly lines of said 210.817 acre tract and aforesaid 20.007 acre tract, a distance of 1,409.86 feet to a point at the beginning of a tangent curve to the left;

In a southeasterly direction, with said curve to the left, having a radius of 1,660.00 feet, a delta angle of 05°17'29", an arc distance of 153.30 feet, and a chord bearing South 01°52'14" East, a distance of 153.25 feet to a point for corner at the end of said curve;

South 04°30'58" East, a distance of 177.43 feet to a point at the beginning of a tangent curve to the right;

In a southeasterly direction, with said curve to the right, having a radius of 1,540.00 feet, a delta angle of 05°17'29", an arc distance of 142.22 feet, and a chord bearing South 01°52'14" East, a distance of 142.17 feet to a point for corner at the end of said curve on the westerly right-of-way line of aforesaid FM 543, the easterly line of said 210.817 acre tract, and the easterly line of aforesaid easement;

Continued on Sheet No. 2

15' WIDE WATER EASEMENT
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200
Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580
Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
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Continued from Sheet No. 1

THENCE South 00°46'30" West, along the westerly right-of-way line of said FM 543, the easterly line of said 210.817 acre tract, and the easterly line of said easement, a distance of 24.59 feet to a point for the southeast corner of said 210.817 acre tract, common to the southeast corner of said easement, and the northeast corner of a called 30.164 acre tract of land described in a deed to James A. Augspurger, as recorded in Instrument No. 2001-0105673 of the Land Records of Collin County, Texas;

THENCE North 88°39'11" West, departing the westerly right-of-way line of said FM 543, along the southerly line of said 210.817 acre tract, the southerly line of said easement, and the northerly line of said 30.164 acre tract, a distance of 15.00 feet to a point for corner;

THENCE departing the southerly line of said 210.817 acre tract and the northerly line of said 30.164 acre tract, and crossing said 210.817 acre tract, the following courses:

North 00°46'30" East, a distance of 24.44 feet to a point at the beginning of a tangent curve to the left;

In a northwesterly direction, with said curve to the left, having a radius of 1,525.00 feet, a delta angle of 05°17'29", an arc distance of 140.84 feet, and a chord bearing North 01°52'14" West, a distance of 140.79 feet to a point for corner at the end of said curve;

North 04°30'58" West, a distance of 177.43 feet to a point at the beginning of a tangent curve to the right;


In a northwesterly direction, with said curve to the right, having a radius of 1,675.00 feet, a delta angle of 05°17'29", an arc distance of 154.69 feet, and a chord bearing North 01°52'14" West, a distance of 154.63 feet to a point for corner at the end of said curve;

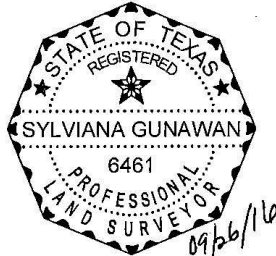
North 00°46'30" East, being 45 feet west of and parallel with the easterly line of said 210.817 acre tract, a distance of 1,409.86 feet to a point at the beginning of a tangent curve to the left;

In a northwesterly direction, with said curve to the left, having a radius of 972.25 feet, a delta angle of 07°31'45", an arc distance of 127.76 feet, and a chord bearing North 02°59'22" West, a distance of 127.67 feet to the **POINT OF BEGINNING** and containing 0.690 of an acre (30,038 square feet) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

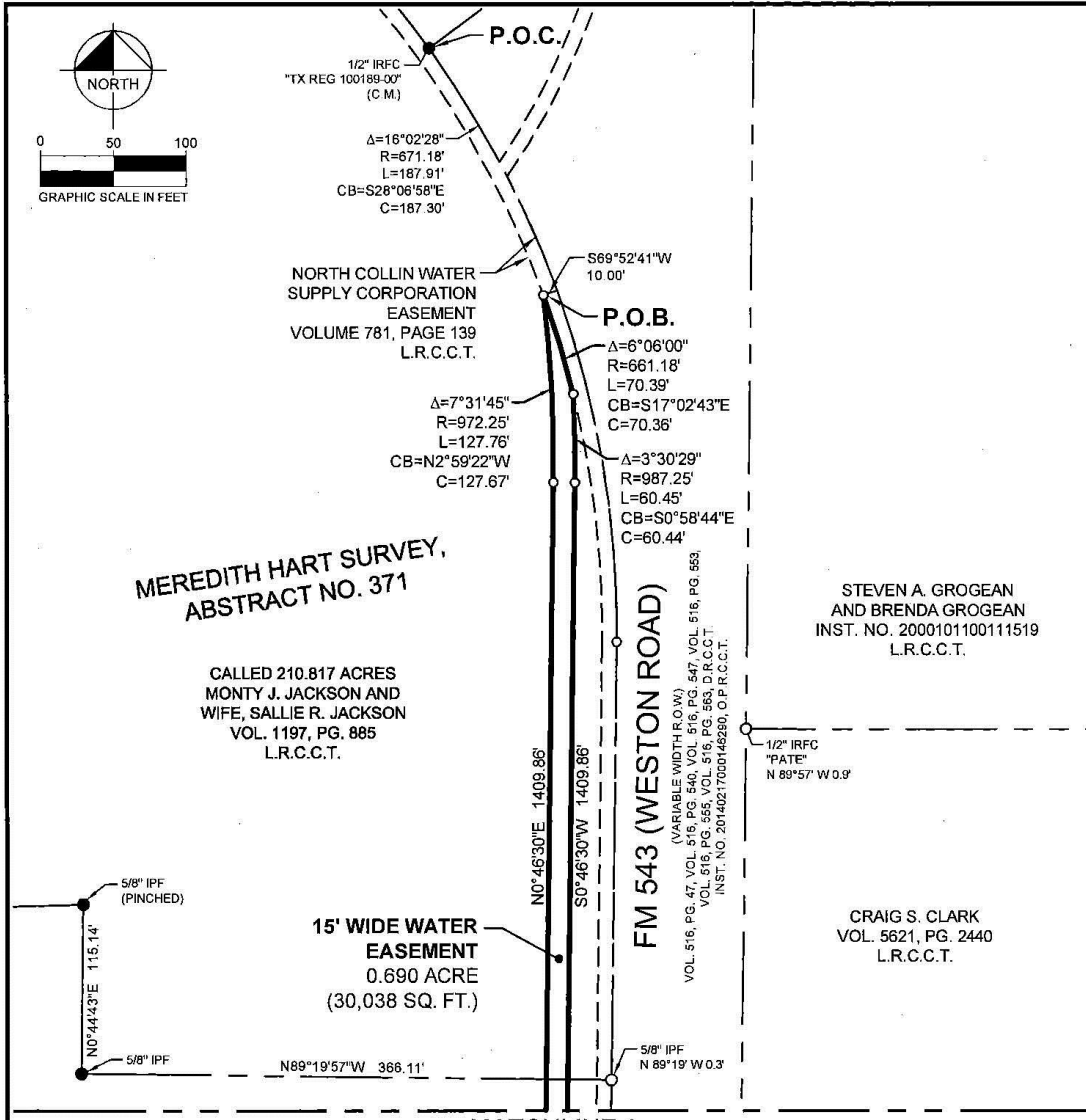

SYLVIANA GUNAWAN
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15' WIDE WATER EASEMENT
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn		5750 Genesis Court, Suite 200 Frisco, Texas 75034		FIRM # 10193822		Tel. No (972) 335-3580 Fax No (972) 335-3779	
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MATCHLINE A

LEGEND

Δ = CENTRAL ANGLE
 P.O.C. = POINT OF COMMENCING
 P.O.B. = POINT OF BEGINNING
 HMW = WOOD HIGHWAY MONUMENT
 IRFC = IRON ROD FOUND W/ CAP
 L.R.C.C.T. = LAND RECORDS OF COLLIN COUNTY, TEXAS
 O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

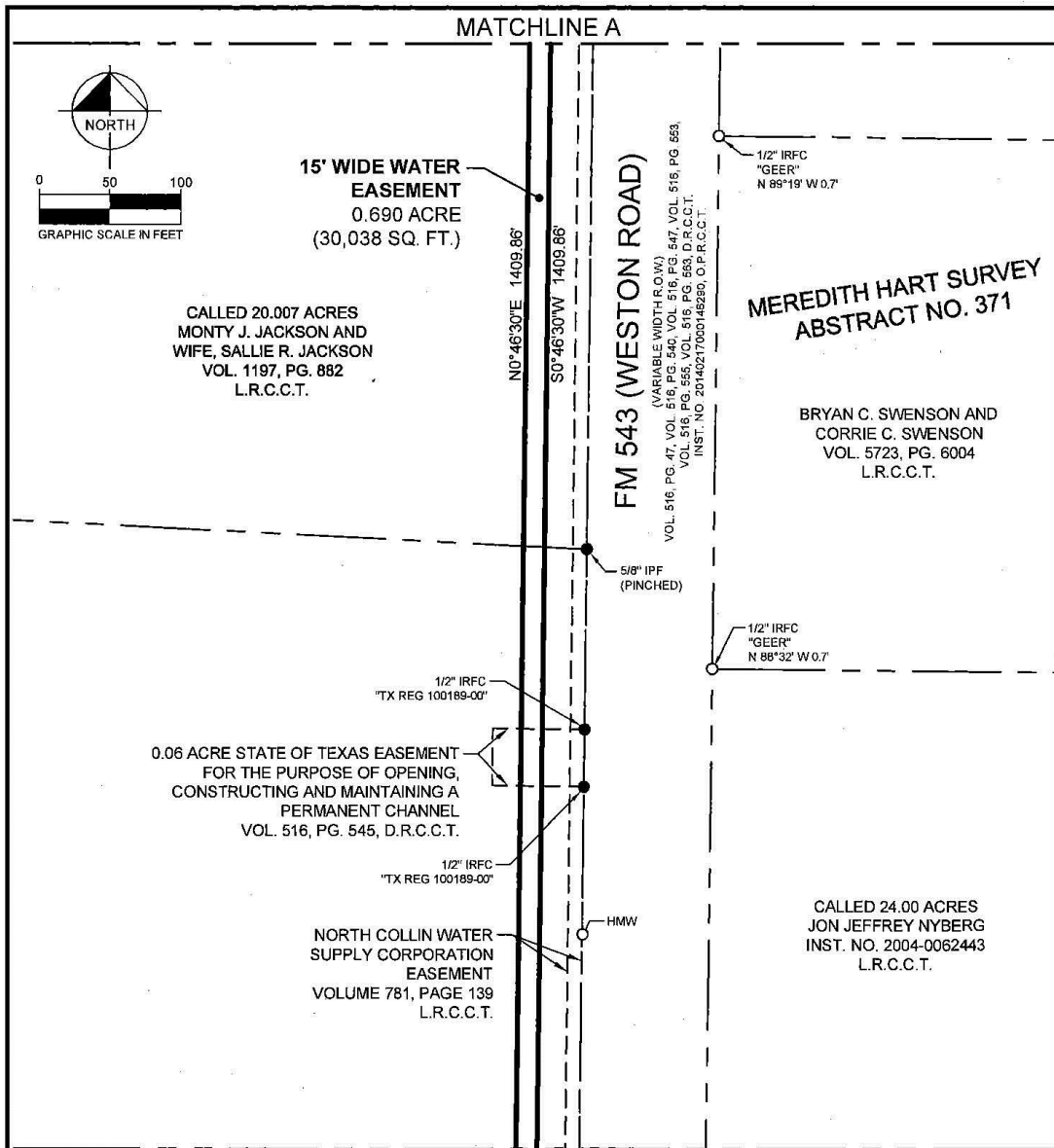
15' WIDE WATER EASEMENT
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200 Tel. No. (972) 335-3580
 Ft. Worth, Texas 75034 FIRM # 10193822 Fax No. (972) 335-3779

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LEGEND

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NOTES

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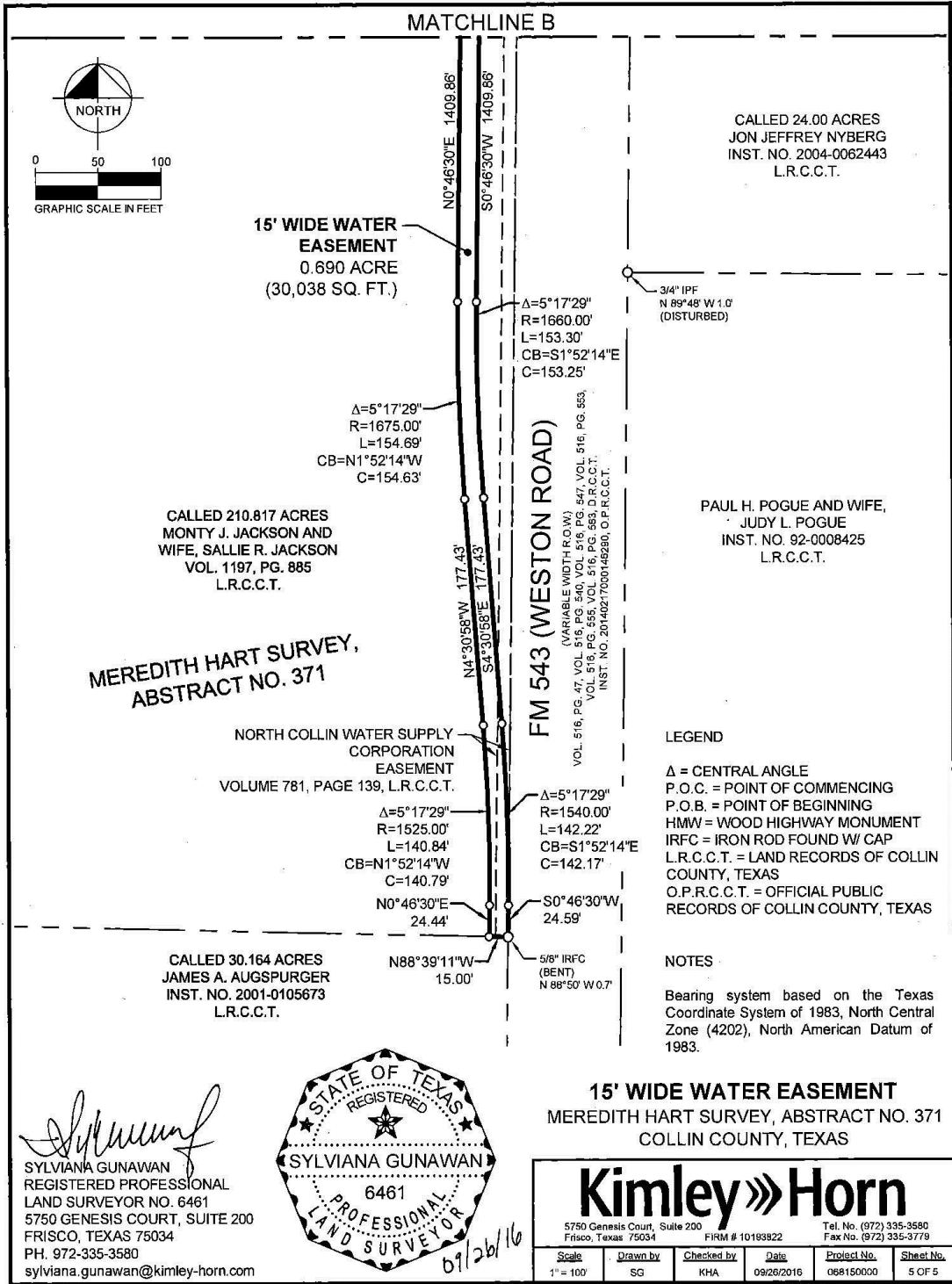
**15' WIDE WATER EASEMENT
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS**

Kimley»Horn

5750 Genesis Court, Suite 200 Frito, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
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LEGAL DESCRIPTION

2.929 Acres

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, City of McKinney, Collin County, Texas, and being a portion of a called 20.007 acre tract of land described in a Warranty Deed to Monty J. Jackson and wife, Sallie R. Jackson, as recorded in Volume 1197, Page 882 of the Land Records of Collin County, Texas, and a portion of a called 210.817 acre tract of land described in a Warranty Deed to Monty J. Jackson and wife, Sallie R. Jackson, as recorded in Volume 1197, Page 885 of the Land Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod with plastic cap stamped "TX REG 100189-00" found at the beginning of a curve to the right, for the northwest corner of a called 15.7401 acre tract of land described in a Transfer of Right-of-Way to City of McKinney, Texas, as recorded in Instrument No. 20140217000146290 of the Official Public Records of Collin County, Texas, same being on the westerly right-of-way line of FM 543 (Weston Road), a variable width right-of-way as dedicated by Volume 516, Page 47, 540, 547, 553, 555, and 563 of the Deed Records of Collin County, Texas and the easterly line of said 210.817 acre tract;

THENCE in a southeasterly direction, along the westerly right-of-way line of said FM 543 and the easterly line of said 210.817 acre tract, with said curve to the right, having a radius of 671.18 feet, a delta angle of 02°18'57", an arc distance of 27.13 feet, and a chord bearing South 34°58'44" East, a distance of 27.13 feet to a point at the beginning of a curve to the right and for the **POINT OF BEGINNING** of the herein described easement tract;

THENCE, in a southeasterly direction, continuing along the westerly right-of-way line of said FM 543 and the easterly line of said 210.817 acre tract, with said curve to the right, having a radius of 671.18 feet, a delta angle of 15°44'41", an arc distance of 184.44 feet, and a chord bearing South 25°56'55" East, a distance of 183.86 feet to a point at the beginning of a non-tangent curve to the right;

THENCE departing the westerly right-of-way line of said FM 543 and the easterly line of said 210.817 acre tract, and crossing said 210.817 acre tract and aforesaid 20.007 acre tract, the following courses:

In a southeasterly direction, with said curve to the right, having a radius of 987.25 feet, a delta angle of 06°19'19", an arc distance of 108.93 feet, and a chord bearing South 02°23'09" East, a distance of 108.88 feet to a point for corner at the end of said curve;

South 0°46'30" West, a distance of 1,409.86 feet to a point at the beginning of a tangent curve to the left;

In a southeasterly direction, with said curve to the left, having a radius of 1,660.00 feet, a delta angle of 05°17'29", an arc distance of 153.30 feet, and a chord bearing South 01°52'14" East, a distance of 153.25 feet to a point for corner at the end of said curve;

South 04°30'58" East, a distance of 177.43 feet to a point at the beginning of a tangent curve to the right;

In a southeasterly direction, with said curve to the right, having a radius of 1,540.00 feet, a delta angle of 05°17'29", an arc distance of 142.22 feet, and a chord bearing South 01°52'14" East, a distance of 142.17 feet to a point for corner at the end of said curve on the westerly right-of-way line of said FM 543 and the easterly line of said 210.817 acre tract;

THENCE South 00°46'30" West, along the westerly right-of-way line of said FM 543 and the easterly line of said 210.817 acre tract, a distance of 24.59 feet to a point for the southeast corner of said 210.817 acre tract, common to the northeast corner of a called 30.164 acre tract of land described in a deed to James A. Augspurger, as recorded in Instrument No. 2001-0105673 of the Land Records of Collin County, Texas, from which a 5/8 inch iron rod with an illegible plastic cap (bent) bears North 88°50' West, 0.7 feet;

Continued on Sheet No. 2

**TEMPORARY CONSTRUCTION
EASEMENT**

MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193622 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

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Continued from Sheet No. 1

THENCE North 88°39'11" West, departing the westerly right-of-way line of said FM 543, along the southerly line of said 210.817 acre tract and the northerly line of said 30.164 acre tract, a distance of 59.95 feet to a point for corner;

THENCE departing the southerly line of said 210.817 acre tract and the northerly line of said 30.164 acre tract, and crossing said 210.817 acre tract and aforesaid 20.007 acre tract, the following courses:

North 01°12'34" East, a distance of 9.47 feet to a point for corner;

North 49°59'36" East, a distance of 26.28 feet to a point for corner;

North 02°30'47" West, a distance of 170.57 feet to a point for corner;

South 85°29'02" West, a distance of 24.84 feet to a point for corner;

North 04°30'58" West, a distance of 142.65 feet to a point at the beginning of a tangent curve to the right;

In a northwesterly direction, with said curve to the right, having a radius of 1,725.00 feet, a delta angle of 04°34'03", an arc distance of 137.51 feet, and a chord bearing North 02°13'57" West, a distance of 137.48 feet to a point for corner;

North 87°55'18" East, a distance of 25.26 feet to a point for corner;

North 01°21'57" West, a distance of 150.76 feet to a point for corner;

North 89°13'29" West, a distance of 9.74 feet to a point for corner;

North 00°46'31" East, a distance of 60.00 feet to a point for corner;

South 89°13'29" East, a distance of 5.00 feet to a point for corner;

North 00°47'01" East, a distance of 256.15 feet to a point for corner;

North 88°47'26" West, a distance of 13.49 feet to a point for corner;

North 01°12'34" East, a distance of 66.70 feet to a point for corner;

South 88°47'26" East, a distance of 9.83 feet to a point for corner;

North 14°20'41" East, a distance of 30.14 feet to a point for corner;

North 03°41'46" East, a distance of 72.85 feet to a point for corner;

North 45°28'14" West, a distance of 26.69 feet to a point for corner;

North 01°12'34" East, a distance of 295.02 feet to a point for corner;

North 78°09'12" West, a distance of 117.03 feet to a point for corner;

Continued on Sheet No. 3

**TEMPORARY CONSTRUCTION
EASEMENT**
MEREDITH HART SURVEY, ABSTRACT-NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200
Frisco, Texas 75034

FIRM # 10193822

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Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
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Continued from Sheet No. 2

- North 01°12'34" East, a distance of 49.08 feet to a point for corner;
- North 61°24'33" East, a distance of 137.25 feet to a point for corner;
- North 01°12'34" East, a distance of 62.56 feet to a point for corner;
- North 24°55'36" West, a distance of 62.28 feet to a point for corner;
- North 01°12'34" East, a distance of 22.01 feet to a point for corner;
- North 19°53'38" East, a distance of 75.25 feet to a point for corner;
- North 05°30'27" East, a distance of 121.71 feet to a point for corner;
- North 09°12'41" West, a distance of 119.61 feet to a point for corner;
- North 24°38'22" East, a distance of 18.53 feet to a point for corner;
- North 13°23'31" West, a distance of 138.04 feet to a point for corner;
- North 18°01'28" East, a distance of 14.38 feet to the **POINT OF BEGINNING** and containing 2.929 acres (127,583 square feet) of land, more or less.

NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.


 SYLVIANA GUNAWAN
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 sylviana.gunawan@kimley-horn.com



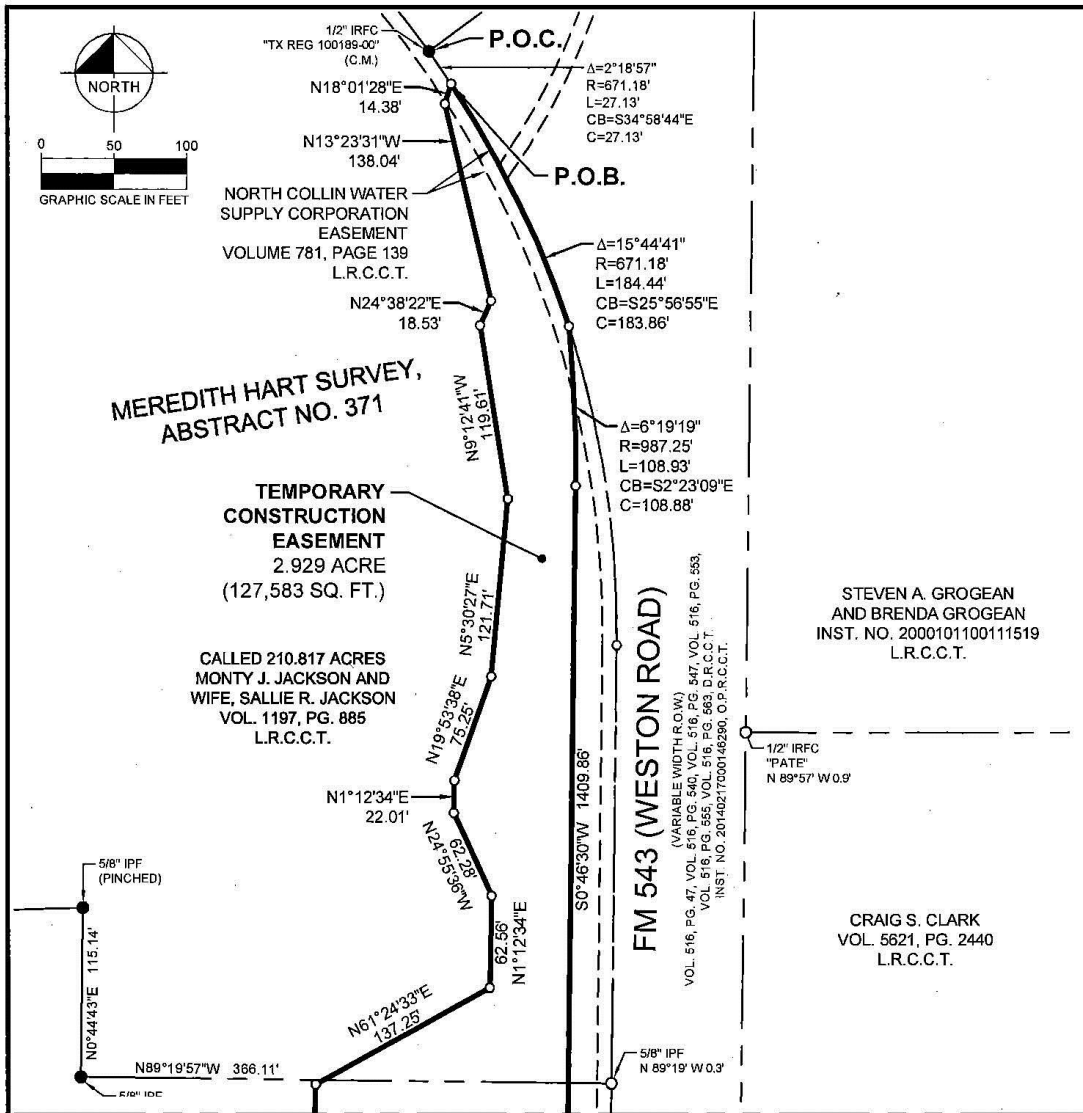
**TEMPORARY CONSTRUCTION
 EASEMENT**
 MEREDITH HART SURVEY, ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
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LEGEND

- Δ = CENTRAL ANGLE
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- HMW = WOOD HIGHWAY MONUMENT
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- L.R.C.C.T. = LAND RECORDS OF COLLIN COUNTY, TEXAS
- O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS

NOTES

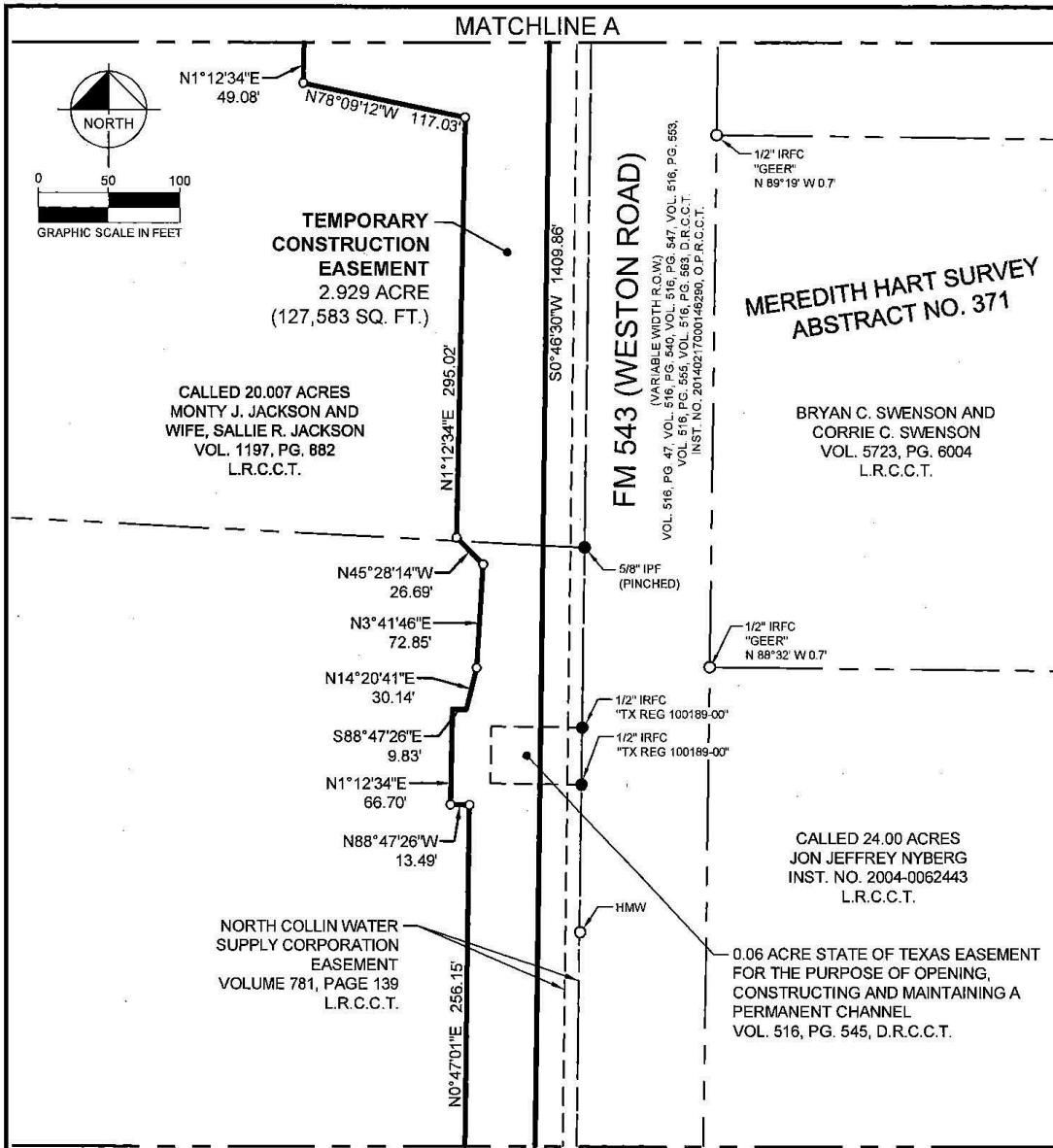
Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

**TEMPORARY CONSTRUCTION
EASEMENT
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS**

Kimley»Horn

5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 100'	SG	KHA	05/22/2017	068150000	4 OF 6



LEGEND

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NOTES

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TEMPORARY CONSTRUCTION EASEMENT
MEREDITH HART SURVEY, ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 100'	SG	KHA	05/22/2017	068150000	5 OF 6

