



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Meeting Agenda Public Utilities Board

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Monday, June 10, 2024

9:00 AM

Council Work Session Room

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### **REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD**

Citizens will be able to participate in the following way:

- eComment – The agenda was posted online at <https://tx-denton.civicplus.com/242/Public-Meetings-Agendas>. Once the agenda is posted, a link to make virtual comments using the eComment module will be made available next to the meeting listing on the Upcoming Events Calendar. Using eComment, Individuals may indicate support or opposition and submit a brief comment about a specific agenda item. eComments may be submitted up until the start of the meeting at which time the ability to make an eComment will be closed. eComments will be sent directly to members of the Public Utilities Board immediately upon submission and recorded by the Secretary into the Minutes of the Meeting.

After determining that a quorum is present, the Public Utilities Board of the City of Denton, Texas will convene in a Regular Meeting on Monday, June 10, 2024, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

### **REGULAR MEETING**

#### **1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC**

This section of the agenda permits a person to make comments regarding public business on items as listed on the agenda. Each speaker will be allowed a maximum of four (4) minutes. Such person(s) shall have registered under the REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD detailed at the beginning of this agenda. Registration is required prior to the time this agenda item is read into the record.

#### **2. CONSENT AGENDA**

Each of the items on the Consent Agenda is recommended by the Staff and approval thereof will be strictly on the basis of the Staff recommendations. Approval of the Consent Agenda authorizes the City Manager or designee to implement each item in accordance with the Staff recommendations. The Public Utilities Board has received background information and has had an opportunity to raise questions regarding these items prior to consideration.

Listed below are bids, purchase orders, contracts, and other items to be approved for payment or other action under the Consent Agenda (Agenda Items A – N). This listing is provided on the Consent Agenda to allow Public Utilities Board Members to discuss or withdraw an item prior to approval of the Consent Agenda. If no items are pulled, the Consent Agenda Items will be approved with one motion. If items are pulled for separate discussion, they may be considered as the first items following approval of the Consent Agenda.

- A. [PUB24-100](#) Consider recommending adoption of an Ordinance of the City of Denton, a Texas



home-rule municipal corporation, authorizing the City Manager to enter into an agreement with the Texas Department of Transportation (TxDOT) for the relocation and road widening projects (ROW CSJ 0195-03-103, ROW CSJ 0081-13-074, and ROW CSJ 1951-01-012) of various facilities operated by Denton Municipal Electric generally located at I35E frontage road at the Union Pacific Railroad crossing, I35W frontage road between FM 407 and FM 2499 and FM 1515 from Bonnie Brae Street to Westcourt Road within the territorial limits of the City of Denton; authorizing the expenditure of funds not to exceed \$5,000,000; and declaring an effective date.

Attachments:      [Exhibit 1 - Agenda Information Sheet](#)  
                             [Exhibit 2 - Signature Authority Form ROW-U-40](#)  
                             [Exhibit 3 - Ordinance](#)

- B. [PUB24-105](#) Consider recommending adoption of an ordinance of the City of Denton, Texas authorizing the City Manager to execute and administer joint funding agreements (“agreements”) for water resource investigations by and between the City of Denton and the United States Geological Survey, Oklahoma-Texas Water Science Center (“USGS”) related to continued support of the Hickory Creek streamflow station (“station”) in an annual amount not to exceed \$6,500.00; authorizing the expenditure of funds; and providing an effective date.

Attachments:      [Exhibit 1 - Agenda Information Sheet](#)  
                             [Exhibit 2 - Ordinance](#)  
                             [Exhibit 3 - Agreement](#)

- C. [PUB24-106](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a Professional Services Agreement between the City of Denton and 1898 & Co., a division of Burns & McDonnell Engineering Company, Inc., amending the contract approved by City Council on August 1, 2023, in the not-to-exceed amount of \$892,320.00, said first amendment to add additional services as the Owner's Engineer for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7804-010 - providing for an additional first amendment expenditure amount not-to-exceed \$197,780.00, with the total contract amount not-to-exceed \$1,090,100.00).

Attachments:      [Exhibit 1 - Agenda Information Sheet - PUB](#)  
                             [Exhibit 2 - Original Ordinance and Contract](#)  
                             [Exhibit 3 - Ordinance and Amendment 1](#)

- D. [PUB24-107](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a contract between the City of Denton and Freeport Welding & Fabricating, Inc., amending the contract approved by the City Council on June 27, 2023, in the not-to-exceed amount of \$1,279,570.00; said first amendment to complete the purchase of three (3) 60,000 gallon tanks for the Denton Energy Center Winterization Project; providing for the expenditure of funds therefor; and providing an effective date (RFP 8220 - providing for

an additional first amendment expenditure amount not-to-exceed \$140,000.00, with the total contract amount not-to-exceed \$1,419,570.00).

Attachments:      [Exhibit 1 - Agenda Information Sheet](#)  
                              [Exhibit 2 - Original Ordinance and Contract](#)  
                              [Exhibit 3 - Ordinance and Amendment 1](#)

- E.    [PUB24-108](#)    Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with (CTS) Crown Texas, Inc. dba Crown Texas, Inc., for the purchase of prefabricated substation control buildings for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8418 - awarded to (CTS) Crown Texas, Inc. dba Crown Texas, Inc., in the three (3) year not-to-exceed amount of \$2,419,785.01).

Attachments:      [Exhibit 1 - Agenda Information Sheet](#)  
                              [Exhibit 2 - Ordinance and Contract](#)

- F.    [PUB24-109](#)    Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Mountain Cascade of Texas, LLC, for the I-35 Utility Relocation at Fort Worth Drive project, including the construction and movement of public water and abandonment of wastewater utilities in support of the Texas Department of Transportation's I-35 widening from US-377 to South Locust Street for the Capital Projects Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7968-006 - awarded to Mountain Cascade of Texas, LLC, in the not-to-exceed amount of \$750,870.75).

Attachments:      [Exhibit 1 - Agenda Information Sheet](#)  
                              [Exhibit 2 - Ordinance and Contract](#)

- G.    [PUB24-111](#)    Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Gage & Cade Construction, LLC, for the construction of the Landfill Entrance Facility (Scalehouse) Improvements Project for the Solid Waste and Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8281 - awarded to Gage & Cade Construction, LLC, in the not-to-exceed amount of \$3,419,799.60).

Attachments:      [Exhibit 1 - Agenda Information Sheet](#)  
                              [Exhibit 2 - Ordinance and Contract](#)

- H.    [PUB24-112](#)    Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Trilliant Networks Inc., for the renewal extension of continued vendor support services for Advanced Metering Infrastructure (AMI) for Denton Municipal Electric, which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be

awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8566 - awarded to Trilliant Networks Inc., in the five (5) year not-to-exceed amount of \$1,707,564.10).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Ordinance and Contract](#)

- I. [PUB24-113](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, ratifying the expenditure of funds by the City Manager for the emergency purchase of property, boiler, machinery, and business interruption insurance coverage for the Denton Energy Center through the City's broker of record, Lockton Companies, LLC; and providing an effective date (File 8544 - awarded to Associated Electric & Gas Insurance Services Limited (AEGIS), for one (1) year, with the option for two (2) additional one (1) year extensions, in the total three (3) year not-to-exceed amount of \$2,707,349.29).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Declaration of Emergency](#)

[Exhibit 3 - Recommendation Letter](#)

[Exhibit 4 - Comparison Summary](#)

[Exhibit 5 - Ordinance](#)

- J. [PUB24-114](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a contract between the City of Denton and Wäertsilä North America, Inc., amending the contract approved by City Council on April 20, 2021, in the not to exceed amount of \$3,448,184.00; said first amendment to continue to supply routine maintenance supplies for the Denton Energy Center; providing for the expenditure of funds therefor; and providing an effective date (IFB 7544 - providing for an additional first amendment expenditure amount not-to-exceed \$862,046.00, with the total contract amount not-to-exceed \$4,310,230.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Original Ordinance and Contract](#)

[Exhibit 3 - Ordinance and Amendment](#)

- K. [PUB24-115](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Parkhill, Smith & Cooper, Inc., for design services of Landfill Cell 6 for the Solid Waste and Recycling Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFP 7109-039 - Professional Services Agreement for design services awarded to Parkhill, Smith & Cooper, Inc., in the not-to-exceed amount of \$367,000.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Ordinance and Contract](#)

- L. [PUB24-116](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas

home-rule municipal corporation, authorizing the approval of a fifth amendment to a contract between the City of Denton and Schneider Electric Smart Grid Solutions, LLC, formerly Telvent USA, LLC, amending the contract approved by City Council on May 7, 2013, in the not-to-exceed amount of \$491,813.75; said fifth amendment to continue to provide vendor support of the Denton Municipal Electric (DME) ArcFM solution and associated software modules along with new hardware and software upgrades, which is the sole provider of these items, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8564 - providing for a two (2) year term and an additional fifth amendment expenditure amount not-to-exceed \$95,000.00).

Attachments:

[Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Original Ordinance, Contract, Amendments, and Name Change](#)

[Exhibit 3 - Ordinance and Amendment 5](#)

- M. [PUB24-119](#) Consider recommending adoption of an ordinance authorizing the City Manager to execute and deliver Supplemental No. 2 to the Standard Utility Agreement (“Agreement”) by and between the City of Denton and the Texas Department of Transportation (“TxDOT”), for the reimbursement of design, property acquisition and related services, construction, inspection, project management and other direct costs associated with the adjustment, removal, and/or relocation of water utilities along I-35E from Mayhill to Loop 288 more specifically called the I-35E/Mayhill Utility Relocations Project (Utility ID No. U00008008) for water utility relocation efforts, within the County and City of Denton, Texas; providing for the expenditure of funds not to exceed an increase of One Million, Eight Hundred Thirty-Two Thousand, Six Hundred Thirty-Two and 59/100 dollars (\$1,832,632.59) therefor; and providing an effective date.

Attachments:

[Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Ordinance and Agreement](#)

[Exhibit 3 - Original Agreement and Supplemental No. 1](#)

- N. [PUB24-120](#) Consider recommending adoption of an ordinance of the City of Denton, Texas authorizing the City Manager to execute and deliver the Standard Utility Agreement (“Agreement”) by and between the City of Denton (“City”) and the Texas Department of Transportation (“TxDOT”), for the reimbursement of eligible costs incurred in the adjustment, removal, and relocation of city facilities of both Water and Wastewater Utilities along I-35E from US 377/Fort Worth Drive to Locust Street and along the North Frontage Road at UPRR Railroad to the east (“Utility Relocations Project -TxDOT CSJ# 0195-03- 103/Utility ID:U00020852), within the County and City of Denton, Texas; providing for the expenditure of funds in an amount not to exceed Seven Hundred Fifteen Thousand, One Hundred and Fifteen and 00/100 Dollars (\$715,115.00) for Water and Wastewater Utility Relocation efforts; and providing an effective date.

Attachments:

[Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Ordinance and Agreement](#)

**3. ITEMS FOR INDIVIDUAL CONSIDERATION**

- A. [PUB24-118](#) Consider approval of the May 20, 2024 minutes.

Attachments: [5.20.24 PUB Minutes](#)

- B. [PUB24-110](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Archer Western Construction, LLC, for the Ray Roberts Water Treatment Plant Capacity Re-Rate and Performance Improvements Project for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8141-2 - awarded to Archer Western Construction, LLC, in the not-to-exceed amount of \$43,994,500.00).

Attachments: [Exhibit 1 - Agenda Information Sheet - PUB](#)

[Exhibit 2 - Pricing Evaluation](#)

[Exhibit 3 - Presentation - PUB](#)

[Exhibit 4 - Ordinance and Contract](#)

- C. [PUB24-117](#) Management Reports
1. Future Agenda Items
  2. New Business Action Items

Attachments: [1. Future Agenda Items](#)

[2. New Business Action Items](#)

**4. CONCLUDING ITEMS**

A. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the Public Utilities Board or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting AND Under Section 551.0415 of the Texas Open Meetings Act, provide reports about items of community interest regarding which no action will be taken, to include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

Following the completion of the Regular Meeting, the Public Utilities Board will convene in a Work Session at which the following items will be considered:

**WORK SESSION**

- A. [PUB24-014](#) Receive a report, hold a discussion, and give staff direction regarding the Fiscal Year 2024-25 preliminary utility forecasts for Solid Waste, Water, Wastewater/Drainage, and Electric.

Attachments: [Exhibit 1. Agenda Information Sheet](#)

[Exhibit 2. Presentation](#)

Following the completion of the Work Session, the Public Utilities Board (PUB) will convene in a Closed Meeting to consider specific items when these items are listed below under the Closed Meeting section of this agenda. The Public Utilities Board (PUB) reserves the right to adjourn into a Closed Meeting on any item on its Open Meeting agenda consistent with Chapter 551 of the Texas Government Code, as amended, or as otherwise allowed by law.

#### CERTIFICATE

I certify that the above notice of meeting was posted on the official website (<https://tx-denton.civicplus.com/242/Public-Meetings-Agendas>) and bulletin board at City Hall, 215 E. McKinney Street, Denton, Texas, on June 6, 2024, in advance of the 72-hour posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

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OFFICE OF THE CITY SECRETARY

NOTE: THE CITY OF DENTON'S DESIGNATED PUBLIC MEETING FACILITIES ARE ACCESSIBLE IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT. THE CITY WILL PROVIDE ACCOMMODATION, SUCH AS SIGN LANGUAGE INTERPRETERS FOR THE HEARING IMPAIRED, IF REQUESTED AT LEAST 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. PLEASE CALL THE CITY SECRETARY'S OFFICE AT 940-349-8309 OR USE TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) BY CALLING 1-800-RELAY-TX SO THAT REASONABLE ACCOMMODATION CAN BE ARRANGED.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-100, Version: 1**

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### **AGENDA CAPTION**

Consider recommending adoption of an Ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to enter into an agreement with the Texas Department of Transportation (TxDOT) for the relocation and road widening projects (ROW CSJ 0195-03-103, ROW CSJ 0081-13-074, and ROW CSJ 1951-01-012) of various facilities operated by Denton Municipal Electric generally located at I35E frontage road at the Union Pacific Railroad crossing, I35W frontage road between FM 407 and FM 2499 and FM 1515 from Bonnie Brae Street to Westcourt Road within the territorial limits of the City of Denton; authorizing the expenditure of funds not to exceed \$5,000,000; and declaring an effective date.





# City of Denton

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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Denton Municipal Electric, Engineering Department

**GM:** Antonio Puente Jr., General Manager

**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an Ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to enter into an agreement with the Texas Department of Transportation (TxDOT) for the relocation and road widening projects (ROW CSJ 0195-03-103, ROW CSJ 0081-13-074, and ROW CSJ 1951-01-012) of various facilities operated by Denton Municipal Electric generally located at I35E frontage road at the Union Pacific Railroad crossing, I35W frontage road between FM 407 and FM 2499 and FM1515 from Bonnie Brae Street to Westcourt Road within the territorial limits of the City of Denton; authorizing the expenditure of funds not to exceed \$5,000,000; and declaring an effective date.

### **INFORMATION/BACKGROUND**

DME has been tasked with relocation of electrical facilities as part of several TXDOT projects including I35W, I35E, and FM 1515. All work that is accomplished in the TXDOT Right-of-Way (ROW) requires a permit from the state (similar to City of Denton's requirements to work in the ROW of city streets). As part of the permitting process, TXDOT requires completion of a Reimbursement Agreement, joint use agreements, crossing permits, and ROW-U-40 Signature Authority forms.

TXDOT requires all utilities (DME is considered a separate utility from City of Denton utilities by TXDOT) and contractors to submit a complete Reimbursement Agreement for state approval for each project prior to a TXDOT work permit being issued. The Reimbursement Agreement must include a full set of construction plans, material lists (including identification of all iron and steel components in accordance with Buy America laws), and easement acquisition documentation. It also includes a complete estimate of all expected project costs. To identify a properly authorized signatory for the utility, the utility must complete the TXDOT form ROW-U-40 Signature Authority. More than one signatory may be authorized by the utility, however a separate ROW-U-40 form and Reimbursement Agreement are required for each TXDOT project. TXDOT will only accept a Reimbursement Agreement that has been signed by an authorized signatory indicated on the form.

Brief descriptions of each project currently under design and in need of Signature Authority completions are as follows.

**I35E Frontage Road Bridge Replacements at Union Pacific Railroad Crossing** – TXDOT is replacing the frontage road bridges over the railroad tracks. The new bridges will require relocation of existing

DME overhead and underground electrical distribution facilities on both sides of the railroad tracks. The project will require boring underneath I35E for two highway crossings. The estimated cost of this project is roughly \$1,000,000, all of which will be reimbursed to DME by TXDOT.

**I35W Frontage Roads, FM407 to FM2499** – TXDOT is adding frontage roads along this segment of I35W. This highway work will require relocation of existing DME overhead and underground electric distribution facilities at two highway crossing locations. The estimated cost of this project is roughly \$2,200,000, all of which will be reimbursed to DME by TXDOT.

**FM1515 (Airport Road), Bonnie Brae St to Westcourt Rd** – TXDOT is rebuilding and widening FM 1515 along this segment. This road work will require relocation of approximately 9,000 feet of existing DME overhead and underground electric distribution facilities along most of the route. The estimated cost of this project is roughly \$1,800,000, all of which will be reimbursed to DME by TXDOT.

### **RECOMMENDATION**

DME recommends the approval of Signature Authority for DME to enter into reimbursement agreements with TXDOT for the projects listed.

### **EXHIBITS**

Exhibit 1: Agenda Information Sheet

Exhibit 2: Signature Authority Form ROW-U-40

Exhibit 3: Ordinance

Respectfully submitted:  
Jerry Fielder, Division Manager-Engineering  
Denton Municipal Electric

For information concerning this item, contact: Doug Breon, Engineering Supervisor, 940-349-7509.

Legal point of contact: Marcella Lunn, 940-349-8339



## Utility Adjustment Work - Signature Authority

Organization ID: **E00093244**

District: Dallas  
Organization Type: Utility  
Texas Identification No.: 17560005146

County: Denton  
Organization Sub-Type: Electric  
Payee Mail Code: 005 ☐ All Associated Payee Mail Codes

**WHEREAS, Denton Municipal Electric**, hereinafter called the **Owner**, deems it necessary and proper to enter into an agreement with the Texas Department of Transportation (TxDOT) for the relocation of various facilities operated by the **Owner**, which conflict with TxDOT's proposed highway improvement project.

**NOW, THEREFORE**, according to the governing documents attached as **Exhibit A**, be it resolved by **Owner** that **Sara Hensley, as City Manager, or his/her successor in this position**, has general signature authority on all utility adjustment work of **Owner**, and, as such, no further authorization for execution of a specific utility agreement is necessary. **Sara Hensley, as City Manager, or his/her successor in this position**, is hereby authorized and directed to sign any and all utility agreements, or any other necessary documents, required to complete the utility relocation on behalf of the **Owner**.

Passed, approved, and adopted on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**IN WITNESS WHEREOF**, the parties hereto have affixed their signatures.

**ATTEST:**

**Owner:** Denton Municipal Electric  
Utility Name

By: \_\_\_\_\_  
Authorized Signature

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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### Business Entity Acknowledgment

State of Texas  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_ [name  
of utility company], a \_\_\_\_\_ [state] \_\_\_\_\_ [type of company,  
e.g. LLC, Inc., L.P., etc.], on behalf of said business entity. The acknowledging person personally appeared by:

☐ physically appearing before me.

☐ appearing by an interactive two-way audio and video communication that meets the requirements for online notarization under Texas Government Code, Chapter 406, Subchapter C.

\_\_\_\_\_  
Notary Public's Signature

**EXHIBIT "A"**

**A Copy of the Governing Document of the Utility Company Designating Signature Authority**

## ORDINANCE NO. 24-1047

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) FOR THE RELOCATION AND ROAD WIDENING PROJECTS (ROW CSJ 0195-03-103, ROW CSJ 0081-13-074, AND ROW CSJ 1951-01-012) OF VARIOUS FACILITIES OPERATED BY DENTON MUNICIPAL ELECTRIC GENERALLY LOCATED AT I35E FRONTAGE ROAD AT THE UNION PACIFIC RAILROAD CROSSING, I35W FRONTAGE ROAD BETWEEN FM 407 AND FM 2499 AND FM 1515 FROM BONNIE BRAE STREET TO WESTCOURT ROAD WITHIN THE TERRITORIAL LIMITS OF THE CITY OF DENTON; AUTHORIZING THE EXPENDITURE OF FUNDS NOT TO EXCEED \$5,000,000; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of Denton (the “City”) owns and operates an electric utility which provides electric energy and related services to all customers within Denton Municipal Electric’s (DME) Public Utilities Commission of Texas (PUCT) certificated jurisdiction; and

WHEREAS, the City and TxDOT are working cooperatively to determine scope, cost, and appropriate reimbursement to the City associated with the City’s provision of electric energy and related services currently located in TxDOT rights-of-way or private easements to be relocated based upon highway design and rights-of-way drawings provided by TxDOT; and

WHEREAS, the City has determined that it is the public interest to authorize the City Manager to enter into TxDOT reimbursement agreements, joint use agreements, crossing permits, and other required agreements for three (3) active and currently identified TxDOT relocation and road widening projects within the City referenced as ROW CSJ 0195-03-103, ROW CSJ 0081-13-074, and ROW CSJ 1951-01-012 after approval by the City Attorney; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitations contained in the preamble of this ordinance are incorporated herein by reference as findings of the City Council.

SECTION 2. The City Council approves and authorizes the City Manager, or designee, to execute and deliver reimbursement agreements, joint use agreements, and crossing permits, as well as other agreements required by TxDOT, including those attached hereto and referenced herein (“Agreements”) as needed for ROW CSJ 0195-03-103, ROW CSJ 0081-13-074, and ROW CSJ 1951-01-012, only after the same have been approved by the City Attorney and is further authorized to carry out the rights, duties, obligations, and responsibilities of the City under such Agreements.

SECTION 3. The City Council approves and authorizes the City Manager, or designee, to take such additional actions as the City Manager, or designee, determines to be necessary and

advisable to continue to effectuate the purpose, terms, and conditions of the Agreements.

SECTION 4. This ordinance shall become effective immediately upon its passage and approval.

SECTION 5. City Council hereby authorizes the expenditure of funds up to Five Million Dollars and 0/100 (\$5,000,000).

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. The ordinance was passed and approved by the following vote [\_\_\_\_ - \_\_\_\_]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Metzler, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



## Utility Adjustment Work - Signature Authority

Organization ID: **E00093244**

District: Dallas  
Organization Type: Utility  
Texas Identification No.: 17560005146

County: Denton  
Organization Sub-Type: Electric  
Payee Mail Code: 005 ☐ All Associated Payee Mail Codes

**WHEREAS, Denton Municipal Electric**, hereinafter called the **Owner**, deems it necessary and proper to enter into an agreement with the Texas Department of Transportation (TxDOT) for the relocation of various facilities operated by the **Owner**, which conflict with TxDOT's proposed highway improvement project.

**NOW, THEREFORE**, according to the governing documents attached as **Exhibit A**, be it resolved by **Owner** that **Sara Hensley, as City Manager, or his/her successor in this position**, has general signature authority on all utility adjustment work of **Owner**, and, as such, no further authorization for execution of a specific utility agreement is necessary. **Sara Hensley, as City Manager, or his/her successor in this position**, is hereby authorized and directed to sign any and all utility agreements, or any other necessary documents, required to complete the utility relocation on behalf of the **Owner**.

Passed, approved, and adopted on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**IN WITNESS WHEREOF**, the parties hereto have affixed their signatures.

**ATTEST:**

**Owner:** Denton Municipal Electric  
Utility Name

By: \_\_\_\_\_  
Authorized Signature

Title: \_\_\_\_\_

Date: \_\_\_\_\_

---

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### Business Entity Acknowledgment

State of Texas  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_  
\_\_\_\_\_ by \_\_\_\_\_,  
\_\_\_\_\_ of \_\_\_\_\_ [name  
of utility company], a \_\_\_\_\_ [state] \_\_\_\_\_ [type of company,  
e.g. LLC, Inc., L.P., etc.], on behalf of said business entity. The acknowledging person personally appeared by:

☐ physically appearing before me.

☐ appearing by an interactive two-way audio and video communication that meets the requirements for online notarization under Texas Government Code, Chapter 406, Subchapter C.

\_\_\_\_\_  
Notary Public's Signature



**EXHIBIT "A"**

**A Copy of the Governing Document of the Utility Company Designating Signature Authority**



## Standard Utility Agreement

U Number:                      Utility ID:

District:  
ROW Project ID (TxC):  
ROW CSJ:  
Construction CSJ:  
Highway Project Letting Date:

County:  
Highway:  
From:  
To:

This Agreement by and between the State of Texas, acting by and through the Texas Transportation Commission, ("**State**"), and \_\_\_\_\_, ("**Utility**"), acting by and through its duly authorized representative, shall be effective on the date of approval and execution by and on behalf of the **State**.

**WHEREAS**, the **State** has deemed it necessary to make certain highway improvements as designated by the **State** and approved by the Federal Highway Administration within the limits of the highway as indicated above (the "**Highway Project**");

**WHEREAS**, the proposed Highway Project will necessitate the adjustment, removal, and/or relocation of certain facilities of the **Utility** as indicated in the following statement of work: [Enter scope of work here or submission will not be complete] ; and more specifically as shown in the **Utility's** plans, specifications and estimated costs, which are attached hereto as Attachment "A".

**WHEREAS**, the **State** will participate in the costs of the adjustment, removal, and relocation of certain facilities to the extent as may be eligible for State and/or Federal participation.

**WHEREAS**, the **State**, upon receipt of evidence it deems sufficient, acknowledges the **Utility's** interest in certain lands and facilities that entitle it to reimbursement for the adjustment, removal, and relocation of certain of its facilities located upon the lands as indicated in the statement of work above.

### NOW, THEREFORE, BE IT AGREED:

The **State** will pay to the **Utility** the costs incurred in adjustment, removal, and relocation of the **Utility's** facilities up to the amount said costs may be eligible for **State** participation.

All conduct under this agreement, including but not limited to the adjustment, removal, and relocation of the facility, the development and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with all applicable federal and state laws, rules and regulations, including, without limitation, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601, et seq., the National Environmental Policy Act, 42 U.S.C. §§ 4321, et seq., the Buy America provisions of 23 U.S.C. § 313 and 23 CFR 635.410, as amended, Texas Transportation Code § 223.045, the Utility Relocations, Adjustments, and Reimbursements provisions of 23 CFR 645, Subpart A, and the Utility Accommodation provisions of 23 CFR 645, Subpart B.

The **Utility** shall supply, upon request by the **State**, proof of compliance with the aforementioned laws, rules, regulations, and guidelines prior to the commencement of the adjustment, removal, and relocation of the facility.

The **Utility** shall not commence any physical work, including without limitation site preparation, on the State's right of way or future right of way, until TxDOT provides the **Utility** with written authorization to proceed with the physical work upon TxDOT's completion and clearance of its environmental review of the Highway Project. Any such work

\_\_\_\_\_  
Initial                      Date  
TxDOT

\_\_\_\_\_  
Initial                      Date  
Utility

by the Utility prior to TxDOT's written authorization to proceed will not be eligible for reimbursement and the Utility is responsible for entering any property within the proposed limits of the Highway Project that has not yet been acquired by TxDOT. This written authorization to proceed with the physical work is in addition to the authorization to commence work outlined below. Notwithstanding the foregoing, the provisions of this paragraph are required only when TxDOT has not obtained completion and clearance of its environmental review of the Highway Project prior to the execution of this Agreement by the State and the Utility.

The **Utility** shall comply with the Buy America provisions of 23 U.S.C. § 313, 23 CFR 635.410, as amended, and the Steel and Iron Preference provisions of Texas Transportation Code § 223.045 and, when products that are composed predominately of steel and/or iron are incorporated into the permanent installation of the utility facility, use domestically manufactured products. TxDOT Form 1818 (Material Statement), along with all required attachments, must be submitted, prior to the commencement of the adjustment, removal, and relocation of the facility, as evidence of compliance with the aforementioned provisions. Failure to submit the required documentation or to comply with the Buy America, and Steel and Iron Preference requirements shall result in: (1) the **Utility** becoming ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991; (2) the **State** withholding reimbursement for the costs incurred by the **Utility** in the adjustment, removal, and relocation of the **Utility's** facilities; and (3) removal and replacement of the non-compliant products.

The **Utility** agrees to develop relocation or adjustment costs by accumulating actual direct and related indirect costs in accordance with a work order accounting procedure prescribed by the **State**, or may, with the **State's** approval, accumulate actual direct and related indirect costs in accordance with an established accounting procedure developed by the **Utility**. Bills for work hereunder are to be submitted to the **State** not later than one (1) year after completion of the work. Failure to submit the request for final payment, in addition to all supporting documentation, within one (1) year after completion of the work may result in forfeiture of payment for said work.

When requested, the **State** will make intermediate payments at not less than monthly intervals to the **Utility** when properly billed. Such payments will not exceed 90 percent (90%) of the eligible cost as shown in each such billing. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.

The **State** will, upon satisfactory completion of the adjustment, removal, and/or relocation and upon receipt of final billing prepared in an approved form and manner and accounting for any intermediate payments, make payment in the amount of 90 percent (90%) of the eligible costs as shown in the final billing prior to audit and after such audit shall make an additional final payment totaling the reimbursement amount found eligible for **State** reimbursement.

Alternatively, if the approved accounting method is a lump sum, the **State** agrees to pay the **Utility** an agreed lump sum of \$ \_\_\_\_\_ as supported by the attached estimated costs. The **State** will, upon satisfactory completion of the adjustments, removals, and relocations and upon receipt of a final billing, make payment to the **Utility** in the agreed amount.

Upon execution of this agreement by both parties hereto, the **State** will, by written notice, authorize the **Utility** to perform such work diligently and to conclude said adjustment, removal, and relocation by the stated completion date which is attached hereto in Attachment "C". The completion date shall be extended for delays caused by events outside the **Utility's** control, including an event of Force Majeure, which shall include a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, sabotage, or other events, interference by the **State** or any other party with the **Utility's** ability to proceed with the work, or any other event in which the **Utility** has exercised all due care in the prevention thereof so that the causes of other events are beyond the control and without the fault or negligence of the **Utility**.

This agreement in its entirety consists of the following elements:

Standard Utility Agreement – ROW-U-35;

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

- Plans, Specifications, and Estimated Costs (Attachment “A”);
- Accounting Method (Attachment “B”);
- Schedule of Work (Attachment “C”);
- Statement Covering Contract Work – ROW-U-48 (Attachment “D”);
- Utility Joint Use Agreement – ROW-U-JUA and/or Utility Installation Request – Form 1082 (Attachment “E”);
- Eligibility Ratio (Attachment “F”);
- Betterment Calculation and Estimate (Attachment “G”); and
- Proof of Property Interest – ROW-U-Affidavit (Attachment “H”).

All attachments are included herein as if fully set forth. In the event it is determined that a substantial change from the statement of work contained in this agreement is required, reimbursement therefore shall be limited to costs covered by a modification or amendment of this agreement or a written change or extra work order approved by the **State** and the **Utility**.

This agreement is subject to cancellation by the **State** at any time up to the date that work under this agreement has been authorized, and such cancellation will not create any liability on the part of the **State**. However, the **State** will review and reimburse the **Utility** for eligible costs incurred by the **Utility** in preparation of this Agreement.

The State Auditor may conduct an audit or investigation of any entity receiving funds from the **State** directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

The **Utility** by execution of this agreement does not waive any of the rights that the **Utility** may have within the limits of the law.

It is expressly understood that the **Utility** conducts the adjustment, removal, and relocation at its own risk, and that the **State** makes no warranties or representations regarding the existence or location of utilities currently within its right of way.

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

**UTILITY**

**EXECUTION RECOMMENDED:**

Utility:

\_\_\_\_\_  
*Name of Utility*

\_\_\_\_\_  
*Director of TP&D (or designee),*

\_\_\_\_\_  
*District*

By:

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Print or Type Name*

Title:

Date:

\_\_\_\_\_

**THE STATE OF TEXAS**

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

By:

\_\_\_\_\_  
*District Engineer (or designee)*

Date:

\_\_\_\_\_

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment "A"

### Plans, Specifications, and Estimated Costs

All material items within the cost estimate that must meet Buy America or Steel and Iron Preference Provision requirements must be indicated with an asterisk (\*).

- ☐ Currently, **this project does not plan to use** iron and steel subject to Buy America requirements. In the event that Buy America compliant materials are used during construction on this project, compliance documentation will be provided.
- ☐ There are non-domestic iron and steel materials in this project that fall under the De Minimis equation. Calculation showing the total cost does not exceed one-tenth of one percent (0.1 %) of the individual utility agreement amount or \$2,500.00, whichever is greater is required.
- ☐ We understand the Buy America Compliance Requirements for iron and steel and will supply the required documentation to TxDOT indicating compliance with this provision. The following documents will be supplied prior to installation of the materials:

- 1) Form 1818 - Material Statement
- 2) Material Test Reports or Certifications

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment “B” Accounting Method

☐ **Actual Cost Method of Accounting**

The utility accumulates cost under a work order accounting procedure prescribed by the Federal or State regulatory body and proposes to request reimbursement for actual direct and related indirect costs.

☐ **Lump Sum Method of Accounting**

The Utility proposed to request reimbursement based on an agreed lump sum amount supported by a detailed cost analysis.

\_\_\_\_\_  
Initial      Date  
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Initial      Date  
Utility



## Attachment “C” Schedule of Work

Estimated Start Date (mm/dd/yyyy): \_\_\_\_\_, subject to physical work restrictions prior to the issuance of environmental clearance as required by the provisions of this agreement. (If construction will be joint bid and included in the highway contract, enter the project let date.)

Estimated Duration (number of days): \_\_\_\_\_

Estimated Completion Date (mm/dd/yyyy): \_\_\_\_\_

\_\_\_\_\_  
Initial Date  
TxDOT

\_\_\_\_\_  
Initial Date  
Utility

## Attachment “D” Statement Covering Contract Work

**Construction Contract:** Complete form ROW-U-48 and ROW-U-48-1 if applicable.

- ☐ Utility performing with their own forces (timesheets will be required at the time of billing).
- ☐ Utility will use outside forces to perform the adjustment, complete attached ROW-U-48 or ROW-U-48-1 (joint bid).

**Engineering Contract:**

- ☐ Utility performing with their own forces (timesheets will be required at the time of billing).
- ☐ Utility will use consultant contract (continuing contract rate sheets or fee schedule will be required).
- ☐ TxDOT will procure a utility engineering consultant.

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment “E” Utility Joint Use Agreement – (ROW-U-JUA) and/or RULIS Permit

- ☐ Utility Joint Use Agreement (ROW–U–JUA)
  - ☐ Plans with joint use area highlighted are included.
  
- ☐ RULIS Permit Number:  
The utility should obtain an approved permit before the start of construction inside of the highway right of way.
  
- ☐ Quitclaim will be submitted at the Final Billing

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment “F” Eligibility Ratio

Eligibility Ratio established: \_\_\_\_\_ %

- ☐ Non-interstate Highway (Calculations attached)
- ☐ Interstate Highway
- ☐ Toll Road
- ☐ SP2125 Approved Application (100%)  
Minute Order #: \_\_\_\_\_
- ☐ Master Utility Agreement

### ROW Utility Manual Chapter 8, Section 2

In developing the ratio, line length or number of poles is restricted to facilities located within the existing and proposed highway right of way. Facilities located outside the existing and proposed right of way limits will not be used in developing the ratio.

Please see example of eligibility ratio calculations below.

Plan Sheet or Page#	In Easement (Eligible) Existing # of Poles or LF	In Public ROW (Ineligible) Existing # of Poles or LF
1	0	0
2	84	2
3	91	385
4	238	96
Totals	412	503

Total Existing # of Poles or LF (Eligible)	412
Total Existing # of Poles or LF (Ineligible)	503
Total Existing # of Poles or LF	915
Total Existing # of Poles or LF (Eligible) divided by the Total Existing # of Poles or LF	45.03%

Initial \_\_\_\_\_ Date \_\_\_\_\_  
TxDOT

Initial \_\_\_\_\_ Date \_\_\_\_\_  
Utility

## Attachment “G” Betterment Calculation and Estimate

- ☐ Elective Betterment Ratio established: \_\_\_\_\_ %
  - ☐ Calculation is attached and the justification is included below
  - ☐ A betterment and an in-kind estimate are included
- ☐ Forced Betterment
  - ☐ To comply with regulated industry standards, laws, and regulations. (Supporting documentation required)
  - ☐ To comply with published current design practice followed by the utility in its own work. (Supporting documentation required)
  - ☐ Due to proposed roadway design. (Provide explanation below)
- ☐ Not Applicable

A statement explaining Elective and/or Forced Betterment:

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment “H” Proof of Property Interest

☐ Supporting documentation of compensable property interest that establishes reimbursement eligibility as referenced in Texas Transportation Code §203.092.

☐ Property interest documented through applicable affidavits and required attachments.

☐ ROW-U-Affidavit

☐ The roadway improvement project is designated as an Interstate Highway project; therefore, no supporting documentation of compensable interest is required. Supporting documentation for existing easements is required for easement replacement.

☐ Toll Road (Supporting documentation of compensable property interest required if more than 50% eligibility ratio is applied)

☐ SP2125

☐ Master Utility Agreement

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB24-105, **Version:** 1

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, Texas authorizing the City Manager to execute and administer joint funding agreements (“agreements”) for water resource investigations by and between the City of Denton and the United States Geological Survey, Oklahoma-Texas Water Science Center (“USGS”) related to continued support of the Hickory Creek streamflow station (“station”) in an annual amount not to exceed \$6,500.00; authorizing the expenditure of funds; and providing an effective date.





# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Environmental Services and Sustainability

**ACM:** Christine Taylor

**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, Texas authorizing the City Manager to execute and administer joint funding agreements (“agreements”) for water resource investigations by and between the City of Denton and the United States Geological Survey, Oklahoma-Texas Water Science Center (“USGS”) related to continued support of the Hickory Creek streamflow station (“station”) in an annual amount not to exceed \$6,500.00; authorizing the expenditure of funds; and providing an effective date.

### **BACKGROUND**

The City of Denton has participated in collaborative cost share with the USGS and the United States Army Corps of Engineers, Fort Worth District (USACE - FW) to maintain the Hickory Creek streamflow station since 2019. The station is a full range station displaying gage height and discharge flow, located in Hickory Creek at Country Club Road. Hickory Creek streamflow station is one of over 13,000 USGS real-time stations in the USGS National Water Dashboard,  
<https://dashboard.waterdata.usgs.gov/app/nwd/?region=lower48>.

Data is available online in real-time for water quality, emergency management, public and academic use going back to 2008. Additionally, City staff utilize the flow data to support the Hickory Creek Watershed Protection Plan through the development of a load duration curve to assess downstream loadings of sediments and nutrients reaching Lewisville Lake.

USACE contributes financially to this project and the USGS performs all field and analytical work to make data available to the public. The Joint Funding Agreements would be executed annually and have a term from October 1 through September 30. The proposed delegation would be limited to these specific USGS agreements so long as they do not exceed \$6,500 of budgeted funds. Proposed FY2024-25 agreement amount is \$5,250. Previous agreements in FY2022-23 and FY2023-24 were for an annual expenditure of \$5,100.

### **OPTIONS**

1. Approve delegation for Joint Funding Agreements with the USGS.
2. Decline delegation for Joint Funding Agreements with the USGS.

### **RECOMMENDATION**

Approve delegation of Joint Funding Agreements with the USGS.

**ESTIMATED SCHEDULE OF PROJECT**

October 1 through September 30 annually

**PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

None

**FISCAL INFORMATION**

Funds are budgeted by Environmental Services and Sustainability, Watershed Protection Division operating budget.

**EXHIBITS**

1. Agenda Information Sheet
2. Ordinance
3. Agreement

Respectfully submitted:

Michael A. Gange

Director Environmental Services and Sustainability

Prepared by:

JoEtta Dailey

Watershed Protection Manager

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER JOINT FUNDING AGREEMENTS (“AGREEMENTS”) FOR WATER RESOURCE INVESTIGATIONS BY AND BETWEEN THE CITY OF DENTON AND THE UNITED STATES GEOLOGICAL SURVEY, OKLAHOMA-TEXAS WATER SCIENCE CENTER (“USGS”) RELATED TO CONTINUED SUPPORT OF THE HICKORY CREEK STREAMFLOW STATION (“STATION”) IN AN ANNUAL AMOUNT NOT TO EXCEED \$6,500.00; AUTHORIZING THE EXPENDITURE OF FUNDS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Hickory Creek Streamflow Station (“Station”), located at Country Club Road and Hickory Creek Road, is a full range stream monitoring station displaying gauge height and discharge flow online in real-time to the public on the Current Water Data for the Nation website; and

WHEREAS, the United States Geological Survey conducts annual Texas Water Science Center Water Resources Investigations (“Investigations”) from October 1st through September 30th; and

WHEREAS, the Investigations include maintaining stream gage height and streamflow discharge volume at the Station (“Project”); and

WHEREAS, through the Agreements, the City of Denton covers necessary field and analytical work costs directly related to the Project; and

WHEREAS, the United States Army Corps of Engineers (“USACE”) provides additional monetary support for operation and maintenance of the Station; and

WHEREAS, the City of Denton has executed Agreements with USGS since 2019 and publicly available data has been recorded by USGS at the Station since 1986; and

WHEREAS, Project data is utilized by staff in support of the Hickory Creek Watershed Protection Plan; and

WHEREAS, records and reports resulting from the Project shall be made available to the public; and

WHEREAS, the City Council, having considered the Project’s benefit to the public, agrees that approval of current and future Agreements by and between USGS and the City is in the best interest of the citizens of the City of Denton; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference as true and as if fully set forth in the body of this ordinance.

SECTION 2. The City Manager is hereby authorized to execute Agreements with USGS related to the Project at the Station.

SECTION 3. The City Manager is further authorized to carry out all duties and obligations to be performed by the City of Denton under the Agreements including, but not limited to, the expenditure of funds available in the budget in a total annual amount not to exceed \$6,500.00.

SECTION 4. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under the Agreements to the City Manager of the City of Denton.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_, the ordinance was passed and approved by the following vote [\_\_\_\_ - \_\_\_\_]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At-Large Place 5:	_____	_____	_____	_____
Jill Jester, At-Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Christopher Mullins



## United States Department of the Interior

U.S. GEOLOGICAL SURVEY  
Oklahoma-Texas Water Science Center  
1505 Ferguson Lane  
Austin, TX 78754

April 16, 2024

Ms. JoEtta Dailey  
Watershed Protection Manager  
City of Denton  
1105 South Mayhill Rd  
Denton, TX 76208

Dear Ms. Dailey:

Enclosed is a signed scan of our standard joint-funding agreement 25SJFATX161000 between the U.S. Geological Survey Oklahoma-Texas Water Science Center and City of Denton for negotiated deliverables (see attached), during the period October 1, 2024 through September 30, 2025 in the amount of \$5,250 from your agency. U.S. Geological Survey contributions for this agreement are \$0 for a combined total of \$5,250. Please sign and return one fully-executed original to Kandis Becher at GS-W-OT\_OTFM@usgs.gov or mail to the address above.

Federal law requires that we have a signed agreement before we start or continue work. Please return the signed agreement by **July 1, 2024**. If, for any reason, the agreement cannot be signed and returned by the date shown above, please contact Marsha Gipson at (682) 444-6392 or email mgipson@usgs.gov to make alternative arrangements.

This is a fixed cost agreement to be billed annually via Down Payment Request (automated Form DI-1040). Please allow 30-days from the end of the billing period for issuance of the bill. If you experience any problems with your invoice(s), please contact Kandis Becher at phone number (682) 316-5051 or GS-W-OT\_OTFM@usgs.gov.

The results of all work performed under this agreement will be available for publication by the U.S. Geological Survey. We look forward to continuing this and future cooperative efforts in these mutually beneficial water resources studies.

Sincerely,

Timothy H. Raines  
Director

Enclosure  
25SJFATX161000

**Form 9-1366  
(May 2018)**

**U.S. Department of the Interior  
U.S. Geological Survey  
Joint Funding Agreement  
FOR  
Water Resource Investigations**

**Customer #: 6000002538  
Agreement #: 25SJFATX161000  
Project #: SJ009ME  
TIN #: 75--6000514**

**Fixed Cost Agreement YES[ X ] NO[ ]**

THIS AGREEMENT is entered into as of the October 1, 2024, by the U.S. GEOLOGICAL SURVEY, Oklahoma-Texas Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the City of Denton party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation for negotiated deliverables (see attached), herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50, and 43 USC 50b.

2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) include In-Kind-Services in the amount of \$0.00

- (a) \$0 by the party of the first part during the period  
October 1, 2024 to September 30, 2025
- (b) \$5,250 by the party of the second part during the period  
October 1, 2024 to September 30, 2025
- (c) Contributions are provided by the party of the first part through other USGS regional or national programs,  
in the amount of: \$0

Description of the USGS regional/national program:

- (d) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
- (e) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.

3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.

4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.

5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.

6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program, and if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties. The Parties acknowledge that scientific information and data developed as a result of the Scope of Work (SOW) are subject to applicable USGS review, approval, and release requirements, which are available on the USGS Fundamental Science Practices website (<https://www.usgs.gov/office-of-science-quality-and-integrity/fundamental-science-practices>).

**Form 9-1366  
(May 2018)**

**U.S. Department of the Interior  
U.S. Geological Survey  
Joint Funding Agreement  
FOR  
Water Resource Investigations**

**Customer #: 6000002538  
Agreement #: 25SJJFATX161000  
Project #: SJ009ME  
TIN #: 75--6000514**

9. Billing for this agreement will be rendered annually. Invoices not paid within 60 days from the billing date will bear Interest, Penalties, and Administrative cost at the annual rate pursuant the Debt Collection Act of 1982, (codified at 31 U.S.C. § 3717) established by the U.S. Treasury.

**USGS Technical Point of Contact**

Name: Marsha Gipson  
Branch Chief - North Texas  
Address: 501 W. Felix Street Bldg 24  
Fort Worth, TX 76115  
Telephone: (882) 444-6392  
Fax: (882) 316-5022  
Email: mgipson@usgs.gov

**Customer Technical Point of Contact**

Name: JoEtta Dailey  
Watershed Protection Manager  
Address: 1105 South Mayhill Rd  
Denton, TX 76208  
Telephone: (940) 349-7153  
Fax:  
Email: Joetta.dailey@cityofdenton.com

**USGS Billing Point of Contact**

Name: Kandis Becher  
Budget Analyst  
Address: 501 W. Felix Street Bldg 24  
Fort Worth, TX 76115  
Telephone: (882) 316-5051  
Fax: (882) 316-5022  
Email: kkbacher@usgs.gov

**Customer Billing Point of Contact**

Name: JoEtta Dailey  
Watershed Protection Manager  
Address: 1105 South Mayhill Rd  
Denton, TX 76208  
Telephone: (940) 349-7153  
Fax:  
Email: Joetta.dailey@cityofdenton.com

**U.S. Geological Survey  
United States  
Department of Interior**

**City of Denton**

**Signature**  
TIMOTHY RAINES  
Digitally signed by  
TIMOTHY RAINES  
Date: 2024.04.16  
09:33:09 -05'00'

By \_\_\_\_\_ Date: \_\_\_\_\_

**Name:** Timothy H. Raines  
**Title:** Director

**Signatures**

By \_\_\_\_\_ Date: \_\_\_\_\_

**Name:**

**Title:**

By \_\_\_\_\_ Date: \_\_\_\_\_

**Name:**

**Title:**

By \_\_\_\_\_ Date: \_\_\_\_\_

**Name:**

**Title:**



**City of Denton**  
**25SJFATX161000**

Site Information

Description	Code	Units	Diff. Factor	USGS Funds	Customer Funds	Total
Task: 1 - Surface Water Data Collection						
Site: 08052780 Hickory Creek Denton, TX						
Full Range Streamflow Station	QCONT	0.30	1.00	\$0	\$5,250	\$5,250
(USACE FW funds \$11,200)						
<b>Site Totals:</b>				<b>\$0</b>	<b>\$5,250</b>	<b>\$5,250</b>
<b>1 total site(s) under the Account Totaling:</b>				<b>\$0</b>	<b>\$5,250</b>	<b>\$5,250</b>
<b>Agreement Total:</b>				<b>\$0</b>	<b>\$5,250</b>	<b>\$5,250</b>

PROJECT	USGS FUNDS	CITY OF DENTON	TOTAL COST
SURFACE WATER: 00140	\$0	\$5,250	\$5,250
<b>AGREEMENT TOTAL:</b>	<b>\$0</b>	<b>\$5,250</b>	<b>\$5,250</b>



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-106, Version: 1**

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a Professional Services Agreement between the City of Denton and 1898 & Co., a division of Burns & McDonnell Engineering Company, Inc., amending the contract approved by City Council on August 1, 2023, in the not-to-exceed amount of \$892,320.00, said first amendment to add additional services as the Owner's Engineer for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7804-010 - providing for an additional first amendment expenditure amount not-to-exceed \$197,780.00, with the total contract amount not-to-exceed \$1,090,100.00).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement

**ACM:** Cassey Ogden

**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a Professional Services Agreement between the City of Denton and 1898 & Co., a division of Burns & McDonnell Engineering Company, Inc., amending the contract approved by City Council on August 1, 2023, in the not-to-exceed amount of \$892,320.00, said first amendment to add additional services as the Owner's Engineer for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7804-010 - providing for an additional first amendment expenditure amount not-to-exceed \$197,780.00, with the total contract amount not-to-exceed \$1,090,100.00).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

### **INFORMATION/BACKGROUND**

Denton Municipal Electric (DME) is proposing to relocate the electric meter data currently located on an on-premises database to the AWS "DME Utility Cloud". The Itron Meter Data Management System (MDMS) collects and stores detailed data from smart meters and other monitoring devices installed throughout the power grid. Itron MDMS does not allow querying on the hosted system, nor do they guarantee data integrity or performance if individuals are performing tasks other than the basic reporting tools Itron provides. Replicating the electric meter data on AWS "DME Utility Cloud" will allow DME to utilize the data in a more efficient and effective manner. This granular data provides a comprehensive view of electricity consumption patterns at various levels of the grid, allowing for better load forecasting and load profile creation. In addition, logging into the AWS Appstream environment is very cumbersome and takes a long period of time to connect, adding Always-on app-stream will correct this issue.

This change order requests additional efforts to augment DME's existing AWS cloud infrastructure and managed services. Specifically, to create an instance to store a replica of the Itron MDM data within the DME Utility Cloud environment. Leveraging the data within engineering applications will provide DME with the capability to conduct comprehensive load flow analysis and strategic planning. The Energy Management Office (EMO) can access near real-time information on load profiles and system conditions which assist them in improving load forecasting by capturing sudden changes or anomalies in load behavior. The new configuration will decrease egress charges of data transfer from the AWS "DME Utility Cloud".

Cost breakdown for AWS cloud services and additional amendment efforts:

	<b>Year One</b>	<b>Year Two</b>	<b>Year Three</b>
AWS Cloud Services	\$297,440	\$297,440	\$297,440
Meter Data Amendment		98,890	98,890
<b>New Contract Total</b>			<b>\$1,090,100</b>

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

On August 1, 2023, City Council approved a contract with 1898 & Co., a division of Burns & McDonnell Engineering Company, Inc., in the not-to-exceed amount of \$892,320 (Ordinance 23-1414).

### **RECOMMENDATION**

Award a contract to 1898 & Co., a division of Burns & McDonnell Engineering Company, Inc., to add additional services as the Owner's Engineer for Denton Municipal Electric, in a not-to-exceed amount of \$197,780, for a total amended contract amount of \$1,090,100.

### **PRINCIPAL PLACE OF BUSINESS**

1898 & Co., a division of Burns & McDonnell Engineering Company, Inc.  
Fort Worth, TX

### **ESTIMATED SCHEDULE OF PROJECT**

This contract expires on August 1, 2026.

### **FISCAL INFORMATION**

These services will be funded from DME TechOps Operating fund 600750.7899.9210. Requisition #164531 has been entered into the Purchasing software system in the amount of \$98,890. The total amended amount of this contract is \$1,090,100.

### **EXHIBITS**

Exhibit 1: Agenda Information Sheet  
Exhibit 2: Original Ordinance and Contract  
Exhibit 3: Ordinance and Amendment 1

Respectfully submitted:  
Lori Hewell, 940-349-7100  
Purchasing Manager

For information concerning this acquisition, contact: Jerry Looper, 940-349-7676.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. 23-1414

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH 1898 & CO, A DIVISION OF BURNS & MCDONNELL ENGINEERING COMPANY, INC., FOR PROFESSIONAL ENGINEERING SERVICES TO THE DENTON MUNICIPAL ELECTRIC SYSTEMS OPERATION DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFORE; AND PROVIDING AN EFFECTIVE DATE (RFQ 7804-010 - PROFESSIONAL SERVICES AGREEMENT FOR PROFESSIONAL SERVICES AWARDED TO 1898 & CO, A DIVISION OF BURNS & MCDONNELL ENGINEERING COMPANY, INC., IN THE THREE (3) YEAR NOT TO EXCEED THE AMOUNT OF \$892,320.00).

WHEREAS, on December 14, 2021, the City Council approved a pre-qualified professional services list of professional engineering services for Denton Municipal Electric (Ordinance 21-2687), and the professional services provider (the "Provider") mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; and

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees published by the professional associations applicable to the Provider's profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with 1898 & Co, a division of Burns & McDonnell Engineering Company, Inc., to provide professional engineering services for the City of Denton, a copy of which is attached hereto and incorporated by reference herein.

SECTION 2. The City Manager, or their designee, is authorized to expend funds as required by the attached contract.

SECTION 3. The City Council of the City of Denton, hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 4. The findings in the preamble of this ordinance are incorporated herein by reference.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Brian Beck and seconded by Brandon Chase McGee. This ordinance was passed and approved by the following vote [7 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Vicki Byrd, District 1:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Brian Beck, District 2:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Paul Meltzer, District 3:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Joe Holland, District 4:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Brandon Chase McGee, At Large Place 5:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Chris Watts, At Large Place 6:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>

PASSED AND APPROVED this the 15<sup>th</sup> day of August, 2023.

  
GERARD HUDSPETH, MAYOR

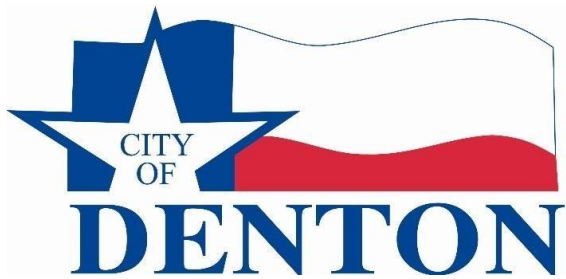
ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY



BY: Marcella Lunn  
Digitally signed by Marcella Lunn  
DN: cn=Marcella Lunn, o=City of Denton,  
email=marcella.lunn@cityofdenton.com, c=US  
Date: 2023.07.11 11:26:40 -05'00'



Docusign City Council Transmittal Coversheet

PSA	7804-010
File Name	Utility Network Cloud Management Services
Purchasing Contact	Christa Christian
City Council Target Date	AUGUST 1, 2023
Piggy Back Option	Not Applicable
Contract Expiration	AUGUST 1, 2026
Ordinance	23-1414

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND 1898 & Co., a division of BURNS & MCDONNELL  
ENGINEERING COMPANY, INC  
(CONTRACT 7804-010)**

**THIS CONTRACT** is made and entered into this date 08/01/2023, by and between 1898 & Co., a division of Burns & McDonnell Engineering Company, Inc., a Missouri corporation, whose address is 9400 Ward Parkway, Kansas City, Missouri 64114, hereinafter referred to as "Engineer," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**SCOPE OF SERVICES**

Engineer shall provide products and/or services in accordance with the Master Services and Solutions Agreement ("MSSA"), a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "B"**. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) 1898 Burns & McDonnell Master Services and Solutions Agreement "MSSA" (**Exhibit "B"**);
- (c) Certificate of Interested Parties Electronic Filing (**Exhibit "C"**);
- (d) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "D"**);

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

**Prohibition On Contracts With Companies Boycotting Israel**

Engineer acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer's signature provides written verification to the City that Engineer: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.



### **Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization**

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Engineer certifies that Engineer's signature provides written verification to the City that Engineer, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

### **Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

Engineer acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer's signature provides written verification to the City that Engineer: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

### **Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations**

Engineer acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate against a firearm entity or firearm trade association," "firearm entity" and "firearm trade association" shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer's signature provides written verification to the City that Engineer: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

### **Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies**

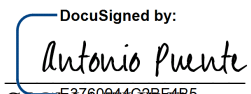
The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Engineer is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of Contract # 7804-010

China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.


DocuSigned by:  
  
F3760944C2BF4B5...  
SIGNATURE

Antonio Puente  
PRINTED NAME

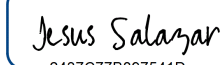
DME General Manager  
TITLE

Electric  
DEPARTMENT

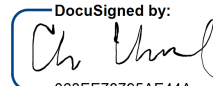
APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
BY:   
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ATTEST:  
JESUS SALAZAR,  
INTERIM CITY SECRETARY

DocuSigned by:  
BY:   
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**1898 & Co., a division of BURNS &  
McDONNELL ENGINEERING  
COMPANY, INC.**

DocuSigned by:  
BY:   
063EE78795AE44A...  
AUTHORIZED SIGNATURE

Date: 6/29/2023

Printed Name: Chris Underwood  
Title: Vice President

913.486.6858  
PHONE NUMBER

chris.underwood@1898andco.com

EMAIL ADDRESS  
2023-  
TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER

**CITY OF DENTON, TEXAS**

DocuSigned by:  
BY:   
5236DB296270423...  
SARA HENSLEY  
CITY MANAGER

Date: 08/01/2023

## **Exhibit A**

1. The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$892,320.00 in the manner and in accordance with the fee schedule as set forth in Exhibit B. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Exhibit B.
2. Unless otherwise terminated pursuant to MSSA Section 5 herein, this AGREEMENT shall be for a contract term of three (3) years, effective from date of award or notice to proceed as determined by the City of Denton Purchasing Department. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months as set forth in Exhibit B.

**Exhibit B**

1898 Burns & McDonnell Master Services and Solutions Agreement “MSSA”



## Exhibit B

### MASTER SERVICES AND SOLUTIONS AGREEMENT

This Master Services and Solutions Agreement ("MSSA") is made by and between City of Denton ("Client") and 1898 & Co., a division of Burns & McDonnell Engineering Company, Inc., a Missouri Corporation ("1898") this 13<sup>th</sup> day of AUGUST 2023 ("Effective Date").

Client from time to time requires professional services and/or technology solutions in connection with Client's business. Therefore, Client and 1898, in consideration of their mutual covenants, agree as follows:

#### SECTION 1 – GENERAL TERMS

- 1.1 1898 shall serve as Client's professional consultant as detailed in subsequent Task Orders to which this MSSA applies, and shall give consultation and advice to Client during the performance of 1898's services ("Services").
- 1.2 Services on any assignment shall be undertaken only upon written authorization of Client and agreement of 1898. The Parties shall use the form of Task Order attached hereto as **Exhibit 1**.
- 1.3 1898's Services will be performed solely for the benefit of Client and are not intended for the benefit of any other persons or entities.
- 1.4 1898 and Client shall execute additional documents ("Ordering Documents") to detail obligations and rights as between the Parties relating to software licenses, hardware, or services obtained from 1898 ("Solutions"). Such Solutions may be obtained from third-party providers ("Third-Party Solutions") or developed by 1898 ("1898 Solutions") and such Ordering Documents will be subject to the terms and conditions of this MSSA. Each capitalized term used in the MSSA has the meaning set forth herein.
- 1.5 If either Party desires to modify this MSSA, such modification shall be communicated in writing to the parties below. No modifications to this MSSA will be valid unless an amendment reflecting agreed to modifications is signed by both Parties.

#### SECTION 2 – SERVICES AND SOLUTIONS

- 2.1 Services. 1898 agrees to provide the Services and Solutions set forth in each Task Order. Unless otherwise agreed to in the Task Order, payments will be made on a time and materials basis. If applicable, 1898 shall quote all compensation for labor at the per hour rates specified in **Appendix A** to any associated Task Order.
- 2.2 Modifications. If Client desires to modify the Services or include additional services at any time during the term of an associated Task Order, Client shall describe the additional services or deliverables to 1898 in writing ("Change Notice"). Within fourteen (14) calendar days of such Change Notice, 1898 shall submit a proposal ("Change Order") which includes a statement of any additional compensation and, if the Change Notice is provided prior an initial acceptance of a deliverable, any additional time or other adjustments to the schedule resulting from the proposed Change Order. Upon Client's approval of a Change Order, 1898 shall issue a Change Order substantially in the format of **Exhibit 2**. Any additional deliverables or changes to the scope described in the Change Order shall be subject to acceptance testing as described in the associated Task Order.
- 2.3 Data Security. 1898 utilizes third-party hosting providers that have implemented industry standard security measures, systems, and procedures designed to protect against normally anticipated threats or hazards to the security or integrity of Client's Confidential Information. Upon request by Client, 1898 will provide a copy of the most recent service auditor's report for such third-party hosting providers.
- 2.4 Ownership of 1898 Solutions. If any 1898 proprietary software is part of the 1898 Solution or contained in the Ordering Documents, 1898 grants to Client a non-exclusive, non-transferable license to use the software, subject to the terms of this MSSA and the applicable Ordering Document. Client



## Exhibit B

represents that it has the authority to bind each User to the use restrictions set forth in this MSSA or, as applicable, in the Ordering Documents. The 1898 Solution is proprietary to 1898, is based upon and contains trade secrets and other Confidential Information provided however this Section is subject to the Texas Public Information Act. No right to use, print, copy, modify, create derivative works of, adapt, translate, distribute, disclose, decompile or reverse engineer the 1898 Solution is granted, except as expressly set forth in this MSSA or applicable Ordering Documents. 1898 reserves all right, title, and interest to the 1898 Solution, and the 1898 intellectual property contained therein licensed to Client pursuant to this MSSA and all rights not expressly granted hereunder. All license grants herein are conditioned upon receipt of payment pursuant to Section 4.

- 2.5 Ownership of Third-Party Solutions. Client's use rights and license limitations to any Third-Party Solution (a) shall be enumerated in the Ordering Documents; (b) such license is solely between the third-party and Client; (c) such license takes precedence if it conflicts with this MSSA; and (d) such third-party license may not be expanded by this MSSA. All right, title and interest to any third-party software, hardware, or service that is embedded or part of a Solution, including any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client, shall remain the property of such third-party provider. All license grants herein are conditioned upon receipt of payment pursuant to Section 4.
- 2.6 Ownership of Deliverables. Unless specifically identified in a Task Order, all right, title, and interest to any deliverable associated with the Services and Solutions will be solely owned by 1898 or its third-party provider. If Client acquires any rights, title, or interests in a deliverable delivered as part of the Services, Client will grant 1898 an exclusive, unlimited, irrevocable, fully paid, royalty-free, worldwide perpetual right to use, publicly display, create derivative works, modify, distribute, and reproduce such deliverable. Except as expressly set forth pursuant to this Agreement, 1898 or the Third-Party Solution provider (and its licensors, where applicable) will retain all intellectual property rights relating to the Solution or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client relating to the Solution, which are hereby assigned to 1898 or the Third-Party Solution provider.
- 2.7 Warranty – If any third-party goods or products are included as part of the 1898 Solution, the third-party supplier warranty will be provided in the Ordering Documents, the warranty shall be directly assigned to Client, and the warranty obligation and any remedies so provided shall be solely and exclusively as to between Client and third-party supplier. 1898 makes no warranty, express or implied, to Client with regards to Third-Party Solutions. Such warranty is conditioned upon receipt of full and final payment to 1898 by Client, for the Third-Party Solution under the applicable Task Order.

## SECTION 3 – CLIENT RESPONSIBILITIES

- 3.1 Usage. Client will not, and will use reasonable efforts to ensure that its employees, agents, contractors, or contingent workers that have access to any 1898 Solutions ("Users") do not: (a) sell, resell, lease, lend, or otherwise make available the 1898 Solutions in whole or in part to a third party; (b) modify, adapt, translate, reverse engineer or make derivative works of the 1898 Solutions; (c) knowingly transmit any viruses or programming routines intended to damage, surreptitiously intercept, or expropriate any system, data, or personal information; or (d) sublicense or operate the 1898 Solutions for timesharing, rental, outsourcing, or service bureau operations, or to train persons other than its Users. Client will manage and maintain communications, connections, and devices for its Users at all locations.

If Client acquires a Third-Party Solution pursuant to this MSSA, Client warrants it shall abide by the terms of any associated licensing or use rights agreements included in the Ordering Documents or attached hereto.

- 3.2 Credentials. Client will (a) credential all Users and determine the correct privileges for each User, (b) use reasonable efforts to ensure that all Users use the 1898 Solutions or Third-Party Solutions in



## Exhibit B

accordance with the Ordering Documents and for no other purpose, and (c) be responsible for any activities that occur under the Client's or Users' accounts or passwords.

- 3.3 Unauthorized Use. Client will use reasonable efforts to prevent unauthorized use of the 1898 Solutions or Third-Party Solutions, and to terminate any unauthorized use. Client will promptly notify 1898 of any unauthorized use of, or access to, the 1898 Solutions or Third-Party Solutions of which it becomes aware. Client agrees to provide information requested by 1898 to verify Client's compliance with this MSSA. Client is also responsible for (a) its security and privacy compliance, including obtaining consents and authorizations where necessary; (b) implementing reasonable security capabilities and policies and procedures to minimize or prevent unlawful access by Client or its Users, and access by unauthorized persons; and (c) any unlawful or unauthorized use by authorized persons.
- 3.4 Audit Rights. Not more than once per year, 1898 may, at its expense, audit Client's compliance with this Agreement or any underlying Task Orders or Ordering Documents. Any such audit will be conducted during Client's business hours and will not unreasonably interfere with Client's business activities. Client shall provide 1898 with all reasonable assistance and information required to enable it to determine whether Client is compliant this Agreement. If the audit reveals that Client has underpaid amounts due under this Agreement, Client shall pay such amounts within thirty (30) days after receiving notice, plus interest at the rate set forth in Section 4.3. If the audit reveals that Client has underpaid amounts totaling five percent (5%) or more of the amounts due in any year, Client shall reimburse 1898 for all reasonable costs, fees, and expenses associated with such audit within thirty (30) days after receiving notice.
- 3.5 Notification of Delays or Errors. Client shall provide timely notice to 1898 of any anticipated delays to the planned Services or Solutions caused by, or otherwise attributable to Client. Client shall also promptly notify 1898 of any errors, inconsistencies, or omissions Client discovers in the Services or Solutions. Unless promptly notified, 1898 shall not be responsible for any costs incurred by Client which would have been avoided if prompt notification had been given as required. 1898 shall be entitled to an equitable adjustment in schedule and compensation and will provide a Change Notice to Client to reflect time and cost impacts to the planned and efficient execution of the Services and Solutions.

## SECTION 4 – COMPENSATION

- 4.1 Compensation. Client shall pay 1898 for services rendered and reimbursable expenses as stated in the Task Order and pursuant to this Section 4.
- 4.2 Invoices. Unless otherwise agreed to in a specific Task Order, monthly invoices will be submitted by 1898 to Client for progress on Services performed in the previous month. Separate invoices will be issued upon delivery, or as further indicated in specific Task Orders or Ordering Documents, for 1898 Solutions or Third-Party Solutions.
- 4.3 Payments. Invoices are payable within 30 days of receipt of invoice. A late payment charge of one and a half percent (1.5%) per month or any partial month or the maximum amount allowed by law (whichever is less) will be added to amounts not received within thirty (30) days of the invoice date. Time is of the essence in payments of invoices, and timely payment is a material part of the consideration of this MSSA. Costs, including reasonable attorney's fees, incurred by 1898 in collecting any delinquent amount shall be reimbursed by Client. If a portion of 1898's invoice is disputed by Client, the undisputed portion shall be paid by Client by the due date. Client shall advise 1898 in writing of the basis for any disputed portion of any invoice.
- 4.4 Reserved.
- 4.5 Additional Services or Modified Services. For additional or modified Services, or reduced or changed or impacted scope of Services, the schedule, and compensation and amount of payment for the



## Exhibit B

applicable Task Order shall be adjusted by Change Order on a mutually agreeable basis. Labor shall be on an hourly rate schedule (found in Appendix A), or as otherwise agreed to by the Parties.

- 4.6 Expenses. Reimbursable expenses for such items as airfare, rental car, lodging, meals, postage, and shipping, and other such costs shall be billed to Client at 1898's direct cost.

### SECTION 5 – TERM & TERMINATION

- 5.1 Term. This MSSA shall remain effective until the later of (a) 90 days after the expiration of all Task Orders in accordance with this MSSA; (b) expiration of any Ordering Document, as and if applicable; or (c) termination of this MSSA as defined below. The term of each Task Order or other Ordering Document is set forth in the applicable Task Order or other Ordering Document. Third-Party Solutions may include a term different than stated herein and such term will be specific to such Third-Party Solution.
- 5.2 For Cause. Either Party may terminate this MSSA or any specific Task Order upon thirty (30) days' written notice in the event of substantial failure to perform a material requirement by the other party, including, but not limited to and by way of example, (a) payment by Client is a material requirement and breach by failure to timely pay undisputed amounts would be substantial failure; or (b) the confidentiality or license grant sections are material requirements, and breach of those sections shall be deemed a substantial failure to perform.
- 5.3 For Convenience. Either Party may terminate this MSSA upon ninety (90) days' written notice if all associated and applicable Task Orders and Ordering Documents have expired prior to such termination. In the event the Contract spans multiple fiscal years, the City's continuing performance under the Contract is contingent upon the appropriation of funds to fulfill the requirements of the Contract by the City Council of the City of Denton. If the City Council of the City of Denton fails to appropriate or allot the necessary funds, City shall issue written notice to Contractor that City may terminate the Contract without penalty, further duty, or obligation.
- 5.4 1898 Compensation. If the MSSA or any Task Order or Ordering Document is terminated in part or in whole for reasons other than the fault of 1898, 1898 shall be compensated for all undisputed amounts related to Services performed and expenses incurred prior to the date of termination in accordance with the provisions of Section 4 above.
- 5.5 1898 Liability. 1898 shall have no liability to Client or third parties for Services or Solutions (a) completed or modified by Client or others provided however 1898 will retain liability for any Services or Solutions provided prior to completion or modification; or (b) that are incomplete due to an early termination by either Party prior to final completion of 1898's Services under the Task Order; or (c) Third-Party Solutions provided however 1898 will retain liability for any Third Party Solutions for which Client does not execute a separate license agreement, including any errors or omissions or warranty obligations, if any of the same are applicable.
- 5.6 Survival. Sections 5.5, 7, 8, and 9 shall survive any termination of this MSSA or of a Task Order by any party.

### SECTION 6 – INSURANCE

- 6.1 1898 Insurance. During the course of performance of its Services, 1898 shall maintain the following insurance (all amounts stated are in U.S. Dollars):

*General Liability Insurance*, with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate.

*Automobile Liability Insurance*, with a combined single limit of \$1,000,000 for each accident.

*Workers' Compensation Insurance* in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each accident.





## Exhibit B

- 6.2 Client's Insurance. During the course of performance of its Services, Client shall maintain the following insurance (all amounts stated are in U.S. Dollars):

*General Liability Insurance*, with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate.

*Automobile Liability Insurance*, with a combined single limit of \$1,000,000 for each accident.

*Workers' Compensation Insurance* in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each accident.

*Umbrella/Excess Liability Insurance* coverage on a follow form basis and sitting excess of the Commercial General Liability, Automobile Liability, and Employers Liability Insurance required herein, with limits not less than \$3,000,000 per occurrence and general aggregate on a per project/location aggregate basis.

*All Risk Property Insurance* including coverage for Client's property, tools and equipment used and necessary in the performance of Services under this contract.

*Cyber Liability Insurance including coverage for Network Security and Privacy Liability* with a minimum limit of \$250,000 per claim and annual aggregate covering all network security and privacy injury liability risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure of information, network interruption, data restoration, media liability, cyber extortion, as well as notification costs and regulatory defense, in the performance of Services and Solutions under this contract.

6.2.1 Prior to commencing any services hereunder, Client shall provide 1898 with certificates evidencing that (a) all insurance obligations required by the Task Orders and Ordering Documents (as applicable) are in full force and in effect and will remain in effect for the duration required by such and (b) no insurance coverage will be canceled or renewal refused unless at least thirty (30) days' prior written notice is given to 1898.

6.2.2 Except for Workers Compensation and Employers Liability, the insurance policies required herein shall list 1898 as an additional insured. Client shall also require its other contractors to name 1898, along with Client as an indemnitee, the beneficiary of any waiver of subrogation, and with respect the other contractor's automobile, general liability, and excess liability policies of insurance as an additional insured.

- 6.3 Waiver of Subrogation. Client and 1898 waive against each other and their respective consultants, subcontractors, sub-subcontractors, agents and employees of each and all of them, all rights of recovery, and their insurer's rights of subrogation, for damages covered by property, automobile, or general liability insurance provided herein. Client and 1898 shall, where appropriate, require similar waivers of subrogation from consultants and subcontractors and shall require each of them to include similar waivers in their contracts.

## SECTION 7 – CONFIDENTIALITY

- 7.1 Confidential Information. The Parties hereby acknowledge that all non-public information provided by or relating to another Party ("Confidential Information") pursuant to this MSSA constitutes trade secrets and confidential information of the disclosing Party. Confidential Information includes, without limitation, (a) pre-existing works, (b) Client materials and data, (c) 1898's methods and designs, (d) either Party's client information, and (e) either Party's trade secrets or other intellectual property. No Party shall sell, transfer, disclose, display or otherwise make available any of another Party's Confidential Information or copies or portions thereof to any other entity or third party (other than employees and contractors on a need-to-know basis who are bound in writing by confidentiality obligations, which are no less protective than those contained herein and survive any termination or expiration of the employee's employment or contractor's agreement with the receiving Party), or



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otherwise use another Party's Confidential Information, except as expressly permitted under, and in compliance with, this MSSA. The Parties agree to secure and protect the other Parties' Confidential Information so as to maintain the proprietary and confidentiality rights of the disclosing Party therein, including appropriate instructions to and agreements with its employees and contractors. Without limiting the foregoing, each of the Parties shall use at least the same procedures and degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other Party under this MSSA, but in no event less than reasonable care.

- 7.2 Limitations. The provisions of this section do not apply to information: (a) generally available to, or known by, the public prior to the time of disclosure by the disclosing Party; (b) that becomes publicly known and made generally available after disclosure by the disclosing Party to the receiving Party through no action or inaction of the receiving Party; (c) which can be documented as previously known by the receiving Party prior to disclosure thereof by the disclosing Party; (d) disclosed to the receiving Party by a third party having no confidentiality obligations with respect to such information; (e) required by law to be disclosed by the receiving Party, provided that the receiving Party gives the disclosing Party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure; or (f) to the extent that the receiving Party has obtained written consent of the disclosing Party, but only to the extent expressly authorized in such written consent. 1898 acknowledges that the City of Denton must strictly comply with the Public Information Act, Chapter 552, Texas Government Code in responding to any request for public information related to this Agreement. This obligation supersedes any conflicting provisions of this Agreement. All written material submitted by 1898 to the City of Denton shall become property of the City upon receipt. Any portions of such material claimed by 1898 to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, chapter 552, and Texas Government Code.
- 7.3 Injunctive Relief. The Parties agree and acknowledge that money damages may not be an adequate remedy for any breach of this section and that a Party may, in its sole discretion, apply to any court of law or equity of competent jurisdiction for injunctive relief in order to prevent any such breach.

## SECTION 8 – SERVICES STANDARD OF CARE AND SOLUTION WARRANTY

- 8.1 1898 Solution Warranty. Unless otherwise stated in an Ordering Document, the 1898 Solution will be “as-is” without warranty, unless the applicable Task Order includes installation and User Acceptance Testing services (“UAT”) by 1898. Such UAT shall demonstrate that the 1898 Solution can function in the specified operating environment substantially in accordance with the documentation. After “go-live” or accepted as ready for production use, the software is thereafter provided “as-is” without warranty; provided, however, if Ordering Document includes an agreement for maintenance and support services, the coverage period under the Ordering Document shall apply from “go-live” or ready for production use date.
- 8.2 1898 Solution Warranty Remedy. In the event of a breach of the warranty in 8.1, 1898 will repair or replace the failing item so that it performs in accordance with such warranty. If, after repeated efforts (not to exceed six (6) months from the date 1898 receives written notice of the warranty breach), 1898 is unable to remediate such warranty claim, 1898 may refund that portion of any pre-paid fees from the date of the original warranty claim, as calculated in the Ordering Documents, as liquidated damages.
- 8.3 1898 Services. 1898 will perform the Services associated with the applicable Task Order consistent with the standards and practices of others providing similar services under similar circumstances at time of performance (“Standard of Care”). Client shall promptly notify 1898 in writing of any failure of 1898 to comply with this standard or any perceived deficiency in its Services. During performance of the Task Order, and for one year after completion of Services, should 1898 receive such notice, 1898 at its sole option, may (a) reperform the Services to bring the same into



## Exhibit B

conformance with the requirements of the Task Order and the applicable Standard of Care, or (b) 1898 may liquidate damages to Client by paying to Client, as refund or otherwise, that portion of the compensation for that portion of the Services which are found to be deficient, or otherwise were not able to be corrected or bought into conformance with Task Order requirements by reperformance or replacement after commercially reasonable attempts by 1898 to do so.

- 8.4 Third-Party Solution. 1898 offers no warranty for Third-Party Solutions, or any third-party products or goods. Any warranty provided to Client will be through the third-party provider of such Third-Party Solution, products, or goods, and Client will be directed to where those warranties are contained or can be found in the Ordering Documents. 1898 makes no warranty or representation, express or implied, and assumes no obligation or liability with regards to Third-Party Solutions, products, goods, or warranties, and Client shall look solely to those third parties for remedies or relief.
- 8.5 THE OBLIGATIONS AND RIGHTS UNDER THIS SECTION CONSTITUTE THE PARTIES' SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO ANY NON-CONFORMANCE OF SERVICE OR BREACH OF THIS WARRANTY.

## SECTION 9 – INDEMNIFICATION

- 9.1 General Indemnity. 1898 agrees to defend, indemnify, and hold Client harmless, and the other's officers, directors, and employees, from and against third party claims, liabilities, obligations, judgments, and causes of actions ("Third-Party Claims") and all losses, damages, or expenses (including reasonable attorney's fees) to the extent such losses, damages, and expenses are caused by the indemnitor's own negligent acts, errors, or omissions. In the event losses, damages, or expenses are caused by the joint or concurrent negligence of Client and 1898, they shall be borne by each party in proportion to its own negligence. The Parties expressly agree that no provision of the MSSA is in any way intended to constitute a waiver by Client of any immunities from suit or from liability that Client may have by operation of law.
- 9.2 Intellectual Property Indemnity. 1898 will defend, indemnify, and hold Client and its officers, directors, employees, and agents harmless from and against Third-Party Claims and associated costs and expenses (including reasonable attorneys' fees) to the extent arising out of an allegation that the 1898 Solution infringes a third party's U.S. patent, trademark, or copyright. 1898's indemnification obligation will not apply to the extent that the Third-Party Claim is based upon: (a) the use of any item in the 1898 Solution in combination with any other product if such combination is the proximate cause of the infringement; or (b) the use of the 1898 Solution in violation of this MSSA; (c) the use of the 1898 Solution not updated to the latest version offered by 1898 if such latest version incorporates modifications that would have avoided the infringement claim; (d) third party content supplied or transmitted by Client or Users; or (e) Third-Party Solutions. If there is a Third-Party Claim relating to Client's use of the 1898 Solution due to an infringement, or if, in 1898's opinion, any of the 1898 Solution is likely to become the subject of a Third-Party Claim of infringement, 1898 will at its option and expense, and as Client's sole and exclusive remedy, use reasonable efforts to procure the right for Client to use the 1898 Solution that is the subject of the infringement Third-Party Claim, replace or modify the 1898 Solution so that it becomes non-infringing, or terminate the 1898 Solution and provide Client with a refund of the item's license fee (calculated on a 5-year straight line depreciated basis) and any prepaid amounts for Services not yet performed.
- 9.3 Indemnification Process. To be indemnified, the party seeking indemnification must: (a) give the other party timely written notice of the Third Party Claim (unless the other party already has notice of the Third-Party Claim); (b) give the indemnifying party authority, information, and assistance for the Third-Party Claim's defense and settlement; and (c) not materially prejudice the indemnifying party's ability to satisfactorily defend or settle the Third-Party Claim. The indemnifying party has the right, at its option, to defend the Third-Party Claim at its own expense and with its own counsel. The indemnifying party has the right to settle the claim without the indemnified party's consent so long as the settlement does not require the indemnified party to pay any money or admit fault. The



## Exhibit B

indemnified party will have the right, at its option, to participate in the defense of the Third-Party Claim, with its own counsel and at its own expense, but the indemnifying party will retain control of the Third-Party Claim's defense.

- 9.4 Third-Party Solutions. As used in this Section 9, "Third-Party Claims", shall not include claims made by a Third-Party Solutions provider against a Party, or made by a Party against a Third-Party Solutions Provider, and indemnification obligations of one Party to the other in that case shall not apply.

### SECTION 10 - LIMITATION OF REMEDIES

Except with regards to Client's breach of Section 3 (Client Responsibilities), Section 4 (Compensation), Section 7 (Confidentiality), or with regards to Third-Party Claims under Section 9 (Indemnification), the following limitations of remedies as to between the parties shall apply:

- 10.1 Mutual Waiver of Consequential Damages. Neither party is liable for any special, indirect, incidental, punitive, or consequential damages to the other. The excluded damages include, but are not limited to, by way of example, loss of profits; loss of savings or revenue; loss of use of the equipment, sublicensed software, licensed software, services, or data; cost of capital; cover costs, or cost of any substitute performance or replacement of equipment, facilities or services; third party consequential damages; and damage or loss property.
- 10.2 1898 Not Responsible for Third-Party Solutions. Subject to Section 5.5, 1898 is not liable for any damages of any kind or nature related to or arising from a Third-Party Solution or any third party product or services. Any liability limitations set forth in the Ordering Documents state the maximum liability of the applicable Third-Party Solution including any representations, warranties, indemnification obligations, limitations of remedies, release or waiver of damages, and any other rights, duties, responsibilities, or obligations between Client and Third Party with respect to that Third-Party Solution. 1898 shall be considered an agent of Client with regards to the procurement of Third-Party Solutions, and otherwise all rights and remedies against Third-Party Solutions provider found under the applicable Order Documents; Client accepts such assignment, and Client waives and releases 1898 from any and all damages or liabilities arising out of Third-Party-Solutions, and Client shall look solely to Third-Party Solutions provider for any enforcement or remedy.
- 10.3 1898 Limitation of Liability. Notwithstanding any other provision herein, 1898's maximum liability to Client for all claims arising out of or related to any individual Task Order or 1898 Solution shall be limited to the specific remedies provided herein, but shall not exceed the greater of \$100,000 USD or the amount paid by Client to 1898 under the applicable Task Order or applicable 1898 Solution Ordering Document, EXCLUDING any amounts paid for Third-Party Solutions. The maximum liability of 1898 to Client for all aggregated claims arising under this MSSA for all Task Orders and 1898 Solutions is limited to the amount paid by Client to 1898 during the twelve (12) months preceding the event giving rise to the most recent claim. The limitations of liability provided herein in this subsection 10.3 shall apply should it be judicially determined that the specific remedies provided elsewhere in this MSSA fail in their essential purpose.
- 10.4 Allowable Remedies. To the greatest extent allowed by law, the damages waived or excluded, or otherwise limited in this SECTION 10 Limitation of Remedies, shall be allowed, and shall apply to any and all claims or causes of action as to between the parties, including but not limited to breach of contract, breach of warranty, any tort claim including negligence, strict liability, or any other legal or statutory theory of recovery.

### SECTION 11 – GENERAL

- 11.1 Dispute Avoidance and Resolution. The parties are fully committed to working with each other during the term of this MSSA and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Client and 1898 each



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commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays, and disruptions.

- 11.2 Jury Trial Waiver. Each party hereto waives trial by jury, and such waiver shall be binding upon their successors and assigns. Each party agrees not to name any employees of the other party individually in a suit, demand, or claim except to establish jurisdiction or venue, and to promptly dismiss such employee if the other party submits to jurisdiction and venue.
- 11.3 Dispute Resolution. For any claim, dispute, or controversy, Client and 1898 will first attempt to resolve such claim, dispute, or controversy through discussions between Client representatives and 1898 representatives designated by each party at such time as a claim, dispute, or controversy should arise.
- 11.3.1 If a claim, dispute, or controversy cannot be resolved through Client representatives and 1898 representatives, the persons who signed the MSSA agreement ("Signatories") shall, upon the written request of either party, meet as soon as conveniently possible in the United States at a mutually agreed location, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such claim, dispute, or controversy. Prior to any meetings between the Signatories, the parties will exchange relevant information that will assist the parties in resolving the claim, dispute, or controversy.
- 11.3.2 If after such meeting, the Signatories determine that the claim, dispute, or controversy cannot be resolved on terms satisfactory to both parties, the parties shall submit the claim, dispute, or controversy to mediation. The mediation shall be conducted by a mutually agreeable impartial mediator jointly selected or, if the parties cannot so agree, a mediator designated by the American Arbitration Association (AAA) pursuant to its Commercial Arbitration Rules and Mediation Procedures from the panel of technology mediators. The mediation will be held in the city of Denton, Texas (unless otherwise agreed in writing) and governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.
- 11.3.3 If a dispute is not resolved by mediation, then the Client and 1898 agree to consent to the jurisdiction and venue of the courts in the State of Texas, United States of America.
- 11.4 Recovery of Attorney Fees. The prevailing party in any litigation, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.
- 11.5 Governing Law, Jurisdiction, and Venue.
- 11.5.1 This MSSA, and any cause of action between the parties, shall be governed by the laws of the State of Texas. Under no circumstances does either Party agree to, or submit itself to, the jurisdiction of any foreign court or tribunal. Parties agree to jurisdiction and venue of the Eastern District Court of Texas, and parties waive any objection to federal jurisdiction or venue in this court, and otherwise agree not to oppose removal from state court to this federal court if action should be first filed in state court; but if federal jurisdiction cannot be established, then jurisdiction and venue shall be found solely in the District Court of Denton County, Texas.
- 11.5.2 It is agreed that as to between the parties involving this MSSA and any Task Order or 1898 Solutions Ordering Document, none of these will be subject to the Uniform Computer Information Transactions Act ("UCITA") (formerly the proposed Article 2B of the Uniform Commercial Code) or any version or revision of UCITA.
- 11.6 Solely with regards to THIRD-PARTY SOLUTIONS:





## Exhibit B

- 11.6.1 If an Ordering Document for Third-Party Solutions specifies Governing Law, Jurisdiction, or Venue, then as to between Third-Party Solutions Provider and Client, that Ordering Document shall control, otherwise governing law shall be Texas and venue shall be in Denton County, Texas.
- 11.6.2 If the Third-Party Solutions ordering document specifies UCITA shall apply, then it shall apply but only as to between the Client and the Third-Party Solutions Provider and that Ordering Document.
- 11.7 Force Majeure. Neither Party shall be considered in default of this MSSA for delays or failure to perform which is caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this MSSA, such circumstances include, but are not limited to, where ever the work or services are to be provided or performed, including but not limited to and by way of example: abnormal weather conditions; floods; earthquakes; lightning; smoke; explosion, wind; water; volcanic eruptions; tidal waves; landslide; hail; fire; epidemics or pandemics; war, riots, and labor disturbances; terrorism; sabotage; third-party criminal acts; electrical; mechanical; telecommunication; cable or satellite failure; facility outages; power interruptions; short circuits; surges; brownouts; failure of the Internet; judicial restraint; order of government authority, organized labor actions, changes in law after the Effective Date; Acts of God; and any inability to procure any of the supplies, materials, accesses, or services required to be provided by either Party under this MSSA (Force Majeure Events).
- Should such circumstances occur, the non-performing Party shall, within 5 days of being prevented from performing, give written notice to the other Party describing the Force Majeure Event, and the circumstances preventing continued performance and the efforts being made to mitigate impacts and resume performance of this MSSA. Force Majeure Events that impact the planned and efficient execution of any Task Order or Ordering Document, including impacts to the scope, schedule, cost to perform, or involving any additional costs or time involved with suspension, protection of 1898's work, demobilization, mitigation costs, increased risks of performance or acceptance, or costs to resume Services, and equitable adjustment in time and compensation shall be subject of a Change Notice and Change Order.
- In the event that any Task Order duration is suspended or extended due to no fault of 1898 for more than sixty (60) days beyond the planned date for final completion of the Task Order, the Services of 1898 required beyond that time shall be performed as additional services pursuant to the hourly rates stated in Appendix A, while both parties pursue in good faith an equitable adjustment in compensation and time for completion by Change Order.
- 11.8 Assignment. This MSSA shall inure to the benefit and be binding upon the Parties, their successors and assigns of the respective Parties hereto, provided however, that neither party shall assign, in whole or in part, its interest under this MSSA or any Task Order without the prior written consent of the other Party.
- 11.9 Beneficiaries. This MSSA and any Task Order or Ordering Document are solely for the benefit of the parties, and there are no other third-party beneficiaries under this MSSA or any Task Order or Ordering Document.
- 11.10 Entire Agreement. This MSSA, as supplemented by the Task Order(s) and Ordering Document(s), represents the entire and integrated agreement between Client and 1898 as to the Services and solutions herein and supersedes all prior negotiations, representations or agreements, either written or oral, relative to the Services and solutions described herein.
- 11.11 Precedence. In the event of inconsistencies between the terms contained in the MSSA and a Task Order or Ordering Document, the Task Order or Ordering Document shall take precedence. The terms of this MSSA will control over the terms contained in any purchase order.



## Exhibit B

11.12 Exhibits. Attached hereto are the following exhibits and attachments which are incorporated herein by reference:

- Exhibit 1 – Task Order template
- Exhibit 2 – Change Order template
- Exhibit 3 - Contractor's Task Order

Task Order Documents – To be determined on a transactional basis  
Ordering Documents – To be determined on a transactional basis

11.13 Authorized Signatories. The persons signing below warrant and represent that they are authorized to execute this MSSA on behalf of their respective companies.

11.14 International Terms. To the extent that any Task Order is located outside of the United States or any 1898 Solution is used outside of the United States, the following additional terms apply.

- 11.14.1 English shall be the official language of this MSSA and of all documents prepared by 1898, as well as those furnished by Client to 1898 for use with any Services or 1898 Solution. In the event of any conflict between documents, the English version shall prevail.
- 11.14.2 All payments hereunder, by either party, shall be in United States Dollars.
- 11.14.3 To the extent permitted by law, Client waives any claims under decennial liability laws of any country and agrees that any claims against 1898 shall be made no later than one (1) year after completion of 1898's Services or Client's acquisition of any 1898 Solution.
- 11.14.4 Exchange rate on any damages awarded to either Party shall be based on the rate in effect on the date the Task Order and/or Ordering Document was entered into for the specific dispute.
- 11.14.5 This MSSA is excluded from the provisions of the United Nations Convention on the International Sale of Goods.
- 11.14.6 Taxes paid by 1898 to taxing authorities outside of the United States are not included in the fees, such as tax withholdings, transaction taxes, value-added taxes ("VAT") and similar taxes. All such excluded taxes not included in the fees are to be paid by Client.

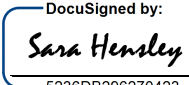


## Exhibit B

IN WITNESS WHEREOF, the parties have executed this MSSA the day and year first written above.

**City of Denton**

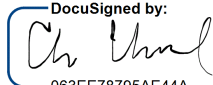
**Burns & McDonnell Engineering Company, Inc.**

By:   
5236DB296270423...

Name: Sara Hensley

Title: City Manager

Date: 08/01/2023

By:   
063EE78795AE44A...

Name: Chris Underwood

Title: Vice President

Date: 6/29/2023



**EXHIBIT 1**

**TASK ORDER #20**

This Task Order ("Task Order") is entered into and authorized by **City of Denton** ("Client") and 1898 & Co., a division of Burns & McDonnell Engineering Co, Inc. ("1898") on the last date of execution below ("Effective Date"). The Parties agree that the 1898 shall perform the following Services in accordance with the terms of the Master Software Services and Solutions Agreement dated \_\_\_\_\_, \_\_\_\_\_ ("MSSA").

1. Scope of Services. (Describe Services here, or in attached **Attachment 20** )

2. Compensation. The basis of compensation for the above Services shall be:

- ☐ Lump Sum Fee of \$ \_\_\_\_\_
- ☐ Hourly Rate per Appendix 2  
Subject to a Not-to-Exceed Cap of \$ \_\_\_\_\_, without further authorization
- ☐ Hourly Rate per Appendix 2  
With no maximum
- ☐ Other, as follows (describe below):

3. Other Terms. (Describe below)

A. The terms of this Task Order supersede any contrary terms of the MSSA.

IN WITNESS WHEREOF, the parties have executed this Task Order the day and year first written above.

**City of Denton**

**Burns & McDonnell Engineering Company, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## **EXHIBIT 2**

### ***CHANGE ORDER [TEMPLATE]***

This Change Order shall modify the terms and conditions in the Master Software Services and Solutions Agreement dated \_\_\_\_\_, \_\_\_\_\_ ("MSSA") under which 1898 & Co., a division of Burns & McDonnell Engineering Co, Inc. ("1898") provides Services to **City of Denton** ("Client") pursuant to Task Order \_\_\_\_\_ ("Task Order").

1898 is hereby authorized and directed to make the changes to the Task Order and its related scope of work as set forth herein. To the extent the terms and conditions set forth herein are inconsistent with or contradict the terms of the MSSA or Task Order, these amended terms and conditions shall supersede such inconsistent or contradictory terms. Except as amended hereby, the MSSA shall remain in full force and effect. This Change Order supersedes all proposals or other prior acknowledgements, oral or written, and all other communications between the parties relating to the subject set forth herein.

1. Adjusted Scope of Services. 1898 shall perform the Services as set forth in **Appendix 2**, which shall be incorporated into this Change Order by reference.
2. **Supplemental or Modified Terms and Conditions. [IF NEEDED]**
3. Compensation. To compensate 1898 for the supervision, labor, materials, equipment, supplies and other costs or risks necessarily incurred to perform the Services required by this Change Order or to credit Client for the supervision, labor, materials, equipment, and supplies deducted from the Services, the Compensation included in the Task Order shall be adjusted as follows:

**Exhibit C**  
**Certificate of Interested Parties Electronic Filing**

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

**Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.**

The contractor shall:

1. Log onto the State Ethics Commission Website at :  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) with the contract number in the subject line.  
(EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

**CONFLICT OF INTEREST QUESTIONNAIRE -****FORM CIQ****For vendor or other person doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1 Name of vendor who has a business relationship with local governmental entity.**

1898 & Co. a division of Burns &  
McDonnell Engineering Company,

Inc.

**2 ☐ Check this box if you are filing an update to a previously filed questionnaire.**
☐

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information in this section is being disclosed.**

\_\_\_\_\_  
Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☒

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☒

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐

Yes

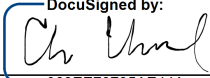
☒

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4 ☒ I have no Conflict of Interest to disclose.****5**

DocuSigned by:



6/29/2023

Signature of Vendor doing business with the governmental entity

Date

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

- (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
  - (i) a contract between the local governmental entity and vendor has been executed; or
  - (ii) the local governmental entity is considering entering into a contract with the vendor;
- (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
  - (i) a contract between the local governmental entity and vendor has been executed; or
  - (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
  - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
  - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
  - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
  - (1) the date that the vendor:
    - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
    - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
  - (2) the date the vendor becomes aware:
    - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
    - (B) that the vendor has given one or more gifts described by Subsection (a); or
    - (C) of a family relationship with a local government officer.

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> degree of affinity (marriage) or consanguinity (blood or adoption)

**City Official:** for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

**Vendor:** a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

**Certificate Of Completion**

Envelope Id: 831F8937CC974003AD0CA0DD154D5569

Status: Completed

Subject: Please DocuSign: City Council Contract 7804-010 Utility Network Cloud Management Services

Source Envelope:

Document Pages: 23

Signatures: 8

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Envelope Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.104

**Record Tracking**

Status: Original

Holder: Christa Christian

Location: DocuSign

6/27/2023 8:40:54 AM

Christa.Christian@cityofdenton.com

**Signer Events****Signature****Timestamp**

Christa Christian

**Completed**

Sent: 6/27/2023 8:45:46 AM

christa.christian@cityofdenton.com

Viewed: 6/27/2023 8:46:00 AM

Purchasing Supervisor

Signed: 6/27/2023 8:46:17 AM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 6/27/2023 8:46:20 AM

lori.hewell@cityofdenton.com

Viewed: 6/27/2023 12:39:42 PM

Purchasing Manager

Signed: 6/27/2023 12:40:18 PM

City of Denton

Signature Adoption: Pre-selected Style

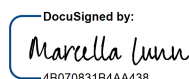
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Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 6/27/2023 12:40:20 PM

marcella.lunn@cityofdenton.com

Viewed: 6/28/2023 4:23:33 PM

Mack Reinwand City Attorney

Signed: 6/28/2023 4:29:54 PM

City of Denton

Signature Adoption: Pre-selected Style

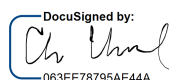
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Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Chris Underwood



Sent: 6/28/2023 4:29:57 PM

chris.underwood@1898andco.com

Viewed: 6/29/2023 5:01:53 PM

Vice President

Signed: 6/29/2023 5:10:54 PM

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Drawn on Device


Using IP Address: 136.32.73.210

Signed using mobile

**Electronic Record and Signature Disclosure:**

Accepted: 6/29/2023 5:01:53 PM

ID: 32d3aa5b-ae21-42cd-9df5-dbc0662e44cc

Signer Events	Signature	Timestamp
Antonio Puente Antonio.Puente@cityofdenton.com DME General Manager Security Level: Email, Account Authentication (None)	 <p>DocuSigned by: Antonio Puente E3760944C2BF4B5...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	Sent: 6/29/2023 5:10:56 PM Viewed: 6/29/2023 5:17:43 PM Signed: 6/29/2023 5:18:16 PM

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Cheyenne Defee  
 cheyenne.defee@cityofdenton.com  
 Procurement Administration Supervisor  
 City of Denton  
 Security Level: Email, Account Authentication (None)

**Completed**

Using IP Address: 198.49.140.104

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 Signed: 8/2/2023 8:04:27 AM

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Sara Hensley  
 sara.hensley@cityofdenton.com  
 City Manager  
 City of Denton  
 Security Level: Email, Account Authentication (None)



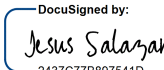
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Sara Hensley  
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Signature Adoption: Pre-selected Style  
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 Signed: 8/2/2023 8:39:12 AM

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Jesus Salazar  
 jesus.salazar@cityofdenton.com  
 Security Level: Email, Account Authentication (None)



DocuSigned by:  
Jesus Salazar  
2437C77B897541D...

Signature Adoption: Pre-selected Style  
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 Signed: 8/2/2023 8:48:52 AM

**Electronic Record and Signature Disclosure:**  
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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee  
 cheyenne.defee@cityofdenton.com  
 Procurement Administration Supervisor  
 City of Denton  
 Security Level: Email, Account Authentication (None)

**COPIED**

Sent: 6/27/2023 8:46:19 AM

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 6/29/2023 5:18:19 PM Viewed: 7/5/2023 1:19:46 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 8/2/2023 8:48:54 AM
Jerry Looper jerry.looper@cityofdenton.com System Operations and Compliance Division Manager Denton Municipal Electric Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 7/24/2023 2:25:01 PM ID: e03664b6-1aff-4aea-9871-f543a0863828	COPIED	Sent: 8/2/2023 8:48:55 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Envelope Updated	Security Checked	7/6/2023 9:22:01 AM
Certified Delivered	Security Checked	8/2/2023 8:47:49 AM
Signing Complete	Security Checked	8/2/2023 8:48:52 AM
Completed	Security Checked	8/2/2023 8:48:55 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		



## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A FIRST AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF DENTON AND 1898 & CO., A DIVISION OF BURNS & MCDONNELL ENGINEERING COMPANY, INC., AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON AUGUST 1, 2023, IN THE NOT-TO-EXCEED AMOUNT OF \$892,320.00, SAID FIRST AMENDMENT TO ADD ADDITIONAL SERVICES AS THE OWNER'S ENGINEER FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7804-010 - PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$197,780.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$1,090,100.00).

WHEREAS, on August 1, 2023, City Council awarded a contract to 1898 & Co., a division of Burns & McDonnell Engineering Company, Inc. in the amount of \$892,320.00, for professional engineering services for the Denton Municipal Electric Systems Operation Department; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; and

WHEREAS, the additional fees under the proposed First Amendment are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees applicable to the Provider's profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The First Amendment, increasing the amount of the contract between the City and 1898 & Co., a division of Burns & McDonnell Engineering Company, Inc., which is on file in the office of the Purchasing Agent, in the amount of One Hundred Ninety-Seven Thousand Seven Hundred Eighty and 0/100 (\$197,780.00) Dollars, is hereby approved, and the expenditure of funds therefor is hereby authorized in accordance with said amendment which shall be effective upon the execution of the amendment attached hereto. The total contract amount increases to \$1,090,100.00.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. This ordinance was passed and approved by the following vote [\_\_\_\_ - \_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

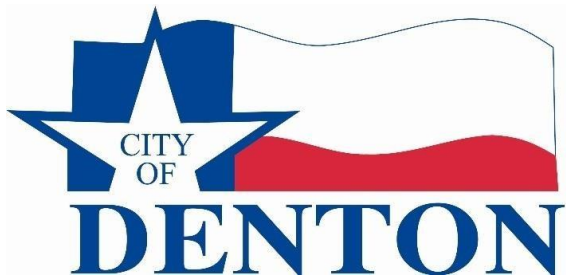
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Gunn



Docusign City Council Transmittal Coversheet

FILE	7804-010
File Name	Utility Network Cloud Management Services, Amendment 1
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

THE STATE OF TEXAS                   §  
  §  
COUNTY OF DENTON                   §

FIRST AMENDMENT TO CONTRACT  
BY AND BETWEEN THE CITY OF DENTON, TEXAS  
AND 1898 & Co., a division of BURNS & MCDONNELL ENGINEERING  
COMPANY, INC (CONTRACT 7804-010)

THIS FIRST AMENDMENT TO CONTRACT 7804-010 (this “Amendment”) by and between the City of Denton, Texas (“City”) and 1898 & Co., a division of BURNS & MCDONNELL ENGINEERING COMPANY, INC (“Engineer”) to that certain contract executed on August 1, 2023, in the original not-to-exceed amount of \$892,320.00 (the “Agreement”); for services related to the **1898 Burns & McDonnell Master Services and Solutions Agreement “MSSA” for the Utility Network Cloud Management Services**

WHEREAS, the City deems it necessary to further expand the services provided by Contractor to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$197,780 with this First Amendment for an aggregate not-to-exceed amount of 1,090,100.00; and

FURTHERMORE, the City deems it necessary to further expand the goods/services provided by Engineer to the City;

NOW THEREFORE, the City and Engineer (hereafter collectively referred to as the “Parties”), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1. The additional services described in Exhibit “A” of this Amendment, attached hereto and incorporated herein for all purposes, for additional services and materials related to the Utility Network Cloud Management Services are hereby authorized to be performed by Engineer. For and in consideration of the additional services to be performed by Engineer, the City agrees to pay, based on the cost estimate detail attached.
2. This Amendment modifies the Agreement amount to provide an additional \$197,780 for the additional services with a revised aggregate not to exceed total of \$1,090,100.

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

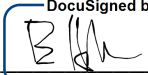
IN WITNESS WHEREOF, the City and the Contractor, have each executed this Amendment, by and through their respective duly authorized representatives and officers on this date\_\_\_\_\_.

“City”

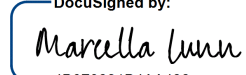
CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By: \_\_\_\_\_  
AUTHORIZED SIGNOR, TITLE

1898 & Co., a division of BURNS & McDONNELL ENGINEERING COMPANY, INC.

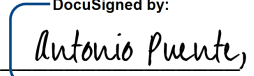
DocuSigned by:  
 Director, Geospatial Technologies  
By: \_\_\_\_\_  
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AUTHORIZED SIGNOR, TITLE

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
 Marcella Lunn  
By: \_\_\_\_\_  
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ATTEST:  
LAUREN THODEN, CITY SECRETARY  
By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational  
obligations and business terms.

DocuSigned by:  
 Antonio Puente, Jr.  
By: \_\_\_\_\_  
F3760944C2BF4B5...  
SIGNATURE PRINTED NAME

DME General Manager  
\_\_\_\_\_  
TITLE  
Electric  
\_\_\_\_\_  
DEPARTMENT





**PROPOSAL FOR**

# **AWS Cloud Infrastructure to Support MDM Data Storage & 'Always-On' AppStream 2.0**

Submitted To: Denton Municipal Electric

Date: March 26, 2024





March 26, 2024

Mr. Jerry Looper  
Denton Municipal Electric  
601 E Hickory St.  
Denton, TX 76205

Re: Proposal for AWS Cloud Infrastructure to Support MDM Data Storage and 'Always-On' AppStream 2.0

Dear Mr. Looper:

1898 & Co., a division of Burns & McDonnell, is pleased to present the proposal below to Denton Municipal Electric (DME) for AWS cloud infrastructure provisioning and managed services for MDM data storage and 'Always-On' AppStream 2.0, provided by our cloud partner, CyberTech Systems & Software Inc., on a 2-year term as an addendum to the existing Managed ArcGIS Cloud Services agreement to support DME's efforts for generating customer load profiles, for future integration with DNV Synergi for engineering modeling, and usage of ArcGIS Pro and Designer XI.

The proposal covers specifications for provisioning of a single compute environment (Production), the products to be implemented, managed services, support and service level agreements, operations and governance, and pricing.

1898 & Co. looks forward to working with Denton Municipal Electric on this important initiative. If you have any questions about our proposal, please contact me at 816-652-2820 or [brian.hiller@1898andco.com](mailto:brian.hiller@1898andco.com).

Sincerely,

A handwritten signature in black ink, appearing to read "B. Hiller", is positioned above the typed name.

Brian Hiller, MBA  
Director, Geospatial Technologies  
1898 & Co.

## Background

Denton Municipal Electric (DME) will be utilizing AWS-based cloud data storage to store long-term Itron IEE meter data to facilitate the production of customer load profiles, and for future integration with DNV Synergi for engineering modeling. In addition, DME would like to use the 'Always-On' AppStream 2.0 configuration for ArcGIS Pro and Designer XI. The 1898 & Co. proposal lays out details of the scope of services ("SOW") to be provided by our cloud partner, CyberTech Systems & Software Inc., for cloud infrastructure provisioning and managed cloud services for a single production environment.

## Managed MDM AWS Cloud Storage and 'Always-On' AppStream for Denton Municipal Electric (DME)

### Services Provided

CyberTech shall provide the services described in this section.

Service	Details	In-Scope Components
Cloud Provisioning <ul style="list-style-type: none"> <li>1 Production Environment</li> </ul>	<ul style="list-style-type: none"> <li>Cloud infrastructure, security infrastructure and network provisioning</li> <li>Installation and licensing of SQL Server on EC2</li> <li>Security scan of the environment</li> <li>Planning and configuring backup and retention</li> <li>Configuring monitoring</li> </ul>	<ul style="list-style-type: none"> <li>AWS EC2 for IEE Task Manager</li> <li>AWS EC2 for SQL Server</li> <li>AWS S3 Intelligent Tier</li> <li>AWS Transfer Family</li> </ul>
Cloud Provisioning <ul style="list-style-type: none"> <li>2 'Always-On' AppStream 2.0</li> </ul>	<ul style="list-style-type: none"> <li>Provision and configure 'Always-On' AppStream 2.0 for Designer XI and ArcGIS Pro</li> </ul>	<ul style="list-style-type: none"> <li>AWS 'Always-On' AppStream 2.0</li> </ul>
Monitoring Services	<ul style="list-style-type: none"> <li>System vitals of cloud components</li> <li>System processes</li> <li>Alerts</li> <li>24*7 Monitoring</li> </ul>	<ul style="list-style-type: none"> <li>AWS Cloud Infrastructure</li> </ul>
Incidents	<ul style="list-style-type: none"> <li>Incident resolution</li> <li>Recommendations</li> </ul>	
Service Requests	<ul style="list-style-type: none"> <li>Change management</li> <li>L2 support: Dedicated service desk (Monday - Friday, 8 AM to 5 PM CST)</li> </ul>	

**Note** — CyberTech will provide managed services for the AWS infrastructure provisioned for MDM data storage. Itron will provide managed services for Itron software, i.e., IEE Task Manager and IEE SQL Database. CyberTech will provide the Itron team with the necessary access to provide these managed services. A RACI matrix will be defined during the project kickoff.

### MDM Data Cloud Infrastructure Requirements

Components	Details
AWS Compute environments	<ul style="list-style-type: none"> <li>1 Production (Two 1-Year Reserved instances)</li> </ul>

## Denton Municipal Electric / AWS Cloud Infrastructure to Support MDM Data Storage &amp; 'Always-On' AppStream 2.0

Products on the Cloud	<ul style="list-style-type: none"> <li>• IEE Task Manager</li> <li>• MDM Data <ul style="list-style-type: none"> <li>• Initial Load – 2.5 TB</li> <li>• Monthly Load – 250 GB/Month</li> </ul> </li> </ul>
AWS Services	<ul style="list-style-type: none"> <li>• Windows EC2 Instance for IEE Task Manager</li> <li>• Windows SQL Server for MDM Data Storage – 15 TB (5 years)</li> <li>• S3 Intelligent Tier for archiving MDM Data (After 5 years)</li> <li>• AWS Transfer Family (1-2 TB Bulk Data Download outside of AWS)</li> </ul>

## MDM Data Cloud Infrastructure Specifications (Only Production Environment)

Component	Server Instance	Specs	Disk Type	Total Disk Size
IEE Task Manager	1	Windows Server 2022 4 vCPUs, 16 GB RAM	General Purpose SSD	256 GB
IEE SQL DB Server	1	Windows Server 2022 8 vCPUs, 96 GB RAM	General Purpose SSD	15 TB
AWS S3	1	Intelligent Tier	N/A	250 GB
AWS Data Transfer	1	Inbound and Outbound	N/A	Inbound 250 GB Outbound 1 TB

## 'Always-On' AppStream 2.0 Specifications

Components	Details
Compute environments	Always-On AppStream 2.0
Products on the Cloud	ArcGIS Pro Designer XI
AWS Services	AWS AppStream 2.0

## 'Always-On' AppStream 2.0 Usage Parameters

The AppStream 2.0 usage parameters are identical to the ones used to design the AppStream component for the initial engagement.

Vectors	ArcGIS Pro	Designer XI
Number of users per month (Total number of unique users launching AppStream 2.0 in a month)	15	50
Number of working hours per day (the maximum number of hours per day that AppStream 2.0 may be used)	8	8
<b>Weekday Usage</b>		
Days in week (number of working days in a week)	5	5
Peak duration (hours) per day (Number of peak hours in a day)	5	4
Average off-peak concurrent users per hour (Number of concurrent users during off-peak hours)	1	1

Vectors	ArcGIS Pro	Designer XI
Average peak concurrent users per hour (Number of concurrent users during peak hours)	10	20
<b>Weekend Usage</b>		
Days in weekend (Number of working days in a weekend)	2	2
Peak duration (hours) per day (Number of peak hours in a weekend)	5	5
Average off-peak concurrent users per hour (Number of concurrent users during off-peak hours in a weekend)	2	2
Average peak concurrent users per hour (Number of concurrent users during peak hours in a weekend)	2	2

## Operations and Governance

Both parties will use the following governance structure to address any issues and conflicts.

### Escalation Process

The engagement will facilitate a monthly call with the engagement manager and a quarterly status review with CyberTech executive management and Client team. All the escalation team members' contact details will be made available to the Client team and can be reached any time for any issue escalation.

- **Manager-Level Meetings:** CyberTech and Client governance team will participate in monthly status meetings.
- **Key Stakeholder Meetings:** Additionally, CyberTech and Client will hold quarterly meetings to discuss any outstanding issues and the overall strategic direction of the relationship.

### Change Management

It may become necessary to amend this SOW based on changes in the Client's requirements or other factors leading to the change in the scope. In the event either party desires to change this SOW, the procedures described in **Error! Reference source not found.** will apply.

### Reports

To ensure transparency and provide detailed operational information, CyberTech will submit the following reports to the Client.

Report	Contents
Weekly	Details of the work accomplished last week Focus on any operational and service issues Details of work proposed to be done in the next week Open/Action Items with respective owners
Monthly	Details of the work accomplished in last month Open/Action Items with respective owners Establish action plans to address any SLA misses Track Progress of action plan
Quarterly	Outstanding Issues Strategic Direction Review major accomplishments for the period Review and discuss upcoming initiatives Review quarterly performance with executive staff SLA performance

	Overall service performance
--	-----------------------------

Service Levels

CyberTech will provide services as per the SLAs discussed in this section. CyberTech will report its performance based on these SLAs. A detailed description of Service Levels can be found in **Error! Reference source not found..**

Service	Service Level	Service Level Agreements (SLA)
Response Time	P1: 30 Minutes P2: 30 Minutes P3: 4 hours P4: 1 business day	95%
Resolution Time	P1: 12 hours P2: 1 business day P3: 4 business days P4: As Scheduled	Target 90%*
MACS Availability	N/A	99%

\* Resolution time may be impacted by other dependencies and complexity of the issue.

\*\* Cloud instance availability will be determined and controlled by Amazon.

Coverage Window

Services described in this SoW will be available during the Coverage Window mentioned here. SLAs will be measured only during the Service Window. CyberTech will exercise reasonable efforts to provide services outside the Coverage Window.

- Monitoring services                   7x24
- Other support services               Monday to Friday (8AM to 5PM US Central Time)

Exclusions

The following services and activities are excluded from the scope of this SOW,

- Procurement of third-party products, licenses, or any tools
- Link and bandwidth provisioning
- Troubleshooting, configuration or services around third-party products
- Application development
- Changes to application software, virtual infrastructure, networking, operating systems, etc. from the proposed services
- Custom reports and dashboards
- Managed Services around IEE Task Manager and Itron metering data

Assumptions and Prerequisites

- All communication will be over HTTPS
- Client will provide:
  - Installation files, Itron licenses, SSL certificates, third-party licenses (if any)
- Support will be provided for English language only
- Successful execution of the task depends on the clarity of information and requirements. Both parties should take the necessary steps to ensure communication and provide the requirements

## Denton Municipal Electric / AWS Cloud Infrastructure to Support MDM Data Storage & 'Always-On' AppStream 2.0

- 1898 will be notified of any proposed or implemented changes to the network or applications being used during the time frame of this project.
- Client will keep 1898 informed of all applicable on-site travel restrictions for the in-scope locations.
- The MDM Cloud Data Storage environment has been sized based on the following –
  - The warehouse (AWS MDM Storage) will have a user or 2 and 5 or 6 services
  - Database connections will drop to less than 50 in the warehouse (AWS MDM Storage)
  - A dedicated Windows EC2 instance setup for SQL Server is favored over AWS RDS for SQL Server
  - Itron will perform the initial load from the current system to the MDM Cloud Storage solution in CyberTech's AWS Cloud
  - Approximately 235 GB of monthly data – including both new data and updates
  - Itron MRS Feed to run twice a day
  - Itron to maintain synchronization between the two environments

## Miscellaneous

CyberTech may use portions of the work from this SOW in IT research and industry publications, advertising, and on Social-Media including your name and logo. No confidential business information or data will be disclosed. Client grants CyberTech permission to publish the work as appropriate.

## Statement of Work Term

**Engagement Duration:** This is an addendum to the existing MACS term and is applicable to Year 2 and Year 3 of the agreement. **The effective date for this addendum is August 21, 2024.**

Pricing / Compensation

Based on the scope of work identified above, 1898 & Co. proposes to perform these services on an annual subscription basis utilizing the existing Master Services and Solutions Agreement (MSSA) 7804-010 between Denton Municipal Electric and Burns & McDonnell Engineering Company, Inc. Pricing for the services is listed below, which will be billed on Day 1 of each term year.

Services	Cost
Two 1-Year Reserved MDM Cloud Data Storage (Only Production environment) <ul style="list-style-type: none"><li>• Cloud provisioning (one-time)</li><li>• Cloud hosting</li><li>• AWS hosting</li><li>• Managed services for AWS Infrastructure only<ul style="list-style-type: none"><li>o 24X7 Monitoring</li><li>o Dedicated Help Desk 8am-5pm CST</li></ul></li></ul>	\$ 67,400/Annual
‘Always-on’ AppStream 2.0	\$22,500/Annual
1898 & Co. Administrative Fee (10%)	\$8,990/Annual
TOTAL COST	\$98,890/Annual
TOTAL COST FOR YEARS 2 AND 3 OF CURRENT AGREEMENT (CONTRACT #7804-010) WITH ADDITIONAL SERVICES PROVIDED	\$396,330/Annual



## Appendix – 1: Description of Services

**Cloud Provisioning:** AWS Cloud provisioning is a one-time service for initial setup for cloud-based MDM Cloud Storage and 'Always-On' AppStream infrastructure and related in-scope components.

**Monitoring Services:** Monitoring services will provide 7x24 monitoring for in-scope components. These services will be provided using mutually agreed and pre-defined Standard Operating Procedures (SOPs) and Runbooks. The monitoring team will take actions defined in SOPs. Actions taken by the monitoring team would include,

- System vitals
- System processes
- Alerts

The monitoring services will include,

- **Alerts**
  - Configuring alerts in monitoring systems for system vitals and processes
- **System Vitals and System Processes**
  - Monitoring VMs hosting SQL products and IEE software
    - CPU utilization
    - Memory utilization
    - Network
    - Disk space

### Service Desk:

- **Ticket management**
  - First level response to emails, calls or tickets from clients
  - Logging tickets with appropriate priority
  - Updating status in the ticketing portal
- **L1 Support**
  - Support for basic customer issues
  - Initial investigation and basic troubleshooting
  - FAQ support
- **Escalations**
  - Determining if L2 support is required
  - Escalating to L2 appropriately
- **Backup and Restore**
  - Monitoring backups
  - Quarterly restoration checks

**Incidents:** An Incident is defined as an event that results in interruption of one or more services.

- **Incident Resolution**
  - Identifying and logging incidents
  - Investigating, analyzing, and troubleshooting
  - Providing issue resolution and recovery
  - Verifying and closing incidents
- **Recommendations**
  - Presenting recommendations as per trend analysis and observations

**Service Requests:** A Service Request is defined as an enhancement or change to the existing cloud-based ArcGIS landscape.

- **L2 Support**
  - Providing in-depth technical support
  - Support personnel with deep knowledge of ArcGIS products

## Appendix – 2: Service Levels

### Service Priority Definitions

CyberTech will follow service categories (prioritized based on the business level impact of the service) defined below.

Priority	Definition/Description
<b>1</b>	The entire application is unavailable. A critical component of the application is unavailable, resulting in the client not being able to conduct critical day-to-day business activities and no acceptable temporary work-around can be identified.
<b>2</b>	A critical component of the application is unavailable, resulting in the client not being able to conduct critical day-to-day business activities. However, an acceptable temporary work-around has been identified.
<b>3</b>	A non-critical part of the application is unavailable or Incident causing or at risk of causing inconvenience and/or increased work effort but not seriously impacting client's ability to conduct day-to-day business activities.
<b>4</b>	Incident with the application that is causing or at risk of causing a minimal amount of increased work effort but is not impacting client's ability to conduct day-to-day business activities.

### Service Levels

Priority	Condition	Response Time	Resolution Time*
<b>1</b>	1. A significant number of clients are affected 2. No workaround available	1. Email to acknowledge within 30 minutes 2. Email on resolution	12 hours
<b>2</b>	1. Multiple clients are affected 2. Possible acceptable workaround	1. Email to acknowledge within 30 minutes 2. Email on resolution	1 business day
<b>3</b>	1. Few clients or individual work is affected 2. Possible workaround exists	1. Email to acknowledge within 4 hours 2. Email on resolution	4 business days
<b>4</b>	1. Requests for additional information 2. No impact on work	1. Email to acknowledge within 1 business day 2. Email on resolution	As scheduled

#### Notes:

- Resolution time can vary depending on complexity of the issue and other dependencies
- During the first 3 months of the engagement, CyberTech will monitor and optimize the SLAs jointly with the Client. SLAs will be enforced from the 4th month of the engagement

## Appendix – 3 Change Management:

It may become necessary to amend this SOW based on changes in the Client's requirements or other factors leading to the change in the scope. In the event either party desires to change this SOW, the following procedures will apply:

- The party requesting the change will deliver a Change Request Form (attached in this section) to the other party. The Change Request will describe the nature of the change, the reason for the change, and the effect the change will have on the scope of work, which may include changes to the Deliverables, the schedule and the price.
- A Change Request may be initiated by either party for any changes to the SOW. The designated contact of the requesting party will review the proposed change with his/her counterpart. The parties will evaluate the Change Request and negotiate in good faith the changes to the Services and the additional charges, if any, required to implement the Change Request. If both parties agree to implement the Change Request, the appropriate authorized representatives of the parties will sign the Change Request, indicating the acceptance of the changes by the parties.
- Upon execution of the Change Request, said Change Request will be incorporated into, and made a part of, this SOW.

**Note:** Whenever there is a conflict between the terms and conditions set forth in a fully executed Change Request and those set forth in the original SOW, or previous fully executed Change Request, the terms and conditions of the most recent fully executed Change Request shall prevail.

Change Request Form

CHANGE REQUEST # <n>

With reference to the change requested by <Client> for the <Project>, CyberTech Systems and Software Inc. (“CyberTech”) and Client, both parties hereby certify, by the signature of an authorized representative, that this Change Management Request will amend and be fully incorporated into the existing Statement of Work (SOW) or Proposal.

- 1

Change Request Number

#<n>
- 2

Reason for Change Request
- 3

Nature of Change
- 4

Reference SoW
- 5

Schedule Impact
- 6

Cost Impact:
- 7

Purchase Order Issuance (as applicable)

The client shall issue a written Purchase Order to CyberTech or shall issue an amendment to its original PO issued under this SOW.
- 8

Original Reference PO#

Except as changed herein, all terms and conditions of the SOW remain in full force and effect.

Client

By

Name

Title

Date

1898 & Co., Part of Burns & McDonnell

By

CyberTech Systems and Software Inc.

By

Name

Title

Date

Denton Municipal Electric / AWS Cloud Infrastructure to Support MDM Data Storage & 'Always-On' AppStream 2.0

**Name**  
**Title**  
**Date**

## 1898 & Co. Representatives

Name / Title: Brian Hiller, MBA, Director, Geospatial Technologies

Email: [brian.hiller@1898andco.com](mailto:brian.hiller@1898andco.com)

Phone: 816.652.2820

Responsibility: Point of Contact

Name / Title: Kyle Gallagher, GISP, Project Manager, Geospatial Technologies

Email: [kyle.gallagher@1898andco.com](mailto:kyle.gallagher@1898andco.com)

Phone: 913.626.1831

Responsibility: Point of Contact

## CyberTech Representatives

Name / Title: Vince Rosales, Account Executive

Email: [vince.rosales@cybertech.com](mailto:vince.rosales@cybertech.com)

Phone: 303.884.4268

Responsibility: Point of Contact

Name / Title: Sagar Nair, Senior Solution Engineer – ArcGIS Cloud Services

Email: [sagar.nair@cybertech.com](mailto:sagar.nair@cybertech.com)

Phone: 506.886.8344

Responsibility: Point of Contact



9400 Ward Parkway  
Kansas City, MO 64114  
816-333-9400  
  
1898andCo.com



**Certificate Of Completion**

Envelope Id: AB885A5ECECE4310BF844A761E4932C8

Status: Sent

Subject: Please DocuSign: City Council Contract 7804-010 UN Cloud Management Services, Amendment 1

Source Envelope:

Document Pages: 16

Signatures: 3

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.104

**Record Tracking**

Status: Original

Holder: Christa Christian

Location: DocuSign

4/26/2024 12:15:57 PM

Christa.Christian@cityofdenton.com

**Signer Events****Signature****Timestamp**

Christa Christian

**Completed**

Sent: 4/29/2024 2:22:35 PM

christa.christian@cityofdenton.com

Viewed: 4/29/2024 2:22:51 PM

Purchasing Supervisor

Signed: 4/29/2024 2:23:39 PM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 4/29/2024 2:23:41 PM

lori.hewell@cityofdenton.com

Viewed: 4/29/2024 2:26:56 PM

Purchasing Manager

Signed: 4/29/2024 2:27:30 PM

City of Denton

Signature Adoption: Pre-selected Style

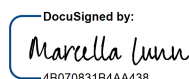
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(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 4/29/2024 2:27:32 PM

marcella.lunn@cityofdenton.com

Viewed: 5/3/2024 1:57:25 PM

Senior Deputy City Attorney

Signed: 5/3/2024 2:15:24 PM

City of Denton

Signature Adoption: Pre-selected Style

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(None)

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**Electronic Record and Signature Disclosure:**

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Brian Hiller



Sent: 5/3/2024 2:15:27 PM

brian.hiller@1898andco.com

Resent: 5/7/2024 1:19:41 PM

Director, Geospatial Technologies

Viewed: 5/7/2024 2:31:51 PM

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Drawn on Device


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Signed using mobile

**Electronic Record and Signature Disclosure:**

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Signer Events	Signature	Timestamp
Antonio Puente, Jr. Antonio.Puente@cityofdenton.com DME General Manager Security Level: Email, Account Authentication (None)	<div> <small>DocuSigned by:</small>    <small>E3760944C2BF4B5...</small> </div> Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 5/7/2024 2:35:03 PM Viewed: 5/7/2024 2:39:38 PM Signed: 5/7/2024 2:39:56 PM

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Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	Sent: 5/7/2024 2:40:00 PM
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**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Sara Hensley  
 sara.hensley@cityofdenton.com  
 Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Lauren Thoden  
 lauren.thoden@cityofdenton.com  
 Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 4/29/2024 2:23:41 PM
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**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 5/7/2024 2:39:59 PM Viewed: 5/10/2024 11:20:19 AM
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Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Kenn Darling kenn.darling@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/29/2024 2:22:35 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		



## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-107, Version: 1**

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a contract between the City of Denton and Freeport Welding & Fabricating, Inc., amending the contract approved by the City Council on June 27, 2023, in the not-to-exceed amount of \$1,279,570.00; said first amendment to complete the purchase of three (3) 60,000 gallon tanks for the Denton Energy Center Winterization Project; providing for the expenditure of funds therefor; and providing an effective date (RFP 8220 - providing for an additional first amendment expenditure amount not-to-exceed \$140,000.00, with the total contract amount not-to-exceed \$1,419,570.00).



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
www.cityofdenton.com

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a contract between the City of Denton and Freeport Welding & Fabricating, Inc., amending the contract approved by the City Council on June 27, 2023, in the not-to-exceed amount of \$1,279,570.00; said first amendment to complete the purchase of three (3) 60,000 gallon tanks for the Denton Energy Center Winterization Project; providing for the expenditure of funds therefor; and providing an effective date (RFP 8220 – providing for an additional first amendment expenditure amount not-to-exceed \$140,000.00, with the total contract amount not-to-exceed \$1,419,570.00).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

### **INFORMATION/BACKGROUND**

In late 2021, Denton Municipal Electric (DME) initiated a comprehensive study of options that could be implemented to reduce or eliminate risks associated with winter weather. The Public Utility Commission of Texas (PUCT) also established new weatherization requirements for the Denton Energy Center (DEC) and all generating units and transmission equipment across Texas in response to winter storm Uri. Based upon the results of the comprehensive analysis of options provided by Black & Veatch (BV), DME selected specific cost-effective measures to permanently reduce the risk of freeze damage to DEC equipment and included \$2.2 million in the FY23 Capital Improvement Plan (CIP) to make the recommended changes. Due to supply chain issues and lead times, three (3) 60,000-gallon tanks will need to be fabricated and purchased separately from the remainder of the procure and construct scope for the DEC winterization project. Due to unpredictable costs and market increases, the transportation of the tanks increased by \$140,000 from the initial contract execution to the actual tank delivery date.

<b>Project Description</b>	<b>Estimated Expenditure</b>
Original Contract	\$1,279,570.00
Transportation of three (3) – 60,000 Gallon Tanks (Amendment)	140,000.00
<b>New Contract Total</b>	<b>\$1,419,570.00</b>

## **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On June 27, 2023, City Council approved a contract with Freeport Welding & Fabricating, Inc., in the not-to-exceed amount of \$1,279,570 (Ordinance 23-1236).

## **RECOMMENDATION**

Award Amendment No. 1 with Freeport Welding & Fabricating, Inc., to complete the purchase of three (3) 60,000 gallon tanks for the Denton Energy Center Winterization Project, in a not-to-exceed amount of \$140,000, for a total amended contract amount of \$1,419,570.

## **PRINCIPAL PLACE OF BUSINESS**

Freeport Welding & Fabricating, Inc.  
Freeport, TX

## **ESTIMATED SCHEDULE OF PROJECT**

This is a one-time expenditure for capital equipment. The anticipated delivery date of the tanks to the Denton Energy Center is May 2024.

## **FISCAL INFORMATION**

These items will be funded from DEC Winterization account 605091500.1350.5520. Purchase Order #203830 will be revised to include the first amendment amount of \$140,000. The total amended amount of this contract is \$1,419,570.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet  
Exhibit 2: Original Ordinance and Contract  
Exhibit 3: Ordinance and Amendment 1

Respectfully submitted:  
Lori Hewell, 940-349-7100  
Purchasing Manager

For information concerning this acquisition, contact: Cody Tenorio, 940-349-7532.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. 23-1236

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FREEPORT WELDING & FABRICATING, INC., FOR THREE (3) 60,000 GALLON TANKS FOR THE DENTON ENERGY CENTER'S WINTERIZATION PROJECT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8220 – AWARDED TO FREEPORT WELDING & FABRICATING, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$1,279,570.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for three (3) 60,000 gallon tanks for the Denton Energy Center's Winterization Project; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered request for proposal for materials, equipment, supplies, or services shown in the "Request Proposals" on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals.

<u>RFP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8220	Freeport Welding & Fabricating, Inc.	\$1,279,570.00

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

SECTION 3. That should the City and person submitting approved and accepted items wish

to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

SECTION 4. The City Council of the City of Denton, hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Brian Beck and seconded by Paul Meltzer. This ordinance was passed and approved by the following vote [7 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Vicki Byrd, District 1:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Brian Beck, District 2:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Paul Meltzer, District 3:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Joe Holland, District 4:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Brandon Chase McGee, At Large Place 5:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Chris Watts, At Large Place 6:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>

PASSED AND APPROVED this the 27<sup>th</sup> day of June, 2023.

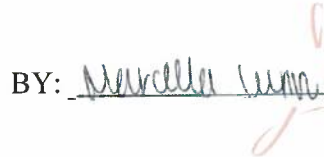
  
GERARD HUDSPETH, MAYOR



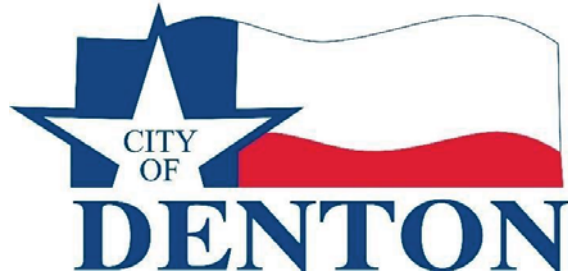
ATTEST:  
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:  Digitally signed by Marcella Lunn  
DN: cn=Marcella Lunn, o, ou=City  
of Denton,  
email=marcella.lunn@cityofdenton.com, c=US  
Date: 2023.06.14 08:47:13 -05'00'





## DocuSign City Council Transmittal Coversheet

RFP	8220
File Name	DEC WINTERIZATION TANKS
Purchasing Contact	Christa Christian
City Council Target Date	06/27/2023
Piggy Back Option	Yes
Contract Expiration	N/A
Ordinance	23-1236

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND FREEPORT WELDING & FABRICATING, INC.  
(Contract # 8220)**

**THIS CONTRACT** is made and entered into this date 06/27/2023, by and between **FREEPORT WELDING & FABRICATING, INC.** a Texas Corporation whose address is 200 N. Navigation Blvd., Freeport, TX 77541, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**SCOPE OF SERVICES**

Contractor shall provide products in accordance with the City's RFP # 8220 – DEC Winterization Tanks, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) City of Denton's **RFP 8220 (Exhibit "B" on file at the office of the Purchasing Agent)**;
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) City of Denton Insurance Requirements (**Exhibit "D"**);
- (e) Certificate of Interested Parties Electronic Filing (**Exhibit "E"**);
- (f) Contractor's Proposal. (**Exhibit "F"**);
- (g) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "G"**)

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

**Prohibition on Contracts with Companies Boycotting Israel**

Contractor acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

**Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains

written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

#### **Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations**

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

#### **Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization**

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

#### **Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies**

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

CONTRACTOR

BY: \_\_\_\_\_

AUTHORIZED SIGNATURE

Printed Name: Michael Huerta

Title: Project Manager

979-233-0121

PHONE NUMBER

michaelh@freeweld.com

EMAIL ADDRESS

2023 - 2023

TEXAS ETHICS COMMISSION  
1295 CERTIFICATE NUMBER

CITY OF DENTON TEXAS

BY: \_\_\_\_\_

SARA HENSLEY, CITY MANAGER

ATTEST:

JESUS SALAZAR, INTERIM CITY  
SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

DocuSigned by:  
Antonio Puente, Jr. Antonio Puente, Jr.  
SIGNATURE PRINTED NAME

DME General Manager

TITLE

Electric

DEPARTMENT

## **Exhibit A**

### **Special Terms and Conditions**

#### **1. The Quantities**

The quantities indicated on Exhibit F are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the bid price. Individual purchase orders will be issued on an as needed basis.

#### **2. Product Changes During Contract Term**

The Contractor shall not change specifications during the contract term without prior approval. Any deviation in the specifications or change in the product must be approved in advance by the City of Denton. Notice of a change shall be submitted in writing to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com), with the above file number in the subject line, for review. Products found to have changed specifications without notification, and acceptance, will be returned at the contractor's expense. Products that have been installed will be replaced at the contractor's expense.

#### **3. Authorized Distributor**

The Contractor shall be the manufacturer or authorized distributor of the proposed products. The distributor shall be authorized to sell to the City of Denton, and make available the manufacturer's representative as needed by the City.

#### **4. Contract Terms**

The contract will be effective from date of award or notice to proceed with a purchase order as determined by the City of Denton Purchasing Department. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

#### **5. Price Escalation and De-escalation**

On Contractor's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The Contractor should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Contract 8220

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

#### **6. Total Contract Amount**

The contract total shall not exceed **\$1,279,570.00**. Pricing shall be per Exhibit F attached.

#### **7. Delivery Lead Time**

This is a one-time expenditure for capital equipment. Fabrication of the tanks is expected to begin upon approval, with an anticipated delivery date to the DEC of September 2023.

**Exhibit C**  
**City of Denton**  
**Standard Purchase Terms and Conditions**

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's contract are applicable to contracts/purchase orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller or respondent herein after referred to as Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the seller's proposal response, invoice or statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the contract/purchase order these written provisions will take precedence.

The Contractor agrees that the contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a solicitation to purchase goods, and sections 9, 10, 11, 22 and 32 shall apply only to a solicitation to purchase services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.

3. **CONTRACTOR TO PACKAGE DELIVERABLES:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. **SHIPMENT UNDER RESERVATION PROHIBITED:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5. **TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.



**6. DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth the purchase order.

**7. RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

**8. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

**9. PLACE AND CONDITION OF WORK:** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

The contractor shall, at all times, exercise reasonable precautions for the safety of their employees, City Staff, participants and others on or near the City's facilities.

## **10. WORKFORCE**

A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Denton contract or on the City's property .

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

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C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

**Immigration:** The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") enacted on September 30, 1996.

**11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

**Environmental Protection:** The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

## **12. INVOICES:**

A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

**B. Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount.

The City will furnish a tax exemption certificate upon request.

**13. PAYMENT:**

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

**B. If payment is not timely made, (per paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;
- vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or
- vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given that any awarded firm who is in arrears to the City of Denton for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

**14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by Contractor 8220

the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

#### **15. FINAL PAYMENT AND CLOSE-OUT:**

A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.

B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**16. SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

#### **17. RIGHT TO AUDIT:**

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

#### **18. SUBCONTRACTORS:**

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in Contract 8220

writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the

Contract, and shall contain provisions that:

- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
- ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

#### **19. WARRANTY-PRICE:**

A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

**20. WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.



**21. WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.

E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

**22. WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above Contract 8220

standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

**23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

**24. RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**25. STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

**26. DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

**27. TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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**28. TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

**29. FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

**30. DELAYS:**

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

**31. INDEMNITY:**

**A. Definitions:**

i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for: (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties), ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct or a breach of any legally imposed strict liability standard.

**B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS,**  
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**EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

**32. INSURANCE:** The following insurance requirements are applicable, in addition to the specific insurance requirements detailed in **Appendix A** for services only. The successful firm shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton.

**A. General Requirements:**

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:  
City of Denton  
Materials Management Department  
901B Texas Street  
Denton, Texas 76209
- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverage's indicated within the Contract.
- xiv. The insurance coverage's specified in within the solicitation and requirements are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the solicitation instrument.

**33. CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

**34. NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

**35. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

**36. NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

**37. CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

**38. OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees

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to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

**39. PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

**40. ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

**41. NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission,

percentage, brokerage or contingent fee.

**42. GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

**43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

**44. INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City of Denton, Texas for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City of Denton, Texas, or his designee under this agreement. The contractor is expressly free to advertise and perform services for other parties while performing services for the City.

**45. ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed Contract 8220



merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

**46. WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**47. MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**48. INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**49. DISPUTE RESOLUTION:**

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of

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participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**50. JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

**51. INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

**52. HOLIDAYS:** The following holidays are observed by the City:

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veterans Day
Thanksgiving
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or his authorized designee.

**53. SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, Contract 8220

or City of Denton Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Denton.

## **55. EQUAL OPPORTUNITY**

**A. Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFQ.

**B. Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

## **56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)**

The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or  
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

**B.** The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

**C.** The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

**D.** The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Contract 8220



Certificate".

**57. RIGHT TO INFORMATION:** The City of Denton reserves the right to use any and all information presented in any response to this contract, whether amended or not, except as prohibited by law. Selection of rejection of the submittal does not affect this right.

**58. LICENSE FEES OR TAXES:** Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

**59. PREVAILING WAGE RATES:** The contractor shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website [www.wdol.gov](http://www.wdol.gov) for Denton County, Texas (WD-2509).

**60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

**61. FEDERAL, STATE, AND LOCAL REQUIREMENTS:** Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Respondent shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City of Denton and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

**62. DRUG FREE WORKPLACE:** The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**63. RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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**64. FORCE MAJEURE:** The City of Denton, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be 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 City of Denton. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

**65. NON-WAIVER OF RIGHTS:** Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

**66. NO WAIVER OF SOVEREIGN IMMUNITY:** The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

**67. RECORDS RETENTION:** The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

**Should a conflict arise between any of the contract documents, it shall be resolved with the following order of precedence (if applicable). In any event, the final negotiated contract shall take precedence over any and all contract documents to the extent of such conflict.**

- 1. Final negotiated contract**
- 2. RFP/Bid documents**
- 3. City's standard terms and conditions**
- 4. Purchase order**
- 5. Contractor terms and conditions**

## EXHIBIT D

### CITY OF DENTON INSURANCE REQUIREMENTS

*Respondent's attention is directed to the insurance requirements below. It is highly recommended that respondents confer with their respective insurance carriers or brokers to determine in advance of Proposal/Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low respondent fails to comply strictly with the insurance requirements, that respondent may be disqualified from award of the contract. Upon contract award, all insurance requirements shall become contractual obligations, which the successful contractor shall have a duty to maintain throughout the course of this contract.*

#### **STANDARD PROVISIONS:**

**Without l i m i t i n g any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain until the contracted work has been completed and accepted by the City of Denton, Owner, the minimum insurance coverage as indicated hereinafter.**

**As soon as practicable after notification of contract award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractors are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.**

**All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or longer, if so noted:**

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A+ or better.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:
  - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.
  - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
  - o Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

• **Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.**

• Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

• Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

• Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

#### **SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:**

*All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:*

##### **A. COMMERCIAL GENERAL LIABILITY INSURANCE**

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

##### **B. WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE**

**Workers' Compensation** within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for Employers Liability are: Bodily Injury by Accident: \$1,000,000.00 Each Accident Bodily Injury by Disease: \$1,000,000.00 Each Employee Bodily Injury by Disease: \$1,000,000.00 Policy Limit NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

**C. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

**Business Automobile Liability Insurance** covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of \$1,000,000.00 per occurrence.

**NOTE:**

a. If CONTRACTOR does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

**EXHIBIT E**  
**Certificate of Interested Parties Electronic Filing**

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

**Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.**

The contractor shall:

1. Log onto the State Ethics Commission Website at :  
<https://www.ethics.state.tx.us/filinginfo/1295/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) with the contract number in the subject line.  
(EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.



## EXHIBIT F

## COMMERCIAL PROPOSAL



CUSTOMER: CITY OF DENTON  
 CONTACT: CHRISTA CHRISTIAN  
 CONTACT PHONE: 940-349-7100  
 CONTACT FAX:  
 RFQ/INQUIRY NUMBER: 8220  
 PROJECT NAME/NUMBER: DEC WINTERIZATION TANKS

Freeport Welding & Fabricating, Inc.  
 200 N. Navigation Blvd., Freeport, Texas 77541  
 PO Box 2076, Freeport, Texas 77542  
 Phone: (979) 233-0121 Fax: (979) 233-0349  
 www.freeweld.com

BID DATE: 5/17/2023  
 REVISION: 2  
 BID NO: 127376

ITEM	QTY	TAG	FWF NO.	DESCRIPTION	PRICE EA.	TOTAL
1	1	1ECB-TK-0001A	127376	WASTE TANK MECHANICAL	\$430,010.00	\$430,010.00
2	1	1ECB-TK-0002A	127377	SUMMER MIX TANK MECHANICAL	\$430,010.00	\$430,010.00
3	1	1ECB-TK-0003A	127378	WINTER MIX TANK MECHANICAL	\$419,550.00	\$419,550.00

**TOTAL** \$1,279,570.00

APPROVAL DRAWINGS: 3-4 WEEKS AFTER RECEIPT OF ORDER (NEGOTIABLE)  
 ALLOWED FOR CUSTOMER REVIEW : 2 WEEKS FROM SUBMITTAL (NEGOTIABLE) \*\*  
 SHIP: 28-30 WEEKS AFTER RECEIPT OF APPROVED DRAWINGS (NEGOTIABLE)  
 FREIGHT TERMS: YOUR JOBSITE / DENTON, TX, USA  
 TERMS: NEGOTIABLE PROGRESS PAYMENTS (WITH APPROVED CREDIT)  
 BID VALIDITY: (10) DAYS

## GENERAL BID NOTES:

- 1 PROPOSAL DOES NOT INCLUDE SALES, PROPERTY (IF APPLICABLE) OR USE TAXES.
- 2 PRICING & DELIVERY IS SUBJECT TO MATERIAL AVAILABILITY AT TIME OF MATERIAL ORDER.
- 3 PROPOSAL IS BASED ON STRAIGHT TIME LABOR ONLY UNLESS OTHERWISE SPECIFICALLY AGREED TO IN WRITING. COMPENSATION WILL BE EXPECTED FOR ANY OVERTIME REQUIRED DUE TO SCHEDULE DELAYS CAUSED BY THE CUSTOMER/OWNER.
- 4 DUE TO THE FACT THAT WE MUST RELY ON SUB-VENDORS & SUB-SUPPLIERS IN ORDER TO MAINTAIN SCHEDULE, AND THEIR PERFORMANCE IS LARGELY BEYOND OUR CONTROL, FREEPORT WELDING DOES NOT ACCEPT ANY LIQUIDATED DAMAGES UNLESS OTHERWISE SPECIFICALLY AGREED TO IN WRITING.
- 5 \*\* ANY DELAY BEYOND THIS APPROVAL DRAWING REVIEW PERIOD WILL RESULT IN AT LEAST A DAY FOR DAY DELAY IN THE SHIPMENT OF THE EQUIPMENT. COULD BE MORE PENDING SHOP CONGESTION.
- 6 BLASTING AND PAINTING/COATING IS DONE OUTSIDE, SO INCLEMENT WEATHER CAN AFFECT DELIVERY. NO ALLOWANCE HAS BEEN MADE FOR CLIMATE-CONTROLLED COATING UNLESS OTHERWISE SPECIFICALLY AGREED TO IN WRITING.
- 7 SEE ATTACHED PROPOSAL NOTES FOR ADDITIONAL CLARIFICATIONS AND/OR PRICING.

THANK YOU FOR THE OPPORTUNITY TO QUOTE.

REGARDS,

DANIEL L. YATES, PE  
 FREEPORT WELDING & FABRICATING, INC.

Rawls, R2

SHT 1 OF 3

**COMMERCIAL OFFER CONTINUED:**

**PROPOSED PROGRESS PAYMENT SCHEDULE (NEGOTIABLE):**

20% UPON SUBMITTAL OF APPROVAL DRAWINGS  
40% UPON RECEIPT OF SHELL & HEAD MATERIAL  
20% UPON SUCCESSFUL HYDROTEST  
20% UPON ~~READY FOR SHIPMENT~~ **Delivery**  
ALL NET 30 FROM DATE OF INVOICE (WITH APPROVED CREDIT)

**PROPOSED CANCELLATION SCHEDULE:**

10% AFTER RECEIPT OF AWARD, PRIOR TO MATERIAL BEING ORDERED  
50% AFTER MATERIAL IS ORDERED, PRIOR TO COMMENCEMENT OF FABRICATION  
85% AFTER FABRICATION HAS COMMENCED  
100% AFTER FABRICATION IS 50% COMPLETE

AS AN ALTERNATIVE, FREEPORT WELDING WILL CHARGE ACCRUED TIME AND MATERIAL UP TO THE TIME OF CANCELLATION (PLUS ANY LABOR, MATERIALS & SUBCONTRACTS ASSOCIATED WITH THE CANCELLATION) PER OUR CURRENT RATE SCHEDULE, AND MAKE EVERY EFFORT TO RETURN ANY UNUSED MATERIALS AND CANCEL ANY SUBS THAT HAVE NOT BEEN PERFORMED. RESTOCKING FEES, CANCELLATION CHARGES, RETURN FREIGHT, ETC. WILL BE CHARGED AT COST PLUS 15%.

**INSURANCE:**

INSURANCE IS INCLUDED PER OUR CURRENT INSURANCE CERTIFICATE. A COPY CAN BE PROVIDED UPON REQUEST. PLEASE NOTE THAT ON-SITE INSURANCE IS NOT APPLICABLE TO SHOP-BUILT EQUIPMENT.

**FIELD SERVICES:**

FIELD SERVICES ARE GENERALLY NOT APPLICABLE TO SHOP-BUILT EQUIPMENT. HOWEVER, UPON REQUEST, A COPY OF OUR FIELD RATES CAN BE PROVIDED.

**RESTOCKING CHARGES:**

RESTOCKING CHARGES FOR THIS PROPOSAL ARE NOT APPLICABLE. ITEM(S) CANNOT BE RESTOCKED.

**MANUFACTURING & SHIPPING LOCATION:**

UNLESS SPECIFICALLY NOTED OTHERWISE, QUOTED ITEM(S) WILL BE MANUFACTURED AT, AND SHIPPED FROM, OUR FACILITY IN FREEPORT, TEXAS USA, 77541.

**BUSINESS CLASSIFICATION:**

FREEPORT WELDING & FAB., INC. IS CLASSIFIED AS A SMALL BUSINESS.  
FREEPORT WELDING & FAB., INC. IS NOT CLASSIFIED AS MINORITY OWNED OR WOMEN OWNED.

**INTERNATIONAL SHIPPING/FREIGHT:**

NO FREIGHT FORWARDING, PACKING/CRATING, OR INTERNATIONAL SHIPPING IS INCLUDED.

**PERFORMANCE BOND:**

NOT APPLICABLE. CAN POSSIBLY BE FURNISHED AT AN EXTRA COST.

**STORAGE:**

NOT APPLICABLE. CAN POSSIBLY BE FURNISHED AT AN EXTRA COST.

**UNION AFFILIATION:**

NONE. FREEPORT WELDING & FAB., INC. IS A NON-UNION SHOP.

**WARRANTY:**

STANDARD WARRANTY IS 18 MONTHS AFTER DELIVERY, OR 12 MONTHS AFTER START-UP. WHICHEVER COMES FIRST. DETAILS APPLY. EXTENDED WARRANTY CAN POSSIBLY BE FURNISHED AT AN EXTRA COST.

**SPARE PARTS:**

A DEFINED LIST OF SPARE PARTS CAN BE FURNISHED AT AN EXTRA COST.

**UNIT PRICING:**

ANY SCOPE CHANGES ARE SUBJECT TO REVIEW & CHANGE, DEPENDING ON COMPLEXITY, MOC, ETC..  
GALVANIZED LADDERS (INCLUDES TRIAL FIT): \$5.50/LB  
GALVANIZED PLATFORMS (INCLUDES TRIAL FIT): \$5.50/LB  
LADDER & PLATFORM CLIPS: \$16.00/LB  
PIPE SUPPORT & GUIDE CLIPS: \$16.00/LB  
GALVANIZED PIPE SUPPORT & GUIDE BRACKETS: \$17.00/LB  
NOZZLE ADD/DELETE: NOZZLES ARE DESIGNED FOR SPECIFIC APPLICATION. UNIT PRICING IS NOT PRACTICAL.



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## PROPOSAL NOTES

CUSTOMER  
RFQ/INQUIRY NO.  
PROJECT

CITY OF DENTON  
8220  
DEC WINTERIZATION TANKS



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CLARIFICATIONS REGARDING OUR PROPOSAL ON THIS RFQ.

- 1 INSULATION SPECS NOT RECEIVED. INSULATION & INSULATION INSTALL ARE NOT INCLUDED.
- 2 NOTE DELETED
- 3 NOTE DELETED
- 4 NOTE DELETED
- 5 ANY SHIPPING STRUCTURE/BRACING, IF NEEDED, IS NOT INCLUDED. TBD AT DETAIL DESIGN.
- 6
- 7 REV 1:
- 8 18' OD X 32' TALL TANK WITH 60,615 GAL CAPACITY QUOTED.
- 9 NOZZLES LOADS HAVE NOT BEEN INCLUDED. WILL BE DETERMINED AT DETAIL DESIGN.
- 10 PIPING, VALVES, INSTRUMENTS, GAUGE HATCHES & HEATERS ARE NOT INCLUDED.
- 11 OPTIONAL API 650 SUMP AT LIQUID OUT NOZZLE: ADD \$8,130.00 PER EA
- 12 NOTE DELETED
- 13
- 14 REV 2:
- 15 OPTIONAL 8" GROTH MODEL 61T BOLTED ON NON SPARKING GAUGE HATCH ADD \$3,000.00
- 16 FREIGHT TO JOBSITE HAS BEEN INCLUDED (ESTIMATED & WILL NEED TO BE UPDATED AT TIME OF SHIPMENT).
- 17 WEATHERHOOD IS INCLUDED (GOOSENECK STYLE W/ BIRDScreen).
- 18 DOWNCOMER PIPE PERFORATIONS HAVE BEEN INCLUDED.
- 19 HEATERS & HEATER INSTALLATION IS NOT INCLUDED.
- 20 SHIPPING SADDLES (CRIBBING) ARE INCLUDED FOR SHIPMENT.
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30

**TECHNICAL BID TAB**

CUSTOMER	CITY OF DENTON
RFQ/INQUIRY NO.	8220
PROJECT	DEC WINTERIZATION TANKS
FWF JOB NO.	127376
TAG NO.(S)	1ECB-TK-0001A
DESCRIPTION	WASTE TANK MECHANICAL
QUANTITY	1
QUOTATION ITEM	ITEM 1

**VESSEL**

DIAMETER 216" ID  
 LENGTH 32'-0"  
 SUPPORT TYPE BOTTOM SUPPORTED  
 SHIPPING DIMENSIONS 20'-1" x 20'-1" x 43'-2"  
 APPROXIMATE FAB WEIGHT 28,315 LBS.

**DESIGN**

CODE API-650  
 STAMP YES  
 NB REGISTRATION YES  
 LETHAL DESIGN NOT INCLUDED  
 INTERNAL PRESSURE 12 in H2O  
 INTERNAL TEMPERATURE 250° F  
 EXTERNAL PRESSURE 3 in H2O  
 EXTERNAL TEMPERATURE 250° F  
 CORROSION ALLOW. 1/8"  
 MDMT -20° F  
 PWHT NOT INCLUDED  
 DESIGN LIQUID LEVEL FULL  
 DESIGN LIQUID SG 1.1  
 WIND DESIGN ASCE 7-16  
 SEISMIC DESIGN ASCE 7-16

**MATERIALS**

RESTRICTIONS	DOMESTIC, CANADIAN, JAPANESE OR WESTERN EUROPE
MATERIAL AML	NOT INCLUDED
THICK	MATERIAL TYPE
ROOF 1/4"	SA-516-70 DISHED-ONLY
BOTTOM 3/8"	SA-516-70 FLAT
SHELLS 1/4"	SA-516-70
NOZZLE NECKS -	SA-106-B/SA-516-70
BOLTS/NUTS -	SA-193-B7/SA-194-2H
GASKETS -	SW 304, FLEXITALLIC "CGI", GRAPHITE FILL

**TESTING & NDE**

RADIOGRAPHY	SPOT
IMPACT TESTS	NOT INCLUDED
FERRITE TESTING	NOT INCLUDED
HARDNESS TESTING	NOT INCLUDED
ULTRASONIC TESTING	NOT INCLUDED
MAG PARTICLE TESTING	NOT INCLUDED
DYE PENETRANT TESTING	YES
POSITIVE MATERIAL ID (PMI)	NOT INCLUDED
OTHER NDE	VACUUM
HYDROTEST	YES
HYDRO WATER	STANDARD

**WELDING**

PROCESSES USED SAW, SMAW, GMAW, FCAW, GTAW

**EXTERNAL ATTACHMENTS**

VACUUM STIFFENERS NOT INCLUDED  
 LADDER CLIPS YES  
 LADDER(S) YES  
 PLATFORM CLIPS YES  
 PLATFORM(S) YES  
 L&P TRIAL FIT NOT INCLUDED  
 PIPE SUPPORTS NOT INCLUDED  
 INSULATION SUPPORTS YES  
 INSULATION 2"  
 INSULATION INSTALL NOT INCLUDED  
 FIREPROOFING SUPPORTS NOT INCLUDED  
 FIREPROOFING NO  
 FIREPROOFING INSTALL NOT INCLUDED  
 LIFTING LUGS 2  
 TAILING LUG(S) 1  
 GROUNDING LUG(S) 2  
 VESSEL DAVIT NOT INCLUDED  
 MANWAY DAVIT(S) @ M1  
 MANWAY HINGE(S) NONE  
 BASEPLATE TEMPLATE NOT INCLUDED

**INTERNAL ATTACHMENTS**

TRAY SUPPORTS NOT INCLUDED  
 TRAYS NOT INCLUDED  
 TRAY INSTALL NOT INCLUDED  
 DEMISTER SUPPORT NOT INCLUDED  
 DEMISTER NOT INCLUDED  
 DEMISTER INSTAL NOT INCLUDED  
 VORTEX BREAKER(S) NOT INCLUDED  
 INTERNAL RUNG(S) YES  
 OTHER INTERNAL: PERF. INLET PIPE & SUPTS.  
 OTHER INTERNALS INSTALL YES

**PAINTING, LINING & SHIPMENT PREP**

EXTERNAL PAINT YES  
 INTERNAL BLASTING NOT INCLUDED  
 INTERNAL LINING NOT INCLUDED  
 PICKLING NOT INCLUDED  
 NITROGEN PURGE NOT INCLUDED  
 FLANGE PROTECTORS STANDARD  
 SHIPPING SADDLES YES  
 OVERSEAS SHIPPING PREP NOT INCLUDED

SHT 1 OF 2

FWF JOB NO.	127376
TAG NO.(S)	1ECB-TK-0001A
DESCRIPTION	WASTE TANK MECHANICAL
QUANTITY	1
QUOTATIC	ITEM 1

**NOZZLE SCHEDULE**

MARK	QTY	SIZE	RATING	FACE	TYPE	FLANGE	NECK	BLIND
N1	1	2"	150#	RF	WN	SA-105N	SA-106-B	NO
N2	1	3"	150#	RF	WN	SA-105N	SA-106-B	NO
N3	1	3"	150#	RF	WN	SA-105N	SA-106-B	NO
N6	1	3"	150#	RF	WN	SA-105N	SA-106-B	NO
N7	1	3"	150#	RF	WN	SA-105N	SA-106-B	YES
L1A	1	2"	150#	RF	WN	SA-105N	SA-106-B	NO
L1B	1	2"	150#	RF	WN	SA-105N	SA-106-B	NO
L2	1	4"	150#	RF	WN	SA-105N	SA-106-B	NO
L3	1	2"	150#	RF	WN	SA-105N	SA-106-B	NO
M1	1	24"	150#	RF	WN	SA-105N	SA-106-B	YES
N4	1	10"	150#	RF	WN	SA-105N	SA-106-B	NO
N5	1	10"	150#	RF	WN	SA-105N	SA-106-B	NO
N8	1	18"	150#	RF	WN	SA-105N	SA-106-B	NO
N9	1	8"	150#	RF	WN	SA-105N	SA-106-B	NO

**TECHNICAL NOTES:**

ALL INFORMATION IS PRELIMINARY & MAY BE SUBJECT TO CHANGE AT DETAIL DESIGN.

COAT INSULATED TANK PER DOC. Q300  
 PREP 1 - SSPC SP10, NEAR WHITE BLAST  
 COAT 1 - EPOXY PHENOLIC  
 COAT 2 - EPOXY PHENOLIC

NOZZLE LOADS HAVE NOT BEEN APPLIED - NOT INCLUDED

SHT 2 OF 2



**TECHNICAL BID TAB**

CUSTOMER	CITY OF DENTON
RFQ/INQUIRY NO.	8220
PROJECT	DEC WINTERIZATION TANKS
FWF JOB NO.	127377
TAG NO.(S)	1ECB-TK-0002A
DESCRIPTION	SUMMER MIX TANK MECHANICAL
QUANTITY	1
QUOTATION ITEM	ITEM 2

**VESSEL**

DIAMETER 216" ID  
 LENGTH 32'-0"  
 SUPPORT TYPE BOTTOM SUPPORTED  
 SHIPPING DIMENSIONS 20'-1" x 20'-1" x 43'-2"  
 APPROXIMATE FAB WEIGHT 28,315 LBS.

**DESIGN**

CODE API-650  
 STAMP YES  
 NB REGISTRATION YES  
 LETHAL DESIGN NOT INCLUDED  
 INTERNAL PRESSURE 12 in H2O  
 INTERNAL TEMPERATURE 250° F  
 EXTERNAL PRESSURE 3 in H2O  
 EXTERNAL TEMPERATURE 250° F  
 CORROSION ALLOW. 1/8"  
 MDMT -20° F  
 PWHT NOT INCLUDED  
 DESIGN LIQUID LEVEL FULL  
 DESIGN LIQUID SG 1.1  
 WIND DESIGN ASCE 7-16  
 SEISMIC DESIGN ASCE 7-16

**MATERIALS**

RESTRICTIONS	DOMESTIC, CANADIAN, JAPANESE OR WESTERN EUROPE
MATERIAL AML	NOT INCLUDED
THICK	MATERIAL
ROOF 1/4"	SA-516-70
BOTTOM 3/8"	SA-516-70
SHELLS 1/4"	SA-516-70
NOZZLE NECKS -	SA-106-B/SA-516-70
BOLTS/NUTS -	SA-193-B7/SA-194-2H
GASKETS -	SW 304, FLEXITALLIC "CGI", GRAPHITE FILL

**TESTING & NDE**

RADIOGRAPHY	SPOT
IMPACT TESTS	NOT INCLUDED
FERRITE TESTING	NOT INCLUDED
HARDNESS TESTING	NOT INCLUDED
ULTRASONIC TESTING	NOT INCLUDED
MAG PARTICLE TESTING	NOT INCLUDED
DYE PENETRANT TESTING	YES
POSITIVE MATERIAL ID (PMI)	NOT INCLUDED
OTHER NDE	VACUUM
HYDROTEST	YES
HYDRO WATER	STANDARD

**WELDING**

PROCESSES USED SAW, SMAW, GMAW, FCAW, GTAW

**EXTERNAL ATTACHMENTS**

VACUUM STIFFENERS NOT INCLUDED  
 LADDER CLIPS YES  
 LADDER(S) YES  
 PLATFORM CLIPS YES  
 PLATFORM(S) YES  
 L&P TRIAL FIT NOT INCLUDED  
 PIPE SUPPORTS NOT INCLUDED  
 INSULATION SUPPORTS YES  
 INSULATION 2"  
 INSULATION INSTALL NOT INCLUDED  
 FIREPROOFING SUPPORTS NOT INCLUDED  
 FIREPROOFING NO  
 FIREPROOFING INSTALL NOT INCLUDED  
 LIFTING LUGS 2  
 TAILING LUG(S) 1  
 GROUNDING LUG(S) 2  
 VESSEL DAVIT NOT INCLUDED  
 MANWAY DAVIT(S) @ M1  
 MANWAY HINGE(S) NONE  
 BASEPLATE TEMPLATE NOT INCLUDED

**INTERNAL ATTACHMENTS**

TRAY SUPPORTS NOT INCLUDED  
 TRAYS NOT INCLUDED  
 TRAY INSTALL NOT INCLUDED  
 DEMISTER SUPPORT NOT INCLUDED  
 DEMISTER NOT INCLUDED  
 DEMISTER INSTAL NOT INCLUDED  
 VORTEX BREAKER(S) NOT INCLUDED  
 INTERNAL RUNG(S) YES  
 OTHER INTERNAL PERF. INLET PIPE & SUPTS.  
 OTHER INTERNALS INSTALL YES

**PAINTING, LINING & SHIPMENT PREP**

EXTERNAL PAINT YES  
 INTERNAL BLASTING NOT INCLUDED  
 INTERNAL LINING NOT INCLUDED  
 PICKLING NOT INCLUDED  
 NITROGEN PURGE NOT INCLUDED  
 FLANGE PROTECTORS STANDARD  
 SHIPPING SADDLES YES  
 OVERSEAS SHIPPING PREP NOT INCLUDED

SHT 1 OF 2

FWF JOB NO.	127377
TAG NO.(S)	1ECB-TK-0002A
DESCRIPTION	SUMMER MIX TANK MECHANICAL
QUANTITY	1
QUOTATIC	ITEM 2

**NOZZLE SCHEDULE**

MARK	QTY	SIZE	RATING	FACE	TYPE	FLANGE	NECK	BLIND
N1	1	2"	150#	RF	WN	SA-105N	SA-106-B	NO
N2	1	3"	150#	RF	WN	SA-105N	SA-106-B	NO
N3	1	3"	150#	RF	WN	SA-105N	SA-106-B	NO
N6	1	3"	150#	RF	WN	SA-105N	SA-106-B	NO
N7	1	3"	150#	RF	WN	SA-105N	SA-106-B	YES
L1A	1	2"	150#	RF	WN	SA-105N	SA-106-B	NO
L1B	1	2"	150#	RF	WN	SA-105N	SA-106-B	NO
L2	1	4"	150#	RF	WN	SA-105N	SA-106-B	NO
L3	1	2"	150#	RF	WN	SA-105N	SA-106-B	NO
M1	1	24"	150#	RF	WN	SA-105N	SA-106-B	YES
N4	1	10"	150#	RF	WN	SA-105N	SA-106-B	NO
N5	1	10"	150#	RF	WN	SA-105N	SA-106-B	NO
N8	1	18"	150#	RF	WN	SA-105N	SA-106-B	NO
N9	1	8"	150#	RF	WN	SA-105N	SA-106-B	NO

**TECHNICAL NOTES:**

ALL INFORMATION IS PRELIMINARY & MAY BE SUBJECT TO CHANGE AT DETAIL DESIGN.

COAT INSULATED TANK PER DOC. Q300  
 PREP 1 - SSPC SP10, NEAR WHITE BLAST  
 COAT 1 - EPOXY PHENOLIC  
 COAT 2 - EPOXY PHENOLIC

NOZZLE LOADS HAVE NOT BEEN APPLIED - NOT INCLUDED

SHT 2 OF 2

**TECHNICAL BID TAB**

CUSTOMER  
RFQ/INQUIRY NO.  
PROJECT  
FWF JOB NO.  
TAG NO.(S)  
DESCRIPTION  
QUANTITY  
QUOTATION ITEM

CITY OF DENTON  
8220  
DEC WINTERIZATION TANKS  
127378  
1ECB-TK-0003A  
WINTER MIX TANK MECHANICAL  
1  
ITEM 3

**VESSEL**

DIAMETER  
LENGTH  
SUPPORT TYPE  
SHIPPING DIMENSIONS  
APPROXIMATE FAB WEIGHT

216" ID  
32'-0"  
BOTTOM SUPPORTED  
20'-1" x 20'-1" x 43'-2"  
28,090 LBS.

**MATERIALS**

RESTRICTIONS  
MATERIAL AML

DOMESTIC, CANADIAN, JAPANESE OR WESTERN EUROPE,  
NOT INCLUDED

ROOF  
BOTTOM  
SHELLS  
NOZZLE NECKS  
BOLTS/NUTS  
GASKETS

THICK  
1/4"  
3/8"  
1/4"

MATERIAL  
SA-516-70  
SA-516-70  
SA-516-70

TYPE  
DISHED-ONLY  
FLAT

SA-106-B/SA-516-70

SA-193-B7/SA-194-2H

SW 304, FLEXITALLIC "CGI", GRAPHITE FILL

**DESIGN**

CODE  
STAMP  
NB REGISTRATION  
LETHAL DESIGN  
INTERNAL PRESSURE  
INTERNAL TEMPERATURE  
EXTERNAL PRESSURE  
EXTERNAL TEMPERATURE  
CORROSION ALLOW.  
MDMT  
PWHT  
DESIGN LIQUID LEVEL  
DESIGN LIQUID SG  
WIND DESIGN  
SEISMIC DESIGN

API-650  
YES  
YES  
NOT INCLUDED  
12 in H2O  
250° F  
3 in H2O  
250° F  
1/8"  
-20° F  
NOT INCLUDED  
FULL  
1.1  
ASCE 7-16  
ASCE 7-16

**TESTING & NDE**

RADIOGRAPHY  
IMPACT TESTS  
FERRITE TESTING  
HARDNESS TESTING  
ULTRASONIC TESTING  
MAG PARTICLE TESTING  
DYE PENETRANT TESTING  
POSITIVE MATERIAL ID (PMI)  
OTHER NDE  
HYDROTEST  
HYDRO WATER

SPOT  
NOT INCLUDED  
NOT INCLUDED  
NOT INCLUDED  
NOT INCLUDED  
NOT INCLUDED  
YES  
NOT INCLUDED  
VACUUM  
YES  
STANDARD

**WELDING**

PROCESSES USED

SAW, SMAW, GMAW, FCAW, GTAW

**EXTERNAL ATTACHMENTS**

VACUUM STIFFENERS  
LADDER CLIPS  
LADDER(S)  
PLATFORM CLIPS  
PLATFORM(S)  
L&P TRIAL FIT  
PIPE SUPPORTS  
INSULATION SUPPORTS  
INSULATION  
INSULATION INSTALL  
FIREPROOFING SUPPORTS  
FIREPROOFING  
FIREPROOFING INSTALL  
LIFTING LUGS  
TAILING LUG(S)  
GROUNDING LUG(S)  
VESSEL DAVIT  
MANWAY DAVIT(S)  
MANWAY HINGE(S)  
BASEPLATE TEMPLATE

NOT INCLUDED  
YES  
YES  
YES  
YES  
NOT INCLUDED  
NOT INCLUDED  
NOT INCLUDED  
NO  
NOT INCLUDED  
NOT INCLUDED  
NO  
NOT INCLUDED  
2  
1  
2  
NOT INCLUDED  
@ M1  
NONE  
NOT INCLUDED

**INTERNAL ATTACHMENTS**

TRAY SUPPORTS  
TRAYS  
TRAY INSTALL  
DEMISTER SUPPORT  
DEMISTER  
DEMISTER INSTAL  
VORTEX BREAKER(S)  
INTERNAL RUNG(S)  
OTHER INTERNAL:  
OTHER INTERNALS INSTALL

NOT INCLUDED  
NOT INCLUDED  
NOT INCLUDED  
NOT INCLUDED  
NOT INCLUDED  
NOT INCLUDED  
NOT INCLUDED  
YES  
PERF. INLET PIPE & SUPTS.  
YES

**PAINTING, LINING & SHIPMENT PREP**

EXTERNAL PAINT  
INTERNAL BLASTING  
INTERNAL LINING  
PICKLING  
NITROGEN PURGE  
FLANGE PROTECTORS  
SHIPPING SADDLES  
OVERSEAS SHIPPING PREP

YES  
NOT INCLUDED  
NOT INCLUDED  
NOT INCLUDED  
NOT INCLUDED  
STANDARD  
YES  
NOT INCLUDED

SHT 1 OF 2

FWF JOB NO.	127378
TAG NO.(S)	1ECB-TK-0003A
DESCRIPTION	WINTER MIX TANK MECHANICAL
QUANTITY	1
QUOTATIC	ITEM 3

**NOZZLE SCHEDULE**

MARK	QTY	SIZE	RATING	FACE	TYPE	FLANGE	NECK	BLIND
N1	1	2"	150#	RF	WN	SA-105N	SA-106-B	NO
N2	1	3"	150#	RF	WN	SA-105N	SA-106-B	NO
N3	1	3"	150#	RF	WN	SA-105N	SA-106-B	NO
N6	1	3"	150#	RF	WN	SA-105N	SA-106-B	NO
N7	1	3"	150#	RF	WN	SA-105N	SA-106-B	YES
L1A	1	2"	150#	RF	WN	SA-105N	SA-106-B	NO
L1B	1	2"	150#	RF	WN	SA-105N	SA-106-B	NO
L2	1	4"	150#	RF	WN	SA-105N	SA-106-B	NO
L3	1	2"	150#	RF	WN	SA-105N	SA-106-B	NO
M1	1	24"	150#	RF	WN	SA-105N	SA-106-B	YES
N4	1	10"	150#	RF	WN	SA-105N	SA-106-B	NO
N5	1	10"	150#	RF	WN	SA-105N	SA-106-B	NO
N8	1	18"	150#	RF	WN	SA-105N	SA-106-B	NO
N9	1	8"	150#	RF	WN	SA-105N	SA-106-B	NO

**TECHNICAL NOTES:**

ALL INFORMATION IS PRELIMINARY & MAY BE SUBJECT TO CHANGE AT DETAIL DESIGN.

COAT INSULATED TANK PER DOC. Q300  
 PREP 1 - SSPC SP10, NEAR WHITE BLAST  
 COAT 1 - EPOXY PHENOLIC  
 COAT 2 - EPOXY PHENOLIC

NOZZLE LOADS HAVE NOT BEEN APPLIED - NOT INCLUDED

SHT 2 OF 2



**EXHIBIT G - CONFLICT OF INTEREST QUESTIONNAIRE****CONFLICT OF INTEREST QUESTIONNAIRE -****FORM CIQ****For vendor or other person doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1** **Name of vendor who has a business relationship with local governmental entity.**  
FREEPORT WELDING & FABRICATING, INC

**2** ☐ **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3** **Name of local government officer about whom the information in this section is being disclosed.**

\_\_\_\_\_  
Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☐

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☐

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐

Yes

☐

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4** ☐ **I have no Conflict of Interest to disclose.**

**5** **Danny Yates – there is no conflict of interest to disclose**

6/12/2023

Signature of vendor doing business with the governmental entity

Date



**Certificate Of Completion**

Envelope Id: F10F174898194FFDA1DF6BBFE37324AE

Status: Completed

Subject: Please DocuSign: City Council Contract 8220 DEC Winterization Tanks

Source Envelope:

Document Pages: 39

Signatures: 5

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Christa Christian

Location: DocuSign

6/8/2023 12:34:07 PM

Christa.Christian@cityofdenton.com

**Signer Events****Signature****Timestamp**

Christa Christian

**Completed**

Sent: 6/8/2023 4:42:12 PM

christa.christian@cityofdenton.com

Viewed: 6/8/2023 4:42:20 PM

Purchasing Supervisor

Signed: 6/8/2023 4:42:31 PM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 6/8/2023 4:42:34 PM

lori.hewell@cityofdenton.com

Viewed: 6/8/2023 5:15:32 PM

Purchasing Manager

Signed: 6/8/2023 5:15:50 PM

City of Denton

Signature Adoption: Pre-selected Style

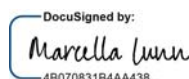
Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 6/8/2023 5:15:53 PM

marcella.lunn@cityofdenton.com

Viewed: 6/12/2023 9:50:44 AM

Mack Reinwand City Attorney

Signed: 6/12/2023 9:57:03 AM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Michael Huerta



Sent: 6/12/2023 9:57:05 AM

michaelh@freeweld.com

Viewed: 6/12/2023 11:13:35 AM

Project Manager

Signed: 6/12/2023 3:36:38 PM

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 12.69.119.131

**Electronic Record and Signature Disclosure:**

Accepted: 6/12/2023 3:29:45 PM

ID: 781b18a3-9460-4209-aaa2-1959258ff6ca

Signer Events	Signature	Timestamp
<p>Antonio Puente, Jr.</p> <p>Antonio.Puente@cityofdenton.com</p> <p>DME General Manager</p> <p>Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:</p> <p><i>Antonio Puente, Jr.</i></p> <p>E3760944C2BF4B5...</p> <p>Signature Adoption: Pre-selected Style</p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 6/12/2023 3:36:41 PM</p> <p>Viewed: 6/12/2023 4:36:49 PM</p> <p>Signed: 6/12/2023 4:37:11 PM</p>

**Electronic Record and Signature Disclosure:**  
Accepted: 6/12/2023 4:36:49 PM  
ID: 13b3469a-14ef-442a-a483-1f448ef7d7dd

Cheyenne Defee

cheyenne.defee@cityofdenton.com

Procurement Administration Supervisor

City of Denton

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Sara Hensley

sara.hensley@cityofdenton.com

City Manager

City of Denton

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Jesus Salazar

jesus.salazar@cityofdenton.com

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Accepted: 6/28/2023 12:10:01 PM  
ID: afe09fdd-94af-47fa-b9d3-ccfdf35ba312

## Completed

Using IP Address: 198.49.140.10

Sent: 6/12/2023 4:37:14 PM

Viewed: 6/28/2023 9:23:43 AM

Signed: 6/28/2023 9:24:16 AM

DocuSigned by:

*Sara Hensley*

5236DB296270423...

Signature Adoption: Pre-selected Style

Using IP Address: 47.190.47.120

Signed using mobile

Sent: 6/28/2023 9:24:19 AM

Viewed: 6/28/2023 9:25:17 AM

Signed: 6/28/2023 9:25:24 AM

DocuSigned by:

*Jesus Salazar*

2437C77B897541D...

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

Sent: 6/28/2023 9:25:27 AM

Viewed: 6/28/2023 12:10:01 PM

Signed: 6/28/2023 12:10:30 PM

Person Signer Events	Signature	Timestamp
Editor Deliver Events	Status	Timestamp
Agent Deliver Events	Status	Timestamp
Intermediary Deliver Events	Status	Timestamp
Certified Deliver Events	Status	Timestamp
Car on Cop Events	Status	Timestamp

Cheyenne Defee

cheyenne.defee@cityofdenton.com

Procurement Administration Supervisor

City of Denton

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**COPIED**

Sent: 6/8/2023 4:42:34 PM

Carion Cop Events	Status	Timestamp
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 6/12/2023 4:37:14 PM
retna ones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 6/12/2023 4:37:14 PM Viewed: 6/13/2023 11:33:15 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 6/28/2023 12:10:32 PM Viewed: 6/28/2023 1:37:12 PM
Cody Tenorio Cody.tenorio@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 6/5/2023 2:29:50 PM ID: 9cf10d6b-7847-4cc2-a6e7-ca16a94e3b61	COPIED	Sent: 6/28/2023 12:10:34 PM Viewed: 6/28/2023 1:54:24 PM
itness Events	Signature	Timestamp
otar Events	Signature	Timestamp
Envelope Summar Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/8/2023 4:42:12 PM
Certified Delivered	Security Checked	6/28/2023 12:10:01 PM
Signing Complete	Security Checked	6/28/2023 12:10:30 PM
Completed	Security Checked	6/28/2023 12:10:34 PM
ament Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A FIRST AMENDMENT TO A CONTRACT BETWEEN THE CITY OF DENTON AND FREEPORT WELDING & FABRICATING, INC., AMENDING THE CONTRACT APPROVED BY THE CITY COUNCIL ON JUNE 27, 2023, IN THE NOT-TO-EXCEED AMOUNT OF \$1,279,570.00; SAID FIRST AMENDMENT TO COMPLETE THE PURCHASE OF THREE (3) 60,000 GALLON TANKS FOR THE DENTON ENERGY CENTER WINTERIZATION PROJECT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8220 – PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$140,000.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$1,419,570.00).

WHEREAS, on June 27, 2023, City Council awarded a contract to Freeport Welding & Fabricating, Inc. in the amount of \$1,279,570.00, for three (3) 60,000 gallon tanks for the Denton Energy Center’s Winterization Project; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the additional fees under the proposed First Amendment are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees applicable to the Provider’s profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The First Amendment, increasing the amount of the contract between the City and Freeport Welding & Fabricating, Inc., which is on file in the office of the Purchasing Agent, in the amount of One Hundred Forty Thousand and 0/100 (\$140,000.00) Dollars, is hereby approved, and the expenditure of funds therefor is hereby authorized in accordance with said amendment which shall be effective upon the execution of the amendment attached hereto. The total contract amount increases to \$1,419,570.00.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. This ordinance was passed and approved by the following vote [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

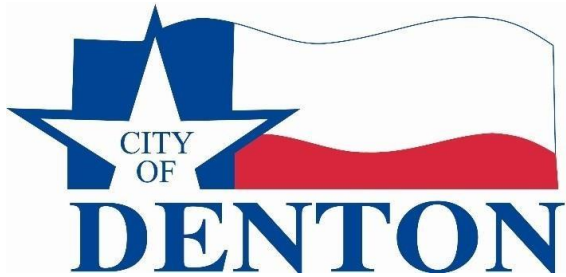
ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Luan





Docusign City Council Transmittal Coversheet

RFP	8220
File Name	DEC Winterization Tanks, NTE Amendment 1
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

THE STATE OF TEXAS           §  
   §  
 COUNTY OF DENTON           §

FIRST AMENDMENT TO CONTRACT  
 BY AND BETWEEN THE CITY OF DENTON, TEXAS  
 AND FREEPORT WELDING & FABRICATING, INC.

THIS FIRST AMENDMENT TO CONTRACT 8220 (this “Amendment”) by and between the City of Denton, Texas (“City”) and FREEPORT WELDING & FABRICATING, INC. (“Contractor”) to that certain contract executed on June 27, 2023 in the original not-to-exceed amount of \$ 1,279,570.00 (the “Agreement”); for services related to the **DEC Winterization Tanks**.

WHEREAS, the City deems it necessary to further expand the services provided by Contractor to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount **\$140,000** with this First Amendment for an aggregate not-to-exceed amount of **\$1,419,570**; and

WHEREAS, this amendment incorporates any previously executed documents between the parties including but not limited to pricing adjustments.

WHEREAS, the City deems it necessary to further expand the goods/services provided by Contractor to the City; and

WHEREAS, the original not-to-exceed amount may not be increased by more than 25.0% as provided in Texas Local Government Code Sec. 252.048; and

NOW THEREFORE, the City and Contractor (hereafter collectively referred to as the “Parties”), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following First Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1. The additional services described in Exhibit “A” of this Amendment, attached hereto and incorporated herein for all purposes, for professional services related to the **Transportation of three (3) – 60,000 Gallon Tanks for the DEC Winterization Project**, are hereby authorized to be performed by Contractor. For and in consideration of the additional services to be performed by Contractor, the City agrees to pay, based on the cost estimate detail attached as Exhibit “A”, a total fee, including reimbursement for non—labor expenses an amount not to exceed \$140,000.
2. This Amendment modifies the Agreement amount to provide an additional \$140,000 for the additional services with a revised aggregate not to exceed total of \$1,419,570.

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and the Contractor, have each executed this Amendment, by and through their respective duly authorized representatives and officers on this date\_\_\_\_\_.

“CONTRACTOR”  
FREEPORT WELDING & FABRICATING, INC  
DocuSigned by:  
By: Michael Huerta  
A130B44836584B0...  
AUTHORIZED SIGNATURE, TITLE

“CITY”  
CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
By: Marcella Lunn  
4B070831B4AA438...

ATTEST:  
LAUREN THODEN, CITY SECRETARY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational  
obligations and business terms.

DocuSigned by:  
Antonio Puente, Jr. Antonio Puente, Jr.  
E3760944C2BF4B5...  
SIGNATURE PRINTED NAME

DME General Manager  
TITLE  
Electric  
DEPARTMENT



# Freeport Welding & Fabricating, Inc.

Physical Address: 200 North Navigation Blvd., Freeport TX 77541 • Mailing Address: P.O. Box 2076, Freeport, TX 77542  
(979) 233-0121 • (800) 560-0121 • www.freeweld.com

**Invoice Date** 05/06/2024

**Due Date** 06/05/2024

**Invoice #** 55456

**Job #** 127376

**Cust. #** 100120

Bill to:

**CITY OF DENTON**

215 E MCKINNEY ST

accountspayable@cityofdenton.com

DENTON , TX 76201-4299

Attn: Accounts Payable

Customer P.O.#203830 CHRISTA CHRISTIAN 940-349-7100

Terms - Net 30

Please include invoice number on check. Remit to: P.O. Box 2076, Freeport, TX 77542

*A monthly interest charge of prime + 2% APR will be charged on all past due accounts.*

**Job Description** CS 1ECB-TK-0001A WASTE TANK

**Project Name** DEC WINTERIZATION TANKS

Invoice Charges				
Item #	Description	Quantity	Cost	Amount
5	ADDITIONAL LUMP SUM FREIGHT	1.0000 EA	\$45,580.00	\$45,580.00
10000	SALES TAX EXEMPTION #75-6000514	-	-	-
Invoice Total				<b>\$45,580.00</b>

Financial Institution: **First State Bank of Clute**

City & State: **Clute, TX**

ABA Routing Number: **113123366**

Account Number: **1055573**



# Freeport Welding & Fabricating, Inc.

Physical Address: 200 North Navigation Blvd., Freeport TX 77541 • Mailing Address: P.O. Box 2076, Freeport, TX 77542  
(979) 233-0121 • (800) 560-0121 • www.freeweld.com

**Invoice Date** 05/06/2024

**Due Date** 06/05/2024

**Invoice #** 55457

**Job #** 127377

**Cust. #** 100120

Bill to:

**CITY OF DENTON**

215 E MCKINNEY ST

accountspayable@cityofdenton.com

DENTON , TX 76201-4299

Attn: Accounts Payable

Customer P.O.#203830 CHRISTA CHRISTIAN 940-349-7100

Terms - Net 30

Please include invoice number on check. Remit to: P.O. Box 2076, Freeport, TX 77542

*A monthly interest charge of prime + 2% APR will be charged on all past due accounts.*

**Job Description** CS 1ECB-TK-0002A SUMMER MIX TANK

**Project Name** DEC WINTERIZATION TANKS

Invoice Charges				
Item #	Description	Quantity	Cost	Amount
5	ADDITIONAL LUMP SUM FREIGHT	1.0000 EA	\$45,580.00	\$45,580.00
10000	SALES TAX EXEMPTION #75-6000514	-	-	-
Invoice Total				<b>\$45,580.00</b>

Financial Institution: **First State Bank of Clute**

City & State: **Clute, TX**

ABA Routing Number: **113123366**

Account Number: **1055573**



# Freeport Welding & Fabricating, Inc.

Physical Address: 200 North Navigation Blvd., Freeport TX 77541 • Mailing Address: P.O. Box 2076, Freeport, TX 77542  
(979) 233-0121 • (800) 560-0121 • www.freeweld.com

**Invoice Date** 05/06/2024

**Due Date** 06/05/2024

**Invoice #** 55458

**Job #** 127378

**Cust. #** 100120

Bill to:

**CITY OF DENTON**

215 E MCKINNEY ST

accountspayable@cityofdenton.com

DENTON , TX 76201-4299

Attn: Accounts Payable

Customer P.O.#203830 CHRISTA CHRISTIAN 940-349-7100

Terms - Net 30

Please include invoice number on check. Remit to: P.O. Box 2076, Freeport, TX 77542

*A monthly interest charge of prime + 2% APR will be charged on all past due accounts.*

**Job Description** CS 1ECB-TK-0003A WINTER MIX TANK

**Project Name** DEC WINTERIZATION TANKS

Invoice Charges				
Item #	Description	Quantity	Cost	Amount
5	ADDITIONAL LUMP SUM FREIGHT	1.0000 EA	\$45,580.00	\$45,580.00
10000	SALES TAX EXEMPTION #75-6000514	-	-	-
Invoice Total				<b>\$45,580.00</b>

Financial Institution: **First State Bank of Clute**

City & State: **Clute, TX**

ABA Routing Number: **113123366**

Account Number: **1055573**

**Certificate Of Completion**

Envelope Id: 04681D77A1F54ECFB761FD236023A12E

Status: Sent

Subject: Please DocuSign: City Council Contract 8220 DEC Winterization Tanks, NTE Amendment

Source Envelope:

Document Pages: 6

Signatures: 3

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Christa Christian

Location: DocuSign

5/3/2024 8:36:39 AM

Christa.Christian@cityofdenton.com

**Signer Events****Signature****Timestamp**

Christa Christian

**Completed**

Sent: 5/6/2024 1:11:35 PM

christa.christian@cityofdenton.com

Viewed: 5/6/2024 1:11:48 PM

Purchasing Supervisor

Signed: 5/6/2024 1:11:54 PM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 5/6/2024 1:11:56 PM

lori.hewell@cityofdenton.com

Viewed: 5/6/2024 1:16:51 PM

Purchasing Manager

Signed: 5/6/2024 1:18:08 PM

City of Denton

Signature Adoption: Pre-selected Style

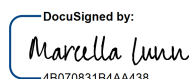
Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 5/6/2024 1:18:11 PM

marcella.lunn@cityofdenton.com

Viewed: 5/8/2024 10:09:00 AM

Senior Deputy City Attorney

Signed: 5/8/2024 10:12:43 AM

City of Denton

Signature Adoption: Pre-selected Style

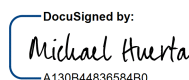
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(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Michael Huerta



Sent: 5/8/2024 10:12:45 AM

Sales@freeweld.com

Resent: 5/13/2024 10:03:44 AM

Security Level: Email, Account Authentication  
(None)

Resent: 5/13/2024 3:04:51 PM

Viewed: 5/13/2024 3:31:20 PM

Signed: 5/13/2024 4:03:48 PM

Signature Adoption: Pre-selected Style

Using IP Address: 12.69.119.131

**Electronic Record and Signature Disclosure:**

Accepted: 5/13/2024 3:31:20 PM

ID: 637e3816-4ef2-4936-b5a5-483bf2f05e3a

Signer Events	Signature	Timestamp
<p>Antonio Puente, Jr.</p> <p>Antonio.Puente@cityofdenton.com</p> <p>DME General Manager</p> <p>Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:</p> <p><i>Antonio Puente, Jr.</i></p> <p>E3760944C2BF4B5...</p> <p>Signature Adoption: Pre-selected Style</p> <p>Using IP Address: 174.244.19.147</p> <p>Signed using mobile</p>	<p>Sent: 5/13/2024 4:03:51 PM</p> <p>Viewed: 5/13/2024 4:11:41 PM</p> <p>Signed: 5/13/2024 4:12:22 PM</p>

**Electronic Record and Signature Disclosure:**  
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ID: 2d9eb91e-e73f-4b01-816b-89591f5839cd

<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	Sent: 5/13/2024 4:12:25 PM
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**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Sara Hensley

sara.hensley@cityofdenton.com

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lauren Thoden

lauren.thoden@cityofdenton.com

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<div>COPIED</div>	<p>Sent: 5/6/2024 1:11:56 PM</p>
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<p>Gretna Jones</p> <p>gretna.jones@cityofdenton.com</p> <p>Legal Secretary</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	<div>COPIED</div>	<p>Sent: 5/13/2024 4:12:24 PM</p> <p>Viewed: 5/14/2024 9:30:37 AM</p>
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Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Jason Brown jason.brown@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 5/8/2024 8:03:00 AM ID: 54c88bee-209b-4aff-a80c-de18a35079f7		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/6/2024 1:11:35 PM
Envelope Updated	Security Checked	5/13/2024 3:04:49 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-108, Version: 1**

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with (CTS) Crown Texas, Inc. dba Crown Texas, Inc., for the purchase of prefabricated substation control buildings for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8418 - awarded to (CTS) Crown Texas, Inc. dba Crown Texas, Inc., in the three (3) year not-to-exceed amount of \$2,419,785.01).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with (CTS) Crown Texas, Inc. dba Crown Texas, Inc., for the purchase of prefabricated substation control buildings for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8418 – awarded to (CTS) Crown Texas, Inc. dba Crown Texas, Inc., in the three (3) year not-to-exceed amount of \$2,419,785.01).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

### **INFORMATION/BACKGROUND**

Denton Municipal Electric (DME) has substation projects approved in its five (5) year Capital Improvement Plan (CIP) that will require the purchase of prefabricated control buildings. Control buildings are essential components for substations because they provide physical security and a climate-controlled environment for critical power system protection and control hardware.

A standardized layout for the buildings has been developed that gives the advantages of reducing engineering, providing a predictable space requirement within substations, and allowing an agreement to be structured to purchase similar buildings over time at a lower cost. A pricing method was incorporated that will allow increases or decreases in the lengths of the buildings should adjustments be necessary. Substation control buildings are used to house relay and control panels, Alternating Current (AC) and Direct Current (DC) systems, meters, the Supervisory Control And Data Acquisition (SCADA) system, and communications equipment that are necessary to control and protect substations and power lines. Placing this sensitive equipment in a climate-controlled environment provides the highest probability of reliable performance and provides the best arrangement for the large amount of integration that is necessary.

Buildings will be configured with the same basic equipment which will include AC and DC circuit breaker panels, redundant heating and air conditioning, interior lighting and outlets, emergency interior and exterior egress lighting, and 125V battery systems (batteries and battery chargers).

The buildings are prefabricated at the manufacturer's facility and shipped as completed functional units to the sites. The prices quoted in this RFP include all estimated shipping costs to Denton, Texas. The contract price includes a 10% contingency for steel and other material cost fluctuations and possible design changes. A portion of the costs are recoverable through the Transmission Cost of Services (TCOS) program.

<b>Project Description</b>	<b>Estimated 3-Year Expenditure</b>
Control Building for Underwood Substation	\$1,099,902.28
Control Building for Future Substation	1,099,902.28
10% Contingency	219,980.45
<b>Total</b>	<b>\$2,419,785.01</b>

Request for Proposals was sent to 177 prospective suppliers, including eight (8) Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Two (2) proposals were received, references were checked, and proposals were evaluated based upon published criteria including delivery, compliance with specifications, probable performance, and price. Best and Final Offers (BAFO) were requested from the top firm. Based upon this evaluation, (CTS) Crown Texas, Inc. dba Crown Texas, Inc. was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	155 - Buildings and Structures: Fabricated and Prefabricated
Notifications sent for Solicitation sent in IonWave:	177
Number of Suppliers that viewed Solicitation in IonWave:	24
HUB-Historically Underutilized Business Invitations sent out:	16
SBE-Small Business Enterprise Invitations sent out:	66
Responses from Solicitation:	2
Responses Meeting Specifications:	1

### **RECOMMENDATION**

Award a contract with (CTS) Crown Texas, Inc. dba Crown Texas, Inc., for the purchase of prefabricated substation control buildings for Denton Municipal Electric, in a three (3) year not-to-exceed amount of \$2,419,785.01.

### **PRINCIPAL PLACE OF BUSINESS**

(CTS) Crown Texas, Inc. dba Crown Texas, Inc.,  
Garland, TX

### **ESTIMATED SCHEDULE OF PROJECT**

This is a three (3) year contract.

### **FISCAL INFORMATION**

These items will be funded from Capital Improvement Projects, and part of the cost will ultimately be recovered through the Public Utility Commission Transmission Cost of Service Program (TCOS). Requisition #164998 has been entered into the Purchasing software system in the amount of \$1,057,312. The budgeted amount for this item is \$2,419,785.01.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet  
Exhibit 2: Ordinance and Contract

Respectfully submitted:  
Lori Hewell, 940-349-7100  
Purchasing Manager

For information concerning this acquisition, contact: Mark Zimmerer, 940-349-7169.

Legal point of contact: Marcella Lunn at 940-349-8333.



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH (CTS) CROWN TEXAS, INC. DBA CROWN TEXAS, INC., FOR THE PURCHASE OF PREFABRICATED SUBSTATION CONTROL BUILDINGS FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8418 – AWARDED TO (CTS) CROWN TEXAS, INC. DBA CROWN TEXAS, INC., IN THE THREE (3) YEAR NOT-TO-EXCEED AMOUNT OF \$2,419,785.01).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the purchase of prefabricated substation control buildings for Denton Municipal Electric; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered request for proposal for materials, equipment, supplies, or services shown in the “Request Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals.

<u>RFP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8418	(CTS) Crown Texas, Inc. dba Crown Texas, Inc.	\$2,419,785.01

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

**SECTION 3.** That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

**SECTION 4.** The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

**SECTION 5.** By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

**SECTION 6.** This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. This ordinance was passed and approved by the following vote [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

RFP	8418
File Name	SUBSTATION CONTROL BUILDINGS
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND (CTS) CROWN TEXAS, INC. dba CROWN TEXAS  
INC.  
(Contract # 8418)**

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between (CTS) CROWN TEXAS, INC. dba CROWN TEXAS, INC. a Texas Corporation whose address is 2350 CRIST RD SUITE 1300, GARLAND, TEXAS 75040 hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**SCOPE OF SERVICES**

Contractor shall provide products in accordance with the City's RFP #8418 Substation Control Buildings, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) City of Denton's RFP 8418 (**Exhibit "B" on file at the office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) Certificate of Interested Parties Electronic Filing (**Exhibit "D"**);
- (e) Contractor's Proposal (**Exhibit "E"**);
- (f) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "F"**)

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

**Prohibition on Contracts with Companies Boycotting Israel**

Contractor acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

**Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains

written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

#### **Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations**

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

#### **Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization**

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

#### **Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies**

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

CONTRACTOR

BY:   
F659F6D5A6074DF...  
AUTHORIZED SIGNATURE

Printed Name: Josh Carruthers

Title: GM

951-332-4170

PHONE NUMBER

JCARRUTHERS@crowntechnicalsystems.com

EMAIL ADDRESS

2024-1139965

TEXAS ETHICS COMMISSION  
1295 CERTIFICATE NUMBER


CITY OF DENTON, TEXAS

BY: \_\_\_\_\_  
SARA HENSLEY, CITY MANAGER


ATTEST:  
LAUREN THODEN, CITY  
SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:   
4B070831B4AA438...  
DocuSigned by:

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

 Antonio Puente, Jr.  
F3760944C2BF4B5...  
SIGNATURE PRINTED NAME

DME General Manager

TITLE

Electric

DEPARTMENT

## **Exhibit A**

### **Special Terms and Conditions**

#### **1. The Quantities**

The quantities indicated on Exhibit E are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the bid price. Individual purchase orders will be issued on an as needed basis.

#### **2. Product Changes During Contract Term**

The Contractor shall not change specifications during the contract term without prior approval. Any deviation in the specifications or change in the product must be approved in advance by the City of Denton. Notice of a change shall be submitted in writing to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com), with the above file number in the subject line, for review. Products found to have changed specifications without notification, and acceptance, will be returned at the contractor's expense. Products that have been installed will be replaced at the contractor's expense.

#### **3. Authorized Distributor**

The Contractor shall be the manufacturer or authorized distributor of the proposed products. The distributor shall be authorized to sell to the City of Denton, and make available the manufacturer's representative as needed by the City.

#### **4. Contract Terms**

The contract term will be three (3) years, effective from date of award or notice to proceed as determined by the City of Denton Purchasing Department. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

by the City of Denton Purchasing Department. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

#### **5. Price Escalation and De-escalation**

On Contractor's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The Contractor should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.



Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

#### **6. Total Contract Amount**

The contract total shall not exceed \$2,419,785.01. Pricing shall be per Exhibit E attached.

#### **7. Delivery Lead Time**

Product or services shall be delivered to the City per the days/weeks noted in Exhibit E after receipt of the order.

**Exhibit C**  
**City of Denton**  
**Standard Purchase Terms and Conditions**

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's contract are applicable to contracts/purchase orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller or respondent herein after referred to as Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the seller's proposal response, invoice or statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the contract/purchase order these written provisions will take precedence.

The Contractor agrees that the contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a solicitation to purchase goods, and sections 9, 10, 11, 22 and 32 shall apply only to a solicitation to purchase services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.

3. **CONTRACTOR TO PACKAGE DELIVERABLES:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. **SHIPMENT UNDER RESERVATION PROHIBITED:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5. **TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

**6. DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth the purchase order.

**7. RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

**8. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

**9. PLACE AND CONDITION OF WORK:** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

The contractor shall, at all times, exercise reasonable precautions for the safety of their employees, City Staff, participants and others on or near the City's facilities.

## **10. WORKFORCE**

A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Denton contract or on the City's property .

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

**Immigration:** The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.

**11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

**Environmental Protection:** The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

## **12. INVOICES:**

A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

**B. Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount.

The City will furnish a tax exemption certificate upon request.

**13. PAYMENT:**

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

**B. If payment is not timely made, (per paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;
- vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or
- vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given that any awarded firm who is in arrears to the City of Denton for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

**14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by Contractor 8418

the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

**15. FINAL PAYMENT AND CLOSE-OUT:**

A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.

B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**16. SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

**17. RIGHT TO AUDIT:**

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

**18. SUBCONTRACTORS:**

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in

Contract 8418

writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the

Contract, and shall contain provisions that:

- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
- ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

#### **19. WARRANTY-PRICE:**

A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

**20. WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

**21. WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.

E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

**22. WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above Contract 8418



standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

**23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

**24. RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**25. STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

**26. DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

**27. TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

**28. TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

**29. FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

**30. DELAYS:**

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

**31. INDEMNITY:**

**A. Definitions:**

i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for: (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties), ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct or a breach of any legally imposed strict liability standard.

**B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS,**

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**EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

**32. INSURANCE:** The following insurance requirements are applicable, in addition to the specific insurance requirements detailed in **Appendix A** for services only. The successful firm shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton.

**A. General Requirements:**

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:  
City of Denton  
Materials Management Department  
901B Texas Street  
Denton, Texas 76209
- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverage's indicated within the Contract.
- xiv. The insurance coverage's specified in within the solicitation and requirements are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the solicitation instrument.

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

**35. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

**36. NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

**37. CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

**38. OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees

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to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

**39. PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

**40. ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

**41. NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission,

percentage, brokerage or contingent fee.

**42. GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

**43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

**44. INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City of Denton, Texas for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City of Denton, Texas, or his designee under this agreement. The contractor is expressly free to advertise and perform services for other parties while performing services for the City.

**45. ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed

merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

**46. WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**47. MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**48. INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**49. DISPUTE RESOLUTION:**

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of



participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**50. JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

**51. INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

**52. HOLIDAYS:** The following holidays are observed by the City:

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veterans Day
Thanksgiving
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or his authorized designee.

**53. SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, Contract 8418

or City of Denton Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Denton.

## **55. EQUAL OPPORTUNITY**

**A. Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFQ.

**B. Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

## **56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)**

The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or  
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

**B.** The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

**C.** The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

**D.** The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Contract 8418

Certificate".

**57. RIGHT TO INFORMATION:** The City of Denton reserves the right to use any and all information presented in any response to this contract, whether amended or not, except as prohibited by law. Selection of rejection of the submittal does not affect this right.

**58. LICENSE FEES OR TAXES:** Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

**59. PREVAILING WAGE RATES:** The contractor shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website [www.wdol.gov](http://www.wdol.gov) for Denton County, Texas (WD-2509).

**60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

**61. FEDERAL, STATE, AND LOCAL REQUIREMENTS:** Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Respondent shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City of Denton and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

**62. DRUG FREE WORKPLACE:** The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**63. RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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**64. FORCE MAJEURE:** The City of Denton, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be 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 City of Denton. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

**65. NON-WAIVER OF RIGHTS:** Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

**66. NO WAIVER OF SOVEREIGN IMMUNITY:** The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

**67. RECORDS RETENTION:** The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

**Should a conflict arise between any of the contract documents, it shall be resolved with the following order of precedence (if applicable). In any event, the final negotiated contract shall take precedence over any and all contract documents to the extent of such conflict.**

- 1. Final negotiated contract**
- 2. RFP/Bid documents**
- 3. City's standard terms and conditions**
- 4. Purchase order**
- 5. Contractor terms and conditions**

**Exhibit D**  
**Certificate of Interested Parties Electronic Filing**

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

**Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.**

The contractor shall:

1. Log onto the State Ethics Commission Website at :  
<https://www.ethics.state.tx.us/filinginfo/1295/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) with the contract number in the subject line.  
(EX: Contract 8418 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.



# Proposal Letter

May 8, 2024

To: Christa Christian  
City of Denton  
Denton, TX 76209 USA

From: Bryan Sorensen  
Director of Business Development  
Crown Technical Systems  
13470 Philadelphia Ave.  
Fontana, CA. 92337

**Job Name: Underwood Substation Building**  
**Reference: RFP No: 8418 Email Dated: 12/08/2023**  
**Crown Quote No: B223427**  
**Rev. 0**  
**Rev. 1**  
**Rev. 2 (clean)**

Dear Ms. Christian:

Thank you for allowing Crown Technical Systems the opportunity to provide a cost proposal for the subject project.

**Please see attached Bill of Materials for Pricing.**

**Lead time for this project would be 50-54 weeks** based on the Panelboards being a (40-42) week lead time. If Crown can provide an alternate manufacturer with a shorter lead time the overall project lead time can be reduced.

**Long Lead Items**

- Bard: 27-30 weeks
- Eaton: 40-42 weeks
- Battery & Charger: 20-24 Weeks

**Revision 1 changes:**

1. Emails dated 02/12/2024 & 03/06/2024: Revised quoted Primax Battery Charger to Hindle equivalent (Alpha ACS is obsolete)
  - a. Please note only the Charger price was revised.

**Revision 2 changes:**

1. Emails dated 02/12/2024 & 03/06/2024: Revised quote to reflect current material pricing and labor rates.

**Customer Documentation provided for bid:**

Crown's proposal is based upon our best understanding of the following Specifications and Drawings provided. It is the Customers responsibility to review the Bill of Material for accuracy and completeness. If awarded, Crown's Bill of Material shall be included in the Contract/Purchase Order.

**1. Current drawing status quoted to is not to be used for construction.**

Document Type	Document Name
<b>Specification</b>	8418 Substation Control Bldg -Tech Specs Substation Control Bldg - Pricing Sheet
<b>Drawings</b>	AC Panels UW-AC Panels – UW AC-1line UW-UW DC Panels UW-UW DC-1line UW-UW Underwood Cntrl Bldg 10-24-2023 (TD)
	8418_Sample_Contract Conflict_of_Interest_Questionnaire Insurance Requirements 8418 - DME - Switchgear Buildings Safety_Record

**Option(s) Offered:**

Option	Description
<b>Option No. 1</b>	<b><u>OPTION</u></b> price to increase building by 2' <b><u>CANNOT</u></b> be offered as the building is already at the max shipping length of 60'. An increase of 2' in length would require another shipping section. Crown would be able to offer this on a per project basis.
<b>Option No. 2</b>	<b><u>OPTION</u></b> cost for a reduction to decrease building by 2'.
<b>Option No. 3</b>	<b><u>OPTION</u></b> cost to Provide and Install Card Readers For Exterior Doors and Associated Equipment as done on prior City Of Denton Projects, Brinker 1 and 2.

**Clarifications to Customer Documentation:****1. Building:**

Specification No. / Drawing No.	Section No.	Clarification
<b>Specification</b>	<b>II.A.1 V.T.2</b>	Providing Eaton panelboards in lieu of Square D described in specification section V.P.9 and V.T.8.
<b>Specification Batteries</b>	<b>V.U.2</b>	The battery racks, spill containment and chargers will be installed and interconnected at Crown Facility. The battery cells will be shipped directly from the battery manufacturer to the site and installed and connect by City of Denton personnel. To maintain the battery warranty, the following conditions at site <b><u>MUST</u></b> be met. Failure to observe these requirements may result in addition costs to reschedule the installation and no back charges for delivery issues caused by failure to meet these conditions shall be assessed against Crown: <ol style="list-style-type: none"> <li>1. The building <b><u>MUST</u></b> have functional climate control in the battery room or area so as the temperature maintains the required 77F degrees in accordance with battery warranty.</li> <li>2. The batteries <b><u>MUST</u></b> be put in service or charged within (3) months of the date of last charge provided in our documentation to maintain the battery warranty.</li> </ol>
<b>Specification</b>	<b>V.L, V.M,</b>	The building has been quoted to be coated with an alternative to

	<b>&amp; V.J</b>	the KYNAR 500 coating. Please note this is the same paint supplied on all previous City of Denton Project Crown has delivered including Brinker No. 1 & 2.
<b>Specification</b>	<b>V.N.11</b>	Providing fire rated doors as requested. 1-hour is best available in lieu of 1.5- hour.
<b>Specification</b>	<b>V.T.1</b>	AC MTS 1 and 2 are being estimated based on given description and drawing AC-1 Line UW-UW.
<b>Specification</b>	<b>V.U.1.k</b>	Per Alcad battery vendor Nicad batteries do not require a thermometer or any monitoring equipment.
<b>Specification</b>	<b>V.U.2</b>	Battery Charger estimated DC output as done on prior City of Denton projects and requested battery system, information for battery charger was not provided with bid.
<b>Specification</b>	<b>V.V</b>	Battery room interior walls are fire rated per Texas state requirement and as done on prior City of Denton projects, Brinker 1 and 2.
<b>Drawing</b>	<b>UW-PL03</b>	Quoting Door canopies shown per building layout in lieu of drip shields per specification section V.N.4
<b>Drawing</b>	<b>DC Panels UW-UW</b>	Providing 48/127vac shunt trip on given DC panelboard drawings. Final type to be selected in engineering phase and may result in a different cost due to the limited information available at this time. DC panels 1 and 2 (Distribution) have replaced (1) 20A 2P breakers with (1) 50A 2P breaker showing in drawing DC-1 Line UW-UW.
<b>Drawing</b>	<b>UW-PL03</b>	Have <b><u>NOT</u></b> included the cost for installing any of customer furnished equipment (CFE) or future equipment (i.e. SCADA Panels, servers, etc.) in this proposal. This includes but is not limited to the following items: <ol style="list-style-type: none"> <li>1. Relay panels (38 shown)</li> <li>2. Comm Rack</li> <li>3. DC transfer switch 2 (Not shown on DC one-line)</li> <li>4. AC panel 3</li> </ol>
		The cost to procure and install stairs and/or platform landings has <b><u>NOT</u></b> been included. It is assumed the will be mounted 6" above grade.

### **Technical Information:**

#### **1. Certifications and PE Stamping:**

<b>Certification Program</b>	<b>Included</b>	<b>Not Included</b>	<b>Option</b>	<b>Reference Note</b>
State Modular Building Program	X			Plan Check time associated with this is estimated at [5-6] weeks Crown has no control over the time of this review, and this could affect the overall delivery schedule
UL Field Certification		X		



**a. PE Stamped Documents:**

<b>Document Stamped by State of Location Registered PE</b>	<b>Included</b>	<b>Not Included</b>	<b>Option</b>	<b>Reference Note</b>
Structural Calculations based on IBC	X			
HVAC Calculations	X			
Energy Calculations		X		
Title-24 Calculations		X		
Fire Alarm Calculations to meet NFPA 72		X		
Seismic Calculations based on IBC		X		
Seismic Calculations based on IEEE 693		X		

**2. Testing**

- a. Crown has **NOT** included the cost to provide, install or develop any relay or HMI settings.
- b. Crown has **NOT** included the cost for performing any coordination studies.
- c. **No Re-Testing is included at the project site.**

<b>Test Type</b>	<b>Building</b>	<b>Reference Note</b>
Visual Inspection	X	
Mechanical Inspection	X	
Rain Test	X	
Continuity	X	
Megger Test Power Cables (Large)	X	
Functional Power Test	X	
Breaker simulation	NA	
Current & Voltage Injection	X	

**3. Transportation and Site Work:****a. Shipping:**

- i. Shipping costs are based on the following:
  1. Full and Complete Road Access with no detour
  2. Compliance with all Statewide Load Requirements
  3. No additional tolls and/or access fees are included
  4. Shipping Permits are included
- ii. Crown has no control over road conditions and/or construction schedules. Should any roads be closed at the time of shipment and a different route or additional permits are required, additional costs may apply.

<b>Description</b>	<b>Location or Quantity</b>	<b>Comment</b>
Location of Manufacture	Garland, TX	
Shipping Address	Denton, TX	
Number of	(2)	All items past the width of 15' 6" will

Shipping Sections		be removed for shipment and will have to be re-installed at the site.
Shipping Terms	Prepaid Allowed	

**b. Site Work:**

- i. Please note this price does not account for delays due to weather. Each additional day lost due to weather conditions or onsite delays past (2) day for Crane usage, and (7) days for the Crown field personnel are subject to additional costs.
  1. Please note Crown is a non-union shop and will be performing the below tasks at the site. The purchaser will have to provide access and authorization to Crown employees at the work site.
    - a. Should union labor be required, additional costs will apply.
  2. Should site specific training or certification be required prior to Crown personnel performing any site work, additional costs may apply. This includes but is not limited to drug testing, background checks, OSHA specific training and any specific customer requirements.
- ii. Please note the following site work is **NOT** included in our proposal.
  1. Installation of any field cables. This includes all cables from the yard equipment into the building. As well as any cables from the panels (Not provided by Crown (i.e. SCADA & Server Panels to the termination cabinet).
  2. Installation of field conduits.
  3. Shimming of the building if the concrete foundation tolerances is not within 0.25" of specifications.

Task	Crown	Client	Option	Reference Note
Crane	X			Unloading of the building is quoted using a 200-ton hydraulic crane with a 35' swing radius (center to center). The crane size is determined by assuming the crane will be able to set up next to the building pad and not have any obstacles (substation equipment) in its path for unloading. The cost for the unloading is subject to change if a larger crane is required
Lift Plan	X			
Anchoring	X			To the owner provided foundation.
Reassembly of Items Removed for Shipment	X			includes but not limited to exterior lights, cable entry hoods, door handles, HVAC units, Ventilation Fans, Rain Hoods, etc are included. All items on the long walls which make the building wider than 16'-0".
Reconnection of Cables removed for Shipment	X			
Continuity Testing of Cables removed for Shipment	X			

Breaker simulation	NA			
Current & Voltage Injection		X		

**Commercial Terms and Conditions:**

1. Contracts, Purchase Orders and Change Orders for this project shall be issued to:

Crown Texas, Inc  
 2350 Crist Rd. Ste. 300  
 Garland, TX 75040

[Contracts@CrownTechnicalSystems.com](mailto:Contracts@CrownTechnicalSystems.com)

2. Crown reserves the right to review and negotiate any Terms and Conditions not provided at the time of Bid.

3. **Deliverable requirements for delivery:**

- a. All customer supplied Release for Construction drawings to be provided no later than the below listed weeks ARO. Please note the schedule below is negotiable prior to award.

- b. Crown issued drawings will be furnished in Auto-CAD format.

Documents to be Provided for Project	Crown	Scheduled Completion	Client	Required Date to Maintain Schedule	Comment
Building Plan View and/or Elevations	X	10-12 Weeks ARO	X	At Award	
Building AC & DC Singlelines & Wiring Diagrams	X	10-12 Weeks ARO	X	At Award	
Cable Schedule	X	10-12 Weeks ARO	X	6 weeks ARO	
Cable Riser Drawings	X	10-12 Weeks ARO		NA	
Battery Load Calculations			X		

**4. Warranty:**

- a. Crown has included the warranties as listed below please note:

- i. Warranty Period shall commence upon delivery and acceptance of materials.

- ii. All sub-vender warranties will be transferred to Purchaser.

- iii. Repair or replacement of any work or materials shall extend the warranty (re-toll) on that work and materials for one year from the repair or replacement, but not to exceed five years from the original delivery date.

- iv. Please review Crown Warranty Package for complete information on offered Warranty.

Type of Warranty	Building Duration in Years	Comment
Workmanship	5	
Parts	5	Manufacturer Warranty shall flow through to Purchaser

Paint	20	
Weather Tightness	5	
Structure	20	

**5. Back charges:**

- a. Crown shall have first right to cure any incomplete, non-conforming or defective work. Sufficient and reasonable time must be provided to Crown to review a claim, verify it is within Crown's responsibility, and commence correction.
- b. In the event of an emergency, or if it is agreed Crown cannot perform the work, and the customer completes or has the work completed by others, the proposed back charges must be approved and accepted by Crown in writing.
  - i. Supporting documentation of actual direct costs must be provided.
  - ii. Crown will not accept charges/costs for customer supervision or other supporting costs in either material or labor when Crown is performing rework or warranty repairs.

**6. Bonding:**

- a. Crown has **NOT** included the cost for the following bonds:
  - i. Bid
  - ii. Performance & Payment
  - iii. Materials & Labor

**7. Liquidated Damages:**

- a. Crown's proposal does **NOT** include any liquidated damages for late submittals.

**8. Payment Terms:**

- a. One Hundred Percent (100%) at time of delivery to Customer and acceptance
- b. All invoices are due Net 30 from receipt.

**9. Proposal Validity:** 30 Days

**10. Taxes:** **NO** sales, use, general receipts, transactional privilege or any similar taxes or fees are included in the bid price. Any taxes or fees due to the state from Crown for this purchase shall be fully reimbursed to Crown from Buyer. Applicable sales tax of the State of sale shall be added as a line item on the final invoice unless, Buyer provides one of the following documents with the Purchase Order:

- a. Tax Exemption Certificate
- b. Reseller Certificate
- c. Direct Pay Certificate

**11. Cancellation Policy:** The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination.

**Attachments:**

1. Customer Documentation
  - a. Pricing Sheet
  - b. Conflict of Interest questionnaire
  - c. Safety Record questionnaire
  - d. Sample Invoice
  - e. Tax License
2. Crown Documents:
  - a. Crown Building Bill of Material
  - b. Crown General Design Criteria
  - c. Crown Preliminary HVAC Calculations

Please do not hesitate to call me at (951) 332-4170 Ext. 175, if you have any questions. We thank you again for the opportunity provided to Crown.

Best regards,

Bryan Sorensen  
Director of Business Development

**CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ**

**For vendor or other person doing business with local governmental entity**

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1 Name of vendor who has a business relationship with local governmental entity.**

(CTS) CROWN TEXAS, INC. dba  
CROWN TEXAS, INC.

**2 ☐ Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information in this section is being disclosed.**

\_\_\_\_\_  
Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relations hip with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☐

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☐

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐

Yes

☐

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4 ☒ I have no Conflict of Interest to disclose.**

**5** DocuSigned by:

*Josh Carruthers*

5/15/2024

Signature of vendor doing business with the governmental entity

Date

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

- (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
  - (i) a contract between the local governmental entity and vendor has been executed; or
  - (ii) the local governmental entity is considering entering into a contract with the vendor;
- (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
  - (i) a contract between the local governmental entity and vendor has been executed; or
  - (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
  - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
  - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
  - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
  - (1) the date that the vendor:
    - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
    - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
  - (2) the date the vendor becomes aware:
    - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
    - (B) that the vendor has given one or more gifts described by Subsection (a); or
    - (C) of a family relationship with a local government officer.

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> degree of affinity (marriage) or consanguinity (blood or adoption)

**City Official:** for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

**Vendor:** a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

**Certificate Of Completion**

Envelope Id: 7EF670728AF844308083272444CD3CCD

Status: Sent

Subject: Please DocuSign: City Council Contract 8418 - SUBSTATION CONTROL BUILDINGS

Source Envelope:

Document Pages: 36

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Envelopel Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Christa Christian

Location: DocuSign

5/3/2024 2:35:27 PM

Christa.Christian@cityofdenton.com

**Signer Events****Signature****Timestamp**

Christa Christian

**Completed**

Sent: 5/8/2024 12:45:39 PM

christa.christian@cityofdenton.com

Viewed: 5/8/2024 12:45:47 PM

Purchasing Supervisor

Signed: 5/8/2024 12:46:10 PM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 5/8/2024 12:46:13 PM

lori.hewell@cityofdenton.com

Viewed: 5/8/2024 2:09:03 PM

Purchasing Manager

Signed: 5/8/2024 2:09:11 PM

City of Denton

Signature Adoption: Pre-selected Style

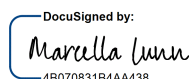
Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 5/8/2024 2:09:14 PM

marcella.lunn@cityofdenton.com

Viewed: 5/9/2024 2:56:38 PM

Senior Deputy City Attorney

Signed: 5/9/2024 2:58:17 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Josh Carruthers



Sent: 5/9/2024 2:58:21 PM

JCARRUTHERS@crowntechnicalsystems.com

Resent: 5/15/2024 9:19:05 AM

GM

Viewed: 5/15/2024 10:18:24 AM

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Pre-selected Style


Using IP Address: 12.172.109.194

**Electronic Record and Signature Disclosure:**

Accepted: 5/9/2024 5:43:07 PM

ID: 6acef7f9-e47c-4879-8500-b137d86b2afb



Signer Events	Signature	Timestamp
Antonio Puente, Jr. Antonio.Puente@cityofdenton.com DME General Manager Security Level: Email, Account Authentication (None)	<div> <small>DocuSigned by:</small>    <small>E3760944C2BF4B5...</small> </div> Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 5/15/2024 10:19:24 AM Viewed: 5/15/2024 10:23:44 AM Signed: 5/15/2024 10:24:04 AM

**Electronic Record and Signature Disclosure:**  
 Accepted: 5/15/2024 10:23:44 AM  
 ID: 4e4e0963-5124-4245-82c5-00ff3001d9ec

Cheyenne Defee  
 cheyenne.defee@cityofdenton.com  
 Procurement Administration Supervisor  
 City of Denton

Sent: 5/15/2024 10:24:08 AM

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Sara Hensley  
 sara.hensley@cityofdenton.com  
 Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Lauren Thoden  
 lauren.thoden@cityofdenton.com  
 Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee  
 cheyenne.defee@cityofdenton.com  
 Procurement Administration Supervisor  
 City of Denton



Sent: 5/8/2024 12:46:13 PM

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Gretna Jones  
 gretna.jones@cityofdenton.com  
 Legal Secretary  
 City of Denton

Sent: 5/15/2024 10:24:08 AM  
 Viewed: 5/17/2024 8:09:03 AM

Security Level: Email, Account Authentication (None)

Carbon Copy Events	Status	Timestamp
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City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Mark Zimmerer mark.zimmerer@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Accepted: 4/15/2024 2:17:37 PM ID: 3313cd87-634a-4e95-b2f7-a78e514cf021		
BRYAN SORENSEN bsorensen@crowntechnicalsystems.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/8/2024 12:45:39 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB24-109, **Version:** 1

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Mountain Cascade of Texas, LLC, for the I-35 Utility Relocation at Fort Worth Drive project, including the construction and movement of public water and abandonment of wastewater utilities in support of the Texas Department of Transportation's I-35 widening from US-377 to South Locust Street for the Capital Projects Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7968-006 - awarded to Mountain Cascade of Texas, LLC, in the not-to-exceed amount of \$750,870.75).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Mountain Cascade of Texas, LLC, for the I-35 Utility Relocation at Fort Worth Drive project, including the construction and movement of public water and abandonment of wastewater utilities in support of the Texas Department of Transportation's I-35 widening from US-377 to South Locust Street for the Capital Projects Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7968-006 – awarded to Mountain Cascade of Texas, LLC, in the not-to-exceed amount of \$750,870.75).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

### **INFORMATION/BACKGROUND**

The Texas Department of Transportation (TxDOT) has proposed a widening of Interstate Highway 35 (I-35) with an estimated construction start of Q4 2024. The I-35 Utility Relocation at Fort Worth Drive Project will move public utilities in support of TxDOT with the installation of 709 LF of 8" PVC, 466 LF of 12" PVC, and the removal of abandoned 340 LF of 8" wastewater in conflict with pavement & ROW longitudinal to IH35 from US-377 to South Locust Street. To align with TxDOT I-35 widening, the project is scheduled for 90 days. Since the project is a forced relocation of City of Denton utilities, there will be reimbursements from TxDOT to support this effort at 100%.

The I-35 Utility Relocation Project (Fort Worth Drive) has a total estimated cost of \$750,870.75. This estimate includes a \$715,115.00 total base proposal amount and a contingency of \$35,755.75. A five (5) percent contingency allowance, if any, is for the sole use of the City and will be subject to written authorization by the City's Project Manager and Program Manager.

In an effort to meet TxDOT's anticipated roadway construction schedule, a Request for Qualifications for utility relocation construction services was solicited using the City's formal solicitation process. City Council approved a pre-qualified list of professional service firms on June 7, 2022 (Ordinance 22-1145).

Invitation for Bids was sent to the three pre-qualified firms. Two (2) bids meeting specifications were received. The lowest bid was received from Mountain Cascade of Texas, LLC.

## **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On June 7, 2022, City Council approved RFQ 7968 for a prequalified list of firms for utility relocation and construction services for various Capital Investment Projects (Ordinance 22-1145).

## **RECOMMENDATION**

Award a contract with Mountain Cascade of Texas, LLC, for the I-35 Utility Relocation at Fort Worth Drive project, including the construction and movement of public water and abandonment of wastewater utilities in support of the Texas Department of Transportation's I-35 widening from US-377 to South Locust Street for the Capital Projects Department, in a not-to-exceed amount of \$750,870.75.

## **PRINCIPAL PLACE OF BUSINESS**

Mountain Cascade of Texas, LLC  
Alvarado, TX

## **ESTIMATED SCHEDULE OF PROJECT**

This project will be started upon approval with a completion date within 120 days after receipt of order with an estimated construction start in Q4 of 2024.

## **FISCAL INFORMATION**

These items/services will be funded from a combination of the accounts listed below.

TXDOT I-35N WW LINE RELOCATION	640504541.1365.401000	\$24,710.00
TXDOT I-35N WATER LINE RELOCATION	630523523.1365.401000	\$665,655.00

Requisition #164940 has been entered into the Purchasing software system in the amount of \$690,365. The project cost is 100% reimbursable. Project expenses will be submitted for reimbursement at regular intervals during the project. The budgeted amount for this item is \$750,870.75. As the project progresses the remaining funds not yet encumbered will be encumbered for a total of \$750,870.75.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet  
Exhibit 2: Ordinance and Contract

Respectfully submitted:  
Lori Hewell, 940-349-7100  
Purchasing Manager

For information concerning this acquisition, contact: Shawn Messick, 940-349-8390.

Legal point of contact: Marcella Lunn at 940-349-8333.



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH MOUNTAIN CASCADE OF TEXAS, LLC, FOR THE I-35 UTILITY RELOCATION AT FORT WORTH DRIVE PROJECT, INCLUDING THE CONSTRUCTION AND MOVEMENT OF PUBLIC WATER AND ABANDONMENT OF WASTEWATER UTILITIES IN SUPPORT OF THE TEXAS DEPARTMENT OF TRANSPORTATION'S I-35 WIDENING FROM US-377 TO SOUTH LOCUST STREET FOR THE CAPITAL PROJECTS DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7968-006 – AWARDED TO MOUNTAIN CASCADE OF TEXAS, LLC, IN THE NOT-TO-EXCEED AMOUNT OF \$750,870.75).

WHEREAS, on June 7, 2022, the City Council approved a pre-qualified list for utility relocation and construction services for various Capital Improvement Projects (Ordinance 22-1145), and the provider (the "Provider") mentioned in this ordinance is being selected as being the most advantageous to the City considering the relative importance of price and the other evaluation factors; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; and

WHEREAS the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Mountain Cascade of Texas, LLC, to provide construction services for the City of Denton, a copy of which is attached hereto and incorporated by reference herein.

SECTION 2. The City Manager, or their designee, is authorized to expend funds as required by the attached contract.

SECTION 3. The City Council of the City of Denton, hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 4. The findings in the preamble of this ordinance are incorporated herein by reference.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by  
\_\_\_\_\_. This ordinance was passed approved by the following vote [\_\_\_\_ - \_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

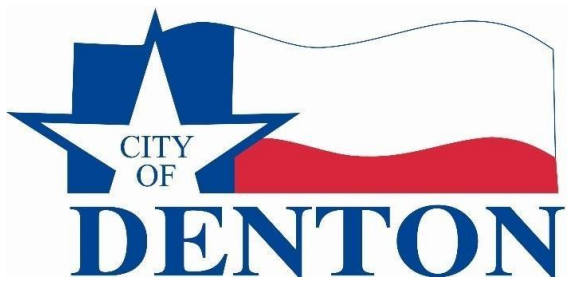
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

RFP	7968-006
File Name	Utility Relocation
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**SECTION 00 52 43****AGREEMENT – UNIT PRICE BID**

**THIS AGREEMENT**, authorized on \_\_\_\_\_ is made by and between the City of Denton, a Texas home-rule municipal corporation, acting by and through its duly authorized City Manager, (“City”), and Mountain Cascade of Texas, LLC, authorized to do business in Texas, acting by and through its duly authorized representative, (“Contractor”).

City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK**

Contractor shall complete all Work as specified or indicated in the Contract Documents for the Project identified herein.

**Article 2. PROJECT**

The project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

I-35 Utility Relocation at Fort Worth Dr. Frontage Road

IFB# 7968-006

**Article 3. CONTRACT PRICE**

City agrees to pay Contractor for performance of the Work in accordance with the Contract Documents an amount, in current funds, of Seven Hundred Fifteen Thousand One Hundred Fifteen Dollars (\$715,115.00). At the sole option of the City, five (5) percent contingency in the amount of Thirty-Five Thousand Seven Hundred Fifty-Five Dollars and Seventy-Five Cents (\$35,755.75) may be used for a total not-to-exceed amount of Seven Hundred Fifty Thousand Eight Hundred Seventy Dollars and Seventy-Five Cents. (\$750,870.75).

**Article 4. CONTRACT TIME****4.1 Time is of the essence.**

All time limits for Milestones, if any, and Final Acceptance as stated in the Contract Documents are of the essence to this Contract.

**4.2 Final Acceptance.**

The Work will be completed for Final Acceptance within 120 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

## 4.3 Liquidated Damages:

- A. Contractor recognizes that *time is of the essence* to achieve Milestones and Final Acceptance of the Work, and City will suffer financial and other losses if the Work is not completed within the times specified in the Contract Documents. The Contractor also recognizes the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work related to the Milestones or Final Acceptance is not completed on time. Accordingly, instead of requiring any such proof, Contractor agrees that liquidated damages for delay (but not as a penalty):
1. *Final Acceptance*: If Contractor neglects, refuse, or fails to complete the Work within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2, for completion and readiness for Final Payment, Contractor shall pay City Six-Hundred and Twenty-Five Dollars (\$625.00) for each day that expires after such time, until the date determined by City as stated in the City-issued Letter of Final Acceptance.

**Article 5. CONTRACT DOCUMENTS**

## 5.1 CONTENTS:

- A. The Contract comprises the entire agreement between City and Contractor concerning the Work and consists of this Agreement and the items set forth below. The Contract Documents consist of all items below other than this Agreement.
1. Attachments to this Agreement:
    - a. Proposal Form
      - 1) Bid Form
      - 2) Unit Price Proposal Form
      - 3) State and Federal documents (*project specific*)
    - b. Current Prevailing Wage Rate Table
    - c. Worker's Compensation Affidavit
    - d. General Conditions.
    - e. Supplementary Conditions.
  2. The following located in File 7968-006 at:  
<https://lfpubweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&dbid=0&repo=MaterialsManagement&cr=1>
    - a. Specifications described in the Table of Contents of the Project's Contract Documents.
    - b. Drawings.
    - c. Addenda.
    - d. Documentation submitted by Contractor prior to Notice of Award.
  3. The following which shall be issued after the Effective Date and delivered to the City within ten (10) days of the Effective Date and before beginning Work:
    - a. Payment Bond
    - b. Performance Bond
    - c. Maintenance Bond
    - d. Power of Attorney for the Bonds
    - e. Form 1295 – Certificate of Interested Parties (email to purchasing)
    - f. Insurance Certificate

4. Specifications specifically made a part of the Contract Documents by attachment or, if not attached, as incorporated by reference and described in the Table of Contents of the Project's Contract Documents.
5. The following which may be delivered or issued after the Effective Date of the Agreement and, if issued, become an incorporated part of the Contract Documents:
  - a. Notice to Proceed.
  - b. Field Orders.
  - c. Change Orders.
  - d. Letter of Final Acceptance.

## Article 6. INDEMNIFICATION

**6.1 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL INJURY OR DEATH, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**

**6.2 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR, LOSS OF, DAMAGE TO, OR DESTRUCTION OF, PROPERTY OF THE CITY OR OF A THIRD PARTY, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**

## Article 7. MISCELLANEOUS

1     7.1   Capitalized Terms.

2           Unless otherwise provided herein, capitalized terms used in this Agreement which are  
3           defined in Article 1 of the General Conditions will have the meanings indicated in the General  
4           Conditions.

5     7.2   Assignment of Contract.

6           This Agreement, including all of the Contract Documents may not be assigned by the  
7           Contractor without the advance express written consent of the City.

8     7.3   Successors and Assigns.

9           City and Contractor each binds itself, its partners, successors, assigns and legal  
10          representatives to the other party hereto, in respect to all covenants, agreements and  
11          obligations contained in the Contract Documents.

12    7.4   Severability.

13          Any provision or part of the Contract Documents held to be unconstitutional, void or  
14          unenforceable by a court of competent jurisdiction shall be deemed stricken, and all  
15          remaining provisions shall continue to be valid and binding upon City and Contractor.

16    7.5   Venue and Waiver of Sovereign Immunity.

17          This Agreement, including all of the Contract Documents is performable in the State of  
18          Texas. Venue shall be in the state district courts of Denton County, Texas. The City's  
19          sovereign immunity is waived only to the extent set forth and in accordance with the  
20          provisions of Subchapter I, Chapter 271 of the Texas Local Government Code or as otherwise  
21          specifically waived by law. The City does not waive its sovereign immunity to suit in federal  
22          court.

23    7.6   Authority to Sign.

24          Contractor hereby certifies that the person signing the Agreement on its behalf is the duly  
25          authorized signatory of the Contractor.

26    7.7   Prohibition on Contracts with Companies Boycotting Israel.

27          Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government  
28          Code, the City is prohibited from entering into a contract with a company for goods or  
29          services unless the contract contains a written verification from the company that it: (1) does  
30          not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms  
31          "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section  
32          808.001 of the Texas Government Code. By signing this contract, Contractor certifies that  
33          Contractor's signature provides written verification to the City that Contractor: (1) does not  
34          boycott Israel; and (2) will not boycott Israel during the term of the contract.

35    7.8   Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

7.9 Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations.

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

7.10 Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

7.11 Prohibition on Contracts with Companies Boycotting Certain Energy Companies

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

7.12 Immigration Nationality Act.



Contractor shall verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by City, Contractor shall provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Contractor shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any Contractor employee who is not legally eligible to perform such services. **CONTRACTOR SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CONTRACTOR, CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** City, upon written notice to Contractor, shall have the right to immediately terminate this Agreement for violations of this provision by Contractor.

7.13 No Third-Party Beneficiaries.

This Agreement gives no rights or benefits to anyone other than the City and the Contractor and there are no third-party beneficiaries.

7.14 No Cause of Action Against Engineer.

Contractor, its subcontractors and equipment and materials suppliers on the Project or their sureties, shall maintain no direct action against the Engineer, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the City will be the beneficiary of any undertaking by the Engineer. The presence or duties of the Engineer's personnel at a construction site, whether as on-site representatives or otherwise, do not make the Engineer or its personnel in any way responsible to Contractor or any other entity for those duties that belong to the City, and do not relieve Contractor or any other entity of its obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for performing, coordinating and completing all portions of the Work in accordance with the Contract Documents and any health or safety precautions required by such Work. The Engineer and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, City and Contractor have each executed this Agreement to be effective as of the date subscribed by the City's City Manager or his designee ("Effective Date").

CITY OF DENTON

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

CONTRACTOR  
MOUNTAIN CASCADE OF TEXAS, LLC

DocuSigned by:  
*Andrew McCulloch*  
BY: \_\_\_\_\_  
0AB8B77B68BE940A...  
AUTHORIZED AGENT

Andrew McCulloch

NAME

Vice-President

TITLE

925-525-2920

PHONE NUMBER

AMcCulloch@mountaincascade.com

EMAIL ADDRESS

2024-1160693

TEXAS ETHICS COMMISSION  
1295 CERTIFICATE NUMBER

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

DocuSigned by:  
*Trevor Crain*  
7D46EEFAB11BC4F2...  
SIGNATURE PRINTED NAME  
Director of Capital Projects  
TITLE  
Capital Projects  
DEPARTMENT

ATTEST:  
LAUREN THODEN, CITY SECRETARY

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
*Marcella Lunn*  
4B070831B4AA438...

**SECTION 00 41 00****BID FORM**

TO: City of Denton  
c/o: Purchasing Division  
901-B Texas Street  
Denton, Texas 76209

FOR: *I-35 Utility Relocation at Fort Worth Dr. Frontage Road, IFB 7968-006*

**1 Enter Into Agreement**

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with City in the form included in the Bidding Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

**2 BIDDER Acknowledgements and Certification**

- 2.1 In submitting this Bid, Bidder accepts all of the terms and conditions of the INVITATION TO BIDDERS and INSTRUCTIONS TO BIDDERS, including without limitation those dealing with the disposition of Bid Bond.
- 2.2 Bidder is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.
- 2.3 Bidder certifies that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
- 2.4 Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
- 2.5 Bidder has not solicited or induced any individual or entity to refrain from bidding.
- 2.6 Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:
- a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.
  - b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of City (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.
  - c. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of City, a purpose of which is to establish Bid prices at artificial, non-competitive levels.
  - d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

2.7 The Bidder acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 23-1165.

### 3 Time of Completion

- 3.1 The Work will be complete for Final Acceptance within 120 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.
- 3.2 Bidder accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable) and Final Acceptance within the times specified in the Agreement.

### 4 Attached to this Bid

The following documents are attached to and made a part of this Bid:

- a. Section 00 35 13 – Conflict of Interest Affidavit
- b. Section 00 41 00 – This Bid Form
- c. **Section 00 42 43 – Unit Price Proposal Form – Electronic Copy (either included in the Bid, or submitted via Ion Wave)**
- d. Section 00 42 13 – Required Bid Bond, issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions
- e. Section 00 43 36 – Proposed Subcontractors Form
- f. ~~Section 00 43 37 – Vendor Compliance to State Law Non-Resident Bidder~~
- g. ~~Section 00 45 13 – Bidders Minimum Qualification Statement~~
- h. Section 00 45 26 – Contractor Compliance with Workers Compensation Law
- i. Section 00 45 43 – Corporate Resolution of Authorized Signatories
- j. Any additional documents that may be required by Section 00 21 13 – Instructions to Bidders

**5 Total Bid Amount**

- 5.1 Bidder will complete the Work in accordance with the Contract Documents for the following bid amount. In the space provided below, please enter the total bid amount for this project. Only this figure will be read publicly by the City at the bid opening.
- 5.2 It is understood and agreed by the Bidder in signing this proposal that the total bid amount entered below is subject to verification and/or modification by multiplying the unit bid prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.
- 5.3 Total Bid Amount: \$ 715,115.00

**6 Bid Submittal**

This Bid is submitted on April 10, 2024 by the entity named below.

Respectfully submitted,

By: 

(Signature)

Andrew L. McCulloch

(Printed Name)

Title: Vice President

Company: Mountain Cascade of Texas, LLC.

Address: 5340 E. US Hwy 67

Alvarado, TX 76009

State of Incorporation: Texas

Email: amcculloch@mountaincascade.com

Phone: 817-783-3094

Receipt is acknowledged of the following Addenda:	Initial
Addenda No. 1:	
Addenda No. 2:	
Addenda No. 3:	
Addenda No. 4:	
Addenda No. 5:	

**END OF SECTION**





City of Denton - Capital Projects  
901-A Texas Street  
Denton, TX 76209  
Erica Garcia/Purchasing Dept.

From: Mountain Cascade of Texas LLC.  
5340 E US Hwy 67  
Alvarado, TX 76009  
Andrew L. McCulloch  
817-783-3094  
[amcculloch@mountaincascade.com](mailto:amcculloch@mountaincascade.com)

PROPOSAL FORM: **I-35 Utility Relocation at Fort Worth Dr. Frontage Rd.**

IFB: **7968-006**

CIP/ENG: **230009-1**

00 42 43 PROPOSAL FORM

### BIDDERS APPLICATION - UNIT PRICE BID

Item NO.	Spec. Section No.	Description of work	UOM	BID QTY	Unit Price	Extended Price
1	01 58 13	Project Signs	EA	2	\$ 1,000.00	\$2,000.00
2	01 70 00	Mobilization	LS	1	\$ 20,000.00	\$20,000.00
3	02 41 14	Utility Line Removal	LF	1285	\$ 45.00	\$57,825.00
4	02 41 14	Remove Fire Hydrant	EA	3	\$ 2,000.00	\$6,000.00
5	02 41 14	Remove Cleanout	EA	1	\$ 2,000.00	\$2,000.00
6	02 41 14	Remove Water Valve	EA	4	\$ 2,000.00	\$8,000.00
7	31 25 14	SWPPP Device Installation	LS	1	\$ 15,000.00	\$15,000.00
8	31 25 14	SWPPP Device Removal	LS	1	\$ 2,500.00	\$2,500.00
9	32 01 17	Asphalt Pavement Repair for Utility Trench	SY	80	\$ 300.00	\$24,000.00
10	32 01 29	Concrete Pavement Repair for Utility Trench	SY	94	\$ 360.00	\$33,840.00
11	32 93 00	Seeding Turf Grass	SY	1,005	\$ 4.00	\$4,020.00
12	32 93 00	Block Sod	SY	412	\$ 10.00	\$4,120.00
13	33 05 05	Excavation Protection	LF	2,460	\$ 1.00	\$2,460.00
14	33 05 98	Locate Existing Utilities	LS	1	\$ 20,000.00	\$20,000.00
15	33 14 11	PVC Water Main (8")	LF	709	\$ 236.00	\$167,324.00
16	33 14 11	PVC Water Main (15")	LF	466	\$ 411.00	\$191,526.00
17	33 14 17	Water Service Connection (1")	EA	2	\$ 5,000.00	\$10,000.00
18	33 14 17	Water Service Connection (1.5")	EA	1	\$ 7,500.00	\$7,500.00
19	33 14 20	Gate Valve (8")	EA	1	\$ 8,000.00	\$8,000.00
20	33 14 20	Gate Valve (12")	EA	1	\$ 11,000.00	\$11,000.00
21	33 14 25	Connection to Existing Main (8")	EA	1	\$ 18,000.00	\$18,000.00
22	33 14 25	Connection to Existing Main (12")	EA	1	\$ 20,000.00	\$20,000.00
23	33 14 25	City Performed Tapping Sleeve and Valve Connection (6")	EA	1	\$ 6,000.00	\$6,000.00
24	33 14 25	City Performed Tapping Sleeve and Valve Connection (8")	EA	2	\$ 7,000.00	\$14,000.00
25	33 14 30	2" Air/Vacuum Release Valve	EA	1	\$ 15,000.00	\$15,000.00
26	33 14 40	Fire Hydrant Assembly	EA	3	\$ 13,000.00	\$39,000.00
27	34 71 13	Traffic Control Devices	MO	1	\$ 5,000.00	\$5,000.00
28	34 71 13	Traffic Control Plan	EA	1	\$ 1,000.00	\$1,000.00
END BID ITEMS						

**BASE BID AMOUNT (Items 1-28)**

**\$715,115.00**

I-35 Utility Relocation at Fort Worth Dr. Frontage Rd.

Mountain Cascade of Texas LLC.

"General Decision Number: TX20240016 01/05/2024

Superseded General Decision Number: TX20230016

State: Texas

Construction Type: Heavy

County: Denton County in Texas.

Heavy Construction, Including Treatment Plants (Does not include water/sewer lines)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.</li> </ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number      Publication Date  
0                              01/05/2024

ASBE0021-003 06/01/2023

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Includes application of all insulating materials, protective coverings, coatings, and finishings to all types of mechanical systems).....	\$ 31.32	7.52

ELEC0020-004 12/01/2023

	Rates	Fringes
Electricians:		
Cable Splicer.....	\$ 29.81	8.84
Electrician.....	\$ 37.15	11.29

ELEC0220-001 06/04/2023

	Rates	Fringes
Line Construction:		
CABLE SPLICERS.....	\$ 17.12 **	14.5%+3.75
EQUIPMENT OPERATORS.....	\$ 25.08	17.50%+7.75
GROUNDMAN.....	\$ 18.72	1.5%+7.81
LINEMAN.....	\$ 39.91	17.5%+8.16
TRUCK DRIVER.....	\$ 22.47	2.0%+7.67

ENGI0178-001 06/01/2020

	Rates	Fringes
Cranes:		
Hydraulic Crane (35 ton & under).....	\$ 32.35	13.10
Hydraulic over 35 tons,Derricks, Overhead Gentry,Stiffleg,Tower,etc., and Cranes with Piledriving or Caisson attachements.....	\$ 32.60	13.10

IRON0263-010 06/01/2023

	Rates	Fringes
Ironworkers:		
Reinforcing & Structural....	\$ 27.89	7.93

PLUM0100-002 11/01/2022

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 35.73	13.07

SHEE0068-002 11/01/2012

	Rates	Fringes
Sheet metal worker.....	\$ 27.64	8.84

SUTX1990-039 08/01/1990



	Rates	Fringes
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CARPENTER.....	\$ 10.536	**
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Concrete Finisher.....	\$ 9.603	**
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Form Builder.....	\$ 8.036	**
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Form Setter.....	\$ 9.578	**
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## Laborers:

Common.....	\$ 7.25	**
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Utility.....	\$ 7.25	**
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Pipelayer.....	\$ 7.961	**
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## Power equipment operators:

Backhoe.....	\$ 10.971	**
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Bulldozer.....	\$ 9.942	**
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Front end loader.....	\$ 10.771	**
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Mechanic.....	\$ 9.88	**
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Motor Grader.....	\$ 11.633	**
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Oiler.....	\$ 9.183	**
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Scraper.....	\$ 8.00	**
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TRUCK DRIVER.....	\$ 7.465	**
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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at

<https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date

for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

"General Decision Number: TX20240025 01/05/2024

Superseded General Decision Number: TX20230025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 14026 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.</li></ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 13658 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.</li></ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

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Modification Number      Publication Date  
0                              01/05/2024

SUTX2011-007 08/03/2011

Rates                              Fringes

CONCRETE FINISHER (Paving and  
Structures).....\$ 14.12 \*\*

ELECTRICIAN.....\$ 19.80

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 13.16 \*\*

Structures.....\$ 13.84 \*\*

LABORER

Asphalt Raker.....\$ 12.69 \*\*

Flagger.....\$ 10.06 \*\*

Laborer, Common.....\$ 10.72 \*\*

Laborer, Utility.....\$ 12.32 \*\*

Pipelayer.....\$ 13.24 \*\*

Work Zone Barricade

Servicer.....\$ 11.68 \*\*

POWER EQUIPMENT OPERATOR:

Asphalt Distributor.....\$ 15.32 \*\*

Asphalt Paving Machine.....\$ 13.99 \*\*

Broom or Sweeper.....\$ 11.74 \*\*

Concrete Pavement

Finishing Machine.....\$ 16.05 \*\*

Concrete Saw.....\$ 14.48 \*\*

Crane Operator, Lattice

Boom 80 Tons or Less.....\$ 17.27

Crane Operator, Lattice

Boom over 80 Tons.....\$ 20.52

Crane, Hydraulic 80 Tons

or Less.....\$ 18.12

Crawler Tractor.....\$ 14.07 \*\*

Excavator, 50,000 pounds

or less.....\$ 17.19 \*\*

Excavator, over 50,000

pounds.....\$ 16.99 \*\*

Foundation Drill , Truck

Mounted.....\$ 21.07

Foundation Drill, Crawler

Mounted.....\$ 17.99

Front End Loader 3 CY or

Less.....\$ 13.69 \*\*

Front End Loader, over 3 CY.\$ 14.72 \*\*

Loader/Backhoe.....\$ 15.18 \*\*

Mechanic.....\$ 17.68

Milling Machine.....\$ 14.32 \*\*

Motor Grader, Fine Grade....\$ 17.19 \*\*

Motor Grader, Rough.....\$ 16.02 \*\*

Pavement Marking Machine....\$ 13.63 \*\*

Reclaimer/Pulverizer.....\$ 11.01 \*\*

Roller, Asphalt.....\$ 13.08 \*\*

Roller, Other.....\$ 11.51 \*\*

Scraper.....\$ 12.96 \*\*

Small Slipform Machine.....\$ 15.96 \*\*

Spreader Box.....\$ 14.73 \*\*

Servicer.....\$ 14.58 \*\*

Steel Worker (Reinforcing).....\$ 16.18 \*\*

#### TRUCK DRIVER

Lowboy-Float.....\$ 16.24 \*\*

Off Road Hauler.....\$ 12.25 \*\*

Single Axle.....\$ 12.31 \*\*

Single or Tandem Axle Dump

Truck.....\$ 12.62 \*\*

Tandem Axle Tractor with

Semi Trailer.....\$ 12.86 \*\*

Transit-Mix.....\$ 14.14 \*\*

WELDER.....\$ 14.84 \*\*

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

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#### Survey Rate Identifiers

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A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

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- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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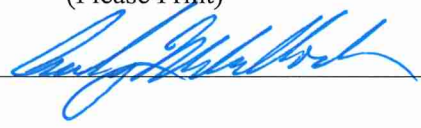
END OF GENERAL DECISION"

## SECTION 00 45 26

## CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW

Pursuant to Texas Labor Code Section 406.096(a), as amended, Contractor certifies that it provides worker's compensation insurance coverage for all of its employees employed on *I-35 Utility Relocation at Fort Worth Dr. Frontage Road, IFB 7968-006*. Contractor further certifies that, pursuant to Texas Labor Code, Section 406.096(b), as amended, it will provide to City its subcontractor's certificates of compliance with worker's compensation coverage.

## CONTRACTOR:

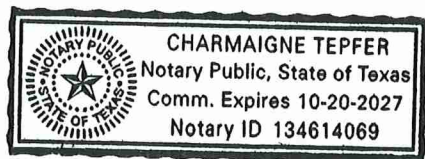
Mountain Cascade of Texas, LLC. By: Andrew L. McCulloch  
Company (Please Print)  
5340 E US Hwy 64 Signature:   
Address  
Alvarado, TX 76009 Title: Vice President  
City/State/Zip (Please Print)

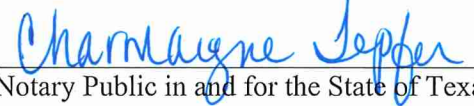
THE STATE OF TEXAS §

COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared  
Andrew L. McCulloch, known to me to be the person whose name is  
subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as  
the act and deed of Vice President for the purposes and  
consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of  
April, 2024.



  
Notary Public in and for the State of Texas

END OF SECTION

# **STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT**

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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**ARTICLE 1 – DEFINITIONS AND TERMINOLOGY****1.01 *Defined Terms***

- A. Wherever used in the Contract or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof, and words denoting gender shall include the masculine, feminine and neuter. When used in a context consistent with the definition of a listed-defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument titled “Agreement”, “Agreement – CSP”, or “Agreement – Unit Price Bid” executed by the City and Contractor for the Work, setting forth the name of the Project, Contract Price, Contract Time and the items included in the Contract.
  3. *Application for Payment*—The form acceptable to City which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Award*—Authorization by the City Council for the City to enter into an Agreement.
  6. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed. The term “Bid” shall be defined to include the term “Proposal” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  7. *Bidder*—The individual or entity that submits a Bid directly to City. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  8. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda). The term “Bidding Documents” shall be defined to include the terms “Proposal Documents” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  9. *Bidding Requirements*—The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments. The term “Bidding Requirements” shall be defined to include the terms “Proposal Requirements” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and will include the Request for Proposal or Invitation to Offerors, Instructions to Offerors, Offerors Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.

10. *Business Day*—A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
11. *Calendar Day*—A day consisting of 24 hours measured from midnight to the next midnight.
12. *Change Order*—A document which is prepared by the Contractor or City, approved by the City, and signed by Contractor and City, authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
13. *City*—The City of Denton is, a Texas home-rule municipal corporation acting by its City Council through its City Manager or his or her designee.
14. *City Attorney*—The officially appointed City Attorney of the City of Denton or his or her designee.
15. *City Council*—The duly elected and qualified governing body of the City of Denton.
16. *City Manager*—The officially appointed authorized City Manager of the City of Denton.
17. *Contract*—The entire and integrated set of written instruments between the City and Contractor concerning the Work comprised of the Agreement and all Contract Documents, which written instruments supersede all prior negotiations, representations, or agreements, whether written or oral, concerning the Work.
18. *Contract Claim*—A demand or assertion by City or Contractor seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Contract Claim.
19. *Contract Documents*—Those items so designated as “Contract Documents.” in the Agreement at Paragraph 5.1.A. Approved Submittals, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
20. *Contract Price*—The moneys payable by City to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 12.03 in the case of Unit Price Work). The Contract Price does not include any “Incentive”, if applicable.
21. *Contract Time*—The number of days or the dates stated in the Agreement to: (a) achieve Milestones, if any and (bb) complete the Work so that it is ready for Final Acceptance.
22. *Contractor*—The individual or entity with whom City has entered into the Agreement.
23. *Cost of the Work*—See Paragraph 12.01 of these General Conditions for definition.
24. *Damage Claims*—A demand for money or services arising from the Project or Site from a third party, City or Contractor exclusive of a Contract Claim.
25. *Day or day*—A day, unless otherwise defined, shall mean a Calendar Day.
26. *Drawings*—The part of the Contract Documents prepared or approved by an Engineer that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Submittals, as defined, are not considered Drawings as so defined here.

27. *Effective Date of the Agreement*—The date, indicated in the Agreement, on which it becomes effective,, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the City.
28. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, text, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
29. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by the Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
30. *Engineer*—The licensed professional engineer or engineering firm registered in the State of Texas performing professional services for the City.
31. *Extra Work*—Additional work made necessary by City-approved changes or alterations to the Contract Documents. Extra Work shall be part of the Work.
32. *Field Order*—A written directive issued by City that requires changes in the Work but does not involve a change to the Contract Price, Contract Time, or Drawings, Plan, or Shop Drawings.
33. *Final Acceptance*—The written notice given by the City to the Contractor that the Work specified in the Contract Documents has been completed to the satisfaction of the City.
34. *Final Inspection*—The inspection performed by the City to determine whether the Contractor has completed each and every part or appurtenance of the Work fully, entirely, and in conformance with the Contract Documents.
35. *General Requirements*—Sections of The information set forth in “Division 101 – General Requirements” of the Standard Construction Specification Documents.
36. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, P C B s , Petroleum, Hazardous Waste, Radioactive Material, or any other substance, product, waste or materials, in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
37. *Hazardous Waste*—Any solid waste listed as hazardous or which possesses one or more hazardous characteristics as defined in applicable Laws and Regulations.
38. *Incidental or incidental*—Work items that the Contractor is not paid for directly, but costs for which are included under the various bid items of the Project.
39. *Laws and Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all

governmental bodies, agencies, authorities, and courts having jurisdiction over the Site or any portion or part of the Work to be performed.

40. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
41. *Major Item*—An item of work included in the Contract Documents that has a total cost equal to or greater than 5% of the original Contract Price.
42. *Milestone*—A principal event specified in the Contract Documents relating to the performance of an identified portion of the Work by an intermediate Contract Time prior to Final Acceptance of the Work.
43. *Notice of Award*—The written notice by City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed in such notice, City will sign and deliver the Agreement.
44. *Notice to Proceed*—A written notice given by City to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work specified in Contract Documents.
45. *PCBs*—Polychlorinated biphenyls.
46. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
47. *Plans*—This term will have the same definition of as “Drawings”.
48. *Project* —The Work to be performed under the Contract.
49. *Project Manager*—The authorized representative of the City who will be assigned to the Project.
50. *Project Manual*—The documentary information prepared for bidding or proposing and furnishing the Work.
51. *Project Schedule*—A schedule, prepared and maintained by Contractor, in accordance with the General Requirements, describing the sequence and duration of the activities comprising Contractor’s plan to achieve each Milestone and accomplish the Work within the Contract Time.
52. *Public Meeting*—An announced meeting conducted by the City to facilitate public participation and to assist the public in gaining an informed view of the Project.
53. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
54. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

55. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
56. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
57. *Site*—Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way, permits, and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
58. *Specifications or Technical Specifications* —The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work. Specifications may be specifically made a part of the Contract Documents by attachment or, if not attached, may be incorporated by reference as indicated in the Table of Contents (Section 00 00 00) of the Project.
59. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
60. *Submittal*—All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to the City to illustrate some portion of the Work.
61. *Subsidiary or subsidiary*—*These terms will have the same* definition as "Incidental. or incidental".
62. *Successful Bidder*—The Bidder to whom City issues a Notice of Award. The term "Bidder" shall be defined to include the terms "Proposer" or "Offeror" in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and is the Proposer or Offeror submitting the proposal or offer that provides the best value to the City and to whom the City issues a Notice of Award.
63. *Superintendent*—The representative of the Contractor who is available at all times and able to receive instructions from the City and to act for the Contractor.
64. *Supplementary Conditions*—The part of the Contract set forth at Division 00 73 00 that amends or supplements these General Conditions.
65. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
66. *Underground Facilities*—All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid

petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

67. *Unit Price Work*—Work for which the Contract Price is determined by multiplying the unit price for the item by the estimated quantity of the item.
68. *Weekend Working Hours*—Those hours between 8:00 a.m. and 8:30 p.m. on Saturday, and between 1:00 p.m. and 8:30 p.m. on Sunday or on a federal or state holiday observed by the City, as approved in advance by the City for performing Work.
69. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction including any Change Order or Field Order, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
70. *Working Day*—Defined as a Business Day but excluding any days that weather or other conditions beyond the reasonable control of the Contractor prevents the performance of the principal unit of work underway for a continuous period of not less than 7 hours between 7:00 a.m. and 8:00 p.m.

#### 1.02 *Terminology*

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract includes the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of judgment by CityCity. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of City as to the Work. It is intended that such exercise of judgment, action, or determination will be to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).
- C. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  1. does not conform to the Contract Documents; or
  2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  3. has been damaged prior to City’s written notice of Final Acceptance.
- D. *Furnish, Install, Perform, Provide*
  1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to execute, carry out, furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- E. Unless stated otherwise in the Contract, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract in accordance with such recognized meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance***

- A. Performance and Payment Bonds: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City the performance bond, payment bond and maintenance bond that comply with the provisions of Chapter 2253 of the Texas Government Code. Work will not be allowed to begin until the performance and payment bonds have been provided by the Contractor to the City.
- B. Evidence of Contractor’s Insurance: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6. Work will not be allowed to begin until the evidence of insurance has been provided by the Contractor to the City.

### **2.02 *Copies of Documents***

- A. City shall furnish to Contractor one (1) original executed copy and one (1) electronic copy of the Contract, and three (3) additional copies of the Drawings. Additional printed copies will be furnished upon request at the cost of reproduction.

### **2.03 *Before Starting Construction***

Baseline starting Work, Contractor shall submit for review by City the following in accordance with the Contract Documents:

- A. Baseline Schedules in accordance with General Requirements, Section 01 32 16.
- B. Preliminary Schedule of Submittals.
- C. Preliminary Schedule of Values: For lump sum contracts, a Schedule of Values for all of the Work that includes quantities and prices of items that when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

#### 2.04 *Preconstruction Meeting*

- A. Before any Work at the Site is started, the Contractor shall attend a Preconstruction Meeting as specified in Section 01 31 19.

#### 2.05 *Public Meeting*

- A. Contractor may not mobilize any equipment, materials, or resources to the Site prior to Contractor attending the Public Meeting as scheduled by the City.

#### 2.06 *Initial Acceptance of Schedules*

- A. No progress payment shall be made to Contractor until acceptable Project Schedules are submitted to City in accordance with the Contract Documents.

#### 2.07 *Electronic Submittals and Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the City and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then City and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.
- C. City will issue clarifications and interpretations of the Contract Documents as provided herein.
- D. The Specifications may vary in form, forma and style. Some Specification sections may be written in varying degrees of streamlined or declarative style, and some sections may be relatively narrative by comparison. Omission of such words and phrases as “the Contractor shall,” “in conformity with,” “as shown,” or “as specified” are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making Contract Claims or Damage Claims.



- E. The cross-referencing of Specification sections under the subparagraph heading “Related Sections include but are not necessarily limited to:” and elsewhere within each Specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross-referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not cross-referencing is provided in each section or whether the cross-referencing is complete or accurate.

### 3.02 *Reference Standards*

#### A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of City, Contractor, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. Reporting Discrepancies

1. *Contractor’s Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements, and conditions. Contractor shall promptly report in writing to City any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby.
2. *Contractor’s Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to City in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.1717) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by City, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to City for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

**B. Resolving Discrepancies**

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier; or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. In case of discrepancies, figured dimensions shall govern over scaled dimensions, Drawings shall govern over Specifications, and Supplementary Conditions shall govern over General Conditions and Specifications.

**3.04 Requirements of the Contract Documents**

- A. During the performance of the Work and until final payment, Contractor shall submit to the City in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. City will be the interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. City will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. City's written clarification, interpretation, or decision will be final and binding on Contractor, unless Contractor appeals by filing a Contract Claim.

**3.05 Reuse of Documents**

- A. Contractor and its Subcontractors and Suppliers shall not:
  1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of CityCity and specific written verification or adaptation by Engineer; or
  2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without City's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

**ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK****4.01** *Commencement of Contract Time; Notice to Proceed*

- A. The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract.

**4.02** *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work may be done at the Site prior to the date on which the Contract Time commences to run.

**4.03** *Delays in Contractor's Progress*

- A. If Contractor is delayed, City shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project. The City shall be liable only to the extent allowed by the provisions of the Contract and as allowed by Subchapter I, Chapter 271 of the Texas Local Government Code.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. The Contractor shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to the Contractor is caused by the failure of the City to provide information or material, if any, that the Contract specifies is to be furnished by the City.
- D. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of City, Contractor, and those for whom they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Time. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Paragraph 4.03. D. The Contractor is responsible for the prompt submission of a request for an adjustment to the Contract Time under this Paragraph to the City. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Time under this Paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with City, as contemplated in Article 8); and

4. Acts of war or terrorism.
- E. Contractor's entitlement to an adjustment of Contract Time or Contract Price is limited as follows:
  1. Contractor's entitlement to an adjustment of the Contract Time is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Time to which Contractor is otherwise entitled.
  3. Adjustments of Contract Time or Contract Price are subject to the provisions of Article 11.
- F. Each Contractor request or Change Order seeking an increase in Contract Time or Contract Price must be supplemented by supporting data that sets forth in detail the following:
  1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Time claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.08.
  6. Contractor shall also furnish such additional supporting documentation as City may require including, where appropriate, a revised Project Schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- G. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from undisclosed Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.03.F and 4.03.G.

## **ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. City shall furnish the Site. City shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which

Contractor must comply in performing the Work. City will be responsible for obtaining any necessary easements for permanent structures or permanent changes in existing facilities.

1. The City has obtained or anticipates acquisition of and/or access to right-of-way, and/or easements. Any outstanding right-of-way and/or easements are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding right-of-way, and/or easements.
  2. Unless otherwise specified in the Contract Documents, the City has or anticipates moving and/or relocating utilities, and obstructions to the Site. Any outstanding movement or relocation of utilities or obstructions is anticipated in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding utilities or obstructions to be moved and/or relocated by others.
- B. Upon reasonable written request of Contractor, City shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed.
- C. Contractor shall provide for any additional lands and access thereto not included in the Site that may be required for construction facilities or storage of materials and equipment. The cost of such shall be part of the Contract Price.

#### 5.02 *Use of Site and Other Areas*

##### A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, worker car parking and the operations of workers to the Site, to adjacent areas that Contractor has arranged to use through construction easements or otherwise, and to other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with worker car parking, construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries, including death, and damage to or losses of property sustained by the owners or occupants of any such land or areas; provided that such damage, losses, injuries or deaths arose out of or result from the performance of the Work or arose out of or resulted from any other actions or conduct of the Contractor or those for whom Contractor is responsible.
2. At any time when, in the judgment of the City, the Contractor has obstructed, closed, or is carrying on operations in a portion of a street, right-of-way, or easement greater than is necessary for proper execution of the Work, the City may require the Contractor to reduce the area impacted to only that necessary for proper execution of the Work and/or to finish the section on which operations are in progress before work is commenced on any additional area of the Site.

3. Construction equipment, spoil materials, supplies, forms, buildings, labs, or equipment and supply storage buildings, or any other item that may be transported by flood flows, shall not be stored within existing federal floodways during the course of the Work.
  4. Should any Damage Claim be made by any such owner or occupant adversely impacted because of the performance of the Work, Contractor shall promptly attempt to resolve the Damage Claim.
  5. ***PURSUANT TO PARAGRAPH 7.21, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH ADVERSELY IMPACTED OWNER OR OCCUPANT AGAINST CITY.***
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
  - C. *Site Maintenance Cleaning:* If 24 hours after written notice is given to the Contractor that the clean-up at the Site is insufficient or occurring in a manner unsatisfactory to the City, the Contractor fails to correct the unsatisfactory condition and/or procedures, the City may take such direct action as the City deems appropriate to correct the clean-up deficiencies cited to the Contractor in the written notice, and the costs of such direct corrective action, plus 25 % of such costs, shall be deducted from the monies due or to become due to the Contractor under the Contract.
  - D. *Final Site Cleaning:* Prior to Final Acceptance of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by City and any adjacent property owners, if applicable. At the completion of the Work, Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, surplus materials, waste materials, rubbish and other debris and shall restore to original condition or better all areas impacted or disturbed by the Work.
  - E. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
  1. Those reports known to City of explorations and tests of subsurface conditions at or contiguous to the Site; and
  2. Those drawings known to City of existing physical conditions at or contiguous to the Site, including those drawings known to City depicting existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities.).
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as technical data.

- C. *Reliance by Contractor on Technical Data:* Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of their officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any "technical data" is materially inaccurate; or
  2. is of such a nature as to require a change in the Contract Documents; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), notify City in writing about such condition.

- B. *Possible Price and Time Adjustments*
1. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a final commitment to City with respect to Contract Price and Contract Time by the submission of a Bid or becoming bound under the Contract; or

- b. The existence of such condition reasonably could have been discovered or revealed as a result of the examination of the Contract Documents or the Site; or
  - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
- C. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Supplementary Conditions::
- 1. City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
  - 2. the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data;
    - b. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
    - c. coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated:*
- 1. If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), identify the owner of such Underground Facility and give notice to that owner and to City. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.
  - 2. If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 11.
  - 3. Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.



#### 5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports known to City relating to Hazardous Environmental Conditions that have been identified at the Site; or
  2. drawings known to City relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Reliance by Contractor on Technical Data:* Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.
- C. Contractor shall not be responsible for a Hazardous Environmental Condition uncovered or revealed at the Site if such Hazardous Environmental Condition was not shown or indicated in Drawings or Specifications or identified if the removal or remediation of such Hazardous Environmental Condition was not identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created by the actions of or with any materials brought to the Site by Contractor, Subcontractors, Suppliers or anyone else for whom Contractor is responsible and the costs associated with the same.
- D. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.17); and (3) notify City (and promptly thereafter confirm such notice in writing). City may consider the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any.

- E. Contractor shall not be required to resume Work in connection with a Hazardous Environmental Condition identified pursuant to Paragraph 5.06.D or in any affected area until after City has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed.
- F. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work and the Contract Price. City may have such deleted portion of the Work performed by City's own forces or others.
- G. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.CityG OBLIGATES CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.***
- H. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6 – BONDS AND INSURANCE**

### **6.01 *Licensed Sureties and Insurers***

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue bonds or insurance policies for the limits and coverages required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### **6.02 *Performance, Payment, and Maintenance Bonds***

- A. Contractor shall furnish a performance bond and a payment bond, in accordance with the provisions of the Texas Government Code Chapter 2253 or successor statute and as required by the City, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. The performance and payment bonds must be provided by the Contractor to the City prior to the Contractor beginning any Work.

- B. Contractor shall furnish maintenance bonds in an amount equal to the Contract Price as security to protect the City against any defects in any portion of the Work described in the Contract Documents. Maintenance bonds shall remain in effect for two (2) years after the date of Final Acceptance by the City. The maintenance bond(s) shall be provided as directed by the City as part of the close-out of the Contract and shall be provided prior to the final payment being made.
- C. All bonds shall be in the form prescribed by the Contract Documents, except as provided otherwise by Laws and Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, or its right to do business is terminated in the State of Texas, then Contractor shall promptly notify City in writing and shall, within 30 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, City may refuse to allow the Contractor to begin Work, exclude the Contractor from the Site and exercise City’s termination rights under Article 15.
- F. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.03 *Certificates of Insurance*

- A. Contractor shall deliver to City, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance and endorsements (and other evidence of insurance requested by City or any other additional insured) establishing that Contractor has obtained and is maintaining the policies and coverages required by these General Conditions and the Supplementary Conditions prior to beginning any Work.
  - 1. The certificate of insurance shall document the City, and all identified entities named in the Supplementary Conditions as “additional insureds” on all liability policies.
  - 2. The Contractor’s general liability insurance shall include a “per project” or “per location” endorsement, that shall be identified in the certificate of insurance provided to the City.
  - 3. The certificate shall be signed by an agent authorized to bind coverage on behalf of the insured, be complete in its entirety, and show complete insurance carrier names as listed in the current A.M. Best Property & Casualty Guide.
  - 4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers’ compensation, all insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent

financial strength and solvency to the satisfaction City. If the rating is below that required, written approval of City is required.

5. All applicable policies shall include a Waiver of Subrogation (Rights of Recovery) in favor of the City. In addition, the Contractor agrees to waive all rights of subrogation against the Engineer (if applicable), and each additional insured identified in the Supplementary Conditions
6. Failure of the City to demand such certificates or other evidence of full compliance with the insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such lines of insurance coverage or to provide such certificates or other evidence of full compliance with the insurance requirements.
7. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.
8. Unless otherwise stated, all required insurance shall be written on the "occurrence basis". If If City agrees in writing that coverage is underwritten may be written on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the effective date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the Contract and for three (3) years following Final Acceptance or for the warranty period provided for under the Contract Documents or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence such insurance coverage.
9. Policies shall have no exclusions by endorsements that either nullify or amend the required lines of coverage, nor or decrease the limits of said coverage unless such endorsements are approved in writing by the City. In the event a Notice of an Award has been issued or the Agreement executed, and the policy exclusions are determined to be unacceptable or the City desires that the Contractor obtain additional insurance coverage the contract price shall be adjusted by the cost of the premium for such additional coverage plus 10%.
10. For any proposed self-insured retention (SIR,) in excess of \$25,000.00, affecting insurance coverage, Contractor must obtain the written approval of the City in regard to asset value and stockholders' equity. In lieu of traditional insurance, proposed alternative coverage maintained through insurance pools or, risk retention groups, or self-funding will also require the written approval of the City.
11. Any deductible in excess of \$5,000.00, for any policy that does not provide coverage on a first-dollar basis must be acceptable to and approved in writing by the City.
12. City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and limits when deemed necessary and prudent by the City based upon the scope of the Work, changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the City. The City will provide prior notice of 90 days and the insurance adjustments shall be incorporated into the Work by Change Order.

13. City shall be entitled, upon written request to Contractor and without expense to City, to receive copies of policies and endorsements thereto and. City may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or exclusions necessary to conform the policy and endorsements to the requirements of the Contract. Deletions, revisions, or modifications shall not be required where policy provisions are established by law or regulations binding upon either party or the underwriter on any such policies.
14. City shall not be responsible for the direct payment of insurance premium costs for Contractor's insurance.

#### 6.04 *Contractor's Insurance*

- A. *Workers Compensation and Employers' Liability:* Contractor shall purchase and maintain such insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, Ch. 406, as amended), and minimum limits for Employers' Liability as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
  1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  2. claims for damages because of bodily injury, occupational sickness or disease, or death of employees.
- B. *Commercial General Liability.* Coverage shall include but not be limited to covering liability (bodily injury, including death, or property damage) arising from: premises/operations, independent contractors, products/completed operations, personal injury including death, liability under an insured contract, and explosion/collapse/underground (where those exposures exist). Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City. The Commercial General Liability policy shall have no exclusions by endorsements that would alter or nullify premises/operations, products/completed operations, contractual, personal injury, or advertising injury, that are normally contained with the policy, unless the City approves such exclusions in writing.  
  
For construction projects that present a substantial completed operation exposure, the City may require the Contractor to maintain completed operations coverage for a minimum of no less than three (3) years following the completion of the project (if identified in the Supplementary Conditions)).
- C. *Automobile Liability.* A commercial business auto policy shall provide coverage on "any auto", defined as autos owned, hired and non-owned and provide indemnity for claims for damages because of bodily injury or death of any person and/or property damage arising out of or related to the work, maintenance or use of any motor vehicle by the Contractor, any

Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

- D. *Railroad Protective Liability.* If any of the Work or any warranty work is within the limits of railroad right-of-way, the Contractor shall comply with the requirements identified in the Supplementary Conditions.
- E. *Notification of Policy Cancellation:* Contractor shall immediately notify City upon cancellation or other loss of insurance coverage. Contractor shall stop Work until replacement insurance has been procured. There shall be no time credit for delays or days not worked pursuant to this section.

#### 6.05 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If City has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 6 or the Supplementary Conditions on the basis of non-conformance with the Contract Documents, the City shall so notify the Contractor in writing within 10 Business Days after receipt of the certificates (or other evidence requested). Contractor shall provide to the City such additional information in respect of insurance provided as the City may reasonably request. If Contractor does not purchase or maintain all of the bonds and insurance required by the Contract Documents, the City shall notify the Contractor in writing of such failure prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Such failure to provide bonds or insurance as required by the Contract Documents is a breach of the terms of the Contract and the City may terminate the Contractor in accordance with the provisions of the Contract Documents.

### ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

#### 7.01 *Contractor’s Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not City-delegated professional design services under this Contract, and neither City nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

#### 7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall identify and assign a competent superintendent, who is proficient in English, and who shall not be replaced without written

notice to City of the name of the replacement superintendent. If at any time the superintendent is not satisfactory to the City, Contractor shall, if requested by City, replace the superintendent with another satisfactory to City.

- C. Contractor shall notify the City 24 hours prior to moving areas during the sequence of construction.

#### 7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to City for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours on Business Days. Contractor will not permit the performance of Work outside of regular working hours on Business Days without City's prior written consent (which will not be unreasonably withheld)). Contractor's written request (by letter or electronic communication) for City's written consent must be made as follows:
  - 1. for Work beyond regular working hours on Business Days, request must be made by noon at least two (2) Business Days prior;
  - 2. for Work during Weekend Working Hours, request must be made by noon of the preceding Wednesday; and
  - 3. for Work on state or federal holidays observed by the City, request must be made sufficiently in advance of the holiday, to satisfy requirements for City Council approval.

#### 7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, Contractor required testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of sufficient quality to complete the Work, and must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of City. If required by City, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment to be incorporated into the Work shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with

instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

- D. All items of standard equipment to be incorporated into the Work shall be the latest model at the time of bid, unless otherwise specified.

#### 7.05 *Project Schedule*

- A. Contractor shall adhere to the Project Schedule established in accordance with Paragraph 2.06 and the General Requirements as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to the City for acceptance (to the extent indicated in Paragraph 2.06 and the General Requirements) proposed adjustments in the Project Schedule that will not result in changing the Contract Time. Such adjustments must comply with any provisions of the General Requirements applicable thereto.
  - 2. Contractor shall submit to City a monthly Project Schedule with a monthly progress payment request for the duration of the Contract in accordance with the Construction Progress Schedule, General Requirements 01 32 16.
  - 3. Proposed adjustments in the Project Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 11. Adjustments in Contract Time may only be made by a Change Order.

#### 7.06 *“Or Equals”*

- A. *Contractor’s Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that City permit the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If City in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by City as an “or equal” item. For the purposes of this Paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. the City determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) it has a proven record of performance and availability of responsive service; and
      - 4) it is not objectionable to City.



- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
    - 1) there will be no increase in cost to the City or increase in Contract Time; and
    - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *City's Evaluation and Determination*: City will be allowed a reasonable time to evaluate each "or-equal" request. City may require Contractor to furnish additional data about the proposed "or-equal" item. City will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an "or-equal." City." City will advise Contractor in writing of its determination.
- D. *Effect of City's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The City's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If City determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that City consider the item a proposed substitution pursuant to Paragraph 7.07.

#### 7.07 Substitutions

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that City permit the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related Work at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow City to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitution therefor. City will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  - 2. The requirements for review by City will be as set forth in Paragraph 7.07.B, as supplemented by the Specifications, and as City may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to City for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application shall comply with Section 01 25 00 and:
    - a. will certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design;
      - 2) be substantially similar in substance to the item specified; and

- 3) be well-suited to the same use as the item specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will adversely impact Contractor's achievement of Final Acceptance on or before the Contract Time;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and Damage Claims of other contractors affected by any resulting change.
- B. *City's Evaluation and Determination:* City will be allowed a reasonable time to evaluate each substitution request. City may require Contractor to furnish additional data about the proposed substitute item. City will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an acceptable substitution. City's approval determination will be evidenced by a Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Time. City will advise Contractor in writing of any denial determination.
- C. *Special Guarantee:* City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitution. ***Contractor shall indemnify and hold harmless City and its officers, elected and appointed officials, employees, agents, consultants and subcontractors and anyone directly or indirectly employed by them from and against any and all claims, damages, losses and expenses (including attorney's fees) arising out of or relateds to the use of substituted materials or equipment.***
- D. *Reimbursement of City's Cost:* City will record City's costs in evaluating a substitution proposed or submitted by Contractor. Whether or not City approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse City for evaluating each such proposed substitute. Contractor shall also reimburse City for the charges for making changes in the Contract Documents (or in the provisions of any other direct contract with City) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

- ## 7.08 Concerning Subcontractors and Suppliers

- CITY OF DENTON  
STANDARD CONSTRUCTION SPECIFICATION DOCUMENTS  
Revised *November 27, 2025*

- H. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of City. Contractor must comply with all applicable federal, state, and local laws, statutes, ordinances or regulations, including but not limited to immigration laws, workers compensation laws and wage laws, in the hiring of any Subcontractor or Supplier and shall ensure that each Subcontractor or Supplier has the same obligations.
- I. Contractor shall restrict all Subcontractors and Suppliers from communicating with City, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

#### 7.09 *Wage Rates*

- A. *Duty to pay Prevailing Wage Rates:* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Denton to be the prevailing wage rates in accordance with Chapter 2258. The then current prevailing wage rates at the time of execution of the Agreement are included in these Contract Documents.
- B. *Penalty for Violation:* A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code Section 2258.023.
- C. *Complaints of Violations and City Determination of Good Cause:* On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being retained from successive progress payments pending a final determination of the violation.
- D. *Arbitration Required if Violation Not Resolved:* An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph 7.09.C. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.

- E. *Records to be Maintained:* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of Final Acceptance, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be available in Denton County, Texas at all reasonable hours for inspection by the City. The provisions of Paragraph 7.23, Right to Audit, shall pertain to this inspection.
- F. *Progress Payments:* With each progress payment request or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.
- G. *Posting of Wage Rates:* The Contractor shall post prevailing wage rates in a conspicuous place at the Site at all times.
- H. *Subcontractor Compliance:* The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with Paragraphs 7.09.A through 7.09.G.

#### 7.10 *Patent Fees and Royalties*

- A. Contractor shall pay all patent or license fees and royalties and pay all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of City, its use is subject to patent rights or copyrights calling for the payment of any patent or license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents. Failure of the City to disclose such information does not relieve the Contractor from its obligations to pay said fees or, royalties or costs to others.
- B. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE.***

#### 7.11 *Permits and Utilities*

- A. *Contractor obtained permits and licenses.* Unless otherwise expressly provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. City shall provide reasonable assistance to Contractor, if necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work applicable at the time the Notice of Award is issued, except for permits provided by the City as specified in Paragraph 7.11.B. City shall pay the charges of utility service providers for connections for providing permanent service to the Work.

- B. *City obtained permits and licenses.* City will obtain and pay for those permits and licenses identified as City's responsibility in the Supplementary Conditions or Contract Documents. It will be the Contractor's responsibility to comply with and carry out the provisions of the permit. If the Contractor initiates changes to the Contract and the City approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agency, relating to the changes. The City will not reimburse the Contractor for any cost associated with the requirements of any City acquired permit. The following are permits the City will obtain if required:
1. Texas Department of Transportation Permits
  2. U.S. Army Corps of Engineers Permits
  3. Texas Commission on Environmental Quality Permits
  4. Railroad Company Permits
  5. Texas Department of Licensing and Regulation (TDLR) Permits
- C. *Outstanding permits and licenses.* Any outstanding permits and licenses are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding permits and licenses.

#### 7.12 Taxes

- A. On issuance of a Notice of Award by the City, an organization which qualifying for exemption pursuant to Texas Tax Code, Subchapter H (as amended), the Contractor may purchase, rent or lease all materials, supplies and equipment used or consumed in the performance of this contract by issuing to hisits Supplier an exemption certificate in lieu of the tax, said exemption certificate to comply with State Comptroller's Rulings applicable to Texas Tax Code, Subchapter H. Any such exemption certificate issued to the Contractor in lieu of the tax shall be subject to and shall comply with all applicable rulings pertaining to the Texas Tax Code, Subchapter H.
- B. Texas tax permits and information may be obtained from:
1. Comptroller of Public Accounts  
Sales Tax Division  
Capitol Station  
Austin, TX 78711; or
  2. <http://www.window.state.tx.us/taxinfo/taxforms/93-forms.html>

#### 7.13 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, City shall not be responsible for monitoring Contractor's compliance with any Laws and Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws and Regulations, Contractor shall be liable for all resulting claims, costs losses, and damages, and shall indemnify and hold harmless City, and its officers, elected

and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

- C. Changes in Laws and Regulations not known at the time of the City's issuance of a Notice of Award having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.

#### 7.14 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. Contractor shall include accurate locations for buried and imbedded items. These record documents, together with all approved Samples, will be available to City for reference. Upon completion of the Work, Contractor shall deliver these record documents to City prior to Final Inspection.

#### 7.15 *Safety and Protection*

- A. As between City and Contractor, Contractor shall be responsible for the safety of persons and property in the performance of the Work, for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs. Contractor shall inform the City in writing of Contractor's designated safety representative at the Site.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.1515.C.2 or 7.1515.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be the responsibility of and remedied by Contractor at its expense.
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss;

and shall implement, erect and maintain all necessary safeguards for such safety and protection.

- F. Contractor shall notify City; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of City's safety programs, if any.
- H. Contractor shall inform City in advance in writing of the specific requirements of Contractor's safety program with which City's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed and City has issued a Letter of Final Acceptance.
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.16 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws and Regulations.

#### 7.17 *Emergencies and/or Rectification*

- A. In the event of threatened or actual emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to immediately act to prevent damage, injury, or loss. Contractor shall give City prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of Contractor's response to an emergency. If City determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Change Order may be issued.
- B. Should the Contractor fail to respond to a request from the City to rectify any discrepancies, omissions, or correction necessary to conform with the requirements of the Contract Documents, the City shall give the Contractor written notice that such work or changes are to be performed. The written notice shall direct attention to the discrepant condition and request the Contractor to take remedial action to correct the condition. In the event the Contractor does not take proper action within 24 hours to fulfill this written request or fails to show just cause for not taking the proper action, within 24 hours, the City may take such remedial action with City resources or by contract. The City shall deduct an amount equal to the entire cost for such remedial action, plus 25% from any funds due or to become due the Contractor on the Project.



### 7.18 Submittals

- A. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit required Submittals to City for review and acceptance in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.03).
1. Contractor shall submit the Submittals in accordance with Section 01 33 00 of the General Requirements.
  2. Data shown on the Submittals must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to demonstrate to City the services, materials, and equipment Contractor proposes to provide, and to enable City to review the information for the limited purposes required by Paragraph 7.18.C.
  3. Submittals reviewed and accepted by City for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by City.
  4. When Submittals are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the Drawings and Specifications.
  5. For-Information-Only submittals upon which the City is not expected to conduct a review or take responsive action may be so identified in the Contract Documents.
  6. Contractor shall submit the required number of Samples specified in the Specifications.
  7. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which it is intended and other data as City may require to enable City to review the Submittal for the limited purposes set forth in Paragraph 7.18.C.
- B. Where a Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to City's review and acceptance of the pertinent submittal will be at the sole risk, expense and responsibility of Contractor.
- C. City's Review
1. City will provide timely review of Submittals in accordance with the accepted Schedule of Submittals. City's review and acceptance will be to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. City's review and acceptance will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents), or to safety precautions or programs incident thereto.
  3. City's review and acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Section 01 33 00 of the General

Requirements, and City has given written acceptance of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

5. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for complying with the requirements of the Contract Documents.
6. City's review and acceptance of a Submittal, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Time or Contract Price, unless such changes are included in a Change Order.
7. Neither City's receipt, review, or acceptance of a Submittal will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in accepted Submittals, subject to the provisions of Section 01 33 00 of the General Requirements.

7.19 *Continuing the Work*

- A. Except as otherwise provided, Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as City and Contractor may otherwise agree in writing.

7.20 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. City and its officers, elected and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Contractor's warranty and guarantee under this Paragraph 7.20:
  1. Observations by Engineer or City;
  2. Recommendation by Engineer or payment by City of any progress or final payment;
  3. The issuance of a letter or certificate of Final Acceptance by City or any payment related thereto by City;
  4. Use or occupancy of the Work or any part thereof by City;
  5. Any review and acceptance of a Submittal by City;

- 6. Any inspection, test, or acceptance by others; or
  - 7. Any correction of defective Work by City.
- D. The Contractor shall remedy any defects or damages in the Work and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Final Acceptance of the Work unless a longer period is specified. Contractor shall furnish a good and sufficient maintenance bond, complying with the requirements of Paragraph 6.02.B. The City will give notice of observed defects with reasonable promptness.

#### 7.21 Indemnification

- A. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM , FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL OR BODILY INJURY OR DEATH, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THESE CONTRACT DOCUMENTS. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY, OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR COSTS, EXPENSES AND LEGAL FEES INCURRED IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**
- B. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM FROM AND AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF PROPERTY OF THE CITY, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.**

## 7.22 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, City will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Submittal related to the requirements indicated in Paragraph 7.22.B is prepared by Contractor, a Subcontractor, or others for submittal to City, then such Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to City.
- D. City shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under the conditions indicated in Paragraph 7.22.B, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.22, City's review, acceptance, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to the conditions indicated in Paragraph 7.22.B, will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.22;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

## 7.23 *Right to Audit*

- A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract during the term of the Contract and for five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be made available, in Denton County, Texas within ten (10) Business Days of City's written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within Denton County, Texas. Except as otherwise provided herein, the cost of the audit will be borne by the City

unless the audit reveals an overpayment of 1% or greater. If the City is undertaking an audit or inspection pursuant to Paragraph 7.09 or if an overpayment of 1% or greater occurs, the City's reasonable cost of the audit, including any travel costs, must be paid by the Contractor within five (5) Business Days of receipt of City's invoice for such costs.

- B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

#### 7.24 *Nondiscrimination*

- A. The City is responsible for operating Public Transportation Programs and implementing transit-related projects, funded in part with Federal financial assistance awarded by the U.S. Department of Transportation and the Federal Transit Administration (FTA), without discriminating against any person in the United States on the basis of race, color, or national origin.
- B. Contractor shall comply with the requirements of *Title VI, Civil Rights Act of 1964 as amended* and the regulations promulgated thereunder, as may be further defined in the Supplementary Conditions, for any project receiving Federal assistance.

### **ARTICLE 8 – OTHER WORK AT THE SITE**

#### 8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the City may perform other work at or adjacent to the Site. Such other work may be performed by City's employees, or through contracts between the City and third parties. City may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If City performs other work at or adjacent to the Site with City's employees, or through contracts for such other work, then City shall give Contractor written notice thereof prior to starting any such other work, if such other work is not noted in the Contract Documents.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and City, if City is performing other work with City's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of City and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to City in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with

Contractor's Work except for latent defects and deficiencies in such other work that could not have been discovered through a proper inspection.

- F. The provisions of this Article 8 are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with City, or that is performed without having been arranged by City. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.03.D.3.

#### 8.02 *Coordination*

- A. If City intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with City's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, City shall have authority for such coordination.

#### 8.03 *Legal Relationships*

- A. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of City, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. When City is performing other work at or adjacent to the Site with City's employees, Contractor shall be liable to City for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by City as a result of Contractor's failure to take reasonable and customary measures with respect to City's other work.
- B. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any Damage Claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, City, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify, defend and hold harmless City and Engineer, and the officers, elected and appointed officials, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

**ARTICLE 9 – CITY’S RESPONSIBILITIES****9.01    *Communications to Contractor***

- A. Except as otherwise provided in the Supplementary Conditions, City shall issue all communications to Contractor.

**9.02    *Furnish Data***

- A. City shall promptly furnish the data required of City under the Contract Documents.

**9.03    *Pay When Due***

- A. City shall make payments to Contractor when they are due in accordance with and subject to the provisions of Article 14.

**9.04    *Lands and Easements; Reports, Tests, and Drawings***

- A. City’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Article 5 refers to City’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by City in preparing the Contract Documents.

**9.05    *Change Orders***

- A. City’s responsibilities with respect to Change Orders are set forth in Article 11.

**9.06    *Inspections, Tests, and Approvals***

- A. City’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.02.DD.

**9.07    *Limitations on City’s Responsibilities***

- A. The City shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

**9.08    *Undisclosed Hazardous Environmental Condition***

- A. City’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

**9.09    *Compliance with Safety Program***

- A. While at the Site, City’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which City has been informed in advance in writing pursuant to Paragraph 7.15.

**ARTICLE 10 – CITY’S OBSERVATION DURING CONSTRUCTION****10.01** *City’s Project Manager or Duly Authorized Representative*

- A. City will provide a Project Manager or duly authorized representative during the construction period. The duties and responsibilities and the limitations of authority of City’s Project Manager or duly appointed representative during construction are set forth in the Contract Documents.
- B. City’s Project Manager for these Contract Documents is as set forth in the Supplementary Conditions. City will establish a duly authorized representative at the Preconstruction Meeting in accordance with Section 01 31 19 of the General Requirements.

**10.02** *Visits to Site*

- A. City will make visits to the Site at intervals appropriate to the various stages of construction as City deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, City will determine, in general, if the Work is proceeding in accordance with the Contract Documents. City will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. City’s efforts will be directed toward providing City a greater degree of confidence that the completed Work will conform generally to the Contract Documents.
- B. City’s visits and observations are subject to all the limitations on City’s responsibility set forth in Paragraph 9.07. Particularly, but without limitation, during or as a result of City’s visits or observations of Contractor’s Work, City will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

**10.03** *Determinations for Work Performed*

- A. As applicable, Contractor will determine the actual quantities and classifications of Work performed.. City’s Project Manager or duly authorized representative will review with Contractor the preliminary determinations on such matters before rendering a written recommendation. City’s written decision will be final (except as modified to reflect changed factual conditions or more accurate data).

**10.04** *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. City will be the interpreter of the requirements of the Contract Documents and judge the acceptability of the Work thereunder.
- B. City will render a written decision on any issue referred.
- C. City’s written decision on the issue referred will be final and binding on the Contractor, subject to the provisions of Paragraph 11.07.



**ARTICLE 11 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK****11.01 *Amending and Supplementing the Contract***

- A. The Contract may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof, including in the Contract Price or Contract Time, but such amendment will be made by Change Order only.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work not involving a change in Contract Price or Contract Time, may be authorized, by one of the following ways:
  - 1. A Field Order; or
  - 2. City's review of a Submittal (subject to the provisions of Paragraph 7.18.C); or
  - 3. City's written interpretation or clarification.

**11.02 *Execution of Change Orders***

- A. City and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed..
  - 2. Changes in the Work which are: (a) ordered by City pursuant to Paragraph 11.04, (b) required because of City's acceptance of defective Work under Paragraph 13.05 or City's correction of defective Work under Paragraph 13.08, or (c) as otherwise agreed to by the parties.

**11.03 *Field Orders***

- A. City may authorize minor variations and deviations in changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on both the City and Contractor, which shall perform the Work involved promptly.

**11.04 *Authorized Changes in the Work – Extra Work***

- A. Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order Extra Work. Upon notice of such Extra Work, Contractor shall proceed with the Work involved only upon receiving written notice from City. Extra Work will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). Extra Work shall be memorialized by a Change Order which may or may not precede an order of Extra Work.
- B. For minor changes of Work not requiring changes to Contract Time or Contract Price, a Field Order may be issued by City.

**11.05 *Unauthorized Changes in the Work***

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract

Documents, as amended, modified, or supplemented as allowed herein, except in certain cases of an emergency as provided in Paragraph 7.17.A.

#### 11.06 *Dispute of Extra Work*

- A. Should a difference arise as to what does or does not constitute Extra Work, or as to the payment for such Extra Work, and the City requires its performance, the Contractor shall proceed with the Extra Work after making written request for a Change Order and shall keep accurate account of the actual reasonable cost thereof. Contract Claims regarding Extra Work shall be made pursuant to Paragraph 11.07.
- B. The Contractor shall furnish the City such records of all deviations from the original Contract Documents as may be necessary to enable the City to prepare for permanent record a corrected set of plans showing the actual work performed.
- C. The compensation agreed upon for Extra Work whether or not initiated by a Change Order shall be the full, complete and final payment for all charges, fees and costs Contractor incurs as a result of or relating to the Extra Work, whether said charges, fees or costs are known, unknown, foreseen or unforeseen at that time, including without limitation, any charges, fees or costs for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of the Extra Work.

#### 11.07 *Contract Claims Process*

- A. *City's Decision Required:* All Contract Claims, except those waived pursuant to Paragraph 14.08, shall be referred to the City for decision. A decision by City shall be required as a condition precedent to any exercise by Contractor of any rights or remedies he may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Contract Claims.
- B. *Notice:*
  - 1. Written notice stating the general nature of each Contract Claim shall be delivered by the Contractor to City no later than 15 days after the start of the event giving rise thereto. The responsibility to substantiate a Contract Claim shall rest with the party making the Contract Claim.
  - 2. Notice of the amount or extent of the Contract Claim, with supporting data shall be delivered to the City no later than 45 days after the start of the event giving rise thereto (unless the City notifies Contractor in writing that City will allow additional time for Contractor to submit additional or more accurate data in support of such Contract Claim).
  - 3. A Contract Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 11.08.
  - 4. A Contract Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 11.09.
  - 5. Each Contract Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event.

6. The City shall submit any response to the Contractor within 30 days after receipt of the Contractor's last submittal (unless in connection with the Contract Claim (unless Contractor allows the City additional time to submit a response).
- C. *City's Action:* City will review each Contract Claim and, within 30 days after receipt of the last submittal of the Contractor unless action by City's Council is required, take one of the following actions in writing:
  1. deny the Contract Claim in whole or in part;
  2. approve the Contract Claim; or
  3. notify the Contractor that the City is unable to resolve the Contract Claim if, in the City's sole discretion, it would be inappropriate for the City to do so. For purposes of further resolution of the Contract Claim, such notice shall be deemed a denial.
- D. City's written action under this Paragraph 11.07 will be final and binding, unless City or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Contract Claim for an adjustment in Contract Price or Contract Time will be valid if not submitted in accordance with this Paragraph 11.07.
- F. If the City fails to take any action pursuant to this Paragraph 11.07, the Contract Claim is considered to have been denied by the City.

#### 11.08 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order.
- B. TheThe value of any Work covered by a Change Order will be determined as follows:
  1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.03);
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum or unit price (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.08.C.2), and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of Extra Work; or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum or unit price, then on the basis of the Cost of the Work (determined as provided in Paragraph 12.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.08.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit will be determined as follows:
  1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. For costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3, the Contractor's fee will be 15 percent except for:
  - 1) rental fees for Contractor's own equipment; and
  - 2) bonds and insurance;
- b. For costs incurred under Paragraph 12.01.B.4, the Contractor's fee will be 5 percent;
  - 1) Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.08.C.2.a and 11.08.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, in no case shall the cumulative total of fees paid be in excess of 25% of the Cost of the Work;
- c. No fee will be payable on the basis of costs itemized under Paragraphs 12.01.B.5, 12.01.B.6, and 12.01.C;
- d. The amount of credit to be allowed by Contractor to City for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

#### 11.09 *Change of Contract Time*

- A. The Contract Time may only be changed by a Change Order.
- B. No extension of the Contract Time will be allowed under a Change Order for Extra Work or for claimed delay unless the Extra Work contemplated or claimed delay is shown to be on the critical path of the Project Schedule or Contractor can show by critical path method analysis how the Extra Work or claimed delay adversely affects the critical path.
- C. Delay, disruption, and interference in the Work, and any related changes in Contract Time, are addressed in and governed by Paragraph 4.03.

#### 11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted by the Contractor to reflect the effect of any such change.

**ARTICLE 12 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT****12.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work:* The term “Cost of the Work” means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 12.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. When needed to determine the value of a Change Order. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* The term, “Cost of the Work” means the sum of all costs, except those excluded in Paragraph 12.01.C, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work is covered by a Change Order, the costs reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work. Such costs shall be in amounts no higher than those calculated based on the prevailing wage rates contained in the Contract Documents, shall not include any of the costs itemized in Paragraph 12.01.C, and may include as applicable, but not be limited to the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Such employees shall include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs shall include, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours on Business Days, during Weekend Working Hours, or on a state or federal holiday observed by the City, shall be included in the above to the extent authorized by City.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers’ field services required in connection therewith.
  3. Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others, in accordance with rental agreements approved in writing by City, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. and the Contract Documents. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

4. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City. Contractor shall deliver such bids to City, which will then determine, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 12.01 and Paragraph 11.08.C.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work and specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically included in the Contract.
6. Supplemental costs consisting of the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and temporary office or facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations, excluding those taxes for which an exemption is available as described in Paragraph 7.12.
  - d. Deposits lost for causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of CityCity. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - f. The cost of utilities, fuel, and sanitary facilities at the Site.
  - g. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - h. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically covered in the Contract. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the acts, omissions, negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Agreement will be determined as set forth in the Contract.
  - b. for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as set forth in Paragraph 11.08.C.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.08.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 12, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices, and submit in a form acceptable to City an itemized cost breakdown together with supporting data. Subject to prior written notice, City will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by City. Contractor will be responsible for ensuring that pertinent Subcontractors will afford such access to City, and preserve such documents, to the same extent as is required of Contractor.

## 12.02 Allowances

- A. *Specified Allowance*: It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to City.
- B. *Cash Allowances*: Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances, have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of City.
- D. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

## 12.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by City subject to the provisions of Paragraph 10.03.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to Unit Price Work listed and the cost of incidental work included as part of the unit price.
- D. Adjustments in Contract Price
  - 1. City may make an adjustment in the Contract Price in accordance with Paragraph 11.08 if:
    - a. the quantity of the item of Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
    - b. there is no corresponding adjustment with respect to any other item of Work.
  - 2. Adjusted unit prices will apply to all units of that item.



- E. Increased or Decreased Quantities: The City reserves the right to order Extra Work in accordance with Paragraph 11.04.
1. If the changes in quantities or the alterations do not significantly change the character of the Work under the Contract Documents, the altered Work will be paid for at the Contract unit price.
  2. If the changes in quantities or alterations materially and significantly change the character of the Work, the Contract will be amended by a Change Order.
  3. If no unit prices exist, this any increase or decrease in quantities will be considered Extra Work and the Contract will be amended by a Change Order in accordance with Article 11.
  4. A significant change in the character of Work occurs when:
    - a. the character of work for any Item as altered differs materially or significantly in kind or nature from that in the Contract; or
    - b. a Major Item of work varies by more than 25% from the original Contract quantity.
  5. When the quantity of work to be done under any Major Item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.
  6. When the quantity of work to be done under any Major Item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price.

**12.04 Plans Quantity Measurement for Unclassified Excavation or Embankment**

- A. Plans quantities may or may not represent the exact quantity of Work performed or material moved, handled, or placed during the term of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised in accordance with the Contract.
- B. If the total actual quantity measured for an individual item varies by more than 25% (or as stipulated under "Price and Payment Procedures" for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract Documents, an adjustment may be made to the quantity of authorized Work done for payment purposes. The party to the Contract requesting the adjustment will provide field measurements and calculations showing the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in Article 11.
- C. When quantities are revised by a change in design approved by the City, by Change Order, or to correct an error, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount identified in the approved change, and the 25% variance provisions of Paragraph 12.04.B will apply to the new plans quantity.
- D. If the total Contract quantity multiplied by the unit price bid for an individual Item is less than \$250 and the Item is not originally a plans quantity Item, then the Item may be paid as a plans quantity Item if the City and Contractor agree in writing to fix the final quantity as a plans quantity.

- E. For callout work or non-site specific Contracts, the plans quantity measurement requirements are not applicable.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

### **13.01 Access to Work**

- A. City and its Engineer, consultants, representatives, employees, and independent testing laboratories, and authorities having jurisdiction shall have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

### **13.02 Tests and Inspections**

- A. Contractor shall give City timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. If the Contract Documents or any Laws and Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection, testing or approval, except that those fees specifically identified in the Supplementary Conditions or any Texas Department of Licensure and Regulation (TDLR) inspections, which shall will be paid as described in the Supplementary Conditions.
- C. Contractor shall be responsible for arranging, obtaining, and paying for all inspections, tests, re-tests, and approvals required:
  - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to City;
  - 2. to attain City's acceptance of materials or equipment to be incorporated in the Work;
  - 3. by manufacturers of equipment furnished under the Contract Documents;
  - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to City.

- D. City may arrange for the services of an independent testing laboratory ("Testing Lab") to perform any inspections or tests ("Testing") for any part of the Work, as determined solely by City.
  - 1. City will coordinate such Testing to the extent possible, with Contractor;

2. Should any Testing under this Section 13.03.D result in a “fail”, “did not pass” or other similar negative result, the Contractor shall be responsible for paying for any and all retests. Contractor’s cancellation without cause of City initiated Testing shall be deemed a negative result and require a retest.
  3. Any amounts owed for any retest under this Section 13.02.D shall be paid directly to the Testing Lab by Contractor. City will forward all invoices for retests to Contractor.
  4. If Contractor fails to pay the Testing Lab, City will not issue Final Payment until the Testing Lab is paid.
- E. If the Contract Documents require the Work (or part thereof) to be approved by City or another designated individual or entity, then Contractor shall assume full responsibility for seeking and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without the written approval of City, Contractor shall, if requested by City, uncover such Work for observation. Such uncovering and the recovering of such Work will be at Contractor’s expense.

### 13.03 *Defective Work*

- A. *Contractor’s Obligation:* It is Contractor’s obligation to assure that the Work is not defective.
- B. *City’s Authority:* City has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Written notice of all defective Work of which City has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if City has rejected the defective Work, shall remove the defective Work from the Project and replace it with Work that is not defective. Failure to require the removal of any defective Work shall not constitute acceptance of such Work.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair City’s warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Contractor or City by governmental authorities because the Work is defective, and the costs of repair, replacement or reconstruction of work of others resulting from defective Work.

### 13.04 *Rejecting Defective Work*

- A. City will have authority to reject Work which City believes to be defective or will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. City will have authority to conduct special inspection or testing

of the Work as provided in this Article 13, whether or not the Work is fabricated, installed, or completed.

#### 13.05 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of the Work so accepted.

#### 13.06 *Uncovering Work*

- A. City has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the Contract Documents or specific instructions of City and if requested by City, Contractor shall uncover such Work for City's observation, inspection or testing and then replace the covering, all at Contractor's expense.
- C. If City considers it necessary or advisable that covered Work be observed by City or inspected or tested by others, then Contractor, at City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others). City shall be entitled to accept defective Work in accordance with Paragraph 13.05 and in such case Contractor shall still be responsible for all costs associated with exposing, observing, and testing defective Work.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an extension of the Contract Time to the extent directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

#### 13.07 *City May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or Contractor fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been corrected or eliminated; however, this right of City to stop the Work will not give rise to any duty on the part of City to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or any employee or agent of, any of them.

**13.08 City May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from City to correct defective Work, or to remove and replace defective Work as required by City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then City may, after providing 7 days' advance written notice to Contractor, correct or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees, and City's other contractors access to the Site to enable City to exercise the rights and remedies under this Paragraph 13.08.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court, or arbitration or other dispute resolution costs) incurred or sustained by City in exercising the rights and remedies under this Paragraph 13.08 will be the responsibility of and will be charged against Contractor. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by City of City's rights and remedies under this Paragraph 13.08.

**ARTICLE 14 – PAYMENTS TO CONTRACTOR; COMPLETION; CORRECTION PERIOD****14.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.03 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to City. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 12.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. Applications for Payments
  - 1. Contractor is responsible for providing all information as required to become a vendor of the City.
  - 2. At least 20 days before the date established in the General Requirements for each progress payment (but not more often than once a month), Contractor shall submit to City for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

3. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) bill of sale, invoice, or purchase order payments, copies of cancelled checks or other documentation establishing full payment by Contractor for the materials and equipment; (b) at City's request, documentation warranting that City has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
4. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received on account of the Work by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
5. The amount of retainage with respect to progress payments will be as stipulated in the Contract Documents.

C. Review of Applications

1. City will, after receipt of each Application for Payment, either indicate in writing it will proceed to process the Application for Payment or return the Application to Contractor indicating reasons for refusing payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. City's processing of any payment requested in an Application for Payment will be based on City's observations of the executed Work, and on City's review of the Application for Payment and the accompanying data and schedules, that based City's actual knowledge:
  - a. the Work has progressed to the point indicated; and
  - b. the quality and/or quantity of the Work is generally in accordance with the Contract Documents (subject to any subsequent evaluations of the Work, an evaluation of the Work as a functioning whole prior to or upon Final Acceptance, the results of any subsequent tests or inspections called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraphs 10.05 and 12.03, and any other qualifications stated).
3. Processing any such payment will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
  - b. there are no other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor; or
  - c. Contractor has complied with Laws and Regulations applicable to Contractor's performance of the Work.
4. City may refuse to process or pay the whole or any part of any payment because of subsequently discovered evidence or the results of subsequent inspections or tests, and

may revise or revoke any such payment previously made, to such extent as may be necessary to protect City from loss because:

- a. the Work is defective, or the completed Work has been damaged by the Contractor or his subcontractors, requiring correction or replacement;
- b. there are discrepancies in quantities contained in previous applications for payment;
- c. the Contract Price has been reduced by Change Orders;
- d. City has been required to correct defective Work in accordance with Paragraph 1313.08, or has accepted defective Work pursuant to Paragraph 13.05;
- e. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- f. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Retainage:

1. For all contracts, retainage shall be five percent (5%).

E. *Liquidated Damages*: For each calendar day that any work shall remain uncompleted after the time specified in the Contract Documents, the sum per day specified in the Agreement will be paid by the Contractor to the City, not as a penalty, but as liquidated damages suffered by the City. If feasible, the parties may agree to have the liquidated damages deducted from any amounts owned to Contractor by City instead of being paid directly to City by Contractor.

F. *Payment*: Contractor will be paid pursuant to the requirements of this Article 14 and payment will become due in accordance with the Contract Documents.

G. Reduction in Payment

1. City may refuse to make payment of the of the amount requested because:
  - a. Claims have been made against City based on Contractor's performance or furnishing of the Work, or City has incurred costs, losses, or damages resulting from Contractor's performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, or patent infringement;
  - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. City has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Work is defective, requiring correction or replacement;

- g. City has been required to correct defective Work in accordance with Paragraph 13.08, or has accepted defective Work pursuant to Paragraph 13.05;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones or Final Acceptance of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to City to secure the satisfaction and discharge of such Liens;
  - l. Other items entitle City to a set-off against the payment amount requested; or
  - m. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.
2. If City refuses to make payment of the amount requested, City will give Contractor written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. City shall pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, within a reasonable time after Contractor remedies the reasons for such action to the satisfaction of City and City has confirmed such action.

#### 14.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

#### 14.03 *Partial Utilization*

- A. Prior to Final Acceptance of all the Work, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City determines constitutes a separately functioning and usable part of the Work that can be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. City at any time may notify Contractor in writing to of any such part of the Work which City determines to be ready for its intended use. In addition, City may request in writing that Contractor permit City to use or occupy any such part of the Work that City believes to be substantially complete, subject to the following conditions:
  - 1. At any time, Contractor may notify City that Contractor considers any such part of the Work ready for its intended use.
  - 2. Within a reasonable time after notification as enumerated in Paragraph 14.03, City and Contractor shall make an inspection of that part of the Work to determine its status of completion. If City does not consider that part of the Work to be substantially complete, City will notify Contractor in writing giving the reasons therefor.
  - 3. Partial Utilization by City will not constitute Final Acceptance by City.



#### 14.04 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work is complete in accordance with the Contract Documents:
  - 1. City will promptly schedule a Final Inspection with Contractor.
  - 2. City will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. City reserves the right to deny request for Final Inspection if City determines that the entire Work is not sufficiently complete to warrant a Final Inspection.

#### 14.05 *Final Acceptance*

- A. Upon completion by Contractor to City's satisfaction, of any and all Work in accordance with the Contract Documents, including any corrections or additional Work identified in the Final Inspection and delivery of all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurances, certificates of inspection, annotated record documents and other required documents in accordance with the Contract Documents, City will issue to Contractor a letter of Final Acceptance.

#### 14.06 *Final Payment*

- A. Application for Payment
  - 1. Upon receipt of a letter of Final Acceptance from City, Contractor may make application for Final Payment following the procedures for requesting payments in accordance with the Contract Documents.
  - 2. The final Application for Payment must be accompanied (except as previously delivered) by:
    - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 6.03;
    - b. consent of the surety, if any, to final payment;
    - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to City free and clear of any Liens or other title defects or will so pass upon final payment.
    - d. a list of all Contract Claims or Damage Claims against City that Contractor believes are unsettled; and
    - e. affidavits of payments and complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- B. Payment Becomes Due: The final payment requested by Contractor, less previous payments made and less any sum to which City is entitled, including but not limited to liquidated damages, will become due and payable:
  - 1. After City's acceptance of the Application for Payment and accompanying documentation; and

2. After all Damage Claims have been resolved:

- a. directly by the Contractor; or
- b. Contractor provides evidence that the Damage Claim has been reported to Contractor's insurance provider for resolution.

The making of the final payment by the City shall not relieve the Contractor of any guarantees or other requirements of the Contract that continue thereafter.

14.07 *Final Completion Delayed and Partial Retainage Release*

- A. If final completion of the Work is significantly delayed, and if City so confirms, City may, upon receipt of Contractor's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by City for Work not fully completed or corrected is less than the retainage stipulated in Paragraph 14.01.D, and if bonds have been furnished as required in Paragraph 6.02, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to City with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Contract Claims.
- B. *Partial Retainage Release.* If the Contract provides for separate establishment and maintenance periods and/or test and performance periods following the completion of all other construction in the Contract Documents for all Work locations, the City may release a portion of the amount retained provided that all other work is completed as determined by the City. Before the release, all submittals and final quantities must be completed and accepted for all other work. An amount sufficient to ensure Contract compliance will be retained.

14.08 *Waiver of Claims*

- A. The acceptance of final payment will constitute a waiver and release by Contractor of all claims, rights, causes of action, or liabilities, including Contract Claims, against City arising out of, related to or under the Contract or for any act, omission or neglect of City.

14.09 *Correction Period*

- A. If within two (2) years after the date of Final Acceptance (or such longer period of time as may be prescribed by the Contract Documents) any Work has been found to be defective, or Contractor's repair of any damages to the Site, adjacent areas, or areas made available for Contractor's use by City has been found to be defective, then after receipt of City's written notice of defect, Contractor shall promptly, without cost to City and in accordance with City's written instructions:
  1. correct the defective repairs to the Site or such adjacent areas, or areas made available for Contractor's use by City;
  2. correct such defective Work;
  3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by City, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. If Contractor does not promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected, repaired or removed and replaced under this Paragraph 14.09, the correction period hereunder with respect to such Work may be extended for an additional period of one year after the end of the initial correction period.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this Paragraph 14.09 are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

### 15.01 *City May Suspend Work*

- A. At any time and without cause, City may suspend the Work or any portion thereof by written notice to Contractor. City may fix the date on which Work will be resumed in such notice, and Contractor shall resume the Work on the date so fixed. During a temporary suspension of the Work covered by these Contract Documents, for any reason, the City will make no extra payment for stand-by time of construction equipment and/or construction crews.
- B. Should the Contractor not be able to complete a portion of the Project due to causes beyond the control of and without the fault or negligence of the Contractor, and should it be determined by mutual consent of the Contractor and City that a solution to allow construction to proceed is not available within a reasonable period of time, Contractor may request an extension in Contract Time, directly attributable to any such suspension.
- C. If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily nor become damaged in any way; Contractor shall take every precaution to prevent damage or deterioration of the work performed; and Contractor shall provide suitable drainage about the work, and erect temporary structures where necessary.
- D. Contractor may be reimbursed for the cost of moving its equipment off the job and returning the necessary equipment to the job when it is determined by the City that construction may be resumed. Such reimbursement shall be based on actual cost to the Contractor of moving the

equipment and no profit or overhead will be allowed. Reimbursement may not be allowed if the equipment is moved to another construction project for the City.

15.02 *City May Terminate for Cause*

- A. The occurrence of any one or more of the following events by way of example, but not of limitation, may justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Project Schedule established under Paragraph 2.06 as adjusted from time to time pursuant to Paragraph 7.05);
  2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract; or
  3. Contractor's disregard of Laws and Regulations of any public body having jurisdiction; or
  4. Contractor's repeated disregard of the authority of City; or
  5. Contractor's failure to promptly make good any defect in materials or workmanship, or defects of any nature, the correction of which has been directed in writing by the City; or
  6. Substantial indication that the Contractor has made an unauthorized assignment of the Contract or any funds due therefrom for the benefit of any creditor or for any other purpose; or
  7. Substantial indication that the Contractor has become insolvent or bankrupt, or otherwise financially unable to perform the Work satisfactorily; or
  8. Contractor commences legal action in a court of competent jurisdiction against the City.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, City will provide written notice to Contractor and Surety to arrange a conference with Contractor and Surety to address Contractor's failure to perform the Work. The conference shall be held not later than 15 days after receipt of notice. by both Contractor and surety.
1. If the City, the Contractor, and the Surety do not agree to allow the Contractor to proceed to perform the Contract, the City may, to the extent permitted by Laws and Regulations, declare a Contractor default and formally terminate the Contractor's right to complete the Contract. Contractor default shall not be declared earlier than 20 days after the Contractor and Surety have received notice of the conference to address Contractor's failure to perform the Work.
  2. If Contractor's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within 15 consecutive calendar days after date of an additional written notice demanding Surety's performance of its obligations, then City, without process or action at law, may take over any portion of the Work and complete it as described below.
    - a. If City completes the Work, City may exclude Contractor and Surety from the Site and take possession of the Work, and all materials and equipment stored at the Site

or for which City has paid Contractor, but which are stored elsewhere, and the Work as City may deem expedient.

3. Whether City or Surety completes the Work, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by City, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to City. Such claims, costs, losses, and damages incurred by City will be incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph 15.02, City shall not be required to obtain the lowest price for the Work performed.
  4. Neither City, nor any of its respective consultants, agents, officers, elected or appointed officials, directors or employees shall be in any way liable or accountable to Contractor or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.
  5. City, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from Contractor or Surety for Contractor's failure to timely complete the entire Contract. Contractor shall not be entitled to any claim, counterclaim or offset on account of the method used by City in completing the Contract.
  6. Maintenance of the Work shall continue to be Contractor's and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise under the Contract or prescribed by law.
- C. Notwithstanding Paragraph 15.02.B, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue, or any rights or remedies of City against Contractor or Surety. Any retention or payment of money due Contractor by City will not release Contractor from liability.
- E. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.02, the termination procedures of that bond shall not supersede the provisions of this Article 15.

#### 15.03 *City May Terminate for Convenience*

- A. City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract, in whole or in part. Any termination shall be affected by giving notice of the termination to the Contractor specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective. Notice shall be deemed validly given if given in accordance with Paragraph 17.01.A.

- B. After a notice of termination, has been given, and except as otherwise directed by the City, the Contractor shall:
1. stop work under the Contract on the date and to the extent specified in the notice of termination;
  2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
  3. terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by notice of termination;
  4. transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
    - a. the fabricated or unfabricated parts, Work in progress, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of the termination; and
    - b. the completed, or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the City.
  5. complete performance of such Work as shall not have been terminated by the notice of termination; and
  6. take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the City has or may acquire the rest.
- C. At a time not later than 30 days after the termination date specified in the notice of termination, the Contractor may submit to the City a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of in accordance with the Contract, exclusive of items the disposition of which has been directed or authorized by City.
- D. Not later than 15 days after Contractor's submission of the certified list to City pursuant to Paragraph 15.03.C, the City shall accept title to such items, subject to verification of the list by the City upon removal of the items or, If the items are stored, then City shall have 45 days after submission of the list, to verify the list submitted and accept title to such items. Any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.
- E. Not later than 60 days after the notice of termination has been given, the Contractor shall submit a termination claim to the City in the form and with the certification prescribed by the City. Unless an extension request is made in writing within such 60-day period by the Contractor, and granted by the City, any and all such claims of Contractor that are not submitted to City within such 60-day period shall be conclusively deemed waived.
- F. Should a termination claim be timely submitted to the City, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead

- and profit on such Work calculated and determined in accordance with the Contract Documents;
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses calculated and determined in accordance with the Contract Documents; and
  3. reasonable expenses directly attributable to reasonable and necessary wind-down and termination activities, without any overhead or profit.
- G. In the event of the failure of the Contractor and City to agree upon the whole amount to be paid to the Contractor by reason of the termination of the Work, the City shall determine, on the basis of information submitted and available to it, the amount, if any, due to the Contractor by reason of the termination and City shall pay to the Contractor the amounts so determined. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of, related to or resulting from such termination.

## ARTICLE 16 – RESOLUTION OF DISPUTES

### 16.01 *Methods and Procedures*

- A. Either City or Contractor may request mediation of any Contract Claim submitted for a decision under Paragraph 11.07 before such decision becomes final and binding. The request for mediation shall be submitted to the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 11.07.E.
- B. City and Contractor shall participate in the mediation process in good faith. The process shall be commenced within 60 calendar days of filing of the request.
- C. The parties shall agree on a mediator; however, if they cannot agree within 14 calendar days then the Denton County Alternative Dispute Resolution Program (“DCAP”) shall appoint a mediator. The mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one party, or the mediator, states that there is no reason to continue because of an impasse that cannot be overcome and sends a “notice of termination of mediation.” All reasonable efforts will be made to complete the mediation within 30 days of the first mediation session. All costs of mediation shall be borne equally by the parties.
- D. All communications, both written and oral, during Phases A and B are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process.
- E. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

- F. If the Contract Claim is not resolved by mediation, City's action under Paragraph 11.07.C or a denial pursuant to Paragraphs 11.07.C.3 or 11.07.D shall become final and binding 30 days after termination of the mediation unless, within that time period, City or Contractor:
1. elects in writing to invoke any other dispute resolution process provided for in the Supplementary Conditions; or
  2. agrees with the other party to submit the Contract Claim to another dispute resolution process; or
  3. gives written notice to the other party of the intent to submit the Contract Claim to a court of competent jurisdiction as set forth within the Contract Documents.

## ARTICLE 17 – MISCELLANEOUS

### 17.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice, it will be deemed to have been validly given if delivered:
1. in person, by a commercial courier service or otherwise, if to City, to the duly authorized representative of City identified in the Contract Documents or to City's Project Manager or, if to Contractor, to a member of the firm or to an officer of the corporation for whom it is intended; or
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient.

### 17.02 *Computation of Time*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day that is a state or federal holiday observed by the City, the next Business Day shall become the last day of the period.

### 17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, in equity, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this Paragraph 17.03 will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 17.04 *Limitation of Damages*

- A. With respect to any and all claims, disputes subject to final resolution, and other matters at issue, neither City, nor any of its officers, directors, elected or appointed officials, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project. Further, the Contractor may only claim and the City may only be liable for those damages that are set forth in Subchapter I, Chapter 271 of the Texas



Local Government Code and the City shall not be liable for any consequential damages, exemplary damages or damages for unabsorbed home office overhead.

17.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.
- B. The City has not waived its sovereign immunity except as expressly set forth in Subchapter I, Chapter 271 of the Texas Local Government Code or as expressly waived by other statute.

17.06 *Survival of Obligations*

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and Final Acceptance of the Work or termination of the Contract or of the services of Contractor.

17.07 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

17.08 *Successors and Assigns*

- A. City and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

17.09 *Governing Law*

- A. The Contract shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles.

17.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

1                                   **SECTION 00 73 00**  
2                                   SUPPLEMENTARY CONDITIONS  
3                                   TO  
4                                   GENERAL CONDITIONS

6  
7   **Supplementary Conditions**  
8

9   These Supplementary Conditions modify and supplement Section 00 72 00 - General Conditions, and other  
10 provisions of the Contract Documents as indicated below. All provisions of the General Conditions that are  
11 modified or supplemented remain in full force and effect as so modified or supplemented. All provisions  
12 of the General Conditions which are not so modified or supplemented remain in full force and effect.  
13

14   **Defined Terms**  
15

16   The terms used in these Supplementary Conditions which are defined in the General Conditions have the  
17 meaning assigned to them in the General Conditions, unless specifically noted herein.  
18

19   **Modifications and Supplements**  
20

21   The following are instructions that modify or supplement specific paragraphs in the General Conditions and  
22 other Contract Documents.  
23

24   **SC-5.01A**  
25

26   Easement limits shown on the Drawing are approximate and were provided to establish a basis for bidding.  
27 Upon receiving the final easements descriptions, Contractor shall compare them to the lines shown on the  
28 Contract Drawings.  
29

30   **SC-5.01A.1., “Availability of Lands”**  
31

32   The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of  
33 [\[February 5, 2024\]](#):  
34  
35  
36  
37

38   **Outstanding Right-Of-Way, and/or Easements to Be Acquired**

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION
DEN23303	Eighteen SAC SELF-Storage Corporation	5/5/2024
DEN23303	Five SAC SELF-Storage Corporation	5/5/2024

39   The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed,  
40 and do not bind the City.  
41

42   If Contractor considers the final easements provided to differ materially from the representations on the  
43 Contract Drawings, Contractor shall within five (5) Business Days and before proceeding with the Work,  
44 notify City in writing associated with the differing easement line locations.  
45

**SC-5.01A.2, "Availability of Lands"****Utilities or obstructions to be removed, adjusted, and/or relocated**

The following is list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated as of *[February 5, 2024]*

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
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*< "None" >*

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The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

**SC-5.03A., "Subsurface and Physical Conditions"**

The following are reports of explorations and tests of subsurface conditions at the site of the Work:

*[ "None" ]*

The following are drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site of the Work:

*[ "None" ]*

**SC-5.05 A., "Underground Facilities"**

The following are additional resources for identification of Underground Facilities which are at or contiguous to the site of the Work, and which are not necessarily shown in the Drawings:

*[ "None" ]*

**SC-5.06A., "Hazardous Environmental Conditions at Site"**

The following are reports and drawings of existing hazardous environmental conditions known to the City:

*[ "None" ]*

**SC-6.02, "Performance, Payment, and Maintenance Bonds"**

*The "Contract Price" for Performance, Payment, and Maintenance Bonds will be the same as indicated in Article 3 as listed in the Agreement.*

**SC-6.03A., "Certificates of Insurance"**

The entities listed below are "additional insureds as their interest may appear" including their respective officers, directors, agents and employees.

- (1) City
- (2) Consultant: *[ "None" ]*
- (3) Other: *[ "None" ]*

**SC-6.04A., "Contractor's Insurance"**

The limits of liability for the insurance required by Paragraph GC-6.04 shall provide the following coverages for not less than the following amounts or greater where required by laws and regulations:

**6.04A. Workers' Compensation, under Paragraph GC-6.04A.**

*Statutory limits*

*Employer's liability*

*\$100,000 each accident/occurrence*

*\$100,000 Disease - each employee*

*\$500,000 Disease - policy limit*

**SC-6.04B., "Contractor's Insurance"**

**6.04B.** Commercial General Liability, under Paragraph GC-6.04B. Contractor's Liability Insurance under Paragraph GC-6.04B., which shall be on a per project basis covering the Contractor with minimum limits of:

*\$1,000,000 each occurrence*

*\$2,000,000 aggregate limit*

The policy must have an endorsement (Amendment – Aggregate Limits of Insurance) making the General Aggregate Limits apply separately to each job site.

The Commercial General Liability Insurance policies shall provide "X", "C", and "U" coverage's. Verification of such coverage must be shown in the Remarks Article of the Certificate of Insurance.

**SC 6.04C., "Contractor's Insurance"**

**6.04C.** Automobile Liability, under Paragraph GC-6.04C. Contractor's Liability Insurance under Paragraph GC-6.04C., which shall be in an amount not less than the following amounts:

- (1) **Automobile Liability** - a commercial business policy shall provide coverage on "Any Auto", defined as autos owned, hired and non-owned.

*\$1,000,000 each accident on a combined single limit basis. Split limits are acceptable if limits are at least:*

*\$250,000 Bodily Injury per person /*

*\$500,000 Bodily Injury per accident /*

*\$100,000 Property Damage*

**SC-6.04D., "Contractor's Insurance"**

The Contractor's construction activities will require its employees, agents, subcontractors, equipment, and material deliveries to cross railroad properties and tracks, or perform work within 25 feet of the center line of tracks [*"None"*].

The Contractor shall conduct its operations on railroad properties in such a manner as not to interfere with, hinder, or obstruct the railroad company in any manner whatsoever in the use or operation of its/their trains or other property. Such operations on railroad properties may require that Contractor to execute a "Right of Entry Agreement" with the particular railroad company or companies involved, and to this end the Contractor should satisfy itself as to the requirements of each railroad company and be prepared to execute the right-of-entry (if any) required by a railroad company. The requirements specified herein likewise relate to the Contractor's use of private and/or construction access roads crossing said railroad company's properties.

The Contractual Liability coverage required by Paragraph 5.04D of the General Conditions shall provide coverage for not less than the following amounts, issued by companies satisfactory to the City and to the Railroad Company for a term that continues for so long as the Contractor's operations and work cross, occupy, or touch railroad property:

(1) General Aggregate: *\$Confirm Limits with Railroad*

(2) Each Occurrence: *\$Confirm Limits with Railroad*

       *Required for this Contract*

  x   *Not required for this Contract*

With respect to the above outlined insurance requirements, the following shall govern:

1. Where a single railroad company is involved, the Contractor shall provide one insurance policy in the name of the railroad company. However, if more than one grade separation or at-grade crossing is affected by the Project at entirely separate locations on the line or lines of the same railroad company, separate coverage may be required, each in the amount stated above.
2. Where more than one railroad company is operating on the same right-of-way or where several railroad companies are involved and operated on their own separate rights-of-way, the Contractor may be required to provide separate insurance policies in the name of each railroad company.
3. If, in addition to a grade separation or an at-grade crossing, other work or activity is proposed on a railroad company's right-of-way at a location entirely separate from the grade separation or at-grade crossing, insurance coverage for this work must be included in the policy covering the grade separation.
4. If no grade separation is involved but other work is proposed on a railroad company's right-of-way, all such other work may be covered in a single policy for that railroad, even though the work may be at two or more separate locations.

No work or activities on a railroad company's property to be performed by the Contractor shall be commenced until the Contractor has furnished the City with an original policy or policies of the insurance for each railroad company named, as required above. All such insurance must be approved by the City and each affected Railroad Company prior to the Contractor's beginning work.

The insurance specified above must be carried until all Work to be performed on the railroad right-of-way has been completed and the grade crossing, if any, is no longer used by the Contractor. In addition, insurance must be carried during all maintenance and/or repair work performed in the railroad right-of-way. Such insurance must name the railroad company as the insured, together with any tenant or lessee of the railroad company operating over tracks involved in the Project.

#### **SC 6.04F., "Contractor's Insurance"**

Add Paragraph 6.04F. Environmental Impairment/Pollution

Environmental Impairment/Pollution Insurance to include coverage for the handling, receiving, dispensing, removal, storage, testing, transportation, disposal, discharge, dispersal release or escape of any hazardous material into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including ground water, with a minimum combined bodily injury (including death) and property damage limit of \$2,000,000 per occurrence to be obtained upon substantial completion and acceptance of facility by the City.

#### **SC-7.08C., "Concerning Subcontractors and Suppliers"**

CITY OF DENTON  
STANDARD CONSTRUCTION SPECIFICATION DOCUMENTS  
Revised February 27, 2023  
Effective February 27, 2023

*IFB 7968-006*

The following subcontractors shall be required to be utilized by the Contractor for specific portions of the Work as indicated below:

**Required Subcontractors**  
SUBCONTRACTOR COMPANY NAME      DESCRIPTION OF WORK TO BE PERFORMED

<“None”>

**SC-7.11., “Permits and Utilities”**

**SC-7.11A., “Contractor obtained permits and licenses”**

The following are known permits and/or licenses required by the Contract to be acquired by the Contractor:  
<“None”>

**SC-7.11B. “City obtained permits and licenses”**

The following are known permits and/or licenses required by the Contract to be acquired by the City:  
1. <TXDOT Utility Installation Request permit>

**SC-7.11C. “Outstanding permits and licenses”**

The following is a list of known outstanding permits and/or licenses to be acquired, if any as of *February 5, 2024*:

**Outstanding Permits and/or Licenses to Be Acquired**  
OWNER      PERMIT OR LICENSE AND LOCATION      TARGET DATE OF POSSESSION

TXDOT	Utility Installation Permit, Project work site	4/1/2024
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**SC-7.24B., “Title VI, Civil Rights Act of 1964 as amended”**

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- Compliance with Regulations:** The Contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each

potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by City or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the City, or the Texas Department of Transportation, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, City shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:
  - a. withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
  - b. cancellation, termination or suspension of the Contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as City or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request City to enter into such litigation to protect the interests of City, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Additional Title VI requirements can be found in the Appendix.

#### SC-8.02., "Coordination"

The individuals or entities listed below have contracts with the City for the performance of other work at the Site:

Vendor	Scope of Work	Coordination Authority
<i>Texas Department of Transportation</i>	<i>Highway and Frontage Road Construction</i>	<i>Contractor/City</i>
<i>Various Franchise Utility Companies</i>	<i>Utility Construction</i>	<i>Contractor/City</i>

#### SC-9.01, "Communications to Contractor"

1. All materials shall use domestically manufactured products that are composed predominately of steel and/or iron to incorporate into the permanent installation of the utility facility in compliance with the Buy America provisions of 23 CFR 635.410 as amended.
2. Denton Water Field Operations (Coordinate 48 hours in advance of performed shutdown and tie-in).

#### SC-10.01B., "City's Project Manager"

The City's Project Manager for this Contract is *<Cole Tankersley>*, or his/her successor pursuant to written notification from the City Engineer.

**SC-13.02B., "Tests and Inspections"**

*<"None">*

**SC-14.01G, "Reduction in Payment"**

Add Paragraph 14.01G.3:

3. *City may reduce payments to the Contractor, if the number of Days that have passed after the date listed on the Notice to Proceed exceeds the Contract Time for Substantial Completion.*

**SC-16.01C.1, "Methods and Procedures"**

*<"None">*

**SC – 17.01, "Documents"**

*Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.*

**SC – 18.01, "Texas State Law Provisions"**

**SC – 18.01A. "Prohibition on Contracts with Companies Boycotting Israel"**

Contractor acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

**SC – 18.01B. "Prohibition on Contracts with Companies Boycotting Certain Energy Companies"**

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.



**SC – 18.01C. “Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations”**

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

**SC – 18.01D. “Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization”**

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

**SC – 18.01E. “Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies”**

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

**SC – 19.01 “BUY AMERICA’ Requirements”**

Notice to Contractors and Suppliers

1 The project requires certification from the contractor's suppliers that all manufacturing processes  
2 for steel and iron materials or for the application of coatings (epoxy, galvanizing, painting or any  
3 other coating that protects or enhances the value of the steel or iron metal) to these materials  
4 occurred in the United States of America. For the purposes of the certifications, manufacturing  
5 processes are defined as all processes required to change the raw ore or scrap metal into the  
6 finished in-place steel or iron product. The successful contractor will be required to complete the  
7 Texas Department of Transportation Material Statement Certification Form 1818 for each  
8 appropriate shop drawing submittal. TxDOT Form 1818 is included in the Appendix of this  
9 project manual.

10  
11

### END OF SECTION

Revision Log		
DATE	NAME	SUMMARY OF CHANGE

**CONFLICT OF INTEREST QUESTIONNAIRE -****FORM CIQ****For vendor or other person doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1 Name of vendor who has a business relationship with local governmental entity.**

Mountain Cascade of Texas LLC

**2** ☐ **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information in this section is being disclosed.**

\_\_\_\_\_  
Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☐

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☐

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐

Yes

☐

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4** ☒ **I have no Conflict of Interest to disclose.****5**

DocuSigned by:

*Andrew McCulloch*

5/20/2024

Signature of vendor doing business with the governmental entity

Date

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
  - (2) the vendor:
    - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
    - (i) a contract between the local governmental entity and vendor has been executed; or
    - (ii) the local governmental entity is considering entering into a contract with the vendor;
    - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
      - (i) a contract between the local governmental entity and vendor has been executed; or
      - (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
  - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
  - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
  - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
  - (1) the date that the vendor:
    - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
    - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
  - (2) the date the vendor becomes aware:
    - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
    - (B) that the vendor has given one or more gifts described by Subsection (a); or
    - (C) of a family relationship with a local government officer.

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> degree of affinity (marriage) or consanguinity (blood or adoption)

**City Official:** for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

**Vendor:** a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

**Certificate Of Completion**

Envelope Id: 4DFDB2F080684882908D2011DB359100

Status: Sent

Subject: Please DocuSign: City Council Contract 7968-006 Utility Relocation Frontage Rd.

Source Envelope:

Document Pages: 106

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Erica Garcia

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

erica.garcia@cityofdenton.com

IP Address: 198.49.140.104

**Record Tracking**

Status: Original

Holder: Erica Garcia

Location: DocuSign

5/16/2024 8:38:48 AM

erica.garcia@cityofdenton.com

**Signer Events****Signature****Timestamp**

Erica Garcia

**Completed**

Sent: 5/16/2024 8:47:12 AM

erica.garcia@cityofdenton.com

Viewed: 5/16/2024 8:47:51 AM

Senior Buyer

Signed: 5/16/2024 8:49:29 AM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Cori Power



Sent: 5/16/2024 8:49:31 AM

cori.power@cityofdenton.com

Viewed: 5/17/2024 1:09:08 PM

Purchasing Supervisor

Signed: 5/17/2024 2:21:22 PM

City of Denton

Signature Adoption: Pre-selected Style

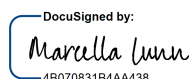
Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 5/17/2024 2:21:26 PM

marcella.lunn@cityofdenton.com

Viewed: 5/20/2024 12:19:45 PM

Senior Deputy City Attorney

Signed: 5/20/2024 12:25:17 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Andrew McCulloch



Sent: 5/20/2024 12:25:22 PM

AMcCulloch@mountaincascade.com

Viewed: 5/20/2024 3:13:11 PM

Vice-President

Signed: 5/20/2024 3:17:12 PM

Harber Co.Inc. dba Mountain Cascade of Nevada

Signature Adoption: Pre-selected Style

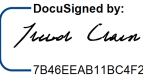
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(None)

Using IP Address: 32.132.177.214

**Electronic Record and Signature Disclosure:**

Accepted: 5/20/2024 3:13:11 PM

ID: 80e1b5a0-1deb-4e23-9736-96136e76372d

Signer Events	Signature	Timestamp
<p>Trevor Crain</p> <p>Trevor.Crain@cityofdenton.com</p> <p>Director of Capital Projects</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Accepted: 5/20/2024 3:26:18 PM  ID: 95500ac3-cc69-4c81-b9b6-23feef74aa51</p>	<p>DocuSigned by:    7B46EEAB11BC4F2...</p> <p>Signature Adoption: Pre-selected Style  Using IP Address: 198.49.140.10</p>	<p>Sent: 5/20/2024 3:17:17 PM</p> <p>Viewed: 5/20/2024 3:26:18 PM</p> <p>Signed: 5/20/2024 3:26:56 PM</p>
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>		<p>Sent: 5/20/2024 3:26:59 PM</p>
<p>Sara Hensley</p> <p>sara.hensley@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>		
<p>Lauren Thoden</p> <p>lauren.thoden@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<div>COPIED</div>	<p>Sent: 5/16/2024 8:49:31 AM</p>
<p>Gretna Jones</p> <p>gretna.jones@cityofdenton.com</p> <p>Legal Secretary</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	<div>COPIED</div>	<p>Sent: 5/20/2024 3:26:59 PM</p> <p>Viewed: 5/20/2024 3:28:52 PM</p>

Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/16/2024 8:47:12 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.



**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB24-111, **Version:** 1

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Gage & Cade Construction, LLC, for the construction of the Landfill Entrance Facility (Scalehouse) Improvements Project for the Solid Waste and Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8281 - awarded to Gage & Cade Construction, LLC, in the not-to-exceed amount of \$3,419,799.60).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Gage & Cade Construction, LLC, for the construction of the Landfill Entrance Facility (Scalehouse) Improvements Project for the Solid Waste and Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8281 – awarded to Gage & Cade Construction, LLC, in the not-to-exceed amount of \$3,419,799.60).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

### **INFORMATION/BACKGROUND**

The Solid Waste Department operates many programs and offers diverse services. Many of these occur at the Landfill with final transactions at the Scalehouse. The Scalehouse facility was constructed in 2007 and has been operating for 17 years. As the City of Denton and surrounding regions have been growing, so has the traffic as it approaches and departs the Scale House. When the Scalehouse was first opened, it was managing transactions of about 600 tons of waste per day. Currently, it is averaging about 1,800 tons a day. The Solid Waste Department seeks to improve site access roads, scale wait times, traffic flow, and safety concerns with the current system to expedite and manage traffic with efficacy and safety.

The Solid Waste Department's Capital Improvement Program (CIP) provides funding for infrastructure improvements regarding the Landfill Scale House roads approaching and departing this facility. The Landfill Entrance Facility Improvements Project has a total construction cost of \$3,419,799.60. The projected cost includes a \$3,256,952 total base bid amount and a 5% contingency of \$162,847.60. A contingency allowance, if any, is for the sole use of the City and will be subject to written authorization by the City's Project Manager and Program Manager.

Competitive Sealed Proposals were sent to 1,055 prospective suppliers, including 75 Denton firms, of this item. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. One (1) proposal was received, and references were checked to ensure the vendor can provide the services requested in the Scope of Work. A Best and Final Offer (BAFO) was requested from the responding firm. The department is awarding the contract to Gage & Cade Construction, LLC.

NIGP Code Used for Solicitation:	911, 912, 913, 914
Notifications sent for Solicitation sent in IonWave:	1,055
Number of Suppliers that viewed Solicitation in IonWave:	20
HUB-Historically Underutilized Business Invitations sent out:	119
SBE-Small Business Enterprise Invitations sent out:	356
Responses from Solicitation:	1

### **RECOMMENDATION**

Award a contract with Gage & Cade Construction, LLC, for the construction of the Landfill Entrance Facility (Scalehouse) Improvements Project for the Solid Waste and Capital Projects Department, in a not-to-exceed amount of \$3,419,799.60.

### **PRINCIPAL PLACE OF BUSINESS**

Gage & Cade Construction, LLC  
Bertram, TX

### **ESTIMATED SCHEDULE OF PROJECT**

The work will be complete for Final Acceptance within 365 days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed. This project will be started upon approval with a completion date of Summer 2025.

### **FISCAL INFORMATION**

These services will be funded from Solid Waste Projects-CO. account 660904.595. Requisition #164650 has been entered into the Purchasing software system in the amount of \$2,322,368.00. Solid Waste has requested FY2024-2025 additional CIP funding for this project in the sum of \$1,097,431.60. The budgeted amount for this item is \$3,419,799.60.

### **EXHIBITS**

Exhibit 1: Agenda Information Sheet  
Exhibit 2: Ordinance and Contract

Respectfully submitted:  
Lori Hewell, 940-349-7100  
Purchasing Manager

For information concerning this acquisition, contact: Kristine Stewart, 210-844-3744.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH GAGE & CADE CONSTRUCTION, LLC, FOR THE CONSTRUCTION OF THE LANDFILL ENTRANCE FACILITY (SCALEHOUSE) IMPROVEMENTS PROJECT FOR THE SOLID WASTE AND CAPITAL PROJECTS DEPARTMENTS; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8281 – AWARDED TO GAGE & CADE CONSTRUCTION, LLC, IN THE NOT-TO-EXCEED AMOUNT OF \$3,419,799.60).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the construction of the Landfill Entrance Facility (Scalehouse) Improvements Project for the Solid Waste and Capital Projects Department; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the competitive sealed proposals; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered competitive sealed proposal for materials, equipment, supplies, or services shown in the “Competitive Sealed Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the competitive sealed proposal.

<u>CSP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8281	Gage & Cade Construction, LLC	\$3,419,799.60

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

**SECTION 3.** That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

**SECTION 4.** The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

**SECTION 5.** By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

**SECTION 6.** This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. This ordinance was passed and approved by the following vote [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

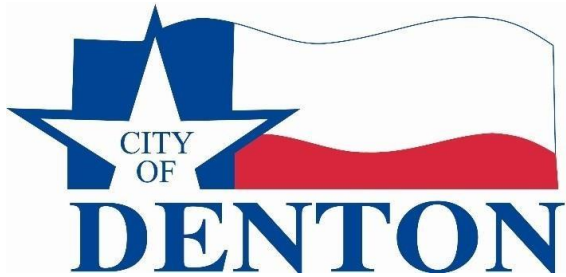
ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn





Docusign City Council Transmittal Coversheet

RFP	8281
File Name	Solid Waste Facility (Scalehouse) Improvements
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**SECTION 00 52 44**

**STIPULATED SUM VERTICAL CONSTRUCTION CONTRACT**

**BY AND BETWEEN**

**CITY OF DENTON**

**AND**

**GAGE & CADE CONSTRUCTION, LLC**

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## STIPULATED SUM VERTICAL CONSTRUCTION CONTRACT

This Stipulated Sum Vertical Construction Contract (this “Agreement”) made as of the \_\_\_\_ day of \_\_\_\_\_ in the year 20 \_\_\_\_ (the “Effective Date”) between City of Denton, a Texas home rule municipal corporation located at 215 East McKinney Street Denton, Texas 76201 (the “Owner” or “City”) and Gage & Cade Construction, LLC at 1107 County Road 264, Bertram, TX 78605 (the “Contractor”) for the following Project:

*CSP 8281 – Landfill Entrance Facility Improvements*

The Owner and Contractor agree as follows:

### Article 1.      THE CONTRACT DOCUMENTS

Section 1.1    The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in the above table of contents, documents issued as part of the solicitation for the Project, this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. In the event any provision contained in this Agreement conflicts with any provision contained in the Contract Documents, the more stringent provision for the Contractor, as interpreted by the Owner, shall govern.

Section 1.2    If, and to the extent of, any inconsistency, ambiguity, discrepancy or error in the Contract Documents (referred to collectively in this Section 1.2 as discrepancy), the Contractor shall immediately seek clarification from (Insert Name and Firm of Design Professional) (the “Design Professional” or “Architect” or “Engineer” as reference may be made in the Contract Documents) and notify the Owner and Contractor that clarification has been requested. In the event that the Design Professional fails to clarify such discrepancy, within a reasonable time under the circumstances, the Contractor shall proceed with the Work without the clarification based on written permission from the Owner, and give precedence to the Contract Documents in the following descending order of priority:

- a. Modifications issued after execution of the Owner-Contractor Agreement, including all exhibits not specifically referenced in this Section 1.2;
- b. the Owner-Contractor Agreement;
- c. Addenda issued prior to the execution of the Owner-Contractor Agreement, with the Addenda bearing the latest date taking precedence;

- d. the General Conditions of the Contract for Construction;
- e. Exhibit "B" - Drawings and Specifications;

## Article 2. THE WORK OF THIS CONTRACT

Section 2.1 The Contractor shall in a good workmanlike manner, fully execute the Work described in, and reasonably inferable by the Contractor as necessary to provide the results intended by fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others: and the Contractor at its sole cost, risk, and expense shall construct, equip, provide purchase, pay for, and furnish all of the Work in accordance with such Contract Documents. and governmental codes and regulations as they apply to performance of the Work.

Section 2.2 An Index of Drawings and Specifications which have been furnished to the Contractor as of the date of this Agreement is set forth in Exhibit "B" – Drawings and Specifications.

Section 2.3 The Contractor shall not be entitled to any adjustments in the Contract Sum or the Contract Time as a result of any action, or failure to act, in connection with any work or other services performed by the Contractor, or any entity affiliated with the Contractor, for portions of the Project other than the Work, such as, without limitation, other projects for this Owner or nearby the Project site, whether such work or other services are performed under contract with the Owner or an independent third party.

Section 2.4 The Contractor shall proceed with performance of the Work as required by the Contract Documents and shall not modify such requirements unless such modifications are accepted by the Owner in a Change Order or Construction Change Directive. The Contractor shall not be entitled to receive any additional fees as a result of any modification requests or recommendations submitted by the Contractor.

Section 2.5 The Contractor shall furnish only skilled and properly trained staff for the performance of the Work. The key members of the Contractor's staff shall be persons agreed upon with the Owner and Contractor and identified in Exhibit "C" – Key Personnel, which is attached hereto and incorporated herein for all purposes.

- a. Such key members of the Contractor's staff shall not be changed without the written consent of the Owner and Contractor, unless such person becomes unable to perform any required duties due to death, disability or termination of employment with the Contractor. If a key member is no longer capable of performing in the capacity described in Exhibit "C" – Key Personnel, the Owner, Design Professional, and the Contractor shall agree on a mutually acceptable substitute.

- b. During the performance of the Work, the Contractor shall keep a competent superintendent at the Project site, who is fully authorized to act on behalf of the Contractor. Notice from the Owner, Contractor or the Design Professional to such superintendent, in connection with defective Work, instructions for performance of the Work or any and all other issues shall be considered notice of such issues to the Contractor.

### Article 3.      DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

Section 3.1      The construction of the Work to be performed under this Contract shall be commenced within three (3) calendar days after receipt of a building permit and Owner's Notice to Proceed.

Issuance of a Notice to Proceed for construction of the Work is subject to Owners acceptance of the Contractor's proposed Construction Management Plan, and receipt of a building permit.

The Contractor shall notify the Owner in writing, with confirmation of receipt, not less than three (3) business days before commencing the Work on the Project site to permit timely filing of mortgages, mechanics' liens, and other security interests.

Section 3.2      The Contract Time shall be measured from the date of Notice to Proceed.

#### Section 3.3 Substantial Completion

- a. Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute the Work and shall achieve Substantial Completion of the entire Work by 300 days.
- b. If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, shall be as specified in Section 8.6 of Exhibit A - General Conditions for the Contract for Construction.

#### Section 3.4 Final Completion

- a. Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute the Work and shall achieve final completion of the entire Work by 365 days.
- b. If the Contractor fails to achieve final completion as provided in this Section 3.3, liquidated damages, shall be as specified in Section 8.6 of Exhibit A - General Conditions for the Contract for Construction.

#### Article 4. CONTRACT SUM

Section 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Three Million Two Hundred Fifty-Six Thousand Nine Hundred Fifty-Two Dollars and 00/100 Cents (\$3,256,952.00), subject to additions and deductions as provided in the Contract Documents. At the sole option of the City, *five* (5) percent contingency in the amount of One Hundred Sixty-Two Thousand Eight Hundred Forty-Seven Dollars and 60/100 Cents (\$162,847.60) may be used for a total not-to-exceed amount of Three Million Four Hundred Nineteen Thousand Seven Hundred Ninety-Nine Dollars and 60/100 Cents (\$3,419,799.60).

#### Section 4.2 Alternates

*None*

#### Section 4.3 Allowances, if any, included in the Contract Sum:

*None*

Section 4.4 Unit prices, if any are set forth in Exhibit "F" – Unit Costs, and such unit prices are considered complete and include all materials, equipment, labor, delivery, installation, overhead, and profit; and any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply.

See Exhibit "F" – Unit Costs

#### Section 4.5 Liquidated damages, if any:

See Exhibit "A" - General Conditions for the Contract for Construction

#### Section 4.6 Other: Omitted

#### Section 4.7 Omitted

#### Article 5. PAYMENTS

#### Section 5.1 Progress Payments

- a. Based upon Applications for Payment including all supporting documentation required by the Owner and submitted to the Design Professional and Owner by the Contractor; its review by the Design Professional and Owner; and Certificates for Payment issued by the

Design Professional and Certificates for Payment issued by the Design Professional, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

- b. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.
- c. Provided that a certifiable Application for Payment is approved by the Design Professional not later than the «twenty-fifth (25th) » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « thirtieth (30th) » day of the « following » month. If a certifiable Application for Payment is received by the Design Professional after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « thirty » (« 30 ») calendar days after the Design Professional approves the Application for Payment.
- d. Each Application for Payment shall be based on the most recent Unit Price Proposal Form submitted by the Contractor and approved in advance by the Owner and Design Professional in accordance with the Contract Documents and the Construction Management Plan. The Unit Price Proposal Form shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form, and supported by such data to substantiate its accuracy, as the Owner and Design Professional may require. This Unit Price Proposal Form, unless objected to by the Owner or Design Professional, shall be used as a basis for reviewing the Contractor's Applications for Payment.
- e. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.
- f. In accordance with Exhibit A - General Conditions for the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
  - i. The amount of each progress payment shall first include:
    - .1 That portion of the Contract Sum properly allocable to completed Work;
    - .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
    - .3 That portion of Construction Change Directives that the Design Professional determines, in the Design Professional's professional judgment, to be reasonably justified.
  - ii. The amount of each progress payment shall then be reduced by:
    - .1 The aggregate of any amounts previously paid by the Owner;
    - .2 The amount, if any, for Work that remains uncorrected and for which the Contractor or Design Professional has previously withheld or



nullified a Certificate for Payment as provided in Article 9 of Exhibit A - General Conditions for the Contract for Construction;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Design Professional may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of Exhibit A - General Conditions for the Contract for Construction; and

.5 Retainage withheld pursuant to Section 5.1.g.

g. Retainage

- i. For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*« Five Percent (5.0%) »*

h. Omitted.

- i. Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.
- j. Each Application for Payment shall, without limitation, conform with the requirements of Exhibit A - General Conditions for the Contract for Construction, as amended.
- k. In taking action on the Contractor's Applications for Payment, the Owner and Design Professional shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Owner or Design Professional have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with this Section 5.1.k or other supporting data; that the Owner or Design Professional have made exhaustive or continuous on-site inspections; or that the Owner or Design Professional have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.
- l. Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site, and even with such approval the Contractor shall follow the procedures in the Contract Documents for such payments.

m. In addition to other required items, the final Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Texas all in a form acceptable to the Owner:

.1 A current sworn statement from the Contractor setting forth all Subcontractors and any material suppliers with whom the Contract has entered into subcontracts; the amount of each such subcontract; the amount requested for any Subcontractor or material supplier in the Application for Payment; and the amount to be paid to the Contractor from such final payment;

.2 A current, duly executed waiver of mechanics' and material suppliers' liens from the Contractor conditional upon establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current Application for Payment;

.3 A current Subcontractor's lien waiver for the current period, conditional only on payment from the Contractor, and duly executed, acknowledged sworn statement showing all Sub-subcontractors and material suppliers with whom the Subcontractor has entered into sub-subcontracts, the amount of each such sub-subcontract, the amount requested for any Sub-subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Sub-subcontractor from such final payment to the Subcontractor;

.4 A current, duly executed unconditional final waiver of mechanics' and material suppliers' liens from the Contractor and all Subcontractors and, when deemed appropriate by the Owner and Design Professional, from material suppliers and Sub-subcontractors establishing payment or satisfaction of payments of all amounts requested by the Contractor on behalf of such entities or persons in any previous Applications for Payment;

.5 A final certificate of occupancy issued by the appropriate governmental body in which the project is located;

.6 All maintenance and operating manuals;

.7 Digitally marked, fully accessible electronic files (not "plot files" or "PDFs") of both field record drawings and specifications reflecting "as-built" conditions;

.8 Digitally marked, accurately dimensioned, and fully accessible electronic files (not "plot files" or "PDFs") of drawings reflecting the location of any concealed utilities, mechanical or electrical systems, and components;

.9 any special guarantees or warranties required by the Contract Documents;

.10 assignments of all guarantees and warranties from subcontractors, vendors, suppliers, or manufacturers;

- .11 a list of the primary contact names, email addresses, physical addresses, and telephone numbers of all Subcontractors and any other persons providing guarantees and warranties;
- .12 all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner, or the Design Professional; and
- .13 If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

## Section 5.2 Final Payment

- a. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when
  - .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of Exhibit A - General Conditions for the Contract for Construction, and to satisfy other requirements, if any, which necessarily survive beyond final payment; and
  - .2 a final Certificate for Payment has been issued by the Design Professional; and
  - .3 the Contractor has provided, and the Owner has accepted as correct, all the information and documents required under Section 5.1.m above; and
  - .4 a complete release of all claims arising out of, related to or connected with Contractor's performance of the respective Phase under this Agreement, and any claims of Subcontractors, subject to any claims reserved in accordance with the terms of the General Conditions and an affidavit that so far as Contractor has knowledge or information, the release includes and covers all materials and services over which Contractor has control for which a claim could be filed, subject to any claims reserved in accordance with the terms of the General Conditions.
- b. The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Design Professional's final Certificate for Payment and the Contractor has provided Owner with all required documentation.

## Section 5.3 Interest

Payments are due and payable within thirty (30) days of the date the Owner receives the Construction Manager's approvable invoice, unless a different date for payment is provided under this Agreement. Amounts unpaid shall bear interest at the legal rate allowed by Texas Government Code Ch. 2251.

## Article 6. DISPUTE RESOLUTION

### Section 6.1 Initial Decision Maker

The Owner will serve as the Initial Decision Maker pursuant to Article 15 of Exhibit A - General Conditions for the Contract for Construction.

### Section 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation or other alternative dispute resolution method as mutually agreed by the parties ("ADR") pursuant to Article 15 of Exhibit A - General Conditions for the Contract for Construction, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

## Article 7. TERMINATION OR SUSPENSION

Section 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of Exhibit A - General Conditions for the Contract for Construction, as amended.

If the Contract is terminated for the Owner's convenience in accordance with Article 14 of Exhibit A - General Conditions for the Contract for Construction, then the Owner shall pay the Contractor a compensation calculated in the manner as specified in Section 14.4.c of Exhibit A - General Conditions for the Contract for Construction, as amended.

Section 7.2 The Work may be suspended by the Owner as provided in Article 14 of Exhibit A - General Conditions for the Contract for Construction, as amended.

Section 7.3 In the event of such termination by the Owner, the amount to be paid to the Contractor shall not exceed the amount the Contractor would have been entitled to receive under Article 5 above.

Section 7.4 In no event shall the Contractor be entitled to receive "Lost Opportunity Costs", defined as unabsorbed overhead costs or unrealized profit on this Work, future work for this Owner, other owner(s), other work, foregone opportunities for the Contractor, or other costs not directly and verifiably associated with services actually performed or Work successfully completed under this Agreement.

## Article 8. MISCELLANEOUS PROVISIONS

Section 8.1 All references in this Agreement to Exhibit A, shall mean the Exhibit A - General Conditions for the Contract for Construction, as modified and amended by the parties hereto. Where reference is made in this Agreement to a provision of another Contract

Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

Section 8.2 The Owner's representative:

City of Denton  
Kristine Stewart  
Project Manager  
401 N Elm Street  
Denton, Texas 76201  
(940) 349-8910  
kristine.stewart@cityofdenton.com

Section 8.3 The Contractor's representative:

*Brandon Wells*  
*Gage & Cade Construction, LLC*  
*Project Manager*  
*1107 County Road 264, Bertram, TX 78605*  
*512-394-8176*  
*brandon@gageandcadeconstruction.com*

Section 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

Section 8.5 Insurance and Bonds

- a. The Owner and the Contractor shall purchase and maintain insurance as set forth in Exhibit A - General Conditions for the Contract for Construction, Insurance and Bonds, and elsewhere in the Contract Documents.

Section 8.6 « Not Used. »

Section 8.7 Other Conditions and Services:

- a. The Contractor represents and warrants the following to the Owner (in addition to any other representation and warranties contained in the Contract Documents) as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and final completion of the Work:

- .1 The Contractor is financially solvent, capable of obtaining adequate insurance, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
  - .2 The Contractor is able to furnish the physical infrastructure, tools, materials, supplies, equipment and supervision, and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
  - .3 The Contractor is authorized to do business in the City of Denton, and the State of Texas and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Contractor and over the Work and the Project;
  - .4 The Contractor's execution of this Agreement and performance thereof is within the Contractor's duly-authorized powers;
  - .5 The Contractor's duly-authorized representative has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed and has correlated its observations with the requirements of the Contract Documents;
  - .6 The Contractor possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of this size, complexity and nature of this particular Project and will perform the Work with the care, skill and diligence of such a contractor;
  - .7 The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder; and
  - .8 The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the proper, timely and diligent prosecution of the Work.
- b. In the event any provision contained in this Agreement conflicts with any provision contained in the Contract Documents, the more stringent provision for the Contractor, as interpreted by the Owner, shall govern.
  - c. Some or all of the Owner's duties, approvals and actions required under this Agreement may be provided by third parties by mutual agreement of the Owner and such third parties. When notified in writing of the specific duties and responsibilities of such third party, the Contractor will recognize the actions and approvals of the third party as sufficient to fulfill the Owner's responsibilities under this Agreement.
  - d. The Contractor shall provide sufficient supporting documentation in form and with a level of detail wholly acceptable to the Owner and Contractor to substantiate any Application for Payment, request for Change to the Contract Sum or Contract Time, and all contract Allowances provided within the Contractor's Contract Sum for this scope of

work. Failure to timely provide all supporting documentation, in and of itself, may result in rejection of the Application for Payment or requested change to the Contract Sum or Contract Time, or payment for work charged to the Allowance(s).

- e. Proof of purchase and warehouse insurance naming the Owner, Contractor and Design Professional as additional insureds, together with inspection rights for the Owner, Contractor and Design Professional is to be provided for any billed materials by the Contractor for the work not physically stored at the Project site.
- f. Time limits set out in or under this Agreement are solely for the protection and benefit of the Owner and create no third-party beneficiary rights in any other party.
- g. Notices. All legal notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner:

Kristine Stewart  
Project Manager  
City of Denton  
401 N Elm Street  
Denton, Texas 76201  
kristine.stewart@cityofdenton.com

With an additional copy to:

Purchasing Manager – *File 8281 Landfill Entrance Facility Improvements*  
City of Denton  
901B Texas Street  
Denton, Texas 76209  
940-349-7100  
purchasing@cityofdenton.com

And with a copy to City Attorney's point of contact:

Mack Reinwand, City Attorney  
City of Denton  
215 East McKinney St.  
Denton, TX 76201  
legal@cityofdenton.com

If to Contractor:

*Brandon Wells*  
*Gage & Cade Construction, LLC*  
*Project Manager/Estimator*  
*1107 County Road 264*  
*Bertram, TX 78605*  
*512-379-8176*  
*brandon@gageandcadeconstruction.com*

If to Design Professional:

Biggs & Mathews Environmental, Inc. (the "Design Professional")  
1700 Robert Road, Suite 100  
Mansfield, TX 76063

- h. All Exhibits referred to in this Agreement are, by reference, incorporated herein for all purposes.
- i. The numbering and captions of the sections are set forth only for convenience and reference and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.
- j. The parties agree that they will execute any further instrument or instruments, and that they will perform any act or acts, which are or may become necessary to effectuate any of the terms or provisions of this Agreement.
- k. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Owner or Contractor.
- l. This Agreement has been created jointly and ambiguity cannot be construed against either party.
- m. This Agreement is and shall be subject to those provisions required of political subdivisions by the laws of the State of Texas. The Contractor understands that the Owner is a Texas home rule municipality and that the project is subject to applicable provisions of Texas law including bid requirements, bonding, and final settlement provisions.
- n. Contractor understands that certain information, including this Agreement, are public records available for public inspection and copying under the Texas Open Records Act., Texas Government Code Ch. 552, as amended, and other applicable laws.
- o. The Owner represents that there are sufficient funds available to undertake this Project.



- p. No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the governmental or sovereign immunities, rights, benefits, or protections of the Owner.
- q. Contractor warrants that the products, processes, techniques and methodologies provided by Contractor shall not infringe upon the copyright, patent or other proprietary rights of others.
- r. Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement. Contractor warrants that to the best of Contractor's knowledge, there exists no actual or potential conflict of interest, and no financial or substantial interest as may be prohibited by Texas law, the Charter, or Code of Ethics of the City of Denton between Contractor and Owner.
- s. Contractor shall comply with the disclosure and reporting requirements in Local Government Code Chapters 171 and 176, and Texas Government Code Sec. 2252.908. Under Sec. 2252.908, if City Council approval is required to award this Agreement or if this Agreement has a value of at least \$1,000,000, the City may not enter into the Agreement unless the Contractor submits a disclosure of interested parties to the City at the time the executed Agreement is presented to the City. The disclosure must be made on the form prescribed by the Texas Ethics Commission and the City is required to submit a copy of the disclosure statement to the Texas Ethics Commission not later than the 30th day after the disclosure is received by the City.
- t. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.
- u. Contractor understands and agrees that TIME IS OF THE ESSENCE.
- v. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto. Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.
- w. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.
- x. COMPLIANCE WITH CERTAIN STATE LAW
  - .1 Prohibition on Contracts with Companies Boycotting Israel. Contractor acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company

that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

.2 Prohibition on Contracts with Companies Boycotting Certain Energy Companies. Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

.3 Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations. Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. Failure to meet or maintain the requirements under this provision will be considered a material breach.

.4 Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization. Sections 2252 and 2270 of the Texas

Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization. Failure to meet or maintain the requirements under this provision will be considered a material breach.

.5 Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies. The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

.6 Pursuant to Chapter 2258, Texas Government Code, all contractors and any Subcontractor involved in the construction of a public work project shall pay not less than the prevailing rates as per diem wages in the locality at the time of construction to all laborers, workmen and mechanics employed by them in the execution of this contract. Contractor shall assure that these requirements are met for the Project and shall insure that every contract or subcontract relating to the Work requires, on behalf of Owner, that the prevailing wage rates be paid.

.6 The Contractor shall be provided an applicable Department of Labor Wage Rate Determination for use on the Project required by Chapter 2258.022, Texas Government Code. In the event the Owner does not provide this Labor Wage Rate Determination, the Contractor shall request it in writing in a timely manner, so as not to delay the Construction Manager's initial subcontractor procurement process during preconstruction. The Construction Manager shall, if requested by the Owner, assist the Owner in conducting a survey of the wages paid, by labor class, on projects of a similar type in a similar location.

## Article 9. ENUMERATION OF CONTRACT DOCUMENTS

Section 9.1 This Agreement is comprised of the following documents:

- .1 Stipulated Sum Vertical Construction Contract
- .2 Exhibit "A" – General Conditions of the Contract for Construction

- .3 Exhibit “B” – Drawings and Specifications (On File with the Purchasing Agent)
- .4 Specifications  
See Exhibit “B” – Drawings and Specifications (On File with the Purchasing Agent)
- .5 Addenda, if any:  
See Exhibit “B” – Drawings and Specifications (On File with the Purchasing Agent)  
Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.
- .6 Other Exhibits:  
Exhibit “C” – Key Personnel  
Exhibit “D” – Alternates – *None*  
Exhibit “E” – Allowances – *None*  
Exhibit “F” – Unit Price Proposal Form  
Exhibit “G” – Initial Schedule of Values – *None*  
Exhibit “H” – Contractor’s Construction Schedule (To be Completed after Contract Award)  
Exhibit “I” – Escrow Agreement – *None*  
Exhibit “J” – Conflict of Interest Questionnaire  
Exhibit “K” – Proposal Form  
Exhibit “L” – Prevailing Wage Rates  
Exhibit “M” – Contractor’s Insurance Certificate(s) and Bonds (To be Completed after Contract Award)

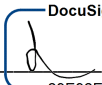
.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. Exhibit A provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« »

This Agreement entered into as of the day and year first written above.

**CONTRACTOR:**  
**GAGE & CADE CONSTRUCTION, LLC**

BY:   
DocuSigned by:  
29E92EACFF8A4CB...  
**BRANDON WELLS**  
**PROJECT MANAGER**

2024-1135918  
**TEXAS ETHICS COMMISSION**  
**CERTIFICATE NUMBER**

**CITY:**  
**CITY OF DENTON, TEXAS**

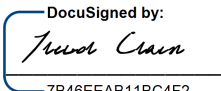
BY: \_\_\_\_\_  
**SARA HENSLEY**  
**CITY MANAGER**


**ATTEST:**  
**LAUREN THODEN, CITY SECRETARY**

BY: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations and  
business terms.

**APPROVED AS TO LEGAL FORM:**  
**MACK REINWAND, CITY ATTORNEY**

  
DocuSigned by:  
7B46EEAB11BC4F2...  
**SIGNATURE**      **PRINTED NAME**  
Director of Capital Projects  
**TITLE**  
Capital Projects  
**DEPARTMENT**

BY:   
DocuSigned by:  
4B070831B4AA438...

SECTION 00 72 00

Exhibit A – General Conditions

for the following PROJECT:

*CSP 8281 Landfill Entrance Facility Improvements*

THE OWNER:

City of Denton  
215 East McKinney Street  
Denton, Texas 76201

THE DESIGN PROFESSIONAL:

Biggs & Mathews Environmental Inc.  
Gregory W. Adams, P.E.  
1700 Robert Road, STE. 100  
Mansfield, Texas 76063

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## Article 1. GENERAL PROVISIONS

### Section 1.1 Basic Definitions

#### a. The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Proposal Documents, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Design Professional. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### b. The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Design Professional or the Design Professional's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Design Professional or the Design Professional's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Design Professional shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Design Professional's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party. The terms "Agreement" and "Contract" shall be used interchangeably to have the same meaning as defined in this Section 1.1.b.

#### c. The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, supplies, skill, supervision, transportation, support services, facilities and other resources necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the Work identified by the Contract Documents. The Work may constitute the whole or a part of the Project.

#### d. The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### e. The Drawings



The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

f. The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

g. Design Documents

Design Documents are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design Professional and the Design Professional's consultants under their respective professional services agreements. Design Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, the Project Manual and other similar materials.

h. Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions.

i. The Indemnitees

The Owner, which includes the Mayor, members of the City Council, employees, agents, assigns, and other city officers, the Owner's consultants, the Design Professional, Design Professional's consultants, and the agents and employees of any of them shall hereafter be known as the "Indemnitees".

j. Construction Management Plan

The Construction Management Plan is prepared by the Contractor for its use in managing the Work and is not a Contract Document. The Construction Management Plan must include, at a minimum and without limitation, the following separate deliverables, which are subject to review and approval by the Design Professional and Owner:

- i. Safety and Logistics Plan;
- ii. Contractor's Construction Schedule;
- iii. Cost Management Plan, Control Estimate and Schedule of Values;
- iv. Quality Management, Commissioning and Turnover Plan; and
- v. Information Management System.

k. As-Built Documents

The As-Built Documents are the Drawings, Specifications, and addenda thereto that may be updated by the Contractor to accurately reflect the actual Work in place, including without limitation, the incorporation of Change Orders, responses to the Contractor's requests for information, Design Professional's supplemental instructions, field modifications, and other similar changes made to the Work during construction. The As-Built documents shall conform to the format and compatibility requirements of Section 1.5.c.

l. Work Breakdown Structure

The project's Work Breakdown Structure ("WBS") is a deliverable-oriented, hierarchical organization of the Project components to be executed by the Owner, and its accompanying numbering system. The WBS will be mutually agreed upon by the Owner and Design Professional and used by the Contractor.

m. Equal to (or Approved Equal)

Products by manufacturers and information about those products other than those products specified in the Contract Documents which the Contractor may submit for substitution as equal to those products specified in the Contract Documents; which may be incorporated in the Work after using the process specified in the Contract Documents for review and acceptance by the Design Professional and acceptance of same by the Owner.

n. Underground Facilities

All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

o. Force Majeure

An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

p. Knowledge

The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the Work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the Work and in accordance with the highest standards in the construction profession.

q. Proposal

The offer or proposal of an Offeror submitted on the prescribed form setting forth the prices for the Work to be performed.

r. Offeror

The individual or entity that submits a Proposal directly to City.

s. Proposal Documents

The Proposal Requirements and the proposed Contract Documents including all addenda.

t. Proposal Requirements

The Advertisement or Request for Proposal, Invitation to Offerors, Instructions to Offerors, Offeror's Bond or other Proposal security, the Proposal Form, and the Proposal with any attachments.

u. Notice of Award

A written notice given by City to the Successful Offeror stating that upon timely compliance by the Successful Offeror with the conditions precedent listed in such notice, City will sign and deliver the Agreement.

v. Calendar Day

A day consisting of 24 hours measures from midnight to the next midnight. A “day” or “Day” unless otherwise defined shall mean a Calendar Day.

w. Business Day

A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.

x. Notice to Proceed

A written instrument from the Owner to the Contractor requiring the Contractor to proceed with performance of activities, including, but not limited to development of submittals, ordering of materials, and any other services (the “Preconstruction Services”) required to prepare for and expedite the construction of the Work as required by the Contract Documents; and complete the Work (the “Construction Services”).

## Section 1.2 Correlation and Intent of the Contract Documents

- a. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Where a conflict occurs between or within standards, specifications, and drawings, the more stringent or higher quality requirements shall apply. The precedence and coordination of the Contract Documents are as follows:

.1 Any addenda and modifications to the Drawings and Specifications take precedence over any earlier Contract Documents.

.2 Should there be a conflict within the Specifications, or within the Drawings, or between the Drawings and Specification, the Design Professional shall decide which stipulation will provide the best installation and its decision shall be final.

.3 The Drawing and Specifications are intended to coordinate with each other. Anything shown on the Drawings but not mentioned in the Specification or vice-versa, or anything not expressly set forth in either, but which is reasonably implied, shall be furnished as though specifically shown and mentioned in both without any extra charge.

.4 The Drawings, for purposes of clearness and legibility, are essentially diagrammatic, and although the sizes and locations of equipment are shown to scale wherever possible, the Contractor, Subcontractors, and Sub-subcontractors are required to familiarize themselves with all the Work required by the Contract Documents. Each Contractor, Subcontractor, and Sub-subcontractor shall properly coordinate its work with that of the Owner and all Separate Contractors. It is not within the scope of the Drawings to show all necessary offsets, obstructions or structural conditions. It shall be the responsibility of each Contractor to plan, coordinate, and install its work in such a manner so as to conform to the structure. Any conflict within the Drawings shall be referred to the Design Professional for disposition prior to the installation of any affected work.

.5 Figured dimensions contained in the Contract Documents shall be accurately followed, even though they differ from scaled measurements. No work

shown on the plans, the dimensions of which are not figured, shall be executed until instructions have been obtained from the Design Professional as to the dimensions to be used. Larger scale Drawings shall have preference over smaller scale drawings, but discrepancies shall be referred to the Design Professional for interpretation.

**.6 Underground Facilities**

Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Supplementary Conditions:

City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

- reviewing and checking all information and data;
- verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
- coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and
- the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

Not Shown or Indicated: If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith, identify the owner of such Underground Facility and give notice to that owner and to City. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.

If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 11.

Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

**.7 Reliance by Contractor on Technical Data:**

Contractor is provided certain technical data with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the

information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or

any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

- i. The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.
- b. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- c. Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### Section 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents that are a part of this Contract.

### Section 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### Section 1.5 Ownership and Use of Design Documents

- a. Submittal or distribution of the Design Documents or any portion thereof to meet official laws, statutes, ordinances and regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights.
- b. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Design Documents provided to them solely and exclusively for

execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Design Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Design Documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

#### Section 1.6 Notice

- a. Except as otherwise provided in Section 1.6.b, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement. In the event notice is provided by mail, it shall be sent certified return receipt requested.
- b. Notice of Claims as provided in Section 15.1.c shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

#### Section 1.7 Digital Data Use and Transmission

- a. The parties shall agree upon protocols governing the transmission and use of Design Documents or any other information or documentation in digital form. The parties will establish the protocols for the development, use, transmission, and exchange of digital data in writing, as mutually agreed.
- b. The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner, without limitation, all electronic and hard copies of any Project-related materials, records, notices, memoranda, recordings, drawings, specifications, mock-ups and any other documents furnished by the Owner or the Design Professional to the Contractor.

#### Section 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without written agreement to protocols governing the use of, and reliance on, the information contained in the model, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

Section 1.9 The representations and warranties contained in the Contract Documents shall survive the complete performance of the Work or earlier termination of this Agreement.

## Article 2.      OWNER

#### Section 2.1 General

- a. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.a, the

Design Professional does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

- b. The Owner shall furnish the following information to a person, including the Design Professional or Contractor, who makes a request for information under Texas Government Code Chapter 2253, related to a payment or performance bond: (1) a certified copy of a payment bond and any attachment to the bond; (2) the public work contract for which the bond was given; and (3) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, for obtaining information concerning licensed insurance companies.
- c. **The Owner may obtain independent review(s) of the Design Professional’s Design Documents, or of any document or other materials submitted by the Contractor, by a separate architect, engineer, contractor, cost estimator or any other consultant they deem necessary and put under contract to or cause to be employed by the Owner. Such independent review shall be undertaken at the Owner’s expense in a timely manner and shall not delay the orderly progress of the Work. The Design Professional and Contractor shall cooperate with such Owner’s other consultants fully and respond to their reviews and comments in writing in a timely and comprehensive manner. This provision shall not be interpreted to require the Owner to obtain an independent review or imply that the Owner is in any way assuming responsibility for the work of the Design Professional and Contractor.**

#### Section 2.2 Evidence of the Owner’s Financial Arrangements

- a. Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract.
- b. Following commencement of the Work and within ten (10) business days of written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor’s request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.b, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor’s reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.
- c. After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.
- d. Where the Owner has designated information furnished under this Section 2.2 as “confidential,” the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose “confidential” information, after seven (7) days’ notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The

Contractor may also disclose “confidential” information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information. Notwithstanding the above, all Agreements with the Owner shall have all references to compensation redacted before disclosing to Subcontractors, sub-Subcontractors, or any other tier of vendor.

### Section 2.3 Information and Services Required of the Owner

- a. Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.a, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- b. The Owner shall retain a Design Professional lawfully licensed to practice architecture or engineering as applicable, or an entity lawfully practicing architecture or engineering, as applicable, in the jurisdiction where the Project is located. That person or entity is identified as the Design Professional in the Agreement and is referred to throughout the Contract Documents as if singular in number.
- c. If the employment of the Design Professional terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Design Professional.
- d. The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- e. The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Contractor’s performance of the Work with reasonable promptness after receiving the Contractor’s written request for such information or services.
- f. Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.e.
- g. The foregoing are, without limitation and in addition to, the other duties and responsibilities of the Owner specified in Article 6; Article 9; and Article 11.

### Section 2.4 Owner’s Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.c nor shall the exercise of the Owner’s right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

### Section 2.5 Owner’s Right to Carry Out the Work



If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within forty-eight (48) hours from receipt of written notice from the Owner or Design Professional to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Design Professional may, at the direction of the Owner, pursuant to Section 9.5.a, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Professional's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Design Professional, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

#### Section 2.6 Extent of Owner Rights

- a. The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted in the Contract Documents; at law; or in equity.
- b. In no event shall the Owner or Design Professional have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work. Notwithstanding anything else herein, and without limitation, any review(s), independent or otherwise, or approval(s) by the Owner or Design Professional of the Design Documents, the Contract Documents, the Contractor's Construction Management Plan(s), the Contractor's Construction Schedule, shop drawings, submittals, meeting minutes or other Contractor's services, deliverables or activities; nor the exercising of any of the rights and authority granted the Owner or Design Professional in the Contract Documents shall in any way reduce, diminish, or otherwise affect the Contractor's responsibilities, duties and accountability to the Owner for, without limitation, the construction means, methods, techniques, sequences, procedures or for safety precautions, and the provision of the Work per the requirements of the Contract Documents.
- c. The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project for cause but without cost to the Owner. Such requests from the Owner will be made in writing and may be done directly or indirectly through the Design Professional/Engineer or on-site representative. "Cause" may include, but is not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the project, the facility or others, poor management, cause delay or delays, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

### Article 3.      CONTRACTOR

#### Section 3.1 General

- a. The Contractor is the person or entity identified as such in the Contract or Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully

licensed, if required in the jurisdiction where the Project is located, Denton County, Texas. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

- b. The Contractor shall perform the Work in accordance with the Contract Documents.
- c. The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in the Design Professional's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### Section 3.2 Review of Contract Documents and Field Conditions by Contractor

- a. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas and generally prevailing climatic conditions; (ii) anticipated labor supply and costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues. The Owner and Design Professional assume no responsibility or liability for the physical condition or safety of the Project site, or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner and Design Professional shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.a.
- b. Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.d, shall take field measurements of and verify any existing conditions related to that portion of the Work, and shall observe and verify the impact of any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Design Professional any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Design Professional may require. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Design Professional, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction per Section 12.2. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.
- c. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Design Professional any nonconformity

discovered by or made known to the Contractor as a request for information in such form as the Design Professional may require.

- d. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Design Professional issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.b or 3.2.c, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.b or 3.2.c, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.g, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Design Professional for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents in its capacity as a contractor and not as a design professional.

### Section 3.3 Supervision and Construction Procedures

- a. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work in accordance with the Contract Documents.
- b. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.
- c. The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- d. The Contractor shall carefully check its own work and that of Subcontractors as the Work is being performed.
- e. During the finishing stages of the project, the Contractor shall make frequent inspections of the Work, with the applicable Subcontractor(s) involved, if any, with seven (7) days advance notice to the Design Professional, and the Contractor shall identify incorrect and faulty Work.
- f. The Contractor shall ensure that incorrect or faulty Work is corrected immediately.
- g. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

### Section 3.4 Labor and Materials

- a. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

- b. The Contractor is encouraged to consider products and systems that improve the project and retain the character of the products specified, but do not alter the intent of the project. However, except in the case of minor changes in the Work authorized by the Design Professional in accordance with Sections 3.12.h or 7.4, the Contractor may make substitutions only by a formal request for substitution of products in place of those specified with the consent of the Owner, after evaluation by the Design Professional in accordance with the conditions set forth below and elsewhere in the Contract Documents, and a Change Order or Construction Change Directive. The Contractor must submit to the Design Professional and the Owner, for each proposed substitution:

.1 A full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog "cut sheets", warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution;

.2 A written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable;

.3 The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable;

.4 The adjustment, if any, in the time of completion of the Contract and the Contractor's Construction Schedule in the event the substitution is acceptable;

.5 An affidavit stating that (1) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (2) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Design Professional;

.6 Proposals for substitutions shall be submitted electronically to the Design Professional and the Owner's other consultants, if any, in sufficient time to allow no less than ten (10) business days for their respective reviews;

.7 No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein; and

.8 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (1) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (2) specified products are unavailable through no fault of the Contractor; (3) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (4) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (5) when, in the judgment of the Owner or the Design Professional, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations; and

.9 Whether or not any proposed substitution is accepted by the Owner, the Owner's other consultants, if any (if any), or the Design Professional, the Contractor shall reimburse the Owner for any fees charged by the Design Professional, and the Owner's other consultants for evaluating each proposed substitute.

- c. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.
- d. All work under this Agreement shall be performed in a skillful and workmanlike manner in accordance with the highest industry standards.
- e. The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Design Professional or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade; and

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

### Section 3.5 Warranty

- a. The Contractor warrants to the Owner and Design Professional that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Design Professional, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. **THE CONTRACTOR SHALL DEFEND AND HOLD THE OWNER HARMLESS AGAINST ANY CLAIM, DEMAND, LOSS, OR DAMAGE BY ANY BREACH OF THIS WARRANTY, AND CONTRACTOR ACKNOWLEDGES IT SHALL NOT LIMIT SUCH WARRANTY BY THE PROVISIONS OF SECTION 12.2.**
- b. All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner and shall commence in accordance with Section 9.8.d.
- c. When written warranties are specified, the document shall include the following information:  
Name and address of Project and Owner;  
Article, materials, or systems covered;

Name and address of Installer;

Name and address of Contractor; and

Signature of individual authorized to sign contracts for the company issuing the warranty.

- d. The following minimum warranty terms shall be incorporated:
  - .1 Duration shall be one year or as otherwise specified, dated from the Date of Substantial Completion;
  - .2 The article, material or system is free from defective materials and workmanship;
  - .3 Costs of repair or replacement shall not accrue to the Owner, including, without limitation, repair or replacement of other work disturbed by, or because of, repair or replacement; and
  - .4 The warranty period of one year, or as otherwise specified, shall recommence upon the identification and completion by Contractor and acceptance by Owner of any warranty claim during the initial one-year (1) warranty period.
- e. Warranties which are provided by a manufacturer for its product shall be received by the Contractor, filled out and filed with the manufacturer or other appropriate entity in coordination with the Owner. Certificates or registration stubs shall be included with the record documents submitted for the Owner upon completion of the Work. The Owner shall administrate manufacturer's warranties/guarantees after expiration of the Contractor's warranty.
- f. Temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any work or material supplied under the Contract Documents before final completion and written acceptance by the Design Professional and Owner shall not be construed as evidence of the Design Professional's or the Owner's acceptance of same, or the commencement of any warranty periods.
- g. The Owner has the privilege of such temporary or trial usage, for such reasonable time as the Owner, or the Design Professional deem proper. The Contractor shall make no claims for damage or injury to, or breaking of, any parts of such work which may be caused by weakness or insufficiency of structural parts, or by defective materials or workmanship.
- h. The Contractor may, without cost to the Owner, make such trial usage. However, trials shall only be conducted with the Design Professional's prior approval and under its observation as may be required by either of them. Equipment and/or materials shall be replaced or returned to "as new" condition prior to acceptance by the Owner.
- i. The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.
- j. If necessary as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the one (1) year period following the date of Substantial Completion described in Section 12.2.b.

### Section 3.6 Taxes

The Contractor shall, to the extent not exempted under Section 13.11.k herein, pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. In

no event shall the Owner pay the Contractor for taxes that were not properly due or for which the Owner is exempt from paying under Texas law.

### Section 3.7 Permits, Fees, Notices and Compliance with Laws

- a. Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit. The Owner shall also pay for any applicable gas, water, sewer and electrical service application fees; assessments against the property, including property tax, developmental excise and similar taxes; sewer, water, and related utility tap fees; and sewer plant improvement fees, unless exempted under Texas law. The Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.
- b. The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.
- c. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, regardless of whether such work is in accordance with Contract Documents, and without notice to the Design Professional that the Contract Documents are at variance with applicable laws, ordinances, rules, or regulations, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Codes and ordinances shall take full and complete precedence over anything contained in the Drawings, Specifications, or other Contract Documents, except where the Contract Documents call for Work or materials of higher standards than those required by codes or ordinances, in which case, the Contract Documents shall govern. Nothing contained in the Contract Documents shall be construed as authority for the Contractor to violate any applicable codes or ordinances in effect at the site.
- d. **Concealed or Unknown Conditions**  
If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Design Professional before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Design Professional will promptly investigate such conditions and, if, in the Design Professional's opinion, they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If, in the Design Professional's opinion, the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Professional shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Design Professional's recommendation, that party may submit a Claim as provided in Article 15.
  - i. In no event shall any adjustment in the Contract Sum or Contract Time be made for conditions which should have been known to the Contractor or would have been noticed

by a Contractor of similar size and experience pursuant to its on-site inspection; by way of or conditions referenced in any other inspections or tests concerning the site which have been made available to the Contractor or have been performed by the Contractor or its Subcontractors; are part of the Contract Documents; or are part of the materials provided by the Contractor to be used in constructing the improvements.

- e. If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Design Professional. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

- f. The Contractor shall comply with all applicable laws, statutes, rules, codes, orders, regulations, and ordinances, including, but not limited to, all immigration, environmental and safety laws, statutes, rules, codes, orders and regulations.

- .1 The Contractor shall also maintain at all times during the term of the this Agreement (and for the time otherwise required by law) all records required by the United States Citizenship and Immigration Services (“USCIS”), including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor’s employees and shall respond at all times during the term of this Agreement in a timely fashion to any inspection request related to such I-9 forms by the Contractor, Owner or governmental agency or authority;

- .2 Furthermore, during the term of this Agreement, and for the time otherwise required by law, Contractor shall cause its officers, directors, managers, agents, and employees to cooperate fully in all respects with any audit, inquiry, inspection, or investigation that may be conducted by the USCIS of the Contractor or any of its employees or subcontractors;

- .3 The Contractor shall immediately, and in any event within two (2) hours of Contractor’s first notice of an event described in this Section 3.7.e, notify the Owner in writing and by in-person voice communications (not voicemail) of any unscheduled inspections, raids, investigations, inquiries, visits, or audits conducted by the USCIS, OSHA, or any other governmental agency or authority related to environmental, immigration, or employee safety issues of the Contractor, its agents, employees, its Design Professional, Subcontractors, or Sub-subcontractors;

- .4 The Contractor shall, on a monthly basis during the term of this Agreement, conduct an audit of the I-9 forms for its employees and shall promptly correct any defects or deficiencies that are identified as a result of such audit;

- .5 The Owner may, at its sole discretion, terminate this Agreement immediately if, at any time during the term of this Agreement, the Contractor violates or is in breach of any provision of this Section 3.7.e, or the USCIS determines that Contractor has not complied with any of the immigration laws, statutes, rules, codes, or regulations of the United States or any applicable state



laws or regulations, or any applicable local ordinances, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigration Responsibility Act of 1996, as amended, and any successor statutes thereto;

.6 If an employee of the Contractor or if the Contractor is later determined to not have valid I-9 information then that employee shall be removed and barred from the Project site at the Contractor's expense; and

.7 The Contractor shall require the Subcontractors, Sub-subcontractors and material suppliers to make the representations and warranties set forth in this Section 3.7.e and to be bound by the same requirements set forth herein.

### Section 3.8 Allowances

- a. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.
- b. Unless otherwise provided in the Contract Documents,
  - .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
  - .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
  - .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.b.1 and (2) changes in Contractor's costs under Section 3.8.b.2.
- c. Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### Section 3.9 Superintendent

- a. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work including, but not limited to, weekends, evenings and nights, or as otherwise reasonably and mutually agreed in writing with the Owner, until all punch list items have been completed to the satisfaction of the Design Professional. No subcontractor shall perform work on the site without the presence of the Superintendent or Assistant Superintendent. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.
- b. The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Design Professional of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner or the Design Professional may notify the Contractor, stating whether the Owner or the Design Professional (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Design Professional to provide notice within the 14-day period shall constitute notice of no reasonable objection.

- c. All of the Contractor's proposed on-site personnel must be approved by the Design Professional and Owner. The Contractor shall not employ a proposed superintendent to whom the Owner or Design Professional has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Substitution or other significant personnel changes which may affect the Contractor's on-site personnel must be preceded by written notification of the Design Professional and Owner no less than seven (7) business days before the anticipated event. Such proposed changes must be approved by the Design Professional and Owner. The Contractor shall designate a second person in charge in writing in the event the Superintendent is temporarily absent due to illness, vacation, or any other cause(s).

#### Section 3.10 Contractor's Construction and Submittal Schedules

- i. Where the Contract is based on a Stipulated Sum, the Contractor, immediately after being awarded the Work, and before execution of the Agreement, shall meet at a Preconstruction Conference with the Owner for the purpose of reviewing the Contractor's proposed Construction Management Plan; assisting the Owner with further developing the Master Project Schedule; and integrating the Work of the Contractor into that of the Owner and all Separate Contractors, if any.
- ii. The Contractor's Project Schedule must include all the following:
  - .1 Use precedence format, critical path method scheduling without the use of artificial activity constraints or "negative float";
  - .2 Use software, techniques and methods satisfactory to the Owner;
  - .3 Provide an electronic and graphic representation of all activities and events that will occur during performance of the Work;
  - .4 Identify each subproject, to include, without limitation preconstruction, construction, commissioning, turnover of the Work, and Owner's occupancy;
  - .5 Set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Contractual Milestone Dates");
  - .6 Upon review by the Design Professional and written review and acceptance by the Owner of the Contractual Milestone Dates, the Contractor's Project Schedule shall be deemed part of the Contract Documents and provided to the Owner as a submittal;
  - .7 If not accepted, the Contractor's Project Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and resubmitted for acceptance;
  - .8 Submission of an updated Contractor's Project Schedule with each Application for Payment shall be a mandatory condition precedent to the payment by the Owner to the Contractor pursuant to an Application for Payment, and the Owner shall not be obligated to make payment if the Contractor fails to include an updated Contractor's Project Schedule reflecting the then-current conditions on the Project and the anticipated progress of Work based on those conditions; and
  - .9 All requests for change orders, modifications or additional compensation from the Contractor affecting the Contract Time or Contract Sum shall include a

detailed schedule with both data and graphics showing the specific effect of the changed, modified or differing condition(s) on the critical path of the Contractor's Project Schedule.

- iii. The Contractor, prior to preparing the Construction Management Plan and attending the Preconstruction Conference, will have reviewed the sequences, durations, sequencing and dependencies of activities, material deliveries, and sequenced man-hour staffing to complete the Work. Work activities which have an installed value of twenty thousand dollars (\$20,000) or more will be broken down into major products or operations except where mutually agreed otherwise by Contractor and Owner, and these values cost-loaded into the Contractor's Project Schedule as deemed necessary by the Owner. Upon request by the Owner, the Contractor shall support values given for each work activity with data that will substantiate its correctness. The Owner may require the Contractor to show separate work activities and Contractual Milestones for, as examples only and without limitation: Substructure Completion; Superstructure Completion; Building Exterior Skin Completion; Interior Finishes Completion; Owner's Beneficial Occupancy, and other similar dates the Owner, at its sole discretion deems important to the Project.
  - iv. In the event the Contractor does not timely provide the Contractor's Construction Management Plan with an acceptable Contractor's Project Schedule containing such elements, information, and processes in a form and with a level of detail acceptable to the Design Professional and the Owner, the Owner may, at the Owner's discretion, unilaterally generate the target Contractor's Project Schedule at the Contractor's expense, and impose such schedule, sequences, logic, and/or durations on the Contractor as it deems necessary to complete the Work, or the Owner may declare the Contractor in breach of contract. Whether or not the Owner decides to implement this option, all other contractual provisions relating to breach of contract will continue to be in full force and apply without modification. The Owner may deduct from the Contractor's Application(s) for Payment the amount paid by the Owner for generating the Contractor's Project Schedule.
  - v. Upon completion of the Master Project Schedule, and acceptance by the Owner and all Separate Contractors, the Master Project Schedule shall supersede previously submitted schedules. Each updated Master Project Schedule shall supersede previous updates.
- b. The Contractor shall, at the Preconstruction Conference, and as a sub-system of its Contractor's Project Schedule, prepare an easily isolated, sorted and separately viewed submittal schedule, and thereafter update it as necessary to maintain a current submittal schedule, and shall submit such schedule(s) for the Design Professional's approval. The Design Professional's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's Construction Schedule, and (2) allow the Design Professional reasonable time to review submittals. If the Contractor fails to submit an approvable submittal schedule thirty (30) days prior to the date established for commencement of the Work, the Contractor shall not mobilize on site, or be entitled to any increase in Contract Sum or extension of Contract Time based on the delay of the Work or time required for review of submittals during the prosecution of the Work.
- c. The Contractor shall perform the Work in general accordance with the most recent Contractor's Project Schedules submitted to the Owner and Design Professional and incorporated into the approved Master Project Schedule.

- d. The Owner together with the Contractor, will monitor the Master Project Schedule, and incorporate the Contractor's updates to its portions of this overall schedule. As all Separate Contractors are also obligated to follow the Master Project Schedule and their respective schedules therein, they will be required to actively cooperate and participate in the preparation and updating of their portion of this schedule, as well as updating the overall Master Project Schedule by the Owner. The Contractor will be kept updated on all significant Master Project Schedule changes materially affecting the Contractor's Project Schedule.
- e. The Contractor will produce a Short Interval Schedule containing activities for not less than one (1) previous week and the next three (3) weeks, and which focuses on the major weekly work activities of each subsystem. At each weekly meeting this Short Interval Schedule will be reviewed by the Contractor with all affected Subcontractors and the Owner.
- f. In the event of substantial delay, if excusable under the Contract, for which extension of the Contract Time has or will be granted, the Owner will review and may require revision by the appropriate contractor(s) of affected component of the Master Project Schedule as required by the specific applicable situation(s), and with the cooperation of the Separate Contractors on the Project.
- g. The Contractor shall, at mutually agreed intervals, submit to the Owner and Design Professional a progress report stating, without limitation, labor forces mobilized and working on site; areas worked in or on; percent complete of current work activities; any potential schedule or coordination problems; material deliveries received; site visitors; and other information as required by the Owner.
- h. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Contractor's Project Schedule and shall promptly advise the Owner of any delays or potential delays. The accepted Contractor's Project Schedule shall be updated to reflect actual conditions as frequently as mutually agreed by the Contractor and Owner; but in no event less frequently than with each Application for Payment; and at other times as may be reasonably requested by the Owner or Design Professional. In the event any progress report or schedule update indicates any actual or potential delays, the Contractor shall, using both the most currently approved Contractor's Project Schedule as a baseline for comparison, and a written narrative, propose an affirmative plan to correct the delay (hereinafter referred to as the "Proposed Recovery Schedule") which must include the following:
  - .1 The Proposed Recovery Schedule will show the results of working additional shift or days, adding additional labor, and any of the other actions specified in Section 8.4, if necessary, all as described in the accompanying narrative;
  - .2 The Proposed Recovery Schedule will be reviewed by the Owner, and the Contractor will promptly and diligently make all adjustments to the Proposed Recovery Schedule reasonably requested as a result of such review.
  - .3 The Proposed Recovery Schedule shall become the most current, approved Contractor's Project Schedule upon its approval by the Owner, issuance of a Change Order for the purpose by the Design Professional; and signing of such Change Order by the Contractor, Design Professional, and Owner, in that order; and
  - .4 In no event shall any progress report, schedule update or Proposed Recovery Schedule constitute an adjustment in the Contract Time, any Contractual

Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

- i. In the event either the Owner or Design Professional determine that the performance of the Work, as of a Contractual Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation those further specified in Section 8.4.
- j. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10 and Section 8.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Contractual Milestone Date or completion date set forth in the Contract Documents.
- k. The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of any part of the Owner's organization or any stakeholders or invitees thereof. The Contractor shall, upon the Owner's or Design Professional's request, reschedule such portion of the Work during hours when the interference to the Owner's organization, or any stakeholders or invitees thereof, will be minimized or eliminated. Any postponement, rescheduling, or performance of the Work under this Section 3.10.k may be grounds for an extension of the Contract Time, if permitted under Section 8.3.a; and an equitable adjustment in the Contract Sum if the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents; and to the extent such rescheduling or postponement is required for the convenience of the Owner.

l. Documents and Samples at the Site

The Contractor shall make available, to the Owner, Design Professional or their designees, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy and delivered to the Design Professional for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall make available to the Owner or Design Professional for inspection and copying the record copy of the drawings, specifications, addenda, Change Orders and other Modifications, including all such documents maintained by the Contractor in electronic format, upon reasonable request of the Owner or Design Professional and, in any event, within twenty-four (24) hours of receipt by Contractor of a request from Owner or Design Professional for such review and/or copying. The Owner or Design Professional may request the record copy of the As-Built Documents, specifications, addenda, Change Orders and other modifications of the Work to be updated before Substantial Completion to reflect the most current condition of the Project, as additional Cost of the Work paid as a Change Order at the Owner's expense. The Owner or Design Professional may require the Contractor to furnish the As-Built Documents in electronic format and may make copies of them prior to completion of the Work at the Owner's expense.

- i. The Contractor shall provide final electronic files and one "hard" copy of the Drawings and Specifications to the Owner updated to reflect the final condition of the Project with the final Application for Payment as a condition precedent to final payment.

### Section 3.12 Shop Drawings, Product Data and Samples

- a. Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
- b. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- c. Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.
- d. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Design Professional is subject to the limitations of Section 4.2.g. Informational submittals upon which the Design Professional is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Design Professional without action.
- e. The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Design Professional, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, after Contractor has verified the information contained within said submittals is in accordance with representations required by Section 3.12.f and in accordance with the submittal schedule approved by the Design Professional or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.
- f. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Design Professional that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents and (4) verified the information contained within said submittals is in accordance with all applicable Federal, state and local codes or ordinances in effect at the site.
- g. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Design Professional. Should the Contractor, Subcontractors, or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.
- h. The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Design Professional's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Design Professional of such deviation at the time of submittal and (1) the Design Professional has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or

omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Design Professional's approval thereof.

- i. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Design Professional on previous submittals. In the absence of such notice, the Design Professional's approval of a resubmission shall not apply to such revisions.
  - i. Copies of all approved Shop Drawings, Product Data, Samples and similar submittals shall be preserved in an orderly manner and delivered by the Contractor to the Owner upon Final Completion.
- j. The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.
  - i. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor, the Owner and the Design Professional will specify all performance and design criteria that such services must satisfy in the Contract Documents. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional who shall comply with reasonable requirements of the Owner regarding qualifications and insurance. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Design Professional. The Owner and the Design Professional shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Design Professional have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.j, the Design Professional will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
  - ii. If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Owner and the Design Professional at the time and in the form specified by the Design Professional.

### Section 3.13 Use of Site, Delivery and Storage

- a. The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

- b. The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Owner before using any portion of the site.
- c. The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the Project site; all property at the Project site; and all persons or property adjacent thereto, which includes, but is not limited to, the all the following duties and acknowledgements:
  - .1 The Contractor acknowledges the Project site comprises and/or may be adjacent to existing structures and that these site areas may be occupied during the performance of some portions of this Contract;
  - .2 The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause interference with adjacent stakeholders or create hazardous conditions;
  - .3 The Contractor shall be responsible for the mitigation and/or abatement of all noise, dust, fumes, traffic or other by-product of construction activity that, in the opinion of the Owner or the Design Professional, have an adverse affect on the quality of life or productivity for Project stakeholders, the Owner's current operations, or the Owner's employees. Such mitigation and/or abatement shall be performed in manner and with a result completely and wholly acceptable to the Owner and Design Professional;
  - .4 The Contractor shall control its personnel and the Subcontractors on site, especially regarding the use of alcohol or profanity, dressing in an inappropriate manner, parking in an inappropriate place, or other activities deemed to be inappropriate, to the satisfaction of the Owner and Design Professional. Repeat offenses will cause the Owner or Design Professional to require, through the Contractor, the temporary or permanent removal of the offending individuals, Subcontractor(s) or Sub-subcontractor(s) from the site;
  - .5 The Contractor shall, at a minimum, secure the site by erecting and maintaining a 6'-0" chain link fence around the perimeter of the construction site. This fence shall remain intact until such time the site becomes secure in the opinion of the Contractor, as a result of construction progress (by way of example, and without limitation, completion of site grading and backfill, installation of doors and windows, etc.);
  - .6 The Contractor shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor or Sub-subcontractor. The facilities of any existing, nearby buildings will not be available for construction use; and
  - .7 The Contractor is advised that the project site area is subject to, among other inclement weather, unpredictable and high winds. When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and stored materials on site and fully protect the Work, as necessary, from injury or damage by any cause and to prevent possible damage caused by flying materials and debris.



- d. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas, which includes, but is not limited to, all of the following duties:
  - .1 The access to the site shall be maintained in compliance with all local, state, and Federal code and life safety requirements for ingress by first responders and other similar emergency requirements;
  - .2 The Contractor shall inform the Owner, Design Professional and any officials referenced in Section 3.13.f in writing a minimum of thirty (30) calendar days prior to any disruption of access, specifically and graphically showing the nature of the disruption, as well as the hours it will be disrupted. Such disruption will be subject to Owner's and Design Professional's approval, such approval not to be unreasonably withheld;
  - .3 The Owner shall be responsible for snow removal to the limits of the construction site only so far that the Contractor will have access to the entrance to the construction area; and
  - .4 Snow removal within the limits of work and/or for the purpose of performing and protecting work by individual contractors is the duty of the Contractor.
- e. During the performance of the Work, the Contractor, its Subcontractors, Sub-subcontractors, suppliers and their employees agree they shall:
  - .1 Use such entrances to the construction site that may be designated by the Owner;
  - .2 Perform the Work at such times of the day and days of the week as may be designated by the Owner; and
  - .3 Accept that these entrances and times may be reviewed and changed from time to time by the Owner.
- f. The Contractor shall notify all public utility companies a minimum of two (2) business days prior to the commencement of any work by it or its Subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Owner to proceed has been given to the Contractor. If the utility service must be interrupted, the Contractor shall, at Contractor's sole cost and expense, notify the head of the local administrative services (by way of example only, and without limitation, the city manager, the mayor, the city or county clerk, etc. as applicable) and the utility users affected by the interruption. Such notice shall consist of direct written communication, publication in a local newspaper, and/or announcement on local radio or television stations, whichever is most reasonably calculated to give the most effective notice to such utility users.
- g. The Contractor shall exercise due diligence in seeing that all equipment, material, and supplies are delivered in advance of the time they are needed on the job and shall properly store and protect same at the Contractor's expense.
- h. Notwithstanding any other provision herein, the Contractor shall take all necessary measures to store materials on site for which payment has been requested by the Contractor or been made by the Owner so that they shall not deteriorate, be damaged or be stolen, which includes, but is not limited to, all the following:
  - .1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor;

- .2 Protection of construction materials and equipment stored at the Project site from fire, weather, burglary, pilferage, vandalism and mischief, damage, and all other adversity; and the care and protection of materials and Work installed in the building is solely the responsibility of the Contractor;
  - .3 The Contractor shall bear sole responsibility for the restoration of damaged Work and replacement of damaged or stolen materials at no additional cost to the Owner; and
  - .4 After equipment is no longer required for the Work, it shall be promptly removed from the Project site.
- i. The Contractor shall not deliver any materials to the site which are not to be installed by same Contractor without fifteen (15) day's advance notice in writing to the Owner of the location, date, and time of such delivery to allow proper coordination. Such materials shall be received jointly by a representative of the Contractor and a representative of the Owner, who shall agree, and the Contractor shall document such agreement in writing:
- .1 The materials delivered are undamaged, or if damaged, such damage is documented by digital photo(s);
  - .2 They are in the quantities shown on the purchase order, invoice or bill of lading accompanying the shipment or delivery or otherwise provided;
  - .3 The storage conditions are adequate for the purposes; and
  - .4 The Contractor has accepted responsibility for insurance and ongoing protection per Section 10.2 for such material until it is released to a third party authorized in writing by the Owner to receive it.

#### Section 3.14 Cutting and Patching

- a. The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.
- b. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

#### Section 3.15 Cleaning Up

- a. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

- b. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

#### Section 3.16 Access to Work

The Contractor shall provide the Owner and Design Professional and their representatives with access to the Work in preparation and progress at all times wherever located, and shall provide proper and safe facilities for such access.

#### Section 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall defend and hold the Owner and Design Professional harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Design Professional. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Design Professional.

#### Section 3.18 Indemnification

- a. **CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF CONTRACTOR OR ANY SUBCONTRACTORS, INVITEES, AND ANY OTHER THIRD PARTIES OR PERSONS FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE, IN ANY WAY ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL AT ITS OWN COST AND EXPENSE DEFEND AND PROTECT OWNER FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.**

**CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES FOR INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS,**

REGARDLESS OF WHETHER THE CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF INDEMNITEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS AN INDEMNITY BY CONTRACTOR FOR THE BENEFIT OF THE OWNER FROM THE CONSEQUENCES OF OWNER'S NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR EMPLOYEE OF ANY OF ITS SUBCONTRACTORS.

IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF THE CONTRACTOR, ANY SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR ANY SUB-CONTRACTOR UNDER WORKMEN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

INDEMNIFIED ITEMS SHALL INCLUDE, BUT NOT BE LIMITED TO, ATTORNEYS' FEES AND COSTS, COURT COSTS AND SETTLEMENT COSTS, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

THE CONTRACTOR IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE DESIGN PROFESSIONAL, ANY LICENSED ENGINEER, OR AN AGENT, SERVANT, OR EMPLOYEE OF THE DESIGN PROFESSIONAL OR LICENSED ENGINEER FROM LIABILITY THAT MAY ARISE FROM DEFECTS IN THE PLANS, DESIGNS OR SPECIFICATIONS OR NEGLIGENCE ON THE PART OF THE DESIGN PROFESSIONAL OR LICENSED ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES ARISING FROM THE CONTRACT AND THE PLANS DESIGNS OR SPECIFICATIONS THAT ARE PART OF THE CONSTRUCTION CONTRACT AS SET FORTH IN CHAPTER 130 OF THE TEXAS CIVIL PRACTICE AND REMEDIES CODE.

- b. THE CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS SECTION 3.18 SHALL ALSO SPECIFICALLY INCLUDE, WITHOUT LIMITATION, ALL FINES, PENALTIES, DAMAGES, LIABILITY, SAFETY VIOLATIONS, COSTS, EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES), AND PUNITIVE DAMAGES, IF ANY, ARISING OUT OF, OR IN CONNECTION WITH ANY:
  - .1 VIOLATION OF OR FAILURE COMPLY WITH ANY LAW, STATUTE, ORDINANCE, RULE, REGULATION, CODE OR REQUIREMENT OF A PUBLIC AUTHORITY THAT BEARS UPON THE PERFORMANCE OF THE WORK BY THE CONTRACTOR, A

**SUBCONTRACTOR OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE;**

**.2 MEANS, PROCEDURES, TECHNIQUES, SAFETY PRECAUTIONS, OR SEQUENCES OF EXECUTION OR PERFORMANCE OF THE WORK; AND**

**.3 FAILURE TO SECURE AND PAY FOR PERMITS, FEES, APPROVALS, LICENSES, AND INSPECTION AS REQUIRED UNDER THE CONTRACT DOCUMENTS, OR ANY VIOLATION OF ANY PERMIT OR OTHER APPROVAL OF A PUBLIC AUTHORITY APPLICABLE TO THE WORK, BY THE CONTRACTOR, A SUBCONTRACTOR, OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE.**

- c. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS ALL OF THE INDEMNITEES SET OUT IN SECTION 3.18.a FROM AND AGAINST ANY COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED BY ANY OF THE INDEMNITEES IN ENFORCING ANY OF THE CONTRACTOR'S DEFENSE, INDEMNITY, AND HOLD-HARMLESS OBLIGATIONS UNDER THIS CONTRACT.**

#### Article 4. DESIGN PROFESSIONAL

##### Section 4.1 General

- a. The Design Professional is the person or entity retained by the Owner pursuant to Section 2.3.b and identified as such in the Agreement.
- b. Duties, responsibilities, and limitations of authority of the Design Professional as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Design Professional. Consent shall not be unreasonably withheld.

##### Section 4.2 Administration of the Contract

- a. The Design Professional will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Design Professional issues the final Certificate for Payment. The Design Professional will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.
- b. The Design Professional will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, as the Work progresses and when fully completed, will be in accordance with the Contract Documents. However, the Design Professional will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Professional will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.a.
- c. On the basis of the site visits, the Design Professional will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most

recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Design Professional will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Professional will not have control over or charge of and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

- i. **NEITHER THE OWNER NOR THE DESIGN PROFESSIONAL NOR THE OWNER'S OTHER CONSULTANTS SHALL BE RESPONSIBLE OR LIABLE FOR THE SAFETY PROGRAM(S) DEVELOPED BY THE CONTRACTOR OR ITS SUBCONTRACTORS FOR THE SAFETY OF PERSONS AND PROPERTY, OR FOR COMPLIANCE WITH STATUTES, RULES, REGULATIONS, AND ORDERS APPLICABLE TO CONDUCT THE WORK. SHOULD ANY CONTRACTOR OR THEIR SUBCONTRACTOR(S), OR THE SUB-SUBCONTRACTOR(S) MAKE A CLAIM AGAINST THE INDEMNITEES, OR SHOULD THEY OR ANY GOVERNMENTAL ENTITY BRING ANY ACTION OR LEVY OR A FINE OR PENALTY AGAINST THE INDEMNITEES ON ACCOUNT OF ANY SAFETY-RELATED DAMAGE OR VIOLATION OF LAW ALLEGED TO HAVE BEEN SUSTAINED, THE CONTRACTOR AGREES THAT IT WILL HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH VIOLATION, FINE, CLAIM OR SUIT, AND THAT IT WILL REIMBURSE THE INDEMNITEES THE COST OF DEFENDING SUCH SUIT, AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THEREFROM, THE CONTRACTOR SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.**
- d. Communications
- The Owner and Contractor shall include the Design Professional in all communications about the Design Professional's services or professional responsibilities. The Owner shall promptly notify the Design Professional of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Design Professional's consultants shall be through the Design Professional. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.
- i. Failure of Contractor to give the Owner or Design Professional written notice of Contractor's objections, within three (3) business days, to directives, instructions, interpretations, or minutes from the Owner or Design Professional, shall constitute final and conclusive consent on the part of the Contractor to such directives, instructions, interpretations, or minutes of the Owner or Design Professional.
  - ii. Any written notice from the Owner or Design Professional to the Contractor shall be sufficiently given when delivered to the last known business address of the Contractor, or to its registered or authorized agent, representative, or officer. Any written notice from the Contractor to the Owner shall be sufficiently given when personally delivered to the Owner's Office, Attn: Project Manager, or at such other address and to the attention of such person as the Owner may from time to time designate in writing.

- e. Based on the Design Professional's evaluations of the Contractor's Applications for Payment, the Design Professional will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- f. The Design Professional has authority to reject Work that does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable, the Design Professional will have authority to require inspection or testing of the Work in accordance with Sections 13.4.b and 13.4.c, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- g. The Design Professional will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Design Professional's action will be taken in accordance with the submittal schedule approved by the Design Professional or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Design Professional's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Design Professional's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 1.2, 3.2.a, 3.3, 3.5, 3.12, and 13.9. The Design Professional's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- h. The Design Professional will prepare Change Orders and Construction Change Directives and may order minor changes in the Work as provided in Section 7.4. The Design Professional will investigate and make recommendations regarding concealed and unknown conditions as provided in Section 3.7.d.
- i. The Design Professional will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.
- j. If the Owner and Design Professional agree, the Design Professional will provide one or more Project representatives to assist in carrying out the Design Professional's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.
- k. The Design Professional will interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Design

Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

- l. Interpretations of the Design Professional will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations, the Design Professional will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.
- m. The Design Professional's opinions on matters relating to aesthetic effect will be considered by the Owner when making the Owner's determination on these issues and the Owner's decision will be final if consistent with the intent expressed in the Contract Documents. Such Owner's determination shall be communicated through the Design Professional.
- n. The Design Professional will review and respond to requests for information about the Contract Documents. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Design Professional will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## Article 5. SUBCONTRACTORS

### Section 5.1 Definitions

- a. A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.
- b. A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### Section 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

- a. Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Design Professional of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Design Professional may notify the Contractor whether the Owner or the Design Professional (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Design Professional to provide notice within the 14-day period shall constitute notice of no reasonable objection.
- b. The Contractor shall not contract with a proposed person or entity to whom the Owner or Design Professional has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.



- c. If the Owner or Design Professional has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Design Professional has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.
- d. The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Design Professional makes reasonable objection to such substitution.
- e. Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.
- f. The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

### Section 5.3 Subcontractual Relations

- a. By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner, the Owner's other consultants and Design Professional. Each subcontract agreement shall preserve and protect the rights of the Owner, the Owner's other consultants, and Design Professional under the Contract Documents with respect to the Work to be performed by the Subcontractor. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available for review for each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Notwithstanding the above, all Agreements with the Owner shall have all references to compensation redacted before disclosing to Subcontractors, sub-Subcontractors, or any other tier of vendor.
- b. All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as an Exhibit, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract. The Contractor's subcontractors, however, are not intended third-party beneficiaries of this Agreement by pass through, assignment, or otherwise, except as provided in the Contract Documents, and the Owner shall not be bound to Contractor's subcontract agreements.
- c. Whenever the Contractor receives payment pursuant to the Contract Documents, the Contractor shall make payments to each of its Subcontractors of any amounts actually received which were included in the Contractor's Application for Payment to the Owner for such subcontracts unless otherwise allowed to withhold payment by the terms and conditions of the subcontract or as allowed by law. The Contractor shall make such payments within ten (10) days of receipt of payment from

the Owner in the same manner as the Owner is required to pay the Contractor under the Contract Documents if the Subcontractor is satisfactorily performing under its contract with the Contractor. Such payments from Owner to Contractor shall be imposed with an express trust to assure that payment is made to all Project Subcontractors, Sub-subcontractors, and suppliers. In addition to the express trust imposed upon such funds and the fiduciary duties incumbent upon the Contractor, Texas Property Code Chapter 162 shall apply.

- d. The Contractor shall monitor the Subcontractors, who shall pay all suppliers, Sub-subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to the Subcontractor any amounts actually received which were included in the Subcontractor's request for payment to the Contractor for such persons, within ten (10) days of receipt of payment from the Contractor. The construction payments made by the Contractor to the Subcontractor shall be trust funds as set forth in Chapter 162 of the Texas Property Code. If the Subcontractor fails to make such payments in the required manner, the Subcontractor shall pay said suppliers, Sub-subcontractors, and laborers interest as set forth in Chapter 162 of the Texas Property Code.
- e. At the time the Subcontractor submits a request for payment to the Contractor, the Subcontractor shall also submit to the Contractor a list of the Subcontractor's suppliers, Sub-subcontractors, and laborers. The Contractor shall be relieved of the requirements of this Section regarding payment in ten (10) days and interest payments until the Subcontractor submits such list. If the Contractor fails to make timely payments to the Subcontractor as required by this Section, the Contractor shall pay the Subcontractor interest as calculated under the provisions of Chapter 2251 of the Texas Government Code. Nothing in this Section 5.3 shall be construed to affect the retention provisions of any contract.
- f. The provisions of this Section 5.3 shall be made a part of each contract between the Contractor and each Subcontractor, either expressly or by incorporation by reference to this Section of the Contract Documents.

#### Section 5.4 Contingent Assignment of Subcontracts

- a. Each subcontract agreement for a portion of the Work may be assigned by the Contractor to the Owner, provided that
  - .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
  - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

- b. If the Work in connection with a subcontract has been suspended for more than thirty ( 30 ) days, after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct verifiable costs incurred by such Subcontractor as a result of the suspension.
- c. Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity, including the performance bond Surety's takeover or completion contractor, which shall relieve the Owner of any legal responsibility under the subcontract.

- d. Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the assignment of the Subcontractor to the Owner after suspension and termination of the Contract, as provided in this Section 5.4. This Section 5.4 shall be construed to prohibit a pass through or assignment of rights, unless authorized by the Owner in writing

#### Section 5.5 Owner Payments to Subcontractors

- a. In the event of any default hereunder by the Contractor, or in the event the Owner or Design Professional fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount paid the Subcontractor shall be deducted from the payment to the Contractor.
- b. Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

### Article 6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

#### Section 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

- a. The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.
- b. When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- c. The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.
- d. Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.
- e. The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are listed in and identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the

Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

#### Section 6.2 Mutual Responsibility

- a. The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- b. If part of the Contractor's Work depends on proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Design Professional of any apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Design Professional of these apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work.
- c. The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.
- d. The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.e.
- e. The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.
- f. Should the Contractor wrongfully delay or cause damage to the work or property of any Separate Contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such Separate Contractor sues or initiates a judicial proceeding against the Owner on account of any delay or damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense. The Owner may fund the defense of such proceedings contemplated by this Section but, in any event, if any judgment or award against the Owner arises therefrom, the Contractor shall pay to satisfy it to the extent of Contractor's responsibility.
- g. **SHOULD ANY SUCH SEPARATE CONTRACTOR WRONGFULLY DELAYED OR DAMAGED BY THE CONTRACTOR OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE PER SECTION 6.2.f MAKE A CLAIM AGAINST THE INDEMNITEES, OR BRING ANY ACTION AGAINST THE INDEMNITEES, ON ACCOUNT OF THE DAMAGE ALLEGED TO HAVE BEEN SO SUSTAINED, THE CONTRACTOR SHALL HOLD THE INDEMNITEES HARMLESS AND DEFEND THEM AGAINST ANY SUCH CLAIM OR SUIT, AND SHALL REIMBURSE TO THE**

**INDEMNITEES THE COST INCLUDING, WITHOUT LIMITATION, REASONABLE, ADDITIONAL ATTORNEY'S FEES INCURRED DEFENDING SUCH SUIT, AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THERE FROM, THE CONTRACTOR SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.**

- h. Should the Contractor be caused damage by any Owner's Separate Contractor(s)'s work, by reason of such Owner's Separate Contractor's failure to perform properly under its contract with the Owner, no action will lie against the Owner, and the Owner shall have no liability therefor, but the Contractor may assert its claims for damages directly against such Owner's Separate Contractor and the Owner shall reasonably assist the Contractor by assign such rights to Contractor, unless otherwise prohibited under Texas law.
- i. Inasmuch as the completion of the building within the prescribed time is dependent very largely upon the close and active cooperation of all those engaged therein, it is, therefore expressly understood and agreed that each contractor shall lay out and install its work at such time(s) and in such manner as to not delay or interfere with the carrying forward of the work of the other contractors.
- j. Where the work of one contractor directly affects the conditions of the work of another contractor including, as examples only, and not limited to, providing shoring for backfilling, providing protective covering for painting, providing adequate bracing of door jambs, etc., the contractor performing the work which will adversely affect another contractor's work shall be responsible for providing adequate protection based upon methods used to perform its work.

### Section 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, or the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Design Professional will allocate the cost among those responsible, which allocation shall be final.

## Article 7. CHANGES IN THE WORK

### Section 7.1 General

- a. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
- b. A Change Order shall be based upon agreement among the Owner, Contractor, and Design Professional. A Construction Change Directive requires agreement by the Owner and Design Professional and may or may not be agreed to by the Contractor. An order for a minor change in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and reasonably inferable from the intent of the Contract Documents may be issued by the Design Professional alone.
- c. Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as

permitted in Section 7.3 or as otherwise provided herein, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

#### Section 7.2 Change Orders

- a. A Change Order is a written instrument prepared by the Design Professional and signed by the Owner, Contractor, and Design Professional stating their agreement upon all of the following:
  - .1 The change in the Work;
  - .2 The amount of the adjustment, if any, in the Contract Sum; and
  - .3 The extent of the adjustment, if any, in the Contract Time.
- b. Methods used in determining adjustments to the Contract Sum may include those listed in Sections 7.3.c, 7.3.g and 7.3.j.
- c. Agreement on any Change Order constitutes a final settlement of all past and future claims, at law or in equity, concerning all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, delays, all direct and indirect costs, any claim for damages associated with such change, and any and all adjustments to the Contract Sum and the construction schedule.
- d. Change Orders Requiring City Council Approval  
 The Contract Sum may not be increased because of a Change Order unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants. The approval of the Denton City Council is required if a Change Order involves a decrease or an increase of \$50,000.01 or more. The original Contract Sum also may not be increased under this Section 7.2 by more than twenty-five percent (25.0%) over the entire duration of the Project. The original Contract Sum may not be increased by more than twenty-five percent (25%) over the entire duration of the Project for any reason; nor may it be decreased by more than twenty-five percent (25%) without the consent of the Contractor, as provided in Texas Local Government Code Sec. 252.048. After the Change Order is submitted by the Contractor under this Section 7.2, the additional time required to obtain City Council approval shall not be factored into any past or future claim for delays or calculated as a part of the Change Order request.

#### Section 7.3 Construction Change Directives

- a. A Construction Change Directive is a written order prepared by the Design Professional and signed by the Owner and Design Professional, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
- b. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

- c. If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
  - .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
  - .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
  - .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed fee; or
  - .4 As provided in Section 7.3.d.
- d. If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Design Professional shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit calculated using the sum of the actual costs allowed in Sections 7.3.d.1 through 7.3.d.5, and using the percentages as set forth in Section 7.3.1 below. In such case, and also under Section 7.3.c, the Contractor shall keep and present, in such form as the Design Professional may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.d shall be limited to the following:
  - .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Design Professional;
  - .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
  - .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
  - .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
  - .5 Additional, verifiable payroll and subsistence costs incurred by the Contractor, Subcontractor, and Sub-subcontractor of field personnel directly attributable to the change.
- e. If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.
- f. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design Professional of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
- g. A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- h. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Design Professional. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

- i. Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Design Professional will make an interim recommendation for purposes of monthly certification for payment for those costs and certify for payment the amount that the Design Professional recommends, in the Design Professional's professional judgment, to be reasonably justified. The Design Professional's interim recommendation of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.
- j. When the Owner and Contractor agree with a recommendation made by the Design Professional concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Design Professional will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.
- k. If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Design Professional for determination. The Design Professional may consult with the Owner in connection with such determination either at the direction of the Owner or at the Design Professional's discretion. If the Contractor does not ultimately agree with the Design Professional's determination, the Contractor may assert a Claim in accordance with Article 15.
- l. In Subparagraph 7.3.4, the allowance for the combined total of onsite and offsite overhead and profit included in the total cost to the Owner shall be based on the following schedule:
  - .1 For the Contractor, for Work performed by the Contractor's own forces, fee percentage of the Cost of Work stated in Section 5.1.a of the Stipulated Sum Agreement plus actual direct jobsite costs associated with the additional work, if any;
  - .2 For the Contractor, for Work performed by the Contractor's Subcontractor, fee percentage of the Cost of Work stated in Section 5.1.a of the Stipulated Sum Agreement plus actual direct jobsite costs associated with the additional work, if any;
  - .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor's own forces, ten percent (10%) of the cost;
  - .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;
  - .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.d;
  - .6 Under no circumstance shall costs of the Contractor's supervisory, management, administrative or other office personnel, regardless of where stationed, be paid as cost of the Work under 7.3.4. Conversely, the Contractor shall be compensated for their labor within the overhead and profit percentage specified in this Section 7.3.l;
  - .7 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can immediately be seen by inspection, shall be accomplished by a complete itemization of costs including



labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also;

.8 When both additions and credits are involved in any change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any; and

.9 Overtime, when specifically authorized by the Owner and not as a requirement for the Contractor to fulfill its obligations under this Agreement, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

#### Section 7.4 Minor Changes in the Work

The Design Professional may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Design Professional's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Design Professional and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Design Professional's order for a minor change without prior notice to the Design Professional that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

#### Section 7.5 Supporting Information

Notwithstanding the above, requests for an adjustment in the Contract Sum or adjustment in the Contract Time shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Owner and Design Professional. The Contractor shall also comply with all provisions of Articles 8 and 15 with respect to claims. The required information shall be provided by the Contractor in less than twenty-one (21) days from the Contractor's request for an adjustment in the Contract Sum or Contract Time. Failure to timely provide this information in the proper form may be, in and of itself, grounds for rejection of the request, at the sole discretion of the Owner or Design Professional.

### Article 8. TIME

#### Section 8.1 Definitions

- a. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- b. The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.
- c. The date of Substantial Completion is the date certified by the Design Professional in accordance with Section 9.8.
- d. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## Section 8.2 Progress and Completion

- a. Time limits stated in the Contract Documents are of the essence. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- b. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a Notice to Proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of any additional necessary documents.
- c. Attention is directed to the fact that the Work is urgently needed by the Owner; for this reason it shall be agreed that the Contractor will substantially complete all Work under the Contract within the time established in the Contract Documents and the most recently approved Contractor's Project Schedule. The Contractor shall begin the Work on the date of commencement as defined in the Contract Documents; carry the Work forward with adequate resources; furnish, without limitation such labor, supervision, materials, facilities, and equipment; and work such hours, including night shifts, overtime operations, and Sundays and/or holidays, as may be necessary to ensure the progress and completion of both the Work and the Project as reflected by the most recently approved Contractor's Project Schedule.
- d. The Contractor shall achieve specific Contractual Milestone dates (if any), Substantial Completion, and Final Completion within the times stated in the Contract Documents, and such dates shall be adhered to and shall be the last acceptable dates for completion of Work required for those milestones and completions, unless and until modified by the Owner in writing.
- e. The Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Contractual Milestones (if any), Substantial Completion, and Final Completion, may be met by the both the Contractor as well as the respective Separate Contractors.
- f. The Contractor shall also complete the Work in all of its details for final acceptance as expeditiously as possible after Substantial Completion.
- g. The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## Section 8.3 Delays and Extensions of Time

- a. If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Design Professional, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, implementation of Federal law or policies, unusual delay in transportation, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.f.ii, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation; or (5) by other causes that the Design Professional recommends may, justify delay, then the Contract Time may be extended for such reasonable time as the Owner may determine.
- b. Claims relating to time shall be made in accordance with applicable provisions of Article 15.
- c. This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

- d. Any claims for extension of time shall be made in writing to the Owner and Design Professional not more than ten (10) days after commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of work within five (5) days of the first date the Contractor should reasonably be expected to have calculated the impact of such delay, but in no event more than fifteen (15) days after the commencement of the delay, with weekly updates to the impact if the delay is of an ongoing nature.
- e. Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at <http://gis.ncdc.noaa.gov/website/ims-cdo/sod/viewer.htm> or other data as mutually agreed by the Owner and Contractor for the Project area.
- f. In allowing delays for weather, the Owner will be entitled to consider weather conditions prevailing throughout the entire Contract period. The Owner and Contractor will together reconcile actual working days lost and gained over the entire Contract period every ninety (90) days. The Contractor shall then adjust the schedule activities accordingly for both the Contractor's weather float reserves and Owner's float reserves where those activities are carried in the Contractor's Project Schedule (if any). Extensions of time due to weather or other allowable reasons will be granted on the basis of one-and-four-tenths (1.4) calendar days credit for every working day lost, with each separate extension figured to the nearest whole calendar day.
- g. The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current Contractor's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions.

#### Section 8.4 Contractor's Obligations After Delay

- a. If either the Work actually in place falls behind as reflected by the currently updated Master Project Schedule or Contractor's Construction Schedule, or it becomes apparent or likely in the reasonable opinion of the Owner after consultation with the Design Professional that the Work will not be completed within the Contract Time or in accordance with the Contractor's Construction Schedule, due to delays caused by the Contractor or its subcontractors, the Contractor agrees it shall, as necessary, take some or all of the following actions (hereinafter referred to collectively as "Extraordinary Measures") at no additional cost to the Owner or Design Professional, as required to substantially eliminate, in the judgment of the Owner, the backlog of Contractor's Work on the Project:
  - .1 Increase quantities of, without limitation, labor, supervision, material deliveries, equipment on site, and crafts as necessary;
  - .2 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing;
  - .3 Reschedule activities to achieve maximum practical concurrence of accomplishment; and
  - .4 Do whatever else is reasonably required by the Owner or Design Professional.

- b. These Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Contractor's Construction Schedule.
- c. In the event of a delay, the Owner Design Professional may also require the Contractor to immediately submit a Proposed Recovery Schedule as specified in Section 3.10.h above. If the Proposed Recovery Schedule is not satisfactory, the Design Professional may unilaterally establish a new Proposed Recovery Schedule acceptable to the Owner; issue it as a Construction Change Directive; and the Contractor shall comply therewith. The Owner may also require the Contractor to take any of the Extraordinary Measures to make up the lag in scheduled progress, all without additional cost to the Owner, or Design Professional.
- d. Failure of the Contractor to substantially comply with the requirements of this Section 8.4 shall be considered grounds for a determination by the Owner, after consultation with the Design Professional, that the Contractor is in breach of this Agreement by failing to prosecute the Work and that of the Project so as to ensure its completion within both the Contract Time and the updated Contractor's Construction Schedule.
- e. Likewise, in the event the progress of the Project falls behind the predictions of the Master Project Schedule through no fault of the Contractor, the Owner or Design Professional may request, and the Contractor may agree to take one or more of the Extraordinary Measures, with the Owner bearing the cost for such measures by Change Order.
- f. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 8.4, except as specifically noted otherwise in Section 8.4.e.

#### Section 8.5 Owner's Rights After Delay

- a. In the event that any Contractor fails, or appears likely to fail, to complete a critical portion of Work on time or to complete a Contractual Milestone Date or completion date as evidenced by the most recently approved Contractor's Project Schedule, the Owner or the Design Professional shall have the right to impose any or all of the following options:
  - .1 Require the Contractor to substantiate the capability to get back on schedule within ten (10) business days;
  - .2 Require the Contractor to take some or all of the Extraordinary Measures, and do whatever else is required by the Owner or Design Professional until Contractor confirms, to the satisfaction of the Owner and Design Professional, the progress of the Work is in compliance and congruence with the most recently approved Contractor's Construction Schedule, such measures being at no extra cost to Owner and Design Professional;
  - .3 Withhold progress payment, or portions thereof, until such time as the Contractor is in compliance with the most recently approved Contractor's Project Schedule; and
  - .4 Contact or visit the factory, plant or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work, and expedite same, at Contractor's expense.

### Section 8.6 Liquidated Damages

- a. Should the Contractor fail to substantially complete the Work on, or before, the original date set forth in the Contract, or on or before the revised date as granted by extensions to Contract Time, the Owner may at its sole discretion permit the Contractor to proceed, and in such case, there shall be deducted from any monies due or which may become due the Contractor, a sum as specified herein, for each and every calendar day that the Work shall remain uncompleted. This sum shall be considered, not as penalty, but as the cost(s) for substantial losses suffered by the public and the Owner. Liquidated damages are intended to compensate the Owner for the Contractor's failure to meet the deadlines set forth herein, and shall not excuse the Contractor from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The Contractor agrees that the sums in Section 8.6.b are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no termination has occurred.
- b. Contractor shall pay as liquidated damages to the Owner: the sums shown in the table below for each calendar day that expires after the date set forth in the Contract for Final Completion of the Work.

First Week Late	Second Week Late	Third & Fourth Weeks Late	Every Day After the Fourth Week Late
\$500/day	\$750/day	\$1,000/day	\$2,000/day

- c. The parties acknowledge, covenant, and agree that the daily basis and the amount set forth above for liquidated damages are reasonable because of the unique nature of the Project as a benefit to the public; the fact that inconvenience to the public will be one of the significant impacts of any failure by the Contractor to timely complete the Work; and that it is impracticable and extremely difficult to ascertain and determine the actual losses which would accrue to the Owner and the public.
- d. Permitting the Contractor to continue and finish the Work, or any portion thereof, after the time fixed for its completion, shall in no way operate as a waiver on the part of the Owner of any of its rights under the Contract. The Contractor acknowledges the Owner receives no benefits from early completion of the Project or the Work, therefore all rights, if any, to an early completion bonus or other increases in the Contract Sum for such early completion are hereby waived by the Contractor.

## Article 9. PAYMENTS AND COMPLETION

### Section 9.1 Contract Sum

- a. The Contract Sum is stated in the Agreement and, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

- b. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

#### Section 9.2 Schedule of Values

Where the Contract is based on a Stipulated Sum or the Cost of the Work, the Contractor shall meet with the Design Professional, at the Preconstruction Conference with a proposed Schedule of Values as specified in Section 3.10. The Contractor's Schedule of Values will be reviewed by the Owner and Design Professional in the context of the Contractor's proposed Construction Management Plan, including, but not limited to, the Contractor's Construction Schedule therein. The values assigned to each work activity in the Schedule of Values should be generated by the projected earned value of the activities in the Contractor's Construction Schedule, rounded to the nearest five dollars, and equal in aggregate to the Contractor's and Subcontractor's contract amount(s). The Schedule of Values shall allocate the entire Contract Sum to the various portions of the Work and be prepared in such form and supported by such additional data to substantiate its accuracy as the Owner and Design Professional may require. This Schedule, of Values, unless objected to by the Owner or Design Professional, shall be used as a basis for reviewing the Contractor's Applications for Payment.

#### Section 9.3 Applications for Payment

- a. At least ten days before the date established for each progress payment, the Contractor shall submit to the Design Professional an itemized Application for Payment prepared in accordance with the Schedule of Values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Design Professional require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers and shall reflect retainage if provided for in the Contract Documents. The Application for Payment shall be notarized and include other documentation as reasonably required by the Owner; submitted electronically.
  - i. As provided in Section 7.3.i, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim recommendations of the Design Professional, but not yet included in Change Orders.
  - ii. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.
  - iii. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and Design Professional and in compliance with all applicable statutes:
    - .1 A duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the invoice from and the amount requested for any Subcontractor and material supplier in the requested Application for Payment, and the amount to be paid to the Contractor from such

progress payment, together with similar sworn statements from all such Subcontractors and material suppliers;

.2 Duly executed statutory conditional waivers of mechanics' and material suppliers' lien for progress payments with each payment application; and appropriate statutory unconditional waivers of mechanics' and material suppliers' liens for progress payments; and appropriate statutory unconditional waivers for final payments from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment;

.3 An updated Contractor's Construction Schedule per Section 3.10.vii.7 clearly showing the actual progress of the Work for each activity against the Work previously scheduled to be completed during the period, and against targeted activities' previously approved completion dates; and

.4 With every Payment Request for the Work, contractor will submit an affidavit stating that the contractor has complied with the requirements of Chapter 2258, Texas Government Code. The parties hereto agree that any electronic copy of such affidavit shall be treated as an original for all intents and purposes;

.4 If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer; and.

.5 Notwithstanding the above, Applications for Payment shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Design Professional, and shall include, at a minimum, an updated monthly Contractor's Construction Schedule clearly and graphically comparing the actual "work-in-place" completed to the Work previously projected to be complete for the period. Failure to provide this information in the proper form may be, in and of itself, grounds for rejection of the Application for Payment, at the discretion of the Design Professional.

- b. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the stored materials and equipment which must be properly tagged as to material and job identification; must be available for inspection by the Design Professional; and such requests for payment must be accompanied by documentary evidence as specified, without limitation, in Sections 3.13 and 11.3, which supports the request's validity; quantity and value of materials; proper material acceptance and storage; and including insurance on the materials as evidenced by a Certificate of Insurance or otherwise protects the Owner's interests. Such request shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Such materials shall be:

- .1 Protected from diversion, destruction, theft, and damage to the satisfaction of the Owner, and the Lender;
  - .2 Specifically marked for use on the Project; and
  - .3 Segregated from other materials at the storage facility.
- c. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.
- d. **THE CONTRACTOR FURTHER EXPRESSLY UNDERTAKES TO DEFEND THE INDEMNITEES, AT THE CONTRACTOR'S SOLE EXPENSE, AGAINST ANY ACTIONS, LAWSUITS, OR PROCEEDINGS BROUGHT AGAINST THE INDEMNITEES AS A RESULT OF LIENS OR VERIFIED CLAIMS FILED AGAINST THE WORK, THE SITE OF ANY OF THE WORK, THE PROJECT SITE AND ANY IMPROVEMENTS THEREON, PAYMENTS DUE THE CONTRACTOR, THE PROJECT BOND OR ANY PORTION OF THE PROPERTY OF ANY OF THE INDEMNITEES (REFERRED TO COLLECTIVELY AS "LIENS OR VERIFIED CLAIMS" IN THIS SECTION 9.3.d). THE CONTRACTOR HEREBY AGREES TO INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH LIENS OR VERIFIED CLAIMS AND AGREES TO PAY ANY JUDGMENT OR LIENS OR VERIFIED CLAIMS RESULTING FROM ANY SUCH ACTIONS, LAWSUITS, OR PROCEEDINGS.**

#### Section 9.4 Certificates for Payment

- a. The Design Professional will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Design Professional recommends is properly due, and notify the Contractor and Owner of the Design Professional's reasons for withholding certification in part as provided in Section 9.5.a; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Design Professional's reason for withholding certification in whole as provided in Section 9.5.a.
- b. The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the Owner, based on the Design Professional's evaluation of the Work and the data in the Application for Payment, that, to the best of the Design Professional's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Design Professional. However, the issuance of a Certificate for Payment will not be a representation that the Design Professional has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;



(2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

- c. Certification will be issued for ninety-five percent (95%) of the amount requested by the Contractor and approved by the Design Professional to be properly due until the Contractor is ninety-five percent (95%) completed with the Work. Thereafter, the accumulated retainage may be held without additional retainage, except that, should the Contractor at any time fail to keep current with the approved progress schedule, fail to assure payment to Subcontractors, Sub-subcontractors and suppliers as required hereunder; or fail to promptly and diligently correct Work that does not comply with the Contract Documents, certification of ninety-five percent (95%) shall automatically again become effective and shall apply as long as the Contractor lags behind such progress or fails to assure such payment.

#### Section 9.5 Decisions to Withhold Certification

- a. The Design Professional may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Design Professional's opinion the representations to the Owner required by Section 9.4.b cannot be made. If the Design Professional is unable to certify payment in the amount of the Application, the Design Professional will notify the Contractor and Owner as provided in Section 9.4.a. If the Contractor and Design Professional cannot agree on a revised amount, the Design Professional will promptly issue a Certificate for Payment for the amount for which the Design Professional is able to make such representations to the Owner. The Design Professional may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Design Professional's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.b, because of any of the following:
  - .1 defective Work not remedied;
  - .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
  - .3 failure of the Contractor to make payments properly to Subcontractors, Sub-subcontractors and suppliers or for labor, materials or equipment;
  - .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
  - .5 damage to the Owner or a Separate Contractor;
  - .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - .7 repeated failure to carry out the Work in accordance with the Contract Documents;
  - .8 Contractor's failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws;

- .9 failure to fully execute the Contract with all associated documents as required;
  - .10 bond claims, or liens, filed for any portion of the Work; or
  - .11 failure of the Contractor to comply with any provisions of the Contract Documents, including without limitation Section 8.4.
- b. Omitted
  - c. When the reasons for withholding certification are removed, certification will be made for amounts previously withheld less all associated damages, costs and expenses, suffered or accrued by the Owner or Design Professional. In the event the Design Professional nullifies a previously issued Project Certificate for Payment, and the Owner has, prior to such nullification, paid thereon, the Contractor shall promptly reimburse to the Owner amounts the latter had previously paid pursuant to the nullified project Certificate for Payment. Alternately, the Owner may withhold payment in any subsequent Application for Payment, until and unless the reasons for nullification of the previously issued project Certificate for Payment have been remedied and all associated damages, costs, and expenses of Owner and Design Professional have been paid by the Contractor.
  - d. If the Design Professional withholds certification for payment under Section 9.5.a.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Design Professional and the Contractor shall reflect such payment on its next Application for Payment.
  - e. The Contractor shall not stop work or terminate the Contract if the Design Professional should refuse to issue any certificate because the Application for Payment does not conform with the requirements of Sections 9.3, 9.4, 9.5 or any other portion of these General Conditions, as supplemented herein.

#### Section 9.6 Progress Payments

- a. After the Design Professional has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Design Professional.
- b. The Contractor shall pay each Subcontractor, Sub-subcontractor and supplier, no later than ten (10) days after receipt of payment from the Owner the amount to which the Subcontractor, Sub-subcontractor and supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's, Sub-subcontractor's and supplier's portion of the Work, unless otherwise allowed by the provisions of the subcontract or by law. The Contractor shall notify Owner in advance and in writing of any payment(s) to be withheld from any Subcontractor. The Contractor shall, by appropriate agreement with each Subcontractor, Sub-subcontractor and supplier, require each to make payments to their Sub-subcontractors and suppliers in a similar manner.
- c. The Design Professional will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Design Professional and Owner on account of portions of the Work done by such Subcontractor.

- d. The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Design Professional shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.
- e. The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.b, 9.6.c and 9.6.d.
- f. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of any Work.
- g. The Contractor shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the Owner unless allowed by the terms and conditions of the subcontract as stated in Section 2.19 of the Agreement or by law. The Contractor shall notify Owner in advance and in writing of any payment(s) to be withheld from any Subcontractor. Sums withheld by the Owner from the Contractor for deficiencies solely attributable to the Contractor shall not be grounds for the Contractor to withhold sums due to any Subcontractor. All sums paid to the Contractor for labor, materials, or equipment for the Work or Project shall be considered trust funds to be used by the Contractor for payment to those persons to the extent providing labor, materials and/or equipment incorporated into the Work or Project. Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. However, notwithstanding the above, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.
- h. **PROVIDED THE OWNER HAS FULFILLED ITS PAYMENT OBLIGATIONS UNDER THE CONTRACT DOCUMENTS, THE CONTRACTOR SHALL DEFEND AND INDEMNIFY THE OWNER FROM ALL LOSS, LIABILITY, DAMAGE OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES AND LITIGATION EXPENSES, ARISING OUT OF ANY LIEN CLAIM OR OTHER CLAIM FOR PAYMENT BY ANY SUBCONTRACTOR OR SUPPLIER OF ANY TIER. UPON RECEIPT OF NOTICE OF A LIEN CLAIM OR OTHER CLAIM FOR PAYMENT, THE OWNER SHALL NOTIFY THE CONTRACTOR. IF APPROVED BY THE APPLICABLE COURT, WHEN REQUIRED, THE CONTRACTOR MAY SUBSTITUTE A SURETY BOND FOR THE PROPERTY AGAINST WHICH THE LIEN OR OTHER CLAIM FOR PAYMENT HAS BEEN ASSERTED.**
- i. To the extent Contractor has received payment in accordance with the terms of this Agreement, the Contractor agrees to keep the Work and the site of the Project and all project bonds free and clear of all bond claim and verified claims related to labor and materials furnished in connection with the Work.

- j. If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, at the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

#### Section 9.7 Failure of Payment

If the Design Professional does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within the date established in the Contract Documents, the amount certified by the Design Professional, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Design Professional, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

#### Section 9.8 Substantial Completion

- a. "Substantial Completion" is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, all major systems are operational, and all safety features are completed and Owner's receipt of written confirmation after final inspections by the applicable electrical, plumbing, fire department, health department, and other local and state officials having jurisdiction, stating the project is ready for occupancy by the Owner. In addition to the other requirements of the Contract Documents, and without limitation, the Contractor must also have obtained the written approval and issuance of any occupancy permits required by the laws of local government(s) and the State of Texas before the Contractor shall be deemed to have achieved Substantial Completion.
- b. When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Design Professional a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor will also provide the Design Professional a comprehensive list of all claims previously and properly made in writing and identified by the Contractor as unsettled at the time of Substantial Completion.
- c. Upon receipt of the Contractor's list, the Design Professional will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design Professional's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall,

before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Design Professional. In such case, the Contractor shall then submit a request for another inspection by the Design Professional to determine Substantial Completion.

- d. When the Work or designated portion thereof is substantially complete, the Design Professional will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- e. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.
- f. The Contractor's acceptance of payment per Section 9.8.e shall constitute a waiver for all purposes of all claims or causes of action by the Contractor against the Owner and the Design Professional, except those previously and properly made in writing and identified in the list provided by the Contractor as unsettled at the time of Substantial Completion per Sections 9.8.b.

#### Section 9.9 Partial Occupancy or Use

- a. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, as such occupancy or use is consented to by the insurer and required under Section 11.3 provided it is authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Design Professional as provided under Section 9.8.b. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Owner.
- b. Immediately prior to such partial occupancy or use, the Owner, Contractor, and Design Professional shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- c. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### Section 9.10 Final Completion and Final Payment

- a. Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Professional will

promptly make such inspection. When the Design Professional finds the Work acceptable under the Contract Documents and the Contract fully performed, the Design Professional will promptly issue a final Certificate for Payment stating that the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Design Professional's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.b as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under Section 3.5 or otherwise required pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Design Professional as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Design Professional until all warranties and guarantees have been received and accepted by the Owner. "Final Completion" occurs when all the conditions of this Section and the Contract Documents are met as set forth herein.

- b. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Design Professional and Owner; (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect; (3) a written statement satisfactory to the Owner that the insurance will cover the period required by the Contract Documents; (4) consent of surety to final payment; (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract for Construction, to the extent and in such form as may be designated by the Owner and Owner's lender; (6) certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Design Professional are complete and accurate in all respects; and (7) evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including, but not limited to, (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Design Professional's review and delivery to the Owner; (iv) delivery to the Owner of printed operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor,

materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner and Owner's lender (if any), the Contractor may furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and attorneys' fees.

- i. In addition to items listed in 9.10.b to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local authorities having jurisdiction.
- c. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Design Professional so confirms, the Owner shall, upon application by the Contractor and certification by the Design Professional, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Design Professional prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.
- d. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
  - .1 bond claims, Claims, liquidated damages, security interests, or encumbrances arising out of the Contract and unsettled;
  - .2 failure of the Work to comply with the requirements of the Contract Documents;
  - .3 terms of special warranties required by the Contract Documents;
  - .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
  - .5 gross negligence, willful misconduct, or fraudulent concealment in connection with the performance of the Contract.
- e. Application for and acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee against the Owner or Design Professional except those previously made in writing and identified by that payee arising after the waiver given at Substantial Completion payment described in Sections 9.8.b and 9.8.f.
- f. In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor being responsible for excess Design Professional's and other Owner's consultant(s)' fees beyond their original scope of services required to achieve final completion ("Excess Fees"). Excess Fees will be deducted from the amount due the Contractor.

## Article 10.      PROTECTION OF PERSONS AND PROPERTY

### Section 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor's and all Subcontractors' Safety Programs shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970, and all other applicable state, local, or federal laws or regulations.

### Section 10.2 Safety of Persons and Property

- a. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to all of the following:
  - .1 employees on the Work and other persons who may be affected thereby;
  - .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
  - .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- b. The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.
- c. The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.
- d. When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and the Contractor shall give the Owner and the Design Professional reasonable advance written notice of such planned activities.
- e. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.a.2 and 10.2.a.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.a.2 and 10.2.a.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Design Professional or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.



- f. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Design Professional.
- g. The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.
- h. Injury or Damage to Person or Property  
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.
- i. The Contractor shall immediately report in writing to the Owner and Design Professional all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately electronically, as well as by telephone or messenger to the Owner and the Design Professional.

### Section 10.3 Hazardous Materials and Substances

- a. Hazardous materials include any material in such quantity, concentration, and physical or chemical characteristics including, but not limited to, ignitability or toxicity, so as to be capable of posing an unreasonable risk to health, safety and/or property if released into the atmosphere, transported, stored, or disposed of. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Design Professional of the condition in writing.

.1 For the purposes of this section, the following terms have the below meanings (however, each definition should be read as broadly as possible to incorporate similar hazardous materials or substances:

Asbestos: any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

Petroleum: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

Hazardous Waste: any solid waste listed as hazardous or which possesses one or more hazardous characteristics.

- b. Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Design Professional the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Design Professional will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Design Professional has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Design Professional have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order duly processed and approved, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, both as specified in Article 7. The term "rendered harmless" shall be interpreted to mean, without limitation that levels of hazardous materials, including, but not limited to, asbestos and polychlorinated biphenyls, are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.
- c. Omitted.
- d. The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.
- e. Omitted.
- f. **THE CONTRACTOR SHALL INDEMNIFY THE OWNER FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE AND NEGLIGENTLY HANDLES, OR (2) WHERE THE CONTRACTOR FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.a, EXCEPT TO THE EXTENT THAT THE COST AND EXPENSE ARE DUE TO THE OWNER'S FAULT OR NEGLIGENCE.**

#### Section 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

#### Section 10.5 Site Visits

Anyone other than the Owner's designated representatives, the Design Professional, the Design Professional's consultants, and the Owner's other consultants visiting the job site who is not employed by a Contractor shall be required to register with the Contractor's site office before proceeding onto the job site.

## Article 11.      INSURANCE AND BONDS

### Section 11.1 Contractor's Liability Insurance

- a. The Contractor shall purchase and maintain in a company or companies lawfully authorized to do business in Texas and as further qualified in Paragraph 11.6, such insurance as will protect the Contractor and the Indemnitees from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
  - .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed; including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;
  - .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees; or persons or entities exempt by statute from the requirements of Section 11.1.a.1, but required by the Contract Documents to provide the insurance required by that Section;
  - .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
  - .4 Claims for damages insured by usual personal injury liability coverage;
  - .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
  - .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle, including pollution clean-up if hauling hazardous materials; and
  - .7 Claims for bodily injury or property damage arising out of completed operations, which coverage shall be maintained for no less than ten (10) years following final payment.
  - .8 Claims for damages to the Work, and/or materials and equipment used/stored at the Work, as may be covered under any Builder's Risk insurance policy.
- b. The Contractor's Commercial General Liability Insurance should be written on ISO Form CG 00 01 10 01 or its equivalent and provide the following:
  - .1 Premises/operations (Including X-C-U coverages);
  - .2 Independent contractors;

- .3 Products and completed operations with a per project aggregate limit, which coverage shall be maintained for a period of ten (10) years from the date of the Final Payment;
  - .4 Personal injury (libel, slander, false arrest) liability with employment exclusion deleted;
  - .5 Blanket Contractual, including, but not limited to, a specified provision for the Contractor's obligations under Section 3.18 of the Contract Documents;
  - .6 Broad form property damage including, but not limited to, completed operations;
  - .7 Primary and Non-Contributory endorsement in favor of Indemnitees; and
  - .8 Contain a Waiver of Subrogation in favor of Indemnitees.
- c. Professional Errors and Omissions Liability Insurance is required for all licensed and certified professionals, including, but not limited to, contractors, engineers, Design Professionals, design-build and design professionals as follows:
- .1 The retroactive date preceding the date of the contract; and
  - .2 An extended reporting period of three (3) years past substantial completion.
- d. Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.
- e. The Contractor shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in this Article 11, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work; and for such duration as required in the Contract Documents; policies of insurance issued by a responsible carriers acceptable to the Owner, and in form and substance satisfactory to the Owner, that afford the coverages set forth in the Schedule of Insurance, attached to the Contract and made a part of it as Exhibit "YX" – Contractor's Insurance Certificate(s). All such insurance shall be written on an occurrence basis, with the sole exception of Professional Errors and Omissions Liability Insurance. In the event professional liability coverage is not available on "an occurrence" basis, a "claims made" basis policy with effective and retroactive dates prior to the effective date of the Contract Documents and an extended reporting period of at least three (3) years beyond Substantial Completion or as otherwise required by the Contract Documents, whichever is greater, may be substituted with the written consent and approval of the Owner and Design Professional. The Contractor's completed operations coverage shall be maintained until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.
- f. The Contractor agrees to deliver to the Design Professional, for transmittal to the Owner with a copy to the Design Professional within ten (10) days of the date of the Owner-Contractor Agreement and prior to bringing any equipment or personnel onto the site of the Work or the Project

site, and thereafter upon renewal or replacement of each required policy of insurance, certified copies of all required insurance policies procured by the Contractor under or pursuant to this Article 11 or, with the written consent of the Owner and Design Professional, Certificates of Insurance in form and substance satisfactory to the Owner and Design Professional evidencing the required coverages with limits not less than those specified in Section 11.1.k below and all endorsements as required in Article 11 herein. The coverage afforded under any insurance policy obtained under or pursuant to this Section 11.1 shall be primary to any valid and collectible insurance carried separately by any of the Indemnitees. Furthermore, all policies and Certificates of Insurance shall expressly provide that no less than thirty (30) days prior written notice (ten (10) days for non-payment of premium) shall be given the Design Professional and Owner in the event of material alteration, cancellation, nonrenewal or expiration of the coverage contained in such policy or evidenced by such certified copy or Certificate of Insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.b and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.e. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness.

- g. Certificates of Insurance with the following or similar wording are not acceptable: "Failure to notify the certificate holder shall impose no obligation or liability of any kind upon the insurer, its agents or representatives."
- h. In no event shall any failure of the Design Professional to receive certified copies or certificates of policies required under Paragraph 11.1.f or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner of the Contractor's obligations to obtain insurance pursuant to this Article 11.
- i. When any required insurance, due to the attainment of normal expiration date or renewal date, shall expire, the Contractor shall furnish to the Design Professional Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy forty-five (45) days prior to renewal date. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differ in any way from the previous policy, the Contractor shall also furnish the Design Professional with a certified copy of the renewal or replacement policy unless the Owner provide the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and Design Professional and written by carriers acceptable to the Owner and Design Professional.
- j. Any Aggregate limit under the Contractor's liability insurance, shall by endorsement, apply to this Project separately.
- k. The Contractor shall notify the Owner and Design Professional in writing of any reduction in collectible limits (aggregate limits) by an amount in excess of Fifty Thousand Dollars (\$50,000), and the Contractor shall promptly procure, at no expense to the Owner, such additional coverage as necessary to restore the valid and collectible limits of such insurance to that required under the Contract Documents.

- l. The Contractor shall cause each Subcontractor to procure insurance congruent with the Contractor's insurance requirements as specified in the Contract Documents and satisfactory to the Owner and Design Professional and name each of the Indemnitees as additional insureds under the Subcontractor's commercial general liability, automobile and umbrella excess liability policies. The additional insured endorsement included on the Subcontractor's commercial general liability policy shall state that coverage is afforded the additional insureds with respect to claims arising out of all on-going and completed operations performed by or on behalf of the Contractor. Each policy shall contain a Waiver of Subrogation in favor of the Indemnities, provide for forty-five (45) day notice of cancellation or non-renewal, and be primary without contribution if the additional insureds have other insurance that is applicable to the loss. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.
- m. The Indemnitees shall also be shown as "Additional Insureds" on the property, commercial general liability, automobile liability and umbrella (excess) liability policies and evidence of same must be included in Certificates of Insurance. Copies of policy endorsements must be provided listing the Indemnities as Additional Insureds, using ISO forms CG2010, CG2037, CA0070, CA0032 or their equivalents, and approved as to form by Owner.
- n. A "waiver of subrogation" clause in favor of the Owner will be attached to the workers compensation, commercial general liability, umbrella (excess) liability, automobile and the any applicable property insurance policies and evidence of same must be included in Certificates of Insurance. Copies of policy endorsements must be provided showing waivers of subrogation in favor of the Indemnities using ISO forms CG2404, CA0070, CA0032, WC0003 or their equivalents, and approved as to form by Owner.
- o. The Owner reserves the right to review the insurance requirements during the effective period of its Agreement with the Contractor, and provide a written request for the Contractor to make any reasonable and commercially available adjustments to insurance coverages and/or limits when deemed reasonably prudent by the Owner based upon its unilateral interpretation of changes in statutory law, court decisions or the Owner's potential increase in exposure to loss.
- p. Neither Contractor, Subcontractor, Sub-subcontractor, nor any of their insurance carrier's liability obligations shall be limited to the minimum limits of coverage of insurance maintained or required to be maintained by the Contract Documents.

#### Section 11.2 Owner's Liability Insurance

- a. The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### Section 11.3 Property Insurance

- a. The Contractor shall purchase and maintain "builder's risk" property insurance, or comparable coverage, for the full replacement cost value thereof, for (i) the Work that is to be done, (ii) all insurable items of Work, title to which has been acquired by Owner in accordance with the Contract Documents and (iii) all materials to be incorporated in the Work, if such materials are in or upon the Premises, or in transit to Premises, whether or not title has been acquired by Owner. Such insurance shall not cover any property owned, leased, or otherwise used in connection with the

Work by Contractor, Contractor's subcontractors or the agents or employees of them, that is not forming a permanent part of the Project. This insurance shall include the interests of Owner, Contractor, and Subcontractors and shall provide coverage against loss for "direct physical damage" (previously known as "all risk" coverage) including, but not limited to, without duplication of coverage, fire, extended coverage, vandalism and malicious mischief, theft, collapse, earthquake, flood, sprinkler leakage, windstorm, testing and startup, temporary buildings and debris removal including demolition and increased cost of construction occasioned by enforcement of any applicable legal requirements.

- b. Any coverage related to the builder's risk property insurance maintained by Contractor for time including delay in opening and/or extra expenses shall inure to the benefit of Owner only. Owner shall be the only party insured under such policy, with the sole exception that the Contractor may be entitled to payment of its fee and general conditions associated with the reconstruction, less any deductible.
- c. The Contractor's insurance shall cover against loss for "direct physical damage" (previously known as "all risk" coverage) with sufficient limits to protect the full replacement cost value of the Work.
- d. If by the terms of the property insurance there is a deductible amount, in the event of a loss covered by such insurance, Contractor shall be responsible for all deductibles per occurrence which shall be considered a Cost of the Work for all insurable items of Work and materials to be incorporated in the Work, title to which has not been acquired by Owner in accordance with the Contract Documents. Except for Contractor's deductible risk, Owner is bearing all risk of loss to the Property for which Owner, Contractor, and others have an insurable or financial interest during construction, and, in the event of a loss to the property during construction, Owner agrees to rely solely to the proceeds of the Builder's Risk Insurance which Owner Contractor has agreed to furnish.
- e. To the extent permitted by law, Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) Owner's Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work. Owner or Contractor, as appropriate, shall require of Owner's Separate Contractors, if any, and the subcontractors, sub-subcontractors, agents, and employees of any of them, by written appropriate agreement, similar waivers each in favor of other parties enumerated herein.
- f. To the degree allowed by the insurer, Owner and Contractor shall each have its policies endorsed to provide for a waiver of the right of subrogation against the other respective party.
- g. Any loss insured pursuant to this Section 11.3 Property Insurance is to be adjusted by Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause. Contractor shall pay each Subcontractor a just share of any insurance monies received by Contractor, and by appropriate written agreement, shall require each Subcontractor to make payments to its Sub-subcontractors in similar manner.
- h. Upon request, Owner shall make available for inspection by Contractor a copy of all policies to be furnished by Owner.

#### Section 11.4 Performance Bond, Payment Bond, and Maintenance Bond

- a. The Contractor must furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Such bonds shall be issued in an amount equal to the total Contract Sum by a surety company licensed in the state where the Project is located, with a current A.M. Best rating of at least A- X, included on the U.S. Treasury Department's listing of approved sureties, and acceptable to the Owner and Design Professional, or as expressly agreed otherwise by the Owner and Design Professional in writing.
  - .1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment and shall satisfy the requirements Texas Government Code Chapters 2253 and 2269.
  - .2 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.
  - .3 Every Bond under this Section 11.4.a must display the Surety's Bond Number and a rider including the following provisions, which shall be attached to each Bond:
    - a) The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents;
    - b) Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived; and
    - c) The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.
- b. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.
- c. The Bond Form shall be in a form provided by the Owner.
- d. Additional Performance and Payment Bonds may be recommended by the Design Professional and required by the Owner, at the Owner's sole discretion, from any Subcontractor. The Owner will pay such actual, additional expenditures as Cost of the Work using the process specified in Article 7 for Changes in the Work. All such bonds shall be in form and substance satisfactory to the Owner and Design Professional.
- e. The Contractor shall deliver the required bonds to the Owner no later than three (3) business days following the date of the Agreement is entered into, or if the Work is to be commenced prior to the date the Agreement is entered into, in response to a notification of award. The Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.
- f. The Contractor shall require the attorney-in-fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

#### Section 11.5 Adjustment and Settlement of Insured Loss

- a. 11.5.1 Omitted.



- b. Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have fourteen (14) days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

#### Section 11.6 Insurance Companies

All insurance coverage procured by the Contractor shall be provided by insurance companies having current policyholder ratings no lower than “A- X” by A.M. Best and acceptable by the Owner and Design Professional, or as expressly agreed otherwise by the Owner, Contractor and Owner in writing. Such companies must be licensed to do business in the State of Texas.

#### Section 11.7 Failure to Purchase Insurance

If one or more of the Indemnitees, or the Contractor is damaged by the failure of either the Owner or the Contractor to purchase or maintain the insurance required under this Article 11, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs (including attorneys’ fees and court and settlement expenses) properly attributable to the failure.

#### Section 11.8 Insurance Limits Required

The following insurance limits are the minimums to be carried by the Design Professional, the Design Professional’s consultants, the Owner’s other consultants, the Contractor, and the Subcontractors, Sub-subcontractors, and suppliers, unless higher limits are required by their respective Agreements or Texas law (in which case those limits shall control):

- .1 Automobile Liability  
\$1,000,000 Combined Single Limit
- .2 Commercial General Liability  
\$1,000,000 Aggregate, Per Occurrence and Personal Injury  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal and Advertising Injury  
\$500,000 Fire Damage  
\$5,000 Medical Payments
- .3 Omitted

- .4 Worker's Compensation  
Statutory Limits  
\$1,000,000 Employers Liability
  - .5 Umbrella or Excess Liability  
\$10,000,000 Per Occurrence
  - .6 Contractor's Pollution coverage  
\$1,000,000 Occurrence or Claim  
\$2,000,000 Policy Aggregate
  - .7 Builder's Risk  
100% of the total value of the work
- a. Limits for primary policies may differ from those shown when Umbrella or Excess Liability insurance is provided, as long as all coverage is equal to or greater than the minimum limits required herein.

## Article 12 UNCOVERING AND CORRECTION OF WORK

### Section 12.1 Uncovering of Work

- a. If a portion of the Work is covered contrary to the Design Professional's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Design Professional, be uncovered for the Design Professional's examination and be replaced at the Contractor's expense without change in the Contract Time.
- b. If a portion of the Work has been covered that the Design Professional has not specifically requested to examine prior to its being covered, the Design Professional may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### Section 12.2 Correction of Work

- a. Before Substantial Completion  
The Contractor shall promptly correct Work rejected by the Design Professional or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, specifically including but not limited to additional testing and inspections, the cost of uncovering and replacement; the cost of any additional supervision, material, labor, equipment, rental charges, home office overhead, and other expenditures necessitated to both rectify the non-complying conditions, protect adjacent Work of both the Contractor and the Project, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying

conditions; as well as compensation for the Design Professional's services and expenses made necessary thereby, shall be at the Contractor's expense.

- i. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable or for which the Contractor is otherwise responsible.
- b. After Substantial Completion
  - i. In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.a, or by terms of any applicable special warranty required by the Contract Documents, or within such longer period of time as may be prescribed by law, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the condition is reasonably discoverable, during the one-year period for correction of Work, and the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Design Professional, the Owner may correct it in accordance with Section 2.5, and charge the reasonable costs to the Contractor.
  - ii. The one-year period for correction of Work shall also be extended by the period of time between Substantial Completion and the actual completion of the corrective Work performed by the Contractor pursuant to this Section 12.2, but only with respect to the corrected portions of the Work.
  - iii. Omitted.
- c. Omitted.
- d. The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents. These costs specifically include, but are not limited to such additional supervision, material, labor, equipment rental charges, home office overhead, and other expenditures necessitated to rectify the non-complying conditions, protect adjacent Work, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying conditions.
- e. Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the

one-year period for correction of Work as described in Section 12.2.b relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

- f. The Contractor's obligations under this Section 12.2 shall, without limitation, survive acceptance of the Work under the Contract and termination of the Contract.

### Section 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. In the event final payment has been made by the Owner subsequent to accepting such non-conforming Work, the Contractor shall pay the Owner for the reduction in the Contract Sum occasioned by such acceptance.

## Article 13. MISCELLANEOUS PROVISIONS

### Section 13.1 Governing Law

The Contract shall be governed by the laws of the state of Texas. Venue on any dispute arising out of this Contract shall be in Denton County, Texas, which is the place where the Project is located and where performance is primarily to occur.

### Section 13.2 Successors and Assigns

- a. The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.b, neither party to the Contract shall assign the Contract, or any rights under the contract, in whole or in part without the written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
- b. The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.
- c. **Written Notice**  
Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### Section 13.3 Rights and Remedies

- a. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.
- b. No action or failure to act by the Owner, Design Professional, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

#### Section 13.4 Quality Management Tests and Inspections

- a. Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Design Professional timely notice of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require. As required by the provisions of Texas Government Code, Section 2269.058(a), the Owner shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the Owner. To the extent that any of the provisions of this Section 13.4 or other provisions of this Agreement conflict with any of the provisions of Section 2269.058(a) such conflict is unintentional, and the provisions of the Texas Government Code shall control.
- b. If the Design Professional, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.a, the Design Professional will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Design Professional of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. Such costs, except as provided in Section 13.4.c, shall be at the Owner's expense.
- c. If such procedures for testing, inspection, or approval under Sections 13.4.a and 13.4.b reveal failure of the portions of the Work to comply with requirements established by the Contract Documents ("Failed Work"), all costs made necessary by the Failed Work, including those of repeated procedures and compensation for the Design Professional's services and expenses and all costs specified in Section 12.2 shall be at the Contractor's expense. The Contractor also agrees all costs of testing, inspection, and approval services required for the correction of the Failed Work and the cost of such similar services related to remedial operations performed to the Failed Work shall be borne by the Contractor.
- d. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Design Professional.

- e. If the Design Professional is to observe tests, inspections, or approvals required by the Contract Documents, the Design Professional will do so promptly and, where practicable, at the normal place of testing.
- f. It is the intent of the Construction Documents to require the Contractor to control the quality of the Work using the processes specified in the Contractor's Quality Management, Commissioning, and Turnover Plan contained within the most recent Construction Management Plan approved by the Owner and Design Professional. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work and shall conform to the most recently approved Contractor's Construction Schedule.
- g. The responsibility for implementing the Quality Management, Commissioning and Turnover Plan is the Contractor's, as is the obligation to provide the Work and a complete and functional project per the Contract Documents. Notwithstanding anything herein, or in subsequently approved Quality Management, Commissioning and Turnover Plans, the Owner's review and Design Professional's approval of such plan(s) does not relieve the Contractor in any way of this responsibility.
- h. The Contractor shall be in charge of scheduling; re-scheduling (when required); and confirming adequate distribution of reports and other findings from all testing and inspections of the Work. This responsibility includes, but is not limited to, scheduling the testing services of a certified testing laboratory which, by statute shall be contracted to and paid for by the Owner. The certified testing laboratory shall be acceptable to the Design Professional; and shall perform the tests as called for in the Contract Documents. The conditions that apply to materials testing and inspections include, but are not limited to the following:
  - .1 The frequency and type of Quality Control testing shall be established by the Contractor and shall be sufficient to insure the delivery of the Work and a complete and functional project per the Contract Documents. The type and amount of testing required by the Contract Documents shall be seen as the minimums required, and shall be increased, if in the opinion of the Contractor, more testing is needed to meet the requirements of the Contractor.
  - .2 The Contractor shall concurrently provide the Design Professional copies of all test results it receives within three (3) business days of receipt of same.
  - .3 The Owner shall provide such Quality Assurance testing as it and the Design Professional mutually agree to be adequate for their own needs. The Owner shall distribute the results of its own Quality Assurance tests as it, at its sole discretion, deems appropriate. The provision of Quality Assurance testing by the Owner, or lack thereof shall in no manner affect the responsibilities of the Contractor or Design Professional under this Agreement.
- i. The Contractor shall facilitate and conduct weekly (or more frequent if necessary) meetings on site for the coordination of all mechanical, electrical and special systems installation activities and possible interference(s) above ceilings, in mechanical rooms, etc. The mechanical trades shall typically have preference in the event of conflicts, and therefore the mechanical contractor's coordinator will usually lead each meeting, unless the Contractor decides another trade or the Contractor should take the lead. The Design Professional shall be informed of the meetings at least seven (7) days in advance, and the appropriate Design Professional's consultants should be invited to attend by the Contractor, as supplemented and coordinated by the Design Professional.

- j. The Contractor's Quality Management, Commissioning and Turnover Plan shall specify that prior to completion and acceptance of any building system or phase, consistent with the Contract and applicable codes and Contractor will review, in detail, the steps for completing testing of all building systems with the Owner and Design Professional. This plan shall be coordinated with and shall be made part of the Contractor's Construction Schedule. All testing shall be of each complete system, before covering, or of individually separable larger portions of each system and shall be performed in the presence of the appropriate Owner's and Design Professional's consultant(s), representatives of the Owner, and at its option, either or both the Design Professional.
- k. When heating, air conditioning, ventilating, exhaust, or other items of mechanical, electrical or other similar equipment are installed, or other systems or equipment requiring testing as may be specified in the Contractor's Quality Management, Commissioning and Turnover Plan, it shall be the responsibility of the Contractor, Subcontractor or Sub-subcontractor installing such equipment to operate it for a period of time satisfactory to the Owner prior to acceptance and before the start of Warranty. The duration of such operation shall be as the Owner, Owner's consultant(s), Design Professional's consultant(s), Owner's employees and other Owner's representatives (the Turnover Team) shall reasonably require for proper testing of the respective system and thorough instruction of the Owner's operating personnel.
- l. All equipment, testing instruments, instruction materials and incidentals required for proper testing of such systems and thorough instruction of the Owner's operating personnel on each system's operations and maintenance shall be provided by the Contractor, Subcontractor or Sub-subcontractor responsible for providing and installing the equipment. Such tests and instruction shall be in meetings held solely for this purpose (the Turnover Meetings), which shall be coordinated and managed by the Contractor, who shall show their dates in the Contractor's Construction Schedule at least sixty (60) days prior to occurrence. The Contractor shall schedule the Turnover Meetings at times reasonably convenient for the Owner's consultant(s), Design Professional's consultant(s), Owner's employees and other Owner's representatives that the Owner and Design Professional agree are necessary to attend for each system. The Design Professional may attend such Turnover Meetings at its discretion.
- m. The Contractor shall provide a digital video record to the Owner, with copies to the Design Professional of all meetings for the purpose of Owner operational staff instruction or training; as well as commissioning of equipment. These videos will become a permanent part of all Operations and Maintenance manuals as applicable.
- n. The Contractor shall prepare a digital video record of the project for the Owner with copies to the Design Professional at such stages as shall be indicated by the Design Professional for the purpose of documenting the location of piping, conduit, equipment, or other construction to be concealed at a later date; recording key inspections and tests; providing evidence of unforeseeable conditions encountered by the Contractor on site; and other construction issues as the Design Professional may reasonably require from time to time.
- o. The Contractor shall layout and mark any plantings, shrubs and trees which will require removal a minimum of five (5) business days prior to their removal. The Contractor shall notify the Design Professional in writing immediately upon completion of this marking, and the Design Professional will have the location of these marked plantings, shrubs and trees reviewed and approved (if correct) by the Owner. The Design Professional will then give permission for removal in writing

to the Contractor. Plantings, shrubs, and trees shall not be removed or damaged without such permission.

#### Section 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest as set forth in the provisions of Texas Government Code, Chapter 2251 or its successor statute.

#### Section 13.6 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work.

#### Section 13.7 Omitted

#### Section 13.8 Measurement

Before ordering any material or doing any Work, the Contractor shall verify all measurements for Work completed at the Project and shall be responsible for their accuracy. Any differences found shall be submitted to the Design Professional for consideration before proceeding with the Work. The Contractor shall use its utmost efforts to identify discrepancies in dimensions in a timely fashion and notify the Owner and Design Professional of these prior to commencing any Work affected by the ambiguous dimensions. No extra charge or compensation shall be allowed because of differences between actual measurements and the dimensions indicated on the drawings.

#### Section 13.9 Expediting Materials

The Contractor shall immediately, after receipt of Notice to Proceed and approval of the list of subcontractors and material suppliers, place orders for all equipment, materials, and supplies required for the Work, and shall submit to the Design Professional evidence that such orders have been placed in accordance with the Contractor's Construction Schedule.

#### Section 13.10 Addressing the Owner's Additional Needs and Concerns

- a. Notwithstanding the above, the Owner has a unique set of stakeholders and organizational structure that creates special challenges the Contractor must completely and successfully address to the satisfaction of the Owner and Design Professional in the performance of the Work under this Agreement. The actions that shall be taken to address these special challenges include, but are not limited to, the following:
  - .1 The Contractor shall provide the Superintendent once per month for a scheduled meeting with the Owner for a progress update on the project if requested by the Owner. A walk-through of the site may be held as a part of this meeting, which shall be scheduled by mutual agreement during regular business hours.
  - .2 The Contractor may be required to provide the Superintendent for one meeting per month with the Design Professional for the purpose of assisting the Owner in preparing City Council agenda items and assisting City staff in preparing



presentations to the City Council for the benefit of the public. The actual preparation and submission of the City Council of any agenda or work session item shall be performed by the Owner.

.3 In addition to the meetings required to complete the Project, it is anticipated the Owner may request tours from time to time of the project and the site. The Contractor shall indicate in writing when such activity will be permitted and when the site is off limits. These requirements shall be coordinated through the Owner.

#### Section 13.11 Additional Provisions

- a. In the event that any provision herein is held to be unlawful, against public policy, or a violation of the Charter or Ordinances of the Denton City, Texas, such provision shall be modified to make it valid, or if modification is not possible, such provision shall be deleted and the remainder of this Agreement shall remain in full force and effect.
- b. Each party hereto agrees to, without limitation, perform all acts; provide all services, material, equipment, labor and supervision; and to make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.
- c. All exhibits referred to in the Contract Documents are, by reference, incorporated herein for all purposes.
- d. The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of the Contract Documents.
- e. Any specific requirement in this Contract that require responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor, Sub-subcontractor or supplier of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor, Sub-subcontractor or supplier of any tier under the Contract Documents or the applicable subcontract.
- f. The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written document signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific material restated in the written document signed by Owner and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents.
- g. The Contractor shall provide and file, as required by law, all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.
- h. The Contractor shall provide Owner with copies of all notices received by Contractor from Subcontractors, Sub-subcontractors, and/or suppliers to Contractor.

- i. The Owner is a Texas home-rule municipality and as such is generally exempt from taxation under Texas law, which may include the purchase of items, materials, or supplies purchased on behalf of the Owner for this public works project. Contractor shall confirm that the Owner is exempt before paying taxes for items, materials, or supplies that may not be lawfully charged to the Owner.
- j. Owner affirmatively represents that its governing body has duly appropriated such sums which are equal to or in excess of the contract amount, and that such contract amount may be lawfully paid by Owner to Contractor subject to the terms and conditions of the Contract Documents. In the event that Owner approves a Change Order, Construction Change Directive or other additional compensable Work to be performed by Contractor, (other than that contemplated by the Contract Documents under any remedy-granting provision), Owner will issue a written assurance at the time of such approval that such additional compensation to be paid has also been duly appropriated by the Owner's governing body.
- k. In the event the Owner is required to further advertise the completion of the Work or the Project under any local, state or Federal law, the Contractor shall notify the Owner and Design Professional of such requirement(s) in writing not less than thirty (30) days in advance and attach a copy of the specific advertising and noticing required.
- l. The Contractor shall, in addition to compliance with the requirements of Section 3.7.f and without limitation, not knowingly employ or contract with an illegal alien to perform any of the Work under this Agreement. The Contractor shall not knowingly contract with a Subcontractor that (i) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (ii) fails to certify to the Contractor that the Subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.
  - i. The Contractor shall comply with any reasonable request of the Texas Workforce Commission made in the course of an investigation pursuant to state law.
  - ii. In addition to any other legal or equitable remedy, and notwithstanding anything to the contrary in the Contract Document the Owner may be entitled to for a breach of the Agreement, if the Owner terminates this Agreement, in whole or in part, due to Contractor's breach of the obligations set forth above in this Section 13.11.1 Contractor shall be liable for actual and consequential damages to the Owner.
- m. It is the express intention of the parties that this Agreement is not to be construed as a waiver of any immunities or defenses of the Owner under Texas law.
- n. Notwithstanding any other provision in the Contract Documents to the contrary, public property is protected from forced sale and therefore may not be made the subject of a mechanic's lien. Nothing in the Contract Documents shall be construed to allow a mechanic's lien on public property owned by the Owner. The Owner does not waive its immunities or right to object to or contest such a lien.

#### Article 14. TERMINATION OR SUSPENSION OF THE CONTRACT

##### Section 14.1 Termination by the Contractor

- a. The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.
- b. The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.
- c. If one of the reasons described in Section 14.1.a or 14.1.b exists, the Contractor may, upon seven (7) days' notice to the Owner and Design Professional, terminate the Contract and recover from the Owner payment for Work executed, including other costs allowed by the law.
- d. If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Design Professional, terminate the Contract and recover from the Owner as provided in Section 14.1.c.

#### Section 14.2 Termination by the Owner for Cause

- a. The Owner may terminate the Contract if the Contractor:
  - .1 refuses or fails to supply enough properly skilled workers or proper materials;
  - .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
  - .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
  - .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
  - .5 contractor becomes insolvent or makes a general assignment for the benefit of its creditors.
- b. When any of the reasons described in Section 14.2.a exist, and upon certification by the Design Professional that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
  - .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
  - .2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

- c. When the Owner terminates the Contract for one of the reasons stated in Section 14.2.a, the Contractor shall not be entitled to receive further payment.
- d. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Professional's, Design Professional's consultants', and Owner's other consultants' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.
  - i. The costs of finishing the Work include, without limitation, all reasonable attorneys' fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect costs incurred by the Owner by reason of the termination of the Contractor as stated herein.

#### Section 14.3 Suspension by the Owner for Convenience

- a. The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.
- b. The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.a. Adjustment of the Contract Sum shall be as specified in Article 7. No adjustment shall be made to the extent:
  - .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
  - .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### Section 14.4 Termination by the Owner for Convenience

- a. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.
- b. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:
  - .1 cease operations as directed by the Owner in the notice;
  - .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
  - .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- c. Upon such termination for the Owner's convenience, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site,

delivered and stored in accordance with the Contract Documents and Owner's further instructions. **The Contractor waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, lost opportunity costs, and potential and actual unabsorbed overhead costs.** The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work; (2) claims that the Owner has against the Contractor under the Contract; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract.

## Article 15. CLAIMS AND DISPUTES

### Section 15.1 Claims

#### a. Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.a does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### b. Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the dispute resolution method selected in the Agreement and within the period specified by applicable law.

#### c. Notice of Claims

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Design Professional, if the Design Professional is not serving as the Initial Decision Maker.; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Design Professional and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims by either party must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one ( 21 ) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

##### i. Claims Made After Final Payment

After Final Payment, Claims made by the Contractor that have not otherwise been waived pursuant to this Contract, must be initiated within one hundred and eighty (180) days from the date of Final Payment by written notice to the Owner as a condition precedent to the Contractor's right to sue on the Contract.

##### ii. Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section

12.2.b, shall be initiated by notice to the other party. In such event, no recommendation by the Initial Decision Maker is required.

d. Continuing Contract Performance

- i. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- ii. The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Design Professional will prepare Change Orders and issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

e. Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.c shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Damages available to the Contractor are limited to those set forth in the Texas Local Government Code, Subchapter I, Section 271.153 or its successor statute(s).

f. Claims for Additional Time

- i. If the Contractor wishes to make a Claim for an increase in the Contract Time, the Contractor shall provide written notice as required by Sections 8.3.d. and 8.3.e.
- ii. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented in accordance with Section 8.3.e.

g. Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.g shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## Section 15.2 Initial Decision

Omitted.

## Section 15.3 Mediation

- a. Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to precedent to filing suit in a state district court

having competent jurisdiction per the Contract Documents. If a statute of limitations is at issue, then suit may be filed by either party to toll the statute, but the suit shall then be stayed pending completion of the agreed mediation. If the parties cannot agree on a mediator, then the court may appoint one upon application of either party.

- b. The parties shall endeavor to resolve their Claims by mediation. A request for mediation, shall be made in writing, delivered to the other party to the Contract.
- c. Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings.
- d. The parties shall share the mediator's fee equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Written agreement(s) reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

Exhibit C



KEY PERSONNEL RESUME FORM

Offerors may attach an organizational chart (maximum of 1 page) as supporting documentation. Please list the key team members that will be assigned to the Project. The Offeror should, at a minimum, provide personnel experience for the Project Manager, Superintendent, and the Foreman/Foremen. Past experience projects should demonstrate experience in the categories listed in 12.2.2.7 of Section 00 21 16 – Instructions to Offerors.

<b>NAME:</b> Kenny Warr
<b>JOB TITLE:</b> President

LICENSES AND CERTIFICATIONS: Osha 10

TOTAL YEARS OF EXPERINCE: 27

TOTAL YEARS WITH CURRENT FIRM: 9

RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.

IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM: \_\_\_\_\_

Please see attached for resume and job history.


LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH: \_\_\_\_\_




NAME: Garret Glover

**JOB TITLE:**Project Manager

LICENSES AND CERTIFICATIONS: OSHA 30 and First Aid Certified

TOTAL YEARS OF EXPERINCE: 9

TOTAL YEARS WITH CURRENT FIRM: 1.5 years

RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.

IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM:

Please see attached resume and job history

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH:

**NAME:** Jason Reeves

**JOB TITLE:**Executive Vice President

LICENSES AND CERTIFICATIONS: OSHA 30

TOTAL YEARS OF EXPERINCE: 4

TOTAL YEARS WITH CURRENT FIRM: 3

RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.

IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM:

Please see attached for resume and job history.

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LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH: \_\_\_\_\_

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<b>NAME:</b> Wade Jones <b>JOB TITLE:</b> Vice President of Operations
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LICENSES AND CERTIFICATIONS: OSHA 10 and First Aid Certified

TOTAL YEARS OF EXPERINCE: 3

TOTAL YEARS WITH CURRENT FIRM: 3

RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.

IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM: \_\_\_\_\_

Please see attached for resume and job history.

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LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH: \_\_\_\_\_

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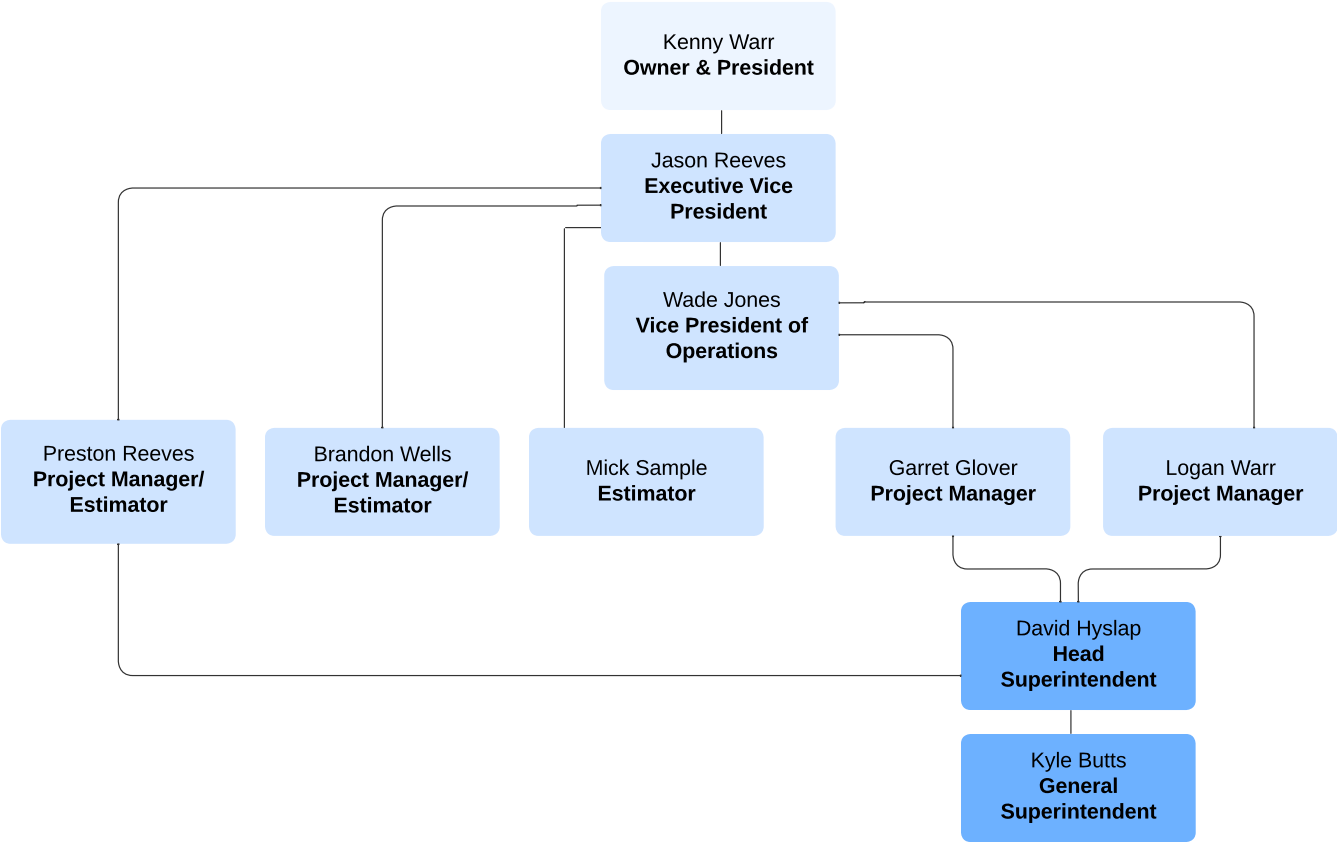
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Personnel Organizational Chart





## Kenny Warr

### President

4400 CR 201, Liberty Hill, TX 78642

#### Expertise

- Site work
- Utilities
- Concrete
- Metal erection

#### Education

- B.F. Terry High School

#### Certifications

- OSHA 10

#### Total Years Experience

26

#### Years with Gage and Cade Construction, LLC

8

#### Start Date

January 2015

#### Position Title: President

2015-Present

Gage and Cade Construction, LLC

#### Projects:

##### McCoy's Burnet Reload - 5.88M

- 100,000 SF Building concrete, site, utilities, cement stabilization

##### Enchanted Oaks - \$5.7M

- Dirt, concrete, drainage, asphalt

##### Sprint Reagen Landfill - 5.05M

- Excavation, Concrete, building erection

##### Seven Springs Ranch - 5.03M

- Site, utilities, concrete, asphalt streets

##### Robinson Business Park Roadway - 4.87M

- Site, utilities, concrete

##### Brushy Mountain - \$4.6M

- Dirt, concrete, drainage, asphalt

##### Mesa Vista Ranch Subdivision - \$4.45M

- Dirt, concrete, wet utilities, dry utilities, asphalt

##### Sprint Pecos Landfill - \$4.4M

- Dirt, concrete, building erection

##### Business Park Improvements - 2.75M

- Site, utilities, concrete, asphalt streets

##### Lampasas Business Park - \$2.7M

- Dirt, concrete, utilities, asphalt

##### Sprint Kenedy Landfill - \$1.55M

- Dirt, concrete, 30,000 SF building erection, asphalt, 2,400 SF office build out

##### Mystic Ridge Estates - \$1.5M

- Dirt, concrete, drainage, asphalt

##### City of Burnet - 281 South Commercial Park - \$1.1M

- Dirt, concrete, wet utilities, asphalt

##### McCoy's Burnet Reload 359 - \$530k

- Dirt, cement stabilization

#### Other Experience

##### Position Title: VP of Operations (Co-Founder)

2011-2015

Sprint Energy

**Manage daily operations for 300+ employees at 7 branches in 3 states.**



## Jason Reeves

### Executive Vice President

208 West Fifth Street, Lampasas, TX 76550

#### Expertise

- Estimating
- Management

#### Education

- Bachelors of Science in Construction Science at Texas A&M University
- Liberty Hill High School

#### Certifications

- OSHA 30

#### Total Years Experience

2

#### Years with Gage and Cade Construction, LLC

2

#### Start Date

February 2021

#### Position Title: Executive Vice President

2022-Present

Gage and Cade Construction, LLC

#### Projects:

##### Enchanted Oaks - \$5.7M

- Dirt, concrete, drainage, asphalt

##### Brushy Mountain - \$4.6M

- Dirt, concrete, drainage, asphalt

##### Lampasas Business Park - \$2.7M

- Dirt, concrete, utilities, asphalt

##### Mystic Ridge Estates - \$1.5M

- Dirt, concrete, drainage, asphalt

##### Shin Oak Bend Subdivision - \$1.05M

- Dirt, concrete, drainage, asphalt

#### Position Title: Estimator

2021-Present

Gage and Cade Construction, LLC

#### Projects:

##### JKB – City of Cedar Park - Lakeline Park - \$2.3M

- Dirt, concrete, metal erection

##### Delaware Springs - \$1.4M

- Dirt, concrete, wet utilities, dry utilities, asphalt

##### City of Burnet - 281 South Commercial Park - \$1.1M

- Dirt, concrete, wet utilities, asphalt

##### The Overlook at Salado - \$970k

- Dirt, concrete, wet utilities, dry utilities, asphalt

##### Blessing Ranch Estates - \$750K

- Dirt, concrete, wet utilities, dry utilities, asphalt

##### USCG – Port Aransas - \$440k

- Metal erection

#### Other Experience

#### Position Title: Estimator

2020-2021

Russell Marine, LLC

#### Projects:

##### Union Pacific – Liberty Bridge - \$20M

- Pile driving, concrete, bridge change out, dirt work

##### MODA Dock 5-6 - \$15M

- Pile driving, concrete

##### Port Lavaca Fishing Pier - \$2.5M

- Demolition, pile driving, wood pier construction, concrete, electrical

##### Port of Corpus Christi – Bulk Dock 1 Repairs - \$430K

- Pile driving, steel, concrete



## Wade Jones

### ***Vice President of Operations***

2932 Brundrett Road, Simonton, TX 77476

#### ***Expertise***

- Management

#### ***Education***

- BF Terry High School
- Sam Houston State University

#### ***Certifications***

- OSHA 10

#### ***Total Years Experience***

2

#### ***Years with Gage and Cade Construction, LLC***

2

#### ***Start Date***

February 2021

#### **Position Title: VP of Operations**

2022-Present

Gage and Cade Construction, LLC

#### **Projects:**

##### **Lakeline Park - \$2.3M**

- Dirt, concrete, metal erection

##### **Shin Oak Bend Subdivision - \$1.05M**

- Dirt, concrete, asphalt, storm drainage

##### **Capital Metro Railway – Cedar Park - \$705K**

- Dirt, box culverts, concrete, utilities

##### **Palms Car Wash - \$1.1M**

- Dirt, concrete, wet utilities

#### **Position Title: Project Manager**

2021-2022

Gage and Cade Construction, LLC

#### **Projects:**

##### **281 South Commercial Park - \$1.1M**

- Dirt, concrete, utilities, asphalt

##### **Ewald Kubota – La Grange - \$715K**

- Dirt, concrete, utilities, asphalt

##### **Family Power Sports - \$1.04M**

- Dirt, concrete, utilities, asphalt, building erection

##### **Liberty Hill Pediatrics - \$350K**

- Dirt, concrete, utilities, asphalt

#### **Other Experience**

#### **Position Title: Logistics/Safety Manager**

2015-2021

Coca-Cola Enterprises

**Manage and coordinate with 250 employees and a fleet of 100 trucks**



## Kyle Butts

### General Superintendent

101 Lone Mott Ct., Liberty Hill, TX 78642

#### Expertise

- Utilities
- Site Work

#### Education

- Lampasas High School
- Eastern Utah

#### Certifications

- OSHA 30
- Confined Space
- Forklift
- CPR
- Competent Person

#### Total Years Experience

21

#### Years with Gage and Cade Construction, LLC

2

#### Start Date

January 2021

#### Position Title: General Superintendent

2021-Present

Gage and Cade Construction, LLC

#### Projects:

##### Lampasas Business Park - \$2.7M

- Dirt, concrete, utilities, asphalt

##### JKB – City of Cedar Park - Lakeline Park - \$2.3M

- Dirt, concrete, metal erection

##### Delaware Springs - \$1.4M

- Dirt, concrete, wet utilities, dry utilities, asphalt

##### City of Burnet - 281 South Commercial Park - \$1.1M

- Dirt, concrete, wet utilities, asphalt

##### Shin Oak Bend Subdivision - \$1.05M

- Dirt, concrete, asphalt, storm drainage

##### Johnny Morris Truck Lot – \$975K

- Dirt, concrete, utilities, 7,000 SF building erection

##### The Overlook at Salado - \$970K

- Dirt, concrete, wet utilities, dry utilities, asphalt

##### Blessing Ranch Estates - \$750K

- Dirt, concrete, wet utilities, dry utilities, asphalt

##### City of Austin – Upper East End - \$725K

- Dirt, concrete, metal erection

##### Capital Metro Railway – Cedar Park - \$705K

- Dirt, box culverts, concrete, utilities

##### Lakeside WCID #2D Pedestrian Trails - \$310K

- Dirt, concrete, drainage, handrails

##### HEB – Bore for Waterline - \$127K

- Dirt, bore underneath HWY 29

#### Other Experience

#### Position Title: Superintendent

2017-2020

JKB Construction Company, LLC

#### Projects:

##### Larkspur Subdivision Phases 2, 3, 5, 7 (750 units) - \$13M

- Dirt, concrete, wet utilities, dry utilities, asphalt

##### Relocate and CIP LH Utilities for Loop & Toll Exp. - \$1.2M

- Wet utilities

##### KB Homes – Ross Road Subdivision (140 units) - \$4.1M

- Dirt, concrete, wet utilities, dry utilities, asphalt

##### KB Homes – Bastrop Subdivision (150 units) - \$6M

- Dirt, concrete, wet utilities, dry utilities, asphalt

##### Pearce Lane Wastewater Plant - \$3.1M

- Wet utilities



**Preston Reeves**  
**Estimator / Project Manager**  
208 West Fifth Street, Lampasas, TX 76550



**Expertise**

- Estimating
- Management

**Education**

- Bachelors of Science in Corporate Finance at Angelo State University
- Burnet High School

**Start Date**

May 2022

**Position Title: Estimator / Project Manager**

2022-Present  
Gage and Cade Construction, LLC

**Projects:**

- Brushy Mountain - \$4.6M**
  - Dirt, concrete, drainage, asphalt
- Shin Oak Bend Subdivision - \$1.05M**
  - Dirt, concrete, drainage, asphalt
- Elgin City Streets - \$595k**
  - Dirt, concrete, Chip seal
- Brushy Mountain - \$4.6M**
  - Dirt, concrete, wet utilities, asphalt
- Robinson Business Park Roadway – \$4.9M**
  - Dirt, Concrete, Wet Utilities

**Other Experience**

**Position Title: Sales Development Representative**

2019-2020  
Time Clock Plus

**Duties:**

Developed Sales opportunities and handle customer service for time and attendance management software company.

**Exhibit F - Unit Price Proposal Form**

City of Denton From: **Gage & Cade Construction, LLC**  
 901-B Texas Street  
 Denton, TX 76209  
 Cori Power/Purchasing Dept.

512-394-8176  
[estimating@gageandcadeconstruction.com](mailto:estimating@gageandcadeconstruction.com)

PROJ. **Landfill Entrance Facility Improvements**

CSP: 8281

ENG

PMO

**OFFEROR'S APPLICATION - UNIT PRICE PROPOSAL**

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
1	01 70 00	Mobilization and Remobilization	LS	1	\$ 155,000.00	\$ 155,000.00
2	02 41 13	Removal of Fence and Gate	LF	60	\$ 87.00	\$ 5,220.00
3	02 41 13	Removal of Guardrail	LF	380	\$ 25.65	\$ 9,747.00
4	02 41 13	Removal of Scales and Foundation Pits - North	LS	1	\$ 64,300.00	\$ 64,300.00
5	02 41 13	Removal of Foundations and Pits - South	LS	1	\$ 51,500.00	\$ 51,500.00
6	02 41 14	Utility Line Removal; Separate Trench - Sewer	LF	50	\$ 134.40	\$ 6,720.00
7	02 41 14	Plugging Utility Lines	LS	1	\$ 6,420.00	\$ 6,420.00
8	02 41 14	Utility Junction Structure Removal	EA	2	\$ 5,340.00	\$ 10,680.00
9	02 41 15	Remove Concrete Pavement	SY	885	\$ 42.10	\$ 37,258.50
10	02 41 15	Remove Concrete Sidewalk	SF	1,280	\$ 3.50	\$ 4,480.00
11	02 41 15	Remove Concrete Slab	SF	314	\$ 7.00	\$ 2,198.00
12	02 41 15	Remove Brick Pavers	SF	1,282	\$ 3.50	\$ 4,487.00
13	26 05 00	Temporary Scale Facility Electrical Service	LS	1	\$ 28,980.00	\$ 28,980.00
14	26 05 00	Permanent Scale Facility Electrical Service	LS	1	\$ 55,200.00	\$ 55,200.00
15	26 56 00	Relocate Light Poles	EA	2	\$ 15,000.00	\$ 30,000.00
16	26 05 00	Relocate Generator Switch	EA	1	\$ 8,400.00	\$ 8,400.00
17	26 05 10	Utility Line Removal; Separate Trench - Fiber/Comm.	LS	1	\$ 7,800.00	\$ 7,800.00
18	26 05 10	Utility Line Removal; Separate Trench - Electric	LS	1	\$ 9,000.00	\$ 9,000.00
19	26 05 19	Fiber Vault Installation	EA	1	\$ 6,000.00	\$ 6,000.00
20	26 05 33	Utility Line Installation - Electric/Fiber - Common Trench	LF	285	\$ 30.10	\$ 8,578.50
21	26 05 33	Utility Line Installation - Electric - Separate Trench	LF	330	\$ 27.95	\$ 9,223.50
22	26 05 33	Utility Line Installation - Fiber - Separate Trench	LF	300	\$ 30.75	\$ 9,225.00
23	26 05 33	Utility Line Conduit Installation - Surface Mount - 5 Wide (Inbound)	LF	150	\$ 36.00	\$ 5,400.00
24	26 05 33	Utility Line Conduit Installation - Surface Mount - 3 Wide (Outbound)	LF	80	\$ 25.50	\$ 2,040.00
26	26 05 33	Utility Line Conduit Installation - Underground - 2 Wide	LF	150	\$ 47.00	\$ 7,050.00
27	26 05 33	Utility Line Conduit Installation - Underground - 5 Wide	LF	60	\$ 50.00	\$ 3,000.00
28	26 05 35	Relocate Electric Pull Box	EA	3	\$ 2,600.00	\$ 7,800.00
29	31 10 00	Site Clearing	LS	1	\$ 16,500.00	\$ 16,500.00
30	31 23 16	Excavation	CY	300	\$ 24.25	\$ 7,275.00
31	31 24 00	General Earthfill	CY	500	\$ 43.25	\$ 21,625.00
32	31 24 00	Select Fill	CY	1,300	\$ 66.50	\$ 86,450.00
33	31 24 00	Flowable Fill and Concrete Rubble	CY	230	\$ 280.00	\$ 64,400.00
34	31 25 14	Silt Fence	LF	750	\$ 3.80	\$ 2,850.00
35	31 25 14	Concrete Washout Sediment Trap	LS	1	\$ 1,530.00	\$ 1,530.00
36	31 25 14	Stone Overflow Sediment Trap	LS	1	\$ 1,465.00	\$ 1,465.00
37	32 11 23	12" Average Thick Flexible Base	SY	2,230	\$ 35.60	\$ 79,388.00
38	32 11 23	18" Average Thick Flexible Base	SY	325	\$ 9.75	\$ 3,168.75
39	32 11 23	24" Average Thick Flexible Base	SY	185	\$ 84.00	\$ 15,540.00
40	32 11 23	48" Average Thick Flexible Base	SY	90	\$ 172.00	\$ 15,480.00
41	32 13 13	6" Thick Concrete Paving	SY	755	\$ 95.05	\$ 71,762.75
42	32 13 13	10" Thick Concrete Paving	SY	655	\$ 184.00	\$ 120,520.00
43	32 13 13	Concrete Transformer Pad	LS	1	\$ 10,500.00	\$ 10,500.00
44	33 01 50	Raise Water Meter Vault	LS	1	\$ 8,820.00	\$ 8,820.00
45	33 05 98	Locating Existing Utilities	LS	1	\$ 1,560.00	\$ 1,560.00
46	33 14 11	Scale Area Drains	LS	1	\$ 31,810.00	\$ 31,810.00
47	33 42 11	Precast Sand Trap	LS	1	\$ 16,140.00	\$ 16,140.00
48	34 71 13	Traffic Controls	MO	9	\$ 1,500.00	\$ 13,500.00
49	34 78 13	Temporary Scale House	LS	1	\$ 39,100.00	\$ 39,100.00
50	34 78 13	Install and Remove 3 Temporary Scales, Foundations, Ramps	LS	1	\$ 132,530.00	\$ 132,530.00
51	34 78 13	Rent 3 Temporary Scales, Foundations, Ramps	MO	9	\$ 18,900.00	\$ 170,100.00
52	34 78 13	Install and Remove Temporary Kiosk Support and Camera Support	LS	1	\$ 12,500.00	\$ 12,500.00
53	34 78 13	Install and Remove Temporary Grated Walkways	LS	1	\$ 87,250.00	\$ 87,250.00
54	34 78 13	Retaining Walls	LS	1	\$ 70,120.00	\$ 70,120.00
55	34 78 13	Scale Foundations and Ramps	LS	1	\$ 321,600.00	\$ 321,600.00
56	34 78 13	Permanent Scales	EA	5	\$ 139,450.00	\$ 697,250.00
57	34 78 13	Grated Walkways	LS	1	\$ 139,500.00	\$ 139,500.00
58	34 78 13	Safety Rails	LS	1	\$ 5,500.00	\$ 5,500.00

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
59	34 78 13	Permanent Kiosk Supports	EA	3	\$ 36,360.00	\$ 109,080.00
60	34 78 13	Camera Supports	EA	4	\$ 390.00	\$ 1,560.00
61	04 22 00	Concrete Unit Masonry	LS	1	\$ 13,000.00	\$ 13,000.00
62	07 21 00	Thermal Insulation	LS	1	\$ 3,250.00	\$ 3,250.00
63	08 41 13	Aluminum-Framed Entrances and Storefronts	LS	1	\$ 19,500.00	\$ 19,500.00
64	08 80 00	Glazing	LS	1	\$ 6,500.00	\$ 6,500.00
65	09 22 16	Non-Structural Metal Framing	LS	1	\$ 2,860.00	\$ 2,860.00
66	09 29 00	Gypsum Board	LS	1	\$ 2,600.00	\$ 2,600.00
67	09 30 13	Ceramic Tile	LS	1	\$ 2,860.00	\$ 2,860.00
68	09 51 13	Acoustic tile Ceilings	LS	1	\$ 2,340.00	\$ 2,340.00
69	09 91 23	Interior Painting	LS	1	\$ 3,900.00	\$ 3,900.00
70	09 96 00	High Performance Coatings	LS	1	\$ 6,500.00	\$ 6,500.00
71	06 41 16	Plastic Laminate Clad Architectural Cabinets	LS	1	\$ 26,000.00	\$ 26,000.00
72	09 65 13	Resilient Base and Accessories	LS	1	\$ 650.00	\$ 650.00
73	09 77 20	Decorative Fiberglass Reinforced Wall Panels	LS	1	\$ 1,560.00	\$ 1,560.00
74	10 26 00	Wall and Door Protection	LS	1	\$ 650.00	\$ 650.00
75	12 24 13	Roller Window Shades	LS	1	\$ 3,250.00	\$ 3,250.00
76	12 36 61	Solid Surface Material	LS	1	\$ 1,950.00	\$ 1,950.00
77	23 07 00	HVAC Removal and Upgrades	LS	1	\$ 6,500.00	\$ 6,500.00
78	02 41 13	Interior Demolition	LS	1	\$ 26,000.00	\$ 26,000.00
						<b>\$3,061,952.00</b>

## Alternate Proposal

1A	02 41 13	Removal of Scales - South	LS	1	\$ 195,000.00	\$ 195,000.00
<b>TOTAL ALT. Proposal:</b>						<b>\$195,000.00</b>

**BASE PLUS ALTERNATE PROPOSAL AMOUNT: \$3,256,952.00**

<b>Landfill Entrance Facility Improvements</b>					<b>TOTAL PROPOSAL AMOUNT:</b>	<b>\$3,256,952.00</b>
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Exhibit J  
SECTION 00 35 14

## CONFLICT OF INTEREST AFFIDAVIT - CSP

**CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ****For vendor or other person doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1 Name of vendor who has a business relationship with local governmental entity.****GAGE AND CADE CONSTRUCTION, LLC****2** ☐ **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information in this section is being disclosed.**

\_\_\_\_\_  
Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☒

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☒

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?


