

COPY

ROADWAY IMPACT FEE CREDIT /
RIGHT-OF-WAY DEDICATION AGREEMENT

STATE OF TEXAS

§
§
§

COUNTY OF COLLIN

KNOW ALL BY THESE PRESENTS

Filed for Recording in:
Collin County, McKinney TX
Honorable Brenda Taylor
Collin County Clerk

On Feb 16 2004
At 3:22pm

Doc/Num : 2004-0021973

Recording/Type:AG 42.00
Receipt #: 6149

The CITY OF MCKINNEY ("City"), a home rule city and municipal corporation situated in Collin County, Texas, and Chi Chu Chan, Tsun Huei Chan, Yen Chau Chan, and Yen Tea Chan, ~~a Texas limited partnership~~, ("Chan") make and enter this Agreement ("Agreement").

COLLECTIVELY
c.c. *PL* T.C.

RECITALS

Y.T.C.

City desires to acquire certain real property as right-of-way for the roadway project known as F.M. 720 Improvements from Ridge Road to Hardin Boulevard in the City of McKinney. The project is one identified on the City's Capital Improvement Projects list made a part of the City's Roadway Impact Fee Ordinance No. 2003-05-055 as amended by Ordinance No. 2003-07-062. The right-of-way cost for the referenced project is or is intended to be added to the cost calculations which are used to derive the roadway impact fees for the Service Area containing the project.

Chan desires to convey to the City the necessary right-of-way, slope easements, drainage easements, and temporary construction easements, as shown in exhibits "A" and "B", in exchange for certain calculated Roadway Impact Fee Credits as such are described in Section 3.09(A) and Section 3.09(B) of Ordinance No. 2003-05-055.

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

ARTICLE I
DEFINITIONS

Section A. Definitions.

1. City means the City of McKinney, a home rule city and municipal corporation situated in Collin Texas, its representatives, agents, assigns, inspectors, contractors, employees and consultants.
2. Chan means Chi Chu Chan, Tsun Huei Chan, Yen Chau Chan, and Yen Tea Chan, ~~a Texas limited partnership~~, its representatives, agents, contractors, employees, and consultants.

Their
c.c. *PL* T.C.,
Y.T.C.

3. *Effective Date* the date on which Chan conveys title to the right-of-way subject of this Agreement, which date shall be **December 1, 2003**.
4. *Notice* means any formal notice or communication required or permitted to be given by one Party to another by this Agreement.
5. *Parties* means the City and Chan.
6. *Service Unit* means a vehicle mile in the p.m. hour, as set forth in the equivalency tables attached to Ordinance 2003-05-055, which serves as the standardized measure of consumption or use of roadway facilities attributable to new development.
7. *Service Unit Equivalent* means the amount of capacity created by contribution of a capital improvement in behalf of a new development, expressed in vehicle miles.

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

Except where the context otherwise clearly requires, in this Agreement:

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

**ARTICLE II
CHAN CONVEYANCE**

Section A. Conveyance.

Chan agrees to convey, in fee simple by instrument acceptable to the City Attorney, the property described in Exhibit A "the Right-of-Way Parcel." The Right-of-Way Parcel shall be free and clear of any encumbrance or title defect, in the sole determination of City. Chan shall warrant the title by Warranty Deed. A copy of said Right-of-Way Warranty Deed is attached. City shall have thirty (30) days after receipt of a title commitment on the Right-of-Way Parcel to object to any title defects. If any written objections are not cured by Chan within ten (10) days of receipt thereof, this agreement shall terminate.

Section B. Value of the Right-of-Way Parcel

Chan and City agree that the value of the Right-of-Way Parcel (1.8304 acres) to be conveyed under Article II, Section A is Three hundred fifty eight Thousand and Seven Hundred eighty nine and 50/100 Dollars (\$358,789.50). The City agrees to purchase the Right-of-Way Parcel through the grant hereunder of Roadway Impact Fee Credits as are more fully described hereinafter.

Section C. Roadway Impact Fee Credits as Consideration

City agrees to grant Chan Roadway Impact Fee Credits as consideration for the conveyance of the Right-of-Way Parcel described in Article II, Section A. The Roadway Impact Fee Credits shall immediately vest and attach to the balance of Chan's property, from which the Right-of-Way Parcel was conveyed, and which Tract shall be called the "Development Tract," more fully described in Exhibit C attached hereto.

The Roadway Impact Fee Credits shall be calculated at Four and 50/100 Dollars per square foot.