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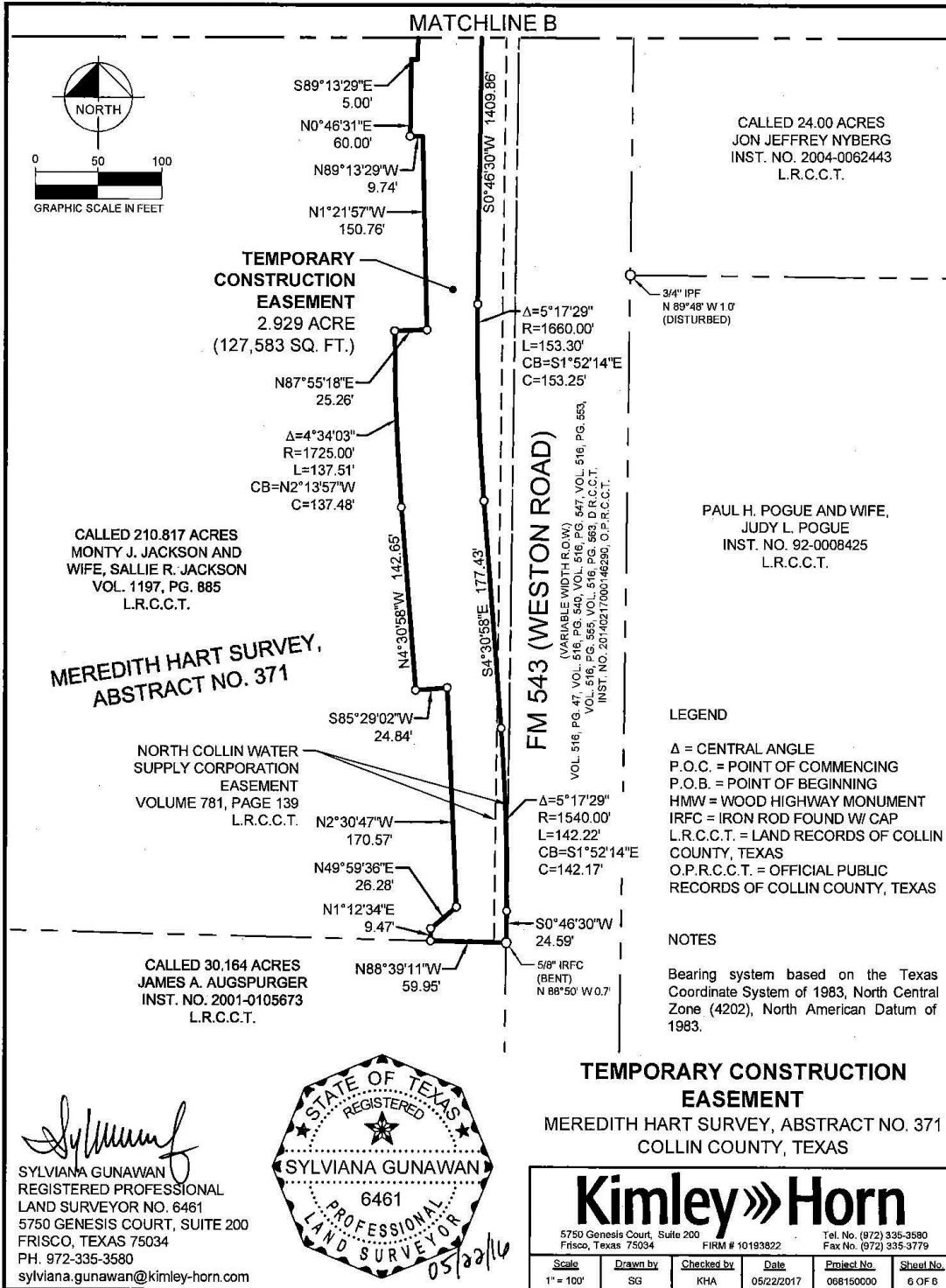


EXHIBIT "B-7"

Depiction and Description of Drainage Easements, Water Line Easement and Temporary Construction Easement on Jon Jeffrey Nyberg Property

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas and being a portion of a called 24.00 acres tract of land described in General Warranty Deed to Jon Jeffrey Nyberg, recorded in Instrument No. 2004-0062443, Land Records, Collin County, Texas, and being more particularly described as follows:

COMMENCING at a point on the easterly right-of-way line of Farm to Market (FM) Road No. 543 (known as Weston Road, a variable width right-of-way) for the northwest corner of said Nyberg tract, same being the southwest corner of a tract of land described in Warranty Deed with Vendor's Lien to Bryan C. and Corrie C. Swenson, recorded in Volume 5723, Page 6004, said Land Records, from which a 1/2 inch iron rod with plastic cap stamped "Geer" found for witness bears North 88°32' West, 0.7 feet;

THENCE South 0°46'30" West, along the common line of said Nyberg tract and the easterly right-of-way line of said FM 543, a distance of 6.40 feet to **THE POINT OF BEGINNING** of the herein described easement tract;


THENCE South 89°13'30" East, departing said common line and crossing said Nyberg tract, a distance of 40.00 feet to a point for corner;

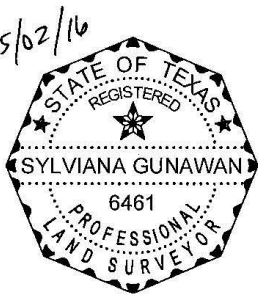
THENCE South 0°46'30" West, continuing across said Nyberg tract, a distance of 108.20 feet to a point for corner;

THENCE North 89°13'30" West, continuing across said Nyberg tract, a distance of 40.00 feet to a point for corner on the easterly right-of-way line of said FM 543, from which the southwest corner of said Nyberg tract, common with the northwest corner of a tract of land described to Paul H. and Judy L. Pogue in Warranty Deed with Vendor's Lien, recorded in Instrument No. 92-0008425, said Land Records, and a 3/4 inch iron pipe (disturbed) found for witness bears South 0°46'30" West, 406.06 feet;

THENCE North 0°46'30" East, along the common line of said Nyberg tract and said FM 543 right-of-way, a distance of 108.20 feet to the **POINT OF BEGINNING** and containing 0.099 of an acre (4,328 sq. ft.) of land, more or less.

NOTE: Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.


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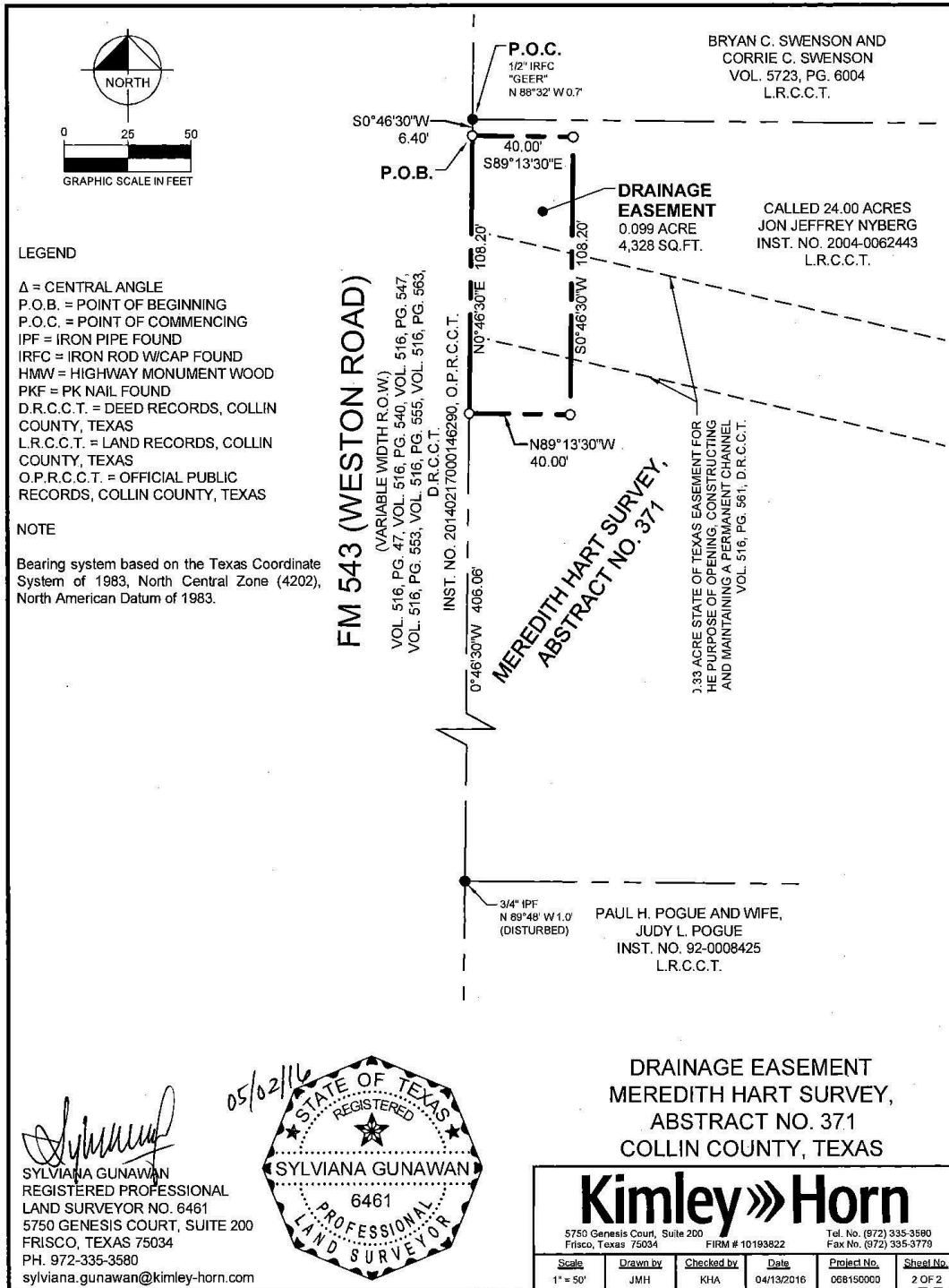
**DRAINAGE EASEMENT
 MEREDITH HART SURVEY,
 ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS**

Kimley»Horn		5750 Genesis Court, Suite 200 Frisco, Texas 75034		FIRM # 10193822		Tel. No. (972) 335-3580 Fax No. (972) 335-3779	
		Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A		JMH	KHA	04/13/2016	066150000	1 OF 2	

GUNAWAN, SYLVIANA 5/2/2016 1:35 PM K:\FR1_SURVEY\066150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\JON JEFFREY NYBERG\DRAINAGE ESMT.DWG

EXHIBIT "B-7"

Depiction and Description of Drainage Easements, Water Line Easement and Temporary Construction Easement on Jon Jeffrey Nyberg Property



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BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas and being a portion of a called 24.00 acres tract of land described in General Warranty Deed to Jon Jeffrey Nyberg, recorded in Instrument No. 2004-0062443, Land Records, Collin County, Texas, and being more particularly described as follows:

COMMENCING at a point on the easterly right-of-way line of Farm to Market (FM) Road No. 543 (known as Weston Road, a variable width right-of-way) for the southwest corner of said Nyberg tract, same being the northwest corner of a tract of land described in Warranty Deed with Vendor's Lien to Paul H. and Judy L. Pogue, recorded in Instrument No. 92-0008425, said Land Records, from which a 3/4 inch iron pipe (disturbed) bears North 89°48' West, 1.0 feet;

THENCE North 0°46'30" East, along the common line of said Nyberg tract and said FM 543, a distance of 82.01 feet to **THE POINT OF BEGINNING** of the herein described easement tract;

THENCE North 0°46'30" East, continuing along said common line, a distance of 70.00 feet to a point for corner, from which the northeast corner of said Nyberg tract, common with the southeast corner of a tract of land described in Warranty Deed with Vendor's Lien to Bryan C. and Corrie C. Swenson, recorded in Volume 5723, Page 6004, said Land Records, and a 1/2 inch iron rod with plastic cap stamped "Geer" found for witness bears North 0°46'30" East, 368.65 feet;

THENCE South 89°13'30" East, departing said common line and crossing said Nyberg tract, a distance of 40.00 feet to a point for corner;

THENCE South 0°46'28" West, continuing across said Nyberg tract, a distance of 11.00 feet to a point for corner;

THENCE South 89°13'30" East, continuing across said Nyberg tract, a distance of 27.00 feet to a point for corner;


THENCE South 0°46'32" West, continuing across said Nyberg tract, a distance of 40.00 feet to a point for corner;

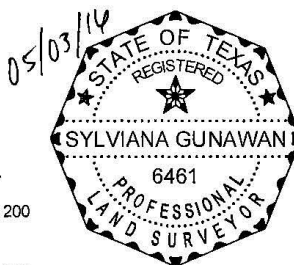
THENCE North 89°13'28" West, continuing across said Nyberg tract, a distance of 27.00 feet to a point for corner;

THENCE South 0°46'32" West, continuing across said Nyberg tract, a distance of 19.00 feet to a point for corner;

THENCE North 89°13'30" West, continuing across said Nyberg tract, a distance of 40.00 feet to the **POINT OF BEGINNING** and containing 0.089 of an acre (3,880 sq. ft.) of land, more or less.

NOTE: Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.


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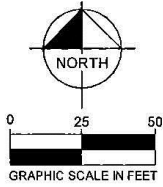
DRAINAGE EASEMENT
 MEREDITH HART SURVEY,
 ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JMH	KHA	04/13/2016	088150000	1 OF 2

GUNAWAN, SYLVIANA 5/2/2016 1:30 PM K:\FRL_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\JON JEFFREY NYBERG\DRAINAGE ESMT 2.DWG



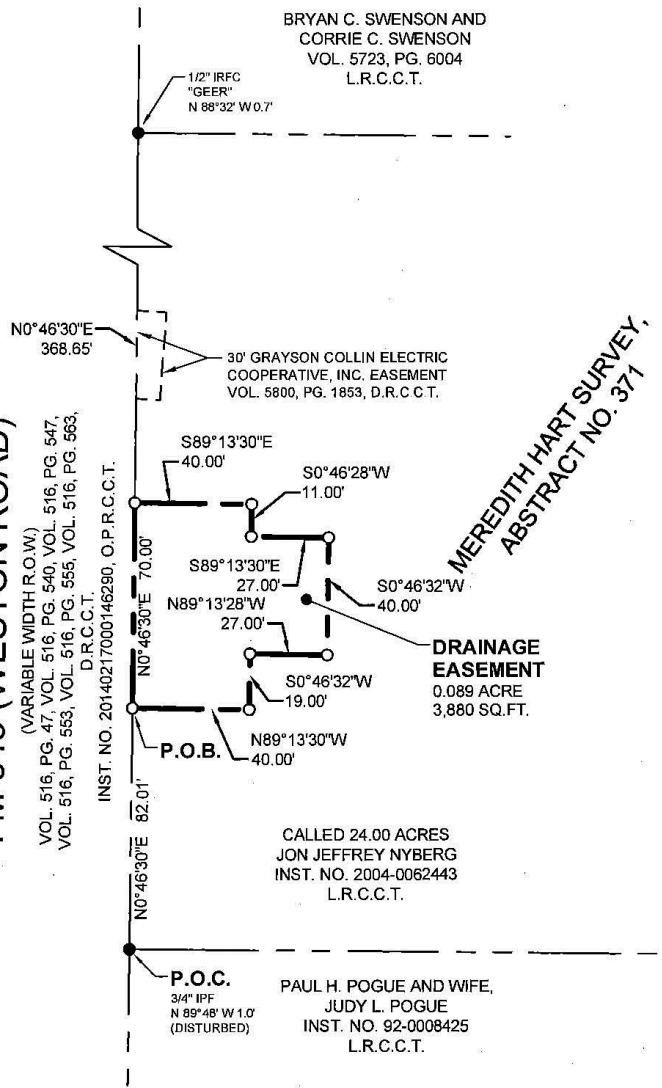
LEGEND

- Δ = CENTRAL ANGLE
- P.O.B. = POINT OF BEGINNING
- P.O.C. = POINT OF COMMENCING
- IPF = IRON PIPE FOUND
- IRFC = IRON ROD W/CAP FOUND
- HMW = HIGHWAY MONUMENT WOOD
- PKF = PK NAIL FOUND
- D.R.C.C.T. = DEED RECORDS, COLLIN COUNTY, TEXAS
- L.R.C.C.T. = LAND RECORDS, COLLIN COUNTY, TEXAS
- O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS

NOTE

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

FM 543 (WESTON ROAD)
(VARIABLE WIDTH R.O.W.)
VOL. 516, PG. 47, VOL. 516, PG. 540, VOL. 516, PG. 547,
VOL. 516, PG. 553, VOL. 516, PG. 555, VOL. 516, PG. 563,
D.R.C.C.T.
INST. NO. 20140217000146290, O.P.R.C.C.T.



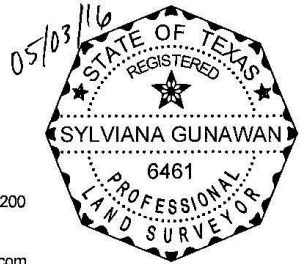
**MEREDITH HART SURVEY,
ABSTRACT NO. 371**

**DRAINAGE
EASEMENT**
0.089 ACRE
3,880 SQ.FT.

CALLED 24.00 ACRES
JON JEFFREY NYBERG
INST. NO. 2004-0062443
L.R.C.C.T.

P.O.C.
3/4" IPF
N 89°48' W 1.0'
(DISTURBED)
PAUL H. POGUE AND WIFE,
JUDY L. POGUE
INST. NO. 92-0008425
L.R.C.C.T.

Sylviana Gunawan
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**DRAINAGE EASEMENT
MEREDITH HART SURVEY,
ABSTRACT NO. 371
COLLIN COUNTY, TEXAS**

Kimley»Horn
5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 50'	JMH	KHA	04/13/2016	068150000	2 OF 2

GUNAWAN, SYLVIANA 5/2/2016 1:30 PM K:\FRI_SURVEY\068150000-TRINITY FALLS\DWG\SEPARATE INSTRUMENTS\FM 543 ROW AND EASEMENTS\JON JEFFREY NYBERG\DRAINAGE ESMT 2.DWG

LEGAL DESCRIPTION

0.239 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas and being a portion of a called 24.00 acres tract of land described in General Warranty Deed to Jon Jeffrey Nyberg, recorded in Instrument No. 2004-0062443, Land Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a point on the easterly right-of-way line of Farm to Market (FM) Road No. 543 (known as Weston Road, a variable width right-of-way) for the northwest corner of said Nyberg tract, same being the southwest corner of a tract of land described in Warranty Deed with Vendor's Lien to Bryan C. and Corrie C. Swenson, recorded in Volume 5723, Page 6004, said Land Records, from which a 1/2 inch iron rod with plastic cap stamped "Geer" found for witness bears North 88°32' West, 0.7 feet;


THENCE South 89°25'25" East, departing the easterly right-of-way line of said FM 543 and along the common line of said Nyberg tract and said Swenson tract, a distance of 20.00 feet to a point for corner;

THENCE South 00°46'30" West, departing said common line and crossing said Nyberg tract, a distance of 520.64 feet to a point for corner on the southerly line of said Nyberg tract and the northerly line of a tract of land described to Paul H. and Judy L. Pogue in Warranty Deed with Vendor's Lien, recorded in Instrument No. 92-0008425, said Land Records;

THENCE North 89°28'33" West, along the common line of said Nyberg tract and said Pogue tract, a distance of 20.00 feet to a point for the southwest corner of said Nyberg tract, common to the northwest corner of said Pogue tract, same being on the easterly right-of-way line of said FM 543, from which a 3/4 inch iron pipe (disturbed) found for witness bears North 89°48' West, 1.0 feet;

THENCE North 00°46'30" East, along the common line of said Nyberg tract and said FM 543 right-of-way, a distance of 520.66 feet to the **POINT OF BEGINNING** and containing 0.239 of an acre (10,413 sq. ft.) of land, more or less.

NOTE: Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.


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05/02/16



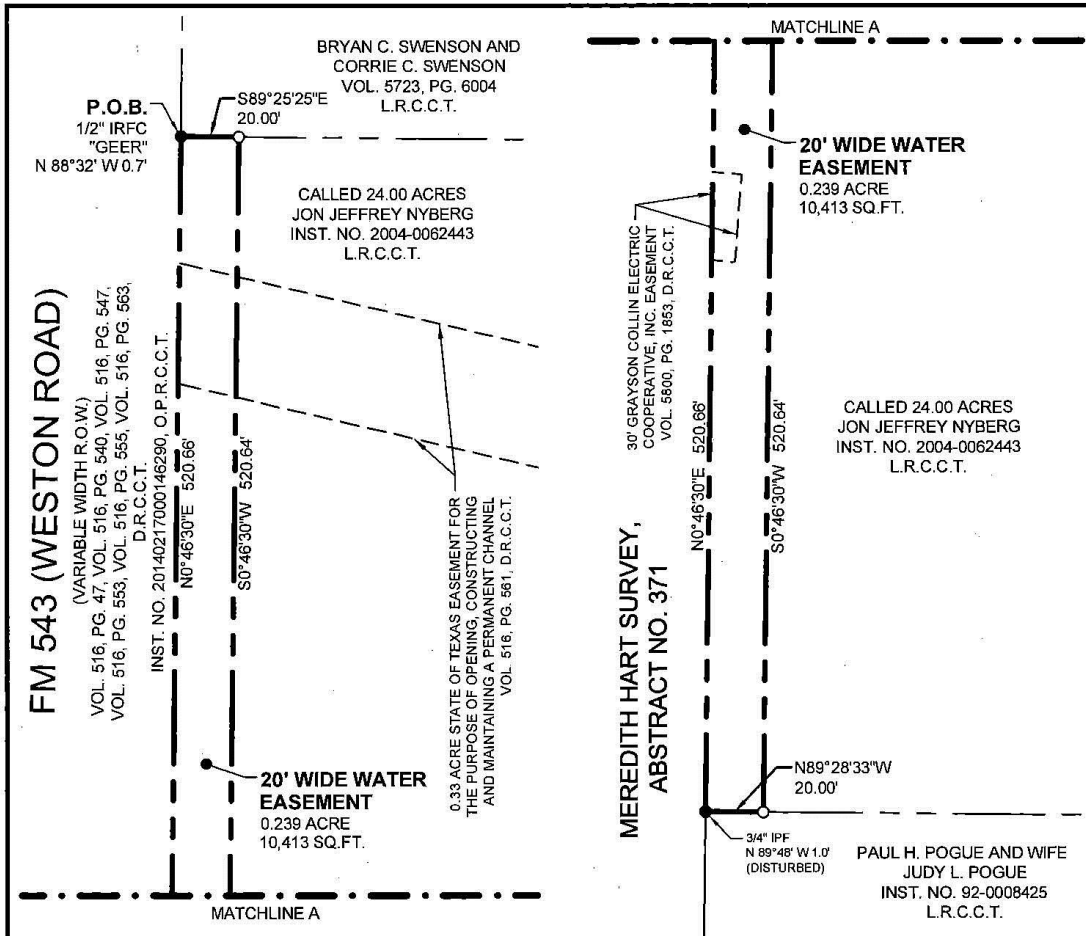
20' WIDE WATER EASEMENT
MEREDITH HART SURVEY,
ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3590 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	04/26/2016	069150000	1 OF 2

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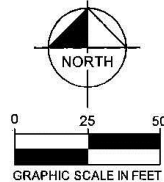


LEGEND

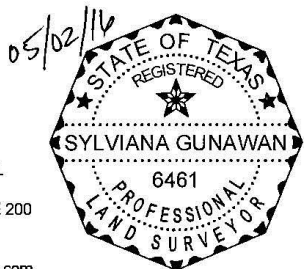
- Δ = CENTRAL ANGLE
- P.O.B. = POINT OF BEGINNING
- IRFC = IRON ROD W/CAP FOUND
- HMW = HIGHWAY MONUMENT WOOD
- PKF = PK NAIL FOUND
- D.R.C.C.T. = DEED RECORDS, COLLIN COUNTY, TEXAS
- L.R.C.C.T. = LAND RECORDS, COLLIN COUNTY, TEXAS
- O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS

NOTE

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.



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20' WIDE WATER EASEMENT
MEREDITH HART SURVEY,
ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

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 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580
 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 50'	SG	KHA	04/26/2016	068150000	2 OF 2

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LEGAL DESCRIPTION

0.708 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas and being a portion of a called 24.00 acres tract of land described in General Warranty Deed to Jon Jeffrey Nyberg, recorded in Instrument No. 2004-0062443, Land Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a point on the easterly right-of-way line of Farm to Market (FM) Road No. 543 (known as Weston Road, a variable width right-of-way) for the northwest corner of said Nyberg tract, same being the southwest corner of a tract of land described in Warranty Deed with Vendor's Lien to Bryan C. and Corrie C. Swenson, recorded in Volume 5723, Page 6004, said Land Records, from which a 1/2 inch iron rod with plastic cap stamped "Geer" found for witness bears North 88°32' West, 0.7 feet;

THENCE South 89°25'25" East, departing the easterly right-of-way line of said FM 543 and along the common line of said Nyberg tract and said Swenson tract, a distance of 49.52 feet to a point for corner;

THENCE South 1°12'34" West, departing said common line and crossing said Nyberg tract, a distance of 46.00 feet to a point for corner;

THENCE South 88°47'26" East, continuing across said Nyberg tract, a distance of 11.69 feet to a point for corner;

THENCE South 1°13'48" West, continuing across said Nyberg tract, a distance of 328.74 feet to a point for corner;

THENCE South 89°13'30" East, continuing across said Nyberg tract, a distance of 13.74 feet to a point for corner;

THENCE South 0°46'32" West, continuing across said Nyberg tract, a distance of 50.00 feet to a point for corner;

THENCE North 89°13'28" West, continuing across said Nyberg tract, a distance of 15.33 feet to a point for corner;

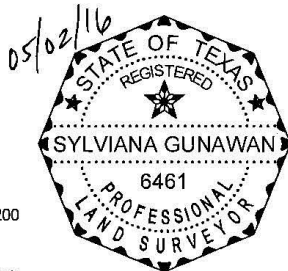
THENCE South 1°28'04" West, continuing across said Nyberg tract, a distance of 95.77 feet to a point for corner on the southerly line of said Nyberg tract and the northerly line of a tract of land described to Paul H. and Judy L. Pogue in Warranty Deed with Vendor's Lien, recorded in Instrument No. 92-0008425, said Land Records;

THENCE North 89°28'33" West, along the common line of said Nyberg tract and said Pogue tract, a distance of 55.51 feet to a point for the southwest corner of said Nyberg tract, same being the northwest corner of said Pogue tract, on the easterly right-of-way line of said FM 543, from which a 3/4 inch iron pipe (disturbed) found for witness bears North 89°48' West, 1.0 feet;

THENCE North 0°46'30" East, along the common line of said Nyberg tract and said FM 543 right-of-way, a distance of 520.66 feet to the **POINT OF BEGINNING** and containing 0.708 of an acre (30,828 sq. ft.) of land, more or less.

NOTE: Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.


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TEMPORARY CONSTRUCTION
EASEMENT
MEREDITH HART SURVEY,
ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

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EXHIBIT "B-8"

Depiction and Description of Drainage Easement, Water Line Easement & Temporary Construction Easement on Steven A. Grogean and Brenda Grogean Property

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas and being a portion of a tract of land described in Special Warranty Deed to Steven A. and Brenda Grogean, recorded in Instrument No. 2000101100111519, Land Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a point on the easterly right-of-way line of Farm to Market (FM) Road No. 543 (known as Weston Road, a variable width right-of-way) for the southwest corner of said Grogean tract, common with the northwest corner of a tract of land described in Warranty Deed with Vendor's Lien to Craig S. Clark, recorded in Volume 5621, Page 2440, said Land Records, from which a 1/2 inch iron rod with plastic cap stamped "Pate" found for witness bears North 89°57' West, 0.9 feet;

THENCE North 0°46'30" East, along the common line of said FM 543 right-of-way and said Grogean tract, a distance of 7.27 feet to a point for corner, from which an interior corner of said Grogean tract and a wooden highway monument found for witness bears North 0°46'30" East, 510.30 feet;

THENCE South 89°13'30" East, departing said common line and crossing said Grogean tract, a distance of 40.00 feet to a point for corner;

THENCE South 0°46'30" West, continuing across said Grogean tract, a distance of 6.76 feet to a point for corner on the south line of said Grogean tract and the north line of said Clark tract;

THENCE North 89°57'41" West, along the common line of said Grogean tract and said Clark tract, a distance of 40.00 feet to the **POINT OF BEGINNING** and containing 0.006 of an acre (280 sq. ft.) of land, more or less.

NOTE: Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.


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DRAINAGE EASEMENT
 MEREDITH HART SURVEY,
 ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
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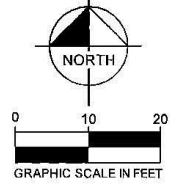
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LEGEND

Δ = CENTRAL ANGLE
 P.O.B. = POINT OF BEGINNING
 IRFC = IRON ROD W/CAP FOUND
 HMW = HIGHWAY MONUMENT WOOD
 PKF = PK NAIL FOUND
 D.R.C.C.T. = DEED RECORDS, COLLIN COUNTY, TEXAS
 L.R.C.C.T. = LAND RECORDS, COLLIN COUNTY, TEXAS
 O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS

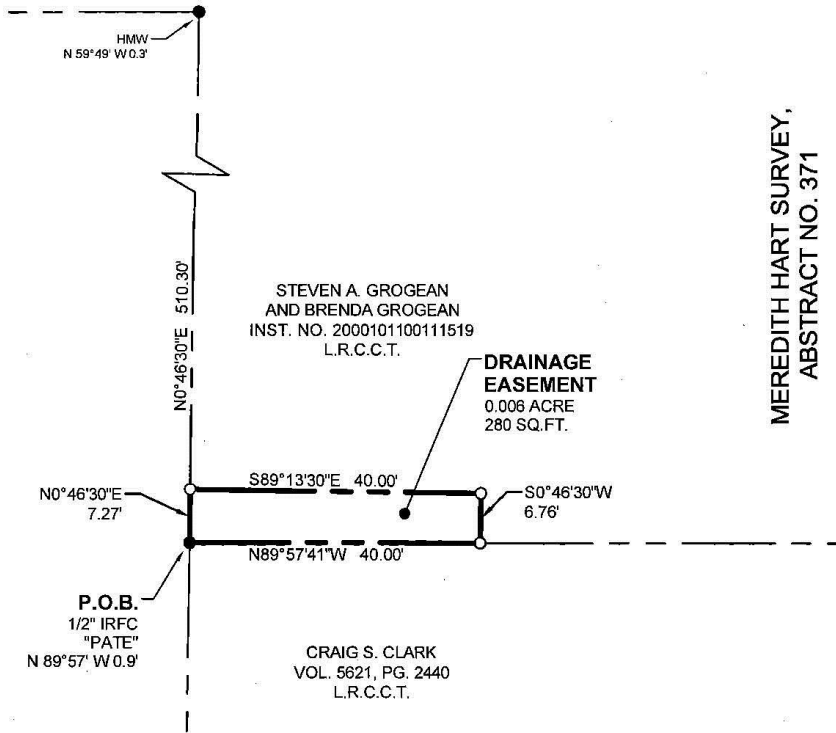
NOTE

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.



FM 543 (WESTON ROAD)

(VARIABLE WIDTH R.O.W.)
 VOL. 516, PG. 47, VOL. 516, PG. 540, VOL. 516, PG. 547,
 VOL. 516, PG. 553, VOL. 516, PG. 555, VOL. 516, PG. 563,
 D.R.C.C.T.
 INST. NO. 20140217000146290, O.P.R.C.C.T.



**MEREDITH HART SURVEY,
 ABSTRACT NO. 371**

Sylviana Gunawan
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05/03/16



**DRAINAGE EASEMENT
 MEREDITH HART SURVEY,
 ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS**

Kimley»Horn
 5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10199822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 20'	JMH	KHA	04/11/2016	068150000	2 OF 2

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LEGAL DESCRIPTION

TRACT 1

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas and being a portion of a tract of land described in Special Warranty Deed to Steven A. and Brenda Grogean, recorded in Instrument No. 2000101100111519, Land Records, Collin County, Texas, and being more particularly described as follows:

COMMENCING at a PK nail found for a point of intersection along the westerly line of said Grogean tract and the easterly line of a called 1.272 acre tract of land described in a deed to McKinney Municipal Utility District No. 1 of Collin County, as recorded in Instrument No. 20131023001452120 of the Official Public Records of Collin County, Texas;

THENCE South 00°48'19" West, along the westerly line of said Grogean tract and the easterly line of said 1.272 acre tract, a distance of 30.76 feet to a point at the beginning of a non-tangent curve to the right and for the **POINT OF BEGINNING** of the herein described easement tract;

THENCE in a southeasterly direction, departing the westerly line of said Grogean tract and the easterly line of said 1.272 acre tract, with said curve to the right and crossing said Grogean tract, having a radius of 1,132.75 feet, a delta angle of 02°53'21", an arc distance of 57.12 feet, and a chord bearing South 17°19'15" East, a distance of 57.11 feet to a point for corner on the southerly line of said Grogean tract and the easterly right-of-way line of said FM 543;

THENCE South 89°54'35" West, along the southerly line of said Grogean tract and the easterly right-of-way line of said FM 543, a distance of 17.77 feet to a point for the northerly southwest corner of said Grogean tract, common to the southeast corner of said 1.272 acre tract;

THENCE North 00°48'19" East, departing the easterly right-of-way line of said FM 543, along the westerly line of said Grogean tract and the easterly line of said 1.272 acre tract, a distance of 54.55 feet to the **POINT OF BEGINNING**, and containing 0.011 of an acre (498 square feet) of land, more or less.