☐

Yes

☒

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4** ☒ **I have no Conflict of Interest to disclose.****5**   
\_\_\_\_\_  
Signature of vendor doing business with the governmental entity3/19/2024  
\_\_\_\_\_  
Date

3

**END OF SECTION**

Exhibit K  
**SECTION 00 41 01**  
PROPOSAL FORM - CSP

TO: City of Denton  
c/o: Purchasing Division  
901-B Texas Street  
Denton, Texas 76209

FOR: *CSP 8281 – Landfill Entrance Facility Improvements*

**1 Enter into Agreement**

The undersigned Offeror proposes and agrees, if this Proposal is accepted, to enter into an Agreement with City in the form included in the Proposal Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Unit Price Proposal and within the Contract Time indicated in this Proposal and in accordance with the other terms and conditions of the Contract Documents.

**2 OFFEROR Acknowledgements and Certification**

- 2.1 In submitting this Proposal, Offeror accepts all of the terms and conditions of the INVITATION TO OFFERORS and INSTRUCTIONS TO OFFERORS, including without limitation those dealing with the disposition of Offeror's Bond.
- 2.2 Offeror is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.
- 2.3 Offeror certifies that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
- 2.4 Offeror has not directly or indirectly induced or solicited any other Offeror to submit a false or sham Proposal.
- 2.5 Offeror has not solicited or induced any individual or entity to refrain from proposing.
- 2.6 Offeror has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Agreement. For the purposes of this Paragraph:
- a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposal process.
  - b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the proposal process to the detriment of City (b) to establish proposal prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.
  - c. "collusive practice" means a scheme or arrangement between two or more Offerors, with or without the knowledge of City, a purpose of which is to establish proposal prices at artificial, non-competitive levels.
  - d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.

2.7 The Offeror acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 23-1165.

### 3 Time of Completion

3.1 The Work will be Substantially Complete as defined in the General Conditions within 300 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 8 of the General Conditions.

3.2 The Work will be complete for Final Acceptance within 365 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 8 of the General Conditions.

3.3 Offeror accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable), Substantial Completion, and Final Acceptance within the times specified in the Agreement.

### 4 Attached to this Proposal

4.1 The following documents are attached to and made a part of this Proposal:

- a. Section 00 35 14 – Conflict of Interest Affidavit – CSP
- b. Section 00 41 01 – This Proposal Form – CSP
- c. **Section 00 42 44 – Unit Price Proposal Form – CSP – Excel Electronic Copy (either included in the hard copy Proposal, or submitted via Ionwave)**
- d. Section 00 43 14 – Required Offeror's Bond – CSP, issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions.
- e. Section 00 43 38 – Proposed Subcontractors Form – CSP
- f. Section 00 43 39 – Vendor Compliance to State Law Non-Resident Offeror – CSP
- g. Section 00 45 14 – Safety Record Questionnaire – CSP
- h. Section 00 45 27 – Contractor Compliance with Workers Compensation Law – CSP
- i. Section 00 45 44 – Corporate Resolution of Authorized Signatories – CSP
- j. Any additional documents required by Paragraph 12 of Section 00 21 16 – Instructions to Offerors

### 5 Total Proposal Amount

5.1 Offeror will complete the Work in accordance with the Contract Documents for the following proposal amount. In the space provided below, please enter the total proposed amount for this project. This figure will be read publicly by the City at the proposal opening.

5.2 It is understood and agreed by the Offeror in signing this proposal that the total proposed amount entered below is subject to verification and/or modification by multiplying the unit prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

Base Bid Proposal Amount: \$ 3,061,952.00

Alternate Proposal Amount: \$ 195,000

Total Proposal Amount: \$ 3,256,952.00

6 Proposal Submittal

6.1 It is understood by Offeror that submission of the total proposal amount is only one of the factors for the City’s evaluation process, and that any award of contract will be based on the complete evaluation of the Proposal and Offeror by City under the terms provided in the Instructions to Offerors or any validly issued amendments or addenda.

6.2 This Proposal is submitted on March 20, 2024 by the entity named below.

Respectfully submitted,

By: BW  
(Signature)

Brandon Wells  
(Printed Name)

Title: Project Manager/ Estimator

Company: GAGE AND CADE CONSTRUCTION, LLC

Address: 1107 County Road 264, Bertram, TX 78605

State of Incorporation: Texas

Email: brandon@gageandcadeconstruction.com

Phone: 512-379-8176

Receipt is acknowledged of the following Addenda:	Initial
Addenda No. 1:	BW
Addenda No. 2:	BW
Addenda No. 3:	BW
Addenda No. 4:	
Addenda No. 5:	

END OF SECTION

"General Decision Number: TX20240025 01/05/2024      Exhibit L - Prevailing Wage Rates

Superseded General Decision Number: TX20230025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 14026 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.</li></ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 13658 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.</li></ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at



<http://www.dol.gov/whd/govcontracts>.

Modification Number      Publication Date  
0                              01/05/2024

SUTX2011-007 08/03/2011

Rates                              Fringes

CONCRETE FINISHER (Paving and  
Structures).....\$ 14.12 \*\*

ELECTRICIAN.....\$ 19.80

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 13.16 \*\*

Structures.....\$ 13.84 \*\*

LABORER

Asphalt Raker.....\$ 12.69 \*\*

Flagger.....\$ 10.06 \*\*

Laborer, Common.....\$ 10.72 \*\*

Laborer, Utility.....\$ 12.32 \*\*

Pipelayer.....\$ 13.24 \*\*

Work Zone Barricade

Servicer.....\$ 11.68 \*\*

POWER EQUIPMENT OPERATOR:

Asphalt Distributor.....\$ 15.32 \*\*

Asphalt Paving Machine.....\$ 13.99 \*\*

Broom or Sweeper.....\$ 11.74 \*\*

Concrete Pavement

Finishing Machine.....\$ 16.05 \*\*

Concrete Saw.....\$ 14.48 \*\*

Crane Operator, Lattice

Boom 80 Tons or Less.....\$ 17.27

Crane Operator, Lattice

Boom over 80 Tons.....\$ 20.52

Crane, Hydraulic 80 Tons

or Less.....\$ 18.12

Crawler Tractor.....\$ 14.07 \*\*

Excavator, 50,000 pounds

or less.....\$ 17.19 \*\*

Excavator, over 50,000

pounds.....\$ 16.99 \*\*

Foundation Drill , Truck

Mounted.....\$ 21.07

Foundation Drill, Crawler

Mounted.....\$ 17.99

Front End Loader 3 CY or

Less.....\$ 13.69 \*\*

Front End Loader, over 3 CY.\$ 14.72 \*\*

Loader/Backhoe.....\$ 15.18 \*\*

Mechanic.....\$ 17.68

Milling Machine.....\$ 14.32 \*\*

Motor Grader, Fine Grade....\$ 17.19 \*\*

Motor Grader, Rough.....\$ 16.02 \*\*

Pavement Marking Machine....\$ 13.63 \*\*

Reclaimer/Pulverizer.....\$ 11.01 \*\*

Roller, Asphalt.....\$ 13.08 \*\*

Roller, Other.....\$ 11.51 \*\*

Scraper.....\$ 12.96 \*\*

Small Slipform Machine.....\$ 15.96 \*\*

Spreader Box.....\$ 14.73 \*\*

Servicer.....\$ 14.58 \*\*

Steel Worker (Reinforcing).....\$ 16.18 \*\*

#### TRUCK DRIVER

Lowboy-Float.....\$ 16.24 \*\*

Off Road Hauler.....\$ 12.25 \*\*

Single Axle.....\$ 12.31 \*\*

Single or Tandem Axle Dump

Truck.....\$ 12.62 \*\*

Tandem Axle Tractor with

Semi Trailer.....\$ 12.86 \*\*

Transit-Mix.....\$ 14.14 \*\*

WELDER.....\$ 14.84 \*\*

-----  
WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

=====

\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

-----

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular

rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

-----

## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

"General Decision Number: TX20240243 04/05/2024

Superseded General Decision Number: TX20230243

State: Texas

Construction Type: Building

County: Denton County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.</li> </ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024
1	04/05/2024

ASBE0021-011 06/01/2023

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation)....	\$ 31.32	7.52

BOIL0074-003 07/01/2023

	Rates	Fringes
BOILERMAKER.....	\$ 37.00	24.64

\* CARP1421-002 10/01/2023

	Rates	Fringes
MILLWRIGHT.....	\$ 32.02	11.27

ELEV0021-006 01/01/2023

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 47.60	37.335+a+b

## FOOTNOTES:

A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

B. New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Day, and Veterans Day.

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR (1) Tower Crane.....	\$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....	\$ 32.35	13.10

IRON0263-005 06/01/2023

	Rates	Fringes
IRONWORKER (ORNAMENTAL AND STRUCTURAL).....	\$ 27.89	7.93

PLUM0100-008 11/01/2022

	Rates	Fringes
HVAC MECHANIC (HVAC Unit Installation Only).....	\$ 35.73	13.07

\* SUTX2014-019 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 19.89	0.00
CARPENTER, Excludes Drywall Hanging, Form Work, and Metal Stud Installation.....	\$ 19.25	0.00
CAULKER.....	\$ 16.63 **	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 12.93 **	0.00
DRYWALL HANGER AND METAL STUD INSTALLER.....	\$ 15.42 **	0.00
ELECTRICIAN (Alarm Installation Only).....	\$ 18.83	3.32
ELECTRICIAN (Communication Technician Only).....	\$ 19.98	3.64
ELECTRICIAN (Low Voltage Wiring Only).....	\$ 15.80 **	2.18
ELECTRICIAN, Excludes Low Voltage Wiring and Installation of Alarms/Sound and Communication Systems.....	\$ 18.82	0.83
FORM WORKER.....	\$ 12.13 **	0.00
GLAZIER.....	\$ 16.55 **	3.13
HIGHWAY/PARKING LOT STRIPING: Operator (Striping Machine).....	\$ 10.04 **	2.31
INSTALLER - SIDING (METAL/ALUMINUM/VINYL).....	\$ 14.74 **	0.00
INSTALLER - SIGN.....	\$ 15.61 **	0.00
INSULATOR - BATT.....	\$ 13.00 **	0.00
IRONWORKER, REINFORCING.....	\$ 14.02 **	0.00
LABORER: Common or General.....	\$ 11.76 **	0.00
LABORER: Mason Tender - Brick...	\$ 10.54 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.75 **	0.00
LABORER: Pipelayer.....	\$ 13.00 **	0.35
LABORER: Plaster Tender.....	\$ 12.22 **	0.00
LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
LABORER: Landscape and Irrigation.....	\$ 12.50 **	0.48
LATHER.....	\$ 16.00 **	0.00
OPERATOR:		

Backhoe/Excavator/Trackhoe.....\$ 12.83 **	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....\$ 13.93 **	0.00
OPERATOR: Bulldozer.....\$ 18.29	1.31
OPERATOR: Drill.....\$ 15.69 **	0.50
OPERATOR: Forklift.....\$ 13.21 **	0.81
OPERATOR: Grader/Blade.....\$ 12.48 **	0.00
OPERATOR: Loader.....\$ 13.46 **	0.85
OPERATOR: Mechanic.....\$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....\$ 18.44	0.00
OPERATOR: Roller.....\$ 15.04 **	0.00
PAINTER (Brush, Roller and Spray), Excludes Drywall Finishing/Taping.....\$ 13.21 **	2.33
PAINTER: Drywall Finishing/Taping Only.....\$ 13.76 **	2.84
PIPEFITTER, Excludes HVAC Pipe Installation.....\$ 22.98	6.35
PLASTERER.....\$ 15.75 **	0.00
PLUMBER (HVAC Pipe Installation Only).....\$ 22.16	5.46
PLUMBER, Excludes HVAC Pipe Installation.....\$ 20.84	4.74
ROOFER.....\$ 17.19 **	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....\$ 20.88	5.19
SHEET METAL WORKER, Excludes HVAC Duct Installation.....\$ 24.88	5.97
SPRINKLER FITTER (Fire Sprinklers).....\$ 22.94	0.00
TILE FINISHER.....\$ 11.22 **	0.00
TILE SETTER.....\$ 14.25 **	0.00
TRUCK DRIVER: 1/Single Axle Truck.....\$ 16.40 **	0.81
TRUCK DRIVER: Dump Truck.....\$ 12.39 **	1.18
TRUCK DRIVER: Flatbed Truck.....\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....\$ 12.50 **	0.00



TRUCK DRIVER: Water Truck.....\$ 12.00 \*\* 4.11

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number,

005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this

initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

**Certificate Of Completion**

Envelope Id: A449D994009646E6963362DAC9D8BD6F

Status: Sent

Subject: Please DocuSign: City Council Contract 8281 Solid Waste Facility Entrance Improvements

Source Envelope:

Document Pages: 131

Signatures: 3

Envelope Originator:

Certificate Pages: 6

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

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cori.power@cityofdenton.com

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cori.power@cityofdenton.com

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Purchasing Supervisor

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City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

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Lori Hewell



Sent: 5/17/2024 2:26:51 PM

lori.hewell@cityofdenton.com

Viewed: 5/17/2024 2:34:54 PM

Purchasing Manager

Signed: 5/17/2024 2:50:28 PM

City of Denton

Signature Adoption: Pre-selected Style

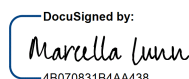
Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 5/17/2024 2:50:32 PM

marcella.lunn@cityofdenton.com

Viewed: 5/17/2024 5:15:14 PM

Senior Deputy City Attorney

Signed: 5/17/2024 5:23:07 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

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Kenny Warr



Sent: 5/17/2024 5:23:10 PM

kenny@gageandcadeconstruction.com

Viewed: 5/17/2024 6:51:04 PM

President

Signed: 5/17/2024 6:51:25 PM

Gage And Cade Construction

Signature Adoption: Drawn on Device

Security Level: Email, Account Authentication  
(None)

Using IP Address: 129.222.78.244

Signed using mobile

**Electronic Record and Signature Disclosure:**

Accepted: 5/17/2024 6:51:04 PM

ID: b8870224-fdc4-4a55-ade8-e2028b8f47c9

Signer Events	Signature	Timestamp
<p>Trevor Crain</p> <p>Trevor.Crain@cityofdenton.com</p> <p>Director of Capital Projects</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 5/17/2024 7:49:53 PM ID: 79a726ad-21c9-49d7-b5e6-fd1dfe48fdcf</p>	<p>DocuSigned by:  7B46EEAB11BC4F2...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 75.18.50.234 Signed using mobile</p>	<p>Sent: 5/17/2024 6:51:27 PM</p> <p>Viewed: 5/17/2024 7:49:53 PM</p> <p>Signed: 5/17/2024 7:50:26 PM</p>
<p>Cori Power</p> <p>cori.power@cityofdenton.com</p> <p>Purchasing Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p><b>Completed</b></p> <p>Using IP Address: 166.198.250.130 Signed using mobile</p>	<p>Sent: 5/17/2024 7:50:30 PM</p> <p>Viewed: 5/17/2024 9:52:04 PM</p> <p>Signed: 5/17/2024 9:52:16 PM</p>
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		<p>Sent: 5/17/2024 7:50:30 PM</p>
<p>Sara Hensley</p> <p>sara.hensley@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		
<p>Lauren Thoden</p> <p>lauren.thoden@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	<p><b>COPIED</b></p>	<p>Sent: 5/17/2024 2:26:51 PM</p>

Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 5/17/2024 7:50:29 PM Viewed: 5/20/2024 3:29:35 PM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Kristine Stewart kristine.stewart@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Accepted: 4/18/2024 4:47:08 PM ID: ccdcd152-aa88-4f91-be50-72183234f614		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

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**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.



**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

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- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-112, Version: 1**

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Trilliant Networks Inc., for the renewal extension of continued vendor support services for Advanced Metering Infrastructure (AMI) for Denton Municipal Electric, which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8566 - awarded to Trilliant Networks Inc., in the five (5) year not-to-exceed amount of \$1,707,564.10).



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Trilliant Networks Inc., for the renewal extension of continued vendor support services for Advanced Metering Infrastructure (AMI) for Denton Municipal Electric, which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8566 – awarded to Trilliant Networks Inc., in the five (5) year not-to-exceed amount of \$1,707,564.10).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

### **INFORMATION/BACKGROUND**

The City of Denton Electric Metering Department uses the Trilliant smart grid software to record the consumption of electric energy on meters and communicate that information back to Denton Municipal Electric (DME) for monitoring and billing. All Advanced Metering Infrastructure (AMI) meters on the Trilliant system can be read remotely at any time. Because the system uses two-way communications, DME can serve customers more efficiently, saving time and resources. This software may also detect the location of power outages more rapidly and provide power quality monitoring. This software also provides more efficient customer service and support by, improved handling of customer accounts (i.e. connects, re-connects, service transfers), hourly use data for billing and use inquiries, online presentation of electric usage to interested customers, fewer visits to the meter location, high-level billing and meter read accuracy, fewer trucks on the road and more detailed data to assist with planning, constructing, and optimizing DME's distribution system.

In addition, the Trilliant smart grid software can provide data for upcoming or new services such as prepaid billing and Time-of-Use billing plans.

If support is not purchased for Trilliant, we will not have access to updates and patches as they are released and immediate access to technical support could be limited. Consistent software patching and maintenance services lead to higher levels of security and compliance. It is important to make use of provided software updates, upgrades, and support tools to maintain security. External threats are ongoing and becoming increasingly sophisticated, requiring ongoing vigilance and maintenance. As security breaches appear to be

more common, with more companies identified as victims of attacks in recent months, we need to ensure that our systems are secure and up-to-date with the latest vendor-supported version.

Support also includes assistance in issues related to application usage, reporting, configuration, and setup. The City of Denton needs to keep current maintenance with the software vendor to ensure the availability of upgrades, software fixes, and access to knowledge and support resources. The City has an established contract in place with Trilliant with negotiated terms and conditions that were approved on June 30, 2010. This would extend the maintenance and support for an additional five (5) years.

Sustainment Support services were added to the contract through an amendment to the scope of services. Sustainment includes the installation and validation of patches and new Head End System releases on the test environment. Deployment planning and execution for patches and new Head End System releases into the production environment. Deployment planning for new firmware releases for test and production networks. Execution and testing of new network device firmware releases in the test environment. Deployment of new firmware release via Unity Suite FW packages to the Production Network. Deployment of new firmware release via NEMS to the Production Network. Assistance in issues related to application usage, reporting, configuration, and setup, which is essential for the City of Denton to ensure the availability of upgrades, software fixes, and access to knowledge and support resources.

Trilliant Networks Inc. is the sole source vendor for the continued upgrade, support, services, and maintenance of Trilliant software and infrastructure.

Section 252.022 of the Local Government Code provides that procurement of sole source commodities and services are exempt from competitive bidding, if over \$50,000, shall be awarded by the governing body.

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Contract Total</b>
Maintenance & Support/ Sustainment Services	\$284,457.67	\$297,856.22	\$309,924.21	\$322,958.68	\$337,134.32	\$1,552,331.10
Contingency	28,446.00	29,786.00	30,992.00	32,296.00	33,713.00	155,233.00
Contract Total:						\$1,707,564.10

### **RECOMMENDATION**

Award with a contract to Trilliant Networks Inc., as a sole source supplier, for the renewal extension of continued vendor support services for Advanced Metering Infrastructure (AMI) for Denton Municipal Electric, in a five (5) year not-to-exceed amount of \$1,707,564.10.

### **PRINCIPAL PLACE OF BUSINESS**

Trilliant Networks Inc.  
Redwood City, CA

### **ESTIMATED SCHEDULE OF PROJECT**

This is a five (5) year contract.

## **FISCAL INFORMATION**

These services will be funded from Operating account 600750.7899.9210. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is \$1,707,564.10. The City will only pay for services rendered and is not obligated to pay the full contract amount unless needed.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance and Contract

Respectfully submitted:  
Lori Hewell, 940-349-7100  
Purchasing Manager

For information concerning this acquisition, contact: Brandon Hamby, 940-349-7645.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH TRILLIANT NETWORKS INC., FOR THE RENEWAL EXTENSION OF CONTINUED VENDOR SUPPORT SERVICES FOR ADVANCED METERING INFRASTRUCTURE (AMI) FOR DENTON MUNICIPAL ELECTRIC, WHICH IS THE SOLE PROVIDER OF THIS SOFTWARE, IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, WHICH PROVIDES THAT PROCUREMENT OF COMMODITIES AND SERVICES THAT ARE AVAILABLE FROM ONE SOURCE ARE EXEMPT FROM COMPETITIVE BIDDING, AND IF OVER \$50,000, SHALL BE AWARDED BY THE GOVERNING BODY; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8566 – AWARDED TO TRILLIANT NETWORKS INC., IN THE FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$1,707,564.10).

WHEREAS, Section 252.022 of the Local Government Code provides that procurement of items that are only available from one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the City Council wishes to procure one or more of the items mentioned in the above paragraph; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following purchase of materials, equipment or supplies, as described in the “File” listed hereon, and on file in the office of the Purchasing Agent, and the license terms attached are hereby approved:

<u>FILE NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8566	Trilliant Networks Inc.	\$1,707,564.10

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library

that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids.

**SECTION 3.** The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

**SECTION 4.** The City Manager, or their designee, is hereby authorized to execute the contract relating to the items specified in Section 1, attached hereto, and the expenditure of funds pursuant to said contract is hereby authorized.

**SECTION 5.** The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

**SECTION 6.** This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. The ordinance was passed and approved by the following vote [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

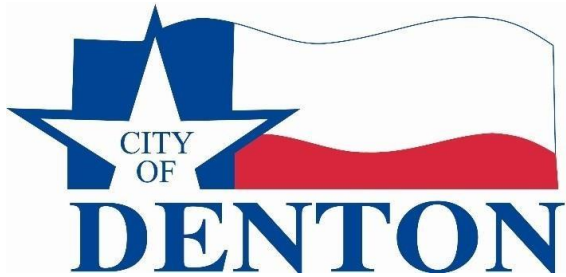
ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn





Docusign City Council Transmittal Coversheet

FILE	8566
File Name	Advanced Metering Infrastructure (AMI) Trilliant Renewal
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**RENEWAL AMENDMENT TO CONTRACT BETWEEN  
CITY OF DENTON, TEXAS AND TRILLIANT NETWORKS INC.  
(Contract #8566)**

This Renewal Amendment to Contract (Contract 8566) (this **Amendment**) is entered into between the City of Denton, Texas (**City**) and Trilliant Networks Inc, **Supplier**).

**Background**

The City and Supplier have previously entered into Contract 7218 as amended (the **Agreement**). Initially capitalized terms used but not otherwise defined in this Amendment will have the meanings set forth in the Agreement. The parties desire to amend the Agreement as follows:

**1 Effective Date**

The terms of this Amendment are effective as of the latest date in the signature block.

**2 Contract Term**

Section (7.1) of the M&S Agreement will be deleted and replaced in its entirety with the following:

The contract term will be five (5) years, effective from date of award.

The Amendment shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

**3 Fee Schedule**

Attachment 1 to this Amendment includes the Annual Fee Schedules. This Attachment 1 shall supersede Exhibit 1 of the Agreement.

**4 Total Contract Amount**

The contract total for the continued services shall not exceed \$1,707,564.10

**5 Updated contract number**

This Amendment constitutes a new agreement beginning on the Effective Date between the parties incorporating, except as amended herein, all the terms and conditions in the Agreement for all intents and purposes. Such Agreement will have contract number 8566.

**Confirmation of Agreement**

This Amendment (together with all exhibits attached hereto) constitutes the entire agreement between the parties regarding the matters of this Amendment and supersedes all prior and contemporaneous agreements and understandings regarding the matters of this Amendment. In the event of a conflict between this Amendment and the Agreement as it relates to the matters of this Amendment, the terms of this Amendment will control. Otherwise, all terms and conditions of the Agreement will remain in full force and effect and likewise apply to this Amendment.

Authorized Signatures:

CITY OF DENTON, TEXAS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

TRILLIANT NETWORKS INC.

DocuSigned by:  
By: Mark Schweigel  
UA758A247D614B2...

Name: Mark Schweigel

Title: Project Director

Date: 5/20/2024

Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at : <https://www.ethics.state.tx.us/filinginfo/1295/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) with the contract number in the subject line.  
(EX: Contract 8566 – Form 1295)

TEXAS ETHICS COMMISSION

1295 CERTIFICATE NUMBER

\_\_\_\_\_ 2024- 1163306 \_\_\_\_\_

ATTEST:

LAUREN THODEN, CITY SECRETARY

APPROVED AS TO LEGAL FORM:

MACK REINWAND, CITY ATTORNEY

BY: \_\_\_\_\_

DocuSigned by:  
BY: Marcella Luna  
4B070831B4AA438...

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

DocuSigned by:  
*Antonio Puente, Jr.* Antonio Puente, Jr.  
E3760944C2BF4B5...

SIGNATURE PRINTED NAME

DME General Manager

TITLE

Electric

DEPARTMENT



## Attachment 1

## COMMERCIAL PROPOSAL

<b>Name:</b>	<b>Sandra Allsup</b>	
<b>Title:</b>	<b>Enterprise Applications Manager</b>	
<b>Company Name:</b>	<b>City of Denton</b>	
<b>Address:</b>	<b>1701 C. Spenser Rd,</b>	
	<b>Denton TX 76201</b>	
<b>Office Phone:</b>	<b>940.349.7102</b>	
<b>Email:</b>	<a href="mailto:Sandra.Allsup@cityofDenton.com">Sandra.Allsup@cityofDenton.com</a>	
		<b>Proposal</b>
		<b>Number:</b> Denton_20240204A
		<b>Date:</b> April 5, 2024
		<b>Rev:</b> v1.1

<b>Reference:</b>	Denton Municipal Electric - Annual Maintenance & Support - 5 years
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Item	Description	Quantity	Unit Price	Total Price
1	Annual Maintenance & Support (\$2.90 x 61,650) - Term Start Date: 11/1/2024 - Term End Date: 10/31/2025	1	\$ 178,785.00	\$ 178,785.00
2	Annual Maintenance & Support (\$2.98 x 63,250) - Term Start Date: 11/1/2025 - Term End Date: 10/31/2026	1	\$ 188,485.00	\$ 188,485.00
3	Annual Maintenance & Support (\$3.05 x 64,500) - Term Start Date: 11/1/2026 - Term End Date: 10/31/2027	1	\$ 196,725.00	\$ 196,725.00
4	Annual Maintenance & Support (\$3.13 x 65,750) - Term Start Date: 11/1/2027 - Term End Date: 10/31/2028	1	\$ 205,797.50	\$ 205,797.50
5	Annual Maintenance & Support (\$3.21 x 67,250) - Term Start Date: 11/1/2028 - Term End Date: 10/31/2029	1	\$ 215,872.50	\$ 215,872.50
			<b>Grand Total:</b>	<b>\$ 985,665.00</b>

## Pricing Notes:

1	All pricing based on Terms per Trilliant standard Terms & Conditions
2	Pricing and payment in US Dollars
3	Pricing is for budgetary/planning purposes.

If you have any questions regarding this proposal, please feel free to contact me at any time.

<b>Name:</b>	<b>Mark Schwegel</b>
<b>Title:</b>	<b>Project Director</b>
<b>Company Name:</b>	<b>Trilliant Networks Inc.</b>
<b>Office Phone:</b>	<b>19842016371</b>
<b>Mobile Phone:</b>	<b>19196644587</b>
<b>Email:</b>	<a href="mailto:Mark.Schwegel@trilliant.com">Mark.Schwegel@trilliant.com</a>



## COMMERCIAL PROPOSAL

<b>Name:</b>	<b>Sandra Allsup</b>	
<b>Title:</b>	<b>Electric Applications Manager</b>	
<b>Company Name:</b>	<b>City of Denton</b>	
<b>Address:</b>	<b>1701 C. Spenser Rd,</b>	
<b>Office Phone:</b>	<b>Denton TX 76201</b>	<b>Quote Number:</b> Denton_20240204B
<b>Email:</b>	<b>940.349.7102</b>	<b>Date:</b> April 2, 2024
	<a href="mailto:Sandra.Allsup@cityofDenton.com">Sandra.Allsup@cityofDenton.com</a>	<b>Rev:</b> v1

<b>Reference:</b>	Denton Municipal Electric - Annual Sustainment Services (S&S) - 5 years
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Item	Description	Quantity	Unit Price	Total Price
1	Annual Sustainment Services (S&S) - Term Start Date: 11/1/2024 - Term End Date: 10/31/2025	1	\$ 105,672.67	\$ 105,672.67
2	Annual Sustainment Services (S&S) - Term Start Date: 11/1/2025 - Term End Date: 10/31/2026	1	\$ 109,371.22	\$ 109,371.22
3	Annual Sustainment Services (S&S) - Term Start Date: 11/1/2026 - Term End Date: 10/31/2027	1	\$ 113,199.21	\$ 113,199.21
4	Annual Sustainment Services (S&S) - Term Start Date: 11/1/2027 - Term End Date: 10/31/2028	1	\$ 117,161.18	\$ 117,161.18
5	Annual Sustainment Services (S&S) - Term Start Date: 11/1/2028 - Term End Date: 10/31/2029	1	\$ 121,261.82	\$ 121,261.82
			<b>Grand Total:</b>	<b>\$ 566,666.10</b>

### Pricing Notes:

1	All pricing based on Terms per Trilliant standard Terms & Conditions
2	Pricing and payment in US Dollars.
3	Services include the below:
3a	HES Upgrades - Testing and implementation support of hot fix, patch, and new HES releases
3b	HES Upgrades - Trilliant and third-party upgrade testing and deployment planning
3c	WAN/NAN Upgrades - Upgrade testing and firmware deployment planning
3d	WAN/NAN Upgrades - Incident/Issue Management
4	NEMS upgrades are not included and will be on a T&M basis
5	This quotation is valid for 30 days for the Quotation Date.

If you have any questions regarding this proposal, please feel free to contact me at any time.

<b>Name:</b>	<b>Mark Schwegel</b>
<b>Title:</b>	<b>Project Director</b>
<b>Company Name:</b>	<b>Trilliant Networks Inc.</b>
<b>Office Phone:</b>	<b>19842016371</b>
<b>Email:</b>	<a href="mailto:Mark.Schwegel@trilliant.com">Mark.Schwegel@trilliant.com</a>

**CONFLICT OF INTEREST QUESTIONNAIRE -****FORM CIQ****For vendor or other person doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1 Name of vendor who has a business relationship with local governmental entity.**

Trilliant Networks Inc.

**2** ☒ **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information in this section is being disclosed.**\_\_\_\_\_  
Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☒

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☒

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☒

Yes

☐

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4** ☒ **I have no Conflict of Interest to disclose.****5** DocuSigned by:

Mark Schweigel

5/20/2024

0A758A247D614B2  
Signature of vendor doing business with the governmental entity

Date

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

- (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
  - (i) a contract between the local governmental entity and vendor has been executed; or
  - (ii) the local governmental entity is considering entering into a contract with the vendor;
- (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
  - (i) a contract between the local governmental entity and vendor has been executed; or
  - (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
  - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
  - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
  - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
  - (1) the date that the vendor:
    - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
    - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
  - (2) the date the vendor becomes aware:
    - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
    - (B) that the vendor has given one or more gifts described by Subsection (a); or
    - (C) of a family relationship with a local government officer.

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> degree of affinity (marriage) or consanguinity (blood or adoption)

**City Official:** for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

**Vendor:** a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.



**Certificate Of Completion**

Envelope Id: 0F6847AA02E349AD8CDC7685E9AEAF0E

Status: Sent

Subject: Please DocuSign: City Council Contract 8566 - Advanced Metering Infrastructure Trilliant Renewal

Source Envelope:

Document Pages: 8

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.104

**Record Tracking**

Status: Original

Holder: Christa Christian

Location: DocuSign

5/15/2024 2:17:42 PM

Christa.Christian@cityofdenton.com

**Signer Events****Signature****Timestamp**

Christa Christian

**Completed**

Sent: 5/15/2024 2:33:52 PM

christa.christian@cityofdenton.com

Viewed: 5/15/2024 2:34:03 PM

Purchasing Supervisor

Signed: 5/15/2024 2:34:12 PM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lori Hewell



Sent: 5/15/2024 2:34:14 PM

lori.hewell@cityofdenton.com

Viewed: 5/16/2024 8:10:05 AM

Purchasing Manager

Signed: 5/16/2024 8:10:57 AM

City of Denton

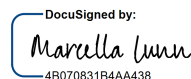
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(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Marcella Lunn



Sent: 5/16/2024 8:11:01 AM

marcella.lunn@cityofdenton.com

Viewed: 5/17/2024 10:59:34 AM

Senior Deputy City Attorney

Signed: 5/17/2024 11:00:43 AM

City of Denton

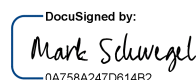
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(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Mark Schwegel



Sent: 5/17/2024 11:00:46 AM

mark.schwegel@trilliant.com

Viewed: 5/20/2024 6:28:21 AM

Project Director

Signed: 5/20/2024 6:45:43 AM

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 108.192.128.193

**Electronic Record and Signature Disclosure:**

Accepted: 5/20/2024 6:28:21 AM

ID: 3a256ee3-957d-4141-b5a1-8c2578e016d8

Signer Events	Signature	Timestamp
<p>Antonio Puente, Jr.</p> <p>Antonio.Puente@cityofdenton.com</p> <p>DME General Manager</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Accepted: 5/20/2024 8:05:08 AM  ID: c315a43e-639b-4749-91b2-c4d1acfcab74</p>	<p>DocuSigned by:    E3760944C2BF4B5...</p> <p>Signature Adoption: Pre-selected Style  Using IP Address: 174.244.21.178  Signed using mobile</p>	<p>Sent: 5/20/2024 6:45:46 AM</p> <p>Viewed: 5/20/2024 8:05:08 AM</p> <p>Signed: 5/20/2024 8:05:43 AM</p>
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>		<p>Sent: 5/20/2024 8:05:45 AM</p>
<p>Sara Hensley</p> <p>sara.hensley@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>		
<p>Lauren Thoden</p> <p>lauren.thoden@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<div>COPIED</div>	<p>Sent: 5/15/2024 2:34:14 PM</p>
<p>Gretna Jones</p> <p>gretna.jones@cityofdenton.com</p> <p>Legal Secretary</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	<div>COPIED</div>	<p>Sent: 5/20/2024 8:05:46 AM</p> <p>Viewed: 5/20/2024 3:31:06 PM</p>

Carbon Copy Events	Status	Timestamp
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City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Jerry Looper jerry.looper@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Accepted: 5/20/2024 12:53:34 PM ID: 6463aa65-e7a2-4844-b74d-69ec816ec100		
Sandra Allsup sandra.allsup@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Accepted: 5/2/2024 9:28:42 AM ID: 3f722114-52c6-4166-a623-f155097bd24e		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/15/2024 2:33:52 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-113, Version: 1**

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, ratifying the expenditure of funds by the City Manager for the emergency purchase of property, boiler, machinery, and business interruption insurance coverage for the Denton Energy Center through the City's broker of record, Lockton Companies, LLC; and providing an effective date (File 8544 - awarded to Associated Electric & Gas Insurance Services Limited (AEGIS), for one (1) year, with the option for two (2) additional one (1) year extensions, in the total three (3) year not-to-exceed amount of \$2,707,349.29).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Trilliant Networks Inc., for the renewal extension of continued vendor support services for Advanced Metering Infrastructure (AMI) for Denton Municipal Electric, which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8566 – awarded to Trilliant Networks Inc., in the five (5) year not-to-exceed amount of \$1,707,564.10).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

### **INFORMATION/BACKGROUND**

The City of Denton Electric Metering Department uses the Trilliant smart grid software to record the consumption of electric energy on meters and communicate that information back to Denton Municipal Electric (DME) for monitoring and billing. All Advanced Metering Infrastructure (AMI) meters on the Trilliant system can be read remotely at any time. Because the system uses two-way communications, DME can serve customers more efficiently, saving time and resources. This software may also detect the location of power outages more rapidly and provide power quality monitoring. This software also provides more efficient customer service and support by, improved handling of customer accounts (i.e. connects, re-connects, service transfers), hourly use data for billing and use inquiries, online presentation of electric usage to interested customers, fewer visits to the meter location, high-level billing and meter read accuracy, fewer trucks on the road and more detailed data to assist with planning, constructing, and optimizing DME's distribution system.

In addition, the Trilliant smart grid software can provide data for upcoming or new services such as prepaid billing and Time-of-Use billing plans.

If support is not purchased for Trilliant, we will not have access to updates and patches as they are released and immediate access to technical support could be limited. Consistent software patching and maintenance services lead to higher levels of security and compliance. It is important to make use of provided software updates, upgrades, and support tools to maintain security. External threats are ongoing and becoming increasingly sophisticated, requiring ongoing vigilance and maintenance. As security breaches appear to be



more common, with more companies identified as victims of attacks in recent months, we need to ensure that our systems are secure and up-to-date with the latest vendor-supported version.

Support also includes assistance in issues related to application usage, reporting, configuration, and setup. The City of Denton needs to keep current maintenance with the software vendor to ensure the availability of upgrades, software fixes, and access to knowledge and support resources. The City has an established contract in place with Trilliant with negotiated terms and conditions that were approved on June 30, 2010. This would extend the maintenance and support for an additional five (5) years.

Sustainment Support services were added to the contract through an amendment to the scope of services. Sustainment includes the installation and validation of patches and new Head End System releases on the test environment. Deployment planning and execution for patches and new Head End System releases into the production environment. Deployment planning for new firmware releases for test and production networks. Execution and testing of new network device firmware releases in the test environment. Deployment of new firmware release via Unity Suite FW packages to the Production Network. Deployment of new firmware release via NEMS to the Production Network. Assistance in issues related to application usage, reporting, configuration, and setup, which is essential for the City of Denton to ensure the availability of upgrades, software fixes, and access to knowledge and support resources.

Trilliant Networks Inc. is the sole source vendor for the continued upgrade, support, services, and maintenance of Trilliant software and infrastructure.

Section 252.022 of the Local Government Code provides that procurement of sole source commodities and services are exempt from competitive bidding, if over \$50,000, shall be awarded by the governing body.

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Contract Total</b>
Maintenance & Support/ Sustainment Services	\$284,457.67	\$297,856.22	\$309,924.21	\$322,958.68	\$337,134.32	\$1,552,331.10
Contingency	28,446.00	29,786.00	30,992.00	32,296.00	33,713.00	155,233.00
Contract Total:						\$1,707,564.10

### **RECOMMENDATION**

Award with a contract to Trilliant Networks Inc., as a sole source supplier, for the renewal extension of continued vendor support services for Advanced Metering Infrastructure (AMI) for Denton Municipal Electric, in a five (5) year not-to-exceed amount of \$1,707,564.10.

### **PRINCIPAL PLACE OF BUSINESS**

Trilliant Networks Inc.  
Redwood City, CA

### **ESTIMATED SCHEDULE OF PROJECT**

This is a five (5) year contract.

## **FISCAL INFORMATION**

These services will be funded from Operating account 600750.7899.9210. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is \$1,707,564.10. The City will only pay for services rendered and is not obligated to pay the full contract amount unless needed.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance and Contract

Respectfully submitted:  
Lori Hewell, 940-349-7100  
Purchasing Manager

For information concerning this acquisition, contact: Brandon Hamby, 940-349-7645.

Legal point of contact: Marcella Lunn at 940-349-8333.



## Declaration of an Emergency

File #: 8544

Requisition #: 165063

Date: 05/22/2024

Vendor: Associated Electric & Gas Insurance Services Limited (AEGIS)Commodity/Service: Property insurance renewal for the Denton Energy Center

Estimated expenditure for the above commodity or service: \$ Three year not to exceed amount of  
\$\_704,213.63

Initial all entries below that apply to the proposed purchase, under the Purchasing Procedures as passed by City Council. (More than one entry may apply.)

1. DS  
MG Emergency situations, including procurements necessary to protect the public health or safety or in response to a public calamity;
2. \_\_\_\_\_ A procurement necessary because of unforeseen damage to public equipment, machinery, or other property;

### Brief Description/Justification for an exception:

Given the complexities of this insurance product solicitation and given that Chapter 252.024 of the Texas Local Government Code, the City utilized the services of our broker of record, Lockton Companies, LLC.

To prevent a lapse in coverage, Property Insurance for Denton Energy Center (DEC) coverage renewals for the 2024/2025 coverage year must be bound by May 24, 2024, by Aegis, through the City's broker of record, Lockton, in the amount of \$704, 213.63.

Staff recommends the approval of expenditures for the purchase of coverage including funding to accommodate a year-over-year price increase of 15% per year for the renewal of property coverage for the DEC through the City's broker of record, Lockton.

Respectfully Submitted by,

Reviewed by:

Reviewed By:

DocuSigned by:  
Megan Gilbreath 5/22/2024  
 669E10A57DE34F7...  
 Dept. Director Date

DocuSigned by:  
Lori Hewell 5/22/2024  
 13F1D934987C40F...  
 Purchasing Manager Date

DocuSigned by:  
Marcella Lunn 5/23/2024  
 4B070831B4AA438...  
 City Attorney Date

Approved by:

DocuSigned by:  
Sara Hensley 5/23/2024  
 City Manager Date

**This form must be attached to a purchase requisition if the expenditure is under \$50,000.**

**This form must be attached to a completed Agenda Information Sheet if the expenditure exceeds \$50,000.**

**Certificate Of Completion**

Envelope Id: 6784554DF7194DFFBDD1CD27582DA4EA

Status: Completed

Subject: Complete with DocuSign: Declaration of Emergency-DEC Property Declaration of Emergency

Source Envelope:

Document Pages: 2

Signatures: 4

Envelope Originator:

Certificate Pages: 2

Initials: 1

Ginny Brummett

AutoNav: Enabled

901B Texas Street

EnvelopelD Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

Ginny.Brummett@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Ginny Brummett

Location: DocuSign

5/22/2024 10:35:00 AM

Ginny.Brummett@cityofdenton.com

**Signer Events**

Megan Gilbreath

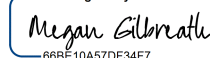
Megan.Gilbreath@cityofdenton.com

HR Director

City of Denton - Human Resources

Security Level: Email, Account Authentication  
(None)**Signature**

DocuSigned by:



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Signature Adoption: Pre-selected Style

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**Timestamp**

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**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell

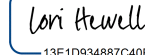
lori.hewell@cityofdenton.com

Purchasing Manager

City of Denton

Security Level: Email, Account Authentication  
(None)

DocuSigned by:



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Signature Adoption: Pre-selected Style

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Signed: 5/22/2024 1:56:55 PM

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn

marcella.lunn@cityofdenton.com

Senior Deputy City Attorney

City of Denton

Security Level: Email, Account Authentication  
(None)

DocuSigned by:



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Signature Adoption: Pre-selected Style

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**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Sara Hensley

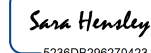
sara.hensley@cityofdenton.com

City Manager

City of Denton

Security Level: Email, Account Authentication  
(None)

DocuSigned by:



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Signature Adoption: Pre-selected Style

Using IP Address: 107.77.199.197

Signed using mobile

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Viewed: 5/23/2024 11:43:30 AM

Signed: 5/23/2024 11:43:55 AM

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp**

Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Tiffany Harris Tiffany.Harris@cityofdenton.com Risk Supervisor Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 5/23/2024 11:43:56 AM Viewed: 5/23/2024 12:28:07 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 5/23/2024 11:43:57 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	5/23/2024 11:43:55 AM
Completed	Security Checked	5/23/2024 11:43:57 AM
Payment Events	Status	Timestamps



UNCOMMONLY INDEPENDENT

5/20/2024

City of Denton  
215 E McKinney  
Denton, TX 76201

Re: City of Denton 5/25/2024-25 Denton Energy Center Property Renewal Proposal

To Whom it May Concern:

Thank you for the opportunity to assist the City of Denton with the 5/25/2024-25 Denton Energy Center Property policy renewal.

The insurance market for conventional power generation risks comparative to other subsets of the power/utility market remains limited and cautious. Insurance carriers, including AEGIS, continue to focus heavily on the engineering quality of risks. We are seeing property rate insurance increases in the 5% to 10% range. Ultimately, Lockton was able to secure renewal terms with the incumbent carrier, AEGIS, at a 2.6% rate increase. Policy terms & conditions remain as expiring with AEGIS.

Lockton marketed the property placement to several markets, including AEGIS (incumbent), AIG, Munich Re, Starr, Swiss Re and Zurich. Ultimately, only AEGIS was able to quote 100% of the risk, which is a favorable policy structure. AIG & Munich Re offered terms on a quota-share basis, whereby they would split the risk with AEGIS, however it was determined that this option was not advantageous as the premium savings were nominal.

Lockton recommends the City bind its Energy Center Property Insurance with AEGIS for a total annual deposit premium of \$674,125 including TRIA (Terrorism) less an AEGIS membership credit of \$2,742 plus \$32,830.63 surplus lines tax and stamping fee for a total premium including taxes of \$704,213.63.

Thank you for the opportunity to work with the City of Denton. Please let us know if you have any questions regarding this renewal.

Sincerely,

Neil Cohen

Senior Vice President, Practice Leader

Lockton Companies.

# City of Denton (5/25 Inception)

## Property Quotes Comparison

Updated: Apr 27, 2022

	22-23 Renewal
	AEGIS
<b>Policy Numbers</b>	
<b>Bound</b>	
<b>Authorization</b>	100.00%
<b>Expiring Participation</b>	100.00%
<b>Security</b>	Associated Electric & Gas Insurance Services Limited, Hamilton Bermuda
<b>Admitted/Non-admitted</b>	<b>Non-admitted</b>
EXPIRING Property	
EXPIRING Business Interruption	
EXPIRING TIV	
RENEWAL Property	\$164,923,647
RENEWAL Business Interruption	\$7,717,562
RENEWAL TIV	<b>\$172,641,209</b>
EXPIRING 100% All-Risk, excluding Terrorism	
EXPIRING 100% TRIA Premium	
Brokerage	
EXPIRING Account Rate	
QUOTED 100% All-Risk, excluding Terrorism	\$500,410
QUOTED 100% TRIA Premium	\$17,514
Market Share Premium (incl. TRIA)	<b>\$517,924</b>
Brokerage	NIL
Engineering services	
QUOTED Account Rate	0.290%
Account Rate Chg YoY	<b>2.9%</b>
Property Member Credit	
BI Premium	
Premium Payment Terms	30 days
Cancellation	90 days, 10 non-payment
Policy Language	AEGIS standard
Premium Payment Terms	
Premium Notes	
<b>All Risk x Terrorism Avg. Rate</b>	
<b>Retentions (per occurrence)</b>	
All Losses, except	\$250,000
Gas Engine Generators	\$500,000
Named Windstorm	2% or reported values, minimum \$250,000



# City of Denton (5/25 Inception)

## Property Quotes Comparison

Updated: Apr 27, 2022

	22-23 Renewal
	AEGIS
<b>Policy Numbers</b>	
<b>Bound</b>	
<b>Authorization</b>	100.00%
<b>Expiring Participation</b>	100.00%
<b>Security</b>	Associated Electric & Gas Insurance Services Limited, Hamilton Bermuda
<b>Admitted/Non-admitted</b>	<b>Non-admitted</b>
Tornado loss (not associated with Named Windstorm)	
Severe Windstorm (new definition in 2022 form includes Tornado)	\$1,000,000
Time Element, except	30 days
Time Element iro Gas Engine Generators	45 days
Service Interruption Qualifier	24 hours
Emergency Action Business Income Loss	5 hours
<b>Policy Limit</b>	\$172,641,209
<b><u>CAT - Sublimits of Liability</u></b>	
Earth Movement (annual aggregate)	\$25,000,000
Earth Movement - California/High Hazard	Excluded
Earth Movement - Newly Acq., E&O, Exhibitions/Fairs/Tradeshows, MUL	Excluded for MUL, Newly Acq, COC
Flood (annual aggregate), except:	\$25,000,000
Flood - Newly Acq., E&O, Exhibitions/Fairs/Tradeshows, MUL	Excluded for MUL, Newly Acq, COC
Flood - High Hazard Flood Zones	Excluded
Named Windstorm including Storm Surge (annual aggregate)	\$25,000,000
Tornado (not associated with Named Windstorm)	N/A
Severe Windstorm (annual aggregate)	\$100,000,000
Named Windstorm including Storm Surge - Newly Acq., E&O, Exhibitions/Fairs/Tradeshows, MUL	Excluded for MUL, Newly Acq, COC
<b><u>Sublimits of Liability</u></b>	
Accounts Receivable	\$1,000,000
Business Interruption	\$7,717,562 not to exceed 105% of monthly margin reported on file
Commissioning, Licensing, Royalties	Excluded
Contingent Time Element - Direct Named	\$10,000,000 subject to BI CAP
Contingent Time Element - Direct and unnamed	Excluded
Contingent Time Element - Indirect	Excluded

# City of Denton (5/25 Inception)

## Property Quotes Comparison

Updated: Apr 27, 2022

	22-23 Renewal
	AEGIS
<b>Policy Numbers</b>	
<b>Bound</b>	
<b>Authorization</b>	100.00%
<b>Expiring Participation</b>	100.00%
<b>Security</b>	Associated Electric & Gas Insurance Services Limited, Hamilton Bermuda
<b>Admitted/Non-admitted</b>	<b>Non-admitted</b>
Course of Construction	\$10,000,000
Crisis Management	Excluded
Data Restoration / Data Physical Damage	Excluded
Debris Removal	or 25% of PD/TE, or \$10,000,000 whichever is lesser
Decontamination Costs	Excluded
Defense Cost	\$500,000
Deferred Payments	Excluded
Demolition and/or Increased Cost of Construction due to Law or Ordinance	\$10,000,000 (PD/TE)
Errors or Omissions	\$2,500,000
Exhibitions, Expositions, Fairs or Tradeshows	Excluded
Expediting Expense	\$2,500,000
Extended Period of Indemnity	30 days
Extra Expense	\$2,500,000, excludes Replacement Power
Fine Arts	\$500,000
Fire and Police Department Service Charges	\$1,000,000
Impounded Water	Excluded
Ingress/Egress	30 days, or \$1,000,000 whichever is lesser (5 mile statute)
Interruption by Civil or Military Authority	30 days, or \$1,000,000 whichever is lesser (5 mile statute)
Land and/or Water Contaminants, Cleanup, Removal, and Disposal (Annual Aggregate)	\$500,000
Land Improvements	Excluded
Leasehold Interest	Excluded
Logistics Extra Cost	Excluded
Miscellaneous Unscheduled Locations	\$2,500,000
Mold ensuing from an Insured Cause of Loss	Excluded
Newly Acquired Locations (90 days reporting)	\$5,000,000
Period of Indemnity (Power Generating Income)	12 months

# City of Denton (5/25 Inception)

## Property Quotes Comparison

Updated: Apr 27, 2022

	22-23 Renewal
	AEGIS
<b>Policy Numbers</b>	
<b>Bound</b>	
<b>Authorization</b>	100.00%
<b>Expiring Participation</b>	100.00%
<b>Security</b>	Associated Electric & Gas Insurance Services Limited, Hamilton Bermuda
<b>Admitted/Non-admitted</b>	<b>Non-admitted</b>
Preservation of Property	\$2,500,000
Professional Fees	\$500,000
Radioactive Contamination	Excluded
Rental Insurance	Excluded
Research and Development	Excluded
Soft Costs	Excluded
Service Interruption	\$10,000,000
Temporary Removal of Property	Silent
Transportation	\$5,000,000
Valuable Papers & Records	\$1,000,000
Emergency Action Business Income Loss	\$1,000,000 per occ and in agg or a (5) hour sublimit, whichever is less
Mobile Equipment	
<b>Other Conditions</b>	
Economic or Trade Sanctions	✓
Engineering Allowance	Included
Agreed Adjusters	
Territory	United States and D.C.
Choice of Law/Jurisdiction	New York
Valuation	Property - RC TE - Actual Loss Sustained on declared monthly values not to exceed 105% of reported value on file
Communicable Disease Endorsement	AEGIS wording
Cyber	AEGIS wording
Other	Emergency Action Endorsement

*Please note that the descriptions, summaries and highlights contained above are for informational purposes only. They are not intended to be exhaustive nor do they amend, alter or modify the actual terms and conditions contained in your insurance quotes. Coverage is governed solely by the actual terms, conditions, premiums and fees reflected by your final bound insurance policies issued by the*

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, RATIFYING THE EXPENDITURE OF FUNDS BY THE CITY MANAGER FOR THE EMERGENCY PURCHASE OF PROPERTY, BOILER, MACHINERY, AND BUSINESS INTERRUPTION INSURANCE COVERAGE FOR THE DENTON ENERGY CENTER THROUGH THE CITY'S BROKER OF RECORD, LOCKTON COMPANIES, LLC; AND PROVIDING AN EFFECTIVE DATE (FILE 8544 – AWARDED TO ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED (AEGIS), FOR ONE (1) YEAR, WITH THE OPTION FOR TWO (2) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL THREE (3) YEAR NOT-TO-EXCEED AMOUNT OF \$2,707,349.29).

WHEREAS, state law and city policy requires that certain contracts requiring an expenditure or payment by the city in an amount exceeding \$50,000 be by competitive bids, except in the case of public calamity where it becomes necessary to act at once to appropriate money to relieve the necessity of the citizens of the city, or in case of unforeseen damage to public property, machinery, or equipment, or where the procurement is necessary to preserve or protect the public health or safety of the city's residents under Section 252 of the Local Government Code; and

WHEREAS, the City Manager has recommended to the City Council that it is necessary to ratify the purchase goods or services due to the following emergency conditions outlined in the memorandum referenced herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Council hereby determines that there is a public calamity that makes it necessary to act at once to appropriate money to relieve the necessity of the citizens of the city, or to provide for unforeseen damage to public property, machinery, or equipment, or to preserve or protect the public health or safety of the city's residents, and by reason thereof, the following emergency purchases of materials, equipment, supplies, or services, as described in the "Declaration of Emergency Memorandum" referenced herein and on file in the office of the Purchasing Agent, are hereby approved:

<u>FILE NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8544	Associated Electric & Gas Insurance Services Limited (AEGIS)	\$2,707,349.29

SECTION 2. Because of such emergency, the City Manager, or a designated employee, is hereby authorized to purchase the materials, equipment, supplies, or services as described in the Memorandum on file in the office of the Purchasing Agent, and to make payment therefore in the amounts therein stated. Such emergency purchases, being in accordance with the provisions of state law, exempt such purchases by the city from the requirements of competitive bids.

SECTION 3. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 4. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. This ordinance was passed and approved by the following vote [\_\_\_\_ - \_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-114, Version: 1**

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a contract between the City of Denton and Wärtsilä North America, Inc., amending the contract approved by City Council on April 20, 2021, in the not to exceed amount of \$3,448,184.00; said first amendment to continue to supply routine maintenance supplies for the Denton Energy Center; providing for the expenditure of funds therefor; and providing an effective date (IFB 7544 - providing for an additional first amendment expenditure amount not-to-exceed \$862,046.00, with the total contract amount not-to-exceed \$4,310,230.00).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a contract between the City of Denton and Wärtsilä North America, Inc., amending the contract approved by City Council on April 20, 2021, in the not to exceed amount of \$3,448,184.00; said first amendment to continue to supply routine maintenance supplies for the Denton Energy Center; providing for the expenditure of funds therefor; and providing an effective date (IFB 7544 – providing for an additional first amendment expenditure amount not-to-exceed \$862,046.00, with the total contract amount not-to-exceed \$4,310,230.00).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Enhance Infrastructure and Mobility

### **INFORMATION/BACKGROUND**

The Denton Energy Center (DEC) was an approved CIP project for DME that reached commercial operation in June 2018. The DEC provides power at times when renewable energy sources are not readily available. The DEC is a critical component of the City of Denton's future commitment to providing the citizens of Denton with 100% electricity from renewable sources of energy.

The DEC's electric generating equipment (12 Gensets and Auxiliary) requires maintenance as the units operate. The maintenance activities are performed as preventative, predictive, and corrective maintenance activities. These are performed as scheduled maintenance based on hours of operation and corrective maintenance are unplanned component failures that most often cause unit outages.

As equipment operating hours increase the maintenance activities also increase. During these maintenance activities, critical components require inspection or replacement for premature wear/failure. In order for the DEC team to manage and maintain high unit availability and reliability for our customers, performing these routine maintenance activities is critical to ensure reliability and this contract is necessary to purchase the materials necessary to perform the hour-based, calendar-based, and corrective maintenance activities efficiently.

Thus far, routine preventative, predictive, and corrective maintenance requiring parts have been procured through contract, however, unpredictable component failures, increased material cost, and market operating hour increases have consumed the initial contract not to exceed amount requiring an amendment to the contract expenditure approval amount.

<b>Project Description</b>	<b>Estimated Expenditure</b>
Original Contract	\$3,448,184.00
Amendment 1 - Maintenance Parts	862,046.00
<b>Total:</b>	<b>\$4,310,230.00</b>

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On April 20, 2021, City Council approved a contract with Wärtsilä North America, Inc., in the not-to-exceed amount of \$3,448,184 (Ordinance 21-414).

### **RECOMMENDATION**

Award Amendment No. 1 with Wärtsilä North America, Inc., to continue to supply routine maintenance supplies for the Denton Energy Center, in a not-to-exceed amount of \$862,046, for a total amended contract amount of \$4,310,230.

### **PRINCIPAL PLACE OF BUSINESS**

Wärtsilä North America, Inc.  
Houston, TX

### **ESTIMATED SCHEDULE OF PROJECT**

This contract expires on April 20, 2026.

### **FISCAL INFORMATION**

These services will be funded from DEC operating budget account 600105.6525.5500. Requisitions will be entered on an as-needed basis. The total amended amount of this contract is \$4,310,230.

### **EXHIBITS**

Exhibit 1: Agenda Information Sheet  
Exhibit 2: Original Ordinance and Contract  
Exhibit 3: Ordinance and Amendment 1

Respectfully submitted:  
Lori Hewell, 940-349-7100  
Purchasing Manager

For information concerning this acquisition, contact: Cody Tenorio, 940-349-7532.

Legal point of contact: Marcella Lunn at 940-349-8333.



ORDINANCE NO. 21-414

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER, OR THEIR DESIGNEE, TO EXECUTE A CONTRACT WITH WÄRTSILÄ NORTH AMERICA, INC., FOR THE SUPPLY OF ROUTINE MAINTENANCE SUPPLIES AND SERVICES FOR THE DENTON ENERGY CENTER; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (IFB 7544 – AWARDED TO WÄRTSILÄ NORTH AMERICA, INC., FOR THREE (3) YEARS, WITH THE OPTION FOR TWO (2) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$3,448,184.00).

WHEREAS, the City has solicited, received, and tabulated competitive bids for the purchase of necessary materials, equipment, supplies, or services in accordance with the procedures of state law and City ordinances; and

WHEREAS, the City Manager, or a designated employee, has reviewed and recommended that the herein described bids are the lowest responsible bids for the materials, equipment, supplies, or services as shown in the “Bid Proposals” submitted therefore; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following competitive bids for the materials, equipment, supplies, or services, as described in the “Bid Invitations”, “Bid Proposals” or plans and specifications on file in the Office of the City’s Purchasing Agent filed according to the bid number assigned hereto, are hereby accepted and approved as being the lowest responsible bids:

<u>BID NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
7544	Wärtsilä North America, Inc.	\$3,448,184.00

SECTION 2. That the acceptance and approval of the above competitive bids shall not constitute a contract between the City and the person submitting the bid for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Bid Invitations, Bid Proposals, and related documents.

SECTION 3. Should the City and the winning bidder(s) wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the bids, the City Manager, or their designated representative, is hereby authorized to execute a written contract, which shall be attached hereto, in accordance with the terms, conditions, specifications,

standards, quantities, and specified sums contained in the Bid Proposal and related documents and to extend that contract as determined to be advantageous to the City of Denton.

SECTION 4. The City Council of the City of Denton, hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Jesse Davis and seconded by John Ryan, the ordinance was passed and approved by the following vote [6 - 1]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Birdia Johnson, District 1:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Connie Baker, District 2:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jesse Davis, District 3:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Ryan, District 4:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deb Armintor, At Large Place 5:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paul Meltzer, At Large Place 6:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PASSED AND APPROVED this the 20<sup>th</sup> day of April, 2021.


  
GERARD HUDSPETH, MAYOR

ATTEST:  
ROSA RIOS, CITY SECRETARY

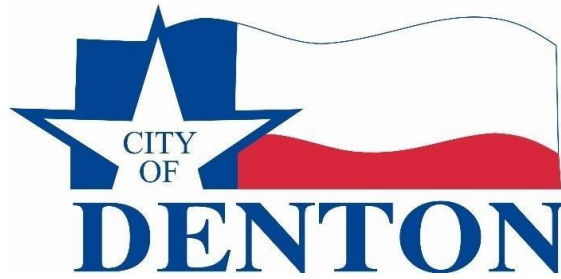
BY: 



APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

BY: 

Digitally signed by Marcella Lunn  
DN: dc=com, dc=cityofdenton,  
dc=codad, ou=Department Users and  
Groups, ou=General Government,  
ou=Legal, cn=Marcella Lunn,  
email=Marcella.Lunn@cityofdenton.com  
Date: 2021.04.08 11:21:52 -05'00'



## DocuSign City Council Transmittal Coversheet

IFB	7544
File Name	DEC Maintenance Parts
Purchasing Contact	Christa Christian
City Council Target Date	April 20, 2021
Piggy Back Option	No
Contract Expiration	April 20, 2026
Ordinance	21-414

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND WARTSILA NORTH AMERICA  
(Contract # 7544)**

**THIS CONTRACT** is made and entered into this date 04/20/2021, 2021, by and between WÄRTSILÄ NORTH AMERICA, INC. a MARYLAND corporation, whose address is 11710 North Gessner Road, Suite A, Houston, Texas 77064, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a Texas municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**SCOPE OF SERVICES**

Contractor shall provide products in accordance with the City's IFB 7544 Denton Energy Center Equipment Maintenance Parts and Services a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) City of Denton's IFB 7544 (**Exhibit "B" on file at the office of the Purchasing Agent**);
- (c) Master Services Agreement (**Exhibit "C"**);
- (d) Contractor's Quotation (**Exhibit "D"**);
- (e) Certificate of Interested Parties Electronic Filing (**Exhibit "E"**);
- (f) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "F"**)

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

**Prohibition on Contracts with Companies Boycotting Israel**

Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

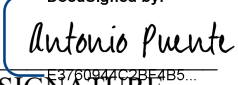
**Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization**

Section 2252 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapter 2252, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

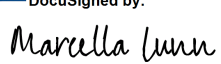
THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations and  
business terms.

DocuSigned by:  
 Antonio Puente  
E3760947C2BE4B5...  
SIGNATURE PRINTED NAME  
Exec Mgr of Utilities  
TITLE  
Electric  
DEPARTMENT

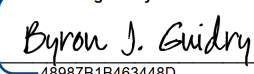
ATTEST:  
ROSA RIOS, CITY SECRETARY

BY: DocuSigned by:  
  
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APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

BY: DocuSigned by:  
  
4B070831B4AA438...

WÄRTSILÄ NORTH AMERICA, INC

DocuSigned by:  
BY:   
48987B1B463448D...  
AUTHORIZED SIGNATURE

Printed Name: Byron J. Guidry

Title: Account Manager-Energy Services


+15046150808  
PHONE NUMBER

byron.guidry@wartsila.com

EMAIL ADDRESS  
byron.guidry@wartsila.com

TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER 2021-727691

CITY OF DENTON, TEXAS

DocuSigned by:  
BY:   
5236DB296270423...  
Sara Hensley SARA HENSLEY

CITY MANAGER

## **Exhibit A**

### **Special Terms and Conditions**

#### **1. Total Contract Amount**

The contract total for products shall not exceed \$3,448,184.00. Pricing shall be per Exhibit D attached.

#### **2. Contract Terms**

The contract term will be three (3) year, effective from date of award. The City and the Contractor shall have the option to renew this contract for an additional two (2) one-year periods on mutual written-agreement.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Contractor's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

Prices quoted do not include shipping/freight and duties/customs fees. These fees will be included in the Final Invoices and are payable by Purchaser.

#### **3. Price Adjustment**

Prices quoted for the commodities or services described in Exhibit D attached hereto must be firm for a period of one (1) year from date of contract award. Any request for price adjustment must be based on the, U.S. department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published list price. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturers published price list. Should the PPI or manufacturers published price list change exceed a minimum threshold value of +/- 1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The supplier should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least sixty (60) days prior to Contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract pricing will be in effect.

The request can be sent by email to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) noting the solicitation number.

#### **4. SHIPPING, DELIVERY, AND PACKAGING**

##### **Identification of Shipments:**

In addition to the complete destination address, each delivery must be clearly marked with the purchase order number. Each shipment must be accompanied by a packing slip.

##### **Packaging and Labeling:**

All items shipped must be properly labeled, with weather resistant labeling, showing the brand name, package quantity, lot number (if applicable) and any other necessary identifying information.

##### **Special Delivery Requirements:**

City Department representatives may have specific, internal delivery rules and policies. These will be provided on each purchase order issued. The contractor(s) will be required to adhere to those requirements.

##### **Hours of Delivery:**

Delivery shall be made during the hours of 8:00 am to 3:00 pm (CST) unless prior approval for after-hours delivery has been obtained from the City. In the event of any approval by the City for after-hours delivery, Contractor may

not invoice any additional charges for that delivery. Contractor is encouraged to obtain City's hours of operation at time of order.

**Delivery Delays:**

If delay is foreseen, Contractor shall give written notice to the City and must keep City advised at all times of the status of order. All shipping dates provided by Contractor are estimates only, subject to availability of the applicable materials at the time of Purchase Order receipt.

**Restocking Fee:**

The City may request that a Contractor accept return of merchandise already delivered or that a Contractor cancel an order prior to delivery. If the return is required through no fault of the Contractor, the Contractor may request a reasonable restocking charge.. As a guideline, such charges shall not exceed 10%.



## EXHIBIT C

### MASTER SERVICE AGREEMENT BETWEEN CITY OF DENTON AND WÄRTSILÄ NORTH AMERICA INC. MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT ("Agreement") is made and entered into effective as of 04/20/2021 ("Effective Date"), by and between the City of Denton. ("Purchaser"), and Wärtsilä North America Inc. ("Contractor") and, together with Purchaser, each a "Party" and together the "Parties". Capitalized terms not otherwise defined have the meaning set forth in Exhibit A.

### COMMERCIAL TERMS AND CONDITIONS

#### 1. SCOPE OF AGREEMENT/PURCHASE ORDERS FOR SERVICES

##### A. Purchase Orders.

- i. Contractor shall provide Services to Purchaser during the Term of this Agreement, as agreed upon in each Purchase Order. Subject to Section 1.A.ii below, each request for Services shall be made by Purchaser in writing pursuant to a Purchase Order substantially similar to the form attached hereto as Exhibit B ("Purchase Order"). Contractor shall provide the Services set forth in the Purchase Order on such terms as shall be mutually agreed upon therein. Contractor's acceptance of a Purchase Order shall be accomplished by Contractor's written acknowledgment of such Purchase Order. All Purchase Orders, and Contractor's performance of Services thereunder, are subject to the terms and conditions of this Agreement, including the General Terms and Conditions set forth in Exhibit A, which form an integral part of this Agreement. This Agreement shall control in the event of any ambiguity, conflict or inconsistency between this Agreement and the Purchase Order.
- ii. In the event of an emergency causing an immediate or imminent threat to Purchaser's Facility, operations, or personnel, Purchaser may issue a verbal Purchase Order to Contractor if Contractor is willing or able to accept such an order. In such event, Purchaser shall promptly submit a written Purchase Order following the issuance of any such verbal Purchase Order.

- B. No Minimum Commitment. Nothing herein shall obligate Purchaser to request Services from Contractor and Contractor shall be compensated only for such Services as Contractor actually performs at the request of Purchaser via a Purchase Order.

#### 2. COMPENSATION, PAYMENTS AND INVOICING

Compensation. As compensation for the performance of the Services, Purchaser shall pay Contractor in accordance with the method of payment set forth in the applicable Purchase Order, which shall be either a lump sum method ("Lump Sum"), a time and materials method ("Time and Materials") or an alternative mutually agreed upon method of payment set forth in the applicable Purchase Order as confirmed by the Contractor; provided that, in the event the Parties do not agree on the Lump Sum or alternative payment method, the Time and Materials method shall be used. Additionally, the Contractor may require certain portions or all of the compensation applicable for a particular Purchase Order to be paid in advance.

Lump-Sum. If the compensation to Contractor is based on a Lump Sum payment method, then such Lump Sum amount shall be set forth in the applicable Purchase Order, as expressly confirmed in writing by the Contractor, describing the Services to be performed.

## Time and Materials.

- i. If the compensation to Contractor is based on a Time and Materials payment method, then Purchaser shall reimburse Contractor for the costs, fees and expenses incurred (collectively, "Fees and Expenses"), including but not limited to:
  - a. The number of hours worked by Contractor, its employees and/or Subcontractors performing the Services multiplied by the applicable hourly rates; and
  - b. Contractor's reasonable expenses related to or attributable to the Services, such as reasonable travel and lodging expenses, supplies, reproduction and equipment rental, if necessary, for performance of the Services, mileage, Materials or such other charges as documented by the Contractor.
- ii. In the event the Parties have agreed to specific rates which apply to a Time and Materials payment method, such rates shall be set forth in the Rate Schedule attached as Exhibit D, which shall be updated by Contractor from time to time, at a minimum, once per calendar year.

## 3. INVOICING AND PAYMENT

Invoicing. Contractor shall use reasonable efforts to submit invoices to Purchaser for Services performed on a monthly basis for all Services performed by Contractor during the prior month. Each invoice (i) shall identify the Purchase Order number and shall include sufficient line item detail for Purchaser to reasonably verify the basis of the charges, including the Services performed and applicable quantities and pricing of Materials, if separately priced and (ii) shall be accompanied by any supporting information or documentation reasonably requested by Purchaser. Invoices submitted for Fees and Expenses charged on an hourly basis shall be supported by documents, time sheets or such other reasonable documentation showing description, date and location of Services performed. Invoices submitted for Fees and Expenses charged as allowable expenses shall be supported by copies of the actual receipts forming the basis of reimbursement. Furthermore, Applicable Taxes or similar fees paid by Contractor on behalf of Purchaser shall be invoiced and supported by reasonable documentation.

Payment. Payment terms are net thirty (30) days from Purchaser's receipt of an invoice unless otherwise specified in the Purchase Order. In the event of a dispute regarding any invoice submitted by Contractor: (i) all amounts not disputed shall be paid by Purchaser as required by this Section 3, (ii) Purchaser shall promptly (but in any event within ten (10) days) notify Contractor in writing of any such dispute, and (iii) payment of any withheld and disputed amount shall be made within ten (10) days following resolution of the dispute.

## 4. INSURANCE

During the Term of this Agreement, each of Contractor and Purchaser, at its sole cost and expense, shall procure and maintain insurance coverage with the coverages and conditions set forth in Exhibit C.

## 5. TERM OF AGREEMENT/TERM OF PURCHASE ORDERS

During the Term of this Agreement, each contractor and Purchaser, at its sole cost and expense, shall procure and maintain insurance coverage with the coverages and conditions set forth in Exhibit C.

## 6. NOTICES

Statements and reports required of Contractor hereunder shall be addressed to the individual designated on the particular Purchase Order. Invoices and Notices required of the Parties herein shall be addressed to the address set forth below or as otherwise provided in writing by one Party to the other:

<b>Contractor</b>	<b>Purchaser</b>
Wärtsilä North America Inc. Attention: Scott Hannen 11710 N. Gessner Rd, Suite A, Houston, TX 77064 Facsimile No.: 281-233-6233 Phone No.: 281-233-6200	Denton Energy Center Attention: Jason Brown 8161 Jim Christal Road Denton, TX 76207 Phone No.: 806-786-5572

## 7. ENTIRE AGREEMENT

This Agreement, together with all Exhibits referenced herein and Purchase Orders executed by the Parties, constitutes the entire agreement between the Parties in relation to the Services and supersedes all prior agreements, understandings and commitments, whether oral or in writing, between the Parties. This Agreement may not be amended or modified in any manner except by a written document signed by both Parties that expressly amends this Agreement. All additional and/or conflicting terms and conditions that may appear on written documents including Purchase Orders, service order tickets, or invoices shall be null and void.

## 8. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall constitute an original and together which shall constitute one and the same agreement.

*[REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized Representatives as of the date first written above.

Accepted and Agreed to:  
**Wärtsilä North America, Inc.**

DocuSigned by:  
By: Byron J. Guidry  
48987B1B463448D...  
Printed Name: Byron J. Guidry  
Title: Account Manager-Energy Services

Accepted and Agreed to:  
**City of Denton**

DocuSigned by:  
By: Sara Hensley  
5236DB296270423...  
Printed Name: Sara Hensley  
Title: INTERIM CITY MANAGER

## EXHIBIT A – MASTER SERVICES AGREEMENT

**GENERAL TERMS AND CONDITIONS****A.1. DEFINITIONS**

As used in this Agreement, the following terms and expressions shall have the following meanings:

- A. **"Affiliate"** means any Person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person. For purposes of this definition, "control" shall mean ownership, directly or indirectly, of either the outstanding voting stock of the controlled Person or any other ownership interest in the controlled Person if such interest has, directly or indirectly, the power to direct or cause the direction of the management and policies of such relevant Person.
- B. **"Applicable Law"** means all applicable laws, regulations, ordinances, statutes, codes, regulations and other rules, as amended, of any international, federal, state, municipality, territory, parish, county, local government or political subdivision thereof or any other duly constituted public authority having jurisdiction over the Parties, the Facilities or the performance of the Services.
- C. **"Applicable Taxes"** shall have the meaning set forth in Section A.17.B of this Agreement.
- D. **"Arbitration Rules"** shall have the meaning set forth in Section A.20 of this Agreement.
- E. **"Change Order"** means a written authorization agreed to and/or signed by Purchaser and Contractor, regarding a deletion or modification to a Purchase Order.
- F. **"Change of Law"** means the coming into force or enacting after the Effective Date of (i) any new Applicable Law, (ii) any reform, modification or revocation of any Applicable Law or official interpretation of such Applicable Law, (iii) the adoption of a new official interpretation of any Applicable Law, or (iv) the issuance of resolutions or other administrative acts by a competent Governmental Authority which changes the nature, application or interpretation of the Applicable Law in force as of the Effective Date.
- G. **"Claims"** means all liabilities, judgments, costs (including court costs, reasonable attorneys' fees and costs of investigation), losses, fines, penalties, expenses, damages, claims, suits, disputes and demands.
- H. **"Confidential Information"** shall have the meaning set forth in Section A.15.A of this Agreement.
- I. **"Effective Date"** shall have the meaning set forth in the first paragraph of this Agreement.
- J. **"Event of Default"** shall have the meaning set forth in Section A.11.A of Exhibit A.
- K. **"External Cybersecurity Threat"** means any threat, act, attack or other incident which negatively affects the reliable workings of the Contractor Provided Equipment, which originated outside of the physical site housing the Contractor Provided Equipment.
- L. **"Facilities"** means the facilities, site and/or location where the Services are performed.
- M. **"Fees and Expenses"** shall have the meaning set forth in Section 2.C.i of this Agreement.

- N. "Force Majeure" means any event or circumstance or combination of events and circumstances that is beyond the reasonable control of a Party and not due to its fault or negligence and could not have been avoided by the exercise of reasonable due diligence by the Party claiming to be excused; such events or circumstances include but are not limited to: drought, fire, severe storms, floods, tsunamis, lightning, explosions, tornadoes, hurricanes, earthquakes, landslides and other acts of God or catastrophic natural events, war, riots, civil disturbances, terrorist attacks, revolts, insurrections, sabotage, strikes and other labor disputes, commercial embargoes, epidemics or quarantine restrictions, failure of a subcontractor to provide manpower, materials or goods caused by an event that qualifies as Force Majeure, Changes in Law, expropriation or confiscation, or action, inaction, or restraint of a Governmental Authority, including but not limited to denial or failure to grant required permits, licenses or authorizations.
- O. "Governmental Authority" means any international, federal, state or local government or other political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity thereof having proper jurisdiction over the Facility or the Parties.
- P. "Indemnified Party" and "Indemnifying Party" shall have the respective meanings set forth in Section 9.C.
- Q. "Initial Term" shall have the meaning set forth in Section 5 of this Agreement.
- R. "Insolvency Event" means the Party (i) makes a general assignment for the benefit of its creditors; (ii) commences a proceeding under applicable bankruptcy law or other Applicable Law for the relief of debtors; (iii) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts; (iv) the appointment of a trustee, custodian, conservator, receiver or similar official for it, or for a substantial part of its property; (v) becomes insolvent or is unable to pay its debts as they become due; or (vi) has instituted against it any involuntary bankruptcy, reorganization, debt arrangement, or other proceeding under any applicable bankruptcy, insolvency or other similar law for the relief of debtors or any dissolution or liquidation proceeding, which is not dismissed or stayed within forty-five (45) days after it is commenced.
- S. "Internal Cybersecurity Threat" means any threat, act, attack or other incident which negatively affects the reliable workings of the Contractor-Provided Equipment, which originated inside of the physical site housing the Contractor-Provided Equipment.
- T. "Improper Service Work" means any act or failure to act which contradicts the OEM-recommended maintenance, configuration and advisable operations resulting in detrimental reliability or increased possibility of failure.
- U. "Lump Sum" shall have the meaning set forth in Section 2.A of this Agreement.
- V. "Materials" means all materials, parts and/or goods provided to Purchaser or incorporated into the Facility as part of the Services.
- W. "Notice" means all notices, consents, approvals, certifications, requests, demands and authorizations.
- X. "Person" means an individual, corporation, limited liability company, partnership, joint venture, unincorporated organization or any other legal entity.

- Y. "Purchase Order" shall have the meaning set forth in Section 1.A of this Agreement.
- Z. "Renewal Term" shall have the meaning set forth in Section 5 of this Agreement.
- AA. "Representatives" shall mean a Party's directors, officers, employees and agents.
- BB. "Services" means the service work to be performed by Contractor for Purchaser pursuant to a Purchase Order accepted by Contractor pursuant to this Agreement.
- CC. "Subcontractors" means a Person of any tier (including vendors and suppliers) who (i) performs any part of the Services and who is not a direct employee of Contractor or (ii) performs any services for Purchaser at the Facility (other than Contractor or its Subcontractors) and who is not a direct, full-time employee of Purchaser.
- DD. "Term" shall mean the Initial Term and any and all Renewal Terms.
- EE. "Time and Materials" shall have the meaning set forth in Section 2.A of this Agreement.

## **A.2. CONTRACTOR'S GENERAL OBLIGATIONS**

- A. General. Contractor shall furnish the Materials and/or Services pursuant to a Purchase Order if and when agreed to and acknowledged by Contractor.
- B. Scheduling. Any agreed upon schedules or delivery or completion date(s) under this Agreement shall be considered estimates only unless Contractor and Purchaser otherwise agree to a firm date for completion or delivery and such date is specified in a Purchase Order agreed to by Contractor. Contractor shall use commercially reasonable efforts to perform the Services in accordance with the estimated completion date(s) set forth in the applicable Purchase Order, subject to the applicable provisions set forth in any Change Order. Contractor shall promptly notify Purchaser of events or circumstances that may, immediately or in the future, materially impede the proper and timely execution of any Services so that remedial action, as is appropriate under the circumstances, may be taken.
- C. Monitoring of Services. Contractor shall provide Purchaser and its representatives the right to inspect and monitor, upon reasonable Notice to Contractor and during regular business hours, Contractor's on-site operations and facilities including tools, equipment, Materials, Services and inventory thereof. Such inspection and monitoring shall be at the cost of Purchaser, and Purchaser shall be responsible for any risks, liabilities incurred by Purchaser's personnel during such inspection and monitoring.

## **A.3. SHIPMENT AND DELIVERY OF MATERIALS**

- A. Packaging, shipment and delivery of all Materials shall be in accordance with this Agreement, including the applicable Purchase Order(s).
- B. All shipments of Materials shall be made DDP as defined under Incoterms® 2020 or as designated in the applicable Purchase Order and written acknowledgement by Contractor. All shipping dates provided by Contractor are estimates only subject to availability of the applicable Materials at the time of the Purchase Order.  
as defined under Incoterms® 2010 or as designated in the applicable Purchase Order and written acknowledgement by Contractor. All shipping dates provided by Contractor are estimates only subject to availability of the applicable Materials at the time of the Purchase Order.

- C. Purchaser reserves the right (payment notwithstanding) to reject and return that portion of any shipment of Materials that may be defective or otherwise fail to comply with an applicable Purchase Order; provided that Notice of such rejection (describing in detail the reason for rejection) is provided to Contractor in writing within seventy-two (72) hours after delivery to Purchaser of such Materials. Purchaser shall be deemed to have accepted the Materials if no rejection Notice is provided to Contractor within such seventy-two (72) hour period.

#### **A.4. USE AND CONDITION OF THE FACILITIES AND EQUIPMENT**

Purchaser shall provide when necessary for Contractor, at no cost to Contractor, ancillary manpower equipped with appropriate tools (such as drills and hand lamps), heavy duty hoisting and transport facilities along with the necessary fuel, lubricants, water, electricity, compressed air and cleaning facilities for Contractor's performance of the Services. Additionally, Purchaser shall advise Contractor of information concerning (i) the local laws and regulations applicable to the Services and (ii) any dangerous conditions or unusual risks that may be encountered in Purchaser's Facility or in the use of any equipment or tools provided by Purchaser.

#### **A.5. SAFETY AND WORKPLACE POLICIES**

Purchaser shall be responsible for providing a healthy and safe work place and working environment for Contractor's Representatives during performance of Services at any Facility controlled by Purchaser. The Parties shall comply with all safety requirements imposed by Applicable Law for the safety of Persons or property. To the extent Services are performed at a Facility controlled by Purchaser, Contractor shall comply with Purchaser's applicable policies and procedures.

#### **A.6. WARRANTIES**

- A. General Warranties. Should the Services performed by Contractor be inadequate due to defective workmanship, Contractor shall re-perform such Services at no additional cost to Purchaser. Contractor shall also repair or, at its discretion, replace any defect in material or manufacturing in the Materials supplied by Contractor under this Agreement, provided that Purchaser notifies Contractor of such defect during the warranty period. When required by Contractor, such Material(s) shall be returned to Contractor, at Contractor's cost, to the location provided by Contractor. Purchaser shall immediately take appropriate steps to prevent any defect from becoming more serious and to enable Contractor to repair such defect at no additional cost to Purchaser. Any warranty claims or requests must be made by Purchaser within fourteen (14) days from discovery during the warranty period.
- B. Replaced Materials. Contractor shall bear only the costs of repairing or replacing the defective Materials at the location designated by Contractor, as well as the cost to transport defective and repaired or replaced Materials between the location designated by Contractor and the Purchaser destination indicated on the applicable Purchase Order for such Materials. Materials that have been replaced shall become Contractor's property.
- C. Warranty Period. The warranty period for Services performed is limited to defects which appear within six (6) months from the performance of Services. The warranty period in respect of Services which have been re-performed under the warranty shall expire six (6) months following the last day on which the Services were re-performed under the warranty. The warranty period for the Materials begins at delivery and ends either (i) twelve (12) months upon installation or (ii) eighteen (18) months from the date of delivery to Purchaser, whichever occurs earlier. The warranty period for repaired or replaced Materials shall be six (6) months from the date of repair or replacement, or until the expiration date of the original warranty period, whichever occurs earlier, under the same



terms, conditions and limitations of liability. Under no circumstances shall the warranty period for Services of Materials exceed thirty-six (36) months from the commencement of the original warranty period.

D. Limits on Warranty. This warranty does not cover any defect due to or connected with: (i) any materials or components or design provided by Purchaser or on behalf of Purchaser; (ii) negligence or other improper acts or omissions of Purchaser, its employees or agents or other third parties; (iii) spare parts not supplied by Contractor; (iv) improper installation or alterations carried out without Contractor's consent in writing; (v) parts, accessories or attachments that are not sold, supplied or expressly approved in writing by Contractor; or (vi) parts provided by Contractor that are warranted directly to Purchaser by another manufacturer. This warranty does not cover any defects that are caused by or connected with the design, normal wear and tear, the use of unsuitable material or consumables by Purchaser, fluctuation in the grid or with any use, maintenance, service or operation of the equipment or the spare parts or any part thereof which is not in conformity with Contractor's or any of its Subcontractors' manuals, instructions or specifications or that is otherwise not in accordance with normal industry practice. Contractor's warranty obligation does not include any craning, electricity, scaffolding, assisting work, docking, towage, underwater or diving work, demounting, mounting nor any travel and boarding costs of Contractor's personnel or Representatives. If after Contractor's warranty investigation it is found that Purchaser does not have a warranty claim within the scope of this Agreement, then Purchaser shall be responsible for all applicable costs and expenses for such inspection, repaired or replaced components or other services.

**E. THE WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES BY CONTRACTOR APPLICABLE TO THE MATERIALS AND SERVICES PROVIDED HEREUNDER AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY EXPRESSED OR IMPLIED AGAINST DEFECTS, LATENT OR OTHERWISE. CONTRACTOR NEITHER ASSUMES, NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT, ANY OTHER WARRANTY OBLIGATION IN CONNECTION WITH THE MATERIALS OR SERVICES PROVIDED HEREUNDER OR ANY PART THEREOF.**

#### **A.7. MECHANICS' LIENS**

To the extent that Purchaser has paid all amounts due and owing to Contractor for the Services, Contractor shall keep the Facility and the Services free of all mechanic's and materialmen's liens and encumbrances with respect to Services provided under this Agreement. Title to any part, material, equipment, supplies, consumables or replacement and any other items furnished, provided or supplied by Contractor in performance of the Services shall pass to Purchaser only when payment in full has been received by Contractor. If such a lien or encumbrance is filed on the Facility or the Services despite Purchaser's payment of the applicable amounts due, Contractor will take whatever steps are necessary to have the lien or encumbrance satisfied, removed or otherwise discharged, and the Purchaser shall provide assistance as may be reasonably requested by Contractor. If Contractor fails to satisfy or remove the lien or encumbrance, Purchaser may satisfy, remove or discharge, by bond or otherwise, the lien or encumbrance, and Contractor shall be liable to Purchaser for all reasonable costs and expenses in connection with such satisfaction, removal or discharge.

#### **A.8. HAZARDOUS SUBSTANCE DISPOSITION**

Purchaser shall be responsible for all costs and expenses associated with any clean-up, removal, response or remediation of any and all hazardous substances or waste material required by any governmental authority or environmental law, except to the extent that the existence of such

contamination directly arises out of the gross negligence or willful misconduct of Contractor in the performance of the Services. Unless otherwise prohibited under Texas law, Purchaser shall indemnify and hold harmless Contractor from and against any and all Claims arising out of or resulting from any matter for which Purchaser is responsible pursuant to this Section A.8.

## **A.9. INDEMNIFICATION**

A. Indemnification by Contractor. Contractor shall indemnify and hold harmless Purchaser, its Representatives from and against any and all third party Claims of any kind or nature whatever to or in respect of Persons or property arising out of, resulting from or relating to the willful misconduct or gross negligence of Contractor in performing its obligations under this Agreement.

B. Indemnification by Purchaser. Unless otherwise prohibited under Texas law, Purchaser shall indemnify and hold harmless Contractor, its Representatives, contractors, and suppliers, from and against any and all third party Claims of any kind or nature whatever to or in respect of Persons or property arising out of, resulting from, or relating to the performance by Contractor obligations under this Agreement and not resulting from or relating to the willful misconduct or gross negligence of Contractor.

C. Notices. If any Party entitled to indemnification hereunder (the "Indemnified Party") intends to seek indemnification under this Section 9 from the other Party (the "Indemnifying Party") with respect to any Claim, the Indemnified Party shall give the Indemnifying Party Notice of such Claim upon the receipt of actual knowledge or information by the Indemnified Party of any possible Claim or of the commencement of such Claim, which period shall in no event be later than the lesser of (a) fifteen (15) business Days prior to the last Day for responding to such Claim or (b) one half of the period allowed for responding to such Claim. The Indemnifying Party shall have no liability under this Section 9 for any Claim for which such Notice is not provided, unless the failure to give such Notice does not prejudice the Indemnifying Party. The Indemnifying Party shall have the right to assume the defense of any such Claim with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party. Should any Indemnified Party be entitled to indemnification under this Section 9 as a result of a Claim by a third Party, and should the Indemnifying Party fail to assume the defense of such Claim, the Indemnified Party may, at the expense of the Indemnifying Party, contest (or, with the prior consent of the Indemnifying Party, settle) such Claim. Except to the extent expressly provided herein, no Indemnified Party shall settle any Claim with respect to which it has sought or intends to seek indemnification pursuant to this Section 9 without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

D. Cybersecurity Indemnification. Unless otherwise prohibited under Texas law, Purchaser shall defend, indemnify and hold harmless Contractor and Contractor's parent and subsidiaries, affiliates, and their respective officers, directors, employees, agents, successors and permitted assigns (each, a "Contractor Indemnitee") from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees, the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, arising out of or resulting from any cybersecurity breach arising out of or resulting from Purchaser's failure to comply with any of its obligations under this provision. For the

absence of doubt, Purchaser shall not be obligated to indemnify Contractor for Contractor's actions or inactions with respect to Contractor's cybersecurity obligations.

#### **A.10 LIMITATION OF LIABILITY**

**A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CONTRACTOR BE LIABLE, WHETHER IT BE IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR TORT, TO THE PURCHASER FOR ANY AMOUNTS IN EXCESS OF FIFTY PERCENT (50%) OF THE AMOUNTS PAID BY PURCHASER TO CONTRACTOR UNDER THIS AGREEMENT DURING THE CONTRACT YEAR GIVING RISE TO THE LIABILITY OR INCIDENT GIVING RISE TO THE LIABILITY EXCEPT FOR CLAIMS COVERED BY CONTRACTOR'S POLICY OF INSURANCE SPECIFIED IN EXHIBIT C TO THIS AGREEMENT TO THE EXTENT OF THE LIMITS SO SPECIFIED.**

**B. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS OR LOST REVENUES, TOWAGE CHARGES, POLLUTION REMEDIATION COSTS, COSTS FOR DOCKING, DIVING OR UNDERWATER WORK, COSTS FOR ADDITIONAL TESTS) ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT OR THE SERVICES.**

#### **A.11 CYBERSECURITY LIMITATION OF LIABILITY**

Contractor shall not be liable for any harm, injury or damages due to or arising in connection with: (1) software provided by Purchaser; (2) systems other than those provided by Contractor except if such other systems are modified by Contractor to interface or communicate with Contractor's proprietary software; or (3) Improper Service Work, installation or alterations carried out by Purchaser.

#### **A.12. TERMINATION FOR DEFAULT**

A. Event of Default. Each of the following shall constitute an event of default under this Agreement ("Event of Default"):

- i. Either Party shall fail in any material respect to comply with, observe, or perform, or shall default in any material respect, in the performance of the Services or any of the terms and conditions of this Agreement or any Purchase Order, as applicable;
- ii. Either Party shall fail to make any payment when due hereunder; or
- iii. The occurrence of an Insolvency Event with respect to either Party.

B. Notice and Cure for Default. If an Event of Default as defined in Section A.11.A.i or Section A.11.A.ii occurs, the non-defaulting Party shall provide the defaulting Party with Notice of the Event of Default. The defaulting Party shall have sixty (60) days following receipt of such Notice to cure the Event of Default, provided that if such Event of Default (other than a payment default) is not capable of being cured within such sixty (60) day period with the exercise of reasonable diligence, then such cure period shall be extended for an additional reasonable period of time, not to exceed

ninety (90) days, so long as the defaulting Party is exercising reasonable diligence to cure the default.

- C. Remedies for Default. If the Notice was given by the non-defaulting Party as provided for in Section A.11.B and the Event of Default is not cured by the expiration of the corresponding period for cure or if an Event of Default as defined in Section A.11.A.iii occurs, the non-defaulting Party, by Notice in writing to the defaulting Party may, in addition to any other rights and remedies available to it under this Agreement or at law or in equity, suspend or terminate this Agreement and/or any Purchase Order. In such event, the non-defaulting Party shall have no further obligation to the defaulting Party with respect to this Agreement or Purchase Order except with respect to Services already performed by Contractor in accordance with this Agreement. The defaulting Party shall remain liable to the non-defaulting Party for any and all Claims that the non-defaulting Party may have against the defaulting Party under this Agreement or the applicable Purchase Order. Further, Contractor shall have the right to suspend any Services until the default is cured if Notice was given by Contractor to Purchaser as provided for in Section A.11.B.

### **A.13. TERMINATION FOR CONVENIENCE**

- A. Termination for Convenience by Purchaser. Purchaser may terminate this Agreement and/or any Purchase Order at any time for its sole convenience by giving Contractor at least thirty (30) days prior written Notice to such effect. In the event of any such termination, Contractor shall promptly stop all terminated Services for such Purchase Order and/or for the Agreement unless notified by Purchaser in writing to the contrary. In the event of such termination for convenience, Purchaser shall pay Contractor that portion of the total consideration specified in the Purchase Order equal to the portion of the Services performed in accordance with this Agreement prior to the effective date of termination, less any payments made prior to such termination plus an amount equal to any and all applicable demobilization costs incurred by Contractor.
- B. Termination for Convenience by Contractor. Contractor may terminate this Agreement in the event of a material change in Contractor's business operations without cause effective thirty (30) days upon providing written Notice to Purchaser to such effect. Purchaser shall pay Contractor that portion of the total consideration specified in the Purchase Order equal to the portion of the Services performed in accordance with this Agreement prior to the effective date of termination, less any payments made prior to such termination.

### **A.14. RIGHT TO AUDIT**

The Purchaser shall have the right to audit the Contractor's invoices, work sheets, and time sheets related to work performed under this Agreement and/or the applicable Order(s). Contractor agrees to maintain such records for a period of two (2) years from the date such work was performed and to make the foregoing available to the Purchaser or Purchaser's representatives at the Purchaser's cost during normal business hours. Nothing herein shall oblige Contractor to disclose documents that will reveal neither the Contractor's commercial costs nor information that is confidential or proprietary.

### **A.15. FORCE MAJEURE**

- A. Neither Contractor nor Purchaser shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, caused by or arising from an event of Force Majeure.
- B. If the Services are interrupted by Force Majeure or for other reasons not attributable to Contractor, the costs for maintaining personnel at or near the Facility (including, without limitation, wages and

lodging) will be borne by Purchaser. Upon the occurrence of an even of Force Majeure, one Party shall notify the other Party of such occurrence and the anticipated delays in writing. If the interruption continues for more than one week, Contractor's personnel may be returned to Contractor's country. All expenses in relation to such withdrawal and/or subsequent return shall be borne by Purchaser. If the period of suspension exceeds one (1) month, either party may terminate the Agreement by three (3) days Notice in writing to the other party without prejudice to the rights of either Party up to the date of termination. In the case of such a termination, Purchaser's payment of the applicable consideration and demobilization costs of Contractor shall be handled as a termination for convenience by Purchaser in accordance with Section A.12.A. All reasonable additional costs incurred by Contractor as a consequence of the suspension and any subsequent resumption or completion of the Services shall be reimbursed by Purchaser.

#### **A.16. CONFIDENTIALITY**

- A. Subject to the Texas Public Information Act, court order, or other law, each Party agrees, for itself and its Affiliates and their Representatives, to keep confidential and not make any unauthorized use of any confidential or proprietary information of the other Party disclosed to such Party in and during the performance of this Agreement, including documents, specifications, formulae, evaluations, methods, processes, technical descriptions, reports and other data, records and information (hereinafter the "Confidential Information").
- B. Confidential Information shall be identified in writing by the disclosing Party, or if it is orally disclosed, the confidentiality thereof shall be confirmed in writing by the disclosing Party promptly after such oral disclosure. In any event, no disclosure shall be deemed to be Confidential Information if such information:
  - (i) was known on a non-confidential basis by the recipient prior to the disclosure thereof by the disclosing Party;
  - (ii) is, or shall become, other than by an act of the recipient, generally available to the public;
  - (iii) is lawfully made available on a non-confidential basis to the recipient by a third Party in good faith; or
  - (iv) was developed by the recipient without reference to or reliance upon Confidential Information received from the disclosing Party.
- C. Each Party agrees that it will make available the other Party's Confidential Information only on a "need to know" basis to such Party's personnel and that all Persons to whom such Confidential Information is made available will be made aware of the strictly confidential nature of such Confidential Information. If either Party deems it necessary to disclose Confidential Information to any third party, such Party must receive written authorization from the other Party.
- D. The Confidential Information will remain the property of disclosing party. Nothing contained in this Agreement shall be construed as a right or license, express or implied, under any patent, copyright, trademark or intellectual property right, or application therefore, that is now or hereafter owned, applied for, or controlled by a disclosing party or any of its partners or Affiliates.

## **A.17. CLAIMS FOR INFRINGEMENT**

- A. Contractor warrants that the Services will not infringe on any copyright, patent, trade secret or other proprietary interest of any third party. Contractor shall indemnify, defend and hold harmless the Purchaser Indemnified Parties against all Claims for any copyright, patent or other proprietary right infringement or misappropriation of a trade secret, arising out of or resulting from the performance of the Services delivered by Contractor under this Agreement. In the event Purchaser's use of any Services is interrupted as a result of such a Claim, then Contractor shall, at its sole cost and expense and Purchaser's option, either (i) procure for Purchaser the right to continue using the infringing Services as though it were non-infringing, or (ii) replace or modify the infringing portion of the Services to make such Services non-infringing without materially impairing their usefulness or performance.
- B. Intellectual property rights associated with the Services or any document or data provided by Contractor in connection therewith shall remain Contractor's property. Unless otherwise prohibited under Texas law, Purchaser shall defend, indemnify and hold harmless Contractor against all Claims arising out of or resulting from any reuse, modification, reproduction or publication of Contractor's intellectual property documents or data by Purchaser or one of its Subcontractors.

## **A.18. TAXES**

- A. General. Unless otherwise expressly set forth in the applicable Purchase Order, Contractor shall be fully responsible for all state and federal income taxes, pension benefits, social security taxes, employment, disability and for any other taxes (except sales, use, excise and gross receipts taxes addressed below) which may be due and owing by Contractor.
- B. Applicable Taxes. Except for Contractor's obligations under Section A.17.A, Purchaser will be responsible for all applicable taxes that arise in any jurisdiction, including, without limitation, value added, sales, use, gross receipts, excise or other taxes, fees, customs fees, duties, however designated, imposed on, incident to, or based upon the Services (collectively "Applicable Taxes"). If Purchaser is entitled to an exemption from any Applicable Taxes, Purchaser is responsible for presenting Contractor with a valid exemption certificate (in a form reasonably acceptable to Contractor). Unless otherwise prohibited under Texas law, Purchaser shall indemnify and hold Contractor harmless for any determination by a Government Authority (i) that Contractor be held liable for such taxes or (ii) regarding the validity or applicability of Purchaser's tax exemptions.

## **A.19. CHANGE ORDERS**

- A. Requests by Purchaser for any modifications or changes to Contractor's Services, including but not limited to, additions, deletions or other revisions, must be issued in writing by an authorized representative of Purchaser. All such Change Order requests are subject to Contractor's written acceptance, and may result in adjustments to fees, expenses and delivery schedules as mutually agreed in writing.
- B. The Parties acknowledged that Purchaser's inability to fully comply with its responsibilities under this Agreement may impact the Contractor's Services. Therefore, Purchaser's failure to adhere to its obligations or interference with the Services shall entitle Contractor to a Change Order under this Section A.18.
- C. If Purchaser initiates any modifications to the Facilities not disclosed and reviewed with the Contractor prior to the Effective Date or if Contractor requests changes to this Agreement as made necessary by the happening of an event of Force Majeure or a Change of Law, Contractor shall be entitled to a Change Order.

- D. Contractor shall be entitled to suspend its performance for the particular Purchase Order pending the agreement of the Parties as to the relevant adjustments in scope, compensation and scheduling for any given Change Order.

#### **A.20. GOVERNING LAW**

This Agreement shall be governed and construed in accordance with the laws of the State of Texas without regard to its conflicts of law principles.

#### **A.21. ARBITRATION**

The Parties shall attempt to resolve any Claim arising out of or relating to this Agreement or the breach thereof by amicable negotiations. If the Parties are unable to resolve the Claim through such negotiations, then the issue shall be submitted to binding arbitration under the arbitration rules of the International Chamber of Commerce (the "Arbitration Rules") then in effect. The arbitration shall be held in Houston, TX, and the proceedings shall be in the English language. If the amount of any asserted Claim or counterclaim does not exceed One Million Dollars (\$1,000,000), the arbitration shall be conducted before a single arbitrator selected in accordance with the Arbitration Rules. Otherwise, the arbitration shall be conducted in accordance with the procedures of the Arbitration Rules before a panel of three (3) arbitrators, with each Party selecting one arbitrator and the third arbitrator, who shall be the chairman of the panel, being selected by the two Party-appointed arbitrators. The award rendered by the arbitration shall be final and judgment thereon may be entered by any court having jurisdiction thereof.

#### **A.22. COMPLIANCE WITH APPLICABLE LAW AND CHANGE OF LAW**

- A. Purchaser and Contractor respectively agree to comply with all Applicable Laws which are now or may become applicable to Services performed under this Agreement or any applicable Purchase Order(s). In the event a Change of Law relating to this Agreement causes an increase of the fees for Services or other compensation due to the Contractor or other adjustments to Contractor's Services, the Parties shall consult in good faith to reach an agreement as to either (i) the adjustment in compensation that should apply and/or (ii) the appropriate scope of Change Order associated with the Change of Law.
- B. Either Party shall provide prompt Notice to the other Party of the occurrence of a Change of Law. Such Notice shall include the notifying Party's opinion as to the impact on its performance of its obligations under the Agreement. In case of disagreement between the Parties concerning the implication and consequences of the increase in the expenditures and/or costs because of a Change of Law, and an agreement cannot be reached between the Parties after thirty (30) days, either Party may terminate this Agreement with three (3) days prior written Notice.
- C. In the event any provision of this Agreement is inconsistent with or contrary to any Applicable Law, said provision shall be deemed to be modified to the extent required to comply with said law, and this Agreement as so modified, shall remain in full force and effect.

#### **A.23. RELATIONSHIP OF THE PARTIES**

Nothing contained in this Agreement shall be construed to constitute either Party as the partner, employee or agent of the other, and neither Party shall have the authority to bind the other in any respect, it being intended that each shall remain responsible for its own actions. Contractor is retained

only for the purposes and to the extent set forth in this Agreement and applicable Purchase Order(s), and Contractor's relationship to Purchaser shall be that of an independent contractor.

Contractor may retain any Subcontractor necessary to assist Contractor in the performance of the Services that is qualified and capable of performing its portion of the Services in accordance with this Agreement and its subcontract. The creation of any Subcontractor relationship by either Party shall not relieve either Party of any of its obligations under this Agreement and such Party who has the Subcontractor shall be responsible for the acts of such.

#### **A.24. MISCELLANEOUS**

- A. Assignment. Neither Party shall assign this Agreement nor any of its rights or obligations under this Agreement without the prior written approval of the other Party and any attempt to make such an assignment shall be void.
- B. No Waiver. No waiver by either Party of the performance of any provision, condition or requirement of this Agreement shall be deemed to be a waiver of, or in any manner release the other Party from, performance of any other provision, condition or requirement of this Agreement; nor shall it be deemed to be a waiver of, or in any manner release the other Party from future performance of the same provision, condition, or requirement; nor shall any delay or omission of a Party in exercising any right hereunder in any manner impair the exercise of any such right or any like right accruing to it thereafter. No waiver shall be effective unless expressly made in writing and signed by the Party to be charged with such waiver.
- C. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable (i) such provision will be fully severable, (ii) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.
- D. No Publicity. Neither Party shall reveal any information concerning details of this Agreement to the press or a news-disseminating agency or use the details of this Agreement within any advertising, promotional material, publicity or other printed material without the other Party's prior written approval in each instance.
- E. Construction. The Parties acknowledge that this Agreement was the subject of fair negotiation between the Parties, and that neither Party shall be considered the "drafter" of this Agreement for the purpose of construing any of its terms and conditions. Article and Section headings and numbers are provided for convenience only, and shall not affect the construction or interpretation of this Agreement. References to "days" or a "day" shall mean a calendar day, unless otherwise stated.
- F. Notices. Any Notice provided for in this Agreement shall be duly given if delivered by (i) hand, (ii) registered or certified mail, return receipt requested, (iii) facsimile or (iv) by electronic mail, with acknowledged receipt by the other Party. The Parties may change their respective addresses for receipt of Notices upon reasonable advance notice to the other. Any Notice given by hand delivery or registered mail shall be deemed given at the time of delivery and facsimile transmission or electronic mail shall be deemed to be given, respectively, at the time of transmission or when electronic delivery has been confirmed.

#### **A.25. EQUIPMENT TECHNICAL DATA**



Purchaser consents to the collection and use of information and to the ownership of the derived or incorporating works as set forth herein. Purchaser shall be responsible for providing equipment technical data through any reasonable means requested by Contractor, including internet-connected devices. The term "Equipment Technical Data" refers to all data relating to the technical operating parameters of any equipment delivered, including without limitation, all information that Contractor shall gather from sensors, instruments, monitors, or other industrial control or SCADA devices located at Purchaser's sites or on the equipment delivered. Equipment Technical Data shall be transmitted to Contractor for purposes including, but not limited to, developing its products, solutions and services. Contractor, Contractor's parent, subsidiaries and/or affiliates shall own all works, products, reports and improvements each may develop based upon, derived from, or incorporating Equipment Technical Data. Equipment Technical Data may be transferred (a) to Contractor's parent, subsidiaries and/or affiliates and (b) to third parties who act for or on Contractor's behalf for processing in accordance with the non-exclusive purpose(s) listed above or as may otherwise be lawfully processed. Equipment Technical Data may also be disclosed to a third party if Contractor is required to do so due to an applicable law, court order or governmental regulation, or if such disclosure is otherwise necessary in support of any criminal or other legal investigation. Contractor's rights to use Equipment Technical Data shall survive the termination or expiration of this Agreement, any applicable warranty period and any other commercial contract between the Contractor and Purchaser.

#### **A.26. CYBERSECURITY PROTECTION**

Contractor shall deliver Contractor Provided Equipment together with its logic-bearing system components (e.g., hardware, firmware, and software hereafter referred to collectively as the "Critical Components") free of any software virus and malware detectable by current standard industry best practices. Unless otherwise agreed, upon delivery of Contractor Provided Equipment, the Purchaser shall be solely responsible for any non-Contractor Provided Equipment system integrations and/or system security engineering. It is Purchaser's sole responsibility to protect Critical Components from any External Cybersecurity Threat or Internal Cybersecurity Threat, including against hardware and software vulnerabilities. In recognition of the foregoing, Purchaser agrees and covenants that it shall use the degree of care appropriate to prevent unauthorized access, use, or hacking of the Critical Components provided in connection with Contractor Provided Equipment and shall do so in a manner that is no less rigorous than any recommendations provided by Contractor and accepted industry practices.

EXHIBIT B – MASTER SERVICES AGREEMENT

SAMPLE PURCHASE ORDER FORM

MSA No. [XXX]

Purchase Order

Purchaser: \_\_\_\_\_  
[Address]

DUPLICATE  
via Print                      Dispatch

Purchase Order No. [XXXX]

Date                                      Page: 1

Payment Terms: Net 30

Freight Terms                      Ship Via

Buyer Phone

Currency: USD

Contractor: \_\_\_\_\_  
[Address]

Ship To: Ordering Purchaser Location  
          <address>  
          <city, state, zip>  
          <country>  
Bill To:   <address>  
          <city, state, zip>  
          <country>>

Description:

Line- Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Estimated Due Date
-----------	------------------	----------	-----	----------	--------------	--------------------

Total PO Amount     

This Purchase Order shall be governed by and incorporate by reference the Master Service Agreement No. [XXX]. All shipments, shipping papers, invoices, and correspondence shall identify the applicable Purchase Order number and MSA No. [XXX].

## EXHIBIT C - MASTER SERVICES AGREEMENT

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### INSURANCE REQUIREMENTS

The Parties shall carry insurance (with reliable insurance companies) in the amounts set forth below. In each such policy, each such Party shall cause (i) all of its deductibles to be for its own account, (ii) the insurer to waive all rights of subrogation against the other Party and its Affiliates, (iii) the other Party to be listed as additional insured, and (iv) all such policies to be primary as to any other existing valid and collectible insurance of the other. If requested, each Party shall furnish the other Party with an executed Certificate of Insurance and/or such other reasonable assurances evidencing such insurance.

1. Workers' Compensation insurance, disability benefit and any other similar employee benefit to the extent required by the Applicable Law in any jurisdiction in which the Services are to be performed.
2. Commercial General Liability insurance for incidents or series of incidents covering the operations, premises and completed operations of a Party in the performance of the Agreement, with a combined single limit of \$1,000,000 for bodily injury and property damage per occurrence and a limit of \$1,000,000 in the general aggregate.
3. Automobile Liability insurance extending to owned, non-owned and hired automobiles used by a Party in the performance of this Agreement, with a combined single limit of \$1,000,000 per occurrence.
4. Such other insurance as may from time to time be required by Applicable Law.

## EXHIBIT C – MASTER SERVICES AGREEMENT

## RATE SCHEDULE



## US Field Service Rates 2019

Wärtsilä North America Inc.

**SERVICE CHARGES** - Engines, Propulsion, Electrical & Automation, Quantiserv (In-situ machining)

## Hourly Charges in USD excluding VAT

Performed by	Weekday / Normal Hours	Weekday/ Overtime A Hours	Weekend/ Overtime B Hours	Holiday/ Overtime C Hours
Service Technician	99	139	181	221
Service Engineer	191	210	234	312
Superintendent	242	298	323	425

## WORKING TIME &amp; OTHER RATES &amp; FEES

- Normal hours: Weekdays (Monday – Friday) up to eight (8) hours/day between 07:00 and 17:00
- Overtime hours:
 

<b>Weekday / Overtime A</b>	Monday to Friday, all hours exceeding 8 hours or hours between 17:00 and 07:00
<b>Weekend / Overtime B</b>	Saturday and Sunday all hours
<b>Holiday / Overtime C</b>	All hours worked on Wärtsilä North America Inc. 2019 Observed US Public Holidays
- Daily allowance: Invoiced at the following rates:  
Within USA: seventy (\$70.00) USD per day  
Outside USA: based on Foreign Per Diem Rates per Location according to U.S. Department of State. Refer to the following link:  
[https://aoprals.state.gov/web920/per\\_diem.asp](https://aoprals.state.gov/web920/per_diem.asp)
- Waiting / Stand-by: Invoiced as eight (8) normal working hours per day
- Reporting: Four (4) hours at normal rate for jobs up to seven (7) days. Otherwise, eight (8) hours
- Preparations: Invoiced at the maximum of eight (8) normal working hours
- Mileage charge: Wärtsilä vehicles use invoiced at one (\$1.00) USD per mile
- Traveling hours: Invoiced at normal rate for actual hours traveling
- Traveling costs: Expenses incurred plus additional administrative fee of ten (10) percent
- External invoices: Invoices charged plus additional administrative fee of fifteen (15) percent
- Factory Personnel: Subject to country of origin for expenses and daily rates
- Utilization fee: Standard tools are included in the above rates. Specialized tools invoiced according to additional fees defined in the proposal

Distribution: Wärtsilä Intranet. Date 15.01.2019. Validity: From January 15, 2019, until further notice.

Wärtsilä North America  
11710 North Gessner Road, Suite A.  
Houston, TX 77064  
Tel. No. 281-232-6200 / Fax No. 281-233-6233  
[www.wartsila.com](http://www.wartsila.com)

Service 24/7: 954-289-5892  
[customersupport.americas@wartsila.com](mailto:customersupport.americas@wartsila.com)  
Parts 24/7: 954-398-1795 (East), 206-886-0655 (West)  
[parts.northamerica@wartsila.com](mailto:parts.northamerica@wartsila.com)



# US Field Service Rates 2019

Wärtsilä North America Inc.

## WÄRTSILÄ NORTH AMERICA INC. 2019 OBSERVED PUBLIC HOLIDAYS SCHEDULE

January 1, February 18, April 19, May 27, July 4 - 5, September 2, November 28 - 29,  
December 24-25

## CANCELLATION POLICY

Should a customer find it necessary to completely cancel a job, less than twenty-four (24) hours prior to the scheduled dispatch, and is not in a position to re-schedule the engineer within a one (1) week time frame, **Wärtsilä reserves the right to invoice a trip cancellation fee of one thousand five hundred (\$1500) USD.** If the engineer is en route to jobsite, the customer will also be invoiced for all travel related expenses incurred as a result of the job cancellation.

## RESERVATION OF ENGINEER

This fee will be applied when the customer specifically requests to put an engineer on "Reserved Status" (unavailable for other jobs or service assignments) awaiting travel instructions to customers work site. A maximum of five (5) days is permissible for reserving an engineer. When five (5) days have elapsed Wärtsilä reserves the right to re-assign the engineer for other service assignments.

**The fee for reserving an engineer will be invoiced at five hundred (\$500) USD per day.**

## LIABILITY

**NO LIABILITY WHETHER DIRECT, INDIRECT, SPECIAL INCIDENTAL OR CONSEQUENTIAL, IS ASSUMED WITH RESPECT TO THE INFORMATION CONTAINED HEREIN. THIS PUBLICATION IS CONFIDENTIAL AND INTENDED FOR INFORMATION PURPOSES ONLY.**

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Distribution: Wärtsilä Intranet. Date 15.01.2019. Validity: From January 15, 2019, until further notice.

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Wärtsilä North America  
11710 North Gessner Road, Suite A.  
Houston, TX 77064  
Tel. No. 281-232-6200 / Fax No. 281-233-6233  
[www.wartsila.com](http://www.wartsila.com)

Service 24/7: 954-289-5892  
[customersupport.americas@wartsila.com](mailto:customersupport.americas@wartsila.com)  
Parts 24/7: 954-398-1795 (East), 206-886-0655 (West)  
[parts.northamerica@wartsila.com](mailto:parts.northamerica@wartsila.com)

Contractor's Proposal  
**Exhibit D**

				Wartsila North America, Inc.
				Total Price
Line #	Description	QTY	UOM	Unit
1	Product Proposal Pricing			
2	Spark Plug	2376	ea	\$185.66
3	O-Ring coil on plug extension	2160	ea	\$2.98
4	O-Ring coil on plug extension	1080	ea	\$3.69
5	Filter Element	120	ea	\$24.40
6	Filter Cartridge	120	ea	\$16.66
7	Filter	1800	ea	\$153.52
8	Gas Sensor	120	ea	\$1,451.92
9	Gas Sensor	60	ea	\$1,451.92
10	Filter Element	48	bx	\$259.44
11	Filter	60	ea	\$74.98
12	Condensate Pump	60	ea	\$749.76
13	Tube with connector	60	ea	\$90.45
14	Pump	60	ea	\$296.33
15	Filter Cartridge	20	ea	\$29.16
16	Gasket	20	ea	\$42.84
17	Gasket	20	ea	\$19.04
18	Nox Sensor	120	ea	\$1,053.24
19	Solenoid Valve Maintenance Kit	120	kt	\$288.00
20	Filter Element	36	ea	\$78.55
21	Filter Element	72	ea	\$186.85
22	Filter Element	144	ea	\$963.98
23	Selaing Kit	36	kt	\$166.61
24	Pilot Valve, Complete	36	ay	\$1,987.47
25	Peak Pressure Sensor	120	ea	\$2,963.35
26	Sealing Kit	72	kt	\$601.00
27	Frequency Converter	12	ea	\$4,379.57
28	Rotor Kit	24	kt	\$3,951.13
29	Spare Parts Set	12	kt	\$351.08
30	Ball	12	ea	\$642.65

31	Stem	12	ea	<b>\$246.35</b>
32	Gas Admission Valve - This Gas Admission Valve also requires:1. New cable resistors - qty of 48 at \$72.60 each = \$3,484.802. Fixing Screws - qty of 96 at \$2.98 each = 286.08	24	ay	<b>\$7,818.96</b>
33	Electronic Unit ESM	12	ea	<b>\$2,725.33</b>
34	Main Control Unit	12	ea	<b>\$4,331.96</b>
35	Power Distrobution Module	12	ea	<b>\$2,106.48</b>
36	Gasket	1364	ea	<b>\$115.44</b>
37	Exhaust Gas Bellow	24	ea	<b>\$1,451.92</b>
38	Exhaust Gas Bellow	24	ea	<b>\$2,177.88</b>
39	Exhaust Gas Bellow	24	ea	<b>\$4,629.49</b>
40	Gasket kit	24	kt	<b>\$324.90</b>
41	SECTION A - SERVICE WORK HOURLY RATE: Regular Working Hours (7:00 AM - 5:00 PM / MONDAY THROUGH FRIDAY):	1	HR	<b>\$191.00</b>
42	SECTION B -EMERGENCY WORK HOURS	1	HR	<b>\$234.00</b>

7544 - Pag

**Exhibit E**  
**Certificate of Interested Parties Electronic Filing**

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

**Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.**

The contractor shall:

1. Log onto the State Ethics Commission Website at :  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.



**CONFLICT OF INTEREST QUESTIONNAIRE -****FORM CIQ****For vendor or other person doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1 Name of vendor who has a business relationship with local governmental entity.****Wärtsilä North America, Inc.****2 ☐ Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information in this section is being disclosed.**N/A

Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☒

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☒

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐

Yes

☒

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4 ☒ have no Conflict of Interest to disclose.****5  Sam Straka****25/11/2020**

Sam Straka (Nov 25, 2020 14:22 EST)

Signature of vendor doing business with the governmental entity

Date

## Certificate Of Completion

Envelope Id: 819014BAF52848B6B67BF1AE5CEFE498

Status: Completed

Subject: Please DocuSign: City Council Contract 7544 - DEC Maintenance Parts

Source Envelope:

Document Pages: 30

Signatures: 7

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US & Canada)

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.104

## Record Tracking

Status: Original

Holder: Christa Christian

Location: DocuSign

2/23/2021 3:50:20 PM

Christa.Christian@cityofdenton.com

## Signer Events

Christa Christian

christa.christian@cityofdenton.com

Senior Buyer

City of Denton

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

## Signature

**Completed**

Using IP Address: 198.49.140.104

## Timestamp

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Viewed: 2/23/2021 4:23:31 PM

Signed: 2/23/2021 4:25:40 PM

Lori Hewell

lori.hewell@cityofdenton.com

Purchasing Manager

City of Denton

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign



Sent: 2/23/2021 4:25:42 PM

Viewed: 2/24/2021 7:25:13 AM

Signed: 2/24/2021 7:26:45 AM

Marcella Lunn

marcella.lunn@cityofdenton.com

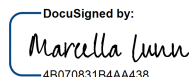
Deputy City Attorney

City of Denton

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

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Viewed: 2/24/2021 2:44:55 PM

Signed: 2/24/2021 2:50:42 PM

Byron J. Guidry

byron.guidry@wartsila.com

Account Manager-Energy Services

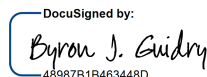
City of Denton

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**

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Viewed: 2/24/2021 2:59:53 PM

Signed: 2/24/2021 4:33:09 PM

Signature Adoption: Pre-selected Style

Using IP Address: 108.212.165.60

Signer Events	Signature	Timestamp
<p>Antonio Puente</p> <p>Antonio.Puente@cityofdenton.com</p> <p>Exec Mgr of Utilities</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 2/24/2021 4:41:37 PM ID: fe3affc5-ce6b-4b00-a816-9a955bc71d3c</p>	<p>DocuSigned by: <i>Antonio Puente</i> E3760944C2BF4B5...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 174.197.72.46 Signed using mobile</p>	<p>Sent: 2/24/2021 4:33:11 PM Viewed: 2/24/2021 4:41:37 PM Signed: 2/24/2021 4:42:16 PM</p>
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Contract Administrator</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p><b>Completed</b></p> <p>Using IP Address: 198.49.140.104</p>	<p>Sent: 2/24/2021 4:42:19 PM Viewed: 4/21/2021 8:03:43 AM Signed: 4/21/2021 8:12:27 AM</p>
<p>Sara Hensley</p> <p>sara.hensley@cityofdenton.com</p> <p>Interim City Manager</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p>DocuSigned by: <i>Sara Hensley</i> 5236DB296270423...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 4/21/2021 8:12:31 AM Viewed: 4/21/2021 8:13:42 AM Signed: 4/21/2021 8:13:54 AM</p>
<p>Rosa Rios</p> <p>rosa.rios@cityofdenton.com</p> <p>City Secretary</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 4/21/2021 8:15:00 AM ID: 8a478bd0-3c00-4760-8cbc-df66ae20aa63</p>	<p>DocuSigned by: <i>Rosa Rios</i> 1C5CA8C5E175493...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104</p>	<p>Sent: 4/21/2021 8:13:56 AM Viewed: 4/21/2021 8:15:00 AM Signed: 4/21/2021 8:15:41 AM</p>
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Contract Administrator</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p><b>COPIED</b></p>	<p>Sent: 2/23/2021 4:25:42 PM Viewed: 2/23/2021 4:26:44 PM</p>

Carbon Copy Events	Status	Timestamp
Sherri Thurman sherri.thurman@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 2/24/2021 4:42:20 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 2/24/2021 4:42:20 PM Viewed: 2/24/2021 4:50:40 PM
Zolaina Parker Zolaina.Parker@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 4/21/2021 8:15:44 AM
Cathy welborn Cathy.Welborn@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 4/21/2021 8:15:44 AM
Jason Brown jason.brown@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 3/3/2021 8:33:17 AM ID: cbf5d958-591a-47f8-a582-2699d30a8ffb	COPIED	Sent: 4/21/2021 8:15:46 AM

Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/23/2021 4:23:16 PM
Certified Delivered	Security Checked	4/21/2021 8:15:00 AM
Signing Complete	Security Checked	4/21/2021 8:15:41 AM
Completed	Security Checked	4/21/2021 8:15:46 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

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- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A FIRST AMENDMENT TO A CONTRACT BETWEEN THE CITY OF DENTON AND WÄRTSILÄ NORTH AMERICA, INC., AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON APRIL 20, 2021, IN THE NOT TO EXCEED AMOUNT OF \$3,448,184.00; SAID FIRST AMENDMENT TO CONTINUE TO SUPPLY ROUTINE MAINTENANCE SUPPLIES FOR THE DENTON ENERGY CENTER; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (IFB 7544 – PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$862,046.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$4,310,230.00).

WHEREAS, on April 20, 2021, City Council awarded a contract to Wärtsilä North America, Inc. in the amount of \$3,448,184.00, for the supply of routine maintenance supplies and services for the Denton Energy Center; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; and

WHEREAS, the additional fees under the proposed First Amendment are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees applicable to the Provider's profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The First Amendment, increasing the amount of the contract between the City and Wärtsilä North America, Inc., which is on file in the office of the Purchasing Agent, in the amount of Eight Hundred Sixty-Two Thousand Forty-Six and 0/100 (\$862,046.00) Dollars, is hereby approved, and the expenditure of funds therefor is hereby authorized in accordance with said amendment which shall be effective upon the execution of the amendment attached hereto. The total contract amount increases to \$4,310,230.00.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. This ordinance was passed and approved by the following vote [\_\_\_ - \_\_\_]:



	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

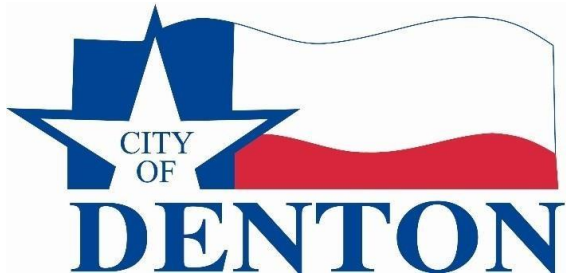
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

IFB	7544
File Name	DEC Maintenance Parts, NTE Amendment 1
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	No
Contract Expiration	
Ordinance	

THE STATE OF TEXAS           §  
   §  
 COUNTY OF DENTON           §

FIRST AMENDMENT TO CONTRACT  
 BY AND BETWEEN THE CITY OF DENTON, TEXAS  
 AND WARTSILA NORTH AMERICA, INC.

THIS FIRST AMENDMENT TO CONTRACT 7544 (this “Amendment”) by and between the City of Denton, Texas (“City”) and **Wärtsilä North America, Inc.**, (“Contractor”) to that certain contract executed on April 20, 2021, in the original not-to-exceed amount of **\$3,448,184.00** (the “Agreement”); for services related to the **Denton Energy Center (DEC) Equipment Maintenance Parts and Services**.

WHEREAS, the City deems it necessary to further expand the services provided by Contractor to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount **\$862,046.00** with this First Amendment for an aggregate not-to-exceed amount of **\$4,310,230.00**; and

WHEREAS, this amendment incorporates any previously executed documents between the parties including but not limited to pricing adjustments.

WHEREAS, the City deems it necessary to further expand the goods/services provided by Contractor to the City; and

WHEREAS, the original not-to-exceed amount may not be increased by more than 25.0% as provided in Texas Local Government Code Sec. 252.048; and

NOW THEREFORE, the City and Contractor (hereafter collectively referred to as the “Parties”), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following First Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1. This Amendment modifies the Agreement amount to provide an additional \$862,046.00 for additional services and materials to be provided in accordance with the terms of the Agreement with a revised aggregate not-to-exceed total of **\$4,310,230.00**.

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and the Contractor, have each executed this Amendment, by and through their respective duly authorized representatives and officers on this date \_\_\_\_\_.

“CONTRACTOR”  
**Wärtsilä North America, Inc.,**  
DocuSigned by:  
By: Byron J. Guidry  
48987B1B463448D...  
AUTHORIZED SIGNATURE, TITLE

“CITY”  
CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
By: Marcella Lunn  
4B070831B4AA438...

ATTEST:  
LAUREN THODEN, CITY SECRETARY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational  
obligations and business terms.

DocuSigned by:  
Antonio Puente, Jr. Antonio Puente, Jr.  
E3760944C2BF4B5...  
SIGNATURE PRINTED NAME

DME General Manager  
TITLE  
Electric  
DEPARTMENT

**Certificate Of Completion**

Envelope Id: BE72923101894F77B74F57DAF0755120

Status: Sent

Subject: Please DocuSign: City Council Contract 7544 - DEC Maint Parts, NTE Amendment 1

Source Envelope:

Document Pages: 3

Signatures: 3

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Christa Christian

Location: DocuSign

5/8/2024 10:19:49 AM

Christa.Christian@cityofdenton.com

**Signer Events****Signature****Timestamp**

Christa Christian

**Completed**

Sent: 5/8/2024 10:23:55 AM

christa.christian@cityofdenton.com

Viewed: 5/8/2024 10:24:04 AM

Purchasing Supervisor

Signed: 5/8/2024 10:24:09 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

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Lori Hewell



Sent: 5/8/2024 10:24:10 AM

lori.hewell@cityofdenton.com

Viewed: 5/8/2024 10:41:32 AM

Purchasing Manager

Signed: 5/8/2024 10:41:42 AM

City of Denton

Signature Adoption: Pre-selected Style

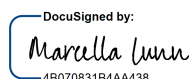
Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

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Not Offered via DocuSign

Marcella Lunn



Sent: 5/8/2024 10:41:44 AM

marcella.lunn@cityofdenton.com

Viewed: 5/9/2024 2:59:08 PM

Senior Deputy City Attorney

Signed: 5/9/2024 3:03:06 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

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Byron J. Guidry



Sent: 5/9/2024 3:03:08 PM

byron.guidry@wartsila.com

Resent: 5/17/2024 11:05:11 AM

Account Manager-Energy Services

Viewed: 5/23/2024 10:47:03 AM

Security Level: Email, Account Authentication  
(None)

Signed: 5/23/2024 10:47:58 AM

Signature Adoption: Pre-selected Style

Using IP Address: 108.212.165.60

**Electronic Record and Signature Disclosure:**

Accepted: 5/9/2024 3:07:19 PM

ID: 1732494c-afc6-4a6d-b946-d0db567b63d6

Signer Events	Signature	Timestamp
Antonio Puente, Jr. Antonio.Puente@cityofdenton.com DME General Manager Security Level: Email, Account Authentication (None)	<div> <div>DocuSigned by:</div> <div>Antonio Puente, Jr.</div> <div>E3760944C2BF4B5...</div> </div> Signature Adoption: Pre-selected Style Using IP Address: 47.184.67.14	Sent: 5/23/2024 10:48:00 AM Viewed: 5/23/2024 10:50:24 AM Signed: 5/23/2024 10:50:43 AM

**Electronic Record and Signature Disclosure:**  
 Accepted: 5/23/2024 10:50:24 AM  
 ID: 44478fb2-dcd5-4cc3-92a7-2a54790a8600

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	Sent: 5/23/2024 10:50:47 AM
---	-----------------------------

**Electronic Record and Signature Disclosure:**  
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Sara Hensley  
 sara.hensley@cityofdenton.com  
 Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Lauren Thoden  
 lauren.thoden@cityofdenton.com  
 Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 5/8/2024 10:24:11 AM
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Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 5/23/2024 10:50:46 AM Viewed: 5/23/2024 10:57:19 AM
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Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Jason Brown jason.brown@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Accepted: 5/8/2024 8:03:00 AM ID: 54c88bee-209b-4aff-a80c-de18a35079f7		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/8/2024 10:23:55 AM
Envelope Updated	Security Checked	5/22/2024 10:22:06 AM
Envelope Updated	Security Checked	5/22/2024 10:22:06 AM
Payment Events	Status	Timestamps
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- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

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# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-115, Version: 1**

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Parkhill, Smith & Cooper, Inc., for design services of Landfill Cell 6 for the Solid Waste and Recycling Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFP 7109-039 - Professional Services Agreement for design services awarded to Parkhill, Smith & Cooper, Inc., in the not-to-exceed amount of \$367,000.00).



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Parkhill, Smith & Cooper, Inc., for design services of Landfill Cell 6 for the Solid Waste and Recycling Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFP 7109-039 – Professional Services Agreement for design services awarded to Parkhill, Smith & Cooper, Inc., in the not-to-exceed amount of \$367,000.00).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Promote Sustainability and the Environment.

### **INFORMATION/BACKGROUND**

The City of Denton Solid Waste Department's landfill is located at 1527 South Mayhill Road and serves as the sole solid waste disposal site for the City of Denton's residents and businesses. Solid Waste operations are designed to maximize the use of landfill space while controlling environmental hazards and protecting the environment.

Landfill design provides for land and air space to be consumed in a phased approach. The Landfill is currently divided into six (6) separate "phases" of land/airspace, and each phase is further subdivided into "cells" which are developed and used according to our Texas Commission on Environmental Quality (TCEQ) 1590 B Rules and Regulations. A site map has been provided in the contract to illustrate the current phases and cells that are both planned and in use. As waste is disposed in a cell, both land and airspace are consumed, and as a result, each cell's useful life is determined by the rate, volume, and density of waste disposed.

Request for Qualifications for professional engineering services was solicited using the City's formal solicitation process. City Council approved a pre-qualified list of engineering firms on October 8, 2019 (Ordinance 19-2305).

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On October 8, 2019, City Council approved RFQ 7109 for a prequalified list of professional engineering firms (Ordinance 19-2305).

## **RECOMMENDATION**

Award a contract with Parkhill, Smith & Cooper, Inc., for design services of Landfill Cell 6 for the Solid Waste and Recycling Department, in a not-to-exceed amount of \$367,000.

## **PRINCIPAL PLACE OF BUSINESS**

Parkhill, Smith & Cooper, Inc.  
Lubbock, TX

## **ESTIMATED SCHEDULE OF PROJECT**

We are expecting this project to begin within this fiscal year, and expecting to have the engineering services and sealed design plans by September of 2024. The bidding and construction phase of this project will begin immediately following FY 24/25.

## **FISCAL INFORMATION**

These services will be funded from Solid Waste and Recycling account #660270585.1360.20100. Requisition #164764 has been entered into the Purchasing software system in the amount of \$367,000.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet  
Exhibit 2: Ordinance and Contract

Respectfully submitted:  
Lori Hewell, 940-349-7100  
Purchasing Manager

For information concerning this acquisition, contact: Randall Morris, 940-349-8049.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC., FOR DESIGN SERVICES OF LANDFILL CELL 6 FOR THE SOLID WASTE AND RECYCLING DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7109-039 – PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES AWARDED TO PARKHILL, SMITH & COOPER, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$367,000.00).

WHEREAS, on October 8, 2019, the City Council approved a pre-qualified professional and engineer list (Ordinance 19-2305); and

WHEREAS, the professional services provider (the “Provider”) mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees published by the professional associations applicable to the Provider’s profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Parkhill, Smith & Cooper, Inc., to provide professional design services of Landfill Cell 6 for the Solid Waste and Recycling Department, a copy of which is attached hereto and incorporated by reference herein.

SECTION 2. The City Manager, or their designee, is authorized to expend funds as required by the attached contract.

SECTION 3. The City Council of the City of Denton, Texas hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, Texas, or their designee.

SECTION 4. The findings in the preamble of this ordinance are incorporated herein by reference.

SECTION 5. This ordinance shall become effective immediately upon its passage and

approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. This ordinance was passed and approved by the following vote [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

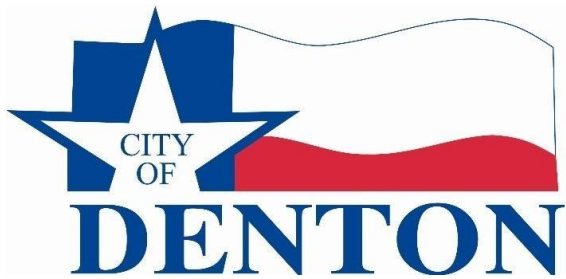
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

PSA	7109-039
File Name	CELL 6 DESIGN
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	



## **CITY OF DENTON, TEXAS**

### **STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES**

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and Parkhill, Smith & Cooper, Inc., with its corporate office at 4222 85<sup>TH</sup> St., Lubbock, TX 79423 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Cell 6 Design (the "PROJECT").

#### **SECTION 1** **Scope of Services**

- A.** The CITY hereby agrees to retain the ENGINEER, and the ENGINEER hereby agrees to perform, professional engineering services set forth in the Scope of Services attached hereto as Attachment A. These services shall be performed in connection with the PROJECT.
- B.** Additional services, if any, will be requested in writing by the CITY. CITY shall not pay for any work performed by ENGINEER or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ENGINEER shall not be compensated for any additional work resulting from oral orders of any person.

#### **SECTION 2** **Compensation and Term of Agreement**

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$367,000 in the manner and in accordance with the fee schedule as set forth in Attachment A. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment A.

#### **SECTION 3** **Terms of Payment**

Payments to the ENGINEER will be made as follows:

##### **A. Invoice and Payment**

City of Denton, Texas  
Standard Agreement for Engineering Related Design Services  
Revised Date: 3/22/22  
Page 1 of 19

- (1) The Engineer shall provide the City sufficient documentation, including but not limited to meeting the requirements set forth in the PROJECT schedule as set forth in Attachment A to reasonably substantiate the invoices.
- (2) The ENGINEER will issue monthly invoices for all work performed under this AGREEMENT. Invoices for the uncontested performance of the particular services are due and payable within 30 days of receipt by City.
- (3) Upon completion of services enumerated in Section 1, the final payment of any balance for the uncontested performance of the services will be due within 30 days of receipt of the final invoice.
- (4) In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The CITY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.
- (5) If the CITY fails to make payment in full to ENGINEER for billings contested in good faith within 60 days of the amount due, the ENGINEER may, after giving 7 days' written notice to CITY, suspend services under this AGREEMENT until paid in full. In the event of suspension of services, the ENGINEER shall have no liability to CITY for delays or damages caused the CITY because of such suspension of services.

## **SECTION 4**

### **Obligations of the Engineer**

#### **A. General**

The ENGINEER will serve as the CITY's professional engineering representative under this AGREEMENT, providing professional engineering consultation and advice and furnishing customary services incidental thereto.

#### **B. Standard of Care**

The ENGINEER shall perform its services:

- (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and
- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

#### **C. Subsurface Investigations**

- (1) The ENGINEER shall advise the CITY with regard to the necessity for subcontract work such as special surveys, tests, test borings, or other subsurface investigations in connection with design and engineering work to be performed hereunder. The ENGINEER shall also advise the CITY concerning the results of same. Such surveys, tests, and investigations shall be furnished by the CITY, unless otherwise specified in Attachment A.
- (2) In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect the total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

#### **D. Preparation of Engineering Drawings**

The ENGINEER will provide to the CITY the original drawings of all plans in ink on reproducible mylar sheets and electronic files in .pdf format, or as otherwise approved by CITY, which shall become the property of the CITY. CITY may use such drawings in any manner it desires; provided, however, that the ENGINEER shall not be liable for the use of such drawings for any project other than the PROJECT described herein.

#### **E. Engineer's Personnel at Construction Site**

- (1) The presence or duties of the ENGINEER's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the CITY's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the AGREEMENT Documents and any health or safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.
- (2) Except to the extent of specific site visits expressly detailed and set forth in Attachment A, the ENGINEER or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress or quality of the completed work on the PROJECT or to determine, in general, if the work on the PROJECT is being performed in a manner indicating that the PROJECT, when completed, will be in accordance with the AGREEMENT

Documents, nor shall anything in the AGREEMENT Documents or this AGREEMENT between CITY and ENGINEER be construed as requiring ENGINEER to make exhaustive or continuous on-site inspections to discover latent defects in the work or otherwise check the quality or quantity of the work on the PROJECT. If the ENGINEER makes on-site observation(s) of a deviation from the AGREEMENT Documents, the ENGINEER shall inform the CITY.

- (3) When professional certification of performance or characteristics of materials, systems or equipment is reasonably required to perform the services set forth in the Scope of Services, the ENGINEER shall be entitled to rely upon such certification to establish materials, systems or equipment and performance criteria to be required in the AGREEMENT Documents.

#### **F. Opinions of Probable Cost, Financial Considerations, and Schedules**

- (1) The ENGINEER shall provide opinions of probable costs based on the current available information at the time of preparation, in accordance with Attachment A.
- (2) In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the PROJECT, the ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the ENGINEER makes no warranty that the CITY's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from the ENGINEER's opinions, analyses, projections, or estimates.

#### **G. Construction Progress Payments**

Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, and belief from selective sampling and observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the ENGINEER to ascertain that the construction contractor has completed the work in exact accordance with the AGREEMENT Documents; that the final work will be acceptable in all respects; that the ENGINEER has made an examination to ascertain how or for what purpose the construction contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to the CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

## **H. Record Drawings**

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. The ENGINEER is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings.

## **I. Right to Audit**

- (1) ENGINEER agrees that the CITY shall, until the expiration of five (5) years after final payment under this AGREEMENT, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of the ENGINEER involving transactions relating to this AGREEMENT. ENGINEER agrees that the CITY shall have access during normal working hours to all necessary ENGINEER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CITY shall give ENGINEER reasonable advance notice of intended audits.
- (2) ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that the CITY shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that the CITY shall have access during normal working hours to all subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (3) hereof. CITY shall give subconsultant reasonable advance notice of intended audits.
- (3) ENGINEER and subconsultant agree to photocopy such documents as may be requested by the CITY. The CITY agrees to reimburse ENGINEER for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

## J. INSURANCE

### (1) ENGINEER'S INSURANCE

- a. Commercial General Liability – the ENGINEER shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 per each occurrence with a \$2,000,000.00 aggregate. If such Commercial General Liability insurance contains a general aggregate limit, it shall apply separately to this PROJECT or location.
  - i. The CITY shall be included as an additional insured with all rights of defense under the CGL, using ISO additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the CITY. The Commercial General Liability insurance policy shall have no exclusions or endorsements that would alter or nullify: premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained within the policy, unless the CITY specifically approves such exclusions in writing.
  - ii. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained in accordance with this AGREEMENT.
- b. Business Auto – the ENGINEER shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of “any auto”, including owned, hired, and non-owned autos, when said vehicle is used in the course of the PROJECT. If the engineer owns no vehicles, coverage for hired or non-owned is acceptable.
  - i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by ENGINEER pursuant to this AGREEMENT or under any applicable auto physical damage coverage.
- c. Workers' Compensation – ENGINEER shall maintain workers compensation and employers liability insurance and, if necessary,

commercial umbrella liability insurance with a limit of not less than \$100,000.00 each accident for bodily injury by accident or \$100,000.00 each employee for bodily injury by disease, with \$500,000.00 policy limit.

- i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by workers compensation and employer's liability or commercial umbrella insurance obtained by ENGINEER pursuant to this AGREEMENT.
- d. Professional Liability – ENGINEER shall maintain professional liability, a claims-made policy, with a minimum of \$1,000,000.00 per claim and aggregate. The policy shall contain a retroactive date prior to the date of the AGREEMENT or the first date of services to be performed, whichever is earlier. Coverage shall be maintained for a period of 5 years following the completion of the AGREEMENT. An annual certificate of insurance specifically referencing this PROJECT shall be submitted to the CITY for each year following completion of the AGREEMENT.

## (2) GENERAL INSURANCE REQUIREMENTS

- a. Certificates of insurance evidencing that the ENGINEER has obtained all required insurance shall be attached to this AGREEMENT prior to its execution.
- b. Applicable policies shall be endorsed to name the CITY an Additional Insured thereon, subject to any defense provided by the policy, as its interests may appear. The term CITY shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.
- c. Certificate(s) of insurance shall document that insurance coverage specified in this AGREEMENT are provided under applicable policies documented thereon.
- d. Any failure on part of the CITY to attach the required insurance documentation hereto shall not constitute a waiver of the insurance requirements.
- e. A minimum of thirty (30) days notice of cancellation or material change in coverage shall be provided to the CITY. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the respective Department Director (by name), City of Denton, 901 Texas Street, Denton, Texas 76209.
- f. Insurers for all policies must be authorized to do business in the State of

Texas and have a minimum rating of A:V or greater, in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management.

- g. Any deductible or self insured retention in excess of \$25,000.00 that would change or alter the requirements herein is subject to approval by the CITY in writing, if coverage is not provided on a first-dollar basis. The CITY, at its sole discretion, may consent to alternative coverage maintained through insurance pools or risk retention groups. Dedicated financial resources or letters of credit may also be acceptable to the CITY.
- h. Applicable policies shall each be endorsed with a waiver of subrogation in favor of the CITY as respects the PROJECT.
- i. The CITY shall be entitled, upon its request and without incurring expense, to review the ENGINEER's insurance policies including endorsements thereto and, at the CITY's discretion; the ENGINEER may be required to provide proof of insurance premium payments.
- j. Lines of coverage, other than Professional Liability, underwritten on a claims-made basis, shall contain a retroactive date coincident with or prior to the date of the AGREEMENT. The certificate of insurance shall state both the retroactive date and that the coverage is claims-made.
- k. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption nor restrictive modification or changes from date of commencement of the PROJECT until final payment and termination of any coverage required to be maintained after final payments.
- l. The CITY shall not be responsible for the direct payment of any insurance premiums required by this AGREEMENT.
- m. Sub consultants and subcontractors to/of the ENGINEER shall be required by the ENGINEER to maintain the same or reasonably equivalent insurance coverage as required for the ENGINEER. When sub consultants/subcontractors maintain insurance coverage, ENGINEER shall provide CITY with documentation thereof on a certificate of insurance.

## **K. Independent Consultant**

The ENGINEER agrees to perform all services as an independent consultant and not as a subcontractor, agent, or employee of the CITY. The doctrine of *respondeat superior* shall not apply.



**L. Disclosure**

The ENGINEER acknowledges to the CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interest, direct or indirect, in property abutting the proposed PROJECT and business relationships with abutting property cities. The ENGINEER further acknowledges that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this AGREEMENT and prior to final payment under the AGREEMENT.

**M. Asbestos or Hazardous Substances**

- (1) If asbestos or hazardous substances in any form are encountered or suspected, the ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.
- (2) If asbestos or other hazardous substances are suspected, the CITY may request the ENGINEER to assist in obtaining the services of a qualified subcontractor to manage the remediation activities of the PROJECT.

**N. Permitting Authorities - Design Changes**

If permitting authorities require design changes so as to comply with published design criteria and/or current engineering practice standards which the ENGINEER should have been aware of at the time this AGREEMENT was executed, the ENGINEER shall revise plans and specifications, as required, at its own cost and expense. However, if design changes are required due to the changes in the permitting authorities' published design criteria and/or practice standards criteria which are published after the date of this AGREEMENT which the ENGINEER could not have been reasonably aware of, the ENGINEER shall notify the CITY of such changes and an adjustment in compensation will be made through an amendment to this AGREEMENT.

**O. Schedule**

ENGINEER shall manage the PROJECT in accordance with the schedule developed per Attachment A to this AGREEMENT.

**P. Equal Opportunity**

- (1) **Equal Employment Opportunity:** ENGINEER and ENGINEER's agents shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this AGREEMENT.
- (2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and ENGINEER's agents shall not engage in any discriminatory employment

practice against individuals with disabilities as defined in the ADA.

## **SECTION 5**

### **Obligations of the City**

#### **A. City-Furnished Data**

ENGINEER may rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

#### **B. Access to Facilities and Property**

The CITY will make its facilities accessible to the ENGINEER as required for the ENGINEER's performance of its services. The CITY will perform, at no cost to the ENGINEER, such tests of equipment, machinery, pipelines, and other components of the CITY's facilities as may be required in connection with the ENGINEER's services. The CITY will be responsible for all acts of the CITY's personnel.

#### **C. Advertisements, Permits, and Access**

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for the ENGINEER's services or PROJECT construction.

#### **D. Timely Review**

The CITY will examine the ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the CITY deems appropriate; and render in writing decisions required by the CITY in a timely manner in accordance with the PROJECT schedule prepared in accordance with Attachment A.

#### **E. Prompt Notice**

The CITY will give prompt written notice to the ENGINEER whenever CITY observes or becomes aware of any development that affects the scope or timing of the ENGINEER's services or of any defect in the work of the ENGINEER or construction contractors.

#### **F. Asbestos or Hazardous Substances Release.**

- (1) CITY acknowledges ENGINEER will perform part of the work at CITY's facilities that may contain hazardous materials, including asbestos containing

materials, or conditions, and that ENGINEER had no prior role in the generation, treatment, storage, or disposition of such materials. In consideration of the associated risks that may give rise to claims by third parties or employees of City, City hereby releases ENGINEER from any damage or liability related to the presence of such materials.

- (2) The release required above shall not apply in the event the discharge, release or escape of hazardous substances, contaminants, or asbestos is a result of ENGINEER's negligence or if ENGINEER brings such hazardous substance, contaminant or asbestos onto the PROJECT.

## **G. Contractor Indemnification and Claims**

The CITY agrees to include in all construction contracts the provisions of Article IV.E. regarding the ENGINEER's Personnel at Construction Site, and provisions providing for contractor indemnification of the CITY and the ENGINEER for contractor's negligence.

## **H. Contractor Claims and Third-Party Beneficiaries**

- (1) The CITY agrees to include the following clause in all contracts with construction contractors and equipment or materials suppliers:

"Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the CITY will be the beneficiary of any undertaking by the ENGINEER."

- (2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ENGINEER and there are no third-party beneficiaries.
- (3) The CITY will include in each agreement it enters into with any other entity or person regarding the PROJECT a provision that such entity or person shall have no third-party beneficiary rights under this AGREEMENT.
- (4) Nothing contained in this Section H. shall be construed as a waiver of any right the CITY has to bring a claim against ENGINEER.

## **I. CITY's Insurance**

- (1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.
- (2) The CITY may secure Builders Risk/Installation insurance at the replacement cost value of the PROJECT. The CITY may provide ENGINEER a copy of the

policy or documentation of such on a certificate of insurance.

#### **J. Litigation Assistance**

The Scope of Services does not include costs of the ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY. In the event CITY requests such services of the ENGINEER, this AGREEMENT shall be amended or a separate agreement will be negotiated between the parties.

#### **K. Changes**

The CITY may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect the ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT with appropriate CITY approval.

### **SECTION 6** **General Legal Provisions**

#### **A. Authorization to Proceed**

ENGINEER shall be authorized to proceed with this AGREEMENT upon receipt of a written Notice to Proceed from the CITY.

#### **B. Reuse of Project Documents**

All designs, drawings, specifications, documents, and other work products of the ENGINEER, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse, change, or alteration by the CITY or by others acting through or on behalf of the CITY of any such instruments of service without the written permission of the ENGINEER will be at the CITY's sole risk. The CITY shall own the final designs, drawings, specifications and documents.

#### **C. Force Majeure**

The ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the ENGINEER that prevent ENGINEER's performance of its obligations hereunder.

#### **D. Termination**

(1) This AGREEMENT may be terminated:

a. by the City for its convenience upon 30 days' written notice to

## ENGINEER.

- b. by either the CITY or the ENGINEER for cause if either party fails substantially to perform through no fault of the other and the nonperforming party does not commence correction of such nonperformance within 5 days' written notice or thereafter fails to diligently complete the correction.

(2) If this AGREEMENT is terminated for the convenience of the City, the ENGINEER will be paid for termination expenses as follows:

- a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ENGINEER'S work product;
- b. Out-of-pocket expenses for purchasing electronic data files and other data storage supplies or services;
- c. The time requirements for the ENGINEER'S personnel to document the work underway at the time of the CITY'S termination for convenience so that the work effort is suitable for long time storage.

(3) Prior to proceeding with termination services, the ENGINEER will submit to the CITY an itemized statement of all termination expenses. The CITY'S approval will be obtained in writing prior to proceeding with termination services.

## **E. Suspension, Delay, or Interruption to Work**

The CITY may suspend, delay, or interrupt the services of the ENGINEER for the convenience of the CITY. In the event of such suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment and cost of the ENGINEER's personnel and subcontractors, and ENGINEER's compensation will be made.

## **F. Indemnification**

**IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 271.904, THE ENGINEER SHALL INDEMNIFY OR HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ANY DAMAGE COMMITTED BY THE ENGINEER OR ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER. CITY IS ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE ENGINEER'S LIABILITY.**

## G. Assignment

Neither party shall assign all or any part of this AGREEMENT without the prior written consent of the other party.

## H. Jurisdiction

The law of the State of Texas shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. The venue for any litigation related to this AGREEMENT shall be Denton County, Texas.

## I. Severability and Survival

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Sections 5.F., 6.B., 6.D., 6.F., 6.H., and 6.I. shall survive termination of this AGREEMENT for any cause.

## J. Observe and Comply

ENGINEER shall at all times observe and comply with all federal and State laws and regulations and with all City ordinances and regulations which in any way affect this AGREEMENT and the work hereunder, and shall observe and comply with all orders, laws ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. **ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS OR LIABILITY ARISING OUT OF THE VIOLATION OF ANY SUCH ORDER, LAW, ORDINANCE, OR REGULATION, WHETHER IT BE BY ITSELF OR ITS EMPLOYEES.**

## K. Immigration Nationality Act

ENGINEER shall verify the identity and employment eligibility of its employees who perform work under this AGREEMENT, including completing the Employment Eligibility Verification Form (I-9). Upon request by CITY, ENGINEER shall provide CITY with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this AGREEMENT. ENGINEER shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any ENGINEER employee who is not legally eligible to perform such services. **ENGINEER SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY ENGINEER, ENGINEER'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** CITY, upon written notice to ENGINEER, shall have the right to immediately terminate this AGREEMENT for violations of this provision by

ENGINEER.

#### **L. Prohibition on Contracts with Companies Boycotting Israel**

Engineer acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

#### **M. Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization**

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

#### **N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

Engineer acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

#### **O. Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations**

Engineer acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

#### **P. Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies**

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Engineer is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

#### **Q. Prohibition Against Personal Interest in Contracts**

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City’s Ethic Ordinance 23-1165 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City’s Conflict of Interest Questionnaire.

#### **R. Certificate of Interested Parties Electronic Filing**

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City



at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at :  
<https://www.ethics.state.tx.us/filinginfo/1295/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

## **S. Agreement Documents**

This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, which supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. This AGREEMENT may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument. The following attachments and schedules are hereby made a part of this AGREEMENT:

Attachment A - Scope of Services, Compensation, Project Schedule, Location Map

These documents make up the AGREEMENT documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the AGREEMENT documents, the inconsistency or conflict shall be resolved by giving precedence first to the written AGREEMENT then to the AGREEMENT documents in the order in which they are listed above.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

Duly executed by each party's designated representative to be effective on \_\_\_\_\_.

BY:  
CITY OF DENTON, TEXAS

\_\_\_\_\_  
Sara Hensley, City Manager

BY:  
ENGINEER  
PARKHILL, SMITH & COOPER, INC.  
 Principal  
22ACF0FE58A3431...

\_\_\_\_\_  
Authorized Agent, Title

Full Name: Frank Pugsley \_\_\_\_\_

2024- 1165894 \_\_\_\_\_

TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational  
obligations and business terms.

  
DCD14331B89A4A9...

Signature

Director of solid waste

Title

SWR

Department

Date Signed: 5/24/2024

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
  
BY: 4B070831B4AA438

## ATTACHMENT A



April 15, 2024

Mr. Randall Morris  
Landfill Manager  
Solid Waste and Recycling Department  
City of Denton  
1527 S. Mayhill Rd.  
Denton, TX 76208

RE: Proposal for Professional Services  
Landfill Cell 6 Design, Construction Administration and Regulatory Reporting  
Denton, Texas

Dear Mr. Morris:

Parkhill is pleased to have the opportunity to provide this Proposal for Engineering Services to the City of Denton (the City) for the referenced Project.

### **Project Understanding and Assumptions**

- The cell construction area is approximately  $\pm 30$  acres. In addition to Cell 6, the construction includes a portion of Cell 5 and the remaining separation liner over the pre-Subtitle D Cell 0.
- The liner of Cell 6 will tie-into the edge of Cell 4 and Cell 5. The liner system shall be a composite liner system in accordance with the landfill permit 1590B. The liner will consist of a recompacted 2-foot-thick clay liner from onsite stockpiles, 60 mil double textured high-density polyethylene (HDPE) geomembrane liner, drainage geocomposite/ geonet, and protective cover.
- A separation liner (approximately  $\pm 14$  acres) will be constructed over the south slope of Cell 0/"1590." The liner will consist of a geocomposite gas vent layer, a 40-mil linear low-density polyethylene (LLDPE) geomembrane, and a geocomposite leachate drainage layer, and protective cover in accordance with the Permit.
- Total construction is anticipated to be approximately 12 months and the actual liner construction is anticipated not to exceed eight weeks.
- The City of Denton will provide a topographical survey of the Site to use for existing conditions.
- The City of Denton will contract with third-party surveyor to complete liner verification surveys (survey CQA).
- The City of Denton will contract with third-party for liner testing and liner construction quality assurance (liner CQA).
- The preliminary Engineer's Opinion of Probable Cost of the Project is between \$6,800,000 and \$8,000,000.

**SCOPE OF SERVICES****TASK 1 – DESIGN**

- Prepare the design of the liner systems for Landfill Cell 6, a portion of Cell 5, and the separation liner over Cell 0/“1590.”
- Prepare the design of a groundwater control, collection and removal system to provide suitable subsurface working conditions for liner construction and to prevent hydrostatic uplift of the liner system prior to establishing sufficient ballast.
- Prepare the design for horizontal gas collection wells to be placed below the separation liner.
- Prepare design details for penetration of the separation liner by existing landfill gas wells.
- The Design Plans will include information necessary for use by a construction contractor including but not limited to:
  - Construction Notes.
  - Pre-Design Topographic Survey.
  - Site Plan.
  - Groundwater Conditions Plan.
  - Existing Utilities Plan.
  - Excavation and Subgrade Plan.
  - Composite Liner Plan.
  - Liner Control Point Plan.
  - Protective Cover Control Point Plan.
  - Liner System Details and Sections.
  - Liner System Cross Sections.
  - Leachate Collection System Plan and Sections.
  - Leachate Collection System Details.
  - Groundwater Collection System Plan and Details.
  - Landfill Gas Collection System Plan and Details.
  - Electrical General Notes.
  - Electrical One-Line Diagram.
  - Electrical Plan.
- Prepare Technical Specifications to govern the work and materials.
- Prepare an Engineer's Opinion of Probable Cost at each submittal milestone.
- Incorporate revisions to Design Plans and Specifications based upon comments received from the City.
- Coordinate with the City's Purchasing Department to incorporate any required Specifications, documents, or forms into the Bid Documents.
- Attend Project meetings:
  - Project staff will attend design review meetings at Project initiation, 60% design, 95% design, and 100% Bid Documents submittal stages.
  - Other Project meetings or Site visits may be scheduled on an as needed basis.

**TASK 2 – BIDDING**

- Attend a Pre-Bid meeting and Site visit to familiarize prospective contractors with the Project.
- Respond to comments and questions raised by potential Bidders through the City Purchasing Department.
- Prepare and issue clarifications to Plans and Specifications as necessary via Addenda to the Bid Documents through the City Purchasing Department.
- Following the Bid opening, Parkhill will provide assistance with reviewing the Bid tab prepared by Denton's Purchasing Department and contacting Contractor references as requested.

**TASK 3 – CONSTRUCTION ADMINISTRATION & ENGINEER OF RECORD**

- During construction Parkhill will lead preconstruction and construction progress meetings with the City and Contractor staff and take and distribute meeting minutes.
  - Attend up to 14 regular construction progress meetings.
- Review construction activities and progress, coordinate with third-party CQA contracted directly with Denton, and review conformance testing results.
- Review and respond to up to 20 submittals, five Requests for Information (RFI) and make recommendations as necessary for up to two Change Order requests.
- Review and submit Contractor requests for payment to the City for processing.
- The Engineer of Record shall visit the Site no less than two times a week while the actual liner construction as required by Texas Commission on Environmental Quality (TCEQ) guidance (recompacted clay, HDPE geomembrane, leachate collection system, and protective cover installation).
- Review CQA survey verification for TCEQ reporting.
- Receive and review all soil tests, material tests, certification forms, daily logs, and other data from the CQA materials testing firm to ensure TCEQ liner construction documentation standards are met.
- Conduct a preliminary walk-through to generate a “punch-list” for completion by the Contractor.
- Conduct a final walk-through at Project completion.
- Assist with groundwater management planning during construction, if required.

**TASK 4 – LINER EVALUATION REPORTS**

- Compile all required information and documentation from the CQA activities. Complete and submit the Soil Liner Evaluation Report (SLER).
  - Respond to comments received from the TCEQ.
- Compile all required information and documentation from the CQA activities. Complete and submit the Geosynthetic Liner Evaluation Report (GLER).
  - Respond to comments received from the TCEQ.

**TASK 5 – DEVELOPMENT SERVICES SUBMITTAL AND COORDINATION**

- Compile all required information and documentation for City’s Development Services.
  - Prepare submittal.
  - Attend up to two meetings with the City.
  - Respond to City’s comments.
  - Submit up to two revised submittals to address City’s comments.

Services specifically excluded from our Scope of Services include, but are not limited to, the following:

- Surveys and Geotechnical Reports.
- Third-Party Independent Construction Inspection Services.
- Construction Material Testing.
- Multiple Bid Packages.

**DELIVERABLES**

- Draft Design Plans and Specifications at 60% and 95% completion in PDF format and 4 copies in 11x17 printed format.
- Final sealed Design Plans and Specifications suitable for Bidding purposes in PDF format.
- Soil Liner Evaluation Report (SLER).
- Geosynthetic Liner Evaluation Report (GLER).

Mr. Randall Morris  
City of Denton

Page 4

April 15, 2024

**COMPENSATION**

Our fee for the Scope of Services for Tasks 1 through 4 described above will be based on a lump sum amount of \$352,000.00 and will be billed on a percentage complete method. Task 5 will be based on an hourly rate. We estimate this to be a not-to-exceed an amount of \$15,000.00. Our proposed not-to-exceed fee for Tasks 1 through 5 is \$367,000.00

<u>TASK</u>		<u>FEE</u>
Task 1 – Design	\$	185,000.00
Task 2 – Bidding	\$	18,500.00
Task 3 – Construction Administration & Engineer of Record	\$	110,000.00
Task 4 – Liner Evaluation Reports	\$	38,500.00
Task 5 – Development Services Submittal and Coordination (hourly)	\$	15,000.00
Grand Total	\$	367,000.00

If this Proposal meets your expectations, you may indicate your acceptance by returning one signed copy to our office. Upon receipt, we will wait to receive your Agreement and Purchase Order and will consider receipt of the executed Agreement and Purchase Order as Authorization to Proceed.

We appreciate the opportunity to provide Professional Services to you and look forward to the successful completion of your Project. If you have any questions, please do not hesitate to call us at 469.200.7384.

Sincerely,

**PARKHILL**

By Frank E. Pugsley, P.E.  
Frank E. Pugsley, PE  
Principal

By Sonia Samir  
Sonia Samir, PE, PhD  
Civil Project Manager

**CITY OF DENTON**

Accepted By: \_\_\_\_\_

Title: \_\_\_\_\_

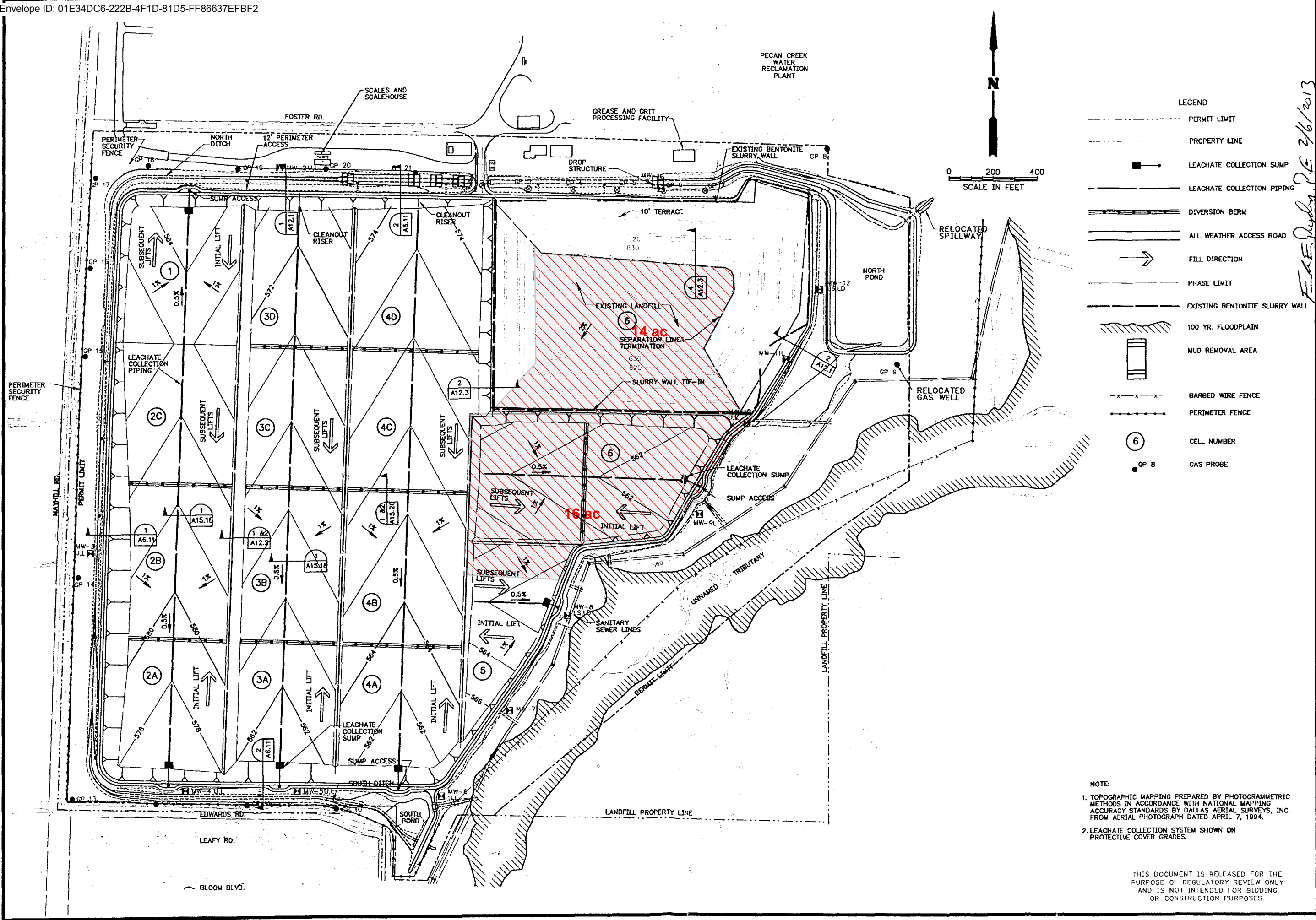
Date: \_\_\_\_\_

IN DUPLICATE

FEP/SS/pg  
Enclosures



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CP&Y  
DENTON

STATE OF TEXAS  
FRANK E. PUGSLEY  
REGISTERED PROFESSIONAL ENGINEER  
NO. 98460  
EXPIRATION DATE 12/31/2013

DATE: FEBRUARY 2013  
DESIGNED: F. PUGSLEY, P.E.  
DRAWN: F. PUGSLEY, P.E.  
REVIEWED: F. PUGSLEY, P.E.  
CP&Y Project: DENT1201

DATE: \_\_\_\_\_  
BY: \_\_\_\_\_  
REVISION: \_\_\_\_\_

CITY OF DENTON LANDFILL  
DENTON COUNTY, TEXAS  
**SITE DEVELOPMENT PLAN**  
SHEET  
11.9.3



**CONFLICT OF INTEREST QUESTIONNAIRE -****FORM CIQ****For vendor or other person doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1 Name of vendor who has a business relationship with local governmental entity.**

PARKHILL, SMITH &amp; COOPER, INC.

**2 ☐ Check this box if you are filing an update to a previously filed questionnaire.**☐

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information in this section is being disclosed.**\_\_\_\_\_  
Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☐

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☐

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐

Yes

☐

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4 ☒ I have no Conflict of Interest to disclose.****5** DocuSigned by:

Frank Pugsley

5/23/2024

Signature of Vendor doing business with the governmental entity

Date

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

- (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
  - (i) a contract between the local governmental entity and vendor has been executed; or
  - (ii) the local governmental entity is considering entering into a contract with the vendor;
- (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
  - (i) a contract between the local governmental entity and vendor has been executed; or
  - (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
  - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
  - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
  - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
  - (1) the date that the vendor:
    - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
    - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
  - (2) the date the vendor becomes aware:
    - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
    - (B) that the vendor has given one or more gifts described by Subsection (a); or
    - (C) of a family relationship with a local government officer.

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> degree of affinity (marriage) or consanguinity (blood or adoption)

**City Official:** for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

**Vendor:** a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

**Certificate Of Completion**

Envelope Id: 01E34DC6222B4F1D81D5FF86637EFBF2

Status: Sent

Subject: Please DocuSign: City Council Contract 7109-039 Cell 6 Design

Source Envelope:

Document Pages: 27

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Crystal Westbrook

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

crystal.westbrook@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Crystal Westbrook

Location: DocuSign

5/17/2024 10:46:28 AM

crystal.westbrook@cityofdenton.com

**Signer Events****Signature****Timestamp**

Crystal Westbrook

**Completed**

Sent: 5/17/2024 10:50:39 AM

crystal.westbrook@cityofdenton.com

Viewed: 5/17/2024 10:53:00 AM

Senior Buyer

Signed: 5/17/2024 10:53:51 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lori Hewell



Sent: 5/17/2024 10:53:54 AM

lori.hewell@cityofdenton.com

Viewed: 5/17/2024 12:44:21 PM

Purchasing Manager

Signed: 5/17/2024 12:45:26 PM

City of Denton

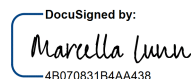
Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Marcella Lunn



Sent: 5/17/2024 12:45:28 PM

marcella.lunn@cityofdenton.com

Viewed: 5/20/2024 12:20:45 PM

Senior Deputy City Attorney

Signed: 5/20/2024 12:22:20 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Frank Pugsley



Sent: 5/20/2024 12:22:22 PM

fpugsley@parkhill.com

Viewed: 5/20/2024 12:23:09 PM

Principal


Signed: 5/23/2024 9:27:15 PM

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 47.185.169.193

**Electronic Record and Signature Disclosure:**  
Accepted: 5/20/2024 12:23:09 PM  
ID: d1d41a38-a87c-44c9-b819-dcf55ab4ddc2

Signer Events	Signature	Timestamp
Brian Boerner brian.boerner@cityofdenton.com Director of Solid Waste Security Level: Email, Account Authentication (None)	DocuSigned by:  DCD14331B89A4A9...  Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 5/23/2024 9:27:18 PM Viewed: 5/24/2024 7:41:09 AM Signed: 5/24/2024 7:42:13 AM

**Electronic Record and Signature Disclosure:**  
 Accepted: 5/24/2024 7:41:09 AM  
 ID: bf1f77ec-63b8-4361-9988-c9d074e5daeb

Cheyenne Defee  
 cheyenne.defee@cityofdenton.com  
 Procurement Administration Supervisor

Sent: 5/24/2024 7:42:16 AM

City of Denton  
 Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Sara Hensley  
 sara.hensley@cityofdenton.com  
 Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Lauren Thoden  
 lauren.thoden@cityofdenton.com  
 Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee  
 cheyenne.defee@cityofdenton.com  
 Procurement Administration Supervisor  
 City of Denton  
 Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

**COPIED**

Sent: 5/17/2024 10:53:54 AM

Gretna Jones  
 gretna.jones@cityofdenton.com  
 Legal Secretary  
 City of Denton  
 Security Level: Email, Account Authentication (None)

**COPIED**

Sent: 5/24/2024 7:42:17 AM  
 Viewed: 5/28/2024 1:01:30 PM

Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Randall Morris randall.morris@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Accepted: 4/29/2024 10:54:00 AM ID: ba5f0ebb-2e48-4880-9e5d-0ddc1b1862e0		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/17/2024 10:50:39 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.





# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-116, Version: 1**

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a fifth amendment to a contract between the City of Denton and Schneider Electric Smart Grid Solutions, LLC, formerly Telvent USA, LLC, amending the contract approved by City Council on May 7, 2013, in the not-to-exceed amount of \$491,813.75; said fifth amendment to continue to provide vendor support of the Denton Municipal Electric (DME) ArcFM solution and associated software modules along with new hardware and software upgrades, which is the sole provider of these items, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8564 - providing for a two (2) year term and an additional fifth amendment expenditure amount not-to-exceed \$95,000.00).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a fifth amendment to a contract between the City of Denton and Schneider Electric Smart Grid Solutions, LLC, formerly Telvent USA, LLC, amending the contract approved by City Council on May 7, 2013, in the not-to-exceed amount of \$491,813.75; said fifth amendment to continue to provide vendor support of the Denton Municipal Electric (DME) ArcFM solution and associated software modules along with new hardware and software upgrades, which is the sole provider of these items, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8564 – providing for a two (2) year term and an additional fifth amendment expenditure amount not-to-exceed \$95,000.00).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Enhance Infrastructure and Mobility

### **INFORMATION/BACKGROUND**

Denton Municipal Electric (DME) must maintain a master repository of records and maps for the installed electric system equipment. A geographic information/facilities management system (referred to as “GIS”) was the method chosen by the City of Denton many years ago. GIS software assists utilities by increasing productivity and improving services through effective spatial data management.

We are currently using ArcFM Suite of products including but not limited to, ArcFM Editor, ArcFM Fiber, Responder OMS, ArcFM Viewer and we have migrated to the latest version of ArcFM XI.

The ArcFM electric GIS tool allows DME the capability to run database queries on the transmission and distribution electric systems infrastructure, fiber communications infrastructure, and create engineering and operations maps. The electric GIS has become a core product for DME and is now used to provide GIS data that assists with financial fixed asset accounting, budget preparations, and presentations requiring governing board approvals, distribution engineering analysis, and outage management tracking and reporting. Over time, there have been other software that have had integrations to the Schneider suite of software that require continued maintenance and support.

The City of Denton needs to keep current maintenance with the software vendor to ensure the availability of upgrades, software fixes, and access to knowledge and support resources.

Schneider Electric, LLC is the sole source vendor for the maintenance of ArcFM Solutions Software systems and associated software modules. They are a wholly owned subsidiary of Schneider Electric Holdings, Inc, operating under the Schneider Electric brand.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On May 7, 2013, City Council approved a contract with Telvent USA, LLC, in the not-to-exceed amount of \$491,813.75 (Ordinance 2013-118).

On October 18, 2016, City Council approved Amendment 1 with Telvent USA, LLC, in the not-to-exceed amount of \$129,401.00 (Ordinance 2016-322).

On August 8, 2018, Purchasing approved Amendment 2 with Telvent USA, LLC, in the not-to-exceed amount of \$4,667.00.

On March 3, 2020, Council approved Amendment 3 with Telvent USA, LLC, in the not-to-exceed amount of \$142,000.00 (Ordinance 20-498).

On April 8, 2022, Purchasing executed a Name Change with Schneider Electric Smart Grid Solutions, LLC, formerly Telvent USA, LLC.

On August 16, 2022, Council approved Amendment 4 with Schneider Electric Smart Grid Solutions, LLC, in the not-to-exceed amount of \$95,000.00 (Ordinance 22-1504).

### **RECOMMENDATION**

Award with an Amendment 5 to Schneider Electric Smart Grid Solutions, LLC, as a sole source supplier, to continue to provide vendor support of the Denton Municipal Electric (DME) ArcFM Solution and associated software modules along with new hardware and software upgrades, in a two (2) year not-to-exceed amount of \$95,000.

### **PRINCIPAL PLACE OF BUSINESS**

Schneider Electric Smart Grid Solutions, LLC,  
Fort Collins, CO

### **ESTIMATED SCHEDULE OF PROJECT**

Anticipated start date of December 1, 2024 until November 30, 2026 for a total of 2 years.

### **FISCAL INFORMATION**

The services will be funded from DME TechOps Operating budget 600750.7899.9210, in the not-to-exceed amount of \$95,000.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet

Exhibit 2: Original Ordinance, Contract, Amendments, and Name Change

Exhibit 3: Ordinance and Amendment 5

Respectfully submitted:  
Lori Hewell, 940-349-7100  
Purchasing Manager

For information concerning this acquisition, contact: Jerry Looper, 940-349-7676.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. 2013-118

AN ORDINANCE OF THE CITY OF DENTON, TEXAS PROVIDING FOR, AUTHORIZING, AND APPROVING A THREE (3) YEAR EXPENDITURE OF FUNDS FOR THE PURCHASE OF A GEOGRAPHIC INFORMATION/FACILITIES MANAGEMENT SYSTEM (GIS), SOFTWARE PRODUCTS FOR GIS CORE OPERATIONS, ENHANCED WEB-BASED GIS, AND A NEW OUTAGE MANAGEMENT SYSTEM FROM TELVENT USA, LLC, WHICH IS AVAILABLE FROM ONLY ONE SOURCE AND IN ACCORDANCE WITH CHAPTER 252.022 OF THE TEXAS LOCAL GOVERNMENT CODE SUCH PURCHASES ARE EXEMPT FROM THE REQUIREMENTS OF COMPETITIVE BIDDING; AND PROVIDING AN EFFECTIVE DATE (FILE 5225-PURCHASE OF GIS SOFTWARE PRODUCTS, ENHANCED WEB-BASED GIS, AND OUTAGE MANAGEMENT SYSTEM IN THE NOT-TO-EXCEED AMOUNT OF \$491,813.75).

WHEREAS, Section 252.022 of the Local Government Code provides that procurement of items that are only available from one source, including; items that are only available from one source because of patents, copyrights, secret processes or natural monopolies; films, manuscripts or books; electricity, gas, water and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and need not be submitted to competitive bids; and

WHEREAS, the City Council wishes to procure one or more of the items mentioned in the above paragraph; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following purchase of materials, equipment or supplies, as described in the "File" listed hereon, and on file in the office of the Purchasing Agent, and the license terms attached are hereby approved:

<u>FILE</u> <u>NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
5225	Telvent USA, LLC	\$491,813.75

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including, items that are only available from one source because of patents, copyrights, secret processes or natural monopolies; films, manuscripts or books; electricity, gas, water and other utility purchases; captive replacement parts or components for equipment; and

library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and need not be submitted to competitive bids.


SECTION 3. The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

SECTION 4. The City Manager is hereby authorized to execute any contracts relating to the items specified in Section 1 and the expenditure of funds pursuant to said contracts is hereby authorized.

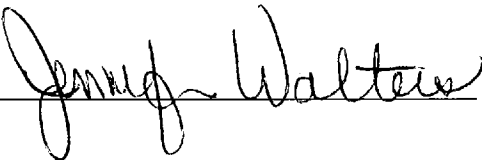
SECTION 5. The City Council of the City of Denton, Texas hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under File 5225 to the City Manager of the City of Denton, Texas, or his designee.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

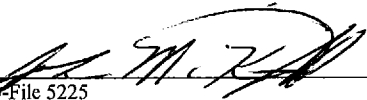
PASSED AND APPROVED this the 7th day of May, 2013.

  
\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY:   
\_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY:   
\_\_\_\_\_  
5-ORD-File 5225

STATE OF TEXAS

§

COUNTY OF DENTON

§

§

**PROFESSIONAL SERVICES AGREEMENT  
FOR CONSULTING SERVICES RE ARCFM SOLUTION UPGRADE**

**THIS AGREEMENT** is made and entered into as of the 7th day of May, 2013, by and between the City of Denton, Texas, a Texas Municipal Corporation, with its principal offices at 215 East McKinney Street, Denton, Texas 76201 (hereinafter "City") and Telvent USA LLC, a limited liability company, with offices at 4701 Royal Vista Circle, Fort Collins, Colorado, 80528 (hereinafter "CONSULTANT"); the parties acting herein, by and through their duly-authorized officers and representatives.

WITNESSETH, that in consideration of the covenants and agreements herein contained, the parties hereto do mutually AGREE as follows:

**ARTICLE I**  
**EMPLOYMENT OF CONSULTANT**

The CITY hereby contracts with CONSULTANT, as an independent contractor, and the CONSULTANT hereby agrees to perform the services herein in connection with the scope of services as stated in the Articles to follow, with diligence and in accordance with the professional standards customarily obtained for such services in the State of Texas.

**ARTICLE II**  
**SCOPE OF SERVICES**

The CONSULTANT shall perform the following services in a professional manner:

- A. Consultant, an international software engineering firm, shall provide to the City professional and personal consulting services pertaining to CONSULTANT'S Scope of Work entitled "ArcFM Solution Upgrade Services", dated March 27, 2013 which is a thirty-three (33) page document from CONSULTANT to Denton Municipal Electric, which letter is attached hereto as Exhibit "A" and is incorporated herewith by reference.
- B. To consult with key personnel within Denton Municipal Electric and the Technology Services Department of the CITY, and any other designated city personnel regarding any and all aspects of the services to be performed pursuant to this Agreement.

**ARTICLE III**  
**ADDITIONAL SERVICES**

Any additional services to be performed by CONSULTANT, if authorized by the CITY, which are not included in the above-described Scope of Work, CONSULTANT, who shall determine, in writing, the scope of such additional services, the amount of compensation for such additional services, and other essential terms pertaining to the provision of such additional services by CONSULTANT.

ARTICLE IV  
PERIOD OF SERVICE

This Agreement shall become effective upon execution by the CITY and the CONSULTANT and upon the issuance of a notice to proceed by the CITY. The termination date of this Agreement shall be upon the earliest to occur of the following events: completion of the work described here, including additional services, and in the attached Exhibit "A"; or upon the depletion and exhaustion of the \$491,813.75 not-to-exceed amount provided for herein; or upon fifteen (15) days written notice to terminate, issued by the City Manager. This Agreement may be sooner terminated in accordance with the provisions hereof. Time is of the essence in this Agreement. The CONSULTANT shall make all reasonable efforts to complete the services set forth herein as expediently as possible and to meet the schedules established by the CITY, acting through its Assistant City Manager of Utilities or his designee.

ARTICLE V  
COMPENSATION

A. COMPENSATION TERMS:

Compensation terms are pursuant to the "Service Quote" contained on page 31 of the above Scope of Work. Reference is expressly made to page 30 for the specific figures and the assumptions.

"Direct Non-Labor Expense" is defined as that expense, based upon actual cost, for any out-of-pocket expense reasonably incurred by CONSULTANT in the performance of this Agreement for supplies, long-distance telephone, telecopier, reproduction expense, overnight courier, photocopy expense, transportation, travel, communications, subsistence and lodging away from home and similar incidental expenses reasonably incurred in connection with the Project. All expenses are included in the fixed price Service Quote on page 31 of the Scope of Work.

B. BILLING AND PAYMENT:

For and in consideration of the professional services to be performed by the CONSULTANT herein, the CITY agrees to pay CONSULTANT a total fee, including reimbursement for direct non-labor expenses, of not-to-exceed \$491,813.75 for those services described in Exhibit "A" attached hereto.

Payments to CONSULTANT will be made by the CITY on the basis of the milestone payment schedule as detailed on page 31 of the Scope of Work and rendered to the CITY through the General Manager of Denton Municipal Electric ("DME") of designee. The fee bills as submitted, shall be allowed and approved, or shall be disallowed for cause, by the General Manager of DME or designees.

Nothing contained in this Article shall require the CITY to pay for any work which is unsatisfactory as reasonably determined by the General Manager of DME Utilities or designee, or which is not submitted in compliance with the terms of this Agreement. The CITY shall not be required to make any payments to the CONSULTANT when the



CONSULTANT is in default under this Agreement.

It is specifically understood and agreed that the CONSULTANT shall not be authorized to undertake any work pursuant to this Agreement which would require additional payments by the CITY for any charge, expense or reimbursement above the maximum not-to-exceed fee as stated, without first having obtained written authorization from the CITY. CONSULTANT shall not proceed to perform any services to be later provided for under Article III. "Additional Services" without first obtaining prior written authorization from the CITY.

- C. **ADDITIONAL SERVICES:** For additional services authorized in writing by the CITY in Article III hereinabove, CONSULTANT shall be paid based on a to-be-agreed-upon Schedule of Charges. Payments for additional services shall be due and payable upon submission by CONSULTANT, and shall be in accordance with Article V.B. herein. Statements for Basic Services and any Additional Services shall be submitted to CITY no more frequently than once monthly.
- D. **PAYMENT**

If the CITY fails to make payments due to CONSULTANT for services and expenses within thirty (30) days after receipt of the CONSULTANT'S undisputed statement thereof, the amounts due the CONSULTANT will be increased by the rate of statutory Prompt Payment Act interest as provided under Texas law from the said thirtieth (30th) day, and in addition, the CONSULTANT may, after giving ten (10) days' written notice to the CITY, suspend services under this Agreement until the CONSULTANT has been paid in full for all amounts then due and owing for services, expenses and charges provided. However, nothing herein shall require the OWNER to pay the Prompt Payment interest referenced above if the CITY reasonably determines that the work of CONSULTANT is unsatisfactory, in accordance with Article V, Compensation, and the CITY promptly notifies CONSULTANT in writing within twenty-one (21) days of any such defect, specifying the work which it deems to be unsatisfactory..

#### ARTICLE VI OBSERVATION AND REVIEW OF THE WORK

- A. CONSULTANT will exercise reasonable care and due diligence in discovering and promptly reporting to the CITY any defects or deficiencies in the work of the CONSULTANT or any of its subcontractors or subconsultants.
- B. All deliverables submitted to the CITY shall be reviewed and checked within two weeks of delivery. Deliverables are outlined in Exhibit "A" – Scope of Work and include completed work (documents, services, code, etc.) provided to CITY for review. CONSULTANT shall be notified in writing of any pending delays in review periods.
- C. All reviews will be performed on the basis of work correctness and compliance with the Agreement. The CITY reserves the right to return for correction within these approximate review periods any and all products that are in error of have not been prepared within the scope of work; unless otherwise notified in writing, these corrections will be incorporated in another work task submittal.

- D. The correction procedures of CONSULTANT shall not affect the overall production schedule. Once final acceptance is given on any deliverable product, any further modifications required of CONSULTANT for that accepted product shall be considered Additional Services per Article III, and shall be billable at appropriate current hourly rates.
- E. CITY must exercise due diligence and shall ensure that factors beyond the control of CONSULTANT, such as CITY delays and failure to fulfill CITY responsibilities, shall not interfere with CONSULTANT's ability to complete the services. CITY shall notify CONSULTANT of any such factors that may cause delays in the completion of tasks or changes to the scope of work, and both parties will mutually determine required modifications to this Agreement.
- F. At the conclusion of project acceptance, CONSULTANT will request that CITY sign an acceptance certificate. CITY's production use of any given application prior to receipt of an acceptance certificate shall constitute acceptance on the part of the CITY. Production use shall be defined as the use of the application in an environment that includes Client's system of record database.

#### ARTICLE VII OWNERSHIP OF DOCUMENTS

All documents, analyses and other data and deliveries prepared by CONSULTANT under this Agreement as described in the Scope of Work ("Work Product") are instruments of service and are and shall remain the property of CONSULTANT. CONSULTANT grants a personal, non-transferable, nonexclusive license to use and copy the Work Products (as defined in Attachment "A" Scope of Work) solely for CITY's internal business purposes. CITY shall include CONSULTANT'S copyright notice and any other legend of ownership on all copies of the Work Product as such notice appears on the originals. CITY shall not make, sell, translate, export, license, sublicense, localize, use with any time-sharing or for service bureau arrangements, or transmit to any person outside of CITY'S internal business organization, the Work Product.

The Work Products shall not be changed or used for purposes other than those set forth in this Agreement without the prior written approval of CONSULTANT. If CITY releases the Work Products to a third party without CONSULTANT prior written consent, or changes or uses the Work Products other than as intended hereunder, CITY does so at its sole risk and discretion and CONSULTANT shall not be liable for any claims or damages resulting from or connected with the release or any third party's use of the Work Products; and CITY shall be considered in breach of this Agreement and CONSULTANT shall have all rights to remedy as provided hereunder.

#### ARTICLE VIII INDEPENDENT CONTRACTOR

CONSULTANT shall provide services to CITY as an independent contractor, not as an employee of the CITY. CONSULTANT shall not have or claim any right arising from employee status.

ARTICLE IX  
INDEMNITY AGREEMENT

A. The CONSULTANT shall indemnify and save and hold harmless the CITY and its officials, officers, agents, attorneys and employees from and against any and all liability, claims, demands, damages, losses and expenses, including but not limited to court costs and reasonable attorney fees incurred by the CITY, and including without limitation damages for bodily and personal injury, death and property damage, resulting from the negligent acts or omissions of the CONSULTANT or its subconsultants in performance of this Agreement. PROVIDED HOWEVER, the total liability of CONSULTANT hereunder, in any event, shall in no event exceed \$1,000,000.

B. The CITY, to the extent provided by applicable law, shall indemnify and save and hold harmless CONSULTANT and its officials, officers, agents, attorney, and employees from and against any and all liability, claims, demands, damages, losses, and expenses, including but not limited to court costs and reasonable attorney's fees incurred by CONSULTANT and including, without limitation, damages for bodily and personal injury, death, or property damage, resulting from the negligent acts or omissions of the CITY, or its officers, agents, subcontractors, subconsultants, attorney, and employees in the execution, operation, or performance of this Agreement

C. Nothing in this Agreement shall be construed to create a liability to any person who is not a party to this Agreement and nothing herein shall waive any of the party's defenses, both at law or equity, to any claim, cause of action or litigation filed by anyone not a party to this Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

ARTICLE X  
INSURANCE

During the performance of the Services under this Agreement, CONSULTANT shall maintain the following insurance with an insurance company licensed to do business in the State of Texas by the State Insurance Commission or any successor agency, that has a rating with A. M. Best Rate Carriers of at least an "A-" or above:

- A. Comprehensive General Liability Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$1,000,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$100,000 in the aggregate.
- B. Automobile Liability Insurance with bodily injury limits of not less than \$1,000,000 for each person and not less than \$1,000,000 for each accident and with property damage limits for not less than \$100,000 for each accident.
- C. Worker's Compensation Insurance (if applicable) in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$100,000 for each accident.
- D. Professional Liability Insurance with limits of not less than \$1,000,000 annual aggregate.
- E. CONSULTANT shall furnish insurance certificates or insurance policies at the CITY's request to evidence such coverage to the extent that is possible. Otherwise CONSULTANT

shall furnish to CITY within fifteen (15) days of the date of approval of this Agreement, certificates of insurance evidencing the required coverage. The insurance policies shall name the CITY as an additional insured on all such policies to the extent legally possible (save and except the coverage described in Subparagraph C. and D. of this Article), and shall contain a provision that such insurance shall not be cancelled or modified without thirty (30) days prior written notice to CITY and CONSULTANT. In such event, the CONSULTANT shall, prior to the effective date of the change or cancellation of coverage, deliver copies of any such substitute policies furnishing at least the same policy limits and coverage to OWNER.

#### ARTICLE XI ARBITRATION AND ALTERNATE DISPUTE RESOLUTION

The parties may agree to settle any disputes under this Agreement by submitting the dispute to arbitration or other means of alternate dispute resolution such as mediation. No arbitration or alternate dispute resolution arising out of or relating to, this Agreement involving one party's disagreement may include the other party to the disagreement without the other's approval.

#### ARTICLE XII LIMITATION OF LIABILITY

- A. CONSULTANT's liability to the CITY shall extend only to those actual damages suffered by the CITY as a result of CONSULTANT's breach of this Agreement. CONSULTANT's liability shall not exceed the amount actually paid by the CITY for the professional services involved in this Agreement.
- B. Notwithstanding the provisions of Article XII.A of this Agreement, the provisions and the insurance coverage provided for in Article X. of this Agreement shall apply, and shall be in full force and effect. CONSULTANT must maintain the insurance set forth in Article X. or otherwise, upon the occurrence of an insurable event for which CONSULTANT should be covered under the terms of this Agreement, CONSULTANT shall be liable to CITY for actual damages, up to the required face amount of each applicable insurance policy. In no event will Consultant be liable to CITY for any indirect, consequential, or special damages.

#### ARTICLE XIII CONSEQUENTIAL DAMAGES

In no event and under no circumstances shall CONSULTANT be liable to CITY for any interest, loss of anticipated revenues, earning, profits, or increases expense of operations, or for any consequential indirect, or special damages.

#### ARTICLE XIV PROFESSIONAL STANDARDS

CONSULTANT will perform services under this Agreement with the degree of skill and diligence normally practiced by professional engineers or consultants performing the same degree of similar services. No other warranty or guarantee, expressed or implied, is made with respect to the services furnished under this Agreement and all implied warranties are disclaimed.

ARTICLE XV  
TERMINATION OF AGREEMENT

- A. Notwithstanding any other provision of this Agreement, either party may terminate this Agreement by providing thirty (30) days advance written notice to the other party.
- B. Alternatively, this Agreement may be terminated in whole or in part in the event of either party substantially failing to fulfill its obligations under this Agreement. No such termination will be effected unless the other party is given (1) written notice (delivered by certified mail, return receipt requested) of intent to terminate and setting forth the reasons specifying the nonperformance or other reason(s), and not less than (30) calendar days to cure the failure; and (2) an opportunity for consultation with the terminating party prior to termination.
- C. If the Agreement is terminated prior to completion of the services to be provided hereunder, CONSULTANT shall immediately cease all services and shall render a final bill for services to the CITY within thirty (30) days after the date of termination. The CITY shall pay CONSULTANT for all services properly rendered and satisfactorily performed, and for reimbursable expenses prior to notice of termination being received by CONSULTANT, in accordance with Article V of this Agreement. Should the CITY subsequently contract with a new consultant for the continuation of services on the Project, CONSULTANT shall cooperate in providing information to the CITY and the new consultant. The CONSULTANT shall turn over all documents prepared or furnished by CONSULTANT pursuant to this Agreement to the OWNER on or before the date of termination but may maintain copies of such documents for its use.

ARTICLE XVI  
RESPONSIBILITY FOR CLAIMS AND LIABILITIES

Approval of the work by the CITY shall not constitute nor be deemed a release of the responsibility and liability of the CONSULTANT, its officers, employees, agents, subcontractors, and sub-consultants for the accuracy and competency of their designs or other work performed pursuant to this Agreement; nor shall such approval by the CITY be deemed as an assumption of such responsibility by the CITY for any defect in the design or other work prepared by the CONSULTANT, its officers, employees, agents, subcontractors, and sub-consultants.

ARTICLE XVII  
NOTICES

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered, faxed e-mailed, or may be mailed to the respective parties by depositing same in the United States mail at the addresses shown below, by means of U. S. Mail, postage prepaid, certified mail, return receipt requested, unless otherwise specified herein.

To CONSULTANT:

Telvent USA, LLC  
Attn: Legal Department  
4701 Royal Vista Circle  
Fort Collins, CO 80528

Fax No. (970) 223-5577

To CITY:

City of Denton, Texas  
Attn: Jerry Fielder, P.E.  
1659 Spencer Road  
Denton, Texas 76205

Fax No. (940) 349-7334

And

City of Denton, Texas  
Attn: City Manager  
215 East McKinney Street  
Denton, Texas 76201

Fax: (940) 349- 8596

All notices under this Agreement shall be effective upon their actual receipt by the party to whom such notice is given or within three days after the date of mailing.

ARTICLE XVIII  
ENTIRE AGREEMENT

This Agreement, consisting of thirteen (13) pages and Exhibit "A" consisting of thirty-one (31) pages, constitutes the complete and final expression of the Agreement of the parties and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior contemporaneous offers, promises, representations, negotiations, discussions, communications understandings, and agreements which may have been made in connection with the subject matter hereof.

ARTICLE XIX  
SEVERABILITY

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement, and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement, to the extent reasonably possible, to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the original intentions of the parties respecting any such stricken provision.

ARTICLE XX  
COMPLIANCE WITH LAWS

The CONSULTANT shall comply with all federal, state, local laws, rules, regulations, and ordinances applicable to the work performed by CONSULTANT hereunder, as they may now read or hereafter be amended.



ARTICLE XXI  
DISCRIMINATION PROHIBITED

In performing the services required hereunder, the CONSULTANT shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

ARTICLE XXII  
PERSONNEL

- A. The CONSULTANT represents that it has secured, or will secure at its own expense at its own expense any additional personnel required to perform all the services under this Agreement. Such personnel shall be subconsultants of CONSULTANT, and shall not be employees or officers of, nor have any contractual relations with the CITY. CONSULTANT shall inform the CITY of any conflict of interest or potential conflict of interest that may arise during the term of this Agreement.
- B. All services required hereunder will be performed by the CONSULTANT or under its supervision. All personnel engaged in performing the work shall be qualified, and shall be authorized and permitted under state and local laws to perform such services.
- C. It is hereby mutually agreed that the CITY and CONSULTANT will not solicit, hire, or contract with any employee(s) of the CITY's or CONSULTANT's staff who are associated with efforts called for under this Agreement during the term of this Agreement and for a period of one (1) year thereafter. In the event the foregoing provision is breached, liquidated damages equal to twelve (12) months of the employee's compensation plus any legal expenses associated with the enforcement of this provision shall be paid by the hiring party, whether CITY or CONSULTANT.

ARTICLE XXIII  
ASSIGNABILITY

The CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment, novation or otherwise) without the prior written consent of the OWNER. CONSULTANT shall promptly notify OWNER, in writing, of any change of its name as well as of any material change in its corporate structure, its location, and/or its operations.

ARTICLE XXIV  
MODIFICATION

No waiver or modification of this Agreement or of any covenant, condition, limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing, duly executed.

The parties further agree that the provisions of this Article will not be waived unless as herein set forth.

ARTICLE XXV  
MISCELLANEOUS

- A. The following Exhibit "A" is attached to, incorporated herewith by reference, and made a part of this Agreement for all purposes pertinent:

Exhibit "A" --- CONSULTANT'S Scope of Work

- B. CONSULTANT agrees that CITY shall, until the expiration of four (4) years after the final payment made by CITY under this Agreement, have access to and the right to examine any pertinent books, documents, papers and records of the CONSULTANT involving transactions relating to this Agreement. CONSULTANT agrees that OWNER shall have access during normal working hours to all necessary CONSULTANT facilities and shall be provided adequate and appropriate working space in order to conduct examinations or audits in compliance with this Article. CITY shall give CONSULTANT reasonable advance notice of all intended examinations or audits.
- C. Venue of any suit or cause of action under this Agreement shall lie exclusively in Denton County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- D. For the purpose of this Agreement, the key persons who will serve as Project Manager respecting this engagement shall be Brent Heath, and Rick Frymyer, Strategic Account Manager of CONSULTANT. However, nothing herein shall limit CONSULTANT from using other qualified and competent consultants and administrative support personnel of their firm to perform the services required herein.
- E. CONSULTANT shall commence, carry on, and complete its work on the Project with all applicable dispatch, and in a sound, economical, efficient manner, and in accordance with the provisions hereof. In accomplishing the Project, CONSULTANT shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on by the CITY.
- F. The CITY shall assist the CONSULTANT by placing at the CONSULTANT's disposal all available information pertinent to the Project, including previous reports, any other data relative to the Project and arranging for the access to, and make all provisions for the CONSULTANT to enter in or upon, public and private property as required for the CONSULTANT to perform professional services under this Agreement. CITY and CONSULTANT agree that CONSULTANT is entitled to rely upon information furnished to it by CITY without the need for further inquiry or investigation into such information.
- G. During the entire course of the project, CITY will be responsible for backup/recovery of all onsite project related digital data, materials, and databases. CONSULTANT will be responsible for backup/recovery of all project related data housed on CONSULTANT computer systems.



- H. The captions of this Agreement are for informational purposes only and shall not in any way affect the substantive terms or conditions of this Agreement.

*Remainder of Page Intentionally Left Blank  
Signatures on next page*

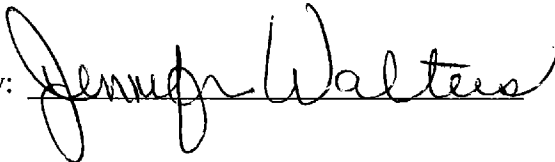
IN WITNESS WHEREOF, the City of Denton, Texas has executed this Agreement in four (4) original counterparts, by and through its duly-authorized City Manager; and Telvent USA LLC, a Delaware limited liability company, having executed this Agreement by and through its duly-authorized undersigned officer, on this the 7th day of May, 2013.

“CITY”

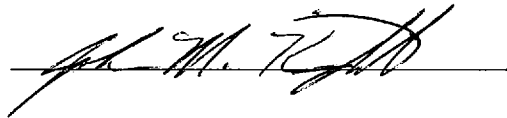
CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By:   
GEORGE C. CAMPBELL  
CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

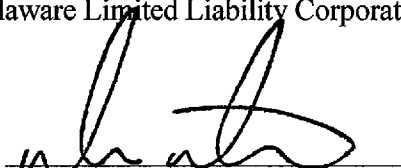
By: 

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

By: 

“CONSULTANT”

TELVENT USA LLC  
A Delaware Limited Liability Corporation

By:   
Drew Ditter

ATTEST:  
Heather R Hansen

By: 

## EXHIBIT A

See attached Scope of Work entitled  
ArcFM Solution Upgrade



Smart Information for a Sustainable World

Scope of Work

## ArcFM Solution Upgrade Services

Prepared for:  
**Denton Municipal Electric**  
**at the City of Denton**

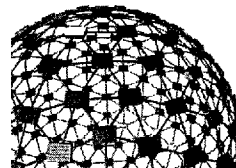
Proposal Date: 2/11/2013

Version Number: 7.1

### **Telvent USA, LLC**

4701 Royal Vista Circle  
Fort Collins, CO 80528  
Phone: 970-223-1888  
Fax: 970-223-5577

[www.telvent.com](http://www.telvent.com)



**Smart  
Grid  
Solution**

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## Introduction

Telvent USA, LLC (Telvent) is pleased to provide to Denton Municipal Electric (DME) at the City of Denton this Scope of Work for ArcFM Solution Upgrade Services.

The upgrade of software components defined in this SOW relates to only those custom components in use at DME that were developed by Telvent during previous ArcFM implementation or upgrade projects. The upgrade of custom components developed either in-house by DME, or by other entities, is not included in this SOW. Should DME request Telvent to perform services beyond those specified in this scope of work, a contract change order will be required.

## Assumptions

### Upgrade Assumptions

- An environment for conversion and upgrades will be established in the Fort Collins office of Telvent, using an Oracle 10g export from DME's existing ArcGIS database. The environment will be configured to operate similarly as DME's new Servers which will be running ArcFM Solution version 10.1 on an Oracle 11g database.
- Telvent will be performing the requested Long Raw to Blob conversion at the time of the database upgrade.
- DME will provide a full database export 10g initially for Telvent to load onto their Fort Collins environment and upgrade and test. DME export of the SDE database should arrive in the Fort Collins office at least four (4) days prior to the arrival of the Telvent Technical Lead on-site to give Telvent adequate time to perform the upgrade and test.
- Telvent has included an on-site visit during the course of the project to assist in the installation of the upgraded system on DME's development environment. This visit will occur after the database has been upgraded in the Fort Collins test environment.
- Telvent requests that DME's DBA be available for the duration of the on-site visit.
- Only the custom Telvent components listed are included in the upgrade SOW.
- No new functionality will be incorporated into the existing custom components. They will continue to function as they do currently. However, a new AutoUpdater will be created in accordance with 1.3.2 of this SOW.
- The mobile replication process will be included in this SOW. An example of what will not be included will be the implementation of replicating aerial images; however, that process and ability will be available but not configured.
- DME should be prepared to provide, for the duration of the on-site upgrade effort, a connection to DME network for the Telvent Technical Lead and an

active internet connection port for the Telvent laptop computer in the same area as the electric GIS client workstations.

- Extended Feeder Manager assumes that all electric data resides within the same geometric network.

### Fiber Manager Assumptions

- Since DME already has existing Fiber features and classes, Telvent has not included any Fiber data migration work included in this scope of work. It is assumed that DME will utilize the Fiber Manager Tools to input or migrate all fiber data into the system manually. Should DME wish Telvent to provide assistance with any data migration, a separate scope and costs will be provided for that effort.
- It is assumed that stored displays can be created through a combination of symbols from the standard Fiber Manager symbol set or standard Esri symbol sets. This scope does not include time for creating custom symbols.

### Responder Assumptions

- DME will use a standard out-of-the-box configuration of Responder. Telvent will work with DME to adjust this configuration to load DME's users into the appropriate user roles, adjust the incident creation parameters according to DME's requirements, assist DME with how to create and enter and set up new users, Crew and Truck information. Telvent will assist DME in creating an Outage Stored Display that allows DME to view outage and crew information within the ArcFM environment and work with DME to create a process that will maintain the Responder customer information with the GIS customer tables.
- DME will use an out-of-the-box installation of the Responder toolset. No custom tools will be developed during DME implementation of the Responder web-browser, the Responder Explorer, or the Responder tools for ArcGIS beyond the specified interfaces of Northstar CIS, Porche IVR system, OSI SCADA system, and associated communication networks.
- Two or more dispatchers will be able to use the system at any time; however the system will not be configured to assign a dispatcher to specific areas of responsibility. Telvent will provide knowledge transfer to DME staff on how to assign specific dispatchers to areas of responsibility.
- Truck and Crew information would be loaded from an existing data source or entered manually by DME personnel.
- ArcFM Feeder Manager is configured and running on DME electric dataset. All features are connected to the network and contain the appropriate attributes for correct tracing.

- Customers will be related to either service points or transformers. If customers are related to service points, the secondary network will support electrical tracing between the transformer and the service points. In either case the network will support electrical tracing between transformer and source breakers.
- Telvent does not expect and has added no time in this scope of work (due to existing functional OMS implementation at DME) for any required data cleaning activities that may be required to operate Responder. Telvent expects that DME will make the data 'Responder Ready' based upon any deficiencies discovered by Telvent during the database upgrade, including ensuring that the Primary Electric Network has appropriate connectivity, ensuring either connectivity from the transformer to the customer point or build relationships between the transformer and the customer point, and ensuring that ArcFM traces can run properly on the network (ie: phasing and voltage levels are correctly populated on the network features).
- DME will have all necessary hardware and network equipment installed prior to the initiation of the project including, but not limited to:
  - A Windows server that will be used to run the Responder business server processes such as the prediction engine and data services
  - A Web Server that will host the Responder Web Browser application
  - Client machines to access the application
  - Network equipment and cable to allow the machines to interact
- DME will provide Telvent remote VPN access to the GIS and Responder systems to assist in the implementation and troubleshooting of issues should they arise after deployment. The City of Denton VPN remote access must be approved and conform to COD Technology Services criteria.
- All GIS, CIS, IVR, and SCADA integrations will be performed through existing COD networking or proposed web services when possible:
- Telvent will be responsible for creating web services to receive messages from the IVR, SCADA and CIS system interfaces or utilize existing COD networking that is established or that will be established. Final solution to be determined after Telvent meets with DME and Technology Services to discuss proposed solutions and interfaces.
- Telvent will be responsible building interfaces which consume web services built by DME and/or other vendors for the IVR, SCADA or CIS systems.
- The services represented in this scope of work are to configure ArcFM Fiber Manager for Fiber Optic feature classes only, and do not include configuration services for Coax, Copper, or Wireless features.



## Proposed Services

### 1 ArcFM Solution Upgrade from Version 9.3.1 to 10.1.x

This section describes the tasks and subtasks required to migrate DME to the ArcGIS for Desktop 10.1.x, ArcGIS for Server (SDE) 10.1.x, and ArcFM 10.1.x environments or the latest recommended environment and then test and verify that all Telvent installed software and migrated custom code, including ArcFM Geodatabase Replication functions properly.

#### 1.1 Project Initiation

Members of the Telvent project team and DME representatives shall attend a project kick-off conference call. The agenda for this call shall be as follows:

- Introduce Telvent team members, including the Project Manager and Database Analyst.
- Review Scope of Work and Project Plan.
- Review deliverables.
- Discuss and define DME tasks required to complete the project.
- Review change control procedures.
- Review project status reporting procedures.
- Identify project risks and issues, and plan mitigation where appropriate.

**Telvent Deliverables:**

- Kick-off meeting attendance by Project Manager and Database Analyst.
- Meeting notes.

**DME Responsibilities:**

- Kick-off meeting attendance.

**Task Assumptions:**

- Telvent understands DME Electric Engineering will be the sole point of contact for all configuration decisions needing to be made during the upgrade

#### 1.2 Data Modeling Support

Telvent will participate in a WebEx-based conference call to discuss potential changes to the DME data model to support functionality with respect to the following:

- Hyperlinks
- Meter location vs Meter Number linkage to CIS
- Others (TBD by DME)

Telvent will make recommendations on any necessary changes to the data model to support the outcome of the discussion. It is anticipated that DME will make the changes to the data model.

**Telvent Deliverables:**

- Participate in Data Model discussion with DME staff

- Provide recommendations on changes to be made to the DME data model to support the additional functionality if necessary.

**DME Responsibilities:**

- Participate in Data Model discussion with Telvent DBA staff

### 1.3 Upgrade Custom Components

Following the establishment of the upgrade environment at Telvent, the process of migrating the DME's GIS environment to ArcFM and ArcGIS 10.1, Telvent will prepare for code upgrade by:

- Installing ArcFM Solution SDK.
- Registering ESRI upgrade add-ins as necessary

The custom code modules will then be upgraded using a process that will:

- Update Global Unique Identifiers in project files for .OCXs
- Open project in Visual Studio
- Remove missing references
- Perform manual checks and apply necessary changes

There are specific changes that must be made when an application uses Shared Product Code samples including:

- Recompile code
- Perform unit test

#### 1.3.1 Upgrade Custom ArcFM Solution Components

Telvent shall apply the ArcFM upgrade process to migrate the existing ArcFM Solution custom tools to the new 10.1 environment. The tools to be migrated are:

- AutoUpdater to populate Transformer LabelText
- AutoUpdater to populate Conductor LabelText
- AutoUpdater to update Transformer Unit information in the Inventory System
- AutoUpdater to modify the TransformerID in ServiceLocation when a transformer is replaced, removed, or when a new ServiceLocation is added
- AutoUpdater to populate BankKVA in TransformerBank when a TransformerUnit record is changed or added.
- Custom Inspection application.

**Telvent Deliverables:**

- Upgraded Custom ArcFM Solution tools
- Provide documentation on what each customized tool is and how it functions. Any existing information from the original creation of each customized autoupdater will be delivered to DME.

**DME Responsibilities:**

- None

**Task Assumptions**

- Telvent understands DME Electric Engineering will be the sole point of contact for all configuration decisions needing to be made during the upgrade

### 1.3.2 Create Additional Custom ArcFM Solution Components

Telvent shall discuss and work with DME to create the following custom AutoUpdater in the new 10.1 environment.

- AutoUpdater to populate new and replaced meters into the Service Account Record and the related meter record.

Telvent will develop component specification documents describing the custom AutoUpdaters to be developed for DME. These component specifications will be used as the blueprint for development of the required custom AutoUpdaters.

Telvent will revise the Component Specifications after reviewing DME's comments. Telvent will initiate (if necessary) a conference call to discuss the revisions necessary to the document. The revisions will only include changes both parties agree upon.

DME will review and provide comments to Telvent on the Draft Component Specification Document within five (5) business days of receiving the documents.

DME will approve the Component Specifications. This document will be the basis for the Custom AutoUpdater.

Telvent will develop the AutoUpdater, using its standard development process including coding, a prototype demonstration via WebEx of the user interface with DME, code reviews with peers, unit testing, and code documentation.

#### Telvent Deliverable(s):

- Draft & Final Component Specification Document
- WebEx Prototype review
- Custom AutoUpdaters

#### DME Responsibilities:

- Ensure attendance at prototype review by appropriate staff
- Comments on the Draft Component Specifications Document
- Approval of the Final Component Specifications

#### Task Assumptions:

- None

## 1.4 Deployment to Development Support

### 1.4.1 Install ArcFM, ArcGIS for Server, & ArcGIS 10.1 in Development Environment

DME will install the following software on DME development system:

- ArcGIS for Server 10.1
- ArcGIS for Desktop 10.1 on desktop machines in the development environment
- ArcFM, ArcFM Viewer, and ArcFM Geodatabase Replication 10.1

**Telvent Deliverables:**

- Remote assistance in the installation of the development system and converting any licenses required.
- Complete documentation of the process involved to configure a machine with each type of existing software products (ArcFM, ArcFM Viewer, ArcFM Viewer for Engine, and ArcFM Geodatabase Replication, demonstrate the proper way to upgrade the client on both Viewer and Engine machines.

**DME Responsibilities:**

- Installation of the development system.

**Task Assumptions:**

- DME has the installed and configured the database server for Oracle 11g prior to Telvent's arrival onsite.

### 1.4.2 Configure Development Environment

Telvent will travel to DME and install the migrated custom code and will migrate the existing ArcFM Solution configuration into the development environment with assistance from DME. This configuration migration will include:

- Model Name Assignments
- Special AutoUpdater Assignments
- Field AU Assignments
- Relationship AU Assignments
- Relationship Rules
- Connectivity Rules
- Snapping Rules
- Px Framework configuration
- ArcFM Geodatabase Replication configuration

**Telvent Deliverables:**

- Migrated Custom Code
- Migration of the existing ArcFM configuration to the development environment.
- Provide detailed documentation of any process that operates or is handled in a uniquely different way than DME's current configuration.

**DME Responsibilities:**

- Assistance in the migration of the existing ArcFM configuration to the development environment.

### 1.4.3 Update Test & Acceptance Plan

To ensure that all application functionality is fully tested in exactly the same manner as it is used in production at DME, Telvent asks that DME update the Acceptance Test Plan used during the previous implementation and upgrade efforts. Telvent will provide recommendations on areas of the test plan to be updated based on new or modified functionality.

Telvent will review the updated plan and provide feedback where appropriate. The final plan shall be used to guide acceptance testing.

**Telvent Deliverable(s):**

- Comment on Acceptance Test Plan documents

**DME Responsibilities:**

- Update Acceptance Test Plan

#### 1.4.4 Site Acceptance Testing – Development Environment

DME shall perform Site Acceptance Testing (SAT) for ArcFM, ArcFM Viewer for ArcGIS Engine, Inspector, and ArcFM Server, using the Acceptance Test Plan developed in Task 1.4.3. DME team members shall record any issues discovered during testing in the issue tracking system. Telvent will provide a resolution for all discrepancies and will resolve all Critical or High issues before completion of SAT.

**Telvent Deliverables:**

- Three (3) days of onsite testing support by Telvent

**DME Responsibilities:**

- Provide details on issues found including steps taken to re-create the problem and any specific data used during the test
- Complete SAT

### 1.5 Deployment to Production Support

#### 1.5.1 Install ArcFM, ArcGIS for Server, & ArcGIS 10.1 in Production Environment

DME will install the following software on DME production environment:

- ArcGIS for Server 10.1
- ArcGIS for Desktop 10.1 on 2 desktop machines in the production environment
- ArcFM, ArcFM Viewer, and ArcFM Geodatabase Replication 10.1
- Custom tools upgraded in Task 1.3.11.3.1

DME has requested that, Telvent travel to DME to assist with migrating from the development environment to the production environment. Telvent shall be onsite at the time DME switches from the IBM production environment to the new Linux production servers. Should it become necessary for Telvent to travel to DME after the initial production environment migration to Linux visit a change order would be issued for these additional travel and service costs.

**Telvent Deliverables:**

- Onsite assistance in the installation of the production system and converting any licenses required.

**DME Responsibilities:**

- Installation of the production system based on the installation and configuration documentation delivered in Task 1.4.1

### 1.5.2 Configure Production Environment

The Telvent Technical Resource will remotely assist DME in the migration of the existing ArcFM Solution configuration into the production environment. This configuration migration will include:

- Model Name Assignments
- Special AutoUpdater Assignments
- Field AU Assignments
- Relationship AU Assignments
- Relationship Rules
- Connectivity Rules
- Snapping Rules
- Px Framework configuration
- ArcFM Geodatabase Replication configuration

**Telvent Deliverables:**

- Remote assistance in the migration of the existing ArcFM configuration to the production environment.
- Provide detailed documentation of any process that operates or is handled in a uniquely different way than DME's current configuration.

**DME Responsibilities:**

- Migration of the existing ArcFM configuration to the production environment.

## 2 ArcFM for Silverlight Implementation

### 2.1 Project Initiation

Telvent team will host a Project Kickoff conference call with DME. During the Kickoff Meeting, Telvent will present the project plan to review the tasks, responsibilities, and dependencies. The team will review the goals and methodology for the project and make sure all participants fully aware of all aspects of the project. The team will then cover the administrative framework for managing the project. We will establish communication protocols, business processes, and change control processes.

**Telvent Deliverables:**

- Agenda
- Project Kickoff Conference Call

**DME Responsibilities:**

- Ensure attendees are invited in advance and are present during the meeting

**Assumptions:**

- All project negotiations will be complete

### 2.2 Install & Configure Hardware

Telvent will provide DME a list of the required hardware and software to support the DME environment.

DME will install and test the required hardware and operating system software to support ArcFM Server and the ArcFM Silverlight Viewer.

**Telvent Deliverables:**

- Provide list of hardware and software to support the ArcFM Server environment.

**DME Responsibilities:**

- Install and test hardware and operating system software.

## 2.3 Configure ArcFM for Silverlight

In this task series Telvent will ensure the DME Geodatabase is configured to use the tools required in ArcFM Server for Silverlight.

During the configuration Telvent will:

- Ensure the correct operation of ArcFM for Silverlight in the DME environment
  - Ensure the table names and aliases in the DME geodatabase do not use any of the following special characters: & @ \* \$ ' " ; : / \ < > { } [ ] % ^ #.
  - Verify that all tables in the geodatabase have a field (e.g., ObjectID) with a data type of OID. (Note: This field must contain a unique value for each feature.)
- Create an ArcGIS Map Service using ArcCatalog and assign the ArcFMMapServer extension.
- Configure Layers
- Configure Related Data
- Configure Searches
- Configure Printing
- Set Up Redlining
- Configure Tracing

**Telvent Deliverables:**

- Configure ArcGIS Server and ArcFM Server for Silverlight
- Produce process document outlining configuration steps

**DME Responsibilities:**

- Provide access to DME web server environment to Telvent resources

## 2.4 Publish Map services

Telvent will create a map services based upon the Map Document provided by DME. Telvent will define, configure, and run the caching process on the published map service.

**Telvent Deliverables:**

- Publish map/data service based on DME's map documents
- Use both ArcMap and the ESRI Server Manager application to test map service.
- Produce process document outlining steps necessary to publish service
- Analyze and document map cache requirements.
- Create cache for published map service
- Produce process document outlining steps necessary to cache services

**DME Responsibilities:**

- Provide relevant map documents.
- Provide guidance on cache scales required

**Task Assumptions:**

- Security and permissions have been configured to allow ArcGIS Server accounts access to necessary data sources.
- It is understood that caching to the ArcGIS Server is a computational intensive process and depending on complexity and extent of data some caching processes could take several hours or even several days.

## 2.5 Post Rollout Support

The Telvent team will provide three (3) days of onsite support to DME after the system has been put into use. This support will provide DME with direct access to a technical resource to answer questions and help resolve issues related to the implementation of ArcFM Server and the ArcFM Silverlight Viewer.

**Telvent Deliverable(s):**

- Onsite ArcFM Server technical support for DME for three (3) days following system rollout

**DME Responsibilities:**

- Provide access for the onsite technical resource to enable quick troubleshooting of any issues identified during this time.
- Provide facility access so the Telvent technical resource can work with DME staff directly.

## 3 Fiber Manager Implementation

### 3.1 Project Kickoff

Telvent will host a WebEx based Project Kickoff Meeting. The team will review, discuss and make sure all participants fully understand the goals and methodology for the project. Telvent will also review the project plan to describe the tasks, responsibilities, and dependencies. The team will then cover the administrative framework for managing the project. We will establish communication processes, business processes (for example, configuration control and access control), and change control processes.

Telvent will review with DME any necessary map products and feature configurations that should be gathered prior to the onsite work to allow time for the materials to be collected. DME will provide Telvent with the projection information necessary to create the Fiber Geodatabase.

**Telvent Deliverable:**

- Host WebEx based project kick-off meeting



- Lead discussion on DME-specific map products and feature configurations to be reviewed during the knowledge transfer sessions

**DME Responsibilities**

- Ensure appropriate personnel attend the Project Kickoff Meeting

**Task Assumptions**

- The project kickoff meeting will be performed via WebEx

## 3.2 Create and Configure Geodatabase

Telvent will create an ArcFM Fiber Manager Fiber Dataset that is in the DME-provided coordinate system. Telvent will then apply a standard ArcFM Fiber configuration to the dataset. The configuration will include all favorites, field properties, Autoupdater assignment, model name assignment, stored displays, page templates, and standard symbology that are provided within the Minerville Fiber sample database.

**Telvent Deliverable:**

- A Fiber Geodatabase using the DME coordinate system created from the ArcFM Fiber Manager data model and configured with the Minerville Fiber sample database configuration.

**DME Responsibilities**

- Provide Telvent with the DME coordinate system

**Task Assumptions:**

- No data model or configuration changes will be included in the creation and configuration of the DME Fiber Geodatabase

## 3.3 Fiber Manager Installation & Configuration

### 3.3.1 Install Fiber Manager Data Model

Telvent will travel to DME to install the ArcFM Fiber Manager data model.

Once installed, Telvent will test the system to ensure that the core ArcFM Fiber Manager functionality works within the environment established. Telvent will update the pre-configured Stored Displays to ensure that the data sources for the GIS layers available from the clients current enterprise GIS are available to the DME user.

**Telvent Deliverable:**

- Installing the Fiber Manager geodatabase in the ArcGIS Server instance.
- Verification of the installation.

**DME Responsibilities**

- Provide access to the DME workstation computers and the network file locations.
- Participate in the installation and verification process to gain knowledge about the ArcFM system.
- Ensure ArcGIS Server instance is installed and ready for data loading.

**Task Assumptions:**

- The installation of the Fiber Manager software will be performed on the same two (2) workstation computers that the ArcFM software was install on.

### 3.3.2 Data Editing and Configuration Settings Knowledge Transfer

Following the software installation and verification, Telvent will lead a three (3) day Fiber data editing/entry/configuration workshop with DME GIS and DME Fiber personnel. The workshop will be a hands-on exercise and is designed to introduce DME personnel to the basic tasks necessary for editing and maintaining an ArcFM Fiber Manager geodatabase.

The workshop will provide:

- Step-by-step instruction on building a fiber circuit in ArcFM starting by drawing a fiber cable in the map, placing a patch location, splice points, slack loops, and fiber faults. The workshop will also demonstrate the use of the Connection Manager to enter the connection information.
- Demonstration of the ArcFM Attribute Editor to correct attributes of features already placed in the system.
- Telvent will demonstrate how to leverage the editing productivity tools within ArcFM such as the ArcFM Target tab, ArcFM favorites, composite favorites, & templates, create new favorites & composite favorites from existing features, the ArcFM Snapping Manager, and the ArcFM QA/QC tools.
- Additional instruction on editing the symbology of an existing Fiber stored display to more closely match DME existing map products.
- Additional instruction on creating a new Fiber stored display to meet specific DME data viewing requirements.
- Additional instruction on modifying an existing Page Template to adjust the map surround to meet specific DME needs.
- Additional instruction on modifying domains in the fiber data model through ArcCatalog.
- Additional instruction on creating new favorites for patch locations, devices and fiber optic cables.

Telvent Deliverable:

- Three (3) day onsite workshop presenting and using the ArcFM and Fiber Manager data editing and configuration tools following a step-by-step process to create & maintain fiber data in the ArcFM Solution.

DME Responsibilities

- Participate in the workshop, performing the data entry and editing work, under the direction of Telvent.

### 3.4 Remote Editing & Configuration Support

Telvent will provide up to eight (8) hours of addition remote support to DME GIS Personnel during the four weeks immediately following the Fiber Manager installation, editing, and configuration workshops.

This support allows DME personnel to call Telvent resources assigned to the DME project to ask questions regarding the use of the ArcFM Fiber Manager tools and their configuration. Telvent will respond to questions through WebEx demonstrations, conference calls, and emails, as appropriate.

**Telvent Deliverable:**

- Up to eight (8) hours of remote support to DME to respond to questions and issues on the use and configuration of Fiber Manager.
- Prompt responses to issues raised by DME

**DME Responsibilities**

- Initiate any communications and present the issues in a clear concise manner.

**Task Assumptions:**

- DME will be able to provide remote access to their GIS through WebEx

## 4 Responder Implementation

### 4.1 Responder – Design Phase

#### 4.1.1 Project Kickoff

Our experience has demonstrated the value of discussing and establishing project parameters and the project plan at the beginning of the project. This ensures all participants have a clear understanding of the project drivers, expectations, and requirements.

In order for this implementation to be successful, DME will assign the following key personnel to support the project and will ensure each is available and can provide the necessary support, at the required times, over the course of the project. DME will ensure the individuals assigned possess the appropriate skills and are authorized to participate in decisions made over the course of the project.

- Executive Sponsor
- Project Manager
- IT System Administrator
- IT Database Administrator
- Subject Matter Experts on current outage processes at DME

Telvent and DME will conduct a two (2) hour conference call to formally begin the project. In this meeting, individuals fulfilling the project roles will be identified, the team will review the detailed project plan to identify and work around any conflicts, review and reach agreement on project drivers, and establish the procedures for identifying and resolving issues as they arise over the course of the project.

The team will review the project schedule and make adjustments to the schedule as needed to accommodate the team member's existing commitments.

**Telvent Deliverable(s):**

- Lead Project Kickoff Conference Call

**DME Responsibilities:**

- Participate in Project Kickoff Meeting

**Task Assumptions**

- None

#### 4.1.2 Core Team Workshop

Telvent will travel to DME and present a two (2) day workshop to introduce DME's team members to the functionality available within Responder. This workshop will cover the Responder Web Browser application, the Responder Explorer, and the Responder tools available within ArcFM and how configurable options within these solutions can impact business processes.

**Telvent Deliverable(s):**

- Two (2)-day onsite presentation of the functionality available within Responder

**DME Responsibilities:**

- Attend Core Team Workshop
- Provide meeting facilities including projector

**Task Assumptions**

- None

#### 4.1.3 Integration Requirements

##### 4.1.3.1 Design Responder IVR Integration

Telvent will work closely with DME and Technology Services defining the requirements for the Responder Milsoft Porche IVR interface. During the onsite workshop, Telvent will lead the requirements discussion to define the functionality that must be included in the interfaces and the data expected to be passed between the applications.

Telvent expects that this interface will be based upon the following general requirements:

- DME and Technology Services will be responsible for providing an interface to receive calls from the IVR system.
- Telvent will create a web service to receive calls from DME's IVR interface. The structure of the call message to be determined by Telvent and DME. The web services will then submit validated calls to Responder as a new incident or part of an existing incident. The Telvent web service will reply back with a message stating if the call will be a new incident or part of a known incident with appropriate incident information available by Responder.
- Telvent will work with DME and Technology Services to build a mechanism for receiving/retrieving callbacks.

This scope of work is limited to the custom components necessary to allow Responder to accept messages from the IVR system, process the messages, and return messages to the IVR.

**Telvent Deliverable(s):**

- Lead Onsite Interface Requirements Workshop
- Draft and final copies of the Interface requirements document

**DME Responsibilities:**

- Ensure attendance at Interface Requirements Workshop by DME SMEs, and IVR SMEs as needed
- Provide meeting facilities
- Provide comments on Draft Functional Requirements Document

#### 4.1.3.2 Design ArcFM/Responder CIS Interface

Telvent will develop processes to load NorthStar CIS data into the ArcFM and Responder customer tables, and to maintain it for ArcFM and Responder uses.

After the onsite workshop, Telvent will develop a functional requirements document and provide it to DME and Technology Services for review. Mutually agreed upon changes to the document will be incorporated into the final functional requirements document.

**Telvent Deliverable(s):**

- Lead Onsite Interface Requirements Workshop
- Draft and final copies of the Interface requirements document

**DME Responsibilities:**

- Ensure attendance at Interface Requirements Workshop by DME and Technology Services SMEs
- Provide meeting facilities
- Provide comments on Draft Functional Requirements Document

**Task Assumptions**

- None

#### 4.1.3.3 Design Responder SCADA Integration

Telvent will work closely with DME and Technology Services defining the requirements for the Responder SCADA interface. During the workshop, Telvent will lead the requirements discussion to define the functionality that must be included in the interface and the data expected to be passed between the applications.

Telvent expects that this interface will be based upon the following general requirements:

- Receive from SCADA a message detailing a status change event that includes a Device ID which can be used to locate the device in GIS and the new device status

This scope of work is limited to the custom components necessary to allow Responder to accept messages from the SCADA system and process the messages to create an outage or to confirm a restoration.

**Telvent Deliverable(s):**

- Lead Onsite Interface Requirements Workshop
- Draft and final copies of the Interface requirements document

**DME Responsibilities:**

- Ensure attendance at Interface Requirements Workshop by DME and Technology Services SMEs
- Provide meeting facilities
- Provide comments on Draft Functional Requirements Document

**Task Assumptions:**

- This interface is only a one-way interface from SCADA to Responder. There is no anticipated functionality to send return messages to SCADA from Responder.

#### 4.1.3.4 Design Responder MDMS Integration

Telvent will work closely with DME and Technology Services defining the requirements for the development of processes to load Itron MDMS meter data into the ArcFM and Responder customer tables, and to maintain it for ArcFM and Responder uses such as trigger OMS indication from AMI of a power outage at a specific AMI electric meter.

After the onsite workshop, Telvent will develop a functional requirements document and provide it to DME and Technology Services for review. Mutually agreed upon changes to the document will be incorporated into the final functional requirements document.

**Telvent Deliverable(s):**

- Lead Onsite Interface Requirements Workshop
- Draft and final copies of the Interface requirements document

**DME Responsibilities:**

- Ensure attendance at Interface Requirements Workshop by DME and Technology Services SMEs
- Provide meeting facilities
- Provide comments on Draft Functional Requirements Document

**Task Assumptions**

- None

## 4.2 Responder – Develop Phase

### 4.2.1 Develop Integrations

#### 4.2.1.1 IVR Interface Development

Under this task, the Telvent team will develop and configure the Responder - IVR Interface. Prior to the start of development, the Telvent team will prepare a Component Specification. This document will contain information on the specific components that require configuration and customization including user and system interfaces, system and data inputs/outputs, database requirements, schema descriptions, system dependencies, and system architecture requirements/descriptions. A draft and final IVR Interface Component Specification will be submitted to DME and Technology Services for review, comment, and acceptance.

Following acceptance of the Component Specification, the Telvent team will use our standard development process to create this interface. This includes performing initial coding or configuration of the IVR interface, holding peer code reviews, performing unit testing, and fix defects as required.

During the development process, if appropriate, the Telvent team will provide DME and Technology Services with WebEx demonstration(s) showing the current state of the IVR interface to elicit comments on the design, usability of the tools, and to apprise DME and Technology Services of the project status. The Telvent team, DME and Technology Services, will mutually agree on the frequency of the demonstration(s) and method(s) used to conduct them.

**Telvent Deliverable(s):**

- Component Specification for the custom integration and tools
- Prototype demonstrations, held via WebEx, to show the development progress, as necessary
- Test plans for the interface to use during acceptance testing
- End User and Administrator documentation, as appropriate
- Installation wizard and guide
- IVR Interface components

**DME Responsibilities:**

- None

#### 4.2.1.2 Develop CIS Interface

Under this task, the Telvent team will develop and configure the ArcFM - CIS Interface. Prior to the start of development, the Telvent team will prepare a Component Specification. This document will contain information on the specific components that require configuration and customization including user and system interfaces, system and data inputs/outputs, database requirements, schema descriptions, system dependencies, and system architecture requirements/descriptions. A draft and final CIS Interface Component Specification will be submitted to DME and Technology Services for review, comment, and acceptance.

Following acceptance of the Component Specification, the Telvent team will use our standard development process to create this interface. This includes performing initial coding or configuration of the CIS interface, holding peer code reviews, performing unit testing, and fix defects as required.

During the development process, if appropriate, the Telvent team will arrange WebEx demonstration(s) showing the current state of the CIS interface to elicit comments on the design, usability of the tool, and to apprise DME of the project status. The Telvent team, DME, and Technology Services will mutually agree on the frequency of the demonstration(s) and method(s) used to conduct them.

**Telvent Deliverable(s):**

- Component Specification for the custom integration and tools
- Prototype demonstrations, held via WebEx, to show the development progress, as necessary
- Test plans for the interface to use during acceptance testing
- End User and Administrator documentation, as appropriate

- Installation wizard and guide
- CIS Interface components

**DME Responsibilities:**

- None

#### 4.2.1.3 SCADA Interface Development

Under this task, the Telvent team will develop and configure the Responder - SCADA Interface. Prior to the start of development, the Telvent team will prepare a Component Specification. This document will contain information on the specific components that require configuration and customization including user and system interfaces, system and data inputs/outputs, database requirements, schema descriptions, system dependencies, and system architecture requirements/descriptions. A draft and final SCADA Interface Component Specification will be submitted to DME and Technology Services for review, comment, and acceptance.

Following acceptance of the Component Specification, the Telvent team will use our standard development process to create this interface. This includes performing initial coding or configuration of the SCADA interface, holding peer code reviews, performing unit testing, and fix defects as required.

During the development process, if appropriate, the Telvent team will provide DME and Technology Services with WebEx demonstration(s) showing the current state of the SCADA interface to elicit comments on the design, usability of the tools, and to apprise DME of the project status. The Telvent team, DME, and Technology Services will mutually agree on the frequency of the demonstration(s) and method(s) used to conduct them.

**Telvent Deliverable(s):**

- Component Specification for the custom integration and tools
- Prototype demonstrations, held via WebEx, to show the development progress, as necessary
- Test plans for the interface to use during acceptance testing
- End User and Administrator documentation, as appropriate
- Installation wizard and guide
- SCADA Interface components

**DME Responsibilities:**

- None

**Task Assumptions**

- This interface is only a one-way interface from SCADA to Responder. There is no anticipated functionality to send return messages to SCADA from Responder.

#### 4.2.2 Responder Configuration

After DME and Technology Services confirm that the infrastructure for the Responder system is in place, Telvent will install and configure the Responder system at DME.



#### 4.2.2.1 Responder Configuration Specification Workshop

Telvent will lead an onsite Responder configuration workshop to work with DME in transferring knowledge on how to configure Responder and defining DME-specific items such as machine names.

**Telvent Deliverable(s):**

- Lead Responder Configuration Workshop

**DME Responsibilities:**

- Attend Configuration Specification Workshop
- Provide meeting facilities

**Task Assumptions**

- None

#### 4.2.2.2 Configuration Specification Development

Once the workshop is complete Telvent will document the results and provide the draft version of the document to DME for review. Any mutually agreed upon changes will be incorporated into the document and the final version will be delivered to DME.

**Telvent Deliverable(s):**

- Draft & Final Responder Configuration Specification documents

**DME Responsibilities:**

- Provide Comment on Draft Configuration Specification

**Task Assumptions**

- None

#### 4.2.2.3 Install Responder Software and Standard Configuration

Telvent will install the Responder software and the out of the box Responder configuration files. Additionally, Telvent will create the Responder tables within the database to store Responder-specific data. Telvent will require support from a system administrator or user accounts with full access to the RDBMS in order to accomplish this task.

**Telvent Deliverable(s):**

- Onsite installation and configuration of Responder and Geodatabase

**DME Responsibilities:**

- RDBMS administrator support or full access to RDBMS
- Participate in installation to gain knowledge of Responder

**Task Assumptions**

- None

#### 4.2.2.4 Configure Business Server

##### 4.2.2.4.1 Configure Data Services

Telvent will configure the Data Services portion of Responder's Server.exe.config file. This configuration will be limited to:

- Updating the connection string information to point to DME's Responder database
- Updating the Geodatabase connection information to point to DME's ArcSDE Geodatabase
- Updating the path to the ControlStylesConfig.xml & the DMERulesConfig.xml to point to the file location of these files

**Telvent Deliverable(s):**

- Configured Data Services section of the Server.exe.config file

**DME Responsibilities:**

- Participate in configuration to gain knowledge of Responder

**Task Assumptions**

- None

##### 4.2.2.4.2 Configure Responder Security

Telvent will configure Responder's Security by adding DME's core team of users to Responder using the Responder web application. Telvent will also instruct DME on how to enter their own users into the system. This configuration will be limited to:

- Adding DME specific users through the web application.
- Assigning one or more of the following user roles to each user: Customer Service, Dispatcher, Senior Dispatcher, Administrator, Archive

**Telvent Deliverable(s):**

- Configured Security.xml file

**DME Responsibilities:**

- Participate in configuration to gain knowledge of Responder

**Task Assumptions**

- None

##### 4.2.2.4.3 Configure Database Schema file

Telvent will configure Responder's Database Schema file by modifying domain list options to configure Responder to better meet DME's business processes. Such configurable options will be covered in the core team training and specific needs determined during the configuration workshop (Task 4.2.2.1) and DME will be instructed on how to make these changes on their own:

- Telvent will perform the modifications to the Database Schema file as specified in the configuration workshop and will allow DME to confirm these settings through user acceptance testing.

**Telvent Deliverable(s):**

- Configured DatabaseSchemaConfig.xml file

**DME Responsibilities:**

- Participate in configuration to gain knowledge of Responder

**Task Assumptions**

- None

#### 4.2.2.4.4 Configure Callbacks

Telvent will configure the standard Callback settings within Responder. Telvent will review the standard settings for Callbacks with DME. DME will then have the ability to change these at a future time.

**Telvent Deliverable(s):**

- None

**DME Responsibilities:**

- None

**Task Assumptions**

- None

#### 4.2.2.4.5 Configure Prediction Engine

Telvent will configure the standard Prediction Engine settings within Responder. Telvent will review the standard settings for Prediction Engine with DME. DME will then have the ability to change these at a future time.

**Telvent Deliverable(s):**

- None

**DME Responsibilities:**

- None

**Task Assumptions**

- None

#### 4.2.2.4.6 Configure MS Message Queuing

Telvent will configure Microsoft Message Queuing on the Responder server(s) and one client machine. Telvent will document and instruct DME on the proper configuration of Microsoft Message Queuing for all client installations.

This configuration will be limited to:

- Adding MS Message to Responder application and web servers and at least one client.

**Telvent Deliverable(s):**

- Configured Server-side message queuing

**DME Responsibilities:**

- Participate in configuration to gain knowledge of Responder

**Task Assumptions**

- None

#### 4.2.2.5 Configure Responder Web Server

##### 4.2.2.5.1 Configure Web Remoting

The web configuration file (WebRemoting.config) is an XML file that must be configured to work with Responder Data Services. Telvent will configure the WebRemoting.config file by assigning the business server name within the file. This configuration will be limited to:

- Assigning the business server name to the appropriate tag within the WebRemoting.config file

**Telvent Deliverable(s):**

- Configured WebRemoting.config file

**DME Responsibilities:**

- Participate in configuration to gain knowledge of Responder

**Task Assumptions**

- None

##### 4.2.2.5.2 Configure Web Application

Telvent will configure or verify the configuration of the ASP.NET and dot Net framework for the web application:

- Restarting IIS after configuring the WebRemoting.config file
- IIS configuration and dot Net framework.

**Telvent Deliverable(s):**

- Configured IIS & Web application

**DME Responsibilities:**

- Participate in configuration to gain knowledge of Responder

**Task Assumptions**

- None

#### 4.2.2.6 Configure DME Machines

##### 4.2.2.6.1 Configure Responder within ArcMap

Telvent will configure the ArcMapRemotingconfig.xml file by assigning the business server name within the file. This configuration will be limited to:

- Assigning the business server name to the appropriate tag within the ArcMap.exe.config file

**Telvent Deliverable(s):**

- Configured ArcMap.exe.config file

**DME Responsibilities:**

- Participate in configuration to gain knowledge of Responder

**Task Assumptions**

- None

#### 4.2.2.6.2 Configure Responder Explorer Application

Telvent will configure the Miner.Responder.Explorer.exe.config file by assigning the business server name within the file and the URL of the Responder Web application server. This configuration will be limited to:

- Assigning the business server name to the appropriate tag within the Miner.Responder.Explorer.exe.config file.
- Assigning the URL of the Responder Web Application.

**Telvent Deliverable(s):**

- Configured Miner.Responder.Explorer.exe.config file

**DME Responsibilities:**

- Participate in configuration to gain knowledge of Responder

**Task Assumptions**

- None

#### 4.2.2.7 Configure Outage Stored Displays

Telvent will work with DME team to configure a Stored Display that allows DME to view outage information within the ArcFM environment. Telvent will focus on how DME can set and adjust the outage and truck symbology, enabling DME to maintain and update the stored display as required.

**Telvent Deliverable(s):**

- Stored Display Configuration Assistance

**DME Responsibilities:**

- Configure Stored Display for Responder

**Task Assumptions**

- None

#### 4.2.2.8 Configure/Load Data

##### 4.2.2.8.1 Enter Truck, and Crew Data

Telvent will work with DME to enter Truck and Crew data into Responder using the Responder Explorer.

**Deliverable(s)**

- Initial load of Truck and Crew data into Responder database.

**DME Responsibilities:**

- Load Truck and Crew data into Responder Database

**Task Assumptions**

- None

#### 4.2.2.8.2 Drop Network, Modify Traceweight, Rebuild Network

In order to support analysis of the distribution network by Responder, Telvent will modify the trace weights maintained by the system for load points (those locations on the network where load is assigned). This is usually done by updating a Model Name in ArcCatalog and then updating the features within a version in the production Geodatabase. Telvent will complete this change and then run Feeder tracing to ensure the trace weights have been properly restored.

**Telvent Deliverable(s):**

- Configuration of Model Name and Update of the Trace Weights used in the Production Geodatabase for Load Points and verification of proper system operation following the change.

**DME Responsibilities:**

- RDBMS administrator support or full access to RDBMS

**Task Assumptions**

- None

#### 4.2.2.9 Configuration Check

Telvent will perform a system walkthrough with DME representatives to confirm configurations have been completed and that the system is ready for the Site Acceptance Testing. Telvent will address any software configuration discrepancies identified during this review. DME will address any infrastructure, related subsystem, or personnel issues.

**Telvent Deliverable(s):**

- Configuration Check of Installed and Configured Responder.
- Configuration documentation

**DME Responsibilities:**

- Resolution of infrastructure, related subsystem, or personnel questions

**Task Assumptions**

- None

#### 4.2.3 Functional Review

Telvent will perform an onsite functional review with DME representatives to review the functionality of Responder by walking through a series of scenarios. These scenarios will include the following processes:

- Receive a call, find the customer record, and enter it into the Call Taking web page in Responder Explorer
- Display the call in Responder Explorer and within ArcMap
- Enter additional calls until the predicted outage device is moved to the transformer feeding the customers and display the changes within Responder Explorer and ArcMap
- Enter additional calls until the predicted outage device is moved to the fuse protecting the branch line feeding the customers and display the changes within Responder Explorer and ArcMap
- Dispatch a crew to the incident and move the incident through the incident workflow to a confirmed outage
- Create a switching plan to restore power to the affected area and execute the switching plan
- Move the incident through the remaining steps of the incident workflow and archive the incident
- Create & View performance metrics reports (CAIDI, CAIFI, SAIDI, SAIFI, etc...)

This review will be performed at both the application level to view the effects on the system from the end user perspective as changes are made and at the database level so that the administrators of the system will have a detailed understanding of how Responder functions.

**Telvent Deliverable(s):**

- Three (3) day onsite Functional Review

**DME Responsibilities:**

- Participation in the Functional Review to gain knowledge of the Responder system

**Task Assumptions**

- None

## 4.3 Responder – Deploy Phase

### 4.3.1 Site Acceptance Testing (SAT)

#### 4.3.1.1 Develop Acceptance Test Plan

DME will develop an Acceptance Plan based on the Responder functionality demonstrated during the Core Team training and the Functional Review. Telvent will provide a checklist of items that should be included in the Acceptance Test Plan for DME to use as a starting point.

**Telvent Deliverable(s):**

- Provide Template Acceptance Plan to DME

**DME Responsibilities:**

- Acceptance Plan

**Task Assumptions**

- None

**4.3.1.2 Review and Comment Acceptance Test Plan**

Telvent will review and comment on the Acceptance Test Plan and approve the plan prior to the start of Acceptance Testing.

**Telvent Deliverable(s):**

- Provide comments on the Acceptance Test Plan within five (5) business days.

**DME Responsibilities:**

- None

**Task Assumptions**

- None

**4.3.1.3 Install & Configure Responder on DME Machines**

Based upon knowledge gained during the configuration task, DME will install Responder client components as needed on client machines and copy the DME configuration files to the client machines based upon Telvent's recommendations and documentation.

**Telvent Deliverable(s):**

- None

**DME Responsibilities:**

- Install Responder DME components and copy client configuration files

**Task Assumptions**

- None

**4.3.1.4 Conduct Site Acceptance Test**

Telvent will provide onsite resources during the test period to address issues as they arise and to provide technical assistance to the team during the testing. DME will perform the SAT following Telvent's testing checklist to ensure that Responder functionality works within DME's environment.

**Telvent Deliverable(s):**

- Onsite SAT Support

**DME Responsibilities:**

- Conduct SAT per Testing Checklist

**Task Assumptions**

- None

**4.3.1.5 Address Acceptance Test Issues**

Telvent will correct any configuration issues that are discovered in the SAT. It is expected that any IT-related issues such as network connectivity or IT system settings will be addressed by DME and Technology Services.



**Telvent Deliverable(s):**

- Correction of configuration issues

**DME Responsibilities:**

- Correction of any IT network or systems issues

**Task Assumptions**

- None

#### 4.3.1.6 Formal Acceptance

This milestone designates DME has completed the testing defined in the Test and Acceptance Plan and formally accepts the implemented system.

**Telvent Deliverable(s):**

- None

**DME Responsibilities:**

- Formal Acceptance per Testing Plan

**Task Assumptions**

- None

#### 4.3.2 Working with Responder Training

Telvent will provide two (2) standard three (3)-day training courses for up to six (6) DME end users in each class. These courses will be standard Working with Responder training courses making use of Minerville data and the standard Responder incident management workflow. The Telvent Trainer will bring a laptop that contains an ArcSDE instance of Minerville to be used during the training classes.

**Telvent Deliverable(s):**

- Lead two (2) separate three (3) day Working with Responder training class for up to six (6) DME staff in each class.

**DME Responsibilities:**

- Attend Responder Training
- Provide training facilities including training hardware

**Task Assumptions**

- None

#### 4.3.3 Responder Deployment Support

##### 4.3.3.1 Go Live with Responder

This milestone designates the project team has completed the preparations, and the system is ready for operational use.

**Telvent Deliverable(s):**

- None

**DME Responsibilities:**

- Begin operational use of Responder system

**Task Assumptions**

- None

#### 4.3.3.2 Production Responder Support

Telvent will provide an offsite technical resource that was involved in the setup and configuration in Denton to work with DME team during the initial two weeks of operational use to resolve any issues, work with users to clarify procedures, and help adjust configuration items as required. Telvent assumes that this person will use remote access to DME's OMS environment or WebEX to assist in any troubleshooting.

**Telvent Deliverable(s):**

- Two (2) weeks of remote support

**DME Responsibilities:**

- None

**Task Assumptions**

- None

## Project Plan

Telvent proposes to perform this work according to the following project schedule and any agreed upon modifications:

ID	Task Name	Month 1			Month 2			Month 3			Month 4			Month 5										
		W-1	W1	W2	W3	W4	W5	W6	W7	W8	W9	W10	W11	W12	W13	W14	W15	W16	W17	W18	W19	W20	W21	
1	1 Upgrade to ArcFM 10.1 and ArcGIS 10.1																							
2	1.1 Project Initiation																							
4	1.2 Data Model Review																							
5	1.3 Upgrade Telvent Custom Components																							
8	1.4 Deployment to Development Support																							
12	1.5 Deployment to Production Support																							
15																								
16	2 ArcFM Server Implementation																							
23																								
24	3 Fiber Manager Installation & Configuration																							
33																								
34	4 Responder Implementation																							
35	4.1 Responder - Design Phase																							
36	4.1.1 Project Kickoff																							
37	4.1.2 Core Team Training																							
38	4.1.3 Integration Requirements																							
63	4.2 Responder - Develop Phase																							
64	4.2.1 Integration Development																							
65	4.2.1.1 IVR Integration Development																							
79	4.2.1.2 CIS Integration Development																							
93	4.2.1.3 SCADA Integration																							
107	4.2.2 Responder Configuration																							
130	4.2.3 Functional Review																							
132	4.3 Responder - Deploy Phase																							
133	4.3.1 Site Acceptance Test (SAT)																							
141	4.3.2 Responder Training																							
143	4.3.3 Responder Deployment Support																							

## Services Quote

Date: 11-Feb-13  
 Quote Number: 2012-2003  
 To: DME

**Receiving Party:** DME

We are pleased to submit the following Fixed Price Quote for:

**ArcFM Upgrade**

**and Optional Services for Responder, ArcFM Server, and Fiber Manager**

### PROPOSED SERVICES

TASK ID	TASK DESCRIPTION	COST
1	ArcFM Upgrade	\$56,319.19
2	ArcFM Server for Silverlight Implementation	\$25,734.92
3	Fiber Manager Implementation	\$23,120.18
	Responder Implementation	
4.1	Rx Design	\$20,540.26
4.2	Rx Develop	\$44,433.26
4.3	Rx Deploy	\$76,371.77
4.4	CIS Integration	\$31,050.07
4.5	IVR Integration	\$27,740.23
4.6	SCADA Integration	\$36,813.86
<b>TOTAL SERVICES COSTS:</b>		<b>\$342,123.75</b>

### OPTIONAL TASKS

		COST
<b>TOTAL OPTIONAL COSTS:</b>		

**Quote is valid for 60 days.**

All rates and costs are quoted in US Dollars and will be billed in US Dollars.

Quote is inclusive of all travel and living expenses for on-site work.

All prices are based on Telvent Utilities Group's standards for services, and do not include duties, levies or fees.

This quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law.

This offer is limited to the terms and conditions of Telvent Utilities Group's Standard Services Agreement.

Estimate does not include the cost of any third party software required to perform the services.

THE PRICING CONTAINED IN THIS QUOTATION IS BASED UPON TUG'S

STANDARD TERMS AND CONDITIONS AND TUG'S EXPERIENCE WITH

SIMILAR PROJECTS. THE SCHEDULE AND PRICE ARE SUBJECT TO CHANGE

BASED UPON THE TERMS AND CONDITIONS IN THE FINAL AGREEMENT.

Quote Provided by: Larry Frank

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**TELVENT USA, LLC  
SOFTWARE LICENSE AGREEMENT**

**Contract No. 2013-404**

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**c. Severability:** If any provision or portion of a provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall not be affected, and the remaining terms will continue in effect and be binding on the Parties, provided that such holding of invalidity or unenforceability does not materially affect the essence of the Agreement.

**d. No Implied Waivers:** No failure or delay by Telvent in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Telvent.

**e. Order of Precedence:** Any conflict between the terms of this License Agreement and any Purchase Order or other terms shall be resolved in favor of the terms of this License Agreement.

**f. Governing Law:** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado without reference to conflict of laws principles.

**g. Entire Agreement and Amendments:** This Agreement and the Attachments, which are incorporated by reference, constitute the sole and entire agreement of the parties as to the matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating hereto. Except as otherwise expressly provided herein, any Amendments to this Agreement must be in writing and signed by an authorized representative of each party. The attachments are as follows:

Exhibit 1 -- Registered Client Information

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective, valid, and binding upon the parties as of the date below as executed by their duly authorized representatives.

*Signatures on next page*

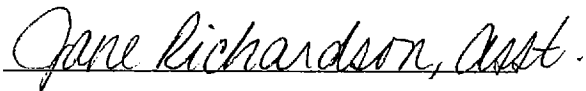
IN WITNESS WHEREOF, the City of Denton, Texas has executed this Agreement in four (4) original counterparts, by and through its duly-authorized City Manager; and Telvent USA LLC, a Delaware limited liability company, having executed this Agreement by and through its duly-authorized undersigned officer, on this the 26th day of July, 2013.

"CITY"

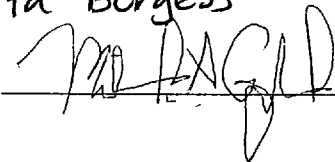
CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By:   
GEORGE C. CAMPBELL  
CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

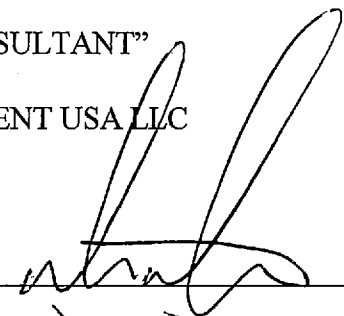
By: 

APPROVED AS TO LEGAL FORM:  
~~EDWIN M. SNYDER~~, CITY ATTORNEY  
Anita Burgess

By: 

"CONSULTANT"

TELVENT USA LLC

By:   
Drew Dittler

ATTEST:

By: \_\_\_\_\_

**EXHIBIT 1**  
Registered Client Information

**Client Name:**

\_\_\_\_\_  
\_\_\_\_\_

**Primary Contact:**

\_\_\_\_\_  
Mailing Address: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

**Bill To:**

\_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**Ship Original Software To:**

\_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**Client's Contract Administrator's Name:**

\_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

**Note:** This will be assumed to be a taxable transaction unless the following documentation is provided upon execution of this license:

1. Direct Pay Certification  
No. \_\_\_\_\_ and a copy of the applicable state documentation, or
2. A copy of your Tax Exemption Certificate.

## ADDENDUM 1 Responder Software License Addendum

Licensee and Telvent mutually desire to modify the Agreement to include the Responder Software Site License. Accordingly, this Addendum, when signed by Licensee and Telvent, shall constitute the following modifications to the Agreement.

For the purposes of this Agreement, and with respect to the Responder Software and Related Materials (Responder) only, "Licensee" includes City of Denton, Texas, a Texas Municipal Corporation and its Named Affiliates as identified below. The provisions of this License Agreement and its Addendum do not apply to any other Affiliate or entity. Licensee shall notify Telvent within a reasonable period after Licensee's acquisition of any company who Licensee intends to add to this Agreement pursuant to Articles 6 and 7 below.

### ARTICLE 1 DEFINITIONS

The following definitions are added to the Agreement and are applicable to Responder only:

"Affiliate" means any commercial entity (including any entity acquired or created after the date of this Agreement) which, directly or indirectly, controls, or is controlled by, or is under common control with, Licensee. An entity shall be deemed to control another entity if such entity possesses, either directly or indirectly, the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract, or otherwise. Without limiting the foregoing, for purposes of this definition, beneficial ownership of 50% or more of the voting equity of an entity shall be deemed to constitute control of such entity. This Agreement shall only apply to Named Affiliates as described below. Licensee may have Affiliates not named in this Agreement, and for whom this Agreement does not apply. For the purposes of this Agreement, Named Affiliates are: NONE

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**Uses Not Permitted.** The Licensee has no rights to:

- Licensee may not use Responder client Software for production data maintenance, mapping, or viewing tasks normally executed through the use of ArcFM or ArcFM Viewer

Such limits shall apply to use of either a portion of or the entire Software or Related Materials.

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## **ARTICLE 6 ASSIGNMENT**

The following provision supersedes Article 6 of the Software License Agreement for the governance of Responder only:

Upon written approval from Telvent, Licensee may assign its rights and obligations hereunder to the other/s affiliate company provided such affiliate company agrees, in writing, to assume such Licensee's rights and obligations under the Agreement. The affiliate company to which the assignment is made will be responsible for payment of any addition in the site license fee, as provided in Article 7 below. As of the effective date of such assignment, the assigning Licensee shall have no further rights, obligations or liability pursuant to this Agreement except its obligation to maintain the confidentiality of the Software and Related Materials.

## **ARTICLE 7 MERGER OR ACQUISITION**

The following provision is added to Article 7 of the Software License Agreement for governance of Responder only:

**Pricing and Payment.** Should merged or acquired affiliate companies, or current or future affiliate companies not named in this Agreement, elect to participate in the Software site license granted hereunder, an equitable adjustment of the site license fee will be made to accommodate the increase in number of copies of Software required. License fees will be billed upon receipt of Software.



Except as modified by this Addendum all other terms in the Agreement and any other previous modifications to the Agreement are incorporated herein by this reference and remain unchanged unless modified by a separate signed modification agreement.


IN WITNESS WHEREOF, the City of Denton, Texas has executed this Agreement in four (4) original counterparts, by and through its duly-authorized City Manager; and Telvent USA LLC, a Delaware limited liability company, having executed this Agreement by and through its duly-authorized undersigned officer, on this the 26th day of July, 2013.

"CITY"

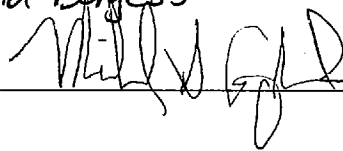
CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By:   
GEORGE C. CAMPBELL  
CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

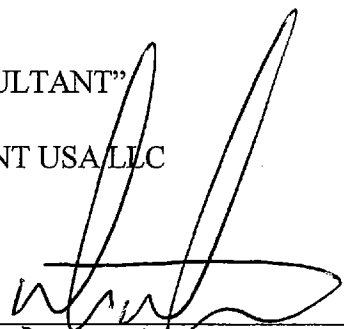
By: 

APPROVED AS TO LEGAL FORM:  
EDWIN M. SNYDER, CITY ATTORNEY  
Anita Burgess

By: 

"CONSULTANT"

TELVENT USA LLC

By:   
Drew Dotson

ATTEST:

By: \_\_\_\_\_

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**TELVENT USA LLC  
SMALL UTILITY  
ENTERPRISE LICENSE AGREEMENT**

**Contract No. 2013-402**

This Small Utility Enterprise License Agreement is a License Agreement and not an Agreement for Sale. This Enterprise License Agreement (ELA) is between City of Denton, Texas, a Texas Municipal Corporation (Licensee), whose address is given in Exhibit 1, Registered Licensee Information annexed hereto, and Telvent USA LLC (Telvent) and is effective (Effective Date) as of the date of signature of this ELA and receipt of Licensee's Purchase Order citing this signed ELA. The ELA grants Licensee certain limited rights to use specific proprietary Telvent Enterprise Software and Related Materials (Software and Related Materials) and receive maintenance and support over a limited, fixed period of time from the Effective Date of this ELA. All rights not specifically granted in this ELA are reserved to Telvent.

This ELA constitutes the sole and entire agreement of the parties as to the subject matter set forth herein. This ELA supersedes any different or additional terms or conditions in or with any Licensee Purchase Order and the terms of this ELA shall govern.

This ELA supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the software listed in Exhibit 1, which is the licensing of the Enterprise Software. All other software shall continue to be licensed under the existing Software License Agreement (Contract No. 2003-CoServ) with Telvent. Except as provided in Article 12.b, any modifications or amendments to this ELA must be in writing and signed by an authorized representative of each party.

**ARTICLE 1  
DEFINITIONS**

As used herein, the following words, phrases or terms in this ELA shall have the following meanings:

"Deploy", "Deployed", or "Deployment" means to redistribute and install or the redistribution and installation of the Enterprise Software or its having been redistributed and installed by Licensee on Licensee's hardware.

"Enterprise Software" means the actual copy of all or any portion of the computer programs delivered, inclusive of backups, updates or merged copies of the specific Telvent software products identified in Exhibit 2.

"ELA Fees" means the fees set forth in Exhibit 3, ELA Fee Schedule.

“Hardware Key/License Manager” means the device and/or software program that administers the distribution of the licensed number of Enterprise Software copies of requesting end users.

“Licensed Configuration” means the Licensee’s specific computer networks and/or computer systems which are licensed to use the Software, as designated through the internet website url: [http://www.telvent-gis.com/support/download\\_form.shtml](http://www.telvent-gis.com/support/download_form.shtml).

“Related Materials” means all of the printed materials, user and specification documentation, training documentation, and other material, if any, specifically identified for use in conjunction with the confidential Enterprise Software supplied by Telvent under this ELA.

## ARTICLE 2

### GRANT OF LICENSE AND RESERVATION OF OWNERSHIP

**a. Grant of License and Retention of Rights.** Telvent hereby grants to Licensee a limited term, personal, non-exclusive, nontransferable license to use the Enterprise Software and Related Materials pursuant to the terms and conditions of this ELA. From the date of receipt, Licensee agrees to protect the Enterprise Software and Related Materials from any unauthorized use, reproduction, distribution or publication. Telvent retains exclusive title and ownership of any copy of the Enterprise Software and Related Materials licensed under this ELA.

**b. License Management.** Telvent employs a License Manager to limit use of the licensed Enterprise Software to specific computer networks and/or computer systems. As each configuration of computer networks and/or computer systems may be unique, Licensee agrees to conform its use of the Enterprise Software to the Licensed Configuration. The Licensed Configuration is incorporated herein by this reference, inclusive of any written modifications approved by Telvent. Licensee is required to update its Licensed Configuration to reflect current use of Enterprise Software for license management purposes.

**c. Audit.** The terms and conditions in this Small Utility ELA offer are for utilities with a total customer count that falls between 10,001 and 50,000. By entering into this Agreement, Licensee confirms its organization's customer count falls within this range. During the term of this ELA, Telvent or its designated agent may inspect Licensee’s facilities and records to verify Licensee’s compliance with this ELA. Any such inspection will take place only during Licensee’s normal business hours and upon no less than ten (10) days prior written notice from Telvent. Telvent will give Licensee written notice of any non-compliance with the Licensed Configuration.

## ARTICLE 3

### COPYRIGHT



The Enterprise Software and Related Materials are owned by Telvent and are protected by United States copyright laws and applicable international treaties and/or conventions. Licensee may not export the Enterprise Software and Related Materials into a country that does not have copyright laws that will protect Telvent's proprietary rights.

#### **ARTICLE 4 SCOPE OF USE**

**a. Permitted Uses.** The license grant permits the Licensee to do only each of the following:

- Licensee may install the Enterprise Software onto the computer systems designated by the Licensed Configuration.
- Licensee may use the Enterprise Software and Related Materials for its internal business and commercial operations only.
- Licensee may access and use any secure Telvent website resources made available to Licensee for Licensee's internal use only, provided that Licensee follows Telvent's terms of use policy specified therein. All password or controlled access information provided by Telvent shall be treated as Telvent Confidential Information.
- Licensee may make only one copy of the Enterprise Software for archival and disaster recovery purposes unless the right to make additional copies is granted to Licensee in writing by Telvent.

**b. Uses Not Permitted.** The Licensee has no rights to:

- Licensee may not sell, rent, lease, sublicense, lend, time-share or transfer, in whole or in part, or provide unlicensed Third Parties access to prior or present versions of the Enterprise Software and Related Materials, any updates, or Licensee's rights under this ELA.
- Licensee may not reverse engineer, decompile or disassemble the Software, or make any attempt to unlock or bypass the License Manager.
- Licensee may not alter, modify or create any derivative works of the Enterprise Software and/or Related Materials.
- Licensee may not make additional copies of the Enterprise Software and/or Related Materials.
- Licensee may not remove or obscure any copyright or trademark notices from the Enterprise Software and/or Related Materials.



**c. Use By Contractors:** A contractor of Licensee ("Contractor"), may be permitted to access the Enterprise Software under the following terms and conditions.

- The term "Contractor" refers to a person, not an employee of Licensee, which is contracted by Licensee and authorized to perform construction or other work on Licensee's behalf. No Contractor shall be an organization engaged in the development, licensing or implementation of a GIS design tool software product unless express written consent is obtained in advance from Telvent.
- No licensing rights will be provided to the Contractor. The license will remain licensed to the Licensee. When its Contractors use the Enterprise Software, Licensee will be responsible for ensuring a Contractor's use of the Enterprise Software in accordance with the terms of this ELA, and shall solely liable for any misuse of the Enterprise Software by Contractor.
- Any Contractor permitted to use the Enterprise Software by Licensee will use it for the sole benefit of Licensee, and only while working on-site at Licensee's facilities or by remotely accessing the Enterprise Software from Licensee's on-site computers or machines. The Enterprise Software may not be used by the Contractor to perform work for any other Licensee.
- Licensee will keep a written record of which Contractors are using the Enterprise Software. Telvent may audit these records upon request, provided that such audits may not unreasonably interfere with Licensee's business and shall occur only during Licensee's normal hours of operation.
- If a Contractor that is using the Enterprise Software ceases to perform work for Licensee, then Licensee will ensure that the Contractor discontinues use of and access to the Enterprise Software.

Such limits shall apply to use of either a portion of or the entire Enterprise Software or Related Materials.

## **ARTICLE 5 PAYMENT**

Fees for the Enterprise Software and Related Materials (the "ELA Fees") will be identified in Exhibit 3. ELA Fees are stated in United States Dollars, must be paid in United States Dollars, and, unless otherwise specified in writing, do not include out-of-pocket expenses or shipping costs. Licensee will pay all ELA Fees and expenses, if any, no later than thirty (30) days from the date of an invoice. All ELA Fees are exclusive of Taxes. Licensee will pay Telvent an amount equal to any Taxes arising from or relating to this ELA which are paid by or are payable

by Telvent. "Taxes" means any form of sales, use, value added or other form of taxation and any fines, duties, fees, penalties, surcharges or interest, but excluding any taxes based solely on the net income of Telvent.

## ARTICLE 6 TERM, TERMINATION, AND RENEWAL

**a. Term:** The license granted by this ELA is for a term of three (3) years from the Effective Date, unless this ELA is terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software Deployed shall be concurrent with the term of this ELA. No indefinite or perpetual term license grants are provided with this ELA.

**b. Termination By Government Entity:** For Government owned utilities only, either party may terminate this ELA for Lack of Funds. Lack of Funds is the inability of Licensee to secure appropriation of funds through the legislative or governing body's approval process for annual payments due.

**c. Termination For Cause:** Either party may termination this ELA for a material breach by the other party. The breaching party shall be given a period of ten (10) days from the date of written notice to cure any material breach. Notwithstanding the foregoing, the parties agree that any breach of this ELA may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, Telvent shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction.

**d. Termination for Convenience.** Should Licensee terminate this ELA for convenience, Licensee will be required to continue paying the ELA Fees for the remainder of the ELA.

**e. Effect of Termination or Expiration:** Upon expiration or termination of this ELA, all Enterprise Software Deployed shall terminate. Licensee shall cease access and use of the Enterprise Software and uninstall, remove, and destroy all Deployed Enterprise Software and any whole or partial copies, modifications, media, or merged portions in any form and execute and deliver evidence of such actions to Telvent. All Enterprise Software maintenance services shall also terminate.

**f. Renewal:** Upon expiration of this ELA, the parties will evaluate Licensee's requirements. Any renewal ELA will be offered in accordance with license terms and conditions and pricing then in effect and based upon Licensee's then current meter count.

## ARTICLE 7 ASSIGNMENT

Licensee shall not assign this ELA or Licensee's rights hereunder without the prior written consent of Telvent. Any purported assignment without such consent shall be null and void.

## ARTICLE 8 MERGER, DIVESTITURE OR ACQUISITION

**a. Merger or Acquisition.** Should Licensee acquire, be acquired by, or merge with another business entity after the date of execution of this License, Licensee shall promptly provide written notice to Telvent. Any entities merged with or acquired by Licensee may join the ELA as additional users upon mutual written agreement of the parties only if the new cumulative meter count does not exceed the maximum meter count to qualify for the Small Utility ELA program. If the new cumulative meter count moves Licensee into a higher pricing tier within the Small Utility ELA program, an increase in the ELA Fees will be negotiated by the parties. If the new cumulative meter count exceeds the limit for the Small Utility ELA program, this ELA shall be considered terminated and a new pricing model shall be negotiated and applied.

**b. Divestiture.** Should any portion of the Licensee's organization be sold or divested, all Enterprise Software and/or Related Materials used by the divested entity must either be uninstalled or transferred to the Licensee in a prompt manner. If the divested entity wishes to continue using any portion of the Enterprise Software, Telvent and the divested entity shall enter into a mutually agreed upon agreement between the parties. Additional fees shall apply to the continued use of the Enterprise Software by the divested entity.

## ARTICLE 9 LIMITED WARRANTY AND DISCLAIMER

**a. Limited Warranty.** Telvent warrants that the unaltered Enterprise Software and media, under normal use, will conform substantially to the Related Materials and will be free from defects in materials and workmanship for a period of ninety (90) days from the date of issue of the software download password or of the license file(s), whichever is first.

**b. General Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTY ABOVE, Telvent DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE ENTERPRISE SOFTWARE AND RELATED MATERIALS.

**c. Data Disclaimer.** LICENSEE ASSUMES ALL RESPONSIBILITY FOR THE QUALITY AND ACCURACY OF DATA USED IN CONJUNCTION WITH THE SOFTWARE LICENSED UNDER THIS ELA. TELVENT MAKES NO WARRANTY WITH RESPECT TO THE DATA. Without limiting the generality of the preceding sentence, Telvent does not warrant that the data will meet Licensee's needs or expectations, the use of the data will be uninterrupted, or that all nonconformities can or will be corrected. Licensee should always verify its data including, but not limited to, map, spatial, raster, and tabular information, against its own records.

**d. Internet Disclaimer.** THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE WEB SERVICES.

**e. Exclusive Remedy.** During the warranty period, Telvent's entire liability and Licensee's exclusive remedy shall be, at Telvent's option, to attempt to correct or work around errors, to replace the Enterprise Software and Related Materials in accordance with the Telvent Maintenance and Support Policy, or to return the license fees paid and terminate the ELA upon the Licensee uninstalling and returning the Enterprise Software and Related Materials to Telvent with a copy of Licensee's receipt.

## **ARTICLE 10 ENTERPRISE SOFTWARE MAINTENANCE**

ELA Maintenance for Enterprise Software provided under this ELA is included with the ELA Fee. ELA Maintenance consists of Enterprise Software and/or Related Materials, updates, and access to technical support and other benefits specified in the Telvent Maintenance Support Services Policy (please see <http://www.telvent-gis.com/support/maintenance.shtml> for specific terms of reference), as modified by this Article 9. Notwithstanding the foregoing, any terms and conditions included in the Maintenance Support Services Policy, especially those related to price, term and renewal, that differ from those contained herein, shall not apply to the ELA Maintenance. This ELA takes precedence over the Maintenance Support Services Policy.

▪ **Tier 1 Support Provided by Licensee**

- (1) Licensee shall provide Tier 1 Support through the Tier 1 Help Desk to all Licensees authorized users.
- (2) The Tier 1 Help Desk shall use analysts fully trained in the Enterprise Software they are supporting.
- (3) At a minimum, Tier 1 Support shall include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
- (4) Tier 1 Support analysts shall be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from the Licensee. This may include obtaining any customizations, code samples, or data involved, if applicable, to the Incident. The analyst shall also use any other information and databases it may develop to satisfactorily resolve Incidents.



- (5) If the Tier 1 Help Desk can not resolve the Incident, an authorized Tier 1 Help Desk individual may contact Telvent Technical Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensees.
- (6) Tier 1 Help Desk individuals identified by Licensee are the only individuals authorized to contact Telvent directly for Tier 2 Support. Licensee may revise named individuals by written notice.

▪ **Tier 2 Support Provided by Telvent**

- (1) Telvent shall log the calls received from the Tier 1 Help Desk individuals.
- (2) Telvent shall attempt to resolve the Incidents by assisting the Tier 1 Help Desk individuals.
- (3) When the Incident is resolved, Telvent shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the Licensee.
- (4) Telvent may, at Telvent's sole discretion, make patches, hot fixes, or updates available for downloading from Telvent's web site or deliver them on via email.

## **ARTICLE 11 LIMITATION OF LIABILITY**

**a. Disclaimer of Certain Types of General Liability.** Telvent SHALL IN NO EVENT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; BUSINESS EXPENDITURES; INVESTMENTS; OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS ELA OR USE OF THE ENTERPRISE SOFTWARE, OR RELATED MATERIALS, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT Telvent HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**b. Limitation of Liability.** FOR ALL EVENTS AND CIRCUMSTANCES, Telvent'S TOTAL CUMULATIVE AND AGGREGATE LIABILITY ARISING OUT OF THIS ELA, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, WILL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE AMOUNTS PAID TO Telvent DURING THE TWELVE (12) MONTHS PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY.

## **ARTICLE 12 INDEMNITY AGAINST INFRINGEMENT**

**a. Indemnification.** Telvent, at its own expense, shall (i) defend Licensee against a Claim and (ii) pay costs, damages and/or attorneys fees that are included in a final judgment against Licensee (without right of appeal) or in a settlement approved by Telvent that are attributable to an unaffiliated third party's claim that the Enterprise Software and Related Materials furnished under this ELA infringe a U. S. Copyright ("Claim"). As conditions precedent to Telvent's obligations to Licensee under Article 12a., Licensee must comply with the following conditions. Licensee must (1) notify Telvent promptly, but in no event later than ten (10) days of receipt of any Claim for which relief is sought under this ELA (including evidence of the Claim brought); (2) provide Telvent with the right to control and conduct the defense of the Claim with counsel of its choice and to settle such Claim at Telvent's sole discretion; and (3) cooperate with Telvent in the defense of the Claim.

**b. Remedies.** As to any Enterprise Software and Related Materials that are or in the opinion of Telvent may become subject to a claim of infringement, Telvent, at its option, will obtain the right for Licensee to continue using the Enterprise Software and Related Materials or replace or modify the Enterprise Software and Related Materials so as to make them non-infringing. If Telvent determines that neither remedy is commercially practical, then Telvent may terminate the ELA without further liability under this paragraph, and if the infringing items are returned to Telvent, Licensee shall be refunded the ELA fees, prorated over a three year period.

**c. Alterations by Licensee.** If Licensee extends, alters, modifies, or creates any derivative works of the Enterprise Software and Related Materials or breaches this ELA in any way, Telvent will not indemnify nor defend Licensee from any infringement claim resulting from any of these modifications or alterations. Licensee, at its own expense, shall defend and indemnify Telvent from all claims, damages, legal fees, and costs of whatsoever kind or nature arising out of any infringement in connection with Licensees performance of such modification or alteration to the Enterprise Software and Related Materials.

THIS SECTION STATES Telvent'S ENTIRE OBLIGATION TO LICENSEE AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR COPYRIGHT INFRINGEMENT.

### ARTICLE 13 GENERAL PROVISIONS

**a. Export Regulations:** Licensee acknowledges that this ELA and the performance thereof are subject to compliance with any and all applicable United States laws, regulations, or orders relating to the export of computer software or know-how relating thereto. Telvent Enterprise Software and Related Materials may be Technical Data under United States export laws. Licensee agrees to comply with all laws, regulations, and orders of the United States in regard to any export of such Technical Data. Licensee agrees not to disclose or re-export any Technical Data received under this ELA in or to any countries for which the United States government requires an export license or other supporting documentation at the time of export or transfer, unless Licensee has obtained prior written authorization from Telvent and the U. S. Office of Export Control.

**b. Future Versions:** Updated or new Enterprise Software may require additional or revised terms and conditions. Telvent will provide notice of the revisions to Licensee in writing. The revisions shall be incorporated into this ELA upon such written notice to Licensee. Should Licensee reject the revisions, then Licensee shall not install or use the revised, updated, or new Enterprise Software.

**c. OEM Licenses:** If Licensee obtains Software or Related Materials or any component thereof as part of an original equipment manufacturer (OEM) software program or product developed and licensed by an OEM business partner of Telvent, Licensee shall not be entitled to or seek any discount from the OEM business partner or Telvent, directly or indirectly, as a result of or based on the availability of such Software or Related Materials, as Enterprise Software under this ELA. In addition, such Software and Related Materials, or any component thereof included in the OEM software program or product will be licensed through the license agreement provided by the OEM business partner and not through this ELA.

**d. Product Obsolescence.** During the term of this ELA, some Enterprise Software items may become obsolete, may no longer be commercially offered, or may no longer be available for unlimited quantity Deployment. Licensee may continue to use such Enterprise Software that has been Deployed for the term of the ELA, but updates for such obsolete Enterprise Software may not be available. Telvent's Product Life Cycle Support Policy, available at <http://www.telvent-gis.com/support/SupportLifeCycleandPolicy.pdf> defines the support phases and overall support plans. ELA Maintenance shall be subject to the Product Life Cycle Support Policy.

**e. Purchase Orders:** Licensee shall issue a Purchase Order upon execution of the ELA and annually thereafter in accordance with the payment schedule. Payment shall be due and payable within thirty (30) days of the anniversary date of the Effective Date, with the initial payment due within thirty (30) days of execution of the ELA. All Purchase Orders shall include the following language "THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE Telvent SMALL UTILITY ELA, AND ANY DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS IN OR WITH THIS PURCHASE ORDER SHALL NOT APPLY".

**f. Endorsement and Publicity:** This ELA shall not be construed or interpreted as an exclusive dealings agreement or an endorsement of Telvent by Licensee. Licensee agrees that upon execution of this ELA, Telvent may publicize the existence of this ELA with Licensee.

**g. Severability:** If any provision or portion of a provision of this ELA is held invalid or unenforceable, the remainder of the ELA shall not be affected, and the remaining terms will continue in effect and be binding on the Parties, provided that such holding of invalidity or unenforceability does not materially affect the essence of the ELA.

**h. No Implied Waivers:** No failure or delay by Telvent in enforcing any right or remedy under this ELA shall be construed as a waiver of any future or other exercise of such right or remedy by Telvent.

**i. Order of Precedence:** Any conflict between the terms of this ELA and any Purchase Order or other terms shall be resolved in favor of the terms of this ELA.

**j. Governing Law:** This ELA, entered into in the County of Larimer, shall be construed and enforced in accordance with, and be governed by, the laws of the State of Colorado without reference to conflict of laws principles. The parties hereby consent to the personal jurisdiction of the courts of this county and waive their rights to change venue.

**k. Survival.** If this ELA is terminated for any reason, Articles 2, 3, 5, 9b, and 11 of this ELA will survive such termination.

**l. Entire Agreement and Amendments:** This ELA and the Attachments, which are incorporated by reference, constitute the sole and entire agreement of the parties as to the matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating hereto. Except as otherwise expressly provided herein, any Amendments to this ELA must be in writing and signed by an authorized representative of each party. The attachments are as follows:

Exhibit 1 -- Registered Client Information

Exhibit 2 -- Enterprise Software

Exhibit 3 -- ELA Fees Schedule

IN WITNESS WHEREOF, the parties hereto have executed this ELA to be effective, valid, and binding upon the parties as of the date below as executed by their duly authorized representatives.

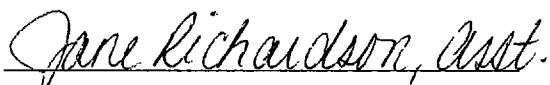
IN WITNESS WHEREOF, the City of Denton, Texas has executed this Agreement in four (4) original counterparts, by and through its duly-authorized City Manager; and Telvent USA LLC, a Delaware limited liability company, having executed this Agreement by and through its duly-authorized undersigned officer, on this the 26th day of July, 2013.

"CITY"

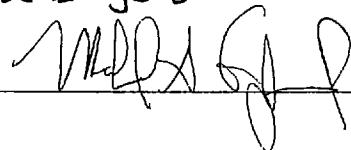
CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By:   
GEORGE C. CAMPBELL  
CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

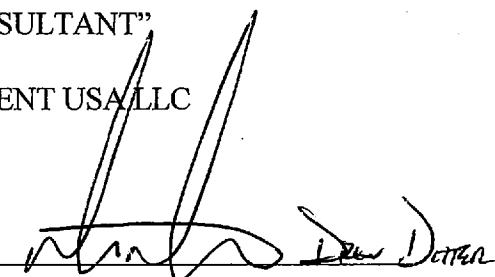
By: 

APPROVED AS TO LEGAL FORM:  
~~EDWIN M. SNYDER~~, CITY ATTORNEY  
Anita Burgess

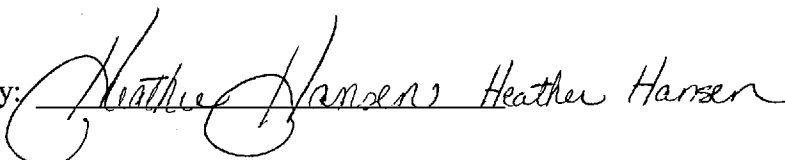
By: 

"CONSULTANT"

TELVENT USA LLC

By: 

ATTEST:

By:  Heather Hansen

**EXHIBIT 1**  
Registered Client Information

**Client Name:**

\_\_\_\_\_  
\_\_\_\_\_

**Primary Contact:**

\_\_\_\_\_  
\_\_\_\_\_

**Mailing Address:**

\_\_\_\_\_  
\_\_\_\_\_

**Email:**

\_\_\_\_\_

**Telephone No.:**

**Fax No.:**

\_\_\_\_\_

**Bill To:**

\_\_\_\_\_  
\_\_\_\_\_

**Address:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**Ship Original Software To:**

\_\_\_\_\_  
\_\_\_\_\_

**Address:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**Client's Contract Administrator's Name:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_  
\_\_\_\_\_

**Telephone No.:**

**Fax No.:**

\_\_\_\_\_

\_\_\_\_\_

**Note: This will be assumed to be a taxable transaction unless the following documentation is provided upon execution of this license:**

1. Direct Pay Certification  
No. \_\_\_\_\_ and a copy of the applicable state documentation, or
2. A copy of your Tax Exemption Certificate.



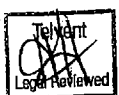
## **EXHIBIT 2**

### **Enterprise Software**

The ELA includes unlimited quantities of the following Telvent proprietary software:

- ArcFM
- ArcFM Viewer
- Designer
- Designer Staker
- Designer Express
- Conduit Manager
- Network Adapter
- Fiber Manager
- ArcFM Viewer with Redliner
- ArcFM Viewer with Inspector
- ArcFM Server Standard
- ArcFM Geodatabase Manager

Any additional Telvent software that is not included in the list above that Licensee wishes to obtain during the term of this ELA, whether such software exists at the time of signing this ELA or not, shall be available to Licensee under a separate agreement and at an additional price.



**Exhibit 3**  
**ELA Fees Schedule**

Licensee shall pay the following ELA Fees for the duration of the agreement. Payment for each year shall be due within 30 days of receipt of an invoice from Telvent.

	Year 1	Year 2	Year 3	Total
<b>Total Annual Fee</b>	\$25,000	\$25,000	\$25,000	\$75,000



ORDINANCE NO. 2016-322

AN ORDINANCE OF THE CITY OF DENTON, TEXAS PROVIDING FOR, AUTHORIZING, AND APPROVING THREE (3) YEAR SOFTWARE MAINTENANCE FOR CONTINUED VENDOR SUPPORT OF THE DENTON MUNICIPAL ELECTRIC (DME) ARCFM SOLUTION AND ASSOCIATED SOFTWARE MODULES ALONG WITH NEW HARDWARE AND SOFTWARE UPGRADES, WHICH IS AVAILABLE FROM ONLY ONE SOURCE AND IN ACCORDANCE WITH CHAPTER 252.022 OF THE TEXAS LOCAL GOVERNMENT CODE SUCH PURCHASES ARE EXEMPT FROM THE REQUIREMENTS OF COMPETITIVE BIDDING; AND PROVIDING AN EFFECTIVE DATE (FILE 5770 AWARDED TO TELEVENT USA, LLC FOR A THREE (3) YEAR NOT-TO-EXCEED AMOUNT OF \$129,401).

WHEREAS, Section 252.022 of the Local Government Code provides that procurement of items that are only available from one source, including; items that are only available from one source because of patents, copyrights, secret processes or natural monopolies; films, manuscripts or books; electricity, gas, water and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and need not be submitted to competitive bids; and

WHEREAS, the City Council wishes to procure one or more of the items mentioned in the above paragraph; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following purchase of materials, equipment or supplies, as described in the "File" listed hereon, and on file in the office of the Purchasing Agent, are hereby approved:

<u>FILE</u> <u>NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
5770	Televent USA, LLC	\$129,401

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including, items that are only available from one source because of patents, copyrights, secret processes or natural monopolies; films, manuscripts or books; electricity, gas, water and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and need not be submitted to competitive bids.

SECTION 3. The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

SECTION 4. The City Manager is hereby authorized to execute any contracts relating to the items specified in Section 1 and the expenditure of funds pursuant to said contracts is hereby authorized.

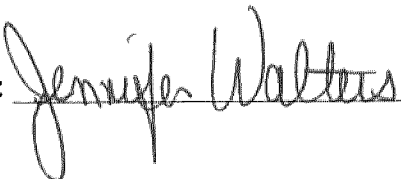
SECTION 5. The City Council of the City of Denton, Texas hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under File 5770 to the City Manager of the City of Denton, Texas, or his designee.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

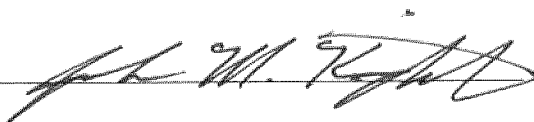
PASSED AND APPROVED this the 18 day of OCTober, 2016.

  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY: 

## EXHIBIT 1



Any additional Telvent software that is not included in the list above that Licensee wishes to obtain during the term of this ELA, whether such software exists at the time of signing this ELA or not, shall be available to Licensee under a separate agreement and at an additional price.

Exhibit 3 – ELA Fees Schedule, shall be deleted and replaced with the following.

Licensee shall pay the following ELA Fees for the duration of the Agreement. Payment for each year shall be due within 30 days of receipt of an invoice from Telvent.

	Year 1 November 1, 2016 – October 31, 2017	Year 2 November 1, 2017 – October 31, 2018	Year 3 November 1, 2018 – October 31, 2019	Total
Total Annual Fee	\$28,000	\$28,000	\$28,000	\$84,000

All terms and conditions of the Agreement not specifically amended as provided herein shall remain unchanged and in full force and effect.

Accepted and Agreed:

City of Denton, Texas, a Texas  
Municipal Corporation

Signature: [Signature]

Printed Name: ELTON D. BROCK

Title: PURCHASING & MATERIALS  
MANAGEMENT MANAGER

Date: \_\_\_\_\_

Telvent USA, LLC

Signature: [Signature]

Printed Name: Dan D. LITZ

Title: DIRECTOR OF OPERATIONS

Date: OCTOBER 27, 2016





## EXHIBIT 1

---

### Small Utility Enterprise License Agreement City of Denton, Texas, a Texas Municipal Corporation Amendment No. 1

In accordance with the terms and conditions of the Small Utility Enterprise License Agreement ("Agreement" or "ELA") between City of Denton, Texas, a Texas Municipal Corporation ("Licensee") and Telvent USA LLC ("Telvent"), Contract No. 2013-402, the parties hereby wish to amend the Agreement for the purpose of renewing the Agreement for an additional three-year period. The terms of the Agreement shall be amended as follows.

#### **Article 6, Term, Termination, and Renewal**

The paragraph a. of Article 6 shall be deleted and replaced with the following provision.

- a. **Term:** The license granted by this ELA Amendment 1 is for a period of three (3) years from the Effective Date, unless terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software deployed by Licensee shall be concurrent with the term of this ELA Amendment. No indefinite or perpetual term license grants are provided with this ELA.

For the avoidance of doubt, the Effective Date for Year 1 under this Amendment 1 is August 1, 2016.

#### **Article 13, General Provisions**

The paragraph l. of Article 13 references Exhibit 2 – Enterprise Software and Exhibit 3 – ELA Fees Schedule.

Exhibit 2 – Enterprise Software, shall be deleted and replaced with the following.

The ELA includes unlimited quantities of the following Telvent proprietary software:

- ArcFM
- ArcFM Viewer
- Designer
- Designer Express
- Conduit Manager
- Network Adapter
- Fiber Manager
- ArcFM Viewer with Redliner
- ArcFM Viewer with Inspector
- ArcFM Server Standard
- ArcFM Geodatabase Manager





**Small Utility Enterprise License Agreement  
City of Denton, Texas, a Texas Municipal Corporation  
Amendment No. 2**

In accordance with the terms and conditions of the Small Utility Enterprise License Agreement ("Agreement" or "ELA") between City of Denton, Texas, a Texas Municipal Corporation ("Licensee"), and Telvent USA, LLC ("Telvent"), Contract No. 2013-402, the parties hereby wish to amend the Agreement for the purpose of extending Year 3 for an additional two months. The terms of the Agreement shall be amended as follows.

**Article 6, Term, Termination, and Renewal**

The paragraph a. of Article 6 shall be deleted and replaced with the following provision, with changes shown in italics.

- a. **Term:** The license granted by this ELA Amendment 1 is for a period of *thirty-eight (38) months* from the Effective Date, unless terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software deployed by Licensee shall be concurrent with the term of this ELA Amendment. No indefinite or perpetual term license grants are provided with this ELA.

For the avoidance of doubt, the Effective Date for Year 1 under this Amendment 1 is August 1, 2016.

Exhibit 3 – ELA Fees Schedule, shall be deleted and replaced with the following, with changes shown in italics.

Licensee shall pay the following ELA Fees for the duration of the Agreement. Payment for each year shall be due within 30 days of receipt of an invoice from Telvent.

	<del>Year 1</del> <i>OCTOBER</i> <del>November 1, 2016 –</del> <i>SEPTEMBER 30</i> <del>October 31, 2017</del>	<del>Year 2</del> <i>OCTOBER</i> <del>November 1, 2017 –</del> <i>SEPTEMBER 30</i> <del>October 31, 2018</del>	<del>Year 3</del> <i>OCTOBER</i> <del>November 1, 2018 –</del> <i>SEPTEMBER 30</i> <del>November 30, 2019</del>	Total
<b>Total Annual Fee</b>	\$28,000	\$28,000	\$32,667	\$88,667

All terms and conditions of the Agreement not specifically amended as provided herein shall remain unchanged and in full force and effect.

*Signatures to follow on next page*



---

Accepted and Agreed:

**City of Denton, Texas, a Texas  
Municipal Corporation**

Signature: DocuSigned by:  
Cindy Alonzo  
EB6CC3C4BEF0496...

Printed Name: Cindy Alonzo

Title: Senior Buyer

Date: 8/7/2018

**Telvent USA, LLC**

Signature: DocuSigned by:  
Drew Ditter  
EC383CF0AA914F4...

Printed Name: Drew Ditter

Title: Director of operations

Date: 8/8/2018



## Certificate Of Completion

Envelope Id: 4712C5A3D81943ACAB808D6D8CC1BEE2

Status: Completed

Subject: Please DocuSign: Amendment No 2-Schneider\_Telvent Software Lic Agr 2013-402 .pdf

Source Envelope:

Document Pages: 2

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 0

Cindy Alonzo

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Cynthia.Alonzo@cityofdenton.com

IP Address: 129.120.6.150

## Record Tracking

Status: Original

Holder: Cindy Alonzo

Location: DocuSign

8/7/2018 3:49:00 PM

Cynthia.Alonzo@cityofdenton.com

## Signer Events

Cindy Alonzo

cynthia.alonzo@cityofdenton.com

Senior Buyer

City of Denton

Security Level: Email, Account Authentication  
(None)

## Signature

DocuSigned by:  
*Cindy Alonzo*  
E96CC3C4BEF0406...

Signature Adoption: Pre-selected Style

Using IP Address: 129.120.6.150

## Timestamp

Sent: 8/7/2018 3:52:59 PM

Viewed: 8/7/2018 3:53:06 PM

Signed: 8/7/2018 3:53:17 PM

## Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Drew Ditter

drew.ditter@schneider-electric.com

Director of Operations

Security Level: Email, Account Authentication  
(None)

DocuSigned by:  
*Drew Ditter*  
EC383CF0AA914F4...

Signature Adoption: Pre-selected Style

Using IP Address: 198.202.137.38

Sent: 8/7/2018 3:53:18 PM

Viewed: 8/8/2018 7:56:41 AM

Signed: 8/8/2018 7:56:56 AM

## Electronic Record and Signature Disclosure:

Accepted: 8/8/2018 7:56:41 AM

ID: e1cabbc5-8c50-46d3-b896-1289527c7026

## In Person Signer Events

## Signature

## Timestamp

## Editor Delivery Events

## Status

## Timestamp

## Agent Delivery Events

## Status

## Timestamp

## Intermediary Delivery Events

## Status

## Timestamp

## Certified Delivery Events

## Status

## Timestamp

## Carbon Copy Events

## Status

## Timestamp

Lisa Clark

Lisa.Clark@schneider-electric.com

Security Level: Email, Account Authentication  
(None)

**COPIED**

Sent: 8/8/2018 7:56:57 AM

Viewed: 8/8/2018 8:00:06 AM

## Electronic Record and Signature Disclosure:

Not Offered via DocuSign

**Carbon Copy Events**

Sandra Allsup  
Sandra.Allsup@cityofdenton.com  
Security Level: Email, Account Authentication  
(None)

**Status****COPIED****Timestamp**

Sent: 8/8/2018 7:56:57 AM  
Viewed: 8/8/2018 7:57:57 AM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent	Hashed/Encrypted	8/8/2018 7:56:57 AM
Certified Delivered	Security Checked	8/8/2018 7:56:57 AM
Signing Complete	Security Checked	8/8/2018 7:56:57 AM
Completed	Security Checked	8/8/2018 7:56:57 AM

**Payment Events****Status****Timestamps**

**Electronic Record and Signature Disclosure**



## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A THIRD AMENDMENT TO A SOLE SOURCE AGREEMENT BETWEEN THE CITY OF DENTON AND TELVENT USA, LLC, AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON MAY 7, 2013, IN THE NOT-TO-EXCEED AMOUNT OF \$491,813.75; AMENDED BY AMENDMENTS 1-2 APPROVED BY PURCHASING; SAID THIRD AMENDMENT TO PROVIDE CONTINUED VENDOR SUPPORT OF THE DENTON MUNICIPAL ELECTRIC (DME) ARCFM SOLUTION AND ASSOCIATED SOFTWARE MODULES ALONG WITH NEW HARDWARE AND SOFTWARE UPGRADES; WHICH IS THE SOLE PROVIDER OF THIS SOFTWARE, IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, WHICH PROVIDES THAT PROCUREMENT OF COMMODITIES AND SERVICES THAT ARE AVAILABLE FROM ONE SOURCE ARE EXEMPT FROM COMPETITIVE BIDDING; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 5770 – PROVIDING FOR AN ADDITIONAL THREE (3) YEAR TERM AND THIRD AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$142,000, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$722,980.75).

WHEREAS, on May 7, 2013, by Ordinance No. 2013-118, the City awarded a contract to Telvent USA, LLC in the amount of \$491,813.75 for the DME GIS Upgrade to Version 10.2.1a; and

WHEREAS, the additional fees under the proposed Third Amendment are fair and reasonable and are consistent with and not higher than the recommended practices and fees applicable to the Provider's profession and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The Third Amendment, increasing the amount of the contract between the City and Telvent USA, LLC, which is on file in the office of the Purchasing Agent, in the amount of One Hundred Forty-Two Thousand Five Hundred and 00/100 (\$142,500) Dollars, is hereby approved and the expenditure of funds therefor is hereby authorized in accordance with said amendment. The total contract amount increases to \$722,980.75.

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including, items that are only available from one source because of patents, copyrights, secret processes or natural monopolies; films, manuscripts or books; electricity, gas, water and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and need not be submitted to competitive bids.

**SECTION 3.** The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

**SECTION 4.** The City Manager is hereby authorized to execute any contracts relating to the items specified in Section 1 and the expenditure of funds pursuant to said contracts is hereby authorized.

**SECTION 5.** The City Council of the City of Denton, hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or his designee.

**SECTION 6.** This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by KEELY BRIGGS and seconded by JOHN RYAN, the ordinance was passed and approved by the following vote [ 5 - 0 ]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Chris Watts:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Gerard Hudspeth, District 1:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Keely G. Briggs, District 2:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Jesse Davis, District 3:	<u>      </u>	<u>      </u>	<u>      </u>	<u>✓</u>
John Ryan, District 4:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Deb Armintor, At Large Place 5:	<u>      </u>	<u>      </u>	<u>      </u>	<u>✓</u>
Paul Meltzer, At Large Place 6:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>

PASSED AND APPROVED this the 3rd day of March, 2020.

Chris Watts  
CHRIS WATTS, MAYOR

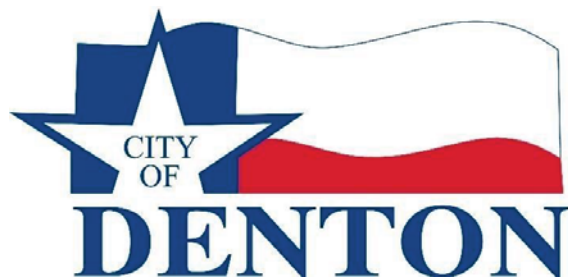
ATTEST:  
ROSA RIOS, CITY SECRETARY

BY: Rosa Rios

APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

BY: Aaron Leal





## Docusign City Council Transmittal Coversheet

FILE	5770
File Name	Amendment 3 DME GIS
Purchasing Contact	Lori Hewell
City Council Target Date	March 3, 2020
Piggy Back Option	Not Applicable
Contract Expiration	March 3, 2023
Ordinance	20-498




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**Small Utility Enterprise License Agreement  
City of Denton, Texas, a Texas Municipal Corporation  
Amendment No. 3**

In accordance with the terms and conditions of the Small Utility Enterprise License Agreement (“Agreement” or “ELA”) between City of Denton, Texas, a Texas Municipal Corporation (“Licensee”), and Telvent USA, LLC (“Telvent”), Contract No. 2013-402, the parties hereby wish to amend the Agreement for the purpose of extending the ELA for an additional three (3) years. The terms of the Agreement shall be amended as follows.

**Article 6, Term, Termination, and Renewal**

The paragraph a. of Article 6 shall be deleted and replaced with the following provision, with changes shown in italics.

- a. **Term:** The license granted by this ELA Amendment 3 is for *an additional three (3) years* from the Effective Date, unless terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software deployed by Licensee shall be concurrent with the term of this ELA Amendment. No indefinite or perpetual term license grants are provided with this ELA.

For the avoidance of doubt, the term of this Amendment 3 shall be from December 1, 2019 through November 30, 2022.

In **Exhibit 2 – Enterprise Software**, the list of Telvent proprietary software to which Licensee shall have access to during the term of this Amendment 3 shall be deleted and replaced with the following:

- |                    |                               |
|--------------------|-------------------------------|
| • ArcFM            | • Fiber Manager               |
| • ArcFM Editor XI  | • ArcFM Viewer with Redliner  |
| • ArcFM Viewer     | • ArcFM Viewer with Inspector |
| • ArcFM Mobile     | • ArcFM Web                   |
| • Designer         | • ArcFM Geodatabase Manager   |
| • Designer XI      |                               |
| • Designer Express | • Wavepoint                   |
| • Network Adapter  | • Conduit Manager             |
| • Responder        | • Responder Adapters          |

**Exhibit 3 – ELA Fees Schedule**, shall be deleted and replaced with the following.

Licensee shall pay the following ELA Fees for the duration of this Amendment 3. Payment for each year shall be due within 30 days of receipt of an invoice from Telvent.



	<b>Year 1</b> <b>December 1, 2019 –</b> <b>November 30, 2020</b>	<b>Year 2</b> <b>December 1, 2020 –</b> <b>November 30, 2021</b>	<b>Year 3</b> <b>December 1, 2021 –</b> <b>November 30, 2022</b>
<b>Total Annual Fee</b>	\$47,500	\$47,500	\$47,500

All terms and conditions of the Agreement not specifically amended as provided herein shall remain unchanged and in full force and effect.

Accepted and Agreed:

**City of Denton, Texas, a Texas  
Municipal Corporation**

DocuSigned by:  
*Todd Hileman*  
Signature: \_\_\_\_\_  
E776C711BA0D454...  
Printed Name: Todd Hileman  
Title: City Manager  
Date: 03/03/2020

**Telvent USA, LLC**

DocuSigned by:  
*Drew Ditter*  
Signature: \_\_\_\_\_  
04CEFA4FC4AD4C8...  
Printed Name: Drew Ditter  
Title: Director of operations  
Date: 2/14/2020

ATTEST:  
ROSA PIOS, CITY SECRETARY

DocuSigned by:  
*Rosa Pios*  
BY: \_\_\_\_\_  
1C5CA8C5E175493...

APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

DocuSigned by:  
*Mack Peinwand*  
BY: \_\_\_\_\_  
7F9D328BF0204E5...

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations and business terms.

DocuSigned by:  
*Antonio Puente, Jr.*  
\_\_\_\_\_  
E3760944C2BF4B5...  
SIGNATURE  
Chief Financial officer  
TITLE  
Antonio Puente, Jr.  
\_\_\_\_\_  
PRINTED NAME  
Electric  
DEPARTMENT



## Exhibit CIQ

	<b>CONFLICT OF INTEREST QUESTIONNAIRE -</b>		<b>FORM CIQ</b>
	<b>For vendor or other person doing business with local governmental entity</b>		
	<b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b>		
	<p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>		
<b>1</b>	<b>Name of vendor who has a business relationship with local governmental entity.</b> Telvent USA, LLC		
<b>2</b>	<input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b>  (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7 <sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
<b>3</b>	<b>Name of local government officer about whom the information in this section is being disclosed.</b>  <div style="text-align: center;">na _____</div> <div style="text-align: center;">Name of Officer</div>  <p>This section, (item 3 including subparts A, B, C &amp; D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Yes           <input checked="" type="checkbox"/> No         </div> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Yes           <input checked="" type="checkbox"/> No         </div> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?</p> <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Yes           <input checked="" type="checkbox"/> No         </div> <p>D. Describe each employment or business and family relationship with the local government officer named in this section.</p> <div style="text-align: center;">na</div>		
<b>4</b>	<input checked="" type="checkbox"/> <b>I have no Conflict of Interest to disclose.</b>		
<b>5</b>	<div style="display: flex; justify-content: space-between;"> <div> <p><small>DocuSigned by:</small></p> <p><i>Drew Ditter</i></p> <p><small>04CEFA4FC4AD4C6...</small></p> </div> <div> <p>_____</p> <p>ing business with the governmental entity</p> </div> <div> <p>2/14/2020</p> <p>_____</p> <p>Date</p> </div> </div>		

## Certificate Of Completion

Envelope Id: 95873B954C0E449F80645F2672B94C64	Status: Completed
Subject: Please DocuSign: City Council Contract 5770 Telvent Amendment 3	
Source Envelope:	
Document Pages: 4	Signatures: 6
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Lori Hewell
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	lori.hewell@cityofdenton.com
	IP Address: 129.120.6.150

## Record Tracking

Status: Original	Holder: Lori Hewell	Location: DocuSign
2/13/2020 8:46:23 AM	lori.hewell@cityofdenton.com	

## Signer Events

Signer Events	Signature	Timestamp
Lori Hewell	<b>Completed</b>	Sent: 2/13/2020 8:51:44 AM
lori.hewell@cityofdenton.com		Viewed: 2/13/2020 8:51:52 AM
Purchasing Manager		Signed: 2/13/2020 8:53:19 AM

City of Denton Using IP Address: 129.120.6.150

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lori Hewell		Sent: 2/13/2020 8:53:20 AM
lori.hewell@cityofdenton.com		Viewed: 2/13/2020 10:07:39 AM
Purchasing Manager		Signed: 2/13/2020 10:07:46 AM

City of Denton

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Mack Reinwand		Sent: 2/13/2020 10:07:47 AM
mack.reinwand@cityofdenton.com		Viewed: 2/13/2020 10:12:09 AM
City of Denton		Signed: 2/13/2020 10:14:17 AM

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

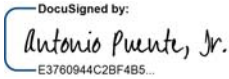
Drew Ditter		Sent: 2/13/2020 10:14:18 AM
drew.ditter@se.com		Viewed: 2/13/2020 3:05:52 PM
Director of Operations		Signed: 2/14/2020 9:34:45 AM

Telvent USA, LLC

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Accepted: 2/13/2020 3:05:52 PM  
ID: 06e1bd22-6bb4-44fe-ad73-a65e0c5c2bd9

Signature Adoption: Pre-selected Style  
Using IP Address: 198.202.137.36

Signer Events	Signature	Timestamp
Antonio Puente, Jr. antonio.puente@cityofdenton.com Chief Financial Officer Security Level: Email, Account Authentication (None)	 DocuSigned by: Antonio Puente, Jr. E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150	Sent: 2/14/2020 9:34:47 AM Viewed: 2/14/2020 9:45:34 AM Signed: 2/14/2020 9:50:13 AM

**Electronic Record and Signature Disclosure:**  
Accepted: 2/14/2020 9:45:34 AM  
ID: d208c3ec-b54c-4700-a24d-e9c9c011a3ba

Cheyenne Defee  
cheyenne.defee@cityofdenton.com  
Contract Administrator  
City of Denton

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Todd Hileman  
Todd.Hileman@cityofdenton.com  
City Manager  
City of Denton  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Accepted: 7/25/2017 11:02:14 AM  
ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21

Rosa Rios  
rosa.rios@cityofdenton.com  
City Secretary  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Accepted: 3/6/2020 7:58:08 AM  
ID: 1a007ee1-137a-4527-bbfd-72fe3b47d8be

**Completed**

Using IP Address: 129.120.6.150

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Viewed: 3/4/2020 8:48:11 AM  
Signed: 3/4/2020 8:48:26 AM

  
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Todd Hileman  
B776C711BA0D454...

Signature Adoption: Pre-selected Style  
Using IP Address: 129.120.6.150

Sent: 3/4/2020 8:48:29 AM  
Viewed: 3/4/2020 9:52:51 AM  
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DocuSigned by:  
Rosa Rios  
1C5CA8C5E175493...

Signature Adoption: Pre-selected Style  
Using IP Address: 129.120.6.150

Sent: 3/4/2020 9:52:58 AM  
Viewed: 3/6/2020 7:58:08 AM  
Signed: 3/6/2020 7:58:54 AM

Person Signer Events	Signature	Timestamp
Editor Deliver Events	Status	Timestamp
Agent Deliver Events	Status	Timestamp
Intermediary Deliver Events	Status	Timestamp
Certified Deliver Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee  
cheyenne.defee@cityofdenton.com  
Contract Administrator  
City of Denton  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**

**COPIED**

Sent: 2/13/2020 8:53:20 AM  
Viewed: 2/13/2020 10:11:05 AM

Carion Cop Events	Status	Timestamp
Not Offered via DocuSign		
Sherri Thurman sherri.thurman@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 2/14/2020 9:50:15 AM
Jane Richardson jane.richardson@cityofdenton.com Assistant City Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 3/4/2020 8:48:28 AM
Zolaina Parker Zolaina.Parker@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 3/4/2020 8:48:28 AM
Omar Rodriguez Omar.Rodriguez@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 3/6/2020 7:58:56 AM

Witness Events	Signature	Timestamp
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Notar Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/6/2020 7:58:56 AM
Certified Delivered	Security Checked	3/6/2020 7:58:56 AM
Signing Complete	Security Checked	3/6/2020 7:58:56 AM
Completed	Security Checked	3/6/2020 7:58:56 AM

Document Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.





## Name Change

From date of execution, Telvent USA, LLC should now be know as Schneider Electric Smart Grid Solutions, LLC. Schneider hereby accepts all rights, title, and interest to the “Contract” described as follows:

Contract approved May 7, 2013, by and between the City of Denton, Telvent USA, LLC for upgrading Denton Municipal Electric (DME)’s geographical information systems (GIS) and related software systems including ARCGIS and ARCFM Database, Responder outage management system (OMS), Fiber Manager, ARCFM for Silverlight, ARCFM Mobile Replication, ARCFM Mobile Inspector and related custom code from Version 10.1 to 10.2.1A; said Contract # 5225 being in the original not to exceed amount of \$491,813.75 and contained the Professional Services Agreement, the Software License Agreement(Contract No. 2013-404), and the Small Utility Enterprise License Agreement (Contract No. 2013-402) (the “ELA”).

Amendments 1 through 3 reference contract #5770 in error. The original contract number is 5225 and was attached to all amendments.

Amendment 1 to the ELA approved October 18, 2016, by and between the City of Denton, Telvent USA, LLC for vendor support of the Denton Municipal Electric (DME) ARCFM Solution and associated software modules along with new hardware and software upgrades; said ELA Amendment 1 being in the additional not to exceed amount of \$84,000 for a total contract not to exceed amount of \$575,813.75.

Amendment 2 to the ELA approved August 7, 2018, by and between the City of Denton, Telvent USA, LLC for vendor support of the Denton Municipal Electric (DME) ARCFM Solution and associated software modules along with new hardware and software upgrades; said ELA Amendment 2 being in the additional not to exceed amount of \$4,667 for a total contract not to exceed amount of \$580,480.75.

Amendment 3 to the ELA approved March 3, 2020, by and between the City of Denton, Telvent USA, LLC to provide continued vendor support of the Denton Municipal Electric (DME) ArcFM Solution and associated software modules along with new hardware and software upgrades; which is the sole provider of this software; said ELA Amendment 3 being in the additional not to exceed amount of \$142,500 for a total contract not to exceed amount of \$722,980.75.

This name change shall become effective as of the date the Consent to Name Change is executed by the City of Denton, which will be signed after this Name Change is executed by the Schneider and shall be binding. In the event of a conflict between this name change and the Contract as it relates to the matters of this name changing, the terms of this name change will control. Otherwise, all terms and conditions of the Contract will remain in full force and effect and likewise apply to this document.

### OUR CORE VALUES

Integrity • Fiscal Responsibility • Transparency • Outstanding Customer Service

Internal






## Procurement & Compliance

215 E. McKinney St., Denton, TX 76201 • (940) 349-7100

**IN WITNESS WHEREOF** Schneider execute and affix their respective approval and signature on this Name Change on the dates herein set forth.

Dated: 4/8/2022

DocuSigned by:  
  
 04CEFA4FC4AD4C6...  
 Schneider


### Consent to Name Change

In accordance with the provisions of the Contract, the City of Denton hereby consents to the name change affirming that no modification of the Contract is made or intended, except as noted hereinabove. Schneider shall provide to the City of Denton the following documentation (1) a completed substitute W-9 form, and (2) a certificate of insurance which meets or exceeds the insurance requirements of the Contract.

Attached: Conflict of Interest Questionnaire  
 Contract #5225  
 Amendments 1 – 3 #5770

Dated: 4/8/2022

Approved by:

DocuSigned by:  
  
 13E1D934887C40F...  
 Lori Hewell  
 Purchasing Manager  
 City of Denton  
 901B Texas Street  
 Denton, Texas  
 940-349-7100  
[lori.hewell@cityofdenton.com](mailto:lori.hewell@cityofdenton.com)

### OUR CORE VALUES

Integrity • Fiscal Responsibility • Transparency • Outstanding Customer Service



ORDINANCE NO. 22-1504

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A FOURTH AMENDMENT TO A CONTRACT BETWEEN THE CITY OF DENTON AND SCHNEIDER ELECTRIC SMART GRID SOLUTIONS, LLC, FORMERLY TELVENT USA, LLC, AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON MAY 7, 2013, IN THE NOT-TO-EXCEED AMOUNT OF \$491,813.75; SAID FOURTH AMENDMENT TO CONTINUE TO PROVIDE VENDOR SUPPORT OF THE DENTON MUNICIPAL ELECTRIC (DME) ARCFM SOLUTION AND ASSOCIATED SOFTWARE MODULES ALONG WITH NEW HARDWARE AND SOFTWARE UPGRADES, WHICH IS THE SOLE PROVIDER OF THESE ITEMS, IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, WHICH PROVIDES THAT PROCUREMENT OF COMMODITIES AND SERVICES THAT ARE AVAILABLE FROM ONE SOURCE ARE EXEMPT FROM COMPETITIVE BIDDING, AND IF OVER \$50,000, SHALL BE AWARDED BY THE GOVERNING BODY; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8048 – PROVIDING FOR A TWO (2) YEAR TERM AND AN ADDITIONAL FOURTH AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$95,000.00).

WHEREAS, on May 7, 2013, by Ordinance No. 2013-118, the City awarded a contract to Telvent USA, LLC, in the amount of \$491,813.75, for the purchase of a Geographic Information/Facilities Management System (GIS) software products for core operations, enhanced web-based GIS, and a new Outage Management System; and

WHEREAS, on October 18, 2016, by Ordinance No. 2016-322, City Council awarded a First Amendment to Telvent USA, LLC, in the amount of \$129,401.00, for vendor support of the Denton Municipal Electric (DME) ARCFM Solution and associated software modules along with new hardware and software upgrades; and

WHEREAS, on August 8, 2018, Purchasing awarded a Second Amendment to Telvent USA, LLC, in the amount of \$4,667.00, for vendor support of the Denton Municipal Electric (DME) ARCFM Solution and associated software modules along with new hardware and software upgrades; and

WHEREAS, on March 3, 2020, by Ordinance No. 20-498, the City Council awarded a Third Amendment to Telvent USA, LLC, in the amount of \$142,000.00, to provide continued vendor support of the Denton Municipal Electric (DME) ARCFM Solution and associated software modules along with new hardware and software upgrades; and

WHEREAS, on April 8, 2022, Purchasing executed a Name Change with Schneider Electric Smart Grid Solutions, LLC, formally Telvent USA, LLC; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; and

WHEREAS, the additional fees under the proposed Fourth Amendment are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees applicable to the Provider's profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The Fourth Amendment, increasing the amount of the contract between the City and Schneider Electric Smart Grid Solutions, LLC, formerly Telvent USA, LLC, which is on file in the office of the Purchasing Agent, in the amount of Ninety-Five Thousand and 00/100 (\$95,000.00), is hereby approved and the expenditure of funds therefor is hereby authorized in accordance with said amendment.

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and need not be submitted to competitive bids.

SECTION 3. The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

SECTION 4. The City Manager is hereby authorized to execute any contracts relating to the items specified in Section 1, and the expenditure of funds pursuant to said contracts is hereby authorized.

SECTION 5. The City Council of the City of Denton, hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Jesse Davis and seconded by Brian Beck, the ordinance was passed and approved by the following vote [7 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vicki Byrd, District 1:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Beck, District 2:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jesse Davis, District 3:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alison Maguire, District 4:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brandon Chase McGee, At Large Place 5:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Watts, At Large Place 6:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>


PASSED AND APPROVED this the 16<sup>th</sup> day of August, 2022.

  
GERARD HUDSPETH, MAYOR

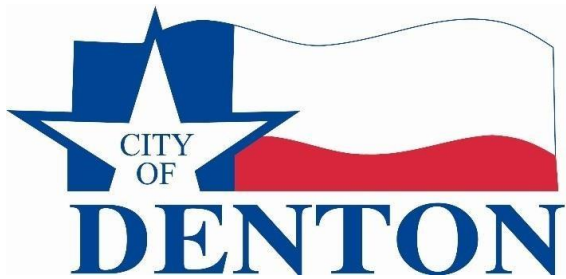
ATTEST:  
ROSA RIOS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:   
Digitally signed by Marcella Lunn  
DN: cn=Marcella Lunn, o,  
ou=City of Denton,  
email=marcella.lunn@cityofde  
nton.com, c=US  
Date: 2022.08.10 16:47:21  
-05'00'





Docusign City Council Transmittal Coversheet

FILE	8048
File Name	Schneider Software Support Amendment
Purchasing Contact	Christa Christian
City Council Target Date	AUGUST 16, 2022
Piggy Back Option	No
Contract Expiration	AUGUST 16, 2024
Ordinance	22-1504




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**Small Utility Enterprise License Agreement  
City of Denton, Texas, a Texas Municipal Corporation  
Amendment No. 4**

In accordance with the terms and conditions of the Small Utility Enterprise License Agreement (“Agreement” or “ELA”) between City of Denton, Texas, a Texas Municipal Corporation (“Licensee”), and Schneider Electric Smart Grid Solutions, LLC, formerly Telvent USA, LLC (“Schneider Electric” or “Telvent”), Contract No. 5770, the parties hereby wish to amend the Agreement for the purpose of extending the ELA for an additional two (2) years and change the contract number from 5770 to 8048. The terms of the Agreement shall be amended as follows.

**Article 6, Term, Termination, and Renewal**

The paragraph a. of Article 6 shall be deleted and replaced with the following provision, with changes shown in italics.

- a. **Term:** The license granted by this ELA Amendment 4 is for *an additional two (2) years* from the Effective Date, unless terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software deployed by Licensee shall be concurrent with the term of this ELA Amendment. No indefinite or perpetual term license grants are provided with this ELA.

For the avoidance of doubt, the term of this Amendment 4 shall be from December 1, 2022 through November 30, 2024.

In **Exhibit 2 – Enterprise Software**, the list of Schneider Electric proprietary software to which Licensee shall have access to during the term of this Amendment 4 shall be as follows:

- |                    |                               |
|--------------------|-------------------------------|
| • ArcFM            | • Fiber Manager               |
| • ArcFM Editor XI  | • ArcFM Viewer with Redliner  |
| • ArcFM Viewer     | • ArcFM Viewer with Inspector |
| • ArcFM Mobile     | • ArcFM Web                   |
| • Designer         | • ArcFM Geodatabase Manager   |
| • Designer XI      |                               |
| • Designer Express | • Wavepoint                   |
| • Network Adapter  | • Conduit Manager             |
| • Responder        | • Responder Adapters          |

**Exhibit 3 – ELA Fees Schedule**, shall be deleted and replaced with the following.

Licensee shall pay the following ELA Fees for the duration of this Amendment 4. Payment for each year shall be due within 30 days of receipt of an invoice from Schneider Electric.

---



	<b>Year 1 December 1, 2022 – November 30, 2023</b>	<b>Year 2 December 1, 2023 – November 30, 2024</b>
<b>Total Annual Fee</b>	\$47,500	\$47,500

For a two year not to exceed amount of \$95,000

This Amendment constitutes the entire agreement between the parties regarding the matters of this Amendment and supersedes all prior and contemporaneous agreements and understandings regarding the matters of this Amendment. In the event of a conflict between this Amendment and the Agreement as it relates to the matters of this Amendment, the terms of this Amendment will control. Otherwise, all terms and conditions of the Agreement not specifically amended as provided herein shall remain unchanged and in full force and effect.

Accepted and Agreed:

**City of Denton, Texas, a Texas  
Municipal Corporation**

DocuSigned by:  
Signature: *Sara Hensley*  
5236DB296270423...  
Printed Name: Sara Hensley  
Title: City Manager  
Date: 08/16/2022

**Schneider Electric Smart Grid  
Solutions, LLC**

DocuSigned by:  
Signature: *Drew Ditter*  
04CEFA4FC4AD4C6...  
Printed Name: Drew Ditter  
Title: Global Operations Director  
Date: 7/18/2022

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

DocuSigned by:

Antonio Puente

E3760944C2BF4B5...

SIGNATURE

Antonio Puente

PRINTED NAME

DME General Manager

TITLE

Electric

DEPARTMENT

CITY OF DENTON, TEXAS

DocuSigned by:

Sara Hensley

5236DB296270423...

BY:

SARA HENSLEY

CITY MANAGER

ATTEST:  
ROSA RIOS, CITY SECRETARY

DocuSigned by:

Rosa Rios

1C5CA8C5E175493...

BY:

APPROVED AS TO LEGAL FORM:  
MACK REINWAND , CITY ATTORNEY

DocuSigned by:

Marcella Lunn

4B070831B4AA438...

BY:



**Certificate Of Completion**

Envelope Id: 2D9793DD500D4020926D56EBD160BE7D

Status: Completed

Subject: Please DocuSign: City Council Contract 8048 Schneider Software Support Amendment

Source Envelope:

Document Pages: 4

Signatures: 6

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Envelopel Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.104

**Record Tracking**

Status: Original

Holder: Christa Christian

Location: DocuSign

7/13/2022 10:23:48 AM

Christa.Christian@cityofdenton.com

**Signer Events****Signature****Timestamp**

Christa Christian

**Completed**

Sent: 7/13/2022 11:06:30 AM

christa.christian@cityofdenton.com

Viewed: 7/13/2022 11:06:42 AM

Senior Buyer

Signed: 7/13/2022 11:07:22 AM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Tabitha Millsop



Sent: 7/13/2022 11:07:24 AM

tabitha.millsop@cityofdenton.com

Viewed: 7/13/2022 12:10:13 PM

Assistant Purchasing Manager

Signed: 7/13/2022 12:10:21 PM

City of Denton

Signature Adoption: Pre-selected Style

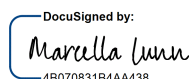
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(None)

Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 7/13/2022 12:10:23 PM

marcella.lunn@cityofdenton.com

Viewed: 7/15/2022 10:19:22 AM

Deputy City Attorney

Signed: 7/15/2022 10:20:02 AM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Drew Ditter



Sent: 7/15/2022 10:20:04 AM

drew.ditter@se.com

Resent: 7/15/2022 12:16:04 PM

Global Operations Director

Resent: 7/15/2022 12:17:38 PM

Schneider Electric Smart Grid Solutions, LLC.

Viewed: 7/18/2022 10:27:02 AM

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Pre-selected Style


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**Electronic Record and Signature Disclosure:**

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ID: a9dcb3ec-a63e-4ab5-964f-32235116f571

Signer Events	Signature	Timestamp
Antonio Puente Antonio.Puente@cityofdenton.com DME General Manager Security Level: Email, Account Authentication (None)	 <p>DocuSigned by: Antonio Puente E3760944C2BF4B5...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	Sent: 7/18/2022 11:10:14 AM Viewed: 7/18/2022 2:32:34 PM Signed: 7/18/2022 2:32:51 PM

**Electronic Record and Signature Disclosure:**  
 Accepted: 7/18/2022 2:32:34 PM  
 ID: de21b813-52bb-42f4-9136-99045670c2d9

Cheyenne Defee  
 cheyenne.defee@cityofdenton.com  
 Procurement Administration Supervisor  
 City of Denton  
 Security Level: Email, Account Authentication (None)

**Completed**  
 Using IP Address: 198.49.140.10

Sent: 7/18/2022 2:32:55 PM  
 Viewed: 8/17/2022 8:22:06 AM  
 Signed: 8/17/2022 8:22:26 AM

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Sara Hensley  
 sara.hensley@cityofdenton.com  
 City Manager  
 City of Denton  
 Security Level: Email, Account Authentication (None)



DocuSigned by:  
Sara Hensley  
5236DB296270423...

Signature Adoption: Pre-selected Style  
Using IP Address: 198.49.140.10

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 Signed: 8/17/2022 8:23:22 AM

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Rosa Rios  
 rosa.rios@cityofdenton.com  
 City Secretary  
 Security Level: Email, Account Authentication (None)



DocuSigned by:  
Rosa Rios  
1C5CA8C5E175493...

Signature Adoption: Pre-selected Style  
Using IP Address: 198.49.140.10

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 Viewed: 8/17/2022 1:41:24 PM  
 Signed: 8/17/2022 1:41:44 PM

**Electronic Record and Signature Disclosure:**  
 Accepted: 8/17/2022 1:41:24 PM  
 ID: 85013305-a946-4f6b-952b-315850bcd49e

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee  
 cheyenne.defee@cityofdenton.com  
 Procurement Administration Supervisor  
 City of Denton  
 Security Level: Email, Account Authentication (None)

**COPIED**

Sent: 7/13/2022 11:07:24 AM

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 7/18/2022 2:32:54 PM Viewed: 7/19/2022 10:32:38 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 8/17/2022 1:41:46 PM
Mark Zimmerer mark.zimmerer@cityofdenton.com Electric Engineering Supervisor Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 7/18/2022 1:28:41 PM ID: 79c223f8-d900-4558-9eb9-21104dba1e4e	COPIED	Sent: 8/17/2022 1:41:47 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/13/2022 11:06:30 AM
Certified Delivered	Security Checked	8/17/2022 1:41:24 PM
Signing Complete	Security Checked	8/17/2022 1:41:44 PM
Completed	Security Checked	8/17/2022 1:41:47 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A FIFTH AMENDMENT TO A CONTRACT BETWEEN THE CITY OF DENTON AND SCHNEIDER ELECTRIC SMART GRID SOLUTIONS, LLC, FORMERLY TELVENT USA, LLC, AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON MAY 7, 2013, IN THE NOT-TO-EXCEED AMOUNT OF \$491,813.75; SAID FIFTH AMENDMENT TO CONTINUE TO PROVIDE VENDOR SUPPORT OF THE DENTON MUNICIPAL ELECTRIC (DME) ARCFM SOLUTION AND ASSOCIATED SOFTWARE MODULES ALONG WITH NEW HARDWARE AND SOFTWARE UPGRADES, WHICH IS THE SOLE PROVIDER OF THESE ITEMS, IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, WHICH PROVIDES THAT PROCUREMENT OF COMMODITIES AND SERVICES THAT ARE AVAILABLE FROM ONE SOURCE ARE EXEMPT FROM COMPETITIVE BIDDING, AND IF OVER \$50,000, SHALL BE AWARDED BY THE GOVERNING BODY; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8564 – PROVIDING FOR A TWO (2) YEAR TERM AND AN ADDITIONAL FIFTH AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$95,000.00).

WHEREAS, on May 7, 2013, by Ordinance No. 2013-118, the City awarded a contract to Telvent USA, LLC, in the amount of \$491,813.75, for the purchase of a Geographic Information/Facilities Management System (GIS) software products for core operations, enhanced web-based GIS, and a new Outage Management System; and

WHEREAS, on October 18, 2016, by Ordinance No. 2016-322, City Council awarded a First Amendment to Telvent USA, LLC, in the amount of \$129,401.00, for vendor support of the Denton Municipal Electric (DME) ARCFM Solution and associated software modules along with new hardware and software upgrades; and

WHEREAS, on August 8, 2018, Purchasing awarded a Second Amendment to Telvent USA, LLC, in the amount of \$4,667.00, for vendor support of the Denton Municipal Electric (DME) ARCFM Solution and associated software modules along with new hardware and software upgrades; and

WHEREAS, on March 3, 2020, by Ordinance No. 20-498, the City Council awarded a Third Amendment to Telvent USA, LLC, in the amount of \$142,000.00, to provide continued vendor support of the Denton Municipal Electric (DME) ARCFM Solution and associated software modules along with new hardware and software upgrades; and

WHEREAS, on April 8, 2022, Purchasing executed a Name Change with Schneider Electric Smart Grid Solutions, LLC, formally Telvent USA, LLC; and

WHEREAS, on August 16, 2022, by Ordinance No. 22-1504, the City Council awarded a Fourth Amendment to Schneider Electric Smart Grid Solutions, LLC, in the amount of \$95,000.00, to provide continued vendor support of the Denton Municipal Electric (DME) ARCFM Solution and associated software modules along with new hardware and software upgrades; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; and

WHEREAS, the additional fees under the proposed Fifth Amendment are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees applicable to the Provider's profession, and such fees do not exceed the maximum provided by law;  
NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The Fifth Amendment, increasing the amount of the contract between the City and Schneider Electric Smart Grid Solutions, LLC, which is on file in the office of the Purchasing Agent, in the amount of Ninety-Five Thousand and 00/100 (\$95,000.00), is hereby approved, and the expenditure of funds therefor is hereby authorized in accordance with said amendment which shall be attached hereto.

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and need not be submitted to competitive bids.

SECTION 3. The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

SECTION 4. The City Manager is hereby authorized to execute any contracts relating to the items specified in Section 1, and the expenditure of funds pursuant to said contracts is hereby authorized.

SECTION 5. The City Council of the City of Denton, hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. This ordinance was passed and approved by the following vote [\_\_\_ - \_\_\_]:



	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

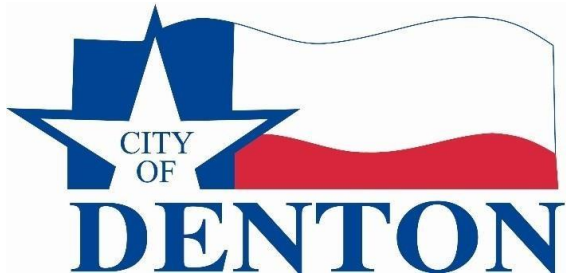
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

FILE	8564
File Name	SCHEIDER SOFTWARE SUPPORT AMENDMENT
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	



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**Small Utility Enterprise License Agreement  
City of Denton, Texas, a Texas Municipal Corporation  
Amendment No. 5**

In accordance with the terms and conditions of the Small Utility Enterprise License Agreement (“Agreement” or “ELA”) between City of Denton, Texas, a Texas Municipal Corporation (“Licensee”), and Schneider Electric Smart Grid Solutions, LLC, formerly Telvent USA, LLC (“Schneider Electric” or “Telvent”), SE Contract No. 2013-402 or Denton Contract No. 8048, the parties hereby wish to amend the Agreement for the purpose of extending the ELA for an additional two (2) years and change the contract number from 8048 to 8564. The terms of the Agreement shall be amended as follows.

---

**Article 6, Term, Termination, and Renewal**

The paragraph a. of Article 6 shall be deleted and replaced with the following provision, with changes shown in italics.

- a. **Term:** The license granted by this ELA Amendment 5 is for *an additional two (2) years* from the Effective Date, unless terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software deployed by Licensee shall be concurrent with the term of this ELA Amendment. No indefinite or perpetual term license grants are provided with this ELA.

For the avoidance of doubt, the term of this Amendment 5 shall be from December 1, 2024 through November 30, 2026.

---

In **Exhibit 2 – Enterprise Software**, the list of Schneider Electric proprietary software to which Licensee shall have access to during the term of this Amendment 5 shall be as follows:

- ArcFM
- Fiber Manager
- Fiber Manager XI
- ArcFM Editor XI
- ArcFM Viewer with Redliner
- ArcFM Viewer
- ArcFM Viewer with Inspector
- ArcFM Mobile
- ArcFM Web
- ArcFM Web XI
- Designer
- Designer XI
- ArcFM Geodatabase Manager
- ArcFM Geodatabase Manager XI
- Designer Express
- Wavepoint



ÉY cxgr qkpvZK  
ÉEqp f wk/O cpci gt"  
ÉResponder  
• Responder Adapters

**Exhibit 3 – ELA Fees Schedule**, shall be deleted and replaced with the following.

Licensee shall pay the following ELA Fees for the duration of this Amendment 4. Payment for each year shall be due within 30 days of receipt of an invoice from Schneider Electric.

	Year 1 December 1, 2024 – November 30, 2025	Year 2 December 1, 2025 – November 30, 2026
Total Annual Fee	\$47,500	\$47,500

For a two year not to exceed amount of \$95,000

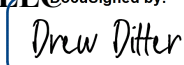
All terms and conditions of the Agreement not specifically amended as provided herein shall remain unchanged and in full force and effect.

Accepted and Agreed:

**City of Denton, Texas, a Texas  
Municipal Corporation**

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Schneider Electric Smart Grid  
Solutions, LLC**

DocuSigned by:  
  
Signature: \_\_\_\_\_  
Printed Name: Drew Ditter  
Title: Global Operations Director  
Date: 5/28/2024

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and ay first above written.

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

DocuSigned by:

 Antonio Puente, Jr.

E3760944C2BF4B6...  
SIGNATURE

PRINTED NAME

DME General Manager

TITLE

Electric

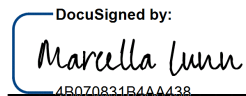
DEPARTMENT

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:

BY:  Marcella Lunn

4B070831B4AA438...

**CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ**

**For vendor or other person doing business with local governmental entity**

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1 Name of vendor who has a business relationship with local governmental entity.**

SCHNEIDER ELECTRIC SMART GRID SOLUTIONS, LLC

**2** ☒ **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information in this section is being disclosed.**

\_\_\_\_\_  
Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relations hip with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☒

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☒

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐

Yes

☒

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4** ☒ **I have no Conflict of Interest to disclose.**

**5** DocuSigned by:

*Drew Ditter*

5/28/2024

Signature of Vendor doing business with the governmental entity

Date

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

- (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
  - (i) a contract between the local governmental entity and vendor has been executed; or
  - (ii) the local governmental entity is considering entering into a contract with the vendor;
- (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
  - (i) a contract between the local governmental entity and vendor has been executed; or
  - (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
  - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
  - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
  - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
  - (1) the date that the vendor:
    - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
    - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
  - (2) the date the vendor becomes aware:
    - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
    - (B) that the vendor has given one or more gifts described by Subsection (a); or
    - (C) of a family relationship with a local government officer.

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> degree of affinity (marriage) or consanguinity (blood or adoption)

**City Official:** for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

**Vendor:** a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

**Certificate Of Completion**

Envelope Id: 01B64C6CB21543D38D823D09823A610B

Status: Sent

Subject: Please DocuSign: City Council Contract 8564 Schneider Electric ArcFM Support Amendment

Source Envelope:

Document Pages: 6

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Crystal Westbrook

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

crystal.westbrook@cityofdenton.com

IP Address: 198.49.140.104

**Record Tracking**

Status: Original

Holder: Crystal Westbrook

Location: DocuSign

5/20/2024 10:33:54 AM

crystal.westbrook@cityofdenton.com

**Signer Events****Signature****Timestamp**

Crystal Westbrook

**Completed**

Sent: 5/20/2024 10:35:34 AM

crystal.westbrook@cityofdenton.com

Viewed: 5/20/2024 10:35:41 AM

Senior Buyer

Signed: 5/20/2024 10:44:33 AM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 5/20/2024 10:44:36 AM

lori.hewell@cityofdenton.com

Viewed: 5/20/2024 12:55:05 PM

Purchasing Manager

Signed: 5/20/2024 12:55:22 PM

City of Denton

Signature Adoption: Pre-selected Style

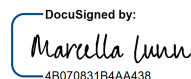
Security Level: Email, Account Authentication (None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 5/20/2024 12:55:24 PM

marcella.lunn@cityofdenton.com

Viewed: 5/20/2024 4:04:40 PM

Senior Deputy City Attorney

Signed: 5/20/2024 4:06:06 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication (None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Drew Ditter



Sent: 5/20/2024 4:06:08 PM

drew.ditter@se.com

Viewed: 5/21/2024 9:15:15 AM

Global Operations Director

Signed: 5/28/2024 11:41:31 AM

Schneider Electric Smart Grid Solutions, LLC.

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication (None)

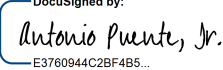
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**Electronic Record and Signature Disclosure:**

Accepted: 5/21/2024 9:15:15 AM

ID: 916a889f-9859-44d9-b8f4-1e8c6bbb9c5c



Signer Events	Signature	Timestamp
Antonio Puente, Jr. antonio.puente@cityofdenton.com DME General Manager Security Level: Email, Account Authentication (None)	DocuSigned by:  E3760944C2BF4B5...  Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 5/28/2024 11:41:34 AM Viewed: 5/28/2024 1:14:19 PM Signed: 5/28/2024 1:14:33 PM

**Electronic Record and Signature Disclosure:**  
Accepted: 5/28/2024 1:14:19 PM  
ID: af368f9c-d796-462b-8876-cee1737965b4

Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	Sent: 5/28/2024 1:14:36 PM
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**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Sara Hensley  
sara.hensley@cityofdenton.com  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lauren Thoden  
lauren.thoden@cityofdenton.com  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 5/20/2024 10:44:35 AM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		

Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 5/28/2024 1:14:36 PM Viewed: 5/28/2024 3:14:06 PM
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Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Jerry Looper jerry.looper@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 5/23/2024 5:02:47 PM ID: 8a4b487f-4e63-4947-b63b-116198194936		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Envelope Updated	Security Checked	5/20/2024 10:42:52 AM
Envelope Updated	Security Checked	5/20/2024 10:42:53 AM
Envelope Updated	Security Checked	5/20/2024 10:42:53 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-119, Version: 1**

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance authorizing the City Manager to execute and deliver Supplemental No. 2 to the Standard Utility Agreement ("Agreement") by and between the City of Denton and the Texas Department of Transportation ("TxDOT"), for the reimbursement of design, property acquisition and related services, construction, inspection, project management and other direct costs associated with the adjustment, removal, and/or relocation of water utilities along I-35E from Mayhill to Loop 288 more specifically called the I-35E/Mayhill Utility Relocations Project (Utility ID No. U00008008) for water utility relocation efforts, within the County and City of Denton, Texas; providing for the expenditure of funds not to exceed an increase of One Million, Eight Hundred Thirty-Two Thousand, Six Hundred Thirty-Two and 59/100 dollars (\$1,832,632.59) therefor; and providing an effective date.



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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Capital Projects/Public Works

**ACM:** Cassandra Ogden

**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance authorizing the City Manager to execute and deliver Supplemental No. 2 to the Standard Utility Agreement (“Agreement”) by and between the City of Denton and the Texas Department of Transportation (“TxDOT”), for the reimbursement of design, property acquisition and related services, construction, inspection, project management and other direct costs associated with the adjustment, removal, and/or relocation of water utilities along I-35E from Mayhill to Loop 288 more specifically called the I-35E/Mayhill Utility Relocations Project (Utility ID No. U00008008) for water utility relocation efforts, within the County and City of Denton, Texas; providing for the expenditure of funds not to exceed an increase of One Million, Eight Hundred Thirty-Two Thousand, Six Hundred Thirty-Two and 59/100 dollars (\$1,832,632.59) therefor; and providing an effective date.

### **BACKGROUND**

In anticipation of the I-35E widening project, the City is responsible for relocating the city owned utilities outside of the newly acquired TxDOT right-of-way. In November 2022, The City and TxDOT entered into an agreement for the water and wastewater utilities to be relocated for the section I-35E/Mayhill section of the project.

Upon completion of the project and an accounting of all costs associated with the relocation efforts, a supplemental agreement is needed by TxDOT to increase the estimated reimbursement amount from \$15,407,417.25 to \$17,240,049.84.

### **RECOMMENDATION**

Staff recommends approval of the Ordinance.

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

On Nov. 15, 2022, The City of Denton authorized the Standard Utility Agreement with TxDOT approving reimbursements in the amount of \$15,407,417.25 – Ordinance No. 22-2391

On Sept. 21, 2023, City Manager authorized Supplemental No. 1 adding the project plan sheets and property interest documentation to the Standard Utility Agreement inadvertently left off in the original City authorization process.

## **ESTIMATED SCHEDULE OF PROJECT**

The City's I-35E/Mayhill Utility Relocation Project was completed in March of 2024.

## **FISCAL INFORMATION**

Reimbursements from TxDOT will be deposited to the I-35E/Mayhill Utility Relocations Project.

## **EXHIBITS**

Exhibit 1 – Agenda Information Sheet

Exhibit 2 – Ordinance and Agreement

Exhibit 3 – Original Agreement and Supplemental No. 1

Respectfully submitted:  
Trevor Crain  
Director of Capital Projects

For information concerning this agreement contact: Robin Davis, PMP, at 940-349-7713.

Legal point of contact: Benjamin Samples, at 940-349-8312.



ORDINANCE NO.

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER SUPPLEMENTAL NO. 2 TO THE STANDARD UTILITY AGREEMENT ("AGREEMENT") BY AND BETWEEN THE CITY OF DENTON AND THE TEXAS DEPARTMENT OF TRANSPORTATION ("TXDOT"), FOR THE REIMBURSEMENT OF DESIGN, PROPERTY ACQUISITION AND RELATED SERVICES, CONSTRUCTION, INSPECTION, PROJECT MANAGEMENT AND OTHER DIRECT COSTS ASSOCIATED WITH THE ADJUSTMENT, REMOVAL, AND/OR RELOCATION OF WATER UTILITIES ALONG I-35E FROM MAYHILL TO LOOP 288 MORE SPECIFICALLY CALLED THE I-35E/MAYHILL UTILITY RELOCATIONS PROJECT (UTILITY ID NO. U00008008) FOR WATER UTILITY RELOCATION EFFORTS, WITHIN THE COUNTY AND CITY OF DENTON, TEXAS; PROVIDING FOR THE EXPENDITURE OF FUNDS NOT TO EXCEED AN INCREASE OF ONE MILLION, EIGHT HUNDRED THIRTY-TWO THOUSAND, SIX HUNDRED THIRTY-TWO AND 59/100 DOLLARS (\$1,832,632.59) THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 15, 2022, City Council authorized Ordinance No. 22-2391 for the approval and execution of the Standard Utility Agreement for water utility relocations on project U00008008 in the amount of \$15,407,417.25; and

WHEREAS, the Supplemental No. 2 to the Standard Utility Agreement No. U00008008 for water relocations will increase the reimbursement available to the City by an additional \$1,832,632.59 for all eligible costs associated with the City's I-35E/Mayhill Utility Relocation Project between Mayhill and Loop 288 for a Total Reimbursement of \$17,240,049.84; and

WHEREAS, the City Council having considered the importance of the project to the citizens of Denton and finding that it is in the public's health and safety interest, is of the opinion that it should approve the Agreements; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitals contained in the preamble of this ordinance are hereby incorporated into the body of this ordinance are true and correct.

SECTION 2. The City Manager, or designee, is hereby authorized to execute on behalf of the City, Supplemental No. 2 to the Standard Utility Agreement No. U00008008 for water utilities relocations, a copy of which is attached hereto as Exhibit " A" and made a part hereof for all purposes.

SECTION 3. The City Manager, or designee, is authorized to expend funds an amount not to exceed not to exceed One Million, Eight Hundred Thirty-Two Thousand, Six Hundred Thirty-Two And 59/100 Dollars (\$1,832,632.59) for Utility ID No. U0008008.

SECTION 4. The City Manager, or designee, is further authorized to carry out all obligations and duties of the City as set forth in the Agreements.

SECTION 5. That this ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. The ordinance was passed and approved by the following vote [\_\_\_\_ - \_\_\_\_]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: Benjamin N. Samples II

# **EXHIBIT A**

Supplemental No. 2

to the

Standard Utility Agreement No. U00008008

I35E-Mayhill Water Utility Relocations



## Standard Utility Agreement Supplemental Agreement No. 2 to U Number N/A Utility ID U00008008

District: Dallas  
ROW Project ID: R00006793  
ROW CSJ: 0196-01-114  
Construction CSJ: 0196-01-109  
Proposed Highway Project Letting Date: 09/01/23 RTL

County: Denton  
Highway: IH 35E  
From: South of Mayhill  
To: South of SL 288

**THIS SUPPLEMENTAL AGREEMENT** by and between the State of Texas ("**State**") and City of Denton ("**Utility**") shall be effective upon the date of acceptance and execution by and on behalf of the **State**.

**WHEREAS**, the **State** and **Utility** executed a Standard Utility Agreement on January 18, 2023 concerning the adjustment, relocation, or removal of certain of the **Utility's** facilities;

**WHEREAS**, said Standard Utility Agreement limits the required scope of work and/or the amount of eligible reimbursement;

**WHEREAS**, due to newly discovered information by the **Utility** deemed sufficient by the **State**, the **State** and **Utility** agree that supplementation to the Standard Utility Agreement is necessary; and

**WHEREAS**, the statement of work contained in the Standard Utility Agreement shall be supplemented to include the reason the supplemental is needed and the change in cost: costs for material over-runs and authorized change orders required for the successful completion of the project, easement acquisition costs over the estimated amount and outside legal counsel costs incurred through the easement acquisition process, and Buy America Attachment A items 49, 51, 52, 53 and 54 fall under small service PVC lines / small fittings section and are not applicable to the Buy America requirement, which is more specifically shown in **Utility's** plans, specifications, estimated costs, and schedule, which are attached to this supplemental agreement as Attachment "A."

### NOW, THEREFORE, BE IT AGREED:

The statement of work contained in the Standard Utility Agreement is supplemented to include the additional adjustment, relocation, or removal found in Attachment "A."

The estimated cost of the adjustment, relocation, or removal is ☒ increased or ☐ decreased to a total of \$17,240,049.84, or ☐ no change to the Total Cost Estimate. The parties agree that the approval of estimated costs in no way indicates the eligibility of said costs for reimbursement.

All conditions and agreements contained in the Standard Utility Agreement, except those specifically included in this document, remain in effect.

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

**UTILITY**

Utility: City of Denton

By: \_\_\_\_\_

Title: City Manager

Date: \_\_\_\_\_

**EXECUTION RECOMMENDED:**

\_\_\_\_\_  
Director of TP&D (or designee), Dallas District

**THE STATE OF TEXAS**

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

By: \_\_\_\_\_  
District Engineer (or designee)

Date: \_\_\_\_\_

\_\_\_\_\_  
Initial Date  
TxDOT

\_\_\_\_\_  
Initial Date  
Utility

## Attachment “A” Plans, Specifications, and Estimated Costs

☐ Not Applicable

All material items within the cost estimate that must meet Buy America or Steel and Iron Preference Provision requirements must be indicated with an asterisk (\*).

- ☐ Currently, **this project does not plan to use** iron and steel subject to Buy America requirements. In the event that Buy America regulated materials are used during the construction of this project, compliance documentation will be provided.
- ☐ There are non-domestic iron and steel materials in this project that fall under the De Minimis equation. Calculations showing the total cost does not exceed one-tenth of one percent (0.1 %) of the individual utility agreement amount or \$2,500.00, whichever is greater is required.
- ☒ We understand the Buy America Compliance Requirements for iron and steel and will supply the required documentation to TxDOT indicating compliance with this provision. The following documents will be supplied prior to the installation of the materials:

- 1) Form 1818 - Material Statement
- 2) Material Test Reports or Certifications

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

CONSTRUCTION - ORIGINAL ESTIMATED														SUA#1	SUA#2			REVISED ESTIMATE
BID ITEM	Description	Quantity	Unit	Unit Cost	Estimated Costs	Amendment 1 added the plans to the SUA that were not included in the original signed SUA.  No Change in Pricing	QTY Change	Estimated Costs	New Est. Total Cost									
1	TEMPORARY PROJECT SIGN	8	EA	\$ 1,000.00	\$ 8,000.00													
2	MOBILIZATION	1	EA	\$ 1,000,000.00	\$ 1,000,000.00													
3	SITE PREPARATION	1	EA	\$ 90,000.00	\$ 90,000.00													
4	STORM WATER POLLUTION PREVENTION DEVICE	1	EA	\$ 50,000.00	\$ 50,000.00													
5	REMOVE STORM WATER POLLUTION PREVENTION DEVICE	1	EA	\$ 7,000.00	\$ 7,000.00													
6	6" CONCRETE RIPRAP*	51	SY	\$ 90.00	\$ 4,590.00													
7	6" COMMON STONE RIPRAP DRY*	50	SY	\$ 80.00	\$ 4,000.00													
8	JOINT BONDING & ELECTRICAL ISOLATION	1	EA	\$ 1.00	\$ 1.00													
9	24" HDPE PRESSURE PIPE, WATER	2229	LF	\$ 600.00	\$ 1,337,400.00													
10	20" HDPE PRESSURE PIPE, WATER	7002	LF	\$ 375.00	\$ 2,625,750.00													
11	12" PVC WATER PRESSURE PIPE	1442	LF	\$ 350.00	\$ 504,700.00													
12	8" DIP WATER PIPE*	135	LF	\$ 280.00	\$ 37,800.00													
13	8" PVC WATER PRESSURE PIPE	3259	LF	\$ 260.00	\$ 847,340.00													
14	6" PVC WATER PRESSURE PIPE	1075	LF	\$ 250.00	\$ 268,750.00													
15	18" CASING PIPE BY OTHER THAN OPEN CUT*	688	LF	\$ 800.00	\$ 550,400.00													
16	24" CASING BY OTHER THAN OPEN CUT*	629	LF	\$ 850.00	\$ 534,650.00													
17	30" CASING BY OPEN CUT*	63	LF	\$ 500.00	\$ 31,500.00													
18	30" CASING BY OTHER THAN OPEN CUT*	400	LF	\$ 960.00	\$ 384,000.00													
19	36" CASING BY OPEN CUT*	141	LF	\$ 600.00	\$ 84,600.00													
20	36" CASING BY OTHER THAN OPEN CUT*	410	LF	\$ 1,200.00	\$ 492,000.00													
21	24" HDPE WATER CARRIER PIPE	551	LF	\$ 220.00	\$ 121,220.00													
22	20" HDPE WATER CARRIER PIPE	463	LF	\$ 180.00	\$ 83,340.00													
23	12" PVC WATER CARRIER PIPE	629	LF	\$ 145.00	\$ 91,205.00													
24	8" PVC WATER CARRIER PIPE	688	LF	\$ 110.00	\$ 75,680.00													
25	20" GATE VALVE*	3	EA	\$ 45,000.00	\$ 135,000.00													
26	16" GATE VALVE*	10	EA	\$ 8,000.00	\$ 80,000.00													
27	12" GATE VALVE*	8	EA	\$ 7,500.00	\$ 60,000.00													
28	8" GATE VALVE*	16	EA	\$ 6,500.00	\$ 104,000.00													
29	6" GATE VALVE*	7	EA	\$ 5,500.00	\$ 38,500.00													
30	6"x6" TAPPING SLEEVE AND VALVE (CITY PERFORMED)*	2	EA	\$ 7,500.00	\$ 15,000.00													
31	8"x6" TAPPING SLEEVE AND VALVE (CITY PERFORMED)*	2	EA	\$ 8,000.00	\$ 16,000.00													
32	8"x8" TAPPING SLEEVE AND VALVE (CITY PERFORMED)*	7	EA	\$ 9,000.00	\$ 63,000.00													
33	12"x12" TAPPING SLEEVE AND VALVE (CITY PERFORMED)*	2	EA	\$ 10,000.00	\$ 20,000.00													
34	20" WATER MAIN CONNECTION W/SHUTDOWN	1	EA	\$ 27,000.00	\$ 27,000.00			1	\$ 27,000.00	\$ 54,000.00								
35	14" WATER MAIN CONNECTION W/SHUTDOWN	3	EA	\$ 20,000.00	\$ 60,000.00													
36	12" WATER MAIN CONNECTION W/SHUTDOWN	3	EA	\$ 10,000.00	\$ 30,000.00													
37	8" WATER MAIN CONNECTION W/SHUTDOWN	14	EA	\$ 8,000.00	\$ 112,000.00			3	\$ 24,000.00	\$ 136,000.00								
38	6" WATER MAIN CONNECTION W/SHUTDOWN	5	EA	\$ 8,000.00	\$ 40,000.00													
39	TRENCH SAFETY	15060	LF	\$ 1.00	\$ 15,060.00													
40	TOPSOIL	671	CY	\$ 25.00	\$ 16,775.00													
41	SODDING	3962	SY	\$ 7.00	\$ 27,734.00													
42	SEEDING	29050	SY	\$ 1.00	\$ 29,050.00													
43	CONCRETE PAVEMENT REPAIR FOR UTILITY TRENCH*	4940	SY	\$ 200.00	\$ 988,000.00													
44	FLEXIBLE PAVING REPAIR FOR UTILITY TRENCH*	229	SY	\$ 130.00	\$ 29,770.00			701	\$ 91,130.00	\$ 120,900.00								
45	4" CONCRETE SIDEWALK*	1134	SY	\$ 130.00	\$ 147,420.00													
46	2" WATER AIR RELEASE VALVE AND VAULT*	1	EA	\$ 22,000.00	\$ 22,000.00													
47	3" WATER AIR RELEASE VALVE AND VAULT*	2	EA	\$ 30,000.00	\$ 60,000.00													
48	FIRE HYDRANT ASSEMBLY*	25	EA	\$ 15,000.00	\$ 375,000.00													
49	1" WATER SERVICE*	9	EA	\$ 1,800.00	\$ 16,200.00													
50	1" PRIVATE WATER SERVICE RELOCATION	245	KF	\$ 80.00	\$ 19,600.00													
51	1-1/2" WATER SERVICE	3	EA	\$ 2,000.00	\$ 6,000.00													
52	2" WATER SERVICE	6	EA	\$ 2,200.00	\$ 13,200.00													
53	2" PRIVATE WATER SERVICE RELOCATION	400	LF	\$ 75.00	\$ 30,000.00													
54	4" WATER METER, VAULT AND APPURTENANCES	1	EA	\$ 6,500.00	\$ 6,500.00													
55	TRAFFIC CONTROL	5	MO	\$ 30,000.00	\$ 150,000.00			4	\$ 120,000.00	\$ 270,000.00								
				CONSTRUCTION TOTAL	\$ 11,986,735.00			CONSTRUCTION w/SUA2 \$ 12,502,098.00										
56	REMOVE 16" UTILITY LINE	142	LF	\$ 68.00	\$ 9,656.00		Amendment 1 added the plans to the SUA that were not											
57	REMOVE 14" UTILITY LINE	8387	LF	\$ 48.00	\$ 402,576.00													
58	REMOVE 12" UTILITY LINE	1064	LF	\$ 41.00	\$ 43,624.00													
59	REMOVE 8" UTILITY LINE	4490	LF	\$ 40.00	\$ 179,600.00													

Amendment 1 added the plans to the SUA that were not

CONSTRUCTION - ORIGINAL ESTIMATED												
BID ITEM	Description	Quantity	Unit	Unit Cost	Estimated Costs	SUA#1	QTY Change	SUA#2	Revised Estimate	SUA#1	SUA#2	Revised Estimate
60	REMOVE 6" UTILITY LINE	426	LF	\$ 39.00	\$ 16,614.00	Included in the original signed SUA. No Change in Pricing						
61	GROUT FILL 14" UTILITY LINE	320	LF	\$ 34.00	\$ 10,880.00							
62	GROUT FILL 12" UTILITY LINE	799	LF	\$ 25.00	\$ 19,975.00							
63	GROUT FILL 8" UTILITY LINE	72	LF	\$ 11.00	\$ 792.00							
64	GROUT FILL 6" UTILITY LINE	36	LF	\$ 9.00	\$ 324.00							
65	REMOVE 6" WATER VALVE	6	EA	\$ 1,000.00	\$ 6,000.00							
66	REMOVE 8" WATER VALVE	14	EA	\$ 1,100.00	\$ 15,400.00							
67	REMOVE 12" WATER VALVE	8	EA	\$ 1,200.00	\$ 9,600.00							
68	REMOVE 14" WATER VALVE	8	EA	\$ 1,250.00	\$ 10,000.00							
69	SALVAGE FIRE HYDRANT	28	EA	\$ 1,000.00	\$ 28,000.00							
70	SALVAGE SMALL WATER METER	18	EA	\$ 1,000.00	\$ 18,000.00							
71	REMOVE CONCRETE WATER VAULT	4	EA	\$ 1,000.00	\$ 4,000.00							
72	UTILITY LINE PLUGGING (WATER)	9	EA	\$ 2,500.00	\$ 22,500.00		1	\$ 2,500.00	\$ 25,000.00			
92				ABANDONMENT TOTAL	\$ 797,541.00			ABANDONMENT w/ SUA#2	\$ 800,041.00			
				Materials On Hand:	\$ -							
SUA#2	AUTHORIZED CHANGE ORDER ITEMS						QTY	SUA#2	Revised Estimate			
CC01.1	(NEW ITEM) 6" Backflow Preventer Assembly		LS	\$ 42,237.32			1.00	\$ 42,237.32				
CC02.1	(ITEM 20) 36" Casing by other than open cut		LF	\$ 1,200.00			190.00	\$ 228,000.00				
CC02.2	(ITEM 9a) 24" HDPE Pressure Pipe, Water		LF	\$ 600.00			-190.00	\$ (114,000.00)				
CC02.3	(ITEM 39) Trench Safety		LF	\$ 1.00			-190.00	\$ (190.00)				
CC02.4	(ITEM 21a) 24" HDPE Water Carrier Pipe		LF	\$ 220.00			190.00	\$ 41,800.00				
CC02.5	(NEW ITEM) RE-MOBILIZATION (Boring)		LS	\$ 10,000.00			1.00	\$ 10,000.00				
CC02.6	(NEW ITEM) Additional Materials		LS	\$ 9,131.00			1.00	\$ 9,131.00				
CC03.1	(ITEMS 34, 37, 44, 55, 72) Quantity Overruns in Orange		LS	\$ 264,630.00			1.00	\$ 264,630.00				
CC04.1	(NEW ITEM) Landscaping Restoration		LS	\$ 36,254.68			1.00	\$ 36,254.68				
	TOTAL CONSTRUCTION & ABANDONMENT ORIGINAL ESTIMATE			\$ 12,784,276.00			CONST & ABANDMNT COST W/ SUA	\$ 517,863.00				\$ 13,302,139.00
	ENGINEERING AND ROW ACQUISITION SERVICES							SUA#2	Revised Estimate			
	Property Acquisition Consultant Services			\$ 551,500.00				No Change				
	Engineering Contract			\$ 630,100.00								
	TOTAL ENGINEERING AND ROW ACQUISITION SERVICES			\$ 1,181,600.00								No change
	EASEMENT COSTS							SUA#2	Revised Estimate			
	Easement Costs			\$ 2,142,471.25				\$ 242,563.26				
	TOTAL EASEMENT COSTS ORIGINAL ESTIMATE			\$ 2,142,471.25			EASEMENT COSTS W/ SUA	\$ 242,563.26				\$ 2,385,034.51
	DIRECT MATERIAL COSTS							SUA#2	Revised Estimate			
SUA#2	Direct Material Costs			\$ -				\$ 15,543.50				
	TOTAL DIRECT MATERIAL COSTS ORIGINAL ESTIMATE			\$ -			DIRECT MATERIAL COSTS W/ SUA	\$ 15,543.50				\$ 15,543.50
	ON-CALL REAL ESTATE SERVICES (DIRECT COSTS)							SUA#2	Revised Estimate			
SUA#2	Freese & Nichols On Call Real Estate Support			\$ -				\$ 114,657.29				
	TOTAL DIRECT ON CALL REAL ESTATE COSTS ORIGINAL ESTIMATE			\$ -			DIRECT ON CALL REAL ESTATE COST	\$ 114,657.29				\$ 114,657.29
	CITY STAFF LABOR							SUA#2	Revised Estimate			
ORIG	Engineer(s)	360	HRS	\$ 50.00	\$ 18,000.00		SUA#2 Hours	Rate				
ORIG	Admin(s)	135	HRS	\$ 35.00	\$ 4,725.00		14	\$ 56.24	\$ (17,212.64)			\$ 787.36
ORIG	Inspector(s)	1800	HRS	\$ 30.00	\$ 54,000.00		50	\$ 40.00	\$ (2,725.00)			\$ 2,000.00
ORIG	Supervisor(s)	63	HRS	\$ 70.00	\$ 4,410.00		400	\$ 30.00	\$ (42,000.00)			\$ 12,000.00
SUA#2	Project Manager(s)	0	HRS	\$ -	\$ -		2080	\$ 54.17	\$ 112,673.60			\$ -
SUA#2	Real Estate Staff	0	HRS	\$ -	\$ -		1040	\$ 39.97	\$ 41,568.80			\$ 41,568.80
SUA#2	Water Utilities Staff	0	HRS	\$ -	\$ -		25	\$ 29.67	\$ 741.75			\$ 741.75
SUA#2	LABOR BURDEN (42%)	0	HRS	\$ -	\$ -							\$ 71,304.03
	TOTAL CITY STAFF LABOR ORIGINAL ESTIMATE			\$ 81,135.00			CITY STAFF LABOR W/ SUA	\$ 88,636.51				\$ 241,075.54
	TOTAL ESTIMATED PROJECT COSTS			\$ 16,189,482.25			TOTAL ESTIMATED PROJECT COSTS W/ SUA#2					\$ 17,240,049.84
	BETTERMENT RATIO OF 4.83%			\$ 783,085.26								
	ESTIMATED UTILITY REIMBURSEMENT			\$ 15,406,396.99								
	REIMBURSEMENT REQUESTED TO DATE:			\$ 10,930,008.22								
	ESTIMATED AMOUNT REMAINING:			\$ 4,476,388.77								



## Attachment “B” Accounting Method

☒ Not Applicable

☐ **Actual Cost Method of Accounting**

The Utility accumulates cost under a work order accounting procedure prescribed by the Federal or State regulatory body and proposes to request reimbursement for actual direct and related indirect costs.

☐ **Lump Sum Method of Accounting**

The Utility proposed to request reimbursement based on an agreed lump sum amount supported by a detailed cost analysis.

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment “C” Schedule of Work

☐ Not Applicable

Estimated Start Date (mm/dd/yyyy): 01/23/2023, subject to physical work restrictions prior to the issuance of environmental clearance as required by the provisions of this agreement. (If construction will be joint bid and included in the highway contract, enter the project let date.)

Estimated Duration (number of days): 410

Estimated Completion Date (mm/dd/yyyy): 03/08/2024

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment “D” Statement Covering Contract Work

☒ Not Applicable

**Construction Contract:** Complete form ROW-U-48 and ROW-U-48-1 if applicable.

- ☐ The Utility will use its own personnel (supporting documentation will be required at the time of billing, See ROW Utilities Manual, Chapter 11).
- ☐ The Utility will use third party contractors to perform the adjustment and complete the attached ROW-U-48 with ROW-U-48-1 (joint bid), if appropriate. (verification of continuing contract rate sheets or copy of bid tabulation will be required at the time of billing)

### Engineering Contract:

- ☐ The Utility will use its own personnel (supporting documentation will be required at the time of billing, See ROW Utilities Manual, Chapter 11).
- ☐ The Utility will use a consultant contract (verification of fee schedule is required).
- ☐ TxDOT will procure a utility engineering consultant.

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment “E” Utility Joint Use Agreement – (ROW-U-JUA) and/or RULIS Permit

☒ Not Applicable

- ☐ Utility Joint Use Agreement (ROW–U–JUA)
  - ☐ Plans with joint use area highlighted are included.
- ☐ RULIS Permit Number:  
The utility should obtain an approved permit before the start of construction inside of the highway right of way.
- ☐ Quitclaim will be submitted at the Final Billing

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment “F” Eligibility Ratio

☒ Not Applicable

Eligibility Ratio established: \_\_\_\_\_ %

- ☐ Non-interstate Highway (Calculations attached)
- ☐ Interstate Highway
- ☐ Toll Road (Minimum of 50%)
- ☐ SP2125 Approved Application (100%)  
Minute Order #: \_\_\_\_\_
- ☐ Master Utility Agreement

\_\_\_\_\_  
Initial Date  
TxDOT

\_\_\_\_\_  
Initial Date  
Utility

## Attachment “G” Betterment Calculation and Estimate

☒ Not Applicable

- ☐ Elective Betterment Ratio established: \_\_\_\_\_ %  
☐ Calculation is attached and the justification is included below  
☐ A betterment and an in-kind estimate are included
- ☐ Forced Betterment  
☐ To comply with regulated industry standards, laws, and regulations. (Supporting documentation required)  
☐ To comply with published current design practice followed by the utility in its own work. (Supporting documentation required)  
☐ Due to proposed roadway design. (Provide explanation below)
- ☐ Not Applicable

A statement explaining Elective and/or Forced Betterment:

\_\_\_\_\_  
Initial Date  
TxDOT

\_\_\_\_\_  
Initial Date  
Utility

## Attachment “H” Proof of Property Interest

☒ Not Applicable

☐ Supporting documentation of compensable property interest that establishes reimbursement eligibility as referenced in Texas Transportation Code §203.092.

☐ Property interest is documented through applicable affidavits and required attachments.

☐ ROW-U-Affidavit (See ROW Utilities Manual, Chapter 9, Section 3)

☐ The roadway improvement project is designated as an Interstate Highway project; therefore, no supporting documentation for compensable interest is required. Supporting documentation for existing easements is required for easement replacement.

☐ Toll Road (Supporting documentation of compensable property interest required if more than 50% eligibility ratio is applied)

☐ SP2125

☐ Master Utility Agreement

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

ORDINANCE NO. 22-2391

AN ORDINANCE APPROVING THE STANDARD UTILITY AGREEMENTS (“AGREEMENTS”) BY AND BETWEEN THE CITY OF DENTON AND THE TEXAS DEPARTMENT OF TRANSPORTATION (“TXDOT”), FOR THE REIMBURSEMENT OF DESIGN, PROPERTY ACQUISITION AND RELATED SERVICES, CONSTRUCTION, INSPECTION AND PROJECT MANAGEMENT COSTS ASSOCIATED WITH THE ADJUSTMENT, REMOVAL, AND/OR RELOCATION OF BOTH WATER AND WASTEWATER UTILITIES ALONG I-35E FROM MAYHILL TO LOOP 288 MORE SPECIFICALLY CALLED THE I-35E/MAYHILL UTILITY RELOCATIONS PROJECT, WITHIN THE COUNTY AND CITY OF DENTON, TEXAS; AUTHORIZING THE CITY MANAGER, OR THEIR DESIGNEE, TO EXECUTE AND DELIVER THE AGREEMENTS; 1) STANDARD UTILITY AGREEMENT-UTILITY ID NO. U00008008 FOR WATER UTILITY RELOCATION EFFORTS IN THE AMOUNT OF \$15,407,417.25 AND 2) STANDARD UTILITY AGREEMENT-UTILITY ID NO. U00011546 FOR WASTEWATER UTILITY RELOCATION EFFORTS IN THE AMOUNT OF \$1,624,824.00; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, TxDOT has expanded their right-of-way through the I-35E corridor within the Denton City Limits in anticipation of the State’s I-35E Widening project with a current project letting schedule of September 2023; and

WHEREAS, The City of Denton is responsible for relocating the city’s utilities currently located within the recently acquired TxDOT right-of-way; and

WHEREAS, In an effort to meet TxDOT’s anticipated roadway construction schedule, the City’s I-35E/Mayhill Utility Relocation Project will relocate both water and wastewater utilities out of TxDOT’s recently expanded right-of-way between Mayhill and Loop 288; and

WHEREAS, The Water and Wastewater Standard Utility Agreements-Utility ID No.’s U00008008 and U00011546 will reimburse the City for all costs associated with the City’s I-35E/Mayhill Utility Relocation Project between Mayhill and Loop 288 with the exception of the City’s elective betterment where the City has upsized from the equivalent 20-Inch High Density Polyethylene (“HDPE”) water pipe to a 24-Inch HDPE water pipe in anticipation of the City’s continued growth. The cost of this elective betterment including design and construction that will not be reimbursed by TxDOT is \$782,065.00; and

WHEREAS, TxDOT will pay the 90% of eligible costs and hold a 10% retainer of the cost until a final audit is done of the billing/invoicing package(s) submitted by the City of Denton after which TXDOT will release the funds owed and that will be the final payment of the reimbursement amount; and

WHEREAS, the City Council having considered the importance of the project to the citizens of Denton and finding that it is in the public's health and safety interest, is of the opinion that it should approve the Agreements; NOW, THEREFORE,



THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitals contained in the preamble of this ordinance are hereby incorporated into the body of this ordinance are true and correct.

SECTION 2. The City Manager, or their designee, is hereby authorized to execute on behalf of the City the Water and Wastewater Standard Utility Agreements No's. U00008008 and U00011546, a copy of which is attached hereto as Exhibits " A" and " B " and made a part hereof for all purposes.

SECTION 3. The City Manager, or their designee, is further authorized to carry out all obligations and duties of the City as set forth in the Agreements, including but not limited to the expenditure of funds.

SECTION 4. That this ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Brian Beck and seconded by Jesse Davis. The ordinance was passed and approved by the following vote [7 - 0]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	<u>✓</u>	_____	_____	_____
Vicki Byrd, District 1:	<u>✓</u>	_____	_____	_____
Brian Beck, District 2:	<u>✓</u>	_____	_____	_____
Jesse Davis, District 3:	<u>✓</u>	_____	_____	_____
Alison Maguire, District 4:	<u>✓</u>	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	<u>✓</u>	_____	_____	_____
Chris Watts, At Large Place 6:	<u>✓</u>	_____	_____	_____

PASSED AND APPROVED this the 15<sup>th</sup> day of November, 2022.

  
GERARD HUDSPETH, MAYOR

ATTEST:  
ROSA RIOS, CITY SECRETARY

By: 

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: 





4777 US HIGHWAY 80 EAST, MESQUITE, TX 75150-6643 | 214.320.6100 | WWW.TXDOT.GOV

January 13, 2023

Mrs. Sara Hensley, City Manager  
City of Denton  
216 E. McKinney St.  
Denton, TX 76201

RE: Approved Standard Utility Agreement – UID: U00008008  
City of Denton  
IH 35E From: South of Mayhill to: South of SL 288  
RCSJ: 0196-01-114 / CCSJ: 0196-01-106  
Federal Project Number: N/A  
Denton County

Dear Mrs. Hensley,

The Texas Department of Transportation is pleased to forward a fully executed copy of the approved Standard Utility Agreement for the above referenced utility relocation project. The Agreement assembly consists of the following:

1. Standard Utility Agreement (Form ROW-U-35)
2. Plans, Specifications, and Estimated Costs (Attachment "A")
3. Accounting Method (Attachment "B")
4. Schedule of Work (Attachment "C")
5. Statement Covering Contract Work (Attachment "D")
6. Utility Joint Use Agreement (Form ROW-U-JUA) (Attachment "E")
7. Eligibility Ratio (Attachment "F")
8. Betterment Calculation and Estimate (Attachment "G")
9. Proof of Property Interest (Attachment "H")

Also attached are the specifications for utility construction including: *"General Utility Installations, Water and Sanitary Sewer Lines, Trench Excavation and Pit Location, Construction of Highway Crossing by Bore, Construction of Highway Crossing by Tunnel, Backfill Specifications, "Buy America" guidelines, and a copy of Form 1818*

Planned construction on the above project requires that utilities, "In Conflict", be relocated or adjusted. This utility adjustment consists of Water Line A: Install approximately 1,172 LF of 24" HOPE water line, 7,002 LF of 20" HOPE, 75 LF of 8" DIP, 63 LF of 12" PVC, 508 LF of 8" PVC, 1,020 LF of 6" PVC and 420 LF of 36" steel casing with carrier pipe and 463 LF of 30" steel casing with carrier pipe longitudinal to IH35 from IH35 Sta 1793+87 to IH35 Sta 1721+38 and one crossing of Mayhill/State School Road at Sta 20+ 75. Water Line 8: Install approximately 1,079 LF of 8" PVC water line and 72 LF of 18" steel casing with carrier pipe longitudinal to IH35 from IH35 Sta 1750+24 to IH35 Sta 1739+91. Water Line C: Install approximately 563 LF of 12" PVC water line, and 629 LF of 24" steel casing with carrier pipe crossing IH 35 at IH 35 Sta 1762+66 and Mayhill/State School Road at Sta 10+87. Water Line D: Install approximately 816 LF of 12" PVC water line, 1,672 LF of 8" PVC, 55 LF of 6" PVC and 616 LF of 18" steel casing with carrier pipe longitudinal to IH35 from IH35 Sta 1832+18 to IH35 Sta 1803+52. Water Line E: Install approximately 1,057 LF of 24" HOPE water line, 60 LF of 8" DIP, and 131 LF of 36" steel

OUR VALUES: People • Accountability • Trust • Honesty

OUR MISSION: Connecting You With Texas

An Equal Opportunity Employer

casing with carrier pipe longitudinal to IH35 from IH35 Sta 1829+23 to IH35 Sta 1817+50. -Approximately 142 LF of 16" water line, 8,387 LF of 14" water line, 1,064 LF of 12" water line, 4,490 LF of 8" water line, 426 LF of 6" water line to be removed. Approximately 320 LF of 14" water line, 799 LF of 12" water line, 72 LF of 8" water line, 36 LF of 6" water line to be abandoned by grout fill. Facilities will be uniformly aligned and installed in accordance with the Utility Accommodation Rules.

City of Denton has submitted a calculated total estimated cost for this adjustment of \$12,353,045.25. Elective betterment is included in the utility plan, and is identified as such in the cost estimate, for this utility adjustment. The cost of elective betterment is estimated to be \$747,065.00 (4.8307%).

Declared salvage of \$5,477.68 is identified in the cost estimate for this utility adjustment.

This adjustment is eligible for state cost participation in accordance with the provisions of 23 CFR 645 A. The eligibility ratio is 100% of eligible costs for the relocation of Utilities on Federal Aid Interstate projects. "Buy America" items have been identified within this agreement.

All quantities in the estimate portion of the agreement are preliminary. Final quantities and participation will be based on the costs of actual work performed.

Subject to Texas Transportation Code Section 203.094, TxDOT may reduce reimbursement to the utility by 10 percent for each 30-day period or portion of a 30-day period by which the relocation exceeds the limit specified in the agreement.

Billing submittals to TxDOT must have a cover letter that includes the following information to facilitate expeditious processing of payments due:

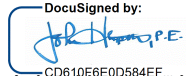
1. Highway Name – RCSJ XXXX XX XXX – Utility Name (U# and/or Utility ID#)
2. Starting and Ending Dates of Construction
3. If applicable, "Buy America" Certification must be notarized and submitted on Material Statement (Form 1818).
4. The Street Address where all records pertaining to this job can be accessed for audit. These records must be maintained for a 3-year minimum from the date of completion.
5. The Utility's 11 Digit Texas Taxpayer Number and 3 Digit Mail Code
6. If applicable, a copy of all Bid Tabulations received.
7. Final or partial invoices must include a detailed itemized billing submittal consistent with the same format as the original estimate. Supporting documentation is also required. If billing submittal deviates significantly from the approved estimate, an explanation will be needed.

The TxDOT Area Engineer (AE) is Travis Campbell, P.E., at the Denton County Area Office. The Area Engineer will be certifying that work was done in accordance with these plans and specifications, and that materials specified, or equivalent have been used. Attention should be paid to backfill, cleanup requirements, and erosion control. These must be accomplished to the satisfaction of the Project Engineer.

The Area Office Utility Coordinator must be notified to arrange a pre-construction meeting 5 working days prior to starting construction. The agenda for this meeting shall include the following: a) Construction Safety, b) Traffic Control Plan, c) Scheduled Project Starting and Completion Dates, and d) Prior to installation, all "Buy America" compliant items must be shown on the Material Statement (Form 1818) with each item's supporting documentation included. The Utility Coordinator for this Area Office is Leonard Chapman (940) 383-1414.

Questions regarding this adjustment may be directed to Jason Lloyd at (214) 320-6623.





Sincerely,

DocuSigned by:  


CD610F6E0D594EF  
John Hudspeth, P.E.

Deputy District Engineer, Dallas District

Attachments

cc: Jeremy Miller   
Darla Payberah, P.E.   
Luis G. Nieto, M.B.A., M.S.C.E., P.E., C.F.M.   
Travis Campbell, P.E.   
Area Office Engineer  
Utility Representative



## STANDARD UTILITY AGREEMENT

U Number: N/A Utility ID: U00008008

District: Dallas  
Federal Project No.: N/A  
ROW CSJ: 0196-01-114  
Highway Project Letting Date: 09/01/2023

County: Denton  
Highway: IH 35E  
From: South of Mayhill  
To: South of SL 288

This Agreement by and between the State of Texas, acting by and through the Texas Transportation Commission, ("State"), and City of Denton, ("Utility"), acting by and through its duly authorized representative, shall be effective on the date of approval and execution by and on behalf of the State.

**WHEREAS**, the State has deemed it necessary to make certain highway improvements as designated by the State and approved by the Federal Highway Administration within the limits of the highway as indicated above (the "Highway Project");

**WHEREAS**, the proposed Highway Project will necessitate the adjustment, removal, and/or relocation of certain facilities of the Utility as indicated in the following statement of work:

- Water Line A: Install approximately 1,172 LF of 24" HDPE water line, 7,002 LF of 20" HDPE, 75 LF of 8" DIP, 63 LF of 12" PVC, 508 LF of 8" PVC, 1,020 LF of 6" PVC and 420 LF of 36" steel casing with carrier pipe and 463 LF of 30" steel casing with carrier pipe longitudinal to IH35 from IH35 Sta 1793+87 to IH35 Sta 1721+38 and one crossing of Mayhill/State School Road at Sta 20+75.
- Water Line B: Install approximately 1,079 LF of 8" PVC water line and 72 LF of 18" steel casing with carrier pipe longitudinal to IH35 from IH35 Sta 1750+24 to IH35 Sta 1739+91.
- Water Line C: Install approximately 563 LF of 12" PVC water line, and 629 LF of 24" steel casing with carrier pipe crossing IH 35 at IH 35 Sta 1762+66 and Mayhill/State School Road at Sta 10+87.
- Water Line D: Install approximately 816 LF of 12" PVC water line, 1,672 LF of 8" PVC, 55 LF of 6" PVC and 616 LF of 18" steel casing with carrier pipe longitudinal to IH35 from IH35 Sta 1832+18 to IH35 Sta 1803+52.
- Water Line E: Install approximately 1,057 LF of 24" HDPE water line, 60 LF of 8" DIP, and 131 LF of 36" steel casing with carrier pipe longitudinal to IH35 from IH35 Sta 1829+23 to IH35 Sta 1817+50.
- Approximately 142 LF of 16" water line, 8,387 LF of 14" water line, 1,064 LF of 12" water line, 4,490 LF of 8" water line, 426 LF of 6" water line to be removed.
- Approximately 320 LF of 14" water line, 799 LF of 12" water line, 72 LF of 8" water line, 36 LF of 6" water line to be abandoned by grout fill.; and more specifically as shown in the Utility's plans, specifications and estimated costs, which are attached hereto as Attachment "A".

**WHEREAS**, the State will participate in the costs of the adjustment, removal, and relocation of certain facilities to the extent as may be eligible for State and/or Federal participation.

**WHEREAS**, the State, upon receipt of evidence it deems sufficient, acknowledges the Utility's interest in certain lands and facilities that entitle it to reimbursement for the adjustment, removal, and relocation of certain of its facilities located upon the lands as indicated in the statement of work above.

### NOW, THEREFORE, BE IT AGREED:

The State will pay to the Utility the costs incurred in adjustment, removal, and relocation of the Utility's facilities up to the amount said costs may be eligible for State participation.

All conduct under this agreement, including but not limited to the adjustment, removal, and relocation of the facility, the development and reimbursement of costs, any environmental requirements, and retention of records will be in

DP  
Initial Date  
TxDOT

SA  
Initial Date  
Utility



Form ROW-U-35  
(Rev. 10/20)  
Page 2

accordance with all applicable federal and state laws, rules and regulations, including, without limitation, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601, et seq., the National Environmental Policy Act, 42 U.S.C. §§ 4321, et seq., the Buy America provisions of 23 U.S.C. § 313 and 23 CFR 635.410, as amended, Texas Transportation Code § 223.045, the Utility Relocations, Adjustments, and Reimbursements provisions of 23 CFR 645, Subpart A, and the Utility Accommodation provisions of 23 CFR 645, Subpart B.

The **Utility** shall supply, upon request by the **State**, proof of compliance with the aforementioned laws, rules, regulations, and guidelines prior to the commencement of the adjustment, removal, and relocation of the facility.

The **Utility** shall not commence any physical work, including without limitation site preparation, on the **State's** right of way or future right of way, until TxDOT provides the **Utility** with written authorization to proceed with the physical work upon TxDOT's completion and clearance of its environmental review of the Highway Project. Any such work by the **Utility** prior to TxDOT's written authorization to proceed will not be eligible for reimbursement and the **Utility** is responsible for entering any property within the proposed limits of the Highway Project that has not yet been acquired by TxDOT. This written authorization to proceed with the physical work is in addition to the authorization to commence work outlined below. Notwithstanding the foregoing, the provisions of this paragraph are required only when TxDOT has not obtained completion and clearance of its environmental review of the Highway Project prior to the execution of this Agreement by the **State** and the **Utility**.

The **Utility** shall comply with the Buy America provisions of 23 U.S.C. § 313, 23 CFR 635.410, as amended, and the Steel and Iron Preference provisions of Texas Transportation Code § 223.045 and, when products that are composed predominately of steel and/or iron are incorporated into the permanent installation of the utility facility, use domestically manufactured products. TxDOT Form 1818 (Material Statement), along with all required attachments, must be submitted, prior to the commencement of the adjustment, removal, and relocation of the facility, as evidence of compliance with the aforementioned provisions. Failure to submit the required documentation or to comply with the Buy America, and Steel and Iron Preference requirements shall result in: (1) the **Utility** becoming ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991; (2) the **State** withholding reimbursement for the costs incurred by the **Utility** in the adjustment, removal, and relocation of the **Utility's** facilities; and (3) removal and replacement of the non-compliant products.

The **Utility** agrees to develop relocation or adjustment costs by accumulating actual direct and related indirect costs in accordance with a work order accounting procedure prescribed by the **State**, or may, with the **State's** approval, accumulate actual direct and related indirect costs in accordance with an established accounting procedure developed by the **Utility**. Bills for work hereunder are to be submitted to the **State** not later than one (1) year after completion of the work. Failure to submit the request for final payment, in addition to all supporting documentation, within one (1) year after completion of the work may result in forfeiture of payment for said work.

When requested, the **State** will make intermediate payments at not less than monthly intervals to the **Utility** when properly billed. Such payments will not exceed 90 percent (90%) of the eligible cost as shown in each such billing. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.

The **State** will, upon satisfactory completion of the adjustment, removal, and/or relocation and upon receipt of final billing prepared in an approved form and manner and accounting for any intermediate payments, make payment in the amount of 90 percent (90%) of the eligible costs as shown in the final billing prior to audit and after such audit shall make an additional final payment totaling the reimbursement amount found eligible for **State** reimbursement.

Alternatively, the **State** agrees to pay the **Utility** an agreed lump sum of \$ N/A as supported by the attached estimated costs. The **State** will, upon satisfactory completion of the adjustments, removals, and relocations and upon receipt of a final billing, make payment to the **Utility** in the agreed amount.

Upon execution of this agreement by both parties hereto, the **State** will, by written notice, authorize the **Utility** to perform such work diligently and to conclude said adjustment, removal, and relocation by the stated completion date which is attached hereto in Attachment "C". The completion date shall be extended for delays caused by events outside the **Utility's** control, including an event of Force Majeure, which shall include a strike, war or act of

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1/17/2023  
Initial Date  
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12/7/22  
Initial Date  
Utility

Form ROW-U-35  
(Rev. 10/20)  
Page 3

war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, sabotage, or other events, interference by the **State** or any other party with the **Utility's** ability to proceed with the work, or any other event in which the **Utility** has exercised all due care in the prevention thereof so that the causes of other events are beyond the control and without the fault or negligence of the **Utility**.

This agreement in its entirety consists of the following elements:

Standard Utility Agreement – ROW-U-35;

- Plans, Specifications, and Estimated Costs (Attachment "A");
- Accounting Method (Attachment "B");
- Schedule of Work (Attachment "C");
- Statement Covering Contract Work – ROW-U-48 (Attachment "D");
- Utility Joint Use Agreement – ROW-U-JUA and/or Utility Installation Request – Form 1082 (Attachment "E");
- Eligibility Ratio (Attachment "F");
- Betterment Calculation and Estimate (Attachment "G"); and
- Proof of Property Interest – ROW-U-Affidavit (Attachment "H").

All attachments are included herein as if fully set forth. In the event it is determined that a substantial change from the statement of work contained in this agreement is required, reimbursement therefore shall be limited to costs covered by a modification or amendment of this agreement or a written change or extra work order approved by the **State** and the **Utility**.

This agreement is subject to cancellation by the **State** at any time up to the date that work under this agreement has been authorized, and such cancellation will not create any liability on the part of the **State**. However, the **State** will review and reimburse the **Utility** for eligible costs incurred by the **Utility** in preparation of this Agreement.

The State Auditor may conduct an audit or investigation of any entity receiving funds from the **State** directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

The **Utility** by execution of this agreement does not waive any of the rights that the **Utility** may have within the limits of the law.

It is expressly understood that the **Utility** conducts the adjustment, removal, and relocation at its own risk, and that the **State** makes no warranties or representations regarding the existence or location of utilities currently within its right of way.

DS  
BP  
Initial      1/17/2023  
Date  
TxDOT

Initial      12/7/22  
Date  
Utility

Form ROW-U-35  
(Rev. 10/20)  
Page 4

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

**UTILITY**

Utility: City of Denton Water  
Name of Utility

By:   
Authorized Signature

Sara Hensley  
Print or Type Name

Title: City Manager


Date: 12/7/22

**EXECUTION RECOMMENDED:**

DocuSigned by:  
Travis Campbell 1/17/2023  
04C4F08FAADC42F...  
Director of TP&D (or designee), Dallas District

**THE STATE OF TEXAS**

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

By:   
DocuSigned by:  
District Engineer (or designee)

Date: 1/18/2023

DP 1/17/2023  
Initial Date  
TxDOT

SH 12/7/22  
Initial Date  
Utility




## Attachment "A"


### Plans, Specifications, and Estimated Costs

All material items within cost estimate that must meet Buy America or Steel and Iron Preference Provision requirements must be indicated with an asterisk (\*).

- ☐ Currently, **we do not have** Buy America required materials planned for this project. In the event that Buy America compliant materials are used during construction on this project, compliance documentation will be provided.
- ☐ There are non-domestic iron and steel materials in this project that fall under the De Minimus equation. Calculation showing the total cost does not exceed one-tenth of one percent (0.1 %) of the individual utility agreement amount or \$2,500.00, whichever is greater is required.
- ☒ We understand the Buy America Compliance Requirements and will supply the required documentation to TxDOT indicating compliance with this provision. The following documents will be supplied prior to installation of the materials:

- 1) Form 1818 - Material Statement
- 2) Material Test Reports or Certifications

  
Initial      1/17/2023  
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Date  
TxDOT

  
Initial      12/7/22  
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Date  
Utility



Date

07/13/2022

Mr Mohamed Bur, P.E.  
 Dallas District Engineer  
 4777 E. Highway 80  
 Mesquite, TX 75150-6643

**RE: Abandonment Request****Installation Request No. (Permit):**

DAL20210118130643 (W)

**County:**

Denton

*If checking this box, please provide  
 project information below.*

☒ TxDOT Construction  
 Project

Example:

IH/US/SH/FM/LP ##: From: To:

CSJ/RCSJ

Utility ID # (for reimbursable relocations)

IH-35E Mayhill  
 From: South of Mayhill Road To: South of SL 288  
 RCSJ: 0196-01-100 CCSJ: 0196-01-109  
 Federal Project Number: n/a  
 Utility ID# U00008008 (WL)

Dear Mr. Bur:

The City of Denton

hereby requests portions/portion of the existing utility facility adjustments and/or relocations shown in the attached exhibits to address items outlined in 43 TAC §21.39 to be abandoned in place. With these exhibits, we have taken the following into consideration:

1. Areas of abandonment will not have negative impacts on TxDOT's facilities and/or construction. Areas proposed for abandonment have exhibits included such as Plan/Profile(s), Plan/Cross Section(s), etc.
2. The need for abandonment will benefit TxDOT in the following manner:

It will allow for the City of Denton to clear proposed TxDOT roadway construction in a more timely manner with minimal disruption to the traffic flow along the IH-35E. The city recommends removing all above ground appurtenances, and pipelines under future roadway and TxDOT ROW. The city is proposing to abandon by grout fill all utilities under major roadways (State School, Mayhill, Brinker, Pockrus Page, Wind River, and Regal) as seen in the exhibit below. Abandonment in place will allow for the city's contractor to be out of the way of other utilities attempting to relocate.

3. This abandonment will not impede future installations of other facilities in TxDOT ROW.

The existing 6", 8", 12", 14", and 16" water lines to be abandoned will be adjusted and/or relocated in compliance with TxDOT's UAR.

The existing type of utility facility to be abandoned within TxDOT ROW consist of:

The existing type of utility facility to be abandoned by removal or grout fill is identified as approximately: 142 LF of 16" water line, 8,707 LF of 14" water line, 1,863 LF of 12" water line, 4,562 LF of 8" water line, and 462 LF of 6" water line, as described further on the attached exhibits. The existing waterlines consist of ductile iron, cast iron, PVC, and concrete cylinder pipe, with average bury depths of 5-feet, but varying from 3.5-ft to 10-ft.

These facilities will be adjusted and/or relocated in compliance with TxDOT's UAR.

During the utility adjustment/relocation the vacated facilities\*, shown in the attached exhibits as abandoned in place, will be :

cut, purged, grout filled, and capped. All other facilities conflicting with IH-35E & Mayhill will be removed during construction during excavation stages as indicated in detail within the enclosed plans and supporting documentation.

All other facilities conflicting with above TxDOT Construction Project, if applicable, will be removed during construction during excavation stages as indicated in detail within the enclosed plans and supporting documentation.

The enclosed plans and supporting documentation includes:

1. UIR Installation Request (Permit)
2. Relocation plans in the form of Plan/Profile(s), Plan/Cross Section(s), etc. that includes:
  - Age, condition, size, current status, type (material composition) and length of the utility facility to be abandoned.
  - The approximate depth of the existing pipeline or conduit to be abandoned.
  - Existing pipeline or conduit operating condition (Optimal/Compromised).
  - Existing pipeline or conduit is not in conflict with other existing utilities.
  - Abandonment will not cause conflict with either the proposed construction and/or other utilities.
  - The removal of abandoned facilities as shown will be coordinated in advance with the designated TxDOT Contractor and/or Utility Coordinator in the Area Office.

This abandonment WILL NOT be construed as a change in ownership of the facility.

1. Assumes all financial responsibility and property ownership of the abandoned facility referenced above.
2. Will be responsible for maintaining abandoned facility records, in accordance with 43 TAC §21.39 and all current federal, state, local laws, codes and industry standards.
3. Attests the utility facility associated with this abandonment does not contain, or is not composed of, hazardous or contaminated materials.

If you have any questions, please contact:

Utility Owner Contact:

David Brown Project Manager Denton Water Utility

Address:

City of Denton  
901-A Texas St. Denton, Tx 76209

Phone Number:

(940) 349-8480

Email Address:

David.Brown@cityofdenton.com

Your consideration to this matter is greatly appreciated.

Sincerely,



Please sign above and include name and title below

David Brown  
Project Manager

Attachments: Permit, Plans, Exhibits and Supporting Documentation

**UTILITY OWNER:**

APPROVED REQUESTS MUST BE UPLOADED TO TXDOT'S UIR SYSTEM WITH UTILITY INSTALLATION REQUEST (PERMIT). PERMITS INCLUDING ABANDONMENT OF FACILITIES MAY NOT BE APPROVED WITHOUT DALLAS DISTRICT APPROVAL.

- \* All abandoned conduit shall be free of wires and cables.  
Pipes/Conduit 3" or greater shall be purged free of hydro-carbons, capped and grout filled.

**DALLAS DISTRICT APPROVAL**

DS

MBB

**DISTRICT ENGINEER**

DS

cc

**DEPUTY DISTRICT ENGINEER**

DS

JH

**DIRECTOR OF TP&D**

DS

DP

**UTILITIES SUPERVISOR**

DS

JTC

**AREA ENGINEER**

DS

DVP

**Design PM**

Rev. 09-07-2021

Supplemental No. 1  
to the  
Standard Utility Agreement U00008008  
I35E-Mayhill Water & WW Relocations

(All plan/document changes via Supp No.1 are  
now made part of the Standard Utility Agreement.)



4777 US HIGHWAY 80 EAST, MESQUITE, TX 75150-6643 | 214.320.6100 | WWW.TXDOT.GOV

September 21, 2023

Ms. Sara Hensley  
City Manager  
City of Denton  
216 E. McKinney St.  
Denton, TX 76201

RE: Standard Utility Agreement – Supplemental Agreement No. 1 – U00008008  
City of Denton  
IH 35E: From South of Mayhill  
To: South of SL 288  
RCSJ: 0196-01-114/CCSJ: 0196-01-10  
Federal Project Number: N/A  
Denton County

Dear Ms. Hensley,

Attached for your record, and to be made part of the original approved utility agreement, is an executed Standard Utility Agreement – Supplemental Agreement No. 1 – U00008008. This Supplemental Agreement contains the following:

1. Standard Utility Agreement – Supplemental Agreement 1 (Form ROW-U-COA)
2. Update to Attachment A – Inclusion of Utility Adjustment Plans
3. Update to Attachment H – Inclusion of Property Interest Documentation

There is no change to the Total Cost Estimate.

Billing submittals to TxDOT must have a cover letter that includes the following information to facilitate expeditious processing of payments due:

1. Highway Name – RCSJ XXXX XX XXX – Utility Name (U# and/or Utility ID#)
2. Starting and Ending Dates of Construction
3. If applicable, “Buy America” Certification must be notarized and submitted on Material Statement (Form 1818).
4. The Street Address where all records pertaining to this job can be accessed for audit. These records must be maintained for a 3-year minimum from the date of completion.
5. The Utility’s 11 Digit Texas Taxpayer Number and 3 Digit Mail Code
6. If applicable, a copy of all Bid Tabulations received.
7. Final or partial invoices must include a detailed itemized billing submittal consistent with the same format as the original estimate. Supporting documentation is also required. If billing submittal deviates significantly from the approved estimate, an explanation will be needed.

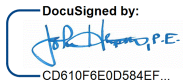
OUR VALUES: *People • Accountability • Trust • Honesty*

OUR MISSION: *Connecting You With Texas*

An Equal Opportunity Employer

Questions regarding this adjustment may be directed to Darla Payberah, P.E. at (214) 320-4436.

Sincerely,

DocuSigned by:  
  
CD610F6E0D584EF...

John Hudspeth, P.E.

Deputy District Engineer, Dallas District

Attachments

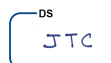
cc: Lesley Taylor

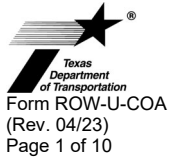


Darla Payberah, P.E.



Travis Campbell, P.E.





## STANDARD UTILITY AGREEMENT SUPPLEMENTAL AGREEMENT NO. 1 TO U NUMBER N/A UTILITY ID U00008008

District: Dallas  
ROW Project ID: R00006793  
ROW CSJ: 0196-01-114  
Proposed Highway Project Letting Date: 9/1/2023

County: Denton  
Highway: IH 35E  
From: South of Mayhill  
To: South of SL 288

**THIS SUPPLEMENTAL AGREEMENT** by and between the State of Texas ("**State**") and City of Denton ("**Utility**") shall be effective upon the date of acceptance and execution by and on behalf of the **State**.

**WHEREAS**, the **State** and **Utility** executed a Standard Utility Agreement on January 18, 2023 concerning the adjustment, relocation, or removal of certain of the **Utility's** facilities;

**WHEREAS**, said Standard Utility Agreement limits the required scope of work and/or the amount of eligible reimbursement;

**WHEREAS**, due to newly discovered information by the **Utility** deemed sufficient by the **State**, the **State** and **Utility** agree that supplementation to the Standard Utility Agreement is necessary; and

**WHEREAS**, the statement of work contained in the Standard Utility Agreement shall be supplemented to include: Inclusion of plan and profiles in Attachment A, and easement documentation in Attachment H to confirm Utility's property interest, which is more specifically shown in **Utility's** plans, specifications, estimated costs, and schedule, which are attached to this supplemental agreement as Attachment "A."


### NOW, THEREFORE, BE IT AGREED:


The statement of work contained in the Standard Utility Agreement is supplemented to include the additional adjustment, relocation, or removal found in Attachment "A."

The estimated cost of the adjustment, relocation, or removal is ☐ increased or ☐ decreased to a total of \$ \_\_\_\_\_, or ☒ no change to the Total Cost Estimate. The reason for the increase/decrease: N/A. The parties agree that the approval of estimated costs in no way indicates the eligibility of said costs for reimbursement.

All conditions and agreements contained in the Standard Utility Agreement, except those specifically included in this document, remain in effect.

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.


 9/22/2023  
\_\_\_\_\_  
Initial Date  
TxDOT

 9/21/2023  
\_\_\_\_\_  
Initial Date  
Utility



Form ROW-U-COA  
(Rev. 04/23)  
Page 2 of 10

**UTILITY**Utility: City of Denton Water

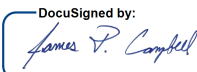
By:   
Authorized Signature

Sara Hensley  
Print or Type Name

Title: City Manager9/21/2023

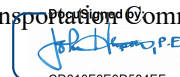
Date: \_\_\_\_\_

**EXECUTION RECOMMENDED:**


  
98671C109B6A4C3...  
Director of TP&D (or designee), Dallas District


**THE STATE OF TEXAS**

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

By:   
CD610F6E0D584EF...  
District Engineer (or designee)

9/24/2023  
Date: \_\_\_\_\_

 9/22/2023  
Initial Date  
TxDOT

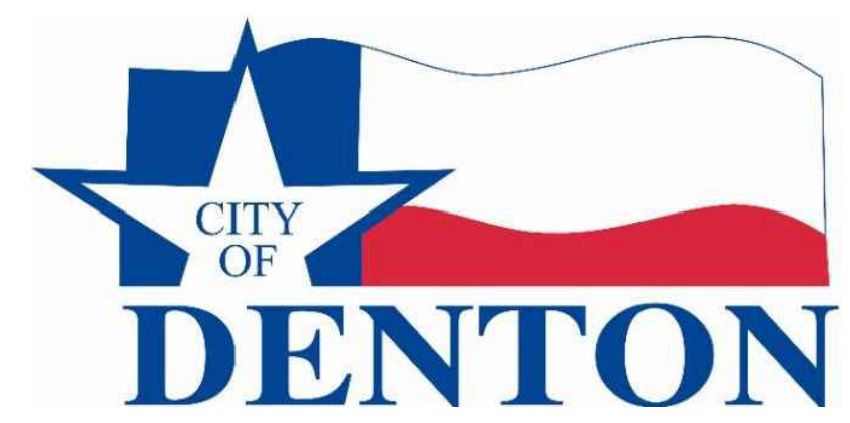
 9/21/2023  
Initial Date  
Utility

THE CITY OF DENTON, TEXAS  
PLANS FOR THE:

IH-35E MAYHILL  
UTILITY RELOCATIONS

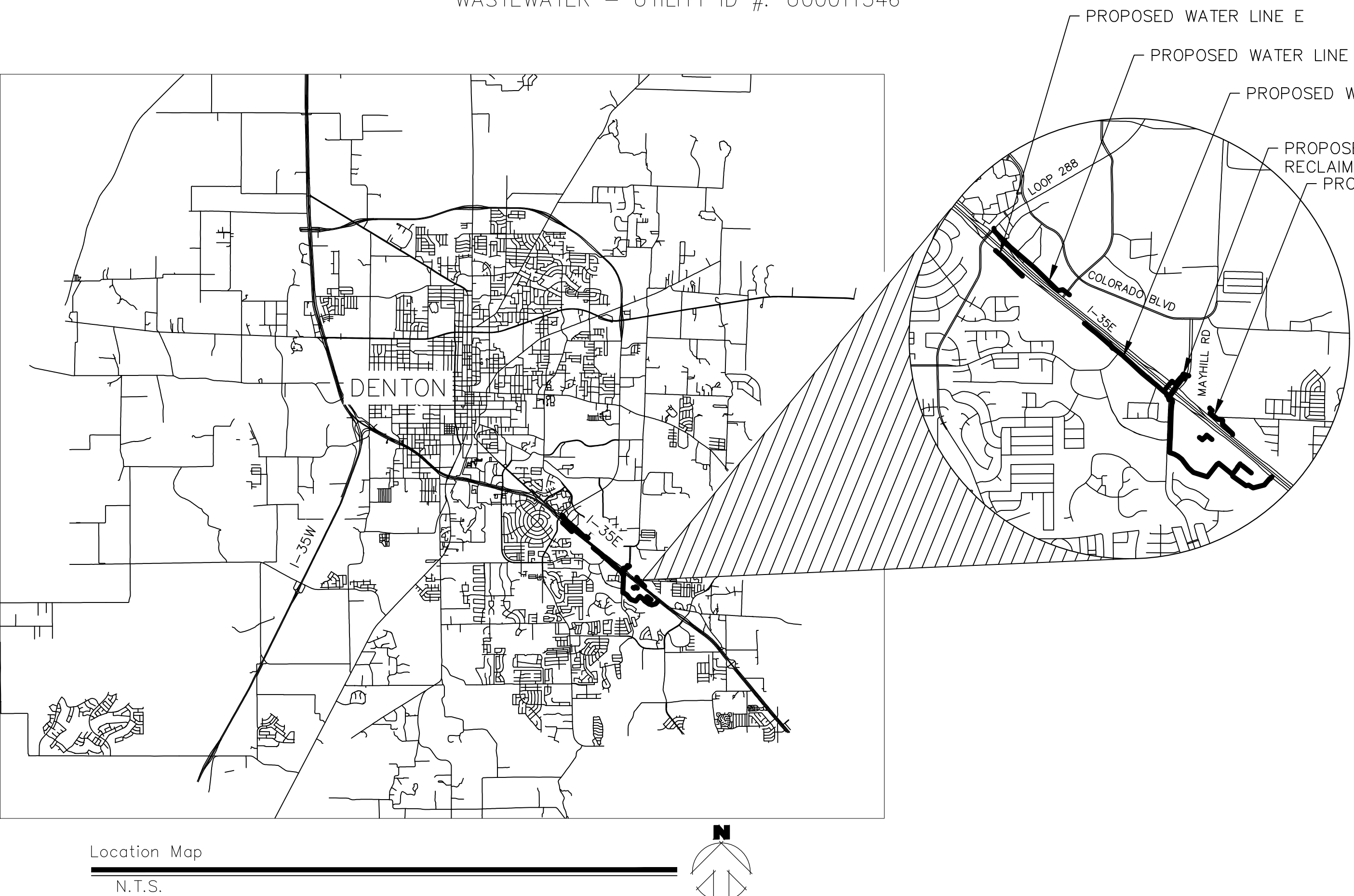
IFB #7968-001

TxDOT Project CCSJ 0196-01-109 & ROW CSJ 0196-01-114  
WATER - UTILITY ID #: U00008008  
WASTEWATER - UTILITY ID #: U00011546



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- 17 - PROPOSED 6 & 8-INCH WATER LINE A2&3
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- 20 - PROPOSED WATER LINE B1 WATER SERVICE RECONNECTION
- 21 - PROPOSED 12-INCH WATER LINE C STA 0+00 TO 6+00
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- 24 - PROPOSED 8-INCH WATER LINE D STA 10+00 TO 20+00
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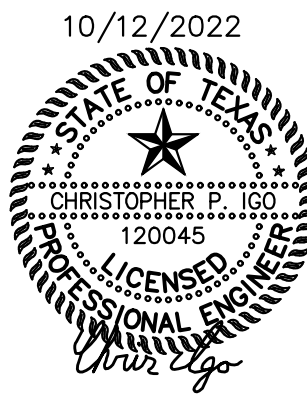
CITY OFFICIALS:

MAYOR..... GERARD HUDSPETH  
COUNCIL MEMBERS:  
DISTRICT 1..... VICKI BYRD  
DISTRICT 2..... BRIAN BECK  
DISTRICT 3..... JESSE DAVIS  
DISTRICT 4..... ALLISON MAGUIRE  
AT LARGE PLACE 5..... BRANDON MCGEE  
AT LARGE PLACE 6..... CHRIS WATTS

DIRECTOR OF WATER AND WASTEWATER UTILITIES  
STEPHEN GAY

CITY ENGINEER  
REBECCA DIVINEY, P.E.

PROGRAM MANAGER  
CAPITAL PROJECTS  
ENGINEERING  
KYLE PEDIGO



TxDOT GENERAL NOTES:

- BY SEALING AND SIGNING THESE PERMIT PLANS AS A PROFESSIONAL CIVIL ENGINEER LICENSED TO PRACTICE IN THE STATE OF TEXAS, I CERTIFY THAT THE PROPOSED DRIVEWAY OR PUBLIC STREET CONNECTION TO THE STATE ROADWAY MEETS OR EXCEEDS THE MINIMUM STOPPING SIGHT DISTANCE REQUIRED FOR A POSTED SPEED OF 45 MILES PER HOUR, BASED ON THE MOST RECENT TxDOT DESIGN MANUAL REQUIREMENTS.
- ALL CONSTRUCTION WITHIN THE STATE RIGHT OF WAY WILL REQUIRE COMPLIANCE TO TxDOT STANDARD SPECIFICATIONS, STANDARD PLANS, AND TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.

*Chris Igo*

(CHRISTOPHER IGO, P.E. #120045)  
\*THE STANDARD TxDOT SHEETS, SPECIFICALLY IDENTIFIED IN THIS SHEET INDEX, HAVE BEEN SELECTED BY ME OR UNDER MY RESPONSIBLE SUPERVISION AS BEING APPLICABLE TO THIS PROJECT.

Kimley»Horn

801 Cherry St., Suite 1300 Ft. Worth, TX 76102 P: 817-335-6511  
TBPE No. 928 F: 817-335-5070

OCTOBER 2022

No.	Revision	By	Date
1	PIPE SIZE CHANGE TO REFLECT BID MATERIAL	CP1	10/12/2022

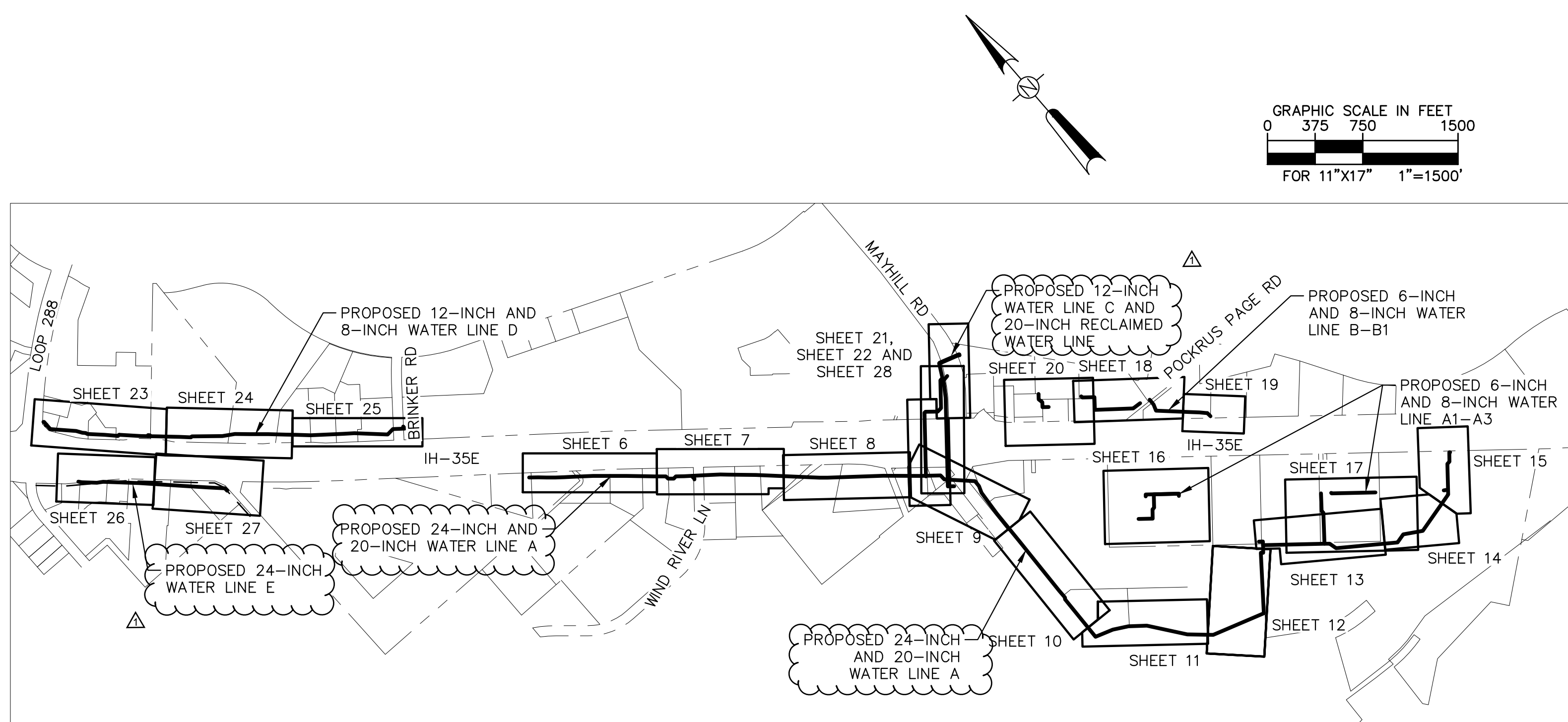


1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING ALL UTILITIES, WHETHER PRIVATE OR PUBLIC, PRIOR TO EXCAVATION. THE INFORMATION AND DATA SHOWN WITH RESPECT TO EXISTING UNDERGROUND FACILITIES AT OR CONTIGUOUS TO THE SITE IS APPROXIMATE AND BASED ON INFORMATION FURNISHED BY THE OWNERS OF SUCH UNDERGROUND FACILITIES OR ON PHYSICAL APPURTENANCES OBSERVED IN THE FIELD. THE OWNER AND ENGINEER SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION OR DATA; AND, THE CONTRACTOR SHALL HAVE FULL RESPONSIBILITY FOR REVIEWING AND CHECKING ALL SUCH INFORMATION AND DATA (FOR LOCATING ALL UNDERGROUND FACILITIES FOR COORDINATION OF THE WORK WITH THE CITY OF SUCH UNDERGROUND FACILITIES DURING CONSTRUCTION) FOR THE SAFETY AND PROTECTION THEREOF, AND REPAIRING ANY DAMAGE THERETO RESULTING FROM THE WORK. THE COST OF ALL WILL BE CONSIDERED AS HAVING BEEN INCLUDED IN THE CONTRACT PRICE. THE CONTRACTOR SHALL NOTIFY ANY AFFECTED UTILITY COMPANIES OR AGENCIES IN WRITING AT LEAST 48 HOURS PRIOR TO BEGINNING CONSTRUCTION.
2. NOTIFY THE CITY OF DENTON TO LOCATE EXISTING CITY UTILITIES PRIOR TO CONSTRUCTION.
3. CAUTION! BURIED GAS LINES EXIST ALONG THIS PROJECT. CONTACT EXPLORER GAS, THOMAS MARTINEZ (918-493-5104) 48 HOURS PRIOR TO EXCAVATION.
4. CAUTION! BURIED GAS LINES EXIST ALONG THIS PROJECT. CONTACT ATMOS, OMAR CAMPOS (940-380-7463) 48 HOURS PRIOR TO EXCAVATION.
5. CAUTION! BURIED TELEPHONE CABLES EXIST ALONG THIS PROJECT. CONTACT THE APPROPRIATE FRANCHISE 48 HOURS PRIOR TO EXCAVATION: VERIZON (972-318-5260), GTE (940-381-9294), ZAYO (817-665-4702), AND AT&T (817-338-6013).
6. CAUTION! BURIED ELECTRIC CABLES EXIST ALONG THIS PROJECT. CONTACT THE APPROPRIATE FRANCHISE 48 HOURS PRIOR TO EXCAVATION: COSERV (940-321-7800) AND DENTON MUNICIPAL ELECTRIC (940-349-8700).
7. CONSTRUCTION SURVEYING IS THE RESPONSIBILITY OF THE CONTRACTOR. THE CONTRACTOR SHALL VERIFY CONTROL MONUMENTATION PRIOR TO CONSTRUCTION AND SUBMIT DOCUMENTATION OF VERIFICATION TO THE CITY AND ENGINEER.
8. CONTRACTOR SHALL RE-ESTABLISH ANY PROPERTY MARKER, BENCHMARK, ETC. DISTURBED DURING CONSTRUCTION TO ITS ORIGINAL LOCATION AT NO COST TO CITY.
9. ONLY THOSE ITEMS LISTED IN THE BID TABULATION WILL BE MEASURED AND PAID FOR AT THE UNIT PRICE REQUIRED TO COMPLETE THE PROJECT. ALL OTHER WORK SHALL BE CONSIDERED SUBSIDIARY TO THE VARIOUS ITEMS BID, AND NO SEPARATE PAYMENT SHALL BE MADE.
10. THE CONTRACTOR SHALL NOTIFY THE CITY OF DENTON 48 HOURS PRIOR TO START OF ANY CONSTRUCTION.
11. THE CONTRACTOR SHALL NOTIFY LANDOWNERS AT LEAST 48 HOURS PRIOR TO ENTERING PROPERTY.
12. CLEARING AND GRUBBING MAY BEGIN NO SOONER THAN ONE MONTH PRIOR TO PIPE TRENCHING OPERATIONS. PIPE STRINGING SHALL BE NO MORE THAN ONE WEEK PRIOR TO PIPE LAYING. BACKFILL SHALL BE COMPLETED NO MORE THAN ONE DAY AFTER PIPE LAYING. CLEANUP AND SURFACE RESTORATION SHALL BE COMPLETED NO MORE THAN ONE MONTH AFTER PIPE LAYING. THE SITE SHALL BE KEPT CLEAN OF TRASH AT ALL TIMES. FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY RESULT IN WITHHOLDING SOME OR ALL PAYMENT TO THE CONTRACTOR.
13. ALL BARRICADES, WARNING SIGNS, LIGHTS, DEVICES, ETC., FOR THE GUIDANCE AND PROTECTION OF TRAFFIC AND PEDESTRIANS SHALL CONFORM TO THE INSTALLATIONS AND LOCATIONS SHOWN IN THE TEXAS MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (TMUTCD), AS CURRENTLY AMENDED, AS PUBLISHED BY TEXAS DEPARTMENT OF TRANSPORTATION.
14. CONTRACTOR SHALL MAINTAIN AT LEAST ONE LANE OF TRAFFIC ON ALL OPEN-CUT ROADS AT ALL TIMES, AND CONSTRUCT TEMPORARY BYPASS IF NECESSARY.
15. THE CONTRACTOR SHALL GIVE THE CITY 5 DAYS NOTICE IN ADVANCE OF THE TIME A STREET SIGN IS TO BE REMOVED TO CLEAR CONSTRUCTION OPERATIONS. AT NO TIME WILL THE CONTRACTOR REMOVE OR RELOCATE A STOP OR YIELD SIGN WITHOUT PRIOR APPROVAL BY THE CITY.

	EXISTING WATER LINE		PROPOSED ROW
	EXISTING SANITARY SEWER LINE		PROPOSED EASEMENT
	EXISTING STORM SEWER LINE		PROPOSED TEMPORARY CONSTRUCTION EASEMENT
	EXISTING GAS LINE		
	EXISTING DENTON MUNICIPAL OVERHEAD ELECTRIC		PROPOSED METER
	EXISTING COSERV OVERHEAD ELECTRIC		PROPOSED FIRE HYDRANT
	EXISTING UNDERGROUND ELECTRIC		PROPOSED WATER ISOLATION VALVE
	EXISTING COMMUNICATION LINE		PROPOSED METER
	EXISTING CURB		PROPOSED REDUCER
	EXISTING GUARD RAIL/PIPE FENCE		EXISTING SIGN
	EXISTING BRICK/WOODEN FENCE		EXISTING GUY WIRE
	EXISTING BARBED WIRE FENCE		EXISTING TREE
	PROPOSED WATER LINE		CONTROL POINT
	PROPOSED UNDERGROUND DENTON MUNICIPAL ELECTRIC		BENCHMARK
	REFERENCE FIGURE A ON SHEET B		UTILITY MARKER
	PROPOSED WATER LINE IN STEEL CASING PIPE		EXISTING ASPHALT PAVEMENT
	PROPOSED WATER GROUT FILL AND ABANDON		EXISTING GRAVEL PAVEMENT
	PROPOSED WATER LINE REMOVAL		EXISTING GRAVEL AND ASPHALT PAVEMENT
	PROPOSED WATER LINE TO BE ABANDONED IN PLACE		EXISTING TxDOT PARCEL NUMBER
	EXISTING WATER MANHOLE		
	EXISTING WATER METER		
	EXISTING FIRE HYDRANT		
	EXISTING POWER POLE		
	EXISTING LIGHT POLE		
	EXISTING WATER ISOLATION VALVE		

1. ALL MATERIALS SHALL USE DOMESTICALLY MANUFACTURED PRODUCTS THAT ARE COMPOSED PREDOMINATELY OF STEEL AND/OR IRON TO INCORPORATE INTO THE PERMANENT INSTALLATION OF THE UTILITY FACILITY - IN COMPLIANCE WITH THE BUY AMERICA PROVISIONS OF 23 CFR 635.410 AS AMENDED.
2. THE CONTRACTOR MAY BE REQUIRED TO USE TEMPORARY PLUGS AND/OR VALVES FOR SEQUENCING OF CONSTRUCTION AND TESTING OF PROPOSED WATER LINES. TEMPORARY PLUGS AND/OR VALVES SHALL BE CONSIDERED SUBSIDIARY TO THE PIPELINE INSTALLATION AND NO SEPARATE PAYMENT SHALL BE MADE.
3. CONTRACTOR SHALL FIELD VERIFY HORIZONTAL AND VERTICAL LOCATIONS OF PROPOSED CONNECTIONS PRIOR TO FABRICATION OF PROPOSED PIPING. VERIFICATION OF TIE-IN LOCATIONS SHALL BE SUBSIDIARY TO CONNECTION BID ITEMS AND NO SEPARATE PAYMENT SHALL BE MADE.
4. ALL OUTLETS, APPURTENANCES, AND FITTINGS FOR DUCTILE IRON PIPE ALTERNATIVE SHALL BE MECHANICAL JOINT, EXCEPT WHERE NOTED OTHERWISE.
5. CORROSION PROTECTION REQUIREMENTS: THE CONTRACTOR WILL BE REQUIRED TO FURNISH AND INSTALL THE FOLLOWING CORROSION PROTECTION SYSTEMS.  
  
DUCTILE IRON PIPE
  - a. A CORROSION CONTROL SYSTEM CONSISTING 8-MIL V-BIO ENHANCED POLYETHYLENE ENCASEMENT, AND ZINC COATED PIPE IN ACCORDANCE WITH ISO 8179-1
  - b. JOINT BONDING
  - c. JOINT ISOLATION AT CONNECTIONS TO EXISTING NON-PVC PIPELINES
  - d. ELECTRICAL ISOLATION AT CASED CROSSINGS
6. SEQUENCING: GENERALLY, THE CONTRACTOR SHALL BEGIN WORK ON WATER LINE D WORKING TOWARDS THE SOUTH DOWN TO THE EAST SIDE OF WATER LINE C AND THEN DOWN TO WATER LINE B. AFTER, CONTRACTOR SHALL MOVE TO THE WEST SIDE OF I-35 AND WORK BACK UP TO THE NORTH, INSTALLING WATER LINE A AND ULTIMATELY WATER LINE E.

1. ALL CONSTRUCTION WITHIN THE STATE RIGHT OF WAY WILL REQUIRE COMPLIANCE TO TxDOT STANDARD SPECIFICATIONS, STANDARD PLANS AND THE TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.
2. SPECIFICATIONS ADOPTED BY THE TEXAS DEPARTMENT OF TRANSPORTATION, NOVEMBER 1, 2014, AND SPECIFICATION ITEMS LISTED AS FOLLOWS SHALL GOVERN ON THIS PROJECT FOR ALL WORK WITHIN THE STATE RIGHT OF WAY.
3. TRAFFIC CONTROL MUST BE MAINTAINED THROUGHOUT THE DURATION OF WORK WITHIN TxDOT ROW.
4. THERE MAY BE TIMES WHERE INTERRUPTION OF A PARTICULAR CONSTRUCTION SEQUENCE MAY BE REQUIRED DUE TO COORDINATION WITH TxDOT OR OTHER UTILITY CONTRACTORS. NO ADDITIONAL PAYMENT WILL BE CONSIDERED FOR SUCH INTERRUPTIONS, DELAYS, RE-MOBILIZATIONS, OR ANY OTHER ACTIVITIES RELATED TO THIS COORDINATION.
5. ALL DISTURBED ROW MUST BE RE-VEGETATED WITH SOD AND MAINTAINED UNTIL VEGETATION IS RE-ESTABLISHED.
6. ALL LANE CLOSURES MUST BE COORDINATED WITH BOTH TxDOT AND MUNICIPALITY INSPECTORS.
7. CONTRACTOR TO CONTACT TxDOT 48 HOURS PRIOR TO BEGIN CONSTRUCTION.
8. CONTRACTOR TO ENSURE MINIMUM DEPTH OF 60" FROM TOP OF CASING TO TOP OF GRADE IN TxDOT ROW AND THAT THE LENGTH OF ANY ENCASEMENT UNDER THE ROADWAY SHALL BE PROVIDED FROM TOP OF BACKSLOPE TO TOP OF BACKSLOPE FOR CUT SECTIONS, 5' BEYOND THE TOE OF SLOPE FOR FILL SECTIONS, AND 5' BEYOND THE FACE OF THE CURB FOR CURB SECTIONS.
9. CONTRACTOR SHALL MAINTAIN A 24" MINIMUM CLEARANCE FROM HIGHWAY STRUCTURES AND ALL OTHER EXISTING UTILITIES (UNLESS MORE IS REQUIRED).



**CITY OF DENTON**  
**IH-35E MAYHILL**  
**UTILITY RELOCATIONS**

## GENERAL NOTES

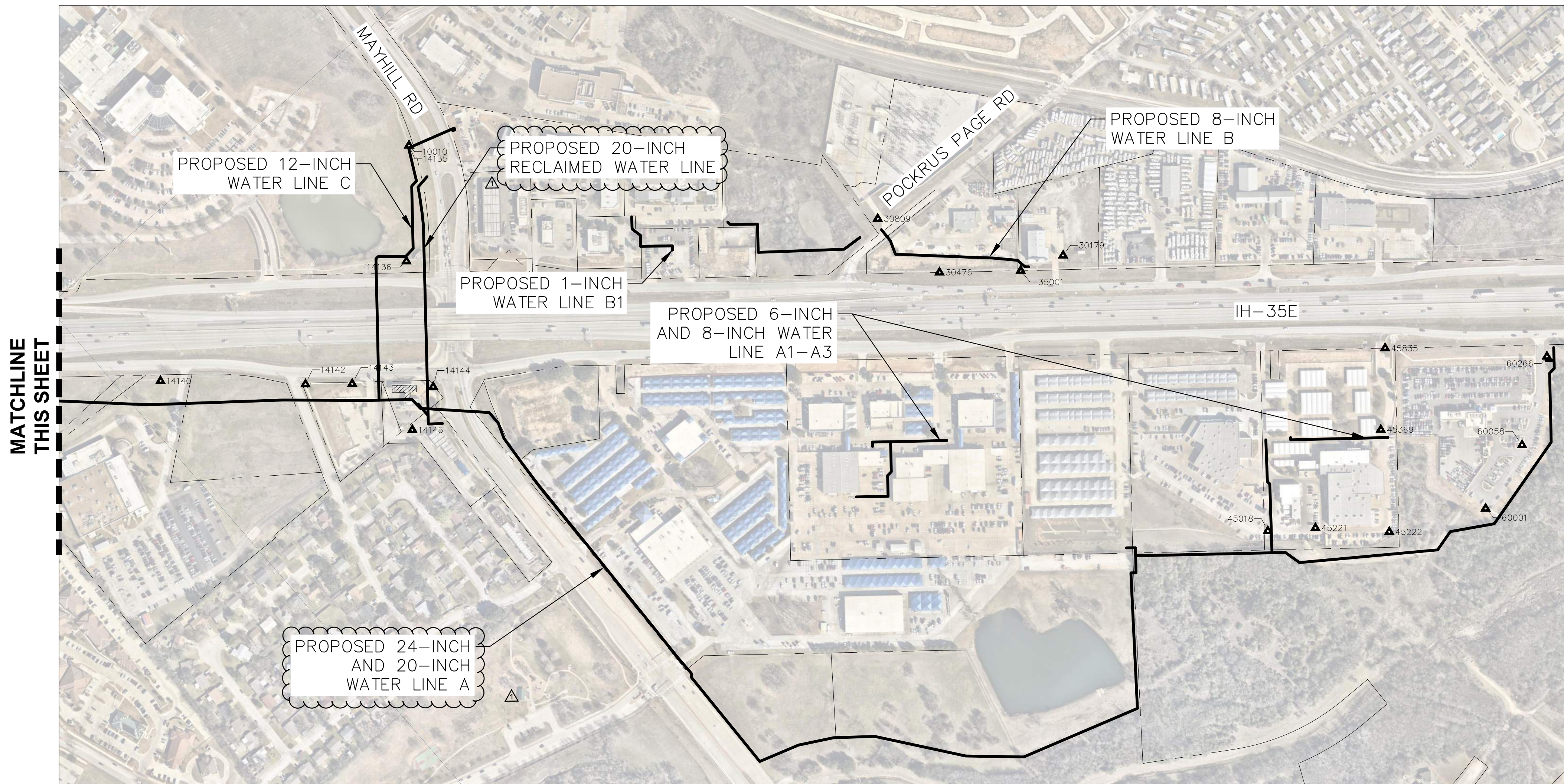
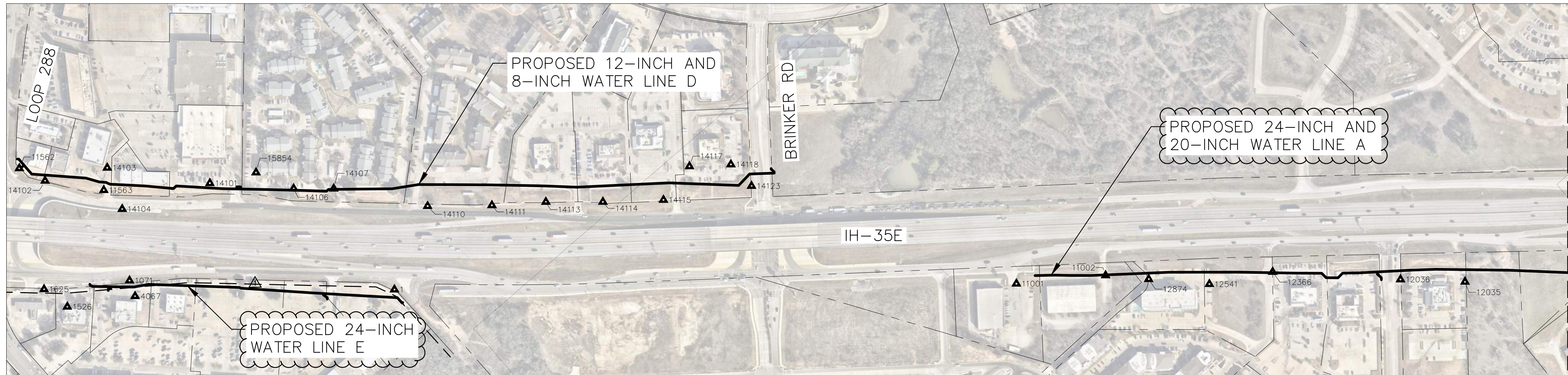
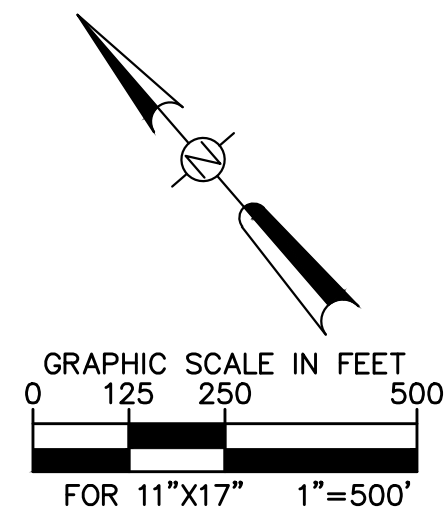
DATE:	OCTOBER 2022
DESIGN:	CPI
DRAWN:	NDCH
CHECKED:	JRA
KHA NO.:	061024039
SHEET	

SHEET

2



PROPOSED WATER LINE  
EXISTING CONTROL POINT



Point #	Northing	Easting	Elevation	Description
1	7116278.54	2395342.59	678.88	CP SIR 12
1071	7116955.14	2394611.86	660.43	CP NLS
1526	7117033.78	2394370.85	665.30	CP NLS
1625	7117140.67	2394347.86	660.73	CP NLS
2133	7117281.16	2394127.11	667.85	CP NLS
4067	7116897.10	2394589.18	663.29	CP XS
10010	7113316.94	2400232.03	626.82	CP XS
11001	7114765.99	2397124.21	643.67	CP XS
11002	7114570.26	2397398.11	630.94	CP XS
11562	7117545.18	2394574.92	659.67	CP XS
11563	7117275.40	2394761.12	671.35	CP XS
12035	7113668.20	2398403.17	648.94	CP XS
12036	7113833.58	2398225.91	645.83	CP XS
12366	7114169.25	2397881.13	640.37	CP XS
12541	7114289.97	2397671.39	631.04	CP XS
12874	7114453.56	2397511.26	630.54	CP XS
14101	7117034.41	2395079.69	686.62	CP XS
14102	7117446.40	2394617.33	662.66	CP XS
14103	7117330.53	2394826.10	673.54	CP XS
14104	7117176.48	2394766.99	672.18	CP XS
14106	7116813.10	2395304.67	689.75	CP XS
14107	7116714.21	2395418.17	687.07	CP XS
14110	7116433.91	2395641.92	674.87	CP XS
14111	7116278.20	2395826.89	682.31	CP XS
14113	7116154.86	2395988.13	683.52	CP XS
14114	7116014.95	2396150.55	674.64	CP XS
14115	7115871.38	2396327.20	660.70	CP XS
14117	7115903.03	2396483.65	656.24	CP XS
14118	7115806.65	2396606.16	652.28	CP XS
14123	7115694.80	2396611.76	641.25	CP XS
14135	7113316.94	2400232.03	626.82	CP XS
14136	7113015.62	2399959.85	619.57	CP XS
14140	7113262.64	2399032.67	638.85	CP XS
14142	7112920.90	2399409.58	623.91	CP XS
14143	7112814.70	2399534.38	622.08	CP XS
14144	7112620.76	2399742.38	621.30	CP XS
14145	7112554.46	2399588.15	621.27	CP XS
15854	7116951.08	2395236.93	692.55	CP XS
30179	7111523.91	2401714.86	616.10	CP XS
30476	7111762.66	2401347.91	612.73	CP XS
30809	7112046.70	2401307.32	607.02	CP XS
35001	7111580.68	2401567.36	617.17	CP XS
45018	7110322.60	2401624.82	603.66	CP XS
45221	7110221.52	2401758.33	603.69	CP XS
45222	7110041.69	2401945.03	602.70	CP XS
45369	7110332.27	2402157.35	603.36	CP XS
45835	7110538.47	2402355.53	599.62	CP XS
60001	7109882.70	2402254.14	594.74	CP XS
60058	7109967.35	2402496.56	595.87	CP XS
60266	7110145.13	2402765.78	593.84	CP XS

**SHEET NOTES:**

1. HORIZONTAL COORDINATES  
SHOWN HEREON ARE IN U.S.  
SURVEY FEET, AND ARE BASED  
ON THE TEXAS COORDINATE  
SYSTEM OF 1983 (NAD83),  
TEXAS NORTH CENTRAL ZONE  
4202 WITH THE DENTON COUNTY  
SCALE FACTOR 0.999849393  
APPLIED (SURFACE\*0.999849393  
= GRID VALUE).

# Kimley»»Horn

No.	Revision	By	Date
A	PIPE SIZE CHANGE TO REFLECT BID MATERIAL		10/12/2022



**CITY OF DENTON**  
**IH-35E MAYHILL**  
**UTILITY RELOCATIONS**

## PROJECT CONTROL AND BENCHMARKS

DATE:	OCTOBER 2022
DESIGN:	CPI
DRAWN:	NDCH
CHECKED:	JRA
KHA NO.:	061024039

SHEET

# 3



WATER ABANDONMENT			
Point #	Northing	Easting	Description
1	7117573.98	2394590.63	BEGIN 12" WL ABANDONMENT BY GROUT FILL
2	7117377.29	2394691.61	END 12" WL ABANDONMENT BY GROUT FILL AND BEGIN 12" WL REMOVAL
3	7116943.19	2395147.85	END 12" WL REMOVAL
4	7116943.44	2395153.04	BEGIN 8" WL REMOVAL
5	7115565.08	2396693.80	END 8" WL REMOVAL
6	7115654.08	2396579.15	END 8" WL REMOVAL AND BEGIN 8" GROUT FILL
7	7115606.97	2396639.45	END 8" WL GROUT FILL AND BEING 8" WL REMOVAL
8	7117271.55	2394769.28	BEGIN 8" WL REMOVAL AND REMOVE 8" GATE VALVE
9	7117282.33	2394783.75	END 8" WL REMOVAL
10	7117102.93	2394947.14	BEGIN 6" WL REMOVAL AND REMOVE 6" GATE VALVE
11	7117113.67	2394956.59	END 6" WL REMOVAL
12	7116954.59	2395134.08	BEGIN 6" WL REMOVAL

WATER ABANDONMENT			
Point #	Northing	Easting	Description
13	7116944.96	2395154.55	END 6" WL REMOVAL AND REMOVE 6" GATE VALVE
14	7116870.84	2395186.35	BEGIN 6" WL REMOVAL AND REMOVE 6" GATE VALVE
15	7116892.00	2395208.60	END 6" WL REMOVAL
16	7116785.31	2395317.35	END 6" WL REMOVAL
17	7116758.72	2395294.20	BEGIN 6" WL REMOVAL
18	7116624.03	2395437.34	BEGIN 6" WL REMOVAL
19	7116657.44	2395465.55	END 6" WL REMOVAL
20	7116509.12	2395561.92	BEGIN 6" WL REMOVAL
21	7116545.33	2395605.16	END 6" WL REMOVAL
22	7116544.14	2395685.37	END 8" WL REMOVAL
23	7116480.79	2395592.18	BEGIN 8" WL REMOVAL
24	7116118.28	2396146.30	END 8" WL REMOVAL

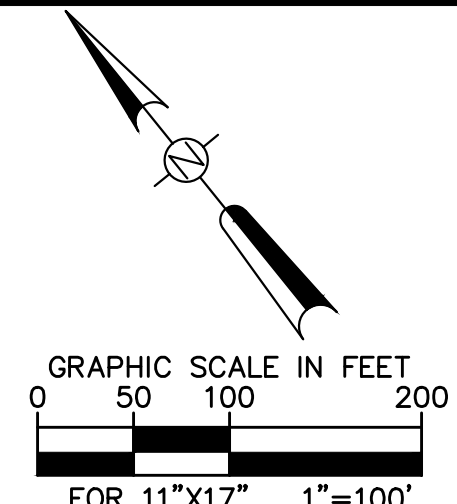
WATER ABANDONMENT			
Point #	Northing	Easting	Description
25	7116067.31	2396074.25	BEGIN 8" WL REMOVAL
26	7115691.16	2396706.79	END 8" WL REMOVAL
27	7115607.31	2396640.43	BEGIN 8" WL REMOVAL
28	7115653.69	2396673.01	REMOVE FH AND 6" VALVE
29	7116034.02	2396123.03	REMOVE FH AND 6" VALVE
30	7116069.13	2396075.98	REMOVE 8" GATE VALVE
31	7116193.94	2395934.81	REMOVE FH AND 6" VALVE
32	7116227.63	2395886.29	REMOVE 8" GATE VALVE
33	7116421.87	2395663.93	REMOVE FH AND 6" VALVE
34	7116512.33	2395686.47	REMOVE FH AND 6" VALVE
35	7116507.34	2395563.81	REMOVE FH AND 6" VALVE
36	7116866.22	2395191.03	REMOVE 8" GATE VALVE

WATER ABANDONMENT			
Point #	Northing	Easting	Description
37	7116923.30	2395133.28	REMOVE 8" GATE VALVE
38	7116946.65	2395143.68	REMOVE 12" GATE VALVE
39	7117090.96	2394951.18	REMOVE FH AND 6" VALVE
40	7116625.77	2395439.15	REMOVE 6" GATE VALVE
41	7117286.57	2394732.02	REMOVE FH AND 6" VALVE
42	7117542.29	2394571.15	REMOVE FH AND 6" VALVE
43	7116893.68	2395173.65	REMOVE FH AND 6" VALVE
44	7116492.81	2395605.89	REMOVE CONCRETE WATER VAULT AND SALVAGE WATER METER
45	7115883.99	2396291.34	BEGIN 6" WL REMOVAL
46	7115906.18	2396310.60	REMOVE 6" GATE VALVE
47	7115926.04	2396327.83	END 6" WL REMOVAL
48	7115833.90	2396350.22	REMOVE 8" GATE VALVE

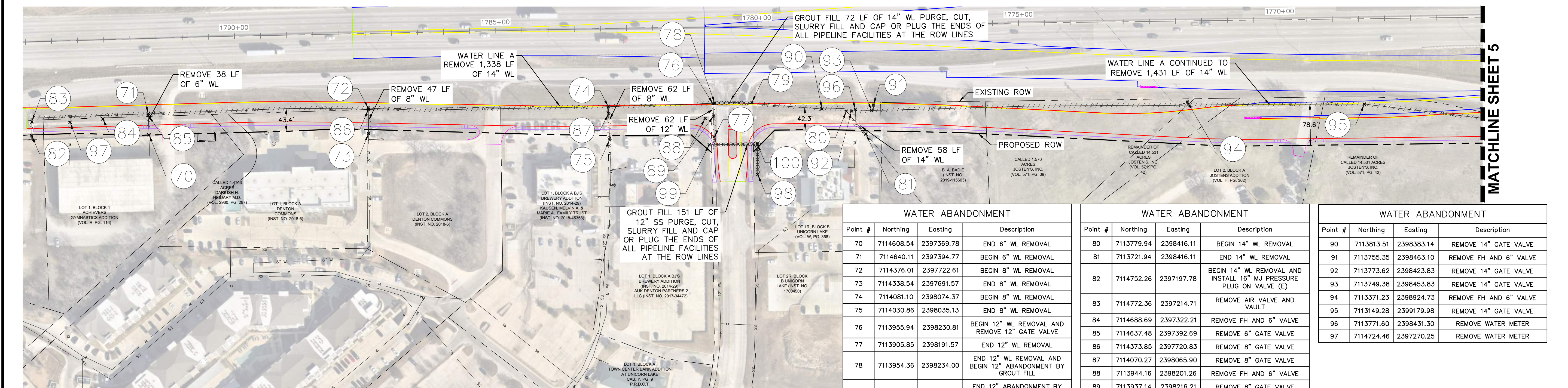
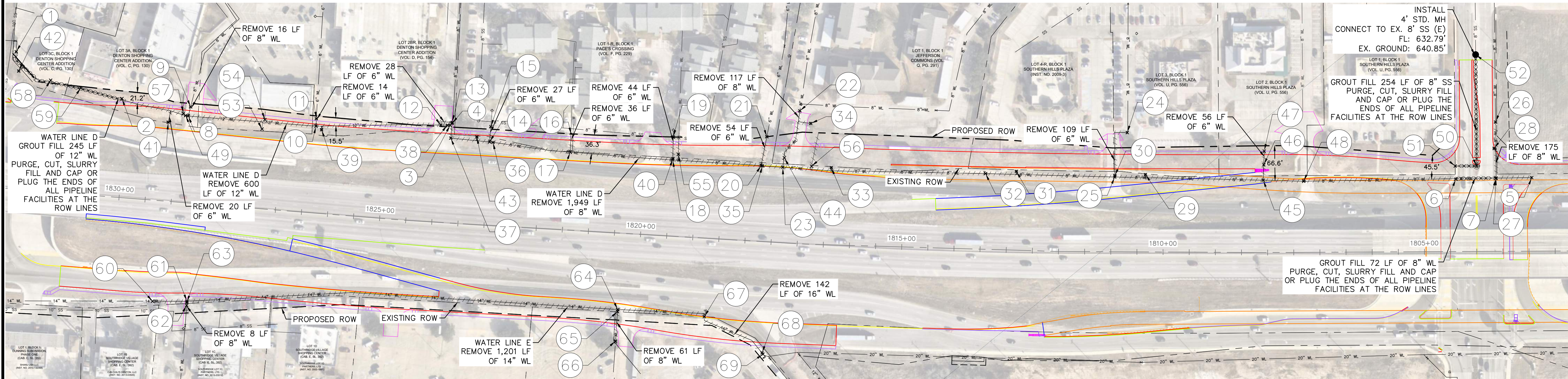
WATER ABANDONMENT			
Point #	Northing	Easting	Description
49	7117275.38	2394765.92	REMOVE 12" GATE VALVE
53	7117163.55	2394863.51	REMOVE WATER METER
54	7117174.23	2394878.92	REMOVE WATER METER
55	7116625.65	2395452.46	REMOVE WATER METER
56	7116447.81	2395636.20	REMOVE WATER METER
57	7117281.31	2394765.09	SALVAGE WATER METER
58	7117490.13	2394607.55	REMOVE WATER METER
59	7117442.68	2394643.35	REMOVE WATER METER

SEWER ABANDONMENT			
Point #	Northing	Easting	Description
50	7115848.52	2396626.01	REMOVE SS MH
51	7115674.29	2396593.96	BEGIN 8" SS GROUT FILL
52	7115815.25	2396758.17	END 8" SS GROUT FILL
98	7113797.10	2398208.20	END 12" SS GROUT FILL
99	7113900.66	2398174.40	BEGIN 12" SS GROUT FILL
100	7113842.25	2398245.50	REMOVE SS MH

WATER ABANDONMENT			
Point #	Northing	Easting	Description
60	7117039.46	2394493.88	BEGIN 14" WL REMOVAL
61	7116998.06	2394544.95	BEGIN 8" WL REMOVAL
62	7116992.36	2394539.65	END 8" WL REMOVAL
63	7116996.43	2394543.44	REMOVE 8" GATE VALVE
64	7116467.94	2395175.90	BEGIN 8" WL REMOVAL
65	7116465.04	2395173.10	REMOVE 8" GATE VALVE
66	7116423.65	2395134.57	END 8" WL REMOVAL
67	7116353.19	2395296.05	REMOVE 2" AIR RELEASE VALVE
68	7116230.07	2395338.49	REMOVE 14" GATE VALVE
69	7116226.89	2395338.34	END 14" WL REMOVAL



- SHEET NOTES:**
1. WATER SERVICE LINES 3" AND SMALLER MAY BE CAPPED AND LEFT IN PLACE.
  2. ALL UTILITY LINES 4" AND GREATER THAT REMAIN IN TXDOT ROW ARE TO BE REMOVED OR PURGE, CUT, SLURRY FILL AND CAP, OR PLUG THE ENDS OF ALL PIPELINE FACILITIES AT THE ROW LINES. ALL OTHER LINES SHOWN TO BE ABANDONED OUTSIDE OF TXDOT ROW MAY BE CAPPED/PLUGGED AND ABANDONED IN PLACE.



WATER ABANDONMENT			
Point #	Northing	Easting	Description
70	7114608.54	2397369.78	END 6" WL REMOVAL
71	7114640.11	2397394.77	BEGIN 6" WL REMOVAL
72	7114376.01	2397722.61	BEGIN 8" WL REMOVAL
73	7114338.54	2397691.57	END 8" WL REMOVAL
74	7114081.10	2398074.37	BEGIN 8" WL REMOVAL
75	7114030.86	2398035.13	END 8" WL REMOVAL
76	7113955.94	2398230.81	BEGIN 12" WL REMOVAL AND REMOVE 12" GATE VALVE
77	7113905.85	2398191.57	END 12" WL REMOVAL
78	7113954.36	2398234.00	END 12" WL REMOVAL AND BEGIN 12" ABANDONMENT BY GROUT FILL
79	7113909.73	2398289.10	END 12" ABANDONMENT BY GROUT FILL AND BEGIN 12" WL REMOVAL

WATER ABANDONMENT			
Point #	Northing	Easting	Description
80	7113779.94	2398416.11	BEGIN 14" WL REMOVAL
81	7113721.94	2398416.11	END 14" WL REMOVAL
82	7114752.26	2397197.78	BEGIN 14" WL REMOVAL AND INSTALL 16" MJ PRESSURE PLUG ON VALVE (E)
83	7114772.36	2397214.71	REMOVE AIR VALVE AND VAULT
84	7114688.69	2397322.21	REMOVE FH AND 6" VALVE
85	7114637.48	2397392.69	REMOVE 6" GATE VALVE
86	7114373.85	2397720.83	REMOVE 8" GATE VALVE
87	7114070.27	2398065.90	REMOVE 8" GATE VALVE
88	7113944.16	2398201.26	REMOVE FH AND 6" VALVE
89	7113937.14	2398216.21	REMOVE 8" GATE VALVE

WATER ABANDONMENT			
Point #	Northing	Easting	Description
90	7113813.51	2398383.14	REMOVE 14" GATE VALVE
91	7113755.35	2398463.10	REMOVE FH AND 6" VALVE
92	7113773.62	2398423.83	REMOVE 14" GATE VALVE
93	7113749.38	2398453.83	REMOVE 14" GATE VALVE
94	7113371.23	2398924.73	REMOVE FH AND 6" VALVE
95	7113149.28	2399179.98	REMOVE 14" GATE VALVE
96	7113771.60	2398431.30	REMOVE WATER METER
97	7114724.46	2397270.25	REMOVE WATER METER

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801 Cherry St., Suite 1300 Ft. Worth, TX 76102  
By \_\_\_\_\_  
No. \_\_\_\_\_  
Revision \_\_\_\_\_

**CITY OF DENTON**  
IH-35E MAYHILL  
UTILITY RELOCATIONS

**PROPOSED UTILITY ABANDONMENT**  
(SHEET 1 OF 2)

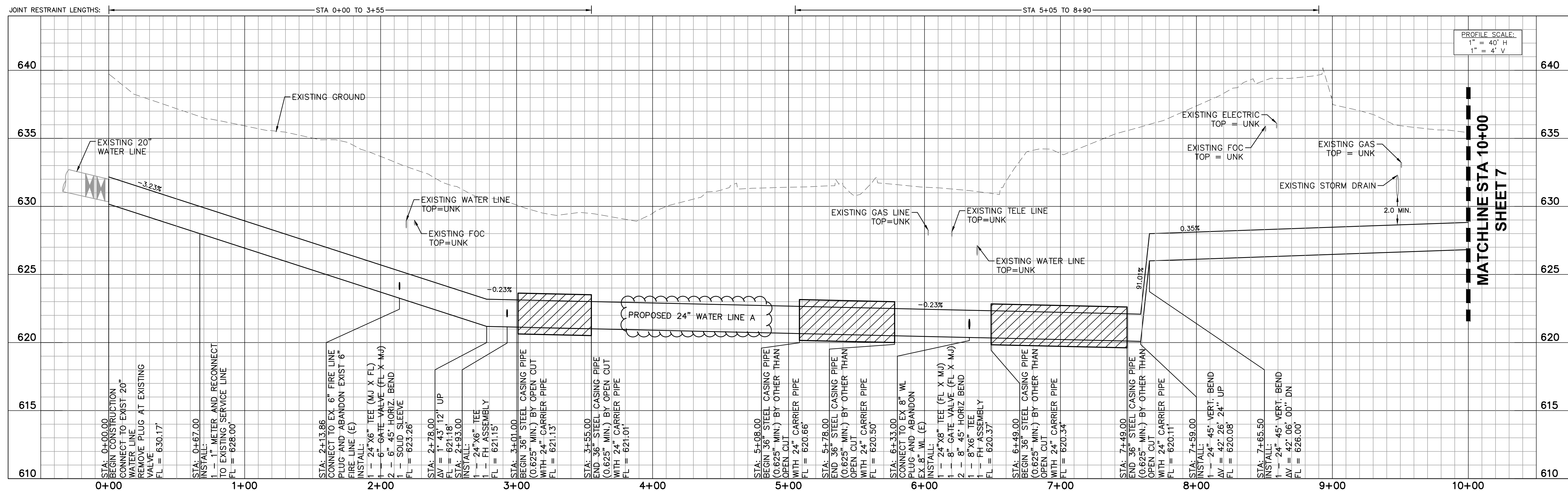
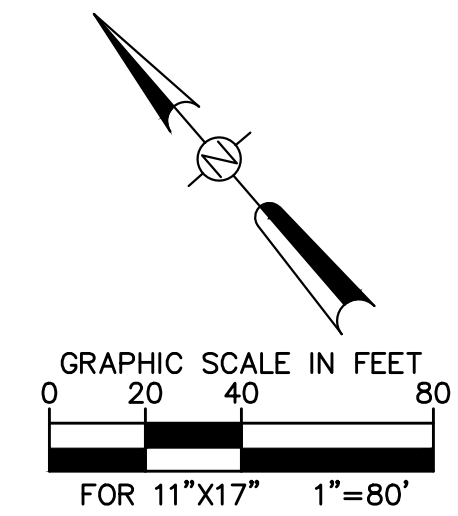
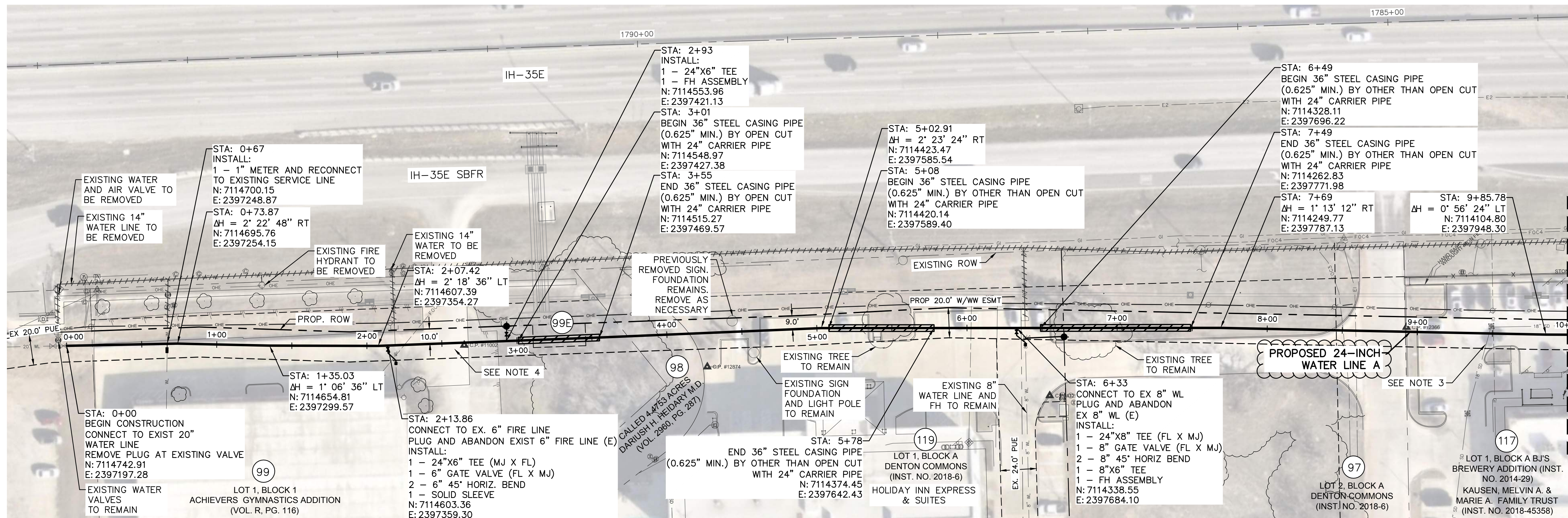
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KHA NO.: 061024039

SHEET  
**4**

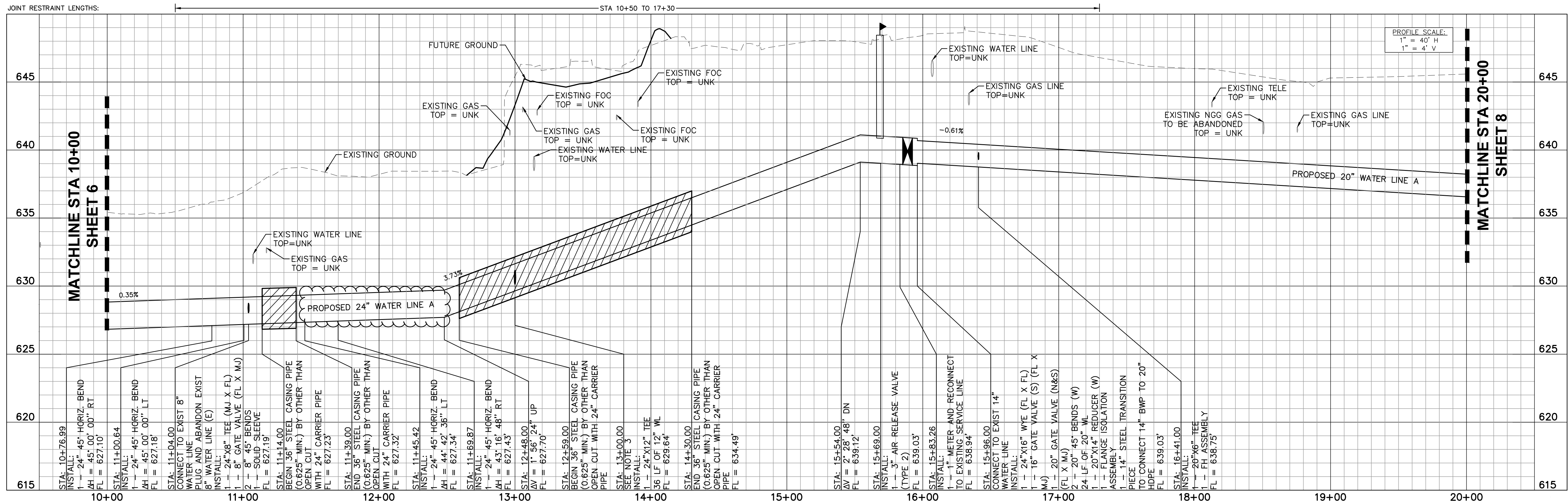
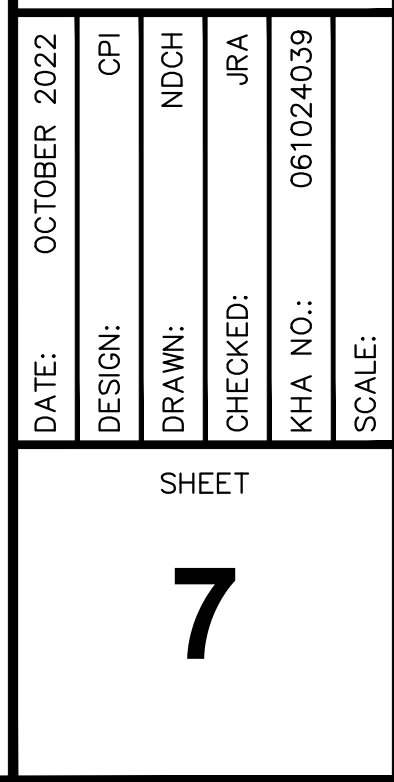
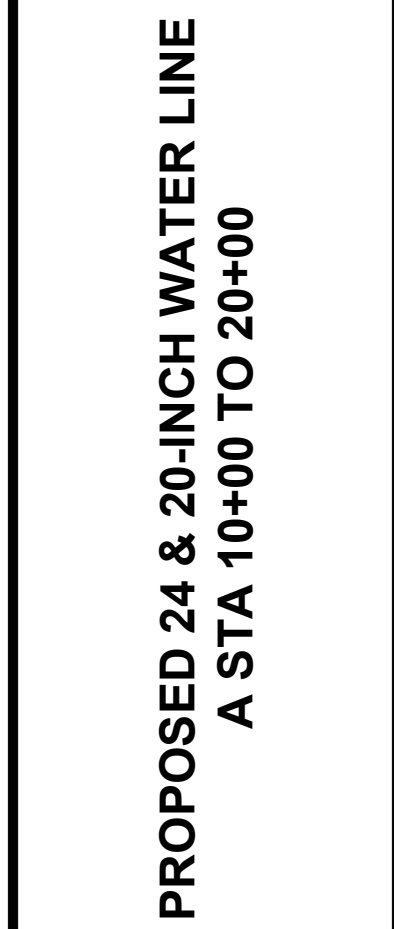
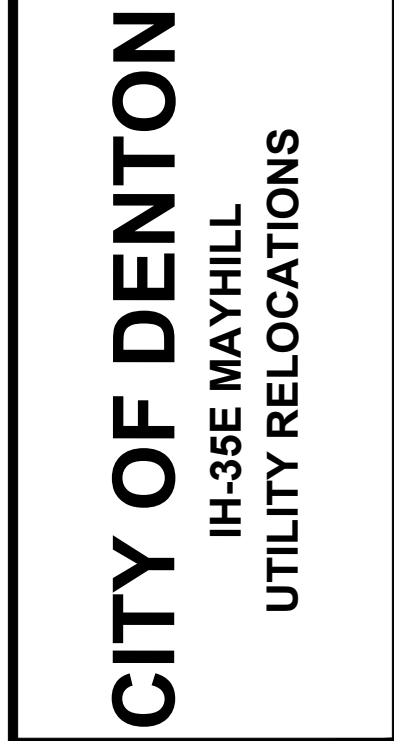
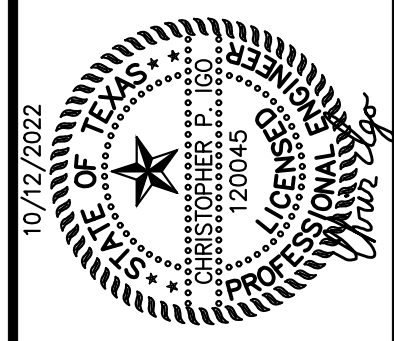
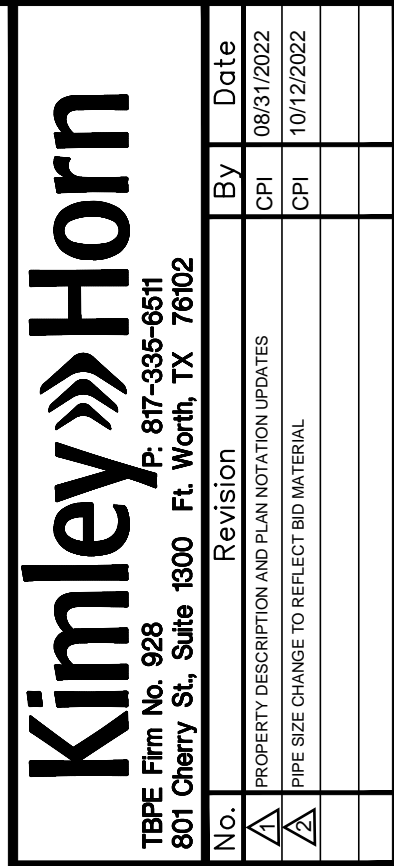
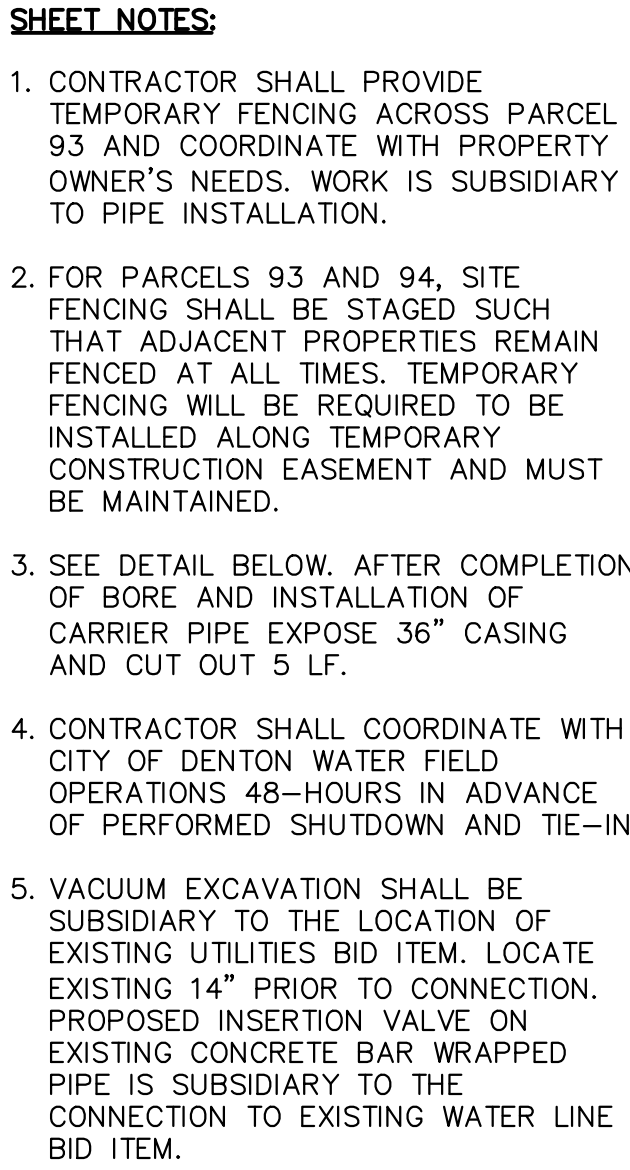








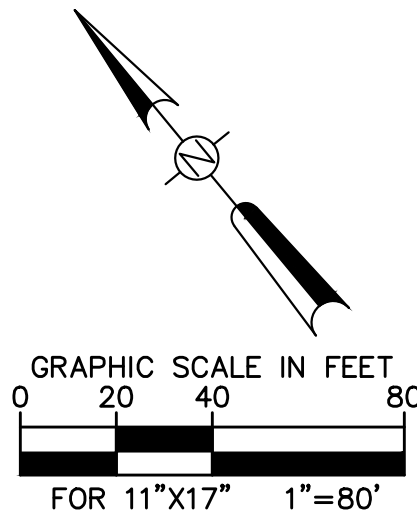
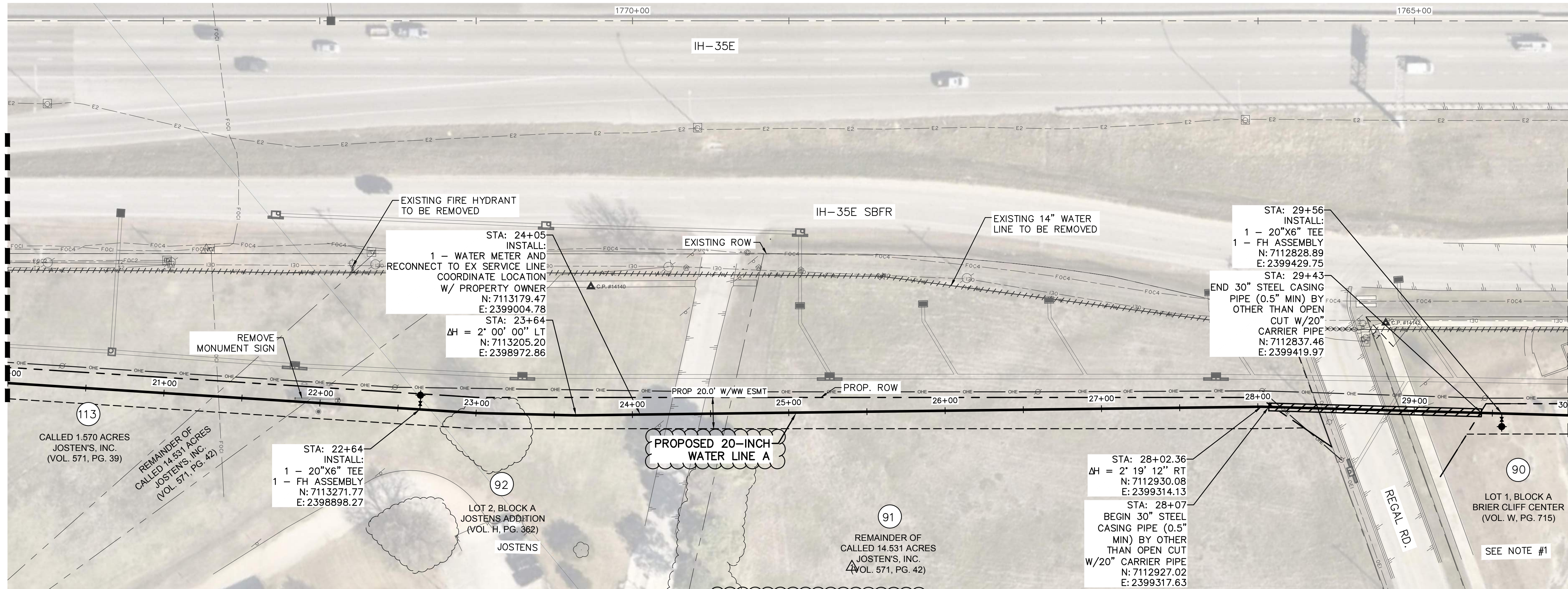






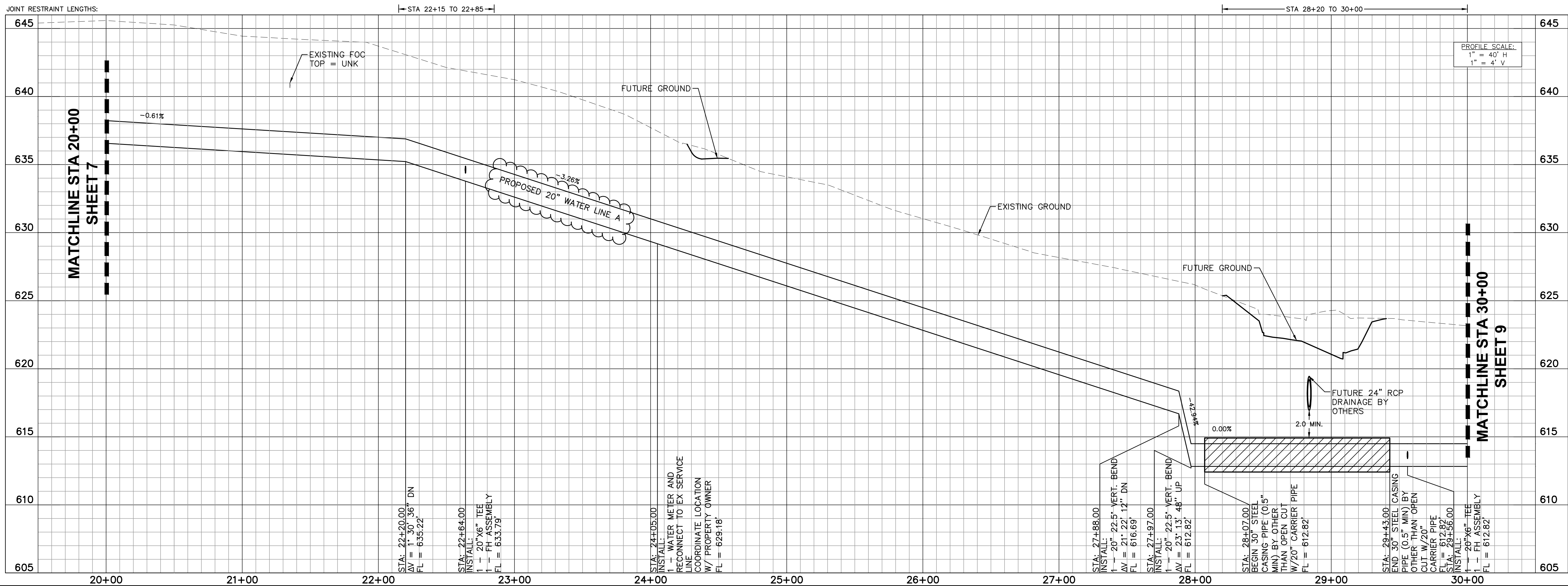
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MATCHLINE STA 20+00  
SHEET 7



- SHEET NOTES:**
1. STRUCTURE PREVIOUSLY REMOVED BY TxDOT PRIOR TO CONSTRUCTION.
  2. CONTRACTOR MAY BE REQUIRED TO BRACE EXISTING POWER POLES DURING CONSTRUCTION. ANY WORK ASSOCIATED WITH THIS ITEM SHALL BE CONSIDERED SUBSIDIARY TO THE VARIOUS BID ITEMS.

PROPOSED 20-INCH WATER LINE A STA 20+00 TO 30+00



**Kimley»Horn**  
TYPE Firm No. 928 P. 87-395-851  
801 Cherry St. Suite 1300 Ft. Worth, TX 76102  
NO. REVISION  
CPI 10/12/2022  
PNE SIZE CHANGE TO REFLECT BID MATERIAL



**CITY OF DENTON**  
IH-35E MAYHILL  
UTILITY RELOCATIONS

**PROPOSED 20-INCH WATER LINE A  
STA 20+00 TO 30+00**

DATE:	OCTOBER 2022
DESIGN:	CPI
DRAWN:	NDCH
CHECKED:	JRA
KHA NO.:	061024039

SHEET  
**08**







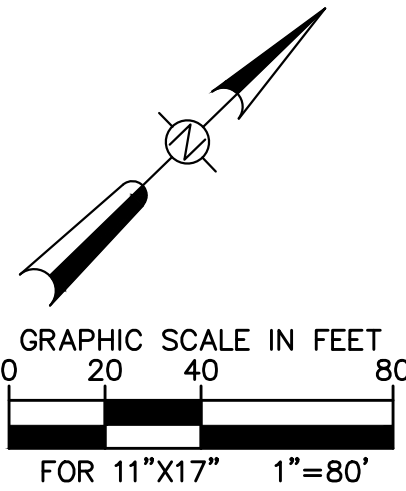
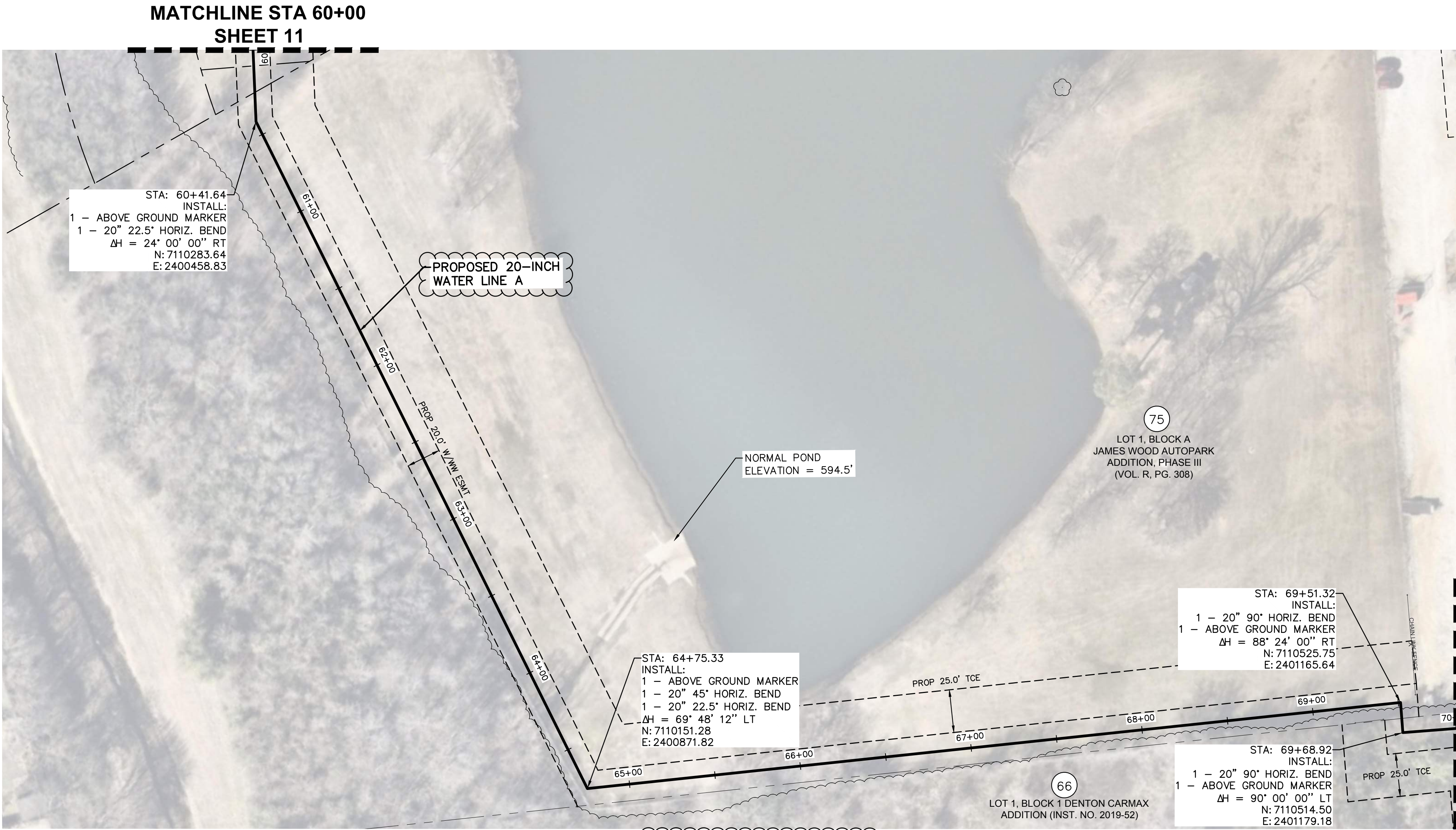








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SHEET NOTES:

1. CONTRACTOR TO REPAIR CHAIN LINK FENCE TO EXISTING OR BETTER CONDITIONS.

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NO.	REVISION	BY	DATE
1	PIE SIZE CHANGE TO REFLECT BID MATERIAL	CPI	10/12/2022



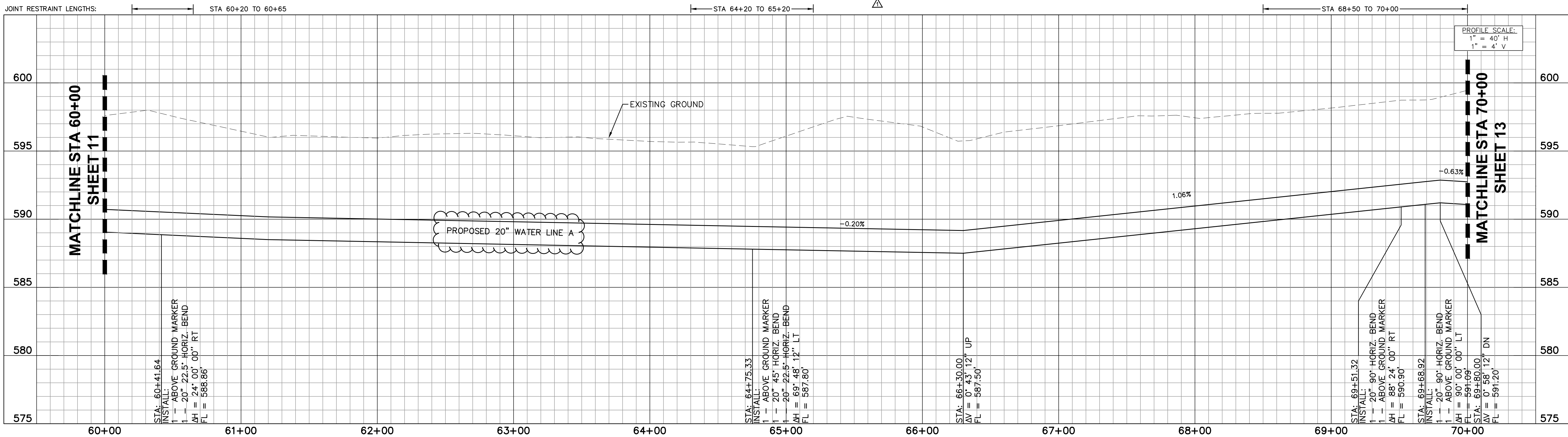
**CITY OF DENTON**  
IH-35E MAYHILL  
UTILITY RELOCATIONS

**PROPOSED 20-INCH WATER LINE A**  
STA 60+00 TO 70+00

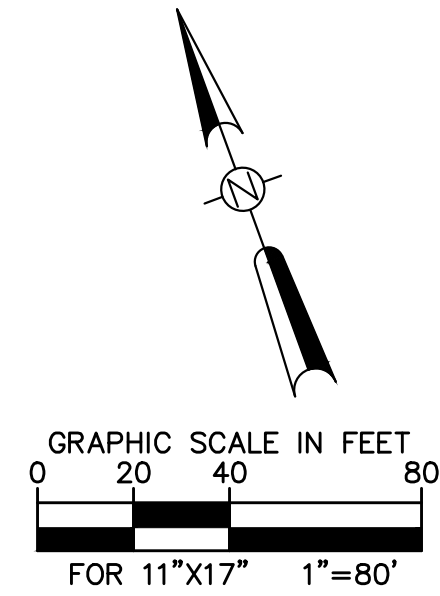
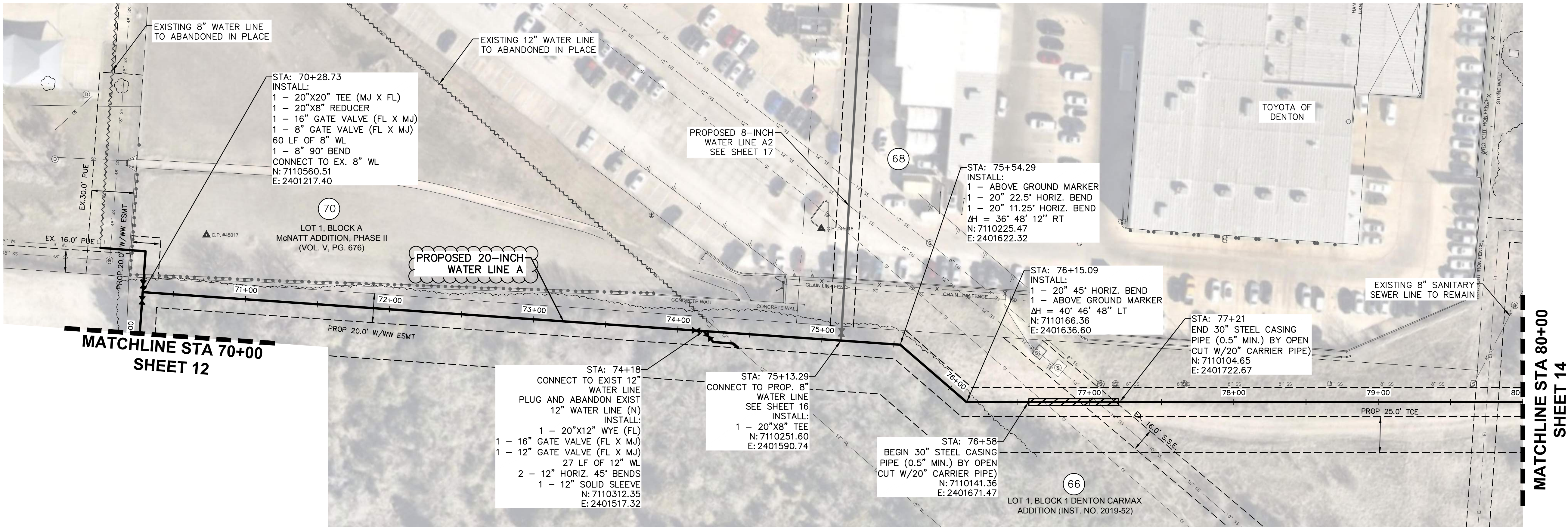
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CHECKED:	JRA
KHA NO.:	061024039

SHEET

12



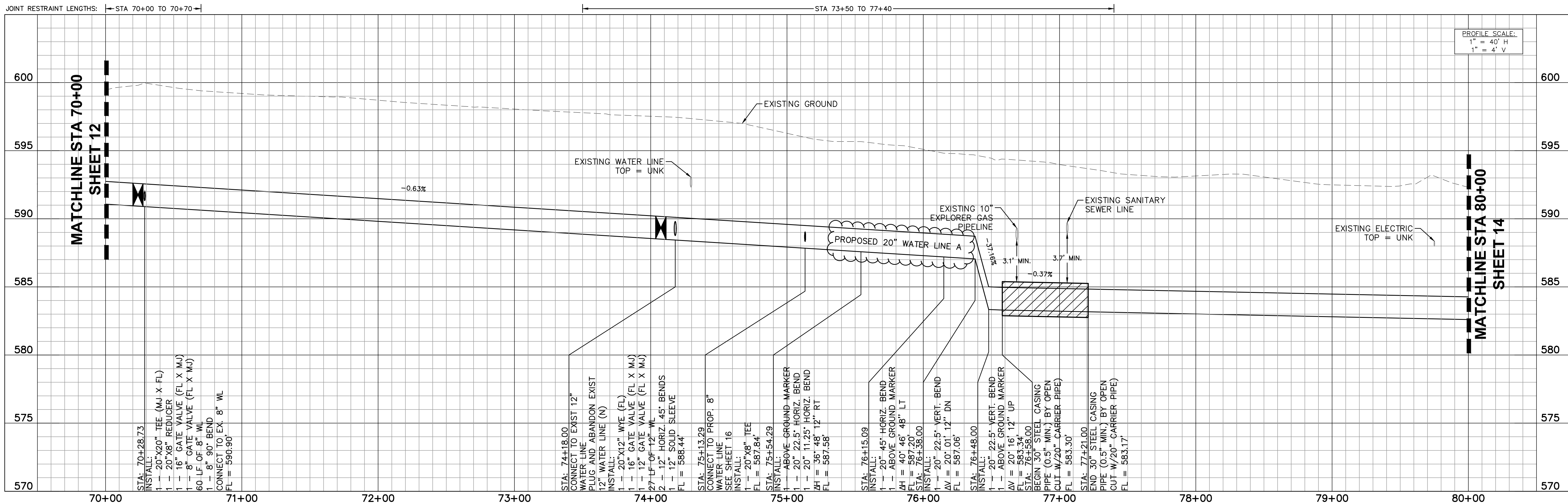




**SHEET NOTES:**

1. CONTRACTOR SHALL CONTACT EXPLORER PIPELINE (877-921-7473) PRIOR TO CROSSING GAS LINE.
2. VACUUM EXCAVATION SHALL BE SUBSIDIARY TO THE LOCATION OF EXISTING UTILITIES BID ITEM. LOCATE EXISTING 12" PRIOR TO CONNECTION.

**PROPOSED 20-INCH WATER LINE A STA 70+00 TO 80+00**



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801 Cherry St, Suite 1300 Ft. Worth, TX 76102  
By Date  
CPI 10/12/2022  
Revision  
PIPE SIZE CHANGE TO REFLECT BID MATERIAL



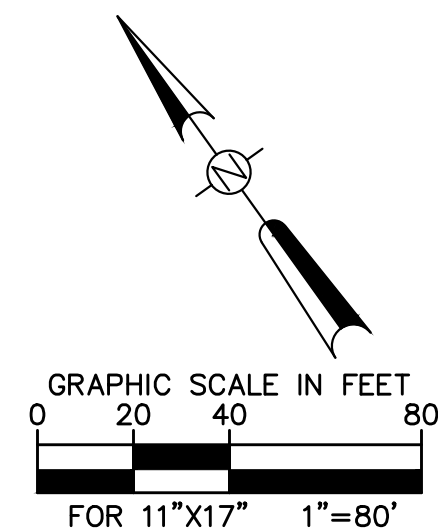
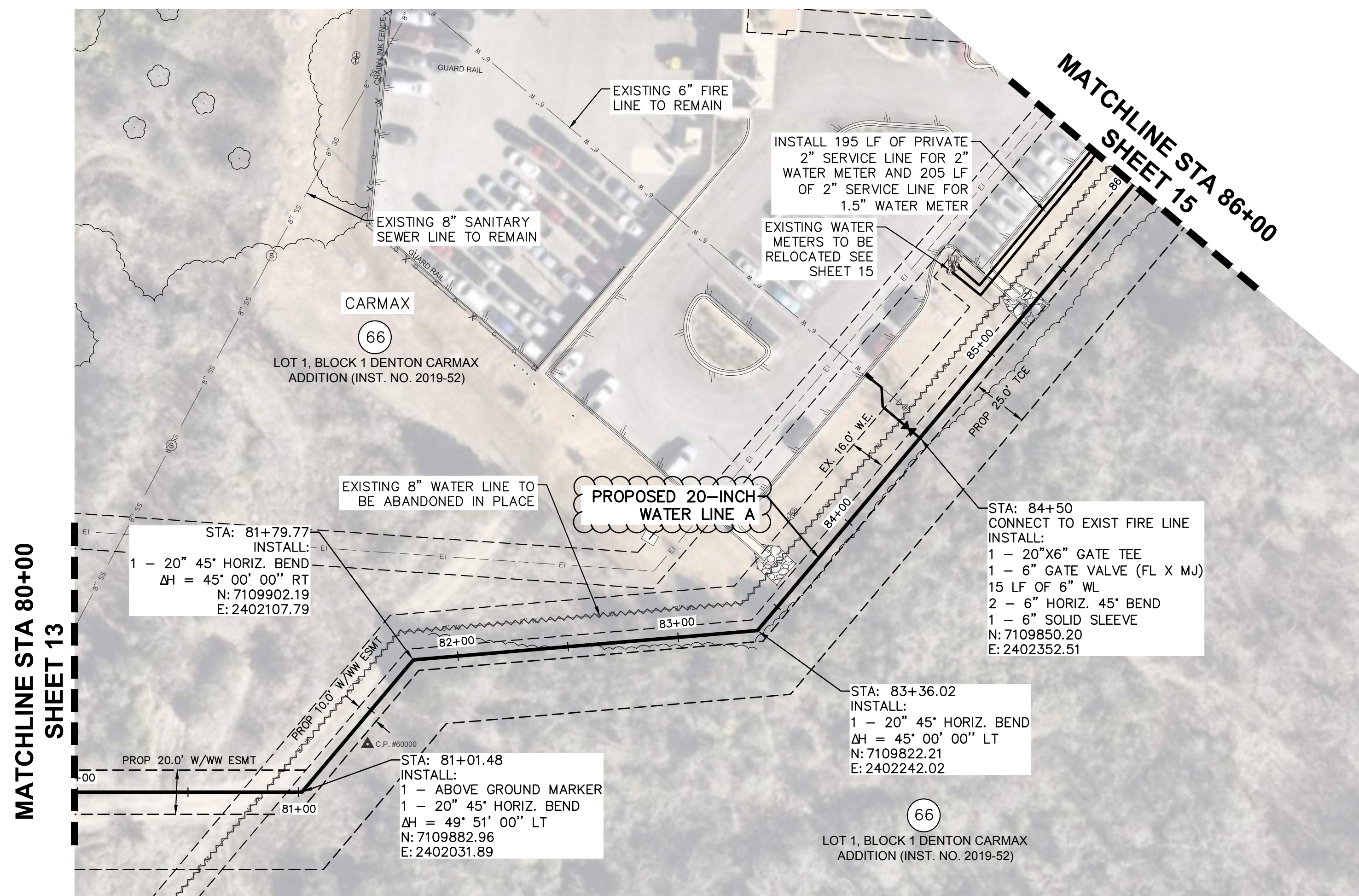
**CITY OF DENTON**  
IH-35E MAYHILL  
UTILITY RELOCATIONS

**PROPOSED 20-INCH WATER LINE A**  
STA 70+00 TO 80+00

DATE: OCTOBER 2022  
DESIGN: CPI  
DRAWN: NDCH  
CHECKED: JRA  
KHA NO.: 061024039

SHEET  
**13**





**SHEET NOTES:**

1. ANY DAMAGE TO EXISTING IRRIGATION SYSTEMS SHALL BE REPAIRED AT NO ADDITIONAL COST TO THE OWNER.



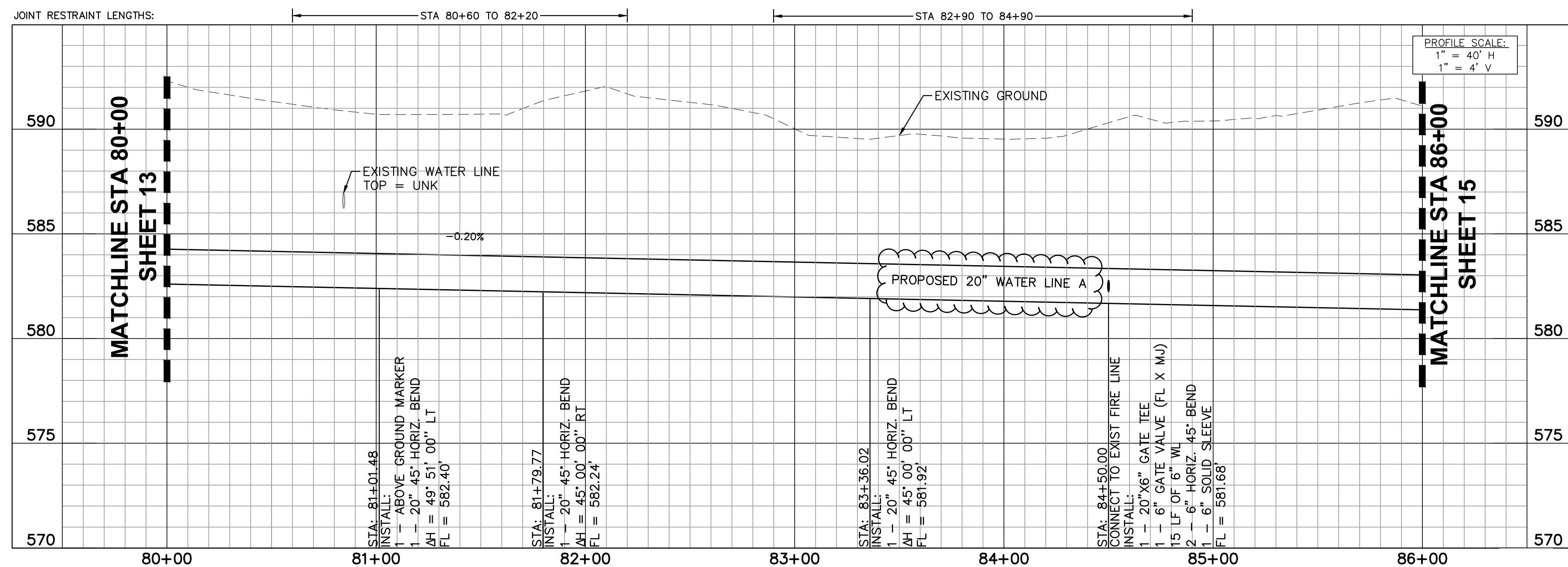
**CITY OF DENTON**  
**IH-35E MAYHILL**  
**UTILITY RELOCATIONS**

**PROPOSED 20-INCH WATER LINE A**  
**STA 80+00 TO 86+00**

DATE:	OCTOBER 2022
DESIGN:	CPI
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CHECKED:	JRA
KHA NO.:	061024039

SHEET

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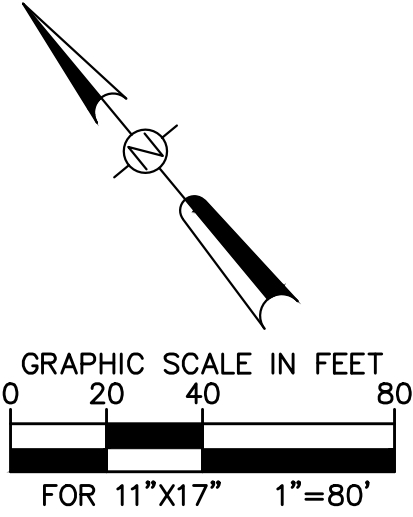
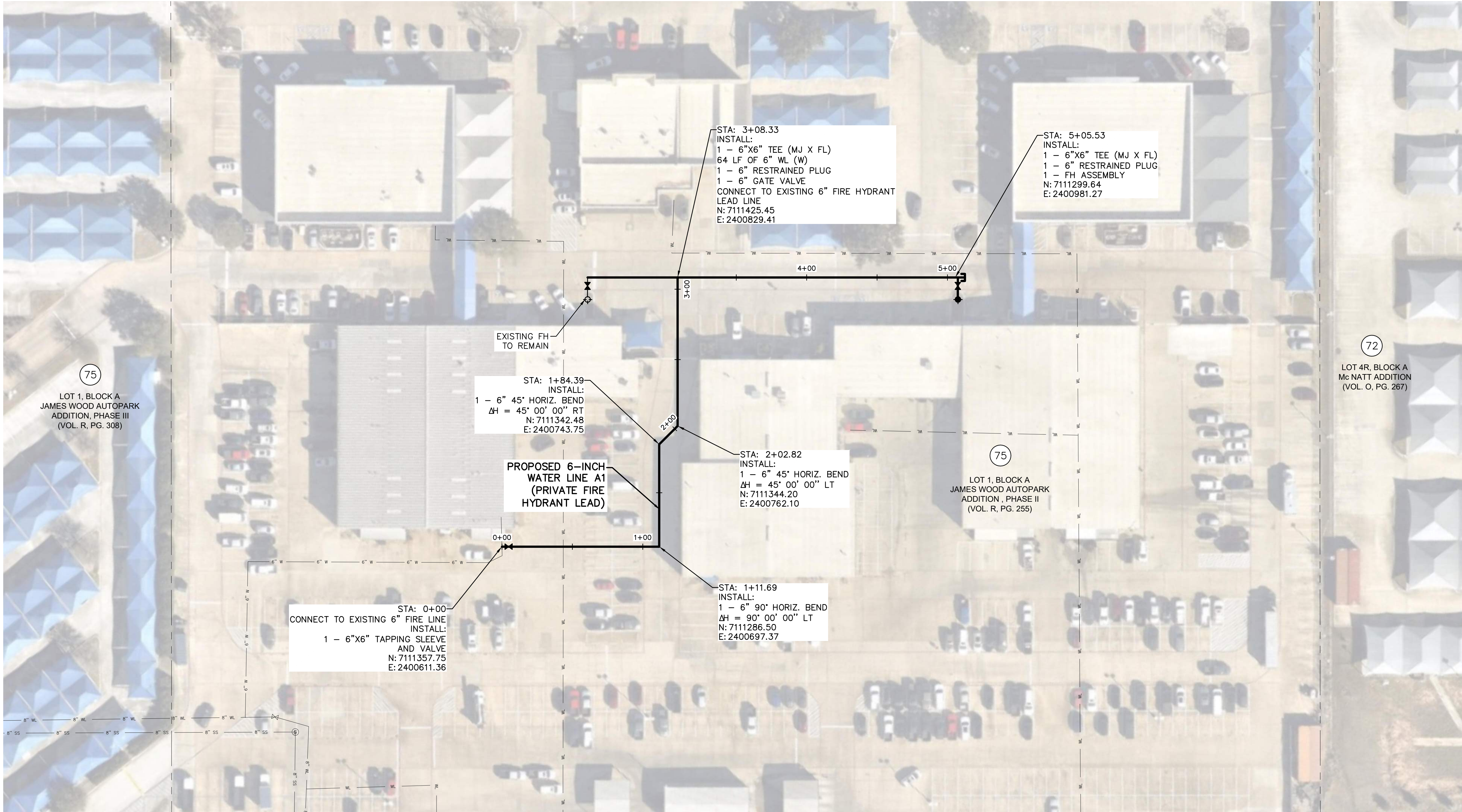








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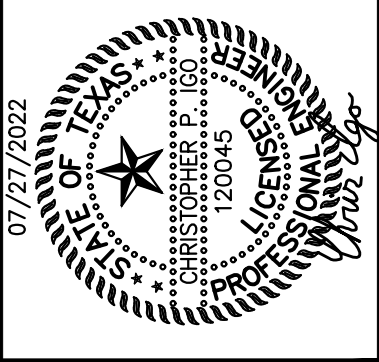
**SHEET NOTES:**

1. CONTRACTOR SHALL ENSURE MINIMUM 2 FT CLEARANCE FOR ALL CROSSING UTILITIES.
2. COORDINATE ACCESS WITH PROPERTY OWNER PRIOR TO STARTING WORK. VERIFY LIMITS OF WORK WITH JEFF MARTINEZ (817-403-1900).

Kimley»Horn

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P: 817-335-6511

No.	Revision	By	Date



CITY OF DENTON

OH-35E MAYHILL

UTILITY RELOCATIONS

07/27/2022

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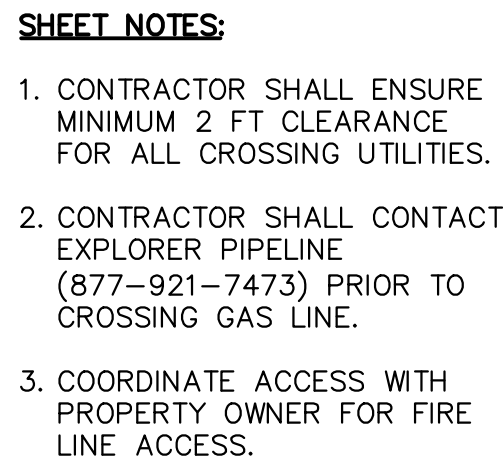
PROPOSED 6-INCH WATER LINE A1

DATE: JULY 2022  
DESIGN: CPT  
DRAWN: NDCH  
CHECKED: JRA  
KHA NO.: 061024039

SHEET

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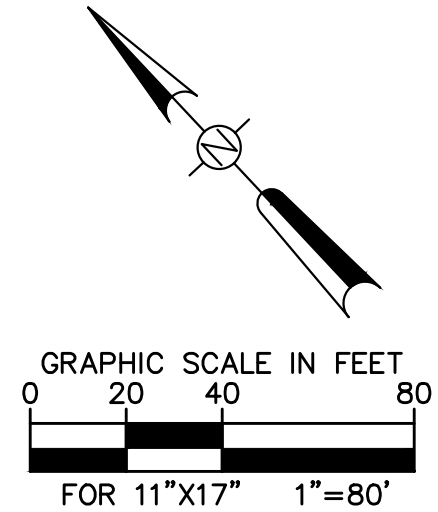
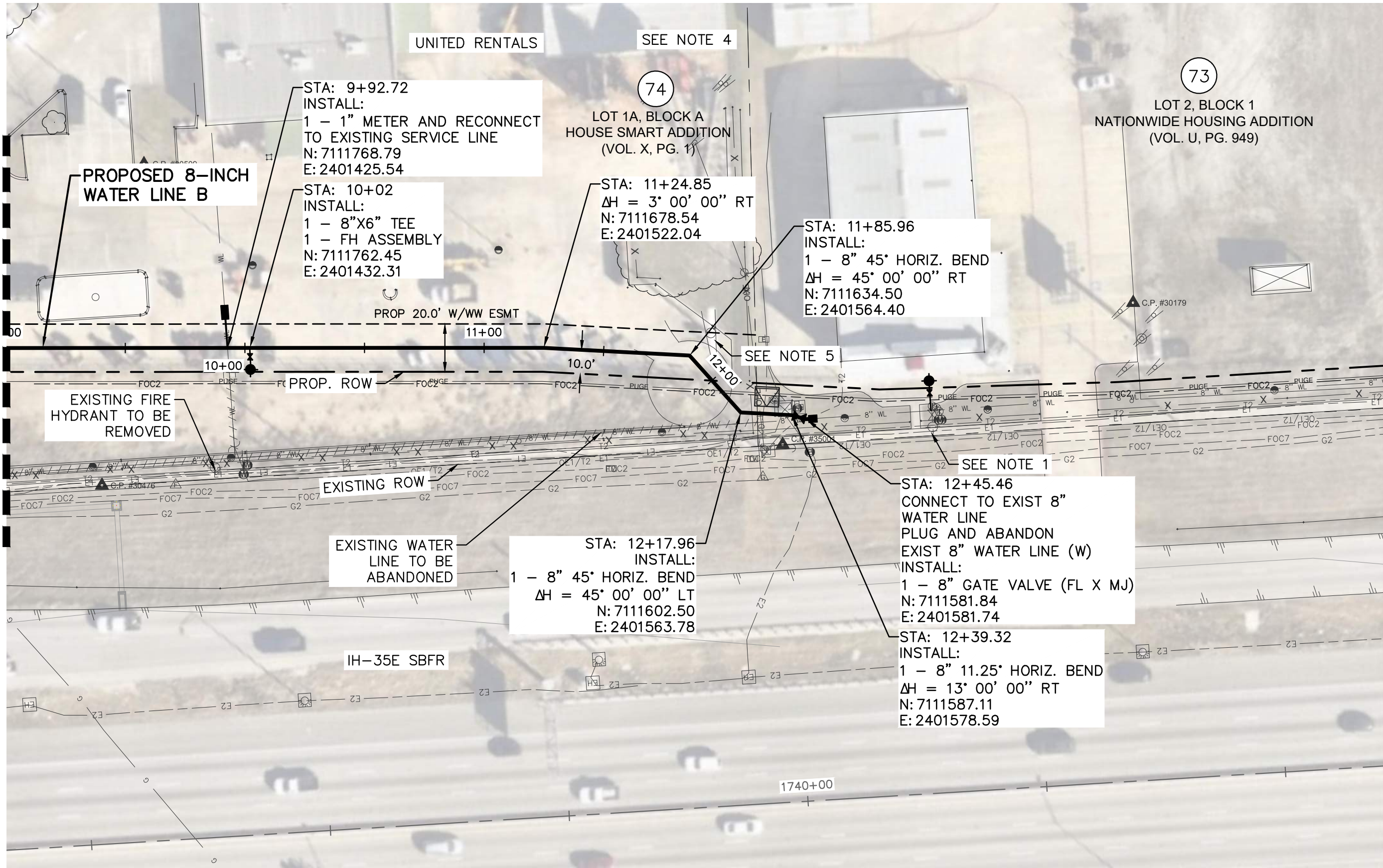






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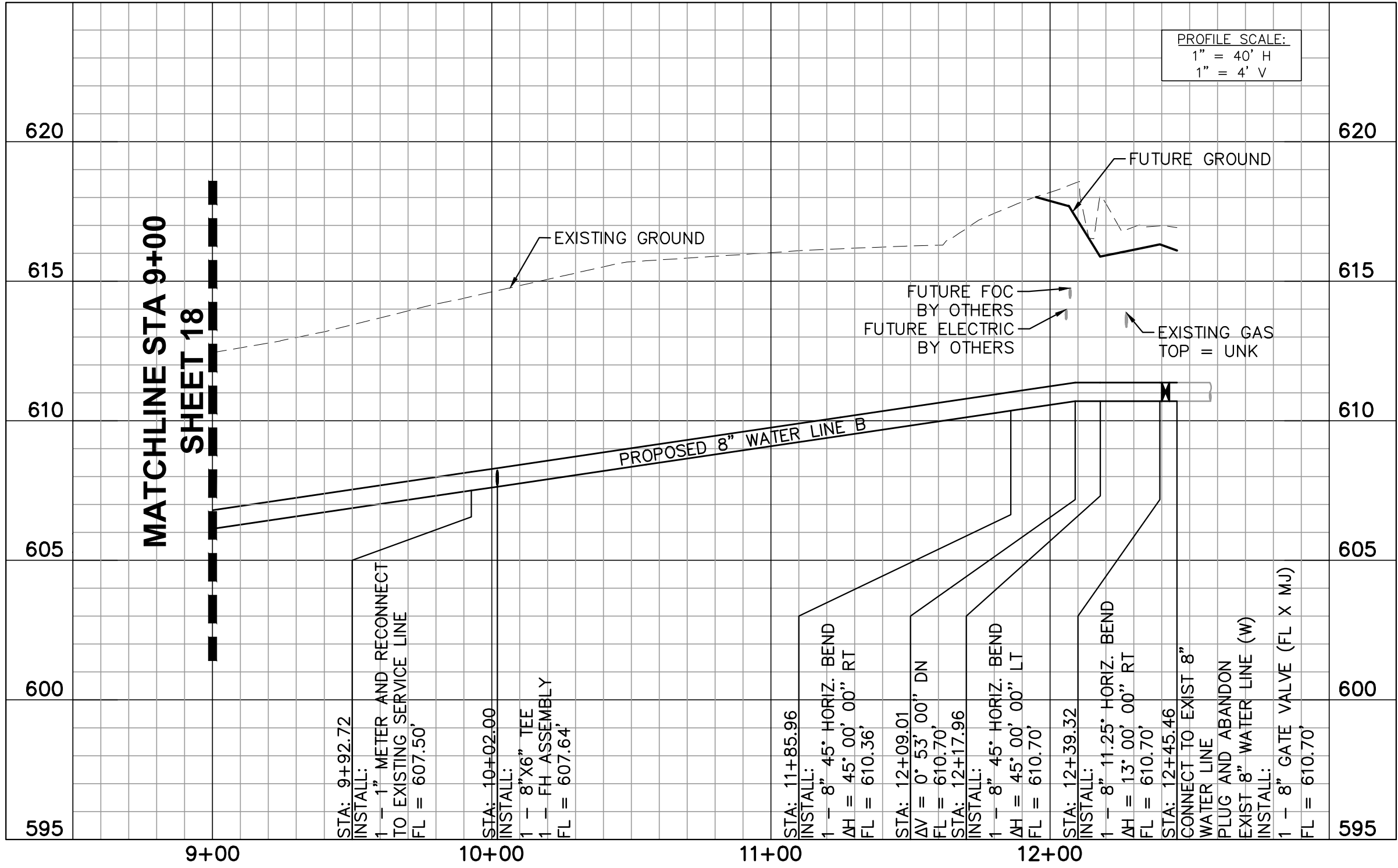
MATCHLINE STA 9+00  
SHEET 18



**SHEET NOTES:**

1. EXISTING WATER LINE TO REMAIN. FIRE HYDRANT, VALVES AND METERS ARE TO BE SET AT ROW LINE. CONNECT BACK TO EX 3/4" SERVICE LINES. INSTALL (2) 3/4" WATER METERS. WATER LINE REMAINS IN TXDOT ROW FROM IH-35 CL STA 1740+00 AND REMAINS TO THE SOUTH.
2. CONTRACTOR SHALL COORDINATE WITH CITY OF DENTON WATER FIELD OPERATIONS 48-HOURS IN ADVANCE OF PERFORMED SHUTDOWN AND TIE-IN.
3. VACUUM EXCAVATION SHALL BE SUBSIDIARY TO THE LOCATION OF EXISTING UTILITIES BID ITEM.
4. VERIFY FENCING REQUIREMENTS IF EXISTING FENCE IS REQUIRED TO BE REMOVED FOR CONSTRUCTION. IT SHALL BE REPLACED TO EXISTING CONDITIONS AND SHALL BE SUBSIDIARY TO PIPE INSTALLATION.
5. EXISTING SIGN TO REMAIN.