The Roadway Impact Fee Credits which shall attach to the Development Tract under this Agreement are **308.50 Service Unit Equivalents**.

***ARTICLE III
IMPACT FEE CREDITS***

Section A. Assignment and Expiration of Roadway Impact Fee Credits

The credits granted under this agreement shall only be assigned with the City's consent pursuant to the provision of Section 3.09(B)(2) of Ordinance No. 2003-05-055. The credits shall have no expiration; but in any event, the credits shall only be applied to the Development Tract. Any reimbursement for unused credits shall be governed by Section 3.09(B)(4) unless otherwise specifically outlined herein.

Section B. Use of Roadway Impact Fee Credits

Roadway Impact Fee Credits shall be used as development occurs on the Development Tract. Service Unit calculations for proposed uses on the Development Tract shall be in accordance with then existing tables of the Roadway Impact Fee Ordinance, or its successor ordinance. Unused credits shall not be transferable or applied to fees owed on other tracts. Upon the exhaustion of the Roadway Impact Fee Credits by Chan on the Development Tract, any additional development shall pay then existing Roadway Impact Fees or receive credits for construction of roadway improvements under then existing ordinances.

Section C. Reimbursement of Unused Credits

1. Chan may apply for and execute a reimbursement agreement reimbursing Chan for unused credits either (i) upon completion of all development in the Development Plat, or (ii) ten (10) years after the execution of this Agreement.
2. The amount reimbursed shall be equal to the number of unused credits times the maximum impact fee per service unit (as of the effective date of this Agreement) to be collected times the fraction equal to the impact fee collected, as set forth in Schedule 2 divided by the maximum impact fee per service unit, as set forth in Schedule 1, Table B, as of the effective date hereof (\$1,163.00).
3. The amount of reimbursement may be further equitably reduced if fewer than fifty percent (50%) of the number of service units in the Development Tract have been developed on the date of application for reimbursement.
4. Payment shall be made, without interest, in equal annual installments, from roadway impact fees collected within Service Area I, subject to availability of said fees/funds.
5. Any termination or reduction of the City's authority under state law to impose impact fees in Service Area I shall terminate or correspondingly reduce any obligation to reimburse under the reimbursement agreement.
6. This Agreement shall terminate upon execution of a reimbursement agreement.

Section D. Developer Responsibilities Under Development Ordinances

Nothing herein shall relieve Chan from its responsibilities for construction of public improvements under applicable development ordinances, save and except the obligation to construct F.M. 720, or any appurtenant section thereof, upon development of the Development Tract.

Section E. Credits Subject to Partial Termination

In the event Chan undertakes and receives approval for a final or record plat requiring right of way dedications (not including boundary plats) under then existing subdivision regulations for F.M. 720, prior to commencement of construction of F.M. 720 within the Right-of-Way Parcel by City, the City may, in City's discretion, terminate a portion of the Roadway Impact Fee Credits granted hereunder. The portion subject to termination shall be that amount attributable to the segment of right-of-way adjacent to the lot or lots created by the final or record plat. The values established by this Agreement shall be used to ascertain the correlative amount of credits which were originally granted for that portion of the Right-of-Way Parcel. No credits shall be subject to termination by the City

after the commencement of construction of F.M. 720 within the Right-of-Way Parcel or after December 31, 2004, whichever is sooner.

ARTICLE IV
AGREEMENT MAY NOT BE PLEDGED AS COLLATERAL

Chan may not pledge this Agreement as collateral for purposes of securing financing for development of the property.

ARTICLE V
GENERAL PROVISIONS

Section A. *Notice of Default; Opportunity to Cure; Remedies; and Mediation.*

1. Should any Party allege that the other has defaulted in the performance of any obligation hereunder, it will provide at least thirty days written Notice to the other Party specifying the nature of the alleged default and opportunity to cure the default before exercising any remedy related to the alleged default.
2. Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond the thirty (30) day notice and cure period provided above, the other Party shall have the right to enforce the terms and provisions of this Agreement by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled.
3. Any remedy or relief described in this Agreement shall be cumulative of, and in addition to, any other remedies and relief available at law or in equity.
4. The foregoing notwithstanding, it is understood and agreed that in addition to any other remedy which the City may have upon default by Chan under this Agreement, should Chan fail to comply with the Subdivision Ordinance, and any related development regulations, the City may terminate this Agreement. Upon termination pursuant to this subsection, all roadway service unit credits shall terminate.

Section B. *Interpretation of this Agreement, and Entire Agreement.*

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

Section C. Amendment.