TRACT 2

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas and being a portion of a tract of land described in Special Warranty Deed to Steven A. and Brenda Grogean, recorded in Instrument No. 2000101100111519, Land Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a point on the easterly right-of-way line of Farm to Market (FM) Road No. 543 (known as Weston Road, a variable width right-of-way) for the southwest corner of said Grogean tract, same being the northwest corner of a tract of land described in Warranty Deed with Vendor's Lien to Craig S. Clark, recorded in Volume 5621, Page 2440, said Land Records, from which a 1/2 inch iron rod with plastic cap stamped "Pate" found for witness bears North 89°57' West, 0.9 feet;

THENCE North 0°46'30" East, along the easterly right-of-way line of said FM 543 and the westerly line of said Grogean tract, a distance of 404.49 feet to a point at the beginning of a non-tangent curve to the right;

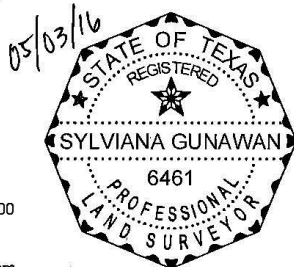
THENCE in a southeasterly direction, departing the easterly right-of-way line of said FM 543 and the westerly line of said Grogean tract, with said curve to the right and crossing said Grogean tract, having a radius of 1,132.75 feet, a delta angle of 10°46'58", an arc distance of 213.18 feet, and a chord bearing South 04°36'58" East, a distance of 212.86 feet to a point for corner at the end of said curve;

THENCE South 00°46'30" West, continuing across said Grogean tract, a distance of 192.31 feet to a point for corner on the southerly line of said Grogean tract and the northerly line of aforesaid Clark tract;

THENCE North 89°57'41" West, along the common line of said Grogean tract and said Clark tract, a distance of 20.00 feet to the **POINT OF BEGINNING** and containing 0.153 of an acre (6,679 square feet) of land, more or less.

NOTE: Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

SYLVIANA GUNAWAN
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6461
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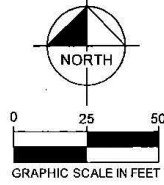
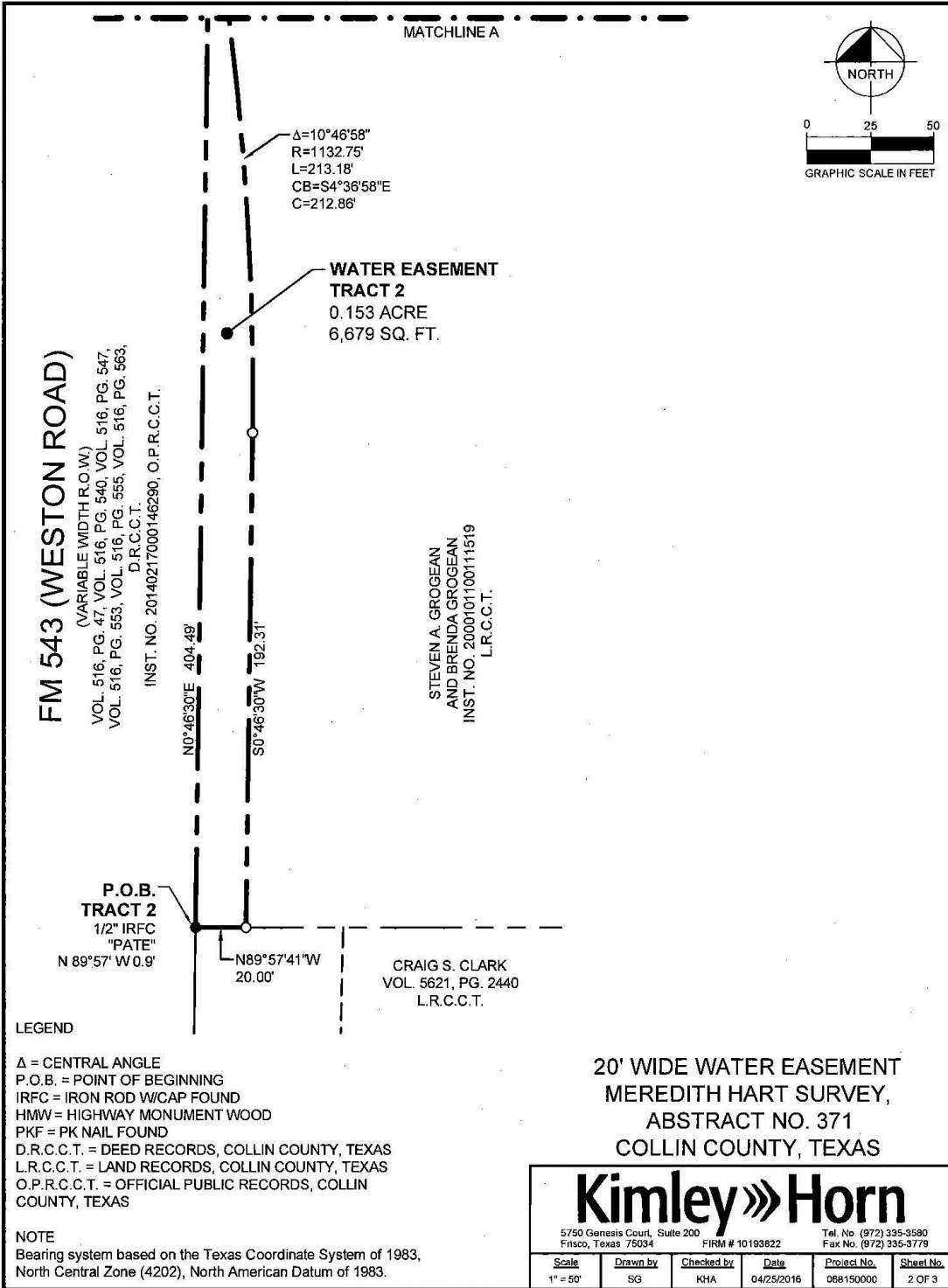
20' WIDE WATER EASEMENT
MEREDITH HART SURVEY,
ABSTRACT NO. 371
COLLIN COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200
Frisco, Texas 75034 FIRM # 10199822 Tel. No. (972) 335-3580
Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
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FM 543 (WESTON ROAD)

(VARIABLE WIDTH R.O.W.)
 VOL. 516, PG. 47, VOL. 516, PG. 540, VOL. 516, PG. 547,
 VOL. 516, PG. 553, VOL. 516, PG. 555, VOL. 516, PG. 563,
 D.R.C.C.T.
 INST. NO. 20140217000146290, O.P.R.C.C.T.

N0°46'30"E 404.49'

S0°46'30"W 182.31'

Δ=10°46'58"
 R=1132.75'
 L=213.18'
 CB=S4°36'58"E
 C=212.86'

**WATER EASEMENT
 TRACT 2**
 0.153 ACRE
 6,679 SQ. FT.

STEVEN A. GROGEAN
 AND BRENDA GROGEAN
 INST. NO. 2000101100111519
 L.R.C.C.T.

**P.O.B.
 TRACT 2**
 1/2" IRFC
 "PATE"
 N 89°57' W 0.9'

N89°57'41"W
 20.00'

CRAIG S. CLARK
 VOL. 5621, PG. 2440
 L.R.C.C.T.

LEGEND

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NOTE

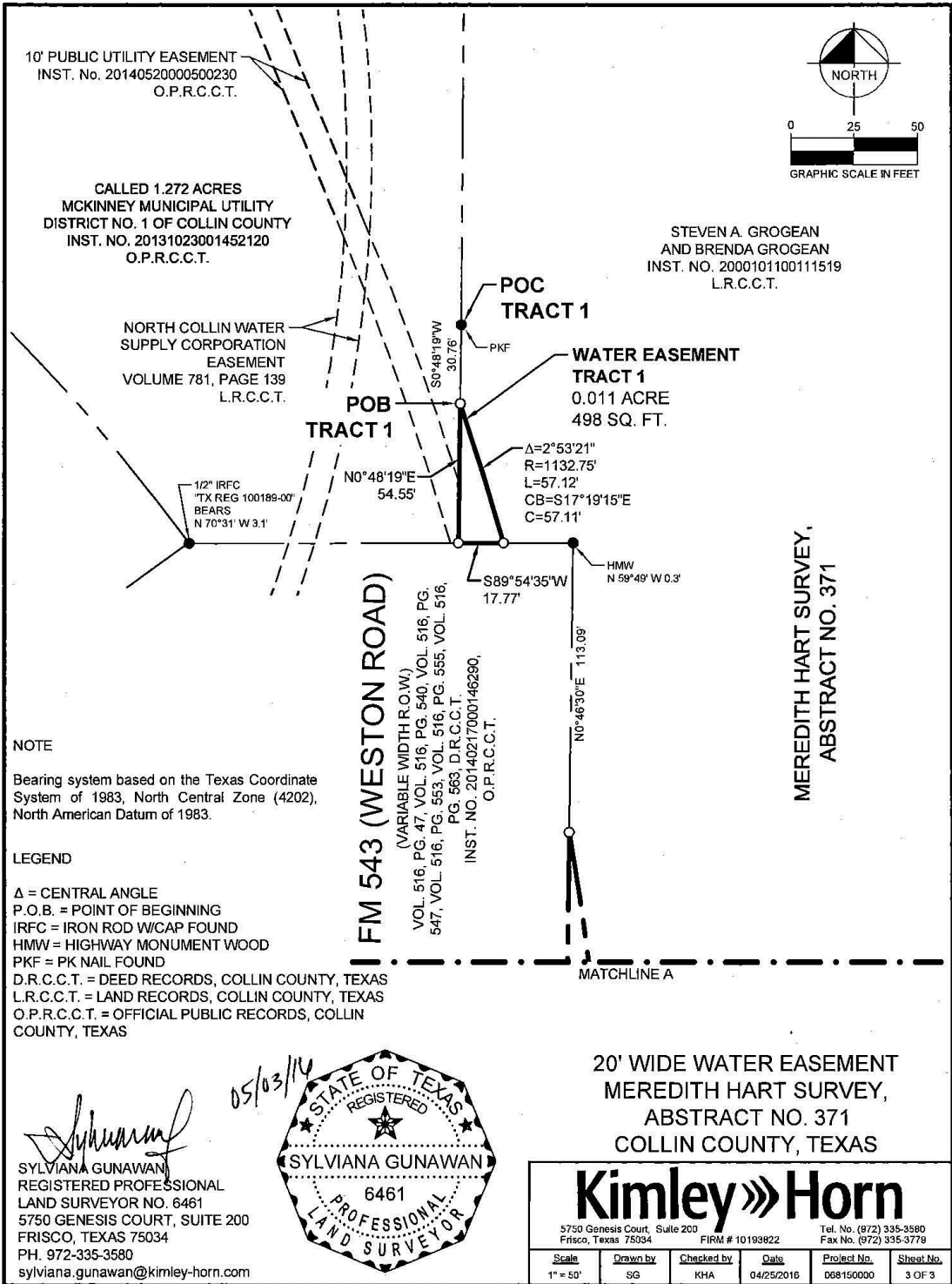
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**20' WIDE WATER EASEMENT
 MEREDITH HART SURVEY,
 ABSTRACT NO. 371
 COLLIN COUNTY, TEXAS**

Kimley»Horn

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Sylviana Gunawan
 05/03/14
 SYLVIANA GUNAWAN
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LEGAL DESCRIPTION

0.771 of an Acre

BEING a tract of land situated in the Meredith Hart Survey, Abstract No. 371, Collin County, Texas and being a portion of a tract of land described in Special Warranty Deed to Steven A. and Brenda Grogean, recorded in Instrument No. 2000101100111519, Land Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a point on the easterly right-of-way line of Farm to Market (FM) Road No. 543 (known as Weston Road, a variable width right-of-way) for the southwest corner of said Grogean tract, same being the northwest corner of a tract of land described in Warranty Deed with Vendor's Lien to Craig S. Clark, recorded in Volume 5621, Page 2440, said Land Records, from which a 1/2 inch iron rod with plastic cap stamped "Pate" found for witness bears North 89°57' West, 0.9 feet;

THENCE North 0°46'30" East, continuing along the common line of said FM 543 right-of-way and said Grogean tract, a distance of 517.57 feet to a point for corner from which a wooden highway monument found for witness bears North 59°49' West, 0.3 feet;

THENCE South 89°54'35" West, continuing along said common line, a distance of 45.27 feet to a point for the northerly southwest corner of said Grogean tract, common to the southeast corner of a called 1.272 acre tract of land described in an Agreed Judgement to McKinney Municipal Utility District No. 1 of Collin County, recorded in Instrument No. 20131023001452120, Official Public Records, Collin County, Texas;

THENCE North 0°48'19" East, departing said FM 543 right-of-way and along the common line of said Grogean tract and said 1.272 acre tract, a distance of 85.32 feet to a PK nail found for corner;

THENCE North 0°28'11" East, continuing along said common line, a distance of 71.13 feet to a point at the beginning of a non-tangent curve to the right having a central angle of 14°43'21", a radius of 1374.59 feet, a chord bearing and distance of South 14°58'40" East, 352.24 feet;

THENCE in a southeasterly direction, departing said common line and crossing said Grogean tract and with said curve to the right, an arc distance of 353.21 feet to a point for corner at the end of said curve to the right;

THENCE South 7°19'13" East, continuing across said Grogean tract, a distance of 35.69 feet to a point for corner;

THENCE South 88°47'26" East, continuing across said Grogean tract, a distance of 55.73 feet to a point for corner;

THENCE South 1°12'34" West, continuing across said Grogean tract, a distance of 53.68 feet to a point for corner;

THENCE South 59°55'32" West, continuing across said Grogean tract, a distance of 58.66 feet to a point for corner;

THENCE South 1°12'34" West, continuing across said Grogean tract, a distance of 214.07 feet to a point for corner on the south line of said Grogean tract and the north line of aforesaid Clark tract;

THENCE North 89°57'41" West, along the common line of said Grogean tract and said Clark tract, a distance of 58.39 feet to the **POINT OF BEGINNING** and containing 0.771 of an acre (33,571 sq. ft.) of land, more or less.

NOTE: Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

Sylviana Gunawan

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05/03/16



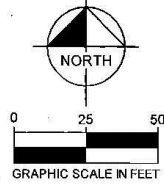
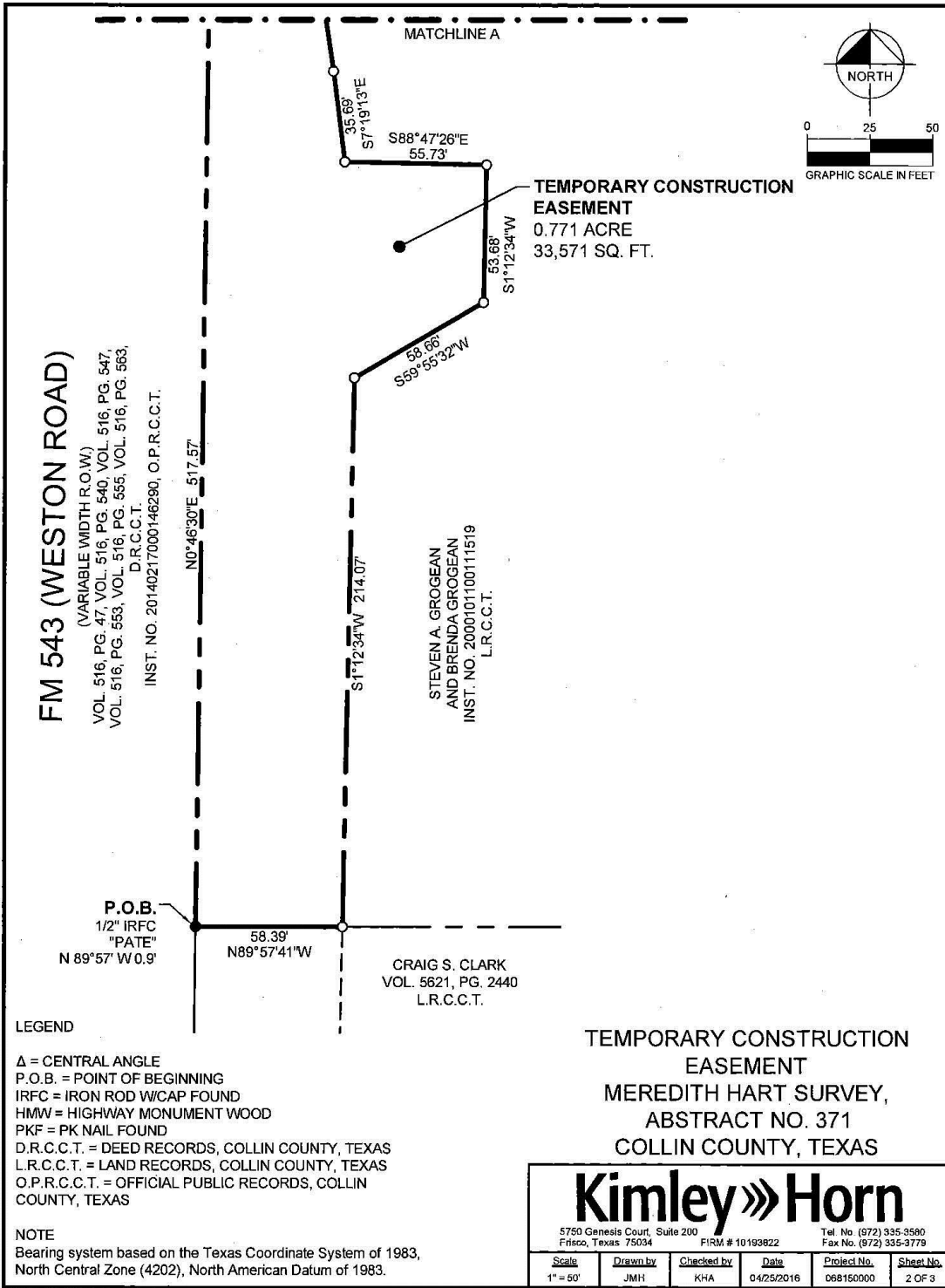
TEMPORARY CONSTRUCTION
EASEMENT
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FM 543 (WESTON ROAD)

(VARIABLE WIDTH R.O.W.)
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N0°46'30"E 517.57'

S1°12'34"W 214.07'

STEVEN A. GROGEAN
 AND BRENDA GROGEAN
 INST. NO. 2000101100111519
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**TEMPORARY CONSTRUCTION
 EASEMENT**
 0.771 ACRE
 33,571 SQ. FT.

P.O.B.
 1/2" IRFC
 "PATE"
 N 89°57' W 0.9'

58.39'
 N89°57'41"W

CRAIG S. CLARK
 VOL. 5821, PG. 2440
 L.R.C.C.T.

LEGEND

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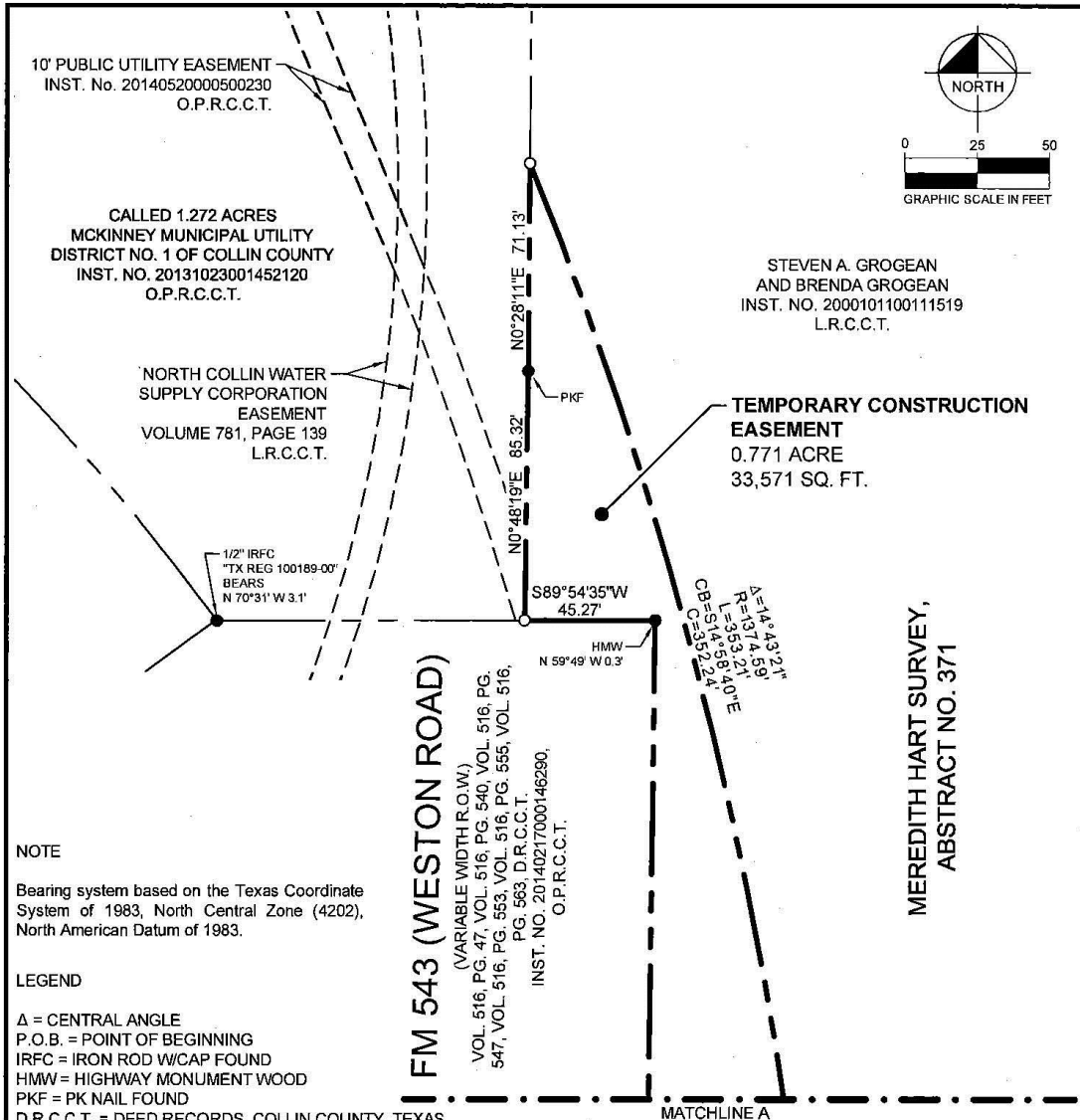
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INST. NO. 20140217000146290,
O.P.R.C.C.T.

**MEREDITH HART SURVEY,
ABSTRACT NO. 371**

**TEMPORARY CONSTRUCTION
EASEMENT
MEREDITH HART SURVEY,
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COLLIN COUNTY, TEXAS**

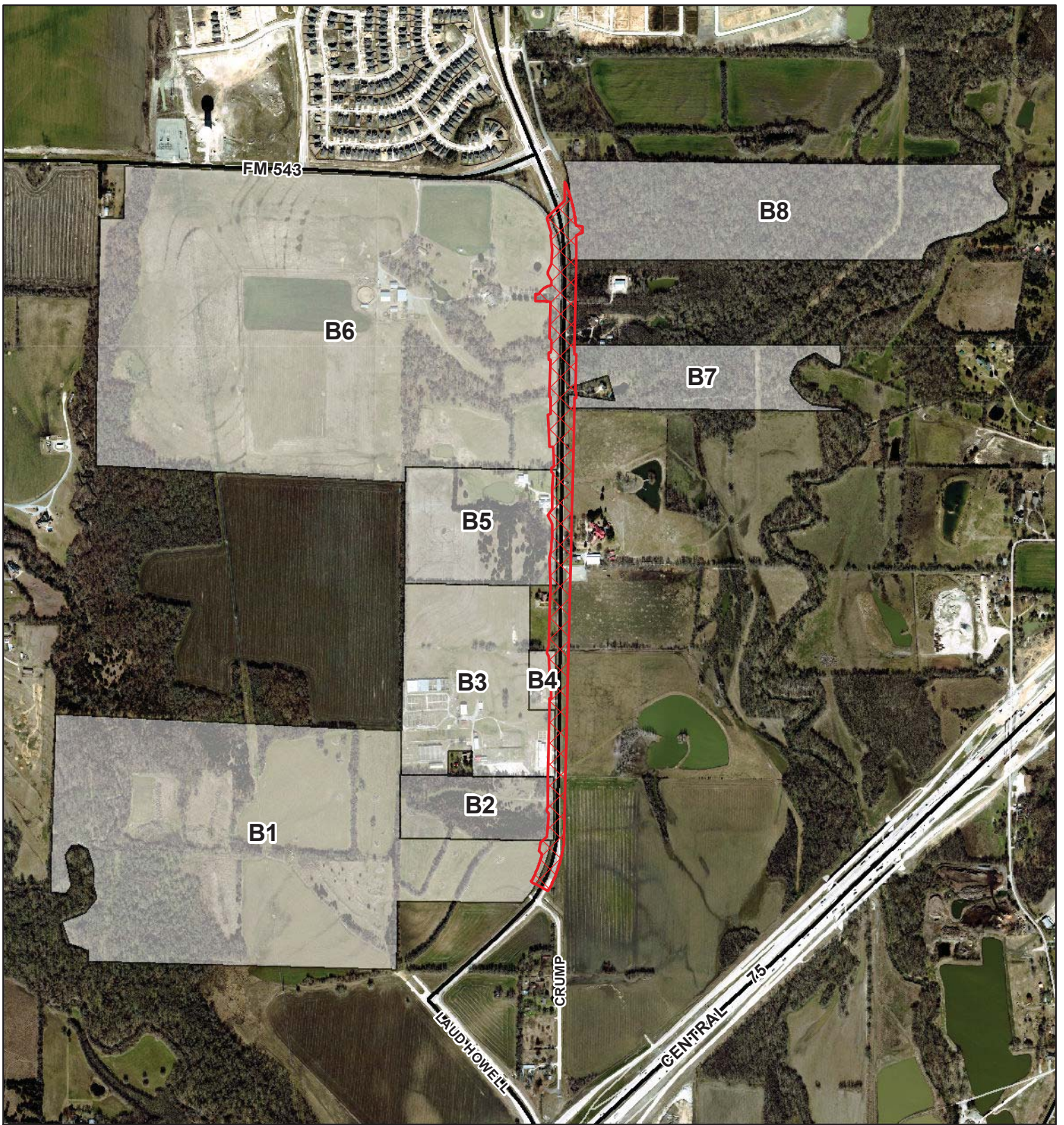
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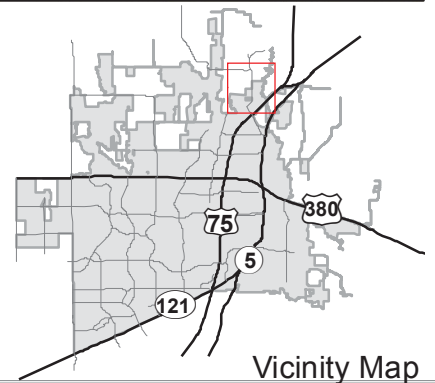
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0 690 1,380
Feet

Trinity Falls Parkway Project



Vicinity Map

DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of McKinney. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of McKinney, its officials or employees for any discrepancies, errors, or variances which may exist.



17-828

TITLE: Consider/Discuss/Act on an Amendment to Section 122-4 of the Code of Ordinances Pertaining to Permitting in the Extraterritorial Jurisdiction (ETJ)

COUNCIL GOAL: Direction for Strategic and Economic Growth

MEETING DATE: August 15, 2017

DEPARTMENT: Development Services

CONTACT: Michael Quint, Executive Director of Development Services

RECOMMENDED CITY COUNCIL ACTION:

- Staff recommends approval of the proposed ordinance.

ITEM SUMMARY:

- With direction from the City Council, Staff is proposing to modify Section 122-4 of the Code of Ordinances to create a permitting exemption for specific single family residential construction located within the City's extraterritorial jurisdiction (ETJ).
- Platting and permitting in the ETJ has been discussed at several City Council work sessions including the meetings held on April 17, 2017, July 17, 2017 and August 14, 2017. Based on feedback from those discussions, Staff drafted amendments modifying permitting in the ETJ.
- The proposed amendments will no longer require building permits prior to the constructing, repair, renovating or remodeling of one (1) existing or new single family residential dwelling unit, private utility service lines, or any accessory residential structures, such as a barn, residential storage shed, arbor, gazebo, or swimming pool on a single, undivided tract of land in the ETJ that is not being conveyed or created from a larger tract and that is not a platted lot of record.
- A redline version of Section 122-4 of the Code of Ordinances is attached hereto so that the proposed modifications are clearly indicated.

BACKGROUND INFORMATION:

- On March 17, 2015, the City Council reaffirmed its authority to issue permits in the ETJ by adopting ordinance number 2015-03-015.

FINANCIAL SUMMARY:

- N/A

BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[Ordinance No. 2015-03-015](#)
[Proposed Changes to Sec 122-4](#)
[Proposed Ordinance for Adoption](#)

ORDINANCE NO. 2015-03-015

AN ORDINANCE OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY BY ADOPTING NEW SECTION 122-4, ENTITLED "PERMITS WITHIN CITY LIMITS AND EXTRATERRITORIAL JURISDICTION"; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas (the "City") is a Home Rule City possessing the full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072 of the Texas Local Government Code, and the City's Home Rule Charter; and

WHEREAS, the City Council of the City of McKinney, Texas ("City Council"), on July 16, 2013, adopted the following codes: the 2012 edition of the International Building Code and amendments thereto; the 2012 edition of the International Residential Code and amendments thereto; the 2012 edition of the International Mechanical Code and amendments thereto; the 2012 edition of the International Plumbing Code and amendments thereto; the 2012 edition of the International Fuel Gas Code and amendments thereto; the 2012 edition of the International Energy Conservation Code and amendments thereto; the 2011 edition of the National Electrical Code and amendments thereto; and the 2012 edition of the International Fire Code and amendments thereto, all of which codes are set forth and codified in the Code of Ordinances of the City of McKinney ("City Code"); and

WHEREAS, the City Council adopted Ordinance No. 2015-001-003 on January 6, 2015, which adopted the 2012 edition of the International Property Maintenance Code and amendments thereto, which is set forth in Chapters 122 and 126 of the City Code; and

WHEREAS, Chapters 212 and 230 of the Texas Local Government Code authorize municipalities to exercise regulations affecting the development and construction of subdivisions in the municipality's city limits and extraterritorial jurisdiction; and

WHEREAS, Chapter 142 of the City Code, entitled "Subdivision Regulations," provides that the City's regulations set forth in that chapter extend to and apply to all of the areas within the City and within the area outside the corporate limits of the City within the City's extraterritorial jurisdiction, pursuant to Chapters 42, 43 and 212 of the Texas Local Government Code; and

WHEREAS, certain decisions by Texas appellate courts, specifically *City of Lucas v. North Texas Municipal Water District*, 724 S.W.2d 811 (Tex.App.-Dallas 1986, writ ref'd. n.r.e.), and *Hartsell v. Town of Talty*, 130 S.W.3d 325 (Tex.App.-Dallas 2004, pet. denied), recognize that a municipality may enforce its construction-related codes in its corporate limits and extraterritorial jurisdiction; and

WHEREAS, the City and Collin County, Texas, have entered into an interlocal agreement pursuant to House Bill 1445, which statute became effective September 1, 2001, and is now codified as Section 242.001 of the Texas Local Government Code, which agreement is entitled "City-County Plat Approval Agreement," effective March 19, 2002 ("Agreement"); and

WHEREAS, pursuant to said Agreement, the City is granted exclusive jurisdiction to regulate all subdivision plats and approve all related permits in the City's extraterritorial jurisdiction in accordance with Chapter 212 of the Texas

Local Government Code, the City's adopted Subdivision Regulations, or other applicable codes or ordinances; and

WHEREAS, the City Council finds that the adoption of this Ordinance is in the best interest of the City and of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. All of the above premises are found to be true and correct legislative determinations and are hereby incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. The Code of Ordinances of the City of McKinney, Chapter 122, Article I, is hereby amended by adding new Section 122-4, entitled "Permits," which shall read as follows:

"Sec. 122-4. Permits within city limits and extraterritorial jurisdiction.