PROPOSED 8-INCH WATER LINE B STA 9+00 TO END



DATE: JULY 2022

DESIGN: CPT

DRAWN: NDCH

CHECKED: JRA

KHA NO.: 061024039

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CITY OF DENTON

IH-35E MAYHILL

UTILITY RELOCATIONS

PROPOSED 8-INCH WATER LINE B

STA 9+00 TO END

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By: [ ]  
Date: [ ]  
Revision: [ ]

07/27/2022

SEAL

REGISTERED PROFESSIONAL ENGINEER

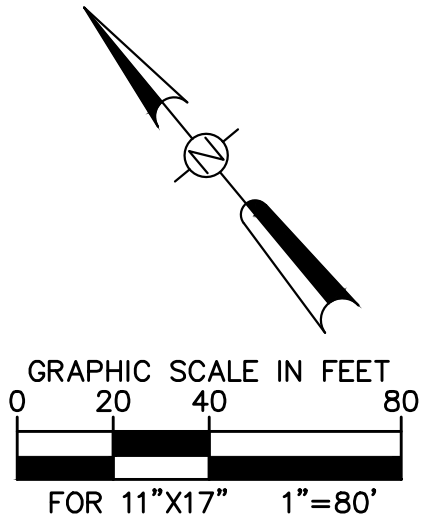
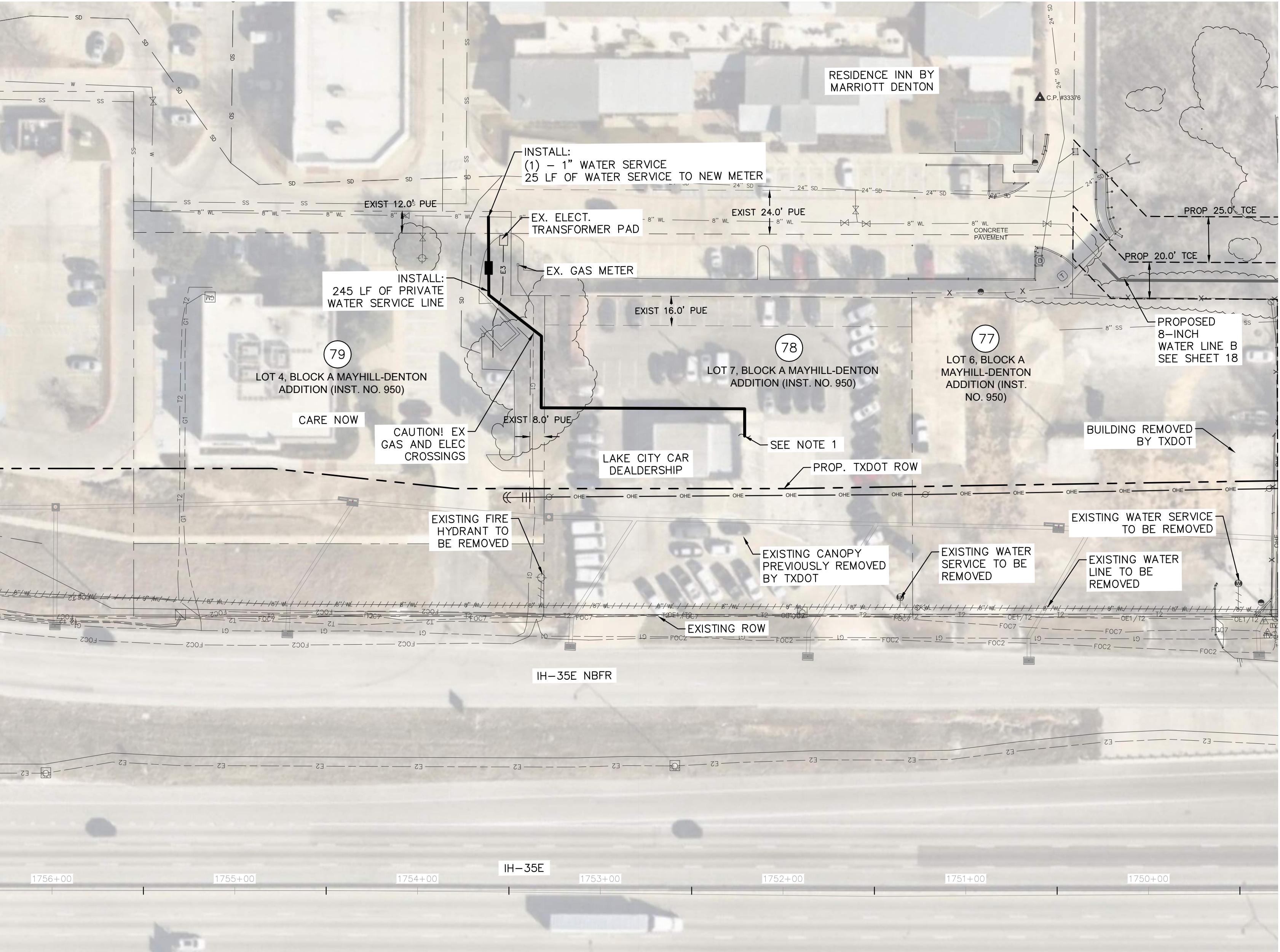
STATE OF TEXAS

CHRISTOPHER P. HORN

120045

By: [ ]  
Date: [ ]  
Revision: [ ]





**SHEET NOTES:**

1. COORDINATE WITH PROPERTY OWNER ON EXACT LOCATION OF EXISTING WATER SERVICE LINE CONNECTION.
2. CONTRACTOR SHALL ENSURE MINIMUM 2' CLEARANCE FOR ALL CROSSING UTILITIES.



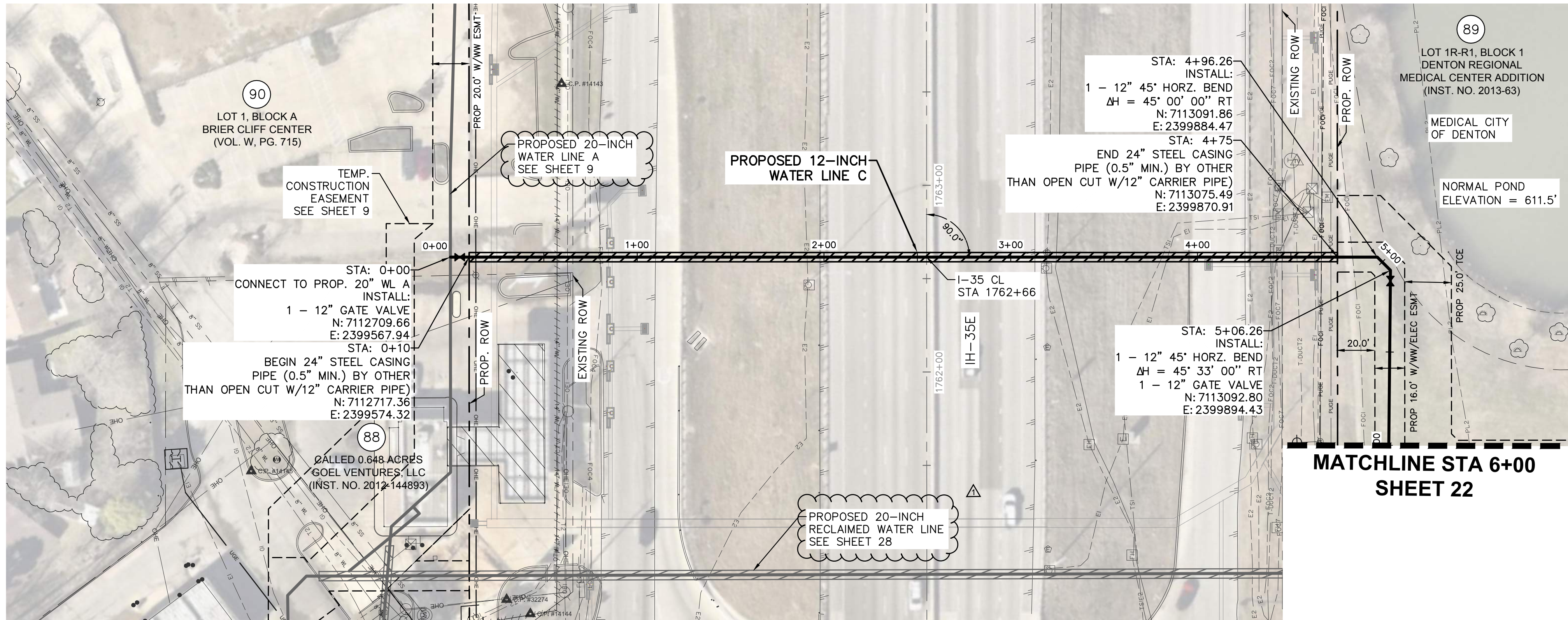
**CITY OF DENTON**  
**IH-35E MAYHILL**  
**UTILITY RELOCATIONS**

# PROPOSED WATER LINE B1 WATER SERVICE RECONNECTION

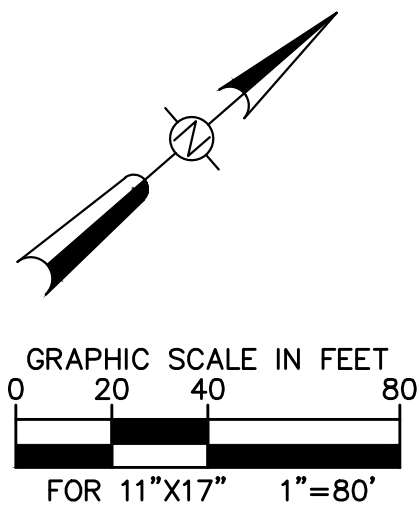
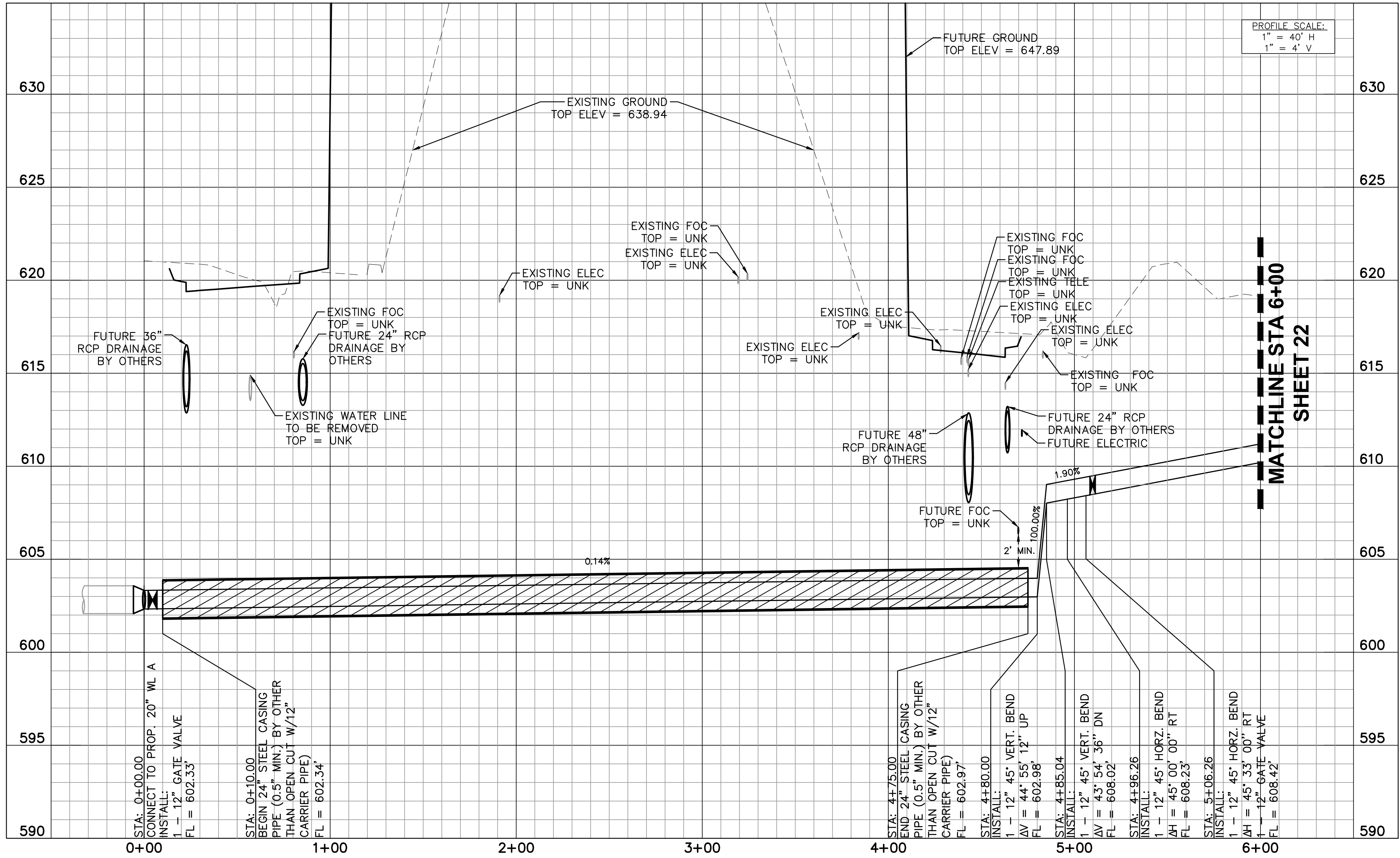
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PROPOSED 12-INCH WATER LINE C STA 0+00 TO 6+00



**SHEET NOTES:**

1. CONTRACTOR SHALL COORDINATE WITH CITY OF DENTON WATER FIELD OPERATIONS 48-HOURS IN ADVANCE OF PERFORMED SHUTDOWN AND TIE-IN.
2. VACUUM EXCAVATION SHALL BE SUBSIDIARY TO THE LOCATION OF EXISTING UTILITIES BID ITEM.

Kimley»Horn

TYPE Firm No. 928 P-87-355-851

801 Cherry St, Suite 1300 Ft. Worth, TX 76102

NO.

BY

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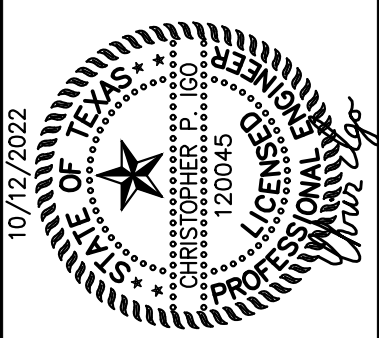
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CITY OF DENTON

IH-35E MAYHILL

UTILITY RELOCATIONS

PROPOSED 12-INCH WATER LINE C

STA 0+00 TO 6+00

DATE: OCTOBER 2022

DESIGN: CPI

DRAWN: NDCH

CHECKED: JRA

KHA NO.: 061024039

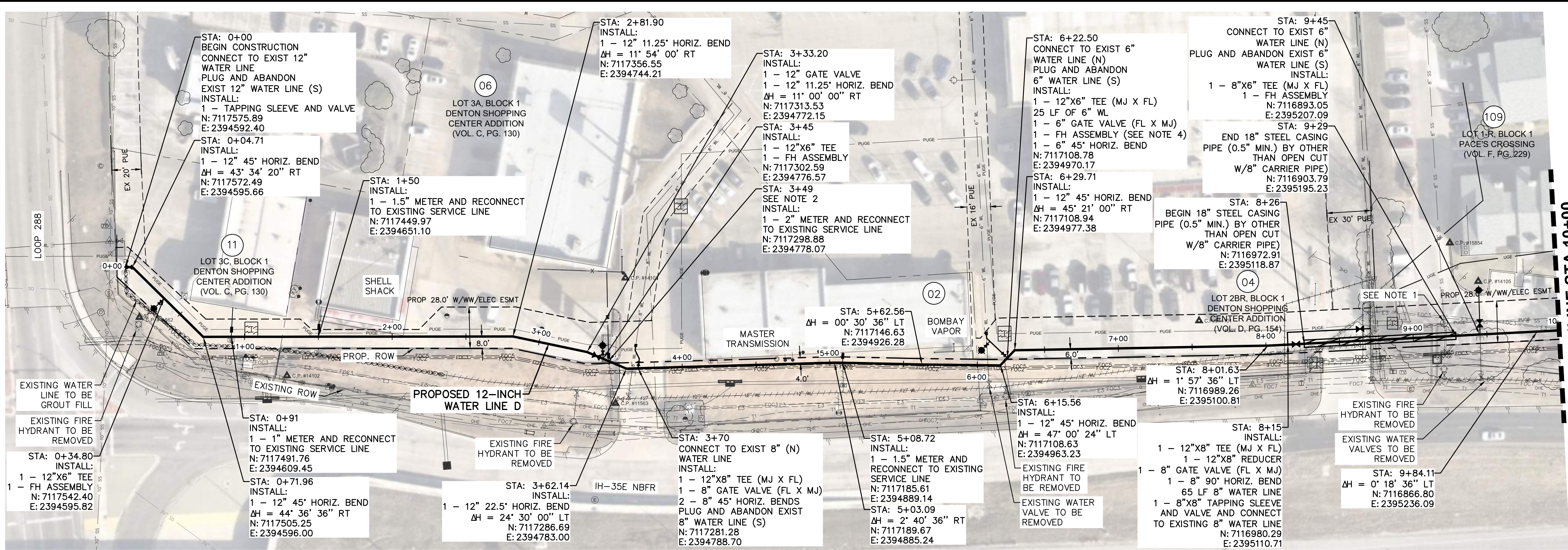
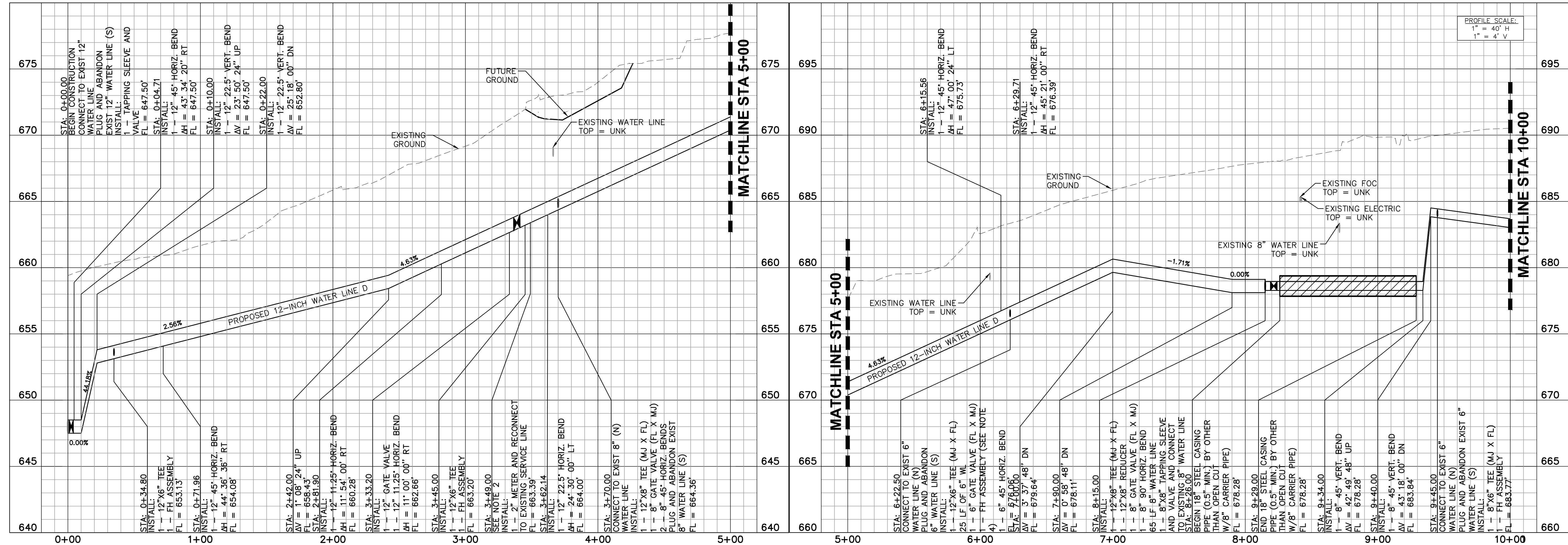
SHEET

21









- SHEET NOTES:**
- 8" SANITARY SEWER LINE AND MANHOLE TO REMAIN.
  - EXISTING MONUMENT SIGN MAY BE PRESENT DURING CONSTRUCTION. CONTRACTOR TO PROTECT AND NOT DISTURB.
  - WATER LINE TO REMAIN IN TXDOT ROW FROM IH-35 CL STA 1828+72 TO 1826+19.
  - FIRE HYDRANT TO BE PLACED OUTSIDE OF ANY DRIVE AISLE OR FIRE LANE.

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No.	Revision	By	Date

07/27/2022

Chris Kimley

**CITY OF DENTON**  
IH-35E MAYHILL  
UTILITY RELOCATIONS

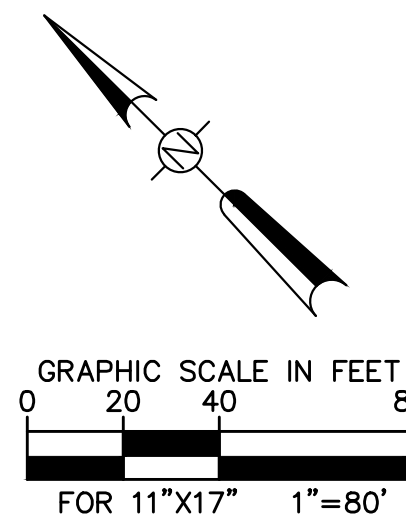
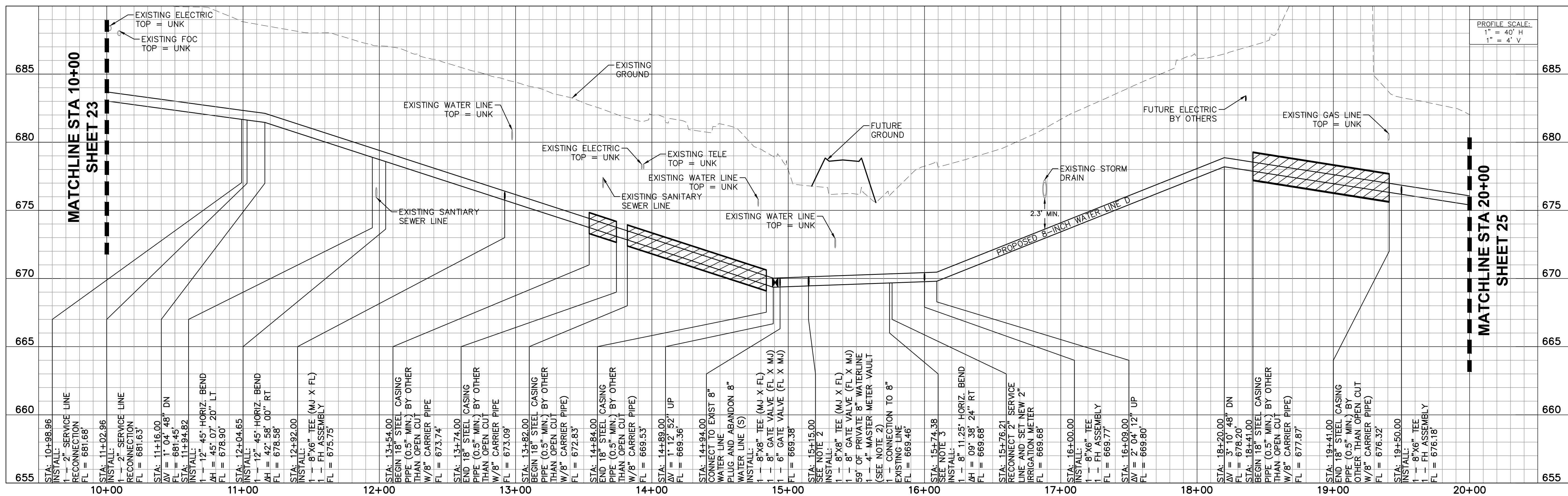
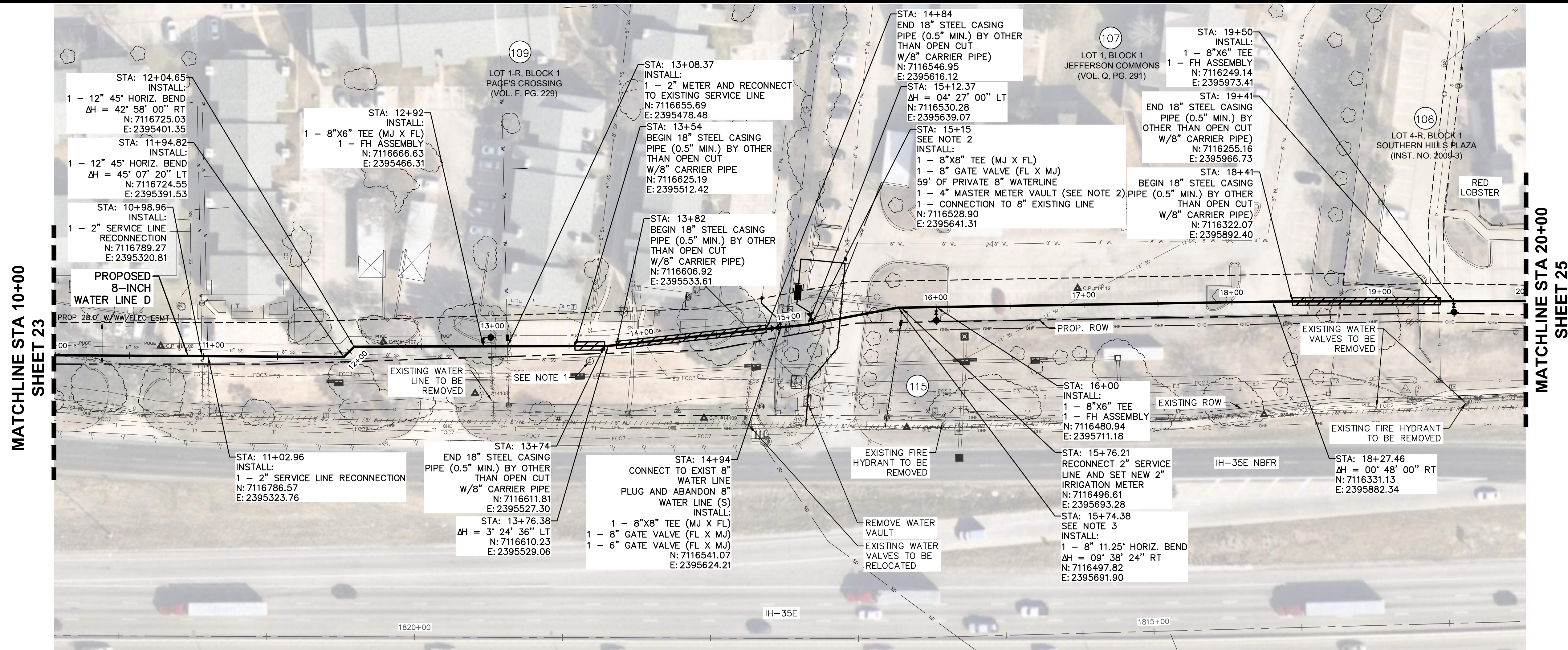
**PROPOSED 8 & 12-INCH WATER LINE D**  
STA 0+00 TO 10+00

DATE:	JULY 2022
DESIGN:	OPI
DRAWN:	NDCH
CHECKED:	JRA
KHA NO.:	061024039

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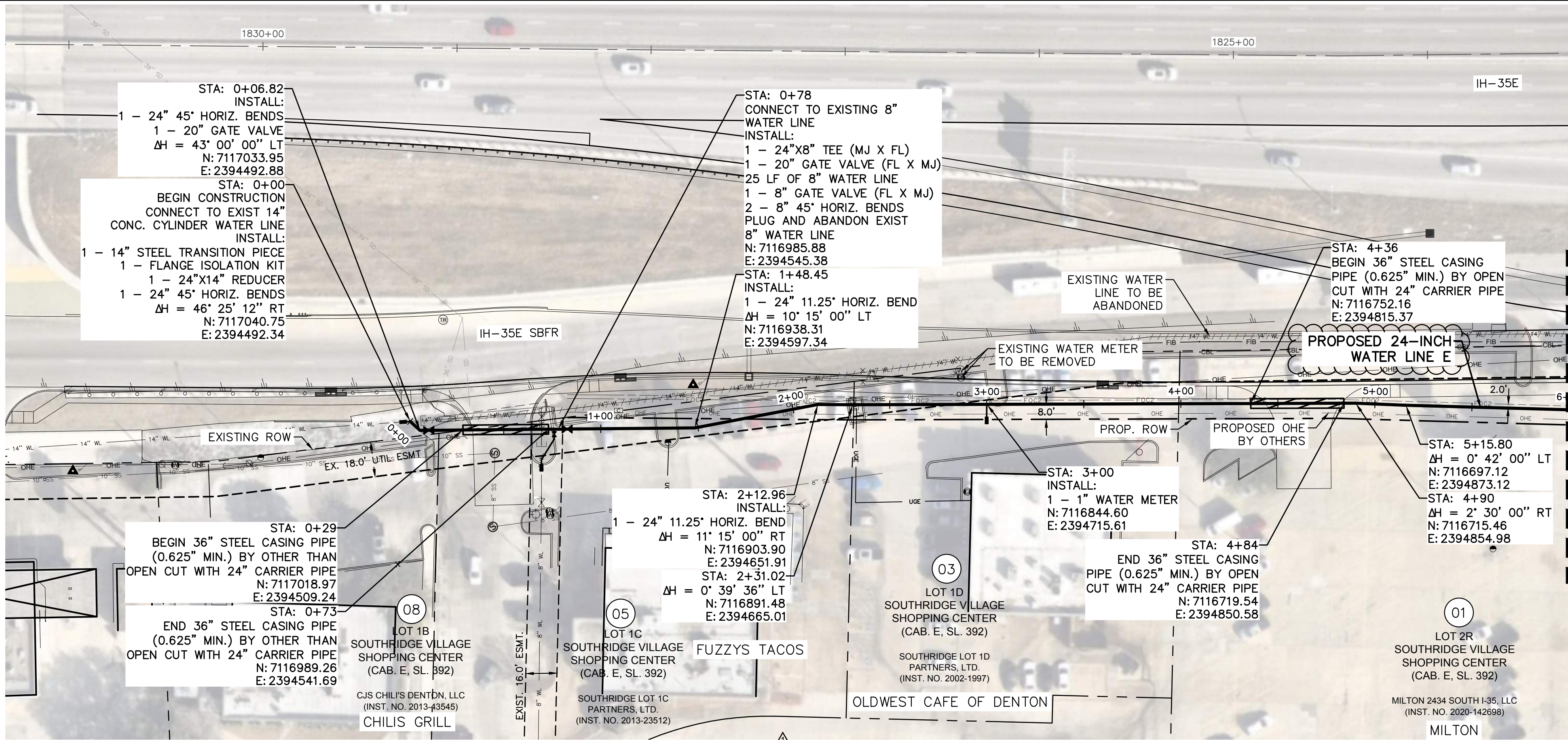




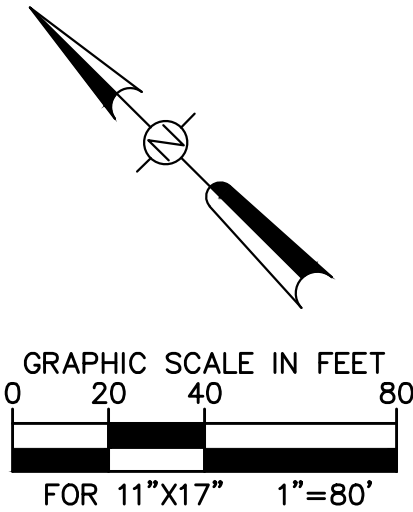
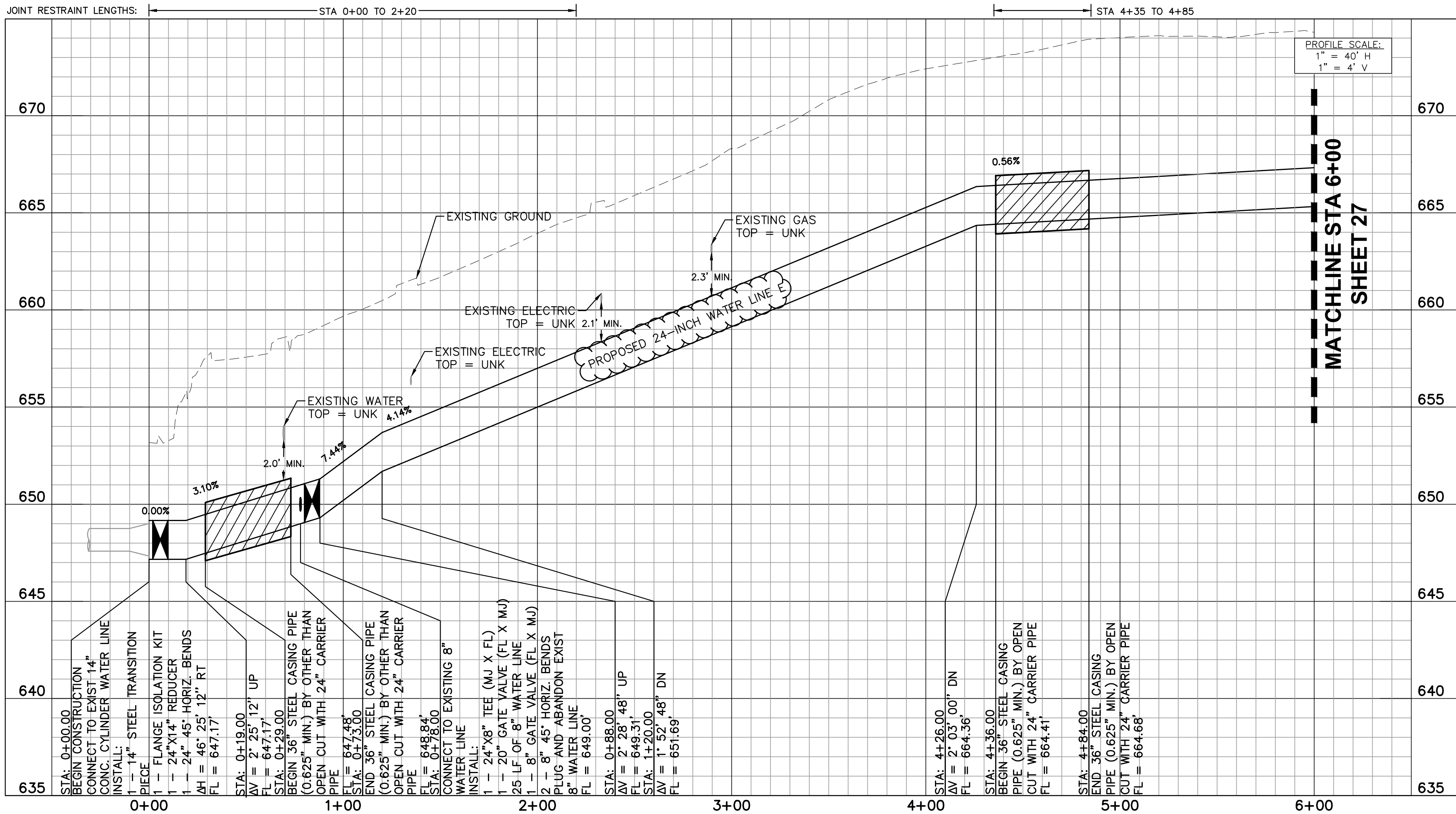




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PROPOSED 24-INCH WATER LINE E STA 0+00 TO 6+00



**SHEET NOTES:**

- CONTRACTOR SHALL COORDINATE WITH CITY OF DENTON WATER FIELD OPERATIONS 48-HOURS IN ADVANCE OF PERFORMED SHUTDOWN AND TIE-IN.
- VACUUM EXCAVATION SHALL BE SUBSIDIARY TO THE LOCATION OF EXISTING UTILITIES BID ITEM.
- WATER MAIN REMAINS IN EXISTING EASEMENT FROM STA 0+00 TO 0+90, AND THEN TRANSITIONS INTO TxDOT ROW. CONTRACTOR TO TAKE EXTREME CAUTION WORKING ADJACENT TO MULTIPLE OTHER UTILITIES IN THE CORRIDOR.

**Kimley»Horn**  
TYPE Firm No. 928 P-87-395-851  
801 Cherry St, Suite 1300 Ft. Worth, TX 76102  
BY Date  
CPI 10/12/2022  
REVISION  
PNE SIZE CHANGE TO REFLECT BID MATERIAL



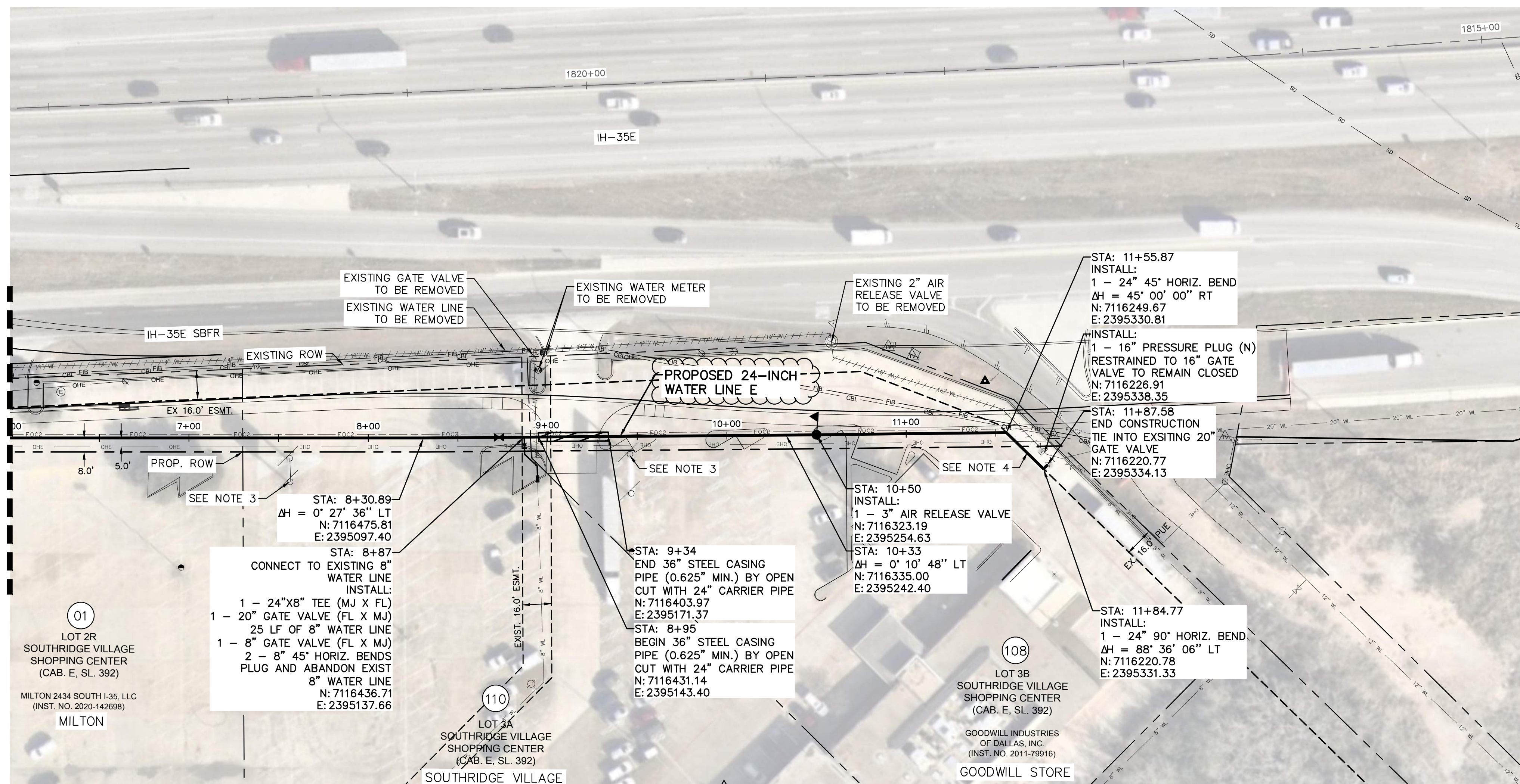
**CITY OF DENTON**  
IH-35E MAYHILL  
UTILITY RELOCATIONS

**PROPOSED 24-INCH WATER LINE E**  
STA 0+00 TO 6+00

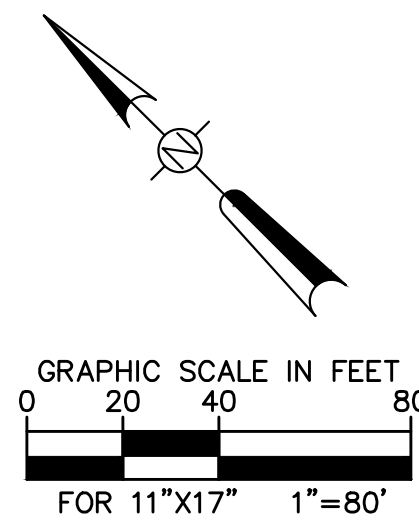
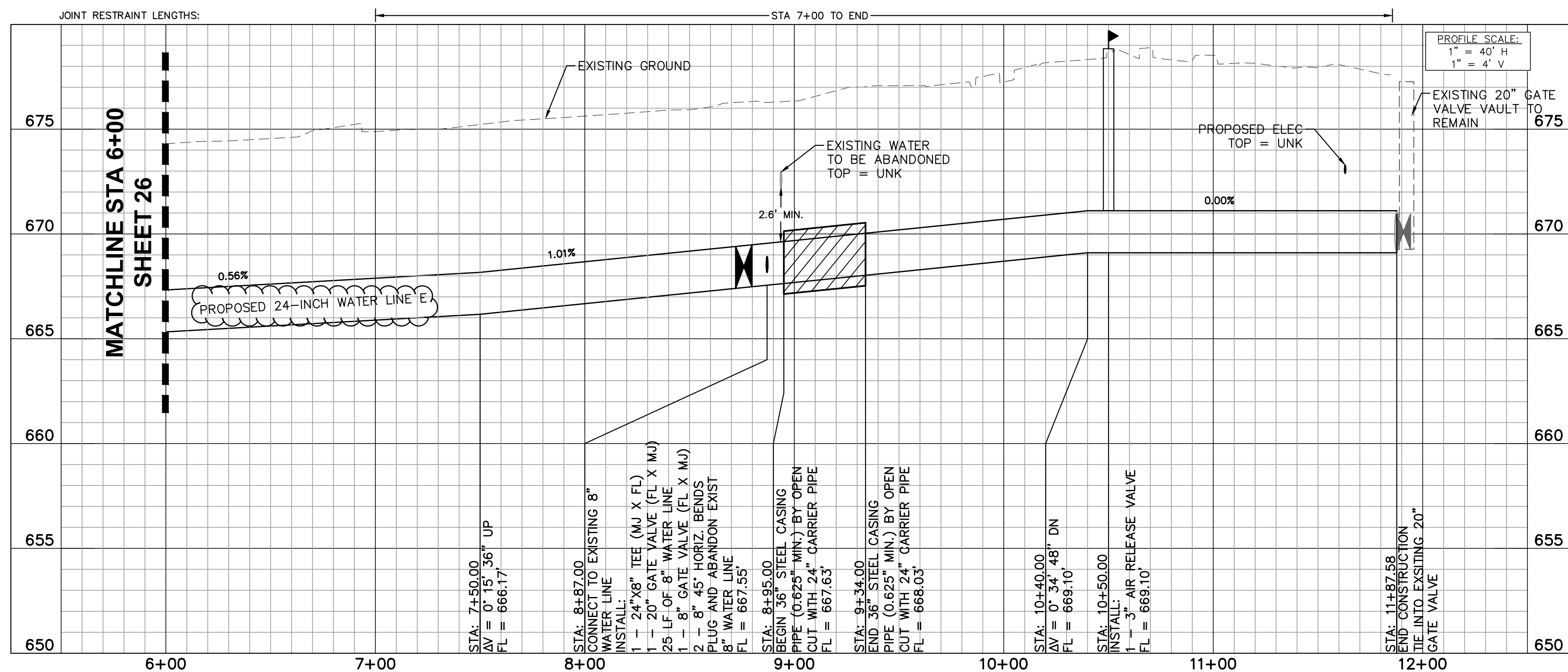
DATE: OCTOBER 2022  
DESIGN: CPI  
DRAWN: NDCH  
CHECKED: JRA  
KHA NO.: 061024039

SHEET  
**26**



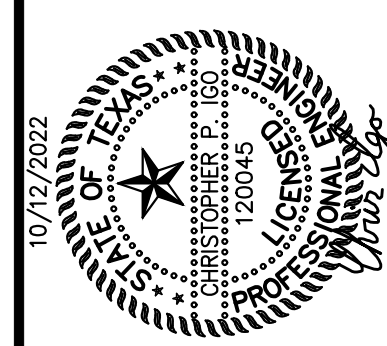


**PROPOSED 24-INCH WATER LINE E STA 6+00 TO END**



**SHEET NOTES:**

1. CONTRACTOR SHALL COORDINATE WITH CITY OF DENTON WATER FIELD OPERATIONS 48-HOURS IN ADVANCE OF PERFORMED SHUTDOWN AND TIE-IN.
2. VACUUM EXCAVATION SHALL BE SUBSIDIARY TO THE LOCATION OF EXISTING UTILITIES BID ITEM.
3. EXISTING SIGNS TO BE REMOVED BY OTHERS.
4. NO TEMPORARY CONSTRUCTION EASEMENTS ARE PROVIDED. CONTRACTOR TO COORDINATE CONSTRUCTION ACCESS WITH ADJACENT PROPERTY OWNERS.



# CITY OF DENTON

## IH-35E MAYHILL

### UTILITY RELOCATIONS

**PROPOSED 24-INCH WATER LINE E  
STA 6+00 TO END**

DATE:	OCTOBER 2022
DESIGN:	CPI
DRAWN:	NDCH
CHECKED:	JRA
KHA NO.:	061024039

SHEET

**27**



**METER VAULT INSTALLATION NOTES:**

- PIPE, METER SIZE AND VAULT SHALL BE APPROVED BY THE WATER UTILITIES DEPARTMENT DURING REVIEW PROCESS.
- PREFABRICATED OR POURED IN PLACE VAULTS SHALL HAVE PRE CAST-CLASS H OR POURED-CLASS S CONCRETE, REINFORCED WITH MINIMUM #4 O.C.E.W.
- METER VAULT MUST BE LOCATED BEHIND CURB AND OUT OF VEHICLE/PEDESTRIAN TRAFFIC. IN THE WATER UTILITY EASEMENT OR PUBLIC R.O.W. EASEMENT OR R.O.W. AREA MUST ACCOMMODATE A MINIMUM 18" BEYOND EACH SIDE OF THE VAULT. METER VAULT TO BE PLACED IN A PROTECTED GRASSY AREA.
- MAINLINE AND BYPASS VALVES WILL BE RESILIENT SEAT TYPE WITH CORROSION RESISTANT FUSION BONDED EPOXY COATING INSIDE AND OUT. NON-RISING STEM. ALL VALVES IN THE VAULT WILL HAVE HANDWHEELS. CUSTOMER VALVES SHALL BE LOCATED OUTSIDE OF VAULT AND EASEMENTS. ALL VALVES SHALL BE RIGHT-HAND TURN CLOSE.
- ALL METERS SHALL BE EQUIPPED WITH ENCODER REGISTERS AND HAVE TOUCH PADS INSTALLED ON THE LID FOR READING PURPOSES. ALL METERS SHALL BE INSTALLED WITH STRAINERS ON THE INLET SIDE OF THE METER.
- HATCH OPENING WILL BE 1" ALUMINUM DIAMOND PLATE COVER WITH EXTRUDED ALUMINUM FRAME. HATCH TO BE FURNISHED WITH TYPE 316 STAINLESS STEEL SHAP AND LOCK WITH BRASS HINGES.
- ALL VAULTS OVER 4 FT. IN DEPTH SHALL HAVE A LADDER INSTALLED AND SECURED TO THE VAULT WALL AT HATCH ENTRY.
- VAULT BEDDING SHALL BE GRADE 4 STANDARD CRUSHED AGGREGATE, 1 IN. SIEVE.
- THE TOP OF METER VAULT SHALL BE SET AT AN ELEVATION SUCH THAT THE SURROUNDING GROUND SLOPES AWAY FROM THE VAULT.
- FOR 3" METERS AND ABOVE ON PROJECTS ON WHICH THE CITY INSTALLS THE TAP IN THE MAINLINE AND STUBS OUT THE SERVICE LINE TO THE BACK OF CURB, THE CONTRACTOR IS RESPONSIBLE FOR INSTALLATION OF ALL REMAINING PIPING FROM THE STUBOUT BEHIND THE CURB THROUGH THE VAULT.
- FOR WATER METER VAULT INSTALLATIONS WHERE THE METER IS NOT EQUIPPED WITH AN INTEGRAL TEST PORT, A SEPARATE SPOOL PIECE WILL BE PROVIDED BETWEEN THE METER AND THE DOWNSTREAM GATE VALVE. THE SPOOL SHALL BE EQUIPPED WITH A TEST PORT AND THREADED BRASS FLUG SIDE FOR THE MANUFACTURER'S REQUIREMENTS OR AS FOLLOWS.
- WHERE NOT SPECIFICALLY NOTED, ALL FLANGED PIPE SHALL BE DUCTILE IRON PIPE WITH DUCTILE IRON FLANGES THREADED ON.

**METER SIZE**      **TEST PORT**

3"	1 1/2"
4"	2"
6"	3"

**NOTES:**

- BOX SHALL BE PARKS TYPE OR APPROVED EQUIVALENT, IN GENERAL DIMENSIONAL EQUIVALENT TO THAT SHOWN.
- LEAVE-OUT TO BE GROUDED WITH NON-SHRINK GROUT WHEN SERVICE CONNECTION IS MADE.
- REFER TO METER VAULT INSTALLATION NOTES.

WATER VAULT INSTALLATION NOTES

W100

**3" AND 4" METER VAULTS**

**PLAN VIEW**

**VAULT DIMENSIONS**

L	W	H
6'-0"	3'-6"	4'-0"

**ELEVATION**

**NOTES:**

- BOX SHALL BE PARKS TYPE OR APPROVED EQUIVALENT, IN GENERAL DIMENSIONAL EQUIVALENT TO THAT SHOWN.
- LEAVE-OUT TO BE GROUDED WITH NON-SHRINK GROUT WHEN SERVICE CONNECTION IS MADE.
- REFER TO METER VAULT INSTALLATION NOTES.

W101

**6" METER VAULT**

**PLAN VIEW**

**VAULT DIMENSION**

L	W	H
11'-0"	7'-0"	4'-0"

**ELEVATION**

**NOTES:**

- BOX SHALL BE PARKS TYPE OR APPROVED EQUIVALENT, IN GENERAL DIMENSIONAL EQUIVALENT TO THAT SHOWN.
- LEAVE-OUT TO BE GROUDED WITH NON-SHRINK GROUT WHEN SERVICE CONNECTION IS MADE.
- REFER TO METER VAULT INSTALLATION NOTES.

W102

**6" AND 8" FIRE SERVICE METER VAULTS**

**PLAN VIEW**

**VAULT DIMENSIONS**

L	W	H
13'-0"	7'-0"	4'-0"

**ELEVATION**

**NOTES:**

- BOX SHALL BE PARKS TYPE OR APPROVED EQUIVALENT, IN GENERAL DIMENSIONAL EQUIVALENT TO THAT SHOWN.
- LEAVE-OUT TO BE GROUDED WITH NON-SHRINK GROUT WHEN SERVICE CONNECTION IS MADE.
- REFER TO METER VAULT INSTALLATION NOTES.

W103

**VAULT CONSTRUCTION VERTICAL GATE VALVE 24" AND LARGER**

**PLAN VIEW**

**SECTION A-A**

**NOTES:**

- POLYURETHANE CUSHION PAD.
- FOR 24" AND LARGER VALVES, PROVIDE SPUR GEAR AND VAULT.
- FOR 30" AND LARGER VALVES, PROVIDE AND INTEGRALLY CAST BYPASS.
- PROVED 2" CORPORATION AND CURB STOPS A MAX. OF 12" FROM EACH END OF GATE VALVE.

W104

**VAULT CONSTRUCTION HORIZONTAL GATE VALVE 24" AND LARGER**

**PLAN**

**PROFILE**

**NOTES:**

- COORDINATE DIMENSIONS NOTED WITH "x" WITH VALVE WFL.
- FOR 24" AND LARGER VALVES, PROVIDE SPUR GEAR AND VAULT.
- FOR 30" AND LARGER VALVES, PROVIDE AND INTEGRALLY CAST BYPASS.

W105

**VAULT CONSTRUCTION HORIZONTAL GATE VALVE 24" AND LARGER**

**PLAN**

**PROFILE**

**NOTES:**

- COORDINATE DIMENSIONS NOTED WITH "x" WITH VALVE WFL.
- FOR 24" AND LARGER VALVES, PROVIDE SPUR GEAR AND VAULT.
- FOR 30" AND LARGER VALVES, PROVIDE AND INTEGRALLY CAST BYPASS.

W106A

**VAULT CONSTRUCTION HORIZONTAL GATE VALVE 24" AND LARGER**

**PLAN**

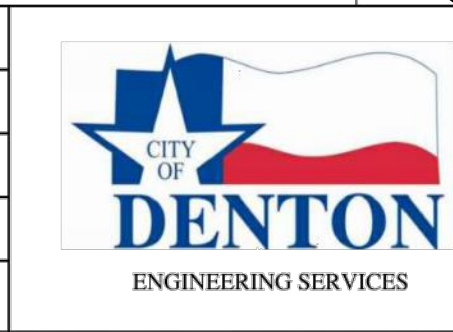
**PROFILE**

**NOTES:**

- COORDINATE DIMENSIONS NOTED WITH "x" WITH VALVE WFL.
- FOR 24" AND LARGER VALVES, PROVIDE SPUR GEAR AND VAULT.
- FOR 30" AND LARGER VALVES, PROVIDE AND INTEGRALLY CAST BYPASS.

W106B

ENTERED BY	PROJECT #
DESIGNED BY	DATE
CHECKED BY	REVISION
PROJ. ENGR.	
PATH	



# STANDARD DETAILS

## WATER DETAILS

DATE	SCALE
JAN. 2022	HOR 1"= N.T.S.
SHEET No.	VER 1"= N/A
1 OF 24	

CERTIFICATION: THIS CITY OF DENTON STANDARD DETAIL SHEET IS AUTHORIZED FOR USE IN THIS PROJECT BY THE ENGINEER WHOSE SEAL APPEARS HEREON, AND WHO CERTIFIES THE CONTENT OF THE DETAILS AND NOTES HEREIN HAVE NOT BEEN ALTERED AND ASSUMES RESPONSIBILITY FOR APPROPRIATE USE OF THE STANDARDS WITHIN THIS SHEET.

**Kimley»Horn**

TYPE Firm No. 928 P. 817-335-6511  
801 Cherry St., Suite 1300 Ft. Worth, TX 76102

No.	Revision	By	Date



**CITY OF DENTON**

**IH-35E MAYHILL**

**UTILITY RELOCATIONS**

### CITY STANDARD DETAILS 1

DATE:	JULY 2022
DESIGN:	OPT
DRAWN:	NDCH
CHECKED:	JRA
KHA NO.:	061024039





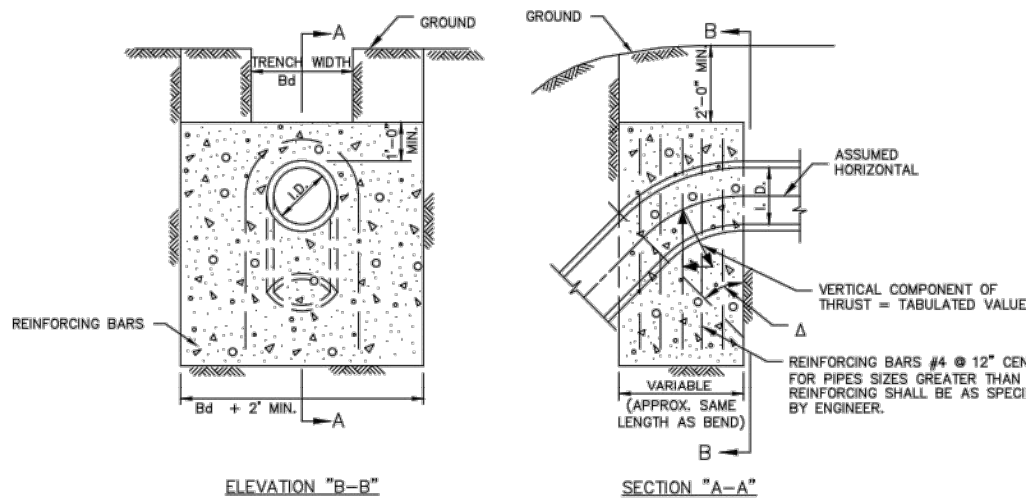


GENERAL NOTES FOR ALL THRUST BLOCKS:

1. RESTRAINED JOINTS SHALL BE REQUIRED FOR ALL WATER MAINS 16" AND LARGER. JOINT RESTRAINT SHALL BE DESIGNED TO ACCOMMODATE THE ENTIRE DESIGN LOAD AS INDICATED IN THE APPLICABLE PIPE MATERIAL SPECIFICATION. THRUST BLOCKING SHALL BE PROVIDED ON ALL FITTINGS AND DEAD-ENDS FOR PIPE 24" AND SMALLER.
2. CONCRETE FOR BLOCKING SHALL BE CLASS B.
3. ALL CALCULATIONS ARE BASED ON INTERNAL PRESSURE OF 200 PSI FOR DUCTILE IRON, P.V.C., AND 150 PSI FOR CONCRETE PIPE.
4. VOLUMES OF THRUST BLOCKS ARE NET VOLUMES OF CONCRETE TO BE FURNISHED. THE CORRESPONDING WEIGHT OF THE CONCRETE (CLASS B) IS EQUAL TO OR GREATER THAN THE VERTICAL COMPONENT OF THE THRUST ON THE VERTICAL BEND.
5. WALL THICKNESS (T) ASSUMED HERE FOR ESTIMATING PURPOSES ONLY.
6. THE SOIL BEARING PRESSURES ARE BASED ON 1,000 LBS./S.F. IN SOIL AND 2,000 LBS./S.F. IN ROCK.
7. POUR CONCRETE FOR BLOCK AGAINST UNDISTURBED EARTH.
8. DIMENSIONS MAY BE VARIED AS REQUIRED BY FIELD CONDITIONS AND AS DIRECTED BY THE CITY. THE VOLUME OF CONCRETE BLOCKING SHALL NOT BE LESS THAN SHOWN HERE.
9. USE POLYETHYLENE WRAP OR EQUAL AS BOND BREAKER BETWEEN CONCRETE AND BEND, TEE, OR PLUG.
10. CONCRETE SHALL NOT EXTEND BEYOND JOINTS.

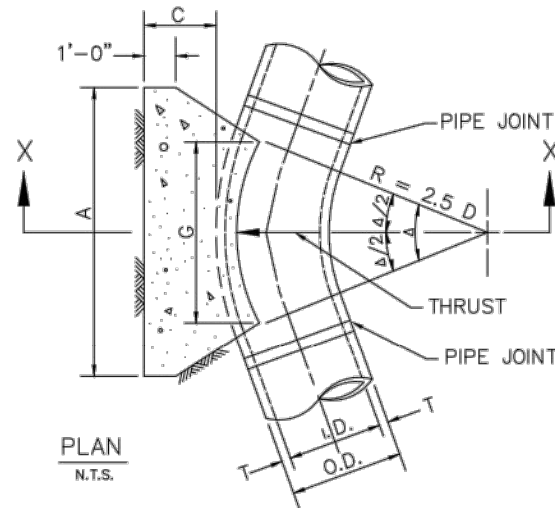
THRUST BLOCK  
GENERAL NOTES

W700



VERTICAL THRUST BLOCK  
AT PIPE BEND

W701



TABLES OF DIMENSIONS AND QUANTITIES

$\Delta = 11.25^\circ$									
EARTH					ROCK				
I.D. (IN.)	G (FT.)	THRUST (TONS)	A (FT.)	B (FT.)	I.D. (IN.)	G (FT.)	THRUST (TONS)	A (FT.)	B (FT.)
4.68	0.4	1.0	1.5	0.1	4.68	0.8	2.0	1.5	0.1
10.12	0.6	2.2	1.5	0.1	10.12	1.1	4.4	2.0	0.3
16.18	0.8	5.0	2.0	0.3	16.18	1.6	9.0	3.0	0.5
20	0.9	6.2	2.0	0.3	20	1.8	12.3	3.5	0.7
24	1.1	8.9	3.0	0.5	24	2.2	17.7	4.0	1.0

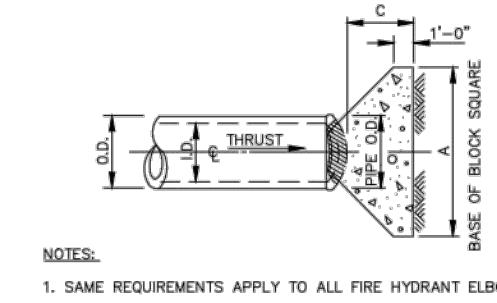
W702A

$\Delta = 30^\circ$									
EARTH					ROCK				
I.D. (IN.)	G (FT.)	THRUST (TONS)	A (FT.)	B (FT.)	I.D. (IN.)	G (FT.)	THRUST (TONS)	A (FT.)	B (FT.)
4.68	1.0	2.6	2.0	1.5	4.68	1.5	3.9	2.0	0.2
10.12	1.5	5.9	2.5	2.0	10.12	2.2	8.7	2.5	0.5
16.18	2.2	13.2	3.5	4.0	16.18	3.2	19.5	4.5	1.1
20	2.4	16.3	4.5	4.0	20	3.6	24.1	5.5	1.5
24	2.9	23.4	6.0	4.0	24	4.3	34.6	8.0	2.3

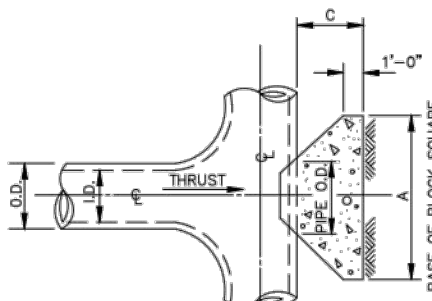
TABLES OF DIMENSIONS AND QUANTITIES

$\Delta = 67.50^\circ$									
EARTH					ROCK				
I.D. (IN.)	G (FT.)	THRUST (TONS)	A (FT.)	B (FT.)	I.D. (IN.)	G (FT.)	THRUST (TONS)	A (FT.)	B (FT.)
4.68	2.1	5.6	3.0	2.0	4.68	2.7	7.1	5.0	1.5
10.12	3.1	12.6	5.5	2.5	10.12	4.0	16.0	6.5	2.5
16.18	4.7	28.3	7.5	4.0	16.18	6.0	36.0	9.0	4.0
20	5.2	34.9	8.0	4.0	20	6.6	44.4	10.0	4.5
24	6.2	50.3	11.5	4.5	24	7.9	64.0	14.5	5.0

W702B



PLAN OF PLUG THRUST BLOCK

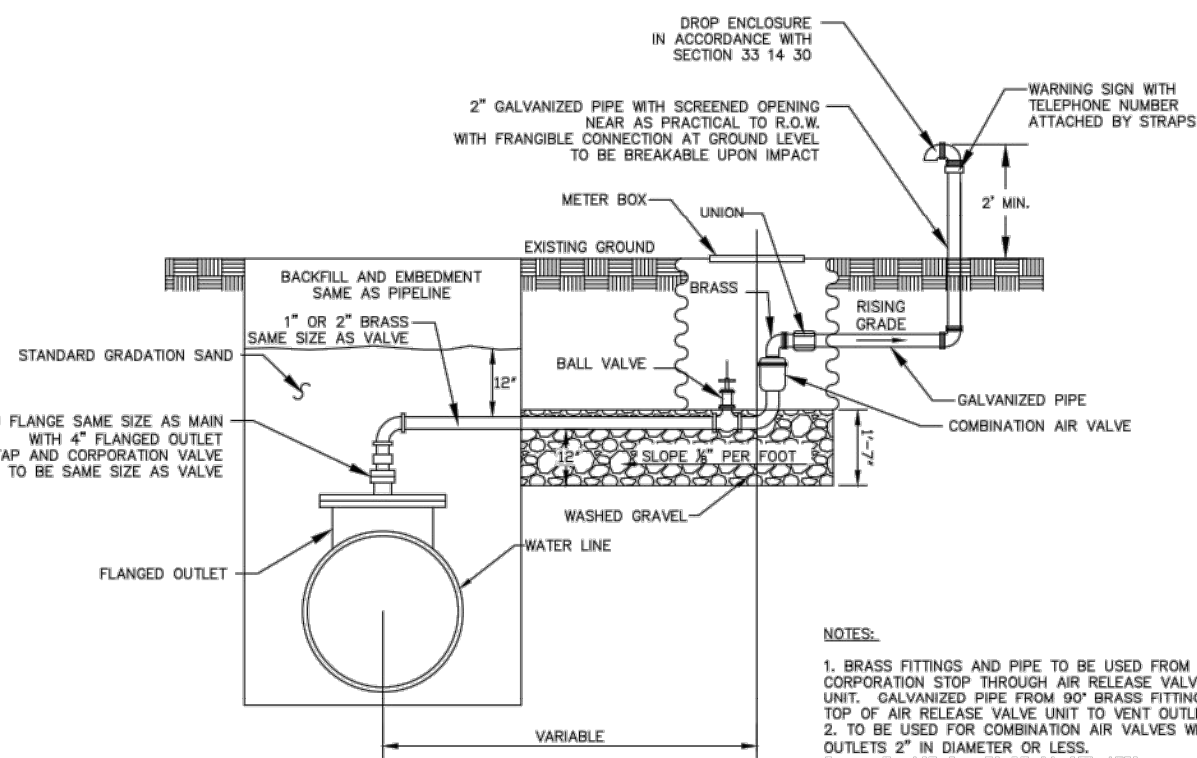


PLAN OF TEE THRUST BLOCK

EARTH									
I.D. (IN.)	THRUST (TONS)	C (FT.)	A (FT.)	B (FT.)	I.D. (IN.)	THRUST (TONS)	C (FT.)	A (FT.)	B (FT.)
4.68	5.1	1.5	2.5	0.3	4.68	5.1	1.5	2.5	0.3
10.12	11.3	1.5	3.5	0.6	10.12	11.3	1.5	3.5	0.6
16.18	25.5	2.0	4.5	1.6	16.18	25.5	2.0	4.5	1.6
20	31.5	2.0	6.0	1.9	20	31.5	2.0	6.0	1.9
24	45.2	2.5	7.0	3.1	24	45.2	2.5	7.0	3.1

HORIZONTAL THRUST BLOCK  
AT TEES AND PLUGS

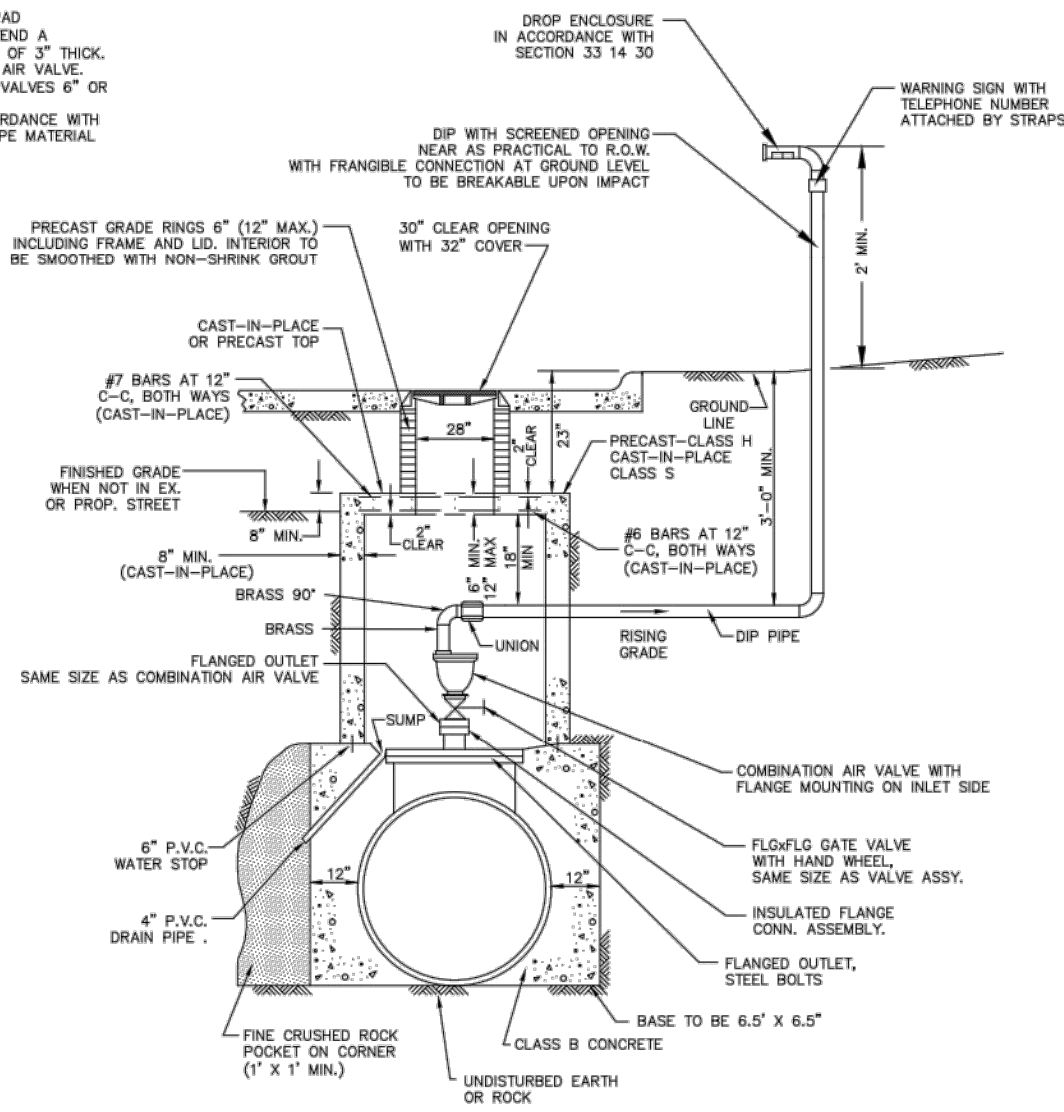
W703



COMBINATION AIR VALVE  
ASSEMBLIES 1" AND 2"

W801

- NOTES:
1. WHEN NOT IN PAVING OR WALK, A CLASS P1 CONCRETE PAD REINFORCED W/ #3 BARS AT 12" C-C EACH WAY, SHALL EXTEND A MINIMUM OF 2' AROUND THE VALVE AND SHALL BE A MINIMUM OF 3" THICK.
  2. VENT PIPE SIZE TO EQUAL OUTLET SIZE OF COMBINATION AIR VALVE.
  3. MINIMUM M.H. DIA. TO BE 6" 7" DIA. M.H. REQUIRED FOR VALVES 6" OR GREATER.
  4. FLANGED CONNECTION TO WATER PIPE SHALL BE IN ACCORDANCE WITH CITY OF DENTON SPEC. SECTION 13 14 30 ACCORDING TO PIPE MATERIAL TYPE.



COMBINATION AIR VALVE  
ASSEMBLIES 3" AND LARGER

W802

ENTERED BY	PROJECT #	
DESIGNED BY	DATE	REVISION
CHECKED BY		
PROJ. ENGR.		
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STANDARD DETAILS  
WATER DETAILS

DATE JAN. 2022	SCALE HOR 1" = N.T.S. VER 1" = N/A
SHEET No. 3 OF 24	

CERTIFICATION:  
THIS CITY OF DENTON STANDARD  
DETAIL SHEET IS AUTHORIZED FOR  
USE IN THIS PROJECT BY THE  
ENGINEER WHOSE SEAL APPEARS  
HEREON, AND WHO CERTIFIES THE  
CONTENT OF THE DETAILS AND NOTES  
HEREIN HAVE NOT BEEN ALTERED  
AND ASSUMES RESPONSIBILITY FOR  
APPROPRIATE USE OF THE  
STANDARDS WITHIN THIS SHEET.

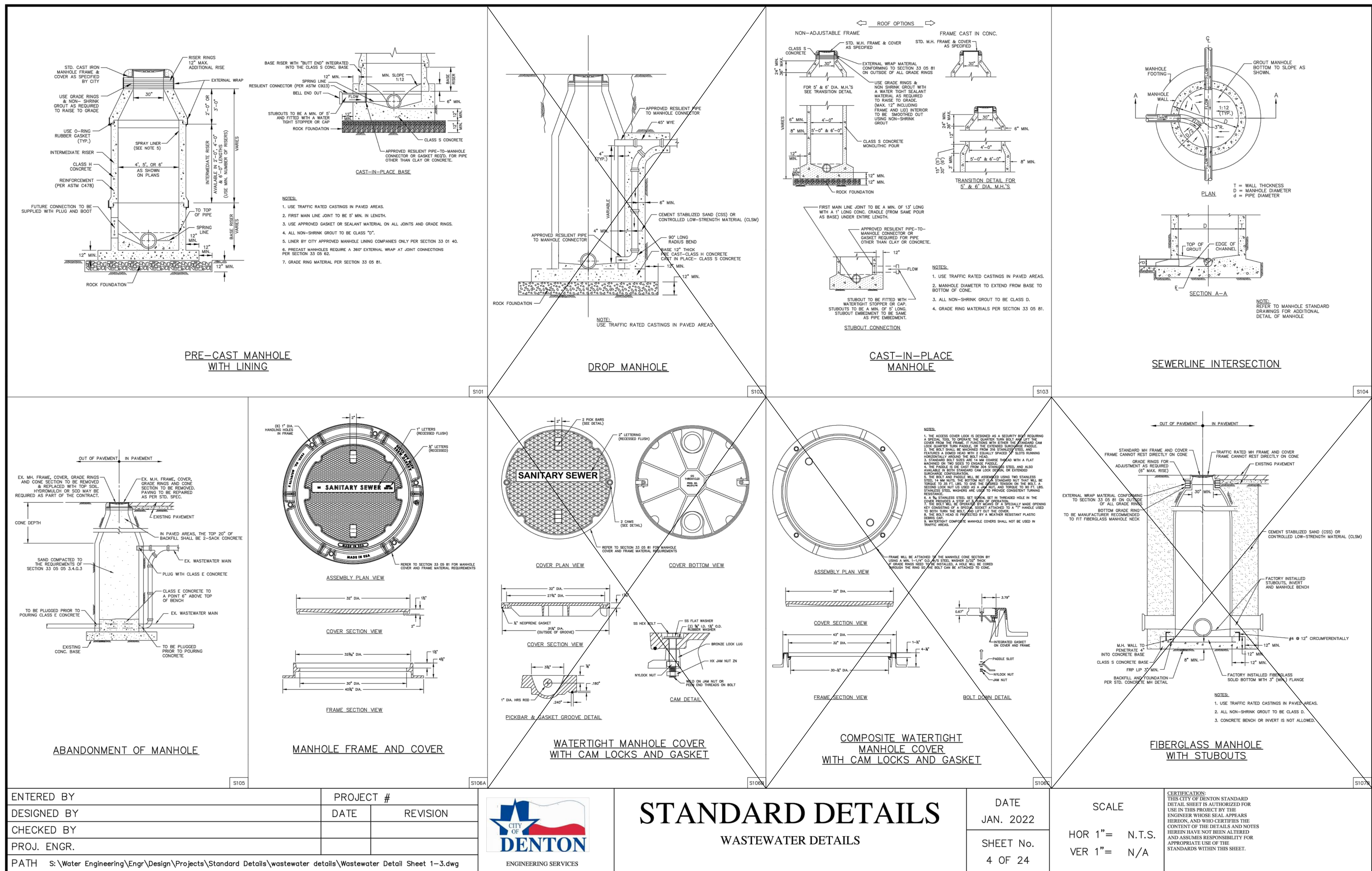
DATE:	JULY 2022
DESIGN:	CPI
DRAWN:	NDCH
CHECKED:	JRA
KHA NO.:	061024039

SHEET

31

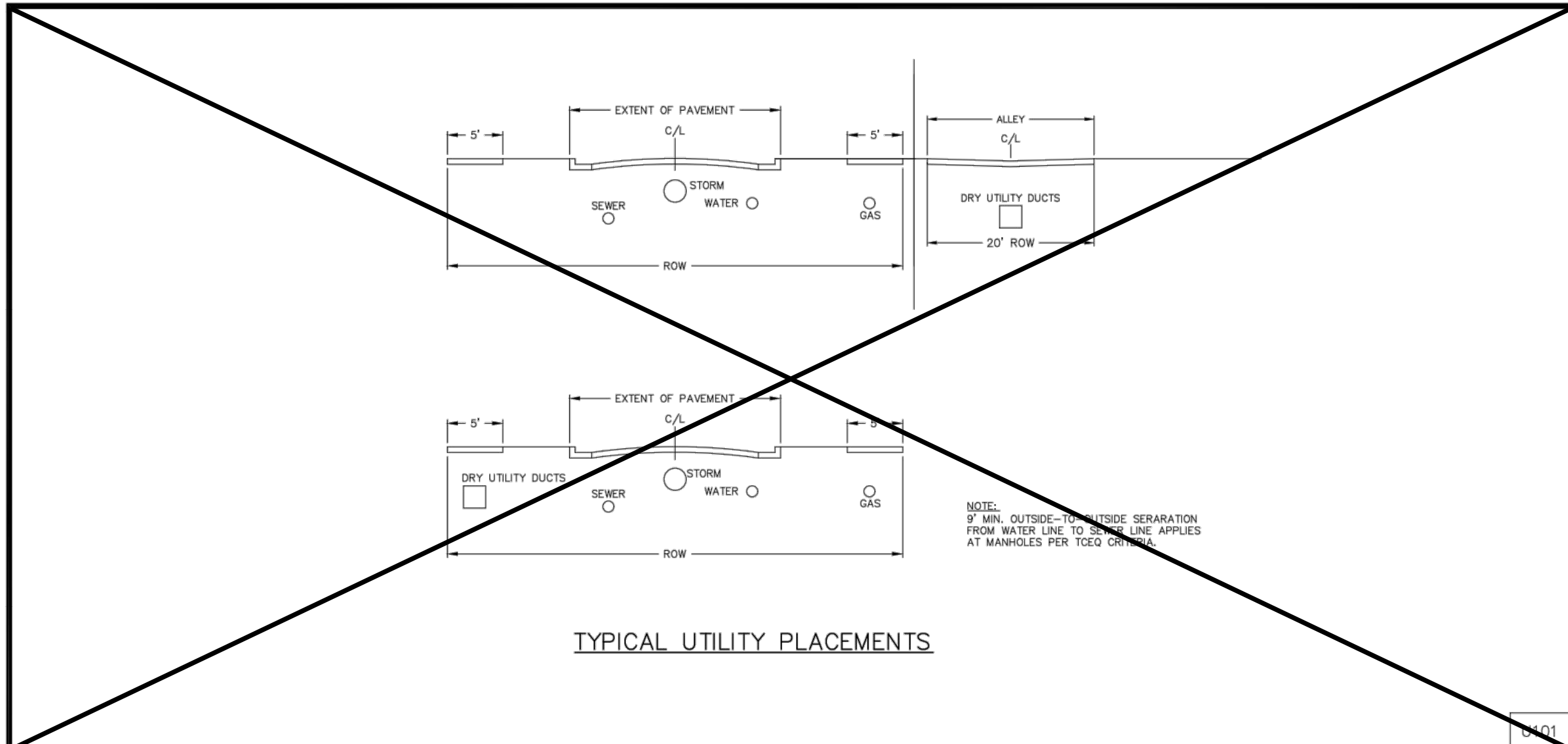






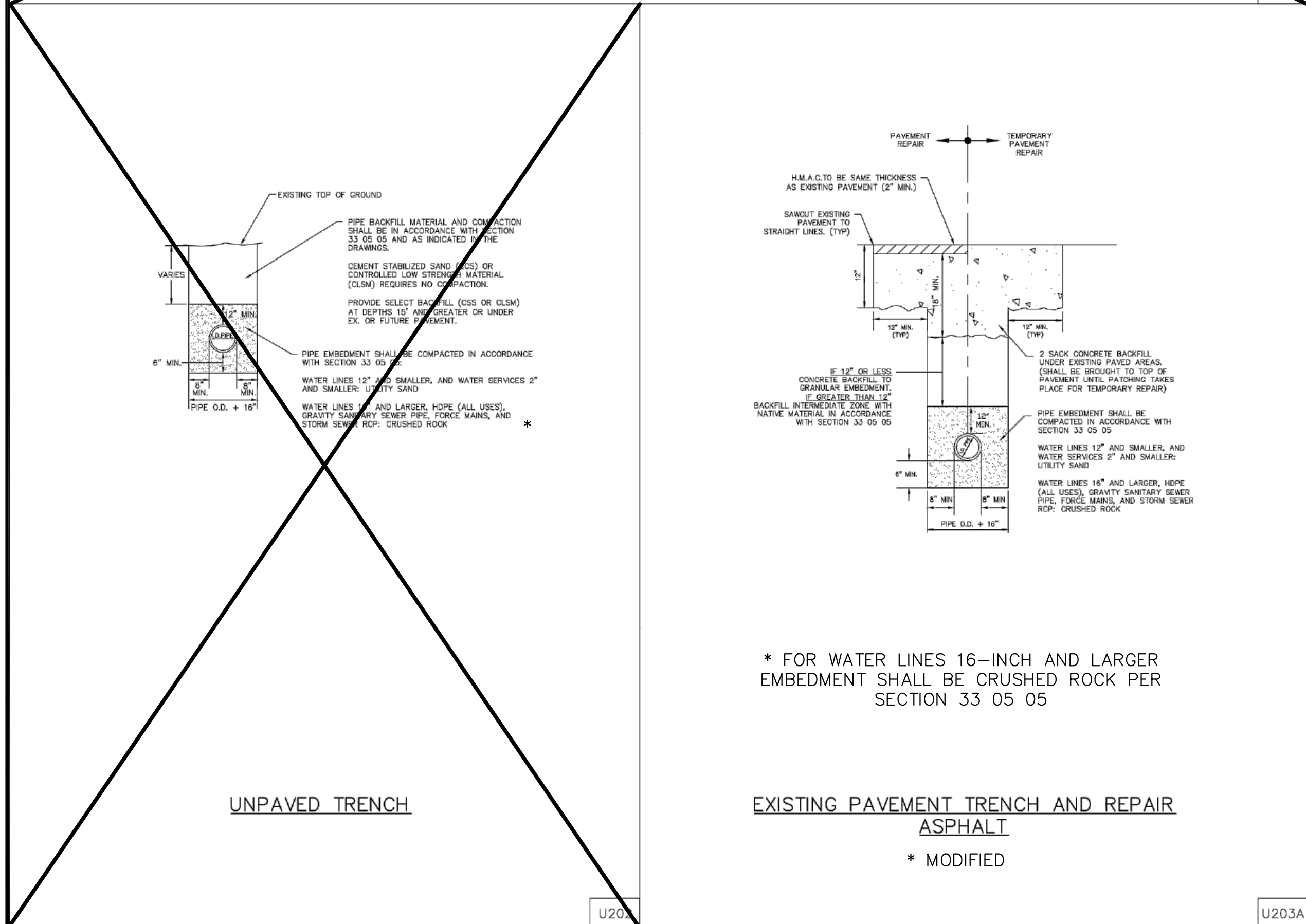


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TYPICAL UTILITY PLACEMENTS

U201

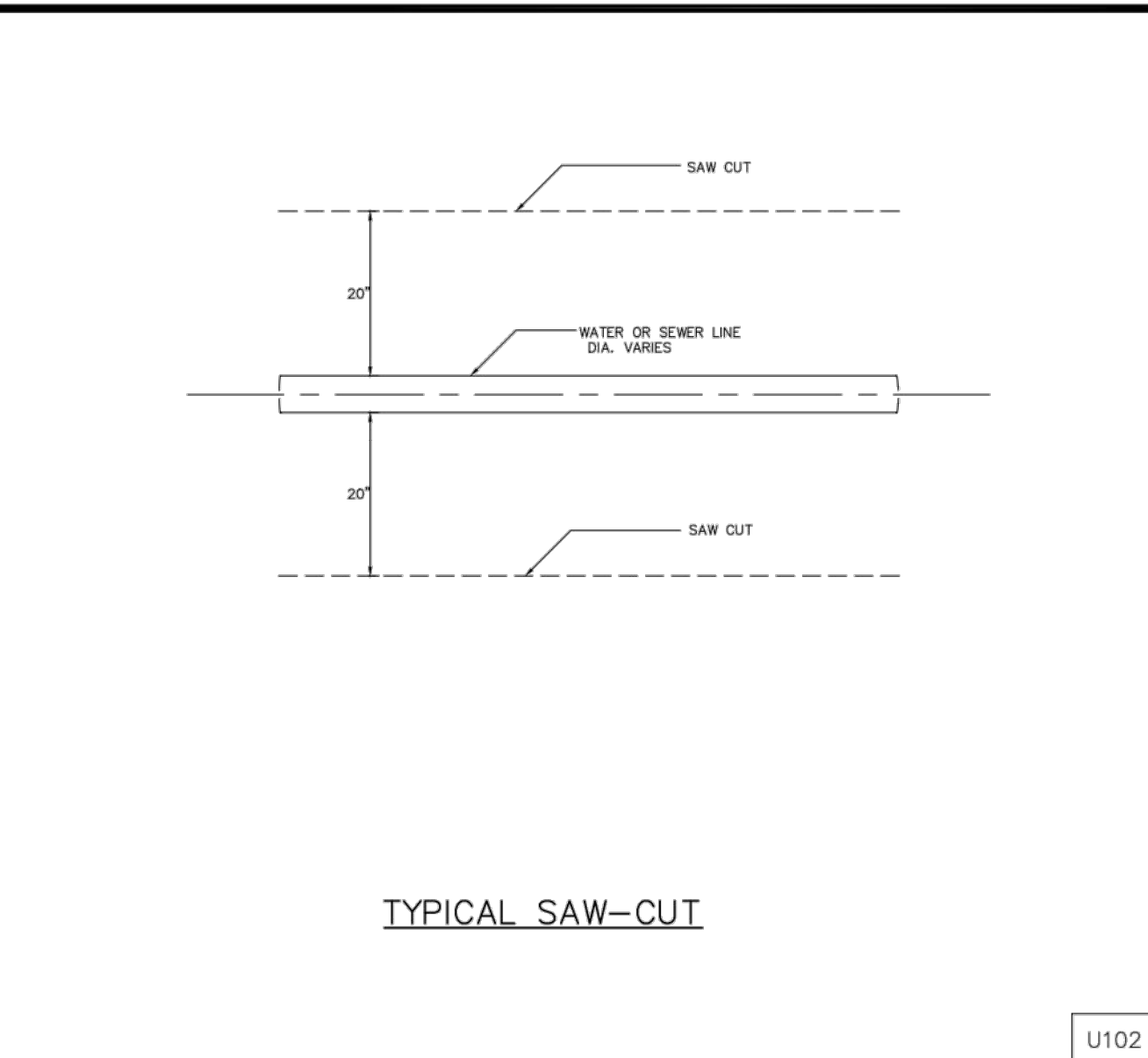


UNPAVED TRENCH

U202

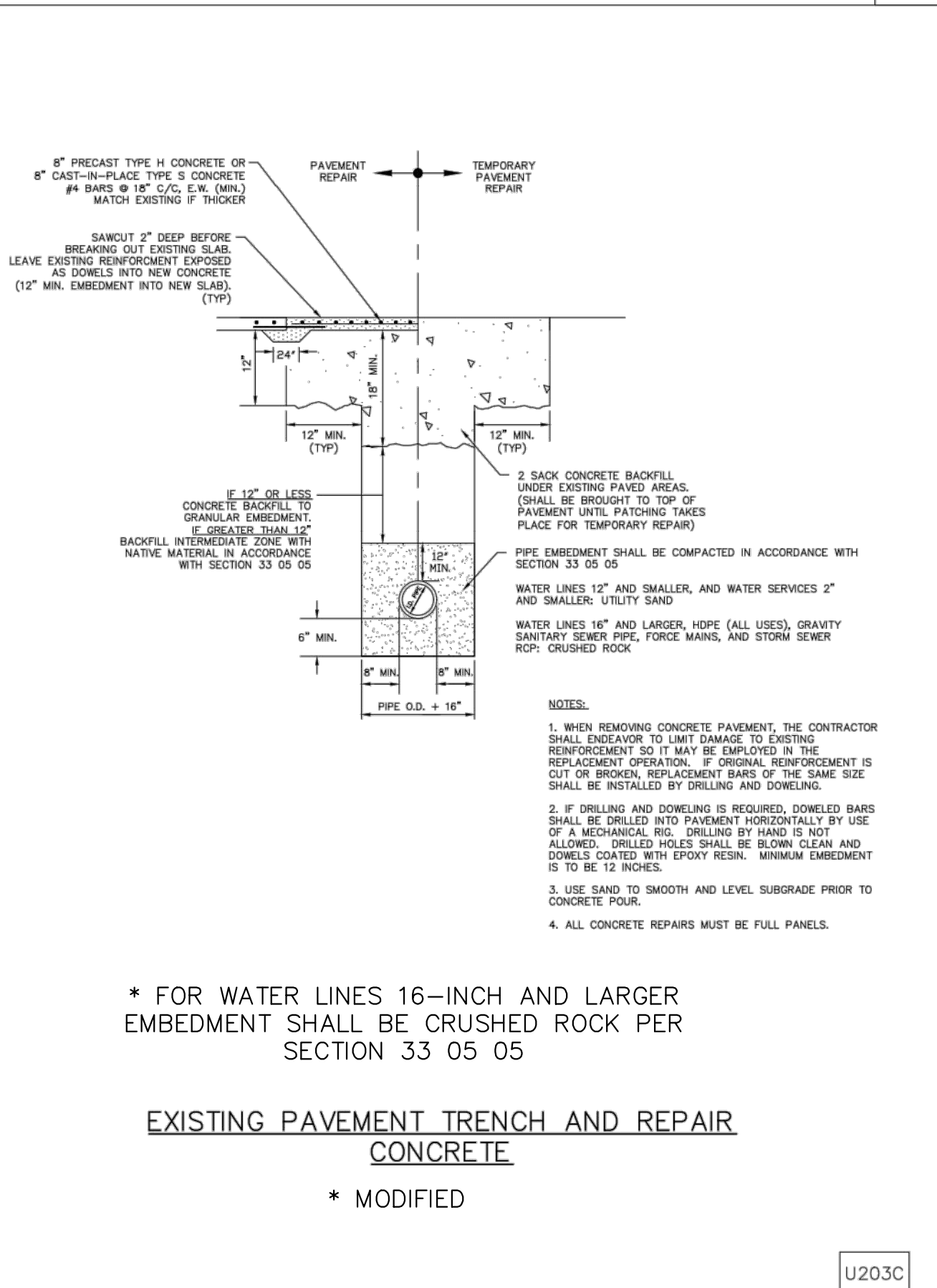
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\* MODIFIED

U203A



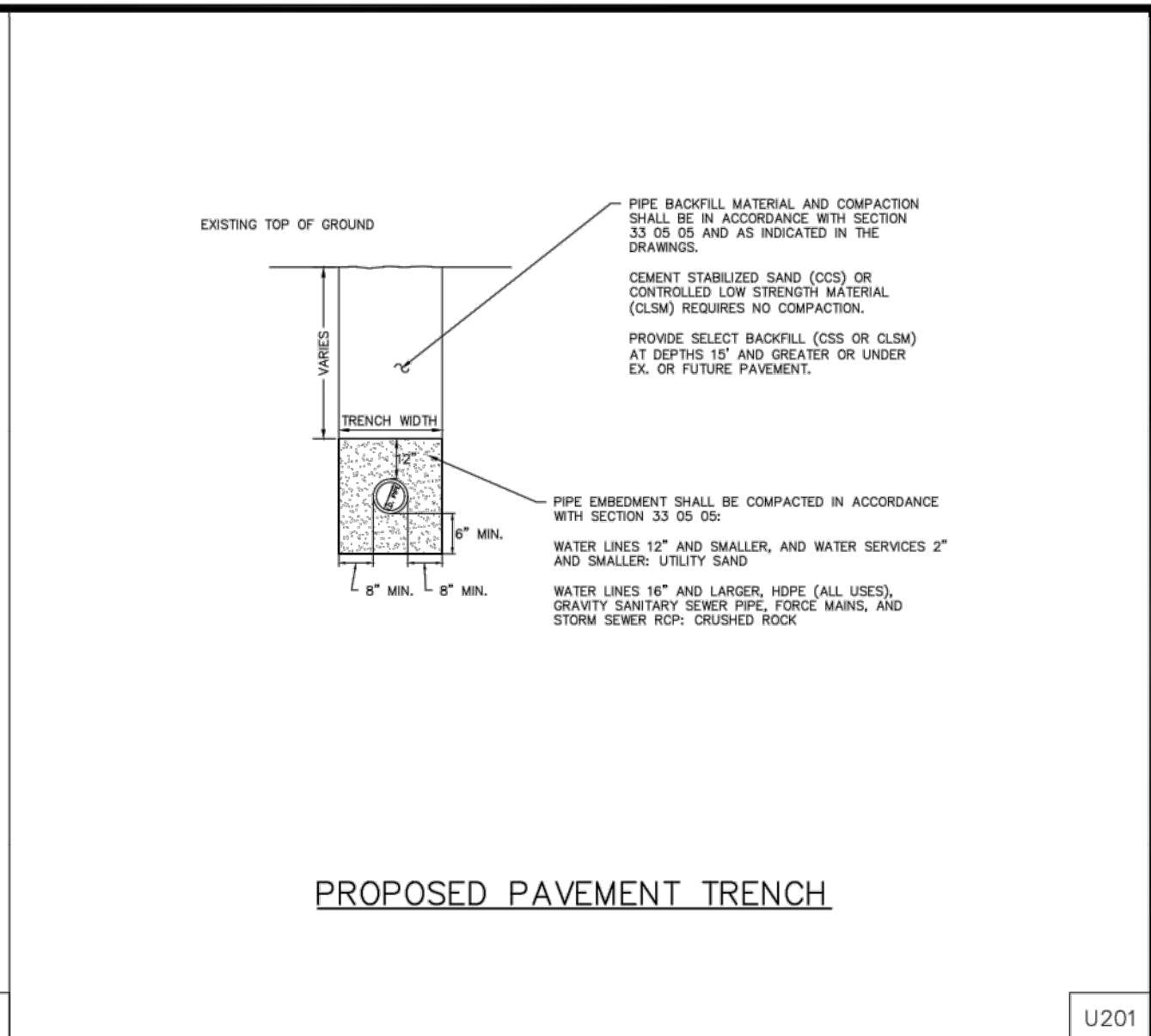
TYPICAL SAW-CUT

U102



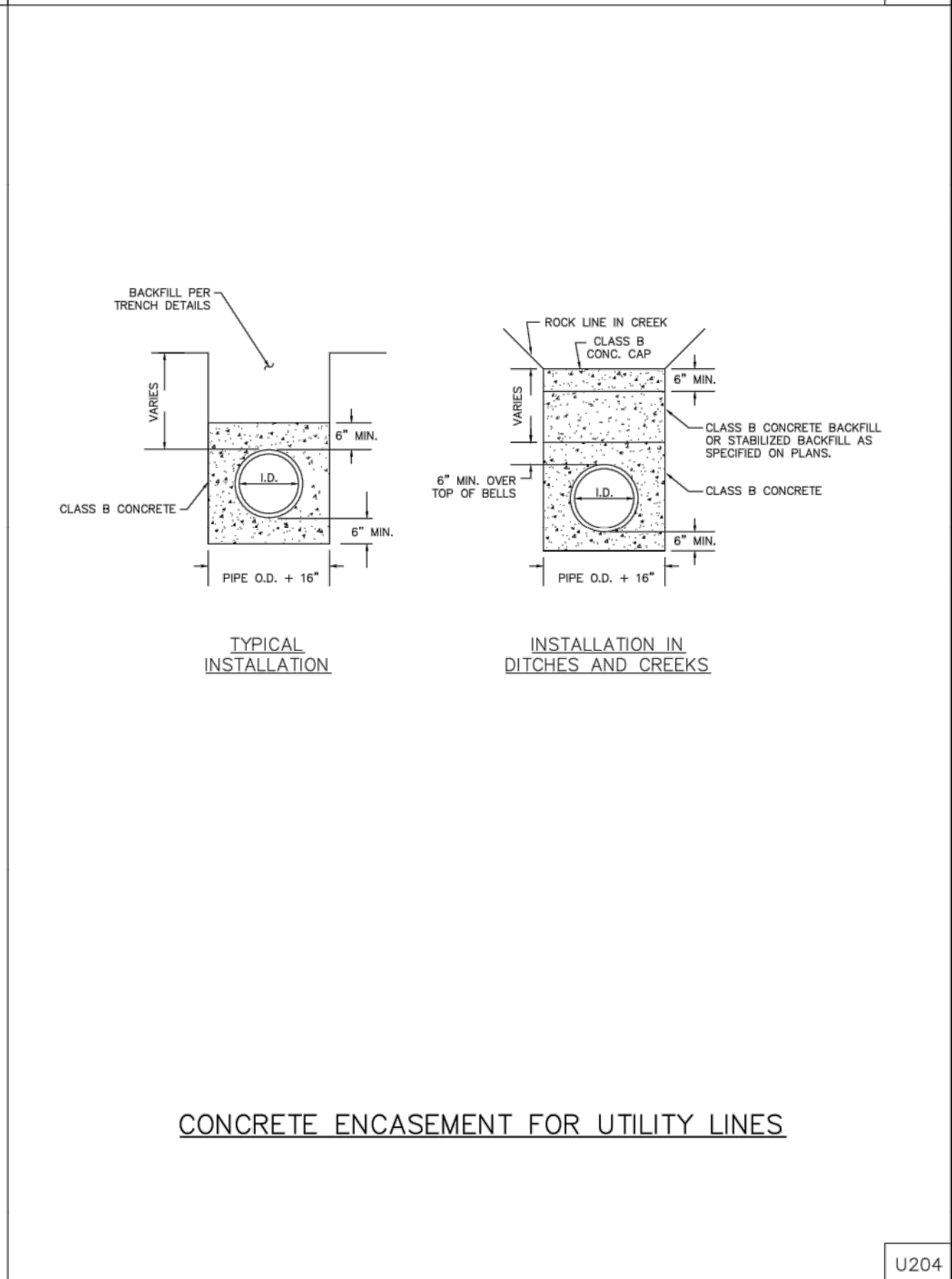
EXISTING PAVEMENT TRENCH AND REPAIR  
CONCRETE  
\* MODIFIED

U203C



PROPOSED PAVEMENT TRENCH

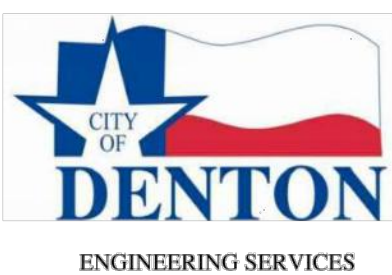
U201



CONCRETE ENCASEMENT FOR UTILITY LINES

U204

ENTERED BY	PROJECT #	
DESIGNED BY	DATE	REVISION
CHECKED BY		
PROJ. ENGR.		
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## STANDARD DETAILS

WATER/WASTEWATER SHARED DETAILS

DATE	SCALE
JAN. 2022	HOR 1"= N.T.S.
SHEET No.	VER 1"= N/A
7 OF 24	

CERTIFICATION:  
THIS CITY OF DENTON STANDARD  
DETAIL SHEET IS AUTHORIZED FOR USE  
IN THIS PROJECT BY THE ENGINEER  
WHOSE SEAL APPEARS HEREON, AND  
WHO CERTIFIES THE CONTENT OF THE  
DETAILS AND NOTES HEREIN HAVE NOT  
BEEN ALTERED AND ASSUMES  
RESPONSIBILITY FOR APPROPRIATE USE  
OF THE STANDARDS WITHIN THIS SHEET.

**Kimley»Horn**  
TbPE Firm No. 028 P. 817-335-6511  
801 Cherry St., Suite 1300 Ft. Worth, TX 76102

No.	Revision	By	Date



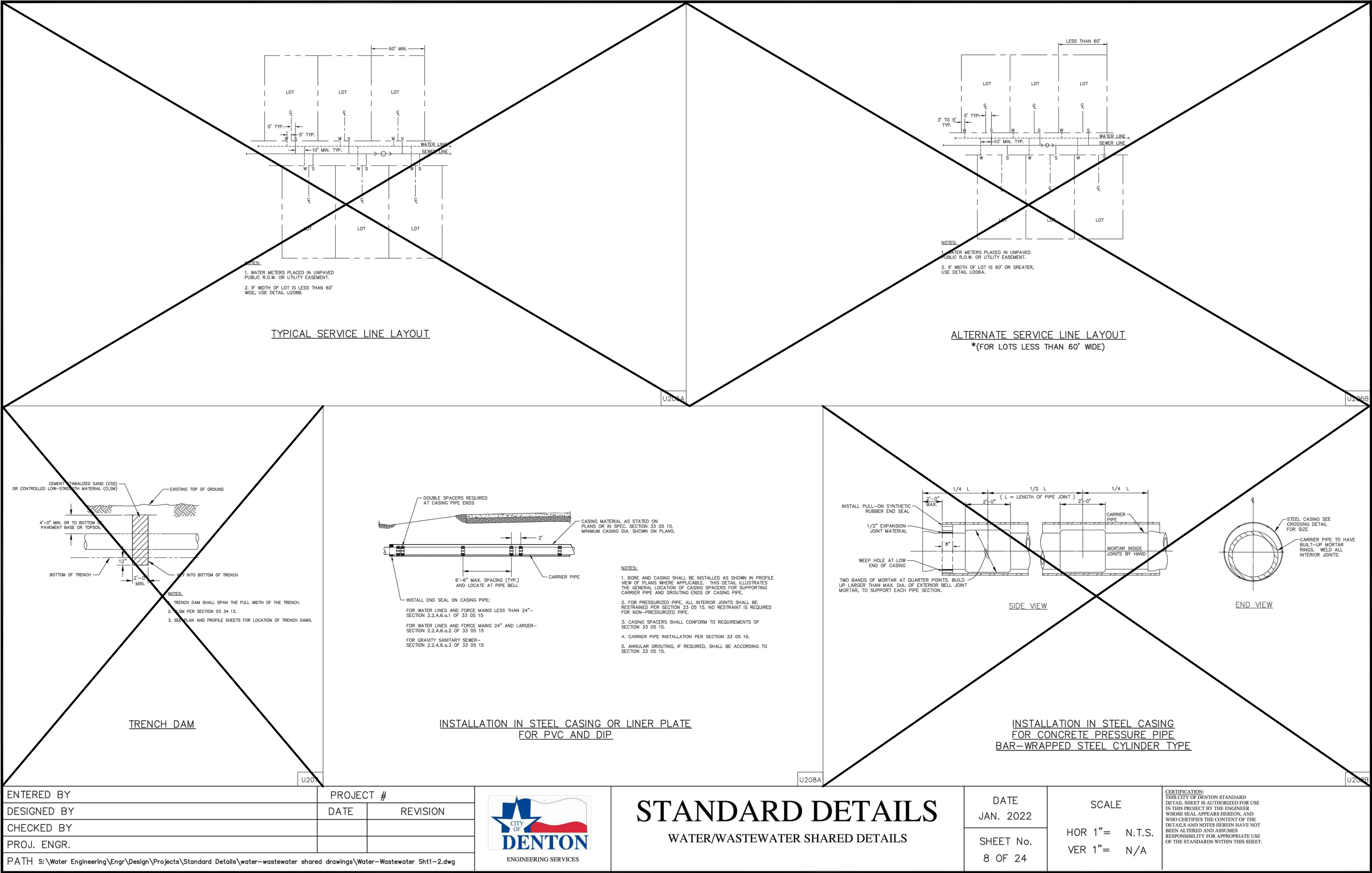
**CITY OF DENTON**  
IH-35E MAYHILL  
UTILITY RELOCATIONS

### CITY STANDARD DETAILS 5

DATE:	JULY 2022
DESIGN:	CPI
DRAWN:	NDCH
CHECKED:	JRA
KHA NO.:	061024039



K:\FTW\_Utillies\061024039-IH-35E-Mayhill-Utillies\CADD\SHEETS\10\_c--DETAILS.dwg 7/29/2022 8:39 AM



Kimley-Horn  
Type Firm No. 028 P. 817-335-6511  
801 Cherry St., Suite 1300 Ft. Worth, TX 76102

CITY OF DENTON  
IH-35E MAYHILL  
UTILITY RELOCATIONS

CITY STANDARD DETAILS 6

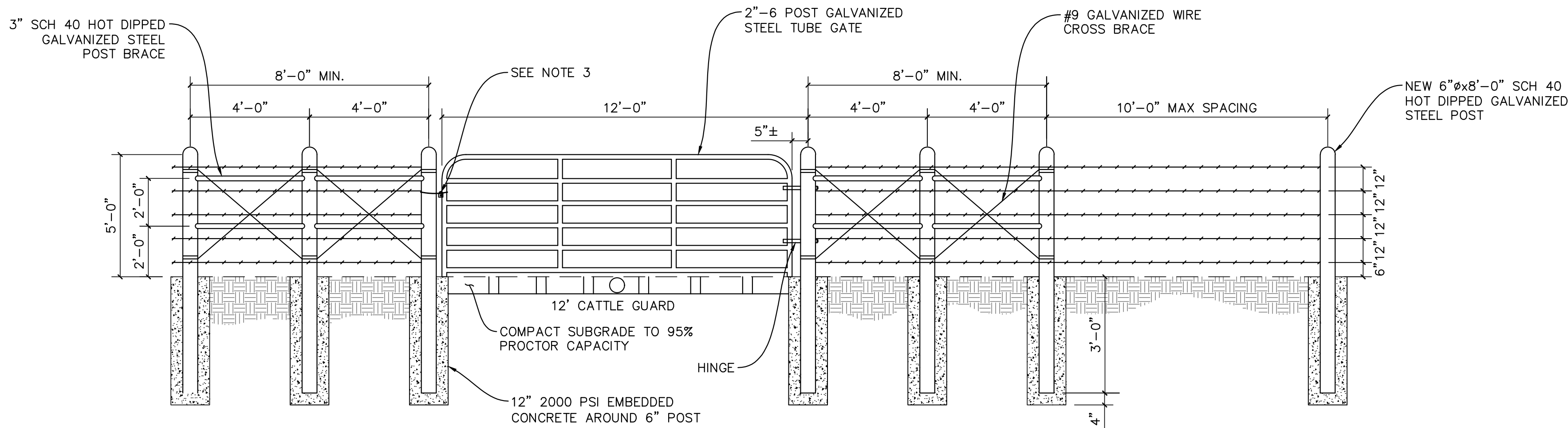
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KHA NO.:					

SHEET

# 34

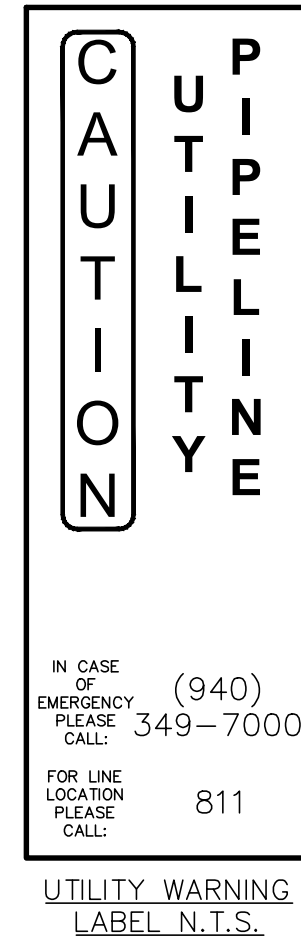
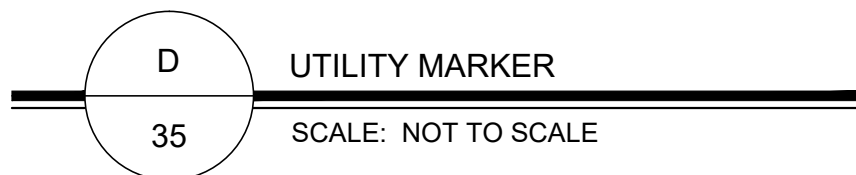
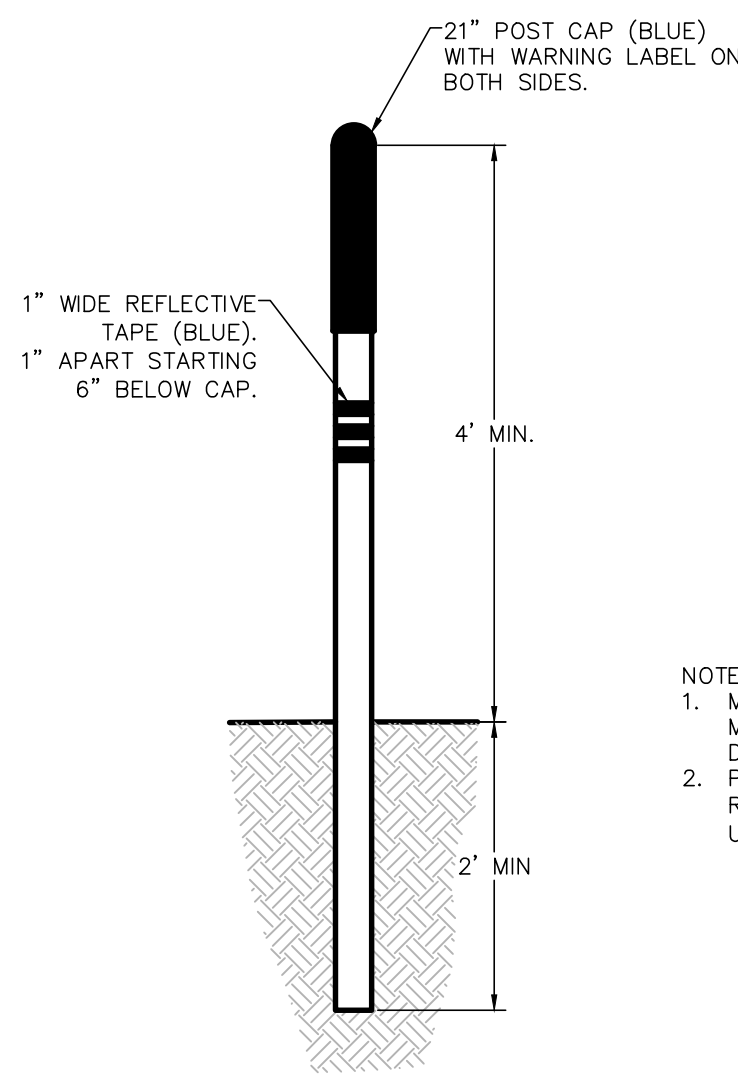
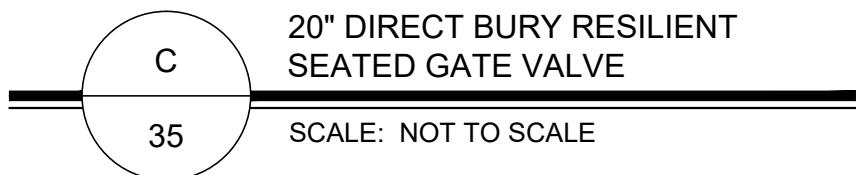
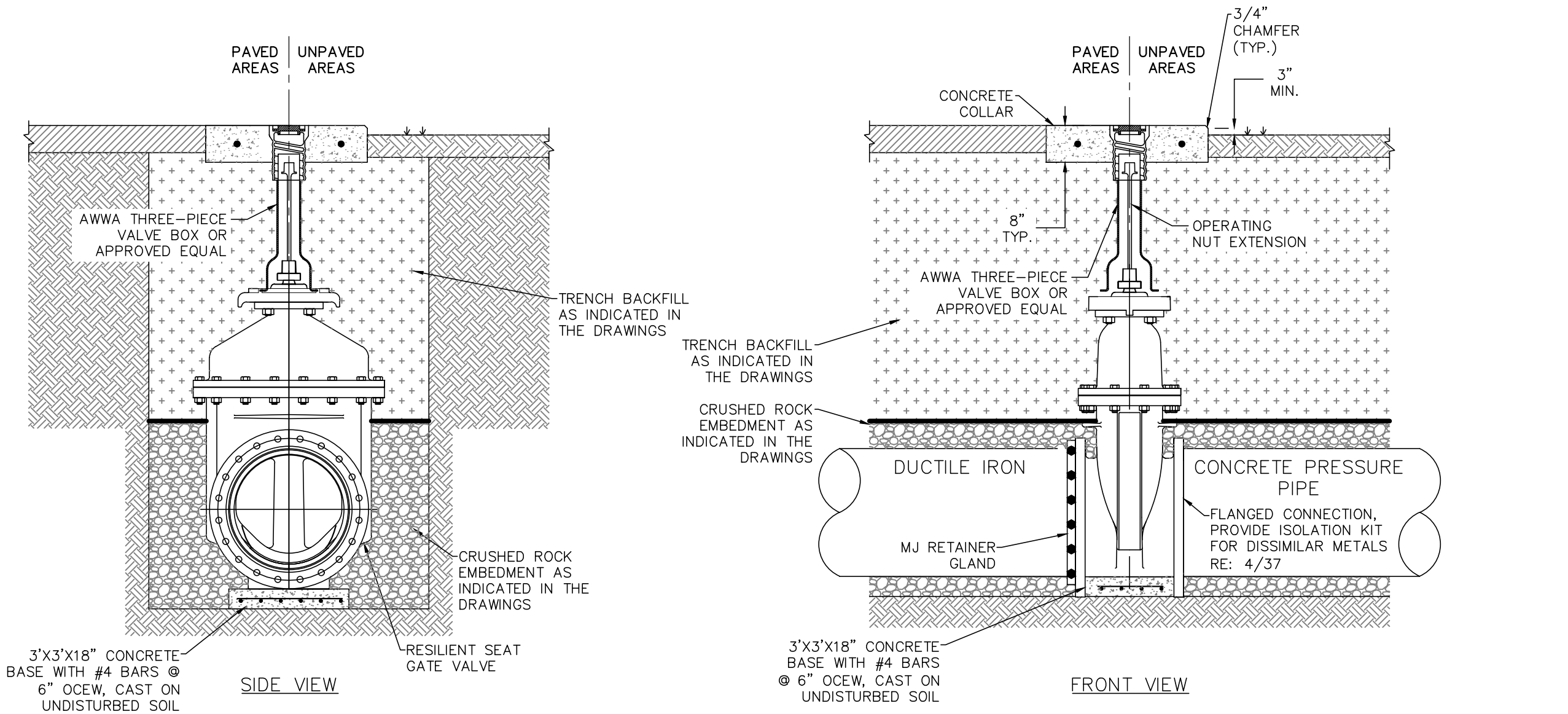
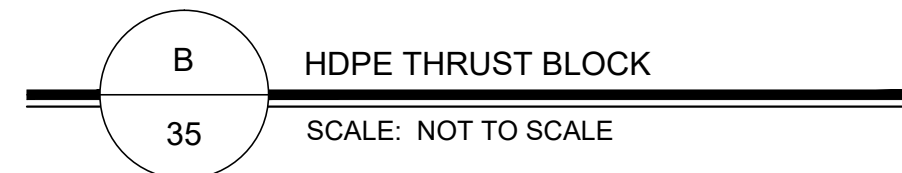
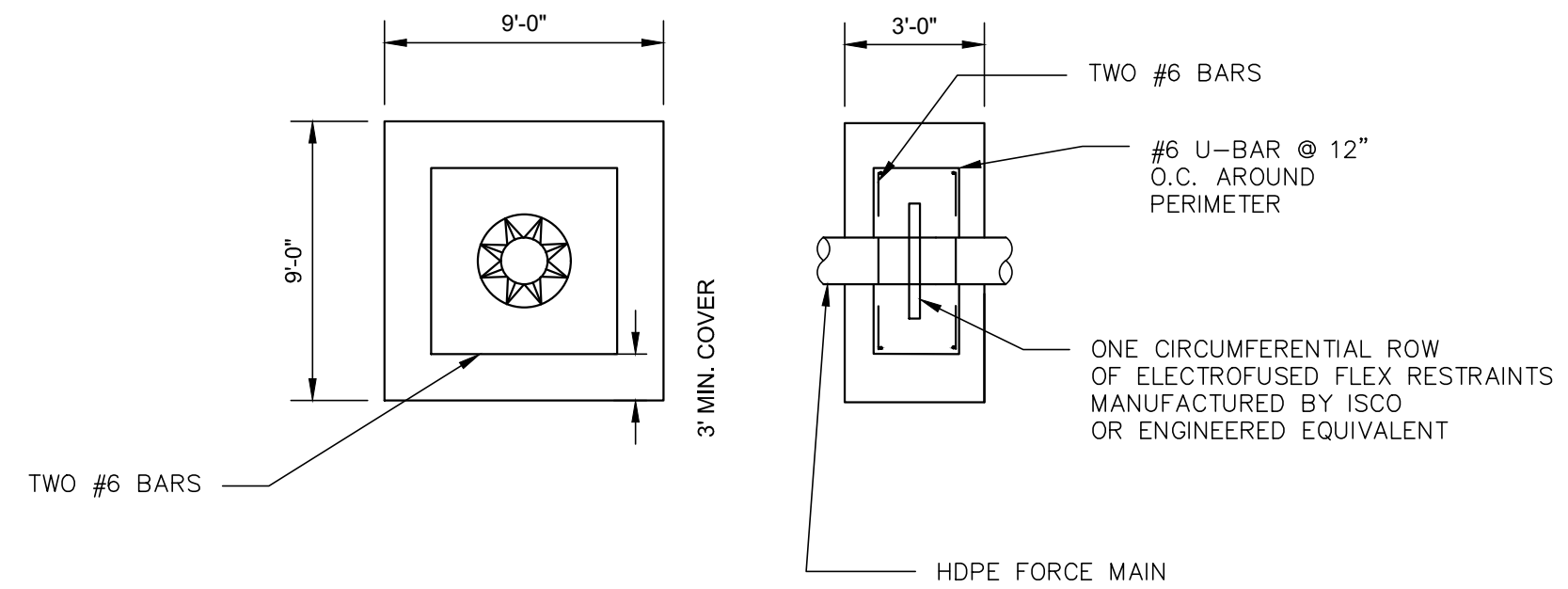
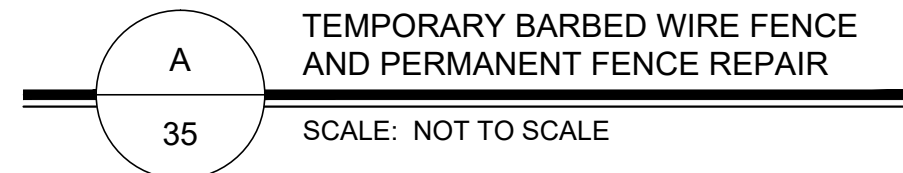


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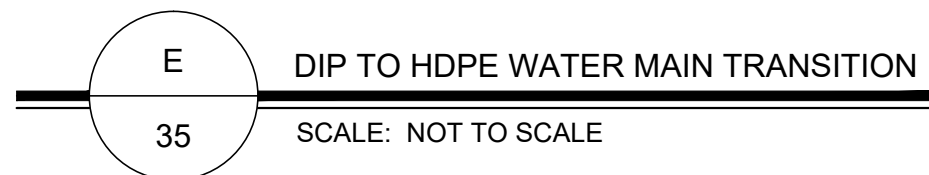
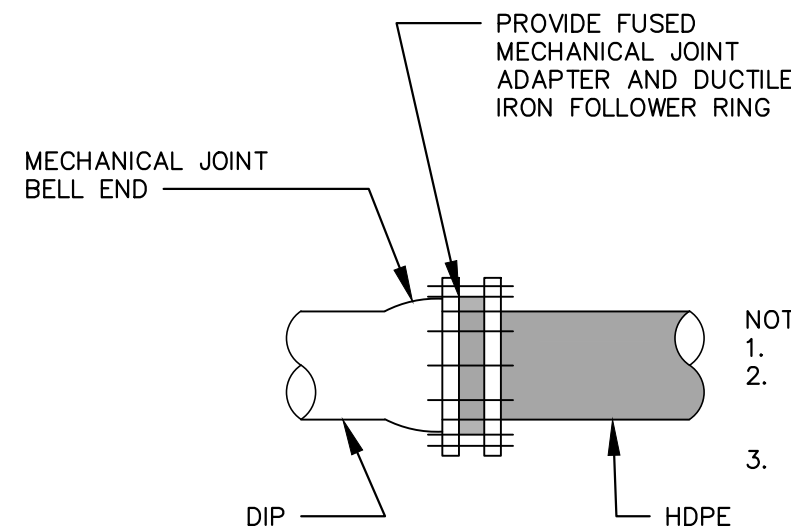


#### NOTES:

1. THE DETAIL ABOVE IS FOR TEMPORARY OR PERMANENT FENCING.
2. PERMANENT GATE SHALL BE 2", 16GA., 12'x50" TUBE GATE MANUFACTURED BY TRACTOR SUPPLY CO., SKU #3603116 OR APPROVED EQUAL. CONTRACTOR SHALL SUBMIT GATE SPECS AS RECORD DATA.
3. PRESSURE TREATED WOOD POSTS (4" DIAMETER) ARE ALLOWED FOR TEMPORARY FENCE INSTALLATION.
4. TEMPORARY GATE SHALL BE 12' SWING, GALVANIZED STEEL TUBE GATE.
5. IN AREAS ADJACENT TO LIVESTOCK, TEMPORARY FENCE SHALL REMAIN IN PLACE UNTIL SEEDING HAS DEVELOPED INTO A UNIFORM STAND OF GRASS AND HAS BEEN ACCEPTED BY THE ENGINEER. FOLLOWING ACCEPTANCE, CONTRACTOR SHALL BE RESPONSIBLE FOR REMOVING TEMPORARY FENCE.
6. TEMPORARY FENCING POSTS SHALL BE SPACED AT A MAXIMUM DISTANCE OF 96' WITH "T" STEEL POSTS AT A MAXIMUM OF 12' SPACING. "T" POSTS SHALL BE EMBEDDED A MINIMUM OF 2'-3" INTO GROUND.
7. CONTRACTOR SHALL SUBMIT SHOP DRAWING DETAILING CONNECTION OF PROPOSED PERMANENT GATE TO EXISTING FENCE TO THE ENGINEER FOR APPROVAL PRIOR TO CONSTRUCTION.



- NOTES:
1. MARKERS SHALL BE 4-INCH DIAMETER, 6-FOOT MINIMUM LENGTH, FIBERGLASS COMPOSITE, DOUBLE-SIDED MARKER, OR APPROVED EQUAL.
  2. POSTS SHALL BE WHITE WITH BLUE ULTRAVIOLET RESISTANT DOMES (IN ACCORDANCE WITH APWA UNIFORM COLOR CODE).



UTILIZE DETAIL IF HDPE IS THE SELECTED PIPE MATERIAL. INSTALL AT ALL CONNECTION POINTS BACK TO EXISTING PIPES. INSTALL AT ALL DIP APPURTENANCES AND FITTINGS



## CITY OF DENTON

IH-35E MAYHILL  
UTILITY RELOCATIONS

### CONSTRUCTION DETAILS 1

DATE:	JULY 2022	CPI	NDCH	JRA	061024039
DESIGN:					
DRAWN:					
CHECKED:					
KHA NO.:					

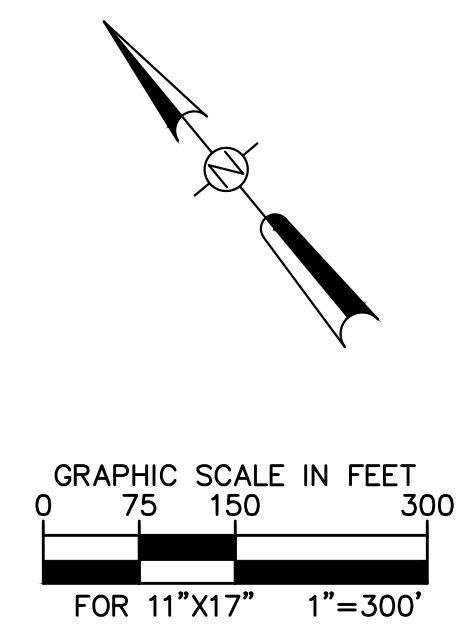
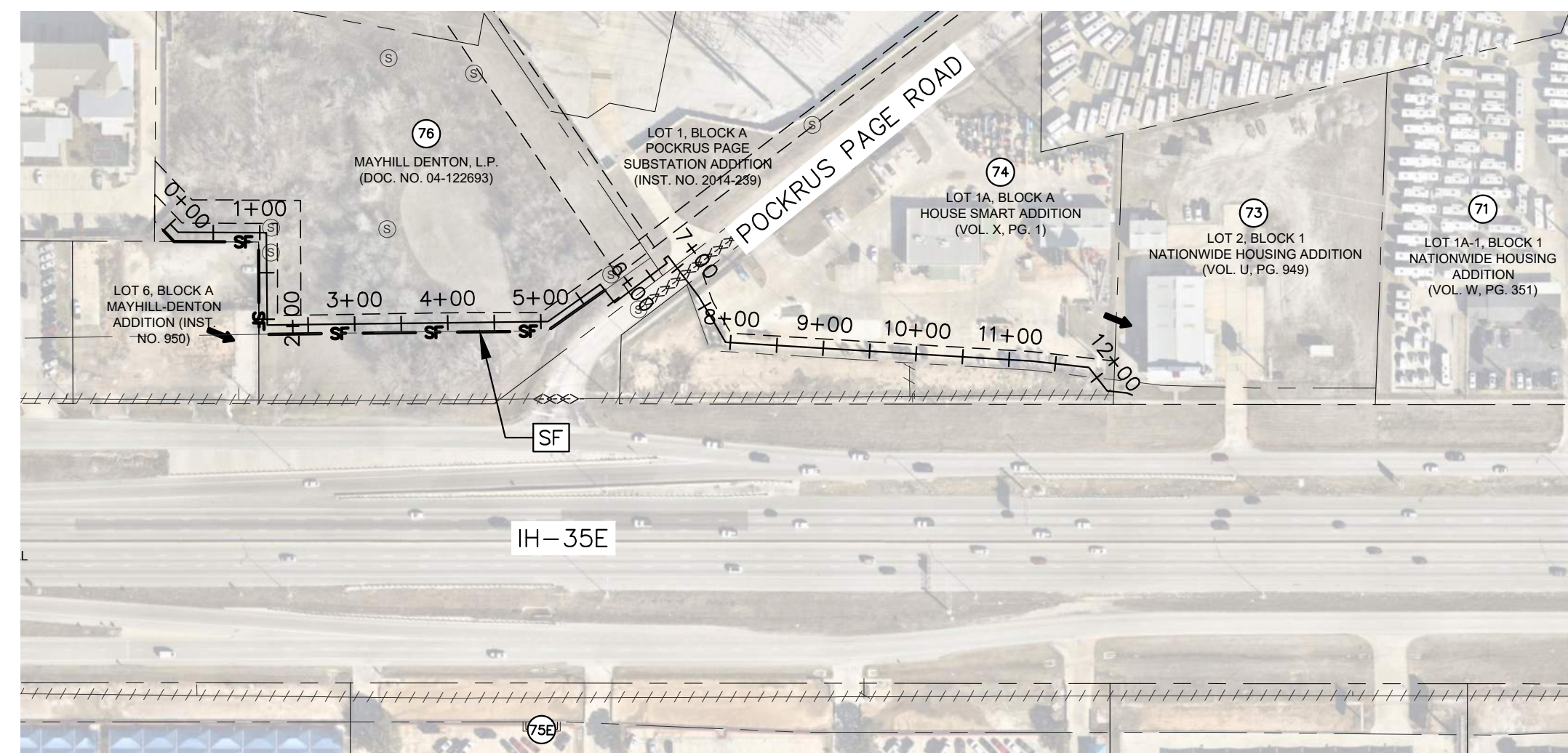
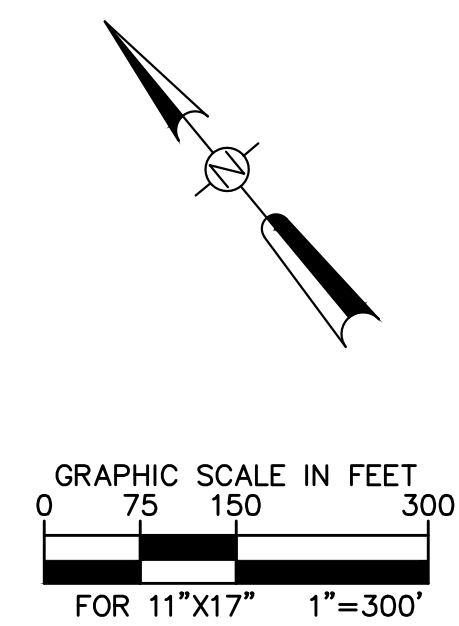
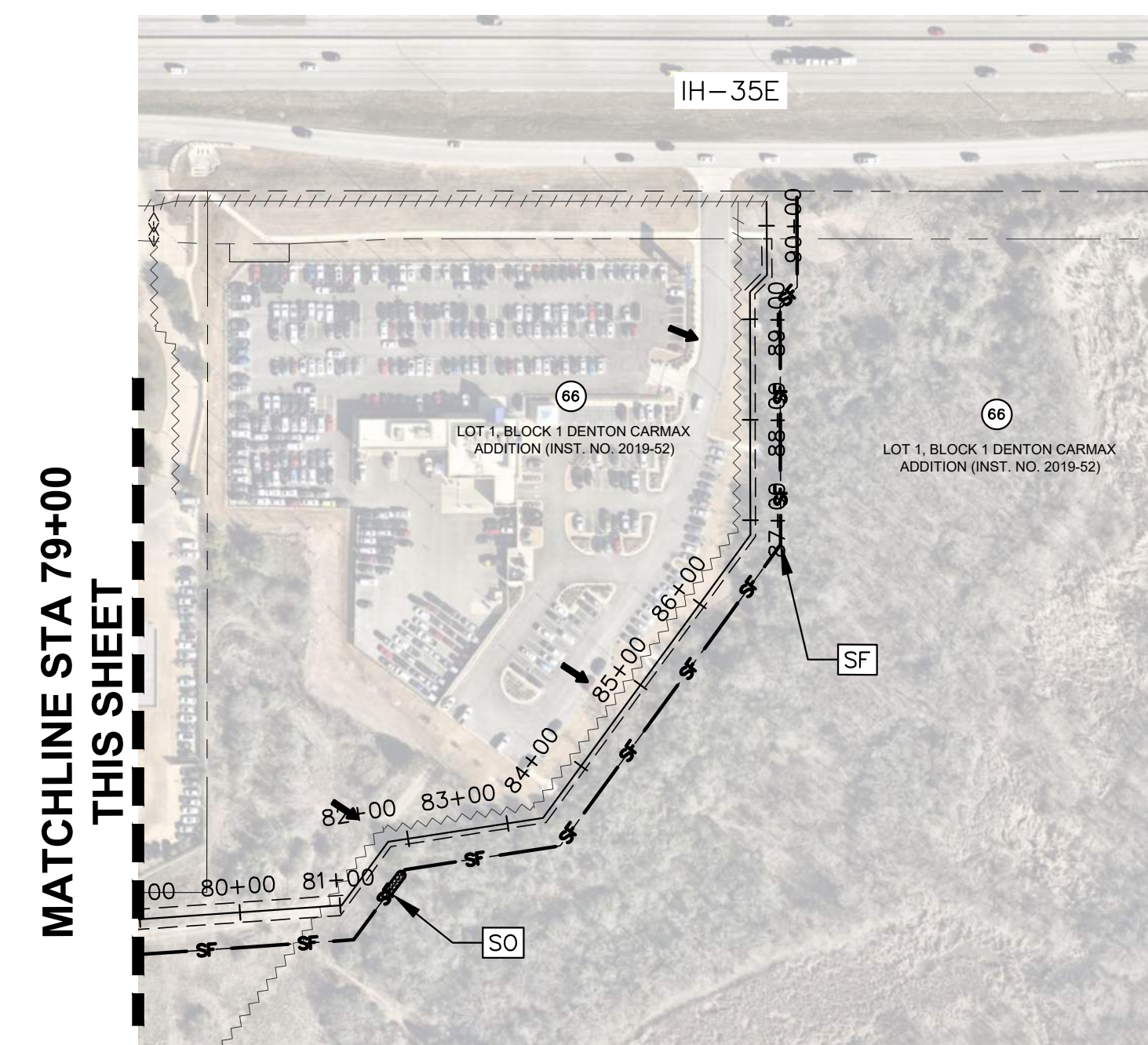
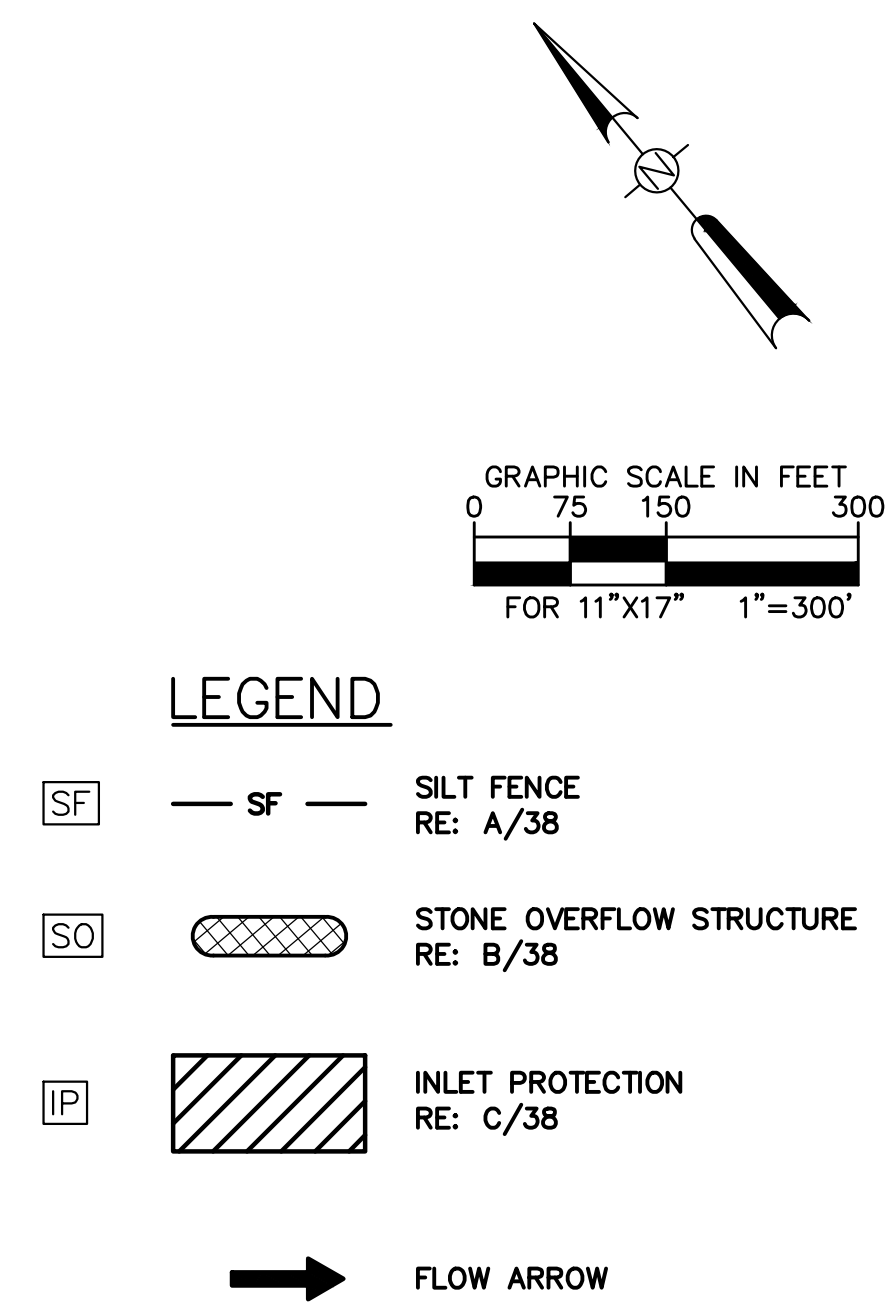
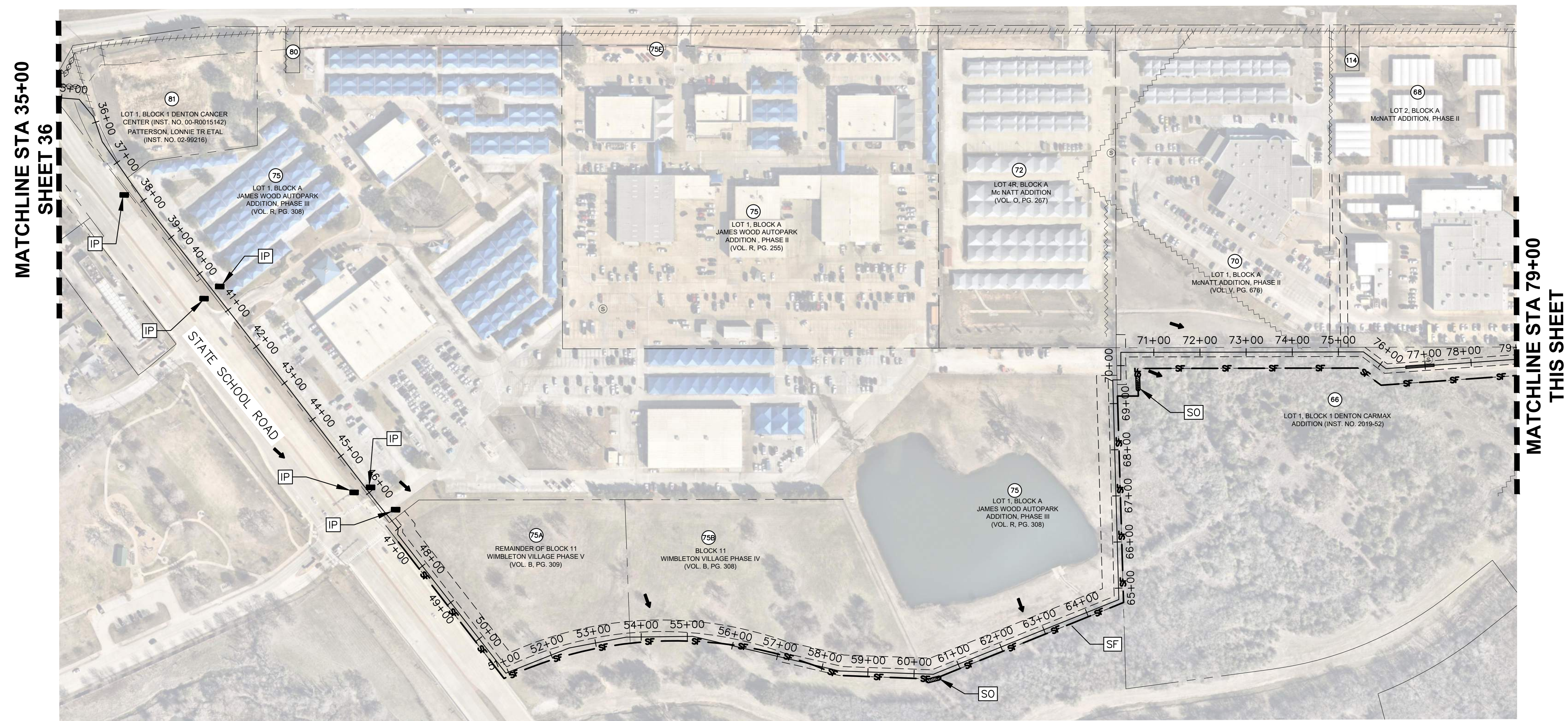
SHEET

**35**

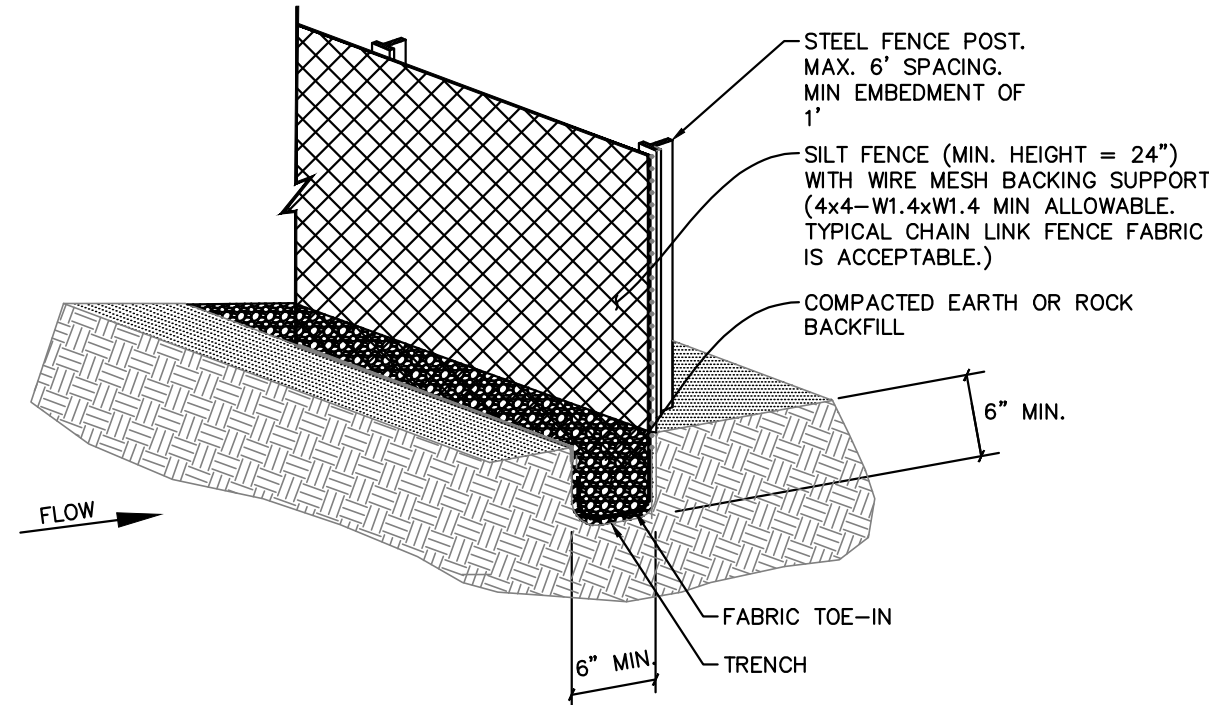






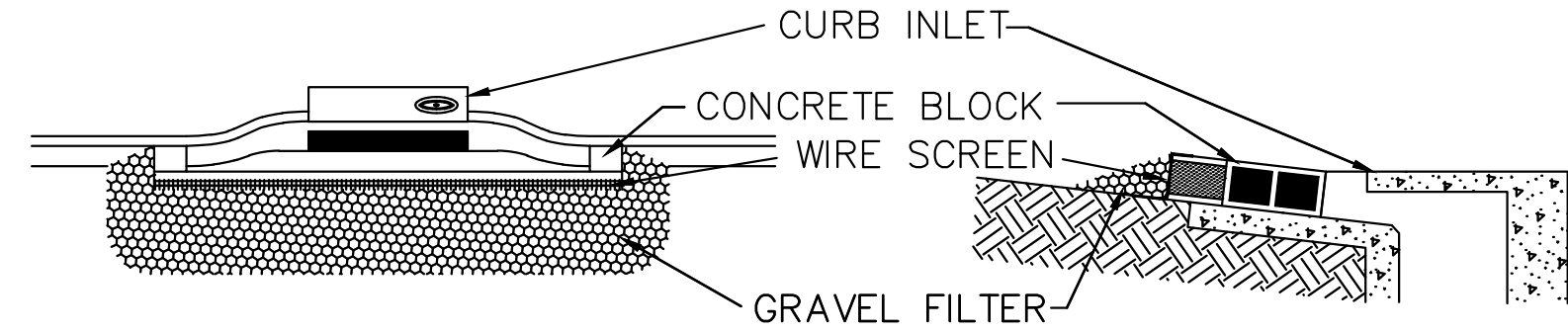
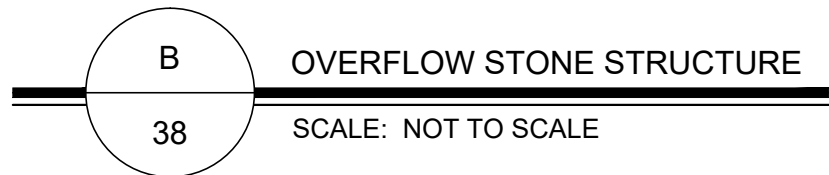
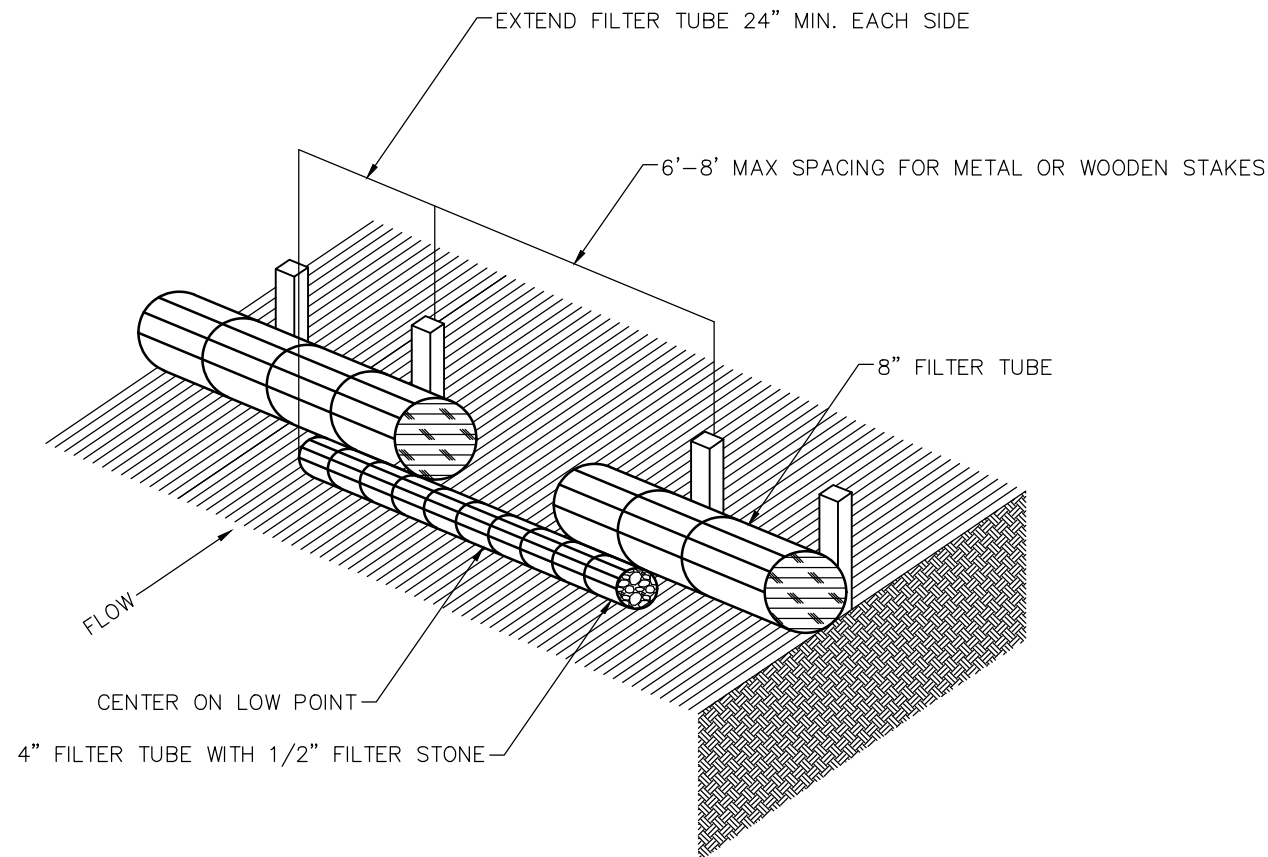




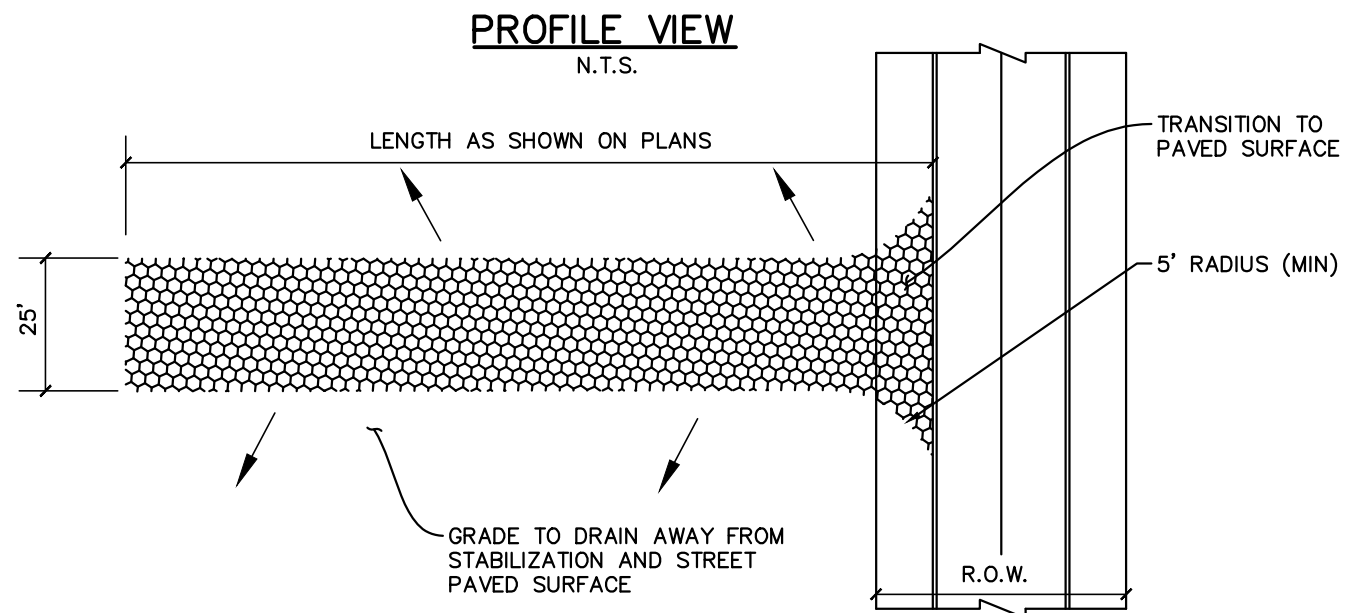
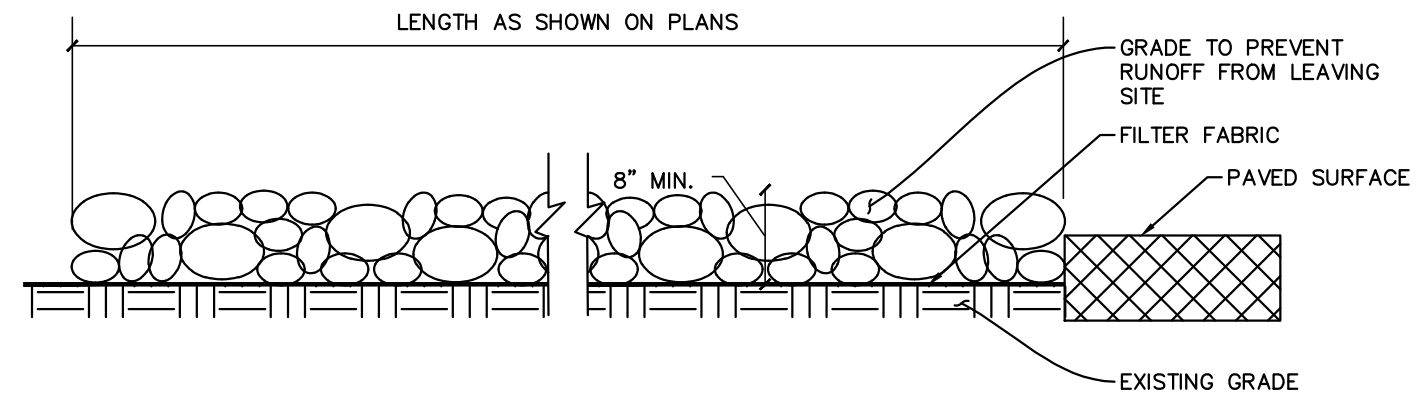
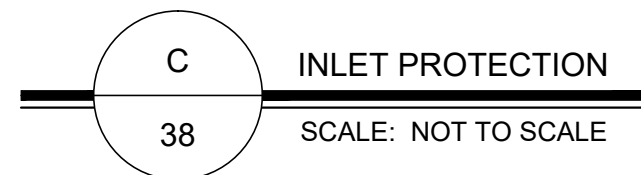


NOTES:

1. POSTS WHICH SUPPORT THE SILT FENCE SHALL BE INSTALLED ON A SLIGHT ANGLE TOWARD THE ANTICIPATED RUNOFF SOURCE. POST MUST BE EMBEDDED A MINIMUM OF ONE FOOT.
2. THE TOE OF THE SILT FENCE SHALL BE TRENCHED IN WITH A SPADE OR MECHANICAL TRENCHER, SO THAT THE DOWNSLOPE FACE OF THE TRENCH IS FLAT AND PERPENDICULAR TO THE LINE OF FLOW. WHERE FENCE CANNOT BE TRENCHED IN (e.g. PAVEMENT), WEIGHT FABRIC FLAP WITH ROCK ON UPHILL SIDE TO PREVENT FLOW FROM SEEPING UNDER FENCE.
3. THE TRENCH MUST BE A MINIMUM OF 6 INCHES DEEP AND 6 INCHES WIDE TO ALLOW FOR THE SILT FENCE FABRIC TO BE LAID IN THE GROUND AND BACKFILLED WITH COMPACTED MATERIAL.
4. SILT FENCE SHOULD BE SECURELY FASTENED TO EACH SUPPORT POST OR TO WIRE BACKING, WHICH IN TURN IS ATTACHED TO THE FENCE POST. THERE SHALL BE A 3 FOOT OVERLAP, SECURELY FASTENED WHERE ENDS OF FABRIC MEET.
5. INSPECTION SHALL BE AS SPECIFIED IN THE SWPPP. REPAIR OR REPLACEMENT SHALL BE MADE PROMPTLY AS NEEDED.
6. SILT FENCE SHALL BE REMOVED WHEN FINAL STABILIZATION IS ACHIEVED OR ANOTHER EROSION OR SEDIMENT CONTROL DEVICE IS EMPLOYED.
7. ACCUMULATED SILT SHALL BE REMOVED WHEN IT REACHES A DEPTH OF HALF THE HEIGHT OF THE FENCE. THE SILT SHALL BE DISPOSED OF AT AN APPROVED SITE AND IN SUCH A MANNER AS TO NOT CONTRIBUTE TO ADDITIONAL SILTATION.
8. PROVISIONS FOR SILT FENCE CAN BE COMBINED WITH TEMPORARY FENCE IN LOCATION WHERE BOTH ARE REQUIRED.
9. CONTRACTOR SHALL PREPARE STORM WATER POLLUTION PREVENTION PLAN IN ACCORDANCE WITH THE SPECIFICATIONS.

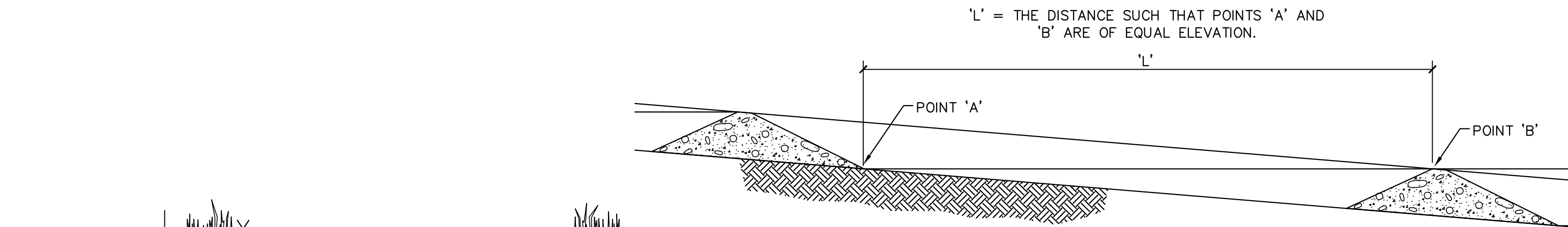
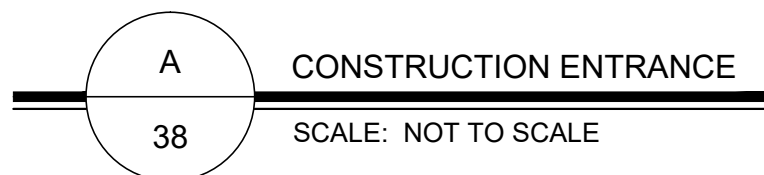


1. PLACE CONCRETE BLOCKS IN A SINGLE ROW IN FRONT OF INLET ON THEIR SIDES, WITH ENDS OF ADJACENT BLOCKS ABUTTING.
2. HEIGHT OF BARRIER VARIES. USE STACKS OF 4-INCH, 8-INCH, OR 12\"/>
3. PLACE HARDWARE CLOTH/WIRE MESH W/ MAX. 1/2\"/>
4. THE AGGREGATE SHALL BE ANY NON-ERODIBLE MATERIAL SUCH AS LOOSE ROCK, BROKEN CONCRETE THAT WILL SLOW THE FLOW OF THE WATER AND ALLOW IT TO FILTER THROUGH AND OVER THE MATERIAL BEFORE ENTERING THE INLET.



STABILIZED CONSTRUCTION ACCESS GENERAL NOTES:

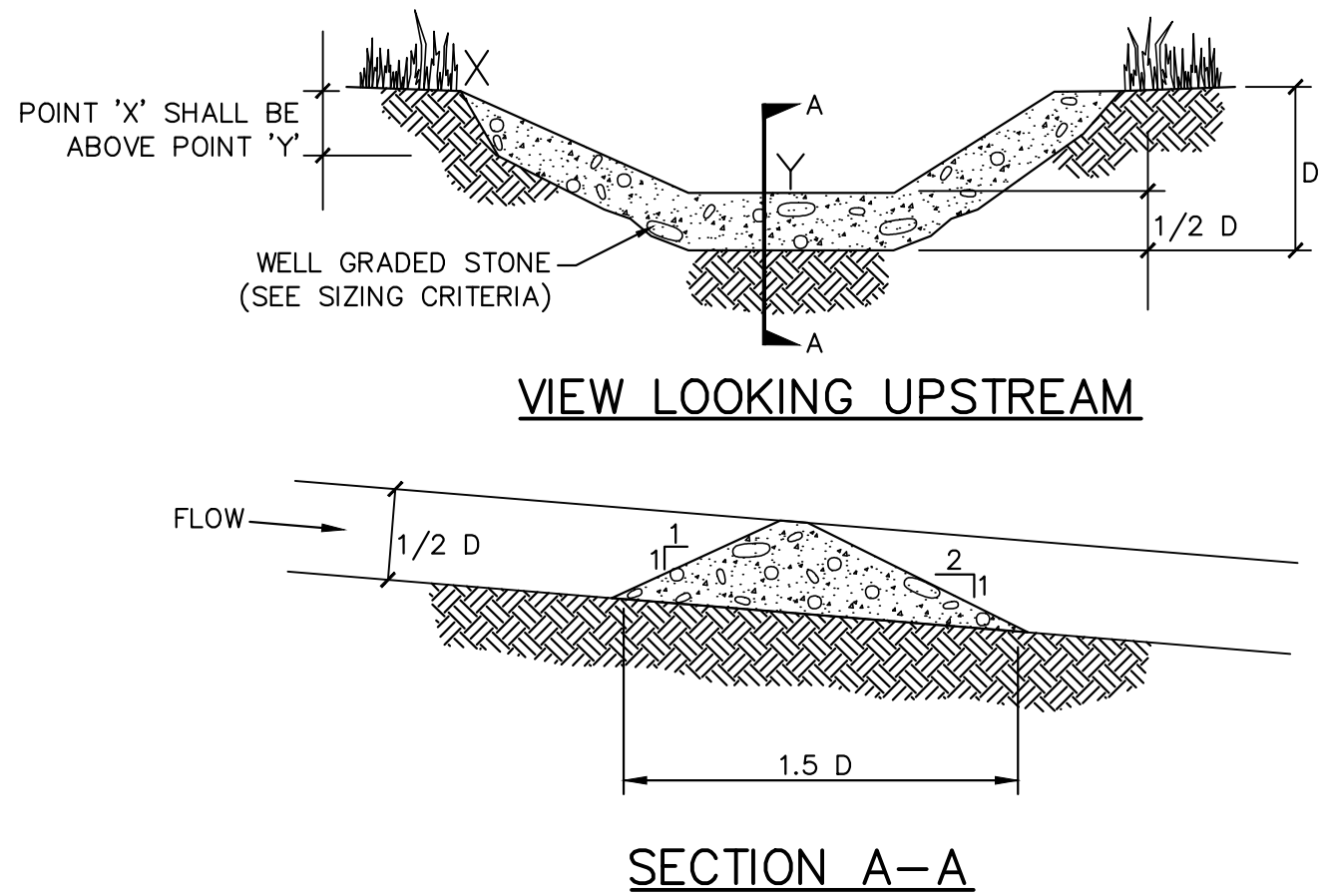
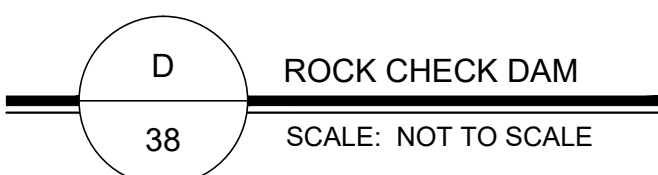
1. STONE SHALL BE 3 TO 5 INCH DIAMETER CRUSHED ROCK OR ACCEPTABLE CRUSHED PORTLAND CEMENT CONCRETE.
2. LENGTH SHALL BE SHOWN ON PLANS, WITH A MINIMUM LENGTH OF 30 FEET FOR LOTS WHICH ARE LESS THAN 150 FEET FROM EDGE OF PAVEMENT. THE MINIMUM DEPTH IN ALL OTHER CASES SHALL BE 50 FEET.
3. THE THICKNESS SHALL NOT BE LESS THAN 8 INCHES.
4. THE WIDTH SHALL BE NO LESS THAN THE FULL WIDTH OF ALL POINTS OF INGRESS OR EGRESS.
5. WHEN NECESSARY, VEHICLES SHALL BE CLEANED TO REMOVE SEDIMENT PRIOR TO ENTRANCE ONTO A PUBLIC ROADWAY. WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABILIZED WITH CRUSHED STONE WITH DRAINAGE FLOWING AWAY FROM BOTH THE STREET AND THE STABILIZED ENTRANCE. ALL SEDIMENT SHALL BE PREVENTED FROM ENTERING ANY STORM DRAIN, DITCH OR WATERCOURSE USING APPROVED METHODS.
6. THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION WHICH WILL PREVENT TRACKING OR FLOWING OF SEDIMENT ONTO PAVED SURFACES. THIS MAY REQUIRE PERIODIC TOP DRESSING WITH ADDITIONAL STONE AS CONDITIONS DEMAND. ALL SEDIMENT SPILLED, DROPPED, WASHED, OR TRACKED ONTO PAVED SURFACES MUST BE REMOVED IMMEDIATELY.
7. THE ENTRANCE MUST BE PROPERLY GRADED OR INCORPORATE A DRAINAGE SWALE TO PREVENT RUNOFF FROM LEAVING THE CONSTRUCTION SITE.



SPACING BETWEEN CHECK DAMS

ROCK CHECK DAM GENERAL NOTES:

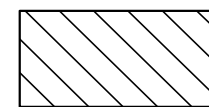
1. STONE SHALL BE WELL GRADED WITH SIZE RANGE FROM 1-1/2 TO 3-1/2 INCHES IN DIAMETER DEPENDING ON EXPECTED FLOWS.
2. THE CHECK DAM SHALL BE SECURED WITH A WOVEN WIRE SHEATHING HAVING A MAXIMUM OPENING OF 1 INCH AND A MINIMUM WIRE SIZE OF 20 GAUGE.
3. THE CHECK DAM SHALL BE INSPECTED AS SPECIFIED IN THE SWPPP AND SHALL BE REPLACED WHEN THE STRUCTURE CEASES TO FUNCTION AS INTENDED DUE TO SILT ACCUMULATION AMONG THE ROCKS, WASHOUT, CONSTRUCTION TRAFFIC DAMAGE, ETC.
4. WHEN SILT REACHES A DEPTH EQUAL TO ONE-THIRD OF THE HEIGHT OF THE CHECK DAM OR ONE FOOT, WHICHEVER IS LESS, THE SILT SHALL BE REMOVED AND DISPOSED OF PROPERLY.
5. WHEN THE SITE HAS ACHIEVED FINAL STABILIZATION OR ANOTHER EROSION OR SEDIMENT CONTROL DEVICE IS EMPLOYED, THE CHECK DAM AND ACCUMULATED SILT SHALL BE REMOVED AND DISPOSED OF IN AN APPROVED MANNER.



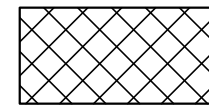


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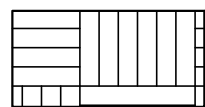
LEGEND



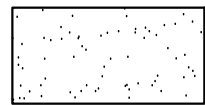
ASPHALT PAVEMENT REPAIR  
(RE: A/35)



CONCRETE PAVEMENT REPAIR  
(RE: B/35)



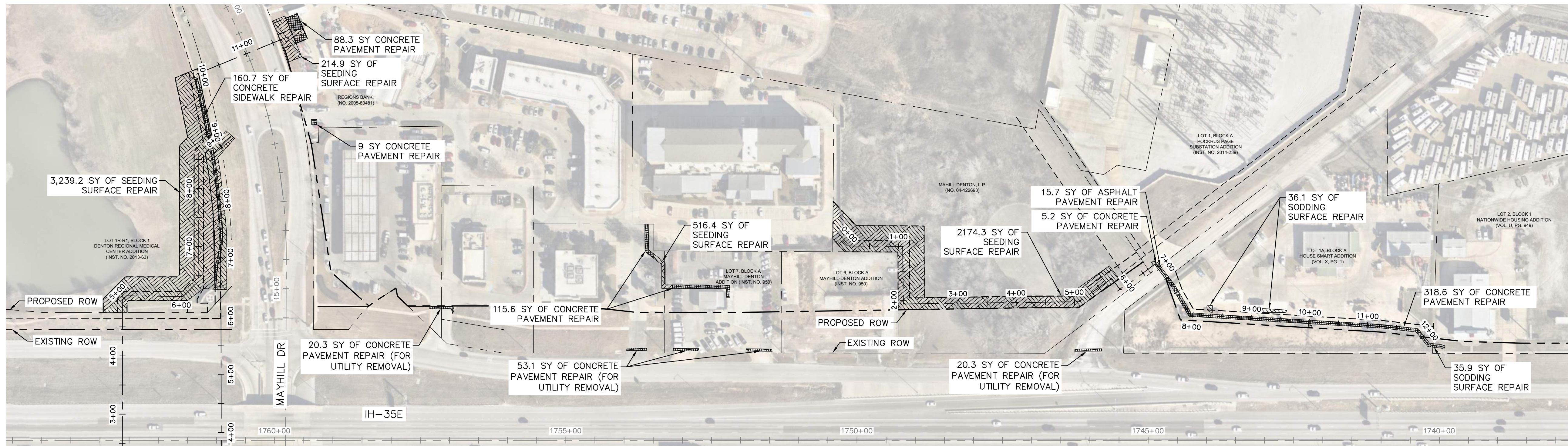
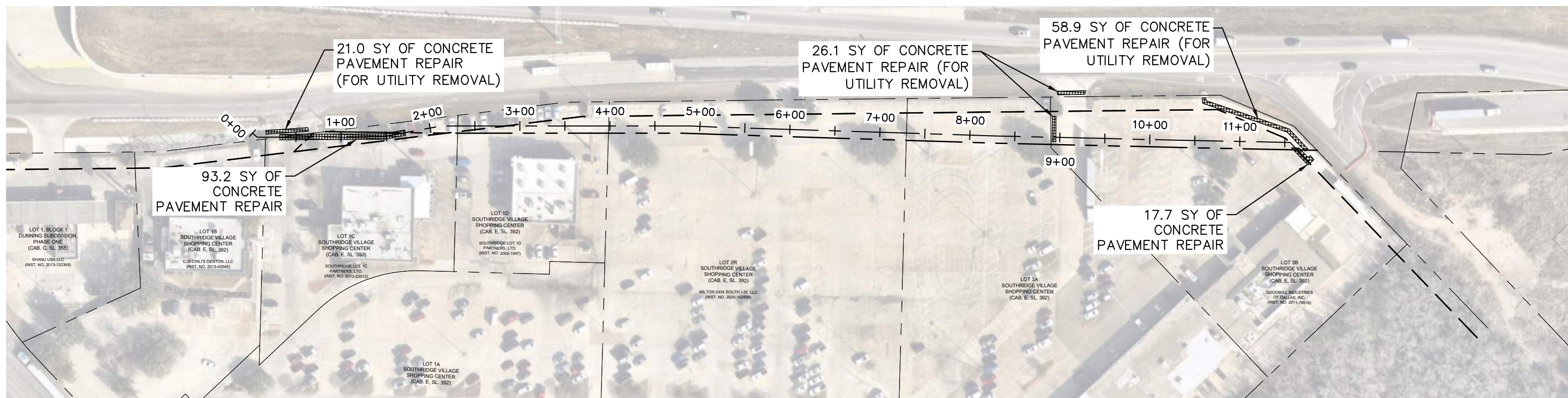
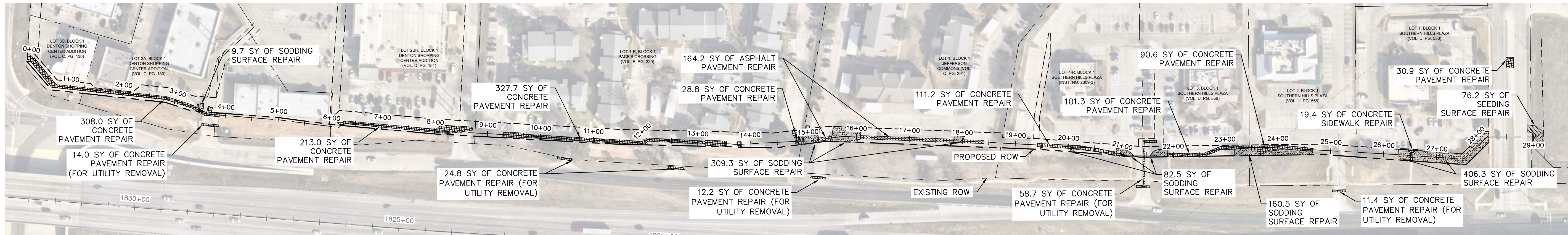
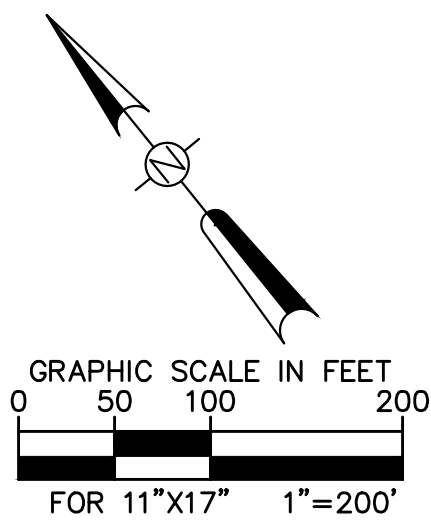
SEEDING SURFACE REPAIR



SODDING SURFACE REPAIR

SHEET NOTES:

1. CONTRACTOR TO REPAIR ANY DAMAGE TO AND RESTORE PRIVATE IRRIGATION SYSTEMS
2. CONTRACTOR IS RESPONSIBLE FOR RESTORING LANDSCAPED AREAS TO EXISTING CONDITION



Kimley»Horn

TYPE Firm No. 928 P. 817-335-6511  
801 Cherry St., Suite 1300 Ft. Worth, TX 76102

No.	Revision	By	Date



CITY OF DENTON  
IH-35E MAYHILL  
UTILITY RELOCATIONS

PROPOSED SURFACE REPAIR  
(SHEET 1 OF 3)

DATE:	JULY 2022
DESIGN:	GPI
DRAWN:	NDCH
CHECKED:	JRA
KHA NO.:	061024039

SHEET

39







MATCHLINE STA 60+50  
SHEET 40

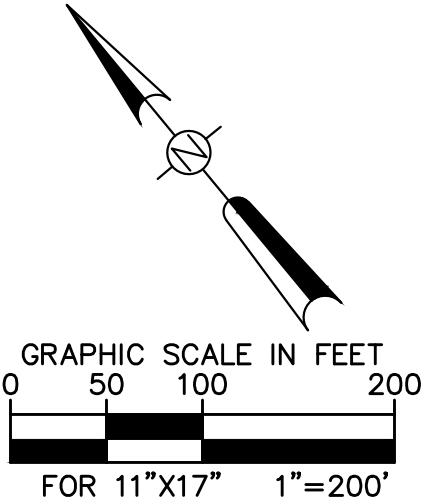


LEGEND

- ASPHALT PAVEMENT REPAIR (RE: A/35)
- CONCRETE PAVEMENT REPAIR (RE: B/35)
- SEEDING SURFACE REPAIR
- SEEDING SURFACE REPAIR

SHEET NOTES:

- CONTRACTOR TO REPAIR ANY DAMAGE TO AND RESTORE PRIVATE IRRIGATION SYSTEMS
- CONTRACTOR IS RESPONSIBLE FOR RESTORING LANDSCAPED AREAS TO EXISTING CONDITION



Kimley»Horn

TPPE Firm No. 928 P. 817-335-6511  
801 Cherry St., Suite 1300 Ft. Worth, TX 76102

No.	Revision	By	Date



CITY OF DENTON

IH-35E MAYHILL

UTILITY RELOCATIONS

07/27/2022

CHRISTOPHER P. 120045

07/27/2022

PROPOSED SURFACE REPAIR  
(SHEET 3 OF 3)

DATE:	JULY 2022
DESIGN:	CPI
DRAWN:	NDCH
CHECKED:	JRA
KHA NO.:	061024039

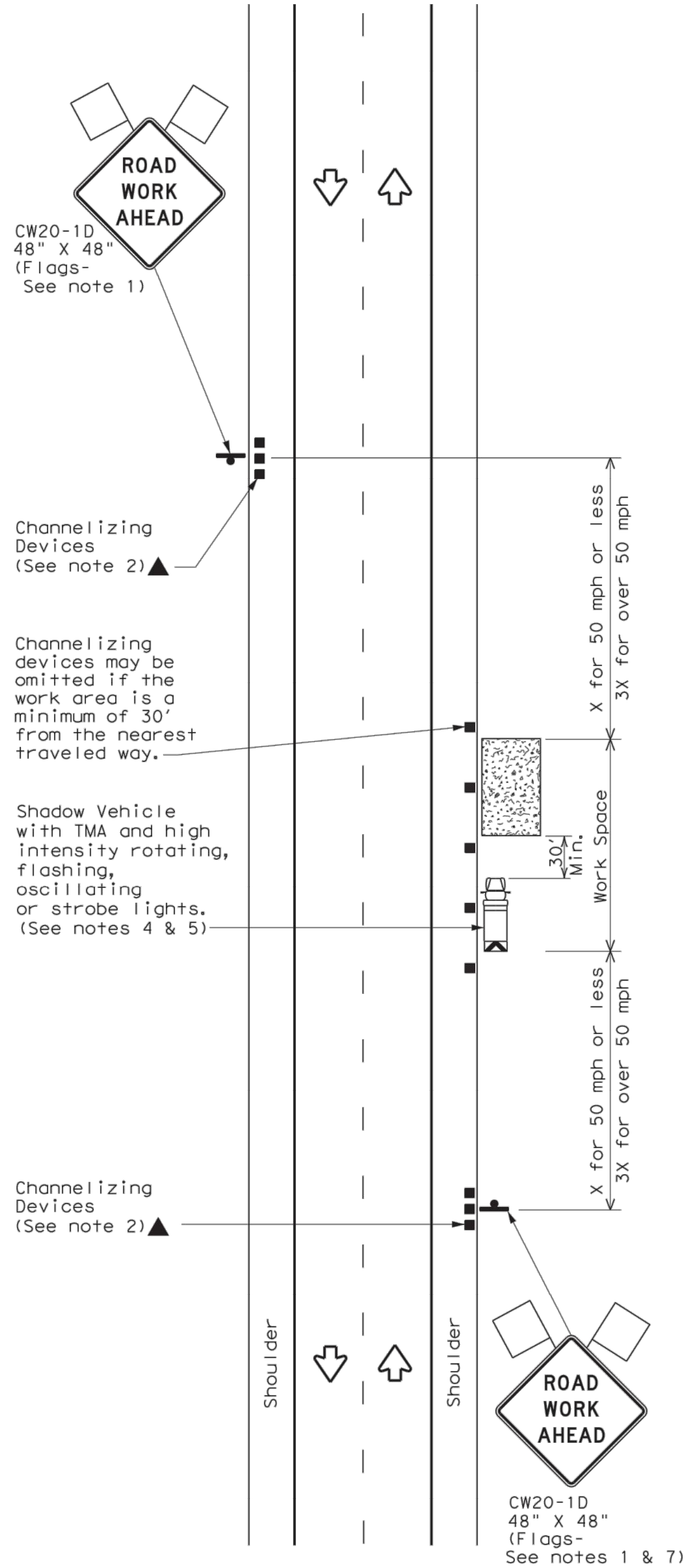
SHEET

41



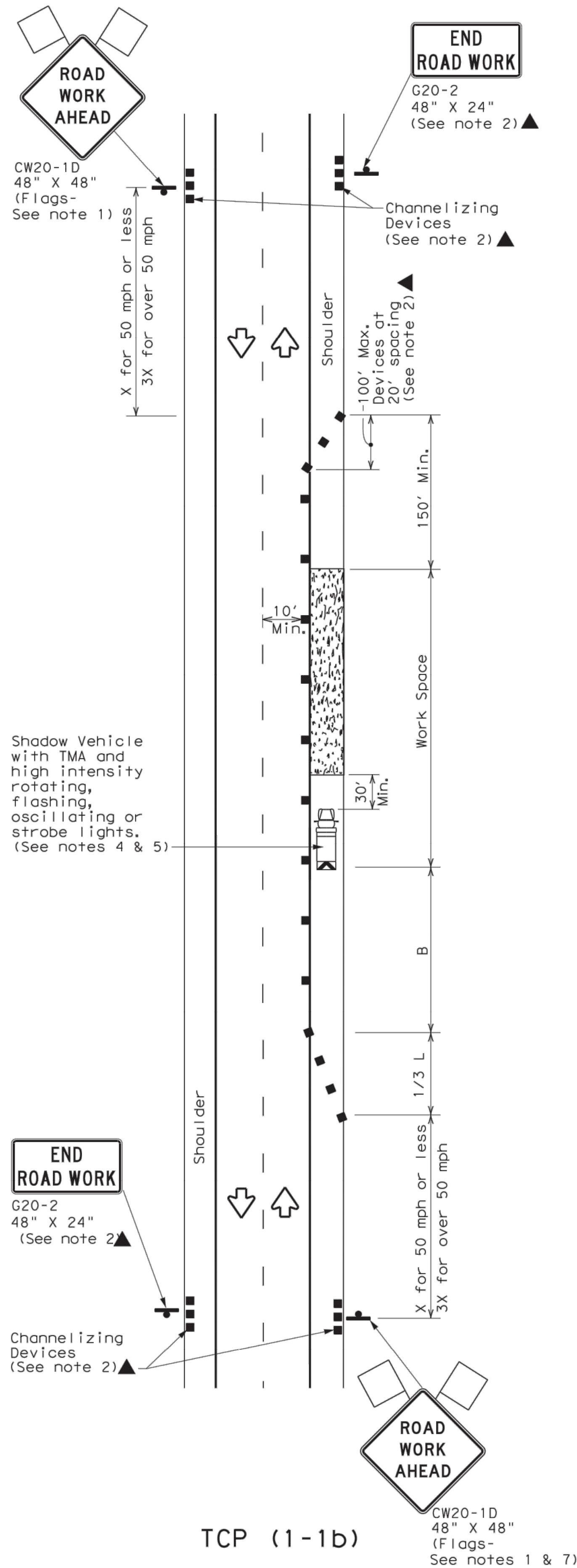
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DATE:  
FILE:



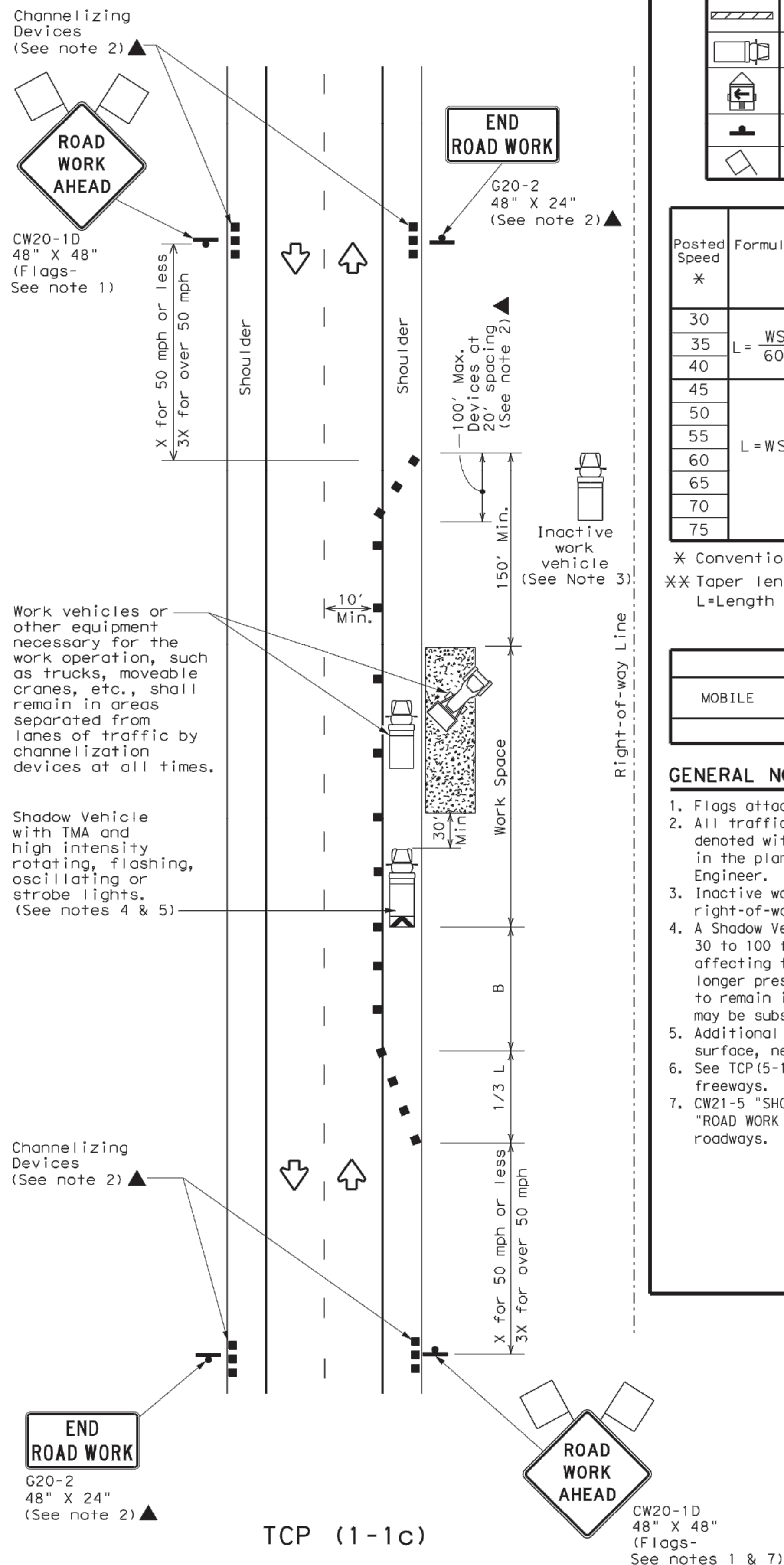
TCP (1-1a)

**WORK SPACE NEAR SHOULDER**  
Conventional Roads



TCP (1-1b)

**WORK SPACE ON SHOULDER**  
Conventional Roads



TCP (1-1c)

**WORK VEHICLES ON SHOULDER**  
Conventional Roads

LEGEND			
	Type 3 Barricade		Channelizing Devices
	Heavy Work Vehicle		Truck Mounted Attenuator (TMA)
	Trailer Mounted Flashing Arrow Board		Portable Changeable Message Sign (PCMS)
	Sign		Traffic Flow
	Flag		Flagger

Posted Speed *	Formula	Minimum Desirable Taper Lengths **			Suggested Maximum Spacing of Channelizing Devices		Minimum Sign Spacing "X" Distance	Suggested Longitudinal Buffer Space "B"
		10' Offset	11' Offset	12' Offset	On a Taper	On a Tangent		
30	$L = \frac{WS^2}{60}$	150'	165'	180'	30'	60'	120'	90'
35		205'	225'	245'	35'	70'	160'	120'
40		265'	295'	320'	40'	80'	240'	155'
45	L = WS	450'	495'	540'	45'	90'	320'	195'
50		500'	550'	600'	50'	100'	400'	240'
55		550'	605'	660'	55'	110'	500'	295'
60		600'	660'	720'	60'	120'	600'	350'
65		650'	715'	780'	65'	130'	700'	410'
70		700'	770'	840'	70'	140'	800'	475'
75		750'	825'	900'	75'	150'	900'	540'

\* Conventional Roads Only  
\*\* Taper lengths have been rounded off.  
L=Length of Taper (FT) W=Width of Offset (FT) S=Posted Speed (MPH)

TYPICAL USAGE				
MOBILE	SHORT DURATION	SHORT TERM STATIONARY	INTERMEDIATE TERM STATIONARY	LONG TERM STATIONARY
	✓	✓		

- GENERAL NOTES**
- Flags attached to signs where shown are REQUIRED.
  - All traffic control devices illustrated are REQUIRED, except those denoted with the triangle symbol may be omitted when stated elsewhere in the plans, or for routine maintenance work, when approved by the Engineer.
  - Inactive work vehicles or other equipment should be parked near the right-of-way line and not parked on the paved shoulder.
  - A Shadow Vehicle with a TMA should be used anytime it can be positioned 30 to 100 feet in advance of the area of crew exposure without adversely affecting the performance or quality of the work. If workers are no longer present but road or work conditions require the traffic control to remain in place, Type 3 Barricades or other channelizing devices may be substituted for the Shadow Vehicle and TMA.
  - Additional Shadow Vehicles with TMAs may be positioned off the paved surface, next to those shown in order to protect wider work spaces.
  - See TCP(5-1) for shoulder work on divided highways, expressways and freeways.
  - CW21-5 "SHOULDER WORK" signs may be used in place of CW20-1D "ROAD WORK AHEAD" signs for shoulder work on conventional roadways.

**Texas Department of Transportation**

**Traffic Operations Division Standard**

**TRAFFIC CONTROL PLAN  
CONVENTIONAL ROAD  
SHOULDER WORK**

**TCP (1-1) - 18**

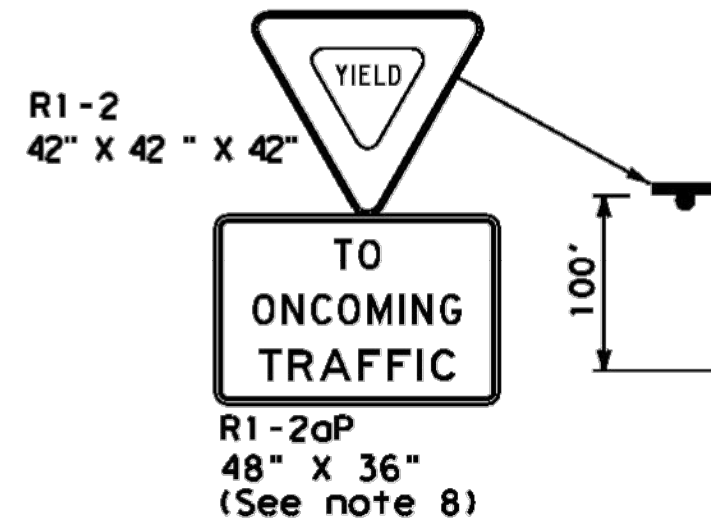
FILE: tcp1-1-18.dgn	DN:	CK:	DW:	CK:
© TxDOT December 1985	CONT	SECT	JOB	HIGHWAY
2-94 4-98 8-95 2-12 1-97 2-18	DIST	COUNTY	SHEET NO. <b>42</b>	



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DATE: FILE:

Warning Sign Sequence in Opposite Direction Same as Below



TCP (1-2a)

ONE LANE TWO-WAY  
CONTROL WITH YIELD SIGNS  
(Less than 2000 ADT - See note 7)

END ROAD WORK

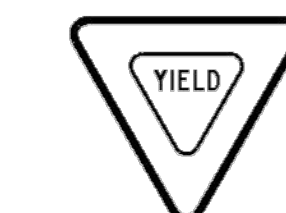
G20-2  
48" x 24"

100' Approx.  
Devices at  
20' spacing

150' Min.

Work Space

Shadow Vehicle with  
TMA and high intensity  
rotating, flashing,  
oscillating or strobe  
lights. (See notes 5 & 6)



R1-2  
42" x 42" x 42"

R1-2aP  
48" x 36"  
(See note 8)

CW3-2  
48" x 48"



CW20-4D  
48" x 48"



CW20-1D  
48" x 48"  
(Flags-  
See note 1)

END ROAD WORK

G20-2  
48" x 24"

Except in  
emergencies,  
flagger stations  
shall be  
illuminated  
at night

Shadow Vehicle  
with TMA and high  
intensity rotating,  
flashing,  
oscillating  
or strobe lights.  
(See notes 5 & 6)

Except in  
emergencies,  
flagger stations  
shall be  
illuminated  
at night

TCP (1-2b)

ONE LANE TWO-WAY  
CONTROL WITH FLAGGERS

CW20-4D  
48" x 48"



CW3-4  
48" x 48"  
(See note 2)



CW20-7  
48" x 48"



CW16-2P  
24" x 18"  
(See note 2)



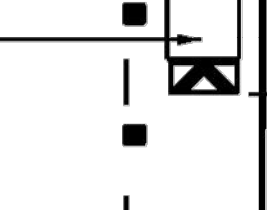
CW20-1D  
48" x 48"  
(Flags-  
See note 1)



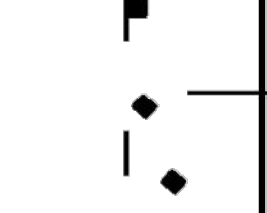
CW20-1D  
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(Flags-  
See note 1)



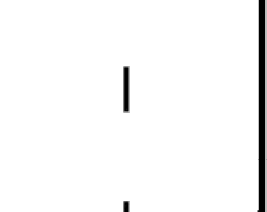
CW20-1D  
48" x 48"  
(Flags-  
See note 1)



CW20-1D  
48" x 48"  
(Flags-  
See note 1)



CW20-1D  
48" x 48"  
(Flags-  
See note 1)



CW20-1D  
48" x 48"  
(Flags-  
See note 1)



CW20-1D  
48" x 48"  
(Flags-  
See note 1)



CW20-1D  
48" x 48"  
(Flags-  
See note 1)



CW20-1D  
48" x 48"  
(Flags-  
See note 1)

## LEGEND

	Type 3 Barricade		Channelizing Devices
	Heavy Work Vehicle		Truck Mounted Attenuator (TMA)
	Trailer Mounted Flashing Arrow Board		Portable Changeable Message Sign (PCMS)
	Sign		Traffic Flow
	Flag		Flagger

Posted Speed *	Formula	Minimum Desirable Taper Lengths **			Suggested Maximum Spacing of Channelizing Devices		Minimum Sign Spacing "X" Distance	Suggested Longitudinal Buffer Space "B"	Stopping Sight Distance
		10' Offset	11' Offset	12' Offset	On a Taper	On a Tangent			
30	$L = \frac{WS^2}{60}$	150'	165'	180'	30'	60'	120'	90'	200'
35		205'	225'	245'	35'	70'	160'	120'	250'
40		265'	295'	320'	40'	80'	240'	155'	305'
45		450'	495'	540'	45'	90'	320'	195'	360'
50		500'	550'	600'	50'	100'	400'	240'	425'
55	L = WS	550'	605'	660'	55'	110'	500'	295'	495'
60		600'	660'	720'	60'	120'	600'	350'	570'
65		650'	715'	780'	65'	130'	700'	410'	645'
70		700'	770'	840'	70'	140'	800'	475'	730'
75		750'	825'	900'	75'	150'	900'	540'	820'

\* Conventional Roads Only

\*\* Taper lengths have been rounded off.

L=Length of Taper (FT) W=Width of Offset (FT) S=Posted Speed (MPH)

## TYPICAL USAGE

MOBILE	SHORT DURATION	SHORT TERM STATIONARY	INTERMEDIATE TERM STATIONARY	LONG TERM STATIONARY
	✓	✓		

## GENERAL NOTES

- Flags attached to signs where shown are REQUIRED.
- All traffic control devices illustrated are REQUIRED, except those denoted with the triangle symbol may be omitted when stated elsewhere in the plans, or for routine maintenance work, when approved by the Engineer.
- The CW3-4 "BE PREPARED TO STOP" sign may be installed after the CW20-4D "ONE LANE ROAD AHEAD" sign, but proper sign spacing shall be maintained.
- Sign spacing may be increased or an additional CW20-1D "ROAD WORK AHEAD" sign may be used if advance warning ahead of the flagger or R1-2 "YIELD" sign is less than 1500 feet.
- A Shadow Vehicle with a TMA should be used anytime it can be positioned 30 to 100 feet in advance of the area of crew exposure without adversely affecting the performance or quality of the work. If workers are no longer present but road or work conditions require the traffic control to remain in place, Type 3 Barricades or other channelizing devices may be substituted for the Shadow Vehicle and TMA.
- Additional Shadow Vehicles with TMAs may be positioned off the paved surface, next to those shown in order to protect wider work spaces.

## TCP (1-2a)

- R1-2 "YIELD" sign traffic control may be used on projects with approaches that have adequate sight distance. For projects in urban areas, work spaces should be no longer than one half city block. In rural areas on roadways with less than 2000 ADT, work spaces should be no longer than 400 feet.
- R1-2 "YIELD" sign with R1-2aP "TO ONCOMING TRAFFIC" plaque shall be placed on a support at a 7 foot minimum mounting height.

## TCP (1-2b)

- Flaggers should use two-way radios or other methods of communication to control traffic.
- Length of work space should be based on the ability of flaggers to communicate.
- If the work space is located near a horizontal or vertical curve, the buffer distances should be increased in order to maintain adequate stopping sight distance to the flagger and a queue of stopped vehicles (see table above).
- Channelizing devices on the center-line may be omitted when a pilot car is leading traffic and approved by the Engineer.
- Flaggers should use 24" STOP/SLOW paddles to control traffic. Flags should be limited to emergency situations.

		Traffic Operations Division Standard	
TRAFFIC CONTROL PLAN ONE-LANE TWO-WAY TRAFFIC CONTROL			
TCP (1-2) - 18			
FILE:	tcp1-2-18.dgn	DN:	CR1
© TxDOT	December 1985	CONT	SECT
REVISIONS		JOB	HIGHWAY
4-90	4-98	DIST	COUNTY
2-94	2-12	SHEET NO.	
1-97	2-18	43	

<b>Client:</b>	City of Denton	<b>Date:</b>	9/20/2022
<b>Project:</b>	IH35E Mayhill from Loop 288 to Post Oak - Utility Relocations	<b>Prepared By:</b>	CPI
<b>KHA No.:</b>	061024039	<b>Checked By:</b>	JRA

**Title:** Water Cost Projection Summary

Project Description	Total		
Water Line Relocations	17,342	LF	\$11,986,735
Utility Abandonments	15,736	LF	\$797,541
<b><u>Construction Total</u></b>			<b>\$12,784,276</b>
Property Acquisition for Proposed Easements	31	parcels	\$2,142,471.25
Property Acquisition Consultant Services (Task 11 in Kimley-Horn Contract Attached)			\$551,500.00
Engineering (Contract Attached) (includes design, survey, CA, permitting, geotech and SUE, less the \$35,000 conflict analysis))			\$630,100.00
City Staff Time (backup estimate provided)			\$81,135
<b><u>Combined Total</u></b>			<b>\$16,189,482.25</b>
<b><u>Betterment for 16-inch to 20-inch (non-reimbursable):</u></b>			<b>\$747,065</b>
<b><u>Engineering for I-35 Conflict Analysis (Task 12, non-reimbursable under this contract):</u></b>			<b>\$35,000</b>
<b><u>Total Reimbursable Amount:</u></b>			<b>\$15,407,417.25</b>

**Basis for Cost Projection:**

- ☐ No Design Completed  
☐ Preliminary Design  
☒ Final Design

**ACTUAL BID TABULATION PROVIDED AS BACKUP**

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

# SECTION 00 42 43 - UNIT PRICE BID FORM



PROJ.: **IH-35E - Mayhill Utility Relocations**  
IFB: **7968-001**

City of Denton Capital Projects  
901-B Texas Street  
Denton, TX 76209  
Attn: Cori Power/Purchasing Dept.

From: Mountain Cascade of Texas, LLC  
5340 East US Highway 67  
Alvarado, TX 76009  
Andrew L. McCulloch  
817-783-3094  
[amcculloch@mountaincascade.com](mailto:amcculloch@mountaincascade.com)

## BIDDERS APPLICATION - UNIT PRICE BID

Item No.	COD SPEC	Description of work	BID QTY	UOM	Unit Price	Extended Price
<b>UNIT 1 - WATER IMPROVEMENTS</b>						
1	01 58 13	0158.001 - Temporary Project Sign	8	EA	\$ 1,000.00	\$ 8,000.00
2	01 70 00	0170.001 - Mobilization	1	EA	\$ 1,000,000.00	\$ 1,000,000.00
3	31 10 00	3100.001 - Site Preparation	1	EA	\$ 90,000.00	\$ 90,000.00
4	31 25 14	3125.010 - Storm Water Pollution Prevention Device Install	1	EA	\$ 50,000.00	\$ 50,000.00
5	31 25 14	3125.011 - Remove Storm Water Polltn Prevention Devices	1	EA	\$ 7,000.00	\$ 7,000.00
6	31 37 00	3137.002 - 6" Concrete Riprap*	51	SY	\$ 90.00	\$ 4,590.00
7	31 37 00	3137.007 - 6" Common Stone Riprap, Dry*	50	SY	\$ 80.00	\$ 4,000.00
8	33 01 12	3301.000 - Joint Bonding and Electrical Isolation	1	EA	\$ 1.00	\$ 1.00
9a	33 14 14	3314.226 - 24" HDPE Pressure Pipe, Water	2229	LF	\$ 600.00	\$ 1,337,400.00
10a	33 14 14	3314.222 - 20" HDPE Pressure Pipe, Water	7002	LF	\$ 375.00	\$ 2,625,750.00
11	33 14 11	3314.146 - 12" PVC Water Pressure Pipe	1442	LF	\$ 350.00	\$ 504,700.00
12	34 14 11	3314.006 - 8" DIP Water Pipe*	135	LF	\$ 280.00	\$ 37,800.00
13	33 14 10	3314.142 - 8" PVC Water Pressure Pipe	3259	LF	\$ 260.00	\$ 847,340.00
14	33 14 11	3314.133 - 6" PVC Water Pressure Pipe	1075	LF	\$ 250.00	\$ 268,750.00
15	33 05 07	3305.028 - 18" Casing Pipe by Other Than Open Cut*	688	LF	\$ 800.00	\$ 550,400.00
16	33 05 07	3305.023 - 24" Casing Pipe by Other Than Open Cut*	629	LF	\$ 850.00	\$ 534,650.00
17	33 05 07	3305.024 - 30" Casing by Open Cut*	63	LF	\$ 500.00	\$ 31,500.00
18	33 05 07	3305.030 - 30" Casing Pipe by Other Than Open Cut*	400	LF	\$ 960.00	\$ 384,000.00
19	33 05 07	3305.025 - 36" Casing by Open Cut*	141	LF	\$ 600.00	\$ 84,600.00
20	33 05 07	3305.031 - 36" Casing by Other Than Open Cut*	410	LF	\$ 1,200.00	\$ 492,000.00
21a	33 05 15, 33 14 14	3305.111 - 24" HDPE Water Carrier Pipe	551	LF	\$ 220.00	\$ 121,220.00
22a	33 05 15, 33 14 14	3305.110 - 20" HDPE Water Carrier Pipe	463	LF	\$ 180.00	\$ 83,340.00
23	33 05 07	3305.097 - 12" PVC Water Carrier Pipe	629	LF	\$ 145.00	\$ 91,205.00
24	33 05 07	3305.096 - 8" PVC Water Carrier Pipe	688	LF	\$ 110.00	\$ 75,680.00
25	33 14 20	3314.331 - 20" Gate Valve*	3	EA	\$ 45,000.00	\$ 135,000.00
26	33 14 20	3314.330 - 16" Gate Valve*	10	EA	\$ 8,000.00	\$ 80,000.00
27	33 14 20	3314.329 - 12" Gate Valve*	8	EA	\$ 7,500.00	\$ 60,000.00
28	33 14 20	3314.328 - 8" Gate Valve*	16	EA	\$ 6,500.00	\$ 104,000.00
29	33 14 20	3314.327 - 6" Gate Valve*	7	EA	\$ 5,500.00	\$ 38,500.00
30	33 14 25	3314.34x - 6" x 6" Tapping Sleeve and Valve (City Performed)*	2	EA	\$ 7,500.00	\$ 15,000.00
31	33 14 25	3314.344 - 8" x 6" Tapping Sleeve and Valve (City Performed)*	2	EA	\$ 8,000.00	\$ 16,000.00
32	33 14 25	3314.345 - 8" x 8" Tapping Sleeve and Valve (City Performed)*	7	EA	\$ 9,000.00	\$ 63,000.00
33	33 14 25	3314.348 - 12" x 12" Tapping Sleeve & Valve (City Performed)*	2	EA	\$ 10,000.00	\$ 20,000.00
34	33 14 25	3314.395 - 20" Water Main Connection with Shutdown	1	EA	\$ 27,000.00	\$ 27,000.00
35	33 14 25	3314.39x - 14" Water Main Connection with Shutdown	3	EA	\$ 20,000.00	\$ 60,000.00
36	33 14 25	3314.393 - 12" Water Main Connection with Shutdown	3	EA	\$ 10,000.00	\$ 30,000.00
37	33 14 25	3314.392 - 8" Water Main Connection with Shutdown	14	EA	\$ 8,000.00	\$ 112,000.00
38	33 14 25	3314.391 - 6" Water Main Connection with Shutdown	5	EA	\$ 8,000.00	\$ 40,000.00
39	33 05 05	3305.021 - Trench Safety	15060	LF	\$ 1.00	\$ 15,060.00
40	32 93 00	3293.015 - Topsoil	671	CY	\$ 25.00	\$ 16,775.00
41	32 93 00	3293.017 - Sodding	3962	SY	\$ 7.00	\$ 27,734.00
42	32 93 00	3293.016 - Seeding	29050	SY	\$ 1.00	\$ 29,050.00
43	32 01 29	3201.013 - Concrete Paving Repair for Utility Trench*	4940	SY	\$ 200.00	\$ 988,000.00
44	32 01 17	3201.007 - Flexible Paving Repair for Utility Trench*	229	SY	\$ 130.00	\$ 29,770.00
45	32 12 16	3216.005 - 4" Concrete Sidewalk*	1134	SY	\$ 130.00	\$ 147,420.00
46	33 14 30	3314.402 - 2" Water Air Release Valve and Vault*	1	EA	\$ 22,000.00	\$ 22,000.00



47	33 14 30	3314.403 - 3" Water Air Release Valve and Vault*	2	EA	\$	30,000.00	\$	60,000.00
48	34 71 13	3314.407 - Fire Hydrant Assembly*	25	EA	\$	15,000.00	\$	375,000.00
49	33 14 17	3314.310 - 1" Water Service*	9	EA	\$	1,800.00	\$	16,200.00
50	33 14 17	3314.312 - 1" Private Water Service Relocation	245	LF	\$	80.00	\$	19,600.00
51	33 14 17	3314.314 - 1-1/2" Water Service*	3	EA	\$	2,000.00	\$	6,000.00
52	33 14 17	3314.318 - 2" Water Service*	6	EA	\$	2,200.00	\$	13,200.00
53	33 14 17	3314.320 - 2" Private Water Service Relocation*	400	LF	\$	75.00	\$	30,000.00
54	33 14 18	3314.323 - 4" Water Meter, Vault and Appurtenances*	1	EA	\$	6,500.00	\$	6,500.00
55	34 71 13	3471.001 - Traffic Control	5	MO	\$	30,000.00	\$	150,000.00
56	02 41 14	0241.035 - Remove 16" Utility Line	142	LF	\$	68.00	\$	9,656.00
57	02 41 14	0241.033 - Remove 14" Utility Line	8387	LF	\$	48.00	\$	402,576.00
58	02 41 14	0241.032 - Remove 12" Utility Line	1064	LF	\$	41.00	\$	43,624.00
59	02 41 14	0241.030 - Remove 8" Utility Line	4490	LF	\$	40.00	\$	179,600.00
60	02 41 14	0241.029 - Remove 6" Utility Line	426	LF	\$	39.00	\$	16,614.00
61	02 41 14	0241.014 - Grout Fill 14" Utility Line	320	LF	\$	34.00	\$	10,880.00
62	02 41 14	0241.013 - Grout Fill 12" Utility Line	799	LF	\$	25.00	\$	19,975.00
63	02 41 14	0241.011 - Grout Fill 8" Utility Line	72	LF	\$	11.00	\$	792.00
64	02 41 14	0241.010 - Grout Fill 6" Utility Line	36	LF	\$	9.00	\$	324.00
65	02 41 14	0241.056 - Remove 6" Water Valve	6	EA	\$	1,000.00	\$	6,000.00
66	02 41 14	0241.057 - Remove 8" Water Valve	14	EA	\$	1,100.00	\$	15,400.00
67	02 41 14	0241.059 - Remove 12" Water Valve	8	EA	\$	1,200.00	\$	9,600.00
68	02 41 14	0241.060 - Remove 14" Water Valve	8	EA	\$	1,250.00	\$	10,000.00
69	02 41 14	0241.094 - Salvage Fire Hydrant	28	EA	\$	1,000.00	\$	28,000.00
70	02 41 14	0241.095 - Salvage Small Water Meter	18	EA	\$	1,000.00	\$	18,000.00
71	02 41 14	0241.096 - Remove Concrete Water Vault	4	EA	\$	1,000.00	\$	4,000.00
72	02 41 14	0241.053 - Utility Line Plugging (Water)	9	EA	\$	2,500.00	\$	22,500.00
<b>TOTAL BID AMOUNT (Unit I): \$</b>							<b>\$</b>	<b>12,784,276.00</b>

\*All materials shall use domestically manufactured products that are composed predominately of steel and/or iron to incorporate into the permanent installation of the utility facility – in compliance with the Buy America provisions of 23 CFR 635.410 as amended.

END BID ITEMS

**IH-35E - Mayhill Utility Relocations**  
**IFB: 7968-001**

**Mountain Cascade of Texas, LLC**

## City of Denton Utility Easements Appraisals

Denton CAD No.	TxDOT Parcel No.	Property Owner	LF of Easement Acquisition	Width (ft)	Total (SF)	Anticipated Fee Price/SF	Total Easement Value	LF of Easement Acquisition	Width (ft)	Total (SF)	Anticipated Fee Price/SF	Total Easement Value	Title Policy Fee	Appraised Value	Total Cost to City
Water Department Easement			Permanent			Permanent		Temporary Construction Easement			Temporary Construction Easement				
749512	66	Carmaxx	2,056.60	10 & 20	31,714.00	\$0.20	\$6,343.00		25	51,500.00	\$0.08	\$4,120.00	\$238.00	\$10,463.00	\$10,701.00
268908	68	TT of Denton, Inc., a Texas corporation	778.00	16.00	6,088.00	\$7.39	\$45,000.00						\$487.00	\$45,000.00	\$45,487.00
268907	70	TT of North Texas	3,070.01	16	574.00	\$11.73	\$6,731.00						\$238.00	\$6,731.00	\$6,969.00
245161	74	Arthur W. Hollingsworth	355.79	28	9,962.00	\$14.40	\$143,426.00			-			\$321.00	\$143,426.00	\$143,747.00
216449, 75161, 74951	75, 75A, 75B	J&S Wood, LP	3,070.01	20	45,553.00	\$1.24	\$56,661.00		25	55,226.00	\$0.24	\$13,255.00	\$568.00	\$69,916.00	\$70,484.00
106979	76	Mayhill Denton, LP, a Texas limited partnership	630.75	28	13,241.00	\$5.75	\$76,136.00		25	6,766.00	\$2.30	\$15,562.00	\$706.00	\$91,698.00	\$92,404.00
282973	87	Regions Bank	23.60	25	613.00	\$16.31	\$10,001.00		25	1,473.00	\$3.20	\$4,714.00	\$238.00	\$14,715.00	\$14,953.00
39171	88	Goel Ventures, LLC, a Texas limited liability company	136.00	20	6,942.00	\$11.25	\$78,097.50		25	4,134.00	\$3.00	\$12,402.00	\$720.00	\$90,499.50	\$91,219.50
290984	90	Mayhill/2499, LLC, a Texas limited liability company	373.50	20	4,279.00	\$12.00	\$51,348.00		25	470.00	\$4.80	\$2,256.00	\$527.00	\$53,604.00	\$54,131.00
39195	91	Josten's, Inc.	373.15	20	7,073.00	\$18.00	\$127,314.00			-			\$321.00	\$127,314.00	\$127,635.00
162646	92/92A	Josten's, Inc.	280.83	20	6,588.00	\$8.79	\$57,916.00			-			\$575.00	\$57,916.00	\$58,491.00
725123	97	Denton Commons, LLC	237.83	20	4,555.00	\$23.00	\$104,765.00			-			\$321.00	\$104,765.00	\$105,086.00
132850	98	Darius H. Heidary, M.D.	38.65	20	811.00	\$12.00	\$9,732.00			-			\$238.00	\$9,732.00	\$9,970.00
33066	99/99E	F & J Partners, Ltd.	364.63	20	7,144.00	\$11.50	\$82,156.00			-			\$748.00	\$82,156.00	\$82,904.00
243009	103	Cole OB Denton, TX, LLC, a Delaware limited liability company	299.49	20	6,011.00	\$11.50	\$69,127.00			-			\$656.00	\$69,127.00	\$69,783.00
243010	104	Roadhouse Enterprises, Inc., a Texas corporation	168.98	20	3,381.00	\$11.50	\$38,882.00			-			\$441.00	\$38,882.00	\$39,323.00
243011	105	FCPT SW Properties, LLC, a Delaware limited liability company	200.99	20	4,021.00	\$11.50	\$46,242.00			-			\$493.00	\$46,242.00	\$46,735.00
619927	106	ARCP RL Portfolio IV, LLC, a Delaware limited liability company	265.45	20	5,344.00	\$16.16	\$86,365.00			-			\$776.00	\$86,365.00	\$87,141.00
162862	113	Josten's, Inc.	342.79	20	5,912.00	\$17.25	\$101,982.00			-			\$321.00	\$101,982.00	\$102,303.00
633163	117	Melvin A. Kausen and Marie A. Kausen Family Trust	207.50	20	4,103.00	\$11.50	\$47,185.00			-			\$499.00	\$47,185.00	\$47,684.00
725122	119	Windriver Lodging, Ltd.	233.81	20	4,995.00	\$12.50	\$62,437.50			-			\$607.00	\$62,437.50	\$63,044.50
Shared Easement with DME															
81677	4	Pick'n'Sav Stores, Inc. #96	267.09	28	7,510.00	\$18.75	\$140,812.00			-			\$321.00	\$140,812.00	\$141,133.00
81681	6	Santander Denton, Ltd., a Texas limited partnership	260.27	28	5,659.00	\$18.75	\$106,106.25			-			\$321.00	\$106,106.25	\$106,427.25
81693	11	Halle Properties, LLC, an Arizona limited liability company	134.62	20	2,637.00	\$3.75	\$9,889.00			-			\$238.00	\$9,889.00	\$10,127.00
563626	89	Columbia Medical Center of Denton	419.93	16	9,558.00	\$11.75	\$112,307.00		25	15,395.00	\$4.70	\$72,357.00	\$321.00	\$184,664.00	\$184,985.00
39175	93	B.A. Badie	290.00	28	5,667.00	\$11.00	\$62,337.00			-			\$607.00	\$62,337.00	\$62,944.00
282709	94	Carroll Family Investments, Ltd.	331.00	28	6,089.00	\$12.00	\$73,068.00			-			\$685.00	\$73,068.00	\$73,753.00
659973	95	GHLDS #2, LLC, a Texas limited liability company	195.18	20	3,742.00	\$11.51	\$43,068.00			-			\$471.00	\$43,068.00	\$43,539.00
215296	107	Texas Student Housing Corporation -- Denton Project	376.03	28	10,576.00	\$5.39	\$56,973.00			-			\$568.00	\$56,973.00	\$57,541.00
121075	109	Denton PCR, Ltd., a Texas limited liability company	620.75	28	17,336.00	\$5.25	\$91,014.00			-			\$813.00	\$91,014.00	\$91,827.00
<b>Total</b>															
Water Department Easement			13,508.35		179,262.62	-	\$1,307,847.00	-	-	119,569.00	-	\$52,309.00	\$10,039.00	\$1,360,156.00	\$1,370,195.00
Shared Easements with DME			2,894.87		68,774.00	-	\$695,574.25	-	-	15,395.00	-	\$72,357.00	\$4,345.00	\$767,931.25	\$772,276.25
Combined Total			16,403.23		248,036.62	-	\$2,003,421.25	-	-	134,964.00	-	\$124,666.00	\$14,384.00	\$2,128,087.25	\$2,142,471.25

\$133,641

Total with Permanent, Temporary Easements and Title:

Water Department Easement  
Shared Easements with DME  
Combined Total

50% of DME

**Total Water Budget**

\$2,142,471.25
\$1,370,195.00
\$772,276.25
\$2,142,471.25
\$386,138.13
<b>\$1,756,333.13</b>

This summary table is only for internal City use. The City is only seeking easement reimbursements once. DME may have other standalone easements they may seek reimbursement on

Client:	City of Denton
Project:	IH-35E-Mayhill-Utility Relocations
KHA No.	0610240xx
PM:	Chris Igo

Task Budget Summary			Task 700	Task 888		
No.	Task Name	Hours	Labor	Expenses	Office Exp.	Subtotal
100	Design Mgmt	141	\$ 29,600	\$ 11,000	\$ 1,400	\$ 42,000
200	Align Routing-Esmt ID	201	\$ 44,100		\$ 2,100	\$ 46,200
201	Prelim Design	529	\$ 118,700	\$ 29,700	\$ 5,500	\$ 153,900
202	Final Design	307	\$ 68,300		\$ 3,200	\$ 71,500
203	Contract Docs	60	\$ 12,500		\$ 600	\$ 13,100
204	Bidding Services	73	\$ 16,100		\$ 800	\$ 16,900
205	CCA	237	\$ 53,300		\$ 2,500	\$ 55,800
206	Record Drawings	42	\$ 8,700		\$ 400	\$ 9,100
207	Permitting	103	\$ 22,800		\$ 1,100	\$ 23,900
208	Survey and Easements	311	\$ 56,700	\$ 57,800	\$ 2,700	\$ 117,200
209	Easement Acquisition			\$ 249,500		\$ 249,500
210	Conflict Analysis	151	\$ 33,000	\$ 400	\$ 1,600	\$ 35,000
777	Contingency				\$ -	
	TOTALS:	2,155	\$ 463,800	\$ 348,400	\$ 21,900	\$ 834,100

Task No.	Task Name	Cost	Multiplier	Subtotal
	TOTALS:	\$ -		\$ -

Labor:	\$	463,800
Expenses:	\$	370,300
<b>TOTAL:</b>	<b>\$</b>	<b>834,100</b>

Note: This portion is for water only, the rest of the contract hourly breakdown is shown in the wastewater agreement

## General Project Information

Client: **City of Denton**  
Project: **IH-35E-Mayhill-Utility Relocation**  
KHA No: **0610240xx**  
PM: **Chris Igo**

## Task Effort Summary

Labor:	\$	-
Expenses:	\$	249,500
Allocation:	\$	-
<b>TOTAL:</b>	<b>\$</b>	<b>249,500</b>

### Task Information

Number: 209  
Name: Easement Acquisition  
Task Mgr:

## Task Description and Budgeting

[illegible]

Client:	City of Denton
Project:	IH-35E-Mayhill-Utility Relocations
KHA No.	061024039
PM:	Chris Igo

<b>Subconsultant Summary</b>				
<b>Task No.</b>	<b>Task Name</b>	<b>Cost</b>	<b>Multiplier</b>	<b>Subtotal</b>
	TOTALS:	\$ -		\$ -

Release v2016.1 Page 1 of 7  
K:\FTW\_Utilities\061024039-IH-35E-Mayhill-Utilities\PPPI\POST\_NTP\Amd-02\IH35E-Mayhill-Amend-No2\_Fee-Work\Printed 6/24/2022, 8:41 AM

Date: September 1, 2020

## General Project Information

Client: **City of Denton**  
Project: **IH-35E-Mayhill-Utility Relocation**  
KHA No: **061024039**  
PM: **Chris Igo**

## Task Effort Summary

Labor:	\$ 3,900
Expenses:	\$ 132,900
Allocation:	\$ 200
<b>TOTAL:</b>	<b>\$ 137,000</b>

### Task Information

Number: 209  
Name: Easement Acquisition  
Task Mgr:

## Task Description and Budgeting

[illegible]

Task Subtotals (\$000's)											Lbr	Expenses (\$)
Cost:			0.8								0.8	\$ 120,800
Effort:			3.9								3.9	\$ 132,900



# Amendment 1

Real Estate Agent Service Items	Anticipated Units/Parcels	Unit/Parcel Rate	Fee Amount
Right-of-Entries	0	\$880.00	\$0.00
Title and Closing Services	10	\$550.00	\$5,500.00
Negotiation Services	10	\$4,950.00	\$49,500.00
Appraisal Service (Land Only)	10	\$4,180.00	\$41,800.00
Appraisal Service (Improved Property)	0	\$6,820.00	\$0.00
Appraisal Service (Independent Review)	35	\$1,760.00	\$61,600.00
Engineer Assistance	30	\$220.00	\$6,600.00
<b>TOTAL SERVICES FEE</b>			<b>\$165,000.00</b>



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## I-35E Project - City Staff Estimate (water)

Employee Name	Title	Hours	Hourly Rate	Total
	Engineer(s)	360	\$ 50.00	\$ 18,000.00
	Admin(s)	135	\$ 35.00	\$ 4,725.00
	Inspector(s)	1800	\$ 30.00	\$ 54,000.00
	Supervisor(s)	63	\$ 70.00	\$ 4,410.00
Sum Total				\$ 81,135.00

## Attachment "B" Accounting Method



### Actual Cost Method of Accounting

The utility accumulates cost under a work order accounting procedure prescribed by the Federal or State regulatory body and proposes to request reimbursement for actual direct and related indirect costs.



### Lump Sum Method of Accounting

Utility proposed to request reimbursement based on an agreed lump sum amount supported by a detailed cost analysis.

DS  
DP  
Initial

1/17/2023

Date

TxDOT

Initial

12/7/22  
Date  
Utility


Form ROW-U-35  
(Rev. 10/20)  
Page 7


## Attachment "C" Schedule of Work

Estimated Start Date: 01/16/23, (subject to physical work restrictions prior to the issuance of environmental clearance as required by the provisions of this agreement)

Estimated Duration (days): 240

Estimated Completion Date: 09/13/23

  
Initial Date  
TxDOT

  
Initial Date  
Utility

## Attachment "D" Statement Covering Contract Work


(ROW-U-48)  
(ROW-U-48-1, if applicable)

### Construction Contract:

- ☐ Utility performing with their own forces (timesheets will be required at the time of billing).
- ☒ Utility will use outside forces to perform the adjustment, complete attached ROW-U-48 or ROW-U-48-1 (joint bid).

### Engineering Contract:

- ☐ Utility performing with their own forces (timesheets will be required at the time of billing).
- ☒ Utility will use consultant contract (continuing contract rate sheets or fee schedule will be required).
- ☐ TxDOT will procure utility consultant.

  
Initial  
1/17/2023  
Date  
TxDOT

  
Initial  
12/7/22  
Date  
Utility



STATEMENT COVERING UTILITY CONSTRUCTION CONTRACT WORK  
(AS APPEARING IN ESTIMATE)

Form ROW-U-48  
(Rev. 10/20)  
Page of

U-Number: N/A Utility ID: U00008008  
ROW CSJ Number: 0196-01-114 District: Dallas  
County: Denton Highway No.: IH-35E  
Federal Project No.: N/A

I, Sara Hensley, a duly authorized and qualified representative of  
City of Denton, hereinafter referred to as **Owner**, am fully cognizant of the  
facts and make the following statements in respect to work which will or may be done on a contract basis as it appears in the  
estimate to which this statement is attached.

It is more economical and/or expedient for **Owner** to contract this adjustment, or **Owner** is not adequately staffed or equipped  
to perform the necessary work on this project with its own forces to the extent as indicated on the estimate.

Procedure to be Used in Contracting Work

- ☐ A. Solicitation for bids is to be accomplished through open advertising and contract is to be awarded to the lowest  
qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be  
performed. Associated bid tabulations will be provided to the **State**.
- ☒ B. Solicitation for bids is to be accomplished by circulating to a list of pre-qualified contractors or known qualified  
contractors and such contract is to be awarded to the lowest qualified bidder who submits a proposal in conformity  
with the requirements and specifications for the work to be performed. Associated bid tabulations will be provided to  
the **State**. Such presently known contractors are listed below:

1. Mountain Cascade of Texas, LLC
2. Oscar Renda Contracting, Inc.
3. S.J. Louis Construction of Texas, Ltd
- 4.
- 5.



- ☐ C. The work is to be performed under an existing continuing contract under which certain work is regularly performed  
for **Owner** and under which the lowest available costs are developed. The existing continuing contract will be made  
available to the **State** for review at a location mutually acceptable to the **Owner** and the **State**. If only part of the  
contract work is to be done under an existing contract, give detailed information by attachment hereto.
- ☐ D. The utility proposes to contract outside the foregoing requirements and therefore evidence in support of its proposal  
is attached to the estimate in order to obtain the concurrence of the **State**, and the Federal Highway Administration  
Division Engineer where applicable, prior to taking action thereon (approval of the agreement shall be considered as  
approval of such proposal).
- ☐ E. The utility plans and specifications, with the consent of the **State**, will be included in the construction contract  
awarded by the **State**. In the best interest of both the **State** and the **Owner**, the **Owner** requests the **State** to include  
the plans and specifications for this work in the general contract for construction of Highway \_\_\_\_\_ in this area, so  
that the work can be coordinated with the other construction operations; and the construction contract is to be  
awarded by the **State** to the lowest qualified bidder who submits a proposal in conformity with the requirements and  
specifications for the work to be performed. If this option is chosen, attach form ROW-U-48-1, the terms of which are  
incorporated herein by reference.

Signature

Date

12/7/22

Contact/Help

City Manager

Title





## DocuSign City Council Transmittal Coversheet

PSA	6590-084
File Name	Mayhill I35E Utility Location
Purchasing Contact	Jane Rogers
City Council Target Date	January 14, 2020
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	20-040

## **CITY OF DENTON, TEXAS**

### **STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES #6590-084**

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and Kimley-Horn and Associates, Inc., with its corporate office at 801 Cherry Street, Unit 11 Suite 950, Fort Worth, Texas 76102 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: engineering services for the design and construction phase services for the IH-35E-MAYHILL – UTILTIY-RELOCATIONS (the "PROJECT").

#### **SECTION 1** **Scope of Services**

- A.** The CITY hereby agrees to retain the ENGINEER, and the ENGINEER hereby agrees to perform, professional engineering services set forth in the Scope of Services attached hereto as Attachment A. These services shall be performed in connection with the PROJECT.
- B.** Additional services, if any, will be requested in writing by the CITY. CITY shall not pay for any work performed by ENGINEER or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ENGINEER shall not be compensated for any additional work resulting from oral orders of any person.

#### **SECTION 2** **Compensation and Term of Agreement**

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$922,800 in the manner and in accordance with the fee schedule as set forth in Attachment B. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment A.

### **SECTION 3**

#### **Terms of Payment**

Payments to the ENGINEER will be made as follows:

#### **A. Invoice and Payment**

- (1) The Engineer shall provide the City sufficient documentation, including but not limited to meeting the requirements set forth in the PROJECT schedule as set forth in Attachment D to reasonably substantiate the invoices.
- (2) The ENGINEER will issue monthly invoices for all work performed under this AGREEMENT. Invoices for the uncontested performance of the particular services are due and payable within 30 days of receipt by City.
- (3) Upon completion of services enumerated in Section 1, the final payment of any balance for the uncontested performance of the services will be due within 30 days of receipt of the final invoice.
- (4) In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The CITY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.
- (5) If the CITY fails to make payment in full to ENGINEER for billings contested in good faith within 60 days of the amount due, the ENGINEER may, after giving 7 days' written notice to CITY, suspend services under this AGREEMENT until paid in full. In the event of suspension of services, the ENGINEER shall have no liability to CITY for delays or damages caused the CITY because of such suspension of services.

### **SECTION 4**

#### **Obligations of the Engineer**

#### **A. General**

The ENGINEER will serve as the CITY's professional engineering representative under this AGREEMENT, providing professional engineering consultation and advice and furnishing customary services incidental thereto.

#### **B. Standard of Care**

The ENGINEER shall perform its services:

- (1) with the professional skill and care ordinarily provided by competent engineers

practicing in the same or similar locality and under the same or similar circumstances and professional license; and

- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

### **C. Subsurface Investigations**

- (1) The ENGINEER shall advise the CITY with regard to the necessity for subcontract work such as special surveys, tests, test borings, or other subsurface investigations in connection with design and engineering work to be performed hereunder. The ENGINEER shall also advise the CITY concerning the results of same. Such surveys, tests, and investigations shall be furnished by the CITY, unless otherwise specified in Attachment A.
- (2) In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect the total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

### **D. Preparation of Engineering Drawings**

The ENGINEER will provide to the CITY the original drawings of all plans in ink on reproducible mylar sheets and electronic files in .pdf format, or as otherwise approved by CITY, which shall become the property of the CITY. CITY may use such drawings in any manner it desires; provided, however, that the ENGINEER shall not be liable for the use of such drawings for any project other than the PROJECT described herein.

### **E. Engineer's Personnel at Construction Site**

- (1) The presence or duties of the ENGINEER's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the CITY's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the AGREEMENT Documents and any health or safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their

employees in connection with their work or any health or safety precautions.

- (2) Except to the extent of specific site visits expressly detailed and set forth in Attachment A, the ENGINEER or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress or quality of the completed work on the PROJECT or to determine, in general, if the work on the PROJECT is being performed in a manner indicating that the PROJECT, when completed, will be in accordance with the AGREEMENT Documents, nor shall anything in the AGREEMENT Documents or this AGREEMENT between CITY and ENGINEER be construed as requiring ENGINEER to make exhaustive or continuous on-site inspections to discover latent defects in the work or otherwise check the quality or quantity of the work on the PROJECT. If the ENGINEER makes on-site observation(s) of a deviation from the AGREEMENT Documents, the ENGINEER shall inform the CITY.
- (3) When professional certification of performance or characteristics of materials, systems or equipment is reasonably required to perform the services set forth in the Scope of Services, the ENGINEER shall be entitled to rely upon such certification to establish materials, systems or equipment and performance criteria to be required in the AGREEMENT Documents.

#### **F. Opinions of Probable Cost, Financial Considerations, and Schedules**

- (1) The ENGINEER shall provide opinions of probable costs based on the current available information at the time of preparation, in accordance with Attachment A.
- (2) In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the PROJECT, the ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the ENGINEER makes no warranty that the CITY's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from the ENGINEER's opinions, analyses, projections, or estimates.

#### **G. Construction Progress Payments**

Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, and belief from selective sampling and observation that the work has

progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the ENGINEER to ascertain that the construction contractor has completed the work in exact accordance with the AGREEMENT Documents; that the final work will be acceptable in all respects; that the ENGINEER has made an examination to ascertain how or for what purpose the construction contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to the CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

## **H. Record Drawings**

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. The ENGINEER is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings.

## **I. Right to Audit**

- (1) ENGINEER agrees that the CITY shall, until the expiration of five (5) years after final payment under this AGREEMENT, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of the ENGINEER involving transactions relating to this AGREEMENT. ENGINEER agrees that the CITY shall have access during normal working hours to all necessary ENGINEER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CITY shall give ENGINEER reasonable advance notice of intended audits.
- (2) ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that the CITY shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that the CITY shall have access during normal working hours to all subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (3) hereof. CITY shall give subconsultant reasonable advance notice of intended audits.
- (3) ENGINEER and subconsultant agree to photocopy such documents as may be requested by the CITY. The CITY agrees to reimburse ENGINEER for the cost of copies at the rate published in the Texas Administrative Code in effect as of



the time copying is performed.

## **J. INSURANCE**

### **(1) ENGINEER'S INSURANCE**

- a. Commercial General Liability – the ENGINEER shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 per each occurrence with a \$2,000,000.00 aggregate. If such Commercial General Liability insurance contains a general aggregate limit, it shall apply separately to this PROJECT or location.
  - i. The CITY shall be included as an additional insured with all rights of defense under the CGL, using ISO additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the CITY. The Commercial General Liability insurance policy shall have no exclusions or endorsements that would alter or nullify: premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained within the policy, unless the CITY specifically approves such exclusions in writing.
  - ii. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained in accordance with this AGREEMENT.
- b. Business Auto – the ENGINEER shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of “any auto”, including owned, hired, and non-owned autos, when said vehicle is used in the course of the PROJECT. If the engineer owns no vehicles, coverage for hired or non-owned is acceptable.
  - i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by ENGINEER pursuant to this AGREEMENT or under any applicable auto physical damage coverage.

- c. Workers' Compensation – ENGINEER shall maintain workers compensation and employers liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$100,000.00 each accident for bodily injury by accident or \$100,000.00 each employee for bodily injury by disease, with \$500,000.00 policy limit.
  - i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by workers compensation and employer's liability or commercial umbrella insurance obtained by ENGINEER pursuant to this AGREEMENT.
- d. Professional Liability – ENGINEER shall maintain professional liability, a claims-made policy, with a minimum of \$1,000,000.00 per claim and aggregate. The policy shall contain a retroactive date prior to the date of the AGREEMENT or the first date of services to be performed, whichever is earlier. Coverage shall be maintained for a period of 5 years following the completion of the AGREEMENT. An annual certificate of insurance specifically referencing this PROJECT shall be submitted to the CITY for each year following completion of the AGREEMENT.

## (2) GENERAL INSURANCE REQUIREMENTS

- a. Certificates of insurance evidencing that the ENGINEER has obtained all required insurance shall be attached to this AGREEMENT prior to its execution.
- b. Applicable policies shall be endorsed to name the CITY an Additional Insured thereon, subject to any defense provided by the policy, as its interests may appear. The term CITY shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.
- c. Certificate(s) of insurance shall document that insurance coverage specified in this AGREEMENT are provided under applicable policies documented thereon.
- d. Any failure on part of the CITY to attach the required insurance documentation hereto shall not constitute a waiver of the insurance requirements.
- e. A minimum of thirty (30) days notice of cancellation or material change in coverage shall be provided to the CITY. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Notice shall be sent

to the respective Department Director (by name), City of Denton, 901 Texas Street, Denton, Texas 76209.

- f. Insurers for all policies must be authorized to do business in the State of Texas and have a minimum rating of A:V or greater, in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management.
- g. Any deductible or self insured retention in excess of \$25,000.00 that would change or alter the requirements herein is subject to approval by the CITY in writing, if coverage is not provided on a first-dollar basis. The CITY, at its sole discretion, may consent to alternative coverage maintained through insurance pools or risk retention groups. Dedicated financial resources or letters of credit may also be acceptable to the CITY.
- h. Applicable policies shall each be endorsed with a waiver of subrogation in favor of the CITY as respects the PROJECT.
- i. The CITY shall be entitled, upon its request and without incurring expense, to review the ENGINEER's insurance policies including endorsements thereto and, at the CITY's discretion; the ENGINEER may be required to provide proof of insurance premium payments.
- j. Lines of coverage, other than Professional Liability, underwritten on a claims-made basis, shall contain a retroactive date coincident with or prior to the date of the AGREEMENT. The certificate of insurance shall state both the retroactive date and that the coverage is claims-made.
- k. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption nor restrictive modification or changes from date of commencement of the PROJECT until final payment and termination of any coverage required to be maintained after final payments.
- l. The CITY shall not be responsible for the direct payment of any insurance premiums required by this AGREEMENT.
- m. Sub consultants and subcontractors to/of the ENGINEER shall be required by the ENGINEER to maintain the same or reasonably equivalent insurance coverage as required for the ENGINEER. When sub consultants/subcontractors maintain insurance coverage, ENGINEER shall provide CITY with documentation thereof on a certificate of insurance.

**K. Independent Consultant**

The ENGINEER agrees to perform all services as an independent consultant and not as a subcontractor, agent, or employee of the CITY. The doctrine of *respondeat superior* shall not apply.

**L. Disclosure**

The ENGINEER acknowledges to the CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interest, direct or indirect, in property abutting the proposed PROJECT and business relationships with abutting property cities. The ENGINEER further acknowledges that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this AGREEMENT and prior to final payment under the AGREEMENT.

**M. Asbestos or Hazardous Substances**

- (1) If asbestos or hazardous substances in any form are encountered or suspected, the ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.
- (2) If asbestos or other hazardous substances are suspected, the CITY may request the ENGINEER to assist in obtaining the services of a qualified subcontractor to manage the remediation activities of the PROJECT.

**N. Permitting Authorities - Design Changes**

If permitting authorities require design changes so as to comply with published design criteria and/or current engineering practice standards which the ENGINEER should have been aware of at the time this AGREEMENT was executed, the ENGINEER shall revise plans and specifications, as required, at its own cost and expense. However, if design changes are required due to the changes in the permitting authorities' published design criteria and/or practice standards criteria which are published after the date of this AGREEMENT which the ENGINEER could not have been reasonably aware of, the ENGINEER shall notify the CITY of such changes and an adjustment in compensation will be made through an amendment to this AGREEMENT.

**O. Schedule**

ENGINEER shall manage the PROJECT in accordance with the schedule developed per Attachment D to this AGREEMENT.

**P. Equal Opportunity**

- (1) **Equal Employment Opportunity:** ENGINEER and ENGINEER's agents

shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this AGREEMENT.

- (2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and ENGINEER's agents shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

## **SECTION 5**

### **Obligations of the City**

#### **A. City-Furnished Data**

ENGINEER may rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

#### **B. Access to Facilities and Property**

The CITY will make its facilities accessible to the ENGINEER as required for the ENGINEER's performance of its services. The CITY will perform, at no cost to the ENGINEER, such tests of equipment, machinery, pipelines, and other components of the CITY's facilities as may be required in connection with the ENGINEER's services. The CITY will be responsible for all acts of the CITY's personnel.

#### **C. Advertisements, Permits, and Access**

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for the ENGINEER's services or PROJECT construction.

#### **D. Timely Review**

The CITY will examine the ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the CITY deems appropriate; and render in writing decisions required by the CITY in a timely manner in accordance with the PROJECT schedule prepared in accordance with Attachment D.

**E. Prompt Notice**

The CITY will give prompt written notice to the ENGINEER whenever CITY observes or becomes aware of any development that affects the scope or timing of the ENGINEER's services or of any defect in the work of the ENGINEER or construction contractors.

**F. Asbestos or Hazardous Substances Release.**

- (1) CITY acknowledges ENGINEER will perform part of the work at CITY's facilities that may contain hazardous materials, including asbestos containing materials, or conditions, and that ENGINEER had no prior role in the generation, treatment, storage, or disposition of such materials. In consideration of the associated risks that may give rise to claims by third parties or employees of City, City hereby releases ENGINEER from any damage or liability related to the presence of such materials.
- (2) The release required above shall not apply in the event the discharge, release or escape of hazardous substances, contaminants, or asbestos is a result of ENGINEER's negligence or if ENGINEER brings such hazardous substance, contaminant or asbestos onto the PROJECT.

**G. Contractor Indemnification and Claims**

The CITY agrees to include in all construction contracts the provisions of Article IV.E. regarding the ENGINEER's Personnel at Construction Site, and provisions providing for contractor indemnification of the CITY and the ENGINEER for contractor's negligence.

**H. Contractor Claims and Third-Party Beneficiaries**

- (1) The CITY agrees to include the following clause in all contracts with construction contractors and equipment or materials suppliers:
 

"Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the CITY will be the beneficiary of any undertaking by the ENGINEER."
- (2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ENGINEER and there are no third-party beneficiaries.
- (3) The CITY will include in each agreement it enters into with any other entity or person regarding the PROJECT a provision that such entity or person shall have no third-party beneficiary rights under this AGREEMENT.



- (4) Nothing contained in this Section H. shall be construed as a waiver of any right the CITY has to bring a claim against ENGINEER.

#### **I. CITY's Insurance**

- (1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.
- (2) The CITY may secure Builders Risk/Installation insurance at the replacement cost value of the PROJECT. The CITY may provide ENGINEER a copy of the policy or documentation of such on a certificate of insurance.

#### **J. Litigation Assistance**

The Scope of Services does not include costs of the ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY. In the event CITY requests such services of the ENGINEER, this AGREEMENT shall be amended or a separate agreement will be negotiated between the parties.

#### **K. Changes**

The CITY may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect the ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT with appropriate CITY approval.

### **SECTION 6** **General Legal Provisions**

#### **A. Authorization to Proceed**

ENGINEER shall be authorized to proceed with this AGREEMENT upon receipt of a written Notice to Proceed from the CITY.

#### **B. Reuse of Project Documents**

All designs, drawings, specifications, documents, and other work products of the ENGINEER, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse, change, or alteration by the CITY or by others acting through or on behalf of the CITY of any such instruments of service without the written permission of the ENGINEER will be at the CITY's sole risk. The CITY shall own the final designs, drawings, specifications and documents.

### **C. Force Majeure**

The ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the ENGINEER that prevent ENGINEER's performance of its obligations hereunder.

### **D. Termination**

(1) This AGREEMENT may be terminated:

- a. by the City for its convenience upon 30 days' written notice to ENGINEER.
- b. by either the CITY or the ENGINEER for cause if either party fails substantially to perform through no fault of the other and the nonperforming party does not commence correction of such nonperformance within 5 days' written notice or thereafter fails to diligently complete the correction.

(2) If this AGREEMENT is terminated for the convenience of the City, the ENGINEER will be paid for termination expenses as follows:

- a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ENGINEER'S work product;
- b. Out-of-pocket expenses for purchasing electronic data files and other data storage supplies or services;
- c. The time requirements for the ENGINEER'S personnel to document the work underway at the time of the CITY'S termination for convenience so that the work effort is suitable for long time storage.

(3) Prior to proceeding with termination services, the ENGINEER will submit to the CITY an itemized statement of all termination expenses. The CITY'S approval will be obtained in writing prior to proceeding with termination services.

### **E. Suspension, Delay, or Interruption to Work**

The CITY may suspend, delay, or interrupt the services of the ENGINEER for the convenience of the CITY. In the event of such suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment and cost of the ENGINEER's personnel and subcontractors, and ENGINEER's compensation will be made.

## **F. Indemnification**

**IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 271.904, THE ENGINEER SHALL INDEMNIFY OR HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ANY DAMAGE COMMITTED BY THE ENGINEER OR ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER. CITY IS ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE ENGINEER'S LIABILITY.**

## **G. Assignment**

Neither party shall assign all or any part of this AGREEMENT without the prior written consent of the other party.

## **H. Jurisdiction**

The law of the State of Texas shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. The venue for any litigation related to this AGREEMENT shall be Denton County, Texas.

## **I. Severability and Survival**

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Sections 5.F., 6.B., 6.D., 6.F., 6.H., and 6.I. shall survive termination of this AGREEMENT for any cause.

## **J. Observe and Comply**

ENGINEER shall at all times observe and comply with all federal and State laws and regulations and with all City ordinances and regulations which in any way affect this AGREEMENT and the work hereunder, and shall observe and comply with all orders, laws ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. **ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS OR LIABILITY ARISING OUT OF THE VIOLATION OF ANY SUCH ORDER, LAW, ORDINANCE, OR REGULATION, WHETHER IT BE BY ITSELF OR ITS EMPLOYEES.**

## K. Immigration Nationality Act

ENGINEER shall verify the identity and employment eligibility of its employees who perform work under this AGREEMENT, including completing the Employment Eligibility Verification Form (I-9). Upon request by CITY, ENGINEER shall provide CITY with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this AGREEMENT. ENGINEER shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any ENGINEER employee who is not legally eligible to perform such services. **ENGINEER SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY ENGINEER, ENGINEER'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** CITY, upon written notice to ENGINEER, shall have the right to immediately terminate this AGREEMENT for violations of this provision by ENGINEER.

## L. Prohibition On Contracts With Companies Boycotting Israel

ENGINEER acknowledges that in accordance with Chapter 2270 of the Texas Government Code, CITY is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this AGREEMENT, ENGINEER certifies that ENGINEER'S signature provides written verification to the CITY that ENGINEER: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the AGREEMENT.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

## M. Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Section 2252 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this AGREEMENT, ENGINEER certifies that ENGINEER'S signature provides written verification to the CITY that ENGINEER, pursuant to Chapter 2252, is not ineligible to enter into this AGREEMENT and will not become ineligible to receive payments under this AGREEMENT by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

## N. Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract

unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at :  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

## **O. Agreement Documents**

This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, which supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. This AGREEMENT may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument. The following attachments and schedules are hereby made a part of this AGREEMENT:

- Attachment A - Scope of Services
- Attachment B – Compensation
- Attachment C – Changes and Amendments to Standard Agreement
- Attachment D – Project Schedule
- Attachment E – Project Location Map

These documents make up the AGREEMENT documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the AGREEMENT documents, the inconsistency or conflict shall be resolved by giving precedence first to the written AGREEMENT then to the AGREEMENT documents in the order in which they are listed above.

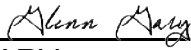
Duly executed by each party's designated representative to be effective on the date subscribed by the City Manager.

BY:  
CITY OF DENTON, TEXAS

DocuSigned by:  
  
TODD HILEMAN, CITY MANAGER


Date: 1/15/2020

BY:  
ENGINEER  
KIMLEY-HORN AND ASSOCIATES, INC.

DocuSigned by:  
  
GLENN GARY  
SR. VICE PRESIDENT

Date: 12/10/2019

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational  
obligations and business terms.

DocuSigned by:  
  
Signature


Water and Wastewater Utilities Director  
Title

Water Utilities  
Department

Date Signed: 12/10/2019

2019-565945  
TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER

APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

By: DocuSigned by:  
  
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ATTEST:  
ROSA RIOS, CITY SECRETARY

By: DocuSigned by:  
  
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## ATTACHMENT "A"

### Scope for Engineering Design Related Services for: **IH-35E-MAYHILL - UTILITY-RELOCATIONS**

The ENGINEER will perform its services pursuant to the requirements delineated below. Services under this attachment include engineering services for the design and construction phase services for the IH-35E-MAYHILL - UTILITY-RELOCATIONS.

#### **Project Understanding**

ENGINEER will provide engineering design services for the following tasks:

The relocations of approximately 14,000 linear feet of 20-inch through 8-inch water main, 1,500 linear feet of 18-inch reclaimed water line, and 500 feet of gravity sewer line from Loop 288 to Post Oak Road along the north and south frontage roads of IH-35E. The relocations are necessary due to the CSJ 0196-01-109 Mayhill Bridge and frontage road expansion planned by TxDOT. All proposed relocations will be placed back in easement, except for lines that cross IH-35E or Mayhill Road. There are approximately 1,000 linear feet of proposed trenchless bores/tunneling.

ENGINEER's scope of services is as follows:

#### **IH-35E-MAYHILL - UTILITY-RELOCATIONS**

- Task 1 – Design Management
- Task 2 – Alignment Study
- Task 3 – Preliminary Design
- Task 4 – Final Design
- Task 5 – Construction Contract Documents
- Task 6 – Bid Phase Services
- Task 7 – Construction Phase Services
- Task 8 – Record Drawings Preparation
- Task 9 – Permitting
- Task 10 – Survey and Easements
- Task 11 – Easement Acquisition Services

#### **IH-35 - UTILITY-RELOCATIONS**

- Task 12 – Conflict Analysis

## **Task 1        DESIGN MANAGEMENT**

### **A. Project Management**

1. Develop project communication plan.
  - a. Develop project contact list. .
  - b. Prepare and e-mail progress reports to the project team once a month to be included with invoices. 24 months is assumed.
  - c. Prepare project schedule and provide schedule updates if the schedule changes.
2. Meetings
  - a. Prepare for and attend kickoff meeting.
  - b. Prepare meeting notes and distribute to the City.
3. Sub-consultant Agreement Preparation
  - a. Prepare and execute up to five (5) subconsultant agreements.

## **Task 2 – ALIGNMENT STUDY**

### **A. Preliminary Investigation**

1. Data Collection and Record Research
  - b. Gather existing survey and topographic data
  - c. Gather existing aerial photographs.
  - d. Gather existing water, sanitary sewer, and storm sewer record drawings.
  - e. Gather existing paving plans.
  - f. Gather existing development plans.
  - g. Gather existing plat information.
  - h. Collect property owner and record information
  - i. Gather existing right-of-way and easement information.
  - j. Gather existing franchise utility record information.
2. Site Investigation
  - a. Walk general alignment.
  - b. Document alignment corridor with photographs.
  - c. Identify potential alignment, conflicts and issues.
3. Data Review with City
  - a. Meet with City to review accuracy of record information.
  - b. Interview City staff concerning historical, existing and future City plans along the alignment.

**B. Prepare Alternate Alignment Technical Memorandum.**

1. Analysis of alternate alignments indicating merits and challenges for each, and including the following considerations:
  - a. Easement acquisition schedule and cost impacts.
  - b. Existing development impacts.
  - c. Existing potential horizontal and vertical conflicts.
  - d. Accessibility for maintenance.
  - e. Prepare opinions of probable construction cost for each alignment. The ENGINEER has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to ENGINEER at this time and represent only the ENGINEER's judgment as a design professional familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

**C. Deliverables**

1. Digital .PDF copy of draft and final technical memorandum.

**D. Meetings**

1. Conduct one (1) review meeting with City.
2. Revise memorandum based on City comments.

**Task 3 – PRELIMINARY DESIGN****A. Design Survey**

1. Utility and Property Owner Coordination
  - a. Coordinate with DIG TESS and City of Denton to locate and mark existing franchise and public utilities prior to performing the field survey.
2. Design Survey
  - a. The limits of the survey shall be a 100-foot wide alignment generally along IH-35E, and along Mayhill Road as shown on the Project Location Map. There are two location of offsite alignment that will require easement along the backside of properties adjacent to IH-35E. The topographic survey will be approximately 15,000 linear feet.
  - b. Establish up to ten (10) horizontal control points based on the City of Denton Coordinate System using ½-inch rebar with identifiable plastic cap, specific for this project.
  - c. Establish a vertical control benchmark circuit tied to the City of Denton benchmark system, specific for this project, as well as tie into the TxDOT control.

- d. Perform a field survey to identify and locate all existing topographic elements within the alignment corridor including, but not limited to, the following:
  - i. Property pins
  - ii. Existing pavement, curbs, sidewalks, barrier free ramps, etc.
  - iii. Lane Striping (where applicable)
  - iv. Driveways
  - v. Existing storm sewer inlets, manholes, junction boxes, outfalls, and erosion control
  - vi. Culverts and bridges
  - vii. Guardrail
  - viii. Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities
  - ix. Traffic signal poles, cabinets, and other signal equipment
  - x. Signs (excluding temporary signs)
  - xi. Trees, 6-inch caliper and up (center of trunk as well as dripline)
  - xii. Buildings
  - xiii. Retaining walls
  - xiv. Fence limits and material types
  - xv. Other applicable physical features that could impact design:
    - a) Field ties to the existing edge of pavement on Mayhill Road and Interstate Hwy 35.
    - b) Field sketches of utility manholes and structures.
    - c) Prepare a final topographic drawings in a digital format (including one-foot contours and breaklines) showing the features located in the field as well as right-of-way strip map information, an ASCII coordinate file of the points located in the field, and a hard copy of the coordinates and feature descriptions.

## **B. Geotechnical Engineering**

1. Perform a geotechnical analysis of the alignment utilizing a qualified geotechnical laboratory to determine subsurface conditions and make recommendations regarding design parameters. The analysis shall include the following:
  - a. Subsurface exploration including up to ten (10) sample bores varying 30 feet depending upon location.
  - b. Laboratory tests for classification purposes and strength characteristics.
  - c. Engineering services that address the following:

- i. soil and groundwater conditions
  - ii. Comments on general excavatability of soils and shale encountered
  - iii. Recommendations for pipe installation, including bedding and backfill
  - iv. Recommendations for tunneling operations
2. A geotechnical report will be furnished by the geotechnical engineer to present the results of the field and laboratory data as well as analyses and recommendations. Three (3) copies of the report will be provided by the geotechnical engineer, with one (1) copy going to the City. The data contained in the geotechnical report will be made available to contractors during the bidding process for informational purposes.

### **C. Subsurface Utility Engineering (SUE)**

1. Level A investigation of existing water line connection point, and potential crossing utilities. The Level A investigation shall consist of performing up to four (4) level A testholes or "locates" of existing utilities. The Level A investigation will be conducted in accordance with ASCE publication CI/ASCE 38-02 and include the location of said utility in three dimensions obtained through non-destructive geophysical methods.

### **D. Preliminary Water Line Design**

1. Visit the site to perform field verification of the survey.
2. Preliminary plan and profile drawings preparation for approximately 8,000 linear feet of 20-inch water line, 1,500 linear feet of 12-inch water line, 3,800 linear feet of 8-inch water line, 500 feet of gravity sanitary sewer, and 1,500 linear feet of 18-inch reclaimed water line.
  - a. Prepare (22"x34") plan and profile drawings at 1"=20' horizontal and 1"=8' vertical scale.
  - b. Plan view of the base map shall have all above ground features shown and clearly labeled along with existing utilities based on field ties and record information.
  - c. Plan view shall include design notes for stationing, size, slope, pipe material, embedment, length and construction method.
  - d. Profile view shall include design notes for stationing, size, slope, flow-line of pipe, pipe material, embedment, length and construction method.
  - e. Prepare preliminary water line details, including connection details.
  - f. Design tunnels/bores including casing/tunnel liner plate minimum thickness and inside diameter, shafts, allowable methods, control of ground water, and appropriate tolerances with the chosen method.
  - g. Perform one (1) site visit to verify preliminary design.
3. Preliminary Traffic Control and Detour Plan Preparation.

- a. City and TxDOT typical traffic control details will be included as required.
4. Franchise Utility Coordination
  - a. Provide one set of drawings to each franchise utility encountered for their review. Request each franchise to mark up the drawings to show the size, type, and location of their utilities.
  - b. Coordinate with franchise utilities if any relocations are required. Notify City if any relocations will be required.
5. Prepare preliminary general notes and details, including City Standard Details where applicable.
6. Prepare preliminary technical specifications utilizing City Standard Specifications, and any special specifications.
7. Compile and prepare an updated opinion of probable construction cost for the entire project using recent average unit bid prices which are representative of similar types of construction in the local area.
  - a. The ENGINEER has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to ENGINEER at this time and represent only the ENGINEER's judgment as a design professional familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

#### **E. Deliverables**

1. Preliminary design submittal (60%)
  - a. Submit four (4) copies to City for review and comment.
  - b. Submittal shall include the following:
    - i. Preliminary design plans (22"x34")
    - ii. Preliminary technical specifications
    - iii. Opinion of probable construction cost

#### **F. Meetings**

1. Attend one (1) meeting with City to kick-off preliminary design.
2. Attend one (1) meeting with City on-site prior to submittal of preliminary plans, if required.
3. Attend one (1) meeting with City to present and review the preliminary design submittal



## **Task 4 – FINAL DESIGN**

### **A. Easement Preparation**

1. Upon receiving approval of 60% design drawings, ENGINEER will prepare up to thirty-five (35) permanent water line easements and up to thirty-five (35) temporary construction easements (which may be shown on the permanent easement document).
2. Easement instruments will consist of metes and bounds descriptions and exhibits.

### **B. Final Design**

1. Incorporate the preliminary design submittal review comments (one (1) round of comments is anticipated in proposed effort).
2. Prepare updated opinion of probable construction cost.
  - a. The ENGINEER has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to ENGINEER at this time and represent only the ENGINEER's judgment as a design professional familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.
3. Incorporate franchise utility investigation information
4. Incorporate details and technical specifications.
5. Prepare surface repair sheets and details as necessary.
6. Prepare final abandonment layout sheet and letter for TxDOT submittal.
7. Prepare Project Manual using City Standard Construction Contract Documents.

### **C. Deliverables:**

1. Final Design Submittal (95%)
  - a. Submit four (4) copies to the City for review and comment.
  - b. Submittal shall include the following:
    - i. Final design drawings
    - ii. Final design project manual
    - iii. Opinion of probable construction cost

### **D. Meetings**

1. One (1) meeting with City to review Final Design Submittal.

## **Task 5 – CONSTRUCTION CONTRACT DOCUMENTS**

### **A. Bidding Construction Contract Documents**

1. Incorporate City comments from 95% design submittal and prepare construction contract documents, bid plans, and opinion of probable construction cost.
2. Construction contract documents will consist of the final plans and project manual, both signed and sealed by a licensed professional engineer in the State of Texas and in accordance with comments provided by the City during final design.

### **B. Deliverables:**

1. Construction Contract Documents Submittal
  - a. Submit four (4) copies to the City for bidding.
  - b. Submittal shall include the following:
    - i. Bid drawings
    - ii. Bid project manual
    - iii. Opinion of probable construction cost

## **Task 6 – BID PHASE SERVICES**

### **A. Bid Phase Services**

1. Provide electronic bid documents to the City purchasing department for bidding.
2. Provide the Notice to Bidders to the City for publication. The City will be responsible for publication of the notice. The City will be responsible for distribution of the bidding documents to prospective contractors, suppliers and plan rooms.
3. The following assistance will be provided to the City during the bidding phase:
  - a. Preparation of addenda and delivery to City for distribution to plans holders.
  - b. Responses to questions submitted by plans holders.
  - c. Attend bid opening facilitated by City.
  - d. Preparation of bid tabulation.
  - e. Preparation of recommendation of award letter.
4. Conformance plans and specifications
  - a. Based on potential questions and addenda from the bidding phase, prepare conformance set of plans and specifications to be used during construction.
    - i. Provide up to four (4) sets to City for execution.

## **Task 7 – CONSTRUCTION PHASE SERVICES**

### **A. Construction Phase Services**

1. Pre-Construction Conference
  - a. Prepare for and attend a pre-construction conference prior to commencement of Work at the Site
2. Site Visits
  - a. Visit the construction site up to twelve (12) times during construction to perform construction observation. 12 months construction time is assumed.
  - b. Site Visits are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgement.
  - c. Based on information obtained during site visits, ENGINEER will determine if Contractor's work is generally proceeding in accordance with the Contract Documents, and ENGINEER will keep CITY informed of the general progress of the work.
3. Recommendations with Respect to Defective Work
  - a. Provide recommendations to City that Contractor's work be disapproved and rejected while it is in progress if, on the basis of site visit evaluations, ENGINEER believes such work will not produce a completed Project that conforms generally to Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Notwithstanding the foregoing, the City reserves the right to disapprove or reject Contractor's work without a recommendation from the ENGINEER.
4. Clarifications and Interpretations
  - a. Issue necessary clarifications and interpretations of the Contract Documents to City as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Field orders authorizing variations from the requirements of the Contract Documents will be made by City.
5. Change Orders
  - a. Recommend change orders to City, as appropriate.
  - b. Review and make recommendations related to Change Orders submitted or proposed by the Contractor.
6. Shop Drawings and Samples
  - a. Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to

submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

7. Substitutes and “or-equal”

- a. Evaluate and determine the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
- b. Provide recommendations to City

8. Inspections and Tests

- a. Review certificates of inspections and tests within ENGINEER’s area of responsibility for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER will be entitled to rely on the results of such tests and facts being certified. The scope of services assumes the pumps and motors will go through a non-witnessed factory test. Attending testing will be considered additional services.

9. Disagreements between City and Contractor

- a. As necessary, ENGINEER will, with reasonable promptness, render initial written decision on all claims of City and Contractor relating to the acceptability of Contractor’s work or the interpretation of the requirements of the Contract Documents pertaining to the progress of the Contractor’s work. In rendering such decisions, ENGINEER will be fair and not show partiality to City or Contractor and will not be liable in connection with any decision rendered in good faith in such capacity. The initial decision of the ENGINEER shall be required as a condition precedent to mediation or litigation of any claim arising prior to the date final payment is due to the Contractor, unless thirty (30) days have passed after a claim has been referred to the ENGINEER with no decision having been rendered.

10. Final Walkthrough and Punchlist Preparation

- a. Attend final walkthrough with Contractor and City to determine if the completed work of Contractor is generally in accordance with the Contract Documents.
  - i. Limitation of Responsibilities: The ENGINEER will not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual entity performing or furnishing the work. ENGINEER will not have the authority or responsibility to stop the work of any Contractor.

- b. Compile punch list from information gathered during final walkthrough with City and Contractor.

## **Task 8 – RECORD DRAWINGS**

### **A. Record Drawings**

1. Obtain and review comments and field changes on the construction plans from City and Contractor.
2. Prepare record drawings based on comments and field changes. The ENGINEER will not be providing resident engineering services and will not be observing on a full-time basis, and will therefore not seal the record drawings. The record drawings will be provided in the following format:
  - a. (1) Mylar hardcopy full-size (22"x34")
  - b. PDF electronic copy

## **Task 9 – PERMITTING**

### **A. Permitting**

1. The City will be responsible for administration of TxDOT UIR permits. The ENGINEER will prepare exhibits for permit submittal.
2. The ENGINEER will aid the City in coordinating the Utility Agreement (U-35) with TxDOT and prepare reimbursement invoices as necessary. This also includes providing betterment calculations and coordination efforts with TxDOT, and their designated Utility Coordinator.

## **Task 10 – SURVEY AND EASEMENTS**

### **A. Survey and Easements**

1. See components of Task 3 and Task 4.

## **Task 11 – EASEMENT ACQUISITION SERVICES**

### **A. Easement Acquisition Services**

ENGINEER will perform the following services for this task:

1. Provide appraisals for proposed easements on up to twenty-five (25) parcels for the proposed lines. Appraisals will be approved by the City prior to beginning negotiations with property owners. The appraisals will be prepared by State Certified Appraisers in accordance with the Uniform Standards of Professional Appraisal Practice Act (USPAP). The appraisals will be suitable for use in condemnation proceedings, if necessary.

2. Provide property negotiation services for up to twenty-five (25) parcels for the proposed line as follows:
3. The offer to purchase the properties will be based on the appraisals as indicated above. The City will establish the value to be used in negotiation and the range of negotiating authority to be given to the right-of-way agent. ENGINEER's Real Estate Agent will provide the services of qualified right-of-way agents to secure the required right-of-way for the project. The right-of-way agents will provide each property owner a copy of The Texas Landowner Bill of Rights, but will NOT be required to provide negotiation services under the Uniform Relocation and Acquisition Act (Uniform Act).
4. ENGINEER's Real Estate Agent will negotiate on behalf of the City and utilize conveyance documents and other necessary forms as prescribed by the City. ENGINEER's Real Estate Agent will provide a good faith effort to acquire the rights-of-way through a negotiation process, which will generally consist of three (3) contacts with the property owner, or his authorized representative. A maximum of five (5) total contacts will be provided to reach an agreement with the property owner, or to determine that further negotiations will be non-productive and that eminent domain actions will be necessary to acquire the property. If absentee owners are involved, the negotiations may be conducted via telephone, fax, or by mail. If the schedule for acquisition of the right-of-way or other factors arise, which make it expedient, travel outside the project area to meet with the absentee owners may be desirable. If such events arise, the travel must be specifically authorized by the City. If such travel is authorized, the expenses involved, including the agent's services, will be considered additional services.
5. The initial offer made to the property owner will be based on the value authorized by the City. All counter-offers by the property owner, along with ENGINEER's Real Estate Agent recommendations will be presented to the City for consideration. The City must establish and recommend such counter offers before ENGINEER's Real Estate Agent will be authorized to agree to the requested changes. All monetary offers made to the property owners will be within the limits authorized by the City in the various stages of the negotiation.
6. After reaching an agreement with the landowner on the consideration and all other terms of the transaction, ENGINEER's Real Estate Agent will forward to the City a Memorandum of Agreement (M/A) executed by the property owner to be ratified by the City. This M/A sets forth the compensation and any other terms and conditions agreed upon. The City will be responsible for obtaining the City's ratification and for returning the ratified M/A to ENGINEER's Real Estate Agent. ENGINEER's Real Estate Agent will then inform the Title Company that the parcel is ready for closing.
7. ENGINEER's Real Estate Agent will coordinate contacts with the CITY to deliver any payments to the Title Company prior to closing.
8. This Scope of Services assumes that costs for Title Commitments, Title Policies and recording fees will be purchased by the City through the assistance of the Real Estate Agent. The amount paid for the Title Policies will not exceed premium amounts set by the Texas Department of Insurance and agreed upon in advance between the City and the Title Company. Any additional Title Company services such as recording fees shall be agreed upon in advance



between the City and the Title Company. ENGINEER's Real Estate Agent will review liens or other exceptions reported in the Title Commitment. ENGINEER will coordinate the location and the effect of any utility easements. ENGINEER will report the results of the Title Commitment to the City, recommending the disposition of the exceptions. The decision whether the reported exceptions are acceptable or must be eliminated will be the responsibility of the City. Any action required to clear title is not included in the Scope of Work for this project, and if required, will be considered Additional Services.

9. ENGINEER's Real Estate Agent will coordinate and attend all closings at the Title Company.
10. ENGINEER's Real Estate Agent will confirm that the Title Company records all documents at the Denton County Courthouse after closing.
11. ENGINEER's Real Estate Agent will confirm that the Title Company forwards copies of all recorded documents to the City.

## **Task 12 – CONFLICT ANALYSIS**

### **A. Conflict Analysis**

- a. I-35 (from I-35E/I-35W split to Denton County Line) Schematic Review: Review proposed TxDOT ROW maps and proposed roadway alignment schematics as compared to the existing CITY water and sanitary sewer maps. Identify potential conflicts between proposed TxDOT ROW, proposed roadway, water and sanitary sewer utilities.
- b. Site Visits to Conflict Areas: After conflict identification, perform site visit to obtain additional information not shown on maps and schematics.
- c. Coordination with CITY regarding conflicts between the future roadway infrastructure and the CITY's water and sanitary sewer infrastructure that creates a service interruption that the CITY deems not in their best interest therefore warranting a potential realignment of the roadway to avoid the conflict with the water and/or sanitary sewer infrastructure.
- d. Coordination with TxDOT regarding conflicts between the future roadway infrastructure and the CITY's water and sanitary sewer infrastructure that creates a service interruption that the CITY deems not in their best interest therefore warranting a potential realignment of the roadway to avoid the conflict with the water and/or sanitary sewer infrastructure.

### **B. Deliverables:**

- a. Meeting notes and action items for each attending party from the coordination efforts.
- b. Conceptual map identifying conflicts and conceptual OPCC.

## **ADDITIONAL SERVICES NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES**

City and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, ENGINEER can provide these services, if needed, upon the City's written request. Any additional amounts paid to ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include, but are not limited to the following:

- Redesign to reflect project scope changes requested by the CITY or TxDOT, required to address changed conditions or change in direction previously approved by the CITY, mandated by changing governmental laws, or necessitated by the CITY's acceptance of substitutions proposed by the contractor.
- Additional Construction Site Visits
- Additional Construction Shop Drawing and Sample Review and Comment
- Additional Traffic Control Plan Details
- Traffic signal design
- Sidewalk design
- Design of any offsite drainage improvements beyond the improvements identified in the scope
- Preparation for and attendance at public meetings
- Furnish additional copies of review documents and/or bid documents in excess of the number of the same identified above.
- Negotiation of temporary right-of-entries.
- Services related to disputes over bid protests, bid rejection, and re-bidding of the contract for construction.
- Construction management and inspection services.
- Performance of materials or specialty testing services.
- Services necessary due to default of the Contractor.
- Services related to damages caused by fire, flood, earthquake or other acts of God.
- Services related to warranty claims, enforcement, and inspection after final completion.
- Services related to Survey Construction Staking.
- Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY.
- Performance of miscellaneous and supplemental services related to the project as requested by the CITY.
- Retaining wall design
- "Value engineering" after bidding
- Traffic studies or reports
- SWPPP inspections / coordination
- Any services not listed in the Scope of Services

**ATTACHMENT "B"**

Compensation for Engineering Design Related Services for:

**IH-35E-MAYHILL - UTILITY-RELOCATIONS**

Total compensation for the ENGINEER contemplated under the terms of this agreement **shall be a total not-to-exceed \$922,800** for all services including reimbursable expenses. The CITY shall compensate the ENGINEER as follows:

For Tasks 1-12 the total compensation shall be on a reimbursable (hourly) basis and not to exceed **\$922,800**.

Progress payments for shall be paid monthly based on the actual work satisfactorily completed per month in each phase, with the following amounts of the total compensation for each phase of the Project:

• Task 1 – Design Management	\$46,700
• Task 2 – Alignment Study	\$51,400
• Task 3 – Preliminary Design	\$171,000
• Task 4 – Final Design	\$79,500
• Task 5 – Construction Contract Documents	\$14,500
• Task 6 – Bid Phase Services	\$18,700
• Task 7 – Construction Phase Services	\$61,900
• Task 8 – Record Drawings Preparation	\$10,100
• Task 9 – Permitting	\$26,600
• Task 10 – Survey and Easements	\$130,200
• Task 11 – Easement Acquisition Services	\$277,200
• Task 12 – Conflict Analysis	\$35,000

---

<b>Grand Total</b>	<b>\$922,800</b>
--------------------	------------------

ENGINEER will not exceed the total maximum labor fee shown without authorization from the CITY. Individual task amounts are provided for budgeting purposes only. ENGINEER reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.10 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the CITY.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

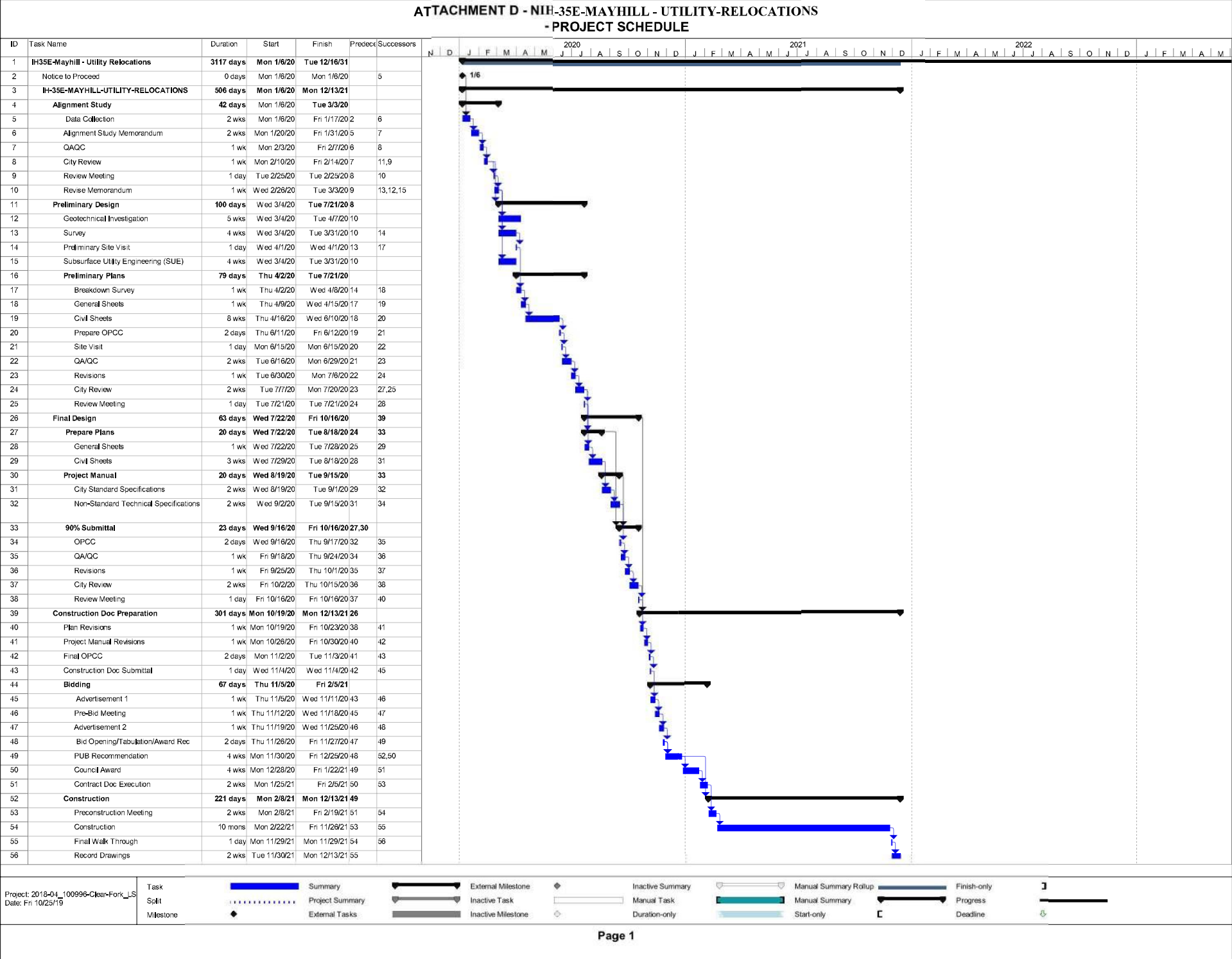
## **ATTACHMENT “C”**

### **CHANGES AND AMENDMENTS TO STANDARD AGREEMENT**

Design Services for

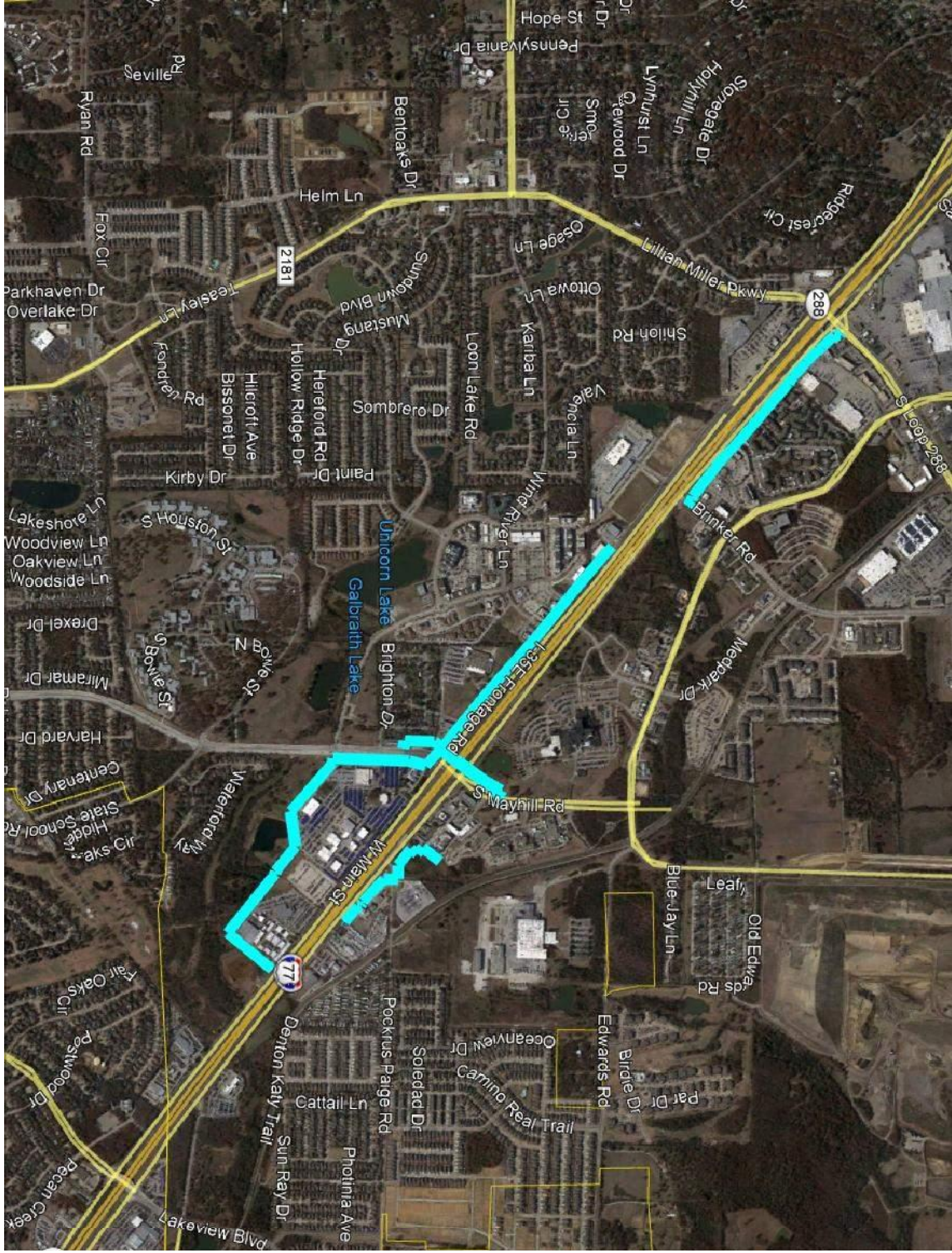
### **IH-35E-MAYHILL - UTILITY-RELOCATIONS**

No modifications to the Standard Agreement are necessary for this project.





**ATTACHMENT “E”**  
**PROJECT LOCATION MAP**  
for  
**IH-35E-MAYHILL - UTILITY-RELOCATIONS**





Client:	City of Denton
Project:	IH-35E-Mayhill-Utility Relocations
KHA No.	0610240xx
PM:	Chris Igo

## Task 700

### Task 888

## Subconsultant Summary

## Project Budget Summary

Labor:	\$	463,800
Expenses:	\$	370,300
<b>TOTAL:</b>	<b>\$</b>	<b>834,100</b>

Note: This portion is for water only, the rest of the contract hourly breakdown is shown in the wastewater agreement

## General Project Information

Client: **City of Denton**  
Project: **IH-35E-Mayhill-Utility Relocation**  
KHA No: **0610240xx**  
PM: **Chris Igo**

## Task Effort Summary

Labor:	\$	29,600
Expenses:	\$	11,000
Allocation:	\$	1,400
<b>TOTAL:</b>	<b>\$</b>	<b>42,000</b>

### Task Information

Number:	100
Name:	Design Mgmt
Task Mgr:	

## Task Description and Budgeting

[illegible]

## General Project Information

Client: **City of Denton**  
Project: **IH-35E-Mayhill-Utility Relocation**  
KHA No: **0610240xx**  
PM: **Chris Igo**

## Task Effort Summary

Labor:	\$	44,100
Expenses:	\$	-
Allocation:	\$	2,100
<b>TOTAL:</b>	<b>\$</b>	<b>46,200</b>

### Task Information

Number: 200  
Name: **Align Routing-Esmt ID**  
Task Mgr:

## Task Description and Budgeting

[illegible]

### ***Task Fee Calculation***

Date: July 1, 2019

## General Project Information

Client: **City of Denton**  
Project: **IH-35E-Mayhill-Utility Relocation**  
KHA No: **0610240xx**  
PM: **Chris Igo**

## Task Effort Summary

Labor:	\$ 118,700
Expenses:	\$ 29,700
Allocation:	\$ 5,500
<b>TOTAL:</b>	<b>\$ 153,900</b>

### Task Information

Number:	201
Name:	Prelim Design
Task Mgr:	

## Task Description and Budgeting

[illegible]

Date: July 1, 2019

### Task Information

Number:	202
Name:	Final Design
Task Mgr:	

Date: July 1, 2019

### Task Information

Number:	203
Name:	Contract Docs
Task Mgr:	



## General Project Information

Client: **City of Denton**  
Project: **IH-35E-Mayhill-Utility Relocation**  
KHA No: **0610240xx**  
PM: **Chris Igo**

## Task Effort Summary

Labor:	\$	16,100
Expenses:	\$	-
Allocation:	\$	800
<b>TOTAL:</b>	<b>\$</b>	<b>16,900</b>

### Task Information

Number: 204  
Name: Bidding Services  
Task Mgr:

## Task Description and Budgeting

[illegible]

Date: July 1, 2019

## General Project Information

Client: **City of Denton**  
Project: **IH-35E-Mayhill-Utility Relocation**  
KHA No: **0610240xx**  
PM: **Chris Igo**

## Task Effort Summary

Labor:	\$	53,300
Expenses:	\$	-
Allocation:	\$	2,500
<b>TOTAL:</b>	<b>\$</b>	<b>55,800</b>

### Task Information

Number:	205
Name:	CCA
Task Mgr:	

## Task Description and Budgeting

[illegible]

Date: July 1, 2019

### Task Information

Number:	206
Name:	Record Drawings
Task Mgr:	

### Task Fee Calculation

Date: July 1, 2019

## General Project Information

Client: **City of Denton**  
Project: **IH-35E-Mayhill-Utility Relocation**  
KHA No: **0610240xx**  
PM: **Chris Igo**

## Task Effort Summary

Labor:	\$	22,800
Expenses:	\$	-
Allocation:	\$	1,100
<b>TOTAL:</b>	<b>\$</b>	<b>23,900</b>

### Task Information

Number: 207  
Name: Permitting  
Task Mgr:  

## Task Description and Budgeting

[illegible]

## General Project Information

Client: **City of Denton**  
Project: **IH-35E-Mayhill-Utility Relocation**  
KHA No: **0610240xx**  
PM: **Chris Igo**

## Task Effort Summary

Labor:	\$	56,700
Expenses:	\$	57,800
Allocation:	\$	2,700
<b>TOTAL:</b>	<b>\$</b>	<b>117,200</b>

### Task Information

Number: 208  
Name: **Survey and Easements**  
Task Mgr:

## Task Description and Budgeting

[illegible]

## General Project Information

Client: **City of Denton**  
Project: **IH-35E-Mayhill-Utility Relocation**  
KHA No: **0610240xx**  
PM: **Chris Igo**

## Task Effort Summary

Labor:	\$	-
Expenses:	\$	249,500
Allocation:	\$	-
<b>TOTAL:</b>	<b>\$</b>	<b>249,500</b>

### Task Information

Number: 209  
Name: Easement Acquisition  
Task Mgr:

## Task Description and Budgeting

[illegible]

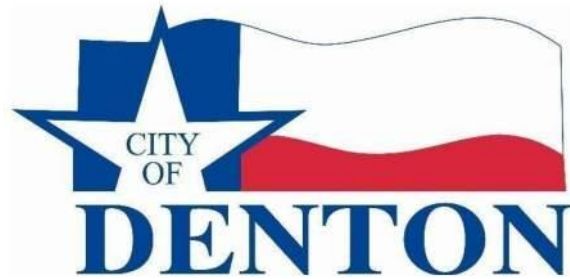
Real Estate Agent Service Items	Anticipated Units/Parcels	Unit/Parcel Rate	Fee Amount
Right-of-Entries	25	\$792.00	\$19,800.00
Title and Closing Services	25	\$495.00	\$12,375.00
Negotiation Services	25	\$4,455.00	\$111,375.00
Appraisal Service (Land Only)	20	\$3,762.00	\$75,240.00
Appraisal Service (Improved Property)	5	\$6,142.00	\$30,710.00
<b>TOTAL SERVICES FEE</b>			<b>\$249,500.00</b>



Date: July 1, 2019

### Task Information

Number:	210
Name:	Conflict Analysis
Task Mgr:	



## Docusign City Council Transmittal Coversheet

PSA	6590-084
File Name	MAYHILL I35E UTILITY LOCATION
Purchasing Contact	Crystal Westbrook
City Council Target Date	January 12, 2021
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	21-019

**FIRST AMENDMENT TO CONTRACT  
BY AND BETWEEN THE CITY OF DENTON, TEXAS  
AND KIMLEY-HORN AND ASSOCIATES, INC.  
Contract #6590-084**

THE STATE OF TEXAS                   §

COUNTY OF DENTON                   §

THIS FIRST AMENDMENT TO CONTRACT 6590-084 (“Amendment”) by and between the City of Denton, Texas (“City”) and Kimley-Horn and Associates, Inc., (“Engineer”); to that certain contract executed on January 15, 2020, in the original not-to-exceed amount of \$922,800 (the “Agreement”); for services related to the IH-35E-Mayhill-Utility Relocations.

WHEREAS, the City deems it necessary to further expand the services provided by Consultant to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$165,000 with this Amendment for an aggregate not-to-exceed amount of \$1,087,800; and

FURTHERMORE, the City deems it necessary to further expand the goods/services provided by Engineer to the City;

NOW THEREFORE, the City and Engineer (hereafter collectively referred to as the “Parties”), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1. The additional services described in Exhibit “A” of this Amendment, attached hereto and incorporated herein for all purposes, for professional services related to the IH-35E-Mayhill-Utility Relocations, are hereby authorized to be performed by Engineer. For and in consideration of the additional services to be performed by Engineer, the City agrees to pay, based on the cost estimate detail attached as Exhibit “A”, a total fee, including reimbursement for non-labor expenses an amount not to exceed \$165,000.
2. This Amendment modifies the Agreement amount to provide an additional \$165,000 for the additional services with a revised aggregate not to exceed total of \$1,087,800.

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

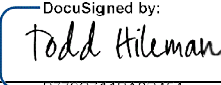
IN WITNESS WHEREOF, the City and the Consultant, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date 01/12/2021.

“CITY”

“Engineer”

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation


KIMLEY-HORN AND ASSOCIATES,  
INC.


By:   
TODD HILEMAN, CITY MANAGER

By:   
Sr. Vice President  
AUTHORIZED SIGNATURE, TITLE

ATTEST:  
ROSA RIOS, CITY SECRETARY

APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

By:   
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By:   
02051D0D427E4E5...

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational  
obligations and business terms.

  
SIGNATURE      Terrance Naulty  
PRINTED NAME

Interim Director Water/Wastewater  
TITLE

Water/Wastewater Utilities  
DEPARTMENT

**EXHIBIT A****AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT  
ADDITIONAL SERVICES****Professional Services Agreement:  
IH-35E-MAYHILL - UTILITY-RELOCATIONS  
Amendment Scope of Services****Scope of Services**

The CITY has requested that the ENGINEER perform additional services including additional property acquisition services.

**Task 11 – Easement Acquisition Services**

ENGINEER will provide technical assistance to the Real Estate Agent during property negotiations for up to thirty (30) hours.

ENGINEER's Real Estate Agent will provide the following additional services in accordance with the Original Contract:

- Provide property negotiation services, title closing services, and appraisal services for an additional (10) parcels for the proposed line in accordance with the previously agreed to scope under Task 11.A.
- Engage an independent Appraisal Reviewer to submit an Appraisal Review to accompany any appraisal completed for up thirty-five (35) parcels according to Task 11.A.1.

**Compensation****Previous Task 11 Amount:**

<b>Real Estate Agent Service Items</b>	<b>Anticipated Units/Parcels</b>	<b>Unit/Parcel Rate</b>	<b>Fee Amount</b>
Right-of-Entries	25	\$880.00	\$22,000.00
Title and Closing Services	25	\$550.00	\$13,750.00
Negotiation Services	25	\$4,950.00	\$123,750.00
Appraisal Service (Land Only)	20	\$4,180.00	\$83,600.00
Appraisal Service (Improved Property)	5	\$6,820.00	\$34,100.00
<b>TOTAL FEE</b>			<b>\$277,200.00</b>

**Revised Task 11 Amount:**

<b>Real Estate Agent Service Items</b>	<b>Anticipated Units/Parcels</b>	<b>Unit/Parcel Rate</b>	<b>Fee Amount</b>
Right-of-Entries	25	\$880.00	\$22,000.00
Title and Closing Services	35	\$550.00	\$19,250.00
Negotiation Services	35	\$4,950.00	\$173,250.00
Appraisal Service (Land Only)	30	\$4,180.00	\$125,400.00

Appraisal Service (Improved Property)	5	\$6,820.00	\$34,100.00
Appraisal Service (Independent Review)	35	\$1,760.00	\$61,600.00
Engineer Assistance	30	\$220.00	\$6,600.00
<b>Revised TOTAL FEE</b>			<b>\$442,200.00</b>

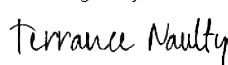
The additional services described above will be accommodated by increasing the contract amount by \$165,00. The following table summarizes the revised contract amount:

Task	Original Contract	Amendment No. 1	Revised Contract
Task 1 – Design Management	\$46,700	-	\$46,700
Task 2 – Alignment Study	\$51,400	-	\$51,400
Task 3 – Preliminary Design	\$171,000	-	\$171,000
Task 4 – Final Design	\$79,500	-	\$79,500
Task 5 – Construction Contract Documents	\$14,500	-	\$14,500
Task 6 – Bid Phase Services	\$18,700	-	\$18,700
Task 7 – Construction Phase Services	\$61,900	-	\$61,900
Task 8 – Record Drawings Preparation	\$10,100	-	\$10,100
Task 9 – Permitting	\$26,600	-	\$26,600
Task 10 – Survey and Easements	\$130,200	-	\$130,200
Task 11 – Easement Acquisition Services	\$277,200	\$165,000	\$442,200
Task 12 – Conflict Analysis	\$35,000	-	\$35,000

<b>Totals:</b>	<b>\$922,800</b>	<b>\$165,000</b>	<b>\$1,087,800</b>
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Duly executed by each party's designated representative to be effective on the date subscribed by the CITY.

BY:  
CITY OF DENTON, TEXAS

DocuSigned by:  
  
B0F331381089478...

Interim Director Water/Wastewater  
TITLE

Date: 10-8-2020

BY:  
ENGINEER  
Kimley-Horn and Associates, Inc



Title: Glenn Gary, Senior Vice President

Date: 10-8-2020



## Total Task 11

<b>Real Estate Agent Service Items</b>	<b>Anticipated Units/Parcels</b>	<b>Unit/Parcel Rate</b>	<b>Fee Amount</b>
Right-of-Entries	25	\$880.00	\$22,000.00
Title and Closing Services	35	\$550.00	\$19,250.00
Negotiation Services	35	\$4,950.00	\$173,250.00
Appraisal Service (Land Only)	30	\$4,180.00	\$125,400.00
Appraisal Service (Improved Property)	5	\$6,820.00	\$34,100.00
Appraisal Service (Independent Review)	35	\$1,760.00	\$61,600.00
Engineer Assistance	30	\$220.00	\$6,600.00
<b>TOTAL SERVICES FEE</b>			<b>\$442,200.00</b>

## Amendment 1

<b>Real Estate Agent Service Items</b>	<b>Anticipated Units/Parcels</b>	<b>Unit/Parcel Rate</b>	<b>Fee Amount</b>
Right-of-Entries	0	\$880.00	\$0.00
Title and Closing Services	10	\$550.00	\$5,500.00
Negotiation Services	10	\$4,950.00	\$49,500.00
Appraisal Service (Land Only)	10	\$4,180.00	\$41,800.00
Appraisal Service (Improved Property)	0	\$6,820.00	\$0.00
Appraisal Service (Independent Review)	35	\$1,760.00	\$61,600.00
Engineer Assistance	30	\$220.00	\$6,600.00
<b>TOTAL SERVICES FEE</b>			<b>\$165,000.00</b>

**SECOND AMENDMENT TO CONTRACT  
BY AND BETWEEN THE CITY OF DENTON, TEXAS  
AND KIMLEY-HORN AND ASSOCIATES, INC.  
Contract #6590-084**

THE STATE OF TEXAS                   §

COUNTY OF DENTON                   §

THIS SECOND AMENDMENT TO CONTRACT 6590-084 (“Amendment”) by and between the City of Denton, Texas (“City”) and Kimley-Horn and Associates, Inc., (“Engineer”); to that certain contract executed on January 14, 2020, in the original not-to-exceed amount of \$922,800 (the “Original Agreement”); amended on January 12, 2021 in the additional amount of \$165,000 aggregating a not-to-exceed amount of \$1,087,800 (the “First Amendment”) (collectively, the Original Agreement, the First Amendment are the “Agreement”) for services related to the IH-35E-Mayhill-Utility Relocations.

WHEREAS, the City deems it necessary to further expand the services provided by Consultant to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$217,500 with this Amendment for an aggregate not-to-exceed amount of \$1,305,300; and

FURTHERMORE, the City deems it necessary to further expand the goods/services provided by Engineer to the City;

NOW THEREFORE, the City and Engineer (hereafter collectively referred to as the “Parties”), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following Amendment, which amends the following terms and conditions of the said Agreement, to wit:


1. The additional services described in Exhibit “A” of this Amendment, attached hereto and incorporated herein for all purposes, for professional services related to the IH-35E-Mayhill-Utility Relocations, are hereby authorized to be performed by Engineer. For and in consideration of the additional services to be performed by Engineer, the City agrees to pay, based on the cost estimate detail attached as Exhibit “A”, a total fee, including reimbursement for non-labor expenses an amount not to exceed \$217,500.
2. This Amendment modifies the Agreement amount to provide an additional \$217,500 for the additional services with a revised aggregate not to exceed total of \$1,305,300.

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and the Consultant, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date 08/03/2021.

“CITY”

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation  
SARA HENSLEY, INTERIM CITY MANAGER


By:  DocuSigned by:  
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“Engineer”

KIMLEY-HORN AND ASSOCIATES,  
INC.

By:  DocuSigned by:  
EDB15720A1C6421... Sr. Vice President  
AUTHORIZED SIGNATURE, TITLE

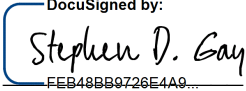
ATTEST:  
ROSA RIOS, CITY SECRETARY

By:  DocuSigned by:  
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APPROVED AS TO LEGAL FORM:  
CATHERINE CLIFTON, INTERIM CITY  
ATTORNEY

By:  DocuSigned by:  
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THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational  
obligations and business terms.

 DocuSigned by:  
FEB48BB9726E4A9... Stephen D. Gay  
SIGNATURE PRINTED NAME

Director, Water Utilities  
TITLE  
Water Utilities  
DEPARTMENT

**EXHIBIT A****AMENDMENT NO. 2 TO PROFESSIONAL SERVICES AGREEMENT  
ADDITIONAL SERVICES****Professional Services Agreement:  
IH-35E-MAYHILL - UTILITY-RELOCATIONS  
Amendment Scope of Services****Scope of Services**

TxDOT has redesigned a portion of the roadway project that necessitates additional waterline relocation. The CITY has requested that the ENGINEER perform additional services including topographic survey, design, easement acquisition, and additional TxDOT coordination for approximately 1,700 linear feet of 20-inch water line.

**Task 1      Design Management**

ENGINEER will provide the following additional services in accordance with the Original Contract:

**A. Project Management**

1. Continued development of progress reporting and updates to project schedule.
2. Attend up to one additional meeting with City.
3. Prepare and execute up to two (2) additional subconsultant amendments.

**Task 3      Preliminary Design**

ENGINEER will provide the following additional services in accordance with the Original Contract:

**A. Preliminary Water Line Design**

1. Perform one additional site visit to perform field verification of the survey.
2. Prepare preliminary water line plan and profile drawings for approximately 1,700 linear feet of 20-inch water line.
3. Compile and prepare an updated opinion of probable construction cost (OPCC) for the additional infrastructure to be incorporated into the preliminary design OPCC.

**B. Deliverables**

1. Supplemental Preliminary design submittal (60%)
  - a. Submit four (4) copies to City for review and comment.
  - b. Submittal shall include the following:
    - i. Supplemental preliminary design plans (22"x34")
    - ii. Opinion of probable construction cost incorporated into overall cost of proposed Mayhill Utility Relocations

**C. Meetings**

1. Attend one (1) additional meeting with City to present and review the supplemental preliminary design submittal.

**Task 4 Final Design**

ENGINEER will provide the following additional services in accordance with the Original Contract:

**A. Final Design**

1. Prepare final design water line plan and profile drawings, surface repair, erosion control, and details for approximately 1,700 linear feet of 20-inch water line.

**B. Deliverables:**

1. Final Design Submittal will be incorporated into the Final Design Deliverables indicated in the Original Contract.

**Task 9 Permitting**

ENGINEER will provide the following additional services in accordance with the Original Contract:

**A. Permitting**

1. The ENGINEER will aid the City in coordinating the additional design into the Utility Agreement (U-35) with TxDOT and prepare reimbursement invoices as necessary. This also includes providing betterment calculations and coordination efforts with TxDOT, and their designated Utility Coordinator.

**Task 10 Survey and Easements**

ENGINEER will provide the following additional services in accordance with the Original Contract:

**A. Design Survey**

1. Additional design survey with the following limits:
  - a. A 100-foot wide alignment generally along Interstate Hwy 35 continuing south/east from the Lillian Miller/Loop 288 intersection approximately 1,700 linear feet.

**B. Easement Preparation**

1. Upon receiving approval of 60% design drawings, ENGINEER will prepare up to eight (8) permanent water line easements and up to one (1) temporary construction easements.
2. Revise up to twelve (12) previously submitted signed and sealed easement documents due to coordination with Denton Municipal Electric and City Real Estate requests.

### **Task 11 – Easement Acquisition Services**

ENGINEER will provide technical assistance to the Real Estate Agent during property negotiations for up to twenty (20) hours.

ENGINEER's Real Estate Agent will provide the following additional services in accordance with the Original Contract:

- Provide property negotiation services, title closing services, and appraisal services, including appraisal review for an additional eight (8) parcels for the proposed line in accordance with the previously agreed to scope under Task 11.A.
- Revise up to four (4) previously submitted appraisal packets due to coordination with Denton Municipal Electric and City Real Estate requests.



## Compensation

The additional services described above will be accommodated by increasing the contract amount by \$217,500. The following table summarizes the revised contract amount:

Task	Original Contract	Amd. No. 1	Amd. No. 2	Revised Contract
Task 1 – Design Management	\$46,700	-	\$2,900	\$49,600
Task 2 – Alignment Study	\$51,400		-	\$51,400
Task 3 – Preliminary Design	\$171,000	-	\$23,900	\$194,900
Task 4 – Final Design	\$79,500	-	\$11,100	\$90,600
Task 5 – Construction Contract Documents	\$14,500	-	-	\$14,500
Task 6 – Bid Phase Services	\$18,700	-	-	\$18,700
Task 7 – Construction Phase Services	\$61,900	-	-	\$61,900
Task 8 – Record Drawings Preparation	\$10,100	-	-	\$10,100
Task 9 – Permitting	\$26,600	-	\$7,600	\$34,200
Task 10 – Survey and Easements	\$130,200	-	\$35,000	\$165,200
Task 11 – Easement Acquisition Services	\$277,200	\$165,000	\$137,000	\$579,200
Task 12 – Conflict Analysis	\$35,000	-	-	\$35,000

<b>Totals:</b>	<b>\$922,800</b>	<b>\$165,000</b>	<b>\$217,500</b>	<b>\$1,305,300</b>
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Duly executed by each party's designated representative to be effective on the date subscribed by the CITY.

BY:  
CITY OF DENTON, TEXAS

\_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

BY:  
ENGINEER  
Kimley-Horn and Associates, Inc

 \_\_\_\_\_

Title: John Atkins, Vice President

Date: \_\_\_\_\_

Client:	City of Denton
Project:	IH-35E-Mayhill-Utility Relocations
KHA No.	061024039
PM:	Chris Igo

Subconsultant Summary				
Task No.	Task Name	Cost	Multiplier	Subtotal
	TOTALS:	\$ -		\$ -

Release v2016.1 Page 1 of 7  
K:\FTW\_Utilities\061024039-IH-35E-Mayhill-Utilities\PPPI\POST\_NTP\Amd-02\IH35E-Mayhill-Amend-No2\_Fee-Work\Printed 6/24/2022, 8:41 AM

Date: September 1, 2020

### Task Information

Number:	100
Name:	Design Management
Task Mgr:	

## Task Description and Budgeting

[illegible]

Task Subtotals (\$000's)													Lbr	Expenses (\$)	
Cost:			0.3	0.2									0.5	\$	-
Effort:			1.4	1.2									2.7	\$	-

## General Project Information

Client: **City of Denton**  
Project: **IH-35E-Mayhill-Utility Relocation**  
KHA No: **061024039**  
PM: **Chris Igo**

## Task Effort Summary

Labor:	\$	22,800
Expenses:	\$	-
Allocation:	\$	1,100
<b>TOTAL:</b>	<b>\$</b>	<b>23,900</b>

### Task Information

Number: 201  
Name: WL-Prelim Design  
Task Mgr:

## Task Description and Budgeting

[illegible][illegible]

Date: September 1, 2020

### Task Information

Number: 202  
Name: WL-Final Design  
Task Mgr:

[illegible]

Date: September 1, 2020

### Task Information

Number: 207  
Name: Permitting  
Task Mgr:

## Task Description and Budgeting

[illegible][illegible]



Date: September 1, 2020

## General Project Information

Client: **City of Denton**  
Project: **IH-35E-Mayhill-Utility Relocation**  
KHA No: **061024039**  
PM: **Chris Igo**

## Task Effort Summary

Labor:	\$	25,200
Expenses:	\$	8,600
Allocation:	\$	1,200
<b>TOTAL:</b>	<b>\$</b>	<b>35,000</b>

### Task Information

Number: 208  
Name: **WL-Survey and Easements**  
Task Mgr:

## Task Description and Budgeting

[illegible][illegible]

Date: September 1, 2020

## General Project Information

Client: **City of Denton**  
Project: **IH-35E-Mayhill-Utility Relocation**  
KHA No: **061024039**  
PM: **Chris Igo**

## Task Effort Summary

Labor:	\$ 3,900
Expenses:	\$ 132,900
Allocation:	\$ 200
<b>TOTAL:</b>	<b>\$ 137,000</b>

### Task Information

Number: 209  
Name: Easement Acquisition  
Task Mgr:

## Task Description and Budgeting

[illegible]**Task Subtotals (\$000's)**

											Lbr	Expenses (\$)
<b>Cost:</b>			0.8								0.8	\$ 120,800
<b>Effort:</b>			3.9								3.9	\$ 132,900

**Kimley-Horn and Associates, Inc.****Standard Rate Schedule**

(Hourly Rate)

B	ANALYST	115.00
B1	ANALYST	120.00
B2	ANALYST	130.00
B3	ANALYST	140.00
B4	PROFESSIONAL	170.00
B5	PROFESSIONAL	190.00
B6	SENIOR PROFESSIONAL I	210.00
B7	SENIOR PROFESSIONAL I	230.00
B8	SENIOR PROFESSIONAL II	250.00
CO3	SENIOR TECHNICAL SUPPORT	150.00
CO4	SENIOR TECHNICAL SUPPORT	160.00
CO5	SENIOR TECHNICAL SUPPORT	170.00
CO6	SENIOR TECHNICAL SUPPORT	180.00
D7	SENIOR TECHNICAL SUPPORT	190.00
D8	SENIOR TECHNICAL SUPPORT	200.00
E1	SENIOR PROFESSIONAL II	270.00
E2	SENIOR PROFESSIONAL II	270.00
E3	SENIOR PROFESSIONAL II	270.00
E4	SENIOR PROFESSIONAL II	270.00
N1	SUPPORT STAFF	85.00
N2	SUPPORT STAFF	90.00
N3	SUPPORT STAFF	100.00
N4	SUPPORT STAFF	115.00
N5	SUPPORT STAFF	120.00
N6	SUPPORT STAFF	125.00
P	ANALYST	160.00
P1	ANALYST	170.00
P2	ANALYST	185.00
P3	PROFESSIONAL	195.00
P4	PROFESSIONAL	215.00
P5	SENIOR PROFESSIONAL I	230.00
P6	SENIOR PROFESSIONAL I	250.00
P7	SENIOR PROFESSIONAL I	260.00
P8	SENIOR PROFESSIONAL II	275.00
T1	TECHNICAL SUPPORT	90.00
T2	TECHNICAL SUPPORT	95.00
T3	TECHNICAL SUPPORT	100.00
T4	TECHNICAL SUPPORT	105.00
T5	SENIOR TECHNICAL SUPPORT	120.00
T6	SENIOR TECHNICAL SUPPORT	130.00
T7	SENIOR TECHNICAL SUPPORT	145.00
TS1	TECHNICAL SUPPORT	75.00
TS2	TECHNICAL SUPPORT	90.00
TS3	TECHNICAL SUPPORT	95.00
TS4	TECHNICAL SUPPORT	100.00
TS5	TECHNICAL SUPPORT	105.00
X5	ANALYST	125.00
X6	ANALYST	135.00
X7	PROFESSIONAL	165.00
X8	SENIOR PROFESSIONAL I	185.00


Effective September 2020 and subject to revision.


Form ROW-U-35  
(Rev. 10/20)  
Page 9

## Attachment "E"

### Utility Joint Use Agreement – (ROW-U-JUA) and/or Utility Installation Request – (Form 1082)

- ☐ Utility Joint Use Agreement (ROW-U-JUA)
- ☒ Utility Installation Review/Permit Number: DAL20210118130643

  
Initial Date  
TxDOT

  
Initial Date  
Utility

## APPROVAL

To David Brown

City of Denton Water Utilities

901 A Texas St

Denton, TX 76209

Date 9/14/2022

Application No. DAL20210118130643

District App. No. DAL20210118130643

Highway IH 0035

Control Section 019601

Maintenance Section Denton County Maintenance

County Denton

TxDOT offers no objection to the location on the right-of-way of your proposed utility installation, as described by Notice of Proposed Utility Installation No. DAL20210118130643 (District Application No. DAL20210118130643) dated 9/14/2022 and accompanying documentation, except as noted below.

**It is understood that it is the responsibility of the utility owner to contact TxDOT 48 hrs prior to the start of construction using the UIR System and by email or phone call to the area office Utility Coordinator. It is also the owners responsibility to contact TxDOT once the construction is complete.**

When installing utility lines on controlled access highways, your attention is directed to governing laws, especially to Texas Transportation Code, Title 6, Chapter 203, pertaining to Modernization of State Highways; Controlled Access Highways. Access for serving this installation shall be limited to access via (a) frontage roads where provided, (b) nearby or adjacent public roads or streets, (c) trails along or near the highway right-of-way lines, connecting only to an intersecting roads; from any one or all of which entry may be made to the outer portion of the highway right-of-way for normal service and maintenance operations. The Installation Owner's rights of access to the through-traffic roadways and ramps shall be subject to the same rules and regulations as apply to the general public except, however, if an emergency situation occurs and usual means of access for normal service operations will not permit the immediate action required by the Utility Installation Owner in making emergency repairs as required for the safety and welfare of the public, the Utility Owners shall have a temporary right of access to and from the through-traffic roadways and ramps as necessary to accomplish the required emergency repairs, provided TxDOT is immediately notified by the Utility Installation Owner when such repairs are initiated and adequate provision is made by the Utility Installation Owner for convenience and safety of highway traffic.

The installation shall not damage any part of the highway and adequate provisions must be made to cause minimum inconveniences to traffic and adjacent property owners. In the event the Installation Owner fails to comply with any or all of the requirements as set forth herein, the State may take such action as it deems appropriate to compel compliance.

It is expressly understood that the TxDOT does not purport, hereby, to grant any right, claim, title, or easement in or upon this highway; and it is further understood that the TxDOT may require the Installation Owner to relocate this line, subject to provisions of governing laws, by giving thirty (30) days written notice.

If construction has not started within six (6) months of the date of this approval, the approval will automatically expire and you will be required to submit a new application. You are also requested to notify this office prior to commencement of any routine or periodic maintenance which requires pruning of trees within the highway right-of-way, so that we may provide specifications for the extent and methods to govern in trimming, topping, tree balance, type of cuts, painting cuts and clean up. These specifications are intended to preserve our considerable investment in highway planting and beautification, by reducing damage due to trimming.

### Special Provisions:

**Bore water sewer lines General Trench Pit Location Backfill**

You are required to notify TxDOT 48 hours (2 business days) before you start construction to allow for proper inspection and coordination of work days and traffic control plans. Use the UIR website for the 48-hour notification. DO NOT start construction until you have coordinated the construction start date and inspection with TxDOT. You are also required to keep a copy of this Approval, the Notice of Proposed Installation, and any approved amendments at the job site at all times.

Texas Department of Transportation  
By Justin Braudrick  
Title Utility Coordinator  
District Dallas

**Construction of Highway Crossing by Bore**

- 1. GENERAL - WATER JETTING OR JACKING WILL NOT BE PERMITTED.** All paved streets which are maintained by TxDOT must be bored & encased unless it is specifically stated on the permit that an exception for open cutting and/or no encasement is granted.

At no time shall the boring operation interfere with the traveling public. The safety of the traveling public and maintaining the integrity of the roadway is the primary concern.

- 2. BORE PIT LOCATIONS** - No excavations for bore pits will be allowed to be any closer to the edge of the pavement (travel lane) than as outlined in the "TRENCH EXCAVATIONS AND PIT LOCATION" specification. If the required clear zoned distance is closer than outlined in the above mentioned specification, then appropriate traffic control devices such as barricades, signs, barrel mounted guard fence and/or concrete traffic barriers will be required as deemed necessary by the TxDOT inspector.

No excavated material will be stored closer to the traveled way than the bore pit. All pits and trenches shall be backfilled immediately after the encasement and carrier pipes have been installed. Upon completion of the backfill, all excess material will be removed from the right of way.

- 3. METHOD OF INSTALLATION** - Crossings are to be installed by the AUGER or "DRY" BORE method and shall be accomplished by use of a laser sighted bore machine or a bore machine requiring a pilot hole. The pilot hole will serve as the centerline of the large diameter hole to be bored. The user of water or fluids in the boring operation will only be allowed for lubricating the cutting head.

The boring operation shall be performed from the low or downstream end. Lateral or vertical variation of the encasement pipe from the proposed line and grade will be permitted only to the extent of one (1) inch in ten (10) feet, provided that such a variation shall be regular and only in one direction.

The encasement pipe shall be approximately the same diameter as the bore hole. Over cutting in excess of one (1) inch shall be remedied by pressure grouting the entire length of the installation with a mixture consisting of two (2) sacks of cement per yard of sand.

- 4. OPTIONAL WET BORE** - The utility or contractor may request installation by the Slurry or "Wet" bore method. The approval to wet bore is granted by the Area Engineer or his designated representative on an individual permit basis. If the area office allows wet bores in their designated area, approval will be based on bore size and soil conditions. Wet bores should be restricted to areas of rock or other suitable material which will prevent the sides of the bore hole from "caving in". A geotechnical report may be required prior to approval. In no instance will wet bores be allowed to exceed eighteen (18) inches in diameter.

The amount of water used for creating the slurry will be such that little or no runoff is encountered. If, in the opinion of the TxDOT inspector, at any time during the boring operation inadequate conditions are encountered for performing the wet bore, the process will be stopped and the bore will be completed by Auger bore.

The slurry material removed from the bore may not be used in the backfilling of the bore pit.



### Water & Sanitary Sewer Lines

- 1. GENERAL** - Longitudinal water and sanitary sewer pipelines shall be placed on uniform alignment three (3) to ten (10) feet from the right of way line. The minimum depth of cover shall be twenty-four (24) inches for non-plastic lines and thirty (30) inches for plastic lines. If a nonmetallic line is installed, a durable metal wire or other device shall be concurrently installed for detection purposes.

Each line may be installed with enough vertical flexibility to prevent stresses; however, horizontal "snaking" of the line is prohibited.

The utility agency shall place identification markers at the right of way line in sufficient number for longitudinal installations and at each highway crossing.

All paved side streets crossed by a longitudinal line within TxDOT right of way must be installed as outlined in item #2 below.

- 2. CROSSING** - Highway crossings are to be installed at or near right angles to highway and must be installed with an encasement pipe. Encasement pipe is also to be installed under normal center medians, extend from the top of back slope for cut sections, and five (5) feet beyond the toe of slope for fill sections, unless an additional length is required as outlined in the "TRENCH EXCAVATION AND PIT LOCATION" specification.

All crossings under existing pavement must be installed as outlined in the "CONSTRUCTION OF HIGHWAY CROSSINGS BY BORE" specification.

The depth of cover for crossings shall be twenty-four (24) inches for non-plastic pipe and thirty (30) inches for plastic pipe under ditches. The encasement pipe must be a minimum of eighteen (18) inches or  $\frac{1}{2}$  the diameter of the pipe, whichever is greater, below the bottom of the pavement structure.

The encasement shall consist of a steel pipe around and outside the carrier pipe and support the load of the ground above the pipe, the highway, and the superimposed loads there on, including construction equipment. HDPE pipe with a SDR ratio of 11 or greater may be used for encasement of water service lines. The HDPE pipe must be a single continuous piece with no joints. The strength of the encasement pipe shall equal or exceed the structural requirements for highway drainage culverts covered under ASTM specifications.

- 3. ABOVE GROUND APPURTENANCES** - Fire hydrants, air release valves, and other similar appurtenances should be located at or near the right of way line. All fire hydrants will be equipped with breakaway bases and should not be located in the sidewalk. Any appurtenances may not be located any closer than 3 ft from back of curb.

Pumps, wells, and other structures associated with lift stations and pump stations will not be permitted within the limits of TxDOT right of way.

- 4. MANHOLES** - The outside diameter of the manhole chimney at ground level shall not exceed thirty-six (36) inches. The inside diameter of the manhole for lines up to twelve (12) inches shall not exceed four (4) feet. For any increase in line size greater than twelve (12) inches the manhole may be increased a like amount. The manhole cover shall be installed flush with the ground, meet HS-20 load requirements, and weigh at least 175 pounds.



## General Utility Installations

**1. GENERAL** - A copy of the approved notice must be kept onsite at all times during construction. Unless other arrangements are made with the designated Texas Department (TxDOT) inspector, no work will be performed on Saturday, Sunday, Holidays, or hours other than standard working hours. Utility lines shall be located to avoid or minimize the need for adjustments to accommodate future highway improvements.

All utility installations will be made without excavation or longitudinal placement being made any closer than three (3) feet from the back of curb. No pavement cuts are permitted unless specifically stated on the permit that approval is given to open cut the pavement.

No explosives shall be used within the limits of the TxDOT highway right of way for utility installations.

**2. COORDINATION OF WORK** - *Prior to the start of construction the local TxDOT Office MUST BE NOTIFIED at the number listed on the approval notice. Traffic control plans must be approved by the Area Office before work can begin.* If the installation is within the limits of an active highway construction project, the utility work must be coordinated with the TxDOT Contractor and Inspectors. The utility work shall not cause any delay or disruption to the TxDOT contractor or construction.

Location existing utility facilities and coordination with the owners is the responsibility of the utility agency.

**3. TRAFFIC SAFETY, BARRICADES, WARNING DEVICES** - Traffic control and protective devices shall be used and must conform to the TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES for streets and highways. All barricades, warning devices, signs, flashers, and flag persons shall be provided by the utility agency or contractor.

Traffic shall not be stopped at any time without the use of a flag person. Prior to beginning work, the traffic control plans must be approved by the Area Engineer or his designated representative. Lane closures for any utility work will not be permitted without prior approval of Area Engineer or his designated representative. Lane closures are not permitted during peak "rush hour" traffic times.

Vehicles, equipment, construction material and personnel not necessary to the timely installation of the facility shall be kept as far as possible from the traveling public. Any above ground obstruction or bore pit located closer than the clear zone distances outlined in the "Trench Excavation and Pit Locations" specification shall be protected by barricades, metal beam guard fence and/or concrete traffic barriers as deemed necessary by the TxDOT Inspector. At the end of every construction day, all equipment and materials shall be removed as far from the roadway edge as possible.

**4. SURVEYING AND STAKING OF UTILITIES** - All utility installations shall be staked by utility agency so that TxDOT may inspect the alignment prior to start of construction. The ROW line is to be staked and the utility installed based on a set distance from the ROW line. The utility is ultimately responsible for the accuracy of the installation.

**5. TIME PERIOD ALLOWED FOR INSTALLATION** - If the installation of the work covered by this utility permit has not started within twelve (12) months from the approval date, a written request for an extension must be submitted to the District Office. It is expected that the installation will progress to completion in an efficient manner. However, if the work is delayed or abandoned for a period of one (1) month or more, a written request must be submitted to continue under the authority of the original permit.

**6. FULL TIME SUPERVISION and INSPECTION** - The utility agency shall provide competent, full time inspectors or supervisors to be present on-site during the installation. Also, the utility may be required to provide a telephone number at which someone may be contacted 24 hours in case of an emergency. The utility construction may be delayed or stopped when it is observed by the TxDOT Inspector that there is not an agency inspector or supervisor present on the job site.

**7. DEPARTMENT INTERVENTION** - TxDOT has the right to take charge of an to remedy any immediate hazard to the traveling public when it is obvious the utility agency will not do so. Any costs associated with TxDOT's action will be charged to the utility agency.

**8. UTILITY ACCOMMODATION RULES** - Utility installations within the TxDOT Right of Way shall conform to the requirements contained in the TxDOT Utility Accommodation Rules, dated February 2, 2005, the Dallas District Utility Specifications and the following industry policies.

A. Safety rules for the installation and maintenance of electric and communication lines - National Electrical Safety Code.

B. Latest edition of the Rules and Regulations for Public Water Systems, published by the Texas Department of Health, Water Hygiene Division.

C. Gas Pipelines - Title 49, C.F.R., Part 195, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards and amendments.

D. Liquid Petroleum Pipelines - Title 49, C.F.R., Part 195, Transportation of Liquids by Pipelines and amendments.

E. Latest edition of the American Society for Testing and Materials (ASTM) Specifications.

F. Latest edition of the AASHTO policy entitled "A Policy on the Accommodations of Utilities within Freeway Right of Way".

G. Latest edition of the Occupational Safety and Health Administration (OSHA) Standards and Interpretations.

### Trench Excavation and Pit Location

1. **GENERAL** - No dirt from a trench or pit excavation shall be placed on the roadway or shoulders. All equipment and stockpiled dirt shall meet the safety clear zone distances listed below or have adequate barricades and warning devices to protect the traveling public.

Topsoil shall be kept separate from other excavation material, and be replaced in accordance with "BACKFILLING" specification.

All pits and trenches shall be kept free from standing water. If trenches and/or bore pits are left open for extended periods of time without a continuous progression of work, the utility will be required to backfill the trench and/or bore pits. Any other pit will not be left open for more than a forty eight (48) hour period.

In all excavations where sloughing is likely to occur, shoring will be utilized to prevent damage to the highway structure(s). The utility agency or contractor shall be responsible for maintaining trench excavation protections as required by provisions of Part 1926, Subpart P - Excavations, Trenching and Shoring of OSHA Standards.

2. **TRENCHING** - Longitudinal installations must be placed as near a uniform alignment to the right of way line as possible. Trenching machine or backhoe may be used. A backhoe will be required if a uniform alignment can't be maintained by use of a trenching machine.
3. **SAFETY CLEAR ZONE DISTANCES** - Minimum clear zone distances required for trench excavations and bore pit locations are as follows:

#### For UNCURBED Highways

- A. Thirty (30) ft. from the edge of pavement (traveled lane) of high-speed (more than 40 mph), high volume (more than 750 vehicles per day) highways.
- B. Sixteen (16) ft\* from edge of pavement of high-speed, low volume (less than 750 vehicles per day) highways.
- C. Sixteen (16) ft\* from ramps.
- D. Ten (10) ft\* for low-speed (40 mph or less) highways.
- E. Ten (10) ft\* for any paved intersections side streets.

\* Five (5) ft MINIMUM from edge of any shoulder.

#### For CURBED Highways

- A. Thirty (30) ft from the back of curb for high-speed highways
- B. Five (5) ft from the back of curb, plus any additional distance to clear sidewalks, for low-speed highways
- C. Five (5) ft from the back of curb for intersecting side street.



### **Backfill Specifications**

- 1. GENERAL** - As soon as practical, all portions of the excavation shall be backfilled. Trenches and pits shall be backfilled with the material obtained from the excavation or from other sources. Backfill material will be free from stones of such size as to interfere with compactions; free from large lumps which will not break down readily under compaction; and free from frozen lumps, wood or other extraneous material. The TxDOT inspector may reject any material containing more than twenty (20) percent by weight of material retained on a three (3) inch sieve.

The portion of top soil removed from the original excavation shall be replaced, as nearly as feasible, in its original position.

- 2. DEPTH OF LIFTS** - The portion of backfill below the top of pipe shall be placed in uniform layers not to exceed eight (8) inches in depth (loose measurement). Backfill above the top of the pipe shall be placed in layers not to exceed ten (10) inches in depth (loose measurement). If the backfill is to support a portion of roadway or embankment, then the material will be placed in uniform layers not to exceed eight (8) inches in depth (loose measurement).

- 3. PROCEDURE FOR COMPACTION** - Each layer of backfill material, if dry, shall be wetted uniformly to the moisture content required to obtain a density comparable with the adjacent undisturbed soil and shall be compacted to that density by means of mechanical tampers or rammers. The use of rolling equipment of the type generally used in compacting embankments will be permitted on portions that are accessible to such equipment. Water jetting or ponding will not be permitted.

Special care shall be taken to ensure thorough compaction of material placed under the haunches of the pipe.

Cohesionless materials, such as sand, may be used for general backfilling purposes. Compaction of cohesionless materials shall be done with vibratory equipment.

- 4. RESTORATION OF RIGHT OF WAY** - Prompt replacement of sod, removal of debris, and any other restoration necessary to restore the right of way to a condition equal to that which existed prior to the utility installation will be required. In areas of erosion, the use of stabilized backfill may be required. Should settlement or erosion occur within six (6) months of the utility installation, the utility agency will be required to reshape, reseed, and/or resod the area.

**Form 1082 Additional Page 3**

- Water Line A: Install approximately 1,172 LF of 24" HDPE water line, 7,002 LF of 20" HDPE, 75 LF of 8" DIP, 36 LF of 12" PVC, 493 LF of 8" PVC, 1,000 LF of 6" PVC and 420 LF of 36" steel casing with carrier pipe and 463 LF of 30" steel casing with carrier pipe longitudinal to IH35 from IH35 Sta 1793+87 to IH35 Sta 1721+38 and one crossing of Mayhill/State School Road at Sta 20+75.
- Water Line B: Install approximately 1,079 LF of 8" PVC water line and 72 LF of 18" steel casing with carrier pipe longitudinal to IH35 from IH35 Sta 1750+24 to IH35 Sta 1739+91.
- Water Line C: Install approximately 563 LF of 12" PVC water line, and 629 LF of 24" steel casing with carrier pipe crossing IH 35 at IH 35 Sta 1762+66 and Mayhill/State School Road at Sta 10+87.
- Water Line D: Install approximately 816 LF of 12" PVC water line, 1,672 LF of 8" PVC, 55 LF of 6" PVC and 616 LF of 18" steel casing with carrier pipe longitudinal to IH35 from IH35 Sta 1832+18 to IH35 Sta 1803+52.
- Water Line E: Install approximately 1,057 LF of 24" HDPE water line, 60 LF of 8" DIP, and 131 LF of 36" steel casing with carrier pipe longitudinal to IH35 from IH35 Sta 1829+23 to IH35 Sta 1817+50.
- Approximately 142 LF of 16" water line, 8,387 LF of 14" water line, 2,599 LF of 12" water line, 5,359 LF of 8" water line, 815 LF of 6" water line to be removed.
- Approximately 320 LF of 14" water line, 245 LF of 12" water line, 114 LF of 8" water line, 36 LF of 6" water line to be abandoned by grout fill.

## Attachment "F" Eligibility Ratio

Eligibility Ratio established: 100 %

- ☐ Non-interstate Highway (Calculations attached)
- ☒ Interstate Highway

### ROW Utility Manual Chapter 8, Section 2

In developing the ratio, line length or number of poles is restricted to facilities located within the existing and proposed highway right of way. Facilities located outside the existing and proposed right of way limits will not be used in developing the ratio.

Please see example of eligibility ratio calculations below.

Plan Sheet or Page#	In Easement (Eligible) Existing # of Poles or LF	In Public ROW (Ineligible) Existing # of Poles or LF
1	0	0
2	84	22
3	90	385
4	238	96
Totals	412	503

Total Existing # of Poles or LF (Eligible)	412
Total Existing # of Poles or LF (Ineligible)	503
Total Existing # of Poles or LF	915
Total Existing # of Poles or LF (Eligible) divided by the Total Existing # of Poles or LF	45.03%

DS  
DP  
Initial  
1/17/2023  
Date  
TxDOT

Initial  
Date  
Utility




## Attachment "G" Betterment Calculation and Estimate


- ☒ Elective Betterment Ratio established: 4.8307 %  
(Calculation attached and justification below)
- ☒ Forced Betterment  
(Provide supporting documentation)
- ☐ Not Applicable

**Elective betterment justification statement:**

The work required is 100% reimbursable with the exception of the upsize of a portion of 20-inch waterline to 24-inch waterline for Waterline A and all of Waterline E. One other portion of engineering work that was not reimbursable per this CSJ is work to identify future conflicts with upcoming TXDOT projects.

Please see attached documentation.

  
Initial Date  
TxDOT

  
Initial Date  
Utility

## Attachment G: Forced Betterment

### Water Comparison HDPE to DIP

The existing 14-inch concrete cylinder water transmission main is in conflict with the State's I-35E widening project and was proposed to be replaced with a 16-inch ductile iron pipe (DIP), as a 14-inch is only available by custom order through manufacturers and per the City's Water Design Criteria manual (Section 3.C.) and City ordinances, a 14-inch water line is non-standard and therefore not allowed. For this reason, the upsizing from a 14-inch to a 16-inch DIP is not considered an elective betterment, but rather a forced betterment.

The City only allows DIP (and will allow HDPE, but not PVC) for this size water transmission line, however the 16-inch DIP is undergoing extremely long lead times (9 plus months). In order to clear TxDOT's requested ready to let date, the City set a short contract duration for this relocation project. To achieve the accelerated schedule, the City allowed contractors to consider either DIP or HDPE pipe when bidding the city's relocation project (see unit price bid sheet). This is a direct benefit to the highway project and should not be considered elective betterment.

HDPE pipe has a thicker wall and smaller inner diameter than the same sized DIP. To achieve the same flow characteristics as a 16-inch DIP, a 20-inch HDPE pipe is required. Additionally, the City has elected to perform a pipe upsize from the required 20-inch HDPE to a 24-inch HDPE due to increased flow demands in the area, The City understands the upsizing from the required 20-inch to 24-inch HDPE is considered an elective betterment and will be responsible for costs associated with this betterment. The below chart shows the difference in pipe inner diameters (ID) between HDPE and DIP.

## HDPE Water/Sewer | DIPS

PRESSURE-RATED HDPE PIPE



### SUBMITTAL AND DATA SHEET

#### HDPE DUCTILE IRON OUTSIDE DIAMETER PRESSURE PIPE

PIPE SIZE (IN)	AVG O.D. (IN)	MIN. T. (IN)	AVG I.D. (IN)	WGT (LBS/FT)	MIN. T. (IN)	AVG I.D. (IN)	WGT (LBS/FT)	MIN. T. (IN)	AVG I.D. (IN)	WGT (LBS/FT)
DR 7 (335 psi)					DR 9 (250 psi)			DR 11 (200 psi)		
4	4.800	0.686	3.346	3.87	0.533	3.670	3.13	0.436	3.876	2.62
6	6.900	0.986	4.868	7.99	0.767	5.274	6.46	0.627	5.571	5.41
8	9.050	1.293	6.309	13.75	1.006	6.917	11.12	0.823	7.305	9.32
10	11.100	1.586	7.738	20.68	1.233	8.486	16.72	1.009	8.961	14.01
12	13.200	1.886	9.202	29.25	1.467	10.090	23.65	1.200	10.656	19.82
14	15.300	2.186	10.666	39.29	1.700	11.696	31.77	1.391	12.351	26.63
16	17.400	2.486	12.130	50.82	1.933	13.302	41.08	1.582	14.046	34.44
18	19.500	2.786	13.594	63.82	2.167	14.906	51.61	1.773	15.741	43.25
20	21.600	3.086	15.058	78.31	2.400	16.512	63.32	1.964	17.436	53.07
24	25.800	N/A	N/A	N/A	2.867	19.722	90.35	2.345	20.829	75.69
30	32.000	N/A	N/A	N/A	N/A	N/A	N/A	2.909	25.833	116.46
36	38.300	N/A	N/A	N/A	N/A	N/A	N/A	3.482	30.918	166.84

**Product Standard:** ANSI/AWWA C906  
ASTM F714, ASTM D3035

**Pipe Compound:** PPI TR-4 PE 4710,  
ASTM D3350 Cell Class 445574 C/E

**Certification:** ANSI/NSF 61, ANSI/NSF 14\*

**Additional Option:** Perforated (4" - 8")\*

**Nominal Laying Length:** 40/50 feet

(Laying length tolerances are in accordance with AWWA and ASTM standards)

Coil option available upon request for size 6" and below.

**Installation:** JM Eagle™ HDPE Water/Sewer  
Installation Guide

Manning Coefficient (n) = 0.009

Hazen-Williams Coefficient (c) = 150

\*Supply may vary based on plant location.  
Please call regarding availability.

## Ductile Iron Pipe Inside Diameter Chart

Unlined (UNL), Cement Lined (CL), Double Cement Lined (DCL)



Ductile Iron Pipe Inside Diameters for Unlined (UNL), Cement Lined (CL), and Double Cement Lined (DCL)					
Size	Class	Nominal Thickness	Inside Diameters*		
			UNL	CL	DCL
16"	250	0.30	16.80	16.61	16.43
	300	0.32	16.76	16.57	16.39
	350	0.34	16.72	16.53	16.35
	50	0.34	16.72	16.53	16.35
	51	0.37	16.66	16.47	16.29
	52	0.40	16.60	16.41	16.23
	53	0.43	16.54	16.35	16.17
	54	0.46	16.48	16.29	16.11
	55	0.49	16.42	16.23	16.05
	56	0.52	16.36	16.17	15.99
20"	250	0.33	20.94	20.75	20.57
	300	0.36	20.88	20.69	20.51
	350	0.38	20.84	20.65	20.47
	50	0.36	20.88	20.69	20.51
	51	0.39	20.82	20.63	20.45
	52	0.42	20.76	20.57	20.39
	53	0.45	20.70	20.51	20.33
	54	0.48	20.64	20.45	20.27
	55	0.51	20.58	20.39	20.21
	56	0.54	20.52	20.33	20.15

# Attachment G- Elective Betterment

City of Denton

Reimbursable Cost Estimate

Client: City of Denton	Date: 9/16/2022
Project: IH35E Mayhill from Loop 288 to Post Oak - Utility Relocations	Prepared By: CPI
KHA No.: 061024039	Checked By: JRA

Title: Water Line "A" and "E" Betterment  
Upsizing Water Line Relocation from 20" to 24"

## 24" Water Line A (Betterment) (HDPE has an ID of 20")

Item Description	Unit	Quantity	Actual Unit Cost	Total
3314.226 - 24" HDPE Pressure Pipe, Water	LF	1,172	\$600	\$703,200
3305.031 - 36" Casing by Other Than Open Cut	LF	366	\$1,200	\$439,200
3305.025 - 36" Casing by Open Cut	LF	54	\$600	\$32,400
3305.111 - 24" HDPE Water Carrier Pipe	LF	420	\$220	\$92,400
3314.331 - 20" Gate Valve	EA	1	\$45,000	\$45,000
Total				\$1,312,200

## 20" Water Line A (Base Relocation) (HDPE has an ID of 16")

Item Description	Unit	Quantity	Estimated Unit Cost	Total
3314.222 - 20" HDPE Pressure Pipe, Water	LF	1,172	\$375	\$439,500
3305.030 - 30" Casing Pipe by Other Than Open Cut	LF	366	\$960	\$351,360
3305.024 - 30" Casing by Open Cut	LF	54	\$500	\$27,000
3305.110 - 20" HDPE Water Carrier Pipe	LF	420	\$180	\$75,600
3314.330 - 16" Gate Valve	EA	1	\$8,000	\$8,000
Total				\$901,460

24" Water Line A (Betterment) (HDPE has an ID of 20")	\$1,312,200
20" Water Line A (Base Relocation) (HDPE has an ID of 16")	\$901,460
<b>Total Betterment Amount for WL A</b>	<b>\$410,740</b>

## 24" Water Line E (Betterment) (HDPE has an ID of 20")

Item Description	Unit	Quantity	Actual Unit Cost	Total
3314.226 - 24" HDPE Pressure Pipe, Water	LF	1,057	\$600	\$634,200
3305.031 - 36" Casing by Other Than Open Cut	LF	44	\$1,200	\$52,800
3305.025 - 36" Casing by Open Cut	LF	87	\$600	\$52,200
3305.111 - 24" HDPE Water Carrier Pipe	LF	131	\$220	\$28,820
3314.331 - 20" Gate Valve	EA	2	\$45,000	\$90,000
Total				\$858,020

## 20" Water Line E (Base Relocation) (HDPE has an ID of 16")

Item Description	Unit	Quantity	Estimated Unit Cost	Total
3314.222 - 20" HDPE Pressure Pipe, Water	LF	1,057	\$375	\$396,375
3305.030 - 30" Casing Pipe by Other Than Open Cut	LF	44	\$960	\$42,240
3305.024 - 30" Casing by Open Cut	LF	87	\$500	\$43,500
3305.110 - 20" HDPE Water Carrier Pipe	LF	131	\$180	\$23,580
3314.330 - 16" Gate Valve	EA	2	\$8,000	\$16,000
Total				\$521,695

24" Water Line E (Betterment) (HDPE has an ID of 20")	\$858,020
20" Water Line E (Base Relocation) (HDPE has an ID of 16")	\$521,695
<b>Total Betterment Amount for WL E</b>	<b>\$336,325</b>

Total Water Line Betterment Amount	\$747,065
Engineering for I-35 Conflict Analysis (non-reimbursable under this contract):	\$35,000
The total estimated cost of the project INCLUDING BETTERMENT	\$16,189,482.25
The total estimated cost of the project NOT including BETTERMENT	\$15,407,417.25
<b>Betterment Ratio:</b>	<b>4.8307%</b>

## Attachment "H" Proof of Property Interest

☒ Supporting documentation of compensable property interest that establishes reimbursement eligibility as referenced in Texas Transportation Code §203.092.

☐ Property interest documented through applicable affidavits and required attachments.

☐ ROW-U-Affidavit

☒ The roadway improvement project is designated as an Interstate Highway project; therefore, no supporting documentation of compensable interest is required.

DS  
PP  
Initial

1/17/2023

Date  
TxDOT

SH  
Initial

12/7/22  
Date

Utility

--

## 35.21.4. - Easement Requirements.

All utilities in a development shall be provided in street rights-of-way except for special circumstances approved by the Development Review Committee. In such cases, the following standards shall prevail:

- A. All utility easements shall be a minimum of sixteen (16) feet unless special circumstances warrant additional or reduced easements which can be approved by the Development Review Committee. The general criteria to define minimum easement widths are listed below:

Type of Development	Easement Size
Individual water or sewer lines up to 24" in diameter	16 ft
Individual water or sewer lines greater than 24"	20 ft
Water and sewer lines up to 24" in the same easement	20 ft
Water and sewer lines greater than 24" in the same easement	25 ft
Easements along TxDOT rights-of-way	20 ft

- B. Lot lines will not split easements.
- C. Dead-end easements are not acceptable unless approved for special circumstances by the Development Review Committee.
- D. Fences within utility easements are prohibited.
1. No fences will be allowed to be built that cross dedicated utility easements.
  2. Any existing fence that crosses dedicated utility easements that conflict with the purpose and intent of the easement may be removed by the City at any time.
  3. The City is under no obligation to repair or replace any fence that is damaged or removed that encroaches within a dedicated easement for the purposes of operating, maintaining, replacing or installing water or sewer facilities within the dedicated easement.
- E. Employees of the City shall have the authority to enter premises at any reasonable time in the regular line of duty for the purpose of inspecting, repairing or constructing any water, electric or sewer line or any water or electric meter, etc. The landowner and occupant are responsible for any construction activities occurring over



or within any on-site utility in a utility easement. If utility inspection or repair or reconstruction is necessary, any pavement, structure or improvement damaged within a dedicated utility easement, shall not be the responsibility of the City for any repairs, but shall be the sole responsibility of the owner. The landowner assumes responsibility for any and all improvements placed within a utility easement at their own risk. Additionally, the provisions of this section do not permit or supercede the limits and restrictions prescribed by the conditions of any existing utility easement for allowing improvements to be place within utility easements.

VERSION: NOV 14, 2013 (ARCHIVE)

Standards

- 35.21.1. - Basic Policy.
- 35.21.2. - Extensions of Water and Sewer Mains.
- 35.21.3. - Basic Design Standards.
- 35.21.4. - Easement Requirements.
- 35.21.5. - Water Capacity Requirements.
- 35.21.6. - Sewer Capacity Requirements.
- 35.21.7. - Impact Fees.
- 35.21.8. - Tapping Fees.
- 35.21.9. - Oversize Participation by the City.
- 35.21.10. - Pro-Rata Agreements.

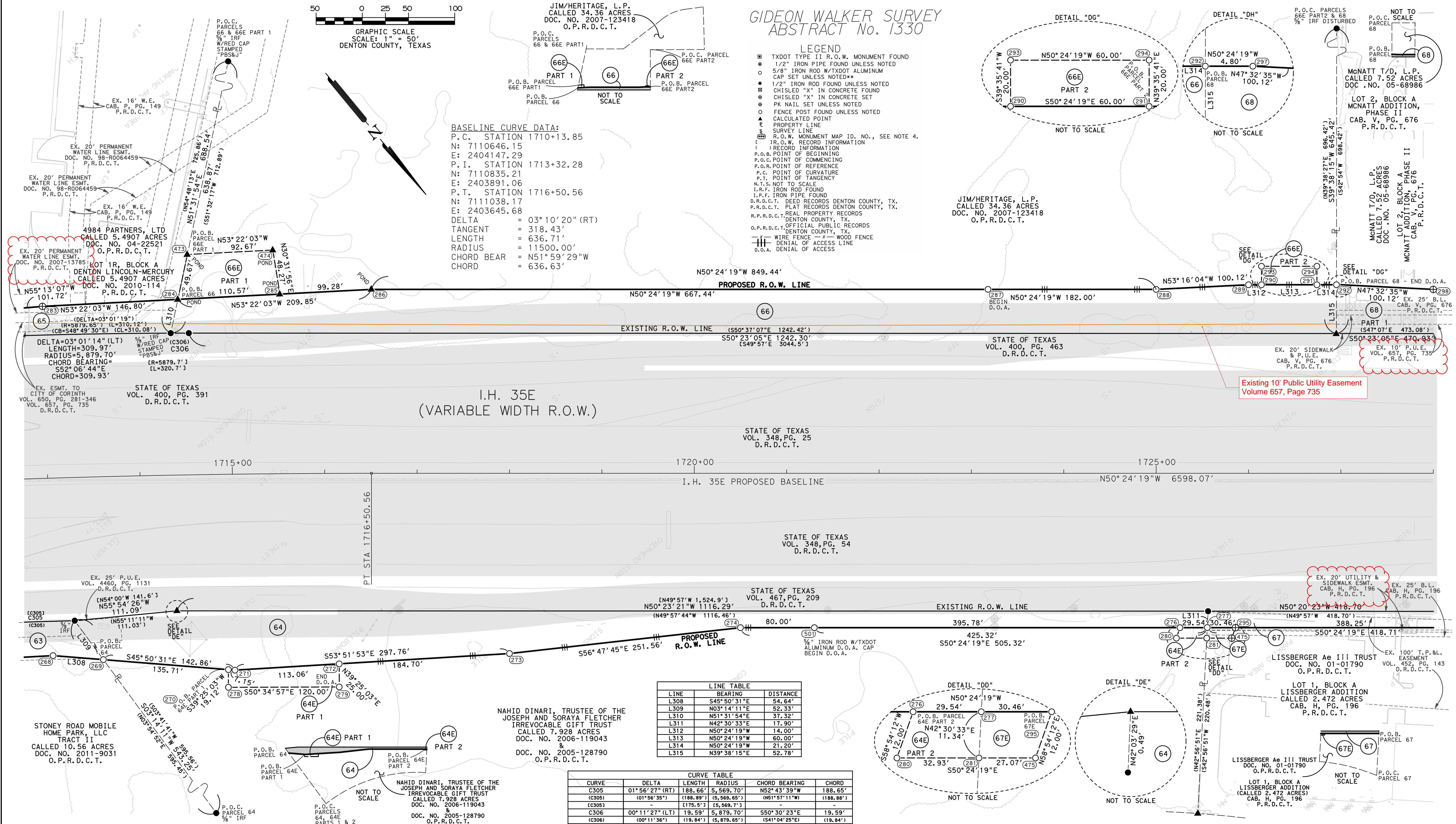
### 35.21.4. - Easement Requirements.

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Water and sewer lines up to 24" in the same easement	20 ft.
Water and sewer lines greater than 24" in the same easement	25 ft.
<u>Easements along TxDOT rights-of-way</u>	<u>20 ft.</u>





PARCEL NO.	DEED ACREAGE	PROPERTY OWNER	TYPE OF CONV.	CONVEYANCE DOCUMENT NO.	ACQUISITION STATIONS		ACQUIRED SQ FT (ACRES)	APPROXIMATE REMAINDER	
					FROM	TO		LEFT	RIGHT
64E PART 1	7.928	NAHID DINARI, TRUSTEE OF THE JOSEPH AND SORAYA FLETCHER IRREVOCABLE GIFT TRUST			1714+92.54	1716+15.00	2,591 SQ FT (0.059 AC)		7.869
64E PART 2	7.928	NAHID DINARI, TRUSTEE OF THE JOSEPH AND SORAYA FLETCHER IRREVOCABLE GIFT TRUST			1725+21.81	1725+55.32	354 SQ FT (0.008 AC)		7.920
65	5.4907	4984 PARTNERS, LTD.			1710+44.47	1714+44.38	11,841 SQ FT (0.272 AC)	5.219	
66	34.36	JIM/HERITAGE, L.P.			1714+44.38	1726+95.20	59,367 SQ FT (1.363 AC)	32.997	
66E PART 1	34.36	JIM/HERITAGE, L.P.			1714+44.38	1715+53.05	4,878 SQ FT (0.112 AC)	34.248	
66E PART 2	34.36	JIM/HERITAGE, L.P.			1726+14.00	1726+74.00	1,200 SQ FT (0.028 AC)		34.332
67	2.472	LISSBERGER A&E III TRUST			1725+55.32	1729+74.03	7,385 SQ FT (0.170 AC)		2.302
67E	2.472	LISSBERGER A&E III TRUST			1725+54.74	1725+85.78	326 SQ FT (0.007 AC)		2.465

**SAM INC.**  
SURVEYING • AERIAL MAPPING • ENGINEERING

1450 Empire Central Drive  
Suite 175  
Dallas, Texas 75247  
(214) 631-7888  
Fax: (214) 631-7103

REVISIONS	
07/18/2012	REVISE D.O.A. LINES

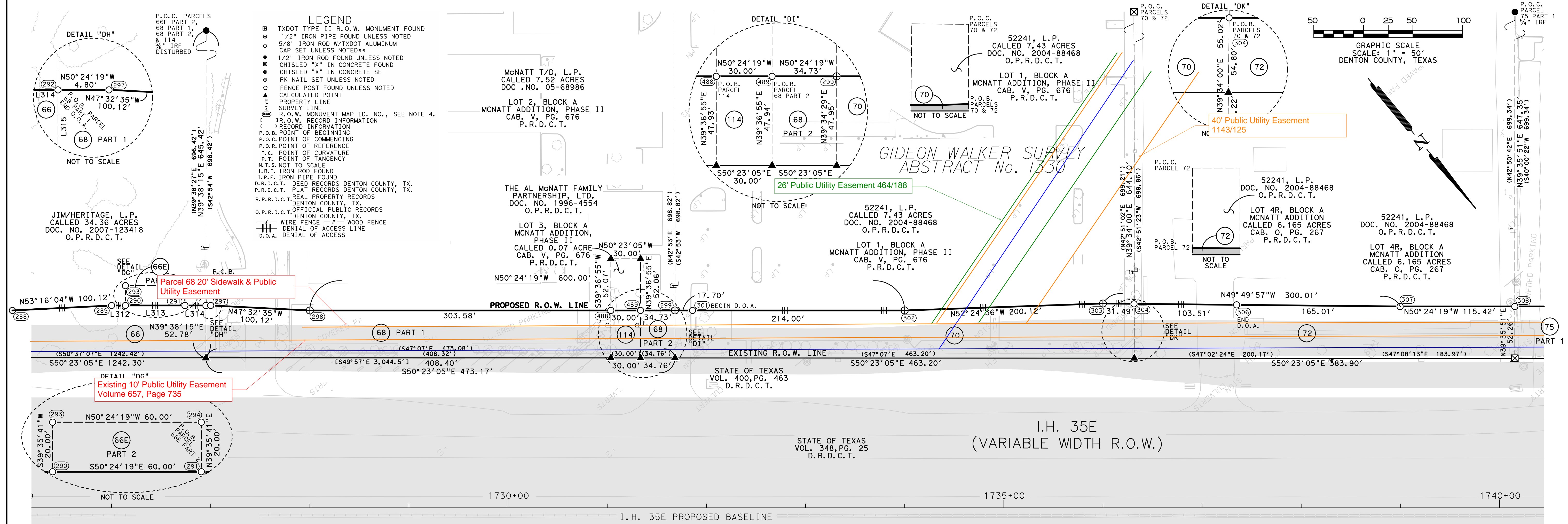
NOTES:

- ALL BEARINGS AND COORDINATES ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE, NAD 83 (1996 CORRS, EPOCH 2002.0). ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY A COMBINED SCALE FACTOR OF 1.000150630.
- IMPROVEMENTS SHOWN HEREON ARE BASED UPON TXDOT AERIAL SURVEY DIGITAL FILES SUPPLEMENTED BY ON-THE-GROUND SURVEY BY SAM, INC. ADDITIONAL IMPROVEMENTS NOT SHOWN HEREON MAY EXIST.
- UTILITIES SHOWN HEREON ARE BASED ON VISIBLE EVIDENCE FOUND ON THE GROUND. ADDITIONAL UTILITIES NOT SHOWN MAY EXIST.
- SEE SHEET 28 FOR R.O.W. MONUMENT DATA.

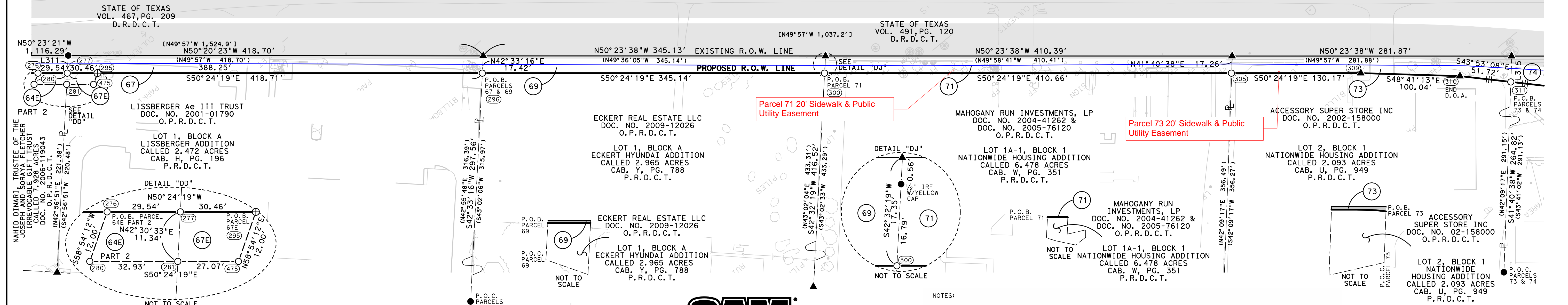
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RF -		
FED. RD. DIV. RD.	FEDERAL AID PROJECT NO. SHEET NO.	
	18	
STATE	DIST.	COUNTY
TEXAS	18	DENTON
CONT.	SECT.	JOB
0196	01	100
		IH 35E

## RIGHT OF WAY WIDENING PROJECT





LINE TABLE		
LINE	BEARING	DISTANCE
L311	N42°30'33"E	17.90'
L312	N50°24'19"W	14.00'
L313	N50°24'19"W	60.00'
L314	N50°24'19"W	21.20'
L315	N41°40'38"E	26.08'



PARCEL NO.	DEED ACREAGE	PROPERTY OWNER	TYPE OF CONV.	CONVEYANCE	ACQUISITION		ACQUIRED SQ FT (ACRES)	APPROXIMATE REMAINDER	
				DOCUMENT NO.	FROM	TO		LEFT	RIGHT
68 PART 1	7.52	MCNATT T/D, L.P.			1726+95.20	1731+03.58	19,816 SQ FT (0.455 AC)	7.027	
68 PART 2	7.52	MCNATT T/D, L.P.			1731+33.58	1731+68.30	1,666 SQ FT (0.038 AC)		
114	0.07	THE AL MCNATT FAMILY PARTNERSHIP, LTD.			1731+03.58	1731+33.58	1,438 SQ FT (0.033 AC)	0.037	
69	2.965	ECKERT REAL ESTATE LLC			1729+74.03	1733+19.17	5,992 SQ FT (0.138 AC)		2.827
70	7.43	52241, L.P.			1731+68.30	1736+31.49	23,164 SQ FT (0.532 AC)	6.898	
71	6.478	MAHOGANY RUN INVESTMENTS, LP			1733+19.17	1737+29.83	7,091 SQ FT (0.163 AC)		6.315
72	6.165	52241, L.P.			1736+31.49	1740+15.42	20,396 SQ FT (0.468 AC)	5.697	
73	2.093	ACCESSORY SUPER STORE INC			1737+29.83	1740+11.38	5,310 SQ FT (0.122 AC)		1.971



1450 Empire Central Drive  
Suite 175  
Dallas, Texas 75247  
(214) 631-7886  
Fax: (214) 631-7103

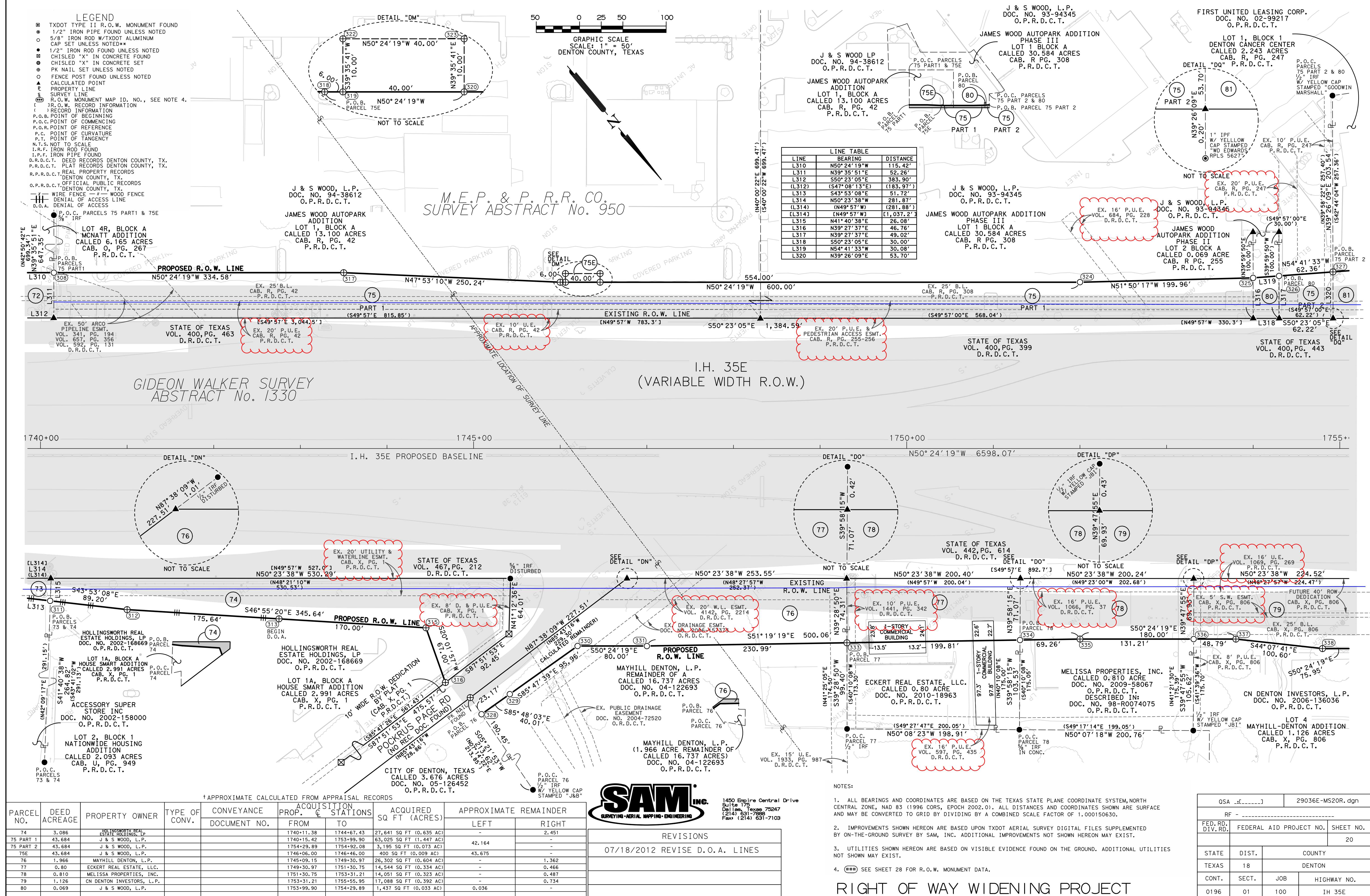
REVISIONS	
07/18/2012	REVISE D.O.A. LINES

- NOTES:
- ALL BEARINGS AND COORDINATES ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE, NAD 83 (1996 CORRS, EPOCH 2002.0). ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY A COMBINED SCALE FACTOR OF 1.000150630.
  - IMPROVEMENTS SHOWN HEREON ARE BASED UPON TXDOT AERIAL SURVEY DIGITAL FILES SUPPLEMENTED BY ON-THE-GROUND SURVEY BY SAM, INC. ADDITIONAL IMPROVEMENTS NOT SHOWN HEREON MAY EXIST.
  - UTILITIES SHOWN HEREON ARE BASED ON VISIBLE EVIDENCE FOUND ON THE GROUND. ADDITIONAL UTILITIES NOT SHOWN MAY EXIST.
  - SEE SHEET 28 FOR R.O.W. MONUMENT DATA.

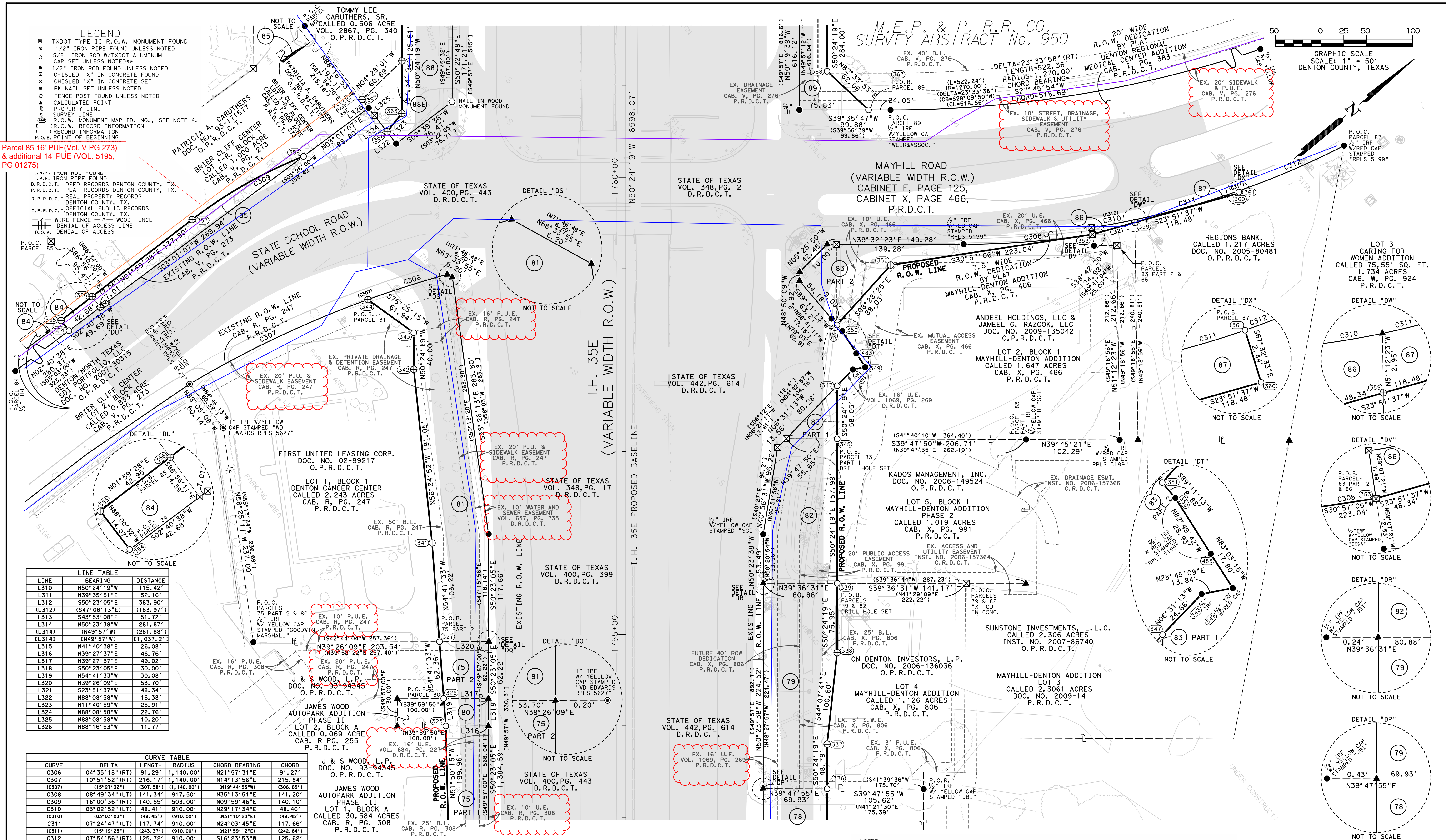
## RIGHT OF WAY WIDENING PROJECT

QSA [redacted]		29036E-MS19R.dgn	
RF - [redacted]			
FED. RD. DIV. RD.	FEDERAL AID PROJECT NO.		SHEET NO.
			19
STATE	DIST.	COUNTY	
TEXAS	18	DENTON	
CONT.	SECT.	JOB	HIGHWAY NO.
0196	01	100	IH 35E









LINE TABLE		
LINE	BEARING	DISTANCE
L310	N50°24'19"W	115.42'
L311	N39°35'51"E	52.16'
L312	S50°23'05"E	383.90'
(L312)	(S47°08'13"E)	(183.97')
L313	S43°53'08"E	51.72'
L314	N50°23'38"W	281.87'
(L314)	(N49°57'W)	(281.88')
(L314)	(N49°57'W)	(1,037.2')
L315	N41°40'38"E	26.08'
L316	N39°27'37"E	46.76'
L317	N39°27'37"E	49.02'
L318	S50°23'05"E	30.00'
L319	N54°41'33"W	30.08'
L320	N39°26'09"E	53.70'
L321	S23°51'37"W	48.34'
L322	N88°08'58"W	16.38'
L323	N11°40'59"W	25.91'
L324	N88°08'58"W	22.76'
L325	N88°08'58"W	10.20'
L326	N88°16'53"W	11.77'

CURVE TABLE				
CURVE	DELTA	LENGTH	RADIUS	CHORD BEARING
C306	04°35'18"(RT)	91.29'	1,140.00'	N21°57'31"E
C307	10°51'52"(RT)	216.17'	1,140.00'	N14°13'56"E
(C307)	(10°51'52"E)	(130.58')	(1,140.00')	(306.88')
C308	08°49'34"(LT)	141.34'	917.50'	N35°13'51"E
C309	18°00'36"(RT)	140.55'	503.00'	N09°59'46"E
C310	03°02'52"(LT)	48.41'	910.00'	N29°17'34"E
(C310)	(03°03'03"E)	(48.45')	(910.00')	(48.45')
C311	07°24'47"(LT)	117.74'	910.00'	N24°03'45"E
(C311)	(15°19'23"E)	(243.37')	(910.00')	(242.64')
C312	07°54'56"(RT)	125.72'	910.00'	S16°23'53"W

PARCEL NO.	DEED ACREAGE	PROPERTY OWNER	TYPE OF CONV.	CONVEYANCE DOCUMENT NO.	ACQUISITION PROP. STATIONS		ACQUIRED SQ FT (ACRES)	APPROXIMATE REMAINDER	
					FROM	TO		LEFT	RIGHT
81	2.243	FIRST UNITED LEASING CORP.			1754+92.08	1758+66.25	23,836 SQ FT (0.547 AC)	1.696	-
82	1.019	KADOS MANAGEMENT, INC.			1755+55.95	1757+13.95	11,835 SQ FT (0.272 AC)	-	0.747
83 PART 1	1.647	ANDEEL HOLDINGS, LLC & JAMEEL G. RAZOOK, LLC			1757+13.95	1757+72.00	1,615 SQ FT (0.037 AC)	-	1.444
83 PART 2	1.647	ANDEEL HOLDINGS, LLC & JAMEEL G. RAZOOK, LLC			1758+38.55	1759+37.56	7,250 SQ FT (0.166 AC)	-	-
83AC	1.647	ANDEEL HOLDINGS, LLC & JAMEEL G. RAZOOK, LLC			1757+72.00	1758+38.55	-	-	-
84	0.833	BRIER CLIFF CENTER			1758+32.23	1759+69.58	614 SQ FT (0.014 AC)	0.819	-
85	1.000	SUNSTONE INVESTMENTS, L.L.C.			1758+69.58	1760+22.93	3,818 SQ FT (0.088 AC)	0.912	-
86	2.306	SUNSTONE INVESTMENTS, L.L.C.			1759+37.56	1759+50.67	240 SQ FT (0.006 AC)	-	2.300
87	1.217	REGIONS BANK			1759+50.67	1759+85.13	163 SQ FT (0.004 AC)	-	1.213
88E	0.506	TOMMY LEE CARUTHERS, SR.			1760+49.78	1761+27.34	1,813 SQ FT (0.042 AC)	0.464	-



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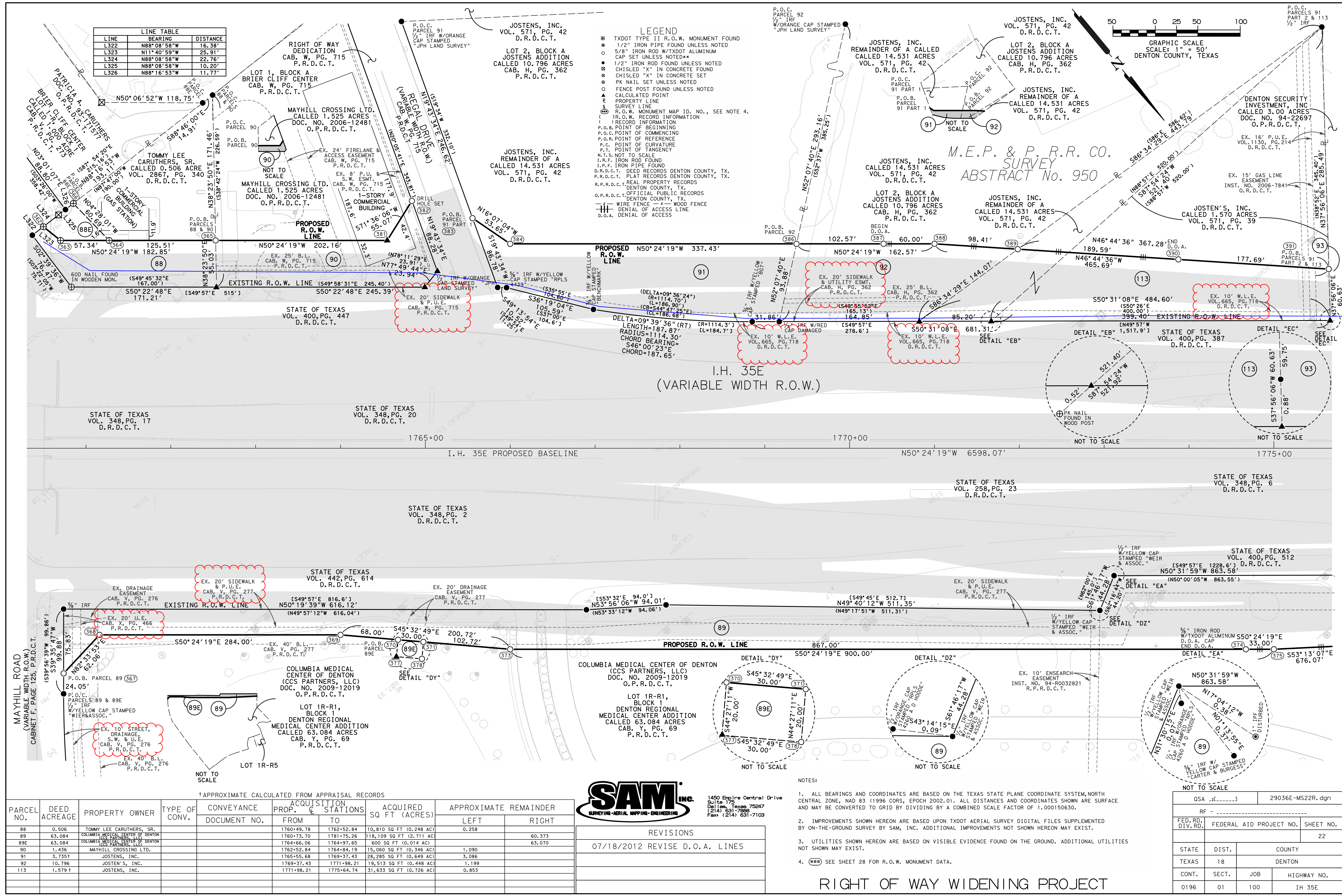
REVISIONS	
07/18/2012	REVISE D.O.A. LINES

- NOTES:
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  - SEE SHEET 28 FOR R.O.W. MONUMENT DATA.

## RIGHT OF WAY WIDENING PROJECT

QSA .s[.....]		29036E-MS21R.dgn	
RF - -----			
FED. RD. DIV. RD.	FEDERAL AID PROJECT NO.		SHEET NO.
			21
STATE	DIST.	COUNTY	
TEXAS	18	DENTON	
CONT.	SECT.	JOB	HIGHWAY NO.
0196	01	100	IH 35E





PARCEL NO.	DEED ACREAGE	PROPERTY OWNER	TYPE OF CONV.	CONVEYANCE	ACQUISITION		ACQUIRED SQ FT (ACRES)	APPROXIMATE REMAINDER	
				DOCUMENT NO.	FROM	TO		LEFT	RIGHT
88	0.506	TOMMY LEE CARUTHERS, SR.			1760+49.78	1762+52.84	10,810 SQ FT (0.248 AC)	0.258	
89	63.084	COLUMBIA MEDICAL CENTER OF DENTON			1760+73.70	1781+75.26	118,109 SQ FT (2.711 AC)		60.373
89E	63.084	COLUMBIA MEDICAL CENTER OF DENTON			1764+66.06	1764+97.65	600 SQ FT (0.014 AC)		63.070
90	1.436	MAYHILL CROSSING LTD.			1762+52.84	1764+84.19	15,060 SQ FT (0.346 AC)	1.090	
91	3.7351	JOSTENS, INC.			1765+55.68	1769+37.43	28,285 SQ FT (0.649 AC)	3.086	
92	10.796	JOSTEN'S, INC.			1769+37.43	1771+98.21	19,513 SQ FT (0.448 AC)	1.199	
113	1.5791	JOSTENS, INC.			1771+98.21	1775+64.74	31,633 SQ FT (0.726 AC)	0.853	



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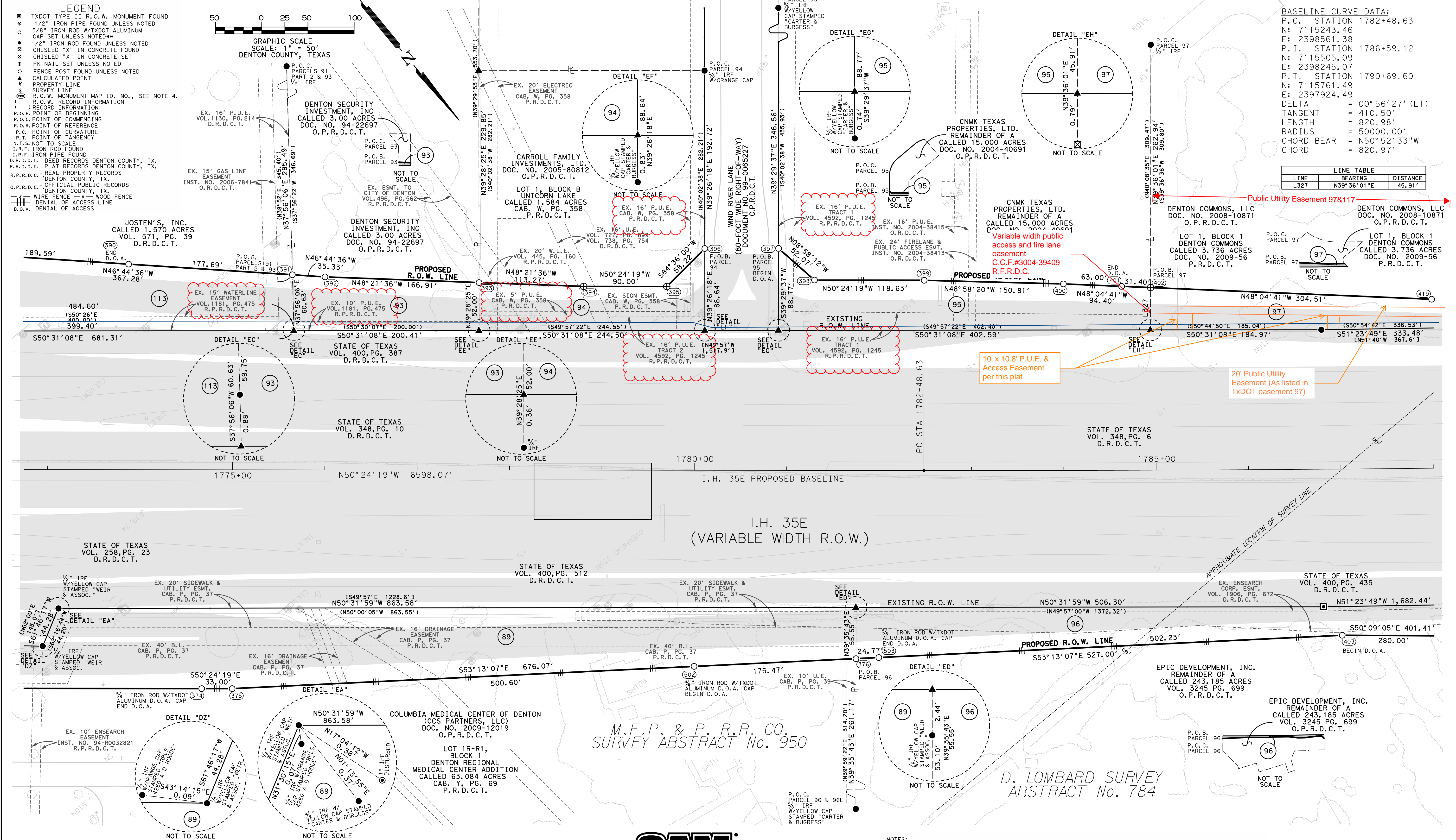
REVISIONS	
07/18/2012	REVISE D.O.A. LINES

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QSA -[.....]		29036E-MS22R.dgn
RF -[.....]		
FED. RD. DIV. RD.	FEDERAL AID PROJECT NO.	SHEET NO.
		22
STATE	DIST.	COUNTY
TEXAS	18	DENTON
CONT.	SECT.	JOB
0196	01	100
		HIGHWAY NO.
		IH 35E

RIGHT OF WAY WIDENING PROJECT





PARCEL NO.	DEED ACREAGE	PROPERTY OWNER	TYPE OF CONV.	CONVEYANCE	ACQUISITION		ACQUIRED		APPROXIMATE REMAINDER	
				DOCUMENT NO.	FROM	TO	SQ FT (ACRES)		LEFT	RIGHT
93	3.00	DENTON SECURITY INVESTMENT, INC. CALLED 3.00 ACRES DOC. NO. 94-22697 O.P.R.D.C.T.			1775+64.74	1777+66.80	11,243 SQ FT (0.258 AC)		2.742	
94	1.584	CARROLL FAMILY INVESTMENTS, LTD. DOC. NO. 2009-80812 O.P.R.D.C.T.			1777+66.80	1780+11.17	12,744 SQ FT (0.293 AC)		1.291	
95	4.759	LOT 1, BLOCK B UNICORN LAKE CALLED 1.584 ACRES CAB. W. PG. 358 P.R.D.C.T.			1780+90.96	1784+94.69	21,558 SQ FT (0.495 AC)		4.264	
96	34.057	EPIC DEVELOPMENT, INC. REMAINDER OF A CALLED 243.185 ACRES VOL. 3245 PG. 699 O.P.R.D.C.T.			1781+75.26	1803+61.86	89,013 SQ FT (2.043 AC)			32.014
97	3.736	DENTON COMMONS, LLC DOC. NO. 2008-10871 O.P.R.D.C.T.			1784+94.69	1789+81.54	18,236 SQ FT (0.419 AC)		3.317	



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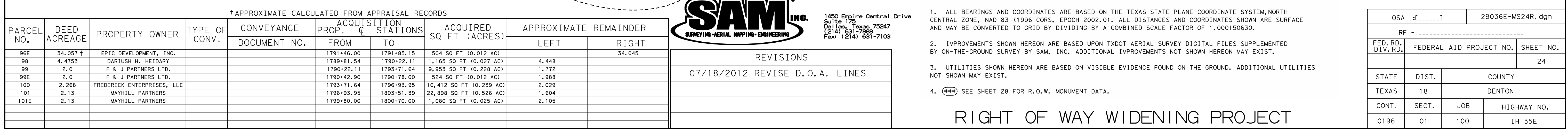
REVISIONS	
07/18/2012	REVISE D.O.A. LINES

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## RIGHT OF WAY WIDENING PROJECT

QSA .s[.....]		29036E-MS23R.dgn	
RF - -----			
FED. RD. DIV. RD.	FEDERAL AID PROJECT NO.		SHEET NO.
			23
STATE	DIST.	COUNTY	
TEXAS	18	DENTON	
CONT.	SECT.	JOB	HIGHWAY NO.
0196	01	100	IH 35E






LINE TABLE		
LINE	BEARING	DISTANCE
L327	N39° 36' 01"E	45.91'
L328	N06° 43' 59"W	46.05'
L329	N10° 14' 27"W	3.93'
L330	N01° 52' 32"E	40.26'
(L331)	(S51° 04' 00"E)	(31.37')
L331	S51° 23' 49"E	31.74'
L332	N51° 14' 56"W	40.42'
L333	N51° 14' 56"W	20.72'
L334	N38° 28' 20"E	24.88'
L335	N51° 20' 46"W	28.36'
L336	N38° 32' 12"E	34.59'

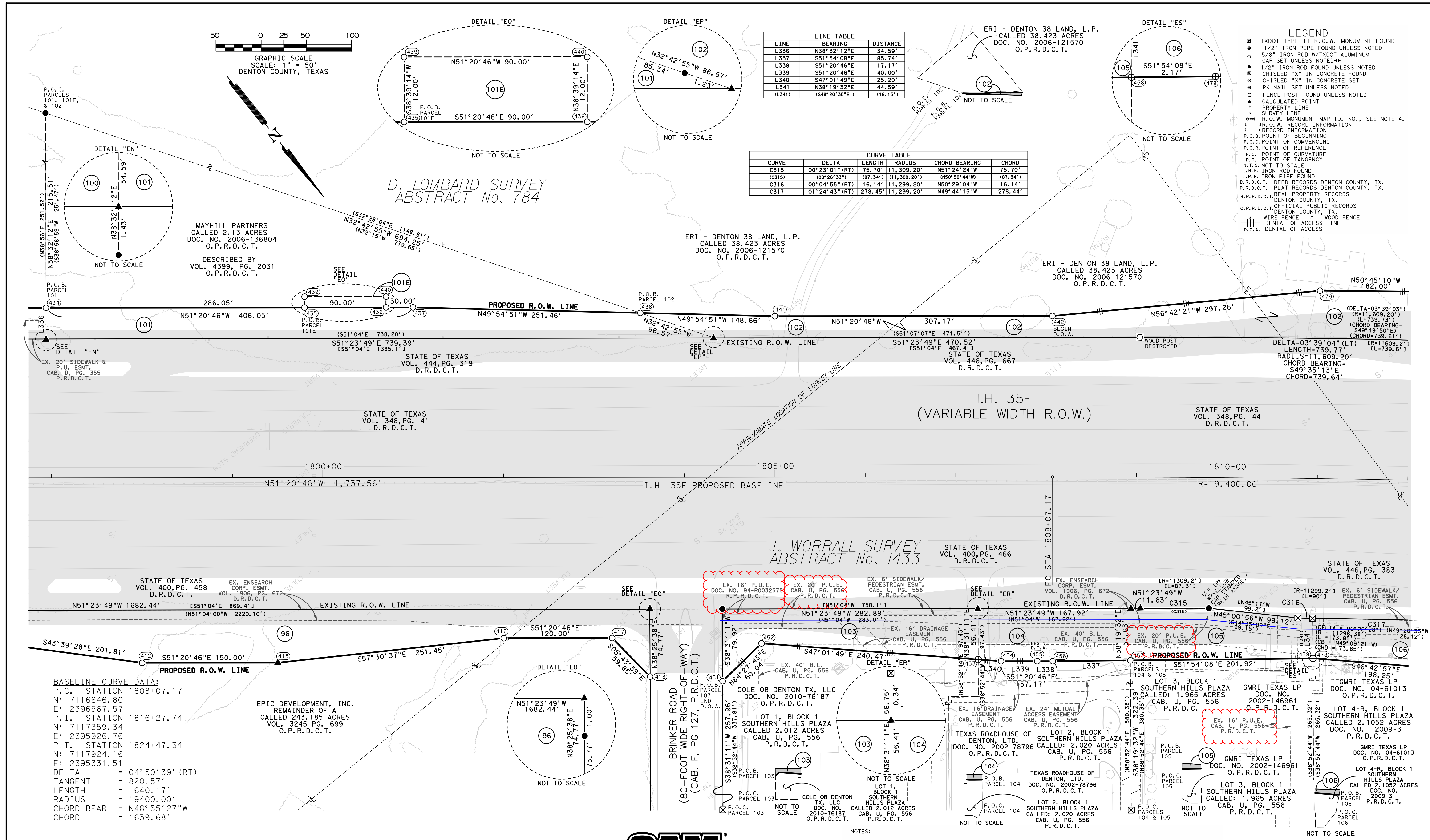
CURVE TABLE					
CURVE	DELTA	LENGTH	RADIUS	CHORD BEARING	CHORD
C306	04°35'18" (RT)	91.29'	1,140.00'	N21°57'31"E	91.27'
C307	10°15'52" (RT)	216.17'	1,140.00'	N28°13'56"E	215.84'
(C307)	(15°27'32")	(307.58')	(1,140.00')	(N89°44'55"W)	(306.65')
C308	08°49'34" (LT)	141.34'	917.50'	N35°13'51"E	141.20'
C309	16°00'36" (LT)	140.55'	503.00'	N09°59'46"E	140.10'
C310	03°02'52" (LT)	48.41'	910.04'	N28°17'34"E	48.40'
(C310)	(03°02'52")	(48.41')	(910.00')	(N39°10'23"E)	(48.45')
C311	07°24'47" (LT)	117.74'	910.00'	N24°03'45"E	117.66'
(C311)	(15°19'23")	(243.37')	(910.00')	(N21°59'12"E)	(242.64')
C312	07°54'56" (RT)	125.72'	910.00'	S16°23'53"W	125.62'
C313	99°34'59" (LT)	95.59'	55.00'	N42°59'31"E	84.01'
(C313)	(99°42'41")	(95.61')	(54.94')	(N42°58'01"E)	(83.99')
(C314)	(99°38'14")	(95.66')	(55.00')	(N43°10'34"W)	(84.05')

[illegible]

	<p><b>SAM INC.</b></p>	<p>1450 Empire Central Suite 175 Dallas, Texas 75247 (214) 631-7898 Fax: (214) 631-7103</p>
	<p>REVISIONS</p>	
	<p>07/18/2012 REVISE D.O.A. LINES</p>	

OSA -[f-----]		29036E-MS24R, dgn	
RF - -----			
FED. RD. DIV. RD.	FEDERAL AID PROJECT NO.		SHEET NO.
			24
STATE	DIST.	COUNTY	
TEXAS	18	DENTON	
CONT.	SECT.	JOB	HIGHWAY NO.
0196	01	100	IH 35E





PARCEL NO.	DEED ACREAGE	PROPERTY OWNER	TYPE OF CONV.	CONVEYANCE		ACQUISITION STATIONS		ACQUIRED SQ FT (ACRES)	APPROXIMATE REMAINDER	
				DOCUMENT NO.		FROM	TO		LEFT	RIGHT
102	38.423	ERI - DENTON 38 LAND, L.P.				1803+51.39	1816+52.85	53,376 SQ FT (1.225 AC)	37.198	
103	2.012	COLE OB DENTON TX, LLC				1804+41.95	1807+24.78	13,875 SQ FT (0.319 AC)		1.765
104	2.020	TEXAS ROADHOUSE OF DENTON, LTD.				1807+24.78	1808+93.81	9,751 SQ FT (0.224 AC)		1.693
105	1.965	GMRI TEXAS LP				1808+93.81	1810+97.81	10,740 SQ FT (0.247 AC)		1.718
106	2.1052	GMRI TEXAS LP				1810+97.81	1813+69.07	14,156 SQ FT (0.325 AC)		1.780

**SAM**  
SURVEYING • AERIAL MAPPING • ENGINEERING

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REVISIONS  
07/18/2012 REVISE D.O.A. LINES

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4. SEE SHEET 28 FOR R.O.W. MONUMENT DATA.

QSA [.....]		29036E-MS25R.dgn	
RF - -----			
FED. RD. DIV. RD.	FEDERAL AID PROJECT NO.		SHEET NO.
			25
STATE	DIST.	COUNTY	
TEXAS	18	DENTON	
CONT.	SECT.	JOB	HIGHWAY NO.
0196	01	100	IH 35E



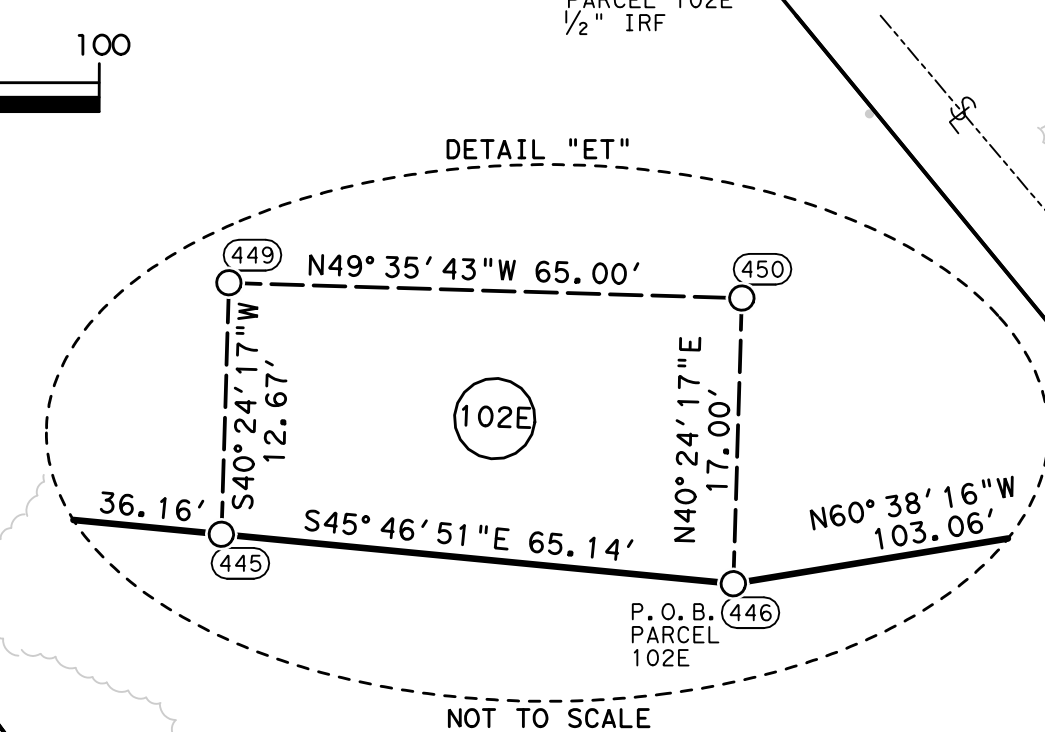
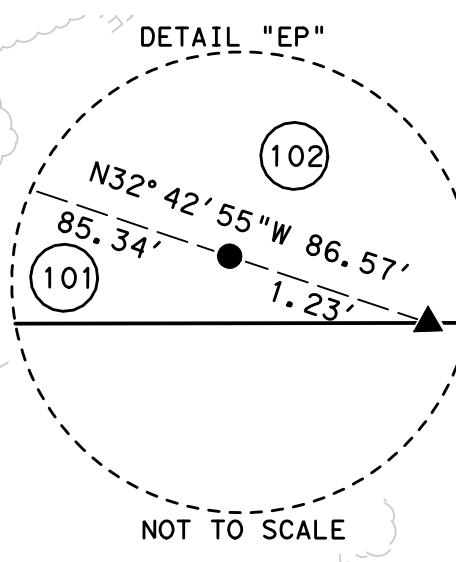
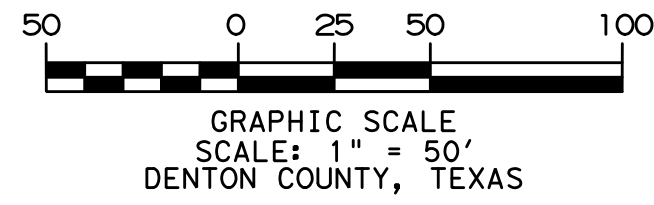
LEGEND

- TXDOT TYPE II R.O.W. MONUMENT FOUND
- 1/2" IRON PIPE FOUND UNLESS NOTED
- 5/8" IRON ROD W/TXDOT ALUMINUM CAP SET UNLESS NOTED\*\*
- 1/2" IRON ROD FOUND UNLESS NOTED
- CHISLED "X" IN CONCRETE SET
- CHISLED "X" IN CONCRETE SET
- PK NAIL SET UNLESS NOTED
- FENCE POST FOUND UNLESS NOTED
- CALCULATED POINT
- PROPERTY LINE
- SURVEY LINE
- R.O.W. MONUMENT MAP ID. NO., SEE NOTE 4.
- J.R.O.W. RECORD INFORMATION
- J.R.O.W. RECORD INFORMATION
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCING
- P.O.R. POINT OF REFERENCE
- P.C. POINT OF CURVATURE
- P.T. POINT OF TANGENCY
- N.T.S. NOT TO SCALE
- I.R.F. IRON ROD FOUND
- I.P.F. IRON PIPE FOUND
- D.R.D.C.T. DEED RECORDS DENTON COUNTY, TX.
- P.R.D.C.T. PLAT RECORDS DENTON COUNTY, TX.
- R.P.R.D.C.T. REAL PROPERTY RECORDS DENTON COUNTY, TX.
- O.P.R.D.C.T. OFFICIAL PUBLIC RECORDS DENTON COUNTY, TX.
- WIRE FENCE
- DENIAL OF ACCESS LINE
- D.O.A. DENIAL OF ACCESS

BASELINE CURVE DATA:  
P.C. STATION 1808+07.17  
N: 7116846.80  
E: 2396567.57  
P.I. STATION 1816+27.74  
N: 7117359.34  
E: 2395926.76  
P.T. STATION 1824+47.34  
N: 7117924.16  
E: 2395331.51  
DELTA = 04° 50' 39" (RT)  
TANGENT = 820.57'  
LENGTH = 1640.17'  
RADIUS = 19400.00'  
CHORD BEAR = N48° 55' 27" W  
CHORD = 1639.68'

LINE	BEARING	DISTANCE
L336	N38° 32' 12" E	34.59'
L337	S51° 54' 08" E	85.74'
L338	S51° 20' 46" E	17.17'
L339	S51° 20' 46" E	40.00'
L340	S47° 01' 49" E	25.29'
L341	N38° 19' 32" E	44.59'
(L341)	(S49° 20' 35" E)	(16.15')
L342	N54° 52' 12" E	18.74'

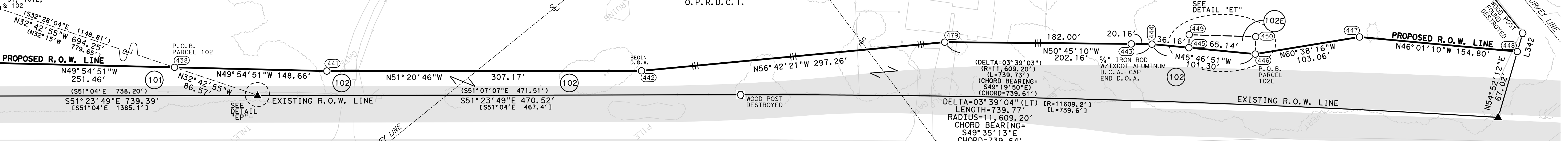
CURVE	DELTA	LENGTH	RADIUS	CHORD BEARING	CHORD
C315	00° 23' 01" (RT)	75.70'	11,309.20'	N51° 24' 24" W	75.70'
(C315)	(00° 26' 33")	(87.34')	(11,309.20')	(N50° 50' 44" W)	(87.34')
C316	00° 04' 55" (RT)	16.14'	11,299.20'	N50° 29' 04" W	16.14'
C317	01° 24' 43" (RT)	278.45'	11,299.20'	N49° 44' 15" W	278.44'
C318	00° 00' 21" (RT)	1.14'	11,299.20'	N49° 01' 43" W	1.14'
C319	00° 42' 28" (RT)	139.68'	11,299.20'	N48° 02' 04" W	139.68'
C320	00° 41' 48" (RT)	137.04'	11,269.20'	N48° 01' 44" W	137.04'



JOHN MCGOWAN SURVEY ABSTRACT No. 797

D. LOMBARD SURVEY ABSTRACT No. 784

ERI - DENTON 38 LAND, L.P. CALLED 38.423 ACRES DOC. NO. 2006-121570 O.P.R.D.C.T.



STATE OF TEXAS VOL. 446, PG. 44 D.R.D.C.T.

I.H. 35E (VARIABLE WIDTH R.O.W.)

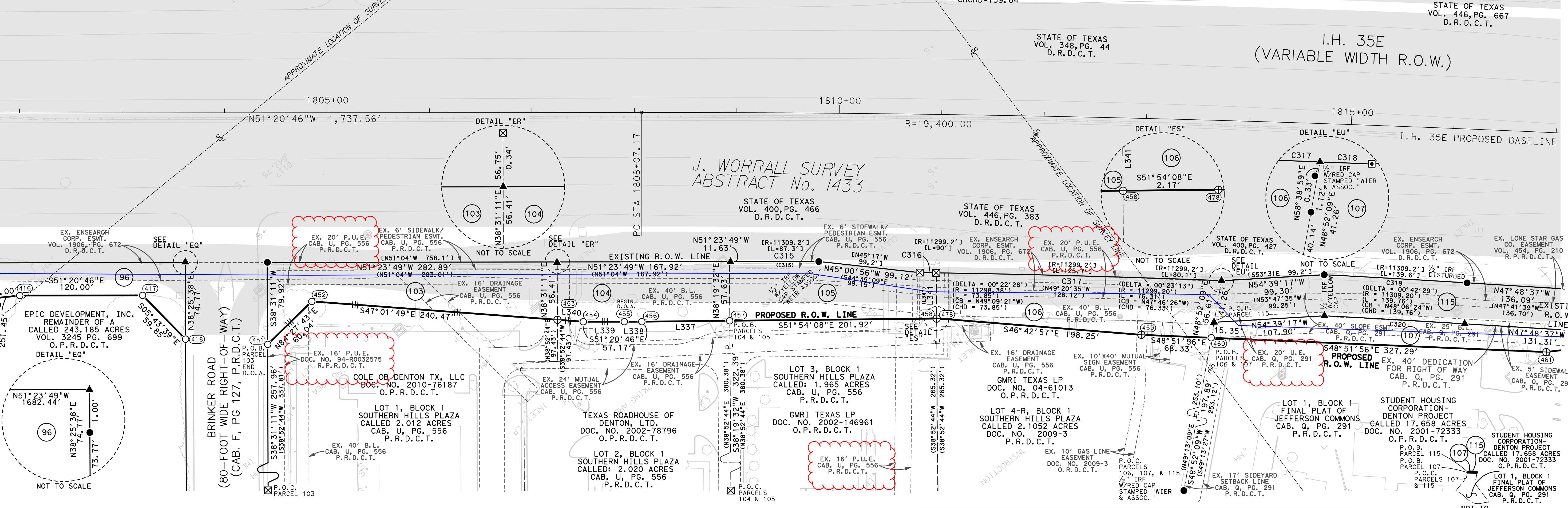
J. WORRALL SURVEY ABSTRACT No. 1433

STATE OF TEXAS VOL. 400, PG. 466 D.R.D.C.T.

STATE OF TEXAS VOL. 446, PG. 383 D.R.D.C.T.

STATE OF TEXAS VOL. 400, PG. 427 D.R.D.C.T.

EX. LONE STAR GAS CO. EASEMENT VOL. 210 R.P.R.D.C.T.



PARCEL NO.	DEED ACREAGE	PROPERTY OWNER	TYPE OF CONV.	CONVEYANCE DOCUMENT NO.	ACQUISITION PROP. STATIONS FROM TO	ACQUIRED SQ FT (ACRES)	APPROXIMATE REMAINDER LEFT RIGHT
102E	38.423	ERI - DENTON 38 LAND, L.P.			1813+35.69 1814+00.00	964 SQ FT (0.022 AC)	38.401
107	17.658	STUDENT HOUSING CORPORATION - DENTON PROJECT			1813+69.07 1817+49.04	8,472 SQ FT (0.194 AC)	17.464
115	17.658	STUDENT HOUSING CORPORATION - DENTON PROJECT			1813+71.38 1817+50.88		



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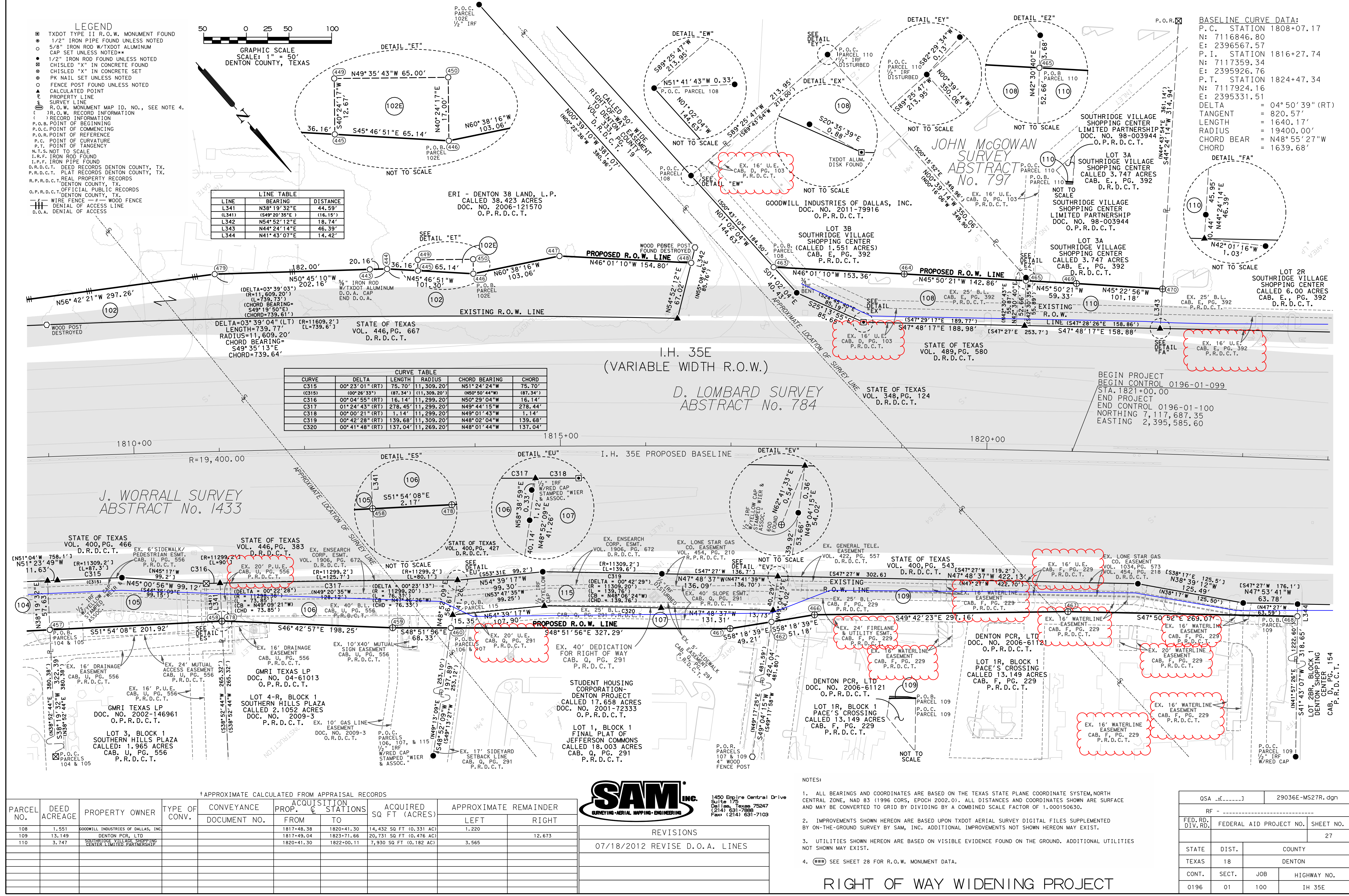
REVISIONS  
07/18/2012 REVISE D.O.A. LINES

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RIGHT OF WAY WIDENING PROJECT

QSA	29036E-MS26R.dgn
RF	
FED. RD. DIV. RD.	FEDERAL AID PROJECT NO. SHEET NO.
	26
STATE	DIST. COUNTY
TEXAS	18 DENTON
CONT.	SECT. JOB HIGHWAY NO.
0196	01 100 IH 35E



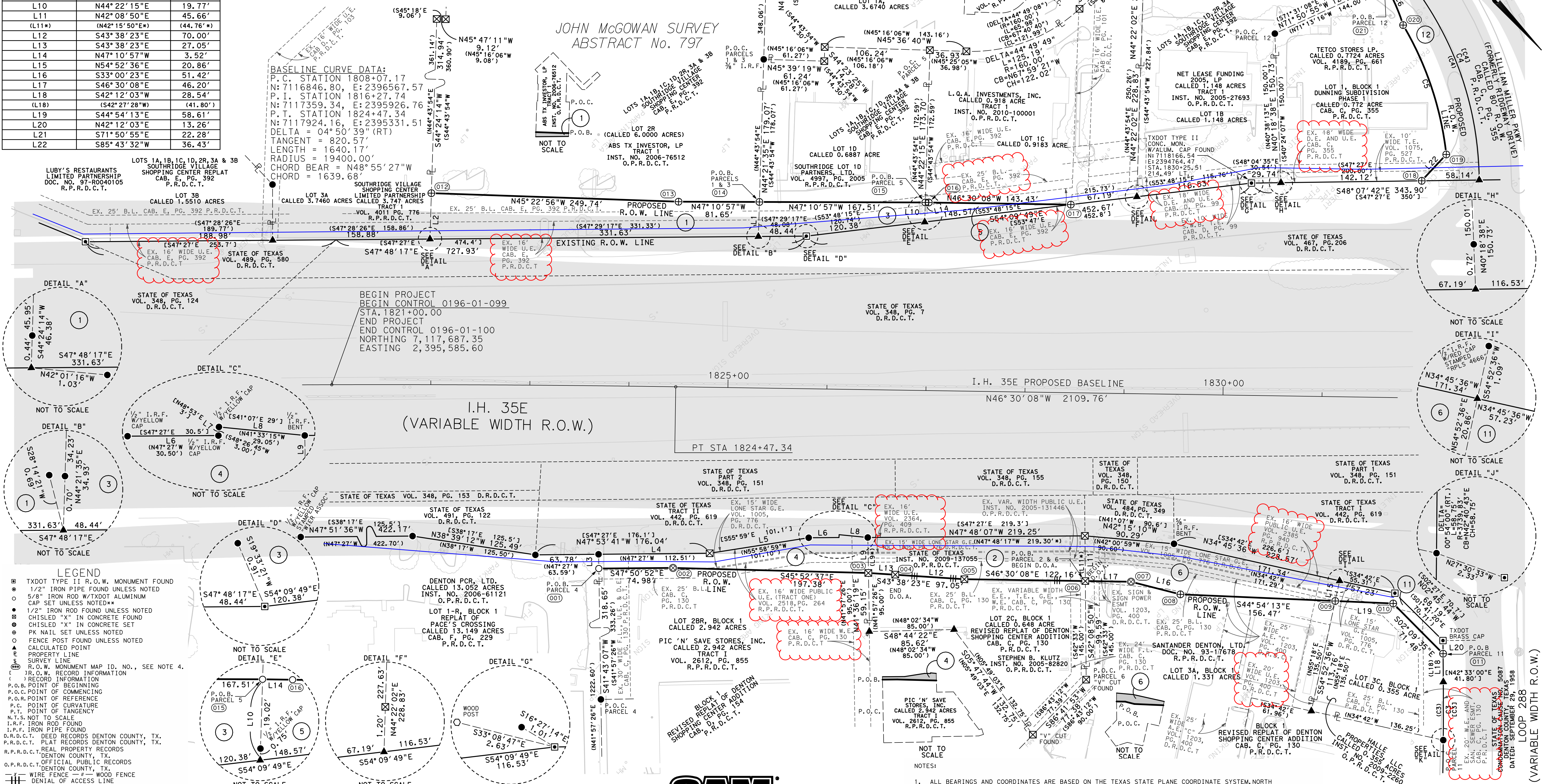




LINE TABLE		
LINE	BEARING	DISTANCE
L1	N44°21'35"E	34.93'
L2	S44°24'14"W	46.38'
L3	S41°43'07"W	14.42'
L4	N47°53'41"W	112.26'
L5	N56°15'47"W	101.15'
L6	N47°46'17"W	30.58'
L7	S46°11'12"W	2.90'
L8	N41°42'02"W	29.07'
L9	N41°36'19"E	35.85'
(L9*)	(S41°40'16"W)	(34.94'*)
L10	N44°22'15"E	19.77'
L11	N42°08'50"E	45.66'
(L11*)	(N42°15'50"E)	(44.76'*)
L12	S43°38'23"E	70.00'
L13	S43°38'23"E	27.05'
L14	N47°10'57"W	3.52'
L15	N54°52'36"E	20.86'
L16	S33°00'23"E	51.42'
L17	S46°30'08"E	46.20'
L18	S42°12'03"W	28.54'
(L18)	(S42°27'28"W)	(41.80')
L19	S44°54'13"E	58.61'
L20	N42°12'03"E	13.26'
L21	S71°50'55"E	22.28'
L22	S85°43'32"W	36.43'

CURVE TABLE				
CURVE	DELTA	LENGTH	RADIUS	CHORD BEARING
C1	03°31'59"(RT)	20.31'	329.38'	N01°20'10"E
(C1)	(03°32'17")	(20.36')	(329.71')	(N01°28'56"E)
(C1)	(03°32'10")	(20.334')	(329.710')	(TANGENT=10.170')
C2	11°46'17"(LT)	38.01'	185.00'	S05°25'58"W
C3	00°54'00"(RT)	58.75'	3739.83'	N42°40'43"E
(C3)	(00°52'55")	(57.57')	(3740.00')	(TANGENT=28.78')
(C3)	(09°44'38")	(636.0')	(3739.83')	-
C4	39°10'34"(RT)	225.21'	329.38'	N22°41'26"E
(C4)	(39°05'59")	(225.00')	(329.710')	(TANGENT=117.079')
(C4)	(39°05'59")	(225.000')	(329.710')	(TANGENT=117.079')

CURVE TABLE				
CURVE	DELTA	LENGTH	RADIUS	CHORD BEARING
C5	24°19'23"(LT)	138.82'	327.00'	S24°12'00"W
C6	14°14'28"(LT)	45.98'	185.00'	S18°26'21"W



- LEGEND**
- TXDOT TYPE II R.O.W. MONUMENT FOUND
  - 1/2" IRON PIPE FOUND UNLESS NOTED
  - 5/8" IRON ROD W/ TXDOT ALUMINUM CAP SET UNLESS NOTED
  - 1/2" IRON ROD FOUND UNLESS NOTED
  - CHISLED "X" IN CONCRETE FOUND
  - CHISLED "X" IN CONCRETE SET
  - PK NAIL SET UNLESS NOTED
  - FENCE POST FOUND UNLESS NOTED
  - PROPERTY LINE
  - SURVEY LINE
  - R.O.W. MONUMENT MAP ID. NO., SEE NOTE 4.
  - J.R.W. RECORD INFORMATION
  - RECORD INFORMATION
  - P.O.B. POINT OF BEGINNING
  - P.O.C. POINT OF COMMENCING
  - P.O.R. POINT OF REFERENCE
  - P.C. POINT OF CURVATURE
  - P.T. POINT OF TANGENCY
  - N.T.S. NOT TO SCALE
  - I.R.F. IRON ROD FOUND
  - I.P.F. IRON PIPE FOUND
  - D.R.D.C.T. DEED RECORDS DENTON COUNTY, TX.
  - P.R.D.C.T. PLAT RECORDS DENTON COUNTY, TX.
  - R.P.R.D.C.T. REAL PROPERTY RECORDS
  - DENTON COUNTY, TX.
  - O.P.R.D.C.T. OFFICIAL PUBLIC RECORDS
  - DENTON COUNTY, TX.
  - WIRE FENCE
  - WOOD FENCE
  - DENIAL OF ACCESS LINE
  - D.O.A. DENIAL OF ACCESS

PARCEL NO.	DEED ACREAGE	PROPERTY OWNER	TYPE OF CONV.	CONVEYANCE DOCUMENT NO.	ACQUISITION STATIONS		ACQUIRED SQ FT (ACRES)	REMAINDER†	
					FROM	TO		LEFT	RIGHT
1	6.000	ABS TX INVESTOR, LP			1822+00.11	1825+28.98	13,152 SQ FT (0.302AC)	5.698	-
2	0.648	STEPHEN B. KLUTZ	DEED	2009-137055	1826+44.71	1828+63.80	9,027 SQ FT (0.2072 AC)	-	0.441
3	0.6887	SOUTHTRIDGE LOT 10 PARTNERS, LTD.			1825+28.98	1826+96.48	4903 SQ FT (0.113 AC)	0.576	-
4	2.942	PIC 'N' SAVE STORES, INC.			1823+71.66	1826+44.71	6277 SQ FT (0.144 AC)	-	2.798
5	0.918	L.Q.A. INVESTMENTS, INC.			1826+96.48	1828+43.43	1455 SQ FT (0.033 AC)	0.885	-
6	1.331	SANTANDER DENTON, LTD.			1828+63.80	1831+16.41	9939 SQ FT (0.2284 AC)	-	1.103
8	1.148	NET LEASE FUNDING 2005, LP			1830+49.97	1831+56.82	2943 SQ FT (0.068 AC)	1.080	-
11	0.355	HALLE PROPERTIES, LLC			1831+16.41	1832+26.12	1529 SQ FT (0.035 AC)	-	0.320
12	0.7724	TETCO STORES LP.			1831+56.82	1831+97.30	7065 SQ FT (0.162 AC)	0.610	-



1450 Empire Central Drive  
Suite 175  
Dallas, Texas 75247  
(214) 631-7888  
Fax: (214) 631-7103

REVISIONS	
11/30/2011	ADDED PARCEL 2
03/15/2012	REVISED PARCEL 4
07/11/2012	REVISE D.O.A. LINES

- ALL BEARINGS AND COORDINATES ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE, NAD 83 (1996 CORRS, EPOCH 2002.0). ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY A COMBINED SCALE FACTOR OF 1.000150630.
- IMPROVEMENTS SHOWN HEREON ARE BASED UPON TXDOT AERIAL SURVEY DIGITAL FILES SUPPLEMENTED BY ON-THE-GROUND SURVEY BY SAM, INC. ADDITIONAL IMPROVEMENTS NOT SHOWN HEREON MAY EXIST.
- UTILITIES SHOWN HEREON ARE BASED ON VISIBLE EVIDENCE FOUND ON THE GROUND. ADDITIONAL UTILITIES NOT SHOWN MAY EXIST.
- SEE SHEET 06 FOR R.O.W. MONUMENT DATA.
- \* BEARINGS AND DISTANCES IN THESE CALLES ARE DERIVED FROM JUDGEMENT TO THE STATE OF TEXAS, RECORDED IN DOCUMENT NO. 2009-137055, O.P.R.D.C.T.

## RIGHT OF WAY WIDENING PROJECT

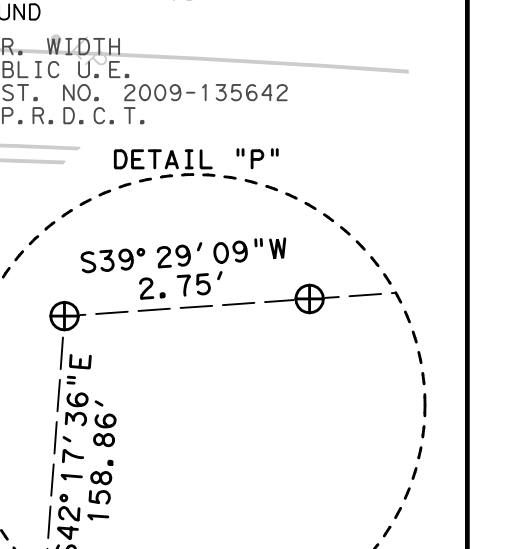
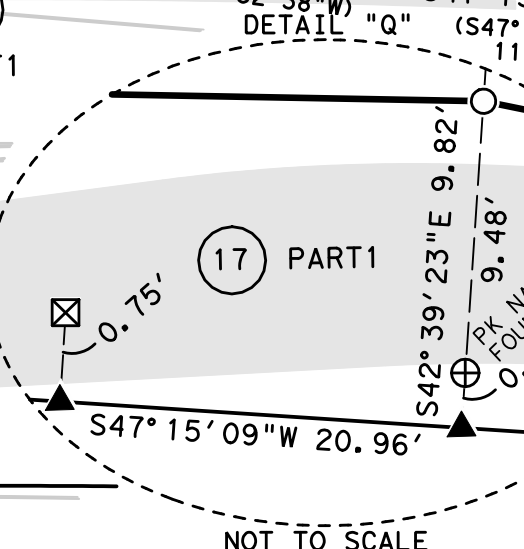
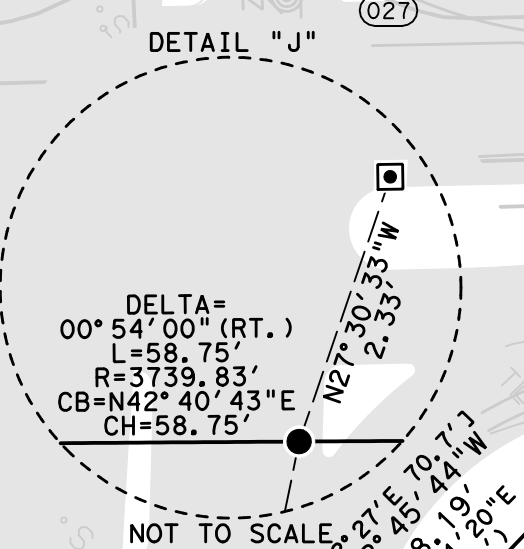
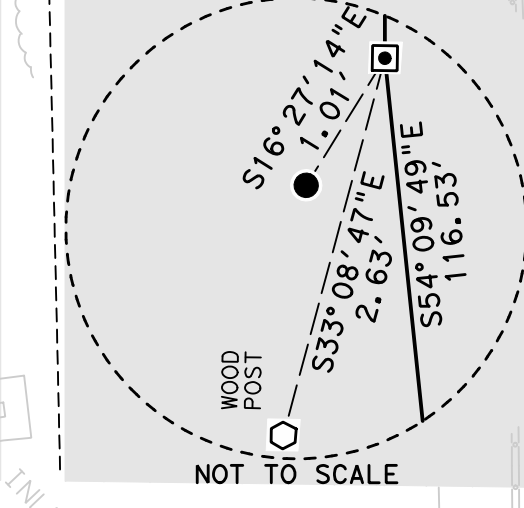
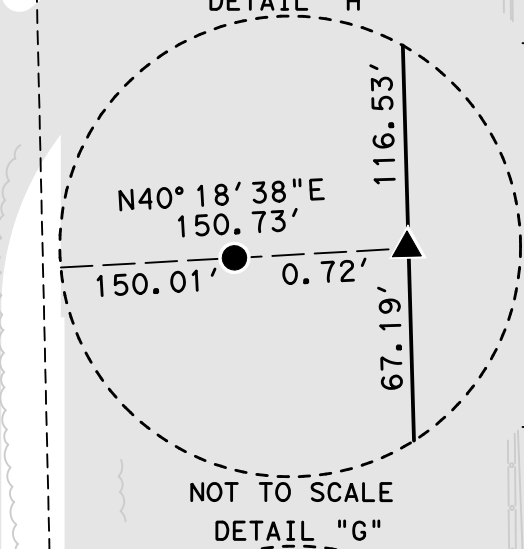
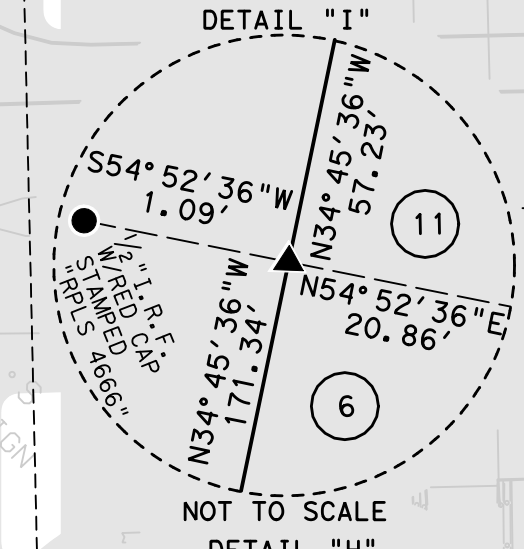
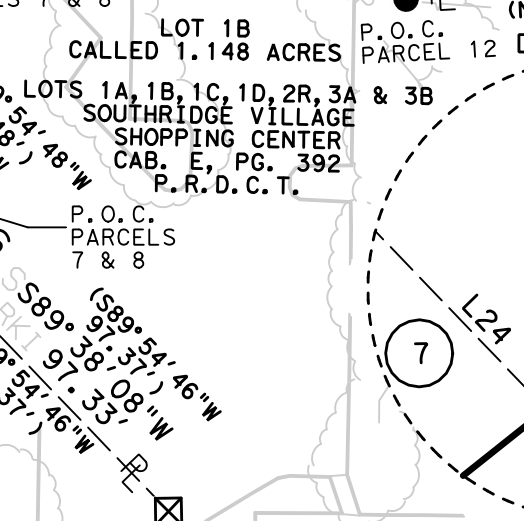
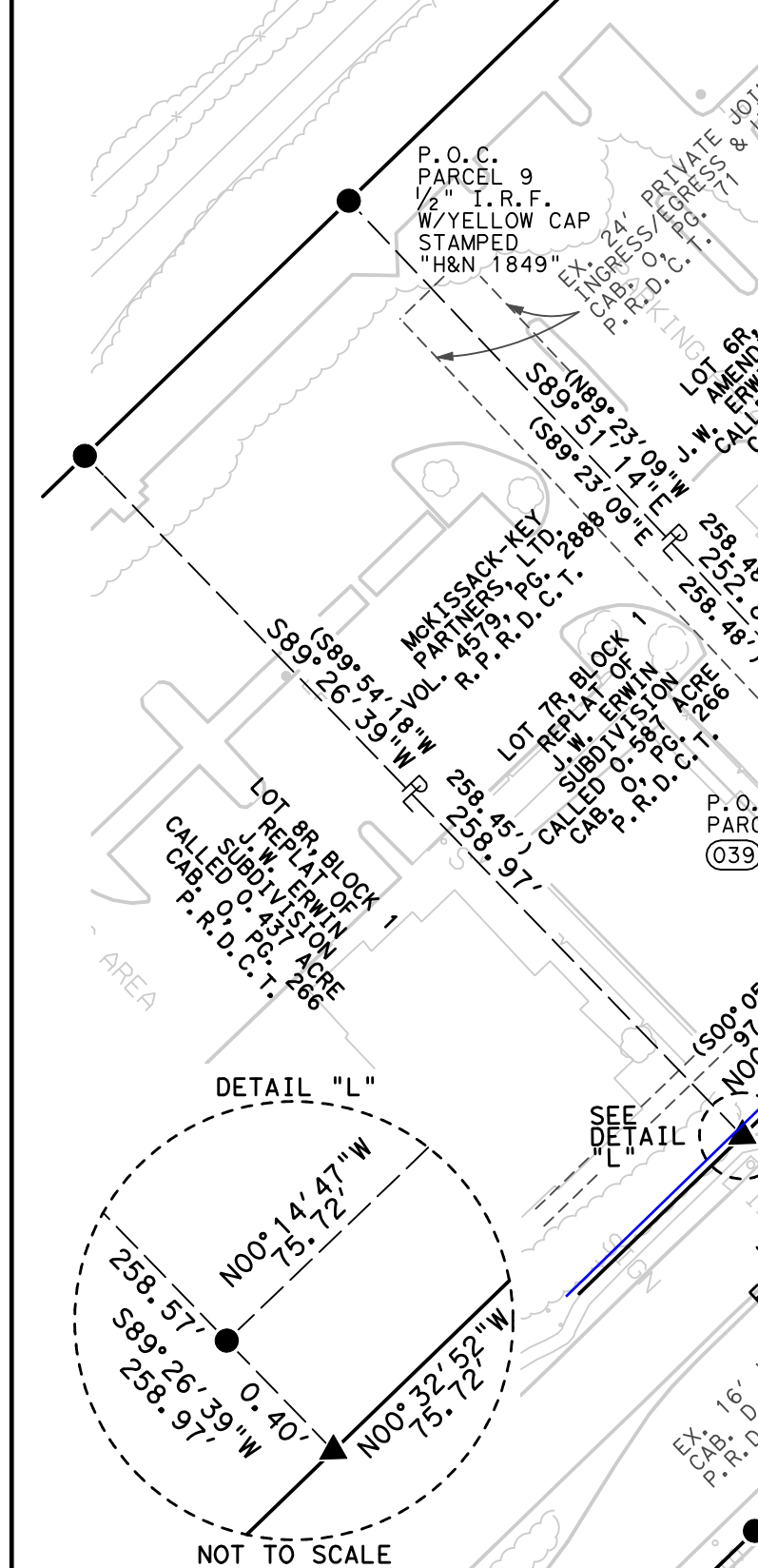
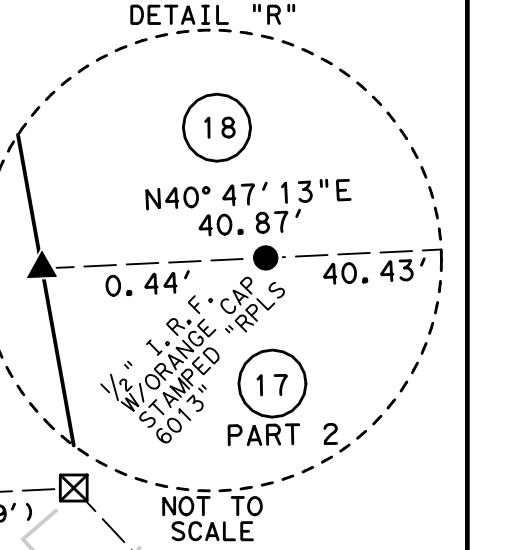
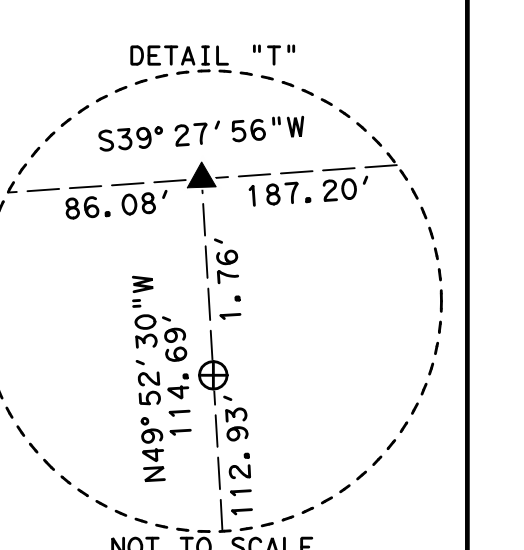
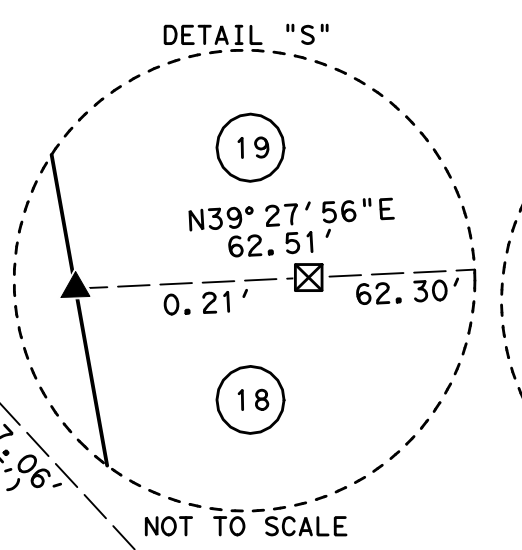
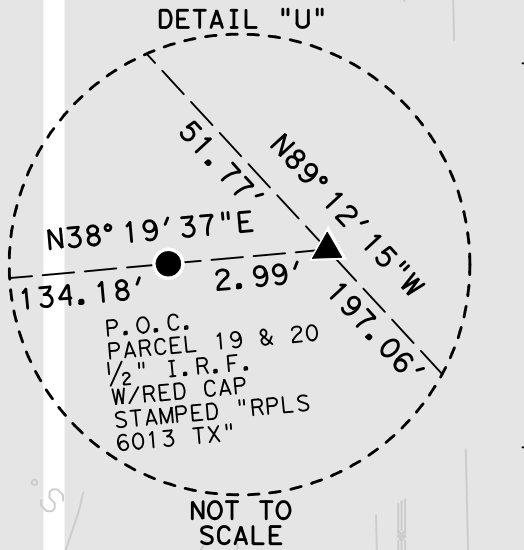
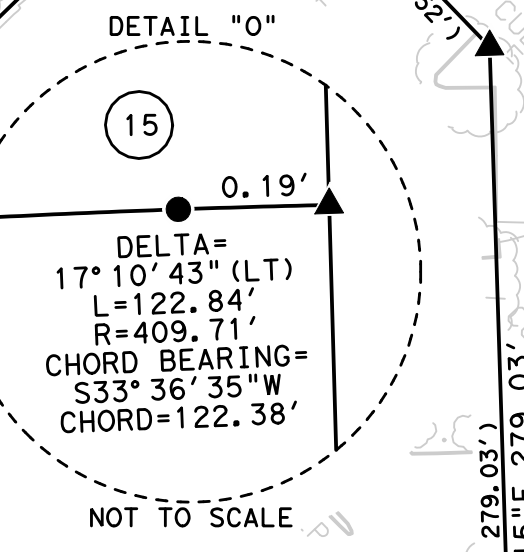
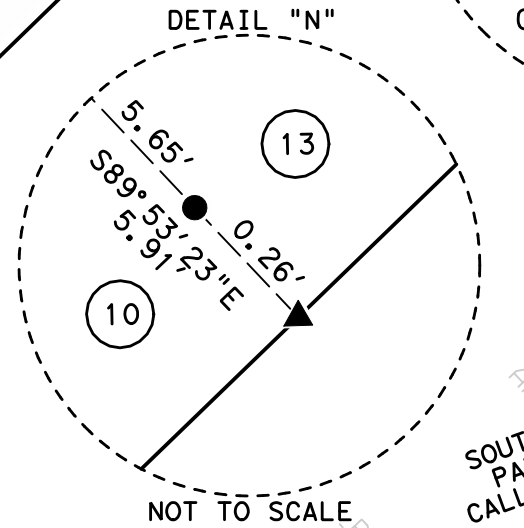
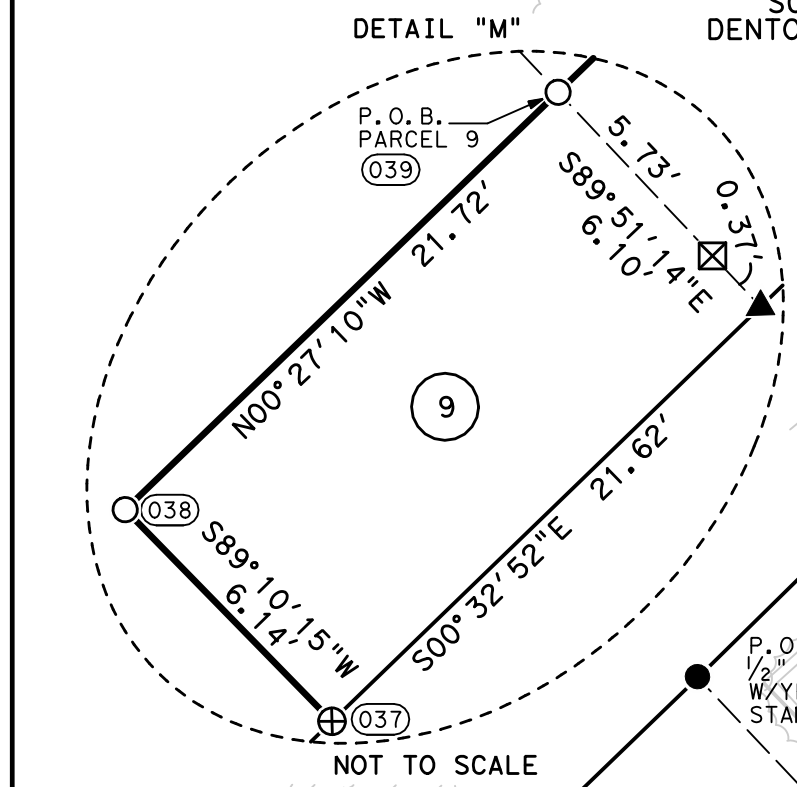
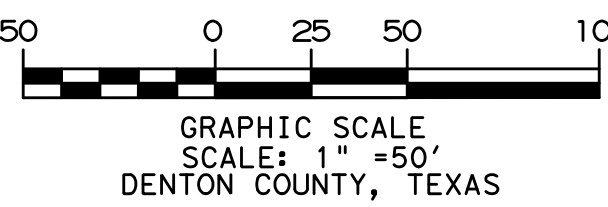
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RF - .....			
FED. RD. DIV. RD.	FEDERAL AID PROJECT NO.		SHEET NO.
			03
STATE	DIST.	COUNTY	
TEXAS	18	DENTON	
CONT.	SECT.	JOB	HIGHWAY NO.
0196	01	099	1H 35E



LINE	BEARING	DISTANCE
L15	N54° 52' 36" E	20.86'
L16	S33° 00' 23" E	51.42'
L17	S46° 30' 08" E	46.20'
L18	S42° 12' 03" W	28.54'
(L18)	(S42° 27' 28" W)	(41.80')
L19	S44° 54' 13" E	58.61'
L20	N42° 12' 03" E	13.26'
L21	S71° 50' 55" E	22.28'
L22	S85° 43' 32" W	36.43'
L23	S89° 31' 22" W	7.31'
L24	N89° 39' 41" E	17.16'
L25	N00° 20' 19" W	17.09'
(L25)	(N00° 05' 14" W)	(17.06')
L26	S04° 57' 55" W	5.86'
L27	S89° 53' 23" E	5.91'
L28	S89° 44' 13" E	11.97'
L29	S00° 29' 17" E	45.86'
L30	N42° 39' 23" W	9.82'
L31	S46° 30' 08" E	36.76'
L32	N40° 47' 13" E	40.87'

**LEGEND**

TXDOT TYPE II R.O.W. MONUMENT FOUND  
 1/2" IRON PIPE FOUND UNLESS NOTED  
 5/8" IRON ROD W/ TXDOT ALUMINUM CAP SET UNLESS NOTED\*\*  
 1/2" IRON ROD FOUND UNLESS NOTED  
 CHISLED "X" IN CONCRETE FOUND  
 CHISLED "X" IN CONCRETE SET  
 PK NAIL SET UNLESS NOTED  
 FENCE POST FOUND UNLESS NOTED  
 CALCULATED POINT  
 SURVEY LINE  
 R.O.W. MONUMENT MAP ID. NO., SEE NOTE 4.  
 JR. O.W. RECORD INFORMATION  
 RECORD INFORMATION  
 P.O.B. POINT OF BEGINNING  
 P.O.C. POINT OF COMMENCING  
 P.O.R. POINT OF REFERENCE  
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 I.R.F. IRON ROD FOUND  
 I.P.F. IRON PIPE FOUND  
 D.R.D.C.T. DEED RECORDS DENTON COUNTY, TX.  
 R.P.R.D.C.T. PLAT RECORDS DENTON COUNTY, TX.  
 R.P.R.D.C.T. PLAT PROPERTY RECORDS  
 DENTON COUNTY, TX.  
 O.P.R.D.C.T. OFFICIAL PUBLIC RECORDS  
 DENTON COUNTY, TX.  
 WIRE FENCE WOOD FENCE  
 D.O.A. DENIAL OF ACCESS LINE



CURVE	DELTA	LENGTH	RADIUS	CHORD BEARING	CHORD
C1	03° 31' 59" (RT)	20.31'	329.38'	N01° 20' 10" E	20.31'
(C1)	(03° 32' 17")	(20.36')	(329.71')	(N01° 28' 56" E)	(20.36')
(C1)	(03° 32' 01")	(20.334')	(329.710')	(TANGENT=10.170')	(10.170')
C2	11° 46' 17" (LT)	38.01'	185.00'	S05° 25' 58" W	37.94'
C3	00° 54' 00" (RT)	58.75'	3739.83'	N42° 40' 43" E	58.75'
(C3)	(00° 52' 55")	(57.57')	(3740.00')	(TANGENT=28.78')	-
(C3)	(09° 44' 38")	(636.0')	(3739.83')	-	-
C4	39° 10' 34" (RT)	225.21'	329.38'	N22° 41' 26" E	220.85'
(C4)	(39° 05' 59")	(225.00')	(329.710')	(TANGENT=117.079')	(220.659')
(C4)	(39° 05' 59")	(225.000')	(329.710')	(TANGENT=117.079')	(220.659')
C5	24° 19' 23" (LT)	138.82'	327.00'	S24° 12' 00" W	137.78'
C6	14° 14' 28" (LT)	45.98'	185.00'	S18° 30' 21" W	45.86'
C7	06° 58' 40" (RT)	47.98'	394.00'	N03° 02' 10" E	47.95'
C8	12° 05' 18" (LT)	86.44'	409.71'	S05° 35' 15" W	86.28'
(C8)	(12° 06' 56")	(86.64')	(409.71')	(N06° 01' 28" E)	(86.48')
C9	13° 23' 19" (LT)	95.74'	409.71'	S18° 19' 33" W	95.52'
(C9)	(13° 23' 17")	(95.74')	(409.71')	(N18° 46' 34" E)	(95.52')
C10	20° 51' 50" (RT)	143.47'	394.00'	N16° 57' 25" E	142.68'
C11	08° 35' 04" (RT)	59.03'	394.00'	N31° 40' 52" E	58.98'
C12	17° 10' 43" (LT)	122.84'	409.71'	S33° 36' 35" W	122.38'
(C12)	(17° 06' 04")	(122.29')	(409.71')	(S33° 59' 58" W)	(121.83')

NOTES:

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- IMPROVEMENTS SHOWN HEREON ARE BASED UPON TXDOT AERIAL SURVEY DIGITAL FILES SUPPLEMENTED BY ON-THE-GROUND SURVEY BY SAM, INC. ADDITIONAL IMPROVEMENTS NOT SHOWN HEREON MAY EXIST.
- UTILITIES SHOWN HEREON ARE BASED ON VISIBLE EVIDENCE FOUND ON THE GROUND. ADDITIONAL UTILITIES NOT SHOWN MAY EXIST.
- SEE SHEET 06 FOR R.O.W. MONUMENT DATA.

PARCEL NO.	DEED ACREAGE	PROPERTY OWNER	TYPE OF CONV.	CONVEYANCE DOCUMENT NO.	ACQUISITION FROM STATIONS	ACQUIRED SQ FT (ACRES)	REMAINDER†
7	3.674	SOUTHRIDGE PARTNERS, LTD.			1829+85.63	1258 SQ FT (0.029 AC)	3.645
9	0.587	McKISSACK-KEY PARTNERS, LTD.			1830+01.34	133 SQ FT (0.003 AC)	0.584
10	0.7117	ONE DENTON PLACE, LP			1831+01.34	720 SQ FT (0.017 AC)	0.695
13	0.8716	SOUTHRIDGE PLAZA PARTNERS, LTD.			1831+84.59	1055 SQ FT (0.024 AC)	0.848
14	2.654	SOUTHRIDGE PLAZA PARTNERS, LTD.			1832+82.79	1968 SQ FT (0.045 AC)	2.609
15	0.127	WELLS FARGO COMPANY			1833+46.54	2940 SQ FT (0.068 AC)	0.059
16	0.523	FBO KATHY APOSTAL			1833+68.20	356 SQ FT (0.008 AC)	-
17 PART 1	0.955	TRITON DENTON EF, LLC			1833+82.75	884 SQ FT (0.020 AC)	0.858
17 PART 2	0.955	TRITON DENTON EF, LLC			1834+18.24	3354 SQ FT (0.077 AC)	0.858



1450 Empire Central Drive  
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 Dallas, Texas 75247  
 (214) 631-7886  
 Fax: (214) 631-7103

REVISIONS
07/11/2012 REVISE D.O.A. LINES

RIGHT OF WAY WIDENING PROJECT

QSA .S.C.....		29036F-MS04R.DGN	
RF - .....			
FED. RD. DIV. RD.	FEDERAL AID PROJECT NO.		SHEET NO.
			04
STATE	DIST.	COUNTY	
TEXAS	18	DENTON	
CONT.	SECT.	JOB	HIGHWAY NO.
0196	01	099	1H 35E

SEE SHEET 5 FOR PARCELS 18 AND 19



**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 66**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1735+69 LT to Sta 1720+90 LT

Existing Easement

Instrument Number 2019-52

PART OF LOT 1, BLOCK 1  
DENTON CARMAX ADDITION  
GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

18424

That M.F.A., INC.

of the County of Tarrant, State of Texas, hereinafter called "Grantor", for a good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant to the City of Corinth, hereinafter called "City", an easement and right-of-way for the purpose of constructing a water/sewer line, the term of such easement to end when the City of Corinth accepts the entire water/sewer system when construction of same is completed; and Grantor does also grant to said City a perpetual easement and right-of-way for the purpose of operating and maintaining such water/sewer line; easements and rights-of-way over and across Grantor's land in G. Walker Survey, Abstract No. 1330, Denton County, Texas, more particularly described in deed from Sanders Campbell to M.F.A., Inc.,

dated February 4, 19 69, and recorded in Volume 579, Page 701, of the Deed Records of said County and containing 326.2 acres, in, on and

over the tracts of land set forth and described in Exhibit "A", which is attached hereto and made a part hereof for all purposes, and SUBJECT TO THE RESERVATION of right in favor of Grantor as set forth therein; and, additionally, City shall have the right to use a strip 15 feet in width adjacent to the West boundary line of the tract set forth and described in Exhibit "A" for and during, and only during, the period of construction of the said water/sewer line.

Together with the right of ingress and egress over Grantor's adjacent lands to or from said right-of-way for the purpose of constructing, improving, reconstructing, repairing, inspecting, maintaining and removing said water/sewer line and appurtenances; the right to relocate said line in the same relative position to any adjacent road, if same is widened in the future; the right to prevent possible interference with the operation of said line and to remove possible hazard thereto; the right to prevent the construction, for a distance of one-half the width of the easement on each side of the actual center of where said water/sewer line is laid, of any building, structures or other obstructions which may endanger or interfere with the efficiency, safety or convenient operation of said water/sewer line and its appurtenances. If such buildings, structures or other obstructions are constructed by Grantor, as above mentioned, without written consent of the City, the City shall have the right to remove same from such space, and this agreement, together with other provisions of this grant shall constitute a covenant running with the land for the benefit of the City, its successors and assigns.

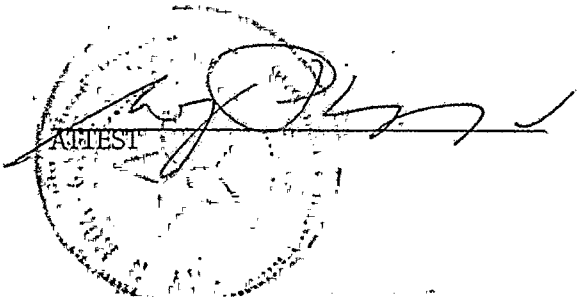
The right is reserved to Grantor to use the land over which a right-of-way or easement is herein granted, provided such use shall not include any use which might interfere with the exercise by the City of the rights hereby granted. The consideration recited herein shall constitute payment in full for all damages sustained by Grantor by reason of the installation of the structures referred to herein and the Grantee will maintain such easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantor's premises.

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TO HAVE AND TO HOLD the above-described easement and rights unto the said City  
of Corinth, its successors and assigns, forever.

And Grantor does hereby bind himself, his heirs and legal representatives, to Warrant and Forever Defend all and singular the above-described easement and rights unto the Said City, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED THIS 3rd day of May, 19 72.



M.F.A., INC.

By: T.W. Reilly

### CORPORATION ACKNOWLEDGMENT

THE STATE OF TEXAS,  
COUNTY OF TARRANT

BEFORE ME, the undersigned authority,

in and for said County, Texas, on this day personally appeared T. W. Reilly, President

whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said M. F. A., Inc.

a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 8th day of May, A. D. 19 72

(L. S.)

Ann Johnson Notary Public, Tarrant County, Texas

My Commission Expires June 1, 19 73.

TRACT NO. 1: All that certain lot, tract or parcel of land, lying and being situated in the County of Denton, State of Texas, being out of the G. Walker Survey, Abstract No. 1330, and being more particularly described as follows:

BEGINNING at a right-of-way marker at the East side of State School Road;

THENCE North  $67^{\circ} 56'$  East with a fence 110.3 feet to a right-of-way monument on the Southwest right-of-way of Interstate Highway 35-E;

THENCE South  $58^{\circ} 23' 30''$  East with said right-of-way 283.8 feet to a monument;

THENCE South  $50^{\circ} 21'$  East with said right-of-way 331.0 feet to a fence corner;

THENCE South  $1^{\circ} 09'$  West with a fence 12.67 feet to a marker;

THENCE North  $50^{\circ} 21'$  West a distance of 338.8 feet to an angle point;

THENCE North  $58^{\circ} 23' 30''$  West a distance of 278.6 feet to an angle point;

THENCE South  $67^{\circ} 56'$  West a distance of 109.39 feet to an angle point;

THENCE North  $2^{\circ} 0'$  East 10.83 feet to the place of beginning.

TRACT NO. 2: All that certain lot, tract or parcel of land, lying and being situated in the County of Denton, State of Texas, being out of the G. Walker Survey, Abstract No. 1330, and being more particularly described as follows:

VOL 657 PAGE 737

BEGINNING at fence corner on the Southwest right-of-way of Interstate Highway 35-E;

THENCE South  $50^{\circ} 21'$  East with said right-of-way 3055.2 feet to fence corner;

THENCE South  $32^{\circ} 33'$  West with a fence 10.16 feet to an angle point;

THENCE North  $50^{\circ} 21'$  West a distance of 3048.8 feet to an angle point;

THENCE North  $1^{\circ} 51'$  East a distance of 12.67 feet to the point of beginning.

Grantor reserves the right from time to time to construct one or more streets for vehicular and/or pedestrian right-of-way over and across the easement area for ingress and egress for the remaining portion of Grantor's land to Interstate Highway 35, and City agrees to bury the water/sewer pipe line contemplated hereby at a sufficient depth so that such streets may be constructed by Grantor at no additional cost by reason of said pipeline. In addition, City grants the right to Grantor to tap into the water/sewer pipeline as is necessary to service the improvements to be constructed on that portion of Grantor's property which lies within the City limits of the City of Corinth provided, however, that Grantor shall be obligated to pay the standard tap-in fee charged by the City in such cases.

## EXHIBIT "A"

FILED FOR RECORD: 18<sup>th</sup> DAY OF October A.D. 1972 at 12:45 o'clock - P M.  
 RECORDED: 25<sup>th</sup> DAY OF October A.D. 1972 at 11:20 o'clock A M.  
 BY E. A. Enrich DEPUTY THETA PARKER, COUNTY CLERK  
 DENTON COUNTY, TEXAS





**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Gideon Walker Survey, Abstract No. 1330, City of Denton, Denton County, Texas, and being part of Lot 1, Block 1, Denton Carmax Addition, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2019-52 of the Official Public Records of Denton, Texas, and being more particularly described as follows:

**BEGINNING** at the northernmost northwest corner of said Lot 1;

**THENCE** South 50°23'42" East, along the northeast line of said Lot 1, a distance of 539.24 feet to a point for corner;

**THENCE** departing the said northeast line of said Lot 1, South 13°34'46" East, a distance of 60.42 feet to a point for corner;

**THENCE** the following seven (7) calls:

South 54°21'41" East, a distance of 484.63 feet to a point for corner;  
 North 75°47'10" East, a distance of 71.52 feet to a point for corner;  
 South 59°12'50" East, a distance of 156.27 feet to a point for corner;  
 North 75°47'10" East, a distance of 345.68 feet to a point for corner;  
 North 39°28'39" East, a distance of 242.13 feet to a point for corner;  
 North 84°13'03" East, a distance of 24.07 feet to a point for corner;

**THENCE** North 39°10'34" East, a distance of 33.86 feet to a point for corner; from said point the northernmost northeast corner of said Lot 1 bears North 45°27'26" West, a distance of 553.73 feet;

**THENCE** the following eleven (11) calls:

South 50°23'38" East, a distance of 10.00 feet to a point for corner;  
 South 39°10'34" West, a distance of 37.93 feet to a point for corner;  
 South 84°16'10" West, a distance of 24.08 feet to a point for corner;  
 South 39°28'39" West, a distance of 241.32 feet to a point for corner;  
 South 75°47'10" West, a distance of 353.10 feet to a point for corner;  
 North 59°12'50" West, a distance of 156.27 feet to a point for corner;  
 South 75°47'10" West, a distance of 85.11 feet to a point for corner;  
 North 54°21'41" West, a distance of 488.28 feet to a point for corner;  
 North 13°34'46" West, a distance of 61.21 feet to a point for corner;  
 North 50°23'42" West, a distance of 512.05 feet to a point for corner;  
 South 38°03'08" West, a distance of 59.87 feet to a point for corner;

**THENCE** North 50°16'45" West, a distance of 20.02 feet to a point for corner in the said northwest line of said Lot 1;

**THENCE** North 38°04'28" East, along the said northwest line of Lot 1, a distance of 79.83 feet to the **POINT OF BEGINNING** and containing 31,714 square feet or 0.7280 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1, BLOCK 1  
 DENTON CARMAX ADDITION  
 GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

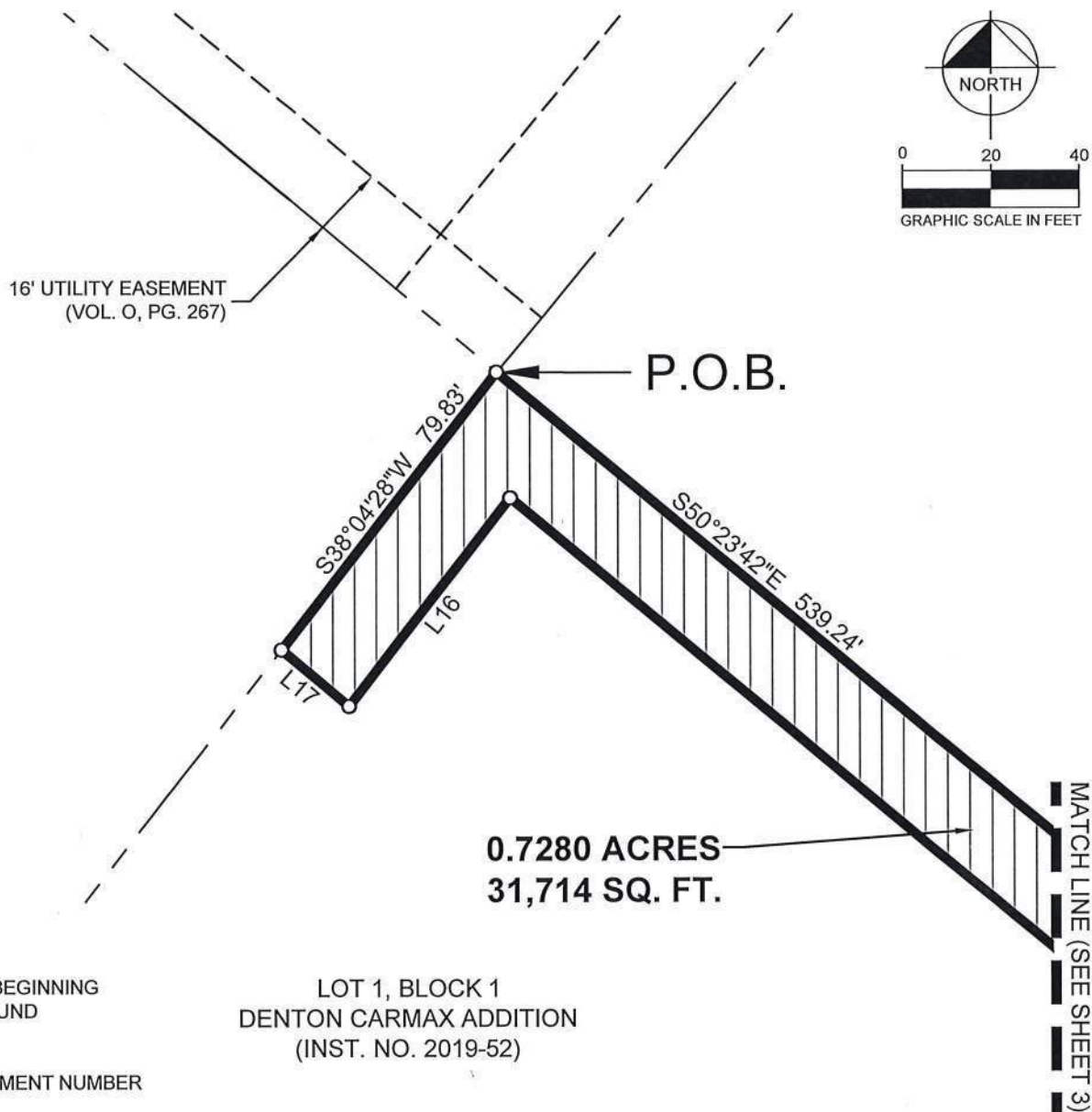
801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	2/3/2021	061024039	1 OF 8

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com





## LEGEND

P.O.B. = POINT OF BEGINNING  
 IRF = IRON ROD FOUND  
 PG. = PAGE  
 VOL. = VOLUME  
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LOT 1, BLOCK 1  
 DENTON CARMAX ADDITION  
 (INST. NO. 2019-52)

## NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley* 2/8/21

MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1, BLOCK 1  
 DENTON CARMAX ADDITION  
 GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

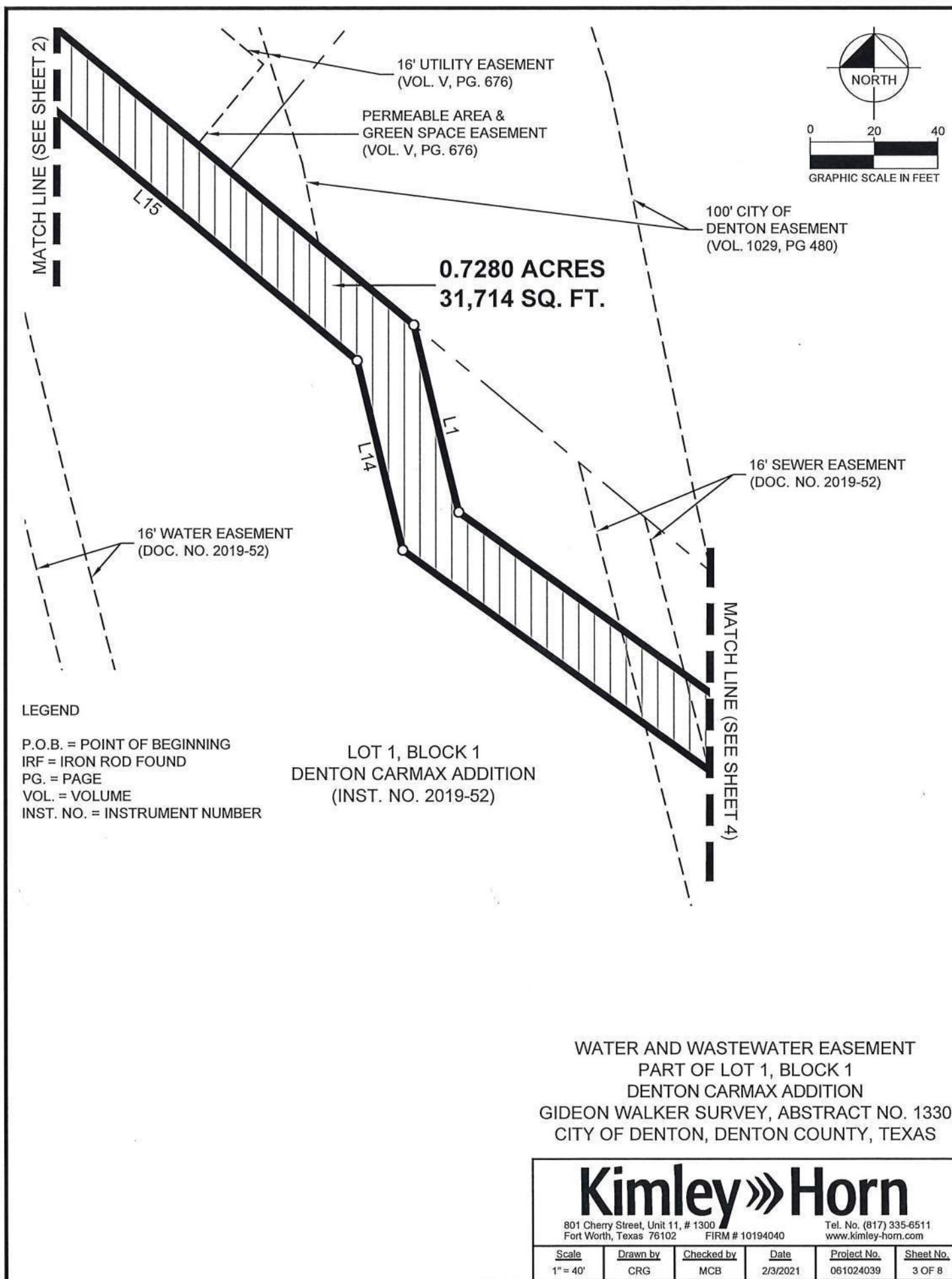
**Kimley»Horn**

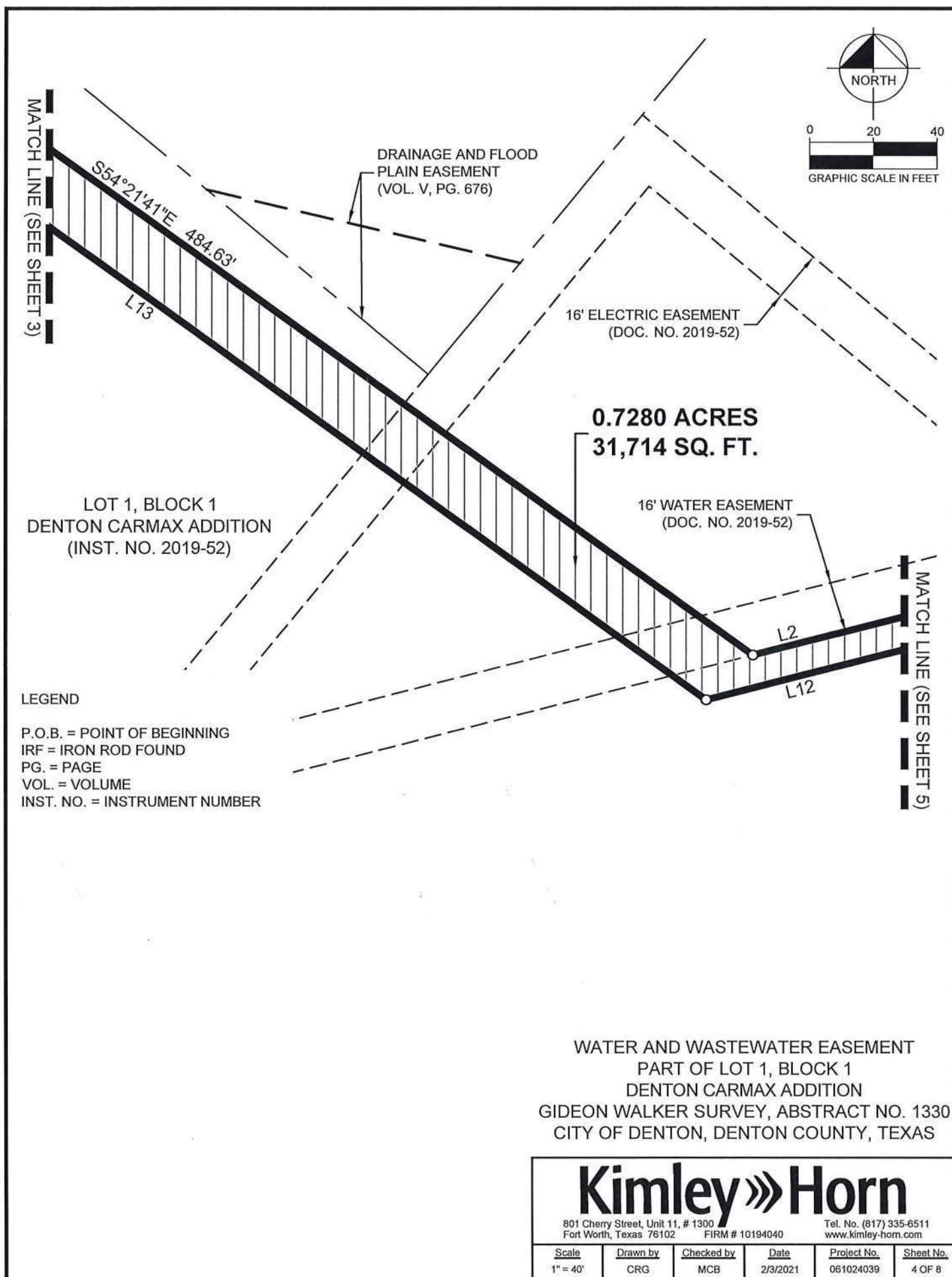
801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

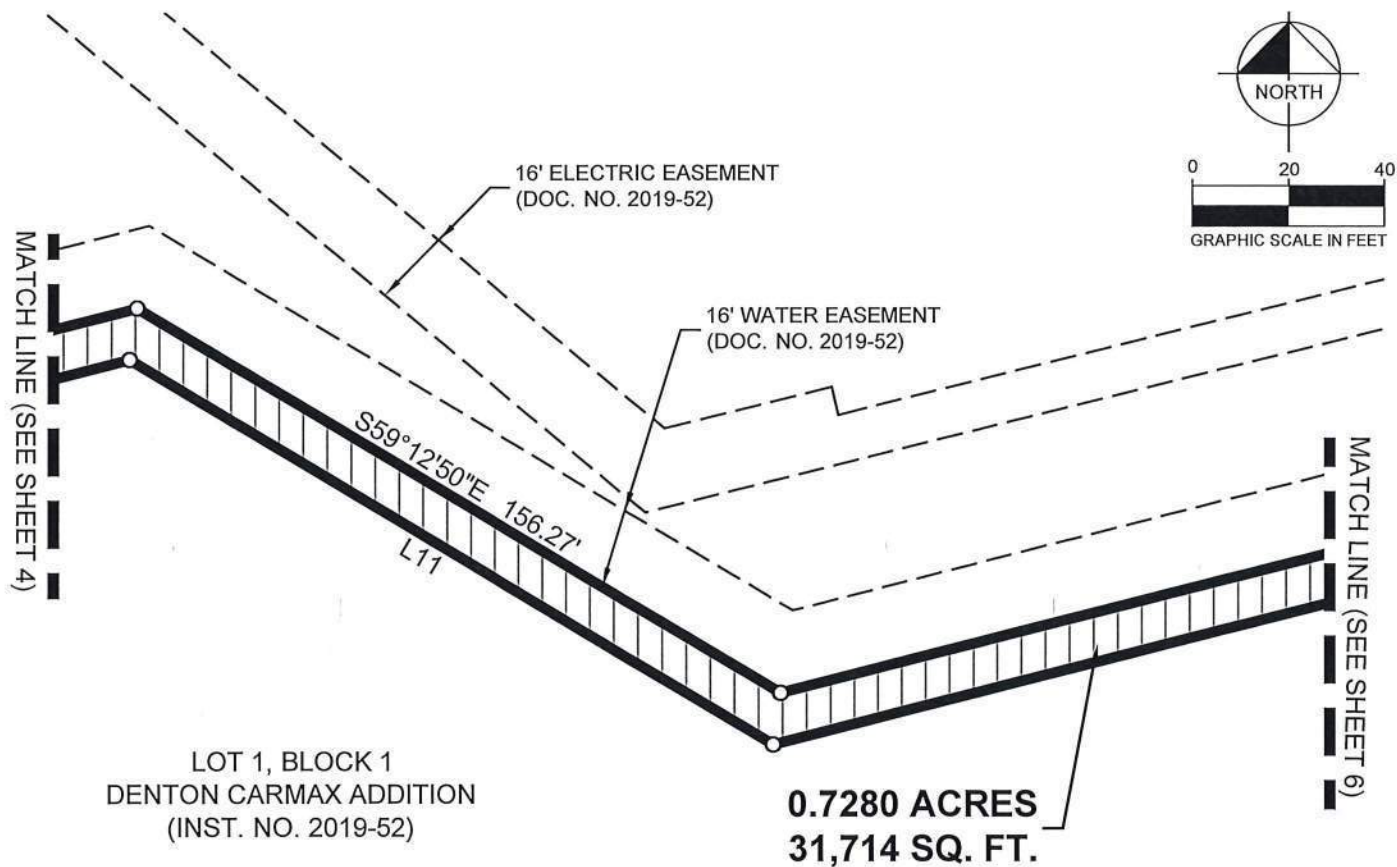
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/3/2021	061024039	2 OF 8









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WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1, BLOCK 1  
 DENTON CARMAX ADDITION  
 GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

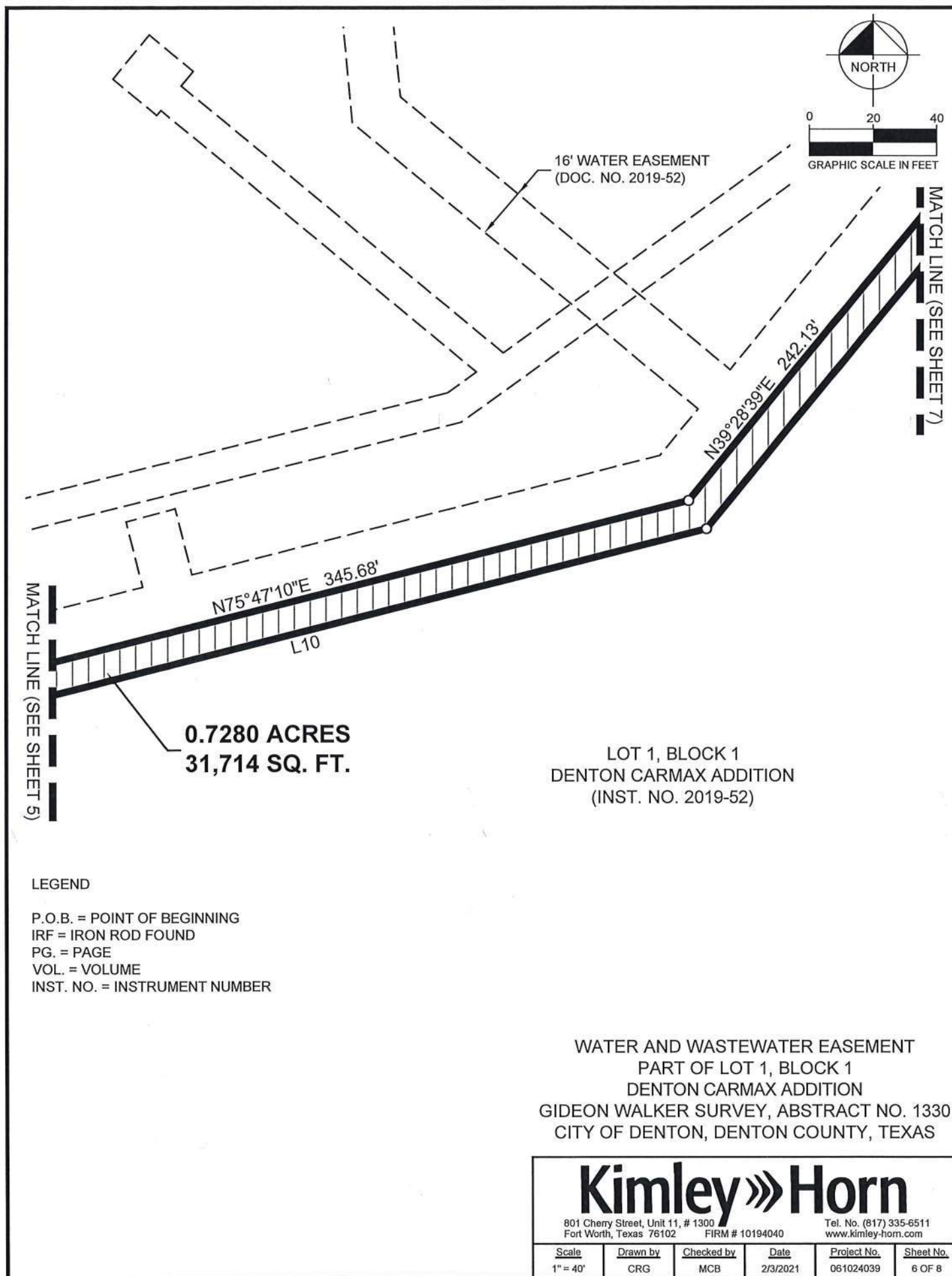
# Kimley»Horn

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 Fort Worth, Texas 76102 FIRM # 10194040

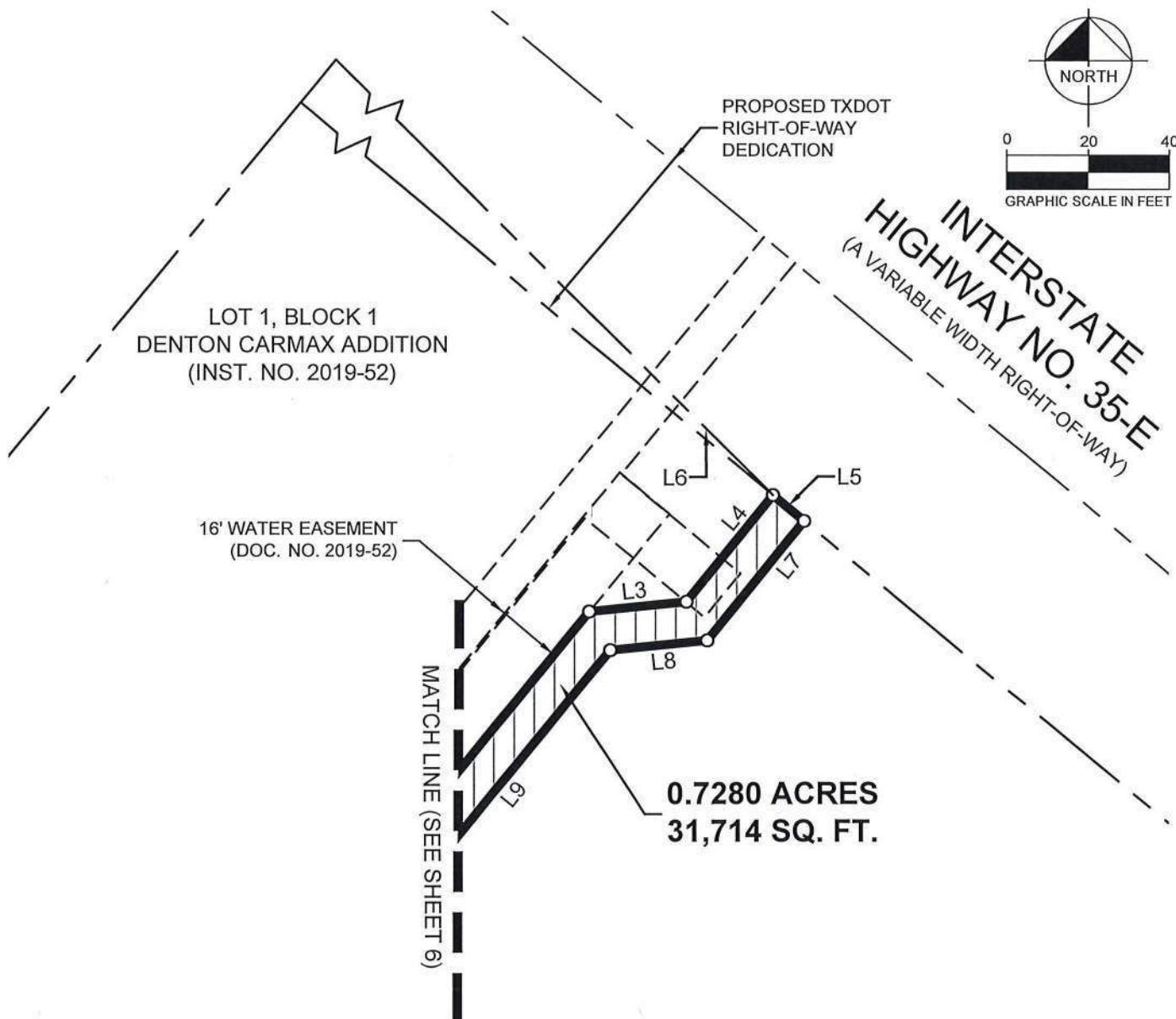
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/3/2021	061024039	5 OF 8









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WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1, BLOCK 1  
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 CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/3/2021	061024039	7 OF 8

LINE TABLE		
NO.	BEARING	LENGTH
L1	S13°34'46"E	60.42'
L2	N75°47'10"E	71.52'
L3	N84°13'03"E	24.07'
L4	N39°10'34"E	33.86'
L5	S50°23'38"E	10.00'
L6	N45°27'26"W	553.73'
L7	S39°10'34"W	37.93'
L8	S84°16'10"W	24.08'
L9	S39°28'39"W	241.32'
L10	S75°47'10"W	353.10'
L11	N59°12'50"W	156.27'
L12	S75°47'10"W	85.11'
L13	N54°21'41"W	488.28'
L14	N13°34'46"W	61.21'
L15	N50°23'42"W	512.05'
L16	S38°03'08"W	59.87'
L17	N50°16'45"W	20.02'

WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1, BLOCK 1  
 DENTON CARMAX ADDITION  
 GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/3/2021	061024039	8 OF 8

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Gideon Walker Survey, Abstract No. 1330, City of Denton, Denton County, Texas, and being part of Lot 1, Block 1, Denton Carmax Addition, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2019-52 of the Official Public Records of Denton, Texas, and being more particularly described as follows:

**COMMENCING** at the northernmost northwest corner of said Lot 1;

**THENCE** South 38°04'28" West, along the northernmost northwest line of said Lot 1, a distance of 79.83 feet to the **POINT OF BEGINNING**;

**THENCE** departing the said northernmost northwest line of said Lot 1, South 50°16'45" East, a distance of 20.02 feet to a point for corner;

**THENCE** the following nine (9) calls:

North 38°03'08" East, a distance of 59.87 feet to a point for corner;  
 South 50°23'42" East, a distance of 512.05 feet to a point for corner;  
 South 13°34'46" East, a distance of 61.21 feet to a point for corner;  
 South 54°21'41" East, a distance of 488.28 feet to a point for corner;  
 North 75°47'10" East, a distance of 85.11 feet to a point for corner;  
 South 59°12'50" East, a distance of 156.27 feet to a point for corner;  
 North 75°47'10" East, a distance of 353.10 feet to a point for corner;  
 North 39°28'39" East, a distance of 241.32 feet to a point for corner;  
 North 84°16'10" East, a distance of 24.08 feet to a point for corner;

**THENCE** North 39°10'34" East, a distance of 37.93 feet to a point for corner; from said point the northernmost northeast corner of said Lot 1 bears North 45°32'41" West, a distance of 563.70 feet;

**THENCE** the following twelve (12) calls:

South 50°23'38" East, a distance of 25.00 feet to a point for corner;  
 South 39°10'34" West, a distance of 48.12 feet to a point for corner;  
 South 84°16'10" West, a distance of 24.15 feet to a point for corner;  
 South 39°28'39" West, a distance of 239.22 feet to a point for corner;  
 South 75°47'10" West, a distance of 371.66 feet to a point for corner;  
 North 59°12'50" West, a distance of 156.27 feet to a point for corner;  
 South 75°47'10" West, a distance of 86.37 feet to a point for corner;  
 North 54°21'41" West, a distance of 509.19 feet to a point for corner;  
 North 13°34'46" West, a distance of 62.18 feet to a point for corner;  
 North 50°23'42" West, a distance of 478.04 feet to a point for corner;  
 South 38°03'08" West, a distance of 59.92 feet to a point for corner;

**CONTINUED ON SHEET 3**

TEMPORARY CONSTRUCTION EASEMENT  
 PART OF LOT 1, BLOCK 1  
 DENTON CARMAX ADDITION  
 GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	2/8/2021	061024039	1 OF 9



**LEGAL DESCRIPTION (CONTINUED)**

**THENCE** North 50°16'45" West, a distance of 45.04 feet to a point for corner in the said northernmost northwest line of Lot 1;


**THENCE** North 38°04'28" East, along the said northernmost northwest line of Lot 1; a distance of 25.01 feet to the **POINT OF BEGINNING** and containing 51,500 square feet or 1.1823 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



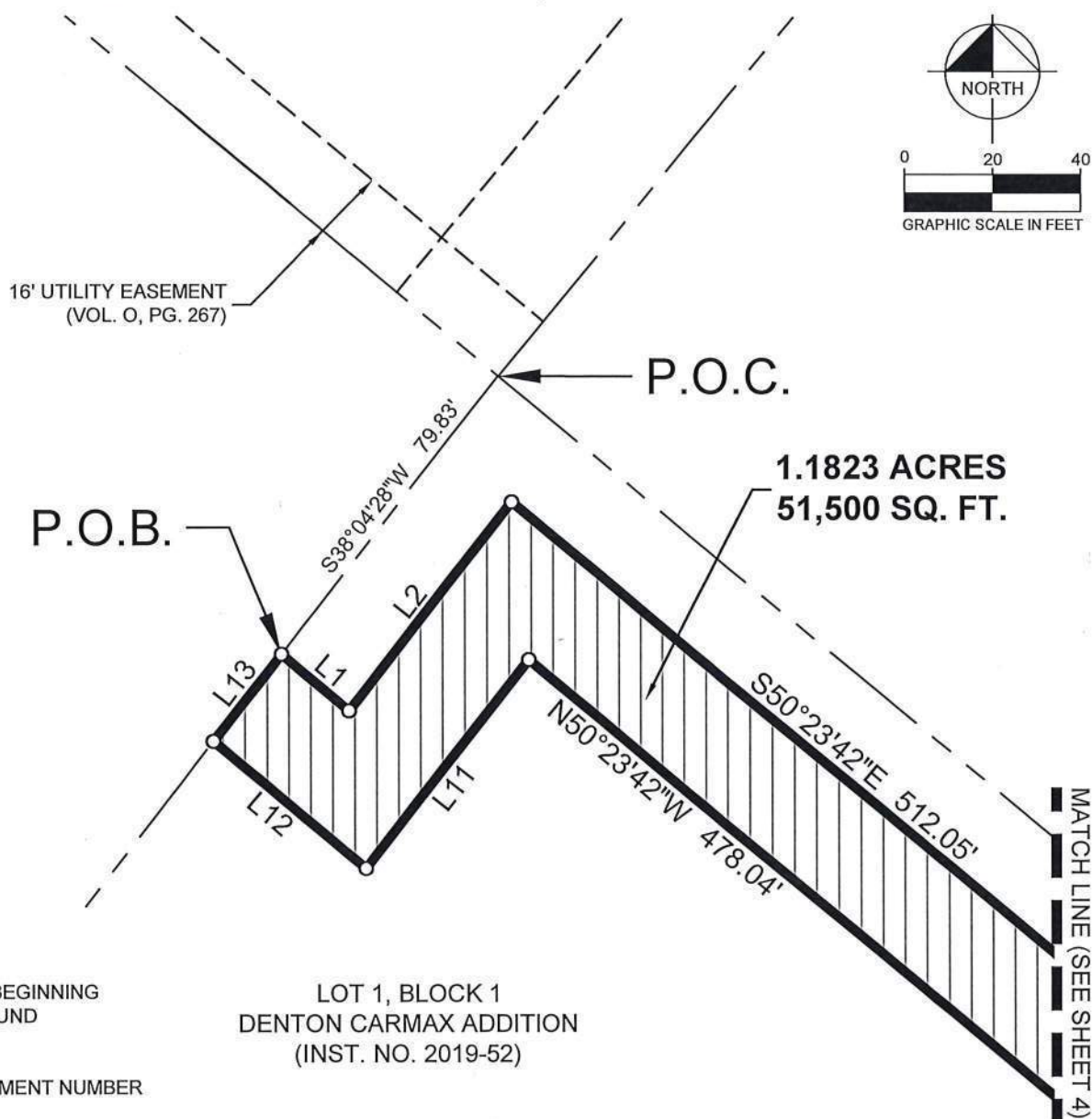
TEMPORARY CONSTRUCTION EASEMENT  
 PART OF LOT 1, BLOCK 1  
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 GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	2/8/2021	061024039	2 OF 9



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LOT 1, BLOCK 1  
 DENTON CARMAX ADDITION  
 (INST. NO. 2019-52)

## NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*[Signature]* 2/8/21  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
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 PART OF LOT 1, BLOCK 1  
 DENTON CARMAX ADDITION  
 GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

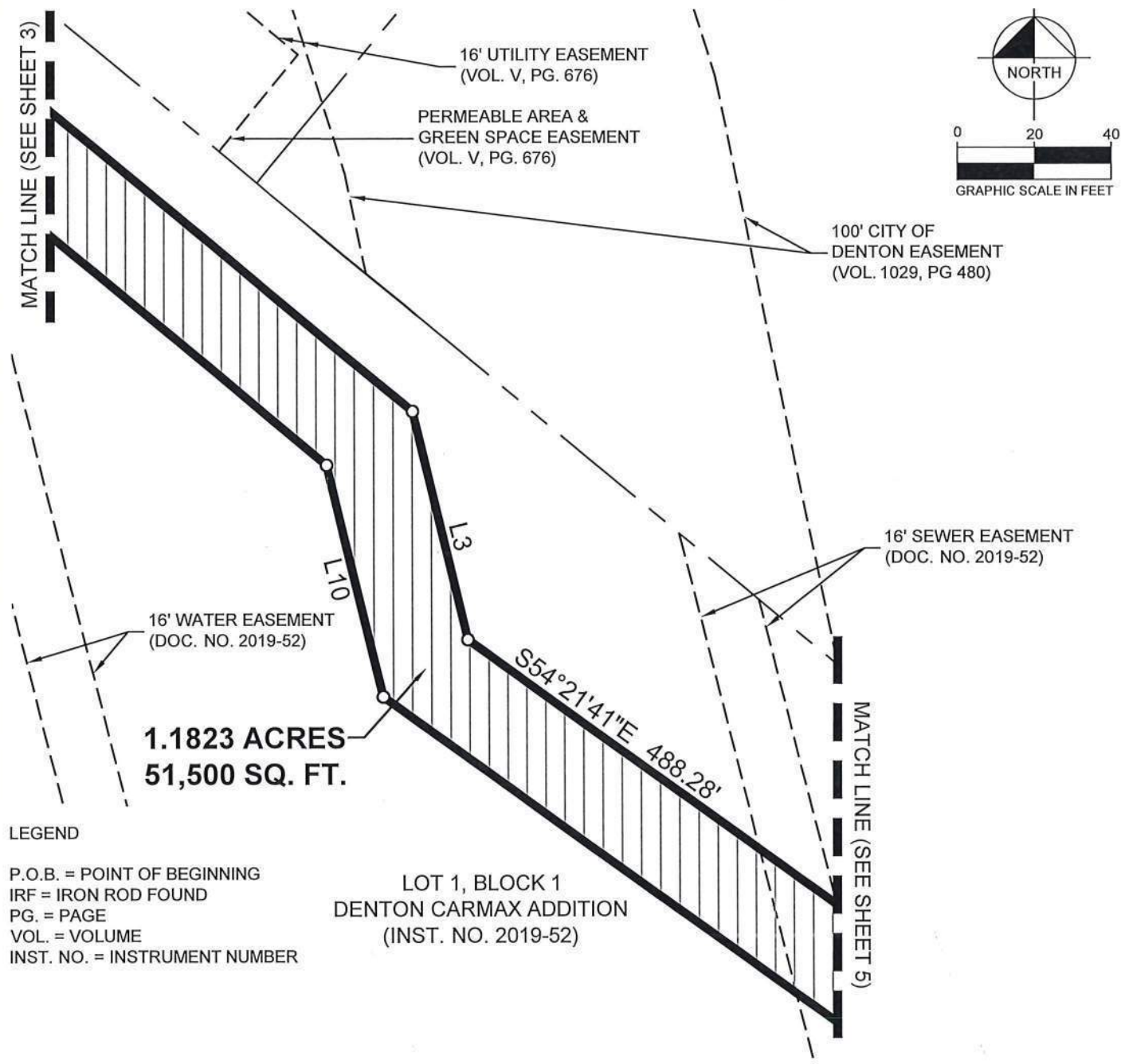
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/8/2021	061024039	3 OF 9





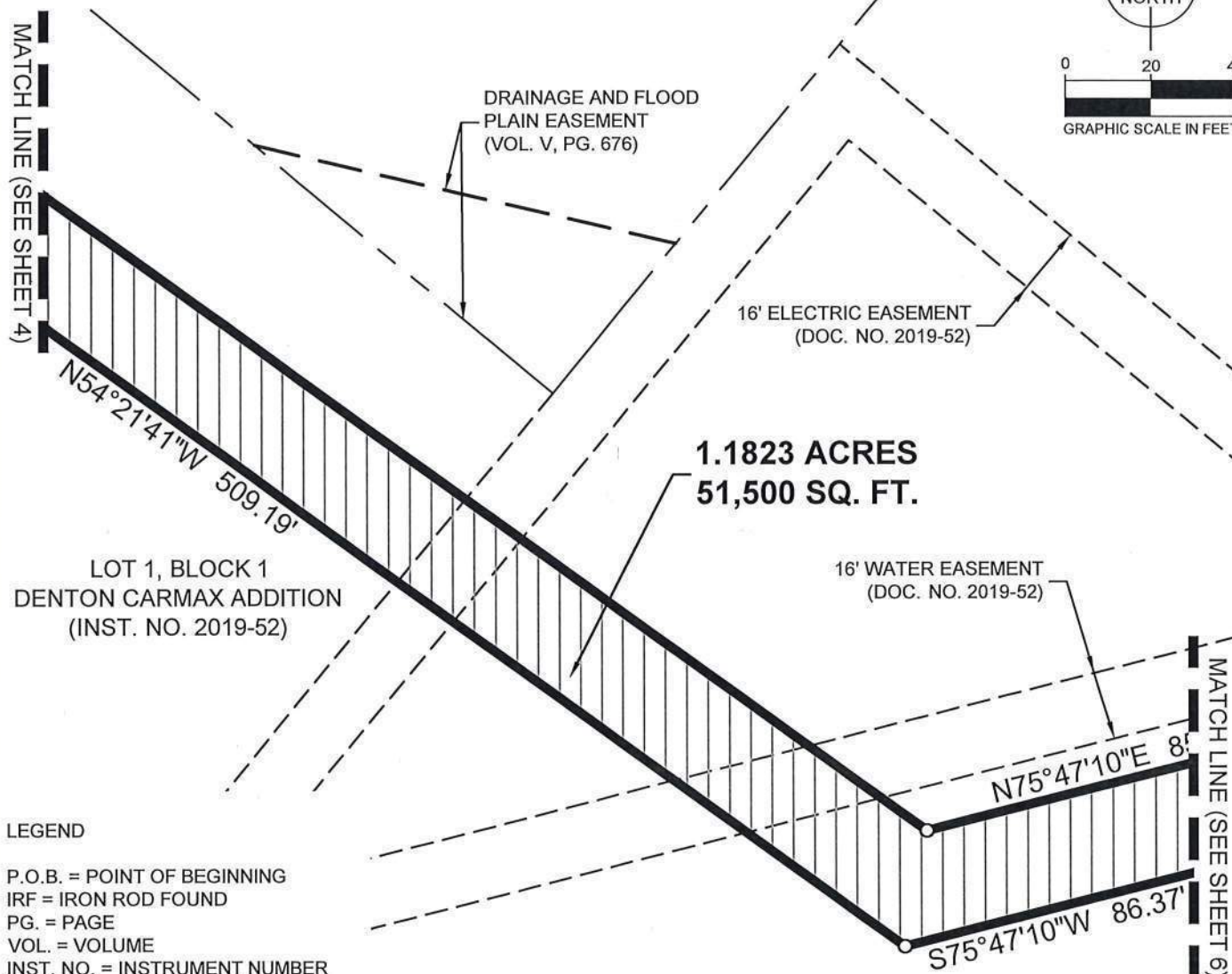
TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT 1, BLOCK 1  
DENTON CARMAX ADDITION  
GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/8/2021	061024039	4 OF 9



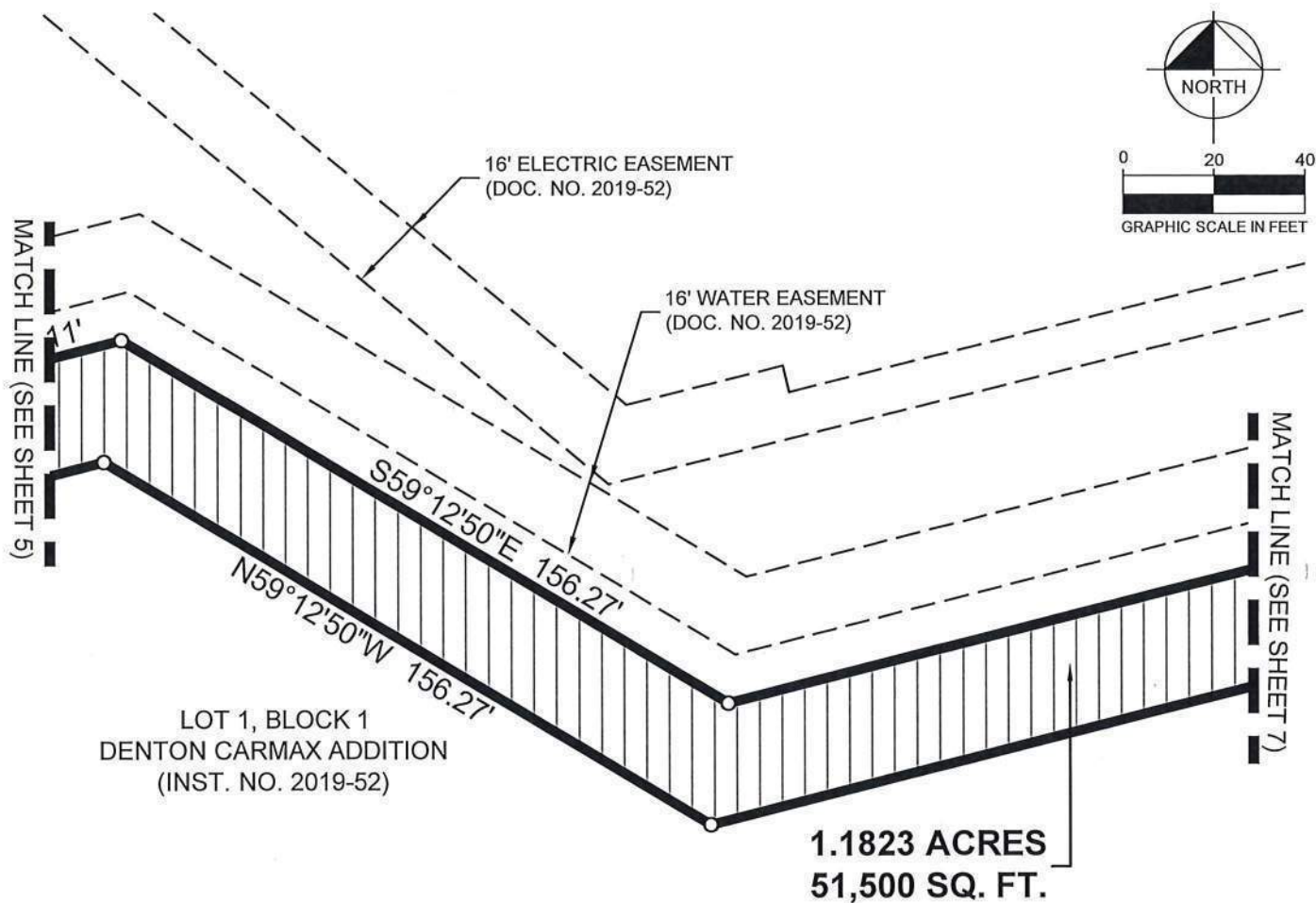
TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT 1, BLOCK 1  
DENTON CARMAX ADDITION  
GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»»Horn

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Fort Worth, Texas 76102 FIRM # 10194040

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<u>Scale</u> 1" = 40'	<u>Drawn by</u> CRG	<u>Checked by</u> MCB	<u>Date</u> 2/8/2021	<u>Project No.</u> 061024039	<u>Sheet No.</u> 5 OF 9
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## LEGEND

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TEMPORARY CONSTRUCTION EASEMENT  
 PART OF LOT 1, BLOCK 1  
 DENTON CARMAX ADDITION  
 GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

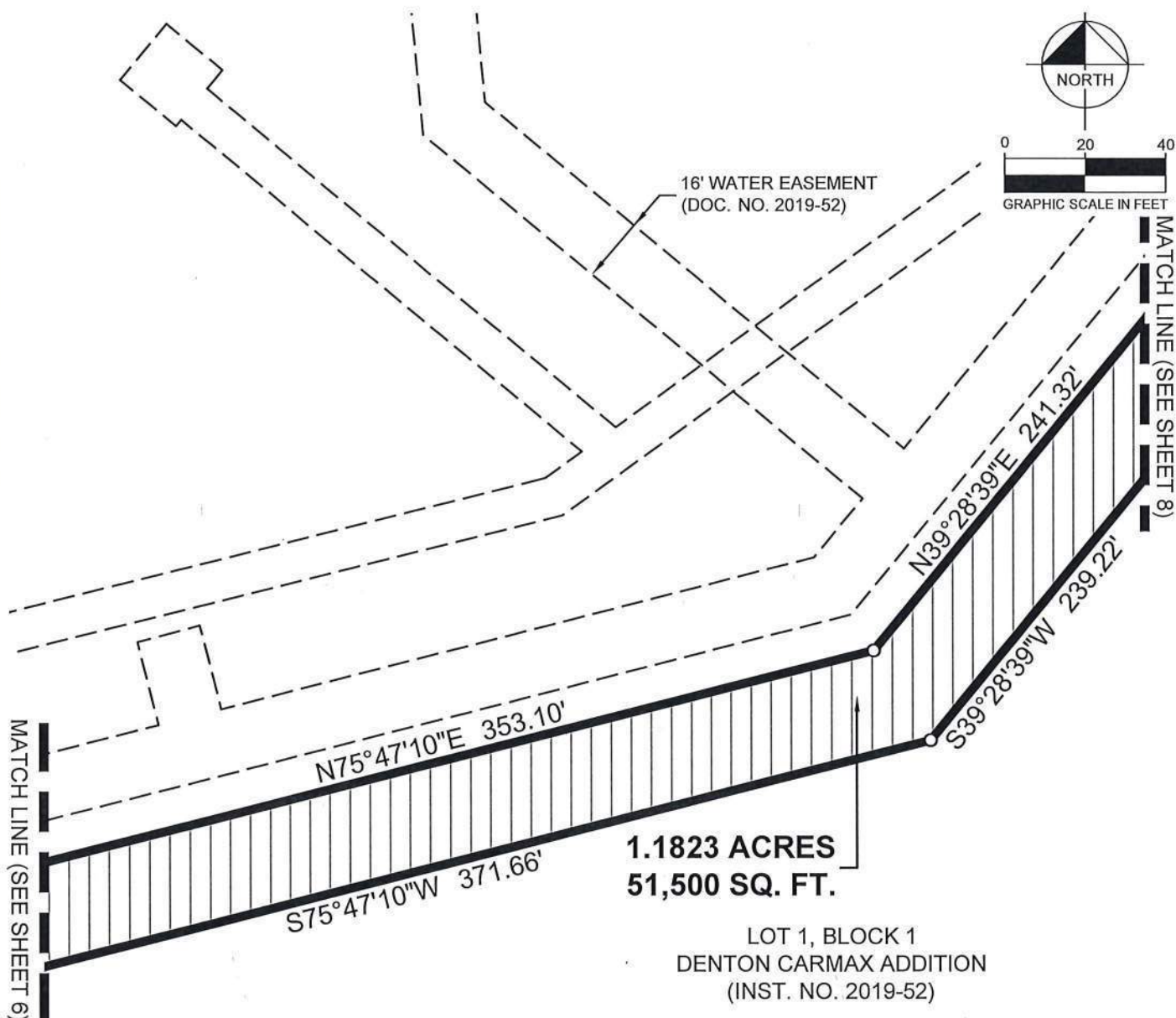
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/8/2021	061024039	6 OF 9





## LEGEND

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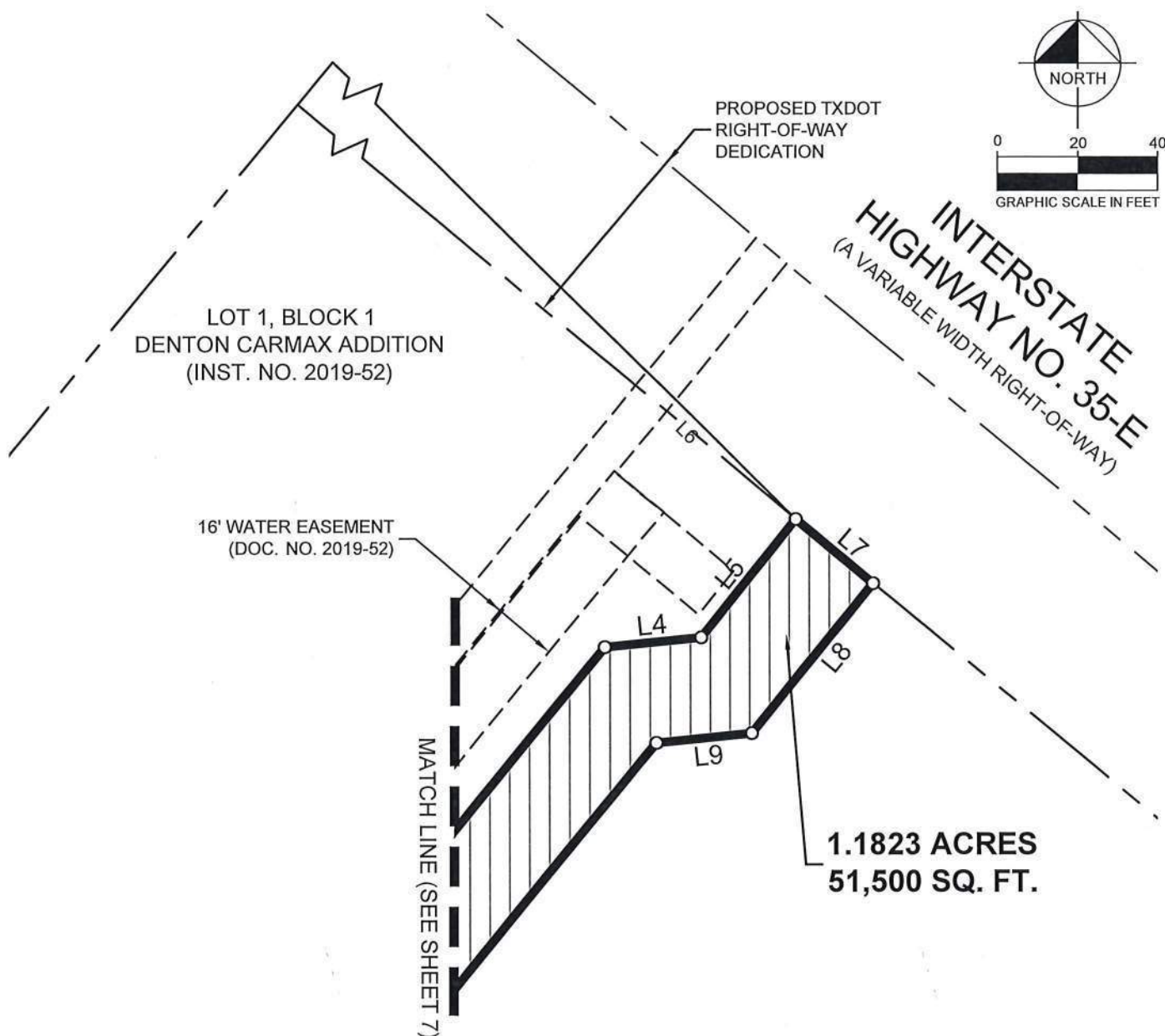
TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT 1, BLOCK 1  
DENTON CARMAX ADDITION  
GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/8/2021	061024039	8 OF 9



LINE TABLE		
NO.	BEARING	LENGTH
L1	S50°16'45"E	20.02'
L2	N38°03'08"E	59.87'
L3	S13°34'46"E	61.21'
L4	N84°16'10"E	24.08'
L5	N39°10'34"E	37.93'
L6	N45°32'41"W	563.70'
L7	S50°23'38"E	25.00'
L8	S39°10'34"W	48.12'
L9	S84°16'10"W	24.15'
L10	N13°34'46"W	62.18'
L11	S38°03'08"W	59.92'
L12	N50°16'45"W	45.04'
L13	N38°04'28"E	25.01'

TEMPORARY CONSTRUCTION EASEMENT  
 PART OF LOT 1, BLOCK 1  
 DENTON CARMAX ADDITION  
 GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/8/2021	061024039	9 OF 9

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 68**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1731+41 LT to Sta 1731+61 LT

Existing Easement

Volume V, Page 225

PART OF LOT 2, BLOCK A  
McNATT ADDITION, PHASE II  
GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

18424

That M.F.A., INC.

of the County of Tarrant, State of Texas, hereinafter called "Grantor", for a good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant to the City of Corinth, hereinafter called "City", an easement and right-of-way for the purpose of constructing a water/sewer line, the term of such easement to end when the City of Corinth accepts the entire water/sewer system when construction of same is completed; and Grantor does also grant to said City a perpetual easement and right-of-way for the purpose of operating and maintaining such water/sewer line; easements and rights-of-way over and across Grantor's land in G. Walker Survey, Abstract No. 1330, Denton County, Texas, more particularly described in deed from Sanders Campbell to M.F.A., Inc.,

dated February 4, 19 69, and recorded in Volume 579, Page 701, of the Deed Records of said County and containing 326.2 acres, in, on and

over the tracts of land set forth and described in Exhibit "A", which is attached hereto and made a part hereof for all purposes, and SUBJECT TO THE RESERVATION of right in favor of Grantor as set forth therein; and, additionally, City shall have the right to use a strip 15 feet in width adjacent to the West boundary line of the tract set forth and described in Exhibit "A" for and during, and only during, the period of construction of the said water/sewer line.