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

Section D. No Amendment of Other Agreements.

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

Section E. Other Instruments, Actions.

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

Section F. No Third Party Beneficiaries.

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

Section G. Applicable Law.

This Agreement will be construed under and according to the laws of the State of Texas.

Section H. Severability.

The provisions of this Agreement are severable, and if any court will 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.

Section I. Personal Jurisdiction and Venue.

Personal jurisdiction and venue for any suit arising hereunder will be in Collin County, Texas.

Section J. Counterparts.

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

Section K. Notices.

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

Chi Chu Chan
4120 Hampshire Street
Plano, Texas 75093

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

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

Section L. No Waiver.

No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this Agreement; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. Nothing herein shall waive any obligations of Chan under applicable ordinances, including but not limited to the subdivision ordinance, the sewer and water impact fee ordinance, or the roadway impact fee ordinance.

Section M. Attorney's Fees.

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

Section N. Governmental Authority.

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

Section O. Assignability.

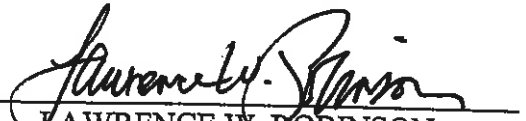
This Agreement shall not be assignable by Chan without the prior written consent of the City.

Section P. Binding Obligation.

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

CITY OF MCKINNEY

By:



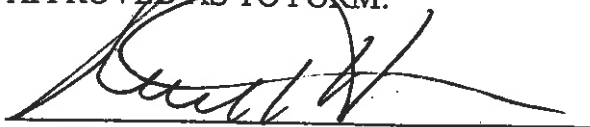
LAWRENCE W. ROBINSON
City Manager

ATTEST:



JENNIFER G. SPROULL
City Secretary
BEVERLY COVINGTON
Deputy City Secretary

APPROVED AS TO FORM:



MARK S. HOUSER
City Attorney

Chi Chu Chan
Chi Chu Chan

Tsun Huei Chan
Tsun Huei Chan

Yeh Chau Chan
Yeh Chau Chan

Yen Tea Chan
Yen Tea Chan

STATE OF TEXAS
COUNTY OF COLLIN

This instrument was acknowledged before me on the 11 day of Feb, 2004 by LAWRENCE W. ROBINSON, City Manager of the CITY OF MCKINNEY, a Texas municipal corporation, on behalf of said municipal corporation.



TAMMY L.
Notary Public
STATE OF TEXAS
My Comm. Exp. 06-28-05

Tammy L. [Signature]
Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF COLLIN

This instrument was acknowledged before me on the 14 day of Jan 2004, 2004 by CHI CHU CHAN.

[Signature]
Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF COLLIN

This instrument was acknowledged before me on the 4 day of Feb 2004, 2004 by TSUN HUEI CHAN.



MONICA DANIELS
NOTARY PUBLIC
STATE OF TEXAS
My Comm. Exp. 06-28-05


[Signature]
Notary Public, State of Texas



MONICA DANIELS
NOTARY PUBLIC
STATE OF TEXAS
My Comm. Exp. 06-28-05

STATE OF TEXAS
COUNTY OF COLLIN

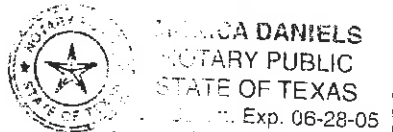

This instrument was acknowledged before me on the 14 day of Jan 2004,
2004 by YEN CHAU CHAN.



Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF COLLIN

This instrument was acknowledged before me on the 14 day of Jan 2004,
2004 by YEN TEA CHAN.

Notary Public, State of Texas

List of Exhibits:

- Exhibit A: Right-of-Way Warranty Deed
- Exhibit B: Slope Easement
- Exhibit C: Drainage Easement
- Exhibit D: Development Tract

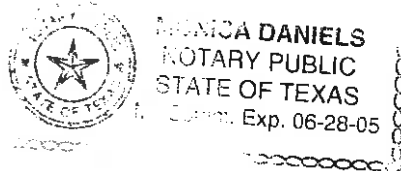

MONICA DANIELS
NOTARY PUBLIC
STATE OF TEXAS
Comm. Exp. 06-28-05

EXHIBIT A

Right-of-Way Warranty Deed (1.8304 acres)

EXHIBIT B

Slope Easement (0.3250 acres)

EXHIBIT C

Drainage Easement (1.0233 acres)

EXHIBIT D

Development Tract