- (a) It shall be unlawful for any person to erect, move, add to, or structurally alter, or to cause to be erected, moved, added to, or structurally altered, or to permit any person to erect, move, add to, or structurally alter, any building or other structure within the city limits or within the city's extraterritorial jurisdiction without first having procured a permit to do so from the city.
- (b) Building permits, development permits and all other construction-related permits required by this chapter are required within the city limits and on all property within the city's extraterritorial jurisdiction.
- (c) No building permit, development permit or other construction-related permit shall be issued except in conformity with the provisions of this chapter and all applicable construction codes of the city."

Section 3. All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of McKinney, Texas, are hereby repealed to the extent that said ordinances, orders or resolutions, or parts thereof, are in conflict herewith.

Section 4. If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

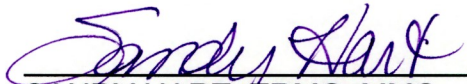
Section 5. This Ordinance shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 17TH DAY OF MARCH, 2015.

CITY OF MCKINNEY, TEXAS


BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:



SANDY HART, TRMC, MMC

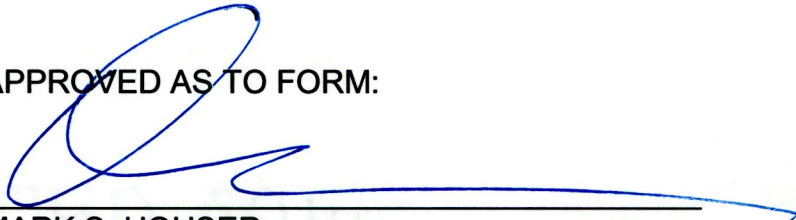
City Secretary

DENISE VICE, TRMC

Assistant City Secretary

DATE: March 17, 2015

APPROVED AS TO FORM:



MARK S. HOUSER

City Attorney

Sec. 122-4. - Permits within city limits and extraterritorial jurisdiction.

- ~~(a)~~ ~~(a)~~ — It shall be unlawful for any person to erect, move, add to, or structurally alter, or to cause to be erected, moved, added to, or structurally altered, or to permit any person to erect, move, add to, or structurally alter, any building or other structure within the city limits or within the city's extraterritorial jurisdiction without first having procured a permit to do so from the city, except as provided in (b) below.
- ~~(b)~~ From and after August 15, 2017, permits otherwise required by (a) above shall not be required prior to the constructing, repair, renovating -or remodeling of one (1) existing or new single family residential dwelling unit, private utility service lines, or any accessory residential structures, such as a barn, residential storage shed, arbor, gazebo, or swimming pool on a single, undivided tract of land in the ETJ that is not being conveyed or created from a larger tract and that is not a platted lot of record.
- ~~(c)~~ Building permits, development permits and all other construction-related permits required by this chapter are required within the city limits and on all property within the city's extraterritorial jurisdiction, except as provided in (b) above.
- ~~(d)~~ No building permit, development permit or other construction-related permit shall be issued except in conformity with the provisions of this chapter and all applicable construction codes of the city, except as provided in (b) above.

(Ord. No. 2015-03-015, § 2, 3-17-2015)

ORDINANCE NO. 2017-08-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING SECTION 122-4 OF THE CODE OF ORDINANCES PERTAINING TO THE PERMITTING OF SINGLE FAMILY RESIDENTIAL STRUCTURES IN THE EXTRATERRITORIAL JURISDICTION (ETJ); ESTABLISHING PRESUMPTIONS; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF

WHEREAS, the City of McKinney adopted the Code of Ordinances for the protection of the public health and general welfare of the people of the City of McKinney and, in some cases, its extraterritorial jurisdiction (ETJ); and

WHEREAS, the City Council has recognized that certain provisions of the Code of Ordinances should be reviewed and updated from time to time; and

WHEREAS, amendments to these provisions have been proposed and the City Council of the City of McKinney is of the opinion that these sections should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. Section 122-4 of the Code of Ordinances, City of McKinney, Texas, is hereby amended and shall read as follows:

“Sec. 122-4. - Permits within city limits and extraterritorial jurisdiction.

(a) It shall be unlawful for any person to erect, move, add to, or structurally alter, or to cause to be erected, moved, added to, or structurally altered, or to permit any person to erect, move, add to, or structurally alter, any building or other structure within the city limits or within the city's extraterritorial jurisdiction without first having procured a permit to do so from the city, except as provided in (b) below.

(b) From and after August 15, 2017, permits otherwise required by (a) above shall not be required prior to the constructing, repair, renovating or remodeling of one (1) existing or new single family residential dwelling unit, private utility service lines, or any accessory residential structures, such as a barn, residential storage shed, arbor, gazebo, or swimming pool on a single, undivided tract of land in the ETJ that is not being conveyed or created from a larger tract and that is not a platted lot of record.

(c) Building permits, development permits and all other construction-related permits required by this chapter are required within the city limits and on all property within the city's extraterritorial jurisdiction, except as provided in (b) above.

(d) No building permit, development permit or other construction-related permit shall be issued except in conformity with the provisions of this chapter and all applicable construction codes of the city, except as provided in (b) above.”

Section 2. If any section, subsection, paragraph, sentence, phrase or clause of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and to this end, the provisions of this Ordinance are declared to be severable.

Section 3. That this Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict

with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 4. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THIS 15TH DAY OF AUGUST, 2017.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

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

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney



16-052DA

TITLE: Consider/Discuss/Act on a Resolution Approving Chapter 380 Economic Development Agreement Between the City of McKinney, Texas, and McKinney SH I, LTD, for the Construction of a Portion of Bois D' Arc Road, Generally Between U.S. Highway 380 and Crowe Lane

COUNCIL GOAL: Direction for Strategic and Economic Growth

MEETING DATE: August 15, 2017

DEPARTMENT: City Manager

CONTACT: Barry Shelton, Assistant City Manager
Michael Quint, Executive Director of Development Services
Gary Graham, PE, Director of Engineering
Brandon Opiela, Development Manager

RECOMMENDED CITY COUNCIL ACTION:

- Approval of the Resolution

ITEM SUMMARY:

- This Resolution authorizes the City Manager to execute the 380 Economic Development Agreement with McKinney SH I, LTD for the development of a commercial center on the southwest corner of US 380 and Hardin Boulevard.
- The proposed commercial center is part of the Costco development under construction.

BACKGROUND INFORMATION:

- The City has the authority under Chapter 380 of the Texas Local Government Code to make loans or grants of City funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City.

FINANCIAL SUMMARY:

- Under the proposed agreement, the City will reimburse up to \$1.35 million of the

construction costs for a portion of Bois D' Arc Road, subsequent to the issuance of a Certificate of Occupancy for a 12-screen, approximately 55,000 square foot movie theater and two retail buildings totaling approximately 20,250 square feet.

BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[Resolution](#)

[Location Map and Aerial Exhibit](#)

[Overall Pavement Plan](#)

RESOLUTION NO. 2017-08-____(R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MCKINNEY, TEXAS, AND MCKINNEY SH I, LTD, A TEXAS COMPANY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council of the City of McKinney, Texas, has determined the need to approve a Chapter 380 Economic Development Agreement (the "Agreement") to provide grants and financial incentives to McKinney SH I, LTD, a Texas company; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code and for the public purpose of promoting economic development and diversity, increasing employment, reducing unemployment and underemployment, expanding commerce and stimulating business and commercial activity in the State of Texas and the City, the City desires to offer certain economic development grants to McKinney SH I, LTD as more particularly described in the Agreement; and

WHEREAS, a Chapter 380 Economic Development Agreement is the binding, legal document governing the incentives and development of a Costco retail facility within the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. The City Council of the City of McKinney, Texas hereby approves the Chapter 380 Economic Development Agreement between the City of McKinney and McKinney SH I, LTD, a Texas company.

Section 2. The City Manager is authorized to execute the Chapter 380 Economic Development Agreement between the City of McKinney and McKinney SH I, LTD, a Texas company.

Section 3: This Resolution shall take effect immediately from and after the date of passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 15th DAY OF AUGUST, 2017.

CITY OF MCKINNEY, TEXAS

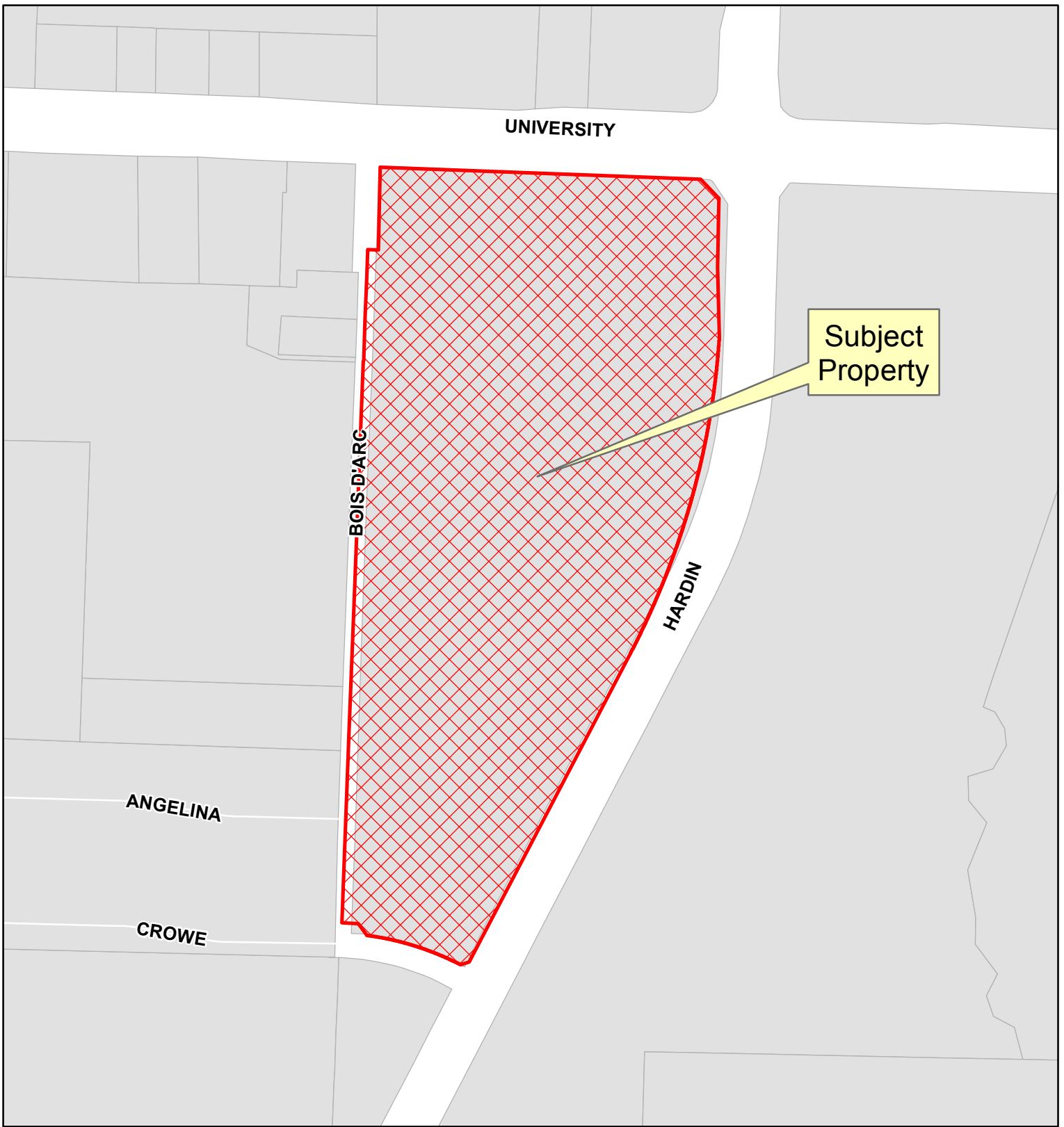
George C. Fuller
Mayor

ATTEST:

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

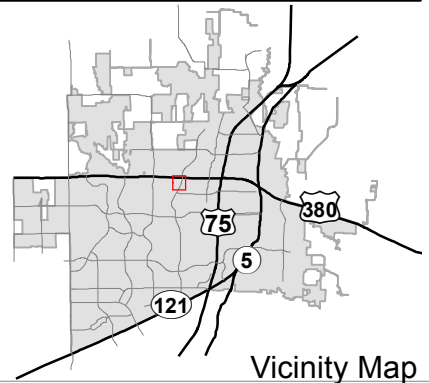
APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney



Location Map

Bois D'Arc Agreement



DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of McKinney. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of McKinney, its officials or employees for any discrepancies, errors, or variances which may exist.



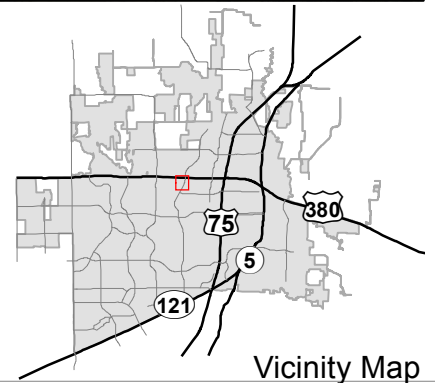
Subject Property



0 180 360
Feet

Location Map

Bois D'Arc Agreement

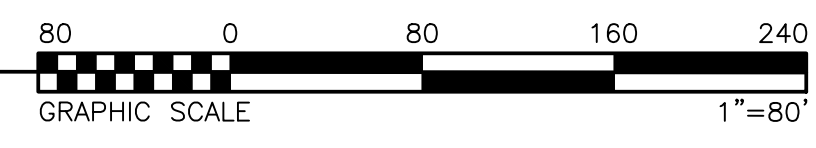


Vicinity Map

DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of McKinney. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of McKinney, its officials or employees for any discrepancies, errors, or variances which may exist.

PLOT DATE: Thursday, July 13, 2017
 FILE NAME: 15-13 C-9.0 Bois D'arc Rd. Plan And Profile.dwg
 FILE PATH: P:\2015\15-13 380 Commons @ Headington Heights, McKinney, TX\Civil\Drawings\Sheets

1 SITE PLAN
 SCALE: 1"=80'-0"



NOTE
 SEE TXDOT APPROVED DRAWINGS FOR ALL WORK IN THE STATE ROW

PAVING LEGEND

	LANDSCAPE AREA
	TXDOT PAVEMENT SECTION SEE SECTION P4/C-8.3
	BOIS D'ARC RD. PAVEMENT SECTION SEE SECTION P5/C-8.3
	CONCRETE SIDEWALKS SEE CITY OF MCKINNEY STANDARD DRAWING NO. 2170MA, DATED AUGUST 1, 2016
	RAMP H.C. RAMP 1:12 MAX SLOPE

**CITY OF MCKINNEY
 ENGINEERING DEPARTMENT
 RELEASED FOR CONSTRUCTION**

DATE _____ BY _____

PRIOR TO CONSTRUCTION, THE OWNER OR THEIR REPRESENTATIVE SHALL NOTIFY THE CITY OF MCKINNEY ENGINEERING DEPARTMENT AT 972-547-7420. CONSTRUCTION DRAWINGS STAMPED BY THE CITY OF MCKINNEY SHALL BE ON THE PROJECT SITE AT ALL TIMES DURING CONSTRUCTION. THE CITY OF MCKINNEY STANDARD SPECIFICATIONS FOR CONSTRUCTION SHALL TAKE PRECEDENCE OVER THESE PLANS WHENEVER IN CONFLICT THEREWITH.

DISCLAIMER: ALL NECESSARY APPROVALS AND PERMITS SHALL BE ACQUIRED PRIOR TO CONSTRUCTION.

ISSUES

NO.	DATE	DESCRIPTION

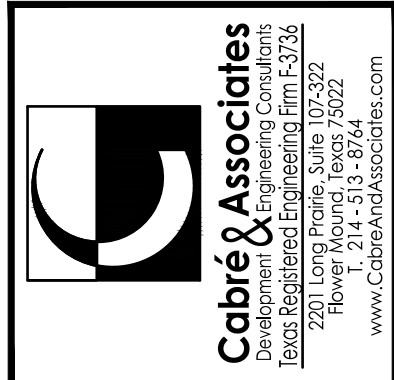
DRAWING TITLE: **BOIS D'ARC RD. PLAN AND PROFILE, STA. 0+00 TO**

DATE: JULY 13, 2017

SCALE: 1"=80'

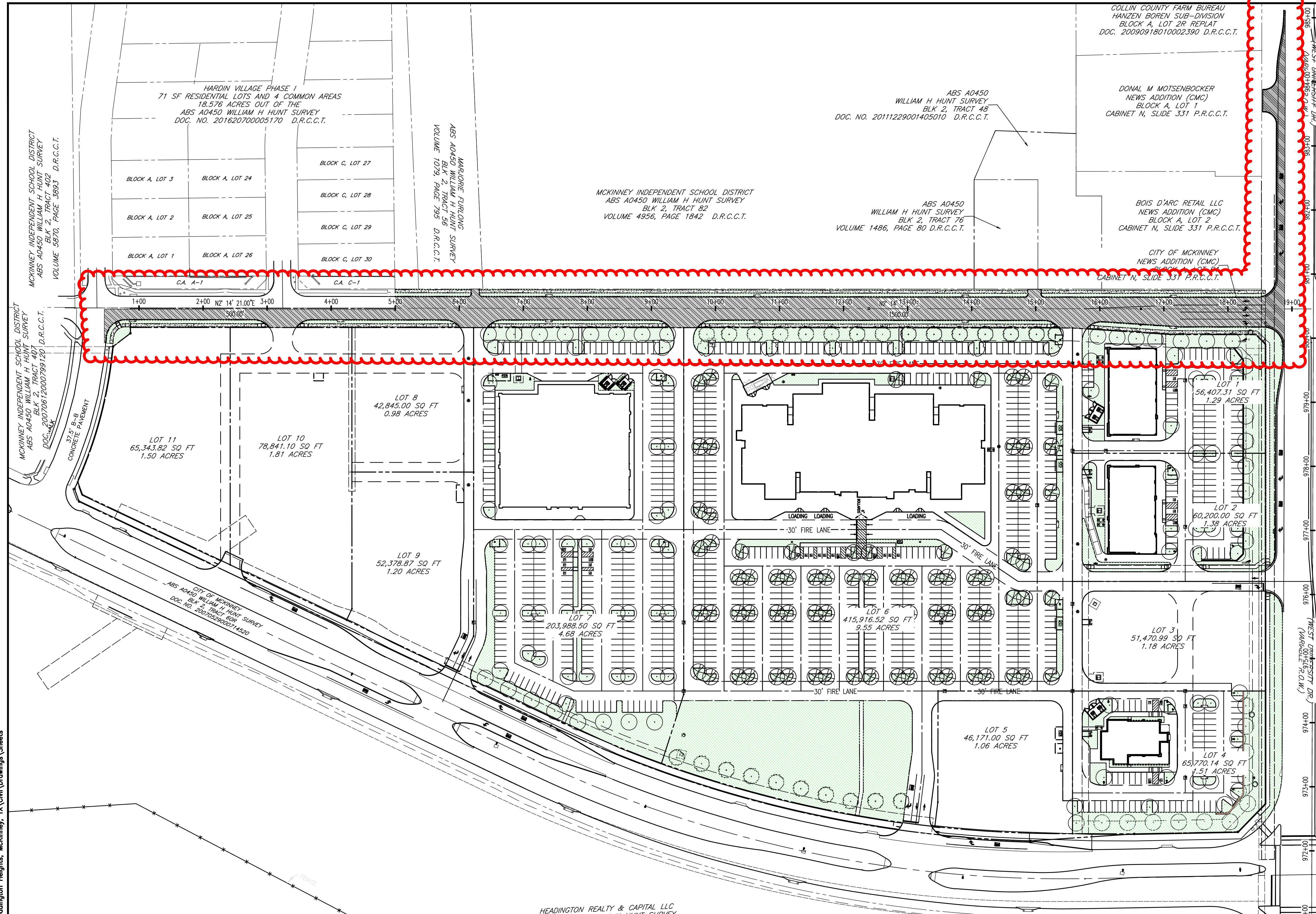
JOB NUMBER: 15-13

DRAWING NUMBER: **C-9.0**



**380 COMMONS
 @ HEADINGTON HEIGHTS**
 SWC WEST UNIVERSITY DRIVE AND HARDIN BLVD.
 CITY OF MCKINNEY
 COLLIN COUNTY, TEXAS

THE SUTZ GROUP
 DEVELOPMENT & SALE OF RETAIL PROPERTIES
 1110 COWAN RD.
 CELINA, TX 75009



VICINITY MAP
 SCALE: 1"=1000'-0"

NOTE:
 1. ALL SITE TABLES AND PARKING COMPUTATION TABLE CAN BE FOUND ON SHEET SP-1.4.

TEXOMA ASSET MANAGEMENT LP
 HEADINGTON HEIGHTS (CMC)
 BLK A, LOT 2BR
 CABINET 2014, PAGE 662 P.R.C.C.T.
 3.84 ACRES; REPLAT

HUTTON GROWTH ONE LLC
 HEADINGTON HEIGHTS (CMC)
 CABINET 2014, PAGE 662 P.R.C.C.T.

HEADINGTON REALTY & CAPITAL LLC
 HEADINGTON HEIGHTS (CMC)
 BLK A, LOT 1R
 CABINET 2015, PAGE 55 P.R.C.C.T.

CITY OF MCKINNEY
 ABS A0450 WILLIAM H HUNT SURVEY
 BLK 1, TRACT 1R
 CABINET 0, PAGE 218 P.R.C.C.T.

HARDIN VILLAGE PHASE I
 71 SF RESIDENTIAL LOTS AND 4 COMMON AREAS
 18.576 ACRES OUT OF THE
 ABS A0450 WILLIAM H HUNT SURVEY
 DOC. NO. 201620700005170 D.R.C.C.T.

MCKINNEY INDEPENDENT SCHOOL DISTRICT
 ABS A0450 WILLIAM H HUNT SURVEY
 BLK 2, TRACT 48
 DOC. NO. 20111229001405010 D.R.C.C.T.

WILLIAM H HUNT SURVEY
 BLK 2, TRACT 76
 VOLUME 1486, PAGE 80 D.R.C.C.T.

DONAL M MOTSENBOCKER
 NEWS ADDITION (CMC)
 BLOCK A, LOT 1
 CABINET N, SLIDE 331 P.R.C.C.T.

BOIS D'ARC RETAIL LLC
 NEWS ADDITION (CMC)
 BLOCK A, LOT 2
 CABINET N, SLIDE 331 P.R.C.C.T.

CITY OF MCKINNEY
 NEWS ADDITION (CMC)
 BLOCK A, LOT 2
 CABINET N, SLIDE 331 P.R.C.C.T.

MCKINNEY INDEPENDENT SCHOOL DISTRICT
 ABS A0450 WILLIAM H HUNT SURVEY
 BLK 2, TRACT 82
 VOLUME 4956, PAGE 1842 D.R.C.C.T.

MCKINNEY INDEPENDENT SCHOOL DISTRICT
 ABS A0450 WILLIAM H HUNT SURVEY
 BLK 2, TRACT 487
 DOC. 20070612000789120 D.R.C.C.T.

MCKINNEY INDEPENDENT SCHOOL DISTRICT
 ABS A0450 WILLIAM H HUNT SURVEY
 BLK 2, TRACT 56
 VOLUME 1079, PAGE 795 D.R.C.C.T.

MCKINNEY INDEPENDENT SCHOOL DISTRICT
 ABS A0450 WILLIAM H HUNT SURVEY
 BLK 2, TRACT 56
 VOLUME 1079, PAGE 795 D.R.C.C.T.

ABS A0450 WILLIAM H HUNT SURVEY
 BLK 2, TRACT 60
 VOLUME 4836, PAGE 851 D.R.C.C.T.



17-050DA

TITLE: Consider/Discuss/Act on a Resolution Authorizing the City Manager to Execute an Interlocal Cooperation Agreement between the City of McKinney and the North Texas Municipal Water District (NTMWD), for the Construction and Connection of a NTMWD Meter Vault and Related Improvements, Generally Located on the West Side of Redbud Boulevard and Approximately 1,400 Feet South of Bloomdale Road

COUNCIL GOAL: Direction for Strategic and Economic Growth

MEETING DATE: August 15, 2017

DEPARTMENT: Development Services

CONTACT: Gary Graham, PE, Director of Engineering
Paul Tucker, PE, Senior Utility Engineer
Brandon Opiela, Development Manager

RECOMMENDED CITY COUNCIL ACTION:

- Approval of the Resolution

ITEM SUMMARY:

- This item authorizes the City Manager to enter into an Interlocal Cooperation Agreement with the North Texas Municipal Water District (NTMWD) for the construction and connection of NTMWD's meter vault and related improvements that will tie into the City's proposed Redbud Pump Station project.
- The proposed agreement states that NTMWD will provide the City with the construction plans and funding necessary to construct the NTMWD meter vault and related improvements, to be constructed by the City and contemporaneously with the construction of the Redbud Pump Station facility.
- The City is currently in the process of designing and preparing bid documents with which to select a general contractor to construct the new pump station facility.

- NTMWD has requested that the City include the NTMWD project in the competitive bid documents for the Redbud Pump Station facility, as an alternate bid item to afford NTMWD and the City an opportunity to coordinate the construction of the two projects and to complete both projects at or about the same time.
- Once the qualified bidder has been chosen by the City and accepted by NTMWD, NTMWD will escrow 125% of the bid amount for the NTMWD component of the project. Any amount of escrow remaining at the close of the project will be returned to NTMWD. The current cost estimate for meter vault and related improvements is \$1,959,000.

BACKGROUND INFORMATION:

- The professional services design contract for the Redbud Pump Station Site Development was approved by Resolution No. 2016-06-085 (R) on June 7, 2016.
- The Redbud Pump Station project is currently in the final design phase with an anticipated construction bid in September, 2017. Construction will take 16 months to complete with completion expected in February, 2019.
- The proposed agreement was reviewed and approved by the NTMWD Board of Directors on July 27, 2017.
- An associated specific use permit (17-125SUP) for the Redbud Pump Station, associated specific use permit (17-186SUP) for the meter vault, and preliminary-final plat (17-126PF) for the Redbud Pump Station and meter vault sites are currently under review.

FINANCIAL SUMMARY:

- N/A

BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[Resolution](#)
[Proposed NTMWD Agreement](#)
[Location Map and Aerial Exhibit](#)
[NTMWD Meter Vault Location Exhibit](#)

RESOLUTION NO. 2017-08-_____ (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF MCKINNEY AND THE NORTH TEXAS MUNICIPAL WATER DISTRICT (NTMWD), FOR THE CONSTRUCTION AND CONNECTION OF A NTMWD METER VAULT AND RELATED IMPROVEMENTS

WHEREAS, the City of McKinney is in the process of designing and preparing bid documents with which to select a general contractor to construct a new pump station facility along Redbud Blvd. at 3601 Redbud Boulevard, McKinney, Texas 75071 to be known as the Redbud Pump Station; and

WHEREAS, the City has discussed entering into an Interlocal Cooperation Agreement with the North Texas Municipal Water District (NTMWD) for the construction and connection of a NTMWD meter vault and related improvements, on property owned by NTMWD adjacent to the Redbud Pump Station to be constructed contemporaneously with the construction of the Redbud Pump Station Project by the general contractor selected by McKinney to construct the Redbud Pump Project; and

WHEREAS, NTMWD has requested that McKinney include the NTMWD Project in the competitive bid documents for the Redbud Pump Station Project as an alternate bid item to afford NTMWD and the City of McKinney an opportunity to coordinate the construction of the two projects thereby avoiding conflicts and confusion and allowing both the Redbud Pump Station Project and the NTMWD Project to be completed and become operational at or about the same time; and

WHEREAS, the City of McKinney desires to cooperate with NTMWD; and

WHEREAS, the Texas Interlocal Cooperation Act, contained in Chapter 791 of the Texas Government Code, authorizes Texas local governments to contract with one or more other local governments to perform governmental functions and services under the terms of said Act; and

WHEREAS, the governing bodies of each Party find that this project or undertaking is necessary for the benefit of the public and that each Party has the legal authority to provide the governmental function or service which is the subject matter of this Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. The City Council of the City of McKinney, Texas, hereby authorizes the City Manager to enter into an Interlocal Cooperation Agreement with the North Texas Municipal Water District (NTMWD) for the construction and connection of a NTMWD meter vault and related improvements.

Section 2. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 15th DAY OF AUGUST, 2017.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
Denise Vice, TRMC
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE CITY OF MCKINNEY, TEXAS AND
THE NORTH TEXAS MUNICIPAL WATER DISTRICT**

This Interlocal Cooperation Agreement (“Agreement”) is made and entered into on this the 27th day of July 2017 (the “Effective Date”) by and between the City of McKinney, Texas (“McKinney”), a home-rule municipality operating under the laws of the State of Texas, and the North Texas Municipal Water District (“NTMWD”), a Texas conservation and reclamation district, which parties are sometimes referred to singly as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, McKinney is in the process of designing and preparing bid documents with which to select a general contractor to construct a new pump station facility along Redbud Blvd. at 3601 Redbud Boulevard, McKinney, Texas 75071 to be known as the Redbud Pump Station (“Redbud Pump Station Project”); and

WHEREAS, NTMWD desires to enter into an Interlocal Agreement with McKinney for the construction and connection of a NTMWD Meter Vault and related site improvements (the “NTMWD Project”) on property owned by NTMWD adjacent to the Redbud Pump Station to be constructed contemporaneously with the construction of the Redbud Pump Station Project by the general contractor selected by McKinney to construct the Redbud Pump Project (“McKinney’s Contractor”); and

WHEREAS, NTMWD has requested that McKinney include the NTMWD Project in the competitive bid documents for the Redbud Pump Station Project as an alternate bid item to afford NTMWD and McKinney an opportunity to coordinate the construction of the two projects thereby avoiding conflicts and confusion and allowing both the Redbud Pump Station Project and the NTMWD Project to be completed and become operational at or about the same time; and

WHEREAS, McKinney desires to cooperate with NTMWD; and

WHEREAS, the Texas Interlocal Cooperation Act, contained in Chapter 791 of the Texas Government Code, authorizes Texas local governments to contract with one or more other local governments to perform governmental functions and services under the terms of said Act; and

WHEREAS, the governing bodies of each Party find that this project or undertaking is necessary for the benefit of the public and that each Party has the legal authority to provide the governmental function or service which is the subject matter of this Agreement; and

WHEREAS, the Parties, in paying for the performance of governmental functions or in performing such governmental functions, shall make payments therefore only from current revenues legally available to such Party;

NOW, THEREFORE, in consideration of the above recitals, the mutual promises that follow and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. The foregoing recitals are found to be true and correct and are fully incorporated into the body of this Agreement and become a part hereof.
2. NTMWD shall comply with the Code of Ordinances, City of McKinney, Texas (“McKinney Code”) and submit applications to McKinney to obtain approval of a record plat and a site plan for the NTMWD Project. NTMWD shall also obtain McKinney’s approval of all design and construction drawings for the NTMWD Project.
3. After McKinney approval of the component portions of the NTMWD Project is obtained, NTMWD shall prepare and provide to McKinney the plan sheets, detail sheets, specifications, bid form and any and all other documentation required for the NTMWD Project to be included as a Bid Alternate in McKinney’s bid package for the Redbud Pump Station Construction Project.
4. McKinney shall incorporate the documentation provided by NTMWD for the NTMWD Project as a Bid Alternate (the “NTMWD Component”) in the bid package for the Redbud Pump Station Construction Project (“Bid Package”), and afford NTMWD an opportunity to review the Bid Package prior to its release for bids.
5. McKinney shall competitively bid the Redbud Pump Station and NTMWD Component as one overall project (the “Redbud Project”) in strict accordance with the competitive bid laws of the State of Texas. NTMWD shall cooperate with McKinney to respond to any questions regarding the NTMWD Component and prepare any addendum that might be necessary regarding the NTMWD Component in a timely fashion.
6. Upon receipt of bids, McKinney shall identify the qualified low bidder on the Bid Package (“Bidder”). Alternatively, McKinney shall have the right to reject all bids in its sole discretion. If McKinney identifies a Bidder, McKinney shall provide a copy of the Bidder’s Bid Package to NTMWD for NTMWD’s review.
7. NTMWD shall have ten (10) business days to review the Bidder’s Bid Package and inform McKinney that NTMWD desires to accept the Bid Alternate for the NTMWD Component. Contemporaneously with that decision, NTMWD shall escrow with the City a cash deposit in the amount of 125% of the Bid Alternate amount bid for the NTMWD Component by Bidder to cover the construction costs and any Change Orders that might be requested and approved by NTMWD (“Escrow”).