Together with the right of ingress and egress over Grantor's adjacent lands to or from said right-of-way for the purpose of constructing, improving, reconstructing, repairing, inspecting, maintaining and removing said water/sewer line and appurtenances; the right to relocate said line in the same relative position to any adjacent road, if same is widened in the future; the right to prevent possible interference with the operation of said line and to remove possible hazard thereto; the right to prevent the construction, for a distance of one-half the width of the easement on each side of the actual center of where said water/sewer line is laid, of any building, structures or other obstructions which may endanger or interfere with the efficiency, safety or convenient operation of said water/sewer line and its appurtenances. If such buildings, structures or other obstructions are constructed by Grantor, as above mentioned, without written consent of the City, the City shall have the right to remove same from such space, and this agreement, together with other provisions of this grant shall constitute a covenant running with the land for the benefit of the City, its successors and assigns.

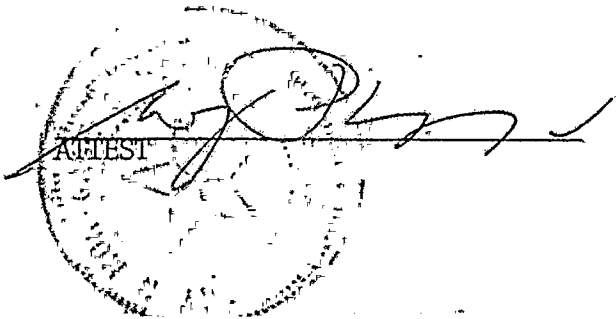
The right is reserved to Grantor to use the land over which a right-of-way or easement is herein granted, provided such use shall not include any use which might interfere with the exercise by the City of the rights hereby granted. The consideration recited herein shall constitute payment in full for all damages sustained by Grantor by reason of the installation of the structures referred to herein and the Grantee will maintain such easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantor's premises.

VOL 657 PAGE 736

TO HAVE AND TO HOLD the above-described easement and rights unto the said City  
of Corinth, its successors and assigns, forever.

And Grantor does hereby bind himself, his heirs and legal representatives, to Warrant and Forever Defend all and singular the above-described easement and rights unto the Said City, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED THIS 3rd day of May, 19 72.

  
Attest

M.F.A., INC.

By: 

### CORPORATION ACKNOWLEDGMENT

THE STATE OF TEXAS,  
COUNTY OF TARRANT

BEFORE ME, the undersigned authority,

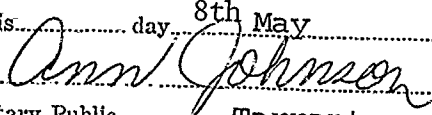
in and for said County, Texas, on this day personally appeared T. W. Reilly, President

whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said M. F. A., Inc.

a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 8th day of May, A. D. 19 72

(L. S.)

 ANN JOHNSON  
Notary Public, Tarrant County, Texas

My Commission Expires June 1, 19 73.

TRACT NO. 1: All that certain lot, tract or parcel of land, lying and being situated in the County of Denton, State of Texas, being out of the G. Walker Survey, Abstract No. 1330, and being more particularly described as follows:

BEGINNING at a right-of-way marker at the East side of State School Road;

THENCE North 67° 56' East with a fence 110.3 feet to a right-of-way monument on the Southwest right-of-way of Interstate Highway 35-E;

THENCE South 58° 23' 30" East with said right-of-way 283.8 feet to a monument;

THENCE South 50° 21' East with said right-of-way 331.0 feet to a fence corner;

THENCE South 1° 09' West with a fence 12.67 feet to a marker;

THENCE North 50° 21' West a distance of 338.8 feet to an angle point;

THENCE North 58° 23' 30" West a distance of 278.6 feet to an angle point;

THENCE South 67° 56' West a distance of 109.39 feet to an angle point;

THENCE North 2° 0' East 10.83 feet to the place of beginning.

TRACT NO. 2: All that certain lot, tract or parcel of land, lying and being situated in the County of Denton, State of Texas, being out of the G. Walker Survey, Abstract No. 1330, and being more particularly described as follows:

VOL 657 PAGE 737

BEGINNING at fence corner on the Southwest right-of-way of Interstate Highway 35-E;

THENCE South  $50^{\circ} 21'$  East with said right-of-way 3055.2 feet to fence corner;

THENCE South  $32^{\circ} 33'$  West with a fence 10.16 feet to an angle point;

THENCE North  $50^{\circ} 21'$  West a distance of 3048.8 feet to an angle point;

THENCE North  $1^{\circ} 51'$  East a distance of 12.67 feet to the point of beginning.

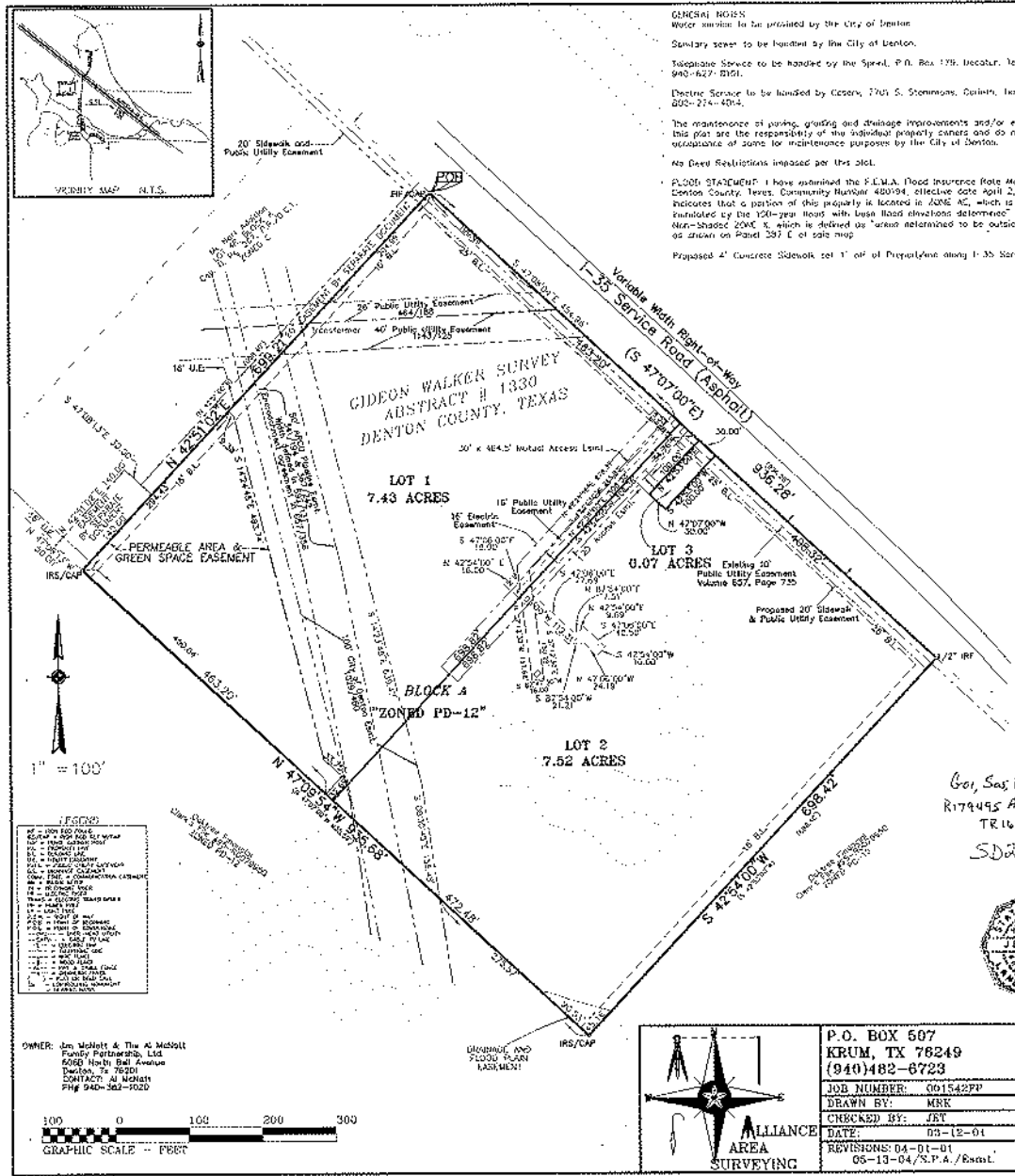
Grantor reserves the right from time to time to construct one or more streets for vehicular and/or pedestrian right-of-way over and across the easement area for ingress and egress for the remaining portion of Grantor's land to Interstate Highway 35, and City agrees to bury the water/sewer pipe line contemplated hereby at a sufficient depth so that such streets may be constructed by Grantor at no additional cost by reason of said pipeline. In addition, City grants the right to Grantor to tap into the water/sewer pipeline as is necessary to service the improvements to be constructed on that portion of Grantor's property which lies within the City limits of the City of Corinth provided, however, that Grantor shall be obligated to pay the standard tap-in fee charged by the City in such cases.

## EXHIBIT "A"

FILED FOR RECORD: 18<sup>th</sup> DAY OF October A.D. 1972 at 12:45 o'clock - P M.  
 RECORDED: 25<sup>th</sup> DAY OF October A.D. 1972 at 11:20 o'clock A M.  
 BY E. A. Enrich DEPUTY THETA PARKER, COUNTY CLERK  
 DENTON COUNTY, TEXAS



Cab v Pg 1076



**GENERAL NOTES**  
 Water service to be provided by the City of Denton.  
 Sanitary sewer to be installed by the City of Denton.  
 Telephone service to be provided by the Sprint, P.O. Box 179, Decatur, Texas 76234, PH: 940-827-2151.  
 Electric service to be provided by Center, 7701 S. Stemmons, Dallas, Texas 75263, PH: 940-214-4014.  
 The maintenance of parking, grading and drainage improvements and/or easements shown on this plat are the responsibility of the individual property owners and do not constitute acceptance of same for maintenance purposes by the City of Denton.  
 No Deed Restrictions imposed per this plat.  
 FLOOD STATEMENT: I have examined the F.E.M.A. Flood Insurance Rate Map for the City of Denton, Denton County, Texas, Community Number 480194, effective date April 2, 1997 and find map indicates that a portion of this property is located in ZONE AC, which is defined as "Areas inundated by the 100-year flood with base flood elevations determined" and a portion is in X-zone shaded ZONE X, which is defined as "Areas determined to be outside the 500-year flood as shown on Flood 500 E of site map."  
 Proposed 4' Concrete Sidewalk set 1' off of Property Line along I-35 Service Road

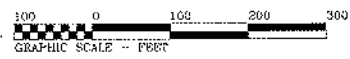
WHEREAS, JIM MCNATT & THE AL MCNATT FAMILY PARTNERSHIP, LTD., through its duly sworn representative, AL MCNATT, is the owner of all that certain lot, tract, or parcel of land situated in the GIDEON WALKER SURVEY, ABSTRACT NUMBER 1330, DENTON COUNTY, TEXAS, and being a certain 15.02 acre tract described in Deed from John L. McNatt to The Al McNatt Family Partnership, Ltd. as recorded in County Clerk's File Number 86-180000-01 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:  
 BEGINNING at a capped iron rod found in the South line of Interstate Highway 35 Access Road for the most Northerly corner of the tract being described herein and the most Southerly corner of Lot 4N, Block A, of MCNATT ADDITION, on condition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Exhibit Q, Page 267, Plat Record of Denton County, Texas:  
 THENCE South 47 degrees 07 minutes 00 seconds East with the South right-of-way of said Access Road a distance of 836.28 feet to a 1/2" iron rod found for the most Southerly corner of the tract being described herein;  
 THENCE South 42 degrees 14 minutes 00 seconds West a distance of 696.42 feet to a 1/2" capped iron rod set for the most Southerly corner of the tract being described herein;  
 THENCE North 47 degrees 00 minutes 54 seconds West a distance of 835.58 feet to a 1/2" capped iron rod set for the most Northerly corner of the tract being described herein and the most Southerly corner of 200 Moffett Addition;  
 THENCE North 42 degrees 51 minutes 02 seconds East with the most Southerly line of said Moffett Addition a distance of 699.21 feet to the POINT OF BEGINNING and enclosing 15.02 acres of land more or less;  
 KNOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS  
 THAT JIM MCNATT & THE AL MCNATT FAMILY PARTNERSHIP, LTD., through its duly sworn representative, AL MCNATT, does hereby designate the herein described property as McNatt Addition, Phase II, in the City of Denton, Denton County, Texas and does hereby dedicate to the public use forever, the abutting rights-of-way one public easements shown herein.

STATE OF TEXAS  
 BEFORE ME, the undersigned Notary Public, on this day personally appeared, AL MCNATT, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed and in the capacity therein stated.  
 GIVEN UNDER MY HAND AND SEAL OF THE OFFICE THIS 11th DAY OF May, 2004.  
 Notary Public in the State of Texas  
 My commission expires 04/08/08  
 SURVEYOR'S CERTIFICATE  
 I, John E. Thompson, a Registered Professional Land Surveyor, do hereby certify that this plat was prepared from and actual survey made on the ground and that the measurements shown herein were found or placed with 1/2" iron rods capped "McNatt" under my direction and supervision in accordance with the Ordinances of the City of Denton, Texas.

John E. Thompson, I.R.S. # 4857 Date 05-14-04  
 CLATIFICATE OF APPROVAL  
 Approved this 14th day of May, 2004 by the Planning Commission for the City of Denton, Texas.  
 Chairman  
 Jennifer Walters  
 City Secretary  
 JENNIFER WALTERS  
 As per Subdivision and Land Development Regulations and subject to the following conditions that shall be binding upon the owners, the heirs, grantees, and successors, the portion of Block A, shown on this plat, is subject to "Private Drainage & Detention Easement". The private drainage & detention easement within the limits of this addition, will remain open to all times and will be maintained in a safe and sanitary condition by the owners of the lots that are traversed by or adjacent to the private drainage & detention easement. The City of Denton will not be responsible for the maintenance and operation of said easement for any purpose to private property or person that results from negligence in the maintenance, or for the control or action. No obstruction to the natural flow of water shall be permitted by construction of any type of building, fence, or any other structure within the private drainage & detention easement, as herein above described, unless approved by the City of Denton. The property owner shall keep the private drainage & detention easement clear of debris, fill, and any obstruction that will result in unduly restricting, or obstruct the flow of water. And, the City of Denton shall have the right of ingress and egress for the purpose of inspection and supervision of maintenance work by the property owner to observe any unreasonable conditions that may occur. The natural drainage through the private drainage & detention easement is subject to storm water overflow and natural bank erosion to an extent that cannot be reasonably defined. The City of Denton shall not be held liable for any of these natural phenomena, or resulting from the failure of any structure, or structures, within the easement.  
 PERMEABLE AREA/GREEN SPACE EASEMENT  
 No building, structures, parking lot, fire lane, road, or other impervious improvements shall be constructed or installed in the permeable area/green space area. If impervious improvements are to be made, a report and associated drainage studies and construction plans shall be submitted for review and approval by the City of Denton for all public and private drainage systems. Other rules and regulations related to zoning in the City of Denton Subdivision and Land Regulations would apply.



OWNER: Jim McNatt & The Al McNatt Family Partnership, Ltd.  
 6080 North Bell Avenue  
 Denton, TX 76201  
 CONTACT: Al McNatt  
 PH: 940-362-1020



P.O. BOX 507  
 KRUM, TX 76249  
 (940)482-6723  
 JOB NUMBER: 001542FP  
 DRAWN BY: MRK  
 CHECKED BY: JET  
 DATE: 03-12-04  
 REVISIONS: 04-01-01  
 05-13-04, S.P.A./E&M

**FINAL PLAT**  
**MCNATT ADDITION, PHASE II**  
**LOTS 1, 2 & 3, BLOCK A**  
 BEING 15.02 ACRES IN THE GIDEON WALKER SURVEY, ABSTRACT # 1330 CITY OF DENTON, DENTON COUNTY, TEXAS

Filed for Record at:  
 Denton County  
 On May 24, 2004 at 09:00  
 by  
 JET  
 Notary Public  
 Book 11355  
 Page 11355

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Gideon Walker Survey, Abstract No. 1330, City of Denton, Denton County, Texas, and being part of Lot 2, Block A, McNatt Addition, Phase II, an addition to the City of Denton, Texas according to the plat recorded in Volume V, Page 676 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a point in the southwest line of said Lot 2; from said point a 1/2-inch iron rod found for the south corner of Lot 1, Block A, James Wood Autopark Addition, Phase II, an addition to the City of Denton, Texas according to the plat recorded in Volume R, Page 255 of said Plat Records bears North 50°23'42" West, a distance of 870.69 feet;

**THENCE** departing the said southwest line of Lot 2, North 38°54'54" East, a distance of 231.19 feet to a point for corner;

**THENCE** North 6°05'01" West, a distance of 19.55 feet to a point for corner;

**THENCE** North 38°55'07" East, a distance of 129.73 feet to a point for corner;

**THENCE** South 50°21'36" East, a distance of 16.00 feet to a point for corner;

**THENCE** South 38°55'07" West, a distance of 122.90 feet to a point for corner;

**THENCE** South 6°05'01" East, a distance of 19.55 feet to a point for corner;

**THENCE** South 38°54'54" West, a distance of 238.02 feet to a point for corner in the said southwest line of Lot 2; from said point the south corner of said Lot 2 bears South 50°23'42" East, a distance of 432.99 feet;

**THENCE** along the said southwest line of Lot 2, North 50°23'42" West, a distance of 16.00 feet to the **POINT OF BEGINNING** and containing 0.1398 acres or 6,088 square feet of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



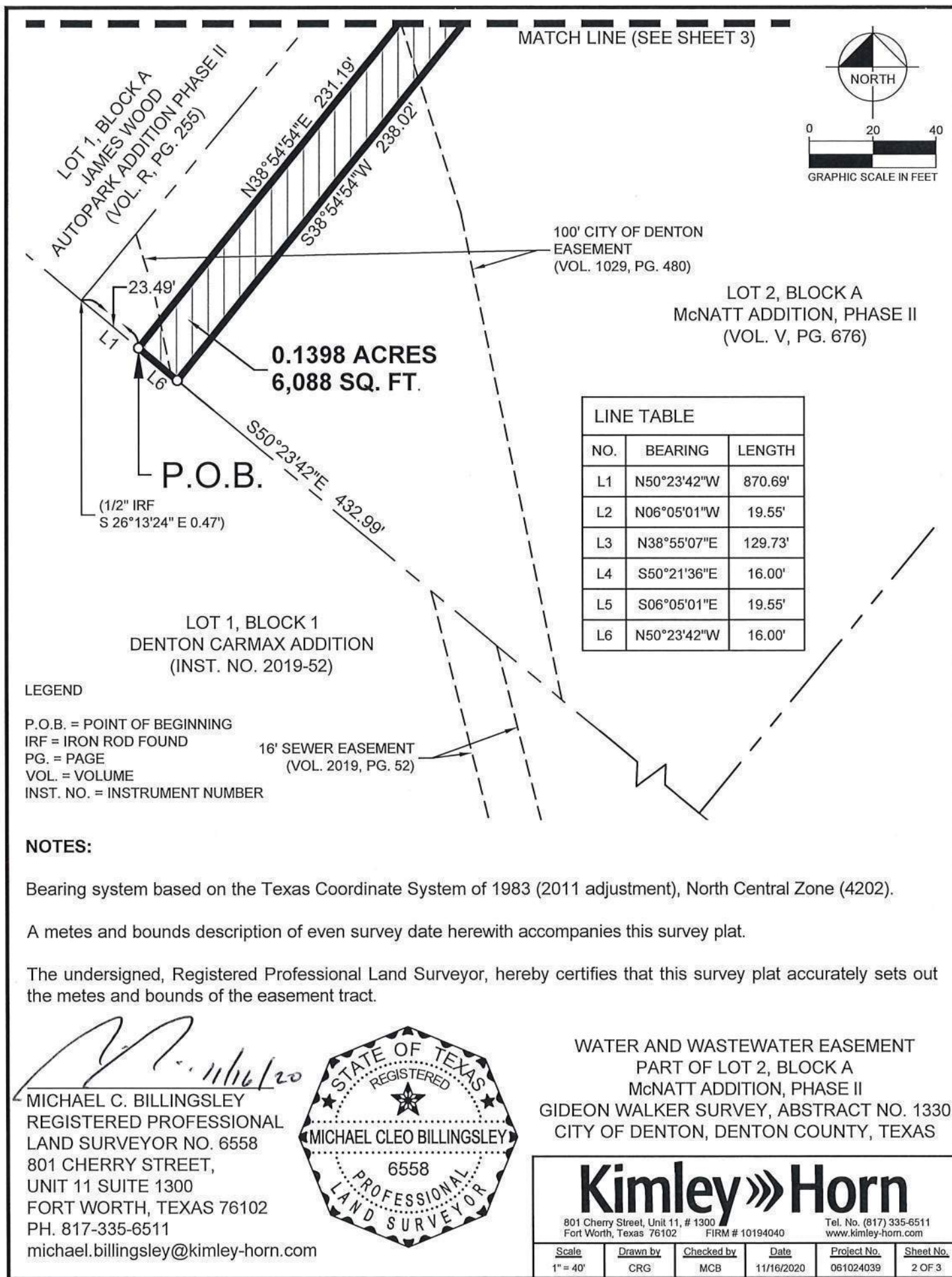
WATER AND WASTEWATER EASEMENT  
 PART OF LOT 2, BLOCK A  
 McNATT ADDITION, PHASE II  
 GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

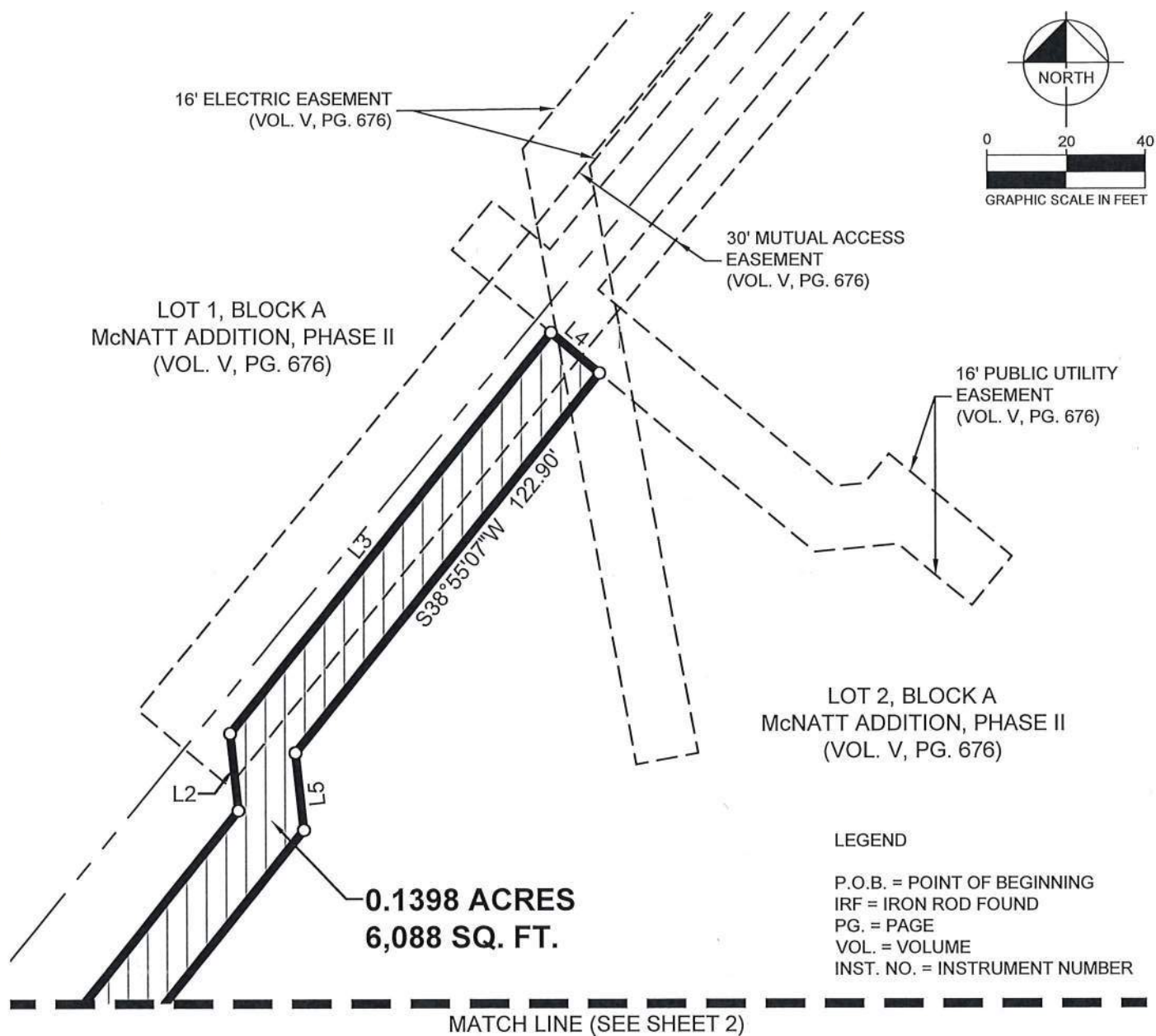
801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	11/16/2020	061024039	1 OF 3







WATER AND WASTEWATER EASEMENT  
PART OF LOT 2, BLOCK A  
McNATT ADDITION, PHASE II  
GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	11/16/2020	061024039	3 OF 3

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 70**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1736+11 LT to Sta 1736+31 LT

Existing Easement

Volume V, Page 676

PART OF LOT 1, BLOCK A  
McNATT ADDITION, PHASE II  
GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS



THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

18424

That M.F.A., INC.

of the County of Tarrant, State of Texas, hereinafter called "Grantor", for a good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant to the City of Corinth, hereinafter called "City", an easement and right-of-way for the purpose of constructing a water/sewer line, the term of such easement to end when the City of Corinth accepts the entire water/sewer system when construction of same is completed; and Grantor does also grant to said City a perpetual easement and right-of-way for the purpose of operating and maintaining such water/sewer line; easements and rights-of-way over and across Grantor's land in G. Walker Survey, Abstract No. 1330, Denton County, Texas, more particularly described in deed from Sanders Campbell to M.F.A., Inc.,

dated February 4, 19 69, and recorded in Volume 579, Page 701, of the Deed Records of said County and containing 326.2 acres, in, on and

over the tracts of land set forth and described in Exhibit "A", which is attached hereto and made a part hereof for all purposes, and SUBJECT TO THE RESERVATION of right in favor of Grantor as set forth therein; and, additionally, City shall have the right to use a strip 15 feet in width adjacent to the West boundary line of the tract set forth and described in Exhibit "A" for and during, and only during, the period of construction of the said water/sewer line.

Together with the right of ingress and egress over Grantor's adjacent lands to or from said right-of-way for the purpose of constructing, improving, reconstructing, repairing, inspecting, maintaining and removing said water/sewer line and appurtenances; the right to relocate said line in the same relative position to any adjacent road, if same is widened in the future; the right to prevent possible interference with the operation of said line and to remove possible hazard thereto; the right to prevent the construction, for a distance of one-half the width of the easement on each side of the actual center of where said water/sewer line is laid, of any building, structures or other obstructions which may endanger or interfere with the efficiency, safety or convenient operation of said water/sewer line and its appurtenances. If such buildings, structures or other obstructions are constructed by Grantor, as above mentioned, without written consent of the City, the City shall have the right to remove same from such space, and this agreement, together with other provisions of this grant shall constitute a covenant running with the land for the benefit of the City, its successors and assigns.

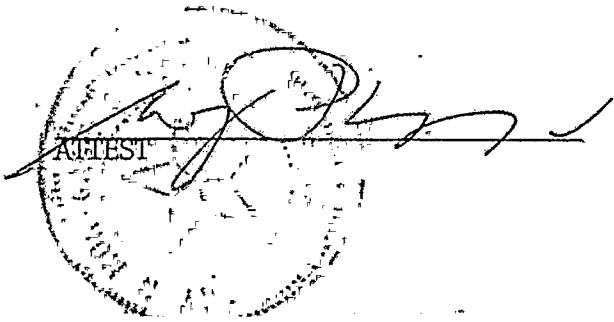
The right is reserved to Grantor to use the land over which a right-of-way or easement is herein granted, provided such use shall not include any use which might interfere with the exercise by the City of the rights hereby granted. The consideration recited herein shall constitute payment in full for all damages sustained by Grantor by reason of the installation of the structures referred to herein and the Grantee will maintain such easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantor's premises.

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TO HAVE AND TO HOLD the above-described easement and rights unto the said City  
of Corinth, its successors and assigns, forever.

And Grantor does hereby bind himself, his heirs and legal representatives, to Warrant and Forever Defend all and singular the above-described easement and rights unto the Said City, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED THIS 3rd day of May, 19 72.



M.F.A., INC.

By: 

### CORPORATION ACKNOWLEDGMENT

THE STATE OF TEXAS,  
COUNTY OF TARRANT

BEFORE ME, the undersigned authority,

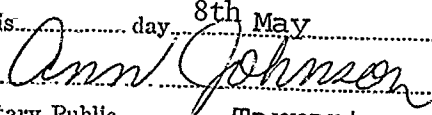
in and for said County, Texas, on this day personally appeared T. W. Reilly, President

whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said M. F. A., Inc.

a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 8th day of May, A. D. 19 72

(L. S.)

 ANN JOHNSON  
Notary Public, Tarrant County, Texas

My Commission Expires June 1, 19 73.

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THENCE South  $58^{\circ} 23' 30''$  East with said right-of-way 283.8 feet to a monument;

THENCE South  $50^{\circ} 21'$  East with said right-of-way 331.0 feet to a fence corner;

THENCE South  $1^{\circ} 09'$  West with a fence 12.67 feet to a marker;

THENCE North  $50^{\circ} 21'$  West a distance of 338.8 feet to an angle point;

THENCE North  $58^{\circ} 23' 30''$  West a distance of 278.6 feet to an angle point;

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THENCE North  $2^{\circ} 0'$  East 10.83 feet to the place of beginning.

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THENCE South  $50^{\circ} 21'$  East with said right-of-way 3055.2 feet to fence corner;

THENCE South  $32^{\circ} 33'$  West with a fence 10.16 feet to an angle point;

THENCE North  $50^{\circ} 21'$  West a distance of 3048.8 feet to an angle point;

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EXHIBIT "A"

FILED FOR RECORD: 18<sup>th</sup> DAY OF October A.D. 1972 at 12:45 o'clock - P M.  
 RECORDED: 25<sup>th</sup> DAY OF October A.D. 1972 at 11:20 o'clock A M.  
 BY E. A. Enrich DEPUTY THETA PARKER, COUNTY CLERK  
 DENTON COUNTY, TEXAS



70 2015 00022280

Denton County  
Juli Luke  
County Clerk  
Denton, TX 76202

Instrument Number: 2015-22280

As  
Release

Recorded On: March 06, 2015

Parties: CITY OF DENTON

To

Billable Pages: 12

Number of Pages: 12

Comment:

( Parties listed above are for Clerks reference only )

**\*\* THIS IS NOT A BILL \*\***

Release	70.00
Total Recording:	70.00

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

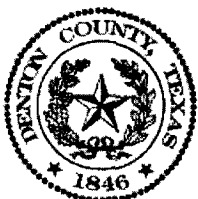
**File Information:**

Document Number: 2015-22280  
Receipt Number: 1259305  
Recorded Date/Time: March 06, 2015 09:14:59A

**Record and Return To:**

52241 LP  
4401 N I 35 UNIT 107  
DENTON TX 76207

User / Station: C Robinson - Cash Station 1



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Juli Luke  
County Clerk  
Denton County, Texas

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**ABANDONMENT AND RELEASE**

<b>THE STATE OF TEXAS</b>	<b>§</b>	
	<b>§</b>	<b>KNOW ALL MEN BY THESE PRESENTS:</b>
<b>COUNTY OF DENTON</b>	<b>§</b>	

THIS Abandonment and Release (herein so called) is dated as of the date set forth below, from the City of Denton, Texas (the "City"), and accepted by 52241, L.P., a Texas limited partnership (the "Owner").

WHEREAS, Owner is the owner of a certain tract of real property described in a General Warranty Deed from James L. McNatt, and The Al McNatt Family Partnership, L. P., recorded under Clerk's File Number 2004-88468, in the Real Property Records of Denton County, Texas (the "Property");

WHEREAS, the PROPERTY is encumbered by the following easements:

- a. That certain sanitary sewer easement, dated on or about January 9, 1961, from Walter M. Lea and wife, Jane C. Lea to the City of Denton, Texas, recorded in Volume 464, Page 188, Deed Records, Denton County, Texas (the "Lea Easement");



- b. That certain public utility easement, dated on or about August 7, 1980, from Calusa Development, Inc. to the City of Denton, Texas, recorded in Volume 1029, Page 480, Deed Records, Denton County, Texas, as affecting Tract One, as referred to therein. [(the “Calusa Easement”);
- c. That certain all purpose utility easement, dated on or about October 6, 1981, from Leon McNatt Motor Co., to the City of Denton, Texas, recorded in Volume 1106, Page 73, Deed Records, Denton County, Texas (the “McNatt Easement”);
- d. That certain all purpose utility easement, dated on or about May 14, 1982, from Republicbank Dallas, National Association to the City of Denton, Texas, recorded in Volume 1143, Page 125, Deed Records, Denton County, Texas, as Affecting Tracts One and Two, as referred to therein (the “Bank Easement”);

WHEREAS, the Lea Easement, the Calusa Easement, the McNatt Easement, and the Bank Easement are hereinafter collectively referred to as the “Affected Easements”;

WHEREAS, pursuant to that certain Easement Grant and Abandonment Agreement, dated on or about May 28, 2013, City of Denton Ordinance No. 2013-131, the Denton City Council authorized the City Manager, or his designee, to enter into this Abandonment and Release for the express purpose of partially releasing the Affected Easements, said partial release releasing the Affected Easements INsofar AND ONLY INsofar as the Affected Easements cover and include those lands described and depicted on Attachment 1 and Attachment 2, respectively, both attached hereto and made a part hereof for all purposes (the “Abandonment

Tracts”).

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby stipulated, the City, subject to the terms and reservations hereof, does by these presents, abandon and release unto Owner, its successors and assigns, all of its right, title and interest in and to the Affected Easements, INsofar AND ONLY INsofar as said Affected Easements cover the Abandonment Tracts. The City expressly reserves and retains, and this abandonment and release shall not be deemed to effect, in any way, manner or form, (i) any right, title or interest that the City may own, hold or possess under or pursuant to the Affected Easements, INsofar as said Affected Easements cover, encumber or include lands other than the Abandonment Tracts, and that the Affected Easements, INsofar as said Affected Easements cover, encumber or include all lands other than the Abandonment Tracts, shall remain valid and subsisting, and in full force and effect in accordance with the terms thereto; and (ii) any and all easements, rights of way and any other rights or interests, other than the Affected Easements, whether acquired, obtained, owned or claimed by the City or public, by, through or under conveyance, dedication by plat or other express dedication, implied dedication, prescription, or by any other manner or means, in or to lands in which the Affected Easements may cover, encumber, include, cross or overlap.

Executed this 14<sup>th</sup> day of May, 2013.

CITY:

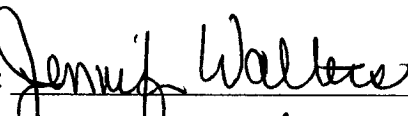
CITY OF DENTON, TEXAS

By:   
GEORGE C. CAMPBELL,  
CITY MANAGER

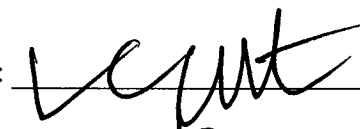
Date: 3/3, 2015

ATTEST:

JENNIFER WALTERS, CITY SECRETARY

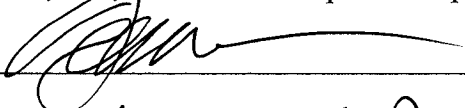
BY:   
Date: March 4, 2015

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY:   
Date: 3/3, 2015

OWNER:

52241, L.P., a Texas limited partnership



Name: AL McHATT, Pres.

Title: HONDA PROPERTIES, L.C.

Date: 5-14-13

ACKNOWLEDGMENT

STATE OF TEXAS )

COUNTY OF DENTON )

This instrument was acknowledged before me on the 3<sup>rd</sup> day of March, 2015 by George C. Campbell, City Manager, City of Denton, Texas, on behalf of said City.



Jennifer K. Walters  
Notary Public, in and for the State of Texas  
My Commission expires: 12/19/18

ACKNOWLEDGMENT

STATE OF TEXAS )

COUNTY OF DENTON )

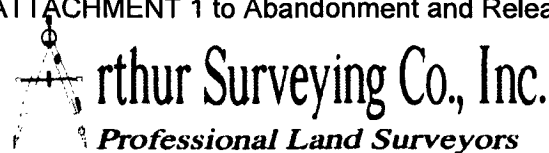
This instrument was acknowledged before me on the 14 day of May, 2013 by Asc M: NATI, Pres. of 52241, L.P., a Texas limited partnership on behalf of said limited partnership.

Angela Everheart  
Notary Public, in and for the State of Texas  
My Commission expires: 7/11/2014

UPON RECORDATION  
RETURN TO:

52241, L.P.  
4401 North I-35, Unit 107  
Denton, TX 76207-3433





LEWISVILLE	DENTON
220 Elm St., # 200	1172 Bent Oaks
Lewisville, TX 75057	Denton, TX 76210
Ph. (972) 221-9439	Ph. (940) 435-5155
Established 1986	
arthursurveying.com	

**EXHIBIT A**  
**EASEMENT ABANDONMENT**  
**0.488 ACRES**  
**CITY OF DENTON, DENTON COUNTY, TEXAS**

**BEING** all that certain lot, tract or parcel of land situated in the M.E.P. & P. R.R. Company Survey, Abstract Number 950 and the Gideon Walker Survey, Abstract Number 1330 in the City of Denton, Denton County, Texas, and being a part of Lot 4R, Block A, McNatt Addition, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet O, Page 267 of the Plat Records of Denton County, Texas, and being a part of a 16 foot wide Utility Easement, "Tract One", to the City of Denton, recorded in Volume 1029, Page 480 of the Deed Records of Denton County, Texas, and being a part of a 26 foot wide Sanitary Sewer Easement to the City of Denton, recorded in Volume 464, Page 188 of the Deed Records of Denton County, Texas, and being a part of a 40 foot wide Utility Easement to the City of Denton, recorded in Volume 1143, Page 125 of the Deed Records of Denton County, Texas, and being all that 20 foot wide Utility Easement to the City of Denton, recorded in Volume 1106, Page 73 of the Deed Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a point for corner in the northwest line of said Lot 4R and the southeast line of Lot 1, Block A, James Wood Autopark Addition, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet R, Page 42 of the Plat Records of Denton County, Texas, from which a  $\frac{3}{4}$  inch iron rod found for the west corner of said Lot 4R and the south corner of said Lot 1 bears South 39 degrees 35 minutes 25 seconds West, a distance of 30.00 feet, said point being in the northeast line of Lot 1, Block A, James Wood Autopark Addition, Phase III, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet R, Page 308 of the Plat Records of Denton County, Texas;

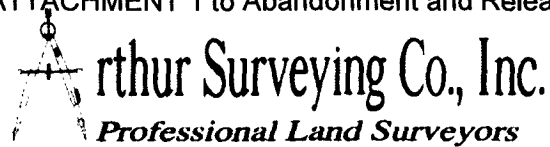
**THENCE** North 39 degrees 35 minutes 25 seconds East, with the southeast line of said Lot 1, Block of James Wood Autopark Addition and with the northwest line of said Lot 4R, a distance of 75.68 feet to a point for corner;

**THENCE** North 83 degrees 36 minutes 08 seconds East, over, through and across said Lot 4R and with the north line of said 26 foot wide Sanitary Sewer Easement, a distance of 380.75 feet to a point for corner thereof;

**THENCE** South 21 degrees 08 minutes 35 seconds East, departing the north line of said 26 foot wide Sanitary Sewer Easement and continuing over, through and across said Lot 4R, a distance of 57.72 feet to a point for corner in the south line of said 40 foot wide Public Utility Easement;

**THENCE** South 83 degrees 22 minutes 25 seconds West, with the south line of said 40 foot wide Public Utility Easement and continuing over, through and across said Lot 4R, a distance of 188.68 feet to a point for corner in a northwest line of a 16 foot wide Utility Easement, part of "Tract One", recorded in Volume 1029, Page 480, Deed Records, Denton County, Texas;





LEWISVILLE	DENTON
220 Elm St., # 200	1172 Bent Oaks
Lewisville, TX 75057	Denton, TX 76210
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Established 1986	
arthursurveying.com	

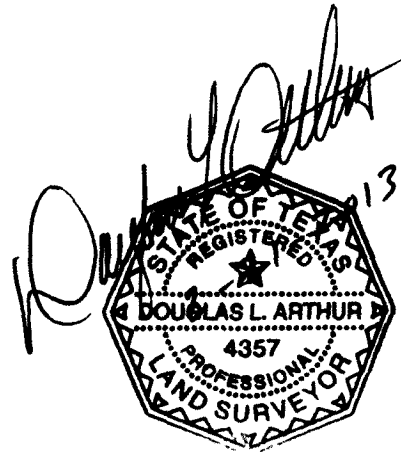
**THENCE** North 39 degrees 40 minutes 16 seconds East, with the northwest line of said 16 foot wide Utility Easement and continuing over, through and across said Lot 4R, a distance of 17.80 feet to a point for corner at the southeast corner of said 20 foot wide Utility Easement;

**THENCE** South 84 degrees 17 minutes 10 seconds West, with the south line of said 20 foot wide Utility Easement and continuing over, through and across said Lot 4R, a distance of 187.39 feet to a point for corner in a northeast line of said 16 foot wide Utility Easement;

**THENCE** South 50 degrees 19 minutes 44 seconds East, with the northeast line of said 16 foot wide Utility Easement and continuing over, through and across said Lot 4R, a distance of 21.14 feet to a point for corner in the south line of said 40 foot wide Public Utility Easement;

**THENCE** South 83 degrees 22 minutes 25 seconds West, departing the northeast line of said 16 foot wide Utility Easement and continuing over, through and across said Lot 4R, a distance of 96.45 feet to a point for corner;

**THENCE** North 50 degrees 26 minutes 51 seconds West, over, through and across said Lot 4R, a distance of 6.97 feet to the **POINT OF BEGINNING**, and containing 0.488 acres of land, more or less.

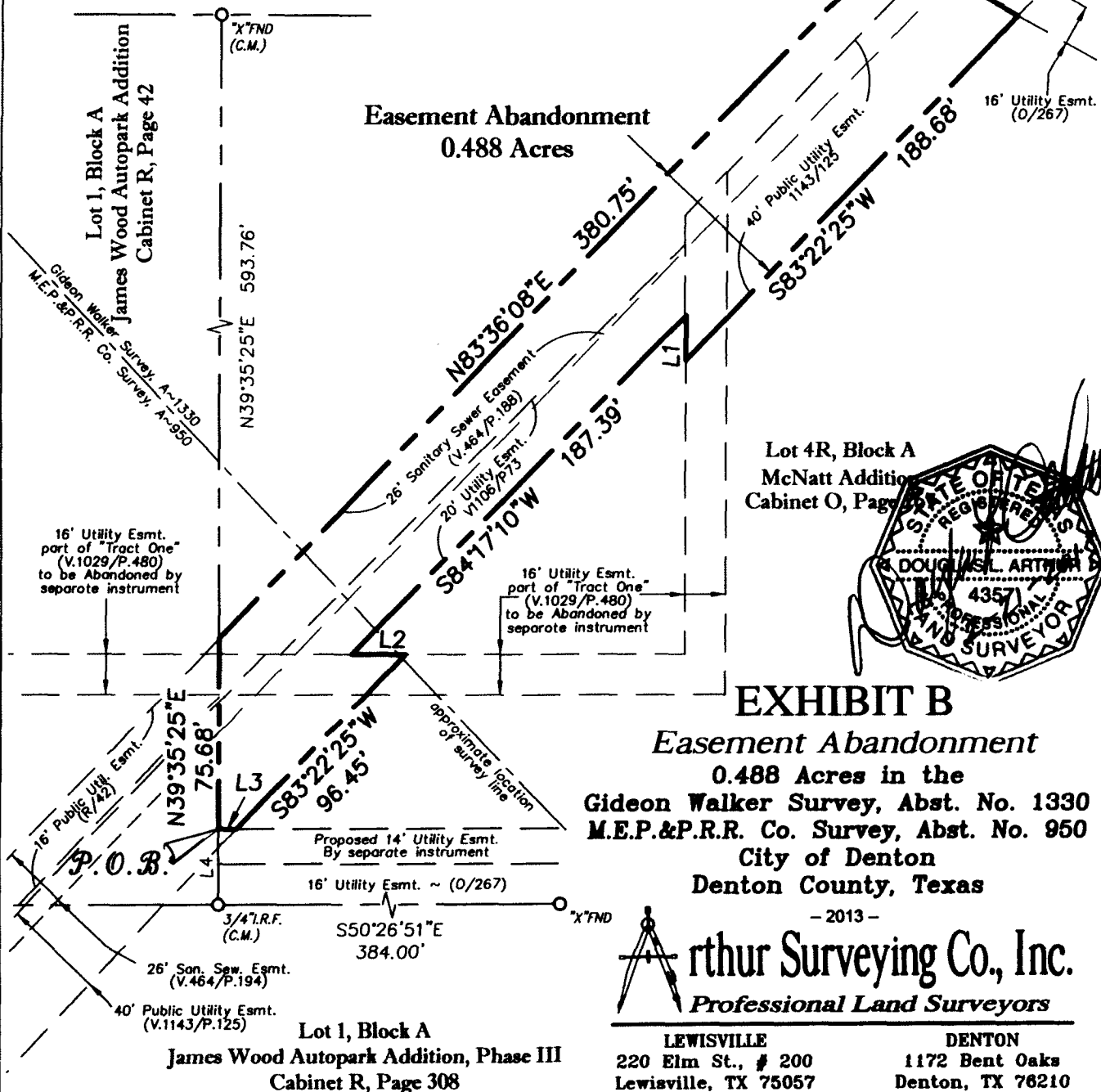


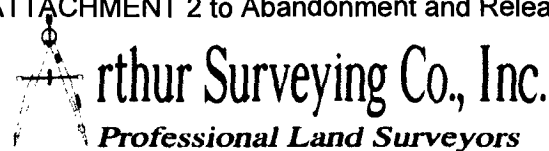
60 0 60 Feet

Bearings shown are based on the City of Denton GIS network.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N39°40'16"E	17.80'
L2	S50°19'44"E	21.14'
L3	N50°26'51"W	6.97'
L4	S39°35'25"W	30.00'

I.H. 35E ~ Service Road





LEWISVILLE                      DENTON  
220 Elm St., # 200              1172 Bent Oaks  
Lewisville, TX 75057          Denton, TX 76210  
Ph. (972) 221-9439              Ph. (940) 435-5155  
Established 1986  
arthursurveying.com

**EXHIBIT A**  
**EASEMENT ABANDONMENT**  
**0.095 ACRES**  
**CITY OF DENTON, DENTON COUNTY, TEXAS**

**BEING** all that certain lot, tract or parcel of land situated in the M.E.P. & P. R.R. Company Survey, Abstract Number 950 and the Gideon Walker Survey, Abstract Number 1330 in the City of Denton, Denton County, Texas, and being a part of Lot 4R, Block A, McNatt Addition, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet O, Page 267 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at a  $\frac{3}{4}$  inch iron rod found for the west corner of said Lot 4R and the south corner of Lot 1, Block A, James Wood Autopark Addition, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet R, Page 42 of the Plat Records of Denton County, Texas, and being in the northeast line of said Lot 1, Block A, James Wood Autopark Addition, Phase III, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet R, Page 308 of the Plat Records of Denton County, Texas;

**THENCE** North 39 degrees 35 minutes 25 seconds East, with the northwest line of said Lot 4R and the southeast line of said Lot 1, Block A, James Wood Autopark Addition, a distance of 22.73 feet to a point for corner in the south line of a 40 foot wide Public Utility Easement to the City of Denton, recorded in Volume 1143, Page 125 of the Deed Records of Denton County, Texas;

**THENCE** North 83 degrees 22 minutes 25 seconds East, with the south line of said 40 foot wide Public Utility Easement and over, through and across said Lot 4R, a distance of 84.39 feet to the **POINT OF BEGINNING**, said point being in the southwest line of a 16 foot wide Utility Easement, part of "Tract One", to the City of Denton, recorded in Volume 1029, Page 480 of the Deed Records of Denton County, Texas;

**THENCE** North 83 degrees 22 minutes 25 seconds East, continuing with the south line of said 40 foot wide Public Utility Easement and continuing over, through and across said 16 foot wide Utility Easement, a distance of 22.13 feet to a point for corner;

**THENCE** South 50 degrees 19 minutes 44 seconds East, departing the south line of said 40 foot wide Public Utility Easement and with the northeast line of said 16 foot wide Utility Easement and continuing over, through and across said Lot 4R, a distance of 110.48 feet to a point for corner;

**THENCE** North 39 degrees 40 minutes 15 seconds East, with the northwest line of said 16 foot wide Utility Easement and continuing over, through and across said Lot 4R, a distance of 115.60 feet to a point for corner in the south line of said 40 foot wide Public Utility Easement;



# Arthur Surveying Co., Inc.

**Professional Land Surveyors**

LEWISVILLE  
220 Elm St., # 200  
Lewisville, TX 75057  
Ph. (972) 221-9439

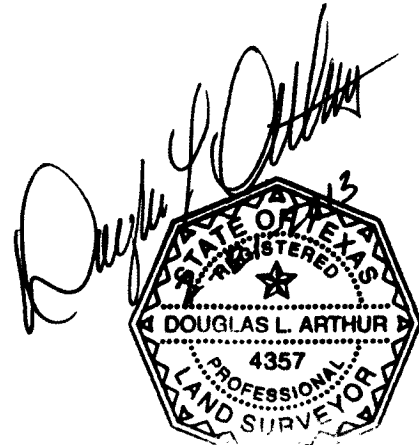
DENTON  
1172 Bent Oaks  
Denton, TX 76210  
Ph. (940) 435-5155

Established 1986  
arthursurveying.com

**THENCE** North 83 degrees 22 minutes 25 seconds East, departing the northwest line of said 16 foot wide Utility Easement and with the south line of said 40 foot wide Public Utility Easement and continuing over, through and across said Lot 4R, a distance of 23.16 feet to a point for corner in the southeast line of said 16 foot wide Utility Easement;

**THENCE** South 39 degrees 40 minutes 16 seconds West, departing the south line of said 40 foot wide Public Utility Easement and with the southeast line of said 16 foot wide Utility Easement and continuing over, through and across said Lot 4R, a distance of 148.34 feet to a point for corner;

**THENCE** North 50 degrees 19 minutes 44 seconds West, with the southwest line of said 16 foot wide Utility Easement and continuing over, through and across said Lot 4R, a distance of 141.77 feet to the **POINT OF BEGINNING**, and containing 0.095 acres of land, more or less.

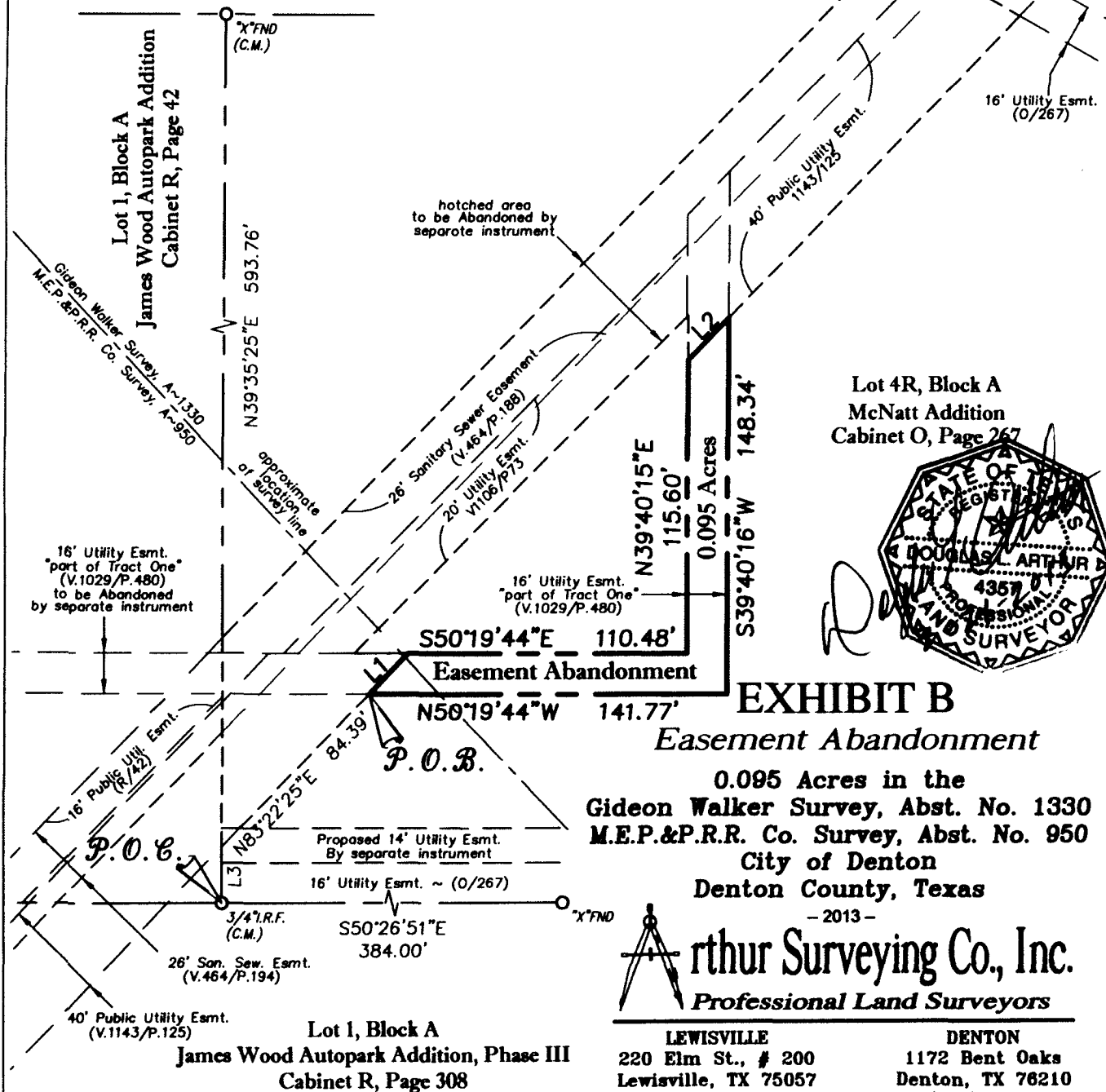


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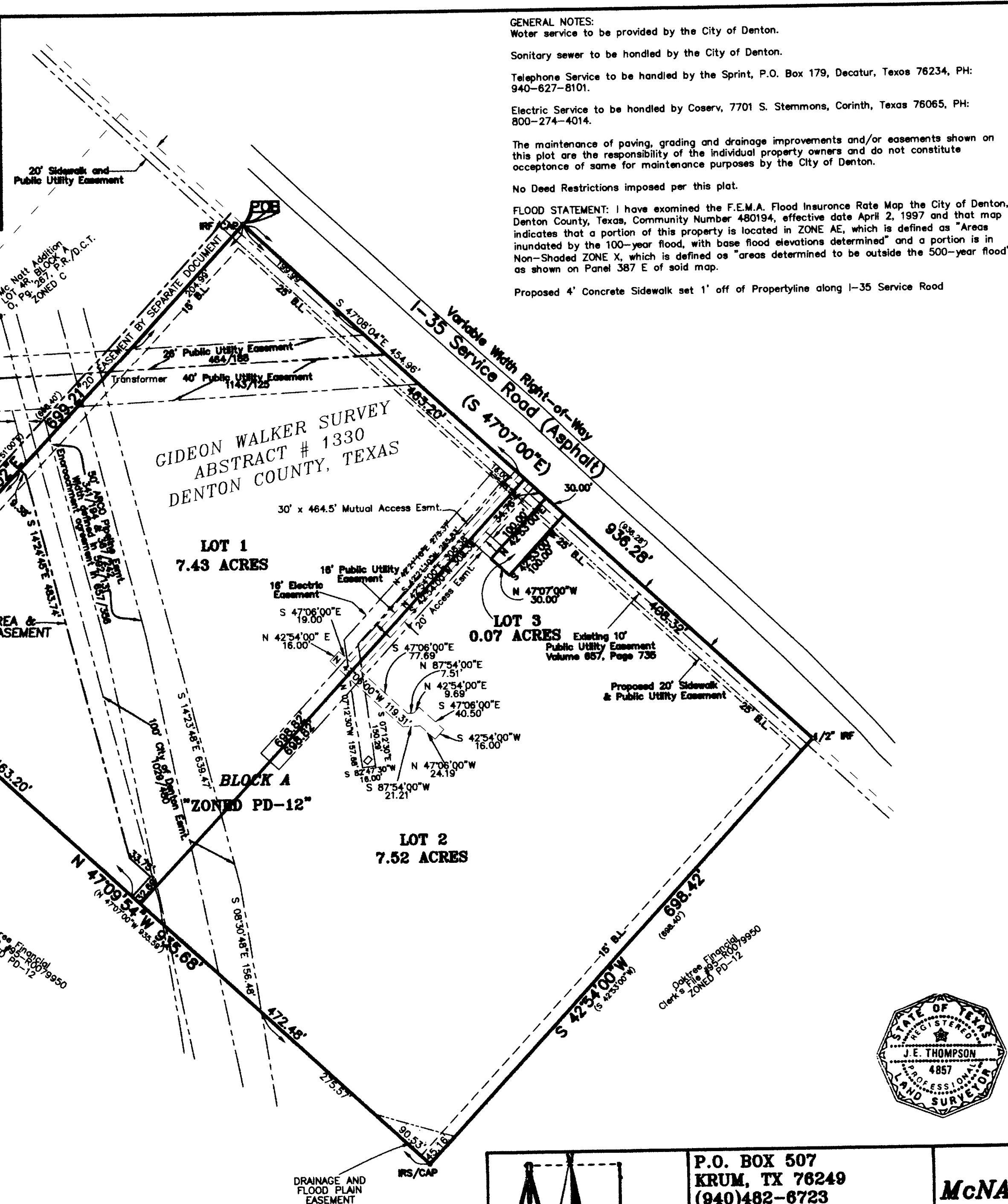
Bearings shown are based on the City of Denton GIS network.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N83°22'25"E	22.13'
L2	N83°22'25"E	23.16'
L3	N39°35'25"E	22.73'

I.H. 35E ~ Service Road







Proposed 4' Concrete Sidewalk set 1' off of Propertyline along I-35 Service Road

**PERMEABLE AREA/GREEN SPACE EASEMENT**  
No building, structures, parking lot, fire lane, road, or other impermeable improvements shall be constructed or installed in the permeable area/green space area. If impermeable improvements are to be made, a replat and associated drainage studies and construction plans shall be submitted for review and approval by the City of Denton for all public and private drainage systems. Other rules and regulations related to platting as per City of Denton Subdivision and Land Regulations would apply.

100 100 200 300  
GRAPHIC SCALE - FEET



JOB NUMBER:	001542FP
DRAWN BY:	MRK
CHECKED BY:	JET
DATE:	03-12-01
REVISIONS:	04-01-01 05-13-04/S.P.A./Esmt

**BEING 15.02 ACRES IN THE GIDEON  
WALKER SURVEY, ABSTRACT # 1330  
CITY OF DENTON, DENTON COUNTY,  
TEXAS**

Filed for Record in:  
Denton County  
On: May 25, 2004 at 02:05PM  
As a  
Plat  
Document Number: 67824  
Amount 43.00  
Receipt Number - 112565  
By  
Erin McConkie

Cab v Pg1076

GENERAL NOTES:  
Water service to be provided by the City of Denton.  
Sanitary sewer to be handled by the City of Denton.  
Telephone Service to be handled by the Sprint, P.O. Box 179, Decatur, Texas 76234, PH: 940-627-8101.  
Electric Service to be handled by Coserv, 7701 S. Stemmons, Corinth, Texas 76065, PH: 800-274-4014.  
The maintenance of paving, grading and drainage improvements and/or easements shown on this plot are the responsibility of the individual property owners and do not constitute acceptance of same for maintenance purposes by the City of Denton.  
No Deed Restrictions imposed per this plat.  
FLOOD STATEMENT: I have examined the F.E.M.A. Flood Insurance Rate Map the City of Denton, Denton County, Texas, Community Number 480194, effective date April 2, 1997 and that map indicates that a portion of this property is located in ZONE AE, which is defined as "Areas inundated by the 100-year flood, with base flood elevations determined" and a portion is in Non-Shaded ZONE X, which is defined as "areas determined to be outside the 500-year flood" as shown on Panel 387 E of said map.  
Proposed 4' Concrete Sidewalk set 1' off of Propertyline along I-35 Service Road

WHEREAS, Jim McNatt & The Al McNatt Family Partnership, Ltd., through its duly sworn representative, Al McNatt, is the owner to all that certain lot, tract, or parcel of land situated in the GIDEON WALKER SURVEY, ABSTRACT NUMBER 1330, Denton County, Texas, and being a called 15.0037 acre tract described in Deed from Alan L. McNatt to The Al McNatt Family Partnership, Ltd. as recorded in County Clerk's File Number 98-R0004554 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:  
BEGINNING at a capped iron rod found in the South line of Interstate Highway 35 Access Road for the most Northeast corner of the tract being described herein and the most Southeast corner of Lot 4R, Block A, of McNATT ADDITION, on addition to the City of Denton, Denton County, Texas, according to the Plat thereof recorded in Cabinet O, Page 267, Plat Records of Denton County, Texas;  
THENCE South 47 degrees 07 minutes 00 seconds East with the South right-of-way of said Access Road a distance of 936.28 feet to a 1/2" iron rod found for the most Southeast corner of the tract being described herein;  
THENCE South 42 degrees 54 minutes 00 seconds West a distance of 698.42 feet to a 1/2" capped iron rod set for the most Southwest corner of the tract being described herein;  
THENCE North 47 degrees 09 minutes 54 seconds West a distance of 935.68 feet to a 1/2" capped iron rod set for the most Northwest corner of the tract being described herein and the most Southwest corner of said McNATT Addition;  
THENCE North 42 degrees 51 minutes 02 seconds East with the most Southerly line of said McNATT Addition a distance of 699.21 feet to the POINT OF BEGINNING and enclosing 15.02 acres of land more or less.  
KNOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS

THAT Jim McNatt & The Al McNatt Family Partnership, Ltd., through its duly sworn representative, Al McNatt, does adopt this plat designating the herein described property as McNATT Addition, Phase II, in the City of Denton, Denton County, Texas and does hereby dedicate to the public use forever, the streets rights-of-way and public easements shown hereon.

By: Al McNatt  
STATE OF TEXAS  
BEFORE ME, the undersigned Notary in and for the State of Texas, on this day personally appeared, Al McNatt, known to me to be the person, whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed and in the capacity therein stated.  
GIVEN UNDER MY HAND AND SEAL OF THE OFFICE THIS 14 DAY OF MAY 2004.

Notary Public in the State of Texas.  
My commission expires 04-02-08  
SURVEYORS CERTIFICATE

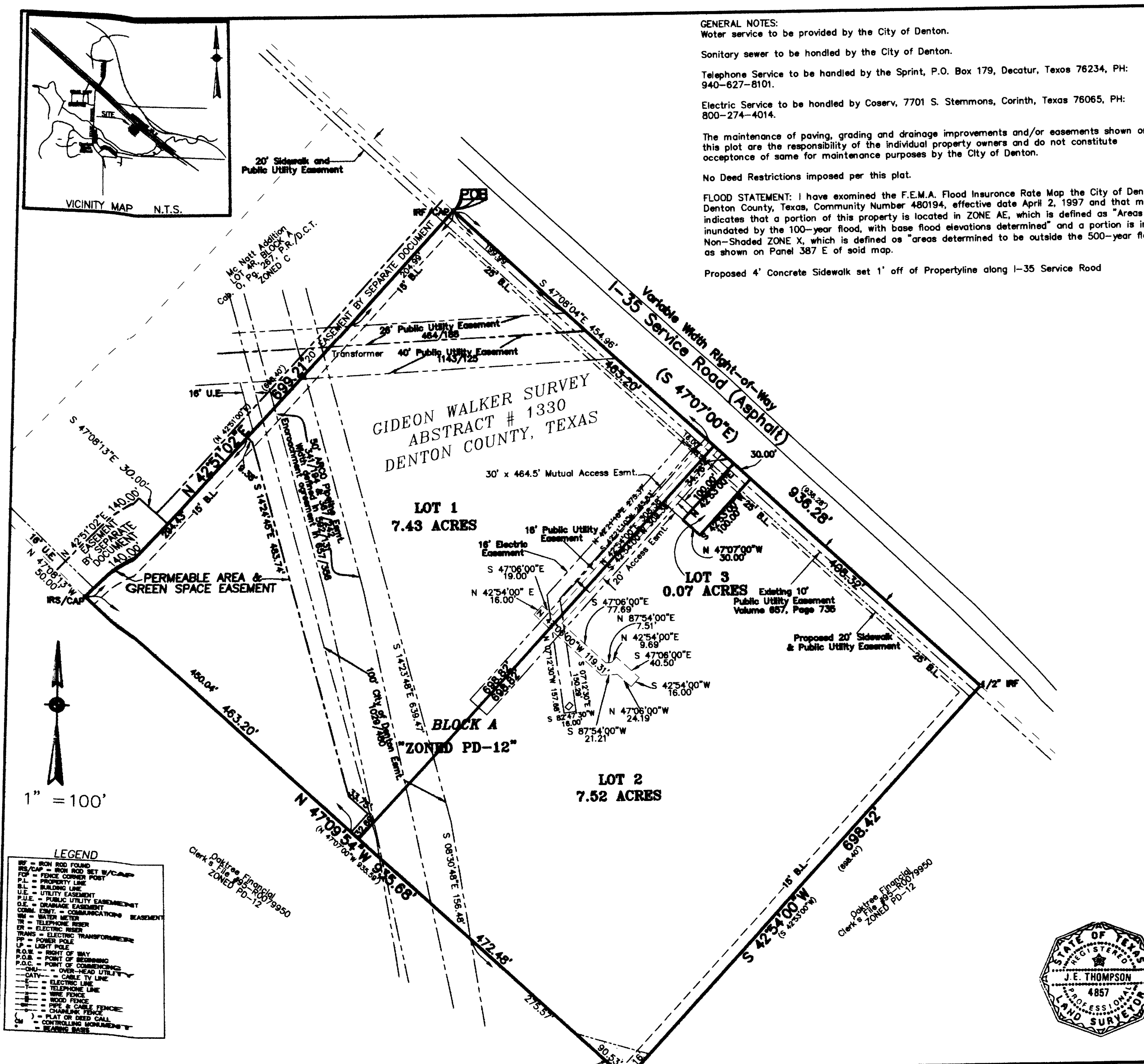
I, John E. Thompson II, Registered Professional Land Surveyor, do hereby certify that this plat was prepared from and actual survey made on the ground and that the monuments shown hereon were found or placed with 1/2" iron rods capped "Alliance" under my direction and supervision in accordance with the Ordinances of the City of Denton, Texas.

John E. Thompson II 05-14-04  
John E. Thompson, II R.P.L.S. # 4857 Date  
CERTIFICATE OF APPROVAL  
Approved this 14th Day of May 2004 by the Planning Commission for the City of Denton, Texas.

John E. Thompson II  
Chairman:  
Jennifer Walters  
City Secretary Jennifer Walters

PRIVATE DETENTION AND DRAINAGE EASEMENT  
As per Subdivision and Land Development Regulations and subject to the following conditions that shall be binding upon the owners, the heirs, grantees, and successors; the portion of Block A, as shown on the plat, is called "Private Drainage & Detention Easement". The private drainage & detention easement within the limits of this addition, will remain open at all times and will be maintained in a safe and sanitary condition by the owners of the lot(s) that are traversed by or adjacent to the private drainage & detention easement. The City of Denton will not be responsible for the maintenance and operation of said easement for any damage to private property or person that results from conditions in the easement, or for the control of erosion. No obstruction to the natural flows of storm water run-off shall be permitted by construction of any type of building, fence, or any other structure within the private drainage & detention easement, so herein above deferred, unless approved by the City of Denton. The property owner shall keep the private drainage & detention easement clear of debris, silt, and any substance that will result in unsanitary conditions, or obstruct the flow of water. And, the City of Denton shall have the right of ingress and egress for the purpose of inspection and supervision of maintenance work by the property owner to alleviate any undesirable conditions that may occur. The natural drainage through the private drainage & detention easement is subject to storm water overflow and natural bank erosion to an extent that cannot be definitely defined. The City of Denton shall not be held liable for any of these natural phenomena, or resulting from the failure of any structure, or structures, within the easement.

PERMEABLE AREA/GREEN SPACE EASEMENT  
No building, structures, parking lot, fire lane, road, or other impermeable improvements shall be constructed or installed in the permeable area/green space area. If impermeable improvements are to be made, a replat and associated drainage studies and construction plans shall be submitted for review and approval by the City of Denton for all public and private drainage systems. Other rules and regulations related to platting as per City of Denton Subdivision and Land Regulations would apply.



 ALLIANCE AREA SURVEYING	P.O. BOX 507 KRUM, TX 76249 (940)482-6723 JOB NUMBER: 001542FP DRAWN BY: MRK CHECKED BY: JET DATE: 03-12-01 REVISIONS: 04-01-01 05-13-04/S.P.A./Esmt.	<b>FINAL PLAT</b> <b>McNATT ADDITION, PHASE II</b> <b>LOTS 1, 2 &amp; 3, BLOCK A</b>  <b>BEING 15.02 ACRES IN THE GIDEON WALKER SURVEY, ABSTRACT # 1330</b> <b>CITY OF DENTON, DENTON COUNTY, TEXAS</b>	Filed for Record in: Denton County Date: May 25, 2004 at 02:05P As a Plat Document Number: 67821 Amount: 43.00 Receipt Number: 115655 Recorded By: Erin McConkie
	OWNER: Jim McNatt & The Al McNatt Family Partnership, Ltd. 6008 North Small Avenue Denton, TX 76201 CONTACT: Al McNatt PH: 940-361-1020		

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF

11583

That Joe P. Farina

of the County of Denton, State of Texas, hereinafter called "Grantor", for a good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant to the City of Corinth, hereinafter called "City", an easement and right-of-way for the purpose of constructing a water/sewer line, the term of such easement to end when the City of Corinth accepts the entire water/sewer system when construction of same is completed; and Grantor does also grant to said City a perpetual easement and right-of-way for the purpose of operating and maintaining such Sewer line; easements and rights-of-way over and across Grantor's land in M.E.P. & P.R.R. Co. & W. Garrison Survey, Abstract No. 911 & 1545, Denton County, Texas, more particularly described in deed from Joe P. Farina to Jay-Kay Investments, Inc.,

dated February 9th, 1972, and recorded in Volume 638, Page 133, of the Deed Records of said County and containing 98.866 acres.

The Construction Easement being a strip of land across the tract referred to above, twenty-five (25) feet in width, with the Grantee herein being hereby authorized to designate the course of the easement herein conveyed. When the pipe line is installed, the Operation and Maintenance Easement herein granted shall be limited to a strip of land ten (10) feet in width, with the center line thereof being the pipe line as installed.

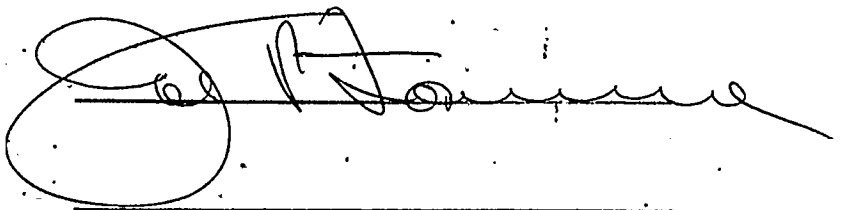
Together with the right of ingress and egress over Grantor's adjacent lands to or from said right-of-way for the purpose of constructing, improving, reconstructing, repairing, inspecting, maintaining and removing said water/sewer line and appurtenances; the right to relocate said line in the same relative position to any adjacent road, if same is widened in the future; the right to prevent possible interference with the operation of said line and to remove possible hazard thereto; the right to prevent the construction, for a distance of one-half the width of the easement on each side of the actual center of where said water/sewer line is laid, of any building, structures or other obstructions which may endanger or interfere with the efficiency, safety or convenient operation of said water/sewer line and its appurtenances. If such buildings, structures or other obstructions are constructed by Grantor, as above mentioned, without written consent of the City, the City shall have the right to remove same from such space, and this agreement, together with other provisions of this grant shall constitute a covenant running with the land for the benefit of the City, its successors and assigns.

The right is reserved to Grantor to use the land over which a right-of-way or easement is herein granted, provided such use shall not include any use which might interfere with the exercise by the City of the rights hereby granted. The consideration recited herein shall constitute payment in full for all damages sustained by Grantor by reason of the installation of the structures referred to herein and the Grantee will maintain such easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantor's premises.

TO HAVE AND TO HOLD the above-described easement and rights unto the said City of Corinth, its successors and assigns, forever.

And Grantor does hereby bind himself, his heirs and legal representatives, to Warrant and Forever Defend all and singular the above-described easement and rights unto the Said City, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED THIS 23 day of March, 19 72.



VOL 650 PAGE 282

## (SINGLE ACKNOWLEDGMENT)

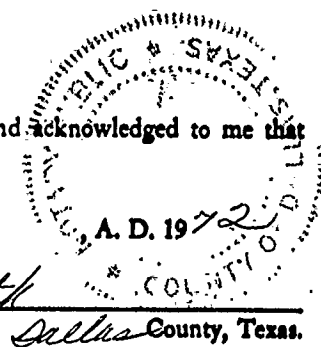
THE STATE OF TEXAS

COUNTY OF

Before me, the undersigned authority, on this day personally appeared Joe P. Farina  
 known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that  
 he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 3rd day of April

*Linda L. Smith*  
 Notary Public in and for



*Dallas County, Texas.*

FILED FOR RECORD: 11th DAY OF July A.D. 1972 at 9:01 o'clock A.M.

RECORDED: 14th DAY OF July A.D. 1972 at 9:30 o'clock A.M.

BY \_\_\_\_\_ DEPUTY THETA PARKER, COUNTY CLERK  
 DENTON COUNTY, TEXAS



THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF

11624

That Willard B. Naughton - Wife Eva 7/10

of the County of Denton, State of Texas, hereinafter called "Grantor", for a good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant to the City of Corinth, hereinafter called "City", an easement and right-of-way for the purpose of constructing a Water/Sewer line, the term of such easement to end when the City of Corinth accepts the entire Sewer & Water system when construction of same is completed; and Grantor does also grant to said City a perpetual easement and right-of-way for the purpose of operating and maintaining such Sewer & Water line; easements and rights-of-way over and across Grantor's land in Walker-MED-PPR Survey, Abstract No. #1330 #911, Denton County, Texas, more particularly described in deed from Nelson S. Van Deventer to Willard B. Naughton,

dated                     , 19             , and recorded in Volume 505, Page 512, of the Deed Records of said County and containing 14.150 acres.

The Construction Easement being a strip of land across the tract referred to above, twenty-five (25) feet in width, with the Grantee herein being hereby authorized to designate the course of the easement herein conveyed. When the pipe line is installed, the Operation and Maintenance Easement herein granted shall be limited to a strip of land ten (10) feet in width, with the center line thereof being the pipe line as installed.

Together with the right of ingress and egress over Grantor's adjacent lands to or from said right-of-way for the purpose of constructing, improving, reconstructing, repairing, inspecting, maintaining and removing said Sewer & Water line and appurtenances; the right to relocate said line in the same relative position to any adjacent road, if same is widened in the future; the right to prevent possible interference with the operation of said line and to remove possible hazard therefrom; the right to prevent the construction, for a distance of one-half the width of the easement on each side of the actual center of where said Sewer & Water line is laid, of any building, structures or other obstructions which may endanger or interfere with the efficiency, safety or convenient operation of said Sewer & Water line and its appurtenances. If such buildings, structures or other obstructions are constructed by Grantor, as above mentioned, without written consent of the City, the City shall have the right to remove same from such space, and this agreement, together with other provisions of this grant shall constitute a covenant running with the land for the benefit of the City, its successors and assigns.

The right is reserved to Grantor to use the land over which a right-of-way or easement is herein granted, provided such use shall not include any use which might interfere with the exercise by the City of the rights hereby granted. The consideration recited herein shall constitute payment in full for all damages sustained by Grantor by reason of the installation of the structures referred to herein and the Grantee will maintain such easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantor's premises.

TO HAVE AND TO HOLD the above-described easement and rights unto the said City of Corinth, its successors and assigns, forever.

And Grantor does hereby bind himself, his heirs and legal representatives, to Warrant and Forever Defend all and singular the above-described easement and rights unto the Said City, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED THIS 24th day of April, 19 72.

Willard B. Naughton



VOL 650 PAGE 347

## (SINGLE ACKNOWLEDGMENT)

THE STATE OF TEXAS  
COUNTY OF }

Before me, the undersigned authority, on this day personally appeared William B. Naughton  
known to me to be the person whose name IS subscribed to the foregoing instrument, and acknowledged to me that  
he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 24 day of April A.D. 1972

Jeanita Chandler  
Notary Public in and for

FILED FOR RECORD: 11<sup>th</sup> DAY OF July A.D. 1972 at 9:05 o'clock A.M.

RECORDED: 19<sup>th</sup> DAY OF July A.D. 1972 at 10:37 o'clock A.M.

BY \_\_\_\_\_ DEPUTY THETA PARKER, COUNTY CLERK  
DENTON COUNTY, TEXAS

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Gideon Walker Survey, Abstract No. 1330, City of Denton, Denton County, Texas, and being part of Lot 1, Block A, McNatt Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume V, Page 676 of the Plat Records of Denton, Texas, and being more particularly described as follows:

**BEGINNING** at the west corner of said Lot 1; from said point a 1/2-inch iron rod found for the west corner of Lot 4R, Block A, McNatt Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume O, Page 267 of said Plat Records bears North 50°23'42" West, a distance of 847.20 feet;

**THENCE** along the northwest line of said Lot 1, North 39°35'33" East, a distance of 28.45 feet to a point for corner; from said point the north corner of said Lot 1, and being a point in the southwest right-of-way line of Interstate Highway No. 35-E (a variable width right-of-way) bears North 39°35'33" East, a distance of 670.64 feet;

**THENCE** departing the said northwest line of Lot 1, South 50°02'24" East, a distance of 20.26 feet to a point for corner;

**THENCE** South 39°43'15" West, a distance of 28.33 feet to a point for corner in the southwest line of said Lot 1;

**THENCE** North 50°23'42" West, along the said southwest line of Lot 1, a distance of 20.19 feet to the **POINT OF BEGINNING** and containing 0.0132 acres or 574 square feet of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

 11/13/20

MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



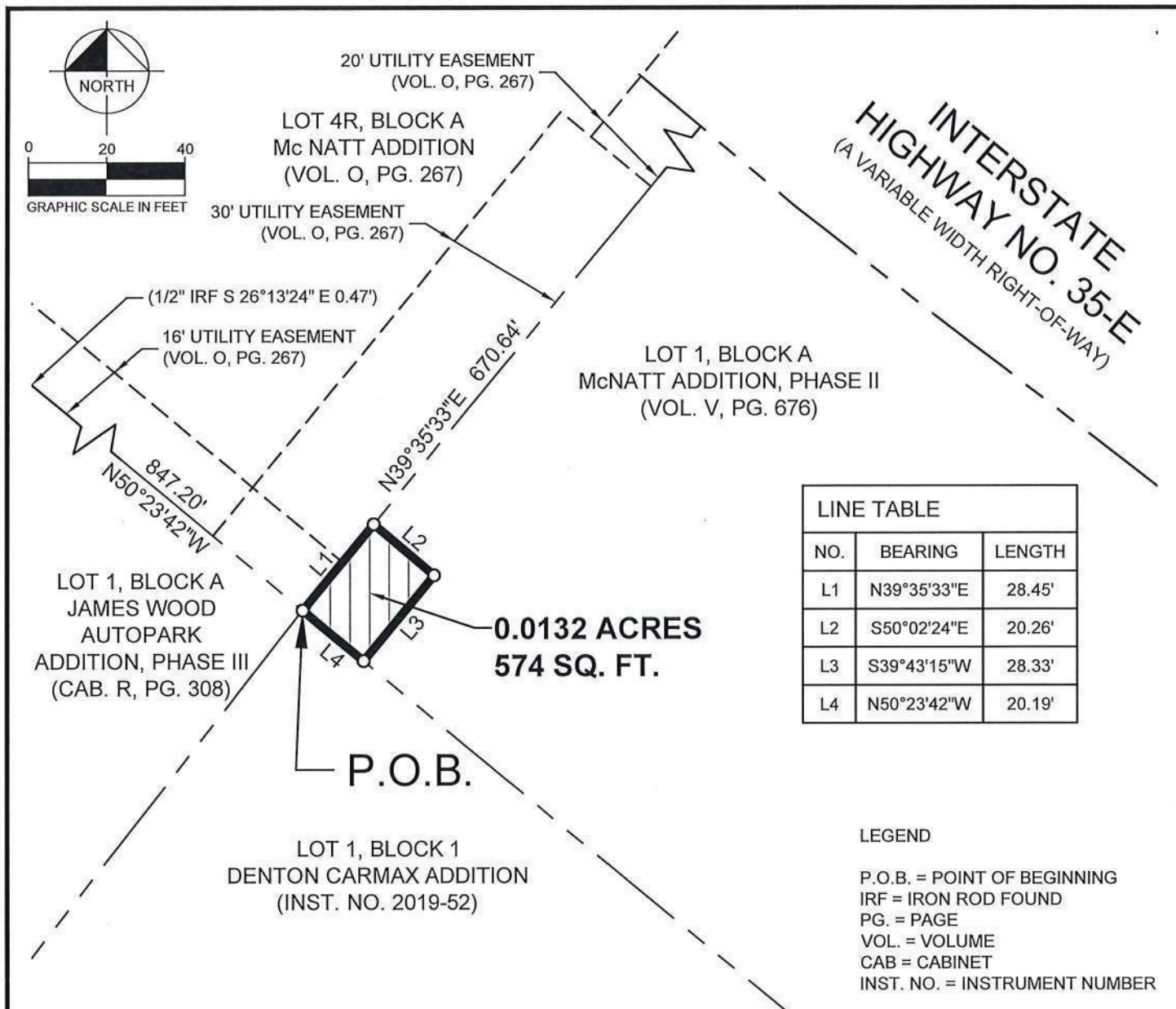
WATER AND WASTEWATER EASEMENT  
PART OF LOT 1, BLOCK A  
McNATT ADDITION, PHASE II  
GIDEON WALKER SURVEY  
ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	11/13/2020	061024039	1 OF 2

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*11/13/20*  
**MICHAEL C. BILLINGSLEY**  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



**WATER AND WASTEWATER EASEMENT**  
 PART OF LOT 1, BLOCK A  
 McNATT ADDITION, PHASE II  
 GIDEON WALKER SURVEY  
 ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	11/13/2020	061024039	2 OF 2

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 74**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

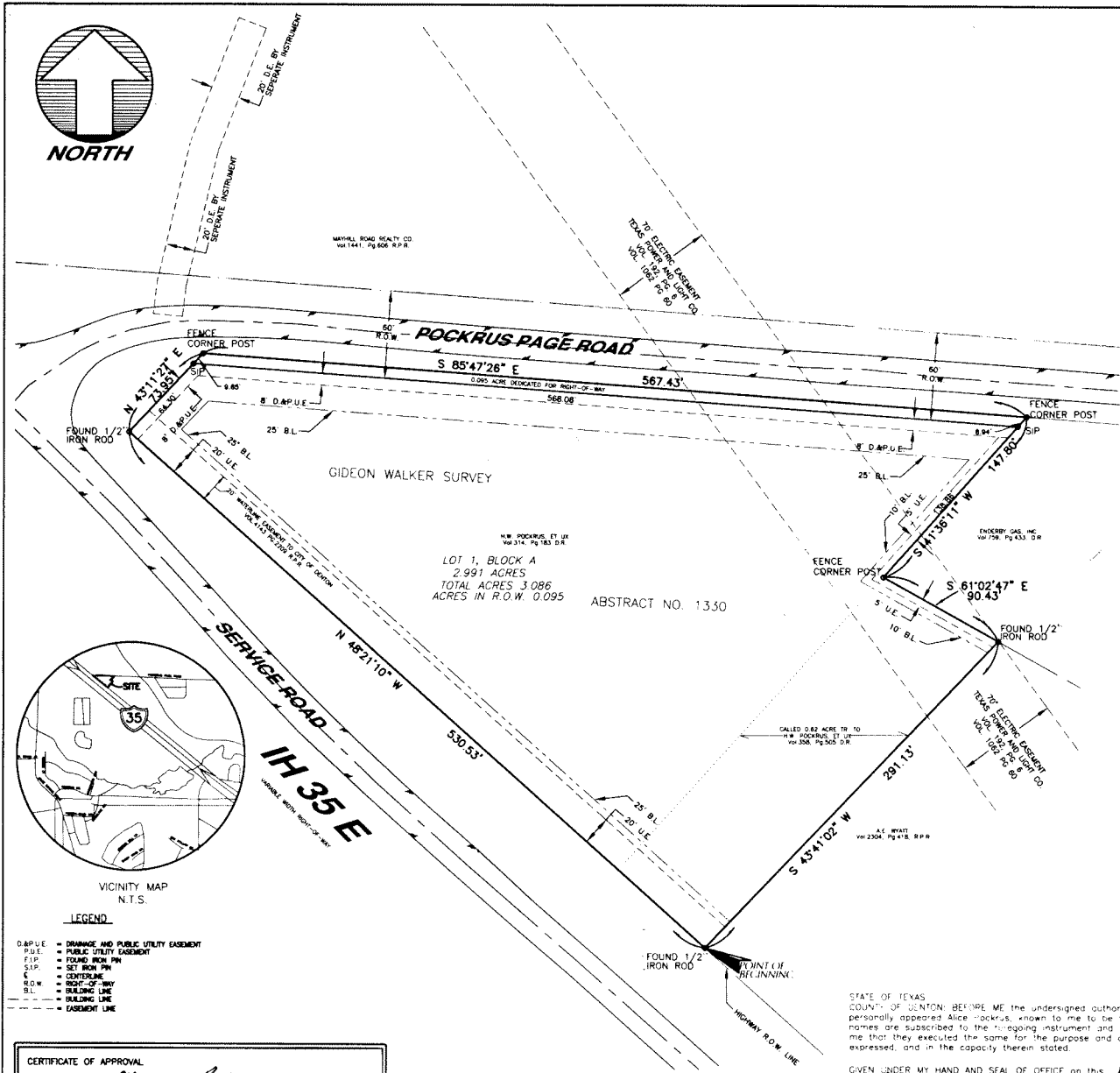
Utility Longitudinal Stations:  
Sta 1740+08 RT to Sta 1744+63 RT

Existing Easement

Volume X, Page 1

PART OF LOT 1A, BLOCK A  
HOUSE SMART ADDITION  
GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

Sub. U B: 464



STATE OF TEXAS

ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE GIDEON WALKER SURVEY, ABSTRACT NUMBER 1330, CITY OF DENTON, DENTON COUNTY, TEXAS, BEING PART OF A TRACT DESCRIBED IN A DEED TO H.W. POCKRUS, ET UX, RECORDED IN VOLUME 314, PAGE 183, DEED RECORDS DENTON COUNTY, TEXAS, AND BEING PART OF A CALLED 0.62 ACRE TRACT DESCRIBED IN A DEED TO H.W. POCKRUS, ET UX, RECORDED IN VOLUME 358, PAGE 505, DEED RECORDS DENTON COUNTY, TEXAS, AND BEING MORE PARTICULAR, Y DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD FOUND AT THE INTERSECTION OF THE SOUTHEAST LINE OF SAID 0.62 ACRE TRACT WITH THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 35E, SAID ROD BEING THE NORTHWEST CORNER OF A TRACT DESCRIBED IN A DEED TO A.E. WYATT, RECORDED IN VOLUME 2304, PAGE 418, REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS;

THENCE NORTH 48 DEGREES 21 MINUTES 10 SECONDS WEST, WITH SAID RIGHT-OF-WAY, A DISTANCE OF 530.53 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER AT THE INTERSECTION OF THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 35E AND THE SOUTH LINE OF POCKRUS PAGE ROAD;

THENCE NORTH 43 DEGREES 11 MINUTES 27 SECONDS EAST, A DISTANCE OF 73.95 FEET TO A FENCE CORNER POST FOUND FOR CORNER;

THENCE SOUTH 85 DEGREES 47 MINUTES 26 SECONDS EAST, WITH THE SOUTH LINE OF POCKRUS PAGE ROAD, A DISTANCE OF 567.43 FEET TO A FENCE CORNER POST FOUND FOR CORNER AT THE NORTHERNMOST NORTHWEST CORNER OF A TRACT DESCRIBED IN A DEED TO ENDERBY GAS, INC. RECORDED IN VOLUME 759, PAGE 433, DEED RECORDS DENTON COUNTY, TEXAS;

THENCE SOUTH 41 DEGREES 36 MINUTES 11 SECONDS WEST, WITH THE NORTHWEST LINE OF SAID ENDERBY GAS TRACT, A DISTANCE OF 147.80 FEET TO A FENCE CORNER POST FOUND FOR CORNER AT THE NORTHERNMOST NORTHEAST CORNER OF SAID 0.62 ACRE TRACT BEING THE WESTERNMOST SOUTHWEST CORNER OF SAID ENDERBY GAS TRACT;

THENCE SOUTH 61 DEGREES 02 MINUTES 47 SECONDS EAST, WITH THE NORTHEAST LINE OF SAID 0.62 ACRE TRACT AND THE SOUTHWEST LINE OF SAID ENDERBY GAS TRACT, A DISTANCE OF 90.43 FEET TO A 1/2 INCH IRON ROD FOUND AT THE SOUTHEAST CORNER OF SAID 0.62 ACRE TRACT WHICH IS THE NORTHERNMOST NORTHEAST CORNER OF SAID A.E. WYATT TRACT;

THENCE SOUTH 43 DEGREES 41 MINUTES 02 SECONDS WEST, WITH THE SOUTHEAST LINE OF SAID 0.62 ACRE TRACT AND THE NORTHWEST LINE OF SAID A.E. WYATT TRACT, A DISTANCE OF 291.13 FEET TO THE POINT OF BEGINNING AND CONTAINING IN ALL 3.086 ACRES OF LAND.

NOW THEREFORE, KNOW ALL MEN/WOMEN BY THESE PRESENTS THAT I ALICE POCKRUS, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREIN ABOVE TRACT AS LOT 1, BLOCK A, HOUSE SMART ADDITION, AN ADDITION TO THE PUBLIC USE FOREVER ALL UTILITY EASEMENTS, GRAINAGE EASEMENTS AND STREETS AS SHOWN HEREON. ALL AND ANY PUBLIC UTILITIES SHALL HAVE THE FULL RIGHT TO REMOVE AND KEEP REMOVED ALL GROWTHS WHICH MAY ENDANGER OR INTERFERE WITH THE CONSTRUCTION, MAINTENANCE OR EFFICIENCY OF ITS RESPECTIVE SYSTEM ON THE UTILITY EASEMENT FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, INSPECTING, PATROLLING, MAINTAINING AND ADDING TO OR REMOVING ALL OR PART OF ALL ITS RESPECTIVE SYSTEMS WITHOUT THE NECESSITY AT ANY TIME OF PROCURING THE PERMISSION OF ANYONE.

*Alice Pockrus*  
 ALICE POCKRUS

**SURVEYOR'S CERTIFICATE**

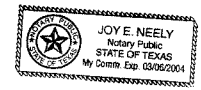
I, GARY W. HAMMETT, DO HEREBY CERTIFY THAT A SURVEY WAS MADE ON THE GROUND THIS 16th DAY OF MAY, 2001, OF THE PROPERTY DESCRIBED HEREON AND THERE ARE NO (VISIBLE) ENCROACHMENTS, PROTRUSIONS OR LAPPING OF IMPROVEMENTS, EXCEPT AS SHOWN HEREON.

*Gary W. Hammett*  
 GARY W. HAMMETT  
 REGISTERED PROFESSIONAL LAND SURVEYOR  
 STATE OF TEXAS, NO. 1849



BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS WITHIN ZONE DETERMINED TO BE OUTSIDE OF A SPECIAL FLOOD HAZARD AREA AS SHOWN BY FIRM MAP COMMUNITY-PANEL NUMBER 48121C0387E, DATED APRIL 2, 1997.

**FINAL PLAT**  
 LOTS 1, BLOCK A,  
 HOUSE SMART ADDITION  
 3.086 ACRES IN THE  
 GIDEON WALKER SURVEY, ABSTRACT 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS  
 ZONED C

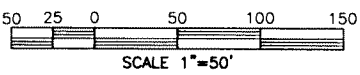


STATE OF TEXAS  
 COUNTY OF DENTON: BEFORE ME the undersigned authority, on this personally appeared Alice Pockrus, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purpose and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 16th day of August, 2001.

*Joyce Neely*  
 JOYCE NEELY  
 Notary Public  
 STATE OF TEXAS  
 My Comm. Exp. 03/06/2004

WITNESS MY HAND this 16 day of August, 2001.



		DWN.	H.O.	SCALE	OWNER/DEVELOPER:
				1"=50'	DON ANDERSON
		CKD.		DATE	2517 FT. WORTH DR.
					DENTON, TX 76205
					(940) 243-0280
DATE	REVISIONS	BY:	JBD	07/30/01	

SHEET	1
OF	1
JOB No.	C01022

**ISBELL ENGINEERING GROUP, INC.**  
 Consulting Engineers  
 11014 Maple, Suite 117  
 Telephone: (940) 458-7501  
 Fax: (940) 458-7417

Filed for Record in  
 DENTON COUNTY, TX  
 CYNTHIA MITCHELL, COUNTY CLERK  
 On Jun 21 2002  
 At 2:43pm  
 Receipt #: 35314  
 Recording: 32.00  
 Doc/Sheet: 1  
 Doc/Num: 2002-00077334  
 Doc/Type: PLA  
 Deputy: Cristina



## EASEMENT

THE STATE OF TEXAS,  
COUNTY OF DENTON

§  
§  
§

KNOW ALL MEN BY THESE PRESENTS:

066860  
THAT H.W. Pockrus and wife, Alice Pockrus, of Denton County, Texas, in consideration of the sum of One Dollar and No Cents (\$1.00) and other good and valuable consideration in hand paid by the City of Denton, Texas receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by them situated in Denton County, Texas in the Gideon Walker Survey, Abstract No. 1330.

BEING part of a tract conveyed to H.W. Pockrus and wife, Alice Pockrus by deed recorded in Volume 358, Page 505 of the Deed Records of Denton County, Texas and being more particularly described as follows:

SEE ATTACHED EXHIBIT "A" & EXHIBIT "B"

And it is further agreed that the City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining water lines, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to said water line facilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as  
aforesaid for the purposes aforesaid the premises above described.

Witness our hands, this the 6th day of July, 1998.

By: Deceased  
H.W. Pockrus

By: Alice Pockrus  
Alice Pockrus

## ACKNOWLEDGMENT

THE STATE OF TEXAS §  
COUNTY OF DENTON §

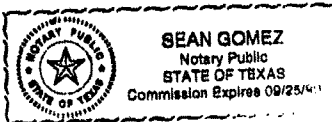
This instrument was acknowledged before me on \_\_\_\_\_, 1998  
by H.W. Pockrus.

\_\_\_\_\_  
Notary Public, in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

## ACKNOWLEDGMENT

THE STATE OF TEXAS §  
COUNTY OF DENTON §

This instrument was acknowledged before me on July 6<sup>th</sup>, 1998  
by Alice Pockrus.



Sean Gomez  
Notary Public, in and for the State of Texas  
My Commission Expires: 9-25-99

Accepted this 22<sup>th</sup> day of JULY, 1998 for the  
City of Denton, Texas (Resolution No. 91-073).

BY: Paul Williamson  
Paul Williamson  
Right-of-Way Agent

RETURN TO: City of Denton  
221 N. Elm Street  
Denton, Texas 76201

ATTN: Paul Williamson

4142 02211

**"EXHIBIT A"**  
**FIELD NOTES**  
**0.244 ACRE**

**BEING** all that certain lot, tract or parcel of land situated in the Gideon Walker Survey, Abstract Number 1330, in the City of Denton, Denton County, Texas, being a part of that certain tract of land conveyed by deed from Glen W. Woodford and wife, Estella Woodford to H.W. Pockrus and wife, Alice Pockrus recorded in Volume 358, Page 505, Deed Records, Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a iron rod found for corner in the northeast line of Interstate Highway Number 35-E a public roadway having a right-of-way of 300.0 feet, said point being the southwest corner of that certain tract of land conveyed by deed from Holbert-Wyatt Volkswagen, Inc. to A.L. Wyatt and Charles Holbert recorded in Volume 2304, Page 418, Real Property Records, Denton County, Texas;

**THENCE** N 49° 51' 45" W, 530.70 feet with said northeast line of said Interstate Highway to an iron rod found for corner in the south line of Pockrus Page Road, a public roadway;

**THENCE** N 41° 51' 53" E, 20.01 feet with said south line of said Pockrus Page Road to an iron rod set for corner;

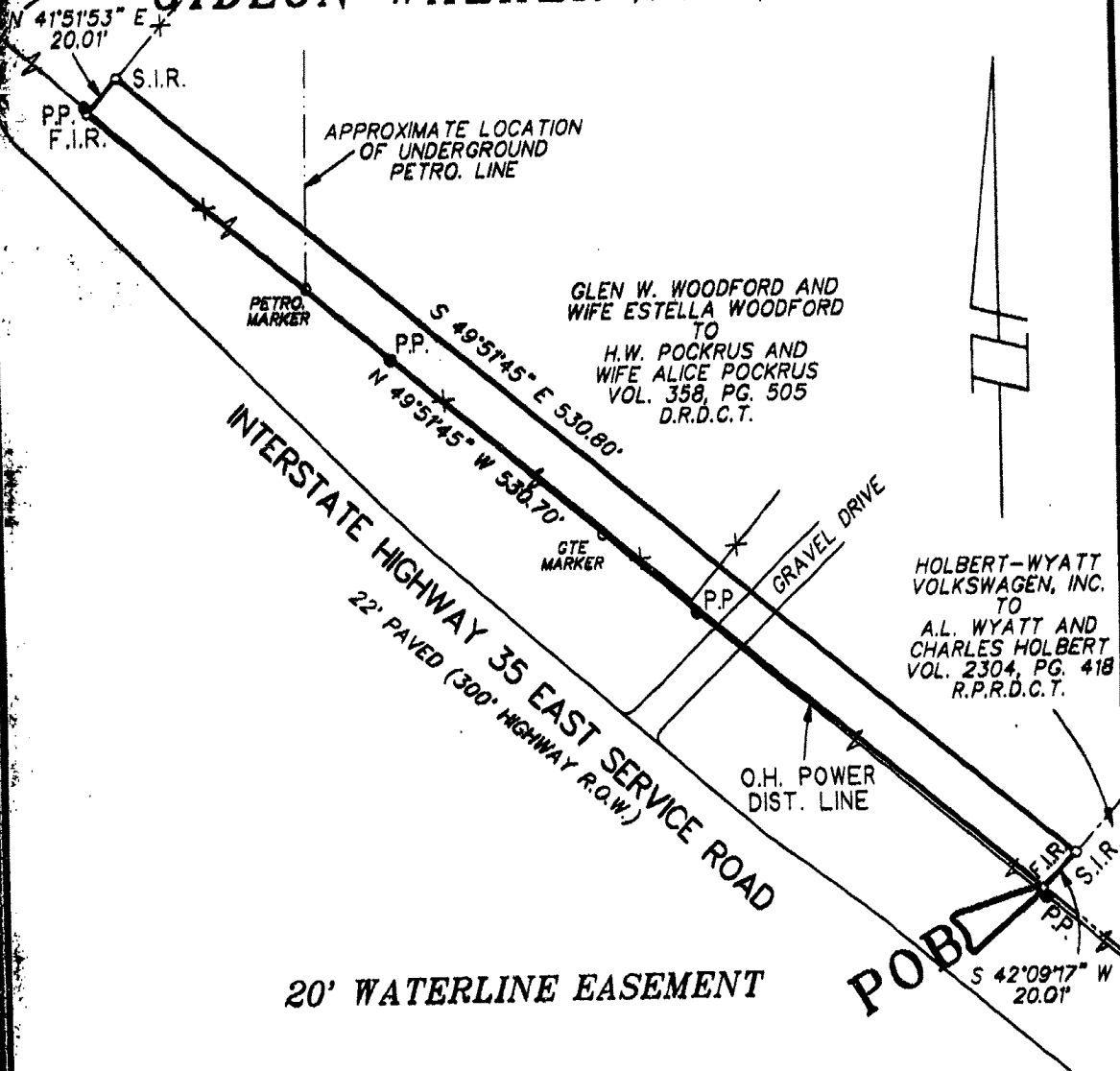
**THENCE** S 49° 51' 45" E, 530.80 feet to an iron rod set for corner in the northwest line of said Wyatt and Holbert tract;

**THENCE** S 42° 09' 17" W 20.01 feet with said northwest line of said Wyatt and Holbert tract to the **PLACE OF BEGINNING** and containing 0.244 acre of land.

POCKRUS PAGE ROAD

"EXHIBIT B"

GIDEON WALKER SURVEY A-1300



**LANDMARK**  
SURVEYORS, INC.

4238 I-35 NORTH  
DENTON, TEXAS 76207  
(940) 382-4016  
FAX (940) 387-9784

4142 02213

Filed for Record in:  
DENTON COUNTY, TX  
HONORABLE TIM HODGES/COUNTY  
CLERK

On Jul 29 1998  
At 3:25pm

Doc/Num : 98-R0066860  
Doc/Type : EAS  
Recording: 11.00  
Doc/Mgmt : 2.00  
Receipt #: 27291  
Deputy - BRANDIE



**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Gideon Walker Survey, Abstract No. 1330, City of Denton, Denton County, Texas, and being part of Lot 1A, Block A, House Smart Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume X, Page 1 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at an aluminum disk stamped "TXDOT" found for corner in the northeast line of said Lot 1A; from said point the southeast corner of said Lot 1A, and being on a point in the northwest right of way line of Interstate Highway No. 35-E (a variable width right-of-way), bears South  $41^{\circ}39'51''$  West, a distance of 26.46 feet;

**THENCE** departing the said southeast line of Lot 1A, North  $43^{\circ}53'08''$  West, a distance of 89.45 feet to a point for corner;

**THENCE** North  $46^{\circ}55'20''$  West, a distance of 345.64 feet to a point for corner;

**THENCE** North  $20^{\circ}01'57''$  East, a distance of 66.96 feet to a point for corner in the north line of said Lot 1A, and being a point in the south right-of-way line of Pockrus Page Road (a variable width right-of-way); from said point the northwest corner of said Lot 1A bears North  $87^{\circ}48'37''$  West, a distance of 92.43 feet;

**THENCE** South  $87^{\circ}48'37''$  East, along the said south right-of-way line of Pockrus Page Road, a distance of 20.77 feet to a point for corner;

**THENCE** departing said south right-of-way line of Pockrus Page Road, South  $20^{\circ}01'57''$  West, a distance of 23.37 feet to a point for corner;

**THENCE** South  $9^{\circ}17'21''$  East, a distance of 40.56 feet to a point for corner;

**THENCE** South  $46^{\circ}55'20''$  East, a distance of 324.98 feet to a point for corner;

**THENCE** South  $43^{\circ}53'08''$  East, a distance of 88.42 feet to a point for corner in the said southeast line of Lot 1A;

**THENCE** South  $41^{\circ}39'51''$  West, along said southeast line of Lot 1A, a distance of 20.06 feet to the **POINT OF BEGINNING** and containing 9,962 square feet or 0.2287 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



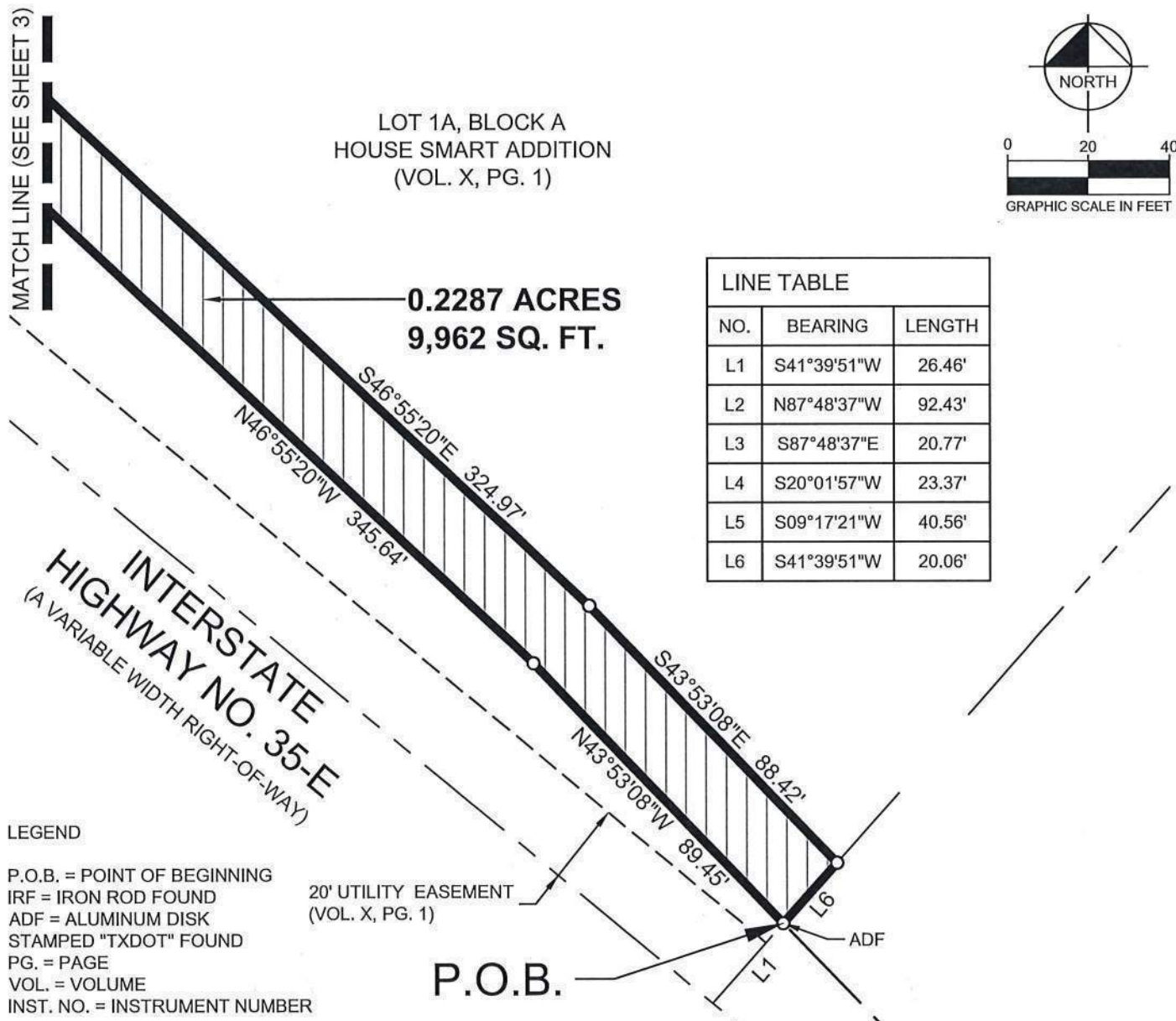
WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1A, BLOCK A  
 HOUSE SMART ADDITION  
 GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	9/3/2020	061024039	1 OF 3



# NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley*

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REGISTERED PROFESSIONAL  
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UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
PART OF LOT 1A, BLOCK A  
HOUSE SMART ADDITION  
GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

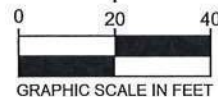
Tel. No. (817) 335-6511  
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	9/3/2020	061024039	2 OF 3



# POCKRUS PAGE ROAD

(A VARIABLE WIDTH RIGHT-OF-WAY)



LOT 1A, BLOCK A  
HOUSE SMART ADDITION  
(VOL. X, PG. 1)

8' DRAINAGE & PUBLIC  
UTILITY EASEMENT  
(VOL. X, PG. 1)

20' UTILITY  
EASEMENT  
(VOL. X, PG. 1)

INTERSTATE HIGHWAY NO. 35-E  
(A VARIABLE WIDTH RIGHT-OF-WAY)

MATCH LINE (SEE SHEET 2)

## LEGEND

P.O.B. = POINT OF BEGINNING  
IRF = IRON ROD FOUND  
ADF = ALUMINUM DISK  
STAMPED "TXDOT" FOUND  
PG. = PAGE  
VOL. = VOLUME  
INST. NO. = INSTRUMENT NUMBER

WATER AND WASTEWATER EASEMENT  
PART OF LOT 1A, BLOCK A  
HOUSE SMART ADDITION  
GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	9/3/2020	061024039	3 OF 3

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 75**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1733+72 LT to Sta 1739+38 LT

Existing Easement

Volume R, Page 308

PART OF LOT 1, BLOCK A  
JAMES WOOD AUTOPARK ADDITION, PHASE III  
MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
GIDEON WALKER SURVEY  
ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

18424

That M.F.A., INC.

of the County of Tarrant, State of Texas, hereinafter called "Grantor", for a good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant to the City of Corinth, hereinafter called "City", an easement and right-of-way for the purpose of constructing a water/sewer line, the term of such easement to end when the City of Corinth accepts the entire water/sewer system when construction of same is completed; and Grantor does also grant to said City a perpetual easement and right-of-way for the purpose of operating and maintaining such water/sewer line; easements and rights-of-way over and across Grantor's land in G. Walker Survey, Abstract No. 1330, Denton County, Texas, more particularly described in deed from Sanders Campbell to M.F.A., Inc.,

dated February 4, 19 69, and recorded in Volume 579, Page 701, of the Deed Records of said County and containing 326.2 acres, in, on and

over the tracts of land set forth and described in Exhibit "A", which is attached hereto and made a part hereof for all purposes, and SUBJECT TO THE RESERVATION of right in favor of Grantor as set forth therein; and, additionally, City shall have the right to use a strip 15 feet in width adjacent to the West boundary line of the tract set forth and described in Exhibit "A" for and during, and only during, the period of construction of the said water/sewer line.

Together with the right of ingress and egress over Grantor's adjacent lands to or from said right-of-way for the purpose of constructing, improving, reconstructing, repairing, inspecting, maintaining and removing said water/sewer line and appurtenances; the right to relocate said line in the same relative position to any adjacent road, if same is widened in the future; the right to prevent possible interference with the operation of said line and to remove possible hazard thereto; the right to prevent the construction, for a distance of one-half the width of the easement on each side of the actual center of where said water/sewer line is laid, of any building, structures or other obstructions which may endanger or interfere with the efficiency, safety or convenient operation of said water/sewer line and its appurtenances. If such buildings, structures or other obstructions are constructed by Grantor, as above mentioned, without written consent of the City, the City shall have the right to remove same from such space, and this agreement, together with other provisions of this grant shall constitute a covenant running with the land for the benefit of the City, its successors and assigns.

The right is reserved to Grantor to use the land over which a right-of-way or easement is herein granted, provided such use shall not include any use which might interfere with the exercise by the City of the rights hereby granted. The consideration recited herein shall constitute payment in full for all damages sustained by Grantor by reason of the installation of the structures referred to herein and the Grantee will maintain such easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantor's premises.

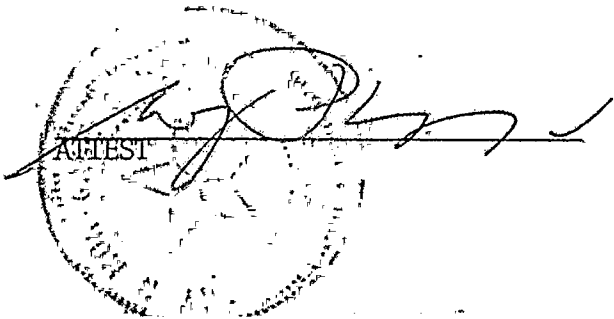


VOL 657 PAGE 736

TO HAVE AND TO HOLD the above-described easement and rights unto the said City  
of Corinth, its successors and assigns, forever.

And Grantor does hereby bind himself, his heirs and legal representatives, to Warrant and Forever Defend all and singular the above-described easement and rights unto the Said City, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof..

EXECUTED THIS 3rd day of May, 19 72.



M.F.A., INC.

By: 

### CORPORATION ACKNOWLEDGMENT

THE STATE OF TEXAS,  
COUNTY OF TARRANT

BEFORE ME, the undersigned authority,

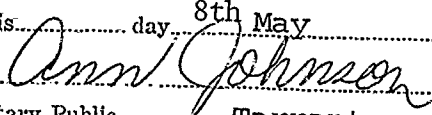
in and for said County, Texas, on this day personally appeared T. W. Reilly, President

whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said M. F. A., Inc.

a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 8th day of May, A. D. 19 72

(L. S.)

 ANN JOHNSON  
Notary Public, Tarrant County, Texas

My Commission Expires June 1, 19 73.

TRACT NO. 1: All that certain lot, tract or parcel of land, lying and being situated in the County of Denton, State of Texas, being out of the G. Walker Survey, Abstract No. 1330, and being more particularly described as follows:

BEGINNING at a right-of-way marker at the East side of State School Road;

THENCE North  $67^{\circ} 56'$  East with a fence 110.3 feet to a right-of-way monument on the Southwest right-of-way of Interstate Highway 35-E;

THENCE South  $58^{\circ} 23' 30''$  East with said right-of-way 283.8 feet to a monument;

THENCE South  $50^{\circ} 21'$  East with said right-of-way 331.0 feet to a fence corner;

THENCE South  $1^{\circ} 09'$  West with a fence 12.67 feet to a marker;

THENCE North  $50^{\circ} 21'$  West a distance of 338.8 feet to an angle point;

THENCE North  $58^{\circ} 23' 30''$  West a distance of 278.6 feet to an angle point;

THENCE South  $67^{\circ} 56'$  West a distance of 109.39 feet to an angle point;

THENCE North  $2^{\circ} 0'$  East 10.83 feet to the place of beginning.

TRACT NO. 2: All that certain lot, tract or parcel of land, lying and being situated in the County of Denton, State of Texas, being out of the G. Walker Survey, Abstract No. 1330, and being more particularly described as follows:

VOL 657 PAGE 737

BEGINNING at fence corner on the Southwest right-of-way of Interstate Highway 35-E;

THENCE South  $50^{\circ} 21'$  East with said right-of-way 3055.2 feet to fence corner;

THENCE South  $32^{\circ} 33'$  West with a fence 10.16 feet to an angle point;

THENCE North  $50^{\circ} 21'$  West a distance of 3048.8 feet to an angle point;

THENCE North  $1^{\circ} 51'$  East a distance of 12.67 feet to the point of beginning.

Grantor reserves the right from time to time to construct one or more streets for vehicular and/or pedestrian right-of-way over and across the easement area for ingress and egress for the remaining portion of Grantor's land to Interstate Highway 35, and City agrees to bury the water/sewer pipe line contemplated hereby at a sufficient depth so that such streets may be constructed by Grantor at no additional cost by reason of said pipeline. In addition, City grants the right to Grantor to tap into the water/sewer pipeline as is necessary to service the improvements to be constructed on that portion of Grantor's property which lies within the City limits of the City of Corinth provided, however, that Grantor shall be obligated to pay the standard tap-in fee charged by the City in such cases.

## EXHIBIT "A"

FILED FOR RECORD: 18<sup>th</sup> DAY OF October A.D. 1972 at 12:45 o'clock - P M.  
 RECORDED: 25<sup>th</sup> DAY OF October A.D. 1972 at 11:20 o'clock A M.  
 BY E. A. Enrich DEPUTY THETA PARKER, COUNTY CLERK  
 DENTON COUNTY, TEXAS

VOL 464 PAGE 176

THE STATE OF TEXAS :

913

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON :

THAT WE, T. M. Cunningham, and wife, Hilda H. Cunningham of the County of Denton, State of Texas, for and in consideration of the sum of Ten Dollars (\$10.00) cash to us in hand paid by the City of Denton, Texas, a municipal corporation, of the County of Denton, State of Texas, the receipt of which is hereby acknowledged, and other good and valuable consideration including the benefits that will accrue to our property, do hereby GIVE, GRANT and EXTEND to the said City of Denton, Texas, its successors and assigns, the right to construct, reconstruct and perpetually maintain a sanitary sewer line and appurtenances in, upon and across the following described tract of land, said tract being a strip of land twenty-six (26) feet in width and six hundred, thirty-seven (637) feet in length, containing 0.37 acres of land, more or less, and being thirteen (13) feet on either side of the center line of said strip of land which said center line is more particularly described as follows:

BEGINNING at a point in a tract of land belonging to T. M. Cunningham and wife, Hilda H. Cunningham, in the M.E.P. & P.R.R. Co. 160 acre Survey No. 47, Denton County, Texas, deeded by W. H. Overall as shown in Volume 361, Page 407 of the Deed Records of Denton County, Texas, said point being in the West property line of said tract and approximately 93.7 feet North of the Southwest property corner of said tract;

THENCE Northeastward a distance of 637 feet, more or less, to a point in the East property line of said tract, said point being approximately 399 feet North of the Southeast property corner of said tract.

TO HAVE AND TO HOLD, all and singular, the privileges aforesaid to it, the said City of Denton, Texas, its successors and assigns forever, together with the right and privilege, at any and all times to enter said premises or any part thereof, for the purpose of constructing, reconstructing and perpetually maintaining said sanitary sewer line together with necessary appurtenances, and for making connections therewith; all upon the condition that the City of Denton, Texas, will never construct any such sanitary sewer line or appurtenances above plow depth, and that the City of Denton, Texas, will at all times, after doing any work in connection with the construction, reconstruction or repair of said sanitary sewer line restore said premises as nearly as possible to the condition in which same were found before such work was undertaken, including repair of all fences that might be disturbed or damaged in performing said work, and further upon the condition that in the use of the aforesaid rights and privileges herein granted, the City of Denton, Texas,

will not create a nuisance or do any act that will be detrimental to said premises and that said tract will not be used by said City of Denton, Texas, for any other purpose, under this grant, except as herein provided. Provided, however, that for the purpose of initially constructing the sanitary sewer line and appurtenances above described, and during such initial construction only, the City of Denton, Texas, and its agents, shall have the right and privilege to enter upon and use for such initial construction purposes a strip of land sixty (60) feet in width and six hundred, thirty-seven (637) feet in length, more or less, and being thirty (30) feet on either side of the center line of said strip of land, as said center line is more particularly described above, upon the condition that said City of Denton, Texas, and its agents, will restore said premises as nearly as possible to the condition in which same were found before such initial construction work was undertaken, including repair of all fences that might be disturbed or damaged in performing said initial construction work.

WITNESS OUR HANDS this 17<sup>th</sup> day of December, A.D. 1960.

T. M. Cunningham  
T. M. Cunningham

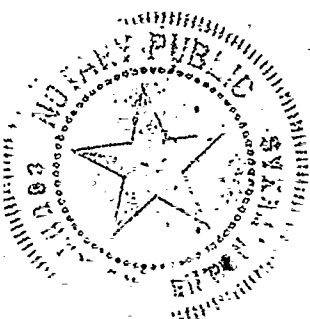
Hilda H. Cunningham  
Hilda H. Cunningham

THE STATE OF TEXAS :

COUNTY OF DENTON :

BEFORE ME, the undersigned authority, a Notary Public in and for Denton County, Texas, on this day personally appeared T. M. Cunningham and Hilda H. Cunningham, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Hilda H. Cunningham, wife of the said T. M. Cunningham, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Hilda H. Cunningham acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed and that she did not wish to retract it.

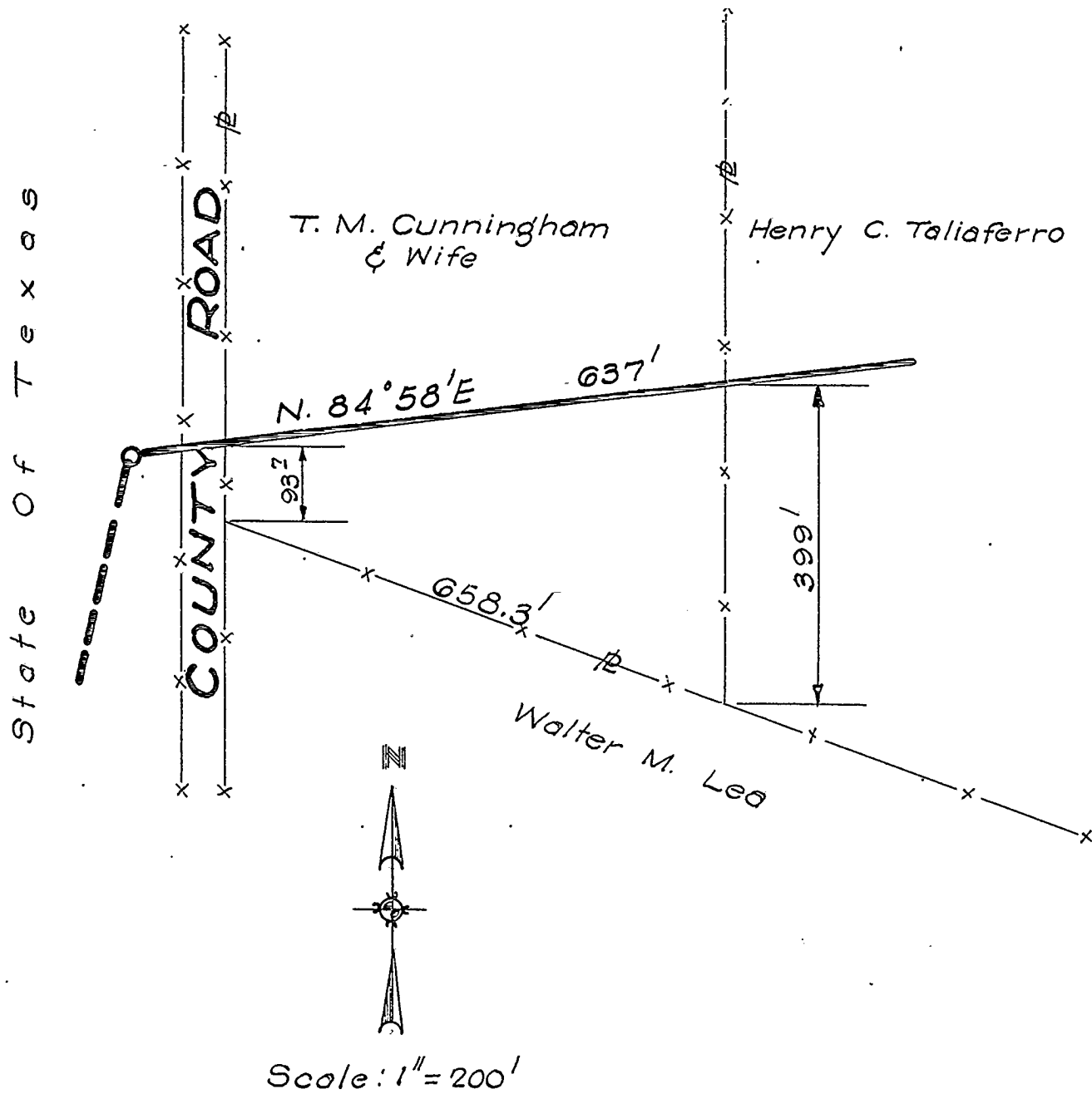
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 17<sup>th</sup> day of December, A.D. 1960.



George W. Dutton

Notary Public in and for  
Denton County, Texas

DENTON, TEXAS  
SEWER EASEMENT



FILED FOR RECORD: 2 day of February A.D. 1961 at 11:55 o'clock A. M.  
RECORDED: 8 day of February A.D. 1961 at 4:20 o'clock P. M.  
By: \_\_\_\_\_ Deputy A. J. Barnett, Clerk, County Court, Denton County, Texas



THE STATE OF TEXAS :

917

COUNTY OF DENTON :

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Walter M. Lea, and wife, Jane C. Lea of the County of Denton, State of Texas, for and in consideration of the sum of Ten Dollars (\$10.00) cash to us in hand paid by the City of Denton, Texas, a municipal corporation, of the County of Denton, State of Texas, the receipt of which is hereby acknowledged, and other good and valuable consideration including the benefits that will accrue to our property, do hereby GIVE, GRANT and EXTEND to the said City of Denton, Texas, its successors and assigns, the right to construct, reconstruct and perpetually maintain a sanitary sewer line and appurtenances in, upon and across a tract of land lying and being situated in the County of Denton, State of Texas, and more particularly described as follows:

BEGINNING at a point in the West line of an 82.24 acre tract of land in the Gideon Walker Survey, Abstract No. 1330 as deeded to Walter M. Lea and wife, Jane C. Lea, by Thomas E. Noel and recorded in Vol. 416, P. 521 of the Deed Records of Denton County, Texas, said West line also being the West line of said Gideon Walker Survey and the East line of a tract of land belonging to Henry C. Taliaferro in the M.E.P. & P.R.R. Co. Survey, Abstract No. 950. Said point being 665.5 feet, more or less, North of the Southeast corner of said Taliaferro tract;

THENCE North  $84^{\circ} 58'$  East, a distance of 893.62 feet, more or less, to a point in the Northeast property line of said Walter M. Lea tract and in the Southwest right-of-way line of Interstate Highway No. 35E, said point being 1102.36', South  $49^{\circ} 57'$  East from said Walter M. Lea Northwest corner;

THENCE Northwesterly with the Southwest right-of-way line of said Highway 35E a distance of 36.72 feet to a point for a corner;

THENCE South  $84^{\circ} 58'$  West, a distance of 842.38 feet to a point for a corner in Walter M. Lea West line;

THENCE South with the West line of said Walter M. Lea tract, a distance of 26 feet more or less to the place of beginning, and containing 0.52 acres of land, more or less.

TO HAVE AND TO HOLD, all and singular, the privileges aforesaid to it, the said City of Denton, Texas, its successors and assigns forever, together with the right and privilege, at any and all times to enter said premises or any part thereof, for the purpose of constructing, reconstructing and perpetually maintaining said sanitary sewer line together with necessary appurtenances, and for making connections therewith; all upon the condition that the City of Denton, Texas, will at all times,

after doing any work in connection with the construction, reconstruction or repair of said sanitary sewer line restore said premises to the condition in which same were found before such work was undertaken, including repair of all fences that might be disturbed or damaged in performing said work, or in lieu of such complete restoration that the City of Denton, Texas, will pay such damages as will fairly compensate grantor for such incomplete restoration; and further upon the condition that in the use of the aforesaid rights and privileges herein granted, the City of Denton, Texas, will not create a nuisance or do any act that will be detrimental to said premises and that said tract will not be used by said City of Denton, Texas, for any other purpose, under this grant, except as herein provided; and further upon the condition that any markers placed for the purpose of locating said sanitary sewer line be placed in the fence rows and not upon the interior portion of grantor's land.

WITNESS OUR HANDS this 9<sup>th</sup> day of January, A.D. 1961.

Walter M. Lea  
Walter M. Lea

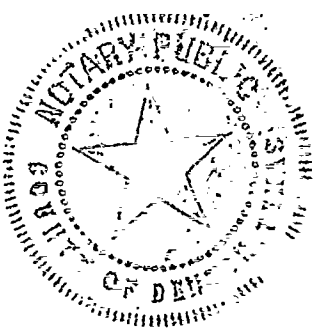
Jane C. Lea  
Jane C. Lea

THE STATE OF TEXAS :

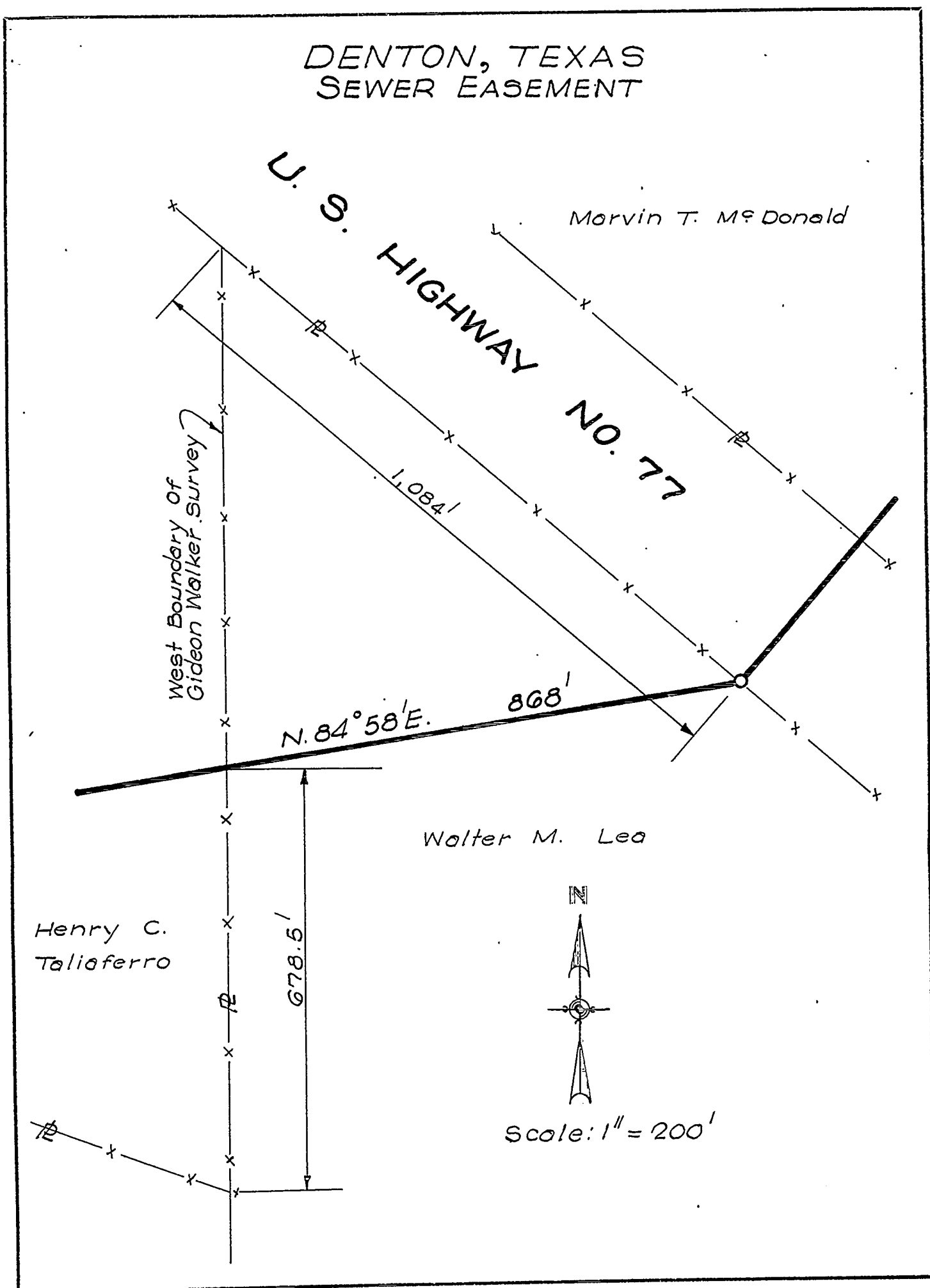
COUNTY OF DENTON :

BEFORE ME, the undersigned authority, a Notary Public in and for Denton County, Texas, on this day personally appeared Walter M. Lea and Jane C. Lea, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Jane C. Lea, wife of the said Walter M. Lea, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Jane C. Lea acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 9<sup>th</sup> day of January, A.D. 1961.



George W. R. H.  
Notary Public in and for  
Denton County, Texas



FILED FOR RECORD: 2 day of February A.D. 1961 at 11:55 o'clock A.M.  
RECORDED: 8 day of February A.D. 1961 at 4:40 o'clock P.M.  
By: \_\_\_\_\_ Deputy A.J. Barnett, Clerk, County Court, Denton County, Texas

THE STATE OF TEXAS :  
COUNTY OF DENTON : KNOW ALL MEN BY THESE PRESENTS;

THAT WE, Henry C. Taliaferro, and wife, A. Kathryn Taliaferro of the County of Denton, State of Texas, for and in consideration of the sum of Ten Dollars (\$10.00) cash, to us in hand paid by the City of Denton, Texas, a municipal corporation, of the County of Denton, State of Texas, the receipt of which is hereby acknowledged, and other good and valuable consideration including the benefits that will accrue to our property, do hereby GIVE, GRANT and EXTEND to the said City of Denton, Texas, its successors and assigns, the right to construct, reconstruct and perpetually maintain a sanitary sewer line and appurtenances in, upon and across the following described tract of land, said tract being a strip of land twenty-six (26) feet in width and six hundred, four (604) feet in length, containing 0.35 acres of land, more or less, and being thirteen (13) feet on either side of the center line of said strip of land which said center line is more particularly described as follows:

BEGINNING at a point in a tract of land belonging to Henry C. Taliaferro and wife, A. Kathryn Taliaferro in the M.E.P. & P.R.R. CO. Survey No. 47, Denton County, Texas, deeded by W. H. Overall as shown in Volume 340, Page 392, of the Deed Records of Denton County, Texas, said point being in the West property line of said tract and 399 feet, more or less, North from the Southwest property corner of said tract;

THENCE Northeastward a distance of approximately 604.3 feet to a point in the East property line of said tract, said point being approximately 678.5 feet North of the Southeast property corner of said tract.

TO HAVE AND TO HOLD, all and singular, the privileges aforesaid to it, the said City of Denton, Texas, its successors and assigns forever, together with the right and privilege, at any and all times to enter said premises or any part thereof, for the purpose of constructing, reconstructing and perpetually maintaining said sanitary sewer line together with necessary appurtenances, and for making connections therewith; all upon the condition that the City of Denton, Texas, will never construct any such sanitary sewer line or appurtenances above plow depth, and that the City of Denton, Texas, will at all times, after doing any work in connection with the construction, reconstruction or repair of said sanitary sewer line restore said premises as nearly as possible to the condition in which same were found before such work was undertaken, including repair of all fences that might be disturbed or damaged in performing said work, and further upon the condition that in the use of the aforesaid rights and privileges herein granted, the City of Denton, Texas, will not create a nuisance or do any act that will be detrimental

to said premises and that said tract will not be used by said City of Denton, Texas, for any other purpose, under this grant, except as herein provided. Provided, however, that for the purpose of initially constructing the sanitary sewer line and appurtenances above described, and during such initial construction only, the City of Denton, Texas, and its agents, shall have the right and privilege to enter upon and use for such initial construction purposes a strip of land sixty (60) feet in width and six hundred, four (604) feet in length, more or less, and being thirty (30) feet on either side of the center line of said strip of land, as said center line is more particularly described above, upon the condition that the said City of Denton, Texas, and its agents, will restore said premises as nearly as possible to the condition in which same were found before such initial construction work was undertaken, including repair of all fences that might be disturbed or damaged in performing said initial construction work.

WITNESS OUR HANDS this 20th day of December, A.D. 1960.

H. C. Taliaferro  
Henry C. Taliaferro

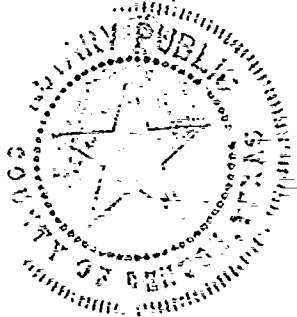
A. Kathryn Taliaferro  
A. Kathryn Taliaferro

THE STATE OF TEXAS :

COUNTY OF DENTON :

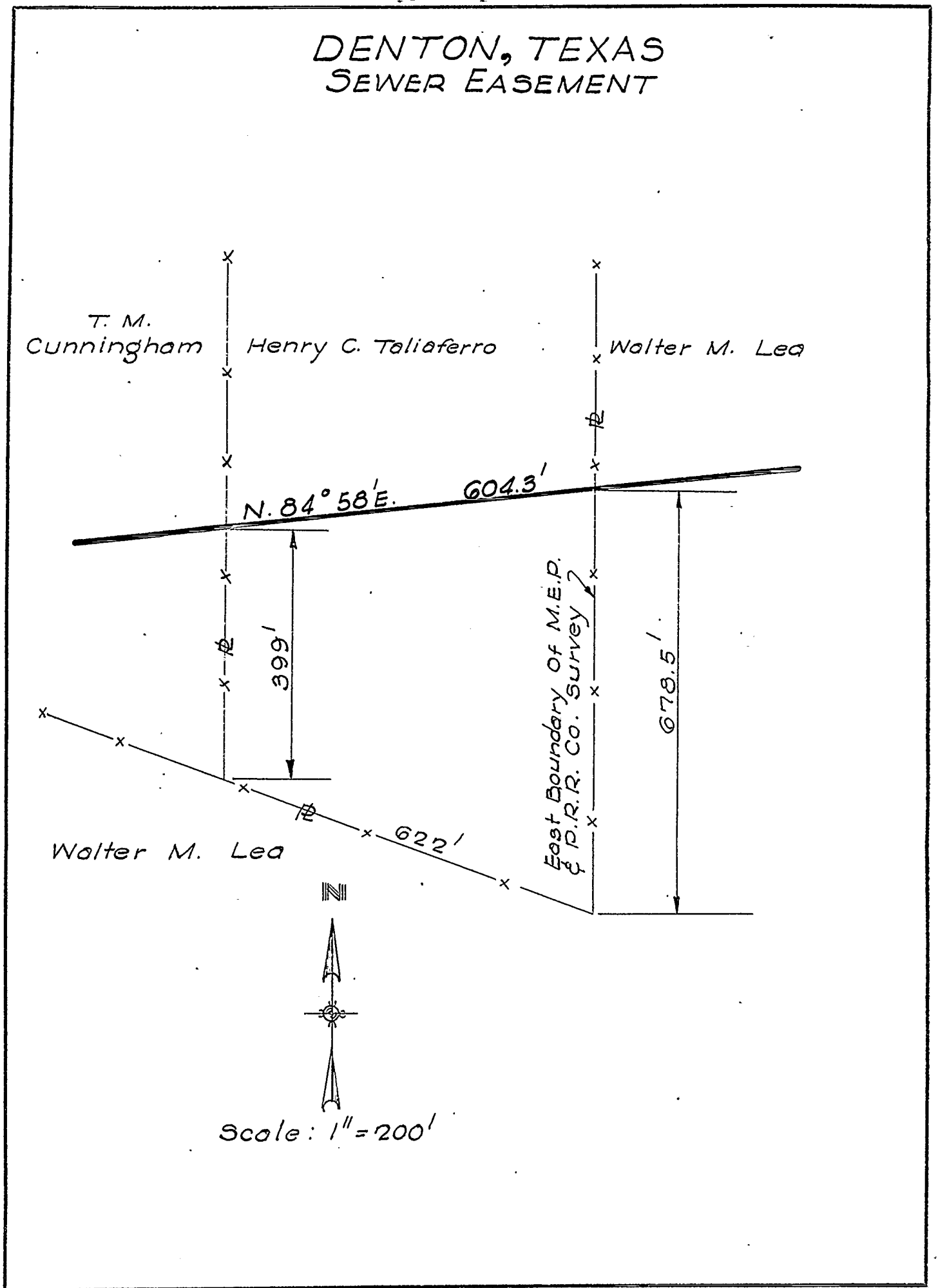
BEFORE ME, the undersigned authority, a Notary Public in and for Denton County, Texas, on this day personally appeared Henry C. Taliaferro and A. Kathryn Taliaferro, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said A. Kathryn Taliaferro, wife of the said Henry C. Taliaferro, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said A. Kathryn Taliaferro acknowledged such instrument to be her act and deed and she declared that she had willingly signed the same for the purposes and consideration therein expressed and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 20th day of December, A.D. 1960.



George W. Rittner  
Notary Public in and for  
Denton County, Texas





FILED FOR RECORD: 2 day of February A.D. 1961 at 11:55 o'clock A M.  
 RECORDED: 3 day of February A.D. 1961 at 4:50 o'clock P M.  
 By: \_\_\_\_\_ Deputy A.J. Barnett, Clerk, County Court, Denton County, Texas

Front

A 8914

OC-216-EASEMENT.

Martin Stationery Co., Dallas

**THE STATE OF TEXAS,** } **KNOW ALL MEN BY THESE PRESENTS:**  
**COUNTY OF DENTON**

**THAT RICHARD H. TALIFERRO**

**17773**

of Denton County, Texas, in consideration of the sum of Ten and No/100 (\$10.00) Dollars-----and other good and valuable consideration in hand paid by the City of Denton, Texas receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto to the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property,

owned by them. Situated in Denton County, Texas, in the  
M.E.P. & P.R.R. Survey, Abstract No. 950

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Co. survey, Abst. No. 950, and being part of a tract of land as conveyed from Henry C. Taliferro to Richard H. Taliferro by deed dated February 9, 1967 and recorded in Volume 547, Page 22 of the Deed Records of Denton County, Texas and more particularly described as follows:

BEGINNING at the northwest corner of said tract said point of beginning lying in the south right of way line of IH 35E;

THENCE South  $51^{\circ} 16' 38''$  east along north boundary of said tract a distance of 783.01 feet to a point for a corner;

THENCE South  $1^{\circ} 07' 20''$  West along the east boundary line of said tract same being the east boundary line M.E.P. & P.R.R. survey a distance of 20.19 feet to a point for a corner;

THENCE North  $51^{\circ} 16' 38''$  west and parallel with north boundary line of said tract a distance 782.64 feet to a point for a corner west boundary line of said tract;

THENCE North  $0^{\circ} 18' 50''$  east a distance of 20.42 feet to the place of beginning containing 12,528.16 square feet of land, more or less.

And it is further agreed that the said City of Denton, Texas, in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, installing, repairing and perpetually maintaining public utilities in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public utilities any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness Our hand, this the 22nd day of

August, A. D. 1973.

*Richard H. Taliferro*  
*Norma Berry Taliferro*

L VOL 684 PAGE 228

## SINGLE ACKNOWLEDGMENT

THE STATE OF TEXAS,

COUNTY OF DENTON

BEFORE ME, the undersigned authority,

in and for said County, Texas, on this day personally appeared

Richard H. Taliaferro and wife Norma Berry Taliaferro

known to me to be the person S whose name S subscribed to the foregoing instrument, and acknowledged to me that he Y executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 27th day of August, A.D. 1973

(L.S.)

Notary Public, DENTON County, Texas

My Commission Expires June 1, 1975

FILED FOR RECORD: 30th DAY OF August A.D. 1973 at 11:41 o'clock a M.

RECORDED: 5th DAY OF September A.D. 1973 at 2:37 o'clock P M.

BY E. Hensrich DEPUTY

MARY JO HILL, COUNTY CLERK  
DENTON COUNTY, TEXAS

THE STATE OF TEXAS )

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON )

DEED RECORDS

13210

THAT, REPUBLICBANK DALLAS, NATIONAL ASSOCIATION, for and in consideration of the sum of one dollar (\$1.00) cash to us in hand paid by the City of Denton, Texas, a municipal corporation of the County of Denton, State of Texas, the receipt of which is hereby acknowledged, and other good and valuable consideration including the benefits that will accrue to our property, do hereby GIVE, GRANT, and EXTEND to the said City of Denton, Texas, its successors and assigns, the right to construct or reconstruct utilities and perpetually maintain an All-Purpose Utility Easement in, upon and across land described as follows:

Said Tract being in the M.E.P. and P.R.R. Survey, Abstract 950 GIDEON WALKER Survey, Abstract 1330, and LEVI YOUNG Survey, Abstract 1451, Denton County, Texas, and recorded in Volume 1136, Page 441, in the Deed Records of Denton County, Texas, and more particularly described below in Tract 1 and Tract 2.

Said easement crossing this property, comprising two parts, as herein designated and described, including (1) a permanent easement 40 feet in width, for construction, or reconstruction of utilities and appurtenances, and for perpetually maintaining an All Purpose Utility Easement, and (2) an additional area adjacent to the permanent easement 20 feet in width, to be used for initial construction.

PART 1 PERMANENT EASEMENT WITH CENTERLINE DESCRIBED AS FOLLOWS:

TRACT 1

Beginning at a point in the Northeasterly boundary line of the said RepublicBank Tract, and the Southwest Right-of-Way line of Interstate Highway 35-E said point lying North 47° 08' 05" West a distance of 1965.26 feet from the most easterly corner of said tract, said point also lying South 47° 08' 05" East a distance of 5.0 feet from an existing sanitary sewer line and North 47° 08' 05" West a distance of 5.0 feet from a proposed 21" sanitary sewer line;

THENCE South 42° 41' 55" West 5 feet from and parallel to the existing and proposed sanitary sewer lines, a distance of 14.29 feet to a point;

THENCE South 86° 38' 20" West 10 feet Northwest of and parallel to the proposed sanitary sewer line, a distance of 609.49 feet the Easterly Northwest boundary line of said RepublicBank Tract, same being the Southeast boundary line of a tract conveyed to McNatt Motor Company by deed recorded in Volume 939, Page 972 of the deed records of Denton County Texas.

VOL 1143  
PAGE 125

TRACT II

Vol 1143 Page 126

Commencing at a point in the Northeast boundary line of said RepublicBank Tract and the Southwest right-of-way line of Interstate Highway 35-E, said point lying North 47° 08' 05" West a distance of 1965.26 feet from the Easterly corner of said tract;

THENCE South 42° 41' 55" West a distance of 14.29 feet to a point;

THENCE South 86° 38' 20" West a distance of 822.97 feet to the point of beginning, said point lying in the Southwest boundary line of said McNatt Tract and the Southerly Northeast boundary line of said RepublicBank Tract;

THENCE South 86° 38' 20" West 10 feet Northwest of and parallel to the proposed sanitary sewer line a distance of 1288.89 feet to a point in the West boundary line of said RepublicBank Tract and the East right-of-way line of said School Road, said point lying South 50° 13' 47" West 1762.81 feet from the Northwest corner of said tract;

PART 2 CONSTRUCTION EASEMENT

In addition to the 40 foot permanent easement as described above, an initial construction easement 20 foot in width is to be furnished. This easement shall be adjacent and parallel to the permanent easement and shall be 20 feet in width on the south side of said permanent easement. The construction easement is to be used for initial construction only and will expire December 31, 1983.

The City of Denton, Texas, shall have the right and privilege to remove and dispose of, off the site, trees, brush, debris, excess excavated material, etc. in the easements, that would interfere with access to the construction site and that would interfere with construction of the said facilities.

TO HAVE AND TO HOLD, all singular, the privileges aforesaid to it, the said City of Denton, Texas, its successors and assigns forever, together with the right and privilege, at any and all times to enter said premises or any part thereof, for the purpose of constructing, reconstructing and perpetually maintaining said facilities together with necessary appurtenances inside said perpetual easements and for making connections therewith; all upon the condition that the City of Denton, Texas, will at all times, after doing any work in connection with the construction, reconstruction or repair of said facilities restore said premises as nearly as feasible to the condition in which same were found before such work was undertaken, including repair of all fences that might be disturbed or damaged in performing said work, and further upon the condition that in the use of the aforesaid rights and privileges herein granted, the City of Denton, Texas, will not create a nuisance or do any act that will be detrimental to said premises and that said tract will not be used by said City of Denton, Texas, for any other purpose, under this grant, except as herein provided.



WITNESS OUR HANDS this 14th day of May

REPUBLICBANK DALLAS, NATIONAL ASSOCIATION

BY: Curtis Hawley  
Curtis Hawley, Vice President

ATTEST:

Charles A. Fernandez  
Charles A. Fernandez, Vice President



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THE STATE OF TEXAS

COUNTY OF

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Curtis Hawley, Vice President known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said Republic Bank Dallas a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This the 13th day of May, A.D. 1982.

*Tammie A. Quillin*  
NOTARY PUBLIC IN AND FOR  
COUNTY, TEXAS



My Commission expires:

TAMMIE A. QUILLIN, Notary Public  
in and for the State of Texas  
My Commission Expires 06-08-85

VOL 1143 PAGE 127



SCALE: 1"=200'

Vol 1143 Page 128

POINT OF BEGINNING TRACT I

S 42° 41' 55" W  
14.29'

1965.26'

INTERSTATE HWY 35-E

N 41° 08' 05" W

S 86° 38' 20" W - 609.49'

TRACT I

185.88'

WEST LINE  
WALKER SUR. A-13307

EAST LINE  
A & R.R. 2 SUR.  
A-950

SOUTHWESTERLY ROW I-35 E 7

M McNATT MOTOR CO.  
13.2 ACRES

POINT OF  
BEGINNING  
TRACT II

COUNTY CLERK'S MEMO: Legibility of  
writing, copying or printing  
UNSATISFACTORY  
in this Document when received

40' PERMANENT  
ALL PURPOSE  
UTILITY EASEMENT

20' TEMPORARY  
CONSTRUCTION EASMT.

UTILITY EASEMENTS  
Republic Bank Dallas, Nat'l. Assoc.  
325.075 AC. TRACT

20' 20'

20'

S 86° 38' 20" W - 1208.89'

TRACT II

S 05° 13' 47" W - 1762.81'  
EAST LINE STATE SCHOOL ROAD

STATE SCHOOL ROAD

CA

*City of Denton  
atty. gen.  
city*

13210

FILED

1982 MAY 17 PM 4:28

COUNTY CLERK, DENTON CO., TEX.  
BY *E.H.* DEPUTY

FILED

Utility Easement

Republic Bank Dallas, N.A.

to

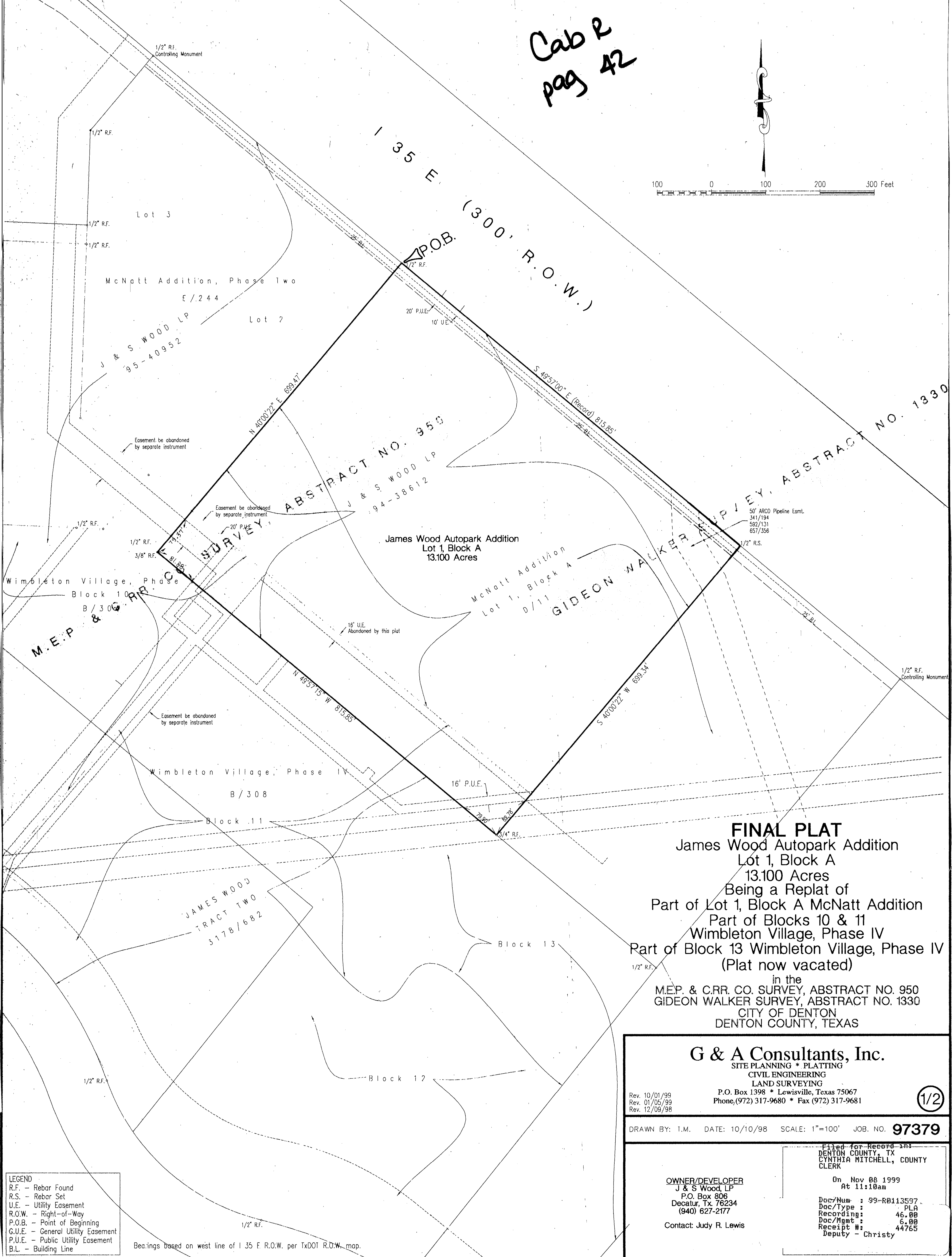
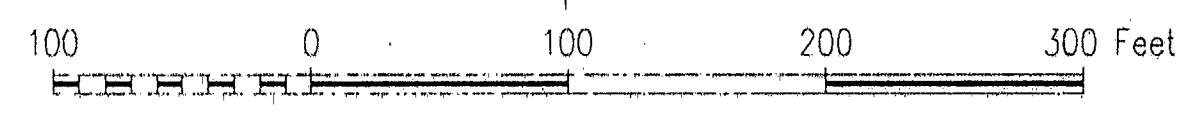
City of Denton

VOL 1143 PAGE 129

*atty. gen.  
City of Denton  
Engineering Dept.  
216 South Main St.*

FILED FOR RECORD 12th DAY OF May A.D. 1982, at 11:28 P.  
RECORDED 18th DAY OF May A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Randy Smith DEPUTY.

Cab R  
pag 42



**FINAL PLAT**  
James Wood Autopark Addition  
Lot 1, Block A  
13.100 Acres  
Being a Replat of  
Part of Lot 1, Block A McNatt Addition  
Part of Blocks 10 & 11  
Wimbleton Village, Phase IV  
Part of Block 13 Wimbleton Village, Phase IV  
(Plat now vacated)  
in the  
M.E.P. & C.R.R. CO. SURVEY, ABSTRACT NO. 950  
GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
CITY OF DENTON  
DENTON COUNTY, TEXAS

**G & A Consultants, Inc.**  
SITE PLANNING \* PLATTING  
CIVIL ENGINEERING  
LAND SURVEYING

Rev. 10/01/99  
Rev. 01/05/99  
Rev. 12/09/98  
P.O. Box 1398 \* Lewisville, Texas 75067  
Phone (972) 317-9680 \* Fax (972) 317-9681

1/2

DRAWN BY: I.M. DATE: 10/10/98 SCALE: 1"=100' JOB NO. **97379**

**OWNER/DEVELOPER**  
J & S Wood LP  
P.O. Box 806  
Decatur, Tx. 76234  
(940) 627-2177  
Contact: Judy R. Lewis

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY  
CLERK  
On Nov 08 1999  
At 11:10am  
Doc/Num : 99-R0113597  
Doc/Type : PLA  
Recording : 46.00  
Doc/Mgmt : 6.00  
Receipt #: 44765  
Deputy - Christy

**LEGEND**  
R.F. - Rebar Found  
R.S. - Rebar Set  
U.E. - Utility Easement  
R.O.W. - Right-of-Way  
P.O.B. - Point of Beginning  
G.U.E. - General Utility Easement  
P.U.E. - Public Utility Easement  
B.L. - Building Line

Bearings based on west line of I 35 E R.O.W. per TxDOT R.O.W. map.

OWNER'S CERTIFICATE AND DEDICATION

STATE OF TEXAS :  
COUNTY OF DENTON : WHEREAS WE, J & S Wood, L.P., are the owners of all that certain lot, tract or parcel, of land situated in the Gideon Walker Survey, Abstract Number 1330 and the M. E. P. & P. RR. Company Survey, Abstract Number 950, City of Denton, Denton County, Texas, being all of that certain called 13.103 acre tract of land described in deed to J & S Wood LP recorded in Clerk's File Number 94-R0039612 of the Real Property Records of Denton County, Texas, and being part of Lot 1, Block A, McNatt Addition, an addition to the City of Denton according to the plat thereof recorded in Cabinet D, Page 11 of the Plat Records of Denton County, Texas, part of Blocks 10 and 11, Wimbleton Village, Phase V, an addition to the City of Denton according to the plat thereof recorded in Cabinet B, Page 309 of said Plat Records and part of Block 13, Wimbleton Village Phase IV, an addition to the City of Denton according to the plat thereof recorded in Cabinet B, Page 378 of said Plat Records (plat now vacated) and being more particularly described as follows:

BEGINNING at a 1/2" rebar found at the northwest corner of said 13.103 acre tract and Lot 1, Block A, McNatt Addition, said point being the northeast corner of Lot 2, McNatt Addition, Phase Two, an addition to the City of Denton according to the plat thereof recorded in Cabinet E, Page 244 of the Plat Records of Denton County, Texas, and being on the southwest right-of-way line of Interstate Highway 35E, a public roadway (300 foot R.O.W.);

THENCE S 49°57'00" E, 815.85 feet, along the the southwest right-of-way line of Interstate Highway 35E, and the northeast line of said 13.103 acre tract and Lot 1, Block A, McNatt Addition to a 1/2" rebar set at the northeast corner thereof and the northwest corner of Lot 4R, Block A, McNatt Addition, an addition to the City of Denton according to the plat thereof recorded in Cabinet O, Page 267 of the Plat Records of Denton County, Texas;

THENCE S 40°00'22" W, along the southeast line of said 13.103 acre tract, and the northwest line of said Lot 4R crossing the south line of said McNatt Addition and the north line of said Block 13, Wimbleton Village, Phase IV, a total distance of 699.42 feet, to a 3/4" rebar found, said point being on the northeast line of that certain tract of land described as Tract Two in deed to James Wood recorded in Volume 3178, Page 682 of the Real Property Records of Denton County, Texas;

THENCE N 49°57'15" W, along the southwest line of said 13.103 acre tract, and the northeast line of said James Wood tract, crossing the west line of said Block 13 and the east line of said Block 11, Wimbleton Village Phase V, crossing the west line of same and the east line of Block 10, a total distance of 815.85 feet, to a 3/8" rebar found at the southwest corner of said 13.103 acre tract, same being the southeast corner of that tract of land described in deed to J & S Wood LP recorded in Clerk's File Number 95-R0040952 of the Real Property Records of Denton County, Texas ;

THENCE N 40°00'22" E, along the northwest line of said 13.103 acre tract, passing the southeast corner of Lot 2, McNatt Addition, Phase Two and the southwest corner of said Lot 1, Block A, McNatt Addition, a total distance of 699.47 feet, to the POINT OF BEGINNING and containing approximately 13.100 acres of land.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS : THAT WE, J & S Wood, L.P., acting through our duly authorized representative, do hereby adopt this Final Plat designating the hereinabove described tract of land as James Wood Autopark Addition, an addition to the City of Denton, Denton County, Texas, and do hereby dedicate to public use forever the streets and alleys shown hereon. The easements as shown are hereby reserved for the purposes as indicated. No buildings, fences, trees, shrubs, or other improvements or growths shall be constructed or placed upon, over or across the utility easements as shown. Said utility easements being hereby reserved for the mutual use and accommodation of all public utilities desiring to use or using same. All and any public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs, or other improvements or growths which may endanger or interfere with construction, maintenance or efficiency of its respective system on the utility easements, and any public utility shall at all times have the full right of ingress and egress to, from and upon the said utility easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining or adding to or removing all or part of its respective system without the necessity of procuring the permission of anyone.

This plat approved subject to all platting ordinances, rules, regulations and resolutions of the City of Denton, Texas.

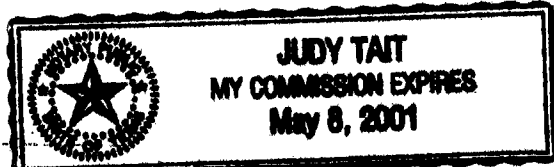
WITNESS OUR HAND this 6 day of Oct, 1999.

*James F. Wood*  
James F. Wood, Authorized Representative  
J & S Wood, L.P.

STATE OF TEXAS :  
COUNTY OF DENTON : BEFORE ME, THE UNDERSIGNED AUTHORITY, personally appeared James F. Wood, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6 day of October, 1999.

*Judy Tait*  
Notary Public  
State of Texas



My commission expires the 8 day of May, 2001.

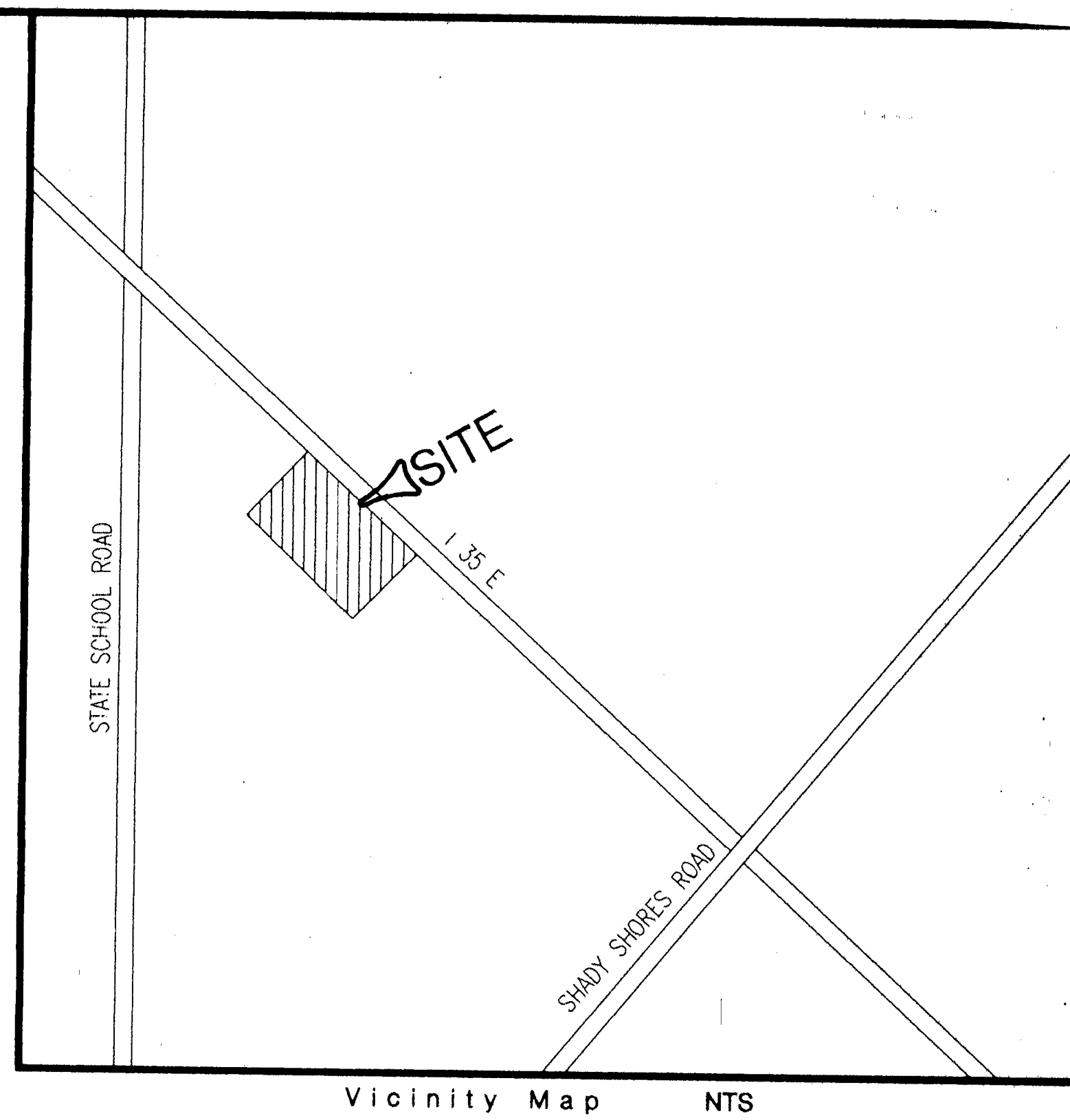
CERTIFICATE OF APPROVAL

Approved this 16th day of December, 1998 by the Planning and Zoning Commission of the City of Denton, Texas.

*Jan Engel*  
Chairman

*Jennyp Walters*  
City Secretary

Cab R  
pag 43



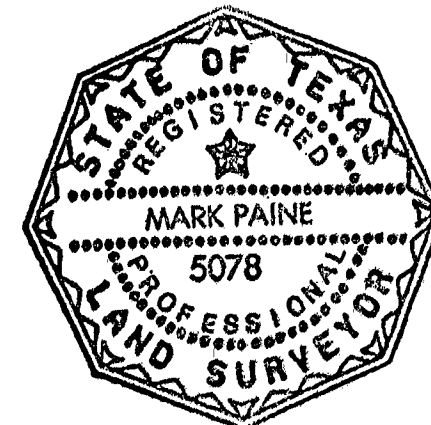
Vicinity Map NTS

SURVEYOR'S CERTIFICATE

The plat hereon correctly represents a survey made under my supervision, and all the lot corners and boundary markers are correctly placed as shown.

*Mark Paine*  
Mark Paine, R.P.I.S.

10/1/99  
Date



**FINAL PLAT**  
James Wood Autopark Addition  
Lot 1, Block A  
13.100 Acres  
Being a Replat of  
Part of Lot 1, Block A McNatt Addition  
Part of Blocks 10 & 11  
Wimbleton Village, Phase IV  
Part of Block 13 Wimbleton Village, Phase IV  
(Plat now vacated)  
in the  
M.E.P. & C.R.R. CO. SURVEY, ABSTRACT NO. 950  
GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
CITY OF DENTON  
DENTON COUNTY, TEXAS

**G & A Consultants, Inc.**

SITE PLANNING \* PLATTING  
CIVIL ENGINEERING  
LAND SURVEYING

Rev. 10/01/99  
Rev. 01/05/99  
Rev. 12/09/98

P.O. Box 1398 \* Lewisville, Texas 75067  
Phone (972) 317-9680 \* Fax (972) 317-9681

2/2

DRAWN BY: T.M. DATE: 10/10/98 SCALE: 1"=100' JOB. NO. **97379**

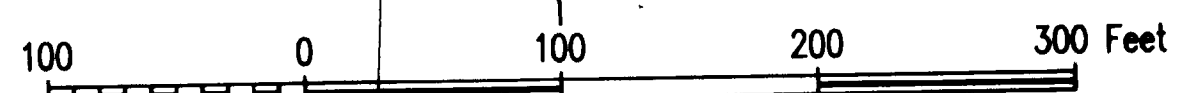
OWNER/DEVELOPER  
J & S Wood, LP  
P.O. Box 806  
Decatur, Tx. 76234  
(940) 627-2177  
Contact: Judy R. Lewis

Filed for Record in  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY  
CLERK

On Nov 08 1999  
At 11:10am

Doc/Num : 99-R0113597  
Doc/Type : PLA  
Recording : 46.00  
Doc/Mgmt : 6.00  
Receipt #: 44765  
Deputy - Christy





LEGEND	
C.R.F.	Capped Rebar Found
R.F.	Rebar Found
C.R.S.	Capped Rebar Set
R.F.	Rebar Found
U.E.	Utility Easement
B.L.	Building Line
R.O.W.	Right-of-Way
D.E.	Drainage Easement
G/M	Goodwin Marshall

NUMBER	DIRECTION	DISTANCE
L1	S 87°32'48" E	126.17'
L2	S 07°11'31" E	294.88'
L3	S 41°02'02" W	129.32'
L6	S 69°37'56" E	414.01'
L5	S 40°00'22" W	16.99'
L6	N 69°37'56" W	421.15'
L7	N 02°27'13" E	15.43'
L8	N 41°02'02" E	129.61'
L6	N 06°39'31" W	273.79'
L10	N 87°32'48" W	59.37'
L11	S 87°34'53" E	86.30'
L12	S 49°57'00" E	421.03'
L13	N 40°07'50" E	304.66'
L14	N 46°32'36" W	104.43'
L15	S 49°57'15" E	746.04'

1/2" rebar found at the easterly  
corner of McNatt Addition Lot 48,  
Block A, Cabinet O, Page 267. P.R.D.C.T.  
(Controlling Monument)  
S 49°52'00" E (Record) 1200.08'

GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
M.E.P. & P.R.R. CO. SURVEY, ABSTRACT NO. 950

McNATT ADDITION  
LOT 4R, BLOCK A  
0 / 267

26' Son. Sew. amt.  
464/176  
464/186  
464/494

3/4" R.F.  
Sly Cor. J & S Wood LF  
94-38612

1/2" R.F.  
Ely cor J & S Wood, LP  
Tract Two  
93-94345

"MONT CANADIAN LAND  
 RTNERSHIP, LTD.  
 94-3975

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY  
CLERK

On Mar 31 2000  
At 2:21pm

Doc/Num : 00-R0029232  
Doc/Type : PLA  
Recording: 46.00  
Doc/Mgmt : 6.00  
Receipt #: 13298  
Deputy - MARY

**STATE SCHOOL ROAD (110' R.O.W.)**

**James Wood Autopark Addition, Phase III**  
**Lot 1, Block A**  
**30.584 Acres**

JAMES WOOD AUTOPARK ADDITION  
LOT 1, BLOCK A  
R/42-43

**FINAL PLAT**  
**d AutoPark Addition, Phase III**  
**Lots 1, Block A**  
**30.584 Acres**  
**Being a Replat of**  
**Lots 1, Block A**  
**d AutoPark Addition, Phase II**  
**and**  
**ck 1, Denton Cancer Center**  
**in the**  
**. CO. SURVEY, ABSTRACT NO. 950**  
**CKER SURVEY, ABSTRACT NO. 1330**  
**CITY OF DENTON**  
**ENTON COUNTY, TEXAS**

**G & A Consultants, Inc.**  
SITE PLANNING \* PLATTING  
CIVIL ENGINEERING  
LAND SURVEYING  
P.O. Box 1398 \* Lewisville, Texas 75067  
Phone (972) 317-9680 \* Fax (972) 317-9681

1/2

REV 3/9/00 Phone (972) 317-9680 \* Fax (972) 317-9681

---

DRAWN BY: Bobby DATE: 02/29/00 SCALE: 1"=100' JOB. NO. **97379**

1006



Cab R Pg 309

OWNER'S CERTIFICATE AND DEDICATION

STATE OF TEXAS

COUNTY OF DENTON : WHEREAS WE, J & S Wood, L. P. Are the owners of all that certain lot, tract or parcel of land situated in the Gideon Walker Survey, Abstract Number 330, and the M. E. P. & P. RR. Company Survey, Abstract Number 950, City of Denton County, Texas, being all of Lot 2, Block 1, Denton Cancer Addition, an addition to the City of Denton according to the plat thereof recorded in Cabinet R, Page 247 of the Plat Records of Denton County, Texas, and all of Lot 1, Block A, James Wood AutoPark Addition, Phase II, an addition to the City of Denton according to the plat thereof recorded in Cabinet R, Pages 255 and 256 of the Plat Records of Denton County, Texas, and being described by metes and bounds as follows:

BEGINNING at 1/2" rebar found at the most northerly corner of Lot 2, Block A, James Wood AutoPark Addition, Phase II, being the most easterly northeast corner of Lot 2, Block 1, Denton Cancer Center, being on the southwesterly right-of-way line of Interstate Highway 35E (300 foot R.O.W.);

THENCE S 39°59'50" W, 100.00 feet, along the southeasterly line of Lot 2, Block 1, Denton Cancer Center and the northwesterly line of Lot 2, Block A, James Wood AutoPark Addition, Phase II, to a 1/2" capped rebar (stamped G & A) found at the southwest corner thereof;

THENCE S 49°57'00" E, 30.00 feet, along the southwesterly line of Lot 2, Block A, James Wood AutoPark Addition, Phase II, to a capped rebar (stamped G & A) found at the southeast corner thereof;

THENCE N 39°59'50" E, 100.00 feet, along the southeasterly line of Lot 2, Block A, James Wood AutoPark Addition, Phase II, to a 1/2" capped rebar (stamped G & A) found at the northeast corner thereof being an ell corner of Lot 1, Block A, James Wood AutoPark Addition, Phase II, and being on the southwesterly right-of-way line of Interstate Highway 35E;

THENCE S 49°57'00" E, 568.04 feet, along the southwesterly right-of-way line of Interstate Highway 35E and the northerly northeast line of Lot 1, Block A, to a 1/2" rebar found at the most northeasterly corner thereof being the most northerly corner of Lot 1, Block A, James Wood AutoPark Addition, an addition to the City of Denton according to the plat thereof recorded in Cabinet R, Pages 42 and 43 of the Plat Records of Denton County, Texas;

THENCE S 40°00'22" W, 699.47 feet, along the common line between Lot 1, Block A, James Wood AutoPark Addition and Lot 1, Block A, James Wood AutoPark Addition, Phase II, to a 3/8" rebar found;

THENCE S 49°58'01" E, along the southerly northeast line of Lot 1, Block A, James Wood AutoPark Addition, Phase II and the southwesterly line of Lot 1, Block A, James Wood AutoPark Addition, Phase II, passing a 3/4" rebar found at the southeasterly corner thereof and the most westerly corner of Lot 4R, Block A, McNatt Addition, an addition to the City of Denton according to the plat thereof recorded in Cabinet O, Page 267 of the Plat Records of Denton County, Texas, and continuing a total distance of 1199.77 feet, to a 1/2" rebar found on the northwesterly line of that certain tract of land described in deed to Oakmont Canadian Land Partnership, Ltd. Recorded in Clerk's File Number 94-003975 of the Real Property Records of Denton County, Texas;

THENCE S 38°30'09" W, 739.25 feet, along the northwesterly line of said Oakmont Canadian tract and the southerly southeast line of Lot 1, Block A, James Wood AutoPark Addition, Phase II, to a 1/2" rebar found at the most southerly southeast corner thereof being on the north line of a Channel according to the Final Plat of Wimbledon Village, Phase V, an addition to the City of Denton, recorded in Cabinet B, Page 309 of the Plat Records of Denton County, Texas, said point being in a curve to the left;

THENCE Northwesterly, along the north line of said Channel and with the arc of said curve having a radius of 960.00 feet, a central angle of 17°17'54", whose chord bears N 67°19'58" W, 288.74 feet, an arc length of 289.84 feet, to a railroad spike set at a point of reverse curvature;

THENCE Northwesterly, continuing along said line, and with the arc of said curve having a radius of 404.43 feet, a central angle of 13°21'34", whose chord bears N 69°21'18" W, 94.08 feet, an arc length of 94.30 feet, to a 1/2" capped rebar (stamped G & A) found at the most southerly southwest corner of Lot 1, Block A, James Wood AutoPark Addition, Phase II;

THENCE N 15°00'00" E, 584.23 feet, along the westerly line of Lot 1, Block A, James Wood AutoPark Addition, Phase II, to a 1/2" capped rebar (stamped G & A) found at an angle point;

THENCE N 49°57'00" W, 919.83 feet, continuing along said line, to a 1/2" capped rebar (stamped G & A) found at an angle point;

THENCE N 87°34'53" W, 80.84 feet, continuing along said line, to a 1/2" capped rebar (stamped G & A) found on the east right-of-way line of State School Road (110 foot R.O.W.);

THENCE N 02°25'07" E, 668.46 feet, along the east right-of-way line of State School Road and the west line of Lot 1, Block A, James Wood AutoPark Addition, Phase II, to a 1/2" capped rebar (stamped G & A) found at the westerly northwest corner thereof being the southwest corner of Lot 2, Block 1, Denton Cancer Center;

THENCE N 02°19'44" E, 135.45 feet, along the east right-of-way line of State School Road and the west line of Lot 2, Block 1, Denton Cancer Center, to a capped rebar (stamped Goodwin & Marshall) found at the point of curvature of a curve to the right;

THENCE Northeasterly, continuing along the east right-of-way line of State School Road, the west line of Lot 2, Block 1, Denton Cancer Center, and with the arc of said curve having a radius of 1140.00 feet, a central angle of 06°47'21", whose chord bears N 05°50'05" E, 135.00 feet, an arc length of 135.08 feet, to a capped rebar (stamped G & A) set at the northwest corner of said Lot 2 and the southwest corner of Lot 1, Block 1, Denton Cancer Center;

THENCE S 87°35'35" E, 60.60 feet, along the north line of Lot 2 and the south line of Lot 1, Block 1, Denton Cancer Center, to a capped rebar (stamped Goodwin & Marshall) found at an angle point;

THENCE S 57°59'42" E, 236.61 feet, continuing along said line to a capped rebar (stamped Goodwin & Marshall) found at an angle point;

THENCE N 39°58'22" E, 257.40 feet, along the southeast line of Lot 1 and the northwest line of Lot 2, to a capped rebar (stamped Goodwin & Marshall) found on the southwesterly right-of-way line of Interstate Highway 35E;

THENCE S 49°57'00" E, 62.22 feet, along said right-of-way line, to the POINT OF BEGINNING and containing approximately 30.584 acres of land.

SURVEYOR'S CERTIFICATE

The plat hereon correctly represents a survey made under my supervision, and all the lot corners and boundary markers are correctly placed as shown.

Mark Paine, R.P.L.S.  
Texas Registration No. 5078

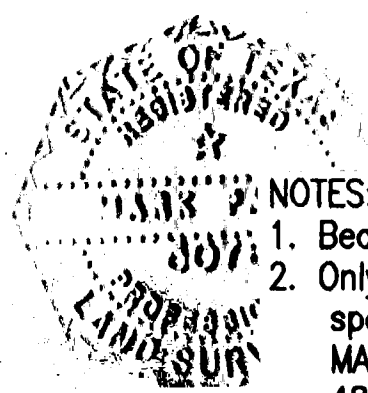
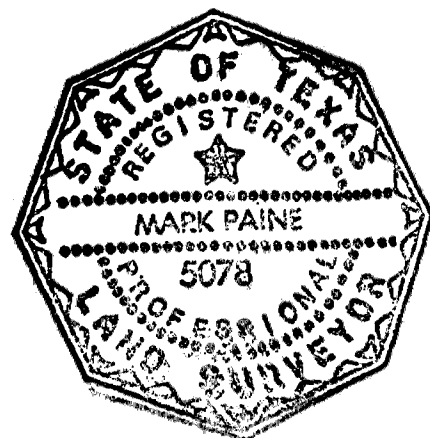
Date

3-27-00

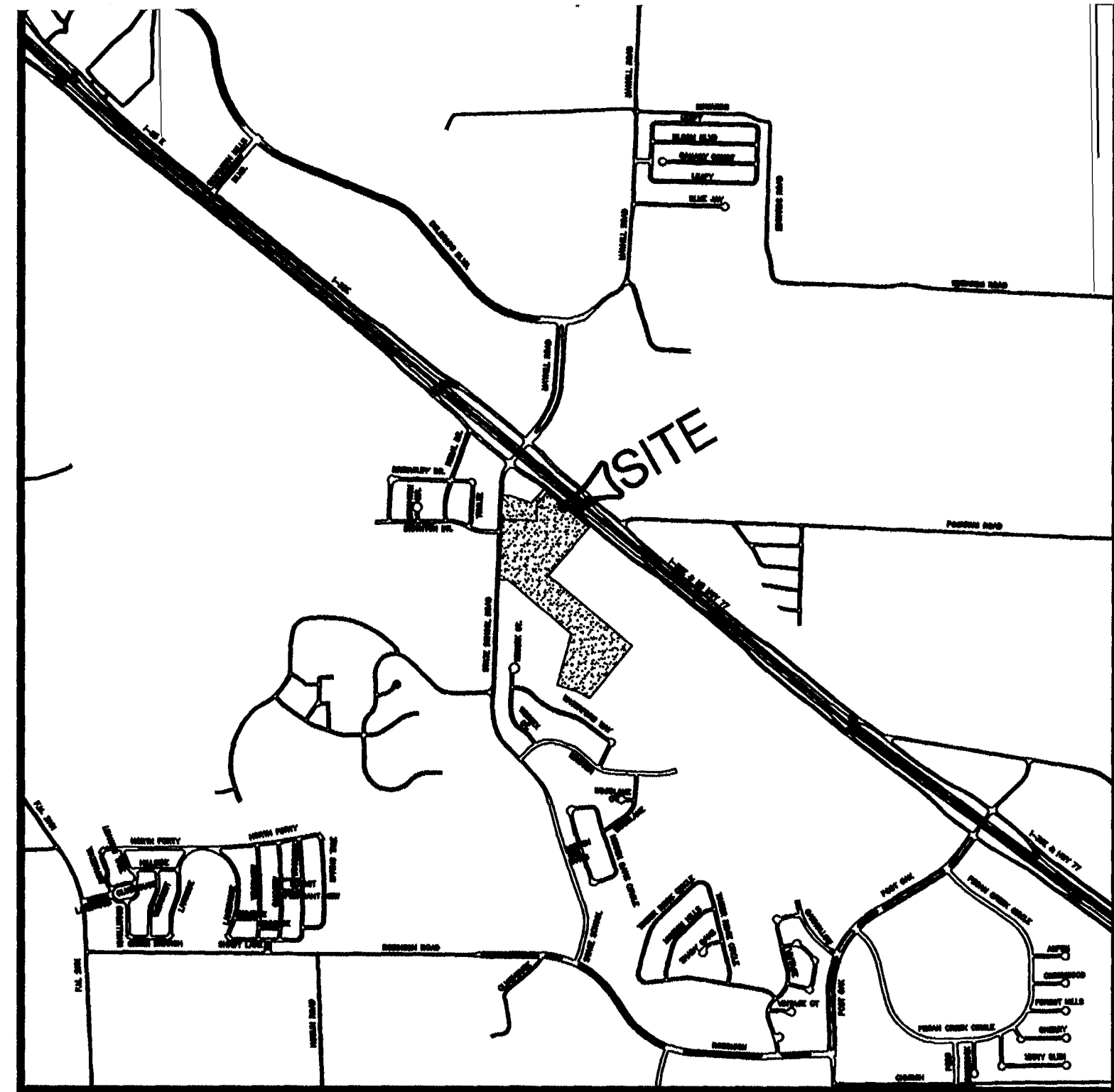
PRIVATE DRAINAGE AND DETENTION EASEMENT

STATE OF TEXAS  
COUNTY OF DENTON  
CITY OF DENTON

The plat is hereby adopted by the Owners and approved by the City of Denton (called "City") subject to the following conditions that shall be binding upon the Owners, their heirs, grantees and successors: The portions of Block A, as shown on the plat, are called "Private Drainage and Detention Easements." The Private Drainage and Detention Easements within the limits of this addition, will remain open at all times and will be maintained in a safe and sanitary condition by the owners of the lot or lots that are traversed by or adjacent to the Private Drainage and Detention Easements. The City will not be responsible for the maintenance and operation of said easements or for any damage to private property or person that results from conditions in the Easements or for the control of erosion. No obstruction to the natural flow of storm water run-off shall be permitted by construction of any type of buildings, fences or any other structures within the Private Drainage and Detention Easements; as herein above defined, unless approved by the City. The property owner shall keep the Private Drainage and Detention Easements clear and free of debris, silt, and any substances that would result in unsanitary conditions or obstruct the flow of water. And, the City shall have the right of ingress and egress for the purpose of inspection and supervision of maintenance work by the property owner to alleviate any undesirable conditions that may occur. The natural drainage through the Private Drainage and Detention Easements is subject to storm water overflow and natural bank erosion to an extent that cannot be definitely defined. The City shall not be held liable for any damages of any nature resulting from the occurrence of these natural phenomena, or resulting from the failure of any structure, or structures, within the Easements.



- NOTES:
1. Bearings based on west line of I 35 E R.O.W. per TxDOT R.O.W. map.
  2. Only the portion shown of subject property appears to lie within a special flood hazard area according to the FLOOD INSURANCE RATE MAP for Denton County, Texas and Incorporated Areas, Map No. 48121C0387 E, Dated April 2, 1997.
  3. Proposed use: Auto Sales and Service



Vicinity Map Scale 1"=2000'

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS : THAT WE, J & S Wood L. P. Acting through our duly authorized representative, do hereby adopt this Final Plat designating the hereinabove described tract of land as James Wood Autopark Addition, Phase III, an addition to the City of Denton, Denton County, Texas, and do hereby dedicate to public use forever the streets and alleys shown hereon. The easements as shown are hereby reserved for the purposes as indicated. No buildings, fences, trees, shrubs, or other improvements or growths shall be constructed or placed upon, over or across the utility easements as shown. Said utility easements being hereby reserved for the mutual use and accommodation of all public utilities desiring to use or using same. All and any public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs, or other improvements or growths which may endanger or interfere with construction, maintenance or efficiency of its respective system on the utility easements, and any public utility shall at all times have the full right of ingress and egress to, from and upon the said utility easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining or adding to or removing all or part of its respective system without the necessity of procuring the permission of anyone.

This plat approved subject to all platting ordinances, rules, regulations and resolutions of the City of Denton, Texas.

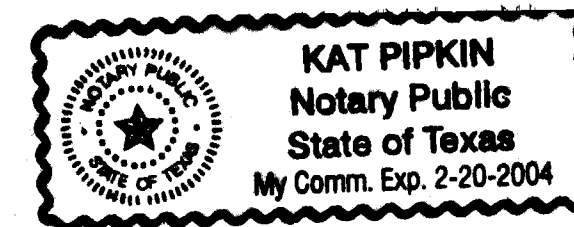
WITNESS OUR HAND this 28<sup>th</sup> day of March, 2000

Judy R. Lewis  
Judy R. Lewis, Authorized Representative  
J & S Wood, L.P.

STATE OF TEXAS :  
COUNTY OF DENTON : BEFORE ME, THE UNDERSIGNED AUTHORITY, personally appeared Judy R. Lewis, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28<sup>th</sup> day of March, 2000

Kat Pipkin  
Notary Public  
State of Texas



CERTIFICATE OF APPROVAL

Approved this 22nd day of MARCH, 2000 by the Planning and Zoning Commission of the City of Denton, Texas.

Jim Engdelt  
Chairman

Jennifer Walters  
City Secretary

FINAL PLAT

James Wood AutoPark Addition, Phase III  
Lots 1, Block A  
30.584 Acres  
Being a Replat of  
Lots 1, Block A  
James Wood AutoPark Addition, Phase II  
and  
Lot 2, Block 1, Denton Cancer Center

in the  
M.E.P. & P.R.R. CO. SURVEY, ABSTRACT NO. 950  
GIDEON WALKER SURVEY, ABSTRACT NO. 1330  
CITY OF DENTON  
DENTON COUNTY, TEXAS

G & A Consultants, Inc.

SITE PLANNING \* PLATTING  
CIVIL ENGINEERING  
LAND SURVEYING

P.O. Box 1398 \* Lewisville, Texas 75067  
Phone (972) 317-9680 \* Fax (972) 317-9681

REV 3/9/00

DRAWN BY: Bobby DATE: 02/29/00 SCALE: 1"=100' JOB. NO. **97379**

OWNER/DEVELOPER  
J & S Wood, L.P.  
P.O. Box 806  
Decatur, Texas 76234  
(904) 627-2177

Contact: Judy R. Lewis

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK

On Mar 31 2000  
At 2:21pm

Doc/Num : 00-R0029232  
Doc/Type : PLA  
Recording : 46.00  
Doc/Mgmt : 6.00  
Receipt #: 13298  
Deputy - MARY

2/2



**LEGAL DESCRIPTION**

**BEING** a 22,700 square foot (0.5211 acre) tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, and the Gideon Walker Survey, Abstract No. 1330, City of Denton, Denton County, Texas, and being part of Lot 1, Block A, James Wood Autopark Addition, Phase III, an addition to the City of Denton, Texas according to the plat recorded in Volume R, Page 308 of the Plat Records of Denton, Texas; said tract being more particularly described as follows:

**COMMENCING** at the south corner of Lot 4R, Block A, McNatt Addition, an addition to the City of Denton according to the plat recorded in Volume O, Page 267 of the Plat records of Denton County, Texas; from said point a 1/2-inch iron rod found for the west corner of said Lot 4R bears North 50°23'42" West, a distance of 384.00 feet;

**THENCE** South 38°04'28" West, along the southeast line of said Lot 1, a distance of 59.82 feet to a point;

**THENCE** North 50°16'45" West, departing said southeast line of Lot 1, a distance of 19.32 feet to the **POINT OF BEGINNING**;

**THENCE** South 38°07'06" West, a distance of 479.07 feet to a point for corner;

**THENCE** North 72°16'09" West, a distance of 425.54 feet to a point for corner;

**THENCE** North 48°07'42" West, a distance of 19.19 feet to a point for corner in the said west line of said Lot 1;

**THENCE** North 14°34'19" East, along said west line of Lot 1, a distance of 28.14 feet to a point for corner; from said point a 1/2-inch iron rod found for an ell corner of said Lot 1 bears North 14°34'19" East, a distance of 379.35 feet;

**THENCE** South 48°07'42" East, departing said west line of Lot 1, a distance of 26.75 feet to a point for corner;

**THENCE** South 72°16'09" East, a distance of 402.81 feet to a point for corner;

**THENCE** North 38°07'06" East, a distance of 462.39 feet to a point for corner;

**THENCE** South 50°16'45" East, a distance of 25.01 feet to the **POINT OF BEGINNING** and containing 22,700 square feet or 0.5211 acres of land, more or less.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT 1, BLOCK A  
JAMES WOOD AUTOPARK ADDITION, PHASE III  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
GIDEON WALKER SURVEY  
ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

*3/23/22*  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com

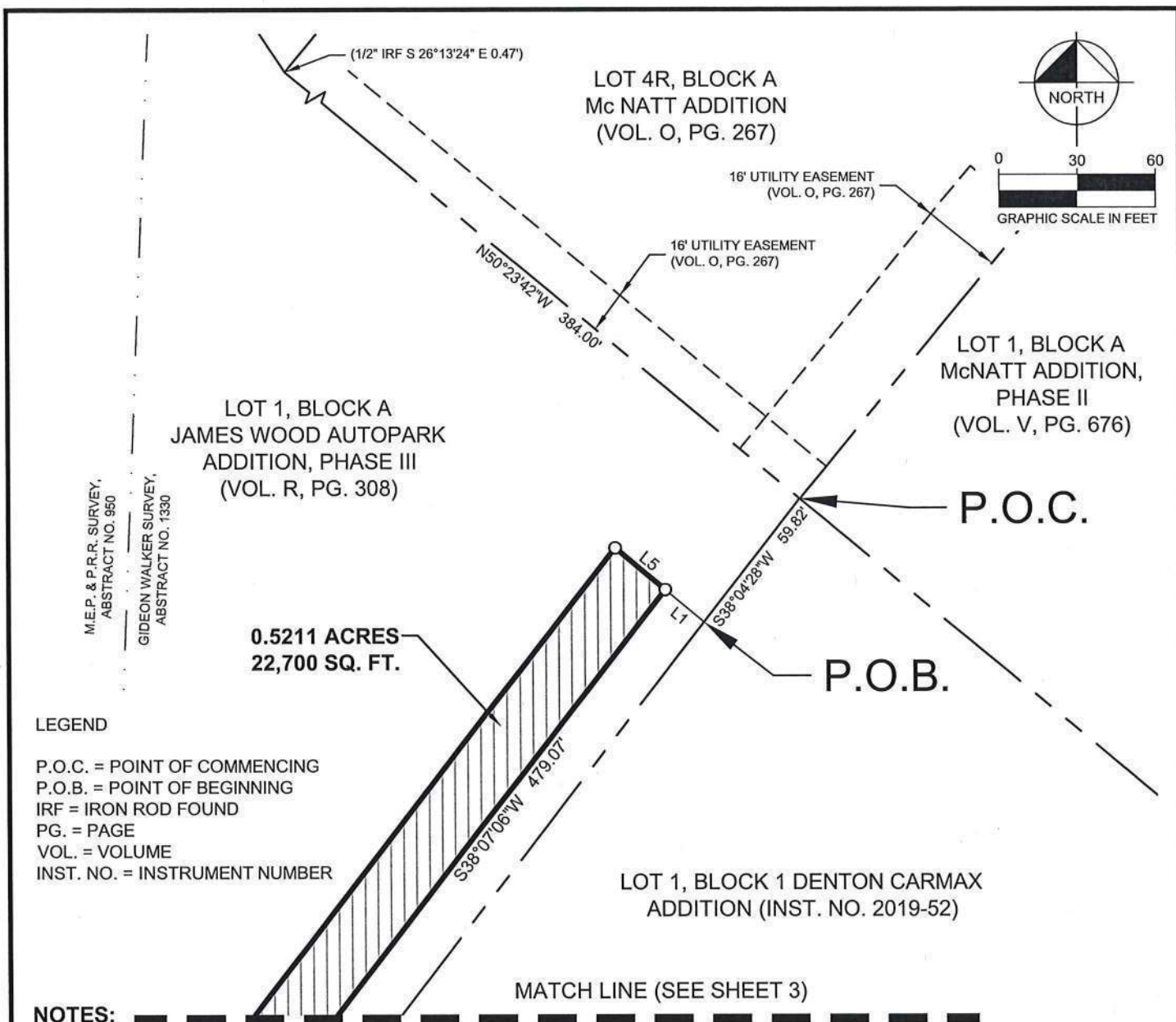


**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	3/23/2022	061024039	1 OF 4



Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

TEMPORARY CONSTRUCTION EASEMENT  
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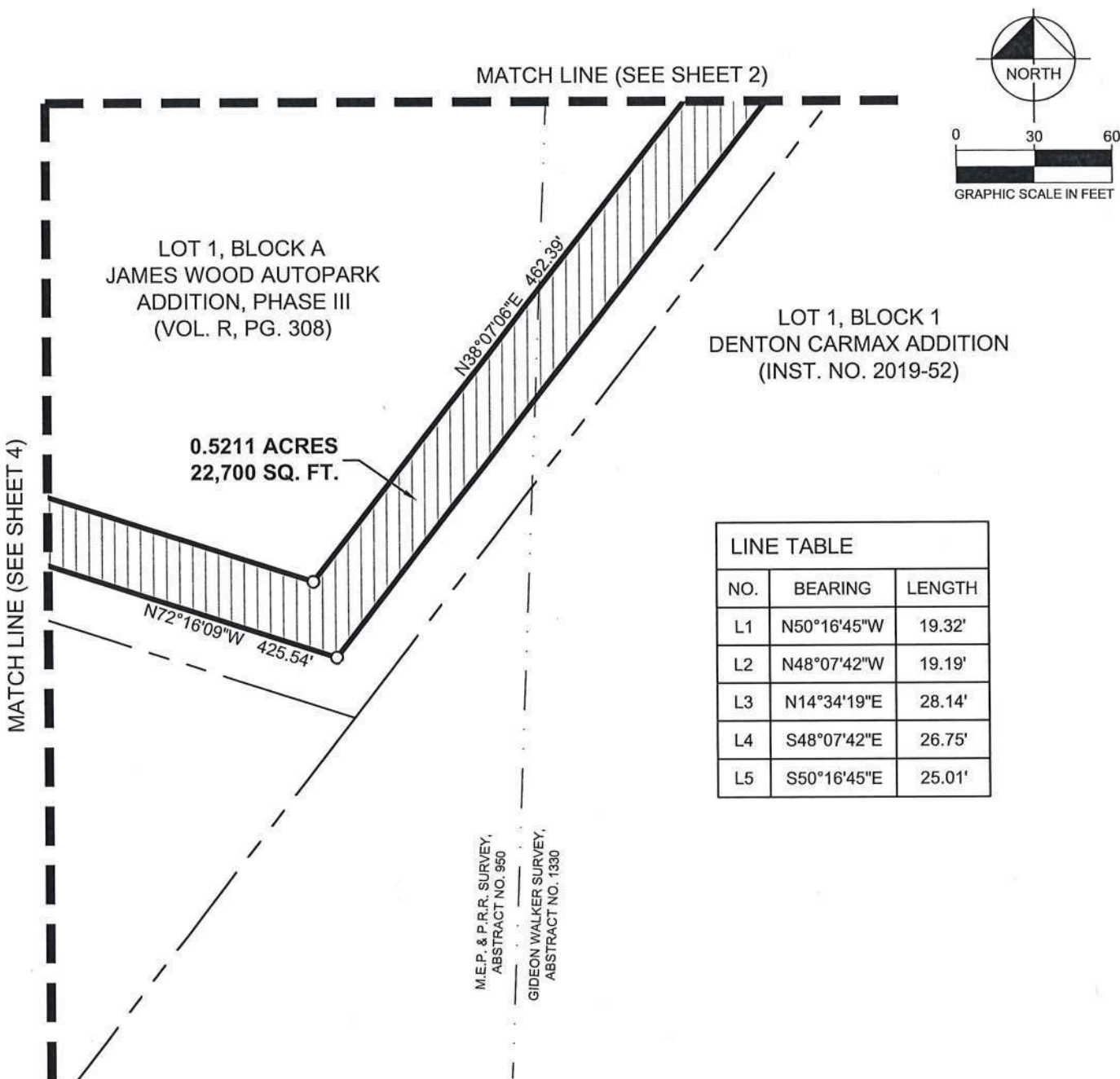
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1" = 60'	CRG	MCB	3/23/2022	061024039	2 OF 4





LINE TABLE

NO.	BEARING	LENGTH
L1	N50°16'45\"W	19.32'
L2	N48°07'42\"W	19.19'
L3	N14°34'19\"E	28.14'
L4	S48°07'42\"E	26.75'
L5	S50°16'45\"E	25.01'

## LEGEND

P.O.C. = POINT OF COMMENCING  
P.O.B. = POINT OF BEGINNING  
IRF = IRON ROD FOUND  
PG. = PAGE  
VOL. = VOLUME  
INST. NO. = INSTRUMENT NUMBER

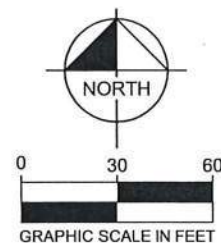
TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT 1, BLOCK A  
JAMES WOOD AUTOPARK ADDITION, PHASE III  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
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1" = 60'	CRG	MCB	3/23/2022	061024039	3 OF 4



BLOCK 11  
WIMBLETON VILLAGE  
PHASE IV  
(VOL. B, PG. 308)

LOT 1, BLOCK A  
JAMES WOOD AUTOPARK  
ADDITION, PHASE III  
(VOL. R, PG. 308)

0.5211 ACRES  
22,700 SQ. FT.

S72°16'09"E 402.81'

MATCH LINE (SEE SHEET 3)

WIMBLETON  
BOULEVARD  
(AN 80 FOOT RIGHT-OF-WAY)

L3

N14°34'19"E 379.35'

(1/2" IRF S 2°07'19" W 1.19')

TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT 1, BLOCK A  
JAMES WOOD AUTOPARK ADDITION, PHASE III  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
GIDEON WALKER SURVEY  
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CITY OF DENTON, DENTON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	CRG	MCB	3/23/2022	061024039	4 OF 4



**LEGAL DESCRIPTION**

**BEING** a 18,485 square foot (0.4244 acre) tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, and the Gideon Walker Survey, Abstract No. 1330, City of Denton, Denton County, Texas, and being part of Lot 1, Block A, James Wood Autopark Addition, Phase III, an addition to the City of Denton, Texas according to the plat recorded in Volume R, Page 308 of the Plat Records of Denton, Texas; said tract being more particularly described as follows:

**COMMENCING** at the south corner of Lot 4R, Block A, McNatt Addition, an addition to the City of Denton according to the plat recorded in Volume O, Page 267 of the said Plat records, and being a point in the southeast line of said Lot 1; from said point a 1/2-inch iron rod found for the west corner of said Lot 4R bears North 50°23'42" West, a distance of 384.00 feet;

**THENCE** South 38°04'28" West, along the southeast line of said Lot 1, a distance of 59.82 feet to the **POINT OF BEGINNING**;

**THENCE** South 38°04'28" West, continuing along said southeast line of Lot 1, a distance of 492.56 feet to a point for corner;

**THENCE** North 72°16'09" West, departing said southeast line of Lot 1, a distance of 443.38 feet to a point for corner;

**THENCE** North 48°07'42" West, a distance of 13.15 feet to a point for corner in the west line of said Lot 1;

**THENCE** North 14°34'19" East, along said west line of Lot 1, a distance of 22.51 feet to a point for corner; from said point a 1/2-inch iron rod found for an ell corner of said Lot 1 bears North 14°34'19" East, a distance of 407.49 feet;

**THENCE** South 48°07'42" East, departing said west line of Lot 1, a distance of 19.19 feet to a point for corner;

**THENCE** South 72°16'09" East, a distance of 425.54 feet to a point for corner;

**THENCE** North 38°07'06" East, a distance of 479.07 feet to a point for corner;

**THENCE** South 50°16'45" East, a distance of 19.32 feet to the **POINT OF BEGINNING** and containing 18,485 square feet or 0.4244 acres of land, more or less.

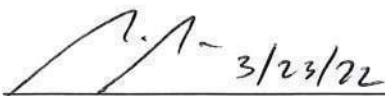
**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

WATER AND WASTEWATER EASEMENT  
PART OF LOT 1, BLOCK A  
JAMES WOOD AUTOPARK ADDITION, PHASE III  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
GIDEON WALKER SURVEY  
ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

 3/23/22  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



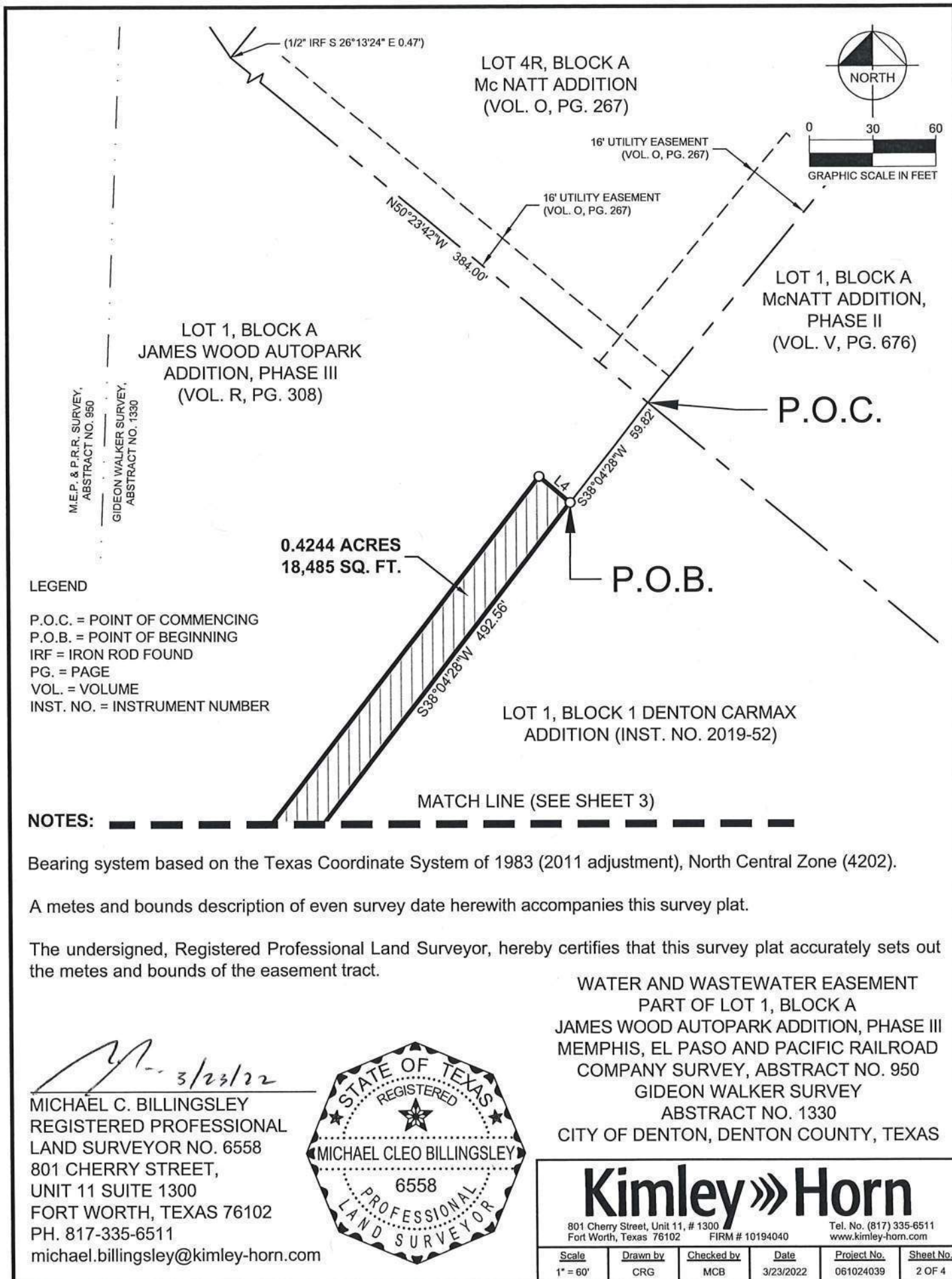
**Kimley»Horn**

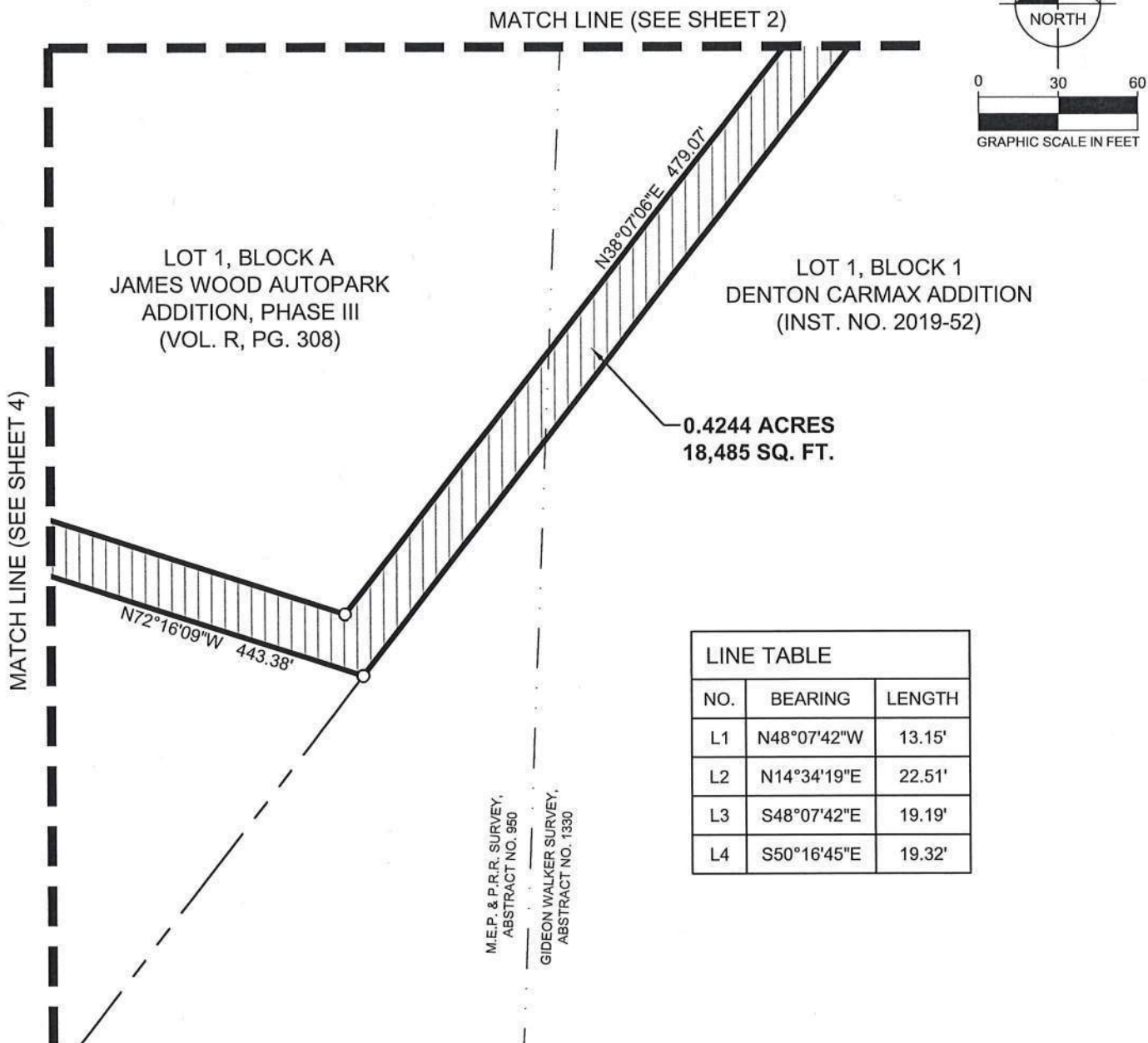
801 Cherry Street, Unit 11, # 1300  
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	3/23/2022	061024039	1 OF 4







LINE TABLE		
NO.	BEARING	LENGTH
L1	N48°07'42\"W	13.15'
L2	N14°34'19\"E	22.51'
L3	S48°07'42\"E	19.19'
L4	S50°16'45\"E	19.32'

## LEGEND

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WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1, BLOCK A  
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 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 GIDEON WALKER SURVEY  
 ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

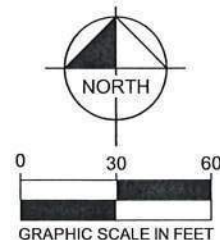
# Kimley»Horn

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FIRM # 10194040

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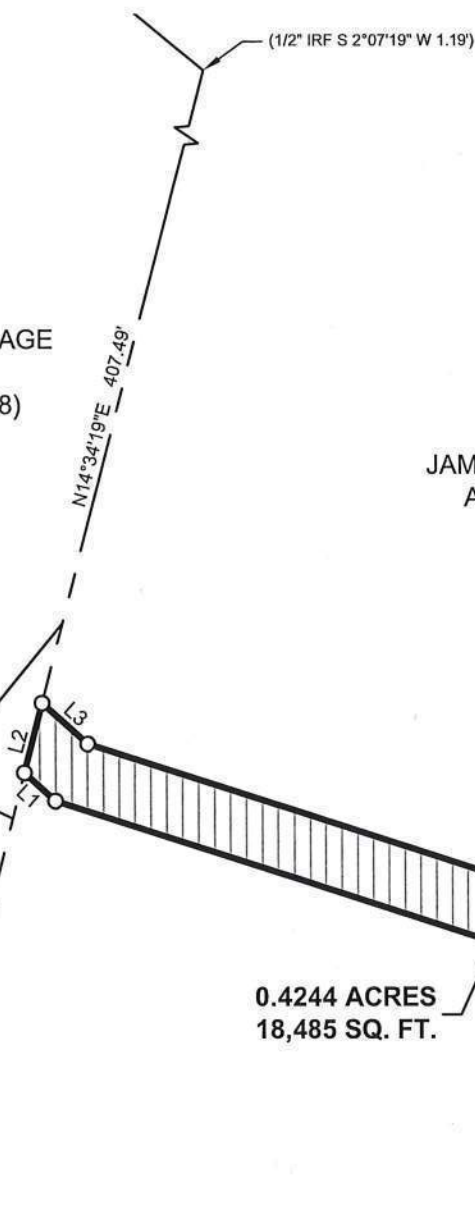
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	CRG	MCB	3/23/2022	061024039	3 OF 4



BLOCK 11  
WIMBLETON VILLAGE  
PHASE IV  
(VOL. B, PG. 308)

LOT 1, BLOCK A  
JAMES WOOD AUTOPARK  
ADDITION, PHASE III  
(VOL. R, PG. 308)

WIMBLETON  
BOULEVARD  
(AN 80 FOOT RIGHT-OF-WAY)



0.4244 ACRES  
18,485 SQ. FT.

WATER AND WASTEWATER EASEMENT  
PART OF LOT 1, BLOCK A  
JAMES WOOD AUTOPARK ADDITION, PHASE III  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
GIDEON WALKER SURVEY  
ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

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**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 75A**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1746+73 LT to Sta 1752+15 LT

Existing Easement

Volume B, Page 309

PART OF LOT BLOCK 11  
WIMBLETON VILLAGE, PHASE V  
MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS



**LEGAL DESCRIPTION**

**BEING** a 16,872 square foot (0.3873 acre) tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Block 11, Wimbleton Village, Phase V, an addition to the City of Denton, Texas according to the plat recorded in Volume B, Page 309 of the Plat Records of Denton, Texas; said tract being more particularly described as follows:

**COMMENCING** at a point in the south line of Lot 1, Block A, James Wood Autopark Addition, Phase III, an addition to the City of Denton, Texas, according to the plat recorded in Volume R, Page 308 of the said Plat Records; from said point a 1/2-inch iron rod found for an inner ell corner of said Lot 1 bears South 50°22'41" East, a distance of 450.44 feet;

**THENCE** departing said south line of Lot 1, South 39°36'18" West, along said southeast line of Block 11, a distance of 262.73 feet to the **POINT OF BEGINNING**;

**THENCE** South 39°36'18" West, continuing along said southeast line of Block 11, a distance of 25.06 feet to a point for corner, being the beginning of a non-tangent curve to the left with a radius of 776.50 feet, a central angle of 21°29'13", and a chord bearing and distance of North 65°12'18" West, 289.50 feet;

**THENCE** in a northwesterly direction, departing said southeast line of Block 11, and along said non-tangent curve to the left, an arc distance of 291.20 feet to a point for corner;

**THENCE** North 02°01'58" East, a distance of 30.17 feet to a point for corner;

**THENCE** North 01°49'33" East, a distance of 337.61 feet to a point for corner;

**THENCE** North 46°00'59" East, a distance of 12.22 feet to a point for corner;

**THENCE** North 00°24'17" East, a distance of 25.81 feet to a point for corner in the north line of said Block 11;

**THENCE** South 88°00'34" East, along said north line of Block 11, a distance of 25.01 feet to a point for corner;

**THENCE** South 00°24'17" West, departing said north line of Block 11, a distance of 35.63 feet to a point for corner;

**THENCE** South 46°00'59" West, a distance of 12.58 feet to a point for corner;

**THENCE** South 01°49'33" West, a distance of 327.51 feet to a point for corner;

**THENCE** South 02°01'58" West, a distance of 10.23 feet to a point for corner, being the beginning of a non-tangent curve to the right with a radius of 801.50 feet, a central angle of 20°09'47", and a chord bearing and distance of South 64°24'58" East, 280.60 feet;

**THENCE** in a southeasterly direction, along said non-tangent curve to the right, an arc distance of 282.06 feet to the **POINT OF BEGINNING** and containing 16,872 square feet or 0.3873 acres of land, more or less.

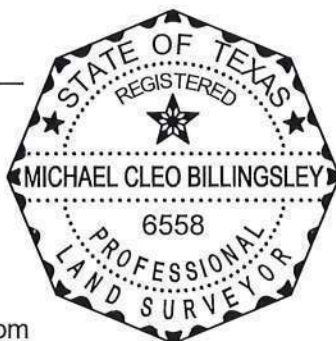
**NOTES:**

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*3/24/22*  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT BLOCK 11  
WIMBLETON VILLAGE, PHASE V  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

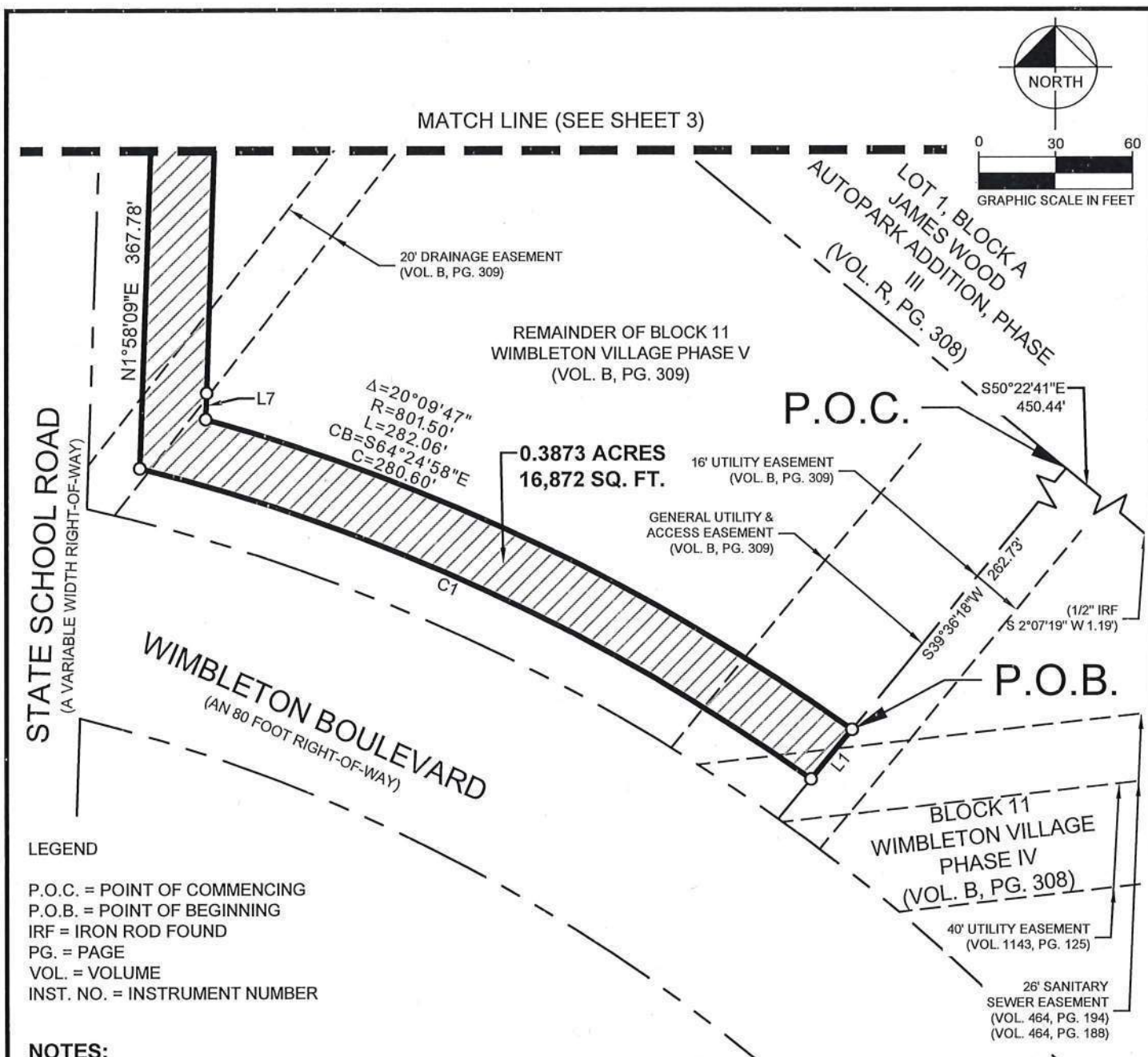
**Kimley»Horn**

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3/24/22  
**MICHAEL C. BILLINGSLEY**  
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**TEMPORARY CONSTRUCTION EASEMENT**  
PART OF LOT BLOCK 11  
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MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

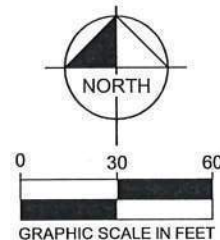
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www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	CRG	MCB	3/24/2022	061024039	2 OF 3

CURVE TABLE					
NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	21°29'13"	776.15'	291.07'	N65°11'39"W	289.37'



LOT 1, BLOCK A  
JAMES WOOD AUTOPARK  
ADDITION, PHASE III  
(VOL. R, PG. 308)

LINE TABLE		
NO.	BEARING	LENGTH
L1	S39°36'18"W	25.06'
L2	N42°37'56"E	11.58'
L3	N00°24'17"E	25.81'
L4	S88°00'34"E	25.01'
L5	S00°24'17"W	35.63'
L6	S46°00'59"W	12.58'
L7	S02°01'58"W	10.23'

STATE SCHOOL ROAD  
(A VARIABLE WIDTH RIGHT-OF-WAY)

0.3873 ACRES  
16,872 SQ. FT.

REMAINDER OF BLOCK 11  
WIMBLETON VILLAGE PHASE V  
(VOL. B, PG. 309)

20' DRAINAGE EASEMENT  
(VOL. B, PG. 309)

16' PUBLIC UTILITY EASEMENT  
(VOL. R, PG. 308)

MATCH LINE (SEE SHEET 2)

TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT BLOCK 11  
WIMBLETON VILLAGE, PHASE V  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

#### LEGEND

P.O.C. = POINT OF COMMENCING  
P.O.B. = POINT OF BEGINNING  
IRF = IRON ROD FOUND  
PG. = PAGE  
VOL. = VOLUME  
INST. NO. = INSTRUMENT NUMBER

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	CRG	MCB	3/24/2022	061024039	3 OF 3



**LEGAL DESCRIPTION**

**BEING** a 14,330 square foot (0.3290 acre) tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Block 11, Wimbleton Village, Phase V, an addition to the City of Denton, Texas according to the plat recorded in Volume B, Page 309 of the Plat Records of Denton, Texas; said tract being more particularly described as follows:

**COMMENCING** at a point in the south line of Lot 1, Block A, James Wood Autopark Addition, Phase III, an addition to the City of Denton, Texas, according to the plat recorded in Volume R, Page 308 of the said Plat Records; from said point a 1/2-inch iron rod found for an inner ell corner of said Lot 1 bears South 50°22'41" East, a distance of 450.44 feet;

**THENCE** departing said south line of Lot 1, South 39°36'18" West, along said southeast line of Block 11, a distance of 287.79 feet to the **POINT OF BEGINNING**;

**THENCE** South 39°36'18" West, continuing along said southeast line of Block 11, a distance of 20.05 feet to a point for corner, being the south corner of said Block 11, and being in the northeast right-of-way line of Wimbleton Boulevard (an 80 foot right-of-way) and being the beginning of a non-tangent curve to the left with a radius of 756.50 feet, a central angle of 22°35'27", and a chord bearing and distance of North 65°51'53" West, 296.35 feet;

**THENCE** in a northwesterly direction, along the said northeast line of Wimbleton Boulevard, and along said non-tangent curve to the left, an arc distance of 298.27 feet to a point for corner in the intersection of the said northeast line of Wimbleton Boulevard and east right-of-way line of State School Road (a variable width right-of-way);

**THENCE** North 01°58'11" East, along said east line of State School Road, a distance of 418.75 feet to a point for corner;

**THENCE** South 88°00'34" East, departing the said east line of State School Road, and along the north line of said Block 11, a distance of 26.84 feet to a point for corner;

**THENCE** South 00°24'17" West, departing the north line of said Block 11, a distance of 25.81 feet to a point for corner;

**THENCE** South 46°00'59" West, a distance of 12.22 feet to a point for corner;

**THENCE** South 01°49'33" West, a distance of 337.61 feet to a point for corner;

**THENCE** South 02°01'58" West, a distance of 30.17 feet to a point for corner, being the beginning of a non-tangent curve to the right with a radius of 776.50 feet, a central angle of 21°29'13", and a chord bearing and distance of South 65°12'18" East, 289.50 feet;

**THENCE** in a southeasterly direction, along said non-tangent curve to the right, an arc distance of 291.20 feet to the **POINT OF BEGINNING** and containing 14,330 square feet or 0.3290 acres of land, more or less.

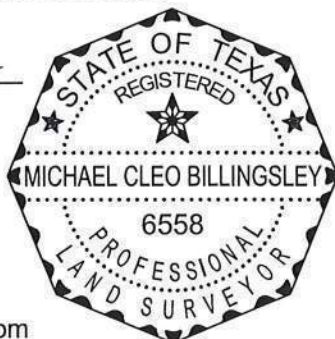
**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
 PART OF LOT BLOCK 11  
 WIMBLETON VILLAGE, PHASE V  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

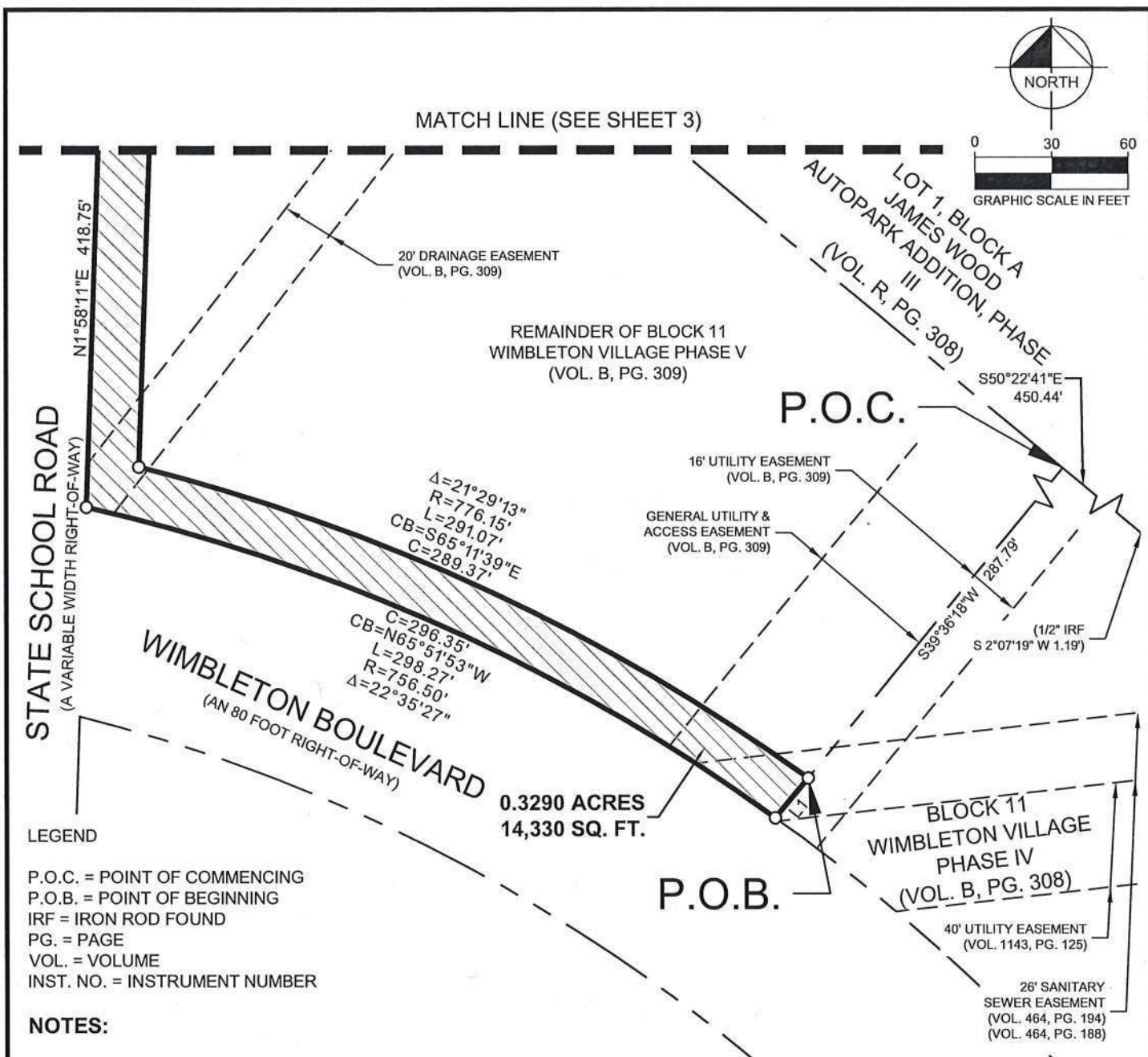
**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

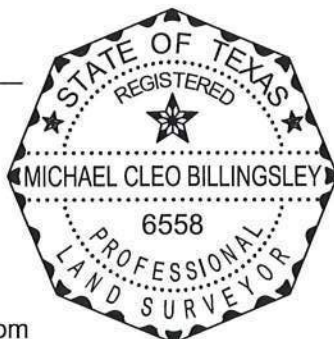
Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	3/24/2022	061024039	1 OF 3





*Michael C. Billingsley* - 3/24/22  
**MICHAEL C. BILLINGSLEY**  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



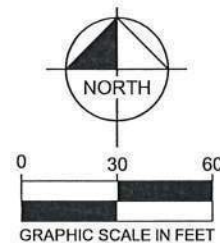
**WATER AND WASTEWATER EASEMENT**  
PART OF LOT BLOCK 11  
WIMBLETON VILLAGE, PHASE V  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	CRG	MCB	3/24/2022	061024039	2 OF 3



LOT 1, BLOCK A  
JAMES WOOD AUTOPARK  
ADDITION, PHASE III  
(VOL. R, PG. 308)

0.3290 ACRES  
14,330 SQ. FT.

LINE TABLE		
NO.	BEARING	LENGTH
L1	S39°36'18"W	20.05'
L2	S88°00'34"E	26.84'
L3	S00°24'17"W	25.81'
L4	S42°37'56"W	11.58'

STATE SCHOOL ROAD  
(A VARIABLE WIDTH RIGHT-OF-WAY)

S1°58'09"W 367.78'

16' PUBLIC UTILITY EASEMENT  
(VOL. R, PG. 308)

REMAINDER OF BLOCK 11  
WIMBLETON VILLAGE PHASE V  
(VOL. B, PG. 309)

20' DRAINAGE EASEMENT  
(VOL. B, PG. 309)

MATCH LINE (SEE SHEET 2)

WATER AND WASTEWATER EASEMENT  
PART OF LOT BLOCK 11  
WIMBLETON VILLAGE, PHASE V  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

#### LEGEND

P.O.C. = POINT OF COMMENCING  
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Fort Worth, Texas 76102 FIRM # 10194040

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	GRB	MCB	3/24/2022	061024039	3 OF 3



**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 75B**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1740+62 LT to Sta 1746+73 LT

Existing Easement

Volume B, Page 308

PART OF LOT BLOCK 11  
WIMBLETON VILLAGE, PHASE V  
MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

**LEGAL DESCRIPTION**

**BEING** a 15,654 square foot (0.3594 acre) tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Block 11, Wimbleton Village, Phase IV, an addition to the City of Denton, Texas according to the plat recorded in Volume B, Page 308 of the Plat Records of Denton, Texas; said tract being more particularly described as follows:

**COMMENCING** at a point in the south line of Lot 1, Block A, James Wood Autopark Addition, Phase III, an addition to the City of Denton, Texas, according to the plat recorded in Volume R, Page 308 of the said Plat Records, and being a point in the northwest line of said Block 11; from said point a 1/2-inch iron rod found for an inner ell corner of said Lot 1 bears South 50°22'41" East, a distance of 450.44 feet;

**THENCE** departing said south line of Lot 1, and along said northwest line of Block 11, South 39°36'18" West, a distance of 262.73 feet to the **POINT OF BEGINNING**, being the beginning of a non-tangent curve to the right with a radius of 801.50 feet, a central angle of 23°58'41", and a chord bearing and distance of South 42°20'43" East, 332.98 feet;

**THENCE** in a southeasterly direction, with said non-tangent curve to the right, an arc distance of 335.43 feet to a point for corner;

**THENCE** South 37°02'57" East, a distance of 121.49 feet to a point for corner;

**THENCE** South 48°07'42" East, a distance of 163.18 feet to a point for corner in the southeast line of said Block 11; from said point a 1/2-inch iron rod found for the east corner of said Block 11 bears North 14°35'19" East, a distance of 379.35 feet;

**THENCE** South 14°34'19" West, along said southeast line of Block 11, a distance of 28.14 feet to a point for corner;

**THENCE** North 48°07'42" West, departing said southeast line of Block 11, a distance of 178.50 feet to a point for corner;

**THENCE** North 37°03'07" West, a distance of 125.34 feet to a point for corner, being the beginning of a non-tangent curve to the left with a radius of 776.50 feet, a central angle of 24°12'57", and a chord bearing and distance of North 42°21'13" West, 325.75 feet;

**THENCE** in a northwesterly direction, with said non-tangent curve to the left, an arc distance of 328.18 feet to a point for corner in the northwest line of said Block 11;


**THENCE** North 39°36'18" East, along said northwest line of Block 11, a distance of 25.06 feet to the **POINT OF BEGINNING** and containing 15,654 square feet or 0.3594 acres of land, more or less.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

 3/23/22  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT BLOCK 11  
WIMBLETON VILLAGE, PHASE V  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

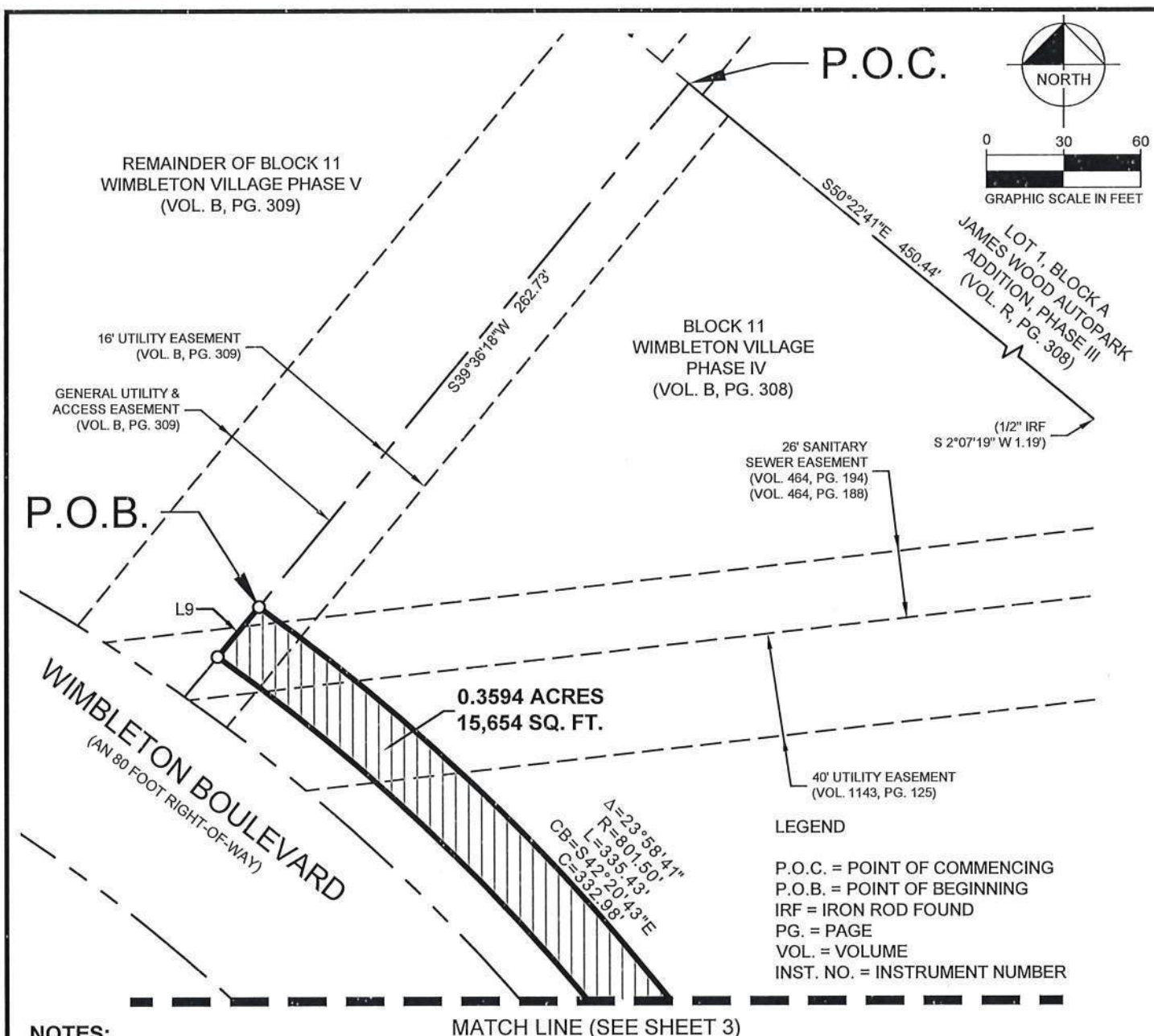
**Kimley»Horn**

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	3/23/2022	061024039	1 OF 3

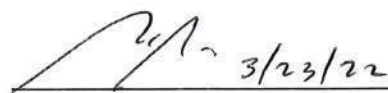




Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

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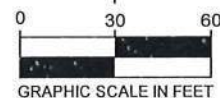
TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT BLOCK 11  
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CITY OF DENTON, DENTON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	CRG	MCB	3/23/2022	061024039	2 OF 3



MATCH LINE (SEE SHEET 2)

(1/2" IRF S 2°07'19" W 1.19')

CURVE TABLE					
NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	24°12'57"	776.50'	328.18'	N42°21'13"W	325.75'

0.3594 ACRES  
15,654 SQ. FT.

LINE TABLE		
NO.	BEARING	LENGTH
L1	S14°34'19"W	28.14'
L9	N39°36'18"E	25.06'

BLOCK 11  
WIMBLETON VILLAGE  
PHASE IV  
(VOL. B, PG. 308)

WIMBLETON BOULEVARD  
(AN 80 FOOT RIGHT-OF-WAY)

LOT 1, BLOCK A  
JAMES WOOD AUTOPARK  
ADDITION, PHASE III  
(VOL. R, PG. 308)

TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT BLOCK 11  
WIMBLETON VILLAGE, PHASE V  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

#### LEGEND

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	CRG	MCB	3/23/2022	061024039	3 OF 3



**LEGAL DESCRIPTION**

**BEING** a 12,738 square foot (0.2924 acre) tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Block 11, Wimbleton Village, Phase IV, an addition to the City of Denton, Texas according to the plat recorded in Volume B, Page 308 of the Plat Records of Denton, Texas; said tract being more particularly described as follows:

**COMMENCING** at a point in the south line of Lot 1, Block A, James Wood Autopark Addition, Phase III, an addition to the City of Denton, Texas, according to the plat recorded in Volume R, Page 308 of the said Plat Records, and being a point in the northwest line of said Block 11; from said point a 1/2-inch iron rod found for an inner ell corner of said Lot 1 bears South 50°22'41" East, a distance of 450.44 feet;

**THENCE** departing said south line of Lot 1, and along said northwest line of Block 11, South 39°36'18" West, a distance of 287.79 feet to the **POINT OF BEGINNING**, being the beginning of a non-tangent curve to the right with a radius of 776.50 feet, a central angle of 24°12'57", and a chord bearing and distance of South 42°21'13" East, 325.75 feet;

**THENCE** in a southeasterly direction, along said non-tangent curve to the right, an arc distance of 328.18 feet to a point for corner;

**THENCE** South 37°03'07" East, a distance of 125.34 feet to a point for corner;

**THENCE** South 48°07'42" East, a distance of 178.50 feet to a point for corner in the southeast line of said Block 11; from said point a 1/2-inch iron rod found for the east corner of said Block 11 bears North 14°35'19" East, a distance of 407.49 feet;

**THENCE** South 14°34'19" West, along said southeast line of Block 11, a distance of 22.51 feet to a point for corner;

**THENCE** North 48°07'42" West, departing said southeast line of Block 11, a distance of 190.77 feet to a point for corner;

**THENCE** North 37°03'07" West, a distance of 128.47 feet to a point for corner in the northeast right-of-way line of Wimbleton Boulevard (an 80 foot right-of-way), and being the beginning of a non-tangent curve to the left with a radius of 756.50 feet, a central angle of 24°24'47", and a chord bearing and distance of North 42°21'46" West, 319.90 feet;

**THENCE** in a northwesterly direction, along the said northeast line of Wimbleton Boulevard, and along said non-tangent curve to the left, an arc distance of 322.33 feet to a point for corner, being the west corner of said Block 11;

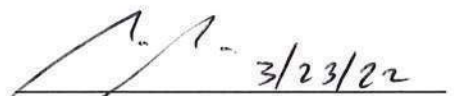
**THENCE** North 39°36'18" East, departing the said northeast line of Wimbleton Boulevard, and along the said northwest line of Block 11, a distance of 20.05 feet to the **POINT OF BEGINNING** and containing 12,738 square feet or 0.2924 acres of land, more or less.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

 3/23/22  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
PART OF LOT BLOCK 11  
WIMBLETON VILLAGE, PHASE V  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

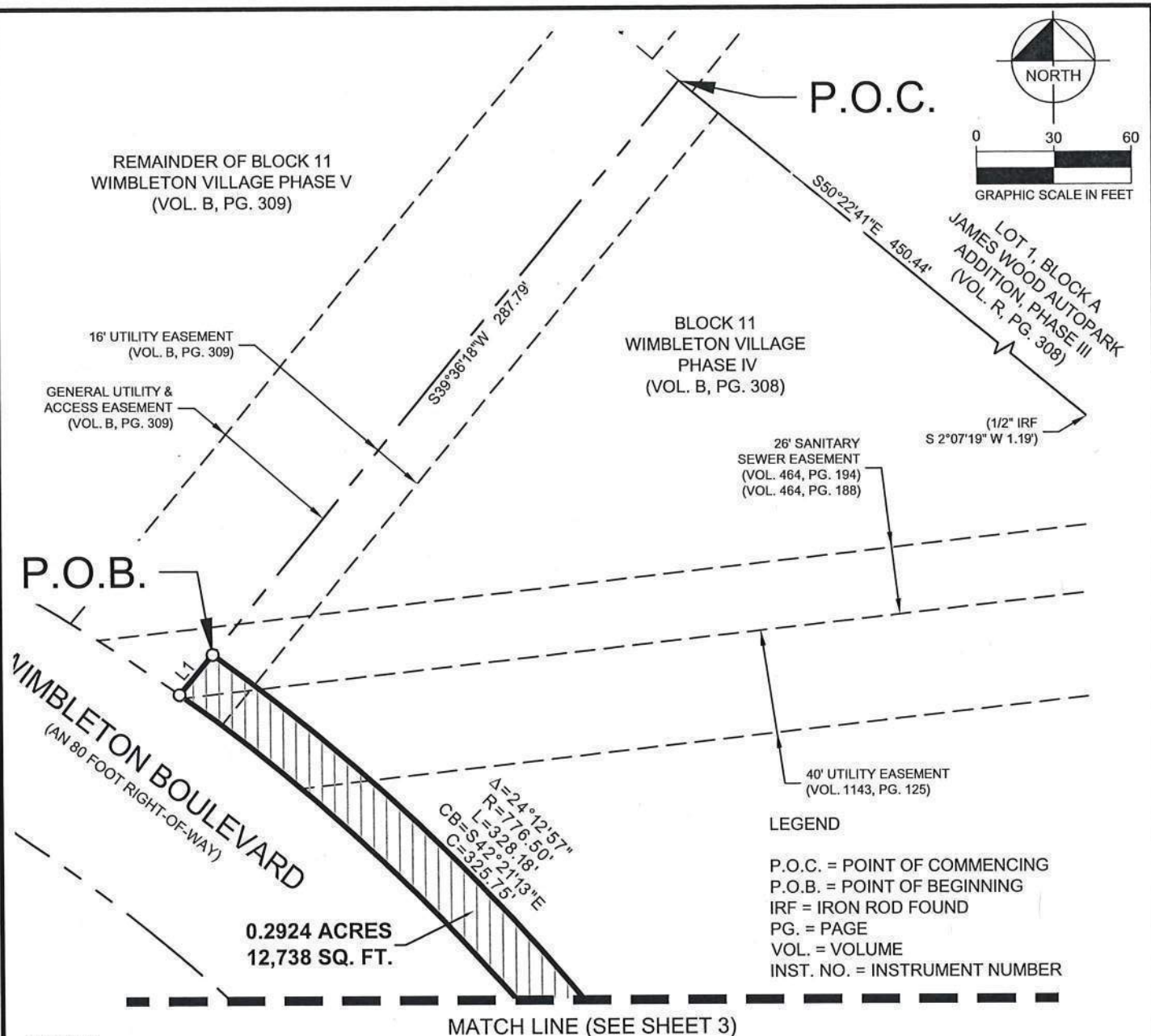
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
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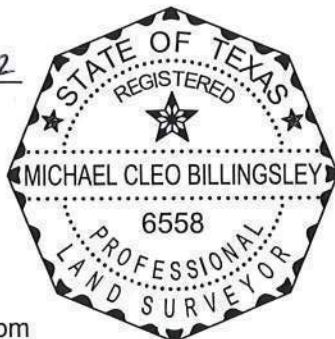
# NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley* 3/23/22  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
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WATER AND WASTEWATER EASEMENT  
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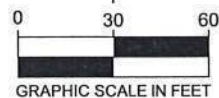
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FIRM # 10194040

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	CRG	MCB	3/23/2022	061024039	2 OF 3



MATCH LINE (SEE SHEET 2)

(1/2" IRF S 2°07'19" W 1.19')

LINE TABLE		
NO.	BEARING	LENGTH
L1	N39°36'18"E	20.05'
L2	S14°34'19"W	22.51'

0.2924 ACRES  
12,738 SQ. FT.

BLOCK 11  
WIMBLETON VILLAGE  
PHASE IV  
(VOL. B, PG. 308)

WIMBLETON BOULEVARD  
(AN 80 FOOT RIGHT-OF-WAY)

LOT 1, BLOCK A  
JAMES WOOD AUTOPARK  
ADDITION, PHASE III  
(VOL. R, PG. 308)

WATER AND WASTEWATER EASEMENT  
PART OF LOT BLOCK 11  
WIMBLETON VILLAGE, PHASE V  
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COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

#### LEGEND

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	CRG	MCB	3/23/2022	061024039	3 OF 3

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 76**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1745+12 RT to Sta 1750+43 RT

Existing Easement

Instrument No. 2044-122693

MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
AND THE GIDEON WALKER SURVEY,  
ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS



70 2014 00116223

Denton County  
Cynthia Mitchell  
County Clerk  
Denton, TX 76202

Instrument Number: 2014-116223

Recorded On: November 14, 2014

As  
Easement

Parties: MAYHILL DENTON LP

To

Billable Pages: 6

Number of Pages: 6

Comment:

( Parties listed above are for Clerks reference only )

**\*\* THIS IS NOT A BILL \*\***

Easement	46.00
Total Recording:	46.00

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2014-116223

Receipt Number: 1225964

Recorded Date/Time: November 14, 2014 04:01:50P

**Record and Return To:**

TITLE RESOURCES

WILL CALL

DENTON TX 76202

User / Station: D Kitzmiller - Cash Station 2



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*C. Mitchell*

County Clerk  
Denton County, Texas

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

## **UTILITY EASEMENT**

<b>THE STATE OF TEXAS</b>	§	
	§	<b>KNOW ALL MEN BY THESE PRESENTS:</b>
<b>COUNTY OF DENTON</b>	§	

THAT MAYHILL DENTON, L.P., a Texas limited partnership (hereinafter referred to as "Grantor"), whose address is 15303 Dallas Parkway, Suite 350, Addison, Texas 75001 for and in consideration of the sum of One and No/100 Dollars (\$1.00) and other good and valuable consideration in hand paid by the City of Denton, Texas, receipt and sufficiency of which is hereby acknowledged, has GRANTED, BARGAINED, SOLD and CONVEYED and does by these presents GRANT, BARGAIN, SELL and CONVEY unto the City of Denton, Texas ("Grantee") a perpetual utility easement in, along, upon, under, over and across the following described property (the "Property"), owned by Grantor, and situated in Denton County, Texas, located in the Gideon Walker Survey, Abstract Number 1330 to wit:

**PROPERTY DEPICTED AND DESCRIBED IN EXHIBIT "A",  
ATTACHED HERETO AND MADE A PART HEREOF**

For the following purposes:

Constructing, reconstructing, installing, repairing, relocating, operating, and perpetually maintaining utilities and related facilities and appurtenances, in, along, upon, under, over and across said Property, including without limitation, the free and interrupted use, liberty, passage, ingress, egress and regress, at all times in, along, upon, under, over and across the Property to Grantee herein, its agents, employees, contractors, workmen and representatives, for the purposes set forth herein, including without limitation, the making additions to, improvements on and repairs to said facilities or any part thereof.



This Easement is subject to the following covenants and agreements:

1. Structures. No buildings, fences, structures, signs, facilities, improvements or obstructions of any kind, or portions thereof, shall be constructed, erected, reconstructed or placed in, along, upon, under, over or across the Property. Further, Grantor stipulates and acknowledges that the Grantee, in consideration of the benefits above set out, may alter the grade of the Property and may remove from the Property, such buildings, fences, structures, signs, facilities, improvements and other obstructions as may now or hereafter be found upon said Property and dispose of any such buildings, fences, structures, signs, facilities, improvements or obstructions in any manner it deems appropriate without liability to Grantee.

2. Access. For the purpose of exercising and enjoying the rights granted herein, the Grantee shall have access to the Property by way of existing public property or right-of-way.

3. Trees and Landscaping. No shrub or tree shall be planted upon the Property or that may encroach upon the Property. Grantee may cut, trim, or remove any shrubs or trees, or portions of shrubs or trees now or hereafter located within or that may encroach overhang upon the Property without liability to Grantee, including without limitation, the obligation to make further payment to Grantor.

4. Grantor's Rights. Grantor shall have the right, subject to the covenants and restrictions contained herein, to make use of the Property for any purpose that does not interfere with the City's rights granted to it herein for the purposes granted.

5. Successors and Assigns. This grant and the provisions contained herein shall constitute covenants running with the land and shall be binding upon the Grantor and Grantee, and their heirs, devisees, successors and assigns.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premise above described.

Witness my hand, this the 28<sup>th</sup> day of SEPTEMBER, 2014.

**GRANTOR:**

MAYHILL DENTON, L.P.,  
A Texas limited partnership

By: Silver Tree Fund Management, L.C.C.,  
a Texas limited liability company  
its General Partner

By: Paul A. Gardner

Title: MANAGER

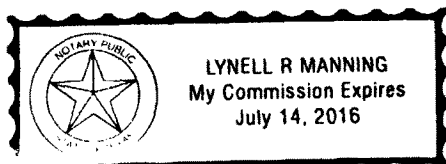
**ACKNOWLEDGMENT**

THE STATE OF TEXAS           §

COUNTY OF DALLAS           §

Before me the undersigned authority, on this day personally appeared PAUL A. GARDNER, MANAGER of Silver Tree Fund Management, L.L.C., a Texas limited liability company, the general partner of Mayhill Denton, L.P., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2nd 20th day of OCTO 2014.  
SEPTEMBER



Lynell R. Manning  
Notary Public, in and for the State of Texas

My Commission Expires: July 14, 2016

AFTER RECORDING RETURN TO:  
City of Denton – Engineering Department  
901-A Texas Street  
Denton, Texas 76209  
Attn: Paul Williamson

**EXHIBIT "A"**

**LEGAL DESCRIPTION  
VARIABLE WIDTH UTILITY EASEMENT  
Mayhill Denton, L.P. Tract**

**BEING** a 0.150 acre tract of land situated in the G. Walker Survey, Abstract No. 1330, City of Denton, Denton County, Texas, and being part of a called 16.737 acre tract of land described in a Deed to Mayhill Denton, L.P., as recorded in Document No. 2004-122693 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at a 60D nail found for corner in Pockrus Page Road, said point being Southeast corner of the above cited 16.737 acre tract, said point also being the Southwest corner of a called 3.676 acre tract of land described in a Deed to the City of Denton, Texas, as recorded in Document No. 2005-126452 of the Real Property Records of Denton County, Texas;

**THENCE** North 87°37'43" West along the South line of said 16.737 acre tract and said Pockrus Page Road, for a distance of 40.09 feet to a point for corner at the **POINT OF BEGINNING** for the herein described 0.150 acre tract;

**THENCE** North 87°37'43" West continuing along the South line of said 16.737 acre tract and said Pockrus Page Road, for a distance of 20.03 feet to a point for corner, from which a 1/2 inch iron rod found for the Southwest corner of said 16.737 acre tract bears North 87°37'43" West a distance of 168.39 feet;

**THENCE** North 05°21'50" East, departing the South line of said 16.737 acre tract and said Pockrus Page Road, for a distance of 304.68 feet to a point for corner in the Southerly line of an existing 20' wide Utility Easement conveyed to the City of Denton, Texas, as recorded in Volume 3339, Page 995 of the Real Property Records of Denton County, Texas;

**THENCE** South 39°49'23" East along the Southerly line of said Utility Easement, for a distance of 28.19 feet to a point for corner in the West line of an existing 50' wide Right-of-Way Easement to Arco Pipe Line Company, as recorded in Volume 1511, Page 340 of the Deed Records of Denton County, Texas;

**THENCE** South 05°21'50" West departing the Southerly line of said Utility Easement and along the West line of said Right-of-Way Easement, for a distance of 238.10 feet to a point for corner;

**THENCE** South 87°51'50" East departing the Westerly line of said Right-of-Way Easement, for a distance of 40.08 feet to a point for corner in the Westerly line of said 3.676 acre tract;

**THENCE** South 05°20'37" West along the Westerly line of said 3.676 acre tract for a distance of 16.03 feet to a 5/8 inch iron rod with cap stamped "TNP" found for corner;

**THENCE** North 87°51'50" West departing the Westerly line of said 3.676 acre tract for a distance of 40.09 feet to a point for corner lying in the Westerly line of said Right-of-Way Easement;

**THENCE** South 05°21'50" West along the West line of said Right-of-Way Easement, for a distance of 29.64 feet to the **POINT OF BEGINNING** and containing 0.150 acres of land, more or less.



Todd B. Turner, R.P.L.S.

July 15, 2013

REV: October 23, 2013

SECOND REV: January 14, 2014

THIRD REV: March 13, 2014

T.B.P.L.S. Firm No. 10011601



# EXHIBIT "A"

**NOTE:** Bearings are based on the Texas State Plane Coordinate System, North Central Zone (NAD83).

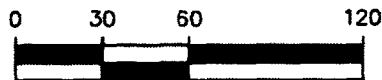
LEGEND	
▲	CALCULATED POINT
●	PK NAIL FOUND
○	1/2 IRON ROD FOUND (UNLESS OTHERWISE NOTED)
(CM)	CONTROL MONUMENT
FND.	FOUND
—	BOUNDARY LINE
- - -	ADJACENT PROPERTY LINE
- - -	PROPOSED EASEMENT LINE
- - -	EXISTING EASEMENT LINE
- - -	EXISTING EDGE OF ASPHALT

MAYHILL DENTON, L.P.  
CALLED 16.757 ACRES  
DOC. NO. 2004-122883  
R.P.R.D.C.T.

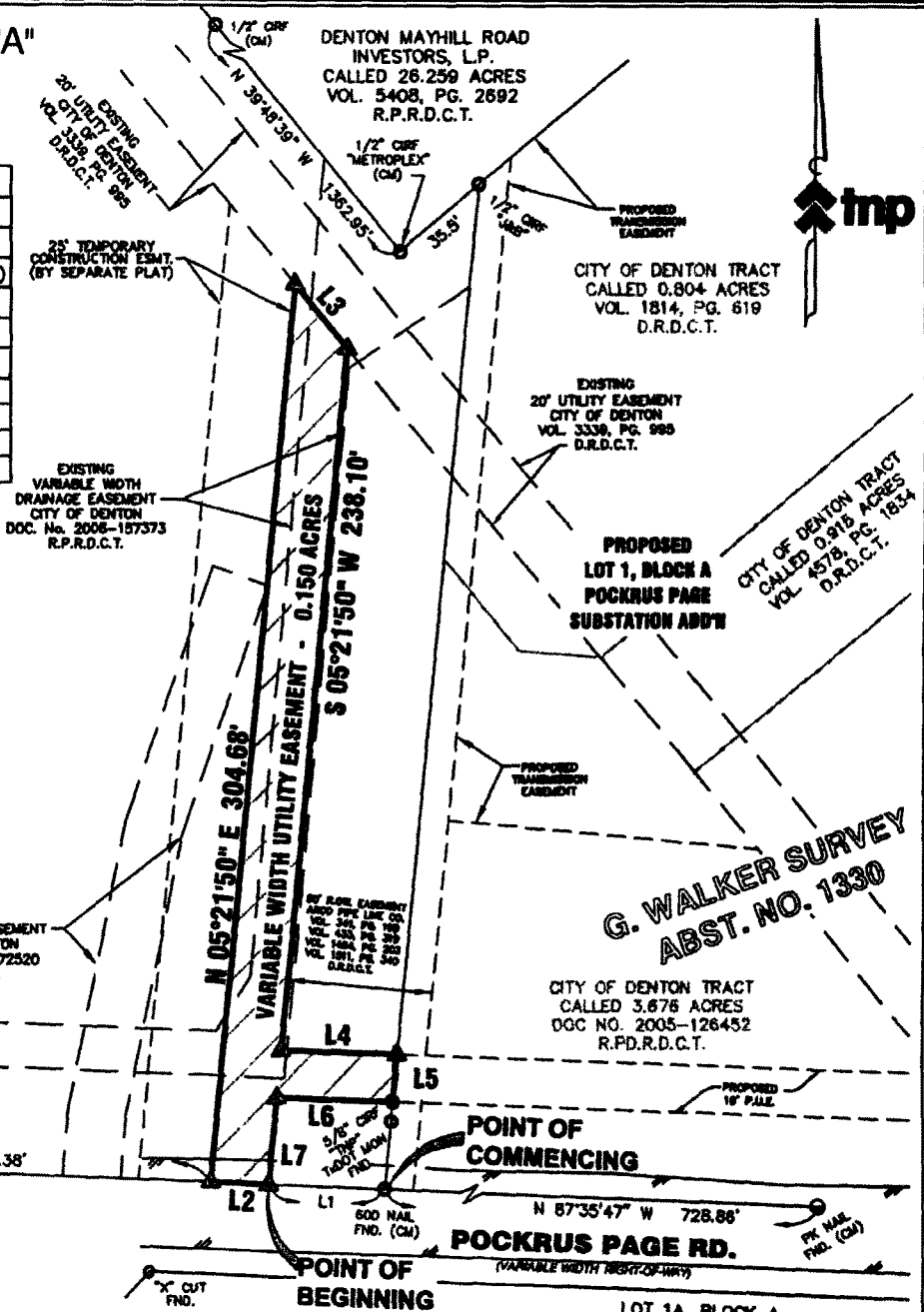
LINE	BEARING	DISTANCE
L1	N 87°37'43" W	40.09'
L2	N 87°37'43" W	20.03'
L3	S 39°49'23" E	28.19'
L4	S 87°51'50" E	40.08'
L5	S 05°20'37" W	16.03'
L6	N 87°51'50" W	40.09'
L7	S 05°21'50" W	29.64'

EXISTING  
VARIABLE WIDTH  
DRAINAGE EASEMENT  
CITY OF DENTON  
DOC. No. 2006-157373  
R.P.R.D.C.T.

EXISTING  
20' DRAINAGE EASEMENT  
CITY OF DENTON  
DOC. No. 2004-72520  
R.P.R.D.C.T.



SCALE: 1" = 60'



*Todd B. Turner*

Todd B. Turner, R.P.L.S.  
July 15, 2013  
REV: October 23, 2013  
SECOND REV: January 14, 2014  
THIRD REV: March 13, 2014  
TBPLS Firm No. 10011601



## VARIABLE WIDTH UTILITY EASEMENT

Being 0.150 Acres  
situated in the  
Gideon Walker Survey, A-1330  
City of Denton  
Denton County, Texas

JOB NO. DME11285

PAGE 2 OF 2



teague nall & perkins

1517 Centre Place Drive, Suite 320  
Denton, Texas 76205  
940.383.4177 ph 940.383.8026 fx  
www.tnpinc.com

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950 and the Gideon Walker Survey, Abstract No. 1330, City of Denton, Denton County, Texas, and being part of a called 16.737 acre tract of land described in Special Warranty Deed to Mayhill Denton, L.P. recorded in Instrument No. 2044-122693 of the Official Public Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a point in the in north right-of-way line of Pockrus Page Road (a variable width right-of-way); from said point the southwest corner of Lot 1, Block A, Pockrus Page Substation Addition, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2014-239 of said Official Public Records bears North 5°19'53" East, a distance of 6.57 feet;

**THENCE** North 85°48'03" West, along the said north right-of-way line of Pockrus Page Road, a distance of 40.01 feet to a point for corner;

**THENCE** continuing along the said north right-of-way line of Pockrus Page Road, North 85°47'39" West, a distance of 95.96 feet to a point at the intersection of the said north right-of-way line of Pockrus Page Road and the northeast right-of-way line of Interstate Highway No. 35 (a variable width right-of-way);

**THENCE** North 50°24'19" West, along the said northeast right-of-way line of Interstate Highway No. 35, a distance of 80.00 feet to a point for corner;

**THENCE** continuing along the said northeast right-of-way line of Interstate Highway No. 35, North 51°19'19" West, a distance of 229.97 feet to a point for corner in the west line of said 16.737 acre tract;

**THENCE** departing the said northeast right-of-way line of Interstate Highway No. 35, North 39°30'37" East, along the said west line of 16.737 acre tract, a distance of 99.27 feet to a point for corner;

**THENCE** continuing along the said west line of 16.737 acre tract, North 50°07'18" West, a distance of 91.01 feet to a point for corner;

**THENCE** departing the said west line of 16.737 acre tract, North 3°59'20" West, a distance of 30.31 feet to a point for corner in southeast line of Lot 7, Mayhill-Denton Addition, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2009-144 of said Official Public Records;

**THENCE** North 40°02'01" East, along the said southeast line of Lot 7, a distance of 28.78 feet to a point for corner;

**THENCE** departing the said southeast line of Lot 7, South 3°59'20" East, a distance of 42.49 feet to a point for corner;

**CONTINUED ON SHEET 2**

WATER AND WASTEWATER EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
AND THE GIDEON WALKER SURVEY,  
ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	2/3/2021	061024039	1 OF 5



**LEGAL DESCRIPTION (CONTINUED)**

**THENCE** the following five (5) calls:

South 50°07'23" East, a distance of 102.36 feet to a point for corner;  
 South 39°30'37" West, a distance of 98.85 feet to a point for corner;  
 South 51°19'19" East, a distance of 209.83 feet to a point for corner;  
 South 50°24'13" East, a distance of 73.78 feet to a point for corner;  
 South 85°47'39" East, a distance of 129.97 feet to a point for corner in the west line of said Lot 1;

**THENCE** South 5°19'53" West, along the said west line of Lot 1, a distance of 20.00 feet to the **POINT OF BEGINNING** and containing 13,241 square feet or 0.3040 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

 5/11/21  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



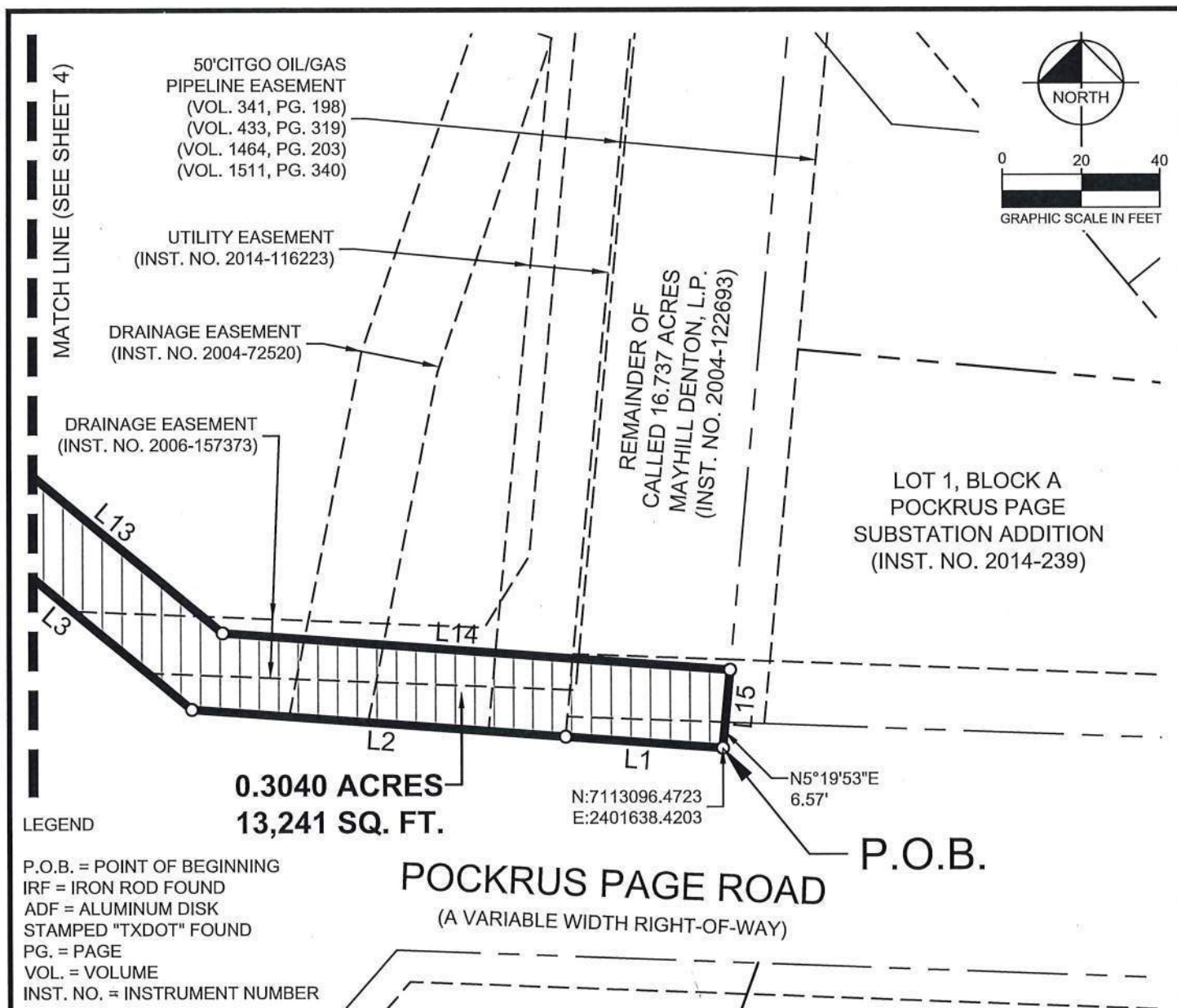
WATER AND WASTEWATER EASEMENT  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 AND THE GIDEON WALKER SURVEY,  
 ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	2/3/2021	061024039	2 OF 5



### NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*5/11/21*  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
AND THE GIDEON WALKER SURVEY,  
ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

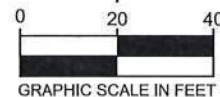
801 Cherry Street, Unit 11, # 1300  
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	2/3/2021	061024039	3 OF 5



MATCH LINE (SEE SHEET 5)



**INTERSTATE  
HIGHWAY NO. 35-E**  
(A VARIABLE WIDTH RIGHT-OF-WAY)

L4  
L12

MATCH LINE (SEE SHEET 3)

LINE TABLE

NO.	BEARING	LENGTH
L1	N85°48'03"W	40.01'
L2	N85°47'39"W	95.96'
L3	N50°24'19"W	80.00'
L4	N51°19'19"W	229.97'
L5	N39°30'37"E	99.27'
L6	N50°07'18"W	91.01'
L7	N03°59'20"W	30.31'
L8	N40°02'01"E	28.78'

LINE TABLE

NO.	BEARING	LENGTH
L9	S03°59'20"E	42.49'
L10	S50°07'23"E	102.36'
L11	S39°30'37"W	98.85'
L12	S51°19'19"E	209.83'
L13	S50°24'13"E	73.78'
L14	S85°47'39"E	129.97'
L15	S05°19'53"W	20.00'

## LEGEND

P.O.B. = POINT OF BEGINNING  
 IRF = IRON ROD FOUND  
 ADF = ALUMINUM DISK  
 STAMPED "TXDOT" FOUND  
 PG. = PAGE  
 VOL. = VOLUME  
 INST. NO. = INSTRUMENT NUMBER

WATER AND WASTEWATER EASEMENT  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 AND THE GIDEON WALKER SURVEY,  
 ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

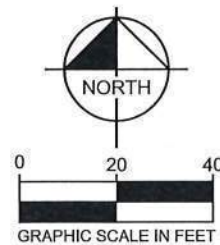
Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	2/3/2021	061024039	4 OF 5

LOT 7  
MAYHILL-DENTON ADDITION  
(INST. NO. 2009-144)

N:7113488.36  
E:2401271.38

DRAINAGE EASEMENT  
(INST. NO. 2006-157373)



S40°02'10"W  
21.86'

CALLED 0.80 ACRES  
ECKERI REAL ESTATE, LLC  
(INST. NO. 2010-18963)

REMAINDER OF  
CALLED 16.737 ACRES  
MAYHILL DENTON, L.P.  
(INST. NO. 2004-122693)

MATCH LINE (SEE SHEET 4)

#### LEGEND

P.O.B. = POINT OF BEGINNING  
IRF = IRON ROD FOUND  
ADF = ALUMINUM DISK  
STAMPED "TXDOT" FOUND  
PG. = PAGE  
VOL. = VOLUME  
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WATER AND WASTEWATER EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
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CITY OF DENTON, DENTON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	2/3/2021	061024039	5 OF 5



**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950 and the Gideon Walker Survey, Abstract No. 1330, City of Denton, Denton County, Texas, and being part of a called 16.737 acre tract of land described in Special Warranty Deed to Mayhill Denton, L.P. recorded in Instrument No. 2044-122693 of the Official Public Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a point in the southeast line of Lot 7, Mayhill-Denton Addition, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2009-144 of said Official Public Records; from said point the south corner of said Lot 7 bears South 40°02'01" West, a distance of 50.64 feet;

**THENCE** North 40°02'01" East, along the said southeast line of Lot 7, a distance of 35.97 feet to a point for corner;

**THENCE** departing the said southeast line of Lot 7, South 3°59'20" East, a distance of 57.71 feet to a point for corner;

**THENCE** the following six (6) calls:


South 50°07'23" East, a distance of 116.56 feet to a point for corner;  
 South 39°30'37" West, a distance of 123.33 feet to a point for corner;  
 North 51°19'19" West, a distance of 25.00 feet to a point for corner;  
 North 39°30'37" East, a distance of 98.85 feet to a point for corner;  
 North 50°07'23" West, a distance of 102.36 feet to a point for corner;  
 North 3°59'20" West, a distance of 42.49 feet to the **POINT OF BEGINNING** and containing 6,766 square feet or 0.1553 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



TEMPORARY CONSTRUCTION EASEMENT  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 AND THE GIDEON WALKER SURVEY,  
 ABSTRACT NO. 1330  
 CITY OF DENTON, DENTON COUNTY, TEXAS

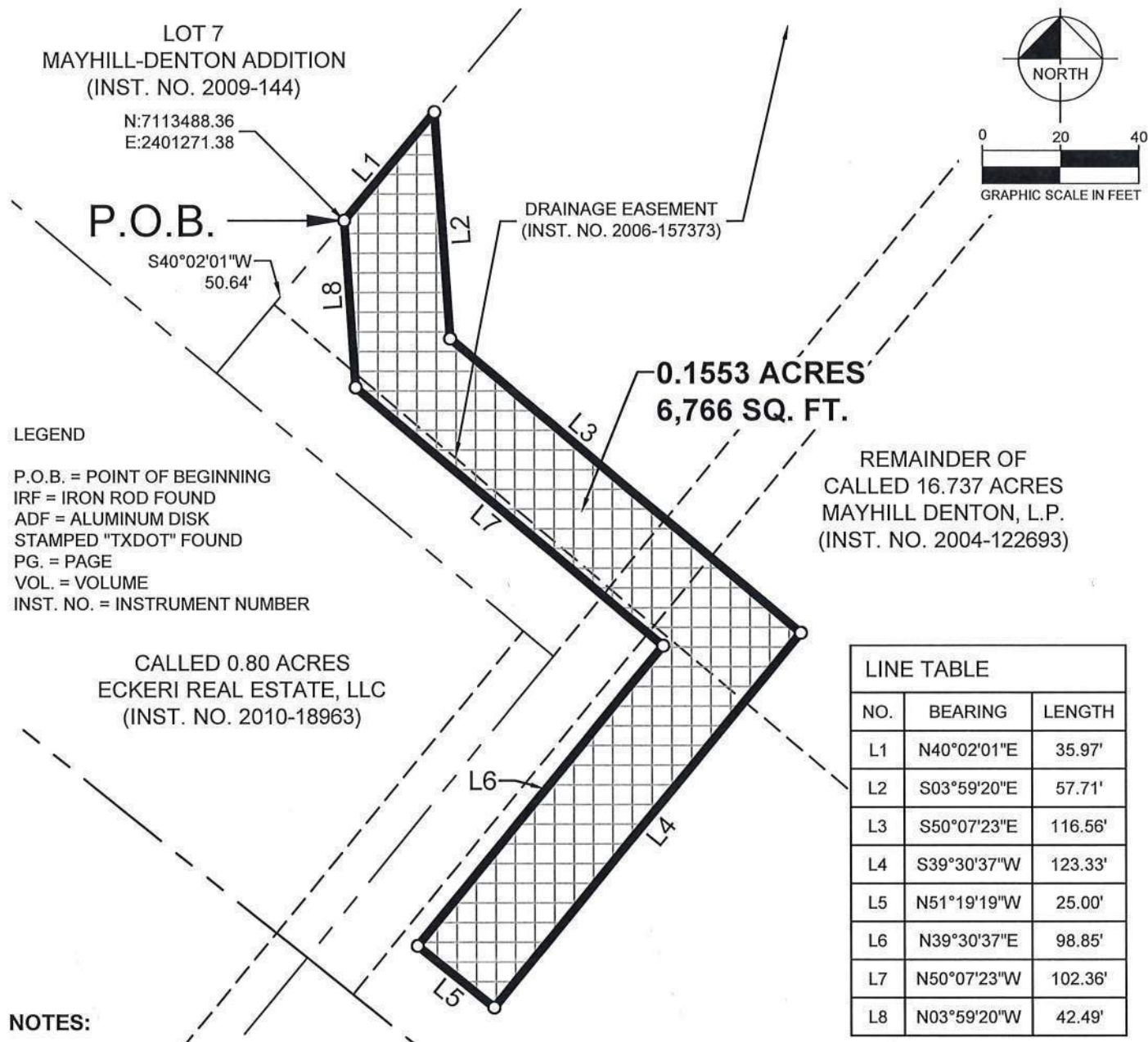
**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	2/3/2021	061024039	1 OF 2





## NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*2/6/21*  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



TEMPORARY CONSTRUCTION EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
AND THE GIDEON WALKER SURVEY,  
ABSTRACT NO. 1330  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	2/3/2021	061024039	2 OF 2

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 87**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Crossing Stations:  
Mayhill Sta 10+87 RT

Existing Easement

Instrument No. 2005-80481

MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

CERTIFICATE OF CITY SECRETARY

THE STATE OF TEXAS

**42546**

COUNTY OF DENTON

CITY OF DENTON

I, the undersigned, City Secretary of the City of Denton, Texas (the "City") DO HEREBY CERTIFY that according to the records of the City of which I am custodian, that:

the attached is a true and accurate copy of Ordinance No. 91-122 as passed by the City of Denton City Council on August 13, 1991.

TO CERTIFY WHICH, witness my official signature and the seal of said City, this the 14th day of August, 19 91.



*Jennifer Watters*  
City Secretary  
City of Denton, Texas

0469C

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: Jennifer Walters

APPROVED AS TO LEGAL FORM:  
DEBRA A. DRAYOVITCH, CITY ATTORNEY

BY: Debra A. Drayovitch

## EXHIBIT "A"

LEGAL DESCRIPTION  
TRACT 3

BEING THE DESCRIPTION of a 0.205 acre tract of land lying and being situated in the M.E.P. & P. Railroad Company Survey, Abstract 950, Denton County, Texas, said tract lying within the existing Right-of-Way of Mayhill Road as now fenced, and more specifically described by metes and bounds as follows:

BEGINNING at a T.H.D. Right-of-Way marker in the Northeasterly Right-of-Way line of Loop I-35 E, 237.07 feet left of Hwy. Station 1065+57.65, the intersection of said I-35E Right-of-Way with a fence and the apparent West Right-of-Way of Mayhill Road; said point also being the Southeast corner of a 243.361 acre tract, being Tract One of two tracts as conveyed to I-35 E/288 Joint Venture, by Deeds Recorded in Volume 1607, Page 328, 433, 443, 453, 463, and 483 Real Property Records, Denton County, Texas;

THENCE N. 14° 45' 35" E., with a fence and apparent West Right-of-Way line (variable width) of Mayhill Road, a distance of 250.51 feet to a point in the East Right-of-Way line of proposed Mayhill Road (120' R.O.W.), said point being on a curve;

THENCE Northeasterly with said curve, to the left, radius of 910.00 feet, through a central angle of 06° 55' 22", an arc distance of 109.95, chord bears N. 30° 36' 11" E., 109.88 feet to a point in the center of existing paving of Mayhill Road;

THENCE S. 14° 45' 35" W., with said asphalt paving and centerline of Mayhill Road Right-of-Way, 352.22 feet to a point;

THENCE N. 82° 49' 08" W., 30.26 feet to the PLACE OF BEGINNING AND CONTAINING 8,917 Square Feet or 0.205 Acre of Land.



## EXHIBIT "A"

VOL 3047 PG 781

LEGAL DESCRIPTION  
TRACT 4

BEING THE DESCRIPTION of a 0.302 acre tract of land lying and being situated in the M.E.P. & P. Railroad Company Survey, Abstract 950, Denton County, Texas, said tract lying within the existing Right-of-Way of Mayhill Road as now fenced, and more specifically described by metes and bounds as follows:

BEGINNING at a point in the centerline of T.M.P.A. Electrical Transmission Line which is the Northwest corner of an 18.2159 acre tract as conveyed to Mayhill Road Realty Company, by Deed Recorded in Volume 1441, Page 606, Real Property Records, Denton County, Texas and also being the Southwest corner of a 24.2584 acre tract as conveyed to Andrews Corporation by Deed Recorded in Volume 944, Page 424, Real Property Records, Denton County, Texas, the apparent East Right-of-Way line of existing Mayhill Road (variable width R.O.W.);

THENCE with said East Right-of-Way line Mayhill Road and the West line of said 18.2159 Acre Tract the following calls and distances:

1. S. 15° 00' 07" W., with a fence, 364.84 feet to a fence post and a jog in said fence;
2. S. 33° 59' 24" E., 5.45 feet to a fence post and a jog in fence;
3. S. 16° 36' 26" W., with a fence, 201.21 feet to its intersection with said Northeasterly, Right-of-Way line of I-35E;

THENCE N. 82° 49' 08" W., 25.82 feet to a point in the center of existing asphalt paving;

THENCE N. 14° 45' 35" E., with center of said asphalt paving, 352.22 feet to a point in the East Right-of-Way line of proposed Mayhill Road (120' R.O.W.), said point being on a curve;

THENCE in a Northeasterly direction with said curve, to the left, radius of 910.00 feet, through a central angle of 140° 23' 53", an arc distance of 228.68 feet, chord bears N. 190° 56' 35" E., 228.08 feet to a point in the centerline of T.M.P.A. Electrical Transmission line;

THENCE S. 39° 28' 16" E., with centerline said power easement, 11.0 feet to the PLACE OF BEGINNING AND CONTAINING 13,173 square feet or 0.302 Acre of Land.

EXHIBIT "A"

VOL 3047 PG 782

LEGAL DESCRIPTION  
TRACT 8

BEING THE DESCRIPTION of a 0.445 acre tract of land lying and being situated in the M.E.P. & P. Railroad Company Survey, Abstract 950, Denton County, Texas, said tract lying within the existing Right-of-Way of Mayhill Road as now fenced, and more specifically described by metes and bounds as follows:

BEGINNING at a point in a fence and the East boundary line of 243.361 acre tract of land, being Tract One of two tracts as conveyed to I-35E/288 Joint Venture by Deeds Recorded in Volume 1607, Page 328, 433, 443, 453, 463, and 483 Real Property Records, Denton County, Texas, and in the apparent West Right-of-Way line of existing Mayhill Road which lies N. 14° 45' 35" E., 906.49 feet from the Southeast corner of said I-35E/288 Joint Venture Tract;

THENCE with said West Right-of-Way and East boundary line the following calls and distances:

1. N. 14° 45' 35" E., with a fence 210.89 feet to a fence post, and an angle in said fence;
2. N. 23° 05' 23" E., with a fence, 168.81 feet to a fence post and an angle in fence;
3. N. 33° 22' 50" E., with a fence 149.79 feet to a point in the South Right-of-Way line of proposed Colorado Boulevard (80' R.O.W.), said point being in a curve;

THENCE in a Northeasterly direction with said curve, to the right, radius of 540.00 feet, through a central angle of 05° 27' 18", an arc distance of 51.41 feet, chord bears N. 66° 18' 37" E, 51.39 feet to a point in the center of existing asphalt paving in Mayhill Road;

THENCE with the center of said asphalt paving the following calls and distances:

1. S. 33° 37' 42" W., with center said asphalt paving, 126.26 feet to an angle point;
2. S. 24° 48' 07" W., 239.15 feet;
3. S. 14° 45' 35" W., 354.89 feet to a point of intersection of said center of existing paving with the East Right-of-Way line of proposed Mayhill Road;

THENCE N. 04° 00' 37" E., 160.85 feet to the PLACE OF BEGINNING AND CONTAINING 19,375 Square Feet or 0.445 Acre of Land.

VOL 3047 PG 0783

ORDINANCE NO. 91-122

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, ABANDONING AND VACATING A PORTION OF MAYHILL ROAD LOCATED BETWEEN INTERSTATE HIGHWAY 35 EAST AND THE UNION PACIFIC RAILROAD TRACKS (FORMERLY KNOWN AS THE M.K.T.) AS A PUBLIC STREET; RESERVING A UTILITY EASEMENT THEREIN; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission has recommended that a portion of Mayhill Road between Interstate Highway 35E and the Union Pacific Railroad Tracks be abandoned and vacated as a public street; and

WHEREAS, the City Council has determined that portion of the street being abandoned and vacated is no longer needed for public use; and

WHEREAS, the fair market value of the street easement has been determined and received, as required by section 272.001 of the Local Government Code; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION I. That the 60.0 foot wide public street right-of-way of Mayhill Road described in Exhibit A, (and labeled as tracts, 3, 4, 8, 9, and 14), attached to and incorporated into this ordinance by reference, is abandoned and vacated as a public street; provided, however, that there is expressly reserved and excepted from vacation and abandonment in the property described, a utility easement for the purpose of constructing, reconstructing, repairing, and maintaining public utilities.

SECTION II. That by operation of law the City of Denton's property interest in the street easement abandoned and vacated shall revert to the abutting property owner, whether one or more, and the City of Denton releases all claims to the use of the property for street purposes.

SECTION III. That this ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the 13<sup>th</sup> day of August, 1991.

  
BOB CASTLEBERRY, MAYOR

# EXHIBIT "A"

## LEGAL DESCRIPTION TRACT 9

VOL 3047 PG 0784

BEING THE DESCRIPTION of a 0.587 acre tract of land lying and being situated in the M.E.P. & P. Railroad Company Survey, Abstract 950, Denton County, Texas, said tract lying within the existing Right-of-Way of Mayhill Road as now fenced, and more specifically described by notes and bounds as follows:

BEGINNING at a point in a fence and the center of T.M.P.A. Electrical Transmission Line, said point being in the apparent East Right-of-Way line (variable width R.O.W.) of existing Mayhill Road, and also being in the Northwest corner of an 18.2159 acre tract as conveyed to Mayhill Road Realty Company by Deed Recorded in Volume 1441, Page 606, and the Southwest corner of a 24.2584 acre tract as conveyed to Andrews Corporation by Deed Recorded in Volume 944, Page 424, Real Property Records, Denton County, Texas;

THENCE N. 39° 28' 16" W., with said T.M.P.A. Electrical Transmission Line, 11.0 feet to a point on a curve and in the East Right-of-Way line proposed Mayhill Road (120' R.O.W.);

THENCE in a Northerly direction with said curve, to the left, radius of 910.00 feet, through a central angle of 08° 44' 01", an arc distance of 138.71 feet, chord bears N. 08° 22' 38" E., 138.58 feet to the end of said curve;

THENCE N. 04° 00' 37" E., 27.88 feet to a point in the center of existing asphalt paving of Mayhill Road (variable R.O.W.);

THENCE with said center of asphalt paving in Mayhill Road the following calls and distances:

1. N. 14° 45' 35" E., 354.89 feet to an angle point;
2. N. 24° 48' 07" E., 239.15 feet to an angle point;
3. N. 33° 37' 47" E., 126.26 feet to a point on the Southerly Right-of-Way line of proposed Colorado Boulevard (80' R.O.W.), said point being on a curve;

THENCE Northeasterly, with said curve, to the left, radius of 540.00 feet, through a central angle of 07° 48' 38", an arc distance of 73.61, chord bears N. 59° 40' 39" E., 73.56 feet to a point in a fence and the West boundary line of said 24.2584 acre tract; said point being in the apparent East Right-of-Way line of existing Mayhill Road (variable width R.O.W.);

THENCE with said West Boundary and apparent East Right-of-Way line of Mayhill Road the following calls and distances:

1. S. 36° 48' 47" W., with a fence, 66.48 feet to a fence post and an angle point;
2. S. 33° 33' 32" W., with a fence, 108.90 feet to a fence post and an angle point;
3. S. 24° 59' 08" W., with a fence, 240.16 feet to a fence post and an angle point;
4. S. 15° 00' 07" W., with a fence, 532.43 feet; to the PLACE OF BEGINNING AND CONTAINING 25,370 Square Feet or 0.587 Acre of Land.

LEGAL DESCRIPTION  
TRACT 14

BEING THE DESCRIPTION of a 0.021 acre tract of land lying and being situated in the M.E.P. & P. Railroad Company Survey, Abstract 950, Denton County, Texas, said tract lying within the existing Right-of-Way of Mayhill Road as now fenced, and more specifically described by metes and bounds as follows:

BEGINNING at a fence post in the apparent North Right-of-Way line of existing Mayhill Road (variable width R.O.W.), said point also being in the South boundary line of a 10.087 acre tract as conveyed to Aubry Products, Inc. by Deed Recorded in Volume 1709, Page 526, Real Property Records, Denton County, Texas, which lies N. 89° 11' 21" W., 24.28 feet from the Southeast corner of said 10.087 Acre Tract and the West Right-of-Way line of the Missouri, Kansas and Texas Railroad (100' R.O.W.);

THENCE S. 89° 11' 21" E., with South line said 10.087 Acre Tract, 14.42 feet to a point on the North Right-of-Way line of proposed Colorado Boulevard (80' R.O.W.), said point also being on a curve;

THENCE with said North Right-of-Way line the following calls and distances:

1. Southwesterly with said curve, to the left, radius of 540.00 feet, through a central angle of 13° 00' 25", an arc distance of 122.59 feet, chord bears S. 54° 24' 19" W., 122.32 feet to the end of said curve;
2. S. 47° 54' 06" W., 81.48 feet to a point in fence line and apparent North Right-of-Way line of existing Mayhill Road (variable width R.O.W.);

THENCE with said North Right-of-Way line of existing Mayhill Road and a fence the following calls and distances:

1. N. 37° 23' 10" E., 23.97 feet to a fence post and an angle in fence;
2. N. 47° 56' 39" E., 84.91 feet to a fence post and an angle in said fence;
3. N. 53° 34' 55" E., 84.39 feet to the PLACE OF BEGINNING AND CONTAINING 897 Square Feet or 0.021 Acre of Land.

RETURN TO:

STEWART TEXAS TITLE COMPANY  
1111 Y. AER MOBILE  
3141 Y. AER ST., SUITE 110  
FORT WORTH, TEXAS 76157



VOL 3047 PG 0786

942516  
FILED FOR RECORD  
91 AUG 27 PM 1:58  
TIM HODGES  
COUNTY CLERK DENTON CO. TEX  
BY \_\_\_\_\_ DEPUTY



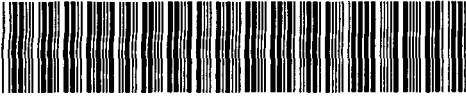
FILED FOR RECORD 27th DAY OF August A.D. 19 91 at 1:58 P.M.

DULY RECORDED 27th DAY OF August A.D. 19 91

TIM HODGES, COUNTY CLERK  
DENTON COUNTY, TEXAS

BY: Shandra Nelson DEPUTY

Denton County  
Cynthia Mitchell  
County Clerk  
Denton, Tx 76202



70 2006 00157364

Instrument Number: 2006-157364

As  
Easement

Recorded On: December 29, 2006

Parties: MAYHILL DENTON LP

To

Billable Pages: 9

Number of Pages: 9

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Easement	48.00
<b>Total Recording:</b>	<b>48.00</b>

\*\*\*\*\* DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2006-157364  
Receipt Number: 348257  
Recorded Date/Time: December 29, 2006 10:10:44A  
  
User / Station: P Sallee - Cash Station 4

**Record and Return To:**

CITY HALL EAST  
UTILITIES ENGINEERING  
601 EAST HICKORY SUITE B  
DENTON TX 76205



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*C. Mitchell*

County Clerk  
Denton County, Texas

PUBLIC ACCESS, FIRE LANE AND PUBLIC UTILITY EASEMENT

THE STATE OF TEXAS           §  
                                  §           KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DENTON           §

THAT MAYHILL DENTON, L.P., a Texas limited partnership (Grantor), in consideration of the sum of ONE DOLLAR and NO CENTS (\$1.00) and other good and valuable consideration in hand paid by the City of Denton, Texas, (Grantee), receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by Grantor and situated in Denton County, Texas, in the M.E.P. & P.R.R. Survey, Abstract No. 950.

SEE ATTACHED EXHIBITS "A" & "B"

And it is further agreed that the City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of access in along and across said premises. The access and fire lane easement shall be open to the public, fire and police units and emergency services. The maintenance of paving on the access and fire lane easement described herein shall be the responsibility of the property Owner. In addition, for the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public utilities, in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and

representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to said public utility facilities or any part thereof.

No buildings, fences, trees, shrubs, or other improvements or growths, other than paving, shall be constructed, reconstructed or placed upon, over or across the easement granted herein. That the undersigned does hereby covenant and agree that it shall construct upon the access and fire lane tract, as described and illustrated herein, a hard surface that it shall maintain the same in a state of good repair at all times and keep the same free and clear of any structures, fences, trees, shrubs, or other improvements, other than paving, or obstructions, including but not limited to the parking of motor vehicles, trailers or other impediments to the access of fire apparatus. The Owner shall post and maintain appropriate signs and markings in conspicuous places along such fire lanes, stating "Fire Lane, No Parking". The Fire Chief or his duly authorized representative is hereby authorized to cause such access and fire lane to be maintained free and unobstructed at all times for Fire Department use.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness its hand, this 22<sup>nd</sup> day of May, 2006.

By: MAYHILL DENTON, L.P.,  
A Texas limited partnership

By: Paul A. Gardner

Print Name: PAUL A. GARDNER

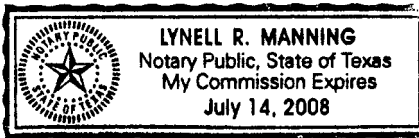
Title: MANAGING PARTNER

ACKNOWLEDGMENT

THE STATE OF TEXAS §  
COUNTY OF Dallas §

This instrument was acknowledged before me on this 22<sup>nd</sup> day of

May 20 06 by Lynell Manning  
(Print name)



Lynell R Manning  
Notary Public, in and for the State of TX  
My Commission Expires: 07-14-08

Accepted this 28<sup>th</sup> day of DECEMBER, 20 06 for the  
City of Denton, Texas (Resolution No. 91-073).

BY: Paul Williamson  
Paul Williamson  
Real Estate & Capital Support Manager

After Recording  
Please Return To:  
Engineering Department  
City Hall East  
601 E. Hickory, Suite B  
Denton, Texas 76205  
Attn: Paul Williamson



EXHIBIT "A"  
LEGAL DESCRIPTION  
ACCESS AND UTILITY EASEMENT  
0.694 ACRES  
SHEET 1 OF 4

BEING a tract of land out of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, situated in the City of Denton, Denton County, Texas, being part of that called 16.737 acre tract of land described in Deed to Mayhill Denton L.P. as recorded in Document No. 2004-122693 Denton County Deed Records, also being part of that called 0.538 acre tract described in Deed to Mayhill Denton L.P. as recorded in Document No. 2004-125300 Denton County Deed Records, and being more particularly described as follows;

BEGINNING at an "X" in concrete found in the west line of said 16.737 acre tract, said point being in the southeast right-of-way line of Mayhill Road, (120 foot wide R.O.W.), said point also being the most westerly corner of a called 1.217 acre tract conveyed to Regions Bank as recorded in Document No. 2005-80481, Denton County Deed Records;

THENCE along the south line of said 1.217 acre tract as follows:

South 49 degrees 18 minutes 56 seconds East, 240.89 feet to a one-half inch iron rod found for corner;

North 41 degrees 40 minutes 10 seconds East, 9.99 feet to a point for corner;

THENCE South 49 degrees 19 minutes 41 seconds East, 47.01 feet to a point for corner;

THENCE South 41 degrees 40 minutes 10 seconds West, 95.97 feet to a point for corner;

THENCE Southeasterly, 39.29 feet along a curve to the left having a radius of 25.00 feet, a central angle of 90 degrees 02 minutes 53 seconds, a tangent of 25.02 feet, and a chord bearing and distance of South 03 degrees 21 minutes 17 seconds East, 35.37 feet to a point for corner;

THENCE South 48 degrees 22 minutes 43 seconds East, 97.18 feet to a point for corner;

THENCE South 41 degrees 26 minutes 18 seconds West, 40.13 feet to a point for corner;

THENCE Southeasterly, 39.18 feet along a curve to the left having a radius of 25.00 feet, a central angle of 89 degrees 48 minutes 06 seconds, a tangent of 24.91 feet, and a chord bearing and distance of South 03 degrees 27 minutes 45 seconds East, 35.29 feet to a point for corner;

THENCE South 48 degrees 21 minutes 48 seconds East, 169.60 feet to a point for corner;

THENCE Southeasterly, 21.31 feet along a curve to the right having a radius of 49.00 feet, a central angle of 24 degrees 55 minutes 00 seconds, a tangent of 10.83 feet, and a

EXHIBIT "A"  
LEGAL DESCRIPTION  
ACCESS AND UTILITY EASEMENT  
0.694 ACRES  
SHEET 2 OF 4

chord bearing and distance of South 35 degrees 54 minutes 18 seconds East, 21.14 feet to a point for corner;

THENCE South 23 degrees 26 minutes 48 East, 5.25 feet to a point for corner;

THENCE Southeasterly, 10.87 feet along a curve to the left having a radius of 25.00 feet, a central angle of 24 degrees 55 minutes 03 seconds, a tangent of 5.52 feet, and a chord bearing and distance of South 35 degrees 54 minutes 19 seconds East, 10.79 feet to a point for corner;

THENCE South 48 degrees 21 minutes 48 seconds East, 243.09 feet to a point for corner;

THENCE South 41 degrees 38 minutes 12 seconds West, 24.00 feet to a point for corner;

THENCE North 48 degrees 21 minutes 48 seconds West, 243.09 feet to a point for corner;

THENCE Northwesterly, 21.31 feet along a curve to the right having a radius of 49.00 feet, a central angle of 24 degrees 55 minutes 00 seconds, a tangent of 10.83 feet, and a chord bearing and distance of North 35 degrees 54 minutes 18 seconds West, 21.14 feet to a point for corner;

THENCE North 23 degrees 26 minutes 48 seconds West, 5.26 feet to a point for corner;

THENCE Northwesterly, 10.68 feet along a curve to the left having a radius of 25.00 feet, a central angle of 24 degrees 27 minutes 58 seconds, a tangent of 5.42 feet, and a chord bearing and distance of North 35 degrees 40 minutes 47 seconds East, 10.59 feet to a point for corner;

THENCE North 41 degrees 39 minutes 50 seconds East, 12.00 feet to a point for corner;

THENCE North 48 degrees 21 minutes 48 seconds West, 206.58 feet to a point for corner;

THENCE South 41 degrees 29 minutes 09 seconds West, 152.00 feet to a point for corner;

THENCE North 41 degrees 03 minutes 53 seconds West, 110.83 feet to a point for corner;

EXHIBIT "A"  
LEGAL DESCRIPTION  
ACCESS AND UTILITY EASEMENT  
0.694 ACRES  
SHEET 3 OF 4

THENCE Northwesterly, 42.44 feet along a curve to the left having a radius of 25.00 feet, a central angle of 97 degrees 15 minutes 57 seconds, a tangent of 28.39 feet, and a chord bearing and distance of North 89 degrees 41 minutes 52 seconds West, 37.52 feet to a point for corner;

THENCE South 41 degrees 40 minutes 10 seconds West, 28.64 feet to a point for corner;

THENCE Southwesterly, 20.45 feet along a curve to the left having a radius of 25.00 feet, a central angle of 46 degrees 51 minutes 45 seconds, a tangent of 10.83 feet, and a chord bearing and distance of South 18 degrees 14 minutes 17 seconds West, 19.88 feet to a point for corner;

THENCE North 38 degrees 57 minutes 57 seconds West, 18.27 feet to a point for corner;

THENCE North 04 degrees 42 minutes 57 seconds West, 13.64 feet to a point for corner;

THENCE North 41 degrees 40 minutes 10 seconds East, 105.26 feet to a point for corner;

THENCE Southeasterly, 27.94 feet along a curve to the right having a radius of 49.00 feet, a central angle of 32 degrees 40 minutes 06 seconds, a tangent of 14.36 feet, and a chord bearing and distance of South 24 degrees 43 minutes 53 seconds East, 27.56 feet to a point for corner;

THENCE Southeasterly, 27.94 feet along a curve to the left having a radius of 49.00 feet, a central angle of 32 degrees 40 minutes 04 seconds, a tangent of 14.36 feet, and a chord bearing and distance of South 24 degrees 43 minutes 51 seconds East, 27.56 feet to a point for corner;

THENCE South 41 degrees 03 minutes 53 seconds East, 67.80 feet to a point for corner;

THENCE Southeasterly, 42.52 feet along a curve to the left having a radius of 25.00 feet, a central angle of 97 degrees 26 minutes 58 seconds, a tangent of 28.48 feet, and a chord bearing and distance of South 89 degrees 47 minutes 22 seconds East, 37.58 feet to a point for corner;

THENCE North 41 degrees 25 minutes 17 seconds East, 125.85 feet to a point for corner;

THENCE Northwesterly, 39.16 feet along a curve to the left having a radius of 25.00 feet, a central angle of 89 degrees 45 minutes 07 seconds, a tangent of 24.89 feet, and a

EXHIBIT "A"  
LEGAL DESCRIPTION  
ACCESS AND UTILITY EASEMENT  
0.694 ACRES  
SHEET 4 OF 4

chord bearing and distance of North 03 degrees 27 minutes 16 seconds West, 35.28 feet to a point for corner;

THENCE North 48 degrees 19 minutes 50 seconds West, 97.38 feet to a point for corner;

THENCE North 41 degrees 40 minutes 10 seconds East, 95.13 feet to a point for corner;

THENCE Northwesterly, 39.70 feet along a curve to the left having a radius of 25.00 feet, a central angle of 90 degrees 59 minutes 06 seconds, a tangent of 25.43 feet, and a chord bearing and distance of North 03 degrees 49 minutes 23 seconds West, 35.66 feet to a point for corner;

THENCE North 48 degrees 33 minutes 46 seconds West, 66.77 feet to a point for corner;

THENCE Southwesterly, 7.98 feet along a curve to the left having a radius of 5.00 feet, a central angle of 91 degrees 29 minutes 14 seconds, a tangent of 5.13 feet, and a chord bearing and distance of South 85 degrees 41 minutes 39 seconds West, 7.16 feet to a point for corner;

THENCE South 39 degrees 57 minutes 00 seconds West, 1.81 feet to a point for corner;

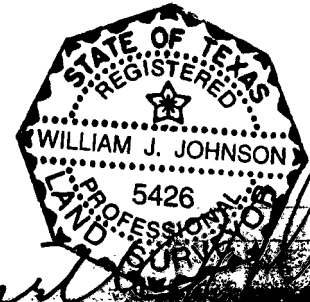
THENCE North 49 degrees 18 minutes 15 seconds West, 30.95 feet to a point for corner;

THENCE North 52 degrees 49 minutes 51 seconds West, 90.16 feet to a point for corner;

THENCE North 48 degrees 35 minutes 13 seconds West, 23.82 feet to a point for corner;

THENCE Northwesterly, 17.51 feet along a curve to the left having a radius of 25.00 feet, a central angle of 40 degrees 08 minutes 19 seconds, a tangent of 9.13 feet, and a chord bearing and distance of North 68 degrees 39 minutes 23 seconds West, 17.16 feet to a point for corner;

THENCE Northeasterly, 31.39 feet along a curve to the left having a radius of 910.00 feet, a central angle of 01 degrees 58 minutes 35 seconds, a tangent of 15.70 feet, and a chord bearing and distance of North 30 degrees 39 minutes 10 seconds East, 31.39 feet to the POINT OF BEGINNING and containing 30,228 square feet or 0.694 acres of land.



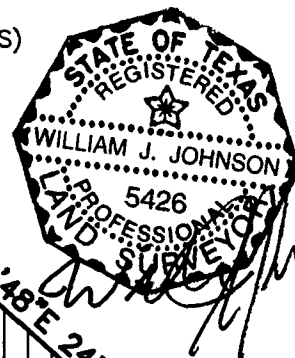
# EXHIBIT "B" ACCESS AND UTILITY EASEMENT 0.694 ACRES

LINE TABLE		
LINE	BEARING	LENGTH
L1	N41°40'10"E	9.99'
L2	S49°19'41"E	47.01'
L3	S41°40'10"W	95.97'
L4	S48°22'43"E	97.18'
L5	S41°26'18"W	40.13'
L6	S23°26'48"E	5.25'
L7	S41°38'12"W	24.00'
L8	N23°26'48"W	5.26'
L9	N41°39'50"E	12.00'
L10	S41°29'09"W	152.00'
L11	N41°03'53"W	110.83'
L12	S41°40'10"W	28.64'
L13	N38°57'57"W	18.27'
L14	N04°42'57"W	13.64'
L15	N41°40'10"E	105.26'
L16	S41°03'53"E	67.80'
L17	N41°25'17"E	125.85'
L18	N48°19'50"W	97.38'
L19	N41°40'10"E	95.13'
L20	N48°33'46"W	66.77'
L21	S39°57'00"W	1.81'
L22	N49°18'15"W	30.95'
L23	N52°49'51"W	90.16'
L24	N48°35'13"W	23.82'



( IN FEET )  
1 inch = 100 ft.

MAYHILL DENTON, L.P.  
DOC.# 2004-122693  
D.R.D.C.T.  
(16.757 ACRES)



SAKS ENTERPRISES, INC  
VOL. 4155, PG. 1927  
D.R.D.C.T.  
(0.808 AC)

MICHAEL W. ECKERT et al  
DOC. NO. 97-R0023052  
D.R.D.C.T.  
(0.80 ACRE)

MAYHILL DENTON, L.P.  
DOC.# 2004-122693  
D.R.D.C.T.  
(16.757 ACRES)

MAYHILL-  
DENTON, L.P.  
DOC.# 2004-125300  
D.R.D.C.T.  
(0.538 ACRES)

INTERSTATE 35E  
(VARIABLE WIDTH ROW)

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHD. BEARING	CHORD
C1	39.29'	25.00'	90°02'53"	25.02'	S03°21'17"E	35.37'
C2	39.18'	25.00'	89°48'06"	24.91'	S03°27'45"E	35.29'
C3	21.31'	49.00'	24°55'00"	10.83'	N35°54'18"W	21.14'
C4	10.87'	25.00'	24°55'03"	5.52'	S35°54'19"E	10.79'
C5	21.31'	49.00'	24°55'00"	10.83'	N35°54'18"W	21.14'
C6	10.68'	25.00'	24°27'58"	5.42'	N35°40'47"W	10.59'
C7	42.44'	25.00'	97°15'57"	28.39'	N89°41'52"W	37.52'
C8	20.45'	25.00'	46°51'45"	10.83'	S18°14'17"W	19.88'
C9	27.94'	49.00'	32°40'06"	14.36'	S24°43'53"E	27.56'
C10	27.94'	49.00'	32°40'04"	14.36'	S24°43'51"E	27.56'
C11	42.52'	25.00'	97°26'58"	28.48'	S89°47'22"E	37.58'
C12	39.16'	25.00'	89°45'07"	24.89'	N03°27'16"W	35.28'
C13	39.70'	25.00'	90°59'06"	25.43'	N03°49'23"W	35.66'
C14	7.98'	5.00'	91°29'14"	5.13'	S85°41'37"W	7.16'
C15	17.51'	25.01'	40°07'43"	9.13'	N68°39'13"W	17.16'
C16	31.39'	910.00'	1°58'35"	15.70'	N30°39'10"E	31.39'





70 2006 00157361

Denton County  
Cynthia Mitchell  
County Clerk  
Denton, Tx 76202

Instrument Number: 2006-157361

Recorded On: December 29, 2006

As  
Easement

Parties: REGIONS BANK

To

Billable Pages: 5

Number of Pages: 5

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Easement	32.00
<b>Total Recording:</b>	<b>32.00</b>

\*\*\*\*\* DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2006-157361

Receipt Number: 348257

Recorded Date/Time: December 29, 2006 10:10:44A

User / Station: P Sallee - Cash Station 4

**Record and Return To:**

CITY HALL EAST  
UTILITIES ENGINEERING  
601 EAST HICKORY SUITE B  
DENTON TX 76205



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*C. Mitchell*

County Clerk  
Denton County, Texas

SEP 13 2006  
LB

WATER LINE EASEMENT

THE STATE OF TEXAS,       §  
                                  §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DENTON       §

THAT REGIONS BANK (Grantor), in consideration of the sum of ONE DOLLAR and NO CENTS (\$1.00) and other good and valuable consideration in hand paid by the City of Denton, Texas, (Grantee), receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by Grantor and situated in Denton County, Texas, in the M.E.P. & P.R.R. Survey, Abstract No. 950.

SEE EXHIBIT "A"

And it is further agreed that the City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining the water lines and related appurtenances in, along, upon and across said premises, with the right and privilege at all times of the Grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to the said water line facilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as  
aforesaid for the purposes aforesaid the premises above described.

By: REGIONS BANK

BY: KB Pressley

Print Name: Keith B. Pressley

Title: Senior Vice President

ACKNOWLEDGMENT

THE STATE OF Alabama §  
COUNTY OF Jefferson §

This instrument was acknowledged before me on this 20<sup>th</sup> day of  
October 2006 by Keith B. Pressley.  
(Print name)

Jorge W. Morgan  
Notary Public, in and for the State of AL  
My Commission Expires: 10-25-09

Accepted this 28<sup>th</sup> day of DECEMBER, 2006 for the  
City of Denton, Texas (Resolution No. 91-073).

BY: Paul Williamson  
Paul Williamson  
Real Estate & Capital Support Manager

AFTER RECORDING RETURN TO:

City Hall East, UTILITIES ENGINEERING  
601 East Hickory Street, Suite B  
Denton, Texas 76205  
Attention: Paul Williamson

LEGAL DESCRIPTION  
WATER EASEMENT  
0.007 ACRES  
SHEET 1 OF 2

BEING a tract of land out of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, situated in the City of Denton, Denton County, Texas, being part of a 1.217 acre tract conveyed to Regions Bank as recorded in Document No. 2005-80481 Denton County Deed Records, and being more particularly described as follows;

COMMENCING at an "X" in concrete found at the west corner of said 1.217 acre tract, said point also being in the southeast right-of-way line of Mayhill Road, (120 foot wide R.O.W.), as recorded in Cabinet F, Page 125, Denton County Deed Records;

THENCE South 49 degrees 18 minutes 56 seconds East, 48.70 feet, along the southwest line of said 1.217 acre tract to a point for corner;

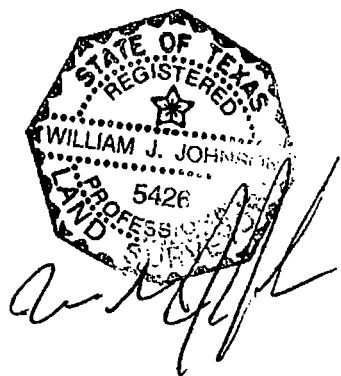
THENCE North 40 degrees 40 minutes 53 seconds East 14.44 feet, to the POINT OF BEGINNING of this tract;

THENCE North 40 degrees 40 minutes 53 seconds East 15.00 feet to a point for corner;

THENCE South 48 degrees 35 minutes 13 seconds East, 19.66 feet to a point for corner;

THENCE South 40 degrees 40 minutes 53 seconds West, 15.00 feet to a point for corner;

THENCE North 48 degrees 35 minutes 13 seconds West, 19.66 feet to the POINT OF BEGINNING and containing 295 square feet or 0.007 acres of land.



**WATER EASEMENT  
0.007 ACRES  
SHEET 2 OF 2**

DENTON MAYHILL ROAD  
INVESTORS, L.P.  
VOL. 5408, PG. 2692  
D.R.D.C.T.  
(25.259 ACRES)

**MAYHILL ROAD**  
CAB. F. PG. 125  
(120' R.O.W.)

REGIONS BANK  
DOC.# 2005-80481  
D.R.D.C.T.  
(1.217 ACRES)

**POINT OF  
BEGINNING**

**POINT OF  
COMMENCING**

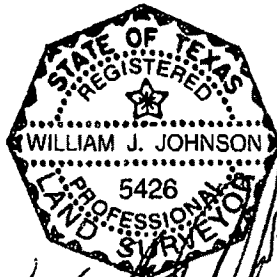
S49°18'55"E  
FND. 48.70'  
N40°40'53"E  
14.44'

PROPOSED ACCESS  
& UTILITY EASEMENT

MAYHILL DENTON L.P.  
DOC.# 2004-122693  
D.R.D.C.T.  
(16.757 ACRES)



( IN FEET )  
1 inch = 50 ft.



LINE TABLE		
LINE	BEARING	LENGTH
L1	N40°40'53"E	15.00'
L2	S48°35'13"E	19.66'
L3	S40°40'53"W	15.00'
L4	N48°35'13"W	19.66'



**LEGAL DESCRIPTION**

**BEING** a tract of land out of the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, situated in the City of Denton, Denton County, Texas, being part of a called 1.217 acre tract of land described in Special Warranty Deed to Regions Bank, recorded in Instrument No. 2005-80481 of the Official Public Records of Denton County, Texas and being more particularly described as follows;

**BEGINNING** at a point in the southeast right-of-way line of Mayhill Road (a 120-foot width right-of-way), from said point the northwest corner of said 1.217 acre tract bears North 15°39'28" East, a distance of 96.51 feet;

**THENCE** South 72°33'56" East, departing the said southeast right-of-way line, a distance of 23.58 feet to a point for corner;

**THENCE** South 17°28'42" West, a distance of 25.62 feet to a point for corner;

**THENCE** North 72°31'24" West, a distance of 24.40 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 1°36'46", a radius of 910.00 feet, a chord bearing and distance of North 19°18'48" East, 25.61 feet, being on the said southeast right-of-way line, from which the southwest corner of said 1.217 acre tract bears South 24°02'40" West, a distance of 117.67 feet;

**THENCE** in a northeasterly direction with said curve to the left, along the said southeast right-of-way line, an arc distance of 25.61 feet to the **POINT OF BEGINNING**, and containing 0.0141 acres or 613 square feet of land, more or less.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley* 2/3/21  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

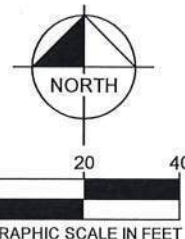
801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	2/3/2021	061024039	1 OF 3

**MAYHILL ROAD**  
(120-FOOT WIDE RIGHT-OF-WAY)  
(VOL. F, PG. 125)

N:7114437.54  
E:2400768.13



**P.O.B.**

N:7114344.62  
E:2400742.08

**0.0141 ACRES**  
**613 SQ. FT.**

N15°39'28"E  
96.51'

L1

L2

L3

C1

REGIONS BANK  
(INST. NO. 2005-80481)

PROPOSED RIGHT-OF-WAY

S24°02'40"W 117.67'

N:7114209.74  
E:2400684.47

#### LEGEND

P.O.B. = POINT OF BEGINNING  
PG. = PAGE  
VOL. = VOLUME  
INST. NO. = INSTRUMENT NUMBER

#### NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley* 2/8/21  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/3/2021	061024039	2 OF 3

LINE TABLE			CURVE TABLE					
NO.	BEARING	LENGTH	NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
L1	S72°33'56"E	23.58'	C1	1°36'46"	910.00'	25.61'	N19°18'48"E	25.61'
L2	S17°28'42"W	25.62'						
L3	N72°31'24"W	24.40'						

WATER AND WASTEWATER EASEMENT  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	2/3/2021	061024039	3 OF 3



**LEGAL DESCRIPTION**

**BEING** a tract of land out of the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, situated in the City of Denton, Denton County, Texas, being part of a called 1.217 acre tract of land described in Special Warranty Deed to Regions Bank, recorded in Instrument No. 2005-80481 of the Official Public Records of Denton County, Texas and being more particularly described as follows;

**BEGINNING** at a point in the southeast right-of-way line of Mayhill Road (a 120-foot width right-of-way), said point being at the beginning of a non-tangent curve to the left having a central angle of  $1^{\circ}19'20''$ , a radius of 910.00 feet, a chord bearing and distance of North  $17^{\circ}50'45''$  East, 21.00 feet, from said point the northwest corner of said 1.217 acre tract bears North  $15^{\circ}39'28''$  East, a distance of 96.51 feet;

**THENCE** in a northeasterly direction, along the said southeast right-of-way line, with said curve to the left, an arc distance of 21.00 feet to a point for corner;

**THENCE** South  $72^{\circ}33'56''$  East, departing the said southeast right-of-way line, a distance of 44.50 feet to a point for corner;

**THENCE** South  $17^{\circ}28'42''$  West, a distance of 46.63 feet to a point for corner;

**THENCE** North  $72^{\circ}31'18''$  West, a distance of 21.00 feet to a point for corner; from which the southwest corner of said 1.217 acre tract bears South  $35^{\circ}00'44''$  West, a distance of 126.22 feet;

**THENCE** North  $17^{\circ}28'42''$  East, a distance of 25.62 feet to a point for corner;

**THENCE** North  $72^{\circ}33'56''$  West, a distance of 23.58 feet to the **POINT OF BEGINNING**, and containing 0.0338 acres or 1,473 square feet of land, more or less.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

*M.C. Billingsley 9/24/21*  
**MICHAEL C. BILLINGSLEY**  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



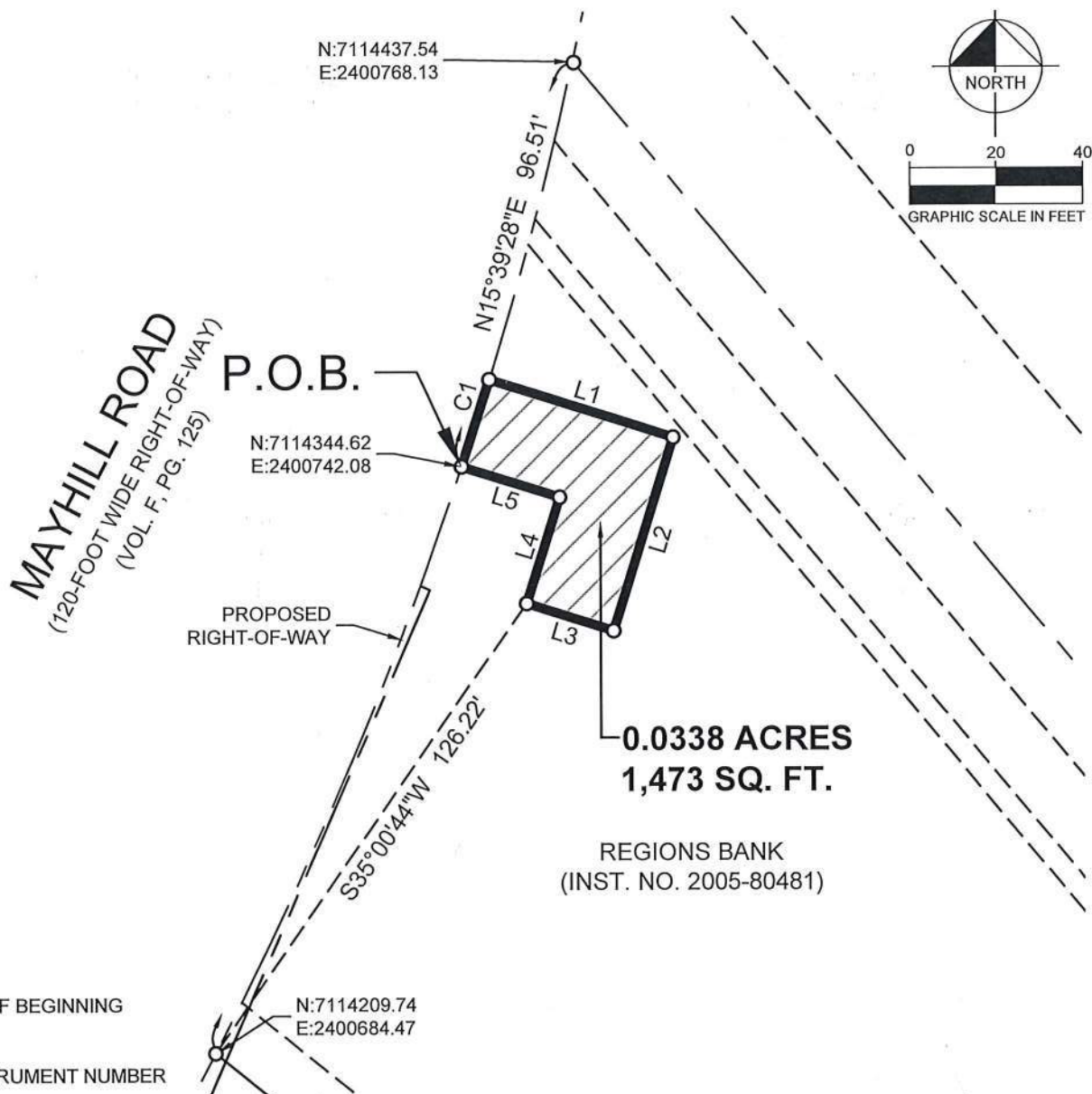
TEMPORARY CONSTRUCTION EASEMENT  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	9/24/2021	061024039	1 OF 3



# LEGEND

P.O.B. = POINT OF BEGINNING  
PG. = PAGE  
VOL. = VOLUME  
INST. NO. = INSTRUMENT NUMBER

# NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley*  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



TEMPORARY CONSTRUCTION EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	9/24/2021	061024039	2 OF 3



LINE TABLE		
NO.	BEARING	LENGTH
L1	S72°33'56"E	44.50'
L2	S17°28'42"W	46.63'
L3	N72°31'24"W	21.00'
L4	N17°28'42"E	25.62'
L5	N72°33'56"W	23.63'

CURVE TABLE					
NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	1°19'20"	910.00'	21.00'	N17°50'45"E	21.00'

TEMPORARY CONSTRUCTION EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	9/24/2021	061024039	3 OF 3

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 88**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1760+83 LT to Sta 1762+52 LT

Existing Easement

Instrument No. 2012-144892

Volume V, Page 273

MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

6232

THE STATE OF TEXAS :

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON :

THAT the Foxworth-Galbraith Lumber Company, a corporation, acting through its president, J. L. Foxworth, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration the receipt of which is hereby fully confessed and acknowledged, and the further consideration of the agreement by Grantee to install in the water line constructed in the hereinafter described tract of land one (1)-two (2) inch water tap at such location as may be designated by Grantor without any cost or expense to Grantor, with the understanding,

by and between Grantor and Grantee that a part of the consideration for the granting of this easement is the agreement by Grantee that the Grantor shall have the right to receive water service from the line hereinafter described for the same rates charged like users within the City Limits of the City of Denton, Texas, does hereby GIVE and GRANT to the said City of Denton, Texas, its successors and assigns, the free and uninterrupted use, liberty, and right in, upon and across the following described property for the purpose of constructing, reconstructing and perpetually maintaining a water line in, upon and across a tract of land lying and being situated in the County of Denton, State of Texas, and more particularly described as follows:

BEGINNING at a point in the Northeasterly line of a tract of land out of the MEP & PRR Co., Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co., a corporation, by H. Edward Smith and wife Mary Frances Smith, and recorded in Volume 474, Page 491 of the Deed Records of Denton County,

Texas; said beginning point also being in the Southwesterly right-of-way line of Interstate Highway 35E; said beginning point also being 654.7 feet North 49 degrees 57 minutes West from the most Easterly Northeast corner of the Foxworth-Galbraith Lumber Co. tract;

THENCE South 2 degrees 49 minutes West and passing at 488.36 feet an inner ell corner of the Foxworth-Galbraith Lumber Co. tract and continuing with the East line of said Foxworth-Galbraith tract for a total distance of 2,173.3 feet to a point for a corner in an existing fence line;

THENCE North 87 degrees 11 minutes West a distance of 20 feet to a point for a corner;

THENCE North 2 degrees 49 minutes East a distance of 2,190.0 feet to a point for a corner in the Southwesterly right-of-way of said Highway 35E;

THENCE South 49 degrees 57 minutes East with the Southwesterly right-of-way line of said Highway 35E a distance of 25.6 feet more or less to the place of beginning

TO HAVE AND TO HOLD the same perpetually to the City of Denton, Texas, and its successors, together with the right and privilege at any and all times to enter said premises for the purpose of constructing, reconstructing and perpetually maintaining said water line and for making connections therewith.

IN WITNESS WHEREOF, the said corporation has caused these presents to be signed by its duly authorized officer and to be sealed with the Seal of the Corporation.

VOL 496 PAGE 564



FOXWORTH-GALBRAITH LUMBER COMPANY

By

J. L. Foxworth  
President

ATTEST:

A. Woodford  
Secretary

THE STATE OF TEXAS :

COUNTY OF DALLAS :

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared J. L. Foxworth, President, Foxworth-Galbraith Lumber Company, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Foxworth-Galbraith Lumber Company, a corporation, and that he executed the same as the act of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

WITNESS MY HAND AND SEAL OF OFFICE this 16th day of  
July, A.D. 1963.

Ann Harrison ANN HARRISON

Notary Public in and for  
Dallas County, Texas

FILED FOR RECORD: 17 day of July A.D. 1963 at 10:15 o'clock A.M.  
RECORDED: 24 day of July A.D. 1963 at 7:45 o'clock P.M.  
By: Lorence McLeod Deputy Theta Parker, Clerk County Court,  
Denton County, Texas



THE STATE OF TEXAS    X  
COUNTY OF DENTON       X

KNOW ALL MEN BY THESE PRESENTS:

9845

THAT the Foxworth-Galbraith Lumber Company, a corporation, acting through its President, J. L. Foxworth, for and in consideration of the sum of TEN DOLLARS (\$10.00) cash and other good and valuable consideration to it in hand paid by the City of Denton, Texas, a municipal corporation, of the County of Denton, State of Texas, the receipt of which is hereby acknowledged, does hereby GIVE and GRANT to the said City of Denton, Texas, its successors and assigns, the free and uninterrupted use, liberty, and right in, upon and across the following described property for the purpose of constructing, reconstructing, and perpetually maintaining a sanitary sewer line and appurtenances in, upon and across a tract of land lying and being situated in the County of Denton, State of Texas, and more particularly described as follows:

VOL 501 PAGE 274

BEGINNING at a point in the East property line of of a 154.7 acre tract of land out of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co. by H. Edward Smith, and wife, Mary Frances Smith, and recorded in Volume 974, Page 491, of the Deed Records of Denton County, Texas; said beginning point being 2,454 feet North, 1,885.35 feet East, and 109.5 feet North, 2 degrees, 05 minutes, East of the Southwest corner of the M.E.P. & P.R.R. Co. Survey; said point also being North, 2 degrees, 05 minutes, East from the Southeast corner of said 154.7 acre tract;

THENCE North 65 degrees 15 minutes West, a distance of 298.0 feet to a point for corner;

THENCE South 89 degrees 03 minutes West, a distance of 285.4 feet to a point for corner;

THENCE North 67 degrees 42 minutes West, a distance of 263.8 feet to a point for corner;

THENCE North 32 degrees 28 minutes West a distance of 970.9 feet to a point for corner;

THENCE North 50 degrees 28 minutes West, a distance of 775.1 feet to a point in the West property line of said Smith to Foxworth-Galbraith 154.7 acre tract;

THENCE North 2 degrees 05 minutes East with the West property line of said 154.7 acre tract of land a distance of 12.8 feet to a point for corner;

THENCE South 50 degrees 28 minutes East, a distance of 784.7 feet to a point for corner;

THENCE South 32 degrees 28 minutes East, a distance of 969.1 feet to a point for corner;

THENCE South 67 degrees 42 minutes East, a distance of 258.8 feet to a point for corner;

THENCE North, 89 degrees 03 minutes East, a distance of 285.6 feet to a point for corner;

THENCE South 65 degrees 15 minutes East, a distance of 296.0 feet to a point in the East property line of said 154.7 acre tract of land;

THENCE South 2 degrees 05 minutes West, with the East property line of said 154.7 acre tract, a distance of 11.0 feet to the place of beginning; and containing 0.60 acres of land, more or less.

TO HAVE AND TO HOLD, all and singular, the privileges aforesaid to it, the said City of Denton, Texas, its successors and assigns forever, together with the right and privilege, at any and all times to enter the said premises or any part thereof, for the purpose of constructing, reconstructing and perpetually maintaining said sanitary sewer line together with necessary appurtenances, and for making connections therewith; all upon the condition that the said City of Denton, Texas, will at all times, after doing any work in connection with the construction, reconstruction or repair of said sanitary sewer line restore said premises to the condition in which same were found before such work was undertaken, including repair of all fences.

that might be disturbed or damaged in performing said work;  
and further upon the condition that Grantor, its successors and assigns shall have the right to make connections with the

aforesaid sanitary sewer line for the purpose of providing sewage collection service to their property, all upon such terms and conditions and upon the payment of such charges for such connections and service as may from time to time be provided by the ordinances of the said City of Denton, Texas;

PROVIDED, HOWEVER, that for the purpose of initially constructing the sanitary sewer line and appurtenances above described, and during such initial construction, the City of Denton, Texas, shall have the right to use and occupy a strip of land sixty (60) feet in width and being thirty (30) feet on either side of the center line of said strip of land, as said center line is more particularly described as follows:

BEGINNING at a point in the East property line of a 154.7 acre tract of land out of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co. by H. Edward Smith, and wife, Mary Frances Smith, and recorded in Volume 974, Page 491, of the Deed Records of Denton County, Texas; said beginning point being 2,454 feet North, 1,885.35 East, and 115.0 feet North, 2 degrees 05 minutes East of the Southwest corner of the M.E.P. & P.R.R. Co. Survey; said point also being North 2 degrees 05 minutes East, 115.0 feet from the Southeast corner of said 154.7 acre tract of land;

THENCE North 65 degrees 15 minutes West, a distance of 297.0 feet to a point for corner;

THENCE South 89 degrees 03 minutes West a distance of 285.5 feet to a point for corner;

THENCE North 67 degrees 42 minutes West a distance of 261.3 feet to a point for corner;

THENCE North 32 degrees 28 minutes West a distance of 970 feet to a point for corner;

THENCE North 50 degrees 28 minutes West a distance of 780 feet to a point in the West property line of said 154.7 acre tract; said easement having a total length of 2,593.8 feet, more or less.

VOL 501 PAGE 276

All upon the condition that said City of Denton, Texas, and its agents, will restore said premises as nearly as possible to the condition in which same were found before such initial construction work was undertaken, including repair of all fences that might be disturbed or damaged in performing said initial construction work.

IN WITNESS WHEREOF, the said corporation has caused these presents to be signed by its duly authorized officer and to be sealed with the Seal of the Corporation.

FOXWORTH-GALBRAITH LUMBER COMPANY

By

J. L. Foxworth  
President

ATTEST:

J. A. Woodford  
Secretary



THE STATE OF TEXAS :

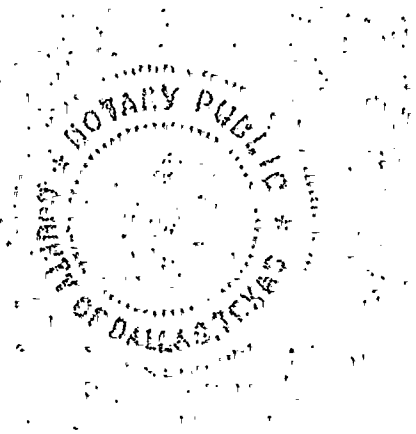
COUNTY OF DALLAS :

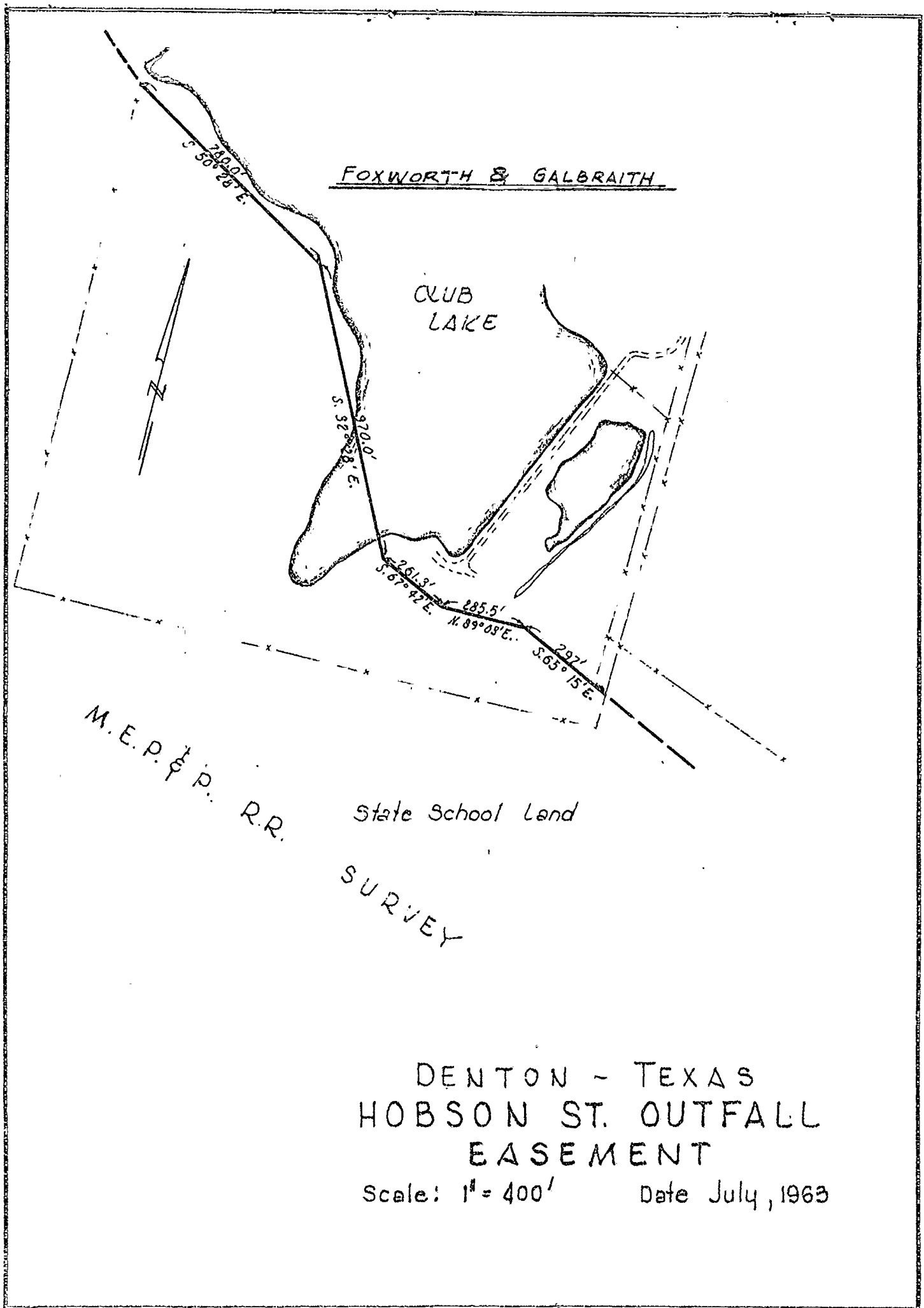
BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day and personally appeared J. L. Foxworth, President, Foxworth-Galbraith Lumber Company, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Foxworth-Galbraith Lumber Company, a corporation, and that he executed the same as the act of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

WITNESS MY HAND AND SEAL OF OFFICE this 30th day of  
October, A.D. 1963.

Ann Harrison ANN HARRISON

Notary Public in and for  
Dallas County, Texas





FILED FOR RECORD: 4 day of Nov. A.D. 1963 at 2:00 o'clock P M.  
 RECORDED: 14 day of Nov. A.D. 1963 at 9:10 o'clock A M.  
 By: Ellen Henrich Deputy Theta Parker, Clerk County Court,  
 Denton County, Texas



**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of a called 0.648 acre tract of land described in Special Warranty Deed with Vendor's Lien to Goel Ventures, LLC recorded in Instrument No. 2012-144893 of the Official Public Records of Denton County, Texas, and being part of Lot 1-R, Block 1, Brier Cliff Center, an addition to the City of Denton, Texas according to the plat recorded in Volume V, Page 273 of the Plat Records of Denton County, Texas, and being part of the called 0.077 acre tract of land described in Special Warranty Deed with Vendor's Lien to Goel Ventures, LLC recorded in Instrument No. 2012-144892 of said Official Public Records, and being more particularly described as follows:

**COMMENCING** at a point in the southwest right-of-way line of Interstate Highway No. 35 (a variable width right-of-way), and being the northeast corner of Lot 1, Block A, Brier Cliff Center Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume W, Page 715 of the Plat Records of Denton County, Texas; from said point a 1/2-inch iron rod found bears North 50°22'36" West, a distance of 277.87 feet;

**THENCE** departing the said southwest right-of-way line of Interstate Highway No. 35, South 38°19'09" West, along the southeast line of said Lot 1, a distance of 55.53 feet to the **POINT OF BEGINNING**;

**THENCE** departing the said southeast line of Lot 1, South 50°24'19" East, a distance of 125.28 feet to a point for corner;

**THENCE** South 04°28'01" East, a distance of 39.51 feet to a point for corner;

**THENCE** North 39°27'56" East, a distance of 28.39 feet to a point for corner;

**THENCE** South 50°24'19" East, a distance of 15.99 feet to a point for corner;

**THENCE** South 39°27'46" West, a distance of 75.42 feet to a point for corner in the south line of said 0.077 acre tract; from said point the northeast corner of said Lot 1-R, and being a point in the west right-of-way line of State School Road (a variable width right-of-way) bears North 59°20'27" East, a distance of 47.90 feet;

**THENCE** North 86°49'47" West, along the said south line of the 0.077 acre tract, a distance of 19.08 feet to a point for corner;

**THENCE** departing the said south line of the 0.077 acre tract, North 04°28'01" West, a distance of 79.83 feet to a point for corner;

**THENCE** North 50°24'03" West, a distance of 97.34 feet to a point for corner in the said southeast line of Lot 1;

**THENCE** North 38°19'09" East, along the said southeast line of Lot 1, a distance of 29.38 feet to the **POINT OF BEGINNING** and containing 6,942 square feet or 0.1594 acres of land, more or less.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

 12/6/21  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

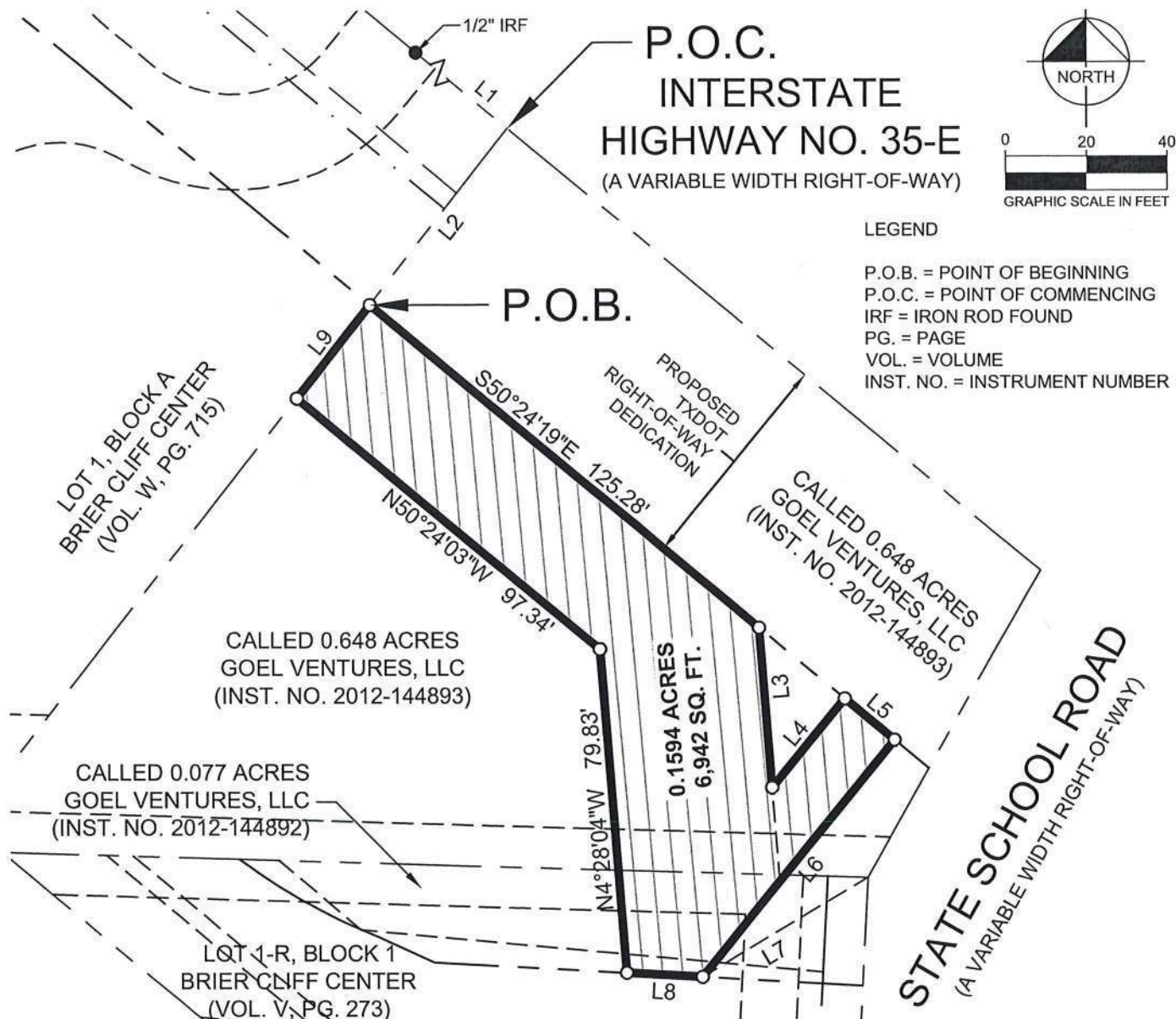
**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	12/6/2021	061024039	2 OF 4



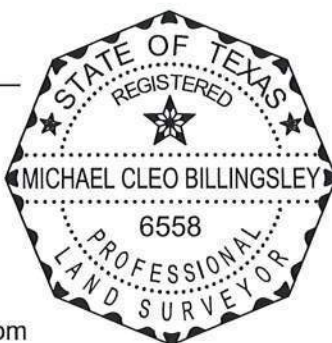
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The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*[Signature]* 12/6/21  
MICHAEL C. BILLINGSLEY  
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801 CHERRY STREET,  
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	12/6/2021	061024039	2 OF 3

LINE TABLE		
NO.	BEARING	LENGTH
L1	N50°22'36"W	277.87'
L2	S38°19'06"W	55.53'
L3	S04°28'01"E	39.51'
L4	N39°27'56"E	28.39'
L5	S50°24'19"E	15.99'
L6	S39°27'46"W	75.42'
L7	N59°20'27"E	47.90'
L8	N86°49'46"W	19.07'
L9	N38°19'09"E	29.38'

WATER AND WASTEWATER EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	12/6/2021	061024039	3 OF 3



**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of a called 0.648 acre tract of land described in Special Warranty Deed with Vendor's Lien to Goel Ventures, LLC recorded in Instrument No. 2012-144893 of the Official Public Records of Denton County, Texas, and being part of Lot 1-R, Block 1, Brier Cliff Center, an addition to the City of Denton, Texas according to the plat recorded in Volume V, Page 273 of the Plat Records of Denton County, Texas, and being part of the called 0.077 acre tract of land described in Special Warranty Deed with Vendor's Lien to Goel Ventures, LLC recorded in Instrument No. 2012-144892 of said Official Public Records, and being more particularly described as follows:

**COMMENCING** at a point in the southwest right-of-way line of Interstate Highway No. 35 (a variable width right-of-way), and being the northeast corner of Lot 1, Block A, Brier Cliff Center Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume W, Page 715 of the Plat Records of Denton County, Texas; from said point a 1/2-inch iron rod found bears North 50°22'36" West, a distance of 277.87 feet;

**THENCE** departing the said southwest right-of-way line of Interstate Highway No. 35, South 38°19'09" West, along the southeast line of said Lot 1, a distance of 84.92 feet to the **POINT OF BEGINNING**;

**THENCE** departing the said southeast line of Lot 1, South 50°24'03" East, a distance of 97.34 feet to a point for corner;

**THENCE** South 04°28'01" East, a distance of 79.83 feet to a point for corner in the south line of said 0.077 acre tract; from said point the northeast corner of said Lot 1-R, and being a point in the west right-of-way line of State School Road (a variable width right-of-way) bears North 68°47'58" East, a distance of 64.62 feet;

**THENCE** North 86°49'47" West, along the said south line of the 0.077 acre tract, a distance of 35.25 feet to a point for corner;

**THENCE** departing the said south line of the 0.077 acre tract, North 04°28'01" West, a distance of 88.10 feet to a point for corner;

**THENCE** North 50°24'03" West, a distance of 62.88 feet to a point for corner in the said southeast line of Lot 1;

**THENCE** North 38°19'09" East, along the said southeast line of Lot 1, a distance of 14.99 feet to the **POINT OF BEGINNING** and containing 4,134 square feet or 0.0949 acres of land, more or less.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

 12/6/21  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



TEMPORARY CONSTRUCTION EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

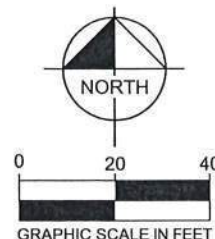
**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

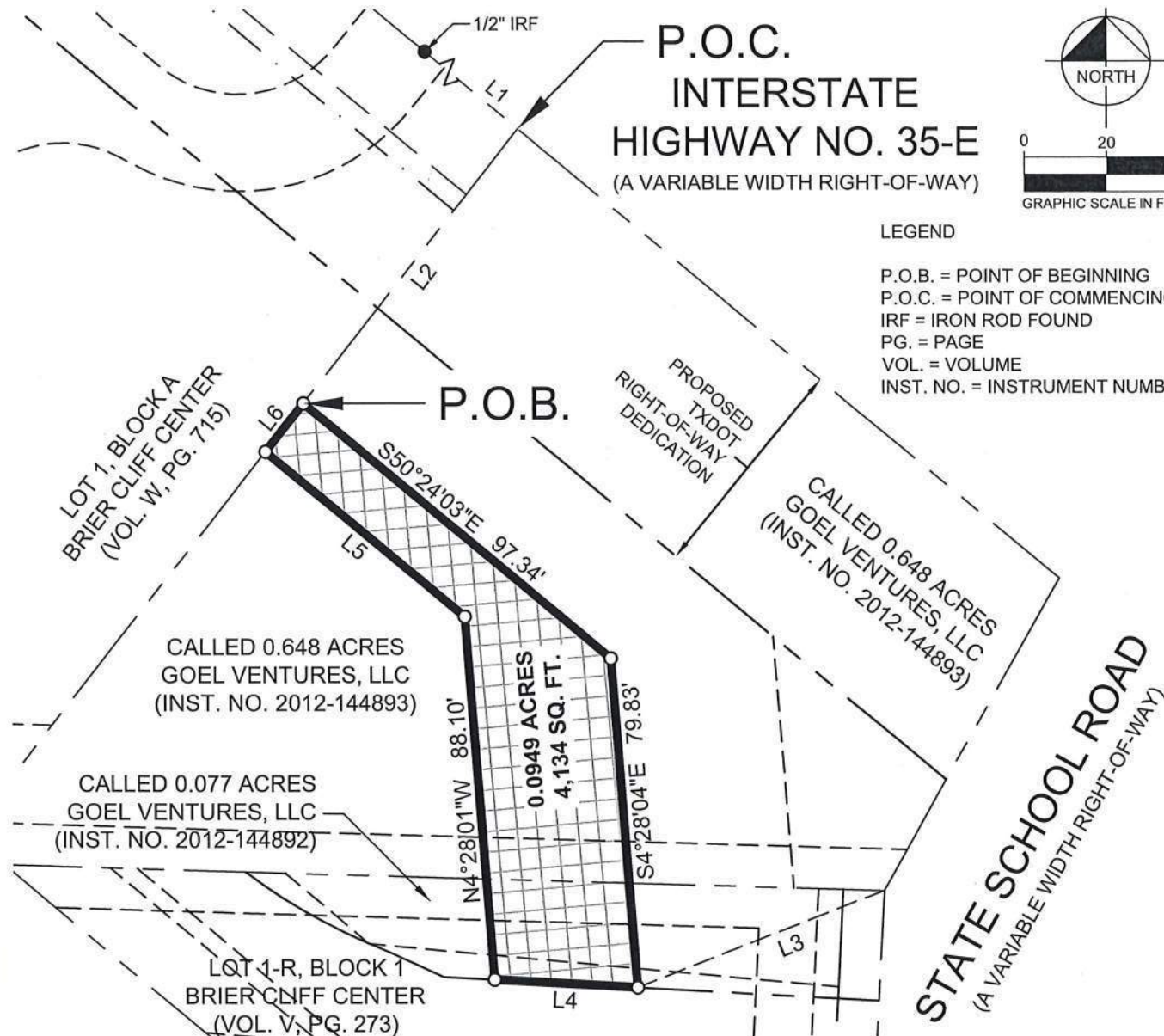
Tel. No. (817) 335-6511  
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	12/6/2021	061024039	1 OF 3



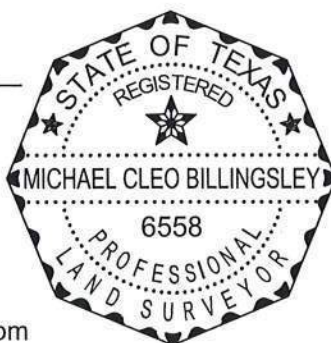


P.O.B. = POINT OF BEGINNING  
P.O.C. = POINT OF COMMENCING  
IRF = IRON ROD FOUND  
PG. = PAGE  
VOL. = VOLUME  
INST. NO. = INSTRUMENT NUMBER



The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

**MICHAEL C. BILLINGSLEY**  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
[michael.billingsley@kimley-horn.com](mailto:michael.billingsley@kimley-horn.com)



TEMPORARY CONSTRUCTION EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

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<u>Scale</u> 1" = 40'	<u>Drawn by</u> CRG	<u>Checked by</u> MCB	<u>Date</u> 12/6/2021	<u>Project No.</u> 061024039	<u>Sheet No.</u> 2 OF 3
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LINE TABLE		
NO.	BEARING	LENGTH
L1	N50°22'36"W	277.87'
L2	S38°19'09"W	84.92'
L3	N68°47'58"E	64.62'
L4	N86°49'48"W	35.25'
L5	N50°24'03"W	62.88'
L6	N38°19'09"E	14.99'

TEMPORARY CONSTRUCTION EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	12/6/2021	061024039	3 OF 3

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 90**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1762+52 LT to Sta 1764+66 LT

Existing Easement

Volume. W, Page 715

PART OF LOT 1, BLOCK A  
BRIER CLIFF CENTER  
MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

THE STATE OF TEXAS    §  
COUNTY OF DENTON    §

KNOW ALL MEN BY THESE PRESENTS:

2140

THAT T. L. Caruthers and Tommy Caruthers of the County of Denton, State of Texas, in consideration of the sum of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid by the City of Denton, receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto to the City of Denton, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by us. Situated in Denton County, Texas, in the M.E.P. and P.R.R. Survey, Abstract No. 950.

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, being a part of the M.E.P. and P.R.R. Survey, Abstract No. 950, and being part of an original 142.18 acre tract conveyed by O. L. Sargent et al to Alfred F. Sellmeyer by deed recorded in Volume 423, Page 446 of the Deed Records of Denton County, Texas, and being a part of two certain tracts, to hereafter be referred to as Tract No. 1 and Tract No. 2 respectively, Tract No. 1 being conveyed by Charles Runyon to T. L. Caruthers by deed dated September 22, 1964, and recorded in Volume 514 Page 133 of the Deed Records of Denton County, Texas, and Tract No. 2 being conveyed by Alfred F. Sellmeyer and wife, Barbara F. Sellmeyer to T. L. Caruthers and Tommy Caruthers by deed dated June 3, 1968, and recorded in Volume 567, Page 549 of the Deed Records of Denton County, Texas, and being more particularly described as follows, to-wit:

BEGINNING at the northwest corner of Tract No. 1 at an existing iron pin;

THENCE south 02° 10' west with the west boundary line of Tract No. 1, 750.30 feet more or less to a point for a corner at the southwest corner of said Tract No. 1, same being the northwest corner of Tract No. 2;

THENCE south 03° 02' west, with the west boundary line of Tract No. 2, 780.10 feet, more or less, (called distance of 782.59 feet) to a point for a corner at the southwest corner of Tract No. 2;

THENCE east with the south boundary line of Tract No. 2 a distance of 1,311.30 feet, more or less, (called distance of 1,311.88 feet) to a point for a corner at the southeast corner of Tract No. 2;

THENCE north 03° 18' east, with the east boundary line of Tract No. 2, 10.02 feet, more or less, to a point for a corner, 16.00 feet north of and perpendicular to the south boundary line of Tract No. 2, extended;

THENCE west, 16.00 feet north of and parallel with the south boundary line of Tract No. 2, 1,301.88 feet, more or less, to a point for a corner 16.00 feet east of and perpendicular to the west boundary line of Tract No. 2;

THENCE north 03° 02' east 16.00 feet east of and parallel with the west boundary line of Tract No. 2, 770.25 feet, more or less, to a point for a corner in the north boundary line of Tract No. 2 same being the south boundary line of Tract No. 1;

THENCE north 02° 10' east, 16.00 feet east of and parallel with the west boundary line of Tract No. 1, 750.34 feet, more or less, to a point for a corner in the north boundary line of Tract No. 1;

THENCE south 88° 57' west, with the north boundary line of Tract No. 1, 16.00 feet, more or less, to the place of beginning and containing 0.650 acres of land, more or less.

And it is further agreed that the said City of Denton, Texas, in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property. For the purpose of constructing, installing and perpetually maintaining public utilities in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public utilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton as aforesaid for the purposes aforesaid the premises above described.

WITNESS our hands, this the 26 day of February,  
A. D. 1968.

T. L. Caruthers  
T. L. Caruthers

Tommy Caruthers  
Tommy Caruthers

CC-216 EASEMENT

Martin Stationery Co., Dallas

**THE STATE OF TEXAS, } KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF DENTON

THAT T. L. CARUTHERS  
of Denton County, Texas **477**, in consideration of the sum of  
One Dollar-----and other good and valuable consideration  
in hand paid by City of Denton, Texas receipt of which is hereby acknowledged, do by  
these presents grant, bargain, sell and convey unto City of Denton, Texas, the free  
and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following  
described property,

owned by me. Situated in Denton County, Texas, in the  
M.E.P. & P.R.R. CO. Survey, Abstract No. 950

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Company Survey, Abstract No. 950, and being part of a tract of land as conveyed from Charles G. Runyon to T. L. Caruthers by deed dated September 22, 1964 and recorded in Volume 514, Page 133 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the most northerly northwest corner of said tract, said point of beginning also being the intersection of the southwest right of way line of Interstate Highway 35E and the east right of way line of Regal Drive;

THENCE south 50° 26' east, along the northeast boundary line of said Caruthers Tract, same being the southwest right of way line of Interstate Highway 35E, a distance of 450.44 feet to a point for a corner, same being the northeast corner of said Caruthers Tract and also being the intersection of the southwest right of way line of Interstate Highway 35E and the west right of way line of State School Road;

THENCE south 28° 16' west along the east boundary line of said Caruthers Tract, same being the west right of way line of State School Road, a distance of 10.20 feet to a point for a corner;

THENCE north 50° 26' west 10.00 feet south of and parallel with the northeast boundary line of said Caruthers tract, a distance of 448.80 feet to a point for a corner in the west boundary line of said Caruthers Tract, same being the east right of way line of Regal Drive;

THENCE north 19° 34' east along the west boundary line of said Caruthers Tract, same being the east right of way line of Regal Drive, a distance of 10.64 feet to the place of beginning and containing 4,496.19 square feet of land, more or less.

And it is further agreed that the said City of Denton, Texas,

in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, installing repairing and perpetually maintaining public utilities in, along, upon and

across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public utilities, or

any part thereof, subject to the terms and conditions as set forth in Exhibit A which is attached hereto and made a part of this Easement and Agreement for all purposes.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for

the purposes aforesaid the premises above described.

Witness my hand, this the 3<sup>rd</sup> day of,

~~October~~ January, A. D. 19 <sup>73</sup>~~72~~

*T. L. Caruthers*  
T. L. CARUTHERS



VOL 663 PAGE 266

## SINGLE ACKNOWLEDGMENT

THE STATE OF TEXAS,  
COUNTY OF DENTON

BEFORE ME, the undersigned authority,

in and for said County, Texas, on this day personally appeared  
T. L. CARUTHERSknown to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 3rd day of January, A.D. 19 73

(L.S.)

Alfred Vick (Alfred Vick)  
Notary Public, Denton County, Texas  
My Commission Expires June 1, 1973

## EXHIBIT A

This Agreement by and between T. L. Caruthers and the City of Denton, Texas is to be included in and made a part of the Easement Agreement to which this Exhibit is attached.

The City of Denton hereby agrees to saw with a concrete saw all driveway and paving which is necessary to be removed so that said opening will produce a smooth joint. The City of Denton further agrees to repair and replace to its original condition all parking lot, driveway and other paving or concrete which is in any way damaged or removed in connection with said Easement.

The City of Denton agrees that only one driveway shall be blocked at any one time, both during the construction of the waterline which is to be placed in said Easement and during any replacement or repairs that shall be necessary in the future. In this connection, the City of Denton shall repair to its original condition any driveway which is or has been blocked before proceeding to cut or block any other driveway on said property.

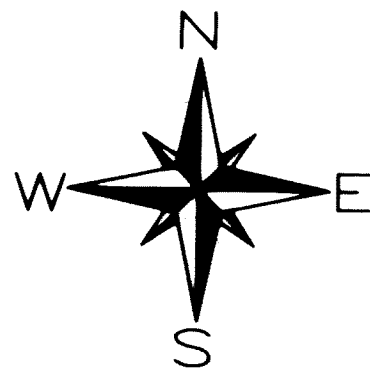
T. L. Caruthers  
T. L. Caruthers

Jim White  
Jim White, City Manager  
City of Denton

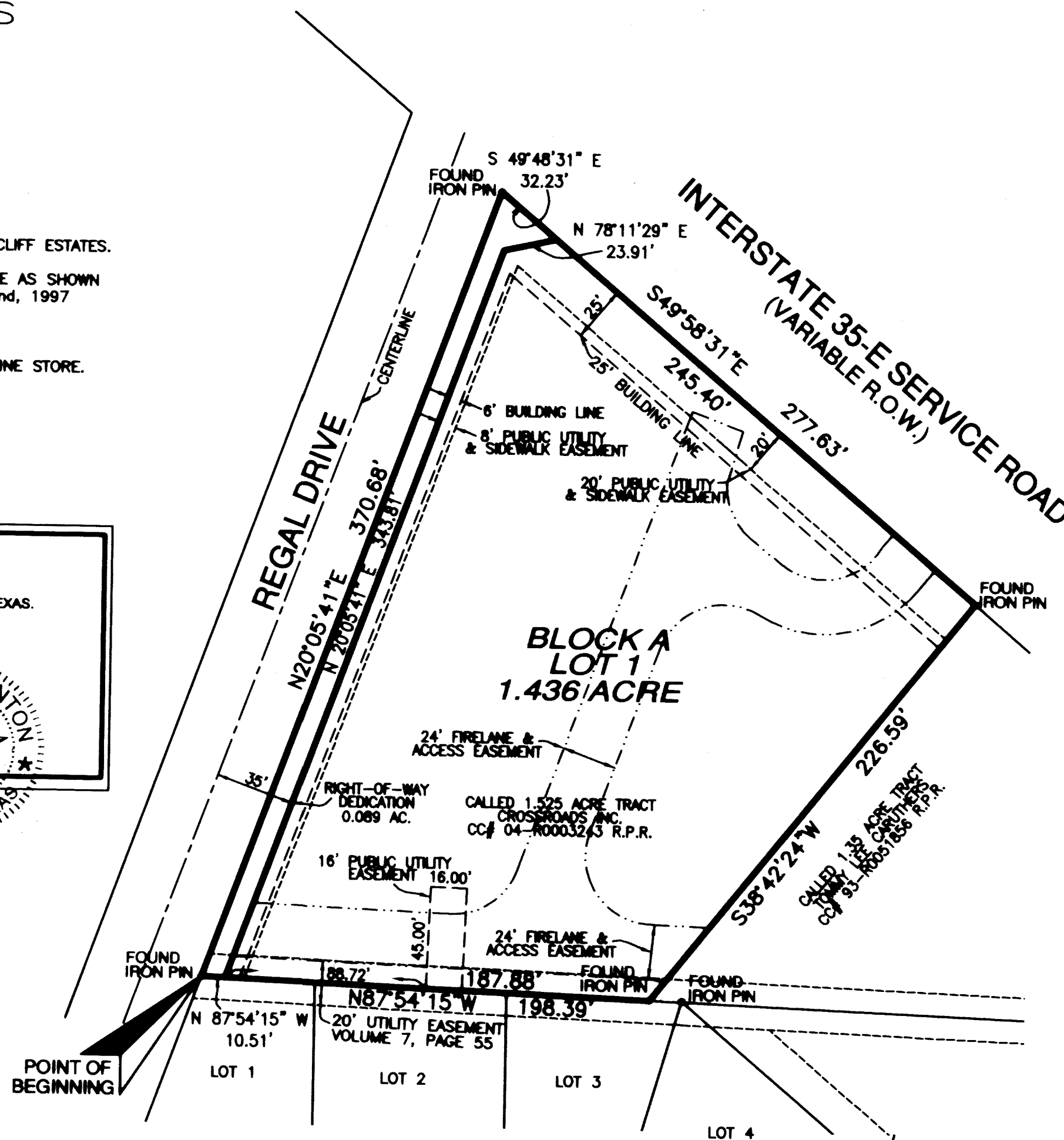
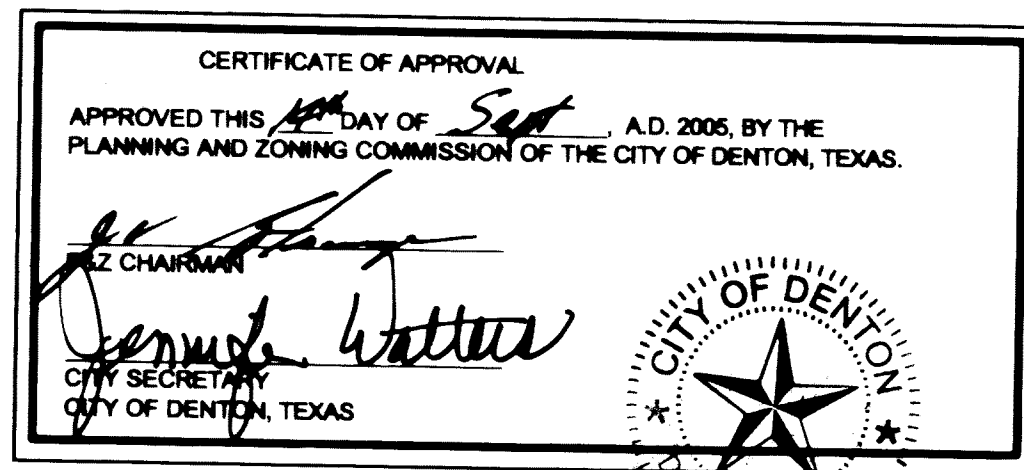
FILED FOR RECORD: 8th DAY OF January A.D. 1973 at 8:26 o'clock A.M.  
RECORDED: 16th DAY OF January A.D. 1973 at 8:05 o'clock A.M.  
BY \_\_\_\_\_ DEPUTY Theta Parker  
THETA PARKER, COUNTY CLERK  
DENTON COUNTY, TEXAS



VICINITY MAP  
SCALE: 1"=1000'



BEARINGS BASED ON EAST OF LOT 1, BLOCK 1, BRIER CLIFF ESTATES.  
PROPERTY IS NOT IN A DESIGNATED FLOOD HAZARD ZONE AS SHOWN BY F.I.R.M. MAP NUMBER 4801940387 E DATED APRIL 2nd, 1997  
PROPERTY IS CURRENTLY ZONED "RCC-N"  
EXISTING USES INCLUDE: RESTAURANT, AND BEER AND WINE STORE.  
EXISTING IMPROVEMENT TO BE REMOVED  
PROPOSED USE COMMERCIAL



STATE OF TEXAS XX  
COUNTY OF DENTON XX

WHEREAS CROSSROADS, INC. IS THE OWNER OF ALL THAT CERTAIN LOT, TRACT, OR PARCEL OF LAND SITUATED IN THE M.E.P. AND P.R.R. COMPANY SURVEY ABSTRACT NO. 950, IN THE CITY OF DENTON, DENTON COUNTY, TEXAS, BEING ALL OF A CALLED 1.525 ACRE TRACT, DESCRIBED IN A DEED TO CROSSROADS INC., AN ARKANSAS CORPORATION, RECORDED IN COUNTY CLERK'S FILE NUMBER 04-3243, REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND IRON ROD IN THE EAST LINE OF REGAL DRIVE (50 FOOT RIGHT OF WAY), SAID IRON ROD BEING IN THE NORTHWEST CORNER OF LOT 1, BLOCK 6, OF REPLAT OF PART OF BLOCK ONE OF BRIERCLIFF ESTATES, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7, PAGE 55 (NOW HELD IN CABINET A, PAGE 146), PLAT RECORDS, DENTON COUNTY, TEXAS;

THENCE N20°11'49"E WITH SAID EAST LINE OF REGAL DRIVE FOR A DISTANCE OF 370.68 FEET TO A FOUND IRON ROD IN THE SOUTHWEST LINE OF INTERSTATE HIGHWAY NUMBER 35 E (VARIABLE WIDTH);

THENCE S49°51'36"E WITH SAID INTERSTATE HIGHWAY NUMBER 35 E FOR A DISTANCE OF 277.63 FEET TO A FOUND "X" IN CONCRETE;

THENCE S38°48'35"W FOR A DISTANCE OF 226.53 FEET TO A FOUND IRON ROD IN THE NORTH LINE OF LOT 3 IN SAID BLOCK 6;

THENCE N87°48'07"W WITH THE NORTH LINE OF SAID BLOCK 6 FOR A DISTANCE OF 198.39 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.525 ACRES OF LAND.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS:  
THAT, CROSSROADS INC., DOES HEREBY ADOPT THIS PLAT, DESIGNATING THE HEREIN DESCRIBED PROPERTY AS LOT 1, BLOCK A, BRIER CLIFF CENTER, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS AND DO HEREBY DEDICATE TO PUBLIC USE FOREVER, THE STREETS AND EASEMENTS SHOWN HEREON.

*Daniel Lindsey*  
DANIEL LINDSEY, VICE PRESIDENT, CROSSROADS INC.

STATE OF TEXAS XX  
COUNTY OF DENTON XX

BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE ON THIS DAY PERSONALLY APPEARED DANIEL LINDSEY, KNOWN TO ME TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATIONS THEREIN EXPRESSED, AND IN THE CAPACITY THEREIN.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 2nd DAY OF September 2005

*Jeanie H. Finch*  
JEANIE H. FINCH  
NOTARY PUBLIC, STATE OF TEXAS



SURVEYOR'S CERTIFICATE

I, GARY W. HAMMETT, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND, AND THAT THE IRON PINS SHOWN THEREON WERE PLACED UNDER MY PERSONAL SUPERVISION IN ACCORDANCE WITH THE ORDINANCES OF THE CITY OF DENTON, TEXAS.

*Gary W. Hammett*  
GARY W. HAMMETT  
R.P.L.S. NO. 1848



FINAL PLAT  
OF  
BRIER CLIFF CENTER  
LOT 1, BLOCK A

1.525 ACRES IN THE  
M.E.P. & P.R.R. CO. SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS  
ZONED "RCC-N"

Filed for Record in:  
Denton County  
On: Dec 21, 2005 at 02:39P  
As a  
Plat  
Document Number: 157771  
Amount 43.00  
Receipt Number - 251545  
By:  
Amanda McElroy

DATE	REVISIONS	BY:	MRK	CKD.	GWH	SCALE	DATE
08/24/05	REVISIONS					1"= 50'	02/02/04
07/19/05	REVISIONS						
08/29/04	REVISIONS						



**Metroplex**  
Surveying, Inc.

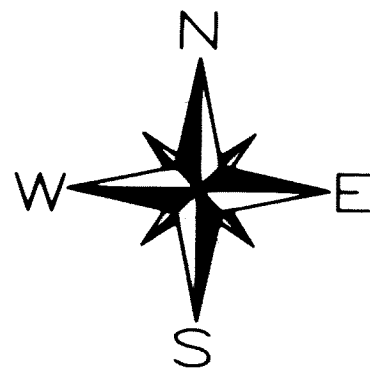
940-387-0505 223 W. HICKORY, DENTON, TEXAS 76201 info@metroplexsurveying.com

SHEET  
OF 1  
JOB No. 33580

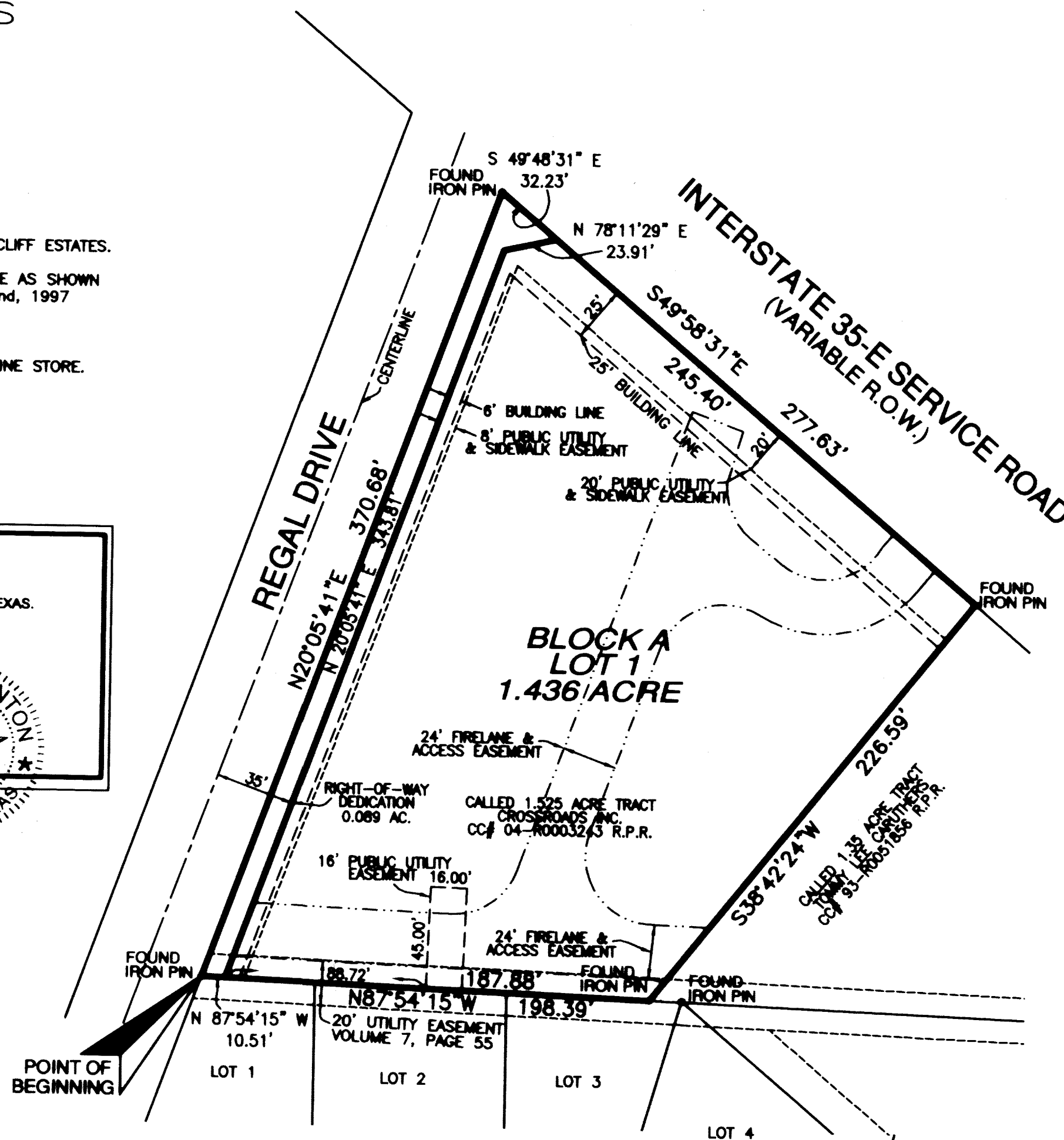
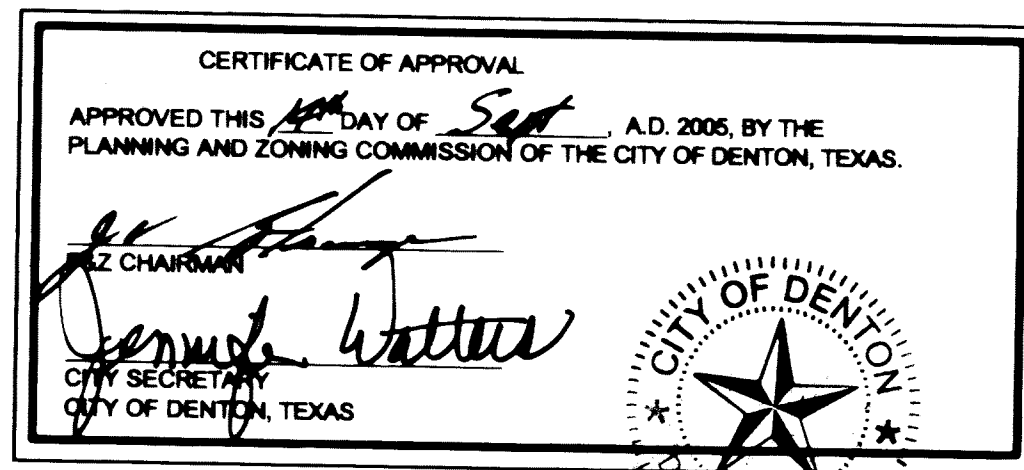
CAB W Pg 715



VICINITY MAP  
SCALE: 1"=1000'



BEARINGS BASED ON EAST OF LOT 1, BLOCK 1, BRIER CLIFF ESTATES.  
PROPERTY IS NOT IN A DESIGNATED FLOOD HAZARD ZONE AS SHOWN BY F.I.R.M. MAP NUMBER 4801940387 E DATED APRIL 2nd, 1997  
PROPERTY IS CURRENTLY ZONED "RCC-N"  
EXISTING USES INCLUDE: RESTAURANT, AND BEER AND WINE STORE.  
EXISTING IMPROVEMENT TO BE REMOVED  
PROPOSED USE COMMERCIAL



STATE OF TEXAS XX  
COUNTY OF DENTON XX

WHEREAS CROSSROADS, INC. IS THE OWNER OF ALL THAT CERTAIN LOT, TRACT, OR PARCEL OF LAND SITUATED IN THE M.E.P. AND P.R.R. COMPANY SURVEY ABSTRACT NO. 950, IN THE CITY OF DENTON, DENTON COUNTY, TEXAS, BEING ALL OF A CALLED 1.525 ACRE TRACT, DESCRIBED IN A DEED TO CROSSROADS INC., AN ARKANSAS CORPORATION, RECORDED IN COUNTY CLERK'S FILE NUMBER 04-3243, REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND IRON ROD IN THE EAST LINE OF REGAL DRIVE (50 FOOT RIGHT OF WAY), SAID IRON ROD BEING IN THE NORTHWEST CORNER OF LOT 1, BLOCK 6, OF REPLAT OF PART OF BLOCK ONE OF BRIERCLIFF ESTATES, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7, PAGE 55 (NOW HELD IN CABINET A, PAGE 146), PLAT RECORDS, DENTON COUNTY, TEXAS;

THENCE N20°11'49"E WITH SAID EAST LINE OF REGAL DRIVE FOR A DISTANCE OF 370.68 FEET TO A FOUND IRON ROD IN THE SOUTHWEST LINE OF INTERSTATE HIGHWAY NUMBER 35 E (VARIABLE WIDTH);

THENCE S49°51'36"E WITH SAID INTERSTATE HIGHWAY NUMBER 35 E FOR A DISTANCE OF 277.63 FEET TO A FOUND "X" IN CONCRETE;

THENCE S38°48'35"W FOR A DISTANCE OF 226.53 FEET TO A FOUND IRON ROD IN THE NORTH LINE OF LOT 3 IN SAID BLOCK 6;

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*Daniel Lindsey*  
DANIEL LINDSEY, VICE PRESIDENT, CROSSROADS INC.

STATE OF TEXAS XX  
COUNTY OF DENTON XX

BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE ON THIS DAY PERSONALLY APPEARED DANIEL LINDSEY, KNOWN TO ME TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATIONS THEREIN EXPRESSED, AND IN THE CAPACITY THEREIN.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 2nd DAY OF September 2005

*Jeanie H. Finch*  
JEANIE H. FINCH  
NOTARY PUBLIC, STATE OF TEXAS



SURVEYOR'S CERTIFICATE

I, GARY W. HAMMETT, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND, AND THAT THE IRON PINS SHOWN THEREON WERE PLACED UNDER MY PERSONAL SUPERVISION IN ACCORDANCE WITH THE ORDINANCES OF THE CITY OF DENTON, TEXAS.

*Gary W. Hammett*  
GARY W. HAMMETT  
R.P.L.S. NO. 1848



FINAL PLAT  
OF  
BRIER CLIFF CENTER  
LOT 1, BLOCK A

1.525 ACRES IN THE  
M.E.P. & P.R.R. CO. SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS  
ZONED "RCC-N"

Filed for Record in:  
Denton County  
On: Dec 21, 2005 at 02:39P  
As a  
Plat  
Document Number: 157771  
Amount 43.00  
Receipt Number - 251545  
By:  
Amanda McElroy

DATE	REVISIONS	BY:	MRK	CKD.	GWH	SCALE	DATE
08/24/05	REVISIONS					1"= 50'	02/02/04
07/19/05	REVISIONS						
08/29/04	REVISIONS						



**Metroplex**  
Surveying, Inc.

940-387-0505 223 W. HICKORY, DENTON, TEXAS 76201 info@metroplexsurveying.com

SHEET  
OF 1  
JOB No. 33580

CAB W Pg 715



**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Lot 1, Block A, Brier Cliff Center, an addition to the City of Denton, Texas according to the plat recorded in Volume. W, Page 715 of the Official Public Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at an "X" cut in concrete found at the south end of a right-of-way corner clip at the intersection of the southwest right-of-way line Interstate Highway No. 35 (a variable width right-of-way) and the east right-of-way line of Regal Drive (a variable width right-of-way); from said point a 1/2-inch iron rod found bears North 3°14'25" West, a distance of 25.65 feet;

**THENCE** South 19°42'15" West, along the said east right-of-way line of Regal Drive, a distance of 88.50 feet to a point;

**THENCE** departing the said east right-of-way line of Regal Drive, North 71°36'06" East, a distance of 32.11 feet to the **POINT OF BEGINNING**;

**THENCE** North 71°36'06" East, a distance of 22.89 feet to a point for corner;

**THENCE** South 50°24'19" East, a distance of 202.16 feet to a point for corner in the southeast line of said Lot 1; from said point the northeast corner of said Lot 1, and being a point in the said southwest right-of-way line of Interstate Highway No. 35 bears North 38°19'09" East, a distance of 55.54 feet;

**THENCE** South 38°19'09" West, along the said southeast line of Lot 1, a distance of 29.38 feet to a point for corner;

**THENCE** departing the said southeast line of Lot 1, North 50°24'03" West, a distance of 19.87 feet to a point for corner;

**THENCE** North 00°45'24" West, a distance of 13.11 feet to a point for corner;

**THENCE** North 50°24'03" West, a distance of 164.62 feet to a point for corner;


**THENCE** North 50°30'33" West, a distance of 21.97 feet to the **POINT OF BEGINNING** and containing 4,279 square feet or 0.0982 acres of land, more or less.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



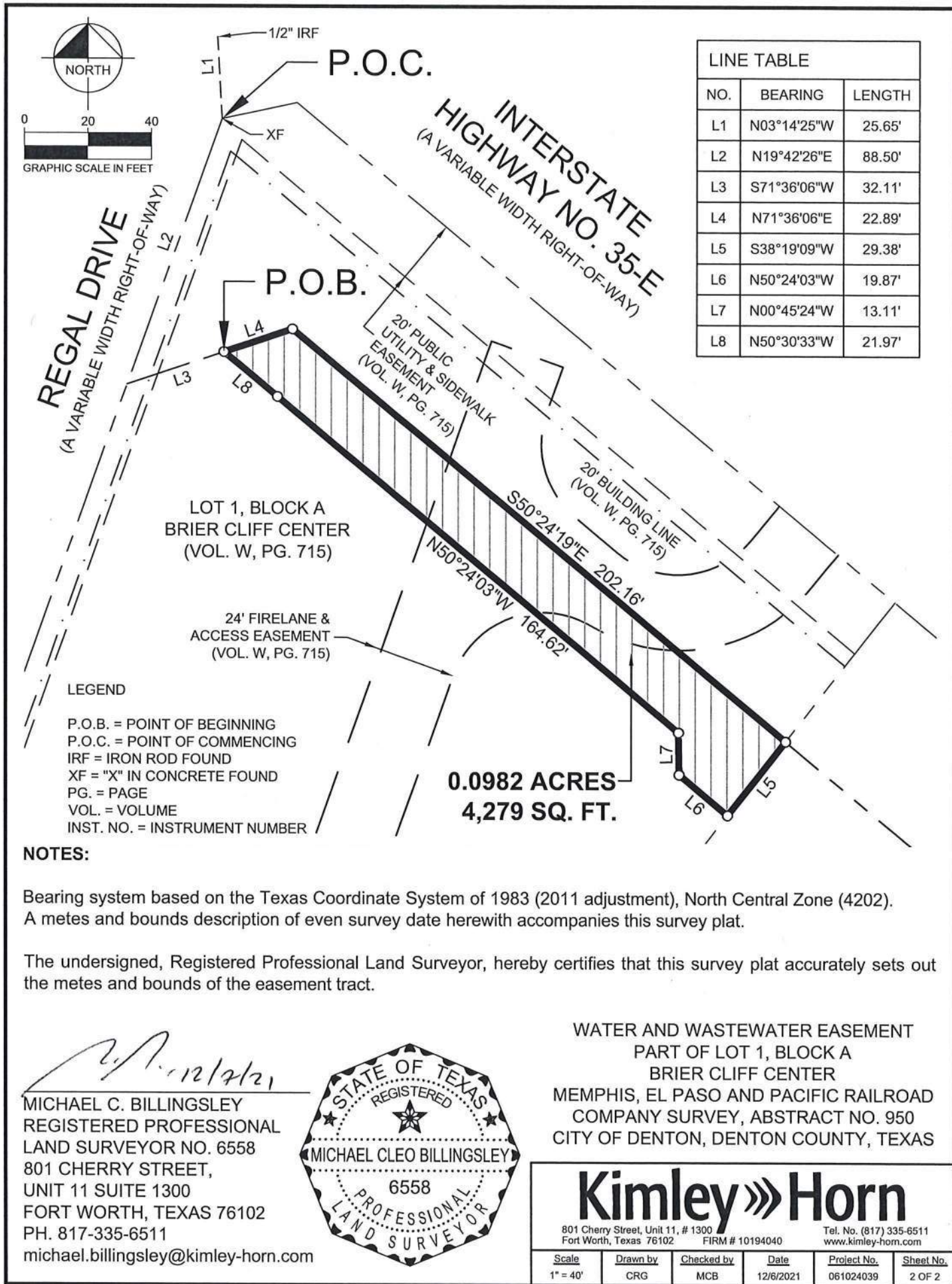
WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1, BLOCK A  
 BRIER CLIFF CENTER  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	12/6/2021	061024039	1 OF 2





**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Lot 1, Block A, Brier Cliff Center, an addition to the City of Denton, Texas according to the plat recorded in Volume. W, Page 715 of the Official Public Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at an "X" cut in concrete found at the south end of a right-of-way corner clip at the intersection of the southwest right-of-way line Interstate Highway No. 35 (a variable width right-of-way) and the east right-of-way line of Regal Drive (a variable width right-of-way); from said point a 1/2-inch iron rod found bears North 3°14'25" West, a distance of 25.65 feet;

**THENCE** South 19°42'15" West, along the said east right-of-way line of Regal Drive, a distance of 88.50 feet to a point;

**THENCE** departing the said east right-of-way line of Regal Drive, North 71°36'06" East, a distance of 55.00 feet to a point;

**THENCE** South 50°24'19" East, a distance of 202.16 feet to a point for corner in the southeast line of said Lot 1; from said point the northeast corner of said Lot 1, and being a point in the said southwest right-of-way line of Interstate Highway No. 35 bears North 38°19'09" East, a distance of 55.54 feet;

**THENCE** South 38°19'09" West, along the said southeast line of Lot 1, a distance of 29.38 feet to the **POINT OF BEGINNING**;

**THENCE** continuing along the said southeast line of Lot 1, South 38°19'09" West, a distance of 14.99 feet to a point for corner;

**THENCE** departing the said southeast line of Lot 1, North 50°24'03" West, a distance of 28.69 feet to a point for corner;

**THENCE** North 39°35'57" East, a distance of 24.98 feet to a point for corner;

**THENCE** South 00°45'24" East, a distance of 13.11 feet to a point for corner;


**THENCE** South 50°24'03" East, a distance of 19.87 feet to the **POINT OF BEGINNING** and containing 470 square feet or 0.0108 acres of land, more or less.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
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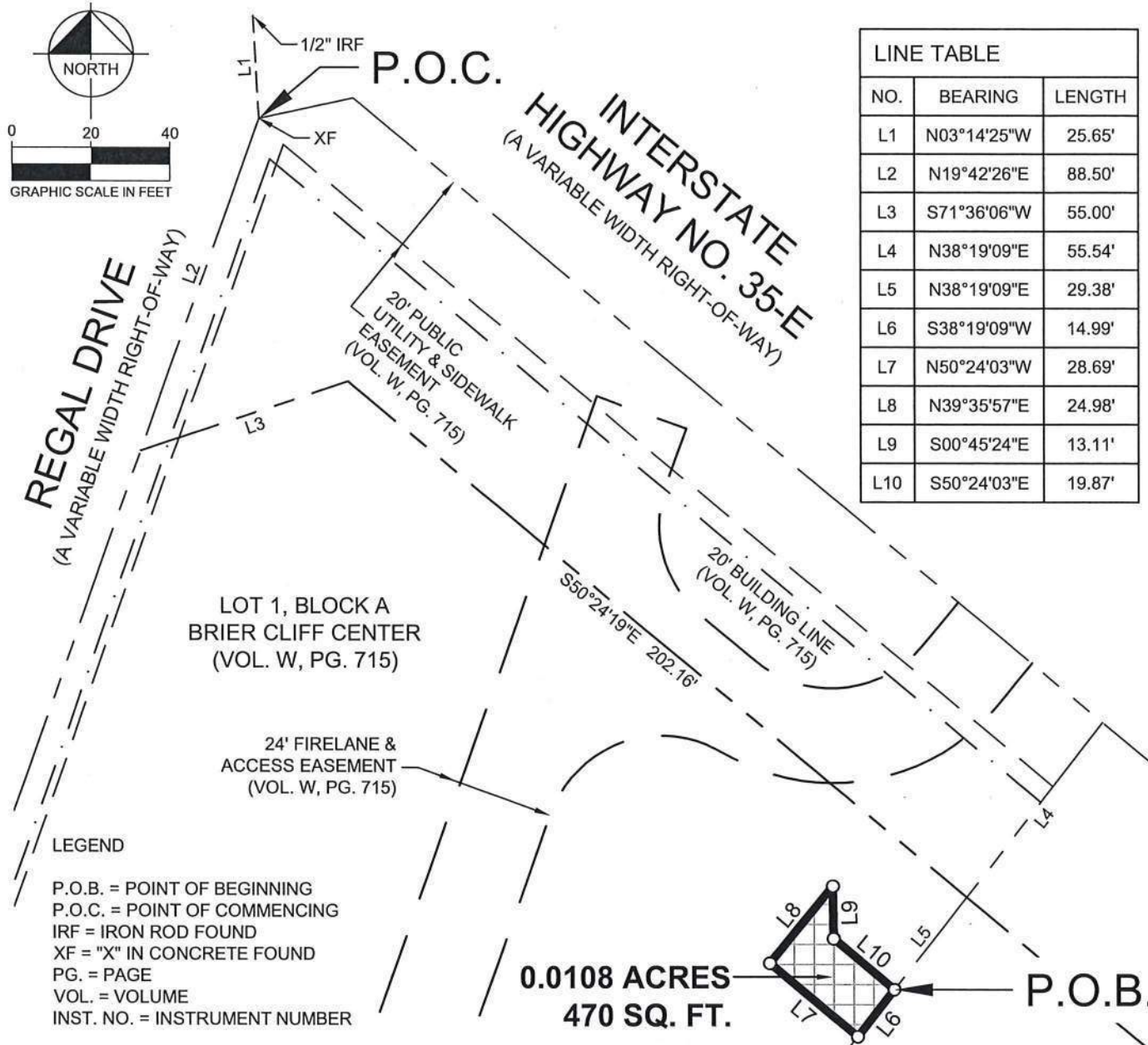
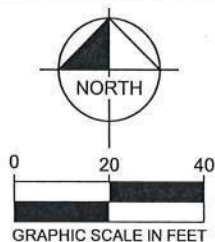
TEMPORARY CONSTRUCTION EASEMENT  
 PART OF LOT 1, BLOCK A  
 BRIER CLIFF CENTER  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	12/6/2021	061024039	1 OF 2



*[Signature]* 12/7/21  
**MICHAEL C. BILLINGSLEY**  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



**TEMPORARY CONSTRUCTION EASEMENT**  
PART OF LOT 1, BLOCK A  
BRIER CLIFF CENTER  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	12/6/2021	061024039	2 OF 2

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 91**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

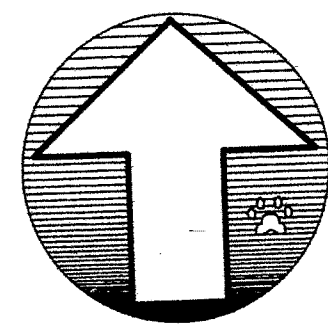
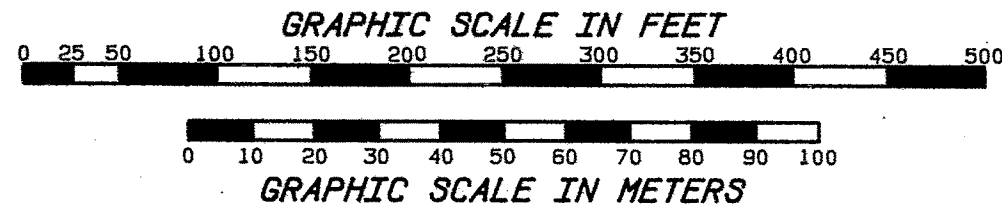
Utility Longitudinal Stations:  
Sta 1765+71 LT to Sta 1769+41 LT

Existing Easement

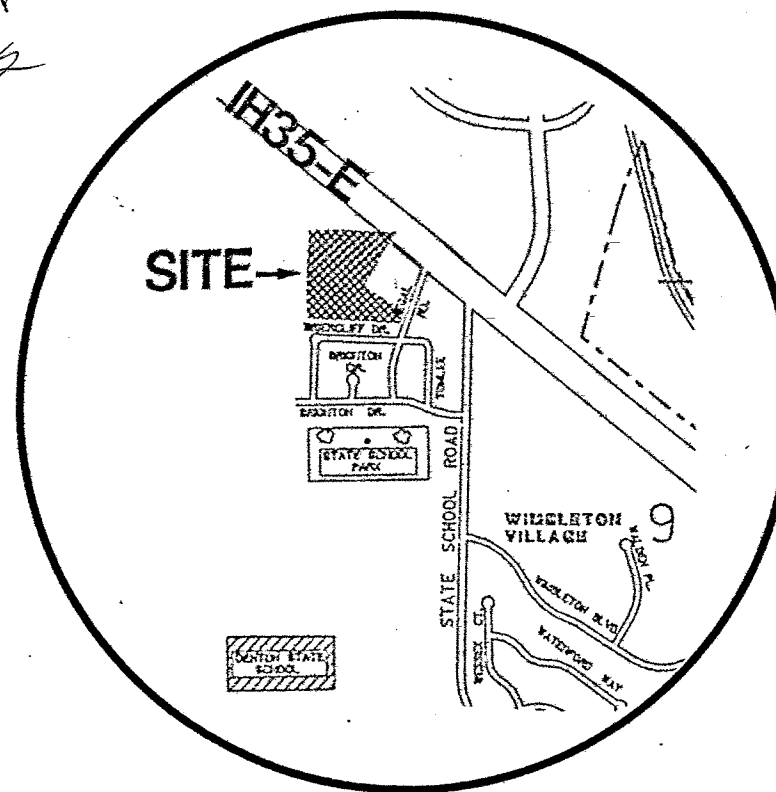
Volume. 571, Page 42

MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS





037457  
FILED FOR RECORD  
91 JUL 31 PM 2:54  
TIM HODGES  
COUNTY CLERK DENTON CO. TEX  
BY *[Signature]* DEPUTY



LOCATION MAP

DEDICATION  
PROPERTY DESCRIPTION

STATE OF TEXAS  
COUNTY OF DENTON

WHEREAS, Josten's, Inc. is the owner of that certain tract of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas:

Being all that certain 10.796 acre tract or parcel of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas, being part of a tract conveyed to Josten's, Inc. from T. L. Caruthers by deed recorded in Volume 571, Page 42 Deed Records, Denton County, Texas, said 10.740 acre tract being more particularly described as follows:

Beginning at a steel pin at a fence corner post at the northwest corner of said Josten's tract, same being the northwest corner of a certain tract deeded by Charles Runyon to T. L. Caruthers by deed recorded in Volume 514, Page 133, Deed Records, Denton County, Texas;

Thence South 86 degrees 00 minutes 00 seconds East a distance of 586.62 feet to a set half inch rebar on the southwest right-of-way of Interstate Highway 35 East, said point being South 49 degrees 55 minutes 52 seconds East 83.79 feet from the most northerly northeast corner of said Josten's tract;

Thence South 49 degrees 55 minutes 52 seconds East with said right-of-way a distance of 165.13 feet to a set half inch rebar for corner;

Thence South 52 degrees 37 minutes 00 seconds West, departing said right-of-way, a distance of 385.25 feet to a set half inch rebar for corner;

Thence South 52 degrees 30 minutes 00 seconds East a distance of 531.43 feet to a set half inch rebar in the northwest right-of-way of Regal Drive;

Thence South 20 degrees 09 minutes 00 seconds West with said right-of-way a distance of 70.00 feet to a set half inch rebar in the north line of Briercliff Estates, Section One, an addition to the City of Denton as shown by plat recorded in Volume 6, Page 45 Plat Records, Denton County, Texas, said rebar being the southeast corner of said Josten's tract, also being North 87 degrees 47 minutes 00 seconds West 0.98 feet from the northeast corner of Lot 1, Block 2 of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 247.29 feet to a found half inch rebar for corner;

Thence South 02 degrees 12 minutes 54 seconds West a distance of 10.14 feet to a set half inch rebar for an inner ell corner of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 589.63 feet to a set half inch rebar for the southwest corner of said Josten's tract, same being the northwest corner of Lot 10, Block 2, of said Briercliff Estates in the occupied west line of said Briercliff Estates;

Thence North 02 degrees 35 minutes 00 seconds East a distance of 748.88 feet to the Point of Beginning, containing in all 10.796 acres of land.

OWNER'S CERTIFICATE

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

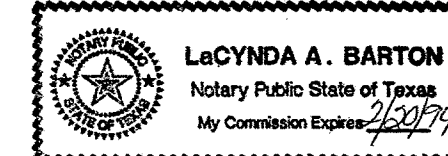
THAT, Josten's, Inc. does hereby adopt this plat designating the herein described property as Lot 2, Block A, Jostens Addition, an addition to the City of Denton, Denton County, Texas, and does hereby dedicate to the public use forever the streets and easements shown hereon.

*C. Denisho Coleman*  
C. Denisho Coleman  
Engineering Manager  
Josten's, Inc.

STATE OF TEXAS

Before me, the undersigned Notary Public for the State of Texas, on this day personally appeared C. Denisho Coleman known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and considerations therein expressed and in the capacity stated.

Given under my hand and seal of office this the 1st day of July, 1991.



*LaCYNDA A. Barton*  
LaCYNDA A. Barton  
Notary Public for the State of Texas  
Commission expires 7/30/94

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Stanford Hauptmann, Registered Public Surveyor, do hereby certify that this plat and description was prepared from an actual and accurate survey of the land and that the iron pins shown hereon were found or placed under my personal supervision or direction in accordance with the law.

*Stanford Hauptmann* 07/06/91  
Stanford Hauptmann  
Texas Registered Professional  
Land Surveyor Number 2255



CERTIFICATE OF APPROVAL

APPROVED THIS 26 DAY OF

June A.D. 1991

BY THE PLANNING AND ZONING COMMISSION  
OF THE CITY OF DENTON, TEXAS.

*Erline Brock*  
Erline Brock  
CHAIRMAN

*Betty Williams*  
Betty Williams  
CITY SECRETARY

**METROPLEX ENGINEERING CONSULTANTS**  
ENGINEERING \* PLANNING \* SURVEYING  
1123 FORT WORTH DRIVE DENTON, TEXAS 76205  
(817) 383-1416 DALLAS 219-7948 FORT WORTH 329-3834

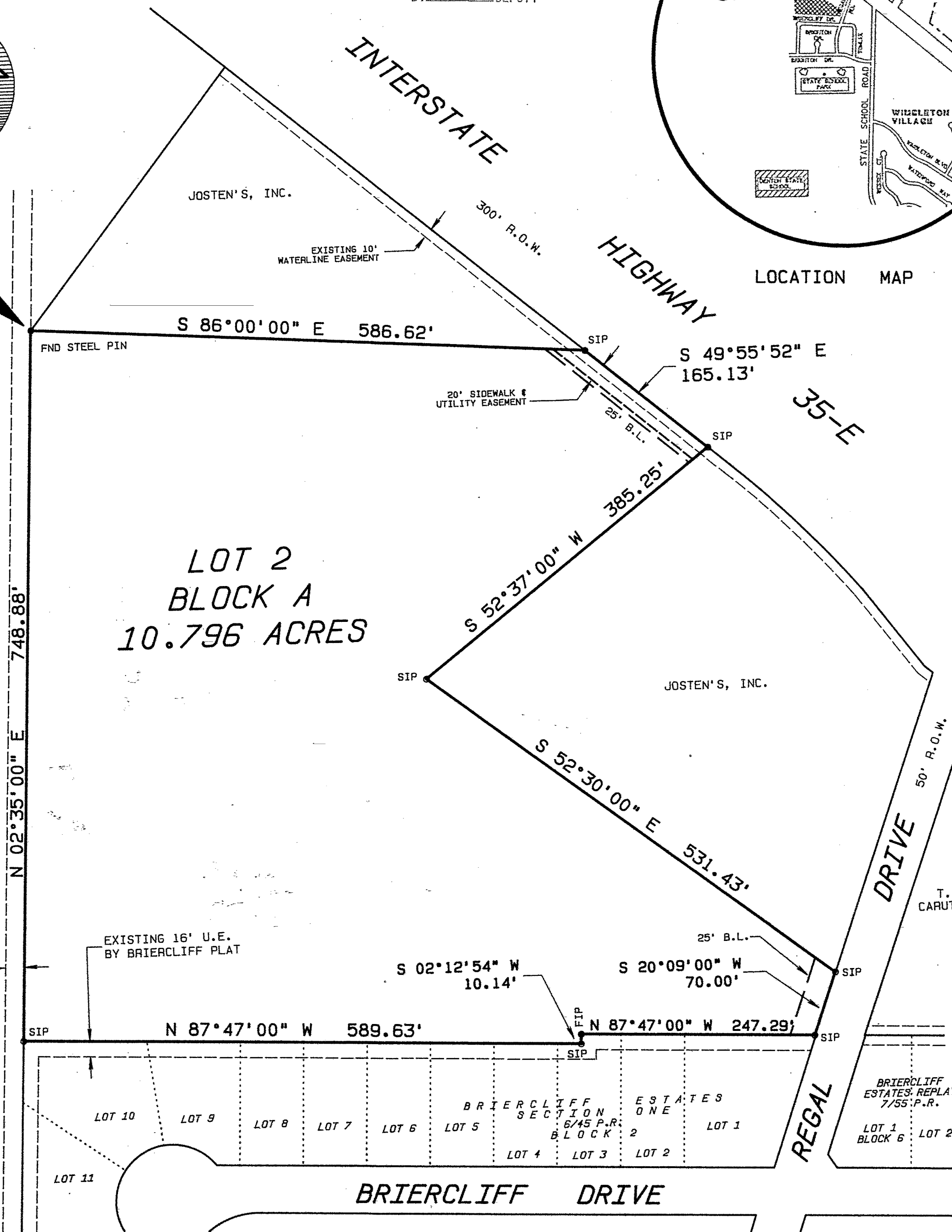
**FINAL PLAT**  
**JOSTENS ADDITION**  
LOT 2, BLOCK A  
BEING 10.796 ACRES IN THE  
M.E.P. & P.R.R. SURVEY, ABSTRACT NUMBER 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

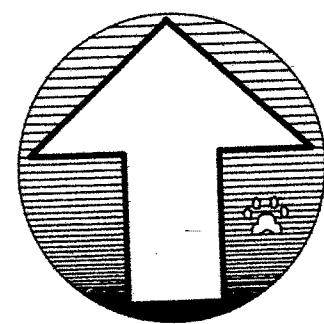
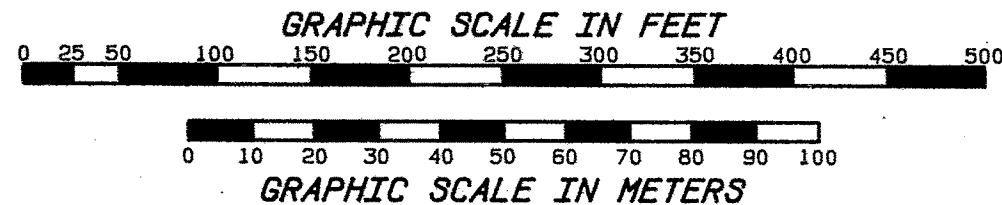
DRAWN: <i>[Signature]</i> WOLF	SCALE: 1" = 100'	DATE: 20 JUN 91	JOB NO. 91007-B
CHECKED: <i>[Signature]</i> S.H.			

LEGEND

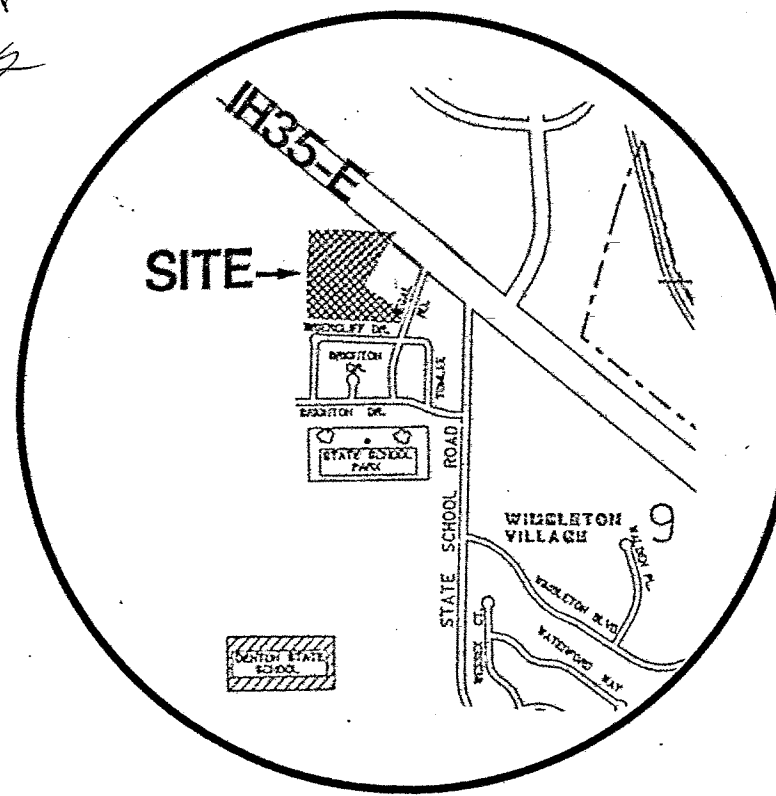
- FIP - Found 1/2" Rebar
- MON - Monument
- ROW - Right-of-Way
- SIP - Set 1/2" Rebar
- X- - Fence Line
- E- - Electric Line
- T- - Telephone Line
- MH - Manhole
- PP - Power Pole
- LP - Light Pole
- FH - Fire Hydrant
- - Center Line
- B.L. - Building Line
- U.E. - Utility Easmt.
- D.E. - Drainage Easmt.
- C.E. - Communications Easmt.

OWNER  
JOSTENS  
3500 SOUTH 135-E  
DENTON, TEXAS





037457  
FILED FOR RECORD  
91 JUL 31 PM 2:54  
TIM HODGES  
COUNTY CLERK DENTON CO. TEX  
BY *[Signature]* DEPUTY



LOCATION MAP

DEDICATION  
PROPERTY DESCRIPTION

STATE OF TEXAS  
COUNTY OF DENTON

WHEREAS, Josten's, Inc. is the owner of that certain tract of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas:

Being all that certain 10.796 acre tract or parcel of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas, being part of a tract conveyed to Josten's, Inc. from T. L. Caruthers by deed recorded in Volume 571, Page 42 Deed Records, Denton County, Texas, said 10.740 acre tract being more particularly described as follows:

Beginning at a steel pin at a fence corner post at the northwest corner of said Josten's tract, same being the northwest corner of a certain tract deeded by Charles Runyon to T. L. Caruthers by deed recorded in Volume 514, Page 133, Deed Records, Denton County, Texas;

Thence South 86 degrees 00 minutes 00 seconds East a distance of 586.62 feet to a set half inch rebar on the southwest right-of-way of Interstate Highway 35 East, said point being South 49 degrees 55 minutes 52 seconds East 83.79 feet from the most northerly northeast corner of said Josten's tract;

Thence South 49 degrees 55 minutes 52 seconds East with said right-of-way a distance of 165.13 feet to a set half inch rebar for corner;

Thence South 52 degrees 37 minutes 00 seconds West, departing said right-of-way, a distance of 385.25 feet to a set half inch rebar for corner;

Thence South 52 degrees 30 minutes 00 seconds East a distance of 531.43 feet to a set half inch rebar in the northwest right-of-way of Regal Drive;

Thence South 20 degrees 09 minutes 00 seconds West with said right-of-way a distance of 70.00 feet to a set half inch rebar in the north line of Briercliff Estates, Section One, an addition to the City of Denton as shown by plat recorded in Volume 6, Page 45 Plat Records, Denton County, Texas, said rebar being the southeast corner of said Josten's tract, also being North 87 degrees 47 minutes 00 seconds West 0.98 feet from the northeast corner of Lot 1, Block 2 of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 247.29 feet to a found half inch rebar for corner;

Thence South 02 degrees 12 minutes 54 seconds West a distance of 10.14 feet to a set half inch rebar for an inner ell corner of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 589.63 feet to a set half inch rebar for the southwest corner of said Josten's tract, same being the northwest corner of Lot 10, Block 2, of said Briercliff Estates in the occupied west line of said Briercliff Estates;

Thence North 02 degrees 35 minutes 00 seconds East a distance of 748.88 feet to the Point of Beginning, containing in all 10.796 acres of land.

OWNER'S CERTIFICATE

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

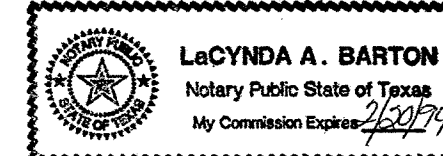
THAT, Josten's, Inc. does hereby adopt this plat designating the herein described property as Lot 2, Block A, Jostens Addition, an addition to the City of Denton, Denton County, Texas, and does hereby dedicate to the public use forever the streets and easements shown hereon.

*C. Denisho Coleman*  
C. Denisho Coleman  
Engineering Manager  
Josten's, Inc.

STATE OF TEXAS

Before me, the undersigned Notary Public for the State of Texas, on this day personally appeared C. Denisho Coleman known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and considerations therein expressed and in the capacity stated.

Given under my hand and seal of office this the 1st day of July, 1991.



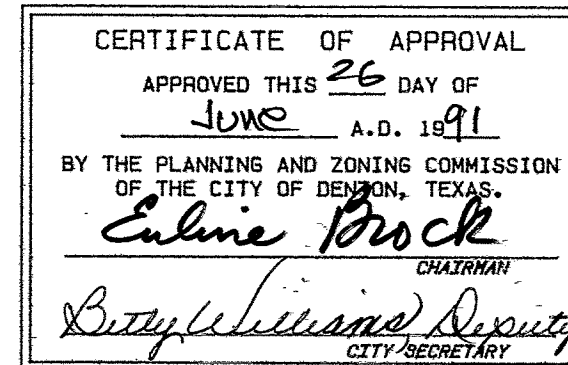
*LaCYNDA A. Barton*  
LaCYNDA A. Barton  
Notary Public for the State of Texas  
Commission expires 7/20/94

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Stanford Hauptmann, Registered Public Surveyor, do hereby certify that this plat and description was prepared from an actual and accurate survey of the land and that the iron pins shown hereon were found or placed under my personal supervision or direction in accordance with the law.

*Stanford Hauptmann* 07/06/91  
Stanford Hauptmann  
Texas Registered Professional  
Land Surveyor Number 2255



**METROPLEX ENGINEERING CONSULTANTS**  
ENGINEERING \* PLANNING \* SURVEYING  
1123 FORT WORTH DRIVE DENTON, TEXAS 76205  
(817) 383-1416 DALLAS 219-7948 FORT WORTH 329-3834

**FINAL PLAT**  
**JOSTENS ADDITION**  
LOT 2, BLOCK A  
BEING 10.796 ACRES IN THE  
M.E.P. & P.R.R. SURVEY, ABSTRACT NUMBER 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

DRAWN: <i>[Signature]</i> WOLF	SCALE: 1" = 100'	DATE: 20 JUN 91	JOB NO. 91007-B
CHECKED: <i>[Signature]</i> S.H.			

- LEGEND**
- FIP - Found 1/2" Rebar
  - MON - Monument
  - ROW - Right-of-Way
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  - - Center Line
  - B.L. - Building Line
  - U.E. - Utility Easmt.
  - D.E. - Drainage Easmt.
  - C.E. - Communications Easmt.

OWNER  
JOSTENS  
3500 SOUTH 135-E  
DENTON, TEXAS

DIMENSION-UNICORN LAKE ASSOCIATES LTD.



6232

THE STATE OF TEXAS :

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON :

THAT the Foxworth-Galbraith Lumber Company, a corporation, acting through its president, J. L. Foxworth, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration the receipt of which is hereby fully confessed and acknowledged, and the further consideration of the agreement by Grantee to install in the water line constructed in the hereinafter described tract of land one (1)-two (2) inch water tap at such location as may be designated by Grantor without any cost or expense to Grantor, with the understanding

by and between Grantor and Grantee that a part of the consideration for the granting of this easement is the agreement by Grantee that the Grantor shall have the right to receive water service from the line hereinafter described for the same rates charged like users within the City Limits of the City of Denton, Texas, does hereby GIVE and GRANT to the said City of Denton, Texas, its successors and assigns, the free and uninterrupted use, liberty, and right in, upon and across the following described property for the purpose of constructing, reconstructing and perpetually maintaining a water line in, upon and across a tract of land lying and being situated in the County of Denton, State of Texas, and more particularly described as follows:

BEGINNING at a point in the Northeasterly line of a tract of land out of the MEP & PRR Co., Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co., a corporation, by H. Edward Smith and wife Mary Frances Smith, and recorded in Volume 474, Page 491 of the Deed Records of Denton County,

Texas; said beginning point also being in the Southwesterly right-of-way line of Interstate Highway 35E; said beginning point also being 654.7 feet North 49 degrees 57 minutes West from the most Easterly Northeast corner of the Foxworth-Galbraith Lumber Co. tract;

THENCE South 2 degrees 49 minutes West and passing at 488.36 feet an inner ell corner of the Foxworth-Galbraith Lumber Co. tract and continuing with the East line of said Foxworth-Galbraith tract for a total distance of 2,173.3 feet to a point for a corner in an existing fence line;

THENCE North 87 degrees 11 minutes West a distance of 20 feet to a point for a corner;

THENCE North 2 degrees 49 minutes East a distance of 2,190.0 feet to a point for a corner in the Southwesterly right-of-way of said Highway 35E;

THENCE South 49 degrees 57 minutes East with the Southwesterly right-of-way line of said Highway 35E a distance of 25.6 feet more or less to the place of beginning

TO HAVE AND TO HOLD the same perpetually to the City of Denton, Texas, and its successors, together with the right and privilege at any and all times to enter said premises for the purpose of constructing, reconstructing and perpetually maintaining said water line and for making connections therewith.

IN WITNESS WHEREOF, the said corporation has caused these presents to be signed by its duly authorized officer and to be sealed with the Seal of the Corporation.

VOL 496 PAGE 564



FOXWORTH-GALBRAITH LUMBER COMPANY

By

J. L. Foxworth  
President

ATTEST:

A. Woodford  
Secretary

THE STATE OF TEXAS :

COUNTY OF DALLAS :

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared J. L. Foxworth, President, Foxworth-Galbraith Lumber Company, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Foxworth-Galbraith Lumber Company, a corporation, and that he executed the same as the act of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

WITNESS MY HAND AND SEAL OF OFFICE this 16th day of  
July, A.D. 1963.

Ann Harrison ANN HARRISON

Notary Public in and for  
Dallas County, Texas

FILED FOR RECORD: 17 day of July A.D. 1963 at 10:15 o'clock A.M.  
RECORDED: 24 day of July A.D. 1963 at 7:45 o'clock P.M.  
By: Lorence McLeod Deputy Theta Parker, Clerk County Court,  
Denton County, Texas

THE STATE OF TEXAS    X  
COUNTY OF DENTON       X

KNOW ALL MEN BY THESE PRESENTS:

9845

THAT the Foxworth-Galbraith Lumber Company, a corporation, acting through its President, J. L. Foxworth, for and in consideration of the sum of TEN DOLLARS (\$10.00) cash and other good and valuable consideration to it in hand paid by the City of Denton, Texas, a municipal corporation, of the County of Denton, State of Texas, the receipt of which is hereby acknowledged, does hereby GIVE and GRANT to the said City of Denton, Texas, its successors and assigns, the free and uninterrupted use, liberty, and right in, upon and across the following described property for the purpose of constructing, reconstructing, and perpetually maintaining a sanitary sewer line and appurtenances in, upon and across a tract of land lying and being situated in the County of Denton, State of Texas, and more particularly described as follows:

VOL 501 PAGE 274

BEGINNING at a point in the East property line of of a 154.7 acre tract of land out of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co. by H. Edward Smith, and wife, Mary Frances Smith, and recorded in Volume 974, Page 491, of the Deed Records of Denton County, Texas; said beginning point being 2,454 feet North, 1,885.35 feet East, and 109.5 feet North, 2 degrees, 05 minutes, East of the Southwest corner of the M.E.P. & P.R.R. Co. Survey; said point also being North, 2 degrees, 05 minutes, East from the Southeast corner of said 154.7 acre tract;

THENCE North 65 degrees 15 minutes West, a distance of 298.0 feet to a point for corner;

THENCE South 89 degrees 03 minutes West, a distance of 285.4 feet to a point for corner;

THENCE North 67 degrees 42 minutes West, a distance of 263.8 feet to a point for corner;

THENCE North 32 degrees 28 minutes West a distance of 970.9 feet to a point for corner;

THENCE North 50 degrees 28 minutes West, a distance of 775.1 feet to a point in the West property line of said Smith to Foxworth-Galbraith 154.7 acre tract;

THENCE North 2 degrees 05 minutes East with the West property line of said 154.7 acre tract of land a distance of 12.8 feet to a point for corner;

THENCE South 50 degrees 28 minutes East, a distance of 784.7 feet to a point for corner;

THENCE South 32 degrees 28 minutes East, a distance of 969.1 feet to a point for corner;

THENCE South 67 degrees 42 minutes East, a distance of 258.8 feet to a point for corner;

THENCE North, 89 degrees 03 minutes East, a distance of 285.6 feet to a point for corner;

THENCE South 65 degrees 15 minutes East, a distance of 296.0 feet to a point in the East property line of said 154.7 acre tract of land;

THENCE South 2 degrees 05 minutes West, with the East property line of said 154.7 acre tract, a distance of 11.0 feet to the place of beginning; and containing 0.60 acres of land, more or less.

TO HAVE AND TO HOLD, all and singular, the privileges aforesaid to it, the said City of Denton, Texas, its successors and assigns forever, together with the right and privilege, at any and all times to enter the said premises or any part thereof, for the purpose of constructing, reconstructing and perpetually maintaining said sanitary sewer line together with necessary appurtenances, and for making connections therewith; all upon the condition that the said City of Denton, Texas, will at all times, after doing any work in connection with the construction, reconstruction or repair of said sanitary sewer line restore said premises to the condition in which same were found before such work was undertaken, including repair of all fences.



that might be disturbed or damaged in performing said work;  
and further upon the condition that Grantor, its successors and assigns shall have the right to make connections with the

aforesaid sanitary sewer line for the purpose of providing sewage collection service to their property, all upon such terms and conditions and upon the payment of such charges for such connections and service as may from time to time be provided by the ordinances of the said City of Denton, Texas;

PROVIDED, HOWEVER, that for the purpose of initially constructing the sanitary sewer line and appurtenances above described, and during such initial construction, the City of Denton, Texas, shall have the right to use and occupy a strip of land sixty (60) feet in width and being thirty (30) feet on either side of the center line of said strip of land, as said center line is more particularly described as follows:

BEGINNING at a point in the East property line of a 154.7 acre tract of land out of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co. by H. Edward Smith, and wife, Mary Frances Smith, and recorded in Volume 974, Page 491, of the Deed Records of Denton County, Texas; said beginning point being 2,454 feet North, 1,885.35 East, and 115.0 feet North, 2 degrees 05 minutes East of the Southwest corner of the M.E.P. & P.R.R. Co. Survey; said point also being North 2 degrees 05 minutes East, 115.0 feet from the Southeast corner of said 154.7 acre tract of land;

THENCE North 65 degrees 15 minutes West, a distance of 297.0 feet to a point for corner;

THENCE South 89 degrees 03 minutes West a distance of 285.5 feet to a point for corner;

THENCE North 67 degrees 42 minutes West a distance of 261.3 feet to a point for corner;

THENCE North 32 degrees 28 minutes West a distance of 970 feet to a point for corner;

THENCE North 50 degrees 28 minutes West a distance of 780 feet to a point in the West property line of said 154.7 acre tract; said easement having a total length of 2,593.8 feet, more or less.

VOL 501 PAGE 276

All upon the condition that said City of Denton, Texas, and its agents, will restore said premises as nearly as possible to the condition in which same were found before such initial construction work was undertaken, including repair of all fences that might be disturbed or damaged in performing said initial construction work.

IN WITNESS WHEREOF, the said corporation has caused these presents to be signed by its duly authorized officer and to be sealed with the Seal of the Corporation.

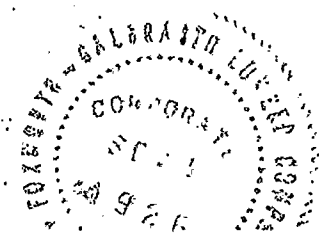
FOXWORTH-GALBRAITH LUMBER COMPANY

By

J. L. Foxworth  
President

ATTEST:

J. A. Woodford  
Secretary



THE STATE OF TEXAS :

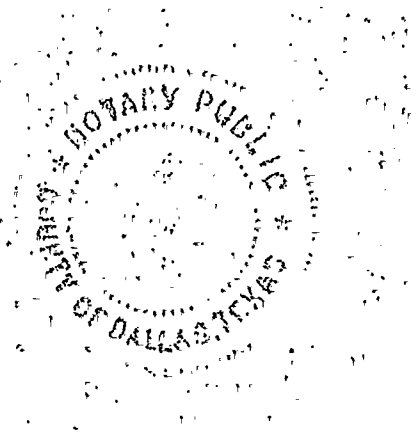
COUNTY OF DALLAS :

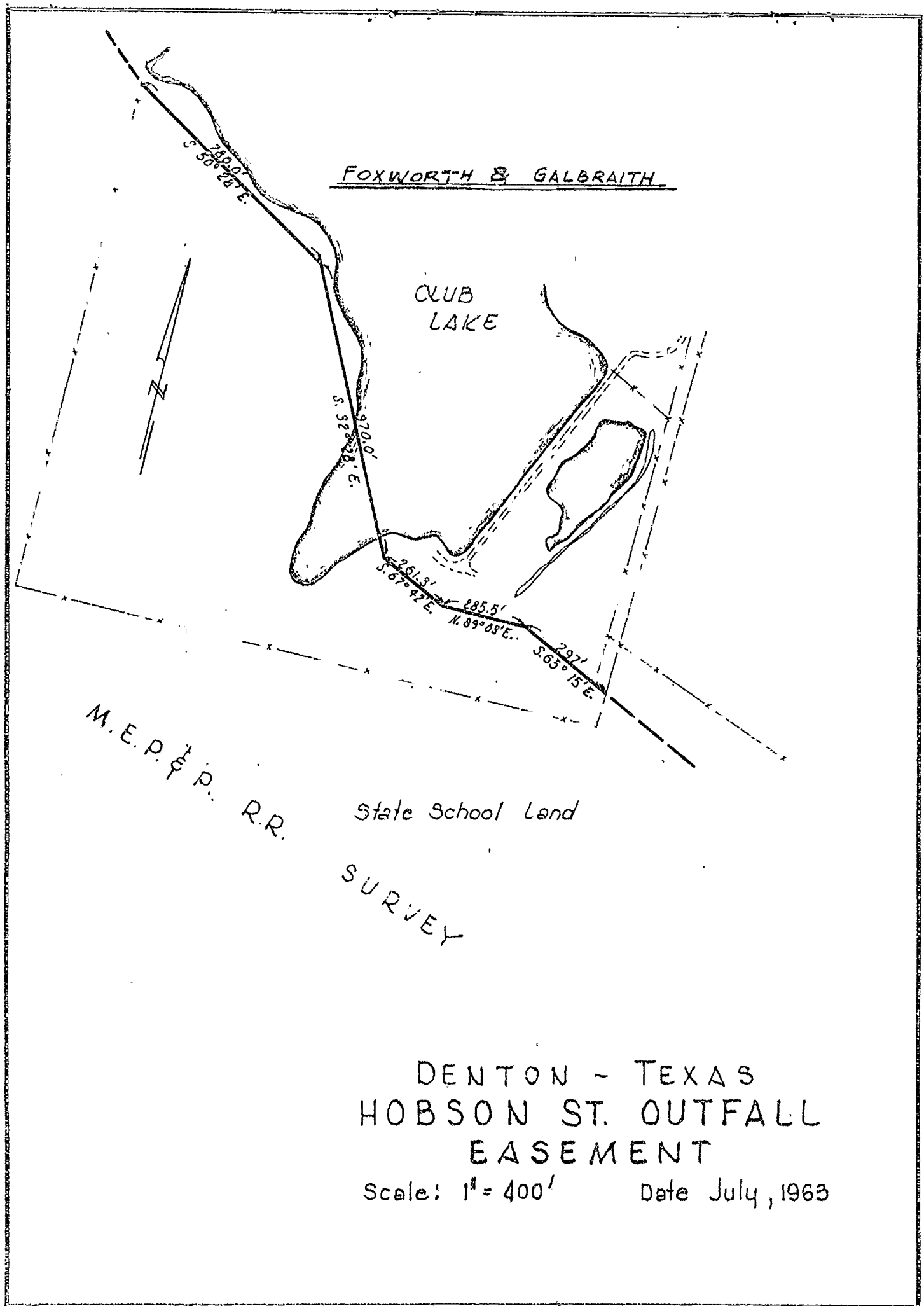
BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day and personally appeared J. L. Foxworth, President, Foxworth-Galbraith Lumber Company, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Foxworth-Galbraith Lumber Company, a corporation, and that he executed the same as the act of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

WITNESS MY HAND AND SEAL OF OFFICE this 30th day of  
October, A.D. 1963.

Ann Harrison ANN HARRISON

Notary Public in and for  
Dallas County, Texas





FILED FOR RECORD: 4 day of Nov. A.D. 1963 at 2:00 o'clock P M.  
 RECORDED: 14 day of Nov. A.D. 1963 at 9:10 o'clock A M.  
 By: Ellen Henrich Deputy      Theta Parker, Clerk County Court,  
 Denton County, Texas

CC-216 EASEMENT

Martin Stationery Co., Dallas

**THE STATE OF TEXAS, } KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF DENTON

THAT T. L. CARUTHERS  
of Denton County, Texas **477**, in consideration of the sum of  
One Dollar-----and other good and valuable consideration  
in hand paid by City of Denton, Texas receipt of which is hereby acknowledged, do by  
these presents grant, bargain, sell and convey unto City of Denton, Texas, the free  
and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following  
described property,

owned by me. Situated in Denton County, Texas, in the  
M.E.P. & P.R.R. CO. Survey, Abstract No. 950

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Company Survey, Abstract No. 950, and being part of a tract of land as conveyed from Charles G. Runyon to T. L. Caruthers by deed dated September 22, 1964 and recorded in Volume 514, Page 133 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the most northerly northwest corner of said tract, said point of beginning also being the intersection of the southwest right of way line of Interstate Highway 35E and the east right of way line of Regal Drive;

THENCE south 50° 26' east, along the northeast boundary line of said Caruthers Tract, same being the southwest right of way line of Interstate Highway 35E, a distance of 450.44 feet to a point for a corner, same being the northeast corner of said Caruthers Tract and also being the intersection of the southwest right of way line of Interstate Highway 35E and the west right of way line of State School Road;

THENCE south 28° 16' west along the east boundary line of said Caruthers Tract, same being the west right of way line of State School Road, a distance of 10.20 feet to a point for a corner;

THENCE north 50° 26' west 10.00 feet south of and parallel with the northeast boundary line of said Caruthers tract, a distance of 448.80 feet to a point for a corner in the west boundary line of said Caruthers Tract, same being the east right of way line of Regal Drive;

THENCE north 19° 34' east along the west boundary line of said Caruthers Tract, same being the east right of way line of Regal Drive, a distance of 10.64 feet to the place of beginning and containing 4,496.19 square feet of land, more or less.

And it is further agreed that the said City of Denton, Texas,

in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, installing repairing and perpetually maintaining public utilities in, along, upon and

across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public utilities, or

any part thereof, subject to the terms and conditions as set forth in Exhibit A which is attached hereto and made a part of this Easement and Agreement for all purposes.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for

the purposes aforesaid the premises above described.

Witness my hand, this the 3<sup>rd</sup> day of,

~~October~~ January, A. D. 19 <sup>73</sup>~~72~~

*T. L. Caruthers*  
T. L. CARUTHERS

VOL 663 PAGE 266

## SINGLE ACKNOWLEDGMENT

THE STATE OF TEXAS,  
COUNTY OF DENTON }

BEFORE ME, the undersigned authority,

in and for said County, Texas, on this day personally appeared  
T. L. CARUTHERSknown to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. January 73GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 3rd day of October, A.D. 19 72

(L.S.)

Alfred Vick (Alfred Vick)  
Notary Public, Denton County, TexasMy Commission Expires June 1, 19 73

## EXHIBIT A

This Agreement by and between T. L. Caruthers and the City of Denton, Texas is to be included in and made a part of the Easement Agreement to which this Exhibit is attached.

The City of Denton hereby agrees to saw with a concrete saw all driveway and paving which is necessary to be removed so that said opening will produce a smooth joint. The City of Denton further agrees to repair and replace to its original condition all parking lot, driveway and other paving or concrete which is in any way damaged or removed in connection with said Easement.

The City of Denton agrees that only one driveway shall be blocked at any one time, both during the construction of the waterline which is to be placed in said Easement and during any replacement or repairs that shall be necessary in the future. In this connection, the City of Denton shall repair to its original condition any driveway which is or has been blocked before proceeding to cut or block any other driveway on said property.

T. L. Caruthers  
T. L. Caruthers

Jim White  
Jim White, City Manager  
City of Denton

FILED FOR RECORD: 8th DAY OF January A.D. 1973 at 8:26 o'clock A.M.  
RECORDED: 16th DAY OF January A.D. 1973 at 8:05 o'clock A.M.  
BY \_\_\_\_\_ DEPUTY Y THETA PARKER, COUNTY CLERK  
DENTON COUNTY, TEXAS



THE STATE OF TEXAS     0  
COUNTY OF DENTON       0

KNOW ALL MEN BY THESE PRESENTS:

**2855**

That Josten's, Inc., a Minnesota Corporation owning real property in Denton County, Texas, in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration in hand paid by the City of Denton, Texas, receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by it and being situated in Denton County, Texas, and being more particularly described as follows, to-wit:

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Company Survey, Abstract No. 950, and being part of two tracts of land, hereafter referred to as Tract One and Tract Two, said Tract One being conveyed by Foxworth-Galbraith Lumber Company to Josten's Incorporated by deed dated August 28, 1968, and recorded in Volume 571, Page 39 of the Deed Records of Denton County, Texas, and said tract Two being conveyed from T. L. Caruthers to Josten's Incorporated by deed dated September 3, 1968 and recorded in Volume 571, Page 42 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the most northerly corner of said Tract One, said point of beginning lying in the southwest right of way line of Interstate Highway No. 35 E;

THENCE south 50° 26' east, along the northeast boundary line of said Tract One, same being the southwest right of way line of Interstate Highway 35E, passing at 400.0 feet the southeast corner of said Tract One, same being the most northerly corner of said Tract Two, and continuing south 50° 26' east, a total distance of 678.0 feet to the beginning of a curve to the right;

THENCE southeasterly along a 5.14° curve to the right, same being the southwest right of way line of Interstate Highway 35E a distance of 187.9 feet to a point;

THENCE south 35° 55' east along the northeast boundary line of said Tract Two, same being the southwest right of way line of Interstate Highway 35E, a distance of 104.6 feet to a point;

THENCE south 49° 54' east along the northeast boundary line of said Tract Two, same being the southwest right of way line of Interstate Highway 35E, a distance of 11.25 feet to a point for a corner, same being the most easterly corner of said tract and also being the intersection of the southwest right of way line of Interstate Highway 35E and the west right of way line of Regal Drive;

THENCE south  $19^{\circ} 34'$  west along the east boundary line of said Tract Two, same being the west right of way line of Regal Drive, a distance of 10.68 feet to a point for a corner;

THENCE north  $49^{\circ} 54'$  west 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, a distance of 13.77 feet to a point;

THENCE north  $35^{\circ} 55'$  west, 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, a distance of 103.737 feet to the beginning of a curve to the left;

THENCE northwesterly along a  $5.14^{\circ}$  curve to the left, 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, a distance of 187.00 feet to a point;

THENCE north  $50^{\circ} 26'$  west, 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, passing at 288.66 feet the north boundary line of said Tract Two, same being the south boundary line of said Tract One, and continuing north  $50^{\circ} 26'$  west, a total distance of 677.88 feet to a point for a corner in the northwest boundary line of said Tract One;

THENCE north  $38^{\circ} 52'$  east along the northwest boundary line of said Tract One, a distance of 10.00 feet to the place of beginning and containing 9,844.03 square feet of land, more or less.

And it is agreed that the said City of Denton, Texas, in consideration of the benefits above set out, will remove from the property above described, such fences, and other obstructions as may now be found upon said property for the purpose of constructing, installing, repairing and perpetually maintaining a water line in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to the said water line, or any part thereof. It is further agreed that the City of Denton shall perform all construction in a workmanlike manner, will close all open ditches each and every night work is in progress, will repair any and all damages promptly, and in no event more than 30 days after the completion of work, and specifically but not limited to, the City of Denton will repair of any and all fencing, repair or replace trees, shrubbery or landscaping if any such be damaged, and restore the surface of the ground, including sod, to as good a condition as when the land was entered onto.

And it is agreed that the City of Denton shall indemnify and hold harmless Josten's, Inc. for any loss or damage occasioned by the use of the rights hereinabove granted, whether such loss or damage be suffered by Josten's, Inc. or a third party.

TO HAVE AND TO HOLD unto the said City of Denton, Texas, as aforesaid for the purpose aforesaid the premises above described.

WITNESS our hands this the 2nd day of February, A.D. 1973.

JOSTEN'S INCORPORATED

BY: H. William Lorton

ATTEST:

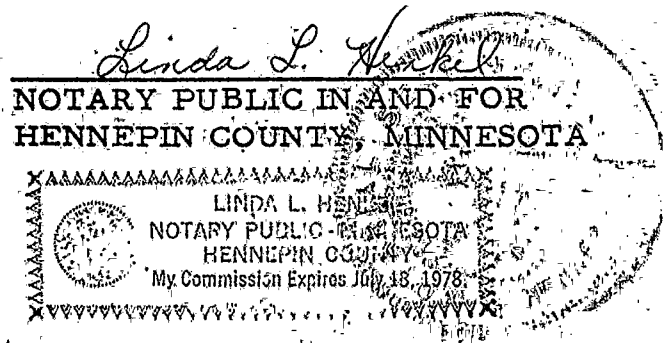
Ann Swed

THE STATE OF MINNESOTA 0

COUNTY OF HENNEPIN 0

BEFORE ME, the undersigned authority, in and for said County, Minnesota, on this day personally appeared H. William Lorton of Josten's Incorporated, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Josten's Incorporated, and that he executed the same as the official act of said Josten's Incorporated for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This the 2nd day of February, A.D. 1973.



FILED FOR RECORD: 14th DAY OF February A.D. 1973 at 8:29 o'clock A. M.  
 RECORDED: 20th DAY OF February A.D. 1973 at 8:47 o'clock A. M.  
 BY C. A. Enrich DEPUTY THETA PARKER, COUNTY CLERK  
 DENTON COUNTY, TEXAS

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CITY OF DENTON  
FORM PUE 5-20-81

VOL 1130 PAGE 214

DEED RECORDS

PUBLIC UTILITY EASEMENT

6014

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON §

That \_\_\_\_\_, JOSTEN'S INCORPORATED, A MINNESOTA CORPORATION  
OWNING REAL PROPERTY IN DENTON COUNTY, TEXAS

hereinafter referred to as Grantors, whether one or more, for and in consideration of the sum of One Dollar (\$1.00) cash to Grantors in hand paid by the City of Denton, the receipt of which is hereby acknowledged, and the further consideration of the benefits to be derived by Grantors from the placing of public utilities, including but not limited to water mains, sanitary sewer mains, gas mains, electric poles and lines, telephone and telegraph poles and lines, through the premises hereinafter described, have this day Granted and Conveyed, and by these presents do hereby Grant and Convey unto the City of Denton, a municipal corporation situated in Denton County, Texas, an easement to construct, reconstruct and perpetually maintain public utilities, including but not limited to water mains, sanitary sewer mains, gas mains, electric poles and lines, telephone and telegraph poles and lines or authorize such construction by any public utility company, in, upon and across the following described land, to-wit:

All that certain tract, piece or parcel of land, lying and being situated in the County of Denton, State of Texas, described in EXHIBIT "A" attached hereto and made a part hereof for all purposes, to which reference is here made for a more particular description of said property;

TO HAVE AND TO HOLD the same perpetually to the City of Denton, its successors and assigns, together with the right and privilege at any and all times to enter said premises, or any part thereof, for the purpose of constructing and maintaining said public utilities, and for making connections therewith; all upon the condition that the City of Denton will at all times after doing any work in connection with the construction or repair of said public utility restore the surface of said premises to the condition in which the same was found before such work was undertaken.

EXECUTED this the 5TH day of MARCH, A.D. 1982.

JOSTEN'S INCORPORATED

BY:

P. J. West S. V. P.

ATTEST:

Richard C. Spaulding

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THE STATE OF MINNESOTA ( )  
COUNTY OF HENNEPIN ( )

BEFORE ME, the undersigned authority, in and for said County, Hennepin, on this day personally appeared Jack Melt of Josten's Incorporated, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Josten's Incorporated, and that he executed the same as the official act of said Josten's Incorporated for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This the 5th day of March, A.D. 1981.

Elizabeth J. Wines  
NOTARY PUBLIC IN AND FOR  
HENNEPIN COUNTY,





EXHIBIT "A"

VOL 1100 PAGE 216

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, and also being part of a tract of land as conveyed from Foxworth-Galbraith Lumber Co. to Josten's, Inc. by Deed dated 8-28-68 and recorded in Volume 571, Page 39 of the Deed Records of Denton County, Texas, and more particularly described as follows:

Beginning at the most northerly corner of said tract, said point lying on the southwest right-of-way line of Interstate Highway 35-E;

Thence South  $50^{\circ} 26'$  east along the northeast boundary line of said tract, same being the southwest right-of-way of I.H. 35-E, a distance of 16.0 feet to a point for a corner;

Thence South  $38^{\circ} 52'$  west 16 feet southeast of and parallel to the west boundary line of said tract, a distance of 331.82 feet to a point for a corner on the south boundary line of said tract;

Thence South  $88^{\circ} 57'$  west along the south boundary line of said tract, a distance of 20.86 feet to the southwest corner of said tract;

Thence North  $38^{\circ} 52'$  east along the northwest boundary line of said tract, a distance of 345.4 feet to the place of beginning and containing 0.124 acres of land, more or less.

Return to  
Foster N. Williams  
City of Denton  
Engineering Dept  
1000 W. 10th Street

FILED  
1982 MAR 8 PM 2:35  
MARY JO HILL  
COUNTY CLERK DENTON TEX  
BY for JOSTICE'S INC.  
DENTON, TEXAS  
FILED

UTILITY EASEMENT

6014

2-28-82  
J. Williams

VOL 1150 PAGE 217

FILED FOR RECORD 8th DAY OF March A.D. 1982, at 2:35 P.  
RECORDED 9th DAY OF March A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Shirley J. Smith DEPUTY.

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of a the remainder of a called 14.531 acre tract of described in General Warranty Deed to Josten's Inc., recorded in Volume 571, Page 42 of the Official Deed Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at the intersection of the southwest right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) and the west right-of-way line of Regal Drive (a variable width right-of-way), and being the northeast corner of said 14.531 acre tract; from said point a 1/2-inch iron rod with capped stamped "JPH" found bears North 78°35'44" West, a distance of 1.25 feet;

**THENCE** South 19°39'45" West, along the said west right-of-way line of Regal Drive, a distance of 88.85 feet to a point;

**THENCE** departing the said west right-of-way line of Regal Drive, North 16°06'51" West, a distance of 21.50 feet to the **POINT OF BEGINNING**;

**THENCE** North 51°20'34" West, a distance of 34.68 feet to a point for corner;

**THENCE** North 50°24'19" West, a distance of 335.53 feet to a point for corner in the southeast line of Lot 2, Block A, Josten's Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume H, Page 362, of the Plat Records of Denton County, Texas;

**THENCE** North 52°07'56" East, along the said southeast line of Lot 2, a distance of 20.49 feet to a point for corner;

**THENCE** departing said southeast line of Lot 2, South 50°24'19" East, a distance of 337.26 feet to a point for corner;

**THENCE** South 16°07'12" East, a distance of 34.50 feet to the **POINT OF BEGINNING** and containing 7,073 square feet or 0.1624 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

 9/13/20

MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



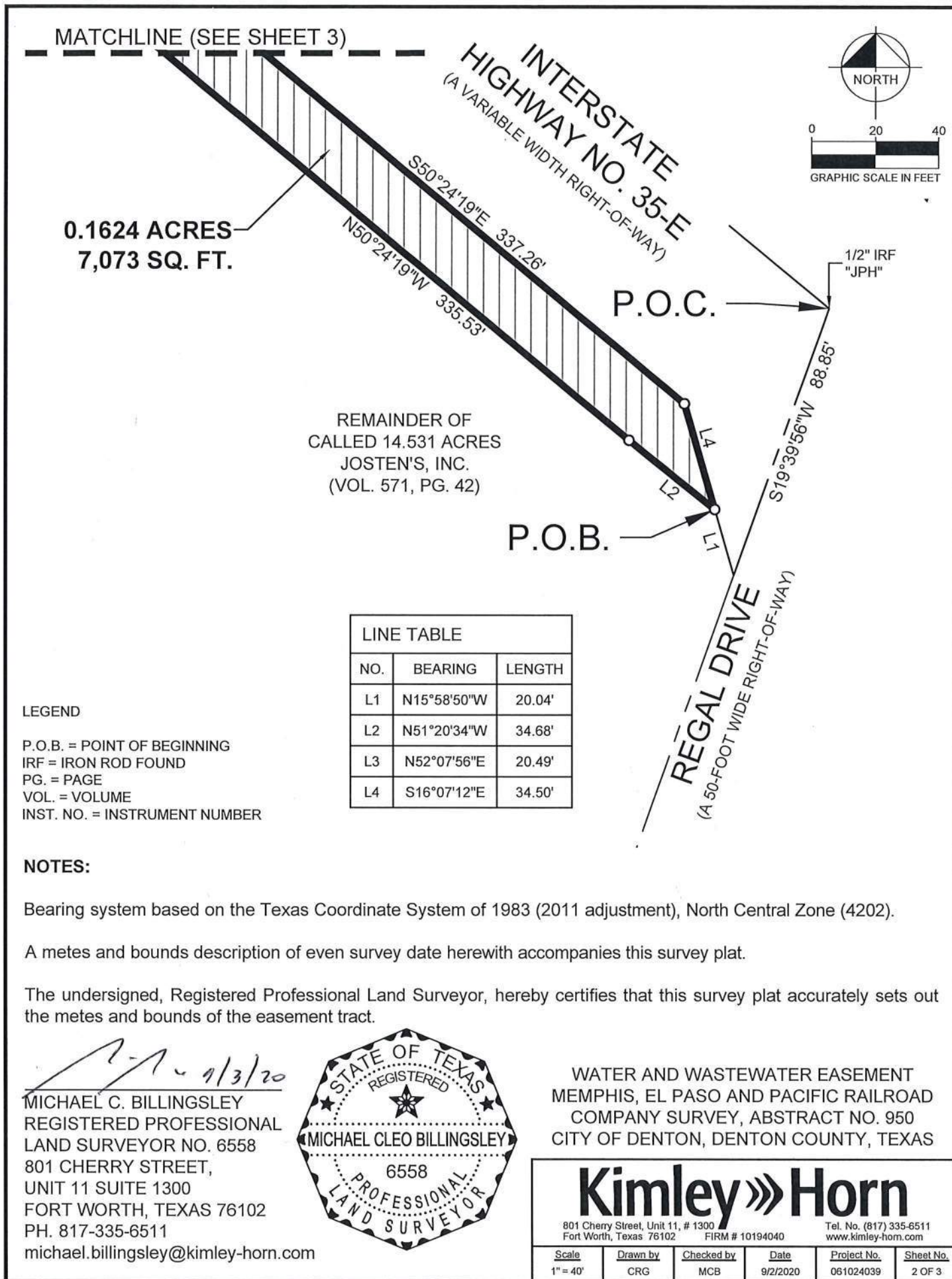
WATER AND WASTEWATER EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

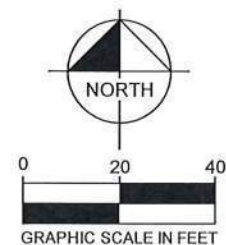
801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	9/2/2020	061024039	1 OF 3







LOT 2, BLOCK A  
JOSTENS ADDITION  
(VOL. H, PG. 362)

**0.1624 ACRES**  
**7,073 SQ. FT.**

REMAINDER OF  
CALLED 14.531 ACRES  
JOSTEN'S, INC.  
(VOL. 571, PG. 42)

**INTERSTATE  
HIGHWAY NO. 35-E**  
(A VARIABLE WIDTH RIGHT-OF-WAY)

MATCHLINE (SEE SHEET 2)

#### LEGEND

P.O.B. = POINT OF BEGINNING  
IRF = IRON ROD FOUND  
PG. = PAGE  
VOL. = VOLUME  
INST. NO. = INSTRUMENT NUMBER

WATER AND WASTEWATER EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	9/2/2020	061024039	3 OF 3



**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 92**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1769+41 LT to Sta 1772+20 LT

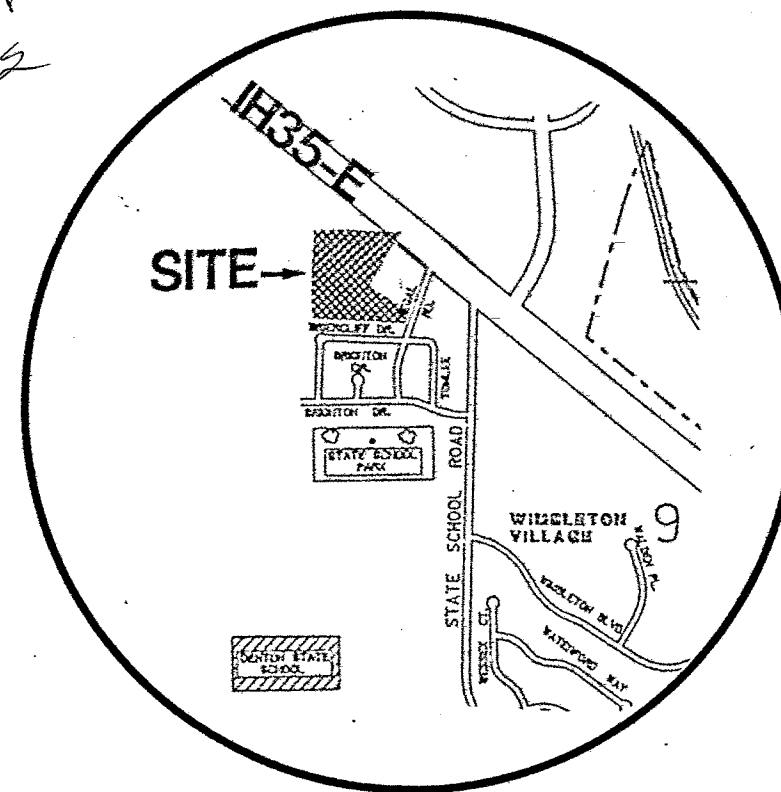
Existing Easement

Volume. H, Page 362

LOT 2, BLOCK A, JOSTENS ADDITION  
MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

# POB

037457  
FILED FOR RECORD  
91 JUL 31 PM 2:54  
TIM HODGES  
COUNTY CLERK DENTON CO. TEX  
BY                      DEPUTY



LOCATION MAP

DEDICATION

PROPERTY DESCRIPTION

STATE OF TEXAS  
COUNTY OF DENTON

WHEREAS, Josten's, Inc. is the owner of that certain tract of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas:

Being all that certain 10.796 acre tract or parcel of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas, being part of a tract conveyed to Josten's, Inc. from T. L. Caruthers by deed recorded in Volume 571, Page 42 Deed Records, Denton County, Texas, said 10.740 acre tract being more particularly described as follows:

Beginning at a steel pin at a fence corner post at the northwest corner of said Josten's tract, same being the northwest corner of a certain tract deeded by Charles Runyon to T. L. Caruthers by deed recorded in Volume 514, Page 133, Deed Records, Denton County, Texas;

Thence South 86 degrees 00 minutes 00 seconds East a distance of 586.62 feet to a set half inch rebar on the southwest right-of-way of Interstate Highway 35 East, said point being South 49 degrees 55 minutes 52 seconds East 83.79 feet from the most northerly northeast corner of said Josten's tract;

Thence South 49 degrees 55 minutes 52 seconds East with said right-of-way a distance of 165.13 feet to a set half inch rebar for corner;

Thence South 52 degrees 37 minutes 00 seconds West, departing said right-of-way, a distance of 385.25 feet to a set half inch rebar for corner;

Thence South 52 degrees 30 minutes 00 seconds East a distance of 531.43 feet to a set half inch rebar in the northwest right-of-way of Regal Drive;

Thence South 20 degrees 09 minutes 00 seconds West with said right-of-way a distance of 70.00 feet to a set half inch rebar in the north line of Briercliff Estates, Section One, an addition to the City of Denton as shown by plat recorded in Volume 6, Page 45 Plat Records, Denton County, Texas, said rebar being the southeast corner of said Josten's tract, also being North 87 degrees 47 minutes 00 seconds West 0.98 feet from the northeast corner of Lot 1, Block 2 of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 247.29 feet to a found half inch rebar for corner;

Thence South 02 degrees 12 minutes 54 seconds West a distance of 10.14 feet to a set half inch rebar for an inner ell corner of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 589.63 feet to a set half inch rebar for the southwest corner of said Josten's tract, same being the northwest corner of Lot 10, Block 2, of said Briercliff Estates in the occupied west line of said Briercliff Estates;

Thence North 02 degrees 35 minutes 00 seconds East a distance of 748.88 feet to the Point of Beginning, containing in all 10.796 acres of land.

OWNER'S CERTIFICATE

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

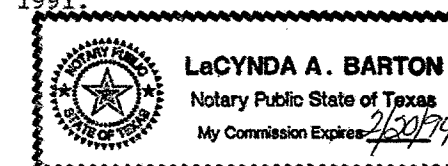
THAT, Josten's, Inc. does hereby adopt this plat designating the herein described property as Lot 2, Block A, Josten's Addition, an addition to the City of Denton, Denton County, Texas, and does hereby dedicate to the public use forever the streets and easements shown hereon.

C. Denisho Coleman  
Engineering Manager  
Josten's, Inc.

STATE OF TEXAS

Before me, the undersigned Notary Public for the State of Texas, on this day personally appeared C. Denisho Coleman known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and considerations therein expressed and in the capacity stated.

Given under my hand and seal of office this the 1st day of July, 1991.



*Lacinda A. Barton*  
Notary Public for the State of Texas  
*Lacinda A. Barton*  
Commission expires *3/30/94*

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Stanford Hauptmann, Registered Public Surveyor, do hereby certify that this plat and description was prepared from an actual and accurate survey of the land and that the iron pins shown hereon were found or placed under my personal supervision or direction in accordance with the law.

Stanford Hauptmann 07/28/94  
Stanford Hauptmann Date  
Texas Registered Professional  
Land Surveyor Number 2255



CERTIFICATE OF APPROVAL

APPROVED THIS 26 DAY OF  
JUNE A.D. 1991


BY THE PLANNING AND ZONING COMMISSION  
OF THE CITY OF DENVER, TEXAS.

Enline Brock  
CHAIRMAN  
Betty Williams Depina  
CITY SECRETARY

### LEGEND

FIP - Found 1/2" Rebar  
MON - Monument  
ROW - Right-of-Way  
SIP - Set 1/2" Rebar  
-X- - Fence Line  
-E- - Electric Line  
-T- - Telephone Line  
MH - Manhole  
PP - Power Pole  
LP - Light Pole  
FH - Fire Hydrant  
---- - Center Line  
B.L. - Building Line  
U.E. - Utility Easmt.  
D.E. - Drainage Easmt.  
C.E. - Communications Easmt.


OWNER  
JOSTENS  
3500 SOUTH I35-E  
DENTON, TEXAS

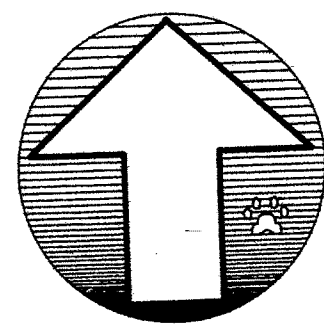
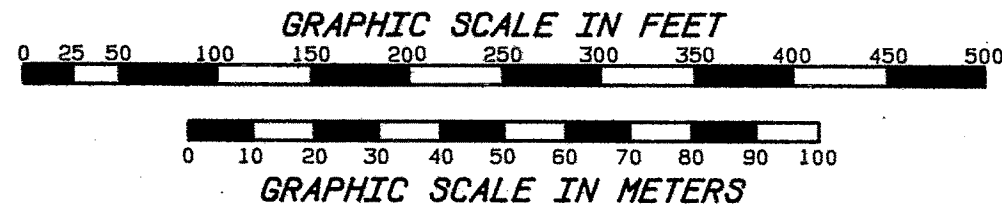


**METROPLEX ENGINEERING CONSULTANTS**  
*ENGINEERING \* PLANNING \* SURVEYING*  
 1123 FORT WORTH DRIVE DENTON, TEXAS 76205  
 (817) 383-1416 DALLAS 219-7948 FORT WORTH 329-3834

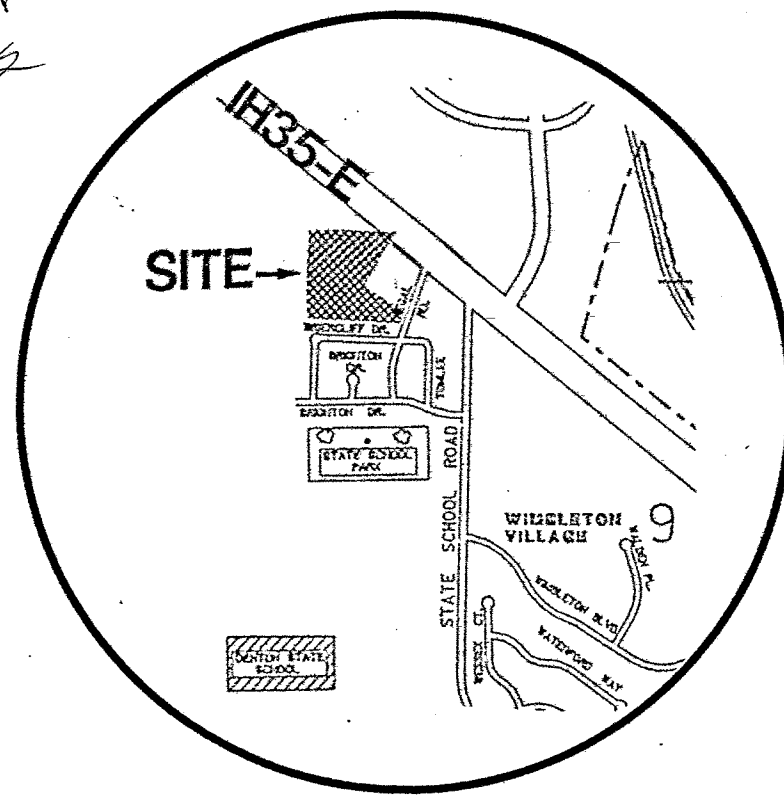
FINAL PLAT  
JOSTENS ADDITION  
LOT 2. BLOCK A

M.E.P. & P.R.R. SURVEY, ABSTRACT NUMBER 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

DRAWN:  <u>WOLF</u>	SCALE	DATE	JOB NO.
CHECKED: <u>SH</u>	1" = 100'	20 JUN 91	91007-B



037457  
FILED FOR RECORD  
91 JUL 31 PM 2:54  
TIM HODGES  
COUNTY CLERK DENTON CO. TEX  
BY *[Signature]* DEPUTY



LOCATION MAP

DEDICATION  
PROPERTY DESCRIPTION

STATE OF TEXAS  
COUNTY OF DENTON

WHEREAS, Josten's, Inc. is the owner of that certain tract of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas:

Being all that certain 10.796 acre tract or parcel of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas, being part of a tract conveyed to Josten's, Inc. from T. L. Caruthers by deed recorded in Volume 571, Page 42 Deed Records, Denton County, Texas, said 10.740 acre tract being more particularly described as follows:

Beginning at a steel pin at a fence corner post at the northwest corner of said Josten's tract, same being the northwest corner of a certain tract deeded by Charles Runyon to T. L. Caruthers by deed recorded in Volume 514, Page 133, Deed Records, Denton County, Texas;

Thence South 86 degrees 00 minutes 00 seconds East a distance of 586.62 feet to a set half inch rebar on the southwest right-of-way of Interstate Highway 35 East, said point being South 49 degrees 55 minutes 52 seconds East 83.79 feet from the most northerly northeast corner of said Josten's tract;

Thence South 49 degrees 55 minutes 52 seconds East with said right-of-way a distance of 165.13 feet to a set half inch rebar for corner;

Thence South 52 degrees 37 minutes 00 seconds West, departing said right-of-way, a distance of 385.25 feet to a set half inch rebar for corner;

Thence South 52 degrees 30 minutes 00 seconds East a distance of 531.43 feet to a set half inch rebar in the northwest right-of-way of Regal Drive;

Thence South 20 degrees 09 minutes 00 seconds West with said right-of-way a distance of 70.00 feet to a set half inch rebar in the north line of Briercliff Estates, Section One, an addition to the City of Denton as shown by plat recorded in Volume 6, Page 45 Plat Records, Denton County, Texas, said rebar being the southeast corner of said Josten's tract, also being North 87 degrees 47 minutes 00 seconds West 0.98 feet from the northeast corner of Lot 1, Block 2 of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 247.29 feet to a found half inch rebar for corner;

Thence South 02 degrees 12 minutes 54 seconds West a distance of 10.14 feet to a set half inch rebar for an inner ell corner of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 589.63 feet to a set half inch rebar for the southwest corner of said Josten's tract, same being the northwest corner of Lot 10, Block 2, of said Briercliff Estates in the occupied west line of said Briercliff Estates;

Thence North 02 degrees 35 minutes 00 seconds East a distance of 748.88 feet to the Point of Beginning, containing in all 10.796 acres of land.

OWNER'S CERTIFICATE

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

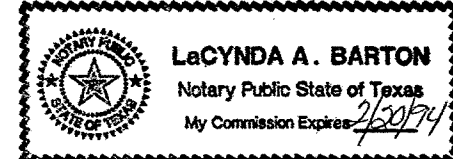
THAT, Josten's, Inc. does hereby adopt this plat designating the herein described property as Lot 2, Block A, Jostens Addition, an addition to the City of Denton, Denton County, Texas, and does hereby dedicate to the public use forever the streets and easements shown hereon.

*C. Denisho Coleman*  
C. Denisho Coleman  
Engineering Manager  
Josten's, Inc.

STATE OF TEXAS

Before me, the undersigned Notary Public for the State of Texas, on this day personally appeared C. Denisho Coleman known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and considerations therein expressed and in the capacity stated.

Given under my hand and seal of office this the 1st day of July, 1991.



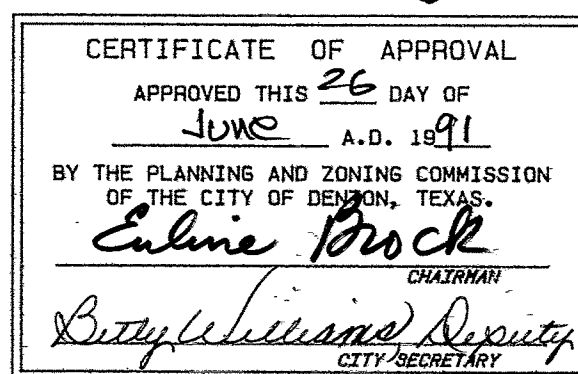
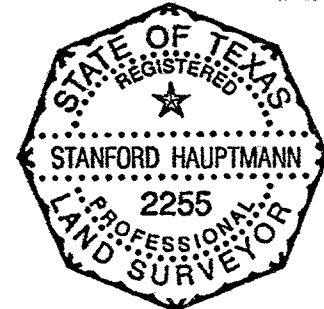
*LaCYNDA A. Barton*  
LaCYNDA A. Barton  
Notary Public for the State of Texas  
Commission expires 7/30/94

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Stanford Hauptmann, Registered Public Surveyor, do hereby certify that this plat and description was prepared from an actual and accurate survey of the land and that the iron pins shown hereon were found or placed under my personal supervision or direction in accordance with the law.

*Stanford Hauptmann* 07/06/91  
Stanford Hauptmann  
Texas Registered Professional  
Land Surveyor Number 2255



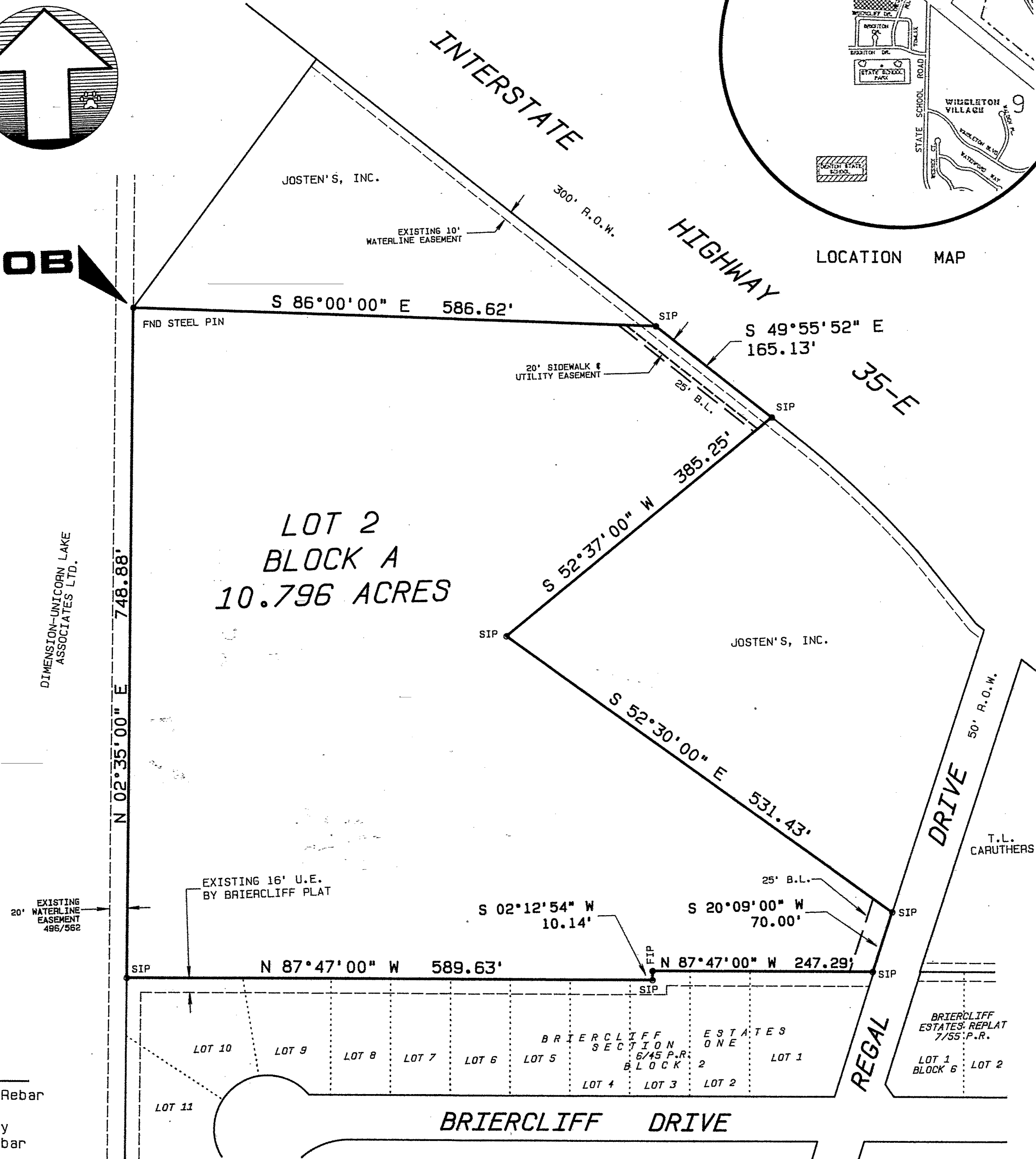
**METROPLEX ENGINEERING CONSULTANTS**  
ENGINEERING \* PLANNING \* SURVEYING  
1123 FORT WORTH DRIVE DENTON, TEXAS 76205  
(817) 383-1416 DALLAS 219-7948 FORT WORTH 329-3834

**FINAL PLAT**  
**JOSTENS ADDITION**  
LOT 2, BLOCK A  
BEING 10.796 ACRES IN THE  
M.E.P. & P.R.R. SURVEY, ABSTRACT NUMBER 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

DRAWN: <i>[Signature]</i> WOLF	SCALE: 1" = 100'	DATE: 20 JUN 91	JOB NO. 91007-B
CHECKED: <i>[Signature]</i> S.H.			

- LEGEND**
- FIP - Found 1/2" Rebar
  - MON - Monument
  - ROW - Right-of-Way
  - SIP - Set 1/2" Rebar
  - X- - Fence Line
  - E- - Electric Line
  - T- - Telephone Line
  - MH - Manhole
  - PP - Power Pole
  - LP - Light Pole
  - FH - Fire Hydrant
  - - Center Line
  - B.L. - Building Line
  - U.E. - Utility Easmt.
  - D.E. - Drainage Easmt.
  - C.E. - Communications Easmt.

OWNER  
JOSTENS  
3500 SOUTH 135-E  
DENTON, TEXAS



6232

THE STATE OF TEXAS :

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON :

THAT the Foxworth-Galbraith Lumber Company, a corporation, acting through its president, J. L. Foxworth, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration the receipt of which is hereby fully confessed and acknowledged, and the further consideration of the agreement by Grantee to install in the water line constructed in the hereinafter described tract of land one (1)-two (2) inch water tap at such location as may be designated by Grantor without any cost or expense to Grantor, with the understanding,

by and between Grantor and Grantee that a part of the consideration for the granting of this easement is the agreement by Grantee that the Grantor shall have the right to receive water service from the line hereinafter described for the same rates charged like users within the City Limits of the City of Denton, Texas, does hereby GIVE and GRANT to the said City of Denton, Texas, its successors and assigns, the free and uninterrupted use, liberty, and right in, upon and across the following described property for the purpose of constructing, reconstructing and perpetually maintaining a water line in, upon and across a tract of land lying and being situated in the County of Denton, State of Texas, and more particularly described as follows:

BEGINNING at a point in the Northeasterly line of a tract of land out of the MEP & PRR Co., Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co., a corporation, by H. Edward Smith and wife Mary Frances Smith, and recorded in Volume 474, Page 491 of the Deed Records of Denton County,

Texas; said beginning point also being in the Southwesterly right-of-way line of Interstate Highway 35E; said beginning point also being 654.7 feet North 49 degrees 57 minutes West from the most Easterly Northeast corner of the Foxworth-Galbraith Lumber Co. tract;

THENCE South 2 degrees 49 minutes West and passing at 488.36 feet an inner ell corner of the Foxworth-Galbraith Lumber Co. tract and continuing with the East line of said Foxworth-Galbraith tract for a total distance of 2,173.3 feet to a point for a corner in an existing fence line;

THENCE North 87 degrees 11 minutes West a distance of 20 feet to a point for a corner;

THENCE North 2 degrees 49 minutes East a distance of 2,190.0 feet to a point for a corner in the Southwesterly right-of-way of said Highway 35E;

THENCE South 49 degrees 57 minutes East with the Southwesterly right-of-way line of said Highway 35E a distance of 25.6 feet more or less to the place of beginning

TO HAVE AND TO HOLD the same perpetually to the City of Denton, Texas, and its successors, together with the right and privilege at any and all times to enter said premises for the purpose of constructing, reconstructing and perpetually maintaining said water line and for making connections therewith.

IN WITNESS WHEREOF, the said corporation has caused these presents to be signed by its duly authorized officer and to be sealed with the Seal of the Corporation.



VOL 496 PAGE 564



FOXWORTH-GALBRAITH LUMBER COMPANY

By

J. L. Foxworth  
President

ATTEST:

A. Woodford  
Secretary

THE STATE OF TEXAS :

COUNTY OF DALLAS :

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared J. L. Foxworth, President, Foxworth-Galbraith Lumber Company, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Foxworth-Galbraith Lumber Company, a corporation, and that he executed the same as the act of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

WITNESS MY HAND AND SEAL OF OFFICE this 16th day of  
July, A.D. 1963.

Ann Harrison

ANN HARRISON

Notary Public in and for  
Dallas County, Texas

FILED FOR RECORD: 17 day of July A.D. 1963 at 10:15 o'clock A.M.  
RECORDED: 24 day of July A.D. 1963 at 7:45 o'clock P.M.  
By: Lorence McLeod Deputy Theta Parker, Clerk County Court,  
Denton County, Texas

THE STATE OF TEXAS    X  
COUNTY OF DENTON       X

KNOW ALL MEN BY THESE PRESENTS:

9845

THAT the Foxworth-Galbraith Lumber Company, a corporation, acting through its President, J. L. Foxworth, for and in consideration of the sum of TEN DOLLARS (\$10.00) cash and other good and valuable consideration to it in hand paid by the City of Denton, Texas, a municipal corporation, of the County of Denton, State of Texas, the receipt of which is hereby acknowledged, does hereby GIVE and GRANT to the said City of Denton, Texas, its successors and assigns, the free and uninterrupted use, liberty, and right in, upon and across the following described property for the purpose of constructing, reconstructing, and perpetually maintaining a sanitary sewer line and appurtenances in, upon and across a tract of land lying and being situated in the County of Denton, State of Texas, and more particularly described as follows:

VOL 501 PAGE 274

BEGINNING at a point in the East property line of of a 154.7 acre tract of land out of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co. by H. Edward Smith, and wife, Mary Frances Smith, and recorded in Volume 974, Page 491, of the Deed Records of Denton County, Texas; said beginning point being 2,454 feet North, 1,885.35 feet East, and 109.5 feet North, 2 degrees, 05 minutes, East of the Southwest corner of the M.E.P. & P.R.R. Co. Survey; said point also being North, 2 degrees, 05 minutes, East from the Southeast corner of said 154.7 acre tract;

THENCE North 65 degrees 15 minutes West, a distance of 298.0 feet to a point for corner;

THENCE South 89 degrees 03 minutes West, a distance of 285.4 feet to a point for corner;

THENCE North 67 degrees 42 minutes West, a distance of 263.8 feet to a point for corner;

THENCE North 32 degrees 28 minutes West a distance of 970.9 feet to a point for corner;

THENCE North 50 degrees 28 minutes West, a distance of 775.1 feet to a point in the West property line of said Smith to Foxworth-Galbraith 154.7 acre tract;

THENCE North 2 degrees 05 minutes East with the West property line of said 154.7 acre tract of land a distance of 12.8 feet to a point for corner;

THENCE South 50 degrees 28 minutes East, a distance of 784.7 feet to a point for corner;

THENCE South 32 degrees 28 minutes East, a distance of 969.1 feet to a point for corner;

THENCE South 67 degrees 42 minutes East, a distance of 258.8 feet to a point for corner;

THENCE North, 89 degrees 03 minutes East, a distance of 285.6 feet to a point for corner;

THENCE South 65 degrees 15 minutes East, a distance of 296.0 feet to a point in the East property line of said 154.7 acre tract of land;

THENCE South 2 degrees 05 minutes West, with the East property line of said 154.7 acre tract, a distance of 11.0 feet to the place of beginning; and containing 0.60 acres of land, more or less.

TO HAVE AND TO HOLD, all and singular, the privileges aforesaid to it, the said City of Denton, Texas, its successors and assigns forever, together with the right and privilege, at any and all times to enter the said premises or any part thereof, for the purpose of constructing, reconstructing and perpetually maintaining said sanitary sewer line together with necessary appurtenances, and for making connections therewith; all upon the condition that the said City of Denton, Texas, will at all times, after doing any work in connection with the construction, reconstruction or repair of said sanitary sewer line restore said premises to the condition in which same were found before such work was undertaken, including repair of all fences.

that might be disturbed or damaged in performing said work;  
and further upon the condition that Grantor, its successors and assigns shall have the right to make connections with the

aforesaid sanitary sewer line for the purpose of providing sewage collection service to their property, all upon such terms and conditions and upon the payment of such charges for such connections and service as may from time to time be provided by the ordinances of the said City of Denton, Texas;

PROVIDED, HOWEVER, that for the purpose of initially constructing the sanitary sewer line and appurtenances above described, and during such initial construction, the City of Denton, Texas, shall have the right to use and occupy a strip of land sixty (60) feet in width and being thirty (30) feet on either side of the center line of said strip of land, as said center line is more particularly described as follows:

BEGINNING at a point in the East property line of a 154.7 acre tract of land out of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co. by H. Edward Smith, and wife, Mary Frances Smith, and recorded in Volume 974, Page 491, of the Deed Records of Denton County, Texas; said beginning point being 2,454 feet North, 1,885.35 East, and 115.0 feet North, 2 degrees 05 minutes East of the Southwest corner of the M.E.P. & P.R.R. Co. Survey; said point also being North 2 degrees 05 minutes East, 115.0 feet from the Southeast corner of said 154.7 acre tract of land;

THENCE North 65 degrees 15 minutes West, a distance of 297.0 feet to a point for corner;

THENCE South 89 degrees 03 minutes West a distance of 285.5 feet to a point for corner;

THENCE North 67 degrees 42 minutes West a distance of 261.3 feet to a point for corner;

THENCE North 32 degrees 28 minutes West a distance of 970 feet to a point for corner;

THENCE North 50 degrees 28 minutes West a distance of 780 feet to a point in the West property line of said 154.7 acre tract; said easement having a total length of 2,593.8 feet, more or less.

VOL 501 PAGE 276

All upon the condition that said City of Denton, Texas, and its agents, will restore said premises as nearly as possible to the condition in which same were found before such initial construction work was undertaken, including repair of all fences that might be disturbed or damaged in performing said initial construction work.

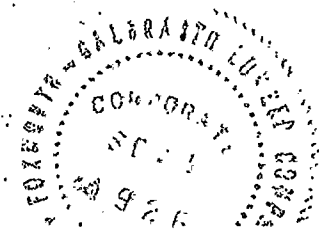
IN WITNESS WHEREOF, the said corporation has caused these presents to be signed by its duly authorized officer and to be sealed with the Seal of the Corporation.

FOXWORTH-GALBRAITH LUMBER COMPANY

By J. L. Foxworth  
President

ATTEST:

J. A. Woodford  
Secretary



THE STATE OF TEXAS :

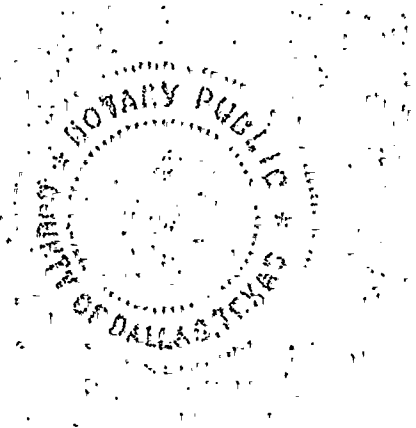
COUNTY OF DALLAS :

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day and personally appeared J. L. Foxworth, President, Foxworth-Galbraith Lumber Company, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Foxworth-Galbraith Lumber Company, a corporation, and that he executed the same as the act of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

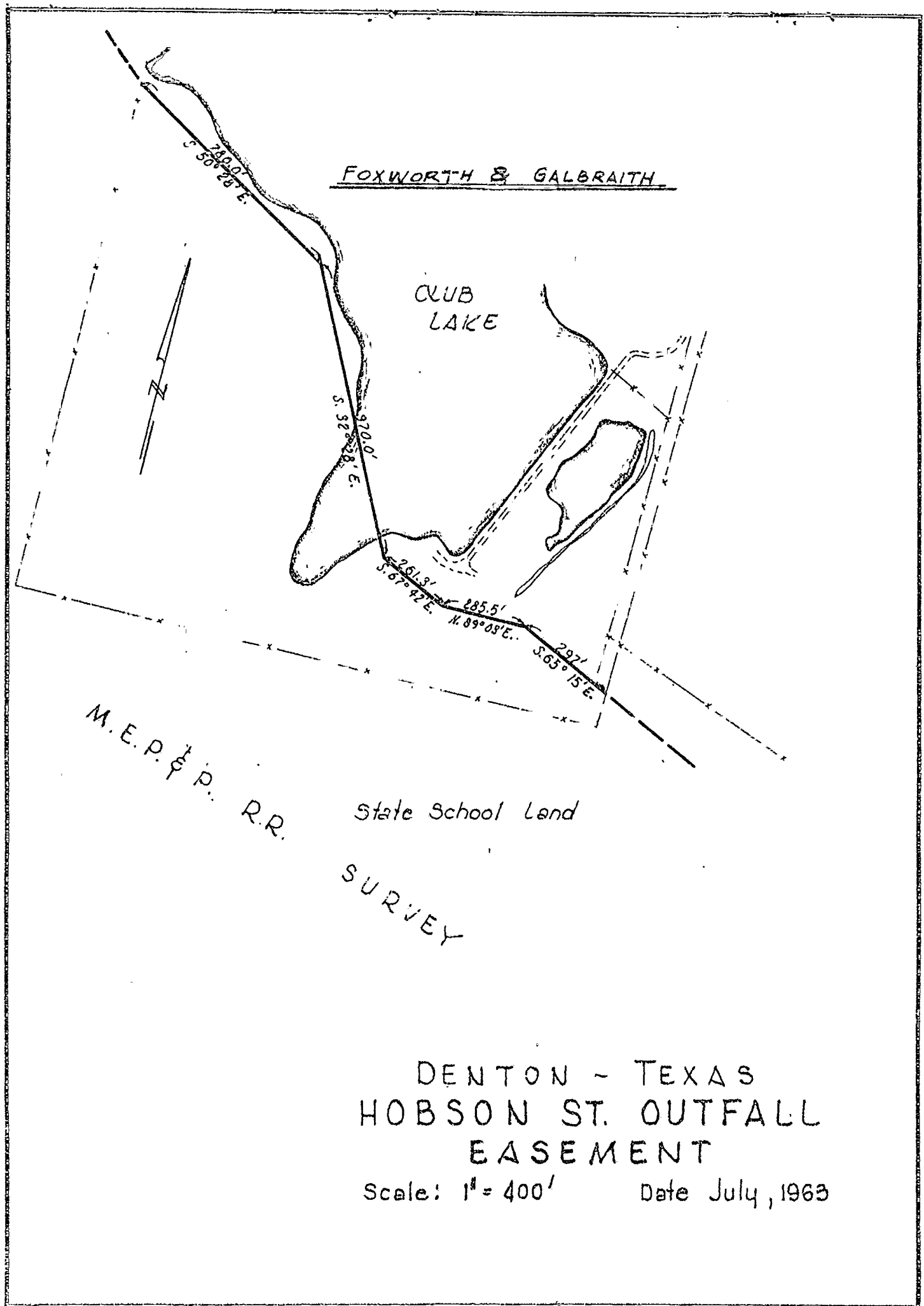
WITNESS MY HAND AND SEAL OF OFFICE this 30th day of  
October, A.D. 1963.

Ann Harrison ANN HARRISON

Notary Public in and for  
Dallas County, Texas







FILED FOR RECORD: 4 day of Nov. A.D. 1963 at 2:00 o'clock P M.  
 RECORDED: 14 day of Nov. A.D. 1963 at 9:10 o'clock A M.  
 By: Ellen Henrich Deputy Theta Parker, Clerk County Court,  
 Denton County, Texas

CC-20 EASEMENT

Martin Stationery Co., Dallas

**THE STATE OF TEXAS, } KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF DENTON

THAT T. L. CARUTHERS  
of Denton County, Texas **477**, in consideration of the sum of  
One Dollar-----and other good and valuable consideration  
in hand paid by City of Denton, Texas receipt of which is hereby acknowledged, do by  
these presents grant, bargain, sell and convey unto City of Denton, Texas, the free  
and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following  
described property,

owned by me . Situated in Denton County, Texas, in the  
M.E.P. & P.R.R. CO. Survey, Abstract No. 950

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Company Survey, Abstract No. 950, and being part of a tract of land as conveyed from Charles G. Runyon to T. L. Caruthers by deed dated September 22, 1964 and recorded in Volume 514, Page 133 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the most northerly northwest corner of said tract, said point of beginning also being the intersection of the southwest right of way line of Interstate Highway 35E and the east right of way line of Regal Drive;

THENCE south 50° 26' east, along the northeast boundary line of said Caruthers Tract, same being the southwest right of way line of Interstate Highway 35E, a distance of 450.44 feet to a point for a corner, same being the northeast corner of said Caruthers Tract and also being the intersection of the southwest right of way line of Interstate Highway 35E and the west right of way line of State School Road;

THENCE south 28° 16' west along the east boundary line of said Caruthers Tract, same being the west right of way line of State School Road, a distance of 10.20 feet to a point for a corner;

THENCE north 50° 26' west 10.00 feet south of and parallel with the northeast boundary line of said Caruthers tract, a distance of 448.80 feet to a point for a corner in the west boundary line of said Caruthers Tract, same being the east right of way line of Regal Drive;

THENCE north 19° 34' east along the west boundary line of said Caruthers Tract, same being the east right of way line of Regal Drive, a distance of 10.64 feet to the place of beginning and containing 4,496.19 square feet of land, more or less.

And it is further agreed that the said City of Denton, Texas,

in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, installing repairing and perpetually maintaining public utilities in, along, upon and

across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public utilities, or

any part thereof, subject to the terms and conditions as set forth in Exhibit A which is attached hereto and made a part of this Easement and Agreement for all purposes.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for

the purposes aforesaid the premises above described.

Witness my hand, this the 3<sup>rd</sup> day of,

~~October~~ January, A. D. 19 <sup>73</sup>~~72~~

*T. L. Caruthers*  
T. L. CARUTHERS

VOL 663 PAGE 266

## SINGLE ACKNOWLEDGMENT

THE STATE OF TEXAS,  
COUNTY OF DENTON }

BEFORE ME, the undersigned authority,

in and for said County, Texas, on this day personally appeared  
T. L. CARUTHERSknown to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. January 73GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 3rd day of October, A.D. 19 72

(L.S.)

Alfred Vick (Alfred Vick)  
Notary Public, Denton County, Texas  
My Commission Expires June 1, 19 73

## EXHIBIT A

This Agreement by and between T. L. Caruthers and the City of Denton, Texas is to be included in and made a part of the Easement Agreement to which this Exhibit is attached.

The City of Denton hereby agrees to saw with a concrete saw all driveway and paving which is necessary to be removed so that said opening will produce a smooth joint. The City of Denton further agrees to repair and replace to its original condition all parking lot, driveway and other paving or concrete which is in any way damaged or removed in connection with said Easement.

The City of Denton agrees that only one driveway shall be blocked at any one time, both during the construction of the waterline which is to be placed in said Easement and during any replacement or repairs that shall be necessary in the future. In this connection, the City of Denton shall repair to its original condition any driveway which is or has been blocked before proceeding to cut or block any other driveway on said property.

T. L. Caruthers  
T. L. Caruthers

Jim White  
Jim White, City Manager  
City of Denton

FILED FOR RECORD: 8th DAY OF January A.D. 1973 at 8:26 o'clock A.M.  
RECORDED: 16th DAY OF January A.D. 1973 at 8:05 o'clock A.M.  
BY \_\_\_\_\_ DEPUTY Y THETA PARKER, COUNTY CLERK  
DENTON COUNTY, TEXAS

THE STATE OF TEXAS     0  
COUNTY OF DENTON     0

KNOW ALL MEN BY THESE PRESENTS:

**2855**

That Josten's, Inc., a Minnesota Corporation owning real property in Denton County, Texas, in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration in hand paid by the City of Denton, Texas, receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by it and being situated in Denton County, Texas, and being more particularly described as follows, to-wit:

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Company Survey, Abstract No. 950, and being part of two tracts of land, hereafter referred to as Tract One and Tract Two, said Tract One being conveyed by Foxworth-Galbraith Lumber Company to Josten's Incorporated by deed dated August 28, 1968, and recorded in Volume 571, Page 39 of the Deed Records of Denton County, Texas, and said tract Two being conveyed from T. L. Caruthers to Josten's Incorporated by deed dated September 3, 1968 and recorded in Volume 571, Page 42 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the most northerly corner of said Tract One, said point of beginning lying in the southwest right of way line of Interstate Highway No. 35 E;

THENCE south 50° 26' east, along the northeast boundary line of said Tract One, same being the southwest right of way line of Interstate Highway 35E, passing at 400.0 feet the southeast corner of said Tract One, same being the most northerly corner of said Tract Two, and continuing south 50° 26' east, a total distance of 678.0 feet to the beginning of a curve to the right;

THENCE southeasterly along a 5.14° curve to the right, same being the southwest right of way line of Interstate Highway 35E a distance of 187.9 feet to a point;

THENCE south 35° 55' east along the northeast boundary line of said Tract Two, same being the southwest right of way line of Interstate Highway 35E, a distance of 104.6 feet to a point;

THENCE south 49° 54' east along the northeast boundary line of said Tract Two, same being the southwest right of way line of Interstate Highway 35E, a distance of 11.25 feet to a point for a corner, same being the most easterly corner of said tract and also being the intersection of the southwest right of way line of Interstate Highway 35E and the west right of way line of Regal Drive;

THENCE south  $19^{\circ} 34'$  west along the east boundary line of said Tract Two, same being the west right of way line of Regal Drive, a distance of 10.68 feet to a point for a corner;

THENCE north  $49^{\circ} 54'$  west 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, a distance of 13.77 feet to a point;

THENCE north  $35^{\circ} 55'$  west, 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, a distance of 103.737 feet to the beginning of a curve to the left;

THENCE northwesterly along a  $5.14^{\circ}$  curve to the left, 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, a distance of 187.00 feet to a point;

THENCE north  $50^{\circ} 26'$  west, 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, passing at 288.66 feet the north boundary line of said Tract Two, same being the south boundary line of said Tract One, and continuing north  $50^{\circ} 26'$  west, a total distance of 677.88 feet to a point for a corner in the northwest boundary line of said Tract One;

THENCE north  $38^{\circ} 52'$  east along the northwest boundary line of said Tract One, a distance of 10.00 feet to the place of beginning and containing 9,844.03 square feet of land, more or less.

And it is agreed that the said City of Denton, Texas, in consideration of the benefits above set out, will remove from the property above described, such fences, and other obstructions as may now be found upon said property for the purpose of constructing, installing, repairing and perpetually maintaining a water line in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to the said water line, or any part thereof. It is further agreed that the City of Denton shall perform all construction in a workmanlike manner, will close all open ditches each and every night work is in progress, will repair any and all damages promptly, and in no event more than 30 days after the completion of work, and specifically but not limited to, the City of Denton will repair of any and all fencing, repair or replace trees, shrubbery or landscaping if any such be damaged, and restore the surface of the ground, including sod, to as good a condition as when the land was entered onto.



And it is agreed that the City of Denton shall indemnify and hold harmless Josten's, Inc. for any loss or damage occasioned by the use of the rights hereinabove granted, whether such loss or damage be suffered by Josten's, Inc. or a third party.

TO HAVE AND TO HOLD unto the said City of Denton, Texas, as aforesaid for the purpose aforesaid the premises above described.

WITNESS our hands this the 2nd day of February, A.D. 1973.

JOSTEN'S INCORPORATED

BY: H. William Lorton

ATTEST:

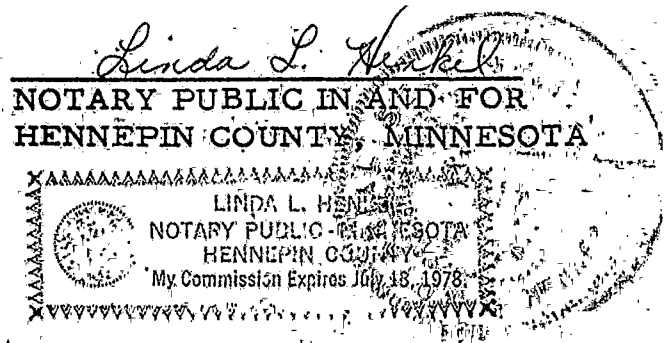
Ann Swartz

THE STATE OF MINNESOTA 0

COUNTY OF HENNEPIN 0

BEFORE ME, the undersigned authority, in and for said County, Minnesota, on this day personally appeared H. William Lorton of Josten's Incorporated, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Josten's Incorporated, and that he executed the same as the official act of said Josten's Incorporated for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This the 2nd day of February, A.D. 1973.



FILED FOR RECORD:

RECORDED:

BY

14th DAY OF February  
20th DAY OF February  
BY C. A. Enrich DEPUTY

A.D. 1973 at 8:29 o'clock A. M.

A.D. 1973 at 8:47 o'clock A. M.

THETA PARKER, COUNTY CLERK  
DENTON COUNTY, TEXAS

CITY OF DENTON  
FORM PUE 5-20-81

VOL 1130 PAGE 214

DEED RECORDS

PUBLIC UTILITY EASEMENT

6014

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON §

That \_\_\_\_\_, JOSTEN'S INCORPORATED, A MINNESOTA CORPORATION  
OWNING REAL PROPERTY IN DENTON COUNTY, TEXAS

hereinafter referred to as Grantors, whether one or more, for and in consideration of the sum of One Dollar (\$1.00) cash to Grantors in hand paid by the City of Denton, the receipt of which is hereby acknowledged, and the further consideration of the benefits to be derived by Grantors from the placing of public utilities, including but not limited to water mains, sanitary sewer mains, gas mains, electric poles and lines, telephone and telegraph poles and lines, through the premises hereinafter described, have this day Granted and Conveyed, and by these presents do hereby Grant and Convey unto the City of Denton, a municipal corporation situated in Denton County, Texas, an easement to construct, reconstruct and perpetually maintain public utilities, including but not limited to water mains, sanitary sewer mains, gas mains, electric poles and lines, telephone and telegraph poles and lines or authorize such construction by any public utility company, in, upon and across the following described land, to-wit:

All that certain tract, piece or parcel of land, lying and being situated in the County of Denton, State of Texas, described in EXHIBIT "A" attached hereto and made a part hereof for all purposes, to which reference is here made for a more particular description of said property;

TO HAVE AND TO HOLD the same perpetually to the City of Denton, its successors and assigns, together with the right and privilege at any and all times to enter said premises, or any part thereof, for the purpose of constructing and maintaining said public utilities, and for making connections therewith; all upon the condition that the City of Denton will at all times after doing any work in connection with the construction or repair of said public utility restore the surface of said premises to the condition in which the same was found before such work was undertaken.

EXECUTED this the 5TH day of MARCH, A.D. 1982.

JOSTEN'S INCORPORATED

BY:

P. J. West S. V. P.

ATTEST:

Richard L. Spaulding

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THE STATE OF MINNESOTA ( )  
COUNTY OF HENNEPIN ( )

BEFORE ME, the undersigned authority, in and for said County, Hennepin, on this day personally appeared Jack Melt of Josten's Incorporated, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Josten's Incorporated, and that he executed the same as the official act of said Josten's Incorporated for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This the 5th day of March, A.D. 1981.

Elizabeth J. Wines  
NOTARY PUBLIC IN AND FOR  
HENNEPIN COUNTY,



EXHIBIT "A"

VOL 1100 PAGE 216

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, and also being part of a tract of land as conveyed from Foxworth-Galbraith Lumber Co. to Josten's, Inc. by Deed dated 8-28-68 and recorded in Volume 571, Page 39 of the Deed Records of Denton County, Texas, and more particularly described as follows:

Beginning at the most northerly corner of said tract, said point lying on the southwest right-of-way line of Interstate Highway 35-E;

Thence South  $50^{\circ} 26'$  east along the northeast boundary line of said tract, same being the southwest right-of-way of I.H. 35-E, a distance of 16.0 feet to a point for a corner;

Thence South  $38^{\circ} 52'$  west 16 feet southeast of and parallel to the west boundary line of said tract, a distance of 331.82 feet to a point for a corner on the south boundary line of said tract;

Thence South  $88^{\circ} 57'$  west along the south boundary line of said tract, a distance of 20.86 feet to the southwest corner of said tract;

Thence North  $38^{\circ} 52'$  east along the northwest boundary line of said tract, a distance of 345.4 feet to the place of beginning and containing 0.124 acres of land, more or less.

Return to  
Foster N. Williams  
City of Denton  
Engineering Dept  
1000 W. Hickam St  
Denton, TX 76201

FILED

1982 MAR 8 PM 2:35

MARY JO HILL  
COUNTY CLERK DENTON COUNTY, TEXAS

BY \_\_\_\_\_

FILED

CITY OF DENTON, TEXAS

JOSEPH S. INC.

UTILITY EASEMENT

6014

VOL 1150 PAGE 217

2-28-82  
12-28-82

FILED FOR RECORD 8th DAY OF March A.D. 1982, at 2:35 P.M.  
RECORDED 9th DAY OF March A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Shirley J. Smith DEPUTY.



**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Lot 2, Block A, Josten's Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume H, Page 362 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a point in the north line of said Lot 2; from which the northeast corner of said Lot 2 bears South 86°29'04" East, a distance of 145.62 feet;

**THENCE** departing said north line of Lot 2, South 46°44'36" East, a distance of 97.24 feet to a point for corner;

**THENCE** South 50°24'19" East, a distance of 162.74 feet to a point in the southeast line of said Lot 2;

**THENCE** South 52°07'56" West, along the said southeast line of Lot 2, a distance of 20.49 feet to a point for corner;

**THENCE** departing the said southeast line of Lot 2, North 50°24'19" West, a distance of 158.94 feet to a point for corner;

**THENCE** North 46°44'36" West, a distance of 121.94 feet to a point for corner in the said north line of Lot 2; from said point a 1/2-inch iron rod found for the northwest corner of said Lot 2 bears North 86°29'04" West, a distance of 413.51 feet;

**THENCE** South 86°29'04" East, along the said north line of Lot 2, a distance of 31.28 feet to the **POINT OF BEGINNING** and containing 5,409 square feet or 0.1242 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley* 9/3/20

MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



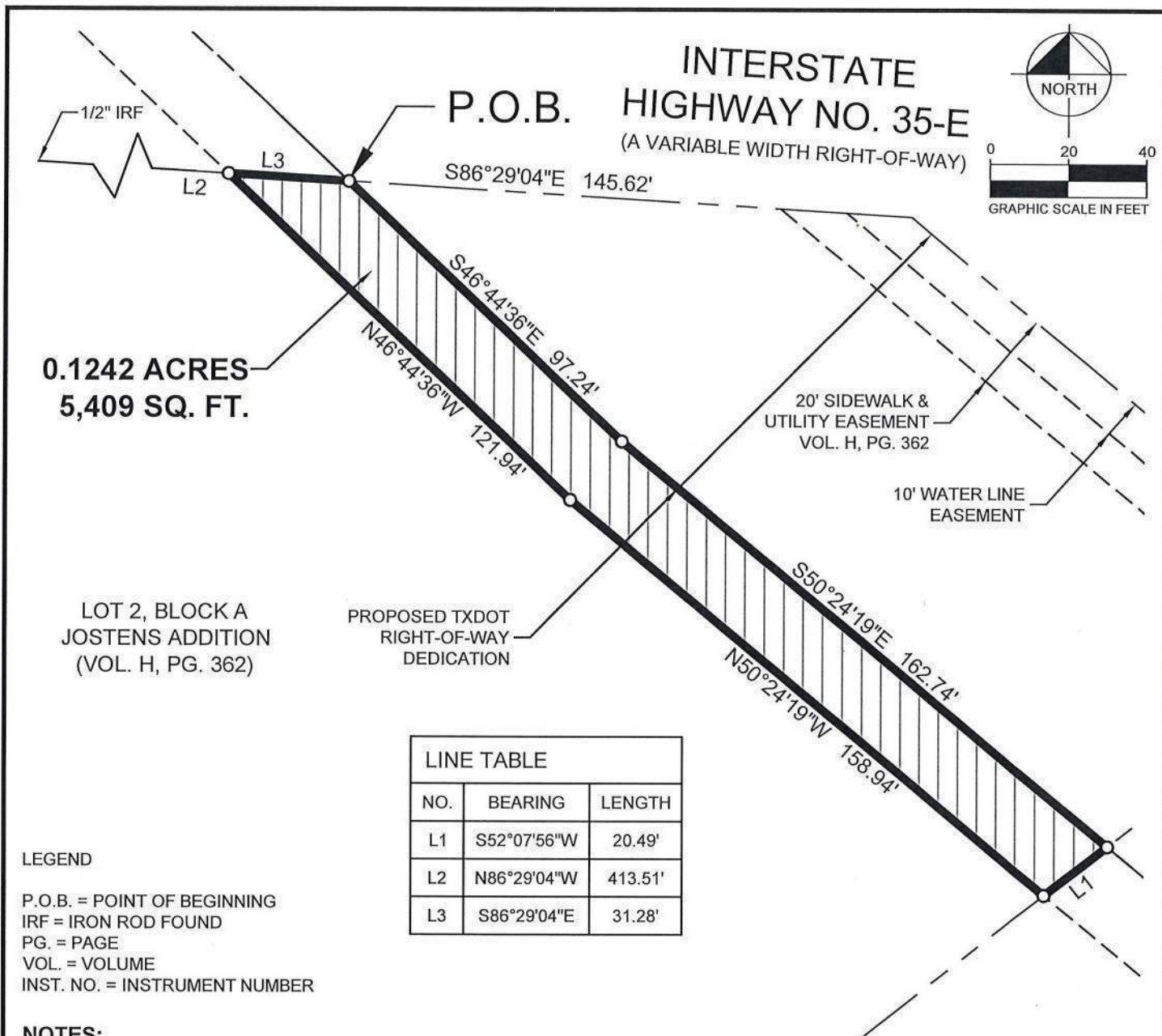
WATER AND WASTEWATER EASEMENT  
LOT 2, BLOCK A, JOSTENS ADDITION  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	9/2/2020	061024039	1 OF 2



*Michael C. Billingsley* 9/3/20  
**MICHAEL C. BILLINGSLEY**  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
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**WATER AND WASTEWATER EASEMENT**  
 LOT 2, BLOCK A, JOSTENS ADDITION  
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	9/2/2020	061024039	2 OF 2

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 92A**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

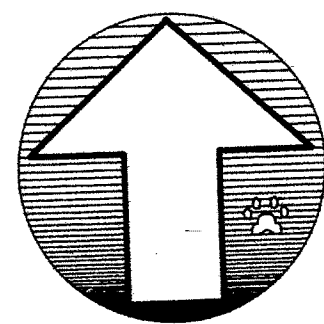
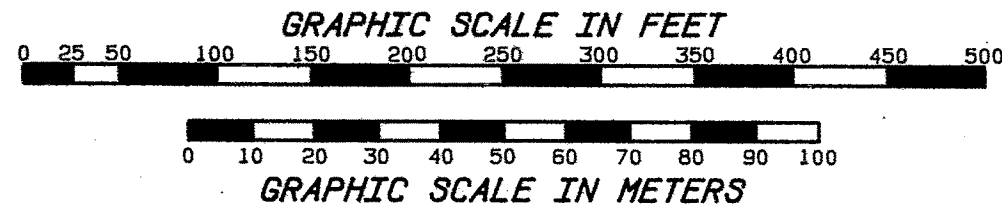
Utility Longitudinal Stations:  
Sta 1772+20 LT to Sta 1772+79 LT

Existing Easement

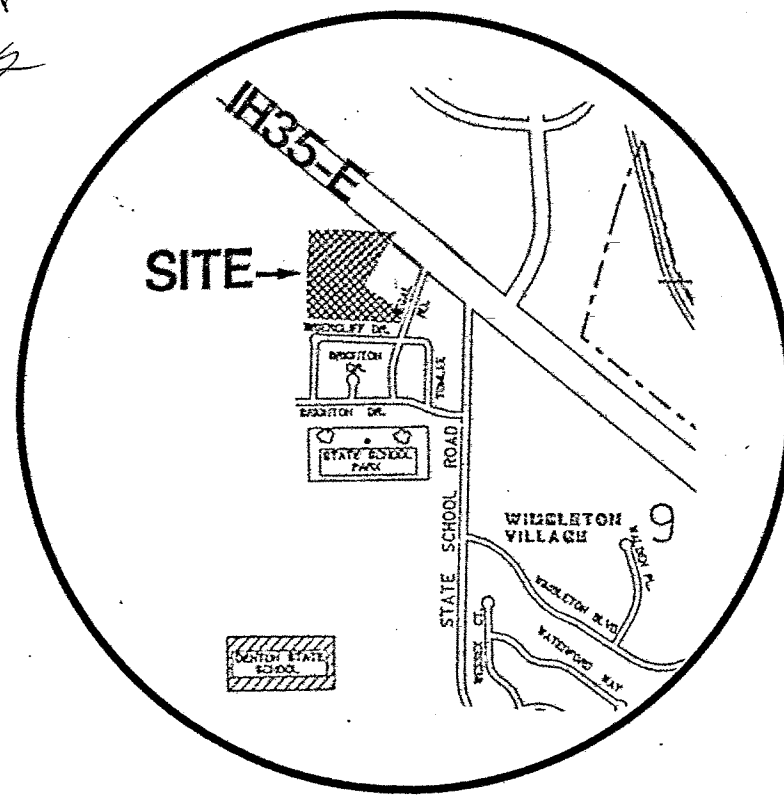
Volume. 571, Page 42

MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS





037457  
FILED FOR RECORD  
91 JUL 31 PM 2:54  
TIM HODGES  
COUNTY CLERK DENTON CO. TEX  
BY *[Signature]* DEPUTY



LOCATION MAP

DEDICATION  
PROPERTY DESCRIPTION

STATE OF TEXAS  
COUNTY OF DENTON

WHEREAS, Josten's, Inc. is the owner of that certain tract of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas:

Being all that certain 10.796 acre tract or parcel of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas, being part of a tract conveyed to Josten's, Inc. from T. L. Caruthers by deed recorded in Volume 571, Page 42 Deed Records, Denton County, Texas, said 10.740 acre tract being more particularly described as follows:

Beginning at a steel pin at a fence corner post at the northwest corner of said Josten's tract, same being the northwest corner of a certain tract deeded by Charles Runyon to T. L. Caruthers by deed recorded in Volume 514, Page 133, Deed Records, Denton County, Texas;

Thence South 86 degrees 00 minutes 00 seconds East a distance of 586.62 feet to a set half inch rebar on the southwest right-of-way of Interstate Highway 35 East, said point being South 49 degrees 55 minutes 52 seconds East 83.79 feet from the most northerly northeast corner of said Josten's tract;

Thence South 49 degrees 55 minutes 52 seconds East with said right-of-way a distance of 165.13 feet to a set half inch rebar for corner;

Thence South 52 degrees 37 minutes 00 seconds West, departing said right-of-way, a distance of 385.25 feet to a set half inch rebar for corner;

Thence South 52 degrees 30 minutes 00 seconds East a distance of 531.43 feet to a set half inch rebar in the northwest right-of-way of Regal Drive;

Thence South 20 degrees 09 minutes 00 seconds West with said right-of-way a distance of 70.00 feet to a set half inch rebar in the north line of Briercliff Estates, Section One, an addition to the City of Denton as shown by plat recorded in Volume 6, Page 45 Plat Records, Denton County, Texas, said rebar being the southeast corner of said Josten's tract, also being North 87 degrees 47 minutes 00 seconds West 0.98 feet from the northeast corner of Lot 1, Block 2 of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 247.29 feet to a found half inch rebar for corner;

Thence South 02 degrees 12 minutes 54 seconds West a distance of 10.14 feet to a set half inch rebar for an inner ell corner of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 589.63 feet to a set half inch rebar for the southwest corner of said Josten's tract, same being the northwest corner of Lot 10, Block 2, of said Briercliff Estates in the occupied west line of said Briercliff Estates;

Thence North 02 degrees 35 minutes 00 seconds East a distance of 748.88 feet to the Point of Beginning, containing in all 10.796 acres of land.