8. If NTMWD does not wish to accept the Bidder or the Bid Alternate amount bid for the NTMWD Component by Bidder, or if NTMWD fails to timely respond, McKinney may award the Redbud Project to the Bidder without including an award of the Bid Alternate for the NTMWD Component.
9. At all times during the construction of the Redbud Project, McKinney shall have primary control and final approval authority regarding the Bidder's work on the Redbud Project. Notwithstanding the foregoing, NTMWD shall provide onsite inspection services for the NTMWD Component in addition to McKinney's inspection services. NTMWD's inspector will coordinate with McKinney's Construction Manager and onsite inspector regarding any construction related items, issues or concerns including, but not limited to, defective work. All communications with the Bidder regarding the NTMWD Component shall be conveyed through McKinney to Contractor.
10. NTMWD agrees to provide a Final Acceptance Letter to McKinney for the NTMWD Component of the Redbud Project, prior to McKinney determining the Redbud Project to be substantially complete and/or finally complete.
11. Following final acceptance of the Redbud Project, McKinney shall refund to NTMWD any amounts remaining in the Escrow fund.
12. Any notice or communication required or permitted hereunder shall be in writing and shall be deemed to be delivered when actually received or, regardless of whether actually received or not, (i) when deposited with Federal Express, DHL, UPS, or other nationally recognized overnight courier service, (ii) when received if delivered by hand, or (iii) when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the addressee as follows or to such other address as shall hereafter be designated by written notice by the addressee actually received by the other Party at least twenty (20) days prior to the effective date of the change:

If to McKinney: City of McKinney
 Paul G. Grimes
 City Manager
 P.O. Box 517
 McKinney, Texas 75069

If to NTMWD: North Texas Municipal Water District
 501 East Brown St.
 Wylie, Texas 75098
 Attn: Jeffrey Ray
 Engineering Manager

The Parties hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its addresses any other address by at least fifteen (15) days' written notice to the Party hereto.

13. This Agreement may not be rescinded or amended except by an instrument in writing signed by authorized representatives of the Parties. The terms of this Agreement shall be binding upon, and inure to the benefit of all Parties and their permitted successors and assigns.
14. This Agreement and the rights and duties of the Parties arising out of this Agreement shall be governed by, and construed in accordance with the laws of the State of Texas, without reference to the conflict of laws rules thereof. Venue for any dispute under this Agreement shall lie exclusively in the state courts and federal courts of Collin County, Texas.
15. NTMWD hereby agrees, to the extent allowed by Texas law, to fully release, indemnify, and save and hold the City of McKinney together with its elected officials, officers, agents, attorneys and employees (hereafter referred to collectively as the "City") harmless from and against any and all suits, claims, judgments, demands, actions or causes of action, liabilities, losses, costs or expenses, including the reasonable attorney's fees and court costs and disbursements that the City suffers or incurs as a result of any of the foregoing. The indemnification provided for herein shall include costs of defense, which shall be an attorney of the City's choice, court costs, expert witness fees, and any judgment together with pre-judgment and post-judgment interest.
16. This Agreement shall be subject to change or modification only with the mutual written consent of McKinney and NTMWD.
17. 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.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on their behalf by their duly authorized representative, as of the date first set above.

CITY OF MCKINNEY, TEXAS

By: _____
PAUL G. GRIMES
City Manager

[Signatures continued on following page.]


ATTEST:

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

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: 
THOMAS W. KULA
Executive Director

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 APRIL, 2017.

Notary Public _____ County, Texas
My commission expires _____

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

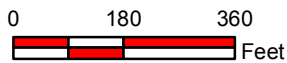
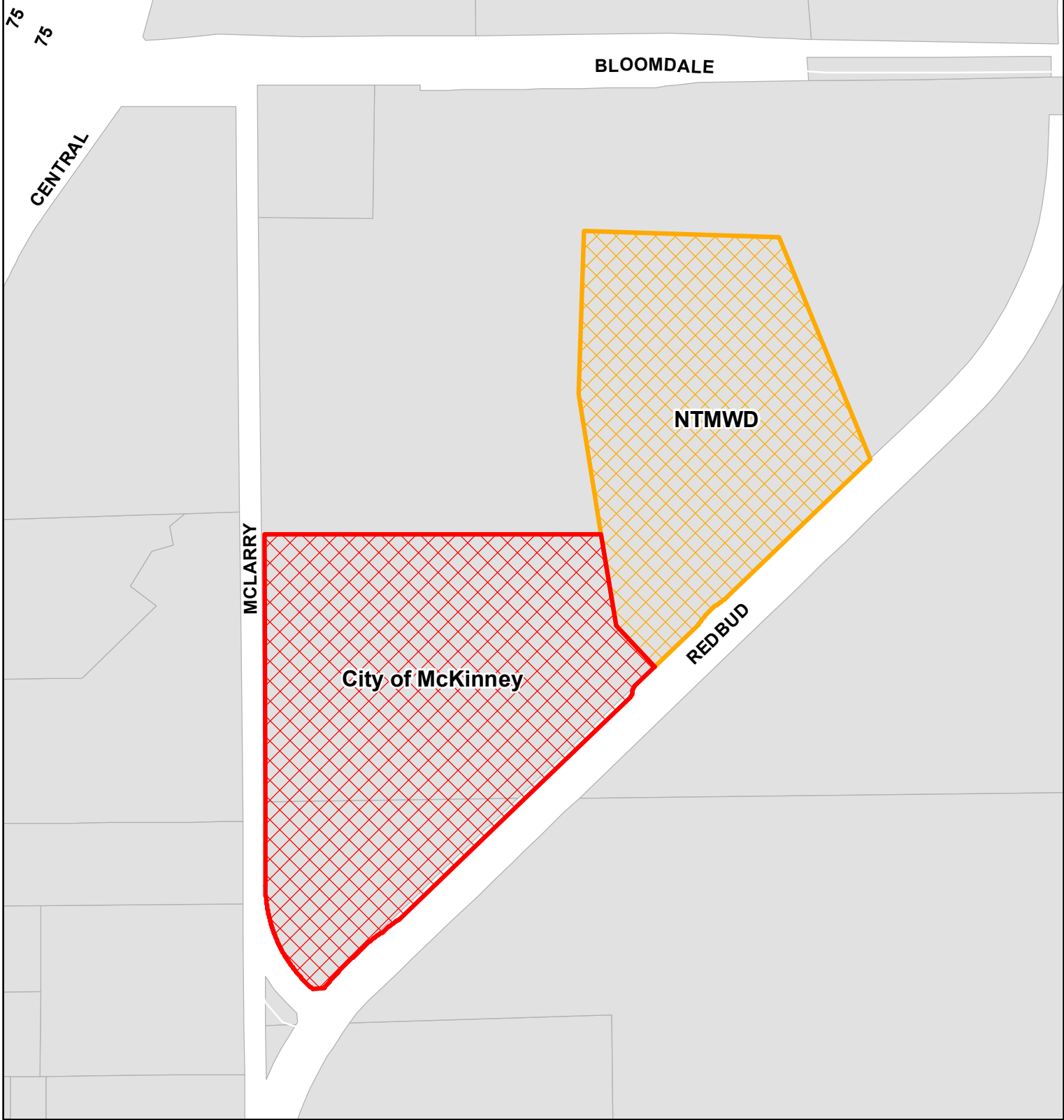
This instrument was acknowledged before me on this 1st day of August, 2017, by THOMAS W. KULA, in his capacity as Executive Director of the *NORTH TEXAS MUNICIPAL WATER DISTRICT*, a governmental agency and body politic and corporate, organized and existing by virtue of Article XVI, Section 59 of the Texas Constitution, and Article 8280-141 of the Revised Civil Statutes of the State of Texas, on behalf of said District.

Melisa Fuller

Notary Public, State of Texas

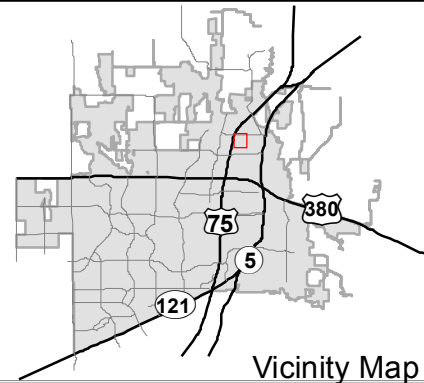


PREPARED IN THE OFFICES OF:
Brown and Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax



Location Map

Case:
NTMWD Meter Vault Agreement

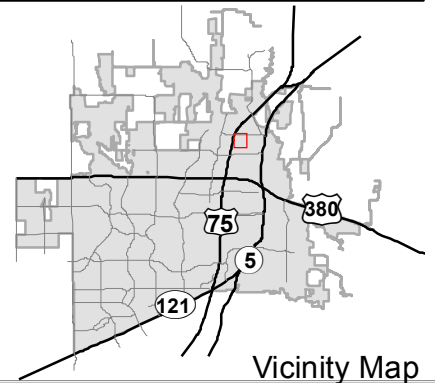


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Location Map

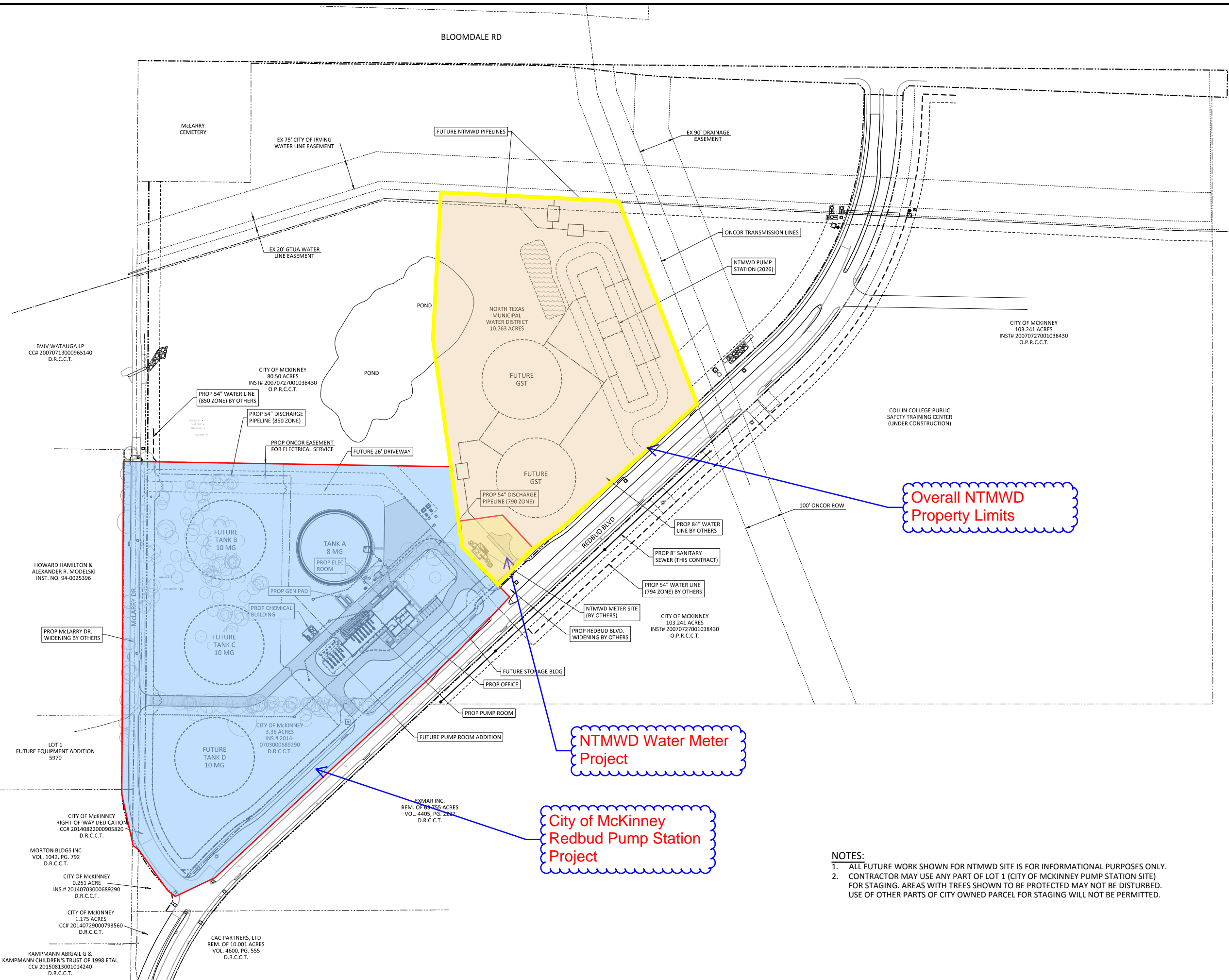
Case:
NTMWD Meter Vault Agreement



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Path: Z:\Projects\2017-06\pump Stations.mxd

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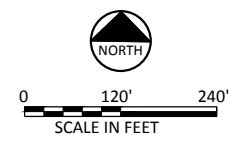


Overall NTMWD
Property Limits

NTMWD Water Meter
Project

City of McKinney
Redbud Pump Station
Project

- NOTES:**
1. ALL FUTURE WORK SHOWN FOR NTMWD SITE IS FOR INFORMATIONAL PURPOSES ONLY.
 2. CONTRACTOR MAY USE ANY PART OF LOT 1 (CITY OF MCKINNEY PUMP STATION SITE) FOR STAGING. AREAS WITH TREES SHOWN TO BE PROTECTED MAY NOT BE DISTURBED. USE OF OTHER PARTS OF CITY OWNED PARCEL FOR STAGING WILL NOT BE PERMITTED.



90% SUBMITTAL

Freeze and Nichols, Inc.
 Texas Registered Engineering Firm F-2144

NOT FOR CONSTRUCTION
 THIS DOCUMENT IS RELEASED FOR THE
 PURPOSE OF INTERIM REVIEW UNDER THE
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**FREEZE
 NICHOLS**
 2711 North Higginel Ave., Suite 3300
 McKinney, TX 75069
 Phone - (214) 217-2200
 Fax - (214) 217-2201

CITY OF MCKINNEY, TEXAS
**REDBUD PUMP STATION
 FOR 794 AND 850 PRESSURE PLANES**
 CIVIL
OVERALL SITE PLAN

NO.	ISSUE	DATE	BY	DATE	FILE NAME
0	VERIFY SCALE				CV-PST-PL-SITE01.dwg
1	Bar is one inch on original drawing. If not one inch on this sheet, adjust scale.				

DESIGNED: SAM
 DRAWN: RGM
 CHECKED: SAM

SHEET **C-1**

SEQ.



17-829

TITLE: Consider/Discuss/Act on a Resolution Authorizing the City Manager to Execute a Chapter 380 Agreement with Independent Bank Group, Inc.

COUNCIL GOAL: Operational Excellence

MEETING DATE: August 15, 2017

DEPARTMENT: City Manager

CONTACT: Paul G. Grimes

RECOMMENDED CITY COUNCIL ACTION:

- Approve Resolution

ITEM SUMMARY:

- The attached Agreement provides for incentives in the form of ad valorem tax reimbursements for a 10 year period on building improvements and business personal property, up to an aggregate maximum of \$1,043,000, incident to the relocation of the corporate national headquarters of Independent Bank Group, Inc. to a new office building and campus on a 10.4 acre parcel in the Craig Ranch Corporate Center.

BACKGROUND INFORMATION:

- Independent Bank Group, Inc. recently announced its construction of a new corporate national headquarters in McKinney. The project is estimated at \$44,400,000, including a 6-story office building and a 750-space structured parking garage. The facility must be completed by December 31, 2019 to receive the incentives. Independent Bank Group, Inc. is currently located at 1600 Redbud Boulevard in McKinney.

SPECIAL CONSIDERATIONS: None

FINANCIAL SUMMARY:

- The tax reimbursements are paid after the City receives ad valorem taxes from the property owner.

BOARD OR COMMISSION RECOMMENDATION: None

SUPPORTING MATERIALS:

[Resolution](#)

[Independent Bank 380 Agreement](#)



TITLE: Consider/Discuss/Act on an Amended and Restated Lease Agreement with DSE Hockey Centers, L.P. for an Expansion of the McKinney StarCenter

COUNCIL GOAL: Direction for Strategic and Economic Growth
Enhance the Quality of Life in McKinney

MEETING DATE: August 15, 2017

DEPARTMENT: City Manager's Office

CONTACT: Barry Shelton, Assistant City Manager

RECOMMENDED CITY COUNCIL ACTION:

- Approval of the proposed lease agreement.

ITEM SUMMARY:

- This item is for the approval of an amended lease agreement between the City of McKinney and the Dallas Stars.
- The McKinney StarCenter is owned by the City of McKinney and leased to the Dallas Stars.
- The City of McKinney and the Dallas Stars have negotiated terms of an amended lease agreement in conjunction with an expansion of the facility.
- The current facility is approximately 85,000 square feet and includes two full-size ice rinks.
- The proposed project would add 46,000 square feet of space and would include one sheet of ice with approximately 1,800 seats to facilitate hosting of youth level hockey games, tournaments and other events.

BACKGROUND INFORMATION:

- The current lease became effective October 1, 2009; the term is 20 years with two 5-year renewals.
- The addition to the facility will also include an expanded back of house / locker room area and approximately 455 new parking spaces.
- Programming offered includes hockey and figure skating academies.
- Team training and league games are held at the facility on a 7 day/week

schedule.

- The strong recreational hockey program offered at the McKinney StarCenter, along with the McKinney North Stars travel organization, has resulted in the McKinney StarCenter hosting more kids playing hockey than any other rink in Texas.
- The McKinney StarCenter is home to the MISD high school hockey program, winner of the Texas High School State Championship in 2013-14 and 2015-16.
- Additionally, public skating is offered periodically throughout the year.
- A promotional event, featuring a Dallas Stars player or coach, or team practice is scheduled annually.
- Dallas Stars promote the City of McKinney through game programs and advertising/announcements.

FINANCIAL SUMMARY:

- The proposed expansion project is estimated to cost \$8,500,000.
- The McKinney Community Development Corporation has approved a grant of \$3,500,000 towards this project.
- The City of McKinney would be responsible for the remaining \$5,000,000 of the construction cost and the \$1,713,215 cost to acquire the property for the expansion.
- Upon approval of the lease agreement, the City will move forward with the selection of a contractor for the design and construction of the expansion project.
- The terms of the lease agreement increase the monthly rent to cover the cost of the expansion project. Lease payments will increase from \$49,000 per month to \$60,000 per month for the first five years, increasing to \$65,000 per month for years 6 - 20.
- The tenant is responsible for the cost of operations and maintenance.

BOARD OR COMMISSION RECOMMENDATION:

- N/A

SUPPORTING MATERIALS:

[StarCenter Amended Lease Presentation](#)

FIRST AMENDED AND RESTATED LEASE AGREEMENT

Whereas the City of McKinney and the Dallas Stars, L.P. entered into that certain Lease Agreement dated effective August 15, 2008 (the "**Effective Date**"); and

Whereas the City of McKinney and the Dallas Stars, L.P. entered into that certain Amended and Restated Lease Agreement dated effective January 9, 2009; and

Whereas the Dallas Stars, L.P. assigned the Amended and Restated Lease Agreement to DSE Hockey Centers, L.P.; and

Whereas the parties desire to make certain amendments to the Amended and Restated Lease Agreement in the form of this First Amended and Restated Lease Agreement (referred to herein as the "**FARLA**" or the Lease) which shall supersede and control over the Amended and Restated Lease Agreement; and

Whereas this FARLA (referred to herein as the "**Lease**" or "**Lease Agreement**") is entered into as of the 1st day of August, 2017 (the "**Expansion Effective Date**"), by and between the City of McKinney ("**Landlord**") and DSE Hockey Centers, L.P., a Delaware limited partnership ("**Tenant**").

ARTICLE I. **DEFINITIONS**

"**Affiliate**" means an entity which (i) directly or indirectly controls Tenant, or (ii) is under the direct or indirect control of Tenant, or (iii) is under common direct or indirect control with Tenant. For purposes of this definition only, "**control**" shall mean ownership of fifty-one percent (51%) or more of the voting securities or rights of the controlled entity.

"**Alterations**" has the meaning set forth in Section 10.2.

"**Approved Budget**" means that certain original \$12,300,000 budget for the construction of the Facility, the construction and installation of the related Improvements, and the purchase of the Facility Personal Property, approved by Landlord and Tenant and attached hereto as Exhibit "D".

"**Approved Facility Expansion Budget**" means that certain \$8,500,000.00 budget for the design and construction of the Facility Expansion, the construction and installation of the related Improvements, and the purchase of the Facility Expansion Personal Property, approved by Landlord and Tenant and attached hereto as Exhibit "E".

"**Approved Plans**" means the "Drawings and Specifications" prepared pursuant to the Scope of Work (as such terms are defined in the Construction Contract) approved by all necessary parties from time to time under the Construction Contract.

"**Architect**" has the meaning set forth in Section 6.1.

"**Base Annual Rental**" has the meaning set forth in Section 4.2(a).

"**Budget Overrun**" means if total actual or reasonably anticipated construction costs for the Facility Expansion exceed the total amount set forth in the Approved Facility Expansion Budget.

"**CCRs**" has the meaning set forth in Section 5.6.

gross floor area, as shown and/or described in the Project Scope Criteria attached as Exhibit "B-2" hereto, including 455 additional parking spaces constructed south of the Facility Expansion building improvements on the Expansion Parcel and as such description is further hereafter amended and modified by the Approved Plans.

"Facility Personal Property" means that certain equipment and furniture and those certain fixtures more particularly described on Exhibit "C" attached hereto.

"Facility Expansion Personal Property" means that certain equipment and furniture and those certain fixtures more particularly described on Exhibit "C-1" attached hereto.

"GMP" means the maximum financial obligation of the City for the construction of the Facility Expansion, the Improvements for the Facility Expansion, and the Facility Expansion Personal Property, and the Parking Area for the Facility Expansion under the design-build construction contract.

"Governmental Regulations" means all laws, ordinances, rules, regulations, statutes, and building codes of all governmental authorities having jurisdiction over the Leased Premises or Tenant's use thereof, including, without limitation, all health, environmental and regulatory requirements, whether currently in effect or hereafter enacted.

"Hazardous Materials" has the meaning in Section 7.2.

"Improvements" means the Expanded Facility, the Parking Area, and all infrastructure improvements from time to time constructed, installed, or situated on the Expanded Facility Land that are necessary for the operation of the Expanded Facility and which exclusively serve the Expanded Facility, including, without limitation, water or sewer facility, and any renovations to or replacements of any of the foregoing, but shall not include Capital Repairs.

"Invitees" means suppliers, employees, agents, customers, contractors, invitees, subtenants, licensees and concessionaires.

"Land" means that certain real property situated in the City of McKinney, Collin County, Texas, being more particularly described on Exhibit "A" attached hereto.

"Landlord's Security" has the meaning set forth in Section 6.9.

"Leased Premises" means the Expanded Facility Land, the Improvements and the Personal Property, and all rights, privileges, easements, and appurtenances belonging to or in any way appertaining to the Improvements.

"Leasehold Mortgage" means any mortgage, deed of trust or other instrument in the nature thereof which encumbers any of Tenant's rights, titles and interests in and to use the Leased Premises, including, without limiting the generality of the foregoing, its right to use and occupy the Leased Premises and all of its rights, titles and interests in and to any and all Improvements.

"Leasehold Mortgagee" means any mortgagee, trust or anyone that claims an interest by, through or under a Leasehold Mortgage.

"Likeness" has the meaning set forth in Section 5.3(c).

"**Mortgaged Premises**" means all of Tenant's leasehold estate under this Lease covered by a Leasehold Mortgage as applicable.

"**NHL**" means the National Hockey League.

"**Overflow Parking Area**" means 100 spaces of parking located generally west and adjacent to the Leased Premises as depicted on Exhibit "F".

"**Parking Area**" means the paved parking lot and any structures built on the Expanded Facility Land which will serve as the primary paved parking area for the Expanded Facility.

"**Parking Agreement**" has the meaning set forth in Section 5.5(c).

"**Personal Property**" means that certain equipment and furniture and those certain fixtures more particularly described on Exhibit "C" for the Facility hereto and the Facility Expansion Personal Property more particularly described on Exhibit "C-1".

"**Primary Lease Term**" means from October 1, 2009 until twenty (20) years from and after the Rent Adjustment Date, subject to extension and earlier termination as provided herein.

"**Project Management Fee**" has the meaning set forth in Section 6.2.

"**Project Scope Criteria**" has the meaning set forth in Section 6.1.

"**Renewal Lease Term**" has the meaning set forth in Section 3.2.

"**Rent Adjustment Date**" means the first day of the month following the month of completion of the Facility Expansion.

"**Rent Commencement Date**" means October 1, 2009.

"**StarCenters**" means those recreational ice skating facilities (including various other amenities) in other municipalities in the Dallas-Fort Worth metropolitan area owned and operated or leased and operated by Tenant in Euless, Farmers Branch, Frisco, Plano, and Richardson, Texas.

"**Subtenant**" means any person or entity to whom or to which Tenant grants or licenses any rights to occupy, use, operate, manage, provide services in, or sell food, beverages, services, merchandise or sporting goods within the Leased Premises.

"**Taxes**" has the meaning set forth in Section 8.1.

"**Term**" means the Primary Lease Term, or if Tenant has exercised its renewal option under this Lease, the then current Renewal Lease Term.

ARTICLE II **LEASED PREMISES**

Section 2.1. Leased Premises. In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, the Leased Premises. TO

HAVE AND TO HOLD said Leased Premises for the Term of this Lease, all upon the terms and conditions set forth in this Lease.

ARTICLE III. TERM

Section 3.1. Primary. This Lease will continue in force during a period beginning on the Effective Date of this Lease and ending on the expiration of the Term, unless this Lease is terminated early or extended to a later date pursuant to the terms of this Lease. The Term will commence and the obligations of Tenant with respect to the Leased Premises (including, without limitation, payment of Base Annual Rental or Adjusted Base Annual Rental, as applicable) will accrue beginning on the Rent Commencement Date or Rent Adjustment Date, as applicable, and continue in full force and effect for the Primary Lease Term, subject to extension and earlier termination as provided herein.

Section 3.2. Renewal. So long as Tenant is not in default hereunder, the Term of this Lease may be extended for up to two consecutive five (5) year periods after the Primary Lease Term (each of which is herein sometimes called a "**Renewal Lease Term**"). The option for each Renewal Lease Term may be exercised by Tenant by written notice to Landlord at least one year before the end of the Primary Lease Term or the then effective Renewal Lease Term, as the case may be. Upon the timely giving of such one year notice, the renewal and extension of this Lease for a Renewal Lease Term shall be on and under the same covenants, agreements, terms, provisions, and conditions that are contained herein for the Primary Lease Term, except that Base Annual Rental or Adjusted Base Annual Rental, as applicable, shall be as stated in Section 4.2(b) below. Once Tenant shall exercise any renewal option, Tenant may not thereafter revoke such exercise, except as expressly set forth below. Tenant shall not have the right to exercise any renewal option at any time that an Event of Default under this Lease has occurred without having been subsequently cured to Landlord's satisfaction under the terms of this FARLA. Tenant's failure to exercise timely any renewal option for any reason whatsoever shall conclusively be deemed a waiver thereof and of any future renewal option. Tenant shall take the Leased Premises "as is" for each Renewal Lease Term and Landlord shall have no obligation to make any improvements or alterations to the Leased Premises.

ARTICLE IV. RENTAL

Section 4.1. Construction Periods (Facility and Facility Expansion). Except as otherwise provided herein, no rent is due from Tenant for the period from the Effective Date to the Rent Commencement Date. Thereafter, Base Annual Rental shall continue from the Rent Commencement Date until the Rent Adjustment Date after which date the Adjusted Base Annual Rental shall continue for the remainder of the Primary Lease Term.

Section 4.2. Base Annual Rental. Tenant shall to pay to Landlord, on or before the Rent Commencement Date and on the first day of each calendar month after the Rent Commencement Date for which this Lease is in effect, by wire transfer, check or cash, one-twelfth (1/12) of the Base Annual Rental (as hereinafter defined) or the Adjusted Base Annual Rental (as hereinafter defined), as applicable, together with any other charges due and payable by Tenant hereunder. Any wire transfer shall be made to the following account: Legacy Texas Bank, ABA# 111901234, Beneficiary: City of McKinney, Beneficiary credit account #0860585, Attn: Sheryl Coleman, unless Landlord notifies Tenant in writing of another account for such wire transfers. Any payment which is not a wire transfer shall be made to Landlord at its address set forth in Section 17.13 unless Landlord notifies Tenant in writing of another place of payment.

(a) **Primary Lease Term.**

- i. The term "**Base Annual Rental**" shall mean the amount of base rent payable by Tenant on an annual basis during the Term until the Rent Adjustment Date. The Base Annual Rental for the Primary Lease Term is as follows:

Lease Year	Base Annual Rental	Monthly Amount
1-5	\$528,000.00	\$44,000.00
6 through Rent Adjustment Date	\$588,000.00	\$49,000.00

- ii. **Adjusted Base Annual Rental.** The term "**Adjusted Base Annual Rental**" shall mean the amount of base rent payable by Tenant after the Rent Adjustment Date and on an annual basis during the remainder of the Primary Lease Term as follows:

Commencement Date	Adjusted Base Annual Rental	Monthly Amount
Rent Adjustment Date through 60 th month thereafter	\$720,000.00	\$60,000.00
From the 61 st month after the Rent Adjustment Date through the end of the Primary Lease Term	\$780,000.00	\$65,000.00

(b) **Renewal Lease Term.** The Adjusted Base Annual Rental for each Renewal Lease Term for which Tenant has effectively exercised Tenant's option hereunder shall be \$780,000.00 (\$65,000.00/mo.) and \$780,000.00 (\$65,000/mo.), respectively. In addition, notwithstanding anything herein to the contrary, Landlord and Tenant shall be jointly responsible for any capital repairs during a Renewal Lease Term, if any, with Landlord being responsible for fifty (50%) percent of any capital repair costs and Tenant responsible for the other fifty (50%) percent of such capital repair costs.