OWNER'S CERTIFICATE

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

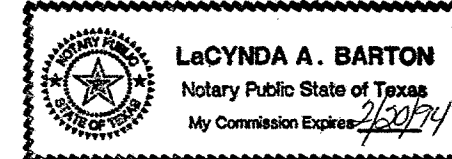
THAT, Josten's, Inc. does hereby adopt this plat designating the herein described property as Lot 2, Block A, Jostens Addition, an addition to the City of Denton, Denton County, Texas, and does hereby dedicate to the public use forever the streets and easements shown hereon.

*C. Denisho Coleman*  
C. Denisho Coleman  
Engineering Manager  
Josten's, Inc.

STATE OF TEXAS

Before me, the undersigned Notary Public for the State of Texas, on this day personally appeared C. Denisho Coleman known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and considerations therein expressed and in the capacity stated.

Given under my hand and seal of office this the 1st day of July, 1991.



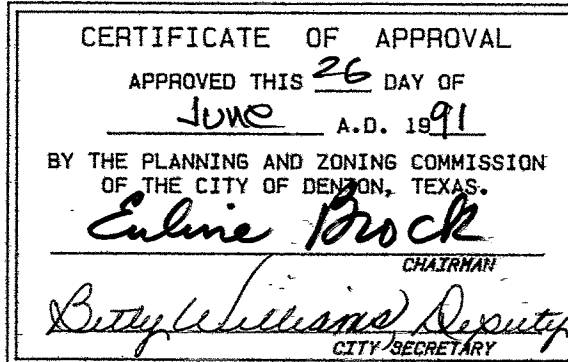
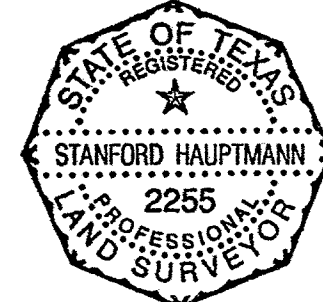
*LaCYNDA A. Barton*  
LaCYNDA A. Barton  
Notary Public for the State of Texas  
Commission expires 7/30/94

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Stanford Hauptmann, Registered Public Surveyor, do hereby certify that this plat and description was prepared from an actual and accurate survey of the land and that the iron pins shown hereon were found or placed under my personal supervision or direction in accordance with the law.

*Stanford Hauptmann* 07/06/91  
Stanford Hauptmann  
Texas Registered Professional  
Land Surveyor Number 2255



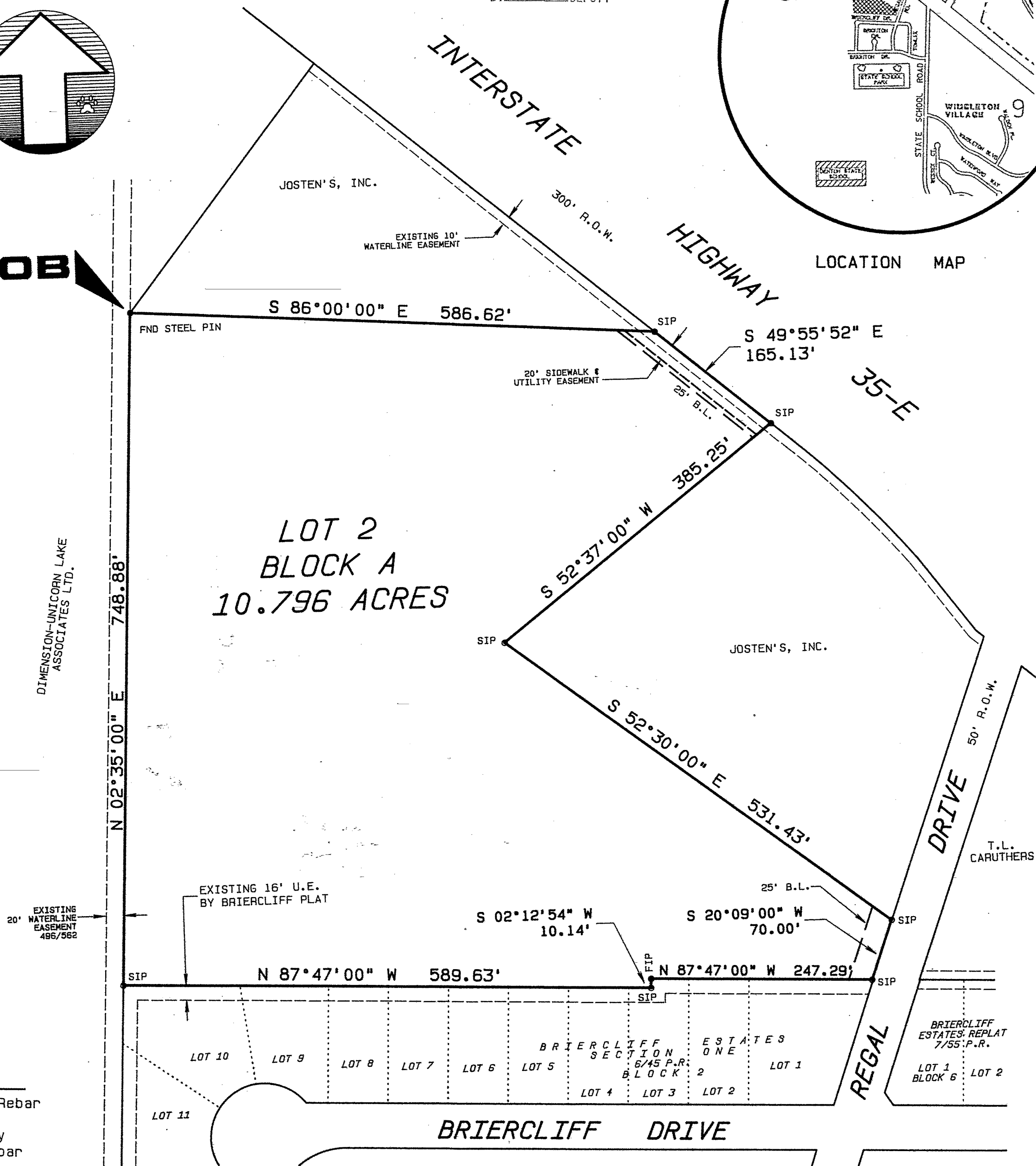
**METROPLEX ENGINEERING CONSULTANTS**  
ENGINEERING \* PLANNING \* SURVEYING  
1123 FORT WORTH DRIVE DENTON, TEXAS 76205  
(817) 383-1416 DALLAS 219-7948 FORT WORTH 329-3834

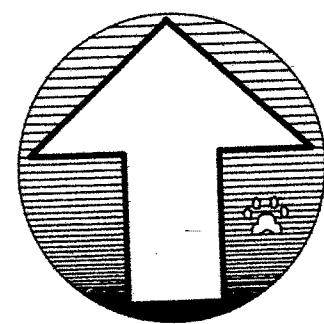
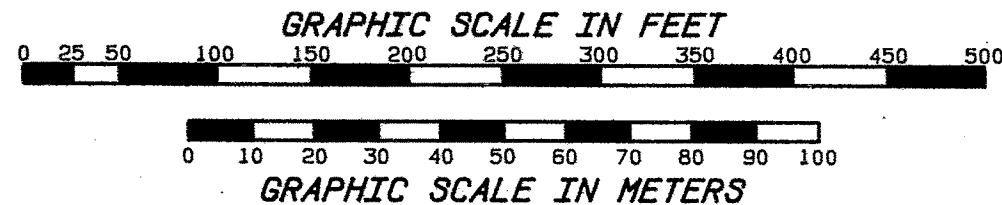
**FINAL PLAT**  
**JOSTENS ADDITION**  
LOT 2, BLOCK A  
BEING 10.796 ACRES IN THE  
M.E.P. & P.R.R. SURVEY, ABSTRACT NUMBER 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

DRAWN: <i>[Signature]</i> WOLF	SCALE: 1" = 100'	DATE: 20 JUN 91	JOB NO. 91007-B
CHECKED: <i>[Signature]</i> S.H.			

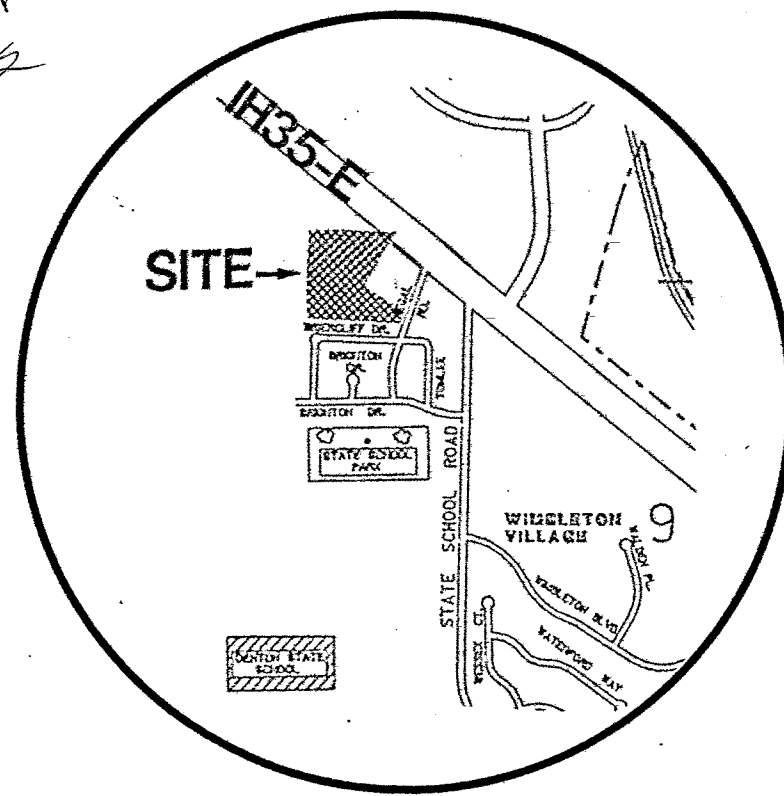
- LEGEND**
- FIP - Found 1/2" Rebar
  - MON - Monument
  - ROW - Right-of-Way
  - SIP - Set 1/2" Rebar
  - X- - Fence Line
  - E- - Electric Line
  - T- - Telephone Line
  - MH - Manhole
  - PP - Power Pole
  - LP - Light Pole
  - FH - Fire Hydrant
  - - Center Line
  - B.L. - Building Line
  - U.E. - Utility Easmt.
  - D.E. - Drainage Easmt.
  - C.E. - Communications Easmt.

OWNER  
JOSTENS  
3500 SOUTH 135-E  
DENTON, TEXAS





037457  
FILED FOR RECORD  
91 JUL 31 PM 2:54  
TIM HODGES  
COUNTY CLERK DENTON CO. TEX  
BY *[Signature]* DEPUTY



LOCATION MAP

DEDICATION  
PROPERTY DESCRIPTION

STATE OF TEXAS  
COUNTY OF DENTON

WHEREAS, Josten's, Inc. is the owner of that certain tract of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas:

Being all that certain 10.796 acre tract or parcel of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas, being part of a tract conveyed to Josten's, Inc. from T. L. Caruthers by deed recorded in Volume 571, Page 42 Deed Records, Denton County, Texas, said 10.740 acre tract being more particularly described as follows:

Beginning at a steel pin at a fence corner post at the northwest corner of said Josten's tract, same being the northwest corner of a certain tract deeded by Charles Runyon to T. L. Caruthers by deed recorded in Volume 514, Page 133, Deed Records, Denton County, Texas;

Thence South 86 degrees 00 minutes 00 seconds East a distance of 586.62 feet to a set half inch rebar on the southwest right-of-way of Interstate Highway 35 East, said point being South 49 degrees 55 minutes 52 seconds East 83.79 feet from the most northerly northeast corner of said Josten's tract;

Thence South 49 degrees 55 minutes 52 seconds East with said right-of-way a distance of 165.13 feet to a set half inch rebar for corner;

Thence South 52 degrees 37 minutes 00 seconds West, departing said right-of-way, a distance of 385.25 feet to a set half inch rebar for corner;

Thence South 52 degrees 30 minutes 00 seconds East a distance of 531.43 feet to a set half inch rebar in the northwest right-of-way of Regal Drive;

Thence South 20 degrees 09 minutes 00 seconds West with said right-of-way a distance of 70.00 feet to a set half inch rebar in the north line of Briercliff Estates, Section One, an addition to the City of Denton as shown by plat recorded in Volume 6, Page 45 Plat Records, Denton County, Texas, said rebar being the southeast corner of said Josten's tract, also being North 87 degrees 47 minutes 00 seconds West 0.98 feet from the northeast corner of Lot 1, Block 2 of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 247.29 feet to a found half inch rebar for corner;

Thence South 02 degrees 12 minutes 54 seconds West a distance of 10.14 feet to a set half inch rebar for an inner ell corner of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 589.63 feet to a set half inch rebar for the southwest corner of said Josten's tract, same being the northwest corner of Lot 10, Block 2, of said Briercliff Estates in the occupied west line of said Briercliff Estates;

Thence North 02 degrees 35 minutes 00 seconds East a distance of 748.88 feet to the Point of Beginning, containing in all 10.796 acres of land.

OWNER'S CERTIFICATE

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

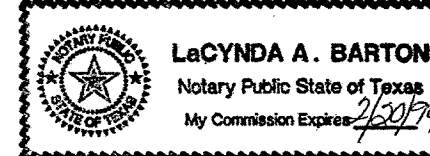
THAT, Josten's, Inc. does hereby adopt this plat designating the herein described property as Lot 2, Block A, Jostens Addition, an addition to the City of Denton, Denton County, Texas, and does hereby dedicate to the public use forever the streets and easements shown hereon.

*C. Denisho Coleman*  
C. Denisho Coleman  
Engineering Manager  
Josten's, Inc.

STATE OF TEXAS

Before me, the undersigned Notary Public for the State of Texas, on this day personally appeared C. Denisho Coleman known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and considerations therein expressed and in the capacity stated.

Given under my hand and seal of office this the 1st day of July, 1991.



*LaCYNDA A. Barton*  
LaCYNDA A. Barton  
Notary Public for the State of Texas  
Commission expires 7/30/94

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Stanford Hauptmann, Registered Public Surveyor, do hereby certify that this plat and description was prepared from an actual and accurate survey of the land and that the iron pins shown hereon were found or placed under my personal supervision or direction in accordance with the law.

*Stanford Hauptmann* 07/06/91  
Stanford Hauptmann  
Texas Registered Professional  
Land Surveyor Number 2255



CERTIFICATE OF APPROVAL  
APPROVED THIS 26 DAY OF JUNE A.D. 1991  
BY THE PLANNING AND ZONING COMMISSION  
OF THE CITY OF DENTON, TEXAS.  
*Eulene Brock*  
CHAIRMAN  
*Betty Williams*  
CITY SECRETARY

METROPLEX ENGINEERING CONSULTANTS  
ENGINEERING \* PLANNING \* SURVEYING  
1123 FORT WORTH DRIVE DENTON, TEXAS 76205  
(817) 383-1416 DALLAS 219-7948 FORT WORTH 329-3834

FINAL PLAT  
JOSTENS ADDITION  
LOT 2, BLOCK A  
BEING 10.796 ACRES IN THE  
M.E.P. & P.R.R. SURVEY, ABSTRACT NUMBER 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

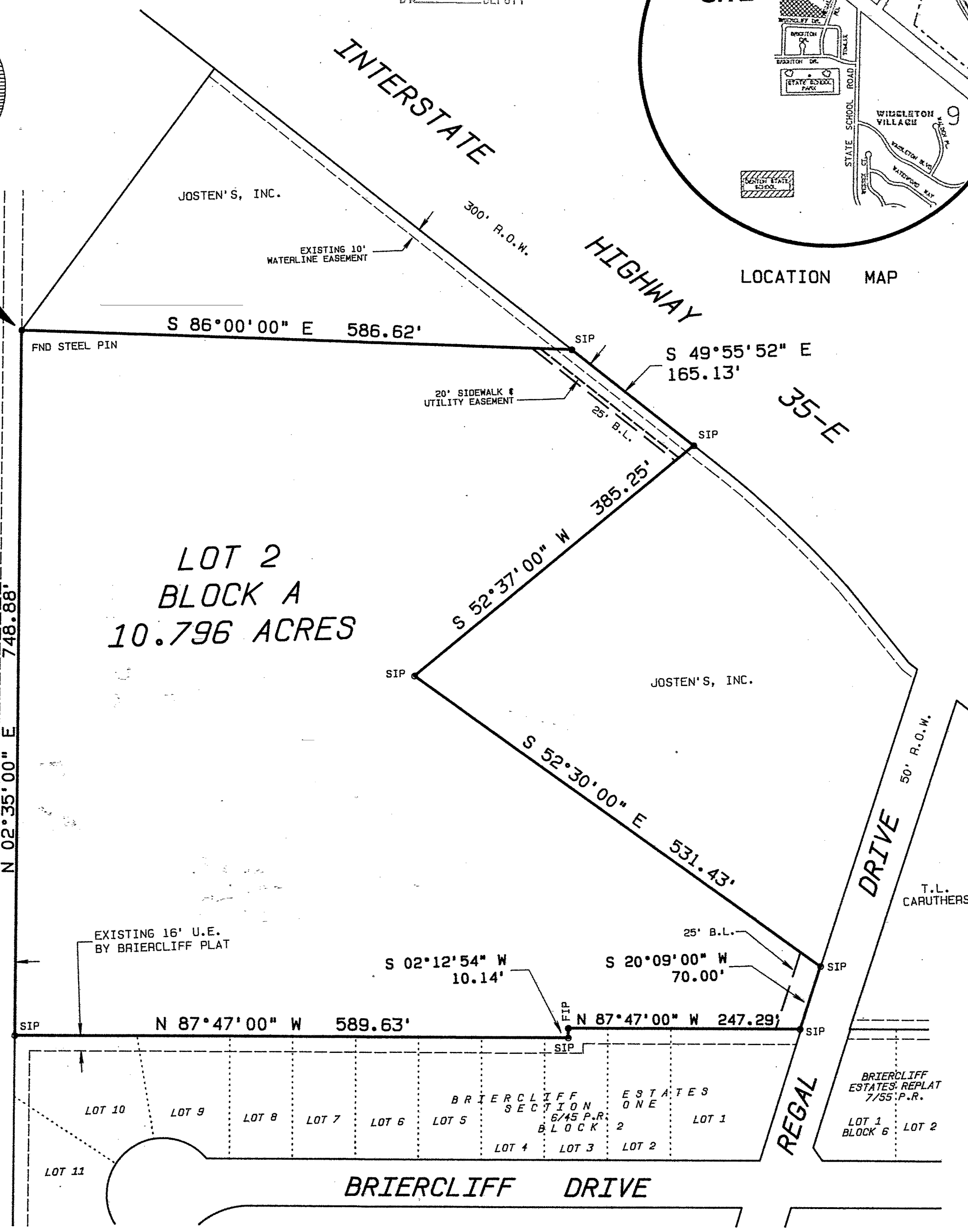
DRAWN: *[Signature]* WOLF  
CHECKED: *[Signature]* S.H.  
SCALE: 1" = 100'  
DATE: 20 JUN 91  
JOB NO.: 91007-B

LEGEND  
FIP - Found 1/2" Rebar  
MON - Monument  
ROW - Right-of-Way  
SIP - Set 1/2" Rebar  
-X- - Fence Line  
-E- - Electric Line  
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--- - Center Line  
B.L. - Building Line  
U.E. - Utility Easmt.  
D.E. - Drainage Easmt.  
C.E. - Communications Easmt.

DIMENSION-UNICORN LAKE  
ASSOCIATES LTD.

LOT 2  
BLOCK A  
10.796 ACRES

OWNER  
JOSTENS  
3500 SOUTH 135-E  
DENTON, TEXAS





6232

THE STATE OF TEXAS :

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON :

THAT the Foxworth-Galbraith Lumber Company, a corporation, acting through its president, J. L. Foxworth, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration the receipt of which is hereby fully confessed and acknowledged, and the further consideration of the agreement by Grantee to install in the water line constructed in the hereinafter described tract of land one (1)-two (2) inch water tap at such location as may be designated by Grantor without any cost or expense to Grantor, with the understanding,

by and between Grantor and Grantee that a part of the consideration for the granting of this easement is the agreement by Grantee that the Grantor shall have the right to receive water service from the line hereinafter described for the same rates charged like users within the City Limits of the City of Denton, Texas, does hereby GIVE and GRANT to the said City of Denton, Texas, its successors and assigns, the free and uninterrupted use, liberty, and right in, upon and across the following described property for the purpose of constructing, reconstructing and perpetually maintaining a water line in, upon and across a tract of land lying and being situated in the County of Denton, State of Texas, and more particularly described as follows:

BEGINNING at a point in the Northeasterly line of a tract of land out of the MEP & PRR Co., Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co., a corporation, by H. Edward Smith and wife Mary Frances Smith, and recorded in Volume 474, Page 491 of the Deed Records of Denton County,

Texas; said beginning point also being in the Southwesterly right-of-way line of Interstate Highway 35E; said beginning point also being 654.7 feet North 49 degrees 57 minutes West from the most Easterly Northeast corner of the Foxworth-Galbraith Lumber Co. tract;

THENCE South 2 degrees 49 minutes West and passing at 488.36 feet an inner ell corner of the Foxworth-Galbraith Lumber Co. tract and continuing with the East line of said Foxworth-Galbraith tract for a total distance of 2,173.3 feet to a point for a corner in an existing fence line;

THENCE North 87 degrees 11 minutes West a distance of 20 feet to a point for a corner;

THENCE North 2 degrees 49 minutes East a distance of 2,190.0 feet to a point for a corner in the Southwesterly right-of-way of said Highway 35E;

THENCE South 49 degrees 57 minutes East with the Southwesterly right-of-way line of said Highway 35E a distance of 25.6 feet more or less to the place of beginning

TO HAVE AND TO HOLD the same perpetually to the City of Denton, Texas, and its successors, together with the right and privilege at any and all times to enter said premises for the purpose of constructing, reconstructing and perpetually maintaining said water line and for making connections therewith.

IN WITNESS WHEREOF, the said corporation has caused these presents to be signed by its duly authorized officer and to be sealed with the Seal of the Corporation.

VOL 496 PAGE 564



FOXWORTH-GALBRAITH LUMBER COMPANY

By

J. L. Foxworth  
President

ATTEST:

A. Woodford  
Secretary

THE STATE OF TEXAS :

COUNTY OF DALLAS :

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared J. L. Foxworth, President, Foxworth-Galbraith Lumber Company, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Foxworth-Galbraith Lumber Company, a corporation, and that he executed the same as the act of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

WITNESS MY HAND AND SEAL OF OFFICE this 16th day of  
July, A.D. 1963.

Ann Harrison

ANN HARRISON

Notary Public in and for  
Dallas County, Texas

FILED FOR RECORD: 17 day of July A.D. 1963 at 10:15 o'clock A.M.  
RECORDED: 24 day of July A.D. 1963 at 7:45 o'clock P.M.  
By: Florence McLeod Deputy Theta Parker, Clerk County Court,  
Denton County, Texas

THE STATE OF TEXAS    X  
COUNTY OF DENTON       X

KNOW ALL MEN BY THESE PRESENTS:

9845

THAT the Foxworth-Galbraith Lumber Company, a corporation, acting through its President, J. L. Foxworth, for and in consideration of the sum of TEN DOLLARS (\$10.00) cash and other good and valuable consideration to it in hand paid by the City of Denton, Texas, a municipal corporation, of the County of Denton, State of Texas, the receipt of which is hereby acknowledged, does hereby GIVE and GRANT to the said City of Denton, Texas, its successors and assigns, the free and uninterrupted use, liberty, and right in, upon and across the following described property for the purpose of constructing, reconstructing, and perpetually maintaining a sanitary sewer line and appurtenances in, upon and across a tract of land lying and being situated in the County of Denton, State of Texas, and more particularly described as follows:

VOL 501 PAGE 274

BEGINNING at a point in the East property line of of a 154.7 acre tract of land out of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co. by H. Edward Smith, and wife, Mary Frances Smith, and recorded in Volume 974, Page 491, of the Deed Records of Denton County, Texas; said beginning point being 2,454 feet North, 1,885.35 feet East, and 109.5 feet North, 2 degrees, 05 minutes, East of the Southwest corner of the M.E.P. & P.R.R. Co. Survey; said point also being North, 2 degrees, 05 minutes, East from the Southeast corner of said 154.7 acre tract;

THENCE North 65 degrees 15 minutes West, a distance of 298.0 feet to a point for corner;

THENCE South 89 degrees 03 minutes West, a distance of 285.4 feet to a point for corner;

THENCE North 67 degrees 42 minutes West, a distance of 263.8 feet to a point for corner;

THENCE North 32 degrees 28 minutes West a distance of 970.9 feet to a point for corner;

THENCE North 50 degrees 28 minutes West, a distance of 775.1 feet to a point in the West property line of said Smith to Foxworth-Galbraith 154.7 acre tract;

THENCE North 2 degrees 05 minutes East with the West property line of said 154.7 acre tract of land a distance of 12.8 feet to a point for corner;

THENCE South 50 degrees 28 minutes East, a distance of 784.7 feet to a point for corner;

THENCE South 32 degrees 28 minutes East, a distance of 969.1 feet to a point for corner;

THENCE South 67 degrees 42 minutes East, a distance of 258.8 feet to a point for corner;

THENCE North, 89 degrees 03 minutes East, a distance of 285.6 feet to a point for corner;

THENCE South 65 degrees 15 minutes East, a distance of 296.0 feet to a point in the East property line of said 154.7 acre tract of land;

THENCE South 2 degrees 05 minutes West, with the East property line of said 154.7 acre tract, a distance of 11.0 feet to the place of beginning; and containing 0.60 acres of land, more or less.

TO HAVE AND TO HOLD, all and singular, the privileges aforesaid to it, the said City of Denton, Texas, its successors and assigns forever, together with the right and privilege, at any and all times to enter the said premises or any part thereof, for the purpose of constructing, reconstructing and perpetually maintaining said sanitary sewer line together with necessary appurtenances, and for making connections therewith; all upon the condition that the said City of Denton, Texas, will at all times, after doing any work in connection with the construction, reconstruction or repair of said sanitary sewer line restore said premises to the condition in which same were found before such work was undertaken, including repair of all fences.



that might be disturbed or damaged in performing said work;  
and further upon the condition that Grantor, its successors and assigns shall have the right to make connections with the

aforesaid sanitary sewer line for the purpose of providing sewage collection service to their property, all upon such terms and conditions and upon the payment of such charges for such connections and service as may from time to time be provided by the ordinances of the said City of Denton, Texas;

PROVIDED, HOWEVER, that for the purpose of initially constructing the sanitary sewer line and appurtenances above described, and during such initial construction, the City of Denton, Texas, shall have the right to use and occupy a strip of land sixty (60) feet in width and being thirty (30) feet on either side of the center line of said strip of land, as said center line is more particularly described as follows:

BEGINNING at a point in the East property line of a 154.7 acre tract of land out of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co. by H. Edward Smith, and wife, Mary Frances Smith, and recorded in Volume 974, Page 491, of the Deed Records of Denton County, Texas; said beginning point being 2,454 feet North, 1,885.35 East, and 115.0 feet North, 2 degrees 05 minutes East of the Southwest corner of the M.E.P. & P.R.R. Co. Survey; said point also being North 2 degrees 05 minutes East, 115.0 feet from the Southeast corner of said 154.7 acre tract of land;

THENCE North 65 degrees 15 minutes West, a distance of 297.0 feet to a point for corner;

THENCE South 89 degrees 03 minutes West a distance of 285.5 feet to a point for corner;

THENCE North 67 degrees 42 minutes West a distance of 261.3 feet to a point for corner;

THENCE North 32 degrees 28 minutes West a distance of 970 feet to a point for corner;

THENCE North 50 degrees 28 minutes West a distance of 780 feet to a point in the West property line of said 154.7 acre tract; said easement having a total length of 2,593.8 feet, more or less.

VOL 501 PAGE 276

All upon the condition that said City of Denton, Texas, and its agents, will restore said premises as nearly as possible to the condition in which same were found before such initial construction work was undertaken, including repair of all fences that might be disturbed or damaged in performing said initial construction work.

IN WITNESS WHEREOF, the said corporation has caused these presents to be signed by its duly authorized officer and to be sealed with the Seal of the Corporation.

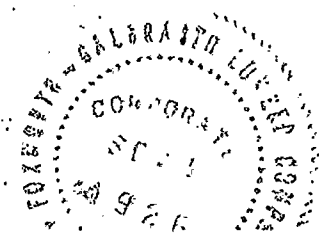
FOXWORTH-GALBRAITH LUMBER COMPANY

By

J. L. Foxworth  
President

ATTEST:

J. A. Woodford  
Secretary



THE STATE OF TEXAS :

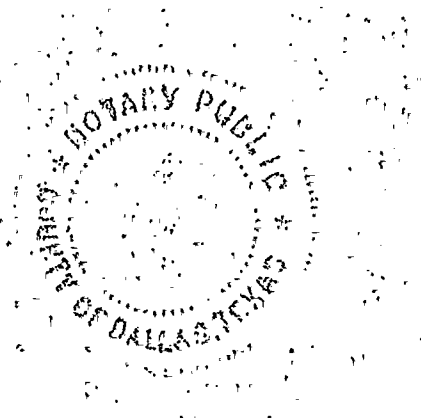
COUNTY OF DALLAS :

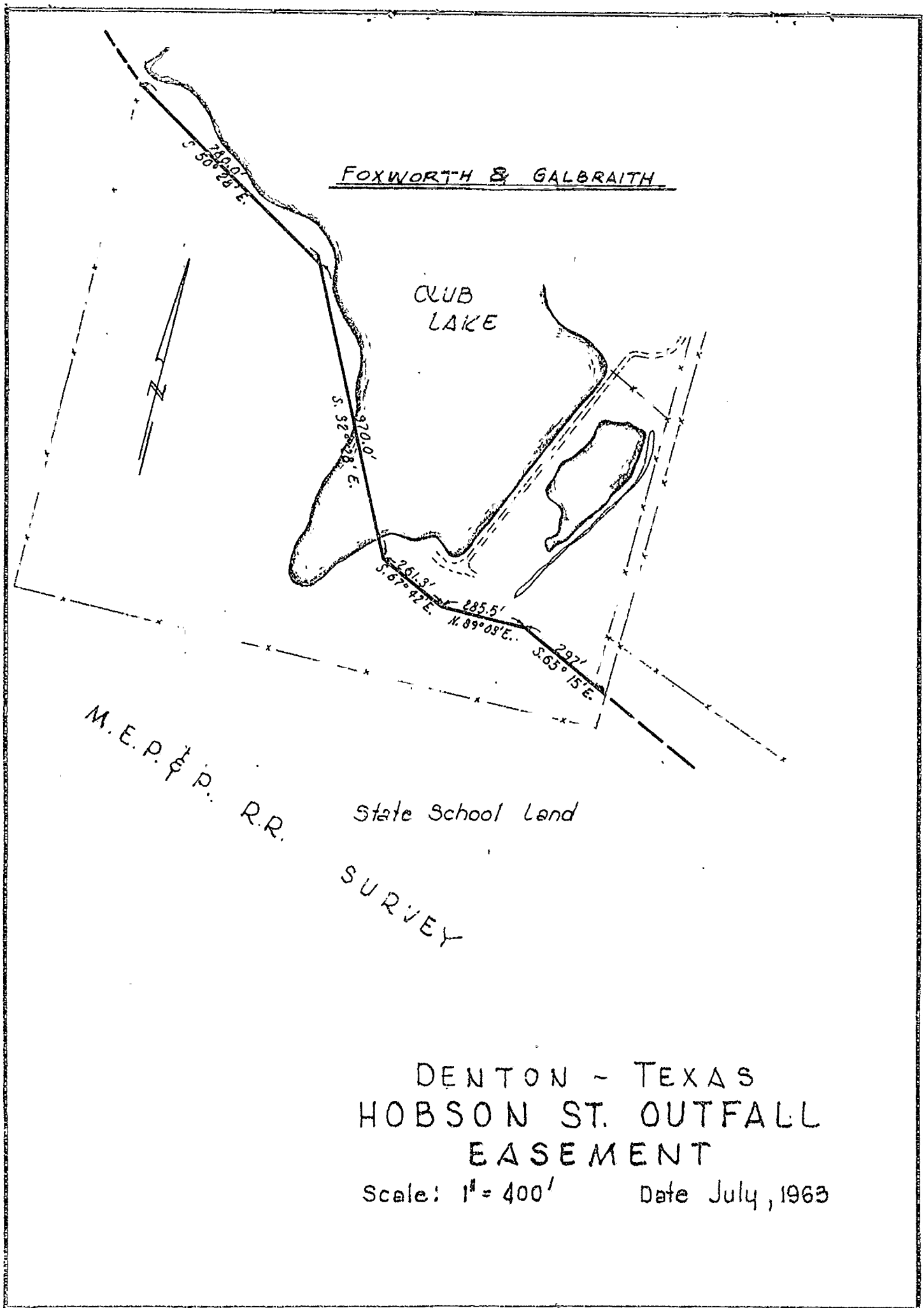
BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day and personally appeared J. L. Foxworth, President, Foxworth-Galbraith Lumber Company, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Foxworth-Galbraith Lumber Company, a corporation, and that he executed the same as the act of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

WITNESS MY HAND AND SEAL OF OFFICE this 30th day of  
October, A.D. 1963.

Ann Harrison ANN HARRISON

Notary Public in and for  
Dallas County, Texas





FILED FOR RECORD: 4 day of Nov. A.D. 1963 at 2:00 o'clock P M.  
 RECORDED: 14 day of Nov. A.D. 1963 at 9:10 o'clock A M.  
 By: Ellen Henrich Deputy Theta Parker, Clerk County Court,  
 Denton County, Texas

CC-216 EASEMENT

Martin Stationery Co., Dallas

**THE STATE OF TEXAS, } KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF DENTON

THAT T. L. CARUTHERS  
of Denton County, Texas **477**, in consideration of the sum of  
One Dollar-----and other good and valuable consideration  
in hand paid by City of Denton, Texas receipt of which is hereby acknowledged, do by  
these presents grant, bargain, sell and convey unto City of Denton, Texas, the free  
and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following  
described property,

owned by me. Situated in Denton County, Texas, in the  
M.E.P. & P.R.R. CO. Survey, Abstract No. 950

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Company Survey, Abstract No. 950, and being part of a tract of land as conveyed from Charles G. Runyon to T. L. Caruthers by deed dated September 22, 1964 and recorded in Volume 514, Page 133 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the most northerly northwest corner of said tract, said point of beginning also being the intersection of the southwest right of way line of Interstate Highway 35E and the east right of way line of Regal Drive;

THENCE south 50° 26' east, along the northeast boundary line of said Caruthers Tract, same being the southwest right of way line of Interstate Highway 35E, a distance of 450.44 feet to a point for a corner, same being the northeast corner of said Caruthers Tract and also being the intersection of the southwest right of way line of Interstate Highway 35E and the west right of way line of State School Road;

THENCE south 28° 16' west along the east boundary line of said Caruthers Tract, same being the west right of way line of State School Road, a distance of 10.20 feet to a point for a corner;

THENCE north 50° 26' west 10.00 feet south of and parallel with the northeast boundary line of said Caruthers tract, a distance of 448.80 feet to a point for a corner in the west boundary line of said Caruthers Tract, same being the east right of way line of Regal Drive;

THENCE north 19° 34' east along the west boundary line of said Caruthers Tract, same being the east right of way line of Regal Drive, a distance of 10.64 feet to the place of beginning and containing 4,496.19 square feet of land, more or less.

And it is further agreed that the said City of Denton, Texas,

in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, installing repairing and perpetually maintaining public utilities in, along, upon and

across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public utilities, or

any part thereof, subject to the terms and conditions as set forth in Exhibit A which is attached hereto and made a part of this Easement and Agreement for all purposes.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for

the purposes aforesaid the premises above described.

Witness my hand, this the 3<sup>rd</sup> day of,

~~October~~ January, A. D. 19 <sup>73</sup>~~72~~

*T. L. Caruthers*  
T. L. CARUTHERS

VOL 663 PAGE 266

## SINGLE ACKNOWLEDGMENT

THE STATE OF TEXAS,  
COUNTY OF DENTON }

BEFORE ME, the undersigned authority,

in and for said County, Texas, on this day personally appeared  
T. L. CARUTHERSknown to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. January 73GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 3rd day of October, A.D. 19 72

(L.S.)

Alfred Vick (Alfred Vick)  
Notary Public, Denton County, Texas  
My Commission Expires June 1, 19 73

## EXHIBIT A

This Agreement by and between T. L. Caruthers and the City of Denton, Texas is to be included in and made a part of the Easement Agreement to which this Exhibit is attached.

The City of Denton hereby agrees to saw with a concrete saw all driveway and paving which is necessary to be removed so that said opening will produce a smooth joint. The City of Denton further agrees to repair and replace to its original condition all parking lot, driveway and other paving or concrete which is in any way damaged or removed in connection with said Easement.

The City of Denton agrees that only one driveway shall be blocked at any one time, both during the construction of the waterline which is to be placed in said Easement and during any replacement or repairs that shall be necessary in the future. In this connection, the City of Denton shall repair to its original condition any driveway which is or has been blocked before proceeding to cut or block any other driveway on said property.

T. L. Caruthers  
T. L. Caruthers

Jim White  
Jim White, City Manager  
City of Denton

FILED FOR RECORD: 8th DAY OF January A.D. 1973 at 8:26 o'clock A.M.  
RECORDED: 16th DAY OF January A.D. 1973 at 8:05 o'clock A.M.  
BY \_\_\_\_\_ DEPUTY Y THETA PARKER, COUNTY CLERK  
DENTON COUNTY, TEXAS



THE STATE OF TEXAS     0  
COUNTY OF DENTON       0

KNOW ALL MEN BY THESE PRESENTS:

**2855**

That Josten's, Inc., a Minnesota Corporation owning real property in Denton County, Texas, in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration in hand paid by the City of Denton, Texas, receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by it and being situated in Denton County, Texas, and being more particularly described as follows, to-wit:

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Company Survey, Abstract No. 950, and being part of two tracts of land, hereafter referred to as Tract One and Tract Two, said Tract One being conveyed by Foxworth-Galbraith Lumber Company to Josten's Incorporated by deed dated August 28, 1968, and recorded in Volume 571, Page 39 of the Deed Records of Denton County, Texas, and said tract Two being conveyed from T. L. Caruthers to Josten's Incorporated by deed dated September 3, 1968 and recorded in Volume 571, Page 42 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the most northerly corner of said Tract One, said point of beginning lying in the southwest right of way line of Interstate Highway No. 35 E;

THENCE south 50° 26' east, along the northeast boundary line of said Tract One, same being the southwest right of way line of Interstate Highway 35E, passing at 400.0 feet the southeast corner of said Tract One, same being the most northerly corner of said Tract Two, and continuing south 50° 26' east, a total distance of 678.0 feet to the beginning of a curve to the right;

THENCE southeasterly along a 5.14° curve to the right, same being the southwest right of way line of Interstate Highway 35E a distance of 187.9 feet to a point;

THENCE south 35° 55' east along the northeast boundary line of said Tract Two, same being the southwest right of way line of Interstate Highway 35E, a distance of 104.6 feet to a point;

THENCE south 49° 54' east along the northeast boundary line of said Tract Two, same being the southwest right of way line of Interstate Highway 35E, a distance of 11.25 feet to a point for a corner, same being the most easterly corner of said tract and also being the intersection of the southwest right of way line of Interstate Highway 35E and the west right of way line of Regal Drive;

THENCE south  $19^{\circ} 34'$  west along the east boundary line of said Tract Two, same being the west right of way line of Regal Drive, a distance of 10.68 feet to a point for a corner;

THENCE north  $49^{\circ} 54'$  west 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, a distance of 13.77 feet to a point;

THENCE north  $35^{\circ} 55'$  west, 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, a distance of 103.737 feet to the beginning of a curve to the left;

THENCE northwesterly along a  $5.14^{\circ}$  curve to the left, 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, a distance of 187.00 feet to a point;

THENCE north  $50^{\circ} 26'$  west, 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, passing at 288.66 feet the north boundary line of said Tract Two, same being the south boundary line of said Tract One, and continuing north  $50^{\circ} 26'$  west, a total distance of 677.88 feet to a point for a corner in the northwest boundary line of said Tract One;

THENCE north  $38^{\circ} 52'$  east along the northwest boundary line of said Tract One, a distance of 10.00 feet to the place of beginning and containing 9,844.03 square feet of land, more or less.

And it is agreed that the said City of Denton, Texas, in consideration of the benefits above set out, will remove from the property above described, such fences, and other obstructions as may now be found upon said property for the purpose of constructing, installing, repairing and perpetually maintaining a water line in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to the said water line, or any part thereof. It is further agreed that the City of Denton shall perform all construction in a workmanlike manner, will close all open ditches each and every night work is in progress, will repair any and all damages promptly, and in no event more than 30 days after the completion of work, and specifically but not limited to, the City of Denton will repair of any and all fencing, repair or replace trees, shrubbery or landscaping if any such be damaged, and restore the surface of the ground, including sod, to as good a condition as when the land was entered onto.

And it is agreed that the City of Denton shall indemnify and hold harmless Josten's, Inc. for any loss or damage occasioned by the use of the rights hereinabove granted, whether such loss or damage be suffered by Josten's, Inc. or a third party.

TO HAVE AND TO HOLD unto the said City of Denton, Texas, as aforesaid for the purpose aforesaid the premises above described.

WITNESS our hands this the 2nd day of February, A.D. 1973.

JOSTEN'S INCORPORATED

BY: H. William Lorton

ATTEST:

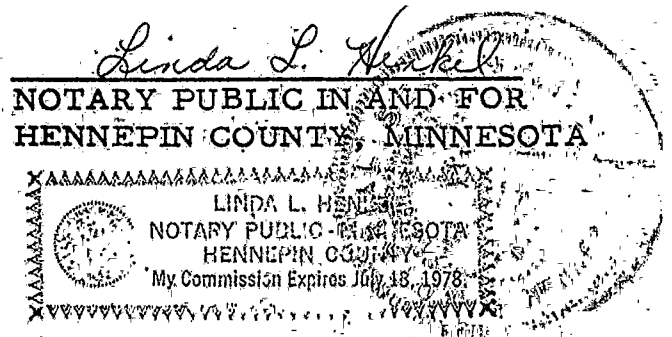
Ann Swartz

THE STATE OF MINNESOTA 0

COUNTY OF HENNEPIN 0

BEFORE ME, the undersigned authority, in and for said County, Minnesota, on this day personally appeared H. William Lorton of Josten's Incorporated, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Josten's Incorporated, and that he executed the same as the official act of said Josten's Incorporated for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This the 2nd day of February, A.D. 1973.



FILED FOR RECORD: 14th DAY OF February A.D. 1973 at 8:29 o'clock A. M.  
 RECORDED: 20th DAY OF February A.D. 1973 at 8:47 o'clock A. M.  
 BY C. A. Enrich DEPUTY THETA PARKER, COUNTY CLERK  
 DENTON COUNTY, TEXAS

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CITY OF DENTON  
FORM PUE 5-20-81

Vol 1130 PAGE 214

DEED RECORDS

PUBLIC UTILITY EASEMENT

6014

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON §

That \_\_\_\_\_, JOSTEN'S INCORPORATED, A MINNESOTA CORPORATION  
OWNING REAL PROPERTY IN DENTON COUNTY, TEXAS

hereinafter referred to as Grantors, whether one or more, for and in consideration of the sum of One Dollar (\$1.00) cash to Grantors in hand paid by the City of Denton, the receipt of which is hereby acknowledged, and the further consideration of the benefits to be derived by Grantors from the placing of public utilities, including but not limited to water mains, sanitary sewer mains, gas mains, electric poles and lines, telephone and telegraph poles and lines, through the premises hereinafter described, have this day Granted and Conveyed, and by these presents do hereby Grant and Convey unto the City of Denton, a municipal corporation situated in Denton County, Texas, an easement to construct, reconstruct and perpetually maintain public utilities, including but not limited to water mains, sanitary sewer mains, gas mains, electric poles and lines, telephone and telegraph poles and lines or authorize such construction by any public utility company, in, upon and across the following described land, to-wit:

All that certain tract, piece or parcel of land, lying and being situated in the County of Denton, State of Texas, described in EXHIBIT "A" attached hereto and made a part hereof for all purposes, to which reference is here made for a more particular description of said property;

TO HAVE AND TO HOLD the same perpetually to the City of Denton, its successors and assigns, together with the right and privilege at any and all times to enter said premises, or any part thereof, for the purpose of constructing and maintaining said public utilities, and for making connections therewith; all upon the condition that the City of Denton will at all times after doing any work in connection with the construction or repair of said public utility restore the surface of said premises to the condition in which the same was found before such work was undertaken.

EXECUTED this the 5TH day of MARCH, A.D. 1982.

JOSTEN'S INCORPORATED

BY:

P. J. West S.A.V.P.

ATTEST:

Richard C. Spaulding

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THE STATE OF MINNESOTA ( )  
COUNTY OF HENNEPIN ( )

BEFORE ME, the undersigned authority, in and for said County, Hennepin, on this day personally appeared Jack Melt of Josten's Incorporated, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Josten's Incorporated, and that he executed the same as the official act of said Josten's Incorporated for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This the 5th day of March, A.D. 1981.

Elizabeth J. Wines  
NOTARY PUBLIC IN AND FOR  
HENNEPIN COUNTY,





EXHIBIT "A"

VOL 1100 PAGE 216

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, and also being part of a tract of land as conveyed from Foxworth-Galbraith Lumber Co. to Josten's, Inc. by Deed dated 8-28-68 and recorded in Volume 571, Page 39 of the Deed Records of Denton County, Texas, and more particularly described as follows:

Beginning at the most northerly corner of said tract, said point lying on the southwest right-of-way line of Interstate Highway 35-E;

Thence South  $50^{\circ} 26'$  east along the northeast boundary line of said tract, same being the southwest right-of-way of I.H. 35-E, a distance of 16.0 feet to a point for a corner;

Thence South  $38^{\circ} 52'$  west 16 feet southeast of and parallel to the west boundary line of said tract, a distance of 331.82 feet to a point for a corner on the south boundary line of said tract;

Thence South  $88^{\circ} 57'$  west along the south boundary line of said tract, a distance of 20.86 feet to the southwest corner of said tract;

Thence North  $38^{\circ} 52'$  east along the northwest boundary line of said tract, a distance of 345.4 feet to the place of beginning and containing 0.124 acres of land, more or less.

Return to  
Foster N. Williams  
City of Denton  
Engineering Dept  
1000 W. Hickam St  
Denton, TX 76201

FILED  
1982 MAR 8 PM 2:35  
MARY JO HILL  
COUNTY CLERK DENTON TEX  
BY for JOSTICE'S INC.  
DENTON, TEXAS  
FILED

UTILITY EASEMENT

6014

VOL 1150 PAGE 217

2-28-82  
J. Williams

FILED FOR RECORD 8th DAY OF March A.D. 1982, at 2:35 P.  
RECORDED 9th DAY OF March A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Shirley J. Smith DEPUTY.

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of a the remainder of a called 14.531 acre tract of described in General Warranty Deed to Josten's Inc., recorded in Volume 571, Page 42 of the Official Deed Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a point in the southwest right-of-way line of Interstate Highway No. 35-E, and being a point in the north line of said 14.531 acre tract; from which an aluminum disk stamped "TXDOT" found bears North 46°44'36" West a distance of 307.43 feet;

**THENCE** departing said north line of said 14.531 acre tract, South 46°44'36" East, along the said southwest right-of-way line of Interstate Highway No. 35-E, a distance of 61.11 feet to a point for corner in the north line of Lot 2, Block A, Josten's Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume H, Page 362, of the Plat Records of Denton County, Texas;

**THENCE** departing said southwest right-of-way line of Interstate Highway No. 35-E, North 86°29'04" West, along said north line of Lot 2, a distance of 31.28 feet to a point for corner; from said point a 1/2-inch iron rod found for the northwest corner of said Lot 2 bears North 86°29'04" West, a distance of 413.51 feet;

**THENCE** departing said north line of Lot 2, North 46°44'36" West, a distance of 56.81 feet to a point for in the said north line of the 14.531 acre tract;

**THENCE** North 87°54'07" East, along the said north line of the 14.531 acre tract, a distance of 28.11 feet to the **POINT OF BEGINNING** and containing 1,179 square feet or 0.0271 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

 9/3/20

MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558

801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511

michael.billingsley@kimley-horn.com



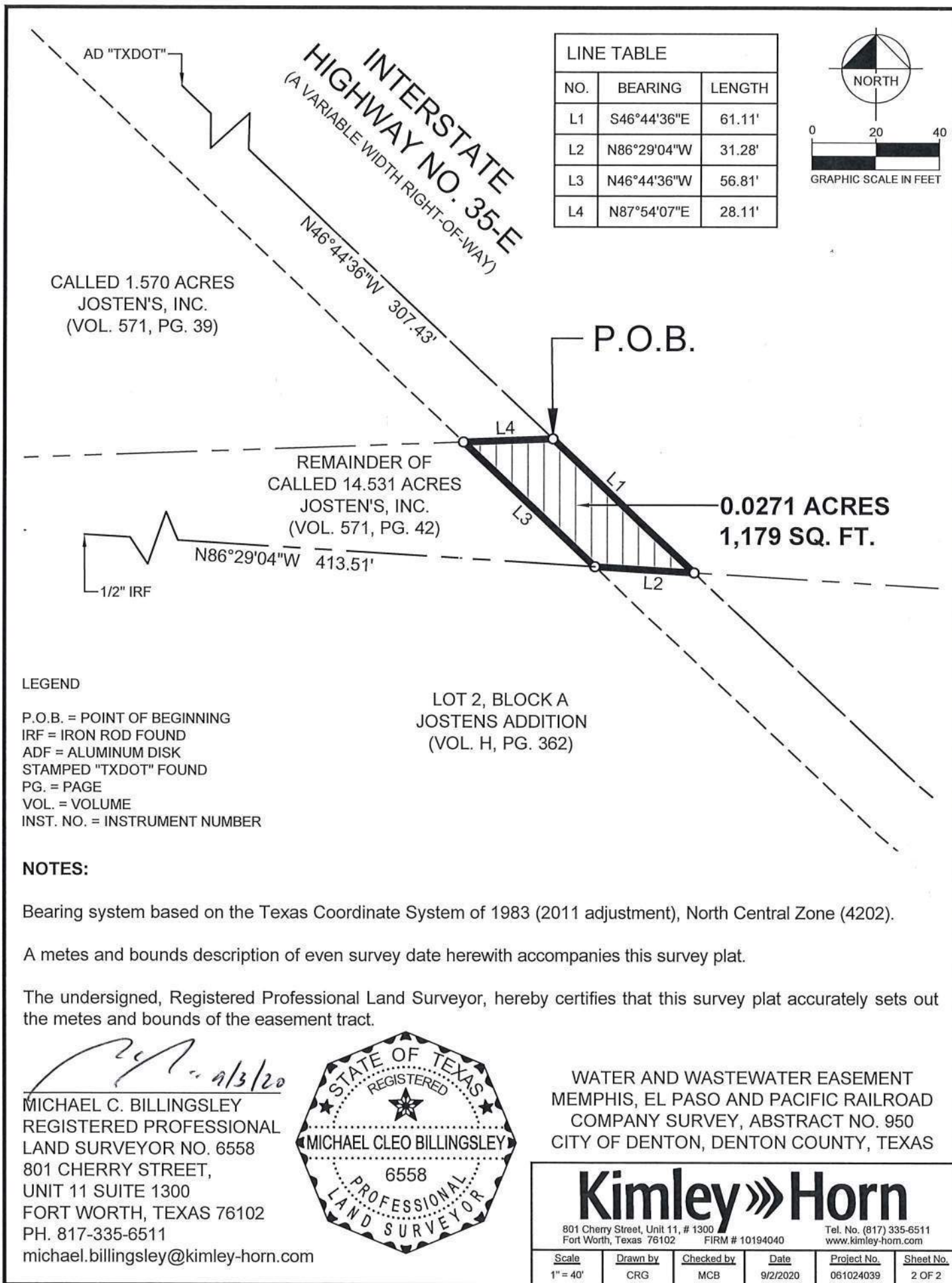
WATER AND WASTEWATER EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	9/2/2020	061024039	1 OF 2



**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 97**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1784+94 LT to Sta 1787+49 LT

Existing Easement

Instrument No. 2018-6

PART OF LOT 2, BLOCK A  
DENTON COMMONS  
MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950 CITY OF DENTON,  
DENTON COUNTY, TEXAS



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Denton County  
Cynthia Mitchell  
County Clerk  
Denton, TX 76202



70 2004 00038410

Instrument Number: 2004-38410

Recorded On: March 29, 2004

As  
Easement

Parties: LODGE CONSTRUCTION CO

To

Billable Pages: 6

Number of Pages: 6

Comment:

**\*\* Examined and Charged as Follows: \*\***

Easement	24 00
Total Recording:	24.00

\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law

**File Information:**

Document Number: 2004-38410  
Receipt Number: 97913  
Recorded Date/Time March 29, 2004 02:34P  
User / Station J Morris - Cash Station 1

**Record and Return To:**

CITY OF DENTON  
601 E HICKORY STE B  
DENTON TX 76205



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas

*Cynthia Mitchell*

County Clerk  
Denton County, Texas

DRAINAGE EASEMENT

THE STATE OF TEXAS,       §  
                                  §  
COUNTY OF DENTON       §

KNOW ALL MEN BY THESE PRESENTS:

THAT, LODGE CONSTRUCTION CO., INC., of Denton County, Texas, in consideration of the sum of One Dollar and No Cents (\$1.<sup>00</sup>) and other good and valuable consideration in hand paid by the City of Denton, Texas, receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by it and situated in Denton County, Texas, in the M.E.P. & P.R.R. Co. Survey, Abstract No. 950.

EASEMENT AREA DESCRIBED IN EXHIBIT "A" AND  
ILLUSTRATED IN EXHIBIT "B" BOTH ATTACHED HERewith

( And it is further agreed that the City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining DRAINAGE in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to said DRAINAGE facilities or any part

thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as  
aforesaid for the purposes aforesaid the premises above described.

Witness my hand(s), this the 19th day of  
March, 2004.

LODGE CONSTRUCTION CO., INC.

By: [Signature]

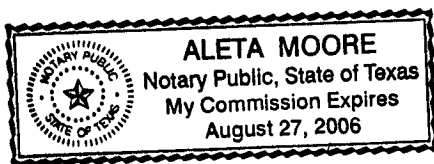
Parviz Rahimi

Title: PRESIDENT

ACKNOWLEDGMENT

THE STATE OF Texas §  
COUNTY OF Collin §

This instrument was acknowledged before me on March 19, 2004  
by Parviz Rahimi.



[Signature]  
Notary Public, in and for  
the State of Texas

My Commission Expires 8-27-06.

Accepted this 29th day of March, 2004 for the  
City of Denton, Texas (Resolution No. 91-073).

BY: [Signature]  
Paul Williamson  
Real Estate and  
Capital Support Manager

RETURN TO: City of Denton  
601 East Hickory Street, Suite B  
Denton, Texas 76205  
ATTN: Paul Williamson

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## EXHIBIT A

### FIELD NOTES

### DESCRIBING A DRAINAGE EASEMENT FROM LODGE CONSTRUCTION COMPANY, INC.

BEING a 0.0867 acre tract of land situated in the M.E.P. & P.R.R. County Survey, Abstract No. 950, City of Denton, Denton County, Texas and being part of a tract of land described in deed to Lodge Construction Co., Inc., as recorded in Volume 1429, Page 0156, of the Property Records of Denton County, Texas (P.R.D.C.T.) and being more particularly described as follows:

COMMENCING at a 5/8-inch iron rod with cap stamped "Carter Burgess" found at the intersection of the north right-of-way of Windriver Lane (an 80 foot right-of-way) as described in County Clerk's File Number 99-R0065227, P.R.D.C.T., and the west right-of-way of Interstate Highway 35 (a variable width right-of-way);

THENCE South 40 degrees 02 minutes 38 seconds West, departing said west right-of-way line of Interstate Highway 35 and along the said north right-of-way line of Windriver Lane, a distance of 435.95 feet to a 5/8-inch found iron rod with cap stamped "Carter Burgess" for the point of curvature of a circular curve to the right having a radius of 460.00 feet and whose chord bears South 59 degrees 09 minutes 10 seconds West, a distance of 301.18 feet;

THENCE Southwesterly, continuing along said north right-of-way line and along said curve to the right through a central angle of 38 degrees 13 minutes 05 seconds, an arc distance of 306.83 feet to a 1/2-inch set iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") for corner, said point being southeast corner of the proposed Lot 1, Block A, Cinemark Addition at Unicorn Lake;

THENCE North 11 degrees 44 minutes 05 seconds West, along the proposed east line of Lot 1, Block A, a distance of 521.68 feet to a 1/2-inch set iron rod with cap;

THENCE North 89 degrees 52 minutes 55 seconds West, along the proposed east line of Lot 1, Block A, a distance of 33.22 feet to the POINT OF BEGINNING;

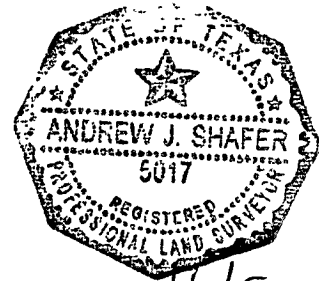
THENCE North 89 degrees 52 minutes 55 seconds West, continuing along said north line, a distance of 100.70 feet to a point or corner;

THENCE North, departing said north line a distance of 37.50 feet to a point for corner;

THENCE South 89 degrees 52 minutes 55 seconds East, a distance of 100.70 feet to a point for corner;

THENCE South, a distance of 37.50 feet to the POINT OF BEGINNING AND  
CONTAINING 3,776 square feet or 0.0867 acres of land more or less.

The basis of bearing for this tract is the deed to the City of Denton for the right-of-way  
dedication of Windriver Lane, as recorded in the Denton County Clerk's File Number 99-  
R0065227 P.R.D.C.T.



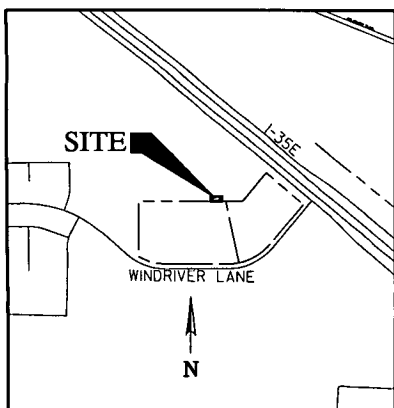
*Andrew J. Shafer*  
March 22, 2004



0 50 100 150 200 300

SCALE IN FEET

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LOCATION MAP  
NOT TO SCALE

NORTH  
37.50'

SOUTH  
37.50'

1/2" SIR  
W/CAP

1/2" FIR

1/2" FIR

N 89° 52' 55" W  
33.22'

POINT OF  
BEGINNING

N 89° 52' 55" W  
100.70'

PROPOSED  
LOT 1, BLOCK A  
399,502 SQ. FT. OR  
9.171 ACRES

WINDJAMMER, LTD.  
CC# 98-R0062520  
CC# 98-R0093041  
P.R.D.C.T.

$\Delta = 11^{\circ}44'17''$  RT  
R= 460.00'  
T= 47.29'  
L= 94.24'  
CB= S84°07'52"W  
CL= 94.08'

N 11°44'05" W  
521.68'

$\Delta = 38^{\circ}13'05''$   
R= 460.00'  
T= 159.37'  
L= 306.83'  
CB= S59°09'10"W  
CL= 301.18'

16' PUBLIC UTILITY EASEMENT  
VOL. 4592, PG. 1245  
P.R.D.C.T.

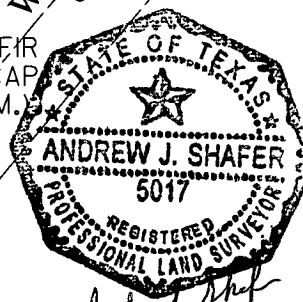
POINT OF  
COMMENCING

S 40°02'38" W  
435.95'

5/8" FIR  
W/CAP  
(C.M.)

WINDRIVER LANE  
CC# 99-R0065227  
(80' ROW)

5/8" FIR  
W/CAP  
(C.M.)



LEGEND

- |          |                              |
|----------|------------------------------|
| 1/2" FIR | 1/2" FOUND IRON ROD          |
| 5/8" FIR | 5/8" FOUND IRON ROD          |
| W/CAP    | WITH "CARTER BURGESS" CAP    |
| 1/2" SIR | 1/2" SET IRON ROD            |
| W/CAP    | WITH "HALFF ASSOC. INC." CAP |
| CM       | CONTROL MONUMENT             |

EXHIBIT B

OF A  
0.0867 ACRE DRAINAGE EASEMENT  
LOCATED IN  
M.E.P. & P.R.R. CO. SURVEY,  
ABST. No. 950  
CITY OF DENTON  
DENTON, COUNTY, TEXAS  
BY  
HALFF ASSOCIATES, INC.  
3801 PARKWOOD BLVD. SUITE 500  
FRISCO, TX 75034

Andrew J. Shafer  
March 22, 2004

THE BASIS OF BEARING FOR THIS TRACT IS THE DEED  
TO THE CITY OF DENTON FOR THE RIGHT OF WAY DECIATION  
OF WIND RIVER LANE, RECORDED IN CC# 99-R0065227  
THE PROPERTY RECORDS OF DENTON COUNTY

MARCH 2004 AVO 21964 SCALE: 1" = 100'



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Denton County  
Cynthia Mitchell  
County Clerk  
Denton, TX 76202



70 2004 00038411

Instrument Number: 2004-38411

Recorded On: March 29, 2004

As  
Easement

Parties: LODGE CONSTRUCTION CO

To

Billable Pages: 7

Number of Pages: 7

Comment:

**\*\* Examined and Charged as Follows: \*\***

Easement	26 00
Total Recording:	26.00

\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law

**File Information:**

Document Number: 2004-38411

Receipt Number: 97913

Recorded Date/Time: March 29, 2004 02:34P

User / Station: J Morris - Cash Station 1

**Record and Return To:**

CITY OF DENTON  
601 E HICKORY STE B  
DENTON TX 76205



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*Cynthia Mitchell*

County Clerk  
Denton County, Texas

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PUBLIC DRAINAGE EASEMENT

THE STATE OF TEXAS,           §  
                                  §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DENTON           §

THAT LODGE CONSTRUCTION CO., INC. (Grantor) in consideration of the sum of ONE DOLLAR and NO CENTS (\$1.00) and other good and valuable consideration in hand paid by the City of Denton, Texas, (Grantee), receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by Grantor and situated in Denton County, Texas, in the M.E.P. & P.R.R. Co. Survey, Abstract No. 950.

SEE ATTACHED EXHIBITS "A" & "B"

And it is further agreed that the City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining drainage in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to said drainage facilities or any part thereof.

This easement is hereby adopted by the Grantor and approved by the City of Denton (called "City") subject to the following conditions that

shall be binding upon the Grantor, their heirs, grantees and successors:  
The Public Drainage easement tract described and illustrated in Exhibits  
"A" and "B", attached herewith, shall remain open at all times and shall  
be maintained in a safe and sanitary condition by the Grantor. The City  
shall not be responsible for the maintenance and operation of said  
easement or for any damage to private property or person that results  
from conditions in the Easement or for the control of erosion. No  
obstruction to the natural flow of storm water run-off shall be  
permitted by construction of any type of building, fence or any other  
structure within the Public Drainage easement, as herein above defined,  
unless approved by the City. The Grantor shall keep the Public Drainage  
easement clear and free of debris, silt, and any substance that would  
result in unsanitary conditions or obstruct the flow of water. And, the  
City shall have the right of ingress and egress for the purpose of  
inspection and supervision of maintenance by the Grantor to alleviate  
any undesirable conditions that may occur. Furthermore, the City shall  
have the right, but not the obligation, to enter upon the above-  
described Public Drainage easement tract to remove any obstruction to  
the flow of water, after giving the Grantor written notice of such  
obstruction and Grantor fails to remove such obstruction. Should the  
City of Denton be compelled to remove any obstruction to the flow of  
water, after giving the Grantor written notice of such obstruction and  
Grantor fails to remove such obstruction, then the City of Denton shall  
be reimbursed by the Grantor the reasonable costs for labor, materials  
and equipment for each instance. The natural drainage through the  
Public Drainage easement is subject to storm water overflow and natural  
bank erosion to an extent that cannot be definitely defined. The City  
shall not be held liable for any damages of any nature resulting from  
the occurrence of these natural phenomena or resulting from the failure

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of any structure or structures, within the Public Drainage easement or otherwise.

This grant and covenants stipulated herein shall run with the land and shall be binding upon the parties and their heirs, successors and assigns.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness my hand, this 19th day of March, 2004.

By: LODGE CONSTRUCTION CO., INC

P. Rahimi  
Name

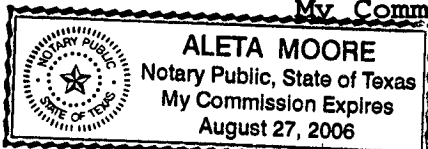
President  
Title

ACKNOWLEDGMENT

THE STATE OF Texas §  
COUNTY OF Collin §

This instrument was acknowledged before me on the 19th day of March, 2004 by Parmiz Bahimi.

Aleta Moore  
Notary Public, in and for the State of Texas  
My Commission Expires 8-27-06



Accepted this 5th day of March 2004 for the City of Denton, Texas (Resolution No. 91-073).

By: Denise M. Perry  
Paul Williamson  
Real Estate &  
Capital Support Manager



**EXHIBIT A**

**FIELD NOTES**

**DESCRIBING A DRAINAGE EASEMENT FROM LODGE CONSTRUCTION COMPANY, INC.**

BEING a 0.7304 acre tract of land situated in the M.E.P. & P.R.R. County Survey, Abstract No. 950, City of Denton, Denton County, Texas and being part of a tract of land described in deed to Lodge Construction Company Inc., as recorded in Volume 1429, Page 156, of the Property Records of Denton County, Texas (P.R.D.C.T.) and being more particularly described as follows:

COMMENCING at a 5/8-inch iron rod with cap stamped "Carter Burgess" found at the intersection of the north right-of-way of Windriver Lane (an 80 foot right-of-way) as described in County Clerk's File Number 99-R0065227, P.R.D.C.T., and the west right-of-way of Interstate Highway 35 (a variable width right-of-way);

THENCE South 40 degrees 02 minutes 38 seconds West, departing said west right-of-way line of Interstate Highway 35 and along the said north right-of-way line of Windriver Lane, a distance of 435.95 feet to a 5/8-inch found iron rod with cap stamped "Carter Burgess" for the point of curvature of a circular curve to the right having a radius of 460.00 feet and whose chord bears South 59 degrees 09 minutes 10 seconds West, a distance of 301.18 feet;

THENCE Southwesterly, continuing along said north right-of-way line and along said curve to the right through a central angle of 38 degrees 13 minutes 05 seconds, an arc distance of 306.83 feet to a 1/2-inch set iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") for corner, said point being southwest corner of the proposed Lot 1, Block A, Cinemark Addition at Unicorn Lake;

THENCE North 11 degrees 44 minutes 05 seconds West, along the proposed east line of Lot 1, Block A, a distance of 521.68 feet to a 1/2-inch set iron rod with cap;

THENCE North 89 degrees 52 minutes 55 seconds West, along the proposed east line of Lot 1, Block A, a distance of 17.70 feet to the POINT OF BEGINNING;

THENCE North 89 degrees 52 minutes 55 seconds West, continuing along said north line, a distance of 15.52 feet to a point for corner;

THENCE North, departing said north line a distance of 37.50 feet to a point for corner;

THENCE North 89 degrees 52 minutes 55 seconds West, a distance of 100.70 feet to a point for corner;

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THENCE South, a distance of 37.50 feet to a point on the north line of said proposed Lot 1, Block A;

THENCE North 89 degrees 52 minutes 55 seconds West, along said north line a distance of 587.61 feet to a 5/8-inch found iron rod with cap stamped "Carter Burgess" for corner, said point being the northwest corner of proposed Lot 1, Block A;

THENCE North, departing said north line a distance of 47.45 feet to a point for corner;

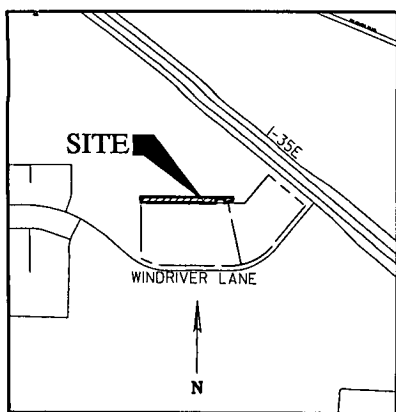
THENCE South 89 degrees 52 minutes 55 seconds East, a distance of 760.52 feet to a point for corner;

THENCE South, a distance of 30.00 feet to a point for corner;

THENCE South 73 degrees 00 minutes 00 seconds West, a distance of 59.28 feet to the POINT OF BEGINNING AND CONTAINING 31,816 square feet or 0.7304 acres of land more or less.

The basis of bearing for this tract is the deed to the City of Denton for the right-of-way dedication of Windriver Lane, as recorded in the Denton County Clerk's File Number 99-R0065227 P.R.D.C.T.





LOCATION MAP  
NOT TO SCALE

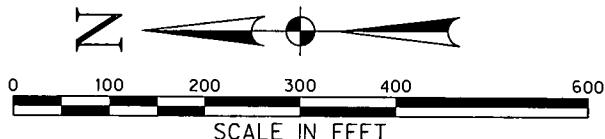
DRAINAGE EASEMENT  
31,816 SQ. FT. OR  
0.7304 ACRES

LODGE CONSTRUCTION  
COMPANY, INC.  
VOL. 1429, PG. 156  
P.R.D.C.T.

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 89° 52' 55" W	17.70'
L2	N 89° 52' 55" W	15.52'
L3	NORTH	37.50'
L4	N 89° 52' 55" W	100.70'
L5	SOUTH	37.50'

NORTH  
47.45'



**LEGEND**

- 1/2" FIR 1/2" FOUND IRON ROD  
5/8" FIR 5/8" FOUND IRON ROD  
W/CAP WITH "CARTER BURGESS" CAP  
1/2" SIR 1/2" SET IRON ROD  
W/CAP WITH "HALFF ASSOC. INC." CAP  
CM CONTROL MONUMENT

THE BASIS OF BEARING FOR THIS TRACT IS THE DEED  
TO THE CITY OF DENTON FOR THE RIGHT OF WAY DEDICATION  
OF WIND RIVER LANE, RECORDED IN CC# 99-R0065227  
THE PROPERTY RECORDS OF DENTON COUNTY

INTERSTATE 35  
(VARIABLE WIDTH ROW)  
STATE OF TEXAS  
VOL. 348, PG. 6  
P.R.D.C.T.

WINDJAMMER, LTD.  
CC# 98-R0062520  
CC# 98-R0093041  
P.R.D.C.T.

PROPOSED  
LOT 1, BLOCK A  
399,502 SQ. FT. OR  
9.171 ACRES  
WINDJAMMER, LTD.  
CC# 98-R0062520  
CC# 98-R0093041  
P.R.D.C.T.

16' PUBLIC  
UTILITY EASEMENT  
VOL. 4592  
PG. 1245  
P.R.D.C.T.

WINDJAMMER, LTD.  
CC# 98-R0062520  
CC# 98-R0093041  
P.R.D.C.T.

POINT OF  
COMMENCING

S 40° 02' 38" W  
435.95'

Δ = 38° 13' 05"  
R = 460.00'  
T = 159.37'  
L = 306.83'  
CB = S59° 09' 10" W  
CL = 301.18'

S 73° 00' 00" W  
59.28'  
N 11° 44' 05" W  
521.68'

POINT OF  
BEGINNING

WINDRIVER LANE  
CC# 99-R0065227  
(80' ROW)



*Andrew J. Shafer*  
March 22, 2004

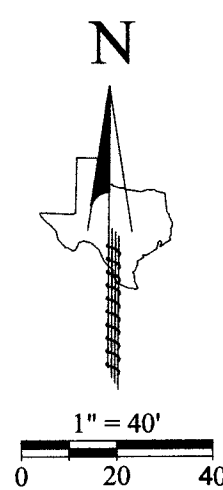
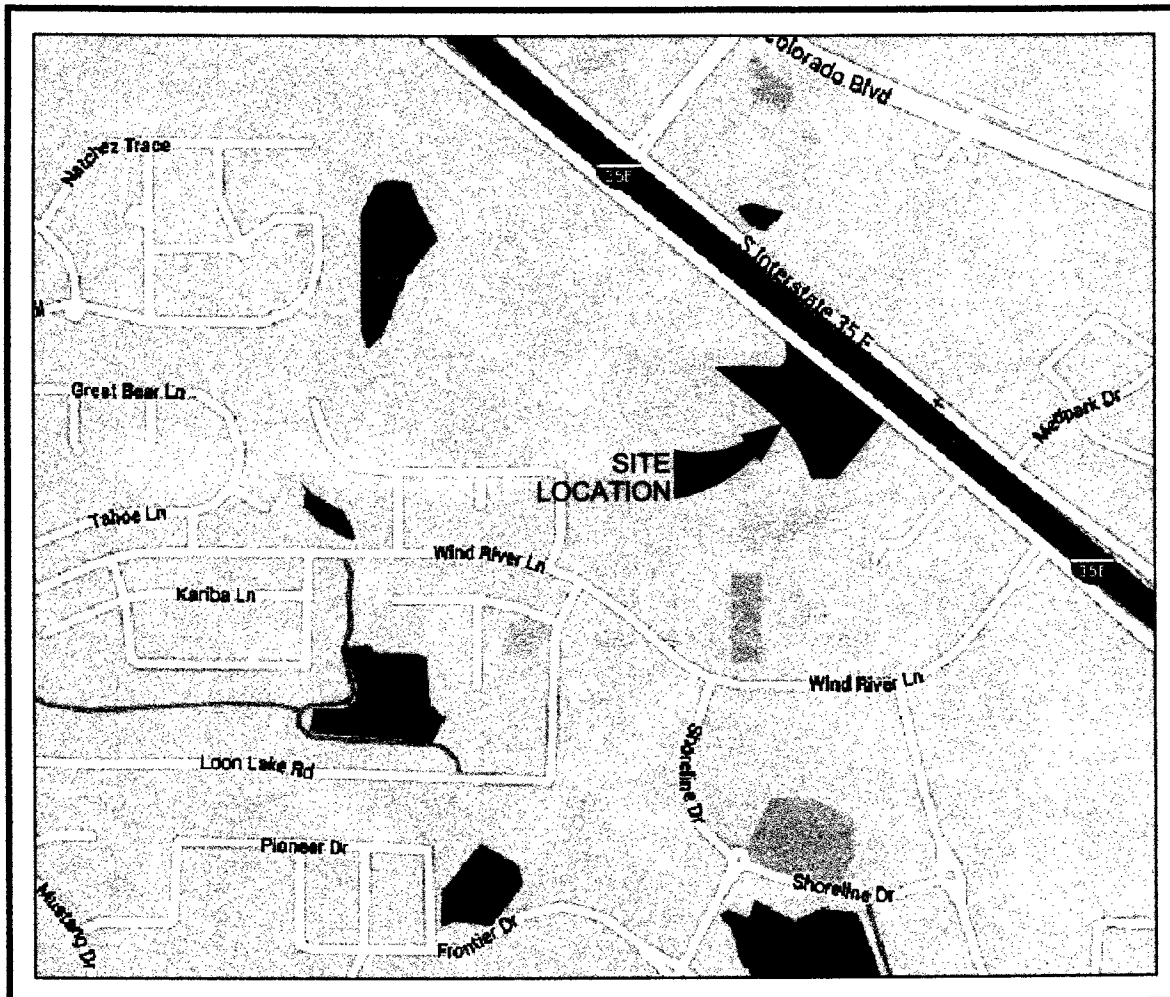
**EXHIBIT B**

OF A  
0.7304 ACRE DRAINAGE EASEMENT  
LOCATED IN  
M.E.P. & P.R.R. CO. SURVEY,  
ABST. No. 950  
CITY OF DENTON  
DENTON, COUNTY, TEXAS  
BY  
HALFF ASSOCIATES, INC.  
3801 PARKWOOD BLVD. SUITE 500  
FRISCO, TX 75034

MARCH 2004 AVO 21964 SCALE: 1" = 200'



VICINITY MAP  
NOT TO SCALE



#### GENERAL PLAT NOTES

- All interior property corners are marked with a capped 1/2" iron rod with a green cap stamped "Eagle Surveying" unless otherwise noted.
- This property is located in "Non-shaded Zone X" as scaled from the F.E.M.A. Flood Insurance Rate Map dated April 18, 2011 and is located in Community Number 480194 as shown on Map Number 48121C0390G. The location of the Flood Zone is approximate; no vertical datum was collected at the time of the survey. For the exact Flood Zone designation, please contact 1-(877) FEMA MAP.
- The City of Denton has adopted the National Electrical Safety Code the ("CODE"). The code generally prohibits structures within 17.5 feet on either side of the centerline of overhead distribution lines and within 37.5 feet on either side of the centerline of transmission lines. In some instances, the code requires greater clearances. Building permits will not be issued for structures within these clearance areas.
- There are no gas well drilling and production sites located within 1000 feet of this property at the time it was platted.
- The purpose of this plat is to create two lots of record for development purposes.
- Property owners are responsible for the maintenance of Access Easement shown on plat.

APPROVED BY THE CITY OF DENTON PLANNING AND ZONING COMMISSION  
ON THIS 31st DAY OF October, 2017.

*Jim Strange*  
PLANNING & ZONING COMMISSION CHAIRMAN



*Jennife Wattus*  
CITY SECRETARY

#### SURVEYOR

EAGLE SURVEYING, LLC  
210 SOUTH ELM STREET  
SUITE: 104  
DENTON, TX 76201  
940.222.3009

#### ENGINEER

THE BOUSQUET GROUP, INC.  
501 S. CARROLL BLVD.  
SUITE: 201  
DENTON, TX 76201  
940.566.0088

#### OWNERS

DENTON COMMONS, LLC  
1215 EXECUTIVE DR.  
RICHARDSON, TX 75081-2283  
972.732.0000

WINDRIVER LODGING, LTD.  
P.O. BOX 168222  
IRVING, TX 75016-8222

JOB #: 16-05-41 FP  
DATE: 10/30/2017  
DRAWN BY: JDC



EAGLE SURVEYING, LLC  
210 SOUTH ELM STREET  
SUITE: 104  
DENTON, TX 76201  
940.222.3009  
TX FIRM # 10194177

## FINAL PLAT DENTON COMMONS LOTS 1 & 2, BLOCK A

BEING 3.73 ACRES OF LAND WITH PARTS IN THE  
M.E.P. & P.R.R. CO. SURVEY, ABSTRACT NO. 950,  
& D. LOMBARD SURVEY, ABSTRACT NO. 784,  
AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS

Filed for Record  
in the Official Records Of:  
Denton County  
On: 1/4/2018 2:26:09 PM  
In the PLAT Records  
DENTON COMMONS  
Doc Number: 2018 - 6  
Number of Pages: 1  
Amount: 50.00  
Order#: 20180104000501  
By: 68

#### OWNERS CERTIFICATION

STATE OF TEXAS  
COUNTY OF DENTON

WHEREAS, DENTON COMMONS, LLC, & WINDRIVER LODGING, LTD., is the sole owner of a tract of land with parts situated in the M.E.P. & P.R.R. Company Survey, Abstract Number 950, and the D. Lombard Survey, Abstract No. 784, Denton County, Texas, being all of Lot 1, Block 1 of Denton Commons, an addition to the City of Denton as recorded in Document No. 2009-56, Plat Records of Denton County, Texas and being more particularly described as follows:

BEGINNING at an "X" cut found in concrete for the Northeast corner of said Lot 1 and being the Northwest corner of a tract of land described in a deed to CNMK Properties, Ltd. as recorded in Document No. 2014-817, Real Property Records of Denton County, Texas, said point lies in the southwesterly Right-of-Way line of Interstate I-35E Frontage Road;

Thence South 39°34'22" West with the westerly boundary line of said CNMK tract for a distance of 309.89 feet to a 1/2" capped iron rod stamped "Eagle Surveying" set for corner;

Thence South 89°32'23" West with the North boundary line of said CNMK tract for a distance of 102.87 feet to an "X" cut found in concrete at the Southeast corner of Lot 1, Block A of The Epic Addition, an addition to the City of Denton, as recorded in Document No. 2016-30, Plat Records of Denton County, Texas;

Thence along the East boundary line of said Lot 1 of The Epic Addition the following courses to wit:

Along a non-tangent curve to the left, having a radius of 536.50 feet, having a chord bearing and distance of North 23°24'42" West, 169.70 feet, and for an arc distance of 170.42 feet to a 1/2" capped iron rod set stamped "Eagle Surveying" at the beginning of a curve to the left, having a radius of 536.50 feet;

Thence along said curve to the left having a chord bearing and distance of North 41°42'54" East, 171.61 feet, for an arc distance of 172.35 feet to a 1/2" capped iron rod set stamped "Eagle Surveying";

North 50°55'07" West for a distance of 279.43 feet to a 1/2" capped iron rod set stamped "Eagle Surveying" for the Northeast corner of said Lot 1 of The Epic Addition, said point lies in the Southern boundary line of a tract of land described in a deed to Darush H. Heidary as recorded in Volume 2960, Page 287, Real Property Records of Denton County, Texas;

Thence along the southerly boundary line of said Heidary tract the following courses to wit:

North 88°54'16" East for a distance of 126.08 feet to a 1/2" iron rod found;

South 87°23'30" East for a distance of 117.37 feet to a 1/2" iron rod found at the beginning of curve to the left with a radius of 54.94 feet;

Thence along said curve to the left having a chord bearing and distance of North 42°52'22" East, 84.02 feet, for an arc distance of 95.66 feet to a 1/2" iron rod found;

North 06°53'40" West for a distance of 50.42 feet to a 1/2" capped iron rod found in the southeasterly Right-of-Way line of said Interstate I-35E Frontage Road;

Thence along the southeasterly Right-of-Way of said frontage road the following courses to wit:

South 50°55'06" East for a distance of 293.33 feet to a 1/2" capped iron rod set stamped "Eagle Surveying";

South 50°55'06" East for a distance of 43.06 feet to a 1/2" iron rod found;

South 50°46'48" East for a distance of 184.94 feet to the POINT OF BEGINNING and there terminating, enclosing 3.73 acres of land, more or less.

#### OWNERS DEDICATION

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS:

THAT DENTON COMMONS, LLC, & WINDRIVER LODGING, LTD., DOES HEREBY ADOPT THIS FINAL PLAT, DESIGNATING HEREIN DESCRIBED PROPERTY AS DENTON COMMONS, LOTS 1 & 2, BLOCK 1, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS AND DOES HEREBY DEDICATE TO PUBLIC USE FOREVER ALL STREETS, ALLEYS, PARKS, WATERCOURSES, DRAINS, EASEMENTS AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

OWNER: DENTON COMMONS, LLC

BY: *J. Kelly*  
AUTHORIZED OFFICIAL

DATE: 10/30/2017

STATE OF TEXAS  
COUNTY OF DENTON

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED COIT BELSLEY, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF THE OFFICE THIS 30 DAY OF OCTOBER, 2017.

*Samanthra Sly*  
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

OWNER: WINDRIVER LODGING, LTD.

BY: *Ken Patis*  
AUTHORIZED OFFICIAL

DATE: 10/31/17

STATE OF TEXAS  
COUNTY OF DENTON

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED COIT BELSLEY, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF THE OFFICE THIS 31 DAY OF OCTOBER, 2017.

*Samanthra Sly*  
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

#### CERTIFICATE OF SURVEYOR

STATE OF TEXAS  
COUNTY OF DENTON

I, ERNEST WOORSTER, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AND ACTUAL SURVEY MADE ON THE GROUND AND THAT THE MONUMENTS SHOWN HEREON WERE FOUND OR PLACED WITH 1/2" IRON RODS CAPPED "EAGLE SURVEYING" UNDER MY DIRECTION AND SUPERVISION IN ACCORDANCE WITH THE CURRENT PROVISIONS OF THE TEXAS ADMINISTRATIVE CODE AND THE ORDINANCES OF THE CITY OF DENTON, TEXAS.

*Ernest Wooster*  
ERNEST WOORSTER R.P.L.S. # 6509

30 Oct 2017  
DATE

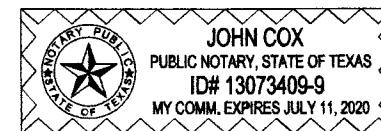


STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED ERNEST WOORSTER, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF THE OFFICE THIS 30th DAY OF October, 2017.

JOHN COX, NOTARY PUBLIC, TEXAS



MY COMMISSION EXPIRES JULY 11, 2020.

PREVIOUS CASE # PP16-0015  
CASE # FP17-0015

STATE OF TEXAS :

2114

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON :

THAT WE, G. A. Godfrey and wife Sue R. Godfrey, of Denton County, Texas, for and in consideration of the sum of One Dollar cash in hand paid and other good and valuable consideration including the right to connect service lines to the hereinafter described water pipe line without payment of the linear frontage foot charge provided by City of Denton Ordinance No. 56-06, have GRANTED AND CONVEYED and by these presents do GRANT AND CONVEY unto the said City of Denton, Texas, its successors and assigns, and the public, for a water pipe line together with a perpetual easement thereon for the benefit of the said City of Denton, Texas, its successors and assigns, and to its agents, officers and employees, perpetually for said water pipe line, the right to construct, reconstruct and perpetually maintain said water pipe line in, upon and across the following described property and to the said City of Denton, we hereby give the free and uninterrupted right of ingress, regress and egress of said water pipe line, said tract being more particularly described as follows:

Being a part of a tract of land out of the M.E.P. and P.R.R. Co. Survey, Abstract No. 950 as conveyed by Harold L. Goodman and wife Tillie L. Goodman and C. P. Smith and wife Gwendolyn Smith to G. A. Godfrey and wife Sue R. Godfrey by deed recorded in Volume 429, Page 501 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the intersection of the east line of the G. A. Godfrey tract and the south right-of-way of U. S. Highway No. 77 at approximate Highway Station 1044 + 55, said beginning point being the northeast corner of a tract of the G. A. Godfrey property bordered on the north by U. S. Highway 77 and on the east by a county road;

THENCE south with the west line of said county road and the east line of the G. A. Godfrey tract a distance of 193 feet, more or less, to a point for a corner;

THENCE west 20 feet. more or less. to a point for a corner:



THENCE north parallel to and 20 feet from the west line of said county road and the east line of the G. A. Godfrey tract a distance of 193 feet, more or less, to a point for a corner in the south right-of-way of Highway 77;

THENCE in an easterly direction with the south right-of-way of U. S. Highway 77 and the north line of the G. A. Godfrey tract a distance of 20 feet, more or less, to the place of beginning.

This easement contains a strip of land 20 feet wide and approximately 193 feet long lying along and adjacent to the west line of a county road.

TO HAVE AND TO HOLD the same perpetually to the City of Denton, Texas, and the public, and to its successors and assigns, together with the right and privilege at any and all times to enter said premises for the purpose of constructing, reconstructing and maintaining said water pipe line.

WITNESS OUR HANDS this 26 day of March A.D. 1959.

G. A. Godfrey  
Sue R. Godfrey Sue R. Godfrey

\*\*\*\*\*

STATE OF TEXAS :

COUNTY OF DENTON :

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared G. A. Godfrey and Sue R. Godfrey, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Sue R. Godfrey, wife of the said G. A. Godfrey, having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Sue R. Godfrey, acknowledged such instrument to be her act and deed, and she x declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 26 day of March A.D. 1959.



W. D. Benthall  
 Notary Public in and for  
 Denton County, Texas

FILED FOR RECORD: 27 day of March A.D. 1959 at 4:00 o'clock P. M.  
 RECORDED: 8 day of April A.D. 1959 at 9:10 o'clock A. M.  
 By: \_\_\_\_\_ Deputy A.J. Barnett, Clerk County Court,  
 Denton County, Texas

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Lot 2, Block A, Denton Commons, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2018-6 of the Official Public Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a PK nail found for a point in the southeast line of said Lot 2; from said point the east corner of said Lot 2, and being a point in the southwest right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) bears North 39°36'08" East, a distance of 50.07 feet;

**THENCE** South 39°36'08" West, along said southeast line, a distance of 20.02 feet to a point for corner; from said point a 5/8-inch iron rod found for the southeast corner of said Lot 2 bears South 39°36'08" West, a distance of 242.81 feet;

**THENCE** departing said southeast line, North 48°04'41" West, a distance of 227.65 feet to a point in the northwest line of said Lot 2;

**THENCE** North 39°03'35" East, along said northwest line, a distance of 20.03 feet to a point for corner;

**THENCE** departing said northwest line, South 48°04'41" East, a distance of 227.84 feet to the **POINT OF BEGINNING** and containing 4,555 square feet or 0.1046 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.



MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
PART OF LOT 2, BLOCK A  
DENTON COMMONS  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

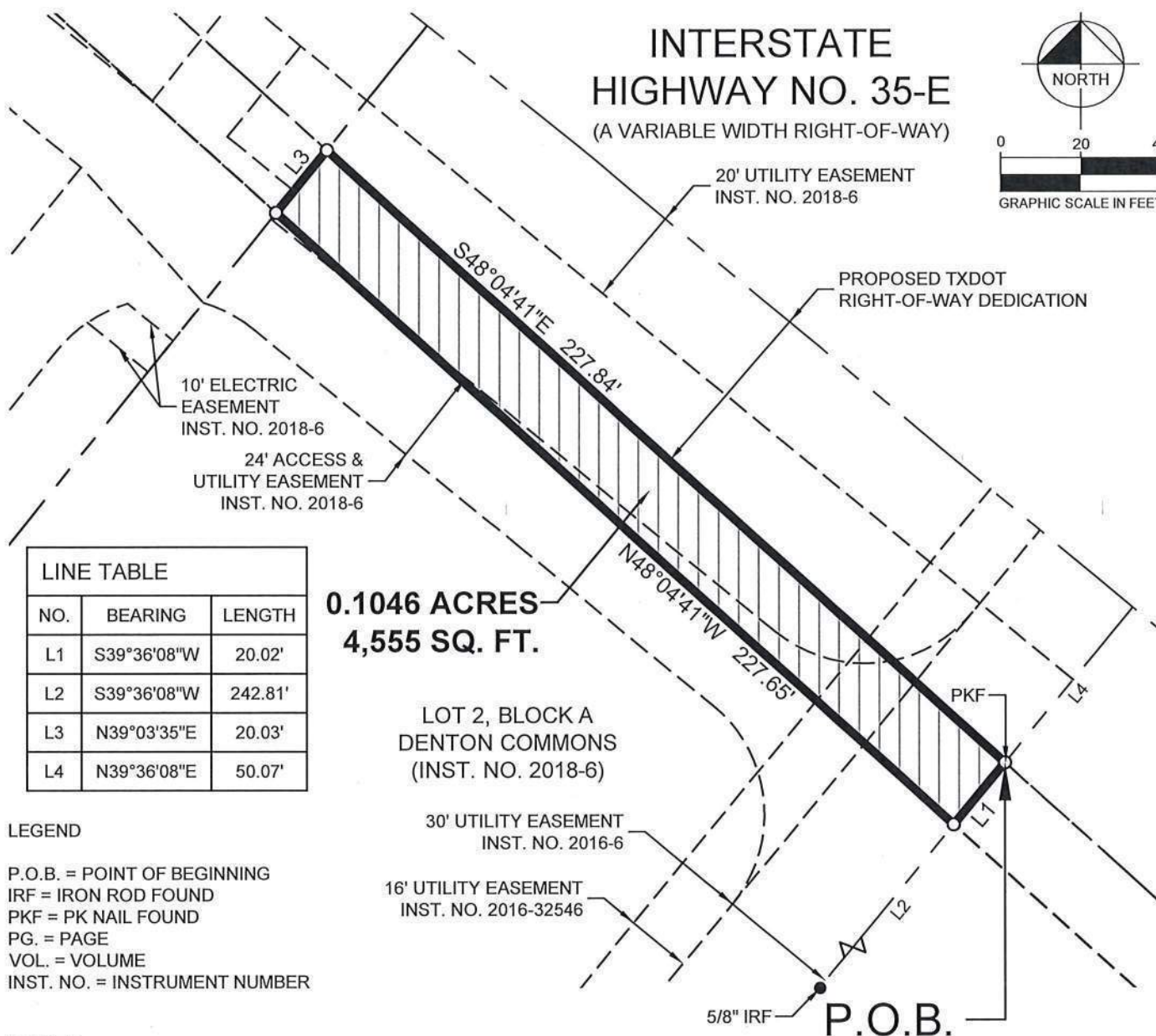
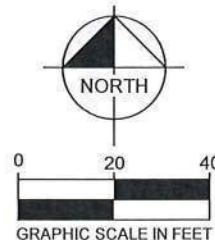
**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	9/1/2020	061024039	1 OF 2

# INTERSTATE HIGHWAY NO. 35-E (A VARIABLE WIDTH RIGHT-OF-WAY)



LINE TABLE		
NO.	BEARING	LENGTH
L1	S39°36'08\"W	20.02'
L2	S39°36'08\"W	242.81'
L3	N39°03'35\"E	20.03'
L4	N39°36'08\"E	50.07'

## LEGEND

P.O.B. = POINT OF BEGINNING  
 IRF = IRON ROD FOUND  
 PKF = PK NAIL FOUND  
 PG. = PAGE  
 VOL. = VOLUME  
 INST. NO. = INSTRUMENT NUMBER

## NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley*  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
 PART OF LOT 2, BLOCK A  
 DENTON COMMONS  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	9/1/2020	061024039	2 OF 2



**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 98**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

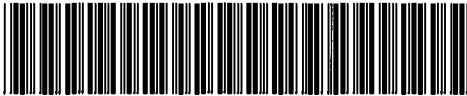
Utility Longitudinal Stations:  
Sta 1789+66 LT to Sta 1790+05 LT

Existing Easement

Volume R, Page 116

DANIEL LOMBARD SURVEY, ABSTRACT NO. 784 CITY  
OF DENTON, DENTON COUNTY, TEXAS

Denton County  
Cynthia Mitchell  
County Clerk  
Denton, Tx 76202



70 2010 00111945

Instrument Number: 2010-111945

Recorded On: November 08, 2010

As  
Easement

Parties: HEIDARY MD DARIUSH H

To

Billable Pages: 6

Number of Pages: 6

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Easement	31.00
Total Recording:	31.00

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2010-111945  
Receipt Number: 738333  
Recorded Date/Time: November 08, 2010 01:37:21P  
User / Station: H Dunn - Cash Station 4

**Record and Return To:**

UTILITIES & CIP ENGINEERING  
901 A TEXAS ST  
ATTN PAUL WILLIAMSON  
DENTON TX 76209



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*C. Mitchell*

County Clerk  
Denton County, Texas



**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: [YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENCE NUMBER.]**

## **SUBSURFACE PUBLIC UTILITY EASEMENT**

**THE STATE OF TEXAS**

§

**KNOW ALL MEN BY THESE PRESENTS:**

**COUNTY OF DENTON**

§

§

THAT Dariush H. Heidary, M.D., (Grantor) in consideration of the sum of ONE DOLLAR and NO CENTS (\$1.00) and other good and valuable consideration in hand paid by the City of Denton, Texas, (Grantee), receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the City of Denton, Texas, subject to the conditions set forth herein, a perpetual easement for the subsurface use, liberty and privilege in, under and across the following described property, hereinafter referred to as the Easement Property, owned by Grantor and situated in Denton County, Texas, in the M.E.P. & P.R.R. Survey, Abstract No. 950.

### **EASEMENT PROPERTY AREA DESCRIBED IN EXHIBIT "A"**

### **AND ILLUSTRATED IN EXHIBIT "B"**

### **BOTH ATTACHED HERETO AND MADE A PART HEREOF**

For the purposes of constructing, reconstructing, installing, repairing, and perpetually maintaining subsurface public utilities in, under and across said Easement Property. The initial installation of any and all subsurface public utility infrastructure shall be placed within steel sleeve encasement(s) with a maximum top of casing pipe(s) elevation of 634 feet Mean Sea Level, which is intended to be at least four (4) feet below the surface of the Easement Property as it exists on the date this instrument is executed. This being a subsurface easement, no permanent rights of surface access are granted; provided however, steel encasement pipe(s) may be constructed by the open-cut method until such time that paving improvements are present upon the Easement Property. Thereafter any

future utility installations, operations or maintenance activities shall be restricted to subsurface use only, at or below the MSL elevation stipulated herein.

Grantor hereby further reserves to itself, its successors and assigns, all rights in and to the Easement Property and the right to use and enjoy the surface and subsurface thereof for any and all purposes whatsoever, so long as such use does not unreasonably interfere with the rights herein granted to Grantee. Grantor specifically reserves the right of passage over the Easement Property including the right to place and maintain pavement improvements over the Easement Property.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness my hand, this 21 day of October, 2010.

By:

Dariush H. Heidary, M.D.

#### ACKNOWLEDGMENT

THE STATE OF Georgia §  
COUNTY OF Chatham §

This instrument was acknowledged before me on this 21 day of October, 2010, by Dariush H. Heidary, M.D.

Quene Lee  
Notary Public, in and for the State of Georgia  
My Commission Expires: 6-14-2011

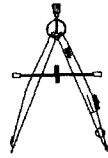
Accepted this 2<sup>ND</sup> day of NOVEMBER, 2010 for the City of Denton, Texas  
(Resolution No. 91-073).

BY:

Paul Williamson  
Paul Williamson  
Real Estate Manager

**AFTER RECORDING RETURN TO:**  
**UTILITIES & CIP ENGINEERING**  
901-A Texas Street  
Denton, Texas 76209  
Attention: Paul Williamson

F:\USBDATA\ZADEH\Denton Heidary Partnership\Subsurface Public Utility Easement.Redline.100610.doc



**Arthur Surveying Co., Inc.**  
**Professional Land Surveyors**

P.O. Box 54 ~ Lewisville, Texas 75067  
Office: (972) 221-9439 ~ Fax: (972) 221-4675

**EXHIBIT A**  
**870 SQUARE FEET**  
**CITY OF DENTON, DENTON COUNTY, TEXAS**

**BEING** all that certain lot, tract or parcel of land situated in the M.E.P. & P. R.R. Company Survey, Abstract Number 950, City of Denton, Denton County, Texas, and being a part of that certain tract of land described in deed to Dariush H. Heidary, M.D., recorded in Volume 2960, Page 287 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

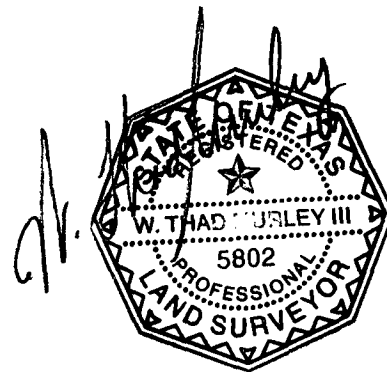
**BEGINNING** at a 5/8 inch iron rod found at the southwest corner of Lot 1, Block 1, Achievers Gymnastic Addition, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet R, Page 116 of the Plat Records of Denton County, Texas, and also being in the north line of said Heidary tract;

**THENCE** South 32 degrees 42 minutes 19 seconds East, over, across and through said Heidary tract, a distance of 28.99 feet to a point for corner in the north line of ERI-Denton 38 Land, L.P., recorded under Document Number 2008-10865 of the Real Property Records of Denton County, Texas;

**THENCE** South 88 degrees 41 minutes 29 seconds West, with the north line of said ERI-Denton 38 Land tract, a distance of 35.15 feet to a point for corner thereof;

**THENCE** North 32 degrees 42 minutes 19 seconds West, over, across and through said Heidary tract, a distance of 28.99 feet to a point for corner in the south line of that certain tract of land described in deed to ERI-Denton 38 Land, L.P., recorded under Document Number 2006-121570 of the Real Property Records of Denton County, Texas;

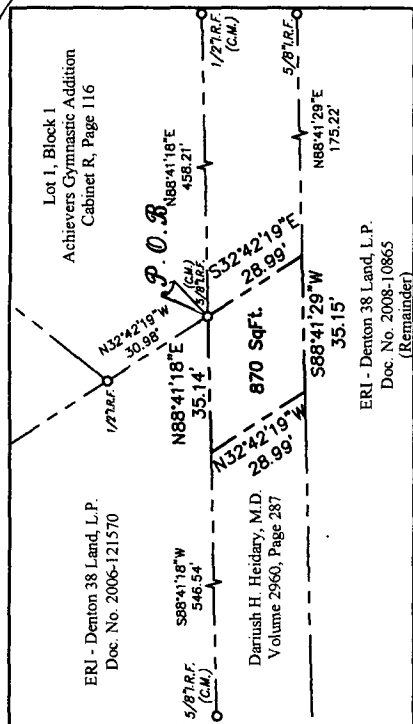
**THENCE** North 88 degrees 41 minutes 18 seconds East, with the south line of said ERI-Denton 38 Land tract (2006-121570), a distance of 35.14 feet to the **POINT OF BEGINNING**, and containing 870 square feet of land, more or less.





150 0 150 Feet

Bearings shown are based on the City of Denton GIS network.



Lot 1, Block A  
Action Carpet Addition  
Cabinet N, Page 355

Lot 1, Block I  
Achievers Gymnastic Addition  
Cabinet R, Page 116

ERI - Denton 38 Land, L.P.  
Doc. No. 2006-121570

SEE DETAIL

ERI - Denton 38 Land, L.P.  
Doc. No. 2008-10865  
(Remainder)

Darius H. Heidary, M.D.  
Volume 2960, Page 287

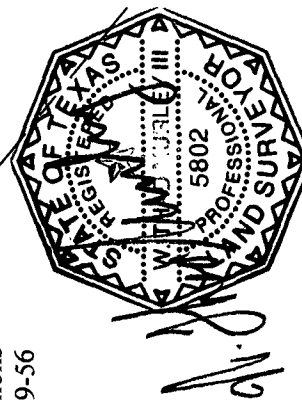
**EXHIBIT B**  
870 Square Feet

in the  
M.E.P. & C. R.R. Company Survey  
Abstract Number 950  
City of Denton  
Denton County, Texas

-- 2010 --

Lot 1, Block I  
Denton Commons  
Doc. No. 2009-56

IH-35E  
SERVICE ROAD  
(VARIABLE WIDTH R.O.W.)

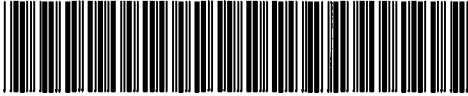


**Arthur Surveying Co., Inc.**  
Professional Land Surveyors

972-221-9439 ~ Fax 972-221-4675  
220 Elm Street, Suite 200 ~ P.O. Box 54  
Lewisville, Texas 75067



Denton County  
Cynthia Mitchell  
County Clerk  
Denton, Tx 76202



70 2010 00111945

Instrument Number: 2010-111945

Recorded On: November 08, 2010

As  
Easement

Parties: HEIDARY MD DARIUSH H  
To

Billable Pages: 6  
Number of Pages: 6

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Easement	31.00
Total Recording:	31.00

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2010-111945  
Receipt Number: 738333  
Recorded Date/Time: November 08, 2010 01:37:21P  
User / Station: H Dunn - Cash Station 4

**Record and Return To:**

UTILITIES & CIP ENGINEERING  
901 A TEXAS ST  
ATTN PAUL WILLIAMSON  
DENTON TX 76209



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*C. Mitchell*

County Clerk  
Denton County, Texas

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## **SUBSURFACE PUBLIC UTILITY EASEMENT**

**THE STATE OF TEXAS**

§

**KNOW ALL MEN BY THESE PRESENTS:**

**COUNTY OF DENTON**

§

§

THAT Dariush H. Heidary, M.D., (Grantor) in consideration of the sum of ONE DOLLAR and NO CENTS (\$1.00) and other good and valuable consideration in hand paid by the City of Denton, Texas, (Grantee), receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the City of Denton, Texas, subject to the conditions set forth herein, a perpetual easement for the subsurface use, liberty and privilege in, under and across the following described property, hereinafter referred to as the Easement Property, owned by Grantor and situated in Denton County, Texas, in the M.E.P. & P.R.R. Survey, Abstract No. 950.

### **EASEMENT PROPERTY AREA DESCRIBED IN EXHIBIT "A"**

### **AND ILLUSTRATED IN EXHIBIT "B"**

### **BOTH ATTACHED HERETO AND MADE A PART HEREOF**

For the purposes of constructing, reconstructing, installing, repairing, and perpetually maintaining subsurface public utilities in, under and across said Easement Property. The initial installation of any and all subsurface public utility infrastructure shall be placed within steel sleeve encasement(s) with a maximum top of casing pipe(s) elevation of 634 feet Mean Sea Level, which is intended to be at least four (4) feet below the surface of the Easement Property as it exists on the date this instrument is executed. This being a subsurface easement, no permanent rights of surface access are granted; provided however, steel encasement pipe(s) may be constructed by the open-cut method until such time that paving improvements are present upon the Easement Property. Thereafter any

future utility installations, operations or maintenance activities shall be restricted to subsurface use only, at or below the MSL elevation stipulated herein.

Grantor hereby further reserves to itself, its successors and assigns, all rights in and to the Easement Property and the right to use and enjoy the surface and subsurface thereof for any and all purposes whatsoever, so long as such use does not unreasonably interfere with the rights herein granted to Grantee. Grantor specifically reserves the right of passage over the Easement Property including the right to place and maintain pavement improvements over the Easement Property.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness my hand, this 21 day of October, 2010.

By:

Dariush H. Heidary, M.D.

#### ACKNOWLEDGMENT

THE STATE OF Georgia §  
COUNTY OF Chatham §

This instrument was acknowledged before me on this 21 day of October, 2010, by Dariush H. Heidary, M.D.

Quene J. Lee  
Notary Public, in and for the State of Georgia  
My Commission Expires: 6-14-2011

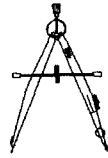
Accepted this 2<sup>ND</sup> day of NOVEMBER, 2010 for the City of Denton, Texas  
(Resolution No. 91-073).

BY:

Paul Williamson  
Paul Williamson  
Real Estate Manager

**AFTER RECORDING RETURN TO:**  
**UTILITIES & CIP ENGINEERING**  
901-A Texas Street  
Denton, Texas 76209  
Attention: Paul Williamson

F:\USBDATA\ZADEH\Denton Heidary Partnership\Subsurface Public Utility Easement.Redline.100610.doc



**Arthur Surveying Co., Inc.**  
**Professional Land Surveyors**

P.O. Box 54 ~ Lewisville, Texas 75067  
Office: (972) 221-9439 ~ Fax: (972) 221-4675

**EXHIBIT A**  
**870 SQUARE FEET**  
**CITY OF DENTON, DENTON COUNTY, TEXAS**

**BEING** all that certain lot, tract or parcel of land situated in the M.E.P. & P. R.R. Company Survey, Abstract Number 950, City of Denton, Denton County, Texas, and being a part of that certain tract of land described in deed to Dariush H. Heidary, M.D., recorded in Volume 2960, Page 287 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

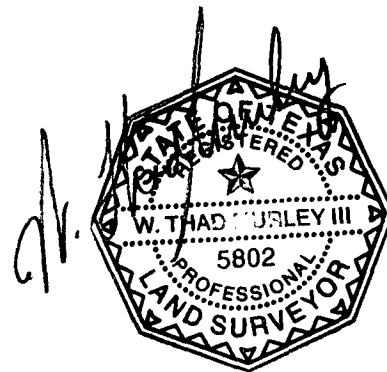
**BEGINNING** at a 5/8 inch iron rod found at the southwest corner of Lot 1, Block 1, Achievers Gymnastic Addition, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet R, Page 116 of the Plat Records of Denton County, Texas, and also being in the north line of said Heidary tract;

**THENCE** South 32 degrees 42 minutes 19 seconds East, over, across and through said Heidary tract, a distance of 28.99 feet to a point for corner in the north line of ERI-Denton 38 Land, L.P., recorded under Document Number 2008-10865 of the Real Property Records of Denton County, Texas;

**THENCE** South 88 degrees 41 minutes 29 seconds West, with the north line of said ERI-Denton 38 Land tract, a distance of 35.15 feet to a point for corner thereof;

**THENCE** North 32 degrees 42 minutes 19 seconds West, over, across and through said Heidary tract, a distance of 28.99 feet to a point for corner in the south line of that certain tract of land described in deed to ERI-Denton 38 Land, L.P., recorded under Document Number 2006-121570 of the Real Property Records of Denton County, Texas;

**THENCE** North 88 degrees 41 minutes 18 seconds East, with the south line of said ERI-Denton 38 Land tract (2006-121570), a distance of 35.14 feet to the **POINT OF BEGINNING**, and containing 870 square feet of land, more or less.

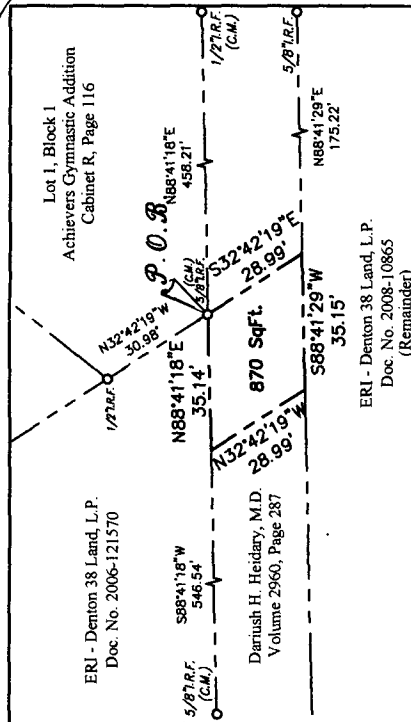






150 0 150 Feet

Bearings shown are based on the City of Denton GIS network.



Lot 1, Block A  
Action Carpet Addition  
Cabinet N, Page 355

Lot 1, Block 1  
Achievers Gymnastic Addition  
Cabinet R, Page 116

ERI - Denton 38 Land, L.P.  
Doc. No. 2006-121570

SEE DETAIL

ERI - Denton 38 Land, L.P.  
Doc. No. 2008-10865  
(Remainder)

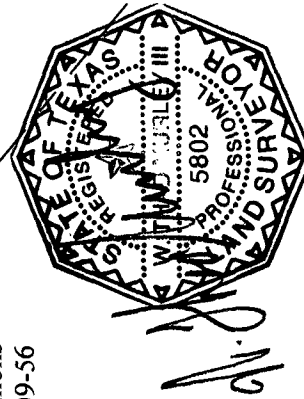
Darius H. Heidary, M.D.  
Volume 2960, Page 287

**EXHIBIT B**  
870 Square Feet

in the  
M.E.P. & C. R.R. Company Survey  
Abstract Number 950  
City of Denton  
Denton County, Texas

Lot 1, Block 1  
Denton Commons  
Doc. No. 2009-56

IH-35E  
SERVICE ROAD  
(VARIABLE WIDTH R.O.W.)



**Arthur Surveying Co., Inc.**  
Professional Land Surveyors

972-221-9439 ~ Fax 972-221-4675  
220 Elm Street, Suite 200 ~ P.O. Box 54  
Lewisville, Texas 75067

-- 2010 --

STATE OF TEXAS :

2114

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON :

THAT WE, G. A. Godfrey and wife Sue R. Godfrey, of Denton County, Texas, for and in consideration of the sum of One Dollar cash in hand paid and other good and valuable consideration including the right to connect service lines to the hereinafter described water pipe line without payment of the linear frontage foot charge provided by City of Denton Ordinance No. 56-06, have GRANTED AND CONVEYED and by these presents do GRANT AND CONVEY unto the said City of Denton, Texas, its successors and assigns, and the public, for a water pipe line together with a perpetual easement thereon for the benefit of the said City of Denton, Texas, its successors and assigns, and to its agents, officers and employees, perpetually for said water pipe line, the right to construct, reconstruct and perpetually maintain said water pipe line in, upon and across the following described property and to the said City of Denton, we hereby give the free and uninterrupted right of ingress, regress and egress of said water pipe line, said tract being more particularly described as follows:

Being a part of a tract of land out of the M.E.P. and P.R.R. Co. Survey, Abstract No. 950 as conveyed by Harold L. Goodman and wife Tillie L. Goodman and C. P. Smith and wife Gwendolyn Smith to G. A. Godfrey and wife Sue R. Godfrey by deed recorded in Volume 429, Page 501 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the intersection of the east line of the G. A. Godfrey tract and the south right-of-way of U. S. Highway No. 77 at approximate Highway Station 1044 + 55, said beginning point being the northeast corner of a tract of the G. A. Godfrey property bordered on the north by U. S. Highway 77 and on the east by a county road;

THENCE south with the west line of said county road and the east line of the G. A. Godfrey tract a distance of 193 feet, more or less, to a point for a corner;

THENCE west 20 feet. more or less. to a point for a corner:

THENCE north parallel to and 20 feet from the west line of said county road and the east line of the G. A. Godfrey tract a distance of 193 feet, more or less, to a point for a corner in the south right-of-way of Highway 77;

THENCE in an easterly direction with the south right-of-way of U. S. Highway 77 and the north line of the G. A. Godfrey tract a distance of 20 feet, more or less, to the place of beginning.

This easement contains a strip of land 20 feet wide and approximately 193 feet long lying along and adjacent to the west line of a county road.

TO HAVE AND TO HOLD the same perpetually to the City of Denton, Texas, and the public, and to its successors and assigns, together with the right and privilege at any and all times to enter said premises for the purpose of constructing, reconstructing and maintaining said water pipe line.

WITNESS OUR HANDS this 26 day of March A.D. 1959.

G. A. Godfrey  
Sue R. Godfrey Sue R. Godfrey

\*\*\*\*\*

STATE OF TEXAS :

COUNTY OF DENTON :

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared G. A. Godfrey and Sue R. Godfrey, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Sue R. Godfrey, wife of the said G. A. Godfrey, having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Sue R. Godfrey, acknowledged such instrument to be her act and deed, and she x declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 26 day of March A.D. 1959.



W. D. Burtchall  
 Notary Public in and for  
 Denton County, Texas

FILED FOR RECORD: 27 day of March A.D. 1959 at 4:00 o'clock P. M.  
 RECORDED: 8 day of April A.D. 1959 at 9:10 o'clock A. M.  
 By: \_\_\_\_\_ Deputy A.J. Barnett, Clerk County Court,  
 Denton County, Texas

## LEGAL DESCRIPTION

**BEING** a tract of land situated in the Daniel Lombard Survey, Abstract No. 784, City of Denton, Denton County, Texas, and being part of a called 4.4753 acre tract of land described in Special Warranty Deed with Vendor's Lien to Dariush H. Heidary, M.D. recorded in Volume 2960, Page 287 of the Deed Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at an aluminum disk stamped "TXDOT" found in the east line of Lot 1, Block 1 Achievers Gymnastic Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume R, Page 116 of the Plat Records of Denton County, Texas; from said point the northeast corner of said Lot 1, and being a point in the southwest right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) bears North 01°46'30" East, a distance of 45.07 feet;

**THENCE** departing the said east line of Lot 1, Block 1, South 51°14'56" East, a distance of 40.41 feet to a point for corner in the northwest line of Lot 1, Block A, Denton Commons, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2018-6 of the Official Public Records of Denton, Texas;

**THENCE** South 6°49'56" East, along the said northwest line of Lot 1, Block A, a distance of 0.48 feet to a point at the beginning of a non-tangent curve to the right having a central angle of 24°43'00", a radius of 54.94 feet, a chord bearing and distance of South 5°29'27" West, 23.52 feet;

**THENCE** continuing along said northwest line of Lot 1, Block A, in a southwesterly direction, with said curve to the right, an arc distance of 23.70 feet to a point for corner;

**THENCE** North 51°14'56" West, a distance of 38.60 feet to a point for corner in the said east line of Lot 1, Block 1; from said point a 1/2-inch iron rod found for the southeast corner of said Lot 1, Block 1 bears South 1°46'30" West, a distance of 28.26 feet;


**THENCE** North 1°46'47" East, along the said east line of Lot 1, Block 1, a distance of 25.03 feet to the **POINT OF BEGINNING** and containing 811 square feet or 0.0186 acres of land.

## NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
DANIEL LOMBARD SURVEY, ABSTRACT NO. 784  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

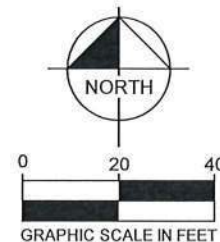
Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	8/25/2020	061024039	1 OF 2



# INTERSTATE HIGHWAY NO. 35-E

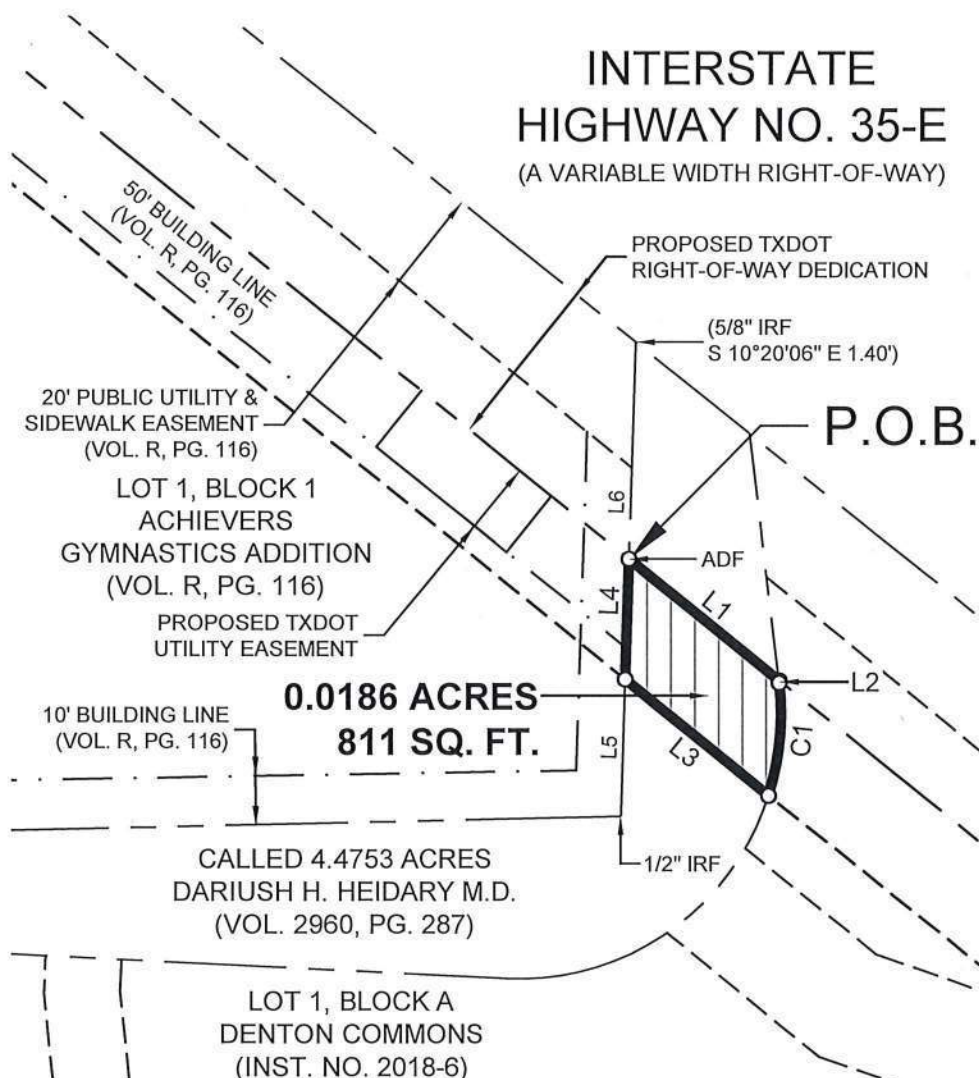
(A VARIABLE WIDTH RIGHT-OF-WAY)



LINE TABLE		
NO.	BEARING	LENGTH
L1	S51°14'56"E	40.41'
L2	S06°49'56"E	0.48'
L3	N51°14'56"W	38.60'
L4	N01°46'47"E	25.03'
L5	S01°46'15"W	28.26'
L6	N01°46'30"E	45.07'

## LEGEND

P.O.B. = POINT OF BEGINNING  
 IRF = IRON ROD FOUND  
 ADF = ALUMINUM DISK  
 STAMPED "TXDOT" FOUND  
 PG. = PAGE  
 VOL. = VOLUME  
 INST. NO. = INSTRUMENT NUMBER



CURVE TABLE					
NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	24°43'00"	54.94'	23.70'	S05°29'27"W	23.52'

## NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley*  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
 DANIEL LOMBARD SURVEY, ABSTRACT NO. 784  
 CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	8/25/2020	061024039	2 OF 2



**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 99**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1790+05 LT to Sta 1796+30 LT

Existing Easement

Volume R, Page 116

PART OF LOT 1, BLOCK 1  
ACHIEVERS GYMNASTIC ADDITION  
DANIEL LOMBARD SURVEY, ABSTRACT NO. 784  
CITY OF DENTON, DENTON COUNTY, TEXAS

Cab R pg 116

STATE OF TEXAS XX  
COUNTY OF DENTON XX

OWNERS CERTIFICATE AND DEDICATION

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

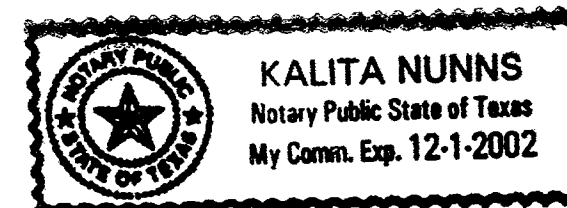
THAT WE, STEVE NUNNO AND FRANK KUDLAC, GENRAL PARTNERS OF S & F PERFORMANCE, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREIN DESCRIBED PROPERTY AS LOT 1, BLOCK 1, ACHEIVERS GYMNASIC CENTER ADDITION, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS, AND DOES HEREBY DEDICATE TO THE PUBLIC USE FOREVER THE STREET RIGHT-OF-WAY AND EASEMENTS AS SHOWN HEREON.

FRANK KUDLAC (GENERAL PARTNER)  
STEVE NUNNO (GENERAL PARTNER)

STATE OF TEXAS XX  
COUNTY OF DENTON XX

BEFORE ME, THE UNDERSIGNED AUTHORITY IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED STEVE NUNNO AND FRANK KUDLAC, KNOWN TO ME TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS, THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED;

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 28 DAY OF September 1999.



Kalita Nunns  
NOTARY PUBLIC, STATE OF TEXAS  
PRINTED NAME OF NOTARY

WHEREAS WE, STEVE NUNNO, AND FRANK KUDLAC, GENARAL PARTNERS OF S & F PERFORMANCE, LTD. ARE THE OWNERS OF A 2.00 ACRE TRACT OF LAND LYING AND BEING SITUATED IN THE DANIEL LOMBARD SURVEY ABSTRACT NUMBER 784. IN THE CITY OF DENTON. DENTON COUNTY TEXAS, AND BEING A PART OF A REMAINDER PORTION OF A CALLED 6.393 ACRE TRACT OF LAND AS DESCRIBED IN A DEED TO PAUL A LOCKHART AS RECORDED IN VOLUME 658, PAGE 676 OF THE DEED RECORDS OF DENTON COUNTY TEXAS, SAID 2.00 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIN FOUND FOR THE NORTHERN MOST CORNER OF THE HEREIN DESCRIBED TRACT, AND THE EASTERN MOST CORNER OF A LOT 1, BLOCK A, OF ACTION CARPET ADDITION AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN CABINET N, PAGE 335, PLAT RECORDS OF DENTON COUNTY TEXAS; SAID IRON PIN ALSO BEING IN THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 35-E (SERVICE ROAD);

THENCE SOUTH 51 DEGREES 04 MINUTES 00 SECONDS EAST, ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID INTERSTATE HIGHWAY 35-E (SERVICE ROAD), A DISTANCE OF 323.12 FEET TO AN IRON PIN FOUND FOR THE NORTHERN MOST NORTHWEST CORNER OF A TRACT OF LAND DESCRIBED IN A DEED TO DARIUSH, H. HEIDARY M.D. AS RECORDED IN VOLUME 2950, PAGE 287, OF THE REAL PROPERTY RECORDS OF DENTON COUNTY TEXAS,

THENCE SOUTH 02 DEGREES 13 MINUTES 57 SECONDS WEST, ALONG AND NEAR A FENCE AND WITH THE WEST BOUNDARY LINE OF SAID HEIDARY TRACT, A DISTANCE OF 97.37 FEET TO AN IRON ROD FOUND FOR AN INTERIOR ELL CORNER OF SAID HEIDARY TRACT;

THENCE SOUTH 89 DEGREES 23 MINUTES 28 SECONDS WEST, ALONG AND NEAR A FENCE AND WITH THE NORTH BOUNDARY LINE OF SAID HEIDARY TRACT, A DISTANCE OF 459.54 FEET TO AN IRON PIN SET FOR A CORNER AT THE SOUTHEAST CORNER OF THE REMAINDER PORTION OF A TRACT OF LAND AS DESCRIBED IN A DEED TO JOHN H. THOMAS, RECORDED IN VOLUME 293, PAGE 134, DEED RECORDS, DENTON COUNTY TEXAS;

THENCE NORTH 32 DEGREES 15 MINUTES 00 SECONDS WEST, ALONG AND NEAR A FENCE AND WITH THE EAST LINE OF SAID THOMAS TRACT, A DISTANCE OF 28.54 FEET TO AN IRON PIN FOUND FOR THE SOUTHERN MOST CORNER OF SAID LOT 1;

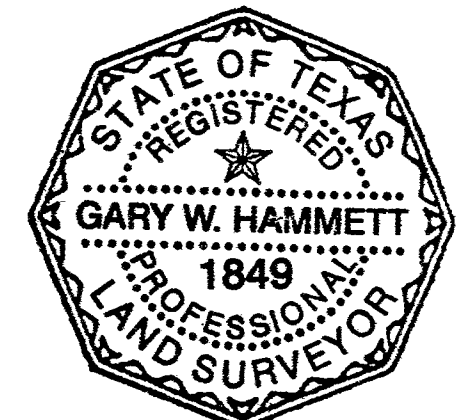
THENCE NORTH 38 DEGREES 56 MINUTES 42 SECONDS EAST, WITH THE SOUTHEASTERLY LINE OF SAID LOT 1, A DISTANCE OF 361.43 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.00 ACRES OF LAND.

SURVEYOR'S CERTIFICATE

KNOW THESE MEN BY THESE PRESENTS:

THAT, I, GARY W. HAMMETT, REGISTERED PROFESSIONAL LAND SURVEY, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND, AND THAT THE IRON PINS SHOWN THEREON WERE PLACED UNDER MY PERSONAL SUPERVISION IN ACCORDANCE WITH THE ORDINANCES OF THE CITY OF DENTON, TEXAS.

GARY W. HAMMETT DATE R.P.L.S. #1849



CERTIFICATE OF APPROVAL  
APPROVED THIS 13th DAY OF December, A.D. 1999, BY THE DEVELOPMENT REVIEW COMMITTEE OF THE CITY OF DENTON, TEXAS.  
Jane Richardson, Assistant City Secretary  
Mark D. Duvall, Chairman

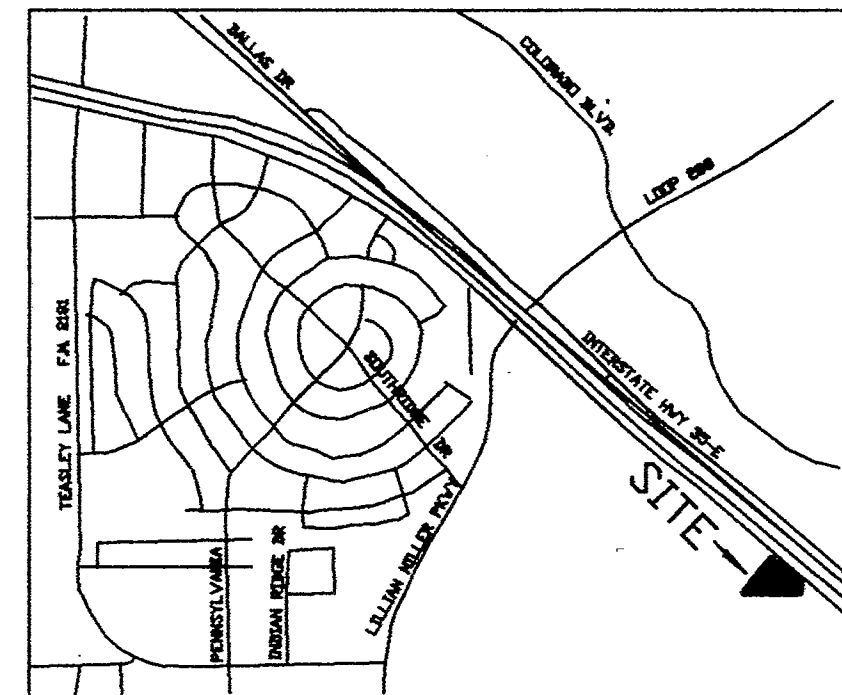
CERTIFICATE OF APPROVAL  
APPROVED THIS DAY OF , A.D. 1999, BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF DENTON, TEXAS.  
Jim Engelbrecht, Chairman  
Jane Richardson, Assistant City Secretary  
Jennifer Walters, City Secretary

FINAL PLAT  
OF  
ACHIEVERS GYMNASIC ADDITION  
LOT 1, BLOCK 1,  
DENTON COUNTY, TEXAS  
2.00 ACRES  
ZONED L(C) 19  
IN THE  
DANIEL LOMBARD SURVEY  
ABSTRACT No. 784  
CITY OF DENTON  
DENTON COUNTY, TEXAS

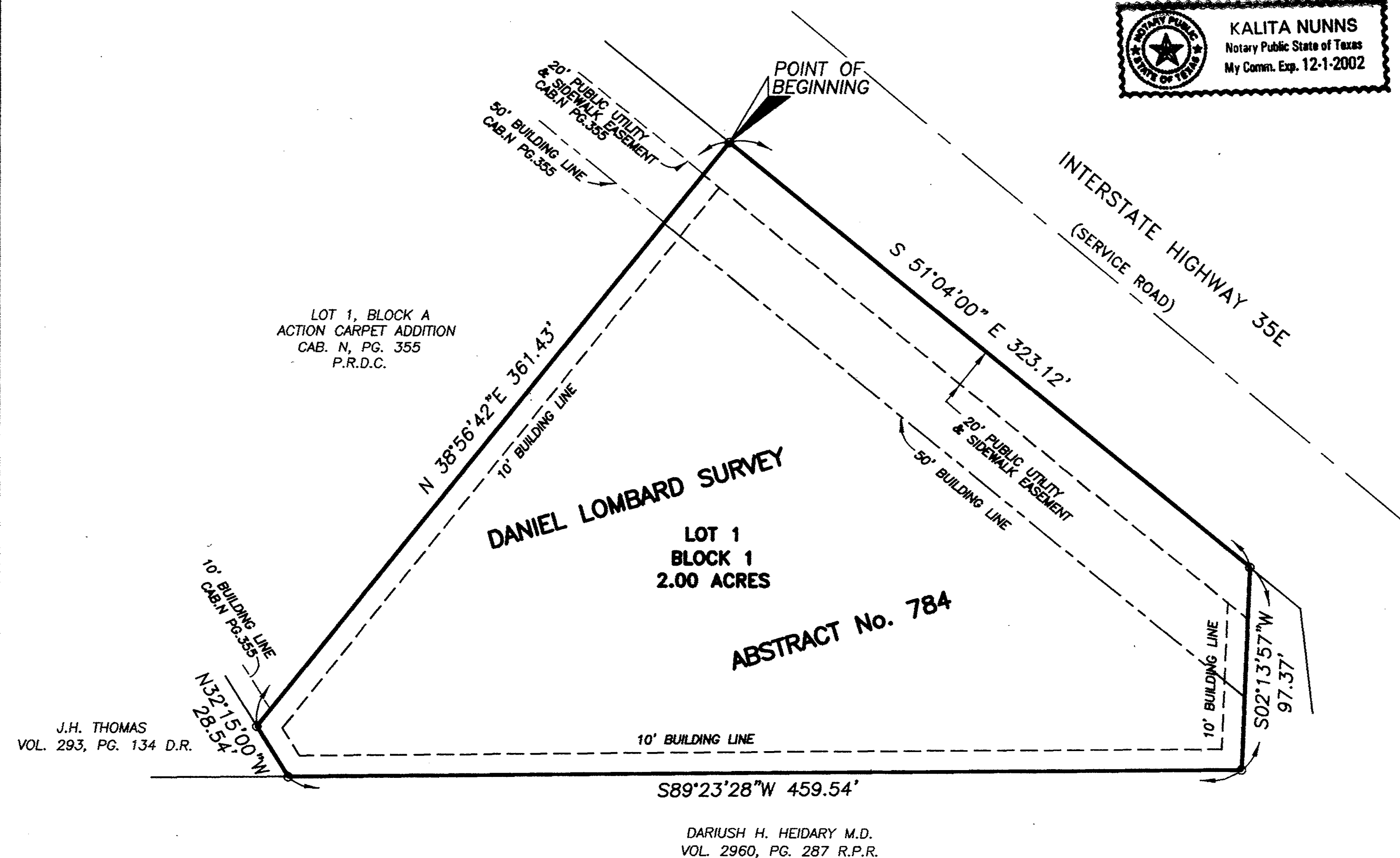
Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK

On Dec 15 1999  
At 2:50pm

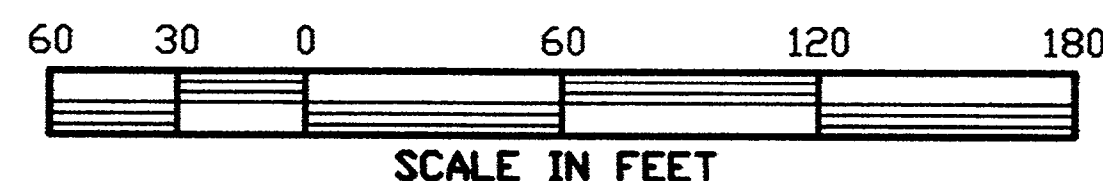
Doc/Num : 99-R0125552  
Doc/Type : PLA  
Recording : 20.00  
Doc/Mgmt : 6.00  
Receipt #: 49524  
Deputy - FRANCESKA



VICINITY MAP  
N.T.S.



BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS WITHIN ZONE "X". AREAS DETERMINED TO BE OUTSIDE OF A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY F.I.R. MAP #48121C0387 E, WHICH BEARS AN EFFECTIVE DATE OF 4/2/97. NO SURVEYING WAS DONE TO DETERMINE THIS FLOOD ZONE.



DATE	REVISIONS	BY:	DWN. MAL	SCALE 1"=60'	OWNER: S & F PERFORMANCE, LTD. 268 SOUTH I-35, DENTON, TEXAS 76201 (940) 484-4900	SURVEYOR: GARY W. HAMMETT 223 W. HICKORY DENTON, TEXAS 76201 (940) 387-0506	SHEET 1 OF 1	JOB No. 31220	HAMMETT & NASH, INC. ENGINEERS & SURVEYORS 223 W. HICKORY, DENTON, TEXAS 940-387-0506/76201 fax 940-565-0436 www.ham1nash@aolmail.net
			CKD.	DATE AUG 99					

**ELECTRIC EASEMENT****000654**

THE STATE OF TEXAS, §  
 COUNTY OF DENTON §

KNOW ALL MEN BY THESE PRESENTS:

THAT Steve Nunno and Frank Kudlac, General Partners of S & F Performance, Ltd., (Grantors) of Denton County, Texas, in consideration of the sum of ONE DOLLAR AND NO CENTS (\$1.<sup>00</sup>) and other good and valuable consideration in hand paid by the City of Denton, Texas, (Grantee) receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by Grantors and situated in Denton County, Texas, in the Daniel Lombard Survey, Abstract No. 784.

All that certain lot, tract or parcel of land lying and being situated in the Daniel Lombard Survey, Abstract No. 784 in Denton County, Texas, and being part of Lot 1, Block 1, Achievers Gymnastic Addition, an addition to the City and County of Denton, Texas, according to the plat thereof recorded in Cabinet R, Page 116 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

COMMENCING from the northwest corner of said Achievers Gymnastic Addition, same being the northeast corner of Lot 1, Block A, Action Carpet Addition, an addition to the city and county of Denton, Texas, according to the plat thereof recorded in Cabinet N, Page 355 of the Plat Records of Denton County, Texas, said point being on the southwesterly right-of-way of Interstate Highway 35-E (service road);

THENCE South 38° 56' 00" West with the southeast line of said Action Carpet Addition and the northwest line of said Achievers Gymnastic Addition, a distance of 208.49 feet to the POINT OF BEGINNING of the herein described tract;

THENCE South 51° 04' 00" East, a distance of 28.00 feet to a point for corner;

THENCE North 38° 56' 00" East, a distance of 35.49 feet to a point for corner;

THENCE South 51° 04' 42" East, a distance of 5.00 feet to a point for corner;

THENCE South 38° 56' 00" West, a distance of 40.49 feet to a point for corner;

THENCE North 51° 04' 00" West, a distance of 33.00 feet to a point for corner on the southeast line of said Action Carpet Addition and the northwest line of said Achievers Gymnastic Addition;

THENCE North 38° 56' 00" East, with the southeast line of said Action Carpet Addition and the northwest line of said Achievers Gymnastic Addition, a distance of 5.00 feet to the POINT OF BEGINNING and containing in all 342.45 square feet of land or 0.01 acres of land.

And it is further agreed that the City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining electric utilities in, along, upon and across said premises, with the right and privilege at all times of the grantees herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to said electric facilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

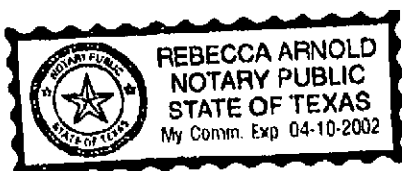
Witness our hands, this the 15 day of December, 1999.

By: Steve Nunno  
Steve Nunno (General Partner)

By: Frank Kudlac  
Frank Kudlac (General Partner)

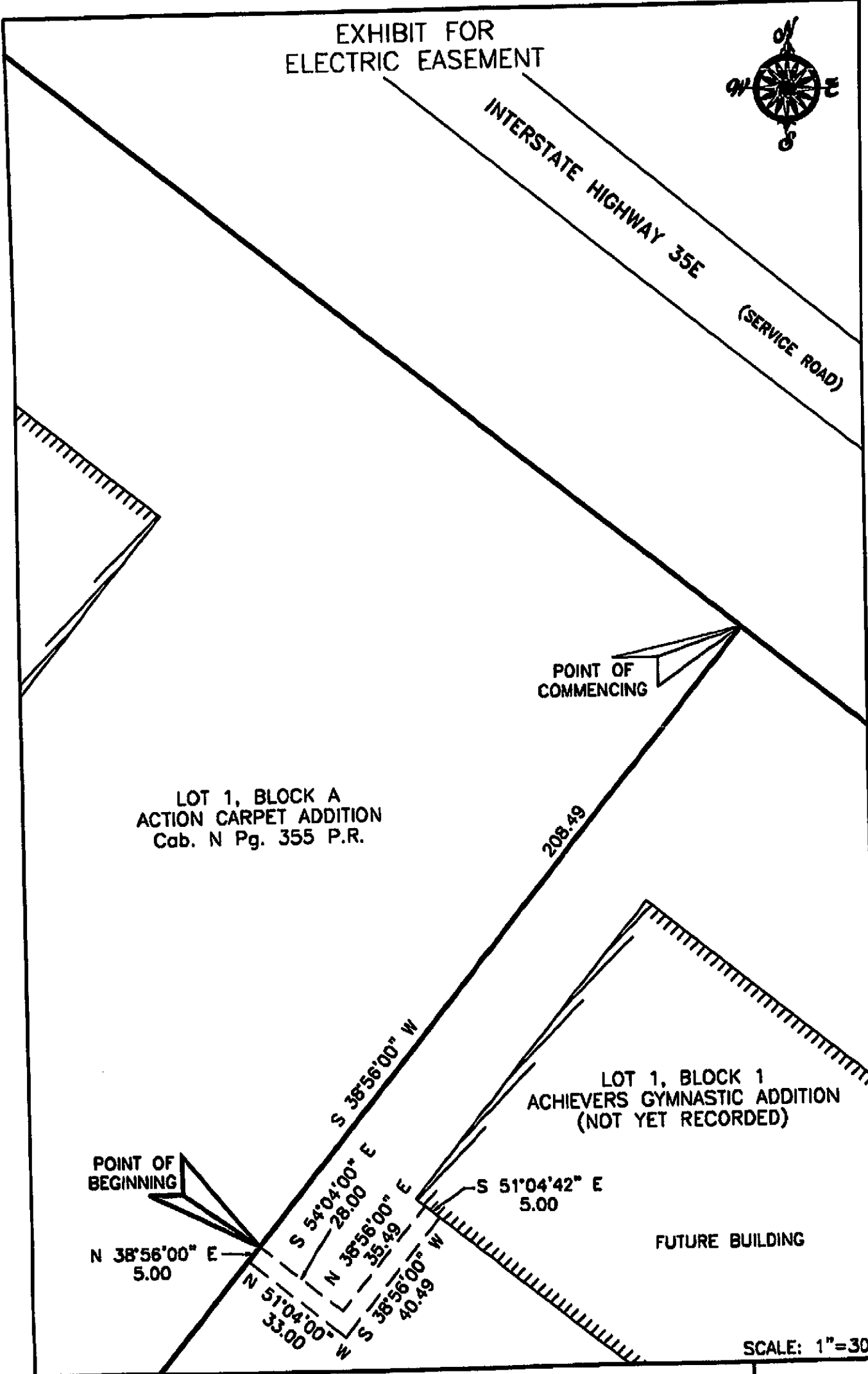
THE STATE OF TEXAS §  
COUNTY OF Denton §

This instrument was acknowledged before me on this the 15 day of Dec, 1999 by Steve Nunno.



Rebecca Arnold  
Notary Public, in and for the  
State of OKLAHOMA.

NON-CERTIFIABLE COPY



City of Denton  
Engineering & Transportation Department  
Right-of-Way Division

SCALE: 1"=30'
99-00000
Choa
Achiever's
12/1/99

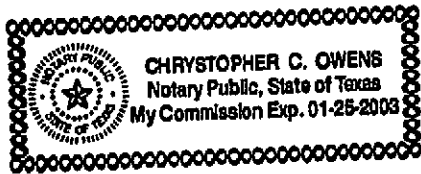


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VOL 4498 PG 0638

THE STATE OF TEXAS   §  
COUNTY OF DENTON   §

This instrument was acknowledged before me on this the  
1<sup>st</sup> day of DECEMBER, 1999 by Frank Kudlac.



Christopher C. Owens  
Notary Public, in and for the  
State of Texas.

Accepted this the 27<sup>th</sup> day  
of DECEMBER 1999 for the City of Denton, Texas  
(Resolution No. 91-073).

BY: Paul Williamson  
Paul Williamson  
Right-of-Way Agent

RETURN TO: City of Denton  
221 N. Elm Street  
Denton, Texas 76201  
ATTN: Paul Williamson

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Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY  
CLERK

On Jan 04 2000  
At 10:49am

Doc/Num : 00-R0000654  
Doc/Type : EAS  
Recording: 11.00  
Doc/Mgmt: 6.00  
Receipt #: 309  
Deputy - Christy

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Daniel Lombard Survey, Abstract No. 784, City of Denton, Denton County, Texas, and being part of Lot 1, Block 1 Achievers Gymnastic Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume R, Page 116 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at an aluminum disk stamped "TXDOT" found in the east line of said Lot 1; from said point the northeast corner of said Lot 1, and being a point in the southwest right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) bears North 01°46'30" East, a distance of 45.07 feet;

**THENCE** South 1°46'30" West, along the said east line of Lot 1, a distance of 25.04 feet to a point for corner; from said point a 1/2-inch iron rod found for the southeast corner of said Lot 1 bears South 1°46'30" West, a distance of 28.26 feet;

**THENCE** departing the said east line of Lot 1, North 51°14'56" West, a distance of 62.48 feet to a point for corner;

**THENCE** the following three (3) calls:

North 51°20'46" West, a distance of 131.08 feet to a point for corner;  
 North 47°19'58" West, a distance of 100.05 feet to a point for corner;  
 North 51°20'46" West, a distance of 71.10 feet to a point for corner in the northwest line of said Lot 1;

**THENCE** North 38°29'32" East, along the said northwest line of Lot 1, a distance of 20.00 feet to a point for corner;

**THENCE** departing the said northwest line of Lot 1, South 51°20'46" East, a distance of 71.66 feet to a point for corner;

**THENCE** the following three (3) calls:


South 47°20'31" East, a distance of 100.24 feet to a point for corner;  
 South 51°20'46" East, a distance of 130.40 feet to a point for corner;  
 South 51°14'56" East, a distance of 47.44 feet to the **POINT OF BEGINNING** and containing 7,144 square feet or 0.1640 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



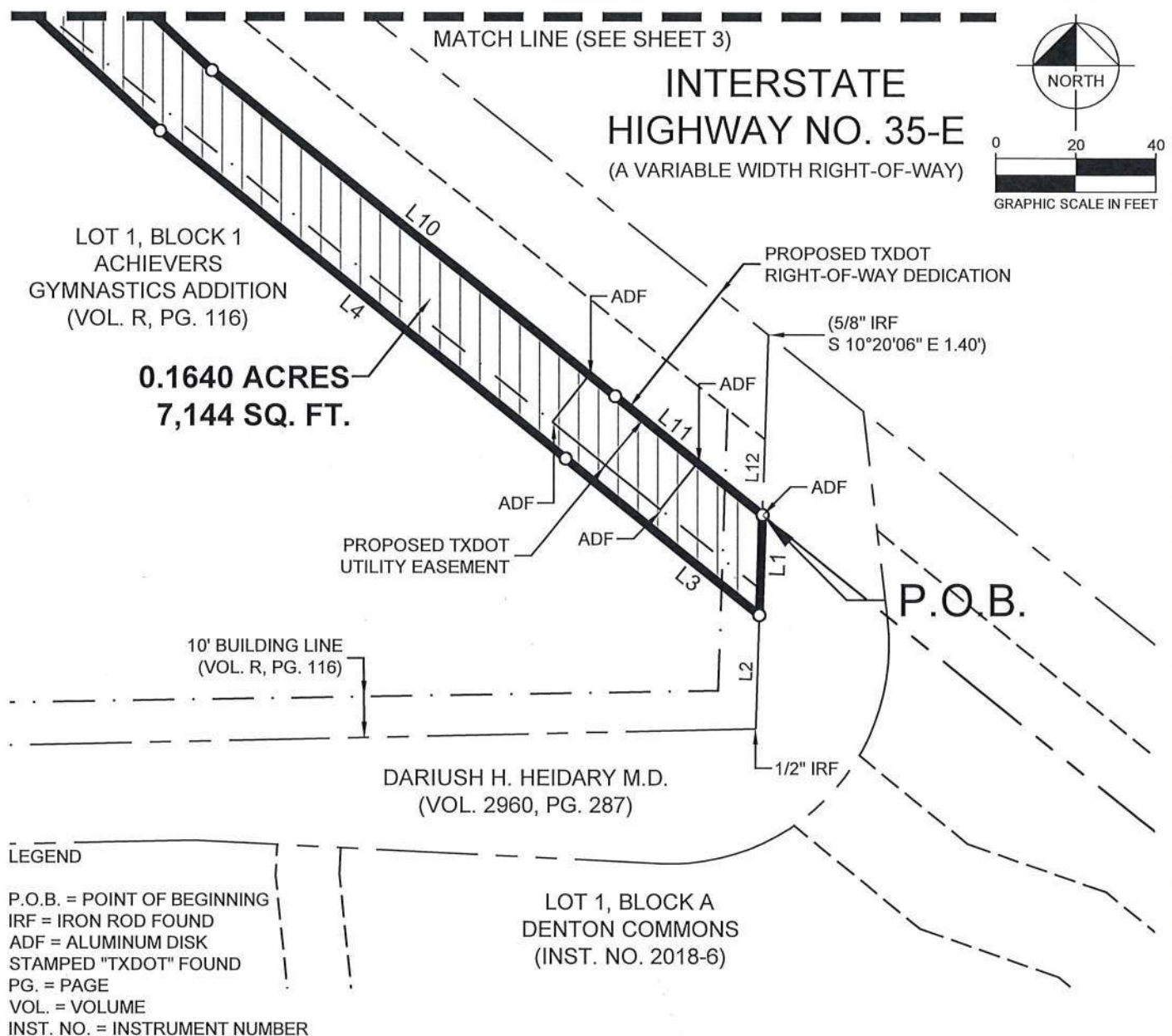
WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1, BLOCK 1  
 ACHIEVERS GYMNASIAC ADDITION  
 DANIEL LOMBARD SURVEY, ABSTRACT NO. 784  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	8/25/2020	061024039	1 OF 3

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*[Signature]*

MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
PART OF LOT 1, BLOCK 1  
ACHIEVERS GYMNASTIC ADDITION  
DANIEL LOMBARD SURVEY, ABSTRACT NO. 784  
CITY OF DENTON, DENTON COUNTY, TEXAS

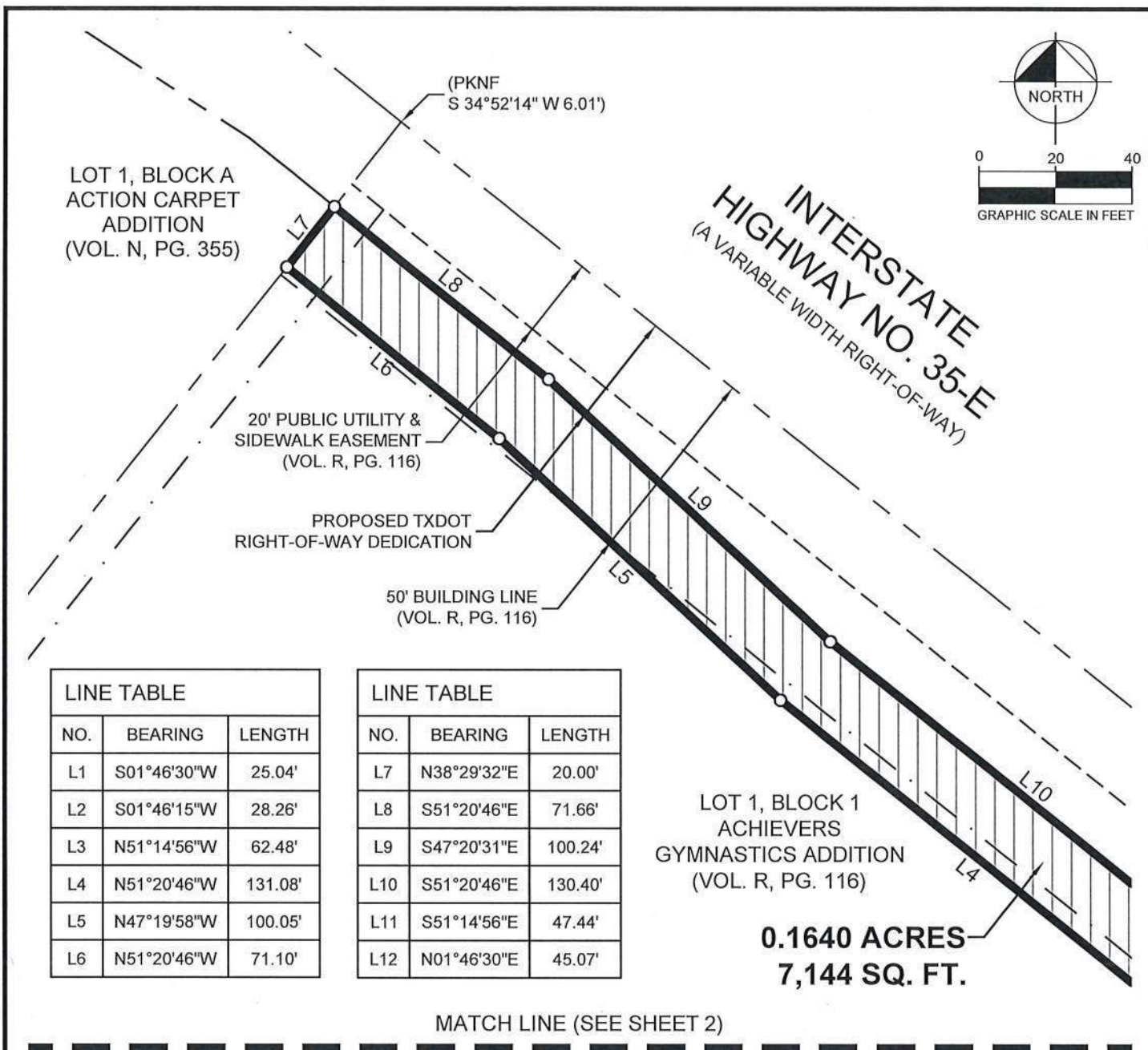
**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	8/25/2020	061024039	2 OF 3





LINE TABLE		
NO.	BEARING	LENGTH
L1	S01°46'30"W	25.04'
L2	S01°46'15"W	28.26'
L3	N51°14'56"W	62.48'
L4	N51°20'46"W	131.08'
L5	N47°19'58"W	100.05'
L6	N51°20'46"W	71.10'

LINE TABLE		
NO.	BEARING	LENGTH
L7	N38°29'32"E	20.00'
L8	S51°20'46"E	71.66'
L9	S47°20'31"E	100.24'
L10	S51°20'46"E	130.40'
L11	S51°14'56"E	47.44'
L12	N01°46'30"E	45.07'

## LEGEND

P.O.B. = POINT OF BEGINNING  
 IRF = IRON ROD FOUND  
 ADF = ALUMINUM DISK  
 STAMPED "TXDOT" FOUND  
 PG. = PAGE  
 VOL. = VOLUME  
 INST. NO. = INSTRUMENT NUMBER

WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1, BLOCK 1  
 ACHIEVERS GYMNASTIC ADDITION  
 DANIEL LOMBARD SURVEY, ABSTRACT NO. 784  
 CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

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 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	8/25/2020	061024039	3 OF 3



**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 103**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1804+41 RT to Sta 1807+22 RT

Existing Easement

Volume U, Page 556

PART OF LOT 1, BLOCK 1  
SOUTHERN HILLS PLAZA  
J. WORRALL SURVEY, ABSTRACT NO. 1433  
CITY OF DENTON, DENTON COUNTY, TEXAS

## EASEMENT

032575

THE STATE OF TEXAS,  
COUNTY OF DENTON

§  
§  
§

KNOW ALL MEN BY THESE PRESENTS:

THAT EPIC DEVELOPMENT, INC.

of Denton County, Texas, in consideration of the sum of one dollar (\$1.00) and no cents and other good and valuable consideration in hand paid by the City of Denton, Texas receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by them situated in Denton County, Texas in the J. White Survey, Abstract No. 1433

LEGAL DESCRIPTION  
UTILITY EASEMENT No. 4

BEING 10,220 square feet of land located in the J. WHITE SURVEY, Abstract No. 1433, Denton County, Texas, being a portion of a tract of land described in deed to Epic Development, Inc., recorded in Volume 3245, Page 699 of the Real Property Records of Denton County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at the intersection of the North right-of-way line of Interstate Highway No. 35-E (a variable width right-of-way) and the West right-of-way line of Southern Hills Boulevard (an 80 foot wide right-of-way) as shown by the plat recorded in Cabinet F, Page 125 of the Plat Records of Denton County, Texas, being in the South boundary line of said Epic tract;

THENCE N 51°00'00"W along the North right-of-way line of said Interstate Highway No. 35-E (a variable width right-of-way) and the South boundary line of said Epic tract, 16.00 feet to a point;

THENCE N 38°54'10"E, 453.19 feet to a point at the Beginning of a Curve to the Right;

THENCE NORTHEASTERLY, 186.32 feet along said Curve to the Right, having a radius of 2056.00 feet, a central angle of 05°11'32" and a chord bearing N 41°29'56"E, 186.26 feet to a point at the End of said Curve to the Right and the Beginning of a non-tangent Curve to the Left;

THENCE SOUTHEASTERLY, 16.00 feet along said non-tangent Curve to the Left, having a radius of 1456.00 feet, a central angle of 00°37'47" and a chord bearing S 45°33'53"E, 16.00 feet to a point in the West right-of-way line of said Southern Hills Boulevard (an 80 foot wide right-of-way);

THENCE along the West right-of-way line of said Southern Hills Boulevard (an 80 foot wide right-of-way) as follows:

SOUTHEASTERLY, 184.77 feet along a Curve to the Left, having a radius of 2040.00 feet, a central angle of 05°11'23" and a chord bearing S 41°29'51"W, 184.71 feet to a point at the End of said Curve to the Left;

S 38°54'10"W, 453.22 feet to the PLACE OF BEGINNING, containing 10,220 square feet of land.

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SEE EXHIBIT "A"

And it is further agreed that the said City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public utilities in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public facilities or any part thereof.

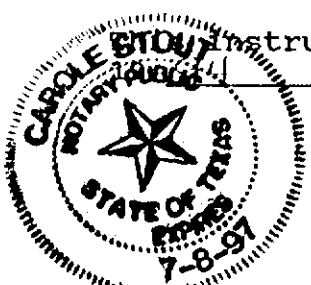
TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness \_\_\_\_\_ hands, this the 15<sup>th</sup> day of March, A.D. 1994.

\_\_\_\_\_  
\_\_\_\_\_

James A. Spring  
Facilities Manager

THE STATE OF TEXAS           §  
COUNTY OF DALLAS           §



This instrument was acknowledged before me on March 15, 1994 by FRANCIS A. SAPIENZA JR

Carole Stout

Notary Public, in and for the State of Texas

My Commission Expires 7/8/97

THE STATE OF TEXAS           §  
COUNTY OF                   §

This instrument was acknowledged before me on \_\_\_\_\_, 19 \_\_\_\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, in and for the State of Texas

My Commission Expires \_\_\_\_\_

Accepted this 8<sup>th</sup> day of April, 19 94 for the City of Denton, Texas (Resolution No. 91-073).

BY: Roger N. Wilkinson  
Roger N. Wilkinson  
Right-of-Way Agent

EPIC DEVELOPMENT, INC.  
VOL. 3245, PG. 699  
R.P.R.D.C.T.

COLORADO BOULEVARD  
CAB. F. PG. 125 P.R.D.C.T.

EPIC DEVELOPMENT, INC.  
VOL. 3245, PG. 699  
R.P.R.D.C.T.

D = 00°37'47"  
R = 1456.00  
L = 16.00  
CH = S 45°33'53" E  
16.00

D = 05°11'32"  
R = 2056.00  
L = 186.26  
CH = N 41°29'56" E  
186.26

D = 05°11'23"  
R = 2040.00  
L = 184.77  
CH = S 41°29'51" W  
184.71

J. WHITE SURVEY  
ABSTRACT #1433

EXHIBIT "A"

SOUTHERN HILLS BOULEVARD

453.19 N 38°54'10"E  
453.22 S 38°54'10"W

80' R.O.W.

80' R.O.W.

INTERSTATE HIGHWAY 35-E

N 51°00'00" W  
16.00

POINT OF BEGINNING  
U.E. No. 4  
10,220 SQ. FT.

EPIC DEVELOPMENT, INC.  
VOL. 3245, PG. 699  
R.P.R.D.C.T.

SCALE: 1" = 100'

EXHIBIT SHOWING  
UTILITY EASEMENT No. 4  
LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433, CITY OF DENTON,  
DENTON COUNTY, TEXAS.

05-28-93  
UE4

WMA WIER & ASSOCIATES, INC.

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RETURN TO: CITY OF DENTON  
215 E. MCKINNEY  
~~CITY~~ DENTON, TEXAS 76201  
ATTN: ROGER WILKINSON

Filed for Record in:  
DENTON COUNTY, TX  
HONORABLE TIM HODGES  
/COUNTY CLERK

On 1994/04/21

At 11:33A

Number: 94-R0032575  
Type : EAS 15.00



CON-  
CER-  
TIFI-  
ABLE  
COPY

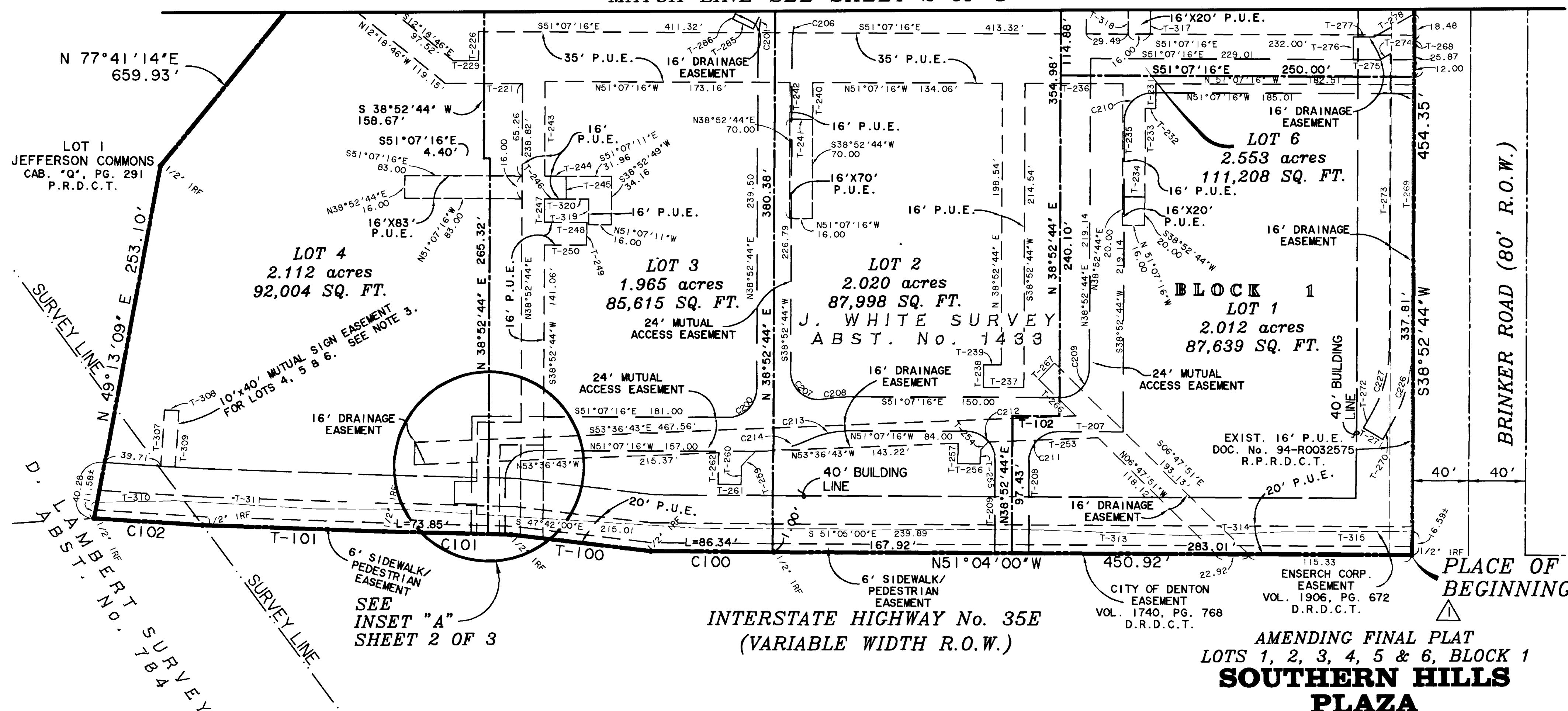
CAB U PG 556

DATE	REVISION	BY
7-22-02	CORRECTED GEOMETRIC ERROR 24' ACCESS ESMT, ADDED P.U.E. FOR DENTON MUNICIPAL ELECTRIC	RAC

\*\*THE PURPOSE OF THIS AMENDING FINAL PLAT IS TO CORRECT GEOMETRIC ERROR IN DEFINITION OF 24' MUTUAL ACCESS EASEMENT AND TO ADD PUBLIC UTILITY EASEMENTS IN WHICH TO PROVIDE ELECTRIC SERVICE TO EACH LOT.

LEGEND	
P.U.E.	DENOTES PUBLIC UTILITY EASEMENT
IRF	IRON ROD FOUND

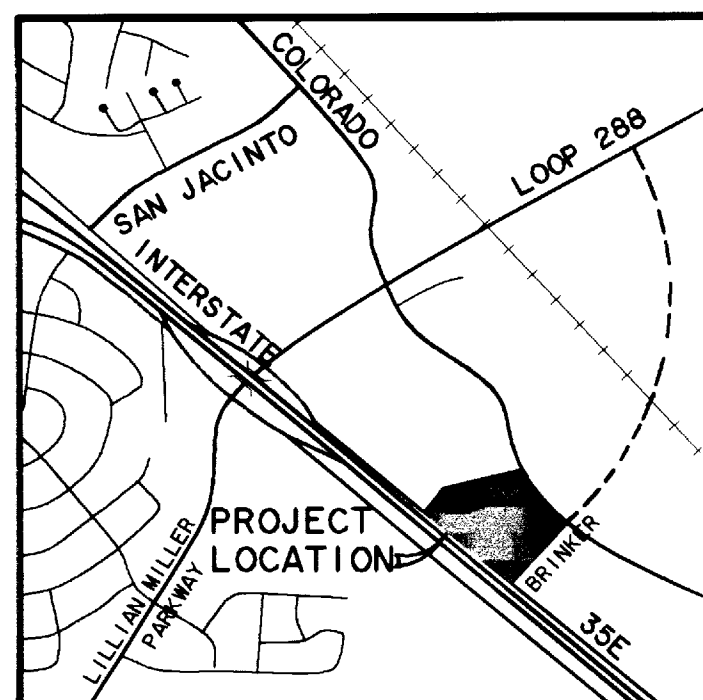
MATCH LINE SEE SHEET 2 OF 3



NOTES:

1. PLACE OF BEGINNING LIES APPROXIMATELY SOUTH, 2480± AND EAST 580'± FROM THE NORTHWEST CORNER OF THE J. WHITE SURVEY, ABSTRACT No. 1433.
2. CITY OF DENTON LANDSCAPE CODE REQUIREMENTS SHALL BE MET ON LOT BY LOT BASIS AS EACH LOT IS DEVELOPED.
3. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK 'A' FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

LEGEND	
△	NORTH CENTRAL TEXAS STATE PLANE COORDINATE (NAD 83) X = 2396583.13 Y = 7115660.42
△	NORTH CENTRAL TEXAS STATE PLANE COORDINATE X = 2396702.81 Y = 7116569.12



\* VICINITY MAP \*

\*\*NOTE\*\*

THE ORIGINAL ENSERCH EASEMENT IS REFERENCED TO OLD PROPERTY CORNERS WHICH HAVE BEEN REMOVED AND CANNOT BE RECREATED. THE EASEMENT LOCATION INDICATED ON THIS PLAT IS THE SURVEYOR'S BEST INTERPRETATION OF THE EASEMENT DOCUMENT RECORDED IN VOLUME 1906, PAGE 672 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS.

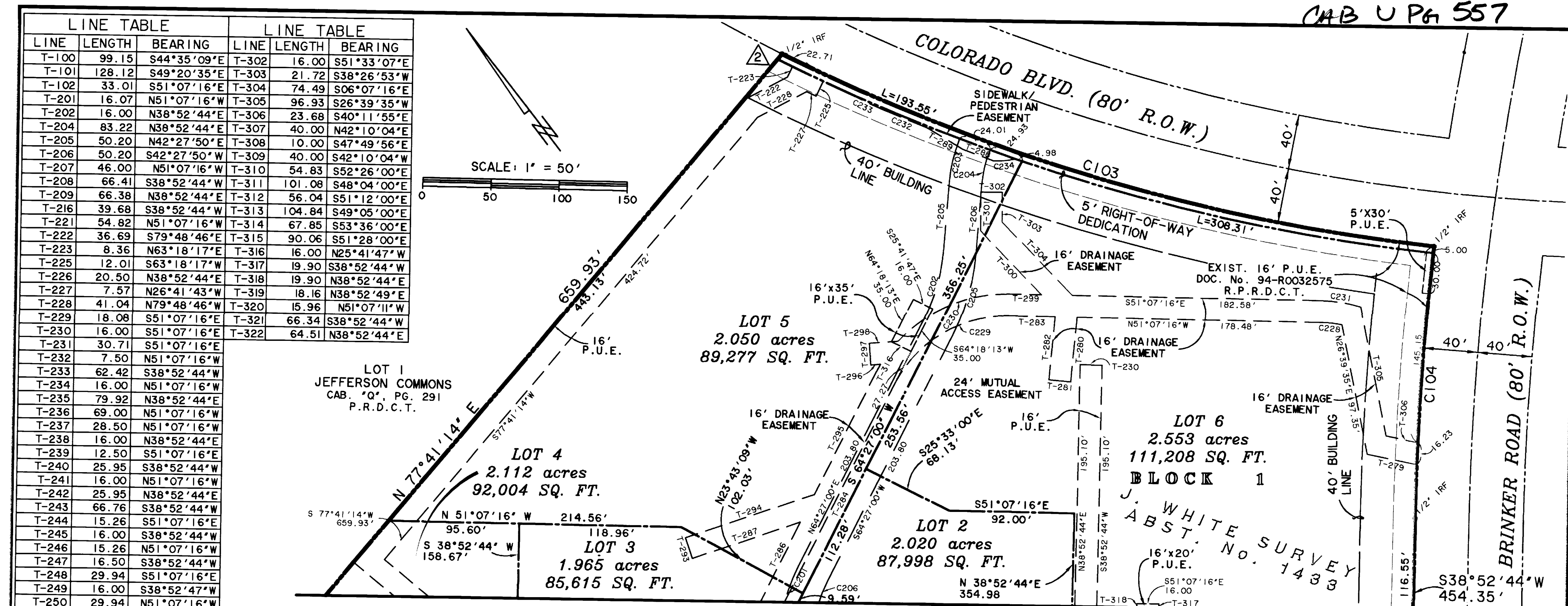
PREPARED BY:  
**WIER & ASSOCIATES, INC.**  
ENGINEERS SURVEYORS LAND PLANNERS  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
www.wierassociates.com

OWNER:  
**QUADRANT SOUTHERN HILLS PARTNERS, LTD.**  
14900 LANDMARK BLVD.  
SUITE 610  
DALLAS, TEXAS 75254  
(972) 980-8806  
SHEET 1 OF 3

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Aug 15 2002  
At 4:11pm  
Receipt #: 46717  
Recording: 108.00  
Doc/Mgmt: 6.00  
Doc/Num: 2002-R0182530  
Doc/Type: PLA  
Deputy -ELIZABETH

DATE: 08-06-2002 FILE: MINOR\_PLAT.dwg W.A. No. 01043

CAB U PG 557



LINE TABLE			LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
T-100	99.15	S44°35'09"E	T-302	16.00	S51°33'07"E
T-101	128.12	S49°20'35"E	T-303	21.72	S38°26'53"W
T-102	33.01	S51°07'16"E	T-304	74.49	S06°07'16"E
T-201	16.07	N51°07'16"W	T-305	96.93	S26°39'35"W
T-202	16.00	N38°52'44"E	T-306	23.68	S40°11'55"E
T-204	83.22	N38°52'44"E	T-307	40.00	N42°10'04"E
T-205	50.20	N42°27'50"E	T-308	10.00	S47°49'56"E
T-206	50.20	S42°27'50"W	T-309	40.00	S42°10'04"W
T-207	46.00	N51°07'16"W	T-310	54.83	S52°26'00"E
T-208	66.41	S38°52'44"W	T-311	101.08	S48°04'00"E
T-209	66.38	N38°52'44"E	T-312	56.04	S51°12'00"E
T-216	39.68	S38°52'44"W	T-313	104.84	S49°05'00"E
T-221	54.82	N51°07'16"W	T-314	67.85	S53°36'00"E
T-222	36.69	S79°48'46"E	T-315	90.06	S51°28'00"E
T-223	8.36	N63°18'17"E	T-316	16.00	N25°41'47"W
T-225	12.01	S63°18'17"W	T-317	19.90	S38°52'44"W
T-226	20.50	N38°52'44"E	T-318	19.90	N38°52'44"E
T-227	7.57	N26°41'43"W	T-319	18.16	N38°52'49"E
T-228	41.04	N79°48'46"W	T-320	15.96	N51°07'11"W
T-229	18.08	S51°07'16"E	T-321	66.34	S38°52'44"W
T-230	16.00	S51°07'16"E	T-322	64.51	N38°52'44"E
T-231	30.71	S51°07'16"E			
T-232	7.50	N51°07'16"W			
T-233	62.42	S38°52'44"W			
T-234	16.00	N51°07'16"W			
T-235	79.92	N38°52'44"E			
T-236	69.00	N51°07'16"W			
T-237	28.50	N51°07'16"W			
T-238	16.00	N38°52'44"E			
T-239	12.50	S51°07'16"E			
T-240	25.95	S38°52'44"W			
T-241	16.00	N51°07'16"W			
T-242	25.95	N38°52'44"E			
T-243	66.76	S38°52'44"W			
T-244	15.26	S51°07'16"E			
T-245	16.00	S38°52'44"W			
T-246	15.26	N51°07'16"W			
T-247	16.50	S38°52'44"W			
T-248	29.94	S51°07'16"E			
T-249	16.00	S38°52'47"W			
T-250	29.94	N51°07'16"W			
T-251	30.71	N51°07'16"W			
T-253	77.68	N53°36'43"W			
T-255	9.69	S38°52'44"W			
T-256	16.00	N51°07'16"W			
T-257	14.56	N38°52'44"E			
T-259	14.55	S81°23'17"W			
T-260	12.89	S38°52'44"W			
T-261	16.00	N51°07'16"W			
T-262	22.49	N38°52'44"E			
T-264	16.02	N38°52'44"E			
T-267	16.00	N83°12'09"E			
T-268	0.71	N81°07'16"W			
T-269	216.90	S38°52'44"W			
T-270	12.00	S68°52'44"W			
T-271	16.00	N21°07'16"W			
T-272	12.00	N68°52'44"E			
T-273	207.66	N38°52'44"E			
T-276	16.00	N38°52'44"E			
T-277	14.86	S51°07'16"E			
T-279	36.94	N40°11'55"W			
T-280	48.04	S43°16'18"W			
T-281	16.00	N46°43'42"W			
T-282	46.81	N43°16'18"E			
T-283	34.00	N51°07'16"W			
T-284	193.68	S64°18'13"W			
T-285	16.00	N25°41'47"W			
T-286	72.16	N64°18'13"E			
T-287	83.89	N70°54'07"W			
T-289	30.83	N21°08'55"W			
T-293	16.00	N19°05'53"E			
T-294	100.01	S70°54'07"E			
T-295	98.82	N64°18'13"E			
T-296	7.26	N56°22'08"W			
T-297	16.00	N33°37'52"E			
T-298	21.18	S56°22'08"E			
T-299	23.32	S51°07'16"E			
T-300	65.04	N06°07'16"W			
T-301	28.28	N38°26'53"E			

LINE TABLE			LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
T-100	99.15	S44°35'09"E	T-302	16.00	S51°33'07"E
T-101	128.12	S49°20'35"E	T-303	21.72	S38°26'53"W
T-102	33.01	S51°07'16"E	T-304	74.49	S06°07'16"E
T-201	16.07	N51°07'16"W	T-305	96.93	S26°39'35"W
T-202	16.00	N38°52'44"E	T-306	23.68	S40°11'55"E
T-204	83.22	N38°52'44"E	T-307	40.00	N42°10'04"E
T-205	50.20	N42°27'50"E	T-308	10.00	S47°49'56"E
T-206	50.20	S42°27'50"W	T-309	40.00	S42°10'04"W
T-207	46.00	N51°07'16"W	T-310	54.83	S52°26'00"E
T-208	66.41	S38°52'44"W	T-311	101.08	S48°04'00"E
T-209	66.38	N38°52'44"E	T-312	56.04	S51°12'00"E
T-216	39.68	S38°52'44"W	T-313	104.84	S49°05'00"E
T-221	54.82	N51°07'16"W	T-314	67.85	S53°36'00"E
T-222	36.69	S79°48'46"E	T-315	90.06	S51°28'00"E
T-223	8.36	N63°18'17"E	T-316	16.00	N25°41'47"W
T-225	12.01	S63°18'17"W	T-317	19.90	S38°52'44"W
T-226	20.50	N38°52'44"E	T-318	19.90	N38°52'44"E
T-227	7.57	N26°41'43"W	T-319	18.16	N38°52'49"E
T-228	41.04	N79°48'46"W	T-320	15.96	N51°07'11"W
T-229	18.08	S51°07'16"E	T-321	66.34	S38°52'44"W
T-230	16.00	S51°07'16"E	T-322	64.51	N38°52'44"E
T-231	30.71	S51°07'16"E			
T-232	7.50	N51°07'16"W			
T-233	62.42	S38°52'44"W			
T-234	16.00	N51°07'16"W			
T-235	79.92	N38°52'44"E			
T-236	69.00	N51°07'16"W			
T-237	28.50	N51°07'16"W			
T-238	16.00	N38°52'44"E			
T-239	12.50	S51°07'16"E			
T-240	25.95	S38°52'44"W			
T-241	16.00	N51°07'16"W			
T-242	25.95	N38°52'44"E			
T-243	66.76	S38°52'44"W			
T-244	15.26	S51°07'16"E			
T-245	16.00	S38°52'44"W			
T-246	15.26	N51°07'16"W			
T-247	16.50	S38°52'44"W			
T-248	29.94	S51°07'16"E			
T-249	16.00	S38°52'47"W			
T-250	29.94	N51°07'16"W			
T-251	30.71	N51°07'16"W			
T-253	77.68	N53°36'43"W			
T-255	9.69	S38°52'44"W			
T-256	16.00	N51°07'16"W			
T-257	14.56	N38°52'44"E			
T-259	14.55	S81°23'17"W			
T-260	12.89	S38°52'44"W			
T-261	16.00	N51°07'16"W			
T-262	22.49	N38°52'44"E			
T-264	16.02	N38°52'44"E			
T-267	16.00	N83°12'09"E			
T-268	0.71	N81°07'16"W			
T-269	216.90	S38°52'44"W			
T-270	12.00	S68°52'44"W			
T-271	16.00	N21°07'16"W			
T-272	12.00	N68°52'44"E			
T-273	207.66	N38°52'44"E			
T-276	16.00	N38°52'44"E			
T-277	14.86	S51°07'16"E			
T-279	36.94	N40°11'55"W			
T-280	48.04	S43°16'18"W			
T-281	16.00	N46°43'42"W			
T-282	46.81	N43°16'18"E			
T-283	34.00	N51°07'16"W			
T-284	193.68	S64°18'13"W			
T-285	16.00	N25°41'47"W			
T-286	72.16	N64°18'13"E			
T-287	83.89	N70°54'07"W			
T-289	30.83	N21°08'55"W			
T-293	16.00	N19°05'53"E			
T-294	100.01	S70°54'07"E			
T-295	98.82	N64°18'13"E			
T-296	7.26	N56°22'08"W			
T-297	16.00	N33°37'52"E			
T-298	21.18	S56°22'08"E			
T-299	23.32	S51°07'16"E			
T-300	65.04	N06°07'16"W			
T-301	28.28	N38°26'53"E			

T-251	30.71	N51°07'16"W
T-253	77.68	N53°36'43"W
T-255	9.69	S38°52'44"W
T-256	16.00	N51°07'16"W
T-257	14.56	N38°52'44"E
T-259	14.55	S81°23'17"W
T-260	12.89	S38°52'44"W
T-261	16.00	N51°07'16"W
T-262	22.49	N38°52'44"E
T-264	16.02	N38°52'44"E
T-267	16.00	N83°12'09"E
T-268	0.71	N81°07'16"W
T-269	216.90	S38°52'44"W
T-270	12.00	S68°52'44"W
T-271	16.00	N21°07'16"W
T-272	12.00	N68°52'44"E
T-273	207.66	N38°52'44"E
T-276	16.00	N38°52'44"E
T-277	14.86	S51°07'16"E
T-279	36.94	N40°11'55"W
T-280	48.04	S43°16'18"W
T-281	16.00	N46°43'42"W
T-282	46.81	N43°16'18"E
T-283	34.00	N51°07'16"W
T-284	193.68	S64°18'13"W
T-285	16.00	N25°41'47"W
T-286	72.16	N64°18'13"E
T-287	83.89	N70°54'07"W
T-289	30.83	N21°08'55"W
T-293	16.00	N19°05'53"E
T-294	100.01	S70°54'07"E
T-295	98.82	N64°18'13"E
T-296	7.26	N56°22'08"W
T-297	16.00	N33°37'52"E
T-298	21.18	S56°22'08"E
T-299	23.32	S51°07'16"E
T-300	65.04	N06°07'16"W
T-301	28.28	N38°26'53"E

CURVE	DELTA	RAD
C100	0°26'33"	113
C101	0°27'23"	112
C102	0°23'13"	112
C103	19°58'06"	14
C104	5°38'19"	20
C200	90°00'00"	
C201	25°34'15"	
C202	21°59'09"	
C203	19°38'55"	
C204	20°48'59"	
C205	21°59'09"	
C206	25°34'15"	
C207	101°16'28"	
C208	11°16'27"	
C209	90°00'00"	
C210	90°00'00"	
C211	90°00'00"	
C212	90°00'00"	
C213	25°38'42"	
C214	25°38'42"	
C215	90°00'00"	
C220	22°09'44"	
C221	18°18'49"	
C222	20°12'41"	
C223	18°38'23"	
C224	22°09'44"	
C225	22°09'44"	
C226	30°00'00"	
C227	30°00'00"	
C228	10°01'19"	



ON - CERTIFICATE OF TITLE - COPY

CAB U PG 558

OWNER'S CERTIFICATE

WHEREAS, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, ACTING BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENTS, ARE THE SOLE OWNERS OF A 12.712 ACRE TRACT OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO EPIC DEVELOPMENT, INC. AS RECORDED IN VOLUME 3245, PAGE 699 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E (A 300-FOOT RIGHT-OF-WAY) AND THE NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY),

THENCE ALONG THE SAID NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E AS FOLLOWS:

N 51°04'00"W, 450.92 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT,

NORTHWESTERLY, 87.34 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 11,309.20 FEET, A CENTRAL ANGLE OF 00°26'33" AND A CHORD BEARING N 50°50'44"E, 87.34 FEET TO A 1/2" IRON ROD FOUND,

N 44°35'09"W, 99.15 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 90.00 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,298.38 FEET, A CENTRAL ANGLE OF 00°27'23" AND A CHORD BEARING N 49°53'46"W, 90.00 FEET TO A 1/2" IRON ROD FOUND,

N 49°20'35"W, 128.12 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 76.33 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,299.20, A CENTRAL ANGLE OF 00°23'13" AND A CHORD BEARING N 47°46'26"E, 76.33 FEET TO A 1/2" IRON ROD FOUND,

THENCE N 49°13'09"E, 253.10 FEET TO A 5/8" IRON ROD FOUND,

THENCE N 77°41'14"E, 659.93 FEET TO A 1/2" IRON ROD FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT BOULEVARD) AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT,

THENCE SOUTHEASTERLY, 501.86 FEET ALONG THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD AND ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 19°58'06" AND A CHORD BEARING S 35°55'18"E, 499.33 FEET TO A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT RIGHT-OF-WAY) AND THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY) AT THE BEGINNING OF ANOTHER NON-TANGENT CURVE TO THE LEFT,

THENCE ALONG THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD AS FOLLOWS:

SOUTHWESTERLY, 200.79 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2,040.20 FEET, A CENTRAL ANGLE OF 05°38'19" AND A CHORD BEARING S 41°41'54"W, 200.70 FEET TO A 1/2" IRON ROD FOUND,

S 38°52'44"W, 454.35 FEET TO THE PLACE OF BEGINNING, CONTAINING 12.712 ACRES, (553,740 SQUARE FEET) OF LAND.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS,

THAT, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENT, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS SOUTHERN HILLS PLAZA, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS AND DO HEREBY DEDICATE TO THE PUBLIC'S USE THE RIGHTS-OF-WAY AND EASEMENTS SHOWN THEREON AND DO FURTHER CERTIFY THAT THIS PLAT DOES NOT ALTER OR REMOVE EXISTING DEED RESTRICTIONS OR COVENANTS, IN ANY, ON THIS PROPERTY.

WITNESS MY HAND AT DALLAS, DALLAS COUNTY, TEXAS THIS THE 7th DAY OF August, 2002.


QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP

  
DON SILVERMAN, AGENT

STATE OF TEXAS  
COUNTY OF DALLAS


BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED DON SILVERMAN, AUTHORIZED AGENT FOR QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS EXPRESSED AND IN THE CAPACITY THEREIN STATED, AND AS THE ACT AND DEED OF SAID CORPORATION.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS THE 7th DAY OF August, 2002.

  
NOTARY PUBLIC OF THE STATE OF TEXAS  
COMMISSION EXPIRES: April 23, 2005

SURVEYOR'S STATEMENT


THAT I, ULYS LANE III, A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL SURVEY OF LAND, AND THAT THE CORNER MONUMENTS SHOWN THEREON SHALL BE PROPERLY MARKED ON THE GROUND, AND THAT THIS PLAT CORRECTLY REPRESENTS THAT SURVEY MADE BY ME OR UNDER MY DIRECTION AND SUPERVISION AND IS IN ACCORDANCE WITH THE PLATTING RULES AND REGULATIONS OF THE CITY OF DENTON, TEXAS.


  
ULYS LANE III  
REGISTERED PROFESSIONAL LAND SURVEYOR  
STATE OF TEXAS No. 2411

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED ULYS LANE III, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 7th DAY OF August, 2002.

  
ERIN MERKEL  
NOTARY PUBLIC  
STATE OF TEXAS  
My Comm Exp 04-18-2004

  
NOTARY PUBLIC, STATE OF TEXAS  
COMMISSION EXPIRES: 4/18/04

CERTIFICATE OF APPROVAL:

APPROVED THIS 15th DAY OF August, 2002  
BY THE DEVELOPMENT REVIEW COMMITTEE OF THE  
CITY OF DENTON, TEXAS.

8-16-02   
DATE: DEVELOPMENT REVIEW COMMITTEE, CHAIRMAN

8-16-02   
DATE: JENNIFER WALTERS CITY SECRETARY

AMENDING FINAL PLAT  
LOTS 1, 2, 3, 4, 5 & 6, BLOCK 1

SOUTHERN HILLS  
PLAZA

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**WIA WIER & ASSOCIATES, INC.**

ENGINEERS SURVEYORS LAND PLANNERS  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
www.wierassociates.com

OWNER:  
QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.  
14900 LANDMARK BLVD.  
SUITE 610  
DALLAS, TEXAS 75254  
(972) 980-8806  
SHEET 3 OF 3

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Aug 15 2002  
At 4:11pm  
46717  
Recording: 108.00  
Doc/Mgmt: 6.00  
Doc/Num: 2002-R0102530  
Doc/Type: PLA  
Deputy: ELIZABETH

Y:\Projects\01043\dwg\MINOR\_PLAT.dwg 7/22/2002 8:30:19 AM CDT W.A. No. 01043

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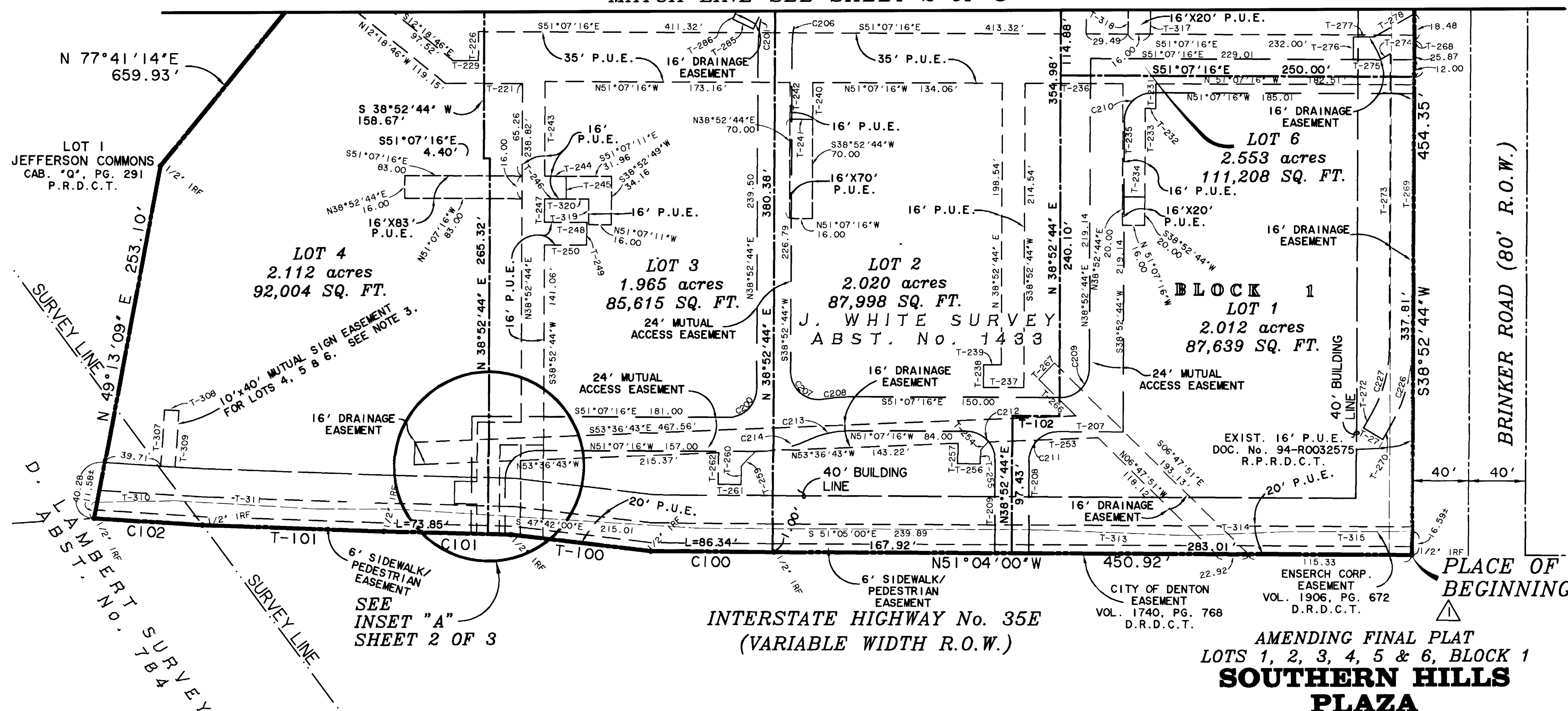
CAB U PG 556

DATE	REVISION	BY
7-22-02	CORRECTED GEOMETRIC ERROR 24' ACCESS ESMT, ADDED P.U.E. FOR DENTON MUNICIPAL ELECTRIC	RAC

\*\*THE PURPOSE OF THIS AMENDING FINAL PLAT IS TO CORRECT GEOMETRIC ERROR IN DEFINITION OF 24' MUTUAL ACCESS EASEMENT AND TO ADD PUBLIC UTILITY EASEMENTS IN WHICH TO PROVIDE ELECTRIC SERVICE TO EACH LOT.

LEGEND	
P.U.E.	DENOTES PUBLIC UTILITY EASEMENT
IRF	IRON ROD FOUND

MATCH LINE SEE SHEET 2 OF 3

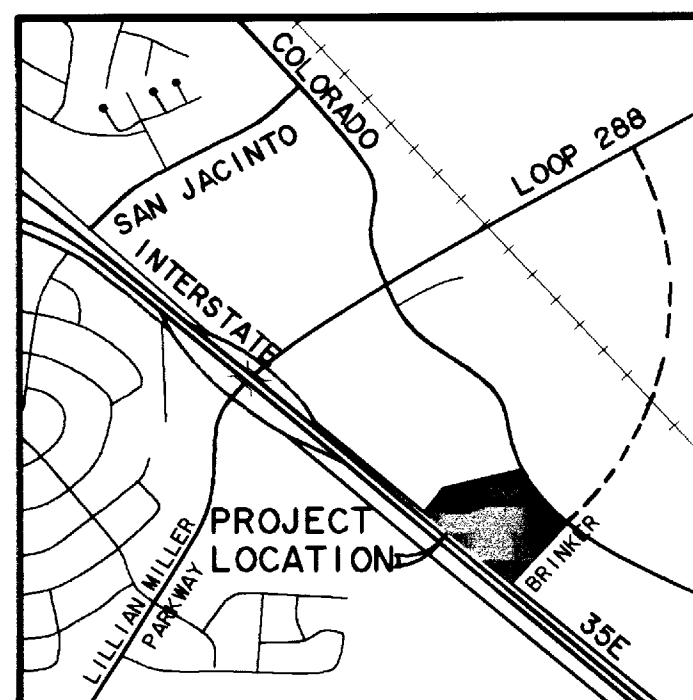


NOTES:

1. PLACE OF BEGINNING LIES APPROXIMATELY SOUTH, 2480± AND EAST 580'± FROM THE NORTHWEST CORNER OF THE J. WHITE SURVEY, ABSTRACT No. 1433.
2. CITY OF DENTON LANDSCAPE CODE REQUIREMENTS SHALL BE MET ON LOT BY LOT BASIS AS EACH LOT IS DEVELOPED.
3. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK 'A' FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

LEGEND

- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE (NAD 83)  
X = 2396583.13  
Y = 7115660.42
- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE  
X = 2396702.81  
Y = 7116569.12



\* VICINITY MAP \*

\*\*NOTE\*\*

THE ORIGINAL ENSERCH EASEMENT IS REFERENCED TO OLD PROPERTY CORNERS WHICH HAVE BEEN REMOVED AND CANNOT BE RECREATED. THE EASEMENT LOCATION INDICATED ON THIS PLAT IS THE SURVEYOR'S BEST INTERPRETATION OF THE EASEMENT DOCUMENT RECORDED IN VOLUME 1906, PAGE 672 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS.

PREPARED BY:  
**WIER & ASSOCIATES, INC.**

ENGINEERS SURVEYORS LAND PLANNERS  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
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OWNER:

**QUADRANT SOUTHERN HILLS PARTNERS, LTD.**  
14900 LANDMARK BLVD.  
SUITE 610  
DALLAS, TEXAS 75254  
(972) 980-8806  
SHEET 1 OF 3

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Aug 15 2002  
At 4:11pm  
Receipt #: 46717  
Recording: 108.00  
Doc/Mgmt: 6.00  
Doc/Num: 2002-R0182530  
Doc/Type: PLA  
Deputy -ELIZABETH

DATE: 08-06-2002 FILE: MINOR\_PLAT.dwg W.A. No. 01043







ON - CERTIFICATE OF TITLE - COPY

CAB U PG 558

# OWNER'S CERTIFICATE

WHEREAS, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, ACTING BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENTS, ARE THE SOLE OWNERS OF A 12.712 ACRE TRACT OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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N 44°35'09"W, 99.15 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 90.00 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,298.38 FEET, A CENTRAL ANGLE OF 00°27'23" AND A CHORD BEARING N 49°53'46"W, 90.00 FEET TO A 1/2" IRON ROD FOUND,

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THENCE SOUTHEASTERLY, 501.86 FEET ALONG THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD AND ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 19°58'06" AND A CHORD BEARING S 35°55'18"E, 499.33 FEET TO A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT RIGHT-OF-WAY) AND THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY) AT THE BEGINNING OF ANOTHER NON-TANGENT CURVE TO THE LEFT,

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S 38°52'44"W, 454.35 FEET TO THE PLACE OF BEGINNING, CONTAINING 12.712 ACRES, (553,740 SQUARE FEET) OF LAND.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS,

THAT, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENT, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS SOUTHERN HILLS PLAZA, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS AND DO HEREBY DEDICATE TO THE PUBLIC'S USE THE RIGHTS-OF-WAY AND EASEMENTS SHOWN THEREON AND DO FURTHER CERTIFY THAT THIS PLAT DOES NOT ALTER OR REMOVE EXISTING DEED RESTRICTIONS OR COVENANTS, IN ANY, ON THIS PROPERTY.

WITNESS MY HAND AT DALLAS, DALLAS COUNTY, TEXAS THIS THE 7th DAY OF August, 2002.

QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP

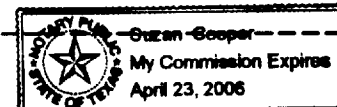
  
DON SILVERMAN, AGENT

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED DON SILVERMAN, AUTHORIZED AGENT FOR QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS EXPRESSED AND IN THE CAPACITY THEREIN STATED, AND AS THE ACT AND DEED OF SAID CORPORATION.


GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS THE 7th DAY OF August, 2002.

  
NOTARY PUBLIC OF THE STATE OF TEXAS  
COMMISSION EXPIRES: April 23, 2005



## SURVEYOR'S STATEMENT

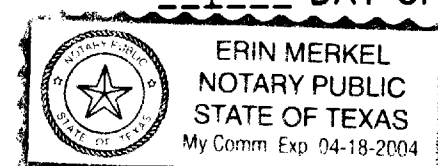
THAT I, ULYS LANE III, A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL SURVEY OF LAND, AND THAT THE CORNER MONUMENTS SHOWN THEREON SHALL BE PROPERLY MARKED ON THE GROUND, AND THAT THIS PLAT CORRECTLY REPRESENTS THAT SURVEY MADE BY ME OR UNDER MY DIRECTION AND SUPERVISION AND IS IN ACCORDANCE WITH THE PLATTING RULES AND REGULATIONS OF THE CITY OF DENTON, TEXAS.


  
ULYS LANE III  
REGISTERED PROFESSIONAL LAND SURVEYOR  
STATE OF TEXAS No. 2411

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED ULYS LANE III, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 7th DAY OF August, 2002.



  
NOTARY PUBLIC, STATE OF TEXAS  
COMMISSION EXPIRES: 4/18/04

## CERTIFICATE OF APPROVAL:

APPROVED THIS 15th DAY OF August, 2002  
BY THE DEVELOPMENT REVIEW COMMITTEE OF THE  
CITY OF DENTON, TEXAS.

8-16-02   
DATE: DEVELOPMENT REVIEW COMMITTEE, CHAIRMAN

8-16-02   
DATE: JENNIFER WALTERS CITY SECRETARY

## AMENDING FINAL PLAT LOTS 1, 2, 3, 4, 5 & 6, BLOCK 1 SOUTHERN HILLS PLAZA

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**WIA WIER & ASSOCIATES, INC.**

**ENGINEERS SURVEYORS LAND PLANNERS**  
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8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
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**OWNER:**  
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SUITE 610  
DALLAS, TEXAS 75254  
(972) 980-8806  
SHEET 3 OF 3

Filed for Record in:  
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On Aug 15 2002  
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Doc/Num: 2002-R0102530  
Doc/Type: PLA  
Deputy: ELIZABETH

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**RECIPROCAL EASEMENT AGREEMENT**

THIS RECIPROCAL EASEMENT AGREEMENT ("Agreement") is promulgated this 17<sup>th</sup> day of May, 2002 by QUADRANT SOUTHERN HILLS PARTNERS, LTD., a Texas limited partnership ("Grantor"), whose address is c/o Quadrant Properties, L.L.C., 8000 Maryland Avenue, Suite 640, St. Louis, Missouri 63105.

**WITNESSETH:**

WHEREAS, Grantor is the owner of a certain parcel of land (the "Property") located in Denton County, Texas, which parcel of land is more particularly described on that certain Final Plat Southern Hills Plaza (the "Plat") dated April 5, 2002, filed April 24, 2002, and recorded in Plat Cabinet U, Page 357, in the Office of the County Clerk, Denton County, Texas, a copy of which Plat is attached hereto as Exhibit A;

WHEREAS, Grantor has caused the Property to be subdivided of record into six (6) lots (each, a "Lot" and collectively the "Lots") as shown on the Plat.

WHEREAS, Grantor desires that the Lots be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial development (sometimes hereinafter referred to as the "Development") in accordance with the Site Plan attached hereto as Exhibit B-1 (the "Site Plan"), and Grantor desires that the Development be subject to the easements and covenants hereinafter set forth.

NOW, THEREFORE, Grantor does hereby declare and grant the following rights, covenants and servitudes on the Property:

**1. Building/Common Areas.**

A. "Building Area" as used herein shall mean that portion of a Lot within the building set back lines on a Lot as shown on Exhibit B-2 attached hereto. Canopies may encroach from the Building Area over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

B. "Common Areas" shall be all of the Property except the Building Area.

C. Conversion to Common Areas: Those portions of the Building Area on each Lot which are not from time to time used, or cannot under the terms of this Agreement be used, for buildings, shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

2. Use. Buildings in the Development shall be used only for retail and other commercial purposes including, without limitation, medical offices, lodging facilities, video rental and sales, financial institutions, restaurants, offices, and retail stores. Only

Lot 6 may be used for purposes of automobile service, convenience stores, service stations and the sale of motor vehicle fuels. Subject to the foregoing and Section 3 and Section 4 below, no portion of the Development shall be used for anything other than the purposes which may be permitted by applicable zoning regulations, nor shall anything be done in the Development which is a nuisance or an annoyance to the owners or occupants of the Development.

3. Prohibited Uses. During the term of this Agreement no portion of the Development may ever be used for any of the following uses whatsoever: (i) an adult-type bookstore or other establishment selling, leasing or exhibiting pornographic materials or paraphernalia for use with illicit drugs; (ii) a massage parlor, topless bar, or a club or establishment which provides striptease entertainment; (iii) a mortuary; (iv) a mobile home or trailer court, labor camp, junkyard or stockyard; (v) a land fill, garbage dump or for the dumping, disposing, incineration or reduction of garbage; (vi) an off-track betting parlor (or any other type of gambling establishment), carnival or amusement park; (vii) a manufacturing, distillation, smelting, refining, industrial, agricultural, drilling, mining or quarrying operation; or (viii) an x-rated movie theatre or video shop.

4. Restrictions on Use and Special Uses.

A. Italian Restaurant Restriction. For so long as a restaurant which features Italian food is operated on Lot 3, but in no event longer than fifty (50) years from the date of recordation of this Agreement, no Lot in the Development (except Lot 3 and except Lot 2 if Lot 2 is under contract to be purchased by or is owned by Texas Roadhouse (as defined below)) shall be used as a restaurant which features Italian food. For the purposes of this section: (a) "features" means that Italian food items comprise more than twenty five percent (25%) of the menu offerings. If Lot 3 ceases to be used as an Italian restaurant for one hundred eighty (180) days or more, for reasons other than closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation or other force majeure then this restriction shall lapse and shall terminate. The foregoing restriction: (a) is not intended to exclude a pizza restaurant, which is defined as a restaurant where at least seventy five percent (75%) of its gross food sales is derived from sales of pizza, including, but not limited to, restaurants of the type of a Chuck E. Cheese restaurant, and (b) shall not be applied to exclude restaurants of the type of a "Boston Pizza and Sports Bar" from the Development, however, such restriction will be applied to exclude restaurants of the type of Pizzeria Uno.

B. Parking Requirement. Any restaurant operating on Lot 4 or Lot 5 (and on Lot 2 if such restaurant is not owned by Texas Roadhouse) shall be required to provide one parking space for each 67 square feet of building area on such Lot.

C. Lot 3 Building Area Restriction. So long as the Development is being used primarily for retail purposes, the floor area of any building on Lot 3 shall not exceed 8,000 square feet, exclusive of mechanical rooms.

D. Lot 3 Frontage Restriction. So long as Lot 2 is being used as a restaurant, the principal entrance to any building on Lot 3 shall not face either Lot

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2 or Brinker Road. If Lot 2 ceases to be used for restaurant purposes for one hundred eighty (180) days or more, for reasons other than closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation or other force majeure, then the provisions of this section shall lapse and terminate.

**E. Mexican Restaurant Restriction.** For so long as (i) Brinker Texas, L.P., a Texas limited partnership, or an affiliate thereof, is reasonably pursuing the development of an On the Border restaurant (or other Mexican-style restaurant) on Lot 1, and/or (ii) Brinker (as hereinafter defined) is operating an On the Border restaurant (or other Mexican-style) restaurant on Lot 1 (excluding any periods of inoperation due to remodeling, renovation, or reconstruction as a result of an assignment, sublease, casualty, condemnation or otherwise), then Grantor shall not lease or sell any part of any Lot in the Development other than Lot 1 to any tenant or purchaser for the operation of a restaurant (nor shall Grantor otherwise permit the operation of a restaurant on any Lot in the Development other than Lot 1) offering alcoholic beverages and a menu featuring Mexican cuisine, "Tex-Mex" cuisine, and/or southwestern cuisine as the primary entrees. For the purposes of this section an "affiliate" shall mean any legal entity which is either (i) the successor by merger or otherwise, to all or substantially all of Brinker Texas, L.P.'s assets and liabilities, (ii) controls or is controlled by, or is under common control with Brinker Texas, L.P., or (iii) any franchisee of Brinker Texas, L.P. (Brinker Texas, L.P. and such affiliates being herein collectively called "Brinker"). Without limiting the foregoing, Grantor shall not lease or sell any part of the Property in the Development to any tenant or purchaser for the operation of the following restaurants (nor shall Grantor otherwise permit the operation of a restaurant in the Development operating under the following trade names): Blue Mesa, Canyon Café, Chi Chi's, Don Pablo's, Rio Bravo, Uncle Julio's, Rio Grande Café, Mia's, Chevy's, El Chico, El Fenix, Chuy's, Cantina Laredo, Abuelo's, Pappasito's, Mi Cocina, and Chipotle Mexican Grill. The foregoing restriction shall not be deemed to prohibit the operation of a restaurant on Lot 2 under the trade name "Texas Roadhouse" featuring menu items reasonably consistent with the items shown on such restaurant's menu as of the effective date hereof.

**F. Steakhouse Restriction.** For so long as a full service steakhouse or similar restaurant concept which features steaks, ribs and related menu items is operated on Lot 2 by Texas Roadhouse, or an affiliate thereof, no portion of the Development other than Lot 2 shall be used as a full service steakhouse or similar restaurant concept featuring steaks, ribs and related menu items or for the advertisement of such a restaurant. For the purposes of this section "features" shall mean that steaks, ribs and related menu items served in a full service steakhouse comprise more than twenty five percent (25%) of the menu items. If Lot 2 ceases to be used as a full service steakhouse restaurant which features steaks, ribs and related menu items for one hundred eighty (180) days or more, for reasons other than a closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation, or other force majeure,

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or ceases to be owned by Texas Roadhouse, then the provisions of this section shall lapse and terminate. For the purposes of this section "affiliate" shall mean any entity which is owned or controlled by, under common control with or owns or controls Texas Roadhouse Holdings LLC or any entity in to which Texas Roadhouse Holdings LLC shall merge or shall transfer substantially all of its assets, or any franchisee of Texas Roadhouse Development Corporation (Texas Roadhouse Holdings LLC and such affiliates being herein collectively called "Texas Roadhouse"). The foregoing restriction shall not be deemed to prohibit the operation of a restaurant on Lot 1 under the trade name "On the Border" featuring menu items reasonably consistent with the items shown on such restaurant's menu as of the effective date hereof.

G. Lot 6 Parking Requirement. For so long as a restaurant is being operated on Lot 2, any restaurant operating on Lot 6 shall be required to provide fifteen (15) parking spaces for each 1,000 square feet of any building constructed on Lot 6. If Lot 2 ceases to be used as a restaurant for one hundred eighty (180) days or more, for reasons other than a closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation, or other force majeure, or ceases to be owned by Texas Roadhouse, then the provisions of this section shall lapse and terminate.

H. Gravel Parking Area. So long as Lot 2 is under contract to be sold to or is owned by Texas Roadhouse and is being operated as a restaurant, Texas Roadhouse and its customers shall have a non-exclusive right to use that portion of Lot 6 depicted as "Gravel Parking Area" (the "Gravel Parking Area") on the Site Plan for the parking of passenger motor vehicles and Grantor hereby grants to Texas Roadhouse a license for such use. Texas Roadhouse may, at its sole cost and expense, place gravel on the Gravel Parking Area. The owner of Lot 6 or Grantor may terminate the license granted by this section by thirty (30) days advance written notice to Texas Roadhouse. Prior to the effective date of the termination of such license Texas Roadhouse shall restore the Gravel Parking Area to the condition as existed on the date on which Texas Roadhouse commenced use of the Gravel Parking Area, unless otherwise directed by Grantor or the owner of Lot 6. Texas Roadhouse shall indemnify and hold the owner of Lot 6 harmless from any losses, damages, liabilities or claims for property damage or personal injury caused by Texas Roadhouse, its customers, employees, agents or contractors in connection with their use of the Gravel Parking Area.

I. Medical Use Restriction. No part of the Development or any of the improvements now or hereafter located thereon may be used or operated: (a) as an acute care or medical surgical hospital or for the provision of services usually provided in such a hospital or to provide any services that are furnished at any hospital or other medical facility located in Denton County, Texas owned or operated by Epic Development, Inc. ("Epic") or any "Affiliate" of Epic; or (b) as a facility wherein any medical care or service of any kind is provided to human beings. In no event may a laboratory, x-ray or other form of diagnostic imaging service, or surgery or birthing services or facilities be provided on or in the



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development on any basis. "Affiliate," for the purposes of this section shall mean any person which directly or indirectly controls or is controlled by or is under control with Epic. For the purposes of this definition, "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used herein, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, through ownership of voting securities, partnership interests or other equity interests. The provisions of this section shall remain in effect and be enforceable until such time as all of the hospitals and other medical facilities owned or operated by Epic or any Affiliate of Epic described above in this section, or all successor health care facilities which replace such hospitals, are permanently closed; provided, however, the provisions of this section shall in any event terminate, lapse and be of no further effect on the date which is 99 years following March 4, 1999.

5. Buildings.

A. Design and Construction. The buildings within the Development shall be designed so that the same are comparable to the buildings located on outparcels within other first class community shopping centers in the metropolitan Dallas, Texas area. Notwithstanding the foregoing, subject to the approval of applicable governmental authorities, prototypical designs for national chain businesses shall be acceptable designs for buildings within the Development.

B. Location. No building shall be constructed on a Lot except within the Building Area.

C. Fire Protection. Any building constructed in the Development shall be constructed and operated in such a manner that standard form of fire insurance policy rates concerning other buildings in the Development are preserved.

D. Parking. Without limiting the specificity of the other provisions hereof relating to required parking, in developing and using a Lot, the owner of the Lot shall continuously provide and maintain parking spaces on such Lot at a minimum equal to the number of parking spaces required by applicable law or code.

E. Damage. In the event any building, structure or other improvement on a Lot shall be damaged or destroyed by any casualty, the owner, lessee or user of the Lot shall within ninety (90) days of such damage or destruction: (i) commence to repair and/or reconstruct such building, structure or improvement (and thereafter promptly complete such work) to a condition at least as good as existed prior to the casualty, subject to the terms of this Agreement (such commencement of repair or reconstruction work shall be deemed to include the preparation of construction plans and the pursuit of permits for such work with diligence and continuity to completion); or (ii) level such improvement, remove the debris from the Lot and keep the Lot neat, orderly, planted in grass and trimmed, until subsequently improved and constructed upon.

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6. Grant of Easements.

A. Access and Parking Easements. Grantor hereby establishes, for the benefit of the Lots, and the respective owners and lessees thereof, a reciprocal perpetual non-exclusive easement over, through and around the Common Areas of the Lots for roadways, walkways, ingress and egress and parking for the use of customers, invitees, licensees and employees of all businesses and owners, tenants and occupants of the buildings constructed within the Building Area on the Lots. The grant of the easement for reciprocal parking shall not release the owner of any Lot from such owner's obligation to maintain on such owner's Lot at minimum the number of parking spaces required by applicable laws or codes.

B. Limitations on Use of Access and Parking Easements.

(i) Employees. The owners of the Lots shall use reasonable efforts to ensure that their employees do not park their vehicles on the Common Areas of Lots of the other owners.

(ii) No Dedication to Public. Nothing contained in this Agreement shall constitute or be construed as a gift or dedication of any portion of the Property, specifically including the Common Areas, for roadways, walkways, ingress, egress, parking, or utilities constructed thereon, to the public or give any member of the public any rights whatsoever, it being the express intention of Grantor that this Agreement shall be for the exclusive benefit of the Lots, the owners thereof and their respective heirs, representatives, lessees, successors and assigns as set forth herein. Notwithstanding the foregoing, approximately forty (40) feet of frontage of the Property along Interstate Highway No. 35 shall be dedicated to the appropriate governmental authority without compensation for right-of-way purposes.

(iii) Prevention of Prescriptive Rights. The owner of each Lot hereby reserves the right to eject from the Common Areas on its Lot any person not authorized to use the same. In addition, the owner of each Lot reserves the right to close off the Common Areas on its Lot for such reasonable periods of time as may be legally necessary in the reasonable opinion of its attorneys to prevent the acquisition of prescriptive rights by anyone. Before closing off any part of the Common Areas as provided above, such owner must give notice to the other owners of its intention to do so and must coordinate its closing with the activities of the other owners of the Development so that no unreasonable interference with the operation of the Development occurs. Reasonable efforts shall be used to ensure that no such closing shall occur during weekends, holidays or normal business hours. No prescriptive easement rights or claims shall ever accrue in favor of any Lot owner or user against any other Lot owner as the result of any use or action taken by any Lot owner or user with respect to another owner's Lot.

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C. Utility and Service Easements. Grantor hereby establishes non-exclusive easements over the Common Areas on each Lot in favor of each other Lot to permit the maintenance and use of all apparatus necessary to provide utility services to a Lot, including telephone, cable, electricity, water, natural gas and storm and sanitary sewers, provided that same are constructed underground. Any disruption or demolition of a servient Lot by reason of the use of this easement shall be kept to a minimum which shall not exceed one (1) day in duration except during the period when the Development is initially constructed, unless such disruption or demolition cannot be reasonably completed within such one (1) day period, in which event the period will be extended to such time period as reasonably is required and such area forthwith shall be restored as quickly as possible by the dominant Lot owner to its original condition at no expense to the servient Lot owner. Nothing herein shall permit a Lot owner to: (i) disrupt the utility service of any business which is operating in the Development; or (ii) eliminate access to any business operating on a servient Lot. Prior to the commencement of any action by an owner of a dominant Lot on a servient Lot pursuant to the easement rights granted by this Section 6.C., the owner of such dominant Lot shall give the owner of such servient Lot at least five (5) days prior written notice of such action, except in the event of an emergency in which case the owner of the dominant Lot shall give notice as is reasonable under the circumstances. Such notice shall set forth the general scope of the work to be performed.

D. Construction Easements. Grantor hereby grants, declares and establishes for the benefit of the Lots, and the respective owners and lessees thereof, temporary easements in the Common Areas of the Lots, and prior to the construction of any improvements thereon, in the Building Area on a Lot, for the initial grading of the Development, including construction of retaining wall(s), and for the construction of the Development's internal roads. With respect to any Lot on which fresh dirt is dumped, the area shall be sloped to meet any contiguous property within the Development or public roads, and shall be smoothed in a level manner consistent with the contours of the adjoining property. Each owner covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the buildings or other improvements of any other owner, and shall not unreasonably interfere with or interrupt the construction of improvements or the business operations conducted by any other owner in the Development. In addition, each owner, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of another owner which have been damaged or destroyed in the exercise by such owner of the easements granted under this section and shall defend, indemnify and hold the other owners harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) incurred in connection with or as a result of an owner's exercise of said easements, except to the extent occasioned by the negligence or willful misconduct of another owner.

E. Water Flow. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of an

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owner's improvements substantially as shown on the Site Plan (including without limitation building, curbs, drives and paving) shall be permitted as long as such water flow conforms to the drainage easements shown on the Plat. Notwithstanding the foregoing, Lot owners shall comply with all applicable laws or regulations concerning storm water, and soil and erosion control.

F. Lot 4 Sign Easement. Grantor hereby grants and conveys for the benefit of Lot 4, Lot 5 and Lot 6, and the respective owners and lessees thereof, a perpetual nonexclusive appurtenant easement on, in, through and over that portion of Lot 4 shown on Exhibit B-2 as the "Mutual Sign Easement", for the purpose of the installation, construction, reconstruction, use, operation, maintenance, repair and replacement of a free standing, lighted pylon sign structure ("Sign Structure") and sign panels located thereon at the option of such Lot owners identifying the owner, lessee and/or occupants of such Lots. The Sign Structure and the panels located thereon shall comply with all applicable laws, ordinances and regulations of governmental authorities and any other requirements set forth hereinbelow. No more than one (1) Sign Structure shall exist in the Mutual Sign Easement at any one time and such Sign Structure may include no more than one (1) two (2)-sided sign panel for each of Lots 4, 5 and 6. The owners of each of Lots 4, 5 and 6 shall be responsible for the maintenance and upkeep of the Sign Structure during the time that the Sign Structure includes a sign panel for such owners' Lot, and such Lot owners shall, during such time when they are responsible for the Sign Structure's maintenance, share pro-rata in the actual and reasonable costs and expenses of permitting, construction, maintenance, repair, replacement, operation and reconstruction of the Sign Structure based on the relative square footage of each Lot owner's sign panel located thereon; provided, however, that such pro rata share shall not include any costs or expenses strictly related to each Lot's particular sign panel, which costs and expenses shall be the responsibility of such panel's owner.

7. Development, Maintenance and Taxes.

A. Development. The arrangement of the Common Areas shall not be changed in any manner which negatively affects the access and parking easements provided for in this Agreement. The Common Areas shall not be changed to alter or reconfigure the access points of the Development, including the access points of each Lot as shown on the Site Plan, without the prior written consent of the owners of all of the Lots, which consent shall not be unreasonably withheld, delayed or conditioned.

B. Maintenance.

(i) Standards. Each owner shall maintain its Lot in good condition and repair, at its own expense, following completion of the improvements on its Lot. The maintenance is to include, without limitation, the following:

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(a) Maintaining the surfaces of the Common Areas on its Lot in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the Common Areas on its Lot to the extent reasonably necessary to keep such areas in a clean and orderly condition;

(c) Placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines on the Common Areas of its Lot;

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required on the Common Areas of its Lot;

(e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair; and

(f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

(ii) Lots. Each owner of a Lot covenants that it, in addition to other requirements of this section, will keep all glass in the doors and windows on its Lot clean; will maintain its Lot at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; and will not permit accumulation of garbage, trash, rubbish and other refuse on its Lot, will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefor until called for to be removed.

C. Taxes. Each of the owners shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against its Lot (including, without limitation, that part of the Common Areas owned by it).

#### 8. Indemnification/Insurance.

A. Indemnification. Each owner of a Lot hereby indemnifies and saves the other owners harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Lot, except if caused by the act or negligence of another owner.



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**B. Insurance.**

(i) The owner of each Lot shall procure and maintain in full force and effect throughout the term of this Agreement commercial general liability insurance and property damage insurance (including contractual liability coverage) against claims for personal injury, death, or property damage occurring upon, in or about its Lot with combined single limit coverage of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate. The owner of each Lot shall provide the other owners with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance which may cover other property in addition to the property covered by this Agreement, and the coverage amounts may be obtained through combination of primary and umbrella policies.

(ii) A policy shall include provisions denying the insurer subrogation rights against the other owners to the extent such rights were waived by the insured prior to the occurrence of loss.

(iii) Each owner of a Lot, for itself and its property insurer, hereby releases the other owners, and their tenants, employees and agents from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of the owner resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

(iv) Notwithstanding anything to the contrary contained in this Section 8.B., so long as the net worth of an owner of a Lot shall exceed Twenty Million Dollars (\$20,000,000.00), such owner shall have the right to satisfy its obligations under this Section 8.B. by self-insuring and retaining the financial risk for any claim.

**9. Eminent Domain.**

A. Owner's Right to Award. Nothing herein shall be construed to give any owner any interest in any award or payment made to any other owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other owner's Lot, or giving the public or any government any rights in a Lot. In the event of any exercise of eminent domain or transfer in lieu

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thereof of any part of the Common Areas located on a Lot, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

B. Collateral Claims. All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.

C. Tenant's Claim. Nothing in this section shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

D. Restoration of Common Areas. The owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective tract as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

10. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon a Lot of any owner, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Lot. Except as set forth in the preceding sentence, however, any holder of a first lien on a Lot, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement. By executing and acknowledging this Agreement, the lender that holds a deed of trust encumbering the Property on the date of this Agreement (the "Lender") hereby consents to this Agreement and to the provisions hereof, and subordinates its interest in the Property to this Agreement.

11. Release from Liability. Any person acquiring fee or leasehold title to a Lot or any portion thereof, shall be bound by this Agreement only as to the Lot acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Lot, except as to the obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this section, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon the Lots running with the land.

## 12. Breach.

A. Parties with Remedies. In the event of a breach or threatened breach of this Agreement, any owner of a Lot shall, subject to Section 12.B. hereinbelow, be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach, by injunction and/or all such other available legal and equitable remedies. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees.

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**B. Remedies.** If any owner of a Lot shall fail to perform any covenant or condition contained in this Agreement, the aggrieved party shall give the defaulting owner at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default be not reasonably susceptible of being cured within said period of thirty (30) days, and said defaulting owner shall not have in good faith commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to completion) the aggrieved party may institute legal proceedings for full and adequate relief from the consequences of said default or threatened default.

**C. Self Help; Right of Entry.** The defaulting owner hereby grants to the aggrieved party a non-exclusive right of entry and non-exclusive easements across and under any and all parts of the defaulting owner's Lot (excluding the right to enter in or upon any buildings on such Lot) for all purposes reasonably necessary to enable the aggrieved party (acting directly or through agents, contractors or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Agreement which the defaulting owner shall have failed to perform, after notice and time to cure, as aforesaid, but only such notice and time to cure as shall be reasonable or practicable under the circumstances need be given in the event of any emergency. Any amounts so expended may be withheld from amounts otherwise payable to the defaulting owner or collection may be sought otherwise and in any event the defaulting owner shall pay such amount with interest at the rate of three percent (3%) per annum over the then existing prime rate of interest announced from time to time by Citibank, N.A. or its successors (but in no event exceeding the maximum rate per annum permitted by law).

**13. Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the owners of the buildings constructed on the Lots, their respective heirs, representatives, lessees, successors and assigns, and occupants of the Lots. The singular number includes the plural and the masculine gender includes the feminine and neuter.

**14. Non-Merger.** This Agreement shall not be subject to the doctrine of merger.

**15. Duration.** Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

**16. Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

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17. Notices. Any notices required or permitted to be given under this Agreement shall be delivered: (i) personally, (ii) by overnight mail or overnight air courier service; or (iii) by United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, and addressed to the owner of a Lot at the last known business address of such owner. Any such notice, request or other communication shall be considered given or delivered, as the case may be, when received or refused. An owner of a Lot may designate a notice address by sending written notice to the last known business address of the other Lot owners.

18. Estoppel Certificates. Each owner shall upon not less than thirty (30) days from receipt of written notice from any other owner execute and deliver to such other owner a certificate stating that: (a) either this Agreement is unmodified and in full force and effect or is modified (and stating the modification); and (b) whether or not to the best of its knowledge the other owner is in default in any respect under this Agreement and if in default, specifying such default.

19. Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

20. Responsibility. Notwithstanding anything to the contrary contained in this Agreement, each owner of a Lot shall be liable for the obligations, covenants, agreements, and responsibilities created by this Agreement and for any judgment rendered hereon only to the extent of its respective interest in its Lot and the improvements located thereon.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

22. Modification. This Agreement may be amended, modified or changed only by the written consent of all of the owners of the Lots, with any such amendment, modification or change being recorded in the land records of Denton County, Texas.

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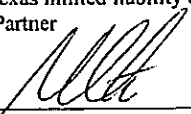
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IN WITNESS WHEREOF, Grantor and Lender have executed this Agreement as of the day and year first written above.

GRANTOR:

QUADRANT SOUTHERN HILLS  
PARTNERS, LTD., a Texas limited  
partnership

By: SOUTHERN HILLS EQUITIES,  
LLC, a Texas limited liability company,  
General Partner

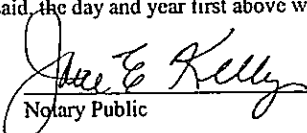
By:   
Stephen M. Notestine, Manager

STATE OF MISSOURI     )  
                                  ) SS  
COUNTY OF ST. LOUIS    )

On this 1st day of MAY, 2002, before me appeared Stephen M. Notestine to me personally known, who, being by me duly sworn, did say that he is the Manager of Southern Hills Equities, LLC, a Texas limited liability company, which company is the General Partner of Quadrant Southern Hills Partners, Ltd., a Texas limited partnership, and that said instrument was signed in behalf of said company and partnership, by authority of its members and partners; and said person acknowledged said instrument to be the free act and deed of said company and partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



  
Notary Public

My commission expires:



5097 02809

LENDER:

FIRST BANK, a Missouri corporation

By: [Signature]  
Print Name: GREG Fuesting  
Title: Senior Vice President

STATE OF MISSOURI  
COUNTY OF ST. LOUIS ) SS

On this 30<sup>th</sup> day of MAY, 2002, before me appeared GREG FUESTING to me personally known, who, being by me duly sworn, did say that he is the SA. V. P. of First Bank, a Missouri corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors; and said person acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

**JULIA A. WOODS**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis City  
My Commission Expires: Aug. 2, 2003  
My commission expires:

[Signature]  
Notary Public

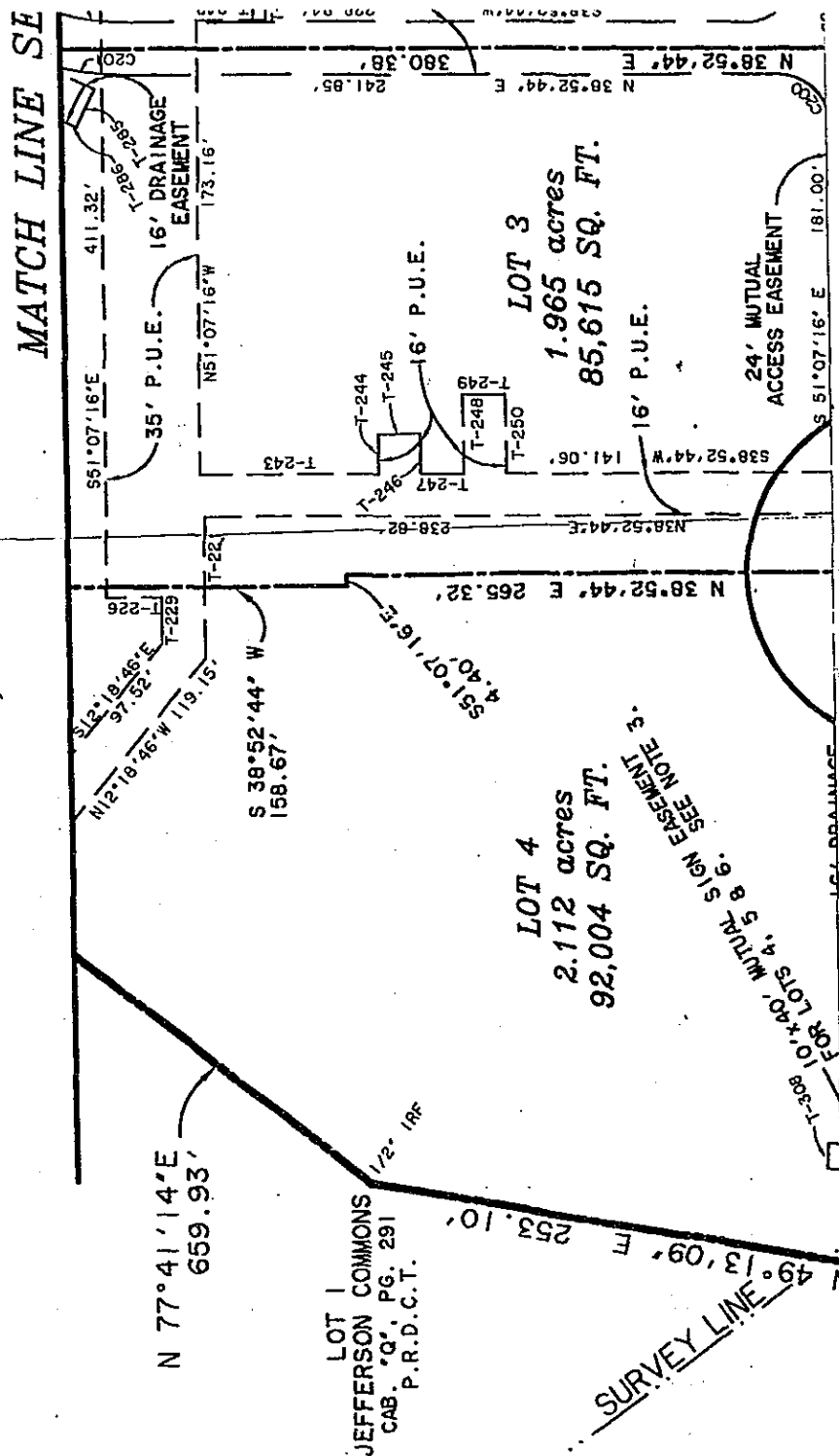
Return to:  
Republic Title of Texas, Inc.  
2626 Howell Street, 10th Floor  
Dallas TX. 75204

5097 02810

EXHIBITA

PLAT

# EXHIBIT



5097 02812

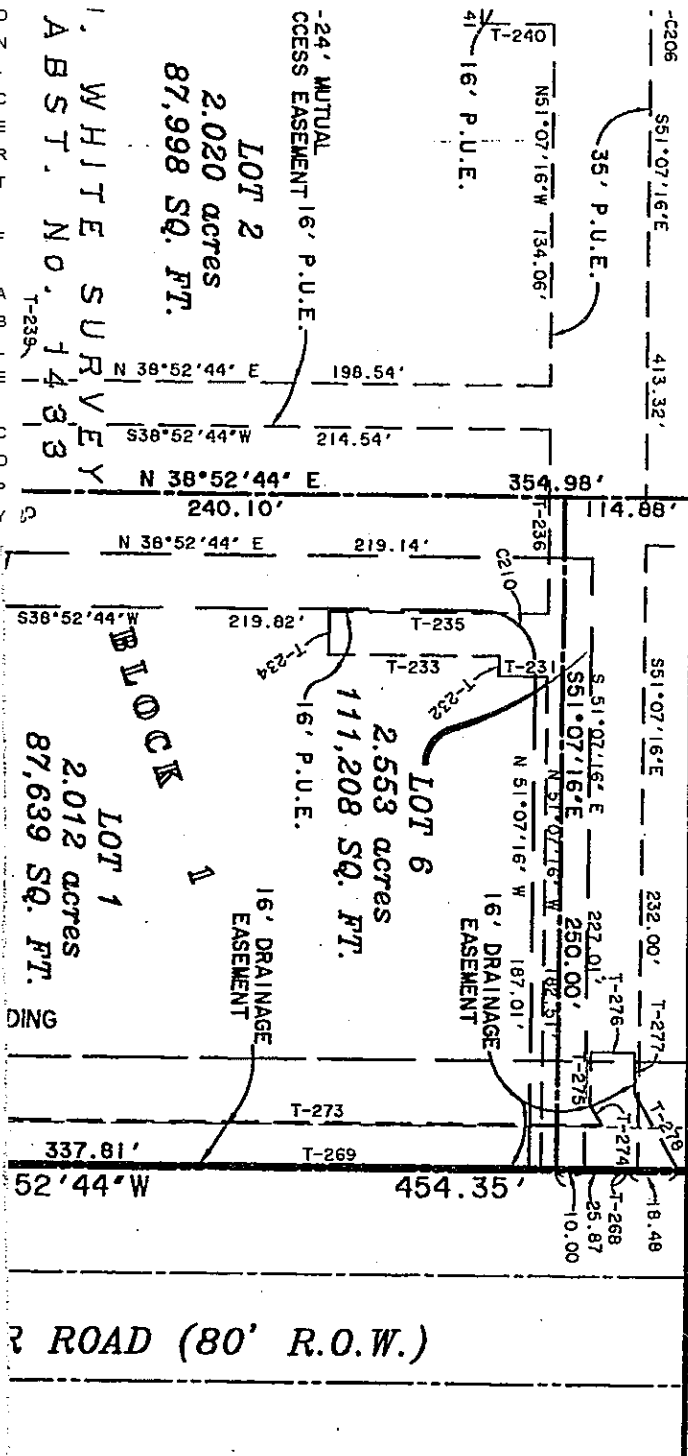
CB 4 84 357

Page 1 of 3

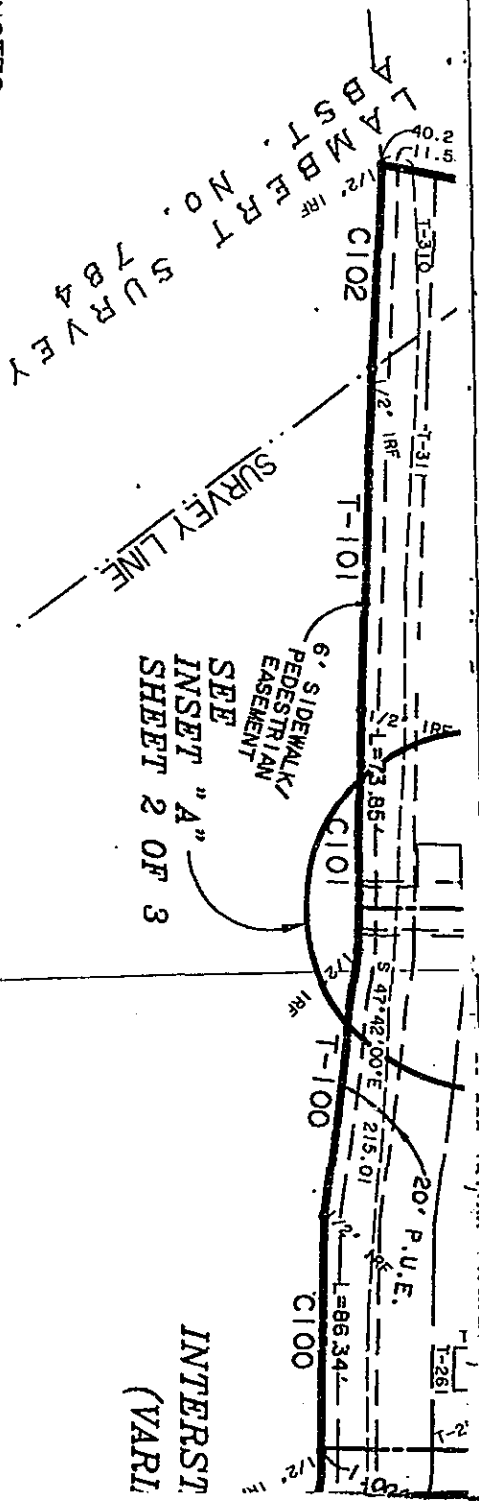
LEGEND  
DENOTES PUBLIC  
UTILITY EASEMENT

IRF IRON ROD FOUND

SHEET 2 OF 3



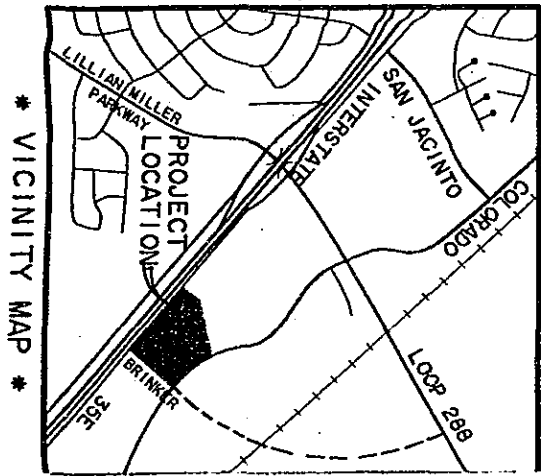
ROAD (80' R.O.W.)



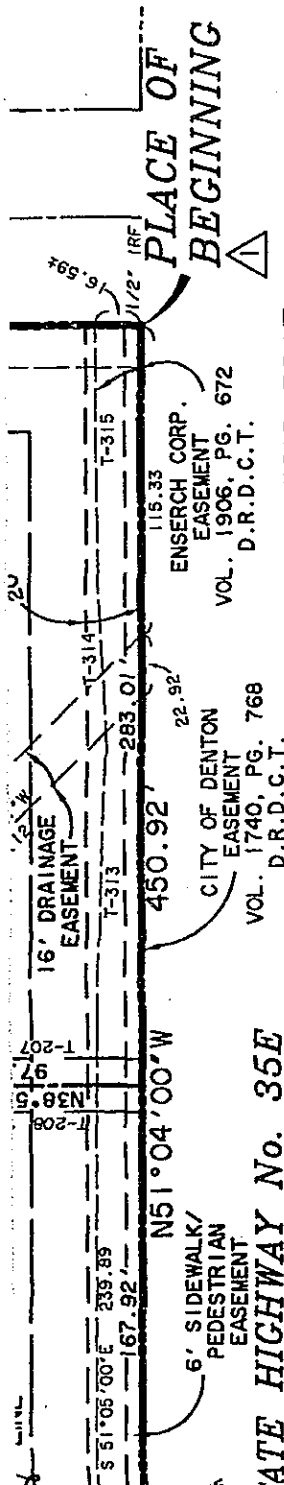
- NOTES:
1. PLACE OF BEGINNING LIES APPROXIMATELY SOUTH, 2480± AND EAST 580± FROM THE NORTHWEST CORNER OF THE J. WHITE SURVEY, ABSTRACT No. 1433.
  2. CITY OF DENTON LANDSCAPE CODE REQUIREMENTS SHALL BE MET ON LOT BY LOT BASIS AS EACH LOT IS DEVELOPED.
  3. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK "A" FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

LEGEND

- ▲ NORTH CENTRAL TEXAS STATE PLANE COORDINATE (NAD 83)  
X = 2396583.13  
Y = 7115660.42
- ▲ NORTH CENTRAL TEXAS STATE PLANE COORDINATE  
X = 2396702.81  
Y = 7116569.12







ATE HIGHWAY No. 35E  
16' WIDTH R.O.W.)

**\*\*NOTE\*\***  
THE ORIGINAL ENSERCH EASEMENT IS REFERENCED TO OLD PROPERTY CORNERS WHICH HAVE BEEN REMOVED AND CANNOT BE RECREATED. THE EASEMENT LOCATION INDICATED ON THIS PLAT IS THE SURVEYOR'S BEST INTERPRETATION OF THE EASEMENT DOCUMENT RECORDED IN VOLUME 1906, PAGE 672 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS.

# SOUTHERN HILLS PLAZA

AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS, BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND D. LAMBERT SURVEY, ABSTRACT No. 784, CITY OF DENTON, DENTON COUNTY, TEXAS

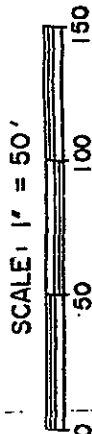
PREPARED BY:

**VIA WIER & ASSOCIATES, INC.**

ENGINEERS SURVEYORS LAND PLANNERS  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRODO, TEXAS 75034 METRO (214)387-8000

OWNER:

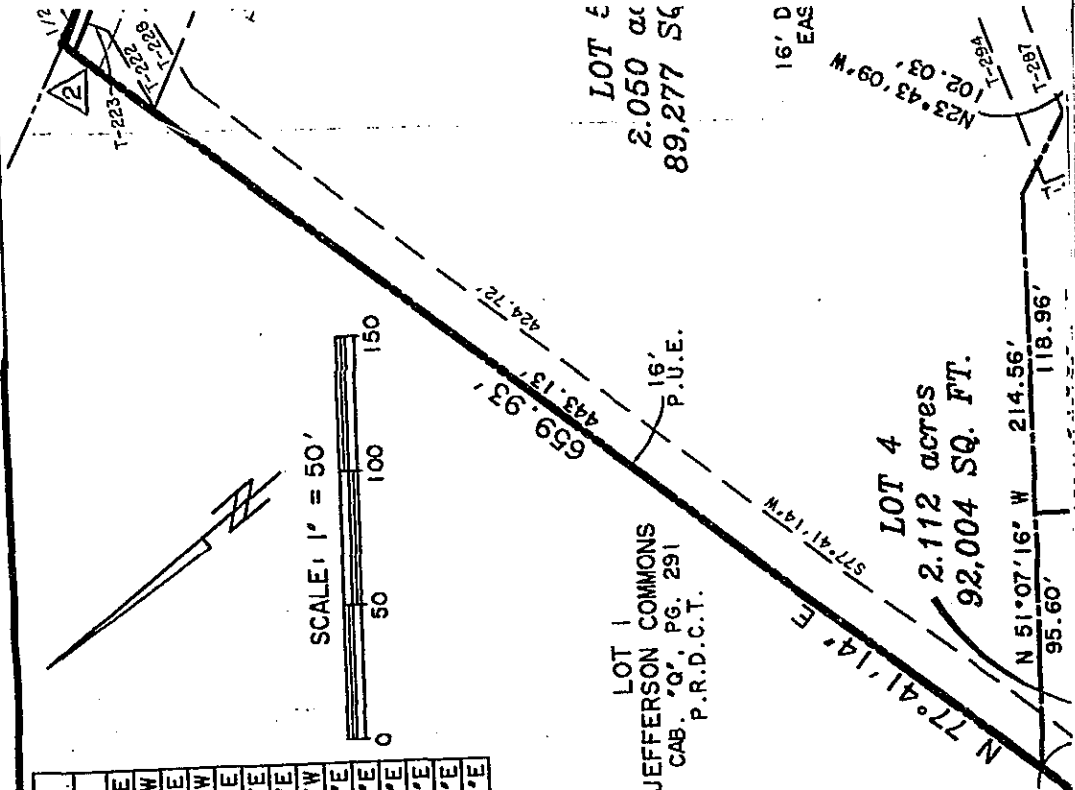
QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.  
15935 BENT TREE FOREST CIRCLE  
SUITE 2025  
DALLAS, TEXAS 75248  
(972) 980-8806  
SHEET 1 OF 3



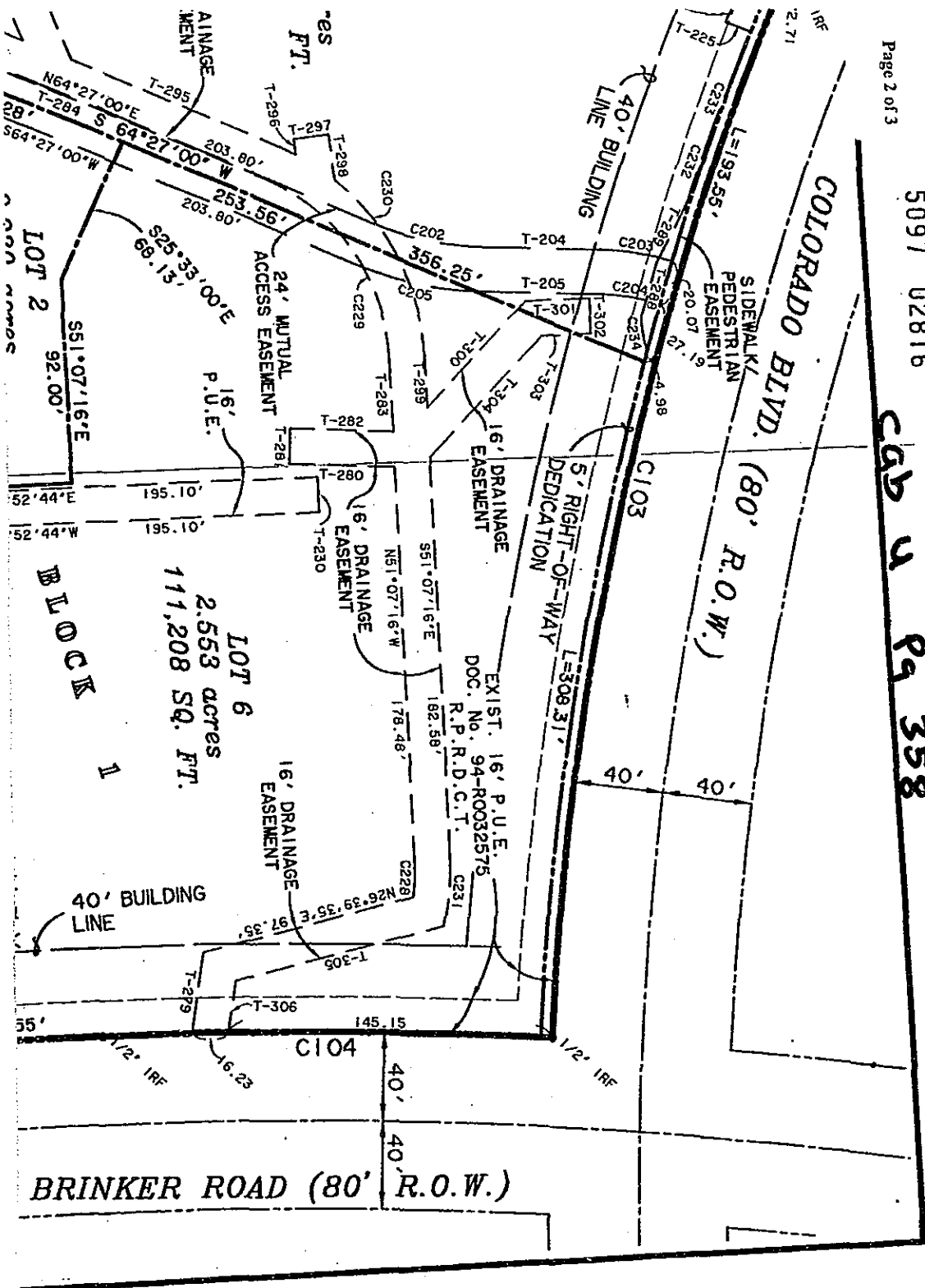
Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Apr 24 2002  
At 9:17am

Receipt #: 23293  
Recording: 188.00  
Doc/Inst: 6.00  
Doc/Inst: 2002-00051498  
Doc/Type: PLA  
Deputy: Felicia

LINE TABLE			LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
T-100	99.15	S44°35'09"E	T-302	16.00	S51°33'07"E
T-101	128.12	S49°20'35"E	T-303	21.72	S38°26'53"W
T-102	33.01	S51°07'16"E	T-304	74.49	S06°07'16"E
T-201	16.07	N51°07'16"W	T-305	96.93	S26°39'35"W
T-202	16.00	N38°52'44"E	T-306	23.68	S40°11'55"E
T-203	81.27	S38°52'44"W	T-307	40.00	N42°10'04"E
T-204	50.20	S42°27'50"W	T-308	10.00	S47°49'56"E
T-205	50.20	N42°27'50"E	T-309	40.00	S42°10'04"W
T-206	33.09	S51°07'16"E	T-310	54.83	S52°26'00"E
T-207	68.41	N38°52'44"E	T-311	101.08	S48°04'00"E
T-208	68.39	S38°52'44"W	T-312	56.04	S51°12'00"E
T-209	86.00	S51°07'16"E	T-313	104.84	S49°05'00"E
T-210	16.07	S51°07'16"E	T-314	67.85	S53°36'00"E
T-221	54.82	N51°07'16"W	T-315	90.06	S51°28'00"E
T-222	36.69	S79°48'46"E			
T-223	8.36	N63°18'17"E			
T-225	12.01	S63°18'17"W			
T-226	20.50	N38°52'44"E			
T-227	7.57	N26°41'43"W			
T-228	41.04	N79°48'46"W			
T-229	18.08	S51°07'16"E			
T-230	16.00	S51°07'16"E			
T-231	30.71	S51°07'16"E			
T-232	7.50	N51°07'16"W			
T-233	62.42	S38°52'44"W			
T-234	16.00	N51°07'16"W			
T-235	79.92	N38°52'44"E			
T-236	69.00	N51°07'16"W			
T-237	28.50	N51°07'16"W			
T-238	16.00	N38°52'44"E			
T-239	12.50	S51°07'16"E			
T-240	25.95	S38°52'44"W			
T-241	16.00	N51°07'16"W			
T-242	25.95	N38°52'44"E			
T-243	66.76	S38°52'44"W			



CGD u Pg 358



T-248	29.94	S51°07'16"E
T-249	16.00	S38°52'47"W
T-250	29.94	N51°07'16"W
T-251	30.71	N51°07'16"W
T-253	77.68	N53°36'43"W
T-255	9.69	S38°52'44"W
T-256	16.00	N51°07'16"W
T-257	14.56	N38°52'44"E
T-259	14.55	S81°23'17"W
T-260	12.89	S38°52'44"W
T-261	16.00	N51°07'16"W
T-262	22.49	N38°52'44"E
T-264	16.02	N38°52'44"E
T-267	16.00	N83°12'09"E
T-268	0.71	N81°07'16"W
T-269	216.90	S38°52'44"W
T-270	12.00	S68°52'44"W
T-271	16.00	N21°07'16"W
T-272	12.00	N68°52'44"E
T-273	207.66	N38°52'44"E
T-276	16.00	N38°52'44"E
T-277	14.86	S51°07'16"E
T-279	36.94	N40°11'55"W
T-280	48.04	S43°16'18"W
T-281	16.00	N46°43'42"W
T-282	46.81	N43°16'18"E
T-283	34.00	N51°07'16"W
T-284	193.68	S64°18'13"W
T-285	16.00	N25°41'47"W
T-286	72.16	N64°18'13"E
T-287	83.89	N70°54'07"W
T-289	30.83	N21°08'55"W
T-293	16.00	N19°06'53"E
T-294	100.01	S70°54'07"E
T-295	98.82	N64°18'13"E
T-296	7.26	N56°22'08"W
T-297	16.00	N33°37'52"E
T-298	21.18	S56°22'08"E
T-299	23.32	S51°07'16"E
T-300	65.04	N06°07'16"W
T-301	28.28	N38°26'53"E

CURVE TABLE

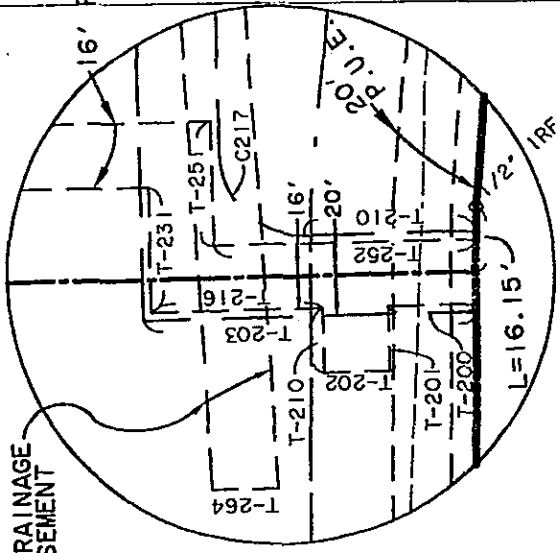
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD DIRECTION	CHORD LENGTH	CURV
C100	0°26'33"	11309.20	87.34	43.67	N50°50'44"W	87.34	C
C101	0°27'23"	11298.36	90.00	45.00	N49°53'46"W	90.00	C
C102	0°23'13"	11299.20	76.33	38.16	N47°46'26"W	76.33	C
C103	19°58'06"	1440.00	501.86	253.50	S35°55'18"E	499.33	C
C104	5°38'19"	2040.20	200.79	100.47	S41°41'54"W	200.70	C
C200	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28	C
C201	25°24'26"	122.00	54.10	27.50	S51°44'46"W	53.66	C
C202	21°59'09"	140.00	53.72	27.20	N53°27'25"E	53.39	C
C203	17°06'40"	110.00	32.85	16.55	S51°01'10"W	32.73	C
C204	17°29'37"	90.00	27.49	13.85	S51°12'39"W	27.37	C
C205	21°59'09"	160.00	61.40	31.08	N53°27'25"E	61.02	C
C206	25°44'59"	102.00	45.84	23.31	S51°34'30"W	45.46	C
C207	102°36'29"	20.00	35.82	24.97	S12°25'30"E	31.22	C
C208	12°36'28"	85.00	18.70	9.39	N57°25'30"W	18.67	C
C209	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28	C
C210	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28	C
C211	1°52'49"	122.00	4.00	2.00	S47°02'47"E	4.00	C
C212	5°00'54"	102.00	8.93	4.47	N48°36'49"W	8.92	C
C213	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28	C
C214	90°00'00"	20.00	31.42	20.00	N06°07'16"W	28.28	C
C215	25°38'42"	65.00	29.09	14.79	N53°56'37"W	28.85	C
C216	25°38'42"	85.00	38.05	19.35	S63°56'37"E	37.73	C
C217	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28	C
C220	22°09'44"	92.00	35.59	18.02	N62°12'08"W	35.36	C
C221	18°18'49"	108.00	34.52	17.41	S64°07'36"E	34.37	C
C222	20°12'41"	92.00	32.45	16.40	N61°13'37"W	32.29	C
C223	18°38'23"	108.00	35.14	17.72	N60°26'28"W	34.98	C
C224	22°09'44"	92.00	35.59	18.02	S62°12'08"E	35.36	C
C225	22°09'44"	108.00	41.77	21.15	N62°12'08"W	41.51	C
C226	30°00'00"	108.00	56.55	28.94	N53°52'44"E	55.90	C
C227	30°00'00"	92.00	48.17	24.65	N53°52'44"E	47.62	C
C228	10°01'19"	92.00	16.09	8.07	N46°06'37"W	16.07	C

MAT

CURVE TABLE

ΔE	DELTA	RADIUS	LENGTH	TANGENT	CHORD	CHORD
					DIRECTION	LENGTH
229	64°34'31"	92.00	103.69	58.13	N83°24'31"W	98.29
230	48°35'13"	108.00	91.58	48.75	N75°24'52"W	88.86
231	15°51'09"	108.00	29.88	15.04	N43°11'41"W	29.79
232	1°23'57"	1446.12	35.32	17.66	S29°58'12"E	35.32
233	5°54'53"	255.00	26.32	13.17	S26°18'47"E	26.31
234	20°11'21"	46.57	16.41	8.29	S56°43'01"E	16.32

DRAINAGE  
ASEMENT



INSET "A"

# FINAL PLAT SOUTHERN HILLS PLAZA

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**VIA WIEH & ASSOCIATES, INC.**  
**ENGINEERS SURVEYORS LAND PLANNERS**  
4300 BELWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817) 467-7700  
8721 5th STREET FRESSO, TEXAS 75044 METRO (214) 387-8000  
**OWNER:**  
**QUADRANT SOUTHERN HILLS**  
**PARTNERS, LTD.**  
15935 BENT TREE FOREST CIRCLE  
SUITE 2025  
DALLAS, TEXAS 75248  
(972) 980-8806  
SHEET 2 OF 3

Filed for Record in:  
Denton County, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Apr 24 2002  
At 9:17am  
Receipt #: 23283  
Recording: 188.88  
Doc/Map: 6.88  
Doc/Num: 2002-00051498  
Doc/Type: PLA  
Deputy - Felicia



5097 02819

EXHIBIT A

OWNER'S CERTIFICATE

WHEREAS, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, ACTING BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENTS, ARE THE SOLE OWNERS OF A 12.712 ACRE TRACT OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO EPIC DEVELOPMENT, INC. AS RECORDED IN VOLUME 3245, PAGE 699 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E (A 300-FOOT RIGHT-OF-WAY) AND THE NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY),

THENCE ALONG THE SAID NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E AS FOLLOWS:

N 51°04'00" W, 450.92 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT,

NORTHWESTERLY, 87.34 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 11,309.20 FEET, A CENTRAL ANGLE OF 00°26'33" AND A CHORD BEARING N 50°50'44" E, 87.34 FEET TO A 1/2" IRON ROD FOUND,

NOW, THEREFORE, KNOW ALL MEN

THAT, QUADRANT SOUTHERN LIMITED PARTNERSHIP, BY AND THROUGH ITS DULY AUTHORIZED AGENT, DO DESIGNATING THE HEREINABOVE DES HILLS PLAZA, AN ADDITION TO HILLS COUNTY, TEXAS AND DO HEREBY DE RIGHTS-OF-WAY AND EASEMENTS S CERTIFY THAT THIS PLAT DOES NO DEED RESTRICTIONS OR COVENANTS,

WITNESS MY HAND AT DALLAS, DA 5th DAY OF 1984

QUADRANT SOUTHERN HILLS PARTNERSHIP

DON SILVE

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, THE UNDERSIGNED PERSONALLY APPEARED DON SILVE QUADRANT SOUTHERN HILLS PARTNERSHIP, KNOWN TO ME TO SUBSCRIBED TO THE ABOVE AND ACKNOWLEDGED TO ME THAT HE PURPOSES AND CONSIDERATIONS E THEREIN STATED AND AS THE ACT

5097 02820

CAP u. 89 359

Y THESE PRESENTS:

ILLS PARTNERS, LTD., A TEXAS  
 UGH THE UNDERSIGNED, THEIR  
 EREBY ADOPT THIS PLAT  
 RIBED PROPERTY AS SOUTHERN  
 E CITY OF DENTON, DENTON  
 ICATE TO THE PUBLIC'S USE THE  
 OWN THEREON AND DO FURTHER  
 T ALTER OR REMOVE EXISTING  
 IN ANY, ON THIS PROPERTY.

LAS COUNTY, TEXAS THIS THE  
 ---, 2002.

ERS, LTD.. A TEXAS LIMITED

*[Signature]*  
 RMAN, AGENT

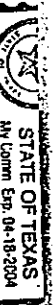
D AUTHORITY, ON THIS DAY  
 RMAN, AUTHORIZED AGENT FOR  
 ERS, LTD., A TEXAS LIMITED  
 THE PERSON WHOSE NAME IS  
 FOREGOING INSTRUMENT, AND  
 EXECUTED THE SAME FOR THE  
 PRESSED AND IN THE CAPACITY  
 AND DEED OF SAID CORPORATION.

CERTIFICATE OF APPROVAL

APPROVED THIS 24 DAY OF January, 2002  
 BY THE PLANNING AND ZONING COMMISSION OF THE  
 CITY OF DENTON, TEXAS.

DATE: *[Signature]* CHAIRMAN

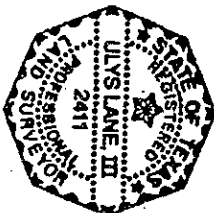
DATE: *[Signature]* CITY SECRETARY



NOTARY PUBLIC  
COMMISSION B

SURVEYOR'S STATE

THAT I, ULYS LANE III, A REGISTERED SURVEYOR OF THE STATE OF TEXAS, HAVE PREPARED THIS PLAT FROM AN AC SURVEY MADE BY ME OR UNDER MY SURVEY MADE BY ME OR UNDER MY IS IN ACCORDANCE WITH THE PLAT THE CITY OF DENTON, TEXAS.



ULYS LANE III  
REGISTERED PROFESSIONAL  
STATE OF TEXAS

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED, IN AND FOR SAID COUNTY AND STATE, APPEARED ULYS LANE III, KNOWN OFFICER WHOSE NAME IS SUBSCRIBED AND ACKNOWLEDGED TO ME THAT PURPOSES AND CONSIDERATIONS CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL  
DAY OF April



ERIN MERKEL  
NOTARY PUBLIC  
STATE OF TEXAS  
NOTARY PUBLIC

N 49°20'35"W, 128.12 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 76.33 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,299.20, A CENTRAL ANGLE OF 00°23'13" AND A CHORD BEARING N 47°46'26"E, 76.33 FEET TO A 1/2" IRON ROD FOUND,

THENCE N 49°13'09"E, 253.10 FEET TO A 5/8" IRON ROD FOUND,

THENCE N 77°41'14"E, 659.93 FEET TO A 1/2" IRON ROD FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT BOULEVARD) AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT,

THENCE SOUTHEASTERLY, 501.86 FEET ALONG THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD AND ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 19°58'06" AND A CHORD BEARING S 35°55'18"E, 499.33 FEET TO A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT RIGHT-OF-WAY) AND THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY) AT THE BEGINNING OF ANOTHER NON-TANGENT CURVE TO THE LEFT,

THENCE ALONG THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD AS FOLLOWS:

SOUTHWESTERLY, 200.79 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2,040.20 FEET, A CENTRAL ANGLE OF 05°38'19" AND A CHORD BEARING S 41°41'54"W, 200.70 FEET TO A 1/2" IRON ROD FOUND,

S 38°52'44"W, 454.35 FEET TO THE PLACE OF BEGINNING, CONTAINING 12.712 ACRES, (553,740 SQUARE FEET) OF LAND.

IC OF THE STATE OF TEXAS  
XPRES: 2/19/04

TEMENT

SISTERED PROFESSIONAL LAND  
IAS, DO HEREBY CERTIFY THAT I  
TUAL SURVEY OF LAND, AND THAT  
HEREON SHALL BE PROPERLY-MARKED  
PLAT CORRECTLY REPRESENTS THAT  
DIRECTION AND SUPERVISION AND  
TING RULES AND REGULATIONS OF

ROFESSIONAL LAND SURVEYOR  
IAS No. 2411

ID-AUTHORITY, A NOTARY PUBLIC  
IATE, ON THIS DAY PERSONALLY  
TO ME TO BE THE PERSON AND  
D TO THE FOREGOING INSTRUMENT  
HE EXECUTED THE SAME FOR THE  
HEREIN EXPRESSED AND IN THE

SEAL OF OFFICE THIS THE  
2002.



C. STATE OF TEXAS  
XPRES: 4/18/04

5097 02822

FINAL PLAT  
**SOUTHERN HILLS  
PLAZA**

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**VIA WIER & ASSOCIATES, INC.**  
**ENGINEERS SURVEYORS LAND PLANNERS**  
4320 EDJWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817) 467-7700  
8721 5th STREET FRSOCO, TEXAS 75034 METRO (214) 387-8000  
**OWNER:**

**QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.**  
**15935 BENT TREE FOREST CIRCLE  
SUITE 2025  
DALLAS, TEXAS 75248  
(972) 980-8806  
SHEET 3 OF 3**

Filed for Record in:  
DENTON COUNTY, TX COUNTY CLERK  
CYNTHIA MITCHELL  
On Apr 24 2002  
at 9:17am  
Receipt #: 23203  
Recording: 108.00  
Doc/Inst: 6.00  
Doc/Inst: 2002-00051490  
Doc/Type: PLA  
Deputy: Felicia

5097 02823

EXHIBIT B-1

SITE PLAN

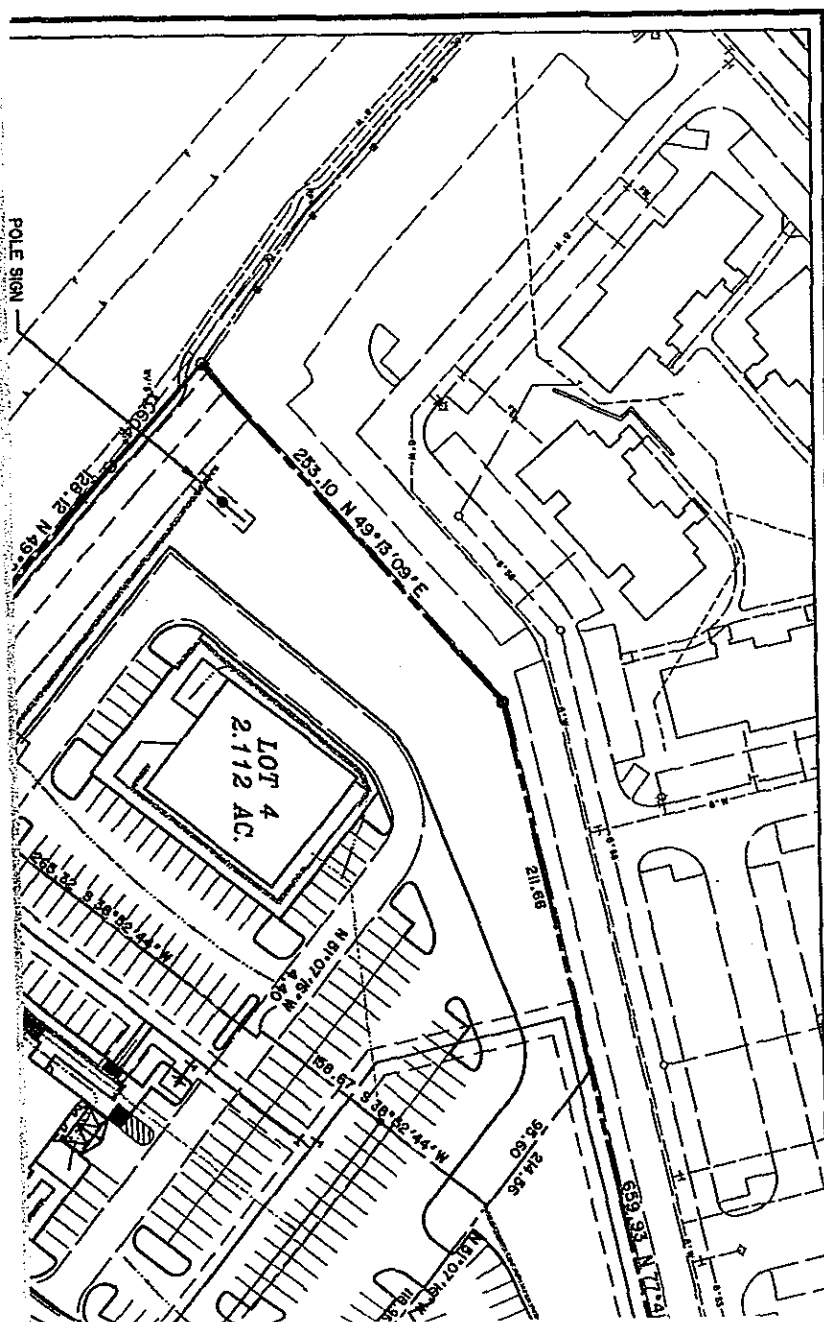
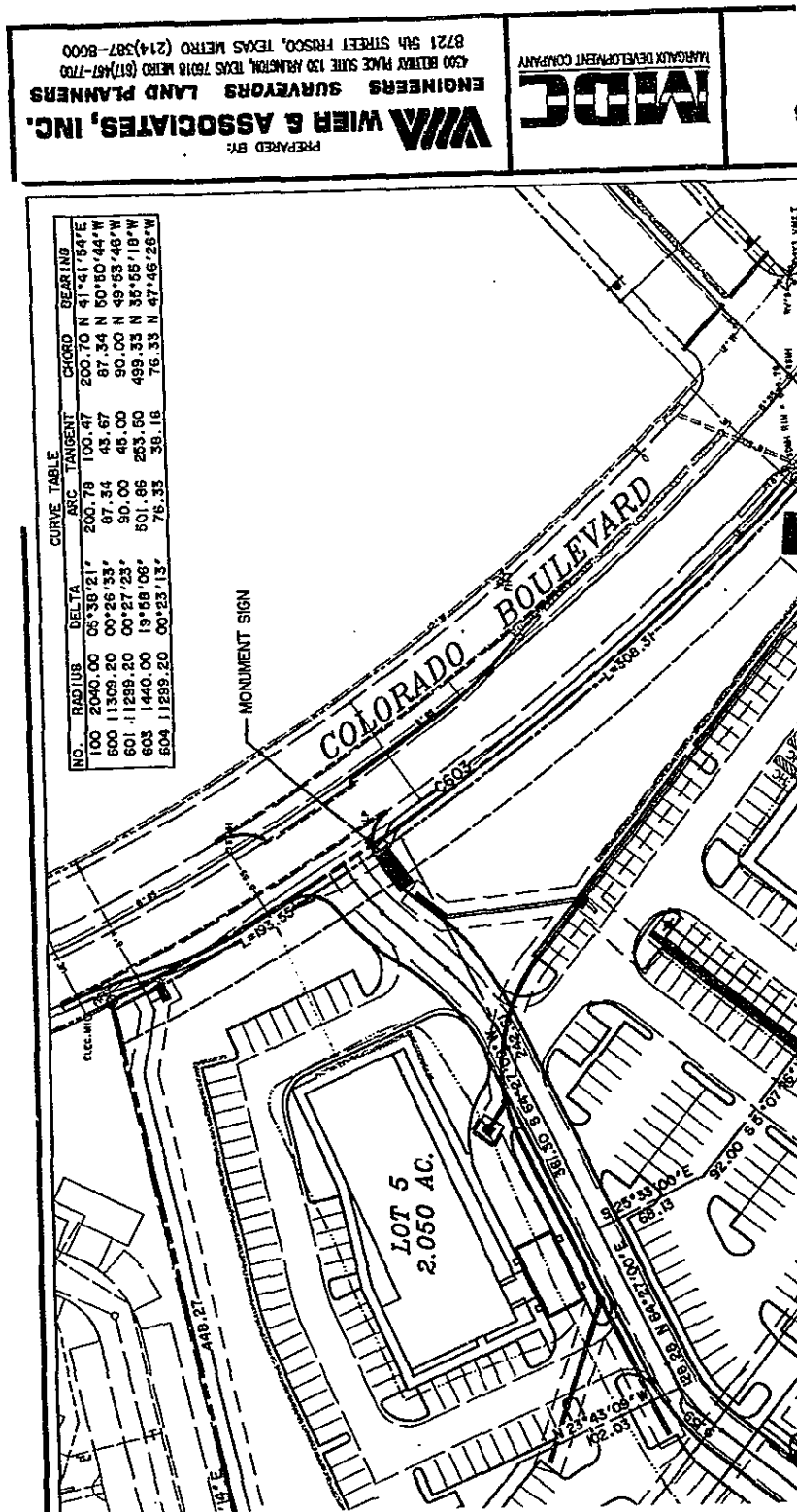




EXHIBIT B-1



INTERSTATE HIGHWAY No. 35-E  
MONUMENT

5097 02826

LOT 3  
1.965 AC.

NON-CERTIFIABLE COPY

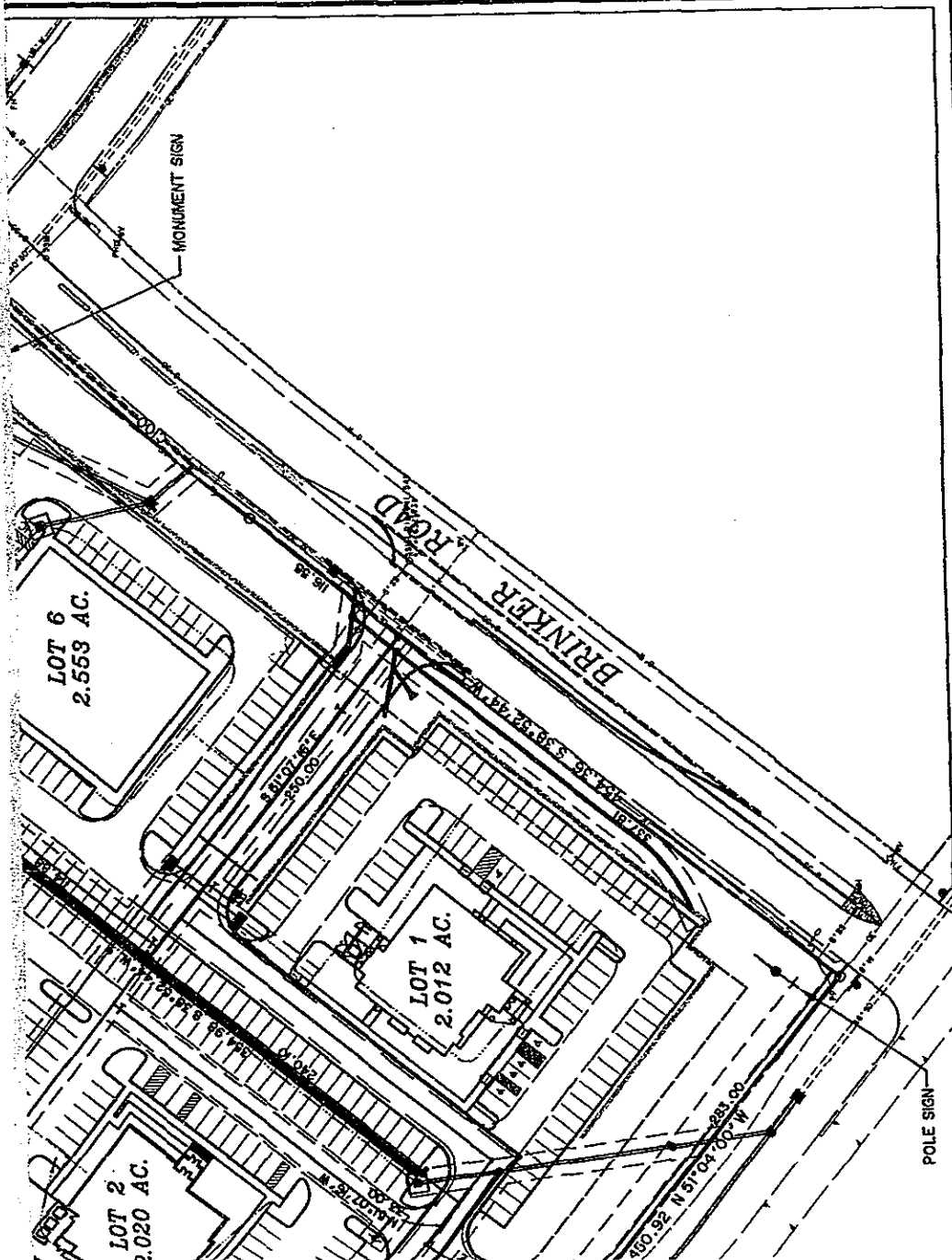
5097 02827

SITE PLAN

SOUTHERN HILLS PLAZA  
CITY OF DENTON, DENTON COUNTY, TEXAS

COPYRIGHT ©  
WELLS ASSOCIATES, INC.  
LAST SHEET FOR  
DATA 10-2-2002  
MAR 2023

SHEET NO.  
1 of 1

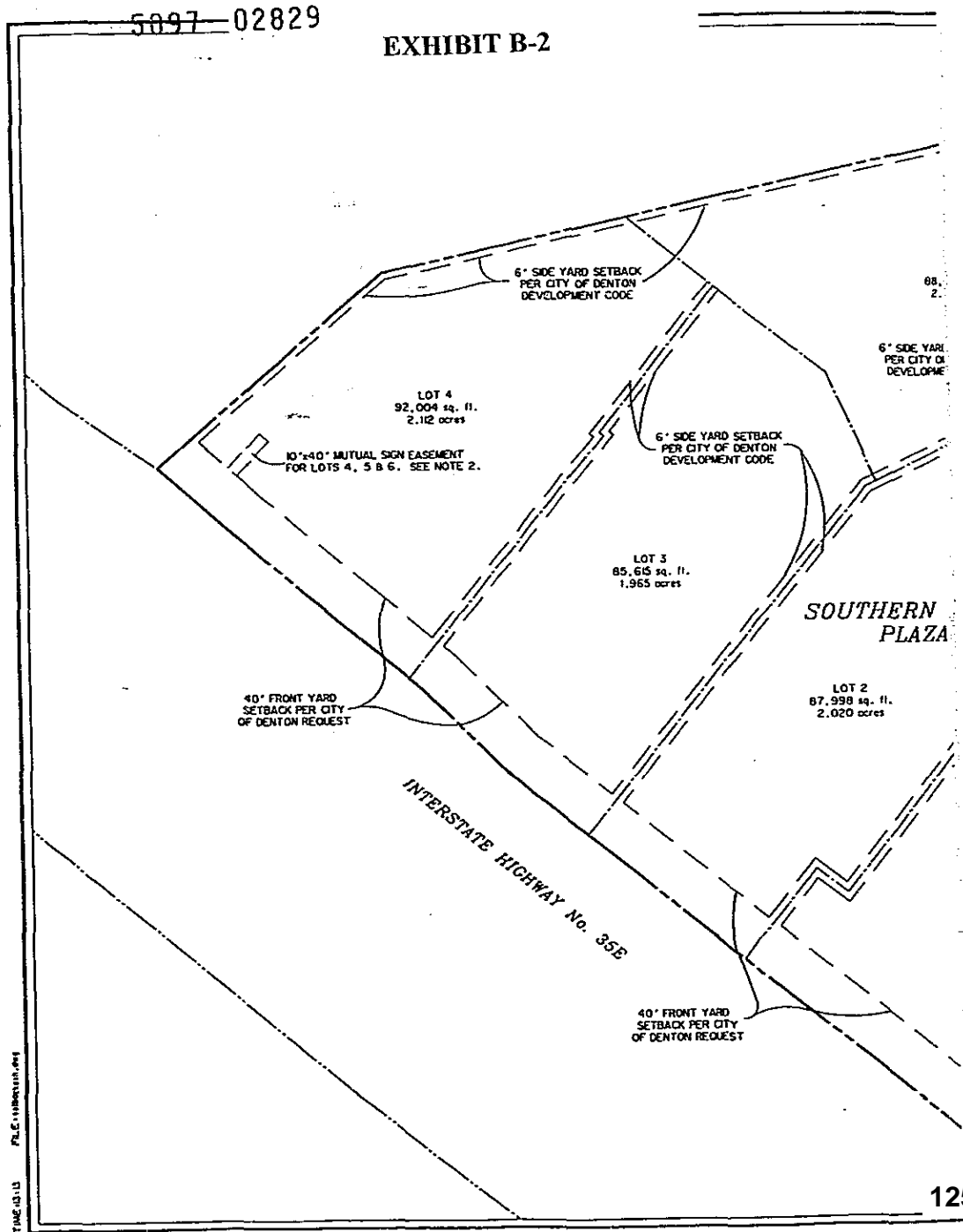


5097 02828

EXHIBIT B-2  
BUILDING SETBACKS

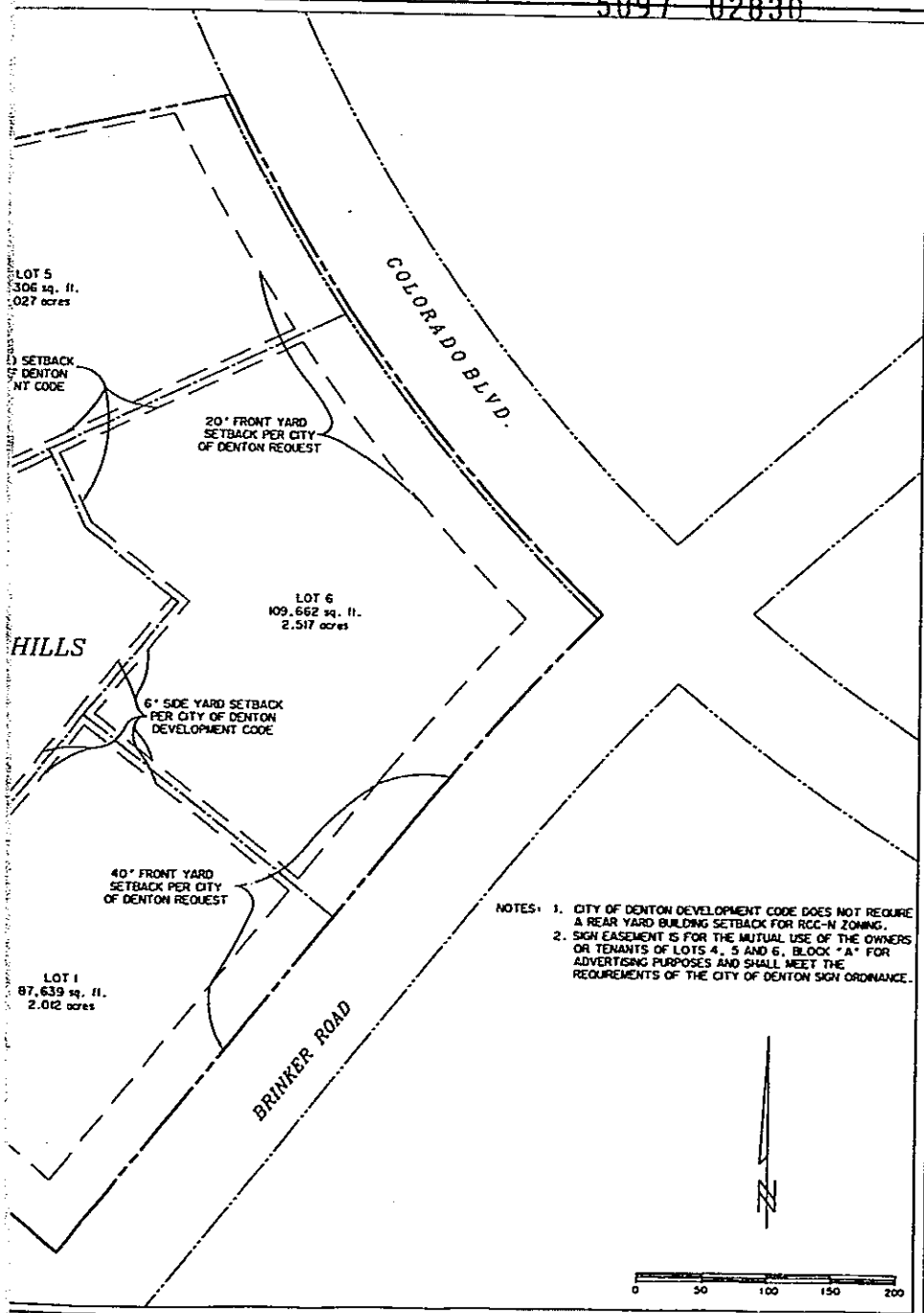
5097-02829

EXHIBIT B-2



PL E:\00000000.dwg  
TIME 03:13

5097 02830



- NOTES: 1. CITY OF DENTON DEVELOPMENT CODE DOES NOT REQUIRE A REAR YARD BUILDING SETBACK FOR RCC-N ZONING.  
2. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK "A" FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

PREPARED BY  
**WIA WIER & ASSOCIATES, INC.**  
ENGINEERS SURVEYORS LAND PLANNERS  
133 BEYOND PLACE SUITE 130 AMARCO, TEX 76010 MTRD (817)417-7700  
8721 5TH STREET FMSD00, TEXAS METRO (214)307-8000



**SOUTHERN HILLS PLAZA**  
**CITY OF DENTON, DENTON COUNTY, TEXAS**  
**EXHIBIT SHOWING BUILDING SETBACKS**

FOR RECORD  
FILED  
DATE RECORDED  
BY  
SHEET NO. 1259  
1 OF 1



5097 02831

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK

On May 31 2002  
At 3:54pm

Receipt #: 30951  
Recording: 87.00  
Doc/Mgt : 5.00  
Doc/Num : 2002-R0068097  
Doc/Type : AGR  
Deputy -ELIZABETH

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Denton County  
Cynthia Mitchell  
County Clerk  
Denton, Tx 76202



70 2007 00054692

Instrument Number: 2007-54692

Recorded On: May 09, 2007

As  
Plat

Parties: SOUTHERN HILLS PLAZA AMENDED

Billable Pages: 2

To

Number of Pages: 2

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Plat	86.00
<b>Total Recording:</b>	<b>86.00</b>

\*\*\*\*\* DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2007-54692  
Receipt Number: 384752  
Recorded Date/Time: May 09, 2007 03:08:59P  
  
User / Station: J Morris - Cash Station 1

**Record and Return To:**

LODGESTAR INVESTMENTS LTD  
4255 BRYANT IRWIN RD STE 212  
FORT WORTH TX 76109



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*C Mitchell*

County Clerk  
Denton County, Texas

NON-CERTIFIED AVAILABLE COPY



Cynthia Mitchell  
County Clerk

Date	5-9-07
Cabinet	X
Page	691, 692
Addition	Southern Hills Plaza Amended
Developer	Golden Hotels
City	Denton
Filing Fee	86 <sup>00</sup>
Comments/ Clerk Initials	Jon

Area Map: (Yes or No

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the J. Worrall Survey, Abstract No. 1433, City of Denton, Denton County, Texas, and being part of Lot 1, Block 1, Southern Hills Plaza Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume U, Page 556 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a point in the northwest line of said Lot 1; from said point the west corner of said Lot 1, and being a point in the northeast right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) bears South 38°30'05" West, a distance of 55.45 feet;

**THENCE** North 38°30'05" East, a distance of 20.07 feet to a point for corner; from said point an "X" cut in concrete found bears North 83°21'00" West, a distance of 39.17 feet;

**THENCE** departing the said northeast line of Lot 1, South 47°01'49" East, a distance of 233.17 feet to a point for corner;

**THENCE** North 84°27'43" East, a distance of 59.15 feet to a point for corner;

**THENCE** South 51°07'20" East, a distance of 8.03 feet to a point for corner in the southeast line of said Lot 1;

**THENCE** South 38°29'49" West, along the said southeast line of Lot 1, a distance of 20.01 feet to a point for corner;

**THENCE** departing the said southeast line of Lot 1, South 84°27'43" West, a distance of 60.00 feet to a point for corner;

**THENCE** North 47°01'49" West, a distance of 240.62 feet to the **POINT OF BEGINNING** and containing 6,011 square feet or 0.1380 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

*8/31/20*  
**MICHAEL C. BILLINGSLEY**  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1, BLOCK 1  
 SOUTHERN HILLS PLAZA  
 J. WORRALL SURVEY, ABSTRACT NO. 1433  
 CITY OF DENTON, DENTON COUNTY, TEXAS

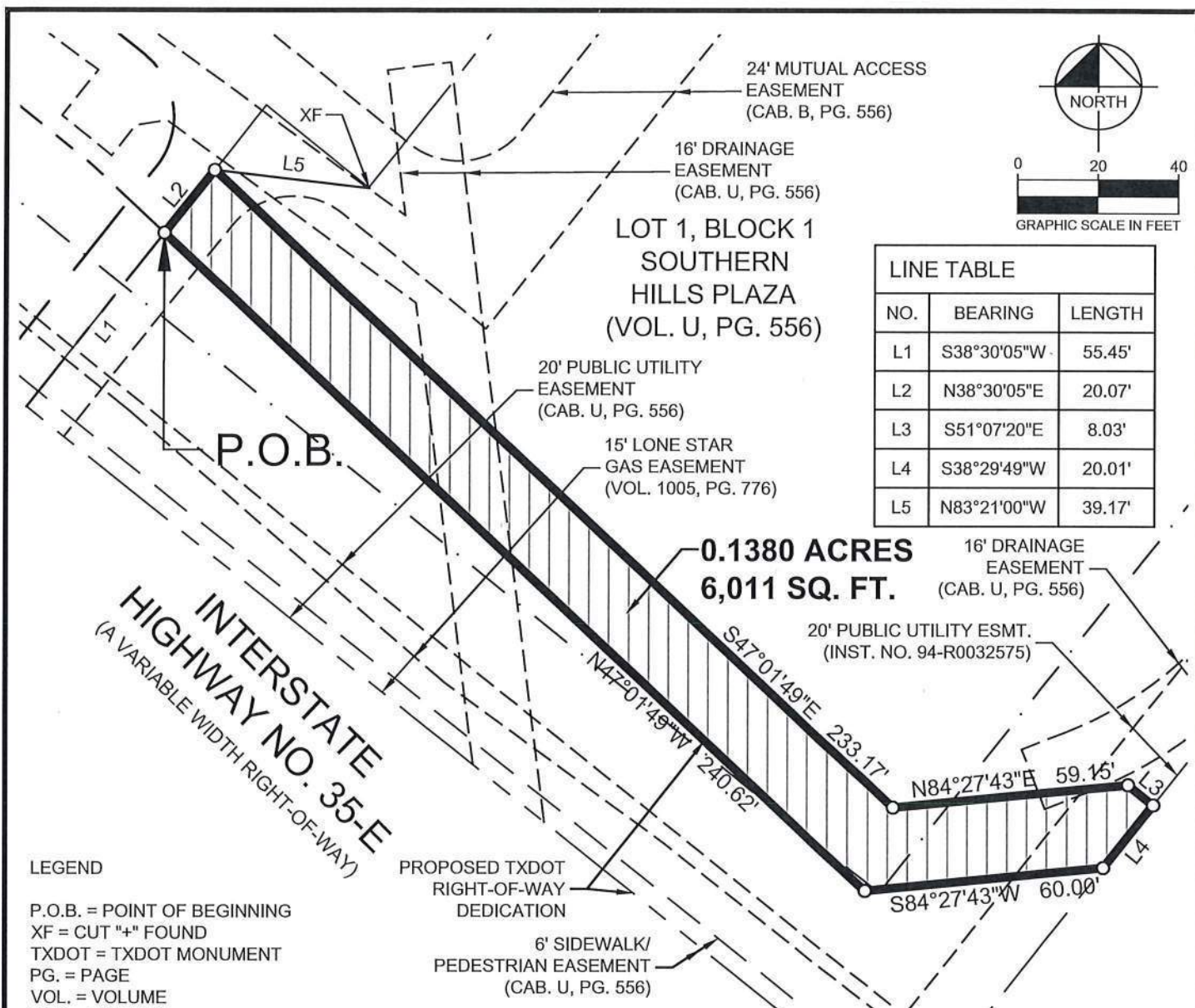
**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	8/25/2020	061024039	1 OF 2





*Michael C. Billingsley* 8/31/20  
**MICHAEL C. BILLINGSLEY**  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



**WATER AND WASTEWATER EASEMENT**  
 PART OF LOT 1, BLOCK 1  
 SOUTHERN HILLS PLAZA  
 J. WORRALL SURVEY, ABSTRACT NO. 1433  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	8/25/2020	061024039	2 OF 2

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 104**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1807+22 RT to Sta 1808+95 RT

Existing Easement

Volume U, Page 556

PART OF LOT 2  
SOUTHERN HILLS PLAZA ADDITION  
J. WORRALL SURVEY, ABSTRACT NO. 1433  
CITY OF DENTON, DENTON COUNTY, TEXAS



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Denton County  
Cynthia Mitchell  
County Clerk  
Denton, Tx 76202



70 2007 00054692

Instrument Number: 2007-54692

Recorded On: May 09, 2007

As  
Plat

Parties: SOUTHERN HILLS PLAZA AMENDED

Billable Pages: 2

To

Number of Pages: 2

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Plat	86.00
<b>Total Recording:</b>	<b>86.00</b>

\*\*\*\*\* DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

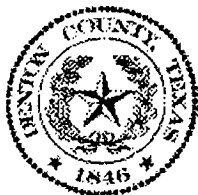
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2007-54692  
Receipt Number: 384752  
Recorded Date/Time: May 09, 2007 03:08:59P  
User / Station: J Morris - Cash Station 1

**Record and Return To:**

LODGESTAR INVESTMENTS LTD  
4255 BRYANT IRWIN RD STE 212  
FORT WORTH TX 76109



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*C Mitchell*

County Clerk  
Denton County, Texas

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**Cynthia Mitchell**  
County Clerk

Date	5-9-07
Cabinet	X
Page	691, 692
Addition	Southern Hills Plaza Amended
Developer	Golden Hotels
City	Denton
Filing Fee	86 <sup>00</sup>
Comments/ Clerk Initials	Jon

Area Map: (Yes or No

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EASEMENT

032575

THE STATE OF TEXAS,  
COUNTY OF DENTON

§  
§  
§

KNOW ALL MEN BY THESE PRESENTS:

THAT EPIC DEVELOPMENT, INC.

of Denton County, Texas, in consideration of the sum of one dollar (\$1.00) and no cents and other good and valuable consideration in hand paid by the City of Denton, Texas receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by them situated in Denton County, Texas in the J. White Survey, Abstract No. 1433

LEGAL DESCRIPTION  
UTILITY EASEMENT No. 4

BEING 10,220 square feet of land located in the J. WHITE SURVEY, Abstract No. 1433, Denton County, Texas, being a portion of a tract of land described in deed to Epic Development, Inc., recorded in Volume 3245, Page 699 of the Real Property Records of Denton County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at the intersection of the North right-of-way line of Interstate Highway No. 35-E (a variable width right-of-way) and the West right-of-way line of Southern Hills Boulevard (an 80 foot wide right-of-way) as shown by the plat recorded in Cabinet F, Page 125 of the Plat Records of Denton County, Texas, being in the South boundary line of said Epic tract;

THENCE N 51°00'00"W along the North right-of-way line of said Interstate Highway No. 35-E (a variable width right-of-way) and the South boundary line of said Epic tract, 16.00 feet to a point;

THENCE N 38°54'10"E, 453.19 feet to a point at the Beginning of a Curve to the Right;

THENCE NORTHEASTERLY, 186.32 feet along said Curve to the Right, having a radius of 2056.00 feet, a central angle of 05°11'32" and a chord bearing N 41°29'56"E, 186.26 feet to a point at the End of said Curve to the Right and the Beginning of a non-tangent Curve to the Left;

THENCE SOUTHEASTERLY, 16.00 feet along said non-tangent Curve to the Left, having a radius of 1456.00 feet, a central angle of 00°37'47" and a chord bearing S 45°33'53"E, 16.00 feet to a point in the West right-of-way line of said Southern Hills Boulevard (an 80 foot wide right-of-way);

THENCE along the West right-of-way line of said Southern Hills Boulevard (an 80 foot wide right-of-way) as follows:

SOUTHEASTERLY, 184.77 feet along a Curve to the Left, having a radius of 2040.00 feet, a central angle of 05°11'23" and a chord bearing S 41°29'51"W, 184.71 feet to a point at the End of said Curve to the Left;

S 38°54'10"W, 453.22 feet to the PLACE OF BEGINNING, containing 10,220 square feet of land.

SEE EXHIBIT "A"

And it is further agreed that the said City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public utilities in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public facilities or any part thereof.

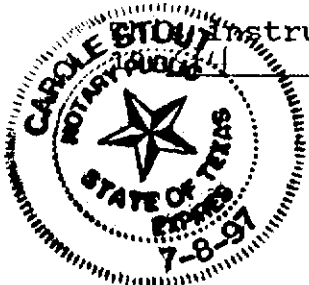
TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness \_\_\_\_\_ hands, this the 15<sup>th</sup> day of March, A.D. 1994.

\_\_\_\_\_  
\_\_\_\_\_

James A. Spring  
Facilities Manager

THE STATE OF TEXAS           §  
COUNTY OF DALLAS           §



This instrument was acknowledged before me on March 15, 1994 by FRANCIS A. SAPIENZA JR

Carole Stout  
Notary Public, in and for the State of Texas  
My Commission Expires 7/8/97

THE STATE OF TEXAS           §  
COUNTY OF                   §

This instrument was acknowledged before me on \_\_\_\_\_, 19 \_\_\_\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, in and for the State of Texas  
My Commission Expires \_\_\_\_\_

Accepted this 8<sup>th</sup> day of April, 19 94 for the City of Denton, Texas (Resolution No. 91-073).

BY: Roger N. Wilkinson  
Roger N. Wilkinson  
Right-of-Way Agent

EPIC DEVELOPMENT, INC.  
VOL. 3245, PG. 699  
R.P.R.D.C.T.

COLORADO BOULEVARD  
CAB. F. PG. 125 P.R.D.C.T.

EPIC DEVELOPMENT, INC.  
VOL. 3245, PG. 699  
R.P.R.D.C.T.

D = 00°37'47"  
R = 1456.00  
L = 16.00  
CH = S 45°33'53" E  
16.00

D = 05°11'32"  
R = 2056.00  
L = 186.26  
CH = N 41°29'56" E  
186.26

D = 05°11'23"  
R = 2040.00  
L = 184.77  
CH = S 41°29'51" W  
184.71

J. WHITE SURVEY  
ABSTRACT #1433

EPIC DEVELOPMENT, INC.  
VOL. 3245, PG. 699  
R.P.R.D.C.T.

SCALE: 1" = 100'

EXHIBIT SHOWING  
UTILITY EASEMENT No. 4  
LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433, CITY OF DENTON,  
DENTON COUNTY, TEXAS.

05-28-93

UE4

WMA WIER & ASSOCIATES, INC.

N 51°00'00" W  
16.00

INTERSTATE HIGHWAY 35-E

POINT OF BEGINNING  
U.E. No. 4  
10,220 SQ. FT.

SOUTHERN HILLS BOULEVARD

453.19 N 38°54'10"E  
453.22 S 38°54'10"W

80' R.O.W.

80' R.O.W.

16'

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RETURN TO: CITY OF DENTON  
215 E. MCKINNEY  
~~CITY~~ DENTON, TEXAS 76201  
ATTN: ROGER WILKINSON

Filed for Record in:  
DENTON COUNTY, TX  
HONORABLE TIM HODGES  
/COUNTY CLERK

On 1994/04/21

At 11:33A

Number: 94-R0032575  
Type : EAS 15.00



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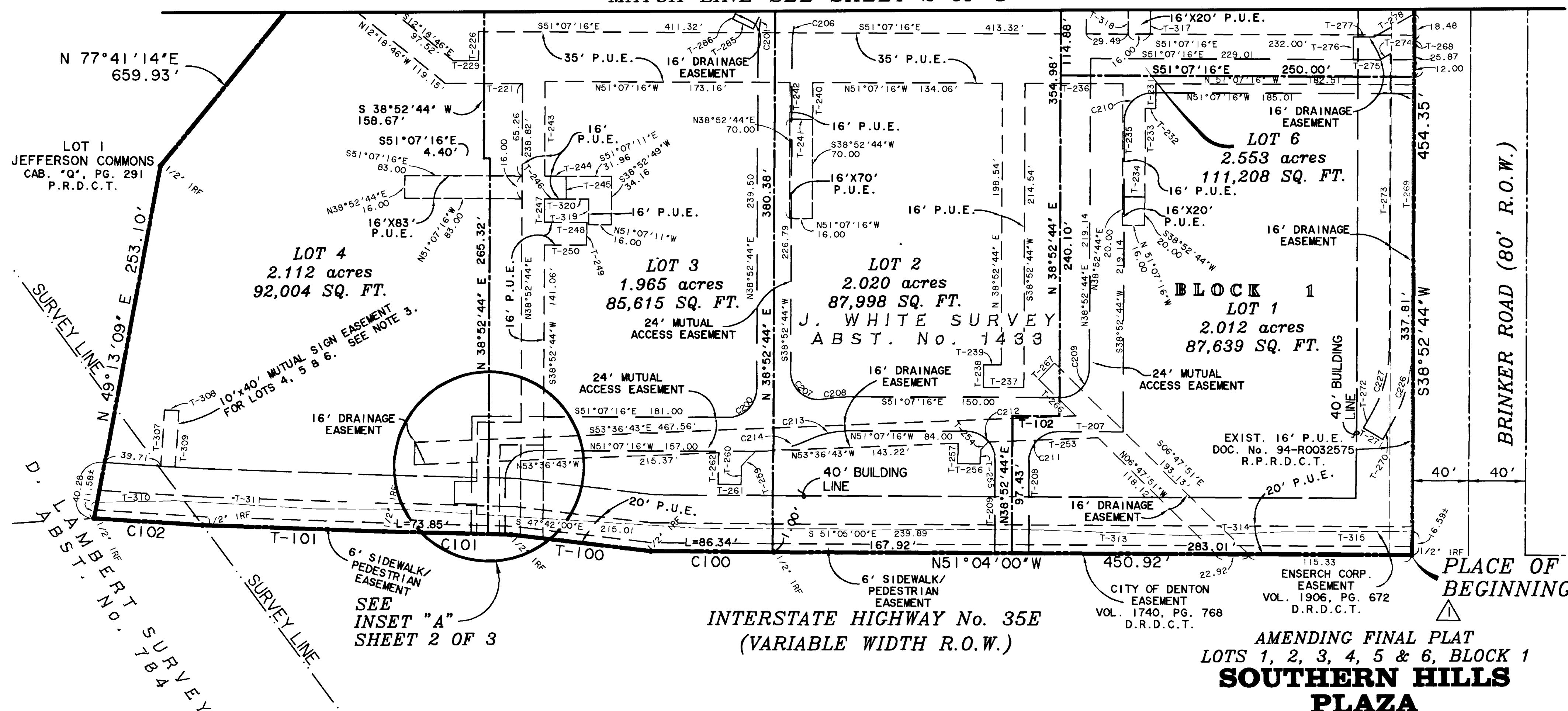
CAB U PG 556

DATE	REVISION	BY
7-22-02	CORRECTED GEOMETRIC ERROR 24' ACCESS ESMT, ADDED P.U.E. FOR DENTON MUNICIPAL ELECTRIC	RAC

\*\*THE PURPOSE OF THIS AMENDING FINAL PLAT IS TO CORRECT GEOMETRIC ERROR IN DEFINITION OF 24' MUTUAL ACCESS EASEMENT AND TO ADD PUBLIC UTILITY EASEMENTS IN WHICH TO PROVIDE ELECTRIC SERVICE TO EACH LOT.

LEGEND	
P.U.E.	DENOTES PUBLIC UTILITY EASEMENT
IRF	IRON ROD FOUND

MATCH LINE SEE SHEET 2 OF 3

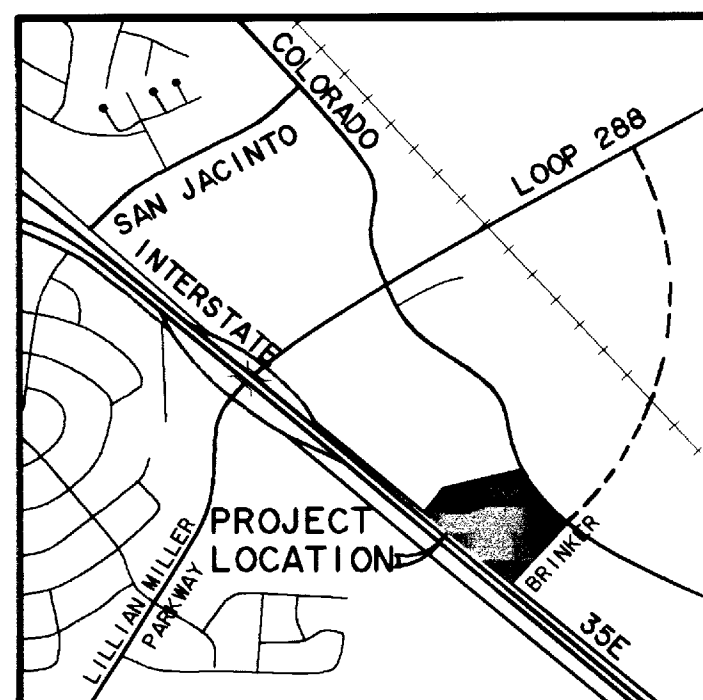


NOTES:

1. PLACE OF BEGINNING LIES APPROXIMATELY SOUTH, 2480± AND EAST 580'± FROM THE NORTHWEST CORNER OF THE J. WHITE SURVEY, ABSTRACT No. 1433.
2. CITY OF DENTON LANDSCAPE CODE REQUIREMENTS SHALL BE MET ON LOT BY LOT BASIS AS EACH LOT IS DEVELOPED.
3. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK 'A' FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

LEGEND

- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE (NAD 83)  
X = 2396583.13  
Y = 7115660.42
- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE  
X = 2396702.81  
Y = 7116569.12



\* VICINITY MAP \*

\*\*NOTE\*\*

THE ORIGINAL ENSERCH EASEMENT IS REFERENCED TO OLD PROPERTY CORNERS WHICH HAVE BEEN REMOVED AND CANNOT BE RECREATED. THE EASEMENT LOCATION INDICATED ON THIS PLAT IS THE SURVEYOR'S BEST INTERPRETATION OF THE EASEMENT DOCUMENT RECORDED IN VOLUME 1906, PAGE 672 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS.

PREPARED BY:  
**WIER & ASSOCIATES, INC.**  
ENGINEERS SURVEYORS LAND PLANNERS

4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
www.wierassociates.com

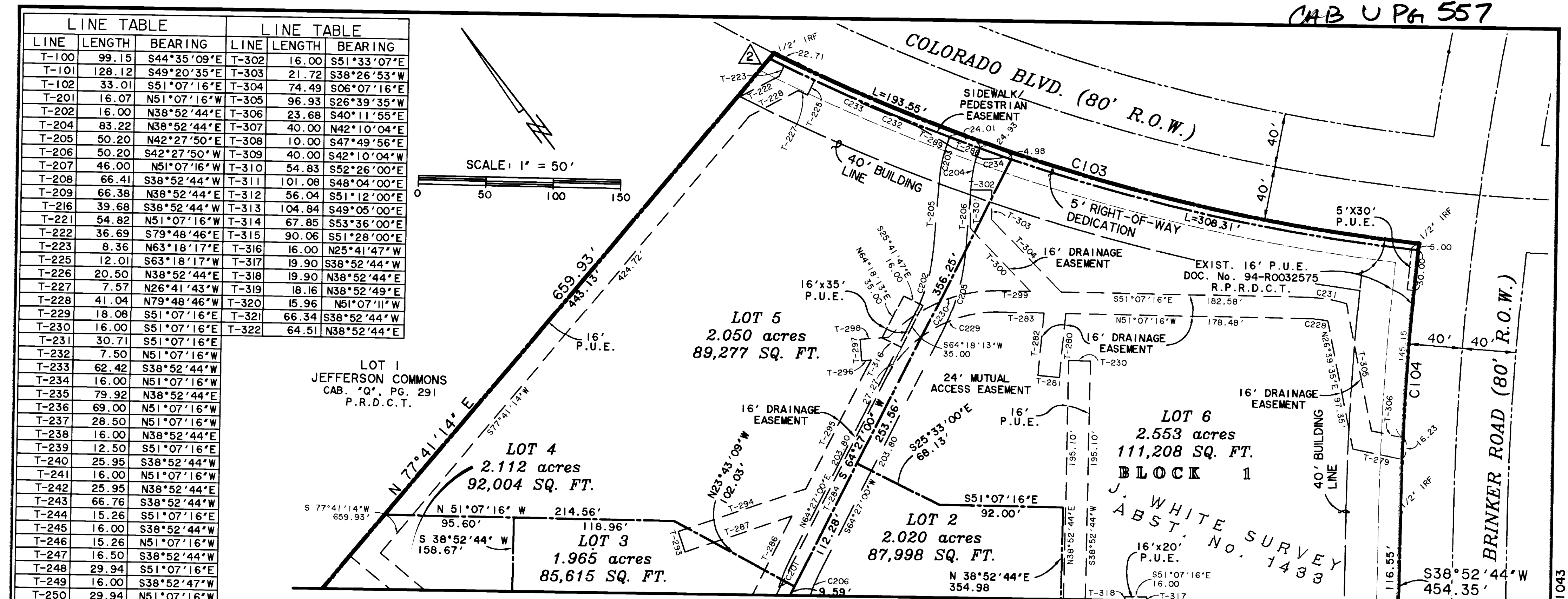
OWNER:

**QUADRANT SOUTHERN HILLS PARTNERS, LTD.**  
14900 LANDMARK BLVD.  
SUITE 610  
DALLAS, TEXAS 75254  
(972) 980-8806  
SHEET 1 OF 3

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Aug 15 2002  
At 4:11pm  
Receipt #: 46717  
Recording: 108.00  
Doc/Mgmt: 6.00  
Doc/Num: 2002-R0182530  
Doc/Type: PLA  
Deputy -ELIZABETH

DATE: 08-06-2002 FILE: MINOR\_PLAT.dwg W.A. No. 01043

CAB U PG 557



LINE TABLE			LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
T-100	99.15	S44°35'09"E	T-302	16.00	S51°33'07"E
T-101	128.12	S49°20'35"E	T-303	21.72	S38°26'53"W
T-102	33.01	S51°07'16"E	T-304	74.49	S06°07'16"E
T-201	16.07	N51°07'16"W	T-305	96.93	S26°39'35"W
T-202	16.00	N38°52'44"E	T-306	23.68	S40°11'55"E
T-204	83.22	N38°52'44"E	T-307	40.00	N42°10'04"E
T-205	50.20	N42°27'50"E	T-308	10.00	S47°49'56"E
T-206	50.20	S42°27'50"W	T-309	40.00	S42°10'04"W
T-207	46.00	N51°07'16"W	T-310	54.83	S52°26'00"E
T-208	66.41	S38°52'44"W	T-311	101.08	S48°04'00"E
T-209	66.38	N38°52'44"E	T-312	56.04	S51°12'00"E
T-216	39.68	S38°52'44"W	T-313	104.84	S49°05'00"E
T-221	54.82	N51°07'16"W	T-314	67.85	S53°36'00"E
T-222	36.69	S79°48'46"E	T-315	90.06	S51°28'00"E
T-223	8.36	N63°18'17"E	T-316	16.00	N25°41'47"W
T-225	12.01	S63°18'17"W	T-317	19.90	S38°52'44"W
T-226	20.50	N38°52'44"E	T-318	19.90	N38°52'44"E
T-227	7.57	N26°41'43"W	T-319	18.16	N38°52'49"E
T-228	41.04	N79°48'46"W	T-320	15.96	N51°07'11"W
T-229	18.08	S51°07'16"E	T-321	66.34	S38°52'44"W
T-230	16.00	S51°07'16"E	T-322	64.51	N38°52'44"E
T-231	30.71	S51°07'16"E			
T-232	7.50	N51°07'16"W			
T-233	62.42	S38°52'44"W			
T-234	16.00	N51°07'16"W			
T-235	79.92	N38°52'44"E			
T-236	69.00	N51°07'16"W			
T-237	28.50	N51°07'16"W			
T-238	16.00	N38°52'44"E			
T-239	12.50	S51°07'16"E			
T-240	25.95	S38°52'44"W			
T-241	16.00	N51°07'16"W			
T-242	25.95	N38°52'44"E			
T-243	66.76	S38°52'44"W			
T-244	15.26	S51°07'16"E			
T-245	16.00	S38°52'44"W			
T-246	15.26	N51°07'16"W			
T-247	16.50	S38°52'44"W			
T-248	29.94	S51°07'16"E			
T-249	16.00	S38°52'47"W			
T-250	29.94	N51°07'16"W			
T-251	30.71	N51°07'16"W			
T-253	77.68	N53°36'43"W			
T-255	9.69	S38°52'44"W			
T-256	16.00	N51°07'16"W			
T-257	14.56	N38°52'44"E			
T-259	14.55	S81°23'17"W			
T-260	12.89	S38°52'44"W			
T-261	16.00	N51°07'16"W			
T-262	22.49	N38°52'44"E			
T-264	16.02	N38°52'44"E			
T-267	16.00	N83°12'09"E			
T-268	0.71	N81°07'16"W			
T-269	216.90	S38°52'44"W			
T-270	12.00	S68°52'44"W			
T-271	16.00	N21°07'16"W			
T-272	12.00	N68°52'44"E			
T-273	207.66	N38°52'44"E			
T-276	16.00	N38°52'44"E			
T-277	14.86	S51°07'16"E			
T-279	36.94	N40°11'55"W			
T-280	48.04	S43°16'18"W			
T-281	16.00	N46°43'42"W			
T-282	46.81	N43°16'18"E			
T-283	34.00	N51°07'16"W			
T-284	193.68	S64°18'13"W			
T-285	16.00	N25°41'47"W			
T-286	72.16	N64°18'13"E			
T-287	83.89	N70°54'07"W			
T-289	30.83	N21°08'55"W			
T-293	16.00	N19°05'53"E			
T-294	100.01	S70°54'07"E			
T-295	98.82	N64°18'13"E			
T-296	7.26	N56°22'08"W			
T-297	16.00	N33°37'52"E			
T-298	21.18	S56°22'08"E			
T-299	23.32	S51°07'16"E			
T-300	65.04	N06°07'16"W			
T-301	28.28	N38°26'53"E			

LINE TABLE			LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
T-100	99.15	S44°35'09"E	T-302	16.00	S51°33'07"E
T-101	128.12	S49°20'35"E	T-303	21.72	S38°26'53"W
T-102	33.01	S51°07'16"E	T-304	74.49	S06°07'16"E
T-201	16.07	N51°07'16"W	T-305	96.93	S26°39'35"W
T-202	16.00	N38°52'44"E	T-306	23.68	S40°11'55"E
T-204	83.22	N38°52'44"E	T-307	40.00	N42°10'04"E
T-205	50.20	N42°27'50"E	T-308	10.00	S47°49'56"E
T-206	50.20	S42°27'50"W	T-309	40.00	S42°10'04"W
T-207	46.00	N51°07'16"W	T-310	54.83	S52°26'00"E
T-208	66.41	S38°52'44"W	T-311	101.08	S48°04'00"E
T-209	66.38	N38°52'44"E	T-312	56.04	S51°12'00"E
T-216	39.68	S38°52'44"W	T-313	104.84	S49°05'00"E
T-221	54.82	N51°07'16"W	T-314	67.85	S53°36'00"E
T-222	36.69	S79°48'46"E	T-315	90.06	S51°28'00"E
T-223	8.36	N63°18'17"E	T-316	16.00	N25°41'47"W
T-225	12.01	S63°18'17"W	T-317	19.90	S38°52'44"W
T-226	20.50	N38°52'44"E	T-318	19.90	N38°52'44"E
T-227	7.57	N26°41'43"W	T-319	18.16	N38°52'49"E
T-228	41.04	N79°48'46"W	T-320	15.96	N51°07'11"W
T-229	18.08	S51°07'16"E	T-321	66.34	S38°52'44"W
T-230	16.00	S51°07'16"E	T-322	64.51	N38°52'44"E
T-231	30.71	S51°07'16"E			
T-232	7.50	N51°07'16"W			
T-233	62.42	S38°52'44"W			
T-234	16.00	N51°07'16"W			
T-235	79.92	N38°52'44"E			
T-236	69.00	N51°07'16"W			
T-237	28.50	N51°07'16"W			
T-238	16.00	N38°52'44"E			
T-239	12.50	S51°07'16"E			
T-240	25.95	S38°52'44"W			
T-241	16.00	N51°07'16"W			
T-242	25.95	N38°52'44"E			
T-243	66.76	S38°52'44"W			
T-244	15.26	S51°07'16"E			
T-245	16.00	S38°52'44"W			
T-246	15.26	N51°07'16"W			
T-247	16.50	S38°52'44"W			
T-248	29.94	S51°07'16"E			
T-249	16.00	S38°52'47"W			
T-250	29.94	N51°07'16"W			
T-251	30.71	N51°07'16"W			
T-253	77.68	N53°36'43"W			
T-255	9.69	S38°52'44"W			
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T-285	16.00	N25°41'47"W			
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T-287	83.89	N70°54'07"W			
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T-293	16.00	N19°05'53"E			
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T-255	9.69	S38°52'44"W
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T-299	23.32	S51°07'16"E
T-300	65.04	N06°07'16"W
T-301	28.28	N38°26'53"E

CURVE	DELTA	RAD
C100	0°26'33"	113
C101	0°27'23"	112
C102	0°23'13"	112
C103	19°58'06"	14
C104	5°38'19"	20
C200	90°00'00"	
C201	25°34'15"	
C202	21°59'09"	
C203	19°38'55"	
C204	20°48'59"	
C205	21°59'09"	
C206	25°34'15"	
C207	101°16'28"	
C208	11°16'27"	
C209	90°00'00"	
C210	90°00'00"	
C211	90°00'00"	
C212	90°00'00"	
C213	25°38'42"	
C214	25°38'42"	
C215	90°00'00"	
C220	22°09'44"	
C221	18°18'49"	
C222	20°12'41"	
C223	18°38'23"	
C224	22°09'44"	
C225	22°09'44"	
C226	30°00'00"	
C227	30°00'00"	
C228	10°01'19"	



ON - CERTIFICATE OF TITLE - COPY

CAB U PG 558

# OWNER'S CERTIFICATE

WHEREAS, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, ACTING BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENTS, ARE THE SOLE OWNERS OF A 12.712 ACRE TRACT OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO EPIC DEVELOPMENT, INC. AS RECORDED IN VOLUME 3245, PAGE 699 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E (A 300-FOOT RIGHT-OF-WAY) AND THE NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY),

THENCE ALONG THE SAID NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E AS FOLLOWS:

N 51°04'00"W, 450.92 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT,

NORTHWESTERLY, 87.34 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 11,309.20 FEET, A CENTRAL ANGLE OF 00°26'33" AND A CHORD BEARING N 50°50'44"E, 87.34 FEET TO A 1/2" IRON ROD FOUND,

N 44°35'09"W, 99.15 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 90.00 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,298.38 FEET, A CENTRAL ANGLE OF 00°27'23" AND A CHORD BEARING N 49°53'46"W, 90.00 FEET TO A 1/2" IRON ROD FOUND,

N 49°20'35"W, 128.12 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 76.33 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,299.20, A CENTRAL ANGLE OF 00°23'13" AND A CHORD BEARING N 47°46'26"E, 76.33 FEET TO A 1/2" IRON ROD FOUND,

THENCE N 49°13'09"E, 253.10 FEET TO A 5/8" IRON ROD FOUND,

THENCE N 77°41'14"E, 659.93 FEET TO A 1/2" IRON ROD FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT BOULEVARD) AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT,

THENCE SOUTHEASTERLY, 501.86 FEET ALONG THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD AND ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 19°58'06" AND A CHORD BEARING S 35°55'18"E, 499.33 FEET TO A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT RIGHT-OF-WAY) AND THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY) AT THE BEGINNING OF ANOTHER NON-TANGENT CURVE TO THE LEFT,

THENCE ALONG THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD AS FOLLOWS:

SOUTHWESTERLY, 200.79 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2,040.20 FEET, A CENTRAL ANGLE OF 05°38'19" AND A CHORD BEARING S 41°41'54"W, 200.70 FEET TO A 1/2" IRON ROD FOUND,

S 38°52'44"W, 454.35 FEET TO THE PLACE OF BEGINNING, CONTAINING 12.712 ACRES, (553,740 SQUARE FEET) OF LAND.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS,

THAT, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENT, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS SOUTHERN HILLS PLAZA, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS AND DO HEREBY DEDICATE TO THE PUBLIC'S USE THE RIGHTS-OF-WAY AND EASEMENTS SHOWN THEREON AND DO FURTHER CERTIFY THAT THIS PLAT DOES NOT ALTER OR REMOVE EXISTING DEED RESTRICTIONS OR COVENANTS, IN ANY, ON THIS PROPERTY.

WITNESS MY HAND AT DALLAS, DALLAS COUNTY, TEXAS THIS THE 7th DAY OF August, 2002.

QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP

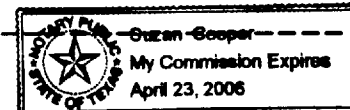
*Don Silverman*  
DON SILVERMAN, AGENT

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED DON SILVERMAN, AUTHORIZED AGENT FOR QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS EXPRESSED AND IN THE CAPACITY THEREIN STATED, AND AS THE ACT AND DEED OF SAID CORPORATION.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS THE 7th DAY OF August, 2002.

*Notary Public*  
NOTARY PUBLIC OF THE STATE OF TEXAS  
COMMISSION EXPIRES: April 23, 2005



## SURVEYOR'S STATEMENT

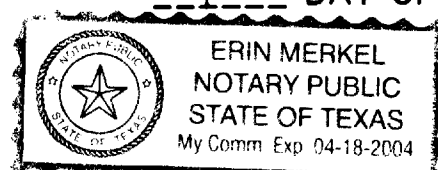
THAT I, ULYS LANE III, A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL SURVEY OF LAND, AND THAT THE CORNER MONUMENTS SHOWN THEREON SHALL BE PROPERLY MARKED ON THE GROUND, AND THAT THIS PLAT CORRECTLY REPRESENTS THAT SURVEY MADE BY ME OR UNDER MY DIRECTION AND SUPERVISION AND IS IN ACCORDANCE WITH THE PLATTING RULES AND REGULATIONS OF THE CITY OF DENTON, TEXAS.

*Ulys Lane III*  
ULYS LANE III  
REGISTERED PROFESSIONAL LAND SURVEYOR  
STATE OF TEXAS No. 2411

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED ULYS LANE III, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 7th DAY OF August, 2002.



*Erin Merkel*  
NOTARY PUBLIC, STATE OF TEXAS  
COMMISSION EXPIRES: 4/18/04

## CERTIFICATE OF APPROVAL:

APPROVED THIS 15th DAY OF August, 2002  
BY THE DEVELOPMENT REVIEW COMMITTEE OF THE  
CITY OF DENTON, TEXAS.

8-16-02 *Douglas S. Powell*  
DATE: DEVELOPMENT REVIEW COMMITTEE, CHAIRMAN

8-16-02 *Jennifer Walters*  
DATE: JENNIFER WALTERS CITY SECRETARY

## AMENDING FINAL PLAT LOTS 1, 2, 3, 4, 5 & 6, BLOCK 1 SOUTHERN HILLS PLAZA

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**WIA WIER & ASSOCIATES, INC.**

ENGINEERS SURVEYORS LAND PLANNERS  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
www.wierassociates.com

OWNER:  
QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.  
14900 LANDMARK BLVD.  
SUITE 610  
DALLAS, TEXAS 75254  
(972) 980-8806  
SHEET 3 OF 3

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Aug 15 2002  
At 4:11pm  
Receipt #: 46717  
Recording: 108.00  
Doc/Mgmt: 6.00  
Doc/Num: 2002-R0102530  
Doc/Type: PLA  
Deputy: ELIZABETH

Y:\Projects\01043\dwg\MINOR\_PLAT.dwg 7/22/2002 8:30:19 AM CDT W.A. No. 01043

CON-  
CER-  
TIFI-  
ABLE  
COPY

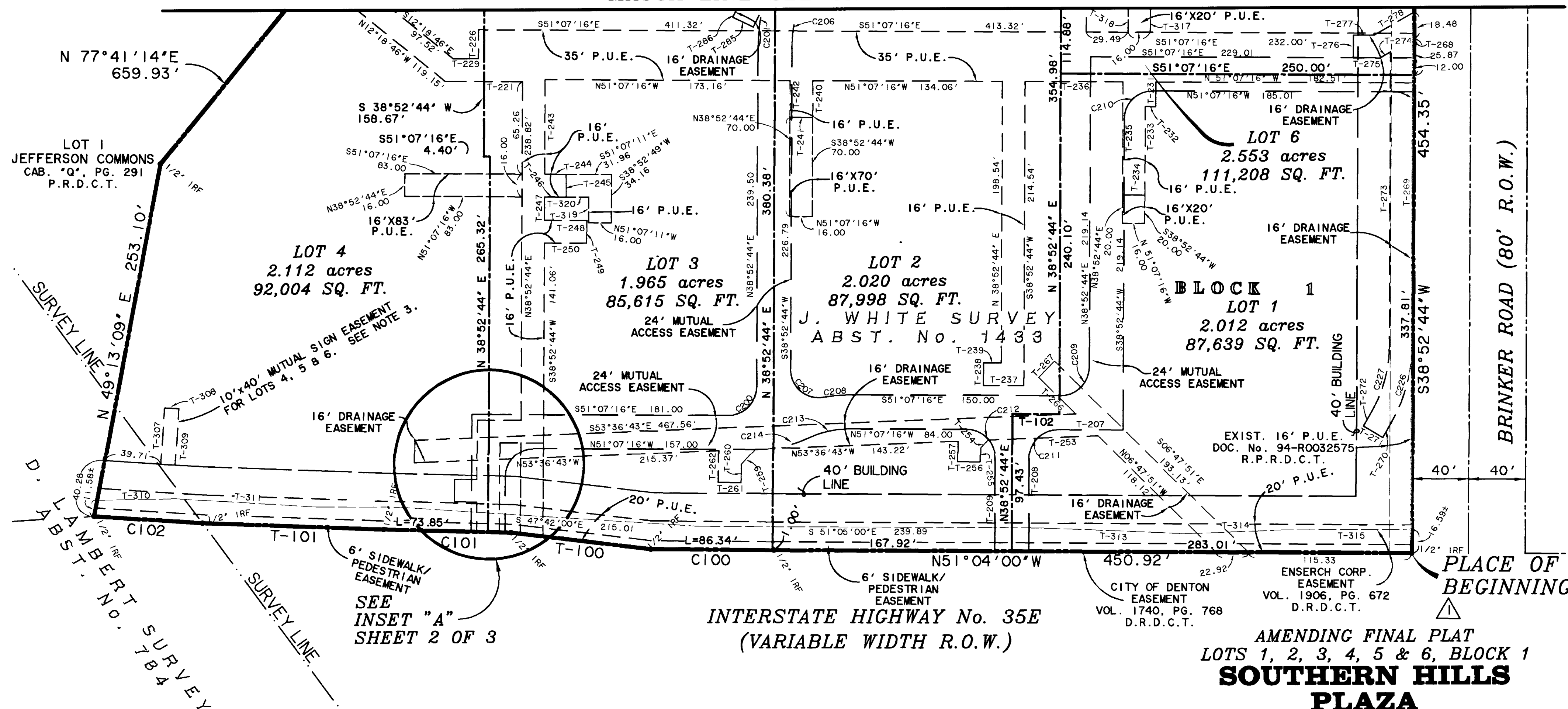
CAB U PG 556

DATE	REVISION	BY
7-22-02	CORRECTED GEOMETRIC ERROR 24' ACCESS ESMT, ADDED P.U.E. FOR DENTON MUNICIPAL ELECTRIC	RAC

\*\*THE PURPOSE OF THIS AMENDING FINAL PLAT IS TO CORRECT GEOMETRIC ERROR IN DEFINITION OF 24' MUTUAL ACCESS EASEMENT AND TO ADD PUBLIC UTILITY EASEMENTS IN WHICH TO PROVIDE ELECTRIC SERVICE TO EACH LOT.

LEGEND	
P.U.E.	DENOTES PUBLIC UTILITY EASEMENT
IRF	IRON ROD FOUND

MATCH LINE SEE SHEET 2 OF 3

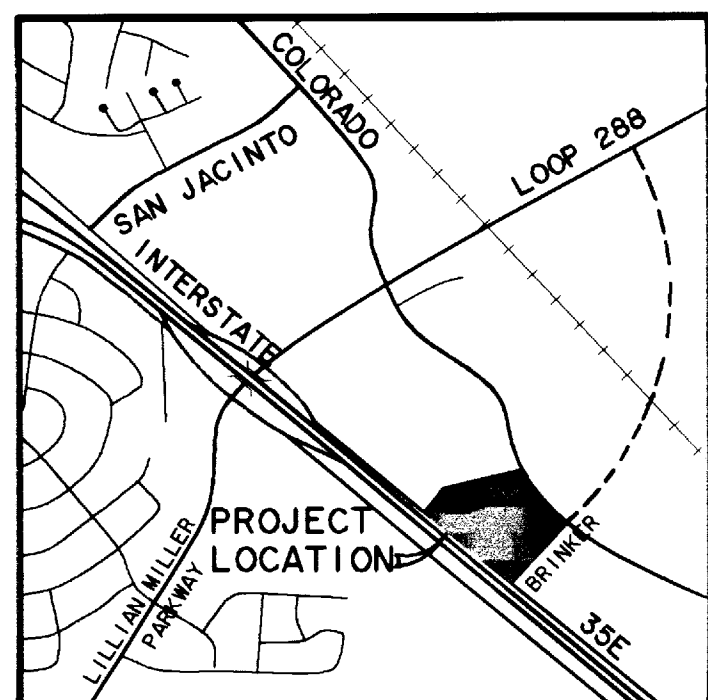


NOTES:

1. PLACE OF BEGINNING LIES APPROXIMATELY SOUTH, 2480± AND EAST 580'± FROM THE NORTHWEST CORNER OF THE J. WHITE SURVEY, ABSTRACT No. 1433.
2. CITY OF DENTON LANDSCAPE CODE REQUIREMENTS SHALL BE MET ON LOT BY LOT BASIS AS EACH LOT IS DEVELOPED.
3. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK 'A' FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

LEGEND

- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE (NAD 83)  
X = 2396583.13  
Y = 7115660.42
- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE  
X = 2396702.81  
Y = 7116569.12



\* VICINITY MAP \*

\*\*NOTE\*\*

THE ORIGINAL ENSERCH EASEMENT IS REFERENCED TO OLD PROPERTY CORNERS WHICH HAVE BEEN REMOVED AND CANNOT BE RECREATED. THE EASEMENT LOCATION INDICATED ON THIS PLAT IS THE SURVEYOR'S BEST INTERPRETATION OF THE EASEMENT DOCUMENT RECORDED IN VOLUME 1906, PAGE 672 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS.

PREPARED BY:  
**WIER & ASSOCIATES, INC.**

ENGINEERS SURVEYORS LAND PLANNERS  
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8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
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SHEET 1 OF 3

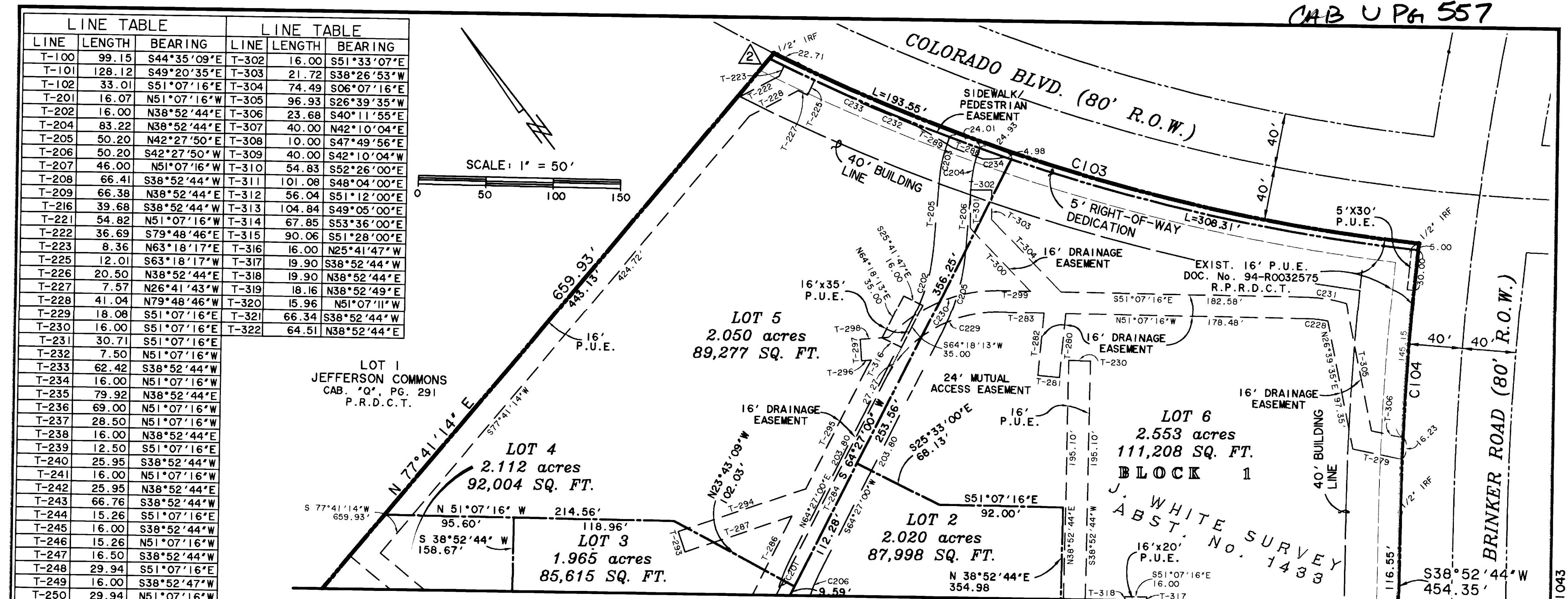
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CYNTHIA MITCHELL, COUNTY CLERK  
On Aug 15 2002  
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Receipt #: 46717  
Recording: 108.00  
Doc/Mgmt: 6.00  
Doc/Num: 2002-R0182530  
Doc/Type: PLA  
Deputy -ELIZABETH

DATE: 08-06-2002 FILE: MINOR\_PLAT.dwg W.A. No. 01043



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COPY

CAB U Pg 557



LINE TABLE			LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
T-100	99.15	S44°35'09"E	T-302	16.00	S51°33'07"E
T-101	128.12	S49°20'35"E	T-303	21.72	S38°26'53"W
T-102	33.01	S51°07'16"E	T-304	74.49	S06°07'16"E
T-201	16.07	N51°07'16"W	T-305	96.93	S26°39'35"W
T-202	16.00	N38°52'44"E	T-306	23.68	S40°11'55"E
T-204	83.22	N38°52'44"E	T-307	40.00	N42°10'04"E
T-205	50.20	N42°27'50"E	T-308	10.00	S47°49'56"E
T-206	50.20	S42°27'50"W	T-309	40.00	S42°10'04"W
T-207	46.00	N51°07'16"W	T-310	54.83	S52°26'00"E
T-208	66.41	S38°52'44"W	T-311	101.08	S48°04'00"E
T-209	66.38	N38°52'44"E	T-312	56.04	S51°12'00"E
T-216	39.68	S38°52'44"W	T-313	104.84	S49°05'00"E
T-221	54.82	N51°07'16"W	T-314	67.85	S53°36'00"E
T-222	36.69	S79°48'46"E	T-315	90.06	S51°28'00"E
T-223	8.36	N63°18'17"E	T-316	16.00	N25°41'47"W
T-225	12.01	S63°18'17"W	T-317	19.90	S38°52'44"W
T-226	20.50	N38°52'44"E	T-318	19.90	N38°52'44"E
T-227	7.57	N26°41'43"W	T-319	18.16	N38°52'49"E
T-228	41.04	N79°48'46"W	T-320	15.96	N51°07'11"W
T-229	18.08	S51°07'16"E	T-321	66.34	S38°52'44"W
T-230	16.00	S51°07'16"E	T-322	64.51	N38°52'44"E
T-231	30.71	S51°07'16"E			
T-232	7.50	N51°07'16"W			
T-233	62.42	S38°52'44"W			
T-234	16.00	N51°07'16"W			
T-235	79.92	N38°52'44"E			
T-236	69.00	N51°07'16"W			
T-237	28.50	N51°07'16"W			
T-238	16.00	N38°52'44"E			
T-239	12.50	S51°07'16"E			
T-240	25.95	S38°52'44"W			
T-241	16.00	N51°07'16"W			
T-242	25.95	N38°52'44"E			
T-243	66.76	S38°52'44"W			
T-244	15.26	S51°07'16"E			
T-245	16.00	S38°52'44"W			
T-246	15.26	N51°07'16"W			
T-247	16.50	S38°52'44"W			
T-248	29.94	S51°07'16"E			
T-249	16.00	S38°52'47"W			
T-250	29.94	N51°07'16"W			
T-251	30.71	N51°07'16"W			
T-253	77.68	N53°36'43"W			
T-255	9.69	S38°52'44"W			
T-256	16.00	N51°07'16"W			
T-257	14.56	N38°52'44"E			
T-259	14.55	S81°23'17"W			
T-260	12.89	S38°52'44"W			
T-261	16.00	N51°07'16"W			
T-262	22.49	N38°52'44"E			
T-264	16.02	N38°52'44"E			
T-267	16.00	N83°12'09"E			
T-268	0.71	N81°07'16"W			
T-269	216.90	S38°52'44"W			
T-270	12.00	S68°52'44"W			
T-271	16.00	N21°07'16"W			
T-272	12.00	N68°52'44"E			
T-273	207.66	N38°52'44"E			
T-276	16.00	N38°52'44"E			
T-277	14.86	S51°07'16"E			
T-279	36.94	N40°11'55"W			
T-280	48.04	S43°16'18"W			
T-281	16.00	N46°43'42"W			
T-282	46.81	N43°16'18"E			
T-283	34.00	N51°07'16"W			
T-284	193.68	S64°18'13"W			
T-285	16.00	N25°41'47"W			
T-286	72.16	N64°18'13"E			
T-287	83.89	N70°54'07"W			
T-289	30.83	N21°08'55"W			
T-293	16.00	N19°05'53"E			
T-294	100.01	S70°54'07"E			
T-295	98.82	N64°18'13"E			
T-296	7.26	N56°22'08"W			
T-297	16.00	N33°37'52"E			
T-298	21.18	S56°22'08"E			
T-299	23.32	S51°07'16"E			
T-300	65.04	N06°07'16"W			
T-301	28.28	N38°26'53"E			

LINE TABLE			LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
T-100	99.15	S44°35'09"E	T-302	16.00	S51°33'07"E
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T-208	66.41	S38°52'44"W	T-311	101.08	S48°04'00"E
T-209	66.38	N38°52'44"E	T-312	56.04	S51°12'00"E
T-216	39.68	S38°52'44"W	T-313	104.84	S49°05'00"E
T-221	54.82	N51°07'16"W	T-314	67.85	S53°36'00"E
T-222	36.69	S79°48'46"E	T-315	90.06	S51°28'00"E
T-223	8.36	N63°18'17"E	T-316	16.00	N25°41'47"W
T-225	12.01	S63°18'17"W	T-317	19.90	S38°52'44"W
T-226	20.50	N38°52'44"E	T-318	19.90	N38°52'44"E
T-227	7.57	N26°41'43"W	T-319	18.16	N38°52'49"E
T-228	41.04	N79°48'46"W	T-320	15.96	N51°07'11"W
T-229	18.08	S51°07'16"E	T-321	66.34	S38°52'44"W
T-230	16.00	S51°07'16"E	T-322	64.51	N38°52'44"E
T-231	30.71	S51°07'16"E			
T-232	7.50	N51°07'16"W			
T-233	62.42	S38°52'44"W			
T-234	16.00	N51°07'16"W			
T-235	79.92	N38°52'44"E			
T-236	69.00	N51°07'16"W			
T-237	28.50	N51°07'16"W			
T-238	16.00	N38°52'44"E			
T-239	12.50	S51°07'16"E			
T-240	25.95	S38°52'44"W			
T-241	16.00	N51°07'16"W			
T-242	25.95	N38°52'44"E			
T-243	66.76	S38°52'44"W			
T-244	15.26	S51°07'16"E			
T-245	16.00	S38°52'44"W			
T-246	15.26	N51°07'16"W			
T-247	16.50	S38°52'44"W			
T-248	29.94	S51°07'16"E			
T-249	16.00	S38°52'47"W			
T-250	29.94	N51°07'16"W			
T-251	30.71	N51°07'16"W			
T-253	77.68	N53°36'43"W			
T-255	9.69	S38°52'44"W			
T-256	16.00	N51°07'16"W			
T-257	14.56	N38°52'44"E			
T-259	14.55	S81°23'17"W			
T-260	12.89	S38°52'44"W			
T-261	16.00	N51°07'16"W			
T-262	22.49	N38°52'44"E			
T-264	16.02	N38°52'44"E			
T-267	16.00	N83°12'09"E			
T-268	0.71	N81°07'16"W			
T-269	216.90	S38°52'44"W			
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T-276	16.00	N38°52'44"E			
T-277	14.86	S51°07'16"E			
T-279	36.94	N40°11'55"W			
T-280	48.04	S43°16'18"W			
T-281	16.00	N46°43'42"W			
T-282	46.81	N43°16'18"E			
T-283	34.00	N51°07'16"W			
T-284	193.68	S64°18'13"W			
T-285	16.00	N25°41'47"W			
T-286	72.16	N64°18'13"E			
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T-289	30.83	N21°08'55"W			
T-293	16.00	N19°05'53"E			
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T-295	98.82	N64°18'13"E			
T-296	7.26	N56°22'08"W			
T-297	16.00	N33°37'52"E			
T-298	21.18	S56°22'08"E			
T-299	23.32	S51°07'16"E			
T-300	65.04	N06°07'16"W			
T-301	28.28	N38°26'53"E			

CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD	DIRECTION
C100	0°26'33"	11309.20	87.34	43.67	N50°50'44"W	87.34
C101	0°27'23"	11298.38	90.00	45.00	N49°53'46"W	90.00
C102	0°23'13"	11299.20	76.33	38.16	N47°46'26"W	76.33
C103	19°58'06"	1440.00	501.86	253.50	S35°55'18"E	499.33
C104	5°38'19"	2040.20	200.79	100.47	S41°41'54"W	200.70
C200	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28
C201	25°34'15"	124.00	55.34	28.14	S51°39'52"W	54.88
C202	21°59'09"	138.00	52.95	26.81	N53°27'25"E	52.63
C203	19°38'55"	112.00	38.41	19.39	S52°17'18"W	38.22
C204	20°48'59"	88.00	31.97	16.16	S52°52'20"W	31.80
C205	21°59'09"	162.00	62.16	31.47	N53°27'25"E	61.78
C206	25°34'15"	100.00	44.63	22.69	S51°39'52"W	44.26
C207	101°16'28"	20.00	35.35	24.38	S11°45'29"E	30.93
C208	11°16'27"	87.00	17.12	8.59	N56°45'30"W	17.09
C209	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28
C210	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28
C211	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28
C212	90°00'00"	20.00	31.42	20.00	N06°07'16"W	28.28
C213	25°38'42"	63.00	28.20	14.34	N63°56'37"W	27.96
C214	25°38'42"	87.00	38.94	19.80	S63°56'37"E	38.62
C215	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28
C220	22°09'44"	92.00	35.59	18.02	N62°12'08"W	35.36
C221	18°18'49"	108.00	34.52	17.41	S64°07'36"E	34.37
C222	20°12'41"	92.00	32.45	16.40	N61°13'37"W	32.29
C223	18°38'23"	108.00	35.14	17.72	N60°26'28"W	34.98
C224	22°09'44"	92.00	35.59	18.02	S62°12'08"E	35.36
C225	22°09'44"	108.00	41.77	21.15	N62°12'08"W	41.51
C226	30°00'00"	108.00	56.55	28.94	N53°52'44"E	55.90
C227	30°00'00"	92.00	48.17	24.65	N53°52'44"E	47.62
C228	10°01'19"	92.00	16.09	8.07	N46°06'37"W	16.07

CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD	DIRECTION
C229	64°34'31"	92.00	103.69	58.13	N83°24'31"W	98.29
C230	48°35'13"	108.00	91.58	48.75	N75°24'52"W	88.86
C231	15°51'09"	108.00	29.88	15.04	N43°11'41"W	29.79
C232	1°23'57"	1446.12	35.32	17.66	S29°58'12"E	35.32
C233	5°54'53"	255.00	26.32	13.17	S26°18'47"E	26.31
C234	20°11'21"	46.57	16.41	8.29	S56°43'01"E	16.32

ON - CERTIFICATE OF TITLE - COPY

CAB U PG 558

OWNER'S CERTIFICATE

WHEREAS, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, ACTING BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENTS, ARE THE SOLE OWNERS OF A 12.712 ACRE TRACT OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO EPIC DEVELOPMENT, INC. AS RECORDED IN VOLUME 3245, PAGE 699 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E (A 300-FOOT RIGHT-OF-WAY) AND THE NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY),

THENCE ALONG THE SAID NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E AS FOLLOWS:

N 51°04'00"W, 450.92 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT,

NORTHWESTERLY, 87.34 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 11,309.20 FEET, A CENTRAL ANGLE OF 00°26'33" AND A CHORD BEARING N 50°50'44"E, 87.34 FEET TO A 1/2" IRON ROD FOUND,

N 44°35'09"W, 99.15 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 90.00 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,298.38 FEET, A CENTRAL ANGLE OF 00°27'23" AND A CHORD BEARING N 49°53'46"W, 90.00 FEET TO A 1/2" IRON ROD FOUND,

N 49°20'35"W, 128.12 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 76.33 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,299.20, A CENTRAL ANGLE OF 00°23'13" AND A CHORD BEARING N 47°46'26"E, 76.33 FEET TO A 1/2" IRON ROD FOUND,

THENCE N 49°13'09"E, 253.10 FEET TO A 5/8" IRON ROD FOUND,

THENCE N 77°41'14"E, 659.93 FEET TO A 1/2" IRON ROD FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT BOULEVARD) AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT,

THENCE SOUTHEASTERLY, 501.86 FEET ALONG THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD AND ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 19°58'06" AND A CHORD BEARING S 35°55'18"E, 499.33 FEET TO A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT RIGHT-OF-WAY) AND THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY) AT THE BEGINNING OF ANOTHER NON-TANGENT CURVE TO THE LEFT,

THENCE ALONG THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD AS FOLLOWS:

SOUTHWESTERLY, 200.79 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2,040.20 FEET, A CENTRAL ANGLE OF 05°38'19" AND A CHORD BEARING S 41°41'54"W, 200.70 FEET TO A 1/2" IRON ROD FOUND,

S 38°52'44"W, 454.35 FEET TO THE PLACE OF BEGINNING, CONTAINING 12.712 ACRES, (553,740 SQUARE FEET) OF LAND.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS,

THAT, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENT, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS SOUTHERN HILLS PLAZA, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS AND DO HEREBY DEDICATE TO THE PUBLIC'S USE THE RIGHTS-OF-WAY AND EASEMENTS SHOWN THEREON AND DO FURTHER CERTIFY THAT THIS PLAT DOES NOT ALTER OR REMOVE EXISTING DEED RESTRICTIONS OR COVENANTS, IN ANY, ON THIS PROPERTY.

WITNESS MY HAND AT DALLAS, DALLAS COUNTY, TEXAS THIS THE 7th DAY OF August, 2002.


QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP

  
DON SILVERMAN, AGENT

STATE OF TEXAS  
COUNTY OF DALLAS


BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED DON SILVERMAN, AUTHORIZED AGENT FOR QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS EXPRESSED AND IN THE CAPACITY THEREIN STATED, AND AS THE ACT AND DEED OF SAID CORPORATION.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS THE 7th DAY OF August, 2002.

  
NOTARY PUBLIC OF THE STATE OF TEXAS  
COMMISSION EXPIRES: April 23, 2005

SURVEYOR'S STATEMENT


THAT I, ULYS LANE III, A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL SURVEY OF LAND, AND THAT THE CORNER MONUMENTS SHOWN THEREON SHALL BE PROPERLY MARKED ON THE GROUND, AND THAT THIS PLAT CORRECTLY REPRESENTS THAT SURVEY MADE BY ME OR UNDER MY DIRECTION AND SUPERVISION AND IS IN ACCORDANCE WITH THE PLATTING RULES AND REGULATIONS OF THE CITY OF DENTON, TEXAS.


  
ULYS LANE III  
REGISTERED PROFESSIONAL LAND SURVEYOR  
STATE OF TEXAS No. 2411

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED ULYS LANE III, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 7th DAY OF August, 2002.

  
ERIN MERKEL  
NOTARY PUBLIC  
STATE OF TEXAS  
My Comm. Exp. 04-18-2004

  
NOTARY PUBLIC, STATE OF TEXAS  
COMMISSION EXPIRES: 4/18/04

CERTIFICATE OF APPROVAL:

APPROVED THIS 15th DAY OF August, 2002  
BY THE DEVELOPMENT REVIEW COMMITTEE OF THE  
CITY OF DENTON, TEXAS.

8-16-02   
DATE: DEVELOPMENT REVIEW COMMITTEE, CHAIRMAN

8-16-02   
DATE: JENNIFER WALTERS CITY SECRETARY

AMENDING FINAL PLAT  
LOTS 1, 2, 3, 4, 5 & 6, BLOCK 1

SOUTHERN HILLS  
PLAZA

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**WIA WIER & ASSOCIATES, INC.**

ENGINEERS SURVEYORS LAND PLANNERS  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
www.wierassociates.com

OWNER:  
QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.  
14900 LANDMARK BLVD.  
SUITE 610  
DALLAS, TEXAS 75254  
(972) 980-8806  
SHEET 3 OF 3

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Aug 15 2002  
At 4:11pm  
46717  
Receipt #: 108.00  
Recording: 6.00  
Doc/Mgmt: 2002-R0102530  
Doc/Num: PLA  
Doc/Type: Deputy - ELIZABETH

Y:\Projects\01043\dwg\MINOR\_PLAT.dwg 7/22/2002 8:30:19 AM CDT W.A. No. 01043



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**RECIPROCAL EASEMENT AGREEMENT**

THIS RECIPROCAL EASEMENT AGREEMENT ("Agreement") is promulgated this 17<sup>th</sup> day of May, 2002 by QUADRANT SOUTHERN HILLS PARTNERS, LTD., a Texas limited partnership ("Grantor"), whose address is c/o Quadrant Properties, L.L.C., 8000 Maryland Avenue, Suite 640, St. Louis, Missouri 63105.

**WITNESSETH:**

WHEREAS, Grantor is the owner of a certain parcel of land (the "Property") located in Denton County, Texas, which parcel of land is more particularly described on that certain Final Plat Southern Hills Plaza (the "Plat") dated April 5, 2002, filed April 24, 2002, and recorded in Plat Cabinet U, Page 357, in the Office of the County Clerk, Denton County, Texas, a copy of which Plat is attached hereto as Exhibit A;

WHEREAS, Grantor has caused the Property to be subdivided of record into six (6) lots (each, a "Lot" and collectively the "Lots") as shown on the Plat.

WHEREAS, Grantor desires that the Lots be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial development (sometimes hereinafter referred to as the "Development") in accordance with the Site Plan attached hereto as Exhibit B-1 (the "Site Plan"), and Grantor desires that the Development be subject to the easements and covenants hereinafter set forth.

NOW, THEREFORE, Grantor does hereby declare and grant the following rights, covenants and servitudes on the Property:

**1. Building/Common Areas.**

A. "Building Area" as used herein shall mean that portion of a Lot within the building set back lines on a Lot as shown on Exhibit B-2 attached hereto. Canopies may encroach from the Building Area over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

B. "Common Areas" shall be all of the Property except the Building Area.

C. Conversion to Common Areas: Those portions of the Building Area on each Lot which are not from time to time used, or cannot under the terms of this Agreement be used, for buildings, shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

2. Use. Buildings in the Development shall be used only for retail and other commercial purposes including, without limitation, medical offices, lodging facilities, video rental and sales, financial institutions, restaurants, offices, and retail stores. Only

Lot 6 may be used for purposes of automobile service, convenience stores, service stations and the sale of motor vehicle fuels. Subject to the foregoing and Section 3 and Section 4 below, no portion of the Development shall be used for anything other than the purposes which may be permitted by applicable zoning regulations, nor shall anything be done in the Development which is a nuisance or an annoyance to the owners or occupants of the Development.

3. Prohibited Uses. During the term of this Agreement no portion of the Development may ever be used for any of the following uses whatsoever: (i) an adult-type bookstore or other establishment selling, leasing or exhibiting pornographic materials or paraphernalia for use with illicit drugs; (ii) a massage parlor, topless bar, or a club or establishment which provides striptease entertainment; (iii) a mortuary; (iv) a mobile home or trailer court, labor camp, junkyard or stockyard; (v) a land fill, garbage dump or for the dumping, disposing, incineration or reduction of garbage; (vi) an off-track betting parlor (or any other type of gambling establishment), carnival or amusement park; (vii) a manufacturing, distillation, smelting, refining, industrial, agricultural, drilling, mining or quarrying operation; or (viii) an x-rated movie theatre or video shop.

4. Restrictions on Use and Special Uses.

A. Italian Restaurant Restriction. For so long as a restaurant which features Italian food is operated on Lot 3, but in no event longer than fifty (50) years from the date of recordation of this Agreement, no Lot in the Development (except Lot 3 and except Lot 2 if Lot 2 is under contract to be purchased by or is owned by Texas Roadhouse (as defined below)) shall be used as a restaurant which features Italian food. For the purposes of this section: (a) "features" means that Italian food items comprise more than twenty five percent (25%) of the menu offerings. If Lot 3 ceases to be used as an Italian restaurant for one hundred eighty (180) days or more, for reasons other than closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation or other force majeure then this restriction shall lapse and shall terminate. The foregoing restriction: (a) is not intended to exclude a pizza restaurant, which is defined as a restaurant where at least seventy five percent (75%) of its gross food sales is derived from sales of pizza, including, but not limited to, restaurants of the type of a Chuck E. Cheese restaurant, and (b) shall not be applied to exclude restaurants of the type of a "Boston Pizza and Sports Bar" from the Development, however, such restriction will be applied to exclude restaurants of the type of Pizzeria Uno.

B. Parking Requirement. Any restaurant operating on Lot 4 or Lot 5 (and on Lot 2 if such restaurant is not owned by Texas Roadhouse) shall be required to provide one parking space for each 67 square feet of building area on such Lot.

C. Lot 3 Building Area Restriction. So long as the Development is being used primarily for retail purposes, the floor area of any building on Lot 3 shall not exceed 8,000 square feet, exclusive of mechanical rooms.

D. Lot 3 Frontage Restriction. So long as Lot 2 is being used as a restaurant, the principal entrance to any building on Lot 3 shall not face either Lot

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2 or Brinker Road. If Lot 2 ceases to be used for restaurant purposes for one hundred eighty (180) days or more, for reasons other than closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation or other force majeure, then the provisions of this section shall lapse and terminate.

**E. Mexican Restaurant Restriction.** For so long as (i) Brinker Texas, L.P., a Texas limited partnership, or an affiliate thereof, is reasonably pursuing the development of an On the Border restaurant (or other Mexican-style restaurant) on Lot 1, and/or (ii) Brinker (as hereinafter defined) is operating an On the Border restaurant (or other Mexican-style) restaurant on Lot 1 (excluding any periods of inoperation due to remodeling, renovation, or reconstruction as a result of an assignment, sublease, casualty, condemnation or otherwise), then Grantor shall not lease or sell any part of any Lot in the Development other than Lot 1 to any tenant or purchaser for the operation of a restaurant (nor shall Grantor otherwise permit the operation of a restaurant on any Lot in the Development other than Lot 1) offering alcoholic beverages and a menu featuring Mexican cuisine, "Tex-Mex" cuisine, and/or southwestern cuisine as the primary entrees. For the purposes of this section an "affiliate" shall mean any legal entity which is either (i) the successor by merger or otherwise, to all or substantially all of Brinker Texas, L.P.'s assets and liabilities, (ii) controls or is controlled by, or is under common control with Brinker Texas, L.P., or (iii) any franchisee of Brinker Texas, L.P. (Brinker Texas, L.P. and such affiliates being herein collectively called "Brinker"). Without limiting the foregoing, Grantor shall not lease or sell any part of the Property in the Development to any tenant or purchaser for the operation of the following restaurants (nor shall Grantor otherwise permit the operation of a restaurant in the Development operating under the following trade names): Blue Mesa, Canyon Café, Chi Chi's, Don Pablo's, Rio Bravo, Uncle Julio's, Rio Grande Café, Mia's, Chevy's, El Chico, El Fenix, Chuy's, Cantina Laredo, Abuelo's, Pappasito's, Mi Cocina, and Chipotle Mexican Grill. The foregoing restriction shall not be deemed to prohibit the operation of a restaurant on Lot 2 under the trade name "Texas Roadhouse" featuring menu items reasonably consistent with the items shown on such restaurant's menu as of the effective date hereof.

**F. Steakhouse Restriction.** For so long as a full service steakhouse or similar restaurant concept which features steaks, ribs and related menu items is operated on Lot 2 by Texas Roadhouse, or an affiliate thereof, no portion of the Development other than Lot 2 shall be used as a full service steakhouse or similar restaurant concept featuring steaks, ribs and related menu items or for the advertisement of such a restaurant. For the purposes of this section "features" shall mean that steaks, ribs and related menu items served in a full service steakhouse comprise more than twenty five percent (25%) of the menu items. If Lot 2 ceases to be used as a full service steakhouse restaurant which features steaks, ribs and related menu items for one hundred eighty (180) days or more, for reasons other than a closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation, or other force majeure,

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or ceases to be owned by Texas Roadhouse, then the provisions of this section shall lapse and terminate. For the purposes of this section "affiliate" shall mean any entity which is owned or controlled by, under common control with or owns or controls Texas Roadhouse Holdings LLC or any entity in to which Texas Roadhouse Holdings LLC shall merge or shall transfer substantially all of its assets, or any franchisee of Texas Roadhouse Development Corporation (Texas Roadhouse Holdings LLC and such affiliates being herein collectively called "Texas Roadhouse"). The foregoing restriction shall not be deemed to prohibit the operation of a restaurant on Lot 1 under the trade name "On the Border" featuring menu items reasonably consistent with the items shown on such restaurant's menu as of the effective date hereof.

G. Lot 6 Parking Requirement. For so long as a restaurant is being operated on Lot 2, any restaurant operating on Lot 6 shall be required to provide fifteen (15) parking spaces for each 1,000 square feet of any building constructed on Lot 6. If Lot 2 ceases to be used as a restaurant for one hundred eighty (180) days or more, for reasons other than a closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation, or other force majeure, or ceases to be owned by Texas Roadhouse, then the provisions of this section shall lapse and terminate.

H. Gravel Parking Area. So long as Lot 2 is under contract to be sold to or is owned by Texas Roadhouse and is being operated as a restaurant, Texas Roadhouse and its customers shall have a non-exclusive right to use that portion of Lot 6 depicted as "Gravel Parking Area" (the "Gravel Parking Area") on the Site Plan for the parking of passenger motor vehicles and Grantor hereby grants to Texas Roadhouse a license for such use. Texas Roadhouse may, at its sole cost and expense, place gravel on the Gravel Parking Area. The owner of Lot 6 or Grantor may terminate the license granted by this section by thirty (30) days advance written notice to Texas Roadhouse. Prior to the effective date of the termination of such license Texas Roadhouse shall restore the Gravel Parking Area to the condition as existed on the date on which Texas Roadhouse commenced use of the Gravel Parking Area, unless otherwise directed by Grantor or the owner of Lot 6. Texas Roadhouse shall indemnify and hold the owner of Lot 6 harmless from any losses, damages, liabilities or claims for property damage or personal injury caused by Texas Roadhouse, its customers, employees, agents or contractors in connection with their use of the Gravel Parking Area.

I. Medical Use Restriction. No part of the Development or any of the improvements now or hereafter located thereon may be used or operated: (a) as an acute care or medical surgical hospital or for the provision of services usually provided in such a hospital or to provide any services that are furnished at any hospital or other medical facility located in Denton County, Texas owned or operated by Epic Development, Inc. ("Epic") or any "Affiliate" of Epic; or (b) as a facility wherein any medical care or service of any kind is provided to human beings. In no event may a laboratory, x-ray or other form of diagnostic imaging service, or surgery or birthing services or facilities be provided on or in the

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development on any basis. "Affiliate," for the purposes of this section shall mean any person which directly or indirectly controls or is controlled by or is under control with Epic. For the purposes of this definition, "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used herein, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, through ownership of voting securities, partnership interests or other equity interests. The provisions of this section shall remain in effect and be enforceable until such time as all of the hospitals and other medical facilities owned or operated by Epic or any Affiliate of Epic described above in this section, or all successor health care facilities which replace such hospitals, are permanently closed; provided, however, the provisions of this section shall in any event terminate, lapse and be of no further effect on the date which is 99 years following March 4, 1999.

5. Buildings.

A. Design and Construction. The buildings within the Development shall be designed so that the same are comparable to the buildings located on outparcels within other first class community shopping centers in the metropolitan Dallas, Texas area. Notwithstanding the foregoing, subject to the approval of applicable governmental authorities, prototypical designs for national chain businesses shall be acceptable designs for buildings within the Development.

B. Location. No building shall be constructed on a Lot except within the Building Area.

C. Fire Protection. Any building constructed in the Development shall be constructed and operated in such a manner that standard form of fire insurance policy rates concerning other buildings in the Development are preserved.

D. Parking. Without limiting the specificity of the other provisions hereof relating to required parking, in developing and using a Lot, the owner of the Lot shall continuously provide and maintain parking spaces on such Lot at a minimum equal to the number of parking spaces required by applicable law or code.

E. Damage. In the event any building, structure or other improvement on a Lot shall be damaged or destroyed by any casualty, the owner, lessee or user of the Lot shall within ninety (90) days of such damage or destruction: (i) commence to repair and/or reconstruct such building, structure or improvement (and thereafter promptly complete such work) to a condition at least as good as existed prior to the casualty, subject to the terms of this Agreement (such commencement of repair or reconstruction work shall be deemed to include the preparation of construction plans and the pursuit of permits for such work with diligence and continuity to completion); or (ii) level such improvement, remove the debris from the Lot and keep the Lot neat, orderly, planted in grass and trimmed, until subsequently improved and constructed upon.

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6. Grant of Easements.

A. Access and Parking Easements. Grantor hereby establishes, for the benefit of the Lots, and the respective owners and lessees thereof, a reciprocal perpetual non-exclusive easement over, through and around the Common Areas of the Lots for roadways, walkways, ingress and egress and parking for the use of customers, invitees, licensees and employees of all businesses and owners, tenants and occupants of the buildings constructed within the Building Area on the Lots. The grant of the easement for reciprocal parking shall not release the owner of any Lot from such owner's obligation to maintain on such owner's Lot at minimum the number of parking spaces required by applicable laws or codes.

B. Limitations on Use of Access and Parking Easements.

(i) Employees. The owners of the Lots shall use reasonable efforts to ensure that their employees do not park their vehicles on the Common Areas of Lots of the other owners.

(ii) No Dedication to Public. Nothing contained in this Agreement shall constitute or be construed as a gift or dedication of any portion of the Property, specifically including the Common Areas, for roadways, walkways, ingress, egress, parking, or utilities constructed thereon, to the public or give any member of the public any rights whatsoever, it being the express intention of Grantor that this Agreement shall be for the exclusive benefit of the Lots, the owners thereof and their respective heirs, representatives, lessees, successors and assigns as set forth herein. Notwithstanding the foregoing, approximately forty (40) feet of frontage of the Property along Interstate Highway No. 35 shall be dedicated to the appropriate governmental authority without compensation for right-of-way purposes.

(iii) Prevention of Prescriptive Rights. The owner of each Lot hereby reserves the right to eject from the Common Areas on its Lot any person not authorized to use the same. In addition, the owner of each Lot reserves the right to close off the Common Areas on its Lot for such reasonable periods of time as may be legally necessary in the reasonable opinion of its attorneys to prevent the acquisition of prescriptive rights by anyone. Before closing off any part of the Common Areas as provided above, such owner must give notice to the other owners of its intention to do so and must coordinate its closing with the activities of the other owners of the Development so that no unreasonable interference with the operation of the Development occurs. Reasonable efforts shall be used to ensure that no such closing shall occur during weekends, holidays or normal business hours. No prescriptive easement rights or claims shall ever accrue in favor of any Lot owner or user against any other Lot owner as the result of any use or action taken by any Lot owner or user with respect to another owner's Lot.



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C. Utility and Service Easements. Grantor hereby establishes non-exclusive easements over the Common Areas on each Lot in favor of each other Lot to permit the maintenance and use of all apparatus necessary to provide utility services to a Lot, including telephone, cable, electricity, water, natural gas and storm and sanitary sewers, provided that same are constructed underground. Any disruption or demolition of a servient Lot by reason of the use of this easement shall be kept to a minimum which shall not exceed one (1) day in duration except during the period when the Development is initially constructed, unless such disruption or demolition cannot be reasonably completed within such one (1) day period, in which event the period will be extended to such time period as reasonably is required and such area forthwith shall be restored as quickly as possible by the dominant Lot owner to its original condition at no expense to the servient Lot owner. Nothing herein shall permit a Lot owner to: (i) disrupt the utility service of any business which is operating in the Development; or (ii) eliminate access to any business operating on a servient Lot. Prior to the commencement of any action by an owner of a dominant Lot on a servient Lot pursuant to the easement rights granted by this Section 6.C., the owner of such dominant Lot shall give the owner of such servient Lot at least five (5) days prior written notice of such action, except in the event of an emergency in which case the owner of the dominant Lot shall give notice as is reasonable under the circumstances. Such notice shall set forth the general scope of the work to be performed.

D. Construction Easements. Grantor hereby grants, declares and establishes for the benefit of the Lots, and the respective owners and lessees thereof, temporary easements in the Common Areas of the Lots, and prior to the construction of any improvements thereon, in the Building Area on a Lot, for the initial grading of the Development, including construction of retaining wall(s), and for the construction of the Development's internal roads. With respect to any Lot on which fresh dirt is dumped, the area shall be sloped to meet any contiguous property within the Development or public roads, and shall be smoothed in a level manner consistent with the contours of the adjoining property. Each owner covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the buildings or other improvements of any other owner, and shall not unreasonably interfere with or interrupt the construction of improvements or the business operations conducted by any other owner in the Development. In addition, each owner, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of another owner which have been damaged or destroyed in the exercise by such owner of the easements granted under this section and shall defend, indemnify and hold the other owners harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) incurred in connection with or as a result of an owner's exercise of said easements, except to the extent occasioned by the negligence or willful misconduct of another owner.

E. Water Flow. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of an

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owner's improvements substantially as shown on the Site Plan (including without limitation building, curbs, drives and paving) shall be permitted as long as such water flow conforms to the drainage easements shown on the Plat. Notwithstanding the foregoing, Lot owners shall comply with all applicable laws or regulations concerning storm water, and soil and erosion control.

F. Lot 4 Sign Easement. Grantor hereby grants and conveys for the benefit of Lot 4, Lot 5 and Lot 6, and the respective owners and lessees thereof, a perpetual nonexclusive appurtenant easement on, in, through and over that portion of Lot 4 shown on Exhibit B-2 as the "Mutual Sign Easement", for the purpose of the installation, construction, reconstruction, use, operation, maintenance, repair and replacement of a free standing, lighted pylon sign structure ("Sign Structure") and sign panels located thereon at the option of such Lot owners identifying the owner, lessee and/or occupants of such Lots. The Sign Structure and the panels located thereon shall comply with all applicable laws, ordinances and regulations of governmental authorities and any other requirements set forth hereinbelow. No more than one (1) Sign Structure shall exist in the Mutual Sign Easement at any one time and such Sign Structure may include no more than one (1) two (2)-sided sign panel for each of Lots 4, 5 and 6. The owners of each of Lots 4, 5 and 6 shall be responsible for the maintenance and upkeep of the Sign Structure during the time that the Sign Structure includes a sign panel for such owners' Lot, and such Lot owners shall, during such time when they are responsible for the Sign Structure's maintenance, share pro-rata in the actual and reasonable costs and expenses of permitting, construction, maintenance, repair, replacement, operation and reconstruction of the Sign Structure based on the relative square footage of each Lot owner's sign panel located thereon; provided, however, that such pro rata share shall not include any costs or expenses strictly related to each Lot's particular sign panel, which costs and expenses shall be the responsibility of such panel's owner.

7. Development, Maintenance and Taxes.

A. Development. The arrangement of the Common Areas shall not be changed in any manner which negatively affects the access and parking easements provided for in this Agreement. The Common Areas shall not be changed to alter or reconfigure the access points of the Development, including the access points of each Lot as shown on the Site Plan, without the prior written consent of the owners of all of the Lots, which consent shall not be unreasonably withheld, delayed or conditioned.

B. Maintenance.

(i) Standards. Each owner shall maintain its Lot in good condition and repair, at its own expense, following completion of the improvements on its Lot. The maintenance is to include, without limitation, the following:

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(a) Maintaining the surfaces of the Common Areas on its Lot in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the Common Areas on its Lot to the extent reasonably necessary to keep such areas in a clean and orderly condition;

(c) Placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines on the Common Areas of its Lot;

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required on the Common Areas of its Lot;

(e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair; and

(f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

(ii) Lots. Each owner of a Lot covenants that it, in addition to other requirements of this section, will keep all glass in the doors and windows on its Lot clean; will maintain its Lot at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; and will not permit accumulation of garbage, trash, rubbish and other refuse on its Lot, will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefor until called for to be removed.

C. Taxes. Each of the owners shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against its Lot (including, without limitation, that part of the Common Areas owned by it).

#### 8. Indemnification/Insurance.

A. Indemnification. Each owner of a Lot hereby indemnifies and saves the other owners harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Lot, except if caused by the act or negligence of another owner.

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**B. Insurance.**

(i) The owner of each Lot shall procure and maintain in full force and effect throughout the term of this Agreement commercial general liability insurance and property damage insurance (including contractual liability coverage) against claims for personal injury, death, or property damage occurring upon, in or about its Lot with combined single limit coverage of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate. The owner of each Lot shall provide the other owners with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance which may cover other property in addition to the property covered by this Agreement, and the coverage amounts may be obtained through combination of primary and umbrella policies.

(ii) A policy shall include provisions denying the insurer subrogation rights against the other owners to the extent such rights were waived by the insured prior to the occurrence of loss.

(iii) Each owner of a Lot, for itself and its property insurer, hereby releases the other owners, and their tenants, employees and agents from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of the owner resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

(iv) Notwithstanding anything to the contrary contained in this Section 8.B., so long as the net worth of an owner of a Lot shall exceed Twenty Million Dollars (\$20,000,000.00), such owner shall have the right to satisfy its obligations under this Section 8.B. by self-insuring and retaining the financial risk for any claim.

**9. Eminent Domain.**

A. Owner's Right to Award. Nothing herein shall be construed to give any owner any interest in any award or payment made to any other owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other owner's Lot, or giving the public or any government any rights in a Lot. In the event of any exercise of eminent domain or transfer in lieu

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thereof of any part of the Common Areas located on a Lot, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

B. Collateral Claims. All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.

C. Tenant's Claim. Nothing in this section shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

D. Restoration of Common Areas. The owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective tract as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

10. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon a Lot of any owner, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Lot. Except as set forth in the preceding sentence, however, any holder of a first lien on a Lot, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement. By executing and acknowledging this Agreement, the lender that holds a deed of trust encumbering the Property on the date of this Agreement (the "Lender") hereby consents to this Agreement and to the provisions hereof, and subordinates its interest in the Property to this Agreement.

11. Release from Liability. Any person acquiring fee or leasehold title to a Lot or any portion thereof, shall be bound by this Agreement only as to the Lot acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Lot, except as to the obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this section, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon the Lots running with the land.

## 12. Breach.

A. Parties with Remedies. In the event of a breach or threatened breach of this Agreement, any owner of a Lot shall, subject to Section 12.B. hereinbelow, be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach, by injunction and/or all such other available legal and equitable remedies. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees.

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**B. Remedies.** If any owner of a Lot shall fail to perform any covenant or condition contained in this Agreement, the aggrieved party shall give the defaulting owner at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default be not reasonably susceptible of being cured within said period of thirty (30) days, and said defaulting owner shall not have in good faith commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to completion) the aggrieved party may institute legal proceedings for full and adequate relief from the consequences of said default or threatened default.

**C. Self Help; Right of Entry.** The defaulting owner hereby grants to the aggrieved party a non-exclusive right of entry and non-exclusive easements across and under any and all parts of the defaulting owner's Lot (excluding the right to enter in or upon any buildings on such Lot) for all purposes reasonably necessary to enable the aggrieved party (acting directly or through agents, contractors or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Agreement which the defaulting owner shall have failed to perform, after notice and time to cure, as aforesaid, but only such notice and time to cure as shall be reasonable or practicable under the circumstances need be given in the event of any emergency. Any amounts so expended may be withheld from amounts otherwise payable to the defaulting owner or collection may be sought otherwise and in any event the defaulting owner shall pay such amount with interest at the rate of three percent (3%) per annum over the then existing prime rate of interest announced from time to time by Citibank, N.A. or its successors (but in no event exceeding the maximum rate per annum permitted by law).

**13. Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the owners of the buildings constructed on the Lots, their respective heirs, representatives, lessees, successors and assigns, and occupants of the Lots. The singular number includes the plural and the masculine gender includes the feminine and neuter.

**14. Non-Merger.** This Agreement shall not be subject to the doctrine of merger.

**15. Duration.** Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

**16. Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.



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17. Notices. Any notices required or permitted to be given under this Agreement shall be delivered: (i) personally, (ii) by overnight mail or overnight air courier service; or (iii) by United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, and addressed to the owner of a Lot at the last known business address of such owner. Any such notice, request or other communication shall be considered given or delivered, as the case may be, when received or refused. An owner of a Lot may designate a notice address by sending written notice to the last known business address of the other Lot owners.

18. Estoppel Certificates. Each owner shall upon not less than thirty (30) days from receipt of written notice from any other owner execute and deliver to such other owner a certificate stating that: (a) either this Agreement is unmodified and in full force and effect or is modified (and stating the modification); and (b) whether or not to the best of its knowledge the other owner is in default in any respect under this Agreement and if in default, specifying such default.

19. Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

20. Responsibility. Notwithstanding anything to the contrary contained in this Agreement, each owner of a Lot shall be liable for the obligations, covenants, agreements, and responsibilities created by this Agreement and for any judgment rendered hereon only to the extent of its respective interest in its Lot and the improvements located thereon.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

22. Modification. This Agreement may be amended, modified or changed only by the written consent of all of the owners of the Lots, with any such amendment, modification or change being recorded in the land records of Denton County, Texas.

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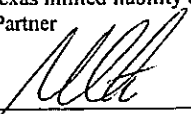
5097 02808

IN WITNESS WHEREOF, Grantor and Lender have executed this Agreement as of the day and year first written above.

GRANTOR:

QUADRANT SOUTHERN HILLS  
PARTNERS, LTD., a Texas limited  
partnership

By: SOUTHERN HILLS EQUITIES,  
LLC, a Texas limited liability company,  
General Partner

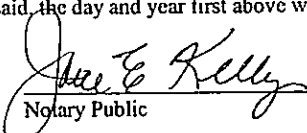
By:   
Stephen M. Notestine, Manager

STATE OF MISSOURI     )  
                                  ) SS  
COUNTY OF ST. LOUIS    )

On this 1st day of MAY, 2002, before me appeared Stephen M. Notestine to me personally known, who, being by me duly sworn, did say that he is the Manager of Southern Hills Equities, LLC, a Texas limited liability company, which company is the General Partner of Quadrant Southern Hills Partners, Ltd., a Texas limited partnership, and that said instrument was signed in behalf of said company and partnership, by authority of its members and partners; and said person acknowledged said instrument to be the free act and deed of said company and partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



  
Notary Public

My commission expires:

5097 02809

LENDER:

FIRST BANK, a Missouri corporation

By: [Signature]  
Print Name: GREG Fuesting  
Title: Senior Vice President

STATE OF MISSOURI  
COUNTY OF ST. LOUIS ) SS

On this 30<sup>th</sup> day of MAY, 2002, before me appeared GREG FUESTING to me personally known, who, being by me duly sworn, did say that he is the SA. V. P. of First Bank, a Missouri corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors; and said person acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

**JULIA A. WOODS**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis City  
My Commission Expires: Aug. 2, 2003  
My commission expires:

[Signature]  
Notary Public

Return to:  
Republic Title of Texas, Inc.  
2626 Howell Street, 10th Floor  
Dallas TX. 75204

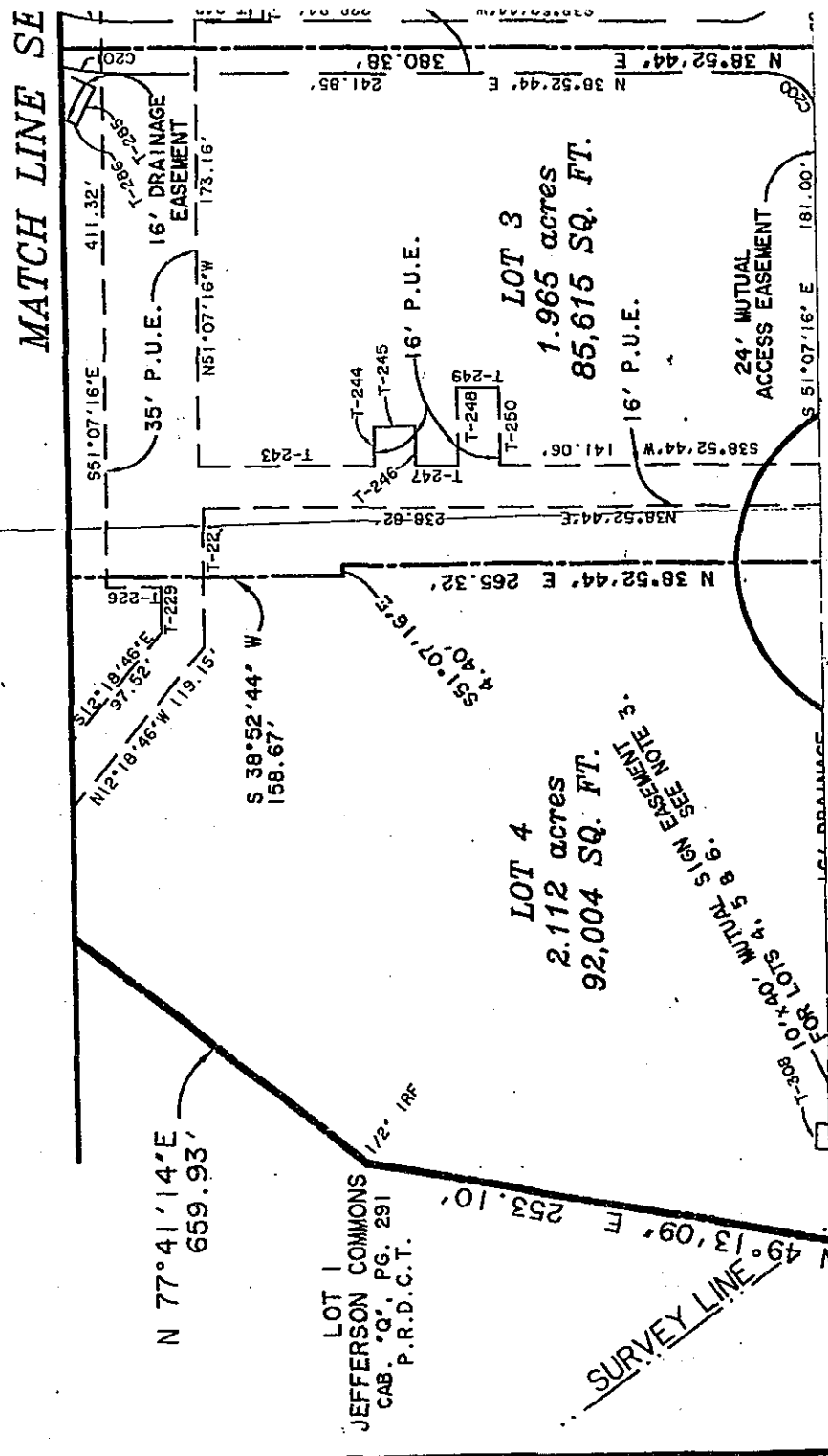
5097 02810

EXHIBITA

PLAT

5097 02811

EXHIBIT



5097 02812

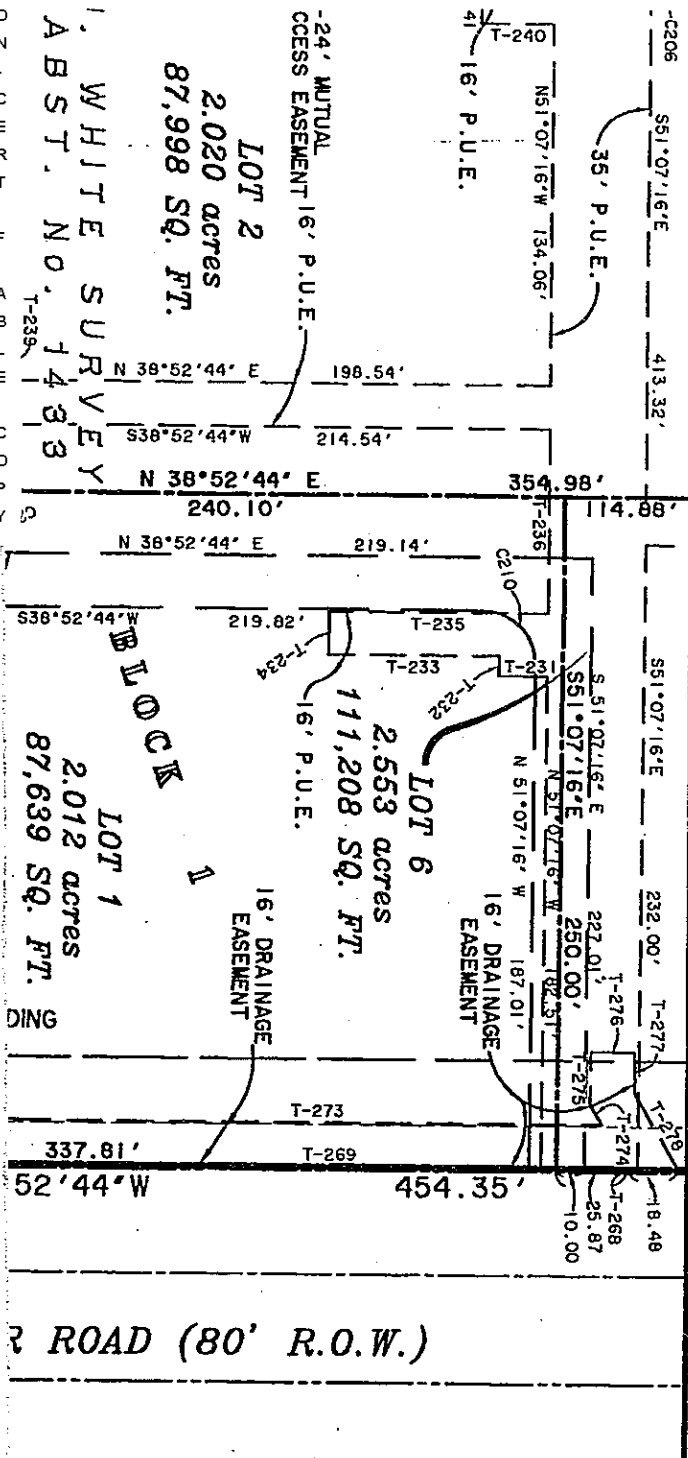
CB 4 84 357

Page 1 of 3

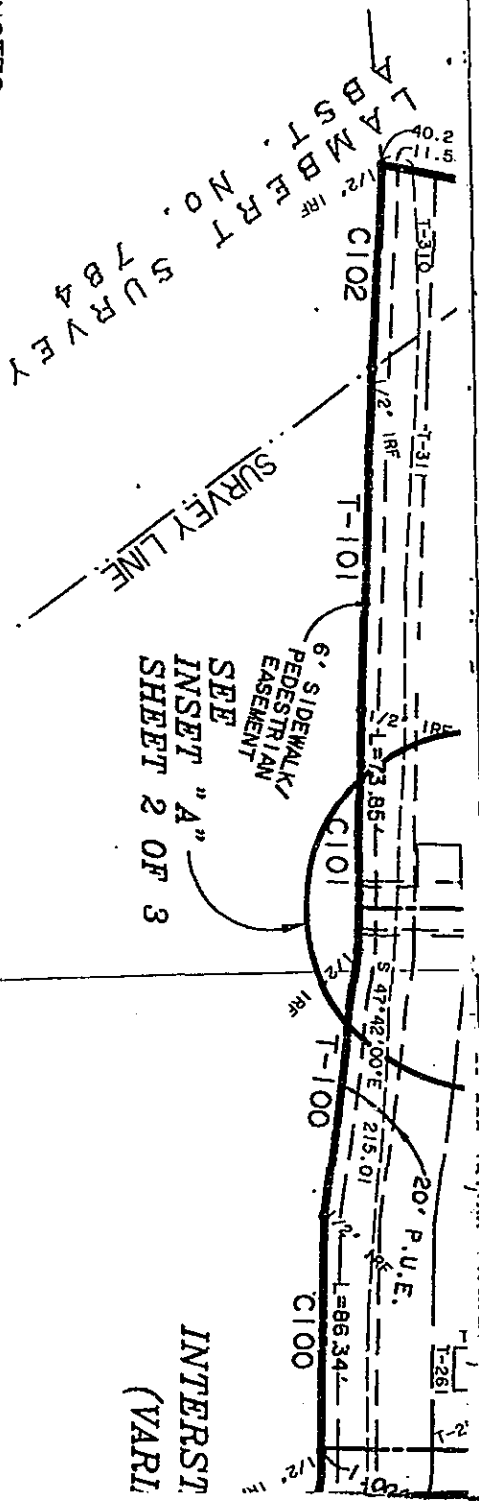
LEGEND  
DENOTES PUBLIC  
UTILITY EASEMENT

IRF IRON ROD FOUND

SHEET 2 OF 3



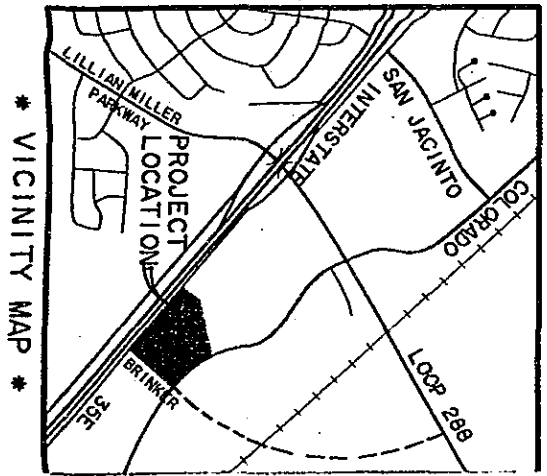


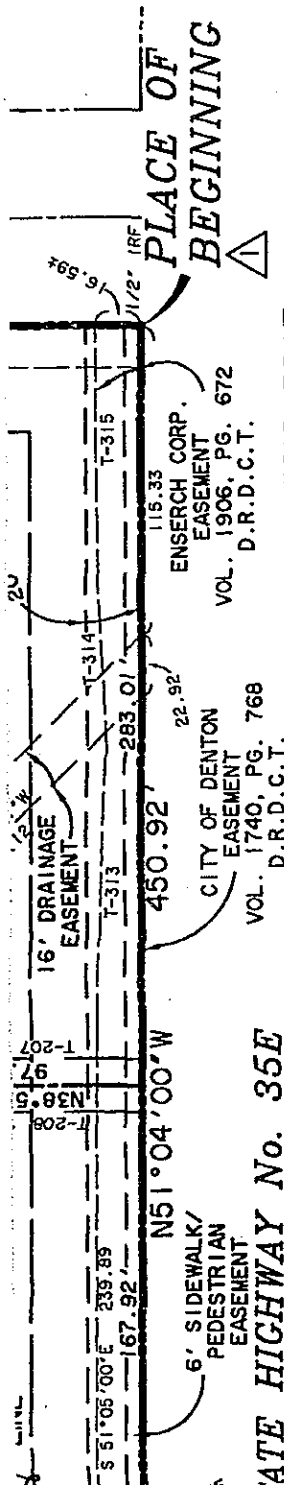


- NOTES:
1. PLACE OF BEGINNING LIES APPROXIMATELY SOUTH, 2480± AND EAST 580± FROM THE NORTHWEST CORNER OF THE J. WHITE SURVEY, ABSTRACT NO. 1430.
  2. CITY OF DENTON LANDSCAPE CODE REQUIREMENTS SHALL BE MET ON LOT BY LOT BASIS AS EACH LOT IS DEVELOPED.
  3. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK "A" FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

LEGEND

- ▲ NORTH CENTRAL TEXAS STATE PLANE COORDINATE (NAD 83)
- X = 2396583.13
- Y = 7115660.42
- ▲ NORTH CENTRAL TEXAS STATE PLANE COORDINATE
- X = 2396702.81
- Y = 7116569.12





STATE HIGHWAY No. 35E  
16' WIDE R.O.W.)

**\*\*NOTE\*\***  
THE ORIGINAL ENSERCH EASEMENT IS REFERENCED TO OLD PROPERTY CORNERS WHICH HAVE BEEN REMOVED AND CANNOT BE RECREATED. THE EASEMENT LOCATION INDICATED ON THIS PLAT IS THE SURVEYOR'S BEST INTERPRETATION OF THE EASEMENT DOCUMENT RECORDED IN VOLUME 1906, PAGE 672 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS.

# SOUTHERN HILLS PLAZA

AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS, BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND D. LAMBERT SURVEY, ABSTRACT No. 784, CITY OF DENTON, DENTON COUNTY, TEXAS

PREPARED BY:

**VIA WIER & ASSOCIATES, INC.**

ENGINEERS SURVEYORS LAND PLANNERS

4300 BELLEVUE PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRODO, TEXAS 75034 METRO (214)387-8000

OWNER:

QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.  
15935 BENT TREE FOREST CIRCLE  
SUITE 2025  
DALLAS, TEXAS 75248  
(972) 980-8806  
SHEET 1 OF 3

SCALE: 1" = 50'



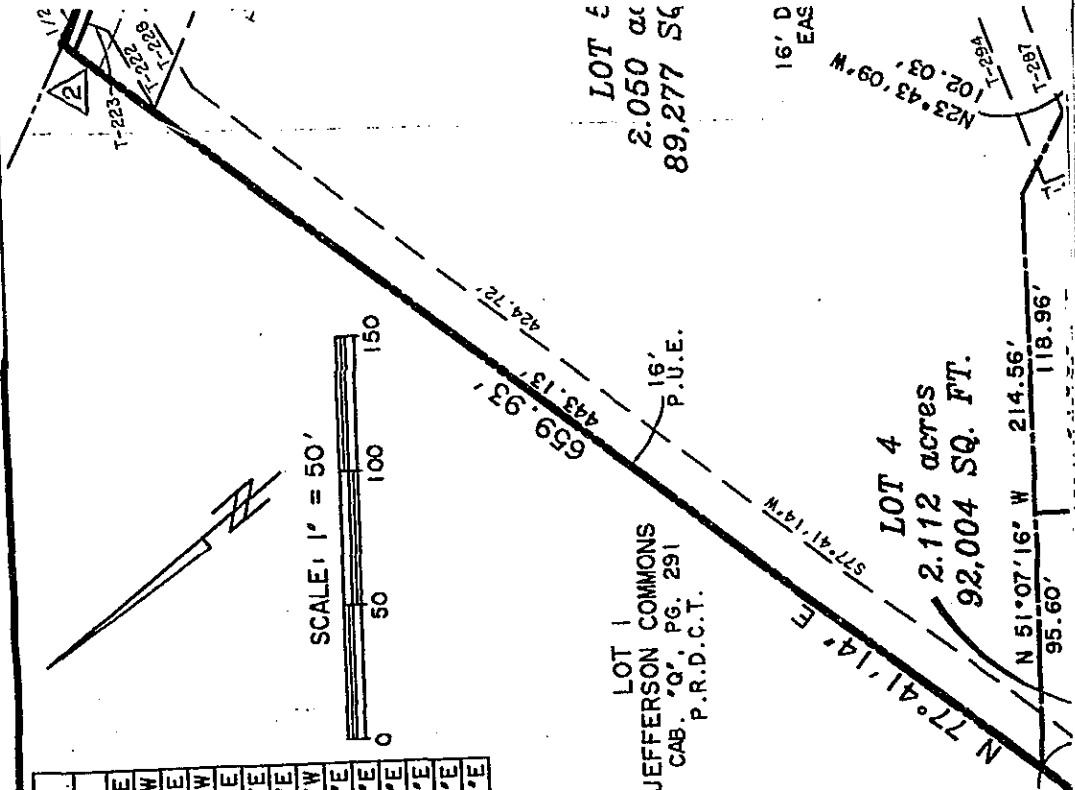
784/38 1133/2A.34 3C

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK

On Apr 24 2002  
At 9:17am

Receipt #: 23293  
Recording: 188.00  
Doc/Inst: 6.00  
Doc/Inst: 2002-00051498  
Doc/Type: PLA  
Deputy: Felicia

LINE TABLE			LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
T-100	99.15	S44°35'09"E	T-302	16.00	S51°33'07"E
T-101	128.12	S49°20'35"E	T-303	21.72	S38°26'53"W
T-102	33.01	S51°07'16"E	T-304	74.49	S06°07'16"E
T-201	16.07	N51°07'16"W	T-305	96.93	S26°39'35"W
T-202	16.00	N38°52'44"E	T-306	23.68	S40°11'55"E
T-203	81.27	S38°52'44"W	T-307	40.00	N42°10'04"E
T-204	50.20	S42°27'50"W	T-308	10.00	S47°49'56"E
T-205	50.20	N42°27'50"E	T-309	40.00	S42°10'04"W
T-206	33.09	S51°07'16"E	T-310	54.83	S52°26'00"E
T-207	68.41	N38°52'44"E	T-311	101.08	S48°04'00"E
T-208	68.39	S38°52'44"W	T-312	56.04	S51°12'00"E
T-209	86.00	S51°07'16"E	T-313	104.84	S49°05'00"E
T-210	16.07	S51°07'16"E	T-314	67.85	S53°36'00"E
T-221	54.82	N51°07'16"W	T-315	90.06	S51°28'00"E
T-222	36.69	S79°48'46"E			
T-223	8.36	N63°18'17"E			
T-225	12.01	S63°18'17"W			
T-226	20.50	N38°52'44"E			
T-227	7.57	N26°41'43"W			
T-228	41.04	N79°48'46"W			
T-229	18.08	S51°07'16"E			
T-230	16.00	S51°07'16"E			
T-231	30.71	S51°07'16"E			
T-232	7.50	N51°07'16"W			
T-233	62.42	S38°52'44"W			
T-234	16.00	N51°07'16"W			
T-235	79.92	N38°52'44"E			
T-236	69.00	N51°07'16"W			
T-237	28.50	N51°07'16"W			
T-238	16.00	N38°52'44"E			
T-239	12.50	S51°07'16"E			
T-240	25.95	S38°52'44"W			
T-241	16.00	N51°07'16"W			
T-242	25.95	N38°52'44"E			
T-243	66.76	S38°52'44"W			



SCALE: 1" = 50'

LOT 5  
2,050 ac  
89,277 SQ. FT.

LOT 1  
JEFFERSON COMMONS  
CAB. "Q", PG. 291  
P.R.D.C.T.

LOT 4  
2.112 acres  
92,004 SQ. FT.

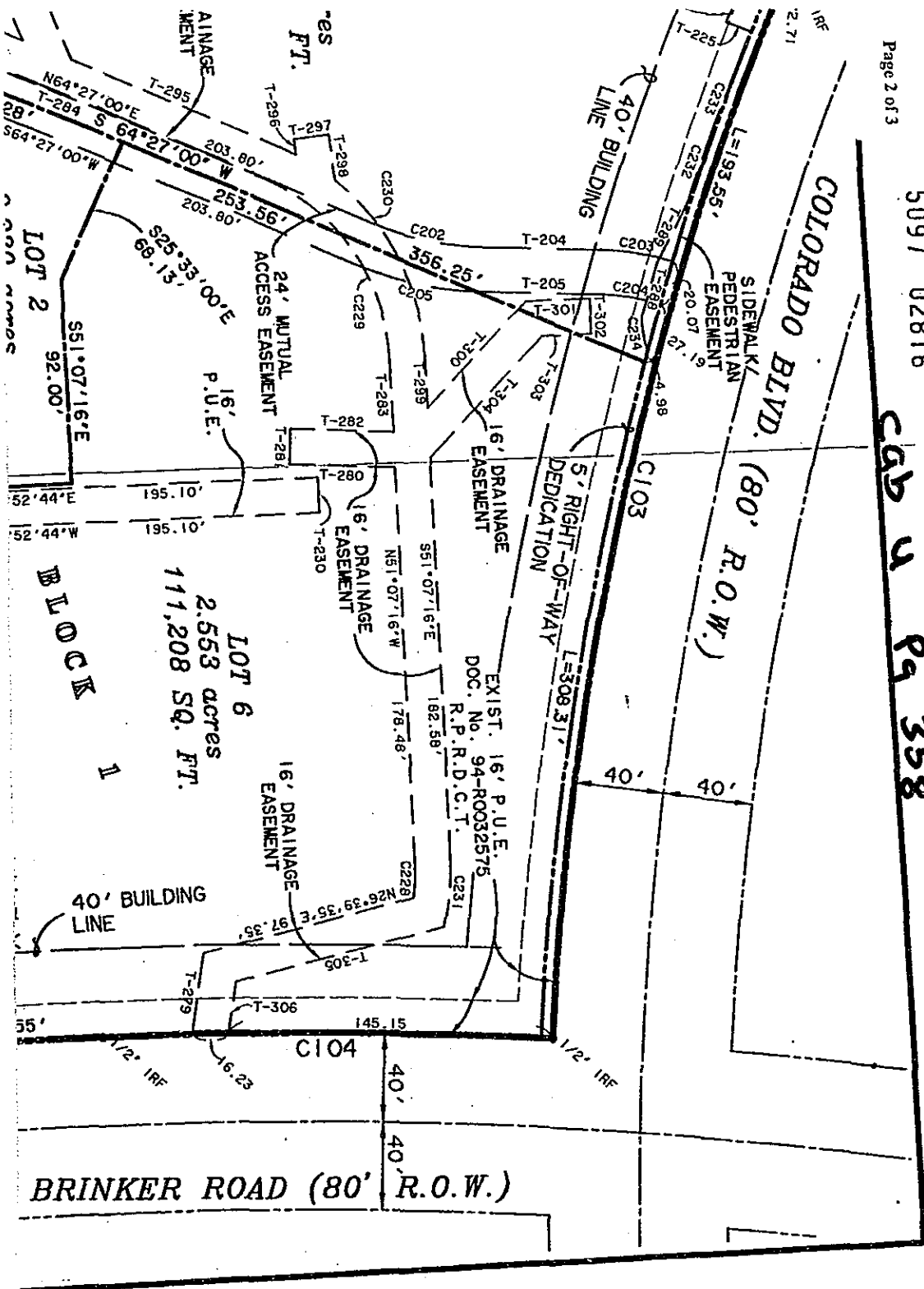
16' D  
EAS

S 77°41'14"W  
659.93'  
N 51°07'16"W  
214.56'  
118.96'  
95.60'

5097 02816

CAB U 99 358

NON-CERTIFIABLE COPY



T-248	29.94	S51°07'16"E
T-249	16.00	S38°52'47"W
T-250	29.94	N51°07'16"W
T-251	30.71	N51°07'16"W
T-253	77.68	N53°36'43"W
T-255	9.69	S38°52'44"W
T-256	16.00	N51°07'16"W
T-257	14.56	N38°52'44"E
T-259	14.55	S81°23'17"W
T-260	12.89	S38°52'44"W
T-261	16.00	N51°07'16"W
T-262	22.49	N38°52'44"E
T-264	16.02	N38°52'44"E
T-267	16.00	N83°12'09"E
T-268	0.71	N81°07'16"W
T-269	216.90	S38°52'44"W
T-270	12.00	S68°52'44"W
T-271	16.00	N21°07'16"W
T-272	12.00	N68°52'44"E
T-273	207.66	N38°52'44"E
T-276	16.00	N38°52'44"E
T-277	14.86	S51°07'16"E
T-279	36.94	N40°11'55"W
T-280	48.04	S43°16'18"W
T-281	16.00	N46°43'42"W
T-282	46.81	N43°16'18"E
T-283	34.00	N51°07'16"W
T-284	193.68	S64°18'13"W
T-285	16.00	N25°41'47"W
T-286	72.16	N64°18'13"E
T-287	83.89	N70°54'07"W
T-289	30.83	N21°08'55"W
T-293	16.00	N19°06'53"E
T-294	100.01	S70°54'07"E
T-295	98.82	N64°18'13"E
T-296	7.26	N56°22'08"W
T-297	16.00	N33°37'52"E
T-298	21.18	S56°22'08"E
T-299	23.32	S51°07'16"E
T-300	65.04	N06°07'16"W
T-301	28.28	N38°26'53"E

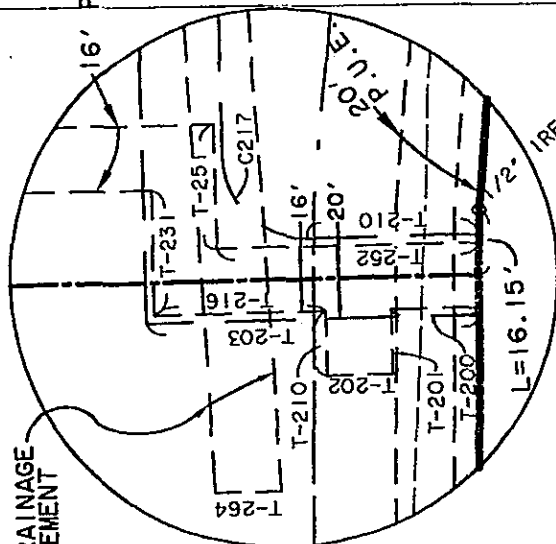
CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD DIRECTION	CHORD LENGTH	CUR
C100	0°26'33"	11309.20	87.34	43.67	N50°50'44"W	87.34	C
C101	0°27'23"	11298.36	90.00	45.00	N49°53'46"W	90.00	C
C102	0°23'13"	11299.20	76.33	38.16	N47°46'26"W	76.33	C
C103	19°58'06"	1440.00	501.86	253.50	S35°55'18"E	499.33	C
C104	5°38'19"	2040.20	200.79	100.47	S41°41'54"W	200.70	C
C200	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28	C
C201	25°24'26"	122.00	54.10	27.50	S51°44'46"W	53.66	C
C202	21°59'09"	140.00	53.72	27.20	N53°27'25"E	53.39	C
C203	17°06'40"	110.00	32.85	16.55	S51°01'10"W	32.73	C
C204	17°29'37"	90.00	27.49	13.85	S51°12'39"W	27.37	C
C205	21°59'09"	160.00	61.40	31.08	N53°27'25"E	61.02	C
C206	25°44'59"	102.00	45.84	23.31	S51°34'30"W	45.46	C
C207	102°36'29"	20.00	35.82	24.97	S12°25'30"E	31.22	C
C208	12°36'28"	85.00	18.70	9.39	N57°25'30"W	18.67	C
C209	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28	C
C210	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28	C
C211	1°52'49"	122.00	4.00	2.00	S47°02'47"E	4.00	C
C212	5°00'54"	102.00	8.93	4.47	N48°36'49"W	8.92	C
C213	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28	C
C214	90°00'00"	20.00	31.42	20.00	N06°07'16"W	28.28	C
C215	25°38'42"	65.00	29.09	14.79	N53°56'37"W	28.85	C
C216	25°38'42"	85.00	38.05	19.35	S63°56'37"E	37.73	C
C217	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28	C
C220	22°09'44"	92.00	35.59	18.02	N62°12'08"W	35.36	C
C221	19°18'49"	108.00	34.52	17.41	S64°07'36"E	34.37	C
C222	20°12'41"	92.00	32.45	16.40	N61°13'37"W	32.29	C
C223	18°38'23"	108.00	35.14	17.72	N60°26'28"W	34.98	C
C224	22°09'44"	92.00	35.59	18.02	S62°12'08"E	35.36	C
C225	22°09'44"	108.00	41.77	21.15	N62°12'08"W	41.51	C
C226	30°00'00"	108.00	56.55	28.94	N53°52'44"E	55.90	C
C227	30°00'00"	92.00	48.17	24.65	N53°52'44"E	47.62	C
C228	10°01'19"	92.00	16.09	8.07	N46°06'37"W	16.07	C

MAT

CURVE TABLE						
STATION	DELTA	RADIUS	LENGTH	TANGENT	CHORD DIRECTION	CHORD LENGTH
229	64°34'31"	92.00	103.69	58.13	N83°24'31"W	98.29
230	48°35'13"	108.00	91.58	48.75	N75°24'52"W	88.86
231	15°51'09"	108.00	29.88	15.04	N43°11'41"W	29.79
232	1°23'57"	1446.12	35.32	17.66	S29°58'12"E	35.32
233	5°54'53"	255.00	26.32	13.17	S26°18'47"E	26.31
234	20°11'21"	46.57	16.41	8.29	S56°43'01"E	16.32

## DRAINAGE- ASEMENT



**INSET "A"**

**FINAL PLAT**

# SOUTHERN HILLS PLAZA

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

**PREPARED BY:**

**VIA WIER & ASSOCIATES, INC.**  
PREPARED BY:

# ENGINEERS SURVEYORS LAND PLANNERS

**VINERO**  
CITY OF DALLAS  
OFFICE DATE 1971 APR MARCH TEXAS 76018 METRO (817) 467-7700

MAY PLACE SOME 100 RESIDENTS; LEAVE FOR  
... .. TRAVIS TEXAS METRO (216) 987-8000

**OWNER:**

QUADRANT SOUTHERN HILLS

**HIVI BOUTHER  
PARTNERS. LTD.**

15085 BENT TREE FOREST CIRCLE

SUITE 2025

DALLAS, TEXAS 75248

(972) 980-8806

**SHEET 2 OF 3**

**Filed For Record in:**

CYNTHIA MITCHELL  
DENTON COUNTY, TX  
COUNTY CLERK

100

On Apr 24 at 9:17 AM

Receipt # 23293

Recording: 108.08

Doc/Mgmt :  
0671-5888-600C  
B9 5.88

Doc/Num	3	600-10031430	PLA
Doc/Type	3		

**Deputy - Felicia**



5097 02819

EXHIBIT A

OWNER'S CERTIFICATE

WHEREAS, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, ACTING BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENTS, ARE THE SOLE OWNERS OF A 12.712 ACRE TRACT OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO EPIC DEVELOPMENT, INC. AS RECORDED IN VOLUME 3245, PAGE 699 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E (A 300-FOOT RIGHT-OF-WAY) AND THE NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY),

THENCE ALONG THE SAID NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E AS FOLLOWS:

N 51°04'00" W, 450.92 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT,

NORTHWESTERLY, 87.34 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 11,309.20 FEET, A CENTRAL ANGLE OF 00°26'33" AND A CHORD BEARING N 50°50'44" E, 87.34 FEET TO A 1/2" IRON ROD FOUND,

NOW, THEREFORE, KNOW ALL MEN

THAT, QUADRANT SOUTHERN LIMITED PARTNERSHIP, BY AND THROUGH ITS DULY AUTHORIZED AGENT, DO DESIGNATING THE HEREINABOVE DES HILLS PLAZA, AN ADDITION TO HILLS COUNTY, TEXAS AND DO HEREBY DE RIGHTS-OF-WAY AND EASEMENTS S CERTIFY THAT THIS PLAT DOES NO DEED RESTRICTIONS OR COVENANTS,

WITNESS MY HAND AT DALLAS, DA 5th DAY OF 1984  
QUADRANT SOUTHERN HILLS PARTNERSHIP

DON SILVE

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, THE UNDERSIGNED PERSONALLY APPEARED DON SILVE QUADRANT SOUTHERN HILLS PARTNERSHIP, KNOWN TO ME TO SUBSCRIBED TO THE ABOVE AND ACKNOWLEDGED TO ME THAT HE PURPOSES AND CONSIDERATIONS E THEREIN STATED AND AS THE ACT

5097 02820

CAP u. 89 359

Y THESE PRESENTS:

ILLS PARTNERS, LTD., A TEXAS  
 UGH THE UNDERSIGNED, THEIR  
 EREBY ADOPT THIS PLAT  
 RIBED PROPERTY AS SOUTHERN  
 E CITY OF DENTON, DENTON  
 ICATE TO THE PUBLIC'S USE THE  
 OWN THEREON AND DO FURTHER  
 T ALTER OR REMOVE EXISTING  
 IN ANY, ON THIS PROPERTY.

LAS COUNTY, TEXAS THIS THE  
 ---, 2002.

ERS, LTD.. A TEXAS LIMITED

*[Signature]*  
 RMAN, AGENT

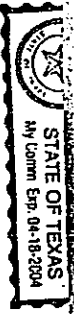
D AUTHORITY, ON THIS DAY  
 RMAN, AUTHORIZED AGENT FOR  
 ERS, LTD., A TEXAS LIMITED  
 THE PERSON WHOSE NAME IS  
 FOREGOING INSTRUMENT, AND  
 EXECUTED THE SAME FOR THE  
 PRESSED AND IN THE CAPACITY  
 AND DEED OF SAID CORPORATION.

CERTIFICATE OF APPROVAL

APPROVED THIS 24 DAY OF January, 2002  
 BY THE PLANNING AND ZONING COMMISSION OF THE  
 CITY OF DENTON, TEXAS.

DATE: *[Signature]* CHAIRMAN

DATE: *[Signature]* CITY SECRETARY



NOTARY PUBLIC  
COMMISSION B

SURVEYOR'S STA

THAT I, ULYS LANE III, A REGISTERED SURVEYOR OF THE STATE OF TEXAS, HAVE PREPARED THIS PLAT FROM AN AC SURVEY MADE BY ME OR UNDER MY SUPERVISION ON THE GROUND, AND THAT THIS PLAT IS IN ACCORDANCE WITH THE PLAT ACT OF THE CITY OF DENTON, TEXAS.



ULYS LANE III  
REGISTERED PROFESSIONAL  
STATE OF TEXAS

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE OF TEXAS, APPEARED ULYS LANE III, KNOWN TO ME BY HIS NAME AND ACKNOWLEDGED TO ME THAT HE HAS SIGNED AND CONSIDERATIONS TO ME THAT CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE  
THIS 14th DAY OF April, 2004



ERIN MERKEL  
NOTARY PUBLIC  
STATE OF TEXAS  
NOTARY PUBLIC

THENCE N 49°20'35"W, 128.12 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, NORTHWESTERLY, 76.33 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,299.20, A CENTRAL ANGLE OF 00°23'13" AND A CHORD BEARING N 47°46'26"E, 76.33 FEET TO A 1/2" IRON ROD FOUND, THENCE N 49°13'09"E, 253.10 FEET TO A 5/8" IRON ROD FOUND, THENCE N 77°41'14"E, 659.93 FEET TO A 1/2" IRON ROD FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT BOULEVARD) AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, THENCE SOUTHEASTERLY, 501.86 FEET ALONG THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD AND ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 19°58'06" AND A CHORD BEARING S 35°55'18"E, 499.33 FEET TO A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT RIGHT-OF-WAY) AND THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY) AT THE BEGINNING OF ANOTHER NON-TANGENT CURVE TO THE LEFT, THENCE ALONG THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD AS FOLLOWS:  
SOUTHWESTERLY, 200.79 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2,040.20 FEET, A CENTRAL ANGLE OF 05°38'19" AND A CHORD BEARING S 41°41'54"W, 200.70 FEET TO A 1/2" IRON ROD FOUND, S 38°52'44"W, 454.35 FEET TO THE PLACE OF BEGINNING, CONTAINING 12.712 ACRES, (553,740 SQUARE FEET) OF LAND.

IC OF THE STATE OF TEXAS  
XPRES: 2/19/04

TEMENT

SISTERED PROFESSIONAL LAND  
IAS, DO HEREBY CERTIFY THAT I  
TUAL SURVEY OF LAND, AND THAT  
HEREON SHALL BE PROPERLY-MARKED  
PLAT CORRECTLY REPRESENTS THAT  
DIRECTION AND SUPERVISION AND  
TING RULES AND REGULATIONS OF

ROFESSIONAL LAND SURVEYOR  
(AS No. 2411)

ID-AUTHORITY, A NOTARY PUBLIC  
IATE, ON THIS DAY PERSONALLY  
TO ME TO BE THE PERSON AND  
D TO THE FOREGOING INSTRUMENT  
HE EXECUTED THE SAME FOR THE  
HEREIN EXPRESSED AND IN THE

SEAL OF OFFICE THIS THE  
2002.



C. STATE OF TEXAS  
XPRES: 4/18/04

5097 02822

# FINAL PLAT SOUTHERN HILLS PLAZA

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**VIA WIER & ASSOCIATES, INC.**  
**ENGINEERS SURVEYORS LAND PLANNERS**  
4300 EDJWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817) 467-7700  
8721 5th STREET FRSOCO, TEXAS 75034 METRO (214) 387-8000  
**OWNER:**

**QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.**  
**15935 BENT TREE FOREST CIRCLE  
SUITE 2025  
DALLAS, TEXAS 75248  
(972) 980-8806  
SHEET 3 OF 3**

Filed for Record in:  
DENTON COUNTY, TX COUNTY CLERK  
CYNTHIA MITCHELL

On Apr 24 2002  
at 9:17am

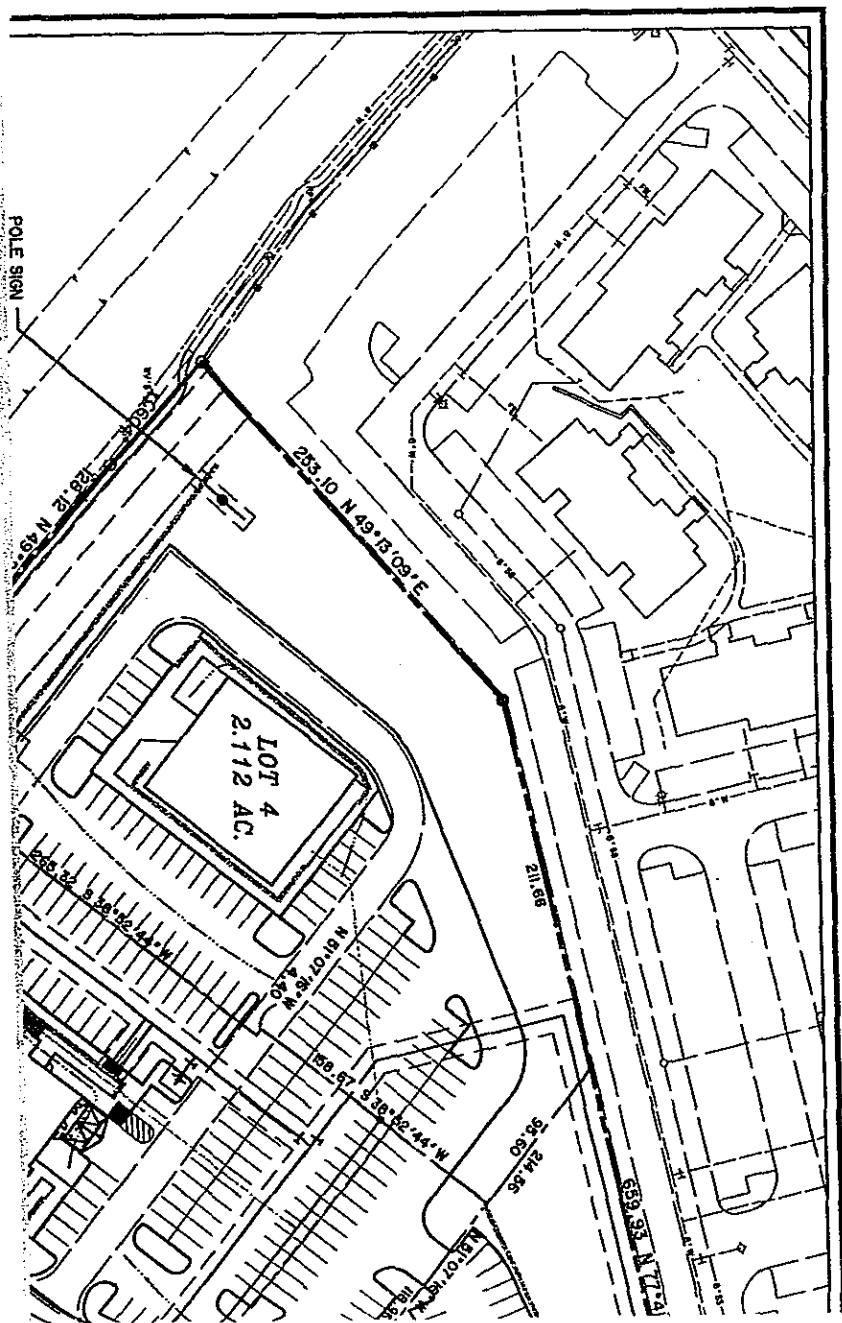
Receipt #: 23203  
Recording: 108.00  
Doc/Inst: 6.00  
Doc/Inst: 2002-00051490  
Doc/Type: PLA  
Deputy: Felicia

5097 02823

EXHIBIT B-1

SITE PLAN

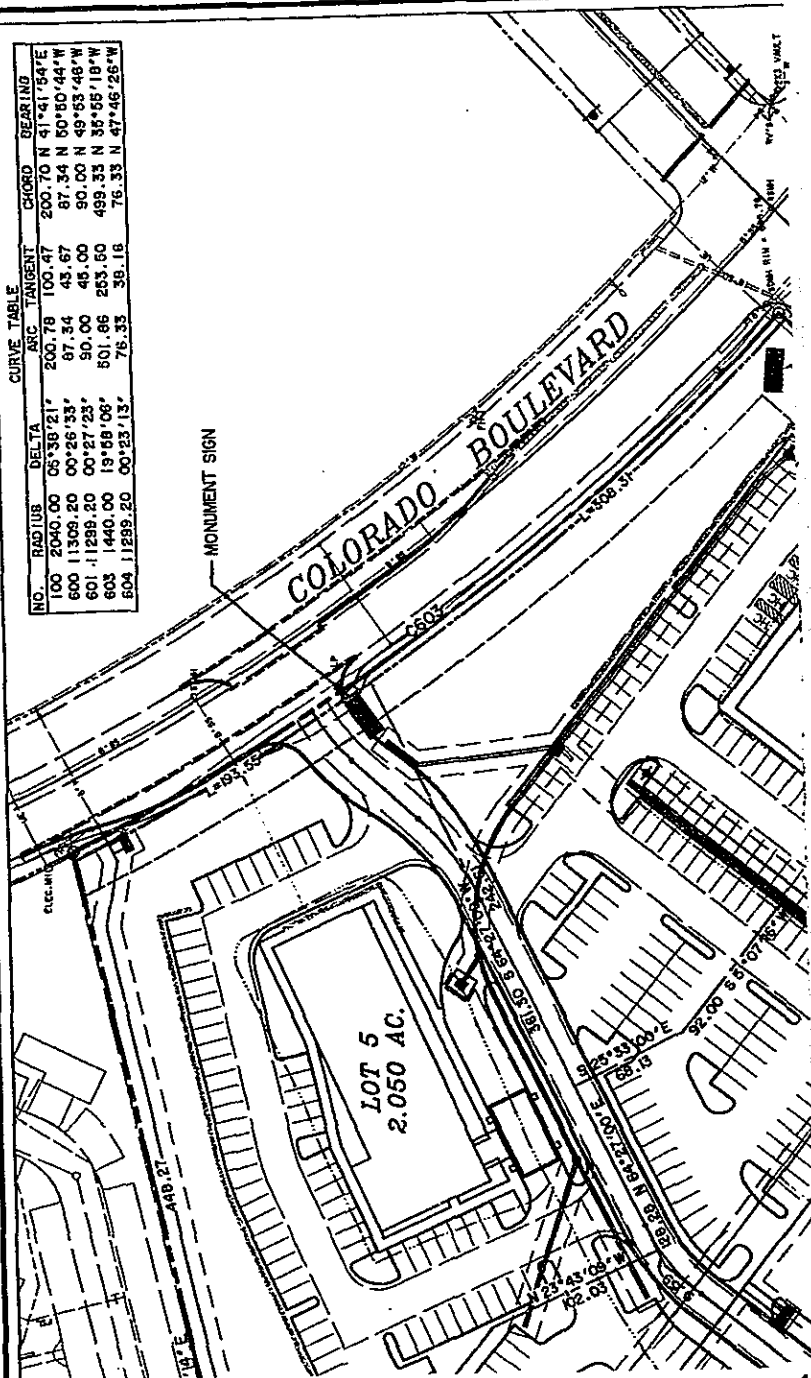
5097 02824





**EXHIBIT B-1**

NO.	CURVE TABLE			CHORD		BEARING
	RADIUS	DELTA	ASC TANGENT	CHORD	BEARING	
100	2040.00	68°36'21"	200.78	109.47	200.70	N 41°41'54"E
200	1020.00	34°18'10"	100.39	54.73	100.35	N 50°50'44"W
300	680.00	22°12'07"	67.34	36.47	67.34	N 59°53'48"W
400	510.00	16°29'00"	50.00	26.50	50.00	N 69°53'48"W
500	408.00	12°50'00"	40.86	20.43	40.86	N 79°53'48"W
600	344.00	10°00'00"	34.40	16.67	34.40	N 89°53'48"W
700	300.00	8°00'00"	30.00	15.00	30.00	N 99°53'48"W
800	262.50	6°45'00"	26.25	13.12	26.25	N 109°53'48"W
900	231.00	5°45'00"	23.10	11.55	23.10	N 119°53'48"W
1000	204.00	5°00'00"	20.40	10.20	20.40	N 129°53'48"W
1100	181.82	4°30'00"	18.18	9.09	18.18	N 139°53'48"W
1200	163.33	4°00'00"	16.33	8.16	16.33	N 149°53'48"W
1300	146.15	3°45'00"	14.62	7.31	14.62	N 159°53'48"W
1400	130.77	3°30'00"	13.08	6.54	13.08	N 169°53'48"W
1500	117.60	3°15'00"	11.76	5.88	11.76	N 179°53'48"W
1600	106.25	3°00'00"	10.63	5.31	10.63	N 189°53'48"W
1700	96.59	2°45'00"	9.66	4.82	9.66	N 199°53'48"W
1800	88.33	2°30'00"	8.83	4.40	8.83	N 209°53'48"W
1900	81.25	2°15'00"	8.12	4.06	8.12	N 219°53'48"W
2000	75.00	2°00'00"	7.50	3.75	7.50	N 229°53'48"W
2100	69.52	1°45'00"	6.95	3.47	6.95	N 239°53'48"W
2200	64.76	1°30'00"	6.48	3.24	6.48	N 249°53'48"W
2300	60.43	1°15'00"	6.04	3.02	6.04	N 259°53'48"W
2400	56.44	1°00'00"	5.64	2.82	5.64	N 269°53'48"W
2500	52.78	0°45'00"	5.28	2.63	5.28	N 279°53'48"W
2600	49.44	0°30'00"	4.94	2.46	4.94	N 289°53'48"W
2700	46.41	0°15'00"	4.64	2.31	4.64	N 299°53'48"W
2800	43.67	0°00'00"	4.37	2.17	4.37	N 309°53'48"W

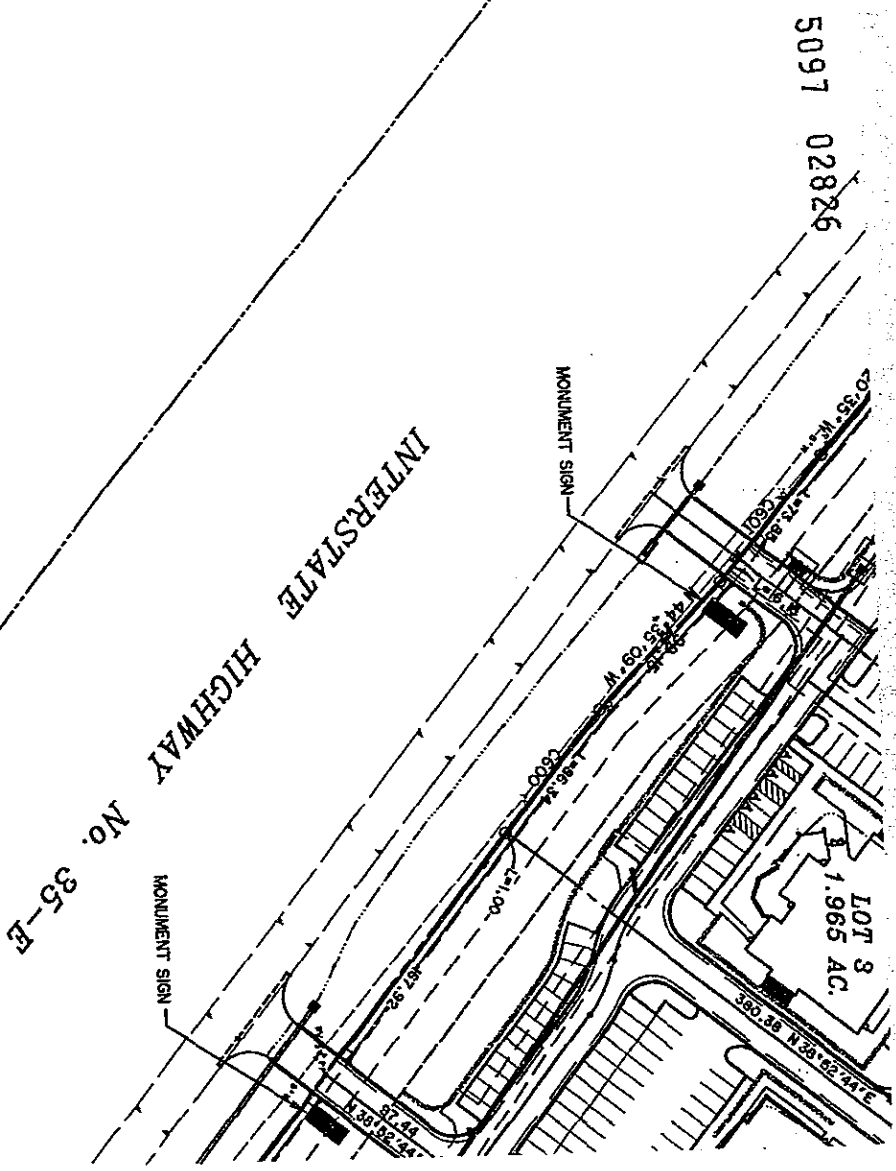


**WILM**  
PREPARED BY:  
**WILM WIER & ASSOCIATES, INC.**  
**ENGINEERS SURVEYORS LAND PLANNERS**  
4500 DELIVERY PLACE SUITE 120 PLANTATION, TEXAS 77061 METRO (817) 467-7700  
8721 54th STREET FRISCO, TEXAS METRO (214) 587-8500



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TIME: 16:07 FILE: site04042002.dwg



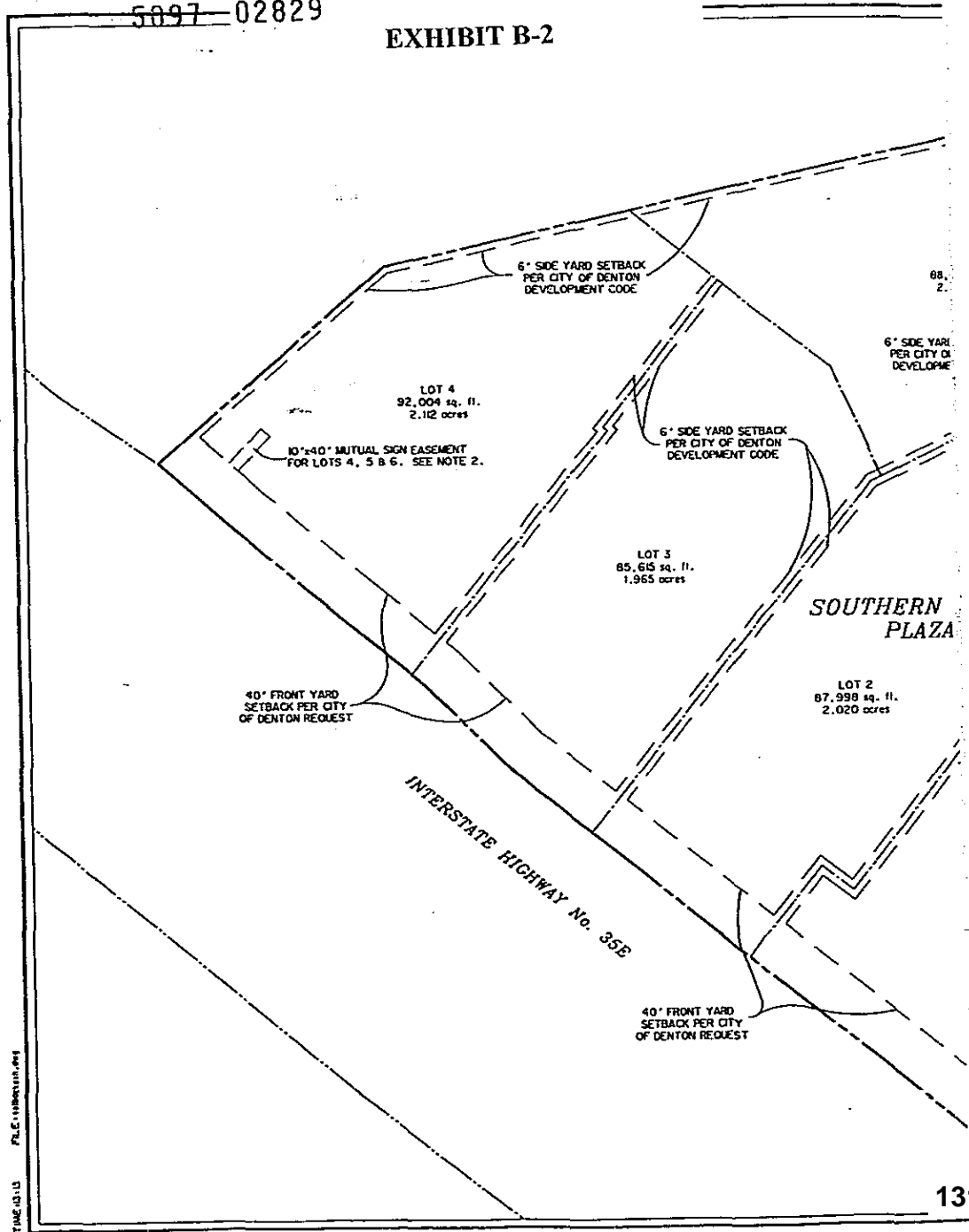


5097 02828

EXHIBIT B-2  
BUILDING SETBACKS

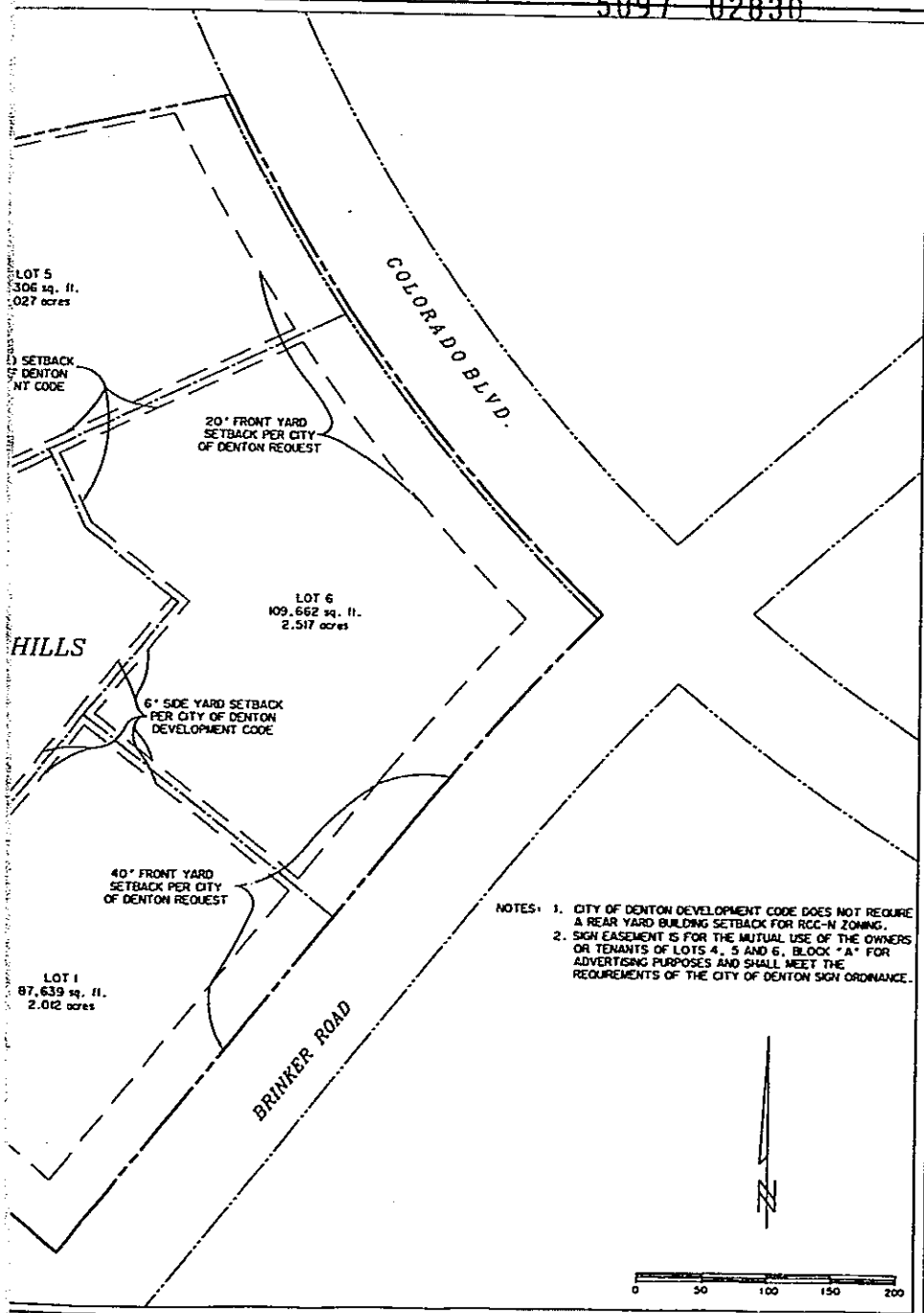
5097-02829

EXHIBIT B-2



PL E:\00000000.dwg  
TIME 03:13

5097 02830



- NOTES: 1. CITY OF DENTON DEVELOPMENT CODE DOES NOT REQUIRE A REAR YARD BUILDING SETBACK FOR RCC-N ZONING.  
2. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK "A" FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

PREPARED BY  
**WIA WIER & ASSOCIATES, INC.**  
ENGINEERS SURVEYORS LAND PLANNERS  
433 BEYOND PLACE SUITE 120 AMARCO, TEX 79018 MTRD (817)417-7700  
8121 5TH STREET FMSD00, TEXAS METRO (214)387-8000



**SOUTHERN HILLS PLAZA**  
**CITY OF DENTON, DENTON COUNTY, TEXAS**  
**EXHIBIT SHOWING BUILDING SETBACKS**

FOR RECORD  
FILED  
DATE RECORDED  
BY  
SHEET NO. 1 OF 1



5097 02831

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK

On May 31 2002  
At 3:54pm

Receipt #: 30951  
Recording: 87.00  
Doc/Mgt : 5.00  
Doc/Num : 2002-R0068097  
Doc/Type : AGR  
Deputy -ELIZABETH

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the J. Worrall Survey, Abstract No. 1433, City of Denton, Denton County, Texas, and being part of Lot 2, Block 1, Southern Hills Plaza Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume U, Page 556 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at an aluminum disk stamped "TXDOT" found in the northwest line of said Lot 2; from said point the west corner of said Lot 2, and being a point in the northeast right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) bears South 38°30'05" West, a distance of 56.93 feet;

**THENCE** North 38°30'05" East, along the said northwest line of said Lot 2, a distance of 20.01 feet to a point for corner;

**THENCE** departing the said northwest line of Lot 2, South 51°54'08" East, a distance of 86.64 feet to a point for corner;

**THENCE** South 51°20'46" East, a distance of 58.02 feet to a point for corner;

**THENCE** South 47°01'49" East, a distance of 24.33 feet to a point for corner in the southeast line of said Lot 2;

**THENCE** South 38°30'05" West, along the said southeast line of Lot 2, a distance of 20.07 feet to a point for corner; from said point the south corner of said Lot 2, and being a point in the said northeast right-of-way line of Interstate Highway No. 35 bears South 38°30'05" West, a distance of 55.44 feet;

**THENCE** North 47°01'49" West, along the south line of said Lot 2, a distance of 25.14 feet to a "TXDOT" monument found for corner;

**THENCE** North 51°20'46" West, a distance of 57.17 feet to an aluminum disk stamped "TXDOT" found for corner;

**THENCE** North 51°54'08" West, a distance of 86.68 feet to the **POINT OF BEGINNING** and containing 3,381 square feet or 0.0776 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley* 8/31/20  
**MICHAEL C. BILLINGSLEY**  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



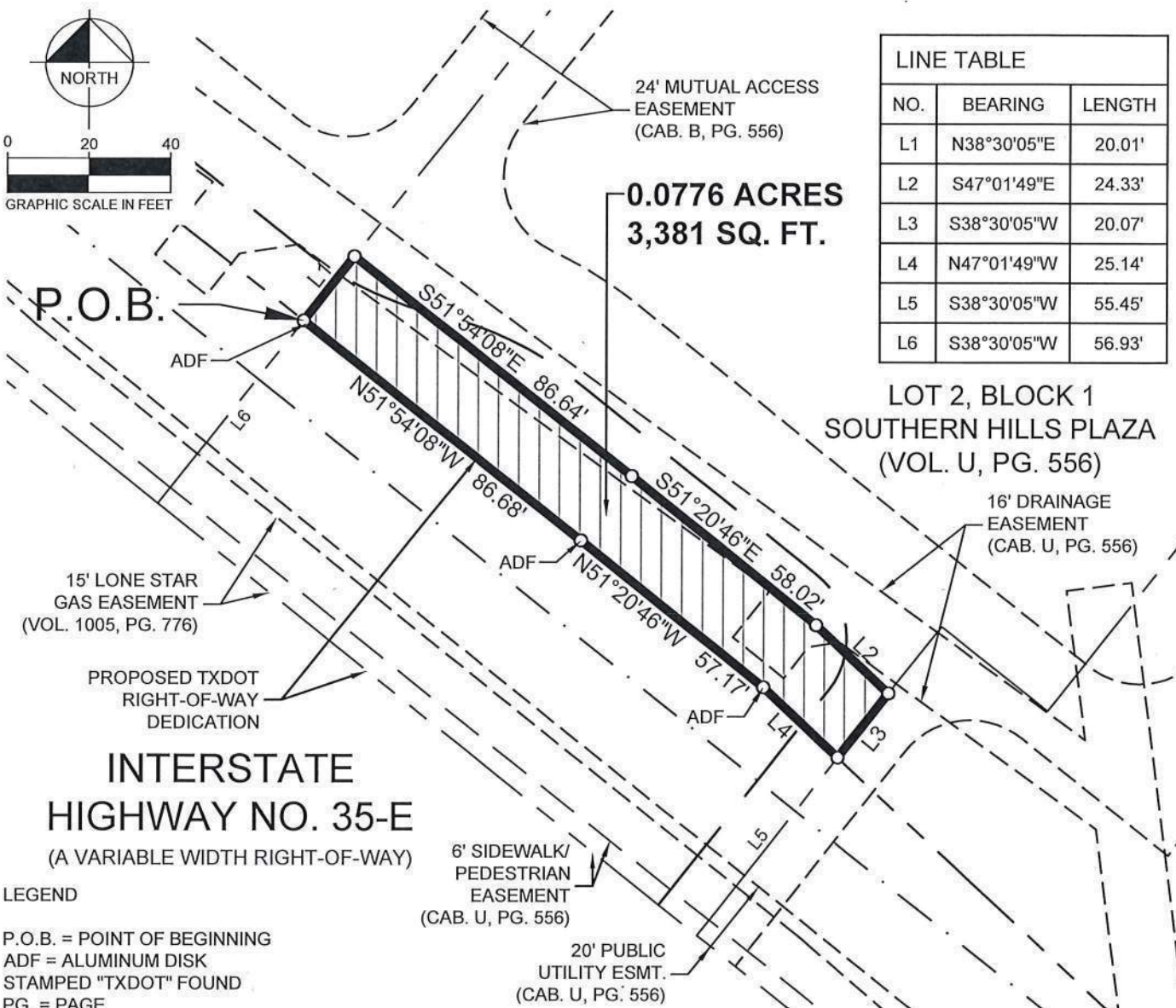
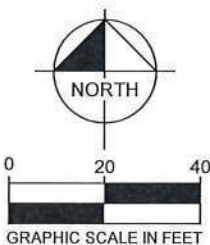
**WATER AND WASTEWATER EASEMENT  
 PART OF LOT 2  
 SOUTHERN HILLS PLAZA ADDITION  
 J. WORRALL SURVEY, ABSTRACT NO. 1433  
 CITY OF DENTON, DENTON COUNTY, TEXAS**

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	8/25/2020	061024039	1 OF 2



#### LEGEND

P.O.B. = POINT OF BEGINNING  
ADF = ALUMINUM DISK  
STAMPED "TXDOT" FOUND  
PG. = PAGE  
VOL. = VOLUME  
INST. NO. = INSTRUMENT NUMBER

#### NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley* 8/31/20  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
PART OF LOT 2  
SOUTHERN HILLS PLAZA ADDITION  
J. WORRALL SURVEY, ABSTRACT NO. 1433  
CITY OF DENTON, DENTON COUNTY, TEXAS

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Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	8/25/2020	061024039	2 OF 2



**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 105**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1808+95 RT to Sta 1810+94 RT

Existing Easement

Volume U, Page 556

PART OF LOT 3, BLOCK 1  
SOUTHERN HILLS PLAZA ADDITION  
J. WORRALL SURVEY, ABSTRACT NO. 1433  
CITY OF DENTON, DENTON COUNTY, TEXAS

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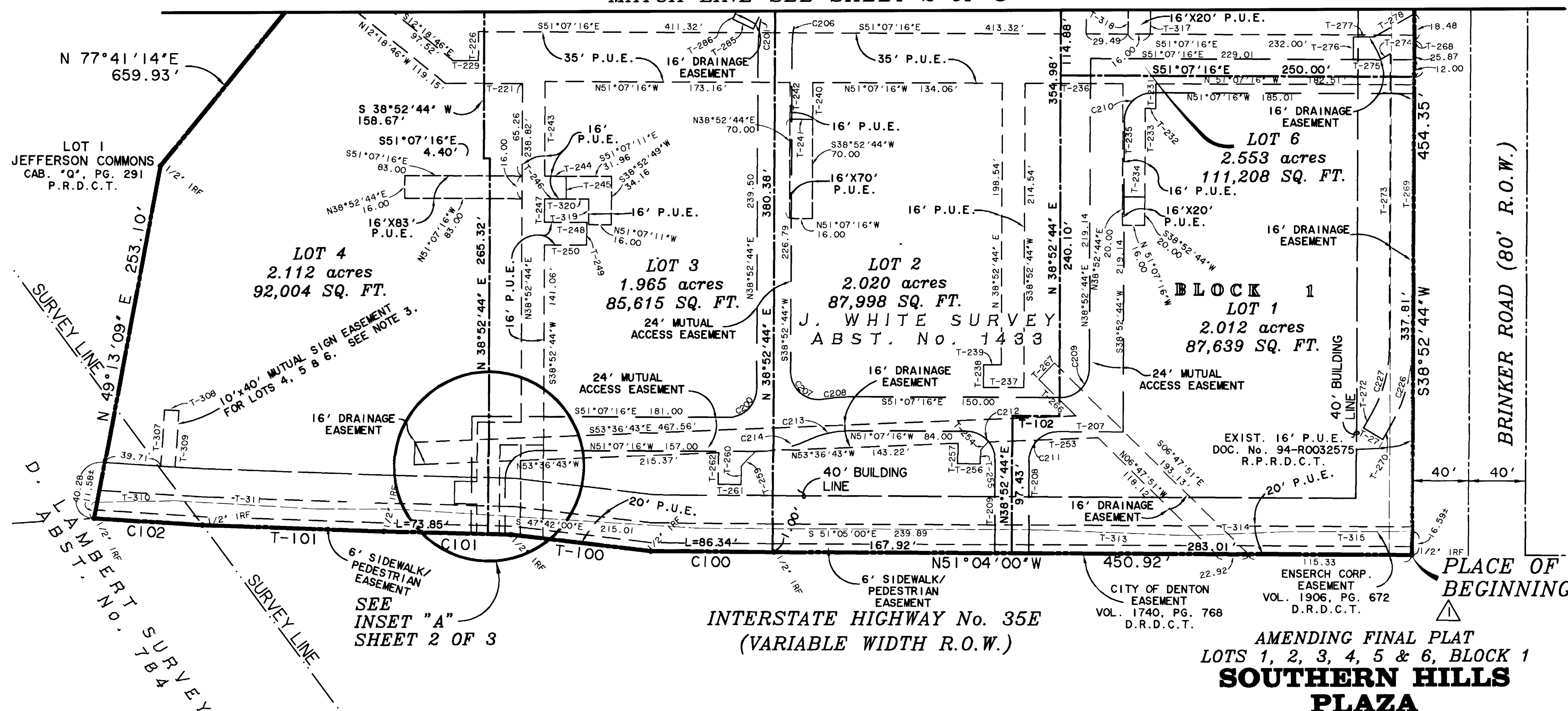
CAB U PG 556

DATE	REVISION	BY
7-22-02	CORRECTED GEOMETRIC ERROR 24' ACCESS ESMT, ADDED P.U.E. FOR DENTON MUNICIPAL ELECTRIC	RAC

\*\*THE PURPOSE OF THIS AMENDING FINAL PLAT IS TO CORRECT GEOMETRIC ERROR IN DEFINITION OF 24' MUTUAL ACCESS EASEMENT AND TO ADD PUBLIC UTILITY EASEMENTS IN WHICH TO PROVIDE ELECTRIC SERVICE TO EACH LOT.

LEGEND	
P.U.E.	DENOTES PUBLIC UTILITY EASEMENT
IRF	IRON ROD FOUND

MATCH LINE SEE SHEET 2 OF 3

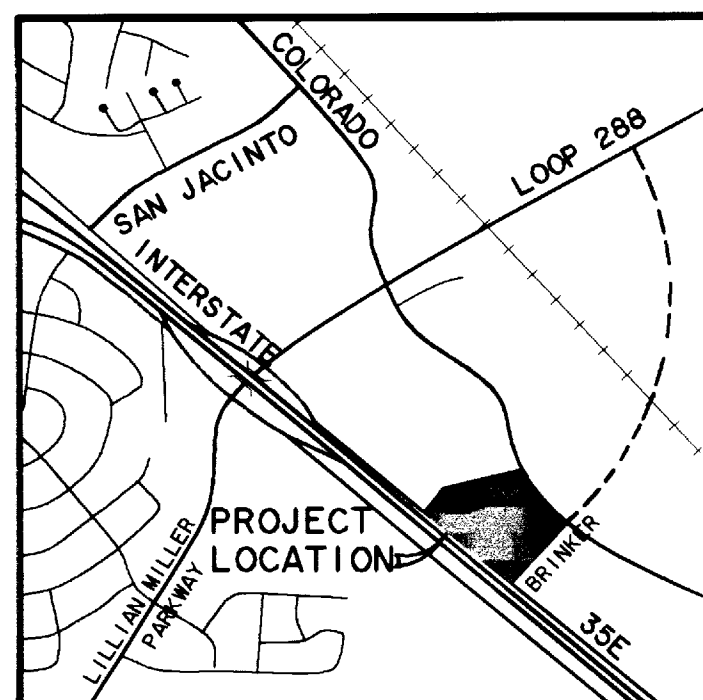


NOTES:

1. PLACE OF BEGINNING LIES APPROXIMATELY SOUTH, 2480± AND EAST 580'± FROM THE NORTHWEST CORNER OF THE J. WHITE SURVEY, ABSTRACT No. 1433.
2. CITY OF DENTON LANDSCAPE CODE REQUIREMENTS SHALL BE MET ON LOT BY LOT BASIS AS EACH LOT IS DEVELOPED.
3. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK 'A' FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

LEGEND

- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE (NAD 83)  
X = 2396583.13  
Y = 7115660.42
- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE  
X = 2396702.81  
Y = 7116569.12



\* VICINITY MAP \*

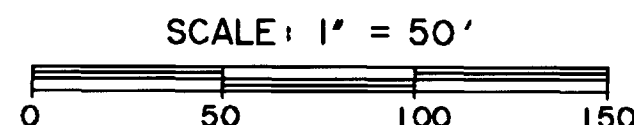
\*\*NOTE\*\*

THE ORIGINAL ENSERCH EASEMENT IS REFERENCED TO OLD PROPERTY CORNERS WHICH HAVE BEEN REMOVED AND CANNOT BE RECREATED. THE EASEMENT LOCATION INDICATED ON THIS PLAT IS THE SURVEYOR'S BEST INTERPRETATION OF THE EASEMENT DOCUMENT RECORDED IN VOLUME 1906, PAGE 672 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS.

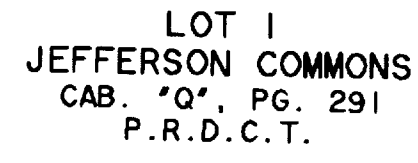
PREPARED BY:  
**WIER & ASSOCIATES, INC.**  
ENGINEERS SURVEYORS LAND PLANNERS  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
www.wierassociates.com

OWNER:  
**QUADRANT SOUTHERN HILLS PARTNERS, LTD.**  
14900 LANDMARK BLVD.  
SUITE 610  
DALLAS, TEXAS 75254  
(972) 980-8806  
SHEET 1 OF 3

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Aug 15 2002  
At 4:11pm  
Receipt #: 46717  
Recording: 108.00  
Doc/Mgmt: 6.00  
Doc/Num: 2002-R0182530  
Doc/Type: PLA  
Deputy -ELIZABETH

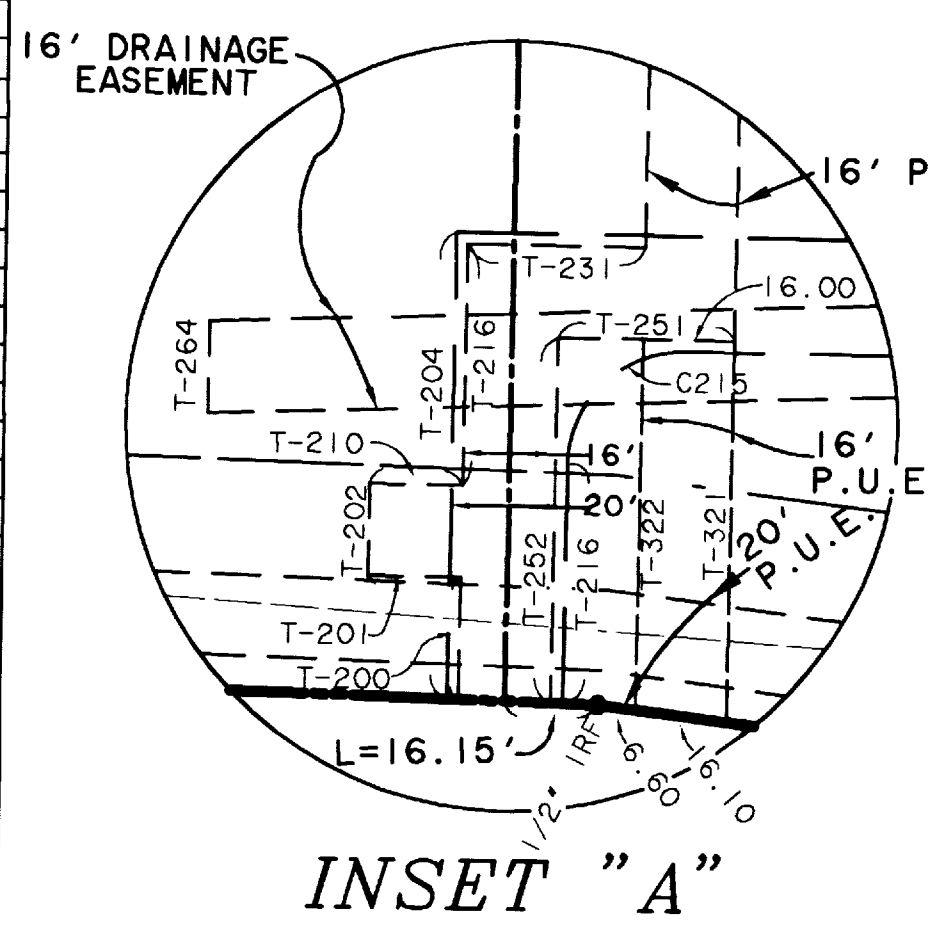


DATE: 08-06-2002 FILE: MINOR\_PLAT.dwg W.A. No. 01043



CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD DIRECTION	CHORD LENGTH
C100	0°26'33"	11309.20	87.34	43.67	N50°50'44"W	87.34
C101	0°27'23"	11298.38	90.00	45.00	N49°53'46"W	90.00
C102	0°23'13"	11299.20	76.33	38.16	N47°46'26"W	76.33
C103	19°58'06"	1440.00	501.86	253.50	S35°55'18"E	499.33
C104	5°38'19"	2040.20	200.79	100.47	S41°41'54"W	200.70
C200	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28
C201	25°34'15"	124.00	55.34	28.14	S51°39'52"W	54.88
C202	21°59'09"	138.00	52.95	26.81	N53°27'25"E	52.63
C203	19°38'55"	112.00	38.41	19.39	S52°17'18"W	38.22
C204	20°48'59"	88.00	31.97	16.16	S52°52'20"W	31.80
C205	21°59'09"	162.00	62.16	31.47	N53°27'25"E	61.78
C206	25°34'15"	100.00	44.63	22.69	S51°39'52"W	44.26
C207	101°16'28"	20.00	35.35	24.38	S11°45'29"E	30.93
C208	11°16'27"	87.00	17.12	8.59	N56°45'30"W	17.09
C209	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28
C210	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28
C211	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28
C212	90°00'00"	20.00	31.42	20.00	N06°07'16"W	28.28
C213	25°38'42"	63.00	28.20	14.34	N63°56'37"W	27.96
C214	25°38'42"	87.00	38.94	19.80	S63°56'37"E	38.62
C215	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28
C220	22°09'44"	92.00	35.59	18.02	N62°12'08"W	35.36
C221	18°18'49"	108.00	34.52	17.41	S64°07'36"E	34.37
C222	20°12'41"	92.00	32.45	16.40	N61°13'37"W	32.29
C223	18°38'23"	108.00	35.14	17.72	N60°26'28"W	34.98
C224	22°09'44"	92.00	35.59	18.02	S62°12'08"E	35.36
C225	22°09'44"	108.00	41.77	21.15	N62°12'08"W	41.51
C226	30°00'00"	108.00	56.55	28.94	N53°52'44"E	55.90
C227	30°00'00"	92.00	48.17	24.65	N53°52'44"E	47.62
C228	10°01'19"	92.00	16.09	8.07	N46°06'37"W	16.07

CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD DIRECTION	CHORD LENGTH
C229	64°34'31"	92.00	103.69	58.13	N83°24'31"W	98.29
C230	48°35'13"	108.00	91.58	48.75	N75°24'52"W	88.86
C231	15°51'09"	108.00	29.88	15.04	N43°11'41"W	29.79
C232	1°23'57"	1446.12	35.32	17.66	S29°58'12"E	35.32
C233	5°54'53"	255.00	26.32	13.17	S26°18'47"E	26.31
C234	20°11'21"	46.57	16.41	8.29	S56°43'01"E	16.32



THE PURPOSE OF THIS AMENDING FINAL PLAT IS TO CORRECT GEOMETRIC ERROR IN DEFINITION OF 24' MUTUAL ACCESS EASEMENT AND TO ADD PUBLIC UTILITY EASEMENTS IN WHICH TO PROVIDE ELECTRIC SERVICE TO EACH LOT.

AMENDING FINAL PLAT  
LOTS 1, 2, 3, 4, 5 & 6, BLOCK 1  
**SOUTHERN HILLS  
PLAZA**

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

**WMA** PREPARED BY:  
**WIER & ASSOCIATES, INC.**  
**ENGINEERS SURVEYORS LAND PLANNERS**  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
[www.Wierassociates.com](http://www.Wierassociates.com)

**OWNER:**  
**QUADRANT SOUTHERN HILLS**  
**PARTNERS, LTD.**  
**14900 LANDMARK BLVD.**  
**SUITE 610**  
**DALLAS, TEXAS 75254**  
**(972) 980-8806**  
**SHEET 2 OF 3**

Filed for Record in:  
 ENTON COUNTY, TX  
 NINTHA MITCHELL, COUNTY CLERK

On Aug 15 2002  
 At 4:11pm

Receipt #: 46717  
 Recording: 108.00  
 Rec/Mgmt : 6.00  
 C/NuM : 2002-R0102530  
 C/Type : PLA  
 Deputy -ELIZABETH



ON - CERTIFICATE OF TITLE - COPY

CAB U PG 558

OWNER'S CERTIFICATE

WHEREAS, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, ACTING BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENTS, ARE THE SOLE OWNERS OF A 12.712 ACRE TRACT OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO EPIC DEVELOPMENT, INC. AS RECORDED IN VOLUME 3245, PAGE 699 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E (A 300-FOOT RIGHT-OF-WAY) AND THE NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY),

THENCE ALONG THE SAID NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E AS FOLLOWS:

N 51°04'00"W, 450.92 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT,

NORTHWESTERLY, 87.34 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 11,309.20 FEET, A CENTRAL ANGLE OF 00°26'33" AND A CHORD BEARING N 50°50'44"E, 87.34 FEET TO A 1/2" IRON ROD FOUND,

N 44°35'09"W, 99.15 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 90.00 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,298.38 FEET, A CENTRAL ANGLE OF 00°27'23" AND A CHORD BEARING N 49°53'46"W, 90.00 FEET TO A 1/2" IRON ROD FOUND,

N 49°20'35"W, 128.12 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 76.33 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,299.20, A CENTRAL ANGLE OF 00°23'13" AND A CHORD BEARING N 47°46'26"E, 76.33 FEET TO A 1/2" IRON ROD FOUND,

THENCE N 49°13'09"E, 253.10 FEET TO A 5/8" IRON ROD FOUND,

THENCE N 77°41'14"E, 659.93 FEET TO A 1/2" IRON ROD FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT BOULEVARD) AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT,

THENCE SOUTHEASTERLY, 501.86 FEET ALONG THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD AND ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 19°58'06" AND A CHORD BEARING S 35°55'18"E, 499.33 FEET TO A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT RIGHT-OF-WAY) AND THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY) AT THE BEGINNING OF ANOTHER NON-TANGENT CURVE TO THE LEFT,

THENCE ALONG THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD AS FOLLOWS:

SOUTHWESTERLY, 200.79 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2,040.20 FEET, A CENTRAL ANGLE OF 05°38'19" AND A CHORD BEARING S 41°41'54"W, 200.70 FEET TO A 1/2" IRON ROD FOUND,

S 38°52'44"W, 454.35 FEET TO THE PLACE OF BEGINNING, CONTAINING 12.712 ACRES, (553,740 SQUARE FEET) OF LAND.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS,

THAT, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENT, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS SOUTHERN HILLS PLAZA, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS AND DO HEREBY DEDICATE TO THE PUBLIC'S USE THE RIGHTS-OF-WAY AND EASEMENTS SHOWN THEREON AND DO FURTHER CERTIFY THAT THIS PLAT DOES NOT ALTER OR REMOVE EXISTING DEED RESTRICTIONS OR COVENANTS, IN ANY, ON THIS PROPERTY.

WITNESS MY HAND AT DALLAS, DALLAS COUNTY, TEXAS THIS THE 7th DAY OF August, 2002.


QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP

  
DON SILVERMAN, AGENT

STATE OF TEXAS  
COUNTY OF DALLAS


BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED DON SILVERMAN, AUTHORIZED AGENT FOR QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS EXPRESSED AND IN THE CAPACITY THEREIN STATED, AND AS THE ACT AND DEED OF SAID CORPORATION.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS THE 7th DAY OF August, 2002.

  
NOTARY PUBLIC OF THE STATE OF TEXAS  
COMMISSION EXPIRES: April 23, 2005

SURVEYOR'S STATEMENT


THAT I, ULYS LANE III, A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL SURVEY OF LAND, AND THAT THE CORNER MONUMENTS SHOWN THEREON SHALL BE PROPERLY MARKED ON THE GROUND, AND THAT THIS PLAT CORRECTLY REPRESENTS THAT SURVEY MADE BY ME OR UNDER MY DIRECTION AND SUPERVISION AND IS IN ACCORDANCE WITH THE PLATTING RULES AND REGULATIONS OF THE CITY OF DENTON, TEXAS.


  
ULYS LANE III  
REGISTERED PROFESSIONAL LAND SURVEYOR  
STATE OF TEXAS No. 2411

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED ULYS LANE III, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 7th DAY OF August, 2002.

  
ERIN MERKEL  
NOTARY PUBLIC  
STATE OF TEXAS  
My Comm Exp 04-18-2004

  
NOTARY PUBLIC, STATE OF TEXAS  
COMMISSION EXPIRES: 4/18/04

CERTIFICATE OF APPROVAL:

APPROVED THIS 15th DAY OF August, 2002  
BY THE DEVELOPMENT REVIEW COMMITTEE OF THE  
CITY OF DENTON, TEXAS.

8-16-02   
DATE: DEVELOPMENT REVIEW COMMITTEE, CHAIRMAN

8-16-02   
DATE: JENNIFER WALTERS CITY SECRETARY

AMENDING FINAL PLAT  
LOTS 1, 2, 3, 4, 5 & 6, BLOCK 1

SOUTHERN HILLS  
PLAZA

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**WIA WIER & ASSOCIATES, INC.**

ENGINEERS SURVEYORS LAND PLANNERS  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
www.wierassociates.com

OWNER:  
QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.  
14900 LANDMARK BLVD.  
SUITE 610  
DALLAS, TEXAS 75254  
(972) 980-8806  
SHEET 3 OF 3

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Aug 15 2002  
At 4:11pm  
46717  
Receipt #: 108.00  
Recording: 6.00  
Doc/Mgmt: 2002-R0102530  
Doc/Num: PLA  
Doc/Type: Deputy - ELIZABETH

Y:\Projects\01043\dwg\MINOR\_PLAT.dwg 7/22/2002 8:30:19 AM CDT W.A. No. 01043

CON-  
CER-  
TIFI-  
ABLE  
COPY

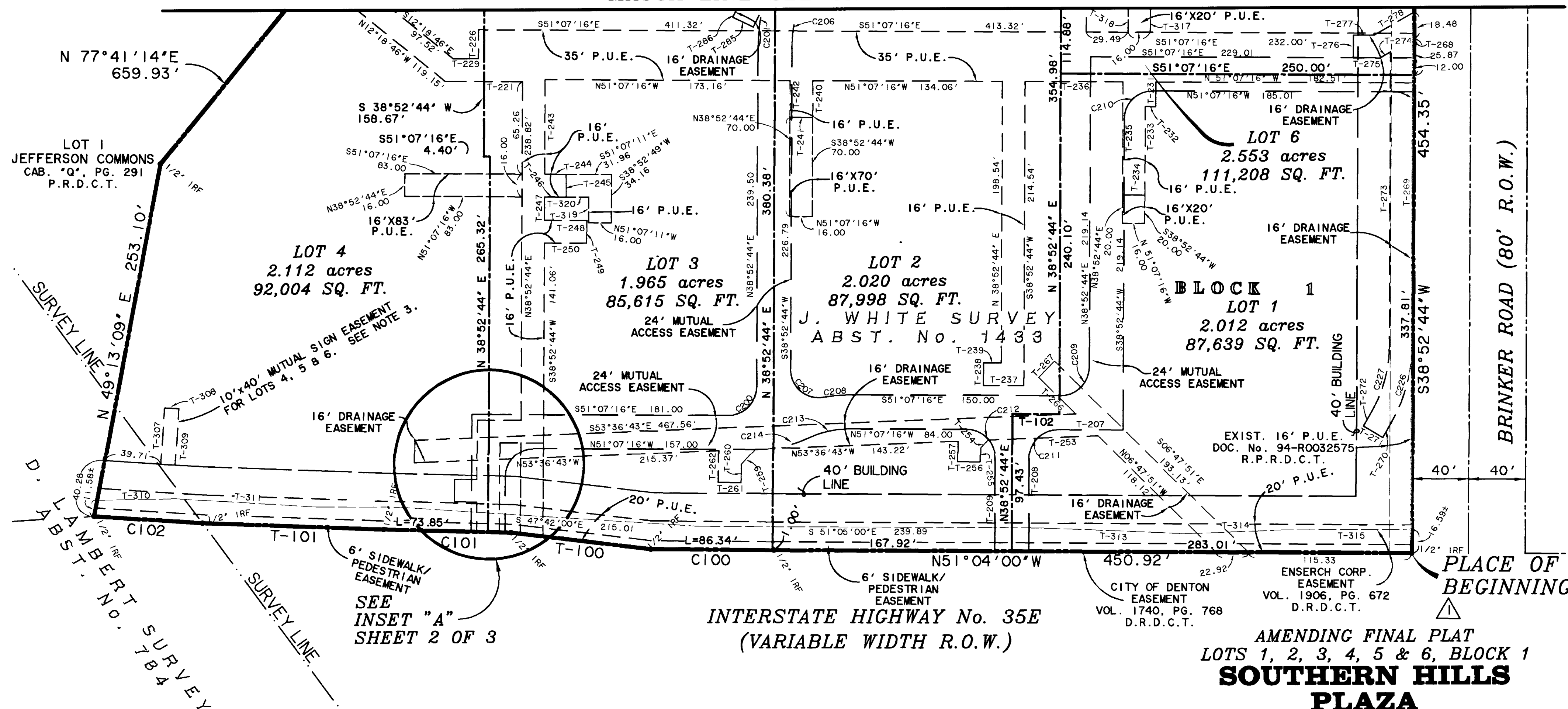
CAB U PG 556

DATE	REVISION	BY
7-22-02	CORRECTED GEOMETRIC ERROR 24' ACCESS ESMT, ADDED P.U.E. FOR DENTON MUNICIPAL ELECTRIC	RAC

\*\*THE PURPOSE OF THIS AMENDING FINAL PLAT IS TO CORRECT GEOMETRIC ERROR IN DEFINITION OF 24' MUTUAL ACCESS EASEMENT AND TO ADD PUBLIC UTILITY EASEMENTS IN WHICH TO PROVIDE ELECTRIC SERVICE TO EACH LOT.

LEGEND	
P.U.E.	DENOTES PUBLIC UTILITY EASEMENT
IRF	IRON ROD FOUND

MATCH LINE SEE SHEET 2 OF 3

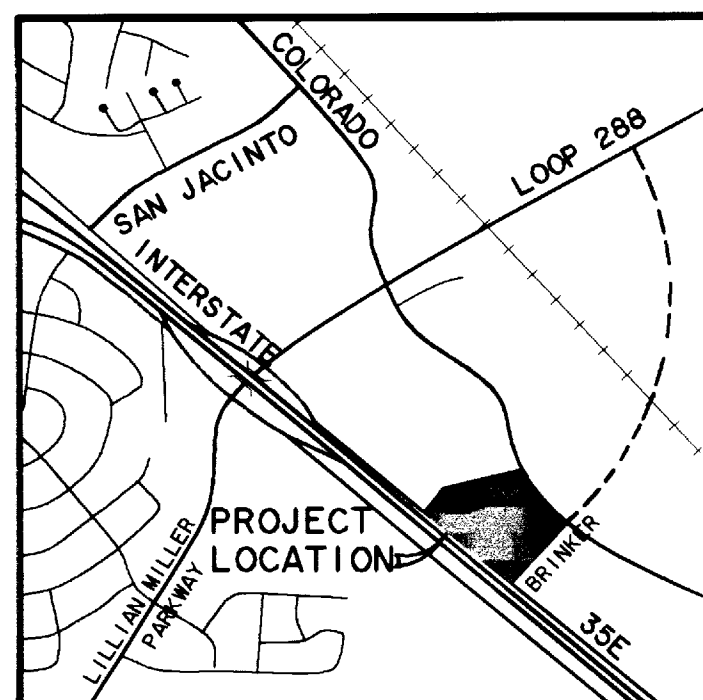


NOTES:

1. PLACE OF BEGINNING LIES APPROXIMATELY SOUTH, 2480± AND EAST 580'± FROM THE NORTHWEST CORNER OF THE J. WHITE SURVEY, ABSTRACT No. 1433.
2. CITY OF DENTON LANDSCAPE CODE REQUIREMENTS SHALL BE MET ON LOT BY LOT BASIS AS EACH LOT IS DEVELOPED.
3. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK 'A' FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

LEGEND

- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE (NAD 83)  
X = 2396583.13  
Y = 7115660.42
- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE  
X = 2396702.81  
Y = 7116569.12



\* VICINITY MAP \*

\*\*NOTE\*\*

THE ORIGINAL ENSERCH EASEMENT IS REFERENCED TO OLD PROPERTY CORNERS WHICH HAVE BEEN REMOVED AND CANNOT BE RECREATED. THE EASEMENT LOCATION INDICATED ON THIS PLAT IS THE SURVEYOR'S BEST INTERPRETATION OF THE EASEMENT DOCUMENT RECORDED IN VOLUME 1906, PAGE 672 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS.

**WIA WIER & ASSOCIATES, INC.**  
ENGINEERS SURVEYORS LAND PLANNERS

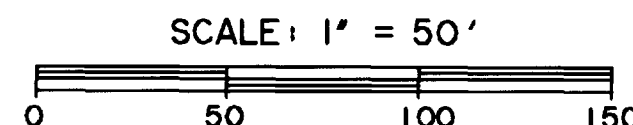
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
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SHEET 1 OF 3

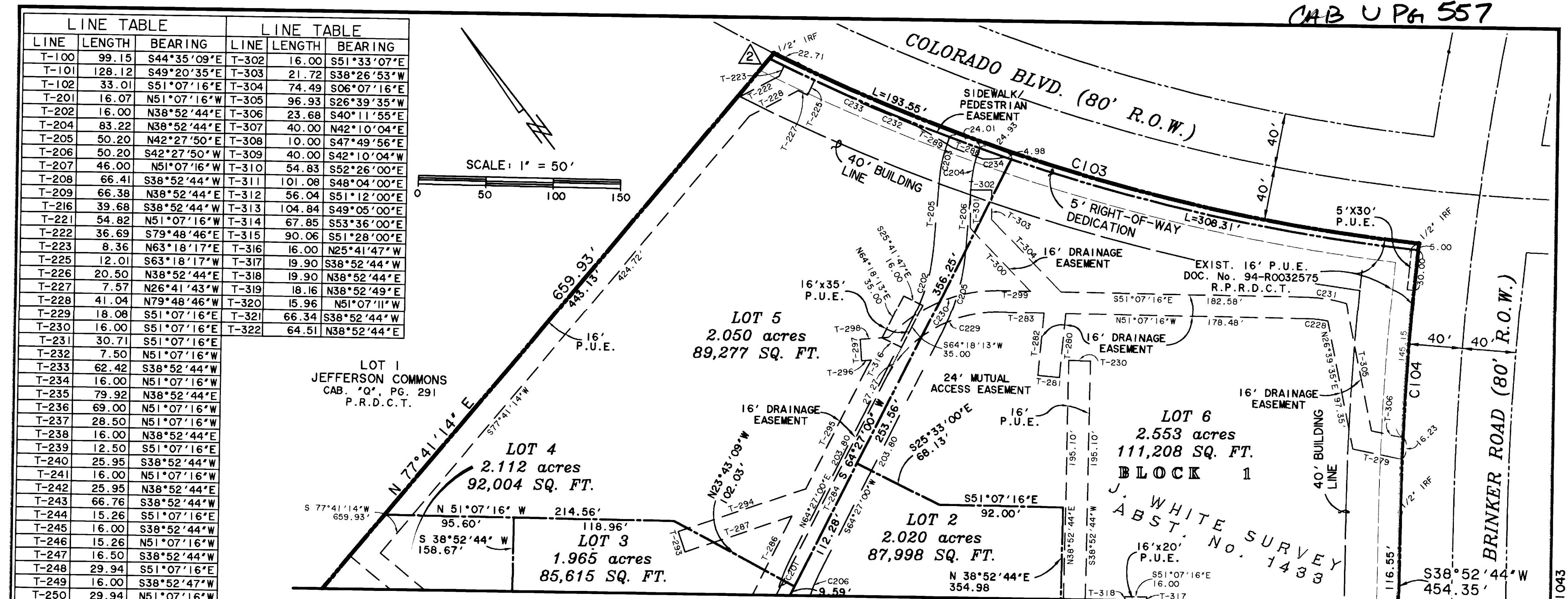
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DATE: 08-06-2002 FILE: MINOR\_PLAT.dwg W.A. No. 01043



CAB U Pg 557



LINE TABLE			LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
T-100	99.15	S44°35'09"E	T-302	16.00	S51°33'07"E
T-101	128.12	S49°20'35"E	T-303	21.72	S38°26'53"W
T-102	33.01	S51°07'16"E	T-304	74.49	S06°07'16"E
T-201	16.07	N51°07'16"W	T-305	96.93	S26°39'35"W
T-202	16.00	N38°52'44"E	T-306	23.68	S40°11'55"E
T-204	83.22	N38°52'44"E	T-307	40.00	N42°10'04"E
T-205	50.20	N42°27'50"E	T-308	10.00	S47°49'56"E
T-206	50.20	S42°27'50"W	T-309	40.00	S42°10'04"W
T-207	46.00	N51°07'16"W	T-310	54.83	S52°26'00"E
T-208	66.41	S38°52'44"W	T-311	101.08	S48°04'00"E
T-209	66.38	N38°52'44"E	T-312	56.04	S51°12'00"E
T-216	39.68	S38°52'44"W	T-313	104.84	S49°05'00"E
T-221	54.82	N51°07'16"W	T-314	67.85	S53°36'00"E
T-222	36.69	S79°48'46"E	T-315	90.06	S51°28'00"E
T-223	8.36	N63°18'17"E	T-316	16.00	N25°41'47"W
T-225	12.01	S63°18'17"W	T-317	19.90	S38°52'44"W
T-226	20.50	N38°52'44"E	T-318	19.90	N38°52'44"E
T-227	7.57	N26°41'43"W	T-319	18.16	N38°52'49"E
T-228	41.04	N79°48'46"W	T-320	15.96	N51°07'11"W
T-229	18.08	S51°07'16"E	T-321	66.34	S38°52'44"W
T-230	16.00	S51°07'16"E	T-322	64.51	N38°52'44"E
T-231	30.71	S51°07'16"E			
T-232	7.50	N51°07'16"W			
T-233	62.42	S38°52'44"W			
T-234	16.00	N51°07'16"W			
T-235	79.92	N38°52'44"E			
T-236	69.00	N51°07'16"W			
T-237	28.50	N51°07'16"W			
T-238	16.00	N38°52'44"E			
T-239	12.50	S51°07'16"E			
T-240	25.95	S38°52'44"W			
T-241	16.00	N51°07'16"W			
T-242	25.95	N38°52'44"E			
T-243	66.76	S38°52'44"W			
T-244	15.26	S51°07'16"E			
T-245	16.00	S38°52'44"W			
T-246	15.26	N51°07'16"W			
T-247	16.50	S38°52'44"W			
T-248	29.94	S51°07'16"E			
T-249	16.00	S38°52'47"W			
T-250	29.94	N51°07'16"W			
T-251	30.71	N51°07'16"W			
T-253	77.68	N53°36'43"W			
T-255	9.69	S38°52'44"W			
T-256	16.00	N51°07'16"W			
T-257	14.56	N38°52'44"E			
T-259	14.55	S81°23'17"W			
T-260	12.89	S38°52'44"W			
T-261	16.00	N51°07'16"W			
T-262	22.49	N38°52'44"E			
T-264	16.02	N38°52'44"E			
T-267	16.00	N83°12'09"E			
T-268	0.71	N81°07'16"W			
T-269	216.90	S38°52'44"W			
T-270	12.00	S68°52'44"W			
T-271	16.00	N21°07'16"W			
T-272	12.00	N68°52'44"E			
T-273	207.66	N38°52'44"E			
T-276	16.00	N38°52'44"E			
T-277	14.86	S51°07'16"E			
T-279	36.94	N40°11'55"W			
T-280	48.04	S43°16'18"W			
T-281	16.00	N46°43'42"W			
T-282	46.81	N43°16'18"E			
T-283	34.00	N51°07'16"W			
T-284	193.68	S64°18'13"W			
T-285	16.00	N25°41'47"W			
T-286	72.16	N64°18'13"E			
T-287	83.89	N70°54'07"W			
T-289	30.83	N21°08'55"W			
T-293	16.00	N19°05'53"E			
T-294	100.01	S70°54'07"E			
T-295	98.82	N64°18'13"E			
T-296	7.26	N56°22'08"W			
T-297	16.00	N33°37'52"E			
T-298	21.18	S56°22'08"E			
T-299	23.32	S51°07'16"E			
T-300	65.04	N06°07'16"W			
T-301	28.28	N38°26'53"E			

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LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
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T-207	46.00	N51°07'16"W	T-310	54.83	S52°26'00"E
T-208	66.41	S38°52'44"W	T-311	101.08	S48°04'00"E
T-209	66.38	N38°52'44"E	T-312	56.04	S51°12'00"E
T-216	39.68	S38°52'44"W	T-313	104.84	S49°05'00"E
T-221	54.82	N51°07'16"W	T-314	67.85	S53°36'00"E
T-222	36.69	S79°48'46"E	T-315	90.06	S51°28'00"E
T-223	8.36	N63°18'17"E	T-316	16.00	N25°41'47"W
T-225	12.01	S63°18'17"W	T-317	19.90	S38°52'44"W
T-226	20.50	N38°52'44"E	T-318	19.90	N38°52'44"E
T-227	7.57	N26°41'43"W	T-319	18.16	N38°52'49"E
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T-230	16.00	S51°07'16"E	T-322	64.51	N38°52'44"E
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T-235	79.92	N38°52'44"E			
T-236	69.00	N51°07'16"W			
T-237	28.50	N51°07'16"W			
T-238	16.00	N38°52'44"E			
T-239	12.50	S51°07'16"E			
T-240	25.95	S38°52'44"W			
T-241	16.00	N51°07'16"W			
T-242	25.95	N38°52'44"E			
T-243	66.76	S38°52'44"W			
T-244	15.26	S51°07'16"E			
T-245	16.00	S38°52'44"W			
T-246	15.26	N51°07'16"W			
T-247	16.50	S38°52'44"W			
T-248	29.94	S51°07'16"E			
T-249	16.00	S38°52'47"W			
T-250	29.94	N51°07'16"W			
T-251	30.71	N51°07'16"W			
T-253	77.68	N53°36'43"W			
T-255	9.69	S38°52'44"W			
T-256	16.00	N51°07'16"W			
T-257	14.56	N38°52'44"E			
T-259	14.55	S81°23'17"W			
T-260	12.89	S38°52'44"W			
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T-295	98.82	N64°18'13"E			
T-296	7.26	N56°22'08"W			
T-297	16.00	N33°37'52"E			
T-298	21.18	S56°22'08"E			
T-299	23.32	S51°07'16"E			
T-300	65.04	N06°07'16"W			
T-301	28.28	N38°26'53"E			

CURVE TABLE							CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD DIRECTION	CHORD LENGTH	CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD DIRECTION	CHORD LENGTH
C100	0°26'33"	11309.20	87.34	43.67	N50°50'44"W	87.34	C229	64°34'31"	92.00	103.69	58.13	N83°24'31"W	98.29
C101	0°27'23"	11298.38	90.00	45.00	N49°53'46"W	90.00	C230	48°35'13"	108.00	91.58	48.75	N75°24'52"W	88.86
C102	0°23'13"	11299.20	76.33	38.16	N47°46'26"W	76.33	C231	15°51'09"	108.00	29.88	15.04	N43°11'41"W	29.79
C103	19°58'06"	1440.00	501.86	253.50	S35°55'18"E	499.33	C232	1°23'57"	1446.12	35.32	17.66	S29°58'12"E	35.32
C104	5°38'19"	2040.20	200.79	100.47	S41°41'54"W	200.70	C233	5°54'53"	255.00	26.32	13.17	S26°18'47"E	26.31
C200	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28	C234	20°11'21"	46.57	16.41	8.29	S56°43'01"E	16.32
C201	25°34'15"	124.00	55.34	28.14	S51°39'52"W	54.88							
C202	21°59'09"	138.00	52.95	26.81	N53°27'25"E	52.63							
C203	19°38'55"	112.00	38.41	19.39	S52°17'18"W	38.22							
C204	20°48'59"	88.00	31.97	16.16	S52°52'20"W	31.80							
C205	21°59'09"	162.00	62.16	31.47	N53°27'25"E	61.78							
C206	25°34'15"	100.00	44.63	22.69	S51°39'52"W	44.26							
C207	101°16'28"	20.00	35.35	24.38	S11°45'29"E	30.93							
C208	11°16'27"	87.00	17.12	8.59	N56°45'30"W	17.09							
C209	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28							
C210	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28							
C211	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28							
C212	90°00'00"	20.00	31.42	20.00	N06°07'16"W	28.28							
C213	25°38'42"	63.00	28.20	14.34	N63°56'37"W	27.96							
C214	25°38'42"	87.00	38.94	19.80	S63°56'37"E	38.62							
C215	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28							
C220	22°09'44"	92.00	35.59	18.02	N62°12'08"W	35.36							
C221	18°18'49"	108.00	34.52	17.41	S64°07'36"E	34.37							
C222	20°12'41"	92.00	32.45	16.40	N61°13'37"W	32.29							
C223	18°38'23"	108.00	35.14	17.72	N60°26'28"W	34.98							
C224	22°09'44"	92.00	35.59	18.02	S62°12'08"E	35.36							
C225	22°09'44"	108.00	41.77	21.15	N62°12'08"W	41.51							
C226	30°00'00"	108.00	56.55	28.94	N53°52'44"E	55.90							
C227	30°00'00"	92.00	48.17	24.65	N53°52'44"E	47.62							
C228	10°01'19"	92.00	16.09	8.07	N46°06'37"W	16.07							

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LOTS 1,  
SOU

AN ADDITION  
DENTON COUNTY  
OF LAND LOCAL  
ABSTRACT No.  
ABSTRACT No.

PREPARED BY:  
**WIER & ASSOCIATES**  
ENGINEERS SURVEYORS  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76010  
8721 5th STREET FRISCO, TEXAS 75034 METRO  
www.WierAssociates.com  
OWNER:  
QUADRANT SOUTHERN  
PARTNERS, L.P.

16' DRAINAGE EASEMENT

16' P.U.E.

16' P.U.E.

16' L

INSET "A"

ON - CERTIFICATE OF TITLE - COPY

CAB U PG 558

# OWNER'S CERTIFICATE

WHEREAS, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, ACTING BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENTS, ARE THE SOLE OWNERS OF A 12.712 ACRE TRACT OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO EPIC DEVELOPMENT, INC. AS RECORDED IN VOLUME 3245, PAGE 699 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E (A 300-FOOT RIGHT-OF-WAY) AND THE NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY),

THENCE ALONG THE SAID NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E AS FOLLOWS:

N 51°04'00"W, 450.92 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT,

NORTHWESTERLY, 87.34 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 11,309.20 FEET, A CENTRAL ANGLE OF 00°26'33" AND A CHORD BEARING N 50°50'44"E, 87.34 FEET TO A 1/2" IRON ROD FOUND,

N 44°35'09"W, 99.15 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 90.00 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,298.38 FEET, A CENTRAL ANGLE OF 00°27'23" AND A CHORD BEARING N 49°53'46"W, 90.00 FEET TO A 1/2" IRON ROD FOUND,

N 49°20'35"W, 128.12 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 76.33 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,299.20, A CENTRAL ANGLE OF 00°23'13" AND A CHORD BEARING N 47°46'26"E, 76.33 FEET TO A 1/2" IRON ROD FOUND,

THENCE N 49°13'09"E, 253.10 FEET TO A 5/8" IRON ROD FOUND,

THENCE N 77°41'14"E, 659.93 FEET TO A 1/2" IRON ROD FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT BOULEVARD) AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT,

THENCE SOUTHEASTERLY, 501.86 FEET ALONG THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD AND ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 19°58'06" AND A CHORD BEARING S 35°55'18"E, 499.33 FEET TO A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT RIGHT-OF-WAY) AND THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY) AT THE BEGINNING OF ANOTHER NON-TANGENT CURVE TO THE LEFT,

THENCE ALONG THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD AS FOLLOWS:

SOUTHWESTERLY, 200.79 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2,040.20 FEET, A CENTRAL ANGLE OF 05°38'19" AND A CHORD BEARING S 41°41'54"W, 200.70 FEET TO A 1/2" IRON ROD FOUND,

S 38°52'44"W, 454.35 FEET TO THE PLACE OF BEGINNING, CONTAINING 12.712 ACRES, (553,740 SQUARE FEET) OF LAND.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS,

THAT, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENT, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS SOUTHERN HILLS PLAZA, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS AND DO HEREBY DEDICATE TO THE PUBLIC'S USE THE RIGHTS-OF-WAY AND EASEMENTS SHOWN THEREON AND DO FURTHER CERTIFY THAT THIS PLAT DOES NOT ALTER OR REMOVE EXISTING DEED RESTRICTIONS OR COVENANTS, IN ANY, ON THIS PROPERTY.

WITNESS MY HAND AT DALLAS, DALLAS COUNTY, TEXAS THIS THE 7th DAY OF August, 2002.

QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP

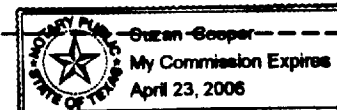
*Don Silverman*  
DON SILVERMAN, AGENT

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED DON SILVERMAN, AUTHORIZED AGENT FOR QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS EXPRESSED AND IN THE CAPACITY THEREIN STATED, AND AS THE ACT AND DEED OF SAID CORPORATION.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS THE 7th DAY OF August, 2002.

*Notary Public*  
NOTARY PUBLIC OF THE STATE OF TEXAS  
COMMISSION EXPIRES: April 23, 2005



## SURVEYOR'S STATEMENT

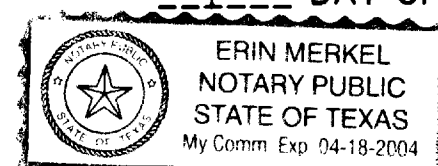
THAT I, ULYS LANE III, A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL SURVEY OF LAND, AND THAT THE CORNER MONUMENTS SHOWN THEREON SHALL BE PROPERLY MARKED ON THE GROUND, AND THAT THIS PLAT CORRECTLY REPRESENTS THAT SURVEY MADE BY ME OR UNDER MY DIRECTION AND SUPERVISION AND IS IN ACCORDANCE WITH THE PLATTING RULES AND REGULATIONS OF THE CITY OF DENTON, TEXAS.

*Ulys Lane III*  
ULYS LANE III  
REGISTERED PROFESSIONAL LAND SURVEYOR  
STATE OF TEXAS No. 2411

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED ULYS LANE III, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 7th DAY OF August, 2002.



*Erin Merkel*  
NOTARY PUBLIC, STATE OF TEXAS  
COMMISSION EXPIRES: 4/18/04

## CERTIFICATE OF APPROVAL:

APPROVED THIS 15th DAY OF August, 2002  
BY THE DEVELOPMENT REVIEW COMMITTEE OF THE  
CITY OF DENTON, TEXAS.

8-16-02 *Douglas S. Powell*  
DATE: DEVELOPMENT REVIEW COMMITTEE, CHAIRMAN

8-16-02 *Jennifer Walters*  
DATE: JENNIFER WALTERS CITY SECRETARY

## AMENDING FINAL PLAT LOTS 1, 2, 3, 4, 5 & 6, BLOCK 1 SOUTHERN HILLS PLAZA

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**WIA WIER & ASSOCIATES, INC.**

**ENGINEERS SURVEYORS LAND PLANNERS**  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
www.wierassociates.com

**OWNER:**  
QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.  
14900 LANDMARK BLVD.  
SUITE 610  
DALLAS, TEXAS 75254  
(972) 980-8806  
SHEET 3 OF 3

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Aug 15 2002  
At 4:11pm  
46717  
Receipt #: 108.00  
Recording: 6.00  
Doc/Mgmt: 2002-R0102530  
Doc/Num: PLA  
Doc/Type: Deputy - ELIZABETH

Y:\Projects\01043\dwg\MINOR\_PLAT.dwg 7/22/2002 8:30:19 AM CDT W.A. No. 01043

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**RECIPROCAL EASEMENT AGREEMENT**

THIS RECIPROCAL EASEMENT AGREEMENT ("Agreement") is promulgated this 17<sup>th</sup> day of May, 2002 by QUADRANT SOUTHERN HILLS PARTNERS, LTD., a Texas limited partnership ("Grantor"), whose address is c/o Quadrant Properties, L.L.C., 8000 Maryland Avenue, Suite 640, St. Louis, Missouri 63105.

**WITNESSETH:**

WHEREAS, Grantor is the owner of a certain parcel of land (the "Property") located in Denton County, Texas, which parcel of land is more particularly described on that certain Final Plat Southern Hills Plaza (the "Plat") dated April 5, 2002, filed April 24, 2002, and recorded in Plat Cabinet U, Page 357, in the Office of the County Clerk, Denton County, Texas, a copy of which Plat is attached hereto as Exhibit A;

WHEREAS, Grantor has caused the Property to be subdivided of record into six (6) lots (each, a "Lot" and collectively the "Lots") as shown on the Plat.

WHEREAS, Grantor desires that the Lots be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial development (sometimes hereinafter referred to as the "Development") in accordance with the Site Plan attached hereto as Exhibit B-1 (the "Site Plan"), and Grantor desires that the Development be subject to the easements and covenants hereinafter set forth.

NOW, THEREFORE, Grantor does hereby declare and grant the following rights, covenants and servitudes on the Property:

**1. Building/Common Areas.**

A. "Building Area" as used herein shall mean that portion of a Lot within the building set back lines on a Lot as shown on Exhibit B-2 attached hereto. Canopies may encroach from the Building Area over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

B. "Common Areas" shall be all of the Property except the Building Area.

C. Conversion to Common Areas: Those portions of the Building Area on each Lot which are not from time to time used, or cannot under the terms of this Agreement be used, for buildings, shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

2. Use. Buildings in the Development shall be used only for retail and other commercial purposes including, without limitation, medical offices, lodging facilities, video rental and sales, financial institutions, restaurants, offices, and retail stores. Only

Lot 6 may be used for purposes of automobile service, convenience stores, service stations and the sale of motor vehicle fuels. Subject to the foregoing and Section 3 and Section 4 below, no portion of the Development shall be used for anything other than the purposes which may be permitted by applicable zoning regulations, nor shall anything be done in the Development which is a nuisance or an annoyance to the owners or occupants of the Development.

3. Prohibited Uses. During the term of this Agreement no portion of the Development may ever be used for any of the following uses whatsoever: (i) an adult-type bookstore or other establishment selling, leasing or exhibiting pornographic materials or paraphernalia for use with illicit drugs; (ii) a massage parlor, topless bar, or a club or establishment which provides striptease entertainment; (iii) a mortuary; (iv) a mobile home or trailer court, labor camp, junkyard or stockyard; (v) a land fill, garbage dump or for the dumping, disposing, incineration or reduction of garbage; (vi) an off-track betting parlor (or any other type of gambling establishment), carnival or amusement park; (vii) a manufacturing, distillation, smelting, refining, industrial, agricultural, drilling, mining or quarrying operation; or (viii) an x-rated movie theatre or video shop.

4. Restrictions on Use and Special Uses.

A. Italian Restaurant Restriction. For so long as a restaurant which features Italian food is operated on Lot 3, but in no event longer than fifty (50) years from the date of recordation of this Agreement, no Lot in the Development (except Lot 3 and except Lot 2 if Lot 2 is under contract to be purchased by or is owned by Texas Roadhouse (as defined below)) shall be used as a restaurant which features Italian food. For the purposes of this section: (a) "features" means that Italian food items comprise more than twenty five percent (25%) of the menu offerings. If Lot 3 ceases to be used as an Italian restaurant for one hundred eighty (180) days or more, for reasons other than closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation or other force majeure then this restriction shall lapse and shall terminate. The foregoing restriction: (a) is not intended to exclude a pizza restaurant, which is defined as a restaurant where at least seventy five percent (75%) of its gross food sales is derived from sales of pizza, including, but not limited to, restaurants of the type of a Chuck E. Cheese restaurant, and (b) shall not be applied to exclude restaurants of the type of a "Boston Pizza and Sports Bar" from the Development, however, such restriction will be applied to exclude restaurants of the type of Pizzeria Uno.

B. Parking Requirement. Any restaurant operating on Lot 4 or Lot 5 (and on Lot 2 if such restaurant is not owned by Texas Roadhouse) shall be required to provide one parking space for each 67 square feet of building area on such Lot.

C. Lot 3 Building Area Restriction. So long as the Development is being used primarily for retail purposes, the floor area of any building on Lot 3 shall not exceed 8,000 square feet, exclusive of mechanical rooms.

D. Lot 3 Frontage Restriction. So long as Lot 2 is being used as a restaurant, the principal entrance to any building on Lot 3 shall not face either Lot



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2 or Brinker Road. If Lot 2 ceases to be used for restaurant purposes for one hundred eighty (180) days or more, for reasons other than closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation or other force majeure, then the provisions of this section shall lapse and terminate.

**E. Mexican Restaurant Restriction.** For so long as (i) Brinker Texas, L.P., a Texas limited partnership, or an affiliate thereof, is reasonably pursuing the development of an On the Border restaurant (or other Mexican-style restaurant) on Lot 1, and/or (ii) Brinker (as hereinafter defined) is operating an On the Border restaurant (or other Mexican-style) restaurant on Lot 1 (excluding any periods of inoperation due to remodeling, renovation, or reconstruction as a result of an assignment, sublease, casualty, condemnation or otherwise), then Grantor shall not lease or sell any part of any Lot in the Development other than Lot 1 to any tenant or purchaser for the operation of a restaurant (nor shall Grantor otherwise permit the operation of a restaurant on any Lot in the Development other than Lot 1) offering alcoholic beverages and a menu featuring Mexican cuisine, "Tex-Mex" cuisine, and/or southwestern cuisine as the primary entrees. For the purposes of this section an "affiliate" shall mean any legal entity which is either (i) the successor by merger or otherwise, to all or substantially all of Brinker Texas, L.P.'s assets and liabilities, (ii) controls or is controlled by, or is under common control with Brinker Texas, L.P., or (iii) any franchisee of Brinker Texas, L.P. (Brinker Texas, L.P. and such affiliates being herein collectively called "Brinker"). Without limiting the foregoing, Grantor shall not lease or sell any part of the Property in the Development to any tenant or purchaser for the operation of the following restaurants (nor shall Grantor otherwise permit the operation of a restaurant in the Development operating under the following trade names): Blue Mesa, Canyon Café, Chi Chi's, Don Pablo's, Rio Bravo, Uncle Julio's, Rio Grande Café, Mia's, Chevy's, El Chico, El Fenix, Chuy's, Cantina Laredo, Abuelo's, Pappasito's, Mi Cocina, and Chipotle Mexican Grill. The foregoing restriction shall not be deemed to prohibit the operation of a restaurant on Lot 2 under the trade name "Texas Roadhouse" featuring menu items reasonably consistent with the items shown on such restaurant's menu as of the effective date hereof.

**F. Steakhouse Restriction.** For so long as a full service steakhouse or similar restaurant concept which features steaks, ribs and related menu items is operated on Lot 2 by Texas Roadhouse, or an affiliate thereof, no portion of the Development other than Lot 2 shall be used as a full service steakhouse or similar restaurant concept featuring steaks, ribs and related menu items or for the advertisement of such a restaurant. For the purposes of this section "features" shall mean that steaks, ribs and related menu items served in a full service steakhouse comprise more than twenty five percent (25%) of the menu items. If Lot 2 ceases to be used as a full service steakhouse restaurant which features steaks, ribs and related menu items for one hundred eighty (180) days or more, for reasons other than a closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation, or other force majeure,

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or ceases to be owned by Texas Roadhouse, then the provisions of this section shall lapse and terminate. For the purposes of this section "affiliate" shall mean any entity which is owned or controlled by, under common control with or owns or controls Texas Roadhouse Holdings LLC or any entity in to which Texas Roadhouse Holdings LLC shall merge or shall transfer substantially all of its assets, or any franchisee of Texas Roadhouse Development Corporation (Texas Roadhouse Holdings LLC and such affiliates being herein collectively called "Texas Roadhouse"). The foregoing restriction shall not be deemed to prohibit the operation of a restaurant on Lot 1 under the trade name "On the Border" featuring menu items reasonably consistent with the items shown on such restaurant's menu as of the effective date hereof.

G. Lot 6 Parking Requirement. For so long as a restaurant is being operated on Lot 2, any restaurant operating on Lot 6 shall be required to provide fifteen (15) parking spaces for each 1,000 square feet of any building constructed on Lot 6. If Lot 2 ceases to be used as a restaurant for one hundred eighty (180) days or more, for reasons other than a closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation, or other force majeure, or ceases to be owned by Texas Roadhouse, then the provisions of this section shall lapse and terminate.

H. Gravel Parking Area. So long as Lot 2 is under contract to be sold to or is owned by Texas Roadhouse and is being operated as a restaurant, Texas Roadhouse and its customers shall have a non-exclusive right to use that portion of Lot 6 depicted as "Gravel Parking Area" (the "Gravel Parking Area") on the Site Plan for the parking of passenger motor vehicles and Grantor hereby grants to Texas Roadhouse a license for such use. Texas Roadhouse may, at its sole cost and expense, place gravel on the Gravel Parking Area. The owner of Lot 6 or Grantor may terminate the license granted by this section by thirty (30) days advance written notice to Texas Roadhouse. Prior to the effective date of the termination of such license Texas Roadhouse shall restore the Gravel Parking Area to the condition as existed on the date on which Texas Roadhouse commenced use of the Gravel Parking Area, unless otherwise directed by Grantor or the owner of Lot 6. Texas Roadhouse shall indemnify and hold the owner of Lot 6 harmless from any losses, damages, liabilities or claims for property damage or personal injury caused by Texas Roadhouse, its customers, employees, agents or contractors in connection with their use of the Gravel Parking Area.

I. Medical Use Restriction. No part of the Development or any of the improvements now or hereafter located thereon may be used or operated: (a) as an acute care or medical surgical hospital or for the provision of services usually provided in such a hospital or to provide any services that are furnished at any hospital or other medical facility located in Denton County, Texas owned or operated by Epic Development, Inc. ("Epic") or any "Affiliate" of Epic; or (b) as a facility wherein any medical care or service of any kind is provided to human beings. In no event may a laboratory, x-ray or other form of diagnostic imaging service, or surgery or birthing services or facilities be provided on or in the

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development on any basis. "Affiliate," for the purposes of this section shall mean any person which directly or indirectly controls or is controlled by or is under control with Epic. For the purposes of this definition, "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used herein, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, through ownership of voting securities, partnership interests or other equity interests. The provisions of this section shall remain in effect and be enforceable until such time as all of the hospitals and other medical facilities owned or operated by Epic or any Affiliate of Epic described above in this section, or all successor health care facilities which replace such hospitals, are permanently closed; provided, however, the provisions of this section shall in any event terminate, lapse and be of no further effect on the date which is 99 years following March 4, 1999.

5. Buildings.

A. Design and Construction. The buildings within the Development shall be designed so that the same are comparable to the buildings located on outparcels within other first class community shopping centers in the metropolitan Dallas, Texas area. Notwithstanding the foregoing, subject to the approval of applicable governmental authorities, prototypical designs for national chain businesses shall be acceptable designs for buildings within the Development.

B. Location. No building shall be constructed on a Lot except within the Building Area.

C. Fire Protection. Any building constructed in the Development shall be constructed and operated in such a manner that standard form of fire insurance policy rates concerning other buildings in the Development are preserved.

D. Parking. Without limiting the specificity of the other provisions hereof relating to required parking, in developing and using a Lot, the owner of the Lot shall continuously provide and maintain parking spaces on such Lot at a minimum equal to the number of parking spaces required by applicable law or code.

E. Damage. In the event any building, structure or other improvement on a Lot shall be damaged or destroyed by any casualty, the owner, lessee or user of the Lot shall within ninety (90) days of such damage or destruction: (i) commence to repair and/or reconstruct such building, structure or improvement (and thereafter promptly complete such work) to a condition at least as good as existed prior to the casualty, subject to the terms of this Agreement (such commencement of repair or reconstruction work shall be deemed to include the preparation of construction plans and the pursuit of permits for such work with diligence and continuity to completion); or (ii) level such improvement, remove the debris from the Lot and keep the Lot neat, orderly, planted in grass and trimmed, until subsequently improved and constructed upon.

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6. Grant of Easements.

A. Access and Parking Easements. Grantor hereby establishes, for the benefit of the Lots, and the respective owners and lessees thereof, a reciprocal perpetual non-exclusive easement over, through and around the Common Areas of the Lots for roadways, walkways, ingress and egress and parking for the use of customers, invitees, licensees and employees of all businesses and owners, tenants and occupants of the buildings constructed within the Building Area on the Lots. The grant of the easement for reciprocal parking shall not release the owner of any Lot from such owner's obligation to maintain on such owner's Lot at minimum the number of parking spaces required by applicable laws or codes.

B. Limitations on Use of Access and Parking Easements.

(i) Employees. The owners of the Lots shall use reasonable efforts to ensure that their employees do not park their vehicles on the Common Areas of Lots of the other owners.

(ii) No Dedication to Public. Nothing contained in this Agreement shall constitute or be construed as a gift or dedication of any portion of the Property, specifically including the Common Areas, for roadways, walkways, ingress, egress, parking, or utilities constructed thereon, to the public or give any member of the public any rights whatsoever, it being the express intention of Grantor that this Agreement shall be for the exclusive benefit of the Lots, the owners thereof and their respective heirs, representatives, lessees, successors and assigns as set forth herein. Notwithstanding the foregoing, approximately forty (40) feet of frontage of the Property along Interstate Highway No. 35 shall be dedicated to the appropriate governmental authority without compensation for right-of-way purposes.

(iii) Prevention of Prescriptive Rights. The owner of each Lot hereby reserves the right to eject from the Common Areas on its Lot any person not authorized to use the same. In addition, the owner of each Lot reserves the right to close off the Common Areas on its Lot for such reasonable periods of time as may be legally necessary in the reasonable opinion of its attorneys to prevent the acquisition of prescriptive rights by anyone. Before closing off any part of the Common Areas as provided above, such owner must give notice to the other owners of its intention to do so and must coordinate its closing with the activities of the other owners of the Development so that no unreasonable interference with the operation of the Development occurs. Reasonable efforts shall be used to ensure that no such closing shall occur during weekends, holidays or normal business hours. No prescriptive easement rights or claims shall ever accrue in favor of any Lot owner or user against any other Lot owner as the result of any use or action taken by any Lot owner or user with respect to another owner's Lot.

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C. Utility and Service Easements. Grantor hereby establishes non-exclusive easements over the Common Areas on each Lot in favor of each other Lot to permit the maintenance and use of all apparatus necessary to provide utility services to a Lot, including telephone, cable, electricity, water, natural gas and storm and sanitary sewers, provided that same are constructed underground. Any disruption or demolition of a servient Lot by reason of the use of this easement shall be kept to a minimum which shall not exceed one (1) day in duration except during the period when the Development is initially constructed, unless such disruption or demolition cannot be reasonably completed within such one (1) day period, in which event the period will be extended to such time period as reasonably is required and such area forthwith shall be restored as quickly as possible by the dominant Lot owner to its original condition at no expense to the servient Lot owner. Nothing herein shall permit a Lot owner to: (i) disrupt the utility service of any business which is operating in the Development; or (ii) eliminate access to any business operating on a servient Lot. Prior to the commencement of any action by an owner of a dominant Lot on a servient Lot pursuant to the easement rights granted by this Section 6.C., the owner of such dominant Lot shall give the owner of such servient Lot at least five (5) days prior written notice of such action, except in the event of an emergency in which case the owner of the dominant Lot shall give notice as is reasonable under the circumstances. Such notice shall set forth the general scope of the work to be performed.

D. Construction Easements. Grantor hereby grants, declares and establishes for the benefit of the Lots, and the respective owners and lessees thereof, temporary easements in the Common Areas of the Lots, and prior to the construction of any improvements thereon, in the Building Area on a Lot, for the initial grading of the Development, including construction of retaining wall(s), and for the construction of the Development's internal roads. With respect to any Lot on which fresh dirt is dumped, the area shall be sloped to meet any contiguous property within the Development or public roads, and shall be smoothed in a level manner consistent with the contours of the adjoining property. Each owner covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the buildings or other improvements of any other owner, and shall not unreasonably interfere with or interrupt the construction of improvements or the business operations conducted by any other owner in the Development. In addition, each owner, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of another owner which have been damaged or destroyed in the exercise by such owner of the easements granted under this section and shall defend, indemnify and hold the other owners harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) incurred in connection with or as a result of an owner's exercise of said easements, except to the extent occasioned by the negligence or willful misconduct of another owner.

E. Water Flow. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of an

5097 02802

owner's improvements substantially as shown on the Site Plan (including without limitation building, curbs, drives and paving) shall be permitted as long as such water flow conforms to the drainage easements shown on the Plat. Notwithstanding the foregoing, Lot owners shall comply with all applicable laws or regulations concerning storm water, and soil and erosion control.

F. Lot 4 Sign Easement. Grantor hereby grants and conveys for the benefit of Lot 4, Lot 5 and Lot 6, and the respective owners and lessees thereof, a perpetual nonexclusive appurtenant easement on, in, through and over that portion of Lot 4 shown on Exhibit B-2 as the "Mutual Sign Easement", for the purpose of the installation, construction, reconstruction, use, operation, maintenance, repair and replacement of a free standing, lighted pylon sign structure ("Sign Structure") and sign panels located thereon at the option of such Lot owners identifying the owner, lessee and/or occupants of such Lots. The Sign Structure and the panels located thereon shall comply with all applicable laws, ordinances and regulations of governmental authorities and any other requirements set forth hereinbelow. No more than one (1) Sign Structure shall exist in the Mutual Sign Easement at any one time and such Sign Structure may include no more than one (1) two (2)-sided sign panel for each of Lots 4, 5 and 6. The owners of each of Lots 4, 5 and 6 shall be responsible for the maintenance and upkeep of the Sign Structure during the time that the Sign Structure includes a sign panel for such owners' Lot, and such Lot owners shall, during such time when they are responsible for the Sign Structure's maintenance, share pro-rata in the actual and reasonable costs and expenses of permitting, construction, maintenance, repair, replacement, operation and reconstruction of the Sign Structure based on the relative square footage of each Lot owner's sign panel located thereon; provided, however, that such pro rata share shall not include any costs or expenses strictly related to each Lot's particular sign panel, which costs and expenses shall be the responsibility of such panel's owner.

7. Development, Maintenance and Taxes.

A. Development. The arrangement of the Common Areas shall not be changed in any manner which negatively affects the access and parking easements provided for in this Agreement. The Common Areas shall not be changed to alter or reconfigure the access points of the Development, including the access points of each Lot as shown on the Site Plan, without the prior written consent of the owners of all of the Lots, which consent shall not be unreasonably withheld, delayed or conditioned.

B. Maintenance.

(i) Standards. Each owner shall maintain its Lot in good condition and repair, at its own expense, following completion of the improvements on its Lot. The maintenance is to include, without limitation, the following:



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(a) Maintaining the surfaces of the Common Areas on its Lot in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the Common Areas on its Lot to the extent reasonably necessary to keep such areas in a clean and orderly condition;

(c) Placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines on the Common Areas of its Lot;

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required on the Common Areas of its Lot;

(e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair; and

(f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

(ii) Lots. Each owner of a Lot covenants that it, in addition to other requirements of this section, will keep all glass in the doors and windows on its Lot clean; will maintain its Lot at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; and will not permit accumulation of garbage, trash, rubbish and other refuse on its Lot, will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefor until called for to be removed.

C. Taxes. Each of the owners shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against its Lot (including, without limitation, that part of the Common Areas owned by it).

#### 8. Indemnification/Insurance.

A. Indemnification. Each owner of a Lot hereby indemnifies and saves the other owners harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Lot, except if caused by the act or negligence of another owner.

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**B. Insurance.**

(i) The owner of each Lot shall procure and maintain in full force and effect throughout the term of this Agreement commercial general liability insurance and property damage insurance (including contractual liability coverage) against claims for personal injury, death, or property damage occurring upon, in or about its Lot with combined single limit coverage of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate. The owner of each Lot shall provide the other owners with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance which may cover other property in addition to the property covered by this Agreement, and the coverage amounts may be obtained through combination of primary and umbrella policies.

(ii) A policy shall include provisions denying the insurer subrogation rights against the other owners to the extent such rights were waived by the insured prior to the occurrence of loss.

(iii) Each owner of a Lot, for itself and its property insurer, hereby releases the other owners, and their tenants, employees and agents from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of the owner resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

(iv) Notwithstanding anything to the contrary contained in this Section 8.B., so long as the net worth of an owner of a Lot shall exceed Twenty Million Dollars (\$20,000,000.00), such owner shall have the right to satisfy its obligations under this Section 8.B. by self-insuring and retaining the financial risk for any claim.

**9. Eminent Domain.**

A. Owner's Right to Award. Nothing herein shall be construed to give any owner any interest in any award or payment made to any other owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other owner's Lot, or giving the public or any government any rights in a Lot. In the event of any exercise of eminent domain or transfer in lieu

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thereof of any part of the Common Areas located on a Lot, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

B. Collateral Claims. All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.

C. Tenant's Claim. Nothing in this section shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

D. Restoration of Common Areas. The owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective tract as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

10. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon a Lot of any owner, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Lot. Except as set forth in the preceding sentence, however, any holder of a first lien on a Lot, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement. By executing and acknowledging this Agreement, the lender that holds a deed of trust encumbering the Property on the date of this Agreement (the "Lender") hereby consents to this Agreement and to the provisions hereof, and subordinates its interest in the Property to this Agreement.

11. Release from Liability. Any person acquiring fee or leasehold title to a Lot or any portion thereof, shall be bound by this Agreement only as to the Lot acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Lot, except as to the obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this section, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon the Lots running with the land.

## 12. Breach.

A. Parties with Remedies. In the event of a breach or threatened breach of this Agreement, any owner of a Lot shall, subject to Section 12.B. hereinbelow, be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach, by injunction and/or all such other available legal and equitable remedies. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees.

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**B. Remedies.** If any owner of a Lot shall fail to perform any covenant or condition contained in this Agreement, the aggrieved party shall give the defaulting owner at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default be not reasonably susceptible of being cured within said period of thirty (30) days, and said defaulting owner shall not have in good faith commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to completion) the aggrieved party may institute legal proceedings for full and adequate relief from the consequences of said default or threatened default.

**C. Self Help; Right of Entry.** The defaulting owner hereby grants to the aggrieved party a non-exclusive right of entry and non-exclusive easements across and under any and all parts of the defaulting owner's Lot (excluding the right to enter in or upon any buildings on such Lot) for all purposes reasonably necessary to enable the aggrieved party (acting directly or through agents, contractors or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Agreement which the defaulting owner shall have failed to perform, after notice and time to cure, as aforesaid, but only such notice and time to cure as shall be reasonable or practicable under the circumstances need be given in the event of any emergency. Any amounts so expended may be withheld from amounts otherwise payable to the defaulting owner or collection may be sought otherwise and in any event the defaulting owner shall pay such amount with interest at the rate of three percent (3%) per annum over the then existing prime rate of interest announced from time to time by Citibank, N.A. or its successors (but in no event exceeding the maximum rate per annum permitted by law).

**13. Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the owners of the buildings constructed on the Lots, their respective heirs, representatives, lessees, successors and assigns, and occupants of the Lots. The singular number includes the plural and the masculine gender includes the feminine and neuter.

**14. Non-Merger.** This Agreement shall not be subject to the doctrine of merger.

**15. Duration.** Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

**16. Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

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17. Notices. Any notices required or permitted to be given under this Agreement shall be delivered: (i) personally, (ii) by overnight mail or overnight air courier service; or (iii) by United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, and addressed to the owner of a Lot at the last known business address of such owner. Any such notice, request or other communication shall be considered given or delivered, as the case may be, when received or refused. An owner of a Lot may designate a notice address by sending written notice to the last known business address of the other Lot owners.

18. Estoppel Certificates. Each owner shall upon not less than thirty (30) days from receipt of written notice from any other owner execute and deliver to such other owner a certificate stating that: (a) either this Agreement is unmodified and in full force and effect or is modified (and stating the modification); and (b) whether or not to the best of its knowledge the other owner is in default in any respect under this Agreement and if in default, specifying such default.

19. Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

20. Responsibility. Notwithstanding anything to the contrary contained in this Agreement, each owner of a Lot shall be liable for the obligations, covenants, agreements, and responsibilities created by this Agreement and for any judgment rendered hereon only to the extent of its respective interest in its Lot and the improvements located thereon.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

22. Modification. This Agreement may be amended, modified or changed only by the written consent of all of the owners of the Lots, with any such amendment, modification or change being recorded in the land records of Denton County, Texas.

[The remainder of this page is intentionally left blank. The signature pages follow.]

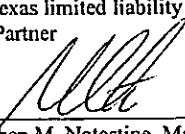
5097 02808

IN WITNESS WHEREOF, Grantor and Lender have executed this Agreement as of the day and year first written above.

GRANTOR:

QUADRANT SOUTHERN HILLS  
PARTNERS, LTD., a Texas limited  
partnership

By: SOUTHERN HILLS EQUITIES,  
LLC, a Texas limited liability company,  
General Partner

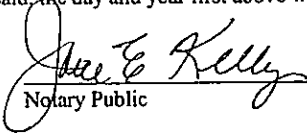
By:   
Stephen M. Notestine, Manager

STATE OF MISSOURI     )  
                                  ) SS  
COUNTY OF ST. LOUIS    )

On this 1st day of MAY, 2002, before me appeared Stephen M. Notestine to me personally known, who, being by me duly sworn, did say that he is the Manager of Southern Hills Equities, LLC, a Texas limited liability company, which company is the General Partner of Quadrant Southern Hills Partners, Ltd., a Texas limited partnership, and that said instrument was signed in behalf of said company and partnership, by authority of its members and partners; and said person acknowledged said instrument to be the free act and deed of said company and partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



  
Notary Public

My commission expires:



NON-CERTIFIABLE COPY

5097 02809

LENDER:

FIRST BANK, a Missouri corporation

By: *[Signature]*

Print Name: GREG Fuesting

Title: Senior Vice President

STATE OF MISSOURI)  
COUNTY OF ST. LOUIS) SS

On this 30<sup>th</sup> day of MAY, 2002, before me appeared GREG FUESTING to me personally known, who, being by me duly sworn, did say that he is the S.A. V.P. of First Bank, a Missouri corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors; and said person acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

**JULIA A. WOODS**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis City  
My Commission Expires: Aug. 2, 2003  
My commission expires:

*[Signature]*  
Notary Public

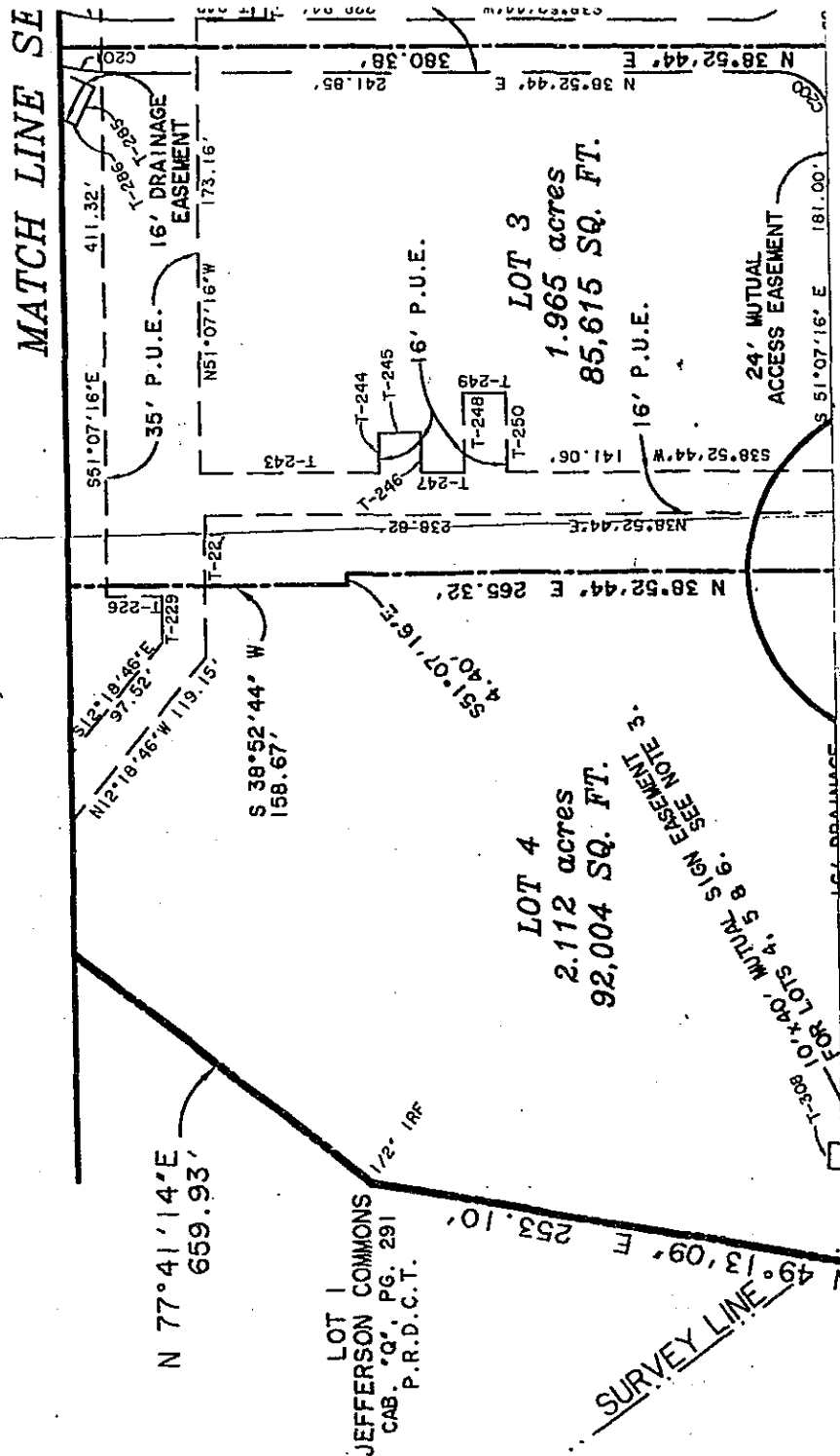
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Republic Title of Texas, Inc.  
2626 Howell Street, 10th Floor  
Dallas TX. 75204

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EXHIBITA

PLAT

# EXHIBIT



5097 02812

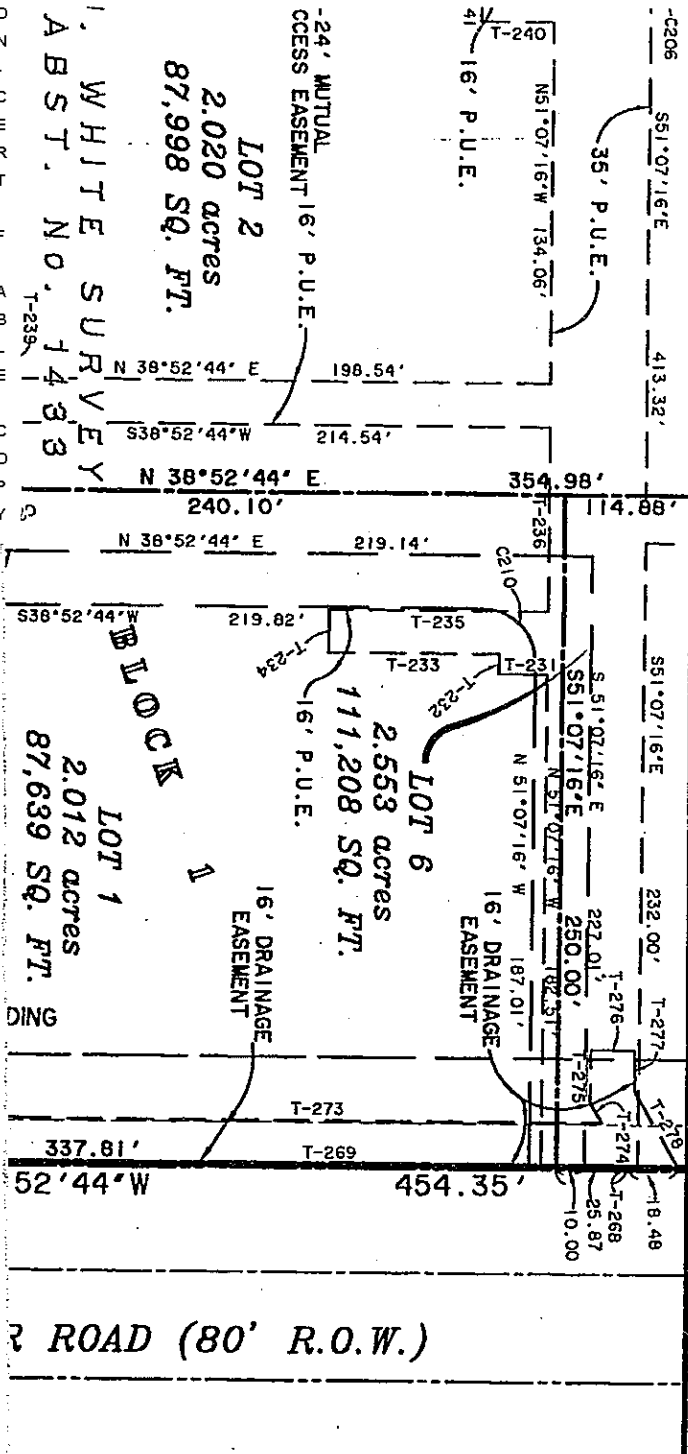
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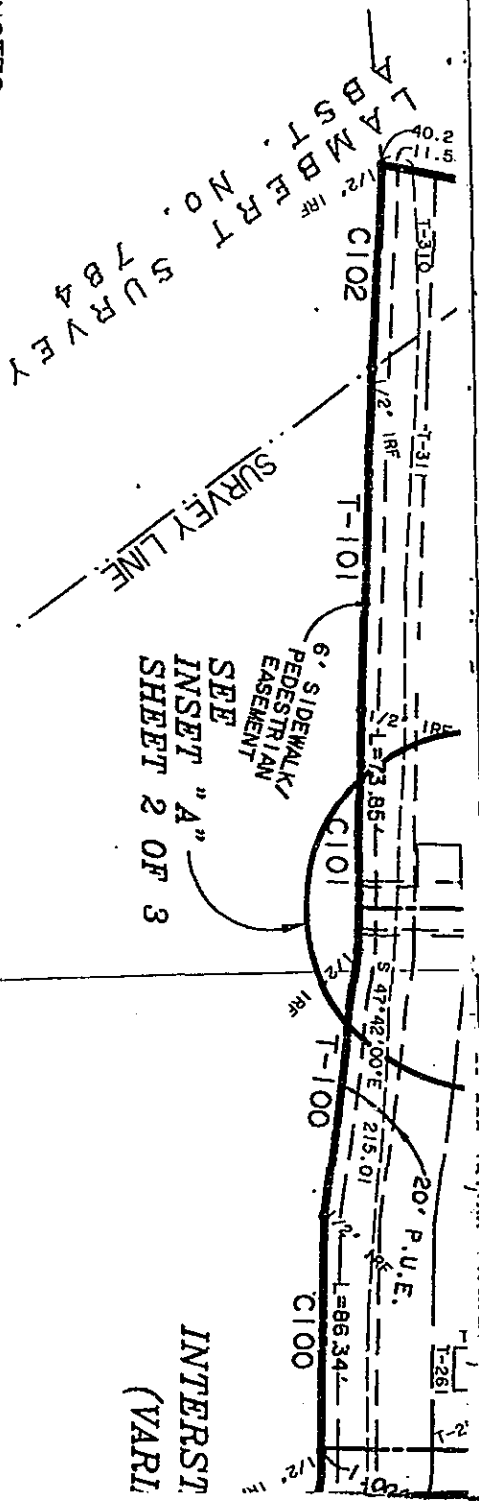
Page 1 of 3

LEGEND  
DENOTES PUBLIC  
UTILITY EASEMENT

IRF IRON ROD FOUND

SHEET 2 OF 3





- NOTES:
1. PLACE OF BEGINNING LIES APPROXIMATELY SOUTH, 2480± AND EAST 580± FROM THE NORTHWEST CORNER OF THE J. WHITE SURVEY, ABSTRACT No. 1433.
  2. CITY OF DENTON LANDSCAPE CODE REQUIREMENTS SHALL BE MET ON LOT BY LOT BASIS AS EACH LOT IS DEVELOPED.
  3. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK 'A' FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

LEGEND

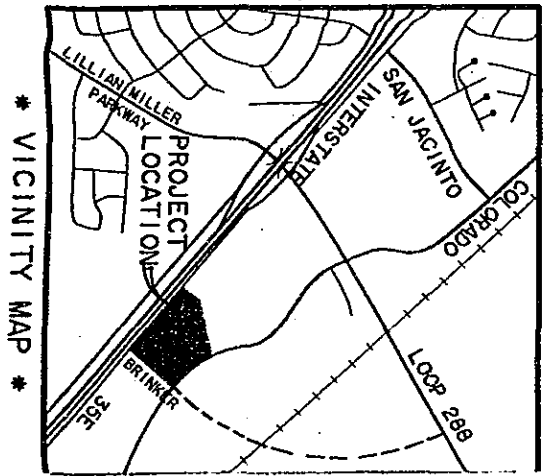


NORTH CENTRAL TEXAS STATE PLANE  
COORDINATE (NAD 83)

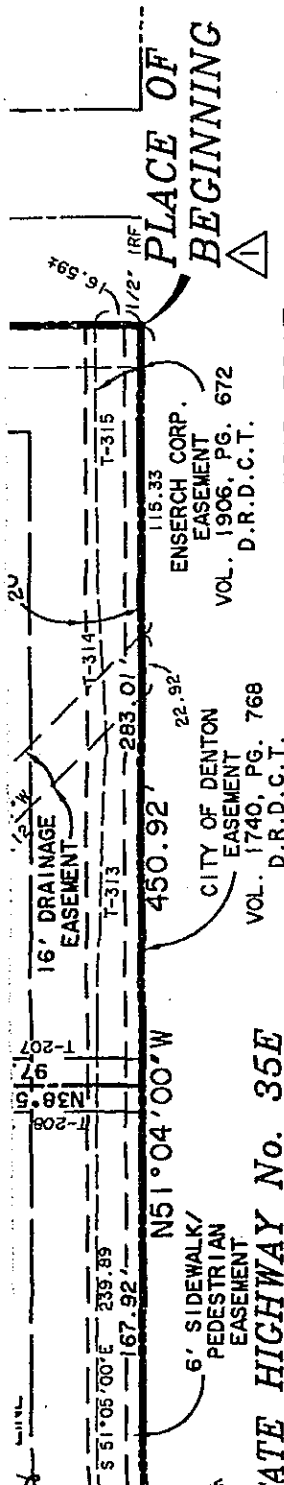
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Y = 7115660.42

NORTH CENTRAL TEXAS STATE PLANE  
COORDINATE

X = 2396702.81  
Y = 7116569.12



\* VICINITY MAP \*



# SOUTHERN HILLS PLAZA

AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS, BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND D. LAMBERT SURVEY, ABSTRACT No. 784, CITY OF DENTON, DENTON COUNTY, TEXAS

**\*\*NOTE\*\***  
THE ORIGINAL ENSERCH EASEMENT IS REFERENCED TO OLD PROPERTY CORNERS WHICH HAVE BEEN REMOVED AND CANNOT BE RECREATED. THE EASEMENT LOCATION INDICATED ON THIS PLAT IS THE SURVEYOR'S BEST INTERPRETATION OF THE EASEMENT DOCUMENT RECORDED IN VOLUME 1906, PAGE 672 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS.

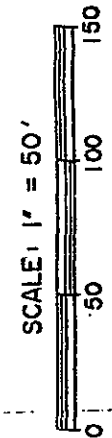
**VIA WIER & ASSOCIATES, INC.**

ENGINEERS SURVEYORS LAND PLANNERS  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRODO, TEXAS 75034 METRO (214)387-8000

OWNER:

QUADRANT SOUTHERN HILLS PARTNERS, LTD.  
15935 BENT TREE FOREST CIRCLE SUITE 2025  
DALLAS, TEXAS 75248  
(972) 980-8806  
SHEET 1 OF 3

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Apr 24 2002  
At 9:17am  
Receipt #: 23293  
Recording: 188.00  
Doc/Inst: 6.00  
Doc/Inst: 2002-00051498  
Doc/Type: PLA  
Deputy: Felicia



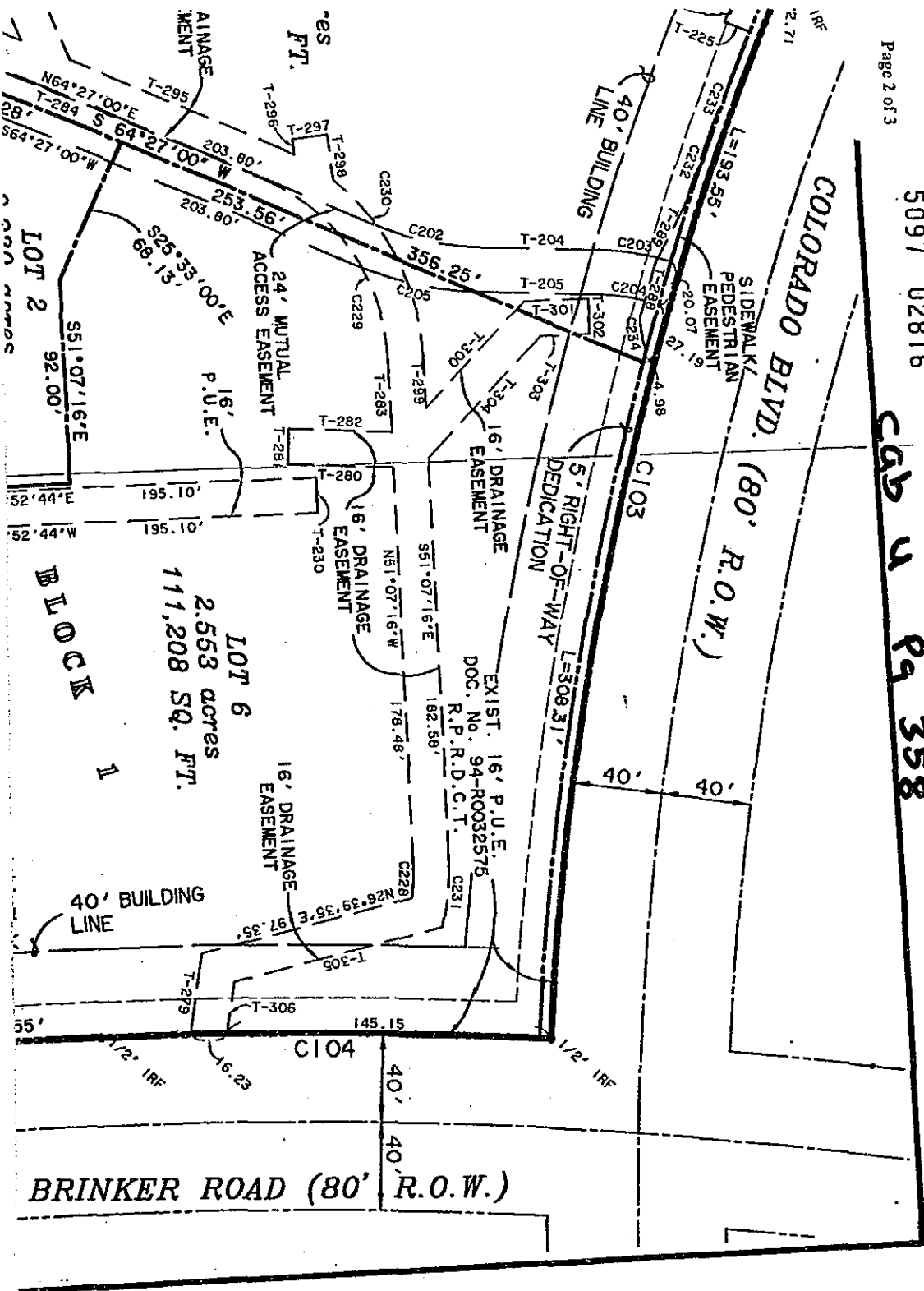
784/28 1133/2A34 SC



[illegible]

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CAB U 99 358



T-248	29.94	S51°07'16"E
T-249	16.00	S38°52'47"W
T-250	29.94	N51°07'16"W
T-251	30.71	N51°07'16"W
T-253	77.68	N53°36'43"W
T-255	9.69	S38°52'44"W
T-256	16.00	N51°07'16"W
T-257	14.56	N38°52'44"E
T-259	14.55	S81°23'17"W
T-260	12.89	S38°52'44"W
T-261	16.00	N51°07'16"W
T-262	22.49	N38°52'44"E
T-264	16.02	N38°52'44"E
T-267	16.00	N83°12'09"E
T-268	0.71	N81°07'16"W
T-269	216.90	S38°52'44"W
T-270	12.00	S68°52'44"W
T-271	16.00	N21°07'16"W
T-272	12.00	N68°52'44"E
T-273	207.66	N38°52'44"E
T-276	16.00	N38°52'44"E
T-277	14.86	S51°07'16"E
T-279	36.94	N40°11'55"W
T-280	48.04	S43°16'18"W
T-281	16.00	N46°43'42"W
T-282	46.81	N43°16'18"E
T-283	34.00	N51°07'16"W
T-284	193.68	S64°18'13"W
T-285	16.00	N25°41'47"W
T-286	72.16	N64°18'13"E
T-287	83.89	N70°54'07"W
T-289	30.83	N21°08'55"W
T-293	16.00	N19°06'53"E
T-294	100.01	S70°54'07"E
T-295	98.82	N64°18'13"E
T-296	7.26	N56°22'08"W
T-297	16.00	N33°37'52"E
T-298	21.18	S56°22'08"E
T-299	23.32	S51°07'16"E
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T-301	28.28	N38°26'53"E

CURVE TABLE

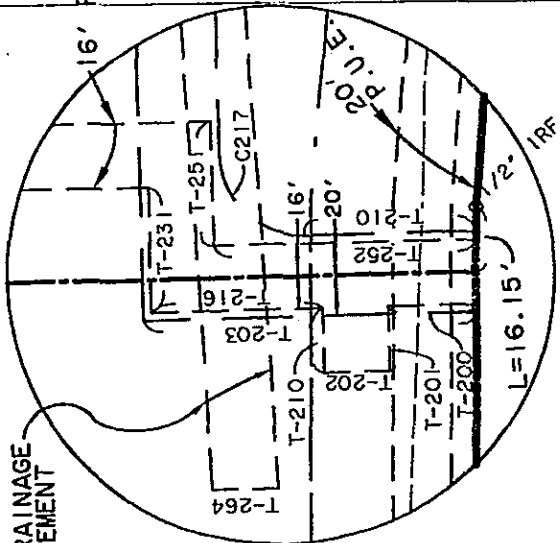
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C101	0°27'23"	11298.36	90.00	45.00	N49°53'46"W	90.00	C
C102	0°23'13"	11299.20	76.33	38.16	N47°46'26"W	76.33	C
C103	19°58'06"	1440.00	501.86	253.50	S35°55'18"E	499.33	C
C104	5°38'19"	2040.20	200.79	100.47	S41°41'54"W	200.70	C
C200	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28	C
C201	25°24'26"	122.00	54.10	27.50	S51°44'46"W	53.66	C
C202	21°59'09"	140.00	53.72	27.20	N53°27'25"E	53.39	C
C203	17°06'40"	110.00	32.85	16.55	S51°01'10"W	32.73	C
C204	17°29'37"	90.00	27.49	13.85	S51°12'39"W	27.37	C
C205	21°59'09"	160.00	61.40	31.08	N53°27'25"E	61.02	C
C206	25°44'59"	102.00	45.84	23.31	S51°34'30"W	45.46	C
C207	102°36'29"	20.00	35.82	24.97	S12°25'30"E	31.22	C
C208	12°36'28"	85.00	18.70	9.39	N57°25'30"W	18.67	C
C209	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28	C
C210	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28	C
C211	1°52'49"	122.00	4.00	2.00	S47°02'47"E	4.00	C
C212	5°00'54"	102.00	8.93	4.47	N48°36'49"W	8.92	C
C213	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28	C
C214	90°00'00"	20.00	31.42	20.00	N06°07'16"W	28.28	C
C215	25°38'42"	65.00	29.09	14.79	N53°56'37"W	28.85	C
C216	25°38'42"	85.00	38.05	19.35	S63°56'37"E	37.73	C
C217	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28	C
C220	22°09'44"	92.00	35.59	18.02	N62°12'08"W	35.36	C
C221	19°18'49"	108.00	34.52	17.41	S64°07'36"E	34.37	C
C222	20°12'41"	92.00	32.45	16.40	N61°13'37"W	32.29	C
C223	18°38'23"	108.00	35.14	17.72	N60°26'28"W	34.98	C
C224	22°09'44"	92.00	35.59	18.02	S62°12'08"E	35.36	C
C225	22°09'44"	108.00	41.77	21.15	N62°12'08"W	41.51	C
C226	30°00'00"	108.00	56.55	28.94	N53°52'44"E	55.90	C
C227	30°00'00"	92.00	48.17	24.65	N53°52'44"E	47.62	C
C228	10°01'19"	92.00	16.09	8.07	N46°06'37"W	16.07	C

MAT

CURVE TABLE

ΔE	DELTA	RADIUS	LENGTH	TANGENT	CHORD	CHORD
					DIRECTION	LENGTH
229	64°34'31"	92.00	103.69	58.13	N83°24'31"W	98.29
230	48°35'13"	108.00	91.58	48.75	N75°24'52"W	88.86
231	15°51'09"	108.00	29.88	15.04	N43°11'41"W	29.79
232	1°23'57"	1446.12	35.32	17.66	S29°58'12"E	35.32
233	5°54'53"	255.00	26.32	13.17	S26°18'47"E	26.31
234	20°11'21"	46.57	16.41	8.29	S56°43'01"E	16.32

DRAINAGE  
ASEMENT



INSET "A"

FINAL PLAT  
**SOUTHERN HILLS  
PLAZA**

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**VIA WIEH & ASSOCIATES, INC.**  
**ENGINEERS SURVEYORS LAND PLANNERS**  
4300 BELWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817) 467-7700  
8721 5th STREET FRESSO, TEXAS 75044 METRO (214) 387-8000  
**OWNER:**  
**QUADRANT SOUTHERN HILLS**  
**PARTNERS, LTD.**  
15935 BENT TREE FOREST CIRCLE  
SUITE 2025  
DALLAS, TEXAS 75248  
(972) 980-8806  
SHEET 2 OF 3

Filed for Record in:  
Denton County, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Apr 24 2002  
At 9:17am  
Receipt #: 23283  
Recording: 188.88  
Doc/Map: 6.88  
Doc/Num: 2002-00051498  
Doc/Type: PLA  
Deputy - Felicia

5097 02819

EXHIBIT A

OWNER'S CERTIFICATE

WHEREAS, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, ACTING BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENTS, ARE THE SOLE OWNERS OF A 12.712 ACRE TRACT OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO EPIC DEVELOPMENT, INC. AS RECORDED IN VOLUME 3245, PAGE 699 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E (A 300-FOOT RIGHT-OF-WAY) AND THE NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY),

THENCE ALONG THE SAID NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E AS FOLLOWS:

N 51°04'00" W, 450.92 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT,

NORTHWESTERLY, 87.34 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 11,309.20 FEET, A CENTRAL ANGLE OF 00°26'33" AND A CHORD BEARING N 50°50'44" E, 87.34 FEET TO A 1/2" IRON ROD FOUND,

NOW, THEREFORE, KNOW ALL MEN

THAT, QUADRANT SOUTHERN LIMITED PARTNERSHIP, BY AND THROUGH ITS DULY AUTHORIZED AGENT, DO DESIGNATING THE HEREINABOVE DES HILLS PLAZA, AN ADDITION TO HILLS COUNTY, TEXAS AND DO HEREBY DE RIGHTS-OF-WAY AND EASEMENTS S CERTIFY THAT THIS PLAT DOES NO DEED RESTRICTIONS OR COVENANTS,

WITNESS MY HAND AT DALLAS, DA 5th DAY OF 1984  
QUADRANT SOUTHERN HILLS PARTNERSHIP

DON SILVE

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, THE UNDERSIGNED PERSONALLY APPEARED DON SILVE QUADRANT SOUTHERN HILLS PARTNERSHIP, KNOWN TO ME TO SUBSCRIBED TO THE ABOVE AND ACKNOWLEDGED TO ME THAT HE PURPOSES AND CONSIDERATIONS E THEREIN STATED AND AS THE ACT

5097 02820

CAB u. 89 359

Y THESE PRESENTS:

ILLS PARTNERS, LTD., A TEXAS  
UGH THE UNDERSIGNED, THEIR  
HEREBY ADOPT THIS PLAT  
RIBED PROPERTY AS SOUTHERN  
E CITY OF DENTON, DENTON  
KATE TO THE PUBLIC'S USE THE  
OWN THEREON AND DO FURTHER  
T ALTER OR REMOVE EXISTING  
IN ANY, ON THIS PROPERTY.

LAS COUNTY, TEXAS THIS THE  
---, 2002.

ERS, LTD.. A TEXAS LIMITED

*DR*  
RMAN, AGENT

D AUTHORITY, ON THIS DAY  
RMAN, AUTHORIZED AGENT FOR  
ERS, LTD., A TEXAS LIMITED  
THE PERSON WHOSE NAME IS  
FOREGOING INSTRUMENT, AND  
EXECUTED THE SAME FOR THE  
PRESSED AND IN THE CAPACITY  
AND DEED OF SAID CORPORATION.

CERTIFICATE OF APPROVAL

APPROVED THIS 24 DAY OF January, 2002  
BY THE PLANNING AND ZONING COMMISSION OF THE  
CITY OF DENTON, TEXAS.

DATE:

CHAIRMAN

DATE:

CITY SECRETARY



STATE OF TEXAS  
My Comm. Exp. 04-18-2004

NOTARY PUBLIC  
COMMISSION B

SURVEYOR'S STATE

THAT I, ULYS LANE III, A REGISTERED SURVEYOR OF THE STATE OF TEXAS, HAVE PREPARED THIS PLAT FROM AN AC SURVEY MADE BY ME OR UNDER MY SURVEY MADE BY ME OR UNDER MY IS IN ACCORDANCE WITH THE PLAT THE CITY OF DENTON, TEXAS.



ULYS LANE III  
REGISTERED PROFESSIONAL  
STATE OF TEXAS

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED, IN AND FOR SAID COUNTY AND STATE, APPEARED ULYS LANE III, KNOWN TO ME AS THE OFFICER WHOSE NAME IS SUBSCRIBED AND ACKNOWLEDGED TO ME THAT PURPOSES AND CONSIDERATIONS THEREIN CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL  
DAY OF April



ERIN MERKEL  
NOTARY PUBLIC  
STATE OF TEXAS  
My Comm. Exp. 04-18-2004

NOTARY PUBLIC

02821

N 49°20'35"W, 128.12 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 76.33 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,299.20, A CENTRAL ANGLE OF 00°23'13" AND A CHORD BEARING N 47°46'26"E, 76.33 FEET TO A 1/2" IRON ROD FOUND,

THENCE N 49°13'09"E, 253.10 FEET TO A 5/8" IRON ROD FOUND,

THENCE N 77°41'14"E, 659.93 FEET TO A 1/2" IRON ROD FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT BOULEVARD) AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT,

THENCE SOUTHEASTERLY, 501.86 FEET ALONG THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD AND ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 19°58'06" AND A CHORD BEARING S 35°55'18"E, 499.33 FEET TO A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT RIGHT-OF-WAY) AND THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY) AT THE BEGINNING OF ANOTHER NON-TANGENT CURVE TO THE LEFT,

THENCE ALONG THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD AS FOLLOWS:

SOUTHWESTERLY, 200.79 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2,040.20 FEET, A CENTRAL ANGLE OF 05°38'19" AND A CHORD BEARING S 41°41'54"W, 200.70 FEET TO A 1/2" IRON ROD FOUND,

S 38°52'44"W, 454.35 FEET TO THE PLACE OF BEGINNING, CONTAINING 12.712 ACRES, (553,740 SQUARE FEET) OF LAND.

IC OF THE STATE OF TEXAS  
XPRES: 2/19/04

TEMENT

SISTERED PROFESSIONAL LAND  
IAS, DO HEREBY CERTIFY THAT I  
TUAL SURVEY OF LAND, AND THAT  
HEREON SHALL BE PROPERLY-MARKED  
PLAT CORRECTLY REPRESENTS THAT  
DIRECTION AND SUPERVISION AND  
TING RULES AND REGULATIONS OF

ROFESSIONAL LAND SURVEYOR  
IAS No. 2411

ID-AUTHORITY, A NOTARY PUBLIC  
IATE, ON THIS DAY PERSONALLY  
TO ME TO BE THE PERSON AND  
D TO THE FOREGOING INSTRUMENT  
HE EXECUTED THE SAME FOR THE  
HEREIN EXPRESSED AND IN THE

SEAL OF OFFICE THIS THE  
2002.



C. STATE OF TEXAS  
XPRES: 4/18/04

5097 02822

FINAL PLAT  
**SOUTHERN HILLS  
PLAZA**

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**VIA WIER & ASSOCIATES, INC.**  
**ENGINEERS SURVEYORS LAND PLANNERS**  
4320 EDJWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817) 467-7700  
8721 5th STREET FRSOCO, TEXAS 75034 METRO (214) 387-8000  
**OWNER:**

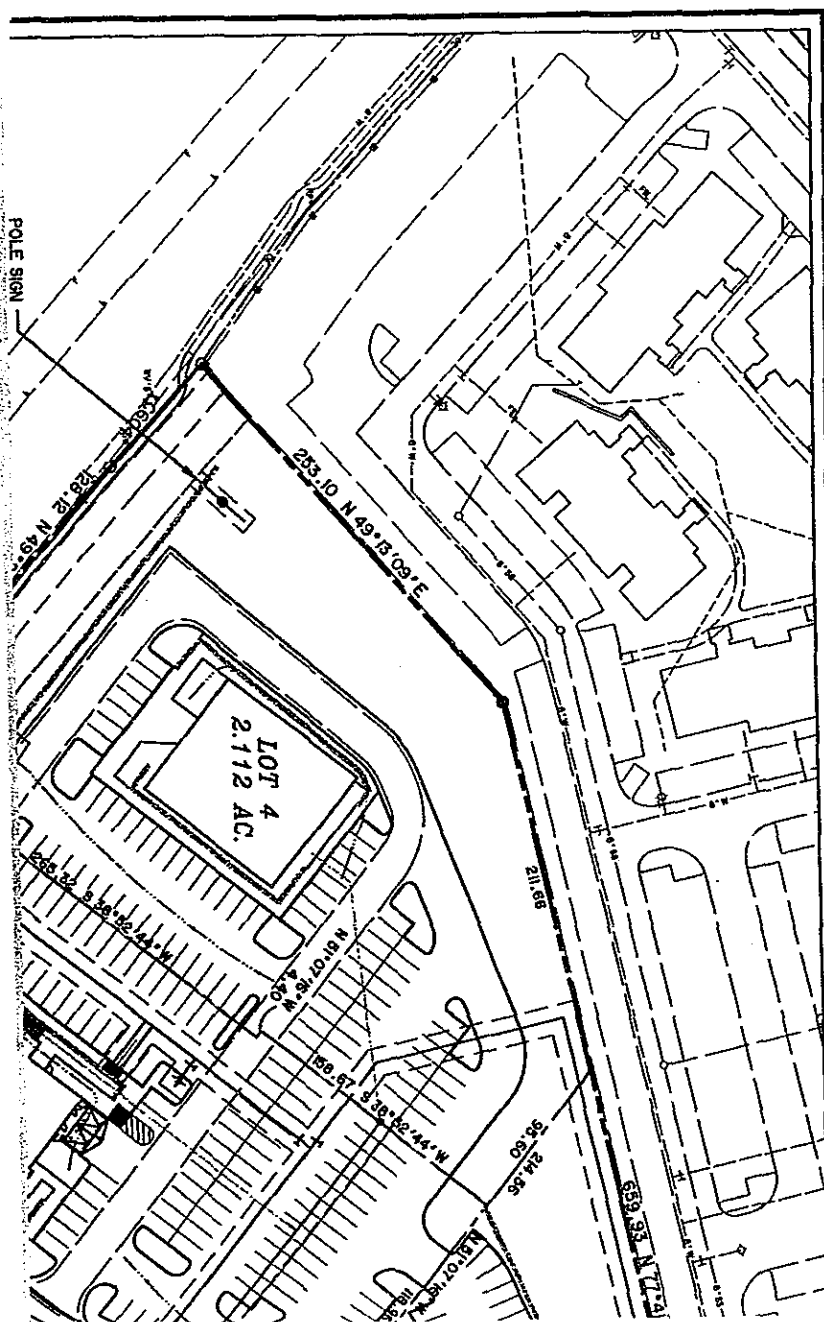
**QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.**  
**15935 BENT TREE FOREST CIRCLE  
SUITE 2025  
DALLAS, TEXAS 75248  
(972) 980-8806  
SHEET 3 OF 3**

Filed for Record in:  
DENTON COUNTY, TX COUNTY CLERK  
CYNTHIA MITCHELL  
On Apr 24 2002  
at 9:17am  
Receipt #: 23203  
Recording: 108.00  
Doc/Inst: 6.00  
Doc/Inst: 2002-00051490  
Doc/Type: PLA  
Deputy: Felicia

5097 02823

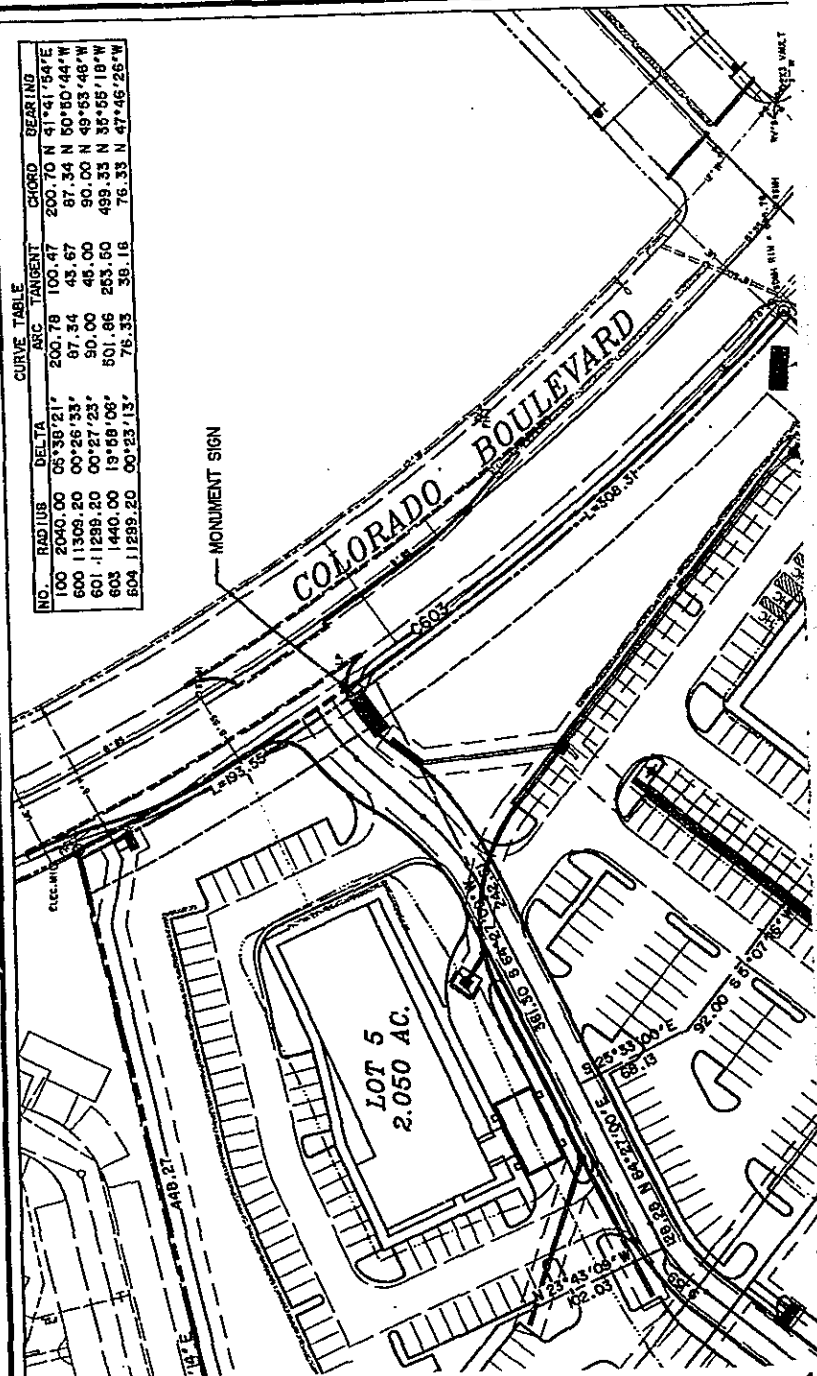
EXHIBIT B-1

SITE PLAN



**EXHIBIT B-1**

NO.	CURVE TABLE				CHORD	BEARING
	RADIUS	DELTA	ARC TANGENT	CHORD		
100	2040.00	08°38'21"	200.78	100.47	87.70	N 51°41'54"E
200	1020.00	04°19'10"	100.39	50.24	43.85	N 50°40'44"W
300	680.00	03°02'33"	67.34	33.47	30.34	N 49°53'48"W
400	510.00	02°12'23"	50.00	25.00	22.37	N 49°00'00"W
500	408.00	01°39'06"	40.86	20.43	18.18	N 48°15'19"W
600	344.00	01°12'13"	34.40	17.20	15.16	N 47°46'26"W

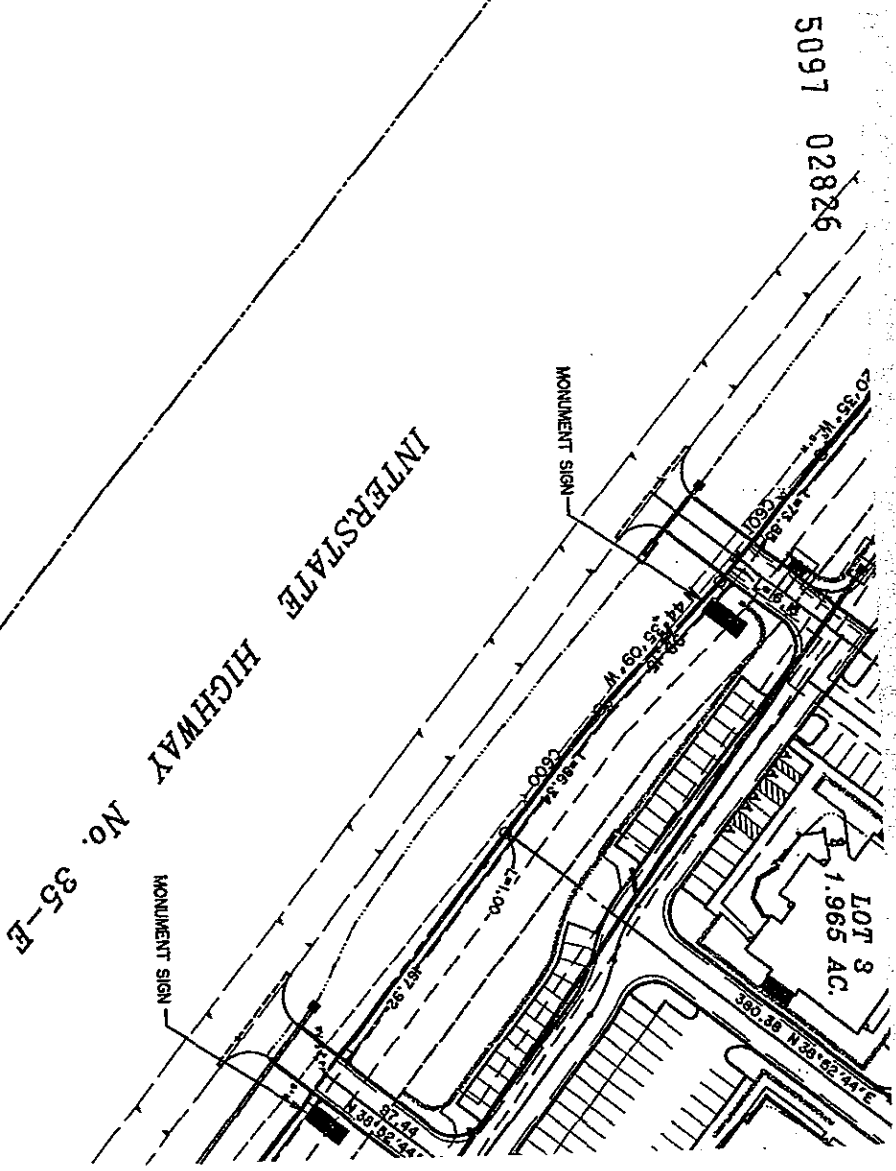


**WIA** PREPARED BY:  
**WIER & ASSOCIATES, INC.**  
**ENGINEERS SURVEYORS LAND PLANNERS**  
4500 BOWLING PLACE SUITE 130 ALHAMBRA, TEXAS 76010 METRO (817) 481-7700  
8721 54th STREET FRISCO, TEXAS METRO (214) 587-8600

**WIDE**  
MARGAUX DEVELOPMENT COMPANY

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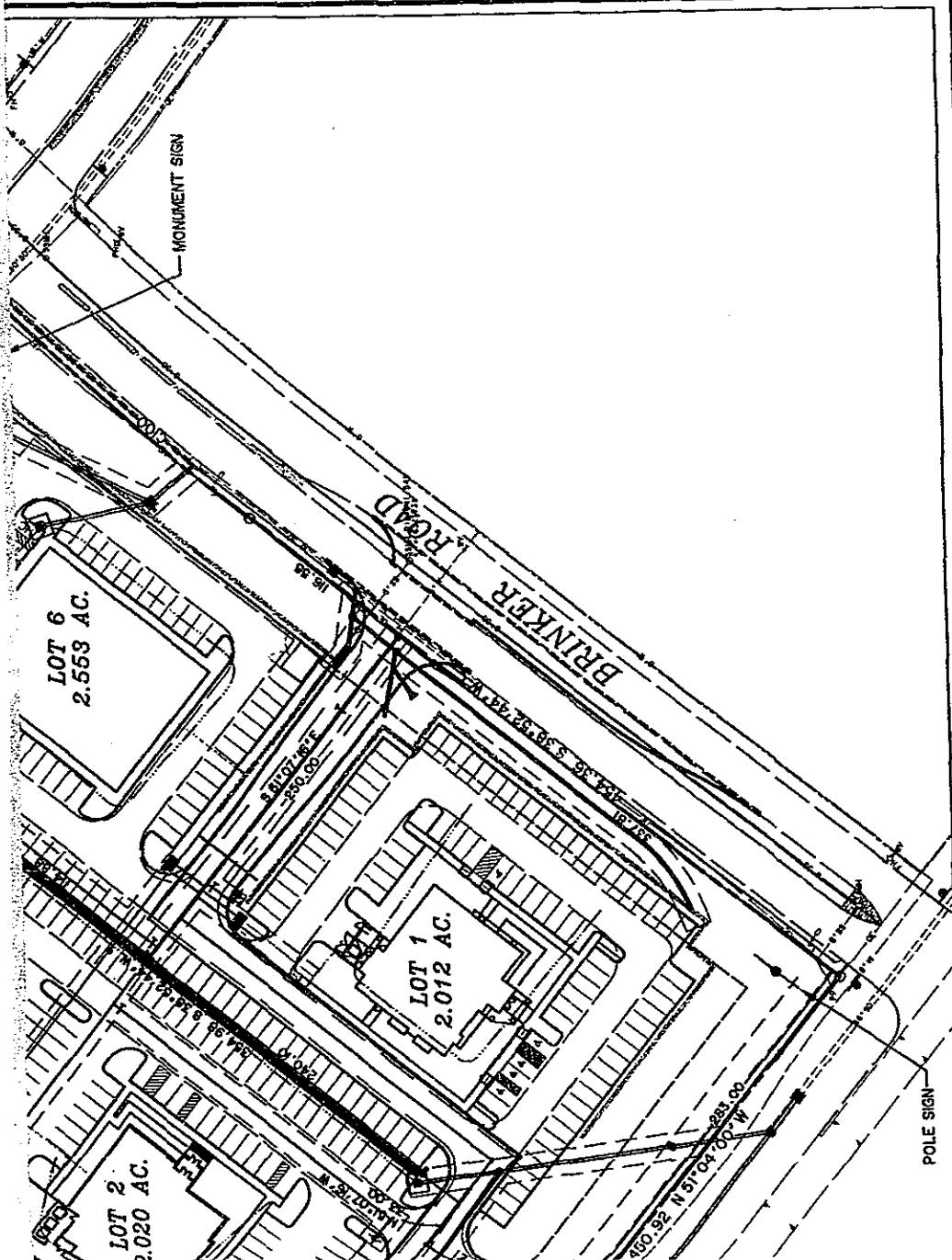
5097 02827

SITE PLAN

SOUTHERN HILLS PLAZA  
CITY OF DENTON, DENTON COUNTY, TEXAS

COPYRIGHT ©  
WELLS ASSOCIATES, INC.  
LAST SHEET FOR  
DATA 2023  
MAR 2023

SHEET NO.  
1 of 1

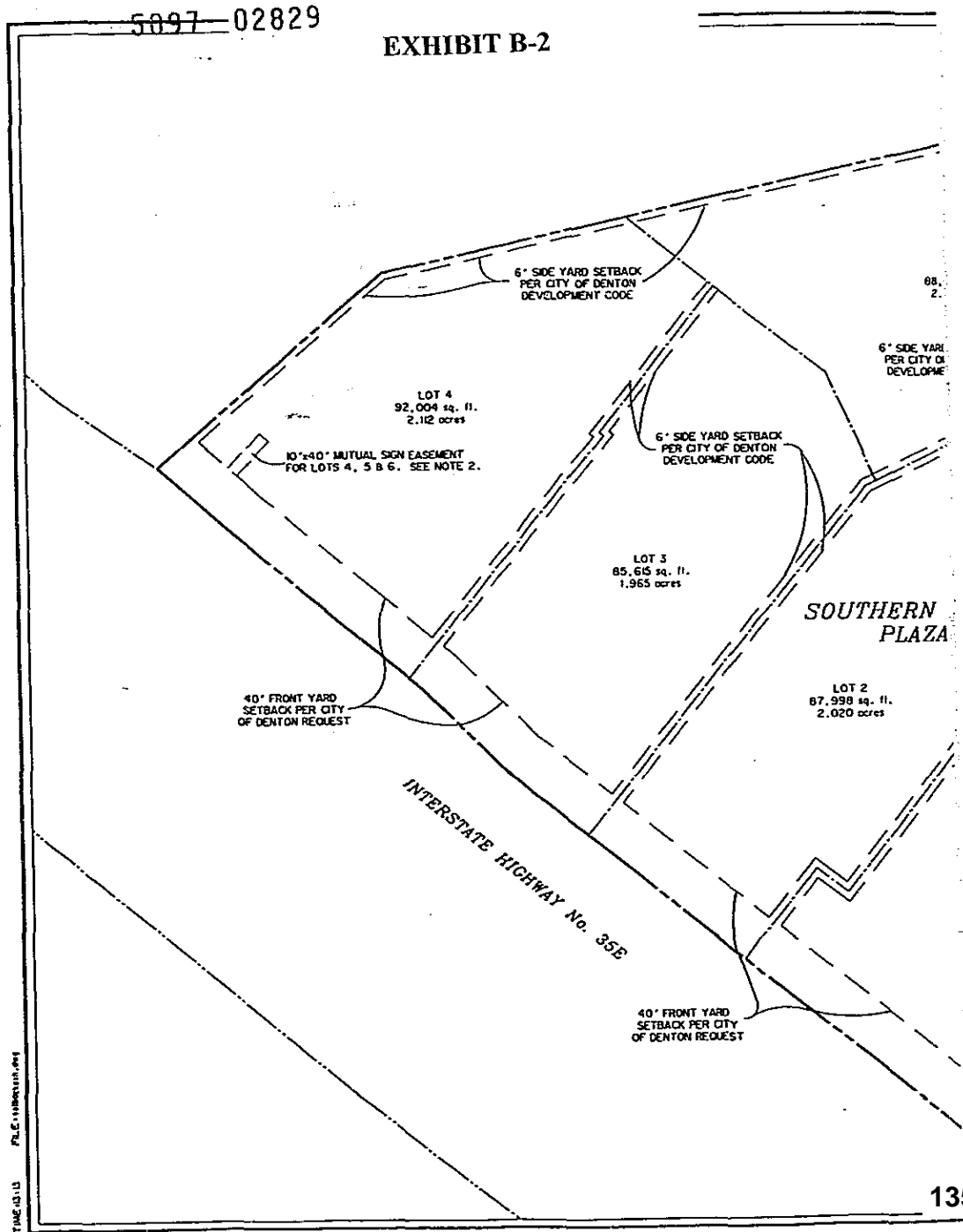


5097 02828

EXHIBIT B-2  
BUILDING SETBACKS

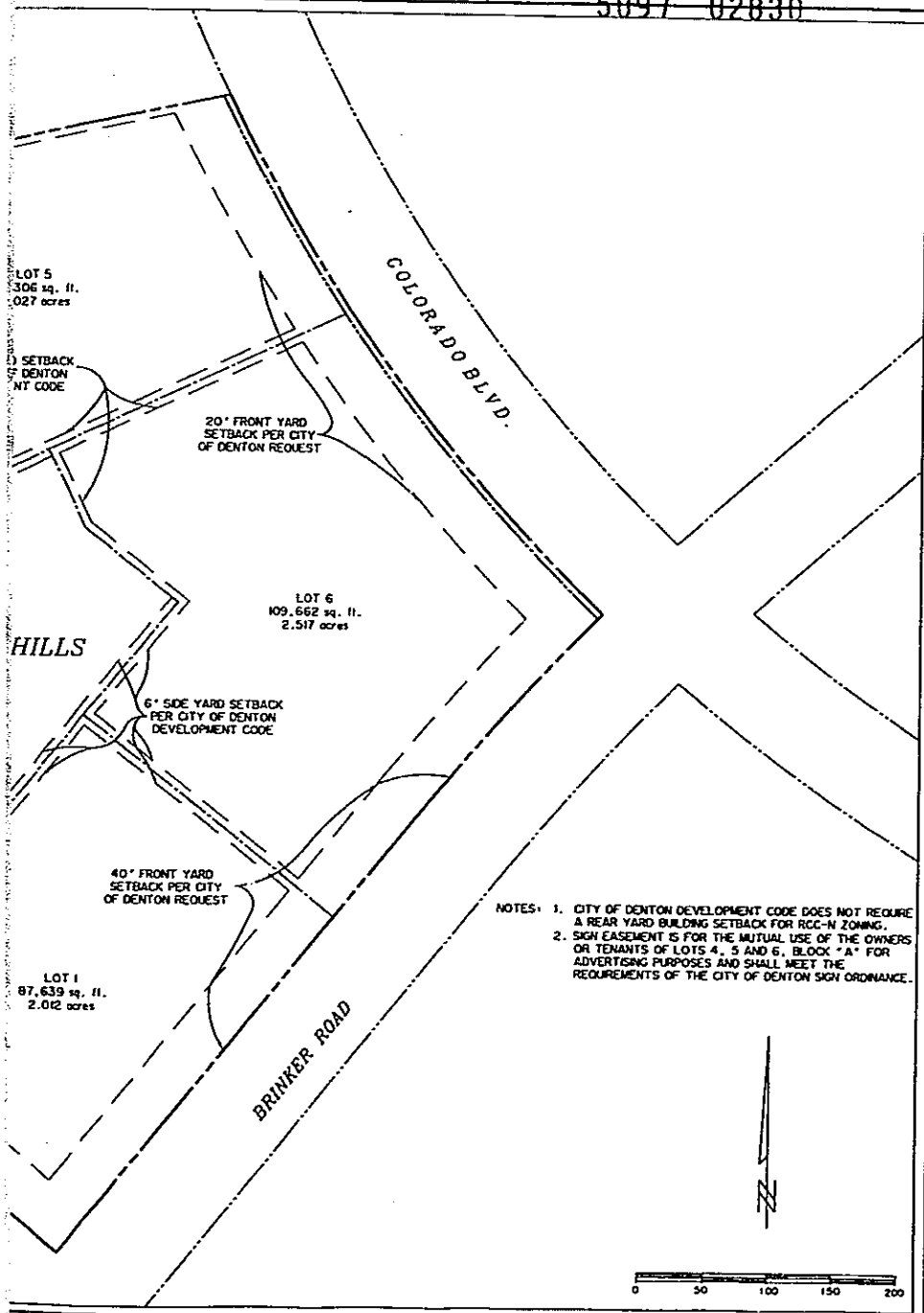
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EXHIBIT B-2



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TIME 03:13

5097 02830



- NOTES: 1. CITY OF DENTON DEVELOPMENT CODE DOES NOT REQUIRE A REAR YARD BUILDING SETBACK FOR RCC-N ZONING.  
2. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK "A" FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

PREPARED BY  
**WIA WIER & ASSOCIATES, INC.**  
ENGINEERS SURVEYORS LAND PLANNERS  
433 BEYOND PLACE SUITE 120 AMARCO, TEX 79018 MTRD (817)447-7700  
8121 5TH STREET FMSO, TEXAS METRO (214)387-8000



**SOUTHERN HILLS PLAZA**  
**CITY OF DENTON, DENTON COUNTY, TEXAS**  
**EXHIBIT SHOWING BUILDING SETBACKS**

FOR RECORD  
FILED  
DATE RECORDED  
BY  
SHEET NO. 1359  
1 OF 1

5097 02831

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK

On May 31 2002  
At 3:54pm

Receipt #: 30951  
Recording: 87.00  
Doc/Mgt : 6.00  
Doc/Num : 2002-R0068097  
Doc/Type : AGR  
Deputy -ELIZABETH

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Denton County  
Cynthia Mitchell  
County Clerk  
Denton, Tx 76202



70 2007 00054692

Instrument Number: 2007-54692

Recorded On: May 09, 2007

As  
Plat

Parties: SOUTHERN HILLS PLAZA AMENDED

Billable Pages: 2

To

Number of Pages: 2

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Plat	86.00
<b>Total Recording:</b>	<b>86.00</b>

\*\*\*\*\* DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2007-54692  
Receipt Number: 384752  
Recorded Date/Time: May 09, 2007 03:08:59P  
  
User / Station: J Morris - Cash Station 1

**Record and Return To:**

LODGESTAR INVESTMENTS LTD  
4255 BRYANT IRWIN RD STE 212  
FORT WORTH TX 76109



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*C Mitchell*

County Clerk  
Denton County, Texas



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**Cynthia Mitchell**  
County Clerk

Date	5-9-07
Cabinet	X
Page	691, 692
Addition	Southern Hills Plaza Amended
Developer	Golden Hotels
City	Denton
Filing Fee	86 <sup>00</sup>
Comments/ Clerk Initials	Jon

Area Map: (Yes or No

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the J. Worrall Survey, Abstract No. 1433, City of Denton, Denton County, Texas, and being part of Lot 3, Block 1, Southern Hills Plaza Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume U, Page 556 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a point in the northwest line of said Lot 3; from which a cut "X" found for a southwest corner of said Lot 3, and being on the northeast right-of-way of Interstate Highway No. 35 (a variable width right-of-way) bears South 18°24'29" West, a distance of 47.75 feet;

**THENCE** North 38°30'05" East, along the said northwest line of Lot 3, a distance of 20.01 feet to a point for corner;

**THENCE** departing the said northwest line of Lot 3, South 51°54'08" East, a distance of 201.01 feet to a point for corner in the southeast line of said Lot 3;

**THENCE** South 38°30'05" West, along the said southeast line of Lot 3, a distance of 20.01 feet to a TXDOT monument found for corner;

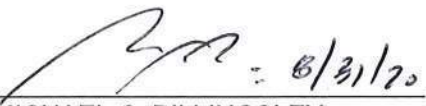
**THENCE** departing the said southeast line of Lot 3, North 51°54'08" West, a distance of 201.01 feet to the **POINT OF BEGINNING** and containing 4,021 square feet or 0.0923 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



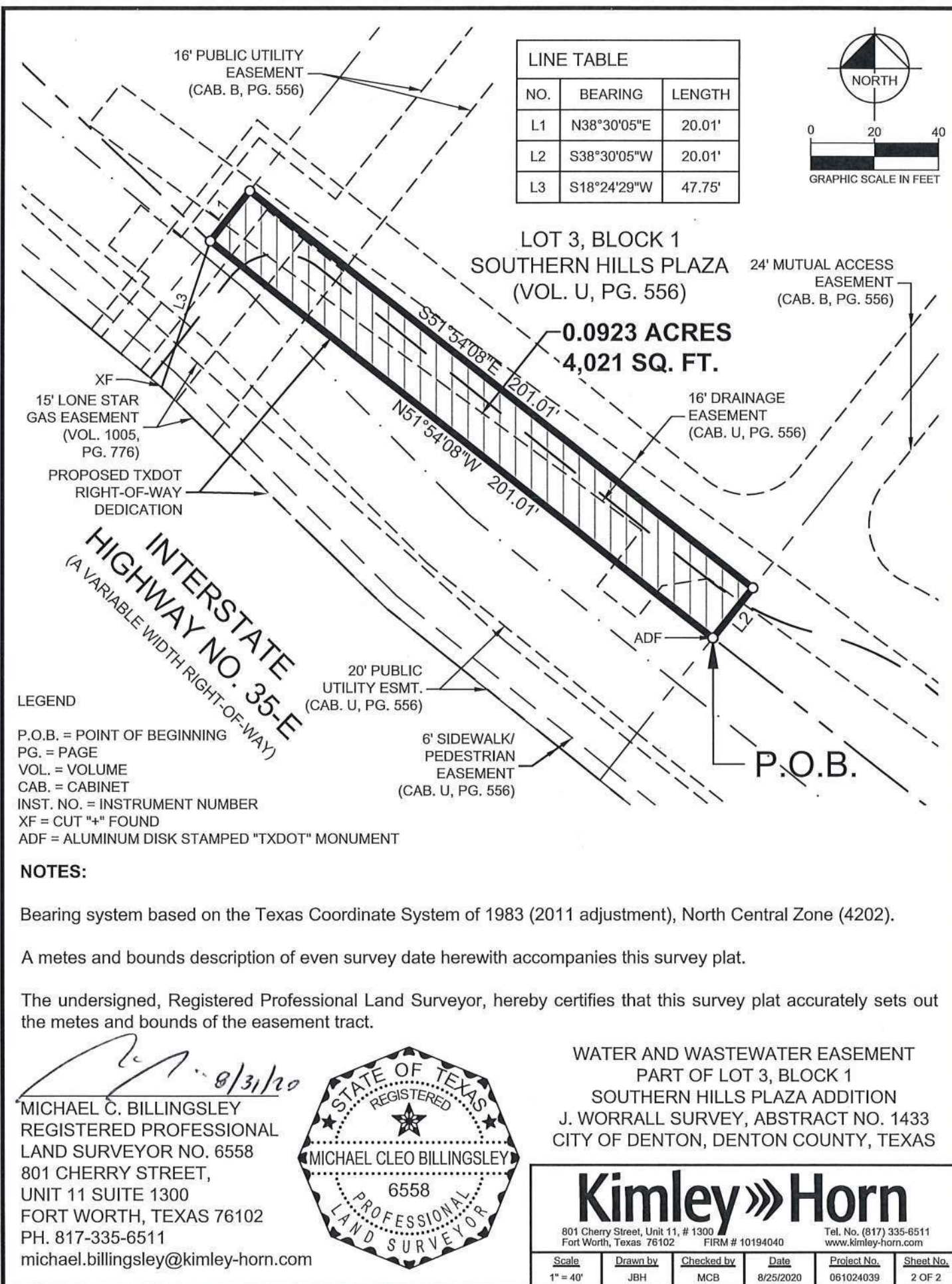
WATER AND WASTEWATER EASEMENT  
 PART OF LOT 3, BLOCK 1  
 SOUTHERN HILLS PLAZA ADDITION  
 J. WORRALL SURVEY, ABSTRACT NO. 1433  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	8/25/2020	061024039	1 OF 2



**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 106**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1810+94 RT to Sta 1813+67 RT

Existing Easement

Document No. 2009-3

PART OF LOT 4-R, BLOCK 1  
SOUTHERN HILLS PLAZA ADDITION  
J. WORRALL SURVEY, ABSTRACT NO. 1433  
& D. LOMBARD SURVEY, ABSTRACT NO. 784  
CITY OF DENTON, DENTON COUNTY, TEXAS



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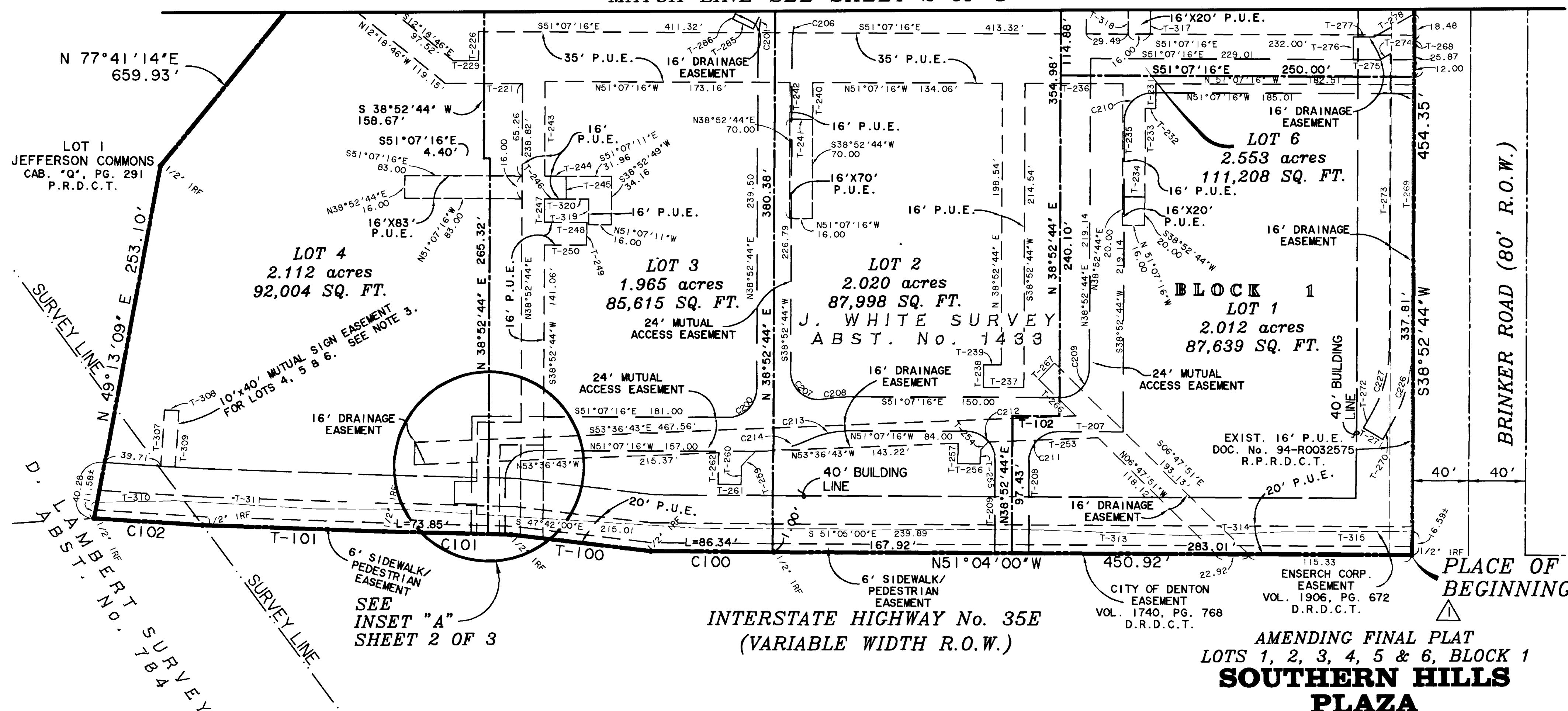
CAB U PG 556

DATE	REVISION	BY
7-22-02	CORRECTED GEOMETRIC ERROR 24' ACCESS ESMT, ADDED P.U.E. FOR DENTON MUNICIPAL ELECTRIC	RAC

\*\*THE PURPOSE OF THIS AMENDING FINAL PLAT IS TO CORRECT GEOMETRIC ERROR IN DEFINITION OF 24' MUTUAL ACCESS EASEMENT AND TO ADD PUBLIC UTILITY EASEMENTS IN WHICH TO PROVIDE ELECTRIC SERVICE TO EACH LOT.

LEGEND	
P.U.E.	DENOTES PUBLIC UTILITY EASEMENT
IRF	IRON ROD FOUND

MATCH LINE SEE SHEET 2 OF 3

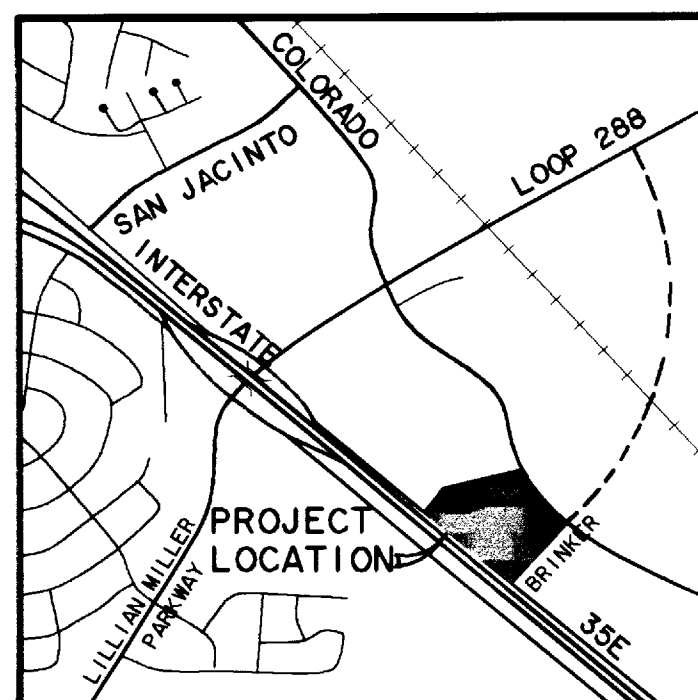


NOTES:

1. PLACE OF BEGINNING LIES APPROXIMATELY SOUTH, 2480± AND EAST 580'± FROM THE NORTHWEST CORNER OF THE J. WHITE SURVEY, ABSTRACT No. 1433.
2. CITY OF DENTON LANDSCAPE CODE REQUIREMENTS SHALL BE MET ON LOT BY LOT BASIS AS EACH LOT IS DEVELOPED.
3. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK 'A' FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

LEGEND

- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE (NAD 83)  
X = 2396583.13  
Y = 7115660.42
- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE  
X = 2396702.81  
Y = 7116569.12



\* VICINITY MAP \*

\*\*NOTE\*\*

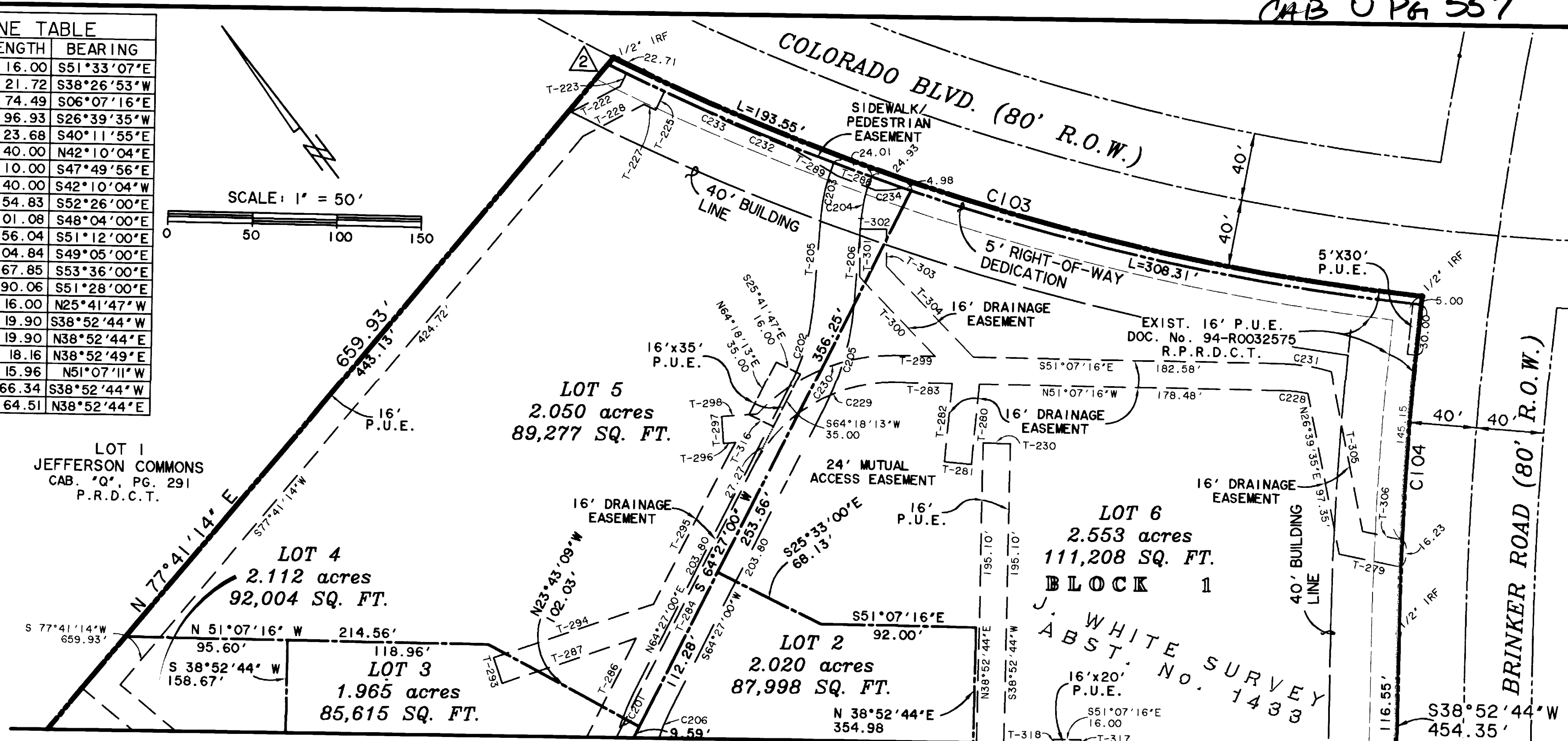
THE ORIGINAL ENSERCH EASEMENT IS REFERENCED TO OLD PROPERTY CORNERS WHICH HAVE BEEN REMOVED AND CANNOT BE RECREATED. THE EASEMENT LOCATION INDICATED ON THIS PLAT IS THE SURVEYOR'S BEST INTERPRETATION OF THE EASEMENT DOCUMENT RECORDED IN VOLUME 1906, PAGE 672 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS.

PREPARED BY:  
**WIER & ASSOCIATES, INC.**  
ENGINEERS SURVEYORS LAND PLANNERS  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
www.wierassociates.com

OWNER:  
**QUADRANT SOUTHERN HILLS PARTNERS, LTD.**  
14900 LANDMARK BLVD.  
SUITE 610  
DALLAS, TEXAS 75254  
(972) 980-8806  
SHEET 1 OF 3

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Aug 15 2002  
At 4:11pm  
Receipt #: 46717  
Recording: 108.00  
Doc/Mgmt: 6.00  
Doc/Num: 2002-R0182530  
Doc/Type: PLA  
Deputy -ELIZABETH

DATE: 08-06-2002 FILE: MINOR\_PLAT.dwg W.A. No. 01043



MATCH LINE SEE SHEET 1 OF 3

CURVE TABLE							CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD DIRECTION	CHORD LENGTH	CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD DIRECTION	CHORD LENGTH
C100	0°26'33"	11309.20	87.34	43.67	N50°50'44"W	87.34	C229	64°34'31"	92.00	103.69	58.13	N83°24'31"W	98.23
C101	0°27'23"	11298.38	90.00	45.00	N49°53'46"W	90.00	C230	48°35'13"	108.00	91.58	48.75	N75°24'52"W	88.80
C102	0°23'13"	11299.20	76.33	38.16	N47°46'26"W	76.33	C231	15°51'09"	108.00	29.88	15.04	N43°11'41"W	29.79
C103	19°58'06"	1440.00	501.86	253.50	S35°55'18"E	499.33	C232	1°23'57"	1446.12	35.32	17.66	S29°58'12"E	35.33
C104	5°38'19"	2040.20	200.79	100.47	S41°41'54"W	200.70	C233	5°54'53"	255.00	26.32	13.17	S26°18'47"E	26.33
C200	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28	C234	20°11'21"	46.57	16.41	8.29	S56°43'01"E	16.33
C201	25°34'15"	124.00	55.34	28.14	S51°39'52"W	54.88							
C202	21°59'09"	138.00	52.95	26.81	N53°27'25"E	52.63							
C203	19°38'55"	112.00	38.41	19.39	S52°17'18"W	38.22							
C204	20°48'59"	88.00	31.97	16.16	S52°52'20"W	31.80							
C205	21°59'09"	162.00	62.16	31.47	N53°27'25"E	61.78							
C206	25°34'15"	100.00	44.63	22.69	S51°39'52"W	44.26							
C207	101°16'28"	20.00	35.35	24.38	S11°45'29"E	30.93							
C208	11°16'27"	87.00	17.12	8.59	N56°45'30"W	17.09							
C209	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28							
C210	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28							
C211	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28							
C212	90°00'00"	20.00	31.42	20.00	N06°07'16"W	28.28							
C213	25°38'42"	63.00	28.20	14.34	N63°56'37"W	27.96							
C214	25°38'42"	87.00	38.94	19.80	S63°56'37"E	38.62							
C215	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28							
C220	22°09'44"	92.00	35.59	18.02	N62°12'08"W	35.36							
C221	18°18'49"	108.00	34.52	17.41	S64°07'36"E	34.37							
C222	20°12'41"	92.00	32.45	16.40	N61°13'37"W	32.29							
C223	18°38'23"	108.00	35.14	17.72	N60°26'28"W	34.98							
C224	22°09'44"	92.00	35.59	18.02	S62°12'08"E	35.36							
C225	22°09'44"	108.00	41.77	21.15	N62°12'08"W	41.51							
C226	30°00'00"	108.00	56.55	28.94	N53°52'44"E	55.90							
C227	30°00'00"	92.00	48.17	24.65	N53°52'44"E	47.62							
C228	10°01'19"	92.00	16.09	8.07	N46°06'37"W	16.07							

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SE 16.32  
AMENDING FINAL PLAT  
LOTS 1, 2, 3, 4, 5 & 6, BLOCK 1  
**SOUTHERN HILLS  
PLAZA**

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

**WIA** PREPARED BY: **WIER & ASSOCIATES, INC.**

**ENGINEERS SURVEYORS LAND PLANNERS**  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000

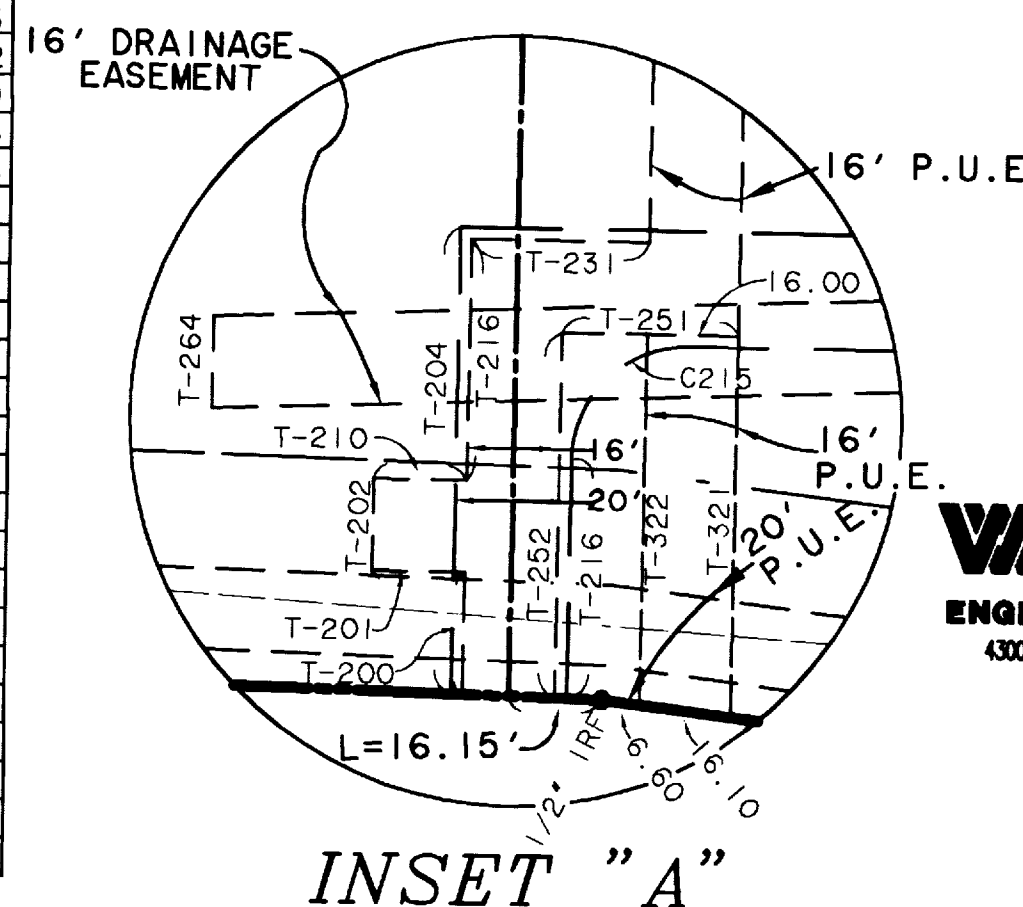
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OWNER:  
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PARTNERS, LTD.  
14900 LANDMARK BLVD.  
SUITE 610  
DALLAS, TEXAS 75254  
(972) 980-8806  
SHEET 2 OF 3

Filed for Record in:  
 TARRANT COUNTY, TX  
 YNTHIA MITCHELL, COUNTY CLERK

On Aug 15 2002

At 4:11pm

Receipt #: 46717  
Recording: 108.00  
ic/Mgmt : 6.00  
ic/Num : 2002-R0102530  
ic/Type : PLA  
Deputy -ELIZABETH



*INSET "A"*



ON - CERTIFICATE OF TITLE - COPY

CAB U PG 558

OWNER'S CERTIFICATE

WHEREAS, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, ACTING BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENTS, ARE THE SOLE OWNERS OF A 12.712 ACRE TRACT OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO EPIC DEVELOPMENT, INC. AS RECORDED IN VOLUME 3245, PAGE 699 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E (A 300-FOOT RIGHT-OF-WAY) AND THE NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY),

THENCE ALONG THE SAID NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E AS FOLLOWS:

N 51°04'00"W, 450.92 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT,

NORTHWESTERLY, 87.34 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 11,309.20 FEET, A CENTRAL ANGLE OF 00°26'33" AND A CHORD BEARING N 50°50'44"E, 87.34 FEET TO A 1/2" IRON ROD FOUND,

N 44°35'09"W, 99.15 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 90.00 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,298.38 FEET, A CENTRAL ANGLE OF 00°27'23" AND A CHORD BEARING N 49°53'46"W, 90.00 FEET TO A 1/2" IRON ROD FOUND,

N 49°20'35"W, 128.12 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 76.33 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,299.20, A CENTRAL ANGLE OF 00°23'13" AND A CHORD BEARING N 47°46'26"E, 76.33 FEET TO A 1/2" IRON ROD FOUND,

THENCE N 49°13'09"E, 253.10 FEET TO A 5/8" IRON ROD FOUND,

THENCE N 77°41'14"E, 659.93 FEET TO A 1/2" IRON ROD FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT BOULEVARD) AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT,

THENCE SOUTHEASTERLY, 501.86 FEET ALONG THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD AND ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 19°58'06" AND A CHORD BEARING S 35°55'18"E, 499.33 FEET TO A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT RIGHT-OF-WAY) AND THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY) AT THE BEGINNING OF ANOTHER NON-TANGENT CURVE TO THE LEFT,

THENCE ALONG THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD AS FOLLOWS:

SOUTHWESTERLY, 200.79 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2,040.20 FEET, A CENTRAL ANGLE OF 05°38'19" AND A CHORD BEARING S 41°41'54"W, 200.70 FEET TO A 1/2" IRON ROD FOUND,

S 38°52'44"W, 454.35 FEET TO THE PLACE OF BEGINNING, CONTAINING 12.712 ACRES, (553,740 SQUARE FEET) OF LAND.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS,

THAT, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENT, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS SOUTHERN HILLS PLAZA, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS AND DO HEREBY DEDICATE TO THE PUBLIC'S USE THE RIGHTS-OF-WAY AND EASEMENTS SHOWN THEREON AND DO FURTHER CERTIFY THAT THIS PLAT DOES NOT ALTER OR REMOVE EXISTING DEED RESTRICTIONS OR COVENANTS, IN ANY, ON THIS PROPERTY.

WITNESS MY HAND AT DALLAS, DALLAS COUNTY, TEXAS THIS THE 7th DAY OF August, 2002.


QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP

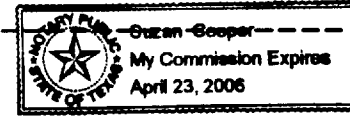
  
DON SILVERMAN, AGENT

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED DON SILVERMAN, AUTHORIZED AGENT FOR QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS EXPRESSED AND IN THE CAPACITY THEREIN STATED, AND AS THE ACT AND DEED OF SAID CORPORATION.


GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS THE 7th DAY OF August, 2002.

  
NOTARY PUBLIC OF THE STATE OF TEXAS  
COMMISSION EXPIRES: April 23, 2005



SURVEYOR'S STATEMENT

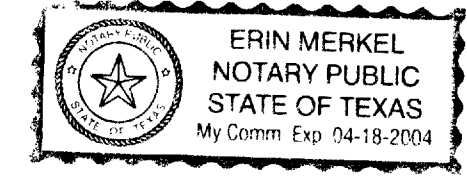
THAT I, ULYS LANE III, A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL SURVEY OF LAND, AND THAT THE CORNER MONUMENTS SHOWN THEREON SHALL BE PROPERLY MARKED ON THE GROUND, AND THAT THIS PLAT CORRECTLY REPRESENTS THAT SURVEY MADE BY ME OR UNDER MY DIRECTION AND SUPERVISION AND IS IN ACCORDANCE WITH THE PLATTING RULES AND REGULATIONS OF THE CITY OF DENTON, TEXAS.


  
ULYS LANE III  
REGISTERED PROFESSIONAL LAND SURVEYOR  
STATE OF TEXAS No. 2411

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED ULYS LANE III, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 7th DAY OF August, 2002.



  
NOTARY PUBLIC, STATE OF TEXAS  
COMMISSION EXPIRES: 4/18/04

CERTIFICATE OF APPROVAL:

APPROVED THIS 15th DAY OF August, 2002  
BY THE DEVELOPMENT REVIEW COMMITTEE OF THE  
CITY OF DENTON, TEXAS.

8-16-02   
DATE: DEVELOPMENT REVIEW COMMITTEE, CHAIRMAN

8-16-02   
DATE: JENNIFER WALTERS CITY SECRETARY

AMENDING FINAL PLAT  
LOTS 1, 2, 3, 4, 5 & 6, BLOCK 1

**SOUTHERN HILLS  
PLAZA**

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**WIA WIER & ASSOCIATES, INC.**

**ENGINEERS SURVEYORS LAND PLANNERS**  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
www.wierassociates.com

**OWNER:**  
**QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.**  
**14900 LANDMARK BLVD.**  
**SUITE 610**  
**DALLAS, TEXAS 75254**  
**(972) 980-8806**  
**SHEET 3 OF 3**

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Aug 15 2002  
At 4:11pm  
46717  
Receipt #: 108.00  
Recording: 6.00  
Doc/Mgmt: 2002-R0102530  
Doc/Num: PLA  
Doc/Type: Deputy - ELIZABETH

Y:\Projects\01043\dwg\MINOR\_PLAT.dwg 7/22/2002 8:30:19 AM CDT W.A. No. 01043

CON-  
CER-  
TIFI-  
ABLE  
COPY

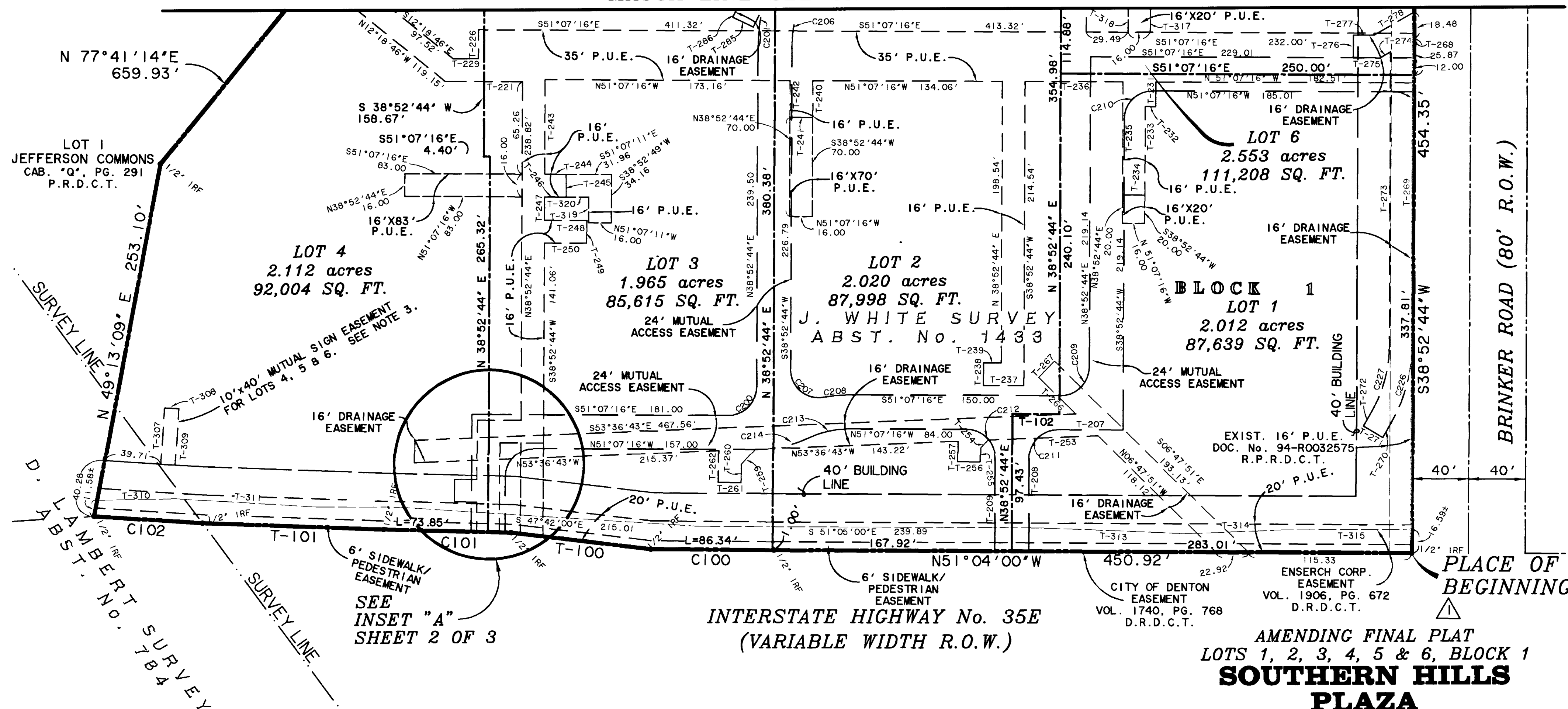
CAB U PG 556

DATE	REVISION	BY
7-22-02	CORRECTED GEOMETRIC ERROR 24' ACCESS ESMT, ADDED P.U.E. FOR DENTON MUNICIPAL ELECTRIC	RAC

\*\*THE PURPOSE OF THIS AMENDING FINAL PLAT IS TO CORRECT GEOMETRIC ERROR IN DEFINITION OF 24' MUTUAL ACCESS EASEMENT AND TO ADD PUBLIC UTILITY EASEMENTS IN WHICH TO PROVIDE ELECTRIC SERVICE TO EACH LOT.

LEGEND	
P.U.E.	DENOTES PUBLIC UTILITY EASEMENT
IRF	IRON ROD FOUND

MATCH LINE SEE SHEET 2 OF 3

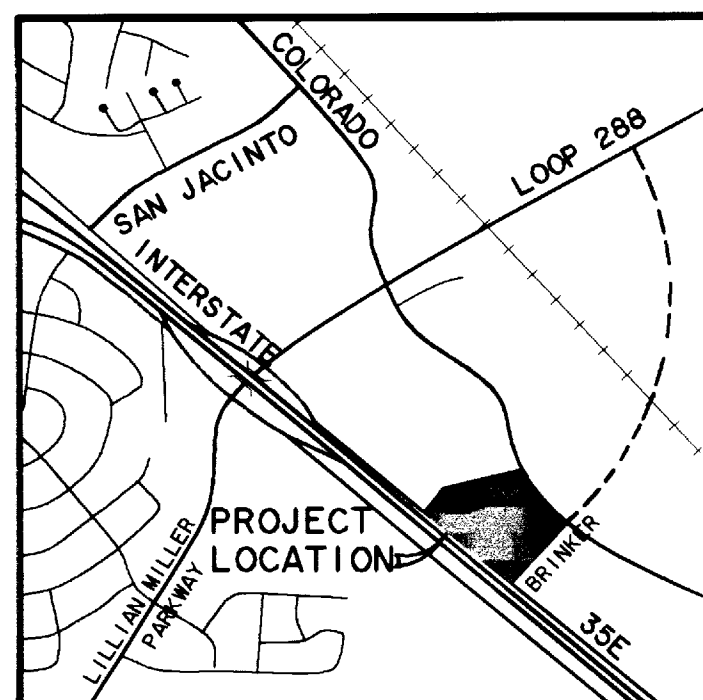


NOTES:

1. PLACE OF BEGINNING LIES APPROXIMATELY SOUTH, 2480± AND EAST 580'± FROM THE NORTHWEST CORNER OF THE J. WHITE SURVEY, ABSTRACT No. 1433.
2. CITY OF DENTON LANDSCAPE CODE REQUIREMENTS SHALL BE MET ON LOT BY LOT BASIS AS EACH LOT IS DEVELOPED.
3. SIGN EASEMENT IS FOR THE MUTUAL USE OF THE OWNERS OR TENANTS OF LOTS 4, 5 AND 6, BLOCK 'A' FOR ADVERTISING PURPOSES AND SHALL MEET THE REQUIREMENTS OF THE CITY OF DENTON SIGN ORDINANCE.

LEGEND

- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE (NAD 83)  
X = 2396583.13  
Y = 7115660.42
- △ NORTH CENTRAL TEXAS STATE PLANE COORDINATE  
X = 2396702.81  
Y = 7116569.12



\* VICINITY MAP \*

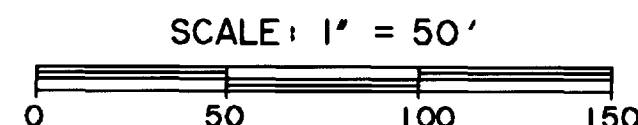
\*\*NOTE\*\*

THE ORIGINAL ENSERCH EASEMENT IS REFERENCED TO OLD PROPERTY CORNERS WHICH HAVE BEEN REMOVED AND CANNOT BE RECREATED. THE EASEMENT LOCATION INDICATED ON THIS PLAT IS THE SURVEYOR'S BEST INTERPRETATION OF THE EASEMENT DOCUMENT RECORDED IN VOLUME 1906, PAGE 672 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS.

PREPARED BY:  
**WIER & ASSOCIATES, INC.**  
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SHEET 1 OF 3

Filed for Record in:  
DENTON COUNTY, TX  
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On Aug 15 2002  
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Doc/Type: PLA  
Deputy -ELIZABETH

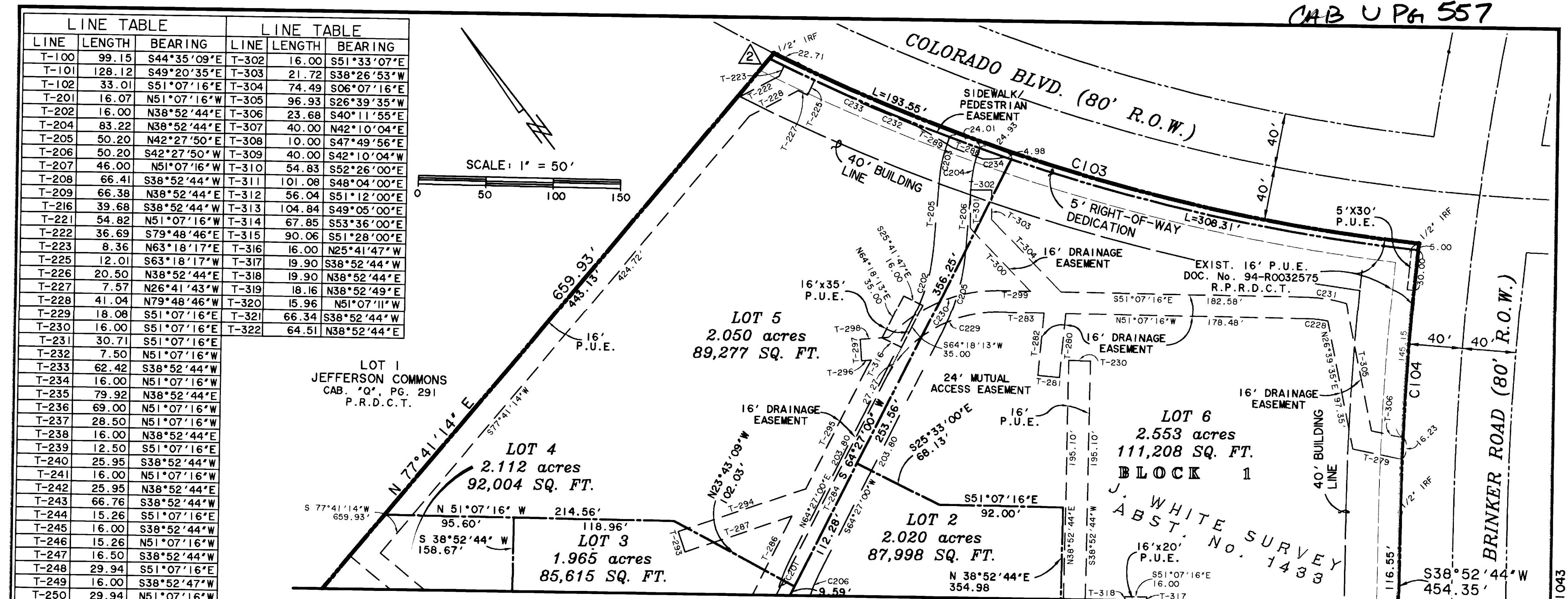


DATE: 08-06-2002 FILE: MINOR\_PLAT.dwg W.A. No. 01043



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COPY

CAB U Pg 557



LINE TABLE			LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
T-100	99.15	S44°35'09"E	T-302	16.00	S51°33'07"E
T-101	128.12	S49°20'35"E	T-303	21.72	S38°26'53"W
T-102	33.01	S51°07'16"E	T-304	74.49	S06°07'16"E
T-201	16.07	N51°07'16"W	T-305	96.93	S26°39'35"W
T-202	16.00	N38°52'44"E	T-306	23.68	S40°11'55"E
T-204	83.22	N38°52'44"E	T-307	40.00	N42°10'04"E
T-205	50.20	N42°27'50"E	T-308	10.00	S47°49'56"E
T-206	50.20	S42°27'50"W	T-309	40.00	S42°10'04"W
T-207	46.00	N51°07'16"W	T-310	54.83	S52°26'00"E
T-208	66.41	S38°52'44"W	T-311	101.08	S48°04'00"E
T-209	66.38	N38°52'44"E	T-312	56.04	S51°12'00"E
T-216	39.68	S38°52'44"W	T-313	104.84	S49°05'00"E
T-221	54.82	N51°07'16"W	T-314	67.85	S53°36'00"E
T-222	36.69	S79°48'46"E	T-315	90.06	S51°28'00"E
T-223	8.36	N63°18'17"E	T-316	16.00	N25°41'47"W
T-225	12.01	S63°18'17"W	T-317	19.90	S38°52'44"W
T-226	20.50	N38°52'44"E	T-318	19.90	N38°52'44"E
T-227	7.57	N26°41'43"W	T-319	18.16	N38°52'49"E
T-228	41.04	N79°48'46"W	T-320	15.96	N51°07'11"W
T-229	18.08	S51°07'16"E	T-321	66.34	S38°52'44"W
T-230	16.00	S51°07'16"E	T-322	64.51	N38°52'44"E
T-231	30.71	S51°07'16"E			
T-232	7.50	N51°07'16"W			
T-233	62.42	S38°52'44"W			
T-234	16.00	N51°07'16"W			
T-235	79.92	N38°52'44"E			
T-236	69.00	N51°07'16"W			
T-237	28.50	N51°07'16"W			
T-238	16.00	N38°52'44"E			
T-239	12.50	S51°07'16"E			
T-240	25.95	S38°52'44"W			
T-241	16.00	N51°07'16"W			
T-242	25.95	N38°52'44"E			
T-243	66.76	S38°52'44"W			
T-244	15.26	S51°07'16"E			
T-245	16.00	S38°52'44"W			
T-246	15.26	N51°07'16"W			
T-247	16.50	S38°52'44"W			
T-248	29.94	S51°07'16"E			
T-249	16.00	S38°52'47"W			
T-250	29.94	N51°07'16"W			
T-251	30.71	N51°07'16"W			
T-253	77.68	N53°36'43"W			
T-255	9.69	S38°52'44"W			
T-256	16.00	N51°07'16"W			
T-257	14.56	N38°52'44"E			
T-259	14.55	S81°23'17"W			
T-260	12.89	S38°52'44"W			
T-261	16.00	N51°07'16"W			
T-262	22.49	N38°52'44"E			
T-264	16.02	N38°52'44"E			
T-267	16.00	N83°12'09"E			
T-268	0.71	N81°07'16"W			
T-269	216.90	S38°52'44"W			
T-270	12.00	S68°52'44"W			
T-271	16.00	N21°07'16"W			
T-272	12.00	N68°52'44"E			
T-273	207.66	N38°52'44"E			
T-276	16.00	N38°52'44"E			
T-277	14.86	S51°07'16"E			
T-279	36.94	N40°11'55"W			
T-280	48.04	S43°16'18"W			
T-281	16.00	N46°43'42"W			
T-282	46.81	N43°16'18"E			
T-283	34.00	N51°07'16"W			
T-284	193.68	S64°18'13"W			
T-285	16.00	N25°41'47"W			
T-286	72.16	N64°18'13"E			
T-287	83.89	N70°54'07"W			
T-289	30.83	N21°08'55"W			
T-293	16.00	N19°05'53"E			
T-294	100.01	S70°54'07"E			
T-295	98.82	N64°18'13"E			
T-296	7.26	N56°22'08"W			
T-297	16.00	N33°37'52"E			
T-298	21.18	S56°22'08"E			
T-299	23.32	S51°07'16"E			
T-300	65.04	N06°07'16"W			
T-301	28.28	N38°26'53"E			

LINE TABLE			LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
T-100	99.15	S44°35'09"E	T-302	16.00	S51°33'07"E
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T-102	33.01	S51°07'16"E	T-304	74.49	S06°07'16"E
T-201	16.07	N51°07'16"W	T-305	96.93	S26°39'35"W
T-202	16.00	N38°52'44"E	T-306	23.68	S40°11'55"E
T-204	83.22	N38°52'44"E	T-307	40.00	N42°10'04"E
T-205	50.20	N42°27'50"E	T-308	10.00	S47°49'56"E
T-206	50.20	S42°27'50"W	T-309	40.00	S42°10'04"W
T-207	46.00	N51°07'16"W	T-310	54.83	S52°26'00"E
T-208	66.41	S38°52'44"W	T-311	101.08	S48°04'00"E
T-209	66.38	N38°52'44"E	T-312	56.04	S51°12'00"E
T-216	39.68	S38°52'44"W	T-313	104.84	S49°05'00"E
T-221	54.82	N51°07'16"W	T-314	67.85	S53°36'00"E
T-222	36.69	S79°48'46"E	T-315	90.06	S51°28'00"E
T-223	8.36	N63°18'17"E	T-316	16.00	N25°41'47"W
T-225	12.01	S63°18'17"W	T-317	19.90	S38°52'44"W
T-226	20.50	N38°52'44"E	T-318	19.90	N38°52'44"E
T-227	7.57	N26°41'43"W	T-319	18.16	N38°52'49"E
T-228	41.04	N79°48'46"W	T-320	15.96	N51°07'11"W
T-229	18.08	S51°07'16"E	T-321	66.34	S38°52'44"W
T-230	16.00	S51°07'16"E	T-322	64.51	N38°52'44"E
T-231	30.71	S51°07'16"E			
T-232	7.50	N51°07'16"W			
T-233	62.42	S38°52'44"W			
T-234	16.00	N51°07'16"W			
T-235	79.92	N38°52'44"E			
T-236	69.00	N51°07'16"W			
T-237	28.50	N51°07'16"W			
T-238	16.00	N38°52'44"E			
T-239	12.50	S51°07'16"E			
T-240	25.95	S38°52'44"W			
T-241	16.00	N51°07'16"W			
T-242	25.95	N38°52'44"E			
T-243	66.76	S38°52'44"W			
T-244	15.26	S51°07'16"E			
T-245	16.00	S38°52'44"W			
T-246	15.26	N51°07'16"W			
T-247	16.50	S38°52'44"W			
T-248	29.94	S51°07'16"E			
T-249	16.00	S38°52'47"W			
T-250	29.94	N51°07'16"W			
T-251	30.71	N51°07'16"W			
T-253	77.68	N53°36'43"W			
T-255	9.69	S38°52'44"W			
T-256	16.00	N51°07'16"W			
T-257	14.56	N38°52'44"E			
T-259	14.55	S81°23'17"W			
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T-276	16.00	N38°52'44"E			
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T-283	34.00	N51°07'16"W			
T-284	193.68	S64°18'13"W			
T-285	16.00	N25°41'47"W			
T-286	72.16	N64°18'13"E			
T-287	83.89	N70°54'07"W			
T-289	30.83	N21°08'55"W			
T-293	16.00	N19°05'53"E			
T-294	100.01	S70°54'07"E			
T-295	98.82	N64°18'13"E			
T-296	7.26	N56°22'08"W			
T-297	16.00	N33°37'52"E			
T-298	21.18	S56°22'08"E			
T-299	23.32	S51°07'16"E			
T-300	65.04	N06°07'16"W			
T-301	28.28	N38°26'53"E			

CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD	DIRECTION
C100	0°26'33"	11309.20	87.34	43.67	N50°50'44"W	87.34
C101	0°27'23"	11298.38	90.00	45.00	N49°53'46"W	90.00
C102	0°23'13"	11299.20	76.33	38.16	N47°46'26"W	76.33
C103	19°58'06"	1440.00	501.86	253.50	S35°55'18"E	499.33
C104	5°38'19"	2040.20	200.79	100.47	S41°41'54"W	200.70
C200	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28
C201	25°34'15"	124.00	55.34	28.14	S51°39'52"W	54.88
C202	21°59'09"	138.00	52.95	26.81	N53°27'25"E	52.63
C203	19°38'55"	112.00	38.41	19.39	S52°17'18"W	38.22
C204	20°48'59"	88.00	31.97	16.16	S52°52'20"W	31.80
C205	21°59'09"	162.00	62.16	31.47	N53°27'25"E	61.78
C206	25°34'15"	100.00	44.63	22.69	S51°39'52"W	44.26
C207	101°16'28"	20.00	35.35	24.38	S11°45'29"E	30.93
C208	11°16'27"	87.00	17.12	8.59	N56°45'30"W	17.09
C209	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28
C210	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28
C211	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28
C212	90°00'00"	20.00	31.42	20.00	N06°07'16"W	28.28
C213	25°38'42"	63.00	28.20	14.34	N63°56'37"W	27.96
C214	25°38'42"	87.00	38.94	19.80	S63°56'37"E	38.62
C215	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28
C220	22°09'44"	92.00	35.59	18.02	N62°12'08"W	35.36
C221	18°18'49"	108.00	34.52	17.41	S64°07'36"E	34.37
C222	20°12'41"	92.00	32.45	16.40	N61°13'37"W	32.29
C223	18°38'23"	108.00	35.14	17.72	N60°26'28"W	34.98
C224	22°09'44"	92.00	35.59	18.02	S62°12'08"E	35.36
C225	22°09'44"	108.00	41.77	21.15	N62°12'08"W	41.51
C226	30°00'00"	108.00	56.55	28.94	N53°52'44"E	55.90
C227	30°00'00"	92.00	48.17	24.65	N53°52'44"E	47.62
C228	10°01'19"	92.00	16.09	8.07	N46°06'37"W	16.07

CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD	DIRECTION
C229	64°34'31"	92.00	103.69	58.13	N83°24'31"W	98.29
C230	48°35'13"	108.00	91.58	48.75	N75°24'52"W	88.86
C231	15°51'09"	108.00	29.88	15.04	N43°11'41"W	29.79
C232	1°23'57"	1446.12	35.32	17.66	S29°58'12"E	35.32
C233	5°54'53"	255.00	26.32	13.17	S26°18'47"E	26.31
C234	20°11'21"	46.57	16.41	8.29	S56°43'01"E	16.32

ON - CERTIFICATE OF TITLE - COPY

CAB U PG 558

# OWNER'S CERTIFICATE

WHEREAS, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, ACTING BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENTS, ARE THE SOLE OWNERS OF A 12.712 ACRE TRACT OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO EPIC DEVELOPMENT, INC. AS RECORDED IN VOLUME 3245, PAGE 699 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E (A 300-FOOT RIGHT-OF-WAY) AND THE NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY),

THENCE ALONG THE SAID NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E AS FOLLOWS:

N 51°04'00"W, 450.92 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT,

NORTHWESTERLY, 87.34 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 11,309.20 FEET, A CENTRAL ANGLE OF 00°26'33" AND A CHORD BEARING N 50°50'44"E, 87.34 FEET TO A 1/2" IRON ROD FOUND,

N 44°35'09"W, 99.15 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 90.00 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,298.38 FEET, A CENTRAL ANGLE OF 00°27'23" AND A CHORD BEARING N 49°53'46"W, 90.00 FEET TO A 1/2" IRON ROD FOUND,

N 49°20'35"W, 128.12 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 76.33 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,299.20, A CENTRAL ANGLE OF 00°23'13" AND A CHORD BEARING N 47°46'26"E, 76.33 FEET TO A 1/2" IRON ROD FOUND,

THENCE N 49°13'09"E, 253.10 FEET TO A 5/8" IRON ROD FOUND,

THENCE N 77°41'14"E, 659.93 FEET TO A 1/2" IRON ROD FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT BOULEVARD) AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT,

THENCE SOUTHEASTERLY, 501.86 FEET ALONG THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD AND ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 19°58'06" AND A CHORD BEARING S 35°55'18"E, 499.33 FEET TO A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT RIGHT-OF-WAY) AND THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY) AT THE BEGINNING OF ANOTHER NON-TANGENT CURVE TO THE LEFT,

THENCE ALONG THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD AS FOLLOWS:

SOUTHWESTERLY, 200.79 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2,040.20 FEET, A CENTRAL ANGLE OF 05°38'19" AND A CHORD BEARING S 41°41'54"W, 200.70 FEET TO A 1/2" IRON ROD FOUND,

S 38°52'44"W, 454.35 FEET TO THE PLACE OF BEGINNING, CONTAINING 12.712 ACRES, (553,740 SQUARE FEET) OF LAND.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS,

THAT, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENT, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS SOUTHERN HILLS PLAZA, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS AND DO HEREBY DEDICATE TO THE PUBLIC'S USE THE RIGHTS-OF-WAY AND EASEMENTS SHOWN THEREON AND DO FURTHER CERTIFY THAT THIS PLAT DOES NOT ALTER OR REMOVE EXISTING DEED RESTRICTIONS OR COVENANTS, IN ANY, ON THIS PROPERTY.

WITNESS MY HAND AT DALLAS, DALLAS COUNTY, TEXAS THIS THE 7th DAY OF August, 2002.


QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP

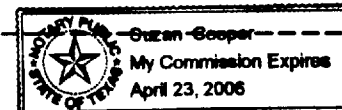
  
DON SILVERMAN, AGENT

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED DON SILVERMAN, AUTHORIZED AGENT FOR QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, KNOWN TO ME TO THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS EXPRESSED AND IN THE CAPACITY THEREIN STATED, AND AS THE ACT AND DEED OF SAID CORPORATION.


GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS THE 7th DAY OF August, 2002.

  
NOTARY PUBLIC OF THE STATE OF TEXAS  
COMMISSION EXPIRES: April 23, 2005



## SURVEYOR'S STATEMENT

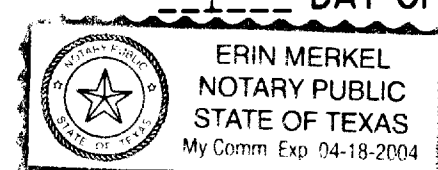
THAT I, ULYS LANE III, A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL SURVEY OF LAND, AND THAT THE CORNER MONUMENTS SHOWN THEREON SHALL BE PROPERLY MARKED ON THE GROUND, AND THAT THIS PLAT CORRECTLY REPRESENTS THAT SURVEY MADE BY ME OR UNDER MY DIRECTION AND SUPERVISION AND IS IN ACCORDANCE WITH THE PLATTING RULES AND REGULATIONS OF THE CITY OF DENTON, TEXAS.

  
ULYS LANE III  
REGISTERED PROFESSIONAL LAND SURVEYOR  
STATE OF TEXAS No. 2411

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED ULYS LANE III, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 7th DAY OF August, 2002.



  
NOTARY PUBLIC, STATE OF TEXAS  
COMMISSION EXPIRES: 4/18/04

## CERTIFICATE OF APPROVAL:

APPROVED THIS 15th DAY OF August, 2002  
BY THE DEVELOPMENT REVIEW COMMITTEE OF THE  
CITY OF DENTON, TEXAS.

8-16-02   
DATE: DEVELOPMENT REVIEW COMMITTEE, CHAIRMAN

8-16-02   
DATE: JENNIFER WALTERS CITY SECRETARY

## AMENDING FINAL PLAT LOTS 1, 2, 3, 4, 5 & 6, BLOCK 1 SOUTHERN HILLS PLAZA

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**WIA WIER & ASSOCIATES, INC.**

**ENGINEERS SURVEYORS LAND PLANNERS**  
4300 BELTWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRISCO, TEXAS 75034 METRO (214)387-8000  
www.wierassociates.com

**OWNER:**  
QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.  
14900 LANDMARK BLVD.  
SUITE 610  
DALLAS, TEXAS 75254  
(972) 980-8806  
SHEET 3 OF 3

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On Aug 15 2002  
At 4:11pm  
Receipt #: 46717  
Recording: 108.00  
Doc/Mgmt: 6.00  
Doc/Num: 2002-R0102530  
Doc/Type: PLA  
Deputy: ELIZABETH

Y:\Projects\01043\dwg\MINOR\_PLAT.dwg 7/22/2002 8:30:19 AM CDT W.A. No. 01043

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**RECIPROCAL EASEMENT AGREEMENT**

THIS RECIPROCAL EASEMENT AGREEMENT ("Agreement") is promulgated this 17<sup>th</sup> day of May, 2002 by QUADRANT SOUTHERN HILLS PARTNERS, LTD., a Texas limited partnership ("Grantor"), whose address is c/o Quadrant Properties, L.L.C., 8000 Maryland Avenue, Suite 640, St. Louis, Missouri 63105.

**WITNESSETH:**

WHEREAS, Grantor is the owner of a certain parcel of land (the "Property") located in Denton County, Texas, which parcel of land is more particularly described on that certain Final Plat Southern Hills Plaza (the "Plat") dated April 5, 2002, filed April 24, 2002, and recorded in Plat Cabinet U, Page 357, in the Office of the County Clerk, Denton County, Texas, a copy of which Plat is attached hereto as Exhibit A;

WHEREAS, Grantor has caused the Property to be subdivided of record into six (6) lots (each, a "Lot" and collectively the "Lots") as shown on the Plat.

WHEREAS, Grantor desires that the Lots be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial development (sometimes hereinafter referred to as the "Development") in accordance with the Site Plan attached hereto as Exhibit B-1 (the "Site Plan"), and Grantor desires that the Development be subject to the easements and covenants hereinafter set forth.

NOW, THEREFORE, Grantor does hereby declare and grant the following rights, covenants and servitudes on the Property:

**1. Building/Common Areas.**

A. "Building Area" as used herein shall mean that portion of a Lot within the building set back lines on a Lot as shown on Exhibit B-2 attached hereto. Canopies may encroach from the Building Area over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

B. "Common Areas" shall be all of the Property except the Building Area.

C. Conversion to Common Areas: Those portions of the Building Area on each Lot which are not from time to time used, or cannot under the terms of this Agreement be used, for buildings, shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

2. Use. Buildings in the Development shall be used only for retail and other commercial purposes including, without limitation, medical offices, lodging facilities, video rental and sales, financial institutions, restaurants, offices, and retail stores. Only

Lot 6 may be used for purposes of automobile service, convenience stores, service stations and the sale of motor vehicle fuels. Subject to the foregoing and Section 3 and Section 4 below, no portion of the Development shall be used for anything other than the purposes which may be permitted by applicable zoning regulations, nor shall anything be done in the Development which is a nuisance or an annoyance to the owners or occupants of the Development.

3. Prohibited Uses. During the term of this Agreement no portion of the Development may ever be used for any of the following uses whatsoever: (i) an adult-type bookstore or other establishment selling, leasing or exhibiting pornographic materials or paraphernalia for use with illicit drugs; (ii) a massage parlor, topless bar, or a club or establishment which provides striptease entertainment; (iii) a mortuary; (iv) a mobile home or trailer court, labor camp, junkyard or stockyard; (v) a land fill, garbage dump or for the dumping, disposing, incineration or reduction of garbage; (vi) an off-track betting parlor (or any other type of gambling establishment), carnival or amusement park; (vii) a manufacturing, distillation, smelting, refining, industrial, agricultural, drilling, mining or quarrying operation; or (viii) an x-rated movie theatre or video shop.

4. Restrictions on Use and Special Uses.

A. Italian Restaurant Restriction. For so long as a restaurant which features Italian food is operated on Lot 3, but in no event longer than fifty (50) years from the date of recordation of this Agreement, no Lot in the Development (except Lot 3 and except Lot 2 if Lot 2 is under contract to be purchased by or is owned by Texas Roadhouse (as defined below)) shall be used as a restaurant which features Italian food. For the purposes of this section: (a) "features" means that Italian food items comprise more than twenty five percent (25%) of the menu offerings. If Lot 3 ceases to be used as an Italian restaurant for one hundred eighty (180) days or more, for reasons other than closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation or other force majeure then this restriction shall lapse and shall terminate. The foregoing restriction: (a) is not intended to exclude a pizza restaurant, which is defined as a restaurant where at least seventy five percent (75%) of its gross food sales is derived from sales of pizza, including, but not limited to, restaurants of the type of a Chuck E. Cheese restaurant, and (b) shall not be applied to exclude restaurants of the type of a "Boston Pizza and Sports Bar" from the Development, however, such restriction will be applied to exclude restaurants of the type of Pizzeria Uno.

B. Parking Requirement. Any restaurant operating on Lot 4 or Lot 5 (and on Lot 2 if such restaurant is not owned by Texas Roadhouse) shall be required to provide one parking space for each 67 square feet of building area on such Lot.

C. Lot 3 Building Area Restriction. So long as the Development is being used primarily for retail purposes, the floor area of any building on Lot 3 shall not exceed 8,000 square feet, exclusive of mechanical rooms.

D. Lot 3 Frontage Restriction. So long as Lot 2 is being used as a restaurant, the principal entrance to any building on Lot 3 shall not face either Lot



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2 or Brinker Road. If Lot 2 ceases to be used for restaurant purposes for one hundred eighty (180) days or more, for reasons other than closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation or other force majeure, then the provisions of this section shall lapse and terminate.

E. Mexican Restaurant Restriction. For so long as (i) Brinker Texas, L.P., a Texas limited partnership, or an affiliate thereof, is reasonably pursuing the development of an On the Border restaurant (or other Mexican-style restaurant) on Lot 1, and/or (ii) Brinker (as hereinafter defined) is operating an On the Border restaurant (or other Mexican-style) restaurant on Lot 1 (excluding any periods of inoperation due to remodeling, renovation, or reconstruction as a result of an assignment, sublease, casualty, condemnation or otherwise), then Grantor shall not lease or sell any part of any Lot in the Development other than Lot 1 to any tenant or purchaser for the operation of a restaurant (nor shall Grantor otherwise permit the operation of a restaurant on any Lot in the Development other than Lot 1) offering alcoholic beverages and a menu featuring Mexican cuisine, "Tex-Mex" cuisine, and/or southwestern cuisine as the primary entrees. For the purposes of this section an "affiliate" shall mean any legal entity which is either (i) the successor by merger or otherwise, to all or substantially all of Brinker Texas, L.P.'s assets and liabilities, (ii) controls or is controlled by, or is under common control with Brinker Texas, L.P., or (iii) any franchisee of Brinker Texas, L.P. (Brinker Texas, L.P. and such affiliates being herein collectively called "Brinker"). Without limiting the foregoing, Grantor shall not lease or sell any part of the Property in the Development to any tenant or purchaser for the operation of the following restaurants (nor shall Grantor otherwise permit the operation of a restaurant in the Development operating under the following trade names): Blue Mesa, Canyon Café, Chi Chi's, Don Pablo's, Rio Bravo, Uncle Julio's, Rio Grande Café, Mia's, Chevy's, El Chico, El Fenix, Chuy's, Cantina Laredo, Abuelo's, Pappasito's, Mi Cocina, and Chipotle Mexican Grill. The foregoing restriction shall not be deemed to prohibit the operation of a restaurant on Lot 2 under the trade name "Texas Roadhouse" featuring menu items reasonably consistent with the items shown on such restaurant's menu as of the effective date hereof.

F. Steakhouse Restriction. For so long as a full service steakhouse or similar restaurant concept which features steaks, ribs and related menu items is operated on Lot 2 by Texas Roadhouse, or an affiliate thereof, no portion of the Development other than Lot 2 shall be used as a full service steakhouse or similar restaurant concept featuring steaks, ribs and related menu items or for the advertisement of such a restaurant. For the purposes of this section "features" shall mean that steaks, ribs and related menu items served in a full service steakhouse comprise more than twenty five percent (25%) of the menu items. If Lot 2 ceases to be used as a full service steakhouse restaurant which features steaks, ribs and related menu items for one hundred eighty (180) days or more, for reasons other than a closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation, or other force majeure,

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or ceases to be owned by Texas Roadhouse, then the provisions of this section shall lapse and terminate. For the purposes of this section "affiliate" shall mean any entity which is owned or controlled by, under common control with or owns or controls Texas Roadhouse Holdings LLC or any entity in to which Texas Roadhouse Holdings LLC shall merge or shall transfer substantially all of its assets, or any franchisee of Texas Roadhouse Development Corporation (Texas Roadhouse Holdings LLC and such affiliates being herein collectively called "Texas Roadhouse"). The foregoing restriction shall not be deemed to prohibit the operation of a restaurant on Lot 1 under the trade name "On the Border" featuring menu items reasonably consistent with the items shown on such restaurant's menu as of the effective date hereof.

G. Lot 6 Parking Requirement. For so long as a restaurant is being operated on Lot 2, any restaurant operating on Lot 6 shall be required to provide fifteen (15) parking spaces for each 1,000 square feet of any building constructed on Lot 6. If Lot 2 ceases to be used as a restaurant for one hundred eighty (180) days or more, for reasons other than a closure for reasonable periods of time under the circumstances due to renovation, casualty, condemnation, or other force majeure, or ceases to be owned by Texas Roadhouse, then the provisions of this section shall lapse and terminate.

H. Gravel Parking Area. So long as Lot 2 is under contract to be sold to or is owned by Texas Roadhouse and is being operated as a restaurant, Texas Roadhouse and its customers shall have a non-exclusive right to use that portion of Lot 6 depicted as "Gravel Parking Area" (the "Gravel Parking Area") on the Site Plan for the parking of passenger motor vehicles and Grantor hereby grants to Texas Roadhouse a license for such use. Texas Roadhouse may, at its sole cost and expense, place gravel on the Gravel Parking Area. The owner of Lot 6 or Grantor may terminate the license granted by this section by thirty (30) days advance written notice to Texas Roadhouse. Prior to the effective date of the termination of such license Texas Roadhouse shall restore the Gravel Parking Area to the condition as existed on the date on which Texas Roadhouse commenced use of the Gravel Parking Area, unless otherwise directed by Grantor or the owner of Lot 6. Texas Roadhouse shall indemnify and hold the owner of Lot 6 harmless from any losses, damages, liabilities or claims for property damage or personal injury caused by Texas Roadhouse, its customers, employees, agents or contractors in connection with their use of the Gravel Parking Area.

I. Medical Use Restriction. No part of the Development or any of the improvements now or hereafter located thereon may be used or operated: (a) as an acute care or medical surgical hospital or for the provision of services usually provided in such a hospital or to provide any services that are furnished at any hospital or other medical facility located in Denton County, Texas owned or operated by Epic Development, Inc. ("Epic") or any "Affiliate" of Epic; or (b) as a facility wherein any medical care or service of any kind is provided to human beings. In no event may a laboratory, x-ray or other form of diagnostic imaging service, or surgery or birthing services or facilities be provided on or in the

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development on any basis. "Affiliate," for the purposes of this section shall mean any person which directly or indirectly controls or is controlled by or is under control with Epic. For the purposes of this definition, "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used herein, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, through ownership of voting securities, partnership interests or other equity interests. The provisions of this section shall remain in effect and be enforceable until such time as all of the hospitals and other medical facilities owned or operated by Epic or any Affiliate of Epic described above in this section, or all successor health care facilities which replace such hospitals, are permanently closed; provided, however, the provisions of this section shall in any event terminate, lapse and be of no further effect on the date which is 99 years following March 4, 1999.

5. Buildings.

A. Design and Construction. The buildings within the Development shall be designed so that the same are comparable to the buildings located on outparcels within other first class community shopping centers in the metropolitan Dallas, Texas area. Notwithstanding the foregoing, subject to the approval of applicable governmental authorities, prototypical designs for national chain businesses shall be acceptable designs for buildings within the Development.

B. Location. No building shall be constructed on a Lot except within the Building Area.

C. Fire Protection. Any building constructed in the Development shall be constructed and operated in such a manner that standard form of fire insurance policy rates concerning other buildings in the Development are preserved.

D. Parking. Without limiting the specificity of the other provisions hereof relating to required parking, in developing and using a Lot, the owner of the Lot shall continuously provide and maintain parking spaces on such Lot at a minimum equal to the number of parking spaces required by applicable law or code.

E. Damage. In the event any building, structure or other improvement on a Lot shall be damaged or destroyed by any casualty, the owner, lessee or user of the Lot shall within ninety (90) days of such damage or destruction: (i) commence to repair and/or reconstruct such building, structure or improvement (and thereafter promptly complete such work) to a condition at least as good as existed prior to the casualty, subject to the terms of this Agreement (such commencement of repair or reconstruction work shall be deemed to include the preparation of construction plans and the pursuit of permits for such work with diligence and continuity to completion); or (ii) level such improvement, remove the debris from the Lot and keep the Lot neat, orderly, planted in grass and trimmed, until subsequently improved and constructed upon.

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6. Grant of Easements.

A. Access and Parking Easements. Grantor hereby establishes, for the benefit of the Lots, and the respective owners and lessees thereof, a reciprocal perpetual non-exclusive easement over, through and around the Common Areas of the Lots for roadways, walkways, ingress and egress and parking for the use of customers, invitees, licensees and employees of all businesses and owners, tenants and occupants of the buildings constructed within the Building Area on the Lots. The grant of the easement for reciprocal parking shall not release the owner of any Lot from such owner's obligation to maintain on such owner's Lot at minimum the number of parking spaces required by applicable laws or codes.

B. Limitations on Use of Access and Parking Easements.

(i) Employees. The owners of the Lots shall use reasonable efforts to ensure that their employees do not park their vehicles on the Common Areas of Lots of the other owners.

(ii) No Dedication to Public. Nothing contained in this Agreement shall constitute or be construed as a gift or dedication of any portion of the Property, specifically including the Common Areas, for roadways, walkways, ingress, egress, parking, or utilities constructed thereon, to the public or give any member of the public any rights whatsoever, it being the express intention of Grantor that this Agreement shall be for the exclusive benefit of the Lots, the owners thereof and their respective heirs, representatives, lessees, successors and assigns as set forth herein. Notwithstanding the foregoing, approximately forty (40) feet of frontage of the Property along Interstate Highway No. 35 shall be dedicated to the appropriate governmental authority without compensation for right-of-way purposes.

(iii) Prevention of Prescriptive Rights. The owner of each Lot hereby reserves the right to eject from the Common Areas on its Lot any person not authorized to use the same. In addition, the owner of each Lot reserves the right to close off the Common Areas on its Lot for such reasonable periods of time as may be legally necessary in the reasonable opinion of its attorneys to prevent the acquisition of prescriptive rights by anyone. Before closing off any part of the Common Areas as provided above, such owner must give notice to the other owners of its intention to do so and must coordinate its closing with the activities of the other owners of the Development so that no unreasonable interference with the operation of the Development occurs. Reasonable efforts shall be used to ensure that no such closing shall occur during weekends, holidays or normal business hours. No prescriptive easement rights or claims shall ever accrue in favor of any Lot owner or user against any other Lot owner as the result of any use or action taken by any Lot owner or user with respect to another owner's Lot.

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C. Utility and Service Easements. Grantor hereby establishes non-exclusive easements over the Common Areas on each Lot in favor of each other Lot to permit the maintenance and use of all apparatus necessary to provide utility services to a Lot, including telephone, cable, electricity, water, natural gas and storm and sanitary sewers, provided that same are constructed underground. Any disruption or demolition of a servient Lot by reason of the use of this easement shall be kept to a minimum which shall not exceed one (1) day in duration except during the period when the Development is initially constructed, unless such disruption or demolition cannot be reasonably completed within such one (1) day period, in which event the period will be extended to such time period as reasonably is required and such area forthwith shall be restored as quickly as possible by the dominant Lot owner to its original condition at no expense to the servient Lot owner. Nothing herein shall permit a Lot owner to: (i) disrupt the utility service of any business which is operating in the Development; or (ii) eliminate access to any business operating on a servient Lot. Prior to the commencement of any action by an owner of a dominant Lot on a servient Lot pursuant to the easement rights granted by this Section 6.C., the owner of such dominant Lot shall give the owner of such servient Lot at least five (5) days prior written notice of such action, except in the event of an emergency in which case the owner of the dominant Lot shall give notice as is reasonable under the circumstances. Such notice shall set forth the general scope of the work to be performed.

D. Construction Easements. Grantor hereby grants, declares and establishes for the benefit of the Lots, and the respective owners and lessees thereof, temporary easements in the Common Areas of the Lots, and prior to the construction of any improvements thereon, in the Building Area on a Lot, for the initial grading of the Development, including construction of retaining wall(s), and for the construction of the Development's internal roads. With respect to any Lot on which fresh dirt is dumped, the area shall be sloped to meet any contiguous property within the Development or public roads, and shall be smoothed in a level manner consistent with the contours of the adjoining property. Each owner covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the buildings or other improvements of any other owner, and shall not unreasonably interfere with or interrupt the construction of improvements or the business operations conducted by any other owner in the Development. In addition, each owner, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of another owner which have been damaged or destroyed in the exercise by such owner of the easements granted under this section and shall defend, indemnify and hold the other owners harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) incurred in connection with or as a result of an owner's exercise of said easements, except to the extent occasioned by the negligence or willful misconduct of another owner.

E. Water Flow. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of an

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owner's improvements substantially as shown on the Site Plan (including without limitation building, curbs, drives and paving) shall be permitted as long as such water flow conforms to the drainage easements shown on the Plat. Notwithstanding the foregoing, Lot owners shall comply with all applicable laws or regulations concerning storm water, and soil and erosion control.

F. Lot 4 Sign Easement. Grantor hereby grants and conveys for the benefit of Lot 4, Lot 5 and Lot 6, and the respective owners and lessees thereof, a perpetual nonexclusive appurtenant easement on, in, through and over that portion of Lot 4 shown on Exhibit B-2 as the "Mutual Sign Easement", for the purpose of the installation, construction, reconstruction, use, operation, maintenance, repair and replacement of a free standing, lighted pylon sign structure ("Sign Structure") and sign panels located thereon at the option of such Lot owners identifying the owner, lessee and/or occupants of such Lots. The Sign Structure and the panels located thereon shall comply with all applicable laws, ordinances and regulations of governmental authorities and any other requirements set forth hereinbelow. No more than one (1) Sign Structure shall exist in the Mutual Sign Easement at any one time and such Sign Structure may include no more than one (1) two (2)-sided sign panel for each of Lots 4, 5 and 6. The owners of each of Lots 4, 5 and 6 shall be responsible for the maintenance and upkeep of the Sign Structure during the time that the Sign Structure includes a sign panel for such owners' Lot, and such Lot owners shall, during such time when they are responsible for the Sign Structure's maintenance, share pro-rata in the actual and reasonable costs and expenses of permitting, construction, maintenance, repair, replacement, operation and reconstruction of the Sign Structure based on the relative square footage of each Lot owner's sign panel located thereon; provided, however, that such pro rata share shall not include any costs or expenses strictly related to each Lot's particular sign panel, which costs and expenses shall be the responsibility of such panel's owner.

7. Development, Maintenance and Taxes.

A. Development. The arrangement of the Common Areas shall not be changed in any manner which negatively affects the access and parking easements provided for in this Agreement. The Common Areas shall not be changed to alter or reconfigure the access points of the Development, including the access points of each Lot as shown on the Site Plan, without the prior written consent of the owners of all of the Lots, which consent shall not be unreasonably withheld, delayed or conditioned.

B. Maintenance.

(i) Standards. Each owner shall maintain its Lot in good condition and repair, at its own expense, following completion of the improvements on its Lot. The maintenance is to include, without limitation, the following:



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(a) Maintaining the surfaces of the Common Areas on its Lot in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the Common Areas on its Lot to the extent reasonably necessary to keep such areas in a clean and orderly condition;

(c) Placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines on the Common Areas of its Lot;

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required on the Common Areas of its Lot;

(e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair; and

(f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

(ii) Lots. Each owner of a Lot covenants that it, in addition to other requirements of this section, will keep all glass in the doors and windows on its Lot clean; will maintain its Lot at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; and will not permit accumulation of garbage, trash, rubbish and other refuse on its Lot, will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefor until called for to be removed.

C. Taxes. Each of the owners shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against its Lot (including, without limitation, that part of the Common Areas owned by it).

#### 8. Indemnification/Insurance.

A. Indemnification. Each owner of a Lot hereby indemnifies and saves the other owners harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Lot, except if caused by the act or negligence of another owner.

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**B. Insurance.**

(i) The owner of each Lot shall procure and maintain in full force and effect throughout the term of this Agreement commercial general liability insurance and property damage insurance (including contractual liability coverage) against claims for personal injury, death, or property damage occurring upon, in or about its Lot with combined single limit coverage of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate. The owner of each Lot shall provide the other owners with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance which may cover other property in addition to the property covered by this Agreement, and the coverage amounts may be obtained through combination of primary and umbrella policies.

(ii) A policy shall include provisions denying the insurer subrogation rights against the other owners to the extent such rights were waived by the insured prior to the occurrence of loss.

(iii) Each owner of a Lot, for itself and its property insurer, hereby releases the other owners, and their tenants, employees and agents from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of the owner resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

(iv) Notwithstanding anything to the contrary contained in this Section 8.B., so long as the net worth of an owner of a Lot shall exceed Twenty Million Dollars (\$20,000,000.00), such owner shall have the right to satisfy its obligations under this Section 8.B. by self-insuring and retaining the financial risk for any claim.

**9. Eminent Domain.**

A. Owner's Right to Award. Nothing herein shall be construed to give any owner any interest in any award or payment made to any other owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other owner's Lot, or giving the public or any government any rights in a Lot. In the event of any exercise of eminent domain or transfer in lieu

5097 02805

thereof of any part of the Common Areas located on a Lot, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

B. Collateral Claims. All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.

C. Tenant's Claim. Nothing in this section shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

D. Restoration of Common Areas. The owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective tract as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

10. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon a Lot of any owner, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Lot. Except as set forth in the preceding sentence, however, any holder of a first lien on a Lot, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement. By executing and acknowledging this Agreement, the lender that holds a deed of trust encumbering the Property on the date of this Agreement (the "Lender") hereby consents to this Agreement and to the provisions hereof, and subordinates its interest in the Property to this Agreement.

11. Release from Liability. Any person acquiring fee or leasehold title to a Lot or any portion thereof, shall be bound by this Agreement only as to the Lot acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Lot, except as to the obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this section, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon the Lots running with the land.

## 12. Breach.

A. Parties with Remedies. In the event of a breach or threatened breach of this Agreement, any owner of a Lot shall, subject to Section 12.B. hereinbelow, be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach, by injunction and/or all such other available legal and equitable remedies. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees.

5097 02806

**B. Remedies.** If any owner of a Lot shall fail to perform any covenant or condition contained in this Agreement, the aggrieved party shall give the defaulting owner at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default be not reasonably susceptible of being cured within said period of thirty (30) days, and said defaulting owner shall not have in good faith commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to completion) the aggrieved party may institute legal proceedings for full and adequate relief from the consequences of said default or threatened default.

**C. Self Help; Right of Entry.** The defaulting owner hereby grants to the aggrieved party a non-exclusive right of entry and non-exclusive easements across and under any and all parts of the defaulting owner's Lot (excluding the right to enter in or upon any buildings on such Lot) for all purposes reasonably necessary to enable the aggrieved party (acting directly or through agents, contractors or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Agreement which the defaulting owner shall have failed to perform, after notice and time to cure, as aforesaid, but only such notice and time to cure as shall be reasonable or practicable under the circumstances need be given in the event of any emergency. Any amounts so expended may be withheld from amounts otherwise payable to the defaulting owner or collection may be sought otherwise and in any event the defaulting owner shall pay such amount with interest at the rate of three percent (3%) per annum over the then existing prime rate of interest announced from time to time by Citibank, N.A. or its successors (but in no event exceeding the maximum rate per annum permitted by law).

**13. Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the owners of the buildings constructed on the Lots, their respective heirs, representatives, lessees, successors and assigns, and occupants of the Lots. The singular number includes the plural and the masculine gender includes the feminine and neuter.

**14. Non-Merger.** This Agreement shall not be subject to the doctrine of merger.

**15. Duration.** Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

**16. Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

5097 02807

17. Notices. Any notices required or permitted to be given under this Agreement shall be delivered: (i) personally, (ii) by overnight mail or overnight air courier service; or (iii) by United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, and addressed to the owner of a Lot at the last known business address of such owner. Any such notice, request or other communication shall be considered given or delivered, as the case may be, when received or refused. An owner of a Lot may designate a notice address by sending written notice to the last known business address of the other Lot owners.

18. Estoppel Certificates. Each owner shall upon not less than thirty (30) days from receipt of written notice from any other owner execute and deliver to such other owner a certificate stating that: (a) either this Agreement is unmodified and in full force and effect or is modified (and stating the modification); and (b) whether or not to the best of its knowledge the other owner is in default in any respect under this Agreement and if in default, specifying such default.

19. Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

20. Responsibility. Notwithstanding anything to the contrary contained in this Agreement, each owner of a Lot shall be liable for the obligations, covenants, agreements, and responsibilities created by this Agreement and for any judgment rendered hereon only to the extent of its respective interest in its Lot and the improvements located thereon.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

22. Modification. This Agreement may be amended, modified or changed only by the written consent of all of the owners of the Lots, with any such amendment, modification or change being recorded in the land records of Denton County, Texas.

[The remainder of this page is intentionally left blank. The signature pages follow.]

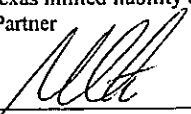
5097 02808

IN WITNESS WHEREOF, Grantor and Lender have executed this Agreement as of the day and year first written above.

GRANTOR:

QUADRANT SOUTHERN HILLS  
PARTNERS, LTD., a Texas limited  
partnership

By: SOUTHERN HILLS EQUITIES,  
LLC, a Texas limited liability company,  
General Partner

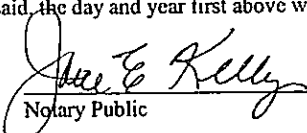
By:   
Stephen M. Notestine, Manager

STATE OF MISSOURI     )  
                                  ) SS  
COUNTY OF ST. LOUIS    )

On this 1st day of MAY, 2002, before me appeared Stephen M. Notestine to me personally known, who, being by me duly sworn, did say that he is the Manager of Southern Hills Equities, LLC, a Texas limited liability company, which company is the General Partner of Quadrant Southern Hills Partners, Ltd., a Texas limited partnership, and that said instrument was signed in behalf of said company and partnership, by authority of its members and partners; and said person acknowledged said instrument to be the free act and deed of said company and partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



  
Notary Public

My commission expires:



5097 02809

LENDER:

FIRST BANK, a Missouri corporation

By: [Signature]  
Print Name: GREG Fuesting  
Title: Senior Vice President

STATE OF MISSOURI  
COUNTY OF ST. LOUIS ) SS

On this 30<sup>th</sup> day of MAY, 2002, before me appeared GREG FUESTING to me personally known, who, being by me duly sworn, did say that he is the SA. V. P. of First Bank, a Missouri corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors; and said person acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

**JULIA A. WOODS**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis City  
My Commission Expires: Aug. 2, 2003  
My commission expires:

[Signature]  
Notary Public

Return to:  
Republic Title of Texas, Inc.  
2626 Howell Street, 10th Floor  
Dallas TX. 75204

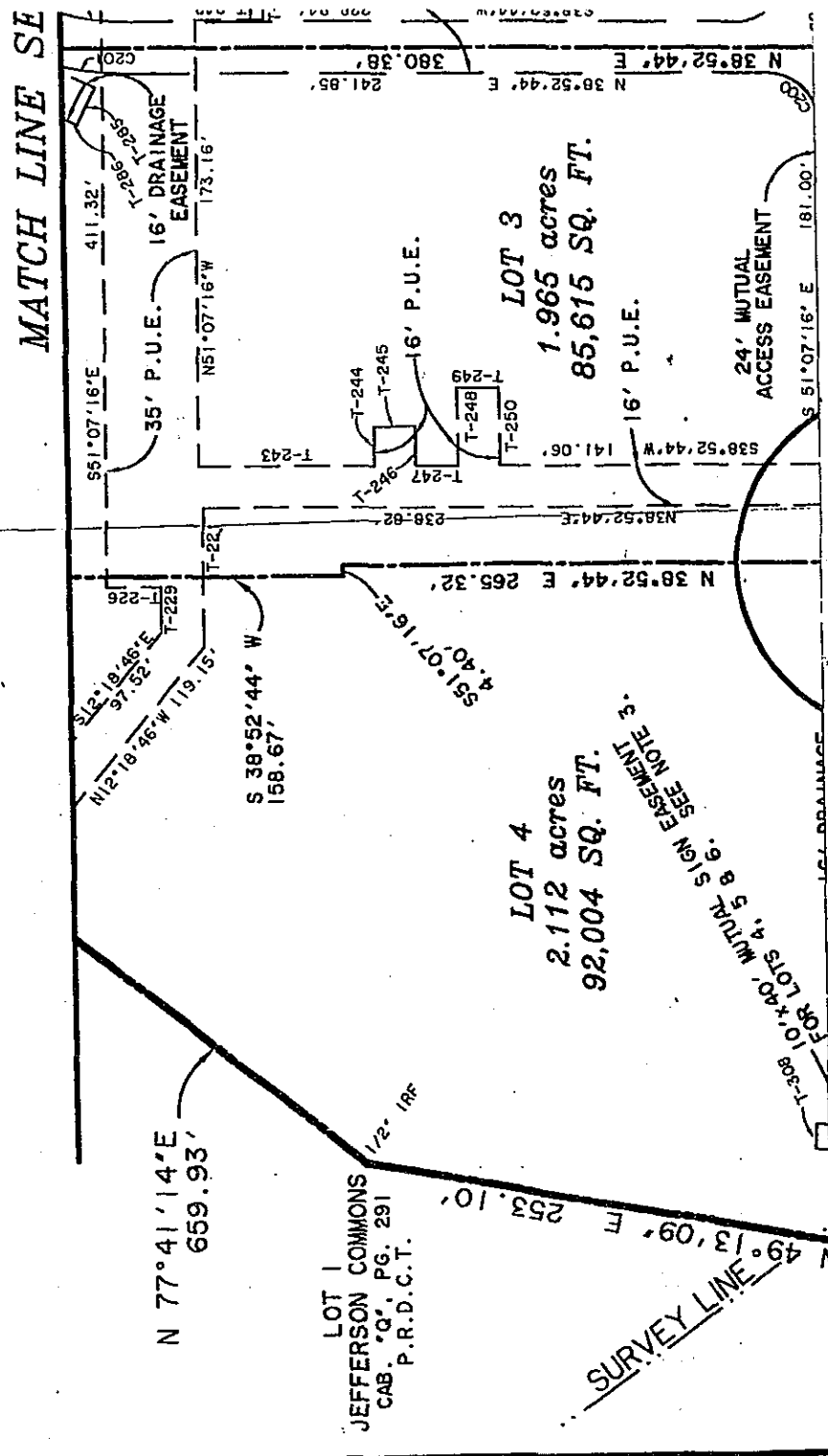
5097 02810

EXHIBITA

PLAT

5097 02811

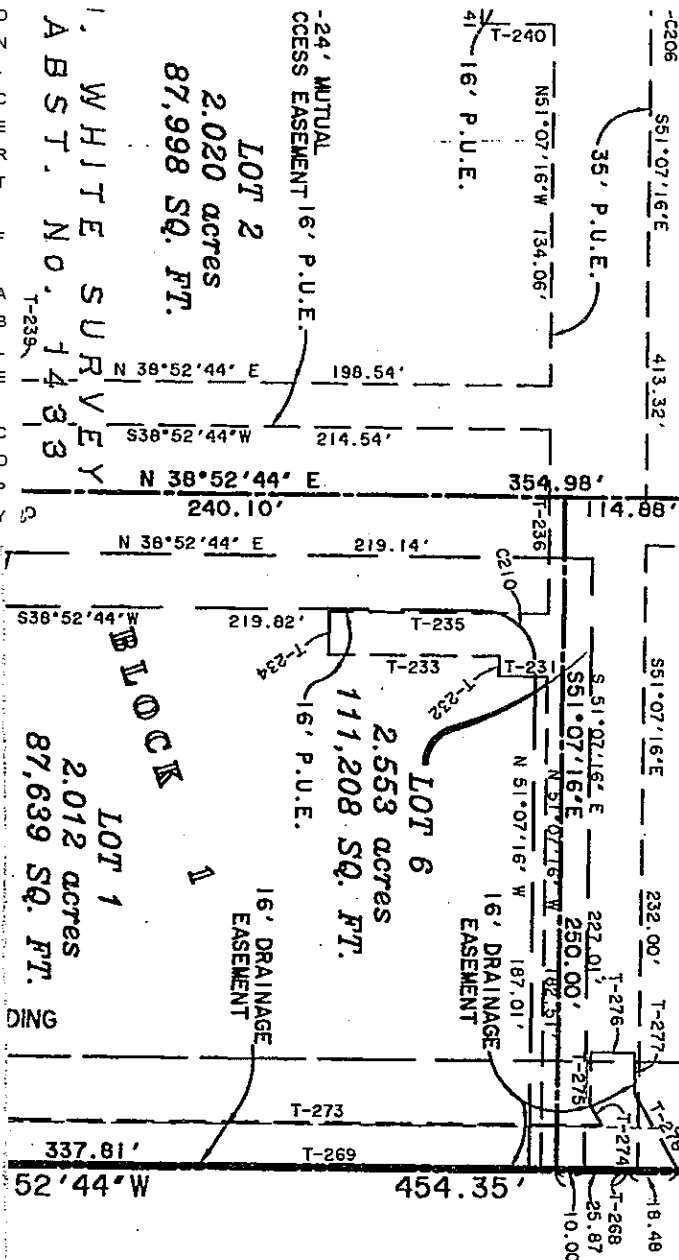
EXHIBIT



P.U.E.  
DENOTES PUBLIC  
UTILITY EASEMENT

IRF      IRON ROD FOUND

-C206



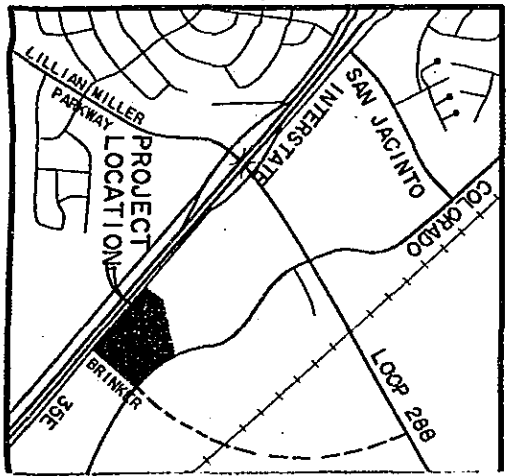
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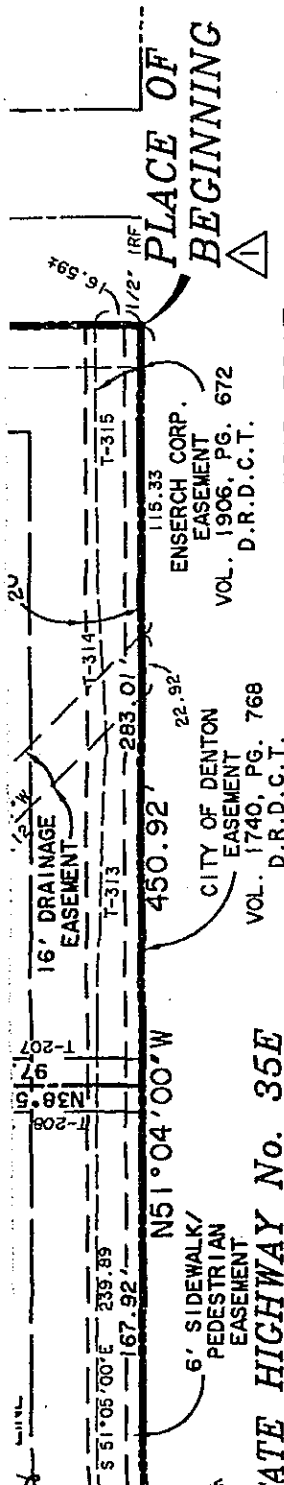


- ## LEGEND

2 NORTH CENTRAL TEXAS STATE PLANE  
COORDINATE

\* VICINITY MAP \*





STATE HIGHWAY No. 35E  
16' WIDE R.O.W.)

**\*\*NOTE\*\***  
THE ORIGINAL ENSERCH EASEMENT IS REFERENCED TO OLD PROPERTY CORNERS WHICH HAVE BEEN REMOVED AND CANNOT BE RECREATED. THE EASEMENT LOCATION INDICATED ON THIS PLAT IS THE SURVEYOR'S BEST INTERPRETATION OF THE EASEMENT DOCUMENT RECORDED IN VOLUME 1906, PAGE 672 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS.

# SOUTHERN HILLS PLAZA

AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS, BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND D. LAMBERT SURVEY, ABSTRACT No. 784, CITY OF DENTON, DENTON COUNTY, TEXAS

PREPARED BY:

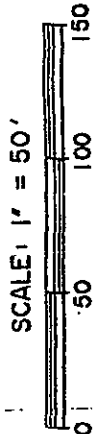
**VIA WIER & ASSOCIATES, INC.**

ENGINEERS SURVEYORS LAND PLANNERS

4300 BELLEVUE PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817)467-7700  
8721 5th STREET FRODO, TEXAS 75034 METRO (214)387-8000

OWNER:

QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.  
15935 BENT TREE FOREST CIRCLE  
SUITE 2025  
DALLAS, TEXAS 75248  
(972) 980-8806  
SHEET 1 OF 3



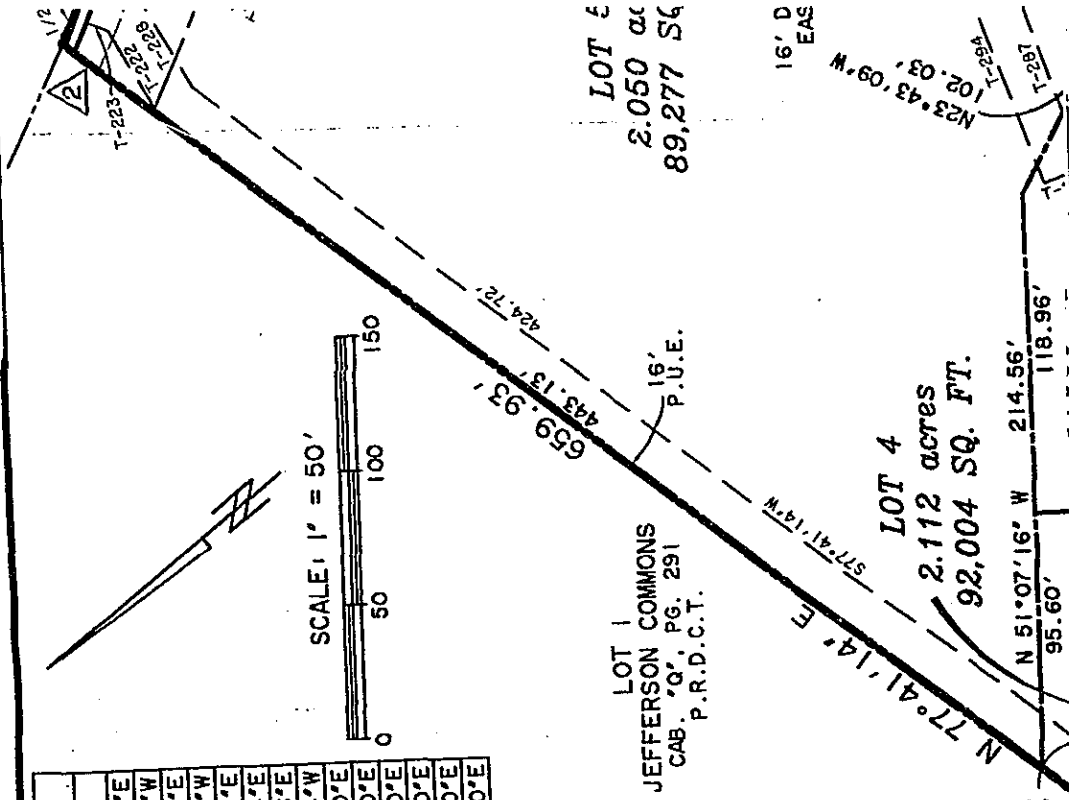
Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK

On Apr 24 2002  
At 9:17am

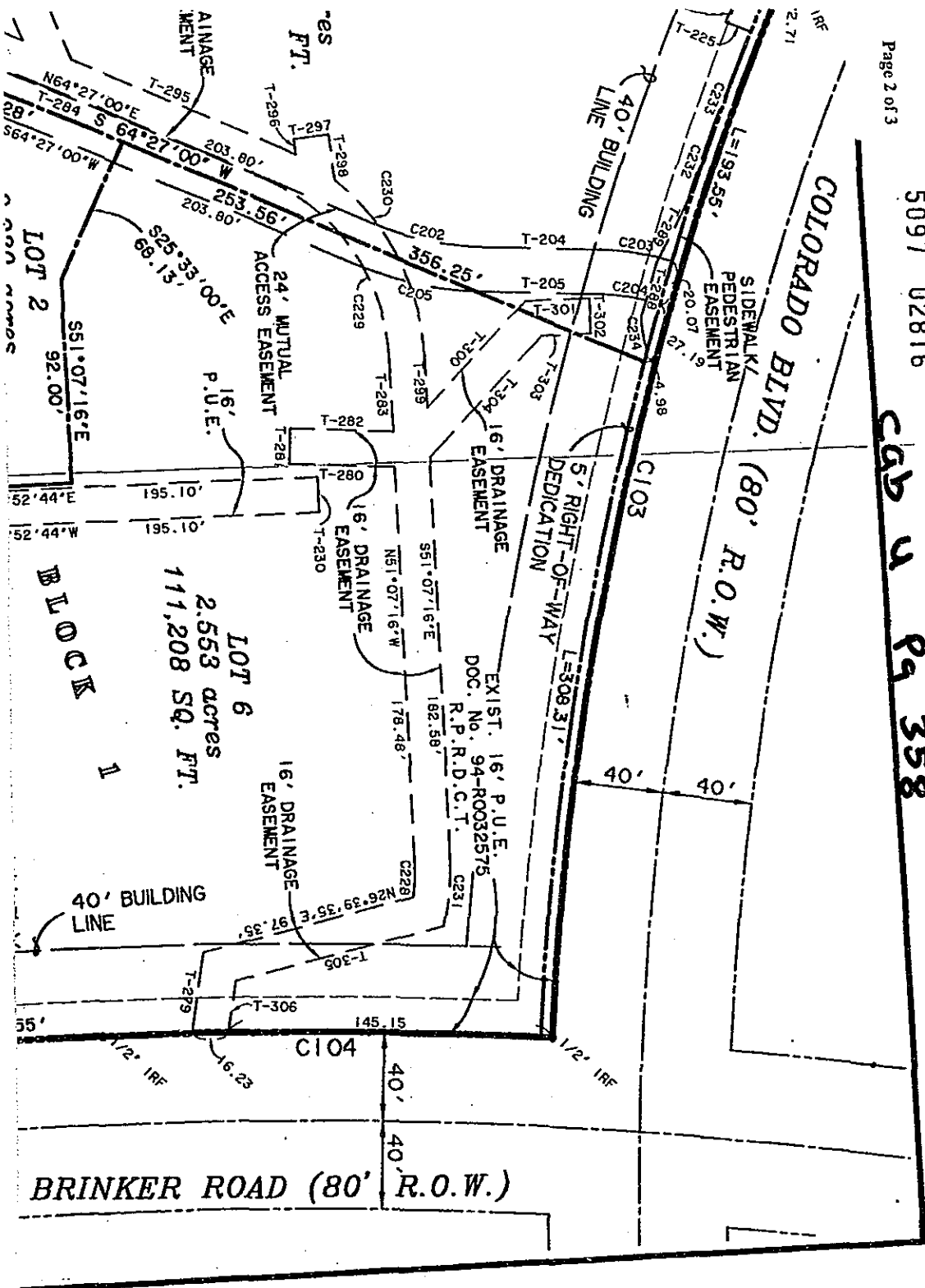
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Recording: 188.00  
Doc/Inst: 6.00  
Doc/Inst: 2002-00051498  
Doc/Type: PLA  
Deputy: Felicia



LINE TABLE			LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
T-100	99.15	S44°35'09"E	T-302	16.00	S51°33'07"E
T-101	128.12	S49°20'35"E	T-303	21.72	S38°26'53"W
T-102	33.01	S51°07'16"E	T-304	74.49	S06°07'16"E
T-201	16.07	N51°07'16"W	T-305	96.93	S26°39'35"W
T-202	16.00	N38°52'44"E	T-306	23.68	S40°11'55"E
T-203	81.27	S38°52'44"W	T-307	40.00	N42°10'04"E
T-204	50.20	S42°27'50"W	T-308	10.00	S47°49'56"E
T-205	50.20	N42°27'50"E	T-309	40.00	S42°10'04"W
T-206	33.09	S51°07'16"E	T-310	54.83	S52°26'00"E
T-207	68.41	N38°52'44"E	T-311	101.08	S48°04'00"E
T-208	68.39	S38°52'44"W	T-312	56.04	S51°12'00"E
T-209	86.00	S51°07'16"E	T-313	104.84	S49°05'00"E
T-210	16.07	S51°07'16"E	T-314	67.85	S53°36'00"E
T-221	54.82	N51°07'16"W	T-315	90.06	S51°28'00"E
T-222	36.69	S79°48'46"E			
T-223	8.36	N63°18'17"E			
T-225	12.01	S63°18'17"W			
T-226	20.50	N38°52'44"E			
T-227	7.57	N26°41'43"W			
T-228	41.04	N79°48'46"W			
T-229	18.08	S51°07'16"E			
T-230	16.00	S51°07'16"E			
T-231	30.71	S51°07'16"E			
T-232	7.50	N51°07'16"W			
T-233	62.42	S38°52'44"W			
T-234	16.00	N51°07'16"W			
T-235	79.92	N38°52'44"E			
T-236	69.00	N51°07'16"W			
T-237	28.50	N51°07'16"W			
T-238	16.00	N38°52'44"E			
T-239	12.50	S51°07'16"E			
T-240	25.95	S38°52'44"W			
T-241	16.00	N51°07'16"W			
T-242	25.95	N38°52'44"E			
T-243	66.76	S38°52'44"W			



CGD u Pg 358



T-248	29.94	S51°07'16"E
T-249	16.00	S38°52'47"W
T-250	29.94	N51°07'16"W
T-251	30.71	N51°07'16"W
T-253	77.68	N53°36'43"W
T-255	9.69	S38°52'44"W
T-256	16.00	N51°07'16"W
T-257	14.56	N38°52'44"E
T-259	14.55	S81°23'17"W
T-260	12.89	S38°52'44"W
T-261	16.00	N51°07'16"W
T-262	22.49	N38°52'44"E
T-264	16.02	N38°52'44"E
T-267	16.00	N83°12'09"E
T-268	0.71	N81°07'16"W
T-269	216.90	S38°52'44"W
T-270	12.00	S68°52'44"W
T-271	16.00	N21°07'16"W
T-272	12.00	N68°52'44"E
T-273	207.66	N38°52'44"E
T-276	16.00	N38°52'44"E
T-277	14.86	S51°07'16"E
T-279	36.94	N40°11'55"W
T-280	48.04	S43°16'18"W
T-281	16.00	N46°43'42"W
T-282	46.81	N43°16'18"E
T-283	34.00	N51°07'16"W
T-284	193.68	S64°18'13"W
T-285	16.00	N25°41'47"W
T-286	72.16	N64°18'13"E
T-287	83.89	N70°54'07"W
T-289	30.83	N21°08'55"W
T-293	16.00	N19°06'53"E
T-294	100.01	S70°54'07"E
T-295	98.82	N64°18'13"E
T-296	7.26	N56°22'08"W
T-297	16.00	N33°37'52"E
T-298	21.18	S56°22'08"E
T-299	23.32	S51°07'16"E
T-300	65.04	N06°07'16"W
T-301	28.28	N38°26'53"E

CURVE TABLE

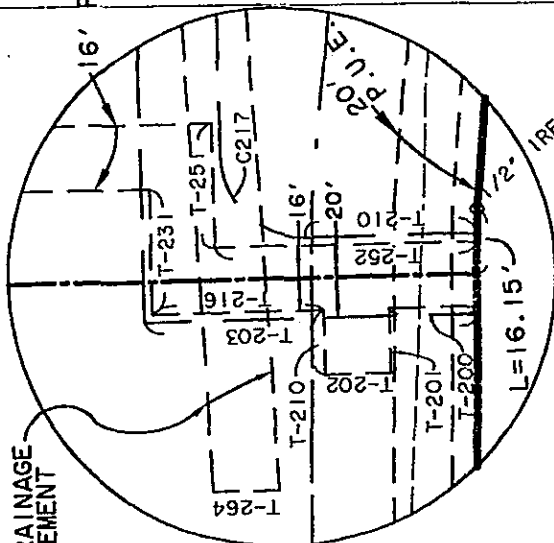
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD DIRECTION	CHORD LENGTH	CUR
C100	0°26'33"	11309.20	87.34	43.67	N50°50'44"W	87.34	C
C101	0°27'23"	11298.36	90.00	45.00	N49°53'46"W	90.00	C
C102	0°23'13"	11299.20	76.33	38.16	N47°46'26"W	76.33	C
C103	19°58'06"	1440.00	501.86	253.50	S35°55'18"E	499.33	C
C104	5°38'19"	2040.20	200.79	100.47	S41°41'54"W	200.70	C
C200	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28	C
C201	25°24'26"	122.00	54.10	27.50	S51°44'46"W	53.66	C
C202	21°59'09"	140.00	53.72	27.20	N53°27'25"E	53.39	C
C203	17°06'40"	110.00	32.85	16.55	S51°01'10"W	32.73	C
C204	17°29'37"	90.00	27.49	13.85	S51°12'39"W	27.37	C
C205	21°59'09"	160.00	61.40	31.08	N53°27'25"E	61.02	C
C206	25°44'59"	102.00	45.84	23.31	S51°34'30"W	45.46	C
C207	102°36'29"	20.00	35.82	24.97	S12°25'30"E	31.22	C
C208	12°36'28"	85.00	18.70	9.39	N57°25'30"W	18.67	C
C209	90°00'00"	20.00	31.42	20.00	N83°52'44"E	28.28	C
C210	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28	C
C211	1°52'49"	122.00	4.00	2.00	S47°02'47"E	4.00	C
C212	5°00'54"	102.00	8.93	4.47	N48°36'49"W	8.92	C
C213	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28	C
C214	90°00'00"	20.00	31.42	20.00	N06°07'16"W	28.28	C
C215	25°38'42"	65.00	29.09	14.79	N53°56'37"W	28.85	C
C216	25°38'42"	85.00	38.05	19.35	S63°56'37"E	37.73	C
C217	90°00'00"	20.00	31.42	20.00	S83°52'44"W	28.28	C
C220	22°09'44"	92.00	35.59	18.02	N62°12'08"W	35.36	C
C221	19°18'49"	108.00	34.52	17.41	S64°07'36"E	34.37	C
C222	20°12'41"	92.00	32.45	16.40	N61°13'37"W	32.29	C
C223	18°38'23"	108.00	35.14	17.72	N60°26'28"W	34.98	C
C224	22°09'44"	92.00	35.59	18.02	S62°12'08"E	35.36	C
C225	22°09'44"	108.00	41.77	21.15	N62°12'08"W	41.51	C
C226	30°00'00"	108.00	56.55	28.94	N53°52'44"E	55.90	C
C227	30°00'00"	92.00	48.17	24.65	N53°52'44"E	47.62	C
C228	10°01'19"	92.00	16.09	8.07	N46°06'37"W	16.07	C

MAT

## CURVE TABLE

BE	DELTA	RADIUS	LENGTH	TANGENT	CHORD DIRECTION	CHORD LENGTH
229	64°34'31"	92.00	103.69	58.13	N83°24'31"W	98.29
230	48°35'13"	108.00	91.58	48.75	N75°24'50"W	88.86
231	15°51'09"	108.00	29.88	15.04	N43°11'41"W	29.79
232	1°23'57"	1446.12	35.32	17.66	S29°58'12"E	35.32
233	5°54'53"	255.00	26.32	13.17	S26°18'47"E	26.31
234	20°11'21"	46.57	16.41	8.29	S56°43'01"E	16.32

## DRAINAGE- ASEMENT



**INSET "A"**

**FINAL PLAT**

# SOUTHERN HILLS PLAZA

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

**PREPARED BY:**

**VIA** WIER & ASSOCIATES, INC.

## ENGINEERS SURVEYORS LAND PLANNERS

**ENGINEERS** CONSULTING  
SINCE 1980 481 WILLOW TEXAS 75018 METRO (512) 467-7700

WYOMING POWER CO. 21A/287-8000

12721 5th STREET, LOS ANGELES, CA 90004 (213) 477-1700

**OWNER:**

GRANDANT SOUTHERN HILLS

MANI DOORS LTD.  
BABTYES LTD.

FACE, BENT TREE FOREST CIRCLE

DATE 10/25/2025

DALLAS, TEXAS 75248

(972) 980-8806

SHEET 2 OF 3

Filed For Record in:

FILED FOR RECORDING  
DENTON COUNTY, TX  
CYNTHIA MITCHELL  
COUNTY CLERK

09 Apr 24 2002

At 9:17am

Receipt #: 23283

**Recording:** 103.00

Doc/Agmt : 2002-00051490  
Doc/Num : 06-00

Doc/Type : PLA

**Deputy - Felicia**

5097 02819

EXHIBIT A

OWNER'S CERTIFICATE

WHEREAS, QUADRANT SOUTHERN HILLS PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, ACTING BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENTS, ARE THE SOLE OWNERS OF A 12.712 ACRE TRACT OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING 12.712 ACRES OF LAND LOCATED IN THE J. WHITE SURVEY, ABSTRACT No. 1433 AND THE D. LAMBERT SURVEY, ABSTRACT No. 784, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO EPIC DEVELOPMENT, INC. AS RECORDED IN VOLUME 3245, PAGE 699 OF THE DEED RECORDS OF DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E (A 300-FOOT RIGHT-OF-WAY) AND THE NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY),

THENCE ALONG THE SAID NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY No. 35E AS FOLLOWS:

N 51°04'00" W, 450.92 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A CURVE TO THE RIGHT,

NORTHWESTERLY, 87.34 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 11,309.20 FEET, A CENTRAL ANGLE OF 00°26'33" AND A CHORD BEARING N 50°50'44" E, 87.34 FEET TO A 1/2" IRON ROD FOUND,

NOW, THEREFORE, KNOW ALL MEN

THAT, QUADRANT SOUTHERN LIMITED PARTNERSHIP, BY AND THROUGH ITS DULY AUTHORIZED AGENT, DO DESIGNATING THE HEREINABOVE DES HILLS PLAZA, AN ADDITION TO HILLS COUNTY, TEXAS AND DO HEREBY DE RIGHTS-OF-WAY AND EASEMENTS S CERTIFY THAT THIS PLAT DOES NO DEED RESTRICTIONS OR COVENANTS,

WITNESS MY HAND AT DALLAS, DA 5th DAY OF 1984  
QUADRANT SOUTHERN HILLS PARTNERSHIP

DON SILVE

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, THE UNDERSIGNED PERSONALLY APPEARED DON SILVE QUADRANT SOUTHERN HILLS PARTNERSHIP, KNOWN TO ME TO SUBSCRIBED TO THE ABOVE AND ACKNOWLEDGED TO ME THAT HE PURPOSES AND CONSIDERATIONS E THEREIN STATED AND AS THE ACT

5097 02820

CAB u. 89 359

Y THESE PRESENTS:

ILLS PARTNERS, LTD., A TEXAS  
UGH THE UNDERSIGNED, THEIR  
HEREBY ADOPT THIS PLAT  
RIBED PROPERTY AS SOUTHERN  
E CITY OF DENTON, DENTON  
KATE TO THE PUBLIC'S USE THE  
OWN THEREON AND DO FURTHER  
T ALTER OR REMOVE EXISTING  
IN ANY, ON THIS PROPERTY.

LAS COUNTY, TEXAS THIS THE  
---, 2002.

ERS, LTD., A TEXAS LIMITED

*[Signature]*  
RMAN, AGENT

D AUTHORITY, ON THIS DAY  
RMAN, AUTHORIZED AGENT FOR  
ERS, LTD., A TEXAS LIMITED  
THE PERSON WHOSE NAME IS  
FOREGOING INSTRUMENT, AND  
EXECUTED THE SAME FOR THE  
PRESSED AND IN THE CAPACITY  
AND DEED OF SAID CORPORATION.

CERTIFICATE OF APPROVAL

APPROVED THIS 24 DAY OF January, 2002  
BY THE PLANNING AND ZONING COMMISSION OF THE  
CITY OF DENTON, TEXAS.

DATE:

*[Signature]*  
CHAIRMAN

DATE:

*[Signature]*  
CITY SECRETARY



N 49°20'35"W, 128.12 FEET TO A 1/2" IRON ROD FOUND AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT,

NORTHWESTERLY, 76.33 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,299.20, A CENTRAL ANGLE OF 00°23'13" AND A CHORD BEARING N 47°46'26"E, 76.33 FEET TO A 1/2" IRON ROD FOUND,

THENCE N 49°13'09"E, 253.10 FEET TO A 5/8" IRON ROD FOUND,

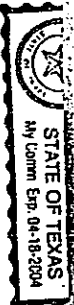
THENCE N 77°41'14"E, 659.93 FEET TO A 1/2" IRON ROD FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT BOULEVARD) AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT,

THENCE SOUTHEASTERLY, 501.86 FEET ALONG THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD AND ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 19°58'06" AND A CHORD BEARING S 35°55'18"E, 499.33 FEET TO A 1/2" IRON ROD FOUND AT THE INTERSECTION OF THE SAID SOUTHWEST RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (AN 80-FOOT RIGHT-OF-WAY) AND THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD (AN 80-FOOT RIGHT-OF-WAY) AT THE BEGINNING OF ANOTHER NON-TANGENT CURVE TO THE LEFT,

THENCE ALONG THE SAID NORTHWEST RIGHT-OF-WAY LINE OF BRINKER ROAD AS FOLLOWS:

SOUTHWESTERLY, 200.79 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2,040.20 FEET, A CENTRAL ANGLE OF 05°38'19" AND A CHORD BEARING S 41°41'54"W, 200.70 FEET TO A 1/2" IRON ROD FOUND,

S 38°52'44"W, 454.35 FEET TO THE PLACE OF BEGINNING, CONTAINING 12.712 ACRES, (553,740 SQUARE FEET) OF LAND.



NOTARY PUBLIC COMMISSION B

SURVEYOR'S STA

THAT I, ULYS LANE III, A REGISTERED SURVEYOR OF THE STATE OF TEXAS, HAVE PREPARED THIS PLAT FROM AN AC SURVEY MADE BY ME OR UNDER MY SUPERVISION ON THE GROUND, AND THAT THIS PLAT IS IN ACCORDANCE WITH THE PLAT ACT OF THE CITY OF DENTON, TEXAS.



ULYS LANE III  
REGISTERED PROFESSIONAL  
STATE OF TEXAS

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED, NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE OF TEXAS, APPEARED ULYS LANE III, KNOWN TO ME BY HIS NAME AND ACKNOWLEDGED TO ME THAT HE HAS SIGNED AND ACKNOWLEDGED TO ME THAT CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 14th DAY OF April, 2004.



ERIN MERKEL  
NOTARY PUBLIC  
STATE OF TEXAS  
NOTARY PUBLIC

IC OF THE STATE OF TEXAS  
XPIRES: 2/19/04

TEMENT

SISTERED PROFESSIONAL LAND  
IAS, DO HEREBY CERTIFY THAT I  
TUAL SURVEY OF LAND, AND THAT  
HEREON SHALL BE PROPERLY-MARKED  
PLAT CORRECTLY REPRESENTS THAT  
DIRECTION AND SUPERVISION AND  
TING RULES AND REGULATIONS OF

ROFESSIONAL LAND SURVEYOR  
(AS No. 2411)

ID-AUTHORITY, A NOTARY PUBLIC  
IATE, ON THIS DAY PERSONALLY  
TO ME TO BE THE PERSON AND  
D TO THE FOREGOING INSTRUMENT  
HE EXECUTED THE SAME FOR THE  
HEREIN EXPRESSED AND IN THE

SEAL OF OFFICE THIS THE  
2002.



C. STATE OF TEXAS  
XPIRES: 4/18/04

5097 02822

FINAL PLAT  
**SOUTHERN HILLS  
PLAZA**

AN ADDITION TO THE CITY OF DENTON,  
DENTON COUNTY, TEXAS, BEING 12.712 ACRES  
OF LAND LOCATED IN THE J. WHITE SURVEY,  
ABSTRACT No. 1433 AND D. LAMBERT SURVEY,  
ABSTRACT No. 784, CITY OF DENTON, DENTON  
COUNTY, TEXAS

PREPARED BY:  
**VIA WIER & ASSOCIATES, INC.**  
**ENGINEERS SURVEYORS LAND PLANNERS**  
4320 EDJWAY PLACE SUITE 130 ARLINGTON, TEXAS 76018 METRO (817) 467-7700  
8721 5th STREET FRSOCO, TEXAS 75034 METRO (214) 387-8000  
**OWNER:**

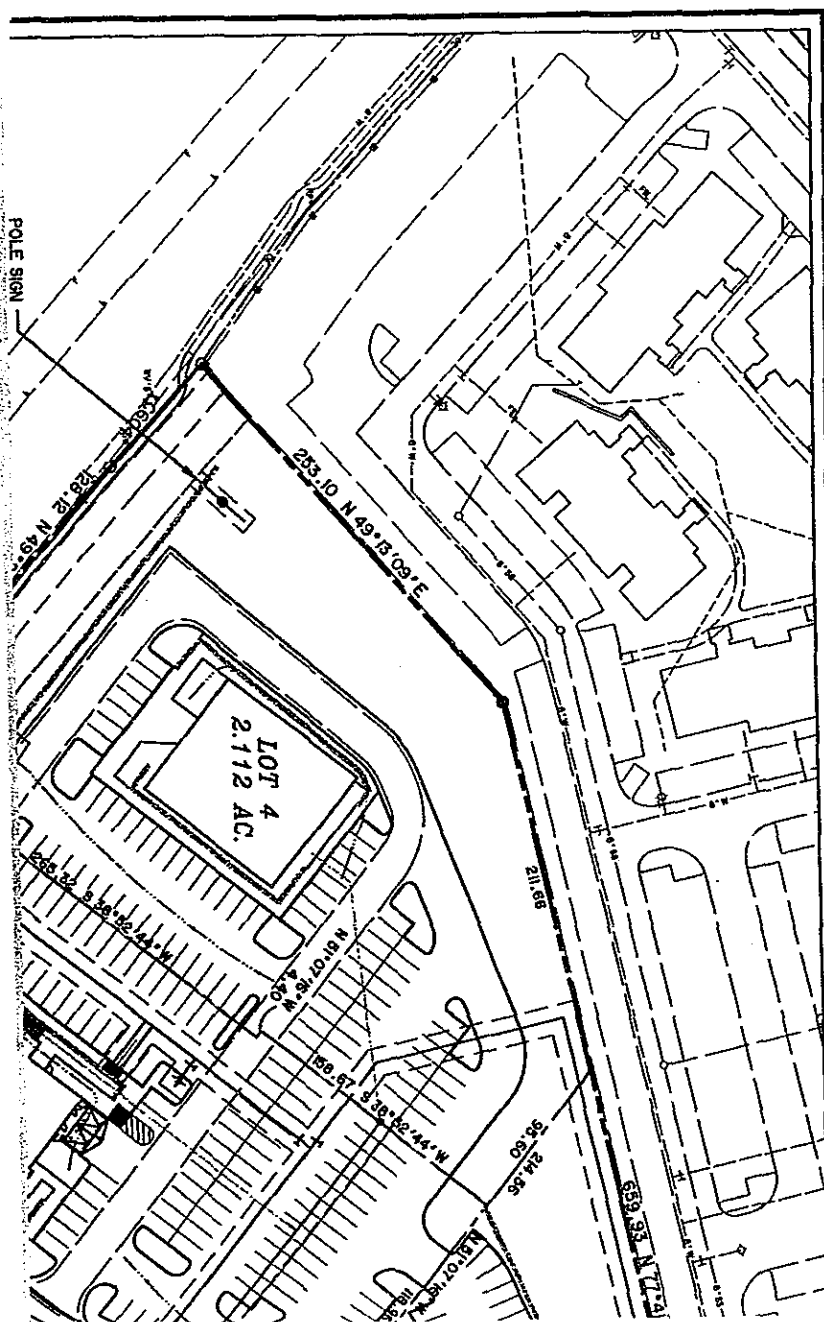
**QUADRANT SOUTHERN HILLS  
PARTNERS, LTD.**  
**15935 BENT TREE FOREST CIRCLE  
SUITE 2025  
DALLAS, TEXAS 75248  
(972) 980-8806  
SHEET 3 OF 3**

Filed for Record in:  
DENTON COUNTY, TX COUNTY CLERK  
CYNTHIA MITCHELL  
On Apr 24 2002  
at 9:17am  
Receipt #: 23203  
Recording: 108.00  
Doc/Inst: 6.00  
Doc/Inst: 2002-00051490  
Doc/Type: PLA  
Deputy: Felicia

5097 02823

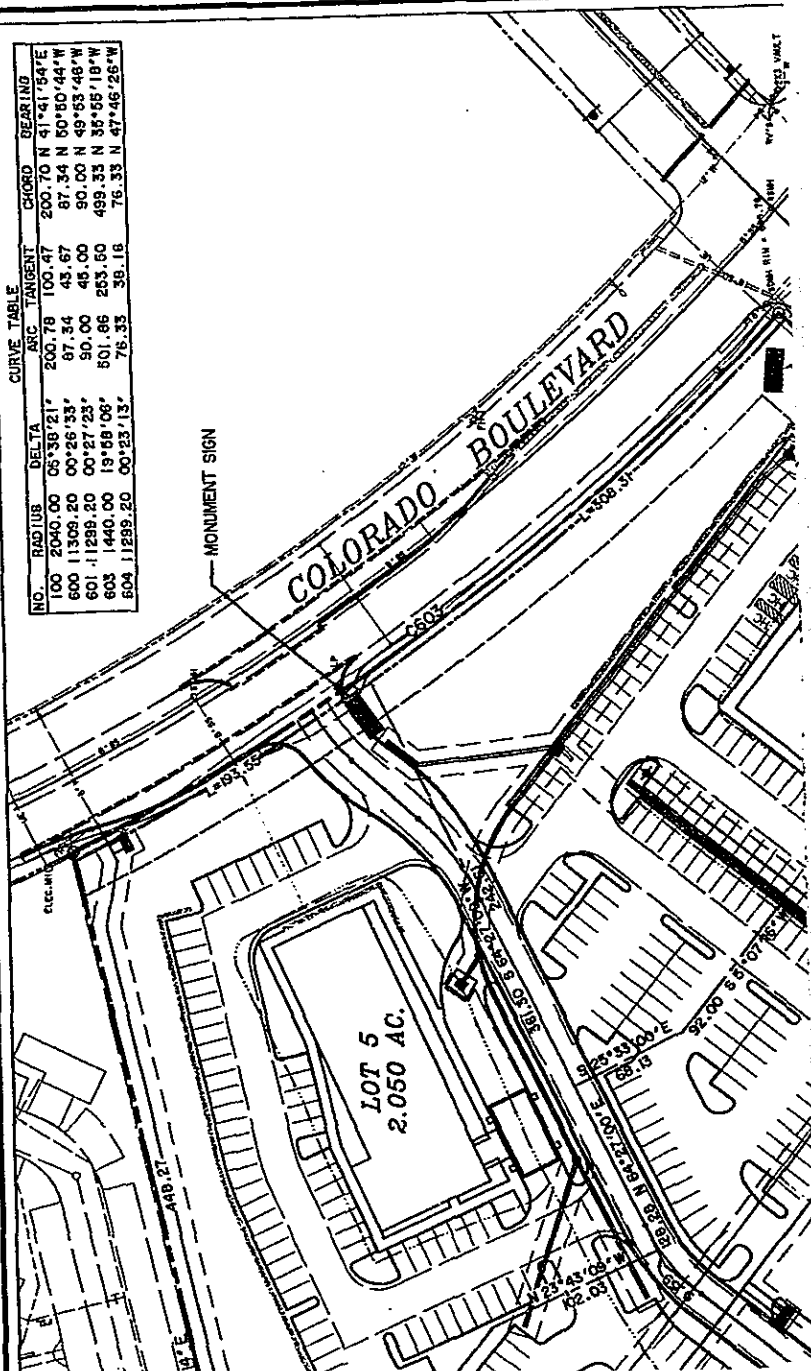
EXHIBIT B-1

SITE PLAN



**EXHIBIT B-1**

NO.	CURVE TABLE			CHORD		BEARING
	RADIUS	DELTA	ASC TANGENT	CHORD	BEARING	
100	2040.00	68°36'21"	200.78	109.47	200.70	N 41°41'54"E
200	1020.00	34°18'10"	100.39	54.73	100.35	N 50°50'44"W
300	680.00	22°52'06"	67.34	36.47	67.34	N 59°53'48"W
400	510.00	17°18'08"	50.00	27.53	50.00	N 69°53'48"W
500	408.00	13°52'06"	40.00	20.86	40.00	N 79°53'48"W
600	344.00	11°29'08"	33.16	16.50	33.16	N 89°53'48"W
700	300.00	10°00'00"	30.00	15.00	30.00	N 90°00'00"W
800	262.50	8°45'00"	26.25	13.12	26.25	N 90°00'00"W
900	231.00	7°36'00"	23.10	11.55	23.10	N 90°00'00"W
1000	204.00	6°36'21"	20.40	10.20	20.40	N 90°00'00"W

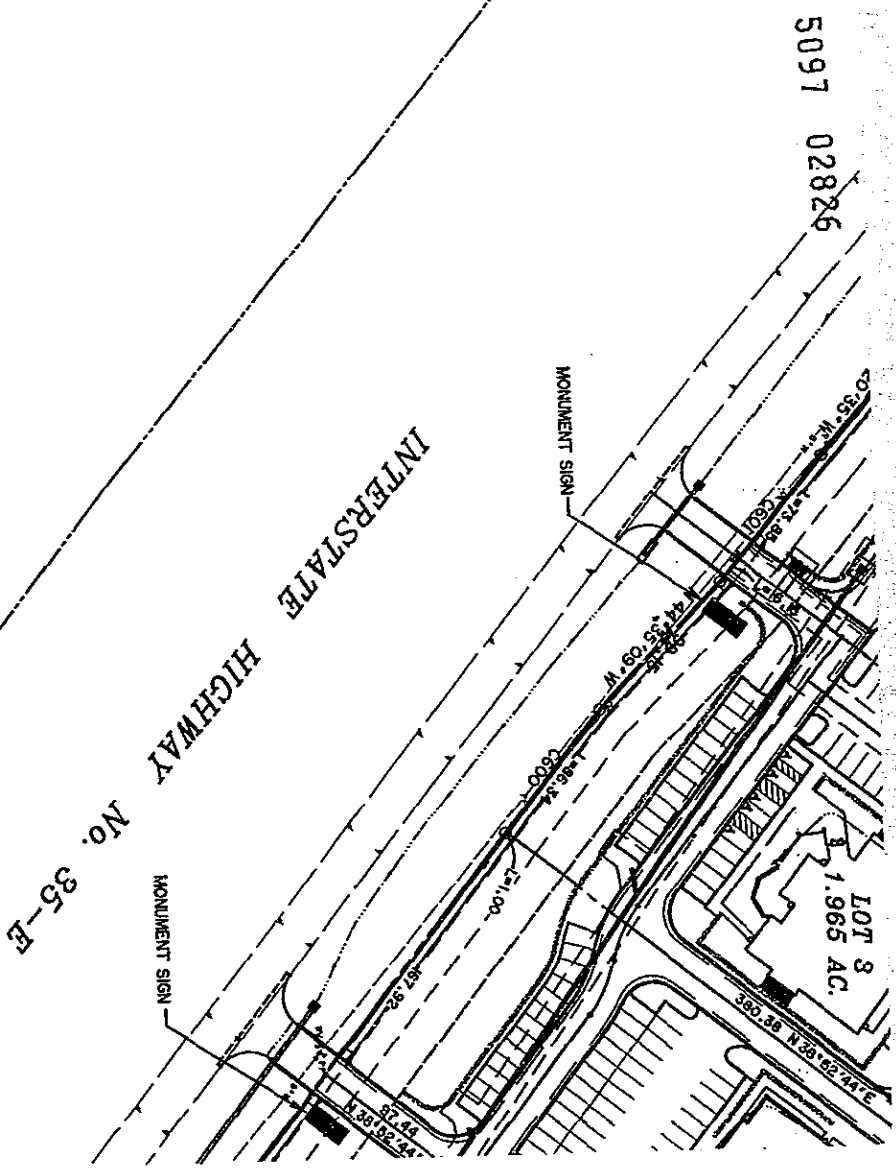


**WILSON**  
PREPARED BY:  
**WILSON ENGINEERS SURVEYORS LAND PLANNERS**  
4500 BELLEVUE PLACE SUITE 120 PLANTATION, TEXAS 77058 METRO (817) 467-7700  
8721 54th STREET FRISCO, TEXAS METRO (214) 587-8500

**IMDC**  
MARGAUX DEVELOPMENT COMPANY

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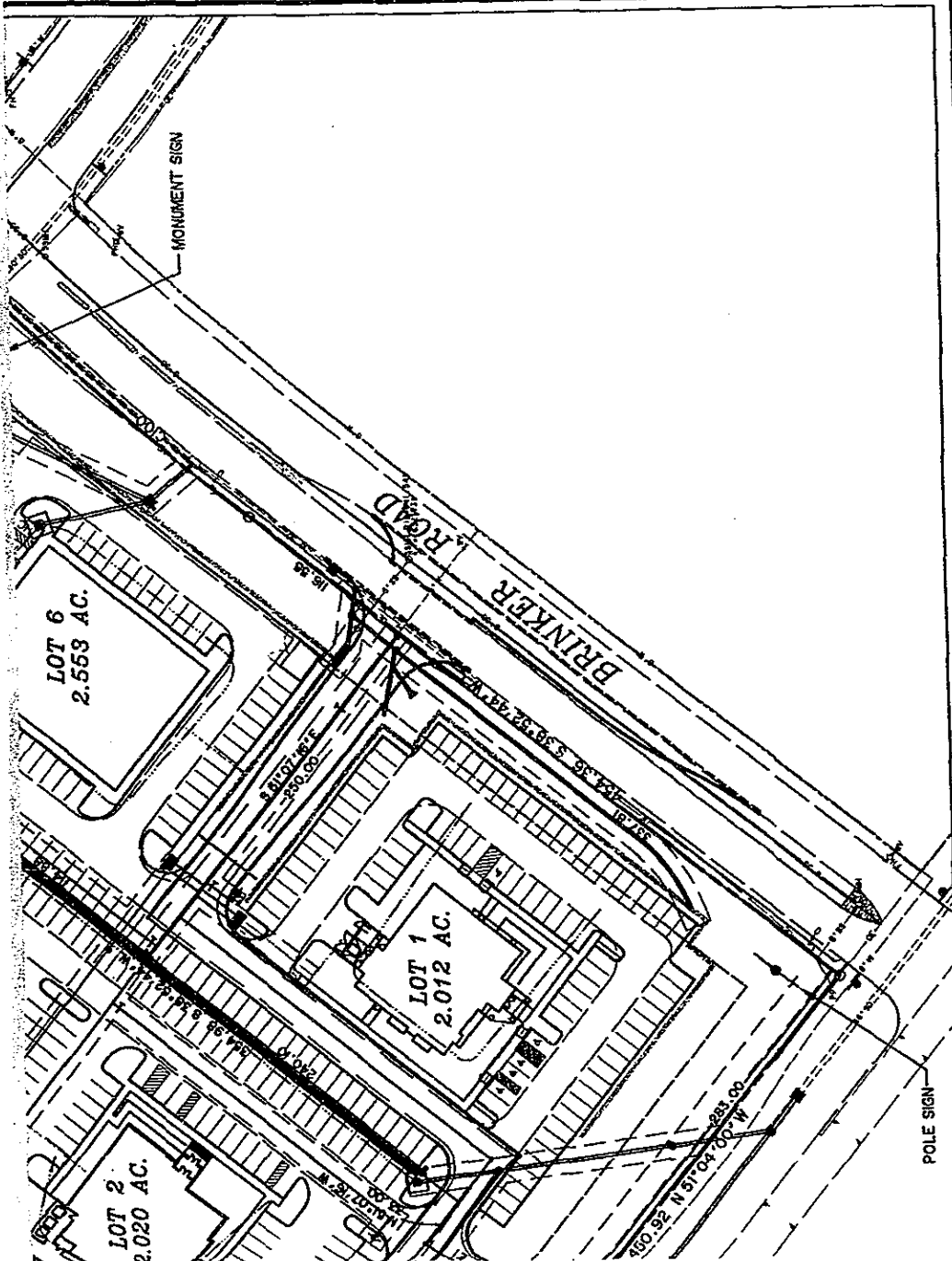
5097 02827

SITE PLAN

SOUTHERN HILLS PLAZA  
CITY OF DENTON, DENTON COUNTY, TEXAS

COPYRIGHT ©  
WELLS ASSOCIATES, INC.  
LAST SHEET FOR  
DATA 2023  
MAR 2023

SHEET NO.  
1 of 1

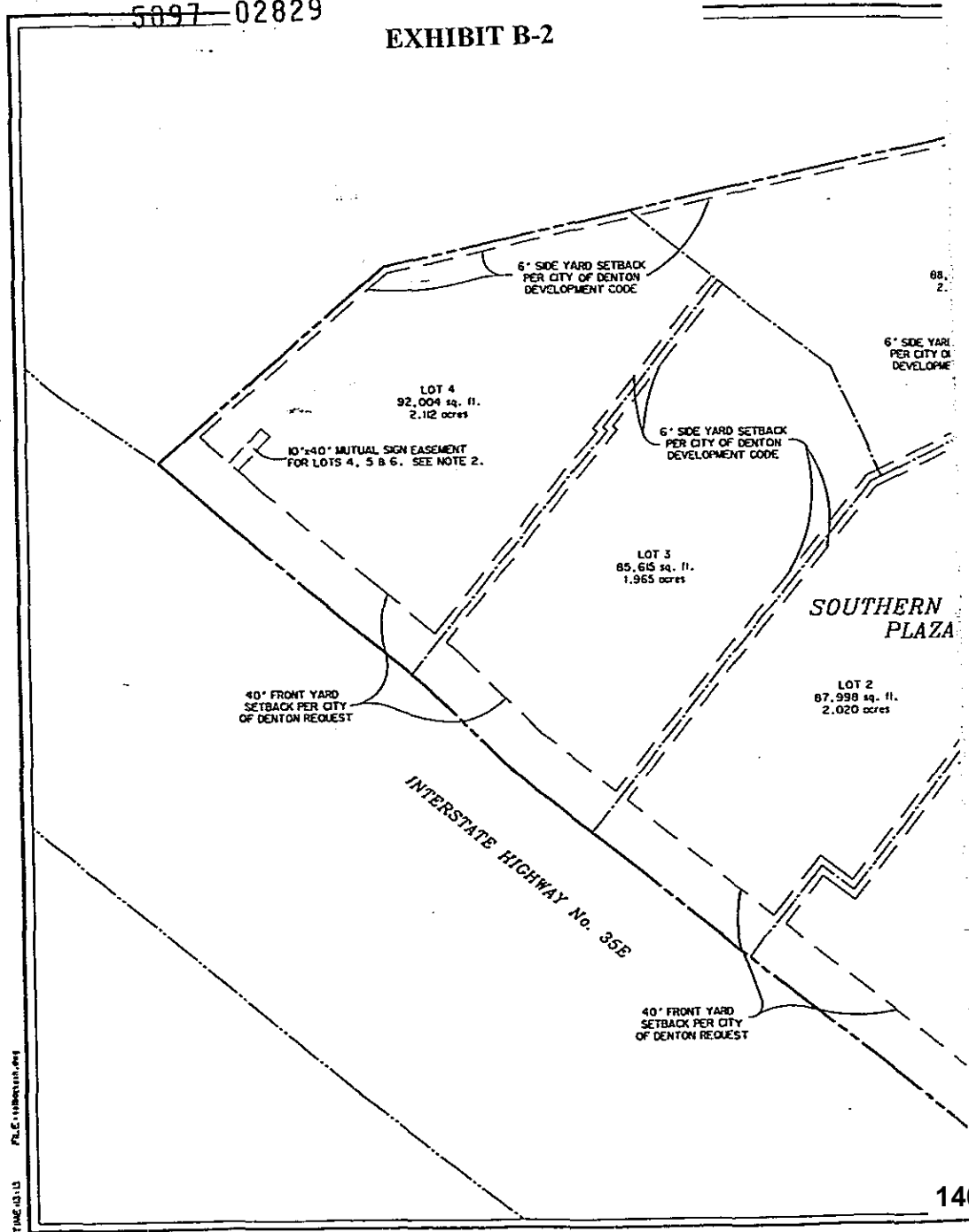


5097 02828

EXHIBIT B-2  
BUILDING SETBACKS

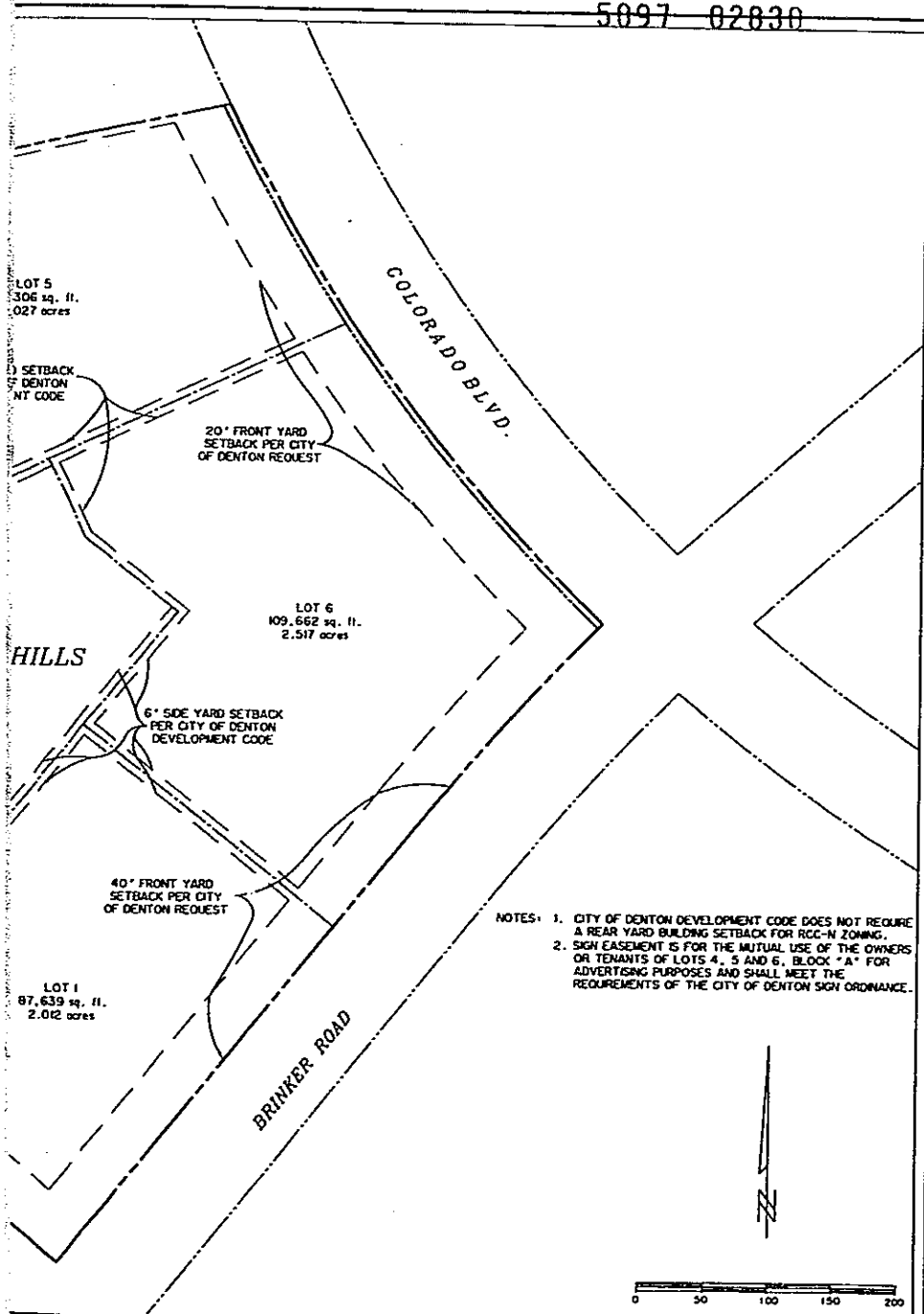
5097-02829

EXHIBIT B-2



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TIME 03:13

5097 02830



PREPARED BY  
**WIA WIER & ASSOCIATES, INC.**  
ENGINEERS SURVEYORS LAND PLANNERS  
433 BEYOND PLACE SUITE 120 AMARCO, TEX 79018 MTRD (817)447-7700  
8721 5TH STREET FMSD00, TEXAS METRO (214)307-8000



SOUTHERN HILLS PLAZA  
CITY OF DENTON, DENTON COUNTY, TEXAS  
EXHIBIT SHOWING BUILDING SETBACKS

FOR RECORD  
FILED  
DATE RECORDED  
BY  
SHEET NO. 1407  
1 OF 1

5097 02831

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK

On May 31 2002  
At 3:54pm

Receipt #: 30951  
Recording: 87.00  
Doc/Mgt : 5.00  
Doc/Num : 2002-R0068097  
Doc/Type : AGR  
Deputy -ELIZABETH

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Denton County  
Cynthia Mitchell  
County Clerk  
Denton, Tx 76202



70 2007 00054692

Instrument Number: 2007-54692

Recorded On: May 09, 2007

As  
Plat

Parties: SOUTHERN HILLS PLAZA AMENDED

Billable Pages: 2

To

Number of Pages: 2

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Plat	86.00
<b>Total Recording:</b>	<b>86.00</b>

\*\*\*\*\* DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

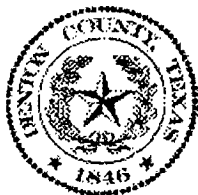
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2007-54692  
Receipt Number: 384752  
Recorded Date/Time: May 09, 2007 03:08:59P  
User / Station: J Morris - Cash Station 1

**Record and Return To:**

LODGESTAR INVESTMENTS LTD  
4255 BRYANT IRWIN RD STE 212  
FORT WORTH TX 76109



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*C Mitchell*

County Clerk  
Denton County, Texas



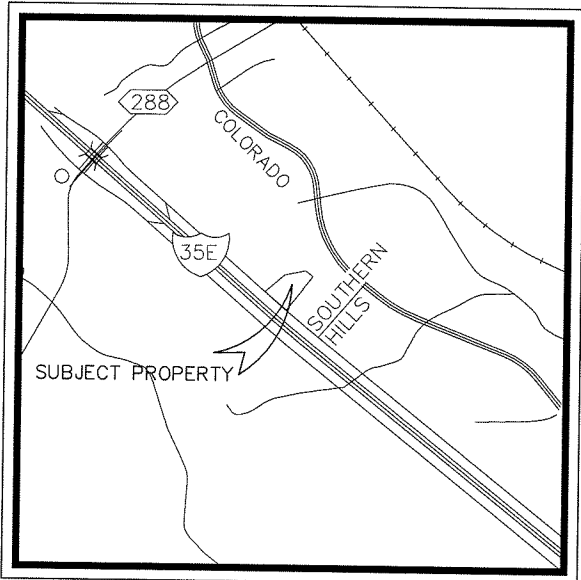
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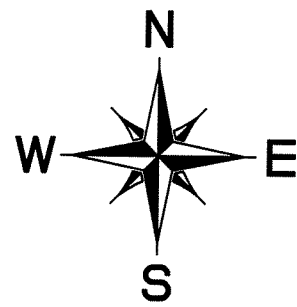
**Cynthia Mitchell**  
County Clerk

Date	5-9-07
Cabinet	X
Page	691, 692
Addition	Southern Hills Plaza Amended
Developer	Golden Hotels
City	Denton
Filing Fee	86 <sup>00</sup>
Comments/ Clerk Initials	Jon

Area Map: (Yes or No



LOCATION MAP  
NOT-TO-SCALE



GRAPHIC SCALE

( IN FEET )  
1 inch = 50 ft.

LINE TABLE			
LINE	LENGTH	BEARING	
L1	96.94	N40°39'25"E	
L2	159.77	S49°13'09"W	
L3	3.56	S51°07'16"E	
L4	36.17	S38°52'44"W	
L5	124.07	S49°13'09"W	
L6	96.19	S40°39'25"W	
L7	118.25	N77°41'14"E	
L8	16.00	S12°18'46"E	
L9	112.61	S77°41'14"W	
L10	3.97	S38°52'44"W	
L11	130.14	S51°07'16"E	
L12	17.50	S38°52'44"W	
L13	16.00	N51°07'16"W	
L14	1.50	N38°52'44"E	
L15	114.14	N51°07'16"W	
L16	28.00	S38°52'44"W	
L17	16.00	N51°07'16"W	
L18	53.61	N38°52'44"E	
L19	55.35	S38°52'44"W	
L20	26.69	N12°18'46"W	
L21	7.65	N77°41'14"E	
L22	32.66	N38°52'44"E	
L23	16.00	S51°07'16"E	
L24	40.00	N42°10'04"E	
L25	10.00	S47°49'56"E	
L26	39.76	S42°10'04"W	
L27	54.83	S52°26'00"E	
L28	101.08	S48°04'00"E	
L29	120.51	S47°42'00"E	
L30	24.16	N38°52'44"E	
L31	16.07	N51°07'16"W	
L32	16.00	N38°52'44"E	
L33	16.00	S51°07'16"E	
L34	39.68	N38°52'44"E	
L35	11.99	S51°07'16"E	
L36	52.75	N53°36'43"W	
L37	16.02	N38°52'44"E	
L38	52.75	S53°36'43"E	
L39	6.80	S51°07'16"E	
L40	59.09	N51°07'16"W	
L41	16.00	N38°52'44"E	
L42	59.09	S51°07'16"E	
L43	26.51	N51°07'16"W	
L44	86.15	N12°18'46"W	
L45	80.51	S12°18'46"E	
L46	18.08	S51°07'16"E	
L47	20.50	N38°52'44"E	
L48	2.79	S51°07'16"E	
L49	83.22	N38°52'44"E	
L50	11.58	N49°13'09"E	
L51	26.00	S51°07'16"E	
L52	11.67	N38°52'44"E	
L53	10.00	N49°13'09"E	

CURVE TABLE					
CURVE	DELTA	RADIUS	LENGTH	CHORD	BEARING
C1	0°02'25"	11298.38	7.94	N48°59'19"W	7.94
C2	0°01'14"	11298.38	4.06	N49°01'09"W	4.06

LEGEND	
IRFC	IRON ROD FOUND, CAPPED
IRF	IRON ROD FOUND
IRS	IRON ROD SET
CM	CONTROL MONUMENT

NOTE:

Bearings based upon the northeast line of Lot 4, Block 1 of Southern Hills Plaza as recorded in Cabinet U, Page 556, Plat Records of Denton County, Texas, said bearing being North 51°07'16" West.

The purpose of this amending plat is to abandon part of a utility easement, add a 10' gas line and (2) 16' public utility easements to service the lot.

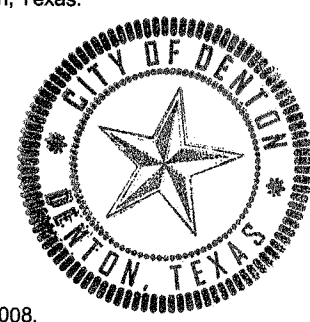
PLACE OF BEGINNING lies approximately south 2060± and east 80± from the northwest corner of the J. White Survey, Abstract No. 1433.

Approved this 18 day of October, 2008, A.D. by the Development Review Committee of the City of Denton, Texas.

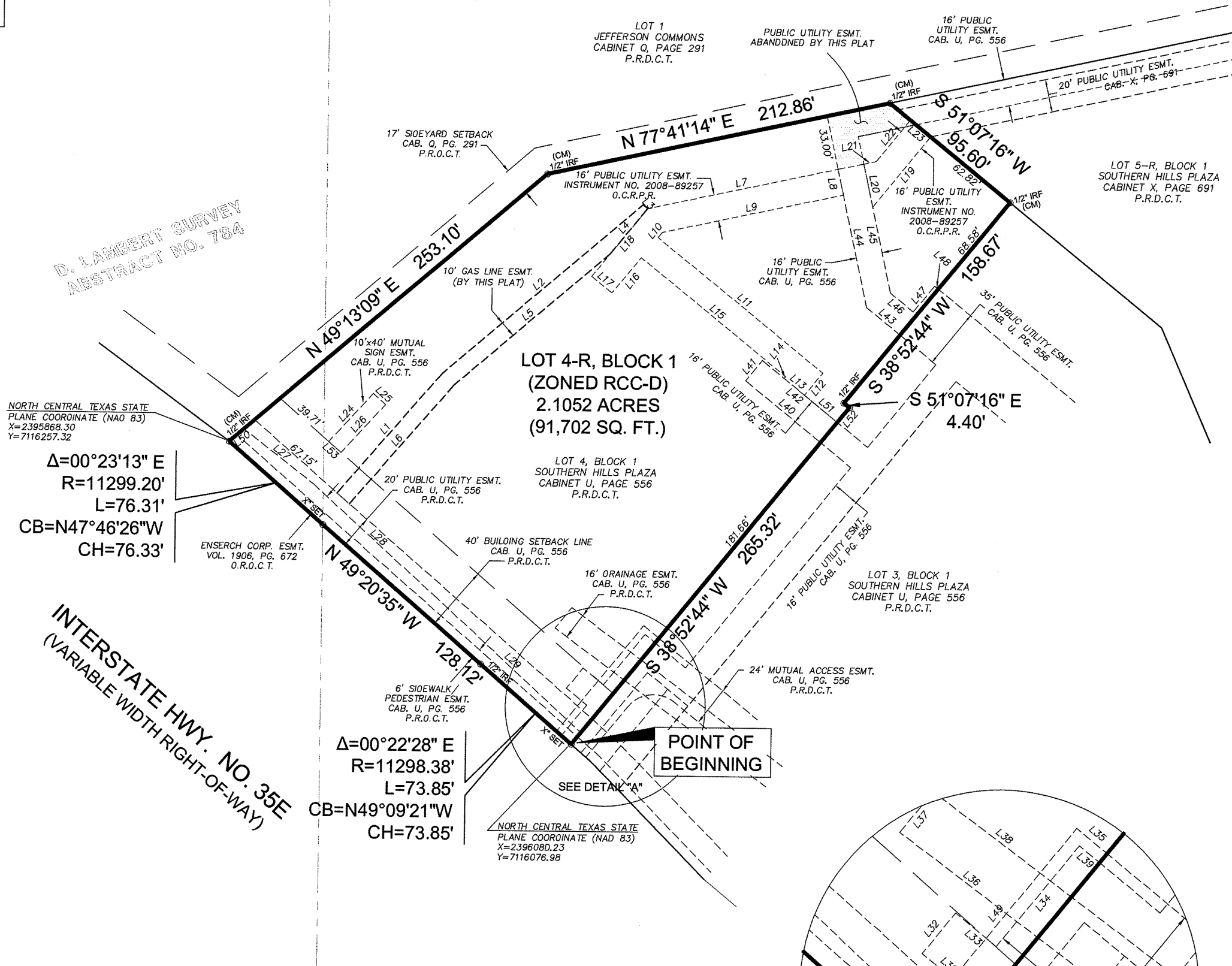
CERTIFICATE OF APPROVAL

Chairperson  
Development Review Committee

Witness my hand on this 21st day of Oct, 2008.



J. WHITE SURVEY  
ABSTRACT NO. 1433



Dedication Statement

WHEREAS DARDEN SW, LLC, is the sole owner of at certain tract, parcel or lot of land out of the J. White Survey, Abstract No. 1433, City of Denton, Denton County, Texas, and being all of Lot 4, Block 1 of SOUTHERN HILLS PLAZA, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet V, Page 556 of the Plat Records of Denton County, Texas, and being all of the certain Lot, tract of land described in deed to GMRI Texas L.P., a Texas limited partnership, recorded under Instrument No. 2004-63013 of the Deed Records of Denton County, Texas.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That I, DARDEN SW, LLC, Owner, do hereby bind myself and my heirs, assignees and successors of title this plat designating the herein above described property as LOT 4-R, BLOCK 1 of SOUTHERN HILLS PLAZA, an addition to the City of Denton, Denton County, Texas and do hereby dedicate to the public use forever the streets, alleys, and right-of-way easements shown thereon, and so hereby reserve the easement strips shown on this plat for the mutual use and accommodation of garbage collection agencies and all public utilities desiring to use or using same. Any public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs, or other improvements or growths that in any way endanger or interfere with the construction, maintenance efficiency of its respective systems on any of these easement strips, and any public utility shall at all times have the right of ingress and egress to and from upon the said easement strips for the purpose of constructing, reconstructing, inspecting, patrolling, without the necessity at any time of procuring the permission of anyone.

Witness our hands at ORLANDO, FL, this 10 day of October, 2008.

DARDEN SW, LLC, a Florida limited liability company

BY: GMRI, Inc., a Florida corporation,  
Managing Member

BY: *[Signature]*  
NAME: Briggs Sellers  
TITLE: Vice President

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 10 day of October, 2008 by Briggs Sellers as the Vice President of GMRI, Inc., a Florida corporation, Managing Member of Darden SW LLC, a Florida limited liability company, on behalf of said entities. Said person is personally known.

*[Signature]*  
Notary Public  
State of Florida  
Commission Expires:

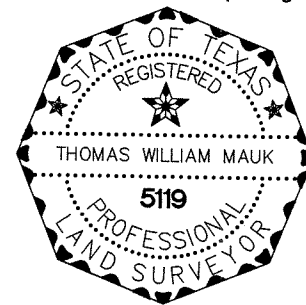
NOTARY PUBLIC-STATE OF FLORIDA  
Dennise Bradford  
Commission # DD581105  
Expires: SEP. 12, 2010  
BONDED THRU ATLANTIC BONDING CO., INC.

SURVEYORS CERTIFICATION

KNOW ALL MEN BY THESE PRESENTS:

I, Thomas W. Mauk, R.P.L.S., do hereby declare that this plat was prepared from an actual survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision in accordance with the platting rules and regulations of the City of Denton, Texas.

*[Signature]*  
Thomas W. Mauk  
Registered Professional Land Surveyor #5119  
KIMLEY-HORN AND ASSOCIATES, INC.  
12700 Park Central Drive, Suite 1800, Dallas, Texas 75251  
(972) 770-1300



STATE OF TEXAS \*  
COUNTY OF DALLAS \*

BEFORE ME, the undersigned authority, on this day personally appeared Thomas W. Mauk, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this 13th day of October, 2008.

NOTARY PUBLIC for the STATE OF TEXAS

REBECCA ANN PARSONS  
Notary Public, State of Texas  
My Commission Expires  
October 26, 2011

AMENDING PLAT  
FOR

AFP08-0020  
SOUTHERN HILLS PLAZA  
LOT 4-R, BLOCK 1  
2.1052 ACRES

AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS  
AND BEING ALL OF LOT 4, BLOCK 1,  
SOUTHERN HILLS PLAZA, AN ADDITION  
TO THE CITY OF DENTON, DENTON COUNTY, TEXAS  
ACCORDING TO THE PLAT THEREOF  
RECORDED IN CABINET U, PAGE 556 OF THE  
PLAT RECORDS OF DENTON COUNTY, TEXAS



Kimley-Horn  
and Associates, Inc.

12700 Park Central Drive, Suite 1800  
Dallas, Texas 75251  
Contact: Thomas W. Mauk  
Tel. No. 972-770-1300  
Fax No. 972-770-1300  
Contact: Jack DeGagne

This plat filed in Cabinet \_\_\_\_\_, Page \_\_\_\_\_, P.R.D.C.T., Dated: July 22, 2008  
CITY FILE NO. ( ) SHEET 1 of 1

Filed for Record in:  
Denton County  
On: Jan 06, 2009 at 02:46P  
As a  
Plat  
SOUTHERN HILLS PLAZA  
Doc Number: 2009-  
No of Pages: 1  
Amount 50.00  
Receipt Number - 547488  
By:  
Daina Fobney

DATE 01/05/2009

## TAX CERTIFICATE

# 080464

KP

STEVE MOSSMAN, DENTON CO.  
P O BOX 90223  
DENTON, TX 76202  
(940) 349-3500

FEE 10.00

\*\*\*\*\*  
\* PROPERTY DESCRIPTION ACCT # 243012DEN \*  
\* SOUTHERN HILLS PLAZA BLK 1 LOT 4 \*  
\* TOWN - LOCATION- I35E \*  
\* ACRES - 2.112 \*  
\* LAND MKT VALUE 1104048 IMPR/PERS MKT VALUE \*  
\* LAND AGR VALUE MKT. BEFORE EXEMPTS 1104048 \*  
\* LIMITED TXBL. VALUE \*  
\* EXEMPTIONS GRANTED: NONE \*  
\*\*\*\*\*

GMRI TEXAS LP  
DBA GMR 5919 - CORP TAX  
PO BOX 593330

ORLANDO

FL 32859-3330

I, STEVE MOSSMAN, Tax Assessor/Collector for Denton County do hereby certify and otherwise guarantee that the tax levies, penalties, and attorney fees due in the current month for the above described property are as listed below. \*Taxes for 2009 have not been calculated.\*

	LEVY	P & I	ATTY FEES	AMT DUE
TAXES 2008	.00	.00	.00	.00
	.00	.00	.00	.00
				=====
				.00
ACCT # 243012DEN				.00
				TOTAL DUE 01/2009
				TOTAL DUE 02/2009
				.00
				.00

\*\*\*\*\*  
\* BREAKDOWN OF TAX DUE BY JURISDICTION \*  
\* JURISDICTION TAXES PEN & INT ATTY FEES TOTAL \*  
\* DENTON COUNTY .00 .00 .00 .00 \*  
\* DENTON IND SCH DI .00 .00 .00 .00 \*  
\* CITY OF DENTON .00 .00 .00 .00 \*  
\* (CERTIFICATE MAY NOT INCLUDE ALL TAXING JURISDICTIONS) \*  
\*\*\*\*\*  
TAX LEVY FOR THE CURRENT ROLL YEAR: 061 2,603.01  
TAX LEVY FOR THE CURRENT ROLL YEAR: S05 16,450.32  
TAX LEVY FOR THE CURRENT ROLL YEAR: C05 7,358.70  
TOTAL TAX LEVY FOR THE CURRENT ROLL YEAR ..... 26,412.03

REQUESTED BY:  
KIMLEY HORN & ASSOC

SIGNATURE OF AUTHORIZED OFFICER OF COLLECTING OFFICE

Filed for Record in:  
Denton County  
On: Jan 06/2009 at 12:46P  
As a  
Plat  
SOUTHERN HILLS PLAZA  
Document Number:  
Number of Pages: 1  
Amount  
50.00  
Receipt Number - 547482  
By:  
Hilario Dunn  
1 NUMBER OF PAGES ATTACHED

Design  
901-A Texas  
Denton, Tx 76209

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the J. Worrall Survey, Abstract No. 1433 and the D. Lombard Survey, Abstract No. 784, City of Denton, Denton County, Texas, and being part of Lot 4-R, Block 1, Southern Hills Plaza Addition, an addition to the City of Denton, Texas according to the plat recorded in Document No. 2009-3 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a point in the northwest line of said Lot 4-R; from said point a 1/2-inch iron rod with cap stamped "WAI" found for the west corner of said Lot 4-R, and being in the northeast right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) bears South 48°50'07" West, a distance of 57.28 feet;

**THENCE** North 48°50'07" East, along the said northwest line of Lot 4-R, a distance of 20.19 feet to a point for corner;

**THENCE** departing the said northwest line of Lot 4-R, South 48°51'56" East, a distance of 66.25 feet to a point for corner;

**THENCE** South 46°42'57" East, a distance of 197.72 feet to a point for corner;

**THENCE** South 51°54'08" East, a distance of 1.37 feet to a point for corner in the southeast line of said Lot 4-R;

**THENCE** South 38°30'05" West, along the said southeast line of Lot 4-R, a distance of 20.01 feet to a point for corner; from said point an "X" cut in concrete found for a southwest corner of Lot 3, Block 1, Southern Hills Plaza Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume U, Page 556 of said Plat Records bears South 18°24'29" East, a distance of 47.75 feet;

**THENCE** departing the said southeast line of Lot 4-R, North 51°54'08" West, a distance of 2.14 feet to a point for corner;

**THENCE** North 46°42'57" West, a distance of 198.25 feet to a point for corner;

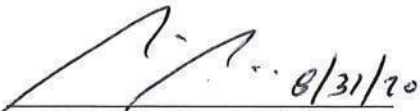
**THENCE** North 48°51'56" West, a distance of 68.58 feet to the **POINT OF BEGINNING** and containing 5,344 square feet or 0.1227 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

 8/31/20

MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
PART OF LOT 4-R, BLOCK 1  
SOUTHERN HILLS PLAZA ADDITION  
J. WORRALL SURVEY, ABSTRACT NO. 1433  
& D. LOMBARD SURVEY, ABSTRACT NO. 784  
CITY OF DENTON, DENTON COUNTY, TEXAS

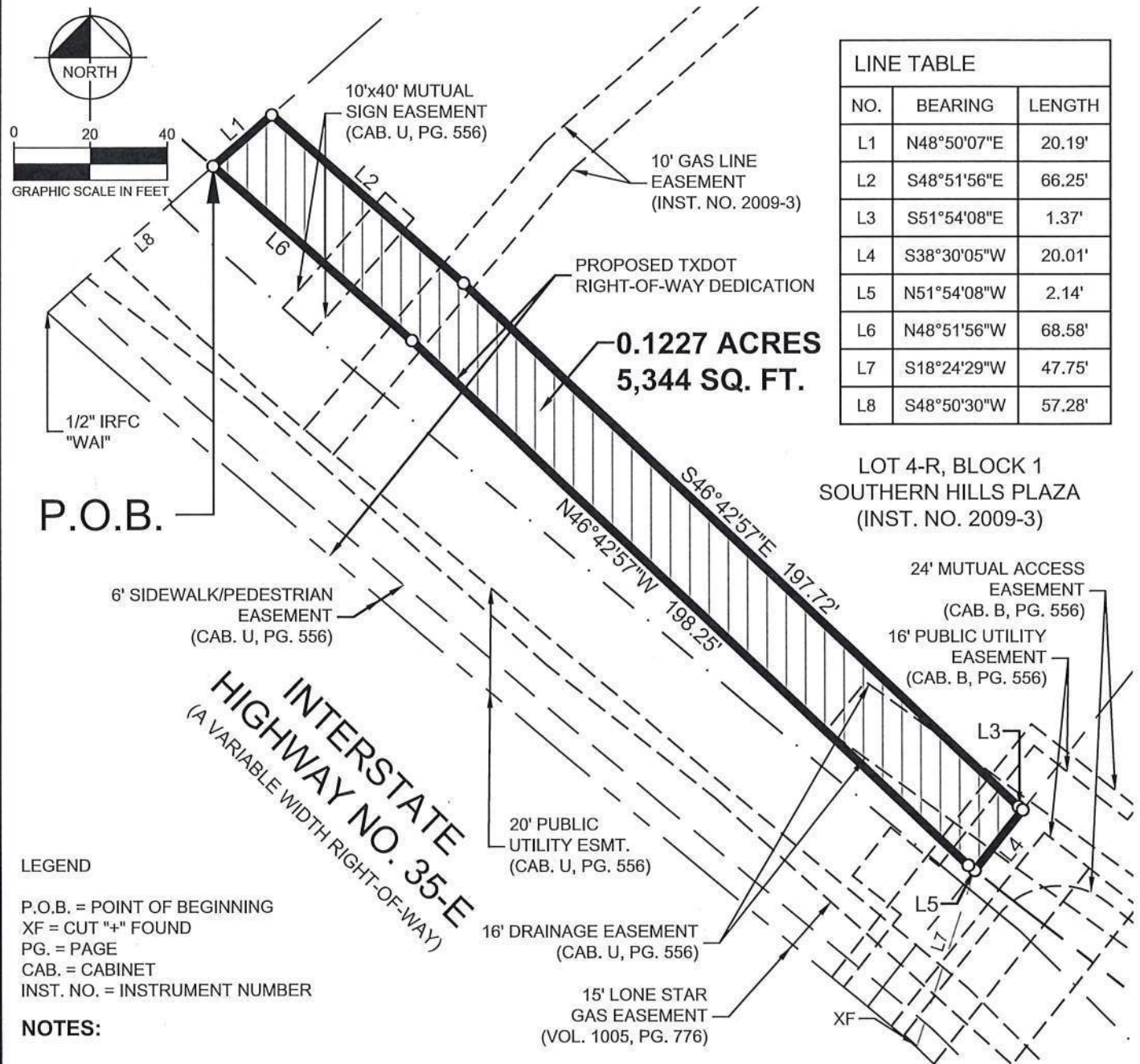
**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	8/25/2020	061024039	1 OF 2





*8/31/20*

**MICHAEL C. BILLINGSLEY**  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
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**WATER AND WASTEWATER EASEMENT  
 PART OF LOT 4-R, BLOCK 1  
 SOUTHERN HILLS PLAZA ADDITION  
 J. WORRALL SURVEY, ABSTRACT NO. 1433  
 & D. LOMBARD SURVEY, ABSTRACT NO. 784  
 CITY OF DENTON, DENTON COUNTY, TEXAS**

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	8/25/2020	061024039	2 OF 2

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 113**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

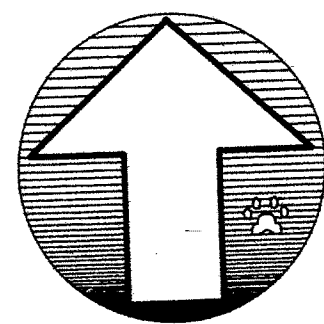
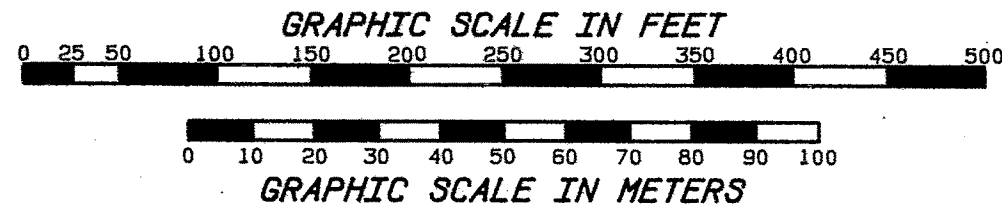
Utility Longitudinal Stations:  
Sta 1772+79 LT to Sta 1775+64 LT

Existing Easement

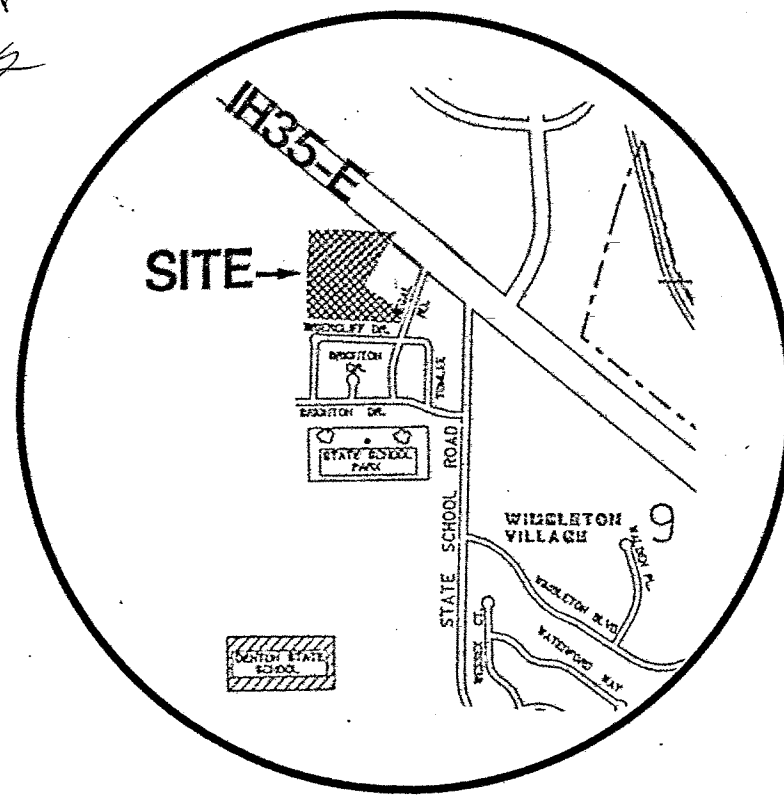
Volume. 571, Page 39

MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS





037457  
FILED FOR RECORD  
91 JUL 31 PM 2:54  
TIM HODGES  
COUNTY CLERK DENTON CO. TEX  
BY *[Signature]* DEPUTY



LOCATION MAP

DEDICATION  
PROPERTY DESCRIPTION

STATE OF TEXAS  
COUNTY OF DENTON

WHEREAS, Josten's, Inc. is the owner of that certain tract of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas:

Being all that certain 10.796 acre tract or parcel of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas, being part of a tract conveyed to Josten's, Inc. from T. L. Caruthers by deed recorded in Volume 571, Page 42 Deed Records, Denton County, Texas, said 10.740 acre tract being more particularly described as follows:

Beginning at a steel pin at a fence corner post at the northwest corner of said Josten's tract, same being the northwest corner of a certain tract deeded by Charles Runyon to T. L. Caruthers by deed recorded in Volume 514, Page 133, Deed Records, Denton County, Texas;

Thence South 86 degrees 00 minutes 00 seconds East a distance of 586.62 feet to a set half inch rebar on the southwest right-of-way of Interstate Highway 35 East, said point being South 49 degrees 55 minutes 52 seconds East 83.79 feet from the most northerly northeast corner of said Josten's tract;

Thence South 49 degrees 55 minutes 52 seconds East with said right-of-way a distance of 165.13 feet to a set half inch rebar for corner;

Thence South 52 degrees 37 minutes 00 seconds West, departing said right-of-way, a distance of 385.25 feet to a set half inch rebar for corner;

Thence South 52 degrees 30 minutes 00 seconds East a distance of 531.43 feet to a set half inch rebar in the northwest right-of-way of Regal Drive;

Thence South 20 degrees 09 minutes 00 seconds West with said right-of-way a distance of 70.00 feet to a set half inch rebar in the north line of Briercliff Estates, Section One, an addition to the City of Denton as shown by plat recorded in Volume 6, Page 45 Plat Records, Denton County, Texas, said rebar being the southeast corner of said Josten's tract, also being North 87 degrees 47 minutes 00 seconds West 0.98 feet from the northeast corner of Lot 1, Block 2 of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 247.29 feet to a found half inch rebar for corner;

Thence South 02 degrees 12 minutes 54 seconds West a distance of 10.14 feet to a set half inch rebar for an inner ell corner of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 589.63 feet to a set half inch rebar for the southwest corner of said Josten's tract, same being the northwest corner of Lot 10, Block 2, of said Briercliff Estates in the occupied west line of said Briercliff Estates;

Thence North 02 degrees 35 minutes 00 seconds East a distance of 748.88 feet to the Point of Beginning, containing in all 10.796 acres of land.

OWNER'S CERTIFICATE

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

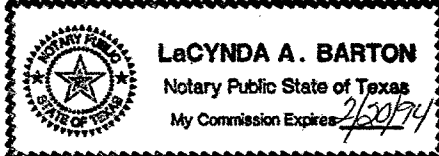
THAT, Josten's, Inc. does hereby adopt this plat designating the herein described property as Lot 2, Block A, Jostens Addition, an addition to the City of Denton, Denton County, Texas, and does hereby dedicate to the public use forever the streets and easements shown hereon.

*C. Denisho Coleman*  
C. Denisho Coleman  
Engineering Manager  
Josten's, Inc.

STATE OF TEXAS

Before me, the undersigned Notary Public for the State of Texas, on this day personally appeared C. Denisho Coleman known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and considerations therein expressed and in the capacity stated.

Given under my hand and seal of office this the 1st day of July, 1991.



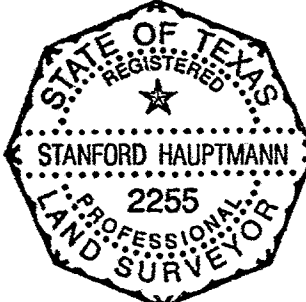
*LaCYNDA A. Barton*  
LaCYNDA A. Barton  
Notary Public for the State of Texas  
Commission expires 7/20/94

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Stanford Hauptmann, Registered Public Surveyor, do hereby certify that this plat and description was prepared from an actual and accurate survey of the land and that the iron pins shown hereon were found or placed under my personal supervision or direction in accordance with the law.

*Stanford Hauptmann* 07/06/91  
Stanford Hauptmann  
Texas Registered Professional  
Land Surveyor Number 2255



CERTIFICATE OF APPROVAL  
APPROVED THIS 26 DAY OF JUNE, A.D. 1991  
BY THE PLANNING AND ZONING COMMISSION  
OF THE CITY OF DENTON, TEXAS.  
*Eulene Brock*  
CHAIRMAN  
*Betty Williams*  
CITY SECRETARY

METROPLEX ENGINEERING CONSULTANTS  
ENGINEERING \* PLANNING \* SURVEYING  
1123 FORT WORTH DRIVE DENTON, TEXAS 76205  
(817) 383-1416 DALLAS 219-7948 FORT WORTH 329-3834

FINAL PLAT  
JOSTENS ADDITION  
LOT 2, BLOCK A  
BEING 10.796 ACRES IN THE  
M.E.P. & P.R.R. SURVEY, ABSTRACT NUMBER 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

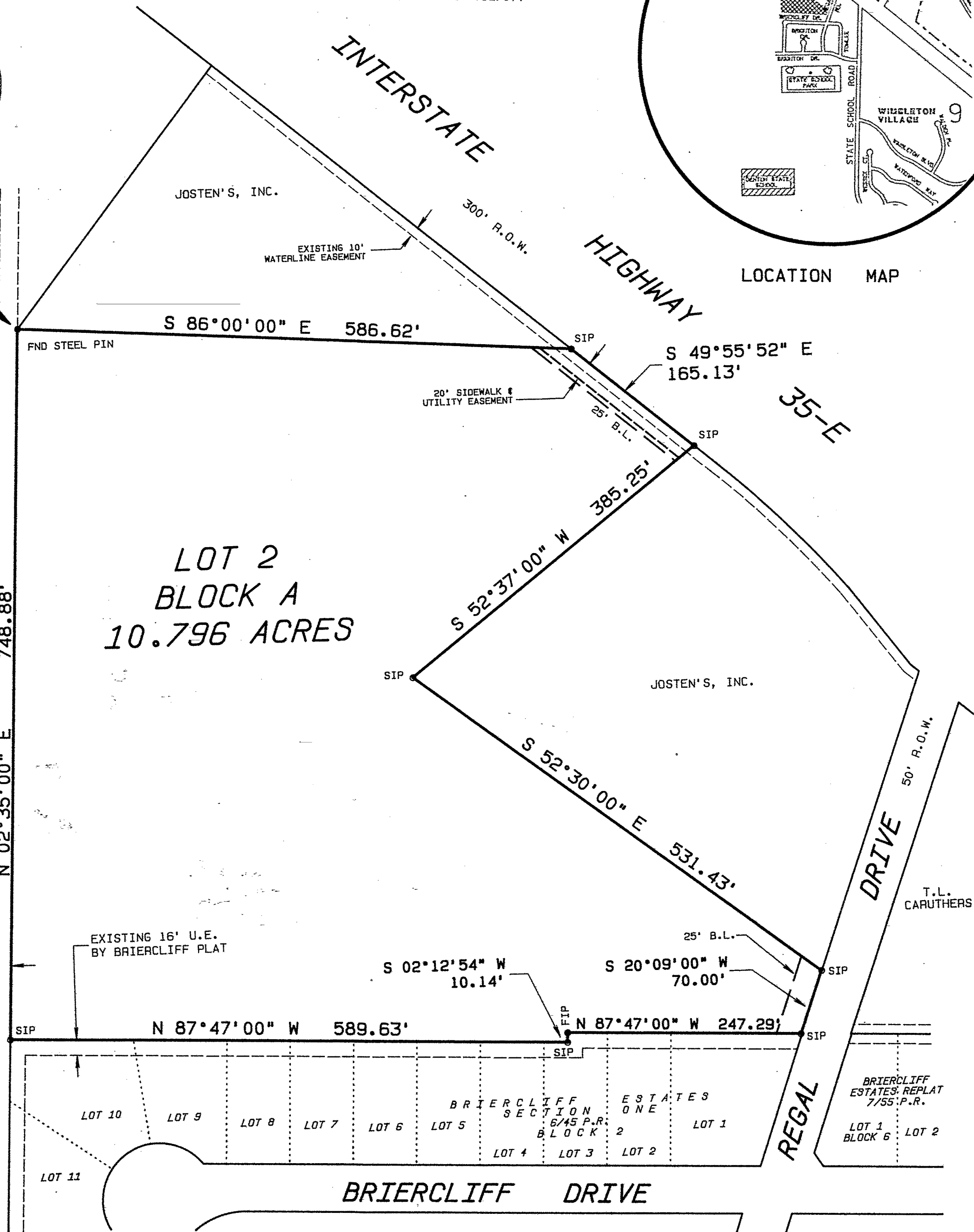
DRAWN: *[Signature]* WOLF  
CHECKED: *[Signature]* S.H.  
SCALE: 1" = 100'  
DATE: 20 JUN 91  
JOB NO.: 91007-B

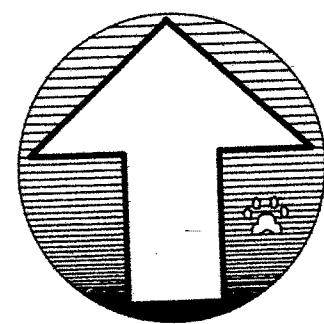
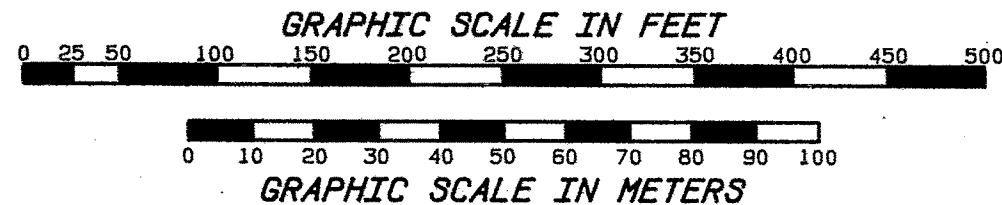
LEGEND  
FIP - Found 1/2" Rebar  
MON - Monument  
ROW - Right-of-Way  
SIP - Set 1/2" Rebar  
-X- - Fence Line  
-E- - Electric Line  
-T- - Telephone Line  
MH - Manhole  
PP - Power Pole  
LP - Light Pole  
FH - Fire Hydrant  
--- - Center Line  
B.L. - Building Line  
U.E. - Utility Easmt.  
D.E. - Drainage Easmt.  
C.E. - Communications Easmt.

DIMENSION-UNICORN LAKE  
ASSOCIATES LTD.

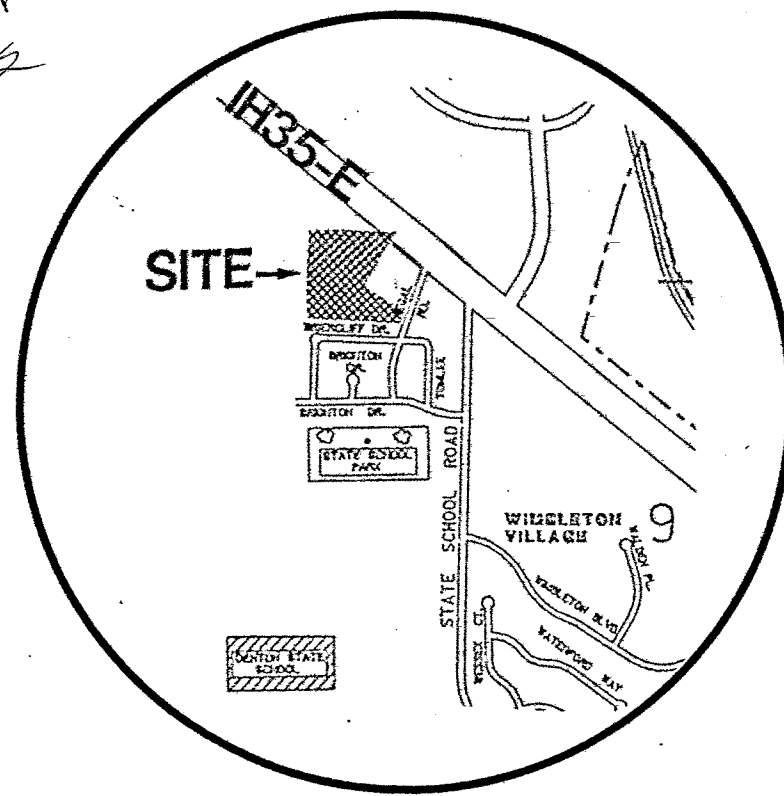
LOT 2  
BLOCK A  
10.796 ACRES

OWNER  
JOSTENS  
3500 SOUTH 135-E  
DENTON, TEXAS





037457  
FILED FOR RECORD  
91 JUL 31 PM 2:54  
TIM HODGES  
COUNTY CLERK DENTON CO. TEX  
BY *[Signature]* DEPUTY



LOCATION MAP

DEDICATION  
PROPERTY DESCRIPTION

STATE OF TEXAS  
COUNTY OF DENTON

WHEREAS, Josten's, Inc. is the owner of that certain tract of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas:

Being all that certain 10.796 acre tract or parcel of land situated in the MEP and PRR Survey, Abstract Number 950, Denton County, Texas, being part of a tract conveyed to Josten's, Inc. from T. L. Caruthers by deed recorded in Volume 571, Page 42 Deed Records, Denton County, Texas, said 10.740 acre tract being more particularly described as follows:

Beginning at a steel pin at a fence corner post at the northwest corner of said Josten's tract, same being the northwest corner of a certain tract deeded by Charles Runyon to T. L. Caruthers by deed recorded in Volume 514, Page 133, Deed Records, Denton County, Texas;

Thence South 86 degrees 00 minutes 00 seconds East a distance of 586.62 feet to a set half inch rebar on the southwest right-of-way of Interstate Highway 35 East, said point being South 49 degrees 55 minutes 52 seconds East 83.79 feet from the most northerly northeast corner of said Josten's tract;

Thence South 49 degrees 55 minutes 52 seconds East with said right-of-way a distance of 165.13 feet to a set half inch rebar for corner;

Thence South 52 degrees 37 minutes 00 seconds West, departing said right-of-way, a distance of 385.25 feet to a set half inch rebar for corner;

Thence South 52 degrees 30 minutes 00 seconds East a distance of 531.43 feet to a set half inch rebar in the northwest right-of-way of Regal Drive;

Thence South 20 degrees 09 minutes 00 seconds West with said right-of-way a distance of 70.00 feet to a set half inch rebar in the north line of Briercliff Estates, Section One, an addition to the City of Denton as shown by plat recorded in Volume 6, Page 45 Plat Records, Denton County, Texas, said rebar being the southeast corner of said Josten's tract, also being North 87 degrees 47 minutes 00 seconds West 0.98 feet from the northeast corner of Lot 1, Block 2 of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 247.29 feet to a found half inch rebar for corner;

Thence South 02 degrees 12 minutes 54 seconds West a distance of 10.14 feet to a set half inch rebar for an inner ell corner of said Briercliff Estates;

Thence North 87 degrees 47 minutes 00 seconds West with a north line of said Briercliff Estates a distance of 589.63 feet to a set half inch rebar for the southwest corner of said Josten's tract, same being the northwest corner of Lot 10, Block 2, of said Briercliff Estates in the occupied west line of said Briercliff Estates;

Thence North 02 degrees 35 minutes 00 seconds East a distance of 748.88 feet to the Point of Beginning, containing in all 10.796 acres of land.

OWNER'S CERTIFICATE

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

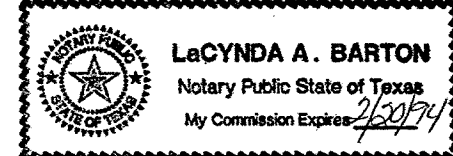
THAT, Josten's, Inc. does hereby adopt this plat designating the herein described property as Lot 2, Block A, Jostens Addition, an addition to the City of Denton, Denton County, Texas, and does hereby dedicate to the public use forever the streets and easements shown hereon.

*C. Denisho Coleman*  
C. Denisho Coleman  
Engineering Manager  
Josten's, Inc.

STATE OF TEXAS

Before me, the undersigned Notary Public for the State of Texas, on this day personally appeared C. Denisho Coleman known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and considerations therein expressed and in the capacity stated.

Given under my hand and seal of office this the 1st day of July, 1991.



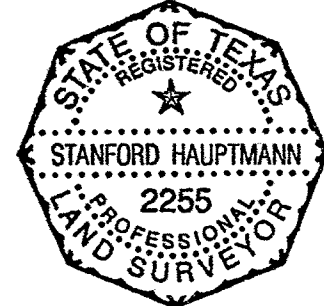
*LaCYNDA A. Barton*  
LaCYNDA A. Barton  
Notary Public for the State of Texas  
Commission expires 7/30/94

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Stanford Hauptmann, Registered Public Surveyor, do hereby certify that this plat and description was prepared from an actual and accurate survey of the land and that the iron pins shown hereon were found or placed under my personal supervision or direction in accordance with the law.

*Stanford Hauptmann* 07/06/91  
Stanford Hauptmann  
Texas Registered Professional  
Land Surveyor Number 2255



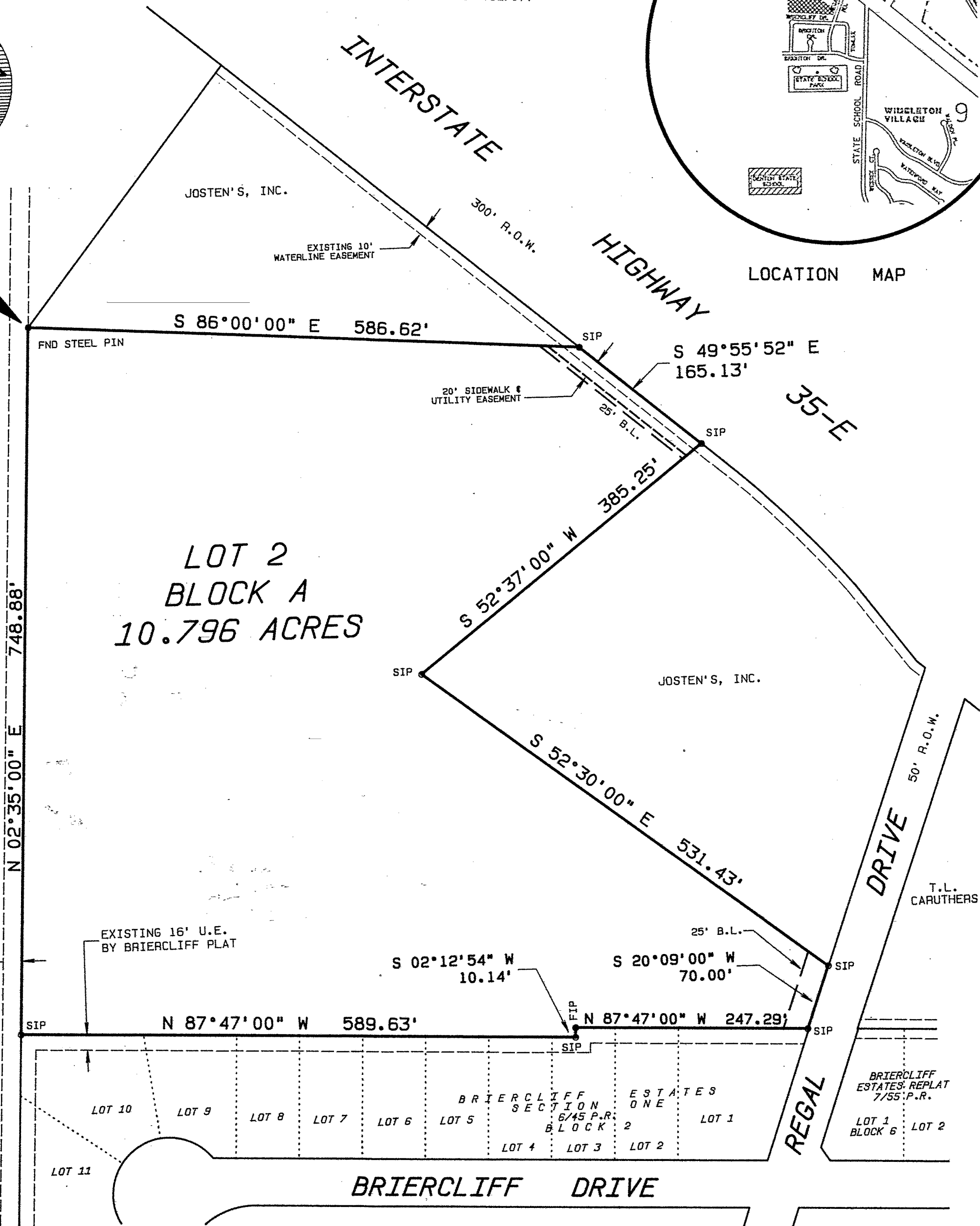
CERTIFICATE OF APPROVAL  
APPROVED THIS 26 DAY OF JUNE, A.D. 1991  
BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF DENTON, TEXAS.  
*Eulene Brock*  
CHAIRMAN  
*Betty Williams*  
CITY SECRETARY

METROPLEX ENGINEERING CONSULTANTS  
ENGINEERING \* PLANNING \* SURVEYING  
1123 FORT WORTH DRIVE DENTON, TEXAS 76205  
(817) 383-1416 DALLAS 219-7948 FORT WORTH 329-3834

FINAL PLAT  
JOSTENS ADDITION  
LOT 2, BLOCK A  
BEING 10.796 ACRES IN THE  
M.E.P. & P.R.R. SURVEY, ABSTRACT NUMBER 950  
CITY OF DENTON, DENTON COUNTY, TEXAS  
DRAWN: *[Signature]* WOLF  
CHECKED: *[Signature]* H  
SCALE: 1" = 100'  
DATE: 20 JUN 91  
JOB NO.: 91007-B

- LEGEND
- FIP - Found 1/2" Rebar
  - MON - Monument
  - ROW - Right-of-Way
  - SIP - Set 1/2" Rebar
  - X- - Fence Line
  - E- - Electric Line
  - T- - Telephone Line
  - MH - Manhole
  - PP - Power Pole
  - LP - Light Pole
  - FH - Fire Hydrant
  - - Center Line
  - B.L. - Building Line
  - U.E. - Utility Easmt.
  - D.E. - Drainage Easmt.
  - C.E. - Communications Easmt.

OWNER  
JOSTENS  
3500 SOUTH 135-E  
DENTON, TEXAS



6232

THE STATE OF TEXAS :

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON :

THAT the Foxworth-Galbraith Lumber Company, a corporation, acting through its president, J. L. Foxworth, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration the receipt of which is hereby fully confessed and acknowledged, and the further consideration of the agreement by Grantee to install in the water line constructed in the hereinafter described tract of land one (1)-two (2) inch water tap at such location as may be designated by Grantor without any cost or expense to Grantor, with the understanding,

by and between Grantor and Grantee that a part of the consideration for the granting of this easement is the agreement by Grantee that the Grantor shall have the right to receive water service from the line hereinafter described for the same rates charged like users within the City Limits of the City of Denton, Texas, does hereby GIVE and GRANT to the said City of Denton, Texas, its successors and assigns, the free and uninterrupted use, liberty, and right in, upon and across the following described property for the purpose of constructing, reconstructing and perpetually maintaining a water line in, upon and across a tract of land lying and being situated in the County of Denton, State of Texas, and more particularly described as follows:

BEGINNING at a point in the Northeasterly line of a tract of land out of the MEP & PRR Co., Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co., a corporation, by H. Edward Smith and wife Mary Frances Smith, and recorded in Volume 474, Page 491 of the Deed Records of Denton County,

Texas; said beginning point also being in the Southwesterly right-of-way line of Interstate Highway 35E; said beginning point also being 654.7 feet North 49 degrees 57 minutes West from the most Easterly Northeast corner of the Foxworth-Galbraith Lumber Co. tract;

THENCE South 2 degrees 49 minutes West and passing at 488.36 feet an inner ell corner of the Foxworth-Galbraith Lumber Co. tract and continuing with the East line of said Foxworth-Galbraith tract for a total distance of 2,173.3 feet to a point for a corner in an existing fence line;

THENCE North 87 degrees 11 minutes West a distance of 20 feet to a point for a corner;

THENCE North 2 degrees 49 minutes East a distance of 2,190.0 feet to a point for a corner in the Southwesterly right-of-way of said Highway 35E;

THENCE South 49 degrees 57 minutes East with the Southwesterly right-of-way line of said Highway 35E a distance of 25.6 feet more or less to the place of beginning

TO HAVE AND TO HOLD the same perpetually to the City of Denton, Texas, and its successors, together with the right and privilege at any and all times to enter said premises for the purpose of constructing, reconstructing and perpetually maintaining said water line and for making connections therewith.

IN WITNESS WHEREOF, the said corporation has caused these presents to be signed by its duly authorized officer and to be sealed with the Seal of the Corporation.

VOL 496 PAGE 564



FOXWORTH-GALBRAITH LUMBER COMPANY

By

J. L. Foxworth  
President

ATTEST:

A. Woodford  
Secretary

THE STATE OF TEXAS :

COUNTY OF DALLAS :

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared J. L. Foxworth, President, Foxworth-Galbraith Lumber Company, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Foxworth-Galbraith Lumber Company, a corporation, and that he executed the same as the act of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

WITNESS MY HAND AND SEAL OF OFFICE this 16th day of  
July, A.D. 1963.

Ann Harrison ANN HARRISON

Notary Public in and for  
Dallas County, Texas

FILED FOR RECORD: 17 day of July A.D. 1963 at 10:15 o'clock A.M.  
RECORDED: 24 day of July A.D. 1963 at 7:45 o'clock P.M.  
By: Lorence McLeod Deputy Theta Parker, Clerk County Court,  
Denton County, Texas

THE STATE OF TEXAS    X  
COUNTY OF DENTON       X

KNOW ALL MEN BY THESE PRESENTS:

9845

THAT the Foxworth-Galbraith Lumber Company, a corporation, acting through its President, J. L. Foxworth, for and in consideration of the sum of TEN DOLLARS (\$10.00) cash and other good and valuable consideration to it in hand paid by the City of Denton, Texas, a municipal corporation, of the County of Denton, State of Texas, the receipt of which is hereby acknowledged, does hereby GIVE and GRANT to the said City of Denton, Texas, its successors and assigns, the free and uninterrupted use, liberty, and right in, upon and across the following described property for the purpose of constructing, reconstructing, and perpetually maintaining a sanitary sewer line and appurtenances in, upon and across a tract of land lying and being situated in the County of Denton, State of Texas, and more particularly described as follows:



VOL 501 PAGE 274

BEGINNING at a point in the East property line of of a 154.7 acre tract of land out of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co. by H. Edward Smith, and wife, Mary Frances Smith, and recorded in Volume 974, Page 491, of the Deed Records of Denton County, Texas; said beginning point being 2,454 feet North, 1,885.35 feet East, and 109.5 feet North, 2 degrees, 05 minutes, East of the Southwest corner of the M.E.P. & P.R.R. Co. Survey; said point also being North, 2 degrees, 05 minutes, East from the Southeast corner of said 154.7 acre tract;

THENCE North 65 degrees 15 minutes West, a distance of 298.0 feet to a point for corner;

THENCE South 89 degrees 03 minutes West, a distance of 285.4 feet to a point for corner;

THENCE North 67 degrees 42 minutes West, a distance of 263.8 feet to a point for corner;

THENCE North 32 degrees 28 minutes West a distance of 970.9 feet to a point for corner;

THENCE North 50 degrees 28 minutes West, a distance of 775.1 feet to a point in the West property line of said Smith to Foxworth-Galbraith 154.7 acre tract;

THENCE North 2 degrees 05 minutes East with the West property line of said 154.7 acre tract of land a distance of 12.8 feet to a point for corner;

THENCE South 50 degrees 28 minutes East, a distance of 784.7 feet to a point for corner;

THENCE South 32 degrees 28 minutes East, a distance of 969.1 feet to a point for corner;

THENCE South 67 degrees 42 minutes East, a distance of 258.8 feet to a point for corner;

THENCE North, 89 degrees 03 minutes East, a distance of 285.6 feet to a point for corner;

THENCE South 65 degrees 15 minutes East, a distance of 296.0 feet to a point in the East property line of said 154.7 acre tract of land;

THENCE South 2 degrees 05 minutes West, with the East property line of said 154.7 acre tract, a distance of 11.0 feet to the place of beginning; and containing 0.60 acres of land, more or less.

TO HAVE AND TO HOLD, all and singular, the privileges aforesaid to it, the said City of Denton, Texas, its successors and assigns forever, together with the right and privilege, at any and all times to enter the said premises or any part thereof, for the purpose of constructing, reconstructing and perpetually maintaining said sanitary sewer line together with necessary appurtenances, and for making connections therewith; all upon the condition that the said City of Denton, Texas, will at all times, after doing any work in connection with the construction, reconstruction or repair of said sanitary sewer line restore said premises to the condition in which same were found before such work was undertaken, including repair of all fences.

that might be disturbed or damaged in performing said work;  
and further upon the condition that Grantor, its successors and  
assigns shall have the right to make connections with the

aforesaid sanitary sewer line for the purpose of providing  
sewage collection service to their property, all upon such  
terms and conditions and upon the payment of such charges  
for such connections and service as may from time to time  
be provided by the ordinances of the said City of Denton,  
Texas;

PROVIDED, HOWEVER, that for the purpose of initially con-  
structing the sanitary sewer line and appurtenances above  
described, and during such initial construction, the City  
of Denton, Texas, shall have the right to use and occupy  
a strip of land sixty (60) feet in width and being thirty  
(30) feet on either side of the center line of said strip  
of land, as said center line is more particularly described  
as follows:

BEGINNING at a point in the East property line of  
a 154.7 acre tract of land out of the M.E.P. &  
P.R.R. Co. Survey, Abstract No. 950, as conveyed  
to Foxworth-Galbraith Lumber Co. by H. Edward Smith,  
and wife, Mary Frances Smith, and recorded in  
Volume 974, Page 491, of the Deed Records of Denton  
County, Texas; said beginning point being 2,454  
feet North, 1,885.35 East, and 115.0 feet North,  
2 degrees 05 minutes East of the Southwest corner  
of the M.E.P. & P.R.R. Co. Survey; said point also  
being North 2 degrees 05 minutes East, 115.0 feet  
from the Southeast corner of said 154.7 acre tract  
of land;

THENCE North 65 degrees 15 minutes West, a distance  
of 297.0 feet to a point for corner;

THENCE South 89 degrees 03 minutes West a distance  
of 285.5 feet to a point for corner;

THENCE North 67 degrees 42 minutes West a distance  
of 261.3 feet to a point for corner;

THENCE North 32 degrees 28 minutes West a distance  
of 970 feet to a point for corner;

THENCE North 50 degrees 28 minutes West a distance  
of 780 feet to a point in the West property line of  
said 154.7 acre tract; said easement having a total  
length of 2,593.8 feet, more or less.

VOL 501 PAGE 276

All upon the condition that said City of Denton, Texas, and its agents, will restore said premises as nearly as possible to the condition in which same were found before such initial construction work was undertaken, including repair of all fences that might be disturbed or damaged in performing said initial construction work.

IN WITNESS WHEREOF, the said corporation has caused these presents to be signed by its duly authorized officer and to be sealed with the Seal of the Corporation.

FOXWORTH-GALBRAITH LUMBER COMPANY

By

J. L. Foxworth  
President

ATTEST:

J. A. Woodford  
Secretary



THE STATE OF TEXAS :

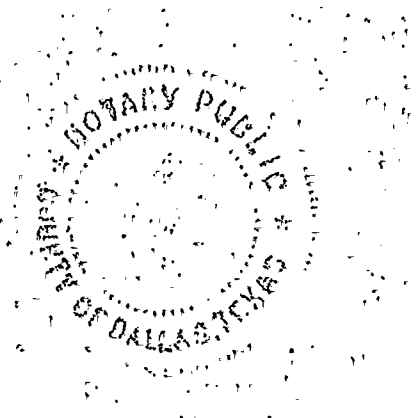
COUNTY OF DALLAS :

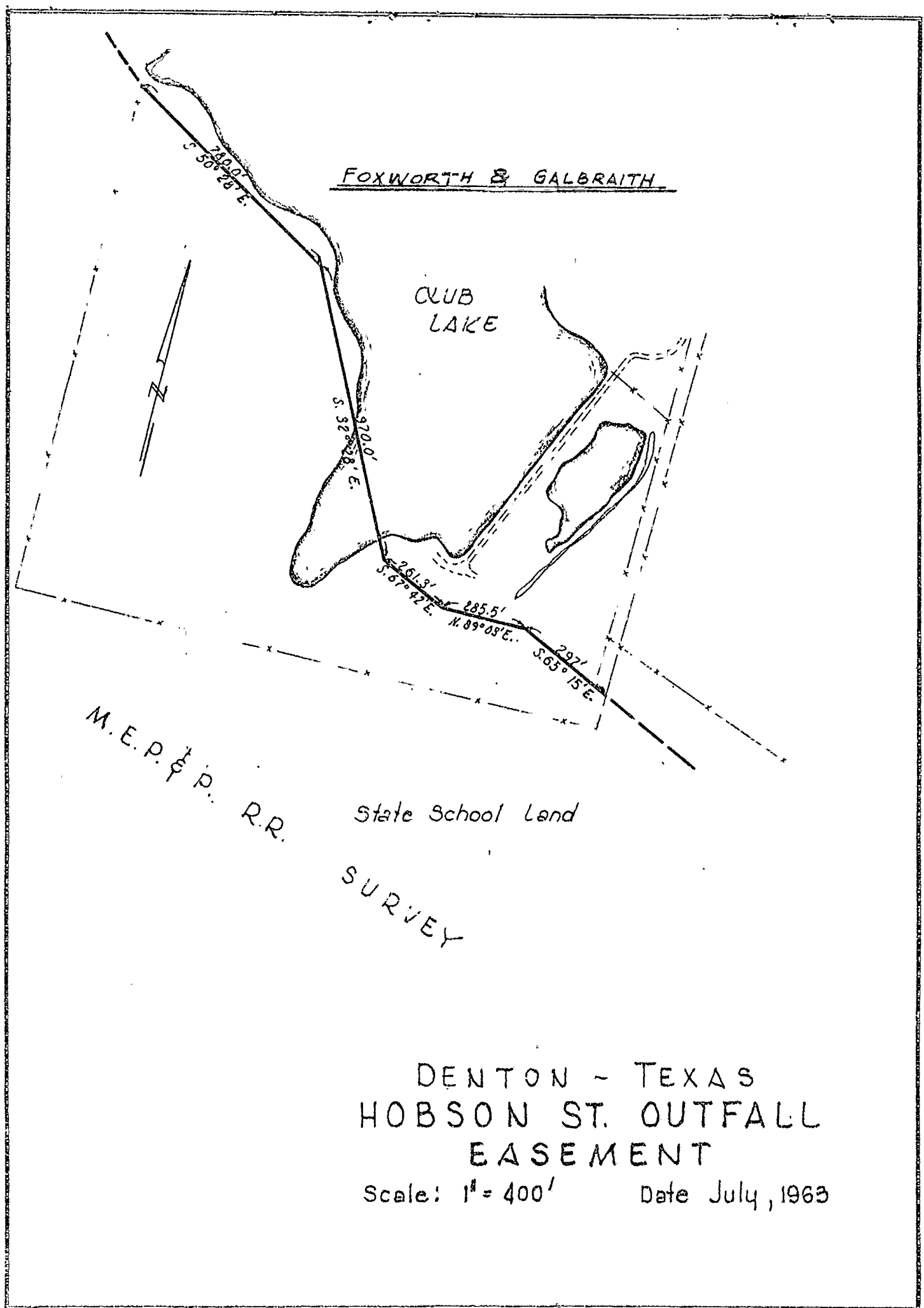
BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day and personally appeared J. L. Foxworth, President, Foxworth-Galbraith Lumber Company, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Foxworth-Galbraith Lumber Company, a corporation, and that he executed the same as the act of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

WITNESS MY HAND AND SEAL OF OFFICE this 30th day of  
October, A.D. 1963.

Ann Harrison ANN HARRISON

Notary Public in and for  
Dallas County, Texas





FILED FOR RECORD: 4 day of Nov. A.D. 1963 at 2:00 o'clock P M.  
 RECORDED: 14 day of Nov. A.D. 1963 at 9:10 o'clock A M.  
 By: Ellen Henrich Deputy Theta Parker, Clerk County Court,  
 Denton County, Texas

CC-216 EASEMENT

Martin Stationery Co., Dallas

**THE STATE OF TEXAS, } KNOW ALL MEN BY THESE PRESENTS:**  
 COUNTY OF DENTON

THAT T. L. CARUTHERS  
 of Denton County, Texas **477**, in consideration of the sum of  
 One Dollar-----and other good and valuable consideration  
 in hand paid by City of Denton, Texas receipt of which is hereby acknowledged, do by  
 these presents grant, bargain, sell and convey unto City of Denton, Texas, the free  
 and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following  
 described property,

owned by me. Situated in Denton County, Texas, in the  
 M.E.P. & P.R.R. CO. Survey, Abstract No. 950

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Company Survey, Abstract No. 950, and being part of a tract of land as conveyed from Charles G. Runyon to T. L. Caruthers by deed dated September 22, 1964 and recorded in Volume 514, Page 133 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the most northerly northwest corner of said tract, said point of beginning also being the intersection of the southwest right of way line of Interstate Highway 35E and the east right of way line of Regal Drive;

THENCE south 50° 26' east, along the northeast boundary line of said Caruthers Tract, same being the southwest right of way line of Interstate Highway 35E, a distance of 450.44 feet to a point for a corner, same being the northeast corner of said Caruthers Tract and also being the intersection of the southwest right of way line of Interstate Highway 35E and the west right of way line of State School Road;

THENCE south 28° 16' west along the east boundary line of said Caruthers Tract, same being the west right of way line of State School Road, a distance of 10.20 feet to a point for a corner;

THENCE north 50° 26' west 10.00 feet south of and parallel with the northeast boundary line of said Caruthers tract, a distance of 448.80 feet to a point for a corner in the west boundary line of said Caruthers Tract, same being the east right of way line of Regal Drive;

THENCE north 19° 34' east along the west boundary line of said Caruthers Tract, same being the east right of way line of Regal Drive, a distance of 10.64 feet to the place of beginning and containing 4,496.19 square feet of land, more or less.

And it is further agreed that the said City of Denton, Texas,

in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, installing repairing and perpetually maintaining public utilities in, along, upon and

across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public utilities, or

any part thereof, subject to the terms and conditions as set forth in Exhibit A which is attached hereto and made a part of this Easement and Agreement for all purposes.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for

the purposes aforesaid the premises above described.

Witness my hand, this the 3<sup>rd</sup> day of, ~~October~~ January, A. D. 19 ~~72~~ <sup>73</sup>.

*T. L. Caruthers*  
 T. L. CARUTHERS

VOL 663 PAGE 266

## SINGLE ACKNOWLEDGMENT

THE STATE OF TEXAS,  
COUNTY OF DENTON }

BEFORE ME, the undersigned authority,

in and for said County, Texas, on this day personally appeared  
T. L. CARUTHERSknown to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. January 73GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 3rd day of October, A.D. 19 72

(L.S.)

Alfred Vick (Alfred Vick)  
Notary Public, Denton County, Texas  
My Commission Expires June 1, 19 73

## EXHIBIT A

This Agreement by and between T. L. Caruthers and the City of Denton, Texas is to be included in and made a part of the Easement Agreement to which this Exhibit is attached.

The City of Denton hereby agrees to saw with a concrete saw all driveway and paving which is necessary to be removed so that said opening will produce a smooth joint. The City of Denton further agrees to repair and replace to its original condition all parking lot, driveway and other paving or concrete which is in any way damaged or removed in connection with said Easement.

The City of Denton agrees that only one driveway shall be blocked at any one time, both during the construction of the waterline which is to be placed in said Easement and during any replacement or repairs that shall be necessary in the future. In this connection, the City of Denton shall repair to its original condition any driveway which is or has been blocked before proceeding to cut or block any other driveway on said property.

T. L. Caruthers  
T. L. Caruthers

Jim White  
Jim White, City Manager  
City of Denton

FILED FOR RECORD: 8th DAY OF January A.D. 1973 at 8:26 o'clock A.M.  
RECORDED: 16th DAY OF January A.D. 1973 at 8:05 o'clock A.M.  
BY \_\_\_\_\_ DEPUTY Y THETA PARKER, COUNTY CLERK  
DENTON COUNTY, TEXAS



THE STATE OF TEXAS     0  
COUNTY OF DENTON     0

KNOW ALL MEN BY THESE PRESENTS:

**2855**

That Josten's, Inc., a Minnesota Corporation owning real property in Denton County, Texas, in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration in hand paid by the City of Denton, Texas, receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by it and being situated in Denton County, Texas, and being more particularly described as follows, to-wit:

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Company Survey, Abstract No. 950, and being part of two tracts of land, hereafter referred to as Tract One and Tract Two, said Tract One being conveyed by Foxworth-Galbraith Lumber Company to Josten's Incorporated by deed dated August 28, 1968, and recorded in Volume 571, Page 39 of the Deed Records of Denton County, Texas, and said tract Two being conveyed from T. L. Caruthers to Josten's Incorporated by deed dated September 3, 1968 and recorded in Volume 571, Page 42 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the most northerly corner of said Tract One, said point of beginning lying in the southwest right of way line of Interstate Highway No. 35 E;

THENCE south 50° 26' east, along the northeast boundary line of said Tract One, same being the southwest right of way line of Interstate Highway 35E, passing at 400.0 feet the southeast corner of said Tract One, same being the most northerly corner of said Tract Two, and continuing south 50° 26' east, a total distance of 678.0 feet to the beginning of a curve to the right;

THENCE southeasterly along a 5.14° curve to the right, same being the southwest right of way line of Interstate Highway 35E a distance of 187.9 feet to a point;

THENCE south 35° 55' east along the northeast boundary line of said Tract Two, same being the southwest right of way line of Interstate Highway 35E, a distance of 104.6 feet to a point;

THENCE south 49° 54' east along the northeast boundary line of said Tract Two, same being the southwest right of way line of Interstate Highway 35E, a distance of 11.25 feet to a point for a corner, same being the most easterly corner of said tract and also being the intersection of the southwest right of way line of Interstate Highway 35E and the west right of way line of Regal Drive;

THENCE south  $19^{\circ} 34'$  west along the east boundary line of said Tract Two, same being the west right of way line of Regal Drive, a distance of 10.68 feet to a point for a corner;

THENCE north  $49^{\circ} 54'$  west 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, a distance of 13.77 feet to a point;

THENCE north  $35^{\circ} 55'$  west, 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, a distance of 103.737 feet to the beginning of a curve to the left;

THENCE northwesterly along a  $5.14^{\circ}$  curve to the left, 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, a distance of 187.00 feet to a point;

THENCE north  $50^{\circ} 26'$  west, 10.0 feet south of and parallel with the northeast boundary line of said Tract Two, passing at 288.66 feet the north boundary line of said Tract Two, same being the south boundary line of said Tract One, and continuing north  $50^{\circ} 26'$  west, a total distance of 677.88 feet to a point for a corner in the northwest boundary line of said Tract One;

THENCE north  $38^{\circ} 52'$  east along the northwest boundary line of said Tract One, a distance of 10.00 feet to the place of beginning and containing 9,844.03 square feet of land, more or less.

And it is agreed that the said City of Denton, Texas, in consideration of the benefits above set out, will remove from the property above described, such fences, and other obstructions as may now be found upon said property for the purpose of constructing, installing, repairing and perpetually maintaining a water line in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to the said water line, or any part thereof. It is further agreed that the City of Denton shall perform all construction in a workmanlike manner, will close all open ditches each and every night work is in progress, will repair any and all damages promptly, and in no event more than 30 days after the completion of work, and specifically but not limited to, the City of Denton will repair of any and all fencing, repair or replace trees, shrubbery or landscaping if any such be damaged, and restore the surface of the ground, including sod, to as good a condition as when the land was entered onto.

And it is agreed that the City of Denton shall indemnify and hold harmless Josten's, Inc. for any loss or damage occasioned by the use of the rights hereinabove granted, whether such loss or damage be suffered by Josten's, Inc. or a third party.

TO HAVE AND TO HOLD unto the said City of Denton, Texas, as aforesaid for the purpose aforesaid the premises above described.

WITNESS our hands this the 2nd day of February, A.D. 1973.

JOSTEN'S INCORPORATED

BY: H. William Lorton

ATTEST:

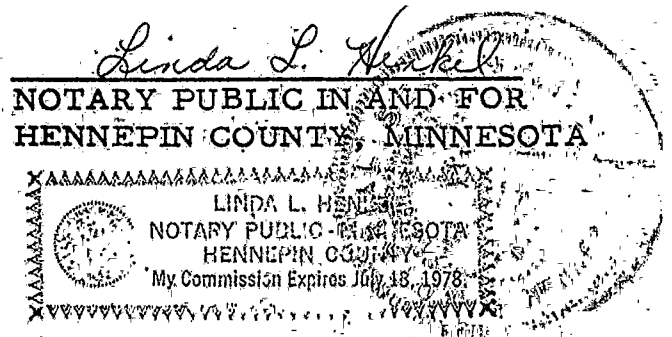
Ann Swartz

THE STATE OF MINNESOTA 0

COUNTY OF HENNEPIN 0

BEFORE ME, the undersigned authority, in and for said County, Minnesota, on this day personally appeared H. William Lorton of Josten's Incorporated, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Josten's Incorporated, and that he executed the same as the official act of said Josten's Incorporated for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This the 2nd day of February, A.D. 1973.



FILED FOR RECORD: 14th DAY OF February A.D. 1973 at 8:29 o'clock A. M.  
 RECORDED: 20th DAY OF February A.D. 1973 at 8:47 o'clock A. M.  
 BY C. A. Enrich DEPUTY THETA PARKER, COUNTY CLERK  
 DENTON COUNTY, TEXAS

CITY OF DENTON  
FORM PUE 5-20-81

VOL 1130 PAGE 214

DEED RECORDS

PUBLIC UTILITY EASEMENT

6014

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON §

That \_\_\_\_\_, JOSTEN'S INCORPORATED, A MINNESOTA CORPORATION  
OWNING REAL PROPERTY IN DENTON COUNTY, TEXAS

hereinafter referred to as Grantors, whether one or more, for and in consideration of the sum of One Dollar (\$1.00) cash to Grantors in hand paid by the City of Denton, the receipt of which is hereby acknowledged, and the further consideration of the benefits to be derived by Grantors from the placing of public utilities, including but not limited to water mains, sanitary sewer mains, gas mains, electric poles and lines, telephone and telegraph poles and lines, through the premises hereinafter described, have this day Granted and Conveyed, and by these presents do hereby Grant and Convey unto the City of Denton, a municipal corporation situated in Denton County, Texas, an easement to construct, reconstruct and perpetually maintain public utilities, including but not limited to water mains, sanitary sewer mains, gas mains, electric poles and lines, telephone and telegraph poles and lines or authorize such construction by any public utility company, in, upon and across the following described land, to-wit:

All that certain tract, piece or parcel of land, lying and being situated in the County of Denton, State of Texas, described in EXHIBIT "A" attached hereto and made a part hereof for all purposes, to which reference is here made for a more particular description of said property;

TO HAVE AND TO HOLD the same perpetually to the City of Denton, its successors and assigns, together with the right and privilege at any and all times to enter said premises, or any part thereof, for the purpose of constructing and maintaining said public utilities, and for making connections therewith; all upon the condition that the City of Denton will at all times after doing any work in connection with the construction or repair of said public utility restore the surface of said premises to the condition in which the same was found before such work was undertaken.

EXECUTED this the 5TH day of MARCH, A.D. 1982.

JOSTEN'S INCORPORATED  
BY:

P. J. West S. V. P.

ATTEST:

Richard L. Spaulding

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THE STATE OF MINNESOTA ( )  
COUNTY OF HENNEPIN ( )

BEFORE ME, the undersigned authority, in and for said County, Hennepin, on this day personally appeared Jack Melt of Josten's Incorporated, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Josten's Incorporated, and that he executed the same as the official act of said Josten's Incorporated for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This the 5th day of March, A.D. 1981.

Elizabeth J. Wines  
NOTARY PUBLIC IN AND FOR  
HENNEPIN COUNTY,



EXHIBIT "A"

VOL 1100 PAGE 216

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, and also being part of a tract of land as conveyed from Foxworth-Galbraith Lumber Co. to Josten's, Inc. by Deed dated 8-28-68 and recorded in Volume 571, Page 39 of the Deed Records of Denton County, Texas, and more particularly described as follows:

Beginning at the most northerly corner of said tract, said point lying on the southwest right-of-way line of Interstate Highway 35-E;

Thence South  $50^{\circ} 26'$  east along the northeast boundary line of said tract, same being the southwest right-of-way of I.H. 35-E, a distance of 16.0 feet to a point for a corner;

Thence South  $38^{\circ} 52'$  west 16 feet southeast of and parallel to the west boundary line of said tract, a distance of 331.82 feet to a point for a corner on the south boundary line of said tract;

Thence South  $88^{\circ} 57'$  west along the south boundary line of said tract, a distance of 20.86 feet to the southwest corner of said tract;

Thence North  $38^{\circ} 52'$  east along the northwest boundary line of said tract, a distance of 345.4 feet to the place of beginning and containing 0.124 acres of land, more or less.



Return to  
Foster N. Williams  
City of Denton  
Engineering Dept  
1000 W. Hickam St  
Denton, TX 76201

FILED  
1982 MAR 8 PM 2:35  
MARY JO HILL  
COUNTY CLERK DENTON TEX  
BY for JOSTICE'S INC.  
DENTON, TEXAS  
FILED

UTILITY EASEMENT

6014

2-28-82  
J. Williams

VOL 1150 PAGE 217

FILED FOR RECORD 8th DAY OF March A.D. 1982, at 2:35 P.  
RECORDED 9th DAY OF March A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Shirley J. Smith DEPUTY.

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of a called 1.570 acre tract of land described in General Warranty Deed to Josten's Inc., recorded in Volume 571, Page 39 of the Official Deed Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at an aluminum disk stamped "TXDOT" found for corner in the southwest right-of-way line of Interstate Highway No. 35-E and being in the northwest line of said 1.570 acre tract;

**THENCE** departing said northwest line of the 1.570 acre tract, South  $46^{\circ}44'36''$  East, along the said southwest right-of-way line of Interstate Highway No. 35-E, a distance of 307.43 feet to a point for corner in the south line of said 1.570 acre tract;

**THENCE** departing said southwest right-of-way line of Interstate Highway No. 35-E South  $87^{\circ}54'07''$  West, along the south line of said 1.570 acre tract, a distance of 28.11 feet to a point for corner;

**THENCE** departing said south line, North  $46^{\circ}44'36''$  West, a distance of 109.89 feet to a point for corner;

**THENCE** North  $46^{\circ}39'54''$  West, a distance of 175.94 feet to a point for corner in the said northwest line of the 1.570 acre tract; from said point a 1/2-inch iron rod found for the southwest corner of said 1.570 acre tract bears South  $37^{\circ}55'37''$  West, a distance of 265.75 feet;

**THENCE** North  $37^{\circ}55'55''$  East, along the said northwest line of said 1.570 acre tract, a distance of 19.85 feet to the **POINT OF BEGINNING** and containing 5,912 square feet or 0.1375 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

 4/3/20

MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



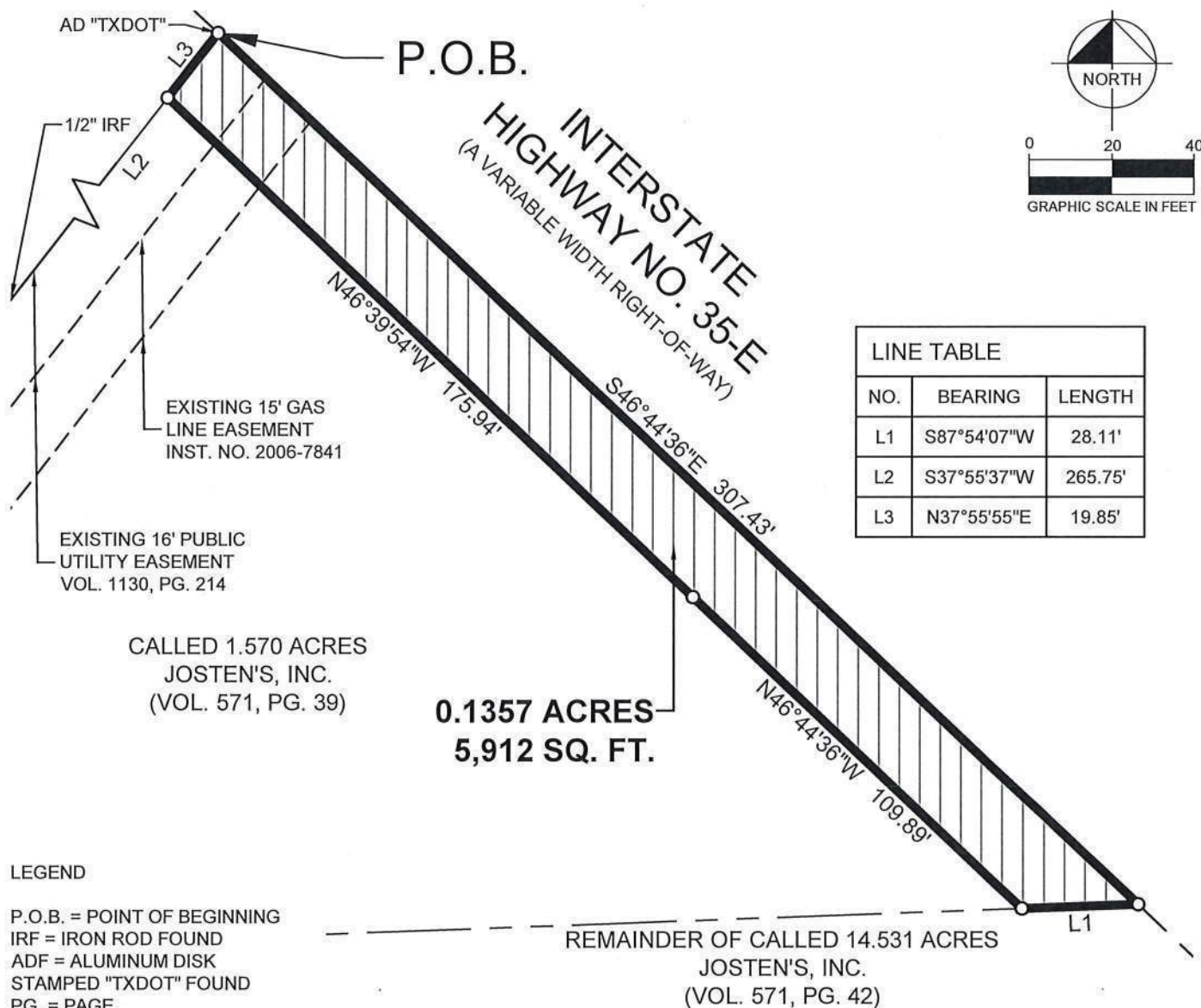
WATER AND WASTEWATER EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	9/2/2020	061024039	1 OF 2



*Michael C. Billingsley* 9/3/20  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	9/2/2020	061024039	2 OF 2

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 117**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1782+93 LT to Sta 1784+94 LT

Existing Easement

Instrument No. 2014-29

PART OF LOT 1, BLOCK A  
BJ'S BREWERY ADDITION  
MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

## PUBLIC UTILITY EASEMENT

THE STATE OF TEXAS, §  
 COUNTY OF DENTON §

046359

KNOW ALL MEN BY THESE PRESENTS:

That Windjammer, Ltd., (Grantor) in consideration of the sum of ONE DOLLAR AND NO CENTS (\$1.00) and other good and valuable consideration in hand paid by the City of Denton, Texas, (Grantee) receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the City of Denton the free and uninterrupted use, liberty and privilege of passage in, along, upon and across the following described property, owned by Grantor, situated in Denton County, Texas in the M. E. P. & P. R. R. Co. Survey, Abstract No. 950.

## TRACT 1

All that certain lot, tract or parcel of land lying and being situated in the M. E. P. & P. R. Co. Survey, Abstract No. 950, Denton County, Texas, and being part of a tract of land described in a deed to Windjammer, Ltd., dated July 10, 1998, recorded under Clerk's File No. 98-R0093041, Real Property Records, Denton County, Texas, and being more particularly described as follows:

BEGINNING at the north corner of said Windjammer, Ltd., tract, on the southeast right-of-way of I-35 E., same being the east corner of a tract of land described in a deed to Lodge Construction Company, Inc., recorded in Volume 1429, Page 456, Real Property Records, Denton County, Texas;

THENCE South 49° 57' 22" East with the southeast right-of-way of I-35 E., and the southeast line of said Windjammer, Ltd., tract, a distance of 402.40 feet to a point for corner;

THENCE South 40° 02' 38" West with the north right-of-way of Wind River Lane, a distance of 435.95 feet to a point for corner at the beginning of a curve to the right;

THENCE with the north right-of-way of Wind River Lane and said curve to the right, having a central angle of 49° 57' 20", a radius of 460.00 feet, an arc length of 401.07 feet, with a chord that bears South 65° 01' 19" West a distance of 388.48 feet to a point for corner;

THENCE West with the north line of Wind River Lane, a distance of 508.30 feet to a point for corner at the beginning of a curve to the right;

THENCE with the north right-of-way of Wind River Lane and said curve to the right, having a central angle of 41° 24' 25", a radius of 460.00 feet, an arc length of 332.44 feet, with a chord that bears North 69° 17' 47" West a distance of 325.25 feet to a point for corner;

THENCE North 48° 35' 33" West with the north right-of-way of Wind River Lane, a distance of 249.94 feet to a point for corner at the beginning of a curve to the left;

THENCE with the north right-of-way of Wind River Lane and said curve to the left, having a central angle of 10° 19' 54", a radius of 1040.00 feet, an arc length of 187.53 feet, with a chord that bears North 53° 45' 30" West a distance of 187.28 feet to a point for corner on the west line of said Windjammer, Ltd., tract;



THENCE North 00° 36' 46" East with the west line of said Windjammer, Ltd., tract, a distance of 18.51 feet to a point for corner at the beginning of a curve to the right;

THENCE with said curve to right, being 16-foot north of and parallel to the north right-of-way of Wind River Lane, having a central angle of 10° 50' 27", a radius of 1056.00 feet, an arc length of 199.81 feet, with a chord that bears South 54° 00' 47" East a distance of 199.51 feet to a point for corner;

THENCE South 48° 35' 33" East, 16-foot north of and parallel to the north right-of-way of Wind River Lane, a distance of 249.94 feet to a point for corner at the beginning of a curve to the left;

THENCE with said curve to the left, being 16-foot north of and parallel to the north right-of-way of Wind River Lane, having a central angle of 41° 24' 25", a radius of 444.00 feet, an arc length of 320.87 feet, with a chord that bears South 69° 17' 47" East a distance of 313.94 feet to a point for corner;

THENCE East, 16-foot north of and parallel to the north right-of-way of Wind River Lane, a distance of 508.30 feet to a point for corner at the beginning of a curve to the left;

THENCE with said curve to the left, 16-foot north of and parallel to the north right-of-way of Wind River Lane, having a central angle of 49° 57' 20", a radius of 444.00 feet, an arc length of 387.12 feet, with a chord that bears North 65° 01' 19" East a distance of 374.97 feet to a point for corner;

THENCE North 40° 02' 38" East, 16-foot north of and parallel to the north right-of-way of Wind River Lane, a distance of 419.95 feet to a point for corner;

THENCE North 49° 57' 22" West, 16-foot south of and parallel to the southeast right-of-way of I-35 E., a distance of 386.43 feet to a point for corner on the northeast line of said Windjammer, Ltd., tract, same being the southwest line of said Lodge Construction Company, Inc., tract;

THENCE North 40° 08' 36" East, with the northeast line of said Windjammer, Ltd., tract, and the southwest line of said Lodge Construction Company, Inc., tract, a distance of 16.00 feet to the POINT OF BEGINNING and containing in all 0.916 acres.

## TRACT 2

All that certain lot, tract or parcel of land lying and being situated in the M. E. P. & P. R. Survey, Abstract No. 950 in the City and County of Denton, Texas, and being part of a tract of land described in a deed to Windjammer, Ltd., recorded in County Clerk's File No. 98-R093041 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point for corner at the north corner of a tract of land described in a deed to Denton Security Investment, Inc., Replacement Property Irrevocable Trust, as recorded in Clerk's File No. 98-R0062519 of the Real Property Records of Denton County, Texas, said point being on the southeast right-of-way of Interstate Highway 35-E;

THENCE South 40° 02' 38" West with the northwest line of said Denton Security Investment, Inc., Replacement Property Irrevocable Trust tract, a distance of 16.00 feet to a point for corner;

THENCE North 49° 57' 22" West, 16-foot south of and parallel to the southeast line of said Windjammer, Ltd., tract and the southeast right-of-way of Interstate Highway 35-E, a distance of 244.40 feet to a point for corner on the southerly right-of-way of Wind River Lane;

C:\Projects\Wind River DME\CO530\Windjammer easement.doc



THENCE North 40° 02' 38" East with the southerly right-of-way of Wind River Lane, a distance of 16.00 feet to a point for corner at the intersection of the southeast right-of-way of said Interstate Highway 35-E and the north right-of-way of Wind River Lane;

THENCE South 49° 57' 22" East with the southeast line of said Windjammer, Ltd., tract and the southeast right-of-way of Interstate Highway 35-E, a distance of 244.40 feet to the POINT OF BEGINNING and containing in all 0.089 acres of land.

And it is further agreed that the said City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may be now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public utilities in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to said public facilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness my hand, this the 18<sup>th</sup> day of MAY, A.D. 2000.

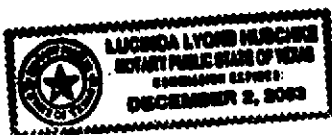
Windjammer, Ltd.

By: [Signature]

Bob Shelton  
General Partner

THE STATE OF TEXAS §  
COUNTY OF DENTON §

This instrument was acknowledged before me on this the 18<sup>th</sup> day of MAY, 2000 by Bob Shelton.



[Signature]  
Notary Public, in and for the State of Texas  
My Commission Expires: 12-02-03

Accepted this 18<sup>th</sup> day of MAY 2000 for the City of Denton, Texas (Resolution No. 91-073).

BY: [Signature]

Paul Williamson  
Right-of-Way Agent

EXHIBIT "A"  
TRACT 1

DARISH M. HEDGART, MD.  
Vol. 2806 Pp. 287 R.P.R.  
3/7/81

LODGE CONSTRUCTION COMPANY, INC.  
Vol. 1428 Pp. 158 R.P.R.  
8/23/84

M.E.P. & P.R.R. CO. SURVEY

ABSTRACT NO. 950

WINDHAMER, LTD.  
CC# 98-0003041 R.P.R.

WINDHAMER, LTD.  
CC# 98-0003041 R.P.R.

A = 10°19'54"  
R = 1040.00  
L = 187.53  
CH = N 53°45'30" W  
187.28

A = 10°50'27"  
R = 1056.00  
L = 199.81  
CH = S 54°00'47" E  
199.51

A = 41°24'25"  
R = 444.00  
L = 320.87  
CH = S 68°17'47" E  
313.94

A = 41°24'25"  
R = 460.00  
L = 332.44  
CH = N 68°17'47" W  
325.25

A = 49°57'20"  
R = 444.00  
L = 387.12  
CH = N 65°01'19" E  
374.97

A = 49°57'20"  
R = 460.00  
L = 401.07  
CH = S 65°01'19" W  
388.48

WIND RIVER LANE

EAST 508.30  
WEST 508.30

POINT OF BEGINNING  
TRACT 1  
N 40°09'36" E  
16.00

35 - E  
(CENTER ROAD)



City of Denton

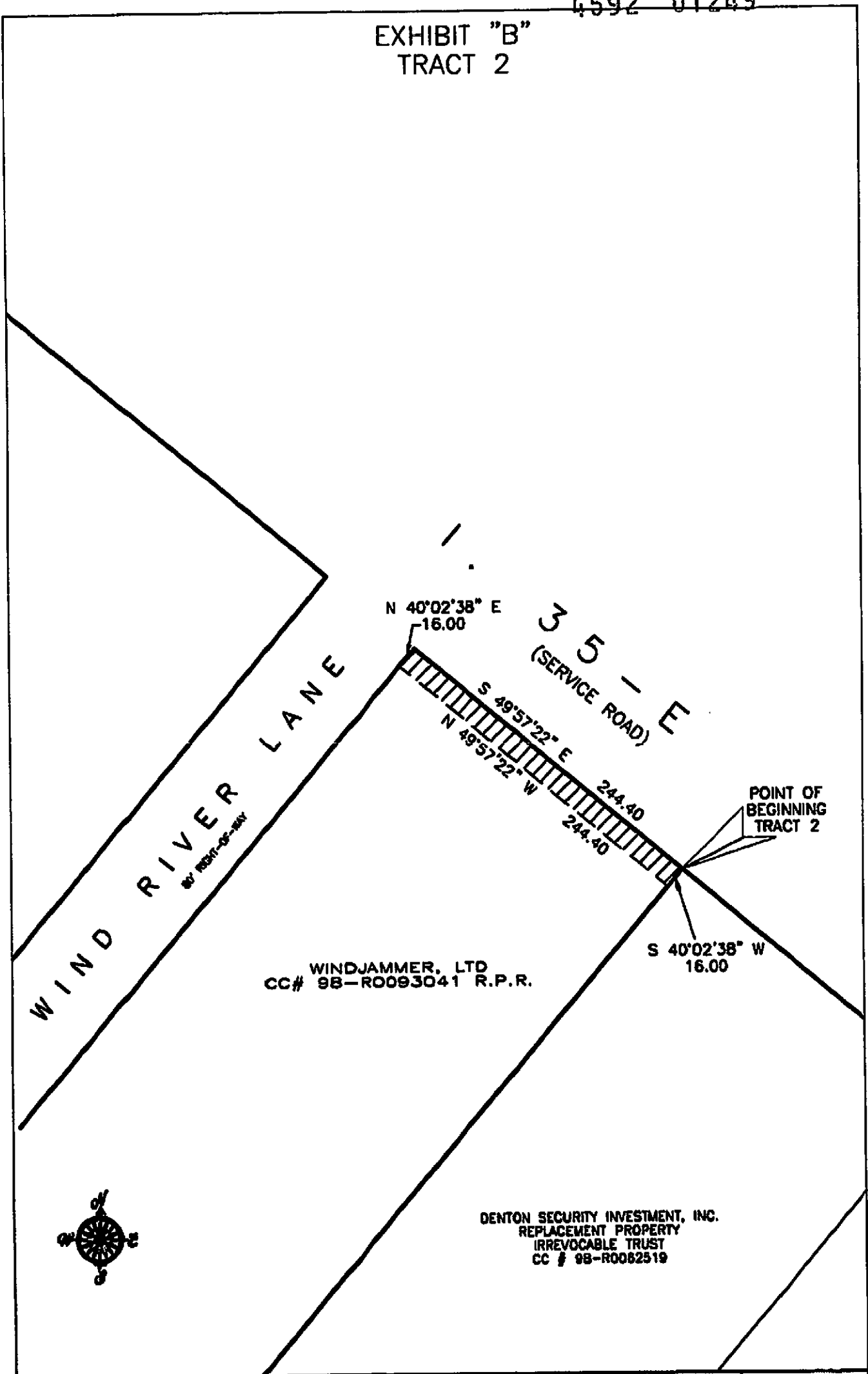
Engineering & Transportation Department  
Right-of-Way Division

TRACT 1
Chova
WIND RIVER
8/5/00

NON-CERTIFIABLE COPY

4592 01249

EXHIBIT "B"  
TRACT 2



City of Denton

Engineering & Transportation Department  
Right-of-Way Division

TRACT 2
Chon
WIND RIVER
5/5/00

4592 01250

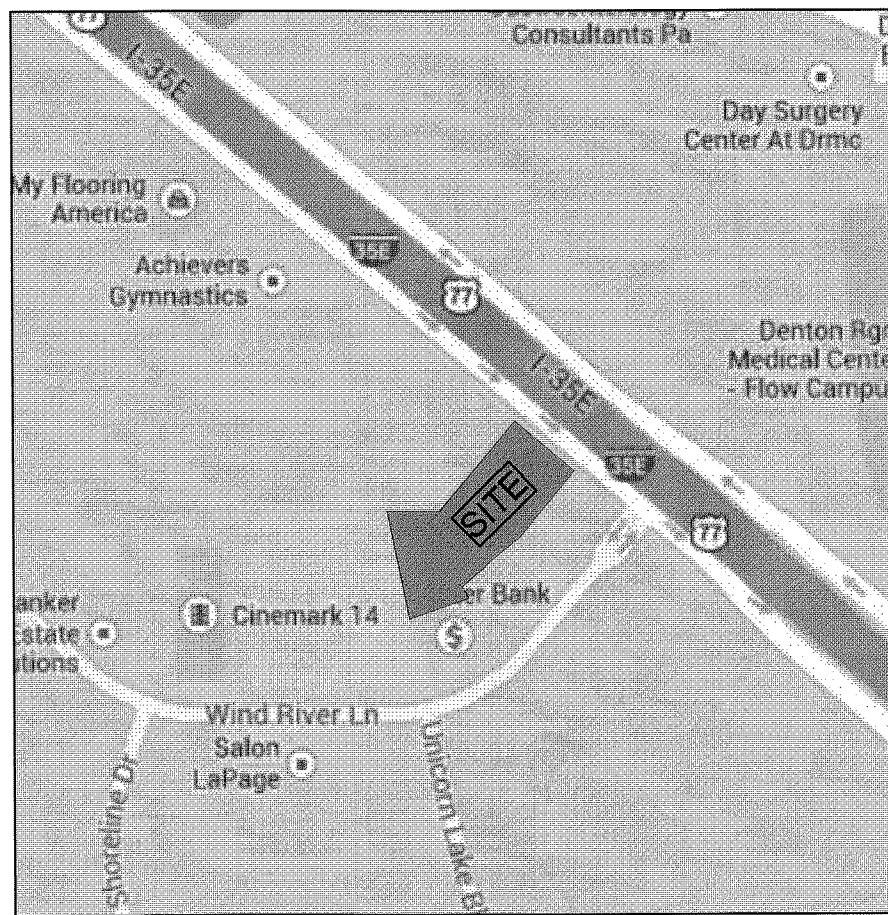
Return to:

City Of Denton  
Engineering & Transportation Dept.  
221 North Elm Street  
Denton, Texas 76201  
Attention: Chrys Owens

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY  
CLERK

On May 18 2000  
At 1:41pm

Doc/Num : 00-R0046359  
Doc/Type : EAS  
Recordings: 13.00  
Doc/Mgmt : 6.00  
Receipt #: 20455  
Deputy - MARY



VICINITY MAP  
NOT TO SCALE

#### GENERAL NOTES:

1. ALL CORNERS ARE MARKED WITH CAPPED 1/2" IRON RODS STAMPED "KAZ" UNLESS OTHERWISE NOTED.

2. NOTE: THE CITY OF DENTON HAS ADOPTED THE NATIONAL ELECTRICAL SAFETY CODE (THE "CODE"). THE CODE GENERALLY PROHIBITS STRUCTURES WITHIN 17.5 FEET ON EITHER SIDE OF THE CENTERLINE OF OVERHEAD DISTRIBUTION LINES AND WITHIN 30 FEET ON EITHER SIDE OF THE CENTERLINE OF OVERHEAD TRANSMISSION LINES. IN SOME INSTANCES THE CODE REQUIRES GREATER CLEARANCES. BUILDING PERMITS WILL NOT BE ISSUED FOR STRUCTURES WITHIN THESE CLEARANCE AREAS. CONTACT THE BUILDING OFFICIAL WITH SPECIFIC QUESTIONS.

3. **FLOOD STATEMENT:** I HAVE EXAMINED THE F.E.M.A. FLOOD INSURANCE RATE MAP FOR THE CITY OF DENTON, COMMUNITY NUMBER 480194 EFFECTIVE DATE 4-18-2011 AND THAT MAP INDICATES THAT THIS PROPERTY IS WITHIN "NON-SHADED ZONE X" DEFINED AS "AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD (500-YEAR)" AS SHOWN ON PANEL 380 G SAID MAP.

4. TAPS MADE TO EXISTING WATERLINES OR RELOCATION OF FIRE HYDRANT SHALL BE DONE BY THE CITY OF DENTON AT THE CONTRACTOR'S EXPENSE. CONTACT HARRY BOPP WITH THE WATER DEPARTMENT AT (940) 349-7167.

5. TAPS MADE TO EXISTING SEWER LINES SHALL BE DONE BY THE CITY OF DENTON AT THE CONTRACTOR'S EXPENSE. CONTACT KELVIN PRYOR WITH THE WASTEWATER DEPARTMENT AT (940) 349-8489.

6. THE SUBJECT PROPERTY IS ZONED RCC-D PER THE CITY OF DENTON'S ONLINE ZONING MAP.

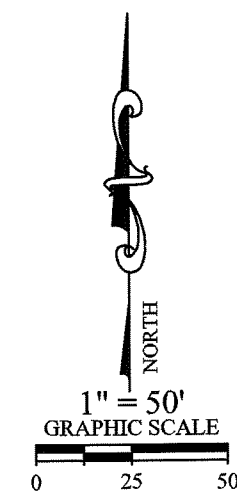
7. ALL BUILDING LINES ARE IMPOSED BE RCC-D ZONING.

8. THE PURPOSE OF THIS PLAT IS TO CREATE 1 LOT.

9. THE PROPERTY OWNER IS RESPONSIBLE FOR THE MAINTENANCE OF THE PUBLIC ACCESS EASEMENT.

#### EASEMENT LINE TABLE

LINE	BEARING	DISTANCE
L1	S 49°58'42" E	15.00'
L2	S 40°01'18" W	229.87'
L3	S 49°58'42" E	156.98'
L4	S 50°39'20" W	15.26'
L5	N 49°58'42" W	169.16'
L6	N 40°01'18" E	9.00'
L7	N 49°58'42" W	32.84'
L8	N 40°07'30" E	19.00'
L9	S 49°58'42" E	32.81'
L10	N 40°01'18" E	216.87'
L11	N 22°57'19" W	26.87'
L12	N 11°41'42" W	245.56'
L13	S 89°48'51" E	16.31'
L14	S 11°42'19" E	240.63'
L15	S 22°57'19" E	26.35'
L16	S 70°48'24" W	16.03'

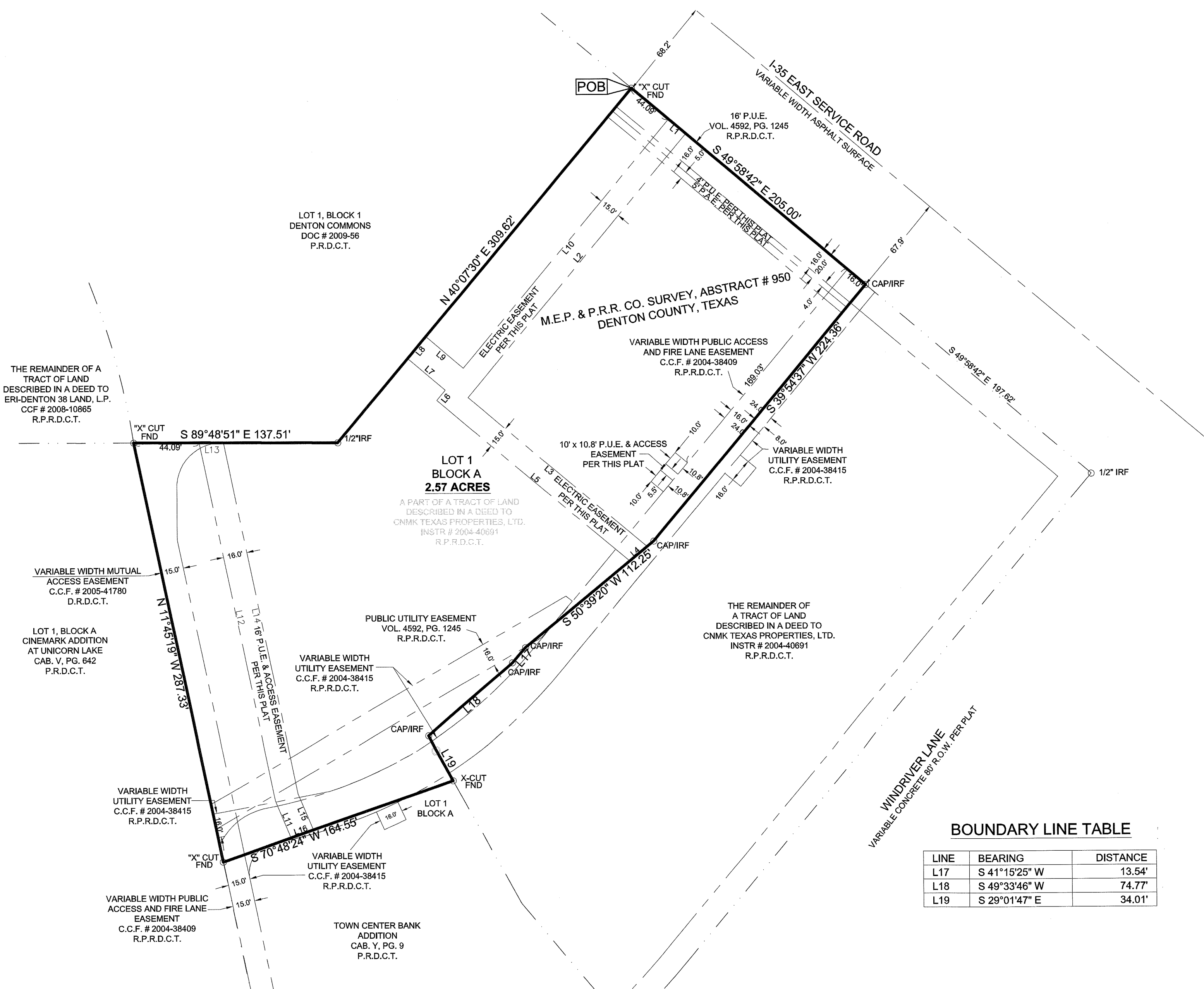


#### SURVEYOR:

KAZ SURVEYING, INC.  
1720 WESTMINSTER DRIVE  
DENTON, TEXAS 76205  
PHONE: (940) 382-3446

#### OWNER:

Auk Denton Partners, LLC,  
6360 LBJ Freeway, Suite 200,  
Dallas, TX 75249



#### BOUNDARY LINE TABLE

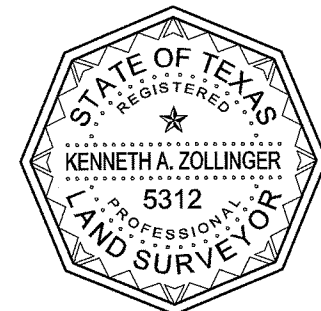
LINE	BEARING	DISTANCE
L17	S 41°15'25" W	13.54'
L18	S 49°33'46" W	74.77'
L19	S 29°01'47" E	34.01'

STATE OF TEXAS  
COUNTY OF DENTON

#### CERTIFICATE OF SURVEYOR

I, KENNETH A. ZOLLINGER, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AND ACTUAL SURVEY MADE ON THE GROUND AND THAT THE MONUMENTS SHOWN HEREON WERE FOUND OR PLACED WITH CAPPED 1/2" IRON RODS STAMPED "KAZ" UNDER MY DIRECTION AND SUPERVISION IN ACCORDANCE WITH THE ORDINANCES OF THE CITY OF DENTON, DENTON COUNTY, TEXAS.

KENNETH A. ZOLLINGER R.P.L.S. # 5312 DATE 12-24-13



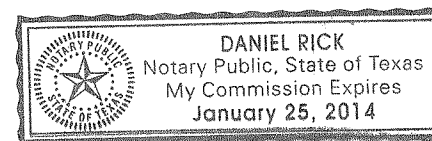
STATE OF TEXAS:  
COUNTY OF DENTON:

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED KENNETH A. ZOLLINGER, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF THE OFFICE THIS 24<sup>th</sup> DAY OF December, 2013.

Daniel Rick  
NOTARY PUBLIC, DENTON COUNTY, TEXAS.

MY COMMISSION EXPIRES 1-25-2014



APPROVED BY THE PLANNING & ZONING COMMISSION ON THIS 11<sup>th</sup> DAY OF December, 2013.

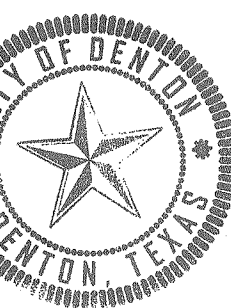
Seamus B. Schaefer  
CHAIRPERSON, PLANNING & ZONING COMMISSION

Jennifer Walters  
CITY SECRETARY



1720 WESTMINSTER  
DENTON, TX 76205  
(940)382-3446

JOB NUMBER: 120291  
DRAWN BY: M.J.P.  
DATE: 12-5-2013  
R.P.L.S.  
KENNETH A. ZOLLINGER



FINAL PLAT  
LOT 1, BLOCK A  
B.J.'S BREWERY ADDITION  
BEING 2.57 ACRES OUT OF THE M.E.P. & P.R.R.  
SURVEY, ABSTRACT NUMBER 950, CITY OF  
DENTON, DENTON COUNTY, TEXAS

D.U.E. = DRAINAGE / UTILITY EASEMENT  
P.U.E. = PUBLIC UTILITY EASEMENT  
U.E. = UTILITY EASEMENT  
P.A.E. = PUBLIC ACCESS EASEMENT  
D.E. = DRAINAGE EASEMENT

CM = CONTROLLING MONUMENT  
CPIRF = CAPPED IRON ROD FOUND  
IRF = IRON ROD FOUND  
CPIRF = CAPPED IRON ROD SET

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STATE OF TEXAS  
DENTON COUNTY

**WHEREAS:** CNMK Texas Properties, LTD is the owner of all the certain lot, tract or parcel of land situated in the M.E.P. & P.R.R. Company Survey, Abstract Number 950 in the City of Denton, Denton County, Texas and being a part of a tract of land described in a deed to CNMK Texas Properties, LTD., as recorded in Instrument Number 2004-40691 Real Property Records, Denton County, Texas; the subject tract being more particularly described as follows;

BEGINNING at a "X" cut found for the North corner of the herein described tract and being the East corner of Lot 1, Block 1 of Denton Commons, an addition to the City of Denton, Denton County, Texas as recorded in Document Number 2009-56 Plat Records, Denton County, Texas and being in the Westerly Right of Way line of Interstate 35E;

Thence South 49 degrees 58 minutes 42 seconds East with the Westerly line thereof a distance of 205.00 feet to a capped 1/2" iron rod stamped "5312" set for the East corner of the herein described tract;

Thence South 39 degrees 54 minutes 37 seconds West a distance of 224.36 feet to a capped 1/2" iron rod stamped "5312" set for corner;

Thence South 50 degrees 39 minutes 20 seconds West a distance of 112.25 feet to a capped 1/2" iron rod stamped "5312" set for corner;

Thence South 41 degrees 15 minutes 25 seconds West a distance of 13.54 feet to a capped 1/2" iron rod stamped "5312" set for corner;

Thence South 49 degrees 33 minutes 46 seconds West a distance of 74.77 feet to a capped 1/2" iron rod stamped "5312" set for corner;

Thence South 29 degrees 01 minutes 47 seconds East a distance of 34.01 feet to a "X" cut set for the most Southerly Southeast corner of the herein described tract and being the Northeast corner of Lot 1, Block A Town Center Bank Addition, an addition to the City of Denton, Denton County, Texas;

Thence South 70 degrees 48 minutes 24 seconds West with the Northerly line thereof a distance of 164.55 feet to a "X" cut found for the Southwest corner of the herein described tract and the Northwest corner of said Town Center Bank Addition and being in the East line of Lot 1, Block A of Cinemark Addition at Unicorn Lake, an addition to the City of Denton, Denton County, Texas as recorded in Cabinet V, Page 642 Plat Records, Denton County, Texas;

Thence North 11 degrees 45 minutes 19 seconds West with the East line thereof a distance of 287.33 feet to a "X" cut found for the Northwest corner of the herein described tract and the Northeast corner of said Cinemark Addition at Unicorn Lake and being the Southeast corner of the remainder of a tract of land described in a deed to ERI-Denton 38 Land, LP., as recorded in County Clerks File Number 2008-10865 Real Property Records, Denton County, Texas and being the Southwest corner of said Denton Commons;

Thence South 89 degrees 48 minutes 51 seconds East a distance of 137.51 feet to a 1/2" iron rod found for corner;

Thence North 40 degrees 07 minutes 30 seconds East with the Southerly line of said Denton Commons a distance of 309.62 feet to the PLACE OF BEGINNING and enclosing 2.57 acres of land more or less.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS:

THAT AUK DENTON PARTNERS, LLC., DOES HEREBY ADOPT THIS FINAL PLAT, DESIGNATING THE HEREIN DESCRIBED PROPERTY AS LOT 1, BLOCK A, B.J.'S BREWERY, AN ADDITION IN THE CITY OF DENTON, TEXAS AND DOES HEREBY DEDICATE TO PUBLIC USE FOREVER ALL STREETS, ALLEYS, PARKS, WATERCOURSES, DRAINS, EASEMENTS, AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

AUK DENTON PARTNERS, LLC.  
CRAIG GUTOW

12/23/13  
DATE

STATE OF TEXAS  
COUNTY OF DENTON

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED CRAIG GUTOW, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN.

WITNESS MY HAND AND SEAL OF OFFICE THIS 23<sup>rd</sup> DAY OF December, 2013.

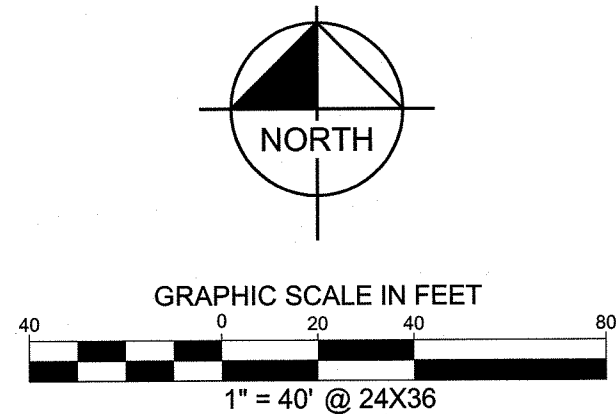
Diane O. Finkelstein  
NOTARY PUBLIC IN AND FOR THE STATE OF South Carolina  
Charleston County

MY COMMISSION EXPIRES ON 02/21/2022  
Diane O. Finkelstein  
Notary Public, State of South Carolina  
My Commission Expires 02/21/2022

CITY OF DENTON PROJECT # FP13-0024

Filed for Record  
in the official records of:  
Denton County  
On Jan 26, 2014 at 02:59P  
In the  
Plat Records  
630 BREWERY ADDITION  
Sec Number: 2014- 29  
No. of Pages: 1  
Amount: 50.00  
Receipt Number: 1120171  
By:  
Paula Glines



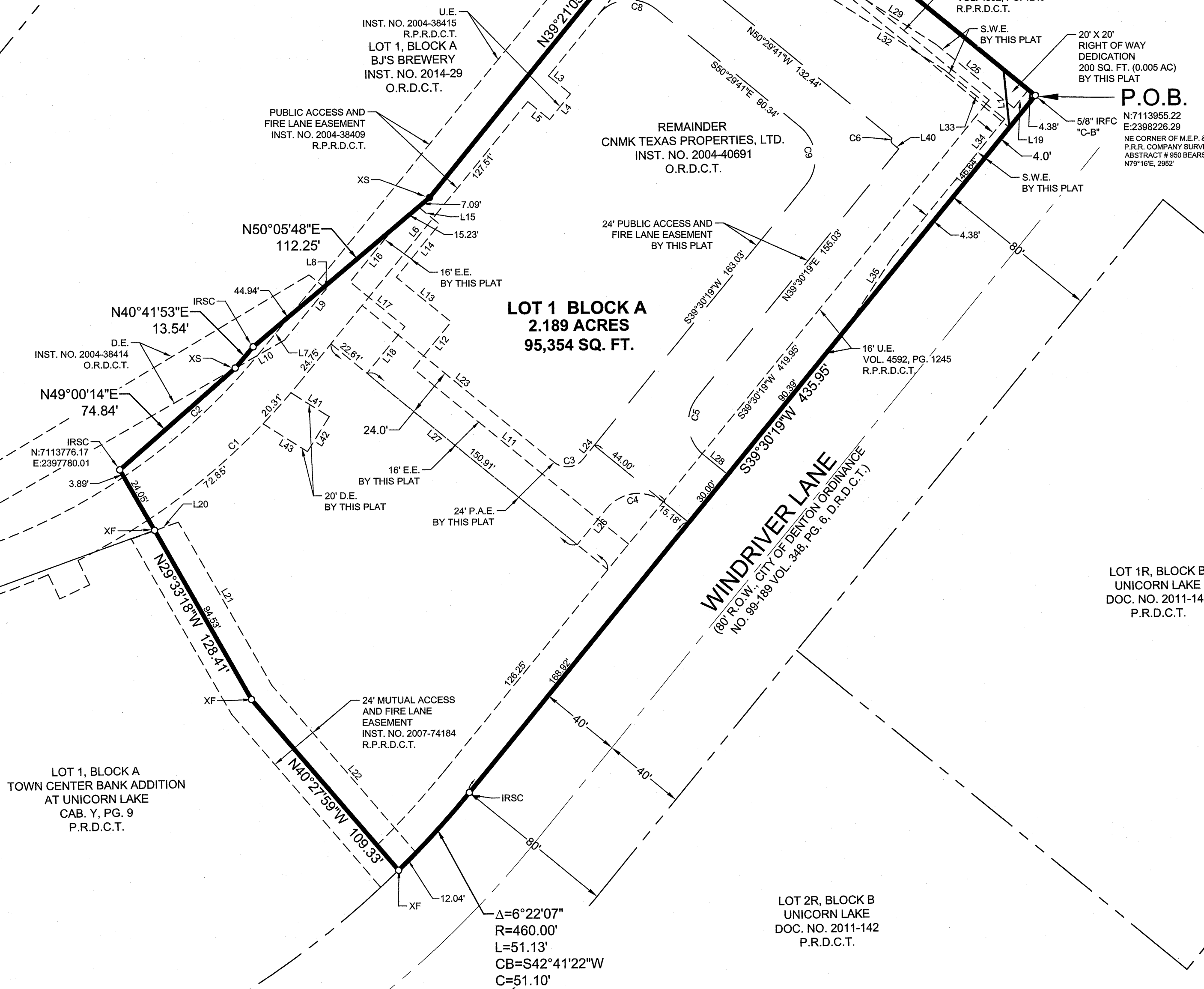


LOT 1, BLOCK 1  
DENTON COMMONS  
DOC. NO. 2009-56  
P.R.D.C.T.

#### LEGEND

Δ = CENTRAL ANGLE  
P.O.B. = POINT OF BEGINNING  
IRSC = 5/8" IRON ROD W/ "KHA" CAP SET  
IRFC = IRON ROD W/CAP FOUND  
D.E. = DRAINAGE EASEMENT  
P.A.E. = PUBLIC ACCESS EASEMENT  
W.E. = WATER EASEMENT  
P.U.E. = PUBLIC UTILITY EASEMENT  
U.E. = UTILITY EASEMENT  
S.W.E. = SIDEWALK EASEMENT  
E.E. = ELECTRIC EASEMENT  
D.R.D.C.T. = DEED RECORDS OF DENTON COUNTY, TEXAS  
O.P.R.D.C.T. = OFFICIAL PUBLIC RECORDS, DENTON COUNTY, TEXAS

INTERSTATE HIGHWAY 35E  
(A VARIABLE WIDTH RIGHT-OF-WAY)



#### GENERAL NOTES:

- All bearings shown are based on grid north of the Texas Coordinate System of 1983, North Central Zone 4202, using the City of Denton control monumentation. All dimensions shown are ground distances. To obtain a grid distance, multiply the ground distance by the Project Combined Factor (PCF) of 0.999848685.
- Selling a portion of this addition by metes and bounds is a violation of City ordinance and state laws and is subject to fines and withholding of utilities and building permits.
- All corners are 5/8-inch iron rods with a red plastic cap stamped "KHA" set, unless otherwise noted.
- According to Community Panel No. 48121C0390G, dated April 18, 2011 of the National Flood Insurance Program Map, Flood Insurance Rate Map of Denton County, Texas, Federal Emergency Management Agency, Federal Insurance Administration, this property is not within a special flood hazard area. If this site is not within an identified special flood hazard area, this flood statement does not imply that the property and/or the structures thereon will be free from flooding or flood damage. On rare occasions, greater floods can and will occur and flood heights may be increased by man-made or natural causes. This flood statement shall not create liability on the part of the surveyor.
- Gas, petroleum lines or easements are not apparent with-in the bounds of this plat.
- The property owner is responsible for the maintenance of the Access Easements shown on this plat.
- Taps made to existing waterlines or relocation of Fire Hydrant shall be done by the City of Denton at the expense of the Contractor. Contact Harry Bopp with the Water Department at 940-349-7167.
- Taps made to existing sewer lines shall be done by the City of Denton at the expense of the Contractor. Contact Justin Divney with the Wastewater Department at 940-349-8489.

LINE TABLE			LINE TABLE			LINE TABLE			LINE TABLE		
NO.	BEARING	LENGTH	NO.	BEARING	LENGTH	NO.	BEARING	LENGTH	NO.	BEARING	LENGTH
L1	S05°29'41"E	28.28'	L11	S50°29'41"E	134.91'	L21	S29°33'37"E	91.29'	L31	N50°29'41"W	85.56'
L2	S39°30'24"W	142.20'	L12	S39°30'22"W	29.15'	L22	S40°28'18"E	107.08'	L32	N57°14'50"W	70.78'
L3	S50°29'36"E	13.80'	L13	S50°29'38"E	34.36'	L23	S50°29'41"E	120.35'	L33	N50°29'41"W	37.49'
L4	S39°30'24"W	16.00'	L14	S39°30'22"W	33.23'	L24	N39°30'19"E	8.27'	L34	N39°30'19"E	85.83'
L5	N50°29'36"W	13.80'	L15	S50°29'38"E	13.20'	L25	S50°29'41"E	48.79'	L35	S33°37'11"W	42.70'
L6	S39°30'24"W	176.28'	L16	S39°30'22"W	34.28'	L26	S39°30'19"W	22.67'	L40	N50°29'41"W	3.87'
L7	N39°30'24"E	22.64'	L17	S50°29'38"E	34.38'	L27	N50°29'41"W	154.35'	L41	S57°41'47"E	21.87'
L8	S50°32'11"E	1.44'	L18	S39°30'22"W	29.15'	L28	S50°29'27"E	15.18'	L42	S32°18'13"W	20.00'
L9	S39°30'19"W	32.00'	L19	N39°30'19"E	11.33'	L29	S57°14'50"E	70.78'	L43	N57°41'47"W	25.40'
L10	S60°35'41"W	27.74'	L20	N70°20'24"E	12.23'	L30	S50°29'41"E	74.27'			

CURVE TABLE				
NO.	DELTA	RADIUS	LENGTH	CHORD BEARING
C1	17°15'09"	329.00'	99.07'	N48°07'59"E
C2	16°57'40"	305.00'	90.29'	N47°59'18"E
C3	90°00'00"	10.00'	15.71'	N84°30'19"E
C4	90°00'00"	20.00'	31.42'	S84°30'19"W
C5	89°59'46"	20.00'	31.41'	S05°29'34"E
C6	90°00'00"	2.00'	3.14'	S05°29'41"E
C7	53°15'51"	20.00'	18.69'	S23°51'46"E
C8	90°00'00"	20.00'	31.42'	S84°30'19"W
C9	90°00'00"	20.00'	31.42'	N05°29'41"W

#### OWNERS CERTIFICATE

STATE OF TEXAS §

COUNTY OF DENTON §

WHERE AS CNMK Texas Properties, LTD., is the rightful owner of all of that tract of land situated in the M.E.P. & P.R.R. Company Survey, Abstract No. 950, City of Denton, Denton County, Texas and being the remainder of a 15.00 acre tract of land described in Special Warranty Deed to CNMK Texas Properties, LTD., recorded in Instrument No. 2004-40691, Official Public Records, Denton County, Texas, and being more particularly described as follows:

BEGINNING at a 5/8-inch iron rod with cap stamped "Carter&Burgess" found at the intersection of the southwesterly right-of-way line of Interstate Highway 35E (a variable width right-of-way) and the northwesterly right-of-way line of Windriver Lane (an 80-foot wide right-of-way);

THENCE with said northwesterly right-of-way line the following courses and distances, to wit:

South 39°30'19" West, a distance of 435.95 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set at the beginning of a tangent curve to the right having a central angle of 6°22'07", a radius of 460.00 feet, a chord bearing and distance of South 42°41'22" West, 51.10 feet;  
In a southwesterly direction, with said curve to the right, an arc distance of 51.13 feet to a "X" cut in concrete found for the east corner of Lot 1, Block A of Town Center Bank Addition, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet Y, Page 9, Plat Records, Denton County, Texas;

THENCE departing said northwesterly right-of-way line and with the east line of said Lot 1, Block A, the following courses and distances, to wit:

North 40°27'59" West, a distance of 109.33 feet to a "X" cut in concrete found;  
North 29°33'18" West, passing at a distance of 94.53 feet to a "X" cut in concrete found for the north corner of said Lot 1, Block A and being the inner el corner of Lot 1, Block A, BJ's Brewery, an addition to the City of Denton according to the plat thereof recorded in Instrument No. 2014-29, Official Public Records, Denton County, Texas, and continuing a total distance of 128.41 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set;

THENCE with the east line of said BJ's Brewery, the following courses and distances, to wit:

North 49°00'14" East, a distance of 74.84 feet to a "X" cut in concrete set;  
North 40°41'53" East, a distance of 13.54 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set;  
North 50°05'48" East, a distance of 112.25 feet to a "X" cut in concrete set;  
North 39°21'05" East, a distance of 224.36 feet to a 1/2-inch iron rod with cap stamped "RPLS 5312" found in said southwesterly right-of-way line and being the east corner of said AUK Denton Partners, LLC tract;

THENCE with said southwesterly right-of-way line, South 50°29'41" East, a distance of 197.77 feet to the POINT OF BEGINNING and containing 2.194 acres or 95,554 square feet of land.

Bearing system of this survey is based on a line oriented between City of Denton monuments 2010 and 2011 found in the field, whose positions are published on the Texas Coordinate System of 1983, North Central Zone (4202) North American Datum of 1983. The horizontal coordinates of this survey are local surface coordinates using a combined local scale factor of 0.999848685.

#### OWNER'S DEDICATION

STATE OF TEXAS §

COUNTY OF DENTON §

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, CNMK Texas Properties, LTD., does hereby adopt this plat designating the herein described property as BONE DADDY'S DENTON, an addition to the City of Denton, Denton County, Texas, and does hereby dedicate to the public use forever the streets and alleys shown thereon, and does hereby reserve the easement strips shown on this plat for the mutual use and accommodations of all public utilities desiring to or using same. Any public utility shall have the right to remove and keep removed all or part of any building, fence, trees, shrubs or other growths or improvements which in any way endangers or interferes with the construction, maintenance, or efficiency of its respective systems on any of these easement strips, and any public utility shall, at all times, have the right of ingress and egress to and from and upon the said easement strips for the purpose of construction, reconstruction, inspecting, patrolling, maintaining and adding to or removing all or part of its respective system without the necessity at any time procuring permission of anyone.

WITNESS MY HAND, this 17th day of February, 2015.

BY: CNMK Texas Properties, L.L.C.,  
a Texas Limited Liability Company

By: *Dana Brown*  
Signature

By: *W.P. Design & Construction*  
Title

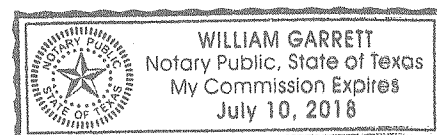
STATE OF TEXAS §

COUNTY OF *Collin* §

BEFORE ME, the undersigned authority, on this day personally appeared *Dana Brown*, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on the 27 day of February, 2015.

*William Garrett*  
Notary Public, State of Texas



#### SURVEYOR'S CERTIFICATION

KNOW ALL MEN BY THESE PRESENTS:

That I, Dana Brown, do hereby certify that I prepared this plat and the field notes made a part thereof from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the Subdivision regulations of the City of Denton, Texas.

Dana Brown  
Registered Professional Land Surveyor No. 5336  
Kimley-Horn and Associates, Inc.  
12750 Merit Drive, Suite 1000  
Dallas, Texas 75251  
Ph. 972-770-1300  
dana.brown@kimley-horn.com



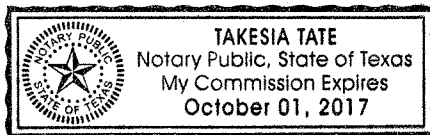
STATE OF TEXAS §

COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for The State of Texas, on this day personally appeared *Dana Brown*, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

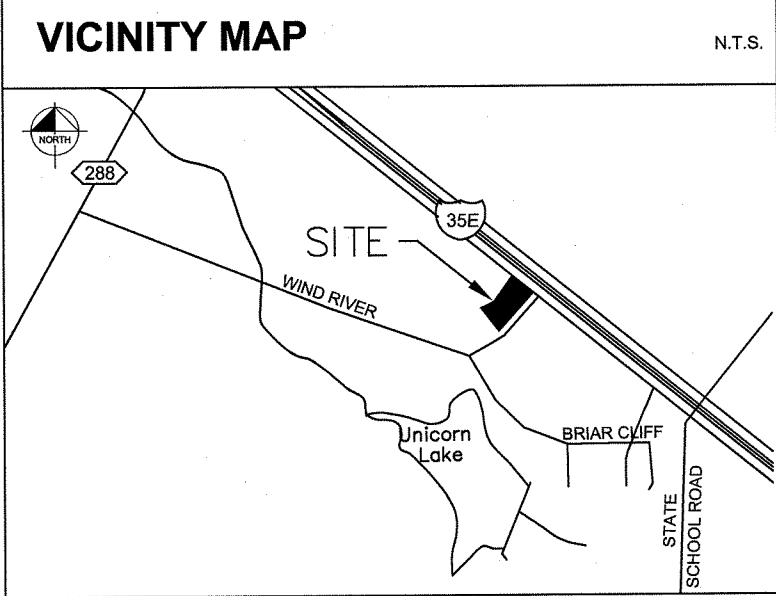
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 26 day of February, 2015.

*John Tate*  
Notary Public, State of Texas



#### IMPORTANT NOTICE

THE CITY OF DENTON HAS ADOPTED THE NATIONAL ELECTRICAL SAFETY CODE (THE "CODE"). THE CODE GENERALLY PROHIBITS STRUCTURES WITHIN 17.5 FEET ON EITHER SIDE OF THE CENTER LINE OF OVERHEAD DISTRIBUTION LINES AND WITHIN 37.5 FEET ON EITHER SIDE OF THE CENTERLINE OF OVERHEAD TRANSMISSION LINES. IN SOME INSTANCES THE CODE REQUIRES GREATER CLEARANCES. BUILDING PERMITS WILL NOT BE ISSUED FOR STRUCTURES WITHIN THESE CLEARANCE AREAS. CONTACT THE BUILDING OFFICIAL WITH SPECIFIC QUESTIONS.

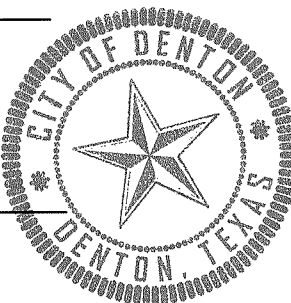


APPROVED BY THE PLANNING & ZONING COMMISSION

ON THIS THE 18th DAY OF February, 2015

*Joe Price*  
CHAIRPERSON, PLANNING AND ZONING COMMISSION

*Opal Richardson, Asst.*  
CITY SECRETARY



FINAL PLAT  
BONE DADDY'S DENTON  
LOT 1 BLOCK A  
2.194 ACRES  
M.E.P & P.R.R. COMPANY SURVEY,  
ABSTRACT NO. 950  
CITY OF DENTON,  
DENTON COUNTY, TEXAS  
CITY OF DENTON PROJECT NO. FP14-0020

Scale		Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'		DWP	DAB	FEB 2015	64433503	1 OF 1
OWNER: CNMK Texas Properties, LTD. 3900 Dallas Parkway Suite 500 Plano TX, 75032 Phone: 972-665-1067 Contact: David Little						
DEVELOPER: Bone Daddys 15300 N. Dallas Parkway #285 Addison, Texas 75001 214-302-5070 Contact: Scott Bown						
ENGINEER: Kimley-Horn and Associates, Inc. 12012 Wickchester, Ste. 500 Houston Texas 75093 972-665-1067 Contact: Ashley Frysinger, PE						



Denton County  
Cynthia Mitchell  
County Clerk  
Denton, TX 76202



70 2014 00007925

Instrument Number: 2014-7925

Recorded On: January 29, 2014

As  
Waiver

Parties: BJS RESTAURANTS INC

To

Billable Pages: 4

Number of Pages: 4

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Waiver	38.00
Total Recording:	38.00

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

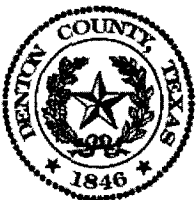
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2014-7925  
Receipt Number: 1128392  
Recorded Date/Time: January 29, 2014 11:38:02A  
User / Station: C Robinson - Cash Station 1

**Record and Return To:**

CITY OF DENTON  
901 A TEXAS ST 2ND FLOOR  
WATER UTILITIES DEPT  
DENTON TX 76209



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*C Mitchell*

County Clerk  
Denton County, Texas

After Recording Return Copy To:  
City of Denton  
Water Utilities Dept.  
901-A Texas St., 2<sup>nd</sup> Floor  
Denton, TX 76209  
Attn.: James B. Jenks, P.E., Senior Engineer

Project No. FP13-0024

### WAIVER AND COVENANT NOT TO SUE

STATE OF TEXAS                    }  
  }  
COUNTY OF DENTON            }      KNOW ALL PERSONS BY THESE PRESENTS

The undersigned, BS's Restaurants, Inc., (hereinafter called "Developer") executes this Waiver and Covenant not to Sue, for the benefit of the City of Denton, Texas (the "City") as of the 28<sup>th</sup> day of January, 20 14.

WHEREAS, Developer is the owner and developer of certain real property located in the City of Denton, County of Denton, Texas at 3250 S. Hwy I-35E, a 2.57-acre tract more particularly described as Lot 1, Block A of the BJ's Brewery Addition, the Final Plat of which was approved by Planning & Zoning Commission on December 11<sup>th</sup>, 2013 (the "Property"); and

WHEREAS, the Developer wants to construct a commercial building and various other improvements on the Property for a project entitled BJ's Restaurant (the "Project") that requires the construction of various public works improvements on the site as defined by the project plans; and

WHEREAS, the Developer has requested City to allow Developer to advance the construction of private grading, utilities, paving, foundation, and full vertical construction ("Expedited Private Improvements") concurrently with completion and acceptance of the public improvements required by the Project, specifically public water, sanitary sewer, and storm sewer ("Concurrent Public Improvements"), under a limited building permit, containing the limitations noted in this paragraph ("Limited Building Permit"). This Limited Building Permit shall entitle the Developer to construct all improvements on the site which are included in the approved construction documents. Developer stipulates and agrees that no Certificate of Occupancy will be requested or allowed until such time as all Concurrent Public Improvements have been accepted by the City; and

WHEREAS, the Developer has requested the City consider allowing the Developer to advance the building permit for the property in advance of the completion of the public improvements; NOW, THEREFORE:

Construction shall comply with all applicable portions of the Fire Code as to emergency access and water supply for firefighting purposes at all times during construction. Adequate access for fire apparatus shall be provided. At such time as combustible construction materials are brought on site, sufficient water for firefighting purposes shall be provided. For all projects (involving combustible or non-combustible construction), adequate ambulance access must be provided at all times.

In anticipation of City's subsequent approval of the requested Limited Building Permit, and because proceeding in this manner is an option requested by Developer, rather than a requirement, Developer agrees to indemnify and hold harmless the City, its employees, agents,

successors, and assigns from any and all costs Developer may incur as a consequence of proceeding in this manner before full building permits are issued, and agrees to assume all risks arising therefrom. Developer understands and agrees that the City will issue a "Stop Work" order for all activity associated with the Limited Building Permit in the event that the Developer's contractor fails to perform the work associated with this permit in a manner satisfactory to the City, or for any other reason authorized by ordinance. Developer hereby covenants not to sue the City, and forever irrevocably waives any and all claims of every kind whatsoever against the City, its employees, agents, successors, and assigns, arising out of either: (1) the City's subsequent issuance of a "Stop Work" order due to the failure of the Developer's contractor to perform the work associated with the Limited Building Permit in a manner satisfactory to the City, or (2) the subsequent failure or refusal of the City to issue a Certificate of Occupancy for any building or structure in the Project, if due to Developer's failure or inability to obtain required permits or approvals from City or any other entity with authority to grant such approvals.

No subsequent change in the law shall in any way affect the validity or enforceability of this Waiver and Covenant not to Sue. This Waiver and Covenant not to Sue is intended to satisfy §35.16.6.D.c.i.2 of the Denton Code of Ordinances – one of the necessary elements which must be satisfied before the City Building Official may issue a Limited Building Permit to advance construction of the Expedited Private Improvements. However, nothing herein shall be construed to authorize any delay in the construction of any public improvements required by the Project, including the Concurrent Public Improvements, beyond any completion deadlines specified in any other agreement, ordinance, project plans or plat, regardless of whether or not the Expedited Private Improvements are complete.

Developer further stipulates to the nexus and proportionality of the public improvements made subject to this Waiver and Covenant not to Sue (specifically including both those contemplated now and those necessitated by changes required for final approval), regardless of whether they were known, quantified or anticipated at the time this document was executed.

Developer, as the sole owner of the Property, hereby declares that all of the Property shall be held, sold and conveyed subject to the covenants contained herein, which are covenants touching and running with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, either now or in the future, and their successors, heirs and assigns, and shall inure to the benefit of the Developer, the City and their successors and assigns. These Restrictive Covenants shall be recorded in the Real Property Records of Denton County, Texas.

Developer has executed this Waiver and Covenant not to Sue, to be effective as of the date first above written (the "Effective Date").

BJ's Restaurants, Inc.  
7799 Center Ave. Ste 300  
Huntington Beach, CA 92647  
Attention: Joan Leguay  
Phone: (714) 966-2410

By: Joan Leguay  
BJ's Restaurants, Inc. Authorized Agent

ACKNOWLEDGMENT

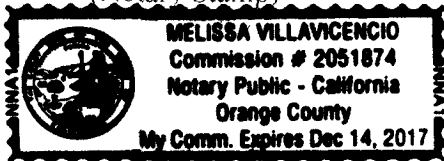
STATE OF California

COUNTY OF Orange

§  
§  
§  
§

This instrument was acknowledged before me on this 28<sup>th</sup> day of January, 2014 by Joan Leguay, an authorized representative of BJ's Restaurants, Inc., on behalf of said entity.

(Notary Stamp)



Melissa Villavicencio  
Notary Public in and for  
State of California

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Denton County  
Cynthia Mitchell  
County Clerk  
Denton, TX 76202



70 2004 00038414

Instrument Number: 2004-38414

Recorded On: March 29, 2004

As  
Easement

Parties: WINDJAMMER

To

Billable Pages: 6

Number of Pages: 6

Comment:

**\*\* Examined and Charged as Follows: \*\***

Easement	24 00
Total Recording:	24.00

\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law

**File Information:**

Document Number 2004-38414  
Receipt Number. 97913  
Recorded Date/Time: March 29, 2004 02:34P  
  
User / Station: J Morris - Cash Station 1

**Record and Return To:**

CITY OF DENTON  
601 E HICKORY STE B  
DENTON TX 76205



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*Cynthia Mitchell*

County Clerk  
Denton County, Texas

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## DRAINAGE EASEMENT

THE STATE OF TEXAS,           §  
                                     §           KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DENTON           §

THAT, WINDJAMMER, LTD. (Grantor) of Denton County, Texas, in consideration of the sum of One Dollar and No Cents (\$1.<sup>00</sup>) and other good and valuable consideration in hand paid by the City of Denton, Texas, (Grantee) receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by it and situated in Denton County, Texas, in the M.E.P. & P.R.R. Co. Survey, Abstract No. 950.

### EASEMENT AREA DESCRIBED IN EXHIBIT "A" AND ILLUSTRATED IN EXHIBIT "B" BOTH ATTACHED HERewith

And it is further agreed that the City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining DRAINAGE in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to said DRAINAGE facilities or any part thereof.



TO HAVE AND TO HOLD unto the said City of Denton, Texas as  
aforesaid for the purposes aforesaid the premises above described.

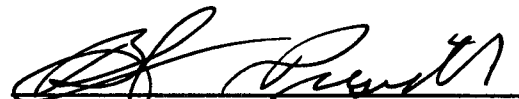
Witness my hand, this the 22nd day of March, 2004.

WINDJAMMER, LTD.,  
a Texas limited partnership

By: Bob Shelton Enterprises, Ltd.,  
a Texas limited partnership,  
General Partner

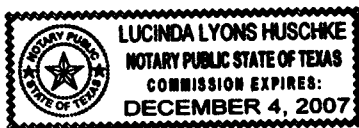
By: Bob Shelton Enterprises  
Management LLC,  
a Texas limited liability company,  
General Partner

By:

  
Bob Shelton, President

STATE OF TEXAS       §  
                                     §  
COUNTY OF DENTON   §

This instrument was acknowledged before me on the 22<sup>nd</sup> day of  
March, 2004, by BOB SHELTON, President of Bob Shelton Enterprises  
Management Company, LLC, a Texas limited liability company, General  
Partner of Bob Shelton Enterprises, Ltd., a Texas limited  
partnership, General Partner of WINDJAMMER, LTD., a Texas limited  
partnership, on behalf of said limited liability company and  
partnerships.




  
Notary Public, State of Texas

My Commission Expires:

12-4-07

Accepted this 29<sup>th</sup> day of March, 2004 for  
the City of Denton, Texas (Resolution No. 91-073).

BY:

  
Paul Williamson  
Real Estate and  
Capital Support Manager

## EXHIBIT A

### FIELD NOTES

#### DESCRIBING A DRAINAGE EASEMENT FROM WINDJAMMER, LTD.

BEING a 0.0996 acre tract of land situated in the M.E.P. & P.R.R. County Survey, Abstract No. 950, City of Denton, Denton County, Texas and being part of a 136.50 acre tract of land described in deed to Windjammer, Ltd., as recorded in County Clerk's File Number 98-R0093041 and 98-R0062520, of the Property Records of Denton County, Texas (P.R.D.C.T.) and being more particularly described as follows:

COMMENCING at a 5/8-inch iron rod with cap stamped "Carter Burgess" found at the intersection of the north right-of-way of Windriver Lane (an 80 foot right-of-way) as described in County Clerk's File Number 99-R0065227, P.R.D.C.T., and the west right-of-way of Interstate Highway 35 (a variable width right-of-way);

THENCE South 40 degrees 02 minutes 38 seconds West, departing said west right-of-way line of Interstate Highway 35 and along the said north right-of-way line of Windriver Lane, a distance of 435.95 feet to a 5/8-inch found iron rod with cap stamped "Carter Burgess" for the point of curvature of a circular curve to the right having a radius of 460.00 feet and whose chord bears South 59 degrees 09 minutes 10 seconds West, a distance of 301.18 feet;

THENCE Southwesterly, continuing along said north right-of-way line and along said curve to the right through a central angle of 38 degrees 13 minutes 05 seconds, an arc distance of 306.83 feet to a 1/2-inch set iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") for corner, said point being southeast corner of the proposed Lot 1, Block A, Cinemark Addition at Unicorn Lake;

THENCE North 11 degrees 44 minutes 05 seconds West, departing said north right-of-way line and along the proposed east line of Lot 1, Block A, a distance of 256.78 feet to the POINT OF BEGINNING;

THENCE North 11 degrees 44 minutes 05 seconds West, continuing along said proposed east line a distance of 16.85 feet to a point for corner;

THENCE North 60 degrees 00 minutes 00 seconds East, departing said proposed east line a distance of 277.31 feet to a point for corner;

THENCE South 49 degrees 59 minutes 52 seconds East, a distance of 5.40 feet to a point for corner;

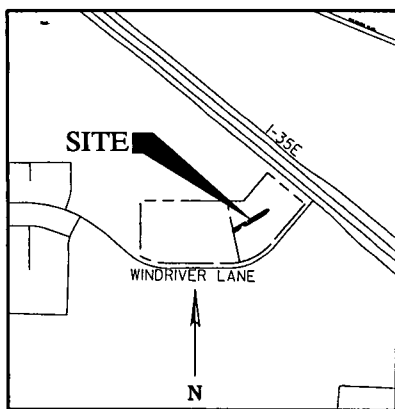
THENCE South 40 degrees 02 minutes 38 seconds West, a distance of 32.00 feet to a point for corner;

THENCE South 60 degrees 00 minutes 00 seconds West, a distance of 254.36 feet to the POINT OF BEGINNING AND CONTAINING 4,340 square feet or 0.0996 acres of land more or less.

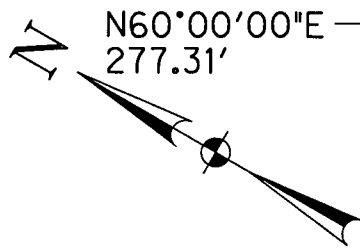
The basis of bearing for this tract is the deed to the City of Denton for the right-of-way dedication of Windriver Lane, as recorded in the Denton County Clerk's File Number 99-R0065227 P.R.D.C.T.



*Andrew J. Shafer*  
March 22, 2004



LOCATION MAP  
NOT TO SCALE



N60°00'00"E  
277.31'

INTERSTATE 35  
(VARIABLE WIDTH ROW)  
STATE OF TEXAS  
VOL. 348, PG. 6  
P.R.D.C.T.

S49°59'52"E  
5.40'

POINT OF  
COMMENCING

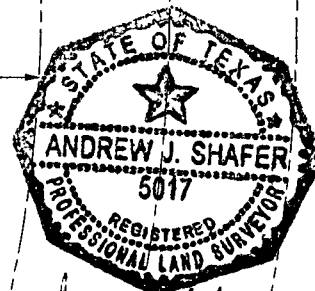
S40°02'38"W  
32.00'

S60°00'00"W  
254.36'

DRAINAGE EASEMENT  
4,340 SQ. FT. OR  
0.0996 ACRES

16' PUBLIC UTILITY  
EASEMENT VOL 4592'  
PG. 1245  
P.R.D.C.T.

WINDJAMMER, LTD.  
CC# 98-R0062520  
CC# 98-R0093041  
P.R.D.C.T.



Andrew J. Shafer  
March 22, 2004

POINT OF  
BEGINNING

N11°44'05"W  
16.85'

N11°44'05"W  
256.78'

Δ= 38°13'05"  
R= 460.00'  
T= 159.37'  
L= 306.83'  
CB= S59°09'10"W  
CL= 301.18'

PROPOSED  
LOT 1, BLOCK A  
399,502 SQ. FT. OR 9.171 ACRES

WINDJAMMER, LTD.  
CC# 98-R0062520  
CC# 98-R0093041  
P.R.D.C.T.

Δ= 11°44'17" RT  
R= 460.00'  
T= 47.29'  
L= 94.24'  
CB= S84°07'52"W  
CL= 94.08'

**LEGEND**

- |                   |   |
|-------------------|---|
| 1/2" FIR          | 1/2" FOUND IRON ROD                               |
| 5/8" FIR<br>W/CAP | 5/8" FOUND IRON ROD<br>WITH "CARTER BURGESS" CAP  |
| 1/2" SIR<br>W/CAP | 1/2" SET IRON ROD<br>WITH "HALFF ASSOC. INC." CAP |
| CM                | CONTROL MONUMENT                                  |

**EXHIBIT B**

OF A  
0.0996 ACRE DRAINAGE EASEMENT  
LOCATED IN  
M.E.P. & P.R.R. CO. SURVEY,  
ABST. No. 950  
CITY OF DENTON  
DENTON, COUNTY, TEXAS  
BY  
HALFF ASSOCIATES, INC.  
3801 PARKWOOD BLVD. SUITE 500  
FRISCO, TX 75034

MARCH 2004 AVO 21964 SCALE: 1" = 60'



THE BASIS OF BEARING FOR THIS TRACT IS THE DEED  
TO THE CITY OF DENTON FOR THE RIGHT OF WAY DEDICATION  
OF WIND RIVER LANE, RECORDED IN CC# 99-R0065227  
THE PROPERTY RECORDS OF DENTON COUNTY

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Denton County  
Cynthia Mitchell  
County Clerk  
Denton, TX 76202



70 2004 00038415

Instrument Number: 2004-38415

Recorded On: March 29, 2004

As  
Easement

Parties: WINDJAMMER

To

Billable Pages: 9

Number of Pages: 9

Comment:

**\*\* Examined and Charged as Follows: \*\***

Easement	30 00
Total Recording:	30.00

\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law

**File Information:**

Document Number: 2004-38415  
Receipt Number: 97913  
Recorded Date/Time: March 29, 2004 02.34P

**Record and Return To:**

CITY OF DENTON  
601 E HICKORY STE B  
DENTON TX 76205

User / Station: J Morris - Cash Station 1



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*Cynthia Mitchell*

County Clerk  
Denton County, Texas

EASEMENT

THE STATE OF TEXAS,           §  
                                  §   KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DENTON           §

THAT WINDJAMMER, LTD. (Grantor), in consideration of the sum of ONE DOLLAR AND NO CENTS(\$1.00) and OTHER GOOD AND VALUABLE CONSIDERATION in hand paid by the City of Denton, Texas, (Grantee), receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by Grantors and situated in Denton County, Texas, in the M.E.P. & P.R.R. Co. Survey, Abstract No. 950.

SEE ATTACHED EXHIBITS "A" & "B" FOR EASEMENT DESCRIPTION  
& ILLUSTRATION

And it is further agreed that the City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public utilities, in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said



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premises for the purpose of making additions to, improvements on and repairs to said public utility facilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness my hand, this the 22nd day of MARCH, 2004.

WINDJAMMER, LTD.,  
a Texas limited partnership

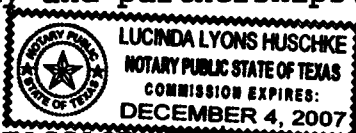
By: Bob Shelton Enterprises, Ltd.,  
a Texas limited partnership,  
General Partner

By: Bob Shelton Enterprises  
Management LLC,  
a Texas limited liability company,  
General Partner

By: [Signature]  
Bob Shelton President

STATE OF TEXAS       §  
                              §  
COUNTY OF DENTON   §

This instrument was acknowledged before me on the 22nd day of March, 2004, by BOB SHELTON, President of Bob Shelton Enterprises Management Company, LLC, a Texas limited liability company, General Partner of Bob Shelton Enterprises, Ltd., a Texas limited partnership, General Partner of WINDJAMMER, LTD., a Texas limited partnership, on behalf of said limited liability company and partnerships.



My Commission Expires:  
12-4-07

Lucinda Lyons Huschke  
Notary Public, State of Texas

Accepted this 29<sup>th</sup> day of March, 2004  
for the City of Denton, Texas (Resolution No. 91-073).

BY: Denise M. Perez  
JWR Paul Williamson  
Real Estate and  
Capital Support Manager

**EXHIBIT A**

**FIELD NOTES**

**DESCRIBING A UTILITY EASEMENT FROM WINDJAMMER, LTD.**

BEING a 0.4378 acre tract of land situated in the M.E.P. & P.R.R. County Survey, Abstract No. 950, City of Denton, Denton County, Texas and being part of a 136.50 acre tract of land described in deed to Windjammer, Ltd., as recorded in County Clerk's File Number 98-R0093041 and 98-R0062520, of the Property Records of Denton County, Texas (P.R.D.C.T.) and being more particularly described as follows:

COMMENCING at a 5/8-inch iron rod with cap stamped "Carter Burgess" found at the intersection of the north right-of-way of Windriver Lane (an 80 foot right-of-way) as described in County Clerk's File Number 99-R0065227, P.R.D.C.T., and the west right-of-way of Interstate Highway 35 (a variable width right-of-way);

THENCE North 49 degrees 57 minutes 22 seconds West, departing said Windriver right-of-way line and along said Interstate Highway 35 right-of-way line, a distance of 189.52 feet to the POINT OF BEGINNING, said point being a point for corner;

THENCE South 40 degrees 02 minutes 38 seconds West, departing said Interstate Highway 35 right-of-way line, a distance of 142.20 feet to a point for corner;

THENCE South 49 degrees 57 minutes 22 seconds East, a distance of 13.80 feet to a point for corner;

THENCE South 40 degrees 02 minutes 38 seconds West, a distance of 16.00 feet to a point for corner;

THENCE North 49 degrees 57 minutes 22 seconds West, a distance of 13.80 feet to a point for corner;

THENCE South 40 degrees 02 minutes 38 seconds West, a distance of 176.26 feet to the point of curvature of a circular curve to the right having a radius of 329.00 feet and whose chord bears South 52 degrees 07 minutes 21 seconds West, a distance of 137.69 feet;

THENCE Southwesterly, continuing along said curve to the right through a central angle of 24 degrees 09 minutes 26 seconds, an arc distance of 138.71 feet to a point for corner;

THENCE South 24 degrees 38 minutes 25 seconds East, a distance of 13.00 feet to a point for corner;

THENCE South 65 degrees 35 minutes 32 seconds West, a distance of 16.08 feet to a point for corner;

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THENCE North 24 degrees 15 minutes 01 seconds West, a distance of 13.00 feet to the point of curvature for a non-tangent circular curve to the right having a radius of 329.00 feet and whose chord bears South 73 degrees 19 minutes 25 seconds West, a distance of 72.63 feet;

THENCE Southwesterly continuing along said curve to the right through a central angle of 12 degrees 40 minutes 27 seconds, an arc distance of 72.78 feet to the point of curvature of a circular curve to the left having a radius of 20.00 feet and whose chord bears South 33 degrees 57 minutes and 47 seconds West, a distance of 28.63 feet;

THENCE Southwesterly, continuing along said curve to the left through a central angle of 91 degrees 23 minutes and 44 seconds, an arc distance of 31.90 feet to a point for corner;

THENCE South 11 degrees 44 minutes 05 seconds East, a distance of 103.82 feet to the point of curvature of a circular curve to the left having a radius of 20.00 feet and whose chord bears South 15 degrees 35 minutes and 14 seconds East, a distance of 2.69 feet;

THENCE Southeasterly, continuing along said curve to the left through a central angle of 07 degrees 42 minutes 18 seconds, an arc distance of 2.69 feet to a point for corner;

THENCE South 19 degrees 26 minutes 24 seconds East, a distance of 49.52 feet to the point of curvature of a circular curve to the right having a radius of 20.00 feet and whose chord bears South 15 degrees 35 minutes 14 seconds East, a distance of 2.69 feet;

THENCE Southeasterly, continuing along said curve to the right through a central angle of 07 degrees 42 minutes 18 seconds, an arc distance of 2.69 feet to a point for corner;

THENCE South 11 degrees 44 minutes 05 seconds East, a distance of 61.08 feet to the point of curvature of a non-tangent circular curve to the right having a radius of 460.00 feet and whose chord bears South 76 degrees 53 minutes 28 seconds West, a distance of 22.01 feet, said point being on said north right-of-way line of Windriver Lane;

THENCE Southwesterly, continuing along said curve to the right and said north right-of-way line of Windriver Lane through a central angle of 02 degrees 44 minutes 30 seconds, an arc distance of 22.01 feet to a 1/2-inch set iron rod with a yellow cap stamped "HALFF ASSOC. INC." for corner, said point being the southeast corner of the proposed Lot 1, Block A, Cinemark Addition at Unicorn Lake;

THENCE North 11 degrees 44 minutes 05 seconds West, departing said north line of Windriver Lane and along the proposed east line of said Lot 1, Block A a distance of 246.54 feet to the point of curvature of a non-tangent circular curve to the right having a radius of 44.00 feet and whose chord bears North 29 degrees 41 minutes 56 seconds East, a distance of 6.34 feet;

THENCE Northeasterly, departing said east line and continuing along said curve to the right through a central angle of 08 degrees 16 minutes 02 seconds, an arc distance of 6.35 feet to a point for corner;

THENCE South 79 degrees 16 minutes 07 seconds West, a distance of 4.20 feet to a point for corner, said point being on the proposed east line of said Lot 1, Block A;

THENCE North 11 degrees 44 minutes 05 seconds West, along the proposed east line of Lot 1, Block A a distance of 16.00 feet to a point for corner;

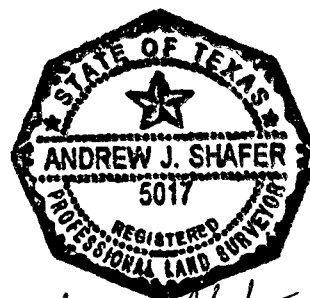
THENCE North 79 degrees 16 minutes 07 seconds East, departing said proposed east line a distance of 80.07 feet to the point of curvature of a non-tangent circular curve to the left having a radius of 305.00 feet and whose chord bears North 55 degrees 42 minutes 55 seconds East, a distance of 164.75 feet;

THENCE Northeasterly, continuing along said curve to the left through a central angle of 31 degrees 20 minutes 15 seconds, an arc distance of 166.82 feet to a point for corner;

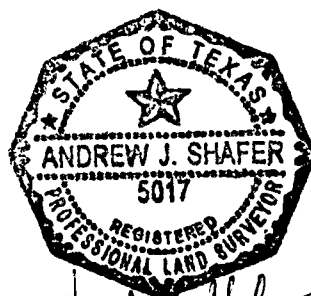
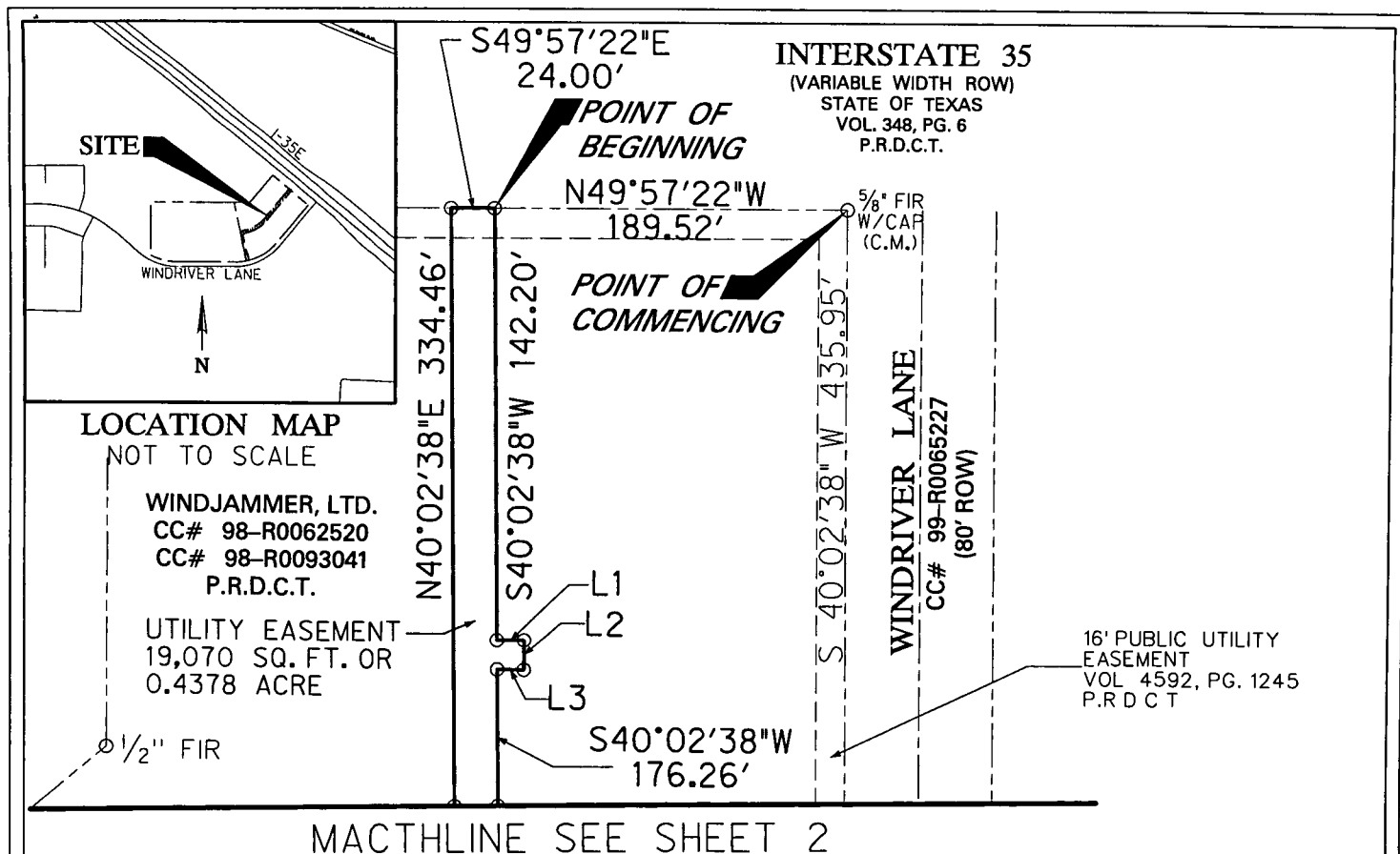
THENCE North 40 degrees 02 minutes 38 seconds East, a distance of 334.46 feet to a point for corner, said point being on said Interstate Highway 35 west right-of-way line;

THENCE South 49 degrees 57 minutes 22 seconds East, along said Interstate Highway 35 west right-of-way line, a distance of 24.00 feet to the POINT OF BEGINNING AND CONTAINING 19,070 square feet or 0.4378 acres of land more or less.

The basis of bearing for this tract is the deed to the City of Denton for the right-of-way dedication of Windriver Lane, as recorded in the Denton County Clerk's File Number 99-R0065227 P.R.D.C.T.



*Andrew J. Shafer*  
March 22, 2004

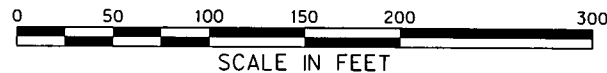


*Andrew J. Shafer*  
march 22, 2004

**LEGEND**

- 1/2" FIR 1/2" FOUND IRON ROD
- 5/8" FIR 5/8" FOUND IRON ROD
- W/CAP WITH "CARTER BURGESS" CAP
- 1/2" SIR 1/2" SET IRON ROD
- W/CAP WITH "HALFF ASSOC. INC." CAP
- CM CONTROL MONUMENT

THE BASIS OF BEARING FOR THIS TRACT IS THE DEED  
TO THE CITY OF DENTON FOR THE RIGHT OF WAY DEDICATION  
OF WIND RIVER LANE, RECORDED IN CC# 99-R0065227  
THE PROPERTY RECORDS OF DENTON COUNTY



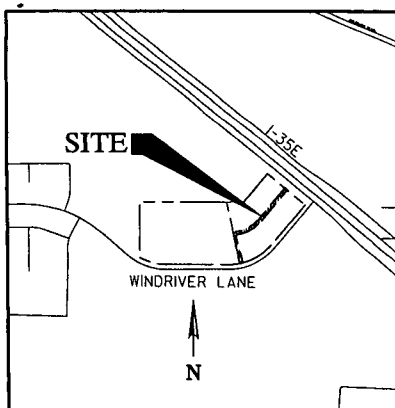
**EXHIBIT B**

OF A  
0.4378 ACRE UTILITY EASEMENT  
LOCATED IN  
M.E.P. & P.R.R. CO. SURVEY,  
ABST. No. 950  
CITY OF DENTON  
DENTON, COUNTY, TEXAS  
BY  
HALFF ASSOCIATES, INC.  
3801 PARKWOOD BLVD. SUITE 500  
FRISCO, TX 75034

MARCH 2004 AVO 21964 SCALE: 1" = 100'







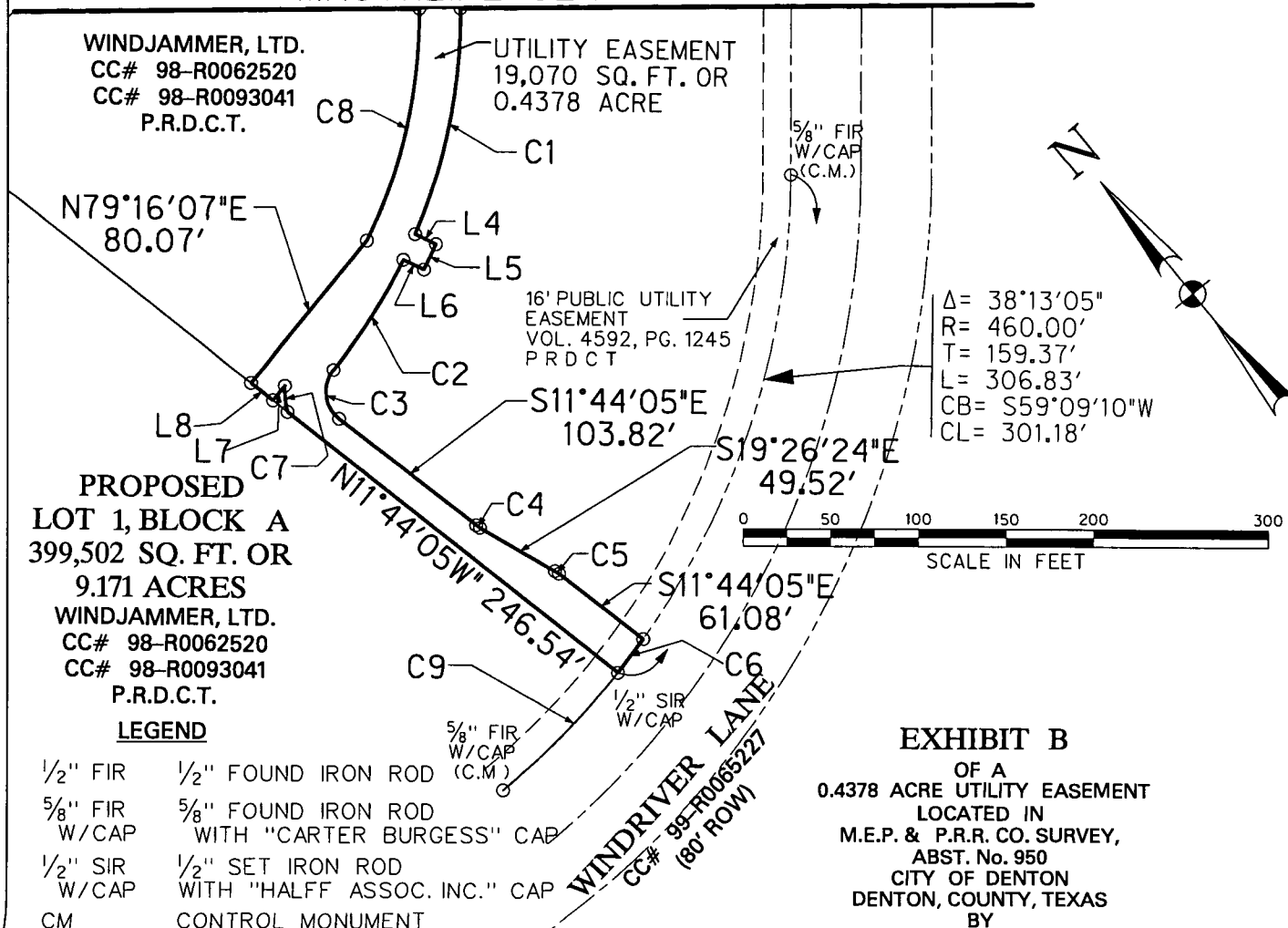
LINE TABLE

LINE	BEARING	DISTANCE
L4	S 24° 38' 25" E	13.00'
L5	S 65° 35' 32" W	16.08'
L6	N 24° 15' 01" W	13.00'
L7	S 79° 16' 07" W	4.20'
L8	N 11° 44' 05" W	16.00'

CURVE TABLE

NO.	DELTA	RADIUS	TANGENT	LENGTH	CHORD BEARING	CHORD LENGTH
C1	24° 09' 26" RT	329.00'	70.40'	138.71'	S 52° 07' 21" W	137.69'
C2	12° 40' 27" RT	329.00'	36.54'	72.78'	S 73° 19' 25" W	72.63'
C3	91° 23' 44" LT	20.00'	20.49'	31.90'	S 33° 57' 47" W	28.63'
C4	7° 42' 18" LT	20.00'	1.35'	2.69'	S 15° 35' 14" E	2.69'
C5	7° 42' 18" RT	20.00'	1.35'	2.69'	S 15° 35' 14" E	2.69'
C6	2° 44' 30" RT	460.00'	11.01'	22.01'	S 76° 53' 28" W	22.01'
C7	8° 16' 02" RT	44.00'	3.18'	6.35'	N 29° 41' 56" E	6.34'
C8	31° 20' 15" LT	305.00'	85.55'	166.82'	N 55° 42' 55" E	164.75'
C9	11° 44' 17" RT	460.00'	47.29'	94.24'	S 84° 07' 52" W	94.08'

MACHTLINE SEE SHEET 1



**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Lot 1, Block A, BJ's Brewery Addition, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2014-29 of the Official Public Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a PK nail found in the northwest line of said Lot 1; from said point the northernmost northwest corner of said Lot 1, and being a point in the southwest right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) bears North 39°36'08" East, a distance of 50.07 feet;

**THENCE** departing said northwest line, South 48°04'41" East, a distance of 31.36 feet to a point for corner;

**THENCE** South 48°04'41" East, a distance of 63.00 feet to a point for corner;

**THENCE** South 48°58'20" East, a distance of 110.72 feet to a point in the southeast line of said Lot 1;

**THENCE** South 39°20'20" West, along the said southeast line of Lot 1, a distance of 20.01 feet to a point for corner;

**THENCE** departing said southeast line of Lot 1, North 48°58'20" West, a distance of 111.46 feet to a point for corner;

**THENCE** North 48°04'41" West, a distance of 63.16 feet to a point for corner;

**THENCE** North 48°04'41" West, a distance of 30.55 feet to a point in the said northwest line of Lot 1; from said point a 5/8-inch iron rod found for the westernmost northwest corner of said Lot 1 bears South 39°36'08" West, a distance of 20.02 feet;

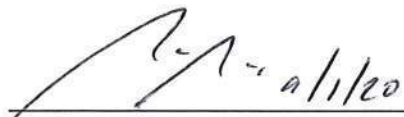
**THENCE** North 39°36'08" East, along the said northwest line of Lot 1, a distance of 20.02 feet to the **POINT OF BEGINNING** and containing 4,103 square feet or 0.0942 acres of land.

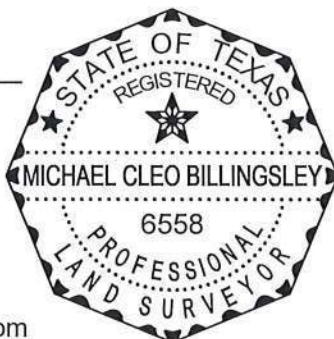
**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1, BLOCK A  
 BJ'S BREWERY ADDITION  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

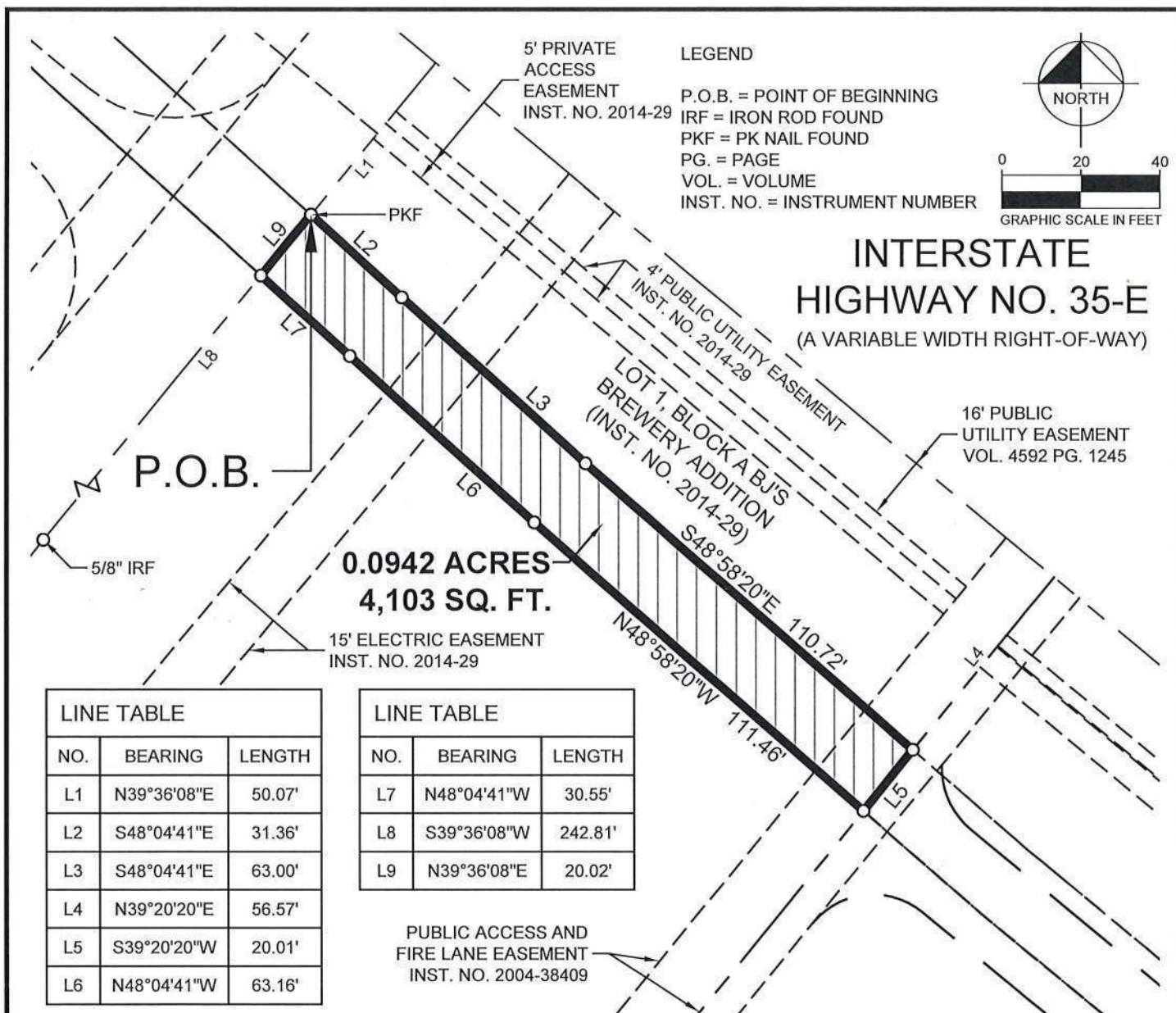
**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	9/1/2020	061024039	1 OF 2





*Michael C. Billingsley* 9/1/20  
**MICHAEL C. BILLINGSLEY**  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	9/1/2020	061024039	2 OF 2

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 119**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1787+49 LT to Sta 1789+66 LT

Existing Easement

Instrument No. 2018-6

PART OF LOT 1, BLOCK A  
DENTON COMMONS  
D. LOMBARD SURVEY, ABSTRACT NO. 784 &  
MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS



70 2016 00032546

Denton County  
Juli Luke  
County Clerk  
Denton, TX 76202

Instrument Number: 2016-32546

As  
Easement

Recorded On: March 24, 2016

Parties: DENTON COMMONS

To

Billable Pages: 6

Number of Pages: 6

Comment:

( Parties listed above are for Clerks reference only )

**\*\* THIS IS NOT A BILL \*\***

Easement	46.00
Total Recording:	46.00

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2016-32546  
Receipt Number: 1405951  
Recorded Date/Time: March 24, 2016 12:32:46P

**Record and Return To:**

CITY OF DENTON  
901 A TEXAS ST  
UTILITIES  
DENTON TX 76209

User / Station: S Parr - Cash Station 3



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Juli Luke

County Clerk  
Denton County, Texas

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: [YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.]**

**PUBLIC UTILITY EASEMENT**

**THE STATE OF TEXAS  
COUNTY OF DENTON**

§  
§  
§

**KNOW ALL MEN BY THESE PRESENTS:**

THAT Denton Commons, LLC., a Texas limited liability company, (Grantor) in consideration of the sum of ONE DOLLAR and NO CENTS (\$1.00) and other good and valuable consideration in hand paid by the City of Denton, Texas, (Grantee), receipt of which is hereby acknowledged, does by these presents GRANT, GIVE, and CONVEY unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by Grantor and situated in Denton County, Texas, in the M.E.P. & P.R.R. Survey, Abstract No. 950.

**PROPERTY AREA DESCRIBED IN EXHIBIT "A"  
AND ILLUSTRATED IN EXHIBIT "B"  
ALL ATTACHED HERETO AND MADE A PART HEREOF**

And it is further agreed that the Grantee in consideration of the benefits above set out, may remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public utilities, inclusive of related facilities and appurtenances, in, along, upon and across said premises, with the right and privilege at all times of the Grantee herein, its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public utility facilities or any part thereof.



TO HAVE AND TO HOLD unto the said City of Denton, Texas (Grantee) as aforesaid for the purposes aforesaid the premises above described.

By: Denton Commons, LLC., a Texas limited liability company

By: *SM*

Print Name: S Belsley

Print Title: MANAGER

ACKNOWLEDGEMENT

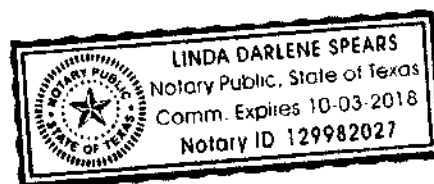
THE STATE OF Texas §  
COUNTY OF Dallas §

Before me, the undersigned authority, on this day personally appeared Scott

Belsley,  
of Denton Commons, LLC., a Texas limited liability company known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein state and as the act and deed of said Denton Commons, LLC., a Texas limited liability company.

Given under my hand and seal of office on this 26<sup>th</sup> day of February, 2016.

Linda Darlene Spears  
Notary Public in and for  
Dallas County, Texas



Accepted this 24<sup>th</sup> day of MARCH, 20 16 for the City of Denton, Texas  
(Resolution No. 91-073).

BY: Paul Williamson  
Paul Williamson  
Real Estate & Capital Support Manager

AFTER RECORDING RETURN TO:

UTILITIES & CIP ENGINEERING  
901-A Texas Street  
Denton, Texas 76209  
Attention: Paul Williamson

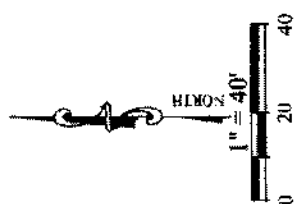
INTERSTATE  
HIGHWAY 35E  
S 50°29'20" E  
16.00'

POB



N 39°36'39" E 280.96'  
S 39°36'39" W 280.99'

LOT 1, BLOCK A  
BJ'S BREWERY ADDITION  
INST# 2014-29 P.R.D.C.T.



1720 WESTMINSTER  
DENTON, TX 76205  
(940)382-3446  
JOB NUMBER: 150013-05  
DRAWN BY: HCI  
DATE: 11-3-2015  
R.P.L.S.  
KENNETH A. ZOLLINGER



LOT 1, BLOCK 1  
DENTON COMMONS  
INST# 2009-56  
P.R.D.C.T.

CURVE DATA	
L = 12.21'	
R = 14.00'	
CHB = N 64°35'52" E	
CHD = 11.83'	

N 89°35'07" E 88.39'  
S 89°35'07" W 83.11'

CURVE DATA	
L = 26.17'	
R = 30.00'	
CHB = S 64°35'52" W	
CHD = 25.35'	

A REMAINDER OF A  
TRACT OF LAND  
DESCRIBED IN A DEED  
TO MOVIE THEATER  
APARTMENTS, LTD  
INST# 2015-51070  
R.P.R.D.C.T.

CURVE DATA	
L = 16.85'	
R = 536.50'	
CHB = N 18°40'24" W	
CHD = 16.85'	

ALL THAT CERTAIN Tract or Parcel of land situated in the M.E.P. & P.R.R. Co. SURVEY, Abstract Number 950, in the City of Denton, Denton County, Texas and being a part of Lot 1, Block 1, of Denton Commons, an addition in the City of Denton, Denton County, Texas, according to the Conveyance Plat thereof recorded in Instrument # 2009-56, of the Plat Records of Denton County, Texas; the subject tract being more particularly described as follows:

BEGINNING at the North corner of a Mutual Access Easement described in Instrument # 2005-41780 of the Real Property Records of Denton County, Texas; being in the Northeast line of said Lot 1, also being the Southeast right-of-way line of Interstate Highway 35E; from which the East corner of said Lot 1 bears South 50 degrees 29 minutes 20 seconds East at a distance of 31.00 feet;

THENCE South 39 degrees 36 minutes 39 seconds West with said Mutual Access Easement a distance of 280.99 feet to the beginning of a tangent curve to the right having a radius of 30.00 feet and a chord bearing and distance of South 64 degrees 35 minutes 52 seconds West, 25.35 feet;

THENCE along said curve, with said Mutual Access Easement an arc length of 26.17 feet;

THENCE South 89 degrees 35 minutes 07 seconds West with said Mutual Access Easement, part of the way, a distance of 83.11 feet to the West line of said Lot 1, at the beginning of a non-tangent curve to the left having a radius of 536.50 feet and a chord bearing and distance of North 18 degrees 40 minutes 24 seconds West, 16.85 feet;

THENCE along said curve, with the West line of said Lot 1, an arc distance of 16.85 feet;

THENCE North 89 degrees 35 minutes 07 seconds East a distance of 88.39 feet to the beginning of a tangent curve to the left having a radius of 14.00 feet and a chord bearing and distance of North 64 degrees 35 minutes 52 seconds East, 11.83 feet;


THENCE along said curve, an arc distance of 12.21 feet;

THENCE North 39 degrees 36 minutes 39 seconds East a distance of 280.96 feet to the Northeast line of said Lot 1 and the Southwest right-of-way line of said Interstate Highway 35E;

THENCE South 50 degrees 29 minutes 20 seconds East with said right-of-way line a distance of 16.00 feet to the PLACE OF BEGINNING, and enclosing 0.14 acres of land, more or less.



SHEET 1 OF 2

 <b>KAZ</b> <b>SURVEYING</b> TX FIRM REGISTRATION # 10002100	1720 WESTMINSTER DENTON, TX 76205 (940)382-3446
	JOB NUMBER: 150013-05
	DRAWN BY: HCI
	DATE: 11-3-2015
	R.P.L.S. KENNETH A. ZOLLINGER

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the D. Lombard Survey, Abstract No. 784 and the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Lot 1, Block A, Denton Commons, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2018-6 of the Official Public Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a point in the northwest line of said Lot 1; from said point a capped 1/2-inch iron rod found for the north corner of said Lot 1, and being on the southwest right-of-way line of Interstate Highway No. 35 (a variable width right-of-way), bears North 06°43'20" West, a distance of 50.19 feet;

**THENCE** departing the said northwest line of Lot 1 South 51°14'56" East, a distance of 81.13 feet to a point for corner;

**THENCE** South 52°14'40" East, a distance of 99.65 feet to a point for corner;

**THENCE** South 48°04'41" East, a distance of 76.71 feet to a point for corner and being on the southeast line of said Lot 1;

**THENCE** South 39°03'35" West, along the said southeast line of Lot 1, a distance of 20.03 feet to a point for corner;

**THENCE** departing said southeast line of Lot 1, North 48°04'41" West, a distance of 76.99 feet to a point for corner;

**THENCE** North 52°14'40" West, a distance of 99.10 feet to a point for corner;

**THENCE** North 51°14'56" West, a distance of 68.06 feet to to a point in the said northwest line of said Lot 1; from said point a 1/2-inch iron rod found for the southeast corner of Lot 1, Block 1, Achievers Gymnastics Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume R, Page, 116 of the Plat of Denton County, Texas, bears South 82°24'37" West, a distance of 31.37 feet, and being a point at the beginning of a non-tangent curve to the left having a central angle of 24°42'57", a radius of 54.94 feet, a chord bearing and distance of North 5°29'26" East, 23.52 feet;

**THENCE** along the said west line of Lot 1, in a northeasterly direction with said curve to the left, an arc distance of 23.70 feet to a point for corner;

**THENCE** North 6°49'56" West, along the said west line of Lot 1, a distance of 0.48 feet to the **POINT OF BEGINNING** and containing 4,995 square feet or 0.1147 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1, BLOCK A  
 DENTON COMMONS  
 D. LOMBARD SURVEY, ABSTRACT NO. 784 &  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

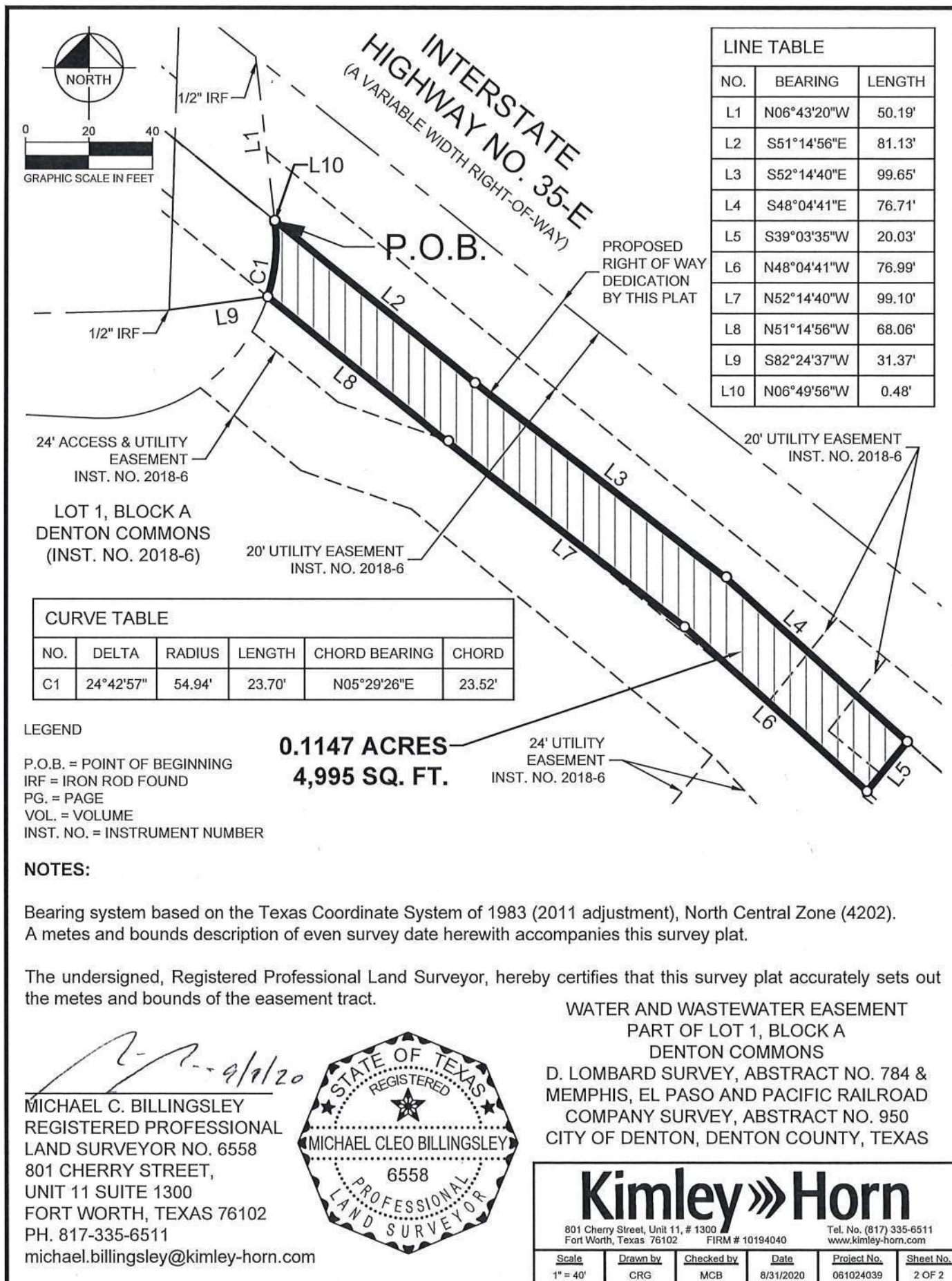
**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	8/31/2020	061024039	1 OF 2







**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 04**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1823+67 RT to Sta 1826+43 RT

Existing Easement

Volume D, Page 154

PART OF LOT 2BR  
DENTON SHOPPING CENTER ADDITION  
JOHN MCGOWAN SURVEY, ABSTRACT NO. 797  
CITY OF DENTON, DENTON COUNTY, TEXAS

VOL 2385 PAGE 940

THE STATE OF TEXAS, §  
COUNTY OF DENTON § KNOW ALL MEN BY THESE PRESENTS:  
§

REAL PROPERTY RECORD

21968

THAT Arnold/Denton Town Center, Ltd., a Texas limited partnership of Dallas County, Texas, in consideration of the sum of One dollar (\$1.00) and no cents and other good and valuable consideration in hand paid by the City of Denton, Texas receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by it, situated in Denton County, Texas in the J. McGowan Survey, Abstract No. 797.

ALL that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the J. McGowan survey, Abst. No. 797, and being part of Lot No. 3A, Block 1, of the Denton Shopping Center Addition, an addition to the City and County of Denton, and also being part of a tract of land as conveyed from 2307 I-35E Joint Venture, a Texas venture to Arnold/Denton Town Center, LTD., a Texas limited partnership by deed dated January 5, 1987 and recorded in Volume 2058, Page 190 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the southern most corner of said Lot 3A, same being the western most corner of said Lot 2C, said point also lying in the northeast right-of-way line of IH 35 E;

THENCE northwesterly, along the southwest boundary line of said Lot 3A, same being the northeast right-of-way line of said IH 35 E the following two (2) courses and distances: (1) north 42° 00' 59" west, 90.6 feet; (2) north 34° 42' 00" west, 171.29 feet to the westerly southwest corner of said Lot 3A, same being the southern most corner of Lot 3C of said addition;

THENCE north 55° 18' 00" east, along the westerly northwest boundary line of said Lot 3A, same being the southeast boundary line of said Lot 3C, a distance of 16.0 feet, to a point lying 16.0 feet northeast of and perpendicular to the southwest boundary line of said Lot 3A for corner;

THENCE southeasterly, 16.0 feet northeast of and parallel to the southwest boundary line of said Lot 3A the following two (2) courses and distances: (1) south 34° 42' 00" east, 170.27 feet; (2) south 42° 00' 59" east, 88.05 feet to a point lying in the southeast boundary line of said Lot 3A, same being the northwest boundary line of said Lot 2C for corner;

THENCE south 42° 33' 00" west along the southeast boundary line of said Lot 3A, same being the northwest boundary line of Lot 2C, a distance of 16.07 feet, to the Point of Beginning and containing 0.0955 acres of land.

0415E/99

And it is further agreed that the said City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public utilities in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public utilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness hand  
*[Signature]*

, this the 20<sup>th</sup> day of JAN, A.D. 1988.  
*[Signature]*  
BY: *[Signature]*  
Arnold, Denton Town Center, Ltd.,  
a Texas limited partnership

CORPORATION ACKNOWLEDGMENT

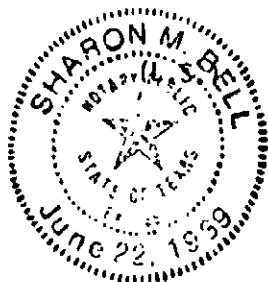
THE STATE OF TEXAS, §  
COUNTY OF §  
on this day personally appeared

BEFORE ME, the undersigned authority,

*Fred L. Arnold*

known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act if such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 20 day of January, A.D. 1988



*[Signature]*  
Notary Public, in and for the State of Texas  
My Commission Expires 6-22-89

RETURN TO: City of Denton  
215 E. McKinney  
Denton, TX 76201

ATTN: Roger N. Wilkinson  
Right-of-Way Agent

0521E/20

FILED FOR RECORD 1<sup>st</sup> DAY OF June A.D. 19 88 at 10:48 A.M.  
DULY RECORDED 1<sup>st</sup> DAY OF June A.D. 19 88

BY: *[Signature]* DEPUTY  
MARILYN ROBINSON, COUNTY CLERK  
DENTON COUNTY, TEXAS

DECLARATION OF RESTRICTIVE COVENANTS

1136 544

STATE OF TEXAS

DEED RECORDS

COUNTY OF DENTON

9472

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made and entered into this 31st day of March, 1982, by DENTON TOWNE CENTER JOINT VENTURE, a joint venture ("Towne Center").

INTRODUCTION

1. Towne Center is the owner of certain property situated in Denton County, Texas, being more particularly described on Exhibit "A" attached to this Declaration (the "Towne Center Tract").
2. Duncan Properties, Ltd., a Texas limited partnership ("Duncan," with such term also applying to the successors and assigns of Duncan who becomes owner of all or any portion of the Duncan Outlet Tract) is the owner of certain abutting real property also situated in Denton County, Texas, being more particularly described on Exhibit "B" attached to this Declaration (the "Duncan Outlet Tract").
3. The Towne Center Tract and the Duncan Outlet Tract are sometimes in this Declaration referred to collectively as the "Tracts" and individually as a "Tract."
4. On even date herewith Towne Center and Duncan have consummated an exchange of real property and entered into a Grant of Reciprocal Easements and certain other agreements relating to the engineering and construction of improvements upon the Tracts. In connection with this series of transactions, Towne Center has agreed to execute this Declaration for the benefit of the owners, from time to time, of the Duncan Outlet Tract.

ARTICLE I

Restrictions

1.1 Definition of "Building". The term "building" shall have the meaning given it below.

(1) the term "Building" when used in this Declaration shall mean and include all temporary or permanent independent structures, which are completely enclosed by exterior walls, but not including exterior projections, whether vertical or horizontal, attached columns, canopies, roof overhangs and similar appendages, landscaping, signage, trash enclosures, lighting and similar nonstructural improvements.

1.2 General Restrictions. Towne Center hereby declares the following restrictions as being applicable to the Towne Center Tract, in accordance with the terms and provisions stated below:

(1) No portion of any building or any protrusions therefrom nor any other structures other than landscaping, signage, trash enclosures, lighting, paving,

curbing, walkways or similar nonstructural improvements shall be located on the Colorado Boulevard side of the Permissible Building Line as shown on Exhibit "C" to this Declaration (the "Site Plan").

(ii) No portion of any building which is located on the Colorado Boulevard side of the "Two Story Line" (herein so called) shown on the Site Plan shall be in excess of one story in height.

(iii) There shall exist at all times a space and separation of at least one hundred twenty feet (120') between buildings to the east of the area shown as being "Access Drive #2" (herein so called) on the Site Plan and buildings to the west of Access Easement #2, (the "120 Foot Area"). Encroachments into the 120 Foot Area will be permitted for all canopies, walkways, awnings, columns, roof overhangs, building or canopy mounted signs and stairways; provided, that a separation between any encroachments on the east side of Access Drive #2 and encroachments on the west side of Access Drive #2 of at least one hundred feet (100') must at all times exist. Any stairway encroachments contained within the 120 Foot Area shall not be enclosed on the second level of the stairway, if any, but may be enclosed on the first level of the stairway. The restrictions contained in this Section 1.2(iii) shall not prohibit the erection of curbing, landscaping, lighting and similar non-structural matters at any place on the Towne Center Tract.

(iv) No portion of any buildings or any protrusions therefrom (not including sidewalks) shall be closer than five feet (5') to Access Drive #2 at any point along the boundaries of Access Drive #2.

(v) No curb openings along the easterly and westerly boundaries of Access Drive #2 shall be permitted to exist except at the general locations shown on the Site Plan.

(vi) No portion of any building located on the I-35 side of the Two Story Line (herein so called) shown on the Site Plan may exceed thirty-four feet (34') in height and no portion of any building located on the Colorado Boulevard side of the Two Story Line shall exceed twenty-five feet (25') in height, with all such height level being measured from the finished grade level for the building pad of such building; provided, however, that elevator enclosures, antennas and towers (such as stairways or clock towers) may exceed the above-described height restrictions, and signs and clocks may be located on the elevator enclosures and towers.

(vii) Any receptacle for trash storage shall be screened on three sides (with at least one screened side facing the Duncan Outlot Tract and one screened side facing the area described on Exhibit "D" to this Declaration) by either a wood screen fence, a masonry screen fence of the same finish as the building in which the trash being stored is generated or as provided below. The surface grade levels to the south of the area in which it is anticipated that trash receptacles will be placed rise rapidly; accordingly, where the surface grade to the south of the area where the

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trash receptacles are placed is equal to or greater than the highest point of a trash receptacle placed on the Towne Center Tract, such surface grade may replace the screen wall required on that side as required above so long as the horizontal distance between:

(a) the closest point of the trash receptacle, and

(b) the point of the surface grade level which is sufficiently high to provide a screening device as provided above,

is equal to or less than the vertical height of the trash receptacle. For example, if the trash receptacle is six feet tall, but within five feet of the trash receptacle the grade level rises to be seven feet higher than the grade level where the trash receptacle sits, such rise in grade level would constitute a screening wall. The foregoing restrictions shall not apply to any trash receptacles which are located within the area designated as the "Permitted Trash Receptacle Area" on the Site Plan.

(viii) Any mechanical equipment placed on the roof of any buildings (except for antennas, which shall not be required to be screened) shall be screened with fences or other screening devices at least as high as the highest portion of the mechanical equipment so located on the roof.

(ix) The exterior of all buildings shall be painted or finished, with the term "finished" including, but not limited to, aggregate concrete stone, performed concrete panels, stucco and decorative concrete blocks.

(x) No fascia signs (except for clocks and related signage which may be located on towers, but which may not extend higher than such towers) located on any building may extend higher than the roof or, if higher, the parapet line of such building.

**1.3 Use Restrictions.** Towne Center hereby declares the following restrictions as being applicable to the Towne Center Tract, in accordance with the terms and provisions stated below. No part of the Towne Center Tract shall be used except for retail sales, service facilities, business offices, financial institutions and other related and appurtenant uses. In addition, no use or operation will be made, conducted or permitted on or with respect to all or any part of the Towne Center Tract which use or operation is obnoxious or clearly injurious to a first-class shopping center, including the following:

(i) Any public or private nuisance;

(ii) Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness, or loudness;

(iii) Any obnoxious odor;

(iv) Any noxious, toxic, caustic, or corrosive fuel or gas;



(v) Any dust, dirt, or fly ash in excessive quantities;

(vi) Any unusual fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;

(vii) Any warehouse (excepting storage which is incidental to a permitted use), assembly, manufacture, distillation, refining, smelting, or mining operations;

(viii) Any "second hand" store, Army, Navy, or government "surplus" store;

(ix) Any mobile home or trailer court, labor camp, junk yard, stock yard, or animal raising;

(x) Any dumping, disposal, incineration or reduction of garbage or refuse;

(xi) Any fire or bankruptcy sale or auction house operation;

(xii) Any central laundry or dry cleaning plants or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pick up and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Towne Center Tract is located;

(xiii) Any automobile sales, leasing or display, including body repair facilities (but this prohibition shall not be applicable to automotive mechanical service facilities or the sale of automotive parts and accessories);

(xiv) Living quarters, sleeping apartments or lodging rooms;

(xv) Any mortuary;

(xvi) Any adult bookstore selling pornographic material or pornographic theatres; and

(xvii) Any trailer rental.

## ARTICLE II

### Miscellaneous

2.1 Estoppel Certificate. Duncan hereby covenants that within twenty (20) days from the delivery of written requests, from time to time, of Towne Center, it will issue to designees of Towne Center an estoppel certificate stating: (i) whether Duncan knows of any default by Towne Center under this Declaration, and if there are known defaults, specifying the nature thereof; and (ii) whether to Duncan's knowledge this Declaration has been modified or amended in any way (and if it has, then stating the nature thereof). Notwithstanding the provisions of Section 2.2 below, any requests for an estoppel certificate and the response thereto may, at the election of the sender, be sent by private carrier expedited mail service (i.e., Federal Express type

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service) and, in such event, the request or the response, as the case may be, shall be effective on the first day following deposit with such private carrier. Duncan agrees to act in good faith in connection with requests for estoppel certificates from Towne Center. Failure by Duncan to respond within the 20-day period shall be deemed the equivalent of a statement that no defaults exist, that no amendment to this Declaration has been entered into and that this Declaration remains in full force and effect.

2.2 Notices. All notices, demands, statements and requested required or permitted to be given under this Declaration must be in writing and shall be deemed to have been properly given or served, whether received or not, by depositing the same in the United States mails, addressed to Duncan or Towne Center, postage prepaid and registered or certified mail, return receipt requested, at the address set forth below.

To Towne Center:      Denton Towne Center Joint Venture  
                                 c/o Henry S. Miller Company  
                                 2001 Bryan Tower, 30th Floor  
                                 Dallas, Texas 75201  
                                 Attention: Raymond J. Poche

with copy by regular mail to:

Thomas J. Terkel  
Jenkins & Gilchrist  
2200 First National Bank Bldg.  
Dallas, Texas 75202

To Duncan:              Duncan Properties, Ltd.  
                                 100 Park Avenue Bldg.  
                                 Suite 1204  
                                 Oklahoma City, Oklahoma 73102  
                                 Attention: Neil Hill

with copy by regular mail to:

Mr. Glenn D. West  
Jackson, Walker, Winstead,  
Cantwell & Miller  
4300 First National Bank Bldg.  
Dallas, Texas 75202

All notices, demands and requests shall, except as hereinafter set forth, be effective upon being deposited in the United States mails in accordance with the provisions hereof. Rejection or other refusal to accept, or the inability to deliver because of changes of address of which no notice was given, shall be deemed to be receipt of the notice, demand or request. Any party shall have the right from time to time and at any time, upon at least ten (10) days' prior written notice thereof in accordance with the provisions hereof, to change its respective address and to specify any other address within the United States of America.

2.3 Binding Effect. The covenants contained in Article I of this Declaration shall constitute covenants running with, and shall be deemed appurtenant to, the Towne Center Tract and all such covenants shall be binding upon the successors and assigns of Towne Center who become owners of any portion of the Towne Center Tract.

2.4 Right to Enforce. The benefits of the covenants contained in Article I shall inure to the benefit of Duncan and the successors and assigns of Duncan as the owner(s) of the Duncan Outlot Tract. The remedies provided below in Section 2.6 may be pursued only by the person(s) or entity(ies) that, from time to time, own in the aggregate fee simple title to fifty-one percent (51%) or more of the land area contained within the Duncan Outlot Tract. Nothing herein contained shall be deemed to be the creation of restrictions for the benefit of the general public, it being the intention and understanding of the parties hereto that this Declaration and the enforcement thereof shall be strictly limited to the person(s) or entity(ies) specified in the immediately preceding sentence.

2.5 Amendments. Amendments to this Declaration shall be effective only when executed and acknowledged by the person(s) or entity(ies) that, from time to time, own in the aggregate fee simple title to fifty-one percent (51%) or more of the land area contained within the Towne Center Tract and the person(s) or entity(ies) that, from time to time, own in the aggregate fee simple title to fifty-one percent (51%) or more of the land area contained within the Duncan Outlot Tract, and when recorded in the deed records of Denton County, Texas.

2.6 Default. Upon violation by Towne Center (the "Defaulting Party") of the covenants created in Article I above, the person(s) or entity(ies) entitled pursuant to Section 2.4 above to enforce the provisions of this Declaration (the "Enforcing Party", whether one or more) shall have the right to exercise one or more of the following remedies, at the sole election and option of the Enforcing Party:

(a) The Enforcing Party may obtain specific performance by injunction, temporary or permanent restraining order and/or any other legal and equitable remedies as may be available, in which event the Enforcing Party shall also be entitled to recover in such proceedings a full reimbursement for all injuries and damages sustained prior to the curing of the default plus all court costs and reasonable attorneys' fees incurred by the Enforcing Party.

(b) The Enforcing Party may demand that the Defaulting Party compensate it for damages sustained and to be sustained as a result of the violation; and if the Enforcing Party proceeds to litigation on this demand, the Enforcing Party shall also be entitled to recover in such proceedings all court costs and reasonable attorneys' fees incurred by the Enforcing Party.

The pursuit of one or more remedies hereinabove prescribed shall not preclude the pursuit of any other remedy otherwise provided under the laws of the State of Texas, unless inherently inconsistent with the remedy being pursued. Notwithstanding the foregoing, Defaulting Party shall not be deemed to be in violation of the covenants created by Article I above until Defaulting Party shall have failed to cure such violation (or, in the case of a violation which cannot be cured within a thirty-day period, to commence and diligently work toward curing the violation) within thirty (30) days following the delivery of written notice (describing with particularity the nature of the violation and referring specifically to the provision of this Declaration claimed to

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be violated) by the Enforcing Party to Defaulting Party and to all mortgagees of Defaulting Party about whom the Enforcing Party has received prior written notice.

2.7 Sale by Towne Center. Upon the bona fide assignment, conveyance, sale or other transfer by Towne Center of its fee simple ownership to any portion or all of the Towne Center Tract, Towne Center shall be released from any liability arising out of a failure to observe the covenants contained in this Declaration arising subsequent to the effective date of such sale or transfer with respect to the portion sold or otherwise transferred (other than those obligations arising from any default by Towne Center under this Declaration prior to such sale or transfer).

2.8 Approvals. Towne Center may at any time request that Duncan review plans and specifications for proposed buildings to be located on the Towne Center Tract and advise Towne Center of any violations of the covenants contained in Section 1.2 hereof (the "Restrictions") created by such plans. In such event, Towne Center shall also deliver to Duncan sufficient supporting data (such as surveys, detailed, scaled exterior elevations, specifications for materials to be used and other renderings as may be needed) to enable Duncan to make an informed determination concerning whether the buildings as proposed comply with the Restrictions. Towne Center shall be deemed to have submitted adequate information to Duncan if Duncan fails to request more detailed information within fifteen days of the initial delivery of such information. Any objections raised by Duncan shall be in writing and shall specify the specific portion of the Restrictions which Duncan believes will be violated by the proposed building and the particular nature of the violation. With respect to any actual violation which Duncan fails to identify in writing to Towne Center within thirty (30) days of the delivery of the initial information, or, if later, within fifteen days of the delivery of all information requested by Duncan, Duncan shall be estopped thereafter to assert any such violation and shall be deemed to have waived any right or remedy to which it might otherwise be entitled. The above described estoppel and waiver shall be effective only as to the specific buildings described in the plans submitted to Duncan and then only if construction of such buildings is commenced within ninety days from the expiration of the period for objection, and shall not apply to any other buildings thereafter constructed, or any remodeling, alteration or reconstruction of any such buildings.

2.9 Six Month Waiver. If, within six months following the date on which a certificate of occupancy is issued for any building or any portion thereof constructed within the Towne Center Tract, an affidavit identifying Towne Center and the Towne Center Tract and setting forth a specific description of the manner in which such building fails to conform with the provisions of Section 1.2 of this Declaration is not filed in the Deed Records of Denton County, Texas, then in such event, the building for which the certificate of occupancy was issued shall conclusively be deemed to comply with all such provisions. Duncan shall thereafter be estopped to assert any violations of Section 1.2 of Declaration with respect to such building; provided, however, that nothing contained herein shall limit or affect in any manner the Enforcing Party's right to pursue any remedies set forth in Section 2.6 hereof at any time prior to the expiration of such six (6) month period.

2.10 Duration. This Declaration and the restrictions contained herein shall terminate and be of no further force and effect upon the earlier of:

(i) February 1, 2020; or

(ii) the date on which a written termination agreement, executed and acknowledged by the parties required to amend this Declaration, is recorded in the real property records of Denton County, Texas.

2.11 Joinder By Other Persons. The persons and/or entities executing Exhibit "E", "F" and "G" to this Agreement have done so to evidence the subordination of their respective interests in the Towne Center Tract to the terms and provisions of this Declaration.

EXECUTED, to be effective as of the date first above specified.

DENTON TOWNE CENTER JOINT VENTURE,  
a joint venture

By: Herbert D. Weitzman  
Herbert D. Weitzman  
Venture Manager

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

BEFORE ME, the undersigned authority, on this day personally appeared HERBERT D. WEITZMAN, Venture Manager of Denton Towne Center Joint Venture, a Texas joint venture, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes, consideration and in the capacity therein expressed, as the act and deed of said joint venture.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 31st day of March, 1982.



Thomas J. Jukil  
Notary Public in and for  
Dallas, County, Texas

My Commission Expires:  
3-10-84

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Exhibit "A"

Towne Center Tract

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BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J. S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing the Easterly line of said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'06", a radius of 3740.00 feet, and an arc length of 182.88 feet to the POINT OF BEGINNING;

Continuing along said curve to the right having a central angle of 14°46'26", a radius of 3740.00 feet, and an arc length of 964.37 feet to a point of curvature to the right;

THENCE along said curve to the right in a Southeasterly direction and departing said Loop 288 and having a central angle of 08°31'31", a radius of 705.00 feet, an arc length of 104.90 feet, and a chord bearing of S 19°21'05" E to a point of reverse curve to the left;

THENCE along said curve to the left having a central angle of 11°00'18", a radius of 453.38 feet, and an arc length of 87.08 feet to a point for corner;

THENCE S 60°43'46" W a distance of 268.95 feet to a point for corner;

THENCE S 41°57'26" W a distance of 357.99 feet to a point for corner;

THENCE S 48°02'34" E a distance of 21.62 feet to a point for corner;

THENCE S 34°48'00" W a distance of 136.00 feet to a point for corner;

THENCE S 25°15'00" W a distance of 170.17 feet to a point for corner;

THENCE N 64°45'00" W a distance of 51.87 feet to a point for corner;

THENCE N 34°42'00" W a distance of 307.00 feet to the POINT OF BEGINNING and containing 4.9698 acres of land, more or less.



Exhibit "B"

Duncan Outlot Tract

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34°42'00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64°45'00" E a distance of 65.87 feet to a point for corner;

THENCE S 05°49'03" W a distance of 95.00 feet to a point for corner;

THENCE S 86°43'12" W a distance of 90.00 feet to a point for corner;

THENCE S 42°33'00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 42°00'59" W a distance of 90.60 feet to a point for corner;

N 34°42'00" W a distance of 226.60 feet to a point for corner;

N 01°41'20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

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Exhibit "D"

DUNCAN MAIN TRACT

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J. S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway No. 35-E and departing the Southerly line of said Loop 288 the following:

S 01°41'20" E a distance of 70.71 feet to a point;

S 34°42'00" E a distance of 226.60 feet to a point;

S42°00'59" E a distance of 90.60 feet to the POINT OF BEGINNING;

THENCE N 42°33'00" E departing the aforementioned I.H. 35-E a distance of 145.00 feet to a point for corner;

THENCE N 86°43'12" E a distance of 90.00 feet to a point for corner;

THENCE N 05°49'03" E a distance of 95.00 feet to a point for corner;

THENCE N 64°45'00" W a distance of 14.00 feet to a point for corner;

THENCE N 25°15'00" E a distance of 170.17 feet to a point for corner;

THENCE N 34°48'00" E a distance of 136.00 feet to a point for corner;

THENCE N 48°02'34" W a distance of 21.62 feet to a point for corner;

THENCE N 41°57'26" E a distance of 357.99 feet to a point for corner;

THENCE N 60°43'46" E a distance of 268.95 feet to a point of curvature to the left;

THENCE along said curve to the left in a Southeasterly direction having a central angle of 22°31'07", a radius of 453.38 feet, an arc length of 178.19 feet, and a chord bearing of N 37°21'11" W to the point of tangency;

THENCE S 48°36'44" E a distance of 323.16 feet to a point for corner;

THENCE S 41°57'26" W a distance of 1152.60 feet to a point situated in the Easterly line of said I.H. 35-E;

THENCE along the Northeasterly line of said Interstate Highway No. 35-E the following:

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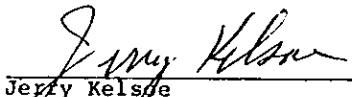
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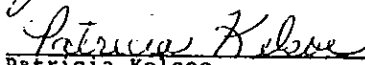
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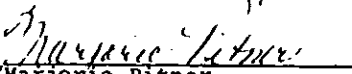
EXHIBIT " E "

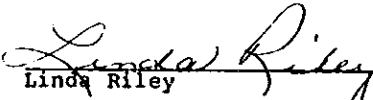
This Exhibit " E " to that certain Declaration of Restrictive Covenants executed by Denton Towne Center Joint Venture (the "Venture") for the benefit of Duncan Properties, Ltd., an Oklahoma limited partnership to be effective as March 31, 1982 (the "Declaration"), is being executed by Jerry Kelsoe, Patricia Kelsoe, Marjorie Pitner and Linda Riley (collectively, "Pitner-Kelsoe") to evidence the subordination by Pitner-Kelsoe of the lien currently held by Pitner-Kelsoe created by that certain deed of trust executed by the Venture, dated December 31, 1979, and recorded in Volume 557, page 320 of the Deed of Trust Records of Denton County, Texas, encumbering certain real property more particularly described in such deed of trust, as such deed of trust has been and is being amended effective on even date herewith, to the terms, provisions, rights and obligations created by the Declaration.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

  
Jerry Kelsoe

  
Patricia Kelsoe

  
Marjorie Pitner

  
Linda Riley

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EXHIBIT "F"

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This Exhibit to that certain Declaration of Restrictive Covenants executed by Denton Towne Center Joint Venture (the "Venture") for the benefit of Duncan Properties, Ltd., an Oklahoma limited partnership executed to be effective as March 31, 1982 (the "Declaration"), is being executed by RepublicBank Dallas N.A. (the "Bank") to evidence the subordination by the Bank of the lien currently held by the Bank created by that certain deed of trust executed by the Venture, dated December 20, 1979, and recorded in Volume 553, page 329 of the Deed of Trust Records of Denton County, Texas, encumbering certain real property more particularly described in such deed of trust, as such deed of trust is being amended effective on even date herewith, to the terms, provisions, restrictions, rights and obligations created by the Declaration.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

REPUBLICBANK DALLAS N.A.

By William H. Miller  
(Vice) President



WCS.dln/3.25-2/3.19.2

EXHIBIT "G"

This Exhibit "G" to that certain Declaration of Restrictive Covenants executed by DENTON TOWNE CENTER JOINT VENTURE (the "Venture") for the benefit of DUNCAN PROPERTIES, LTD., an Oklahoma limited partnership to be effective as of March 31, 1982 (the "Declaration"), is being executed by GIBRALTAR SAVINGS ASSOCIATION ("Gibraltar") to evidence the subordination by Gibraltar of the lien currently held by Gibraltar, created by that certain deed of trust executed by the Venture, dated November 14, 1980, and recorded in Volume 594, page 958 of the Deed of Trust Records of Denton County, Texas, and filed on November 20, 1980, under the County Clerk's File Number 33637, encumbering certain real property more particularly described in such deed of trust, as such deed of trust has been and is being amended effective on even date herewith, to the terms, provisions, rights and obligations created by the Declaration, provided that the subordination of Gibraltar's lien to the Declaration of Restrictive Covenants, effective March 31, 1982, shall not be construed as Gibraltar's consent or approval to any subsequent changes or amendments made pursuant to paragraph 2.5 of said Declaration and any such amendments or changes to the Declaration shall not be effective as to Gibraltar's hereinabove described lien, without obtaining the prior written consent and joinder of Gibraltar in any such amendments or changes to the Declaration.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

GIBRALTAR SAVINGS ASSOCIATION

By: Tommy G. Lane  
Tommy G. Lane

Title: Regional Vice President

WCS 1136 4559

v. 1136 of 560

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FILED  
APR 20 1982  
2472

FILED FOR RECORD 8<sup>11</sup> DAY OF April A.D. 1982, at 6:22 PM.  
RECORDED 1720 DAY OF April A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Elise Taylor DEPUTY

DECLARATION OF RESTRICTIVE COVENANTS

STATE OF TEXAS           §  
                                  §     DEED RECORDS                   9473  
COUNTY OF DENTON       §

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made and entered into this 31st day of March, 1982, by DUNCAN PROPERTIES, LTD., an Oklahoma limited partnership ("Duncan").

INTRODUCTION

1. Duncan is the owner of certain property situated in Denton County, Texas, being more particularly described on Exhibit "A" attached to this Declaration (the "Duncan Outlot Tract").

2. Denton Towne Center Joint Venture, a Texas joint venture ("Towne Center," with such term also applying to the successors and assigns of Towne Center who become owners of all or any portion of the Towne Center Tract) is the owner of certain abutting real property also situated in Denton County, Texas, being more particularly described on Exhibit "B" attached to this Declaration (the "Towne Center Tract").

3. The Towne Center Tract and the Duncan Outlot Tract are sometimes in this Declaration referred to collectively as the "Tracts" and individually as a "Tract".

4. On even date herewith Towne Center and Duncan have consummated an exchange of real property and entered into a Grant of Reciprocal Easements and certain other agreements relating to the engineering and construction of improvements upon the Tracts. In connection with this series of transactions, Duncan has agreed to execute this Declaration for the benefit of the owners, from time to time, of the Towne Center Tract.

ARTICLE I

Restrictions

1.1 Definition of "Building". The term "building" shall have the meaning given it below:

(1) the term "building" when used in this Declaration shall mean and include all temporary or permanent independent structures, which are completely enclosed by exterior walls, but not including exterior projections, whether vertical or horizontal, attached columns, canopies, roof overhangs and similar appendages, landscaping, signage, trash enclosures, lighting and similar nonstructural improvements.

1.2 General Restrictions. Duncan hereby declares the following restrictions as being applicable to the Duncan Outlot Tract, in accordance with the terms and provisions stated below:

(1) Any receptacle for trash storage shall be enclosed on three sides (with at least one enclosed side facing the Towne Center Tract) by either a wood

screen fence or by a masonry screen fence of the same finish as the building in which the trash being stored is generated.

(ii) Any mechanical equipment placed on the roof of any buildings (except for antennas, which shall not be required to be screened) shall be screened with fences or other screening devices at least as high as the highest portion of the mechanical equipment located on the roof.

(iii) The exterior of all buildings shall be painted or finished, with the term "finished" including, but not limited to, aggregate concrete stone, preformed concrete panels, stucco and decorative concrete blocks.

(iv) No fascia signs located on any building may extend higher than the roof or, if higher, the parapet line of such building.

(v) No portion of any building nor any signs or other vertical structures (other than lighting standards or poles) may be constructed or located within the area identified as the "No Building Area" on Exhibit "C" to this Declaration.

(vi) The maximum number of square feet of gross floor area contained within building(s) which may be constructed within the area identified as the "Restricted Building Area" (herein so called) on Exhibit "C" to this Declaration shall be 3,000 square feet of gross floor area; provided, however, no one building constructed within the Restricted Building Area may contain more than 2,000 square feet of gross floor area. The area contained under any canopies or roof overhangs shall be included within the gross floor area calculations prescribed above when all or any portion of foundation support for such canopies or roof overhangs is located exterior of the building exterior walls, whether the devices providing such foundation support are attached to the building or not.

(vii) No portion of any building (including all vertical projections other than antennas) may exceed twenty-five feet (25') in height above any point along the finished grade level for the building pad of such building.

(viii) No building located anywhere on the Duncan Outlot Tract may be leased to or otherwise occupied by more than one business entity; provided, however, that one building may be leased or otherwise occupied by two, but no more than two, business entities, if such building does not exceed 5,000 square feet of gross floor area.

(ix) All buildings shall be separated from one another at their nearest point by at least fifteen feet (15').

(x) No building shall exceed one story in height; provided, however, that this restriction shall not prohibit mezzanine areas.

1.3 Use Restrictions. Duncan hereby declares the following restrictions as being applicable to the Duncan

Outlot Tract, in accordance with the terms and provisions stated below. No part of the Duncan Outlot Tract shall be used except for retail sales, service facilities, business offices, financial institutions and other related and appurtenant uses. In addition, no use or operation will be made, conducted or permitted on or with respect to all or any part of the Duncan Outlot Tract which use or operation is obnoxious or clearly injurious to a first-class shopping center, including the following:

- (i) Any public or private nuisance;
- (ii) Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness, or loudness;
- (iii) Any obnoxious odor;
- (iv) Any noxious, toxic, caustic, or corrosive fuel or gas;
- (v) Any dust, dirt, or fly ash in excessive quantities;
- (vi) Any unusual fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;
- (vii) Any warehouse (excepting storage which is incidental to a permitted use), assembly, manufacture, distillation, refining, smelting, or mining operations;
- (viii) Any "second hand" store, Army, Navy, or government "surplus" store;
- (ix) Any mobile home or trailer court, labor camp, junk yard, stock yard, or animal raising;
- (x) Any dumping, disposal, incineration or reduction of garbage or refuse;
- (xi) Any fire or bankruptcy sale or auction house operation;
- (xii) Any central laundry or dry cleaning plants or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pick up and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Duncan Outlot Tract is located;
- (xiii) Any automobile sales, leasing or display, including body repair facilities (but this prohibition shall not be applicable to automotive mechanical service facilities or the sale of automotive parts and accessories);
- (xiv) Living quarters, sleeping apartments or lodging rooms;
- (xv) Any mortuary;
- (xvi) Any adult bookstore selling pornographic material or pornographic theatres; and

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(xvii) Any trailer rental.

ARTICLE II

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Miscellaneous

2.1 Estoppel Certificate. Towne Center hereby cove-  
nants that within twenty (20) days from the delivery of  
written requests, from time to time, of Duncan, it will  
issue to designees of Duncan an estoppel certificate stat-  
ing: (1) whether Towne Center knows of any default by  
Duncan under this Declaration, and if there are known de-  
faults, specifying the nature thereof; and (2) whether to  
Towne Center's knowledge this Declaration has been modified  
or amended in any way (and if it has, then stating the  
nature thereof). Notwithstanding the provisions of Section 2.2  
below, any requests for an estoppel certificate and the  
response thereto may, at the election of the sender, be sent  
by private carrier expedited mail service (i. e., Federal  
Express type service) and, in such event, the request or the  
response, as the case may be, shall be effective on the  
first day following deposit with such private carrier.  
Towne Center agrees to act in good faith in connection with  
requests for estoppel certificates from Duncan. Failure by  
Towne Center to respond within the 20-day period shall be  
deemed the equivalent of a statement that no defaults exist,  
that no amendments to this Declaration have been entered  
into and that this Declaration remains in full force and  
effect.

2.2 Notices. All notices, demands, statements and  
requests required or permitted to be given under this Decla-  
ration must be in writing and shall be deemed to have been  
properly given or served, whether received or not, by deposit-  
ing the same in the United States mails, addressed to Duncan  
or Towne Center, postage prepaid and registered or certified  
mail, return receipt requested, at the address set forth  
below.

To Towne Center: Denton Towne Center Joint Venture  
c/o Henry S. Miller Company  
2001 Bryan Tower, 30th Floor  
Dallas, Texas 75201  
Attention: Raymond J. Poche

with copy by regular mail to:

Thomas J. Terkel  
Jenkins & Gilchrist  
2200 First National Bank Bldg.  
Dallas, Texas 75202

To Duncan: Duncan Properties, Ltd.  
100 Park Avenue Bldg.  
Suite 1204  
Oklahoma City, Oklahoma 73102  
Attention: Neil Hill

with copy by regular mail to:

Mr. Glenn D. West  
Jackson, Walker, Winstead,  
Cantwell & Miller  
4300 First National Bank Bldg.  
Dallas, Texas 75202



All notices, demands and requests shall, except as herein after set forth, be effective upon being deposited in the United States mails in accordance with the provisions hereof. Rejection or other refusal to accept, or the inability to deliver because of changes of address of which no notice was given, shall be deemed to be receipt of the notice, demand or request. Any party shall have the right from time to time and at any time, upon at least ten (10) days' prior written notice thereof in accordance with the provisions hereof, to change its respective address and to specify any other address within the United States of America.

2.3 Binding Effect. The covenants contained in Article I of this Declaration shall constitute covenants running with, and shall be deemed appurtenant to, the Duncan Outlot Tract and all such covenants shall be binding upon the successors and assigns of Duncan who become owners of any portion of the Duncan Outlot Tract.

2.4 Right to Enforce. The benefits of the covenants contained in Article I shall inure to the benefit of Towne Center and the successors and assigns of Towne Center as the owner(s) of the Towne Center Tract. The remedies provided below in Section 2.6 may be pursued only by the person(s) or entity(ies) that, from time to time, own fee simple title to fifty-one percent (51%) or more of the land area contained within the Towne Center Tract. Nothing herein contained shall be deemed to be the creation of restrictions for the benefit of the general public, it being the intention and understanding of the parties hereto that this Declaration and the enforcement thereof shall be strictly limited to the persons(s) or entity(ies) specified in the immediately preceding sentence.

2.5 Amendments. Amendments to this Declaration shall be effective only when executed and acknowledged by the person(s) or entity(ies) that, from time to time, own fee simple title to fifty-one percent (51%) or more of the land area contained within the Duncan Outlot Tract and the person(s) or entity(ies) that, from time to time, own fee simple title to fifty-one percent (51%) or more of the land area contained within the Towne Center Tract, and when recorded in the deed records of Denton County, Texas.

2.6 Default. Upon violation by Duncan (the "Defaulting Party") of the covenants created in Article I above, the person(s) or entity(ies) entitled pursuant to Section 2.4 above to enforce the provisions of this Declaration (the "Enforcing Party", whether one or more) shall have the right to exercise one or more of the following remedies, at the sole election and option of the Enforcing Party:

(a) The Enforcing Party may obtain specific performance by injunction, temporary or permanent restraining order and/or any other legal and equitable remedies as may be available, in which event the Enforcing Party shall also be entitled to recover in such proceedings a full reimbursement for all injuries and damages sustained prior to the curing of the default plus all court costs and reasonable attorneys' fees incurred by the Enforcing Party.

(b) The Enforcing Party may demand that the Defaulting Party compensate it for damages sustained

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and to be sustained as a result of the violation; and if the Enforcing Party proceeds to litigation on this demand, the Enforcing Party shall also be entitled to recover in such proceedings all court costs and reasonable attorneys' fees incurred by the Enforcing Party.

The pursuit of one or more remedies hereinabove prescribed shall not preclude the pursuit of any other remedy otherwise provided under the laws of the State of Texas, unless inherently inconsistent with the remedy being pursued. Notwithstanding the foregoing, Defaulting Party shall not be deemed to be in violation of the covenants created by Article I above until Defaulting Party shall have failed to cure such violation (or, in the case of a violation which cannot be cured within a thirty-day period, to commence and diligently work toward curing the violation) within thirty (30) days following the delivery of written notice (describing with particularity the nature of the violation and referring specifically to the provision of this Declaration claimed to be violated) by the Enforcing Party to Defaulting Party and to all mortgagees of Defaulting Party about whom the Enforcing Party has received prior written notice.

2.7 Sale by Duncan. Upon the bona fide assignment, conveyance, sale or other transfer by Duncan of its fee simple ownership to any portion or all of the Duncan Outlot Tract, Duncan shall be released from any liability arising out of a failure to observe the covenants contained in this Declaration arising subsequent to the effective date of such sale or transfer with respect to the portion sold or otherwise transferred (other than those obligations arising from any default by Duncan under this Declaration prior to such sale or transfer).

2.8 Approvals. Duncan may at any time request that Towne Center review plans and specifications for proposed buildings to be located on the Duncan Outlot Tract and advise Duncan of any violations of the covenants contained in Section 1.2 hereof (the "Restrictions") created by such plans. In such event, Duncan shall also deliver to Towne Center sufficient supporting data (such as surveys, detailed, scaled exterior elevations, specifications for materials to be used and other renderings as may be needed) to enable Towne Center to make an informed determination concerning whether the buildings as proposed comply with the Restrictions. Duncan shall be deemed to have submitted adequate information to Towne Center if Towne Center fails to request more detailed information within fifteen days of the initial delivery of such information. Any objections raised by Towne Center shall be in writing and shall specify the specific portion of the Restrictions which Towne Center believes will be violated by the proposed building and the particular nature of the violation. With respect to any actual violation which Towne Center fails to identify in writing to Duncan within thirty (30) days of the delivery of the initial information or, if later, within fifteen days of the delivery of all information requested by Towne Center, Towne Center shall be estopped thereafter to assert any such violation and shall be deemed to have waived any right or remedy to which it might otherwise be entitled. The above-described estoppel and waiver shall be effective only as to the specific buildings described in the plans submitted to Towne Center and then only if construction of such buildings is commenced within ninety days from the expiration of the period for objection, and shall not apply to any other buildings thereafter constructed, or any remodeling, alteration or reconstruction of any such buildings.

2.9 Six Month Waiver. If, within six months following the date on which a certificate of occupancy is issued for any building or any portion thereof constructed within the Duncan Outlot Tract, an affidavit identifying Duncan and the Duncan Outlot Tract and setting forth a specific description of the manner in which such building fails to conform with the provisions of Section 1.2 of this Declaration is not filed in the Deed Records of Denton County, Texas, then in such event, the building for which the certificate of occupancy was issued shall conclusively be deemed to comply with all such provisions. Towne Center shall thereafter be estopped to assert any violations of Section 1.2 of this Declaration with respect to such building; provided, however, that nothing contained herein shall limit or affect in any manner the Enforcing Party's right to pursue any remedies set forth in Section 2.6 hereof at any time prior to the expiration of such six (6) month period.

2.10 Duration. This Declaration and the restrictions contained herein shall terminate and be of no further force and effect upon the earlier of:

(i) February 1, 2020; or

(ii) the date on which a written termination agreement, executed and acknowledged by the parties required to amend this Declaration, is recorded in the real property records of Denton County, Texas.

EXECUTED, to be effective as of the date first above specified.

DUNCAN PROPERTIES, LTD.,  
an Oklahoma limited partnership

By: Neil Hill  
Neil Hill, General Partner

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

BEFORE ME, the undersigned authority, on this day personally appeared NEIL HILL, General Partner of Duncan Properties, Ltd., an Oklahoma limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes, consideration and in the capacity therein expressed, as the act and deed of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1<sup>st</sup> day of April, 1982.



Carol M. Cobb  
Notary Public in and for  
Dallas County, Texas

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Exhibit "A"  
Duncan Tract

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BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34°42'00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64°45'00" E a distance of 65.87 feet to a point for corner;

THENCE S 05°49'03" W a distance of 95.00 feet to a point for corner;

THENCE S 86°43'12" W a distance of 90.00 feet to a point for corner;

THENCE S 42°33'00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 42°00'59" W a distance of 90.60 feet to a point for corner;

N 34°42'00" W a distance of 226.60 feet to a point for corner;

N 01°41'20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

Exhibit "B"

Towme Center Tract

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J. S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing the Easterly line of said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'06", a radius of 3740.00 feet, and an arc length of 182.88 feet to the POINT OF BEGINNING;

Continuing along said curve to the right having a central angle of 14°46'26", a radius of 3740.00 feet, and an arc length of 964.37 feet to a point of curvature to the right;

THENCE along said curve to the right in a Southeasterly direction and departing said Loop 288 and having a central angle of 08°31'31", a radius of 705.00 feet, an arc length of 104.90 feet, and a chord bearing of S 19°21'05" E to a point of reverse curve to the left;

THENCE along said curve to the left having a central angle of 11°00'18", a radius of 453.38 feet, and an arc length of 87.08 feet to a point for corner;

THENCE S 60°43'46" W a distance of 268.95 feet to a point for corner;

THENCE S 41°57'26" W a distance of 357.99 feet to a point for corner;

THENCE S 48°02'34" E a distance of 21.62 feet to a point for corner;

THENCE S 34°48'00" W a distance of 136.00 feet to a point for corner;

THENCE S 25°15'00" W a distance of 170.17 feet to a point for corner;

THENCE N 64°45'00" W a distance of 51.87 feet to a point for corner;

THENCE N 34°42'00" W a distance of 307.00 feet to the POINT OF BEGINNING and containing 4.9698 acres of land, more or less.

Vol 1136 Page 569

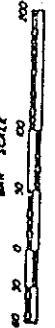
VOL 1136 PAGE 570

0418 (1994) 0096703

LOOP 288

--- DENON DUNE CENTER TRACT ---

--- NINCAR MAIN TRACT ---



L.H. 35-E



FILED 9473  
1982 APR -8 PM 4:28

COUNTY CLERK, DENTON COUNTY, TEXAS

BY

5

SOUTHWEST LAND TITLE CO.  
P. O. BOX 18296  
DALLAS, TEXAS 75218

VOL 1136 PAGE 571

FILED FOR RECORD 8<sup>th</sup> DAY OF April A.D. 1982, at 4:28 P.  
RECORDED 1216 DAY OF April A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Shirley J. Taylor DEPUTY.

## DEED RECORDS

## GENERAL WARRANTY DEED

VOL 1181 PAGE 556

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

§

§

35655

THAT DUNCAN PROPERTIES, LTD., a limited partnership ("Grantor"), for and in consideration of the sum of Ten Dollars (\$10.00) cash and other good and valuable consideration paid by HANDY DAN HOME IMPROVEMENT CENTERS, INC., a Delaware corporation ("Grantee"), whose mailing address is 7909 Fredericksburg Road, San Antonio, Texas 78229, the receipt and sufficiency of which is hereby acknowledged and confessed; and the further consideration of the assumption and agreement by Grantee to keep, pay and perform all of the covenants and obligations of Grantor contained in that certain Grant of Reciprocal Easements, dated March 31, 1962, recorded in Volume 1136, page 509, Deed Records, Denton County, Texas, as modified by that certain Modification of Grant of Reciprocal Easements, dated December 7, 1982, duly recorded in the Deed Records of Denton County, Texas (as modified being herein called the "Grant"), for the benefit of all parties owning portions of the real property covered by the Grant (the "Center Property"), insofar and only insofar as said covenants and obligations or any of them pertain to the Property (hereinafter defined), has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY, unto Grantee, that certain tract of land situated in Denton County, Texas, and being a part of the John McGowen Survey, Abstract No. 797, and the Daniel Lambert Survey, Abstract No. 784, more particularly described on Exhibit A attached hereto and incorporated herein by reference for all purposes, together with all and singular all rights and appurtenances thereto in anywise belonging (collectively the "Property").

And Grantor does hereby declare, for the sole and exclusive benefit of the Property and as a covenant running with the tracts of land described on Exhibit B attached hereto and made a part hereof (the "Retained Land"), that as long as Grantee or any affiliate of Grantee is the user of the Property or the major portion thereof, either as owner or lessee, no portion of the Retained Land or any real property adjacent to the Center Property now or hereafter owned or leased by Grantor shall be allowed to be used for a home center or a business that engages principally in the sale (at retail or wholesale) of lumber, building materials, hardware and tools, paint and decorating material, electrical supplies, plumbing supplies, nursery products, lawn and garden supplies or any combinations thereof. The sale of lamps, carpets, window shades, curtains and drapes, however, are not included in the foregoing restriction.

And as further consideration for this conveyance, Grantee does hereby declare, for the sole and exclusive benefit of (i) the first grantee under Grantor of that portion of the Retained Land described on Exhibit C attached hereto and made a part hereof (the "Parcel I Tract") or (ii) an affiliate of said first grantee as the user, owner or lessee of the Parcel I Tract, that no portion of the Property shall be used for the purpose of conducting thereon or for use as a food store or a food department or for the sale for off-premises consumption of groceries, meats, produce, dairy products, or bakery products, or any of them; provided, however, that nothing contained herein shall prevent any occupant of improvements on the Property from selling such products as an incidental part of its other and principal business so long as the total number of square feet devoted by such occupant to the display for sale of such product does not exceed five percent (5%) of the total number of square feet of building area used by such occupant, or five hundred (500) square feet (including, either such case, one-half (1/2) of the aisle space adjacent to any display area), whichever is smaller.

This conveyance is made subject to those certain exceptions (the "Permitted Exceptions"), set forth in Exhibit B attached hereto and incorporated herein by reference for all purposes, but only to the extent the same are valid and subsisting and affect the Property.

TO HAVE AND TO HOLD the Property unto Grantee, its successors, legal representatives and assigns forever, and Grantor does hereby bind itself, its legal representatives, successors and assigns to WARRANT and FOREVER DEFEND all and singular the Property unto Grantee, its successors, legal representatives and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, subject, however, to the Permitted Exceptions.

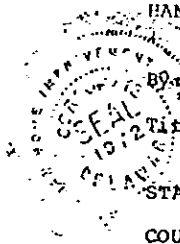
EXECUTED this 9<sup>th</sup> day of December, 1982, but effective for all purposes as of the 9<sup>th</sup> day of December, 1982.

DUNCAN PROPERTIES, LTD.

By: Neil Hill  
NEIL HILL, General Partner

AGREED TO AND ACCEPTED this 7<sup>th</sup> day of December, 1982.

HANDY DAN HOME  
COVENENT CENTERS, INC.



Title: Frank W. Cherry

STATE OF TEXAS §  
COUNTY OF DALLAS §

LEGAL TMC

RTG       

RE NP

FIN       

This instrument was acknowledged before me on Dec 7, 1982, by NEIL HILL, general partner on behalf of DUNCAN PROPERTIES, LTD., a limited partnership.

My commission expires: 12-12-82

Notary Public - State of Texas

Printed Name of Notary: Louise F. [illegible]

STATE OF NEW YORK §  
COUNTY NEW YORK §  
BURROUGH OF New York §

This instrument was acknowledged before me on Dec 7, 1982, by F. W. Cherry, a Vice President of HANDY DAN HOME IMPROVEMENT CENTERS, INC., a Delaware corporation, on behalf of said corporation.

My commission expires: 3/30/83

Notary Public - State of New York

Printed Name of Notary: Olivia Connelley

NOTARY

COMMISSION EXPIRES 12-12-82

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797 and the Daniel Lambert Survey, Abstract No. 784, and being known as Block 1, Lot 2B of the Denton Shopping Center Addition, an addition to the City of Denton as shown on the replat thereof which is recorded in Cabinet C, Page 130, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the Northeasterly line of Interstate Highway No. 35-E (variable right-of-way), said point also being the Southwesterly corner of said Denton Shopping Center Addition;

THENCE along the said Northeasterly line of I.H. 35-E the following:

N 47°27'00" W a distance of 112.51 feet to a point for corner;

N 55°58'59" W a distance of 101.10 feet to a point for corner;

N 47°27'00" W a distance of 30.50 feet to a point for corner;

S 48°26'45" W a distance of 3.00 feet to a point for corner;

N 41°33'15" W a distance of 29.05 feet to a point for corner;

THENCE N 41°57'26" E departing said I.H. 35-E a distance of 95.00 feet to a point for corner;

THENCE N 48°02'34" W a distance of 85.00 feet to a point for corner;

THENCE N 05°49'03" E a distance of 132.75 feet to a point for corner;

THENCE N 86°43'12" E a distance of 12.61 feet to a point for corner;

THENCE N 05°49'03" E a distance of 95.00 feet to a point for corner;

THENCE N 64°45'00" W a distance of 14.00 feet to a point for corner;

THENCE N 25°15'00" E a distance of 30.17 feet to a point for corner;

THENCE S 64°45'00" E a distance of 25.00 feet to a point for corner;

THENCE S 48°02'34" E a distance of 236.91 feet to a point for corner;

THENCE N 41°57'26" E a distance of 25.50 feet to a point for corner;

THENCE S 48°02'34" E a distance of 244.00 feet to a point for corner;

THENCE S 41°57'26" W a distance of 333.26 feet to the POINT OF BEGINNING and containing 127,375 square feet or 2.924 acres of land, more or less.

1509Z

EXHIBIT B

"Retained Land"

BEING a tract of land situated in the John McGowen Survey, Abstract No. 797, and the Daniel Lambert Survey, Abstract No. 784, and being part of Lot 2 of the replat of Denton Shopping Center Addition as recorded in Cabinet C, Page 67, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at the Southwest Corner of Lot 1 of the said replat of Denton Shopping Center Addition;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 239.34 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W a distance of 244.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 25.50 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W a distance of 236.91 feet to a point for corner;

THENCE N  $64^{\circ} 45' 00''$  W a distance of 25.00 feet to a point for corner;

THENCE N  $25^{\circ} 15' 00''$  E a distance of 140.00 feet to a point for corner;

THENCE N  $34^{\circ} 48' 00''$  E a distance of 136.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 282.03 feet to a point for corner;

THENCE N  $41^{\circ} 57' 26''$  E a distance of 108.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 155.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 105.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 125.00 feet to the POINT OF BEGINNING AND containing 3.50 acres of land, more or less.

BEING a tract of land of the John McGowen Survey, Abstract No. 797, and being part of lot 2, of the replat of Denton Shopping Center Addition. An addition to the City of Denton as recorded in Cabinet C, page 67 Deed Record, Denton County, Texas and being more particularly described as follows:

BEGINNING with an iron rod set at the Northwest corner of Lot 2, and being in the Easterly line of Interstate Highway 35 (a variable width row) said point also being the Southwest corner of Lot 3.

THENCE N  $42^{\circ} 33' 00''$  E a distance of 145.00 feet to an iron rod set for corner;

THENCE N  $86^{\circ} 43' 12''$  E a distance of 77.39 feet to an iron rod set for corner;

THENCE S  $05^{\circ} 49' 03''$  W a distance of 132.75 feet to an iron rod set for corner;

THENCE S  $46^{\circ} 02' 34''$  E a distance of 85.00 feet to an iron rod set for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 95.00 feet to an iron rod set for corner in the said East line of Interstate Highway 35.

THENCE N  $47^{\circ} 27' 00''$  W at the East line of Interstate Highway 35, a distance of 219.30 feet to the POINT OF BEGINNING and containing 0.648 acres of land, more or less.

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EXHIBIT B

CONTINUED

VOL 1181 PAGE 560

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being all of Lot 3, Block 1 of the Denton Shopping Center Addition, an addition to the City of Denton, according to the replat thereof, recorded in the Map Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway 35-E the following:

N 42° 27' 28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02° 48' 06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34° 42' 00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64° 45' 00" E a distance of 65.87 feet to a point for corner;

THENCE S 05° 49' 03" W a distance of 95.00 feet to a point for corner;

THENCE S 86° 43' 12" W a distance of 90.00 feet to a point for corner;

THENCE S 42° 33' 00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway 35-E;

THENCE along the Easterly line of said Interstate Highway 35-E the following:

N 42° 00' 59" W a distance of 90.60 feet to a point for corner;

N 34° 42' 00" W a distance of 226.00 feet to a point for corner;

N 01° 41' 20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.



EXHIBIT C

"Parcel 1 Tract"

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, and the Daniel Lambert Survey, Abstract No. 784, and being part of Lot 2 of the replat of Denton Shopping Center Addition as recorded in Cabinet C, Page 67, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at the Southwest Corner of Lot 1 of the said replat of Denton Shopping Center Addition;

THENCE S 41° 57' 26" W a distance of 239.34 feet to a point for corner;  
 THENCE N 48° 02' 34" W a distance of 244.00 feet to a point for corner;  
 THENCE S 41° 57' 26" W a distance of 25.50 feet to a point for corner;  
 THENCE N 48° 02' 34" W a distance of 236.91 feet to a point for corner;  
 THENCE N 64° 45' 00" W a distance of 25.00 feet to a point for corner;  
 THENCE N 25° 15' 00" E a distance of 140.00 feet to a point for corner;  
 THENCE N 34° 48' 00" E a distance of 136.00 feet to a point for corner;  
 THENCE S 48° 02' 34" E a distance of 282.03 feet to a point for corner;  
 THENCE N 41° 57' 26" E a distance of 108.00 feet to a point for corner;  
 THENCE S 48° 02' 34" E a distance of 155.00 feet to a point for corner;  
 THENCE S 41° 57' 26" W a distance of 105.00 feet to a point for corner;  
 THENCE S 48° 02' 34" E a distance of 125.00 feet to the POINT OF BEGINNING AND containing 3.50 acres of land, more or less.

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EXHIBIT D

VOL 1181 PAGE 562

1. Taxes for the year 1983 and subsequent years and subsequent assessments for prior years due to change in land usage or ownership.
2. All easements, restrictions, covenants and conditions shown on the replat of Denton Shopping Center Addition, an addition to the City of Denton, recorded in Cabinet C, page 130, Plat Records, Denton County, Texas.
3. Grant of Reciprocal Easements, dated March 31, 1982, recorded in Volume 1136, page 509, Deed Records, Denton County, Texas, as modified by Modification of Grant of Reciprocal Easements, dated December 7, 1982, duly recorded in the Deed Records of Denton County, Texas.
4. Agreement of Easements, Covenants & Restrictions, dated April 26, 1982, recorded in Volume 1141, page 974, Deed Records, Denton County, Texas, as amended and restated by Restatement of Agreement of Easements, Covenants & Restrictions, dated December 7, 1982, duly recorded in the Deed Records of Denton County, Texas.
5. Easements to Lone Star Gas Co., recorded in Volume 454, page 213, and Volume 454, page 214, Deed Records, Denton County, Texas, as the same were partially released and defined by instruments recorded in Volume 1006, page 134, and Volume 1005, page 776, Deed Records, Denton County, Texas.

1514Z

GRANTEE'S MAILING ADDRESS:  
HANDY DAN HOME IMPROVEMENT CENTERS, INC.  
Suite 134  
San Antonio, Texas 78229

35655

EX-115 10 26

RETURN TO: HANDY DAN HOME IMPROVEMENT CENTERS, INC.  
7909 Fredericksburg Road  
Suite 134  
San Antonio, Texas 78229

VOL 1181 PAGE 563

FILED FOR RECORD 15th DAY OF December A.D. 1982, at 5:26 P.  
RECORDED 16th DAY OF December A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: [Signature] DEPUTY.

RESTATEMENT OF AGREEMENT OF  
EASEMENTS, COVENANTS AND RESTRICTIONS

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DEED RECORDS

35656

THIS RESTATEMENT OF AGREEMENT OF EASEMENTS, COVENANTS AND RESTRICTIONS is made and entered into as of the 7<sup>TH</sup> day of November, 1982, by and between DUNCAN PROPERTIES, LTD. ("Duncan"), WAL-MART PROPERTIES, INC. ("Wal-Mart") and HANDY DAN HOME IMPROVEMENT CENTERS, INC. ("Handy Dan").

W I T N E S S E T H:

WHEREAS, Duncan and Wal-Mart entered into an Agreement of Easements, Covenants and Restrictions dated April 26, 1982 and recorded in Volume 1141 at Page 974 et seq of the Deed Records of Denton County, Texas, pertaining to certain real property in the City of Denton, Denton County, Texas shown on Exhibit "A" attached hereto and described in Exhibit "B-1" attached hereto (the "Center Property"); and

WHEREAS, Wal-Mart is the owner of the land designated as Tract I on Exhibit "A" attached hereto and described in Exhibit "B-2"; Handy Dan is the owner of the land designated as Tract II, Parcel 2 on Exhibit "A" and described in Exhibit "B-3"; and Duncan is the owner of Tract II, Parcel 1, Tract II, Parcel 3 and Tract II, Parcel 4 shown on Exhibit "A" and described in Exhibits "B-4", "B-5" and "B-6"; and

WHEREAS, the parties hereto desire to amend and restate the aforesaid agreement.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THAT for and in consideration of the premises, easements, covenants, conditions and restrictions contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Building Areas. Any building or structure constructed on the Center Property (either as immediate development or future expansion) shall be built only in that area within the building lines or only to the maximum square footage as set forth on Exhibit "A" hereto (the "Building Areas"). That portion of the Center Property not within the Building Areas is hereinafter referred to as the Common Area. Any canopies, signs or ornaments which are attached to a building or structure situated within the Building Areas may encroach upon that space above the Common Area provided that such canopy, sign or ornament does not interfere with the unrestricted use of any portion of the Common Area as set forth in paragraph 5 hereof. A Building Area may be improved as Common Area, in which case it shall be deemed Common Area and subject to all the provisions of this Agreement pertaining to Common Area until it is improved with a building.
2. Use. Buildings located on the Center Property shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices, and retail stores. With the exception stated below, no cafeteria, restaurant, theater, flea market, car wash, bowling alley, billiard parlor, night club, any business which, as its primary business activity, serves alcoholic beverages for consumption on the premises of such business, or any place of recreation or amusement, shall be situated within any portion of the Center Property which is within a 300 foot radius of the front door of Wal-Mart's or Handy Dan's retail outlet. The parties acknowledge that the location of any such business within said area may inconvenience the customers and may adversely affect the business of Wal-Mart and Handy Dan. Notwithstanding the foregoing restriction, restaurants may be located on Tract II, Parcel 3, and restaurants and restaurant-theater and restaurant-entertainment businesses may be located on Tract II, Parcel 4. No adult book store, massage parlor, "head shop" or store devoted to the sale of sexual material and devices shall be allowed on the Center Property.

2321A-120282

### 3. Competing Business.

a. Duncan and Handy Dan agree that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of Tract I or the major portion thereof, either as owner or lessee, no portion of Tract II and no portion of any real property adjacent to the Center Property which may subsequently be acquired by Duncan shall be occupied by, or leased or conveyed to any other party for use as a discount department store similar to Wal-Mart's retail outlet and whose overall retail concept is based on a discounting price structure similar to the concept used by Wal-Mart.

b. Duncan and Handy Dan further agree that for the benefit of the first grantee from Duncan of Tract II, Parcel 1 or any affiliate of said grantee (as the user of Tract II, Parcel 1 as owner or lessee), no portion of Tract II, Parcels 2, 3 and 4 and no portion of any real property adjacent to the Center Property which may subsequently be acquired by Duncan shall be used for the purpose of conducting therein or for use as, a food store or a food department or for the sale for off-premises consumption of groceries, meats, produce, dairy products, or bakery products, or any of them; provided however, that nothing contained herein shall prevent any occupant of improvements on Parcels 2, 3 or 4 or real property adjoining the Center Property from selling such products as an incidental part of its other and principal business so long as the total number of square feet devoted by such occupant to the display for sale of such product does not exceed five percent (5%) of the total number of square feet of building area used by such occupant, or five hundred (500) square feet (including, either such case, one-half (1/2) of the aisle space adjacent to any display area), whichever is smaller.

c. Duncan agrees that as long as Handy Dan or any affiliate of Handy Dan is the user of Tract II, Parcel 2 or the major portion thereof, either as owner or lessee, no portion of Tract II, Parcels 1, 3 and 4 and no portion of any real property adjacent to the Center Property now or hereafter owned or leased by Duncan shall be allowed to be used for a home center or a business that engages principally in the sale (at retail or wholesale) of lumber, building materials, hardware and tools, paint and decorating material, electrical supplies, plumbing supplies, nursery products, lawn and garden supplies or any combinations thereof. The sale of lamps, carpets, window shades, curtains and drapes are not included in the foregoing restriction.

d. As used in this Agreement, the term "affiliate" means any person or entity controlling, controlled by or under common control with the party in question.

### 4. Buildings.

a. Design and Construction. All buildings constructed on the Center Property shall be designed so that the exterior of each such building shall be architecturally and aesthetically compatible to all other buildings located on the Center Property and so that any building wall footing shall not encroach from one Tract onto another Tract. The design and construction of any building on the Center Property shall be of high quality and shall be in accordance with sound architectural and engineering standards. Buildings on the following Tracts and Parcels shall not exceed the heights above finished grade set forth below:

Tract I	35 feet
Tract II, Parcels 1 and 2	35 feet
Tract II, Parcel 3	22 feet
Tract II, Parcel 4	22 feet

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b. Easements. In the event building wall footings encroach from one parcel of separately owned land ("tract") onto another, despite efforts to avoid such occurrence, the party onto whose tract the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

c. Fire Protection. Any building constructed on the Center Property which is not equipped with a sprinkler system shall be constructed and operated in a manner which will preserve the sprinkler rating on the buildings situated on the Center Property which are equipped with sprinkler systems as established by applicable City, County or State fire code authorities in the City of Denton, Denton County, Texas.

#### 5. Common Area.

a. Grant of Easements. Each of the parties hereto, as grantor, hereby grants to the other parties, as grantees, for their benefit and the benefit of their respective customers, invitees, licensees, tenants, and employees, a nonexclusive easement across the Common Area for roadways, walkways, ingress and egress to any and all public roadways, whether established or proposed, which run adjacent to the Center Property; parking of motor vehicles (except construction worker vehicles); loading and unloading of commercial and other vehicles (except for construction vehicles) and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of buildings situated on the Center Property.

#### b. Limitations on Use.

(i) Customers. The parties hereto shall use all reasonable efforts to ensure that no person shall be permitted to park on the Common Area except for employees and invitees of those businesses occupying a portion of the Center Property in compliance with the terms of this Agreement and those persons shopping or engaging in a lawful business transaction with such businesses.

(ii) Employees. Each party shall use reasonable efforts to ensure that all employees of businesses located in the Center Property park in those portions of the Common Area which the parties hereto from time to time mutually designate as employee parking areas.

(iii) General. The primary purpose of the Common Area is to provide for parking for the employees and invitees of those businesses occupying a portion of the Center Property in compliance with the terms of this Agreement and those persons shopping or engaging in a lawful business transaction with such businesses. Persons using the Common Area in accordance with the provisions of this subparagraph shall not be charged any fee for such use. However, no activity shall be conducted in the Common Area which will interfere with the aforementioned primary purpose of the Common Area.

(iv) Trash Containers. Each owner, on its own tract, may use or permit the use of the portion of the Common Area to the south of the Building Area on Tract I and Tract II, Parcels 1 and 2 for trash containers or compactors and outside storage of merchandise and equipment, provided that they do not interfere with normal access and unloading by delivery and other service vehicles between the Building Area and the southern boundary of the Center Property. Outdoor trash containers and compactors located on Tract II, Parcel 3 shall be screened so that they are not visible from Tract II, Parcels 1 and 2, and the access to the containers and compactors shall be from the north or west.

(v) Outdoor Sales. Outside sales and displays of merchandise shall be permitted to be conducted by any of the stores located on Tract I and Tract II, Parcels 1 and 2 upon their respective sidewalks and within 125 feet of their respective main entrances; provided, however, that the sales area is not located in the drive lanes parallel and adjacent to the front of the building on the respective tract.



(vi) Service Drive and Driving Lane. The Common Area designated "Service Drive" on Exhibit "A" shall be used exclusively for access, loading and unloading of service vehicles, except for underground utility lines, overhead utility lines that do not interfere with service vehicles and the trash containers described in Section 5.b.(iv). The Common Area designated "Driving Lane" on Exhibit "A" shall be used exclusively for passage of vehicles and pedestrians and for underground utility lines.

c. Utility and Service Easements. The parties hereto shall cooperate in the granting of appropriate and proper easements for the installation, use, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Common Area and those buildings to be erected upon the Building Areas. The parties will use their best efforts to effect the installation of such utility and service lines prior to the paving of the Common Area. However, in no event shall the lines, sewers, utilities and services which benefit one tract be installed within the Building Areas of any other tract without the express written consent of the owner of the other tract.

d. Water Flow. The parties agree to the drainage of surface water in the Center Property that results from (i) the grading and underground drainage system shown on Exhibit "C" attached hereto and (ii) the location of buildings within the Building Area (the "Permitted Drainage"); and the parties hereby grant each other an easement to allow the Permitted Drainage over their respective tracts. Each party agrees that it will not alter the grading within its tract or place improvements in the Common Area that will materially alter the Permitted Drainage or cause the owner of any other tract to be in violation of the surface drainage easement contained in the Grant of Reciprocal Easements between Duncan Properties, Ltd. and Denton Towne Center Joint Venture dated March 31, 1982 as recorded in Volume 1136, Page 509, Deed Records, Denton County, Texas.

e. Subdivision of Existing Tracts. Tracts created by subdivision of already existing tracts shall have, with respect to each other, all easements granted in this Section 5 that benefit the present Tracts and Parcels in which said newly created tracts are located.

#### 6. Development, Maintenance, and Taxes.

##### a. Development.

(i) "Parking Area" Ratio. Each owner agrees it shall maintain, in that portion of the Common Area situated on its respective tract, sufficient parking area to accommodate not fewer than five (5) cars spaces for each one thousand (1,000) square feet of building floor area constructed on its respective tract. If a restaurant is operated on Tract II, Parcel 3, then (i) the Common Area on said Parcel shall contain no fewer car spaces than the seating capacity of the restaurant divided by 3 and (ii) the principal occupant of Tract II, Parcel 2 may require all or some of the restaurant employees to park their cars on designated portions of Tract II, Parcel 2.

(ii) Design of Common Area. The design and arrangement of the Common Area shall not be changed in a manner inconsistent with the terms of this Agreement without the express written consent of the parties entitled to amend this Agreement pursuant to Article 17, except that the location and use of the Service Drive and Driving Lane shown on Exhibit "A" shall not be changed without the express written consent of all Principal Parties (as defined in Paragraph 17).

(iii) Coordination of Common Area Construction-Service Drive. Wal-Mart acknowledges that at the time it opened for business to the general public on November 16, 1982 the Service Drive located as set forth on Exhibit "A" was completed in Tract I only. As Wal-Mart gave Duncan no written notice of its scheduled opening date, Wal-Mart has

waived its right to complete that portion of the service drive located on Tract II, Parcels 1 & 2 and does hereby waive any rights it may have had to complete same. Nevertheless, it is agreed by all parties that the portion of the Service Drive on Tract II Parcels 1 & 2 will be constructed on the respective parcels by the time the buildings on said Parcels are completed.

(iv) Coordination of Common Area Construction-Tract II, Parcels 1 & 2. In addition to Subparagraph 6.a.(iii), each of the owners of Tract II, Parcel 1 and Tract II, Parcel 2 agree with the other to complete construction on its Parcel of the work described below within forty (40) days after it receives written notice from the other owner that an occupant intends to open a place of business on the latter's Parcel within seventy-five (75) days. The work to be performed by each owner is the paving of the Service Drive and the parking area lying north of the sidewalk line and within thirty-five (35) feet of the boundary between Tract II, Parcels 1 and 2. The specifications for the work to be performed on each owner's Parcel are set forth in Exhibit "D" attached hereto. In the event that either owner should fail to fulfill its obligations under this paragraph 6.a.(iv) (the "defaulting party"), then the other owner (the "non-defaulting party") shall have the right to complete such work on the defaulting party's Parcel pursuant to a bid approved by the defaulting party, said approval not to be unreasonably withheld and to be deemed given if not refused within ten (10) days after it is submitted. In connection therewith the non-defaulting party shall obtain a waiver from its contractors and sub-contractors of any and all liens which could be asserted against the defaulting party's tract. All costs and expenses incurred in connection with any such construction shall be payable by the defaulting party to the non-defaulting party upon demand after the issuance of a certificate of occupancy for the building on the defaulting owner's Parcel. In order to secure such sums the non-defaulting party shall have a lien on the Parcel owned by the defaulting party, which shall be superior to all other liens except liens securing lawful governmental assessments and bona fide first lien mortgages or first lien deeds of trust, and which shall be evidenced by the non-defaulting party preparing, executing, acknowledging and recording in the appropriate records in the office of the County Clerk of Denton County, Texas, a notice of such lien setting forth the principal amount due, the name of the defaulting party and a description of the tract owned by the defaulting party. After recordation of such notice the lien may be foreclosed in like manner as a mortgage on real property subsequent to the recording of a notice or claim thereof. The defaulting party shall be responsible for and shall pay all costs and expenses incurred by the non-defaulting party in enforcing any of the foregoing rights and remedies (including attorneys' fees and court costs).

(v) Conduct of Construction. All construction work done within the Center Property and the right of way adjoining the Center Property shall be conducted so as not to unreasonably interfere with permitted uses (including construction activity) and businesses conducted in the Center Property. The Service Drive designated on Exhibit "A" shall not be obstructed except temporarily for necessary construction work or unloading, provided that during the period the Service Drive is so temporarily obstructed the dock area of the building on Tract I must be served by an unobstructed truck route utilizing portions of the Service Drive connected to the parking area on Tracts I and II. Notwithstanding Section 6.b.(i), an owner of a tract upon which construction is taking place shall repair all damage to the Building and Common Areas on other tracts caused by its construction work.

b. Maintenance.

(i) Standards. Following completion of the improvements on the Common Area, each of the parties respectively shall maintain that portion of the Common Area situated on its tract in good condition and repair. Such maintenance shall include, without limitation, the following:

(A) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(B) Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(C) Installing, repairing, and replacing any and all necessary directional signs, markers and lines;

(D) Operating, repairing and replacing, where necessary, such artificial lighting facilities as shall reasonably be required;

(E) Maintaining all perimeter walls in a good condition and state of repair; and

(F) Maintaining all landscaped areas and making such replacements of shrubs and other landscaping as is reasonably necessary.

(ii) Expenses. Each of the parties hereto shall pay the cost of maintaining their respective tracts, except that owners and tenants of tracts that negligently or wilfully cause damage to other tracts shall reimburse its owner for the cost of the repair.

(iii) Maintenance Service. The parties hereto may agree to employ an independent maintenance service to maintain the Common Area in the manner above outlined. The expenses incurred in connection with the hiring of such maintenance service shall be borne by the parties hereto in the same proportion that the number of square feet contained in their respective tracts is to the total number of square feet in the Center Property.

c. Prior to Development. Before land in the Center Property is improved, its owner shall maintain the land in compliance with all laws and governmental rules and regulations and shall not permit a nuisance affecting any other part of the Center Property to exist on its land. Without limiting the foregoing, the owner shall keep grass and underbrush cut, remove debris, prevent soil from washing into improved portions of the Center Property and maintain in an attractive condition any fences or barriers on its Building Area that is not intended for use solely during construction.

d. Restoration. A building in the Center Property damaged by casualty or condemnation does not have to be restored, but its owner shall within ninety (90) days after the damage occurs remove all debris resulting therefrom and within a reasonable time thereafter either (i) repair or restore the building, (ii) replace the building with a new improvement that complies with this Agreement or (iii) demolish the building, remove the debris, smooth the ground surface and either pave or grass over the site.

e. Taxes. Each of the parties hereto agrees to pay or cause to be paid, before delinquent, directly to the appropriate taxing authority those assessments which are levied against that portion of the Center Property owned by it.

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7. Signs.

a. No sign shall be located on the Center Property, except as allowed in this Article. All signs located on the Center Property shall be related to business(es) conducted on the Center Property. 774 DMC

b. The two (2) signs designated as Center I.D. signs on said Exhibit "A" and located on Tract I and Tract II, Parcel 4, respectively, shall be composed of a pylon structure and not more than three individual box signs. None of the boxes shall have flashing lights or moving visual or mechanical elements. The top box of each such Center I.D. sign shall be designated for use by Wal-Mart. The second box from the top of each such Center I.D. sign shall be designated for use by the principal user of Tract II, Parcel 1. The third box from the top of the easterly Center I.D. sign shall be designated for use by Handy Dan. The remaining box on the westerly Center I.D. sign, if used, shall be used by the business designated by Wal-Mart and the user of Tract II, Parcel 1. The designated user of each box shall bear an equal share of the cost of constructing and maintaining the Center I.D. pylon sign structures, said share being proportional to the number of boxes on the pylon. The cost of installing, equipping, maintaining, illuminating and metering each of the boxes used by owners or tenants utilizing such boxes shall be borne completely by such tenant or owner.

c. The sign situated on Tract II, Parcel 2 and designated "Handy Dan Sign" on Exhibit "A" hereto shall be the sole responsibility of Handy Dan and Handy Dan shall have the right to erect and use or allow the use of such sign.

d. The two signs situated on Tract II, Parcel 4, each designated "Duncan Sign Easement" on Exhibit "A", shall be the sole responsibility of the principal user of Tract II, Parcel 1, and said user shall have the right to erect and use or allow the use of such sign.

e. Duncan shall have the right to erect and to apportion the use of four (4) additional signs on Tract II, Parcel 4 (other than the Center I.D. sign and the two Duncan Sign Easements) and one sign on Tract II, Parcel 3, provided that the sign on Tract II, Parcel 3 does not exceed thirty-five (35) feet in height and does not materially impede the visibility of the sign described in subparagraph 7.c. from Interstate Highway 35.

8. Indemnification/Insurance.

a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim, or judgment arising from personal injury, death, or property damage occurring on or in any way connected with the indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee.

b. Insurance.

(i) Each owner of a tract at its sole cost and expense shall procure and maintain or cause to be procured and maintained in full force and effect throughout the term of this Agreement policies of general public liability insurance and of property damage insurance. Such policies shall provide coverage against all claims, demands or actions for personal injury, death or property damage occurring upon or in connection with that portion of the Center Property owned by such party within limits of not less than \$500,000.00 for injury or death of a single person, within limits of not less than \$1,000,000.00 for any one occurrence, and within limits of not less than \$500,000.00 for property damage. Such policies shall name as additional insureds all Principal Parties (as defined in Paragraph 17) of which the owner has knowledge and shall provide that it may not be cancelled as to any insured without at least ten (10) days advance written notice to the insured. Each owner shall provide the Principal Parties named as additional insureds with

certificates of such insurance from time to time to evidence that such insurance is in force. Such insurance may be written by an additional premises endorsement on any master policy of insurance carried by either of the parties hereto.

(ii) During the term of this Agreement, each owner shall insure or cause to be insured all improvements located on its tract against loss or damage by fire and any other perils or events which may be covered under the broad form of Uniform Extended Coverage Clause in effect from time to time in the State of Texas. Said insurance shall be for the full replacement cost of such improvements.

(iii) Except for damage covered by Subparagraph 6.b.(ii), each owner and occupant of real property within the Center Property hereby releases, on behalf of itself and its insurers, each other owner and occupant of real property within the Center Property from any and all claims for damage to real and personal property, business interruption, loss of profits and loss of rent or payment of rent for untenable premises, regardless of whether such losses are insurable or the releasing party is insured or is able to collect on its insurance claims. If the releasing party is unable to obtain insurance by reason of the aforementioned release, then the release (i) shall be limited to the releasing party and apply only to the uninsured and uncollectible portions of its loss, and (ii) shall not apply to its insurer or bar a subrogation action by the insurer to recover the amount it has paid. In that instance, however, the releasing party shall indemnify and hold harmless each other owner and occupant of real property within the Center Property from all loss, damage and expense (including attorneys' fees) in connection with the claims mentioned in the first sentence of this paragraph made by the releasing party's insurer.

(iv) Notwithstanding anything to the contrary contained in this Paragraph 8, as long as the net worth of Wal-Mart or its parent company, Wal-Mart Stores, Inc., shall exceed Fifty Million Dollars (\$50,000,000.00), and as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of Tract I, either as owner or lessee, then Wal-Mart shall have the right to assume the financial risk, independently and without obtaining insurance coverage in connection therewith, for any property located on Tract I up to an amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00) per claim. Notwithstanding anything to the contrary contained in this Paragraph 8, as long as the net worth of Handy Dan or its parent company, Grace Retail Corporation, shall exceed Fifty Million Dollars (\$50,000,000.00), and as long as Handy Dan, or any affiliate of Handy Dan, is the user of Tract II, Parcel 2, either as owner or lessee, then Handy Dan shall have the right to assume the financial risk, independently and without obtaining insurance coverage in connection therewith, for any property located on Tract II, Parcel 2 up to an amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00) per claim. Notwithstanding anything to the contrary contained in this Paragraph 8, as long as the net worth of a company operating a supermarket on Tract II, Parcel 1 or its parent company, shall exceed Fifty Million Dollars (\$50,000,000.00), then the company operating the supermarket shall have the right to assume the financial risk, independently and without obtaining insurance coverage in connection therewith, for any property located on Tract II, Parcel 1 up to an amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00) per claim.

#### 9. Eminent Domain.

a. Owner's Right to Award. Nothing herein shall be construed to (i) give either party any interest in and to any award or payment made to another party in connection with any exercise of eminent domain (or transfer in lieu thereof) affecting the other party's tract, or (ii) give the public or any government any interest in and to said tract. In the event of any exercise of eminent domain (or transfer of any part of the Center Property in lieu thereof) the award attributable to the land and improvements of such tract shall be payable only to the owner thereof, and no claim therefor shall be made by the owner of any other tract.

b. Collateral Claims. An owner of a tract may file collateral claims with any condemning authority in connection with any losses sustained by it in connection with the taking of any other tract.

c. Tenant's Claim. Nothing in this Paragraph 9 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between a tenant and owner for all or a portion of any such award or payment.

d. Restoration of Common Area. The party owning any portion of the Common Area so condemned or taken shall use its best efforts to promptly repair and restore the remaining portion of the Common Area owned by such party to the condition existing immediately prior to such condemnation or transfer. However, in connection with such restoration or repair, no party shall be required to expend an amount which exceeds the amount such party received for such condemnation or taking.

10. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon a tract, such lien shall expressly be subordinate and inferior to any lien securing lawful governmental assessments and bona fide mortgages or first priority deeds of trust which encumber such tract prior to the attachment of said lien. Except as set forth in the preceding sentence, the holder of a first lien on any portion of the Center Property and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

11. Release from Liability. Any person now owning or hereafter acquiring fee or leasehold title to any portion of the Center Property shall be bound by this Agreement only as to that portion of the Center Property owned or leased by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of a portion of the Center Property, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits and servitudes upon the Center Property which run with the land.

12. Breach. In the event of breach or threatened breach of this Agreement, a party entitled to enforce the breached obligation (as described in Paragraph 18) shall be entitled to any relief available under the laws of the State of Texas, ~~and the right to enjoin a violation or threatened violation of this Agreement without regard to the sufficiency of legal damages or any other remedy.~~ The unsuccessful party in any action shall pay to the prevailing party all reasonable attorneys' fees incurred in connection with the prosecution or defense of such suit. 7/12 DMC

13. Right to Cure. Should any owner or user of a portion of Tract II fail to timely perform any of its obligations hereunder and thereafter fail to cure such failure within thirty (30) days of its receipt of a demand for performance made by another owner or user of a portion of Tract II that is entitled to enforce the obligation pursuant to Paragraph 18 (or, if the default cannot be reasonably cured within thirty days, the defaulting party does not commence to cure such default promptly and thereafter diligently pursue the curing of the default to completion), the party giving such notice shall, in addition to any other remedy provided at law or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of the defaulting party. The thirty (30) day period to cure the default may be reduced in the event of an emergency by the party giving notice stating the nature of the emergency and the shorter time to cure the default in its notice. The defaulting party shall reimburse the party curing the default for the cost of performing the defaulted obligation within fifteen (15) days after receipt of billing therefor and proof of payment thereof. In the event the defaulting party does not reimburse the curing party within such fifteen (15) day period, the amount due shall bear interest at the rate of three percent (3%) per annum over the stated prime interest rate of the largest commercial bank (asset size) in Dallas, Texas, from the date of billing until paid and the curing party shall have: (i) the right to exercise any and all rights which such curing party might have at law to collect the same, and (ii) have a lien on the tract owned by the defaulting party to the extent of the amount paid by the curing party but



not reimbursed by the defaulting party. Such lien may be filed for record by the curing party as a claim against the defaulting party, in the manner described in Subparagraph 6(a)(iv).

The lien so claimed shall attach from the date of recordation in the amount claimed by the party curing the default and it may be enforced and foreclosed in any manner allowed by law, including but not limited to suits to foreclose a mortgage or mechanic's lien under the applicable law of the State of Texas.

14. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, lessees, successors and assigns. As used herein, the singular number includes the plural and the masculine gender includes the feminine and neuter.

15. Adjoining Shopping Center Restrictions. The parties hereto each acknowledge that Denton Towne Center Joint Venture as the owner of real property situated adjacent to the Center Property (the "Towne Center Tract"), made, executed and delivered that certain Declaration of Restrictive Covenants (the "Declaration") dated March 31, 1982, recorded in Volume 1136, page 544, Deed Records, Denton County, Texas, which benefits the Center Property, but for which the benefits and the enforcement thereof were limited to the owners of Tract 11, Parcel 4. Duncan, for itself, its successors, legal representatives and assigns, and as a covenant running with Tract 11, Parcel 4, hereby covenants and agrees that the Declaration shall not be altered, modified, amended or affirmatively waived in any manner without the prior written consent of all of the owners of the Center Property.

16. Prior Easements and Restrictions. The parties each acknowledge that this Agreement is made and accepted subject to certain prior easements and restrictions of record in Denton County, Texas, including (i) that certain Declaration of Restrictive Covenants, dated March 31, 1982, recorded in Volume 1136, page 561, Deed Records, Denton County, Texas, burdening Tract 11, Parcel 4 for the benefit of the Towne Center Tract, and (ii) that certain Grant of Reciprocal Easements, dated March 31, 1982, recorded in Volume 1136, page 509, Deed Records, Denton County, Texas, covering the Center Property and the Towne Center Tract. To the extent any term or covenant hereof conflicts with a term or covenant set forth in such prior easements and restrictions, the terms of such prior easements and restrictions shall control.

17. Cancellation, Extension and Modification. This Agreement may be cancelled or extended only by all the owners of the Center Property, the Principal Parties (hereinafter defined) and all holders of first mortgages on the Center Property. The provisions of this Agreement may be amended by the Principal Parties owning or using eighty-five percent (85%) of the area of the Center Property, provided, however, that (i) no change will be made in the improvement or layout of a portion of a Building Area or Common Area without the consent of its owner and its tenant if the tenant is a Principal Party and (ii) the Service Drive and Driving Lane shall not be changed without consent of all Principal Parties. Consent, as referred to in this Paragraph, shall be evidenced only by execution of a formal, written amendment of the document in question. The provision of the Grant of Easements described in Subparagraph 16(ii) shall not be amended by the owners of the Center Property without the prior written consent of the Principal Parties owning or using eighty-five percent (85%) of the area of the Center Property. "Principal Party" means (i) Wal-Mart, Handy Dan, Duncan and their respective affiliates, (ii) a tenant of the entire Building Area on Tract 1, Tract 11, Parcel 1, or Tract 11, Parcel 2, and (iii) the owner of Tract 1 or Parcel 1, 2, 3 or 4 of Tract 11, if said Tract or Parcel is not used by another Principal Party. Any purchaser, lender, lessee, assignee, grantee, sublessee or any other party acquiring any interest in and to the Center Property shall appoint and be deemed to

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have appointed the Principal Party of the property in which it has an interest as such party's attorney-in-fact for the purpose of negotiating and entering into any modifications of this Agreement in connection with such party's interest, except for changing the duration of this Agreement.

18. Enforcement. The covenants and restrictions in this Agreement may be enforced only by a record owner of land within the Center Property and a Principal Party. Any occupant of the Center Property may enforce its right to use an easement granted herein for its benefit but may not enforce any limitations or obligations imposed upon other parties with respect to such easements.

19. Estoppel Certificate. Each Principal Party and owner of property within the Center Property, upon written request made by any other owner or Principal Party ("Requesting Party") from time to time, (but not more frequently than three (3) times during any calendar year), shall issue to a prospective mortgagee or successor Principal Party of the Requesting Party, an estoppel certificate stating:

- (i) whether the party to whom the request has been directed knows of any default by the Requesting Party under this Agreement, and if there are known defaults, specifying the nature thereof;
- (ii) whether to its knowledge this Agreement has been modified or amended in any way (and if it has, then stating the nature thereof);
- (iii) that to the knowledge of the party to whom the request has been directed, this Agreement is in full force and effect.

20. Non-Extinguishment. This Agreement shall not be extinguished, so long as Duncan, Wal-Mart or Handy Dan, or any affiliate of Wal-Mart or Handy Dan is the owner or lessee of any portion of the Center Property, even though the underlying fee ownership of the Center Property may be vested in a single person or entity.

21. Duration. Unless otherwise cancelled or terminated, this Agreement and all the easements, rights and obligations contained herein shall automatically terminate and be of no further force and effect after seventy-five (75) years from and after the date hereof.

22. Headings. The headings used in this Agreement are for convenience and reference only and shall not be deemed to expand or limit the meaning of this Agreement.

23. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements whether oral or written.

24. Notice. All notices, demands and requests which may be given or which are required to be given by any party to other parties shall be in writing and shall be sent by United States certified or registered mail, postage prepaid, return receipt requested, addressed to Wal-Mart, Handy Dan or Duncan, respectively, as follows:

WAL-MART:

Wal-Mart Properties, Inc.  
P.O. Box 116  
Bentonville, Ark. 72712  
Attention: Real Estate Dept.

HANDY DAN:

Handy Dan Home Improvement Centers  
7909 Fredericksburg Road  
San Antonio, Texas 78229  
Attention: Director of Real Estate

DUNCAN:

Duncan Properties, Ltd.  
100 Park Avenue Bldg.  
Suite 1204  
Oklahoma City, Okla. 73102  
Attention: Neil Hill

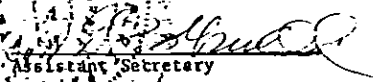
with a copy to

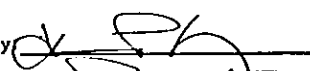
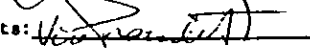
W. R. Grace & Co.  
1114 Avenue of the Americas  
New York, New York 10036  
Attention: Senior Vice President  
of Real Estate - Retail Group

or at such other place as the recipient may from time to time designate in a written notice pursuant to the terms hereof. Notices, demands and requests which shall be served upon the recipient in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be delivered, regardless of whether it is refused or, if delivered on a business day, any person is available to accept it.

EXECUTED as of the day and year first above written.

WAL-MART PROPERTIES, INC.

(Seal)  
ATTEST:  
  
Assistant Secretary

By:   
Its: 

LTD.  
DUNCAN PROPERTIES, INC.

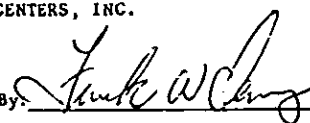
By: Neil Hill  
Its: General Partner  
Neil Hill  
General Partner

(Seal)

ATTEST:

  
Assistant Secretary

HANDY DAN HOME IMPROVEMENT  
CENTERS, INC.

By:   
Its: Senior Vice Pres.  
LEGAL: OK  
RTG: Twist  
RE: Y  
FIN: \_\_\_\_\_

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THE STATE OF ARKANSAS  
COUNTY OF BENTON

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This instrument was acknowledged before me on December 7, 1982,  
by Thomas P. Day as Vice President of Wal-Mart  
Properties, Inc., a Delaware corporation, on behalf of said corporation.

Thomas P. Day  
Notary Public in and for  
Benton County, Arkansas

My commission expires: 1/15/83

Delaware  
STATE OF OKLAHOMA  
Benton  
COUNTY OF OKLAHOMA

This instrument was acknowledged before me on December 7, 1982,  
by Neil Hill, General Partner, on behalf of Duncan Properties, Ltd., a  
limited partnership.

Neil Hill  
Notary Public in and for  
the State of Colorado  
Benton County, Oklahoma

My commission expires: 1/15/83

STATE OF NEW YORK  
COUNTY OF NEW YORK

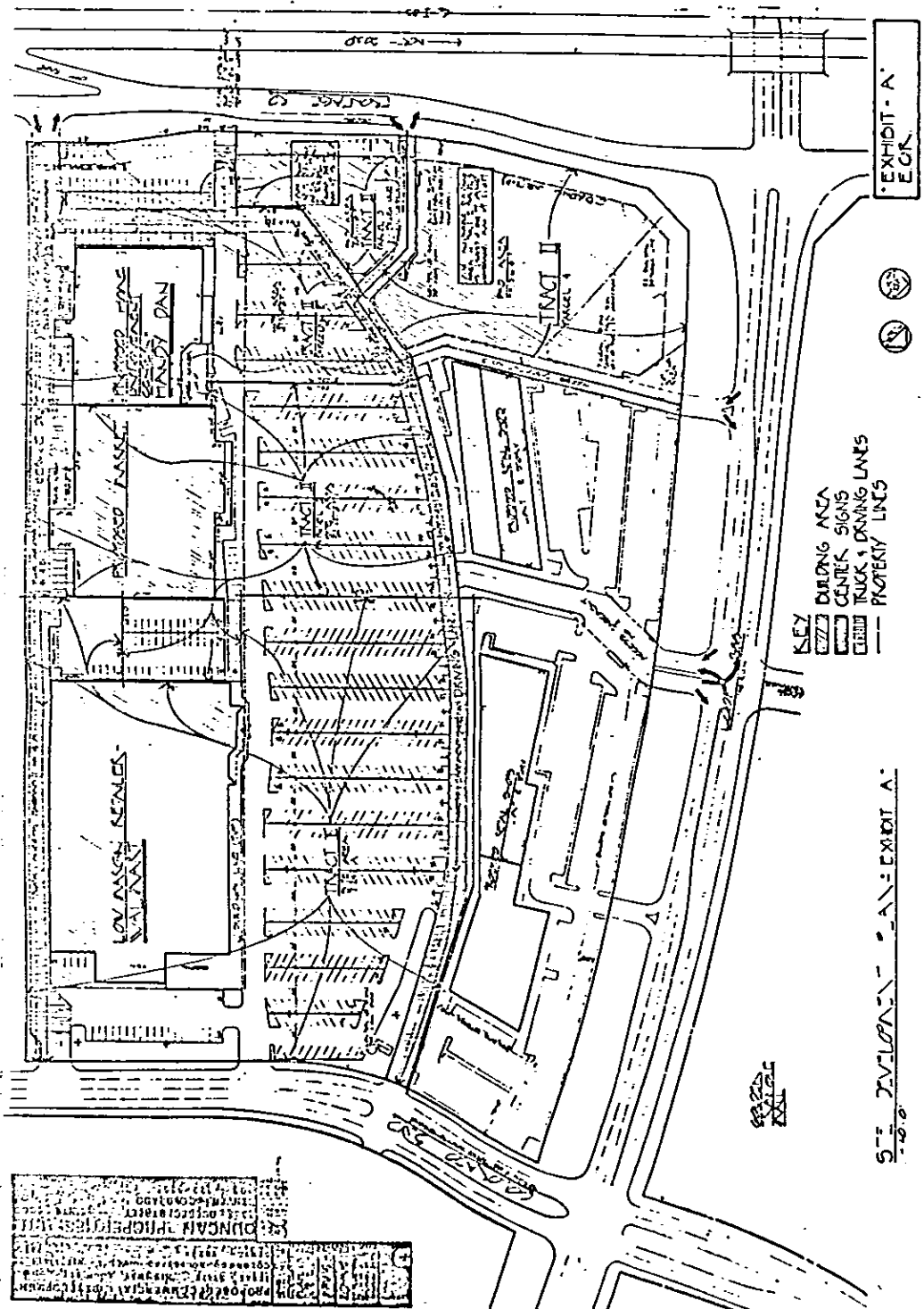
This instrument was acknowledged before me on December 6, 1982,  
by Frank W. Denny, Vice President, on behalf of Handy Dan  
Home Improvement Centers, Inc., a Delaware corporation.

Michael S. Services  
Notary Public in and for  
the State of New York

My commission expires: March 30, 1983

MICHAEL S. SERVICES  
Notary Public, State of New York  
No. 00421211  
in County of Essex County  
Commission Expires March 30, 1983

Exhibit "A"



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EXHIBIT B-1

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Being the aggregate of:

TRACT 1 (MAIN TRACT):

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J.S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E ( a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway No. 35-E and departing the Southerly line of said Loop 288 the following:

S 01° 41' 20" E a distance of 70.71 feet to a point;  
S 34° 42' 00" E a distance of 226.60 feet to a point;  
S 42° 00' 59" E a distance of 90.60 feet to the POINT OF BEGINNING;

THENCE N 42° 33' 00" E departing the aforementioned I.H. 35-E a distance of 145.00 feet to a point for corner;

THENCE N 86° 43' 12" E a distance of 90.00 feet to a point for corner;

THENCE N 05° 49' 03" E a distance of 95.00 feet to a point for corner;

THENCE N 64° 45' 00" W a distance of 14.00 feet to a point for corner;

THENCE N 25° 15' 00" E a distance of 170.17 feet to a point for corner;

THENCE N 34° 48' 00" E a distance of 136.00 feet to a point for corner;

THENCE N 48° 02' 34" W a distance of 21.62 feet to a point for corner;

THENCE N 41° 57' 26" E a distance of 357.99 feet to a point for corner;

THENCE N 60° 43' 46" E a distance of 268.95 feet to a point of curvature to the left;

THENCE along said curve to the left in a Southeasterly direction having a central angle of 22° 31' 07", a radius of 453.38 feet, an arc length of 178.19 feet, and a chord bearing of N 37° 21' 11" W to the point of tangency;

THENCE S 48° 36' 44" E a distance of 323.16 feet to a point for corner;

THENCE S 41° 57' 26" W a distance of 1152.60 feet to a point situated in the Easterly line of said I.H. 35-E;

THENCE along the Northeasterly line of said Interstate Highway No. 35-E the following:

N 47° 27' 00" W a distance of 112.51 feet to a point for corner;



N 55° 58' 59" W a distance of 101.10 feet to a point for corner;

N 47° 27' 00" W a distance of 30.50 feet to a point for corner;

S 48° 26' 45" W a distance of 3.00 feet to a point for corner;

N 41° 33' 15" W a distance of 29.05 feet to a point for corner;

N 47° 27' 00" W a distance of 219.30 feet to the POINT OF BEGINNING and containing 14.3336 acres of land, more or less.

AND

TRACT 2 (OUT LOT):

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 ( a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway No. 35-E the following:

N 42° 27' 28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02° 48' 06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34° 42' 00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64° 45' 00" E a distance of 65.87 feet to a point for corner;

THENCE S 05° 49' 03" W a distance of 95.00 feet to a point for corner;

THENCE S 86° 43' 12" W a distance of 90.00 feet to a point for corner;

THENCE S 42° 33' 00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 42° 00' 59" W a distance of 90.60 feet to a point for corner;

N 34° 42' 00" W a distance of 226.60 feet to a point for corner;

N 01° 41' 20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

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MU

## EXHIBIT B-2

BEING a tract of land situated in Denton County in the J.S. Taft Survey, Abstract No. 1256, the John McGowan Survey, Abstract No. 797 and the Daniel Lambert Survey, Abstract No. 784 and also being all of Lot 1, Block 1 of the Denton Shopping Center Addition, an addition to the City of Denton, according to the replat thereof, recorded in the Map Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point in the common line between the said John McGowan Survey and the said Daniel Lambert Survey, 124.00 feet south of the Northwest corner of the Daniel Lambert Survey;

THENCE N  $60^{\circ} 43' 46''$  E, a distance of 268.95 feet to a point for corner, said point also being the beginning of a curve to the left having a radius of 453.38 feet and central angle of  $22^{\circ} 31' 07''$ ;

THENCE along said curve, an arc distance of 178.19 feet to a point for corner;

THENCE S  $48^{\circ} 36' 44''$  E, a distance of 323.16 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W, a distance of 580.00 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W, a distance of 125.00 feet to a point for corner;

THENCE N  $41^{\circ} 57' 26''$  E, a distance of 105.00 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W, a distance of 155.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W, a distance of 108.00 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W, a distance of 303.66 feet to a point for corner;

THENCE N  $41^{\circ} 57' 26''$  E, a distance of 357.99 feet to the POINT OF BEGINNING and containing 7.242 acres of land, more or less.