**ARTICLE V.
USE OF DEMISED PREMISES**

Section 5.1. Use. The Leased Premises may be used by Tenant primarily as a public recreational ice skating facility, and for no other purpose without the prior written consent of Landlord, except that Landlord acknowledges that the Leased Premises shall additionally be used for certain ancillary purposes related to the ice skating rinks, including, without limitation, locker room facilities, concession areas, meeting rooms, a retail store selling sporting goods and equipment and other goods ancillary thereto, and such additional uses as are shown and/or described in the Approved Plans. The Leased Premises may only be used by Tenant as permitted by, and in full and strict compliance with, all Governmental Regulations. Landlord represents and warrants that there are no restrictive covenants or other documents applicable to the Expanded Facility Land that prohibit the use of the Leased Premises for the purposes contemplated by this Lease. Tenant and Landlord acknowledge that the Facility and Expanded Facility are primarily intended to serve youth and adult sports and recreational users in the city of McKinney and the McKinney region. Tenant and Landlord further acknowledge the City's primary intent in constructing the Expanded Facility is not economic development. Tenant agrees to provide Landlord, by notice to the McKinney Director of Parks and Recreation, with periodic reports on scheduled activities, use statistics, concessions and facility use pricing, and community relations, including reports regarding all obligations required of Tenant under Sections 16.1-16.4.

Section 5.2. Limitations on Use.

(a) Tenant shall not, without Landlord's prior written consent, keep anything within the Leased Premises or use the Leased Premises for any purpose which invalidates any insurance policy carried on the Leased Premises.

(b) Tenant shall not permit any objectionable or unpleasant odors to emanate from the Leased Premises; nor place any antenna, awning or other projection on the exterior of the Leased Premises (other than those indicated on the Approved Plans or otherwise approved in advance by Landlord in writing); nor take any other action which would constitute a nuisance. Tenant shall comply with local noise ordinances in the operation of radios, televisions, loudspeakers or amplifiers on the Leased Premises.

(c) Tenant shall keep the Leased Premises neat, clean and reasonably free from dirt or rubbish at all times, reasonable wear and tear excepted. Tenant shall store all trash and garbage within the Leased Premises or in such area outside the Leased Premises as may be designated for such purpose by Landlord and Tenant shall arrange for the regular pickup of such trash and garbage at Tenant's expense. Tenant shall not operate an incinerator or burn trash or garbage.

Section 5.3. Operational Rights; Revenue.

(a) Subject to the terms and provisions of this Lease, Tenant shall have full and exclusive control of the management and operation of the Leased Premises, including, without limitation, the Expanded Facility. Without limiting the generality of the foregoing, Tenant shall own all revenues of any source generated by or from the Leased Premises or the operation or management or the name thereof.

(b) Subject to all Governmental Regulations, Tenant shall have exclusive authority, control and rights in selecting the name of the Expanded Facility, as well as the sponsor or sponsors for which the Expanded Facility (or portions thereof) will be named from

time to time or for which signage and advertising will be sold within or without the Expanded Facility, including, without limitation, the right to retain all proceeds therefrom; provided, however, that the name of the Expanded Facility must include a reference to "McKinney" or the "City of McKinney" and under no circumstances will the name given to the Expanded Facility include any reference to a proper geographic name, unless such reference is to "McKinney" or the "City of McKinney". Landlord agrees to the initial name of the Expanded Facility to be "Dr Pepper StarCenter McKinney @ Craig Ranch"; subject to approval and payment by the sponsor(s).

(c) Notwithstanding anything in Section 5.3(a) or Section 5.3(b) above to the contrary, the name given to the Expanded Facility shall not include a reference to or the name of a company that produces or distributes alcoholic beverages or tobacco products or that relates to any reasonably objectionable subject matter. Subject to the foregoing and the limitations in Section 5.3(b) above, Tenant shall have the full and exclusive control and discretion as to the name of the Expanded Facility and all other Improvements.

(d) Subject to the terms and provisions of this Lease, Tenant shall have the right to install and shall have the full and exclusive control of any and all advertising signage displayed within the Expanded Facility and on the exterior roof or facade thereof, subject to all Governmental Regulations; provided, however, the signage on the exterior of the Expanded Facility shall not include a reference to or the name of a company that produces or distributes alcoholic beverages or tobacco products or that relates to any reasonably objectionable subject matter.

(e) Tenant shall own all rights, including intellectual property rights, in, to and relating to the Leased Premises, including, without limitation, the Expanded Facility, whether now in existence or created in the future, including, without limitation, all copyrights, trademarks, trade names, trade dress and merchandising rights of, in or relating to the Leased Premises and any and all names, logos or other likenesses of the Leased Premises as well as the rights to protect, enforce and license any or all of the foregoing (collectively, the "Likenesses"). Tenant shall provide Landlord, or shall cause the owner of such documents to provide Landlord, copies of any drawings, renderings, designs, and plans and specifications for the Expanded Facility, and Landlord will be entitled to retain and use them in connection with the construction of the Expanded Facility, or, in the event of the occurrence of an Event of Default under this Lease, for the purpose of satisfying Tenant's obligations under this Lease. In addition, Landlord and its agents and contractors shall have the right to use the Expanded Facility name, logo and image in connection with any Landlord-approved or Landlord-sponsored campaign marketing the City of McKinney, Texas.

Section 5.4. Common Area. Tenant shall have no responsibility for Common Area costs or maintenance.

Section 5.5. Parking Area.

(a) Throughout the Term but at all times subject to the extent of the rights held by Landlord under the CCRs, Tenant and its Invitees shall have the exclusive right to use the Parking Area.

(b) Landlord warrants that the Parking Area will contain the minimum number of parking spaces required by zoning and other Governmental Regulations. Landlord agrees that at least 250

parking spaces within the Parking Area will be available at all times for use by Tenant and its Invitees and that by the Rent Adjustment Date at least 705 parking spaces within the Parking Area will be available at all times for use by Tenant and its Invitees.

(c) The Parking Area will be provided solely for the users of the Expanded Facility. In accordance with Section 17.27 below, Landlord and the Owner of the Overflow Parking Area will enter into a Parking Agreement to be attached to this Lease as Exhibit "E" (the "**Parking Agreement**") granting Landlord, its lessees and assigns, an easement to the shared use the Overflow Parking Area and an easement for ingress and egress over any accessways and driveways that are reasonably necessary to access the Leased Premises from the Overflow Parking Area, if the CCRs and Replat of the Development do not otherwise grant such rights to the Landlord, which shall be consistent with the following:

(i) The Parking Agreement will provide that the Owner of the Overflow Parking Area shall restrict its invitees, tenants and the general public from using the Parking Area in any manner inconsistent with Landlord's rights thereunder.

(ii) The Parking Agreement shall provide that the Tenant shall have the shared right to the use the Overflow Parking Area lot for Tenant's invitees along with the Owner of the Overflow Parking Area under a parking easement in favor of Landlord.

(d) Tenant shall have the right to charge patrons for parking in the Parking Area for special events held at the Expanded Facility, including events and tournaments involving professional or junior ice hockey teams or figure skating clubs held at the Expanded Facility.

Section 5.6. Declaration of Covenants, Conditions and Restrictions. Tenant acknowledges and agrees that a Declaration of Covenants, Conditions and Restrictions ("**CCRs**") governing the Development may be recorded after the Effective Date, which grants certain easements relating to ingress and egress within the Development and provides for the maintenance and operation of the Common Areas of the Development. Once the CCRs are recorded, Landlord shall not make any modifications, additions, deletions or amendments to the CCRs that materially and adversely affect the Tenant, the Leased Premises, Tenant's use and development of the Leased Premises, and any rights or privileges granted under this Lease or the CCRs to Tenant or the owner of the Leased Premises without the prior written consent of the Tenant, which shall not be unreasonably withheld, conditioned or delayed. If the Land is not subject to the CCRs, Tenant shall have no rights under this Section 5.6.

ARTICLE VI.

DESIGN, CONSTRUCTION, INSTALLATION AND LIEN CLAIMS

Section 6.1. Design of Facility and Facility Expansion. Landlord and Tenant acknowledge that the Facility has been heretofore constructed and accepted in general conformity to this Article VI. Contractor shall be responsible for the planning, design, and engineering of the Facility Expansion in substantial conformity with the preliminary site plans, floor plans and elevations to which Landlord has given conceptual approval, which site plans, floor plans and elevations are attached hereto as Exhibit "B" and comprise the "**Project Scope Criteria**" and Tenant shall be responsible for overseeing and monitoring such work by the Contractor. Notwithstanding anything to the contrary set forth in Section 6.2 below, Landlord shall pay any additional costs if the costs exceed the GMP, defined below. Tenant shall be responsible for assuring that the Approved Plans for the Facility Expansion (a) satisfy any and all Governmental Regulations applicable to the construction and operation of the Facility (including, without limitation, if applicable, (i) United States Occupational Safety and Health Administration

requirements, (ii) the Americans with Disabilities Act of 1990 (as amended) and comparable state laws, (iii) building codes and zoning requirements, and (iv) stormwater, utility and related requirements), and (b) do not violate the easements, CCRs and other restrictions encumbering or otherwise affecting the Leased Premises that are listed on Exhibit "E" attached hereto.

In accordance with the Construction Contract (as hereinafter defined), Contractor shall hire, terminate, and replace, as the case may be, and shall pay all fees and costs, provided Landlord may pay certain costs directly as provided herein in this Section 6.1, of the architect (the "Architect"), engineers and other design professional Subcontractors (as that term is defined in the Construction Contract) for the design development of the Facility Expansion, with the understanding that the structural elements of the Facility Expansion shall be engineered in accordance with generally accepted engineering practices which will result in a useful life of the structural elements of not less than twenty (20) years. The fees and expenses of the Architect and the engineers shall be included in the Approved Facility Expansion Budget. The Construction Contract shall contain a provision whereby Landlord shall pay directly the Contractor's vendors for the Facility Expansion Personal Property, the Architect and the Project Management Fee which fee shall be paid directly to Tenant. The Construction Contract shall further provide that if Landlord terminates the Construction Contract under Section 6.10, Landlord and Tenant shall have no obligation to Contractor, Landlord or any other party as a result of such termination. The Construction Contract shall be generally in the form attached hereto as Exhibit B-1.

The Construction Contract shall provide that the Approved Plans shall be prepared by the Architect from time to time during the course of construction, and Tenant shall be responsible to assure that such Approved Plans are without material deviation from the Project Scope Criteria, and copies thereof made available to Landlord and approved by Tenant as provided in this Lease. Tenant will cause Contractor to provide Landlord, within thirty (30) days upon receipt of Landlord request, a construction progress schedule, and immediately upon their availability from time to time, copies of the Approved Plans and all other related construction documents. **LANDLORD'S PAYMENT TO ARCHITECT, ITS APPROVAL OF THE PROJECT SCOPE CRITERIA, ANY OF THE DRAWINGS AND SPECIFICATIONS, OR THE CONSTRUCTION PROGRESS SCHEDULE DOES NOT IMPOSE ON LANDLORD ANY RESPONSIBILITY WHATSOEVER, INCLUDING WITHOUT LIMITATION, RESPONSIBILITY FOR THE ADEQUACY OF THE CONSTRUCTION TIME PROVIDED, THE SUFFICIENCY OF THE PLANS OR COMPLIANCE WITH ANY GOVERNMENTAL REGULATIONS, FOR WHICH THE ARCHITECT AND CONTRACTOR SHALL HAVE FULL AND COMPLETE RESPONSIBILITY.** Upon either party's desire for a change to the Approved Plans, or any other change under the Construction Contract, the requesting party shall provide the non-requesting party with written notice thereof, and the non-requesting party shall respond to the requesting party's request within five (5) days of such notice. Landlord shall have final approval of any requested change.

In designing the Facility Expansion, Tenant shall ensure that (i) the Architect and the engineers reasonably consult with Landlord and the City's City Manager (the "City Manager"), or the City Manager's authorized designee, with respect to satisfaction of the City's code requirements applicable to the design of the Facility Expansion, and (ii) the Contractor obtains all City permits, licenses and approvals required by law, rule, regulation or ordinance in connection with the construction of the Facility Expansion and all other permits or approvals, if any, issued by other governmental agencies, to the extent required by law. Landlord hereby acknowledges that the City has agreed to waive any construction and design permits and fees in connection with the construction of the Facility Expansion.

Section 6.2. Construction of Facility Expansion, including the Parking Area. Upon Tenant's coordination to Landlord's satisfaction of all requisites under state law for a design-build

public procurement, Landlord shall execute a contract (the "**Construction Contract**") with Contractor as the general contractor for the development and construction of the Facility Expansion. The Construction Contract shall be the form of Exhibit B-1, and shall contain, among other things, Contractor's obligation to obtain and, at all times during the term of such contract, carry insurance sufficient to satisfy Landlord's insurance requirements. The Construction Contract shall be for a design-build (not construction-manager-at-risk) project. The Construction Contract shall further set out Landlord's guaranteed maximum price ("**GMP**") for construction of the Facility Expansion, the Facility Expansion Personal Property and the Parking Area, whereby Landlord's agreed cost shall be no greater than an amount equal to \$8,500,000.00, the same amount as the Approved Facility Expansion Budget; however the Construction Contract shall provide that Landlord shall pay directly to Contractor's vendors for the Facility Expansion Personal Property, to the Architect for the Architectural fees, and to the Tenant the Project Management Fee, subject to agreed change orders. Landlord's payment to Contractor's vendors shall not create any third-party beneficiary liability to Landlord. Landlord has agreed, at Tenant's and Contractor's request, to allow an agent of Tenant to be "Landlord's Representative" for purposes of the management of the construction of the Facility Expansion under the Construction Contract (the "**Construction Manager**"), with Landlord retaining only limited approval rights under the Construction Contract as more particularly described therein. Tenant acknowledges and agrees that Construction Manager is responsible, as between Landlord and Tenant, for assuring that construction of the Facility Expansion: (a) will be constructed in accordance with the construction progress schedule, the Project Scope Criteria and the Approved Plans, and (b) will be performed in a good and workmanlike manner as provided in the Construction Contract. **Tenant shall insure conformity to all state procurement laws in coordination of Landlord's construction of the Facility Expansion.** The Construction Contract shall contain a provision whereby any savings on the subcontracts for constructing the Facility Expansion shall be shared between the Contractor and Tenant. Subject to Contractor's written approval under the Construction Contract, Landlord agrees to a correlative reduction (applied ratably to each month of the Term) in the Adjusted Base Annual Rental for any savings Tenant elects to apply to reduce the GMP. The Construction Contract shall include liquidated damages from Contractor in favor of Landlord in the event the Contractor does not complete construction and obtain a Certificate of Occupancy by November 15, 2018. The amount of liquidated damages from Contractor shall equal \$2,000.00 per day. Landlord agrees to assign to Tenant such actual amounts received from Contractor in an amount equal to \$1,500.00 per day; however no amounts shall be owing to Tenant unless actually received by Landlord (through its credit against payments due Contractor under the Construction Contract). Tenant shall have no liability to Landlord, Contractor or any other party as a result of such event.

Under no circumstances whatsoever shall Tenant authorize, without Landlord's prior written approval, any change, alteration, or addition to the Approved Plans which Landlord or Tenant reasonably believes would (a) increase the total cost to complete the construction of the Facility Expansion over the amount in the Approved Facility Expansion Budget or GMP, (b) delay the completion of the Facility Expansion beyond the completion date set forth in the Construction Contract, or (c) have a material adverse impact on the quality of the completed Facility Expansion.

Landlord shall be responsible for any agreed increase in the GMP that is a result of (i) any changes to the plans solely requested or required by Landlord, or (ii) any City of McKinney Fees relating to Construction of the Leased Premises. Tenant shall be responsible for any agreed increase in the GMP that is a result of any changes to the plans solely requested or required by Tenant and approved by Landlord.

During the construction of the Facility Expansion and related Improvements, Tenant shall require the Construction Manager to attend "job progress" meetings on a regular basis as necessary to

provide appropriate coordination, and Landlord shall be notified in advance of, and Landlord and the City Manager shall be entitled to attend, all such meetings. During the construction of the Facility Expansion, Landlord and the City Manager shall be entitled to monitor and inspect all aspects of the construction of the Facility Expansion. To ensure that neither the design nor the construction of the Facility Expansion is delayed, Landlord will cause the City Manager, the City Manager's authorized designees, and other City personnel to respond in a reasonably expeditious manner to all submissions and requests by Tenant, the Architect, the engineers, the Contractor or other contractors.

As expressly set forth in Section 17.22 hereof, Landlord is making no representations and is providing no warranties of any kind in connection with the construction of the Facility Expansion and related Improvements. However, upon the completion of construction of the Facility Expansion and related Improvements, Landlord will assign to Tenant any and all warranties obtained by Landlord in connection with the construction of the Facility Expansion and related Improvements; provided, however, that Tenant agrees to assign to Landlord any and all such warranties remaining upon the expiration or earlier termination of this Lease. Landlord further agrees that it will not, without the consent of Tenant, waive or release any rights or claims that Landlord may have against the Contractor or any of the other contractors, subcontractors, material suppliers, architects, design consultants, or other third parties regarding the design or construction of the Facility Expansion or related Improvements.

Section 6.3. Construction Costs. Except as otherwise provided herein, Landlord shall be solely responsible for the costs and expenses related to construction and completion of the Facility Expansion, including the Parking Area, in accordance with the requirements of this Lease.

Section 6.4. Purchase of Personal Property. Landlord, through the Construction Contractor or through Tenant's procurement, shall purchase for Tenant's use the Personal Property. Landlord agrees that Tenant may modify the list attached to this Lease as Exhibit "C" and Exhibit "C-1"; provided, however, that (a) the total cost to Landlord for Facility Expansion Personal Property shall not exceed the amount therefor set forth in the Approved Facility Expansion Budget, provided that if the actual project costs are below the Approved Facility Expansion Budget, Tenant may allocate such savings to additional funds for Facility Expansion Personal Property or, if approved by Landlord, to a reduction in the Base Annual Rent or Adjusted Based Annual Rent, as applicable; and (b) Tenant provides to Landlord, within ten (10) days after the final advance is made for such Facility Expansion Personal Property, a detailed listing and description of the Facility Expansion Personal Property, as modified, including serial numbers, if any. In the event the actual cost of the Facility Expansion Personal Property exceeds the amount estimated therefor in the Approved Facility Expansion Budget and Landlord or Tenant believe that such increase will result in an increase to the total amount of the Approved Facility Expansion Budget, Tenant will deposit such deficiency with Landlord within ten (10) days after Landlord's written request therefor. All Personal Property purchased by Landlord shall remain at the Leased Premises unless replaced by Tenant with items of comparable quality, characteristics and value or unless such items have become obsolete; provided, however, that any such replacement or disposal of the Personal Property shall remain subject to the notice requirements of Section 6.7 below.

Section 6.5. Project Management. Tenant shall use commercially reasonable efforts to oversee the development of the Facility Expansion to ensure the Expanded Facility are constructed by Landlord in a quality, workmanlike manner reasonably comparable to other StarCenters operated by Tenant. As part of the Approved Facility Expansion Budget, Landlord shall pay Tenant the amount of One Hundred Thousand and No/100 Dollars (\$100,000.00) (the "**Project Management Fee**") as a management fee for overseeing the development and construction of the Facility Expansion payable to

Tenant in ten (10) monthly installments of Ten Thousand and No/100 Dollars (\$10,000.00) each. The Project Management Fee shall be paid by either a check made payable to Tenant and mailed to its notice address (or to such other address as may be designated by Tenant from time to time) or by wire transfer to Tenant's designated bank account. Tenant's oversight of the project shall include a review of the Construction Contract between Landlord and Contractor under Section 6.1.

Section 6.6. Ownership of Improvements. The Expanded Facility, the Parking Area, the Personal Property, and all other Improvements of any nature constructed on the Expanded Facility Land, together with any modifications, replacements or substitutions for any of the foregoing, shall be owned by and shall be the property of Landlord, free of any claim of Tenant or any party claiming by, through or under Tenant. Any and all fixtures which are a part of the Improvements shall remain at the Leased Premises unless replaced by Tenant with items of comparable quality, characteristics and value.

Notwithstanding the foregoing, Tenant may elect to replace the Personal Property from time to time, at Tenant's sole cost and expense, and any replacements of the Personal Property purchased by Tenant shall be deemed owned by Tenant and may, unless affixed to the Expanded Facility, be removed by Tenant upon the expiration or early termination of this Lease. In addition, Tenant may dispose of items of the Personal Property which have become obsolete. However, Tenant shall provide Landlord thirty (30) days prior written notice of Tenant's intent to replace or dispose of any item of the Personal Property, the original cost of which was in excess of \$500.00. Landlord shall be entitled, but not obligated, to remove such Personal Property from the Expanded Facility within such thirty (30) day period, and to sell or otherwise dispose of such Personal Property in such manner and upon such terms as Landlord deems appropriate, in Landlord's sole discretion, and any proceeds therefrom shall be the sole property of Landlord.

Upon the expiration or earlier termination of this Lease, Tenant shall deliver up the Leased Premises, including the Improvements and any remaining items of the Personal Property, to Landlord in good condition, reasonable wear and tear excepted. Upon the expiration of this Lease, Tenant may, and at Landlord's request shall, at Tenant's sole cost, remove any and all furniture, trade fixtures, equipment, and other personal property not permanently affixed to the Improvements and purchased at Tenant's cost (expressly excluding any remaining items of the Personal Property), title to which shall not be in or pass automatically to Landlord upon such expiration, repairing all damage caused by such removal. Property not so removed shall, unless requested to be removed, be deemed abandoned by Tenant and title to the same shall thereupon pass to Landlord under this Lease as by a bill of sale.

Upon the termination of this Lease, Tenant will execute, at Landlord's written request, a release or other recordable instrument, of all Tenant's interest in the Leased Premises, and Landlord and Tenant shall further execute such other instruments as may be necessary to evidence the termination of this Lease and stating the termination date.

Section 6.7. Tenant's Work. Tenant shall have no right, authority or power to bind Landlord for any claim for labor or material or for any other charge or expense incurred in connection with any construction work done by Tenant on the Leased Premises or any change, alteration or addition thereto, or replacement or substitution therefor, or to render the Landlord's interest in the Leased Premises liable to any lien or right of lien for any labor or material or any other charge or expense incurred in connection therewith, and Tenant shall in no way be considered as the agent of Landlord in the construction or operation of the Improvements or any replacement or substitution therefor.

All work at any time done by Tenant within the Leased Premises shall be performed in a good and workmanlike manner, in compliance with all Governmental Regulations, and in such manner as to

cause a minimum of interference with other construction in progress. Tenant agrees to indemnify Landlord and hold Landlord harmless from and against any loss, liability or damage resulting from Tenant's work, and Tenant shall, if requested by Landlord, furnish bond or other security satisfactory to Landlord against any such loss, liability or damage.

Section 6.8. Zoning and Permits.

(a) Landlord shall be responsible, at its sole cost and expense, to obtain rezoning of the Leased Premises if necessary to use the Leased Premises for the purposes contemplated in this Lease. Tenant shall reasonably cooperate with Landlord in obtaining such rezoning, at Landlord's sole cost and expense. Landlord must keep Tenant apprised of the rezoning process and must obtain Tenant's written approval, which shall not be unreasonably withheld, conditioned or delayed, prior to any rezoning of the Leased Premises.

(b) Landlord shall be responsible, at its sole cost and expense, to replat the Leased Premises if necessary to construct the Leased Premises in accordance with the Approved Plans. Tenant shall reasonably cooperate with Landlord in obtaining such replat, at Landlord's sole cost and expense. Landlord must keep Tenant apprised of the replatting process and must obtain Tenant's written approval of the final replat of the Leased Premises, which shall not be unreasonably withheld, conditioned or delayed.

(c) Landlord shall be responsible for obtaining the issuance of all permits, licenses and approvals by all public authorities that are required in connection with the construction of the Facility Expansion and the Parking Area, including a Certificate of Occupancy for the Facility Expansion.

(d) Tenant shall obtain the issuance of all permits, licenses and approvals by all public authorities which are required in order for Tenant to carry on its business upon the Leased Premises.

Section 6.9. Discharge of Liens. If any mechanic's, materialman's or other types of liens or lien claims are filed against the whole or any part of the Leased Premises, arising or resulting from actions or omissions by Tenant or Construction Manager, including, without limitation, Construction Manager's failure to cause Contractor to retain the amounts required under the Construction Contract or under applicable law, then Tenant shall promptly secure their release, or if Tenant wishes to contest any such lien or claim and has a reasonable basis for a contest, Tenant may do so, but only if Tenant furnishes Landlord with surety bonds or escrow funds ("**Landlord's Security**") sufficient in amount to protect Landlord's interest in the Leased Premises and Landlord's and Tenant's interest in this Lease during the pendency of the contest. If Tenant does not secure a lien release or furnish Landlord's Security, such failure shall constitute an Event of Default by Tenant hereunder and, in addition to all other rights and remedies available to Landlord by reason thereof, Landlord may, after thirty (30) days' prior written notice, pay such lien or claim and secure such release, and Tenant shall be obligated to reimburse Landlord for all sums reasonably expended by Landlord in paying such lien or claim and securing such release, including reasonable attorney's fees, plus interest at the highest lawful rate from the date of Landlord's payment until it is reimbursed. Nothing contained in this Section 6.9 or elsewhere in this Lease shall be deemed or construed as an authorization by or consent of Landlord to the filing of any mechanic's or materialman's lien against the Land, or against all or any portion of the Leased Premises or any interest therein.

Section 6.10. Conditions Relating to Construction. Both Landlord and Tenant shall each have the right to terminate this FARLA, without obligation to the other party except as provided in this FARLA, in the event of any of the following: (i) Landlord's or Contractor's failure to execute a

Construction Contract on or before January 1, 2018 containing a construction completion date and a Certificate of Occupancy received on or before November 15, 2018; (ii) Landlord's failure to accept the conveyance of a construction-ready, improved lot comprising the Expansion Parcel having a condition of title acceptable to Landlord on or before September 8, 2017, or (iii) Landlord's failure to obtain confirmation of funding for the Approved Facility Expansion Budget, including funding from the McKinney Community Development Corporation for the Facility Expansion, on or before September 1, 2017. In the event Landlord or Tenant elects to terminate the FARLA under this Section 6.10, the Amended and Restated Lease Agreement shall immediately be revived and shall thereafter govern the rights and obligations of the Parties as if this FARLA had not been executed.

ARTICLE VII.
COMPLIANCE WITH LAW

Section 7.1. Compliance with Laws.

(a) Tenant shall comply, and shall require any Subtenants of the Leased Premises at all times to comply, at Tenant's and/or Subtenants' sole cost and expense, with (i) any and all Governmental Regulations applicable to the Leased Premises, including, without limitation, those related to the use and occupancy of the Leased Premises, (ii) any Governmental Regulations relating to the design and construction of the Facility Expansion, including, without limitation, those related to signage at the Leased Premises, and (iii) all governmental orders for the correction, prevention and abatement of nuisances or other violations of Governmental Regulations on or about the Leased Premises, including, without limitation, any repairs, additions or alterations which are required in connection therewith.

(b) Tenant shall procure at its sole expense any permits and licenses required for the transaction of business in the Leased Premises and/or in any way related to the Leased Premises, including, without limitation, any permits required in connection with the sale of alcoholic beverages, if any, at the Expanded Facility.

(c) Tenant shall comply, and shall require any Subtenants of the Leased Premises at all times to comply, at Tenant's and/or Subtenants' sole cost and expense, with the CCRs, easements and other restrictions encumbering or otherwise affecting the Leased Premises that are described on Exhibit "E" attached hereto.

(d) City shall waive all permit and construction fees to the extent permitted by law. Such fees shall not be included in the Approved Facility Expansion Budget.

Section 7.2. Environmental Covenants. Tenant shall not, and shall not direct, suffer or permit Subtenants or any of Tenant's or Subtenants' Invitees to at any time handle, use, manufacture, store or dispose of, in or about the Leased Premises in violation of Environmental Laws, any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance subject to regulation by or under any Environmental Law, as hereinafter defined (collectively, "Hazardous Materials"), nor shall Tenant suffer or permit any Hazardous Materials to be used in or on the Leased Premises and appurtenant land in any manner not fully in compliance with all Environmental Laws or allow the environment to become contaminated with any Hazardous Materials. The term "Environmental Laws" shall mean, collectively, any and all federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of

them, and all rules and regulations issued pursuant to any of such laws or ordinances. Notwithstanding the foregoing, Tenant and Subtenants may:

(a) subject to Landlord's prior consent, handle, store, use or dispose of products containing small quantities of Hazardous Materials (such as aerosol cans containing insecticides, toner for copiers, paints, paint remover and the like) to the extent customary and necessary for general office use; and

(b) store and use on the Leased Premises such quantities of anhydrous ammonia, gasoline, refrigeration oil, water base house paint, spray paint, mineral spirits, automotive oil, grease, and household cleaning products, as are reasonably necessary in connection with Tenant's use of the Leased Premises;

provided that Tenant and Subtenants shall always handle, store, use, and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Leased Premises, the appurtenant land, or the environment in violation of Environmental Laws. Tenant shall protect, defend, indemnify and hold Landlord harmless from and against any and all loss, claims, liability or costs (including court costs and reasonable attorney's fees) incurred by reason of any actual or asserted failure of Tenant or Subtenants to fully comply with all applicable Environmental Laws, or by reason of any actual or asserted failure of Tenant or Subtenants to keep, observe, or perform any provision of this Section 7.2. Notwithstanding anything to the contrary contained herein, Tenant shall have no liability to Landlord for (a) any Hazardous Materials which are located at the Leased Premises prior to Tenant taking possession of the Leased Premises and which have not been placed at the Leased Premises by Tenant, Subtenants, or Tenant's or Subtenants' agents, employees or contractors, (b) any Hazardous Materials which are placed or disposed of in or about the Leased Premises by Landlord, its employees, agents, or contractors; or (c) any Hazardous Materials which are released underground or into the groundwater by parties other than Tenant, Subtenants, or Tenant's or Subtenants' agents, employees or contractors; provided, however, that Tenant shall give immediate written notice to Landlord upon becoming aware of any such actual or alleged contamination, and shall cooperate with Landlord in Landlord's investigation and/or cleanup thereof.

ARTICLE VIII. TAXES

Section 8.1. Payment of Taxes. Tenant shall pay all property taxes, assessments and other governmental charges and impositions levied or assessed against the Leased Premises or any part thereof, including, without limitation, the Land, the Expansion Parcel, the Improvements, and the Personal Property (together with any other equipment, furniture or fixtures purchased by Tenant, whether in replacement thereof, substitution therefor, or otherwise) (collectively, "**Taxes**") before the same become delinquent, and Tenant, at the request of Landlord, shall furnish to Landlord receipts or copies thereof showing payment of such Taxes. Tenant shall be entitled to pay any Taxes in installments as and to the extent the same may be permitted by the applicable taxing authority or claimant. Landlord agrees to cooperate with Tenant in seeking the delivery of all notices of Taxes to Tenant directly from the applicable taxing authorities. Landlord shall promptly deliver all notices of Taxes to Tenant which are delivered to Landlord. In no event shall Tenant be in default under this Lease for failure to pay any Taxes before the same become delinquent if Landlord fails to forward or deliver to Tenant notice of such Taxes at least thirty (30) days before the date the same become delinquent. Landlord shall use good faith efforts to obtain any exemption on Taxes that may be applicable as a result of the Leased Premises, the Land, the Expansion Parcel, the Improvements and

the Personal Property being owned by the City of McKinney and used for public purposes, and Tenant shall receive the full benefit of any such exemption. In addition, Landlord shall use good faith efforts to assist Tenant in obtaining a waiver of Taxes from any other taxing authority having jurisdiction over the Leased Premises.