## EXHIBIT B-3

BEING a tract of land situated in the John McGowen Survey, Abstract No. 797 and the Daniel Lambert Survey, Abstract No. 784, and being part of Lot 2 in Block 1 of the replat of Denton Shopping Center Addition, an addition to the City of Denton as recorded in Cabinet C, Page 19, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the Northeasterly line of Interstate Highway No. 35-E (variable right of way), said point also being the Southwesterly corner of said Denton Shopping Center Addition;

THENCE along the said Northeasterly line of I.H. 35-E the following:  
N 47° 27' 00" W a distance of 112.51 feet to a point for corner;

N 55° 58' 59" W a distance of 101.10 feet to a point for corner;

N 47° 27' 00" W a distance of 30.50 feet to a point for corner;

S 48° 26' 45" W a distance of 3.00 feet to a point for corner;

N 41° 33' 15" W a distance of 29.05 feet to a point for corner;

THENCE N 41° 57' 26" E departing said I.H. 35-E a distance of 95.00 feet to a point for corner;

THENCE N 48° 02' 34" W a distance of 85.00 feet to a point for corner;

THENCE N 05° 49' 03" E a distance of 132.75 feet to a point for corner;

THENCE N 86° 43' 12" E a distance of 12.61 feet to a point for corner;

THENCE N 05° 49' 03" E a distance of 95.00 feet to a point for corner;

THENCE N 64° 45' 00" W a distance of 14.00 feet to a point for corner;

THENCE N 25° 15' 00" E a distance of 30.17 feet to a point for corner;

THENCE S 64° 45' 00" E a distance of 25.00 feet to a point for corner;

THENCE S 48° 02' 34" E a distance of 236.91 feet to a point for corner;

THENCE N 41° 57' 26" E a distance of 25.50 feet to a point for corner;

THENCE S 48° 02' 34" E a distance of 244.00 feet to a point for corner;

THENCE S 41° 57' 26" W a distance of 333.26 feet to the POINT OF BEGINNING and containing 127,375 square feet or 2.924 acres of land, more or less.

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BEING a tract of land situated in the John McGowen Survey, Abstract No. 797, and the Daniel Lambert Survey, Abstract No. 784, and being part of Lot 2 of the replat of Denton Shopping Center Addition as recorded in Cabinet C, Page 67, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at the Southwest Corner of Lot 1 of the said replat of Denton Shopping Center Addition;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 239.34 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W a distance of 244.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 25.50 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W a distance of 236.91 feet to a point for corner;

THENCE N  $64^{\circ} 45' 00''$  W a distance of 25.00 feet to a point for corner;

THENCE N  $25^{\circ} 15' 00''$  E a distance of 140.00 feet to a point for corner;

THENCE N  $34^{\circ} 48' 00''$  E a distance of 136.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 282.03 feet to a point for corner;

THENCE N  $41^{\circ} 57' 26''$  E a distance of 108.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 155.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 105.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 125.00 feet to the POINT OF BEGINNING AND containing 3.50 acres of land, more or less.

EXHIBIT B-5

BEING a tract of land of the John McGowen Survey, Abstract No. 797, and being part of lot 2, of the replat of Denton Shopping Center Addition. An addition to the City of Denton as recorded in Cabinet C, page 67 Deed Record, Denton County, Texas and being more particularly described as follows:

BEGINNING with an iron rod set at the Northwest corner of Lot 2, and being in the Easterly line of Interstate Highway 35 (a variable width row) said point also being the Southwest corner of Lot 3.

THENCE N  $42^{\circ} 33' 00''$  E a distance of 145.00 feet to an iron rod set for corner;

THENCE N  $86^{\circ} 43' 12''$  E a distance of 77.39 feet to an iron rod set for corner;

THENCE S  $05^{\circ} 49' 03''$  W a distance of 132.75 feet to an iron rod set for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 85.00 feet to an iron rod set for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 95.00 feet to an iron rod set for corner in the said East line of Interstate Highway 35.

THENCE N  $47^{\circ} 27' 00''$  W at the East line of Interstate Highway 35, a distance of 219.30 feet to the POINT OF BEGINNING and containing 0.648 acres of land, more or less.

VOL 1181 PAGE 583

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being all of Lot 3, Block 1 of the Denton Shopping Center Addition, an addition to the City of Denton, according to the replat thereof, recorded in the Map Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway 35-E the following:

N 42° 27' 28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02° 48' 06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34° 42' 00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64° 45' 00" E a distance of 65.87 feet to a point for corner;

THENCE S 05° 49' 03" W a distance of 95.00 feet to a point for corner;

THENCE S 86° 43' 12" W a distance of 90.00 feet to a point for corner;

THENCE S 42° 33' 00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway 35-E;

THENCE along the Easterly line of said Interstate Highway 35-E the following:

N 42° 00' 59" W a distance of 90.60 feet to a point for corner;

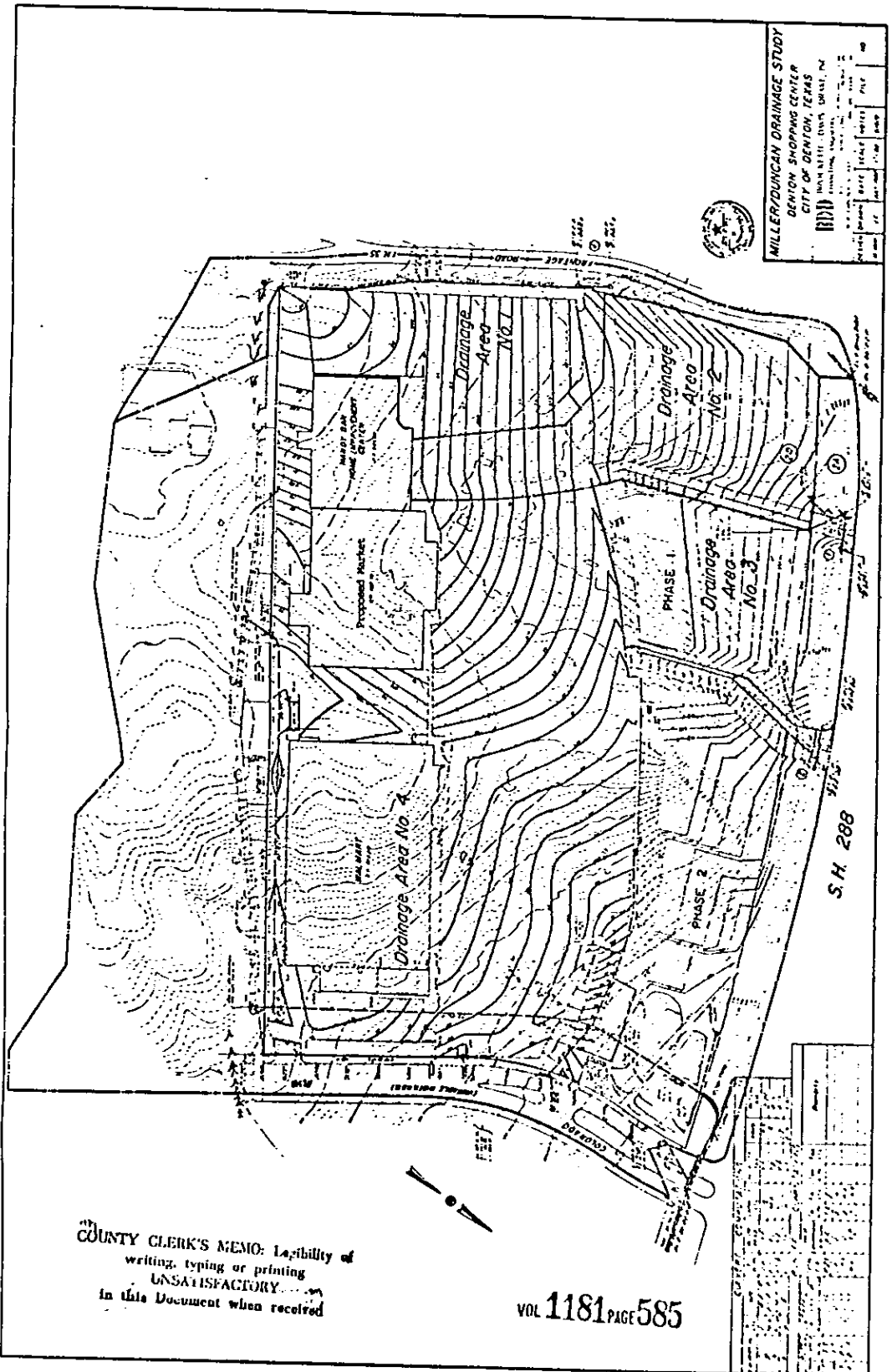
N 34° 42' 00" W a distance of 226.00 feet to a point for corner;

N 01° 41' 20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.



Exhibit "C"

NON-CERTIFIABLE COPY



1. Specifications for paving on Tract II, Parcel 1.

Parking Area

5" concrete or asphalt consisting of 8" granulized base or lime stabilized, 3" sub base and 1" wearing surface

Service Drive

7" concrete or asphalt consisting of 12" granulized base or lime stabilized, 5" sub base and 2" wearing surface

2. Specifications for paving on Tract II, Parcel 2.

5" concrete in Service Drive

4" concrete in parking area

All concrete shall be minimum compression of 3,000 p.s.i. 28 days and contain No. 3 reinforcing base set on 24" center both ways. Construction procedures shall conform to Texas Highway Department 1972 Standard Specifications for Construction of Highways, Streets and Bridges, adopted by the State Highway Department of Texas on January 3, 1972.

*Handwritten signature/initials*

GRANTEE'S MAILING ADDRESS:  
HANDY DAN HOME IMPROVEMENT CENTERS, INC.  
Suite 134  
San Antonio, Texas 78229

35656  
DEC 15 PM 3:26  
FILED

RETURN TO: HANDY DAN HOME IMPROVEMENT CENTERS, INC.  
7909 Fredericksburg Road  
Suite 134  
San Antonio, Texas 78229

VOL 1181 PAGE 587

FILED FOR RECORD 15th DAY OF December A.D. 1982, at 3:26 P.  
RECORDED 16th DAY OF December A.D. 1982.  
MARY KATHLEEN COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: *[Signature]* DEPUTY.

H-83-0-42288-M SJH (14)

DEED RECORDS

22619

THE STATE OF TEXAS  
COUNTY OF DENTON

§  
§  
§  
MODIFICATION OF RESTATEMENT  
OF AGREEMENT OF EASEMENTS,  
COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

Complainant Party *nn*.

*nn* - ~~greater~~

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the ~~party~~ who owns the ~~greatest~~ portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

the Principal Party of

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. ~~Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.~~ nn.

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: Neil Hill  
Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OTR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF Oklahoma §  
COUNTY OF Oklahoma §

This instrument was acknowledged before me, on the 16<sup>th</sup> day of May, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

Leticia Toepfer  
Notary Public in and for  
the State of Oklahoma

My Commission Expires:  
2-23-87

Leticia Toepfer  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of New York

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

VOL 1225 PAGE 351



STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

VOL 1225 PAGE 352

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

\_\_\_\_\_  
Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF FLORIDA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

2877Z

GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

FILED

1983 JUN 13 PM 2:52

22619

VOL 1225 PAGE 353

1225/349

FILED FOR RECORD 137A DAY OF June A.D. 1983, 2:52 P. M.  
RECORDED 147A DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Handie Smith DEPUTY.

H-83-D-42288-M SJH (14)

DEED RECORDS

22620

THE STATE OF TEXAS	§	MODIFICATION OF RESTATEMENT
	§	OF AGREEMENT OF EASEMENTS,
COUNTY OF DENTON	§	COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and-

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the \*party who owns the greatest portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

\*Complaining Party

*SJH*  
Init.

*SJH*  
Init.

*DRM*  
*HP*

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of \*Tract II, Parcel 1 and \*Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. ~~likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.~~ \*Tract I, Olt  
Init.

\*\*the Principal Party of

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: Nell Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC. LEGAL

By: Edward H. Tutun RE  
Title: Edward H. Tutun, President

OTR

VOL 1225 PAGE 356

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the 10th day of May, 1983 by Charles H. Tustin of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

Carmela Romaloo  
Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

CARMELA ROMALOO  
Notary Public, State of New York  
No. 31-4812206  
Qualified in New York County  
Commission Expires March 20, 1984

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

\_\_\_\_\_  
Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF FLORIDA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

28772

VOL 1225 PAGE 357



GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

VOL 1225 PAGE 358

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

FILED

1983 JUN 13 PM 2:52  
JUN 13 1983

029922

FILED FOR RECORD 13th DAY OF June  
RECORDED 14th DAY OF June A.D. 1983, at 2:52 P.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Handwritten Signature DEPUTY.

H-83-D-42288-M SJH (14)

DEED RECORDS

22621

THE STATE OF TEXAS            §            MODIFICATION OF RESTATEMENT  
   §            OF AGREEMENT OF EASEMENTS,  
COUNTY OF DENTON            §            COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement: SEE ADDENDUM

INITIALED BY ~~With respect to the Grant of Reciprocal Easements referred to in subparagraph (1) above (the "Grant"), the parties hereby agree that the party who owns the greatest portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event~~

VOL 1225 PAGE 359

INITIALED BY: \_\_\_\_\_

~~of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Town Center Joint Venture as set forth in the Grant.~~

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: \_\_\_\_\_  
Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OTR

By: Stephen A. Mitchell  
Title: Stephen A. Mitchell, Partner

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_

Printed Name of Notary

VOL 1225 PAGE 331

STATE OF Ohio §  
COUNTY OF Franklin §

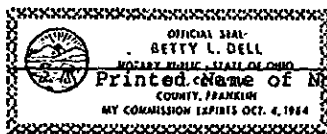
VOL 1225 PAGE 352

This instrument was acknowledged before me, on the 20th day of May, 1983 by Stephen A. Mitchell, Partner of OTR, an Ohio general partnership, on behalf of said general partnership.

Betty L. Dell  
Notary Public in and for the  
County of Benton, State of Arkansas  
FRANKLIN OHIO

My Commission Expires:

OCT. 4, 1984



STATE OF FLORIDA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_, of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_, of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

2877Z

ADDENDUM

With respect to the Grant of Reciprocal Easements ("Grant") referred to in subparagraph (ii) above, the parties hereby agree that the Complaining Party who owns the greatest portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event of a default by Denton Town Center Joint Venture, under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract 1, Tract 11, parcel 1 and Tract 11, parcel 2, which consent shall not be unreasonably withheld or delayed.

the Principal Party of

INITIALED BY

*SA*

VOL 1225 PAGE 353



GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

VOL 1225 PAGE 364

FILED

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

1983 JUN 13 PM 2 52

FILED FOR RECORD 13th DAY OF June A.D. 1983, at 2:52 P.  
RECORDED 14th DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Wanda Smith DEPUTY.

H-83-D-42288-M SJH (14)

DEED RECORDS

23622

THE STATE OF TEXAS	§	MODIFICATION OF RESTATEMENT
	§	OF AGREEMENT OF EASEMENTS,
COUNTY OF DENTON	§	COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 21 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the <sup>party</sup> who owns the greater portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

VOL 1225 PAGE 385

# 3675  
ECT:vmv  
5/19/83

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: \_\_\_\_\_  
Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OTR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: *[Signature]*  
Title: Vice President

Attest: *[Signature]* Asst. Secretary  
PIZZA TIME THEATRES, INC.



By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

VOL 1225 PAGE 337

STATE OF FLORIDA  
COUNTY OF DADE

VOL 1225 PAGE 368

BEFORE ME, the undersigned authority, personally appeared Jerry Sklar and Ellen Sklar to me well known and known to me to be the individuals described in and who executed the foregoing instrument as Vice President and Assistant Secretary of BURGER KING CORPORATION, a Florida corporation, and severally acknowledged to and before me that they executed such instrument as such Vice President and Assistant Secretary respectively of said corporation and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 23 day of May, 19 82.

(SEAL)

Maurice A. M. [Signature]  
Notary Public  
My Commission Expires



STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

\_\_\_\_\_  
Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF FLORIDA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

2877Z

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GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

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RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

FILED

22622

JUN 13 PM 2:52

FILED FOR RECORD 13th DAY OF June A.D. 1983, at 2:52 P.  
RECORDED 14th DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Wanda Smith DEPUTY.

THE STATE OF TEXAS  
COUNTY OF DENTON

§ MODIFICATION OF RESTATEMENT  
§ OF AGREEMENT OF EASEMENTS,  
§ COVENANTS & RESTRICTIONS  
**DEED RECORDS**

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26<sup>th</sup> day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

**W I T N E S S E T H:**

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the party who owns the greater portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

\* Complaining

VOL 1225 PAGE 371

the Principal  
Party of

ABW

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of <sup>Tract</sup> Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.

ABW

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: \_\_\_\_\_  
Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OTR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: David B. Wohl  
Title: Director of Real Estate

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

VOL 1225 PAGE 373

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

VOL 1225 PAGE 374

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires: \_\_\_\_\_

Printed Name of Notary

STATE OF FLORIDA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

Notary Public in and for the  
State of Florida

My Commission Expires: \_\_\_\_\_

Printed Name of Notary

STATE OF CALIFORNIA §

COUNTY OF San Clara §

This instrument was acknowledged before me, on the 26th day of April, 1983, by David Wheeler of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.



Joan Bossie  
Notary Public in and for  
the State of California

My Commission Expires: \_\_\_\_\_

August 18, 1986

JOAN BOSSIE  
Printed Name of Notary

28772

GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

22623

FILED  
1983 JUN 13 PM 2:52  
COUNTY CLERK, DENTON, TEX.  
BY *[Signature]*

FILED

VOL 1225 PAGE 375

FILED FOR RECORD 13th DAY OF June A.D. 1983, 2:52 P.  
RECORDED 14th DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Randee Smith DEPUTY.



H-83-D-42288-M SJH (14)

VOL 1225 PAGE 376

DEED RECORDS

22624

THE STATE OF TEXAS        §        MODIFICATION OF RESTATEMENT  
                                 §        OF AGREEMENT OF EASEMENTS,  
COUNTY OF DENTON        §        COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the party who owns the greater ~~greatest~~ portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

the Principal Party of

Tract I

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. ~~Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.~~

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OTR

VOL 1225 PAGE 378

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

WAL-MART PROPERTIES, INC.

By: [Signature]  
Title: [Signature]



STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

N  
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STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

\_\_\_\_\_  
Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF FLORIDA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

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C O R P O R A T E    A C K N O W L E D G M E N T

STATE OF ARKANSAS )  
COUNTY OF BENTON ) SS

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Be it remembered that on this 27TH day of MAY, 19 83, before me, a notary public in and for the county and state aforesaid, came Thomas P. Seay, Vice President of Wal-Mart Properties, Inc., a corporation, who is personally known to me to be the person who executed as such officer the within instrument of writing on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.



Anna Daugherty  
Notary Public

My commission expires February 24, 1991.



GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

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FILED FOR RECORD 13th DAY OF June A.D. 1983, 2:52 P  
RECORDED 14th DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Randy Smith DEPUTY.



DEED RECORDS

GRANT OF RECIPROCAL EASEMENTS

9471

THIS GRANT OF RECIPROCAL EASEMENTS ("Agreement") is to be effective as of March 31, 1982, and is between DUNCAN PROPERTIES, LTD., an Oklahoma limited partnership ("Duncan") and DENTON TOWNE CENTER JOINT VENTURE, a joint venture ("Towne Center"), upon the following terms and conditions:

INTRODUCTION

1. Duncan owns a tract of land (the "Duncan Tract") located partially in the Daniel Lambert Survey, Abstract No. 784, and partially in the John McGowan Survey, Abstract No. 797, and partially in the J. S. Taft Survey, Abstract No. 1256, City of Denton, Denton County, Texas, which land is described on Exhibit "A" to this Agreement and shown on Exhibit "C-1" to this Agreement (the "Site Plan"). The Duncan Tract is composed of "Duncan's Main Tract", being the area shown as such on the Site Plan and "Duncan's Outlot Tract", being the area shown as such on the Site Plan.
2. Towne Center owns a tract of land located partially in the Daniel Lambert Survey, Abstract No. 784, partially in the John McGowan Survey, Abstract No. 797 and partially in the J. S. Taft Survey, Abstract No. 1256, which is contiguous to the Duncan Tract, and which is described on Exhibit "B" to this Agreement and shown on the Site Plan (the "Towne Center Tract"). The Towne Center Tract and the Duncan Tract collectively shall be referred to as the "Shopping Center", and are sometimes individually referred to as a "Tract".
3. The terms "Duncan" and "Towne Center" shall include their respective successors and assigns as owners of portions of the Shopping Center and all such parties shall be referred to in this Agreement individually as a "Party" and collectively as the "Parties". As used in this Agreement, the term "Permittee" shall collectively refer to the Parties, each person or entity entitled to occupy a portion of the Shopping Center and all of their respective officers, employees, agents, contractors, customers, visitors, business invitees and other invitees of any nature whatsoever.
4. Towne Center and Duncan intend to develop and operate their respective Tracts in conjunction with each other, and in order to effectuate that purpose, Towne Center and Duncan desire to grant to each other certain reciprocal easements in, to, over and across their respective Tracts.

ARTICLE I

EASEMENTS

- 1.1 Access Easements. Each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, a nonexclusive perpetual easement for the passage of vehicles over and across the portions of the grantor's Tract shown as "Access Easements" on Exhibit "C-2" to this Agreement and described by metes and bounds on Exhibits "D-1, D-2 and D-3" to this Agreement as Access Easement #1, Access Easement #2 and Access Easement #3 so as to assure a free and unimpeded flow of vehicular traffic through the interconnecting Access Easements. Neither Party shall vary, alter

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or change the grade levels of its Tract within any of the Access Easements from the grade levels shown on the grading plan attached to this Agreement as Exhibit "E" without the prior written consent of the other Party. No fence (except the required guard rails referred to in Section 3.4 hereof and shown on Exhibit "H") or other barrier which would prevent or obstruct the passage of vehicular travel shall be erected or permitted within or across the Access Easements; provided, however, that a Party may, at its sole election, erect curbing along those boundary lines of the Access Easements which are located on its Tract except (i) in that area identified as "No Curb Area" on Exhibit "C-1", within which no curbing may be erected by any Party, and (ii) within any intersection of two Access Easements. Towne Center shall have the right, and an easement over and across that portion of the Duncan Tract as is necessary to effectuate such right is hereby granted, to penetrate any curbing erected within the "Optional Curb Opening Area" shown on Exhibit "C-2" to create a curb opening and to pave and use as a driveway, from the Towne Center Tract to Access Easement #1, an area of a width to be determined by Towne Center in its sole discretion, but in no event to exceed two hundred sixty-eight feet (268'). In such event, Towne Center acknowledges that water will likely surface drain from Duncan's Tract into the Towne Center Tract through any opening so created by Towne Center in the curb, and Towne Center will accept all such water onto its Tract and will release, indemnify and hold Duncan harmless from any loss, liability or cause of action arising from such water drainage, notwithstanding the provisions of Section 1.3 hereof. Towne Center shall be responsible at its sole expense for all such work and to prepare neat and sightly curb openings. The foregoing provisions shall not prohibit temporary barricades erected and reasonably necessary in connection with the construction, reconstruction or repair and maintenance of improvements erected or constructed in connection with this Article I (collectively "Construction"). All Construction shall be conducted in the most expeditious manner reasonably possible to minimize the interference with the use of the Access Easements, with the Party erecting temporary barricade(s) being obligated to provide alternate routes of vehicular travel to the extent that such are obstructed at all times while any barricade(s) remains in place; provided, however, that prior to closing off any portion of the Access Easements, as herein provided, such Party shall give written notice to the other Party of its intention to do so, and shall coordinate such closing with the other Party so that no unreasonable interference in the operation of the Shopping Center shall occur.

1.2 Utilities. Each Party hereby grants and conveys to each other Party a nonexclusive perpetual easement in, to, under and across the areas of the grantor's Tract shown as "Utility Easements" on Exhibit "C-3" and described by metes and bounds on Exhibit "F" attached to this Agreement, for the installation, operation, flow and passage, use, maintenance, repair, relocation within the easement area and removal of water and gas mains, electrical power lines, telephone lines, television cable and any related facilities which are incidental to any such services to serve the Tract of the grantee. All utility lines or systems installed pursuant to the foregoing grant shall be underground, except for incidental surface structures such as phone pedestals and power transformers, which may be installed above ground in an area outside of Access Easement #1 which is either within the Utility Easement or on the Tract of the installing Party. Any Party installing utilities pursuant to the

provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith to be completed, including general clean-up and surface restoration, as quickly as practical. If any of the Parties elect to install common utility lines or systems, all costs and expenses with respect to the initial installation thereof shall be set forth in a separate agreement between the cooperating Parties.

1.3 Surface Drainage Easement. Towne Center hereby grants to Duncan and Duncan's successors and assigns, a perpetual nonexclusive easement for surface water drainage from Duncan's Main Tract into the Surface Drainage Entry Area owned by Towne Center, as shown on Exhibit "C-2", but not into any other portion of the Towne Center Tract. Towne Center acknowledges that the path of surface water after entering the Surface Drainage Entry Area will be the responsibility of Towne Center. Attached to this Agreement as Exhibit "C" is a grading plan which identifies a possible Drainage Basin (with the term "Drainage Basin" referring to an area from which water will flow and drain through the Surface Drainage Entry Area), pursuant to which Duncan may elect to grade its Tract (the "Safe Harbor Grading Plan"). If Duncan does so grade its Tract, then Towne Center shall accept whatever amount of water flow is created by the Safe Harbor Grading Plan from the Drainage Basin. If Duncan shall grade its Tract in such a manner so as (a) to increase or change the perimeter boundaries of the Drainage Basin from that shown in the Safe Harbor Grading Plan or (b) to materially alter the grade levels within the Drainage Basin shown in the Safe Harbor Grading Plan in any manner, then Duncan shall be obligated and does hereby covenant to grade Duncan's Main Tract so as to assure that the water flow into the Surface Drainage Entry Area shall not exceed five cubic feet per second of water based on a ten-year design frequency as established by the City of Denton Drainage Design Manual dated May 1975, using the applicable assumptions used by the City of Denton, Texas on the effective date of this Agreement. If Duncan shall violate the terms of the covenants contained in the immediately preceding sentence, Towne Center may deliver written notice thereof to Duncan together with a certification from a registered civil engineer of such violation, together with an identification of the Drainage Basin which is causing the default (the "Drainage Default Notice"). The Party owning the Drainage Basin causing the default shall be the only person or entity deemed to be Duncan for purposes of the remainder of this Section 1.3. In such event, the following procedures shall apply:

(i) If Duncan concedes that a violation does exist, Duncan may, within thirty days from delivery of the Drainage Default Notice, submit to the City Engineer of the City of Denton, Texas (or if he declines to assist, to an engineer designated by the City Engineer of the City of Denton, Texas -- whichever may be applicable being referred to as the "Binding Engineer") and to Towne Center a proposal for curing the violation. If the Binding Engineer approves such proposal, then Duncan shall promptly commence to cure the violation at its sole expense and Duncan shall pursue the completion of such proposal in an expeditious manner.

(ii) If Duncan does not agree that a violation exists, Duncan may, within thirty days following delivery of the Drainage Default Notice, obtain an opinion

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from the Binding Engineer concerning the existence of a violation. If the Binding Engineer determines that no violation exists, such determination shall be final and binding on all Parties. If the Binding Engineer determines that a violation does exist, then Duncan shall have a period of thirty days from the date on which written notice of such determination is delivered to Duncan and Towne Center to submit a proposal to cure the violation to the Binding Engineer and to Towne Center. If the Binding Engineer approves such proposal, then Duncan shall promptly commence to cure the violation at Duncan's sole expense and Duncan shall pursue the completion of such proposal in an expeditious manner.

(iii) If Duncan fails to obtain an opinion of the Binding Engineer within the stated thirty-day period, then a violation shall be deemed to have been conclusively established and Towne Center may pursue all remedies prescribed below.

Notwithstanding anything contained hereinabove to the contrary, if within sixty days following the delivery of the Drainage Default Notice, Duncan has not either (x) commenced curing the asserted violation or (y) delivered to Towne Center an opinion from the Binding Engineer that no violation exists, then Towne Center shall have, in addition to all other rights and remedies otherwise available, the right to terminate the easement granted in this Section 1.3. In addition, Towne Center may erect or construct, at Duncan's sole expense, whatever barriers or other devices (including, but not limited to, underground water collection devices) Towne Center may deem appropriate to prevent the passage of surface water into the Surface Drainage Entry Area. Duncan shall promptly reimburse Towne Center upon request for any such expenses actually incurred by Towne Center in connection with curing such violation. In addition to all of the foregoing, (aa) until such time as the initial Slope Retention Devices (i.e., the earthen bank described in Section 1.4 hereof) are modified, altered or replaced in accordance with Section 2.3 hereof, Duncan may drain surface water over and across any portion of the Towne Center Tract located to the west of Access Easement #2, and (bb) if Towne Center is the direct cause of a violation of the covenants of this Section 1.3 (for example, but not by way of limitation, by penetrating any curb bordering the Duncan Main Tract as contemplated by Section 1.1 or by failing to maintain or repair the Slope Retention Devices in accordance with Section 2.3 hereof), thereby causing water to enter the Towne Center Tract at a place other than the Surface Drainage Entry Area, Duncan shall not be responsible therefor, notwithstanding any other provision hereof.

1.4 Slope Maintenance Easement. Significant grade differences exist between the Towne Center Tract and Duncan's Main Tract, and Duncan and Towne Center have by separate instrument dated on even date herewith and entitled "Standard Form of Agreement as outlined in the February 1982 Construction Documents and Technical Specifications", prepared by Pierce Lunsford & Associates, Inc., as amended, from time to time, agreed to cooperate concerning the grading and construction of slope retention devices along the common boundary between Duncan's Main Tract and the Towne Center Tract in the area identified on Exhibit "H" (the "Slope Retention Devices"). The Slope Retention Devices are contemplated to consist initially of earthen bank. The Slope Retention Devices will

commence to the north of the northernmost boundary of the area shown as Access Easement #1 on the Site Plan (with the southernmost point of the Slope Retention Devices being referred to as the "Slope Commencement Line" and being in the location shown on Exhibit "H" to this Agreement). Duncan hereby grants to Towne Center a perpetual easement over, across, under and to all portions of the Shopping Center adjoining the Slope Commencement Line or the Slope Retention Devices for the purposes of maintaining and replacing the Slope Retention Devices, as more particularly described in Section 2.3 below.

1.5 Construction. Each Party grants and conveys to each other Party, and to its respective contractors, materialmen and workmen during the term of this Agreement such temporary licenses for ingress and egress, and for the performance of construction activities (but then only within the Access Easements and the Utility Easement) over, upon and across the portions of the Shopping Center located upon the grantor's Tract not occupied by buildings, signage, landscaping or other improvements other than paving, as shall be reasonably necessary to construct, maintain and reconstruct improvements, utilities, curbing and curb openings, parking, buildings, signs, landscaping, guard rails and Slope Retention Devices on the Tract of such other Party. Towne Center shall make reasonable efforts to perform all construction activities related to the parking area, building, signs and landscaping to be located on its Tract from and on the Towne Center Tract and to avoid use of the Access Drives in connection therewith, subject to the rights and limitations described in the last three sentences of this Section 1.5. Such temporary licenses shall be in effect only during such periods as actual construction, maintenance or reconstruction is performed and shall be exercised so as not to unreasonably interfere with the use and operation of the affected areas. The Access Easements and the Utility Easement located upon the grantor's Tract may also be utilized by vehicles transporting construction materials, equipment and persons employed in connection with any work provided for herein. Storage of materials and vehicles being utilized in connection with such construction may only occur on the constructing Party's Tract and only for temporary periods of time. Prior to exercising any rights under this temporary construction license, the Party wishing to cause such work to be performed shall obtain reasonable and customary liability insurance protection as is appropriate. Any Party availing itself of such temporary license shall indemnify and hold harmless the Party owning the affected area from any liability (including the reasonable attorneys' fees and costs of suit of the indemnified Party) or obligation arising out of or related to the use of such license, except for claims caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants or employees, or the agents, servants, or employees of any licensees or concessionaires wherever the same may occur. In addition, the Party causing the work to be performed agrees to promptly pay all costs and expenses associated therewith, to diligently complete such work as quickly as possible, and to promptly clean the area and restore the affected areas to a condition which is equal to or better than the condition which existed prior to the beginning of such work. Notwithstanding the foregoing, Towne Center may, from time to time, obstruct the Access Drives in connection with the performance of construction activities relating to the Towne Center Tract for a

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continuous period of not more than four (4) hours on any one occasion. If Towne Center contemplates obstructing an Access Drive for more than a continuous period of four (4) hours in connection with such activities, Towne Center shall deliver written notice thereof to the owner of the greatest portion of the Duncan Tract with a request for written approval therefor at least seven (7) days prior to the contemplated commencement date of the construction activities. Towne Center may not commence any such activities without such approval, which shall not be unreasonably withheld or delayed; however, if no response is received by Towne Center within ten (10) days after the delivery of the request for approval, such request shall be deemed approved.

**1.6 No Parking Easements.** Nothing contained in this Agreement shall be deemed to grant, confer or otherwise entitle any Party or any Permittee of a Party to park automobiles on the Tract of another Party, and any such rights are hereby expressly negated. If the Permittees of a Party shall park automobiles on the Tract of another Party, then the Party upon whose Tract automobiles are wrongfully being parked (the "Innocent Party") may, in addition to all other rights to which the Innocent Party is otherwise entitled, tow or cause to be towed all such wrongfully parked automobiles; provided, however, that prior to towing or causing to be towed any such automobiles, the Innocent Party shall first have delivered written notice to the Party whose Permittees are violating the no-parking restriction that the Innocent Party intends to begin towing violating automobiles and shall have allowed ten days thereafter to elapse.

**1.7 Sign Easement.** Duncan hereby grants to Towne Center the right, and an easement therefor, to place in the manner provided below a sign on any pylon or pole sign structure (the "Sign Structure") which Duncan may erect on the Duncan Tract along or contiguous to the frontage road of Interstate Highway #35. Duncan shall have no obligation whatsoever to erect or build a Sign Structure; however, if Duncan shall erect or build a Sign Structure, Duncan agrees that each sign placed thereon shall be of approximately equal size (or at Duncan's election, and as an alternative, that a sign placed on the Sign Structure by Towne Center may be as large as the largest sign placed on the Sign Structure), and Towne Center may, if Towne Center so elects, use the sign position which is fourth from the top of the Sign Structure to identify the shopping center located on the Towne Center Tract. In such event, the bottom of the sign to be used by Towne Center shall be at least ten feet (10') above the grade level directly underneath the sign. Duncan shall deliver written notice to Towne Center of Duncan's commitment to commence construction of the Sign Structure within ninety days, and thereafter Towne Center shall have a period of sixty (60) days in which to exercise its right to locate a sign on the Sign Structure as provided above by delivering written notice thereof to Duncan, and failure by Towne Center to so exercise its sign rights shall be a waiver of the right of Towne Center to locate a sign on the Sign Structure. If Towne Center elects to use the space on the Sign Structure designated above for use by Towne Center, Towne Center shall pay to Duncan prior to placing its sign on the Sign Structure (and in no event later than ninety (90) days following exercise by Towne Center of this sign option) an amount equal to one-fourth (1/4th) of the actual costs incurred by Duncan in erecting and building the Sign Structure. Duncan shall, if requested by Towne Center,



reasonably substantiate the amount which it requests as payment therefor. In addition to the above-granted sign easement, Duncan also hereby grants to Towne Center an underground electrical utility easement to be placed in a location designated by Towne Center and approved in writing by Duncan (such approval not to be unreasonably withheld or delayed) for the purpose of illuminating any sign placed by Towne Center on the Sign Structure. Any such electrical services shall be separately metered and Towne Center shall be solely responsible for any costs incurred for such electrical service. Any sign erected on the Sign Structure by Towne Center shall as to the enclosure for such sign conform to the enclosures used for the other signs erected on the Sign Structure.

## ARTICLE II

### MAINTENANCE AND REPAIR

2.1 Utilities. Each Party shall be obligated to maintain, service and repair:

(i) any utility lines, services or facilities situated on that Party's Tract unless (a) such utility is contained within an easement dedicated to and accepted by a quasi-municipal corporation or other utility or governmental agency whereby such quasi-municipal corporation or other utility or governmental agency assumes such maintenance, service and repair obligation, or (b) such utility is required by subsection (ii) below to be maintained, serviced and repaired by another Party; and

(ii) any utility lines, services or facilities situated on the Tract of another Party, the benefits of which, however, are used solely by that Party unless such utility is contained within an easement dedicated to and accepted by a quasi-municipal corporation or other utility or governmental agency whereby such quasi-municipal corporation or other utility or governmental agency assumes such maintenance, service and repair obligation; and

(iii) without regard for which Party would otherwise be required to perform such maintenance, service or repair, any damage caused by the act of that Party or its servants, employees or independent contractors.

Any such maintenance and repair required to be performed on the Tract of another Party shall be subject to the insurance and indemnity provisions of Section 1.5 hereof and shall be performed only after fourteen (14) days' notice to the grantor of the easement (hereinafter in this Section 2.1 referred to as the "Grantor") of the intention of the grantee of the easement to do such work (except in the case of any emergency, whereupon the work may be initiated immediately). Any such work shall be done without cost or expense to the Grantor, after normal business hours whenever possible and otherwise in such manner as to cause as little disturbance in the use of the Grantor's Tract as may be practicable under the circumstances. Any Party performing or causing to be performed maintenance work hereunder agrees to pay promptly all costs and expenses associated therewith (seeking reimbursement from other grantees, if applicable), to complete diligently such work as quickly as possible, and to clean promptly the

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area and restore the affected portion of the Shopping Center to a condition which is equal to or better than the condition which existed prior to the beginning of such work.

2.2 Access Easements. Each Party covenants and agrees to cause to be maintained and kept, at its cost and expense, those portions of Access Easement #1 and Access Easement #2 located on its Tract. With respect to Access Easement #3, Duncan shall maintain, at its sole cost and expense, that portion of Access Easement #3 labeled as "Duncan's Maintenance Area" on Exhibit "C-2" to this Agreement and Towne Center shall maintain, at its sole cost and expense, that portion of Access Easement #3 labeled "Towne Center's Maintenance Area" on Exhibit "C-2" to this Agreement. All Access Easements shall be maintained by the Party responsible therefor in good condition and state of repair, and in compliance with all laws, rules and regulations, orders and ordinances of governmental agencies exercising jurisdiction thereover and further in compliance with the provisions of this Agreement. In this regard, each Party acknowledges that the Access Easements are intended to be used by delivery trucks and other "heavy-duty" vehicles, and further acknowledges that any damage caused by such "heavy-duty" use is not excluded from the maintenance obligations hereby imposed. The standard of maintenance for the Access Easements Area to be followed by the Parties shall be comparable to the standards of maintenance followed in other first-class retail real estate developments of comparable size in Denton, Texas. The maintenance and repair obligation in any event shall include, but not be limited to, the following:

(i) Maintaining all paved surfaces of the Access Easements in a smooth and evenly covered condition, which maintenance work shall include, without limitation, cleaning, sweeping, restriping, repairing and resurfacing (using surfacing material and design of a quality equal or superior to the original surfacing material and design).

(ii) Removal of all papers, debris, filth, refuse, ice and/or snow; and sweeping the Access Easements to the extent necessary to keep the Access Easements in a first-class, clean and orderly condition.

(iii) Placing, keeping in repair and replacing any appropriate directional signs, markers and lines.

2.3 Slope Retention Devices. Towne Center shall maintain and repair the Slope Retention Devices as defined in Section 1.4 so as to maintain the structural soundness thereof and to maintain any erosion control devices placed on the Slope Retention Devices in a neat and orderly condition. Towne Center shall also maintain the paving covering Access Easement #1 at the grades and levels shown on Exhibit "E" to this Agreement, but only to the extent that any damage caused to the paving covering Access Easement #1 is directly caused by or attributable to the Slope Retention Devices or Towne Center's failure to maintain same. Subject to the following qualifications, Towne Center shall have the right to modify, alter or replace all or any portion of the Slope Retention Devices whether located on Duncan's Main Tract or the Towne Center Tract. At least twenty days prior to commencing any modification, alteration or replacement of any portion of the Slope Retention Devices, Towne Center shall deliver to Duncan (as the owner of Duncan's Main

Tract) plans and specifications for such modification, alteration or replacement. To the extent such plans and specifications are substantially in conformity with the concept displayed on Exhibit "I" attached hereto, such plans and specifications shall automatically be deemed approved. To the extent such plans and specifications are not in conformity with the concept displayed on Exhibit "I", however, Duncan shall have the right to approve such plans and specifications, which approval shall not be unreasonably withheld or delayed. In any event Duncan shall have the right to approve the structural soundness of such plans and specifications, which approval shall not be unreasonably withheld or delayed. If Duncan fails to approve such plans and specifications as provided above, Duncan shall submit to Towne Center specific recommendations from a registered civil engineer for improving the design of the Towne Center proposal. If no objections are delivered by Duncan to Towne Center within twenty days from the delivery to Duncan of the plans and specifications, they shall be deemed approved.

### ARTICLE III

#### OPERATION

3.1 Liability. Each Party ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless the other Party ("Indemnitee") from and against all claims, costs, expenses and liability (including reasonable attorneys' fees and cost of suit incurred in connection with all claims), including any action or proceedings brought hereon, arising from or as a result of:

(a) the death of, or any accident, injury, loss or damage whatsoever caused to, any person or entity, or to the property of any person or entity, which shall occur on the Tract owned by each Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitee, its licensees, concessionaires, agents, servants or employees, or the agents, servants, or employees of any licensee or concessionaire wherever the same may occur; and

(b) all claims asserted by or through any Permittees of the Indemnitor's Tract for any loss or damage to the property of such Permittee located upon the respective Indemnitor's Tract, which loss or damage is of the type generally covered by fire insurance with extended coverage irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

In addition, each Party (the "Releasing Party"), on behalf of itself and its insurer, hereby releases the other Party (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Shopping Center, which loss or damage is of the type generally covered by fire insurance with an extended coverage endorsement, irrespective of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried. Each Party agrees to use its best efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; it being understood, however, that

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failure to obtain such endorsements shall not affect the release hereinabove given.

3.2 Taxes. Each Party shall pay, or cause to be paid, prior to delinquency, all taxes and assessments upon the Tract, and the buildings and improvements and personalty owned or leased by such Party in the Shopping Center, provided that if the taxes or assessments on any part thereof may be paid in installments, the Party may pay each such installment as and when the same become due and payable, and in any event prior to the delinquency thereof. Nothing herein contained in this subsection shall prevent any Party from contesting at its cost and expense any such taxes and assessments with respect to the Tract in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith, and at such time as such contest is concluded, such Party promptly pays all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

3.3 Liens. In the event any mechanic's liens are filed against the Tract of any Party as a result of services performed or materials furnished for the use of another Party's Tract, the Party permitting or causing such lien to be filed hereby covenants to cause such lien to be discharged prior to the foreclosure of such lien, and further agrees to indemnify, defend and hold harmless the other Party and its Tract against liability, loss, damage, costs or expenses, including reasonable attorneys' fees and cost of suit on account of such claim of lien. Upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be filed agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien, or posting such bond or other securities as shall be required by law to obtain such release and discharge. Nothing herein shall prevent a Party permitting or causing such lien to contest the validity thereof in any manner such Party chooses, so long as such contest is pursued with reasonable diligence, and in the event such contest is determined adversely, such Party shall promptly pay in full the required amount, together with any interest, penalties and costs.

3.4 Guardrails. Towne Center shall cause to be erected in the location shown on Exhibit "H" to this Agreement metal guard rails concurrently with installation of the initial Slope Retention Devices and Towne Center shall at all times maintain, repair and restore such guard rails as may be necessary.

#### ARTICLE IV.

##### Utility Services to Duncan's Outlot Tract

4.1 General. It is anticipated that the ultimate users of Duncan's Outlot Tract will obtain electricity and natural gas by connecting to utility services being installed by Duncan and Towne Center under the Utility Easement granted in Section 1.2 above.

4.2 Reimbursement Required. In the event that any owner or occupant of Duncan's Outlot Tract shall ever tie in, tap-in or otherwise connect to the electrical service lines or natural gas lines contained within the Utility Easement, then such owner or occupant shall reimburse Towne Center for

a portion of the cost of installing such utility lines as prescribed below in Section 4.3 (the "Utility Reimbursement"). The payment of the Utility Reimbursement shall be a condition precedent to the right of any owner or occupant of Duncan's Outlot Tract to connect into the utility lines installed in the Utility Easement.

4.3 Amount of Reimbursement. The amount of the Utility Reimbursement shall be equal to the entire installation cost (from the easternmost point of the I-35 right-of-way to the common boundary line between Duncan's Outlot Tract and the Towne Center Tract) on a lineal-foot basis of the utility line(s) to which the owner or occupant of Duncan's Outlot Tract connects. Such costs shall include, but not be limited to, all expenses incurred for engineering fees, labor, supervisory personnel, conduit, cable and primary lines. Towne Center shall notify Duncan of the amount of the Utility Reimbursement to the electrical line and the natural gas line promptly after completion of such installation.

4.4 No Other Reimbursements. The Utility Reimbursement described above shall be in lieu of and instead of any other prorata reimbursements which would otherwise be required from the owner or occupant of Duncan's Outlot Tract to Towne Center. Towne Center shall credit against the Utility Reimbursement an amount equal to twenty-four percent (24%) of any reimbursements or pro rata paybacks Towne Center shall receive from any utility company in connection with electricity or natural gas utilities.

#### ARTICLE V

##### MISCELLANEOUS

5.1 Default. Upon the default by any party obligated to perform under the terms of this Agreement (the party owning the land upon which or as a result of which the default is asserted to have occurred being hereinafter in this paragraph referred to as the "Defaulting Party"), and the Defaulting Party's failure to cure such default (or, in the case of a default which cannot be cured within a thirty-day period, to commence and diligently work toward curing the default) within thirty (30) days after the delivery of written notice by the other party (hereinafter in this paragraph referred to as the "Complaining Party"), such written notice to be delivered not only to the Defaulting Party but also to any mortgagees of the Defaulting Party about whom the Complaining Party has received prior written notice, then for as long as the default continues, the Complaining Party shall have the right to exercise one or more of the following remedies, at the sole election of the Complaining Party -- to be determined in the case of the Duncan Tract by the Complaining Party who owns the greatest portion of the Duncan Tract and in the case of the Towne Center Tract by the Complaining Party who owns the greatest portion of the Towne Center Tract.

(a) The Complaining Party may cure the default of the Defaulting Party, or cause the default to be cured (with an easement for ingress and egress necessary for such purposes being hereby granted by each Party to the other), in which event the Defaulting Party shall immediately reimburse the Complaining Party for the reasonable expenses thereby incurred, plus interest at the rate of eighteen percent (18%) per annum, plus all

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reasonable attorneys fees incurred by the Complaining Party in curing the default and obtaining full reimbursement.

(b) The Complaining Party may obtain specific performance by injunction and such other legal and equitable remedies as may be available, in which event the Complaining Party shall also be entitled to recover in such proceedings a full reimbursement for all injuries and damages sustained prior to the curing of the default plus all court costs and reasonable attorneys fees incurred by the Complaining Party in obtaining its relief.

(c) The Complaining Party may demand that the Defaulting Party compensate it for damages sustained and to be sustained as a result of the default; and if the Complaining Party proceeds to litigation on this demand, the Defaulting Party shall also be liable for all court costs and reasonable attorneys fees.

5.2 Estoppel Certificate. Each Party hereby severally covenants that within twenty (20) days from the delivery of written requests from time to time of the other Party, it will issue to a prospective mortgagee, purchaser or tenant of such other Party or to a prospective successor Party to such other Party, an estoppel certificate stating: (i) whether the Party to whom the request has been directed knows of any default by the requesting Party under this Agreement, and if there are known defaults, specifying the nature thereof; (ii) whether to its knowledge this Agreement has been assigned, modified or amended in any way (or if it has, then stating the nature thereof); and (iii) that to the Party's knowledge this Agreement as of the date is in full force and effect. Such statement, however, shall in no event subject the Party furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Party to disclose correct and/or relevant information. Notwithstanding the provisions of Section 5.3 below, any requests for an estoppel certificate as provided above and the response thereto may, at the election of the sender, be sent by private carrier expedited mail service (i.e., Federal Express type service) and, in such event, the request or the response, as the case may be, shall be effective on the first day following deposit with such private carrier. Each Party agrees to act in good faith in connection with requests for estoppel certificates from the others. Failure by a Party to respond within the 20-day period shall be deemed to be the equivalent of a statement that no defaults exist, that no amendment to this Agreement has been entered into and that this Agreement remains in full force and effect.

5.3 Notices. All notices, demands, statements and requests required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served, whether received or not, by depositing the same in the United States mails, addressed to Duncan or Towne Center, postage prepaid and registered or certified mail, return receipt requested, at the address set forth below.



To Towne Center: Denton Towne Center Joint Venture  
c/o Henry S. Miller Company  
2001 Bryan Tower, 30th Floor  
Dallas, Texas 75201  
Attention: Raymond J. Poche

with a copy by regular mail to:

Thomas J. Terkel  
Jenkins & Gilchrist  
2200 First National Bank Bldg.  
Dallas, Texas 75202

To Duncan: Duncan Properties, Ltd.  
100 Park Avenue Bldg.  
Suite 1204  
Oklahoma City, Oklahoma 73102  
Attention: Neil Hill

with a copy by regular mail to:

Mr. Glenn D. West  
Jackson, Walker, Winstead,  
Cantwell & Miller  
4300 First National Bank Bldg.  
Dallas, Texas 75202

All notices, demands and requests shall, except as herein-  
after set forth, be effective upon being deposited in the  
United States mails in accordance with the provisions hereof.  
Rejection or other refusal to accept, or the inability to  
deliver because of changes of address of which no notice was  
given, shall be deemed to be receipt of the notice, demand  
or request. Any Party shall have the right from time to  
time and at any time, upon at least ten (10) days' prior  
written notice thereof in accordance with provisions hereof,  
to change its respective address and to specify any other  
address within the United States of America.

5.4 Condemnation. In the event of a condemnation or a  
sale in lieu thereof concerning a portion or all of the  
Shopping Center, the award or purchase price paid for such  
taking shall be paid to the Party owning such land so taken;  
it being the intent of the other Party who might have an  
easement or other property interest or right under this  
Agreement in the land so taken, to release and/or waive such  
property interest or right with respect to such award or  
purchase price; provided, however, such other Party shall  
have the right to seek an award or compensation for the loss  
of its easement right to the extent such award or compensa-  
tion paid or allocated for such loss does not reduce or  
diminish the amount paid to the Party owning such land.

5.5 Binding Effect. The terms of this Agreement shall  
constitute covenants running with, and be appurtenant to,  
the land affected, and all such terms shall inure to the  
benefit of and be binding upon the undersigned Parties and  
their respective successors and assigns who become owners of  
any portion of the Shopping Center.

5.6 Singular and Plural. Whenever required by the  
context of this Agreement, the singular shall include the  
plural, and vice versa, and the masculine shall include the  
feminine and neuter genders, and vice versa.

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5.7 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

5.8 Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights to any person who is not a Party hereto unless expressly otherwise provided.

5.9 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Tract or portion thereof to the general public, or for the general public or for any public use or purpose whatsoever; it being the intention and understanding of the Parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed solely for the benefit of the Parties hereto.

5.10 Excusable Delays. Whenever performance is required of any Party hereunder, that Party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage to work in progress by reason of fire or other casualty or causes beyond the reasonable control of a Party, then the time of performance as herein specified shall be appropriately extended by the amount of the delay actually so caused, not to exceed sixty (60) days total.

5.11 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

5.12 Entire Agreement. This written Agreement and the exhibits hereto contain all the representations and the entire agreement between the Parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement and exhibits hereto.

5.13 Amendments; Termination. Amendments to or termination of this Agreement must be in writing and must be executed by the Party or Parties owning fee simple title to at least seventy-five percent (75%) of the land area of the Duncan Tract and the Party or Parties owning fee simple title to at least seventy-five percent (75%) of the land area of the Towne Center Tract.

5.14 Captions. The captions preceding the text of each paragraph and subparagraph hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

5.15 Minimization of Damages. In all situations arising out of this Agreement, all Parties shall attempt to

avoid and minimize the damages resulting from the conduct of any other Party. Each Party hereto shall take all necessary measures to effectuate the provisions of this Agreement.

5.16 Agreement Shall Continue Notwithstanding Breach. It is expressly agreed that, except as otherwise provided above, no breach of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement; however, such limitation shall not affect in any manner any other rights or remedies which such Party may have hereunder by reason of any such breach.

5.17 Joinder by Other Parties. The parties executing Exhibit "J" to this Agreement have done so to evidence the subordination of their respective interests in the Shopping Center to the terms and provisions of this Agreement.

5.18 Time. Time is of the essence of this Agreement and each and every provision hereof.

5.19 Release. Upon the bona fide assignment, conveyance, sale or other transfer by either Duncan or Towne Center to all or any portion of its respective Tract, the transferring party shall be released from any liability arising out of a failure to observe the covenants, terms and obligations imposed by this Agreement on the owner of the land so transferred arising subsequent to the effective date of such conveyance; provided, that as a condition to such release, the transferor shall obtain a written assumption agreement from the transferee for the benefit of the other parties then owning portions of the Shopping Center whereby the transferee expressly assumes all such covenants, terms and obligations.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the date first stated above.

DUNCAN PROPERTIES, LTD., an  
Oklahoma limited partnership

By: Neil Hill  
Neil Hill, its sole  
General Partner

DENTON TOWNE CENTER JOINT VENTURE

By: Herbert D. Weitzman  
Herbert D. Weitzman,  
Venture Manager

STATE OF TEXAS §  
COUNTY OF DALLAS §

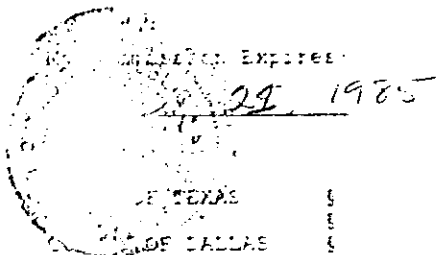
BEFORE ME, the undersigned authority, on this day personally appeared NEIL HILL, sole General Partner of Duncan Properties, Ltd., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said limited partnership.

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GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1st day  
of April, 1982.

Carol M. Cobb  
Notary Public in and for  
Dallas County, Texas



BEFORE ME, the undersigned authority, on this day personally appeared HERBERT D. WEITZMAN, Venture Manager of Denton Towne Center Joint Venture, a Texas joint venture, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes, consideration and in the capacity therein expressed, as the act and deed of said joint venture.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1st day  
of April, 1982.

Thomas J. Inkel  
Notary Public in and for  
Dallas County, Texas

My Commission Expires.

3.11.84

Exhibit "A"

Duncan Tract

Being the aggregate of:

TRACT 1 (MAIN TRACT):

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J. S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway No. 35-E and departing the Southerly line of said Loop 288 the following:

S 01°41'20" E a distance of 70.71 feet to a point;

S 34°42'00" E a distance of 226.60 feet to a point;

S42°00'59" E a distance of 90.60 feet to the POINT OF BEGINNING;

THENCE N 42°33'00" E departing the aforementioned I.H. 35-E a distance of 145.00 feet to a point for corner;

THENCE N 86°43'12" E a distance of 90.00 feet to a point for corner;

THENCE N 05°49'03" E a distance of 95.00 feet to a point for corner;

THENCE N 64°45'00" W a distance of 14.00 feet to a point for corner;

THENCE N 25°15'00" E a distance of 170.17 feet to a point for corner;

THENCE N 34°48'00" E a distance of 136.00 feet to a point for corner;

THENCE N 48°02'34" W a distance of 21.62 feet to a point for corner;

THENCE N 41°57'26" E a distance of 357.99 feet to a point for corner;

THENCE N 60°43'46" E a distance of 268.95 feet to a point of curvature to the left;

THENCE along said curve to the left in a Southeasterly direction having a central angle of 22°31'07", a radius of 453.38 feet, an arc length of 178.19 feet, and a chord bearing of N 37°21'11" W to the point of tangency;

THENCE S 48°36'44" E a distance of 323.16 feet to a point for corner;

THENCE S 41°57'26" W a distance of 1152.60 feet to a point situated in the Easterly line of said I.H. 35-E;

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THENCE along the Northeasterly line of said Interstate Highway No. 35-E the following:

N 47°27'00" W a distance of 112.51 feet to a point for corner;

N 55°58'59" W a distance of 101.10 feet to a point for corner;

N 47°27'00" W a distance of 30.50 feet to a point for corner;

S 45°26'45" W a distance of 3.00 feet to a point for corner;

N 41°33'15" W a distance of 29.05 feet to a point for corner;

N 47°27'00" W a distance of 219.30 feet to the POINT OF BEGINNING and containing 14.3336 acres of land, more or less.

AND

TRACT 2 (OUT LOT):

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'05", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34°42'00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64°45'00" E a distance of 65.87 feet to a point for corner;

THENCE S 05°49'03" W a distance of 95.00 feet to a point for corner;

THENCE S 86°43'12" W a distance of 90.00 feet to a point for corner;

THENCE S 42°33'00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:



N 42°00'59" W a distance of 90.60 feet to a point for corner;

N 34°42'00" W a distance of 226.60 feet to a point for corner;

N 01°41'20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

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Exhibit "B"

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Towne Center Tract

BEING a tract of land situated in the John McTewen Survey, Abstract No. 727, Daniel Larkins Survey, Abstract No. 784, and the L. S. Telf Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southern line of Loop 288 (a variable right-of-way) and the Eastern line of Interstate Highway No. 454 (a variable right-of-way);

THENCE along the Southern line of said Loop 288 and departing the Eastern line of said Interstate Highway No. 454 the following:

THENCE S 12°21'26" E a distance of 41.94 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 92°46'06", a radius of 2710.00 feet, and an arc length of 191.00 feet to a point of tangency;

Continuing along said curve to the right having a central angle of 112°46'26", a radius of 3710.00 feet, and an arc length of 261.33 feet to a point of curvature to the right;

THENCE along said curve to the right on a circularly decreasing and departing said Loop 288 and having a central angle of 66°23'31", a radius of 2025.00 feet, an arc length of 104.00 feet, and a chord bearing of S 19°21'05" E to a point of reverse curve to the left;

THENCE along said curve to the left having a central angle of 112°00'16", a radius of 453.25 feet, and an arc length of 67.00 feet to a point for corner;

THENCE S 60°43'46" W a distance of 266.95 feet to a point for corner;

THENCE S 61°25'12" W a distance of 251.00 feet to a point for corner;

THENCE S 48°02'34" E a distance of 17.61 feet to a point for corner;

THENCE S 34°48'00" W a distance of 136.00 feet to a point for corner;

THENCE S 25°15'00" W a distance of 170.17 feet to a point for corner;

THENCE N 66°45'00" W a distance of 51.87 feet to a point for corner;

THENCE N 34°42'00" W a distance of 307.00 feet to the POINT OF BEGINNING and containing 4.9698 acres of land, more or less.

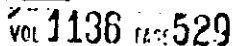


EXHIBIT "C-2"  
Access Easements

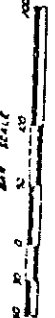
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DATE 1/10/01 COUNTY

LOOP 288

Operational Over Crossing Area

Access Easement



L.H. 35-E

Easement "C-3"

LOOP 288

Utility Easement

Utility Easement

L.H. 35-E

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Exhibit "D-1"

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ACCESS EASEMENT NO. 1

Being a tract of land situated in the John McGowan Survey, Abstract No. 797 and the Daniel Lambert Survey, Abstract No. 784, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway 35-E (a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway 35-E and departing the Southerly line of said Loop 288 the following:

S 01°04'20" E a distance of 70.71 feet to a point;

S 34°42'00" E a distance of 226.60 feet to a point;

S 42°00'59" E a distance of 81.56 feet to the POINT OF BEGINNING;

THENCE N 42°33'00" E departing the Easterly line of said Interstate Highway No. 35-E a distance of 147.80 feet to a point for corner;

THENCE N 86°43'12" E a distance of 64.67 feet to a point of curvature to the left;

THENCE along said curve to the left having a central angle of 80°54'09", a radius of 20.00 feet, and an arc length of 28.24 feet to a point for corner;

THENCE N 05°49'03" E a distance of 75.61 feet to a point for corner;

THENCE N 25°15'00" E a distance of 170.17 feet to a point for corner;

THENCE N 34°48'00" E a distance of 241.57 feet to a point for corner;

THENCE N 41°57'26" E a distance of 180.01 feet to a point of curvature to the right;

THENCE along said curve to the right having a central angle of 18°46'20", a radius of 452.87 feet, and an arc length of 148.38 feet to a point for corner;

THENCE N 60°43'46" E a distance of 189.46 feet to a point of curvature to the left;

THENCE along said curve to the left having a central angle of 03°02'01", a radius of 453.38 feet, an arc length of 24.01, and a chord bearing of S 26°33'28" E;

THENCE S 60°43'46" W a distance of 189.16 feet to a point of curvature to the left;

THENCE along said curve to the left having a central angle of 18°46'20", a radius of 428.87, and an arc length of 140.51 feet to a point for corner;



THENCE S 41°57'26" W a distance of 170.49 feet to a point for corner;

THENCE S 34°48'00" W a distance of 245.95 feet to a point for corner;

THENCE S 25°15'00" W a distance of 161.69 feet to a point for corner;

THENCE S 05°49'03" W a distance of 96.38 feet to a point for corner;

THENCE S 51°28'24" W a distance of 24.26 feet to a point for corner;

THENCE S 86°43'12" W a distance of 76.60 feet to a point for corner;

THENCE S 42°33'00" W a distance of 138.91 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

THENCE N 47°27'00" W a distance of 15.00 feet to a point for corner;

THENCE N 42°00'59" W a distance of 9.04 feet to the POINT OF BEGINNING and containing 0.7016 acres of land, more or less.

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Exhibit "D-2"

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ACCESS EASEMENT NO. 2

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing the Easterly line of said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

ALONG said curve to the right having a central angle of 07°21'49", a radius of 3740.00 feet, and an arc length of 480.65 to the POINT OF BEGINNING;

CONTINUING along said curve to the right having a central angle of 00°55'46", a radius of 3740.00 feet, and an arc length of 60.67 feet, to a point for corner;

THENCE S 05°13'22" E departing said Loop 288 a distance of 148.56 feet to a point for corner;

THENCE S 34°42'00" E a distance of 125.31 feet to a point for corner;

THENCE S 55°12'00" E a distance of 15.72 feet to a point for corner;

THENCE S 34°48'00" W a distance of 30.00 feet to a point for corner;

THENCE N 55°12'00" W a distance of 21.14 feet to a point for corner;

THENCE N 34°42'00" W a distance of 179.27 feet to a point for corner;

THENCE N 05°13'22" W a distance of 86.72 feet to the POINT OF BEGINNING and containing 0.2527 acres of land, more or less.

Exhibit "D-3"

ACCESS EASEMENT NO. 3

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing the Easterly line of said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

ALONG said curve to the right having a central angle of 02°36'26", a radius of 3740.00 feet, and an arc length of 170.16 feet to the POINT OF BEGINNING;

CONTINUING along said curve to the right having a central angle of 00°23'20", a radius of 3740.00 feet, and an arc length of 25.39 feet to a point for corner;

THENCE S 34°42'00" E departing said Loop 288 a distance of 305.84 feet to a point for corner;

THENCE S 64°45'00" E a distance of 48.52 feet to a point for corner;

THENCE S 25°15'00" W a distance of 12.50 feet to a point for corner;

THENCE S 05°49'03" W a distance of 13.26 feet to a point for corner;

THENCE N 64°45'00" W a distance of 59.64 feet to a point for corner;

THENCE N 34°42'00" W a distance of 308.12 feet to the POINT OF BEGINNING and containing 0.2066 acres of land, more or less.

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NON-CERTIFIABLE COPY

EXHIBIT "E"

I. H. 35-E

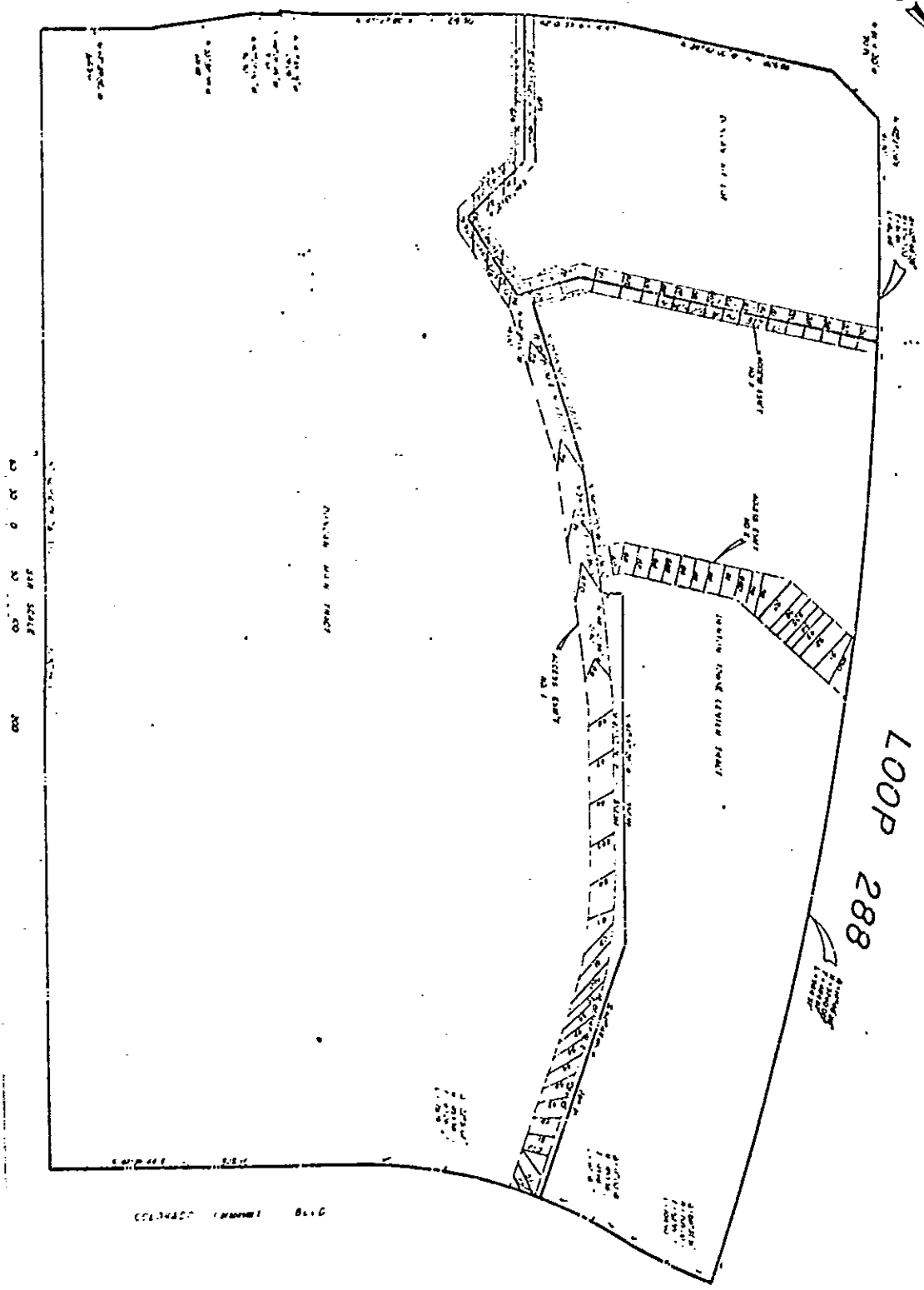


Exhibit "F"

UTILITY EASEMENT

FIELD NOTE DESCRIPTION

BEING a tract of land situated in the John McGowen Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J.S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway 35-E (a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway No. 35-E and departing the Southerly line of said Loop 288 the following:

S 01°04'20" E a distance of 70.71 feet to a point;

S 34°42'00" E a distance of 226.60 feet to a point;

S 42°00'59" E a distance of 75.53 feet to the POINT OF BEGINNING;

THENCE N 42°33'00" E departing the Easterly line of said Interstate Highway No. 35-E a distance of 149.66 feet to a point for corner;

THENCE N 86°43'12" E a distance of 85.12 feet to a point for corner;

THENCE N 05°49'03" E a distance of 86.58 feet to a point for corner;

THENCE N 25°15'00" E a distance of 170.17 feet to a point for corner;

THENCE N 34°48'00" E a distance of 136.00 feet to a point for corner;

THENCE N 48°02'34" W a distance of 21.62 feet to a point for corner;

THENCE N 41°57'26" E a distance of 357.99 feet to a point for corner;

THENCE N 60°43'46" E a distance of 268.95 feet to a point situated in the curving West line of Colorado Boulevard (a variable right-of-way);

THENCE with said Colorado Boulevard and along said curve to the left having a central angle of 03°24'51" a radius of 453.38 feet, an arc length of 27.02 feet, and a chord bearing of S 27°47'45" E to a point for corner;

THENCE S 60°43'46" W departing the curving West line of said Colorado Boulevard a distance of 263.80 feet to a point for corner;

THENCE S 41°57'26" W a distance of 180.09 feet to a point for corner;

THENCE S 37°05'13" W a distance of 174.06 feet to a point for corner;

THENCE S 34°48'00" W a distance of 131.81 feet to a point for corner;

THENCE S 25°15'00" W a distance of 165.08 feet to a point for corner;

THENCE S 05°49'03" W a distance of 100.21 feet to a point for corner;

THENCE S 86°43'12" W a distance of 94.06 feet to a point for corner;

THENCE S 42°33'00" W a distance of 142.97 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 47°27'00" W a distance of 5.00 feet to a point for corner;

N 42°00'59" W a distance of 15.07 feet to the POINT OF BEGINNING and containing 0.704 acres of land, more or less.

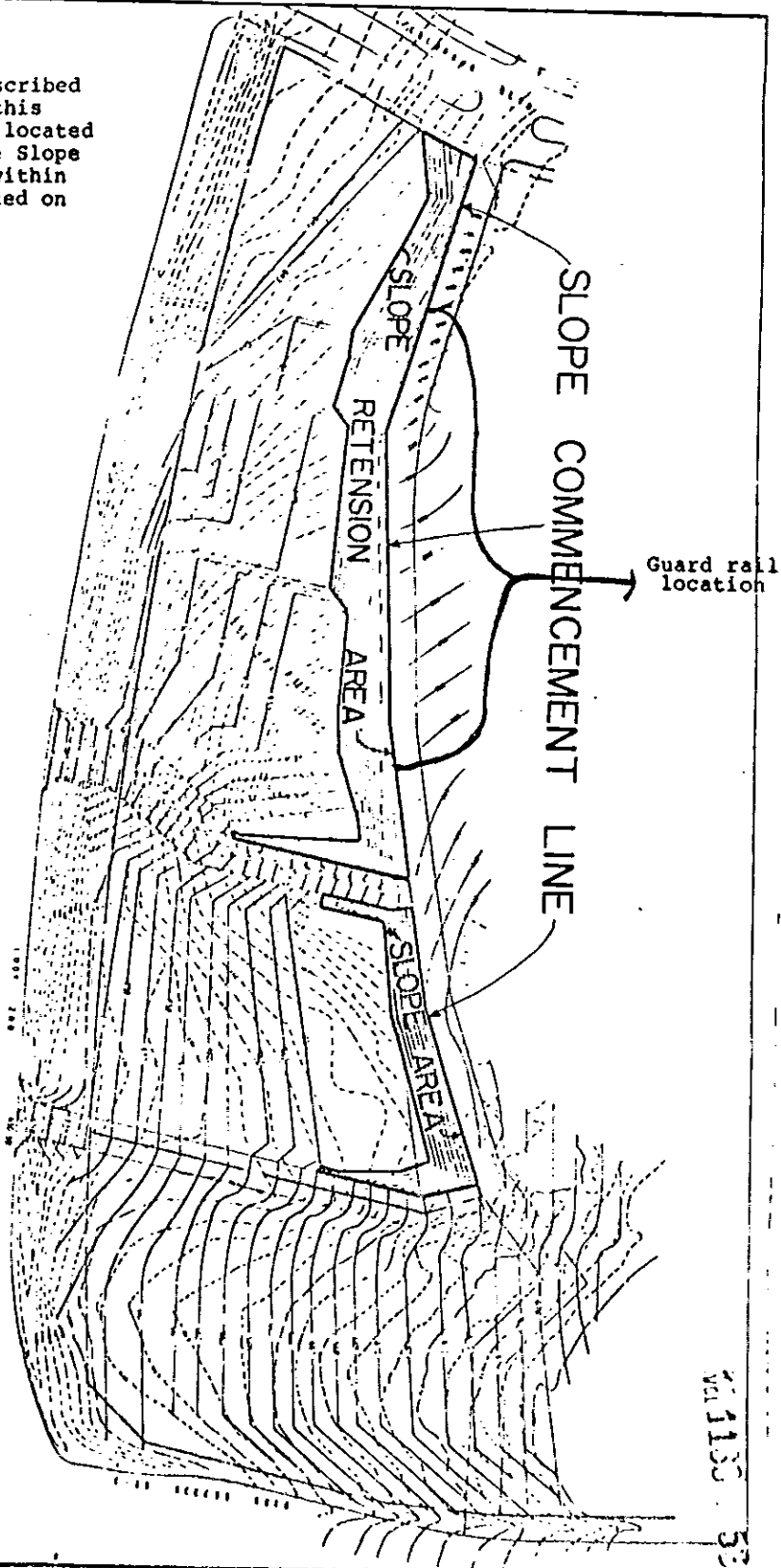
VOL 1136 - 537





EXHIBIT "H"

The guard rails described in Section 3.4 of this Agreement shall be located generally along the Slope Commencement Line within the area so indicated on this Exhibit "H".



SLOPE COMMENCEMENT LINE  
GENERAL TOWN CENTER  
CITY OF DENVER  
PLANNING DEPARTMENT  
JANUARY 1985

61135 338

EXHIBIT "I"

Vol. 1136 Page 540

PARKS & PARTNERS Architects

310 Union Station  
Dallas, Texas 75202  
214/742-6701

Sheet No.

1

Date 12 MARCH 1982

Project #M66 DENTON TOWN CENTER

Subject SECTION @ DRIVE C SOUTH PL

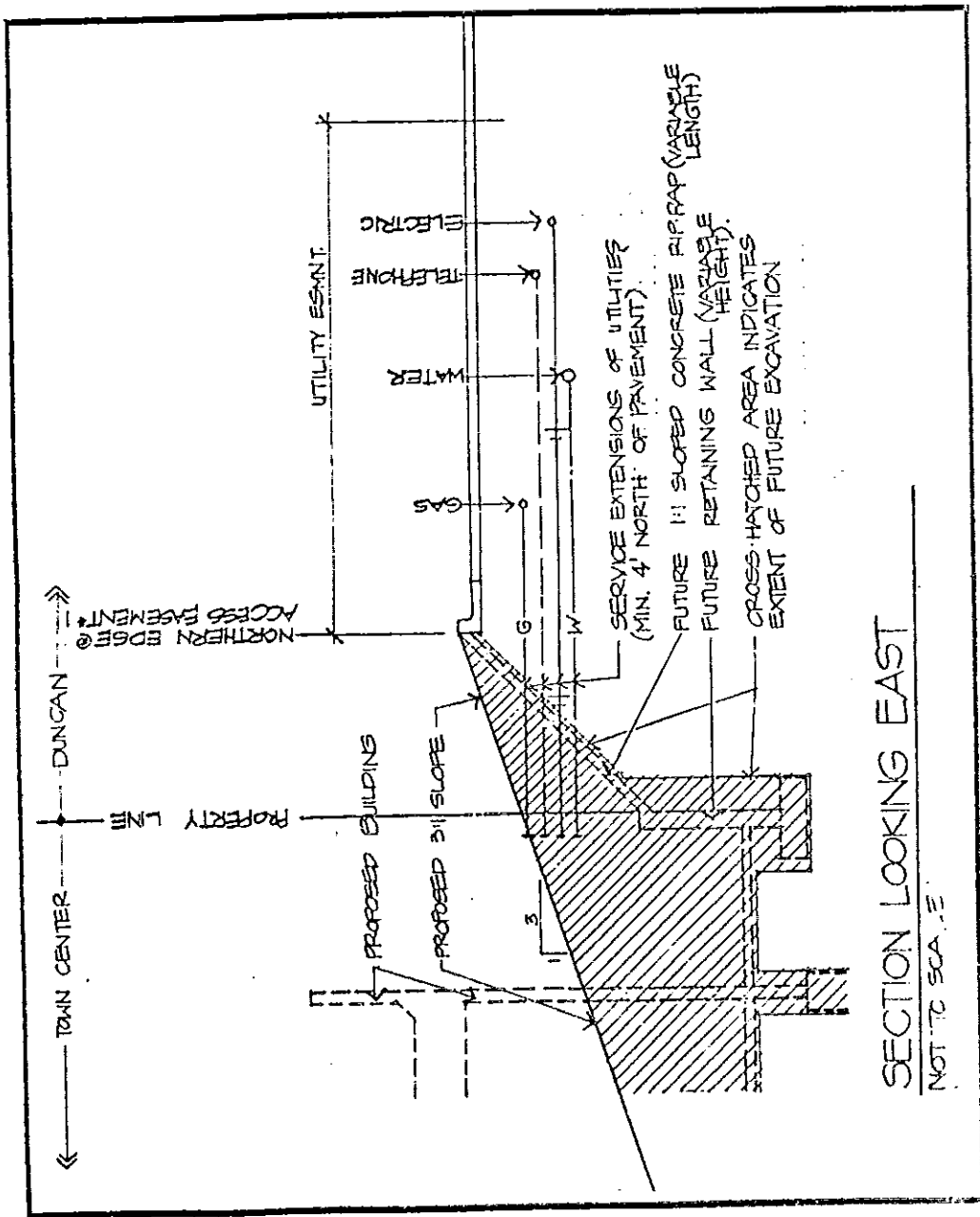


EXHIBIT "J-1"

This Exhibit "J-1" to that certain Grant of Reciprocal Easements between Denton Towne Center Joint Venture (the "Venture") and Duncan Properties, Ltd., an Oklahoma limited partnership executed to be effective as March 31, 1982 (the "REA"), is being executed by RepublicBank Dallas N.A. (the "Bank") to evidence the subordination by the Bank of the lien currently held by the Bank created by that certain deed of trust executed by the Venture, dated December 20, 1979, and recorded in Volume 553, page 329 of the Deed of Trust Records of Denton County, Texas, encumbering certain real property more particularly described in such deed of trust, as such deed of trust is being amended effective on even date herewith, to the terms, provisions, rights and obligations created by the REA.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

REPUBLICBANK DALLAS N.A.

By William H. McElroy  
(Vice) President

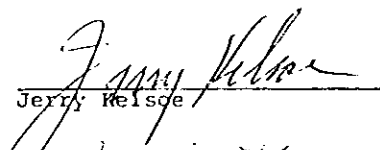
VOL 1136 PAGE 541

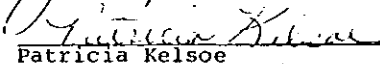
EXHIBIT "J-2"

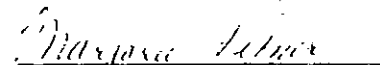
Vol. 1136 Page 542

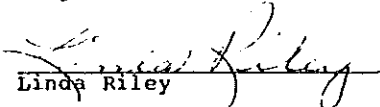
This Exhibit "J-2" to that certain Grant of Reciprocal Easements between Denton Towne Center Joint Venture (the "Venture") and Duncan Properties, Ltd., an Oklahoma limited partnership executed to be effective as March 31, 1982 the "REA"), is being executed by Jerry Kelsoe, Patricia Kelsoe, Marjorie Pitner and Linda Riley (collectively, "Pitner-Kelsoe") to evidence the subordination by Pitner-Kelsoe of the lien currently held by Pitner-Kelsoe created by that certain deed of trust executed by the Venture, dated December 31, 1979, and recorded in Volume 557, page 320 of the Deed of Trust Records of Denton County, Texas, encumbering certain real property more particularly described in such deed of trust, as such deed of trust has been and is being amended effective on even date herewith, to the terms, provisions, rights and obligations created by the REA.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

  
Jerry Kelsoe

  
Patricia Kelsoe

  
Marjorie Pitner

  
Linda Riley

W-176480  
SOUTHWEST LAND TITLE CO.  
P. O. BOX 18296  
DALLAS, TEXAS 75218

SOUTHWEST LAND TITLE CO.  
P. O. BOX 18296  
DALLAS, TEXAS 75218

FILED  
1982 APR -8 PM 4:28  
COUNTY CLERK  
DENTON COUNTY, TEXAS  
9471  
Vol 1136 543

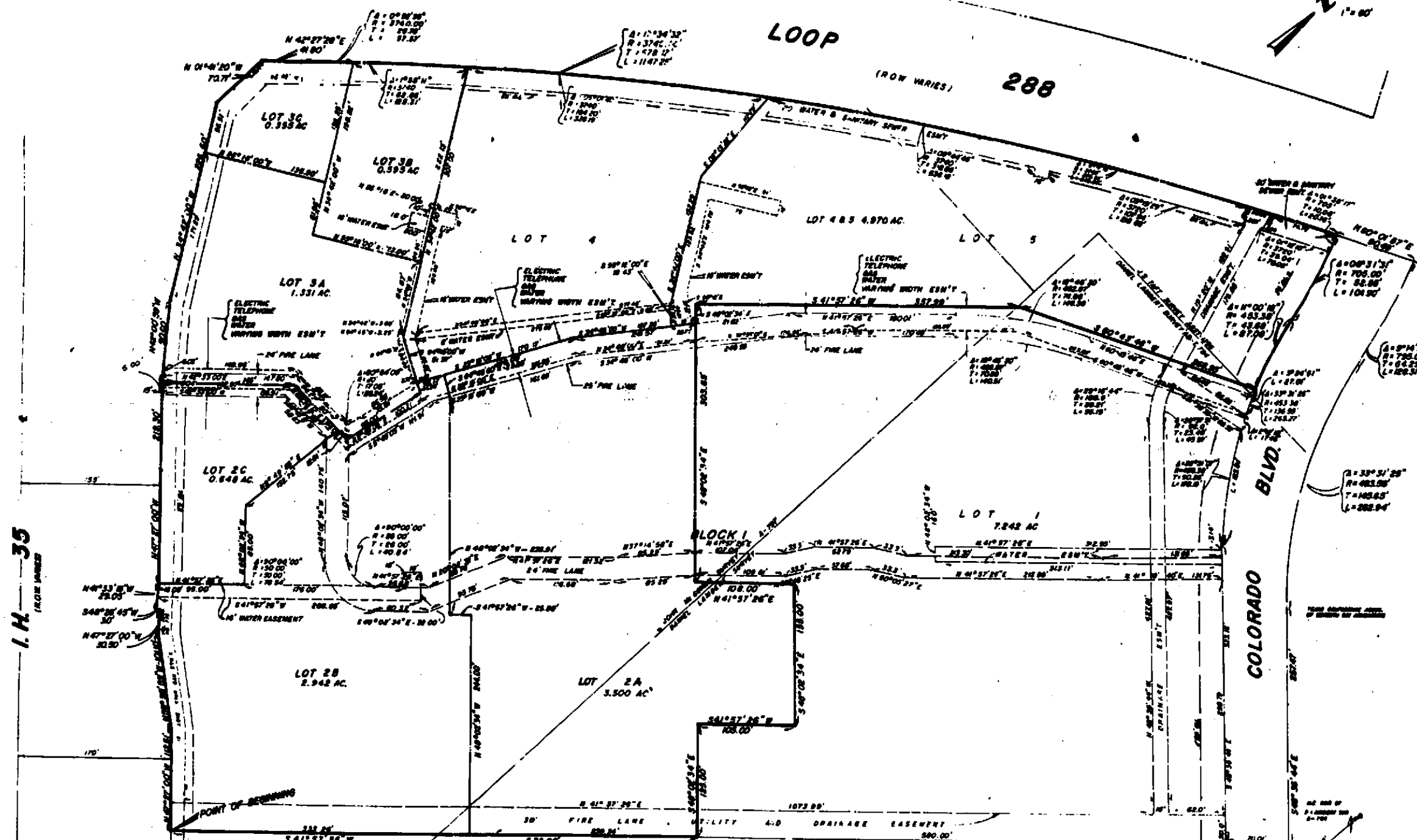
FILED FOR RECORD 8th DAY OF April A.D. 1982, at 2:28 P.M.  
RECORDED 1215 DAY OF April A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Bloua J. Taylor DEPUTY.

32806

19 11 50

8-11

"C" - 130



## SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Jack R. Davis, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision in accordance with the platting rules and regulations of the City of Denton, Texas.

*Jack R. Davis*  
 Jack R. Davis, Registered Public Surveyor

STATE OF TEXAS  
COUNTY OF DALLAS

## CERTIFICATE OF APPROVAL

Approved this 11th day of November, A.D. 1962, by the undersigned, a Notary Public in and for said County and State, on this day personally appeared *Robert D. Wooten*, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed, and in the capacity therein stated.

*Robert D. Wooten*  
 Robert D. Wooten, Notary Public in and for Dallas County, Texas



*William C. Smith*  
 William C. Smith, Notary Public in and for Dallas County, Texas

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, the undersigned Notary Public in and for said County and State, on this day personally appeared *Robert D. Wooten*, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed, and in the capacity therein stated.

GIVEN under my hand and seal of office, this 11th day of November, 1962.

*Pat Sanders*  
 Pat Sanders, Notary Public in and for Dallas County, Texas

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, the undersigned Notary Public in and for said County and State, on this day personally appeared *Robert D. Wooten*, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed, and in the capacity therein stated.

GIVEN under my hand and seal of office, this 11th day of November, 1962.

*Norm Campbell Miller*  
 Norm Campbell Miller, Notary Public in and for Dallas County, Texas

## OWNER'S CERTIFICATE

STATE OF TEXAS  
COUNTY OF DENTON

WHEREAS, WE, DUNCAN PROPERTIES, LTD., and DENTON TOWN CENTER JOINT VENTURE, are the Owners of a tract of land situated in the John McCombs Survey, Abstract No. 787, the Daniel Lambert Survey, Abstract No. 788, and the J.S. Taft Survey, Abstract No. 1256, and being part of Denton Shopping Center Addition, as addition to the City of Denton as recorded in Cabinet C, Page 19, Deed Records, Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point situated in the Northeastly line of Interstate Highway No. 25-E (a variable R.O.M.), said point also being the Southeastly corner of said Denton Shopping Center Addition;

THENCE along the Northeastly line of said Interstate Highway No. 25-E the following:

N 47°27'00" W a distance of 112.51 feet to a point for corner;  
 N 55°58'59" W a distance of 101.10 feet to a point for corner;  
 N 47°27'00" W a distance of 30.50 feet to a point for corner;  
 S 08°26'45" W a distance of 219.30 feet to a point for corner;  
 N 41°33'15" W a distance of 219.30 feet to a point for corner;  
 N 47°27'00" W a distance of 219.30 feet to a point for corner;  
 N 42°08'59" W a distance of 90.60 feet to a point for corner;  
 N 34°42'00" W a distance of 226.60 feet to a point for corner;  
 N 01°41'20" W a distance of 70.71 feet to a point situated in the Southeastly line of Loop 288 (a variable R.O.M.);

THENCE along the Southeastly line of said Loop 288 the following:

N 42°27'25" E a distance of 41.80 feet to a point of curvature to the right;  
 Along said curve to the right having a central angle of 17°34'52", a radius of 3740.00 feet, and an arc length of 1147.25 to a point for corner, said point being the intersection of said Loop 288 and the Southeastly line of Colorado Boulevard (a variable R.O.M.) and also being the point of curvature of a curve to the right having a central angle of 08°31'31", a radius of 700.00 feet, an arc length of 104.80 feet, and having a chord bearing of S 19°21'04" E to a point of reverse curvature to the left;

THENCE along said Southeastly line of Colorado Boulevard and said curve to the left having a central angle of 13°00'10", a radius of 463.30 feet, an arc length of 87.00 feet, and a chord bearing of S 20°36'31" E to a point for corner;

THENCE departing said Colorado Boulevard S 60°43'06" W a distance of 268.96 feet to a point for corner;

THENCE S 41°57'26" W a distance of 367.86 feet to a point for corner;  
 THENCE S 48°02'34" E a distance of 363.06 feet to a point for corner;  
 THENCE N 41°57'26" E a distance of 108.00 feet to a point for corner;  
 THENCE S 48°02'34" E a distance of 158.00 feet to a point for corner;  
 THENCE S 41°57'26" W a distance of 108.00 feet to a point for corner;  
 THENCE S 48°02'34" W a distance of 125.00 feet to a point for corner;  
 THENCE S 41°57'26" W a distance of 572.00 feet to the POINT OF BEGINNING and containing 18.3614 acres of land, more or less.

ALL THEREIN, AND ALL THE HEREIN, I, the undersigned, a Notary Public in and for said County and State, on this day personally appeared *Robert D. Wooten*, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed, and in the capacity therein stated.

*Robert D. Wooten*  
 Robert D. Wooten, Notary Public in and for Dallas County, Texas

REVISED REPLAT OF  
DENTON SHOPPING CENTER ADDITION  
DENTON, TEXAS

OUT OF THE

JOHN MCGOWAN SUR, A-797  
 DANIEL LAMBERT SUR, A-784  
 J.S. TAFT SUR, A-1256

DENTON COUNTY TEXAS

OWNERS:

DUNCAN PROPERTIES LTD.  
 1001 CHURCH ST. SUITE 200  
 DENTON, TEXAS 76201  
 DENTON TOWN CENTER JOINT VENTURE  
 2001 BRUNN 30TH FLOOR  
 DALLAS, TEXAS 75201

SURVEYOR

BROCKETTE / DAVIS / DRAKE  
 2902 CARLISLE  
 DALLAS, TEXAS 75204



**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the John McGowan Survey, Abstract No. 797, City of Denton, Denton County, Texas, and being part of Lot 2BR, Denton Shopping Center Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume D, Page 154 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at an aluminum disk stamped "TXDOT" found in the northeast right-of-way line of Interstate Highway No. 35 (a variable width right-of-way), and being in the southeast line of said Lot 2BR; from said point the south corner of said Lot 2BR bears South 41°41'51" West, a distance of 14.15 feet;

**THENCE** departing the said southeast line of Lot 2BR, North 47°50'52" West, a distance of 75.07 feet to a point for corner;

**THENCE** North 45°52'39" West, a distance of 197.42 feet to a point for corner in the northwest line of said Lot 2BR;

**THENCE** North 41°39'50" East, along the said northwest line of Lot 2BR, a distance of 14.64 feet to a point for corner;

**THENCE** departing the said northwest line of 2BR, South 45°24'22" East, a distance of 3.00 feet to a point for corner;

**THENCE** the following three (3) calls:

North 84°13'38" East, a distance of 17.49 feet to a point for corner;

South 45°53'04" East, a distance of 183.29 feet to a point for corner;

South 47°50'52" East, a distance of 74.36 feet to a point for corner in the said southeast line of Lot 2BR;

**THENCE** South 41°41'51" West, along the said southeast line of Lot 2BR, a distance of 28.01 feet to the **POINT OF BEGINNING** and containing 7,510 square feet or 0.1724 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

*10/12/20*  
**MICHAEL C. BILLINGSLEY**  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



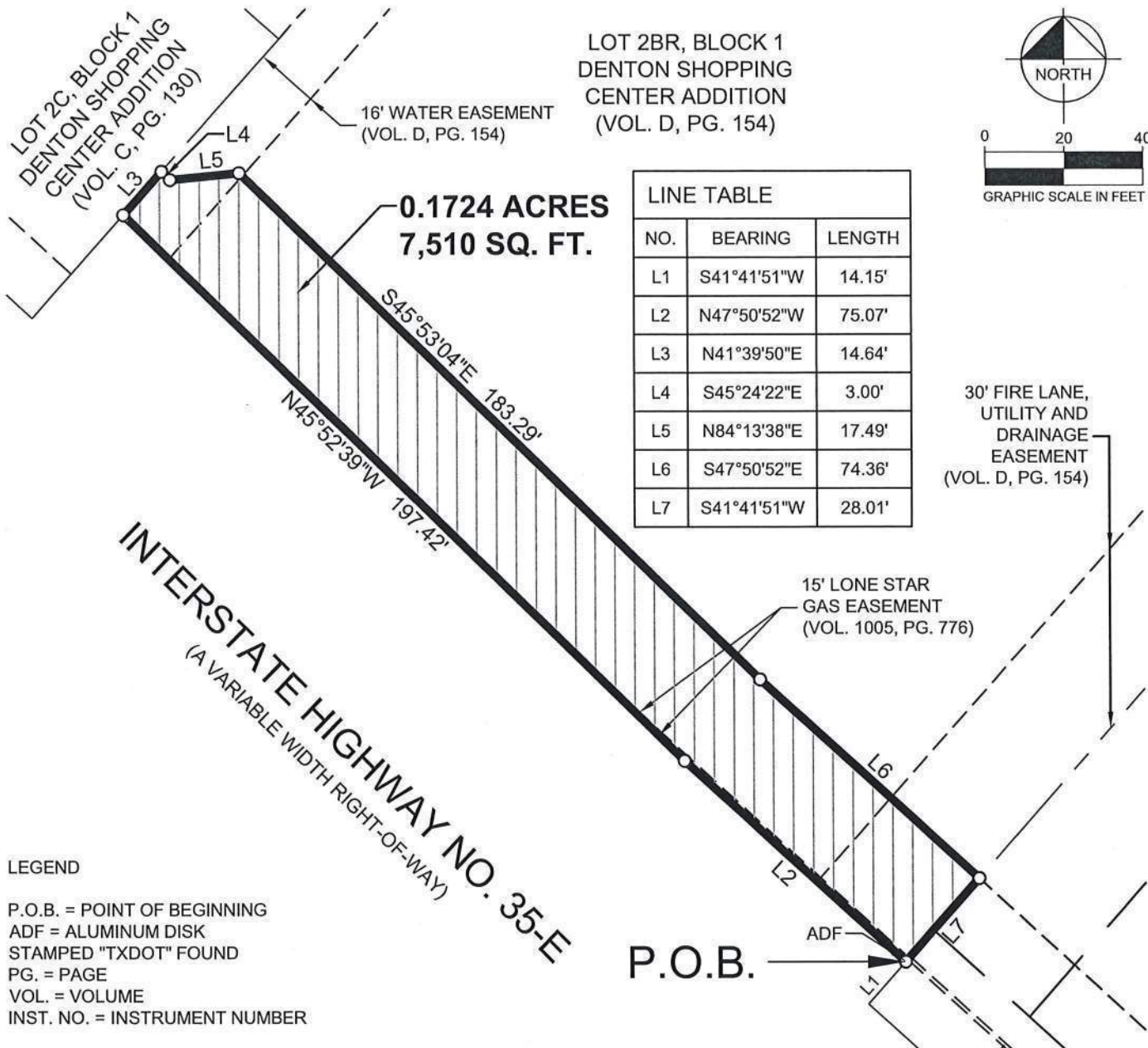
WATER, WASTEWATER  
 AND ELECTRIC EASEMENT  
 PART OF LOT 2BR  
 DENTON SHOPPING CENTER ADDITION  
 JOHN MCGOWAN SURVEY, ABSTRACT NO. 797  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	8/25/2020	061024039	1 OF 2



10/12/20

MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER, WASTEWATER  
AND ELECTRIC EASEMENT  
PART OF LOT 2BR  
DENTON SHOPPING CENTER ADDITION  
JOHN MCGOWAN SURVEY, ABSTRACT NO. 797  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	8/25/2020	061024039	2 OF 2

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 06**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1828+62 RT to Sta 1831+11 RT

Existing Easement

Volume C, Page 130

PART OF LOT 3A, BLOCK 1  
DENTON SHOPPING CENTER ADDITION  
JOHN MCGOWAN SURVEY  
ABSTRACT NO. A-797  
CITY OF DENTON, DENTON COUNTY, TEXAS



VOL 2385 PAGE 940

THE STATE OF TEXAS, §  
COUNTY OF DENTON § KNOW ALL MEN BY THESE PRESENTS:  
§

REAL PROPERTY RECORD

21968

THAT Arnold/Denton Town Center, Ltd., a Texas limited partnership of Dallas County, Texas, in consideration of the sum of One dollar (\$1.00) and no cents and other good and valuable consideration in hand paid by the City of Denton, Texas receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by it, situated in Denton County, Texas in the J. McGowan Survey, Abstract No. 797.

ALL that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the J. McGowan survey, Abst. No. 797, and being part of Lot No. 3A, Block 1, of the Denton Shopping Center Addition, an addition to the City and County of Denton, and also being part of a tract of land as conveyed from 2307 I-35E Joint Venture, a Texas venture to Arnold/Denton Town Center, LTD., a Texas limited partnership by deed dated January 5, 1987 and recorded in Volume 2058, Page 190 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the southern most corner of said Lot 3A, same being the western most corner of said Lot 2C, said point also lying in the northeast right-of-way line of IH 35 E;

THENCE northwesterly, along the southwest boundary line of said Lot 3A, same being the northeast right-of-way line of said IH 35 E the following two (2) courses and distances: (1) north 42° 00' 59" west, 90.6 feet; (2) north 34° 42' 00" west, 171.29 feet to the westerly southwest corner of said Lot 3A, same being the southern most corner of Lot 3C of said addition;

THENCE north 55° 18' 00" east, along the westerly northwest boundary line of said Lot 3A, same being the southeast boundary line of said Lot 3C, a distance of 16.0 feet, to a point lying 16.0 feet northeast of and perpendicular to the southwest boundary line of said Lot 3A for corner;

THENCE southeasterly, 16.0 feet northeast of and parallel to the southwest boundary line of said Lot 3A the following two (2) courses and distances: (1) south 34° 42' 00" east, 170.27 feet; (2) south 42° 00' 59" east, 88.05 feet to a point lying in the southeast boundary line of said Lot 3A, same being the northwest boundary line of said Lot 2C for corner;

THENCE south 42° 33' 00" west along the southeast boundary line of said Lot 3A, same being the northwest boundary line of Lot 2C, a distance of 16.07 feet, to the Point of Beginning and containing 0.0955 acres of land.

0415E/99

And it is further agreed that the said City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public utilities in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public utilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness hand  
*[Signature]*

, this the 20<sup>th</sup> day of JAN, A.D. 1988.  
*[Signature]*  
BY: *[Signature]*  
Arnold, Denton Town Center, Ltd.,  
a Texas limited partnership

CORPORATION ACKNOWLEDGMENT

THE STATE OF TEXAS, §  
COUNTY OF §  
on this day personally appeared

BEFORE ME, the undersigned authority,

*Fred L. Arnold*

known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act if such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 20 day of January, A.D. 1988



*[Signature]*  
Notary Public, in and for the State of Texas  
My Commission Expires 6-22-89

RETURN TO: City of Denton  
215 E. McKinney  
Denton, TX 76201

ATTN: Roger N. Wilkinson  
Right-of-Way Agent

0521E/20

FILED FOR RECORD 1<sup>st</sup> DAY OF June A.D. 19 88 at 10:48 A.M.  
DULY RECORDED 1<sup>st</sup> DAY OF June A.D. 19 88

BY: *[Signature]* DEPUTY

MARILYN ROBINSON, COUNTY CLERK  
DENTON COUNTY, TEXAS

# DECLARATION OF RESTRICTIVE COVENANTS

1136 544

STATE OF TEXAS

DEED RECORDS

COUNTY OF DENTON

9472

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made and entered into this 31st day of March, 1982, by TOWNE CENTER JOINT VENTURE, a joint venture ("Towne Center").

## INTRODUCTION

1. Towne Center is the owner of certain property situated in Denton County, Texas, being more particularly described on Exhibit "A" attached to this Declaration (the "Towne Center Tract").
2. Duncan Properties, Ltd., a Texas limited partnership ("Duncan," with such term also applying to the successors and assigns of Duncan who becomes owner of all or any portion of the Duncan Outlet Tract) is the owner of certain abutting real property also situated in Denton County, Texas, being more particularly described on Exhibit "B" attached to this Declaration (the "Duncan Outlet Tract").
3. The Towne Center Tract and the Duncan Outlet Tract are sometimes in this Declaration referred to collectively as the "Tracts" and individually as a "Tract."
4. On even date herewith Towne Center and Duncan have consummated an exchange of real property and entered into a Grant of Reciprocal Easements and certain other agreements relating to the engineering and construction of improvements upon the Tracts. In connection with this series of transactions, Towne Center has agreed to execute this Declaration for the benefit of the owners, from time to time, of the Duncan Outlet Tract.

## ARTICLE I

### Restrictions

1.1 Definition of "Building". The term "building" shall have the meaning given it below.

(1) the term "Building" when used in this Declaration shall mean and include all temporary or permanent independent structures, which are completely enclosed by exterior walls, but not including exterior projections, whether vertical or horizontal, attached columns, canopies, roof overhangs and similar appendages, landscaping, signage, trash enclosures, lighting and similar nonstructural improvements.

1.2 General Restrictions. Towne Center hereby declares the following restrictions as being applicable to the Towne Center Tract, in accordance with the terms and provisions stated below:

(1) No portion of any building or any protrusions therefrom nor any other structures other than landscaping, signage, trash enclosures, lighting, paving,



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curbing, walkways or similar nonstructural improvements shall be located on the Colorado Boulevard side of the Permissible Building Line as shown on Exhibit "C" to this Declaration (the "Site Plan").

(ii) No portion of any building which is located on the Colorado Boulevard side of the "Two Story Line" (herein so called) shown on the Site Plan shall be in excess of one story in height.

(iii) There shall exist at all times a space and separation of at least one hundred twenty feet (120') between buildings to the east of the area shown as being "Access Drive #2" (herein so called) on the Site Plan and buildings to the west of Access Easement #2, (the "120 Foot Area"). Encroachments into the 120 Foot Area will be permitted for all canopies, walkways, awnings, columns, roof overhangs, building or canopy mounted signs and stairways; provided, that a separation between any encroachments on the east side of Access Drive #2 and encroachments on the west side of Access Drive #2 of at least one hundred feet (100') must at all times exist. Any stairway encroachments contained within the 120 Foot Area shall not be enclosed on the second level of the stairway, if any, but may be enclosed on the first level of the stairway. The restrictions contained in this Section 1.2(iii) shall not prohibit the erection of curbing, landscaping, lighting and similar non-structural matters at any place on the Towne Center Tract.

(iv) No portion of any buildings or any protrusions therefrom (not including sidewalks) shall be closer than five feet (5') to Access Drive #2 at any point along the boundaries of Access Drive #2.

(v) No curb openings along the easterly and westerly boundaries of Access Drive #2 shall be permitted to exist except at the general locations shown on the Site Plan.

(vi) No portion of any building located on the I-35 side of the Two Story Line (herein so called) shown on the Site Plan may exceed thirty-four feet (34') in height and no portion of any building located on the Colorado Boulevard side of the Two Story Line shall exceed twenty-five feet (25') in height, with all such height level being measured from the finished grade level for the building pad of such building; provided, however, that elevator enclosures, antennas and towers (such as stairways or clock towers) may exceed the above-described height restrictions, and signs and clocks may be located on the elevator enclosures and towers.

(vii) Any receptacle for trash storage shall be screened on three sides (with at least one screened side facing the Duncan Outlot Tract and one screened side facing the area described on Exhibit "D" to this Declaration) by either a wood screen fence, a masonry screen fence of the same finish as the building in which the trash being stored is generated or as provided below. The surface grade levels to the south of the area in which it is anticipated that trash receptacles will be placed rise rapidly; accordingly, where the surface grade to the south of the area where the

Vol 1136 -545

v 1136 - 546

trash receptacles are placed is equal to or greater than the highest point of a trash receptacle placed on the Towne Center Tract, such surface grade may replace the screen wall required on that side as required above so long as the horizontal distance between:

(a) the closest point of the trash receptacle, and

(b) the point of the surface grade level which is sufficiently high to provide a screening device as provided above,

is equal to or less than the vertical height of the trash receptacle. For example, if the trash receptacle is six feet tall, but within five feet of the trash receptacle the grade level rises to be seven feet higher than the grade level where the trash receptacle sits, such rise in grade level would constitute a screening wall. The foregoing restrictions shall not apply to any trash receptacles which are located within the area designated as the "Permitted Trash Receptacle Area" on the Site Plan.

(viii) Any mechanical equipment placed on the roof of any buildings (except for antennas, which shall not be required to be screened) shall be screened with fences or other screening devices at least as high as the highest portion of the mechanical equipment so located on the roof.

(ix) The exterior of all buildings shall be painted or finished, with the term "finished" including, but not limited to, aggregate concrete stone, performed concrete panels, stucco and decorative concrete blocks.

(x) No fascia signs (except for clocks and related signage which may be located on towers, but which may not extend higher than such towers) located on any building may extend higher than the roof or, if higher, the parapet line of such building.

**1.3 Use Restrictions.** Towne Center hereby declares the following restrictions as being applicable to the Towne Center Tract, in accordance with the terms and provisions stated below. No part of the Towne Center Tract shall be used except for retail sales, service facilities, business offices, financial institutions and other related and appurtenant uses. In addition, no use or operation will be made, conducted or permitted on or with respect to all or any part of the Towne Center Tract which use or operation is obnoxious or clearly injurious to a first-class shopping center, including the following:

(i) Any public or private nuisance;

(ii) Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness, or loudness;

(iii) Any obnoxious odor;

(iv) Any noxious, toxic, caustic, or corrosive fuel or gas;

(v) Any dust, dirt, or fly ash in excessive quantities;

(vi) Any unusual fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;

(vii) Any warehouse (excepting storage which is incidental to a permitted use), assembly, manufacture, distillation, refining, smelting, or mining operations;

(viii) Any "second hand" store, Army, Navy, or government "surplus" store;

(ix) Any mobile home or trailer court, labor camp, junk yard, stock yard, or animal raising;

(x) Any dumping, disposal, incineration or reduction of garbage or refuse;

(xi) Any fire or bankruptcy sale or auction house operation;

(xii) Any central laundry or dry cleaning plants or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pick up and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Towne Center Tract is located;

(xiii) Any automobile sales, leasing or display, including body repair facilities (but this prohibition shall not be applicable to automotive mechanical service facilities or the sale of automotive parts and accessories);

(xiv) Living quarters, sleeping apartments or lodging rooms;

(xv) Any mortuary;

(xvi) Any adult bookstore selling pornographic material or pornographic theatres; and

(xvii) Any trailer rental.

## ARTICLE II

### Miscellaneous

2.1 Estoppel Certificate. Duncan hereby covenants that within twenty (20) days from the delivery of written requests, from time to time, of Towne Center, it will issue to designees of Towne Center an estoppel certificate stating: (i) whether Duncan knows of any default by Towne Center under this Declaration, and if there are known defaults, specifying the nature thereof; and (ii) whether to Duncan's knowledge this Declaration has been modified or amended in any way (and if it has, then stating the nature thereof). Notwithstanding the provisions of Section 2.2 below, any requests for an estoppel certificate and the response thereto may, at the election of the sender, be sent by private carrier expedited mail service (i.e., Federal Express type

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service) and, in such event, the request or the response, as the case may be, shall be effective on the first day following deposit with such private carrier. Duncan agrees to act in good faith in connection with requests for estoppel certificates from Towne Center. Failure by Duncan to respond within the 20-day period shall be deemed the equivalent of a statement that no defaults exist, that no amendment to this Declaration has been entered into and that this Declaration remains in full force and effect.

2.2 Notices. All notices, demands, statements and requested required or permitted to be given under this Declaration must be in writing and shall be deemed to have been properly given or served, whether received or not, by depositing the same in the United States mails, addressed to Duncan or Towne Center, postage prepaid and registered or certified mail, return receipt requested, at the address set forth below.

To Towne Center:      Denton Towne Center Joint Venture  
                                 c/o Henry S. Miller Company  
                                 2001 Bryan Tower, 30th Floor  
                                 Dallas, Texas 75201  
                                 Attention: Raymond J. Poche

with copy by regular mail to:

Thomas J. Terkel  
Jenkins & Gilchrist  
2200 First National Bank Bldg.  
Dallas, Texas 75202

To Duncan:              Duncan Properties, Ltd.  
                                 100 Park Avenue Bldg.  
                                 Suite 1204  
                                 Oklahoma City, Oklahoma 73102  
                                 Attention: Neil Hill

with copy by regular mail to:

Mr. Glenn D. West  
Jackson, Walker, Winstead,  
Cantwell & Miller  
4300 First National Bank Bldg.  
Dallas, Texas 75202

All notices, demands and requests shall, except as hereinafter set forth, be effective upon being deposited in the United States mails in accordance with the provisions hereof. Rejection or other refusal to accept, or the inability to deliver because of changes of address of which no notice was given, shall be deemed to be receipt of the notice, demand or request. Any party shall have the right from time to time and at any time, upon at least ten (10) days' prior written notice thereof in accordance with the provisions hereof, to change its respective address and to specify any other address within the United States of America.

2.3 Binding Effect. The covenants contained in Article I of this Declaration shall constitute covenants running with, and shall be deemed appurtenant to, the Towne Center Tract and all such covenants shall be binding upon the successors and assigns of Towne Center who become owners of any portion of the Towne Center Tract.

2.4 Right to Enforce. The benefits of the covenants contained in Article I shall inure to the benefit of Duncan and the successors and assigns of Duncan as the owner(s) of the Duncan Outlot Tract. The remedies provided below in Section 2.6 may be pursued only by the person(s) or entity(ies) that, from time to time, own in the aggregate fee simple title to fifty-one percent (51%) or more of the land area contained within the Duncan Outlot Tract. Nothing herein contained shall be deemed to be the creation of restrictions for the benefit of the general public, it being the intention and understanding of the parties hereto that this Declaration and the enforcement thereof shall be strictly limited to the person(s) or entity(ies) specified in the immediately preceding sentence.

2.5 Amendments. Amendments to this Declaration shall be effective only when executed and acknowledged by the person(s) or entity(ies) that, from time to time, own in the aggregate fee simple title to fifty-one percent (51%) or more of the land area contained within the Towne Center Tract and the person(s) or entity(ies) that, from time to time, own in the aggregate fee simple title to fifty-one percent (51%) or more of the land area contained within the Duncan Outlot Tract, and when recorded in the deed records of Denton County, Texas.

2.6 Default. Upon violation by Towne Center (the "Defaulting Party") of the covenants created in Article I above, the person(s) or entity(ies) entitled pursuant to Section 2.4 above to enforce the provisions of this Declaration (the "Enforcing Party", whether one or more) shall have the right to exercise one or more of the following remedies, at the sole election and option of the Enforcing Party:

(a) The Enforcing Party may obtain specific performance by injunction, temporary or permanent restraining order and/or any other legal and equitable remedies as may be available, in which event the Enforcing Party shall also be entitled to recover in such proceedings a full reimbursement for all injuries and damages sustained prior to the curing of the default plus all court costs and reasonable attorneys' fees incurred by the Enforcing Party.

(b) The Enforcing Party may demand that the Defaulting Party compensate it for damages sustained and to be sustained as a result of the violation; and if the Enforcing Party proceeds to litigation on this demand, the Enforcing Party shall also be entitled to recover in such proceedings all court costs and reasonable attorneys' fees incurred by the Enforcing Party.

The pursuit of one or more remedies hereinabove prescribed shall not preclude the pursuit of any other remedy otherwise provided under the laws of the State of Texas, unless inherently inconsistent with the remedy being pursued. Notwithstanding the foregoing, Defaulting Party shall not be deemed to be in violation of the covenants created by Article I above until Defaulting Party shall have failed to cure such violation (or, in the case of a violation which cannot be cured within a thirty-day period, to commence and diligently work toward curing the violation) within thirty (30) days following the delivery of written notice (describing with particularity the nature of the violation and referring specifically to the provision of this Declaration claimed to

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be violated) by the Enforcing Party to Defaulting Party and to all mortgagees of Defaulting Party about whom the Enforcing Party has received prior written notice.

2.7 Sale by Towne Center. Upon the bona fide assignment, conveyance, sale or other transfer by Towne Center of its fee simple ownership to any portion or all of the Towne Center Tract, Towne Center shall be released from any liability arising out of a failure to observe the covenants contained in this Declaration arising subsequent to the effective date of such sale or transfer with respect to the portion sold or otherwise transferred (other than those obligations arising from any default by Towne Center under this Declaration prior to such sale or transfer).

2.8 Approvals. Towne Center may at any time request that Duncan review plans and specifications for proposed buildings to be located on the Towne Center Tract and advise Towne Center of any violations of the covenants contained in Section 1.2 hereof (the "Restrictions") created by such plans. In such event, Towne Center shall also deliver to Duncan sufficient supporting data (such as surveys, detailed, scaled exterior elevations, specifications for materials to be used and other renderings as may be needed) to enable Duncan to make an informed determination concerning whether the buildings as proposed comply with the Restrictions. Towne Center shall be deemed to have submitted adequate information to Duncan if Duncan fails to request more detailed information within fifteen days of the initial delivery of such information. Any objections raised by Duncan shall be in writing and shall specify the specific portion of the Restrictions which Duncan believes will be violated by the proposed building and the particular nature of the violation. With respect to any actual violation which Duncan fails to identify in writing to Towne Center within thirty (30) days of the delivery of the initial information, or, if later, within fifteen days of the delivery of all information requested by Duncan, Duncan shall be estopped thereafter to assert any such violation and shall be deemed to have waived any right or remedy to which it might otherwise be entitled. The above described estoppel and waiver shall be effective only as to the specific buildings described in the plans submitted to Duncan and then only if construction of such buildings is commenced within ninety days from the expiration of the period for objection, and shall not apply to any other buildings thereafter constructed, or any remodeling, alteration or reconstruction of any such buildings.

2.9 Six Month Waiver. If, within six months following the date on which a certificate of occupancy is issued for any building or any portion thereof constructed within the Towne Center Tract, an affidavit identifying Towne Center and the Towne Center Tract and setting forth a specific description of the manner in which such building fails to conform with the provisions of Section 1.2 of this Declaration is not filed in the Deed Records of Denton County, Texas, then in such event, the building for which the certificate of occupancy was issued shall conclusively be deemed to comply with all such provisions. Duncan shall thereafter be estopped to assert any violations of Section 1.2 of Declaration with respect to such building; provided, however, that nothing contained herein shall limit or affect in any manner the Enforcing Party's right to pursue any remedies set forth in Section 2.6 hereof at any time prior to the expiration of such six (6) month period.



2.10 Duration. This Declaration and the restrictions contained herein shall terminate and be of no further force and effect upon the earlier of:

(i) February 1, 2020; or

(ii) the date on which a written termination agreement, executed and acknowledged by the parties required to amend this Declaration, is recorded in the real property records of Denton County, Texas.

2.11 Joinder By Other Persons. The persons and/or entities executing Exhibit "E", "F" and "G" to this Agreement have done so to evidence the subordination of their respective interests in the Towne Center Tract to the terms and provisions of this Declaration.

EXECUTED, to be effective as of the date first above specified.

DENTON TOWNE CENTER JOINT VENTURE,  
a joint venture

By: Herbert D. Weitzman  
Herbert D. Weitzman  
Venture Manager

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

BEFORE ME, the undersigned authority, on this day personally appeared HERBERT D. WEITZMAN, Venture Manager of Denton Towne Center Joint Venture, a Texas joint venture, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes, consideration and in the capacity therein expressed, as the act and deed of said joint venture.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 31st day of March, 1982.



Thomas J. Jukil  
Notary Public in and for  
Dallas, County, Texas

My Commission Expires:  
3-10-84

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Exhibit "A"

Towne Center Tract

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BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J. S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing the Easterly line of said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'06", a radius of 3740.00 feet, and an arc length of 182.88 feet to the POINT OF BEGINNING;

Continuing along said curve to the right having a central angle of 14°46'26", a radius of 3740.00 feet, and an arc length of 964.37 feet to a point of curvature to the right;

THENCE along said curve to the right in a Southeasterly direction and departing said Loop 288 and having a central angle of 08°31'31", a radius of 705.00 feet, an arc length of 104.90 feet, and a chord bearing of S 19°21'05" E to a point of reverse curve to the left;

THENCE along said curve to the left having a central angle of 11°00'18", a radius of 453.38 feet, and an arc length of 87.08 feet to a point for corner;

THENCE S 60°43'46" W a distance of 268.95 feet to a point for corner;

THENCE S 41°57'26" W a distance of 357.99 feet to a point for corner;

THENCE S 48°02'34" E a distance of 21.62 feet to a point for corner;

THENCE S 34°48'00" W a distance of 136.00 feet to a point for corner;

THENCE S 25°15'00" W a distance of 170.17 feet to a point for corner;

THENCE N 64°45'00" W a distance of 51.87 feet to a point for corner;

THENCE N 34°42'00" W a distance of 307.00 feet to the POINT OF BEGINNING and containing 4.9698 acres of land, more or less.

Exhibit "B"

Duncan Outlot Tract

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34°42'00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64°45'00" E a distance of 65.87 feet to a point for corner;

THENCE S 05°49'03" W a distance of 95.00 feet to a point for corner;

THENCE S 86°43'12" W a distance of 90.00 feet to a point for corner;

THENCE S 42°33'00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 42°00'59" W a distance of 90.60 feet to a point for corner;

N 34°42'00" W a distance of 226.60 feet to a point for corner;

N 01°41'20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

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Exhibit "D"

DUNCAN MAIN TRACT

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J. S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway No. 35-E and departing the Southerly line of said Loop 288 the following:

S 01°41'20" E a distance of 70.71 feet to a point;

S 34°42'00" E a distance of 226.60 feet to a point;

S42°00'59" E a distance of 90.60 feet to the POINT OF BEGINNING;

THENCE N 42°33'00" E departing the aforementioned I.H. 35-E a distance of 145.00 feet to a point for corner;

THENCE N 86°43'12" E a distance of 90.00 feet to a point for corner;

THENCE N 05°49'03" E a distance of 95.00 feet to a point for corner;

THENCE N 64°45'00" W a distance of 14.00 feet to a point for corner;

THENCE N 25°15'00" E a distance of 170.17 feet to a point for corner;

THENCE N 34°48'00" E a distance of 136.00 feet to a point for corner;

THENCE N 48°02'34" W a distance of 21.62 feet to a point for corner;

THENCE N 41°57'26" E a distance of 357.99 feet to a point for corner;

THENCE N 60°43'46" E a distance of 268.95 feet to a point of curvature to the left;

THENCE along said curve to the left in a Southeasterly direction having a central angle of 22°31'07", a radius of 453.38 feet, an arc length of 178.19 feet, and a chord bearing of N 37°21'11" W to the point of tangency;

THENCE S 48°36'44" E a distance of 323.16 feet to a point for corner;

THENCE S 41°57'26" W a distance of 1152.60 feet to a point situated in the Easterly line of said I.H. 35-E;

THENCE along the Northeasterly line of said Interstate Highway No. 35-E the following:

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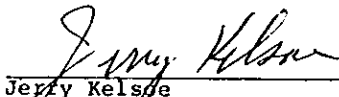
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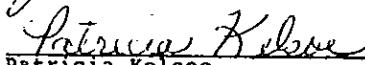


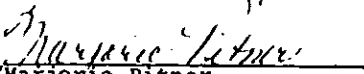
EXHIBIT " E "

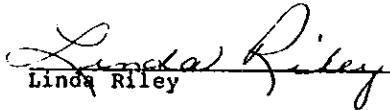
This Exhibit " E " to that certain Declaration of Restrictive Covenants executed by Denton Towne Center Joint Venture (the "Venture") for the benefit of Duncan Properties, Ltd., an Oklahoma limited partnership to be effective as March 31, 1982 (the "Declaration"), is being executed by Jerry Kelsoe, Patricia Kelsoe, Marjorie Pitner and Linda Riley (collectively, "Pitner-Kelsoe") to evidence the subordination by Pitner-Kelsoe of the lien currently held by Pitner-Kelsoe created by that certain deed of trust executed by the Venture, dated December 31, 1979, and recorded in Volume 557, page 320 of the Deed of Trust Records of Denton County, Texas, encumbering certain real property more particularly described in such deed of trust, as such deed of trust has been and is being amended effective on even date herewith, to the terms, provisions, rights and obligations created by the Declaration.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

  
Jerry Kelsoe

  
Patricia Kelsoe

  
Marjorie Pitner

  
Linda Riley

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EXHIBIT "F"

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This Exhibit to that certain Declaration of Restrictive Covenants executed by Denton Towne Center Joint Venture (the "Venture") for the benefit of Duncan Properties, Ltd., an Oklahoma limited partnership executed to be effective as March 31, 1982 (the "Declaration"), is being executed by RepublicBank Dallas N.A. (the "Bank") to evidence the subordination by the Bank of the lien currently held by the Bank created by that certain deed of trust executed by the Venture, dated December 20, 1979, and recorded in Volume 553, page 329 of the Deed of Trust Records of Denton County, Texas, encumbering certain real property more particularly described in such deed of trust, as such deed of trust is being amended effective on even date herewith, to the terms, provisions, restrictions, rights and obligations created by the Declaration.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

REPUBLICBANK DALLAS N.A.

By William H. Miller  
(Vice) President

WCS.dln/3.25-2/3.19.2

EXHIBIT "G"

This Exhibit "G" to that certain Declaration of Restrictive Covenants executed by DENTON TOWNE CENTER JOINT VENTURE (the "Venture") for the benefit of DUNCAN PROPERTIES, LTD., an Oklahoma limited partnership to be effective as of March 31, 1982 (the "Declaration"), is being executed by GIBRALTAR SAVINGS ASSOCIATION ("Gibraltar") to evidence the subordination by Gibraltar of the lien currently held by Gibraltar, created by that certain deed of trust executed by the Venture, dated November 14, 1980, and recorded in Volume 594, page 958 of the Deed of Trust Records of Denton County, Texas, and filed on November 20, 1980, under the County Clerk's File Number 33637, encumbering certain real property more particularly described in such deed of trust, as such deed of trust has been and is being amended effective on even date herewith, to the terms, provisions, rights and obligations created by the Declaration, provided that the subordination of Gibraltar's lien to the Declaration of Restrictive Covenants, effective March 31, 1982, shall not be construed as Gibraltar's consent or approval to any subsequent changes or amendments made pursuant to paragraph 2.5 of said Declaration and any such amendments or changes to the Declaration shall not be effective as to Gibraltar's hereinabove described lien, without obtaining the prior written consent and joinder of Gibraltar in any such amendments or changes to the Declaration.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

GIBRALTAR SAVINGS ASSOCIATION

By: Tommy G. Lane  
Tommy G. Lane

Title: Regional Vice President

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FILED  
APR 20 1982  
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FILED FOR RECORD 8<sup>11</sup> DAY OF April A.D. 1982, at 6:22 PM.  
RECORDED 1726 DAY OF April A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Elise Taylor DEPUTY

DECLARATION OF RESTRICTIVE COVENANTS

STATE OF TEXAS           §  
                                  §     DEED RECORDS                   9473  
COUNTY OF DENTON       §

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made and entered into this 31st day of March, 1982, by DUNCAN PROPERTIES, LTD., an Oklahoma limited partnership ("Duncan").

INTRODUCTION

1. Duncan is the owner of certain property situated in Denton County, Texas, being more particularly described on Exhibit "A" attached to this Declaration (the "Duncan Outlot Tract").
2. Denton Towne Center Joint Venture, a Texas joint venture ("Towne Center," with such term also applying to the successors and assigns of Towne Center who become owners of all or any portion of the Towne Center Tract) is the owner of certain abutting real property also situated in Denton County, Texas, being more particularly described on Exhibit "B" attached to this Declaration (the "Towne Center Tract").
3. The Towne Center Tract and the Duncan Outlot Tract are sometimes in this Declaration referred to collectively as the "Tracts" and individually as a "Tract".
4. On even date herewith Towne Center and Duncan have consummated an exchange of real property and entered into a Grant of Reciprocal Easements and certain other agreements relating to the engineering and construction of improvements upon the Tracts. In connection with this series of transactions, Duncan has agreed to execute this Declaration for the benefit of the owners, from time to time, of the Towne Center Tract.

ARTICLE I

Restrictions

1.1 Definition of "Building". The term "building" shall have the meaning given it below:

(1) the term "building" when used in this Declaration shall mean and include all temporary or permanent independent structures, which are completely enclosed by exterior walls, but not including exterior projections, whether vertical or horizontal, attached columns, canopies, roof overhangs and similar appendages, landscaping, signage, trash enclosures, lighting and similar nonstructural improvements.

1.2 General Restrictions. Duncan hereby declares the following restrictions as being applicable to the Duncan Outlot Tract, in accordance with the terms and provisions stated below:

(1) Any receptacle for trash storage shall be enclosed on three sides (with at least one enclosed side facing the Towne Center Tract) by either a wood

screen fence or by a masonry screen fence of the same finish as the building in which the trash being stored is generated.

(ii) Any mechanical equipment placed on the roof of any buildings (except for antennas, which shall not be required to be screened) shall be screened with fences or other screening devices at least as high as the highest portion of the mechanical equipment located on the roof.

(iii) The exterior of all buildings shall be painted or finished, with the term "finished" including, but not limited to, aggregate concrete stone, preformed concrete panels, stucco and decorative concrete blocks.

(iv) No fascia signs located on any building may extend higher than the roof or, if higher, the parapet line of such building.

(v) No portion of any building nor any signs or other vertical structures (other than lighting standards or poles) may be constructed or located within the area identified as the "No Building Area" on Exhibit "C" to this Declaration.

(vi) The maximum number of square feet of gross floor area contained within building(s) which may be constructed within the area identified as the "Restricted Building Area" (herein so called) on Exhibit "C" to this Declaration shall be 3,000 square feet of gross floor area; provided, however, no one building constructed within the Restricted Building Area may contain more than 2,000 square feet of gross floor area. The area contained under any canopies or roof overhangs shall be included within the gross floor area calculations prescribed above when all or any portion of foundation support for such canopies or roof overhangs is located exterior of the building exterior walls, whether the devices providing such foundation support are attached to the building or not.

(vii) No portion of any building (including all vertical projections other than antennas) may exceed twenty-five feet (25') in height above any point along the finished grade level for the building pad of such building.

(viii) No building located anywhere on the Duncan Outlot Tract may be leased to or otherwise occupied by more than one business entity; provided, however, that one building may be leased or otherwise occupied by two, but no more than two, business entities, if such building does not exceed 5,000 square feet of gross floor area.

(ix) All buildings shall be separated from one another at their nearest point by at least fifteen feet (15').

(x) No building shall exceed one story in height; provided, however, that this restriction shall not prohibit mezzanine areas.

1.3 Use Restrictions. Duncan hereby declares the following restrictions as being applicable to the Duncan



Outlot Tract, in accordance with the terms and provisions stated below. No part of the Duncan Outlot Tract shall be used except for retail sales, service facilities, business offices, financial institutions and other related and appurtenant uses. In addition, no use or operation will be made, conducted or permitted on or with respect to all or any part of the Duncan Outlot Tract which use or operation is obnoxious or clearly injurious to a first-class shopping center, including the following:

- (i) Any public or private nuisance;
- (ii) Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness, or loudness;
- (iii) Any obnoxious odor;
- (iv) Any noxious, toxic, caustic, or corrosive fuel or gas;
- (v) Any dust, dirt, or fly ash in excessive quantities;
- (vi) Any unusual fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;
- (vii) Any warehouse (excepting storage which is incidental to a permitted use), assembly, manufacture, distillation, refining, smelting, or mining operations;
- (viii) Any "second hand" store, Army, Navy, or government "surplus" store;
- (ix) Any mobile home or trailer court, labor camp, junk yard, stock yard, or animal raising;
- (x) Any dumping, disposal, incineration or reduction of garbage or refuse;
- (xi) Any fire or bankruptcy sale or auction house operation;
- (xii) Any central laundry or dry cleaning plants or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pick up and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Duncan Outlot Tract is located;
- (xiii) Any automobile sales, leasing or display, including body repair facilities (but this prohibition shall not be applicable to automotive mechanical service facilities or the sale of automotive parts and accessories);
- (xiv) Living quarters, sleeping apartments or lodging rooms;
- (xv) Any mortuary;
- (xvi) Any adult bookstore selling pornographic material or pornographic theatres; and

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(xvii) Any trailer rental.

ARTICLE II

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Miscellaneous

2.1 Estoppel Certificate. Towne Center hereby cove-  
nants that within twenty (20) days from the delivery of  
written requests, from time to time, of Duncan, it will  
issue to designees of Duncan an estoppel certificate stat-  
ing: (1) whether Towne Center knows of any default by  
Duncan under this Declaration, and if there are known de-  
faults, specifying the nature thereof; and (2) whether to  
Towne Center's knowledge this Declaration has been modified  
or amended in any way (and if it has, then stating the  
nature thereof). Notwithstanding the provisions of Section 2.2  
below, any requests for an estoppel certificate and the  
response thereto may, at the election of the sender, be sent  
by private carrier expedited mail service (i.e., Federal  
Express type service) and, in such event, the request or the  
response, as the case may be, shall be effective on the  
first day following deposit with such private carrier.  
Towne Center agrees to act in good faith in connection with  
requests for estoppel certificates from Duncan. Failure by  
Towne Center to respond within the 20-day period shall be  
deemed the equivalent of a statement that no defaults exist,  
that no amendments to this Declaration have been entered  
into and that this Declaration remains in full force and  
effect.

2.2 Notices. All notices, demands, statements and  
requests required or permitted to be given under this Decla-  
ration must be in writing and shall be deemed to have been  
properly given or served, whether received or not, by deposit-  
ing the same in the United States mails, addressed to Duncan  
or Towne Center, postage prepaid and registered or certified  
mail, return receipt requested, at the address set forth  
below.

To Towne Center: Denton Towne Center Joint Venture  
c/o Henry S. Miller Company  
2001 Bryan Tower, 30th Floor  
Dallas, Texas 75201  
Attention: Raymond J. Poche

with copy by regular mail to:

Thomas J. Terkel  
Jenkins & Gilchrist  
2200 First National Bank Bldg.  
Dallas, Texas 75202

To Duncan: Duncan Properties, Ltd.  
100 Park Avenue Bldg.  
Suite 1204  
Oklahoma City, Oklahoma 73102  
Attention: Neil Hill

with copy by regular mail to:

Mr. Glenn D. West  
Jackson, Walker, Winstead,  
Cantwell & Miller  
4300 First National Bank Bldg.  
Dallas, Texas 75202

All notices, demands and requests shall, except as herein after set forth, be effective upon being deposited in the United States mails in accordance with the provisions hereof. Rejection or other refusal to accept, or the inability to deliver because of changes of address of which no notice was given, shall be deemed to be receipt of the notice, demand or request. Any party shall have the right from time to time and at any time, upon at least ten (10) days' prior written notice thereof in accordance with the provisions hereof, to change its respective address and to specify any other address within the United States of America.

2.3 Binding Effect. The covenants contained in Article I of this Declaration shall constitute covenants running with, and shall be deemed appurtenant to, the Duncan Outlot Tract and all such covenants shall be binding upon the successors and assigns of Duncan who become owners of any portion of the Duncan Outlot Tract.

2.4 Right to Enforce. The benefits of the covenants contained in Article I shall inure to the benefit of Towne Center and the successors and assigns of Towne Center as the owner(s) of the Towne Center Tract. The remedies provided below in Section 2.6 may be pursued only by the person(s) or entity(ies) that, from time to time, own fee simple title to fifty-one percent (51%) or more of the land area contained within the Towne Center Tract. Nothing herein contained shall be deemed to be the creation of restrictions for the benefit of the general public, it being the intention and understanding of the parties hereto that this Declaration and the enforcement thereof shall be strictly limited to the persons(s) or entity(ies) specified in the immediately preceding sentence.

2.5 Amendments. Amendments to this Declaration shall be effective only when executed and acknowledged by the person(s) or entity(ies) that, from time to time, own fee simple title to fifty-one percent (51%) or more of the land area contained within the Duncan Outlot Tract and the person(s) or entity(ies) that, from time to time, own fee simple title to fifty-one percent (51%) or more of the land area contained within the Towne Center Tract, and when recorded in the deed records of Denton County, Texas.

2.6 Default. Upon violation by Duncan (the "Defaulting Party") of the covenants created in Article I above, the person(s) or entity(ies) entitled pursuant to Section 2.4 above to enforce the provisions of this Declaration (the "Enforcing Party", whether one or more) shall have the right to exercise one or more of the following remedies, at the sole election and option of the Enforcing Party:

(a) The Enforcing Party may obtain specific performance by injunction, temporary or permanent restraining order and/or any other legal and equitable remedies as may be available, in which event the Enforcing Party shall also be entitled to recover in such proceedings a full reimbursement for all injuries and damages sustained prior to the curing of the default plus all court costs and reasonable attorneys' fees incurred by the Enforcing Party.

(b) The Enforcing Party may demand that the Defaulting Party compensate it for damages sustained

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V. 1133 W. 556

and to be sustained as a result of the violation; and if the Enforcing Party proceeds to litigation on this demand, the Enforcing Party shall also be entitled to recover in such proceedings all court costs and reasonable attorneys' fees incurred by the Enforcing Party.

The pursuit of one or more remedies hereinabove prescribed shall not preclude the pursuit of any other remedy otherwise provided under the laws of the State of Texas, unless inherently inconsistent with the remedy being pursued. Notwithstanding the foregoing, Defaulting Party shall not be deemed to be in violation of the covenants created by Article I above until Defaulting Party shall have failed to cure such violation (or, in the case of a violation which cannot be cured within a thirty-day period, to commence and diligently work toward curing the violation) within thirty (30) days following the delivery of written notice (describing with particularity the nature of the violation and referring specifically to the provision of this Declaration claimed to be violated) by the Enforcing Party to Defaulting Party and to all mortgagees of Defaulting Party about whom the Enforcing Party has received prior written notice.

2.7 Sale by Duncan. Upon the bona fide assignment, conveyance, sale or other transfer by Duncan of its fee simple ownership to any portion or all of the Duncan Outlot Tract, Duncan shall be released from any liability arising out of a failure to observe the covenants contained in this Declaration arising subsequent to the effective date of such sale or transfer with respect to the portion sold or otherwise transferred (other than those obligations arising from any default by Duncan under this Declaration prior to such sale or transfer).

2.8 Approvals. Duncan may at any time request that Towne Center review plans and specifications for proposed buildings to be located on the Duncan Outlot Tract and advise Duncan of any violations of the covenants contained in Section 1.2 hereof (the "Restrictions") created by such plans. In such event, Duncan shall also deliver to Towne Center sufficient supporting data (such as surveys, detailed, scaled exterior elevations, specifications for materials to be used and other renderings as may be needed) to enable Towne Center to make an informed determination concerning whether the buildings as proposed comply with the Restrictions. Duncan shall be deemed to have submitted adequate information to Towne Center if Towne Center fails to request more detailed information within fifteen days of the initial delivery of such information. Any objections raised by Towne Center shall be in writing and shall specify the specific portion of the Restrictions which Towne Center believes will be violated by the proposed building and the particular nature of the violation. With respect to any actual violation which Towne Center fails to identify in writing to Duncan within thirty (30) days of the delivery of the initial information or, if later, within fifteen days of the delivery of all information requested by Towne Center, Towne Center shall be estopped thereafter to assert any such violation and shall be deemed to have waived any right or remedy to which it might otherwise be entitled. The above-described estoppel and waiver shall be effective only as to the specific buildings described in the plans submitted to Towne Center and then only if construction of such buildings is commenced within ninety days from the expiration of the period for objection, and shall not apply to any other buildings thereafter constructed, or any remodeling, alteration or reconstruction of any such buildings.

2.9 Six Month Waiver. If, within six months following the date on which a certificate of occupancy is issued for any building or any portion thereof constructed within the Duncan Outlot Tract, an affidavit identifying Duncan and the Duncan Outlot Tract and setting forth a specific description of the manner in which such building fails to conform with the provisions of Section 1.2 of this Declaration is not filed in the Deed Records of Denton County, Texas, then in such event, the building for which the certificate of occupancy was issued shall conclusively be deemed to comply with all such provisions. Towne Center shall thereafter be estopped to assert any violations of Section 1.2 of this Declaration with respect to such building; provided, however, that nothing contained herein shall limit or affect in any manner the Enforcing Party's right to pursue any remedies set forth in Section 2.6 hereof at any time prior to the expiration of such six (6) month period.

2.10 Duration. This Declaration and the restrictions contained herein shall terminate and be of no further force and effect upon the earlier of:

(i) February 1, 2020; or

(ii) the date on which a written termination agreement, executed and acknowledged by the parties required to amend this Declaration, is recorded in the real property records of Denton County, Texas.

EXECUTED, to be effective as of the date first above specified.

DUNCAN PROPERTIES, LTD.,  
an Oklahoma limited partnership

By: Neil Hill  
Neil Hill, General Partner

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

BEFORE ME, the undersigned authority, on this day personally appeared NEIL HILL, General Partner of Duncan Properties, Ltd., an Oklahoma limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes, consideration and in the capacity therein expressed, as the act and deed of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1<sup>st</sup> day of April, 1982.



Carol M. Cobb  
Notary Public in and for  
Dallas County, Texas

VOL 1136 567

Exhibit "A"  
Duncan Tract

v. 1136-568

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34°42'00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64°45'00" E a distance of 65.87 feet to a point for corner;

THENCE S 05°49'03" W a distance of 95.00 feet to a point for corner;

THENCE S 86°43'12" W a distance of 90.00 feet to a point for corner;

THENCE S 42°33'00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 42°00'59" W a distance of 90.60 feet to a point for corner;

N 34°42'00" W a distance of 226.60 feet to a point for corner;

N 01°41'20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.



Exhibit "B"

Towme Center Tract

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J. S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing the Easterly line of said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'06", a radius of 3740.00 feet, and an arc length of 182.88 feet to the POINT OF BEGINNING;

Continuing along said curve to the right having a central angle of 14°46'26", a radius of 3740.00 feet, and an arc length of 964.37 feet to a point of curvature to the right;

THENCE along said curve to the right in a Southeasterly direction and departing said Loop 288 and having a central angle of 08°31'31", a radius of 705.00 feet, an arc length of 104.90 feet, and a chord bearing of S 19°21'05" E to a point of reverse curve to the left;

THENCE along said curve to the left having a central angle of 11°00'18", a radius of 453.38 feet, and an arc length of 87.08 feet to a point for corner;

THENCE S 60°43'46" W a distance of 268.95 feet to a point for corner;

THENCE S 41°57'26" W a distance of 357.99 feet to a point for corner;

THENCE S 48°02'34" E a distance of 21.62 feet to a point for corner;

THENCE S 34°48'00" W a distance of 136.00 feet to a point for corner;

THENCE S 25°15'00" W a distance of 170.17 feet to a point for corner;

THENCE N 64°45'00" W a distance of 51.87 feet to a point for corner;

THENCE N 34°42'00" W a distance of 307.00 feet to the POINT OF BEGINNING and containing 4.9698 acres of land, more or less.

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0418 (1994) 0096703

LOOP 288

--- DENON DUNE CENTER TRACT ---

--- NINCAR MAIN TRACT ---



L.H. 35-E

FILED 9473  
1982 APR -8 PM 4:28

COUNTY CLERK, DENTON COUNTY, TEXAS  
BY *[Signature]*

SOUTHWEST LAND TITLE CO.  
P. O. BOX 18296  
DALLAS, TEXAS 75218

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FILED FOR RECORD 8<sup>th</sup> DAY OF April A.D. 1982, at 4:28 P.  
RECORDED 1216 DAY OF April A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: *[Signature]* DEPUTY.

DEED RECORDS

GENERAL WARRANTY DEED

VOL 1181 PAGE 556

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

§

§

35655

THAT DUNCAN PROPERTIES, LTD., a limited partnership ("Grantor"), for and in consideration of the sum of Ten Dollars (\$10.00) cash and other good and valuable consideration paid by HANDY DAN HOME IMPROVEMENT CENTERS, INC., a Delaware corporation ("Grantee"), whose mailing address is 7909 Fredericksburg Road, San Antonio, Texas 78229, the receipt and sufficiency of which is hereby acknowledged and confessed; and the further consideration of the assumption and agreement by Grantee to keep, pay and perform all of the covenants and obligations of Grantor contained in that certain Grant of Reciprocal Easements, dated March 31, 1962, recorded in Volume 1136, page 509, Deed Records, Denton County, Texas, as modified by that certain Modification of Grant of Reciprocal Easements, dated December 7, 1982, duly recorded in the Deed Records of Denton County, Texas (as modified being herein called the "Grant"), for the benefit of all parties owning portions of the real property covered by the Grant (the "Center Property"), insofar and only insofar as said covenants and obligations or any of them pertain to the Property (hereinafter defined), has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY, unto Grantee, that certain tract of land situated in Denton County, Texas, and being a part of the John McGowen Survey, Abstract No. 797, and the Daniel Lambert Survey, Abstract No. 784, more particularly described on Exhibit A attached hereto and incorporated herein by reference for all purposes, together with all and singular all rights and appurtenances thereto in anywise belonging (collectively the "Property").

And Grantor does hereby declare, for the sole and exclusive benefit of the Property and as a covenant running with the tracts of land described on Exhibit B attached hereto and made a part hereof (the "Retained Land"), that as long as Grantee or any affiliate of Grantee is the user of the Property or the major portion thereof, either as owner or lessee, no portion of the Retained Land or any real property adjacent to the Center Property now or hereafter owned or leased by Grantor shall be allowed to be used for a home center or a business that engages principally in the sale (at retail or wholesale) of lumber, building materials, hardware and tools, paint and decorating material, electrical supplies, plumbing supplies, nursery products, lawn and garden supplies or any combinations thereof. The sale of lamps, carpets, window shades, curtains and drapes, however, are not included in the foregoing restriction.

And as further consideration for this conveyance, Grantee does hereby declare, for the sole and exclusive benefit of (i) the first grantee under Grantor of that portion of the Retained Land described on Exhibit C attached hereto and made a part hereof (the "Parcel I Tract") or (ii) an affiliate of said first grantee as the user, owner or lessee of the Parcel I Tract, that no portion of the Property shall be used for the purpose of conducting thereon or for use as a food store or a food department or for the sale for off-premises consumption of groceries, meats, produce, dairy products, or bakery products, or any of them; provided, however, that nothing contained herein shall prevent any occupant of improvements on the Property from selling such products as an incidental part of its other and principal business so long as the total number of square feet devoted by such occupant to the display for sale of such product does not exceed five percent (5%) of the total number of square feet of building area used by such occupant, or five hundred (500) square feet (including, either such case, one-half (1/2) of the aisle space adjacent to any display area), whichever is smaller.

This conveyance is made subject to those certain exceptions (the "Permitted Exceptions"), set forth in Exhibit B attached hereto and incorporated herein by reference for all purposes, but only to the extent the same are valid and subsisting and affect the Property.

TO HAVE AND TO HOLD the Property unto Grantee, its successors, legal representatives and assigns forever, and Grantor does hereby bind itself, its legal representatives, successors and assigns to WARRANT and FOREVER DEFEND all and singular the Property unto Grantee, its successors, legal representatives and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, subject, however, to the Permitted Exceptions.

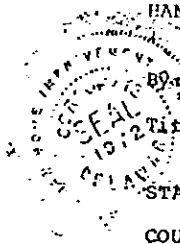
EXECUTED this 9<sup>th</sup> day of December, 1982, but effective for all purposes as of the 9<sup>th</sup> day of December, 1982.

DUNCAN PROPERTIES, LTD.

By: Neil Hill  
NEIL HILL, General Partner

AGREED TO AND ACCEPTED this  
7<sup>th</sup> day of December, 1982.

HANDY DAN HOME  
COVENENT CENTERS, INC.



Title: Frank W. Cherry

STATE OF TEXAS §  
COUNTY OF DALLAS §

LEGAL TMC

RTG \_\_\_\_\_

RE NP

FIN \_\_\_\_\_

This instrument was acknowledged before me on Dec 7, 1982, by NEIL HILL, general partner on behalf of DUNCAN PROPERTIES, LTD., a limited partnership.

My commission expires: 3/30/83

Notary Public - State of Texas

Printed Name of Notary: Louise F. [illegible]

STATE OF NEW YORK §  
COUNTY NEW YORK §  
BURROUGH OF New York §

This instrument was acknowledged before me on Dec 7, 1982, by F. W. Cherry, a Vice President of HANDY DAN HOME IMPROVEMENT CENTERS, INC., a Delaware corporation, on behalf of said corporation.

My commission expires: 3/30/83

Notary Public - State of New York

Printed Name of Notary: Olivia Connelley

NOTARY

COMMISSION EXPIRES 3/30/83

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797 and the Daniel Lambert Survey, Abstract No. 784, and being known as Block 1, Lot 2B of the Denton Shopping Center Addition, an addition to the City of Denton as shown on the replat thereof which is recorded in Cabinet C, Page 130, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the Northeasterly line of Interstate Highway No. 35-E (variable right-of-way), said point also being the Southwesterly corner of said Denton Shopping Center Addition;

THENCE along the said Northeasterly line of I.H. 35-E the following:

N 47°27'00" W a distance of 112.51 feet to a point for corner;

N 55°58'59" W a distance of 101.10 feet to a point for corner;

N 47°27'00" W a distance of 30.50 feet to a point for corner;

S 48°26'45" W a distance of 3.00 feet to a point for corner;

N 41°33'15" W a distance of 29.05 feet to a point for corner;

THENCE N 41°57'26" E departing said I.H. 35-E a distance of 95.00 feet to a point for corner;

THENCE N 48°02'34" W a distance of 85.00 feet to a point for corner;

THENCE N 05°49'03" E a distance of 132.75 feet to a point for corner;

THENCE N 86°43'12" E a distance of 12.61 feet to a point for corner;

THENCE N 05°49'03" E a distance of 95.00 feet to a point for corner;

THENCE N 64°45'00" W a distance of 14.00 feet to a point for corner;

THENCE N 25°15'00" E a distance of 30.17 feet to a point for corner;

THENCE S 64°45'00" E a distance of 25.00 feet to a point for corner;

THENCE S 48°02'34" E a distance of 236.91 feet to a point for corner;

THENCE N 41°57'26" E a distance of 25.50 feet to a point for corner;

THENCE S 48°02'34" E a distance of 244.00 feet to a point for corner;

THENCE S 41°57'26" W a distance of 333.26 feet to the POINT OF BEGINNING and containing 127,375 square feet or 2.924 acres of land, more or less.

1509Z



EXHIBIT B

"Retained Land"

BEING a tract of land situated in the John McGowen Survey, Abstract No. 797, and the Daniel Lambert Survey, Abstract No. 784, and being part of Lot 2 of the replat of Denton Shopping Center Addition as recorded in Cabinet C, Page 67, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at the Southwest Corner of Lot 1 of the said replat of Denton Shopping Center Addition;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 239.34 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W a distance of 244.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 25.50 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W a distance of 236.91 feet to a point for corner;

THENCE N  $64^{\circ} 45' 00''$  W a distance of 25.00 feet to a point for corner;

THENCE N  $25^{\circ} 15' 00''$  E a distance of 140.00 feet to a point for corner;

THENCE N  $34^{\circ} 48' 00''$  E a distance of 136.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 282.03 feet to a point for corner;

THENCE N  $41^{\circ} 57' 26''$  E a distance of 108.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 155.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 105.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 125.00 feet to the POINT OF BEGINNING AND containing 3.50 acres of land, more or less.

BEING a tract of land of the John McGowen Survey, Abstract No. 797, and being part of lot 2, of the replat of Denton Shopping Center Addition. An addition to the City of Denton as recorded in Cabinet C, page 67 Deed Record, Denton County, Texas and being more particularly described as follows:

BEGINNING with an iron rod set at the Northwest corner of Lot 2, and being in the Easterly line of Interstate Highway 35 (a variable width row) said point also being the Southwest corner of Lot 3.

THENCE N  $42^{\circ} 33' 00''$  E a distance of 145.00 feet to an iron rod set for corner;

THENCE N  $86^{\circ} 43' 12''$  E a distance of 77.39 feet to an iron rod set for corner;

THENCE S  $05^{\circ} 49' 03''$  W a distance of 132.75 feet to an iron rod set for corner;

THENCE S  $46^{\circ} 02' 34''$  E a distance of 85.00 feet to an iron rod set for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 95.00 feet to an iron rod set for corner in the said East line of Interstate Highway 35.

THENCE N  $47^{\circ} 27' 00''$  W at the East line of Interstate Highway 35, a distance of 219.30 feet to the POINT OF BEGINNING and containing 0.648 acres of land, more or less.

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EXHIBIT B

CONTINUED

VOL 1181 PAGE 560

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being all of Lot 3, Block 1 of the Denton Shopping Center Addition, an addition to the City of Denton, according to the replat thereof, recorded in the Map Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway 35-E the following:

N 42° 27' 28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02° 48' 06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34° 42' 00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64° 45' 00" E a distance of 65.87 feet to a point for corner;

THENCE S 05° 49' 03" W a distance of 95.00 feet to a point for corner;

THENCE S 86° 43' 12" W a distance of 90.00 feet to a point for corner;

THENCE S 42° 33' 00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway 35-E;

THENCE along the Easterly line of said Interstate Highway 35-E the following:

N 42° 00' 59" W a distance of 90.60 feet to a point for corner;

N 34° 42' 00" W a distance of 226.00 feet to a point for corner;

N 01° 41' 20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

EXHIBIT C

"Parcel I Tract"

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, and the Daniel Lambert Survey, Abstract No. 784, and being part of Lot 2 of the replat of Denton Shopping Center Addition as recorded in Cabinet C, Page 67, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at the Southwest Corner of Lot 1 of the said replat of Denton Shopping Center Addition;

- THENCE S 41° 57' 26" W a distance of 239.34 feet to a point for corner;
- THENCE N 48° 02' 34" W a distance of 244.00 feet to a point for corner;
- THENCE S 41° 57' 26" W a distance of 25.50 feet to a point for corner;
- THENCE N 48° 02' 34" W a distance of 236.91 feet to a point for corner;
- THENCE N 64° 45' 00" W a distance of 25.00 feet to a point for corner;
- THENCE N 25° 15' 00" E a distance of 140.00 feet to a point for corner;
- THENCE N 34° 48' 00" E a distance of 136.00 feet to a point for corner;
- THENCE S 48° 02' 34" E a distance of 282.03 feet to a point for corner;
- THENCE N 41° 57' 26" E a distance of 108.00 feet to a point for corner;
- THENCE S 48° 02' 34" E a distance of 155.00 feet to a point for corner;
- THENCE S 41° 57' 26" W a distance of 105.00 feet to a point for corner;
- THENCE S 48° 02' 34" E a distance of 125.00 feet to the POINT OF BEGINNING AND containing 3.50 acres of land, more or less.

EXHIBIT D

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1. Taxes for the year 1983 and subsequent years and subsequent assessments for prior years due to change in land usage or ownership.
2. All easements, restrictions, covenants and conditions shown on the replat of Denton Shopping Center Addition, an addition to the City of Denton, recorded in Cabinet C, page 130, Plat Records, Denton County, Texas.
3. Grant of Reciprocal Easements, dated March 31, 1982, recorded in Volume 1136, page 509, Deed Records, Denton County, Texas, as modified by Modification of Grant of Reciprocal Easements, dated December 7, 1982, duly recorded in the Deed Records of Denton County, Texas.
4. Agreement of Easements, Covenants & Restrictions, dated April 26, 1982, recorded in Volume 1141, page 974, Deed Records, Denton County, Texas, as amended and restated by Restatement of Agreement of Easements, Covenants & Restrictions, dated December 7, 1982, duly recorded in the Deed Records of Denton County, Texas.
5. Easements to Lone Star Gas Co., recorded in Volume 454, page 213, and Volume 454, page 214, Deed Records, Denton County, Texas, as the same were partially released and defined by instruments recorded in Volume 1006, page 134, and Volume 1005, page 776, Deed Records, Denton County, Texas.

1514Z

GRANTEE'S MAILING ADDRESS:  
HANDY DAN HOME IMPROVEMENT CENTERS, INC.  
Suite 134  
San Antonio, Texas 78229

35655

EX-115 10 26

RETURN TO: HANDY DAN HOME IMPROVEMENT CENTERS, INC.  
7909 Fredericksburg Road  
Suite 134  
San Antonio, Texas 78229

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FILED FOR RECORD 15th DAY OF December A.D. 1982, at 5:26 P.  
RECORDED 16th DAY OF December A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: [Signature] DEPUTY.

RESTATEMENT OF AGREEMENT OF  
EASEMENTS, COVENANTS AND RESTRICTIONS

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DEED RECORDS

35656

THIS RESTATEMENT OF AGREEMENT OF EASEMENTS, COVENANTS AND RESTRICTIONS is made and entered into as of the 7<sup>TH</sup> day of November, 1982, by and between DUNCAN PROPERTIES, LTD. ("Duncan"), WAL-MART PROPERTIES, INC. ("Wal-Mart") and HANDY DAN HOME IMPROVEMENT CENTERS, INC. ("Handy Dan").

W I T N E S S E T H:

WHEREAS, Duncan and Wal-Mart entered into an Agreement of Easements, Covenants and Restrictions dated April 26, 1982 and recorded in Volume 1141 at Page 974 et seq of the Deed Records of Denton County, Texas, pertaining to certain real property in the City of Denton, Denton County, Texas shown on Exhibit "A" attached hereto and described in Exhibit "B-1" attached hereto (the "Center Property"); and

WHEREAS, Wal-Mart is the owner of the land designated as Tract I on Exhibit "A" attached hereto and described in Exhibit "B-2"; Handy Dan is the owner of the land designated as Tract II, Parcel 2 on Exhibit "A" and described in Exhibit "B-3"; and Duncan is the owner of Tract II, Parcel 1, Tract II, Parcel 3 and Tract II, Parcel 4 shown on Exhibit "A" and described in Exhibits "B-4", "B-5" and "B-6"; and

WHEREAS, the parties hereto desire to amend and restate the aforesaid agreement.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THAT for and in consideration of the premises, easements, covenants, conditions and restrictions contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Building Areas. Any building or structure constructed on the Center Property (either as immediate development or future expansion) shall be built only in that area within the building lines or only to the maximum square footage as set forth on Exhibit "A" hereto (the "Building Areas"). That portion of the Center Property not within the Building Areas is hereinafter referred to as the Common Area. Any canopies, signs or ornaments which are attached to a building or structure situated within the Building Areas may encroach upon that space above the Common Area provided that such canopy, sign or ornament does not interfere with the unrestricted use of any portion of the Common Area as set forth in paragraph 5 hereof. A Building Area may be improved as Common Area, in which case it shall be deemed Common Area and subject to all the provisions of this Agreement pertaining to Common Area until it is improved with a building.

2. Use. Buildings located on the Center Property shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices, and retail stores. With the exception stated below, no cafeteria, restaurant, theater, flea market, car wash, bowling alley, billiard parlor, night club, any business which, as its primary business activity, serves alcoholic beverages for consumption on the premises of such business, or any place of recreation or amusement, shall be situated within any portion of the Center Property which is within a 300 foot radius of the front door of Wal-Mart's or Handy Dan's retail outlet. The parties acknowledge that the location of any such business within said area may inconvenience the customers and may adversely affect the business of Wal-Mart and Handy Dan. Notwithstanding the foregoing restriction, restaurants may be located on Tract II, Parcel 3, and restaurants and restaurant-theater and restaurant-entertainment businesses may be located on Tract II, Parcel 4. No adult book store, massage parlor, "head shop" or store devoted to the sale of sexual material and devices shall be allowed on the Center Property.

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### 3. Competing Business.

a. Duncan and Handy Dan agree that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of Tract I or the major portion thereof, either as owner or lessee, no portion of Tract II and no portion of any real property adjacent to the Center Property which may subsequently be acquired by Duncan shall be occupied by, or leased or conveyed to any other party for use as a discount department store similar to Wal-Mart's retail outlet and whose overall retail concept is based on a discounting price structure similar to the concept used by Wal-Mart.

b. Duncan and Handy Dan further agree that for the benefit of the first grantee from Duncan of Tract II, Parcel 1 or any affiliate of said grantee (as the user of Tract II, Parcel 1 as owner or lessee), no portion of Tract II, Parcels 2, 3 and 4 and no portion of any real property adjacent to the Center Property which may subsequently be acquired by Duncan shall be used for the purpose of conducting therein or for use as, a food store or a food department or for the sale for off-premises consumption of groceries, meats, produce, dairy products, or bakery products, or any of them; provided however, that nothing contained herein shall prevent any occupant of improvements on Parcels 2, 3 or 4 or real property adjoining the Center Property from selling such products as an incidental part of its other and principal business so long as the total number of square feet devoted by such occupant to the display for sale of such product does not exceed five percent (5%) of the total number of square feet of building area used by such occupant, or five hundred (500) square feet (including, either such case, one-half (1/2) of the aisle space adjacent to any display area), whichever is smaller.

c. Duncan agrees that as long as Handy Dan or any affiliate of Handy Dan is the user of Tract II, Parcel 2 or the major portion thereof, either as owner or lessee, no portion of Tract II, Parcels 1, 3 and 4 and no portion of any real property adjacent to the Center Property now or hereafter owned or leased by Duncan shall be allowed to be used for a home center or a business that engages principally in the sale (at retail or wholesale) of lumber, building materials, hardware and tools, paint and decorating material, electrical supplies, plumbing supplies, nursery products, lawn and garden supplies or any combinations thereof. The sale of lamps, carpets, window shades, curtains and drapes are not included in the foregoing restriction.

d. As used in this Agreement, the term "affiliate" means any person or entity controlling, controlled by or under common control with the party in question.

### 4. Buildings.

a. Design and Construction. All buildings constructed on the Center Property shall be designed so that the exterior of each such building shall be architecturally and aesthetically compatible to all other buildings located on the Center Property and so that any building wall footing shall not encroach from one Tract onto another Tract. The design and construction of any building on the Center Property shall be of high quality and shall be in accordance with sound architectural and engineering standards. Buildings on the following Tracts and Parcels shall not exceed the heights above finished grade set forth below:

Tract I	35 feet
Tract II, Parcels 1 and 2	35 feet
Tract II, Parcel 3	22 feet
Tract II, Parcel 4	22 feet

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b. Easements. In the event building wall footings encroach from one parcel of separately owned land ("tract") onto another, despite efforts to avoid such occurrence, the party onto whose tract the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

c. Fire Protection. Any building constructed on the Center Property which is not equipped with a sprinkler system shall be constructed and operated in a manner which will preserve the sprinkler rating on the buildings situated on the Center Property which are equipped with sprinkler systems as established by applicable City, County or State fire code authorities in the City of Denton, Denton County, Texas.

#### 5. Common Area.

a. Grant of Easements. Each of the parties hereto, as grantor, hereby grants to the other parties, as grantees, for their benefit and the benefit of their respective customers, invitees, licensees, tenants, and employees, a nonexclusive easement across the Common Area for roadways, walkways, ingress and egress to any and all public roadways, whether established or proposed, which run adjacent to the Center Property; parking of motor vehicles (except construction worker vehicles); loading and unloading of commercial and other vehicles (except for construction vehicles) and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of buildings situated on the Center Property.

#### b. Limitations on Use.

(i) Customers. The parties hereto shall use all reasonable efforts to ensure that no person shall be permitted to park on the Common Area except for employees and invitees of those businesses occupying a portion of the Center Property in compliance with the terms of this Agreement and those persons shopping or engaging in a lawful business transaction with such businesses.

(ii) Employees. Each party shall use reasonable efforts to ensure that all employees of businesses located in the Center Property park in those portions of the Common Area which the parties hereto from time to time mutually designate as employee parking areas.

(iii) General. The primary purpose of the Common Area is to provide for parking for the employees and invitees of those businesses occupying a portion of the Center Property in compliance with the terms of this Agreement and those persons shopping or engaging in a lawful business transaction with such businesses. Persons using the Common Area in accordance with the provisions of this subparagraph shall not be charged any fee for such use. However, no activity shall be conducted in the Common Area which will interfere with the aforementioned primary purpose of the Common Area.

(iv) Trash Containers. Each owner, on its own tract, may use or permit the use of the portion of the Common Area to the south of the Building Area on Tract I and Tract II, Parcels 1 and 2 for trash containers or compactors and outside storage of merchandise and equipment, provided that they do not interfere with normal access and unloading by delivery and other service vehicles between the Building Area and the southern boundary of the Center Property. Outdoor trash containers and compactors located on Tract II, Parcel 3 shall be screened so that they are not visible from Tract II, Parcels 1 and 2, and the access to the containers and compactors shall be from the north or west.

(v) Outdoor Sales. Outside sales and displays of merchandise shall be permitted to be conducted by any of the stores located on Tract I and Tract II, Parcels 1 and 2 upon their respective sidewalks and within 125 feet of their respective main entrances; provided, however, that the sales area is not located in the drive lanes parallel and adjacent to the front of the building on the respective tract.

(vi) Service Drive and Driving Lane. The Common Area designated "Service Drive" on Exhibit "A" shall be used exclusively for access, loading and unloading of service vehicles, except for underground utility lines, overhead utility lines that do not interfere with service vehicles and the trash containers described in Section 5.b.(iv). The Common Area designated "Driving Lane" on Exhibit "A" shall be used exclusively for passage of vehicles and pedestrians and for underground utility lines.

c. Utility and Service Easements. The parties hereto shall cooperate in the granting of appropriate and proper easements for the installation, use, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Common Area and those buildings to be erected upon the Building Areas. The parties will use their best efforts to effect the installation of such utility and service lines prior to the paving of the Common Area. However, in no event shall the lines, sewers, utilities and services which benefit one tract be installed within the Building Areas of any other tract without the express written consent of the owner of the other tract.

d. Water Flow. The parties agree to the drainage of surface water in the Center Property that results from (i) the grading and underground drainage system shown on Exhibit "C" attached hereto and (ii) the location of buildings within the Building Area (the "Permitted Drainage"); and the parties hereby grant each other an easement to allow the Permitted Drainage over their respective tracts. Each party agrees that it will not alter the grading within its tract or place improvements in the Common Area that will materially alter the Permitted Drainage or cause the owner of any other tract to be in violation of the surface drainage easement contained in the Grant of Reciprocal Easements between Duncan Properties, Ltd. and Denton Towne Center Joint Venture dated March 31, 1982 as recorded in Volume 1136, Page 509, Deed Records, Denton County, Texas.

e. Subdivision of Existing Tracts. Tracts created by subdivision of already existing tracts shall have, with respect to each other, all easements granted in this Section 5 that benefit the present Tracts and Parcels in which said newly created tracts are located.

#### 6. Development, Maintenance, and Taxes.

##### a. Development.

(i) "Parking Area" Ratio. Each owner agrees it shall maintain, in that portion of the Common Area situated on its respective tract, sufficient parking area to accommodate not fewer than five (5) cars spaces for each one thousand (1,000) square feet of building floor area constructed on its respective tract. If a restaurant is operated on Tract II, Parcel 3, then (i) the Common Area on said Parcel shall contain no fewer car spaces than the seating capacity of the restaurant divided by 3 and (ii) the principal occupant of Tract II, Parcel 2 may require all or some of the restaurant employees to park their cars on designated portions of Tract II, Parcel 2.

(ii) Design of Common Area. The design and arrangement of the Common Area shall not be changed in a manner inconsistent with the terms of this Agreement without the express written consent of the parties entitled to amend this Agreement pursuant to Article 17, except that the location and use of the Service Drive and Driving Lane shown on Exhibit "A" shall not be changed without the express written consent of all Principal Parties (as defined in Paragraph 17).

(iii) Coordination of Common Area Construction-Service Drive. Wal-Mart acknowledges that at the time it opened for business to the general public on November 16, 1982 the Service Drive located as set forth on Exhibit "A" was completed in Tract I only. As Wal-Mart gave Duncan no written notice of its scheduled opening date, Wal-Mart has

waived its right to complete that portion of the service drive located on Tract II, Parcels 1 & 2 and does hereby waive any rights it may have had to complete same. Nevertheless, it is agreed by all parties that the portion of the Service Drive on Tract II Parcels 1 & 2 will be constructed on the respective parcels by the time the buildings on said Parcels are completed.

(iv) Coordination of Common Area Construction-Tract II, Parcels 1 & 2. In addition to Subparagraph 6.a.(iii), each of the owners of Tract II, Parcel 1 and Tract II, Parcel 2 agree with the other to complete construction on its Parcel of the work described below within forty (40) days after it receives written notice from the other owner that an occupant intends to open a place of business on the latter's Parcel within seventy-five (75) days. The work to be performed by each owner is the paving of the Service Drive and the parking area lying north of the sidewalk line and within thirty-five (35) feet of the boundary between Tract II, Parcels 1 and 2. The specifications for the work to be performed on each owner's Parcel are set forth in Exhibit "D" attached hereto. In the event that either owner should fail to fulfill its obligations under this paragraph 6.a.(iv) (the "defaulting party"), then the other owner (the "non-defaulting party") shall have the right to complete such work on the defaulting party's Parcel pursuant to a bid approved by the defaulting party, said approval not to be unreasonably withheld and to be deemed given if not refused within ten (10) days after it is submitted. In connection therewith the non-defaulting party shall obtain a waiver from its contractors and sub-contractors of any and all liens which could be asserted against the defaulting party's tract. All costs and expenses incurred in connection with any such construction shall be payable by the defaulting party to the non-defaulting party upon demand after the issuance of a certificate of occupancy for the building on the defaulting owner's Parcel. In order to secure such sums the non-defaulting party shall have a lien on the Parcel owned by the defaulting party, which shall be superior to all other liens except liens securing lawful governmental assessments and bona fide first lien mortgages or first lien deeds of trust, and which shall be evidenced by the non-defaulting party preparing, executing, acknowledging and recording in the appropriate records in the office of the County Clerk of Denton County, Texas, a notice of such lien setting forth the principal amount due, the name of the defaulting party and a description of the tract owned by the defaulting party. After recordation of such notice the lien may be foreclosed in like manner as a mortgage on real property subsequent to the recording of a notice or claim thereof. The defaulting party shall be responsible for and shall pay all costs and expenses incurred by the non-defaulting party in enforcing any of the foregoing rights and remedies (including attorneys' fees and court costs).

(v) Conduct of Construction. All construction work done within the Center Property and the right of way adjoining the Center Property shall be conducted so as not to unreasonably interfere with permitted uses (including construction activity) and businesses conducted in the Center Property. The Service Drive designated on Exhibit "A" shall not be obstructed except temporarily for necessary construction work or unloading, provided that during the period the Service Drive is so temporarily obstructed the dock area of the building on Tract I must be served by an unobstructed truck route utilizing portions of the Service Drive connected to the parking area on Tracts I and II. Notwithstanding Section 6.b.(i), an owner of a tract upon which construction is taking place shall repair all damage to the Building and Common Areas on other tracts caused by its construction work.

b. Maintenance.

(i) Standards. Following completion of the improvements on the Common Area, each of the parties respectively shall maintain that portion of the Common Area situated on its tract in good condition and repair. Such maintenance shall include, without limitation, the following:

(A) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(B) Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(C) Installing, repairing, and replacing any and all necessary directional signs, markers and lines;

(D) Operating, repairing and replacing, where necessary, such artificial lighting facilities as shall reasonably be required;

(E) Maintaining all perimeter walls in a good condition and state of repair; and

(F) Maintaining all landscaped areas and making such replacements of shrubs and other landscaping as is reasonably necessary.

(ii) Expenses. Each of the parties hereto shall pay the cost of maintaining their respective tracts, except that owners and tenants of tracts that negligently or wilfully cause damage to other tracts shall reimburse its owner for the cost of the repair.

(iii) Maintenance Service. The parties hereto may agree to employ an independent maintenance service to maintain the Common Area in the manner above outlined. The expenses incurred in connection with the hiring of such maintenance service shall be borne by the parties hereto in the same proportion that the number of square feet contained in their respective tracts is to the total number of square feet in the Center Property.

c. Prior to Development. Before land in the Center Property is improved, its owner shall maintain the land in compliance with all laws and governmental rules and regulations and shall not permit a nuisance affecting any other part of the Center Property to exist on its land. Without limiting the foregoing, the owner shall keep grass and underbrush cut, remove debris, prevent soil from washing into improved portions of the Center Property and maintain in an attractive condition any fences or barriers on its Building Area that is not intended for use solely during construction.

d. Restoration. A building in the Center Property damaged by casualty or condemnation does not have to be restored, but its owner shall within ninety (90) days after the damage occurs remove all debris resulting therefrom and within a reasonable time thereafter either (i) repair or restore the building, (ii) replace the building with a new improvement that complies with this Agreement or (iii) demolish the building, remove the debris, smooth the ground surface and either pave or grass over the site.

e. Taxes. Each of the parties hereto agrees to pay or cause to be paid, before delinquent, directly to the appropriate taxing authority those assessments which are levied against that portion of the Center Property owned by it.

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7. Signs.

a. No sign shall be located on the Center Property, except as allowed in this Article. All signs located on the Center Property shall be related to business(es) conducted on the Center Property. 774 DMC

b. The two (2) signs designated as Center I.D. signs on said Exhibit "A" and located on Tract I and Tract II, Parcel 4, respectively, shall be composed of a pylon structure and not more than three individual box signs. None of the boxes shall have flashing lights or moving visual or mechanical elements. The top box of each such Center I.D. sign shall be designated for use by Wal-Mart. The second box from the top of each such Center I.D. sign shall be designated for use by the principal user of Tract II, Parcel 1. The third box from the top of the easterly Center I.D. sign shall be designated for use by Handy Dan. The remaining box on the westerly Center I.D. sign, if used, shall be used by the business designated by Wal-Mart and the user of Tract II, Parcel 1. The designated user of each box shall bear an equal share of the cost of constructing and maintaining the Center I.D. pylon sign structures, said share being proportional to the number of boxes on the pylon. The cost of installing, equipping, maintaining, illuminating and metering each of the boxes used by owners or tenants utilizing such boxes shall be borne completely by such tenant or owner.

c. The sign situated on Tract II, Parcel 2 and designated "Handy Dan Sign" on Exhibit "A" hereto shall be the sole responsibility of Handy Dan and Handy Dan shall have the right to erect and use or allow the use of such sign.

d. The two signs situated on Tract II, Parcel 4, each designated "Duncan Sign Easement" on Exhibit "A", shall be the sole responsibility of the principal user of Tract II, Parcel 1, and said user shall have the right to erect and use or allow the use of such sign.

e. Duncan shall have the right to erect and to apportion the use of four (4) additional signs on Tract II, Parcel 4 (other than the Center I.D. sign and the two Duncan Sign Easements) and one sign on Tract II, Parcel 3, provided that the sign on Tract II, Parcel 3 does not exceed thirty-five (35) feet in height and does not materially impede the visibility of the sign described in subparagraph 7.c. from Interstate Highway 35.

8. Indemnification/Insurance.

a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim, or judgment arising from personal injury, death, or property damage occurring on or in any way connected with the indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee.

b. Insurance.

(i) Each owner of a tract at its sole cost and expense shall procure and maintain or cause to be procured and maintained in full force and effect throughout the term of this Agreement policies of general public liability insurance and of property damage insurance. Such policies shall provide coverage against all claims, demands or actions for personal injury, death or property damage occurring upon or in connection with that portion of the Center Property owned by such party within limits of not less than \$500,000.00 for injury or death of a single person, within limits of not less than \$1,000,000.00 for any one occurrence, and within limits of not less than \$500,000.00 for property damage. Such policies shall name as additional insureds all Principal Parties (as defined in Paragraph 17) of which the owner has knowledge and shall provide that it may not be cancelled as to any insured without at least ten (10) days advance written notice to the insured. Each owner shall provide the Principal Parties named as additional insureds with



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certificates of such insurance from time to time to evidence that such insurance is in force. Such insurance may be written by an additional premises endorsement on any master policy of insurance carried by either of the parties hereto.

(ii) During the term of this Agreement, each owner shall insure or cause to be insured all improvements located on its tract against loss or damage by fire and any other perils or events which may be covered under the broad form of Uniform Extended Coverage Clause in effect from time to time in the State of Texas. Said insurance shall be for the full replacement cost of such improvements.

(iii) Except for damage covered by Subparagraph 6.b.(ii), each owner and occupant of real property within the Center Property hereby releases, on behalf of itself and its insurers, each other owner and occupant of real property within the Center Property from any and all claims for damage to real and personal property, business interruption, loss of profits and loss of rent or payment of rent for untenable premises, regardless of whether such losses are insurable or the releasing party is insured or is able to collect on its insurance claims. If the releasing party is unable to obtain insurance by reason of the aforementioned release, then the release (i) shall be limited to the releasing party and apply only to the uninsured and uncollectible portions of its loss, and (ii) shall not apply to its insurer or bar a subrogation action by the insurer to recover the amount it has paid. In that instance, however, the releasing party shall indemnify and hold harmless each other owner and occupant of real property within the Center Property from all loss, damage and expense (including attorneys' fees) in connection with the claims mentioned in the first sentence of this paragraph made by the releasing party's insurer.

(iv) Notwithstanding anything to the contrary contained in this Paragraph 8, as long as the net worth of Wal-Mart or its parent company, Wal-Mart Stores, Inc., shall exceed Fifty Million Dollars (\$50,000,000.00), and as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of Tract I, either as owner or lessee, then Wal-Mart shall have the right to assume the financial risk, independently and without obtaining insurance coverage in connection therewith, for any property located on Tract I up to an amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00) per claim. Notwithstanding anything to the contrary contained in this Paragraph 8, as long as the net worth of Handy Dan or its parent company, Grace Retail Corporation, shall exceed Fifty Million Dollars (\$50,000,000.00), and as long as Handy Dan, or any affiliate of Handy Dan, is the user of Tract II, Parcel 2, either as owner or lessee, then Handy Dan shall have the right to assume the financial risk, independently and without obtaining insurance coverage in connection therewith, for any property located on Tract II, Parcel 2 up to an amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00) per claim. Notwithstanding anything to the contrary contained in this Paragraph 8, as long as the net worth of a company operating a supermarket on Tract II, Parcel 1 or its parent company, shall exceed Fifty Million Dollars (\$50,000,000.00), then the company operating the supermarket shall have the right to assume the financial risk, independently and without obtaining insurance coverage in connection therewith, for any property located on Tract II, Parcel 1 up to an amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00) per claim.

9. Eminent Domain.

a. Owner's Right to Award. Nothing herein shall be construed to (i) give either party any interest in and to any award or payment made to another party in connection with any exercise of eminent domain (or transfer in lieu thereof) affecting the other party's tract, or (ii) give the public or any government any interest in and to said tract. In the event of any exercise of eminent domain (or transfer of any part of the Center Property in lieu thereof) the award attributable to the land and improvements of such tract shall be payable only to the owner thereof, and no claim therefor shall be made by the owner of any other tract.

b. Collateral Claims. An owner of a tract may file collateral claims with any condemning authority in connection with any losses sustained by it in connection with the taking of any other tract.

c. Tenant's Claim. Nothing in this Paragraph 9 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between a tenant and owner for all or a portion of any such award or payment.

d. Restoration of Common Area. The party owning any portion of the Common Area so condemned or taken shall use its best efforts to promptly repair and restore the remaining portion of the Common Area owned by such party to the condition existing immediately prior to such condemnation or transfer. However, in connection with such restoration or repair, no party shall be required to expend an amount which exceeds the amount such party received for such condemnation or taking.

10. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon a tract, such lien shall expressly be subordinate and inferior to any lien securing lawful governmental assessments and bona fide mortgages or first priority deeds of trust which encumber such tract prior to the attachment of said lien. Except as set forth in the preceding sentence, the holder of a first lien on any portion of the Center Property and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

11. Release from Liability. Any person now owning or hereafter acquiring fee or leasehold title to any portion of the Center Property shall be bound by this Agreement only as to that portion of the Center Property owned or leased by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of a portion of the Center Property, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits and servitudes upon the Center Property which run with the land.

12. Breach. In the event of breach or threatened breach of this Agreement, a party entitled to enforce the breached obligation (as described in Paragraph 18) shall be entitled to any relief available under the laws of the State of Texas, ~~and the right to enjoin a violation or threatened violation of this Agreement without regard to the sufficiency of legal damages or any other remedy.~~ The unsuccessful party in any action shall pay to the prevailing party all reasonable attorneys' fees incurred in connection with the prosecution or defense of such suit. 7/12 DMC

13. Right to Cure. Should any owner or user of a portion of Tract II fail to timely perform any of its obligations hereunder and thereafter fail to cure such failure within thirty (30) days of its receipt of a demand for performance made by another owner or user of a portion of Tract II that is entitled to enforce the obligation pursuant to Paragraph 18 (or, if the default cannot be reasonably cured within thirty days, the defaulting party does not commence to cure such default promptly and thereafter diligently pursue the curing of the default to completion), the party giving such notice shall, in addition to any other remedy provided at law or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of the defaulting party. The thirty (30) day period to cure the default may be reduced in the event of an emergency by the party giving notice stating the nature of the emergency and the shorter time to cure the default in its notice. The defaulting party shall reimburse the party curing the default for the cost of performing the defaulted obligation within fifteen (15) days after receipt of billing therefor and proof of payment thereof. In the event the defaulting party does not reimburse the curing party within such fifteen (15) day period, the amount due shall bear interest at the rate of three percent (3%) per annum over the stated prime interest rate of the largest commercial bank (asset size) in Dallas, Texas, from the date of billing until paid and the curing party shall have: (i) the right to exercise any and all rights which such curing party might have at law to collect the same, and (ii) have a lien on the tract owned by the defaulting party to the extent of the amount paid by the curing party but

not reimbursed by the defaulting party. Such lien may be filed for record by the curing party as a claim against the defaulting party, in the manner described in Subparagraph 6(a)(iv).

The lien so claimed shall attach from the date of recordation in the amount claimed by the party curing the default and it may be enforced and foreclosed in any manner allowed by law, including but not limited to suits to foreclose a mortgage or mechanic's lien under the applicable law of the State of Texas.

14. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, lessees, successors and assigns. As used herein, the singular number includes the plural and the masculine gender includes the feminine and neuter.

15. Adjoining Shopping Center Restrictions. The parties hereto each acknowledge that Denton Towne Center Joint Venture as the owner of real property situated adjacent to the Center Property (the "Towne Center Tract"), made, executed and delivered that certain Declaration of Restrictive Covenants (the "Declaration") dated March 31, 1982, recorded in Volume 1136, page 544, Deed Records, Denton County, Texas, which benefits the Center Property, but for which the benefits and the enforcement thereof were limited to the owners of Tract 11, Parcel 4. Duncan, for itself, its successors, legal representatives and assigns, and as a covenant running with Tract 11, Parcel 4, hereby covenants and agrees that the Declaration shall not be altered, modified, amended or affirmatively waived in any manner without the prior written consent of all of the owners of the Center Property.

16. Prior Easements and Restrictions. The parties each acknowledge that this Agreement is made and accepted subject to certain prior easements and restrictions of record in Denton County, Texas, including (i) that certain Declaration of Restrictive Covenants, dated March 31, 1982, recorded in Volume 1136, page 561, Deed Records, Denton County, Texas, burdening Tract 11, Parcel 4 for the benefit of the Towne Center Tract, and (ii) that certain Grant of Reciprocal Easements, dated March 31, 1982, recorded in Volume 1136, page 509, Deed Records, Denton County, Texas, covering the Center Property and the Towne Center Tract. To the extent any term or covenant hereof conflicts with a term or covenant set forth in such prior easements and restrictions, the terms of such prior easements and restrictions shall control.

17. Cancellation, Extension and Modification. This Agreement may be cancelled or extended only by all the owners of the Center Property, the Principal Parties (hereinafter defined) and all holders of first mortgages on the Center Property. The provisions of this Agreement may be amended by the Principal Parties owning or using eighty-five percent (85%) of the area of the Center Property, provided, however, that (i) no change will be made in the improvement or layout of a portion of a Building Area or Common Area without the consent of its owner and its tenant if the tenant is a Principal Party and (ii) the Service Drive and Driving Lane shall not be changed without consent of all Principal Parties. Consent, as referred to in this Paragraph, shall be evidenced only by execution of a formal, written amendment of the document in question. The provision of the Grant of Easements described in Subparagraph 16(ii) shall not be amended by the owners of the Center Property without the prior written consent of the Principal Parties owning or using eighty-five percent (85%) of the area of the Center Property. "Principal Party" means (i) Wal-Mart, Handy Dan, Duncan and their respective affiliates, (ii) a tenant of the entire Building Area on Tract 1, Tract 11, Parcel 1, or Tract 11, Parcel 2, and (iii) the owner of Tract 1 or Parcel 1, 2, 3 or 4 of Tract 11, if said Tract or Parcel is not used by another Principal Party. Any purchaser, lender, lessee, assignee, grantee, sublessee or any other party acquiring any interest in and to the Center Property shall appoint and be deemed to

7H  
OMC

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have appointed the Principal Party of the property in which it has an interest as such party's attorney-in-fact for the purpose of negotiating and entering into any modifications of this Agreement in connection with such party's interest, except for changing the duration of this Agreement.

18. Enforcement. The covenants and restrictions in this Agreement may be enforced only by a record owner of land within the Center Property and a Principal Party. Any occupant of the Center Property may enforce its right to use an easement granted herein for its benefit but may not enforce any limitations or obligations imposed upon other parties with respect to such easements.

19. Estoppel Certificate. Each Principal Party and owner of property within the Center Property, upon written request made by any other owner or Principal Party ("Requesting Party") from time to time, (but not more frequently than three (3) times during any calendar year), shall issue to a prospective mortgagee or successor Principal Party of the Requesting Party, an estoppel certificate stating:

- (i) whether the party to whom the request has been directed knows of any default by the Requesting Party under this Agreement, and if there are known defaults, specifying the nature thereof;
- (ii) whether to its knowledge this Agreement has been modified or amended in any way (and if it has, then stating the nature thereof);
- (iii) that to the knowledge of the party to whom the request has been directed, this Agreement is in full force and effect.

20. Non-Extinguishment. This Agreement shall not be extinguished, so long as Duncan, Wal-Mart or Handy Dan, or any affiliate of Wal-Mart or Handy Dan is the owner or lessee of any portion of the Center Property, even though the underlying fee ownership of the Center Property may be vested in a single person or entity.

21. Duration. Unless otherwise cancelled or terminated, this Agreement and all the easements, rights and obligations contained herein shall automatically terminate and be of no further force and effect after seventy-five (75) years from and after the date hereof.

22. Headings. The headings used in this Agreement are for convenience and reference only and shall not be deemed to expand or limit the meaning of this Agreement.

23. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements whether oral or written.

24. Notice. All notices, demands and requests which may be given or which are required to be given by any party to other parties shall be in writing and shall be sent by United States certified or registered mail, postage prepaid, return receipt requested, addressed to Wal-Mart, Handy Dan or Duncan, respectively, as follows:

WAL-MART:

Wal-Mart Properties, Inc.  
P.O. Box 116  
Bentonville, Ark. 72712  
Attention: Real Estate Dept.

HANDY DAN:

Handy Dan Home Improvement Centers  
7909 Fredericksburg Road  
San Antonio, Texas 78229  
Attention: Director of Real Estate

DUNCAN:

Duncan Properties, Ltd.  
100 Park Avenue Bldg.  
Suite 1204  
Oklahoma City, Okla. 73102  
Attention: Neil Hill

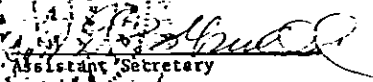
with a copy to

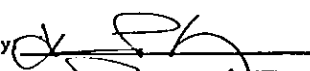
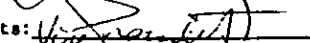
W. R. Grace & Co.  
1114 Avenue of the Americas  
New York, New York 10036  
Attention: Senior Vice President  
of Real Estate - Retail Group

or at such other place as the recipient may from time to time designate in a written notice pursuant to the terms hereof. Notices, demands and requests which shall be served upon the recipient in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be delivered, regardless of whether it is refused or, if delivered on a business day, any person is available to accept it.

EXECUTED as of the day and year first above written.

WAL-MART PROPERTIES, INC.

(Seal)  
ATTEST:  
  
Assistant Secretary

By:   
Its: 

LTD.  
DUNCAN PROPERTIES, INC.

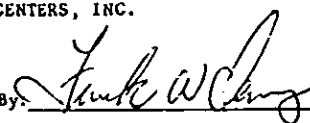
By: Neil Hill  
Its: General Partner  
Neil Hill  
General Partner

(Seal)

ATTEST:

  
Assistant Secretary

HANDY DAN HOME IMPROVEMENT  
CENTERS, INC.

By:   
Its: Senior Vice Pres.  
LEGAL: OK  
RTG: Twist  
RE: Y  
FIN: \_\_\_\_\_

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THE STATE OF ARKANSAS  
COUNTY OF BENTON

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This instrument was acknowledged before me on December 7, 1982,  
by Thomas P. Day as Vice President of Wal-Mart  
Properties, Inc., a Delaware corporation, on behalf of said corporation.

Thomas P. Day  
Notary Public in and for  
Benton County, Arkansas

My commission expires: 1/15/83

Delaware  
STATE OF OKLAHOMA  
Benton  
COUNTY OF OKLAHOMA

This instrument was acknowledged before me on December 7, 1982,  
by Neil Hill, General Partner, on behalf of Duncan Properties, Ltd., a  
limited partnership.

Neil Hill  
Notary Public in and for  
the State of Colorado  
Benton County, Oklahoma

My commission expires: 1/15/83

STATE OF NEW YORK  
COUNTY OF NEW YORK

This instrument was acknowledged before me on December 6, 1982,  
by Frank W. Denny, Vice President, on behalf of Handy Dan  
Home Improvement Centers, Inc., a Delaware corporation.

Michael S. Sparrows  
Notary Public in and for  
the State of New York

My commission expires: March 30, 1983

MICHAEL S. SPARROWS  
Notary Public, State of New York  
No. 00421211  
Residing in Essex County  
Commission Expires March 30, 1983



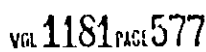


EXHIBIT B-1

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Being the aggregate of:

TRACT 1 (MAIN TRACT):

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J.S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E ( a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway No. 35-E and departing the Southerly line of said Loop 288 the following:

S 01° 41' 20" E a distance of 70.71 feet to a point;  
S 34° 42' 00" E a distance of 226.60 feet to a point;  
S 42° 00' 59" E a distance of 90.60 feet to the POINT OF BEGINNING:

THENCE N 42° 33' 00" E departing the aforementioned I.H. 35-E a distance of 145.00 feet to a point for corner;

THENCE N 86° 43' 12" E a distance of 90.00 feet to a point for corner;

THENCE N 05° 49' 03" E a distance of 95.00 feet to a point for corner;

THENCE N 64° 45' 00" W a distance of 14.00 feet to a point for corner;

THENCE N 25° 15' 00" E a distance of 170.17 feet to a point for corner;

THENCE N 34° 48' 00" E a distance of 136.00 feet to a point for corner;

THENCE N 48° 02' 34" W a distance of 21.62 feet to a point for corner;

THENCE N 41° 57' 26" E a distance of 357.99 feet to a point for corner;

THENCE N 60° 43' 46" E a distance of 268.95 feet to a point of curvature to the left;

THENCE along said curve to the left in a Southeasterly direction having a central angle of 22° 31' 07", a radius of 453.38 feet, an arc length of 178.19 feet, and a chord bearing of N 37° 21' 11" W to the point of tangency;

THENCE S 48° 36' 44" E a distance of 323.16 feet to a point for corner;

THENCE S 41° 57' 26" W a distance of 1152.60 feet to a point situated in the Easterly line of said I.H. 35-E;

THENCE along the Northeasterly line of said Interstate Highway No. 35-E the following:

N 47° 27' 00" W a distance of 112.51 feet to a point for corner;

N 55° 58' 59" W a distance of 101.10 feet to a point for corner;

N 47° 27' 00" W a distance of 30.50 feet to a point for corner;

S 48° 26' 45" W a distance of 3.00 feet to a point for corner;

N 41° 33' 15" W a distance of 29.05 feet to a point for corner;

N 47° 27' 00" W a distance of 219.30 feet to the POINT OF BEGINNING and containing 14.3336 acres of land, more or less.

AND

TRACT 2 (OUT LOT):

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 ( a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway No. 35-E the following:

N 42° 27' 28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02° 48' 06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34° 42' 00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64° 45' 00" E a distance of 65.87 feet to a point for corner;

THENCE S 05° 49' 03" W a distance of 95.00 feet to a point for corner;

THENCE S 86° 43' 12" W a distance of 90.00 feet to a point for corner;

THENCE S 42° 33' 00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 42° 00' 59" W a distance of 90.60 feet to a point for corner;

N 34° 42' 00" W a distance of 226.60 feet to a point for corner;

N 01° 41' 20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

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## EXHIBIT B-2

BEING a tract of land situated in Denton County in the J.S. Taft Survey, Abstract No. 1256, the John McGowan Survey, Abstract No. 797 and the Daniel Lambert Survey, Abstract No. 784 and also being all of Lot 1, Block 1 of the Denton Shopping Center Addition, an addition to the City of Denton, according to the replat thereof, recorded in the Map Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point in the common line between the said John McGowan Survey and the said Daniel Lambert Survey, 124.00 feet south of the Northwest corner of the Daniel Lambert Survey;

THENCE N  $60^{\circ} 43' 46''$  E, a distance of 268.95 feet to a point for corner, said point also being the beginning of a curve to the left having a radius of 453.38 feet and central angle of  $22^{\circ} 31' 07''$ ;

THENCE along said curve, an arc distance of 178.19 feet to a point for corner;

THENCE S  $48^{\circ} 36' 44''$  E, a distance of 323.16 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W, a distance of 580.00 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W, a distance of 125.00 feet to a point for corner;

THENCE N  $41^{\circ} 57' 26''$  E, a distance of 105.00 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W, a distance of 155.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W, a distance of 108.00 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W, a distance of 303.66 feet to a point for corner;

THENCE N  $41^{\circ} 57' 26''$  E, a distance of 357.99 feet to the POINT OF BEGINNING and containing 7.242 acres of land, more or less.

## EXHIBIT B-3

BEING a tract of land situated in the John McGowen Survey, Abstract No. 797 and the Daniel Lambert Survey, Abstract No. 784, and being part of Lot 2 in Block 1 of the replat of Denton Shopping Center Addition, an addition to the City of Denton as recorded in Cabinet C, Page 19, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the Northeasterly line of Interstate Highway No. 35-E (variable right of way), said point also being the Southwesterly corner of said Denton Shopping Center Addition;

THENCE along the said Northeasterly line of I.H. 35-E the following:  
N 47° 27' 00" W a distance of 112.51 feet to a point for corner;

N 55° 58' 59" W a distance of 101.10 feet to a point for corner;

N 47° 27' 00" W a distance of 30.50 feet to a point for corner;

S 48° 26' 45" W a distance of 3.00 feet to a point for corner;

N 41° 33' 15" W a distance of 29.05 feet to a point for corner;

THENCE N 41° 57' 26" E departing said I.H. 35-E a distance of 95.00 feet to a point for corner;

THENCE N 48° 02' 34" W a distance of 85.00 feet to a point for corner;

THENCE N 05° 49' 03" E a distance of 132.75 feet to a point for corner;

THENCE N 86° 43' 12" E a distance of 12.61 feet to a point for corner;

THENCE N 05° 49' 03" E a distance of 95.00 feet to a point for corner;

THENCE N 64° 45' 00" W a distance of 14.00 feet to a point for corner;

THENCE N 25° 15' 00" E a distance of 30.17 feet to a point for corner;

THENCE S 64° 45' 00" E a distance of 25.00 feet to a point for corner;

THENCE S 48° 02' 34" E a distance of 236.91 feet to a point for corner;

THENCE N 41° 57' 26" E a distance of 25.50 feet to a point for corner;

THENCE S 48° 02' 34" E a distance of 244.00 feet to a point for corner;

THENCE S 41° 57' 26" W a distance of 333.26 feet to the POINT OF BEGINNING and containing 127,375 square feet or 2.924 acres of land, more or less.

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EXHIBIT B-4

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BEING a tract of land situated in the John McGowen Survey, Abstract No. 797, and the Daniel Lambert Survey, Abstract No. 784, and being part of Lot 2 of the replat of Denton Shopping Center Addition as recorded in Cabinet C, Page 67, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at the Southwest Corner of Lot 1 of the said replat of Denton Shopping Center Addition;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 239.34 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W a distance of 244.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 25.50 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W a distance of 236.91 feet to a point for corner;

THENCE N  $64^{\circ} 45' 00''$  W a distance of 25.00 feet to a point for corner;

THENCE N  $25^{\circ} 15' 00''$  E a distance of 140.00 feet to a point for corner;

THENCE N  $34^{\circ} 48' 00''$  E a distance of 136.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 282.03 feet to a point for corner;

THENCE N  $41^{\circ} 57' 26''$  E a distance of 108.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 155.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 105.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 125.00 feet to the POINT OF BEGINNING AND containing 3.50 acres of land, more or less.



EXHIBIT B-5

BEING a tract of land of the John McGowen Survey, Abstract No. 797, and being part of lot 2, of the replat of Denton Shopping Center Addition. An addition to the City of Denton as recorded in Cabinet C, page 67 Deed Record, Denton County, Texas and being more particularly described as follows:

BEGINNING with an iron rod set at the Northwest corner of Lot 2, and being in the Easterly line of Interstate Highway 35 (a variable width row) said point also being the Southwest corner of Lot 3.

THENCE N  $42^{\circ} 33' 00''$  E a distance of 145.00 feet to an iron rod set for corner;

THENCE N  $86^{\circ} 43' 12''$  E a distance of 77.39 feet to an iron rod set for corner;

THENCE S  $05^{\circ} 49' 03''$  W a distance of 132.75 feet to an iron rod set for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 85.00 feet to an iron rod set for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 95.00 feet to an iron rod set for corner in the said East line of Interstate Highway 35.

THENCE N  $47^{\circ} 27' 00''$  W at the East line of Interstate Highway 35, a distance of 219.30 feet to the POINT OF BEGINNING and containing 0.648 acres of land, more or less.

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BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being all of Lot 3, Block 1 of the Denton Shopping Center Addition, an addition to the City of Denton, according to the replat thereof, recorded in the Map Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway 35-E the following:

N 42° 27' 28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02° 48' 06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34° 42' 00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64° 45' 00" E a distance of 65.87 feet to a point for corner;

THENCE S 05° 49' 03" W a distance of 95.00 feet to a point for corner;

THENCE S 86° 43' 12" W a distance of 90.00 feet to a point for corner;

THENCE S 42° 33' 00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway 35-E;

THENCE along the Easterly line of said Interstate Highway 35-E the following:

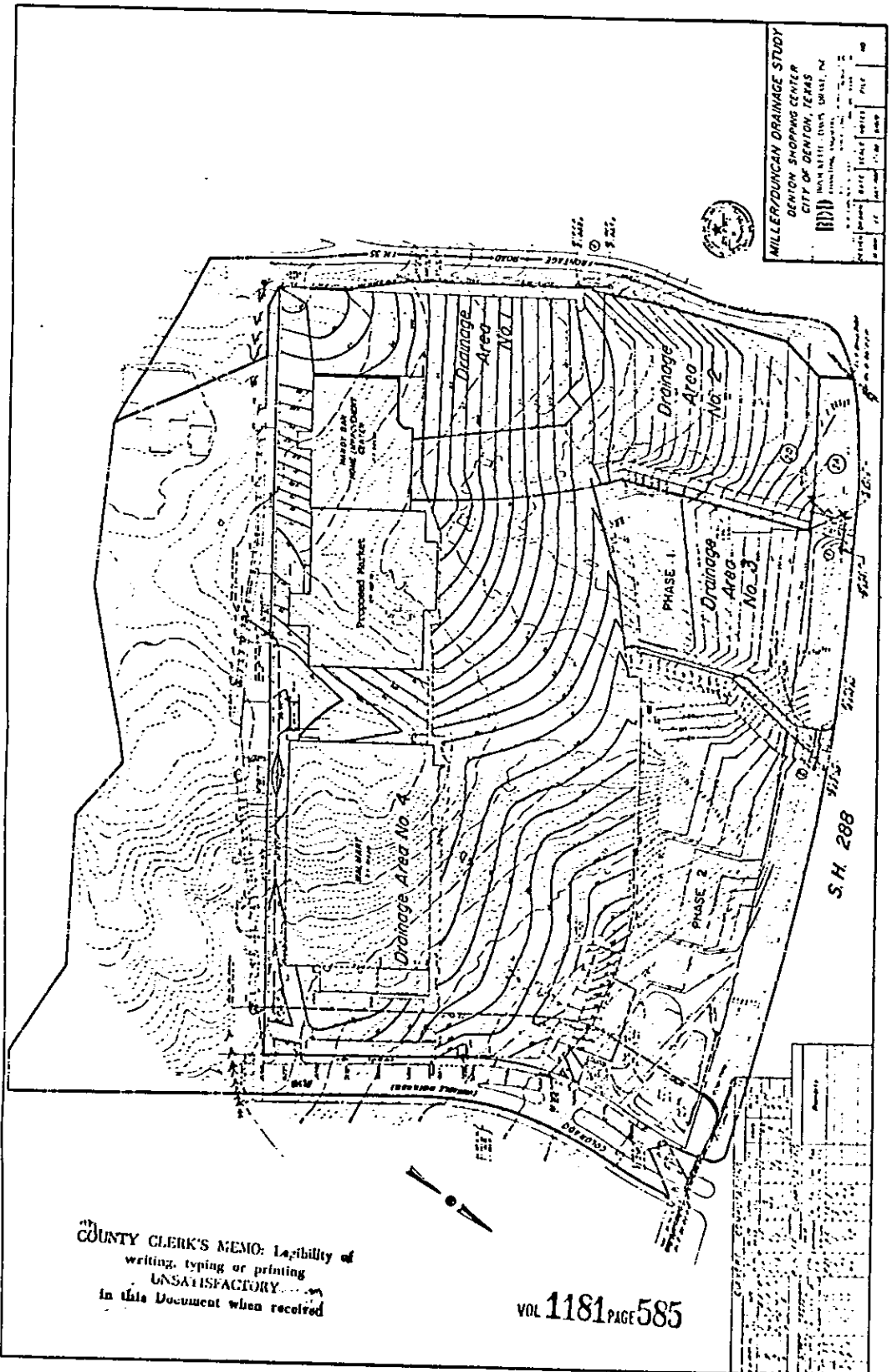
N 42° 00' 59" W a distance of 90.60 feet to a point for corner;

N 34° 42' 00" W a distance of 226.00 feet to a point for corner;

N 01° 41' 20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

Exhibit "C"

NON-CERTIFIABLE COPY



1. Specifications for paving on Tract II, Parcel 1.

Parking Area

5" concrete or asphalt consisting of 8" granulized base or lime stabilized, 3" sub base and 1" wearing surface

Service Drive

7" concrete or asphalt consisting of 12" granulized base or lime stabilized, 5" sub base and 2" wearing surface

2. Specifications for paving on Tract II, Parcel 2.

5" concrete in Service Drive

4" concrete in parking area

All concrete shall be minimum compression of 3,000 p.s.i. 28 days and contain No. 3 reinforcing base set on 24" center both ways. Construction procedures shall conform to Texas Highway Department 1972 Standard Specifications for Construction of Highways, Streets and Bridges, adopted by the State Highway Department of Texas on January 3, 1972.

*Handwritten signature/initials*

GRANTEE'S MAILING ADDRESS:  
HANDY DAN HOME IMPROVEMENT CENTERS, INC.  
Suite 134  
San Antonio, Texas 78229

35656  
DEC 15 PM 3:26  
FILED

RETURN TO: HANDY DAN HOME IMPROVEMENT CENTERS, INC.  
7909 Fredericksburg Road  
Suite 134  
San Antonio, Texas 78229

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FILED FOR RECORD 15th DAY OF December A.D. 1982, at 3:26 P.  
RECORDED 16th DAY OF December A.D. 1982.  
MARY KATHLEEN COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: *[Signature]* DEPUTY.

H-83-0-42288-M SJH (14)

DEED RECORDS

22619

THE STATE OF TEXAS  
COUNTY OF DENTON

§  
§  
§  
MODIFICATION OF RESTATEMENT  
OF AGREEMENT OF EASEMENTS,  
COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

Complainant Party *nn*.

*nn-greater*

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the ~~party~~ who owns the ~~greatest~~ portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event



the Principal Party of

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. ~~Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.~~ nn.

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: Neil Hill  
Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OTR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF Oklahoma §  
COUNTY OF Oklahoma §

This instrument was acknowledged before me, on the 16<sup>th</sup> day of May, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

Leticia Toepfer  
Notary Public in and for  
the State of Oklahoma

My Commission Expires:  
2-23-87

Leticia Toepfer  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of New York

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

VOL 1225 PAGE 351

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

§  
§  
§

VOL 1225 PAGE 352

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

\_\_\_\_\_  
Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF FLORIDA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

2877Z

GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

FILED

1983 JUN 13 PM 2:52

22619

VOL 1225 PAGE 353

1225/349

FILED FOR RECORD 137A DAY OF June A.D. 1983, 2:52 P.  
RECORDED 147A DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Handie Smith DEPUTY.

H-83-D-42288-M SJH (14)

DEED RECORDS

22620

THE STATE OF TEXAS            §            MODIFICATION OF RESTATEMENT  
                                 §            OF AGREEMENT OF EASEMENTS,  
COUNTY OF DENTON            §            COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and-

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the \*party who owns the greatest portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

\*Complaining Party

*SJH*  
Init.

*SJH*  
Init.

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of ~~\*Tract II, Parcel 1 and \*Tract II, Parcel 2~~, which consent shall not be unreasonably withheld or delayed. ~~Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.~~ \*Tract I, Olt  
Init.

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof: LEGAL DMC  
RE

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: Nell Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC. LEGAL

By: Edward H. Tutun RE  
Title: Edward H. Tutun, President



OTR

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By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the 10th day of May, 1983 by Charles H. Tustin of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

Carmela Romaloo  
Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_  
CARMELA ROMALOO  
Notary Public, State of New York  
No. 31-4812206  
Qualified in New York County  
Commission Expires March 20, 1984

Carmela Romaloo  
Printed Name of Notary

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

\_\_\_\_\_  
Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF FLORIDA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

28772

VOL 1225 PAGE 357

GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

VOL 1225 PAGE 358

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

FILED

1983 JUN 13 PM 2 52  
JUN 13 1983

029922

FILED FOR RECORD 13th DAY OF June  
RECORDED 14th DAY OF June A.D. 1983, at 2:52 P.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Handie Smith DEPUTY.

H-83-D-42288-M SJH (14)

DEED RECORDS

22621

THE STATE OF TEXAS            §            MODIFICATION OF RESTATEMENT  
   §            OF AGREEMENT OF EASEMENTS,  
COUNTY OF DENTON            §            COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement: SEE ADDENDUM

INITIALED BY ~~With respect to the Grant of Reciprocal Easements referred to in subparagraph (1) above (the "Grant"), the parties hereby agree that the party who owns the greatest portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event~~

VOL 1225 PAGE 359

INITIALED BY: \_\_\_\_\_

~~of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Town Center Joint Venture as set forth in the Grant.~~

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: \_\_\_\_\_  
Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OTR

By: Stephen A. Mitchell  
Title: Stephen A. Mitchell, Partner

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_

Printed Name of Notary

VOL 1225 PAGE 331



STATE OF Ohio §  
COUNTY OF Franklin §

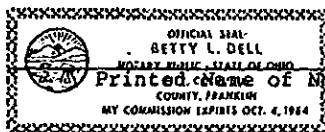
VOL 1225 PAGE 362

This instrument was acknowledged before me, on the 20th day of May, 1983 by Stephen A. Mitchell, Partner of OTR, an Ohio general partnership, on behalf of said general partnership.

Betty L. Dell  
Notary Public in and for the  
County of Benton, State of Arkansas  
FRANKLIN OHIO

My Commission Expires:

OCT. 4, 1984



STATE OF FLORIDA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_, of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_, of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

28772

ADDENDUM

With respect to the Grant of Reciprocal Easements ("Grant") referred to in subparagraph (ii) above, the parties hereby agree that the Complaining Party who owns the greatest portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event of a default by Denton Town Center Joint Venture, under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract 1, Tract 11, parcel 1 and Tract 11, parcel 2, which consent shall not be unreasonably withheld or delayed.

the Principal Party of

INITIALED BY

*SA*

VOL 1225 PAGE 353

GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

VOL 1225 PAGE 364

FILED

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

1983 JUN 13 PM 2 52

FILED FOR RECORD 13th DAY OF June A.D. 1983, at 2:52 P.  
RECORDED 14th DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Wanda Smith DEPUTY.

H-83-D-42288-M SJH (14)

DEED RECORDS

23622

THE STATE OF TEXAS        §        MODIFICATION OF RESTATEMENT  
                                 §        OF AGREEMENT OF EASEMENTS,  
COUNTY OF DENTON        §        COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 21 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the <sup>party</sup> who owns the greater portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

VOL 1225 PAGE 385

# 3675  
ECT:vmv  
5/19/83

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: \_\_\_\_\_  
Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OTR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: [Signature]  
Title: Vice President

Attest: [Signature] Asst. Secretary  
PIZZA TIME THEATRES, INC.



By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

VOL 1225 PAGE 337



STATE OF FLORIDA  
COUNTY OF DADE

VOL 1225 PAGE 368

BEFORE ME, the undersigned authority, personally appeared Jerry Sklar and Ellen Sklar to me well known and known to me to be the individuals described in and who executed the foregoing instrument as Vice President and Assistant Secretary of BURGER KING CORPORATION, a Florida corporation, and severally acknowledged to and before me that they executed such instrument as such Vice President and Assistant Secretary respectively of said corporation and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 23 day of May, 19 82.

(SEAL)

Maurice A. Miller  
Notary Public  
My Commission Expires 1982



STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

\_\_\_\_\_  
Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF FLORIDA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

2877Z

VOL 1225 PAGE 339

GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

VOL 1225 PAGE 370

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

FILED

22622

JUN 13 PM 2:52

FILED FOR RECORD 13th DAY OF June A.D. 1983, at 2:52 P.  
RECORDED 14th DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Wanda Smith DEPUTY.

THE STATE OF TEXAS  
COUNTY OF DENTON

§ MODIFICATION OF RESTATEMENT  
§ OF AGREEMENT OF EASEMENTS,  
§ COVENANTS & RESTRICTIONS  
**DEED RECORDS**

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26<sup>th</sup> day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

**W I T N E S S E T H:**

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the party who owns the greater portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

\* Complaining

VOL 1225 PAGE 371

the Principal  
Party of

ABW

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of <sup>Tract</sup> Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.

ABW

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OTR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: David B. Wohl  
Title: Director of Real Estate

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

VOL 1225 PAGE 373



STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

VOL 1225 PAGE 374

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires: \_\_\_\_\_

Printed Name of Notary

STATE OF FLORIDA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

Notary Public in and for the  
State of Florida

My Commission Expires: \_\_\_\_\_

Printed Name of Notary

STATE OF CALIFORNIA §

COUNTY OF San Clara §

This instrument was acknowledged before me, on the 26th day of April, 1983, by David Wheeler of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.



Joan Bossie  
Notary Public in and for  
the State of California

My Commission Expires: \_\_\_\_\_

August 18, 1986

JOAN BOSSIE  
Printed Name of Notary

28772

GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

22623

FILED  
1983 JUN 13 PM 2:52  
COUNTY CLERK, DENTON, TEX.  
BY *[Signature]*

FILED

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FILED FOR RECORD 13th DAY OF June A.D. 1983, 2:52 P.  
RECORDED 14th DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Randee Smith DEPUTY.

H-83-D-42288-M SJH (14)

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DEED RECORDS

22624

THE STATE OF TEXAS        §        MODIFICATION OF RESTATEMENT  
                                 §        OF AGREEMENT OF EASEMENTS,  
COUNTY OF DENTON        §        COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the party who owns the greater ~~greatest~~ portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

the Principal Party of

Tract I

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. ~~Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.~~

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OTR

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By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

WAL-MART PROPERTIES, INC.

By: [Signature]  
Title: [Signature]



STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

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STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

\_\_\_\_\_  
Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF FLORIDA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

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# CORPORATE ACKNOWLEDGMENT

STATE OF ARKANSAS )  
COUNTY OF BENTON ) SS

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Be it remembered that on this 27TH day of MAY, 19 83, before me, a notary public in and for the county and state aforesaid, came Thomas P. Seay, Vice President of Wal-Mart Properties, Inc., a corporation, who is personally known to me to be the person who executed as such officer the within instrument of writing on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.



Simonne Ann Daugherty  
Notary Public

My commission expires February 24, 1991.



GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

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FILED FOR RECORD 13th DAY OF June A.D. 1983, 2:52 P  
RECORDED 14th DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Randa Smith DEPUTY.

DEED RECORDS

GRANT OF RECIPROCAL EASEMENTS

9471

THIS GRANT OF RECIPROCAL EASEMENTS ("Agreement") is to be effective as of March 31, 1982, and is between DUNCAN PROPERTIES, LTD., an Oklahoma limited partnership ("Duncan") and DENTON TOWNE CENTER JOINT VENTURE, a joint venture ("Towne Center"), upon the following terms and conditions:

INTRODUCTION

1. Duncan owns a tract of land (the "Duncan Tract") located partially in the Daniel Lambert Survey, Abstract No. 784, and partially in the John McGowan Survey, Abstract No. 797, and partially in the J. S. Taft Survey, Abstract No. 1256, City of Denton, Denton County, Texas, which land is described on Exhibit "A" to this Agreement and shown on Exhibit "C-1" to this Agreement (the "Site Plan"). The Duncan Tract is composed of "Duncan's Main Tract", being the area shown as such on the Site Plan and "Duncan's Outlot Tract", being the area shown as such on the Site Plan.
2. Towne Center owns a tract of land located partially in the Daniel Lambert Survey, Abstract No. 784, partially in the John McGowan Survey, Abstract No. 797 and partially in the J. S. Taft Survey, Abstract No. 1256, which is contiguous to the Duncan Tract, and which is described on Exhibit "B" to this Agreement and shown on the Site Plan (the "Towne Center Tract"). The Towne Center Tract and the Duncan Tract collectively shall be referred to as the "Shopping Center", and are sometimes individually referred to as a "Tract".
3. The terms "Duncan" and "Towne Center" shall include their respective successors and assigns as owners of portions of the Shopping Center and all such parties shall be referred to in this Agreement individually as a "Party" and collectively as the "Parties". As used in this Agreement, the term "Permittee" shall collectively refer to the Parties, each person or entity entitled to occupy a portion of the Shopping Center and all of their respective officers, employees, agents, contractors, customers, visitors, business invitees and other invitees of any nature whatsoever.
4. Towne Center and Duncan intend to develop and operate their respective Tracts in conjunction with each other, and in order to effectuate that purpose, Towne Center and Duncan desire to grant to each other certain reciprocal easements in, to, over and across their respective Tracts.

ARTICLE I

EASEMENTS

- 1.1 Access Easements. Each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, a nonexclusive perpetual easement for the passage of vehicles over and across the portions of the grantor's Tract shown as "Access Easements" on Exhibit "C-2" to this Agreement and described by metes and bounds on Exhibits "D-1, D-2 and D-3" to this Agreement as Access Easement #1, Access Easement #2 and Access Easement #3 so as to assure a free and unimpeded flow of vehicular traffic through the interconnecting Access Easements. Neither Party shall vary, alter

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or change the grade levels of its Tract within any of the Access Easements from the grade levels shown on the grading plan attached to this Agreement as Exhibit "E" without the prior written consent of the other Party. No fence (except the required guard rails referred to in Section 3.4 hereof and shown on Exhibit "H") or other barrier which would prevent or obstruct the passage of vehicular travel shall be erected or permitted within or across the Access Easements; provided, however, that a Party may, at its sole election, erect curbing along those boundary lines of the Access Easements which are located on its Tract except (i) in that area identified as "No Curb Area" on Exhibit "C-1", within which no curbing may be erected by any Party, and (ii) within any intersection of two Access Easements. Towne Center shall have the right, and an easement over and across that portion of the Duncan Tract as is necessary to effectuate such right is hereby granted, to penetrate any curbing erected within the "Optional Curb Opening Area" shown on Exhibit "C-2" to create a curb opening and to pave and use as a driveway, from the Towne Center Tract to Access Easement #1, an area of a width to be determined by Towne Center in its sole discretion, but in no event to exceed two hundred sixty-eight feet (268'). In such event, Towne Center acknowledges that water will likely surface drain from Duncan's Tract into the Towne Center Tract through any opening so created by Towne Center in the curb, and Towne Center will accept all such water onto its Tract and will release, indemnify and hold Duncan harmless from any loss, liability or cause of action arising from such water drainage, notwithstanding the provisions of Section 1.3 hereof. Towne Center shall be responsible at its sole expense for all such work and to prepare neat and sightly curb openings. The foregoing provisions shall not prohibit temporary barricades erected and reasonably necessary in connection with the construction, reconstruction or repair and maintenance of improvements erected or constructed in connection with this Article I (collectively "Construction"). All Construction shall be conducted in the most expeditious manner reasonably possible to minimize the interference with the use of the Access Easements, with the Party erecting temporary barricade(s) being obligated to provide alternate routes of vehicular travel to the extent that such are obstructed at all times while any barricade(s) remains in place; provided, however, that prior to closing off any portion of the Access Easements, as herein provided, such Party shall give written notice to the other Party of its intention to do so, and shall coordinate such closing with the other Party so that no unreasonable interference in the operation of the Shopping Center shall occur.

1.2 Utilities. Each Party hereby grants and conveys to each other Party a nonexclusive perpetual easement in, to, under and across the areas of the grantor's Tract shown as "Utility Easements" on Exhibit "C-3" and described by metes and bounds on Exhibit "F" attached to this Agreement, for the installation, operation, flow and passage, use, maintenance, repair, relocation within the easement area and removal of water and gas mains, electrical power lines, telephone lines, television cable and any related facilities which are incidental to any such services to serve the Tract of the grantee. All utility lines or systems installed pursuant to the foregoing grant shall be underground, except for incidental surface structures such as phone pedestals and power transformers, which may be installed above ground in an area outside of Access Easement #1 which is either within the Utility Easement or on the Tract of the installing Party. Any Party installing utilities pursuant to the

provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith to be completed, including general clean-up and surface restoration, as quickly as practical. If any of the Parties elect to install common utility lines or systems, all costs and expenses with respect to the initial installation thereof shall be set forth in a separate agreement between the cooperating Parties.

1.3 Surface Drainage Easement. Towne Center hereby grants to Duncan and Duncan's successors and assigns, a perpetual nonexclusive easement for surface water drainage from Duncan's Main Tract into the Surface Drainage Entry Area owned by Towne Center, as shown on Exhibit "C-2", but not into any other portion of the Towne Center Tract. Towne Center acknowledges that the path of surface water after entering the Surface Drainage Entry Area will be the responsibility of Towne Center. Attached to this Agreement as Exhibit "C" is a grading plan which identifies a possible Drainage Basin (with the term "Drainage Basin" referring to an area from which water will flow and drain through the Surface Drainage Entry Area), pursuant to which Duncan may elect to grade its Tract (the "Safe Harbor Grading Plan"). If Duncan does so grade its Tract, then Towne Center shall accept whatever amount of water flow is created by the Safe Harbor Grading Plan from the Drainage Basin. If Duncan shall grade its Tract in such a manner so as (a) to increase or change the perimeter boundaries of the Drainage Basin from that shown in the Safe Harbor Grading Plan or (b) to materially alter the grade levels within the Drainage Basin shown in the Safe Harbor Grading Plan in any manner, then Duncan shall be obligated and does hereby covenant to grade Duncan's Main Tract so as to assure that the water flow into the Surface Drainage Entry Area shall not exceed five cubic feet per second of water based on a ten-year design frequency as established by the City of Denton Drainage Design Manual dated May 1975, using the applicable assumptions used by the City of Denton, Texas on the effective date of this Agreement. If Duncan shall violate the terms of the covenants contained in the immediately preceding sentence, Towne Center may deliver written notice thereof to Duncan together with a certification from a registered civil engineer of such violation, together with an identification of the Drainage Basin which is causing the default (the "Drainage Default Notice"). The Party owning the Drainage Basin causing the default shall be the only person or entity deemed to be Duncan for purposes of the remainder of this Section 1.3. In such event, the following procedures shall apply:

(i) If Duncan concedes that a violation does exist, Duncan may, within thirty days from delivery of the Drainage Default Notice, submit to the City Engineer of the City of Denton, Texas (or if he declines to assist, to an engineer designated by the City Engineer of the City of Denton, Texas -- whichever may be applicable being referred to as the "Binding Engineer") and to Towne Center a proposal for curing the violation. If the Binding Engineer approves such proposal, then Duncan shall promptly commence to cure the violation at its sole expense and Duncan shall pursue the completion of such proposal in an expeditious manner.

(ii) If Duncan does not agree that a violation exists, Duncan may, within thirty days following delivery of the Drainage Default Notice, obtain an opinion

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from the Binding Engineer concerning the existence of a violation. If the Binding Engineer determines that no violation exists, such determination shall be final and binding on all Parties. If the Binding Engineer determines that a violation does exist, then Duncan shall have a period of thirty days from the date on which written notice of such determination is delivered to Duncan and Towne Center to submit a proposal to cure the violation to the Binding Engineer and to Towne Center. If the Binding Engineer approves such proposal, then Duncan shall promptly commence to cure the violation at Duncan's sole expense and Duncan shall pursue the completion of such proposal in an expeditious manner.

(iii) If Duncan fails to obtain an opinion of the Binding Engineer within the stated thirty-day period, then a violation shall be deemed to have been conclusively established and Towne Center may pursue all remedies prescribed below.

Notwithstanding anything contained hereinabove to the contrary, if within sixty days following the delivery of the Drainage Default Notice, Duncan has not either (x) commenced curing the asserted violation or (y) delivered to Towne Center an opinion from the Binding Engineer that no violation exists, then Towne Center shall have, in addition to all other rights and remedies otherwise available, the right to terminate the easement granted in this Section 1.3. In addition, Towne Center may erect or construct, at Duncan's sole expense, whatever barriers or other devices (including, but not limited to, underground water collection devices) Towne Center may deem appropriate to prevent the passage of surface water into the Surface Drainage Entry Area. Duncan shall promptly reimburse Towne Center upon request for any such expenses actually incurred by Towne Center in connection with curing such violation. In addition to all of the foregoing, (aa) until such time as the initial Slope Retention Devices (i.e., the earthen bank described in Section 1.4 hereof) are modified, altered or replaced in accordance with Section 2.3 hereof, Duncan may drain surface water over and across any portion of the Towne Center Tract located to the west of Access Easement #2, and (bb) if Towne Center is the direct cause of a violation of the covenants of this Section 1.3 (for example, but not by way of limitation, by penetrating any curb bordering the Duncan Main Tract as contemplated by Section 1.1 or by failing to maintain or repair the Slope Retention Devices in accordance with Section 2.3 hereof), thereby causing water to enter the Towne Center Tract at a place other than the Surface Drainage Entry Area, Duncan shall not be responsible therefor, notwithstanding any other provision hereof.

1.4 Slope Maintenance Easement. Significant grade differences exist between the Towne Center Tract and Duncan's Main Tract, and Duncan and Towne Center have by separate instrument dated on even date herewith and entitled "Standard Form of Agreement as outlined in the February 1982 Construction Documents and Technical Specifications", prepared by Pierce Lunsford & Associates, Inc., as amended, from time to time, agreed to cooperate concerning the grading and construction of slope retention devices along the common boundary between Duncan's Main Tract and the Towne Center Tract in the area identified on Exhibit "H" (the "Slope Retention Devices"). The Slope Retention Devices are contemplated to consist initially of earthen bank. The Slope Retention Devices will



commence to the north of the northernmost boundary of the area shown as Access Easement #1 on the Site Plan (with the southernmost point of the Slope Retention Devices being referred to as the "Slope Commencement Line" and being in the location shown on Exhibit "H" to this Agreement). Duncan hereby grants to Towne Center a perpetual easement over, across, under and to all portions of the Shopping Center adjoining the Slope Commencement Line or the Slope Retention Devices for the purposes of maintaining and replacing the Slope Retention Devices, as more particularly described in Section 2.3 below.

1.5 Construction. Each Party grants and conveys to each other Party, and to its respective contractors, materialmen and workmen during the term of this Agreement such temporary licenses for ingress and egress, and for the performance of construction activities (but then only within the Access Easements and the Utility Easement) over, upon and across the portions of the Shopping Center located upon the grantor's Tract not occupied by buildings, signage, landscaping or other improvements other than paving, as shall be reasonably necessary to construct, maintain and reconstruct improvements, utilities, curbing and curb openings, parking, buildings, signs, landscaping, guard rails and Slope Retention Devices on the Tract of such other Party. Towne Center shall make reasonable efforts to perform all construction activities related to the parking area, building, signs and landscaping to be located on its Tract from and on the Towne Center Tract and to avoid use of the Access Drives in connection therewith, subject to the rights and limitations described in the last three sentences of this Section 1.5. Such temporary licenses shall be in effect only during such periods as actual construction, maintenance or reconstruction is performed and shall be exercised so as not to unreasonably interfere with the use and operation of the affected areas. The Access Easements and the Utility Easement located upon the grantor's Tract may also be utilized by vehicles transporting construction materials, equipment and persons employed in connection with any work provided for herein. Storage of materials and vehicles being utilized in connection with such construction may only occur on the constructing Party's Tract and only for temporary periods of time. Prior to exercising any rights under this temporary construction license, the Party wishing to cause such work to be performed shall obtain reasonable and customary liability insurance protection as is appropriate. Any Party availing itself of such temporary license shall indemnify and hold harmless the Party owning the affected area from any liability (including the reasonable attorneys' fees and costs of suit of the indemnified Party) or obligation arising out of or related to the use of such license, except for claims caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants or employees, or the agents, servants, or employees of any licensees or concessionaires wherever the same may occur. In addition, the Party causing the work to be performed agrees to promptly pay all costs and expenses associated therewith, to diligently complete such work as quickly as possible, and to promptly clean the area and restore the affected areas to a condition which is equal to or better than the condition which existed prior to the beginning of such work. Notwithstanding the foregoing, Towne Center may, from time to time, obstruct the Access Drives in connection with the performance of construction activities relating to the Towne Center Tract for a

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continuous period of not more than four (4) hours on any one occasion. If Towne Center contemplates obstructing an Access Drive for more than a continuous period of four (4) hours in connection with such activities, Towne Center shall deliver written notice thereof to the owner of the greatest portion of the Duncan Tract with a request for written approval therefor at least seven (7) days prior to the contemplated commencement date of the construction activities. Towne Center may not commence any such activities without such approval, which shall not be unreasonably withheld or delayed; however, if no response is received by Towne Center within ten (10) days after the delivery of the request for approval, such request shall be deemed approved.

**1.6 No Parking Easements.** Nothing contained in this Agreement shall be deemed to grant, confer or otherwise entitle any Party or any Permittee of a Party to park automobiles on the Tract of another Party, and any such rights are hereby expressly negated. If the Permittees of a Party shall park automobiles on the Tract of another Party, then the Party upon whose Tract automobiles are wrongfully being parked (the "Innocent Party") may, in addition to all other rights to which the Innocent Party is otherwise entitled, tow or cause to be towed all such wrongfully parked automobiles; provided, however, that prior to towing or causing to be towed any such automobiles, the Innocent Party shall first have delivered written notice to the Party whose Permittees are violating the no-parking restriction that the Innocent Party intends to begin towing violating automobiles and shall have allowed ten days thereafter to elapse.

**1.7 Sign Easement.** Duncan hereby grants to Towne Center the right, and an easement therefor, to place in the manner provided below a sign on any pylon or pole sign structure (the "Sign Structure") which Duncan may erect on the Duncan Tract along or contiguous to the frontage road of Interstate Highway #35. Duncan shall have no obligation whatsoever to erect or build a Sign Structure; however, if Duncan shall erect or build a Sign Structure, Duncan agrees that each sign placed thereon shall be of approximately equal size (or at Duncan's election, and as an alternative, that a sign placed on the Sign Structure by Towne Center may be as large as the largest sign placed on the Sign Structure), and Towne Center may, if Towne Center so elects, use the sign position which is fourth from the top of the Sign Structure to identify the shopping center located on the Towne Center Tract. In such event, the bottom of the sign to be used by Towne Center shall be at least ten feet (10') above the grade level directly underneath the sign. Duncan shall deliver written notice to Towne Center of Duncan's commitment to commence construction of the Sign Structure within ninety days, and thereafter Towne Center shall have a period of sixty (60) days in which to exercise its right to locate a sign on the Sign Structure as provided above by delivering written notice thereof to Duncan, and failure by Towne Center to so exercise its sign rights shall be a waiver of the right of Towne Center to locate a sign on the Sign Structure. If Towne Center elects to use the space on the Sign Structure designated above for use by Towne Center, Towne Center shall pay to Duncan prior to placing its sign on the Sign Structure (and in no event later than ninety (90) days following exercise by Towne Center of this sign option) an amount equal to one-fourth (1/4th) of the actual costs incurred by Duncan in erecting and building the Sign Structure. Duncan shall, if requested by Towne Center,

reasonably substantiate the amount which it requests as payment therefor. In addition to the above-granted sign easement, Duncan also hereby grants to Towne Center an underground electrical utility easement to be placed in a location designated by Towne Center and approved in writing by Duncan (such approval not to be unreasonably withheld or delayed) for the purpose of illuminating any sign placed by Towne Center on the Sign Structure. Any such electrical services shall be separately metered and Towne Center shall be solely responsible for any costs incurred for such electrical service. Any sign erected on the Sign Structure by Towne Center shall as to the enclosure for such sign conform to the enclosures used for the other signs erected on the Sign Structure.

## ARTICLE II

### MAINTENANCE AND REPAIR

2.1 Utilities. Each Party shall be obligated to maintain, service and repair:

(i) any utility lines, services or facilities situated on that Party's Tract unless (a) such utility is contained within an easement dedicated to and accepted by a quasi-municipal corporation or other utility or governmental agency whereby such quasi-municipal corporation or other utility or governmental agency assumes such maintenance, service and repair obligation, or (b) such utility is required by subsection (ii) below to be maintained, serviced and repaired by another Party; and

(ii) any utility lines, services or facilities situated on the Tract of another Party, the benefits of which, however, are used solely by that Party unless such utility is contained within an easement dedicated to and accepted by a quasi-municipal corporation or other utility or governmental agency whereby such quasi-municipal corporation or other utility or governmental agency assumes such maintenance, service and repair obligation; and

(iii) without regard for which Party would otherwise be required to perform such maintenance, service or repair, any damage caused by the act of that Party or its servants, employees or independent contractors.

Any such maintenance and repair required to be performed on the Tract of another Party shall be subject to the insurance and indemnity provisions of Section 1.5 hereof and shall be performed only after fourteen (14) days' notice to the grantor of the easement (hereinafter in this Section 2.1 referred to as the "Grantor") of the intention of the grantee of the easement to do such work (except in the case of any emergency, whereupon the work may be initiated immediately). Any such work shall be done without cost or expense to the Grantor, after normal business hours whenever possible and otherwise in such manner as to cause as little disturbance in the use of the Grantor's Tract as may be practicable under the circumstances. Any Party performing or causing to be performed maintenance work hereunder agrees to pay promptly all costs and expenses associated therewith (seeking reimbursement from other grantees, if applicable), to complete diligently such work as quickly as possible, and to clean promptly the

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area and restore the affected portion of the Shopping Center to a condition which is equal to or better than the condition which existed prior to the beginning of such work.

2.2 Access Easements. Each Party covenants and agrees to cause to be maintained and kept, at its cost and expense, those portions of Access Easement #1 and Access Easement #2 located on its Tract. With respect to Access Easement #3, Duncan shall maintain, at its sole cost and expense, that portion of Access Easement #3 labeled as "Duncan's Maintenance Area" on Exhibit "C-2" to this Agreement and Towne Center shall maintain, at its sole cost and expense, that portion of Access Easement #3 labeled "Towne Center's Maintenance Area" on Exhibit "C-2" to this Agreement. All Access Easements shall be maintained by the Party responsible therefor in good condition and state of repair, and in compliance with all laws, rules and regulations, orders and ordinances of governmental agencies exercising jurisdiction thereover and further in compliance with the provisions of this Agreement. In this regard, each Party acknowledges that the Access Easements are intended to be used by delivery trucks and other "heavy-duty" vehicles, and further acknowledges that any damage caused by such "heavy-duty" use is not excluded from the maintenance obligations hereby imposed. The standard of maintenance for the Access Easements Area to be followed by the Parties shall be comparable to the standards of maintenance followed in other first-class retail real estate developments of comparable size in Denton, Texas. The maintenance and repair obligation in any event shall include, but not be limited to, the following:

(i) Maintaining all paved surfaces of the Access Easements in a smooth and evenly covered condition, which maintenance work shall include, without limitation, cleaning, sweeping, restriping, repairing and resurfacing (using surfacing material and design of a quality equal or superior to the original surfacing material and design).

(ii) Removal of all papers, debris, filth, refuse, ice and/or snow; and sweeping the Access Easements to the extent necessary to keep the Access Easements in a first-class, clean and orderly condition.

(iii) Placing, keeping in repair and replacing any appropriate directional signs, markers and lines.

2.3 Slope Retention Devices. Towne Center shall maintain and repair the Slope Retention Devices as defined in Section 1.4 so as to maintain the structural soundness thereof and to maintain any erosion control devices placed on the Slope Retention Devices in a neat and orderly condition. Towne Center shall also maintain the paving covering Access Easement #1 at the grades and levels shown on Exhibit "E" to this Agreement, but only to the extent that any damage caused to the paving covering Access Easement #1 is directly caused by or attributable to the Slope Retention Devices or Towne Center's failure to maintain same. Subject to the following qualifications, Towne Center shall have the right to modify, alter or replace all or any portion of the Slope Retention Devices whether located on Duncan's Main Tract or the Towne Center Tract. At least twenty days prior to commencing any modification, alteration or replacement of any portion of the Slope Retention Devices, Towne Center shall deliver to Duncan (as the owner of Duncan's Main

Tract) plans and specifications for such modification, alteration or replacement. To the extent such plans and specifications are substantially in conformity with the concept displayed on Exhibit "I" attached hereto, such plans and specifications shall automatically be deemed approved. To the extent such plans and specifications are not in conformity with the concept displayed on Exhibit "I", however, Duncan shall have the right to approve such plans and specifications, which approval shall not be unreasonably withheld or delayed. In any event Duncan shall have the right to approve the structural soundness of such plans and specifications, which approval shall not be unreasonably withheld or delayed. If Duncan fails to approve such plans and specifications as provided above, Duncan shall submit to Towne Center specific recommendations from a registered civil engineer for improving the design of the Towne Center proposal. If no objections are delivered by Duncan to Towne Center within twenty days from the delivery to Duncan of the plans and specifications, they shall be deemed approved.

### ARTICLE III

#### OPERATION

3.1 Liability. Each Party ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless the other Party ("Indemnitee") from and against all claims, costs, expenses and liability (including reasonable attorneys' fees and cost of suit incurred in connection with all claims), including any action or proceedings brought hereon, arising from or as a result of:

(a) the death of, or any accident, injury, loss or damage whatsoever caused to, any person or entity, or to the property of any person or entity, which shall occur on the Tract owned by each Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitee, its licensees, concessionaires, agents, servants or employees, or the agents, servants, or employees of any licensee or concessionaire wherever the same may occur; and

(b) all claims asserted by or through any Permittees of the Indemnitor's Tract for any loss or damage to the property of such Permittee located upon the respective Indemnitor's Tract, which loss or damage is of the type generally covered by fire insurance with extended coverage irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

In addition, each Party (the "Releasing Party"), on behalf of itself and its insurer, hereby releases the other Party (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Shopping Center, which loss or damage is of the type generally covered by fire insurance with an extended coverage endorsement, irrespective of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried. Each Party agrees to use its best efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; it being understood, however, that

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failure to obtain such endorsements shall not affect the release hereinabove given.

3.2 Taxes. Each Party shall pay, or cause to be paid, prior to delinquency, all taxes and assessments upon the Tract, and the buildings and improvements and personalty owned or leased by such Party in the Shopping Center, provided that if the taxes or assessments on any part thereof may be paid in installments, the Party may pay each such installment as and when the same become due and payable, and in any event prior to the delinquency thereof. Nothing herein contained in this subsection shall prevent any Party from contesting at its cost and expense any such taxes and assessments with respect to the Tract in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith, and at such time as such contest is concluded, such Party promptly pays all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

3.3 Liens. In the event any mechanic's liens are filed against the Tract of any Party as a result of services performed or materials furnished for the use of another Party's Tract, the Party permitting or causing such lien to be filed hereby covenants to cause such lien to be discharged prior to the foreclosure of such lien, and further agrees to indemnify, defend and hold harmless the other Party and its Tract against liability, loss, damage, costs or expenses, including reasonable attorneys' fees and cost of suit on account of such claim of lien. Upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be filed agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien, or posting such bond or other securities as shall be required by law to obtain such release and discharge. Nothing herein shall prevent a Party permitting or causing such lien to contest the validity thereof in any manner such Party chooses, so long as such contest is pursued with reasonable diligence, and in the event such contest is determined adversely, such Party shall promptly pay in full the required amount, together with any interest, penalties and costs.

3.4 Guardrails. Towne Center shall cause to be erected in the location shown on Exhibit "H" to this Agreement metal guard rails concurrently with installation of the initial Slope Retention Devices and Towne Center shall at all times maintain, repair and restore such guard rails as may be necessary.

#### ARTICLE IV.

##### Utility Services to Duncan's Outlot Tract

4.1 General. It is anticipated that the ultimate users of Duncan's Outlot Tract will obtain electricity and natural gas by connecting to utility services being installed by Duncan and Towne Center under the Utility Easement granted in Section 1.2 above.

4.2 Reimbursement Required. In the event that any owner or occupant of Duncan's Outlot Tract shall ever tie in, tap-in or otherwise connect to the electrical service lines or natural gas lines contained within the Utility Easement, then such owner or occupant shall reimburse Towne Center for



a portion of the cost of installing such utility lines as prescribed below in Section 4.3 (the "Utility Reimbursement"). The payment of the Utility Reimbursement shall be a condition precedent to the right of any owner or occupant of Duncan's Outlot Tract to connect into the utility lines installed in the Utility Easement.

4.3 Amount of Reimbursement. The amount of the Utility Reimbursement shall be equal to the entire installation cost (from the easternmost point of the I-35 right-of-way to the common boundary line between Duncan's Outlot Tract and the Towne Center Tract) on a lineal-foot basis of the utility line(s) to which the owner or occupant of Duncan's Outlot Tract connects. Such costs shall include, but not be limited to, all expenses incurred for engineering fees, labor, supervisory personnel, conduit, cable and primary lines. Towne Center shall notify Duncan of the amount of the Utility Reimbursement to the electrical line and the natural gas line promptly after completion of such installation.

4.4 No Other Reimbursements. The Utility Reimbursement described above shall be in lieu of and instead of any other prorata reimbursements which would otherwise be required from the owner or occupant of Duncan's Outlot Tract to Towne Center. Towne Center shall credit against the Utility Reimbursement an amount equal to twenty-four percent (24%) of any reimbursements or pro rata paybacks Towne Center shall receive from any utility company in connection with electricity or natural gas utilities.

## ARTICLE V

### MISCELLANEOUS

5.1 Default. Upon the default by any party obligated to perform under the terms of this Agreement (the party owning the land upon which or as a result of which the default is asserted to have occurred being hereinafter in this paragraph referred to as the "Defaulting Party"), and the Defaulting Party's failure to cure such default (or, in the case of a default which cannot be cured within a thirty-day period, to commence and diligently work toward curing the default) within thirty (30) days after the delivery of written notice by the other party (hereinafter in this paragraph referred to as the "Complaining Party"), such written notice to be delivered not only to the Defaulting Party but also to any mortgagees of the Defaulting Party about whom the Complaining Party has received prior written notice, then for as long as the default continues, the Complaining Party shall have the right to exercise one or more of the following remedies, at the sole election of the Complaining Party -- to be determined in the case of the Duncan Tract by the Complaining Party who owns the greatest portion of the Duncan Tract and in the case of the Towne Center Tract by the Complaining Party who owns the greatest portion of the Towne Center Tract.

(a) The Complaining Party may cure the default of the Defaulting Party, or cause the default to be cured (with an easement for ingress and egress necessary for such purposes being hereby granted by each Party to the other), in which event the Defaulting Party shall immediately reimburse the Complaining Party for the reasonable expenses thereby incurred, plus interest at the rate of eighteen percent (18%) per annum, plus all

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reasonable attorneys fees incurred by the Complaining Party in curing the default and obtaining full reimbursement.

(b) The Complaining Party may obtain specific performance by injunction and such other legal and equitable remedies as may be available, in which event the Complaining Party shall also be entitled to recover in such proceedings a full reimbursement for all injuries and damages sustained prior to the curing of the default plus all court costs and reasonable attorneys fees incurred by the Complaining Party in obtaining its relief.

(c) The Complaining Party may demand that the Defaulting Party compensate it for damages sustained and to be sustained as a result of the default; and if the Complaining Party proceeds to litigation on this demand, the Defaulting Party shall also be liable for all court costs and reasonable attorneys fees.

5.2 Estoppel Certificate. Each Party hereby severally covenants that within twenty (20) days from the delivery of written requests from time to time of the other Party, it will issue to a prospective mortgagee, purchaser or tenant of such other Party or to a prospective successor Party to such other Party, an estoppel certificate stating: (i) whether the Party to whom the request has been directed knows of any default by the requesting Party under this Agreement, and if there are known defaults, specifying the nature thereof; (ii) whether to its knowledge this Agreement has been assigned, modified or amended in any way (or if it has, then stating the nature thereof); and (iii) that to the Party's knowledge this Agreement as of the date is in full force and effect. Such statement, however, shall in no event subject the Party furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Party to disclose correct and/or relevant information. Notwithstanding the provisions of Section 5.3 below, any requests for an estoppel certificate as provided above and the response thereto may, at the election of the sender, be sent by private carrier expedited mail service (i.e., Federal Express type service) and, in such event, the request or the response, as the case may be, shall be effective on the first day following deposit with such private carrier. Each Party agrees to act in good faith in connection with requests for estoppel certificates from the others. Failure by a Party to respond within the 20-day period shall be deemed to be the equivalent of a statement that no defaults exist, that no amendment to this Agreement has been entered into and that this Agreement remains in full force and effect.

5.3 Notices. All notices, demands, statements and requests required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served, whether received or not, by depositing the same in the United States mails, addressed to Duncan or Towne Center, postage prepaid and registered or certified mail, return receipt requested, at the address set forth below.

To Towne Center: Denton Towne Center Joint Venture  
c/o Henry S. Miller Company  
2001 Bryan Tower, 30th Floor  
Dallas, Texas 75201  
Attention: Raymond J. Poche

with a copy by regular mail to:

Thomas J. Terkel  
Jenkins & Gilchrist  
2200 First National Bank Bldg.  
Dallas, Texas 75202

To Duncan: Duncan Properties, Ltd.  
100 Park Avenue Bldg.  
Suite 1204  
Oklahoma City, Oklahoma 73102  
Attention: Neil Hill

with a copy by regular mail to:

Mr. Glenn D. West  
Jackson, Walker, Winstead,  
Cantwell & Miller  
4300 First National Bank Bldg.  
Dallas, Texas 75202

All notices, demands and requests shall, except as herein-  
after set forth, be effective upon being deposited in the  
United States mails in accordance with the provisions hereof.  
Rejection or other refusal to accept, or the inability to  
deliver because of changes of address of which no notice was  
given, shall be deemed to be receipt of the notice, demand  
or request. Any Party shall have the right from time to  
time and at any time, upon at least ten (10) days' prior  
written notice thereof in accordance with provisions hereof,  
to change its respective address and to specify any other  
address within the United States of America.

5.4 Condemnation. In the event of a condemnation or a  
sale in lieu thereof concerning a portion or all of the  
Shopping Center, the award or purchase price paid for such  
taking shall be paid to the Party owning such land so taken;  
it being the intent of the other Party who might have an  
easement or other property interest or right under this  
Agreement in the land so taken, to release and/or waive such  
property interest or right with respect to such award or  
purchase price; provided, however, such other Party shall  
have the right to seek an award or compensation for the loss  
of its easement right to the extent such award or compensa-  
tion paid or allocated for such loss does not reduce or  
diminish the amount paid to the Party owning such land.

5.5 Binding Effect. The terms of this Agreement shall  
constitute covenants running with, and be appurtenant to,  
the land affected, and all such terms shall inure to the  
benefit of and be binding upon the undersigned Parties and  
their respective successors and assigns who become owners of  
any portion of the Shopping Center.

5.6 Singular and Plural. Whenever required by the  
context of this Agreement, the singular shall include the  
plural, and vice versa, and the masculine shall include the  
feminine and neuter genders, and vice versa.

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5.7 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

5.8 Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights to any person who is not a Party hereto unless expressly otherwise provided.

5.9 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Tract or portion thereof to the general public, or for the general public or for any public use or purpose whatsoever; it being the intention and understanding of the Parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed solely for the benefit of the Parties hereto.

5.10 Excusable Delays. Whenever performance is required of any Party hereunder, that Party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage to work in progress by reason of fire or other casualty or causes beyond the reasonable control of a Party, then the time of performance as herein specified shall be appropriately extended by the amount of the delay actually so caused, not to exceed sixty (60) days total.

5.11 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

5.12 Entire Agreement. This written Agreement and the exhibits hereto contain all the representations and the entire agreement between the Parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement and exhibits hereto.

5.13 Amendments; Termination. Amendments to or termination of this Agreement must be in writing and must be executed by the Party or Parties owning fee simple title to at least seventy-five percent (75%) of the land area of the Duncan Tract and the Party or Parties owning fee simple title to at least seventy-five percent (75%) of the land area of the Towne Center Tract.

5.14 Captions. The captions preceding the text of each paragraph and subparagraph hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

5.15 Minimization of Damages. In all situations arising out of this Agreement, all Parties shall attempt to

avoid and minimize the damages resulting from the conduct of any other Party. Each Party hereto shall take all necessary measures to effectuate the provisions of this Agreement.

5.16 Agreement Shall Continue Notwithstanding Breach. It is expressly agreed that, except as otherwise provided above, no breach of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement; however, such limitation shall not affect in any manner any other rights or remedies which such Party may have hereunder by reason of any such breach.

5.17 Joinder by Other Parties. The parties executing Exhibit "J" to this Agreement have done so to evidence the subordination of their respective interests in the Shopping Center to the terms and provisions of this Agreement.

5.18 Time. Time is of the essence of this Agreement and each and every provision hereof.

5.19 Release. Upon the bona fide assignment, conveyance, sale or other transfer by either Duncan or Towne Center to all or any portion of its respective Tract, the transferring party shall be released from any liability arising out of a failure to observe the covenants, terms and obligations imposed by this Agreement on the owner of the land so transferred arising subsequent to the effective date of such conveyance; provided, that as a condition to such release, the transferor shall obtain a written assumption agreement from the transferee for the benefit of the other parties then owning portions of the Shopping Center whereby the transferee expressly assumes all such covenants, terms and obligations.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the date first stated above.

DUNCAN PROPERTIES, LTD., an  
Oklahoma limited partnership

By: Neil Hill  
Neil Hill, its sole  
General Partner

DENTON TOWNE CENTER JOINT VENTURE

By: Herbert D. Weitzman  
Herbert D. Weitzman,  
Venture Manager

STATE OF TEXAS §  
COUNTY OF DALLAS §

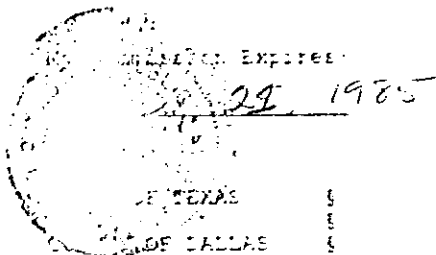
BEFORE ME, the undersigned authority, on this day personally appeared NEIL HILL, sole General Partner of Duncan Properties, Ltd., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said limited partnership.

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GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1st day  
of April, 1982.

Carol M. Cobb  
Notary Public in and for  
Dallas County, Texas



BEFORE ME, the undersigned authority, on this day personally appeared HERBERT D. WEITZMAN, Venture Manager of Denton Towne Center Joint Venture, a Texas joint venture, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes, consideration and in the capacity therein expressed, as the act and deed of said joint venture.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1st day  
of April, 1982.

Thomas J. Inkel  
Notary Public in and for  
Dallas County, Texas

My Commission Expires.

3.11.84



Exhibit "A"

Duncan Tract

Being the aggregate of:

TRACT 1 (MAIN TRACT):

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J. S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway No. 35-E and departing the Southerly line of said Loop 288 the following:

S 01°41'20" E a distance of 70.71 feet to a point;

S 34°42'00" E a distance of 226.60 feet to a point;

S42°00'59" E a distance of 90.60 feet to the POINT OF BEGINNING;

THENCE N 42°33'00" E departing the aforementioned I.H. 35-E a distance of 145.00 feet to a point for corner;

THENCE N 86°43'12" E a distance of 90.00 feet to a point for corner;

THENCE N 05°49'03" E a distance of 95.00 feet to a point for corner;

THENCE N 64°45'00" W a distance of 14.00 feet to a point for corner;

THENCE N 25°15'00" E a distance of 170.17 feet to a point for corner;

THENCE N 34°48'00" E a distance of 136.00 feet to a point for corner;

THENCE N 48°02'34" W a distance of 21.62 feet to a point for corner;

THENCE N 41°57'26" E a distance of 357.99 feet to a point for corner;

THENCE N 60°43'46" E a distance of 268.95 feet to a point of curvature to the left;

THENCE along said curve to the left in a Southeasterly direction having a central angle of 22°31'07", a radius of 453.38 feet, an arc length of 178.19 feet, and a chord bearing of N 37°21'11" W to the point of tangency;

THENCE S 48°36'44" E a distance of 323.16 feet to a point for corner;

THENCE S 41°57'26" W a distance of 1152.60 feet to a point situated in the Easterly line of said I.H. 35-E;

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THENCE along the Northeasterly line of said Interstate Highway No. 35-E the following:

N 47°27'00" W a distance of 112.51 feet to a point for corner;

N 55°58'59" W a distance of 101.10 feet to a point for corner;

N 47°27'00" W a distance of 30.50 feet to a point for corner;

S 45°26'45" W a distance of 3.00 feet to a point for corner;

N 41°33'15" W a distance of 29.05 feet to a point for corner;

N 47°27'00" W a distance of 219.30 feet to the POINT OF BEGINNING and containing 14.3336 acres of land, more or less.

AND

TRACT 2 (OUT LOT):

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'05", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34°42'00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64°45'00" E a distance of 65.87 feet to a point for corner;

THENCE S 05°49'03" W a distance of 95.00 feet to a point for corner;

THENCE S 86°43'12" W a distance of 90.00 feet to a point for corner;

THENCE S 42°33'00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 42°00'59" W a distance of 90.60 feet to a point for corner;

N 34°42'00" W a distance of 226.60 feet to a point for corner;

N 01°41'20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

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Exhibit "B"

W 1136 -528

Towne Center Tract

BEING a tract of land situated in the John McTewen Survey, Abstract No. 727, Daniel Larkins Survey, Abstract No. 784, and the L. S. Telf Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southern line of Loop 288 (a variable right-of-way) and the Eastern line of Interstate Highway No. 454 (a variable right-of-way);

THENCE along the Southern line of said Loop 288 and departing the Eastern line of said Interstate Highway No. 454 the following:

N 12°21'26" E a distance of 41.94 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 92°46'06", a radius of 2710.00 feet, and an arc length of 191.00 feet to a point of tangency;

Continuing along said curve to the right having a central angle of 112°46'26", a radius of 3710.00 feet, and an arc length of 261.33 feet to a point of curvature to the right;

THENCE along said curve to the right on a circularly decreasing and departing said Loop 288 and having a central angle of 66°23'31", a radius of 202.00 feet, an arc length of 104.00 feet, and a chord bearing of S 19°21'05" E to a point of reverse curve to the left;

THENCE along said curve to the left having a central angle of 112°00'16", a radius of 453.25 feet, and an arc length of 67.00 feet to a point for corner;

THENCE S 60°43'46" W a distance of 266.95 feet to a point for corner;

THENCE S 61°25'12" W a distance of 251.00 feet to a point for corner;

THENCE S 48°02'36" E a distance of 17.61 feet to a point for corner;

THENCE S 34°48'00" W a distance of 136.00 feet to a point for corner;

THENCE S 25°15'00" W a distance of 170.17 feet to a point for corner;

THENCE N 66°45'00" W a distance of 51.87 feet to a point for corner;

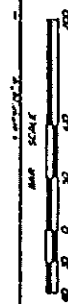
THENCE N 34°42'00" W a distance of 307.00 feet to the POINT OF BEGINNING and containing 4.9698 acres of land, more or less.

EXHIBIT "C-1"  
Site Plan

DATE 1/10/61 PROJECT 100

LOOP 288

VE CORP.  
AREA



L.H. 35-E

1136 529

EXHIBIT "C-2"  
Access Easements

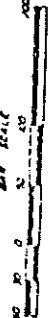
VOL 1136 PAGE 530

DATE 1/10/01 COUNTY

LOOP 288

Operational Over Crossing Area

Access Easement



L.H. 35-E



Easement "C-3"

LOOP 288

Utility Easement

Utility Easement

L.H. 35-E

Vol 1136 - 531

Exhibit "D-1"

VOL 1136 PAGE 532

ACCESS EASEMENT NO. 1

Being a tract of land situated in the John McGowan Survey, Abstract No. 797 and the Daniel Lambert Survey, Abstract No. 784, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway 35-E (a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway 35-E and departing the Southerly line of said Loop 288 the following:

S 01°04'20" E a distance of 70.71 feet to a point;

S 34°42'00" E a distance of 226.60 feet to a point;

S 42°00'59" E a distance of 81.56 feet to the POINT OF BEGINNING;

THENCE N 42°33'00" E departing the Easterly line of said Interstate Highway No. 35-E a distance of 147.80 feet to a point for corner;

THENCE N 86°43'12" E a distance of 64.67 feet to a point of curvature to the left;

THENCE along said curve to the left having a central angle of 80°54'09", a radius of 20.00 feet, and an arc length of 28.24 feet to a point for corner;

THENCE N 05°49'03" E a distance of 75.61 feet to a point for corner;

THENCE N 25°15'00" E a distance of 170.17 feet to a point for corner;

THENCE N 34°48'00" E a distance of 241.57 feet to a point for corner;

THENCE N 41°57'26" E a distance of 180.01 feet to a point of curvature to the right;

THENCE along said curve to the right having a central angle of 18°46'20", a radius of 452.87 feet, and an arc length of 148.38 feet to a point for corner;

THENCE N 60°43'46" E a distance of 189.46 feet to a point of curvature to the left;

THENCE along said curve to the left having a central angle of 03°02'01", a radius of 453.38 feet, an arc length of 24.01, and a chord bearing of S 26°33'28" E;

THENCE S 60°43'46" W a distance of 189.16 feet to a point of curvature to the left;

THENCE along said curve to the left having a central angle of 18°46'20", a radius of 428.87, and an arc length of 140.51 feet to a point for corner;

THENCE S 41°57'26" W a distance of 170.49 feet to a point for corner;

THENCE S 34°48'00" W a distance of 245.95 feet to a point for corner;

THENCE S 25°15'00" W a distance of 161.69 feet to a point for corner;

THENCE S 05°49'03" W a distance of 96.38 feet to a point for corner;

THENCE S 51°28'24" W a distance of 24.26 feet to a point for corner;

THENCE S 86°43'12" W a distance of 76.60 feet to a point for corner;

THENCE S 42°33'00" W a distance of 138.91 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

THENCE N 47°27'00" W a distance of 15.00 feet to a point for corner;

THENCE N 42°00'59" W a distance of 9.04 feet to the POINT OF BEGINNING and containing 0.7016 acres of land, more or less.

VOL 1136 PAGE 533

Exhibit "D-2"

v 1135 ac 534

ACCESS EASEMENT NO. 2

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing the Easterly line of said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

ALONG said curve to the right having a central angle of 07°21'49", a radius of 3740.00 feet, and an arc length of 480.65 to the POINT OF BEGINNING;

CONTINUING along said curve to the right having a central angle of 00°55'46", a radius of 3740.00 feet, and an arc length of 60.67 feet, to a point for corner;

THENCE S 05°13'22" E departing said Loop 288 a distance of 148.56 feet to a point for corner;

THENCE S 34°42'00" E a distance of 125.31 feet to a point for corner;

THENCE S 55°12'00" E a distance of 15.72 feet to a point for corner;

THENCE S 34°48'00" W a distance of 30.00 feet to a point for corner;

THENCE N 55°12'00" W a distance of 21.14 feet to a point for corner;

THENCE N 34°42'00" W a distance of 179.27 feet to a point for corner;

THENCE N 05°13'22" W a distance of 86.72 feet to the POINT OF BEGINNING and containing 0.2527 acres of land, more or less.

Exhibit "D-3"

ACCESS EASEMENT NO. 3

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing the Easterly line of said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

ALONG said curve to the right having a central angle of 02°36'26", a radius of 3740.00 feet, and an arc length of 170.16 feet to the POINT OF BEGINNING;

CONTINUING along said curve to the right having a central angle of 00°23'20", a radius of 3740.00 feet, and an arc length of 25.39 feet to a point for corner;

THENCE S 34°42'00" E departing said Loop 288 a distance of 305.84 feet to a point for corner;

THENCE S 64°45'00" E a distance of 48.52 feet to a point for corner;

THENCE S 25°15'00" W a distance of 12.50 feet to a point for corner;

THENCE S 05°49'03" W a distance of 13.26 feet to a point for corner;

THENCE N 64°45'00" W a distance of 59.64 feet to a point for corner;

THENCE N 34°42'00" W a distance of 308.12 feet to the POINT OF BEGINNING and containing 0.2066 acres of land, more or less.

VOL 1136 PAGE 535

EXHIBIT "E"

I. H. 35-E

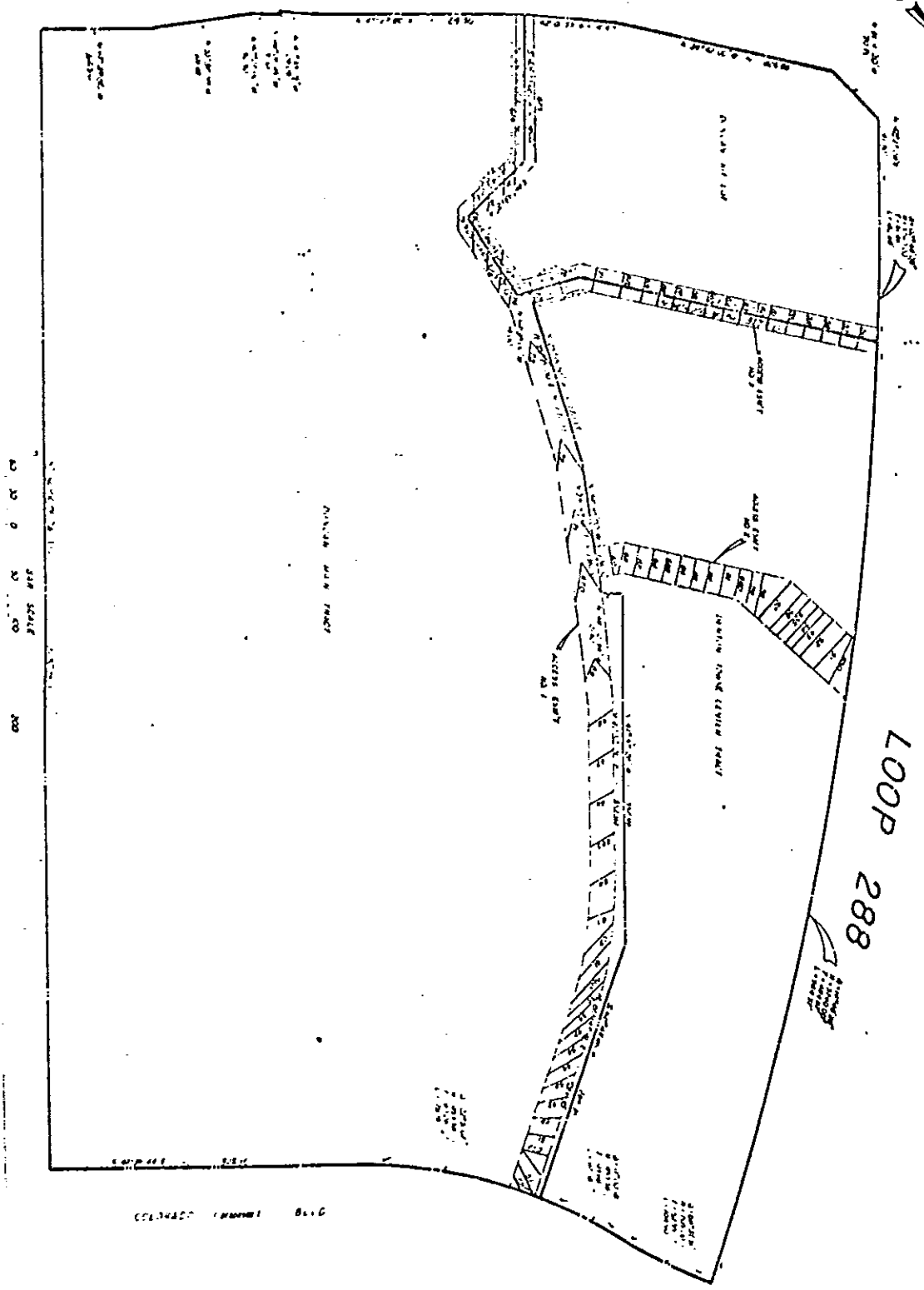




Exhibit "F"

UTILITY EASEMENT

FIELD NOTE DESCRIPTION

BEING a tract of land situated in the John McGowen Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J.S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway 35-E (a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway No. 35-E and departing the Southerly line of said Loop 288 the following:

S 01°04'20" E a distance of 70.71 feet to a point;

S 34°42'00" E a distance of 226.60 feet to a point;

S 42°00'59" E a distance of 75.53 feet to the POINT OF BEGINNING;

THENCE N 42°33'00" E departing the Easterly line of said Interstate Highway No. 35-E a distance of 149.66 feet to a point for corner;

THENCE N 86°43'12" E a distance of 85.12 feet to a point for corner;

THENCE N 05°49'03" E a distance of 86.58 feet to a point for corner;

THENCE N 25°15'00" E a distance of 170.17 feet to a point for corner;

THENCE N 34°48'00" E a distance of 136.00 feet to a point for corner;

THENCE N 48°02'34" W a distance of 21.62 feet to a point for corner;

THENCE N 41°57'26" E a distance of 357.99 feet to a point for corner;

THENCE N 60°43'46" E a distance of 268.95 feet to a point situated in the curving West line of Colorado Boulevard (a variable right-of-way);

THENCE with said Colorado Boulevard and along said curve to the left having a central angle of 03°24'51" a radius of 453.38 feet, an arc length of 27.02 feet, and a chord bearing of S 27°47'45" E to a point for corner;

THENCE S 60°43'46" W departing the curving West line of said Colorado Boulevard a distance of 263.80 feet to a point for corner;

THENCE S 41°57'26" W a distance of 180.09 feet to a point for corner;

THENCE S 37°05'13" W a distance of 174.06 feet to a point for corner;

THENCE S 34°48'00" W a distance of 131.81 feet to a point for corner;

THENCE S 25°15'00" W a distance of 165.08 feet to a point for corner;

THENCE S 05°49'03" W a distance of 100.21 feet to a point for corner;

THENCE S 86°43'12" W a distance of 94.06 feet to a point for corner;

THENCE S 42°33'00" W a distance of 142.97 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 47°27'00" W a distance of 5.00 feet to a point for corner;

N 42°00'59" W a distance of 15.07 feet to the POINT OF BEGINNING and containing 0.704 acres of land, more or less.

VOL 1136 - 537

Exhibit "G"

Vol. 1133 Page 538

I. H. 35-E

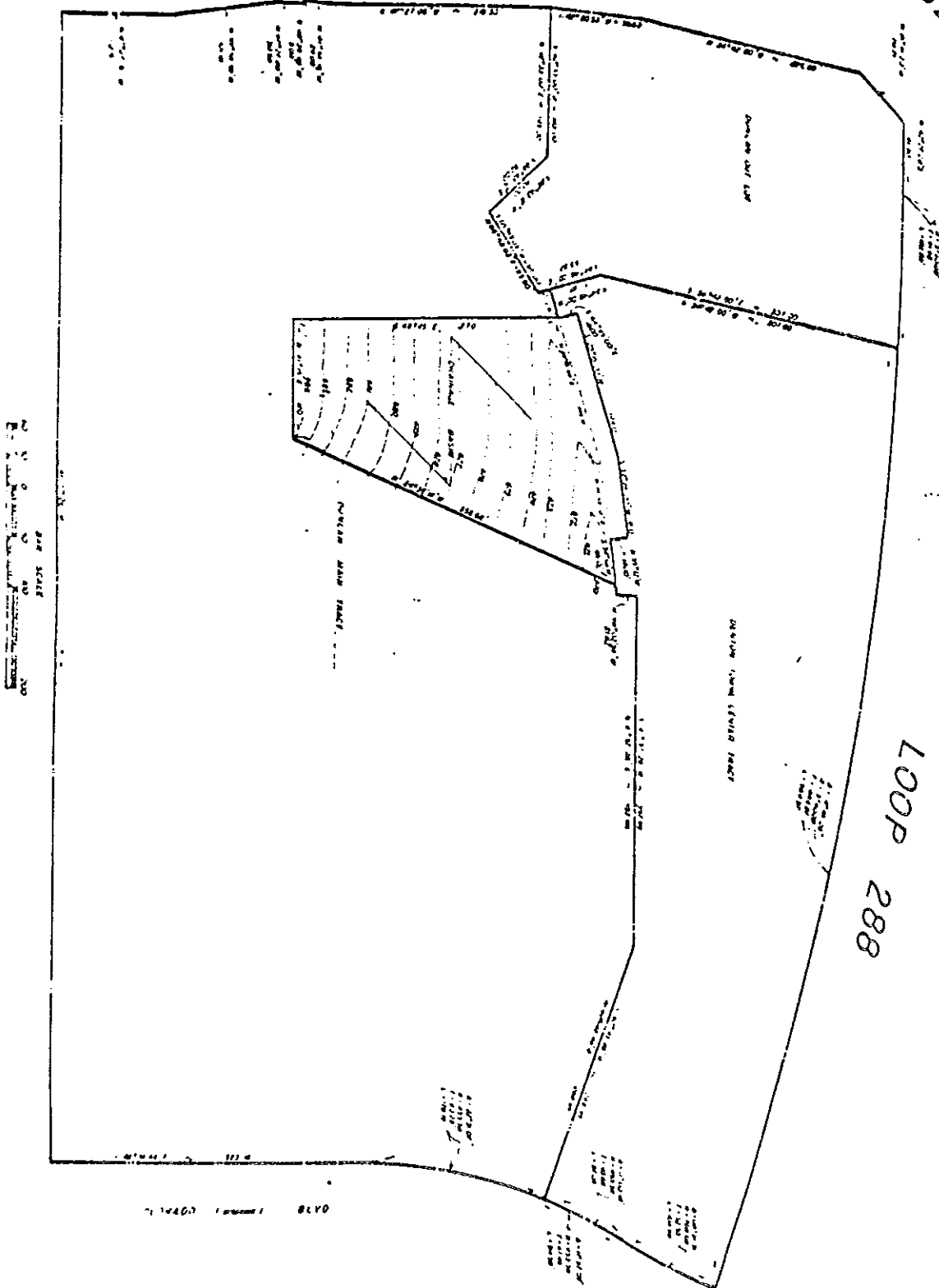
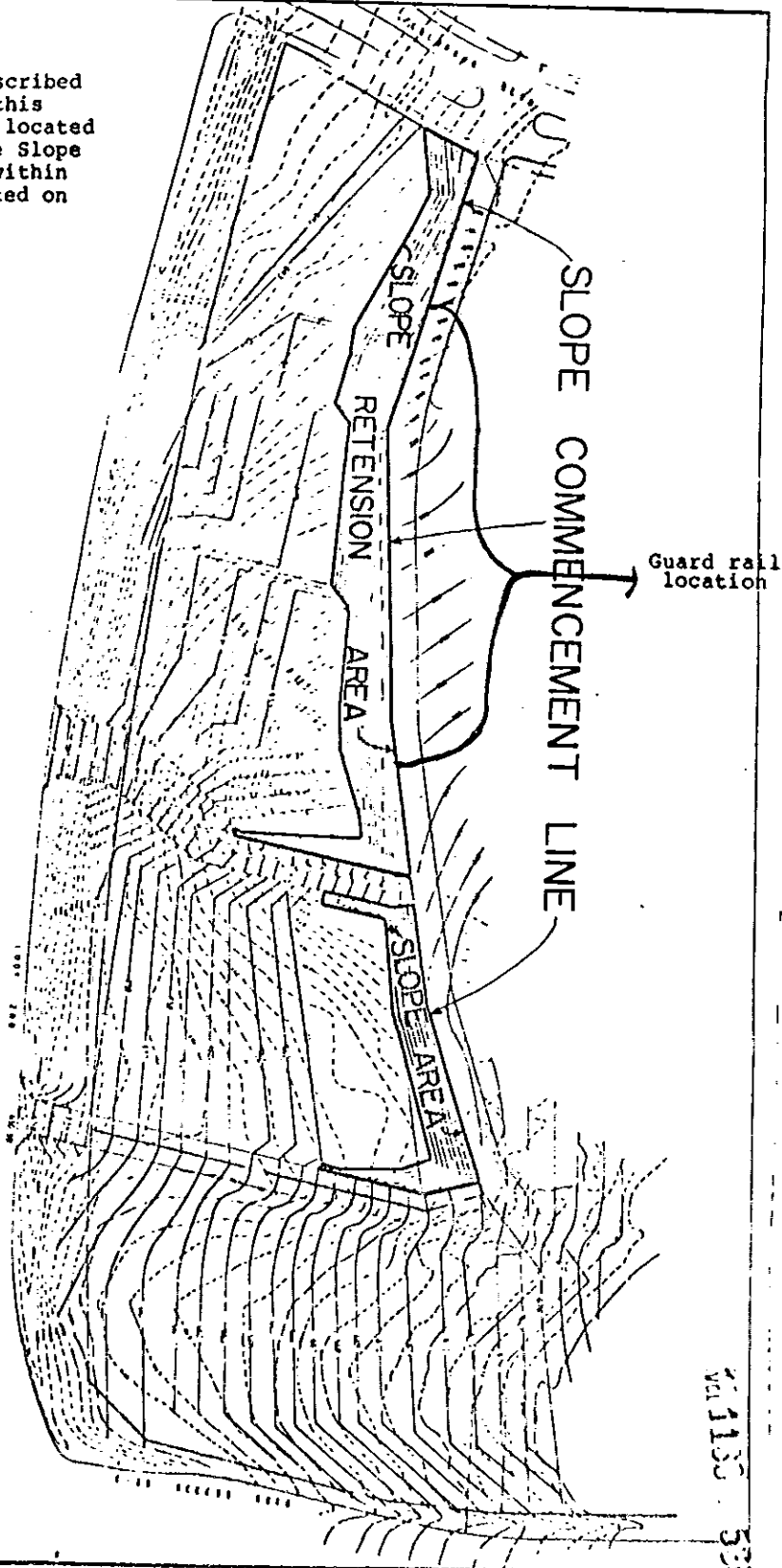


EXHIBIT "H"

The guard rails described in Section 3.4 of this Agreement shall be located generally along the Slope Commencement Line within the area so indicated on this Exhibit "H".



SLOPE COMMENCEMENT LINE  
GENERAL TOWNSHIP  
COUNTY OF  
STATE OF

11155 338

EXHIBIT "I"

Vol. 1136 Page 540

PARKS & PARTNERS Architects

310 Union Station  
Dallas, Texas 75202  
214/742-6701

Sheet No.

1

Date 12 MARCH 1982

Project #M66 DENTON TOWN CENTER

Subject SECTION @ DRYEC SOUTH PL

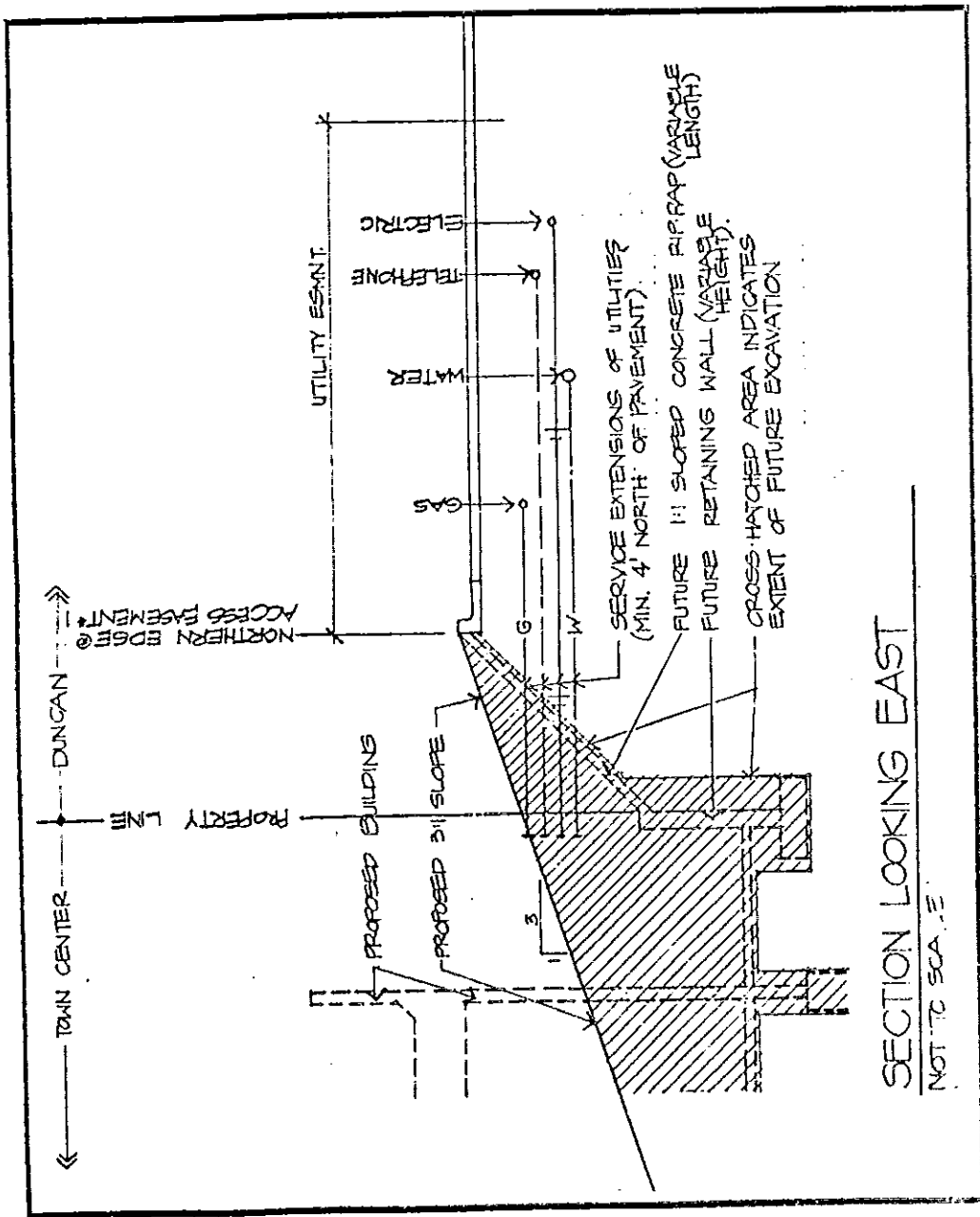


EXHIBIT "J-1"

This Exhibit "J-1" to that certain Grant of Reciprocal Easements between Denton Towne Center Joint Venture (the "Venture") and Duncan Properties, Ltd., an Oklahoma limited partnership executed to be effective as March 31, 1982 (the "REA"), is being executed by RepublicBank Dallas N.A. (the "Bank") to evidence the subordination by the Bank of the lien currently held by the Bank created by that certain deed of trust executed by the Venture, dated December 20, 1979, and recorded in Volume 553, page 329 of the Deed of Trust Records of Denton County, Texas, encumbering certain real property more particularly described in such deed of trust, as such deed of trust is being amended effective on even date herewith, to the terms, provisions, rights and obligations created by the REA.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

REPUBLICBANK DALLAS N.A.

By William H. McElroy  
(Vice) President

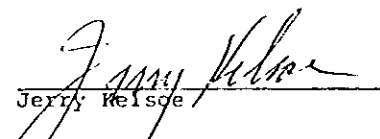
VOL 1136 PAGE 541

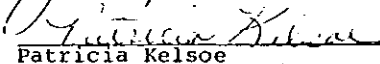
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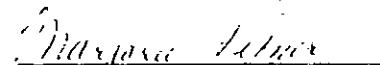
Vol. 1136 Page 542

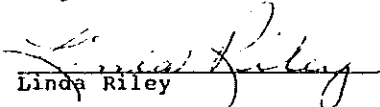
This Exhibit "J-2" to that certain Grant of Reciprocal Easements between Denton Towne Center Joint Venture (the "Venture") and Duncan Properties, Ltd., an Oklahoma limited partnership executed to be effective as March 31, 1982 the "REA"), is being executed by Jerry Kelsoe, Patricia Kelsoe, Marjorie Pitner and Linda Riley (collectively, "Pitner-Kelsoe") to evidence the subordination by Pitner-Kelsoe of the lien currently held by Pitner-Kelsoe created by that certain deed of trust executed by the Venture, dated December 31, 1979, and recorded in Volume 557, page 320 of the Deed of Trust Records of Denton County, Texas, encumbering certain real property more particularly described in such deed of trust, as such deed of trust has been and is being amended effective on even date herewith, to the terms, provisions, rights and obligations created by the REA.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

  
Jerry Kelsoe

  
Patricia Kelsoe

  
Marjorie Pitner

  
Linda Riley



W-176480  
SOUTHWEST LAND TITLE CO.  
P. O. BOX 18296  
DALLAS, TEXAS 75218

SOUTHWEST LAND TITLE CO.  
P. O. BOX 18296  
DALLAS, TEXAS 75218

FILED  
1982 APR -8 PM 4:28  
COUNTY CLERK  
DENTON COUNTY, TEXAS

VOL 1136 PAGE 543

FILED FOR RECORD 8th DAY OF April A.D. 1982, at 2:28 P.M.  
RECORDED 1215 DAY OF April A.D. 1982.  
MARY JOYHILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Bloua J. Taylor DEPUTY.



**LEGAL DESCRIPTION****WATER AND WASTEWATER AND ELECTRIC EASEMENT**

**BEING** a tract of land situated in the John McGowan Survey, Abstract No. A-797, City of Denton, Denton County, Texas, and being a part of Lot 3A, Block 1, Denton Shopping Center Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume C, Page 130 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a PK nail found in the northwestern line of said Lot 3A; from said point the west corner of said Lot 3A, and being a point in the northeast right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) bears South 55°00'50" West, a distance of 20.42 feet;

**THENCE** North 55°00'50" East, along the said northwestern line of said Lot 3A, a distance of 20.31 feet to a point for corner;

**THENCE** departing the said northwestern line of Lot 3A, South 44°54'13" East, a distance of 10.08 feet to a point for corner;

**THENCE** the following six (6) calls:

South 1°46'45" East, a distance of 10.35 feet to a point for corner;  
 South 44°50'45" East, a distance of 72.95 feet to a point for corner;  
 South 89°50'45" East, a distance of 21.45 feet to a point for corner;  
 South 44°54'13" East, a distance of 50.56 feet to a point for corner;  
 South 33°00'23" East, a distance of 51.02 feet to a point for corner;  
 South 46°30'08" East, a distance of 42.25 feet to a point for corner in the southeast line of said Lot 3A;

**THENCE** South 42°15'50" West, along the said southeast line of said Lot 3A, a distance of 28.01 feet to a point for corner; from said point the southernmost corner of said Lot 3A, and being a point in the said northeast right-of-way line of Interstate Highway No. 35 bears South 42°15'50" West, a distance of 44.76 feet;

**THENCE** departing the said southeast line of said Lot 3A, North 46°30'08" West, a distance of 46.17 feet to a point for corner;


**THENCE** North 33°00'23" West, a distance of 51.42 feet to a point for corner;

**THENCE** North 44°54'13" West, a distance of 156.90 feet to the **POINT OF BEGINNING** and containing 0.1299 acres or 5,659 square feet of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202). A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER AND  
 ELECTRIC EASEMENT  
 PART OF LOT 3A, BLOCK 1  
 DENTON SHOPPING CENTER ADDITION  
 JOHN MCGOWAN SURVEY  
 ABSTRACT NO. A-797  
 CITY OF DENTON, DENTON COUNTY, TEXAS

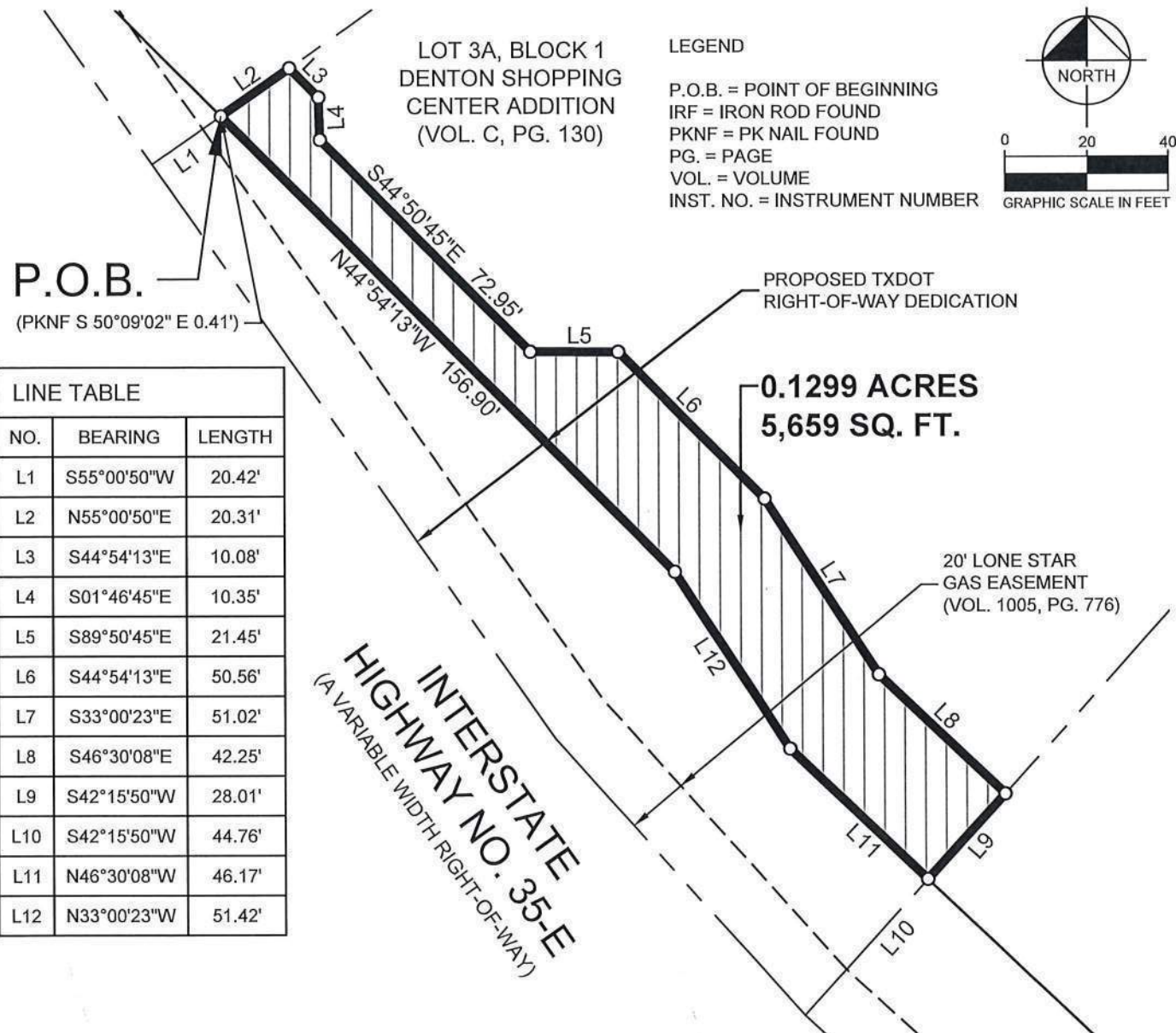
**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	1/14/2021	061024039	1 OF 2





LINE TABLE

NO.	BEARING	LENGTH
L1	S55°00'50"W	20.42'
L2	N55°00'50"E	20.31'
L3	S44°54'13"E	10.08'
L4	S01°46'45"E	10.35'
L5	S89°50'45"E	21.45'
L6	S44°54'13"E	50.56'
L7	S33°00'23"E	51.02'
L8	S46°30'08"E	42.25'
L9	S42°15'50"W	28.01'
L10	S42°15'50"W	44.76'
L11	N46°30'08"W	46.17'
L12	N33°00'23"W	51.42'

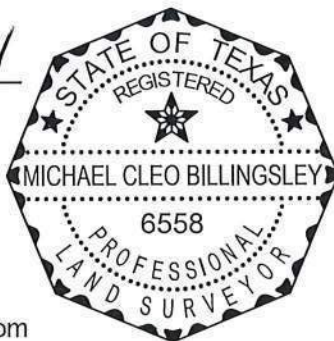
## NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*[Signature]*  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER AND  
ELECTRIC EASEMENT  
PART OF LOT 3A, BLOCK 1  
DENTON SHOPPING CENTER ADDITION  
JOHN MCGOWAN SURVEY  
ABSTRACT NO. A-797  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	1/14/2021	061024039	2 OF 2

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 11**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1831+11 RT to Sta 1832+24 RT

Existing Easement

Volume C, Page 130

PART OF LOT 3C, BLOCK 1  
DENTON SHOPPING CENTER ADDITION  
JOHN MCGOWAN SURVEY  
ABSTRACT NO. A-797  
CITY OF DENTON, DENTON COUNTY, TEXAS

VOL 2385 PAGE 940

THE STATE OF TEXAS,  
COUNTY OF DENTON

§  
§ KNOW ALL MEN BY THESE PRESENTS:  
§

REAL PROPERTY RECORD

21968

THAT Arnold/Denton Town Center, Ltd., a Texas limited partnership of Dallas County, Texas, in consideration of the sum of One dollar (\$1.00) and no cents and other good and valuable consideration in hand paid by the City of Denton, Texas receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by it, situated in Denton County, Texas in the J. McGowan Survey, Abstract No. 797.

ALL that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the J. McGowan survey, Abst. No. 797, and being part of Lot No. 3A, Block 1, of the Denton Shopping Center Addition, an addition to the City and County of Denton, and also being part of a tract of land as conveyed from 2307 I-35E Joint Venture, a Texas venture to Arnold/Denton Town Center, LTD., a Texas limited partnership by deed dated January 5, 1987 and recorded in Volume 2058, Page 190 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the southern most corner of said Lot 3A, same being the western most corner of said Lot 2C, said point also lying in the northeast right-of-way line of IH 35 E;

THENCE northwesterly, along the southwest boundary line of said Lot 3A, same being the northeast right-of-way line of said IH 35 E the following two (2) courses and distances: (1) north 42° 00' 59" west, 90.6 feet; (2) north 34° 42' 00" west, 171.29 feet to the westerly southwest corner of said Lot 3A, same being the southern most corner of Lot 3C of said addition;

THENCE north 55° 18' 00" east, along the westerly northwest boundary line of said Lot 3A, same being the southeast boundary line of said Lot 3C, a distance of 16.0 feet, to a point lying 16.0 feet northeast of and perpendicular to the southwest boundary line of said Lot 3A for corner;

THENCE southeasterly, 16.0 feet northeast of and parallel to the southwest boundary line of said Lot 3A the following two (2) courses and distances: (1) south 34° 42' 00" east, 170.27 feet; (2) south 42° 00' 59" east, 88.05 feet to a point lying in the southeast boundary line of said Lot 3A, same being the northwest boundary line of said Lot 2C for corner;

THENCE south 42° 33' 00" west along the southeast boundary line of said Lot 3A, same being the northwest boundary line of Lot 2C, a distance of 16.07 feet, to the Point of Beginning and containing 0.0955 acres of land.

0415E/99

And it is further agreed that the said City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.



For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public utilities in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public utilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness hand  
*[Signature]*

, this the 20<sup>th</sup> day of JAN, A.D. 1988.

BY: *[Signature]*  
Arnold, Denton Town Center, Ltd.,  
a Texas limited partnership

CORPORATION ACKNOWLEDGMENT

THE STATE OF TEXAS, §  
COUNTY OF §  
on this day personally appeared

BEFORE ME, the undersigned authority,

*Fred L. Arnold*

known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act if such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 20 day of January, A.D. 1988



*[Signature]*  
Notary Public, in and for the State of Texas  
My Commission Expires 6-22-89

RETURN TO: City of Denton  
215 E. McKinney  
Denton, TX 76201

ATTN: Roger N. Wilkinson  
Right-of-Way Agent

0521E/20

FILED FOR RECORD 1<sup>st</sup> DAY OF June A.D. 19 88 at 10:48 A.M.  
DULY RECORDED 1<sup>st</sup> DAY OF June A.D. 19 88

BY: *[Signature]* DEPUTY

MARILYN ROBINSON, COUNTY CLERK  
DENTON COUNTY, TEXAS

# DECLARATION OF RESTRICTIVE COVENANTS

1136 544

STATE OF TEXAS

DEED RECORDS

COUNTY OF DENTON

9472

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made and entered into this 31st day of March, 1982, by DENTON TOWNE CENTER JOINT VENTURE, a joint venture ("Towne Center").

## INTRODUCTION

1. Towne Center is the owner of certain property situated in Denton County, Texas, being more particularly described on Exhibit "A" attached to this Declaration (the "Towne Center Tract").
2. Duncan Properties, Ltd., a Texas limited partnership ("Duncan," with such term also applying to the successors and assigns of Duncan who becomes owner of all or any portion of the Duncan Outlet Tract) is the owner of certain abutting real property also situated in Denton County, Texas, being more particularly described on Exhibit "B" attached to this Declaration (the "Duncan Outlet Tract").
3. The Towne Center Tract and the Duncan Outlet Tract are sometimes in this Declaration referred to collectively as the "Tracts" and individually as a "Tract."
4. On even date herewith Towne Center and Duncan have consummated an exchange of real property and entered into a Grant of Reciprocal Easements and certain other agreements relating to the engineering and construction of improvements upon the Tracts. In connection with this series of transactions, Towne Center has agreed to execute this Declaration for the benefit of the owners, from time to time, of the Duncan Outlet Tract.

## ARTICLE I

### Restrictions

1.1 Definition of "Building". The term "building" shall have the meaning given it below.

(1) the term "Building" when used in this Declaration shall mean and include all temporary or permanent independent structures, which are completely enclosed by exterior walls, but not including exterior projections, whether vertical or horizontal, attached columns, canopies, roof overhangs and similar appendages, landscaping, signage, trash enclosures, lighting and similar nonstructural improvements.

1.2 General Restrictions. Towne Center hereby declares the following restrictions as being applicable to the Towne Center Tract, in accordance with the terms and provisions stated below:

(1) No portion of any building or any protrusions therefrom nor any other structures other than landscaping, signage, trash enclosures, lighting, paving,

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curbing, walkways or similar nonstructural improvements shall be located on the Colorado Boulevard side of the Permissible Building Line as shown on Exhibit "C" to this Declaration (the "Site Plan").

(ii) No portion of any building which is located on the Colorado Boulevard side of the "Two Story Line" (herein so called) shown on the Site Plan shall be in excess of one story in height.

(iii) There shall exist at all times a space and separation of at least one hundred twenty feet (120') between buildings to the east of the area shown as being "Access Drive #2" (herein so called) on the Site Plan and buildings to the west of Access Easement #2, (the "120 Foot Area"). Encroachments into the 120 Foot Area will be permitted for all canopies, walkways, awnings, columns, roof overhangs, building or canopy mounted signs and stairways; provided, that a separation between any encroachments on the east side of Access Drive #2 and encroachments on the west side of Access Drive #2 of at least one hundred feet (100') must at all times exist. Any stairway encroachments contained within the 120 Foot Area shall not be enclosed on the second level of the stairway, if any, but may be enclosed on the first level of the stairway. The restrictions contained in this Section 1.2(iii) shall not prohibit the erection of curbing, landscaping, lighting and similar non-structural matters at any place on the Towne Center Tract.

(iv) No portion of any buildings or any protrusions therefrom (not including sidewalks) shall be closer than five feet (5') to Access Drive #2 at any point along the boundaries of Access Drive #2.

(v) No curb openings along the easterly and westerly boundaries of Access Drive #2 shall be permitted to exist except at the general locations shown on the Site Plan.

(vi) No portion of any building located on the I-35 side of the Two Story Line (herein so called) shown on the Site Plan may exceed thirty-four feet (34') in height and no portion of any building located on the Colorado Boulevard side of the Two Story Line shall exceed twenty-five feet (25') in height, with all such height level being measured from the finished grade level for the building pad of such building; provided, however, that elevator enclosures, antennas and towers (such as stairways or clock towers) may exceed the above-described height restrictions, and signs and clocks may be located on the elevator enclosures and towers.

(vii) Any receptacle for trash storage shall be screened on three sides (with at least one screened side facing the Duncan Outlot Tract and one screened side facing the area described on Exhibit "D" to this Declaration) by either a wood screen fence, a masonry screen fence of the same finish as the building in which the trash being stored is generated or as provided below. The surface grade levels to the south of the area in which it is anticipated that trash receptacles will be placed rise rapidly; accordingly, where the surface grade to the south of the area where the

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trash receptacles are placed is equal to or greater than the highest point of a trash receptacle placed on the Towne Center Tract, such surface grade may replace the screen wall required on that side as required above so long as the horizontal distance between:

(a) the closest point of the trash receptacle, and

(b) the point of the surface grade level which is sufficiently high to provide a screening device as provided above,

is equal to or less than the vertical height of the trash receptacle. For example, if the trash receptacle is six feet tall, but within five feet of the trash receptacle the grade level rises to be seven feet higher than the grade level where the trash receptacle sits, such rise in grade level would constitute a screening wall. The foregoing restrictions shall not apply to any trash receptacles which are located within the area designated as the "Permitted Trash Receptacle Area" on the Site Plan.

(viii) Any mechanical equipment placed on the roof of any buildings (except for antennas, which shall not be required to be screened) shall be screened with fences or other screening devices at least as high as the highest portion of the mechanical equipment so located on the roof.

(ix) The exterior of all buildings shall be painted or finished, with the term "finished" including, but not limited to, aggregate concrete stone, performed concrete panels, stucco and decorative concrete blocks.

(x) No fascia signs (except for clocks and related signage which may be located on towers, but which may not extend higher than such towers) located on any building may extend higher than the roof or, if higher, the parapet line of such building.

1.3 Use Restrictions. Towne Center hereby declares the following restrictions as being applicable to the Towne Center Tract, in accordance with the terms and provisions stated below. No part of the Towne Center Tract shall be used except for retail sales, service facilities, business offices, financial institutions and other related and appurtenant uses. In addition, no use or operation will be made, conducted or permitted on or with respect to all or any part of the Towne Center Tract which use or operation is obnoxious or clearly injurious to a first-class shopping center, including the following:

(i) Any public or private nuisance;

(ii) Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness, or loudness;

(iii) Any obnoxious odor;

(iv) Any noxious, toxic, caustic, or corrosive fuel or gas;

(v) Any dust, dirt, or fly ash in excessive quantities;

(vi) Any unusual fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;

(vii) Any warehouse (excepting storage which is incidental to a permitted use), assembly, manufacture, distillation, refining, smelting, or mining operations;

(viii) Any "second hand" store, Army, Navy, or government "surplus" store;

(ix) Any mobile home or trailer court, labor camp, junk yard, stock yard, or animal raising;

(x) Any dumping, disposal, incineration or reduction of garbage or refuse;

(xi) Any fire or bankruptcy sale or auction house operation;

(xii) Any central laundry or dry cleaning plants or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pick up and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Towne Center Tract is located;

(xiii) Any automobile sales, leasing or display, including body repair facilities (but this prohibition shall not be applicable to automotive mechanical service facilities or the sale of automotive parts and accessories);

(xiv) Living quarters, sleeping apartments or lodging rooms;

(xv) Any mortuary;

(xvi) Any adult bookstore selling pornographic material or pornographic theatres; and

(xvii) Any trailer rental.

## ARTICLE II

### Miscellaneous

2.1 Estoppel Certificate. Duncan hereby covenants that within twenty (20) days from the delivery of written requests, from time to time, of Towne Center, it will issue to designees of Towne Center an estoppel certificate stating: (i) whether Duncan knows of any default by Towne Center under this Declaration, and if there are known defaults, specifying the nature thereof; and (ii) whether to Duncan's knowledge this Declaration has been modified or amended in any way (and if it has, then stating the nature thereof). Notwithstanding the provisions of Section 2.2 below, any requests for an estoppel certificate and the response thereto may, at the election of the sender, be sent by private carrier expedited mail service (i.e., Federal Express type

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service) and, in such event, the request or the response, as the case may be, shall be effective on the first day following deposit with such private carrier. Duncan agrees to act in good faith in connection with requests for estoppel certificates from Towne Center. Failure by Duncan to respond within the 20-day period shall be deemed the equivalent of a statement that no defaults exist, that no amendment to this Declaration has been entered into and that this Declaration remains in full force and effect.

2.2 Notices. All notices, demands, statements and requested required or permitted to be given under this Declaration must be in writing and shall be deemed to have been properly given or served, whether received or not, by depositing the same in the United States mails, addressed to Duncan or Towne Center, postage prepaid and registered or certified mail, return receipt requested, at the address set forth below.

To Towne Center:      Denton Towne Center Joint Venture  
                                 c/o Henry S. Miller Company  
                                 2001 Bryan Tower, 30th Floor  
                                 Dallas, Texas 75201  
                                 Attention: Raymond J. Poche

with copy by regular mail to:

Thomas J. Terkel  
Jenkins & Gilchrist  
2200 First National Bank Bldg.  
Dallas, Texas 75202

To Duncan:              Duncan Properties, Ltd.  
                                 100 Park Avenue Bldg.  
                                 Suite 1204  
                                 Oklahoma City, Oklahoma 73102  
                                 Attention: Neil Hill

with copy by regular mail to:

Mr. Glenn D. West  
Jackson, Walker, Winstead,  
Cantwell & Miller  
4300 First National Bank Bldg.  
Dallas, Texas 75202

All notices, demands and requests shall, except as hereinafter set forth, be effective upon being deposited in the United States mails in accordance with the provisions hereof. Rejection or other refusal to accept, or the inability to deliver because of changes of address of which no notice was given, shall be deemed to be receipt of the notice, demand or request. Any party shall have the right from time to time and at any time, upon at least ten (10) days' prior written notice thereof in accordance with the provisions hereof, to change its respective address and to specify any other address within the United States of America.

2.3 Binding Effect. The covenants contained in Article I of this Declaration shall constitute covenants running with, and shall be deemed appurtenant to, the Towne Center Tract and all such covenants shall be binding upon the successors and assigns of Towne Center who become owners of any portion of the Towne Center Tract.



2.4 Right to Enforce. The benefits of the covenants contained in Article I shall inure to the benefit of Duncan and the successors and assigns of Duncan as the owner(s) of the Duncan Outlot Tract. The remedies provided below in Section 2.6 may be pursued only by the person(s) or entity(ies) that, from time to time, own in the aggregate fee simple title to fifty-one percent (51%) or more of the land area contained within the Duncan Outlot Tract. Nothing herein contained shall be deemed to be the creation of restrictions for the benefit of the general public, it being the intention and understanding of the parties hereto that this Declaration and the enforcement thereof shall be strictly limited to the person(s) or entity(ies) specified in the immediately preceding sentence.

2.5 Amendments. Amendments to this Declaration shall be effective only when executed and acknowledged by the person(s) or entity(ies) that, from time to time, own in the aggregate fee simple title to fifty-one percent (51%) or more of the land area contained within the Towne Center Tract and the person(s) or entity(ies) that, from time to time, own in the aggregate fee simple title to fifty-one percent (51%) or more of the land area contained within the Duncan Outlot Tract, and when recorded in the deed records of Denton County, Texas.

2.6 Default. Upon violation by Towne Center (the "Defaulting Party") of the covenants created in Article I above, the person(s) or entity(ies) entitled pursuant to Section 2.4 above to enforce the provisions of this Declaration (the "Enforcing Party", whether one or more) shall have the right to exercise one or more of the following remedies, at the sole election and option of the Enforcing Party:

(a) The Enforcing Party may obtain specific performance by injunction, temporary or permanent restraining order and/or any other legal and equitable remedies as may be available, in which event the Enforcing Party shall also be entitled to recover in such proceedings a full reimbursement for all injuries and damages sustained prior to the curing of the default plus all court costs and reasonable attorneys' fees incurred by the Enforcing Party.

(b) The Enforcing Party may demand that the Defaulting Party compensate it for damages sustained and to be sustained as a result of the violation; and if the Enforcing Party proceeds to litigation on this demand, the Enforcing Party shall also be entitled to recover in such proceedings all court costs and reasonable attorneys' fees incurred by the Enforcing Party.

The pursuit of one or more remedies hereinabove prescribed shall not preclude the pursuit of any other remedy otherwise provided under the laws of the State of Texas, unless inherently inconsistent with the remedy being pursued. Notwithstanding the foregoing, Defaulting Party shall not be deemed to be in violation of the covenants created by Article I above until Defaulting Party shall have failed to cure such violation (or, in the case of a violation which cannot be cured within a thirty-day period, to commence and diligently work toward curing the violation) within thirty (30) days following the delivery of written notice (describing with particularity the nature of the violation and referring specifically to the provision of this Declaration claimed to

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be violated) by the Enforcing Party to Defaulting Party and to all mortgagees of Defaulting Party about whom the Enforcing Party has received prior written notice.

2.7 Sale by Towne Center. Upon the bona fide assignment, conveyance, sale or other transfer by Towne Center of its fee simple ownership to any portion or all of the Towne Center Tract, Towne Center shall be released from any liability arising out of a failure to observe the covenants contained in this Declaration arising subsequent to the effective date of such sale or transfer with respect to the portion sold or otherwise transferred (other than those obligations arising from any default by Towne Center under this Declaration prior to such sale or transfer).

2.8 Approvals. Towne Center may at any time request that Duncan review plans and specifications for proposed buildings to be located on the Towne Center Tract and advise Towne Center of any violations of the covenants contained in Section 1.2 hereof (the "Restrictions") created by such plans. In such event, Towne Center shall also deliver to Duncan sufficient supporting data (such as surveys, detailed, scaled exterior elevations, specifications for materials to be used and other renderings as may be needed) to enable Duncan to make an informed determination concerning whether the buildings as proposed comply with the Restrictions. Towne Center shall be deemed to have submitted adequate information to Duncan if Duncan fails to request more detailed information within fifteen days of the initial delivery of such information. Any objections raised by Duncan shall be in writing and shall specify the specific portion of the Restrictions which Duncan believes will be violated by the proposed building and the particular nature of the violation. With respect to any actual violation which Duncan fails to identify in writing to Towne Center within thirty (30) days of the delivery of the initial information, or, if later, within fifteen days of the delivery of all information requested by Duncan, Duncan shall be estopped thereafter to assert any such violation and shall be deemed to have waived any right or remedy to which it might otherwise be entitled. The above described estoppel and waiver shall be effective only as to the specific buildings described in the plans submitted to Duncan and then only if construction of such buildings is commenced within ninety days from the expiration of the period for objection, and shall not apply to any other buildings thereafter constructed, or any remodeling, alteration or reconstruction of any such buildings.

2.9 Six Month Waiver. If, within six months following the date on which a certificate of occupancy is issued for any building or any portion thereof constructed within the Towne Center Tract, an affidavit identifying Towne Center and the Towne Center Tract and setting forth a specific description of the manner in which such building fails to conform with the provisions of Section 1.2 of this Declaration is not filed in the Deed Records of Denton County, Texas, then in such event, the building for which the certificate of occupancy was issued shall conclusively be deemed to comply with all such provisions. Duncan shall thereafter be estopped to assert any violations of Section 1.2 of Declaration with respect to such building; provided, however, that nothing contained herein shall limit or affect in any manner the Enforcing Party's right to pursue any remedies set forth in Section 2.6 hereof at any time prior to the expiration of such six (6) month period.

2.10 Duration. This Declaration and the restrictions contained herein shall terminate and be of no further force and effect upon the earlier of:

(i) February 1, 2020; or

(ii) the date on which a written termination agreement, executed and acknowledged by the parties required to amend this Declaration, is recorded in the real property records of Denton County, Texas.

2.11 Joinder By Other Persons. The persons and/or entities executing Exhibit "E", "F" and "G" to this Agreement have done so to evidence the subordination of their respective interests in the Towne Center Tract to the terms and provisions of this Declaration.

EXECUTED, to be effective as of the date first above specified.

DENTON TOWNE CENTER JOINT VENTURE,  
a joint venture

By: Herbert D. Weitzman  
Herbert D. Weitzman  
Venture Manager

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

BEFORE ME, the undersigned authority, on this day personally appeared HERBERT D. WEITZMAN, Venture Manager of Denton Towne Center Joint Venture, a Texas joint venture, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes, consideration and in the capacity therein expressed, as the act and deed of said joint venture.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 31st day of March, 1982.



Thomas J. Jukil  
Notary Public in and for  
Dallas, County, Texas

My Commission Expires:  
3-10-84

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Exhibit "A"

Towne Center Tract

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BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J. S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing the Easterly line of said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'06", a radius of 3740.00 feet, and an arc length of 182.88 feet to the POINT OF BEGINNING;

Continuing along said curve to the right having a central angle of 14°46'26", a radius of 3740.00 feet, and an arc length of 964.37 feet to a point of curvature to the right;

THENCE along said curve to the right in a Southeasterly direction and departing said Loop 288 and having a central angle of 08°31'31", a radius of 705.00 feet, an arc length of 104.90 feet, and a chord bearing of S 19°21'05" E to a point of reverse curve to the left;

THENCE along said curve to the left having a central angle of 11°00'18", a radius of 453.38 feet, and an arc length of 87.08 feet to a point for corner;

THENCE S 60°43'46" W a distance of 268.95 feet to a point for corner;

THENCE S 41°57'26" W a distance of 357.99 feet to a point for corner;

THENCE S 48°02'34" E a distance of 21.62 feet to a point for corner;

THENCE S 34°48'00" W a distance of 136.00 feet to a point for corner;

THENCE S 25°15'00" W a distance of 170.17 feet to a point for corner;

THENCE N 64°45'00" W a distance of 51.87 feet to a point for corner;

THENCE N 34°42'00" W a distance of 307.00 feet to the POINT OF BEGINNING and containing 4.9698 acres of land, more or less.

Exhibit "B"

Duncan Outlot Tract

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34°42'00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64°45'00" E a distance of 65.87 feet to a point for corner;

THENCE S 05°49'03" W a distance of 95.00 feet to a point for corner;

THENCE S 86°43'12" W a distance of 90.00 feet to a point for corner;

THENCE S 42°33'00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 42°00'59" W a distance of 90.60 feet to a point for corner;

N 34°42'00" W a distance of 226.60 feet to a point for corner;

N 01°41'20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

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Exhibit "D"

DUNCAN MAIN TRACT

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J. S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway No. 35-E and departing the Southerly line of said Loop 288 the following:

S 01°41'20" E a distance of 70.71 feet to a point;

S 34°42'00" E a distance of 226.60 feet to a point;

S42°00'59" E a distance of 90.60 feet to the POINT OF BEGINNING;

THENCE N 42°33'00" E departing the aforementioned I.H. 35-E a distance of 145.00 feet to a point for corner;

THENCE N 86°43'12" E a distance of 90.00 feet to a point for corner;

THENCE N 05°49'03" E a distance of 95.00 feet to a point for corner;

THENCE N 64°45'00" W a distance of 14.00 feet to a point for corner;

THENCE N 25°15'00" E a distance of 170.17 feet to a point for corner;

THENCE N 34°48'00" E a distance of 136.00 feet to a point for corner;

THENCE N 48°02'34" W a distance of 21.62 feet to a point for corner;

THENCE N 41°57'26" E a distance of 357.99 feet to a point for corner;

THENCE N 60°43'46" E a distance of 268.95 feet to a point of curvature to the left;

THENCE along said curve to the left in a Southeasterly direction having a central angle of 22°31'07", a radius of 453.38 feet, an arc length of 178.19 feet, and a chord bearing of N 37°21'11" W to the point of tangency;

THENCE S 48°36'44" E a distance of 323.16 feet to a point for corner;

THENCE S 41°57'26" W a distance of 1152.60 feet to a point situated in the Easterly line of said I.H. 35-E;

THENCE along the Northeasterly line of said Interstate Highway No. 35-E the following:

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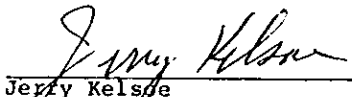
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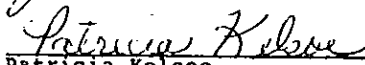
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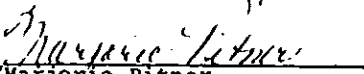
EXHIBIT " E "

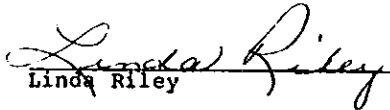
This Exhibit " E " to that certain Declaration of Restrictive Covenants executed by Denton Towne Center Joint Venture (the "Venture") for the benefit of Duncan Properties, Ltd., an Oklahoma limited partnership to be effective as March 31, 1982 (the "Declaration"), is being executed by Jerry Kelsoe, Patricia Kelsoe, Marjorie Pitner and Linda Riley (collectively, "Pitner-Kelsoe") to evidence the subordination by Pitner-Kelsoe of the lien currently held by Pitner-Kelsoe created by that certain deed of trust executed by the Venture, dated December 31, 1979, and recorded in Volume 557, page 320 of the Deed of Trust Records of Denton County, Texas, encumbering certain real property more particularly described in such deed of trust, as such deed of trust has been and is being amended effective on even date herewith, to the terms, provisions, rights and obligations created by the Declaration.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

  
Jerry Kelsoe

  
Patricia Kelsoe

  
Marjorie Pitner

  
Linda Riley

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EXHIBIT "F"

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This Exhibit to that certain Declaration of Restrictive Covenants executed by Denton Towne Center Joint Venture (the "Venture") for the benefit of Duncan Properties, Ltd., an Oklahoma limited partnership executed to be effective as March 31, 1982 (the "Declaration"), is being executed by RepublicBank Dallas N.A. (the "Bank") to evidence the subordination by the Bank of the lien currently held by the Bank created by that certain deed of trust executed by the Venture, dated December 20, 1979, and recorded in Volume 553, page 329 of the Deed of Trust Records of Denton County, Texas, encumbering certain real property more particularly described in such deed of trust, as such deed of trust is being amended effective on even date herewith, to the terms, provisions, restrictions, rights and obligations created by the Declaration.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

REPUBLICBANK DALLAS N.A.

By William H. Miller  
(Vice) President

WCS.dln/3.25-2/3.19.2

EXHIBIT "G"

This Exhibit "G" to that certain Declaration of Restrictive Covenants executed by DENTON TOWNE CENTER JOINT VENTURE (the "Venture") for the benefit of DUNCAN PROPERTIES, LTD., an Oklahoma limited partnership to be effective as of March 31, 1982 (the "Declaration"), is being executed by GIBRALTAR SAVINGS ASSOCIATION ("Gibraltar") to evidence the subordination by Gibraltar of the lien currently held by Gibraltar, created by that certain deed of trust executed by the Venture, dated November 14, 1980, and recorded in Volume 594, page 958 of the Deed of Trust Records of Denton County, Texas, and filed on November 20, 1980, under the County Clerk's File Number 33637, encumbering certain real property more particularly described in such deed of trust, as such deed of trust has been and is being amended effective on even date herewith, to the terms, provisions, rights and obligations created by the Declaration, provided that the subordination of Gibraltar's lien to the Declaration of Restrictive Covenants, effective March 31, 1982, shall not be construed as Gibraltar's consent or approval to any subsequent changes or amendments made pursuant to paragraph 2.5 of said Declaration and any such amendments or changes to the Declaration shall not be effective as to Gibraltar's hereinabove described lien, without obtaining the prior written consent and joinder of Gibraltar in any such amendments or changes to the Declaration.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

GIBRALTAR SAVINGS ASSOCIATION

By: Tommy G. Lane  
Tommy G. Lane

Title: Regional Vice President

WCS 1136 45-559

v. 1136 of 560

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APR 20 1982  
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FILED FOR RECORD 8<sup>11</sup> DAY OF April A.D. 1982, at 6:22 PM.  
RECORDED 7:20 DAY OF April A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Elise Taylor DEPUTY



DECLARATION OF RESTRICTIVE COVENANTS

STATE OF TEXAS           §  
                                  §     DEED RECORDS                   9473  
COUNTY OF DENTON       §

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made and entered into this 31st day of March, 1982, by DUNCAN PROPERTIES, LTD., an Oklahoma limited partnership ("Duncan").

INTRODUCTION

1. Duncan is the owner of certain property situated in Denton County, Texas, being more particularly described on Exhibit "A" attached to this Declaration (the "Duncan Outlot Tract").
2. Denton Towne Center Joint Venture, a Texas joint venture ("Towne Center," with such term also applying to the successors and assigns of Towne Center who become owners of all or any portion of the Towne Center Tract) is the owner of certain abutting real property also situated in Denton County, Texas, being more particularly described on Exhibit "B" attached to this Declaration (the "Towne Center Tract").
3. The Towne Center Tract and the Duncan Outlot Tract are sometimes in this Declaration referred to collectively as the "Tracts" and individually as a "Tract".
4. On even date herewith Towne Center and Duncan have consummated an exchange of real property and entered into a Grant of Reciprocal Easements and certain other agreements relating to the engineering and construction of improvements upon the Tracts. In connection with this series of transactions, Duncan has agreed to execute this Declaration for the benefit of the owners, from time to time, of the Towne Center Tract.

ARTICLE I

Restrictions

1.1 Definition of "Building". The term "building" shall have the meaning given it below:

(1) the term "building" when used in this Declaration shall mean and include all temporary or permanent independent structures, which are completely enclosed by exterior walls, but not including exterior projections, whether vertical or horizontal, attached columns, canopies, roof overhangs and similar appendages, landscaping, signage, trash enclosures, lighting and similar nonstructural improvements.

1.2 General Restrictions. Duncan hereby declares the following restrictions as being applicable to the Duncan Outlot Tract, in accordance with the terms and provisions stated below:

(1) Any receptacle for trash storage shall be enclosed on three sides (with at least one enclosed side facing the Towne Center Tract) by either a wood

screen fence or by a masonry screen fence of the same finish as the building in which the trash being stored is generated.

(ii) Any mechanical equipment placed on the roof of any buildings (except for antennas, which shall not be required to be screened) shall be screened with fences or other screening devices at least as high as the highest portion of the mechanical equipment located on the roof.

(iii) The exterior of all buildings shall be painted or finished, with the term "finished" including, but not limited to, aggregate concrete stone, preformed concrete panels, stucco and decorative concrete blocks.

(iv) No fascia signs located on any building may extend higher than the roof or, if higher, the parapet line of such building.

(v) No portion of any building nor any signs or other vertical structures (other than lighting standards or poles) may be constructed or located within the area identified as the "No Building Area" on Exhibit "C" to this Declaration.

(vi) The maximum number of square feet of gross floor area contained within building(s) which may be constructed within the area identified as the "Restricted Building Area" (herein so called) on Exhibit "C" to this Declaration shall be 3,000 square feet of gross floor area; provided, however, no one building constructed within the Restricted Building Area may contain more than 2,000 square feet of gross floor area. The area contained under any canopies or roof overhangs shall be included within the gross floor area calculations prescribed above when all or any portion of foundation support for such canopies or roof overhangs is located exterior of the building exterior walls, whether the devices providing such foundation support are attached to the building or not.

(vii) No portion of any building (including all vertical projections other than antennas) may exceed twenty-five feet (25') in height above any point along the finished grade level for the building pad of such building.

(viii) No building located anywhere on the Duncan Outlot Tract may be leased to or otherwise occupied by more than one business entity; provided, however, that one building may be leased or otherwise occupied by two, but no more than two, business entities, if such building does not exceed 5,000 square feet of gross floor area.

(ix) All buildings shall be separated from one another at their nearest point by at least fifteen feet (15').

(x) No building shall exceed one story in height; provided, however, that this restriction shall not prohibit mezzanine areas.

1.3 Use Restrictions. Duncan hereby declares the following restrictions as being applicable to the Duncan

Outlot Tract, in accordance with the terms and provisions stated below. No part of the Duncan Outlot Tract shall be used except for retail sales, service facilities, business offices, financial institutions and other related and appurtenant uses. In addition, no use or operation will be made, conducted or permitted on or with respect to all or any part of the Duncan Outlot Tract which use or operation is obnoxious or clearly injurious to a first-class shopping center, including the following:

- (i) Any public or private nuisance;
- (ii) Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness, or loudness;
- (iii) Any obnoxious odor;
- (iv) Any noxious, toxic, caustic, or corrosive fuel or gas;
- (v) Any dust, dirt, or fly ash in excessive quantities;
- (vi) Any unusual fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;
- (vii) Any warehouse (excepting storage which is incidental to a permitted use), assembly, manufacture, distillation, refining, smelting, or mining operations;
- (viii) Any "second hand" store, Army, Navy, or government "surplus" store;
- (ix) Any mobile home or trailer court, labor camp, junk yard, stock yard, or animal raising;
- (x) Any dumping, disposal, incineration or reduction of garbage or refuse;
- (xi) Any fire or bankruptcy sale or auction house operation;
- (xii) Any central laundry or dry cleaning plants or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pick up and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Duncan Outlot Tract is located;
- (xiii) Any automobile sales, leasing or display, including body repair facilities (but this prohibition shall not be applicable to automotive mechanical service facilities or the sale of automotive parts and accessories);
- (xiv) Living quarters, sleeping apartments or lodging rooms;
- (xv) Any mortuary;
- (xvi) Any adult bookstore selling pornographic material or pornographic theatres; and

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(xvii) Any trailer rental.

ARTICLE II

v 1138 w 564

Miscellaneous

2.1 Estoppel Certificate. Towne Center hereby cove-  
nants that within twenty (20) days from the delivery of  
written requests, from time to time, of Duncan, it will  
issue to designees of Duncan an estoppel certificate stat-  
ing: (1) whether Towne Center knows of any default by  
Duncan under this Declaration, and if there are known de-  
faults, specifying the nature thereof; and (2) whether to  
Towne Center's knowledge this Declaration has been modified  
or amended in any way (and if it has, then stating the  
nature thereof). Notwithstanding the provisions of Section 2.2  
below, any requests for an estoppel certificate and the  
response thereto may, at the election of the sender, be sent  
by private carrier expedited mail service (i.e., Federal  
Express type service) and, in such event, the request or the  
response, as the case may be, shall be effective on the  
first day following deposit with such private carrier.  
Towne Center agrees to act in good faith in connection with  
requests for estoppel certificates from Duncan. Failure by  
Towne Center to respond within the 20-day period shall be  
deemed the equivalent of a statement that no defaults exist,  
that no amendments to this Declaration have been entered  
into and that this Declaration remains in full force and  
effect.

2.2 Notices. All notices, demands, statements and  
requests required or permitted to be given under this Decla-  
ration must be in writing and shall be deemed to have been  
properly given or served, whether received or not, by deposit-  
ing the same in the United States mails, addressed to Duncan  
or Towne Center, postage prepaid and registered or certified  
mail, return receipt requested, at the address set forth  
below.

To Towne Center: Denton Towne Center Joint Venture  
c/o Henry S. Miller Company  
2001 Bryan Tower, 30th Floor  
Dallas, Texas 75201  
Attention: Raymond J. Poche

with copy by regular mail to:

Thomas J. Terkel  
Jenkins & Gilchrist  
2200 First National Bank Bldg.  
Dallas, Texas 75202

To Duncan: Duncan Properties, Ltd.  
100 Park Avenue Bldg.  
Suite 1204  
Oklahoma City, Oklahoma 73102  
Attention: Neil Hill

with copy by regular mail to:

Mr. Glenn D. West  
Jackson, Walker, Winstead,  
Cantwell & Miller  
4300 First National Bank Bldg.  
Dallas, Texas 75202

All notices, demands and requests shall, except as herein after set forth, be effective upon being deposited in the United States mails in accordance with the provisions hereof. Rejection or other refusal to accept, or the inability to deliver because of changes of address of which no notice was given, shall be deemed to be receipt of the notice, demand or request. Any party shall have the right from time to time and at any time, upon at least ten (10) days' prior written notice thereof in accordance with the provisions hereof, to change its respective address and to specify any other address within the United States of America.

2.3 Binding Effect. The covenants contained in Article I of this Declaration shall constitute covenants running with, and shall be deemed appurtenant to, the Duncan Outlot Tract and all such covenants shall be binding upon the successors and assigns of Duncan who become owners of any portion of the Duncan Outlot Tract.

2.4 Right to Enforce. The benefits of the covenants contained in Article I shall inure to the benefit of Towne Center and the successors and assigns of Towne Center as the owner(s) of the Towne Center Tract. The remedies provided below in Section 2.6 may be pursued only by the person(s) or entity(ies) that, from time to time, own fee simple title to fifty-one percent (51%) or more of the land area contained within the Towne Center Tract. Nothing herein contained shall be deemed to be the creation of restrictions for the benefit of the general public, it being the intention and understanding of the parties hereto that this Declaration and the enforcement thereof shall be strictly limited to the persons(s) or entity(ies) specified in the immediately preceding sentence.

2.5 Amendments. Amendments to this Declaration shall be effective only when executed and acknowledged by the person(s) or entity(ies) that, from time to time, own fee simple title to fifty-one percent (51%) or more of the land area contained within the Duncan Outlot Tract and the person(s) or entity(ies) that, from time to time, own fee simple title to fifty-one percent (51%) or more of the land area contained within the Towne Center Tract, and when recorded in the deed records of Denton County, Texas.

2.6 Default. Upon violation by Duncan (the "Defaulting Party") of the covenants created in Article I above, the person(s) or entity(ies) entitled pursuant to Section 2.4 above to enforce the provisions of this Declaration (the "Enforcing Party", whether one or more) shall have the right to exercise one or more of the following remedies, at the sole election and option of the Enforcing Party:

(a) The Enforcing Party may obtain specific performance by injunction, temporary or permanent restraining order and/or any other legal and equitable remedies as may be available, in which event the Enforcing Party shall also be entitled to recover in such proceedings a full reimbursement for all injuries and damages sustained prior to the curing of the default plus all court costs and reasonable attorneys' fees incurred by the Enforcing Party.

(b) The Enforcing Party may demand that the Defaulting Party compensate it for damages sustained

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and to be sustained as a result of the violation; and if the Enforcing Party proceeds to litigation on this demand, the Enforcing Party shall also be entitled to recover in such proceedings all court costs and reasonable attorneys' fees incurred by the Enforcing Party.

The pursuit of one or more remedies hereinabove prescribed shall not preclude the pursuit of any other remedy otherwise provided under the laws of the State of Texas, unless inherently inconsistent with the remedy being pursued. Notwithstanding the foregoing, Defaulting Party shall not be deemed to be in violation of the covenants created by Article I above until Defaulting Party shall have failed to cure such violation (or, in the case of a violation which cannot be cured within a thirty-day period, to commence and diligently work toward curing the violation) within thirty (30) days following the delivery of written notice (describing with particularity the nature of the violation and referring specifically to the provision of this Declaration claimed to be violated) by the Enforcing Party to Defaulting Party and to all mortgagees of Defaulting Party about whom the Enforcing Party has received prior written notice.

2.7 Sale by Duncan. Upon the bona fide assignment, conveyance, sale or other transfer by Duncan of its fee simple ownership to any portion or all of the Duncan Outlot Tract, Duncan shall be released from any liability arising out of a failure to observe the covenants contained in this Declaration arising subsequent to the effective date of such sale or transfer with respect to the portion sold or otherwise transferred (other than those obligations arising from any default by Duncan under this Declaration prior to such sale or transfer).

2.8 Approvals. Duncan may at any time request that Towne Center review plans and specifications for proposed buildings to be located on the Duncan Outlot Tract and advise Duncan of any violations of the covenants contained in Section 1.2 hereof (the "Restrictions") created by such plans. In such event, Duncan shall also deliver to Towne Center sufficient supporting data (such as surveys, detailed, scaled exterior elevations, specifications for materials to be used and other renderings as may be needed) to enable Towne Center to make an informed determination concerning whether the buildings as proposed comply with the Restrictions. Duncan shall be deemed to have submitted adequate information to Towne Center if Towne Center fails to request more detailed information within fifteen days of the initial delivery of such information. Any objections raised by Towne Center shall be in writing and shall specify the specific portion of the Restrictions which Towne Center believes will be violated by the proposed building and the particular nature of the violation. With respect to any actual violation which Towne Center fails to identify in writing to Duncan within thirty (30) days of the delivery of the initial information or, if later, within fifteen days of the delivery of all information requested by Towne Center, Towne Center shall be estopped thereafter to assert any such violation and shall be deemed to have waived any right or remedy to which it might otherwise be entitled. The above-described estoppel and waiver shall be effective only as to the specific buildings described in the plans submitted to Towne Center and then only if construction of such buildings is commenced within ninety days from the expiration of the period for objection, and shall not apply to any other buildings thereafter constructed, or any remodeling, alteration or reconstruction of any such buildings.



2.9 Six Month Waiver. If, within six months following the date on which a certificate of occupancy is issued for any building or any portion thereof constructed within the Duncan Outlot Tract, an affidavit identifying Duncan and the Duncan Outlot Tract and setting forth a specific description of the manner in which such building fails to conform with the provisions of Section 1.2 of this Declaration is not filed in the Deed Records of Denton County, Texas, then in such event, the building for which the certificate of occupancy was issued shall conclusively be deemed to comply with all such provisions. Towne Center shall thereafter be estopped to assert any violations of Section 1.2 of this Declaration with respect to such building; provided, however, that nothing contained herein shall limit or affect in any manner the Enforcing Party's right to pursue any remedies set forth in Section 2.6 hereof at any time prior to the expiration of such six (6) month period.

2.10 Duration. This Declaration and the restrictions contained herein shall terminate and be of no further force and effect upon the earlier of:

(i) February 1, 2020; or

(ii) the date on which a written termination agreement, executed and acknowledged by the parties required to amend this Declaration, is recorded in the real property records of Denton County, Texas.

EXECUTED, to be effective as of the date first above specified.

DUNCAN PROPERTIES, LTD.,  
an Oklahoma limited partnership

By: Neil Hill  
Neil Hill, General Partner

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

BEFORE ME, the undersigned authority, on this day personally appeared NEIL HILL, General Partner of Duncan Properties, Ltd., an Oklahoma limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes, consideration and in the capacity therein expressed, as the act and deed of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1<sup>st</sup> day of April, 1982.



Carol M. Cobb  
Notary Public in and for  
Dallas County, Texas

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Exhibit "A"  
Duncan Tract

v. 1136 - 568

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34°42'00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64°45'00" E a distance of 65.87 feet to a point for corner;

THENCE S 05°49'03" W a distance of 95.00 feet to a point for corner;

THENCE S 86°43'12" W a distance of 90.00 feet to a point for corner;

THENCE S 42°33'00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 42°00'59" W a distance of 90.60 feet to a point for corner;

N 34°42'00" W a distance of 226.60 feet to a point for corner;

N 01°41'20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

Exhibit "B"

Towme Center Tract

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J. S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing the Easterly line of said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'06", a radius of 3740.00 feet, and an arc length of 182.88 feet to the POINT OF BEGINNING;

Continuing along said curve to the right having a central angle of 14°46'26", a radius of 3740.00 feet, and an arc length of 964.37 feet to a point of curvature to the right;

THENCE along said curve to the right in a Southeasterly direction and departing said Loop 288 and having a central angle of 08°31'31", a radius of 705.00 feet, an arc length of 104.90 feet, and a chord bearing of S 19°21'05" E to a point of reverse curve to the left;

THENCE along said curve to the left having a central angle of 11°00'18", a radius of 453.38 feet, and an arc length of 87.08 feet to a point for corner;

THENCE S 60°43'46" W a distance of 268.95 feet to a point for corner;

THENCE S 41°57'26" W a distance of 357.99 feet to a point for corner;

THENCE S 48°02'34" E a distance of 21.62 feet to a point for corner;

THENCE S 34°48'00" W a distance of 136.00 feet to a point for corner;

THENCE S 25°15'00" W a distance of 170.17 feet to a point for corner;

THENCE N 64°45'00" W a distance of 51.87 feet to a point for corner;

THENCE N 34°42'00" W a distance of 307.00 feet to the POINT OF BEGINNING and containing 4.9698 acres of land, more or less.

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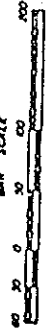
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0418 (1994) 0096703

LOOP 288

--- DENON DUNE CENTER TRACT ---

--- NINCAR MAIN TRACT ---



L.H. 35-E

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CLERK OF DISTRICT COURT  
DENTON COUNTY, TEXAS

BY

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SOUTHWEST LAND TITLE CO.  
P. O. BOX 18296  
DALLAS, TEXAS 75218

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FILED FOR RECORD 8<sup>th</sup> DAY OF April A.D. 1982, at 4:28 P.  
RECORDED 1216 DAY OF April A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Shirley J. Taylor DEPUTY.

## DEED RECORDS

## GENERAL WARRANTY DEED

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THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

§

§

35655

THAT DUNCAN PROPERTIES, LTD., a limited partnership ("Grantor"), for and in consideration of the sum of Ten Dollars (\$10.00) cash and other good and valuable consideration paid by HANDY DAN HOME IMPROVEMENT CENTERS, INC., a Delaware corporation ("Grantee"), whose mailing address is 7909 Fredericksburg Road, San Antonio, Texas 78229, the receipt and sufficiency of which is hereby acknowledged and confessed; and the further consideration of the assumption and agreement by Grantee to keep, pay and perform all of the covenants and obligations of Grantor contained in that certain Grant of Reciprocal Easements, dated March 31, 1962, recorded in Volume 1136, page 509, Deed Records, Denton County, Texas, as modified by that certain Modification of Grant of Reciprocal Easements, dated December 7, 1982, duly recorded in the Deed Records of Denton County, Texas (as modified being herein called the "Grant"), for the benefit of all parties owning portions of the real property covered by the Grant (the "Center Property"), insofar and only insofar as said covenants and obligations or any of them pertain to the Property (hereinafter defined), has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY, unto Grantee, that certain tract of land situated in Denton County, Texas, and being a part of the John McGowen Survey, Abstract No. 797, and the Daniel Lambert Survey, Abstract No. 784, more particularly described on Exhibit A attached hereto and incorporated herein by reference for all purposes, together with all and singular all rights and appurtenances thereto in anywise belonging (collectively the "Property").

And Grantor does hereby declare, for the sole and exclusive benefit of the Property and as a covenant running with the tracts of land described on Exhibit B attached hereto and made a part hereof (the "Retained Land"), that as long as Grantee or any affiliate of Grantee is the user of the Property or the major portion thereof, either as owner or lessee, no portion of the Retained Land or any real property adjacent to the Center Property now or hereafter owned or leased by Grantor shall be allowed to be used for a home center or a business that engages principally in the sale (at retail or wholesale) of lumber, building materials, hardware and tools, paint and decorating material, electrical supplies, plumbing supplies, nursery products, lawn and garden supplies or any combinations thereof. The sale of lamps, carpets, window shades, curtains and drapes, however, are not included in the foregoing restriction.

And as further consideration for this conveyance, Grantee does hereby declare, for the sole and exclusive benefit of (i) the first grantee under Grantor of that portion of the Retained Land described on Exhibit C attached hereto and made a part hereof (the "Parcel I Tract") or (ii) an affiliate of said first grantee as the user, owner or lessee of the Parcel I Tract, that no portion of the Property shall be used for the purpose of conducting thereon or for use as a food store or a food department or for the sale for off-premises consumption of groceries, meats, produce, dairy products, or bakery products, or any of them; provided, however, that nothing contained herein shall prevent any occupant of improvements on the Property from selling such products as an incidental part of its other and principal business so long as the total number of square feet devoted by such occupant to the display for sale of such product does not exceed five percent (5%) of the total number of square feet of building area used by such occupant, or five hundred (500) square feet (including, either such case, one-half (1/2) of the aisle space adjacent to any display area), whichever is smaller.

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This conveyance is made subject to those certain exceptions (the "Permitted Exceptions"), set forth in Exhibit B attached hereto and incorporated herein by reference for all purposes, but only to the extent the same are valid and subsisting and affect the Property.

TO HAVE AND TO HOLD the Property unto Grantee, its successors, legal representatives and assigns forever, and Grantor does hereby bind itself, its legal representatives, successors and assigns to WARRANT and FOREVER DEFEND all and singular the Property unto Grantee, its successors, legal representatives and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, subject, however, to the Permitted Exceptions.

EXECUTED this 9<sup>th</sup> day of December, 1982, but effective for all purposes as of the 9<sup>th</sup> day of December, 1982.

DUNCAN PROPERTIES, LTD.

By: Neil Hill  
NEIL HILL, General Partner

AGREED TO AND ACCEPTED this  
7<sup>th</sup> day of December, 1982.

HANDY DAN HOME  
COVENANT CENTERS, INC.



By: Frank W. Cherry  
Title: President

STATE OF TEXAS §  
COUNTY OF DALLAS §

LEGAL TMC

RTG       

RE NP

FIN       

This instrument was acknowledged before me on Dec 7, 1982, by NEIL HILL, general partner on behalf of DUNCAN PROPERTIES, LTD., a limited partnership.

My commission expires: 1-1-83

Notary Public - State of Texas

Printed Name of Notary: Louise F. [illegible]

STATE OF NEW YORK §  
COUNTY NEW YORK §  
BURROUGH OF New York §

This instrument was acknowledged before me on Dec 7, 1982, by F. W. DEWY, a Vice President of HANDY DAN HOME IMPROVEMENT CENTERS, INC., a Delaware corporation, on behalf of said corporation.

My commission expires: 3/30/83

Notary Public - State of New York

Printed Name of Notary: Oliver Connelley

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BEING a tract of land situated in the John McGowan Survey, Abstract No. 797 and the Daniel Lambert Survey, Abstract No. 784, and being known as Block 1, Lot 2B of the Denton Shopping Center Addition, an addition to the City of Denton as shown on the replat thereof which is recorded in Cabinet C, Page 130, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the Northeasterly line of Interstate Highway No. 35-E (variable right-of-way), said point also being the Southwesterly corner of said Denton Shopping Center Addition;

THENCE along the said Northeasterly line of I.H. 35-E the following:

N 47°27'00" W a distance of 112.51 feet to a point for corner;

N 55°58'59" W a distance of 101.10 feet to a point for corner;

N 47°27'00" W a distance of 30.50 feet to a point for corner;

S 48°26'45" W a distance of 3.00 feet to a point for corner;

N 41°33'15" W a distance of 29.05 feet to a point for corner;

THENCE N 41°57'26" E departing said I.H. 35-E a distance of 95.00 feet to a point for corner;

THENCE N 48°02'34" W a distance of 85.00 feet to a point for corner;

THENCE N 05°49'03" E a distance of 132.75 feet to a point for corner;

THENCE N 86°43'12" E a distance of 12.61 feet to a point for corner;

THENCE N 05°49'03" E a distance of 95.00 feet to a point for corner;

THENCE N 64°45'00" W a distance of 14.00 feet to a point for corner;

THENCE N 25°15'00" E a distance of 30.17 feet to a point for corner;

THENCE S 64°45'00" E a distance of 25.00 feet to a point for corner;

THENCE S 48°02'34" E a distance of 236.91 feet to a point for corner;

THENCE N 41°57'26" E a distance of 25.50 feet to a point for corner;

THENCE S 48°02'34" E a distance of 244.00 feet to a point for corner;

THENCE S 41°57'26" W a distance of 333.26 feet to the POINT OF BEGINNING and containing 127,375 square feet or 2.924 acres of land, more or less.

EXHIBIT B

"Retained Land"

BEING a tract of land situated in the John McGowen Survey, Abstract No. 797, and the Daniel Lambert Survey, Abstract No. 784, and being part of Lot 2 of the replat of Denton Shopping Center Addition as recorded in Cabinet C, Page 67, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at the Southwest Corner of Lot 1 of the said replat of Denton Shopping Center Addition;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 239.34 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W a distance of 244.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 25.50 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W a distance of 236.91 feet to a point for corner;

THENCE N  $64^{\circ} 45' 00''$  W a distance of 25.00 feet to a point for corner;

THENCE N  $25^{\circ} 15' 00''$  E a distance of 140.00 feet to a point for corner;

THENCE N  $34^{\circ} 48' 00''$  E a distance of 136.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 282.03 feet to a point for corner;

THENCE N  $41^{\circ} 57' 26''$  E a distance of 108.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 155.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 105.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 125.00 feet to the POINT OF BEGINNING AND containing 3.50 acres of land, more or less.

BEING a tract of land of the John McGowen Survey, Abstract No. 797, and being part of lot 2, of the replat of Denton Shopping Center Addition. An addition to the City of Denton as recorded in Cabinet C, page 67 Deed Record, Denton County, Texas and being more particularly described as follows:

BEGINNING with an iron rod set at the Northwest corner of Lot 2, and being in the Easterly line of Interstate Highway 35 (a variable width row) said point also being the Southwest corner of Lot 3.

THENCE N  $42^{\circ} 33' 00''$  E a distance of 145.00 feet to an iron rod set for corner;

THENCE N  $86^{\circ} 43' 12''$  E a distance of 77.39 feet to an iron rod set for corner;

THENCE S  $05^{\circ} 49' 03''$  W a distance of 132.75 feet to an iron rod set for corner;

THENCE S  $46^{\circ} 02' 34''$  E a distance of 85.00 feet to an iron rod set for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 95.00 feet to an iron rod set for corner in the said East line of Interstate Highway 35.

THENCE N  $47^{\circ} 27' 00''$  W at the East line of Interstate Highway 35, a distance of 219.30 feet to the POINT OF BEGINNING and containing 0.648 acres of land, more or less.

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EXHIBIT B

CONTINUED

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BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being all of Lot 3, Block 1 of the Denton Shopping Center Addition, an addition to the City of Denton, according to the replat thereof, recorded in the Map Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway 35-E the following:

N 42° 27' 28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02° 48' 06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34° 42' 00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64° 45' 00" E a distance of 65.87 feet to a point for corner;

THENCE S 05° 49' 03" W a distance of 95.00 feet to a point for corner;

THENCE S 86° 43' 12" W a distance of 90.00 feet to a point for corner;

THENCE S 42° 33' 00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway 35-E;

THENCE along the Easterly line of said Interstate Highway 35-E the following:

N 42° 00' 59" W a distance of 90.60 feet to a point for corner;

N 34° 42' 00" W a distance of 226.00 feet to a point for corner;

N 01° 41' 20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

EXHIBIT C

"Parcel 1 Tract"

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, and the Daniel Lambert Survey, Abstract No. 784, and being part of Lot 2 of the replat of Denton Shopping Center Addition as recorded in Cabinet C, Page 67, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at the Southwest Corner of Lot 1 of the said replat of Denton Shopping Center Addition;

THENCE S 41° 57' 26" W a distance of 239.34 feet to a point for corner;  
 THENCE N 48° 02' 34" W a distance of 244.00 feet to a point for corner;  
 THENCE S 41° 57' 26" W a distance of 25.50 feet to a point for corner;  
 THENCE N 48° 02' 34" W a distance of 236.91 feet to a point for corner;  
 THENCE N 64° 45' 00" W a distance of 25.00 feet to a point for corner;  
 THENCE N 25° 15' 00" E a distance of 140.00 feet to a point for corner;  
 THENCE N 34° 48' 00" E a distance of 136.00 feet to a point for corner;  
 THENCE S 48° 02' 34" E a distance of 282.03 feet to a point for corner;  
 THENCE N 41° 57' 26" E a distance of 108.00 feet to a point for corner;  
 THENCE S 48° 02' 34" E a distance of 155.00 feet to a point for corner;  
 THENCE S 41° 57' 26" W a distance of 105.00 feet to a point for corner;  
 THENCE S 48° 02' 34" E a distance of 125.00 feet to the POINT OF BEGINNING AND containing 3.50 acres of land, more or less.

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EXHIBIT D

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1. Taxes for the year 1983 and subsequent years and subsequent assessments for prior years due to change in land usage or ownership.
2. All easements, restrictions, covenants and conditions shown on the replat of Denton Shopping Center Addition, an addition to the City of Denton, recorded in Cabinet C, page 130, Plat Records, Denton County, Texas.
3. Grant of Reciprocal Easements, dated March 31, 1982, recorded in Volume 1136, page 509, Deed Records, Denton County, Texas, as modified by Modification of Grant of Reciprocal Easements, dated December 7, 1982, duly recorded in the Deed Records of Denton County, Texas.
4. Agreement of Easements, Covenants & Restrictions, dated April 26, 1982, recorded in Volume 1141, page 974, Deed Records, Denton County, Texas, as amended and restated by Restatement of Agreement of Easements, Covenants & Restrictions, dated December 7, 1982, duly recorded in the Deed Records of Denton County, Texas.
5. Easements to Lone Star Gas Co., recorded in Volume 454, page 213, and Volume 454, page 214, Deed Records, Denton County, Texas, as the same were partially released and defined by instruments recorded in Volume 1006, page 134, and Volume 1005, page 776, Deed Records, Denton County, Texas.

1514Z

GRANTEE'S MAILING ADDRESS:  
HANDY DAN HOME IMPROVEMENT CENTERS, INC.  
Suite 134  
San Antonio, Texas 78229

35655

EX-115 10 26

RETURN TO: HANDY DAN HOME IMPROVEMENT CENTERS, INC.  
7909 Fredericksburg Road  
Suite 134  
San Antonio, Texas 78229

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FILED FOR RECORD 15th DAY OF December A.D. 1982, at 5:26 P.  
RECORDED 16th DAY OF December A.D. 1982.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: [Signature] DEPUTY.

RESTATEMENT OF AGREEMENT OF  
EASEMENTS, COVENANTS AND RESTRICTIONS

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DEED RECORDS

35656

THIS RESTATEMENT OF AGREEMENT OF EASEMENTS, COVENANTS AND RESTRICTIONS is made and entered into as of the 7<sup>TH</sup> day of November, 1982, by and between DUNCAN PROPERTIES, LTD. ("Duncan"), WAL-MART PROPERTIES, INC. ("Wal-Mart") and HANDY DAN HOME IMPROVEMENT CENTERS, INC. ("Handy Dan").

W I T N E S S E T H:

WHEREAS, Duncan and Wal-Mart entered into an Agreement of Easements, Covenants and Restrictions dated April 26, 1982 and recorded in Volume 1141 at Page 974 et seq of the Deed Records of Denton County, Texas, pertaining to certain real property in the City of Denton, Denton County, Texas shown on Exhibit "A" attached hereto and described in Exhibit "B-1" attached hereto (the "Center Property"); and

WHEREAS, Wal-Mart is the owner of the land designated as Tract I on Exhibit "A" attached hereto and described in Exhibit "B-2"; Handy Dan is the owner of the land designated as Tract II, Parcel 2 on Exhibit "A" and described in Exhibit "B-3"; and Duncan is the owner of Tract II, Parcel 1, Tract II, Parcel 3 and Tract II, Parcel 4 shown on Exhibit "A" and described in Exhibits "B-4", "B-5" and "B-6"; and

WHEREAS, the parties hereto desire to amend and restate the aforesaid agreement.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THAT for and in consideration of the premises, easements, covenants, conditions and restrictions contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Building Areas. Any building or structure constructed on the Center Property (either as immediate development or future expansion) shall be built only in that area within the building lines or only to the maximum square footage as set forth on Exhibit "A" hereto (the "Building Areas"). That portion of the Center Property not within the Building Areas is hereinafter referred to as the Common Area. Any canopies, signs or ornaments which are attached to a building or structure situated within the Building Areas may encroach upon that space above the Common Area provided that such canopy, sign or ornament does not interfere with the unrestricted use of any portion of the Common Area as set forth in paragraph 5 hereof. A Building Area may be improved as Common Area, in which case it shall be deemed Common Area and subject to all the provisions of this Agreement pertaining to Common Area until it is improved with a building.
2. Use. Buildings located on the Center Property shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices, and retail stores. With the exception stated below, no cafeteria, restaurant, theater, flea market, car wash, bowling alley, billiard parlor, night club, any business which, as its primary business activity, serves alcoholic beverages for consumption on the premises of such business, or any place of recreation or amusement, shall be situated within any portion of the Center Property which is within a 300 foot radius of the front door of Wal-Mart's or Handy Dan's retail outlet. The parties acknowledge that the location of any such business within said area may inconvenience the customers and may adversely affect the business of Wal-Mart and Handy Dan. Notwithstanding the foregoing restriction, restaurants may be located on Tract II, Parcel 3, and restaurants and restaurant-theater and restaurant-entertainment businesses may be located on Tract II, Parcel 4. No adult book store, massage parlor, "head shop" or store devoted to the sale of sexual material and devices shall be allowed on the Center Property.

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### 3. Competing Business.

a. Duncan and Handy Dan agree that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of Tract I or the major portion thereof, either as owner or lessee, no portion of Tract II and no portion of any real property adjacent to the Center Property which may subsequently be acquired by Duncan shall be occupied by, or leased or conveyed to any other party for use as a discount department store similar to Wal-Mart's retail outlet and whose overall retail concept is based on a discounting price structure similar to the concept used by Wal-Mart.

b. Duncan and Handy Dan further agree that for the benefit of the first grantee from Duncan of Tract II, Parcel 1 or any affiliate of said grantee (as the user of Tract II, Parcel 1 as owner or lessee), no portion of Tract II, Parcels 2, 3 and 4 and no portion of any real property adjacent to the Center Property which may subsequently be acquired by Duncan shall be used for the purpose of conducting therein or for use as, a food store or a food department or for the sale for off-premises consumption of groceries, meats, produce, dairy products, or bakery products, or any of them; provided however, that nothing contained herein shall prevent any occupant of improvements on Parcels 2, 3 or 4 or real property adjoining the Center Property from selling such products as an incidental part of its other and principal business so long as the total number of square feet devoted by such occupant to the display for sale of such product does not exceed five percent (5%) of the total number of square feet of building area used by such occupant, or five hundred (500) square feet (including, either such case, one-half (1/2) of the aisle space adjacent to any display area), whichever is smaller.

c. Duncan agrees that as long as Handy Dan or any affiliate of Handy Dan is the user of Tract II, Parcel 2 or the major portion thereof, either as owner or lessee, no portion of Tract II, Parcels 1, 3 and 4 and no portion of any real property adjacent to the Center Property now or hereafter owned or leased by Duncan shall be allowed to be used for a home center or a business that engages principally in the sale (at retail or wholesale) of lumber, building materials, hardware and tools, paint and decorating material, electrical supplies, plumbing supplies, nursery products, lawn and garden supplies or any combinations thereof. The sale of lamps, carpets, window shades, curtains and drapes are not included in the foregoing restriction.

d. As used in this Agreement, the term "affiliate" means any person or entity controlling, controlled by or under common control with the party in question.

### 4. Buildings.

a. Design and Construction. All buildings constructed on the Center Property shall be designed so that the exterior of each such building shall be architecturally and aesthetically compatible to all other buildings located on the Center Property and so that any building wall footing shall not encroach from one Tract onto another Tract. The design and construction of any building on the Center Property shall be of high quality and shall be in accordance with sound architectural and engineering standards. Buildings on the following Tracts and Parcels shall not exceed the heights above finished grade set forth below:

Tract I	35 feet
Tract II, Parcels 1 and 2	35 feet
Tract II, Parcel 3	22 feet
Tract II, Parcel 4	22 feet

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b. Easements. In the event building wall footings encroach from one parcel of separately owned land ("tract") onto another, despite efforts to avoid such occurrence, the party onto whose tract the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

c. Fire Protection. Any building constructed on the Center Property which is not equipped with a sprinkler system shall be constructed and operated in a manner which will preserve the sprinkler rating on the buildings situated on the Center Property which are equipped with sprinkler systems as established by applicable City, County or State fire code authorities in the City of Denton, Denton County, Texas.

#### 5. Common Area.

a. Grant of Easements. Each of the parties hereto, as grantor, hereby grants to the other parties, as grantees, for their benefit and the benefit of their respective customers, invitees, licensees, tenants, and employees, a nonexclusive easement across the Common Area for roadways, walkways, ingress and egress to any and all public roadways, whether established or proposed, which run adjacent to the Center Property; parking of motor vehicles (except construction worker vehicles); loading and unloading of commercial and other vehicles (except for construction vehicles) and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of buildings situated on the Center Property.

#### b. Limitations on Use.

(i) Customers. The parties hereto shall use all reasonable efforts to ensure that no person shall be permitted to park on the Common Area except for employees and invitees of those businesses occupying a portion of the Center Property in compliance with the terms of this Agreement and those persons shopping or engaging in a lawful business transaction with such businesses.

(ii) Employees. Each party shall use reasonable efforts to ensure that all employees of businesses located in the Center Property park in those portions of the Common Area which the parties hereto from time to time mutually designate as employee parking areas.

(iii) General. The primary purpose of the Common Area is to provide for parking for the employees and invitees of those businesses occupying a portion of the Center Property in compliance with the terms of this Agreement and those persons shopping or engaging in a lawful business transaction with such businesses. Persons using the Common Area in accordance with the provisions of this subparagraph shall not be charged any fee for such use. However, no activity shall be conducted in the Common Area which will interfere with the aforementioned primary purpose of the Common Area.

(iv) Trash Containers. Each owner, on its own tract, may use or permit the use of the portion of the Common Area to the south of the Building Area on Tract I and Tract II, Parcels 1 and 2 for trash containers or compactors and outside storage of merchandise and equipment, provided that they do not interfere with normal access and unloading by delivery and other service vehicles between the Building Area and the southern boundary of the Center Property. Outdoor trash containers and compactors located on Tract II, Parcel 3 shall be screened so that they are not visible from Tract II, Parcels 1 and 2, and the access to the containers and compactors shall be from the north or west.

(v) Outdoor Sales. Outside sales and displays of merchandise shall be permitted to be conducted by any of the stores located on Tract I and Tract II, Parcels 1 and 2 upon their respective sidewalks and within 125 feet of their respective main entrances; provided, however, that the sales area is not located in the drive lanes parallel and adjacent to the front of the building on the respective tract.

(vi) Service Drive and Driving Lane. The Common Area designated "Service Drive" on Exhibit "A" shall be used exclusively for access, loading and unloading of service vehicles, except for underground utility lines, overhead utility lines that do not interfere with service vehicles and the trash containers described in Section 5.b.(iv). The Common Area designated "Driving Lane" on Exhibit "A" shall be used exclusively for passage of vehicles and pedestrians and for underground utility lines.

c. Utility and Service Easements. The parties hereto shall cooperate in the granting of appropriate and proper easements for the installation, use, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Common Area and those buildings to be erected upon the Building Areas. The parties will use their best efforts to effect the installation of such utility and service lines prior to the paving of the Common Area. However, in no event shall the lines, sewers, utilities and services which benefit one tract be installed within the Building Areas of any other tract without the express written consent of the owner of the other tract.

d. Water Flow. The parties agree to the drainage of surface water in the Center Property that results from (i) the grading and underground drainage system shown on Exhibit "C" attached hereto and (ii) the location of buildings within the Building Area (the "Permitted Drainage"); and the parties hereby grant each other an easement to allow the Permitted Drainage over their respective tracts. Each party agrees that it will not alter the grading within its tract or place improvements in the Common Area that will materially alter the Permitted Drainage or cause the owner of any other tract to be in violation of the surface drainage easement contained in the Grant of Reciprocal Easements between Duncan Properties, Ltd. and Denton Towne Center Joint Venture dated March 31, 1982 as recorded in Volume 1136, Page 509, Deed Records, Denton County, Texas.

e. Subdivision of Existing Tracts. Tracts created by subdivision of already existing tracts shall have, with respect to each other, all easements granted in this Section 5 that benefit the present Tracts and Parcels in which said newly created tracts are located.

#### 6. Development, Maintenance, and Taxes.

##### a. Development.

(i) "Parking Area" Ratio. Each owner agrees it shall maintain, in that portion of the Common Area situated on its respective tract, sufficient parking area to accommodate not fewer than five (5) cars spaces for each one thousand (1,000) square feet of building floor area constructed on its respective tract. If a restaurant is operated on Tract II, Parcel 3, then (i) the Common Area on said Parcel shall contain no fewer car spaces than the seating capacity of the restaurant divided by 3 and (ii) the principal occupant of Tract II, Parcel 2 may require all or some of the restaurant employees to park their cars on designated portions of Tract II, Parcel 2.

(ii) Design of Common Area. The design and arrangement of the Common Area shall not be changed in a manner inconsistent with the terms of this Agreement without the express written consent of the parties entitled to amend this Agreement pursuant to Article 17, except that the location and use of the Service Drive and Driving Lane shown on Exhibit "A" shall not be changed without the express written consent of all Principal Parties (as defined in Paragraph 17).

(iii) Coordination of Common Area Construction-Service Drive. Wal-Mart acknowledges that at the time it opened for business to the general public on November 16, 1982 the Service Drive located as set forth on Exhibit "A" was completed in Tract I only. As Wal-Mart gave Duncan no written notice of its scheduled opening date, Wal-Mart has

waived its right to complete that portion of the service drive located on Tract II, Parcels 1 & 2 and does hereby waive any rights it may have had to complete same. Nevertheless, it is agreed by all parties that the portion of the Service Drive on Tract II Parcels 1 & 2 will be constructed on the respective parcels by the time the buildings on said Parcels are completed.

(iv) Coordination of Common Area Construction-Tract II, Parcels 1 & 2. In addition to Subparagraph 6.a.(iii), each of the owners of Tract II, Parcel 1 and Tract II, Parcel 2 agree with the other to complete construction on its Parcel of the work described below within forty (40) days after it receives written notice from the other owner that an occupant intends to open a place of business on the latter's Parcel within seventy-five (75) days. The work to be performed by each owner is the paving of the Service Drive and the parking area lying north of the sidewalk line and within thirty-five (35) feet of the boundary between Tract II, Parcels 1 and 2. The specifications for the work to be performed on each owner's Parcel are set forth in Exhibit "D" attached hereto. In the event that either owner should fail to fulfill its obligations under this paragraph 6.a.(iv) (the "defaulting party"), then the other owner (the "non-defaulting party") shall have the right to complete such work on the defaulting party's Parcel pursuant to a bid approved by the defaulting party, said approval not to be unreasonably withheld and to be deemed given if not refused within ten (10) days after it is submitted. In connection therewith the non-defaulting party shall obtain a waiver from its contractors and sub-contractors of any and all liens which could be asserted against the defaulting party's tract. All costs and expenses incurred in connection with any such construction shall be payable by the defaulting party to the non-defaulting party upon demand after the issuance of a certificate of occupancy for the building on the defaulting owner's Parcel. In order to secure such sums the non-defaulting party shall have a lien on the Parcel owned by the defaulting party, which shall be superior to all other liens except liens securing lawful governmental assessments and bona fide first lien mortgages or first lien deeds of trust, and which shall be evidenced by the non-defaulting party preparing, executing, acknowledging and recording in the appropriate records in the office of the County Clerk of Denton County, Texas, a notice of such lien setting forth the principal amount due, the name of the defaulting party and a description of the tract owned by the defaulting party. After recordation of such notice the lien may be foreclosed in like manner as a mortgage on real property subsequent to the recording of a notice or claim thereof. The defaulting party shall be responsible for and shall pay all costs and expenses incurred by the non-defaulting party in enforcing any of the foregoing rights and remedies (including attorneys' fees and court costs).

(v) Conduct of Construction. All construction work done within the Center Property and the right of way adjoining the Center Property shall be conducted so as not to unreasonably interfere with permitted uses (including construction activity) and businesses conducted in the Center Property. The Service Drive designated on Exhibit "A" shall not be obstructed except temporarily for necessary construction work or unloading, provided that during the period the Service Drive is so temporarily obstructed the dock area of the building on Tract I must be served by an unobstructed truck route utilizing portions of the Service Drive connected to the parking area on Tracts I and II. Notwithstanding Section 6.b.(i), an owner of a tract upon which construction is taking place shall repair all damage to the Building and Common Areas on other tracts caused by its construction work.

b. Maintenance.

(i) Standards. Following completion of the improvements on the Common Area, each of the parties respectively shall maintain that portion of the Common Area situated on its tract in good condition and repair. Such maintenance shall include, without limitation, the following:

(A) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(B) Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(C) Installing, repairing, and replacing any and all necessary directional signs, markers and lines;

(D) Operating, repairing and replacing, where necessary, such artificial lighting facilities as shall reasonably be required;

(E) Maintaining all perimeter walls in a good condition and state of repair; and

(F) Maintaining all landscaped areas and making such replacements of shrubs and other landscaping as is reasonably necessary.

(ii) Expenses. Each of the parties hereto shall pay the cost of maintaining their respective tracts, except that owners and tenants of tracts that negligently or wilfully cause damage to other tracts shall reimburse its owner for the cost of the repair.

(iii) Maintenance Service. The parties hereto may agree to employ an independent maintenance service to maintain the Common Area in the manner above outlined. The expenses incurred in connection with the hiring of such maintenance service shall be borne by the parties hereto in the same proportion that the number of square feet contained in their respective tracts is to the total number of square feet in the Center Property.

c. Prior to Development. Before land in the Center Property is improved, its owner shall maintain the land in compliance with all laws and governmental rules and regulations and shall not permit a nuisance affecting any other part of the Center Property to exist on its land. Without limiting the foregoing, the owner shall keep grass and underbrush cut, remove debris, prevent soil from washing into improved portions of the Center Property and maintain in an attractive condition any fences or barriers on its Building Area that is not intended for use solely during construction.

d. Restoration. A building in the Center Property damaged by casualty or condemnation does not have to be restored, but its owner shall within ninety (90) days after the damage occurs remove all debris resulting therefrom and within a reasonable time thereafter either (i) repair or restore the building, (ii) replace the building with a new improvement that complies with this Agreement or (iii) demolish the building, remove the debris, smooth the ground surface and either pave or grass over the site.

e. Taxes. Each of the parties hereto agrees to pay or cause to be paid, before delinquent, directly to the appropriate taxing authority those assessments which are levied against that portion of the Center Property owned by it.

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7. Signs.

a. No sign shall be located on the Center Property, except as allowed in this Article. All signs located on the Center Property shall be related to business(es) conducted on the Center Property. 7N DMC

b. The two (2) signs designated as Center I.D. signs on said Exhibit "A" and located on Tract I and Tract II, Parcel 4, respectively, shall be composed of a pylon structure and not more than three individual box signs. None of the boxes shall have flashing lights or moving visual or mechanical elements. The top box of each such Center I.D. sign shall be designated for use by Wal-Mart. The second box from the top of each such Center I.D. sign shall be designated for use by the principal user of Tract II, Parcel 1. The third box from the top of the easterly Center I.D. sign shall be designated for use by Handy Dan. The remaining box on the westerly Center I.D. sign, if used, shall be used by the business designated by Wal-Mart and the user of Tract II, Parcel 1. The designated user of each box shall bear an equal share of the cost of constructing and maintaining the Center I.D. pylon sign structures, said share being proportional to the number of boxes on the pylon. The cost of installing, equipping, maintaining, illuminating and metering each of the boxes used by owners or tenants utilizing such boxes shall be borne completely by such tenant or owner.

c. The sign situated on Tract II, Parcel 2 and designated "Handy Dan Sign" on Exhibit "A" hereto shall be the sole responsibility of Handy Dan and Handy Dan shall have the right to erect and use or allow the use of such sign.

d. The two signs situated on Tract II, Parcel 4, each designated "Duncan Sign Easement" on Exhibit "A", shall be the sole responsibility of the principal user of Tract II, Parcel 1, and said user shall have the right to erect and use or allow the use of such sign.

e. Duncan shall have the right to erect and to apportion the use of four (4) additional signs on Tract II, Parcel 4 (other than the Center I.D. sign and the two Duncan Sign Easements) and one sign on Tract II, Parcel 3, provided that the sign on Tract II, Parcel 3 does not exceed thirty-five (35) feet in height and does not materially impede the visibility of the sign described in subparagraph 7.c. from Interstate Highway 35.

8. Indemnification/Insurance.

a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim, or judgment arising from personal injury, death, or property damage occurring on or in any way connected with the indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee.

b. Insurance.

(i) Each owner of a tract at its sole cost and expense shall procure and maintain or cause to be procured and maintained in full force and effect throughout the term of this Agreement policies of general public liability insurance and of property damage insurance. Such policies shall provide coverage against all claims, demands or actions for personal injury, death or property damage occurring upon or in connection with that portion of the Center Property owned by such party within limits of not less than \$500,000.00 for injury or death of a single person, within limits of not less than \$1,000,000.00 for any one occurrence, and within limits of not less than \$500,000.00 for property damage. Such policies shall name as additional insureds all Principal Parties (as defined in Paragraph 17) of which the owner has knowledge and shall provide that it may not be cancelled as to any insured without at least ten (10) days advance written notice to the insured. Each owner shall provide the Principal Parties named as additional insureds with

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certificates of such insurance from time to time to evidence that such insurance is in force. Such insurance may be written by an additional premises endorsement on any master policy of insurance carried by either of the parties hereto.

(ii) During the term of this Agreement, each owner shall insure or cause to be insured all improvements located on its tract against loss or damage by fire and any other perils or events which may be covered under the broad form of Uniform Extended Coverage Clause in effect from time to time in the State of Texas. Said insurance shall be for the full replacement cost of such improvements.

(iii) Except for damage covered by Subparagraph 6.b.(ii), each owner and occupant of real property within the Center Property hereby releases, on behalf of itself and its insurers, each other owner and occupant of real property within the Center Property from any and all claims for damage to real and personal property, business interruption, loss of profits and loss of rent or payment of rent for untenable premises, regardless of whether such losses are insurable or the releasing party is insured or is able to collect on its insurance claims. If the releasing party is unable to obtain insurance by reason of the aforementioned release, then the release (i) shall be limited to the releasing party and apply only to the uninsured and uncollectible portions of its loss, and (ii) shall not apply to its insurer or bar a subrogation action by the insurer to recover the amount it has paid. In that instance, however, the releasing party shall indemnify and hold harmless each other owner and occupant of real property within the Center Property from all loss, damage and expense (including attorneys' fees) in connection with the claims mentioned in the first sentence of this paragraph made by the releasing party's insurer.

(iv) Notwithstanding anything to the contrary contained in this Paragraph 8, as long as the net worth of Wal-Mart or its parent company, Wal-Mart Stores, Inc., shall exceed Fifty Million Dollars (\$50,000,000.00), and as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of Tract I, either as owner or lessee, then Wal-Mart shall have the right to assume the financial risk, independently and without obtaining insurance coverage in connection therewith, for any property located on Tract I up to an amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00) per claim. Notwithstanding anything to the contrary contained in this Paragraph 8, as long as the net worth of Handy Dan or its parent company, Grace Retail Corporation, shall exceed Fifty Million Dollars (\$50,000,000.00), and as long as Handy Dan, or any affiliate of Handy Dan, is the user of Tract II, Parcel 2, either as owner or lessee, then Handy Dan shall have the right to assume the financial risk, independently and without obtaining insurance coverage in connection therewith, for any property located on Tract II, Parcel 2 up to an amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00) per claim. Notwithstanding anything to the contrary contained in this Paragraph 8, as long as the net worth of a company operating a supermarket on Tract II, Parcel 1 or its parent company, shall exceed Fifty Million Dollars (\$50,000,000.00), then the company operating the supermarket shall have the right to assume the financial risk, independently and without obtaining insurance coverage in connection therewith, for any property located on Tract II, Parcel 1 up to an amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00) per claim.

9. Eminent Domain.

a. Owner's Right to Award. Nothing herein shall be construed to (i) give either party any interest in and to any award or payment made to another party in connection with any exercise of eminent domain (or transfer in lieu thereof) affecting the other party's tract, or (ii) give the public or any government any interest in and to said tract. In the event of any exercise of eminent domain (or transfer of any part of the Center Property in lieu thereof) the award attributable to the land and improvements of such tract shall be payable only to the owner thereof, and no claim therefor shall be made by the owner of any other tract.



b. Collateral Claims. An owner of a tract may file collateral claims with any condemning authority in connection with any losses sustained by it in connection with the taking of any other tract.

c. Tenant's Claim. Nothing in this Paragraph 9 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between a tenant and owner for all or a portion of any such award or payment.

d. Restoration of Common Area. The party owning any portion of the Common Area so condemned or taken shall use its best efforts to promptly repair and restore the remaining portion of the Common Area owned by such party to the condition existing immediately prior to such condemnation or transfer. However, in connection with such restoration or repair, no party shall be required to expend an amount which exceeds the amount such party received for such condemnation or taking.

10. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon a tract, such lien shall expressly be subordinate and inferior to any lien securing lawful governmental assessments and bona fide mortgages or first priority deeds of trust which encumber such tract prior to the attachment of said lien. Except as set forth in the preceding sentence, the holder of a first lien on any portion of the Center Property and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

11. Release from Liability. Any person now owning or hereafter acquiring fee or leasehold title to any portion of the Center Property shall be bound by this Agreement only as to that portion of the Center Property owned or leased by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of a portion of the Center Property, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits and servitudes upon the Center Property which run with the land.

12. Breach. In the event of breach or threatened breach of this Agreement, a party entitled to enforce the breached obligation (as described in Paragraph 18) shall be entitled to any relief available under the laws of the State of Texas, ~~and the right to enjoin a violation or threatened violation of this Agreement without regard to the sufficiency of legal damages or any other remedy.~~ The unsuccessful party in any action shall pay to the prevailing party all reasonable attorneys' fees incurred in connection with the prosecution or defense of such suit. 7/12 DMC

13. Right to Cure. Should any owner or user of a portion of Tract II fail to timely perform any of its obligations hereunder and thereafter fail to cure such failure within thirty (30) days of its receipt of a demand for performance made by another owner or user of a portion of Tract II that is entitled to enforce the obligation pursuant to Paragraph 18 (or, if the default cannot be reasonably cured within thirty days, the defaulting party does not commence to cure such default promptly and thereafter diligently pursue the curing of the default to completion), the party giving such notice shall, in addition to any other remedy provided at law or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of the defaulting party. The thirty (30) day period to cure the default may be reduced in the event of an emergency by the party giving notice stating the nature of the emergency and the shorter time to cure the default in its notice. The defaulting party shall reimburse the party curing the default for the cost of performing the defaulted obligation within fifteen (15) days after receipt of billing therefor and proof of payment thereof. In the event the defaulting party does not reimburse the curing party within such fifteen (15) day period, the amount due shall bear interest at the rate of three percent (3%) per annum over the stated prime interest rate of the largest commercial bank (asset size) in Dallas, Texas, from the date of billing until paid and the curing party shall have: (i) the right to exercise any and all rights which such curing party might have at law to collect the same, and (ii) have a lien on the tract owned by the defaulting party to the extent of the amount paid by the curing party but

not reimbursed by the defaulting party. Such lien may be filed for record by the curing party as a claim against the defaulting party, in the manner described in Subparagraph 6(a)(iv).

The lien so claimed shall attach from the date of recordation in the amount claimed by the party curing the default and it may be enforced and foreclosed in any manner allowed by law, including but not limited to suits to foreclose a mortgage or mechanic's lien under the applicable law of the State of Texas.

14. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, lessees, successors and assigns. As used herein, the singular number includes the plural and the masculine gender includes the feminine and neuter.

15. Adjoining Shopping Center Restrictions. The parties hereto each acknowledge that Denton Towne Center Joint Venture as the owner of real property situated adjacent to the Center Property (the "Towne Center Tract"), made, executed and delivered that certain Declaration of Restrictive Covenants (the "Declaration") dated March 31, 1982, recorded in Volume 1136, page 544, Deed Records, Denton County, Texas, which benefits the Center Property, but for which the benefits and the enforcement thereof were limited to the owners of Tract 11, Parcel 4. Duncan, for itself, its successors, legal representatives and assigns, and as a covenant running with Tract 11, Parcel 4, hereby covenants and agrees that the Declaration shall not be altered, modified, amended or affirmatively waived in any manner without the prior written consent of all of the owners of the Center Property.

16. Prior Easements and Restrictions. The parties each acknowledge that this Agreement is made and accepted subject to certain prior easements and restrictions of record in Denton County, Texas, including (i) that certain Declaration of Restrictive Covenants, dated March 31, 1982, recorded in Volume 1136, page 561, Deed Records, Denton County, Texas, burdening Tract 11, Parcel 4 for the benefit of the Towne Center Tract, and (ii) that certain Grant of Reciprocal Easements, dated March 31, 1982, recorded in Volume 1136, page 509, Deed Records, Denton County, Texas, covering the Center Property and the Towne Center Tract. To the extent any term or covenant hereof conflicts with a term or covenant set forth in such prior easements and restrictions, the terms of such prior easements and restrictions shall control.

17. Cancellation, Extension and Modification. This Agreement may be cancelled or extended only by all the owners of the Center Property, the Principal Parties (hereinafter defined) and all holders of first mortgages on the Center Property. The provisions of this Agreement may be amended by the Principal Parties owning or using eighty-five percent (85%) of the area of the Center Property, provided, however, that (i) no change will be made in the improvement or layout of a portion of a Building Area or Common Area without the consent of its owner and its tenant if the tenant is a Principal Party and (ii) the Service Drive and Driving Lane shall not be changed without consent of all Principal Parties. Consent, as referred to in this Paragraph, shall be evidenced only by execution of a formal, written amendment of the document in question. The provision of the Grant of Easements described in Subparagraph 16(ii) shall not be amended by the owners of the Center Property without the prior written consent of the Principal Parties owning or using eighty-five percent (85%) of the area of the Center Property. "Principal Party" means (i) Wal-Mart, Handy Dan, Duncan and their respective affiliates, (ii) a tenant of the entire Building Area on Tract 1, Tract 11, Parcel 1, or Tract 11, Parcel 2, and (iii) the owner of Tract 1 or Parcel 1, 2, 3 or 4 of Tract 11, if said Tract or Parcel is not used by another Principal Party. Any purchaser, lender, lessee, assignee, grantee, sublessee or any other party acquiring any interest in and to the Center Property shall appoint and be deemed to

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have appointed the Principal Party of the property in which it has an interest as such party's attorney-in-fact for the purpose of negotiating and entering into any modifications of this Agreement in connection with such party's interest, except for changing the duration of this Agreement.

18. Enforcement. The covenants and restrictions in this Agreement may be enforced only by a record owner of land within the Center Property and a Principal Party. Any occupant of the Center Property may enforce its right to use an easement granted herein for its benefit but may not enforce any limitations or obligations imposed upon other parties with respect to such easements.

19. Estoppel Certificate. Each Principal Party and owner of property within the Center Property, upon written request made by any other owner or Principal Party ("Requesting Party") from time to time, (but not more frequently than three (3) times during any calendar year), shall issue to a prospective mortgagee or successor Principal Party of the Requesting Party, an estoppel certificate stating:

- (i) whether the party to whom the request has been directed knows of any default by the Requesting Party under this Agreement, and if there are known defaults, specifying the nature thereof;
- (ii) whether to its knowledge this Agreement has been modified or amended in any way (and if it has, then stating the nature thereof);
- (iii) that to the knowledge of the party to whom the request has been directed, this Agreement is in full force and effect.

20. Non-Extinguishment. This Agreement shall not be extinguished, so long as Duncan, Wal-Mart or Handy Dan, or any affiliate of Wal-Mart or Handy Dan is the owner or lessee of any portion of the Center Property, even though the underlying fee ownership of the Center Property may be vested in a single person or entity.

21. Duration. Unless otherwise cancelled or terminated, this Agreement and all the easements, rights and obligations contained herein shall automatically terminate and be of no further force and effect after seventy-five (75) years from and after the date hereof.

22. Headings. The headings used in this Agreement are for convenience and reference only and shall not be deemed to expand or limit the meaning of this Agreement.

23. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements whether oral or written.

24. Notice. All notices, demands and requests which may be given or which are required to be given by any party to other parties shall be in writing and shall be sent by United States certified or registered mail, postage prepaid, return receipt requested, addressed to Wal-Mart, Handy Dan or Duncan, respectively, as follows:

WAL-MART:

Wal-Mart Properties, Inc.  
P.O. Box 116  
Bentonville, Ark. 72712  
Attention: Real Estate Dept.

HANDY DAN:

Handy Dan Home Improvement Centers  
7909 Fredericksburg Road  
San Antonio, Texas 78229  
Attention: Director of Real Estate

DUNCAN:

Duncan Properties, Ltd.  
100 Park Avenue Bldg.  
Suite 1204  
Oklahoma City, Okla. 73102  
Attention: Neil Hill

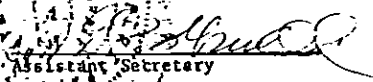
with a copy to

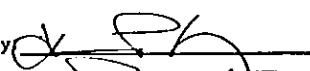
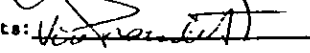
W. R. Grace & Co.  
1114 Avenue of the Americas  
New York, New York 10036  
Attention: Senior Vice President  
of Real Estate - Retail Group

or at such other place as the recipient may from time to time designate in a written notice pursuant to the terms hereof. Notices, demands and requests which shall be served upon the recipient in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be delivered, regardless of whether it is refused or, if delivered on a business day, any person is available to accept it.

EXECUTED as of the day and year first above written.

WAL-MART PROPERTIES, INC.

(Seal)  
ATTEST:  
  
Assistant Secretary

By:   
Its: 

LTD.  
DUNCAN PROPERTIES, INC.

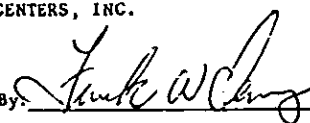
By: Neil Hill  
Its: General Partner  
Neil Hill  
General Partner

(Seal)

ATTEST:

  
Assistant Secretary

HANDY DAN HOME IMPROVEMENT  
CENTERS, INC.

By:   
Its: Senior Vice Pres.  
LEGAL: OK  
RTG: FW  
RE: Y  
FIN: \_\_\_\_\_

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THE STATE OF ARKANSAS  
COUNTY OF BENTON

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This instrument was acknowledged before me on December 7, 1982,  
by Thomas P. Day as Vice President of Wal-Mart  
Properties, Inc., a Delaware corporation, on behalf of said corporation.

Thomas P. Day  
Notary Public in and for  
Benton County, Arkansas

My commission expires: 1/15/83

Indian  
STATE OF OKLAHOMA  
Benton  
COUNTY OF OKLAHOMA

This instrument was acknowledged before me on December 7, 1982,  
by Neil Hill, General Partner, on behalf of Duncan Properties, Ltd., a  
limited partnership.

Neil Hill  
Notary Public in and for  
the State of Colorado  
Benton County, Oklahoma

My commission expires: 1/15/83

STATE OF NEW YORK  
COUNTY OF NEW YORK

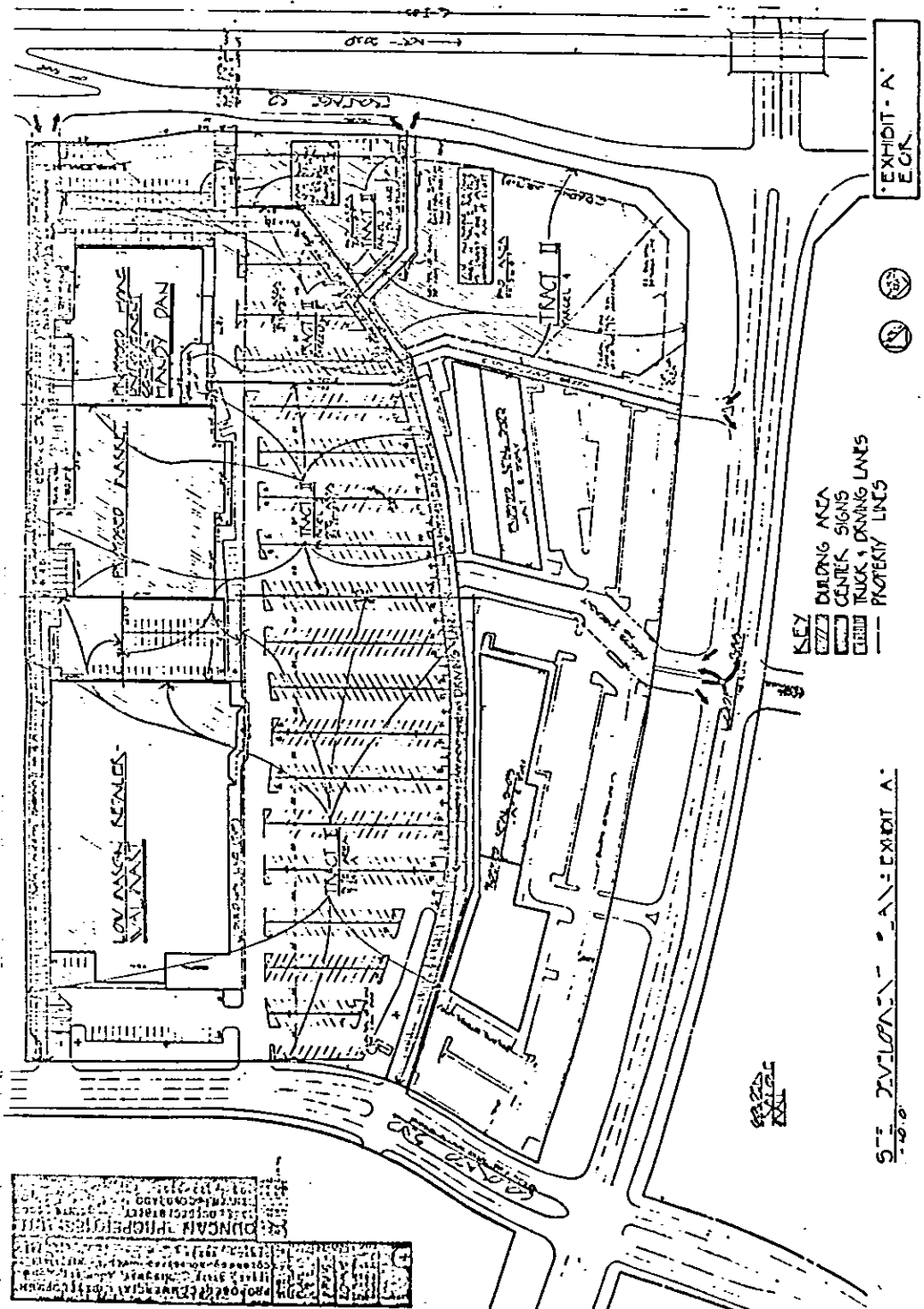
This instrument was acknowledged before me on December 6, 1982,  
by Frank W. Denny, Vice President, on behalf of Handy Dan  
Home Improvement Centers, Inc., a Delaware corporation.

Michael S. Spivack  
Notary Public in and for  
the State of New York

My commission expires: March 30, 1983

MICHAEL S. SPIVACK  
Notary Public, State of New York  
No. 00421211  
Residing in Essex County  
Commission Expires March 30, 1983

Exhibit "A"



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EXHIBIT B-1

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Being the aggregate of:

TRACT 1 (MAIN TRACT):

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J.S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E ( a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway No. 35-E and departing the Southerly line of said Loop 288 the following:

S 01° 41' 20" E a distance of 70.71 feet to a point;  
S 34° 42' 00" E a distance of 226.60 feet to a point;  
S 42° 00' 59" E a distance of 90.60 feet to the POINT OF BEGINNING;

THENCE N 42° 33' 00" E departing the aforementioned I.H. 35-E a distance of 145.00 feet to a point for corner;

THENCE N 86° 43' 12" E a distance of 90.00 feet to a point for corner;

THENCE N 05° 49' 03" E a distance of 95.00 feet to a point for corner;

THENCE N 64° 45' 00" W a distance of 14.00 feet to a point for corner;

THENCE N 25° 15' 00" E a distance of 170.17 feet to a point for corner;

THENCE N 34° 48' 00" E a distance of 136.00 feet to a point for corner;

THENCE N 48° 02' 34" W a distance of 21.62 feet to a point for corner;

THENCE N 41° 57' 26" E a distance of 357.99 feet to a point for corner;

THENCE N 60° 43' 46" E a distance of 268.95 feet to a point of curvature to the left;

THENCE along said curve to the left in a Southeasterly direction having a central angle of 22° 31' 07", a radius of 453.38 feet, an arc length of 178.19 feet, and a chord bearing of N 37° 21' 11" W to the point of tangency;

THENCE S 48° 36' 44" E a distance of 323.16 feet to a point for corner;

THENCE S 41° 57' 26" W a distance of 1152.60 feet to a point situated in the Easterly line of said I.H. 35-E;

THENCE along the Northeasterly line of said Interstate Highway No. 35-E the following:

N 47° 27' 00" W a distance of 112.51 feet to a point for corner;



N 55° 58' 59" W a distance of 101.10 feet to a point for corner;

N 47° 27' 00" W a distance of 30.50 feet to a point for corner;

S 48° 26' 45" W a distance of 3.00 feet to a point for corner;

N 41° 33' 15" W a distance of 29.05 feet to a point for corner;

N 47° 27' 00" W a distance of 219.30 feet to the POINT OF BEGINNING and containing 14.3336 acres of land, more or less.

AND

TRACT 2 (OUT LOT):

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 ( a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway No. 35-E the following:

N 42° 27' 28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02° 48' 06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34° 42' 00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64° 45' 00" E a distance of 65.87 feet to a point for corner;

THENCE S 05° 49' 03" W a distance of 95.00 feet to a point for corner;

THENCE S 86° 43' 12" W a distance of 90.00 feet to a point for corner;

THENCE S 42° 33' 00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 42° 00' 59" W a distance of 90.60 feet to a point for corner;

N 34° 42' 00" W a distance of 226.60 feet to a point for corner;

N 01° 41' 20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

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## EXHIBIT B-2

BEING a tract of land situated in Denton County in the J.S. Taft Survey, Abstract No. 1256, the John McGowan Survey, Abstract No. 797 and the Daniel Lambert Survey, Abstract No. 784 and also being all of Lot 1, Block 1 of the Denton Shopping Center Addition, an addition to the City of Denton, according to the replat thereof, recorded in the Map Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point in the common line between the said John McGowan Survey and the said Daniel Lambert Survey, 124.00 feet south of the Northwest corner of the Daniel Lambert Survey;

THENCE N  $60^{\circ} 43' 46''$  E, a distance of 268.95 feet to a point for corner, said point also being the beginning of a curve to the left having a radius of 453.38 feet and central angle of  $22^{\circ} 31' 07''$ ;

THENCE along said curve, an arc distance of 178.19 feet to a point for corner;

THENCE S  $48^{\circ} 36' 44''$  E, a distance of 323.16 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W, a distance of 580.00 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W, a distance of 125.00 feet to a point for corner;

THENCE N  $41^{\circ} 57' 26''$  E, a distance of 105.00 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W, a distance of 155.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W, a distance of 108.00 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W, a distance of 303.66 feet to a point for corner;

THENCE N  $41^{\circ} 57' 26''$  E, a distance of 357.99 feet to the POINT OF BEGINNING and containing 7.242 acres of land, more or less.

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## EXHIBIT B-3

BEING a tract of land situated in the John McGowen Survey, Abstract No. 797 and the Daniel Lambert Survey, Abstract No. 784, and being part of Lot 2 in Block 1 of the replat of Denton Shopping Center Addition, an addition to the City of Denton as recorded in Cabinet C, Page 19, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the Northeasterly line of Interstate Highway No. 35-E (variable right of way), said point also being the Southwesterly corner of said Denton Shopping Center Addition;

THENCE along the said Northeasterly line of I.H. 35-E the following:  
N 47° 27' 00" W a distance of 112.51 feet to a point for corner;

N 55° 58' 59" W a distance of 101.10 feet to a point for corner;

N 47° 27' 00" W a distance of 30.50 feet to a point for corner;

S 48° 26' 45" W a distance of 3.00 feet to a point for corner;

N 41° 33' 15" W a distance of 29.05 feet to a point for corner;

THENCE N 41° 57' 26" E departing said I.H. 35-E a distance of 95.00 feet to a point for corner;

THENCE N 48° 02' 34" W a distance of 85.00 feet to a point for corner;

THENCE N 05° 49' 03" E a distance of 132.75 feet to a point for corner;

THENCE N 86° 43' 12" E a distance of 12.61 feet to a point for corner;

THENCE N 05° 49' 03" E a distance of 95.00 feet to a point for corner;

THENCE N 64° 45' 00" W a distance of 14.00 feet to a point for corner;

THENCE N 25° 15' 00" E a distance of 30.17 feet to a point for corner;

THENCE S 64° 45' 00" E a distance of 25.00 feet to a point for corner;

THENCE S 48° 02' 34" E a distance of 236.91 feet to a point for corner;

THENCE N 41° 57' 26" E a distance of 25.50 feet to a point for corner;

THENCE S 48° 02' 34" E a distance of 244.00 feet to a point for corner;

THENCE S 41° 57' 26" W a distance of 333.26 feet to the POINT OF BEGINNING and containing 127,375 square feet or 2.924 acres of land, more or less.

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BEING a tract of land situated in the John McGowen Survey, Abstract No. 797, and the Daniel Lambert Survey, Abstract No. 784, and being part of Lot 2 of the replat of Denton Shopping Center Addition as recorded in Cabinet C, Page 67, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at the Southwest Corner of Lot 1 of the said replat of Denton Shopping Center Addition;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 239.34 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W a distance of 244.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 25.50 feet to a point for corner;

THENCE N  $48^{\circ} 02' 34''$  W a distance of 236.91 feet to a point for corner;

THENCE N  $64^{\circ} 45' 00''$  W a distance of 25.00 feet to a point for corner;

THENCE N  $25^{\circ} 15' 00''$  E a distance of 140.00 feet to a point for corner;

THENCE N  $34^{\circ} 48' 00''$  E a distance of 136.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 282.03 feet to a point for corner;

THENCE N  $41^{\circ} 57' 26''$  E a distance of 108.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 155.00 feet to a point for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 105.00 feet to a point for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 125.00 feet to the POINT OF BEGINNING AND containing 3.50 acres of land, more or less.

EXHIBIT B-5

BEING a tract of land of the John McGowen Survey, Abstract No. 797, and being part of lot 2, of the replat of Denton Shopping Center Addition. An addition to the City of Denton as recorded in Cabinet C, page 67 Deed Record, Denton County, Texas and being more particularly described as follows:

BEGINNING with an iron rod set at the Northwest corner of Lot 2, and being in the Easterly line of Interstate Highway 35 (a variable width row) said point also being the Southwest corner of Lot 3.

THENCE N  $42^{\circ} 33' 00''$  E a distance of 145.00 feet to an iron rod set for corner;

THENCE N  $86^{\circ} 43' 12''$  E a distance of 77.39 feet to an iron rod set for corner;

THENCE S  $05^{\circ} 49' 03''$  W a distance of 132.75 feet to an iron rod set for corner;

THENCE S  $48^{\circ} 02' 34''$  E a distance of 85.00 feet to an iron rod set for corner;

THENCE S  $41^{\circ} 57' 26''$  W a distance of 95.00 feet to an iron rod set for corner in the said East line of Interstate Highway 35.

THENCE N  $47^{\circ} 27' 00''$  W at the East line of Interstate Highway 35, a distance of 219.30 feet to the POINT OF BEGINNING and containing 0.648 acres of land, more or less.

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BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being all of Lot 3, Block 1 of the Denton Shopping Center Addition, an addition to the City of Denton, according to the replat thereof, recorded in the Map Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway 35-E the following:

N 42° 27' 28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02° 48' 06", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34° 42' 00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64° 45' 00" E a distance of 65.87 feet to a point for corner;

THENCE S 05° 49' 03" W a distance of 95.00 feet to a point for corner;

THENCE S 86° 43' 12" W a distance of 90.00 feet to a point for corner;

THENCE S 42° 33' 00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway 35-E;

THENCE along the Easterly line of said Interstate Highway 35-E the following:

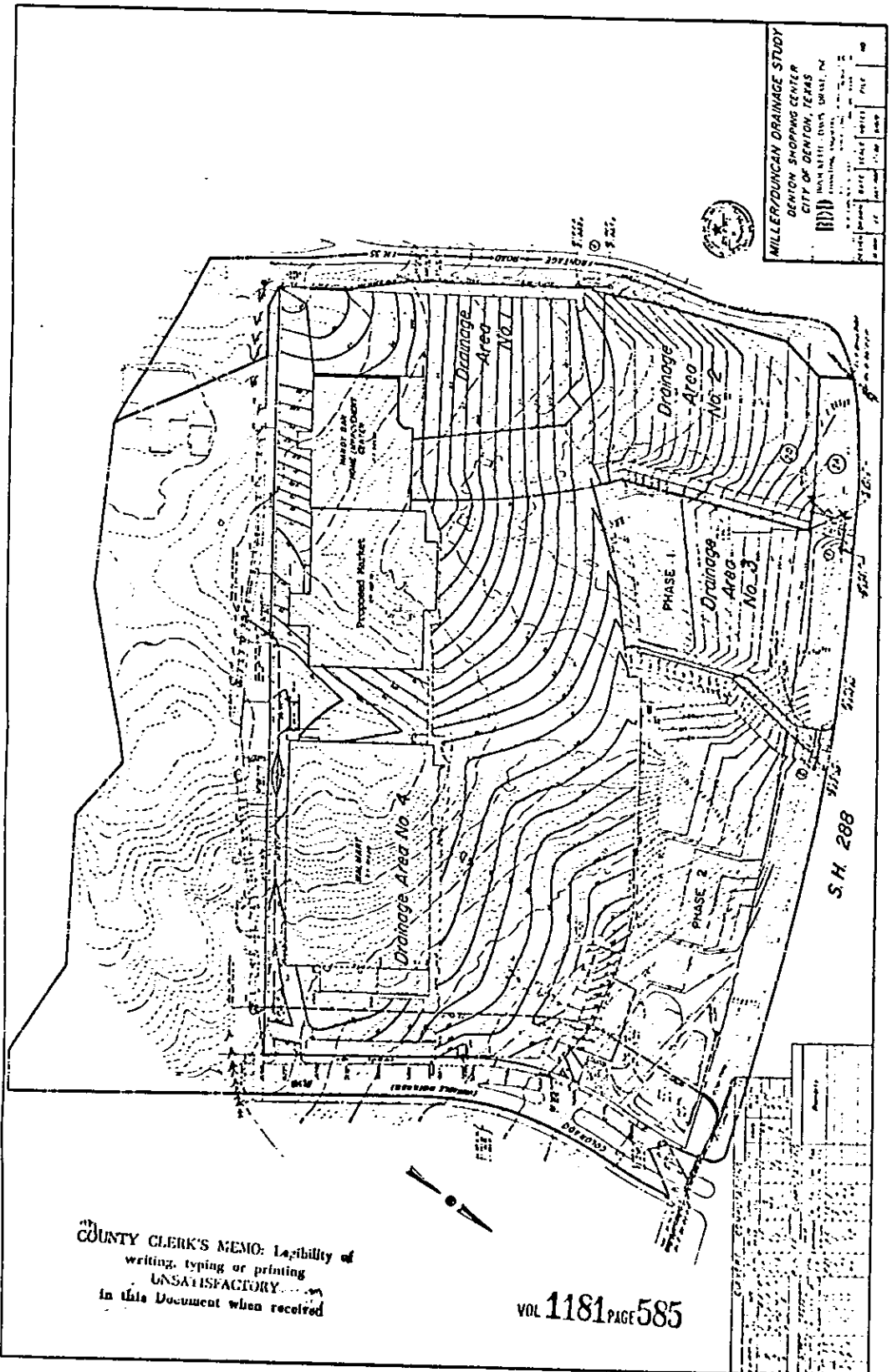
N 42° 00' 59" W a distance of 90.60 feet to a point for corner;

N 34° 42' 00" W a distance of 226.00 feet to a point for corner;

N 01° 41' 20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

Exhibit "C"

NON-CERTIFIABLE COPY



COUNTY CLERK'S MEMO: Legibility of  
 writing, typing or printing  
 UNSATISFACTORY  
 in this Document when received

VOL 1181 PAGE 585



1. Specifications for paving on Tract II, Parcel 1.

Parking Area

5" concrete or asphalt consisting of 8" granulized base or lime stabilized, 3" sub base and 1" wearing surface

Service Drive

7" concrete or asphalt consisting of 12" granulized base or lime stabilized, 5" sub base and 2" wearing surface

2. Specifications for paving on Tract II, Parcel 2.

5" concrete in Service Drive

4" concrete in parking area

All concrete shall be minimum compression of 3,000 p.s.i. 28 days and contain No. 3 reinforcing base set on 24" center both ways. Construction procedures shall conform to Texas Highway Department 1972 Standard Specifications for Construction of Highways, Streets and Bridges, adopted by the State Highway Department of Texas on January 3, 1972.

GRANTEE'S MAILING ADDRESS:  
HANDY DAN HOME IMPROVEMENT CENTERS, INC.  
Suite 134  
San Antonio, Texas 78229

35656  
DEC 15 PM 3:26  
FILED

RETURN TO: HANDY DAN HOME IMPROVEMENT CENTERS, INC.  
7909 Fredericksburg Road  
Suite 134  
San Antonio, Texas 78229

VOL 1181 PAGE 587

FILED FOR RECORD 15th DAY OF December A.D. 1982, at 3:26 P.  
RECORDED 16th DAY OF December A.D. 1982.  
MARY KATHLEEN COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: *[Signature]* DEPUTY.

H-83-0-42288-M SJH (14)

DEED RECORDS

22619

THE STATE OF TEXAS  
COUNTY OF DENTON

§  
§  
§

MODIFICATION OF RESTATEMENT  
OF AGREEMENT OF EASEMENTS,  
COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

Complainant Party *nn*.

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the ~~party~~ <sup>nn</sup> who owns the ~~greatest~~ portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

*nn* - ~~greater~~

the Principal Party of

774 of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. ~~Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.~~ 774.

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: Neil Hill  
Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OTR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF Oklahoma §  
COUNTY OF Oklahoma §

This instrument was acknowledged before me, on the 16<sup>th</sup> day of May, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

Leticia Toepfer  
Notary Public in and for  
the State of Oklahoma

My Commission Expires:  
2-23-87

Leticia Toepfer  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of New York

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

VOL 1225 PAGE 351

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

§  
§  
§

VOL 1225 PAGE 352

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

\_\_\_\_\_  
Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF FLORIDA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

2877Z

GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

FILED

1983 JUN 13 PM 2:52

22619

VOL 1225 PAGE 353

1225/349

FILED FOR RECORD 137A DAY OF June A.D. 1983, 2:52 P.  
RECORDED 147A DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Handie Smith DEPUTY.



H-83-D-42288-M SJH (14)

DEED RECORDS

22620

THE STATE OF TEXAS           §           MODIFICATION OF RESTATEMENT  
                                  §           OF AGREEMENT OF EASEMENTS,  
COUNTY OF DENTON           §           COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and-

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the \*party who owns the greatest portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

\*Complaining Party

*SJH*  
Init.

*SJH*  
Init.

*JP*  
*JP*

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of \*Tract II, Parcel 1 and \*Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. ~~Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.~~ \*Tract I, Olt  
Init.

\*\*the Principal Party of

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: Nell Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC. LEGAL

By: Edward H. Tutun RE  
Title: Edward H. Tutun, President

OTR

VOL 1225 PAGE 356

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

Notary Public in and for  
the State of \_\_\_\_\_

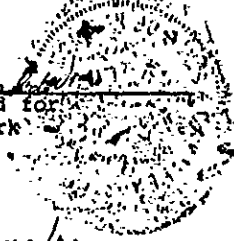
My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the 10th day of May, 1983 by Charles H. Tustin of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

Carmela Romaloo  
Notary Public in and for  
the State of New York



My Commission Expires:

\_\_\_\_\_  
CARMELA ROMALOO  
Notary Public, State of New York  
No. 31-4812206  
Qualified in New York County  
Commission Expires March 20, 1984

Carmela Romaloo  
Printed Name of Notary

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

\_\_\_\_\_  
Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF FLORIDA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

28772

VOL 1225 PAGE 357

GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

VOL 1225 PAGE 358

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

FILED

1983 JUN 13 PM 2 52  
JUN 13 1983

029922

FILED FOR RECORD 13th DAY OF June  
RECORDED 14th DAY OF June A.D. 1983, at 2:52 P.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Handie Smith DEPUTY.

H-83-D-42288-M SJH (14)

DEED RECORDS

22621

THE STATE OF TEXAS            §            MODIFICATION OF RESTATEMENT  
                                     §            OF AGREEMENT OF EASEMENTS,  
COUNTY OF DENTON            §            COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement: SEE ADDENDUM

INITIALED BY ~~With respect to the Grant of Reciprocal Easements referred to in subparagraph (1) above (the "Grant"), the parties hereby agree that the party who owns the greatest portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event~~

VOL 1225 PAGE 359

INITIALED BY: \_\_\_\_\_

~~of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Town Center Joint Venture as set forth in the Grant.~~

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: \_\_\_\_\_  
Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_



OTR

By: Stephen A. Mitchell  
Title: Stephen A. Mitchell, Partner

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_

Printed Name of Notary

VOL 1225 PAGE 331

STATE OF Ohio §  
COUNTY OF Franklin §

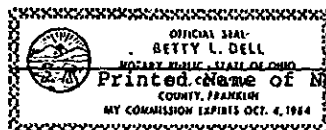
VOL 1225 PAGE 352

This instrument was acknowledged before me, on the 20th day of May, 1983 by Stephen A. Mitchell, Partner of OTR, an Ohio general partnership, on behalf of said general partnership.

Betty L. Dell  
Notary Public in and for the  
County of Benton, State of Arkansas  
FRANKLIN OHIO

My Commission Expires:

OCT. 4, 1984



STATE OF FLORIDA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_, of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_, of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

28772

ADDENDUM

With respect to the Grant of Reciprocal Easements ("Grant") referred to in subparagraph (ii) above, the parties hereby agree that the Complaining Party who owns the greatest portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event of a default by Denton Town Center Joint Venture, under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract 1, Tract 11, parcel 1 and Tract 11, parcel 2, which consent shall not be unreasonably withheld or delayed.

the Principal Party of

INITIALED BY

*SA*

VOL 1225 PAGE 353

GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

VOL 1225 PAGE 364

FILED

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

1983 JUN 13 PM 2 52

FILED FOR RECORD 13th DAY OF June A.D. 1983, at 2:52 P.  
RECORDED 14th DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Wanda Smith DEPUTY.

H-83-D-42288-M SJH (14)

DEED RECORDS

23622

THE STATE OF TEXAS	§	MODIFICATION OF RESTATEMENT
	§	OF AGREEMENT OF EASEMENTS,
COUNTY OF DENTON	§	COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 21 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the <sup>party</sup> who owns the greater portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

VOL 1225 PAGE 385

# 3675  
ECT:vmv  
5/19/83

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: \_\_\_\_\_  
Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OTR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: [Signature]  
Title: Vice President

Attest: [Signature] Asst. Secretary  
PIZZA TIME THEATRES, INC.



By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

VOL 1225 PAGE 337



STATE OF FLORIDA  
COUNTY OF DADE

VOL 1225 PAGE 368

BEFORE ME, the undersigned authority, personally appeared Jerry Skuberg and Ellen Skuberg to me well known and known to me to be the individuals described in and who executed the foregoing instrument as Vice President and Assistant Secretary of BURGER KING CORPORATION, a Florida corporation, and severally acknowledged to and before me that they executed such instrument as such Vice President and Assistant Secretary respectively of said corporation and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 23 day of May, 19 82.

(SEAL)

Maurice A. M. [Signature]  
Notary Public  
My Commission Expires



STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

\_\_\_\_\_  
Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF FLORIDA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

2877Z

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GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

VOL 1225 PAGE 370

22622

JUN 13 PM 2:52

FILED

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

FILED FOR RECORD 13th DAY OF June A.D. 1983, at 2:52 P.  
RECORDED 14th DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Wanda Smith DEPUTY.

THE STATE OF TEXAS  
COUNTY OF DENTON

§ MODIFICATION OF RESTATEMENT  
§ OF AGREEMENT OF EASEMENTS,  
§ COVENANTS & RESTRICTIONS  
**DEED RECORDS**

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26<sup>th</sup> day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

**W I T N E S S E T H:**

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the party who owns the greater portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

\* Complaining

VOL 1225 PAGE 371

the Principal  
Party of

ABW

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of <sup>Tract</sup> Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.

ABW

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OTR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: David B. Wohl  
Title: Director of Real Estate

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

VOL 1225 PAGE 373

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

VOL 1225 PAGE 374

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of OTR, an Ohio general partnership, on behalf of said general partnership.

Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires: \_\_\_\_\_

Printed Name of Notary

STATE OF FLORIDA §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, by \_\_\_\_\_ of Burger King Corporation, a Florida corporation, on behalf of said corporation.

Notary Public in and for the  
State of Florida

My Commission Expires: \_\_\_\_\_

Printed Name of Notary

STATE OF CALIFORNIA §

COUNTY OF San Clara §

This instrument was acknowledged before me, on the 26th day of April, 1983, by David Wheeler of Pizza Time Theatre, Inc., a California corporation, on behalf of said corporation.



Joan Bossie  
Notary Public in and for  
the State of California

My Commission Expires: \_\_\_\_\_

August 18, 1986

JOAN BOSSIE  
Printed Name of Notary

28772



GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

22623

FILED  
1983 JUN 13 PM 2:52  
COUNTY CLERK, DENTON, TEX.  
BY *[Signature]*

FILED

VOL 1225 PAGE 375

FILED FOR RECORD 13th DAY OF June A.D. 1983, 2:52 P.  
RECORDED 14th DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Randee Smith DEPUTY.

H-83-D-42288-M SJH (14)

VOL 1225 PAGE 376

DEED RECORDS

22624

THE STATE OF TEXAS        §        MODIFICATION OF RESTATEMENT  
                                 §        OF AGREEMENT OF EASEMENTS,  
COUNTY OF DENTON        §        COVENANTS & RESTRICTIONS

This Modification of Restatement of Agreement of Easements, Covenants and Restrictions (the "Modification") is made and entered into as of the 26 day of April, 1983, by and among Duncan Properties, LTD., an Oklahoma limited partnership ("Duncan"), OTR, an Ohio general partnership ("OTR"), Handy Dan Home Improvement Centers, Inc., a Delaware corporation ("Handy Dan"), Burger King Corporation, a Florida corporation ("Burger King") and Pizza Time Theatre, Inc., a California corporation ("Pizza Time").

W I T N E S S E T H:

WHEREAS, as of December 7, 1982, Duncan, Wal-Mart Properties, Inc. and Handy Dan executed and delivered each to the other that certain Restatement of Agreement of Easements, Covenants and Restrictions (the "Restatement"), dated of even date therewith and recorded in Volume 1181, page 564, Deed Records, Denton County, Texas, covering the real property more particularly described therein (the "Shopping Center"); and

WHEREAS, OTR, Burger King and Pizza Time thereafter acquired portions of the Shopping Center subject to the Restatement.

WHEREAS, Duncan has requested that the Restatement be modified and amended in certain respects; and

WHEREAS, Handy Dan, OTR, Burger King and Pizza Time have agreed, upon the following terms and conditions, to such request; and

WHEREAS, Duncan, Handy Dan, OTR, Burger King and Pizza Time are all of the current owners of the Shopping Center.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Duncan, OTR, Handy Dan, Burger King and Pizza Time hereby agree that:

1. The Restatement is hereby amended such that Paragraph 21 of the Restatement is hereby deleted in its entirety and the following Paragraph 21 is hereby substituted in lieu thereof.

"21. Duration. Unless otherwise cancelled or terminated, this Agreement and all of the easements, rights and obligations contained herein shall continue in perpetuity."

2. The Restatement is hereby amended such that the following paragraph is inserted at the end of Paragraph 16 of the Restatement:

With respect to the Grant of Reciprocal Easements referred to in subparagraph (ii) above (the "Grant"), the parties hereby agree that the party who owns the greater ~~greatest~~ portion of the Center Property (who is thereby entitled pursuant to Section 5.1 of the Grant, to determine the remedy to be exercised in the event

the Principal Party of

Tract I

of a default by Denton Town Center Joint Venture under the terms of the Grant) shall not take any action or exercise any remedy under the Grant without the prior written consent of the owners of Tract II, Parcel 1 and Tract II, Parcel 2, which consent shall not be unreasonably withheld or delayed. ~~Likewise, the party who owns the greatest portion of the Center Property shall from time to time take all such action as shall be reasonably requested by the owners of Tract II, Parcel 1 and Tract II, Parcel 2 to enforce the obligations of Denton Towne Center Joint Venture as set forth in the Grant.~~

3. The Restatement is hereby amended such that Paragraph 8a of the Restatement is hereby deleted in its entirety and the following Paragraph 8a is hereby substituted in lieu thereof:

"8a. Indemnification. The owner of each tract hereby indemnifies and holds each other owner harmless from any and all liability, damage or expense in connection with any cause of action, suit, claim or judgment arising from personal injury, death or property damage occurring on or in any way connected with the Indemnitor's Tract unless caused by the intentional act or negligence of the indemnitee, its agents, employees or contractors."

4. The Restatement is hereby amended such that the word "purchaser" in the last sentence of Paragraph 17 thereof is hereby deleted therefrom.

5. Any and all of the terms and provisions of the Restatement are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

6. Any and all of the terms and provisions of the Restatement, except as modified and amended hereby, remain in full force and effect.

7. This Modification shall be binding upon and inure to the benefit of Duncan, Handy Dan, Pizza Time, Burger King and OTR and their respective legal representatives, successors and assigns.

8. This Modification may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed one and the same instrument.

EXECUTED as of the day and year first above written.

DUNCAN PROPERTIES, LTD.

By: Neil Hill, General Partner

HANDY DAN IMPROVEMENT CENTERS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

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OTR

VOL 1225 PAGE 378

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIZZA TIME THEATRES, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

WAL-MART PROPERTIES, INC.

By: [Signature]  
Title: [Signature]



STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by Neil Hill, General Partner of Duncan Properties, LTD., an Oklahoma limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public in and for  
the State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF NEW YORK §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me, on the \_\_\_\_ day of \_\_\_\_\_, 1983 by \_\_\_\_\_ of Handy Dan Home Improvement Centers, Inc., a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of New York

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

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STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_ day  
of \_\_\_\_\_, 1983 by \_\_\_\_\_ of OTR,  
an Ohio general partnership, on behalf of said general  
partnership.

\_\_\_\_\_  
Notary Public in and for the  
County of Benton, State of Arkansas

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF FLORIDA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_  
day of \_\_\_\_\_, 1983, by \_\_\_\_\_  
of Burger King Corporation, a Florida  
corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Florida

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

STATE OF CALIFORNIA §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me, on the \_\_\_\_\_  
day of \_\_\_\_\_, 1983, by \_\_\_\_\_  
of Pizza Time Theatre, Inc., a  
California corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of California

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

VOL 1225 PAGE 379

C O R P O R A T E    A C K N O W L E D G M E N T

STATE OF ARKANSAS )  
COUNTY OF BENTON ) SS

VOL 1225 PAGE 380

Be it remembered that on this 27TH day of MAY, 19 83, before me, a notary public in and for the county and state aforesaid, came Thomas P. Seay, Vice President of Wal-Mart Properties, Inc., a corporation, who is personally known to me to be the person who executed as such officer the within instrument of writing on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.



Simonne Ann Daugherty  
Notary Public

My commission expires February 24, 1991.



GRANTEE'S MAILING ADDRESS:  
DUNCAN PROPERTIES, LTD.  
100 Park Avenue Bldg.  
Suite 1200  
Oklahoma City, Oklahoma 73102

RETURN TO: CARL CROSS  
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER  
4300 Interfirst One  
1401 Elm Street  
Dallas, Texas 75202

VOL 1225 PAGE 381

FILED FOR RECORD 13th DAY OF June A.D. 1983, 2:52 P  
RECORDED 14th DAY OF June A.D. 1983.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Randy Smith DEPUTY.



DEED RECORDS

GRANT OF RECIPROCAL EASEMENTS

9471

THIS GRANT OF RECIPROCAL EASEMENTS ("Agreement") is to be effective as of March 31, 1982, and is between DUNCAN PROPERTIES, LTD., an Oklahoma limited partnership ("Duncan") and DENTON TOWNE CENTER JOINT VENTURE, a joint venture ("Towne Center"), upon the following terms and conditions:

INTRODUCTION

1. Duncan owns a tract of land (the "Duncan Tract") located partially in the Daniel Lambert Survey, Abstract No. 784, and partially in the John McGowan Survey, Abstract No. 797, and partially in the J. S. Taft Survey, Abstract No. 1256, City of Denton, Denton County, Texas, which land is described on Exhibit "A" to this Agreement and shown on Exhibit "C-1" to this Agreement (the "Site Plan"). The Duncan Tract is composed of "Duncan's Main Tract", being the area shown as such on the Site Plan and "Duncan's Outlot Tract", being the area shown as such on the Site Plan.
2. Towne Center owns a tract of land located partially in the Daniel Lambert Survey, Abstract No. 784, partially in the John McGowan Survey, Abstract No. 797 and partially in the J. S. Taft Survey, Abstract No. 1256, which is contiguous to the Duncan Tract, and which is described on Exhibit "B" to this Agreement and shown on the Site Plan (the "Towne Center Tract"). The Towne Center Tract and the Duncan Tract collectively shall be referred to as the "Shopping Center", and are sometimes individually referred to as a "Tract".
3. The terms "Duncan" and "Towne Center" shall include their respective successors and assigns as owners of portions of the Shopping Center and all such parties shall be referred to in this Agreement individually as a "Party" and collectively as the "Parties". As used in this Agreement, the term "Permittee" shall collectively refer to the Parties, each person or entity entitled to occupy a portion of the Shopping Center and all of their respective officers, employees, agents, contractors, customers, visitors, business invitees and other invitees of any nature whatsoever.
4. Towne Center and Duncan intend to develop and operate their respective Tracts in conjunction with each other, and in order to effectuate that purpose, Towne Center and Duncan desire to grant to each other certain reciprocal easements in, to, over and across their respective Tracts.

ARTICLE I

EASEMENTS

- 1.1 Access Easements. Each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, a nonexclusive perpetual easement for the passage of vehicles over and across the portions of the grantor's Tract shown as "Access Easements" on Exhibit "C-2" to this Agreement and described by metes and bounds on Exhibits "D-1, D-2 and D-3" to this Agreement as Access Easement #1, Access Easement #2 and Access Easement #3 so as to assure a free and unimpeded flow of vehicular traffic through the interconnecting Access Easements. Neither Party shall vary, alter

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or change the grade levels of its Tract within any of the Access Easements from the grade levels shown on the grading plan attached to this Agreement as Exhibit "E" without the prior written consent of the other Party. No fence (except the required guard rails referred to in Section 3.4 hereof and shown on Exhibit "H") or other barrier which would prevent or obstruct the passage of vehicular travel shall be erected or permitted within or across the Access Easements; provided, however, that a Party may, at its sole election, erect curbing along those boundary lines of the Access Easements which are located on its Tract except (i) in that area identified as "No Curb Area" on Exhibit "C-1", within which no curbing may be erected by any Party, and (ii) within any intersection of two Access Easements. Towne Center shall have the right, and an easement over and across that portion of the Duncan Tract as is necessary to effectuate such right is hereby granted, to penetrate any curbing erected within the "Optional Curb Opening Area" shown on Exhibit "C-2" to create a curb opening and to pave and use as a driveway, from the Towne Center Tract to Access Easement #1, an area of a width to be determined by Towne Center in its sole discretion, but in no event to exceed two hundred sixty-eight feet (268'). In such event, Towne Center acknowledges that water will likely surface drain from Duncan's Tract into the Towne Center Tract through any opening so created by Towne Center in the curb, and Towne Center will accept all such water onto its Tract and will release, indemnify and hold Duncan harmless from any loss, liability or cause of action arising from such water drainage, notwithstanding the provisions of Section 1.3 hereof. Towne Center shall be responsible at its sole expense for all such work and to prepare neat and sightly curb openings. The foregoing provisions shall not prohibit temporary barricades erected and reasonably necessary in connection with the construction, reconstruction or repair and maintenance of improvements erected or constructed in connection with this Article I (collectively "Construction"). All Construction shall be conducted in the most expeditious manner reasonably possible to minimize the interference with the use of the Access Easements, with the Party erecting temporary barricade(s) being obligated to provide alternate routes of vehicular travel to the extent that such are obstructed at all times while any barricade(s) remains in place; provided, however, that prior to closing off any portion of the Access Easements, as herein provided, such Party shall give written notice to the other Party of its intention to do so, and shall coordinate such closing with the other Party so that no unreasonable interference in the operation of the Shopping Center shall occur.

1.2 Utilities. Each Party hereby grants and conveys to each other Party a nonexclusive perpetual easement in, to, under and across the areas of the grantor's Tract shown as "Utility Easements" on Exhibit "C-3" and described by metes and bounds on Exhibit "F" attached to this Agreement, for the installation, operation, flow and passage, use, maintenance, repair, relocation within the easement area and removal of water and gas mains, electrical power lines, telephone lines, television cable and any related facilities which are incidental to any such services to serve the Tract of the grantee. All utility lines or systems installed pursuant to the foregoing grant shall be underground, except for incidental surface structures such as phone pedestals and power transformers, which may be installed above ground in an area outside of Access Easement #1 which is either within the Utility Easement or on the Tract of the installing Party. Any Party installing utilities pursuant to the

provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith to be completed, including general clean-up and surface restoration, as quickly as practical. If any of the Parties elect to install common utility lines or systems, all costs and expenses with respect to the initial installation thereof shall be set forth in a separate agreement between the cooperating Parties.

1.3 Surface Drainage Easement. Towne Center hereby grants to Duncan and Duncan's successors and assigns, a perpetual nonexclusive easement for surface water drainage from Duncan's Main Tract into the Surface Drainage Entry Area owned by Towne Center, as shown on Exhibit "C-2", but not into any other portion of the Towne Center Tract. Towne Center acknowledges that the path of surface water after entering the Surface Drainage Entry Area will be the responsibility of Towne Center. Attached to this Agreement as Exhibit "C" is a grading plan which identifies a possible Drainage Basin (with the term "Drainage Basin" referring to an area from which water will flow and drain through the Surface Drainage Entry Area), pursuant to which Duncan may elect to grade its Tract (the "Safe Harbor Grading Plan"). If Duncan does so grade its Tract, then Towne Center shall accept whatever amount of water flow is created by the Safe Harbor Grading Plan from the Drainage Basin. If Duncan shall grade its Tract in such a manner so as (a) to increase or change the perimeter boundaries of the Drainage Basin from that shown in the Safe Harbor Grading Plan or (b) to materially alter the grade levels within the Drainage Basin shown in the Safe Harbor Grading Plan in any manner, then Duncan shall be obligated and does hereby covenant to grade Duncan's Main Tract so as to assure that the water flow into the Surface Drainage Entry Area shall not exceed five cubic feet per second of water based on a ten-year design frequency as established by the City of Denton Drainage Design Manual dated May 1975, using the applicable assumptions used by the City of Denton, Texas on the effective date of this Agreement. If Duncan shall violate the terms of the covenants contained in the immediately preceding sentence, Towne Center may deliver written notice thereof to Duncan together with a certification from a registered civil engineer of such violation, together with an identification of the Drainage Basin which is causing the default (the "Drainage Default Notice"). The Party owning the Drainage Basin causing the default shall be the only person or entity deemed to be Duncan for purposes of the remainder of this Section 1.3. In such event, the following procedures shall apply:

(i) If Duncan concedes that a violation does exist, Duncan may, within thirty days from delivery of the Drainage Default Notice, submit to the City Engineer of the City of Denton, Texas (or if he declines to assist, to an engineer designated by the City Engineer of the City of Denton, Texas -- whichever may be applicable being referred to as the "Binding Engineer") and to Towne Center a proposal for curing the violation. If the Binding Engineer approves such proposal, then Duncan shall promptly commence to cure the violation at its sole expense and Duncan shall pursue the completion of such proposal in an expeditious manner.

(ii) If Duncan does not agree that a violation exists, Duncan may, within thirty days following delivery of the Drainage Default Notice, obtain an opinion

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from the Binding Engineer concerning the existence of a violation. If the Binding Engineer determines that no violation exists, such determination shall be final and binding on all Parties. If the Binding Engineer determines that a violation does exist, then Duncan shall have a period of thirty days from the date on which written notice of such determination is delivered to Duncan and Towne Center to submit a proposal to cure the violation to the Binding Engineer and to Towne Center. If the Binding Engineer approves such proposal, then Duncan shall promptly commence to cure the violation at Duncan's sole expense and Duncan shall pursue the completion of such proposal in an expeditious manner.

(iii) If Duncan fails to obtain an opinion of the Binding Engineer within the stated thirty-day period, then a violation shall be deemed to have been conclusively established and Towne Center may pursue all remedies prescribed below.

Notwithstanding anything contained hereinabove to the contrary, if within sixty days following the delivery of the Drainage Default Notice, Duncan has not either (x) commenced curing the asserted violation or (y) delivered to Towne Center an opinion from the Binding Engineer that no violation exists, then Towne Center shall have, in addition to all other rights and remedies otherwise available, the right to terminate the easement granted in this Section 1.3. In addition, Towne Center may erect or construct, at Duncan's sole expense, whatever barriers or other devices (including, but not limited to, underground water collection devices) Towne Center may deem appropriate to prevent the passage of surface water into the Surface Drainage Entry Area. Duncan shall promptly reimburse Towne Center upon request for any such expenses actually incurred by Towne Center in connection with curing such violation. In addition to all of the foregoing, (aa) until such time as the initial Slope Retention Devices (i.e., the earthen bank described in Section 1.4 hereof) are modified, altered or replaced in accordance with Section 2.3 hereof, Duncan may drain surface water over and across any portion of the Towne Center Tract located to the west of Access Easement #2, and (bb) if Towne Center is the direct cause of a violation of the covenants of this Section 1.3 (for example, but not by way of limitation, by penetrating any curb bordering the Duncan Main Tract as contemplated by Section 1.1 or by failing to maintain or repair the Slope Retention Devices in accordance with Section 2.3 hereof), thereby causing water to enter the Towne Center Tract at a place other than the Surface Drainage Entry Area, Duncan shall not be responsible therefor, notwithstanding any other provision hereof.

1.4 Slope Maintenance Easement. Significant grade differences exist between the Towne Center Tract and Duncan's Main Tract, and Duncan and Towne Center have by separate instrument dated on even date herewith and entitled "Standard Form of Agreement as outlined in the February 1982 Construction Documents and Technical Specifications", prepared by Pierce Lunsford & Associates, Inc., as amended, from time to time, agreed to cooperate concerning the grading and construction of slope retention devices along the common boundary between Duncan's Main Tract and the Towne Center Tract in the area identified on Exhibit "H" (the "Slope Retention Devices"). The Slope Retention Devices are contemplated to consist initially of earthen bank. The Slope Retention Devices will

commence to the north of the northernmost boundary of the area shown as Access Easement #1 on the Site Plan (with the southernmost point of the Slope Retention Devices being referred to as the "Slope Commencement Line" and being in the location shown on Exhibit "H" to this Agreement). Duncan hereby grants to Towne Center a perpetual easement over, across, under and to all portions of the Shopping Center adjoining the Slope Commencement Line or the Slope Retention Devices for the purposes of maintaining and replacing the Slope Retention Devices, as more particularly described in Section 2.3 below.

1.5 Construction. Each Party grants and conveys to each other Party, and to its respective contractors, materialmen and workmen during the term of this Agreement such temporary licenses for ingress and egress, and for the performance of construction activities (but then only within the Access Easements and the Utility Easement) over, upon and across the portions of the Shopping Center located upon the grantor's Tract not occupied by buildings, signage, landscaping or other improvements other than paving, as shall be reasonably necessary to construct, maintain and reconstruct improvements, utilities, curbing and curb openings, parking, buildings, signs, landscaping, guard rails and Slope Retention Devices on the Tract of such other Party. Towne Center shall make reasonable efforts to perform all construction activities related to the parking area, building, signs and landscaping to be located on its Tract from and on the Towne Center Tract and to avoid use of the Access Drives in connection therewith, subject to the rights and limitations described in the last three sentences of this Section 1.5. Such temporary licenses shall be in effect only during such periods as actual construction, maintenance or reconstruction is performed and shall be exercised so as not to unreasonably interfere with the use and operation of the affected areas. The Access Easements and the Utility Easement located upon the grantor's Tract may also be utilized by vehicles transporting construction materials, equipment and persons employed in connection with any work provided for herein. Storage of materials and vehicles being utilized in connection with such construction may only occur on the constructing Party's Tract and only for temporary periods of time. Prior to exercising any rights under this temporary construction license, the Party wishing to cause such work to be performed shall obtain reasonable and customary liability insurance protection as is appropriate. Any Party availing itself of such temporary license shall indemnify and hold harmless the Party owning the affected area from any liability (including the reasonable attorneys' fees and costs of suit of the indemnified Party) or obligation arising out of or related to the use of such license, except for claims caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants or employees, or the agents, servants, or employees of any licensees or concessionaires wherever the same may occur. In addition, the Party causing the work to be performed agrees to promptly pay all costs and expenses associated therewith, to diligently complete such work as quickly as possible, and to promptly clean the area and restore the affected areas to a condition which is equal to or better than the condition which existed prior to the beginning of such work. Notwithstanding the foregoing, Towne Center may, from time to time, obstruct the Access Drives in connection with the performance of construction activities relating to the Towne Center Tract for a

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continuous period of not more than four (4) hours on any one occasion. If Towne Center contemplates obstructing an Access Drive for more than a continuous period of four (4) hours in connection with such activities, Towne Center shall deliver written notice thereof to the owner of the greatest portion of the Duncan Tract with a request for written approval therefor at least seven (7) days prior to the contemplated commencement date of the construction activities. Towne Center may not commence any such activities without such approval, which shall not be unreasonably withheld or delayed; however, if no response is received by Towne Center within ten (10) days after the delivery of the request for approval, such request shall be deemed approved.

1.6 No Parking Easements. Nothing contained in this Agreement shall be deemed to grant, confer or otherwise entitle any Party or any Permittee of a Party to park automobiles on the Tract of another Party, and any such rights are hereby expressly negated. If the Permittees of a Party shall park automobiles on the Tract of another Party, then the Party upon whose Tract automobiles are wrongfully being parked (the "Innocent Party") may, in addition to all other rights to which the Innocent Party is otherwise entitled, tow or cause to be towed all such wrongfully parked automobiles; provided, however, that prior to towing or causing to be towed any such automobiles, the Innocent Party shall first have delivered written notice to the Party whose Permittees are violating the no-parking restriction that the Innocent Party intends to begin towing violating automobiles and shall have allowed ten days thereafter to elapse.

1.7 Sign Easement. Duncan hereby grants to Towne Center the right, and an easement therefor, to place in the manner provided below a sign on any pylon or pole sign structure (the "Sign Structure") which Duncan may erect on the Duncan Tract along or contiguous to the frontage road of Interstate Highway #35. Duncan shall have no obligation whatsoever to erect or build a Sign Structure; however, if Duncan shall erect or build a Sign Structure, Duncan agrees that each sign placed thereon shall be of approximately equal size (or at Duncan's election, and as an alternative, that a sign placed on the Sign Structure by Towne Center may be as large as the largest sign placed on the Sign Structure), and Towne Center may, if Towne Center so elects, use the sign position which is fourth from the top of the Sign Structure to identify the shopping center located on the Towne Center Tract. In such event, the bottom of the sign to be used by Towne Center shall be at least ten feet (10') above the grade level directly underneath the sign. Duncan shall deliver written notice to Towne Center of Duncan's commitment to commence construction of the Sign Structure within ninety days, and thereafter Towne Center shall have a period of sixty (60) days in which to exercise its right to locate a sign on the Sign Structure as provided above by delivering written notice thereof to Duncan, and failure by Towne Center to so exercise its sign rights shall be a waiver of the right of Towne Center to locate a sign on the Sign Structure. If Towne Center elects to use the space on the Sign Structure designated above for use by Towne Center, Towne Center shall pay to Duncan prior to placing its sign on the Sign Structure (and in no event later than ninety (90) days following exercise by Towne Center of this sign option) an amount equal to one-fourth (1/4th) of the actual costs incurred by Duncan in erecting and building the Sign Structure. Duncan shall, if requested by Towne Center,

reasonably substantiate the amount which it requests as payment therefor. In addition to the above-granted sign easement, Duncan also hereby grants to Towne Center an underground electrical utility easement to be placed in a location designated by Towne Center and approved in writing by Duncan (such approval not to be unreasonably withheld or delayed) for the purpose of illuminating any sign placed by Towne Center on the Sign Structure. Any such electrical services shall be separately metered and Towne Center shall be solely responsible for any costs incurred for such electrical service. Any sign erected on the Sign Structure by Towne Center shall as to the enclosure for such sign conform to the enclosures used for the other signs erected on the Sign Structure.

## ARTICLE II

### MAINTENANCE AND REPAIR

2.1 Utilities. Each Party shall be obligated to maintain, service and repair:

(i) any utility lines, services or facilities situated on that Party's Tract unless (a) such utility is contained within an easement dedicated to and accepted by a quasi-municipal corporation or other utility or governmental agency whereby such quasi-municipal corporation or other utility or governmental agency assumes such maintenance, service and repair obligation, or (b) such utility is required by subsection (ii) below to be maintained, serviced and repaired by another Party; and

(ii) any utility lines, services or facilities situated on the Tract of another Party, the benefits of which, however, are used solely by that Party unless such utility is contained within an easement dedicated to and accepted by a quasi-municipal corporation or other utility or governmental agency whereby such quasi-municipal corporation or other utility or governmental agency assumes such maintenance, service and repair obligation; and

(iii) without regard for which Party would otherwise be required to perform such maintenance, service or repair, any damage caused by the act of that Party or its servants, employees or independent contractors.

Any such maintenance and repair required to be performed on the Tract of another Party shall be subject to the insurance and indemnity provisions of Section 1.5 hereof and shall be performed only after fourteen (14) days' notice to the grantor of the easement (hereinafter in this Section 2.1 referred to as the "Grantor") of the intention of the grantee of the easement to do such work (except in the case of any emergency, whereupon the work may be initiated immediately). Any such work shall be done without cost or expense to the Grantor, after normal business hours whenever possible and otherwise in such manner as to cause as little disturbance in the use of the Grantor's Tract as may be practicable under the circumstances. Any Party performing or causing to be performed maintenance work hereunder agrees to pay promptly all costs and expenses associated therewith (seeking reimbursement from other grantees, if applicable), to complete diligently such work as quickly as possible, and to clean promptly the

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area and restore the affected portion of the Shopping Center to a condition which is equal to or better than the condition which existed prior to the beginning of such work.

2.2 Access Easements. Each Party covenants and agrees to cause to be maintained and kept, at its cost and expense, those portions of Access Easement #1 and Access Easement #2 located on its Tract. With respect to Access Easement #3, Duncan shall maintain, at its sole cost and expense, that portion of Access Easement #3 labeled as "Duncan's Maintenance Area" on Exhibit "C-2" to this Agreement and Towne Center shall maintain, at its sole cost and expense, that portion of Access Easement #3 labeled "Towne Center's Maintenance Area" on Exhibit "C-2" to this Agreement. All Access Easements shall be maintained by the Party responsible therefor in good condition and state of repair, and in compliance with all laws, rules and regulations, orders and ordinances of governmental agencies exercising jurisdiction thereover and further in compliance with the provisions of this Agreement. In this regard, each Party acknowledges that the Access Easements are intended to be used by delivery trucks and other "heavy-duty" vehicles, and further acknowledges that any damage caused by such "heavy-duty" use is not excluded from the maintenance obligations hereby imposed. The standard of maintenance for the Access Easements Area to be followed by the Parties shall be comparable to the standards of maintenance followed in other first-class retail real estate developments of comparable size in Denton, Texas. The maintenance and repair obligation in any event shall include, but not be limited to, the following:

(i) Maintaining all paved surfaces of the Access Easements in a smooth and evenly covered condition, which maintenance work shall include, without limitation, cleaning, sweeping, restriping, repairing and resurfacing (using surfacing material and design of a quality equal or superior to the original surfacing material and design).

(ii) Removal of all papers, debris, filth, refuse, ice and/or snow; and sweeping the Access Easements to the extent necessary to keep the Access Easements in a first-class, clean and orderly condition.

(iii) Placing, keeping in repair and replacing any appropriate directional signs, markers and lines.

2.3 Slope Retention Devices. Towne Center shall maintain and repair the Slope Retention Devices as defined in Section 1.4 so as to maintain the structural soundness thereof and to maintain any erosion control devices placed on the Slope Retention Devices in a neat and orderly condition. Towne Center shall also maintain the paving covering Access Easement #1 at the grades and levels shown on Exhibit "E" to this Agreement, but only to the extent that any damage caused to the paving covering Access Easement #1 is directly caused by or attributable to the Slope Retention Devices or Towne Center's failure to maintain same. Subject to the following qualifications, Towne Center shall have the right to modify, alter or replace all or any portion of the Slope Retention Devices whether located on Duncan's Main Tract or the Towne Center Tract. At least twenty days prior to commencing any modification, alteration or replacement of any portion of the Slope Retention Devices, Towne Center shall deliver to Duncan (as the owner of Duncan's Main

Tract) plans and specifications for such modification, alteration or replacement. To the extent such plans and specifications are substantially in conformity with the concept displayed on Exhibit "I" attached hereto, such plans and specifications shall automatically be deemed approved. To the extent such plans and specifications are not in conformity with the concept displayed on Exhibit "I", however, Duncan shall have the right to approve such plans and specifications, which approval shall not be unreasonably withheld or delayed. In any event Duncan shall have the right to approve the structural soundness of such plans and specifications, which approval shall not be unreasonably withheld or delayed. If Duncan fails to approve such plans and specifications as provided above, Duncan shall submit to Towne Center specific recommendations from a registered civil engineer for improving the design of the Towne Center proposal. If no objections are delivered by Duncan to Towne Center within twenty days from the delivery to Duncan of the plans and specifications, they shall be deemed approved.

### ARTICLE III

#### OPERATION

3.1 Liability. Each Party ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless the other Party ("Indemnitee") from and against all claims, costs, expenses and liability (including reasonable attorneys' fees and cost of suit incurred in connection with all claims), including any action or proceedings brought hereon, arising from or as a result of:

(a) the death of, or any accident, injury, loss or damage whatsoever caused to, any person or entity, or to the property of any person or entity, which shall occur on the Tract owned by each Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitee, its licensees, concessionaires, agents, servants or employees, or the agents, servants, or employees of any licensee or concessionaire wherever the same may occur; and

(b) all claims asserted by or through any Permittees of the Indemnitor's Tract for any loss or damage to the property of such Permittee located upon the respective Indemnitor's Tract, which loss or damage is of the type generally covered by fire insurance with extended coverage irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

In addition, each Party (the "Releasing Party"), on behalf of itself and its insurer, hereby releases the other Party (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Shopping Center, which loss or damage is of the type generally covered by fire insurance with an extended coverage endorsement, irrespective of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried. Each Party agrees to use its best efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; it being understood, however, that

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failure to obtain such endorsements shall not affect the release hereinabove given.

3.2 Taxes. Each Party shall pay, or cause to be paid, prior to delinquency, all taxes and assessments upon the Tract, and the buildings and improvements and personalty owned or leased by such Party in the Shopping Center, provided that if the taxes or assessments on any part thereof may be paid in installments, the Party may pay each such installment as and when the same become due and payable, and in any event prior to the delinquency thereof. Nothing herein contained in this subsection shall prevent any Party from contesting at its cost and expense any such taxes and assessments with respect to the Tract in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith, and at such time as such contest is concluded, such Party promptly pays all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

3.3 Liens. In the event any mechanic's liens are filed against the Tract of any Party as a result of services performed or materials furnished for the use of another Party's Tract, the Party permitting or causing such lien to be filed hereby covenants to cause such lien to be discharged prior to the foreclosure of such lien, and further agrees to indemnify, defend and hold harmless the other Party and its Tract against liability, loss, damage, costs or expenses, including reasonable attorneys' fees and cost of suit on account of such claim of lien. Upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be filed agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien, or posting such bond or other securities as shall be required by law to obtain such release and discharge. Nothing herein shall prevent a Party permitting or causing such lien to contest the validity thereof in any manner such Party chooses, so long as such contest is pursued with reasonable diligence, and in the event such contest is determined adversely, such Party shall promptly pay in full the required amount, together with any interest, penalties and costs.

3.4 Guardrails. Towne Center shall cause to be erected in the location shown on Exhibit "H" to this Agreement metal guard rails concurrently with installation of the initial Slope Retention Devices and Towne Center shall at all times maintain, repair and restore such guard rails as may be necessary.

#### ARTICLE IV.

##### Utility Services to Duncan's Outlot Tract

4.1 General. It is anticipated that the ultimate users of Duncan's Outlot Tract will obtain electricity and natural gas by connecting to utility services being installed by Duncan and Towne Center under the Utility Easement granted in Section 1.2 above.

4.2 Reimbursement Required. In the event that any owner or occupant of Duncan's Outlot Tract shall ever tie in, tap-in or otherwise connect to the electrical service lines or natural gas lines contained within the Utility Easement, then such owner or occupant shall reimburse Towne Center for

a portion of the cost of installing such utility lines as prescribed below in Section 4.3 (the "Utility Reimbursement"). The payment of the Utility Reimbursement shall be a condition precedent to the right of any owner or occupant of Duncan's Outlot Tract to connect into the utility lines installed in the Utility Easement.

4.3 Amount of Reimbursement. The amount of the Utility Reimbursement shall be equal to the entire installation cost (from the easternmost point of the I-35 right-of-way to the common boundary line between Duncan's Outlot Tract and the Towne Center Tract) on a lineal-foot basis of the utility line(s) to which the owner or occupant of Duncan's Outlot Tract connects. Such costs shall include, but not be limited to, all expenses incurred for engineering fees, labor, supervisory personnel, conduit, cable and primary lines. Towne Center shall notify Duncan of the amount of the Utility Reimbursement to the electrical line and the natural gas line promptly after completion of such installation.

4.4 No Other Reimbursements. The Utility Reimbursement described above shall be in lieu of and instead of any other prorata reimbursements which would otherwise be required from the owner or occupant of Duncan's Outlot Tract to Towne Center. Towne Center shall credit against the Utility Reimbursement an amount equal to twenty-four percent (24%) of any reimbursements or pro rata paybacks Towne Center shall receive from any utility company in connection with electricity or natural gas utilities.

#### ARTICLE V

##### MISCELLANEOUS

5.1 Default. Upon the default by any party obligated to perform under the terms of this Agreement (the party owning the land upon which or as a result of which the default is asserted to have occurred being hereinafter in this paragraph referred to as the "Defaulting Party"), and the Defaulting Party's failure to cure such default (or, in the case of a default which cannot be cured within a thirty-day period, to commence and diligently work toward curing the default) within thirty (30) days after the delivery of written notice by the other party (hereinafter in this paragraph referred to as the "Complaining Party"), such written notice to be delivered not only to the Defaulting Party but also to any mortgagees of the Defaulting Party about whom the Complaining Party has received prior written notice, then for as long as the default continues, the Complaining Party shall have the right to exercise one or more of the following remedies, at the sole election of the Complaining Party -- to be determined in the case of the Duncan Tract by the Complaining Party who owns the greatest portion of the Duncan Tract and in the case of the Towne Center Tract by the Complaining Party who owns the greatest portion of the Towne Center Tract.

(a) The Complaining Party may cure the default of the Defaulting Party, or cause the default to be cured (with an easement for ingress and egress necessary for such purposes being hereby granted by each Party to the other), in which event the Defaulting Party shall immediately reimburse the Complaining Party for the reasonable expenses thereby incurred, plus interest at the rate of eighteen percent (18%) per annum, plus all

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reasonable attorneys fees incurred by the Complaining Party in curing the default and obtaining full reimbursement.

(b) The Complaining Party may obtain specific performance by injunction and such other legal and equitable remedies as may be available, in which event the Complaining Party shall also be entitled to recover in such proceedings a full reimbursement for all injuries and damages sustained prior to the curing of the default plus all court costs and reasonable attorneys fees incurred by the Complaining Party in obtaining its relief.

(c) The Complaining Party may demand that the Defaulting Party compensate it for damages sustained and to be sustained as a result of the default; and if the Complaining Party proceeds to litigation on this demand, the Defaulting Party shall also be liable for all court costs and reasonable attorneys fees.

5.2 Estoppel Certificate. Each Party hereby severally covenants that within twenty (20) days from the delivery of written requests from time to time of the other Party, it will issue to a prospective mortgagee, purchaser or tenant of such other Party or to a prospective successor Party to such other Party, an estoppel certificate stating: (i) whether the Party to whom the request has been directed knows of any default by the requesting Party under this Agreement, and if there are known defaults, specifying the nature thereof; (ii) whether to its knowledge this Agreement has been assigned, modified or amended in any way (or if it has, then stating the nature thereof); and (iii) that to the Party's knowledge this Agreement as of the date is in full force and effect. Such statement, however, shall in no event subject the Party furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Party to disclose correct and/or relevant information. Notwithstanding the provisions of Section 5.3 below, any requests for an estoppel certificate as provided above and the response thereto may, at the election of the sender, be sent by private carrier expedited mail service (i.e., Federal Express type service) and, in such event, the request or the response, as the case may be, shall be effective on the first day following deposit with such private carrier. Each Party agrees to act in good faith in connection with requests for estoppel certificates from the others. Failure by a Party to respond within the 20-day period shall be deemed to be the equivalent of a statement that no defaults exist, that no amendment to this Agreement has been entered into and that this Agreement remains in full force and effect.

5.3 Notices. All notices, demands, statements and requests required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served, whether received or not, by depositing the same in the United States mails, addressed to Duncan or Towne Center, postage prepaid and registered or certified mail, return receipt requested, at the address set forth below.

To Towne Center: Denton Towne Center Joint Venture  
c/o Henry S. Miller Company  
2001 Bryan Tower, 30th Floor  
Dallas, Texas 75201  
Attention: Raymond J. Poche

with a copy by regular mail to:

Thomas J. Terkel  
Jenkins & Gilchrist  
2200 First National Bank Bldg.  
Dallas, Texas 75202

To Duncan: Duncan Properties, Ltd.  
100 Park Avenue Bldg.  
Suite 1204  
Oklahoma City, Oklahoma 73102  
Attention: Neil Hill

with a copy by regular mail to:

Mr. Glenn D. West  
Jackson, Walker, Winstead,  
Cantwell & Miller  
4300 First National Bank Bldg.  
Dallas, Texas 75202

All notices, demands and requests shall, except as herein-  
after set forth, be effective upon being deposited in the  
United States mails in accordance with the provisions hereof.  
Rejection or other refusal to accept, or the inability to  
deliver because of changes of address of which no notice was  
given, shall be deemed to be receipt of the notice, demand  
or request. Any Party shall have the right from time to  
time and at any time, upon at least ten (10) days' prior  
written notice thereof in accordance with provisions hereof,  
to change its respective address and to specify any other  
address within the United States of America.

5.4 Condemnation. In the event of a condemnation or a  
sale in lieu thereof concerning a portion or all of the  
Shopping Center, the award or purchase price paid for such  
taking shall be paid to the Party owning such land so taken;  
it being the intent of the other Party who might have an  
easement or other property interest or right under this  
Agreement in the land so taken, to release and/or waive such  
property interest or right with respect to such award or  
purchase price; provided, however, such other Party shall  
have the right to seek an award or compensation for the loss  
of its easement right to the extent such award or compensa-  
tion paid or allocated for such loss does not reduce or  
diminish the amount paid to the Party owning such land.

5.5 Binding Effect. The terms of this Agreement shall  
constitute covenants running with, and be appurtenant to,  
the land affected, and all such terms shall inure to the  
benefit of and be binding upon the undersigned Parties and  
their respective successors and assigns who become owners of  
any portion of the Shopping Center.

5.6 Singular and Plural. Whenever required by the  
context of this Agreement, the singular shall include the  
plural, and vice versa, and the masculine shall include the  
feminine and neuter genders, and vice versa.

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5.7 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

5.8 Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights to any person who is not a Party hereto unless expressly otherwise provided.

5.9 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Tract or portion thereof to the general public, or for the general public or for any public use or purpose whatsoever; it being the intention and understanding of the Parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed solely for the benefit of the Parties hereto.

5.10 Excusable Delays. Whenever performance is required of any Party hereunder, that Party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage to work in progress by reason of fire or other casualty or causes beyond the reasonable control of a Party, then the time of performance as herein specified shall be appropriately extended by the amount of the delay actually so caused, not to exceed sixty (60) days total.

5.11 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

5.12 Entire Agreement. This written Agreement and the exhibits hereto contain all the representations and the entire agreement between the Parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement and exhibits hereto.

5.13 Amendments; Termination. Amendments to or termination of this Agreement must be in writing and must be executed by the Party or Parties owning fee simple title to at least seventy-five percent (75%) of the land area of the Duncan Tract and the Party or Parties owning fee simple title to at least seventy-five percent (75%) of the land area of the Towne Center Tract.

5.14 Captions. The captions preceding the text of each paragraph and subparagraph hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

5.15 Minimization of Damages. In all situations arising out of this Agreement, all Parties shall attempt to



avoid and minimize the damages resulting from the conduct of any other Party. Each Party hereto shall take all necessary measures to effectuate the provisions of this Agreement.

5.16 Agreement Shall Continue Notwithstanding Breach. It is expressly agreed that, except as otherwise provided above, no breach of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement; however, such limitation shall not affect in any manner any other rights or remedies which such Party may have hereunder by reason of any such breach.

5.17 Joinder by Other Parties. The parties executing Exhibit "J" to this Agreement have done so to evidence the subordination of their respective interests in the Shopping Center to the terms and provisions of this Agreement.

5.18 Time. Time is of the essence of this Agreement and each and every provision hereof.

5.19 Release. Upon the bona fide assignment, conveyance, sale or other transfer by either Duncan or Towne Center to all or any portion of its respective Tract, the transferring party shall be released from any liability arising out of a failure to observe the covenants, terms and obligations imposed by this Agreement on the owner of the land so transferred arising subsequent to the effective date of such conveyance; provided, that as a condition to such release, the transferor shall obtain a written assumption agreement from the transferee for the benefit of the other parties then owning portions of the Shopping Center whereby the transferee expressly assumes all such covenants, terms and obligations.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the date first stated above.

DUNCAN PROPERTIES, LTD., an  
Oklahoma limited partnership

By: Neil Hill  
Neil Hill, its sole  
General Partner

DENTON TOWNE CENTER JOINT VENTURE

By: Herbert D. Weitzman  
Herbert D. Weitzman,  
Venture Manager

STATE OF TEXAS §  
COUNTY OF DALLAS §

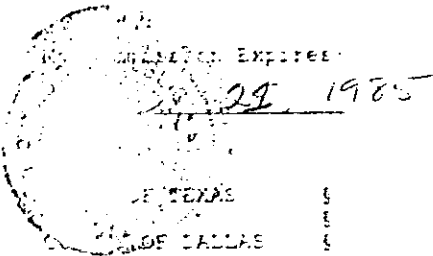
BEFORE ME, the undersigned authority, on this day personally appeared NEIL HILL, sole General Partner of Duncan Properties, Ltd., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said limited partnership.

VOL 1135 PAGE 523

v 1135 - 524

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1st day  
of April, 1982.

Carol M. Cobb  
Notary Public in and for  
Dallas County, Texas



BEFORE ME, the undersigned authority, on this day personally appeared HERBERT D. WEITZMAN, Venture Manager of Denton Towne Center Joint Venture, a Texas joint venture, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes, consideration and in the capacity therein expressed, as the act and deed of said joint venture.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1st day  
of April, 1982.

Thomas J. Lel  
Notary Public in and for  
Dallas County, Texas

My Commission Expires.

3.11.84

Exhibit "A"

Duncan Tract

Being the aggregate of:

TRACT 1 (MAIN TRACT):

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J. S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway No. 35-E and departing the Southerly line of said Loop 288 the following:

S 01°41'20" E a distance of 70.71 feet to a point;

S 34°42'00" E a distance of 226.60 feet to a point;

S42°00'59" E a distance of 90.60 feet to the POINT OF BEGINNING;

THENCE N 42°33'00" E departing the aforementioned I.H. 35-E a distance of 145.00 feet to a point for corner;

THENCE N 86°43'12" E a distance of 90.00 feet to a point for corner;

THENCE N 05°49'03" E a distance of 95.00 feet to a point for corner;

THENCE N 64°45'00" W a distance of 14.00 feet to a point for corner;

THENCE N 25°15'00" E a distance of 170.17 feet to a point for corner;

THENCE N 34°48'00" E a distance of 136.00 feet to a point for corner;

THENCE N 48°02'34" W a distance of 21.62 feet to a point for corner;

THENCE N 41°57'26" E a distance of 357.99 feet to a point for corner;

THENCE N 60°43'46" E a distance of 268.95 feet to a point of curvature to the left;

THENCE along said curve to the left in a Southeasterly direction having a central angle of 22°31'07", a radius of 453.38 feet, an arc length of 178.19 feet, and a chord bearing of N 37°21'11" W to the point of tangency;

THENCE S 48°36'44" E a distance of 323.16 feet to a point for corner;

THENCE S 41°57'26" W a distance of 1152.60 feet to a point situated in the Easterly line of said I.H. 35-E;

vc. 1136 and 526

THENCE along the Northeasterly line of said Interstate Highway No. 35-E the following:

N 47°27'00" W a distance of 112.51 feet to a point for corner;

N 55°58'59" W a distance of 101.10 feet to a point for corner;

N 47°27'00" W a distance of 30.50 feet to a point for corner;

S 45°26'45" W a distance of 3.00 feet to a point for corner;

N 41°33'15" W a distance of 29.05 feet to a point for corner;

N 47°27'00" W a distance of 219.30 feet to the POINT OF BEGINNING and containing 14.3336 acres of land, more or less.

AND

TRACT 2 (OUT LOT):

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

BEGINNING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 02°48'05", a radius of 3740.00 feet, and an arc length of 182.88 feet to a point for corner;

THENCE S 34°42'00" E departing said Loop 288 a distance of 307.00 feet to a point for corner;

THENCE S 64°45'00" E a distance of 65.87 feet to a point for corner;

THENCE S 05°49'03" W a distance of 95.00 feet to a point for corner;

THENCE S 86°43'12" W a distance of 90.00 feet to a point for corner;

THENCE S 42°33'00" W a distance of 145.00 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 42°00'59" W a distance of 90.60 feet to a point for corner;

N 34°42'00" W a distance of 226.60 feet to a point for corner;

N 01°41'20" W a distance of 70.71 feet to the POINT OF BEGINNING and containing 2.280 acres of land, more or less.

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Exhibit "B"

W 1136 -528

Towne Center Tract

BEING a tract of land situated in the John McTewen Survey, Abstract No. 727, Daniel Larkins Survey, Abstract No. 784, and the L. S. Telf Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 454 (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing the Easterly line of said Interstate Highway No. 454 the following:

THENCE S 12°21'26" E a distance of 41.94 feet to a point of curvature to the right;

Along said curve to the right having a central angle of 92°46'06", a radius of 2710.00 feet, and an arc length of 191.00 feet to a point of tangency;

Continuing along said curve to the right having a central angle of 112°46'26", a radius of 3710.00 feet, and an arc length of 261.33 feet to a point of curvature to the right;

THENCE along said curve to the right on a Southerly direction and departing said Loop 288 and having a central angle of 66°23'31", a radius of 2025.00 feet, an arc length of 104.00 feet, and a chord bearing of S 19°21'05" E to a point of reverse curve to the left;

THENCE along said curve to the left having a central angle of 112°00'16", a radius of 453.25 feet, and an arc length of 67.00 feet to a point for corner;

THENCE S 60°43'46" W a distance of 266.95 feet to a point for corner;

THENCE S 61°25'12" W a distance of 251.00 feet to a point for corner;

THENCE S 48°02'36" E a distance of 17.61 feet to a point for corner;

THENCE S 34°48'00" W a distance of 136.00 feet to a point for corner;

THENCE S 25°15'00" W a distance of 170.17 feet to a point for corner;

THENCE N 66°45'00" W a distance of 51.87 feet to a point for corner;

THENCE N 24°42'00" W a distance of 307.00 feet to the POINT OF BEGINNING and containing 4.9698 acres of land, more or less.

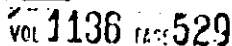




EXHIBIT "C-2"  
Access Easements

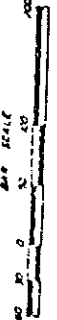
VOL 1136 PAGE 530

DATE 1/10/01 COUNTY

LOOP 288

Operational Over Crossing Area

Access Easement



L.H. 35-E

Easement "C-3"

LOOP 288

Utility Easement

Utility Easement

L.H. 35-E

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Exhibit "D-1"

VOL 1136 PAGE 532

ACCESS EASEMENT NO. 1

Being a tract of land situated in the John McGowan Survey, Abstract No. 797 and the Daniel Lambert Survey, Abstract No. 784, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway 35-E (a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway 35-E and departing the Southerly line of said Loop 288 the following:

S 01°04'20" E a distance of 70.71 feet to a point;

S 34°42'00" E a distance of 226.60 feet to a point;

S 42°00'59" E a distance of 81.56 feet to the POINT OF BEGINNING;

THENCE N 42°33'00" E departing the Easterly line of said Interstate Highway No. 35-E a distance of 147.80 feet to a point for corner;

THENCE N 86°43'12" E a distance of 64.67 feet to a point of curvature to the left;

THENCE along said curve to the left having a central angle of 80°54'09", a radius of 20.00 feet, and an arc length of 28.24 feet to a point for corner;

THENCE N 05°49'03" E a distance of 75.61 feet to a point for corner;

THENCE N 25°15'00" E a distance of 170.17 feet to a point for corner;

THENCE N 34°48'00" E a distance of 241.57 feet to a point for corner;

THENCE N 41°57'26" E a distance of 180.01 feet to a point of curvature to the right;

THENCE along said curve to the right having a central angle of 18°46'20", a radius of 452.87 feet, and an arc length of 148.38 feet to a point for corner;

THENCE N 60°43'46" E a distance of 189.46 feet to a point of curvature to the left;

THENCE along said curve to the left having a central angle of 03°02'01", a radius of 453.38 feet, an arc length of 24.01, and a chord bearing of S 26°33'28" E;

THENCE S 60°43'46" W a distance of 189.16 feet to a point of curvature to the left;

THENCE along said curve to the left having a central angle of 18°46'20", a radius of 428.87, and an arc length of 140.51 feet to a point for corner;

THENCE S 41°57'26" W a distance of 170.49 feet to a point for corner;

THENCE S 34°48'00" W a distance of 245.95 feet to a point for corner;

THENCE S 25°15'00" W a distance of 161.69 feet to a point for corner;

THENCE S 05°49'03" W a distance of 96.38 feet to a point for corner;

THENCE S 51°28'24" W a distance of 24.26 feet to a point for corner;

THENCE S 86°43'12" W a distance of 76.60 feet to a point for corner;

THENCE S 42°33'00" W a distance of 138.91 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

THENCE N 47°27'00" W a distance of 15.00 feet to a point for corner;

THENCE N 42°00'59" W a distance of 9.04 feet to the POINT OF BEGINNING and containing 0.7016 acres of land, more or less.

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Exhibit "D-2"

v 1135 ac 534

ACCESS EASEMENT NO. 2

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the intersection of the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing the Easterly line of said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

ALONG said curve to the right having a central angle of 07°21'49", a radius of 3740.00 feet, and an arc length of 480.65 to the POINT OF BEGINNING;

CONTINUING along said curve to the right having a central angle of 00°55'46", a radius of 3740.00 feet, and an arc length of 60.67 feet, to a point for corner;

THENCE S 05°13'22" E departing said Loop 288 a distance of 148.56 feet to a point for corner;

THENCE S 34°42'00" E a distance of 125.31 feet to a point for corner;

THENCE S 55°12'00" E a distance of 15.72 feet to a point for corner;

THENCE S 34°48'00" W a distance of 30.00 feet to a point for corner;

THENCE N 55°12'00" W a distance of 21.14 feet to a point for corner;

THENCE N 34°42'00" W a distance of 179.27 feet to a point for corner;

THENCE N 05°13'22" W a distance of 86.72 feet to the POINT OF BEGINNING and containing 0.2527 acres of land, more or less.

Exhibit "D-3"

ACCESS EASEMENT NO. 3

BEING a tract of land situated in the John McGowan Survey, Abstract No. 797, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway No. 35-E (a variable right-of-way);

THENCE along the Southerly line of said Loop 288 and departing the Easterly line of said Interstate Highway No. 35-E the following:

N 42°27'28" E a distance of 41.80 feet to a point of curvature to the right;

ALONG said curve to the right having a central angle of 02°36'26", a radius of 3740.00 feet, and an arc length of 170.16 feet to the POINT OF BEGINNING;

CONTINUING along said curve to the right having a central angle of 00°23'20", a radius of 3740.00 feet, and an arc length of 25.39 feet to a point for corner;

THENCE S 34°42'00" E departing said Loop 288 a distance of 305.84 feet to a point for corner;

THENCE S 64°45'00" E a distance of 48.52 feet to a point for corner;

THENCE S 25°15'00" W a distance of 12.50 feet to a point for corner;

THENCE S 05°49'03" W a distance of 13.26 feet to a point for corner;

THENCE N 64°45'00" W a distance of 59.64 feet to a point for corner;

THENCE N 34°42'00" W a distance of 308.12 feet to the POINT OF BEGINNING and containing 0.2066 acres of land, more or less.

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I.H. 35-E

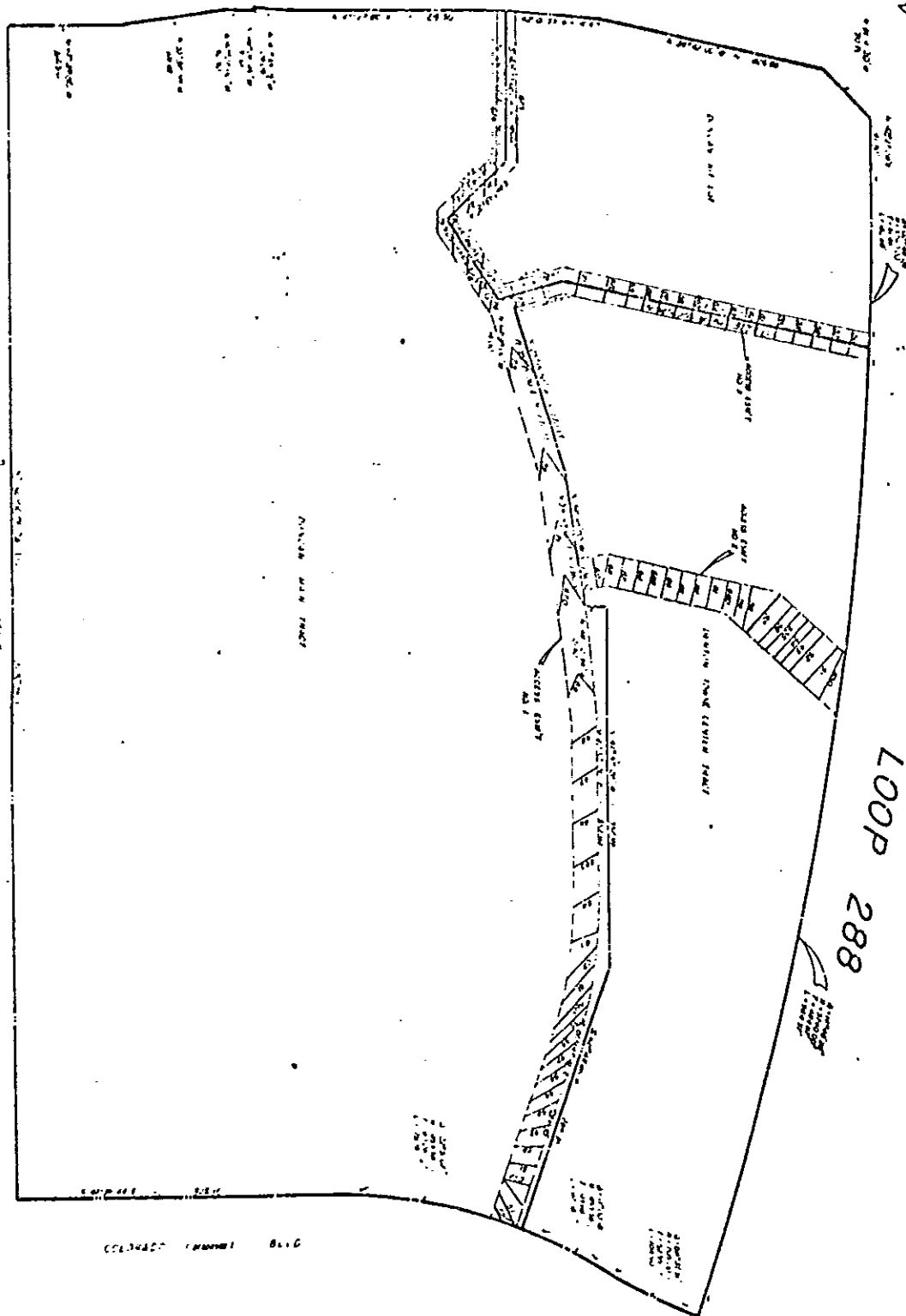




Exhibit "F"

UTILITY EASEMENT

FIELD NOTE DESCRIPTION

BEING a tract of land situated in the John McGowen Survey, Abstract No. 797, Daniel Lambert Survey, Abstract No. 784, and the J.S. Taft Survey, Abstract No. 1256, Denton County, Texas and being more particularly described as follows:

COMMENCING at a point situated in the Southerly line of Loop 288 (a variable right-of-way) and the Easterly line of Interstate Highway 35-E (a variable right-of-way);

THENCE along the Easterly line of said Interstate Highway No. 35-E and departing the Southerly line of said Loop 288 the following:

S 01°04'20" E a distance of 70.71 feet to a point;

S 34°42'00" E a distance of 226.60 feet to a point;

S 42°00'59" E a distance of 75.53 feet to the POINT OF BEGINNING;

THENCE N 42°33'00" E departing the Easterly line of said Interstate Highway No. 35-E a distance of 149.66 feet to a point for corner;

THENCE N 86°43'12" E a distance of 85.12 feet to a point for corner;

THENCE N 05°49'03" E a distance of 86.58 feet to a point for corner;

THENCE N 25°15'00" E a distance of 170.17 feet to a point for corner;

THENCE N 34°48'00" E a distance of 136.00 feet to a point for corner;

THENCE N 48°02'34" W a distance of 21.62 feet to a point for corner;

THENCE N 41°57'26" E a distance of 357.99 feet to a point for corner;

THENCE N 60°43'46" E a distance of 268.95 feet to a point situated in the curving West line of Colorado Boulevard (a variable right-of-way);

THENCE with said Colorado Boulevard and along said curve to the left having a central angle of 03°24'51" a radius of 453.38 feet, an arc length of 27.02 feet, and a chord bearing of S 27°47'45" E to a point for corner;

THENCE S 60°43'46" W departing the curving West line of said Colorado Boulevard a distance of 263.80 feet to a point for corner;

THENCE S 41°57'26" W a distance of 180.09 feet to a point for corner;

THENCE S 37°05'13" W a distance of 174.06 feet to a point for corner;

THENCE S 34°48'00" W a distance of 131.81 feet to a point for corner;

THENCE S 25°15'00" W a distance of 165.08 feet to a point for corner;

THENCE S 05°49'03" W a distance of 100.21 feet to a point for corner;

THENCE S 86°43'12" W a distance of 94.06 feet to a point for corner;

THENCE S 42°33'00" W a distance of 142.97 feet to a point situated in the Easterly line of said Interstate Highway No. 35-E;

THENCE along the Easterly line of said Interstate Highway No. 35-E the following:

N 47°27'00" W a distance of 5.00 feet to a point for corner;

N 42°00'59" W a distance of 15.07 feet to the POINT OF BEGINNING and containing 0.704 acres of land, more or less.

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Exhibit "G"

Vol. 1133 Page 538

I. H. 35-E

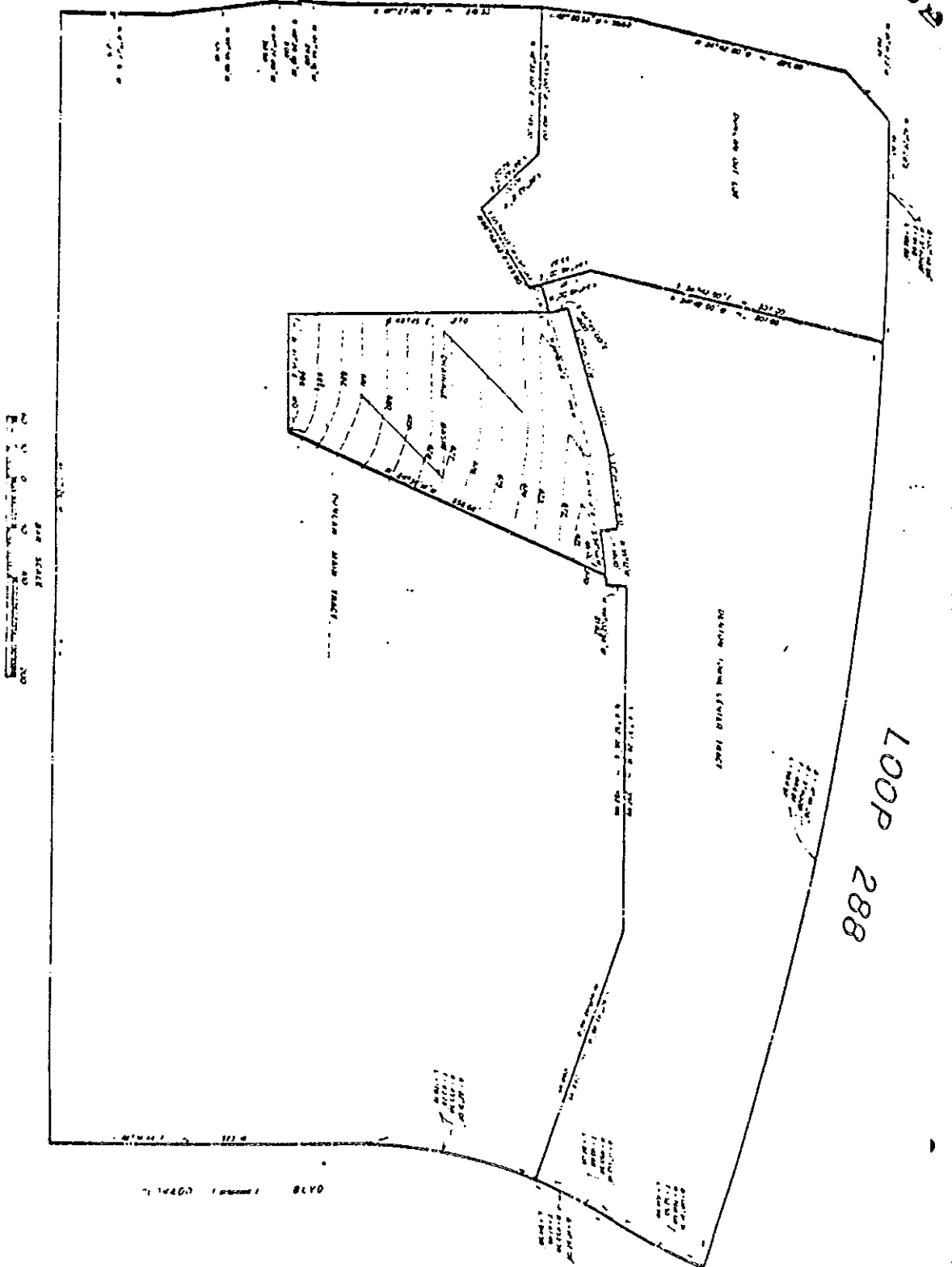
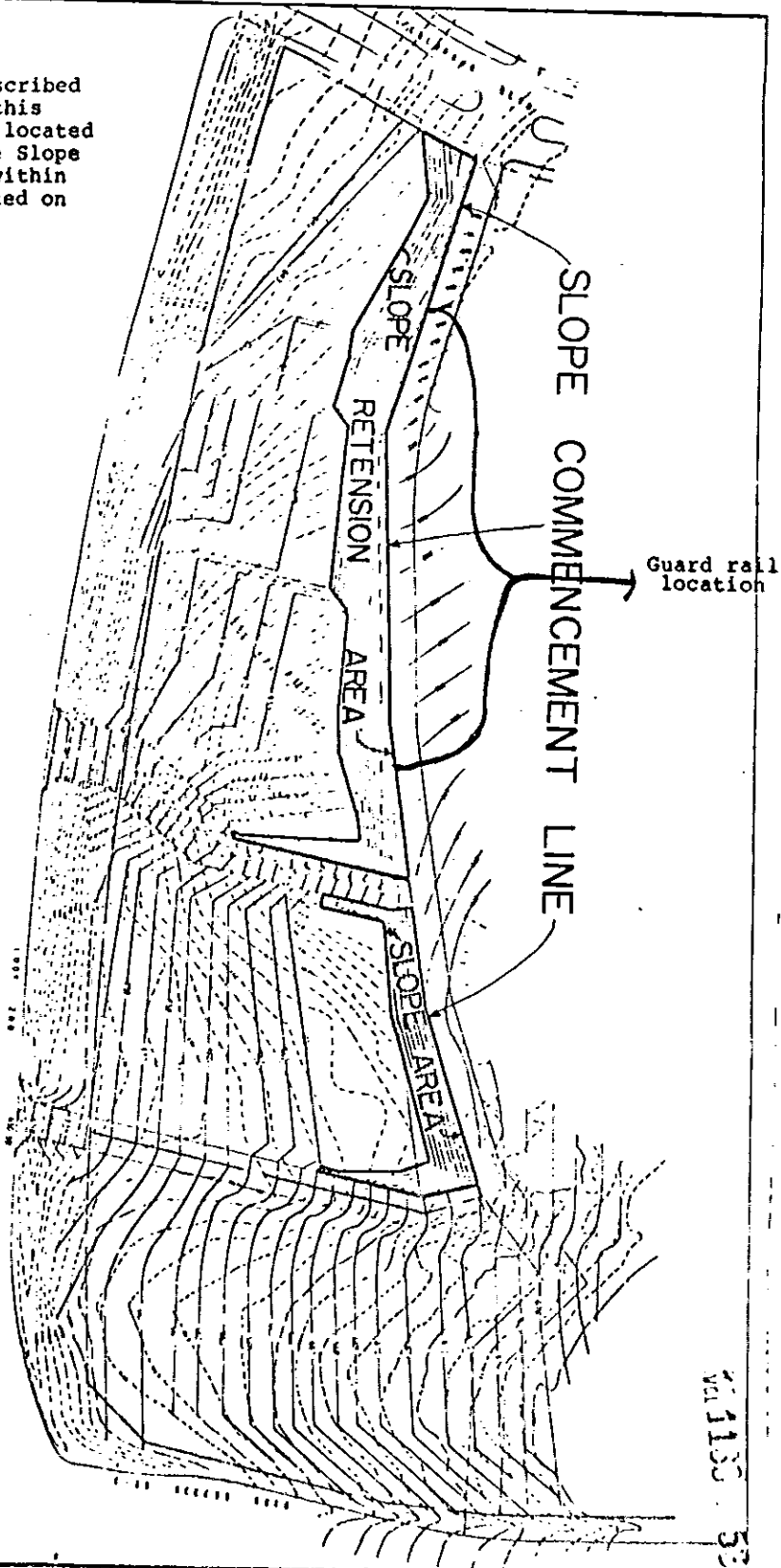


EXHIBIT "H"

The guard rails described in Section 3.4 of this Agreement shall be located generally along the Slope Commencement Line within the area so indicated on this Exhibit "H".



SLOPE COMMENCEMENT LINE  
GENERAL TOWN CENTER  
CITY OF LOS ANGELES  
JAN 1965

61155 338

EXHIBIT "I"

Vol. 1136 Page 540

PARKS & PARTNERS Architects

310 Union Station  
Dallas, Texas 75202  
214/742-6701

Sheet No.

1

Date 12 MARCH 1982

Project #M66 DENTON TOWN CENTER

Subject SECTION @ DRYEC SOUTH PL

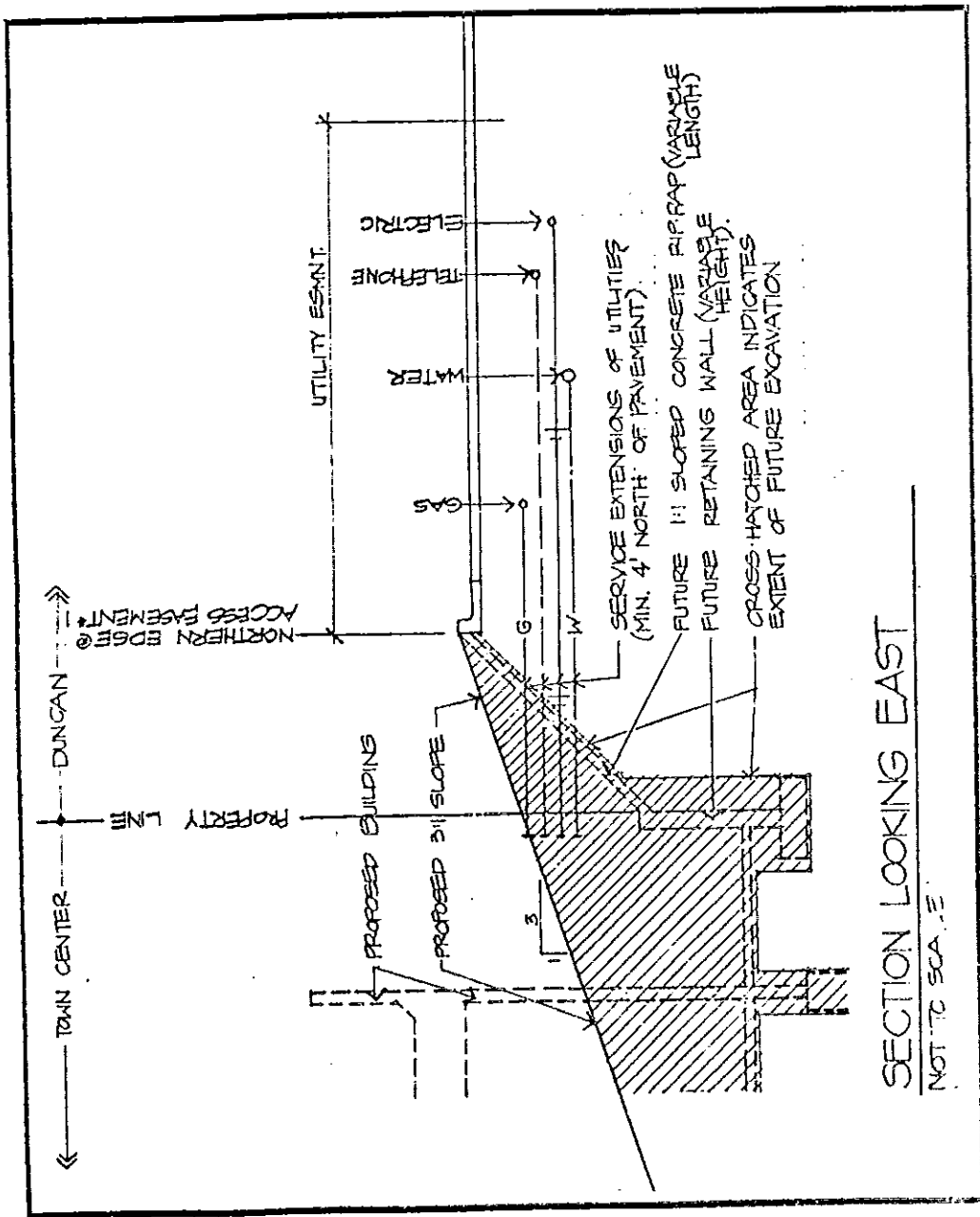


EXHIBIT "J-1"

This Exhibit "J-1" to that certain Grant of Reciprocal Easements between Denton Towne Center Joint Venture (the "Venture") and Duncan Properties, Ltd., an Oklahoma limited partnership executed to be effective as March 31, 1982 (the "REA"), is being executed by RepublicBank Dallas N.A. (the "Bank") to evidence the subordination by the Bank of the lien currently held by the Bank created by that certain deed of trust executed by the Venture, dated December 20, 1979, and recorded in Volume 553, page 329 of the Deed of Trust Records of Denton County, Texas, encumbering certain real property more particularly described in such deed of trust, as such deed of trust is being amended effective on even date herewith, to the terms, provisions, rights and obligations created by the REA.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

REPUBLICBANK DALLAS N.A.

By William H. McElroy  
(Vice) President

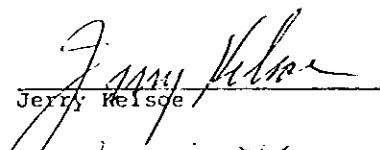
VOL 1136 PAGE 541

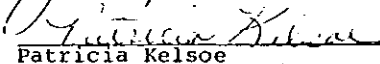
EXHIBIT "J-2"

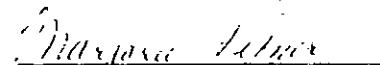
Vol. 1136 Page 542

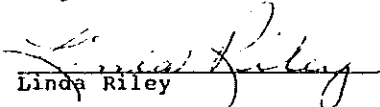
This Exhibit "J-2" to that certain Grant of Reciprocal Easements between Denton Towne Center Joint Venture (the "Venture") and Duncan Properties, Ltd., an Oklahoma limited partnership executed to be effective as March 31, 1982 the "REA"), is being executed by Jerry Kelsoe, Patricia Kelsoe, Marjorie Pitner and Linda Riley (collectively, "Pitner-Kelsoe") to evidence the subordination by Pitner-Kelsoe of the lien currently held by Pitner-Kelsoe created by that certain deed of trust executed by the Venture, dated December 31, 1979, and recorded in Volume 557, page 320 of the Deed of Trust Records of Denton County, Texas, encumbering certain real property more particularly described in such deed of trust, as such deed of trust has been and is being amended effective on even date herewith, to the terms, provisions, rights and obligations created by the REA.

Executed this 31 day of March, 1982, to be effective as of March 31, 1982.

  
Jerry Kelsoe

  
Patricia Kelsoe

  
Marjorie Pitner

  
Linda Riley

W-176480  
SOUTHWEST LAND TITLE CO.  
P. O. BOX 18296  
DALLAS, TEXAS 75218

SOUTHWEST LAND TITLE CO.  
P. O. BOX 18296  
DALLAS, TEXAS 75218

FILED  
1982 APR -8 PM 4:28  
COUNTY CLERK  
DENTON COUNTY, TEXAS

VOL 1136 PAGE 543

FILED FOR RECORD 8th DAY OF April A.D. 1982, at 2:28 P.M.  
RECORDED 1215 DAY OF April A.D. 1982.  
MARY JOYHILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Bloua J. Taylor DEPUTY.





**LEGAL DESCRIPTION****WATER AND WASTEWATER AND ELECTRIC EASEMENT**

**BEING** a tract of land situated in the John McGowan Survey, Abstract No. A-797, City of Denton, Denton County, Texas, and being a part of Lot 3C, Block 1, Denton Shopping Center Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume C, Page 130 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a PK nail found in the southeast line of said Lot 3C; from said point the south corner of said Lot 3C, and being a point in the northeast right-of-way line of Interstate Highway No. 35 (a variable width right-of-way), and being the south corner of said Lot 3C, bears South 55°00'50" West a distance of 20.42 feet;

**THENCE** departing said southeast line of lot 3C, North 44°54'13" West, a distance of 58.18 feet to a point for corner;

**THENCE** North 2°09'35" West, a distance of 71.23 feet to a point for corner in the southeast right-of-way line of Loop 288 (a variable width right-of-way); from said point the intersection of the said northeast right-of-way line of Interstate Highway No. 35 and the said southeast right-of-way line of Loop 288 and being the westernmost northwest corner of said Lot 3C bears South 42°03'49" West a distance of 11.60 feet;

**THENCE** continuing along the said southeast right-of-way line of Loop 288, North 42°03'49" East, a distance of 19.80 feet to a point at the beginning of a tangent curve to the right having a central angle of 0°00'20", a radius of 3739.69 feet, a chord bearing and distance of North 42°03'59" East, 0.36 feet;

**THENCE** in a northeasterly direction, along the said southeast right-of-way line of Loop 288 and with said curve to the right, an arc distance of 0.36 feet to a point for corner;

**THENCE** departing said southeast right-of-way line of Loop 288, South 47°06'41" East, a distance of 8.41 feet to a point for corner;

**THENCE** South 2°09'35" East, a distance of 71.90 feet to a point for corner;

**THENCE** South 44°54'13" East, a distance of 53.85 feet to a point for corner in the said southeast line of Lot 3C;

**THENCE** South 55°00'50" West, along the said southeast line of Lot 3C, a distance of 20.31 feet to the **POINT OF BEGINNING** and containing 2,637 square feet or 0.0605 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley* 1/14/21  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER AND  
 ELECTRIC EASEMENT  
 PART OF LOT 3C, BLOCK 1  
 DENTON SHOPPING CENTER ADDITION  
 JOHN MCGOWAN SURVEY  
 ABSTRACT NO. A-797  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	1/14/2021	061024039	1 OF 2

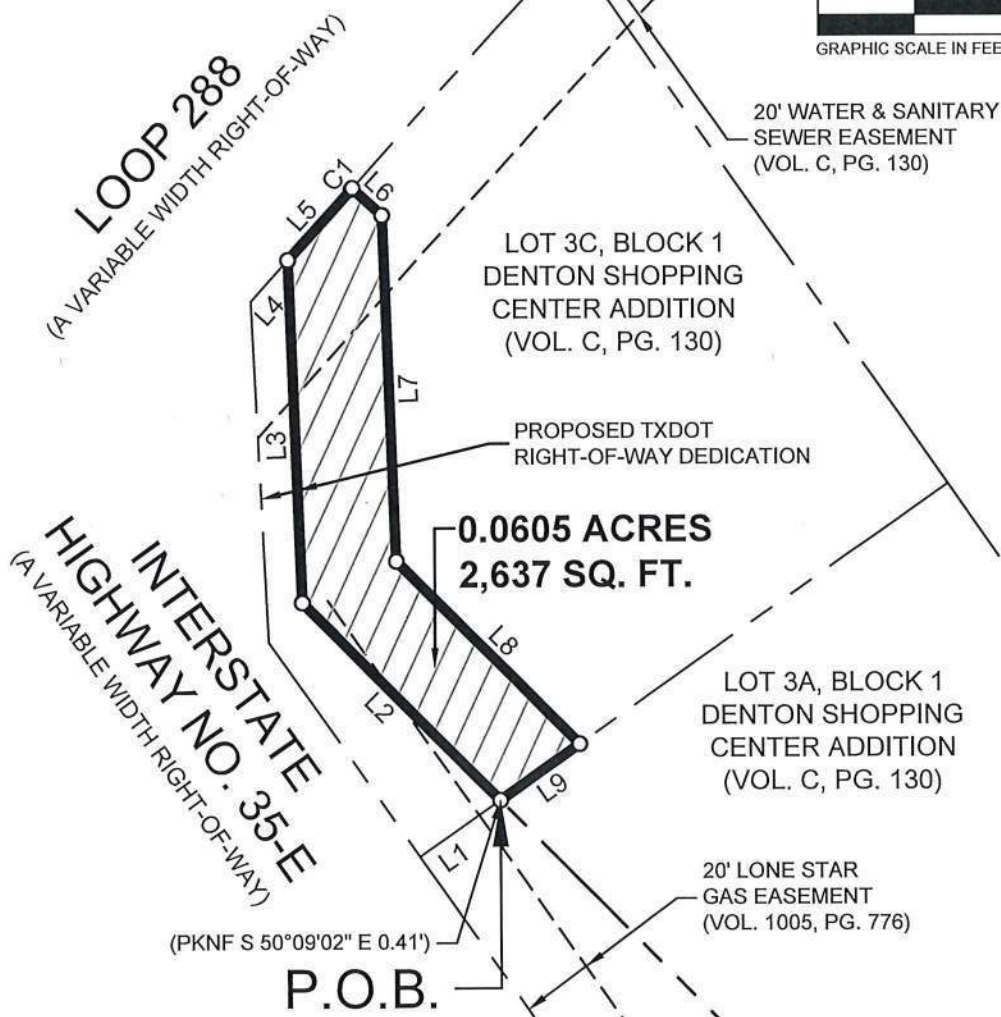
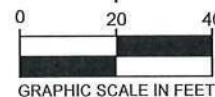


CURVE TABLE

NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	0°00'20"	3739.69'	0.36'	N42°03'59"E	0.36'

LINE TABLE

NO.	BEARING	LENGTH
L1	S55°00'50"W	20.42'
L2	N44°54'13"W	58.18'
L3	N02°09'35"W	71.23'
L4	S42°03'49"W	11.60'
L5	N42°03'49"E	19.80'
L6	S47°06'41"E	8.41'
L7	S02°09'35"E	71.90'
L8	S44°54'13"E	53.85'
L9	S55°00'50"W	20.31'



## LEGEND

P.O.B. = POINT OF BEGINNING  
 IRF = IRON ROD FOUND  
 PKNF = PK NAIL FOUND  
 PG. = PAGE  
 VOL. = VOLUME  
 INST. NO. = INSTRUMENT NUMBER

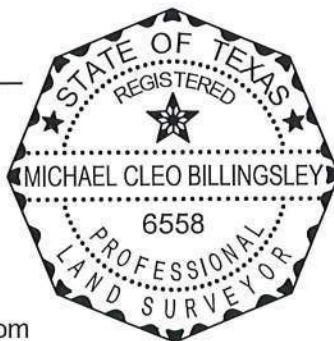
## NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
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WATER AND WASTEWATER AND  
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	1/14/2021	061024039	2 OF 2

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 89**

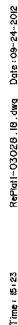
RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1761+20 RT to Sta 1762+95 RT

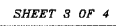
Existing Easement

Instrument No. 2013-63

PART OF LOT 1R-R1R, BLOCK 1  
DENTON REGIONAL MEDICAL CENTER ADDITION  
MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS









## OWNERS CERTIFICATE

WHEREAS, EPIC DEVELOPMENT INCORPORATED, A DELAWARE INCORPORATION, AN AFFILIATE OF COLUMBIANA, INC. AND CCS PARTNERS, L.L.C., ACTING BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENT ARE THE SOLE OWNERS OF A TRACT OF LAND LOCATED IN THE DANIEL LAMBERT SURVEY, ABSTRACT NO. 784 AND THE M.E.P. & P.R.R. SURVEY, ABSTRACT NO. 950, DENTON COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A TRACT OF LAND LOCATED IN THE DANIEL LAMBERT SURVEY, ABSTRACT NO. 784 AND THE M.E.P. & P.R.R. SURVEY, ABSTRACT NO. 950, DENTON COUNTY, TEXAS, BEING A PORTION OF A TRACT OF LAND DESCRIBED IN A DEED TO COLUMBIANA EPIC DEVELOPMENT, INC., RECORDED IN VOLUME 348, PAGE 69, REAL PROPERTY RECORDS DENTON COUNTY, TEXAS, (P.R.D.C.T.), AND BEING A TRACT OF LAND DESCRIBED IN A DEED TO CCS PARTNERS, L.L.C., RECORDED IN INSTRUMENT NUMBER 209-05016, DEED RECORDS, DENTON COUNTY, TEXAS (P.R.D.C.T.), BEING ALL OF LOTS 1R-1R1 AND 1R-1R2, BLOCK 1, DENTON REGIONAL MEDICAL CENTER ADDITION, AN ADDITION TO THE CITY OF DENTON AS SHOWN BY THE PLAT RECORDED IN CABINET "Y", PAGE 68 OF THE PLAT RECORDS OF DENTON COUNTY, TEXAS, (P.R.D.C.T.), LOT 1R-2, BLOCK 1, DENTON REGIONAL MEDICAL CENTER ADDITION, AN ADDITION TO THE CITY OF DENTON AS SHOWN BY THE PLAT RECORDED IN CABINET "Y", PAGE 714 OF THE P.R.D.C.T., AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT AN "X" CUT FOUND AT THE INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF MAYHILL ROAD (A 120-FOOT RIGHT-OF-WAY) AND THE SOUTH RIGHT-OF-WAY LINE OF COLORADO BOULEVARD (A 100-FOOT RIGHT-OF-WAY), BEING THE NORTHEAST CORNER OF SAID LOT 1R-1;

THENCE ALONG THE EAST OF SAID LOT 1R-1 AND THE SAID WEST RIGHT-OF-WAY LINE OF MAYHILL ROAD AS FOLLOWS:

S 00°51'34" W, 74.25 FEET TO A 1/2" IRON ROD FOUND WITH A CAP STAMPED "WIER & ASSOC. INC.;"

S 03°58'53" W, 647.85 FEET TO A 1/2" IRON ROD FOUND WITH A CAP STAMPED "WIER & ASSOC. INC.;"

S 00°34'54" W, 43.76 FEET TO A 1/2" IRON ROD FOUND WITH A CAP STAMPED "WIER & ASSOC. INC.;" AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;

SOUTHWESTERLY, 522.24 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 1,270.09 FEET, A CENTRAL ANGLE OF 27°33'58" AND A CHORD BEARING S 28°09'00" W, 519.58 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;"

S 30°56'30" W, 96.86 FEET TO A 1/2" IRON ROD FOUND WITH A CAP STAMPED "WIER & ASSOC. INC.;" AT THE INTERSECTION OF THE NORTHWEST RIGHT-OF-WAY LINE OF MAYHILL ROAD (A 120-FOOT RIGHT-OF-WAY) AND THE NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 30E (A VARIABLE WIDTH RIGHT-OF-WAY);

THENCE ALONG THE SAID NORTHEAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 30E AND THE SOUTHWEST LINE OF SAID LOT 1R-1 AS FOLLOWS:

N 49°51'12" W, 618.04 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;"

N 53°32'12" W, 54.08 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;"

N 49°17'51" W, 511.31 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;"

S 62°16'44" W, 44.20 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;"

N 57°00'00" W, 863.50 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;" SAID IRON ROD BEING THE SOUTHWEST CORNER OF SAID LOT 1R-1;

N 57°00'00" W, ALONG THE SOUTHWEST LINE OF SAID COLUMBIANA EPIC DEVELOPMENT, INC. TRACT, 246.30 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;"

THENCE N 84°15'11" E, DEPARTING THE NORTHEAST RIGHT-OF-WAY LINE OF SAID INTERSTATE HIGHWAY NO. 30E AND THE SOUTHWEST LINE OF SAID COLUMBIANA EPIC DEVELOPMENT, INC. TRACT, A DISTANCE OF 27.90 FEET TO 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;"

THENCE N 30°25'19" E, 78.15 FEET TO 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;" SAID IRON ROD BEING THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE NORTHEASTERLY, 210.41 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 438.00 FEET, A CENTRAL ANGLE OF 27°42'40" AND A CHORD BEARING N 52°04'00" E, 208.30 TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;"

THENCE N 27°42'52" W, 12.18 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;" SAID IRON ROD BEING THE BEGINNING OF A CURVE TO THE LEFT;

THENCE NORTHEASTERLY, 58.27 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 150.00 FEET, A CENTRAL ANGLE OF 22°10'23" AND A CHORD BEARING N 34°53'34" W, 57.90 TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;"

THENCE N 49°52'19" W, 58.17 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;" SAID IRON ROD BEING THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE N 43°59'44" E, 253.20 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;" SAID IRON ROD BEING THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE NORTHEASTERLY, 78.84 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 22°00'55" AND A CHORD BEARING N 56°57'10" E, 78.37 TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;" SAID IRON ROD BEING THE BEGINNING OF A CURVE TO THE LEFT;

THENCE NORTHEASTERLY, 1.82 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 160.00 FEET, A CENTRAL ANGLE OF 00°41'30" AND A CHORD BEARING N 65°30'46" E, 1.82 TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;" SAID IRON ROD BEING A WEST CORNER OF SAID LOT 1R-1;

THENCE N 22°25'56" E, 11.67 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;" BEING THE WEST CORNER OF LOT 1R-3, BLOCK 1, DENTON REGIONAL MEDICAL CENTER ADDITION, AN ADDITION TO THE CITY OF DENTON, TEXAS, RECORDED IN CABINET "Y", PAGE 275-276, P.R.D.C.T.;

THENCE S 87°37'09" E, ALONG THE SOUTH LINE OF SAID LOT 1R-1, A DISTANCE OF 60.02 FEET TO A POINT BEING THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE SOUTHEASTERLY, 103.91 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 290.00 FEET, A CENTRAL ANGLE OF 29°49'02" AND A CHORD BEARING S 52°44'02" E, 102.74 FEET TO A POINT BEING THE BEGINNING OF A CURVE TO THE LEFT;

THENCE SOUTHEASTERLY, 199.71 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 07°04'24" AND A CHORD BEARING S 89°27'27" E, 191.52 FEET TO A 1/2" IRON ROD FOUND WITH A CAP STAMPED "WIER & ASSOC. INC.;"

THENCE N 84°56'09" E, 4.57 FEET TO A 1/2" IRON ROD FOUND WITH A CAP STAMPED "MET", SAID IRON ROD BEING THE SOUTHEAST CORNER OF SAID LOT 1R-3;

THENCE N 53°03'31" W, ALONG THE EAST LINE OF SAID LOT 1R-3, 20.77 FEET TO A 1/2" IRON ROD FOUND WITH A CAP STAMPED "MET", SAID IRON ROD BEING THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE NORTHEASTERLY, 115.19 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 280.00 FEET, A CENTRAL ANGLE OF 23°16'40" AND A CHORD BEARING N 09°43'19" E, 114.38 FEET TO A POINT BEING THE NORTHEAST CORNER OF SAID LOT 1R-3;

THENCE N 87°04'30" E, ALONG THE NORTH LINE OF SAID LOT 1R-3, 290.16 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;" SAID IRON ROD BEING THE NORTHEAST CORNER OF SAID LOT 1R-3 AND THE SOUTHWEST CORNER OF LOT 1R-4, BLOCK 1, DENTON REGIONAL MEDICAL CENTER ADDITION, AN ADDITION TO THE CITY OF DENTON, TEXAS, RECORDED IN CABINET "Y", PAGE 774, P.R.D.C.T.;

THENCE N 22°25'56" E, 30.33 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;" BEING THE NORTHEAST CORNER OF SAID LOT 1R-3, AND LYING IN THE SOUTH RIGHT-OF-WAY LINE OF SAID COLORADO BOULEVARD (A 100-FOOT RIGHT-OF-WAY AT THIS POINT);

THENCE S 87°04'30" E, ALONG THE SAID SOUTH RIGHT-OF-WAY LINE OF SAID COLORADO BOULEVARD, 404.88 FEET TO A 1/2" IRON ROD FOUND WITH A CAP STAMPED "WIER & ASSOC. INC.;" AT THE NORTHEAST CORNER OF SAID LOT 1R-4 AND BEING THE NORTHEAST CORNER OF LOT 1R-4, BLOCK 1, DENTON REGIONAL MEDICAL CENTER ADDITION AS SHOWN BY THE PLAT RECORDED IN CABINET "Y", PAGES 193-196 OF THE PLAT RECORDS OF DENTON COUNTY, TEXAS;

THENCE S 22°25'56" W, ALONG A NORTH LINE OF SAID LOT 1R-1, AND THE WEST LINE OF SAID LOT 1R-4, 244.25 FEET TO A 1/2" IRON ROD FOUND WITH A CAP STAMPED "WIER & ASSOC. INC.;"

THENCE S 87°04'30" E, ALONG A NORTH LINE OF SAID LOT 1R-1, AND THE SOUTH LINE OF SAID LOT 1R-4, 124.08 FEET TO A 1/2" IRON ROD FOUND WITH A CAP STAMPED "WIER & ASSOC. INC.;" AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;

THENCE ALONG A NORTH LINE OF SAID LOT 1R-1, AND THE EAST LINE OF SAID LOT 1R-4 AS FOLLOWS:

NORTHEASTERLY, 25.75 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 273.60 FEET, A CENTRAL ANGLE OF 0°24'40" AND A CHORD BEARING N45°39'55" E, 25.74 FEET TO A 1/2" IRON ROD FOUND WITH A CAP STAMPED "WIER & ASSOC. INC.;"

N 52°23'35" E, 64.86 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;" AT THE BEGINNING OF A TANGENT CURVE TO THE LEFT;

NORTHEASTERLY, 85.89 FEET ALONG SAID TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 126.56 FEET, A CENTRAL ANGLE OF 29°53'06" AND A CHORD BEARING N37°42'22" E, 85.34 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;"

N22°37'49" E, 76.17 FEET TO A 1/2" IRON ROD FOUND WITH A CAP STAMPED "WIER & ASSOC. INC.;" AND LYING IN THE SOUTH RIGHT-OF-WAY LINE OF SAID COLORADO BOULEVARD, AND THE NORTH LINE OF SAID LOT 1R-1, BEING THE NORTHEAST CORNER OF SAID LOT 1R-4;

THENCE ALONG THE SAID SOUTH RIGHT-OF-WAY LINE OF SAID COLORADO BOULEVARD AND THE NORTH LINE OF SAID LOT 1R-1 AS FOLLOWS:

S 87°04'30" E, 326.94 FEET TO A 5/8" IRON ROD FOUND WITH A CAP STAMPED "CARTER & BURGESS;" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHWESTERLY, 361.38 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 1,340.00 FEET, A CENTRAL ANGLE OF 21°33'44" AND A CHORD BEARING S 78°25'55" E, 389.16 FEET TO A 5/8" IRON ROD FOUND WITH A CAP STAMPED "CARTER & BURGESS;"

S 89°08'10" E, 167.08 FEET TO A 5/8" IRON ROD FOUND WITH A CAP STAMPED "CARTER & BURGESS;"

S 00°50'30" W, 10.16 FEET TO A 1/2" IRON ROD SET WITH A CAP STAMPED "WIER & ASSOC. INC.;"

S 89°09'10" E, 148.61 FEET TO THE PLACE OF BEGINNING, CONTAINING 69.194 ACRES (3,014.088 SQUARE FEET) OF LAND.

THIS PLAT IS HEREBY ADOPTED BY THE OWNER AND APPROVED BY THE CITY OF DENTON (CALLED "CITY") SUBJECT TO THE FOLLOWING CONDITIONS THAT SHALL BE BINDING UPON THE OWNERS, THEIR HEIRS, GRANTEES, AND SUCCESSORS: THE DRAINAGE AND DETENTION EASEMENT WITHIN THE LIMITS OF THIS ADDITION, SHALL REMAIN OPEN AT ALL TIMES AND WILL BE MAINTAINED IN A SAFE AND SANITARY CONDITION BY THE OWNERS OF THE LOT OR LOTS THAT ARE TRAVERSED BY OR ADJACENT TO THE DRAINAGE AND DETENTION EASEMENT, AS HEREIN ADOPTED, UNLESS APPROVED BY THE CITY. THE OWNERS SHALL KEEP THE DRAINAGE AND DETENTION EASEMENT CLEAR AND FREE OF DEBRIS, SILT, AND ANY SUBSTANCE THAT WOULD RESULT IN UNSANITARY CONDITIONS OR OBSTRUCT THE FLOW OF WATER, AND THE CITY SHALL HAVE THE RIGHT OF ACCESS AND EGRESS FOR THE PURPOSE OF INSPECTION AND SUPERVISION OF MAINTENANCE BY THE OWNERS TO ALLEVIATE ANY UNDESIRABLE CONDITIONS OR OBSTRUCTION TO THE FLOW OF WATER, AFTER GIVING THE OWNERS WRITTEN NOTICE OF SUCH OBSTRUCTION AND OWNERS FAIL TO REMOVE SUCH OBSTRUCTION, SHOULD THE CITY OF DENTON BE COMPELLED TO REMOVE ANY OBSTRUCTION TO THE FLOW OF WATER, AFTER GIVING THE OWNERS WRITTEN NOTICE OF SUCH OBSTRUCTION AND OWNERS FAIL TO REMOVE SUCH OBSTRUCTION, THE CITY OF DENTON SHALL BE REIMBURSED BY THE OWNERS REASONABLE COSTS FOR LABOR, MATERIALS, AND EQUIPMENT FOR EACH INSTANCE, THE NATURAL DRAINAGE THROUGH THE DRAINAGE AND DETENTION EASEMENT IS SUBJECT TO STORM WATER OVERFLOW AND NATURAL BANK EROSION TO AN EXTENT THAT CANNOT BE DEFINITELY DETERMINED. THE CITY SHALL NOT BE HELD LIABLE FOR ANY DAMAGES OF ANY NATURE RESULTING FROM THE OCCURRENCE OF THESE NATURAL PHENOMENA OR RESULTING FROM THE FAILURE OF ANY STRUCTURE OR STRUCTURES, WITHIN THE EASEMENT OR OTHERWISE.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, EPIC DEVELOPMENT, INC., A DELAWARE CORPORATION AND CCS PARTNERS, L.L.C., BY AND THROUGH THE UNDERSIGNED, THEIR DULY AUTHORIZED AGENT DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREABOVE DESCRIBED PROPERTY AS LOTS 1R-1R1, 1R-1R2, 1R-5, 1R-5, 1R-5 AND 10, BLOCK 1, DENTON REGIONAL MEDICAL CENTER ADDITION, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS, AND DO HEREBY DEDICATE TO THE PUBLIC'S USE THE RIGHTS-OF-WAY AND EASEMENTS SHOWN THEREON AND DO FURTHER CERTIFY THAT THIS PLAT DOES NOT ALTER OR REMOVE EXISTING DEED RESTRICTIONS OR COVENANTS, IN ANY, ON THIS PROPERTY.

WITNESS MY HAND AT NASHVILLE, DAVIDSON COUNTY, TENNESSEE THIS 3d DAY OF OCTOBER, 2012.

EPIC DEVELOPMENT INCORPORATED, A DELAWARE CORPORATION

*Michael E. Paul* VICE PRESIDENT

STATE OF TENNESSEE

COUNTY OF DAVIDSON

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED *Michael E. Paul*, AUTHORIZED AGENT FOR EPIC DEVELOPMENT, INCORPORATED, A DELAWARE INCORPORATION, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS EXPRESSED AND IN THE CAPACITY THEREIN STATED, AND AS THE ACT AND DEED OF SAID CORPORATION.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS 3d DAY OF OCTOBER, 2012.

*Michael E. Paul* NOTARY PUBLIC, STATE OF TENNESSEE  
MY COMMISSION EXPIRES March 9, 2014

WITNESS MY HAND, THIS 28 DAY OF September, 2012.

CCS PARTNERS, L.L.C.

*Carlos P. Cruz*

STATE OF TEXAS

CITY OF DENTON

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED CARLOS P. CRUZ, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 28 DAY OF September, 2012.

*James D. Smith* NOTARY PUBLIC, STATE OF TEXAS  
MY COMMISSION EXPIRES 10-12-2013

WITNESS MY HAND, THIS 28 DAY OF September, 2012.

CCS PARTNERS, L.L.C.

*Carlos P. Cruz*

STATE OF TEXAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED CARLOS P. CRUZ, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 28 DAY OF September, 2012.

*James D. Smith* NOTARY PUBLIC, STATE OF TEXAS  
MY COMMISSION EXPIRES 10-12-2013

WITNESS MY HAND, THIS 28 DAY OF September, 2012.

CCS PARTNERS, L.L.C.

*Carlos P. Cruz*

STATE OF TEXAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED CARLOS P. CRUZ, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 28 DAY OF September, 2012.

*James D. Smith* NOTARY PUBLIC, STATE OF TEXAS  
MY COMMISSION EXPIRES 10-12-2013

WITNESS MY HAND, THIS 28 DAY OF September, 2012.

CCS PARTNERS, L.L.C.

*Carlos P. Cruz*

STATE OF TEXAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED CARLOS P. CRUZ, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 28 DAY OF September, 2012.

*James D. Smith* NOTARY PUBLIC, STATE OF TEXAS  
MY COMMISSION EXPIRES 10-12-2013

WITNESS MY HAND, THIS 28 DAY OF September, 2012.

CCS PARTNERS, L.L.C.

*Carlos P. Cruz*

STATE OF TEXAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED CARLOS P. CRUZ, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

SURVEYOR'S STATEMENT

THAT I, LUIS LANE II, A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL SURVEY OF LAND, AND THAT THE CORNER MONUMENTS SHOWN THEREON SHALL BE PROPERLY MARKED ON THE GROUND, AND THAT THIS PLAT CORRECTLY REPRESENTS THAT SURVEY MADE BY ME OR UNDER MY DIRECTION AND SUPERVISION AND IS IN ACCORDANCE WITH THE PLATTING RULES AND REGULATIONS OF THE CITY OF DENTON, TEXAS.

*Luis Lane II* LUIS LANE II  
REGISTERED PROFESSIONAL LAND SURVEYOR  
STATE OF TEXAS No. 2411

STATE OF TEXAS

COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED LUIS LANE II, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 28 DAY OF September, 2012.

*Andy Mearns* NOTARY PUBLIC, STATE OF TEXAS  
MY COMMISSION EXPIRES July 2, 2014

WITNESS MY HAND, THIS 28 DAY OF September, 2012.

CCS PARTNERS, L.L.C.

STATE OF TEXAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED CARLOS P. CRUZ, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 28 DAY OF September, 2012.

*James D. Smith* NOTARY PUBLIC, STATE OF TEXAS  
MY COMMISSION EXPIRES 10-12-2013

WITNESS MY HAND, THIS 28 DAY OF September, 2012.

CCS PARTNERS, L.L.C.

STATE OF TEXAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED CARLOS P. CRUZ, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 28 DAY OF September, 2012.

*James D. Smith* NOTARY PUBLIC, STATE OF TEXAS  
MY COMMISSION EXPIRES 10-12-2013

WITNESS MY HAND, THIS 28 DAY OF September, 2012.

CCS PARTNERS, L.L.C.

STATE OF TEXAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED CARLOS P. CRUZ, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 28 DAY OF September, 2012.

*James D. Smith* NOTARY PUBLIC, STATE OF TEXAS  
MY COMMISSION EXPIRES 10-12-2013

WITNESS MY HAND, THIS 28 DAY OF September, 2012.

CCS PARTNERS, L.L.C.

STATE OF TEXAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED CARLOS P. CRUZ, KNOWN TO ME TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 28 DAY OF September, 2012.

*James D. Smith* NOTARY PUBLIC, STATE OF TEXAS  
MY COMMISSION EXPIRES 10-12-2013

WITNESS MY HAND, THIS 28 DAY OF September, 2012.

CCS PARTNERS, L.L.C.