Section 8.2. Contest of Taxes. If the levy of any of the Taxes shall be deemed by Tenant to be improper, illegal or excessive, or if Tenant desires in good faith to contest the Taxes for any other reason, Tenant may, at Tenant's sole cost and expense, dispute and contest the same and file all such protests or other instruments and institute or prosecute all such proceedings for the purpose of contest as Tenant shall deem necessary and appropriate; provided, however, that Tenant shall not permit any lien which may be imposed against the Leased Premises for contested Taxes to be foreclosed and, within sixty (60) days after the commencement of such contest, Tenant shall provide to Landlord reasonable security therefor. Subject to the foregoing, any item of contested Taxes need not be paid until it is finally adjudged to be valid. Tenant shall be entitled to any refund of any Taxes (and the penalties or interest thereon) refunded by the levying authority pursuant to any such proceeding or contest, if such Taxes shall have been either (a) paid directly by Tenant, or (b) shall have been paid directly by Landlord and Landlord was reimbursed therefor by Tenant. Landlord shall contest in court, if necessary, along with Tenant, any attempt by the Appraisal District to place Landlord's property, including real and personal property, on the tax rolls for the purpose of levying, assessing, establishing and collecting ad valorem taxes.

Section 8.3. Standing. If Tenant determines that it lacks standing to contest any Taxes imposed by a governmental authority other than the City or to obtain an extended payment period from any such entity, Landlord (to the maximum extent allowed by law) at Tenant's expense shall join in such contest or otherwise provide Tenant with sufficient authority to obtain such standing.

ARTICLE IX. TENANT'S INSURANCE

Section 9.1. Liability Insurance. Tenant agrees, at its sole expense, to obtain and maintain public liability insurance at all times during the Term hereof with reputable insurance companies authorized to transact business in the State of Texas for bodily injury (including death) and property damage with minimum limits of \$5,000,000 Combined Single Limit, protecting Landlord, the City, and Tenant against any liability, damage, claim or demand arising out of or connected with the condition or use of the Leased Premises. Such insurance shall include contractual liability, personal injury and advertising liability, business automobile (including owned, non-owned and hired), liquor liability, and independent contractor liability. Such insurance coverage must be written on an "occurrence" basis. It may be maintained by any combination of single policies and/or umbrella or blanket policies and may be obtained and maintained by a Subtenant with respect to that portion of the Leased Premises subleased to such Subtenant. Landlord and the City shall be named as additional insureds on all insurance policies required by this Section 9.1, whether provided by Tenant or by any Subtenant.

Section 9.2. Workers' Compensation and Employers Liability Insurance. Tenant agrees, at its sole expense, to obtain and maintain during the Term of this Lease, (a) workers' compensation insurance, as required by applicable law, and (b) employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease policy limit, \$500,000 disease--each employee.

Section 9.3. Property Insurance. At all times during the Term of this Lease, Tenant shall, at its sole expense, obtain All Risk or Special Form coverage protecting Tenant and Landlord against loss of or damage to the Leased Premises, including, without limitation, the Improvements and the Personal

Property (together with any other equipment, furniture or fixtures purchased by Tenant, whether in replacement thereof, substitution therefor, or otherwise), to the full replacement value of the property so insured. Coverage must be written by reputable insurance companies authorized to transact business in the State of Texas. Landlord shall be named as additional insured or loss payee, as appropriate, on all such coverage, and will have the right to settle all claims covered by such insurance.

Section 9.4. Policies. All insurance policies required by this Article IX shall provide for at least thirty (30) days written notice to Landlord before cancellation. Certificates or copies of policies of insurance shall be delivered to Landlord on or before the date Tenant takes possession of the Leased Premises and at least 30 days prior to any renewal of such policies. If any blanket general insurance policy of Tenant complies with the terms of this Article IX, the naming of Landlord therein as an additional insured shall be deemed compliance with the requirements for the insurance coverage provided in any such blanket policy.

ARTICLE X.
MAINTENANCE AND REPAIR; ALTERATIONS; UTILITIES; SECURITY

Section 10.1. Maintenance and Repair. Tenant shall maintain in good repair and condition the entire Leased Premises and all of the Improvements and the Personal Property (together with any other equipment, furniture or fixtures purchased by Tenant, whether in replacement thereof, substitution therefor, or otherwise) and keep them free from waste or nuisance.

Section 10.2. Alterations. Tenant shall have the right, from time to time, to make additions, alterations and changes (hereinafter sometimes referred to collectively as "**alterations**") in or to the Improvements, provided that no Event of Default shall exist by Tenant in the performance of Tenant's covenants or agreements in this Lease, subject, however, to the following:

- (a) subject to the Governmental Regulations, no structural alterations or alterations to the original facade or exterior of the Improvements will be commenced without Landlord's prior written consent of such alterations, which consent shall not be unreasonably withheld or delayed;
- (b) no alterations will be made which would impair the structural soundness of the Improvements;
- (c) no alterations will be undertaken until Tenant has obtained all building permits, licenses and authorizations of all municipal departments and governmental subdivisions having jurisdiction. Landlord shall join, but without expense to Landlord, in the application for such permits, licenses or authorizations whenever such action is necessary and is requested by Tenant;
- (d) no alterations will be made which would be in violation of the terms and provisions of any easements or other restrictions listed on **Exhibit "E"** attached hereto;
- (e) no alterations will be made which are inconsistent with Tenant's use of the Leased Premises, as set forth in this Lease;
- (f) any alterations shall be made within a reasonable time and in a good and workmanlike manner and in substantial compliance with all applicable permits, licenses and authorizations, and building laws and with all other Governmental Regulations; and

(g) Tenant will upon demand by Landlord give reasonably satisfactory proof or assurances to Landlord that the funds required to pay for such alterations are or will be available to Tenant for such purpose.

Section 10.3. Utilities. Landlord agrees to initially install such utility service as is provided for in the Approved Plans, the cost of which will be included in the Approved Facility Expansion Budget. Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees and services furnished to the Leased Premises from and after the Effective Date and Expansion Effective Date, as applicable to the Facility and Facility Expansion, until the end of the Term. Landlord shall in no event be liable or responsible for any cessation or interruption in, or damage caused by, any such utility services, unless the cessation or interruption results from Landlord's intentional or negligent conduct.

Section 10.4. Security. Landlord will not be responsible for providing security to the Leased Premises, except as otherwise required by Section 5.4 hereof.

Section 10.5. Inspection. Tenant shall permit Landlord and its agents, upon no less than twenty-four (24) hours prior written notice, to enter into and upon the Leased Premises during normal business hours for the purpose of inspecting the same on the condition that Tenant's and any Subtenant's quiet enjoyment of the same is not interfered with.

Section 10.6. Capital Repairs.

(a) Tenant shall be responsible for all costs associated with the maintenance and operation of the Facility and the Facility Expansion, including all capital repairs, which shall include capital replacements, deemed necessary to keep the Expanded Facility in the same condition as delivered to Tenant (normal wear and tear excluded) from the Effective Date until the end the Primary Lease Term. Notwithstanding the foregoing and for those capital repairs made during the Primary Lease Term which involve improvements having a useful life which extend beyond the Primary Lease Term, the cost of such capital repairs shall be prorated based upon the useful life of the particular improvement in relation to the end of the Primary Lease Term using straight-line depreciation. The balance of the cost of such improvement shall be the responsibility of Landlord. By way of example for the proration in this Section 10.6, if there are four (4) years remaining on the Primary Lease Term, and the Facility Expansion or Facility was to require a capital repair of \$5,000,000 that was estimated to last for 10 years, the cost of that capital repair would be shared as follows:

a) Capital repair	\$5,000,000
b) Amortization of cost (straight line)	\$500,000/year
c) Useful life	10 years
d) Remaining term of this Lease	4 years
e) Tenant's required contribution	\$2,000,000 (\$500,000 x 4 years)
f) Landlord's required contribution	\$3,000,000 (\$5,000,000 - \$2,000,000)

(b) Landlord and Tenant agree to follow commonly accepted accounting rules to distinguish capital repair expenses from operating expenses. Landlord and Tenant agree that capital repairs to the Facility and Facility Expansion will be approved by both parties hereto prior to the repair. The foregoing obligation for capital repairs by

Landlord shall not apply to any alterations, reconfigurations or remodeling undertaken by Tenant under Section 10.2 above.

- (c) As stated in Section 4.2(b), Landlord and Tenant agree that any capital repair expenses during a Renewal Lease Term, if any, shall be the joint responsibility of Landlord and Tenant with each being responsible for fifty (50%) percent of the costs of any capital repair expenses.

ARTICLE XI.
CASUALTY DAMAGE, DESTRUCTION AND CONDEMNATION

Section 11.1. Casualty Damage or Destruction.

(a) **Tenant's Obligation to Restore.** Should any of the Improvements or the Personal Property (or any other equipment, furniture or fixtures in replacement thereof or substitution therefor or otherwise purchased by Tenant) be wholly or partially destroyed or damaged by fire, or any other casualty whatsoever, Tenant shall promptly repair, replace, restore or reconstruct the same in substantially the form and condition in which the same existed prior to any such casualty. Such work shall commence on or before sixty (60) days from the event giving rise to such construction obligation and shall be completed thereafter with reasonable diligence.

In the event of any casualty damage to the Improvements during the last twelve (12) months of the Term of this Lease which would require more than ninety (90) days to repair and restore after commencement of restoration, Tenant shall have the option to terminate this Lease at any time prior to commencement of rebuilding by giving notice of termination to Landlord. Upon Tenant's exercise of such option, (i) this Lease shall terminate as of the termination date specified in such notice to Landlord, which shall not be less than thirty (30) days after the date of such notice; (ii) Tenant shall be required to pay the Adjusted Base Annual Rental through the 20th anniversary of the Rent Adjustment Date hereof and all other payments due and owing as of the termination date; (iii) Tenant shall not be required to repair the damage; and (iv) all insurance proceeds available as a result of such damage shall be paid to and be the property of Landlord.

(b) **Deposit of Funds for Restoration.** All insurance proceeds shall be deposited with a national bank in Dallas, Texas selected by Tenant ("**Qualified Bank**"). Such proceeds shall be received, held and paid out by such Qualified Bank, and shall be disbursed for restoration of the Improvements and replacement of the Personal Property (and any other equipment, furniture or fixtures in replacement thereof or substitution therefor or otherwise purchased by Tenant) as follows:

- (i) Tenant must first secure Landlord's reasonable approval of (A) the budget for such restoration and replacement, and (B) the plans and specifications for the proposed restorative work if such plans and specifications for restoration deviate materially from the original plans and specifications for the Improvements which have been so damaged. The insurance proceeds will be disbursed by such Qualified Bank after delivery of evidence reasonably satisfactory to Landlord that (x) such repair, restoration, rebuilding or replacement for which a disbursement has been requested has been completed and effected in compliance with this Lease and all applicable laws, and (y) no mechanics' or materialmen's liens have attached to the fee or leasehold estate. At

the option of Tenant, such proceeds may be disbursed by such Qualified Bank in reasonable installments. Each such installment (except the final installment) is to be disbursed by such Qualified Bank in an amount equal to the cost of construction of the work completed or Personal Property (or other equipment, furniture, or fixtures purchased by Tenant) replaced since the prior advance (or since commencement of work, as to the first advance) according to a certificate by the Tenant's architect in charge, less statutorily required retainage in respect of mechanics' and materialmen's liens, together with a reasonable showing of bills for labor and material, and evidence satisfactory to Landlord that no lien affidavit has been filed in Collin County for any labor or material in connection with such work. The final payment or disbursement shall then be made upon the architect's proper certificate of completion and upon receipt of evidenced required by (i)(x) and (i)(y) above, but in no event shall such Qualified Bank be required to advance more than the balance of such insurance proceeds remaining on deposit with such disbursing agent;

(ii) Should the cost of said repairs, restoration, rebuilding or replacement be estimated by Tenant's architect in charge to be in excess of said insurance proceeds or should the actual cost determined after Tenant has commenced restoration and replacement be in excess of said proceeds, Tenant will deposit the necessary funds to cover such deficiency with such Qualified Bank; and

(iii) Any and all such insurance proceeds in excess of the cost of such repairs, restoration, rebuilding or replacement shall be paid over to Landlord.

(c) **No Abatement.** In the event of any such casualty, the Base Annual Rental and the Adjusted Base Annual Rental and other payments herein provided for shall not be abated, and the happening of any such casualty shall not cause a termination of this Lease except as herein provided.

Section 11.2. Condemnation.

(a) **Total Taking.** Landlord and Tenant agree that should the whole of the Leased Premises be taken (which term when used in this Section 11.2 shall include any conveyance in avoidance or settlement of condemnation or eminent domain proceedings) by the Government of the United States, State of Texas, the City, or any other government or power whatsoever, or by any corporation under the right of eminent domain, or should the whole of said Leased Premises and improvements be condemned by any court, city, state, county or governmental authority or office, department or bureau of the city, county, state or United States, then the award will paid to Landlord and this Lease shall terminate as of the date of taking of possession by the condemning authorities as if such date were the expiration of this Lease, no obligation for rental payments shall accrue after the later of (i) the date of such earlier termination of this Lease or (ii) the date Tenant delivers possession of the Leased Premises to Landlord.

(b) **Partial Taking.** Landlord and Tenant agree that should the fee simple title to part of the Leased Premises be taken by the Government of the United States, State of Texas, the City, or any other government or power whatsoever, or by any corporation under the right of eminent domain, or should a part of said Leased Premises be condemned by any court, city, state, county or governmental authority or office, department or bureau of the city, county, state or United States, then in such event this Lease shall nevertheless continue in effect as to

the remainder of the Leased Premises unless so much of the Leased Premises shall be so taken or condemned as to materially interfere with Tenant's use of the remainder for the uses and purposes contemplated herein, in which latter event this Lease shall terminate upon notice of termination by the Tenant to Landlord, with such termination to be effective as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Leased Premises had been thus taken or condemned. In the event of such taking or condemnation of a portion of the Leased Premises where this Lease is not terminated thereby under the provisions of the first sentence of this Paragraph, the Base Annual Rental or the Adjusted Base Annual Rental payable during the remainder of the Term after taking of possession by said condemning authority shall be reduced on a just and proportionate basis taking into consideration the extent, if any, to which Tenant's use of the remainder of the Leased Premises shall be impaired or interfered with by reason of such partial taking or condemnation.

(c) **Award.** In the event that a part of the Leased Premises is taken under the power of eminent domain, or by condemnation proceedings, then the award will be distributed to Landlord. If this Lease is not terminated by virtue of such taking, and repairs and/or restoration to the Improvements are required, Tenant shall commence and thereafter proceed with reasonable diligence to repair, alter and restore the remaining part of the Improvements so as to constitute complete, rentable Improvements (the foregoing being herein referred to as the "**Work**"). Landlord shall make the award received available to Tenant to complete the Work, and the award will be disbursed by Landlord to Tenant in reasonable installments after delivery of evidence satisfactory to Landlord that (i) the Work for which a disbursement has been requested has been completed and effected in compliance with this Lease and all applicable laws, and (ii) no mechanics' or materialmen's liens have attached to the fee or leasehold estate. Each such installment (except the final installment) is to be advanced by Landlord, in an amount equal to the cost of construction of the Work completed since the prior advance (or, for purposes of the first advance, since commencement of the Work) according to a certificate by the Tenant's architect in charge, less statutorily required retainage in respect of mechanics' and materialman's liens, together with a reasonable showing of bills for labor and material, and evidence satisfactory to Landlord that no lien affidavit has been filed in Collin County for any labor or material in connection with such Work. The final payment or disbursement shall then be made upon the architect's proper certificate of completion and upon receipt of evidenced required by (i) and (ii) above, but in no event shall Landlord be required to advance more than the balance of the award remaining. Should the cost of the Work be estimated by Tenant's architect in charge to be in excess of the award or should the actual cost determined after Tenant has commenced restoration be in excess of said award, Tenant will deposit the necessary funds to cover such deficiency with Landlord. Any portion of the award in excess of the cost of the Work will be retained by Landlord.

(d) **Voluntary Dedication; Easement Grants.** Landlord shall dedicate portions of the Land or Expansion Parcel in a manner consistent with the Approved Plans for public streets along the boundaries of the Land if such dedication is required by the City as a condition to approve construction of the Improvements. Landlord agrees to obtain any change in zoning required for Tenant's use of the Leased Premises.

Landlord and Tenant further agree that easements over and upon the Leased Premises may be granted to the City or to any utility company if such easements are consistent with the Approved Plans and are reasonably necessary in connection with the construction and operation of Improvements on the Land.

Any dedication of any portion of the Land by plat or easement grant approved in connection with the construction of the Improvements or for utilities or other purposes as provided above shall not result in any reduction or abatement of Base Annual Rental or the Adjusted Base Annual Rental under this Lease.

ARTICLE XII.
ASSIGNMENT AND SUBLETTING; TRANSFERS BY LANDLORD

Section 12.1. Assignment. Except for Approved Subleases (as defined below) of space within the Improvements and except as otherwise provided in Section 12.5 below, Tenant shall not sell, assign, mortgage, pledge, or otherwise transfer any portion of its leasehold estate, or undivided interests therein without the prior written consent of Landlord.

Section 12.2. Subleasing. Subleases of space within the Improvements that satisfy the requirements of this Section 12.2 are referred to herein as "**Approved Subleases.**"

(a) **Conditions for Sublease.** Tenant shall not sublet all or any portion of the Leased Premises for occupancy by any Subtenant unless (i) such sublease is consistent with Tenant's use of the Leased Premises, (ii) such Subtenant is a reputable and quality business or restaurateur, and (iii) prior written notice of such sublease is provided to Landlord.

(b) **Sublease Terms.** In addition to the other required provisions contained in this Lease, Tenant's sublease agreements shall include provisions which provide that:

(i) the sublease is subject to every provision of this Lease;

(ii) the sublease shall not be for a term extending beyond the Term of this Lease;

(iii) the Subtenant is responsible for complying with all Governmental Regulations and other easements and restrictions encumbering or otherwise affecting the Leased Premises, and that Subtenant's failure to cure after receiving notice of non-compliance will result in Tenant's right to terminate the sublease;

(iv) the Subtenant is responsible for obtaining insurance identical to that required of Tenant as described in Article IX; and

(v) the Subtenant has no right to sublease or otherwise assign or encumber its interest in the Leased Premises.

Tenant shall provide to Landlord copies of any and all subleases of any portion of the Leased Premises, together with the names and addresses of all Subtenants.

(c) **Subtenant Attornment.** If this Lease terminates for any reason, including Tenant's default, Landlord shall accept the attornment by Subtenants in good standing and paying fair market rentals under Approved Subleases. In no circumstance is Landlord required to accept a sublease that (i) reduces rental payable to Landlord or calls for the granting of concessions in rent at any time, (ii) allows the prepayment of rent beyond the current month for which rent is due and payable (except the prepayment of rental for the last month of the term of a sublease made to an actual space occupant for the space to be occupied by him), or (iii)

imposes on the Landlord any obligation to make alterations to the Leased Premises under the sublease or to reimburse Subtenant for alterations made by the Subtenant.

Section 12.3. Continuing Obligations. Except as otherwise stated herein, Tenant shall at all times remain fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under this Lease (even if future assignments and sublettings occur subsequent to the assignment or subletting by Tenant, and regardless of whether or not Landlord's approval has been obtained for such future assignments and sublettings). Landlord shall be permitted to enforce the provisions of this Lease against the undersigned Tenant and/or any assignee without demand upon or proceeding in any way against any other person. Tenant shall reimburse Landlord for Landlord's reasonable expenses incurred by Landlord in connection with any request by Tenant for assignment or subletting which requires Landlord's prior consent.

Section 12.4. Landlord Transfers and Mortgages.

(a) Landlord may freely assign, transfer, sublet, hypothecate, pledge or mortgage the Land and Landlord's interest under this Lease, subject to the terms and provisions of this Lease, without Tenant's prior written consent; provided, however, that upon the sale, lease or other transfer of the Leased Premises, Landlord shall not be released from its obligations under this Lease unless the assignee or transferee assumes all such obligations in writing. If Landlord, in its sole discretion, determines it is desirable or necessary for obtaining project funding, Landlord and Tenant agree to restructure this Lease whereby MCDC shall lease the Expanded Facility from Landlord and Tenant shall become the Sub-Tenant of MCDC, as Sub-Landlord.

(b) Every lienholder to whom Landlord shall grant a mortgage, pledge, lien or other encumbrance upon Landlord's interest in the Land or hereunder must expressly agree in the loan documents that (i) all notices to Landlord of any default or defaults of Landlord under such loan documents or in connection with such loan, including notice of acceleration of the maturity of the indebtedness, will be given to Tenant as well as to Landlord and shall not be effective until so given to Tenant, (ii) such lienholder will accept a cure of any default under such loan documents by Tenant, but that Tenant shall not be required to cure any such default, and (iii) all payments so made and all things so done or performed by Tenant shall be effective to prevent an acceleration of the maturity of the indebtedness, the foreclosure of any liens securing payment thereof or the exercise of any other remedies the same as if paid, done or performed by Landlord. Tenant shall not be or become liable to any such lienholder as a result of the right and option to cure any such default or defaults by Landlord.

Section 12.5. Approved Assignments.

(a) Notwithstanding anything to the contrary set forth herein, Tenant shall be permitted to assign this Lease to an Affiliate of Tenant without the prior consent of Landlord, if all of the following conditions are first satisfied:

(i) Tenant shall give Landlord at least thirty (30) days prior written notice of such assignment;

(ii) No Event of Default (or event which, with notice or lapse of time or both, would constitute an Event of Default) has occurred and is continuing under this Lease;

- (iii) A fully executed copy of such assignment, the assumption of this Lease by the assignee, and such other information regarding the assignment as Landlord may reasonably request, shall have been delivered to Landlord;
- (iv) The Leased Premises shall continue to be operated solely for the use specified in this Lease;
- (v) Tenant shall pay Landlord's reasonable costs, including reasonable attorneys' fees, in connection with Landlord's review of the assignment and other documentation required under this Section 12.5;
- (vi) The Affiliate remains an Affiliate of Tenant during the Term of this Lease; and
- (vii) The net worth of the Affiliate at the time of such assignment is at least equal to the net worth of Tenant upon the execution of this Lease.

Tenant acknowledges and agrees (and agrees at the time of such assignment to confirm) that in each instance described above, Tenant shall remain liable for the performance of the terms and conditions of this Lease despite such assignment.

(b) Notwithstanding anything to the contrary set forth herein, Tenant may assign or transfer this Lease without the consent of Landlord to any person or entity who acquires the ownership interests of the Dallas Stars NHL Franchise. Upon such assignment, the assignee shall execute and deliver to Landlord a written assumption, in form and substance reasonably satisfactory to Landlord, of all Tenant's obligations hereunder accruing after the date of such assignment. Tenant will thereafter be released of all liabilities or obligations arising under this Lease after the date of such assignment.

Section 12.6. Leasehold Mortgages.

(a) Leasehold Mortgages Permitted. Tenant, from time to time and at any time, shall have the right to grant a Leasehold Mortgage. In the event that Tenant grants a Leasehold Mortgage, upon Tenant's written request to Landlord, Landlord will execute and deliver an estoppel certificate addressed to the Leasehold Mortgagee setting forth the information described in Section 17.5 of this Lease, confirming the terms of this Section 12.6, and providing Landlord's agreement to recognize the Leasehold Mortgagee or any purchaser of the Mortgaged Premises at foreclosure in the same manner as an assignee pursuant to Section 12.1 of this Lease. Notwithstanding the foregoing, no Leasehold Mortgagee shall acquire, by virtue of the Leasehold Mortgage, any greater right in the Mortgaged Premises and in any building or improvements thereon than Tenant then had under this Lease. In no event shall Tenant have the right to encumber, subordinate or render inferior in any way Landlord's fee simple title in and to the Leased Premises.

(b) Notices to Leasehold Mortgagees. If at any time after execution and recordation of any Leasehold Mortgage in the Real Property Records of Collin County, Texas, in accordance with the provisions of Section 12.6(a) hereof, the Leasehold Mortgagee shall notify Landlord in writing that the Leasehold Mortgage on the Mortgaged Premises has been given and executed by Tenant, and shall furnish Landlord at the same time with the address to which the Leasehold Mortgagee desires copies of notices to be mailed, or designates some person or corporation as its agent and representative for the purpose of receiving copies of notices, Landlord hereby agrees that it will thereafter deliver in the manner specified in Section 17.13 to the Leasehold Mortgagee and to the agent or representative so designated by the Leasehold Mortgagee, at the address so given, duplicate copies of any and all notices

in writing which Landlord may from time to time give or serve upon Tenant under and pursuant to the terms and provisions of this Lease and any and all pleadings in suits filed by Landlord against Tenant. No notice to Tenant shall be effective as to the Leasehold Mortgagee unless duplicate copies thereof are delivered to such Leasehold Mortgagee at the same time the notice is given or served upon Tenant.

(c) Leasehold Mortgagee's Right to Cure. If Landlord shall ever be entitled to exercise a right hereunder to terminate this Lease after the giving of notice and/or the passage of time, as applicable, Landlord, subject to notification by Leasehold Mortgagee pursuant to Section 12.6(b) hereof, shall deliver additional written notice to Leasehold Mortgagee of Landlord's intention to so terminate this Lease and describing the existing defaults, and Leasehold Mortgagee thereafter shall have thirty (30) days to cure the defaults described in such written notice. Notwithstanding the foregoing, but subject to the provisions of Section 14.2 hereof, in the event (a) such default is not capable of cure within such 30-day period, this Lease may not be terminated if Leasehold Mortgagee shall deliver to Landlord, within such 30-day period, written notice of Leasehold Mortgagee's intention to cure the specified defaults and shall commence and diligently pursue the cure of the specified defaults and such defaults are cured within 120 days of the date of such notice, or (b) any Leasehold Mortgagee is not in actual possession of the Mortgaged Premises on the date of the additional notice given the Leasehold Mortgagee under this Section 12.6(c) and possession is necessary in order to cure any default, then the time within which such Leasehold Mortgagee may commence to cure such default shall be extended for a reasonable time not to exceed 120 days until such Leasehold Mortgagee can obtain actual possession of the Mortgaged Premises. No purported termination of this Lease shall be effective until such written notice shall have been given to Leasehold Mortgagee and such 30-day period, or additional time period as provided above, shall have expired without the described defaults having been cured. Leasehold Mortgagee may, at its option and at any time before the rights of Tenant under this Lease have been terminated, pay any of the Base Annual Rental or Adjusted Base Annual Rental due hereunder, procure any insurance required hereunder, pay any taxes required hereunder, make any repairs and improvements required hereunder, or do any other act or thing or make any other payment required of Tenant by the terms of this Lease or which may be necessary and appropriate to comply with the covenants and conditions of this Lease to prevent the termination of this Lease. All payments so made and all things so done and performed by any such Leasehold Mortgagee shall be as effective to prevent a forfeiture of the rights of Tenant hereunder as if performed by Tenant.

(d) New Lease. Notwithstanding anything to the contrary contained in this Lease or otherwise, in the event of termination of this Lease for any reason prior to the stated expiration date, Landlord shall promptly notify all Leasehold Mortgagees of such termination. If the Leasehold Mortgagee having the highest priority with respect to the Lease cures (subject to Section 12.6(e) hereof) all defaults giving rise to such termination as provided below, Landlord shall enter into a new lease of the Mortgaged Premises with such Leasehold Mortgagee or its designee for the remainder of the Term of this Lease, such new lease to be effective as of the date of termination of this Lease, at the Base Annual Rental or Adjusted Base Annual Rental payable hereunder and upon all the same terms, conditions, covenants, agreements, provisions and limitations contained herein, subject to the following:

(i) the Leasehold Mortgagee entitled to the new lease shall make written request to Landlord for a new lease within sixty (60) days of receipt by the Leasehold Mortgagee of written notice from Landlord of the date of termination of this Lease; and

(ii) at the time of the execution and delivery of the new lease, the Leasehold Mortgagee or its designee shall pay to Landlord all amounts specified in the notice of termination delivered by Landlord which would have been due hereunder except for such termination and which

are currently due except for such termination, and shall promptly cure (subject to Section 12.6(e) hereof) all other defaults giving rise to such termination.

(e) Certain Cure Requirements. Notwithstanding the provisions of Section 12.6(d) above, a Leasehold Mortgagee's right to enter into a new lease with Landlord as provided in said Section 12.6(d) shall not be conditioned upon such Leasehold Mortgagee curing any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee.

(f) Survival. The provisions of Section 12.6(d) and Section 12.6(e) shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if said Section 12.6(d) and Section 12.6(e) were a separate and independent contract among Landlord, Tenant and any Leasehold Mortgagee.

(g) Leasehold Mortgagees' Liability. Unless a new lease shall have been executed pursuant to Section 12.6(d) hereof, no Leasehold Mortgagee shall be or become personally liable to Landlord as an assignee of this Lease, for the payment or performance of any obligation of Tenant unless and until it expressly assumes by written instrument the payment or performance of such obligation, and no assumption of liability shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by any Leasehold Mortgagee, or from a conveyance or assignment pursuant to which any purchaser at foreclosure shall acquire the rights and interest of Tenant under the terms of this Lease; provided, however, any such assignee or purchaser must timely and diligently perform all obligations of Tenant hereunder.

Section 12.7. Nondisturbance Agreement. Upon the written request of Tenant, Landlord will enter into a Nondisturbance Agreement (herein so called) with any Subtenant or Leasehold Mortgagee. Such Nondisturbance Agreement shall include such reasonable provisions as requested by a Subtenant or a Leasehold Mortgagee, subject to the reasonable approval of Landlord, but in any event shall (a) reaffirm Landlord's ownership of the Leased Premises, (b) confirm (if true) that this Lease is in full force and effect without default by Tenant (or, if a default exists, specifying the default and the remedy required by Landlord), and (c) in the case of a Subtenant, provide, in substance, that, so long as the Subtenant complies with all of the terms of its sublease or other applicable agreement, Landlord, in the exercise of any of its rights or remedies under this Lease, shall not deprive the Subtenant of possession, or the right of possession, of the subleased property during the term of the sublease, deprive the Subtenant of any other rights under the sublease or other applicable agreement or join the Subtenant as a party in any action or proceeding to enforce or terminate this Lease or obtain possession of the property leased in the sublease for any reason other than a breach by the Subtenant of the terms of the sublease or other applicable agreement which would entitle Tenant to dispossess the Subtenant thereunder or otherwise terminate the Subtenant's rights thereunder.

ARTICLE XIII. INDEMNIFICATION

Section 13.1. Tenant Indemnification. From and after the Rent Commencement Date, Tenant agrees to protect, defend (with counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord from and against any and all loss, cost, damage, liability and expense (including court costs and reasonable attorneys' fees) arising from (i) the failure by Tenant, any Subtenant, or any of their agents, employees, or contractors, including, without limitation, Construction Manager, to comply with the terms and conditions of this Lease and/or to perform their respective duties and obligations under this Lease in accordance with the terms hereof, (ii) the use, possession, management,

and maintenance of the Leased Premises; (iii) any work done in, on, or about the Leased Premises by Tenant, its agents, contractors, or employees; or (iv) any accident, injury or damage to any person or property occurring in, on, or about the Leased Premises; provided, however, that none of the foregoing will apply when any of the following apply: (i) when such loss results from a default by Landlord under this Lease or the willful misconduct or gross negligence of Landlord, its agents, employees, or contractors, (ii) to the extent of any insurance proceeds received by Landlord or payable under Landlord's insurance, (iii) any claims relating to the creek or flood plain on the Land, except as arising directly from Tenant's use of the Land, and (iv) any claims relating to construction of the Facility Expansion or Improvements.

Section 13.2. Third Parties and Subtenants. In connection with its management, operation, promotion and subleasing of the Leased Premises, including, but not limited to Tenant's business operations, Tenant shall insert, in each and every contract or sublease entered into, a clause exculpating Landlord from personal liability under the contract or lease and a clause pursuant to which the third party or Subtenant agrees to indemnify and hold harmless Landlord for the matters set forth in Section 13.1.

ARTICLE XIV.
TENANT'S DEFAULT AND LANDLORD'S REMEDIES

Section 14.1. Default. Each of the following events is an "**Event of Default**" by Tenant under this Lease:

(a) Tenant fails to pay when due any sum of money becoming due to be paid to Landlord under this Lease, whether such sum be any installment of the rent reserved by this Lease, or any other payment or reimbursement to Landlord required by this Lease, and such failure shall continue for a period of five days after written notice that such payment was not made when due.

(b) Tenant fails to perform or observe any of the terms, covenants, conditions, agreements and provisions of this Lease which is not provided for in another clause of this Section 14.1 and such failure continues for a period of thirty (30) days after written notice thereof; provided, however, that if such failure cannot reasonably be cured within said thirty-day period despite Tenant's diligent good faith efforts, the occurrence of such failure shall not constitute an Event of Default if Tenant commences reasonable efforts to cure such failure within said thirty (30) day period and thereafter diligently pursues such efforts until such failure is cured.

(c) Tenant fails to vacate the Leased Premises immediately upon termination of this Lease, by lapse of time or otherwise, or upon termination of Tenant's right to possession only.

(d) Tenant shall become insolvent, admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency statute, make an assignment for the benefit of creditors, make a transfer in fraud of creditors, apply for or consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable law or statute of the United States or any state thereof.

(e) A court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a receiver of Tenant, or of the whole or any substantial part of its property, without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within thirty (30) days from the date of entry thereof.

Section 14.2. Landlord's Remedies for Tenant Default. Upon the occurrence and during the continuance of an Event of Default, Landlord shall have all remedies available at law or in equity, including, without limitation, termination, injunction and specific performance, subject to the provisions of Article 12 of this Lease. All remedies of Landlord under this Lease shall be cumulative, and the failure to assert any remedy or the granting of any waiver of any event of default shall not be deemed to be a waiver of such remedy or any subsequent event of default.

Section 14.3. Lien For Rent. In consideration of the mutual benefits arising under this Lease, Tenant hereby grants to Landlord a lien and security interest in all property of Tenant, if any (including, but not limited to, all fixtures, machinery, equipment, furnishings, and other articles of personal property now or hereafter placed in or on the Leased Premises and owned by Tenant, together with the proceeds from the disposition of those items) (the "Collateral"), now or hereafter placed in or upon the Leased Premises, as security for payment of all rent and other sums agreed to be paid by Tenant herein. The provisions of this Section 14.3 constitute a security agreement under the Texas Uniform Commercial Code, and Landlord has and may enforce a security interest in the Collateral. Upon the occurrence of an Event of Default under this Lease, the Collateral shall not be removed without the consent of Landlord until all arrearages in rent and other sums of money then due to Landlord hereunder have been paid and discharged. Tenant shall, upon Landlord's request, execute a Financing Statement to perfect this security interest pursuant to the Texas Uniform Commercial Code. Landlord may at its election at any time file a copy of this Lease as a Financing Statement. Landlord, as Secured Party, has all of the rights and remedies afforded a secured party under the Texas Uniform Commercial Code in addition to and cumulative of the landlord's liens and rights provided by law or by the other terms and provisions of this Lease.

Section 14.4 Rights of Leasehold Mortgagees. Notwithstanding any other provision of this Article XIV, all rights and remedies of Landlord under this Lease are subject to the provisions of Section 12.7 hereof.

ARTICLE XV. REPRESENTATIONS AND WARRANTIES

Section 15. Landlord's Representations, Warranties and Special Covenants. Landlord hereby represents, warrants and covenants as follows:

(a) **Existence.** Landlord is a home rule municipal corporation of the State of Texas duly incorporated and currently existing pursuant to the constitution and laws of the State of Texas, including the Local Government Code and Texas Government Code.

(b) **Authority.** Landlord has all requisite power and authority to purchase and own the Leased Premises, to execute, deliver and perform its obligations under this Lease and to consummate the transactions herein contemplated and, by proper action in accordance with all applicable law, has duly authorized the execution and delivery of this Lease, the performance

of its obligations under this Lease and the consummation of the transactions herein contemplated.

(c) **Binding Obligation.** This Lease is a valid and binding obligation of Landlord and is enforceable against Landlord in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditors' rights generally, or (ii) general principles of equity.

(d) **No Defaults.** The execution by Landlord of this Lease and the consummation by Landlord of the transactions contemplated hereby (i) do not, as of the Expansion Effective Date, result in a breach of any of the terms or provisions of or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under any resolution, indenture, agreement, instrument or obligation to which Landlord is a party; and (ii) do not, to the knowledge of Landlord, constitute a violation of any law, order, rule or regulation applicable to Landlord of any court or of any federal, state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Landlord.

(e) **Consents.** Except as expressly stated otherwise herein, no permission, approval or consent by third parties or any other governmental authorities is required in order for Landlord to enter into this Lease, make the agreements herein contained or perform the obligations of Landlord hereunder other than those which have been obtained.

(f) **Quiet Enjoyment.** From and after the date Landlord delivers possession of the Leased Premises to Tenant, and subject to the terms of this Lease, Tenant shall have the quiet enjoyment and peaceable possession of the Leased Premises against hindrance or disturbance by Landlord or any person or entity acting by, through or under Landlord.

Section 15.2. Tenant's Representations, Warranties and Special Covenants.

(a) **Existence.** Tenant is duly organized and validly existing under the laws of the state of its organization and is authorized to do business in the State of Texas.

(b) **Authority.** Tenant has all requisite power and authority to lease the Leased Premises, execute, deliver and perform its obligations under this Lease, operate its business, and consummate the transactions herein contemplated, and by proper action in accordance with all applicable law, has duly authorized the execution and delivery of this Lease, the performance of its obligations under this Lease, and the consummation of the transactions herein contemplated.

(c) **Binding Obligation.** This Lease is a valid and binding obligation of Tenant and is enforceable against Tenant in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditors' rights generally, or (ii) general principles of equity.

(d) **No Defaults.** The execution by Tenant of this Lease and the consummation by Tenant of the transactions contemplated hereby (i) do not, as of the Expansion Effective Date, result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under the organizational

documents of Tenant or under any indenture, agreement, instrument or obligation to which Tenant is a party or is bound, and (ii) do not, to the knowledge of Tenant, constitute a violation of any law, order, rule or regulation applicable to Tenant of any court or of any federal, state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Tenant.

(e) **Consents.** No permission, approval or consent by third parties or any other governmental authorities is required in order for Tenant to enter into this Lease, make the agreements herein contained or perform the obligations of Tenant hereunder other than those which have been obtained.

(f) **Proceedings.** There are no actions, suits or proceedings pending or, to the reasonable best knowledge of Tenant, threatened or asserted against Tenant affecting Tenant, at law or at equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

ARTICLE XVI.

ADVERTISING AND PROMOTIONS

Section 16.1. Advertising. Each Lease Year during the Term, Tenant shall provide the following to Landlord:

(a) one mention promoting StarCenters (including the Facility) on the jumbotron at each Dallas Stars NHL home game;

(b) one advertisement promoting StarCenters (including the Facility) in each of the following:

(i) Dallas Stars Yearbook;

(ii) Dallas Stars game night program (currently titled "Stars Tonight"); and

(iii) Dallas Stars newsletter to season ticket holders (currently titled "In the Crease") per season;

(c) one 1/2 page advertisement promoting birthday parties or similar activities at StarCenters (including the Expanded Facility) in the Dallas Stars game night program (currently titled "Stars Tonight");

(d) one full-page, full-color advertisement to be used at Landlord's discretion, subject to prior approval by Tenant, in each of the following (Landlord shall provide artwork for such advertisements at its sole cost and expense in accordance with specifications and deadlines established by Tenant in its sole discretion):

(i) Dallas Stars Yearbook; and

(ii) Dallas Stars game night program (currently titled "Stars Tonight");

(e) Promotion of Dr Pepper StarCenters (including the Expanded Facility) on the matrix panels at each Dallas Stars NHL home game;

(f) one (1) promotional read promoting StarCenters (including the Expanded Facility) during each of the following-

(i) radio broadcasts of Dallas Stars NHL regular season and playoff games; and

(ii) television broadcasts of Dallas Stars NHL regular season and playoff games;

(g) reasonable use of the Dallas Stars logos and trademarks to promote the Expanded Facility and for such other purposes as desired by Landlord; provided, however, that any and all uses of such logos and trademarks by Landlord shall be subject to prior written approval by Tenant, in its sole discretion;

(h) reasonable efforts to include Expanded Facility and the Dr. Pepper StarCenters on Dallas Stars social media channels in Tenant's discretion.

Section 16.2. Promotions. Each calendar year during the Term, Tenant shall ensure that the following events occur at the Expanded Facility:

(a) One (1) practice by the Dallas Stars, at a date selected by Tenant; and

(b) One (1) appearance by a Dallas Stars player or coach, such player or coach and appearance date to be selected by Tenant.

In addition, upon request by a visiting NHL team as to availability of practice ice, Tenant shall, when such ice is available at the Expanded Facility, notify such visiting team of such availability at the then prevailing rates. Tenant is under no further obligations with respect to such practice ice and makes no representation that any visiting team shall rent such ice or otherwise utilize the Expanded Facility.

Section 16.3. Landlord's Use of Facility. Each calendar year during the Term, Landlord shall be entitled to (a) one hundred fifty (150) hours of free ice time at the Facility, based on availability, during Non-Prime-Time Hours, and (b) thirty-six (36) hours of free ice time at the Facility, based on availability, during Prime-Time Hours, in each instance on dates and at times mutually agreed upon by Landlord and Tenant. During March and April of each calendar year during the Term, Landlord and Tenant shall confirm the schedule of dates/times for Landlord's use. As used herein, the term "**Prime-Time Hours**" means 4:00 p.m. through 11:00 p.m., Monday through Friday, and 7:00 a.m. through 11:00 p.m. on Saturdays and Sundays. As used herein, the term "**Non-Prime-Time Hours**" means any hours during which the Facility is open to the public that are not Prime-Time Hours. Landlord shall be required to notify Tenant of its desire to use ice pursuant to this Section 16.3 not later than three (3) business days prior to the date of such desired use. If the desired ice is available upon such notification, such party shall be entitled to use the ice times desired. In the event such ice time is not available, such party shall not have access to the ice as desired and Tenant shall have no liability therefor. Use of one (1) sheet of ice at the Facility for one (1) hour shall constitute one (1) hour of ice usage for the purposes of this Section 16.3. Use of both sheets of ice at the Facility for one (1) hour shall constitute two (2) hours of ice usage for the purposes of this Section 16.3. Landlord's ice time use shall also include the use of party rooms necessary to facilitate the scheduled Landlord event(s). Landlord will be responsible for any non-operational costs incurred when using the ice during such free ice time, including, without limitation, the cost of instructors. The rights granted pursuant to this Section 16.3 are personal to the City of McKinney and are not transferable or assignable to subsequent owners of the Facility or

otherwise. The use of the ice pursuant to this Section 16.3 may only be used by the City of McKinney on a non-revenue-producing basis and cannot be used for any purpose which competes with Tenant's use of the Facility. Tenant agrees to program a minimum amount of public skating/public hockey in its operational schedule (on a fee basis) as follows, per each calendar year:

Public skating	520 hours
Adult Drop in Hockey	364 hours
Youth Drop in Hockey	364 hours

Section 16.4. Additional Benefits. In addition, Tenant shall use commercially reasonable efforts to do the following:

(a) at Tenant's sole expense, to promote various community-type programs of Landlord;

(b) to provide occasional donations of Dallas Stars tickets or other merchandise (not more than three (3) donations per year) to local charity auctions being held in the City of McKinney;

(c) to provide tickets at a discount for events at the Facility on a similar basis to the discount provided for citizens at other StarCenters within the Dallas-Fort Worth Metroplex;

(d) to provide fifteen (15) youth hockey league scholarships and ten (10) skating scholarships for skating or figure skating schools (with a value equal to: the then-current youth hockey league registration fee and the free rental of each participant's basic equipment, but shall not include private lessons) to McKinney residents annually, which shall be awarded based upon financial need-based criteria to be mutually agreed between Tenant and Landlord, and

(e) to provide City of McKinney residents at least 3-business-day priority registration for major programs at the Expanded Facility (including, but not limited to, hockey leagues, hockey clinics/camps, and ice skating schools) over non-residents.

ARTICLE XVII.
MISCELLANEOUS

Section 17.1. Rent on Net Return Basis. It is intended that the rent provided for in this Lease shall be a net return to Landlord as provided herein, without any offsets or deductions whatsoever. Tenant shall pay all operating expenses with respect to the Leased Premises, including, without limitation, insurance premiums, utility charges, maintenance and repair costs, and taxes and assessments, and this Lease shall be construed in accordance with and to effectuate this intention.

Section 17.2. Holding Over. If Tenant, or any of Tenant's successors in interest, fails to surrender the Leased Premises, or any part thereof, on the expiration of the Term of this Lease (whether by lapse of time or otherwise), the holding over shall constitute a tenancy from month-to-month terminable at any time by either Landlord or Tenant after 30 days prior written notice to the other, at a monthly rental equal to 200% of the rent paid for the month preceding the expiration of the Term of this Lease.

Section 17.3. Waiver of Default. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

Section 17.4. Estoppel Certificates. Both parties hereto agree that from time to time, on 10 days prior written request, the non-requesting party, at the requesting party's cost, will deliver to the requesting party a statement in writing certifying:

- (a) if the facts permit, that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications);
- (b) the dates to which rent and other charges have been paid;
- (c) that either the requesting party is not in default under any monetary obligation or other material term or provision of this Lease, or if in default the nature thereof in detail in accordance with an exhibit attached thereto;
- (d) that rent has not been paid more than one (1) month in advance; and
- (e) any other information reasonably requested by the requesting party.

Section 17.5. No Partnership. It is understood and agreed that in leasing and operating the Leased Premises, Tenant is acting independently and is not acting as agent, partner, joint venturer or employee of Landlord.

Section 17.6. Survival. All of the terms, provisions, conditions, agreements and covenants contained in this Lease shall survive the expiration or termination of this Lease with respect to all rights and remedies that have accrued prior to or that accrue on the expiration or termination of this Lease.

Section 17.7. Exhibits. All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes.

Section 17.8. Use of Language. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

Section 17.9. Captions. The captions or headings of paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.

Section 17.10. Successors. The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective permitted successors and assigns. All rights, powers, privileges, immunities and duties of either party under this Lease, including, but not limited to, any notices required or permitted to be delivered by either party hereunder, may, at such party's option, be exercised or performed by such party's agent or attorney.

Section 17.11. Severability. If any provision herein is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

Section 17.12. Notices. All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be, (notwithstanding lack of actual receipt by the addressee): (i) upon actual receipt or refusal by the addressee by hand, telecopier or other electronic transmission; or (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid; or (iii) one (1) business day after having been deposited with an expedited, overnight courier service (such as by way of example but not limitation, U.S. Express Mail, Federal Express or UPS) for one-day delivery, addressed to the party to whom notice is intended to be given at the following addresses:

LANDLORD'S ADDRESS: City of McKinney
Attention: City Manager
222 N. Tennessee Street
McKinney, Texas 75070
Fax:

With a copy to: Brown & Hofmeister, LLP
Attention: Mark Houser
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
Fax: 214-747-6111

TENANT'S ADDRESS: DSE Hockey Centers, L.P.
Attention: Damon Boettcher
2601 Avenue of the Stars
Frisco, Texas 75032
Fax: 214-387-5503

With a copy to: Attention: Alana C. Newhook, General Counsel

Section 17.13. Fees or Commissions. Each party hereby represents and warrants to the other, that it has neither contacted nor entered into an agreement with any real estate broker, agent, finder, or any other party in connection with this transaction, or taken any action that would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any other party with respect to the transaction contemplated by this Agreement. To the extent permitted by applicable law, each party hereby indemnifies and agrees to hold the other party harmless from any loss, liability, damage, cost, or expense (including reasonable attorney's fees) resulting to the other party from a breach of the representation made by the indemnifying party in this Section 17.13.

Section 17.14. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

Section 17.15. Actions for Nonpayment of Rent and Other Charges. Tenant shall not for any reason withhold or reduce Tenant's required payments of rentals and other charges provided in this Lease, it being agreed that the obligations of Landlord hereunder are independent of Tenant's obligations, except as may be otherwise expressly provided.

Section 17.16. Limitation of Landlord's Liability. Landlord's elected officials and employees shall not be personally liable for any judgments.

Section 17.17. Delays. The time for the performance of either Landlord's or Tenant's obligations, as the case may be, relative to the construction, restoration, repair, operation and maintenance of the Improvements as provided for in this Lease shall be extended for the period that such performance is prevented by Unavoidable Delay (as hereinafter defined); provided, however, that the Rent Adjustment Date shall not be extended due to any Unavoidable Delay. "**Unavoidable Delay**" shall mean all failures or delays in a party's performance of its obligations hereunder not within such party's reasonable control, including without limitation, the impossibility of such performance which shall result from or be caused by acts of God, acts of the public enemy, wars, blockades, epidemics, earthquakes, storms, floods, explosions, strikes, labor disputes, work stoppages, riots, insurrections, lawful acts of any governmental agency, save and except the City of McKinney, or authority restricting or curtailing the construction of the Improvements or withholding or revoking necessary consents, approvals, permits or licenses, equipment failures, provided, that such party shall pursue with reasonable diligence the avoidance or removal of such delay. The inability or refusal of a party to settle any labor dispute shall not qualify or limit the effect of Unavoidable Delay.

Section 17.18. Short Form Lease. The parties agree not to place this Lease of record, but each party shall, at the request of the other, execute and acknowledge so that the same may be recorded a short form lease or memorandum of lease, stating that Tenant has accepted possession of the Leased Premises, indicating the Primary Lease Term, but omitting rent and other terms, and an agreement specifying the date of commencement and termination of the Primary Lease Term; provided, however, that the failure to record said short form lease, memorandum of lease or agreement shall not affect or impair the validity and effectiveness of this Lease. The party requesting such recording shall pay all costs, taxes, fees and other expenses in connection with or prerequisite to recording.

Section 17.19. Governing Law; Provisions Severable. The laws of the State in which the Leased Premises are situated shall govern the interpretation, validity, performance and enforcement of this Lease. If any provision of this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby. Venue for any action under this Lease shall be in Collin County, Texas.

Section 17.20. Interest on Late Payments. In the event any installment of Base Annual Rental, Adjusted Base Annual Rental or any other sum payable by Tenant to Landlord under the provisions of this Lease is not received by Landlord from Tenant within ten (10) days of the date it is due and payable, Tenant shall pay to Landlord an additional sum equal to five percent (5%) of the amount due. Furthermore, in the event any installment of Base Annual Rental, Adjusted Base Rental or any other sum payable by Tenant to Landlord under the provisions of this Lease is not received within ten (10) days after its due date for any reason whatsoever, it is agreed that the amount thus due shall bear interest at the maximum contractual rate which legally could be charged under the laws of the State in which the Leased Premises are situated in the event of a loan of such rental or other sum to Tenant (but in no event to exceed 1-1/2% per month), such interest to accrue continuously on any unpaid balance due to Landlord by Tenant during the period commencing with the aforesaid due date and terminating with the date on which Tenant makes full payment of such amounts to Landlord. Any such interest shall be payable as additional rent hereunder and shall be payable immediately on demand. In addition to any other charges permitted herein, if Tenant makes a payment to Landlord by check and said check is returned to Landlord by Tenant's bank marked NSF (Not Sufficient Funds), "Account Closed," or is dishonored for some similar reason, then an additional charge of \$25.00 per check shall be paid by Tenant to Landlord.

Section 17.21. No Warranties; Covenants of Performance. Tenant acknowledges that its decision to lease the Leased Premises is based solely upon Tenant's comprehensive inspection of the

Leased Premises and not upon any warranty or representation of Landlord, or of Landlord's employees, agents, or representatives, with regard thereto. It is expressly stipulated and agreed that none of the obligations to be undertaken hereunder by Landlord shall constitute any form of a warranty, express or implied, all such obligations being contractual covenants of performance. Without limiting the generality of the foregoing, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE. The parties agree that the herein provision disclaiming warranties, express and implied, are provisions bargained for by the parties in entering into this Lease. The parties further agree that had warranties been undertaken by the Landlord hereunder or were the Landlord to undertake to perform repairs beyond that contemplated hereunder, the economics of this Lease would have been affected and would have required an increase in rent from that payable hereunder.

Section 17.22. Entire Agreement and Amendments. This Lease embodies the entire agreement between Landlord and Tenant and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or on behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

Section 17.23. Bankruptcy or Insolvency. Landlord and Tenant agree that if Tenant ever becomes the subject of a bankruptcy proceeding under the federal bankruptcy laws, as now enacted or hereinafter amended, then "adequate protection" of Landlord's interest in the Leased Premises pursuant to the provisions of Sections 361 and 363 or their successor sections of the United States Bankruptcy Code, 11 U.S.C. §101, et seq. (the "**Bankruptcy Code**") prior to the assumption and/or assignment of the Lease by Tenant shall include, but not be limited to all (or any part) of the following:

- (a) The continued payment by Tenant of all rent and other sums due and owing under this Lease; the performance of all other covenants and obligations under this Lease by Tenant;
- (b) The hiring of security guards to protect the Leased Premises if Tenant abandons and/or ceases operations; such obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Leased Premises to the exclusion of Landlord; and
- (c) The furnishing of a security deposit by Tenant in the amount of three times the then-current monthly Base Annual Rental or Adjusted Base Annual Rental payable hereunder.

Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as "rent," shall constitute "rent" for the purposes of §502(b)(6) of the Bankruptcy Code. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid and delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust by Tenant for the benefit of Landlord and shall be promptly paid to or turned over to Landlord.

Section 17.24. Landlord's Right to Perform Tenant's Covenants. If Tenant shall fail in the performance of any of its covenants, obligations or agreements contained in this Lease, other than the obligation to pay Base Annual Rental and Adjusted Base Annual Rental, and such failure shall continue without Tenant curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, Landlord may, after ten (10) days additional written notice to Tenant specifying such failure (or shorter notice if imminent danger to the safety of persons or of substantial damage to property exists), perform the same for the account and at the expense of Tenant, but Landlord will not be obligated to perform same, and the amount of any payment made or other reasonable expenses (including reasonable attorneys' fees incurred by Landlord for curing such default), with interest thereon at the highest rate then allowed by law, shall be payable by Tenant to Landlord on demand, or, if not so paid, shall be treated at Landlord's option as a monetary default hereunder pursuant to and subject to all of the provisions of Section 14.1(a) hereof.

Section 17.25. Limitations on Landlord's Rights. For a period of five (5) years after the Rent Adjustment Date, neither Landlord nor any entity related to Landlord shall, without the prior written consent of Tenant, design, develop, construct or otherwise fund, provide economic or tax benefits to, or participate in the design, development, construction or financing of, any new recreational ice skating facility located within a five (5) mile radius of the Leased Premises. Landlord acknowledges that Tenant would suffer irreparable injury as a result of a breach of this Section 17.25 and that Tenant would not have an adequate remedy at law in the event of such breach. Landlord agrees that Tenant may obtain an injunction to enforce this Section 17.25, without the necessity of proving irreparable injury or inadequate remedy at law.

Section 17.26. Time is of the Essence. Time is of the essence with respect to each and every provision of this Lease.

Section 17.27. Exhibits. As of the date of execution of this Lease, the parties have not agreed upon nor attached Exhibit "A" (Description of Land), Exhibit "A-1" (Description of Expansion Parcel Land), Exhibit "B" (Project Scope Criteria), Exhibit B-1 Construction Contract, Exhibit "C" (Personal Property List), Exhibit "C-1" (Facility Expansion Personal Property List) or Exhibit "D" (Approved Facility Expansion Budget); Exhibit "E" (Parking Agreement); Exhibit "F" (Development). The parties' obligations under this Lease are subject to and conditioned upon reaching an agreement on these exhibits within sixty (60) days after the Expansion Effective Date (the "**Exhibit Deadline**"). Promptly after execution of this Lease, Landlord and Tenant shall use good faith efforts to negotiate and reach mutual agreement of these exhibits, and upon agreement of these exhibits, will execute an amendment to this Lease attaching Exhibits "A", "A-1", "B", "B-1", "C", "C-1", "D", "E" and "F" (the "**Exhibit Amendment**"). If the Exhibit Amendment is not executed and delivered by both Landlord and Tenant on or before the Exhibit Deadline, then either party hereto may terminate this Lease by written notice to the other party, in which event this Lease shall thereafter be of no further force or effect and neither Landlord nor Tenant shall have any further rights or obligations hereunder. If a party hereto has not delivered written notice of termination to the other party within thirty (30) days after the Exhibit Deadline, then the other party hereto may deliver written notice to such party stating exactly the following: "This letter requires your immediate attention. It is the [Landlord's/Tenant's] understanding that the contingency set forth in Section 17.27 of the Lease has either been satisfied or waived, since [Tenant/Landlord] has not exercised the right to terminate the Lease in accordance with such section. Unless [Tenant/Landlord] affirmatively responds to this letter by delivering written notice to [Landlord/Tenant] within five (5) business days after your receipt hereof stating that [Tenant/Landlord] is exercising the termination right set forth in Section 17.27 of the Lease, the contingency will be deemed waived by you and you will have no further right to terminate under Section 17.27." If the party to whom such notice is sent does not respond within such 5-business-day period, then the

contingency will be deemed waived by such party to whom the notice is sent and thereafter neither party will have the right to terminate this Lease in accordance with this Section 17.27.

EXECUTED as of the day, month and year first above written.

LANDLORD:

CITY OF MCKINNEY, TEXAS

By: _____

Name: Paul G. Grimes

Title: City Manager

TENANT:

DSE HOCKEY CENTERS, L.P.,

a Delaware limited partnership

By: DSE Hockey Centers GP, Inc.

its general partner

By: _____

Name: _____

Title: _____

Exhibit "A"

Description of Land

The Land is approximately 6.277 acres of land described as Lot 7, Block A of the North Texas Athletic Center Addition in the development known as "Craig Ranch" in McKinney, Collin County, Texas, and as depicted in more detail on the drawing attached hereto.

[Attach drawing and metes and bounds description.]

Description of Expansion Parcel Exhibit "A-1" Add

Exhibit "B"

Project Scope Criteria

[TO BE ATTACHED AFTER LEASE EXECUTION PURSUANT TO SECTION 17.27]

Exhibit "B-1" - Construction Contract - Add

Exhibit "C"

Personal Property List

[TO BE ATTACHED AFTER LEASE EXECUTION PURSUANT TO SECTION 17.27]

Exhibit "C-1" Facility Expansion Personal Property List - Add

Exhibit "D"

Approved Budget

[TO BE ATTACHED AFTER LEASE EXECUTION PURSUANT TO SECTION 17.27]

Exhibit D or E- Approved Facility Expansion Budget - Add

Exhibit "E"

Parking Agreement

[TO BE ATTACHED AFTER LEASE EXECUTION PURSUANT TO SECTION 17.27]

Exhibit "F"

The Development

[Attach drawing at Lease execution]

Star Center Expansion

City Council Presentation



Star Center

- Existing Facility –
 - 85,000 square feet
 - Two ice rinks
 - Associated uses (restaurant, concessions, skate rentals, party rooms)
- Proposed Expansion –
 - 46,000 square feet
 - One additional rink with 1,800 seats
 - Associated locker rooms and back of house uses
 - Additional Parking

Star Center

- Existing Facility –
 - Approximately 250,000 customers per year
 - Programs ranging from learn to skate to training of national level athletes
 - Home to the McKinney High School hockey team (2-time state champions)
 - Hockey and figure skating programs for all ages and abilities
- Proposed Expansion –
 - Additional ice to expand existing programs
 - 1,800 seats will allow for larger events and tournaments
 - Seating will allow for possible NAHL minor league hockey franchise



Star Center Lease

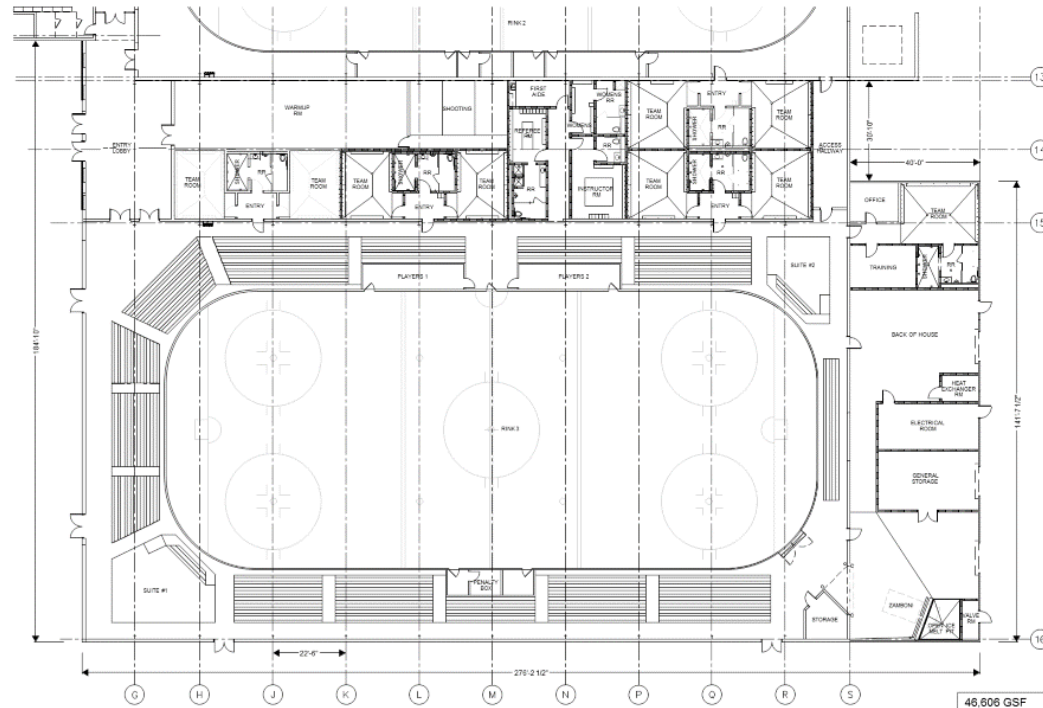
- Cost of expansion project - \$8,500,000
 - McKinney Community Development Corporation approved a grant for \$3,500,000
 - The remaining costs will be funded by the City of McKinney
- Twenty year lease term with two five year extensions
 - Years 1 – 5 - \$60,000 per month rent
 - Years 6 – 20 - \$65,000 per month rent
 - Extension years - \$65,000 per month rent
- The Dallas Stars will be responsible for operations, utilities and maintenance of the center. Capital repair costs may be shared depending on the useful life of the improvement.



Preliminary Site Layout



Preliminary Floor Plan



46,606 GSF
 1,770 BLEACHER SEATS
 36 SUITE SEATS
 1,806 TOTAL SEATS

FLOOR PLAN • OPT 4
 NO SCALE

DR. PEPPER STARS CENTER
 MCKINNEY, TEXAS 01/07/17

BOKA POWELL, LLC
 16154.000



Conceptual Images



DR. PEPPER STARS CENTER - MCKINNEY



ERIKAL E. FLETCHER, L.L.C.
Reg. No. 2200
Chris W. Powers
Proj. No. 16154

Image 2
01.16.17
Project No.
16154.000

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DR. PEPPER STARS CENTER - MCKINNEY



ERIKAL E. FLETCHER, L.L.C.
Reg. No. 2200
Chris W. Powers
Proj. No. 16154

Image 1
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Questions?