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Lot 1R-R1R, Block 1, Denton Regional Medical Center Addition, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2013-63 of the Official Public Records of Denton, Texas, and being more particularly described as follows:

**BEGINNING** at an aluminum disk stamped "TXDOT" found; from which the intersection of the northeast right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) and the northwest right-of-way line of Mayhill Road (120-foot wide right-of-way); from said point the southernmost southeast corner of said Lot 1R-R1R bears South 15°26'49" East, a distance of 51.60 feet;

**THENCE** the following twenty one (21) calls:

North 50°24'19" West, a distance of 34.44 feet to a point for corner;  
 North 39°35'41" East, a distance of 20.00 feet to a point for corner;  
 North 50°24'19" West, a distance of 101.65 feet to a point for corner;  
 South 84°37'48" West, a distance of 2.82 feet to a point for corner;  
 South 39°37'52" West, a distance of 18.01 feet to a point for corner;  
 North 50°24'19" West, a distance of 16.00 feet to a point for corner;  
 North 39°37'52" East, a distance of 24.65 feet to a point for corner;  
 North 84°38'03" East, a distance of 16.06 feet to a point for corner;  
 South 50°24'19" East, a distance of 98.11 feet to a point for corner;  
 North 84°35'29" East, a distance of 30.59 feet to a point for corner;  
 North 39°35'41" East, a distance of 218.75 feet to a point for corner;  
 North 82°28'59" East, a distance of 23.64 feet to a point for corner;  
 North 27°34'55" East, a distance of 121.59 feet to a point for corner;  
 South 72°36'59" East, a distance of 16.26 feet to a point for corner;  
 South 27°34'55" West, a distance of 132.78 feet to a point for corner;  
 South 82°28'59" West, a distance of 25.67 feet to a point for corner;  
 South 39°35'41" West, a distance of 229.13 feet to a point for corner;  
 South 70°09'21" West, a distance of 21.34 feet to a point for corner;  
 South 39°35'41" West, a distance of 6.82 feet to a point for corner;  
 South 51°06'50" East, a distance of 17.82 feet to a point for corner;

South 39°35'41" West, a distance of 15.99 feet to the **POINT OF BEGINNING** and containing 9,558 square feet or 0.2194 acres of land, more or less.


**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

WATER AND WASTEWATER AND ELECTRIC  
 EASEMENT  
 PART OF LOT 1R-R1R, BLOCK 1  
 DENTON REGIONAL MEDICAL CENTER ADDITION  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



**Kimley»Horn**

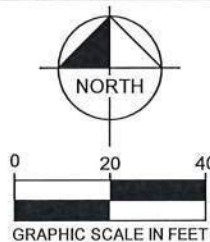
801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	2/8/2021	061024039	1 OF 3



MATCH LINE (SEE SHEET 3)



20' GAS EASEMENT  
(INST. NO. 2005-153191)

0.2194 ACRES  
9,558 SQ. FT.

7' SIDEWALK  
EASEMENT  
(VOL. Y, PG. 63)

DRAINAGE EASEMENT  
(VOL. Y, PG. 69)

INTERSTATE  
HIGHWAY NO. 35-E  
(A VARIABLE WIDTH RIGHT-OF-WAY)

P.O.B.

MAYHILL ROAD  
(120-FOOT WIDE RIGHT-OF-WAY)  
(VOL. F, PG. 125)

## LEGEND

P.O.B. = POINT OF BEGINNING  
ADF = ALUMINUM DISK  
STAMPED "TXDOT" FOUND  
PG. = PAGE  
VOL. = VOLUME  
INST. NO. = INSTRUMENT NUMBER

## NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

WATER AND WASTEWATER AND ELECTRIC  
EASEMENT  
PART OF LOT 1R-R1R, BLOCK 1  
DENTON REGIONAL MEDICAL CENTER ADDITION  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

*M. C. Billingsley* 2/8/21  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com

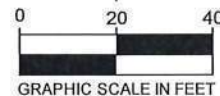


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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/8/2021	061024039	2 OF 3



LINE TABLE			LINE TABLE		
NO.	BEARING	LENGTH	NO.	BEARING	LENGTH
L1	N50°24'19"W	34.44'	L12	N82°28'59"E	23.64'
L2	N39°35'41"E	20.00'	L13	N27°34'55"E	121.59'
L3	N50°24'19"W	101.65'	L14	S72°36'59"E	16.26'
L4	S84°37'48"W	2.82'	L15	S27°34'55"W	132.78'
L5	S39°37'52"W	18.01'	L16	S82°28'59"W	25.67'
L6	N50°24'19"W	16.00'	L17	S39°35'41"W	229.13'
L7	N39°37'52"E	24.65'	L18	S70°09'21"W	21.34'
L8	N84°38'03"E	16.06'	L19	S39°35'41"W	6.82'
L9	S50°24'19"E	98.11'	L20	S51°06'50"E	17.82'
L10	N84°35'29"E	30.59'	L21	S39°35'41"W	15.99'
L11	N39°35'41"E	218.75'			

20' SIDEWALK &  
PUBLIC UTILITY  
EASEMENT  
(VOL. Y, PG. 63)

**0.2194 ACRES  
9,558 SQ. FT.**

LOT 1R-R1, BLOCK 1  
DENTON REGIONAL  
MEDICAL CENTER ADDITION  
(INST. NO. 2013-63)

2.650 ACRE  
RETENTION POND  
(VOL. Y, PG. 69)

L12

L13

L15

L14

**MAYHILL ROAD**  
(120-FOOT WIDE RIGHT-OF-WAY)  
(VOL. F, PG. 125)

L16

MATCH LINE (SEE SHEET 2)

WATER AND WASTEWATER AND ELECTRIC  
EASEMENT

PART OF LOT 1R-R1R, BLOCK 1  
DENTON REGIONAL MEDICAL CENTER ADDITION  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

#### LEGEND

P.O.B. = POINT OF BEGINNING  
IRF = IRON ROD FOUND  
ADF = ALUMINUM DISK  
STAMPED "TXDOT" FOUND  
PG. = PAGE  
VOL. = VOLUME  
INST. NO. = INSTRUMENT NUMBER

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/8/2021	061024039	3 OF 3



**LEGAL DESCRIPTION**

**BEING** two tracts of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Lot 1R-R1R, Block 1, Denton Regional Medical Center Addition, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2013-63 of the Official Public Records of Denton, Texas, and being more particularly described as follows:

**TRACT 1 - TEMPORARY CONSTRUCTION EASEMENT**

**COMMENCING** at the intersection of the northeast right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) and the northwest right-of-way line of Mayhill Road (120-foot wide right-of-way), and being the southernmost southeast corner of said Lot 1R-R1R;

**THENCE** North 15°26'49" West, a distance of 51.60 feet to an aluminum disk stamped "TXDOT" found;

**THENCE** North 82°33'53" East, a distance of 18.15 feet to the **POINT OF BEGINNING**;

**THENCE** North 39°33'59" East, a distance of 55.98 feet to a point at the beginning of a tangent curve to the left having a central angle of 9°26'34", a radius of 1240.00 feet, a chord bearing and distance of North 34°50'42" East, 204.13 feet;

**THENCE** in a northeasterly direction, with said curve to the left, an arc distance of 204.36 feet to a point for corner;

**THENCE** North 82°28'59" East, a distance of 12.60 feet to a point on the easterly line of a gas easement recorded in Instrument No. 2005-153191, Official Public Records, Denton County, Texas, and being at the beginning of a non-tangent curve to the right having a central angle of 9°47'44", a radius of 1250.00 feet, a chord bearing and distance of South 34°40'07" West, 213.44 feet;

**THENCE** in a southwesterly direction, along the said easterly line and with the said curve to the right, an arc distance of 213.70 feet to a point for corner;

**THENCE** South 39°33'59" West, a distance of 45.25 feet to a point for corner;

**THENCE** South 82°33'53" West, a distance of 14.66 feet to the **POINT OF BEGINNING** and containing 2,597 square feet or 0.0596 acres of land, more or less.

**TRACT 2 - TEMPORARY CONSTRUCTION EASEMENT**

**COMMENCING** at the intersection of the northeast right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) and the northwest right-of-way line of Mayhill Road (120-foot wide right-of-way), and being the southernmost southeast corner of said Lot 1R-R1R;

**THENCE** North 15°26'49" West, a distance of 51.60 feet to an aluminum disk stamped "TXDOT" found;

**THENCE** North 50°24'19" West, a distance of 154.09 feet to the **POINT OF BEGINNING**;

**CONTINUED ON SHEET 2**

TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT 1R-R1R, BLOCK 1  
DENTON REGIONAL MEDICAL CENTER ADDITION  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	2/8/2021	061024039	1 OF 4

**LEGAL DESCRIPTION (CONTINUED)**

**THENCE** the following sixteen (16) calls:


North 50°24'19" West, a distance of 25.00 feet to a point for corner;  
 North 39°37'52" East, a distance of 23.06 feet to a point for corner;  
 North 84°38'03" East, a distance of 53.70 feet to a point for corner;  
 South 50°24'19" East, a distance of 89.66 feet to a point for corner;  
 North 84°35'29" East, a distance of 4.88 feet to a point for corner;  
 North 39°35'41" East, a distance of 221.75 feet to a point for corner;  
 North 82°28'59" East, a distance of 20.47 feet to a point for corner;  
 North 27°34'55" East, a distance of 104.11 feet to a point for corner;  
 South 72°36'48" East, a distance of 25.40 feet to a point for corner;  
 South 27°34'55" West, a distance of 121.59 feet to a point for corner;  
 South 82°28'59" West, a distance of 23.64 feet to a point for corner;  
 South 39°35'41" West, a distance of 218.75 feet to a point for corner;  
 South 84°35'29" West, a distance of 30.59 feet to a point for corner;  
 North 50°24'19" West, a distance of 98.11 feet to a point for corner;  
 South 84°38'03" West, a distance of 16.06 feet to a point for corner;  
 South 39°37'52" West, a distance of 24.65 feet to the **POINT OF BEGINNING** and containing 12,798 square feet or 0.2938 acres of land, more or less.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



TEMPORARY CONSTRUCTION EASEMENT  
 PART OF LOT 1R-R1R, BLOCK 1  
 DENTON REGIONAL MEDICAL CENTER ADDITION  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

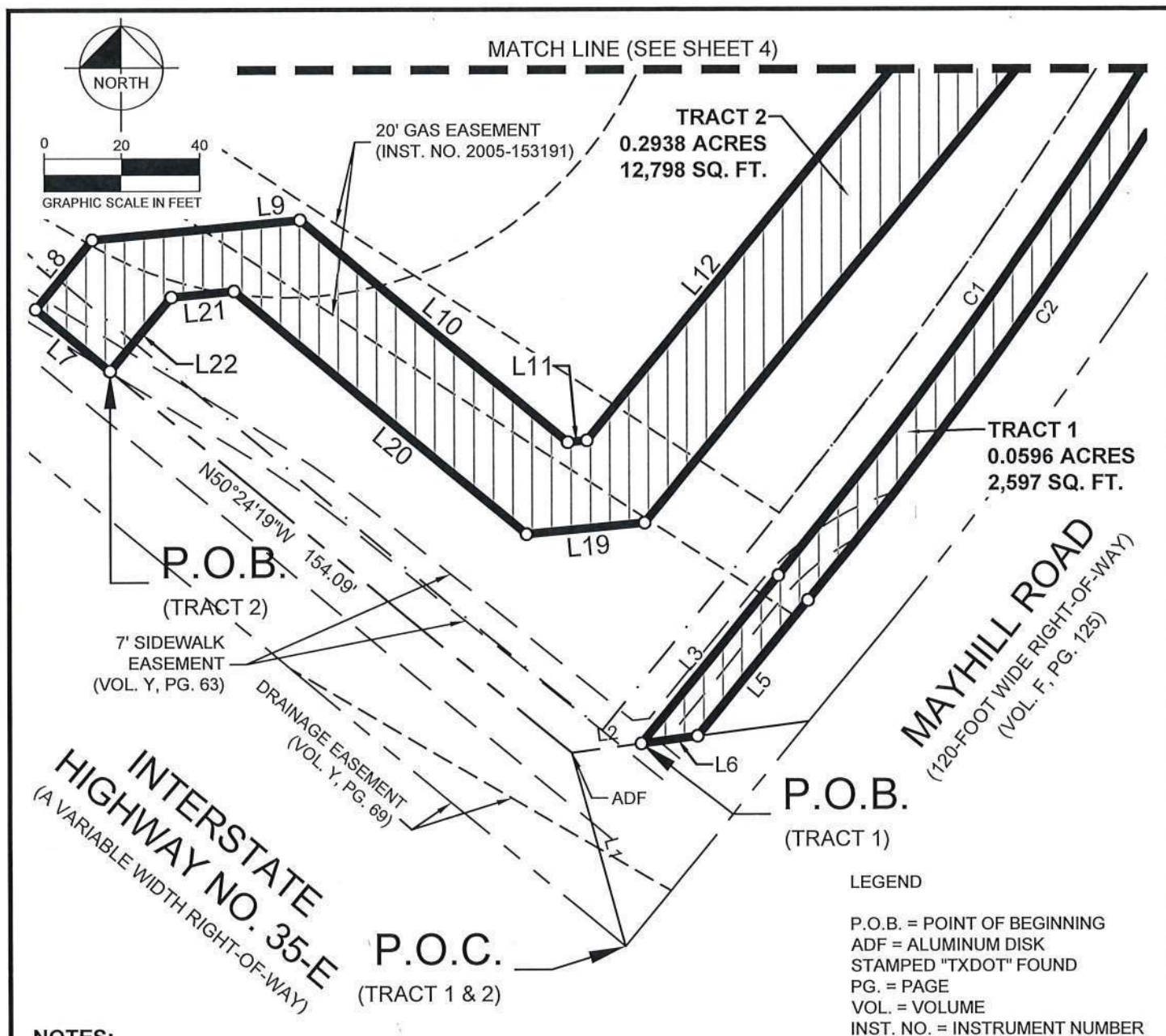
**Kimley»Horn**

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	2/8/2021	061024039	2 OF 4



**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*[Signature]* 2/8/21  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT 1R-R1R, BLOCK 1  
DENTON REGIONAL MEDICAL CENTER ADDITION  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

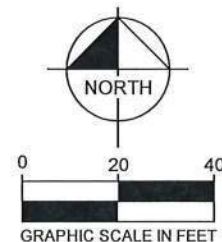
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/8/2021	061024039	3 OF 4



LINE TABLE			LINE TABLE		
NO.	BEARING	LENGTH	NO.	BEARING	LENGTH
L1	S15°26'49"E	51.60'	L15	S72°36'48"E	25.40'
L2	N82°33'53"E	18.15'	L16	S27°34'55"W	121.59'
L7	N50°24'19"W	25.00'	L17	S82°28'59"W	23.64'
L8	N39°37'52"E	23.06'	L18	S39°35'41"W	218.75'
L9	N84°38'03"E	53.70'	L19	S84°35'29"W	30.59'
L10	S50°24'19"E	89.66'	L20	N50°24'19"W	98.11'
L11	N84°35'29"E	4.88'	L21	S84°38'03"W	16.06'
L12	N39°35'41"E	221.75'	L22	S39°37'52"W	24.65'
L13	N82°28'59"E	20.47'			
L14	N27°34'55"E	104.11'			



20' SIDEWALK &  
PUBLIC UTILITY  
EASEMENT  
(VOL. Y, PG. 63)

L15

TRACT 2  
0.2938 ACRES  
12,798 SQ. FT.

L14

MAYHILL ROAD  
(120-FOOT WIDE RIGHT-OF-WAY)  
(VOL. F, PG. 125)

L16

L13

L17

L4

L18

TRACT 1  
0.0596 ACRES  
2,597 SQ. FT.

CURVE TABLE					
NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	9°26'34"	1240.00'	204.36'	N34°50'42"E	204.13'
C2	9°47'44"	1250.00'	213.70'	S34°40'07"W	213.44'

LOT 1R-R1, BLOCK 1  
DENTON REGIONAL  
MEDICAL CENTER ADDITION  
(INST. NO. 2013-63)

2.650 ACRE  
RETENTION POND  
(VOL. Y, PG. 69)

MATCH LINE (SEE SHEET 3)

#### LEGEND

P.O.B. = POINT OF BEGINNING  
IRF = IRON ROD FOUND  
ADF = ALUMINUM DISK  
STAMPED "TXDOT" FOUND  
PG. = PAGE  
VOL. = VOLUME  
INST. NO. = INSTRUMENT NUMBER

TEMPORARY CONSTRUCTION EASEMENT  
PART OF LOT 1R-R1R, BLOCK 1  
DENTON REGIONAL MEDICAL CENTER ADDITION  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	2/8/2021	061024039	4 OF 4

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 93**

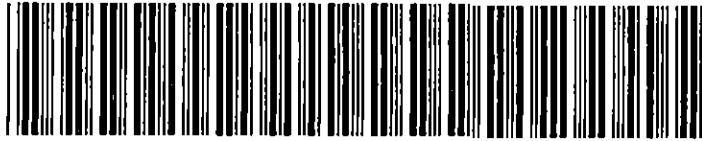
RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1775+64 LT to Sta 1777+64 LT

Existing Easement

Instrument No. 2019-115603

B.A. BADIE  
MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS



70 2012 00002335

Denton County  
Cynthia Mitchell  
County Clerk  
Denton, Tx 76202

Instrument Number: 2012-2335

Recorded On: January 09, 2012

As  
Agreement

Parties: WASHINGTON FEDERAL SAVINGS

To

Billable Pages: 9

Number of Pages: 9

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Agreement	48.00
Total Recording:	48.00

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

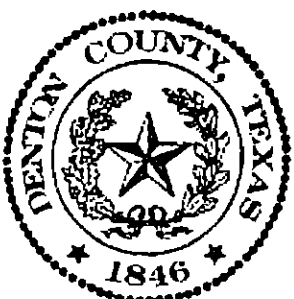
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2012-2335  
Receipt Number: 862162  
Recorded Date/Time: January 09, 2012 03:24:33P  
User / Station: D Kitzmiller - Cash Station 2

**Record and Return To:**

CITY OF DENTON  
UTILITIES & CIP ENGINEERING  
901-A TEXAS STREET  
DENTON TX 76209



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*C Mitchell*

County Clerk  
Denton County, Texas

## AGREEMENT CONCERNING PUBLIC DRAINAGE EASEMENT

**WHEREAS**, Washington Federal Savings has entered into that certain Public Drainage Easement Agreement with the City of Denton, a true and correct copy of which is attached hereto as Exhibit "A" (hereinafter the "Easement"); and

**WHEREAS**, the Easement directly benefits a tract of land owned by Carroll Family Investments, Ltd. This tract of land is described more particularly by metes and bounds in the attached Exhibit "B"; and

**WHEREAS**, Washington Federal Savings wishes to ensure that after construction and installation in the Easement of such drainage lines and other public facilities as are determined by the City of Denton to be necessary are complete and/or repaired, as necessary from time to time, and that its property is restored as close as is practicable to the condition existing at the time of construction or the condition existing at the time of any repairs occurring; and

**WHEREAS**, Carroll Family Investments, Ltd. wishes to provide assurances to Washington Federal Savings regarding the restoration of Washington Federal Savings' property;

**NOW THEREFORE**, Based on the foregoing described facts and consideration, the parties agree as follows:

**1. Damages and Restoration:** Carroll Family Investments, Ltd. agrees that within a reasonable time following the completion of the public facilities to be located within the Easement and subject to weather and/or soil conditions, in the event the City of Denton does not restore the Easement that Carroll Family Investments, Ltd. shall restore, as near as practicable, the Easement to its original contour and condition. Further, in the event repair or maintenance of the public facilities located within the Easement causes damage to the Easement property and in the event the City of Denton does not repair and/or restore the Washington Federal Savings' property and Easement location, that Carroll Family Investments, Ltd. shall restore, as near as practicable, Washington Federal Savings property and Easement location to its then existing contour and condition as it existed immediately prior to the repair or maintenance work being done on the easement. However, Carroll Family Investments, Ltd. shall not be in breach of this agreement in the event Carroll Family Investments, Ltd. is unable to obtain consent from the City of Denton to enter the Easement and perform the restoration work. Further, a reasonable time period shall not be more than the later of: a.) thirty (30) days following the date of the completion of the public facilities, or b.) thirty (30) days following the date that Washington Federal Savings gives notice to Carroll Family Investments, Ltd. or its successors in title of the need for repair and/or restoration called for under this agreement.

**5. Assignment:** In the event in the Carroll Family Investments, Ltd. shall sell the real property described in Exhibit "B", Carroll Family Investments, Ltd. shall have no further obligation under the terms of this agreement; however, the rights described herein shall be covenants running with the land referenced in Exhibit "B" and shall be binding upon Carroll Family Investments, Ltd.'s successors in title to said property.

**6. Authority to Bind:** The Undersigned representatives from Carroll Family Investments, Ltd. affirmatively represent and warrant that they are the owners of the real property reference in Exhibit "B" and that by signing below they understand that the covenants contained herein shall bind future owners of the property to the same extent as they are bound.

By: Washington Federal Savings  
A Federally Chartered Savings and Loan Association

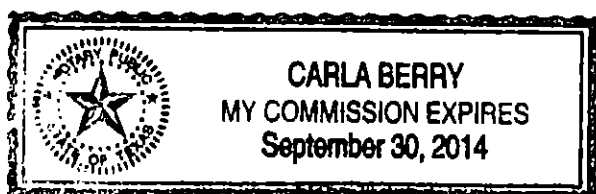
By: Bill Childers  
Printed Name: Bill Childers  
Title: Vice President

ACKNOWLEDGMENT

STATE OF TEXAS §  
COUNTY OF Collin §

This instrument was acknowledged before me this 14th day of December, 2011 by Bill Childers [name of officer], Vice President [title of officer] of Washington Federal Savings, on behalf of said bank.

(Seal)



Carla Berry  
Notary Public, State of Texas  
My commission expires: 9-30-2014

By: Carroll Family Investments, Ltd.  
A Texas Limited Partnership

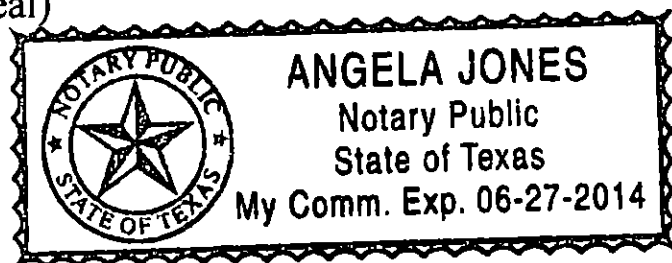
By: [Signature]  
Printed Name: Christopher S. Carroll  
Title: Manager

ACKNOWLEDGMENT

STATE OF TEXAS §  
COUNTY OF DENTON §

This instrument was acknowledged before me this 8 day of December, 2011 by Christopher S. Carroll [name of officer], Manager [title of officer] of Carroll Family Investments, Ltd., a Texas Limited Partnership, on behalf of said partnership.

(Seal)



Angela Jones  
Notary Public, State of Texas  
My commission expires: 6-27-14

Exhibit "A"

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: [YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.]**

**PUBLIC DRAINAGE EASEMENT**

**THE STATE OF TEXAS  
COUNTY OF DENTON**

**§  
§  
§**

**KNOW ALL MEN BY THESE PRESENTS:**

THAT Washington Federal Savings, a federally chartered savings and loan association (Grantor) in consideration of the sum of ONE DOLLAR and NO CENTS (\$1.00) and other good and valuable consideration in hand paid by the City of Denton, Texas, (Grantee), receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by Grantor and situated in Denton County, Texas, in the M.E.P. & P.R.R. Survey, Abstract No. 950.

**PROPERTY AREA DESCRIBED IN EXHIBIT "A"**

**AND ILLUSTRATED IN EXHIBIT "B"**

**ALL ATTACHED HERETO AND MADE A PART HEREOF**

And it is further agreed that the City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public drainage in, along, upon and across said premises, with the right and privilege at all times of the Grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public facilities or any part thereof.

STATE OF TEXAS :

2114

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON :

THAT WE, G. A. Godfrey and wife Sue R. Godfrey, of Denton County, Texas, for and in consideration of the sum of One Dollar cash in hand paid and other good and valuable consideration including the right to connect service lines to the hereinafter described water pipe line without payment of the linear frontage foot charge provided by City of Denton Ordinance No. 56-06, have GRANTED AND CONVEYED and by these presents do GRANT AND CONVEY unto the said City of Denton, Texas, its successors and assigns, and the public, for a water pipe line together with a perpetual easement thereon for the benefit of the said City of Denton, Texas, its successors and assigns, and to its agents, officers and employees, perpetually for said water pipe line, the right to construct, reconstruct and perpetually maintain said water pipe line in, upon and across the following described property and to the said City of Denton, we hereby give the free and uninterrupted right of ingress, regress and egress of said water pipe line, said tract being more particularly described as follows:

Being a part of a tract of land out of the M.E.P. and P.R.R. Co. Survey, Abstract No. 950 as conveyed by Harold L. Goodman and wife Tillie L. Goodman and C. P. Smith and wife Gwendolyn Smith to G. A. Godfrey and wife Sue R. Godfrey by deed recorded in Volume 429, Page 501 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the intersection of the east line of the G. A. Godfrey tract and the south right-of-way of U. S. Highway No. 77 at approximate Highway Station 1044 + 55, said beginning point being the northeast corner of a tract of the G. A. Godfrey property bordered on the north by U. S. Highway 77 and on the east by a county road;

THENCE south with the west line of said county road and the east line of the G. A. Godfrey tract a distance of 193 feet, more or less, to a point for a corner;

THENCE west 20 feet. more or less. to a point for a corner:



THENCE north parallel to and 20 feet from the west line of said county road and the east line of the G. A. Godfrey tract a distance of 193 feet, more or less, to a point for a corner in the south right-of-way of Highway 77;

THENCE in an easterly direction with the south right-of-way of U. S. Highway 77 and the north line of the G. A. Godfrey tract a distance of 20 feet, more or less, to the place of beginning.

This easement contains a strip of land 20 feet wide and approximately 193 feet long lying along and adjacent to the west line of a county road.

TO HAVE AND TO HOLD the same perpetually to the City of Denton, Texas, and the public, and to its successors and assigns, together with the right and privilege at any and all times to enter said premises for the purpose of constructing, reconstructing and maintaining said water pipe line.

WITNESS OUR HANDS this 26 day of March A.D. 1959.

G. A. Godfrey  
Sue R. Godfrey Sue R. Godfrey

\* \* \* \* \*

STATE OF TEXAS :

COUNTY OF DENTON :

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared G. A. Godfrey and Sue R. Godfrey, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Sue R. Godfrey, wife of the said G. A. Godfrey, having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Sue R. Godfrey, acknowledged such instrument to be her act and deed, and she x declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 26 day of March A.D. 1959.



W. D. Burtchall  
 Notary Public in and for  
 Denton County, Texas

FILED FOR RECORD: 27 day of March A.D. 1959 at 4:00 o'clock P. M.  
 RECORDED: 8 day of April A.D. 1959 at 9:10 o'clock A. M.  
 By: \_\_\_\_\_ Deputy A.J. Barnett, Clerk County Court,  
 Denton County, Texas

6232

THE STATE OF TEXAS :

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON :

THAT the Foxworth-Galbraith Lumber Company, a corporation, acting through its president, J. L. Foxworth, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration the receipt of which is hereby fully confessed and acknowledged, and the further consideration of the agreement by Grantee to install in the water line constructed in the hereinafter described tract of land one (1)-two (2) inch water tap at such location as may be designated by Grantor without any cost or expense to Grantor, with the understanding

by and between Grantor and Grantee that a part of the consideration for the granting of this easement is the agreement by Grantee that the Grantor shall have the right to receive water service from the line hereinafter described for the same rates charged like users within the City Limits of the City of Denton, Texas, does hereby GIVE and GRANT to the said City of Denton, Texas, its successors and assigns, the free and uninterrupted use, liberty, and right in, upon and across the following described property for the purpose of constructing, reconstructing and perpetually maintaining a water line in, upon and across a tract of land lying and being situated in the County of Denton, State of Texas, and more particularly described as follows:

BEGINNING at a point in the Northeasterly line of a tract of land out of the MEP & PRR Co., Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co., a corporation, by H. Edward Smith and wife Mary Frances Smith, and recorded in Volume 474, Page 491 of the Deed Records of Denton County,

Texas; said beginning point also being in the Southwesterly right-of-way line of Interstate Highway 35E; said beginning point also being 654.7 feet North 49 degrees 57 minutes West from the most Easterly Northeast corner of the Foxworth-Galbraith Lumber Co. tract;

THENCE South 2 degrees 49 minutes West and passing at 488.36 feet an inner ell corner of the Foxworth-Galbraith Lumber Co. tract and continuing with the East line of said Foxworth-Galbraith tract for a total distance of 2,173.3 feet to a point for a corner in an existing fence line;

THENCE North 87 degrees 11 minutes West a distance of 20 feet to a point for a corner;

THENCE North 2 degrees 49 minutes East a distance of 2,190.0 feet to a point for a corner in the Southwesterly right-of-way of said Highway 35E;

THENCE South 49 degrees 57 minutes East with the Southwesterly right-of-way line of said Highway 35E a distance of 25.6 feet more or less to the place of beginning

TO HAVE AND TO HOLD the same perpetually to the City of Denton, Texas, and its successors, together with the right and privilege at any and all times to enter said premises for the purpose of constructing, reconstructing and perpetually maintaining said water line and for making connections therewith.

IN WITNESS WHEREOF, the said corporation has caused these presents to be signed by its duly authorized officer and to be sealed with the Seal of the Corporation.

VOL 496 PAGE 564

FOXWORTH-GALBRAITH LUMBER COMPANY

By

President

ATTEST:

Secretary

THE STATE OF TEXAS :

COUNTY OF DALLAS :

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared J. L. Foxworth, President, Foxworth-Galbraith Lumber Company, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Foxworth-Galbraith Lumber Company, a corporation, and that he executed the same as the act of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

WITNESS MY HAND AND SEAL OF OFFICE this 16th day of July, A.D. 1963.

Ann Harrison

ANN HARRISON

Notary Public in and for  
Dallas County, Texas

FILED FOR RECORD: 17 day of July A.D. 1963 at 10:15 o'clock A.M.  
RECORDED: 24 day of July A.D. 1963 at 7:45 o'clock P.M.  
By: Lorence McLeod Deputy Theta Parker, Clerk County Court,  
Denton County, Texas

THE STATE OF TEXAS,  
COUNTY OF DENTON

KNOW ALL MEN BY THESE PRESENTS:  
REAL PROPERTY RECORDS 5582

THAT DIMENSION - UNICORN LAKE ASSOCIATES, LTD

of DALLAS COUNTY, TEXAS

, in consideration of the sum of

One dollar (\$1.00) and no cents----- and other good and valuable consideration

in hand paid by the City of Denton, Texas receipt of which is hereby acknowledged, do by

these presents grant, bargain, sell and convey unto to the City of Denton, Texas , the free

and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property,

owned by it . Situated in Denton County, Texas, in the

M.E.P. & P.R.R. Co. Survey, Abstract No. 950

ALL that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Co. survey, Abst. No. 950, and also being part of a tract of land as conveyed from Foxworth-Galbraith Lumber Co. to Dimension-Unicorn Lake Associates, Ltd. by deed dated June 29, 1984 and recorded in Volume 1434, Page 111 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the northeast corner of said tract, said point lying in the southwest right-of-way line of I. H. 35 E., said point also being the northerly corner of a tract conveyed to Josten's Inc. by deed recorded in Volume 571 Page 39 of the deed records of Denton County, Texas;

THENCE south 38° 23' 25" West, along a northerly east boundary line of said tract, same being the west boundary line of said Josten's tract, a distance of 10.01 feet to a point for a corner;

THENCE north 49° 57' West, a distance of 247.39' feet to a point for a corner, said point lying in the east boundary line of an easement granted to the City of Denton by Foxworth-Galbraith Lumber Co. recorded in Volume 496 Page 562 of the deed records of Denton County, Texas;

THENCE north 2° 49' East, along the east boundary line of said easement, a distance of 12.55 feet to a point for a corner in the northeast boundary line of said tract, same being the southwest right-of-way line of I. H. 35 E.;

THENCE south 49° 57' East, along said lines a distance of 254.7 feet to the place of beginning.

And it is further agreed that the said City of Denton, Texas

in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, installing, repairing and perpetually maintaining public utilities in, along, upon and

across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public utilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness

hand

, this the

day of

, A.D. 19

DIMENSION-UNICORN LAKE ASSOCIATES, LTD  
BY: DIMENSION-DEVELOPMENT COMPANY, INC.,  
Managing Partner

By: Michael L. Neary  
Michael L. Neary, President

(VOL. 1811 PAGE 476

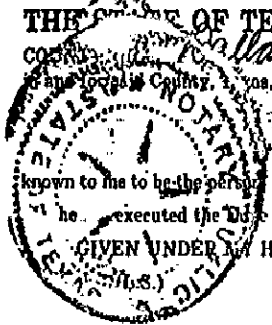
ACKNOWLEDGMENT

THE STATE OF TEXAS,

COUNTY OF Denton, Texas, on this day personally appeared

BEFORE ME, the undersigned authority,

Michael L. Neary



known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 23<sup>rd</sup> day of January, A.D. 19 84

Notary Public, KATHY MARTIN, Notary Public, Denton County, Texas  
My Commission Expires 11/5/88

ACKNOWLEDGMENT

THE STATE OF TEXAS,

COUNTY OF

in and for said County, Texas, on this day personally appeared

BEFORE ME, the undersigned authority,

known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_

(L.S.)

Notary Public, \_\_\_\_\_ County, Texas  
My Commission Expires \_\_\_\_\_

CORPORATION ACKNOWLEDGMENT

THE STATE OF TEXAS,

COUNTY OF

in and for said County, Texas, on this day personally appeared

BEFORE ME, the undersigned authority,

known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said

a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_

record in my office on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and duly recorded this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., in the

Records of said County, in Volume \_\_\_\_\_, on pages \_\_\_\_\_

WITNESS MY HAND AND SEAL OF THE COUNTY COURT of said County, at office in \_\_\_\_\_, the day and year last above written.

(L.S.)

County Clerk \_\_\_\_\_ County, Texas.  
By \_\_\_\_\_ Deputy.

D/5  
Chg. City  
of Denton  
(Power Dept)

No. 5582  
**EASEMENT**  
FROM  
DIMENSION-UNICORN LAKE ASSOCIATES, LTD.

TO  
CITY OF DENTON, TEXAS

FILED  
CORP  
this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
County Clerk \_\_\_\_\_ Co., Texas  
By \_\_\_\_\_ Deputy.  
RECORDED

A.D. 19 \_\_\_\_\_  
County Records,  
Book \_\_\_\_\_, Page \_\_\_\_\_  
County Clerk \_\_\_\_\_  
Deputy \_\_\_\_\_  
Recording Fee \$ \_\_\_\_\_

This instrument should be filed immediately with the County Clerk for record.

MAINTIN Stationary Co., Dallas

Buyer's Name  
City of Denton  
215 S. Mainway 14  
D/5 7-9-84

FILED FOR RECORD 29<sup>th</sup> DAY OF January, A.D. 198 6, at 3:35 P.  
RECORDED 29<sup>th</sup> DAY OF January, A.D. 198 6.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Theresa Williams DEPUTY.







**STEVE MOSSMAN**

DENTON COUNTY TAX ASSESSOR/COLLECTOR  
P O BOX 90223  
DENTON, TX 76202  
(940) 349-3500

**Tax Certificate**

Property Account Number:

**282710DEN**

Statement Date: 07/15/2011

Owner: CARROLL FAMILY INVESTMENTS

Mailing Address: LTD

2340 I-20 W STE 100

Property Location: 0000000 WIND RIVER LN

Legal: UNICORN LAKE BLK B LOT  
2

TAX CERTIFICATE FOR ACCOUNT : 282710DEN  
AD NUMBER: SD2442A-00000B-0000-0002-0000  
GF NUMBER:  
CERTIFICATE NO : 1700450

DATE : 7/15/2011

PAGE 1 OF 1

FEE : \$10.00

**PROPERTY DESCRIPTION**

UNICORN LAKE BLK B LOT 2

**COLLECTING AGENCY**

Denton County  
P O BOX 90223  
DENTON TX 76202

0000000 WIND RIVER LN  
1.63 ACRES

**REQUESTED BY**

CARROLL FAMILY INVESTMENTS LTD

2340 I-20 W STE 100  
ARLINGTON TX 76017-7601

**PROPERTY OWNER**

CARROLL FAMILY INVESTMENTS LTD

2340 I-20 W STE 100  
ARLINGTON TX 76017-7601

THIS IS TO CERTIFY THAT, AFTER A CAREFUL CHECK OF THE RECORDS OF THE DENTON COUNTY TAX OFFICE,  
THE FOLLOWING DELINQUENT TAXES, PENALTIES, AND INTEREST ARE DUE ON THE DESCRIBED PROPERTY.

THE ABOVE DESCRIBED PROPERTY TAX HAS/IS RECEIVING SPECIAL APPRAISAL BASED ON ITS USE, AND  
ADDITIONAL ROLLBACK TAXES MAY BECOME DUE BASED ON THE PROVISIONS OF THE SPECIAL APPRAISAL. (IF  
APPLICABLE).

TAXES FOR 2011 HAVE NOT BEEN CALCULATED**CURRENT VALUES**

LAND MKT VALUE: 454,419  
AG LAND VALUE: 0  
APPRAISED VALUE: 454,419  
EXEMPTIONS:  
LAWSUITS:

IMPROVEMENT: 0  
DEF HOMESTEAD: 0  
LIMITED VALUE: 0

YEAR	TAX UNIT	LEVY	PEN	INT	DEF INT	ATTY	AMOUNT DUE
2010	CITY OF DENTON	0.00	0.00	0.00	0.00	0.00	0.00
2010	DENTON COUNTY	0.00	0.00	0.00	0.00	0.00	0.00
2010	DENTON IND SCH DIST	0.00	0.00	0.00	0.00	0.00	0.00
2010 SUB TOTAL							\$0.00

TOTAL CERTIFIED TAX DUE 7/2011 : \$ 0.00

ISSUED TO: CARROLL FAMILY INVESTMENTS  
ACCOUNT NUMBER: 282710DEN

CERTIFIED BY:

City of Denton

Design

901-A Texas Street  
Denton, Texas 76209

AUTHORIZED AGENT OF DENTON COUNTY

Filed for Record  
in the official records of:  
Denton County

On: Jul 26, 2011 at 04:02P

As a

Flat Records

UNICORN LAKE

Doc Number: 2011- 142

No of Pages: 1

Amount 50.00

Receipt Number - 813327

By,  
Jane Morris

**1903**

**STEVE MOSSMAN**

DENTON COUNTY TAX ASSESSOR/COLLECTOR  
P O BOX 90223  
DENTON, TX 76202  
(940) 349-3500

**Tax Certificate**

Property Account Number:

**282709DEN**

Statement Date: 07/15/2011

Owner: CARROLL FAMILY INVESTMENTS

Mailing Address: LTD

2340 I-20 W STE 100

Property Location: 0000000 WIND RIVER LN

Legal: UNICORN LAKE BLK B LOT  
1

TAX CERTIFICATE FOR ACCOUNT : 282709DEN  
AD NUMBER: SD2442A-00000B-0000-0001-0000  
GF NUMBER:  
CERTIFICATE NO : 1700449

DATE : 7/15/2011

PAGE 1 OF 1

FEE : \$10.00

**PROPERTY DESCRIPTION**

UNICORN LAKE BLK B LOT 1

**COLLECTING AGENCY**

Denton County  
P O BOX 90223  
DENTON TX 76202

0000000 WIND RIVER LN  
1.584 ACRES

**REQUESTED BY**

CARROLL FAMILY INVESTMENTS LTD

2340 I-20 W STE 100  
ARLINGTON TX 76017-7601

**PROPERTY OWNER**

CARROLL FAMILY INVESTMENTS LTD

2340 I-20 W STE 100  
ARLINGTON TX 76017-7601

THIS IS TO CERTIFY THAT, AFTER A CAREFUL CHECK OF THE RECORDS OF THE DENTON COUNTY TAX OFFICE,  
THE FOLLOWING DELINQUENT TAXES, PENALTIES, AND INTEREST ARE DUE ON THE DESCRIBED PROPERTY.

THE ABOVE DESCRIBED PROPERTY TAX HAS/IS RECEIVING SPECIAL APPRAISAL BASED ON ITS USE, AND  
ADDITIONAL ROLLBACK TAXES MAY BECOME DUE BASED ON THE PROVISIONS OF THE SPECIAL APPRAISAL. (IF  
APPLICABLE).

TAXES FOR 2011 HAVE NOT BEEN CALCULATED**CURRENT VALUES**

LAND MKT VALUE: 441,594  
AG LAND VALUE: 0  
APPRAISED VALUE: 441,594  
EXEMPTIONS:  
LAWSUITS:

IMPROVEMENT : 0  
DEF HOMESTEAD: 0  
LIMITED VALUE: 0

YEAR	TAX UNIT	LEVY	PEN	INT	DEF INT	ATTY	AMOUNT DUE
2010	CITY OF DENTON	0.00	0.00	0.00	0.00	0.00	0.00
2010	DENTON COUNTY	0.00	0.00	0.00	0.00	0.00	0.00
2010	DENTON IND SCH DIST	0.00	0.00	0.00	0.00	0.00	0.00
2010 SUB TOTAL							\$0.00

TOTAL CERTIFIED TAX DUE 7/2011 : \$ 0.00

ISSUED TO : CARROLL FAMILY INVESTMENTS LTD  
ACCOUNT NUMBER: 282709DEN

CERTIFIED BY:   
AUTHORIZED AGENT OF DENTON COUNTY

City of Denton  
Design  
901-A Texas Street  
Denton, Texas 76209

Filed for Record  
in the official records of:  
Denton County

On: Jul 26, 2011 at 04:02P  
As a

Plat Records  
UNICORN LAKE  
Doc Number: 2011- 142  
No of Pages: 1  
Amount 50.00

Receipt Number - 813327

By,  
Jane Morris

**1904**

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Denton County  
Cynthia Mitchell  
County Clerk  
Denton, TX 76202



70 2005 00075246

Instrument Number: 2005-75246

Recorded On: June 23, 2005

As  
Plat

Parties: UNICORN LAKE FINAL PLAT

To

Billable Pages: 1

Number of Pages: 4

Comment:

**\*\* Examined and Charged as Follows: \*\***

Plat	43.00
Total Recording:	43.00

\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

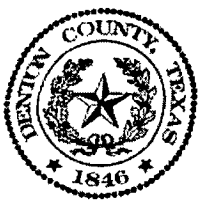
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2005-75246  
Receipt Number: 203899  
Recorded Date/Time: June 23, 2005 10:27A  
  
User / Station P Sallee - Cash Station 4

**Record and Return To:**

CITY OF DENTON  
C/O R FORSYTHE  
601 E HICKORY SUITE B  
DENTON TX 76205



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas

*C. Mitchell*  
County Clerk  
Denton County, Texas

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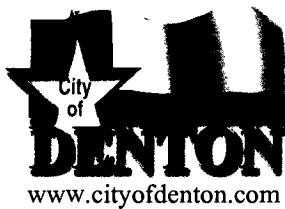


## CYNTHIA MITCHELL

County Clerk

DATE	June 23 2005
CABINET	W
PAGE	358
ADDITION	Unicorn Lake Final Plat
DEVELOPER	Carroll Family Investments Ltd
CITY	Denton
FILING FEE	\$48.00
COMMENTS: INITIALS OF FILING CLERK	PS

AREA MAP: ☒ YES or NO



**CITY OF DENTON  
TAX OFFICE**  
601 E. Hickory, Suite G  
Denton, Texas 76205-4305  
940-349-8318

TAX CERTIFICATE FOR ACCOUNT : R219002  
DATE : 5/16/2005  
FEE : \$10.00  
CERTIFICATE NO : 493739

**REQUESTED BY**  
LONESTAR RECORD

11700 PRESTON RD  
DALLAS TX 75230

AD NUMBER:  
GF NUMBER:

**PROPERTY DESCRIPTION**

0000000  
A0950A MEP & PRR, TRACT 15A, A  
CRES 121.601

**PROPERTY OWNER**

WINDJAMMER LTD  
  
3300 SUNDOWN BLVD  
DENTON TX 76210

CURRENT VALUES							
LAND MKT VALUE:		3,280,225	IMPROVEMENT		0		
AG LAND VALUE:		0	DEF		0		
APPRAISED VALUE:		3,280,225	LIMITED VALUE:		0		
EXEMPTIONS:							
LAWSUITS:							

YEAR	TAX UNIT	LEVY	PEN	INT	DEF INT	ATTY	AMOUNT DUE
2004	CITY OF DENTON	0.00	0.00	0.00	0.00	0.00	0.00
2004 SUB TOTAL							\$0.00

**TOTAL CERTIFIED TAX DUE 5/2005 : \$ 0.00**

ISSUED TO : LONESTAR RECORD  
ACCOUNT NUMBER: R219002

  
CERTIFIED BY THE CITY OF DENTON TAX OFFICE



*City of Denton  
Go L. Forsythe  
601 E. Hickory Suite B  
Denton TX 76205*

DATE 05/16/2005

## TAX CERTIFICATE

# 041418

DG

STEVE MOSSMAN, DENTON CO.  
P O BOX 90223  
DENTON, TX 76202  
(940) 349-3500

FEE 10.00

\*\*\*\*\*  
\* PROPERTY DESCRIPTION ACCT # R0219002 \*  
\* \* \* \* \*  
\* A0950A MEP & PRR, TRACT 15A, ACRES 129.42 \*  
\* \* \* \* \*  
\* TOWN - LOCATION- C05 S I35E \*  
\* ACRES - 129.420 \*  
\* \* \* \* \*  
\* LAND MKT VALUE 3280370 IMPR/PERS MKT VALUE \*  
\* LAND AGR VALUE MKT. BEFORE EXEMPTS 3280370 \*  
\* \* \* \* \*  
\* EXEMPTIONS GRANTED: NONE \*  
\* \* \* \* \*

WINDJAMMER LTD  
3300 SUNDOWN BLVD

DENTON TX 76210

I, STEVE MOSSMAN, Tax Assessor/Collector for Denton County do hereby certify and otherwise guarantee that the tax levies, penalties, and attorney fees due in the current month for the above described property are as listed below.

	LEVY	P & I	ATTY FEES	AMT DUE
TAXES 2004	.00	.00	.00	.00
	-----	-----	-----	-----
	.00	.00	.00	.00
				=====
				.00
ACCT # R0219002			TOTAL DUE 05/2005	.00
			TOTAL DUE 06/2005	.00

\*\*\*\*\*  
\* BREAKDOWN OF TAX DUE BY JURISDICTION \*  
\* JURISDICTION TAXES PEN & INT ATTY FEES TOTAL \*  
\* DENTON COUNTY .00 .00 .00 .00 \*  
\* DENTON IND SCH DI .00 .00 .00 .00 \*  
\* (CERTIFICATE MAY NOT INCLUDE ALL TAXING JURISDICTIONS) \*  
\* \* \* \* \*  
\* TAX LEVY FOR THE CURRENT ROLL YEAR: 061 8,358.38 \*  
\* TAX LEVY FOR THE CURRENT ROLL YEAR: S05 61,146.10 \*  
\* TOTAL TAX LEVY FOR THE CURRENT ROLL YEAR ..... 69,504.48 \*  
\* \* \* \* \*

REQUESTED BY:  
LONESTAR RECORD & ABSTRAC

Dana Gardner  
SIGNATURE OF AUTHORIZED OFFICER OF COLLECTING OFFICE

City of Denton  
Co R. Forsythe  
601 E. Hickory Suite B  
Denton, TX 76205

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of a called 3 acre tract of land described in Warranty Deed to B. A. Badie recorded in Instrument No. 2019-115603 of the Official Public Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at an aluminum disk stamped "TXDOT" found in the southwest right-of-way line of Interstate Highway No. 35. (a variable width right-of-way), and being in the southeast line of said 3 acre tract;

**THENCE** South 37°55'39" West, along the said southeast line of the 3 acre tract, a distance of 28.12 feet to a point for corner;

**THENCE** departing the said southeast line of the 3 acre tract, North 46°44'36" West, a distance of 37.45 feet to a point for corner;

**THENCE** North 48°21'36" West, a distance of 165.30 feet to a point for corner in the northwest line of said 3 acre tract; from said point a 1/2-inch iron rod found for the southwest corner of said 3 acre tract bears South 39°29'17" West, a distance of 473.20 feet;

**THENCE** North 39°29'17" East, along the said northwest line of the 3 acre tract, a distance of 28.02 feet to a point for corner in the said southwest right-of-way line of Interstate Highway No. 35;

**THENCE** departing the said northwest line of the 3 acre tract, South 48°21'36" East, along the said southwest right-of-way line of Interstate Highway No. 35, a distance of 166.75 feet to a point for corner;

**THENCE** continuing along the said southwest right-of-way line of Interstate Highway No. 35, South 46°44'36" East, a distance of 35.24 feet to the **POINT OF BEGINNING** and containing 5,667 square feet or 0.1301 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER  
 AND ELECTRIC EASEMENT  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

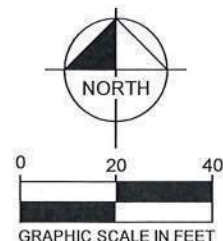
801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	8/25/2020	061024039	1 OF 2



LOT 1R, BLOCK B  
UNICORN LAKE  
(VOL. W, PG. 358)



INTERSTATE  
HIGHWAY NO. 35-E  
(A VARIABLE WIDTH RIGHT-OF-WAY)

0.1301 ACRES  
5,667 SQ. FT.

P.O.B.

REMAINDER OF  
CALLED 3 ACRES  
B. A. BADIE  
(INST. NO. 2019-115603)

LINE TABLE		
NO.	BEARING	LENGTH
L1	S37°55'39"W	28.12'
L2	N46°44'36"W	37.45'
L3	N48°21'36"W	165.30'
L4	S39°29'17"W	473.20'
L5	N39°29'17"E	28.02'
L6	S48°21'36"E	166.75'
L7	S46°44'36"E	35.24'

16' PUBLIC  
UTILITY EASEMENT  
(VOL. 1130, PG. 214)

CALLED 1.570 ACRES  
JOSTEN'S, INC.  
(VOL. 571, PG. 39)

CITY OF DENTON  
WATER EASEMENT  
(VOL. 496, PG. 562)

#### LEGEND

P.O.B. = POINT OF BEGINNING  
IRF = IRON ROD FOUND  
ADF = ALUMINUM DISK  
STAMPED "TXDOT" FOUND  
PG. = PAGE  
VOL. = VOLUME  
INST. NO. = INSTRUMENT NUMBER

#### NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley* 9/25/20  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER  
AND ELECTRIC EASEMENT  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	8/25/2020	061024039	2 OF 2

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 94**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1777+64 LT to Sta 1779+97 LT

Existing Easement

Instrument No. 2011-142

Volume W, Page 358

PART OF LOT 1R, BLOCK B, UNICORN LAKE  
MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS



70 2012 00002335

Denton County  
Cynthia Mitchell  
County Clerk  
Denton, Tx 76202

Instrument Number: 2012-2335

As

Recorded On: January 09, 2012

Agreement

Parties: WASHINGTON FEDERAL SAVINGS

To

Billable Pages: 9

Number of Pages: 9

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Agreement	48.00
Total Recording:	48.00

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

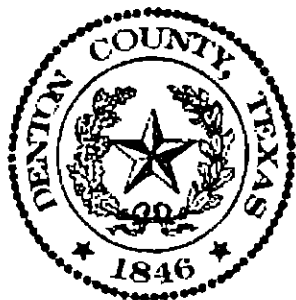
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2012-2335  
Receipt Number: 862162  
Recorded Date/Time: January 09, 2012 03:24:33P  
User / Station: D Kitzmiller - Cash Station 2

**Record and Return To:**

CITY OF DENTON  
UTILITIES & CIP ENGINEERING  
901-A TEXAS STREET  
DENTON TX 76209



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*C Mitchell*

County Clerk  
Denton County, Texas

## AGREEMENT CONCERNING PUBLIC DRAINAGE EASEMENT

**WHEREAS**, Washington Federal Savings has entered into that certain Public Drainage Easement Agreement with the City of Denton, a true and correct copy of which is attached hereto as Exhibit "A" (hereinafter the "Easement"); and

**WHEREAS**, the Easement directly benefits a tract of land owned by Carroll Family Investments, Ltd. This tract of land is described more particularly by metes and bounds in the attached Exhibit "B"; and

**WHEREAS**, Washington Federal Savings wishes to ensure that after construction and installation in the Easement of such drainage lines and other public facilities as are determined by the City of Denton to be necessary are complete and/or repaired, as necessary from time to time, and that its property is restored as close as is practicable to the condition existing at the time of construction or the condition existing at the time of any repairs occurring; and

**WHEREAS**, Carroll Family Investments, Ltd. wishes to provide assurances to Washington Federal Savings regarding the restoration of Washington Federal Savings' property;

**NOW THEREFORE**, Based on the foregoing described facts and consideration, the parties agree as follows:

**1. Damages and Restoration:** Carroll Family Investments, Ltd. agrees that within a reasonable time following the completion of the public facilities to be located within the Easement and subject to weather and/or soil conditions, in the event the City of Denton does not restore the Easement that Carroll Family Investments, Ltd. shall restore, as near as practicable, the Easement to its original contour and condition. Further, in the event repair or maintenance of the public facilities located within the Easement causes damage to the Easement property and in the event the City of Denton does not repair and/or restore the Washington Federal Savings' property and Easement location, that Carroll Family Investments, Ltd. shall restore, as near as practicable, Washington Federal Savings property and Easement location to its then existing contour and condition as it existed immediately prior to the repair or maintenance work being done on the easement. However, Carroll Family Investments, Ltd. shall not be in breach of this agreement in the event Carroll Family Investments, Ltd. is unable to obtain consent from the City of Denton to enter the Easement and perform the restoration work. Further, a reasonable time period shall not be more than the later of: a.) thirty (30) days following the date of the completion of the public facilities, or b.) thirty (30) days following the date that Washington Federal Savings gives notice to Carroll Family Investments, Ltd. or its successors in title of the need for repair and/or restoration called for under this agreement.

**5. Assignment:** In the event in the Carroll Family Investments, Ltd. shall sell the real property described in Exhibit "B", Carroll Family Investments, Ltd. shall have no further obligation under the terms of this agreement; however, the rights described herein shall be covenants running with the land referenced in Exhibit "B" and shall be binding upon Carroll Family Investments, Ltd.'s successors in title to said property.

**6. Authority to Bind:** The Undersigned representatives from Carroll Family Investments, Ltd. affirmatively represent and warrant that they are the owners of the real property reference in Exhibit "B" and that by signing below they understand that the covenants contained herein shall bind future owners of the property to the same extent as they are bound.

By: Washington Federal Savings  
A Federally Chartered Savings and Loan Association

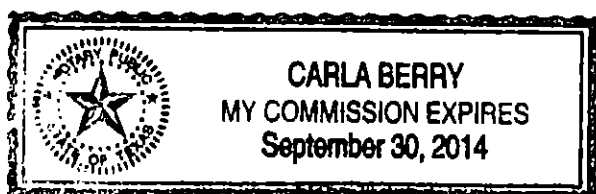
By: Bill Childers  
Printed Name: Bill Childers  
Title: Vice President

ACKNOWLEDGMENT

STATE OF TEXAS §  
COUNTY OF Collin §

This instrument was acknowledged before me this 14th day of December, 2011 by Bill Childers [name of officer], Vice President [title of officer] of Washington Federal Savings, on behalf of said bank.

(Seal)



Carla Berry  
Notary Public, State of Texas  
My commission expires: 9-30-2014

By: Carroll Family Investments, Ltd.  
A Texas Limited Partnership

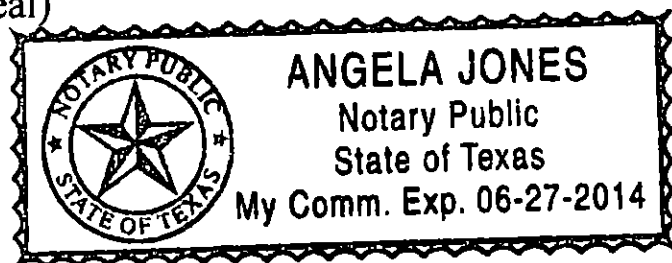
By: [Signature]  
Printed Name: Christopher S. Carroll  
Title: Manager

ACKNOWLEDGMENT

STATE OF TEXAS §  
COUNTY OF DENTON §

This instrument was acknowledged before me this 8 day of December, 2011 by Christopher S. Carroll [name of officer], Manager [title of officer] of Carroll Family Investments, Ltd., a Texas Limited Partnership, on behalf of said partnership.

(Seal)



Angela Jones  
Notary Public, State of Texas  
My commission expires: 6-27-14

Exhibit "A"

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: [YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.]**

**PUBLIC DRAINAGE EASEMENT**

**THE STATE OF TEXAS  
COUNTY OF DENTON**

**§  
§  
§**

**KNOW ALL MEN BY THESE PRESENTS:**

THAT Washington Federal Savings, a federally chartered savings and loan association (Grantor) in consideration of the sum of ONE DOLLAR and NO CENTS (\$1.00) and other good and valuable consideration in hand paid by the City of Denton, Texas, (Grantee), receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by Grantor and situated in Denton County, Texas, in the M.E.P. & P.R.R. Survey, Abstract No. 950.

**PROPERTY AREA DESCRIBED IN EXHIBIT "A"**

**AND ILLUSTRATED IN EXHIBIT "B"**

**ALL ATTACHED HERETO AND MADE A PART HEREOF**

And it is further agreed that the City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public drainage in, along, upon and across said premises, with the right and privilege at all times of the Grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public facilities or any part thereof.

STATE OF TEXAS :

2114

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON :

THAT WE, G. A. Godfrey and wife Sue R. Godfrey, of Denton County, Texas, for and in consideration of the sum of One Dollar cash in hand paid and other good and valuable consideration including the right to connect service lines to the hereinafter described water pipe line without payment of the linear frontage foot charge provided by City of Denton Ordinance No. 56-06, have GRANTED AND CONVEYED and by these presents do GRANT AND CONVEY unto the said City of Denton, Texas, its successors and assigns, and the public, for a water pipe line together with a perpetual easement thereon for the benefit of the said City of Denton, Texas, its successors and assigns, and to its agents, officers and employees, perpetually for said water pipe line, the right to construct, reconstruct and perpetually maintain said water pipe line in, upon and across the following described property and to the said City of Denton, we hereby give the free and uninterrupted right of ingress, regress and egress of said water pipe line, said tract being more particularly described as follows:

Being a part of a tract of land out of the M.E.P. and P.R.R. Co. Survey, Abstract No. 950 as conveyed by Harold L. Goodman and wife Tillie L. Goodman and C. P. Smith and wife Gwendolyn Smith to G. A. Godfrey and wife Sue R. Godfrey by deed recorded in Volume 429, Page 501 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the intersection of the east line of the G. A. Godfrey tract and the south right-of-way of U. S. Highway No. 77 at approximate Highway Station 1044 + 55, said beginning point being the northeast corner of a tract of the G. A. Godfrey property bordered on the north by U. S. Highway 77 and on the east by a county road;

THENCE south with the west line of said county road and the east line of the G. A. Godfrey tract a distance of 193 feet, more or less, to a point for a corner;

THENCE west 20 feet. more or less. to a point for a corner:



THENCE north parallel to and 20 feet from the west line of said county road and the east line of the G. A. Godfrey tract a distance of 193 feet, more or less, to a point for a corner in the south right-of-way of Highway 77;

THENCE in an easterly direction with the south right-of-way of U. S. Highway 77 and the north line of the G. A. Godfrey tract a distance of 20 feet, more or less, to the place of beginning.

This easement contains a strip of land 20 feet wide and approximately 193 feet long lying along and adjacent to the west line of a county road.

TO HAVE AND TO HOLD the same perpetually to the City of Denton, Texas, and the public, and to its successors and assigns, together with the right and privilege at any and all times to enter said premises for the purpose of constructing, reconstructing and maintaining said water pipe line.

WITNESS OUR HANDS this 26 day of March A.D. 1959.

G. A. Godfrey  
Sue R. Godfrey Sue R. Godfrey

\*\*\*\*\*

STATE OF TEXAS :

COUNTY OF DENTON :

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared G. A. Godfrey and Sue R. Godfrey, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Sue R. Godfrey, wife of the said G. A. Godfrey, having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Sue R. Godfrey, acknowledged such instrument to be her act and deed, and she x declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 26 day of March A.D. 1959.



W. D. Buttrill  
 Notary Public in and for  
 Denton County, Texas

FILED FOR RECORD: 27 day of March A.D. 1959 at 4:00 o'clock P. M.  
 RECORDED: 8 day of April A.D. 1959 at 9:10 o'clock A. M.  
 By: \_\_\_\_\_ Deputy A.J. Barnett, Clerk County Court,  
 Denton County, Texas

6232

THE STATE OF TEXAS :

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON :

THAT the Foxworth-Galbraith Lumber Company, a corporation, acting through its president, J. L. Foxworth, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration the receipt of which is hereby fully confessed and acknowledged, and the further consideration of the agreement by Grantee to install in the water line constructed in the hereinafter described tract of land one (1)-two (2) inch water tap at such location as may be designated by Grantor without any cost or expense to Grantor, with the understanding,

by and between Grantor and Grantee that a part of the consideration for the granting of this easement is the agreement by Grantee that the Grantor shall have the right to receive water service from the line hereinafter described for the same rates charged like users within the City Limits of the City of Denton, Texas, does hereby GIVE and GRANT to the said City of Denton, Texas, its successors and assigns, the free and uninterrupted use, liberty, and right in, upon and across the following described property for the purpose of constructing, reconstructing and perpetually maintaining a water line in, upon and across a tract of land lying and being situated in the County of Denton, State of Texas, and more particularly described as follows:

BEGINNING at a point in the Northeasterly line of a tract of land out of the MEP & PRR Co., Survey, Abstract No. 950, as conveyed to Foxworth-Galbraith Lumber Co., a corporation, by H. Edward Smith and wife Mary Frances Smith, and recorded in Volume 474, Page 491 of the Deed Records of Denton County,

Texas; said beginning point also being in the Southwesterly right-of-way line of Interstate Highway 35E; said beginning point also being 654.7 feet North 49 degrees 57 minutes West from the most Easterly Northeast corner of the Foxworth-Galbraith Lumber Co. tract;

THENCE South 2 degrees 49 minutes West and passing at 488.36 feet an inner ell corner of the Foxworth-Galbraith Lumber Co. tract and continuing with the East line of said Foxworth-Galbraith tract for a total distance of 2,173.3 feet to a point for a corner in an existing fence line;

THENCE North 87 degrees 11 minutes West a distance of 20 feet to a point for a corner;

THENCE North 2 degrees 49 minutes East a distance of 2,190.0 feet to a point for a corner in the Southwesterly right-of-way of said Highway 35E;

THENCE South 49 degrees 57 minutes East with the Southwesterly right-of-way line of said Highway 35E a distance of 25.6 feet more or less to the place of beginning

TO HAVE AND TO HOLD the same perpetually to the City of Denton, Texas, and its successors, together with the right and privilege at any and all times to enter said premises for the purpose of constructing, reconstructing and perpetually maintaining said water line and for making connections therewith.

IN WITNESS WHEREOF, the said corporation has caused these presents to be signed by its duly authorized officer and to be sealed with the Seal of the Corporation.

VOL 496 PAGE 564

FOXWORTH-GALBRAITH LUMBER COMPANY

By

President

ATTEST:

Secretary

THE STATE OF TEXAS :

COUNTY OF DALLAS :

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared J. L. Foxworth, President, Foxworth-Galbraith Lumber Company, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Foxworth-Galbraith Lumber Company, a corporation, and that he executed the same as the act of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

WITNESS MY HAND AND SEAL OF OFFICE this 16th day of July, A.D. 1963.

Ann Harrison

ANN HARRISON

Notary Public in and for  
Dallas County, Texas

FILED FOR RECORD: 17 day of July A.D. 1963 at 10:15 o'clock A.M.  
 RECORDED: 24 day of July A.D. 1963 at 7:45 o'clock P.M.  
 By: Florence McLeod Deputy Theta Parker, Clerk County Court,  
 Denton County, Texas

CC-216-EASEMENT

EVOL 1011 PAGE 270

**THE STATE OF TEXAS, }**  
**COUNTY OF DENTON**

**KNOW ALL MEN BY THESE PRESENTS:**  
**REAL PROPERTY RECORDS 5582**

THAT DIMENSION - UNICORN LAKE ASSOCIATES, LTD

of DALLAS COUNTY, TEXAS

, in consideration of the sum of

One dollar (\$1.00) and no cents----- and other good and valuable consideration

in hand paid by the City of Denton, Texas receipt of which is hereby acknowledged, do by

these presents grant, bargain, sell and convey unto to the City of Denton, Texas , the free

and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property,

owned by it . Situated in Denton County, Texas, in the

M.E.P. & P.R.R. Co. Survey, Abstract No. 950

ALL that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being part of the M.E.P. & P.R.R. Co. survey, Abst. No. 950, and also being part of a tract of land as conveyed from Foxworth-Galbraith Lumber Co. to Dimension-Unicorn Lake Associates, Ltd. by deed dated June 29, 1984 and recorded in Volume 1434, Page 111 of the Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at the northeast corner of said tract, said point lying in the southwest right-of-way line of I. H. 35 E., said point also being the northerly corner of a tract conveyed to Josten's Inc. by deed recorded in Volume 571 Page 39 of the deed records of Denton County, Texas;

THENCE south 38° 23' 25" West, along a northerly east boundary line of said tract, same being the west boundary line of said Josten's tract, a distance of 10.01 feet to a point for a corner;

THENCE north 49° 57' West, a distance of 247.39' feet to a point for a corner, said point lying in the east boundary line of an easement granted to the City of Denton by Foxworth-Galbraith Lumber Co. recorded in Volume 496 Page 562 of the deed records of Denton County, Texas;

THENCE north 2° 49' East, along the east boundary line of said easement, a distance of 12.55 feet to a point for a corner in the northeast boundary line of said tract, same being the southwest right-of-way line of I. H. 35 E.;

THENCE south 49° 57' East, along said lines a distance of 254.7 feet to the place of beginning.

And it is further agreed that the said City of Denton, Texas

in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, installing, repairing and perpetually maintaining public utilities in, along, upon and

across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said public utilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness hand , this the

day of , A.D. 19

DIMENSION-UNICORN LAKE ASSOCIATES, LTD  
BY: DIMENSION-DEVELOPMENT COMPANY, INC.,  
Managing Partner

By: *Michael L. Neary*  
Michael L. Neary, President

(VOL. 1811 PAGE 476

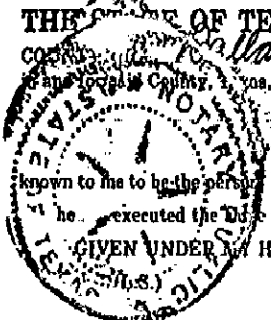
ACKNOWLEDGMENT

THE STATE OF TEXAS,

County of Denton, Texas, on this day personally appeared

BEFORE ME, the undersigned authority,

Michael L. Neary



known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 23<sup>rd</sup> day of January, A.D. 19 84

Notary Public, Kathy Martin, Notary Public, Denton County, Texas  
My Commission Expires 11/5/88

ACKNOWLEDGMENT

THE STATE OF TEXAS,

COUNTY OF

in and for said County, Texas, on this day personally appeared

BEFORE ME, the undersigned authority,

known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_

(L.S.)

Notary Public, \_\_\_\_\_ County, Texas  
My Commission Expires \_\_\_\_\_

CORPORATION ACKNOWLEDGMENT

THE STATE OF TEXAS,

COUNTY OF

in and for said County, Texas, on this day personally appeared

BEFORE ME, the undersigned authority,

known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said

a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_

record in my office on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and duly recorded this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., in the

Records of said County, in Volume \_\_\_\_\_, on pages \_\_\_\_\_

WITNESS MY HAND AND SEAL OF THE COUNTY COURT of said County, at office in \_\_\_\_\_, the day and year last above written.

(L.S.)

County Clerk \_\_\_\_\_ County, Texas.  
By \_\_\_\_\_ Deputy.

D/5  
Chg. City  
of Denton  
(Power Dept)

No. 5582

EASEMENT

FROM  
DIMENSION-UNICORN LAKE ASSOCIATES, LTD.

TO  
CITY OF DENTON, TEXAS

FILED  
FOR RECORD  
this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_

County Clerk \_\_\_\_\_ Co., Texas  
By \_\_\_\_\_ Deputy.

A.D. 19 \_\_\_\_\_

County Records,  
Book \_\_\_\_\_, Page \_\_\_\_\_

County Clerk \_\_\_\_\_

Deputy \_\_\_\_\_

Recording Fee \$ \_\_\_\_\_

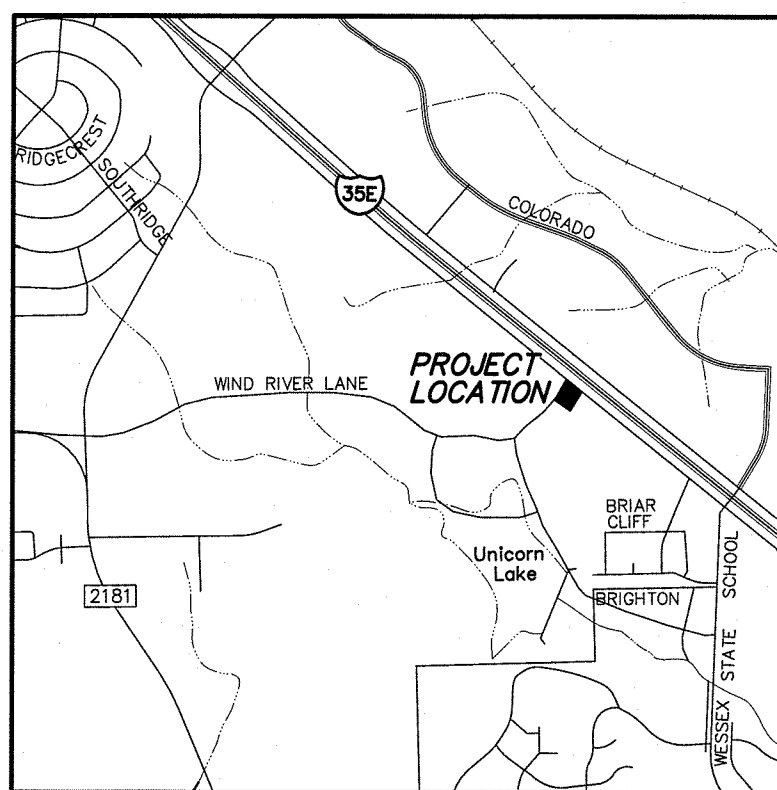
This instrument should be filed immediately with the County Clerk for record.

MAINTIN Stationary Co., Dallas

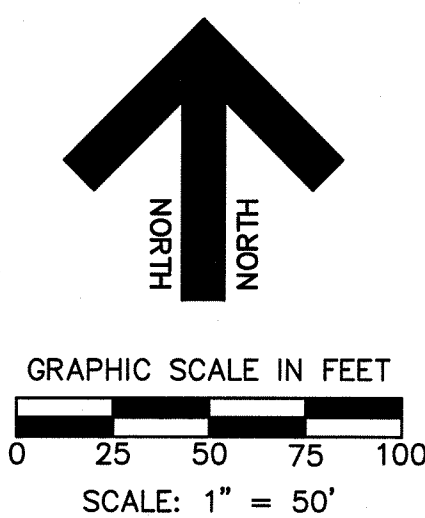
Buyer's Name  
City of Denton  
215 S. Mainway 14  
D. 17. 9. 84

FILED FOR RECORD 29<sup>th</sup> DAY OF January, A.D. 1986, at 3:35 P.  
RECORDED 29<sup>th</sup> DAY OF January, A.D. 1986.  
MARY JO HILL, COUNTY CLERK, DENTON COUNTY, TEXAS.  
BY: Theresa Williams DEPUTY.

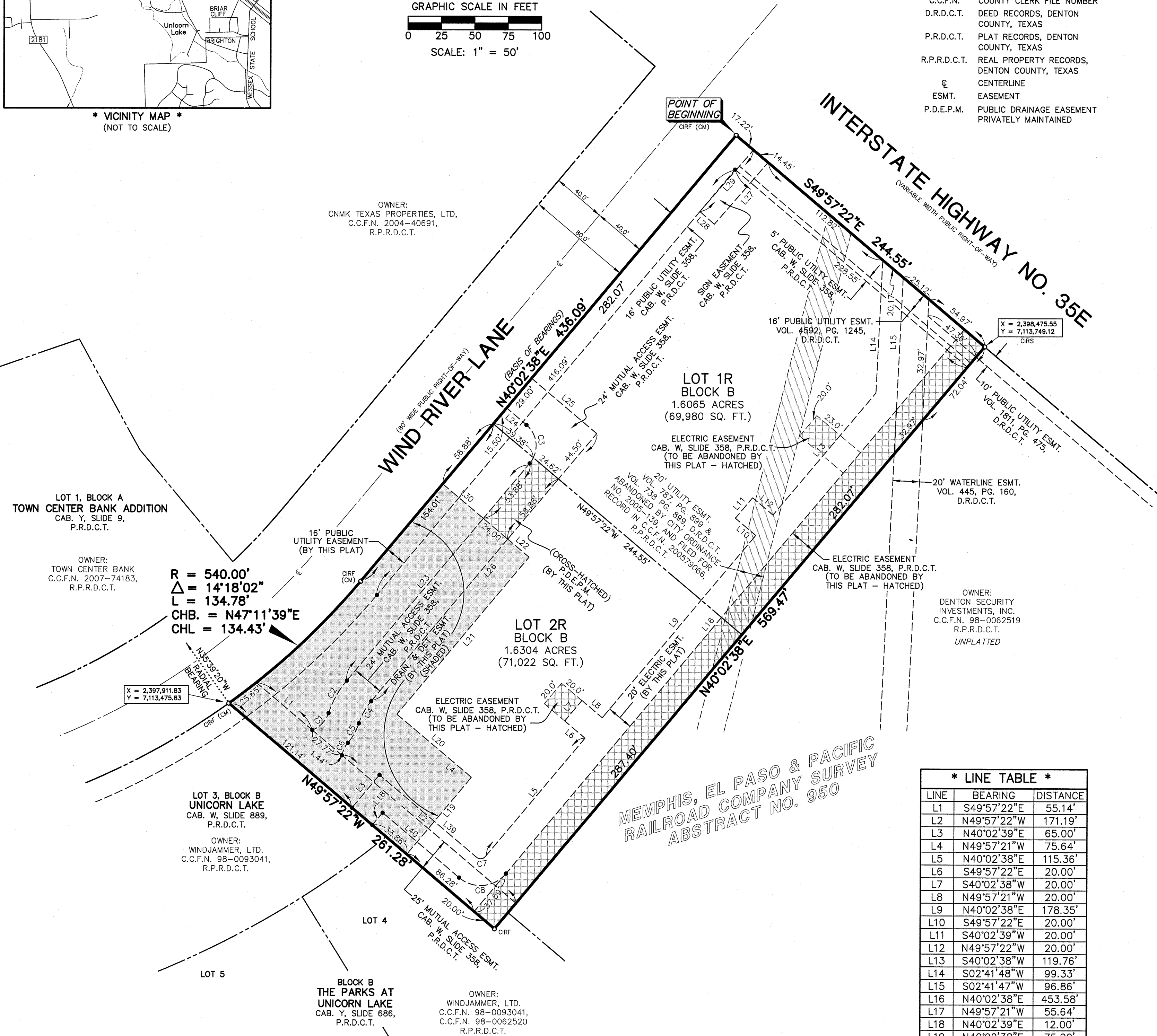




\* VICINITY MAP \*  
(NOT TO SCALE)



* LEGEND *	
CIRS	5/8 INCH IRON ROD SET WITH CAP STAMPED "JDJR"
CIRF	5/8 INCH IRON ROD FOUND WITH CAP STAMPED "JDJR" UNLESS OTHERWISE SHOWN
(CM)	CONTROLLING MONUMENT
CAB.	CABINET
C.C.F.N.	COUNTY CLERK FILE NUMBER
D.R.D.C.T.	DEED RECORDS, DENTON COUNTY, TEXAS
P.R.D.C.T.	PLAT RECORDS, DENTON COUNTY, TEXAS
R.P.R.D.C.T.	REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS
©	CENTERLINE
ESMT.	EASEMENT
P.D.E.P.M.	PUBLIC DRAINAGE EASEMENT PRIVATELY MAINTAINED



* CURVE TABLE *					
CURVE	RADIUS	DELTA	LENGTH	CH. BEARING	CH. LENGTH
C1	20.50'	50°59'05"	18.24'	N43°44'53"E	17.65'
C2	74.00'	21°47'17"	28.14'	N29°08'59"W	27.97'
C3	20.50'	90°00'00"	32.20'	N04°57'22"W	28.99'
C4	50.00'	21°47'17"	19.01'	S29°08'59"W	18.90'
C5	44.50'	21°47'17"	16.92'	S29°08'59"W	16.82'
C6	20.50'	29°11'47"	10.45'	S25°26'44"W	10.33'
C7	5.00'	90°29'08"	7.90'	N84°48'05"W	7.10'
C8	25.00'	90°13'02"	39.36'	S84°56'08"W	35.42'

* LINE TABLE *		
LINE	BEARING	DISTANCE
L1	S49°57'22"E	55.14'
L2	N49°57'22"W	171.19'
L3	N40°02'39"E	65.00'
L4	N49°57'21"W	75.64'
L5	N40°02'38"E	115.36'
L6	S49°57'22"E	20.00'
L7	S40°02'38"W	20.00'
L8	N49°57'21"W	20.00'
L9	N40°02'38"E	178.35'
L10	S49°57'22"E	20.00'
L11	S40°02'39"W	20.00'
L12	N49°57'22"W	20.00'
L13	S40°02'38"W	119.76'
L14	S02°41'48"W	99.33'
L15	S02°41'47"W	96.86'
L16	N40°02'38"E	453.58'
L17	N49°57'21"W	55.64'
L18	N40°02'39"E	12.00'
L19	N40°02'38"E	75.00'
L20	N49°57'22"W	73.27'
L21	N40°02'38"E	153.52'
L22	N49°57'22"W	21.00'
L23	N40°02'38"E	212.32'
L24	N49°57'22"W	19.50'
L25	N49°57'22"W	64.00'
L26	N40°02'38"E	261.82'
L27	N40°59'59"E	61.33'
L28	S49°00'01"E	14.45'
L29	S40°59'59"W	61.09'
L30	N49°57'22"W	40.00'
L31	S49°57'21"E	43.19'
L32	N85°02'38"E	6.81'
L33	N40°02'39"E	90.63'
L34	N85°02'38"E	24.58'
L35	S04°57'22"E	16.00'
L36	S85°02'38"W	17.95'
L37	S40°02'38"W	104.82'
L38	N49°57'21"W	64.00'
L39	S49°57'21"E	95.14'
L40	N49°57'21"W	75.14'

\* OWNER'S CERTIFICATION \*

STATE OF TEXAS §  
COUNTY OF DENTON §

WHEREAS CARROLL FAMILY INVESTMENTS, LTD. is the sole owner of a lot, tract or parcel of land located in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being all of Lots 1 and 2, Block B, Unicorn Lake, an addition to the City of Denton, Denton County, Texas, as shown on the plat filed for record in Cabinet W, Slide 358, Plat Records, Denton County, Texas (P.R.D.C.T.), and being all of those certain tracts of land described in the deeds to Carroll Family Investments, Ltd. filed for record under the County Clerk's File No. 2005-80812 and County Clerk's File No. 2005-80814, Official Public Records, Denton County, Texas (O.P.R.D.C.T.), and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found with a cap stamped "JDJR" (Controlling Monument, and herein after referred to as an iron rod found) at the intersection of the southeasterly right-of-way line of Wind River Lane (an 80 foot wide public right-of-way) and the southwesterly right-of-way line of Interstate Highway No. 35E;

THENCE South 49° 57' 22" East, along the southwesterly right-of-way line of said Interstate Highway No. 35E, a distance of 244.55 feet, to a 5/8 inch iron rod set with a cap stamped "JDJR" at the most easterly corner of the aforementioned Lot 1, and being at the most northerly corner of that certain tract of land described in the deed to Denton Security Investments, Inc., filed for record under the County Clerk's File No. 98-0062519, O.P.R.D.C.T.;

THENCE South 40° 02' 38" East, departing said southwesterly right-of-way line and along the most northerly southeasterly line of Unicorn Lake, a distance of 569.47 feet, to an iron rod found at the south corner of the aforementioned Lot 2 Block B of Unicorn Lake, and being at an ell corner in the northeasterly line of Lot 4, Block B, The Parks at Unicorn Lake, an addition to the City of Denton, Denton County, Texas, according to the plat filed for record in Cabinet Y, Slide 686, P.R.D.C.T.;

THENCE North 49° 57' 22" West, along the common line of said Lot 2 and said Lot 4, at 106.54 feet passing a 5/8 inch iron rod found at the most northerly corner of said Lot 4 and the east corner of Lot 3, Block B, Unicorn Lake, an addition to the City of Denton, Denton County, Texas, according to the plat filed for record in Cabinet W, Slide 889, P.R.D.C.T., and continuing along the common line of said Lots 2 and 3, in all a distance of 261.28 feet, to an iron rod found (Controlling Monument) on the southeasterly right-of-way line of the aforementioned Wind River Lane, and being on a curve to the right whose center bears North 35° 39' 20" West, a distance of 540.00 feet;

THENCE along the southeasterly right-of-way line of said Wind River Lane and in a northeasterly direction with said curve to the right, through a central angle of 14° 18' 02", an arc length of 134.78, to an iron rod found (Controlling Monument);

THENCE North 40° 02' 38" East (Basis of Bearings), continuing along said southeasterly right-of-way line, a distance of 436.09 feet, to the POINT OF BEGINNING and containing 3.2369 acres (140,002 square feet) of land, more or less.

\* OWNER'S DEDICATION \*

NOW, THEREFORE, know all men by these present that Carroll Family Investments, Ltd., acting herein and through its duly authorized officers, does hereby adopt this plat designating the hereinabove described property as Unicorn Lake, Lots 1R and 2R, Block B, an addition to the City of Denton, Texas, and does hereby dedicated to the public use forever the streets thereon; and does hereby dedicated the easement strips shown on the plat for mutual use and accommodation of all public utilities desiring to use, or using same, no buildings, fences, trees, shrubs, or other improvements shall be constructed or placed upon, over or across, the easement strips on said plat. Any public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs, or other improvements or growths, which in any way endanger or interfere with the construction, maintenance, or efficiency of its respective system without the necessity at any time of procuring the permission of anyone.

This plat is hereby adopted by the owner and approved by the City of Denton (called "City") subject to the following conditions that shall be binding upon the owners, their heirs, grantees, and successors. The Drainage and Detention Easement within the limits of this addition, shall remain open at all times and will be maintained in a safe and sanitary condition by the owners of the lot or lots that are traversed by or adjacent to the Drainage and Detention Easement. The City will not be responsible for the maintenance and operation of said easement or for any damage to private property or person that results from conditions in the easement, or for the control of erosion. No obstruction to the natural flow of storm water run-off shall be permitted by construction of any type of building, fence, or any other structures within the Drainage and Detention Easement, as herein above defined, unless approved by the City. The owners shall keep the drainage and detention easement clear and free of debris, silt, and any substance that would result in unsanitary conditions or obstruct the flow of water. And, the City shall have the right of ingress and egress for the purpose of inspection and supervision of maintenance by the owners to alleviate any undesirable conditions that may occur. Furthermore, the City shall have the right, but not the obligation, to enter upon the above-described drainage and detention easement to remove any obstruction to the flow of water, after giving the owners written notice of such obstruction and owners fail to remove such obstruction. Should the City of Denton be compelled to remove any obstruction to the flow of water, after giving the owners written notice of such obstruction and the owners fail to remove such obstruction, the City of Denton shall be reimbursed by the owners reasonable costs for labor, materials, and equipment for each instance. The natural drainage through the Drainage and Detention Easement is subject to storm water overflow and natural bank erosion to an extent that cannot be definitely defined. The City shall not be held liable for any damages of any nature resulting from the occurrence of these natural phenomena or resulting from the failure of any structure or structures, within the easement or otherwise.

WITNESS MY HAND THIS 14 day of July, 2011.

CARROLL FAMILY INVESTMENTS, LTD.

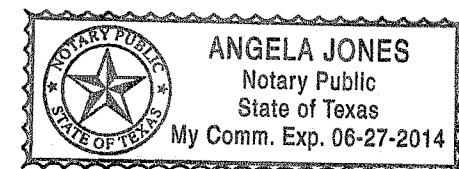
*Christopher S. Carroll*  
Christopher S. Carroll

STATE OF TEXAS §  
COUNTY OF TARRANT §

BEFORE ME, the undersigned, a Notary Public in and for The State of Texas, on this day personally appeared Christopher S. Carroll, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14 day of July, 2011.

*Angela Jones*  
Notary Public, State of Texas



OWNER/DEVELOPER:  
CARROLL FAMILY INVESTMENTS, LTD.  
2340 WEST INTERSTATE 20  
ARLINGTON, TEXAS 76017  
PHONE: (817) 467-0505  
CONTACT: CHRISTOPHER CARROLL

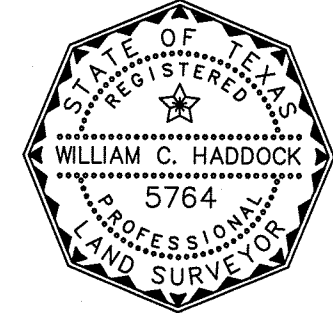
\* SURVEYOR'S STATEMENT \*

KNOWN ALL MEN BY THESE PRESENTS:

THAT I, William C. Haddock, do hereby certify that I prepared this plat and the field notes made a part thereof from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the Subdivision regulations of the City of Denton, Texas.

Dated this the 14th day of July, 2011.

*William C. Haddock*  
William C. Haddock  
Registered Professional Land Surveyor  
Texas Registration No. 5764

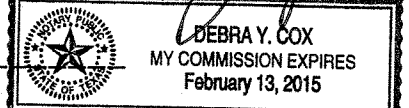


STATE OF TEXAS §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for The State of Texas, on this day personally appeared William C. Haddock, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14th day of July, 2011.

*James Y. Cox*  
Notary Public, State of Texas

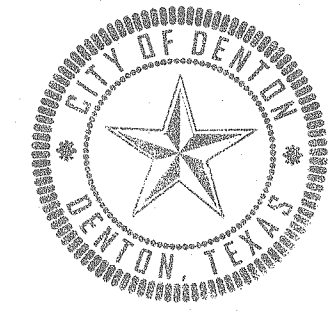


\* CERTIFICATE OF APPROVAL \*

Approved this 14th day of July, 2011, by the Development Review Committee.

*POC*  
Committee Chairperson

*Janet Richardson, Asst.*  
Jennifer Walters, City Secretary



\* GENERAL NOTES \*

- The bearings shown hereon are based on the found monumentation of the easterly right-of-way line of Wind River Lane, as shown on the plat filed for record in Cabinet W, Slide 358, Plat Records, Denton County, Texas. (Called Bearing = North 40° 02' 38" East)
- According to the Flood Insurance Rate Map published by the Federal Emergency Management Agency, Department of Homeland Security, the subject property appears to be located in Zone "X" (areas determined to be outside the 500-Year Flood Plain), as shown on Map No. 48121C0386 E. Map Revised: April 2, 1997, for Denton County, Texas and incorporated areas. This flood statement does not imply that the property and/or the structures located in Zone "X" will be free from flooding or flood damage. This flood statement shall not create liability on the part of the surveyor.
- The minimum finished floor elevations shall be provided when a building permit application is submitted. The minimum finished floor elevations shall be based on the current FEMA data. The minimum finished floor elevations shall be stated as mean sea level rather than relative based on city of Denton Datum or N.G.S. 1983 datum.
- Selling a portion of this addition by metes and bounds is a violation of city ordinance and state law and is subject to fines and withholding of utilities and building permits.
- Lot 2R is undevelopable until on-site drainage is addressed in accordance with the Denton Development Code.

THE PURPOSE OF THIS AMENDED PLAT IS TO ADD AND ABANDON EASEMENTS

CITY FILE NO. AFP11-0002

AMENDED PLAT

UNICORN LAKE

LOTS 1R AND 2R, BLOCK B

2 LOTS - 3.2369 ACRES

BEING A REPLAT OF LOTS 1 AND 2, BLOCK B, UNICORN LAKE, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS, AND BEING LOCATED IN THE MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY SURVEY, ABSTRACT NO. 950

JULY - 2011

SHEET 1 OF 1

Filed for Record  
in the official records of:  
Denton County  
On: Jul 26/2011 at 04:02P  
As a  
Plat Records  
UNICORN LAKE  
Doc Number: 2011- 142  
No of Pages: 1  
Amount 50.00  
Receipt Number - 813327  
B91  
Jane Harris

JDJR FILE NO.: 103-30-04

JDJR ENGINEERS AND CONSULTANTS, INC.

ENGINEERS • SURVEYORS • LAND PLANNERS

2500 Texas Drive Suite 100 Irving, Texas 75062  
Tel 972-252-5357 (JDJR) Fax 972-252-8958



**STEVE MOSSMAN**DENTON COUNTY TAX ASSESSOR/COLLECTOR  
P O BOX 90223  
DENTON, TX 76202  
(940) 349-3500**Tax Certificate**

Property Account Number:

**282710DEN**

Statement Date: 07/15/2011

Owner: CARROLL FAMILY INVESTMENTS

Mailing Address: LTD

2340 I-20 W STE 100

Property Location: 0000000 WIND RIVER LN

Legal: UNICORN LAKE BLK B LOT  
2TAX CERTIFICATE FOR ACCOUNT : 282710DEN  
AD NUMBER: SD2442A-00000B-0000-0002-0000  
GF NUMBER:  
CERTIFICATE NO : 1700450

DATE : 7/15/2011

PAGE 1 OF 1

FEE : \$10.00

**PROPERTY DESCRIPTION**

UNICORN LAKE BLK B LOT 2

**COLLECTING AGENCY**Denton County  
P O BOX 90223  
DENTON TX 762020000000 WIND RIVER LN  
1.63 ACRES**REQUESTED BY**

CARROLL FAMILY INVESTMENTS LTD

2340 I-20 W STE 100  
ARLINGTON TX 76017-7601**PROPERTY OWNER**

CARROLL FAMILY INVESTMENTS LTD

2340 I-20 W STE 100  
ARLINGTON TX 76017-7601THIS IS TO CERTIFY THAT, AFTER A CAREFUL CHECK OF THE RECORDS OF THE DENTON COUNTY TAX OFFICE,  
THE FOLLOWING DELINQUENT TAXES, PENALTIES, AND INTEREST ARE DUE ON THE DESCRIBED PROPERTY.THE ABOVE DESCRIBED PROPERTY TAX HAS/IS RECEIVING SPECIAL APPRAISAL BASED ON ITS USE, AND  
ADDITIONAL ROLLBACK TAXES MAY BECOME DUE BASED ON THE PROVISIONS OF THE SPECIAL APPRAISAL. (IF  
APPLICABLE).TAXES FOR 2011 HAVE NOT BEEN CALCULATED**CURRENT VALUES**LAND MKT VALUE: 454,419  
AG LAND VALUE: 0  
APPRAISED VALUE: 454,419  
EXEMPTIONS:  
LAWSUITS:IMPROVEMENT: 0  
DEF HOMESTEAD: 0  
LIMITED VALUE: 0

YEAR	TAX UNIT	LEVY	PEN	INT	DEF INT	ATTY	AMOUNT DUE
2010	CITY OF DENTON	0.00	0.00	0.00	0.00	0.00	0.00
2010	DENTON COUNTY	0.00	0.00	0.00	0.00	0.00	0.00
2010	DENTON IND SCH DIST	0.00	0.00	0.00	0.00	0.00	0.00
2010 SUB TOTAL							\$0.00

TOTAL CERTIFIED TAX DUE 7/2011 : \$ 0.00

ISSUED TO: CARROLL FAMILY INVESTMENTS  
ACCOUNT NUMBER: 282710DEN

CERTIFIED BY:

City of Denton

Design

901-A Texas Street  
Denton, Texas 76209

AUTHORIZED AGENT OF DENTON COUNTY

Filed for Record  
in the official records of:  
Denton County

On: Jul 26, 2011 at 04:02P

As a  
Flat RecordsUNICORN LAKE  
Doc Number: 2011- 142  
No of Pages: 1  
Amount 50.00

Receipt Number - 813327

By,  
Jane Morris

1924

**STEVE MOSSMAN**

DENTON COUNTY TAX ASSESSOR/COLLECTOR  
P O BOX 90223  
DENTON, TX 76202  
(940) 349-3500

**Tax Certificate**

Property Account Number:

**282709DEN**

Statement Date: 07/15/2011

Owner: CARROLL FAMILY INVESTMENTS

Mailing Address: LTD

2340 I-20 W STE 100

Property Location: 0000000 WIND RIVER LN

Legal: UNICORN LAKE BLK B LOT  
1

TAX CERTIFICATE FOR ACCOUNT : 282709DEN  
AD NUMBER: SD2442A-00000B-0000-0001-0000  
GF NUMBER:  
CERTIFICATE NO : 1700449

DATE : 7/15/2011

PAGE 1 OF 1

FEE : \$10.00

**PROPERTY DESCRIPTION**

UNICORN LAKE BLK B LOT 1

**COLLECTING AGENCY**

Denton County  
P O BOX 90223  
DENTON TX 76202

0000000 WIND RIVER LN  
1.584 ACRES

**REQUESTED BY**

CARROLL FAMILY INVESTMENTS LTD

2340 I-20 W STE 100  
ARLINGTON TX 76017-7601

**PROPERTY OWNER**

CARROLL FAMILY INVESTMENTS LTD

2340 I-20 W STE 100  
ARLINGTON TX 76017-7601

THIS IS TO CERTIFY THAT, AFTER A CAREFUL CHECK OF THE RECORDS OF THE DENTON COUNTY TAX OFFICE,  
THE FOLLOWING DELINQUENT TAXES, PENALTIES, AND INTEREST ARE DUE ON THE DESCRIBED PROPERTY.

THE ABOVE DESCRIBED PROPERTY TAX HAS/IS RECEIVING SPECIAL APPRAISAL BASED ON ITS USE, AND  
ADDITIONAL ROLLBACK TAXES MAY BECOME DUE BASED ON THE PROVISIONS OF THE SPECIAL APPRAISAL. (IF  
APPLICABLE).

TAXES FOR 2011 HAVE NOT BEEN CALCULATED**CURRENT VALUES**

LAND MKT VALUE: 441,594  
AG LAND VALUE: 0  
APPRAISED VALUE: 441,594  
EXEMPTIONS:  
LAWSUITS:

IMPROVEMENT : 0  
DEF HOMESTEAD: 0  
LIMITED VALUE: 0

YEAR	TAX UNIT	LEVY	PEN	INT	DEF INT	ATTY	AMOUNT DUE
2010	CITY OF DENTON	0.00	0.00	0.00	0.00	0.00	0.00
2010	DENTON COUNTY	0.00	0.00	0.00	0.00	0.00	0.00
2010	DENTON IND SCH DIST	0.00	0.00	0.00	0.00	0.00	0.00
2010 SUB TOTAL							\$0.00

TOTAL CERTIFIED TAX DUE 7/2011 : \$ 0.00

ISSUED TO : CARROLL FAMILY INVESTMENTS LTD  
ACCOUNT NUMBER: 282709DEN

CERTIFIED BY: [Signature]  
AUTHORIZED AGENT OF DENTON COUNTY

City of Denton  
Design  
901-A Texas Street  
Denton, Texas 76209

Filed for Record  
in the official records of:  
Denton County

On: Jul 26, 2011 at 04:02P  
As a

Plat Records  
UNICORN LAKE  
Doc Number: 2011- 142  
No of Pages: 1  
Amount 50.00

Receipt Number - 813327

By,  
Jane Morris

1925

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Denton County  
Cynthia Mitchell  
County Clerk  
Denton, TX 76202



70 2005 00075246

Instrument Number: 2005-75246

Recorded On: June 23, 2005

As  
Plat

Parties: UNICORN LAKE FINAL PLAT

To

Billable Pages: 1

Number of Pages: 4

Comment:

**\*\* Examined and Charged as Follows: \*\***

Plat	43.00
Total Recording:	43.00

\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2005-75246  
Receipt Number: 203899  
Recorded Date/Time: June 23, 2005 10:27A  
  
User / Station P Sallee - Cash Station 4

**Record and Return To:**

CITY OF DENTON  
C/O R FORSYTHE  
601 E HICKORY SUITE B  
DENTON TX 76205



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas

*Cynthia Mitchell*  
County Clerk  
Denton County, Texas

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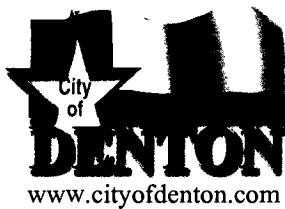


## CYNTHIA MITCHELL

County Clerk

DATE	June 23 2005
CABINET	W
PAGE	358
ADDITION	Unicorn Lake Final Plat
DEVELOPER	Carroll Family Investments Ltd
CITY	Denton
FILING FEE	\$48.00
COMMENTS: INITIALS OF FILING CLERK	PS

AREA MAP: ☒ YES or NO



**CITY OF DENTON  
TAX OFFICE**  
601 E. Hickory, Suite G  
Denton, Texas 76205-4305  
940-349-8318

TAX CERTIFICATE FOR ACCOUNT : R219002  
DATE : 5/16/2005  
FEE : \$10.00  
CERTIFICATE NO : 493739

**REQUESTED BY**  
LONESTAR RECORD

11700 PRESTON RD  
DALLAS TX 75230

AD NUMBER:

GF NUMBER:

**PROPERTY DESCRIPTION**

0000000

A0950A MEP & PRR, TRACT 15A, A  
CRES 121.601

**PROPERTY OWNER**

WINDJAMMER LTD

3300 SUNDOWN BLVD  
DENTON TX 76210

CURRENT VALUES							
LAND MKT VALUE:		3,280,225	IMPROVEMENT		0		
AG LAND VALUE:		0	DEF		0		
APPRAISED VALUE:		3,280,225	LIMITED VALUE:		0		
EXEMPTIONS:							
LAWSUITS:							

YEAR	TAX UNIT	LEVY	PEN	INT	DEF INT	ATTY	AMOUNT DUE
2004	CITY OF DENTON	0.00	0.00	0.00	0.00	0.00	0.00
						2004 SUB TOTAL	\$0.00

**TOTAL CERTIFIED TAX DUE 5/2005 : \$ 0.00**

ISSUED TO : LONESTAR RECORD  
ACCOUNT NUMBER: R219002

  
CERTIFIED BY THE CITY OF DENTON TAX OFFICE



*City of Denton  
Go L. Forsythe  
601 E. Hickory Suite B  
Denton TX 76205*

DATE 05/16/2005

## TAX CERTIFICATE

# 041418

DG

STEVE MOSSMAN, DENTON CO.  
P O BOX 90223  
DENTON, TX 76202  
(940) 349-3500

FEE 10.00

\*\*\*\*\*  
\* PROPERTY DESCRIPTION ACCT # R0219002 \*  
\* \* \* \* \*  
\* A0950A MEP & PRR, TRACT 15A, ACRES 129.42 \*  
\* \* \* \* \*  
\* TOWN - LOCATION- C05 S I35E \*  
\* ACRES - 129.420 \*  
\* \* \* \* \*  
\* LAND MKT VALUE 3280370 IMPR/PERS MKT VALUE \*  
\* LAND AGR VALUE MKT. BEFORE EXEMPTS 3280370 \*  
\* \* \* \* \*  
\* EXEMPTIONS GRANTED: NONE \*  
\* \* \* \* \*

WINDJAMMER LTD  
3300 SUNDOWN BLVD

DENTON TX 76210

I, STEVE MOSSMAN, Tax Assessor/Collector for Denton County do hereby certify and otherwise guarantee that the tax levies, penalties, and attorney fees due in the current month for the above described property are as listed below.

	LEVY	P & I	ATTY FEES	AMT DUE
TAXES 2004	.00	.00	.00	.00
	-----	-----	-----	-----
	.00	.00	.00	.00
				=====
				.00
ACCT # R0219002			TOTAL DUE 05/2005	.00
			TOTAL DUE 06/2005	.00

\*\*\*\*\*  
\* BREAKDOWN OF TAX DUE BY JURISDICTION \*  
\* JURISDICTION TAXES PEN & INT ATTY FEES TOTAL \*  
\* DENTON COUNTY .00 .00 .00 .00 \*  
\* DENTON IND SCH DI .00 .00 .00 .00 \*  
\* (CERTIFICATE MAY NOT INCLUDE ALL TAXING JURISDICTIONS) \*  
\* \* \* \* \*  
\* TAX LEVY FOR THE CURRENT ROLL YEAR: 061 8,358.38 \*  
\* TAX LEVY FOR THE CURRENT ROLL YEAR: S05 61,146.10 \*  
\* TOTAL TAX LEVY FOR THE CURRENT ROLL YEAR ..... 69,504.48 \*  
\* \* \* \* \*

REQUESTED BY:  
LONESTAR RECORD & ABSTRAC

Dana Gardner  
SIGNATURE OF AUTHORIZED OFFICER OF COLLECTING OFFICE

City of Denton  
Co R. Forsythe  
601 E. Hickory Suite B  
Denton, TX 76205

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Lot 1R, Block B, Unicorn Lake, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2011-142 of the Official Public Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at the intersection of the southwest right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) and the southeast right-of-way line of Windriver Lane (80-foot wide right-of-way), and being the north corner of said Lot 1R;

**THENCE** South 39°29'34" West, along the said southeast right-of-way line of Windriver Lane, a distance of 91.44 feet to an aluminum disk stamped "TXDOT" found;

**THENCE** departing the said southeast right-of-way line of Windriver Lane, North 84°36'00" East, a distance of 18.40 feet to the **POINT OF BEGINNING**;

**THENCE** North 84°36'00" East, a distance of 39.60 feet to a point for corner;

**THENCE** South 50°24'19" East, a distance of 90.00 feet to a point for corner;

**THENCE** South 48°21'36" East, a distance of 113.43 feet to a point in the southeast line of said Lot 1R;

**THENCE** South 39°29'17" West, along the said southeast line of Lot 1R, a distance of 28.02 feet to a point for corner; from said point a 5/8-inch iron rod found for the south corner of Lot 2R, in said Block B bears South 39°28'03" West, a distance of 488.81 feet;

**THENCE** departing said southeast line of Lot 1R, North 48°21'36" West, a distance of 113.99 feet to a point for corner;

**THENCE** North 50°24'19" West, a distance of 117.51 feet to the **POINT OF BEGINNING** and containing 6,089 square feet or 0.1398 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER  
 AND ELECTRIC EASEMENT  
 PART OF LOT 1R, BLOCK B, UNICORN LAKE  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

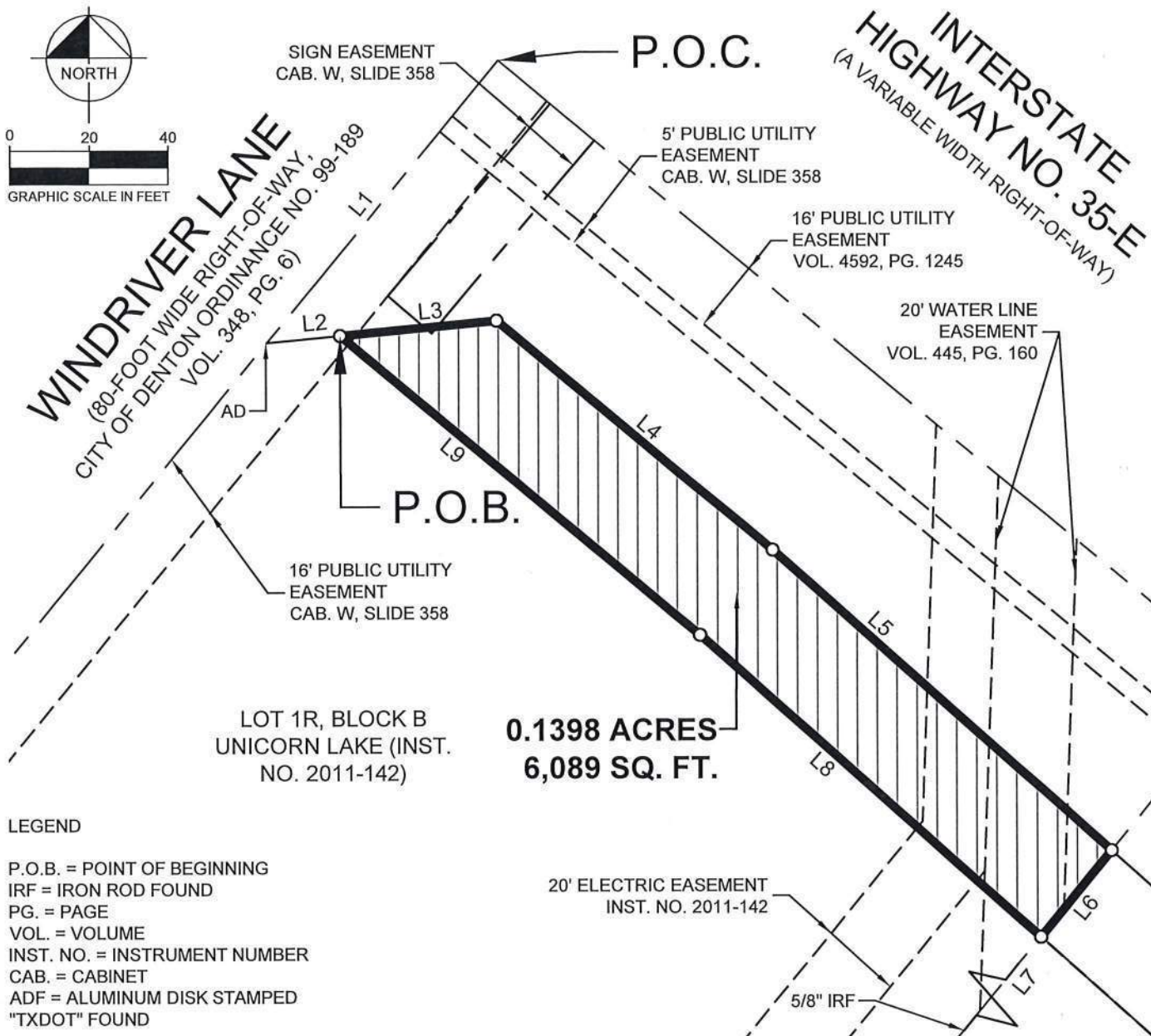
**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	8/25/2020	061024039	1 OF 3



**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley*  
MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



**WATER AND WASTEWATER  
AND ELECTRIC EASEMENT**  
PART OF LOT 1R, BLOCK B, UNICORN LAKE  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	8/25/2020	061024039	2 OF 3

LINE TABLE		
NO.	BEARING	LENGTH
L1	S39°29'34"W	91.44'
L2	N84°36'00"E	18.40'
L3	N84°36'00"E	39.60'
L4	S50°24'19"E	90.00'
L5	S48°21'36"E	113.43'
L6	S39°29'17"W	28.02'
L7	S39°28'03"W	488.81'
L8	N48°21'36"W	113.99'
L9	N50°24'19"W	117.51'

WATER AND WASTEWATER  
AND ELECTRIC EASEMENT  
PART OF LOT 1R, BLOCK B, UNICORN LAKE  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	8/25/2020	061024039	3 OF 3

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 95**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1781+02 LT to Sta 1782+93 LT

Existing Easement

Instrument No. 2015-123

PART OF LOT 1, BLOCK A  
BONE DADDY'S DENTON ADDITION  
MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

## PUBLIC UTILITY EASEMENT

THE STATE OF TEXAS, §  
 COUNTY OF DENTON §

046359

KNOW ALL MEN BY THESE PRESENTS:

That Windjammer, Ltd., (Grantor) in consideration of the sum of ONE DOLLAR AND NO CENTS (\$1.00) and other good and valuable consideration in hand paid by the City of Denton, Texas, (Grantee) receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the City of Denton the free and uninterrupted use, liberty and privilege of passage in, along, upon and across the following described property, owned by Grantor, situated in Denton County, Texas in the M. E. P. & P. R. R. Co. Survey, Abstract No. 950.

## TRACT 1

All that certain lot, tract or parcel of land lying and being situated in the M. E. P. & P. R. Co. Survey, Abstract No. 950, Denton County, Texas, and being part of a tract of land described in a deed to Windjammer, Ltd., dated July 10, 1998, recorded under Clerk's File No. 98-R0093041, Real Property Records, Denton County, Texas, and being more particularly described as follows:

BEGINNING at the north corner of said Windjammer, Ltd., tract, on the southeast right-of-way of I-35 E., same being the east corner of a tract of land described in a deed to Lodge Construction Company, Inc., recorded in Volume 1429, Page 456, Real Property Records, Denton County, Texas;

THENCE South 49° 57' 22" East with the southeast right-of-way of I-35 E., and the southeast line of said Windjammer, Ltd., tract, a distance of 402.40 feet to a point for corner;

THENCE South 40° 02' 38" West with the north right-of-way of Wind River Lane, a distance of 435.95 feet to a point for corner at the beginning of a curve to the right;

THENCE with the north right-of-way of Wind River Lane and said curve to the right, having a central angle of 49° 57' 20", a radius of 460.00 feet, an arc length of 401.07 feet, with a chord that bears South 65° 01' 19" West a distance of 388.48 feet to a point for corner;

THENCE West with the north line of Wind River Lane, a distance of 508.30 feet to a point for corner at the beginning of a curve to the right;

THENCE with the north right-of-way of Wind River Lane and said curve to the right, having a central angle of 41° 24' 25", a radius of 460.00 feet, an arc length of 332.44 feet, with a chord that bears North 69° 17' 47" West a distance of 325.25 feet to a point for corner;

THENCE North 48° 35' 33" West with the north right-of-way of Wind River Lane, a distance of 249.94 feet to a point for corner at the beginning of a curve to the left;

THENCE with the north right-of-way of Wind River Lane and said curve to the left, having a central angle of 10° 19' 54", a radius of 1040.00 feet, an arc length of 187.53 feet, with a chord that bears North 53° 45' 30" West a distance of 187.28 feet to a point for corner on the west line of said Windjammer, Ltd., tract;

THENCE North 00° 36' 46" East with the west line of said Windjammer, Ltd., tract, a distance of 18.51 feet to a point for corner at the beginning of a curve to the right;

THENCE with said curve to right, being 16-foot north of and parallel to the north right-of-way of Wind River Lane, having a central angle of 10° 50' 27", a radius of 1056.00 feet, an arc length of 199.81 feet, with a chord that bears South 54° 00' 47" East a distance of 199.51 feet to a point for corner;

THENCE South 48° 35' 33" East, 16-foot north of and parallel to the north right-of-way of Wind River Lane, a distance of 249.94 feet to a point for corner at the beginning of a curve to the left;

THENCE with said curve to the left, being 16-foot north of and parallel to the north right-of-way of Wind River Lane, having a central angle of 41° 24' 25", a radius of 444.00 feet, an arc length of 320.87 feet, with a chord that bears South 69° 17' 47" East a distance of 313.94 feet to a point for corner;

THENCE East, 16-foot north of and parallel to the north right-of-way of Wind River Lane, a distance of 508.30 feet to a point for corner at the beginning of a curve to the left;

THENCE with said curve to the left, 16-foot north of and parallel to the north right-of-way of Wind River Lane, having a central angle of 49° 57' 20", a radius of 444.00 feet, an arc length of 387.12 feet, with a chord that bears North 65° 01' 19" East a distance of 374.97 feet to a point for corner;

THENCE North 40° 02' 38" East, 16-foot north of and parallel to the north right-of-way of Wind River Lane, a distance of 419.95 feet to a point for corner;

THENCE North 49° 57' 22" West, 16-foot south of and parallel to the southeast right-of-way of I-35 E., a distance of 386.43 feet to a point for corner on the northeast line of said Windjammer, Ltd., tract, same being the southwest line of said Lodge Construction Company, Inc., tract;

THENCE North 40° 08' 36" East, with the northeast line of said Windjammer, Ltd., tract, and the southwest line of said Lodge Construction Company, Inc., tract, a distance of 16.00 feet to the POINT OF BEGINNING and containing in all 0.916 acres.

## TRACT 2

All that certain lot, tract or parcel of land lying and being situated in the M. E. P. & P. R. Survey, Abstract No. 950 in the City and County of Denton, Texas, and being part of a tract of land described in a deed to Windjammer, Ltd., recorded in County Clerk's File No. 98-R093041 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point for corner at the north corner of a tract of land described in a deed to Denton Security Investment, Inc., Replacement Property Irrevocable Trust, as recorded in Clerk's File No. 98-R0062519 of the Real Property Records of Denton County, Texas, said point being on the southeast right-of-way of Interstate Highway 35-E;

THENCE South 40° 02' 38" West with the northwest line of said Denton Security Investment, Inc., Replacement Property Irrevocable Trust tract, a distance of 16.00 feet to a point for corner;

THENCE North 49° 57' 22" West, 16-foot south of and parallel to the southeast line of said Windjammer, Ltd., tract and the southeast right-of-way of Interstate Highway 35-E, a distance of 244.40 feet to a point for corner on the southerly right-of-way of Wind River Lane;

C:\Projects\Wind River DME\CO530\Windjammer easement.doc

THENCE North 40° 02' 38" East with the southerly right-of-way of Wind River Lane, a distance of 16.00 feet to a point for corner at the intersection of the southeast right-of-way of said Interstate Highway 35-E and the north right-of-way of Wind River Lane;

THENCE South 49° 57' 22" East with the southeast line of said Windjammer, Ltd., tract and the southeast right-of-way of Interstate Highway 35-E, a distance of 244.40 feet to the POINT OF BEGINNING and containing in all 0.089 acres of land.

And it is further agreed that the said City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may be now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public utilities in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to said public facilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness my hand, this the 18<sup>th</sup> day of MAY, A.D. 2000.

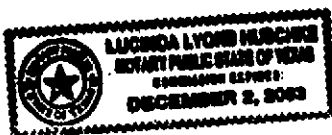
Windjammer, Ltd.

By: [Signature]

Bob Shelton  
General Partner

THE STATE OF TEXAS §  
COUNTY OF DENTON §

This instrument was acknowledged before me on this the 18<sup>th</sup> day of MAY, 2000 by Bob Shelton.



[Signature]  
Notary Public, in and for the State of Texas  
My Commission Expires: 12-02-03

Accepted this 18<sup>th</sup> day of MAY 2000 for the City of Denton, Texas (Resolution No. 91-073).

BY: [Signature]

Paul Williamson  
Right-of-Way Agent

EXHIBIT "A"  
TRACT 1

DARISH M. HEDBAST, MD.  
Vol. 2806 Pp. 287 R.P.R.  
3/7/81

LODGE CONSTRUCTION COMPANY, INC.  
Vol. 1428 Pp. 158 R.P.R.  
6/23/84

M.E.P. & P.R.R. CO. SURVEY

ABSTRACT NO. 950

WINDHAMER, LTD.  
CC# 98-0003041 R.P.R.

WINDHAMER, LTD.  
CC# 98-0003041 R.P.R.

A = 10°19'54"  
R = 1040.00  
L = 187.53  
CH = N 53°45'30" W  
187.28

A = 10°50'27"  
R = 1056.00  
L = 199.81  
CH = S 54°00'47" E  
199.51

A = 41°24'25"  
R = 444.00  
L = 320.87  
CH = S 68°17'47" E  
313.94

A = 41°24'25"  
R = 460.00  
L = 332.44  
CH = N 68°17'47" W  
325.25

A = 49°57'20"  
R = 444.00  
L = 387.12  
CH = N 65°01'19" E  
374.97

A = 49°57'20"  
R = 460.00  
L = 401.07  
CH = S 65°01'19" W  
388.48

WIND RIVER LANE

EAST 508.30  
WEST 508.30

POINT OF  
BEGINNING  
TRACT 1  
N 40°08'36" E  
16.00

35 - E  
(CENTER ROAD)



City of Denton

Engineering & Transportation Department  
Right-of-Way Division

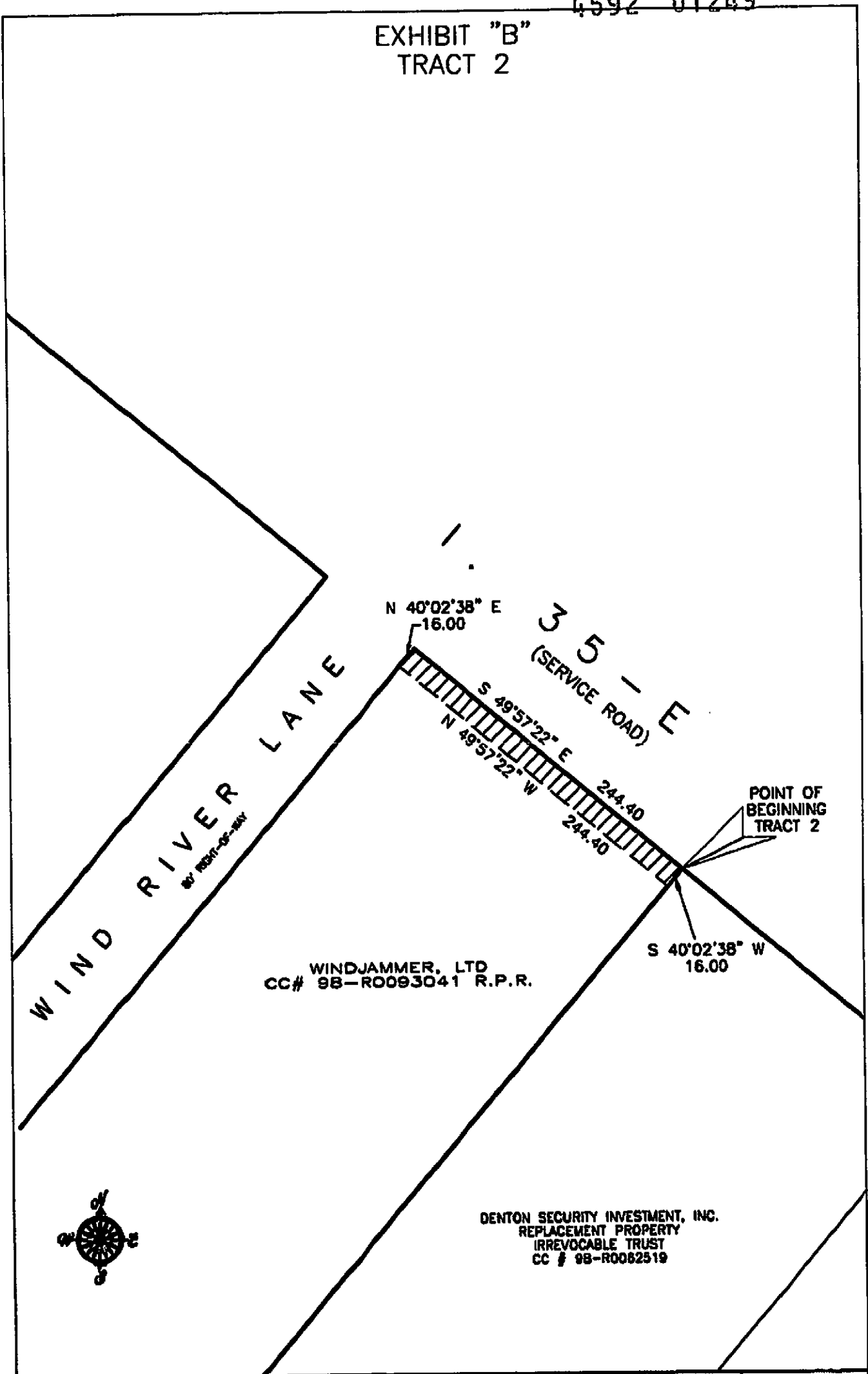
TRACT 1
Chova
WIND RIVER
8/5/00



NON-CERTIFIABLE COPY

4592 01249

EXHIBIT "B"  
TRACT 2



City of Denton  
Engineering & Transportation Department  
Right-of-Way Division

TRACT 2
Chon
WIND RIVER
5/5/00

4592 01250

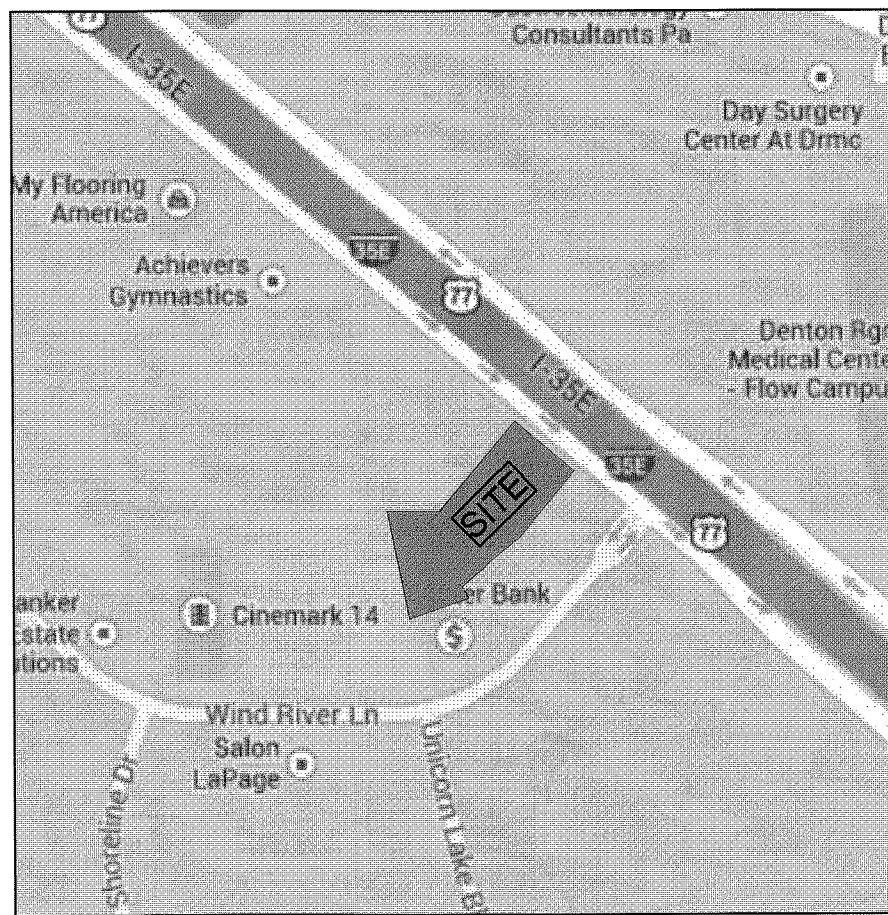
Return to:

City Of Denton  
Engineering & Transportation Dept.  
221 North Elm Street  
Denton, Texas 76201  
Attention: Chrys Owens

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY  
CLERK

On May 18 2000  
At 1:41pm

Doc/Num : 00-R0046359  
Doc/Type : EAS  
Recordings: 13.00  
Doc/Mgmt : 6.00  
Receipt #: 20455  
Deputy - MARY



VICINITY MAP  
NOT TO SCALE

#### GENERAL NOTES:

1. ALL CORNERS ARE MARKED WITH CAPPED 1/2" IRON RODS STAMPED "KAZ" UNLESS OTHERWISE NOTED.

2. NOTE: THE CITY OF DENTON HAS ADOPTED THE NATIONAL ELECTRICAL SAFETY CODE (THE "CODE"). THE CODE GENERALLY PROHIBITS STRUCTURES WITHIN 17.5 FEET ON EITHER SIDE OF THE CENTERLINE OF OVERHEAD DISTRIBUTION LINES AND WITHIN 30 FEET ON EITHER SIDE OF THE CENTERLINE OF OVERHEAD TRANSMISSION LINES. IN SOME INSTANCES THE CODE REQUIRES GREATER CLEARANCES. BUILDING PERMITS WILL NOT BE ISSUED FOR STRUCTURES WITHIN THESE CLEARANCE AREAS. CONTACT THE BUILDING OFFICIAL WITH SPECIFIC QUESTIONS.

3. **FLOOD STATEMENT:** I HAVE EXAMINED THE F.E.M.A. FLOOD INSURANCE RATE MAP FOR THE CITY OF DENTON, COMMUNITY NUMBER 480194 EFFECTIVE DATE 4-18-2011 AND THAT MAP INDICATES THAT THIS PROPERTY IS WITHIN "NON-SHADED ZONE X" DEFINED AS "AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD (500-YEAR)" AS SHOWN ON PANEL 380 G SAID MAP.

4. TAPS MADE TO EXISTING WATERLINES OR RELOCATION OF FIRE HYDRANT SHALL BE DONE BY THE CITY OF DENTON AT THE CONTRACTOR'S EXPENSE. CONTACT HARRY BOPP WITH THE WATER DEPARTMENT AT (940) 349-7167.

5. TAPS MADE TO EXISTING SEWER LINES SHALL BE DONE BY THE CITY OF DENTON AT THE CONTRACTOR'S EXPENSE. CONTACT KELVIN PRYOR WITH THE WASTEWATER DEPARTMENT AT (940) 349-8489.

6. THE SUBJECT PROPERTY IS ZONED RCC-D PER THE CITY OF DENTON'S ONLINE ZONING MAP.

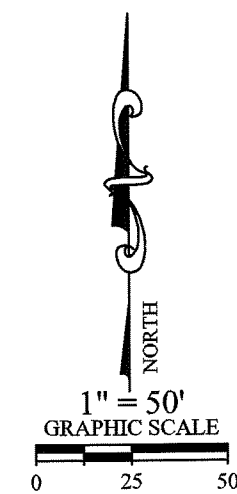
7. ALL BUILDING LINES ARE IMPOSED BE RCC-D ZONING.

8. THE PURPOSE OF THIS PLAT IS TO CREATE 1 LOT.

9. THE PROPERTY OWNER IS RESPONSIBLE FOR THE MAINTENANCE OF THE PUBLIC ACCESS EASEMENT.

#### EASEMENT LINE TABLE

LINE	BEARING	DISTANCE
L1	S 49°58'42" E	15.00'
L2	S 40°01'18" W	229.87'
L3	S 49°58'42" E	156.98'
L4	S 50°39'20" W	15.26'
L5	N 49°58'42" W	169.16'
L6	N 40°01'18" E	9.00'
L7	N 49°58'42" W	32.84'
L8	N 40°07'30" E	19.00'
L9	S 49°58'42" E	32.81'
L10	N 40°01'18" E	216.87'
L11	N 22°57'19" W	26.87'
L12	N 11°41'42" W	245.56'
L13	S 89°48'51" E	16.31'
L14	S 11°42'19" E	240.63'
L15	S 22°57'19" E	26.35'
L16	S 70°48'24" W	16.03'

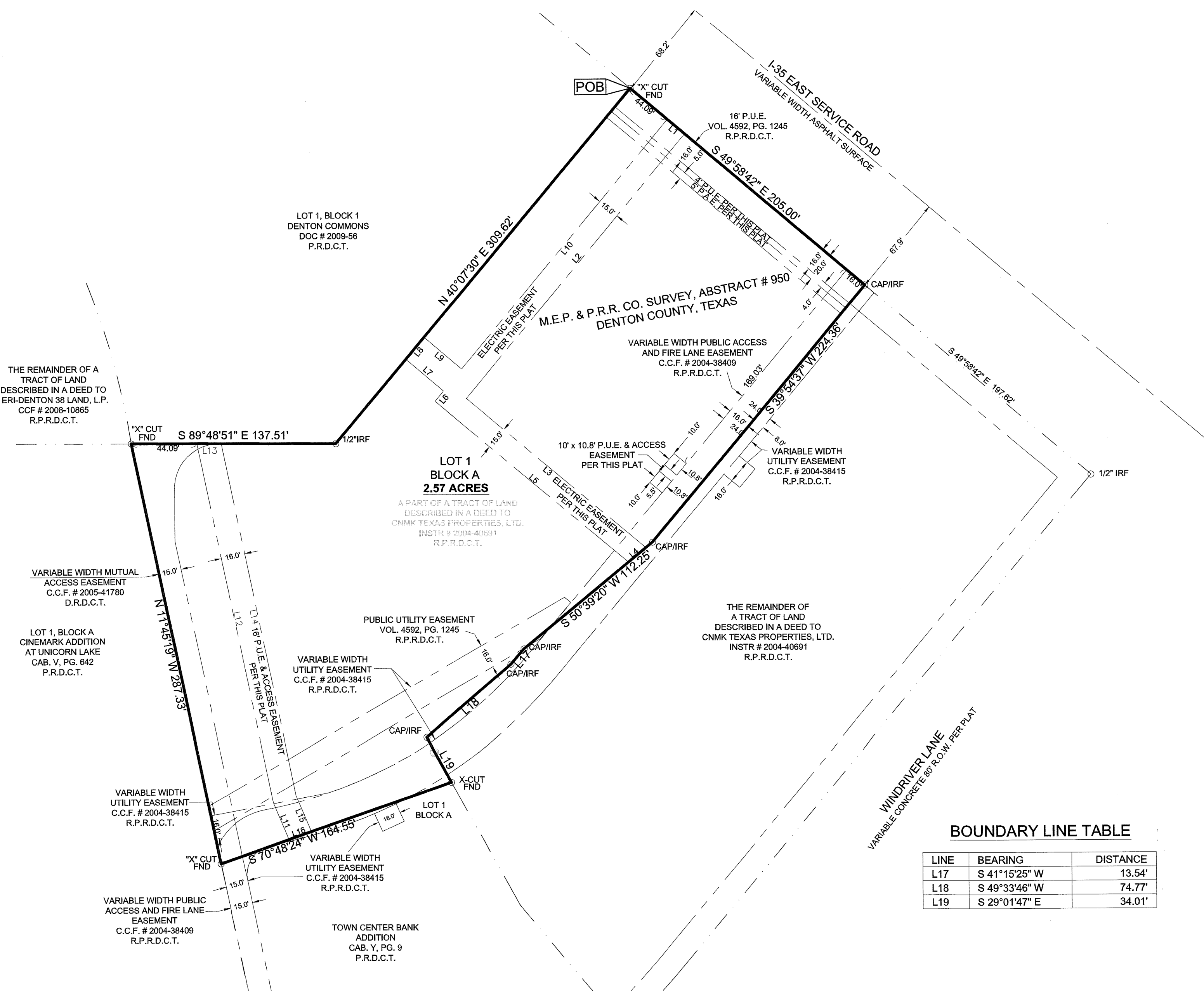


#### SURVEYOR:

KAZ SURVEYING, INC.  
1720 WESTMINSTER DRIVE  
DENTON, TEXAS 76205  
PHONE: (940) 382-3446

#### OWNER:

Auk Denton Partners, LLC,  
6360 LBJ Freeway, Suite 200,  
Dallas, TX 75249



#### BOUNDARY LINE TABLE

LINE	BEARING	DISTANCE
L17	S 41°15'25" W	13.54'
L18	S 49°33'46" W	74.77'
L19	S 29°01'47" E	34.01'

STATE OF TEXAS  
COUNTY OF DENTON

#### CERTIFICATE OF SURVEYOR

I, KENNETH A. ZOLLINGER, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AND ACTUAL SURVEY MADE ON THE GROUND AND THAT THE MONUMENTS SHOWN HEREON WERE FOUND OR PLACED WITH CAPPED 1/2" IRON RODS STAMPED "KAZ" UNDER MY DIRECTION AND SUPERVISION IN ACCORDANCE WITH THE ORDINANCES OF THE CITY OF DENTON, DENTON COUNTY, TEXAS.

KENNETH A. ZOLLINGER R.P.L.S. # 5312 DATE 12-24-13



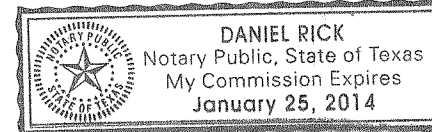
STATE OF TEXAS:  
COUNTY OF DENTON:

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED KENNETH A. ZOLLINGER, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF THE OFFICE THIS 24<sup>th</sup> DAY OF December, 2013.

Daniel Rick  
NOTARY PUBLIC, DENTON COUNTY, TEXAS.

MY COMMISSION EXPIRES 1-25-2014



APPROVED BY THE PLANNING & ZONING COMMISSION  
ON THIS

11<sup>th</sup> DAY OF December, 2013.

CHAIRPERSON, PLANNING & ZONING COMMISSION

CITY SECRETARY



1720 WESTMINSTER  
DENTON, TX 76205  
(940)382-3446

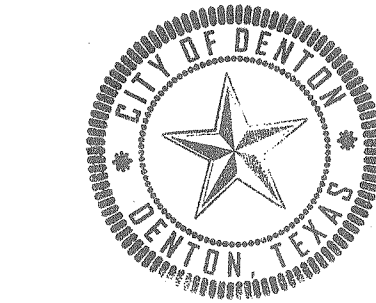
JOB NUMBER: 120291

DRAWN BY: M.J.P.

DATE: 12-5-2013

R.P.L.S.

KENNETH A. ZOLLINGER



#### FINAL PLAT LOT 1, BLOCK A B.J.'S BREWERY ADDITION

BEING 2.57 ACRES OUT OF THE M.E.P. & P.R.R.  
SURVEY, ABSTRACT NUMBER 950, CITY OF  
DENTON, DENTON COUNTY, TEXAS

D.U.E. = DRAINAGE / UTILITY EASEMENT  
P.U.E. = PUBLIC UTILITY EASEMENT  
U.E. = UTILITY EASEMENT  
P.A.E. = PUBLIC ACCESS EASEMENT  
D.E. = DRAINAGE EASEMENT

CM = CONTROLLING MONUMENT  
CAPRI = CAPPED IRON ROD FOUND  
IRF = IRON ROD FOUND  
CAPRI = CAPPED IRON ROD SET

© 2013 All Rights Reserved

STATE OF TEXAS  
DENTON COUNTY

**WHEREAS:** CNMK Texas Properties, LTD is the owner of all the certain lot, tract or parcel of land situated in the M.E.P. & P.R.R. Company Survey, Abstract Number 950 in the City of Denton, Denton County, Texas and being a part of a tract of land described in a deed to CNMK Texas Properties, LTD., as recorded in Instrument Number 2004-40691 Real Property Records, Denton County, Texas; the subject tract being more particularly described as follows;

BEGINNING at a "X" cut found for the North corner of the herein described tract and being the East corner of Lot 1, Block 1 of Denton Commons, an addition to the City of Denton, Denton County, Texas as recorded in Document Number 2009-56 Plat Records, Denton County, Texas and being in the Westerly Right of Way line of Interstate 35E;

Thence South 49 degrees 58 minutes 42 seconds East with the Westerly line thereof a distance of 205.00 feet to a capped 1/2" iron rod stamped "5312" set for the East corner of the herein described tract;

Thence South 39 degrees 54 minutes 37 seconds West a distance of 224.36 feet to a capped 1/2" iron rod stamped "5312" set for corner;

Thence South 50 degrees 39 minutes 20 seconds West a distance of 112.25 feet to a capped 1/2" iron rod stamped "5312" set for corner;

Thence South 41 degrees 15 minutes 25 seconds West a distance of 13.54 feet to a capped 1/2" iron rod stamped "5312" set for corner;

Thence South 49 degrees 33 minutes 46 seconds West a distance of 74.77 feet to a capped 1/2" iron rod stamped "5312" set for corner;

Thence South 29 degrees 01 minutes 47 seconds East a distance of 34.01 feet to a "X" cut set for the most Southerly Southeast corner of the herein described tract and being the Northeast corner of Lot 1, Block A Town Center Bank Addition, an addition to the City of Denton, Denton County, Texas;

Thence South 70 degrees 48 minutes 24 seconds West with the Northerly line thereof a distance of 164.55 feet to a "X" cut found for the Southwest corner of the herein described tract and the Northwest corner of said Town Center Bank Addition and being in the East line of Lot 1, Block A of Cinemark Addition at Unicorn Lake, an addition to the City of Denton, Denton County, Texas as recorded in Cabinet V, Page 642 Plat Records, Denton County, Texas;

Thence North 11 degrees 45 minutes 19 seconds West with the East line thereof a distance of 287.33 feet to a "X" cut found for the Northwest corner of the herein described tract and the Northeast corner of said Cinemark Addition at Unicorn Lake and being the Southeast corner of the remainder of a tract of land described in a deed to ERI-Denton 38 Land, LP., as recorded in County Clerks File Number 2008-10865 Real Property Records, Denton County, Texas and being the Southwest corner of said Denton Commons;

Thence South 89 degrees 48 minutes 51 seconds East a distance of 137.51 feet to a 1/2" iron rod found for corner;

Thence North 40 degrees 07 minutes 30 seconds East with the Southerly line of said Denton Commons a distance of 309.62 feet to the PLACE OF BEGINNING and enclosing 2.57 acres of land more or less.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS:

THAT AUK DENTON PARTNERS, LLC., DOES HEREBY ADOPT THIS FINAL PLAT, DESIGNATING THE HEREIN DESCRIBED PROPERTY AS LOT 1, BLOCK A, B.J.'S BREWERY, AN ADDITION IN THE CITY OF DENTON, TEXAS AND DOES HEREBY DEDICATE TO PUBLIC USE FOREVER ALL STREETS, ALLEYS, PARKS, WATERCOURSES, DRAINS, EASEMENTS, AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

AUK DENTON PARTNERS, LLC.  
CRAIG GUTOW

12/23/13  
DATE

STATE OF TEXAS  
COUNTY OF DENTON

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED CRAIG GUTOW, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN.

WITNESS MY HAND AND SEAL OF OFFICE THIS 23<sup>rd</sup> DAY OF December, 2013.

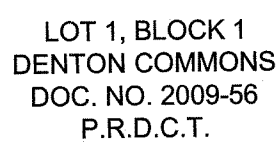
DIANE O. FINKELSTEIN  
NOTARY PUBLIC IN AND FOR THE STATE OF South Carolina  
Charleston, COUNTY

MY COMMISSION EXPIRES ON 02/21/2022  
DIANE O. FINKELSTEIN  
Notary Public, State of South Carolina  
My Commission Expires 02/21/2022

CITY OF DENTON PROJECT # FP13-0024

Filed for Record  
in the official records of:  
Denton County  
On Jan 26, 2014 at 02:59P  
In the  
Plat Records  
B.J.'S BREWERY ADDITION  
Sec Number: 2014- 29  
No. of Pages: 1  
Amount: 50.00  
Receipt Number: 1120171  
By:  
Paula Glines





INTERSTATE HIGHWAY 35E  
(A VARIABLE WIDTH RIGHT-OF-WAY)

**VICINITY MAP**

N.T.S.

Map showing the location of the site (indicated by a black rectangle) relative to Wind River, Unicorn Lake, Briar Cliff, and State School Road. The map includes a north arrow and a scale bar.

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	DWP	DAB	FEB 2015	64433503	1 OF 1
<b>OWNER:</b> CNMK Texas Properties, LTD. 3900 Dallas Parkway Suite 500 Plano TX, 75032 Phone: 972-665-1067 Contact :David Little					
<b>DEVELOPER:</b> Bone Daddys 15300 N. Dallas Parkway #285 Addison, Texas 75001 214-302-5670 Contact : Scott Brown					
<b>ENGINEER:</b> Kimley-Horn and Associates, Inc. 12012 Wickchester, Ste. 500 Houston Texas 75083 972-665-1067 Contact :Ashley Frysinger, PE					
Filed for Record in the official records of Denton County Date: 04/06/2015 at 02:05P in the Plat Records BONE DADDY DEVELOPMENT Doc Number: 2015- 123 No of Pages: 1 Amount: \$0.00 Receipt Number - 1271798 By: Correen Robinson					

1. All bearings shown are based on grid north of the Texas Coordinate System of 1983, North Central Zone 4202, using the City of Denton control monumentation. All dimensions shown are ground distances. To obtain a grid distance, multiply the ground distance by the Project Combined Factor (PCF) of 0.99984865
2. Selling a portion of this addition by metes and bounds is a violation of City ordinance and state laws and is subject to fines and withholding of utilities and building permits.
3. All corners are 5/8-inch iron rods with a red plastic cap stamped "KHA" set, unless otherwise noted
4. According to Community Panel No. 48121-C0390Q, dated April 18, 2011 of the National Flood Insurance Program Map, Flood Insurance Rate Map of Denton County, Texas, Federal Emergency Management Agency, Federal Insurance Administration, this property is not within a special flood hazard area. If this site is not within an identified special flood hazard area, this flood statement does not imply that the property and/or the structures thereon will be free from flooding or flood damage. On rare occasions, greater floods can and will occur and flood heights may be increased by man-made or natural causes. This flood statement shall not create liability on the part of the surveyor.
5. Gas, petroleum lines or easements are not apparent with-in the bounds of this plat.
6. The property owner is responsible for the maintenance of the Access Easements shown on this plat.
7. Taps made to existing waterlines or relocation of Fire Hydrant shall be done by the City of Denton at the expense of the Contractor. Contact Harry Bopp with the Water Department at 940-349-7167.
8. Taps made to existing sewer lines shall be done by the City of Denton at the expense of the Contractor. Contact Justin Diviny with the Wastewater Department at 940-349-8489.

CURVE TABLE					
NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	17°15'00"	328.00'	99.07'	N48°07'59"E	98.69'
C2	16°57'40"	305.00'	90.29'	N47°56'18"E	89.96'
C3	90°00'00"	10.00'	15.71'	N84°30'19"E	14.14'
C4	90°00'00"	20.00'	31.42'	S84°30'19"W	28.28'
C5	89°58'46"	20.00'	31.41'	S05°29'34"E	28.28'
C6	90°00'00"	2.00'	3.14'	S05°29'34"E	2.83'
C7	53°15'51"	20.00'	18.69'	S23°51'46"E	17.93'
C8	90°00'00"	20.00'	31.42'	S84°30'19"W	28.28'
C9	90°00'00"	20.00'	31.42'	S05°29'41"W	28.28'

Denton County  
Cynthia Mitchell  
County Clerk  
Denton, TX 76202



70 2014 00007925

Instrument Number: 2014-7925

Recorded On: January 29, 2014

As  
Waiver

Parties: BJS RESTAURANTS INC

To

Billable Pages: 4

Number of Pages: 4

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Waiver	38.00
Total Recording:	38.00

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

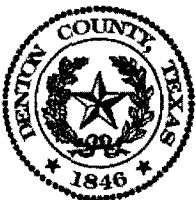
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2014-7925  
Receipt Number: 1128392  
Recorded Date/Time: January 29, 2014 11:38:02A  
User / Station: C Robinson - Cash Station 1

**Record and Return To:**

CITY OF DENTON  
901 A TEXAS ST 2ND FLOOR  
WATER UTILITIES DEPT  
DENTON TX 76209



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*C Mitchell*

County Clerk  
Denton County, Texas

After Recording Return Copy To:  
City of Denton  
Water Utilities Dept.  
901-A Texas St., 2<sup>nd</sup> Floor  
Denton, TX 76209  
Attn.: James B. Jenks, P.E., Senior Engineer

Project No. FP13-0024

### WAIVER AND COVENANT NOT TO SUE

STATE OF TEXAS                    }  
  }  
COUNTY OF DENTON            }      KNOW ALL PERSONS BY THESE PRESENTS

The undersigned, BS's Restaurants, Inc., (hereinafter called "Developer") executes this Waiver and Covenant not to Sue, for the benefit of the City of Denton, Texas (the "City") as of the 28<sup>th</sup> day of January, 20 14.

WHEREAS, Developer is the owner and developer of certain real property located in the City of Denton, County of Denton, Texas at 3250 S. Hwy I-35E, a 2.57-acre tract more particularly described as Lot 1, Block A of the BJ's Brewery Addition, the Final Plat of which was approved by Planning & Zoning Commission on December 11<sup>th</sup>, 2013 (the "Property"); and

WHEREAS, the Developer wants to construct a commercial building and various other improvements on the Property for a project entitled BJ's Restaurant (the "Project") that requires the construction of various public works improvements on the site as defined by the project plans; and

WHEREAS, the Developer has requested City to allow Developer to advance the construction of private grading, utilities, paving, foundation, and full vertical construction ("Expedited Private Improvements") concurrently with completion and acceptance of the public improvements required by the Project, specifically public water, sanitary sewer, and storm sewer ("Concurrent Public Improvements"), under a limited building permit, containing the limitations noted in this paragraph ("Limited Building Permit"). This Limited Building Permit shall entitle the Developer to construct all improvements on the site which are included in the approved construction documents. Developer stipulates and agrees that no Certificate of Occupancy will be requested or allowed until such time as all Concurrent Public Improvements have been accepted by the City; and

WHEREAS, the Developer has requested the City consider allowing the Developer to advance the building permit for the property in advance of the completion of the public improvements; NOW, THEREFORE:

Construction shall comply with all applicable portions of the Fire Code as to emergency access and water supply for firefighting purposes at all times during construction. Adequate access for fire apparatus shall be provided. At such time as combustible construction materials are brought on site, sufficient water for firefighting purposes shall be provided. For all projects (involving combustible or non-combustible construction), adequate ambulance access must be provided at all times.

In anticipation of City's subsequent approval of the requested Limited Building Permit, and because proceeding in this manner is an option requested by Developer, rather than a requirement, Developer agrees to indemnify and hold harmless the City, its employees, agents,

successors, and assigns from any and all costs Developer may incur as a consequence of proceeding in this manner before full building permits are issued, and agrees to assume all risks arising therefrom. Developer understands and agrees that the City will issue a "Stop Work" order for all activity associated with the Limited Building Permit in the event that the Developer's contractor fails to perform the work associated with this permit in a manner satisfactory to the City, or for any other reason authorized by ordinance. Developer hereby covenants not to sue the City, and forever irrevocably waives any and all claims of every kind whatsoever against the City, its employees, agents, successors, and assigns, arising out of either: (1) the City's subsequent issuance of a "Stop Work" order due to the failure of the Developer's contractor to perform the work associated with the Limited Building Permit in a manner satisfactory to the City, or (2) the subsequent failure or refusal of the City to issue a Certificate of Occupancy for any building or structure in the Project, if due to Developer's failure or inability to obtain required permits or approvals from City or any other entity with authority to grant such approvals.

No subsequent change in the law shall in any way affect the validity or enforceability of this Waiver and Covenant not to Sue. This Waiver and Covenant not to Sue is intended to satisfy §35.16.6.D.c.i.2 of the Denton Code of Ordinances – one of the necessary elements which must be satisfied before the City Building Official may issue a Limited Building Permit to advance construction of the Expedited Private Improvements. However, nothing herein shall be construed to authorize any delay in the construction of any public improvements required by the Project, including the Concurrent Public Improvements, beyond any completion deadlines specified in any other agreement, ordinance, project plans or plat, regardless of whether or not the Expedited Private Improvements are complete.

Developer further stipulates to the nexus and proportionality of the public improvements made subject to this Waiver and Covenant not to Sue (specifically including both those contemplated now and those necessitated by changes required for final approval), regardless of whether they were known, quantified or anticipated at the time this document was executed.

Developer, as the sole owner of the Property, hereby declares that all of the Property shall be held, sold and conveyed subject to the covenants contained herein, which are covenants touching and running with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, either now or in the future, and their successors, heirs and assigns, and shall inure to the benefit of the Developer, the City and their successors and assigns. These Restrictive Covenants shall be recorded in the Real Property Records of Denton County, Texas.

Developer has executed this Waiver and Covenant not to Sue, to be effective as of the date first above written (the "Effective Date").



BJ's Restaurants, Inc.  
7799 Center Ave. Ste 300  
Huntington Beach, CA 92647  
Attention: Joan Leguay  
Phone: (714) 966-2410

By: Joan Leguay  
BJ's Restaurants, Inc. Authorized Agent

ACKNOWLEDGMENT

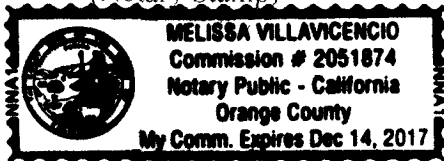
STATE OF California

§  
§  
§  
§

COUNTY OF Orange

This instrument was acknowledged before me on this 28<sup>th</sup> day of January, 2014 by Joan Leguay, an authorized representative of BJ's Restaurants, Inc., on behalf of said entity.

(Notary Stamp)



Melissa Villavicencio  
Notary Public in and for  
State of California

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Denton County  
Cynthia Mitchell  
County Clerk  
Denton, TX 76202



70 2004 00038414

Instrument Number: 2004-38414

Recorded On: March 29, 2004

As  
Easement

Parties: WINDJAMMER

To

Billable Pages: 6

Number of Pages: 6

Comment:

**\*\* Examined and Charged as Follows: \*\***

Easement	24 00
Total Recording:	24.00

\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law

**File Information:**

Document Number 2004-38414  
Receipt Number. 97913  
Recorded Date/Time: March 29, 2004 02:34P

**Record and Return To:**

CITY OF DENTON  
601 E HICKORY STE B  
DENTON TX 76205

User / Station: J Morris - Cash Station 1



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*Cynthia Mitchell*

County Clerk  
Denton County, Texas

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## DRAINAGE EASEMENT

THE STATE OF TEXAS,           §  
                                  §           KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DENTON           §

THAT, WINDJAMMER, LTD. (Grantor) of Denton County, Texas, in consideration of the sum of One Dollar and No Cents (\$1.<sup>00</sup>) and other good and valuable consideration in hand paid by the City of Denton, Texas, (Grantee) receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by it and situated in Denton County, Texas, in the M.E.P. & P.R.R. Co. Survey, Abstract No. 950.

### EASEMENT AREA DESCRIBED IN EXHIBIT "A" AND ILLUSTRATED IN EXHIBIT "B" BOTH ATTACHED HERewith

And it is further agreed that the City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining DRAINAGE in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to said DRAINAGE facilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as  
aforesaid for the purposes aforesaid the premises above described.

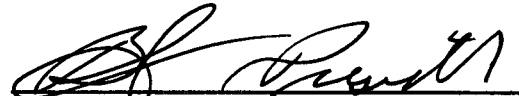
Witness my hand, this the 22nd day of March, 2004.

WINDJAMMER, LTD.,  
a Texas limited partnership

By: Bob Shelton Enterprises, Ltd.,  
a Texas limited partnership,  
General Partner

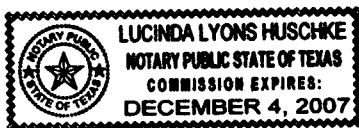
By: Bob Shelton Enterprises  
Management LLC,  
a Texas limited liability company,  
General Partner

By:

  
Bob Shelton, President

STATE OF TEXAS       §  
                                  §  
COUNTY OF DENTON   §

This instrument was acknowledged before me on the 22<sup>nd</sup> day of  
March, 2004, by BOB SHELTON, President of Bob Shelton Enterprises  
Management Company, LLC, a Texas limited liability company, General  
Partner of Bob Shelton Enterprises, Ltd., a Texas limited  
partnership, General Partner of WINDJAMMER, LTD., a Texas limited  
partnership, on behalf of said limited liability company and  
partnerships.




  
Notary Public, State of Texas

My Commission Expires:

12-4-07

Accepted this 29<sup>th</sup> day of March, 2004 for  
the City of Denton, Texas (Resolution No. 91-073).

BY:

  
Paul Williamson  
Real Estate and  
Capital Support Manager

## EXHIBIT A

### FIELD NOTES

#### DESCRIBING A DRAINAGE EASEMENT FROM WINDJAMMER, LTD.

BEING a 0.0996 acre tract of land situated in the M.E.P. & P.R.R. County Survey, Abstract No. 950, City of Denton, Denton County, Texas and being part of a 136.50 acre tract of land described in deed to Windjammer, Ltd., as recorded in County Clerk's File Number 98-R0093041 and 98-R0062520, of the Property Records of Denton County, Texas (P.R.D.C.T.) and being more particularly described as follows:

COMMENCING at a 5/8-inch iron rod with cap stamped "Carter Burgess" found at the intersection of the north right-of-way of Windriver Lane (an 80 foot right-of-way) as described in County Clerk's File Number 99-R0065227, P.R.D.C.T., and the west right-of-way of Interstate Highway 35 (a variable width right-of-way);

THENCE South 40 degrees 02 minutes 38 seconds West, departing said west right-of-way line of Interstate Highway 35 and along the said north right-of-way line of Windriver Lane, a distance of 435.95 feet to a 5/8-inch found iron rod with cap stamped "Carter Burgess" for the point of curvature of a circular curve to the right having a radius of 460.00 feet and whose chord bears South 59 degrees 09 minutes 10 seconds West, a distance of 301.18 feet;

THENCE Southwesterly, continuing along said north right-of-way line and along said curve to the right through a central angle of 38 degrees 13 minutes 05 seconds, an arc distance of 306.83 feet to a 1/2-inch set iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") for corner, said point being southeast corner of the proposed Lot 1, Block A, Cinemark Addition at Unicorn Lake;

THENCE North 11 degrees 44 minutes 05 seconds West, departing said north right-of-way line and along the proposed east line of Lot 1, Block A, a distance of 256.78 feet to the POINT OF BEGINNING;

THENCE North 11 degrees 44 minutes 05 seconds West, continuing along said proposed east line a distance of 16.85 feet to a point for corner;

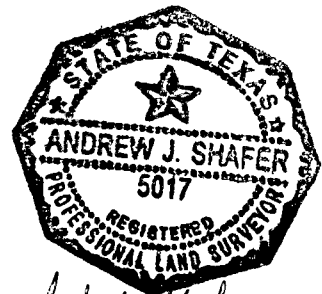
THENCE North 60 degrees 00 minutes 00 seconds East, departing said proposed east line a distance of 277.31 feet to a point for corner;

THENCE South 49 degrees 59 minutes 52 seconds East, a distance of 5.40 feet to a point for corner;

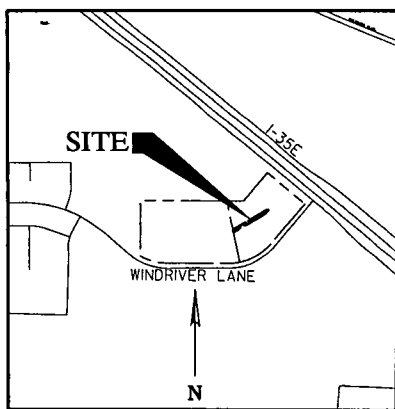
THENCE South 40 degrees 02 minutes 38 seconds West, a distance of 32.00 feet to a point for corner;

THENCE South 60 degrees 00 minutes 00 seconds West, a distance of 254.36 feet to the POINT OF BEGINNING AND CONTAINING 4,340 square feet or 0.0996 acres of land more or less.

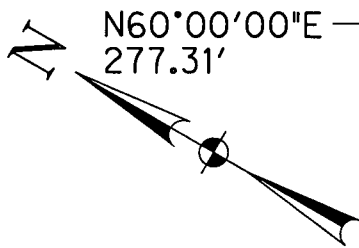
The basis of bearing for this tract is the deed to the City of Denton for the right-of-way dedication of Windriver Lane, as recorded in the Denton County Clerk's File Number 99-R0065227 P.R.D.C.T.



*Andrew J. Shafer*  
March 22, 2004



LOCATION MAP  
NOT TO SCALE



N60°00'00"E  
277.31'

0 30 60 90 120 180  
SCALE IN FEET

WINDJAMMER, LTD.  
CC# 98-R0062520  
CC# 98-R0093041  
P.R.D.C.T.

INTERSTATE 35  
(VARIABLE WIDTH ROW)  
STATE OF TEXAS  
VOL. 348, PG. 6  
P.R.D.C.T.

S49°59'52"E  
5.40'

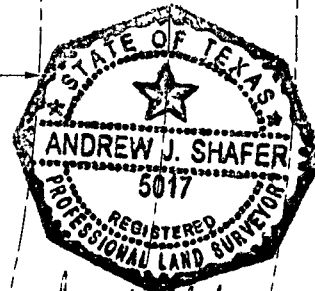
POINT OF  
COMMENCING

S40°02'38"W  
32.00'

S60°00'00"W  
254.36'

DRAINAGE EASEMENT  
4,340 SQ. FT. OR  
0.0996 ACRES

16' PUBLIC UTILITY  
EASEMENT VOL 4592'  
PG. 1245  
P.R.D.C.T.



Andrew J. Shafer  
March 22, 2004

POINT OF  
BEGINNING

N11°44'05"W  
16.85'

N11°44'05"W  
256.78'

Δ= 38°13'05"  
R= 460.00'  
T= 159.37'  
L= 306.83'  
CB= S59°09'10"W  
CL= 301.18'

PROPOSED  
LOT 1, BLOCK A  
399,502 SQ. FT. OR 9.171 ACRES

WINDJAMMER, LTD.  
CC# 98-R0062520  
CC# 98-R0093041  
P.R.D.C.T.

Δ= 11°44'17" RT  
R= 460.00'  
T= 47.29'  
L= 94.24'  
CB= S84°07'52"W  
CL= 94.08'

**LEGEND**

- |                   |   |
|-------------------|---|
| 1/2" FIR          | 1/2" FOUND IRON ROD                               |
| 5/8" FIR<br>W/CAP | 5/8" FOUND IRON ROD<br>WITH "CARTER BURGESS" CAP  |
| 1/2" SIR<br>W/CAP | 1/2" SET IRON ROD<br>WITH "HALFF ASSOC. INC." CAP |
| CM                | CONTROL MONUMENT                                  |

THE BASIS OF BEARING FOR THIS TRACT IS THE DEED  
TO THE CITY OF DENTON FOR THE RIGHT OF WAY DEDICATION  
OF WIND RIVER LANE, RECORDED IN CC# 99-R0065227  
THE PROPERTY RECORDS OF DENTON COUNTY

**EXHIBIT B**

OF A  
0.0996 ACRE DRAINAGE EASEMENT  
LOCATED IN  
M.E.P. & P.R.R. CO. SURVEY,  
ABST. No. 950  
CITY OF DENTON  
DENTON, COUNTY, TEXAS  
BY  
HALFF ASSOCIATES, INC.  
3801 PARKWOOD BLVD. SUITE 500  
FRISCO, TX 75034

MARCH 2004 AVO 21964 SCALE: 1" = 60'





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Denton County  
Cynthia Mitchell  
County Clerk  
Denton, TX 76202



70 2004 00038415

Instrument Number: 2004-38415

Recorded On: March 29, 2004

As  
Easement

Parties: WINDJAMMER

To

Billable Pages: 9

Number of Pages: 9

Comment:

**\*\* Examined and Charged as Follows: \*\***

Easement	30 00
Total Recording:	30.00

\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law

**File Information:**

Document Number: 2004-38415  
Receipt Number: 97913  
Recorded Date/Time: March 29, 2004 02.34P

**Record and Return To:**

CITY OF DENTON  
601 E HICKORY STE B  
DENTON TX 76205

User / Station: J Morris - Cash Station 1



THE STATE OF TEXAS }  
COUNTY OF DENTON }

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

*Cynthia Mitchell*

County Clerk  
Denton County, Texas

EASEMENT

THE STATE OF TEXAS, §  
COUNTY OF DENTON § KNOW ALL MEN BY THESE PRESENTS:  
§

THAT WINDJAMMER, LTD. (Grantor), in consideration of the sum of ONE DOLLAR AND NO CENTS(\$1.00) and OTHER GOOD AND VALUABLE CONSIDERATION in hand paid by the City of Denton, Texas, (Grantee), receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by Grantors and situated in Denton County, Texas, in the M.E.P. & P.R.R. Co. Survey, Abstract No. 950.

SEE ATTACHED EXHIBITS "A" & "B" FOR EASEMENT DESCRIPTION  
& ILLUSTRATION

And it is further agreed that the City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public utilities, in, along, upon and across said premises, with the right and privilege at all times of the grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said

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premises for the purpose of making additions to, improvements on and repairs to said public utility facilities or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness my hand, this the 22nd day of MARCH, 2004.

WINDJAMMER, LTD.,  
a Texas limited partnership

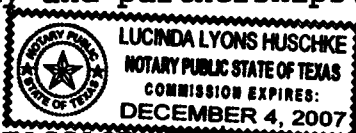
By: Bob Shelton Enterprises, Ltd.,  
a Texas limited partnership,  
General Partner

By: Bob Shelton Enterprises  
Management LLC,  
a Texas limited liability company,  
General Partner

By: [Signature]  
Bob Shelton President

STATE OF TEXAS       §  
                              §  
COUNTY OF DENTON   §

This instrument was acknowledged before me on the 22nd day of March, 2004, by BOB SHELTON, President of Bob Shelton Enterprises Management Company, LLC, a Texas limited liability company, General Partner of Bob Shelton Enterprises, Ltd., a Texas limited partnership, General Partner of WINDJAMMER, LTD., a Texas limited partnership, on behalf of said limited liability company and partnerships.



My Commission Expires:  
12-4-07

Lucinda Lyons Huschke  
Notary Public, State of Texas

Accepted this 29<sup>th</sup> day of March, 2004  
for the City of Denton, Texas (Resolution No. 91-073).

BY: Denise M. Perez  
JPK Paul Williamson  
Real Estate and  
Capital Support Manager

**EXHIBIT A**

**FIELD NOTES**

**DESCRIBING A UTILITY EASEMENT FROM WINDJAMMER, LTD.**

BEING a 0.4378 acre tract of land situated in the M.E.P. & P.R.R. County Survey, Abstract No. 950, City of Denton, Denton County, Texas and being part of a 136.50 acre tract of land described in deed to Windjammer, Ltd., as recorded in County Clerk's File Number 98-R0093041 and 98-R0062520, of the Property Records of Denton County, Texas (P.R.D.C.T.) and being more particularly described as follows:

COMMENCING at a 5/8-inch iron rod with cap stamped "Carter Burgess" found at the intersection of the north right-of-way of Windriver Lane (an 80 foot right-of-way) as described in County Clerk's File Number 99-R0065227, P.R.D.C.T., and the west right-of-way of Interstate Highway 35 (a variable width right-of-way);

THENCE North 49 degrees 57 minutes 22 seconds West, departing said Windriver right-of-way line and along said Interstate Highway 35 right-of-way line, a distance of 189.52 feet to the POINT OF BEGINNING, said point being a point for corner;

THENCE South 40 degrees 02 minutes 38 seconds West, departing said Interstate Highway 35 right-of-way line, a distance of 142.20 feet to a point for corner;

THENCE South 49 degrees 57 minutes 22 seconds East, a distance of 13.80 feet to a point for corner;

THENCE South 40 degrees 02 minutes 38 seconds West, a distance of 16.00 feet to a point for corner;

THENCE North 49 degrees 57 minutes 22 seconds West, a distance of 13.80 feet to a point for corner;

THENCE South 40 degrees 02 minutes 38 seconds West, a distance of 176.26 feet to the point of curvature of a circular curve to the right having a radius of 329.00 feet and whose chord bears South 52 degrees 07 minutes 21 seconds West, a distance of 137.69 feet;

THENCE Southwesterly, continuing along said curve to the right through a central angle of 24 degrees 09 minutes 26 seconds, an arc distance of 138.71 feet to a point for corner;

THENCE South 24 degrees 38 minutes 25 seconds East, a distance of 13.00 feet to a point for corner;

THENCE South 65 degrees 35 minutes 32 seconds West, a distance of 16.08 feet to a point for corner;

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THENCE North 24 degrees 15 minutes 01 seconds West, a distance of 13.00 feet to the point of curvature for a non-tangent circular curve to the right having a radius of 329.00 feet and whose chord bears South 73 degrees 19 minutes 25 seconds West, a distance of 72.63 feet;

THENCE Southwesterly continuing along said curve to the right through a central angle of 12 degrees 40 minutes 27 seconds, an arc distance of 72.78 feet to the point of curvature of a circular curve to the left having a radius of 20.00 feet and whose chord bears South 33 degrees 57 minutes and 47 seconds West, a distance of 28.63 feet;

THENCE Southwesterly, continuing along said curve to the left through a central angle of 91 degrees 23 minutes and 44 seconds, an arc distance of 31.90 feet to a point for corner;

THENCE South 11 degrees 44 minutes 05 seconds East, a distance of 103.82 feet to the point of curvature of a circular curve to the left having a radius of 20.00 feet and whose chord bears South 15 degrees 35 minutes and 14 seconds East, a distance of 2.69 feet;

THENCE Southeasterly, continuing along said curve to the left through a central angle of 07 degrees 42 minutes 18 seconds, an arc distance of 2.69 feet to a point for corner;

THENCE South 19 degrees 26 minutes 24 seconds East, a distance of 49.52 feet to the point of curvature of a circular curve to the right having a radius of 20.00 feet and whose chord bears South 15 degrees 35 minutes 14 seconds East, a distance of 2.69 feet;

THENCE Southeasterly, continuing along said curve to the right through a central angle of 07 degrees 42 minutes 18 seconds, an arc distance of 2.69 feet to a point for corner;

THENCE South 11 degrees 44 minutes 05 seconds East, a distance of 61.08 feet to the point of curvature of a non-tangent circular curve to the right having a radius of 460.00 feet and whose chord bears South 76 degrees 53 minutes 28 seconds West, a distance of 22.01 feet, said point being on said north right-of-way line of Windriver Lane;

THENCE Southwesterly, continuing along said curve to the right and said north right-of-way line of Windriver Lane through a central angle of 02 degrees 44 minutes 30 seconds, an arc distance of 22.01 feet to a 1/2-inch set iron rod with a yellow cap stamped "HALFF ASSOC. INC." for corner, said point being the southeast corner of the proposed Lot 1, Block A, Cinemark Addition at Unicorn Lake;

THENCE North 11 degrees 44 minutes 05 seconds West, departing said north line of Windriver Lane and along the proposed east line of said Lot 1, Block A a distance of 246.54 feet to the point of curvature of a non-tangent circular curve to the right having a radius of 44.00 feet and whose chord bears North 29 degrees 41 minutes 56 seconds East, a distance of 6.34 feet;

THENCE Northeasterly, departing said east line and continuing along said curve to the right through a central angle of 08 degrees 16 minutes 02 seconds, an arc distance of 6.35 feet to a point for corner;

THENCE South 79 degrees 16 minutes 07 seconds West, a distance of 4.20 feet to a point for corner, said point being on the proposed east line of said Lot 1, Block A;

THENCE North 11 degrees 44 minutes 05 seconds West, along the proposed east line of Lot 1, Block A a distance of 16.00 feet to a point for corner;

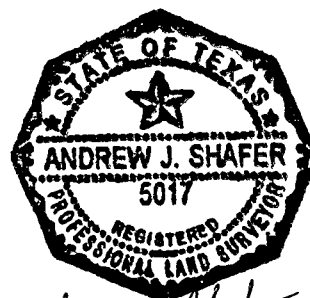
THENCE North 79 degrees 16 minutes 07 seconds East, departing said proposed east line a distance of 80.07 feet to the point of curvature of a non-tangent circular curve to the left having a radius of 305.00 feet and whose chord bears North 55 degrees 42 minutes 55 seconds East, a distance of 164.75 feet;

THENCE Northeasterly, continuing along said curve to the left through a central angle of 31 degrees 20 minutes 15 seconds, an arc distance of 166.82 feet to a point for corner;

THENCE North 40 degrees 02 minutes 38 seconds East, a distance of 334.46 feet to a point for corner, said point being on said Interstate Highway 35 west right-of-way line;

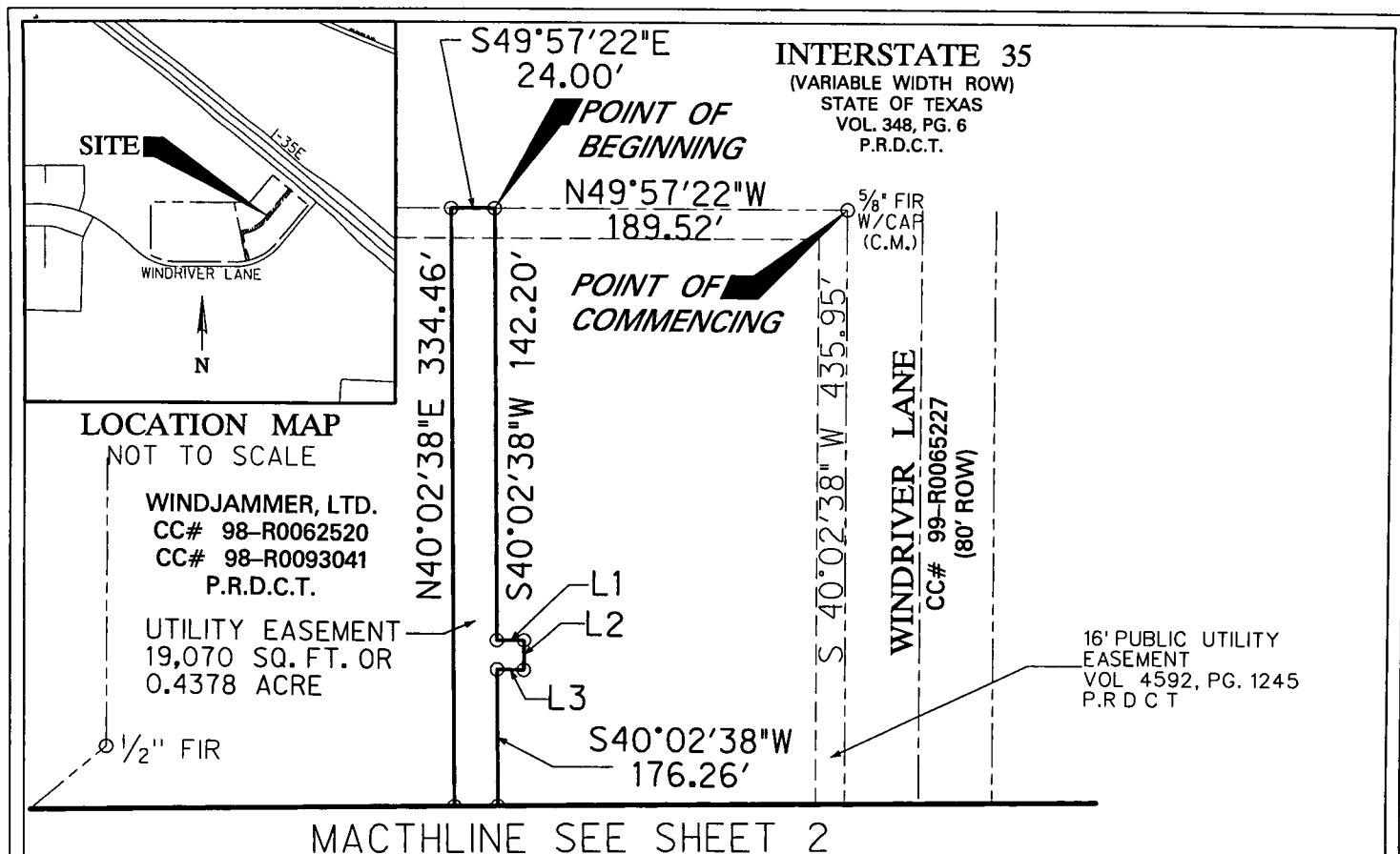
THENCE South 49 degrees 57 minutes 22 seconds East, along said Interstate Highway 35 west right-of-way line, a distance of 24.00 feet to the POINT OF BEGINNING AND CONTAINING 19,070 square feet or 0.4378 acres of land more or less.

The basis of bearing for this tract is the deed to the City of Denton for the right-of-way dedication of Windriver Lane, as recorded in the Denton County Clerk's File Number 99-R0065227 P.R.D.C.T.



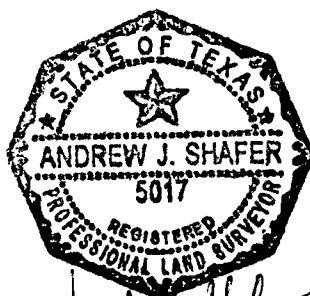
*Andrew J. Shafer*  
March 22, 2004





LINE TABLE

LINE	BEARING	DISTANCE
L1	S 49° 57' 22" E	13.80'
L2	S 40° 02' 38" W	16.00'
L3	N 49° 57' 22" W	13.80'

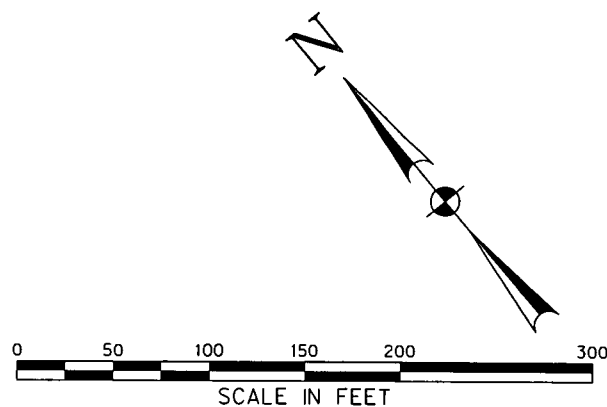


*Andrew J. Shafer*  
march 22, 2004

**LEGEND**

- 1/2" FIR 1/2" FOUND IRON ROD
- 5/8" FIR 5/8" FOUND IRON ROD
- W/CAP WITH "CARTER BURGESS" CAP
- 1/2" SIR 1/2" SET IRON ROD
- W/CAP WITH "HALFF ASSOC. INC." CAP
- CM CONTROL MONUMENT

THE BASIS OF BEARING FOR THIS TRACT IS THE DEED  
TO THE CITY OF DENTON FOR THE RIGHT OF WAY DEDICATION  
OF WIND RIVER LANE, RECORDED IN CC# 99-R0065227  
THE PROPERTY RECORDS OF DENTON COUNTY

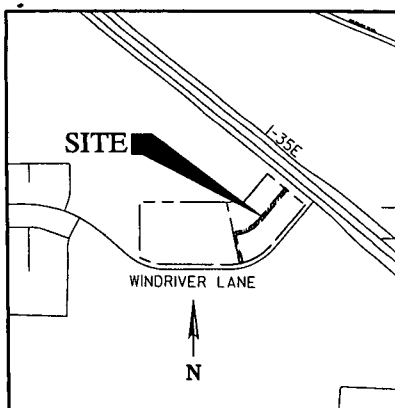


**EXHIBIT B**

OF A  
0.4378 ACRE UTILITY EASEMENT  
LOCATED IN  
M.E.P. & P.R.R. CO. SURVEY,  
ABST. No. 950  
CITY OF DENTON  
DENTON, COUNTY, TEXAS  
BY  
HALFF ASSOCIATES, INC.  
3801 PARKWOOD BLVD. SUITE 500  
FRISCO, TX 75034

MARCH 2004 AVO 21964 SCALE: 1" = 100'





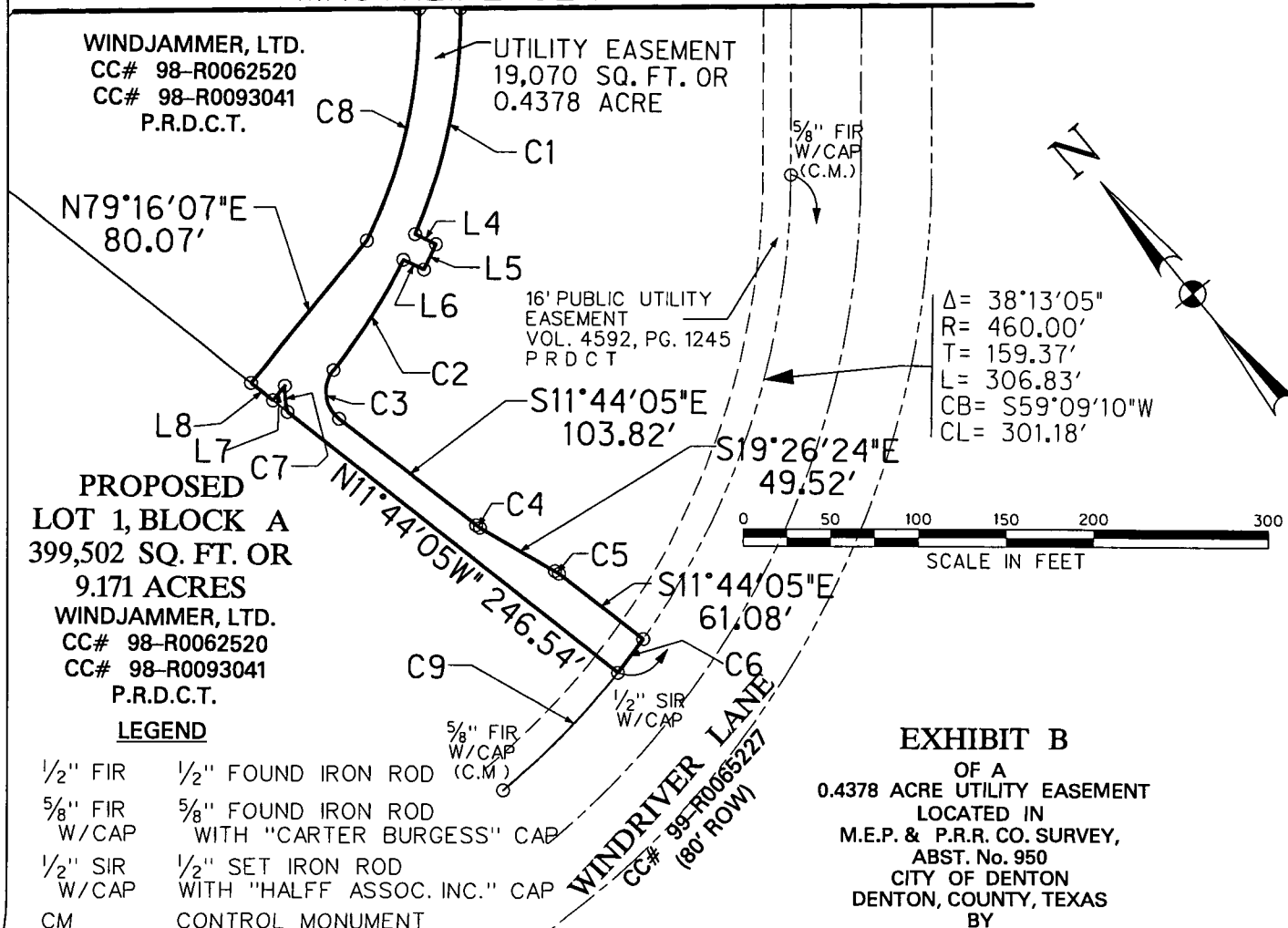
LINE TABLE

LINE	BEARING	DISTANCE
L4	S 24° 38' 25" E	13.00'
L5	S 65° 35' 32" W	16.08'
L6	N 24° 15' 01" W	13.00'
L7	S 79° 16' 07" W	4.20'
L8	N 11° 44' 05" W	16.00'

CURVE TABLE

NO.	DELTA	RADIUS	TANGENT	LENGTH	CHORD BEARING	CHORD LENGTH
C1	24° 09' 26" RT	329.00'	70.40'	138.71'	S 52° 07' 21" W	137.69'
C2	12° 40' 27" RT	329.00'	36.54'	72.78'	S 73° 19' 25" W	72.63'
C3	91° 23' 44" LT	20.00'	20.49'	31.90'	S 33° 57' 47" W	28.63'
C4	7° 42' 18" LT	20.00'	1.35'	2.69'	S 15° 35' 14" E	2.69'
C5	7° 42' 18" RT	20.00'	1.35'	2.69'	S 15° 35' 14" E	2.69'
C6	2° 44' 30" RT	460.00'	11.01'	22.01'	S 76° 53' 28" W	22.01'
C7	8° 16' 02" RT	44.00'	3.18'	6.35'	N 29° 41' 56" E	6.34'
C8	31° 20' 15" LT	305.00'	85.55'	166.82'	N 55° 42' 55" E	164.75'
C9	11° 44' 17" RT	460.00'	47.29'	94.24'	S 84° 07' 52" W	94.08'

MACTHLINE SEE SHEET 1



# LEGAL DESCRIPTION

## WATER AND WASTEWATER AND ELECTRIC EASEMENT

**BEING** a tract of land in the Memphis, El Paso & Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being a part of Lot 1, Block A, Bone Daddy's Denton Addition, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2015-123 of the Official Public Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at the intersection of the southwest right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) and the northwest right-of-way line of Windriver Lane (an 80-foot right-of-way); from said point an aluminum disk stamped "TXDOT" found in the southeast right-of-way line of said Windriver Lane bears South 1°29'14" East, a distance of 121.61 feet;

**THENCE** departing the said southwest right-of-way line of Interstate Highway No. 35, South 39°29'34" West along the said northwest right-of-way line of Windriver Lane a distance of 91.88 feet to a point;

**THENCE** departing the said northwest right-of-way line of Windriver Lane, North 08°58'12" West, a distance of 13.11 feet to the **POINT OF BEGINNING**;

**THENCE** the following five (5) calls:

- North 53°02'23" West, a distance of 23.21 feet to a point for corner;
- North 52°03'57" West, a distance of 30.06 feet to a point for corner;
- North 37°27'04" East, a distance of 7.68 feet to a point for corner;
- North 50°24'21" West, a distance of 74.49 feet to a point for corner;
- South 86°18'55" West, a distance of 21.64 feet to a point for corner;
- North 48°58'14" West, a distance of 43.95 feet to a point for corner in the northwest line of said Lot 1;

**THENCE** North 39°20'20" East, along the said northwest line of Lot 1, a distance of 18.60 feet to a point for corner; from said point the north corner of said Lot 1 bears North 39°20'20" East, a distance of 56.57 feet;

**THENCE** departing the said northwest line of Lot 1, South 02°59'17" East, a distance of 0.82 feet to a point for corner;

**THENCE** the following four (4) calls:

- South 48°58'14" East, a distance of 36.53 feet to a point for corner;
- North 86°18'55" East, a distance of 24.30 feet to a point for corner;
- South 50°24'19" East, a distance of 103.87 feet to a point for corner;
- South 8°58'12" East, a distance of 38.89 feet to the **POINT OF BEGINNING** and containing 0.0859 acres or 3,742 square feet of land, more or less.

## NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER AND  
 ELECTRIC EASEMENT  
 PART OF LOT 1, BLOCK A  
 BONE DADDY'S DENTON ADDITION  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG	MCB	11/3/2021	061024039	1 OF 3





LINE TABLE		
NO.	BEARING	LENGTH
L1	N08°58'12"W	13.11'
L2	N53°02'23"W	23.21'
L3	N52°03'57"W	30.06'
L4	N37°27'04"E	7.68'
L5	S86°18'55"W	21.64'
L6	N48°58'14"W	43.95'
L7	N39°20'20"E	18.60'
L8	S02°59'17"E	0.82'
L9	S48°58'14"E	36.53'
L10	N86°18'55"E	24.30'
L11	S08°58'12"E	38.89'

WATER AND WASTEWATER AND  
ELECTRIC EASEMENT  
PART OF LOT 1, BLOCK A  
BONE DADDY'S DENTON ADDITION  
MEMPHIS, EL PASO AND PACIFIC RAILROAD  
COMPANY SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS

# Kimley»Horn

801 Cherry Street, Unit 11, # 1300  
Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG	MCB	11/3/2021	061024039	3 OF 3

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 107**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1813+67 RT to Sta 1817+50 RT

Existing Easement

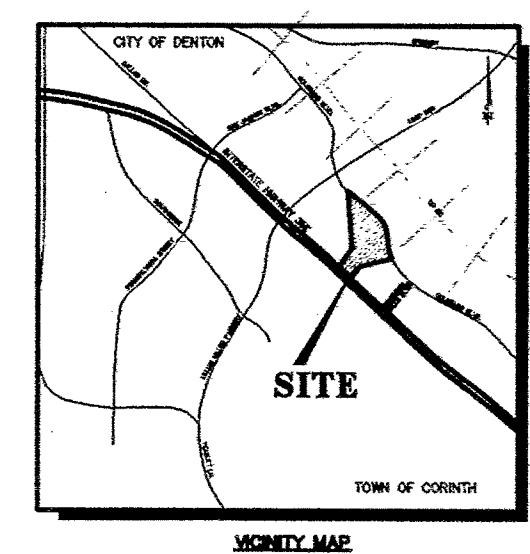
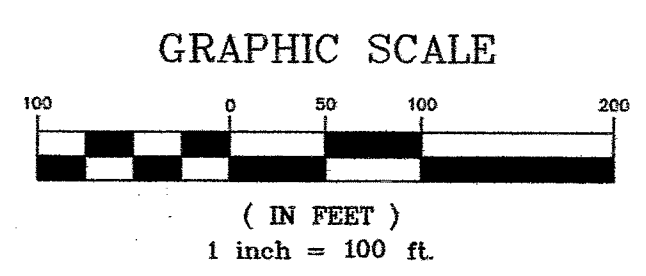
Volume Q, Page 291

PART OF LOT 1  
JEFFERSON COMMONS  
D. LOMBARD SURVEY, ABSTRACT NO. 784  
CITY OF DENTON, DENTON COUNTY, TEXAS



ON-  
CERTIFI-  
ABLE  
COPY

Cab Q pg 291



PACE'S CROSSING ADDITION  
LOT 1, BLOCK 1  
CAB. E. PG. 372  
P.R.D.C.T.

D. LAMBERT SURVEY  
ABSTRACT NO. 784

J. WHITE SURVEY  
ABSTRACT NO. 1433

LOT 1  
18.003 ACRES

COLORADO BOULEVARD  
(80' R.O.W.)  
Cab. F. Pg. 125  
P.R.D.C.T.

# FINAL PLAT JEFFERSON COMMONS

Lot 1, 18.003 Acres  
Multi-Family Land Use

J. WHITE SURVEY, ABSTRACT NO. 1433  
AND THE D. LAMBERT SURVEY, ABSTRACT NO. 784  
CITY OF DENTON, DENTON COUNTY, TEXAS

OWNER:  
JEFFERSON COMMONS DENTON, L.P.  
600 East Las Colinas Blvd., Suite 1400  
Cigna Tower  
Irving, Texas 75039

PHONE:  
(972) 556-6926

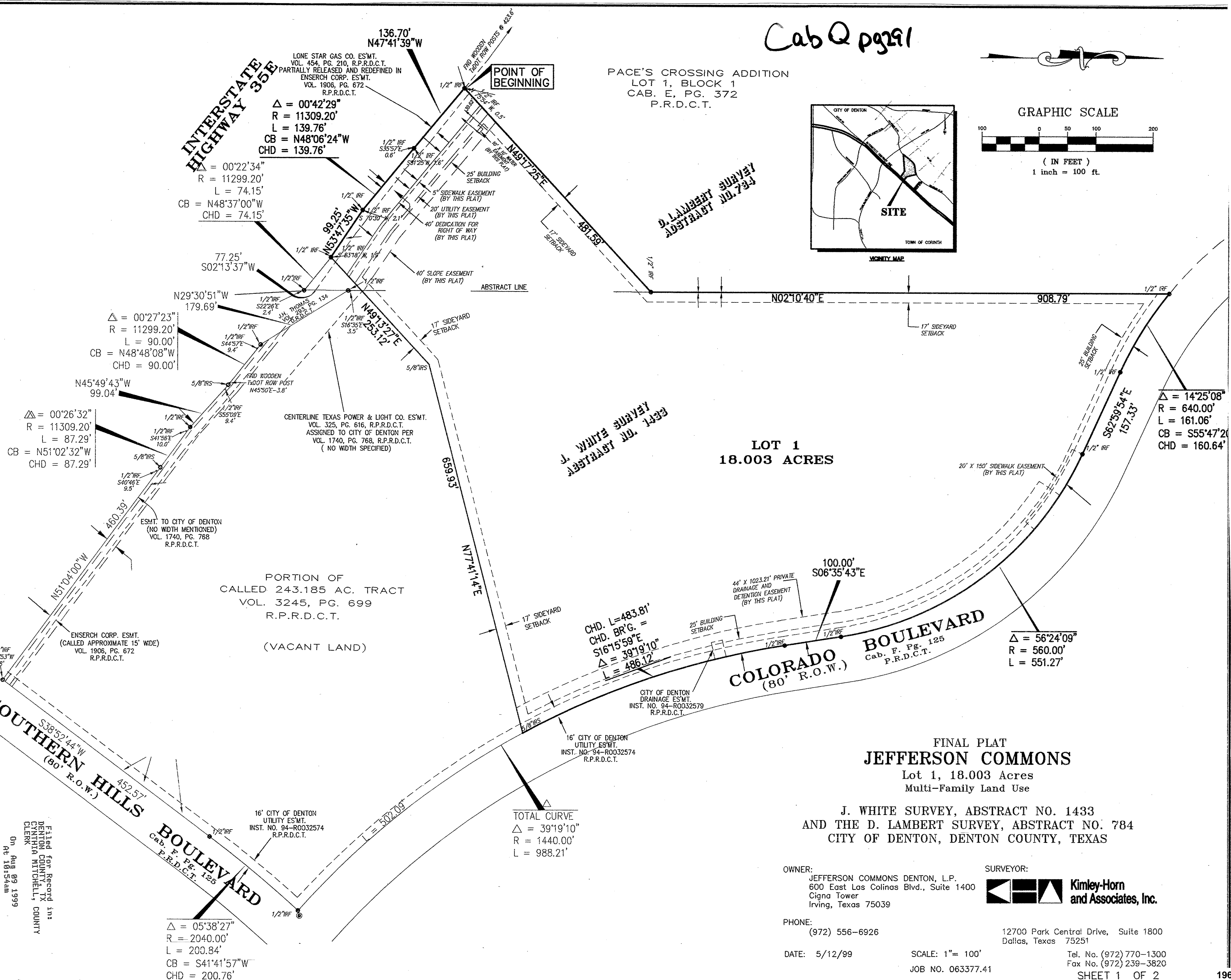
DATE: 5/12/99

SURVEYOR:  
 **Kimley-Horn  
and Associates, Inc.**

12700 Park Central Drive, Suite 1800  
Dallas, Texas 75251

SCALE: 1" = 100'  
JOB NO. 063377.41

Tel. No. (972) 770-1300  
Fax No. (972) 239-3820  
SHEET 1 OF 2



Filed for Record in  
DENTON COUNTY, TX COUNTY  
CLERK  
CYNTHIA MITCHELL  
On Aug 09 1999  
At 10:54am  
Doc/Num : 99-R0081267  
Doc/Type : PLAT  
Recording : 46.00  
Doc/Unit : 6.00  
Receipt #: 32178  
Deputy - FRANCHESKA



STATE OF TEXAS  
COUNTY OF DENTON  
CITY OF DENTON

WHEREAS, Jefferson Commons - Denton, L.P., a Delaware Limited Partnership is the owner of a tract of land located in the J. White Survey, Abstract No. 1433 and the D. Lambert Survey, Abstract No. 784, City of Denton, Denton County, Texas and being a portion of that certain tract of land described in the deed to Epic Development, Inc., as recorded in Volume 3245, Page 699 of the Deed Records of Denton County, Texas (DRDCT) and more particularly described by metes and bounds as follows (bearings based on the northeast right-of-way line of Interstate Highway No. 35-E per Texas Department of Transportation right-of-way maps):

BEGINNING at a 1/2-inch iron rod found for the most southerly corner of Lot 1, Block 1, Pace's Crossing, an addition to the City of Denton, Texas according to the plat recorded in Cabinet E, Page 372 of the Plat Records of Denton County, Texas, from which a 1/2-inch iron rod found bears North 75°54' West, 0.5 feet;

THENCE along the west boundary line of said Epic Development, Inc. tract with the east boundary line of said Pace's Crossing, as follows:

- North 49°17'25" East, 481.59 feet to a 1/2-inch iron pipe found for a corner in the common line of said White survey and said Lambert survey;
- North 02°10'40" East, along said common line, 908.79 feet to a 1/2-inch iron rod found in the southwest right-of-way line of Colorado Boulevard (an 80-foot wide right-of-way);

THENCE along the said southwest right-of-way line of Colorado Boulevard, as follows:

- Southeasterly, 161.06 feet along a curve to the left having a radius of 640.00 feet, a central angle of 14°25'09", and a chord bearing of South 55°47'19" East, 160.64 feet to a 1/2-inch iron rod found at the end of said curve;
- South 62°59'54" East, 157.33 feet to a 1/2-inch iron rod found at the beginning of a curve to the right;
- Southeasterly, 551.27 feet along said curve to the right having a radius of 560.00 feet, a central angle of 56°24'10", and a chord bearing of South 34°47'46" East, 529.28 feet to a 1/2-inch iron rod found at the end of said curve;
- South 06°35'43" East, 100.00 feet to a 1/2-inch iron rod found at the beginning of a curve to the left;
- Southeasterly, 486.12 feet along said curve to the left having a radius of 1440.00 feet, a central angle of 19°20'31", and a chord bearing of South 16°15'59" East, 483.81 feet to a 5/8-inch "KHA" capped iron rod set for a corner;

THENCE South 77°41'14" West, departing said southwest right-of-way line of Colorado Boulevard, a distance of 659.93 feet to a 5/8-inch "KHA" capped iron rod set for a corner;

THENCE South 49°13'27" West, a distance of 253.12 feet to a 1/2-inch iron rod found for a corner in the southwest boundary line of said Epic Development, Inc. tract and the northeast right-of-way line of Interstate Highway No. 35-E, from which a 1/2-inch iron rod found bears South 83°18' West, 1.9 feet;

THENCE along said southwest boundary line with the said northeast right-of-way line of Interstate Highway No. 35-E, as follows:

- North 53°47'35" West, 99.25 feet to a 1/2-inch iron rod found at the beginning of a curve to the right, from which a 1/2-inch iron rod found bears South 70°30' West, 2.1 feet;
- Northwesterly, 139.76 feet along said curve to the right having a radius of 11,309.20 feet, a central angle of 00°42'29", and a chord bearing of North 48°06'24" West, 139.76 feet to a point for the end of said curve, from which a 1/2-inch iron rod found bears South 35°57' East, 0.6 feet and a 1/2-inch iron rod found bears South 81°25' West, 1.6 feet;
- North 47°41'40" West, 136.70 feet to the POINT OF BEGINNING and containing 18.003 acres of land, more or less.

PRIVATE DRAINAGE AND DETENTION EASEMENT

STATE OF TEXAS  
COUNTY OF DENTON  
CITY OF DENTON

The plat is hereby adopted by the Owners and approved by the City of Denton (called "City") subject to the following conditions that shall be binding upon the Owners, their heirs, grantees and successors: The portion of Lot 1, as shown on the plat, is called "Private Drainage and Detention Easement". The Private Drainage and Detention Easement within the limits of this addition, will remain open at all times and will be maintained in a safe and sanitary condition by the owners of the lot or lots that are traversed by or adjacent to the Private Drainage and Detention Easement. The City will not be responsible for the maintenance and operation of said easement or for any damage to private property or person that results from conditions in the Easement, or for the control of erosion, No obstruction to the natural flow of storm water run-off shall be permitted by construction of any type of building, fence, or any other structure within the Private Drainage and Detention Easement, as herein above defined, unless approved by the City. The property owner shall keep the Private Drainage and Detention Easement clear and free of debris, silt, and any substance that would result in unsanitary conditions or obstruct the flow of water. And, the City shall have the right of ingress and egress for the purpose of inspection and supervision of maintenance work by the property owner to alleviate any undesirable conditions that may occur. The natural drainage through the Private Drainage and Detention Easement is subject to storm water overflow and natural bank erosion to an extent that cannot be definitely defined. The City shall not be held liable for any damages of any nature resulting from the occurrence of these natural phenomena, or resulting from the failure of any structure, or structures, within the Easement.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: Jefferson Commons - Denton, L.P., being the Owner of the above described tract of land does hereby adopt this plat designating the herein described property as **JEFFERSON COMMONS** an addition to the City of Denton, Denton County, Texas and does hereby dedicate to the public use forever the right-of-way shown thereon. The easements shown thereon are hereby granted for the limited purposes indicated. The utility, access and fire lane easements shall be open to the public, fire and police units, garbage and rubbish collection agencies; and all public and private utilities for each-particular use. The maintenance of paving on the utility, access and fire lane easements it the responsibility of the property owner. No buildings, fences, trees, shrubs, or other improvements or growths, other than paving, shall be constructed, reconstructed or placed upon, over or across the easements as shown. Said easements are hereby granted for the mutual use and accommodation of all public utilities using or desiring to use the same. All, and any public utility companies shall have the right to remove and keep removed all or parts of any buildings, fences, trees, shrubs, or other improvements, other than paving, or growths which in any way may endanger or interfere with the construction, maintenance or efficiency of its respective systems on the easements, and all public utility companies shall at all times have the full right of ingress and egress to or from and upon the said easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or parts of its respective systems without the necessity at any time of procuring the permission of anyone. Any damages caused by the exercise of the foregoing rights shall be repaired by the party causing same. Any public utility company shall have the right of ingress and egress over private property for the purpose of reading meters and performing any maintenance and services required or ordinarily performed by that utility company.

This plat is approved subject all platting ordinances, rules, regulations and resolutions of the City of Denton, Texas.

That the undersigned does hereby covenant and agree that it shall construct upon the fire lane easements, as dedicated and shown hereon, a hard surface that it shall maintain the same in a state of good repair at all times and keep the same free and clear of any structures, fences, trees, shrubs, or other improvements, other than paving, or obstructions, including but not limited to the parking of motor vehicles, trailers, boats or other impediments to the access of fire apparatus. The maintenance of paving on the utility, access and fire lane easements is the responsibility of the owner, and the owner shall post and maintain appropriate signs in conspicuous places along such fire lanes, stating "Fire Lane, No Parking". The Fire Chief or his duly authorized representative is hereby authorized to cause such fire lanes and utility easements to be maintained free and unobstructed at all times for fire department and public utility use.

EXECUTED this 21<sup>st</sup> day of July, 1999.

JEFFERSON COMMONS - DENTON, L.P.  
A DELAWARE LIMITED PARTNERSHIP

By: APARTMENT COMMUNITY REALTY LLC  
a DELAWARE LIMITED LIABILITY COMPANY  
GENERAL PARTNER

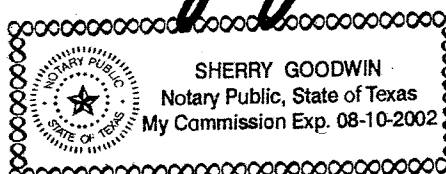
By: Ronald Ingram  
Name: Vice President  
Title:

STATE OF TEXAS  
COUNTY OF DENTON

BEFORE ME, the undersigned Authority, A Notary Public in and for said county and state, on this day personally appeared Ronald D. Ingram known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration thereof expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE  
THIS 21<sup>st</sup> DAY OF July, 1999

NOTARY PUBLIC in and for the STATE OF TEXAS

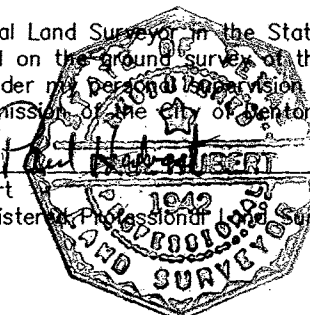


Cab Q pg29 2

KNOW ALL MEN BY THESE PRESENTS:

I, Paul Hubert, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that I have prepared this plat from an actual on the ground survey of the land, and that the corner monuments shown thereon were properly placed under my personal supervision in accordance with Platting Rules and Regulations of the City Plan Commission of the City of Denton, Denton County, Texas.

Paul Hubert  
Texas Registered Professional Land Surveyor, No. 1942

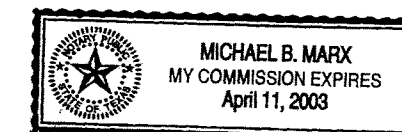


STATE OF TEXAS  
COUNTY OF DENTON

BEFORE ME, the undersigned Authority, A Notary Public in and for said county and state, on this day personally appeared Paul Hubert known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration thereof expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE

THIS 21<sup>st</sup> DAY OF July, 1999



NOTARY PUBLIC in and for the STATE OF TEXAS

Michael B. Marx

CERTIFICATE OF APPROVAL:

Approved this 14<sup>th</sup> day of July, 1999 by the Planning and Zoning Commission for the City of Denton, Texas.

Jim Engelbrecht, Chairman

Jennifer Walters, City Secretary

FINAL PLAT  
**JEFFERSON COMMONS**  
Lot 1, 18.003 Acres  
Multi-Family Land Use

J. WHITE SURVEY, ABSTRACT NO. 1433  
AND THE D. LAMBERT SURVEY, ABSTRACT NO. 784  
CITY OF DENTON, DENTON COUNTY, TEXAS

OWNER:  
JEFFERSON COMMONS DENTON, L.P.  
600 East Las Colinas Blvd., Suite 1400  
Cigna Tower  
Irving, Texas 75039

SURVEYOR:  
 **Kimley-Horn and Associates, Inc.**

PHONE:  
(972) 556-6926

12700 Park Central Drive, Suite 1800  
Dallas, Texas 75251

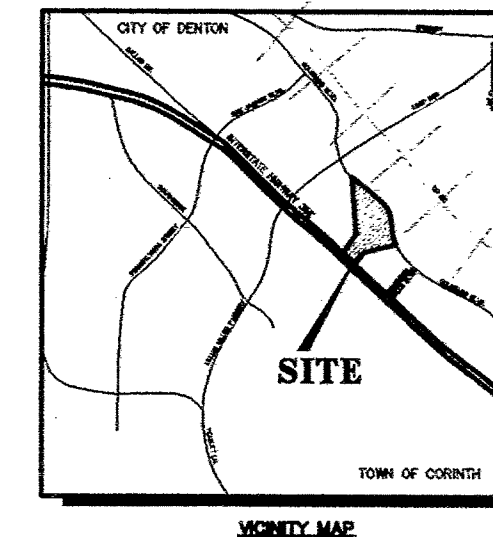
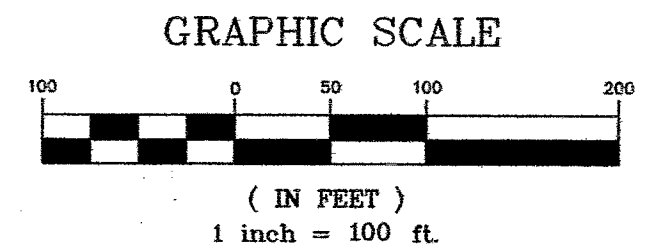
DATE: 5/12/99

SCALE: 1"= 100'  
JOB NO. 063377.41

Tel. No. (972) 770-1300  
Fax No. (972) 239-3820  
SHEET 2 OF 2

Filed for Record in  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY  
CLERK  
On: Aug 09 1999  
At: 10:55am  
Doc/Type: 99-R0081287  
PLA  
Recording: 46-00  
Doc/Num: 6-00  
Receipt #: 32178  
Deputy - FRANCHESKA

Cab Q pg291



PACE'S CROSSING ADDITION  
LOT 1, BLOCK 1  
CAB. E. PG. 372  
P.R.D.C.T.

D. LAMBERT SURVEY  
ABSTRACT NO. 784

J. WHITE SURVEY  
ABSTRACT NO. 1433

LOT 1  
18.003 ACRES

COLORADO BOULEVARD  
(80' R.O.W.)  
Cab. F. Pg. 125  
P.R.D.C.T.

FINAL PLAT  
JEFFERSON COMMONS

Lot 1, 18.003 Acres  
Multi-Family Land Use

J. WHITE SURVEY, ABSTRACT NO. 1433  
AND THE D. LAMBERT SURVEY, ABSTRACT NO. 784  
CITY OF DENTON, DENTON COUNTY, TEXAS

OWNER:  
JEFFERSON COMMONS DENTON, L.P.  
600 East Las Colinas Blvd., Suite 1400  
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and Associates, Inc.**

PHONE:  
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DATE: 5/12/99

SCALE: 1" = 100'

JOB NO. 063377.41

12700 Park Central Drive, Suite 1800  
Dallas, Texas 75251

Tel. No. (972) 770-1300

Fax No. (972) 239-3820

SHEET 1 OF 2

1967

INTERSTATE  
HIGHWAY 35E

LONE STAR GAS CO. ES.MT.  
VOL. 454, PG. 210, R.P.R.D.C.T.  
PARTIALLY RELEASED AND REDEFINED IN  
ENSERCH CORP. ES.MT.  
VOL. 1906, PG. 672  
R.P.R.D.C.T.

$\Delta = 00^{\circ}42'29''$   
R = 11309.20'  
L = 139.76'  
CB = N48^{\circ}06'24''W  
CHD = 139.76'

$\Delta = 00^{\circ}22'34''$   
R = 11299.20'  
L = 74.15'  
CB = N48^{\circ}37'00''W  
CHD = 74.15'

$\Delta = 00^{\circ}27'23''$   
R = 11299.20'  
L = 90.00'  
CB = N48^{\circ}48'08''W  
CHD = 90.00'

$\Delta = 00^{\circ}26'32''$   
R = 11309.20'  
L = 87.29'  
CB = N51^{\circ}02'32''W  
CHD = 87.29'

CENTERLINE TEXAS POWER & LIGHT CO. ES.MT.  
VOL. 325, PG. 616, R.P.R.D.C.T.  
ASSIGNED TO CITY OF DENTON PER  
VOL. 1740, PG. 768, R.P.R.D.C.T.  
(NO WIDTH SPECIFIED)

PORTION OF  
CALLED 243.185 AC. TRACT  
VOL. 3245, PG. 699  
R.P.R.D.C.T.

(VACANT LAND)

ENSERCH CORP. ES.MT.  
(CALLED APPROXIMATE 15' WIDE)  
VOL. 1906, PG. 672  
R.P.R.D.C.T.

ES.MT. TO CITY OF DENTON  
(NO WIDTH MENTIONED)  
VOL. 1740, PG. 768  
R.P.R.D.C.T.

TOTAL CURVE  
 $\Delta = 39^{\circ}19'10''$   
R = 1440.00'  
L = 988.21'

$\Delta = 05^{\circ}38'27''$   
R = 2040.00'  
L = 200.84'  
CB = S41^{\circ}41'57''W  
CHD = 200.76'

Filed for Record in  
DENTON COUNTY, TX COUNTY  
CLERK  
CYNTHIA MITCHELL  
On Aug 09 1999  
At 10:54am  
Doc/Num : 99-R0081267  
Doc/Type : PLAT  
Recording : 46.00  
Doc/Sheet : 6.00  
Receipt #: 32178  
Deputy - FRANCHESKA

STATE OF TEXAS  
COUNTY OF DENTON  
CITY OF DENTON

WHEREAS, Jefferson Commons - Denton, L.P., a Delaware Limited Partnership is the owner of a tract of land located in the J. White Survey, Abstract No. 1433 and the D. Lambert Survey, Abstract No. 784, City of Denton, Denton County, Texas and being a portion of that certain tract of land described in the deed to Epic Development, Inc., as recorded in Volume 3245, Page 699 of the Deed Records of Denton County, Texas (DRDCT) and more particularly described by metes and bounds as follows (bearings based on the northeast right-of-way line of Interstate Highway No. 35-E per Texas Department of Transportation right-of-way maps):

BEGINNING at a 1/2-inch iron rod found for the most southerly corner of Lot 1, Block 1, Pace's Crossing, an addition to the City of Denton, Texas according to the plat recorded in Cabinet E, Page 372 of the Plat Records of Denton County, Texas, from which a 1/2-inch iron rod found bears North 75°54' West, 0.5 feet;

THENCE along the west boundary line of said Epic Development, Inc. tract with the east boundary line of said Pace's Crossing, as follows:

- North 49°17'25" East, 481.59 feet to a 1/2-inch iron pipe found for a corner in the common line of said White survey and said Lambert survey;
- North 02°10'40" East, along said common line, 908.79 feet to a 1/2-inch iron rod found in the southwest right-of-way line of Colorado Boulevard (an 80-foot wide right-of-way);

THENCE along the said southwest right-of-way line of Colorado Boulevard, as follows:

- Southeasterly, 161.06 feet along a curve to the left having a radius of 640.00 feet, a central angle of 14°25'09", and a chord bearing of South 55°47'19" East, 160.64 feet to a 1/2-inch iron rod found at the end of said curve;
- South 62°59'54" East, 157.33 feet to a 1/2-inch iron rod found at the beginning of a curve to the right;
- Southeasterly, 551.27 feet along said curve to the right having a radius of 560.00 feet, a central angle of 56°24'10", and a chord bearing of South 34°47'46" East, 529.28 feet to a 1/2-inch iron rod found at the end of said curve;
- South 06°35'43" East, 100.00 feet to a 1/2-inch iron rod found at the beginning of a curve to the left;
- Southeasterly, 486.12 feet along said curve to the left having a radius of 1440.00 feet, a central angle of 19°20'31", and a chord bearing of South 16°15'59" East, 483.81 feet to a 5/8-inch "KHA" capped iron rod set for a corner;

THENCE South 77°41'14" West, departing said southwest right-of-way line of Colorado Boulevard, a distance of 659.93 feet to a 5/8-inch "KHA" capped iron rod set for a corner;

THENCE South 49°13'27" West, a distance of 253.12 feet to a 1/2-inch iron rod found for a corner in the southwest boundary line of said Epic Development, Inc. tract and the northeast right-of-way line of Interstate Highway No. 35-E, from which a 1/2-inch iron rod found bears South 83°18' West, 1.9 feet;

THENCE along said southwest boundary line with the said northeast right-of-way line of Interstate Highway No. 35-E, as follows:

- North 53°47'35" West, 99.25 feet to a 1/2-inch iron rod found at the beginning of a curve to the right, from which a 1/2-inch iron rod found bears South 70°30' West, 2.1 feet;
- Northwesterly, 139.76 feet along said curve to the right having a radius of 11,309.20 feet, a central angle of 00°42'29", and a chord bearing of North 48°06'24" West, 139.76 feet to a point for the end of said curve, from which a 1/2-inch iron rod found bears South 35°57' East, 0.6 feet and a 1/2-inch iron rod found bears South 81°25' West, 1.6 feet;
- North 47°41'40" West, 136.70 feet to the POINT OF BEGINNING and containing 18.003 acres of land, more or less.

PRIVATE DRAINAGE AND DETENTION EASEMENT

STATE OF TEXAS  
COUNTY OF DENTON  
CITY OF DENTON

The plat is hereby adopted by the Owners and approved by the City of Denton (called "City") subject to the following conditions that shall be binding upon the Owners, their heirs, grantees and successors: The portion of Lot 1, as shown on the plat, is called "Private Drainage and Detention Easement". The Private Drainage and Detention Easement within the limits of this addition, will remain open at all times and will be maintained in a safe and sanitary condition by the owners of the lot or lots that are traversed by or adjacent to the Private Drainage and Detention Easement. The City will not be responsible for the maintenance and operation of said easement or for any damage to private property or person that results from conditions in the Easement, or for the control of erosion, No obstruction to the natural flow of storm water run-off shall be permitted by construction of any type of building, fence, or any other structure within the Private Drainage and Detention Easement, as herein above defined, unless approved by the City. The property owner shall keep the Private Drainage and Detention Easement clear and free of debris, silt, and any substance that would result in unsanitary conditions or obstruct the flow of water. And, the City shall have the right of ingress and egress for the purpose of inspection and supervision of maintenance work by the property owner to alleviate any undesirable conditions that may occur. The natural drainage through the Private Drainage and Detention Easement is subject to storm water overflow and natural bank erosion to an extent that cannot be definitely defined. The City shall not be held liable for any damages of any nature resulting from the occurrence of these natural phenomena, or resulting from the failure of any structure, or structures, within the Easement.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: Jefferson Commons - Denton, L.P., being the Owner of the above described tract of land does hereby adopt this plat designating the herein described property as **JEFFERSON COMMONS** an addition to the City of Denton, Denton County, Texas and does hereby dedicate to the public use forever the right-of-way shown thereon. The easements shown thereon are hereby granted for the limited purposes indicated. The utility, access and fire lane easements shall be open to the public, fire and police units, garbage and rubbish collection agencies; and all public and private utilities for each-particular use. The maintenance of paving on the utility, access and fire lane easements it the responsibility of the property owner. No buildings, fences, trees, shrubs, or other improvements or growths, other than paving, shall be constructed, reconstructed or placed upon, over or across the easements as shown. Said easements are hereby granted for the mutual use and accommodation of all public utilities using or desiring to use the same. All, and any public utility companies shall have the right to remove and keep removed all or parts of any buildings, fences, trees, shrubs, or other improvements, other than paving, or growths which in any way may endanger or interfere with the construction, maintenance or efficiency of its respective systems on the easements, and all public utility companies shall at all times have the full right of ingress and egress to or from and upon the said easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or parts of its respective systems without the necessity at any time of procuring the permission of anyone. Any damages caused by the exercise of the foregoing rights shall be repaired by the party causing same. Any public utility company shall have the right of ingress and egress over private property for the purpose of reading meters and performing any maintenance and services required or ordinarily performed by that utility company.

This plat is approved subject all platting ordinances, rules, regulations and resolutions of the City of Denton, Texas.

That the undersigned does hereby covenant and agree that it shall construct upon the fire lane easements, as dedicated and shown hereon, a hard surface that it shall maintain the same in a state of good repair at all times and keep the same free and clear of any structures, fences, trees, shrubs, or other improvements, other than paving, or obstructions, including but not limited to the parking of motor vehicles, trailers, boats or other impediments to the access of fire apparatus. The maintenance of paving on the utility, access and fire lane easements is the responsibility of the owner, and the owner shall post and maintain appropriate signs in conspicuous places along such fire lanes, stating "Fire Lane, No Parking". The Fire Chief or his duly authorized representative is hereby authorized to cause such fire lanes and utility easements to be maintained free and unobstructed at all times for fire department and public utility use.

EXECUTED this 21<sup>st</sup> day of July, 1999.

JEFFERSON COMMONS - DENTON, L.P.  
A DELAWARE LIMITED PARTNERSHIP

By: APARTMENT COMMUNITY REALTY LLC  
a DELAWARE LIMITED LIABILITY COMPANY  
GENERAL PARTNER

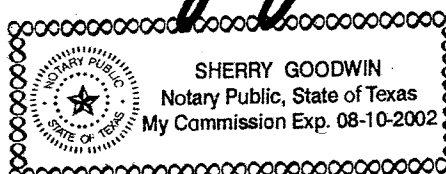
By: Ronald Ingram  
Name: Vice President  
Title:

STATE OF TEXAS  
COUNTY OF DENTON

BEFORE ME, the undersigned Authority, A Notary Public in and for said county and state, on this day personally appeared Ronald D. Ingram known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration thereof expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE  
THIS 21<sup>st</sup> DAY OF July, 1999

NOTARY PUBLIC in and for the STATE OF TEXAS

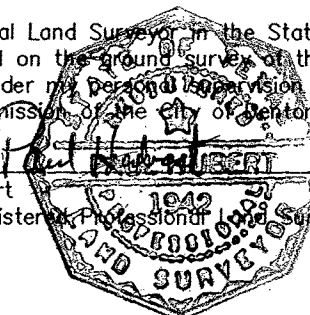


Cab Q pg29 2

KNOW ALL MEN BY THESE PRESENTS:

I, Paul Hubert, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that I have prepared this plat from an actual on the ground survey of the land, and that the corner monuments shown thereon were properly placed under my personal supervision in accordance with Platting Rules and Regulations of the City Plan Commission of the City of Denton, Denton County, Texas.

Paul Hubert  
Texas Registered Professional Land Surveyor, No. 1942



STATE OF TEXAS  
COUNTY OF DENTON

BEFORE ME, the undersigned Authority, A Notary Public in and for said county and state, on this day personally appeared Paul Hubert known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration thereof expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE

THIS 21<sup>st</sup> DAY OF July, 1999



NOTARY PUBLIC in and for the STATE OF TEXAS

Michael B. Marx

CERTIFICATE OF APPROVAL:

Approved this 14<sup>th</sup> day of July, 1999 by the Planning and Zoning Commission for the City of Denton, Texas.

Jim Engelbrecht, Chairman

Jennifer Walters, City Secretary

FINAL PLAT  
**JEFFERSON COMMONS**  
Lot 1, 18.003 Acres  
Multi-Family Land Use

J. WHITE SURVEY, ABSTRACT NO. 1433  
AND THE D. LAMBERT SURVEY, ABSTRACT NO. 784  
CITY OF DENTON, DENTON COUNTY, TEXAS

OWNER:  
JEFFERSON COMMONS DENTON, L.P.  
600 East Las Colinas Blvd., Suite 1400  
Cigna Tower  
Irving, Texas 75039

SURVEYOR:  
 Kimley-Horn  
and Associates, Inc.

PHONE:  
(972) 556-6926

12700 Park Central Drive, Suite 1800  
Dallas, Texas 75251

DATE: 5/12/99

SCALE: 1"= 100'  
JOB NO. 063377.41

Tel. No. (972) 770-1300  
Fax No. (972) 239-3820  
SHEET 2 OF 2

Filed for Record in  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY  
CLERK  
On: Aug 09 1999  
At: 10:55am  
Doc/Type: 99-R0081287  
PLA  
Recording: 46-00  
Doc/Num: 6-00  
Receipt #: 32178  
Deputy - FRANCHESKA



**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the D. Lombard Survey, Abstract No. 784, City of Denton, Denton County, Texas, and being part of Lot 1, Jefferson Commons, an addition to the City of Denton, Texas according to the plat recorded in Volume Q, Page 291 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a point in the northwest line of said Lot 1; from said point a 1/2-inch iron rod found for the south corner of Lot 1-R, Block 1, Pace's Crossing, an addition to the City of Denton, Texas according to the plat recorded in Volume F, Page 229 of said Plat Records, and being in the northeast right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) bears South 48°54'20" West, a distance of 53.86 feet

**THENCE** North 48°54'20" East, along the said northwest line of said Lot 1, a distance of 29.32 feet to a point for corner;

**THENCE** departing the said northwest line of said Lot 1, South 58°18'39" East, a distance of 2.61 feet to a point for corner;

**THENCE** following five (5) calls:

North 48°13'41" East, a distance of 6.58 feet to a point for corner;  
 South 41°48'48" East, a distance of 6.32 feet to a point for corner;  
 South 48°13'41" West, a distance of 4.71 feet to a point for corner;  
 South 58°18'39" East, a distance of 33.86 feet to a point for corner;  
 South 48°51'56" East, a distance of 333.15 feet to a point for corner in the southeast line of said Lot 1;

**THENCE** South 48°50'14" West, along the said southeast line of Lot 1, a distance of 28.26 feet to a point for corner; from said point a 1/2-inch iron rod found for the south corner of Lot 4-R, Block 1, Southern Hills Plaza, an addition to the City of Denton, Texas according to the plat recorded in Instrument No. 2009-3 of the Official Public Records of Denton County, Texas, and being in the said northeast right-of-way line of Interstate Highway No. 35 bears South 48°54'20" West, a distance of 57.28 feet;

**THENCE** North 48°51'56" West, departing the said southeast line of Lot 1, a distance of 327.05 feet to a point for corner;

**THENCE** North 58°18'39" West, a distance of 49.42 feet to the **POINT OF BEGINNING** and containing 10,576 square feet or 0.2428 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



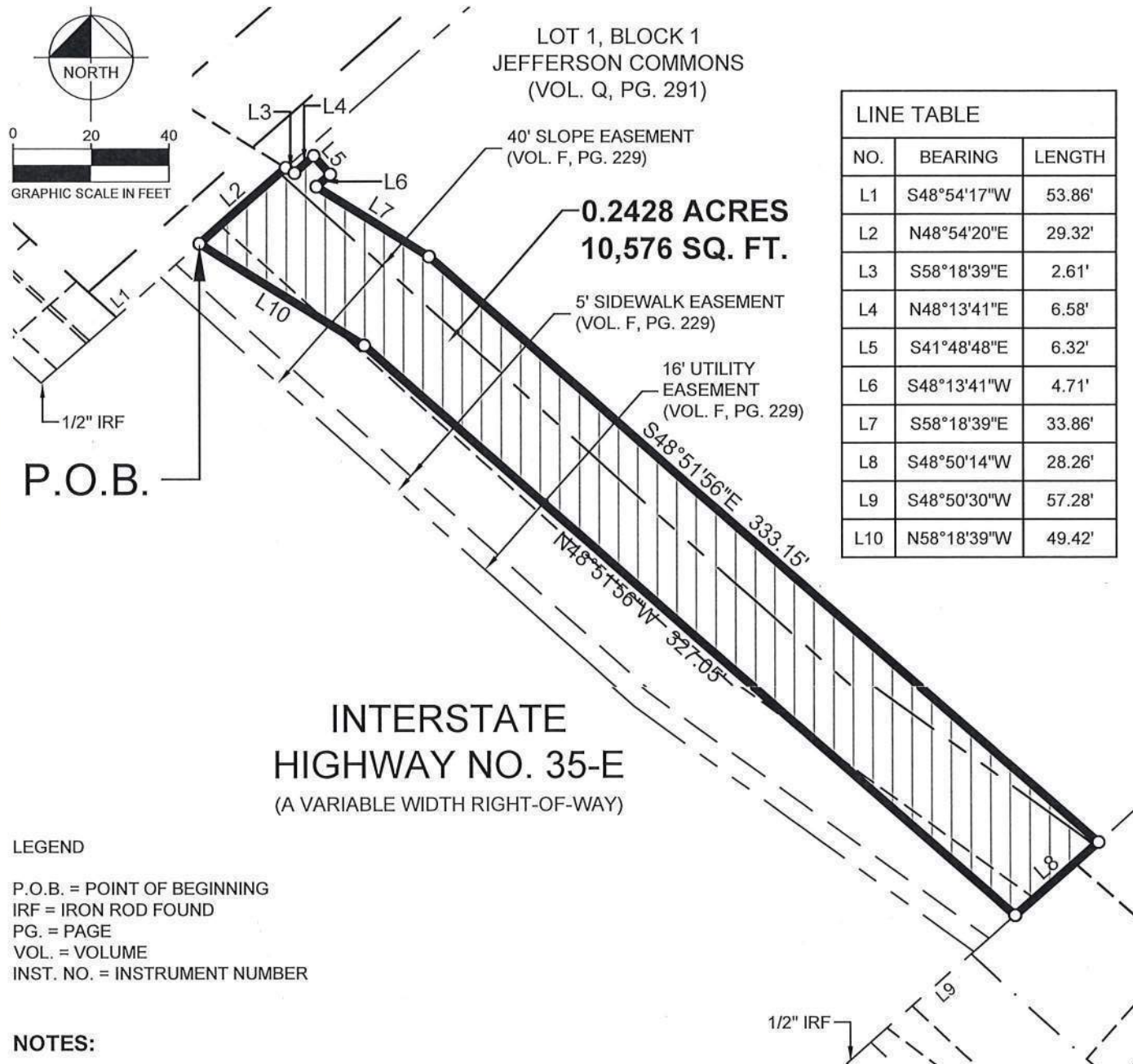
WATER AND WASTEWATER  
 AND ELECTRIC EASEMENT  
 PART OF LOT 1  
 JEFFERSON COMMONS  
 D. LOMBARD SURVEY, ABSTRACT NO. 784  
 CITY OF DENTON, DENTON COUNTY, TEXAS

**Kimley»Horn**

801 Cherry Street, Unit 11, # 1300  
 Fort Worth, Texas 76102 FIRM # 10194040

Tel. No. (817) 335-6511  
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	8/25/2020	061024039	1 OF 2



9/25/20

MICHAEL C. BILLINGSLEY  
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1" = 40'	JBH	MCB	8/25/2020	061024039	2 OF 2



**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 109**

RCSJ 0196-01-100  
From: South of Mayhill  
To: South of SL 288

Utility Longitudinal Stations:  
Sta 1817+50 RT to Sta 1823+67 RT

Existing Easement

Volume F, Page 229

PART OF LOT 1-R, BLOCK A, PACE'S CROSSING  
DANIEL LOMBARD SURVEY, ABSTRACT NO. 784  
JOHN MCGOWAN SURVEY, ABSTRACT NO. 797  
CITY OF DENTON, DENTON COUNTY, TEXAS

THE STATE OF TEXAS

COUNTY OF DENTON

THAT JACKIE T. BROWN AND WIFE, LETA NELL BROWN

of Denton County, Texas

in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration

in hand paid by the City of Denton, Texas receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto to the City of Denton, Texas, the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property,

owned by them Situated in Denton County, Texas, in the

J. McGowan Survey, Abstract No. 797

All that certain lot, tract or parcel of land lying and being situated in the City/County of Denton, State of Texas, and being a part of the J. McGowan Survey, Abstract No. 797 and being part of a tract of land as conveyed from Johnnie W. Richards and wife, Constance Jean Richards to Jackie T. Brown and wife, Leta Nell Brown by deed dated March 19, 1965 and recorded in Volume 521, Page 129 of the Deed Records of Denton County, Texas and more particularly described as follows:

BEGINNING at the southwest corner of said Brown Tract, said point of beginning lying in the northeast right of way line of Interstate Highway 35E and also being the southeast corner of a tract of land conveyed from W. E. Singleton to T. E. Marshall by deed dated September 24, 1944 and recorded in Volume 292, Page 488 of the Deed Records of Denton County, Texas;

THENCE north 40° 53' east along the west boundary line of said Brown Tract a distance of 223.60 feet to a point for a corner, said point lying in the east boundary line of said McGowan Survey;

THENCE south 1° 28' east along the east boundary line of said McGowan Survey a distance of 23.75 feet to a point for a corner;

THENCE south 40° 53' west 16.0 feet southeast of and parallel with the west boundary line of said Brown Tract a distance of 218.72 feet to a point for a corner in the southwest boundary line of said Brown Tract same being the northeast right of way line of Interstate Hwy. 35E;

THENCE north 39° 38' west along the southwest boundary line of said Brown Tract same being the northeast right of way line of Interstate Highway 35E, a distance of 16.22 feet to the place of beginning and containing 3,661.33 square feet of land, more or less.



And it is further agreed that the said City of Denton, Texas in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, installing, repairing and perpetually maintaining electric utilities in, along, upon and across said premises, with the right and privilege at all times of the grantees herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along upon and across said premises for the purpose of making additions to, improvements on and repairs to the said electric utilities, or any part thereof.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness our hand, this the 21 day of February, A. D. 1974  
 JACKIE T. BROWN  
 LETA NELL BROWN

SINGLE ACKNOWLEDGMENT

THE STATE OF TEXAS,  
 COUNTY OF DENTON

in said for said County, Texas, on this day personally appeared

BEFORE ME, the undersigned authority,  
 JACKIE T. BROWN AND WIFE,

LETA NELL BROWN

whose name is subscribed to the foregoing instrument, and acknowledged to me for the purposes and consideration therein expressed.

AND SEAL OF OFFICE, This 21 day of February, A.D. 1974

Notary Public, Denton County, Texas  
 My Commission Expires June 1, 1975

JOINT ACKNOWLEDGMENT

THE STATE OF TEXAS,  
 COUNTY OF DENTON

in and for said County, Texas, on this day personally appeared

BEFORE ME, the undersigned authority,

and his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said

wife of the said having been examined by me privately and apart from her husband, and having the same fully explained to her, she, the said

acknowledged such instrument to be her act and deed and that she did not wish to rescind it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 21 day of February, A.D. 1974

(1-1)

Notary Public, Denton County, Texas  
 My Commission Expires June 1, 1975

22nd  
 27th

February  
 February

1974  
 1975



**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Daniel Lombard Survey, Abstract No. 784 and the John McGowan Survey, Abstract No. 797, City of Denton, Denton County, Texas, and being part of Lot 1-R, Block 1, Pace's Crossing, an addition to the City of Denton, Texas according to the plat recorded in Volume F, Page 229 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at an aluminum disk found in the northwest line of said Lot 1-R; from said point the west corner of said Lot 1-R, and being in the northeast right-of-way line of Interstate Highway No. 35 (a variable width right-of-way) bears South 41°41'51" West, a distance of 14.15 feet;

**THENCE** North 41°41'51" East, along the said northwest line of Lot 1-R, a distance of 28.01 feet to a point for corner;

**THENCE** departing the said northwest line of Lot 1-R, South 47°50'52" East, a distance of 268.75 feet to a point for corner;

**THENCE** South 49°42'23" East, a distance of 294.60 feet to a point for corner;

**THENCE** South 58°18'39" East, a distance of 57.54 feet to a point for corner in the southeast line of said Lot 1-R;

**THENCE** South 48°54'20" West, along the said southeast line of Lot 1-R, a distance of 29.32 feet to a point for corner; from said point a 1/2-inch iron rod found for the south corner of said Lot 1-R, and being in the said northeast right-of-way line of Interstate Highway No. 35 bears South 48°54'20" West, a distance of 53.86 feet;

**THENCE** departing the said southeast line of Lot 1-R, North 58°18'39" West, a distance of 50.97 feet to a point for corner;

**THENCE** North 49°42'23" West, a distance of 297.16 feet to a point for corner;

**THENCE** North 47°50'52" West, a distance of 268.99 feet to the **POINT OF BEGINNING** and containing 17,336 square feet or 0.3980 acres of land.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

*M. C. Billingsley*  
2/8/21

MICHAEL C. BILLINGSLEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 6558  
801 CHERRY STREET,  
UNIT 11 SUITE 1300  
FORT WORTH, TEXAS 76102  
PH. 817-335-6511  
michael.billingsley@kimley-horn.com



WATER AND WASTEWATER  
AND ELECTRIC EASEMENT  
PART OF LOT 1-R, BLOCK A, PACE'S CROSSING  
DANIEL LOMBARD SURVEY, ABSTRACT NO. 784  
JOHN MCGOWAN SURVEY, ABSTRACT NO. 797  
CITY OF DENTON, DENTON COUNTY, TEXAS

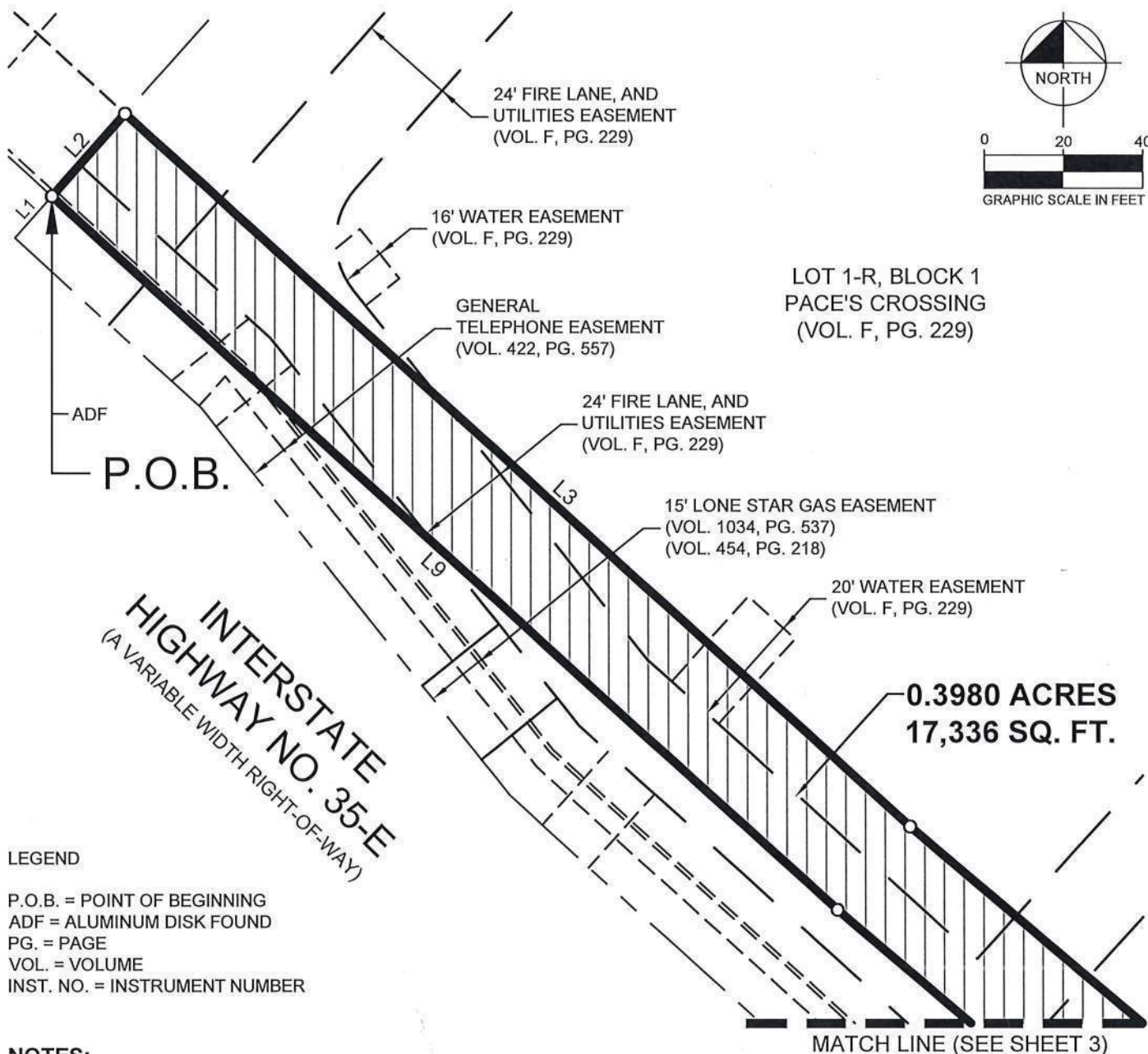
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	8/25/2020	061024039	1 OF 3





## LEGEND

P.O.B. = POINT OF BEGINNING  
 ADF = ALUMINUM DISK FOUND  
 PG. = PAGE  
 VOL. = VOLUME  
 INST. NO. = INSTRUMENT NUMBER

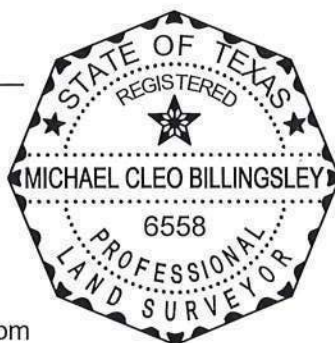
## NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*Michael C. Billingsley*  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
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WATER AND WASTEWATER  
 AND ELECTRIC EASEMENT  
 PART OF LOT 1-R, BLOCK A, PACE'S CROSSING  
 DANIEL LOMBARD SURVEY, ABSTRACT NO. 784  
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 CITY OF DENTON, DENTON COUNTY, TEXAS

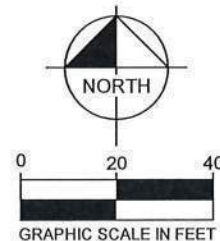
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	JBH	MCB	8/25/2020	061024039	2 OF 3

MATCH LINE (SEE SHEET 2)

24' FIRE LANE, AND  
UTILITIES EASEMENT  
(VOL. F, PG. 229)16' WATER EASEMENT  
(VOL. F, PG. 229)GENERAL TELEPHONE EASEMENT  
(VOL. 422, PG. 557)LOT 1-R, BLOCK 1  
PACE'S CROSSING  
(VOL. F, PG. 229)**0.3980 ACRES**  
**17,336 SQ. FT.**15' LONE STAR GAS EASEMENT  
(VOL. 1034, PG. 537)  
(VOL. 454, PG. 218)

**INTERSTATE  
HIGHWAY NO. 35-E**  
(A VARIABLE WIDTH RIGHT-OF-WAY)

LINE TABLE

NO.	BEARING	LENGTH
L1	S41°41'51"W	14.15'
L2	N41°41'51"E	28.01'
L3	S47°50'52"E	268.75'
L4	S49°42'23"E	294.60'
L5	S58°18'39"E	57.54'
L6	S48°54'20"W	29.32'
L7	N58°18'39"W	50.97'
L8	N49°42'23"W	297.16'
L9	N47°50'52"W	268.99'
L10	S48°54'20"W	53.86'

1/2" IRF

## LEGEND

P.O.B. = POINT OF BEGINNING  
 ADF = ALUMINUM DISK FOUND  
 PG. = PAGE  
 VOL. = VOLUME  
 INST. NO. = INSTRUMENT NUMBER

WATER AND WASTEWATER  
AND ELECTRIC EASEMENT  
 PART OF LOT 1-R, BLOCK A, PACE'S CROSSING  
 DANIEL LOMBARD SURVEY, ABSTRACT NO. 784  
 JOHN McGOWAN SURVEY, ABSTRACT NO. 797  
 CITY OF DENTON, DENTON COUNTY, TEXAS

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1" = 40'	JBH	MCB	8/25/2020	061024039	3 OF 3



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB24-120, **Version:** 1

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, Texas authorizing the City Manager to execute and deliver the Standard Utility Agreement (“Agreement”) by and between the City of Denton (“City”) and the Texas Department of Transportation (“TxDOT”), for the reimbursement of eligible costs incurred in the adjustment, removal, and relocation of city facilities of both Water and Wastewater Utilities along I-35E from US 377/Fort Worth Drive to Locust Street and along the North Frontage Road at UPRR Railroad to the east (“Utility Relocations Project -TxDOT CSJ# 0195-03- 103/Utility ID:U00020852), within the County and City of Denton, Texas; providing for the expenditure of funds in an amount not to exceed Seven Hundred Fifteen Thousand, One Hundred and Fifteen and 00/100 Dollars (\$715,115.00) for Water and Wastewater Utility Relocation efforts; and providing an effective date.





---

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Capital Projects/Public Works

**ACM:** Cassandra Ogden

**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, Texas authorizing the City Manager to execute and deliver the Standard Utility Agreement (“Agreement”) by and between the City of Denton (“City”) and the Texas Department of Transportation (“TxDOT”), for the reimbursement of eligible costs incurred in the adjustment, removal, and relocation of city facilities of both Water and Wastewater Utilities along I-35E from US 377/Fort Worth Drive to Locust Street and along the North Frontage Road at UPRR Railroad to the East (“Utility Relocations Project -TxDOT CSJ# 0195-03-103/Utility ID:U00020852), within the County and City of Denton, Texas; providing for the expenditure of funds in an amount not to exceed Seven Hundred Fifteen Thousand, One Hundred and Fifteen and 00/100 Dollars (\$715,115.00) for Water and Wastewater Utility Relocation efforts; and providing an effective date.

### **BACKGROUND**

The Texas Department of Transportation (TxDOT) has proposed a widening of Interstate Highway 35 (I-35) with an estimated construction start of Q4 2024. The I-35 Utility Relocation (Ft Worth Drive) Project will move public utilities in support of TxDOT with the installation of 709 LF of 8” PVC, 466 LF of 12” PVC, and removal of abandoned 340 LF of 8” wastewater in conflict with pavement & ROW longitudinal to IH35 from US-377 to S Locust Street. To align with TxDOT I-35 widening the project is scheduled for 90 days schedule. Since the project is a forced relocation of City of Denton utilities, there will be reimbursements from TxDOT to support this effort.

The I-35 Utility Relocation Project (Ft. Worth Drive) has a total estimated cost of \$750,870.75. This estimate includes a \$715,115.00 total base proposal amount and a contingency of \$35,755.75. A five (5) percent contingency allowance, if any, is for the sole use of the City and will be subject to written authorization by the City’s Project Manager and Program Manager.

### **RECOMMENDATION**

Staff recommends approval of the Ordinance.

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

N/A



### **ESTIMATED SCHEDULE OF PROJECT**

The City's Ft Worth Drive Utility Relocation Project is expected to be completed by Q4 2024.

### **FISCAL INFORMATION**

Reimbursements from TxDOT will be deposited to the Ft Worth Drive Utility Relocations Project.

### **EXHIBITS**

Exhibit 1 – Agenda Information Sheet

Exhibit 2 – Ordinance and Agreement

Respectfully submitted:  
Trevor Crain  
Director of Capital Projects

For information concerning this acquisition, contact: Shawn Messick, 940-349-8390.

Legal point of contact: Benjamin Samples at 940-349-8312

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER THE STANDARD UTILITY AGREEMENT (“AGREEMENT”) BY AND BETWEEN THE CITY OF DENTON (“CITY”) AND THE TEXAS DEPARTMENT OF TRANSPORTATION (“TXDOT”), FOR THE REIMBURSEMENT OF ELIGIBLE COSTS INCURRED IN THE ADJUSTMENT, REMOVAL, AND RELOCATION OF CITY FACILITIES OF BOTH WATER AND WASTEWATER UTILITIES ALONG I-35E FROM US 377/FORT WORTH DRIVE TO LOCUST STREET AND ALONG THE NORTH FRONTAGE ROAD AT UPRR RAILROAD TO THE EAST (“UTILITY RELOCATIONS PROJECT -TXDOT CSJ# 0195-03-103/Utility ID:U00020852), WITHIN THE COUNTY AND CITY OF DENTON, TEXAS; PROVIDING FOR THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED SEVEN HUNDRED FIFTEEN THOUSAND, ONE HUNDRED AND FIFTEEN AND 00/100 DOLLARS (\$715,115.00) FOR WATER AND WASTEWATER UTILITY RELOCATION EFFORTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the TxDOT has deemed it necessary to make certain highway improvements as designated by the State and approved by the Federal Highway Administration within the limits of the highway as indicated for the I-35 E From US 377/Ft. Worth Dr. to Locust St. and along the North frontage road at UPRR Railroad to the East (“Utility Relocation Project”).

WHEREAS, TxDOT has expanded their right-of-way through the I-35E corridor within the Denton city limits in anticipation of the TxDOT’s I-35E Widening project with a current project letting schedule of September 2023; and

WHEREAS, the proposed Utility Relocation Project will necessitate the adjustment, removal, and/or relocation of certain facilities of the City as indicated in the following statement of work:

- 1) CSJ 088 Water Line: Install approximately 709 LF of 8” PVC Sta.3930+00 to Sta.3936+50, 466 LF of 12” PVC Sta. 2924+50 to Sta. 2927+90 , and remove 1285 of waterlines longitudinal to IH35 from IH35 2924+50 to 3930+00.
- 2) Wastewater: abandon 340 LF of 8” wastewater in conflict with pavement & ROW longitudinal to IH35 from IH35 Sta.2934+50 to Sta.2939+65; and

WHEREAS, the TXDOT will participate in the costs of the adjustment, removal, and relocation of certain facilities to the extent as may be eligible for State and/or Federal participation.

WHEREAS, TXDOT, upon receipt of evidence it deems sufficient, acknowledges the Utility’s interest in certain lands and facilities that entitle it to reimbursement for the adjustment, removal, and relocation of certain of its facilities located upon the lands as indicated in the statement of work above; and

WHEREAS, in an effort to meet TxDOT’s anticipated roadway construction schedule, the City’s Utility Relocation Project will relocate both water and wastewater utilities out of TxDOT’s recently expanded right-of-way between US-377 and Locust St and along the North frontage road at UPRR Railroad to the East; and

WHEREAS, the TxDOT will participate in the costs of the adjustment, removal, and relocation of certain facilities to the extent as may be eligible for State and/or Federal participation; and

WHEREAS, TxDOT, upon receipt of evidence it deems sufficient, acknowledges the City's interest in certain lands and facilities that entitle it to reimbursement for the adjustment, removal, and relocation of certain of its facilities located upon the lands as indicated in the statement of work; and

WHEREAS, TxDOT will, upon satisfactory completion of the adjustment, removal, and/or relocation and upon receipt of final billing prepared in an approved form and manner and accounting for any intermediate payments, make payment in the amount of 90 percent (90%) of the eligible costs as shown in the final billing prior to audit and after such audit shall make an additional final payment totaling the reimbursement amount found eligible for State reimbursement.

WHEREAS, the City Council having considered the importance of the project to the citizens of Denton and finding that it is in the public's health and safety interest, is of the opinion that it should approve the Agreements; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitals contained in the preamble of this ordinance are hereby incorporated into the body of this ordinance are true and correct.

SECTION 2. The City Manager, or designee, is hereby authorized to execute on behalf of the City the Water and Wastewater Standard Utility Agreement No. U00020852, a copy of which is attached hereto as Exhibits " A" and made a part hereof for all purposes.

SECTION 3. The City Manager, or designee, is authorized to expend funds an amount not to exceed Seven Hundred Fifteen Thousand, One Hundred and Fifteen And 00/100 Dollars (\$715,115.00) for the I-35 E From US-377 and Locust St and along the North frontage road at UPRR Railroad to the East Utility Relocation Project in the City and County of Denton.

SECTION 4. The City Manager, or designee, is further authorized to carry out all obligations and duties of the City as set forth in the Agreement.

SECTION 5. That this ordinance shall become effective immediately upon its passage and approval.

*[Signatures to appear on the following page]*

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. The ordinance was passed and approved by the following vote [\_\_\_\_ - \_\_\_\_]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: Benjamin N. Samples, II

## **EXHIBIT A**

(“WATER AND WASTEWATER STANDARD UTILITY AGREEMENT NO. U00020852”)



# Standard Utility Agreement

Form ROW-U-35

(Rev. 03/24)

Page 1

U Number: **N/A** Utility ID: **U00020852**

District: Dallas  
ROW Project ID (TxC): R00016062  
ROW CSJ: 0195-03-103  
Construction CSJ: 0195-03-088  
Highway Project Letting Date: 08/01/24

County: Denton  
Highway: IH 35E  
From: North Bound Frontage Roads at UPRR  
To: N/A

This Agreement by and between the State of Texas, acting by and through the Texas Transportation Commission, ("**State**"), and City of Denton, ("**Utility**"), acting by and through its duly authorized representative, shall be effective on the date of approval and execution by and on behalf of the **State**.

**WHEREAS**, the **State** has deemed it necessary to make certain highway improvements as designated by the **State** and approved by the Federal Highway Administration within the limits of the highway as indicated above (the "**Highway Project**");

**WHEREAS**, the proposed Highway Project will necessitate the adjustment, removal, and/or relocation of certain facilities of the **Utility** as indicated in the following statement of work: CSJ 088 Water Line: Install approximately 709 LF of 8" PVC Sta.3930+00 to Sta.3936+50, 466 LF of 12" PVC Sta. 2924+50 to Sta. 2927+90 , and remove 1285 of waterlines longitudinal to IH35 from IH35 2924+50 to 3930+00. Wastewater: abandon 340 LF of 8" wastewater in conflict with pavement & ROW longitudinal to IH35 from IH35 Sta.2934+50 to Sta.2939+65; and more specifically as shown in the **Utility's** plans, specifications and estimated costs, which are attached hereto as Attachment "A".

**WHEREAS**, the **State** will participate in the costs of the adjustment, removal, and relocation of certain facilities to the extent as may be eligible for State and/or Federal participation.

**WHEREAS**, the **State**, upon receipt of evidence it deems sufficient, acknowledges the **Utility's** interest in certain lands and facilities that entitle it to reimbursement for the adjustment, removal, and relocation of certain of its facilities located upon the lands as indicated in the statement of work above.

## NOW, THEREFORE, BE IT AGREED:

The **State** will pay to the **Utility** the costs incurred in adjustment, removal, and relocation of the **Utility's** facilities up to the amount said costs may be eligible for **State** participation.

All conduct under this agreement, including but not limited to the adjustment, removal, and relocation of the facility, the development and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with all applicable federal and state laws, rules and regulations, including, without limitation, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601, et seq., the National Environmental Policy Act, 42 U.S.C. §§ 4321, et seq., the Buy America provisions of 23 U.S.C. § 313 and 23 CFR 635.410, as amended, Texas Transportation Code § 223.045, the Utility Relocations, Adjustments, and Reimbursements provisions of 23 CFR 645, Subpart A, and the Utility Accommodation provisions of 23 CFR 645, Subpart B.

The **Utility** shall supply, upon request by the **State**, proof of compliance with the aforementioned laws, rules, regulations, and guidelines prior to the commencement of the adjustment, removal, and relocation of the facility.

Initial \_\_\_\_\_ Date \_\_\_\_\_  
TxDOT

Initial \_\_\_\_\_ Date \_\_\_\_\_  
Utility

The Utility shall not commence any physical work, including without limitation site preparation, on the State's right of way or future right of way, until TxDOT provides the Utility with written authorization to proceed with the physical work upon TxDOT's completion and clearance of its environmental review of the Highway Project. Any such work by the Utility prior to TxDOT's written authorization to proceed will not be eligible for reimbursement and the Utility is responsible for entering any property within the proposed limits of the Highway Project that has not yet been acquired by TxDOT. This written authorization to proceed with the physical work is in addition to the authorization to commence work outlined below. Notwithstanding the foregoing, the provisions of this paragraph are required only when TxDOT has not obtained completion and clearance of its environmental review of the Highway Project prior to the execution of this Agreement by the State and the Utility.

The **Utility** shall comply with the Buy America provisions of 23 U.S.C. § 313, 23 CFR 635.410, as amended, and the Steel and Iron Preference provisions of Texas Transportation Code § 223.045 and, when products that are composed predominately of steel and/or iron are incorporated into the permanent installation of the utility facility, use domestically manufactured products. TxDOT Form 1818 (Material Statement), along with all required attachments, must be submitted, prior to the commencement of the adjustment, removal, and relocation of the facility, as evidence of compliance with the aforementioned provisions. Failure to submit the required documentation or to comply with the Buy America, and Steel and Iron Preference requirements shall result in: (1) the **Utility** becoming ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991; (2) the **State** withholding reimbursement for the costs incurred by the **Utility** in the adjustment, removal, and relocation of the **Utility's** facilities; and (3) removal and replacement of the non-compliant products.

The **Utility** agrees to develop relocation or adjustment costs by accumulating actual direct and related indirect costs in accordance with a work order accounting procedure prescribed by the **State**, or may, with the **State's** approval, accumulate actual direct and related indirect costs in accordance with an established accounting procedure developed by the **Utility**. Bills for work hereunder are to be submitted to the **State** not later than one (1) year after completion of the work. Failure to submit the request for final payment, in addition to all supporting documentation, within one (1) year after completion of the work may result in forfeiture of payment for said work.

When requested, the **State** will make intermediate payments at not less than monthly intervals to the **Utility** when properly billed. Such payments will not exceed 90 percent (90%) of the eligible cost as shown in each such billing. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.

The **State** will, upon satisfactory completion of the adjustment, removal, and/or relocation and upon receipt of final billing prepared in an approved form and manner and accounting for any intermediate payments, make payment in the amount of 90 percent (90%) of the eligible costs as shown in the final billing prior to audit and after such audit shall make an additional final payment totaling the reimbursement amount found eligible for **State** reimbursement.

Alternatively, if the approved accounting method is a lump sum, the **State** agrees to pay the **Utility** an agreed lump sum of \$N/A as supported by the attached estimated costs. The **State** will, upon satisfactory completion of the adjustments, removals, and relocations and upon receipt of a final billing, make payment to the **Utility** in the agreed amount.

Upon execution of this agreement by both parties hereto, the **State** will, by written notice, authorize the **Utility** to perform such work diligently and to conclude said adjustment, removal, and relocation by the stated completion date which is attached hereto in Attachment "C". The completion date shall be extended for delays caused by events outside the **Utility's** control, including an event of Force Majeure, which shall include a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, sabotage, or other events, interference by the **State** or any other party with the **Utility's** ability to proceed with the work, or any other event in which the **Utility** has exercised all due care in the prevention thereof so that the causes of other events are beyond the control and without the fault or negligence of the **Utility**.

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility



This agreement in its entirety consists of the following elements:

Standard Utility Agreement – ROW-U-35;

- Plans, Specifications, and Estimated Costs (Attachment “A”);
- Accounting Method (Attachment “B”);
- Schedule of Work (Attachment “C”);
- Statement Covering Contract Work – ROW-U-48 (Attachment “D”);
- Utility Joint Use Agreement – ROW-U-JUA and/or Utility Installation Request – Form 1082 (Attachment “E”);
- Eligibility Ratio (Attachment “F”);
- Betterment Calculation and Estimate (Attachment “G”); and
- Proof of Property Interest – ROW-U-Affidavit (Attachment “H”).

All attachments are included herein as if fully set forth. In the event it is determined that a substantial change from the statement of work contained in this agreement is required, reimbursement therefore shall be limited to costs covered by a modification or amendment of this agreement or a written change or extra work order approved by the **State** and the **Utility**.

This agreement is subject to cancellation by the **State** at any time up to the date that work under this agreement has been authorized, and such cancellation will not create any liability on the part of the **State**. However, the **State** will review and reimburse the **Utility** for eligible costs incurred by the **Utility** in preparation of this Agreement.

The State Auditor may conduct an audit or investigation of any entity receiving funds from the **State** directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

The **Utility** by execution of this agreement does not waive any of the rights that the **Utility** may have within the limits of the law.

It is expressly understood that the **Utility** conducts the adjustment, removal, and relocation at its own risk, and that the **State** makes no warranties or representations regarding the existence or location of utilities currently within its right of way.

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

**UTILITY**

Utility: City of Denton  
*Name of Utility*

By: \_\_\_\_\_  
*Authorized Signature*

Sara Hensley  
*Print or Type Name*

Title: City Manager

Date: \_\_\_\_\_

**EXECUTION RECOMMENDED:**

\_\_\_\_\_  
*Director of TP&D (or designee), Dallas District*

**THE STATE OF TEXAS**

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

By: \_\_\_\_\_  
*District Engineer (or designee)*

Date: \_\_\_\_\_

Initial \_\_\_\_\_ Date \_\_\_\_\_  
TxDOT

Initial \_\_\_\_\_ Date \_\_\_\_\_  
Utility

## Attachment "A"

### Plans, Specifications, and Estimated Costs

All material items within the cost estimate that must meet Buy America or Steel and Iron Preference Provision requirements must be indicated with an asterisk (\*).

- ☐ Currently, **this project does not plan to use** iron and steel subject to Buy America requirements. In the event that Buy America compliant materials are used during construction on this project, compliance documentation will be provided.
- ☐ There are non-domestic iron and steel materials in this project that fall under the De Minimis equation. Calculation showing the total cost does not exceed one-tenth of one percent (0.1 %) of the individual utility agreement amount or \$2,500.00, whichever is greater is required.
- ☒ We understand the Buy America Compliance Requirements for iron and steel and will supply the required documentation to TxDOT indicating compliance with this provision. The following documents will be supplied prior to installation of the materials:
- 1) Form 1818 - Material Statement
  - 2) Material Test Reports or Certifications

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

# I-35 @ FT. WORTH UTILITY RELOCATION

12" WATERLINE UPRR TO EAST,  
8" WATERLINE FT. WORTH DR. TO LOCUST ST. AND  
8" SANITARY SEWER ABANDONMENT

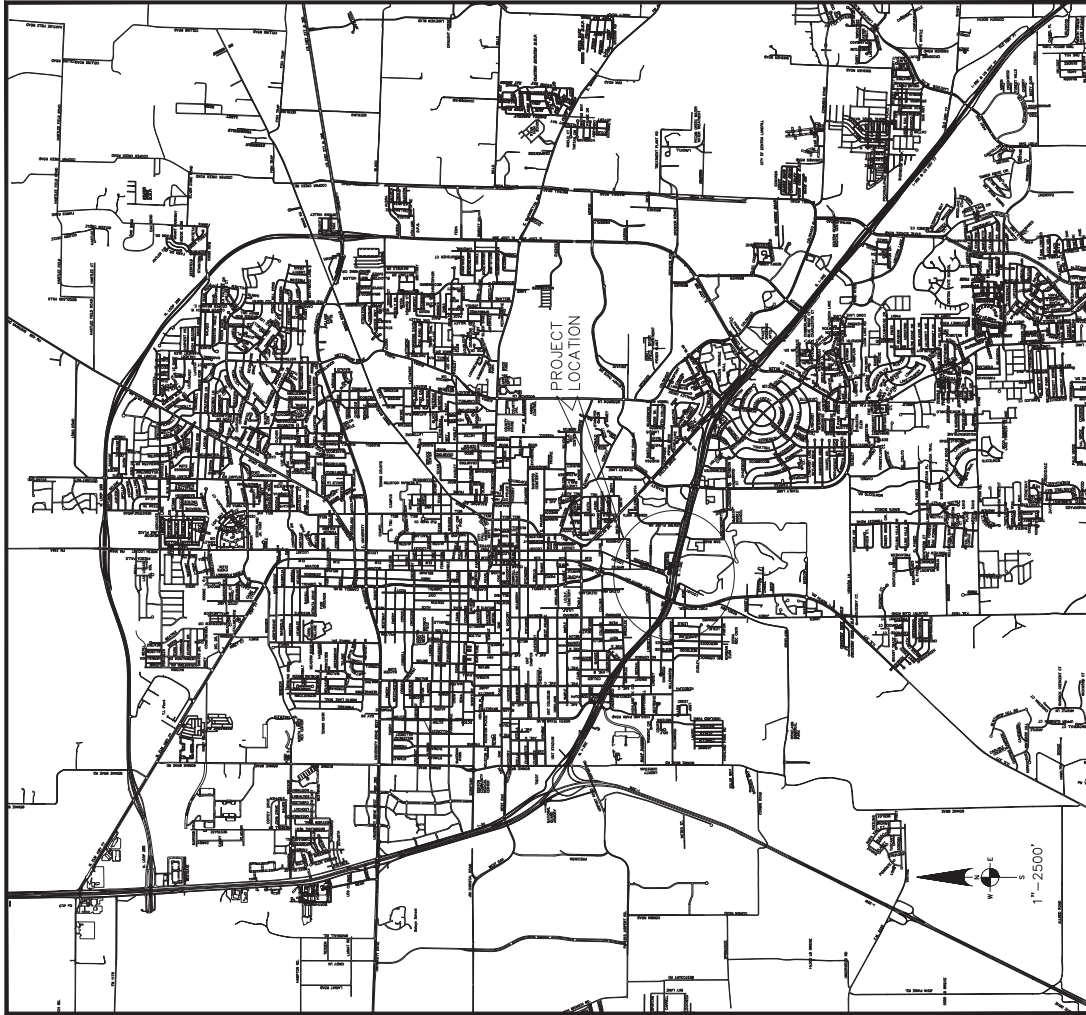
PROJECT #630523523  
FEBRUARY 2024



## SHEET LIST

1	COVER SHEET
2	GENERAL NOTES/CONTROL POINTS
3	QUANTITY SUMMARY
4	12" WATERLINE PLAN/PROFILE - NORTH SERVICE RD. FROM UPRR TO EAST
5	8" WATERLINE PLAN/PROFILE - SOUTH SERVICE RD. FROM FT. WORTH DR. TO LOCUST ST.
6	8" SANITARY SEWER ABANDONMENT - NORTH SERVICE RD. FROM FT. WORTH DR. TO LOCUST ST.
7-8	EROSION CONTROL SHEETS
9	TRAFFIC CONTROL NARRATIVE
10-13	DETAILS CITY OF DENTON - STANDARD DETAILS

\* THE DETAILS SHEETS SPECIFICALLY IDENTIFIED ABOVE HAVE BEEN SELECTED BY ME UNDER MY RESPONSIBLE SUPERVISION AS BEING APPLICABLE TO THIS PROJECT.



## GENERAL CONSTRUCTION NOTES:

DISCUSSION

- [illegible]

## THE USE OF BILBO

- UNATED AND CANITADY CEMED NOTES:

I. THE CONTRACTOR IS RESPONSIBLE FOR MAINTAINING WATER AND SEWER CONNECTIONS IN WORKING ORDER AT ALL TIMES. IN NO CASE SHALL SERVICES BE ALLOWED TO REMAIN OUT OF SERVICE OVERNIGHT.

- 2.2. EXISTING AND PROPOSED WATER, SEWER, OR STORM DRAINAGE APPLURTENANCES (I.E., VALVE STACKS, MANHOLE FRAMES, ETC.) LOCATED IN PROPOSED STREET RECONSTRUCTION ZONES SHALL BE ADJUSTED TO MATCH THE GRADE OF STREET. THESE ADJUSTMENTS SHALL BE CONSIDERED INCIDENTAL WORK AND NOT PAID FOR SEPARATELY.

SHALL BE ADJUSTED TO MATCH THE GRADE OF STREET. THESE ADJUSTMENTS SHALL BE CONSIDERED INCIDENTAL WORK AND NOT PAID FOR SEPARATELY.

1. THE CONTRACTOR SHALL PREPARE, IMPLEMENT, AND MAINTAIN AN EROSION CONTROL PLAN AND THE ASSOCIATED EROSION CONTROL MEASURES IN ACCORDANCE WITH THE GUIDELINES CONTAINED IN THESE PLANS.
2. IN THE EVENT THAT SIGNIFICANT EROSION OCCURS AS A RESULT OF CONSTRUCTION THE CONTRACTOR SHALL RESTORE ALL AFFECTED AREAS TO ORIGINAL CONDITION.
3. THE CONTRACTOR IS RESPONSIBLE FOR KEEPING STREETS AND SIDEWALKS ADJACENT TO THE PROJECT FREE OF MUD AND DEBRIS FROM THE CONSTRUCTION. THE CONTRACTOR SHALL PREVENT ANY RELEASES OF POLLUTANTS, INCLUDING BUT NOT LIMITED TO, OIL, GREASE, OR ADDITIONAL RELEASES OF MUD OR DELETERIOUS MATERIALS ONTO PUBLIC ROADWAYS OR PRIVATE PROPERTY.

HAULING EQUIPMENT:

1. THE USE OF RUBBER-TIRED EQUIPMENT WILL BE REQUIRED FOR MOVING DIRT OR OTHER MATERIALS ALONG OR ACROSS PAVED SURFACES. WHERE THE CONTRACTOR DESIRES TO MOVE ANY EQUIPMENT NOT LICENSED FOR OPERATION ON PUBLIC HIGHWAYS, ON OR ACROSS PAVEMENT, THEY SHALL PROTECT THE PAVEMENT FROM DAMAGE AS DIRECTED/APPROVED BY THE PROJECT MANAGER.

- UNATED AND CANITADY CEMED NOTES:

I. THE CONTRACTOR IS RESPONSIBLE FOR MAINTAINING WATER AND SEWER CONNECTIONS IN WORKING ORDER AT ALL TIMES. IN NO CASE SHALL SERVICES BE ALLOWED TO REMAIN OUT OF SERVICE OVERNIGHT.

- 2.2. EXISTING AND PROPOSED WATER, SEWER, OR STORM DRAINAGE APPLIANCE (I.E., VALVE STACKS, MANHOLE FRAMES, ETC.) LOCATED IN PROPOSED STREET RECONSTRUCTION ZONES SHALL BE ADJUSTED TO MATCH THE GRADE OF STREET. THESE ADJUSTMENTS SHALL BE CONSIDERED INCIDENTAL WORK AND NOT PAID FOR SEPARATELY.

SHALL BE ADJUSTED TO MATCH THE GRADE OF STREET. THESE ADJUSTMENTS SHALL BE CONSIDERED INCIDENTAL WORK AND NOT PAID FOR SEPARATELY.

## CP NUMBER NORTHING EASTING

BEARINGS OF LINES SHOWN HEREON REFER TO GRID NORTH OF THE COORDINATE SYSTEM OF 1983 (NORTH CENTRAL ZONE; NAD83 (2011) AS DERIVED LOCALLY FROM WESTERN DATA SYSTEMS CONTING 2010) OPERATING REFERENCE STATIONS (CORS) VIA REAL TIME KINEMATIC CORPS. ALL ELEVATIONS ARE REFERENCED TO NAVD83, AS DERIVED OBSERVATIONS. ORTHOMETRIC HEIGHTS WERE CALCULATED BY APPLYING GEOD12A MODEL TO ELLIPSOID HEIGHTS.

- BEARINGS OF LINES SHOWN HEREON REFER TO GRID NORTH OF THE TEXAS COORDINATE SYSTEM OF 1983 (NORTH CENTRAL ZONE; NAD83 (2011) EPOCH 2010) AS DERIVED LOCALLY FROM WESTERN DATA SYSTEMS CONTINUITY OPERATING REFERENCE STATIONS (CORS) VIA REAL TIME KINEMATICS (RTK) CORRS. ALL ELEVATIONS ARE REFERENCED TO NAVD83, AS DERIVED FROM RTK CORRS. ORTHOMETRIC HEIGHTS WERE CALCULATED BY APPLYING THE GEOID012A MODEL TO ELLIPSOID HEIGHTS.

SURVEY DATA WAS COLLECTED IN JULY 2023

SURVEY DATA WAS COLLECTED IN JULY 2023

[illegible]

3. THE CONTRACTOR SHALL INSTALL METAL PLATES OVER OPEN TRENCHES, UNCOVERED MANHOLES OR OPEN INLETS ADJACENT TO TRAFFIC OVERNIGHT OR WHEN NO WORK IS BEING PERFORMED FOR MULTIPLE DAYS.

5. THE CONTRACTOR SHALL INSTALL METAL PLATES OVER OPEN TRENCHES, UNCOVERED MANHOLES OR OPEN INLETS ADJACENT TO TRAFFIC OVERNIGHT OR WHEN NO WORK IS BEING PERFORMED FOR MULTIPLE DAYS.

- FINAL CLEAN UP.
- UPON COMPLETION OF THE WORK AND BEFORE FINAL ACCEPTANCE AND FINAL PAYMENT IS MADE, THE CONTRACTOR SHALL CLEAR AND REMOVE FROM THE SITE ALL SURPLUS AND EXCESS MATERIALS, DEBRIS, AND WASTE OF EVERY KIND AND LEAVE THE ENTIRE PROJECT IN A SMOOTH, NEAT AND SIGHTLY CONDITION.

UPON COMPLETION OF THE WORK AND BEFORE FINAL ACCEPTANCE AND FINAL PAYMENT IS MADE, THE CONTRACTOR SHALL CLEAR AND REMOVE FROM THE SITE ALL SURPLUS AND DISCARDED MATERIALS AND DEBRIS OF EVERY KIND AND LEAVE THE ENTIRE PROJECT IN A SMOOTH, NEAT AND SIGHTLY CONDITION.

## ATMOS (LOCAL-GAS) CITY OF DEN

• THE EXISTING UTILITIES SHOWN ON THESE PLANS WERE COMPILED FROM INFORMATION PROVIDED BY THE UTILITIES. THE CONTRACTOR SHALL VERIFY THE LOCATION OF THE UTILITIES INFORMATION ON THE PLANS PRIOR TO ANY CONSTRUCTION ACTIVITY. THE CONTRACTOR SHALL VERIFY THE EXACT LOCATION OF ALL EXISTING UTILITIES AND DETERMINE IF THERE ARE ANY CONFLICTS WITH THE PROPOSED FACILITIES. THE CONTRACTOR SHALL NOTIFY THE ENGINEER IMMEDIATELY WHEN CONFLICTS WITH EXISTING UTILITIES ARE DISCOVERED.

- THE EXISTING UTILITIES SHOWN ON THESE PLANS WERE COMPILED FROM INFORMATION PROVIDED BY THE UTILITIES. THE CONTRACTOR SHALL VERIFY THE LOCATION OF THE UTILITIES INFORMATION ON THE PLANS PRIOR TO ANY CONSTRUCTION ACTIVITY. THE CONTRACTOR SHALL VERIFY THE EXACT LOCATION OF ALL EXISTING UTILITIES AND DETERMINE IF THERE ARE ANY CONFLICTS WITH THE PROPOSED FACILITIES. THE CONTRACTOR SHALL NOTIFY THE ENGINEER IMMEDIATELY WHEN CONFLICTS WITH EXISTING UTILITIES ARE DISCOVERED.

## GENERAL NOTES

DATE FEB. 2024	SCALE  HOR 1"= N/A VER 1"= N/A	 <i>James Wilson 2/7/24</i>
SHEET No. 2 OF 13		





QUANTITY SUMMARY:

Spec. Section No.	Description	UOM	Total QTY	SHT 4	SHT 5	SHT 6
02 41 14	Remove EOL Cleanout	EA	1			1
02 41 14	Utility Line Plugging	LS	1			
02 41 14	Waterline Removal	LF	1285	545	740	
02 41 14	Remove Water Valve	EA	4	2	2	
02 41 14	Remove Hydrant Assy.	EA	3	2	1	
33 05 05	Excavation Protection	LF	2460	1011	1449	
33 14 11	PVC Water Main (8")	LF	709		709	
33 14 11	PVC Water Main (12")	LF	466	466		
33 14 30	2" Air/Vacuum Release Valve	EA	1		1	
33 14 30	Gate Valve (8")	EA	1	1		
33 14 20	Gate Valve (12")	EA	1	1		
33 14 25	City Performed Tapping Sleeve and Valve Connection (6" x 6")	EA	1		1	
33 14 25	City Performed Tapping Sleeve and Valve Connection (8" x 8")	EA	2	1	1	
33 14 25	Connection to Existing Main (8")	EA	1	1		
33 14 25	Connection to Existing Main (12")	EA	1	1		
33 14 40	Fire Hydrant (6")	EA	3	1	2	
33 14 17	Water Service Connection (1")	EA	2	1	1	
33 14 17	Water Service Connection (1.5")	EA	1			
32 01 17	Concrete Pavement Repair	SY	94	76	16	
32 01 17	Asphalt Pavement Repair	SY	80	69	11	
	Seeding	SY	1,005	184	821	
	Bermuda Sod	SY	412	71	349	

NOTE:  
THESE QUANTITIES ARE FOR REFERENCE ONLY. THE OFFICIAL BID QUANTITIES ARE CONTAINED IN SECTION 00 42 44 OF THE PROJECT MANUAL

ENTERED BY TLL  
DESIGNED BY TLL  
CHECKED BY JW  
PROJ. ENGR. J. WILDER  
PATH S:\Water Engineering\Eng\Design\Projects\1-35 Service Roads at Ft. Worth Drive waterlines\Design\1-35 Service Rd. at Ft. Worth Drive\waterline.dwg

PROJECT # 630523523  
DATE  
REVISION

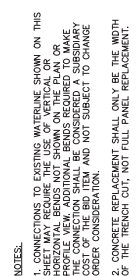
DATE FEB. 2024  
SHEET No. 3 OF 13

SCALE  
HOR 1" = N/A  
VER 1" = N/A

  
JAMES E. WILDER  
ENGINEER  
J. WILDER  
2/7/24

  
DENTON  
ENGINEERING SERVICES

I-35 @ FT. WORTH  
UTILITY RELOCATION  
QUANTITY SUMMARY



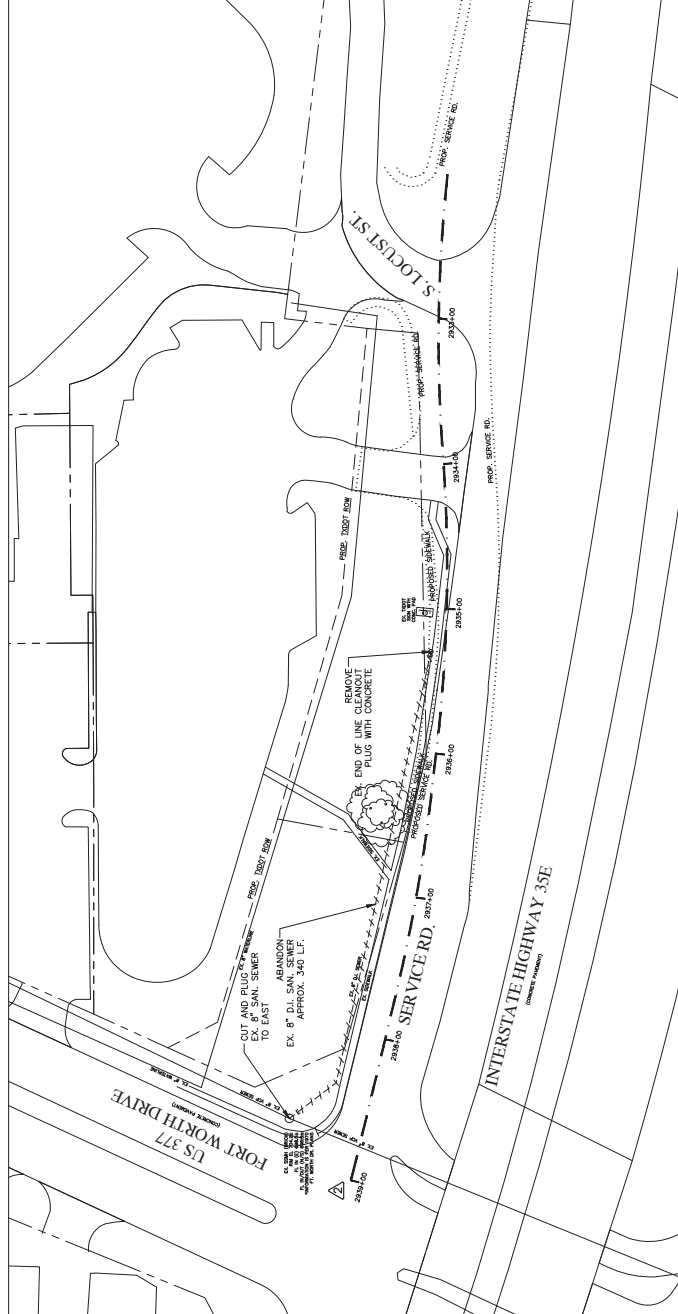
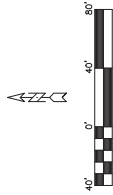
A vertical scale with labels 0+00, 1+00, 2+00, 3+00, and 4+00. Tick marks are present at each label.

PROJECT #	630523523
DATE	
REVISION	
ALIGNMENT CHANGE AROUND EX. SIGN	
ADDED TPOOT STATIONING	
ADDED TPOOT STATIONING	









ENTERED BY	TLL	PROJECT #	630523523
DESIGNED BY	TLL	DATE	REVISION
CHECKED BY	JW	MAR. 2024	ADDED TPOOT STATIONING
PROJ. ENGR.	J. WILDER		
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**I-35 @ FT. WORTH  
UTILITY RELOCATION**  
8" SANITARY SEWER ABANDONMENT

DATE	MAR. 2024
SHEET No.	6 OF 13

SCALE  
HOR 1" = 40'  
VER 1" = 4'





<p><b>FIG. 2.1 SCHEMATICS OF ROCK CHECK DAMS</b></p>	<p><b>FIG. 2.2 SCHEMATICS OF ROCK CHECK DAMS</b></p>	<p><b>FIG. 2.3 SCHEMATICS OF ROCK CHECK DAMS</b></p>	<p><b>FIG. 2.4 SCHEMATICS OF ROCK CHECK DAMS</b></p>
<p><b>FIG. 2.5 SCHEMATICS OF ROCK CHECK DAMS</b></p>	<p><b>FIG. 2.6 SCHEMATICS OF ROCK CHECK DAMS</b></p>	<p><b>FIG. 2.7 SCHEMATICS OF ROCK CHECK DAMS</b></p>	<p><b>FIG. 2.8 SCHEMATICS OF ROCK CHECK DAMS</b></p>
<p><b>FIG. 2.9 SCHEMATICS OF ROCK CHECK DAMS</b></p>	<p><b>FIG. 2.10 SCHEMATICS OF ROCK CHECK DAMS</b></p>	<p><b>FIG. 2.11 SCHEMATICS OF ROCK CHECK DAMS</b></p>	<p><b>FIG. 2.12 SCHEMATICS OF ROCK CHECK DAMS</b></p>

TRAFFIC CONTROL PLAN GUIDELINES

- ALL TRAFFIC CONTROL PLANS FOR THIS PROJECT SHALL BE REVIEWED BY THE CONTRACTOR AND SUBMITTED FOR REVIEW BY THE CITY PRIOR TO IMPLEMENTATION. THE PROJECT MANUAL TRAFFIC CONTROL PLANS SHALL BE SUBJECT TO THE CITY ENGINEER'S REVIEW AND APPROVAL. THE CONTRACTOR SHALL MAINTAIN ONE LANE OF TRAFFIC OPEN DURING INSTALLATION WITH THE USE OF CONE PLACEMENT AND TRAFFIC CONTROL DEVICES.
1. FOR THE WATER LINE TIE-IN AT LOUISE STREET, THE CONTRACTOR SHALL MAINTAIN ONE LANE OF TRAFFIC OPEN DURING INSTALLATION WITH THE USE OF CONE PLACEMENT AND TRAFFIC CONTROL DEVICES.
2. IF THE LOCATION OF THE REAL ESTATE'S EXISTING TRAFFIC TO PASS ON THE ROAD SAFELY, THE CONTRACTOR MAY CLOSE THE ROAD TO PASS TRAFFIC. THE CONTRACTOR SHALL MAINTAIN ONE LANE OF TRAFFIC OPEN DURING INSTALLATION. ACCESS MUST BE MAINTAINED TO THE BUSINESS AT 301 N-USE (CAMP HARBOR) AND THE RESIDENCE AT 19229 S. LOUST 51.
3. THE TRAFFIC CONTROL PLAN MUST BE SUBMITTED TO TDDT AND A TDDT PERMIT OBTAINED BEFORE WORK ON THE SITE IS COMMENCED.

ENTERED BY	TLL	PROJECT #	630523523
DESIGNED BY	TLL	DATE	REVISION
CHECKED BY	JW		
PROJ. ENGR.	J. WILDER		
PATH S:\Water Engineering\Eng\Design\Projects\N-35 Service Roads at Ft. Worth Drive waterline\Design\N-35 Service Rd. at Ft. Worth Drive\waterline.dwg			



I-35 @ FT. WORTH  
UTILITY RELOCATION  
TRAFFIC CONTROL NARRATIVE

DATE	FEB. 2024
SHEET No.	9 OF 13

SCALE	HOR 1" = N/A VER 1" = N/A
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# Utility Adjustment for TxDOT Project

TXDOT STANDARD  
SUA ESTIMATE

City of Denton

IH35E - UPRR

RCSJ: 0195-03-103

Utility ID#: U00020852

UNNUMBER: N/A

The cost estimate items must be sufficiently detailed to provide TxDOT with a reasonable basis for analysis. Items should include appropriate units and unit price for each (See Utility Manual, Chapter 7). Applies to All "EA" or "LS" items.

## Internally Supplied Materials - documented with Certified Ledger at Payment

Line Item / Item Description	Unit	Quantity	\$/Unit	Total
* Sample Steel item to show (*) indication				\$ -
X Select this row and Insert to add rows. Drag to fill formulas from top cell.				\$ -
OVERHEAD (%)	Enter % if applicable		0.00%	\$ -
SUBTOTAL				\$ -

## Externally Acquired Materials - documented with Invoices and/or Checks

Line Item / Item Description	Unit	Quantity	\$/Unit	Total
* Gate Valve (8")	EA	1	\$8,000.00	\$ 8,000.00
* Gate Valve (12")	EA	1	\$11,000.00	\$ 11,000.00
* Water Service Connection (1")	EA	2	\$5,000.00	\$ 10,000.00
* Water Service Connection (1.5")	EA	1	\$7,500.00	\$ 7,500.00
* 2" Air/Vacuum Release Valve	EA	1	\$15,000.00	\$ 15,000.00
* Fire Hydrant Assembly	EA	3	\$13,000.00	\$ 39,000.00
PVC Water Main (8")	LF	709	\$236.00	\$ 167,324.00
PVC Water Main (12")	LF	466	\$411.00	\$ 191,526.00
SUBTOTAL				\$ 449,350.00
MATERIALS SUBTOTAL				\$ 449,350.00

\* Indicated items are being tracked for **BUY AMERICA COMPLIANCE** and will be documented using **Form 1818** and all supporting documentation prior to installation.

X Indicated items are IRON or STEEL, but will not be tracked for BUY AMERICA COMPLIANCE due to falling under the DE MINIMUS of \$2,500, or .1% of the project total cost, whichever is greater.	Sum of De Minimus Items	\$0.00
---	-------------------------	--------

## Internal Labor Costs - documented with Certified Ledger at payment.

Line Item / Item Description	Unit	Quantity	\$/Unit	Total
Tapping Sleeve & Valve Connection (6")	EA	1	\$6,000.00	\$ 6,000.00
Tapping Sleeve & Valve Connection (8")	EA	2	\$7,000.00	\$ 14,000.00
OVERHEAD (%)	Enter % if applicable			\$ -
SUBTOTAL				\$ 20,000.00

## External Labor Costs - documented with Invoices and / or checks

Line Item / Item Description	Unit	Quantity	\$/Unit	Total
Mobilization	LS	1	\$20,000.00	\$ 20,000.00
Project Signs	EA	2	\$1,000.00	\$ 2,000.00
Utility Line Removal	LF	1285	\$45.00	\$ 57,825.00
Remove Fire Hydrant	EA	3	\$2,000.00	\$ 6,000.00
Remove Cleanout	EA	1	\$2,000.00	\$ 2,000.00
Remove Water Valve	EA	4	\$2,000.00	\$ 8,000.00
SWPPP Device Installation	EA	1	\$15,000.00	\$ 15,000.00
SWPPP Device Removal	EA	1	\$2,500.00	\$ 2,500.00
Asphalt Pavement Repair for Utility Trench	YD	80	\$300.00	\$ 24,000.00
Concrete Pavement Repair for Utility Trench	YD	94	\$360.00	\$ 33,840.00
Seeding Turf Grass	YD	1005	\$4.00	\$ 4,020.00
Black Sod	YD	412	\$10.00	\$ 4,120.00

Excavation Protection	LF	2460	\$1.00	\$	2,460.00
Locate Existing Utilities	EA	1	\$20,000.00	\$	20,000.00
Connection to Existing Main (8")	EA	1	\$18,000.00	\$	18,000.00
Connection to Existing Main (12")	EA	1	\$20,000.00	\$	20,000.00
Traffic Control Devices	MO	1	\$5,000.00	\$	5,000.00
Traffic Control Plan	EA	1	\$1,000.00	\$	1,000.00
Select this row and Insert to add rows. Drag to fill formulas from top cell.					\$ -

SUBTOTAL \$ 245,765.00

LABOR SUBTOTAL \$ 265,765.00

### Internal Engineering - Costs Documented with Certified Ledger at payment.

Line Item / Item Description	Unit	Quantity	\$/Unit	Total
PM Time	HR	300	\$72.07	\$ 21,621.00
Senior PM Time	HR	180	\$75.67	\$ 13,620.60
SUBTOTAL				\$ 35,241.60

#### Internal Survey / Landman

Engineer Time	HR	120	\$68.63	\$ 8,235.60
Engineer Tech Time	HR	150	\$49.54	\$ 7,431.00
SUBTOTAL				\$ 15,666.60

#### Internal Inspection

				\$ -
Inspector Time	HR	480	\$40.95	\$ 19,656.00
SUBTOTAL				\$ 19,656.00

#### Internal Administration

				\$ -
Administration Staff Time	HR	80	\$56.46	\$ 4,516.80
SUBTOTAL				\$ 4,516.80

#### Internal Engineering/ Survey/ Inspection/ Administration Overhead

OVERHEAD (%) Enter % if applicable 0.00% \$ -

SUBTOTAL \$ 75,081.00

### External Engineering - Cost documented with INVOICES and / or CHECKS

Line Item / Item Description	Unit	Quantity	\$/Unit	Total
				\$ -
Select this row and Insert to add rows. Drag to fill formulas from top cell.				
SUBTOTAL				\$ -

#### External Survey/ Landman

				\$ -
Select this row and Insert to add rows. Drag to fill formulas from top cell.				
SUBTOTAL				\$ -

#### External Inspection

				\$ -
Select this row and Insert to add rows. Drag to fill formulas from top cell.				
SUBTOTAL				\$ -

Engineering / Administration / Inspection SUBTOTAL \$ 75,081.00

### Existing Easement Compensation - following Quit Claim / Eligibility Ratio not applied. ROW PM confirmation of rate required.

Line Item / Item Description	Unit	Quantity	\$/Unit	Total
Parcel 5	EA	1	\$23,249.00	\$ 23,249.00
Parcel 18	EA	1	\$14,017.00	\$ 14,017.00

SUBTOTAL		\$	37,266.00
Replacement Easement Compensation - following Quit Claim / Eligibility Ratio is applied. PM must concur with rate. Documentation of actual cost must be supplied at billing.		ROW	
		\$	-
Select this row and Insert to add rows. Drag to fill formulas from top cell.		\$	-
SUBTOTAL		\$	-
Easement Compensation SUBTOTAL		\$	37,266.00

<b>SUMMARY:</b>		Total Project Cost	\$	827,462.00
General & Administrative OH (TPC * %)	0.00%		\$	-
		GROSS COST	\$	827,462.00
		SALVAGE and/or Depreciation CREDIT	\$	-
BETTERMENT RATIO	0.00%	Ratio Deduction	\$	-
		Amount reimbursable after Betterment and Salvage Credit	\$	827,462.00
ELIGIBILITY RATIO	100.00%			
		NET REIMBURSEMENT TO UTILITY	\$	827,462.00

Version 3.0



City of Denton - Capital Projects  
901-A Texas Street  
Denton, TX 76209  
Erica Garcia/Purchasing Dept.

From: Mountain Cascade of Texas LLC.  
5340 E US Hwy 67  
Alvarado, TX 76009  
Andrew L. McCulloch  
817-783-3094  
[amcculloch@mountaincascade.com](mailto:amcculloch@mountaincascade.com)

PROPOSAL FORM: **I-35 Utility Relocation at Fort Worth Dr. Frontage Rd.**

IFB: **7968-006**

CIP/ENG: **230009-1**

00 42 43 PROPOSAL FORM

### BIDDERS APPLICATION - UNIT PRICE BID

Item NO.	Spec. Section No.	Description of work	UOM	BID QTY	Unit Price	Extended Price
1	01 58 13	Project Signs	EA	2	\$ 1,000.00	\$2,000.00
2	01 70 00	Mobilization	LS	1	\$ 20,000.00	\$20,000.00
3	02 41 14	Utility Line Removal	LF	1285	\$ 45.00	\$57,825.00
4	02 41 14	Remove Fire Hydrant	EA	3	\$ 2,000.00	\$6,000.00
5	02 41 14	Remove Cleanout	EA	1	\$ 2,000.00	\$2,000.00
6	02 41 14	Remove Water Valve	EA	4	\$ 2,000.00	\$8,000.00
7	31 25 14	SWPPP Device Installation	EA	1	\$ 15,000.00	\$15,000.00
8	31 25 14	SWPPP Device Removal	EA	1	\$ 2,500.00	\$2,500.00
9	32 01 17	Asphalt Pavement Repair for Utility Trench	SY	80	\$ 300.00	\$24,000.00
10	32 01 29	Concrete Pavement Repair for Utility Trench	SY	94	\$ 360.00	\$33,840.00
11	32 93 00	Seeding Turf Grass	SY	1,005	\$ 4.00	\$4,020.00
12	32 93 00	Block Sod	SY	412	\$ 10.00	\$4,120.00
13	33 05 05	Excavation Protection	LF	2,460	\$ 1.00	\$2,460.00
14	33 05 98	Locate Existing Utilities	EA	1	\$ 20,000.00	\$20,000.00
15	33 14 11	PVC Water Main (8")	LF	709	\$ 236.00	\$167,324.00
16	33 14 11	PVC Water Main (15")	LF	466	\$ 411.00	\$191,526.00
17	33 14 17	Water Service Connection (1")*	EA	2	\$ 5,000.00	\$10,000.00
18	33 14 17	Water Service Connection (1.5")*	EA	1	\$ 7,500.00	\$7,500.00
19	33 14 20	Gate Valve (8")*	EA	1	\$ 8,000.00	\$8,000.00
20	33 14 20	Gate Valve (12")*	EA	1	\$ 11,000.00	\$11,000.00
21	33 14 25	Connection to Existing Main (8")	EA	1	\$ 18,000.00	\$18,000.00
22	33 14 25	Connection to Existing Main (12")	EA	1	\$ 20,000.00	\$20,000.00
23	33 14 25	City Performed Tapping Sleeve and Valve Connection (6")	EA	1	\$ 6,000.00	\$6,000.00
24	33 14 25	City Performed Tapping Sleeve and Valve Connection (8")	EA	2	\$ 7,000.00	\$14,000.00
25	33 14 30	2" Air/Vacuum Release Valve *	EA	1	\$ 15,000.00	\$15,000.00
26	33 14 40	Fire Hydrant Assembly *	EA	3	\$ 13,000.00	\$39,000.00
27	34 71 13	Traffic Control Devices	MO	1	\$ 5,000.00	\$5,000.00
28	34 71 13	Traffic Control Plan	EA	1	\$ 1,000.00	\$1,000.00
END BID ITEMS						

**BASE BID AMOUNT (Items 1-28)**

**\$715,115.00**

I-35 Utility Relocation at Fort Worth Dr. Frontage Rd.

Mountain Cascade of Texas LLC.

## Attachment “B” Accounting Method



### **Actual Cost Method of Accounting**

The utility accumulates cost under a work order accounting procedure prescribed by the Federal or State regulatory body and proposes to request reimbursement for actual direct and related indirect costs.



### **Lump Sum Method of Accounting**

The Utility proposed to request reimbursement based on an agreed lump sum amount supported by a detailed cost analysis.

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility



## Attachment “C” Schedule of Work

Estimated Start Date (mm/dd/yyyy): 7/3/2024, subject to physical work restrictions prior to the issuance of environmental clearance as required by the provisions of this agreement. (If construction will be joint bid and included in the highway contract, enter the project let date.)

Estimated Duration (number of days): 120

Estimated Completion Date (mm/dd/yyyy): 11/3/2024

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment “D” Statement Covering Contract Work

**Construction Contract:** Complete form ROW-U-48 and ROW-U-48-1 if applicable.

- ☐ Utility performing with their own forces (timesheets will be required at the time of billing).
- ☒ Utility will use outside forces to perform the adjustment, complete attached ROW-U-48 or ROW-U-48-1 (joint bid).

### Engineering Contract:

- ☒ Utility performing with their own forces (timesheets will be required at the time of billing).
- ☐ Utility will use consultant contract (continuing contract rate sheets or fee schedule will be required).
- ☐ TxDOT will procure a utility engineering consultant.

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility



STATEMENT COVERING UTILITY CONSTRUCTION CONTRACT WORK  
(AS APPEARING IN ESTIMATE)

Form ROW-U-48  
(Rev. 10/20)  
Page 1 of 1

U-Number: N/A Utility ID: U00020852  
ROW CSJ Number: 0195-03-103 District: Dallas  
County: Denton Highway No.: IH35E  
Federal Project No.: N/A

I, \_\_\_\_\_, a duly authorized and qualified representative of \_\_\_\_\_, hereinafter referred to as **Owner**, am fully cognizant of the facts and make the following statements in respect to work which will or may be done on a contract basis as it appears in the estimate to which this statement is attached.

It is more economical and/or expedient for **Owner** to contract this adjustment, or **Owner** is not adequately staffed or equipped to perform the necessary work on this project with its own forces to the extent as indicated on the estimate.

Procedure to be Used in Contracting Work

- ☐ A. Solicitation for bids is to be accomplished through open advertising and contract is to be awarded to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed. Associated bid tabulations will be provided to the **State**.
- ☒ B. Solicitation for bids is to be accomplished by circulating to a list of pre-qualified contractors or known qualified contractors and such contract is to be awarded to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed. Associated bid tabulations will be provided to the **State**. Such presently known contractors are listed below:
1. Oscar Renda
  2. Mountain Cascade
  3. SJ. Louis Construction of Texas, Ltd
- ☐ C. The work is to be performed under an existing continuing contract under which certain work is regularly performed for **Owner** and under which the lowest available costs are developed. The existing continuing contract will be made available to the **State** for review at a location mutually acceptable to the **Owner** and the **State**. If only part of the contract work is to be done under an existing contract, give detailed information by attachment hereto.
- ☐ D. The utility proposes to contract outside the foregoing requirements and therefore evidence in support of its proposal is attached to the estimate in order to obtain the concurrence of the **State**, and the Federal Highway Administration Division Engineer where applicable, prior to taking action thereon (approval of the agreement shall be considered as approval of such proposal).
- ☐ E. The utility plans and specifications, with the consent of the **State**, will be included in the construction contract awarded by the **State**. In the best interest of both the **State** and the **Owner**, the **Owner** requests the **State** to include the plans and specifications for this work in the general contract for construction of Highway \_\_\_\_\_ in this area, so that the work can be coordinated with the other construction operations; and the construction contract is to be awarded by the **State** to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed. If this option is chosen, attach form ROW-U-48-1, the terms of which are incorporated herein by reference.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title



May 10, 2024

Darla Payberah  
TxDOT – Dallas District Utility and Survey Supervisor  
4777 E. Highway 80  
Mesquite, Texas 76021  
214-320-6648

Dear Mrs. Payberah:

This correspondence aims to elucidate the reasons behind the limited participation in the bidding process for the Fort Worth Drive Bridge Frontage Road (CSJ-088) (RCSJ-103) - Utility ID#: U00020852 project by the City of Denton.

The City of Denton initiated the solicitation for this project utilizing a Prequalified List of Utility Relocation Construction Services, consisting of three (3) contractors: Mountain Cascade of Texas, Oscar Renda Contracting, Inc., and S.J. Louis Construction of Texas, Ltd. However, bids were only received from Mountain Cascade of Texas and Oscar Renda Contracting, Inc., as submitted to the City of Denton's Procurement Office. It's noteworthy that the City lacks the authority to mandate participation from all parties, hence S.J. Louis Construction of Texas, Ltd. did not fulfill the bid requirements.

Should you find this letter and its accompanying enclosure insufficient in addressing this matter, please don't hesitate to contact us for further assistance.

Sincerely,

**Shawn  
Messick**

Shawn Messick  
Construction Project Manager

Digitally signed by Shawn  
Messick  
Date: 2024.05.14 09:46:42  
-05'00'

Enclosure(s):  
Bid Opportunity Detail

**OUR CORE VALUES**

Inclusion • Collaboration • Quality Service • Strategic Focus • Fiscal Responsibility



## Bid Opportunity Detail

[Return to Listing](#) [Supplier Registration](#)

### Bid Information

Type Invitation for Bid  
 Status Unsealed  
 Number 7968-006 (I35-Utility Relocation at Fort Worth Dr. Frontage Rd.)  
 Issue Date & Time 3/8/2024 05:00:02 PM (CT)  
 Close Date & Time 4/10/2024 01:00:00 PM (CT)  
 Duration 1 month 2 days  
 Notes

### Contact Info

Name Eric  
 Address 901 Der  
 Phone (94  
 Fax  
 Email eric

### IFB 7968-006 - IH-35 UTILITY RELOCATION (Fort Worth Dr Frontage Road)

The submittal process may take significant time.

The City highly recommends that respondents **do not wait until minutes before the due date and time to submit proposal.**

Submissions via email will **not** be accepted.

**\*\*Hard copy bid bonds are required. \*\***

**A virtual Pre-Bid Meeting will be conducted for this solicitation on Tuesday, March 19th at 9:00 AM CST**

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 233 150 344 257

Passcode: awQQFb

Download Teams | Join on the web

**A Public Opening will be conducted for this solicitation on Wednesday, April 10, 2024 at 1:45PM CST**

To attend the Public Opening **in-person**, see physical location below:

City of Denton Civic Center  
 Meeting Room One (Community Room)  
 321 E McKinney Street  
 Denton, TX 76201

**TO ATTEND PUBLIC OPENING VIRTUALLY, PLEASE USE THE LINK BELOW:**

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 217 852 433 223

Passcode: 6PHyZa

Download Teams | Join on the web

In accordance with the provisions of Texas State Law, the City of Denton (the City) is requesting submissions to contract with an individual or business with considerable experience in providing goods or services of this solicitation. The responses and the cost solutions shall be submitted to the City of Denton in a sealed submission.

The awarded individual or business shall possess a proven track record of using innovative approaches to providing goods and services that represent the best value to their clients. The awarded individual or business shall have the ability to accomplish all aspects of the requested services. The selected individual or firm should be able to provide innovative methods to deal with municipal challenges, and cost effective solutions.

Only firms prequalified under the Request for Qualifications (RFQ 7968 - Prequalification for Utility Relocation Construction Services) portion of this two-step process are allowed to submit bids in response to this Invitation for Bid (IFB). The firms who have been prequalified are as follows (listed alphabetically):

- Mountain Cascade of Texas
- Oscar Renda Contracting, Inc.
- S.J. Louis Construction of Texas, Ltd.

### Bid Documents

Document name	Format
<a href="#">Bid Invitation</a>	Acrobat / PDF
<a href="#">Public Question &amp; Answer</a>	Acrobat / PDF
1	2 items in 1 pages

### Bid Attachments

File Name	Description	File Size
7968-006 I-35 Specifications.pdf (please login to view this document)	7968-006 Specifications	7.66 MB
7968-006 I-35 Utility Relocation Ft Worth Dr Frontage Project Manual Sealed.pdf (please login to view this document)	7968-006 Utility Relocation Project Manual	5.88 MB
7968-006 00 42 43 Unit Price Bid Form.xlsx (please login to view this document)	7968-006 Unit Price Bid Form 00 42 43	33 KB
1	3 items in 1 pages	

Bid Event Participation Activity

Activity Date	Activity Name	Description
3/19/2024 09:00:00 AM (CT)	Pre-Bid Conference	<p>A non-mandatory pre-bid conference will be available to interested contractors. Attendance at the pre-bid conference is strongly encouraged prior to submission of a response.</p> <p>Instructions to attend the virtual pre-bid conference, please see events details tab.</p>
1	1 items in 1 pages	

Plan Holders

Supplier Name	City	State	Contact Name	Email	Phone
mountain cascade of texas	Alvarado	TX	Cody Sears	codys@mountaincascade.com	(817) 783-3094
Oscar Renda Contracting, Inc.	Grapevine	TX	Janie Rodriguez	bidding@southlandholdings.com	(817) 293-4263
S.J. Louis Construction of Texas, Ltd	Mansfield	TX	Adam Lunsford	Adaml@sjlouis.com	(817) 477-0320
1	3 items in 1 pages				



City of Denton - Capital Projects  
901-A Texas Street  
Denton, TX 76209  
Erica Garcia/Purchasing Dept.

From: Mountain Cascade of Texas LLC.  
5340 E US Hwy 67  
Alvarado, TX 76009  
Andrew L. McCulloch  
817-783-3094  
[amcculloch@mountaincascade.com](mailto:amcculloch@mountaincascade.com)

PROPOSAL FORM: **I-35 Utility Relocation at Fort Worth Dr. Frontage Rd.**

IFB: **7968-006**

CIP/ENG: **230009-1**

00 42 43 PROPOSAL FORM

### BIDDERS APPLICATION - UNIT PRICE BID

Item NO.	Spec. Section No.	Description of work	UOM	BID QTY	Unit Price	Extended Price
1	01 58 13	Project Signs	EA	2	\$ 1,000.00	\$2,000.00
2	01 70 00	Mobilization	LS	1	\$ 20,000.00	\$20,000.00
3	02 41 14	Utility Line Removal	LF	1285	\$ 45.00	\$57,825.00
4	02 41 14	Remove Fire Hydrant	EA	3	\$ 2,000.00	\$6,000.00
5	02 41 14	Remove Cleanout	EA	1	\$ 2,000.00	\$2,000.00
6	02 41 14	Remove Water Valve	EA	4	\$ 2,000.00	\$8,000.00
7	31 25 14	SWPPP Device Installation	EA	1	\$ 15,000.00	\$15,000.00
8	31 25 14	SWPPP Device Removal	EA	1	\$ 2,500.00	\$2,500.00
9	32 01 17	Asphalt Pavement Repair for Utility Trench	SY	80	\$ 300.00	\$24,000.00
10	32 01 29	Concrete Pavement Repair for Utility Trench	SY	94	\$ 360.00	\$33,840.00
11	32 93 00	Seeding Turf Grass	SY	1,005	\$ 4.00	\$4,020.00
12	32 93 00	Block Sod	SY	412	\$ 10.00	\$4,120.00
13	33 05 05	Excavation Protection	LF	2,460	\$ 1.00	\$2,460.00
14	33 05 98	Locate Existing Utilities	EA	1	\$ 20,000.00	\$20,000.00
15	33 14 11	PVC Water Main (8")	LF	709	\$ 236.00	\$167,324.00
16	33 14 11	PVC Water Main (15")	LF	466	\$ 411.00	\$191,526.00
17	33 14 17	Water Service Connection (1")*	EA	2	\$ 5,000.00	\$10,000.00
18	33 14 17	Water Service Connection (1.5")*	EA	1	\$ 7,500.00	\$7,500.00
19	33 14 20	Gate Valve (8")*	EA	1	\$ 8,000.00	\$8,000.00
20	33 14 20	Gate Valve (12")*	EA	1	\$ 11,000.00	\$11,000.00
21	33 14 25	Connection to Existing Main (8")	EA	1	\$ 18,000.00	\$18,000.00
22	33 14 25	Connection to Existing Main (12")	EA	1	\$ 20,000.00	\$20,000.00
23	33 14 25	City Performed Tapping Sleeve and Valve Connection (6")	EA	1	\$ 6,000.00	\$6,000.00
24	33 14 25	City Performed Tapping Sleeve and Valve Connection (8")	EA	2	\$ 7,000.00	\$14,000.00
25	33 14 30	2" Air/Vacuum Release Valve *	EA	1	\$ 15,000.00	\$15,000.00
26	33 14 40	Fire Hydrant Assembly *	EA	3	\$ 13,000.00	\$39,000.00
27	34 71 13	Traffic Control Devices	MO	1	\$ 5,000.00	\$5,000.00
28	34 71 13	Traffic Control Plan	EA	1	\$ 1,000.00	\$1,000.00
END BID ITEMS						

**BASE BID AMOUNT (Items 1-28)**

**\$715,115.00**

I-35 Utility Relocation at Fort Worth Dr. Frontage Rd.

Mountain Cascade of Texas LLC.





City of Denton - Capital Projects  
901-A Texas Street  
Denton, TX 76209  
Erica Garcia/Purchasing Dept.

From: Oscar Renda Contracting, Inc.  
1100 Kubota Dr  
Grapevine TX 76051  
Jon Dorma VP Preconstr  
817.293.4263  
[JDorma@SouthlandHoldings.com](mailto:JDorma@SouthlandHoldings.com)

PROPOSAL FORM: **I-35 Utility Relocation at Fort Worth Dr. Frontage Rd.**

IFB: **7968-006**

CIP/ENG: **230009-1**

00 42 43 PROPOSAL FORM

### BIDDERS APPLICATION - UNIT PRICE BID

Item NO.	Spec. Section No.	Description of work	UOM	BID QTY	Unit Price	Extended Price
1	01 58 13	Project Signs	EA	2	\$ 4,500.00	\$9,000.00
2	01 70 00	Mobilization	LS	1	\$ 270,000.00	\$270,000.00
3	02 41 14	Utility Line Removal	LF	1285	\$ 700.00	\$899,500.00
4	02 41 14	Remove Fire Hydrant	EA	3	\$ 5,000.00	\$15,000.00
5	02 41 14	Remove Cleanout	EA	1	\$ 12,500.00	\$12,500.00
6	02 41 14	Remove Water Valve	EA	4	\$ 675.00	\$2,700.00
7	31 25 14	SWPPP Device Installation	EA	1	\$ 75,000.00	\$75,000.00
8	31 25 14	SWPPP Device Removal	EA	1	\$ 5,000.00	\$5,000.00
9	32 01 17	Asphalt Pavement Repair for Utility Trench	SY	80	\$ 575.00	\$46,000.00
10	32 01 29	Concrete Pavement Repair for Utility Trench	SY	94	\$ 1,000.00	\$94,000.00
11	32 93 00	Seeding Turf Grass	SY	1,005	\$ 2.00	\$2,010.00
12	32 93 00	Block Sod	SY	412	\$ 25.00	\$10,300.00
13	33 05 05	Excavation Protection	LF	2,460	\$ 12.00	\$29,520.00
14	33 05 98	Locate Existing Utilities	EA	1	\$ 75,000.00	\$75,000.00
15	33 14 11	PVC Water Main (8")	LF	709	\$ 500.00	\$354,500.00
16	33 14 11	PVC Water Main (15")	LF	466	\$ 750.00	\$349,500.00
17	33 14 17	Water Service Connection (1")*	EA	2	\$ 12,500.00	\$25,000.00
18	33 14 17	Water Service Connection (1.5")*	EA	1	\$ 16,000.00	\$16,000.00
19	33 14 20	Gate Valve (8")*	EA	1	\$ 14,000.00	\$14,000.00
20	33 14 20	Gate Valve (12")*	EA	1	\$ 23,000.00	\$23,000.00
21	33 14 25	Connection to Existing Main (8")	EA	1	\$ 19,000.00	\$19,000.00
22	33 14 25	Connection to Existing Main (12")	EA	1	\$ 19,250.00	\$19,250.00
23	33 14 25	City Performed Tapping Sleeve and Valve Connection (6")	EA	1	\$ 28,000.00	\$28,000.00
24	33 14 25	City Performed Tapping Sleeve and Valve Connection (8")	EA	2	\$ 24,000.00	\$48,000.00
25	33 14 30	2" Air/Vacuum Release Valve *	EA	1	\$ 65,000.00	\$65,000.00
26	33 14 40	Fire Hydrant Assembly *	EA	3	\$ 47,780.00	\$143,340.00
27	34 71 13	Traffic Control Devices	MO	1	\$ 60,000.00	\$60,000.00
28	34 71 13	Traffic Control Plan	EA	1	\$ 15,060.00	\$15,060.00
END BID ITEMS						

**BASE BID AMOUNT (Items 1-28) \$2,725,180.00**

I-35 Utility Relocation at Fort Worth Dr. Frontage Rd.

Oscar Renda Contracting, Inc.

## Attachment “E” Utility Joint Use Agreement – (ROW-U-JUA) and/or RULIS Permit

- ☐ Utility Joint Use Agreement (ROW–U–JUA)  
☐ Plans with joint use area highlighted are included.
  
- ☒ RULIS Permit Number: 00002/20231030/20682/40093/UP  
The utility should obtain an approved permit before the start of construction inside of the highway right of way.
  
- ☐ Quitclaim will be submitted at the Final Billing

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## UTILITY PERMIT APPROVAL

<b>TO:</b>	Tankersley City of Denton - Cole
	401 N. Elm St. Denton, 76201

<b>Date:</b>	03-19-2024
<b>Application/Permit No.:</b>	00002/20231030/20682/40093/UP
<b>District:</b>	Dallas

Highway	Control Section	Maintenance Section	County
IH0035E-A: From milepost 94.919 To milepost 94.987	0195-03		Denton
IH0035E-X: From milepost 94.901 To milepost 95.022	0195-03		Denton
US0377-L: At milepost 56.448	0081-04		Denton
IH0035E-X: At milepost 94.901	0195-03		Denton

Schedule Dates: from 06/01/2024 to 08/31/2024

TxDOT offers no objection to the location on the right-of-way of your proposed utility installation, as described by Notice of Proposed Utility Installation No. 00002/20231030/20682/40093/UP dated

10/30/2023 and accompanying documentation, except as noted below.

Contractors: Contact Denton County Area Office to submit all permit information: 72 Hour advance notice, Contact Gary Matthews (214-392-2106) Submit traffic control and lane closures to Donovan Carter (214)-415-7872 / [Donovan.carter@txdot.gov](mailto:Donovan.carter@txdot.gov) If not available Leonard Chapman (940)-230-5350 / [Leonard.Chapman@txdot.gov](mailto:Leonard.Chapman@txdot.gov) General Note Underground utilities owned by the Texas Department of Transportation may be present within the Right-Of-Way on this project. For signal, illumination, surveillance, and communications & control maintained by TxDOT, call the TxDOT Traffic Signal Office (214-320-6682) for locates a minimum of 48 hours in advance of excavation. For irrigation systems, call TxDOT Landscape Office (214-320-6205) for locates a minimum of 48 hours in advance of excavation. If city or town owned irrigation facilities are present, call the appropriate department of the local city or town a minimum of 48 hours in advance of excavation. The Contractor is liable for all damages when utilities are damaged due to Contractor's negligence including, but not limited to, repair or replacement at the Contractor's expense. If advanced notice and Lane closures are not submitted prior to starting work, Txdot will direct contractors to stop work until adequate notification is submitted. LANE CLOSURES ARE PROHIBITED THE FOLLOWING DATES AND TIMES (TOTAL ECLIPSE PRECAUTIONS): BEGINNING AT 8:00 AM, APRIL 6, 2024 -THRU- 12:00 PM, APRIL 9, 2024 CONTRACTORS MAY WORK DURING THEIR NORMAL TIMES AS LONG AS IT DOES NOT INVOLVE ANY LANE CLOSURES.

### Special Provisions:

You are required to notify TxDOT 72 hours (3 business days) before you start construction to allow for proper inspection and coordination of workdays and traffic control plans. Use the RULIS website for the 72-hour notification. DO NOT start construction until you have coordinated the construction start date and inspection with TxDOT. You are also required to keep a copy of this Approval and any approved amendments at the job site.

When installing utility lines on controlled-access highways, access for serving this installation shall be limited to access via (a) frontage roads where provided, (b) nearby or adjacent public roads or streets, (c) trails along or near the highway right-of-way lines, connecting only to intersecting roads; from any one or all of which entry may be made to the outer portion of the highway right-of-way for routine service and maintenance operations. The Installation Owner's rights of access to the through-traffic roadways and ramps shall be subject to the same rules and regulations as that apply to the general public except, however, if an emergency occurs and usual means of access for routine service operations will not permit the immediate action required by the Utility Installation Owner in making emergency repairs as required for the safety and welfare of the public, the Utility Owners shall have a temporary right of access to and from the through-traffic roadways and ramps as necessary to accomplish the required emergency repairs, provided TxDOT is immediately notified by the Utility Installation Owner when such repairs are initiated and adequate provision is made by the Utility Installation Owner for the convenience and safety of highway traffic.

The installation shall not damage any part of the highway, and adequate provisions must be made to cause minimum inconveniences to traffic and adjacent property owners. If the Utility Installation Owner fails to comply with any or all the requirements as set forth herein, the State may take such action as it deems appropriate to compel compliance.

**SME - Utility Coordinator Review**

**Review Answer:**Require Additional Information

**Response text:**

- Show TxDOT stationing
- Show existing & proposed ROW

**SME - Utility Coordinator Review**

**Review Answer:**Recommend Approval

**Response text:**

*Reviewed and recommend approval by the Area Office.*

**SME - Utility Coordinator Review**

**Review Answer:**Recommend Approval

**Response text:** Recommend for approval

**SME ATTACHMENTS:**

**The following Documents are Included in this Approved Utility Permit:**

Plans (Must be available on Job site): [link](#)

General Provisions : [link](#)

General Provisions : [link](#)

General Provisions : [link](#)



Date

10/30/2023

Ms. Ceason Clemens, P.E.  
Dallas District Engineer  
4777 E. Highway 80  
Mesquite, TX 75150-6643

**RE: Abandon-In-Place Request**

**Installation Request No. (Permit):**

00002/20231030/20682/40093/UP

**County:**

Denton

*Please provide project or Roadway  
and limits/location below.*

☒ TxDOT Construction  
Project

*Example:*

*IH/US/SH/FM/LP ##: From: To:*

*CSJ/RCSJ (if applicable)*

*Utility ID # (for reimbursable relocations)*

IH35E UPRR Frontage Roads

CSJ: 0195-03-088

RCSJ: Pending

Utility ID#: Pending

Dear Ms. Clemens:

City of Denton Water

*Utility Owner/Company Name*

hereby requests portions/portion of the existing utility facility adjustments and/or relocations shown in the attached exhibits to address items outlined in 43 TAC §21.39 to be abandoned in place. Please provide further information regarding your request for abandonment.

- Utility Owner** agrees the areas of abandonment will not have negative impacts on TxDOT's facilities and/or construction. Areas proposed for abandonment have exhibits included such as Plan/Profile(s), Plan/Cross Section(s), etc.
- Indicate how this abandonment will benefit TxDOT:

Facilities to be abandoned are located within close proximity to existing sidewalk that will potentially need to be removed.

3. Explain how the abandonment will not impede future installations of other facilities in TxDOT ROW.

Facility will not be in conflict with proposed construction for this Txdot project and can be verified during roadway construction by a City representative upon request.

4. The existing type of utility facility to be abandoned within TxDOT ROW consists of (type, diameter, material, length and depth):

Aproximitley 340' of 8" sanitary sewer at a variable depth of 3'-5' on the NBFR of IH35E.

5. Describe the proposed final condition of the abandoned facilities, ensuring compliance with TxDOT's UAR. The utility adjustment/relocation of the vacated facilities\*, shown in the attached exhibits as abandoned in place, will be (example cut, capped, grout filled):

8" line is to be cut, plugged, and grout filled per TAC.

6. **Utility Owner** agrees to all other facilities conflicting with above TxDOT Construction Project, if applicable, will be removed as indicated in detail within the enclosed plans and supporting documentation.

The enclosed plans and supporting documentation includes:

1. UIR Installation Request (Permit)
2. Relocation plans in the form of Plan/Profile(s), Plan/Cross Section(s), etc. that includes:
  - Age, condition, size, current status, type (material composition) and length of the utility facility to be abandoned.
  - The approximate depth of the existing pipeline or conduit to be abandoned.
  - Existing pipeline or conduit operating condition (Optimal/Compromised).
  - Existing pipeline or conduit is not in conflict with other existing utilities.
  - Abandonment will not cause conflict with either the proposed construction and/or other utilities.
  - The removal of abandoned facilities as shown will be coordinated in advance with the designated TxDOT Contractor and/or Utility Coordinator in the Area Office.

This abandonment **WILL NOT** be construed as a change in ownership of the facility.

1. **Utility Owner** assumes all financial responsibility and property ownership of the abandoned facility referenced above.
2. **Utility Owner** will be responsible for maintaining abandoned facility records, in accordance with 43 TAC §21.39 and all current federal, state, local laws, codes and industry standards.
3. **Utility Owner** attests the utility facility associated with this abandonment does not contain, or is not composed of, hazardous or contaminated materials.

The below contact will be on-site within 48 hours of notice to identify the abandoned utility:

Utility Owner Contact:

Cole Tankersley

Address:

401 N. Elm St.  
Denton, TX 76201

Phone Number:

469-982-7444

Email Address:

cole.tankersley@cityofdenton.com

NOTICE: TxDOT reserves all available legal rights, which may include seeking legal relief, reimbursement of costs associated with removal (if necessary), and denial of future abandonment requests, if Utility Owner fails to make a good faith effort to locate and mark the abandoned facility within 48 hours of a request from TxDOT.

Your cooperation is greatly appreciated.

Sincerely,

Cole K. Tankersley

Digitally signed by Cole K. Tankersley  
DN: E=Cole.Tankersley@cityofdenton.com, CN=Cole  
K. Tankersley, OU=Water and Wastewater,  
OU=Utilities, OU=Department Users and Groups,  
DC=codad, DC=cityofdenton, DC=com  
Date: 2023.11.02 09:15:27-05'00'

Please sign above and include name and title below.

Cole Tankersley, Project Manager

#### UTILITY OWNER:

APPROVED REQUESTS MUST BE UPLOADED  
TO TXDOT'S UIR SYSTEM WITH UTILITY  
INSTALLATION REQUEST (PERMIT).  
PERMITS INCLUDING ABANDONMENT OF  
FACILITIES MAY NOT BE APPROVED  
WITHOUT DALLAS DISTRICT APPROVAL.

#### DALLAS DISTRICT APPROVAL

DS  
cc

DISTRICT ENGINEER

BS

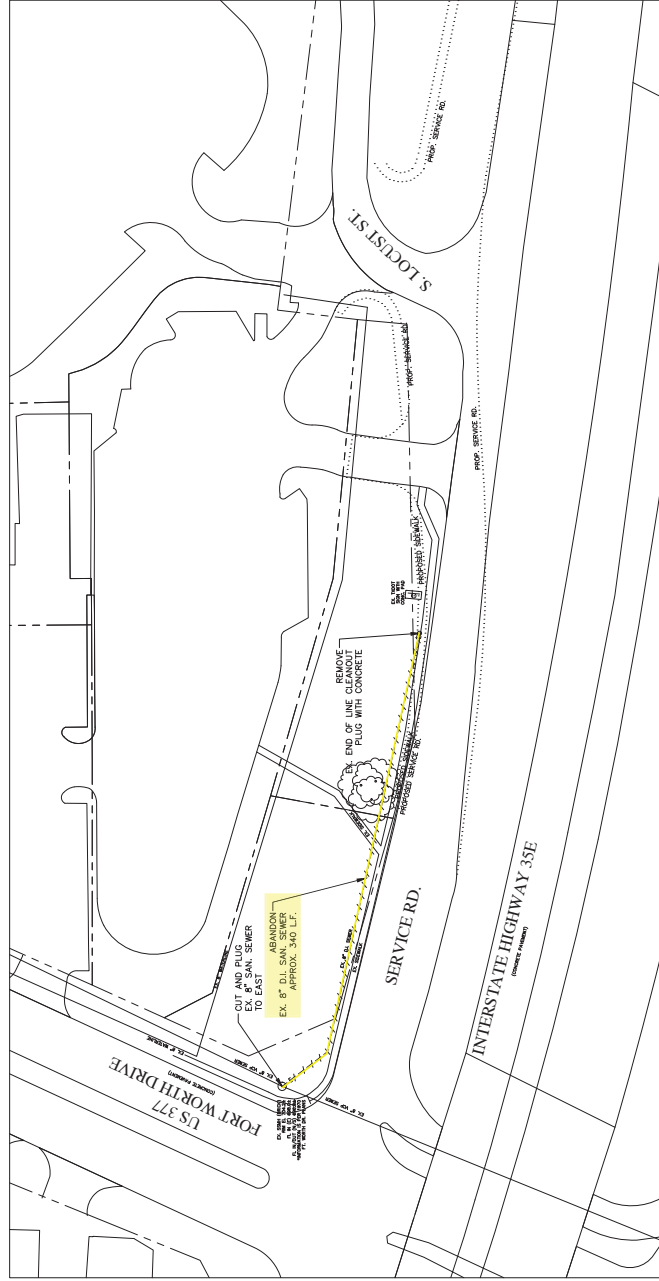
DIRECTOR OF CONSTRUCTION

DS  
AM

AREA ENGINEER

- \* All abandoned conduit shall be free of wires and cables.  
Pipes/Conduit 3" or greater shall be purged free of  
hydro-carbons, capped and grout filled.





ENTERED BY	TLL	PROJECT #	630523523
DESIGNED BY	TLL	DATE	REVISION
CHECKED BY	JW		
PROJ. ENGR.	J. WILDER		
PATH S:\Water Engineering\Eng\Design\Projects\N-35 Service Road at Ft. Worth Drive waterlines\Design\N-35 Service Rd. at Ft. Worth Dr.waterlines.dwg			



**I-35 @ FT. WORTH  
UTILITY RELOCATION**  
8" SANITARY SEWER ABANDONMENT

DATE	OCT. 2023
SHEET No.	6 OF 12

SCALE  
HOR 1" = 40'  
VER 1" = 4'



## Attachment “F” Eligibility Ratio

Eligibility Ratio established: 100 %

- ☐ Non-interstate Highway (Calculations attached)
- ☒ Interstate Highway
- ☐ Toll Road
- ☐ SP2125 Approved Application (100%)  
Minute Order #: \_\_\_\_\_
- ☐ Master Utility Agreement

### ROW Utility Manual Chapter 8, Section 2

In developing the ratio, line length or number of poles is restricted to facilities located within the existing and proposed highway right of way. Facilities located outside the existing and proposed right of way limits will not be used in developing the ratio.

Please see example of eligibility ratio calculations below.

Plan Sheet or Page#	In Easement (Eligible) Existing # of Poles or LF	In Public ROW (Ineligible) Existing # of Poles or LF
1	0	0
2	84	2
3	91	385
4	238	96
Totals	412	503

Total Existing # of Poles or LF (Eligible)	412
Total Existing # of Poles or LF (Ineligible)	503
Total Existing # of Poles or LF	915
Total Existing # of Poles or LF (Eligible) divided by the Total Existing # of Poles or LF	45.03%

Initial \_\_\_\_\_ Date \_\_\_\_\_  
TxDOT

Initial \_\_\_\_\_ Date \_\_\_\_\_  
Utility

## Attachment “G” Betterment Calculation and Estimate

- ☐ Elective Betterment Ratio established: \_\_\_\_\_ %  
☐ Calculation is attached and the justification is included below  
☐ A betterment and an in-kind estimate are included
- ☐ Forced Betterment  
☐ To comply with regulated industry standards, laws, and regulations. (Supporting documentation required)  
☐ To comply with published current design practice followed by the utility in its own work. (Supporting documentation required)  
☐ Due to proposed roadway design. (Provide explanation below)
- ☒ Not Applicable

A statement explaining Elective and/or Forced Betterment:

\_\_\_\_\_  
Initial Date  
TxDOT

\_\_\_\_\_  
Initial Date  
Utility

## Attachment “H” Proof of Property Interest

☐ Supporting documentation of compensable property interest that establishes reimbursement eligibility as referenced in Texas Transportation Code §203.092.

☐ Property interest documented through applicable affidavits and required attachments.

☐ ROW-U-Affidavit

☒ The roadway improvement project is designated as an Interstate Highway project; therefore, no supporting documentation of compensable interest is required. Supporting documentation for existing easements is required for easement replacement.

☐ Toll Road (Supporting documentation of compensable property interest required if more than 50% eligibility ratio is applied)

☐ SP2125

☐ Master Utility Agreement

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

**Real Estate Division**

401 North Elm St. Denton, TX 76201

## IOL/FOL REVIEW MEMORANDUM

### Real Estate Division

**DATE:** January 11, 2024

**FROM:** Mark Janicki/Right of Way Specialist/214-346-6316  
Halff Associates, Inc.



**SUBJECT:** Project Name and Account # TxDOT I35 Ft. Worth Drive / 630523523.30200  
Property Address: 220 N. I-35E, Denton, TX Parcel No. Five SAC Self-Storage  
Property Owner Name: Five SAC Self-Storage Corporation, a Nevada corporation

**IOL Packet Contents:**

Approval Ordinance for Project  
Initial Offer Letter \$23,249.00  
Conveyance Document w/Survey Ex  
DCAD Information  
Title Commitment –  
➤ **Policy Amt - Curative Plan - Easement Type**  
Existing easements within the proposed easement  
Ownership Deed  
Signature of Authority (S.O.S.) for a Business Entity  
Landowner Bill of Rights  
Local Public Agency Booklet (as applicable)  
Appraisal  
Review Appraisal (as applicable)

*Received/Reviewed by COD Legal***DD Real Estate***(PDF to be signed/certified via Adobe Acrobat)***RE Submitted for Approval By:****FOL Packet Contents:**

Real Estate ED Approval Ordinance  
Final Offer Letter

DS  
BS

1/11/2024

Initials  
DS  
DC

Date  
1/11/2024

Initials  
DocuSigned by:

Captoria Brown  
BC828CB8F2AD431...

Date

1/11/2024

Date

**Important Note:** A parcel folder has been created specifically for legal review – please see the below file path:

**O:\REAL ESTATE IOL & FOL REVIEWS**

Updated 4/5/22

**OUR CORE VALUES**

Integrity • Fiscal Responsibility • Transparency • Outstanding Customer Service

**2026**

**EXHIBIT "A"****20' EASEMENT***Part of Five SAC Self-Storage Corporation Tract*

**BEING** a 0.122 acre tract of land situated in the Alexander Hill Survey, Abstract No. 623, City of Denton, Denton County, Texas, and being a part of those certain tract of land described as Tract One and Tract Two per Deed to Five SAC Self-Storage Corporation, as recorded in Document No. 2017-152630 of the Official Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a Mag Nail found in the North line of Interstate Highway 35E, a variable width right-of-way, said point being in the East line of the above Tract Two, said point also being the Northeast corner of a called 0.248 acre tract of land described as Parcel 48 in a Deed to the State of Texas, as recorded in Document No. 2023-1585 of the Official Records of Denton County, Texas, from which a Mag Nail found for the Southeast corner of said Parcel 48 bears South 08°32'59" West a distance of 44.53 feet;

**THENCE** North 83°40'10" West along the North line of said Interstate Highway 35E and said Parcel 48, for a distance of 24.35 feet to a Mag Nail found for an angle point;

**THENCE** North 79°50'09" West continuing along the North line of said Interstate Highway 35E and said Parcel 48, for a distance of 244.53 feet to a TxDOT aluminum disk found for the Northwest corner of said Parcel 48, same being in the East line of the Union Pacific Railroad (formerly the Texas and Pacific Railway Company);

**THENCE** in a Northeasterly direction, along the East line of said railroad, and along a non-tangent curve to the left having a central angle of 00°18'34", a radius of 3861.68 feet, a chord bearing of North 26°43'01" East, a chord distance of 20.86 feet and an arc length of 20.86 feet to a point;

**THENCE** South 79°50'09" East departing the East line of said railroad, for a distance of 237.92 feet to an angle point;

**THENCE** South 83°40'10" East for a distance of 24.61 feet to a point in the East line of said Tract Two, from which an "X" cut in concrete found for the Northeast corner of said Tract Two bears North 08°58'05" East a distance of 73.11 feet;

**THENCE** South 08°58'05" West along the East line of said Tract Two, for a distance of 20.02 feet to the **POINT OF BEGINNING**, and containing 0.122 acres of land, more or less.

**NOTES:**

1. Bearings are referenced to Grid North of the Texas Coordinate System of 1983 (North Central Zone 4202, NAD83 (2011) EPOCH 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods.
2. An Exhibit of even date herewith accompanies this legal description. See Exhibit "B".

  
 Todd B. Turner, R.P.L.S. No. 4859  
 Teague Nall & Perkins, Inc.  
 3200 S. Interstate 35E, Suite 1129, Denton, Texas 76210  
 940-383-4177  
 Date: June 15, 2023





UNION PACIFIC RAILROAD  
(FORMERLY THE TEXAS AND PACIFIC RAILWAY COMPANY)

ALEXANDER HILL SURVEY  
ABSTRACT NO. 623

0 25 50 100  
SCALE: 1" = 50'

FIVE SAC SELF-STORAGE CORPORATION  
TRACT ONE-CALLED 0.632 ACRES  
DOC. NO. 2017-152630  
O.R.D.C.T.

FIVE SAC SELF-STORAGE CORPORATION  
TRACT TWO-CALLED 0.418 ACRES  
DOC. NO. 2017-152630  
O.R.D.C.T.

LOT 1, BLOCK 1  
GREENHOUSE ADDITION  
CAB. E. PG. 310  
P.R.D.C.T.  
EIGHTEEN SAC SELF-STORAGE CORPORATION  
CALLED 2.644 ACRES  
VOL. 4990, PG. 3569  
R.P.R.D.C.T.

S 79°50'09" E 237.92'

N 79°50'09" W 244.53'

20' EASEMENT  
0.122 ACRES

INTERSTATE HIGHWAY 35-E  
(VARIABLE WIDTH RIGHT-OF-WAY)

CURVE TABLE

CURVE	DELTA ANGLE	RADIUS	CHORD BEARING	CHORD LENGTH	ARC LENGTH
C1	0°18'34"	3861.68'	N 26°43'01" E	20.86'	20.86'

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 83°40'10" W	24.35'
L2	S 83°40'10" E	24.61'
L3	S 08°58'05" W	20.02'
L4	S 08°32'59" W	44.53'
L5	N 08°58'05" E	73.11'

NOTES:

- Bearings of lines shown hereon are referenced to Grid North of the Texas Coordinate System of 1983 (North Central Zone 4202: NAD83 (2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods.
- This Exhibit was prepared without the benefit of a current Title Commitment, or Encumbrance Report. Additional easements, rights-of-way and/or other matters of record may affect this tract that are not shown hereon.
- A Legal Description of even date herewith accompanies this Easement Exhibit. See Exhibit "A".

**tnp**  
teague nall and perkins  
3200 S. Interstate 35E, Suite 1129  
Denton, Texas 76210  
940.383.4177 ph 940.383.8026 fx  
www.tnpinc.com  
TBP&LS FIRM 10011601

EXHIBIT "B"  
20' EASEMENT

BEING 0.122 ACRES OF LAND SITUATED IN THE  
ALEXANDER HILL SURVEY, ABSTRACT NO. 623  
CITY OF DENTON, DENTON COUNTY, TEXAS  
DEN23303 PAGE 1 OF 1



LEGEND	
▲	CALCULATED POINT
●	1/2" IRON ROD FOUND (UNLESS NOTED OTHERWISE)
⊙	MAG NAIL FOUND
⊗	3" CUT IN CONCRETE FOUND
⊕	LIGHT POLE
⊖	POWER POLE
⊘	GUY ANCHOR WIRE
⊙	SIGN
⊕	WATER METER
⊖	WATER VALVE
⊗	BOLLARD
⊕	CONTROLLING MONUMENT
IRF	IRON ROD FOUND
P.R.D.C.T.	PLAT RECORDS DENTON COUNTY TEXAS
O.R.D.C.T.	OFFICIAL RECORDS DENTON COUNTY TEXAS
R.P.R.D.C.T.	REAL PROPERTY RECORDS DENTON COUNTY TEXAS
EASEMENT BOUNDARY LINE	
RIGHT-OF-WAY LINE	
PROPERTY LINE	
EASEMENT LINE	
OVERHEAD ELECTRIC LINE	
EDGE OF ASPHALT	



**Real Estate Division**

401 North Elm St. Denton, TX 76201

## IOL/FOL REVIEW MEMORANDUM

### Real Estate Division

**DATE:** January 11, 2024

**FROM:** Mark Janicki/Right of Way Specialist/214-346-6316  
Halff Associates, Inc.

 **< \$50K**
 **> \$50K**

**SUBJECT:** Project Name and Account # TxDOT I35 Ft. Worth Drive / 630523523.30200  
Property Address: 164 N. I-35E, Denton, TX Parcel No. Eighteen SAC Self-Storage  
Property Owner Name: Eighteen SAC Self-Storage Corporation, a Nevada corporation

**IOL Packet Contents:**

Initial Offer Letter \$14,017.00  
Conveyance Document w/Survey Ex  
DCAD Information  
Title Commitment –  
➤ **Policy Amt - Curative Plan - Easement Type**  
Existing easements within the proposed easement  
Ownership Deed  
Signature of Authority (S.O.S.) for a Business Entity  
Landowner Bill of Rights  
Local Public Agency Booklet (as applicable)  
Appraisal  
Review Appraisal (as applicable)

*Received/Reviewed by COD Legal***DD Real Estate***(PDF to be signed/certified via Adobe Acrobat)***RE Submitted for Approval By:****FOL Packet Contents:**

Real Estate ED Approval Ordinance  
Final Offer Letter

DS  
BS

1/11/2024

Initials  
DS  
DC

**Date**  
1/11/2024

Initials  
DocuSigned by:

Captoria Brown  
BC828CB8F2AD431...

**Date**  
1/11/2024

**Date**

**Important Note:** A parcel folder has been created specifically for legal review – please see the below file path:

**O:\REAL ESTATE IOL & FOL REVIEWS**

Updated 4/5/22

**OUR CORE VALUES**

Integrity • Fiscal Responsibility • Transparency • Outstanding Customer Service

**2029**

**EXHIBIT "A"**

**20' EASEMENT**

*Part of Eighteen SAC Self-Storage Corporation Tract*

**BEING** a 0.078 acre tract of land situated in the Alexander Hill Survey, Abstract No. 623, City of Denton, Denton County, Texas, and being a part of that certain 2.644 acre tract of land described in a Deed to Eighteen SAC Self-Storage Corporation, as recorded in Volume 4990, Page 3569 of the Real Property Records of Denton County, Texas, and being known as a part of Lot 1, Block 1 per the Final Plat of Greenhouse Addition, as recorded in Cabinet E, Page 310 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a Mag Nail found in the North line of Interstate Highway 35E, a variable width right-of-way, said point being in the West line of the above 2.644 acre tract and said Lot 1, said point also being the Northwest corner of a called 0.455 acre tract of land described as Parcel 47 in a Deed to the State of Texas, as recorded in Document No. 2022-171756 of the Official Records of Denton County, Texas, from which a Mag Nail found for the Southwest corner of said Parcel 47 bears South 08°32'59" West a distance of 44.53 feet;

**THENCE** North 08°58'05" East departing the North line of said Interstate Highway 35E, and along the West line of said 2.644 acre tract and said Lot 1, for a distance of 20.02 feet to a point, from which an "X" cut in concrete found for an interior ell corner of said 2.644 acre tract and said Lot 1 bears North 08°58'05" East a distance of 73.11 feet;

**THENCE** South 83°40'10" East departing the West line of said 2.644 acre tract and said Lot 1, for a distance of 125.47 feet to an angle point;

**THENCE** South 81°24'30" East for a distance of 43.39 feet to a point;


**THENCE** South 08°35'30" West for a distance of 20.00 feet to a point in the North line of said Interstate Highway 35E and said Parcel 47, from which an "X" cut in concrete found at an angle point bears South 81°24'30" East a distance of 107.01 feet;

**THENCE** North 81°24'30" West along the North line of said Interstate Highway 35E and said Parcel 47, for a distance of 43.00 feet to a "X" cut in concrete found for an angle point;

**THENCE** North 83°40'10" West continuing along the North line of said Interstate Highway 35E and said Parcel 47, for a distance of 126.00 feet to the **POINT OF BEGINNING**, and containing 0.078 acres of land, more or less.

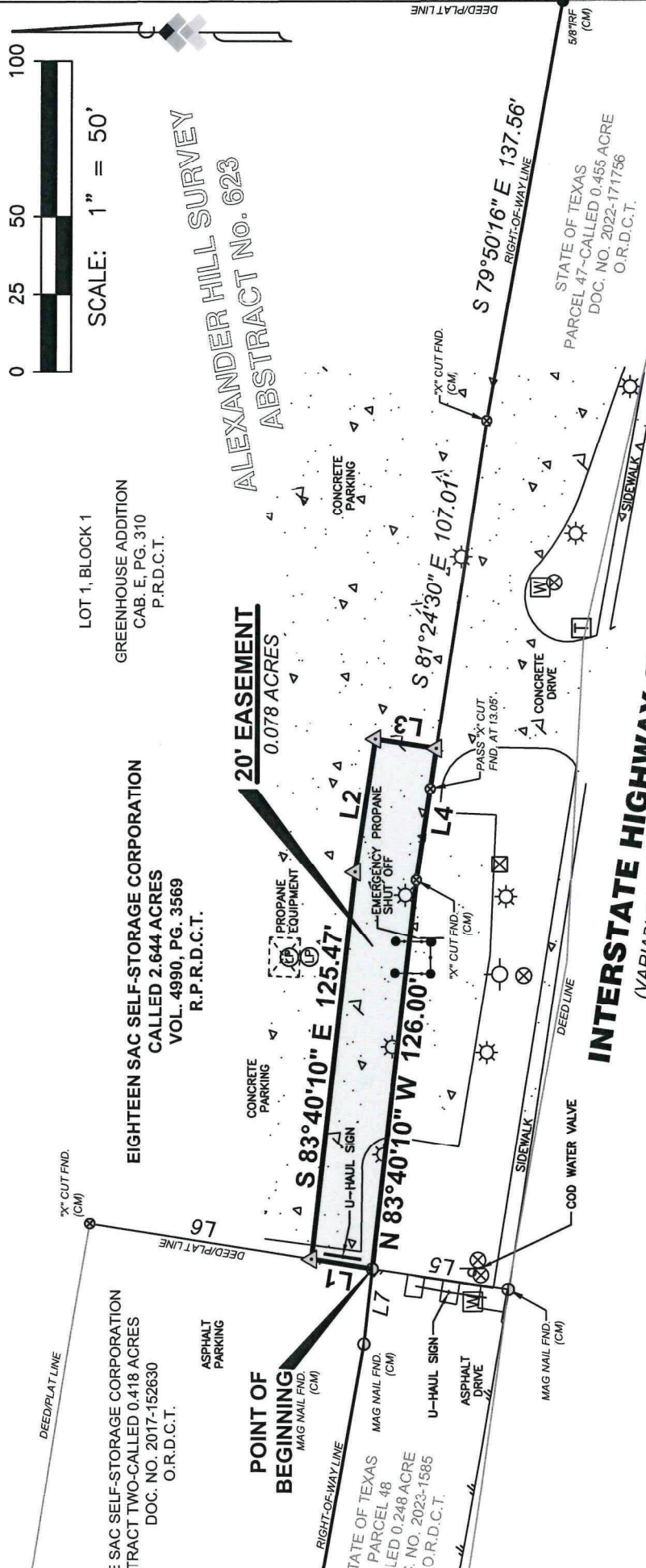
**NOTES:**

1. Bearings are referenced to Grid North of the Texas Coordinate System of 1983 (North Central Zone 4202, NAD83 (2011) EPOCH 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods.
2. An Exhibit of even date herewith accompanies this legal description. See Exhibit "B".

  
Todd B. Turner, R.P.L.S. No. 4859  
Teague Nall & Perkins, Inc.  
3200 S. Interstate 35E, Suite 1129, Denton, Texas 76210  
940-383-4177  
Date: June 15, 2023







# INTERSTATE HIGHWAY 35E (VARIABLE WIDTH RIGHT-OF-WAY)

LEGEND	
△	CALCULATED POINT
●	1/2" IRON ROD FOUND (UNLESS NOTED OTHERWISE)
⊖	MAG NAIL FOUND
⊗	"X" CUT IN CONCRETE FOUND
⊙	LIGHT POLE
⊕	POWER POLE
⊖	GUY ANCHOR WIRE
⊕	SIGN
⊕	TELEPHONE PEDESTAL
⊕	FIRE HYDRANT
⊕	WATER METER
⊕	WATER VALVE
●	BOLLARD
(CM)	CONTROLLING MONUMENT
RF	IRON ROD FOUND
P.R.D.C.T.	PLAT RECORDS DENTON COUNTY TEXAS
O.R.D.C.T.	OFFICIAL RECORDS DENTON COUNTY TEXAS
R.P.R.D.C.T.	REAL PROPERTY RECORDS DENTON COUNTY TEXAS
—	EASEMENT BOUNDARY LINE
—	RIGHT-OF-WAY LINE
—	PROPERTY LINE
—	EASEMENT LINE
—	EDGE OF ASPHALT

LINE	BEARING	DISTANCE
L1	N 08°58'05" E	20.02'
L2	S 81°24'30" E	43.39'
L3	S 08°35'30" W	20.00'
L4	N 81°24'30" W	43.00'
L5	S 08°32'59" W	44.53'
L6	N 08°58'05" E	73.11'
L7	N 83°40'10" W	24.35'

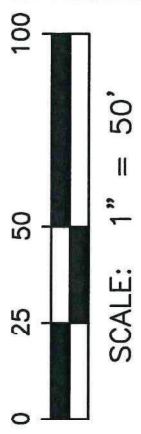
## NOTES:

- Bearings of lines shown hereon are referenced to Grid North of the Texas Coordinate System of 1983 (North Central Zone 4202: NAD83 (2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods.
- This Exhibit was prepared without the benefit of a current Title Commitment, or Encumbrance Report. Additional easements, rights-of-way and/or other matters of record may affect this tract that are not shown hereon.
- A Legal Description of even date herewith accompanies this Easement Exhibit. See Exhibit "A".

**teague nall and perkins**  
3200 S. Interstate 35E, Suite 1129  
Denton, Texas 76210  
940.383.4177 ph 940.383.8026 fx  
www.tnpinc.com  
TBPELS FIRM 10011601

## EXHIBIT "B" 20' EASEMENT

BEING 0.078 ACRES OF LAND SITUATED IN THE  
ALEXANDER HILL SURVEY, ABSTRACT NO. 623  
CITY OF DENTON, DENTON COUNTY, TEXAS  
DEN23303



ALEXANDER HILL SURVEY  
ABSTRACT NO. 623

LOT 1, BLOCK 1  
GREENHOUSE ADDITION  
CAB. E. PG. 310  
P.R.D.C.T.

EIGHTEEN SAC SELF-STORAGE CORPORATION  
CALLED 2.644 ACRES  
VOL. 4990, PG. 3569  
R.P.R.D.C.T.

FIVE SAC SELF-STORAGE CORPORATION  
TRACT TWO-CALLED 0.418 ACRES  
DOC. NO. 2017-152630  
O.R.D.C.T.

STATE OF TEXAS  
PARCEL 48  
CALLED 0.248 ACRE  
DOC. NO. 2023-1585  
O.R.D.C.T.

STATE OF TEXAS  
PARCEL 47-CALLED 0.455 ACRE  
DOC. NO. 2022-171756  
O.R.D.C.T.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB24-118, **Version:** 1

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### AGENDA CAPTION

Consider approval of the May 20, 2024 minutes.

**CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES**  
**May 20, 2024**

After determining that a quorum was present of the Public Utilities Board of the City of Denton, convened in a Regular Meeting on Monday, May 20, 2024, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Lee Riback

Also present: General Manager Antonio Puente and Deputy City Attorney Marcella Lunn

Absent: Robert Rayner and Thomas Plock

**REGULAR MEETING**

**1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC**

There were no presentations from the public.

**2. CONSENT AGENDA**

The Consent Agenda consisted of Items 2 A - G

**Board Member Cheek moved to recommend adoption of agenda items 2 A - G. Motion seconded by Board Member Riback; motion carried.**

**YES (4): Susan Parker, Billy Cheek, Devin Taylor, Lee Riback**

**NO (0):**

- A. PUB24-104** Consider recommending adoption of an ordinance of the City of Denton, a Texas Home-Rule Municipal Corporation, authorizing the City Manager or designee to execute an Oversize Cost Participation Agreement with 4600 Ganzer Investments, LLC, for the construction of a 16" water main for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (4600 Ganzer Investments, LLC, in the amount not-to-exceed amount of \$1,092,497.00).
- B. PUB24-094** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Binkley & Barfield, Inc., for design services for Neighborhood 5A for the Capital Projects Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7599-019 - Professional Services Agreement for design services awarded to Binkley & Barfield, Inc., in the not-to-exceed amount of \$1,355,840.00).

- C. PUB24-095** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc., for engineering services for the conceptual design and due diligence items for the Clear Creek Interceptor project for the Wastewater Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8213-001 - Professional Services Agreement for engineering services awarded to Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$1,259,400.00).
- D. PUB24-096** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Keasler Sales, LLC, for the purchase of protective relay panels for the Brinker Substation Phase II for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8473 - awarded to Keasler Sales, LLC, in the not-to-exceed amount of \$82,578.00).
- E. PUB24-097** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with SewerAI Corporation, for sewer pipe and manhole rating services for the Drainage and Wastewater Departments; providing for the expenditure of funds therefor; and providing an effective date (RFP 8488 - awarded to SewerAI Corporation, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$875,000.00).
- F. PUB24-098** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Aerowave Technologies, LLC, for the Aerowave In-Cab Radio subscription for the Solid Waste and Recycling Department, which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8536 - awarded to Aerowave Technologies, LLC, for one (1) year, with the option for two (2) additional one (1) year extensions, in the total three (3) year not-to-exceed amount of \$122,850.00).
- G. PUB24-099** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive proposals under RFP 8429 for Substation Power Transformers; and providing an effective date (RFP 8429).

### **3. ITEMS FOR INDIVIDUAL CONSIDERATION**

- A. PUB24-102** Consider approval of the May 6, 2024 minutes.

**Board Member Taylor moved to recommend adoption of agenda item 3 A. Motion seconded by Board Member Riback; motion carried.**

**YES (4): Susan Parker, Billy Cheek, Devin Taylor, Lee Riback**

**NO (0):**

- B. PUB24-090** Consider recommending adoption of an ordinance considering all matters incident and related to the issuance, sale and delivery of up to \$151,660,000 in principal amount of "City of Denton General Obligation refunding and improvement bonds, Series 2024"; authorizing the issuance of the bonds; delegating the authority to certain city officials to execute certain documents relating to the sale of the bonds; approving and authorizing instruments and procedures relating to said bonds; enacting other provisions relating to the subject; and providing an effective date.

Randee Klingele gave a presentation. Billy Cheek and Lee Riback asked questions that Tony Puente and Randee Klingele answered.

**Board Member Taylor moved to recommend adoption of agenda item 3 B. Motion seconded by Board Member Riback; motion carried.**

**YES (4): Susan Parker, Billy Cheek, Devin Taylor, Lee Riback**

**NO (0):**

- C. PUB24-091** Consider recommending adoption of an ordinance considering all matters incident and related to the issuance, sale and delivery of up to \$262,330,000 in principal amount of "City of Denton Certificates of Obligation, Series 2024"; authorizing the issuance of the certificates; delegating the authority to certain city officials to execute certain documents relating to the sale of the certificates; approving and authorizing instruments and procedures relating to said certificates; enacting other provisions relating to the subject; and providing an effective date.

**Board Member Cheek moved for approval of agenda item 3 C. Motion seconded by Board Member Taylor; motion carried.**

**YES (4): Susan Parker, Billy Cheek, Devin Taylor, Lee Riback**

**NO (0):**

- D. PUB24-103** Management Reports
1. Future Agenda Items
  2. New Business Action Items

#### **4. CONCLUDING ITEMS**

None

#### **WORK SESSION**

- A. PUB24-101** Receive a report, hold a discussion, and give staff direction regarding the redevelopment of the closed Moseley Road Landfill.



Brian Boerner gave a presentation. Lee Riback, Billy Cheek, and Devin Taylor asked questions that Brian Boerner answered.

With no further business, the meeting was adjourned at 9:25 AM.

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**SUSAN PARKER**  
**CHAIR**  
**CITY OF DENTON, TEXAS**

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**CASSIE BLACKBURN**  
**DME ADMIN. SUPERVISOR**  
**CITY OF DENTON, TEXAS**

Minutes approved on: June 6, 2024.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB24-110, **Version:** 1

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Archer Western Construction, LLC, for the Ray Roberts Water Treatment Plant Capacity Re-Rate and Performance Improvements Project for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8141-2 - awarded to Archer Western Construction, LLC, in the not-to-exceed amount of \$43,994,500.00).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** June 10, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Archer Western Construction, LLC, for the Ray Roberts Water Treatment Plant Capacity Re-Rate and Performance Improvements Project for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8141-2 – awarded to Archer Western Construction, LLC, in the not-to-exceed amount of \$43,994,500.00).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

### **INFORMATION/BACKGROUND**

The recently completed design of the Ray Roberts Water Treatment Plant Capacity Re-Rate and Performance Improvements Project included improvements and updates to a majority of the treatment processes at the Ray Roberts Water Treatment Plant (RRWTP). The following are highlighted focus areas of this Project:

- Replacement of electric motor valve operators throughout the RRWTP to improve reliability and operation of the devices that have exceeded their anticipated life cycle.
- Rehabilitation of the solids removal equipment with the existing sedimentation basin to improve operations and reduce the maintenance requirements of the components that have exceeded their anticipated life cycle.
- Replacement of electric motor valve operators and valves associated with the existing filters.
- Replacement of the outdated filter media with Granular Activated Carbon in all eight filters to increase filtration efficiency and water quality.
- Addition of a backwash ground storage tank and associated piping and valve additions.
- Construction of a new backwash system for the existing filters with necessary piping, valve, and programming components to provide a greater degree of flexibility to the operations staff and allow the RRWTP staff to backwash (clean) filters back-to-back should the need arise.
- Construction of a new Variable Frequency Drive Building to support the replacement of the two existing 1000 HP soft starters to variable frequency drives to provide operational flexibility for flow control.

The goal of these improvements is to improve operational flexibility and reduce the maintenance requirements of critical components.

The RRWTP Re-Rate Project has a total estimated cost of \$43,994,500. This estimate includes a \$39,995,000 total base bid amount and a contingency of \$3,999,500. A contingency allowance, if any, is for the sole use of the City and will be subject to written authorization by the City's Project Manager and Program Manager.

The Utility Extendable Commercial Paper program is being used as appropriation authority for this contract.

Competitive Sealed Proposals were sent to 1,057 prospective suppliers, including 75 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Two (2) proposals were received, references were checked, and proposals were evaluated based upon published criteria including key personnel, past experience on similar projects, schedule/written plan, safety record, and price. Best and Final Offers (BAFO) were requested from the top firm. Based upon this evaluation, Archer Western Construction, LLC was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	911, 912, 913, 914
Notifications sent for Solicitation sent in IonWave:	1,057
Number of Suppliers that viewed Solicitation in IonWave:	36
HUB-Historically Underutilized Business Invitations sent out:	120
SBE-Small Business Enterprise Invitations sent out:	357
Responses from Solicitation:	2

## **RECOMMENDATION**

Award a contract with Archer Western Construction, LLC, for the Ray Roberts Water Treatment Plant Capacity Re-Rate and Performance Improvements Project for the Water Utilities Department, in a not-to-exceed amount of \$43,994,500.

## **PRINCIPAL PLACE OF BUSINESS**

Archer Western Construction, LLC  
Irving, TX

## **SUSTAINABILITY MEASURES**

The Ray Roberts Water Treatment Plant Capacity Re-Rate and Performance Improvements Project improves the existing water treatment plant by improving reliability through rehabilitation, innovation, and capacity increases. Our goal is to improve the reliability and flexibility in the operation of the existing plant. We also ensure water is treated in accordance with regulatory requirements. Protect the health, safety, and the environment by improving several key components within the plant.

## **ESTIMATED SCHEDULE OF PROJECT**

This project will be started upon approval with an estimated final completion within 1,088 days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed.

## **FISCAL INFORMATION**

The Utility Extendable Commercial Paper program is being used as appropriation authority for this contract. These services will be funded from Water Utilities account 630409523.1360.40100. Requisition #164777 has been entered into the Purchasing software system in the amount of \$8,000,000. The budgeted amount for this item is \$43,994,500.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet

Exhibit 2: Pricing Evaluation

Exhibit 3: Presentation

Exhibit 4: Ordinance and Contract

Respectfully submitted:  
Lori Hewell, 940-349-7100  
Purchasing Manager

For information concerning this acquisition, contact: Katherine Koch, 940-349-8419.

Legal point of contact: Marcella Lunn at 940-349-8333.

Exhibit 2  
CSP 8141-2 - Pricing Evaluation for Re-Rate and Performance Improvement Project

Respondent's Business Name: Principal Place of Business (City and State):		Archer Western Construction LLC	Felix Construction
		Irving, TX	Carrollton, TX
Line #	Description	Unit	Unit
1	TOTAL PROPOSAL AMOUNT Item Notes: Copy your responses from Section 5.2 of Bid Specification 00 41 01 - Proposal Form in the following fields. Please note that the following totals must match your total amounts listed in Bid Specification 00 42 44 - Unit Price Proposal Form and Section 5.2 of Bid Specifications 00 41 01 - Proposal Form. If different, the amounts listed in Section 5.2 of Bid Specifications 00 41 01 - Proposal Form will take precedence.	\$39,871,810.00	\$42,987,043.90
2	Alternate Amount	\$23,190.00	\$63,980.00
3	Allowance	\$100,000.00	\$100,000.00
Total:		\$39,995,000.00	\$43,151,023.90

Evaluation			
Item #	Scoring Criteria	Archer Western Construction LLC	Felix Construction
1	Offeror's Key Personnel - 10%	8.50	6.50
2	Quality, Reputation, and Ability to Complete Similar Projects on Schedule and Within Budget - 20%	15.00	11.00
3	Detailed Schedule and Written Plan - 25%	22.50	17.50
4	Offeror's Safety Record - 5%	4.00	2.75
5	Price, Total Cost of Ownership - 40%	40.00	37.07
Total Score:		90.00	74.82



# Ray Roberts Water Treatment Plant Capacity Re-Rate and Performance Improvements Project

Katherine Koch  
Project Manager  
Water Utilities



PUB24-110 – June 10, 2024



# RRWTP Capacity Re-Rate

- The Ray Roberts Water Treatment Plant (RRWTP) was placed into service in 2002 and has not received any major maintenance since.
  - The project includes significant improvements to treatment processes.
  - The project will improve operational flexibility and reduce maintenance.
- It is anticipated that the project add up to 10 million gallons a day (MGD) of additional treatment capacity. Yielding between 28 and 30 MGD of total capacity at the site.
- The project is anticipated to be completed in Q4 of 2028.

# Major Project Components

- Replacement of valves and actuators throughout RRWTP to improve reliability.
- Rehabilitation of the solids removal equipment within the sedimentation basins.
- Replacement of the outdated filter media with Granular Activated Carbon in all eight filters to increase filtration efficiency.
- Construction of a new backwash system to increase flexibility for the operations staff to clean filters.
- Construction of a new Variable Frequency Drive Building to support the replacement of the two existing 1000 HP soft starters to variable frequency drives.





# Competitive Sealed Proposals

Through the procurement evaluation process for this Competitive Seal Proposal staff received two competitive bids.

Archer Western Construction	
Base Price	\$39,995,000.00
Contingency	\$3,999,500.00
<b>Total</b>	<b>\$43,994,500</b>
Contract Days	1088

**Staff Recommends awarding the construction contract to Archer Western Construction.**

**This project is in the 5-year CIP and will leverage The Utility Extendable Commercial Paper program as appropriation authority for this contract. These services will be funded by Water Utilities.**



# Questions?

**Katherine Koch**  
**Project Manager**  
**Water Utilities**



PUB24-110 – June 10, 2024

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH ARCHER WESTERN CONSTRUCTION, LLC, FOR THE RAY ROBERTS WATER TREATMENT PLANT CAPACITY RE-RATE AND PERFORMANCE IMPROVEMENTS PROJECT FOR THE WATER UTILITIES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8141-2 – AWARDED TO ARCHER WESTERN CONSTRUCTION, LLC, IN THE NOT-TO-EXCEED AMOUNT OF \$43,994,500.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the Ray Roberts Water Treatment Plant Capacity Re-Rate and Performance Improvements Project for the Water Utilities Department; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the competitive sealed proposals; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function [Health and sanitation services]; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered competitive sealed proposal for materials, equipment, supplies, or services shown in the “Competitive Sealed Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the competitive sealed proposal.

<u>CSP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8141-2	Archer Western Construction, LLC	\$43,994,500.00

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

**SECTION 3.** That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

**SECTION 4.** The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

**SECTION 5.** By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

**SECTION 6.** This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. This ordinance was passed and approved by the following vote [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

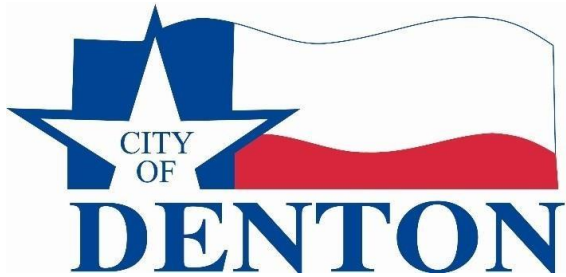
ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn





Docusign City Council Transmittal Coversheet

RFP	8141-2
File Name	RRWTP Capacity Re-rate and Performance Improvement
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**SECTION 00 52 44****AGREEMENT - CSP**

**THIS AGREEMENT**, authorized on \_\_\_\_\_ is made by and between the City of Denton, a Texas home rule municipal corporation, acting by and through its duly authorized City Manager, ("City"), and Archer Western Construction, LLC, authorized to do business in Texas, acting by and through its duly authorized representative, ("Contractor").

City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK**

Contractor shall complete all Work as specified or indicated in the Contract Documents for the Project identified herein.

**Article 2. PROJECT**

The project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

RRWTP Capacity Re-Rate and Performance Improvements

CSP# 8141-2

**Article 3. CONTRACT PRICE**

City agrees to pay Contractor for performance of the Work in accordance with the Contract Documents an amount, in current funds, of Thirty-Nine Million Nine Hundred Ninety-Five Thousand Dollars (\$39,995,000). At the sole option of the City, ten (10) percent contingency in the amount of Three Million Nine Hundred Ninety-Nine Thousand Five Hundred Dollars (\$3,999,500) may be used for a total not-to-exceed amount of Forty-Three Million Nine Hundred Ninety-Four Thousand Five Hundred Dollars (\$43,994,500).

**Article 4. CONTRACT TIME****4.1 Time is of the essence.**

All time limits for Milestones, if any, Substantial Completion and Final Acceptance as stated in the Contract Documents are of the essence to this Contract.

**4.2 Substantial Completion.**

The Work will be Substantially Complete, as defined in the Supplementary Conditions, within 1,025 Days the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

**4.3 Final Acceptance.**

The Work will be complete for Final Acceptance within 1,088 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

## 4.5 Liquidated Damages:

A. Contractor recognizes that *time is of the essence* to achieve Milestones, Substantial Completion, and Final Acceptance of the Work, and City will suffer financial and other losses if the Work is not completed within the times specified in the Contract Documents. The Contractor also recognizes the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work related to the Milestones, Substantial Completion, or Final Acceptance is not completed on time. Accordingly, instead of requiring any such proof, Contractor agrees that liquidated damages for delay (but not as a penalty):

1. *Milestones*: If Contractor neglects, refuses, or fails to complete a Milestone(s) within the time (as duly adjusted in the Contract) specified in Section 01 35 00 "Special Procedures", Contractor shall pay the City the liquidated damages outlined in Section 01 35 00 "Special Procedures", until the Milestone(s) is completed.
2. *Substantial Completion*: If the Contractor neglects, refuses, or fails to achieve Substantial Completion, as defined in the Supplementary Conditions, within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2, Contractor shall pay City *Seven hundred fifty* Dollars (\$750) for each day that expires after such time, until Substantial Completion is achieved.
3. *Final Acceptance*: If Contractor neglects, refuse, or fails to complete the Work within the time (as duly adjusted under the Contract) specified in Paragraph 4.3, for completion and readiness for Final Payment, Contractor shall pay City five hundred Dollars (\$500) for each day that expires after such time, until the date determined by City as stated in the City-issued Letter of Final Acceptance.

**Article 5. CONTRACT DOCUMENTS**

## 5.1 CONTENTS:

A. The Contract comprises the entire agreement between City and Contractor concerning the Work and consists of this Agreement and the items set forth below. The Contract Documents consist of all items below other than this Agreement:

1. Attachments to this Agreement:
  - a. Proposal Form
    - 1) Proposal Form
    - 2) Unit Price Proposal Form
    - 3) Vendor Compliance to State Law Non-Resident Offeror
    - 4) State and Federal documents (*project specific*)
  - b. Current Prevailing Wage Rate Table
  - c. Worker's Compensation Affidavit
  - d. General Conditions.
  - e. Supplementary Conditions.
2. The following located in File 8141-2 at:
 

<https://lfpubweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&dbid=0&repo=MaterialsManagement&cr=1>

  - a. Specifications described in the Table of Contents (Section 00 00 00) of the Project's Contract Documents.
  - b. Drawings.

- 1 c. Addenda.
- 2 d. Documentation submitted by Contractor prior to Notice of Award.
- 3 3. The following which shall be issued after the Effective Date of this Agreement and
- 4 delivered to the City within ten (10) days of the Effective Date and before beginning
- 5 Work:
- 6 a. Payment Bond
- 7 b. Performance Bond
- 8 c. Maintenance Bond
- 9 d. Power of Attorney for the Bonds
- 10 e. Form 1295 – Certificate of Interested Parties (email to City's Materials
- 11 Management department)
- 12 f. Insurance Certificate
- 13 4. Specifications specifically made a part of the Contract Documents by attachment or,
- 14 if not attached, as incorporated by reference and described in the Table of Contents
- 15 of the Project's Contract Documents.
- 16 5. The following which may be delivered or issued after the Effective Date of the
- 17 Agreement and, if issued, become an incorporated part of the Contract Documents:
- 18 a. Notice to Proceed.
- 19 b. Field Orders.
- 20 c. Change Orders.
- 21 d. Letter of Final Acceptance.
- 22
- 23

1 **Article 6. INDEMNIFICATION**

2 **6.1 Contractor covenants and agrees to indemnify, hold harmless and defend, at its own**  
3 **EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS,**  
4 **AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR**  
5 **PERSONAL INJURY OR DEATH, ARISING OUT OF, OR ALLEGED TO ARISE**  
6 **OUT OF, RELATED TO OR IN CONNECTION WITH THE WORK AND**  
7 **SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS,**  
8 **AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES**  
9 **UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS**  
10 **SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS**  
11 **ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING**  
12 **SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION**  
13 **OR NEGLIGENCE OF THE CITY. THIS INDEMNITY PROVISION IS INTENDED**  
14 **TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL**  
15 **COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN**  
16 **DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**

17  
18 **6.2 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD**  
19 **HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS,**  
20 **SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS**  
21 **FOR, LOSS OF, DAMAGE TO, OR DESTRUCTION OF, PROPERTY OF THE CITY**  
22 **OR OF A THIRD PARTY, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF,**  
23 **RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE**  
24 **PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES,**  
25 **SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT.**  
26 **THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO**  
27 **OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT**  
28 **ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN**  
29 **WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE**  
30 **CITY. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT**  
31 **LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND**  
32 **LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH**  
33 **CLAIMS AND CAUSES OF ACTIONS.**

34  
35 **Article 7. MISCELLANEOUS**

36 **7.1 Capitalized Terms.**

37 Unless otherwise stated herein, capitalized terms used in this Agreement which are defined  
38 in Article 1 of the General Conditions will have the meanings indicated in the General  
39 Conditions.

40 **7.2 Assignment of Contract.**

41 This Agreement, including all of the Contract Documents may not be assigned by the  
42 Contractor without the advance express written consent of the City.

1     7.3   Successors and Assigns.

2           City and Contractor each binds itself, its partners, successors, assigns and legal  
3           representatives to the other party hereto, in respect to all covenants, agreements and  
4           obligations contained in the Contract Documents.

5     7.4   Severability.

6           Any provision or part of the Contract Documents held to be unconstitutional, void or  
7           unenforceable by a court of competent jurisdiction shall be deemed stricken, and all  
8           remaining provisions shall continue to be valid and binding upon City and Contractor.

9     7.5   Venue and Waiver of Sovereign Immunity.

10          This Agreement, including all of the Contract Documents is performable in the State of  
11          Texas. Venue shall be in the state district courts of Denton County, Texas. The City's  
12          sovereign immunity is waived only to the extent set forth and in accordance with the  
13          provisions of Subchapter I, Chapter 271 of the Texas Local Government Code or as otherwise  
14          specifically waived by law. The City does not waive its sovereign immunity to suit in federal  
15          court.

16    7.6   Authority to Sign.

17          Contractor hereby certifies that the person signing the Agreement on its behalf is the duly  
18          authorized signatory of the Contractor.

19    7.7   Prohibition on Contracts with Companies Boycotting Israel.

20          Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government  
21          Code, the City is prohibited from entering into a contract with a company for goods or  
22          services unless the contract contains a written verification from the company that it: (1) does  
23          not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms  
24          "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section  
25          808.001 of the Texas Government Code. By signing this contract, Contractor certifies that  
26          Contractor's signature provides written verification to the City that Contractor: (1) does not  
27          boycott Israel; and (2) will not boycott Israel during the term of the contract.

28    7.8   Prohibition on Contracts with Companies Boycotting Certain Energy Companies

29          Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government  
30          Code, City is prohibited from entering into a contract with a company for goods or services  
31          unless the contract contains written verification from the company that it (1) does not boycott  
32          energy companies; and (2) will not boycott energy companies during the term of the contract.  
33          The terms "boycott energy company" and "company" shall have the meanings ascribed to  
34          those terms in Section 809.001 of the Texas Government Code. By signing this agreement,  
35          Contractor certifies that Contractor's signature provides written verification to the City that  
36          Contractor: (1) does not boycott energy companies; and (2) will not boycott energy  
37          companies during the term of the agreement. Failure to meet or maintain the requirements  
38          under this provision will be considered a material breach.

39    7.9   Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm  
40          Trade Associations.

41          Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government  
42          Code, City is prohibited from entering into a contract with a company for goods or services

1 unless the contract contains written verification from the company that it (1) does not have a  
2 practice, policy, guidance, or directive that discriminates against a firearm entity or firearm  
3 trade association; and (2) will not discriminate during the term of the contract against a  
4 firearm entity or firearm trade association. The terms “discriminate against a firearm entity  
5 or firearm trade association,” “firearm entity” and “firearm trade association” shall have the  
6 meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. **By**  
7 **signing this agreement, Contractor certifies that Contractor’s signature provides written**  
8 **verification to the City that Contractor: (1) does not have a practice, policy, guidance, or**  
9 **directive that discriminates against a firearm entity or firearm trade association; and (2)**  
10 **will not discriminate during the term of the contract against a firearm entity or firearm**  
11 **trade association.** Failure to meet or maintain the requirements under this provision will be  
12 considered a material breach.

13 7.10 Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign  
14 Terrorist Organization

15 Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with  
16 companies that do business with Iran, Sudan, or a foreign terrorist organization. **By signing**  
17 **this agreement, Contractor certifies that Contractor’s signature provides written**  
18 **verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not**  
19 **ineligible to enter into this agreement and will not become ineligible to receive payments**  
20 **under this agreement by doing business with Iran, Sudan, or a foreign terrorist**  
21 **organization.** Failure to meet or maintain the requirements under this provision will be  
22 considered a material breach.

23 7.11 Prohibition on Contracts with Companies Boycotting Certain Energy Companies

24 The City of Denton may terminate this Contract immediately without any further liability if  
25 the City of Denton determines, in its sole judgment, that this Contract meets the requirements  
26 under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority  
27 of stock or other ownership interest of the company is held or controlled by individuals who  
28 are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly  
29 controlled by the Government of China, Iran, North Korea, Russia, or other designated  
30 country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated  
31 country.

32 7.12 Immigration Nationality Act.

33 Contractor shall verify the identity and employment eligibility of its employees who perform  
34 work under this Agreement, including completing the Employment Eligibility Verification  
35 Form (I-9). Upon request by City, Contractor shall provide City with copies of all I-9 forms  
36 and supporting eligibility documentation for each employee who performs work under this  
37 Agreement. Contractor shall adhere to all Federal and State laws as well as establish  
38 appropriate procedures and controls so that no services will be performed by any Contractor  
39 employee who is not legally eligible to perform such services. **CONTRACTOR SHALL**  
40 **INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES,**  
41 **LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY**  
42 **CONTRACTOR, CONTRACTOR’S EMPLOYEES, SUBCONTRACTORS,**  
43 **AGENTS, OR LICENSEES.** City, upon written notice to Contractor, shall have the right  
44 to immediately terminate this Agreement for violations of this provision by Contractor.  
45

46 7.13 No Third-Party Beneficiaries.



1 This Agreement gives no rights or benefits to anyone other than the City and the Contractor  
2 and there are no third-party beneficiaries.  
3

4 7.14 No Cause of Action Against Engineer.

5 Contractor, its subcontractors and equipment and materials suppliers on the Project or their  
6 sureties, shall maintain no direct action against the Engineer, its officers, employees, and  
7 subcontractors, for any claim arising out of, in connection with, or resulting from the engineering  
8 services performed. Only the City will be the beneficiary of any undertaking by the Engineer.  
9 The presence or duties of the Engineer's personnel at a construction site, whether as on-site  
10 representatives or otherwise, do not make the Engineer or its personnel in any way  
11 responsible to Contractor or any other entity for those duties that belong to the City, and do  
12 not relieve Contractor or any other entity of its obligations, duties, and responsibilities,  
13 including, but not limited to, all construction methods, means, techniques, sequences, and  
14 procedures necessary for performing, coordinating and completing all portions of the Work  
15 in accordance with the Contract Documents and any health or safety precautions required by  
16 such Work. The Engineer and its personnel have no authority to exercise any control over  
17 any construction contractor or other entity or their employees in connection with their work  
18 or any health or safety precautions.  
19

20 SIGNATURE PAGE TO FOLLOW  
21

IN WITNESS WHEREOF, City and Contractor have each executed this Agreement to be effective as of the date subscribed by the City's City Manager or his designee ("Effective Date").

CITY OF DENTON

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

CONTRACTOR  
ARCHER WESTERN CONSTRUCTION, LLC

DocuSigned by:  
BY: Daniel Walsh Jr.  
FDEB784FE59884BC  
AUTHORIZED AGENT

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations and  
business terms.

DocuSigned by:  
Steven D. Gay Steven D. Gay  
FEB48BB9726E4A9...  
SIGNATURE PRINTED NAME  
Director

TITLE  
water utilities  
DEPARTMENT

Daniel walsh Jr.  
NAME

President

TITLE

5,635,401.00

PHONE NUMBER

dpwalsh@walshgroup.com

EMAIL ADDRESS

51

52 2024-1150486

53

54 TEXAS ETHICS COMMISSION  
55 1295 CERTIFICATE NUMBER

ATTEST:  
LAUREN THODEN, CITY SECRETARY

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
Marcella Lunn  
4B070831B4AA438

**SECTION 00 41 01**  
**PROPOSAL FORM - CSP**

TO: Erica Garcia  
c/o: Purchasing Division  
901-B Texas Street  
Denton, Texas 76209

FOR: RRWTP Capacity Re-Rate and Performance Improvements (CSP No. 8141-2)

**1 Enter into Agreement**

The undersigned Offeror proposes and agrees, if this Proposal is accepted, to enter into an Agreement with City in the form included in the Proposal Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Unit Price Proposal and within the Contract Time indicated in this Proposal and in accordance with the other terms and conditions of the Contract Documents.

**2 OFFEROR Acknowledgements and Certification**

- 2.1 In submitting this Proposal, Offeror accepts all of the terms and conditions of the INVITATION TO OFFERORS and INSTRUCTIONS TO OFFERORS, including without limitation those dealing with the disposition of Offeror's Bond.
- 2.2 Offeror is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.
- 2.3 Offeror certifies that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
- 2.4 Offeror has not directly or indirectly induced or solicited any other Offeror to submit a false or sham Proposal.
- 2.5 Offeror has not solicited or induced any individual or entity to refrain from proposing.
- 2.6 Offeror has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:
- a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposal process.
  - b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the proposal process to the detriment of City (b) to establish proposal prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.
  - c. "collusive practice" means a scheme or arrangement between two or more Offerors, with or without the knowledge of City, a purpose of which is to establish proposal prices at artificial, non-competitive levels.

d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.

2.7 The Offeror acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 23-1165.

### 3 Time of Completion

- 3.1 The Work will be Substantially Complete as defined in the Supplementary Conditions within 1,025 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.
- 3.2 The Work will be complete for Final Acceptance within 1,088 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.
- 3.3 Offeror accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable), Substantial Completion, and Final Acceptance within the times specified in the Agreement.

### 4 Attached to this Proposal

- 4.1 The following documents are attached to and made a part of this Proposal:
- a. Section 00 35 14 – Conflict of Interest Affidavit – CSP **Correct Section # 00 35 13**
  - b. Section 00 41 01 – This Proposal Form – CSP
  - c. **Section 00 42 44 – Unit Price Proposal Form – CSP – Excel Electronic Copy (either included in the hard copy Proposal, or submitted via Ionwave)**
  - d. Section 00 43 14 – Required Offeror's Bond – CSP, issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions.
  - e. Section 00 43 38 – Proposed Subcontractors Form – CSP
  - f. Section 00 43 39 – Vendor Compliance to State Law Non-Resident Offeror – CSP
  - g. Section 00 45 14 – Safety Record Questionnaire – CSP
  - h. Section 00 45 27 – Contractor Compliance with Workers Compensation Law – CSP
  - i. Section 00 45 44 – Corporate Resolution of Authorized Signatories – CSP
  - j. Any additional documents required by Paragraph 12 of Section 00 21 16 – Instructions to Offerors

**5 Total Proposal Amount**

- 5.1 Offeror will complete the Work in accordance with the Contract Documents for the following proposal amount. In the space provided below, please enter the total proposed amount for this project. This figure will be read publicly by the City at the proposal opening.
- 5.2 It is understood and agreed by the Offeror in signing this proposal that the total proposed amount entered below is subject to verification and/or modification by multiplying the unit prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

Base Proposal Amount: \$ 39,871,810

Alternate (Extra Work) Proposal Amount: \$ 23,190

Total Allowance Amount: \$ 100,000

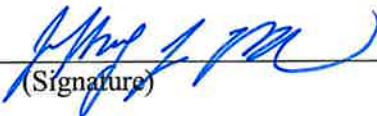
Total Proposal Amount: \$ 39,995,000

**6 Proposal Submittal**

- 6.1 It is understood by Offeror that submission of the total proposal amount is only one of the factors for the City's evaluation process, and that any award of contract will be based on the complete evaluation of the Proposal and Offeror by City under the terms provided in the Instructions to Offerors or any validly issued amendments or addenda.

- 6.2 This Proposal is submitted on MARCH 13TH, 2024 by the entity named below.

Respectfully submitted,

By:   
(Signature)

Jeff Polak  
(Printed Name)

Title: Business Group Leader, V.P.

Company: Archer Western Construction, LLC

Address: 1411 Greenway Drive  
Irving, Texas 75038


State of Incorporation: Illinois

Email: jscott@walshgroup.com

Phone: 972-457-8500

Receipt is acknowledged of the following Addenda:	Initial
Addenda No. 1:	<u>JP</u>
Addenda No. 2:	
Addenda No. 3:	
Addenda No. 4:	
Addenda No. 5:	

**END OF SECTION**



To:

City of Denton - Capital Projects

901-B Texas Street

Denton, TX 76209

Erica Garcia/Purchasing Dept.

From:

Archer Western Construction, Inc.

1411 Greenway Drive

Irving, TX 75038

Jeff Scott

972-457-8500

[jscott@walshgroup.com](mailto:jscott@walshgroup.com)

PROJ.: **RRWTP Capacity Re-Rate and Performance Improvements**

RFP: 8141-2

ENG

PMO:

OFFEROR'S APPLICATION - UNIT PRICE PROPOSAL

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
1	BC-01	<b>Ray Roberts Water Treatment Plant (RRWTP) Re-Rate and Performance Improvements:</b> Price for the construction and operational completion of the improvements at the existing Ray Roberts Water Treatment Plant inclusive of all items with the exception of the specific Items listed below.	LS	1	\$ 36,221,290.00	\$ 36,221,290.00
2	BC-02	<b>Existing Vertical Turbine Pump Modifications:</b> Price for furnishing all labor, tools, equipment, and machinery necessary to execute the work identified in Section 44 42 56.12 “Existing Vertical Turbine Pump Modifications” for Ray Roberts Water Treatment Plant High Service Pump Station P-PS-1 and P-PS-2.	EA	2	\$ 243,100.00	\$ 486,200.00
3	BC-03	<b>Pre-Ozone Contactor Wall Cracking Repair:</b> Price for the repair of minor wall cracking per the details provided in the Contract Documents.	LF	40	\$ 225.00	\$ 9,000.00
4	BC-04	<b>Flow Split Structure Wall Mortar Repair:</b> Price for the brush coat of cementitious mortar at existing wall craze cracking per the details provided in the Contract Documents.	SF	400	\$ 183.25	\$ 73,300.00
5	BC-05	<b>Flocculation/Sedimentation Basin Wall Cracking Repair:</b> Price for the repair of minor wall cracking per the details provided in the Contract Documents.	LF	200	\$ 125.00	\$ 25,000.00
6	BC-06	<b>Flocculation/Sedimentation Basin Expansion Joint Replacement:</b> Price for the replacement of expansion joints per the details provided in the Contract Documents.	LF	880	\$ 236.50	\$ 208,120.00
7	BC-07	<b>Flocculation/Sedimentation Basin Spalled Concrete Repair:</b> Price for the repair of concrete spall per the details provided in the Contract Documents.	CF	80	\$ 1,476.25	\$ 118,100.00
8	BC-08	<b>Intermediate Ozone Contactor Wall Cracking Repair:</b> Price for the repair of minor wall cracking per the details provided in the Contract Documents.	LF	50	\$ 200.00	\$ 10,000.00
9	BC-09	<b>Excavation and Support Protection Systems:</b> Price for the development, design, implementation, and maintenance of excavation and support projection systems for excavations and trenches, as required by the Occupational Safety and Health Administration, and the assumption of the responsibility for said system.	LF	3,000	\$ 5.00	\$ 15,000.00

10	BC-10	<b>Storm Water Pollution Prevention Plan:</b> Price for the development, design, implementation, and maintenance of the storm water pollution prevention plan in accordance with the TCEQ General Construction Permit TXR150000, and the assumption of the responsibility for said system.	LS	1	\$ 25,400.00	\$ 25,400.00
11	BC-11	<b>System Integration and Instrumentation:</b> Price for the furnishing of System Integration Professional Services, equipment and other services identified in Sections 26 29 13.01 "Industrial Control Panels," 40 90 00 "Instrumentation and Control for Process Systems," 40 90 01 "Instrumentation," 40 90 02 "Supervisory Control and Data Acquisition," 40 90 02.01 "Control Narratives," and 40 90 02.02 "Supervisory Control and Data Acquisition Input-Output Lists."	LS	1	\$ 2,665,400.00	\$ 2,665,400.00
12	BC-12	<b>Chemical Storage Containment Wall Cracking Repair:</b> Price for the repair of minor wall cracking per the details provided in the Contract Documents.	LF	50	\$ 200.00	\$ 10,000.00
13	BC-13	<b>Chemical Storage Containment Slab Cracking Repair:</b> Price for the repair of minor slab cracking per the details provided in the Contract Documents.	LF	50	\$ 100.00	\$ 5,000.00
			TOTAL BASE PROPOSAL:			\$39,871,810.00
15	Allowances in Base Bid per Section 01 23 10 "Alternates and Allowances"					
16	AL-01	<b>Existing Vertical Turbine Pump Additional Modifications:</b> For additional modifications and repairs not identified in the Plans, Specifications, or Section 44 42 56.12 "Existing Vertical Turbine Pump Modifications" and to be used solely at the direction of the Owner.	LS	1	\$ 100,000.00	100,000.00
18	Extra Work Items in the Contract per Section 01 29 01 "Measurement and Basis for Payment"					
19	EW-01	<b>Flowable Fill:</b> Installation of additional flowable fill not shown in the Contract Documents including excavation, preparation, materials, forms, equipment, placement, and finishing, as directed by the Owner and the per the details and specifications within the Contract Documents.	CY	50	\$ 217.00	\$ 10,850.00
20	EW-02	<b>Structural Fill:</b> Installation of additional structural select fill not shown in the Contract Documents, including excavation, preparation, materials, equipment, placement, and compaction, as directed by the Owner and the per the details and specifications within the Contract Documents.	CY	50	\$ 134.00	\$ 6,700.00
21	EW-03	<b>Piers:</b> Installation of additional length of 24-inch diameter drill piers not shown in the Contract Documents, including drilling, preparation, materials, casing, tool, and equipment, as directed by the Owner and per the details and specifications within the Contract Documents.	VLF	40	\$ 141.00	\$ 5,640.00
23						
30					\$ -	\$ -
			TOTAL Allowance & Alternate: \$123,190.00			

RRWTP Capacity Re-Rate and Performance Improvements	TOTAL PROPOSAL:	\$39,995,000.00
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**SECTION 00 43 39****VENDOR COMPLIANCE TO STATE LAW NON-RESIDENT OFFEROR - CSP**

Texas Government Code Chapter 2252 was adopted for the award of contracts to nonresident offerors. This law provides that, in order to be awarded a best value contract where the offeror also offered the lowest proposal price, nonresident offerors (out-of-state contractors whose corporate offices or principal place of business are outside the State of Texas) propose on projects for construction, improvements, supplies or services in Texas at an amount lower than the lowest Texas resident offeror by the same amount that a Texas resident offeror would be required to underbid a nonresident offeror in order to obtain a comparable contract in the State which the nonresident's principal place of business is located.

The appropriate blanks in Section A must be filled out by all nonresident offerors in order for your proposal to meet specifications. The failure of nonresident offerors to do so will automatically disqualify that offeror. Resident offerors must check the box in Section B.

A. Nonresident offerors in the State of \_\_\_\_\_, our principal place of business, are required to be \_\_\_\_\_ percent lower than resident offerors by State Law. A copy of the statute is attached.

Nonresident offerors in the State of Illinois, our principal place of business, are not required to underbid resident Offerors.

B. The principal place of business of our company or our parent company or majority owner is in the State of Texas. ☐

**OFFEROR:**

Archer Western Construction, LLC

By: 

(Please Print)

Company

1411 Greenway Drive

Signature: Jeff Polak

Address

Irving, Texas 75038

Title: Business Group Leader, V.P.

City/State/Zip

(Please Print)

Date: 03-13-2024

**END OF SECTION**

"General Decision Number: TX20240016 01/05/2024

Superseded General Decision Number: TX20230016

State: Texas

Construction Type: Heavy

County: Denton County in Texas.

Heavy Construction, Including Treatment Plants (Does not include water/sewer lines)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.</li> </ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number      Publication Date  
0                              01/05/2024

ASBE0021-003 06/01/2023

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Includes application of all insulating materials, protective coverings, coatings, and finishings to all types of mechanical systems).....	\$ 31.32	7.52

ELEC0020-004 12/01/2023

	Rates	Fringes
Electricians:		
Cable Splicer.....	\$ 29.81	8.84
Electrician.....	\$ 37.15	11.29

ELEC0220-001 06/04/2023

	Rates	Fringes
Line Construction:		
CABLE SPLICERS.....	\$ 17.12 **	14.5%+3.75
EQUIPMENT OPERATORS.....	\$ 25.08	17.50%+7.75
GROUNDMAN.....	\$ 18.72	1.5%+7.81
LINEMAN.....	\$ 39.91	17.5%+8.16
TRUCK DRIVER.....	\$ 22.47	2.0%+7.67

ENGI0178-001 06/01/2020

	Rates	Fringes
Cranes:		
Hydraulic Crane (35 ton & under).....	\$ 32.35	13.10
Hydraulic over 35 tons,Derricks, Overhead Gentry,Stiffleg,Tower,etc., and Cranes with Piledriving or Caisson attachements.....	\$ 32.60	13.10

IRON0263-010 06/01/2023

	Rates	Fringes
Ironworkers:		
Reinforcing & Structural....	\$ 27.89	7.93

PLUM0100-002 11/01/2022

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 35.73	13.07

SHEE0068-002 11/01/2012

	Rates	Fringes
Sheet metal worker.....	\$ 27.64	8.84

SUTX1990-039 08/01/1990

	Rates	Fringes
--	-------	---------

CARPENTER.....	\$ 10.536	**
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Concrete Finisher.....	\$ 9.603	**
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Form Builder.....	\$ 8.036	**
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Form Setter.....	\$ 9.578	**
------------------	----------	----

## Laborers:

Common.....	\$ 7.25	**
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Utility.....	\$ 7.25	**
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Pipelayer.....	\$ 7.961	**
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## Power equipment operators:

Backhoe.....	\$ 10.971	**
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Bulldozer.....	\$ 9.942	**
----------------	----------	----

Front end loader.....	\$ 10.771	**
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Mechanic.....	\$ 9.88	**
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Motor Grader.....	\$ 11.633	**
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Oiler.....	\$ 9.183	**
------------	----------	----

Scraper.....	\$ 8.00	**
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TRUCK DRIVER.....	\$ 7.465	**
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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at

<https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date

for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

-----  
WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"




**SECTION 00 45 27**

**CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW - CSP**

Pursuant to Texas Labor Code Section 406.096(a), as amended, Contractor certifies that it provides worker's compensation insurance coverage for all of its employees employed on RRWTP Capacity Re-Rate and Improvements Project. Contractor further certifies that, pursuant to Texas Labor Code, Section 406.096(b), as amended, it will provide to City its subcontractor's certificates of compliance with worker's compensation coverage.

**CONTRACTOR:**


Archer Western Construction, LLC By: Jeff Polak  
Company (Please Print)  
1411 Greenway Drive Signature:   
Address  
Irving, Texas 75038 Title: Business Group Leader, V.P.  
City/State/Zip (Please Print)

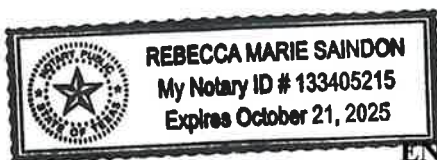
THE STATE OF TEXAS §

COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared Jeff Polak, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of Archer Western Construction for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13<sup>th</sup> day of MARCH, 2024

  
Notary Public in and for the State of Texas



**END OF SECTION**

# **STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT**

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Contract or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof, and words denoting gender shall include the masculine, feminine and neuter. When used in a context consistent with the definition of a listed-defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument titled “Agreement”, “Agreement – CSP”, or “Agreement – Unit Price Bid” executed by the City and Contractor for the Work, setting forth the name of the Project, Contract Price, Contract Time and the items included in the Contract.
  3. *Application for Payment*—The form acceptable to City which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Award*—Authorization by the City Council for the City to enter into an Agreement.
  6. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed. The term “Bid” shall be defined to include the term “Proposal” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  7. *Bidder*—The individual or entity that submits a Bid directly to City. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  8. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda). The term “Bidding Documents” shall be defined to include the terms “Proposal Documents” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  9. *Bidding Requirements*—The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments. The term “Bidding Requirements” shall be defined to include the terms “Proposal Requirements” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and will include the Request for Proposal or Invitation to Offerors, Instructions to Offerors, Offerors Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.

10. *Business Day*—A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
11. *Calendar Day*—A day consisting of 24 hours measured from midnight to the next midnight.
12. *Change Order*—A document which is prepared by the Contractor or City, approved by the City, and signed by Contractor and City, authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
13. *City*—The City of Denton is, a Texas home-rule municipal corporation acting by its City Council through its City Manager or his or her designee.
14. *City Attorney*—The officially appointed City Attorney of the City of Denton or his or her designee.
15. *City Council*—The duly elected and qualified governing body of the City of Denton.
16. *City Manager*—The officially appointed authorized City Manager of the City of Denton.
17. *Contract*—The entire and integrated set of written instruments between the City and Contractor concerning the Work comprised of the Agreement and all Contract Documents, which written instruments supersede all prior negotiations, representations, or agreements, whether written or oral, concerning the Work.
18. *Contract Claim*—A demand or assertion by City or Contractor seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Contract Claim.
19. *Contract Documents*—Those items so designated as “Contract Documents.” in the Agreement at Paragraph 5.1.A. Approved Submittals, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
20. *Contract Price*—The moneys payable by City to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 12.03 in the case of Unit Price Work). The Contract Price does not include any “Incentive”, if applicable.
21. *Contract Time*—The number of days or the dates stated in the Agreement to: (a) achieve Milestones, if any and (bb) complete the Work so that it is ready for Final Acceptance.
22. *Contractor*—The individual or entity with whom City has entered into the Agreement.
23. *Cost of the Work*—See Paragraph 12.01 of these General Conditions for definition.
24. *Damage Claims*—A demand for money or services arising from the Project or Site from a third party, City or Contractor exclusive of a Contract Claim.
25. *Day or day*—A day, unless otherwise defined, shall mean a Calendar Day.
26. *Drawings*—The part of the Contract Documents prepared or approved by an Engineer that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Submittals, as defined, are not considered Drawings as so defined here.

27. *Effective Date of the Agreement*—The date, indicated in the Agreement, on which it becomes effective,, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the City.
28. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, text, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
29. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by the Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
30. *Engineer*—The licensed professional engineer or engineering firm registered in the State of Texas performing professional services for the City.
31. *Extra Work*—Additional work made necessary by City-approved changes or alterations to the Contract Documents. Extra Work shall be part of the Work.
32. *Field Order*—A written directive issued by City that requires changes in the Work but does not involve a change to the Contract Price, Contract Time, or Drawings, Plan, or Shop Drawings.
33. *Final Acceptance*—The written notice given by the City to the Contractor that the Work specified in the Contract Documents has been completed to the satisfaction of the City.
34. *Final Inspection*—The inspection performed by the City to determine whether the Contractor has completed each and every part or appurtenance of the Work fully, entirely, and in conformance with the Contract Documents.
35. *General Requirements*—Sections of The information set forth in “Division 101 – General Requirements” of the Standard Construction Specification Documents.
36. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, P C B s , Petroleum, Hazardous Waste, Radioactive Material, or any other substance, product, waste or materials, in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
37. *Hazardous Waste*—Any solid waste listed as hazardous or which possesses one or more hazardous characteristics as defined in applicable Laws and Regulations.
38. *Incidental or incidental*—Work items that the Contractor is not paid for directly, but costs for which are included under the various bid items of the Project.
39. *Laws and Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all

governmental bodies, agencies, authorities, and courts having jurisdiction over the Site or any portion or part of the Work to be performed.

40. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
41. *Major Item*—An item of work included in the Contract Documents that has a total cost equal to or greater than 5% of the original Contract Price.
42. *Milestone*—A principal event specified in the Contract Documents relating to the performance of an identified portion of the Work by an intermediate Contract Time prior to Final Acceptance of the Work.
43. *Notice of Award*—The written notice by City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed in such notice, City will sign and deliver the Agreement.
44. *Notice to Proceed*—A written notice given by City to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work specified in Contract Documents.
45. *PCBs*—Polychlorinated biphenyls.
46. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
47. *Plans*—This term will have the same definition of as “Drawings”.
48. *Project* —The Work to be performed under the Contract.
49. *Project Manager*—The authorized representative of the City who will be assigned to the Project.
50. *Project Manual*—The documentary information prepared for bidding or proposing and furnishing the Work.
51. *Project Schedule*—A schedule, prepared and maintained by Contractor, in accordance with the General Requirements, describing the sequence and duration of the activities comprising Contractor’s plan to achieve each Milestone and accomplish the Work within the Contract Time.
52. *Public Meeting*—An announced meeting conducted by the City to facilitate public participation and to assist the public in gaining an informed view of the Project.
53. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
54. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

55. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
56. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
57. *Site*—Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way, permits, and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
58. *Specifications or Technical Specifications* —The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work. Specifications may be specifically made a part of the Contract Documents by attachment or, if not attached, may be incorporated by reference as indicated in the Table of Contents (Section 00 00 00) of the Project.
59. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
60. *Submittal*—All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to the City to illustrate some portion of the Work.
61. *Subsidiary or subsidiary*—*These terms will have the same* definition as “Incidental. or incidental”.
62. *Successful Bidder*—The Bidder to whom City issues a Notice of Award. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and is the Proposer or Offeror submitting the proposal or offer that provides the best value to the City and to whom the City issues a Notice of Award.
63. *Superintendent*—The representative of the Contractor who is available at all times and able to receive instructions from the City and to act for the Contractor.
64. *Supplementary Conditions*—The part of the Contract set forth at Division 00 73 00 that amends or supplements these General Conditions.
65. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
66. *Underground Facilities*—All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid

petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

67. *Unit Price Work*—Work for which the Contract Price is determined by multiplying the unit price for the item by the estimated quantity of the item.
68. *Weekend Working Hours*—Those hours between 8:00 a.m. and 8:30 p.m. on Saturday, and between 1:00 p.m. and 8:30 p.m. on Sunday or on a federal or state holiday observed by the City, as approved in advance by the City for performing Work.
69. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction including any Change Order or Field Order, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
70. *Working Day*—Defined as a Business Day but excluding any days that weather or other conditions beyond the reasonable control of the Contractor prevents the performance of the principal unit of work underway for a continuous period of not less than 7 hours between 7:00 a.m. and 8:00 p.m.

#### 1.02 *Terminology*

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract includes the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of judgment by CityCity. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of City as to the Work. It is intended that such exercise of judgment, action, or determination will be to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).
- C. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  1. does not conform to the Contract Documents; or
  2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  3. has been damaged prior to City’s written notice of Final Acceptance.
- D. *Furnish, Install, Perform, Provide*
  1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to execute, carry out, furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- E. Unless stated otherwise in the Contract, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract in accordance with such recognized meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance***

- A. Performance and Payment Bonds: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City the performance bond, payment bond and maintenance bond that comply with the provisions of Chapter 2253 of the Texas Government Code. Work will not be allowed to begin until the performance and payment bonds have been provided by the Contractor to the City.
- B. Evidence of Contractor’s Insurance: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6. Work will not be allowed to begin until the evidence of insurance has been provided by the Contractor to the City.

### **2.02 *Copies of Documents***

- A. City shall furnish to Contractor one (1) original executed copy and one (1) electronic copy of the Contract, and three (3) additional copies of the Drawings. Additional printed copies will be furnished upon request at the cost of reproduction.

### **2.03 *Before Starting Construction***

Baseline starting Work, Contractor shall submit for review by City the following in accordance with the Contract Documents:

- A. Baseline Schedules in accordance with General Requirements, Section 01 32 16.
- B. Preliminary Schedule of Submittals.
- C. Preliminary Schedule of Values: For lump sum contracts, a Schedule of Values for all of the Work that includes quantities and prices of items that when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.



#### 2.04 *Preconstruction Meeting*

- A. Before any Work at the Site is started, the Contractor shall attend a Preconstruction Meeting as specified in Section 01 31 19.

#### 2.05 *Public Meeting*

- A. Contractor may not mobilize any equipment, materials, or resources to the Site prior to Contractor attending the Public Meeting as scheduled by the City.

#### 2.06 *Initial Acceptance of Schedules*

- A. No progress payment shall be made to Contractor until acceptable Project Schedules are submitted to City in accordance with the Contract Documents.

#### 2.07 *Electronic Submittals and Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the City and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then City and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.
- C. City will issue clarifications and interpretations of the Contract Documents as provided herein.
- D. The Specifications may vary in form, forma and style. Some Specification sections may be written in varying degrees of streamlined or declarative style, and some sections may be relatively narrative by comparison. Omission of such words and phrases as “the Contractor shall,” “in conformity with,” “as shown,” or “as specified” are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making Contract Claims or Damage Claims.

- E. The cross-referencing of Specification sections under the subparagraph heading “Related Sections include but are not necessarily limited to:” and elsewhere within each Specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross-referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not cross-referencing is provided in each section or whether the cross-referencing is complete or accurate.

### 3.02 *Reference Standards*

#### A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of City, Contractor, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. Reporting Discrepancies

1. *Contractor’s Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements, and conditions. Contractor shall promptly report in writing to City any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby.
2. *Contractor’s Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to City in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.1717) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by City, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to City for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

**B. Resolving Discrepancies**

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier; or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. In case of discrepancies, figured dimensions shall govern over scaled dimensions, Drawings shall govern over Specifications, and Supplementary Conditions shall govern over General Conditions and Specifications.

**3.04 Requirements of the Contract Documents**

- A. During the performance of the Work and until final payment, Contractor shall submit to the City in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. City will be the interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. City will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. City's written clarification, interpretation, or decision will be final and binding on Contractor, unless Contractor appeals by filing a Contract Claim.

**3.05 Reuse of Documents**

- A. Contractor and its Subcontractors and Suppliers shall not:
  1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of CityCity and specific written verification or adaptation by Engineer; or
  2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without City's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

**ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK****4.01** *Commencement of Contract Time; Notice to Proceed*

- A. The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract.

**4.02** *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work may be done at the Site prior to the date on which the Contract Time commences to run.

**4.03** *Delays in Contractor's Progress*

- A. If Contractor is delayed, City shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project. The City shall be liable only to the extent allowed by the provisions of the Contract and as allowed by Subchapter I, Chapter 271 of the Texas Local Government Code.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. The Contractor shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to the Contractor is caused by the failure of the City to provide information or material, if any, that the Contract specifies is to be furnished by the City.
- D. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of City, Contractor, and those for whom they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Time. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Paragraph 4.03. D. The Contractor is responsible for the prompt submission of a request for an adjustment to the Contract Time under this Paragraph to the City. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Time under this Paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with City, as contemplated in Article 8); and

4. Acts of war or terrorism.
- E. Contractor's entitlement to an adjustment of Contract Time or Contract Price is limited as follows:
  1. Contractor's entitlement to an adjustment of the Contract Time is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Time to which Contractor is otherwise entitled.
  3. Adjustments of Contract Time or Contract Price are subject to the provisions of Article 11.
- F. Each Contractor request or Change Order seeking an increase in Contract Time or Contract Price must be supplemented by supporting data that sets forth in detail the following:
  1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Time claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.08.
  6. Contractor shall also furnish such additional supporting documentation as City may require including, where appropriate, a revised Project Schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- G. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from undisclosed Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.03.F and 4.03.G.

## **ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. City shall furnish the Site. City shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which

Contractor must comply in performing the Work. City will be responsible for obtaining any necessary easements for permanent structures or permanent changes in existing facilities.

1. The City has obtained or anticipates acquisition of and/or access to right-of-way, and/or easements. Any outstanding right-of-way and/or easements are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding right-of-way, and/or easements.
  2. Unless otherwise specified in the Contract Documents, the City has or anticipates moving and/or relocating utilities, and obstructions to the Site. Any outstanding movement or relocation of utilities or obstructions is anticipated in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding utilities or obstructions to be moved and/or relocated by others.
- B. Upon reasonable written request of Contractor, City shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed.
- C. Contractor shall provide for any additional lands and access thereto not included in the Site that may be required for construction facilities or storage of materials and equipment. The cost of such shall be part of the Contract Price.

#### 5.02 *Use of Site and Other Areas*

- A. Limitation on Use of Site and Other Areas
1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, worker car parking and the operations of workers to the Site, to adjacent areas that Contractor has arranged to use through construction easements or otherwise, and to other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with worker car parking, construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries, including death, and damage to or losses of property sustained by the owners or occupants of any such land or areas; provided that such damage, losses, injuries or deaths arose out of or result from the performance of the Work or arose out of or resulted from any other actions or conduct of the Contractor or those for whom Contractor is responsible.
  2. At any time when, in the judgment of the City, the Contractor has obstructed, closed, or is carrying on operations in a portion of a street, right-of-way, or easement greater than is necessary for proper execution of the Work, the City may require the Contractor to reduce the area impacted to only that necessary for proper execution of the Work and/or to finish the section on which operations are in progress before work is commenced on any additional area of the Site.

3. Construction equipment, spoil materials, supplies, forms, buildings, labs, or equipment and supply storage buildings, or any other item that may be transported by flood flows, shall not be stored within existing federal floodways during the course of the Work.
  4. Should any Damage Claim be made by any such owner or occupant adversely impacted because of the performance of the Work, Contractor shall promptly attempt to resolve the Damage Claim.
  5. ***PURSUANT TO PARAGRAPH 7.21, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH ADVERSELY IMPACTED OWNER OR OCCUPANT AGAINST CITY.***
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Site Maintenance Cleaning:* If 24 hours after written notice is given to the Contractor that the clean-up at the Site is insufficient or occurring in a manner unsatisfactory to the City, the Contractor fails to correct the unsatisfactory condition and/or procedures, the City may take such direct action as the City deems appropriate to correct the clean-up deficiencies cited to the Contractor in the written notice, and the costs of such direct corrective action, plus 25 % of such costs, shall be deducted from the monies due or to become due to the Contractor under the Contract.
- D. *Final Site Cleaning:* Prior to Final Acceptance of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by City and any adjacent property owners, if applicable. At the completion of the Work, Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, surplus materials, waste materials, rubbish and other debris and shall restore to original condition or better all areas impacted or disturbed by the Work.
- E. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. Those reports known to City of explorations and tests of subsurface conditions at or contiguous to the Site; and
  2. Those drawings known to City of existing physical conditions at or contiguous to the Site, including those drawings known to City depicting existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities.).
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.



Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as technical data.

- C. *Reliance by Contractor on Technical Data:* Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of their officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any "technical data" is materially inaccurate; or
  2. is of such a nature as to require a change in the Contract Documents; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), notify City in writing about such condition.

- B. *Possible Price and Time Adjustments*
1. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a final commitment to City with respect to Contract Price and Contract Time by the submission of a Bid or becoming bound under the Contract; or

- b. The existence of such condition reasonably could have been discovered or revealed as a result of the examination of the Contract Documents or the Site; or
  - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
- C. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Supplementary Conditions::
- 1. City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
  - 2. the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data;
    - b. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
    - c. coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated:*
- 1. If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), identify the owner of such Underground Facility and give notice to that owner and to City. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.
  - 2. If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 11.
  - 3. Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

#### 5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports known to City relating to Hazardous Environmental Conditions that have been identified at the Site; or
  2. drawings known to City relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Reliance by Contractor on Technical Data*: Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.
- C. Contractor shall not be responsible for a Hazardous Environmental Condition uncovered or revealed at the Site if such Hazardous Environmental Condition was not shown or indicated in Drawings or Specifications or identified if the removal or remediation of such Hazardous Environmental Condition was not identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created by the actions of or with any materials brought to the Site by Contractor, Subcontractors, Suppliers or anyone else for whom Contractor is responsible and the costs associated with the same.
- D. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.17); and (3) notify City (and promptly thereafter confirm such notice in writing). City may consider the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any.

- E. Contractor shall not be required to resume Work in connection with a Hazardous Environmental Condition identified pursuant to Paragraph 5.06.D or in any affected area until after City has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed.
- F. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work and the Contract Price. City may have such deleted portion of the Work performed by City's own forces or others.
- G. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.CityG OBLIGATES CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.***
- H. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6 – BONDS AND INSURANCE**

### **6.01 *Licensed Sureties and Insurers***

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue bonds or insurance policies for the limits and coverages required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### **6.02 *Performance, Payment, and Maintenance Bonds***

- A. Contractor shall furnish a performance bond and a payment bond, in accordance with the provisions of the Texas Government Code Chapter 2253 or successor statute and as required by the City, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. The performance and payment bonds must be provided by the Contractor to the City prior to the Contractor beginning any Work.

- B. Contractor shall furnish maintenance bonds in an amount equal to the Contract Price as security to protect the City against any defects in any portion of the Work described in the Contract Documents. Maintenance bonds shall remain in effect for two (2) years after the date of Final Acceptance by the City. The maintenance bond(s) shall be provided as directed by the City as part of the close-out of the Contract and shall be provided prior to the final payment being made.
- C. All bonds shall be in the form prescribed by the Contract Documents, except as provided otherwise by Laws and Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, or its right to do business is terminated in the State of Texas, then Contractor shall promptly notify City in writing and shall, within 30 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, City may refuse to allow the Contractor to begin Work, exclude the Contractor from the Site and exercise City’s termination rights under Article 15.
- F. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.03 *Certificates of Insurance*

- A. Contractor shall deliver to City, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance and endorsements (and other evidence of insurance requested by City or any other additional insured) establishing that Contractor has obtained and is maintaining the policies and coverages required by these General Conditions and the Supplementary Conditions prior to beginning any Work.
  - 1. The certificate of insurance shall document the City, and all identified entities named in the Supplementary Conditions as “additional insureds” on all liability policies.
  - 2. The Contractor’s general liability insurance shall include a “per project” or “per location” endorsement, that shall be identified in the certificate of insurance provided to the City.
  - 3. The certificate shall be signed by an agent authorized to bind coverage on behalf of the insured, be complete in its entirety, and show complete insurance carrier names as listed in the current A.M. Best Property & Casualty Guide.
  - 4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers’ compensation, all insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent

financial strength and solvency to the satisfaction City. If the rating is below that required, written approval of City is required.

5. All applicable policies shall include a Waiver of Subrogation (Rights of Recovery) in favor of the City. In addition, the Contractor agrees to waive all rights of subrogation against the Engineer (if applicable), and each additional insured identified in the Supplementary Conditions
6. Failure of the City to demand such certificates or other evidence of full compliance with the insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such lines of insurance coverage or to provide such certificates or other evidence of full compliance with the insurance requirements.
7. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.
8. Unless otherwise stated, all required insurance shall be written on the "occurrence basis". If If City agrees in writing that coverage is underwritten may be written on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the effective date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the Contract and for three (3) years following Final Acceptance or for the warranty period provided for under the Contract Documents or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence such insurance coverage.
9. Policies shall have no exclusions by endorsements that either nullify or amend the required lines of coverage, nor or decrease the limits of said coverage unless such endorsements are approved in writing by the City. In the event a Notice of an Award has been issued or the Agreement executed, and the policy exclusions are determined to be unacceptable or the City desires that the Contractor obtain additional insurance coverage the contract price shall be adjusted by the cost of the premium for such additional coverage plus 10%.
10. For any proposed self-insured retention (SIR,) in excess of \$25,000.00, affecting insurance coverage, Contractor must obtain the written approval of the City in regard to asset value and stockholders' equity. In lieu of traditional insurance, proposed alternative coverage maintained through insurance pools or, risk retention groups, or self-funding will also require the written approval of the City.
11. Any deductible in excess of \$5,000.00, for any policy that does not provide coverage on a first-dollar basis must be acceptable to and approved in writing by the City.
12. City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and limits when deemed necessary and prudent by the City based upon the scope of the Work, changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the City. The City will provide prior notice of 90 days and the insurance adjustments shall be incorporated into the Work by Change Order.

13. City shall be entitled, upon written request to Contractor and without expense to City, to receive copies of policies and endorsements thereto and. City may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or exclusions necessary to conform the policy and endorsements to the requirements of the Contract. Deletions, revisions, or modifications shall not be required where policy provisions are established by law or regulations binding upon either party or the underwriter on any such policies.
14. City shall not be responsible for the direct payment of insurance premium costs for Contractor's insurance.

#### 6.04 *Contractor's Insurance*

- A. *Workers Compensation and Employers' Liability:* Contractor shall purchase and maintain such insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, Ch. 406, as amended), and minimum limits for Employers' Liability as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
  1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  2. claims for damages because of bodily injury, occupational sickness or disease, or death of employees.
- B. *Commercial General Liability.* Coverage shall include but not be limited to covering liability (bodily injury, including death, or property damage) arising from: premises/operations, independent contractors, products/completed operations, personal injury including death, liability under an insured contract, and explosion/collapse/underground (where those exposures exist). Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City. The Commercial General Liability policy shall have no exclusions by endorsements that would alter or nullify premises/operations, products/completed operations, contractual, personal injury, or advertising injury, that are normally contained with the policy, unless the City approves such exclusions in writing.

For construction projects that present a substantial completed operation exposure, the City may require the Contractor to maintain completed operations coverage for a minimum of no less than three (3) years following the completion of the project (if identified in the Supplementary Conditions)).
- C. *Automobile Liability.* A commercial business auto policy shall provide coverage on "any auto", defined as autos owned, hired and non-owned and provide indemnity for claims for damages because of bodily injury or death of any person and/or property damage arising out of or related to the work, maintenance or use of any motor vehicle by the Contractor, any



Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

- D. *Railroad Protective Liability.* If any of the Work or any warranty work is within the limits of railroad right-of-way, the Contractor shall comply with the requirements identified in the Supplementary Conditions.
- E. *Notification of Policy Cancellation:* Contractor shall immediately notify City upon cancellation or other loss of insurance coverage. Contractor shall stop Work until replacement insurance has been procured. There shall be no time credit for delays or days not worked pursuant to this section.

6.05 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If City has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 6 or the Supplementary Conditions on the basis of non-conformance with the Contract Documents, the City shall so notify the Contractor in writing within 10 Business Days after receipt of the certificates (or other evidence requested). Contractor shall provide to the City such additional information in respect of insurance provided as the City may reasonably request. If Contractor does not purchase or maintain all of the bonds and insurance required by the Contract Documents, the City shall notify the Contractor in writing of such failure prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Such failure to provide bonds or insurance as required by the Contract Documents is a breach of the terms of the Contract and the City may terminate the Contractor in accordance with the provisions of the Contract Documents.

**ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES**

7.01 *Contractor’s Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not City-delegated professional design services under this Contract, and neither City nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall identify and assign a competent superintendent, who is proficient in English, and who shall not be replaced without written

notice to City of the name of the replacement superintendent. If at any time the superintendent is not satisfactory to the City, Contractor shall, if requested by City, replace the superintendent with another satisfactory to City.

- C. Contractor shall notify the City 24 hours prior to moving areas during the sequence of construction.

#### 7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to City for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours on Business Days. Contractor will not permit the performance of Work outside of regular working hours on Business Days without City's prior written consent (which will not be unreasonably withheld)). Contractor's written request (by letter or electronic communication) for City's written consent must be made as follows:
  - 1. for Work beyond regular working hours on Business Days, request must be made by noon at least two (2) Business Days prior;
  - 2. for Work during Weekend Working Hours, request must be made by noon of the preceding Wednesday; and
  - 3. for Work on state or federal holidays observed by the City, request must be made sufficiently in advance of the holiday, to satisfy requirements for City Council approval.

#### 7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, Contractor required testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of sufficient quality to complete the Work, and must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of City. If required by City, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment to be incorporated into the Work shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with

instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

- D. All items of standard equipment to be incorporated into the Work shall be the latest model at the time of bid, unless otherwise specified.

#### 7.05 *Project Schedule*

- A. Contractor shall adhere to the Project Schedule established in accordance with Paragraph 2.06 and the General Requirements as it may be adjusted from time to time as provided below.
1. Contractor shall submit to the City for acceptance (to the extent indicated in Paragraph 2.06 and the General Requirements) proposed adjustments in the Project Schedule that will not result in changing the Contract Time. Such adjustments must comply with any provisions of the General Requirements applicable thereto.
  2. Contractor shall submit to City a monthly Project Schedule with a monthly progress payment request for the duration of the Contract in accordance with the Construction Progress Schedule, General Requirements 01 32 16.
  3. Proposed adjustments in the Project Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 11. Adjustments in Contract Time may only be made by a Change Order.

#### 7.06 *“Or Equals”*

- A. *Contractor’s Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that City permit the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
1. If City in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by City as an “or equal” item. For the purposes of this Paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. the City determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) it has a proven record of performance and availability of responsive service; and
      - 4) it is not objectionable to City.

- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
    - 1) there will be no increase in cost to the City or increase in Contract Time; and
    - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *City's Evaluation and Determination*: City will be allowed a reasonable time to evaluate each "or-equal" request. City may require Contractor to furnish additional data about the proposed "or-equal" item. City will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an "or-equal." City." City will advise Contractor in writing of its determination.
- D. *Effect of City's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The City's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If City determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that City consider the item a proposed substitution pursuant to Paragraph 7.07.

#### 7.07 Substitutions

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that City permit the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related Work at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow City to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitution therefor. City will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  - 2. The requirements for review by City will be as set forth in Paragraph 7.07.B, as supplemented by the Specifications, and as City may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to City for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application shall comply with Section 01 25 00 and:
    - a. will certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design;
      - 2) be substantially similar in substance to the item specified; and

- 3) be well-suited to the same use as the item specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will adversely impact Contractor's achievement of Final Acceptance on or before the Contract Time;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and Damage Claims of other contractors affected by any resulting change.
- B. *City's Evaluation and Determination:* City will be allowed a reasonable time to evaluate each substitution request. City may require Contractor to furnish additional data about the proposed substitute item. City will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an acceptable substitution. City's approval determination will be evidenced by a Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Time. City will advise Contractor in writing of any denial determination.
- C. *Special Guarantee:* City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitution. ***Contractor shall indemnify and hold harmless City and its officers, elected and appointed officials, employees, agents, consultants and subcontractors and anyone directly or indirectly employed by them from and against any and all claims, damages, losses and expenses (including attorney's fees) arising out of or relateds to the use of substituted materials or equipment.***
- D. *Reimbursement of City's Cost:* City will record City's costs in evaluating a substitution proposed or submitted by Contractor. Whether or not City approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse City for evaluating each such proposed substitute. Contractor shall also reimburse City for the charges for making changes in the Contract Documents (or in the provisions of any other direct contract with City) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

- F. *City Substitution Reimbursement:* Cost savings attributable to acceptance of a substitution shall be paid to City by Contractor by an appropriate Change Order decreasing the Contract Price.
- G. *Effect of City's Determination:* If City approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The City's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.07.D, by timely submittal of a Change Order.

7.08 *Concerning Subcontractors and Suppliers*

- A. Contractor shall perform with its own organization, and with the assistance of workmen under its immediate superintendence, work of a value not less than 35% of the Contract Price, unless otherwise approved by the City.
- B. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection, except as provided in Paragraph 7.08.C. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to City to perform and complete the Work in accordance with the Contract.
- C. The City may require the use of specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work , and will provide such requirements in the Supplementary Conditions.
- D. Contractor shall provide to City as part of the Bid, the identity of all proposed Subcontractors and Suppliers. Such proposed Subcontractor or Supplier shall be deemed acceptable to City unless City raises a substantive, reasonable objection prior to execution of the Agreement.
- E. Contractor shall be fully responsible to City for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between City and any such Subcontractor, Supplier or other individual or entity; nor
  - 2. shall create any obligation on the part of City to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- F. No acceptance by City of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of City to the completion of the Work in accordance with the Contract Documents, Contract Price and Contract Time.
- G. Contractor shall be solely responsible for scheduling and coordinating the tasks of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

- H. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of City. Contractor must comply with all applicable federal, state, and local laws, statutes, ordinances or regulations, including but not limited to immigration laws, workers compensation laws and wage laws, in the hiring of any Subcontractor or Supplier and shall ensure that each Subcontractor or Supplier has the same obligations.
- I. Contractor shall restrict all Subcontractors and Suppliers from communicating with City, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

#### 7.09 *Wage Rates*

- A. *Duty to pay Prevailing Wage Rates:* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Denton to be the prevailing wage rates in accordance with Chapter 2258. The then current prevailing wage rates at the time of execution of the Agreement are included in these Contract Documents.
- B. *Penalty for Violation:* A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code Section 2258.023.
- C. *Complaints of Violations and City Determination of Good Cause:* On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being retained from successive progress payments pending a final determination of the violation.
- D. *Arbitration Required if Violation Not Resolved:* An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph 7.09.C. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.



- E. *Records to be Maintained:* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of Final Acceptance, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be available in Denton County, Texas at all reasonable hours for inspection by the City. The provisions of Paragraph 7.23, Right to Audit, shall pertain to this inspection.
- F. *Progress Payments:* With each progress payment request or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.
- G. *Posting of Wage Rates:* The Contractor shall post prevailing wage rates in a conspicuous place at the Site at all times.
- H. *Subcontractor Compliance:* The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with Paragraphs 7.09.A through 7.09.G.

#### 7.10 *Patent Fees and Royalties*

- A. Contractor shall pay all patent or license fees and royalties and pay all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of City, its use is subject to patent rights or copyrights calling for the payment of any patent or license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents. Failure of the City to disclose such information does not relieve the Contractor from its obligations to pay said fees or, royalties or costs to others.
- B. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE.***

#### 7.11 *Permits and Utilities*

- A. *Contractor obtained permits and licenses.* Unless otherwise expressly provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. City shall provide reasonable assistance to Contractor, if necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work applicable at the time the Notice of Award is issued, except for permits provided by the City as specified in Paragraph 7.11.B. City shall pay the charges of utility service providers for connections for providing permanent service to the Work.

- B. *City obtained permits and licenses.* City will obtain and pay for those permits and licenses identified as City's responsibility in the Supplementary Conditions or Contract Documents. It will be the Contractor's responsibility to comply with and carry out the provisions of the permit. If the Contractor initiates changes to the Contract and the City approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agency, relating to the changes. The City will not reimburse the Contractor for any cost associated with the requirements of any City acquired permit. The following are permits the City will obtain if required:
1. Texas Department of Transportation Permits
  2. U.S. Army Corps of Engineers Permits
  3. Texas Commission on Environmental Quality Permits
  4. Railroad Company Permits
  5. Texas Department of Licensing and Regulation (TDLR) Permits
- C. *Outstanding permits and licenses.* Any outstanding permits and licenses are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding permits and licenses.

#### 7.12 *Taxes*

- A. On issuance of a Notice of Award by the City, an organization which qualifying for exemption pursuant to Texas Tax Code, Subchapter H (as amended), the Contractor may purchase, rent or lease all materials, supplies and equipment used or consumed in the performance of this contract by issuing to hisits Supplier an exemption certificate in lieu of the tax, said exemption certificate to comply with State Comptroller's Rulings applicable to Texas Tax Code, Subchapter H. Any such exemption certificate issued to the Contractor in lieu of the tax shall be subject to and shall comply with all applicable rulings pertaining to the Texas Tax Code, Subchapter H.
- B. Texas tax permits and information may be obtained from:
1. Comptroller of Public Accounts  
Sales Tax Division  
Capitol Station  
Austin, TX 78711; or
  2. <http://www.window.state.tx.us/taxinfo/taxforms/93-forms.html>

#### 7.13 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, City shall not be responsible for monitoring Contractor's compliance with any Laws and Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws and Regulations, Contractor shall be liable for all resulting claims, costs losses, and damages, and shall indemnify and hold harmless City, and its officers, elected

and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

- C. Changes in Laws and Regulations not known at the time of the City's issuance of a Notice of Award having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.

#### 7.14 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. Contractor shall include accurate locations for buried and imbedded items. These record documents, together with all approved Samples, will be available to City for reference. Upon completion of the Work, Contractor shall deliver these record documents to City prior to Final Inspection.

#### 7.15 *Safety and Protection*

- A. As between City and Contractor, Contractor shall be responsible for the safety of persons and property in the performance of the Work, for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs. Contractor shall inform the City in writing of Contractor's designated safety representative at the Site.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.1515.C.2 or 7.1515.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be the responsibility of and remedied by Contractor at its expense.
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss;

and shall implement, erect and maintain all necessary safeguards for such safety and protection.

- F. Contractor shall notify City; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of City's safety programs, if any.
- H. Contractor shall inform City in advance in writing of the specific requirements of Contractor's safety program with which City's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed and City has issued a Letter of Final Acceptance.
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.16 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws and Regulations.

#### 7.17 *Emergencies and/or Rectification*

- A. In the event of threatened or actual emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to immediately act to prevent damage, injury, or loss. Contractor shall give City prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of Contractor's response to an emergency. If City determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Change Order may be issued.
- B. Should the Contractor fail to respond to a request from the City to rectify any discrepancies, omissions, or correction necessary to conform with the requirements of the Contract Documents, the City shall give the Contractor written notice that such work or changes are to be performed. The written notice shall direct attention to the discrepant condition and request the Contractor to take remedial action to correct the condition. In the event the Contractor does not take proper action within 24 hours to fulfill this written request or fails to show just cause for not taking the proper action, within 24 hours, the City may take such remedial action with City resources or by contract. The City shall deduct an amount equal to the entire cost for such remedial action, plus 25% from any funds due or to become due the Contractor on the Project.

### 7.18 Submittals

- A. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit required Submittals to City for review and acceptance in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.03).
1. Contractor shall submit the Submittals in accordance with Section 01 33 00 of the General Requirements.
  2. Data shown on the Submittals must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to demonstrate to City the services, materials, and equipment Contractor proposes to provide, and to enable City to review the information for the limited purposes required by Paragraph 7.18.C.
  3. Submittals reviewed and accepted by City for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by City.
  4. When Submittals are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the Drawings and Specifications.
  5. For-Information-Only submittals upon which the City is not expected to conduct a review or take responsive action may be so identified in the Contract Documents.
  6. Contractor shall submit the required number of Samples specified in the Specifications.
  7. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which it is intended and other data as City may require to enable City to review the Submittal for the limited purposes set forth in Paragraph 7.18.C.
- B. Where a Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to City's review and acceptance of the pertinent submittal will be at the sole risk, expense and responsibility of Contractor.
- C. City's Review
1. City will provide timely review of Submittals in accordance with the accepted Schedule of Submittals. City's review and acceptance will be to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. City's review and acceptance will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents), or to safety precautions or programs incident thereto.
  3. City's review and acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Section 01 33 00 of the General

Requirements, and City has given written acceptance of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

5. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for complying with the requirements of the Contract Documents.
6. City's review and acceptance of a Submittal, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Time or Contract Price, unless such changes are included in a Change Order.
7. Neither City's receipt, review, or acceptance of a Submittal will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in accepted Submittals, subject to the provisions of Section 01 33 00 of the General Requirements.

7.19 *Continuing the Work*

- A. Except as otherwise provided, Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as City and Contractor may otherwise agree in writing.

7.20 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. City and its officers, elected and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Contractor's warranty and guarantee under this Paragraph 7.20:
  1. Observations by Engineer or City;
  2. Recommendation by Engineer or payment by City of any progress or final payment;
  3. The issuance of a letter or certificate of Final Acceptance by City or any payment related thereto by City;
  4. Use or occupancy of the Work or any part thereof by City;
  5. Any review and acceptance of a Submittal by City;

- 6. Any inspection, test, or acceptance by others; or
  - 7. Any correction of defective Work by City.
- D. The Contractor shall remedy any defects or damages in the Work and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Final Acceptance of the Work unless a longer period is specified. Contractor shall furnish a good and sufficient maintenance bond, complying with the requirements of Paragraph 6.02.B. The City will give notice of observed defects with reasonable promptness.

#### 7.21 *Indemnification*

- A. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM , FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL OR BODILY INJURY OR DEATH, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THESE CONTRACT DOCUMENTS. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY, OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR COSTS, EXPENSES AND LEGAL FEES INCURRED IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**
- B. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM FROM AND AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF PROPERTY OF THE CITY, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.**



## 7.22 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, City will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Submittal related to the requirements indicated in Paragraph 7.22.B is prepared by Contractor, a Subcontractor, or others for submittal to City, then such Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to City.
- D. City shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under the conditions indicated in Paragraph 7.22.B, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.22, City's review, acceptance, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to the conditions indicated in Paragraph 7.22.B, will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.22;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

## 7.23 *Right to Audit*

- A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract during the term of the Contract and for five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be made available, in Denton County, Texas within ten (10) Business Days of City's written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within Denton County, Texas. Except as otherwise provided herein, the cost of the audit will be borne by the City

unless the audit reveals an overpayment of 1% or greater. If the City is undertaking an audit or inspection pursuant to Paragraph 7.09 or if an overpayment of 1% or greater occurs, the City's reasonable cost of the audit, including any travel costs, must be paid by the Contractor within five (5) Business Days of receipt of City's invoice for such costs.

- B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

#### 7.24 *Nondiscrimination*

- A. The City is responsible for operating Public Transportation Programs and implementing transit-related projects, funded in part with Federal financial assistance awarded by the U.S. Department of Transportation and the Federal Transit Administration (FTA), without discriminating against any person in the United States on the basis of race, color, or national origin.
- B. Contractor shall comply with the requirements of *Title VI, Civil Rights Act of 1964 as amended* and the regulations promulgated thereunder, as may be further defined in the Supplementary Conditions, for any project receiving Federal assistance.

### ARTICLE 8 – OTHER WORK AT THE SITE

#### 8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the City may perform other work at or adjacent to the Site. Such other work may be performed by City's employees, or through contracts between the City and third parties. City may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If City performs other work at or adjacent to the Site with City's employees, or through contracts for such other work, then City shall give Contractor written notice thereof prior to starting any such other work, if such other work is not noted in the Contract Documents.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and City, if City is performing other work with City's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of City and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to City in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with

Contractor's Work except for latent defects and deficiencies in such other work that could not have been discovered through a proper inspection.

- F. The provisions of this Article 8 are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with City, or that is performed without having been arranged by City. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.03.D.3.

#### 8.02 *Coordination*

- A. If City intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with City's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, City shall have authority for such coordination.

#### 8.03 *Legal Relationships*

- A. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of City, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. When City is performing other work at or adjacent to the Site with City's employees, Contractor shall be liable to City for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by City as a result of Contractor's failure to take reasonable and customary measures with respect to City's other work.
- B. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any Damage Claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, City, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify, defend and hold harmless City and Engineer, and the officers, elected and appointed officials, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

**ARTICLE 9 – CITY’S RESPONSIBILITIES****9.01**    *Communications to Contractor*

- A. Except as otherwise provided in the Supplementary Conditions, City shall issue all communications to Contractor.

**9.02**    *Furnish Data*

- A. City shall promptly furnish the data required of City under the Contract Documents.

**9.03**    *Pay When Due*

- A. City shall make payments to Contractor when they are due in accordance with and subject to the provisions of Article 14.

**9.04**    *Lands and Easements; Reports, Tests, and Drawings*

- A. City’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Article 5 refers to City’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by City in preparing the Contract Documents.

**9.05**    *Change Orders*

- A. City’s responsibilities with respect to Change Orders are set forth in Article 11.

**9.06**    *Inspections, Tests, and Approvals*

- A. City’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.02.DD.

**9.07**    *Limitations on City’s Responsibilities*

- A. The City shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

**9.08**    *Undisclosed Hazardous Environmental Condition*

- A. City’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

**9.09**    *Compliance with Safety Program*

- A. While at the Site, City’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which City has been informed in advance in writing pursuant to Paragraph 7.15.

**ARTICLE 10 – CITY’S OBSERVATION DURING CONSTRUCTION****10.01** *City’s Project Manager or Duly Authorized Representative*

- A. City will provide a Project Manager or duly authorized representative during the construction period. The duties and responsibilities and the limitations of authority of City’s Project Manager or duly appointed representative during construction are set forth in the Contract Documents.
- B. City’s Project Manager for these Contract Documents is as set forth in the Supplementary Conditions. City will establish a duly authorized representative at the Preconstruction Meeting in accordance with Section 01 31 19 of the General Requirements.

**10.02** *Visits to Site*

- A. City will make visits to the Site at intervals appropriate to the various stages of construction as City deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, City will determine, in general, if the Work is proceeding in accordance with the Contract Documents. City will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. City’s efforts will be directed toward providing City a greater degree of confidence that the completed Work will conform generally to the Contract Documents.
- B. City’s visits and observations are subject to all the limitations on City’s responsibility set forth in Paragraph 99.07. Particularly, but without limitation, during or as a result of City’s visits or observations of Contractor’s Work, City will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

**10.03** *Determinations for Work Performed*

- A. As applicable, Contractor will determine the actual quantities and classifications of Work performed.. City’s Project Manager or duly authorized representative will review with Contractor the preliminary determinations on such matters before rendering a written recommendation. City’s written decision will be final (except as modified to reflect changed factual conditions or more accurate data).

**10.04** *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. City will be the interpreter of the requirements of the Contract Documents and judge the acceptability of the Work thereunder.
- B. City will render a written decision on any issue referred.
- C. City’s written decision on the issue referred will be final and binding on the Contractor, subject to the provisions of Paragraph 11.07.

**ARTICLE 11 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK****11.01 *Amending and Supplementing the Contract***

- A. The Contract may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof, including in the Contract Price or Contract Time, but such amendment will be made by Change Order only.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work not involving a change in Contract Price or Contract Time, may be authorized, by one of the following ways:
  - 1. A Field Order; or
  - 2. City's review of a Submittal (subject to the provisions of Paragraph 7.18.C); or
  - 3. City's written interpretation or clarification.

**11.02 *Execution of Change Orders***

- A. City and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed..
  - 2. Changes in the Work which are: (a) ordered by City pursuant to Paragraph 11.04, (b) required because of City's acceptance of defective Work under Paragraph 13.05 or City's correction of defective Work under Paragraph 13.08, or (c) as otherwise agreed to by the parties.

**11.03 *Field Orders***

- A. City may authorize minor variations and deviations in changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on both the City and Contractor, which shall perform the Work involved promptly.

**11.04 *Authorized Changes in the Work – Extra Work***

- A. Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order Extra Work. Upon notice of such Extra Work, Contractor shall proceed with the Work involved only upon receiving written notice from City. Extra Work will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). Extra Work shall be memorialized by a Change Order which may or may not precede an order of Extra Work.
- B. For minor changes of Work not requiring changes to Contract Time or Contract Price, a Field Order may be issued by City.

**11.05 *Unauthorized Changes in the Work***

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract

Documents, as amended, modified, or supplemented as allowed herein, except in certain cases of an emergency as provided in Paragraph 7.17.A.

**11.06** *Dispute of Extra Work*

- A. Should a difference arise as to what does or does not constitute Extra Work, or as to the payment for such Extra Work, and the City requires its performance, the Contractor shall proceed with the Extra Work after making written request for a Change Order and shall keep accurate account of the actual reasonable cost thereof. Contract Claims regarding Extra Work shall be made pursuant to Paragraph 11.07.
- B. The Contractor shall furnish the City such records of all deviations from the original Contract Documents as may be necessary to enable the City to prepare for permanent record a corrected set of plans showing the actual work performed.
- C. The compensation agreed upon for Extra Work whether or not initiated by a Change Order shall be the full, complete and final payment for all charges, fees and costs Contractor incurs as a result of or relating to the Extra Work, whether said charges, fees or costs are known, unknown, foreseen or unforeseen at that time, including without limitation, any charges, fees or costs for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of the Extra Work.

**11.07** *Contract Claims Process*

- A. *City's Decision Required:* All Contract Claims, except those waived pursuant to Paragraph 14.08, shall be referred to the City for decision. A decision by City shall be required as a condition precedent to any exercise by Contractor of any rights or remedies he may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Contract Claims.
- B. *Notice:*
  - 1. Written notice stating the general nature of each Contract Claim shall be delivered by the Contractor to City no later than 15 days after the start of the event giving rise thereto. The responsibility to substantiate a Contract Claim shall rest with the party making the Contract Claim.
  - 2. Notice of the amount or extent of the Contract Claim, with supporting data shall be delivered to the City no later than 45 days after the start of the event giving rise thereto (unless the City notifies Contractor in writing that City will allow additional time for Contractor to submit additional or more accurate data in support of such Contract Claim).
  - 3. A Contract Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 11.08.
  - 4. A Contract Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 11.09.
  - 5. Each Contract Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event.



6. The City shall submit any response to the Contractor within 30 days after receipt of the Contractor's last submittal (unless in connection with the Contract Claim (unless Contractor allows the City additional time to submit a response)).
- C. *City's Action:* City will review each Contract Claim and, within 30 days after receipt of the last submittal of the Contractor unless action by City's Council is required, take one of the following actions in writing:
  1. deny the Contract Claim in whole or in part;
  2. approve the Contract Claim; or
  3. notify the Contractor that the City is unable to resolve the Contract Claim if, in the City's sole discretion, it would be inappropriate for the City to do so. For purposes of further resolution of the Contract Claim, such notice shall be deemed a denial.
- D. City's written action under this Paragraph 11.07 will be final and binding, unless City or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Contract Claim for an adjustment in Contract Price or Contract Time will be valid if not submitted in accordance with this Paragraph 11.07.
- F. If the City fails to take any action pursuant to this Paragraph 11.07, the Contract Claim is considered to have been denied by the City.

#### 11.08 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order.
- B. TheThe value of any Work covered by a Change Order will be determined as follows:
  1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.03);
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum or unit price (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.08.C.2), and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of Extra Work; or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum or unit price, then on the basis of the Cost of the Work (determined as provided in Paragraph 12.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.08.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit will be determined as follows:
  1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. For costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3, the Contractor's fee will be 15 percent except for:
  - 1) rental fees for Contractor's own equipment; and
  - 2) bonds and insurance;
- b. For costs incurred under Paragraph 12.01.B.4, the Contractor's fee will be 5 percent;
  - 1) Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.08.C.2.a and 11.08.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, in no case shall the cumulative total of fees paid be in excess of 25% of the Cost of the Work;
- c. No fee will be payable on the basis of costs itemized under Paragraphs 12.01.B.5, 12.01.B.6, and 12.01.C;
- d. The amount of credit to be allowed by Contractor to City for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

#### 11.09 *Change of Contract Time*

- A. The Contract Time may only be changed by a Change Order.
- B. No extension of the Contract Time will be allowed under a Change Order for Extra Work or for claimed delay unless the Extra Work contemplated or claimed delay is shown to be on the critical path of the Project Schedule or Contractor can show by critical path method analysis how the Extra Work or claimed delay adversely affects the critical path.
- C. Delay, disruption, and interference in the Work, and any related changes in Contract Time, are addressed in and governed by Paragraph 4.03.

#### 11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted by the Contractor to reflect the effect of any such change.

**ARTICLE 12 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT****12.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work:* The term “Cost of the Work” means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 12.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. When needed to determine the value of a Change Order. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* The term, “Cost of the Work” means the sum of all costs, except those excluded in Paragraph 12.01.C, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work is covered by a Change Order, the costs reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work. Such costs shall be in amounts no higher than those calculated based on the prevailing wage rates contained in the Contract Documents, shall not include any of the costs itemized in Paragraph 12.01.C, and may include as applicable, but not be limited to the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Such employees shall include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs shall include, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours on Business Days, during Weekend Working Hours, or on a state or federal holiday observed by the City, shall be included in the above to the extent authorized by City.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers’ field services required in connection therewith.
  3. Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others, in accordance with rental agreements approved in writing by City, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. and the Contract Documents. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

4. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City. Contractor shall deliver such bids to City, which will then determine, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 12.01 and Paragraph 11.08.C.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work and specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically included in the Contract.
6. Supplemental costs consisting of the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and temporary office or facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations, excluding those taxes for which an exemption is available as described in Paragraph 7.12.
  - d. Deposits lost for causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of CityCity. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - f. The cost of utilities, fuel, and sanitary facilities at the Site.
  - g. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - h. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically covered in the Contract. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the acts, omissions, negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Agreement will be determined as set forth in the Contract.
  - b. for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as set forth in Paragraph 11.08.C.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.08.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 12, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices, and submit in a form acceptable to City an itemized cost breakdown together with supporting data. Subject to prior written notice, City will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by City. Contractor will be responsible for ensuring that pertinent Subcontractors will afford such access to City, and preserve such documents, to the same extent as is required of Contractor.

## 12.02 Allowances

- A. *Specified Allowance*: It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to City.
- B. *Cash Allowances*: Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances, have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of City.
- D. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

## 12.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by City subject to the provisions of Paragraph 10.03.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to Unit Price Work listed and the cost of incidental work included as part of the unit price.
- D. Adjustments in Contract Price
  - 1. City may make an adjustment in the Contract Price in accordance with Paragraph 11.08 if:
    - a. the quantity of the item of Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
    - b. there is no corresponding adjustment with respect to any other item of Work.
  - 2. Adjusted unit prices will apply to all units of that item.

- E. Increased or Decreased Quantities: The City reserves the right to order Extra Work in accordance with Paragraph 11.04.
1. If the changes in quantities or the alterations do not significantly change the character of the Work under the Contract Documents, the altered Work will be paid for at the Contract unit price.
  2. If the changes in quantities or alterations materially and significantly change the character of the Work, the Contract will be amended by a Change Order.
  3. If no unit prices exist, this any increase or decrease in quantities will be considered Extra Work and the Contract will be amended by a Change Order in accordance with Article 11.
  4. A significant change in the character of Work occurs when:
    - a. the character of work for any Item as altered differs materially or significantly in kind or nature from that in the Contract; or
    - b. a Major Item of work varies by more than 25% from the original Contract quantity.
  5. When the quantity of work to be done under any Major Item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.
  6. When the quantity of work to be done under any Major Item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price.

12.04 *Plans Quantity Measurement for Unclassified Excavation or Embankment*

- A. Plans quantities may or may not represent the exact quantity of Work performed or material moved, handled, or placed during the term of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised in accordance with the Contract.
- B. If the total actual quantity measured for an individual item varies by more than 25% (or as stipulated under "Price and Payment Procedures" for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract Documents, an adjustment may be made to the quantity of authorized Work done for payment purposes. The party to the Contract requesting the adjustment will provide field measurements and calculations showing the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in Article 11.
- C. When quantities are revised by a change in design approved by the City, by Change Order, or to correct an error, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount identified in the approved change, and the 25% variance provisions of Paragraph 12.04.B will apply to the new plans quantity.
- D. If the total Contract quantity multiplied by the unit price bid for an individual Item is less than \$250 and the Item is not originally a plans quantity Item, then the Item may be paid as a plans quantity Item if the City and Contractor agree in writing to fix the final quantity as a plans quantity.



- E. For callout work or non-site specific Contracts, the plans quantity measurement requirements are not applicable.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

### **13.01 *Access to Work***

- A. City and its Engineer, consultants, representatives, employees, and independent testing laboratories, and authorities having jurisdiction shall have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

### **13.02 *Tests and Inspections***

- A. Contractor shall give City timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. If the Contract Documents or any Laws and Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection, testing or approval, except that those fees specifically identified in the Supplementary Conditions or any Texas Department of Licensure and Regulation (TDLR) inspections, which shall will be paid as described in the Supplementary Conditions.
- C. Contractor shall be responsible for arranging, obtaining, and paying for all inspections, tests, re-tests, and approvals required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to City;
  2. to attain City's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to City.

- D. City may arrange for the services of an independent testing laboratory ("Testing Lab") to perform any inspections or tests ("Testing") for any part of the Work, as determined solely by City.
1. City will coordinate such Testing to the extent possible, with Contractor;

2. Should any Testing under this Section 13.03.D result in a “fail”, “did not pass” or other similar negative result, the Contractor shall be responsible for paying for any and all retests. Contractor’s cancellation without cause of City initiated Testing shall be deemed a negative result and require a retest.
  3. Any amounts owed for any retest under this Section 13.02.D shall be paid directly to the Testing Lab by Contractor. City will forward all invoices for retests to Contractor.
  4. If Contractor fails to pay the Testing Lab, City will not issue Final Payment until the Testing Lab is paid.
- E. If the Contract Documents require the Work (or part thereof) to be approved by City or another designated individual or entity, then Contractor shall assume full responsibility for seeking and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without the written approval of City, Contractor shall, if requested by City, uncover such Work for observation. Such uncovering and the recovering of such Work will be at Contractor’s expense.

### 13.03 *Defective Work*

- A. *Contractor’s Obligation:* It is Contractor’s obligation to assure that the Work is not defective.
- B. *City’s Authority:* City has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Written notice of all defective Work of which City has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if City has rejected the defective Work, shall remove the defective Work from the Project and replace it with Work that is not defective. Failure to require the removal of any defective Work shall not constitute acceptance of such Work.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair City’s warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Contractor or City by governmental authorities because the Work is defective, and the costs of repair, replacement or reconstruction of work of others resulting from defective Work.

### 13.04 *Rejecting Defective Work*

- A. City will have authority to reject Work which City believes to be defective or will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. City will have authority to conduct special inspection or testing

of the Work as provided in this Article 13, whether or not the Work is fabricated, installed, or completed.

#### 13.05 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of the Work so accepted.

#### 13.06 *Uncovering Work*

- A. City has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the Contract Documents or specific instructions of City and if requested by City, Contractor shall uncover such Work for City's observation, inspection or testing and then replace the covering, all at Contractor's expense.
- C. If City considers it necessary or advisable that covered Work be observed by City or inspected or tested by others, then Contractor, at City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others). City shall be entitled to accept defective Work in accordance with Paragraph 13.05 and in such case Contractor shall still be responsible for all costs associated with exposing, observing, and testing defective Work.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an extension of the Contract Time to the extent directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

#### 13.07 *City May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or Contractor fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been corrected or eliminated; however, this right of City to stop the Work will not give rise to any duty on the part of City to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or any employee or agent of, any of them.

**13.08 City May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from City to correct defective Work, or to remove and replace defective Work as required by City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then City may, after providing 7 days' advance written notice to Contractor, correct or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees, and City's other contractors access to the Site to enable City to exercise the rights and remedies under this Paragraph 13.08.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court, or arbitration or other dispute resolution costs) incurred or sustained by City in exercising the rights and remedies under this Paragraph 13.08 will be the responsibility of and will be charged against Contractor. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by City of City's rights and remedies under this Paragraph 13.08.

**ARTICLE 14 – PAYMENTS TO CONTRACTOR; COMPLETION; CORRECTION PERIOD****14.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.03 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to City. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 12.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. Applications for Payments
  - 1. Contractor is responsible for providing all information as required to become a vendor of the City.
  - 2. At least 20 days before the date established in the General Requirements for each progress payment (but not more often than once a month), Contractor shall submit to City for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

3. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) bill of sale, invoice, or purchase order payments, copies of cancelled checks or other documentation establishing full payment by Contractor for the materials and equipment; (b) at City's request, documentation warranting that City has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
4. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received on account of the Work by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
5. The amount of retainage with respect to progress payments will be as stipulated in the Contract Documents.

C. Review of Applications

1. City will, after receipt of each Application for Payment, either indicate in writing it will proceed to process the Application for Payment or return the Application to Contractor indicating reasons for refusing payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. City's processing of any payment requested in an Application for Payment will be based on City's observations of the executed Work, and on City's review of the Application for Payment and the accompanying data and schedules, that based City's actual knowledge:
  - a. the Work has progressed to the point indicated; and
  - b. the quality and/or quantity of the Work is generally in accordance with the Contract Documents (subject to any subsequent evaluations of the Work, an evaluation of the Work as a functioning whole prior to or upon Final Acceptance, the results of any subsequent tests or inspections called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraphs 10.05 and 12.03, and any other qualifications stated).
3. Processing any such payment will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
  - b. there are no other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor; or
  - c. Contractor has complied with Laws and Regulations applicable to Contractor's performance of the Work.
4. City may refuse to process or pay the whole or any part of any payment because of subsequently discovered evidence or the results of subsequent inspections or tests, and

may revise or revoke any such payment previously made, to such extent as may be necessary to protect City from loss because:

- a. the Work is defective, or the completed Work has been damaged by the Contractor or his subcontractors, requiring correction or replacement;
- b. there are discrepancies in quantities contained in previous applications for payment;
- c. the Contract Price has been reduced by Change Orders;
- d. City has been required to correct defective Work in accordance with Paragraph 1313.08, or has accepted defective Work pursuant to Paragraph 13.05;
- e. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- f. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Retainage:

1. For all contracts, retainage shall be five percent (5%).

E. *Liquidated Damages*: For each calendar day that any work shall remain uncompleted after the time specified in the Contract Documents, the sum per day specified in the Agreement will be paid by the Contractor to the City, not as a penalty, but as liquidated damages suffered by the City. If feasible, the parties may agree to have the liquidated damages deducted from any amounts owned to Contractor by City instead of being paid directly to City by Contractor.

F. *Payment*: Contractor will be paid pursuant to the requirements of this Article 14 and payment will become due in accordance with the Contract Documents.

G. Reduction in Payment

1. City may refuse to make payment of the of the amount requested because:

- a. Claims have been made against City based on Contractor's performance or furnishing of the Work, or City has incurred costs, losses, or damages resulting from Contractor's performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, or patent infringement;
- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
- c. Contractor has failed to provide and maintain required bonds or insurance;
- d. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
- e. City has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
- f. The Work is defective, requiring correction or replacement;

- g. City has been required to correct defective Work in accordance with Paragraph 13.08, or has accepted defective Work pursuant to Paragraph 13.05;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones or Final Acceptance of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to City to secure the satisfaction and discharge of such Liens;
  - l. Other items entitle City to a set-off against the payment amount requested; or
  - m. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.
2. If City refuses to make payment of the amount requested, City will give Contractor written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. City shall pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, within a reasonable time after Contractor remedies the reasons for such action to the satisfaction of City and City has confirmed such action.

#### 14.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

#### 14.03 *Partial Utilization*

- A. Prior to Final Acceptance of all the Work, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City determines constitutes a separately functioning and usable part of the Work that can be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. City at any time may notify Contractor in writing to of any such part of the Work which City determines to be ready for its intended use. In addition, City may request in writing that Contractor permit City to use or occupy any such part of the Work that City believes to be substantially complete, subject to the following conditions:
- 1. At any time, Contractor may notify City that Contractor considers any such part of the Work ready for its intended use.
  - 2. Within a reasonable time after notification as enumerated in Paragraph 14.03, City and Contractor shall make an inspection of that part of the Work to determine its status of completion. If City does not consider that part of the Work to be substantially complete, City will notify Contractor in writing giving the reasons therefor.
  - 3. Partial Utilization by City will not constitute Final Acceptance by City.



#### 14.04 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work is complete in accordance with the Contract Documents:
  - 1. City will promptly schedule a Final Inspection with Contractor.
  - 2. City will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. City reserves the right to deny request for Final Inspection if City determines that the entire Work is not sufficiently complete to warrant a Final Inspection.

#### 14.05 *Final Acceptance*

- A. Upon completion by Contractor to City's satisfaction, of any and all Work in accordance with the Contract Documents, including any corrections or additional Work identified in the Final Inspection and delivery of all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurances, certificates of inspection, annotated record documents and other required documents in accordance with the Contract Documents, City will issue to Contractor a letter of Final Acceptance.

#### 14.06 *Final Payment*

- A. Application for Payment
  - 1. Upon receipt of a letter of Final Acceptance from City, Contractor may make application for Final Payment following the procedures for requesting payments in accordance with the Contract Documents.
  - 2. The final Application for Payment must be accompanied (except as previously delivered) by:
    - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 6.03;
    - b. consent of the surety, if any, to final payment;
    - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to City free and clear of any Liens or other title defects or will so pass upon final payment.
    - d. a list of all Contract Claims or Damage Claims against City that Contractor believes are unsettled; and
    - e. affidavits of payments and complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- B. Payment Becomes Due: The final payment requested by Contractor, less previous payments made and less any sum to which City is entitled, including but not limited to liquidated damages, will become due and payable:
  - 1. After City's acceptance of the Application for Payment and accompanying documentation; and

2. After all Damage Claims have been resolved:

- a. directly by the Contractor; or
- b. Contractor provides evidence that the Damage Claim has been reported to Contractor's insurance provider for resolution.

The making of the final payment by the City shall not relieve the Contractor of any guarantees or other requirements of the Contract that continue thereafter.

14.07 *Final Completion Delayed and Partial Retainage Release*

- A. If final completion of the Work is significantly delayed, and if City so confirms, City may, upon receipt of Contractor's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by City for Work not fully completed or corrected is less than the retainage stipulated in Paragraph 14.01.D, and if bonds have been furnished as required in Paragraph 6.02, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to City with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Contract Claims.
- B. *Partial Retainage Release.* If the Contract provides for separate establishment and maintenance periods and/or test and performance periods following the completion of all other construction in the Contract Documents for all Work locations, the City may release a portion of the amount retained provided that all other work is completed as determined by the City. Before the release, all submittals and final quantities must be completed and accepted for all other work. An amount sufficient to ensure Contract compliance will be retained.

14.08 *Waiver of Claims*

- A. The acceptance of final payment will constitute a waiver and release by Contractor of all claims, rights, causes of action, or liabilities, including Contract Claims, against City arising out of, related to or under the Contract or for any act, omission or neglect of City.

14.09 *Correction Period*

- A. If within two (2) years after the date of Final Acceptance (or such longer period of time as may be prescribed by the Contract Documents) any Work has been found to be defective, or Contractor's repair of any damages to the Site, adjacent areas, or areas made available for Contractor's use by City has been found to be defective, then after receipt of City's written notice of defect, Contractor shall promptly, without cost to City and in accordance with City's written instructions:
  1. correct the defective repairs to the Site or such adjacent areas, or areas made available for Contractor's use by City;
  2. correct such defective Work;
  3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by City, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. If Contractor does not promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected, repaired or removed and replaced under this Paragraph 14.09, the correction period hereunder with respect to such Work may be extended for an additional period of one year after the end of the initial correction period.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this Paragraph 14.09 are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

### **15.01 *City May Suspend Work***

- A. At any time and without cause, City may suspend the Work or any portion thereof by written notice to Contractor. City may fix the date on which Work will be resumed in such notice, and Contractor shall resume the Work on the date so fixed. During a temporary suspension of the Work covered by these Contract Documents, for any reason, the City will make no extra payment for stand-by time of construction equipment and/or construction crews.
- B. Should the Contractor not be able to complete a portion of the Project due to causes beyond the control of and without the fault or negligence of the Contractor, and should it be determined by mutual consent of the Contractor and City that a solution to allow construction to proceed is not available within a reasonable period of time, Contractor may request an extension in Contract Time, directly attributable to any such suspension.
- C. If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily nor become damaged in any way; Contractor shall take every precaution to prevent damage or deterioration of the work performed; and Contractor shall provide suitable drainage about the work, and erect temporary structures where necessary.
- D. Contractor may be reimbursed for the cost of moving its equipment off the job and returning the necessary equipment to the job when it is determined by the City that construction may be resumed. Such reimbursement shall be based on actual cost to the Contractor of moving the

equipment and no profit or overhead will be allowed. Reimbursement may not be allowed if the equipment is moved to another construction project for the City.

15.02 *City May Terminate for Cause*

- A. The occurrence of any one or more of the following events by way of example, but not of limitation, may justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Project Schedule established under Paragraph 2.06 as adjusted from time to time pursuant to Paragraph 7.05);
  2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract; or
  3. Contractor's disregard of Laws and Regulations of any public body having jurisdiction; or
  4. Contractor's repeated disregard of the authority of City; or
  5. Contractor's failure to promptly make good any defect in materials or workmanship, or defects of any nature, the correction of which has been directed in writing by the City; or
  6. Substantial indication that the Contractor has made an unauthorized assignment of the Contract or any funds due therefrom for the benefit of any creditor or for any other purpose; or
  7. Substantial indication that the Contractor has become insolvent or bankrupt, or otherwise financially unable to perform the Work satisfactorily; or
  8. Contractor commences legal action in a court of competent jurisdiction against the City.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, City will provide written notice to Contractor and Surety to arrange a conference with Contractor and Surety to address Contractor's failure to perform the Work. The conference shall be held not later than 15 days after receipt of notice. by both Contractor and surety.
1. If the City, the Contractor, and the Surety do not agree to allow the Contractor to proceed to perform the Contract, the City may, to the extent permitted by Laws and Regulations, declare a Contractor default and formally terminate the Contractor's right to complete the Contract. Contractor default shall not be declared earlier than 20 days after the Contractor and Surety have received notice of the conference to address Contractor's failure to perform the Work.
  2. If Contractor's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within 15 consecutive calendar days after date of an additional written notice demanding Surety's performance of its obligations, then City, without process or action at law, may take over any portion of the Work and complete it as described below.
    - a. If City completes the Work, City may exclude Contractor and Surety from the Site and take possession of the Work, and all materials and equipment stored at the Site

or for which City has paid Contractor, but which are stored elsewhere, and the Work as City may deem expedient.

3. Whether City or Surety completes the Work, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by City, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to City. Such claims, costs, losses, and damages incurred by City will be incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph 15.02, City shall not be required to obtain the lowest price for the Work performed.
  4. Neither City, nor any of its respective consultants, agents, officers, elected or appointed officials, directors or employees shall be in any way liable or accountable to Contractor or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.
  5. City, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from Contractor or Surety for Contractor's failure to timely complete the entire Contract. Contractor shall not be entitled to any claim, counterclaim or offset on account of the method used by City in completing the Contract.
  6. Maintenance of the Work shall continue to be Contractor's and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise under the Contract or prescribed by law.
- C. Notwithstanding Paragraph 15.02.B, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue, or any rights or remedies of City against Contractor or Surety. Any retention or payment of money due Contractor by City will not release Contractor from liability.
- E. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.02, the termination procedures of that bond shall not supersede the provisions of this Article 15.

#### 15.03 *City May Terminate for Convenience*

- A. City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract, in whole or in part. Any termination shall be affected by giving notice of the termination to the Contractor specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective. Notice shall be deemed validly given if given in accordance with Paragraph 17.01.A.

- B. After a notice of termination, has been given, and except as otherwise directed by the City, the Contractor shall:
1. stop work under the Contract on the date and to the extent specified in the notice of termination;
  2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
  3. terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by notice of termination;
  4. transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
    - a. the fabricated or unfabricated parts, Work in progress, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of the termination; and
    - b. the completed, or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the City.
  5. complete performance of such Work as shall not have been terminated by the notice of termination; and
  6. take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the City has or may acquire the rest.
- C. At a time not later than 30 days after the termination date specified in the notice of termination, the Contractor may submit to the City a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of in accordance with the Contract, exclusive of items the disposition of which has been directed or authorized by City.
- D. Not later than 15 days after Contractor's submission of the certified list to City pursuant to Paragraph 15.03.C, the City shall accept title to such items, subject to verification of the list by the City upon removal of the items or, If the items are stored, then City shall have 45 days after submission of the list, to verify the list submitted and accept title to such items. Any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.
- E. Not later than 60 days after the notice of termination has been given, the Contractor shall submit his termination claim to the City in the form and with the certification prescribed by the City. Unless an extension request is made in writing within such 60-day period by the Contractor, and granted by the City, any and all such claims of Contractor that are not submitted to City within such 60-day period shall be conclusively deemed waived.
- F. Should a termination claim be timely submitted to the City, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead

- and profit on such Work calculated and determined in accordance with the Contract Documents;
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses calculated and determined in accordance with the Contract Documents; and
  3. reasonable expenses directly attributable to reasonable and necessary wind-down and termination activities, without any overhead or profit.
- G. In the event of the failure of the Contractor and City to agree upon the whole amount to be paid to the Contractor by reason of the termination of the Work, the City shall determine, on the basis of information submitted and available to it, the amount, if any, due to the Contractor by reason of the termination and City shall pay to the Contractor the amounts so determined. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of, related to or resulting from such termination.

## **ARTICLE 16 – RESOLUTION OF DISPUTES**

### **16.01 *Methods and Procedures***

- A. Either City or Contractor may request mediation of any Contract Claim submitted for a decision under Paragraph 11.07 before such decision becomes final and binding. The request for mediation shall be submitted to the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 11.07.E.
- B. City and Contractor shall participate in the mediation process in good faith. The process shall be commenced within 60 calendar days of filing of the request.
- C. The parties shall agree on a mediator; however, if they cannot agree within 14 calendar days then the Denton County Alternative Dispute Resolution Program (“DCAP”) shall appoint a mediator. The mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one party, or the mediator, states that there is no reason to continue because of an impasse that cannot be overcome and sends a “notice of termination of mediation.” All reasonable efforts will be made to complete the mediation within 30 days of the first mediation session. All costs of mediation shall be borne equally by the parties.
- D. All communications, both written and oral, during Phases A and B are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process.
- E. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.



- F. If the Contract Claim is not resolved by mediation, City's action under Paragraph 11.07.C or a denial pursuant to Paragraphs 11.07.C.3 or 11.07.D shall become final and binding 30 days after termination of the mediation unless, within that time period, City or Contractor:
1. elects in writing to invoke any other dispute resolution process provided for in the Supplementary Conditions; or
  2. agrees with the other party to submit the Contract Claim to another dispute resolution process; or
  3. gives written notice to the other party of the intent to submit the Contract Claim to a court of competent jurisdiction as set forth within the Contract Documents.

## ARTICLE 17 – MISCELLANEOUS

### 17.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice, it will be deemed to have been validly given if delivered:
1. in person, by a commercial courier service or otherwise, if to City, to the duly authorized representative of City identified in the Contract Documents or to City's Project Manager or, if to Contractor, to a member of the firm or to an officer of the corporation for whom it is intended; or
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient.

### 17.02 *Computation of Time*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day that is a state or federal holiday observed by the City, the next Business Day shall become the last day of the period.

### 17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, in equity, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this Paragraph 17.03 will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 17.04 *Limitation of Damages*

- A. With respect to any and all claims, disputes subject to final resolution, and other matters at issue, neither City, nor any of its officers, directors, elected or appointed officials, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project. Further, the Contractor may only claim and the City may only be liable for those damages that are set forth in Subchapter I, Chapter 271 of the Texas

Local Government Code and the City shall not be liable for any consequential damages, exemplary damages or damages for unabsorbed home office overhead.

17.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.
- B. The City has not waived its sovereign immunity except as expressly set forth in Subchapter I, Chapter 271 of the Texas Local Government Code or as expressly waived by other statute.

17.06 *Survival of Obligations*

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and Final Acceptance of the Work or termination of the Contract or of the services of Contractor.

17.07 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

17.08 *Successors and Assigns*

- A. City and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

17.09 *Governing Law*

- A. The Contract shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles.

17.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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**SECTION 00 73 01**  
**SUPPLEMENTARY CONDITIONS - CSP**  
**TO**  
**GENERAL CONDITIONS**

**Supplementary Conditions**

These Supplementary Conditions modify and supplement Section 00 72 00 - General Conditions, and other provisions of the Contract Documents as indicated below. All provisions of the General Conditions that are modified or supplemented remain in full force and effect as so modified or supplemented. All provisions of the General Conditions which are not so modified or supplemented remain in full force and effect.

**Defined Terms**

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meaning assigned to them in the General Conditions, unless specifically noted herein.

**Modifications and Supplements**

The following are instructions that modify or supplement specific paragraphs in the General Conditions and other Contract Documents.

**SC-1.01 "Defined Terms"**

The following Terms listed in the General Conditions are modified as follows:

Bid – See Proposal.

Bidder – See Offeror.

Bidding Documents – See Proposal Documents.

Bidding Requirements – See Proposal Requirements.

The following Terms are added to the General Conditions as follows:

Competitive Sealed Proposals – A procurement method by which a governmental entity requests proposals, evaluates and ranks the Offerors, and negotiates a contract with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

Daily Value – The City-determined value in dollars as indicated in the Proposal Form as the value of one Day for the purposes of determining the Incentive (if applicable) for Substantial Completion relative to the Contract Time and achievement of Substantial Completion.

Offeror – The individual or entity that submits a Proposal directly to City.

Proposal – The offer or proposal of an Offeror submitted in accordance with the requirements set forth in the Instructions to Offerors.

Proposal Documents – The Proposal Requirements and the Proposed Contract Documents.

Proposal Requirements – The Advertisement or Invitation to Offerors, Instructions to Offerors, Offeror’s Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.

Substantial Completion – The completion of the Work necessary for the project to function as it was intended pursuant to the Contract Documents and as specified below, to the reasonable satisfaction of the City. The date of Substantial Completion shall be memorialized by written notice given by the City to the Contractor.

#### SC-5.01A

Easement limits shown on the Drawing are approximate and were provided to establish a basis for proposals. Upon receiving the final easements descriptions, Contractor shall compare them to the lines shown on the Contract Drawings.

##### SC-5.01A.1., “Availability of Lands”

The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of October 21, 2022:

##### Outstanding Right-Of-Way, and/or Easements to Be Acquired

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION
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None

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

If Contractor considers the final easements provided to differ materially from the representations on the Contract Drawings, Contractor shall within five (5) Business Days and before proceeding with the Work, notify City in writing associated with the differing easement line locations.

##### SC-5.01A.2, “Availability of Lands”

##### Utilities or obstructions to be removed, adjusted, and/or relocated

The following is list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated as of October 21, 2022:

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
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None

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

**SC-5.03A., "Subsurface and Physical Conditions"**

The following are reports of explorations and tests of subsurface conditions at the site of the Work:

A geotechnical report titled "Lake Ray Roberts Water Treatment Plant Backwash Supply Tank," dated September 6, 2022, prepared by Freese and Nichols, Inc., a consultant of the City. This geotechnical report is not considered Technical Data and may not be relied upon by the Contractor. This report is provided for informational purposes only. The Appendix A "Vicinity Map, Boring Location Maps", Appendix B "Logs of Boring B-2201 through B-2204, including Key to Terms and Symbols" and Appendix C "Laboratory Results, Unconfirmed Results, Swell Test Results" are considered Technical Data that the Contractor may rely upon.

The following are drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site of the Work:

None.

**SC-5.05 A., "Underground Facilities"**

The following are additional resources for identification of Underground Facilities which are at or contiguous to the site of the Work, and which are not necessarily shown in the Drawings:

None.

**SC-5.06A., "Hazardous Environmental Conditions at Site"**

The following are reports and drawings of existing hazardous environmental conditions known to the City:

None.

**SC-6.02, "Performance, Payment, and Maintenance Bonds"**

**The "Contract Price" for Performance, Payment, and Maintenance Bonds will be the same as indicated in Article 3 as listed in the Agreement.**

**SC-6.03A., "Certificates of Insurance"**

The entities listed below are "additional insureds as their interest may appear" including their respective officers, directors, agents and employees.

- (1) City
- (2) Consultant: Freese and Nichols, Inc.; JQ Infrastructure, Inc.; Arcadis-US, Inc.
- (3) Other: None.

**SC-6.04A., "Contractor's Insurance"**

The limits of liability for the insurance required by Paragraph GC-6.04 shall provide the following coverages for not less than the following amounts or greater where required by laws and regulations:

**6.04A. Workers' Compensation, under Paragraph GC-6.04A.**

Statutory limits	
Employer's liability	
\$100,000	each accident/occurrence
\$100,000	Disease - each employee
\$500,000	Disease - policy limit

**SC-6.04B., "Contractor's Insurance"**

**6.04B.** Commercial General Liability, under Paragraph GC-6.04B. Contractor's Liability Insurance under Paragraph GC-6.04B., which shall be on a per project basis covering the Contractor with minimum limits of:

\$1,000,000 each occurrence

\$2,000,000 aggregate limit

The policy must have an endorsement (Amendment – Aggregate Limits of Insurance) making the General Aggregate Limits apply separately to each job site.

The Commercial General Liability Insurance policies shall provide "X", "C", and "U" coverage's. Verification of such coverage must be shown in the Remarks Article of the Certificate of Insurance.

**SC 6.04C., "Contractor's Insurance"**

**6.04C.** Automobile Liability, under Paragraph GC-6.04C. Contractor's Liability Insurance under Paragraph GC-6.04C., which shall be in an amount not less than the following amounts:

- (1) **Automobile Liability** - a commercial business policy shall provide coverage on "Any Auto", defined as autos owned, hired and non-owned.

\$1,000,000 each accident on a combined single limit basis. Split limits are acceptable if limits are at least:

\$250,000 Bodily Injury per person /

\$500,000 Bodily Injury per accident /

\$100,000 Property Damage

**SC-6.04D., "Contractor's Insurance"**

The Contractor's construction activities will require its employees, agents, subcontractors, equipment, and material deliveries to cross railroad properties and tracks, or perform work within 25 feet of the center line of tracks owned and operated by None.

The Contractor shall conduct its operations on railroad properties in such a manner as not to interfere with, hinder, or obstruct the railroad company in any manner whatsoever in the use or operation of its/their trains or other property. Such operations on railroad properties may require that Contractor to execute a "Right of Entry Agreement" with the particular railroad company or companies involved, and to this end the Contractor should satisfy itself as to the requirements of each railroad company and be prepared to execute the right-of-entry (if any) required by a railroad company. The requirements specified herein likewise relate to the Contractor's use of private and/or construction access roads crossing said railroad company's properties.

The Contractual Liability coverage required by Paragraph 5.04D of the General Conditions shall provide coverage for not less than the following amounts, issued by companies satisfactory to the City and to the Railroad Company for a term that continues for so long as the Contractor's operations and work cross, occupy, or touch railroad property:

(1) General Aggregate: \$ N/A

(2) Each Occurrence: \$ N/A



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1. Where a single railroad company is involved, the Contractor shall provide one insurance policy in the name of the railroad company. However, if more than one grade separation or at-grade crossing is affected by the Project at entirely separate locations on the line or lines of the same railroad company, separate coverage may be required, each in the amount stated above.
2. Where more than one railroad company is operating on the same right-of-way or where several railroad companies are involved and operated on their own separate rights-of-way, the Contractor may be required to provide separate insurance policies in the name of each railroad company.
3. If, in addition to a grade separation or an at-grade crossing, other work or activity is proposed on a railroad company's right-of-way at a location entirely separate from the grade separation or at-grade crossing, insurance coverage for this work must be included in the policy covering the grade separation.
4. If no grade separation is involved but other work is proposed on a railroad company's right-of-way, all such other work may be covered in a single policy for that railroad, even though the work may be at two or more separate locations.

The insurance specified above must be carried until all Work to be performed on the railroad right-of-way has been completed and the grade crossing, if any, is no longer used by the Contractor. In addition, insurance must be carried during all maintenance and/or repair work performed in the railroad right-of-way. Such insurance must name the railroad company as the insured, together with any tenant or lessee of the railroad company operating over tracks involved in the Project.

The following subcontractors shall be required to be utilized by the Contractor for specific portions of the Work as indicated below:

SUBCONTRACTOR COMPANY NAME	DESCRIPTION OF WORK TO BE PERFORMED
----------------------------	-------------------------------------

**SC-7.11A., “Contractor obtained permits and licenses”**

SC-7.11B. "City obtained permits and licenses"

The following are known permits and/or licenses required by the Contract to be acquired by the City: None.

**SC-7.11C., “Outstanding permits and licenses”**

The following is a list of known outstanding permits and/or licenses to be acquired, if any as of October 15, 2023:

**Outstanding Permits and/or Licenses to Be Acquired**

OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION
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None

**SC-7.20., “Contractor’s General Warranty and Guarantee”**

Delete Paragraph 7.20.D in its entirety and add the following in its place:

“D. The Contractor shall remedy any defects or damages in the Work and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Substantial Completion of the Work unless a longer period is specified. Substantial Completion shall be as defined in Paragraph 14.03. Contractor shall furnish a good and sufficient maintenance bond, complying with the requirements of Paragraph 6.02.B. The City will give notice of observed defects with reasonable promptness.”

**SC-8.02., “Coordination”**

The individuals or entities listed below have contracts with the City for the performance of other work at the Site:

Vendor	Scope of Work	Coordination Authority
None	None	None

**SC-9.01, “Communications to Contractor”**

None.

**SC-10.01B., “City’s Project Manager”**

The City’s Project Manager for this Contract is David Brown, or his/her successor pursuant to written notification from the Direct of Utilities.

**SC-13.02B., “Tests and Inspections”**

None.

**SC-14.01G, “Reduction in Payment”**

Add Paragraph 14.01G.3:

3. *City may reduce payments to the Contractor, if the number of Days that have passed after the date listed on the Notice to Proceed exceeds the Contract Time for Substantial Completion.*

**SC-14.03, "Partial Utilization"**

Delete this Paragraph in its entirety and insert the following text in its place:

**"14.03 Substantial Completion and Partial Use or Occupancy"****A. Substantial Completion**

1. When Contractor considers the entire Work ready for its intended use Contractor shall notify City and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to City and Engineer an initial draft of punch list items to be completed or corrected before final payment.
2. Promptly after Contractor's notification, City, Contractor, and Engineer will make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
  - a. If some or all the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel, and living expenses, will be paid by Contractor to City. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then City may impose a reasonable set-off against payments due under this Article 14.
3. If Engineer considers the Work substantially complete, Engineer will deliver to City a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer will attach to the certificate a punch list of items to be completed or corrected before final payment. City will have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to City, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If City does not object to the provisions of the certificate, or if despite consideration of City's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to City and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after considerations of any objections from City.
4. At the time of receipt of the preliminary certificate of Substantial Completion, City and Contractor will confer regarding City's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by City. Unless City and Contractor agree otherwise in writing, City shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon City's use or occupancy of the Work.

5. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
6. City shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.
- B. Partial Use or Occupancy
1. Prior to Substantial Completion of all the Work, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that may be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
- a. At any time, City may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, City, and Engineer will follow the procedures of Paragraph 14.03.A.1 through 14.03.A.5 for that part of the Work.
- b. At any time, Contractor may notify City and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
- c. Within a reasonable time after either such requests, City, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify City and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.03.A will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
- D. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance."

#### SC-16.01C.1, "Methods and Procedures"

None.

#### SC – 17.01, "Documents"

*Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.*

1 **SC – 18.01, “Texas State Law Provisions”**

2  
3 **SC – 18.01A. “Prohibition on Contracts with Companies Boycotting Israel”**

4  
5 Contractor acknowledges that in accordance with Chapter 2271 of the Texas Government Code,  
6 City is prohibited from entering into a contract with a company for goods or services unless the  
7 contract contains a written verification from the company that it: (1) does not boycott Israel; and  
8 (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and  
9 “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas  
10 Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature***  
11 ***provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will***  
12 ***not boycott Israel during the term of the agreement.*** Failure to meet or maintain the  
13 requirements under this provision will be considered a material breach.  
14

15 **SC – 18.01B. “Prohibition on Contracts with Companies Boycotting Certain Energy**  
16 **Companies”**

17  
18 Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code,  
19 City is prohibited from entering into a contract with a company for goods or services unless the  
20 contract contains written verification from the company that it (1) does not boycott energy  
21 companies; and (2) will not boycott energy companies during the term of the contract. The terms  
22 “boycott energy company” and “company” shall have the meanings ascribed to those terms in  
23 Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor***  
24 ***certifies that Contractor’s signature provides written verification to the City that Contractor:***  
25 ***(1) does not boycott energy companies; and (2) will not boycott energy companies during the***  
26 ***term of the agreement.*** Failure to meet or maintain the requirements under this provision will be  
27 considered a material breach.  
28

29 **SC – 18.01C. “Prohibition on Contracts with Companies Boycotting Certain Firearm**  
30 **Entities and Firearm Trade Associations”**

31  
32 Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code,  
33 City is prohibited from entering into a contract with a company for goods or services unless the  
34 contract contains written verification from the company that it (1) does not have a practice,  
35 policy, guidance, or directive that discriminates against a firearm entity or firearm trade  
36 association; and (2) will not discriminate during the term of the contract against a firearm entity  
37 or firearm trade association. The terms “discriminate against a firearm entity or firearm trade  
38 association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to  
39 those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement,***  
40 ***Contractor certifies that Contractor’s signature provides written verification to the City that***  
41 ***Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates***  
42 ***against a firearm entity or firearm trade association; and (2) will not discriminate during the***  
43 ***term of the contract against a firearm entity or firearm trade association.*** Failure to meet or  
44 maintain the requirements under this provision will be considered a material breach.  
45

**SC – 18.01D. “Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization”**

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

**SC – 18.01E. “Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies”**

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

**END OF SECTION**

Revision Log		
DATE	NAME	SUMMARY OF CHANGE
08/29/2022	James Naylor	SC-5.03 A., Changed to: A geotechnical Report titled “Lake Ray Roberts Water Treatment Plant Backwash Supply Tank, dated September 6, 2022, prepared by Freese and Nichols, Inc., a consultant of the City. This geotechnical report is not considered Technical Data and may not be relied upon by the Contractor. This report is provided for informational purposes only. The Appendix A “Vicinity Map, Boring Location Maps”, Appendix B “Logs of Boring B-2201 through B-2204, including Key to Terms and Symbols” and Appendix C “Laboratory Results, Unconfirmed Results, Swell Test Results” are considered Technical Data that the Contractor may rely upon.
10/14/2022	James Naylor	Added SC-7.20 language.  Added SC-14.03 language.

**CONFLICT OF INTEREST QUESTIONNAIRE -****FORM CIQ****For vendor or other person doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1 Name of vendor who has a business relationship with local governmental entity.**

Archer Western Construction, LLC

**2 ☐ Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information in this section is being disclosed.**

\_\_\_\_\_  
Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☒

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☒

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐

Yes

☒

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4 ☐ I have no Conflict of Interest to disclose.****5**

DocuSigned by:

Daniel Walsh Jr.

5/13/2024

Signature of vendor doing business with the governmental entity

Date



## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

- (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
  - (i) a contract between the local governmental entity and vendor has been executed; or
  - (ii) the local governmental entity is considering entering into a contract with the vendor;
- (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
  - (i) a contract between the local governmental entity and vendor has been executed; or
  - (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
  - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
  - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
  - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
  - (1) the date that the vendor:
    - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
    - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
  - (2) the date the vendor becomes aware:
    - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
    - (B) that the vendor has given one or more gifts described by Subsection (a); or
    - (C) of a family relationship with a local government officer.

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> degree of affinity (marriage) or consanguinity (blood or adoption)

**City Official:** for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

**Vendor:** a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

**Certificate Of Completion**

Envelope Id: 337A1418935E4895B9E722FC1C0CADB8

Status: Sent

Subject: Please DocuSign: City Council Contract 8141-2 RRWTP Capacity Re-rate and Performance Improvement

Source Envelope:

Document Pages: 106

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Erica Garcia

AutoNav: Enabled

901B Texas Street

Envelope Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

erica.garcia@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Erica Garcia

Location: DocuSign

5/8/2024 12:48:32 PM

erica.garcia@cityofdenton.com

**Signer Events****Signature****Timestamp**

Erica Garcia

**Completed**

Sent: 5/8/2024 12:56:14 PM

erica.garcia@cityofdenton.com

Viewed: 5/8/2024 12:56:23 PM

Senior Buyer

Signed: 5/8/2024 12:58:13 PM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lori Hewell



Sent: 5/8/2024 12:58:16 PM

lori.hewell@cityofdenton.com

Viewed: 5/8/2024 2:25:34 PM

Purchasing Manager

Signed: 5/8/2024 2:28:23 PM

City of Denton

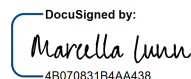
Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Marcella Lunn



Sent: 5/8/2024 2:28:26 PM

marcella.lunn@cityofdenton.com

Viewed: 5/9/2024 2:41:04 PM

Senior Deputy City Attorney

Signed: 5/9/2024 2:51:36 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Daniel Walsh Jr.



Sent: 5/9/2024 2:51:39 PM

dpwalsh@walshgroup.com

Resent: 5/13/2024 9:00:59 AM

President

Viewed: 5/13/2024 1:13:13 PM

The Walsh Group

Signed: 5/13/2024 1:20:24 PM

Security Level: Email, Account Authentication  
(None), Login with SSO

Signature Adoption: Pre-selected Style

Using IP Address: 104.207.198.34

**Electronic Record and Signature Disclosure:**

Accepted: 5/10/2024 5:38:50 AM

ID: 30d24216-75eb-43ae-9d5e-a743d618ed99

Signer Events	Signature	Timestamp
Steven D. Gay stephen.gay@cityofdenton.com Director Security Level: Email, Account Authentication (None)	DocuSigned by:  FEB48BB9726E4A9...  Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 5/13/2024 1:20:27 PM Viewed: 5/13/2024 4:21:02 PM Signed: 5/13/2024 4:44:53 PM

**Electronic Record and Signature Disclosure:**  
Accepted: 5/13/2024 4:21:02 PM  
ID: fc5498e0-073b-4a43-850e-513b66419799

Cheyenne Defee  
cheyenne.defee@cityofdenton.com  
Procurement Administration Supervisor

Sent: 5/13/2024 4:44:57 PM

City of Denton  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Sara Hensley  
sara.hensley@cityofdenton.com  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lauren Thoden  
lauren.thoden@cityofdenton.com  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee  
cheyenne.defee@cityofdenton.com  
Procurement Administration Supervisor

**COPIED**

Sent: 5/8/2024 12:58:16 PM

City of Denton  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Gretna Jones  
gretna.jones@cityofdenton.com  
Legal Secretary

**COPIED**

Sent: 5/13/2024 4:44:57 PM  
Viewed: 5/14/2024 9:28:52 AM

City of Denton  
Security Level: Email, Account Authentication (None)

Carbon Copy Events	Status	Timestamp
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Electronic Record and Signature Disclosure:  
Not Offered via DocuSign

City Secretary Office  
citysecretary@cityofdenton.com  
Security Level: Email, Account Authentication  
(None)

Electronic Record and Signature Disclosure:  
Not Offered via DocuSign

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Updated	Security Checked	5/13/2024 9:00:58 AM
Envelope Updated	Security Checked	5/13/2024 9:00:58 AM
Envelope Updated	Security Checked	5/13/2024 9:00:58 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

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To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

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- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

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- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.





# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB24-117, **Version:** 1

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### AGENDA CAPTION

#### Management Reports

1. Future Agenda Items
2. New Business Action Items

# Future Public Utilities Board Agenda Items

Note: This is a working draft of pending PUB items and is subject to change without notice.

Meeting Date	Item	Dept
June 10, 2024		
June 24, 2024	Reviews proposed Electric/Water/Wastewater/Solid Waste Rate Increases Reviews Electric, Water, Wastewater, Drainage and Solid Waste Budget	Finance Finance
July 8, 2024	Recommends approval Utility rate changes and ordinances Recommends approval Electric, Water, Wastewater, Drainage and Solid Waste budgets	Finance Finance
July 22, 2024		
August 12, 2024		
August 26, 2024		
September 9, 2024		
September 23, 2024		
October 14, 2024		
October 28, 2024		
November 18, 2024		
December 9, 2024		

Codes: Work Session WS, Consent Agenda CA, Individual Consideration IC

**PUBLIC UTILITIES BOARD - NEW BUSINESS ACTION ITEMS**

	DATE REQUESTED	REQUESTOR	ITEM	DEPT	STATUS
1.	10/23/23	Taylor	Would like a comparison of our experience with EVs vs Combustion Engine cars and trucks.	Fleet	10/28/24



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### **AGENDA CAPTION**

Receive a report, hold a discussion, and give staff direction regarding the Fiscal Year 2024-25 preliminary utility forecasts for Solid Waste, Water, Wastewater/Drainage, and Electric.



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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Finance

**ACM:** Cassey Ogden

**DATE:** June 10, 2024

### **SUBJECT**

Receive a report, hold a discussion, and give staff direction regarding the Fiscal Year 2024-25 preliminary utility forecasts for Solid Waste, Water, Wastewater/Drainage, and Electric.

### **BACKGROUND**

The purpose of this work session and additional work sessions during the months of June and July is to provide the Public Utilities Board (PUB) with details regarding the preliminary FY 2024-25 Utility Operating and Capital Budgets. This work session will include a review of economic forecasts, prior fiscal year financial performance for each utility, and financial assumptions which will directly impact each utility's operating budget for the upcoming fiscal year. The City's budget emphasis continues to be focused on cost containment, financial transparency, long-term maintenance of utility assets, and system reliability.

### **EXHIBITS**

1. Agenda Information Sheet
2. Presentation

Respectfully submitted:  
Jessica Williams  
Chief Financial Officer  
(940) 349-8244

Prepared By:  
Matt Hamilton  
Budget Manager  
(940) 349-8127

**CITY OF  
DENTON,  
TEXAS**

# **PUBLIC UTILITIES BOARD**

**Utilities Forecast Presentation  
June 10, 2024**

**Inclusion | Collaboration | Quality Service | Strategic Focus | Fiscal Responsibility**





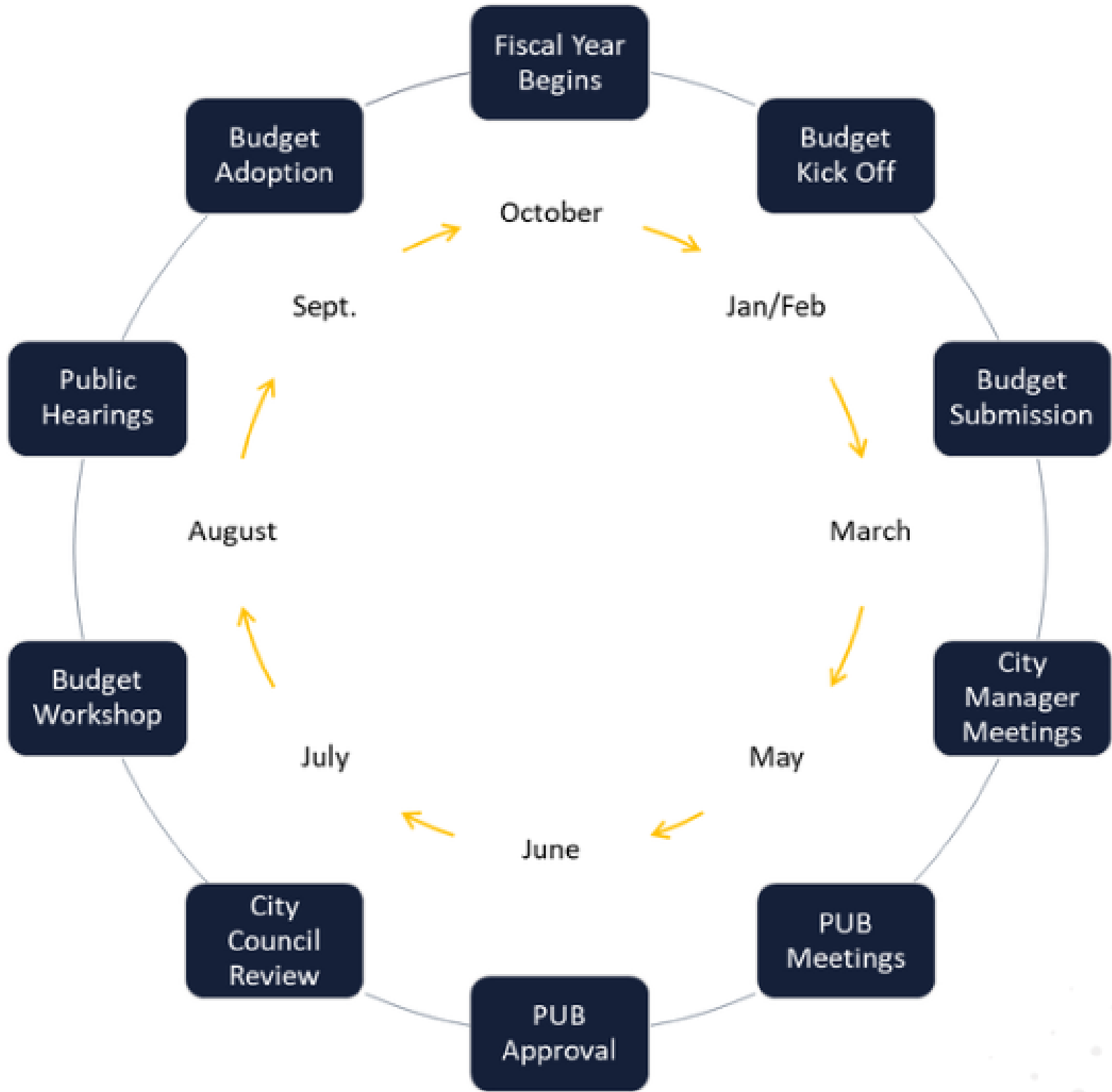
# Agenda

- Fiscal Year 2024-25 Budget Process Overview
- Economic Conditions
- Financial Assumptions
- Growth Forecasts & 2023 Financial Performance
  - Solid Waste
  - Water
  - Wastewater
  - Electric
- Next Steps



# Fiscal Year 2024-25 Utility Budget Process

- Budget Kickoff
- Budget Submission
- City Manager Meetings
- PUB Meetings
- City Council Review
- Budget Workshop
- Public Hearings
- Budget Adoption
- October 1, 2024 - Effective Date



# Economic Conditions

---

## **Current Challenges:**

- Community-wide Growth
  - Paying for tomorrow's growth with today's dollars
  - Existing and new infrastructure needs
  - Inflation

## **Current Opportunities:**

- Use of federal and state funding opportunities for infrastructure
  - Pursuing all available programs to assist with funding tomorrow's growth today
- Re-examination of debt portfolio and current needs
- Potential rate increases

# Financial Assumptions

---

## **All Utilities:**

- City population growth assumption of 2.94% resulting in increased system demand.
- Hunter/Cole developments accounted for in the 5-Year CIP.

## **Solid Waste:**

- Forecast is based on customer counts, tonnage, and service frequency.

## **Water & Wastewater:**

- Volume-based forecast.
- Forecast included alternative funding options for large capital projects (WIFIA/SWIFT).

## **Electric:**

- FY 2024 mid-year rate adjustment included in forecast.

# FY 2024-25 Solid Waste Fund Overview

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## Growth Projections

- 2.6% Growth in Residential Customers
- 2.0% Growth in Commercial FL/SL Pulls
- 2.1% Growth in Landfill Customers

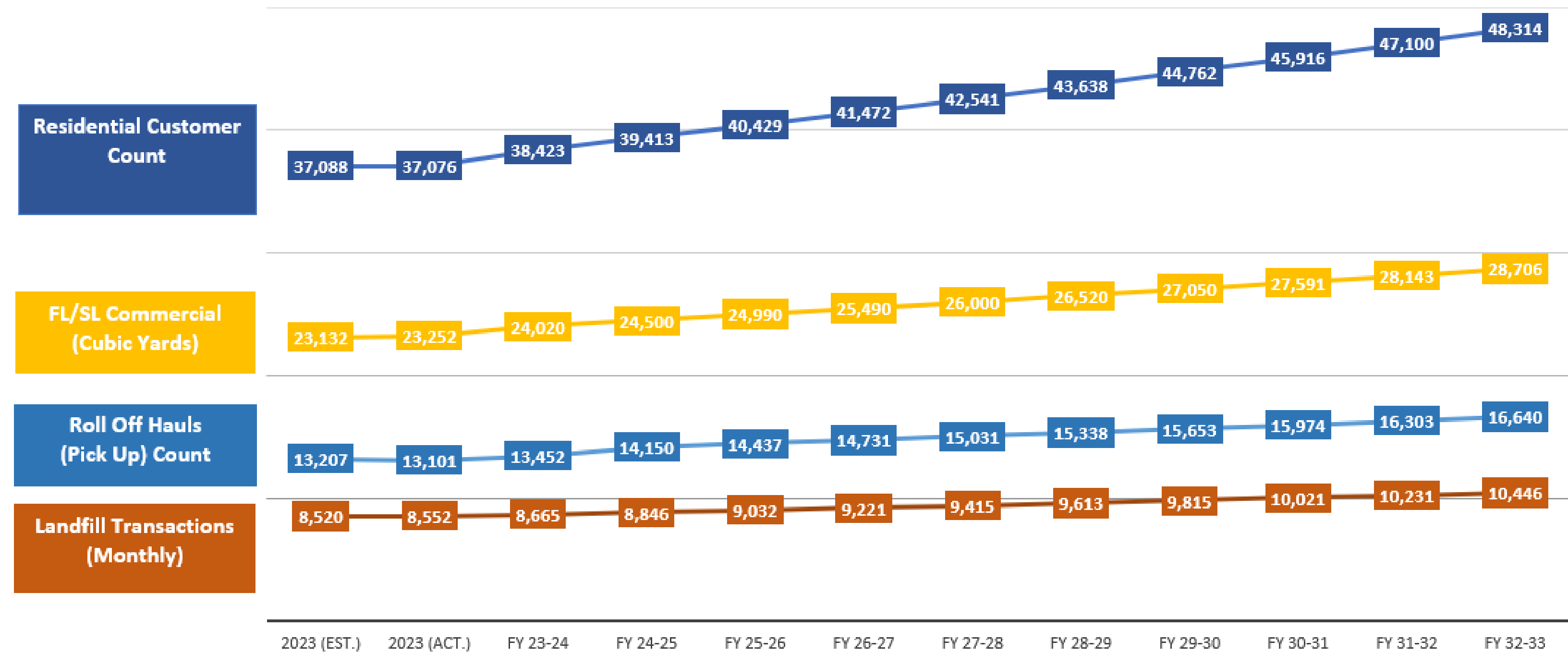
## Revenue Projections

- Cost of Service Study (Completion June 2024)
- Potential Rate Increase

## Expense Projections

- Annual Closure/Post Closure Contribution
- Increase in Personnel Costs
  - City-wide compensation adjustment for inflation & competitive market
- Debt service increase projected in FY 2025 for capital improvements
  - \$2,000,000 for the fleet shop (2024 issuance)
  - \$1,839,730 for vehicles (2024 issuance)

# Solid Waste 10-Year Growth Projections



# Solid Waste Fund - Financial Performance

Revenues	FY 2023 Budget	FY 2023 Actuals	FY 2024 Budget
Base Rate Revenues	\$ 33,411,938	\$ 30,390,568	\$ 33,501,676
Wholesale Agreements	4,208,599	3,598,251	4,033,433
Non-Rate Revenues	<u>1,733,952</u>	<u>6,356,122</u>	<u>1,760,794</u>
<b>Total Revenues</b>	<b>\$ 39,354,489</b>	<b>\$ 40,344,941</b>	<b>\$ 39,295,903</b>
Expenses	FY 2023 Budget	FY 2023 Actuals	FY 2024 Budget
Personnel	\$ 12,317,395	\$ 12,239,887	\$ 13,858,641
O&M	9,892,701	9,598,641	9,958,424
Cost of Service Transfers	5,857,807	4,667,025	6,531,546
Franchise Fees	1,670,597	1,965,749	1,876,755
Vehicle Replacement	3,690,000	3,690,000	2,575,000
Debt Service	3,897,501	3,874,437	4,817,837
Closure/Post Closure	835,710	971,296	752,631
Revenue Funded Capital	<u>3,545,000</u>	<u>3,545,000</u>	<u>1,000,000</u>
<b>Total Expenditures</b>	<b>\$ 41,706,711</b>	<b>\$ 40,552,035</b>	<b>\$ 41,370,834</b>
<b>Net Income (Use of Reserve)</b>	<b>\$ (2,352,222)</b>	<b>\$ (207,094)</b>	<b>\$ (2,074,931)</b>

# FY 2024-25 Water Fund Overview

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## Growth Projections

- 3.4% Growth in Residential Customers
- 5.3% Growth in Commercial Customers
- Additional factors include Hunter Cole Development & MUD Growth

## Revenue Projections

- 3.0% increase in rate revenues based on growth
- Water conservation implementation impacts
- Texas Water Development Board Funding (RRWTP Expansion Project)

## Expense Projections

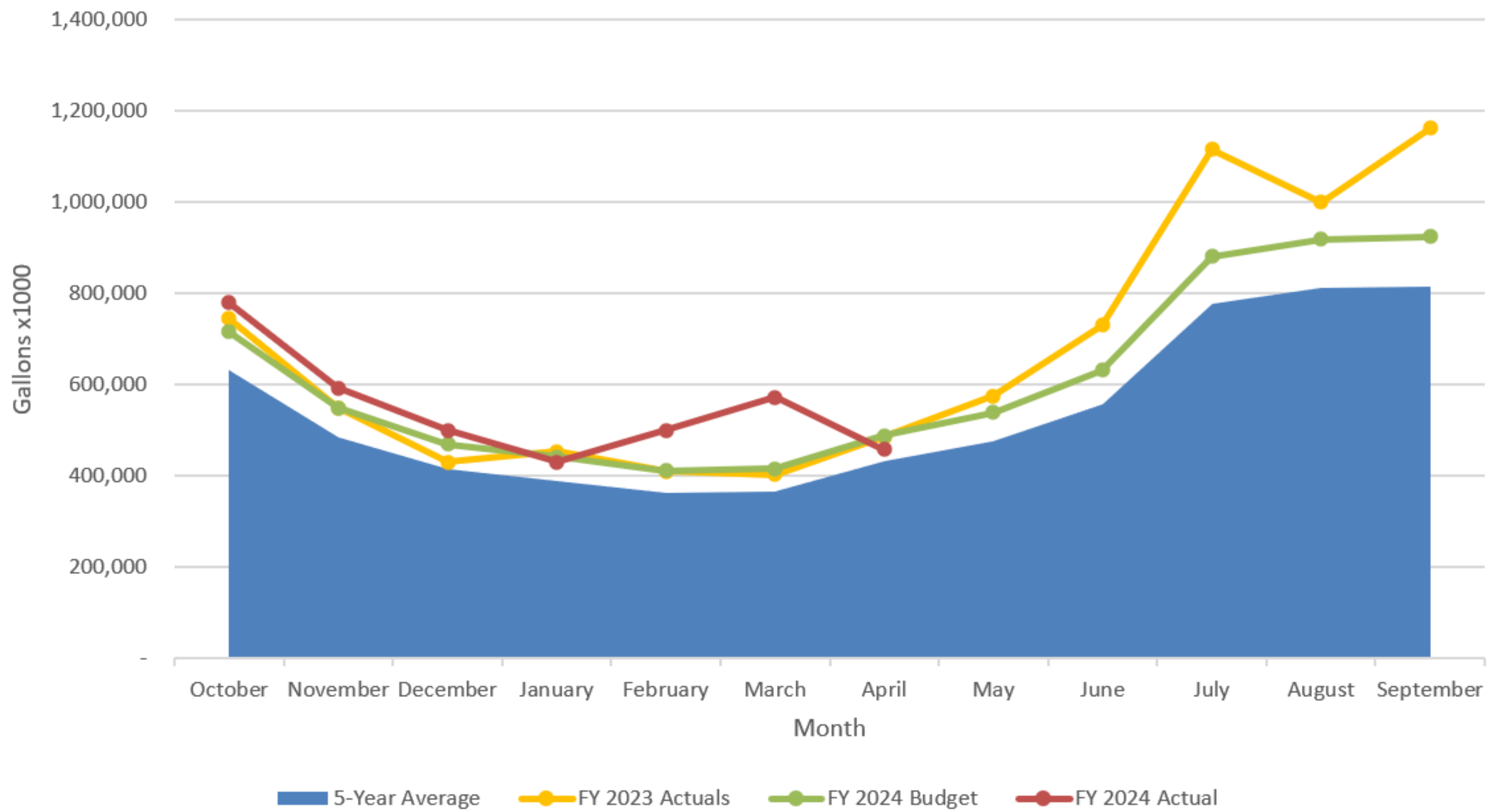
- Increase in Personnel Costs
  - City-wide compensation adjustment for inflation & competitive market
- Increase in debt service for capital improvements
  - \$20M for Lake Ray Roberts WTP Expansion Project (2024 issuance)
  - \$12.2M for water line replacements (2024 issuance)



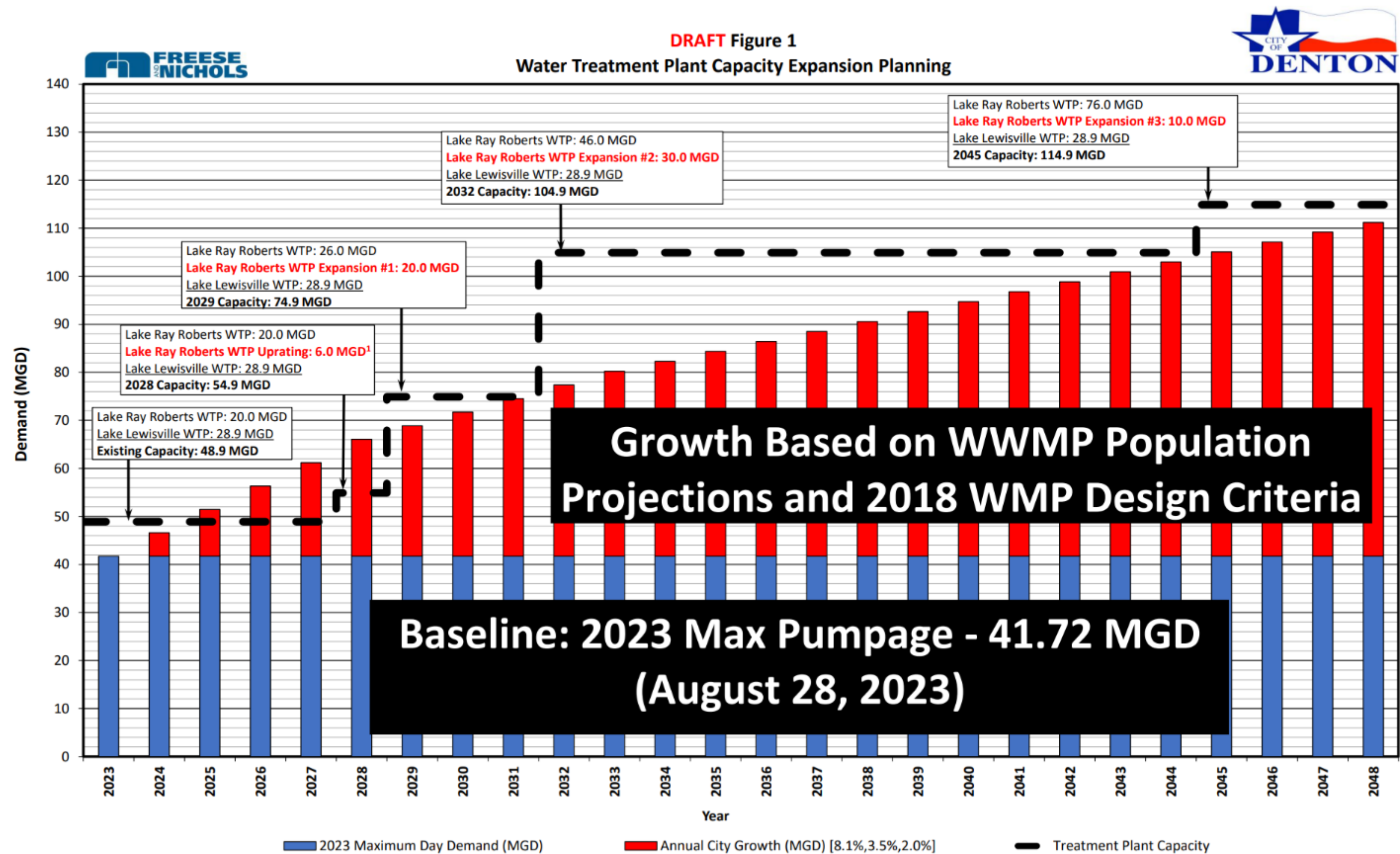
# Water Fund - Financial Performance

Revenues	FY 2023 Budget	FY 2023 Actuals	FY 2024 Budget
Rate Revenues	\$ 43,883,903	\$ 48,358,373	\$ 46,404,583
Non-Rate Revenues	11,658,578	5,137,986	5,145,860
Impact Fees	<u>6,605,000</u>	<u>1,938,055</u>	<u>7,158,538</u>
<b>Total Revenues</b>	<b>\$ 62,147,481</b>	<b>\$ 55,434,414</b>	<b>\$ 58,708,981</b>
Expenses	FY 2023 Budget	FY 2023 Actuals	FY 2024 Budget
Personnel	\$ 10,023,865	\$ 9,322,841	\$ 11,458,323
O&M	7,942,703	8,248,369	7,824,903
Franchise Fees & ROI	3,725,882	4,063,833	3,944,389
Other Expenses	1,935,748	2,063,175	1,597,193
Debt Service	10,239,818	10,216,828	11,849,983
Interfund Transfers	8,046,304	8,116,076	8,312,190
Revenue Funded Capital	<u>21,141,703</u>	<u>7,937,661</u>	<u>13,722,000</u>
<b>Total Expenditures</b>	<b>\$ 63,056,023</b>	<b>\$ 49,968,783</b>	<b>\$ 58,708,981</b>
<b>Net Income (Use of Reserve)</b>	<b>\$ (908,542)</b>	<b>\$ 5,465,631</b>	<b>\$ -</b>

# Water Production - Billable Volume (ex. Raw Water)



# Water Distribution – Water Demand Forecast



# FY 2024-25 Wastewater Fund Overview

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## Growth Projections

- 3.4% Growth in Residential Customers
- 4.1% Growth in Commercial Customers

## Revenue Projections

- 3.7% increase in rate revenues based on growth
- Potential rate increase

## Expense Projections

- Increase in Personnel Costs
  - City-wide compensation adjustment for inflation & competitive market
- Increase in debt service for capital improvements
  - \$24M for the Pecan Creek Water Reclamation Plant (2024 issuance)
  - \$8M for wastewater line replacements (2024 issuance)

# Wastewater Fund - Financial Performance

Revenues	FY 2023 Budget	FY 2023 Actuals	FY 2024 Budget
Rate Revenues	\$ 34,404,122	\$ 31,773,892	\$ 35,160,238
Non-Rate Revenues	17,535,332	4,240,061	4,365,955
Impact Fees	<u>4,270,000</u>	<u>4,270,000</u>	<u>4,270,000</u>
<b>Total Revenues</b>	<b>\$ 56,209,454</b>	<b>\$ 40,283,953</b>	<b>\$ 43,796,193</b>
Expenses	FY 2023 Budget	FY 2023 Actuals	FY 2024 Budget
Personnel	\$ 8,781,551	\$ 8,512,296	\$ 9,142,345
O&M	7,004,155	7,856,171	6,842,208
Franchise Fees & ROI	2,478,637	2,474,983	2,619,061
Other Expenses	1,221,000	1,109,500	1,247,248
Debt Service	8,628,692	8,549,983	8,713,745
Interfund Transfers	8,473,931	8,470,744	9,857,488
Revenue Funded Capital	<u>29,891,759</u>	<u>14,872,179</u>	<u>6,905,164</u>
<b>Total Expenditures</b>	<b>\$ 66,479,725</b>	<b>\$ 51,845,856</b>	<b>\$ 45,327,259</b>
<b>Net Income (Use of Reserve)</b>	<b>\$ (10,270,271)</b>	<b>\$ (11,561,903)</b>	<b>\$ (1,531,066)</b>



# Drainage Division - Financial Performance

Revenues	FY 2023 Budget	FY 2023 Actuals	FY 2024 Budget
Drainage Fees - Residential	\$ 2,183,731	\$ 2,151,971	\$ 2,245,256
Drainage Fees - Non-Residential	3,633,718	2,651,716	2,714,746
Non-Rate Revenue	91,476	19,050	72,112
Interfund Revenue	<u>378,166</u>	<u>378,165</u>	<u>378,166</u>
<b>Total Revenues</b>	<b>\$ 6,287,091</b>	<b>\$ 5,200,902</b>	<b>\$ 5,410,280</b>
Expenses	FY 2023 Budget	FY 2023 Actuals	FY 2024 Budget
Personnel Services	\$ 2,244,792	\$ 1,998,587	\$ 2,590,912
Materials and Supplies	99,478	110,484	197,257
Maintenance and Repair	297,047	253,041	297,047
Insurance	70,540	63,388	69,181
Operations	589,287	582,278	589,287
Capital & Admin Transfers	2,967,597	2,167,632	1,648,246
Other Expenses	<u>18,350</u>	<u>25,492</u>	<u>18,350</u>
<b>Total Expenditures</b>	<b>\$ 6,287,091</b>	<b>\$ 5,200,902</b>	<b>\$ 5,410,280</b>
<b>Net Income (Use of Reserve)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

# FY 2024-25 Electric Fund Overview

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## Growth Projections

- 7.53% retail sales (MWh) growth for known Residential and Commercial Projects

## Revenue Projections

- Cost of Service Study (Completion July 2024)
- Potential rate increase

## Expense Projections

- Increase in Personnel Costs
  - City-wide compensation adjustment for inflation & competitive market
- Increase in debt service for capital improvements
  - Reduced FY 2024 planned bond sale from \$82.5M to \$60M based on current project timelines.

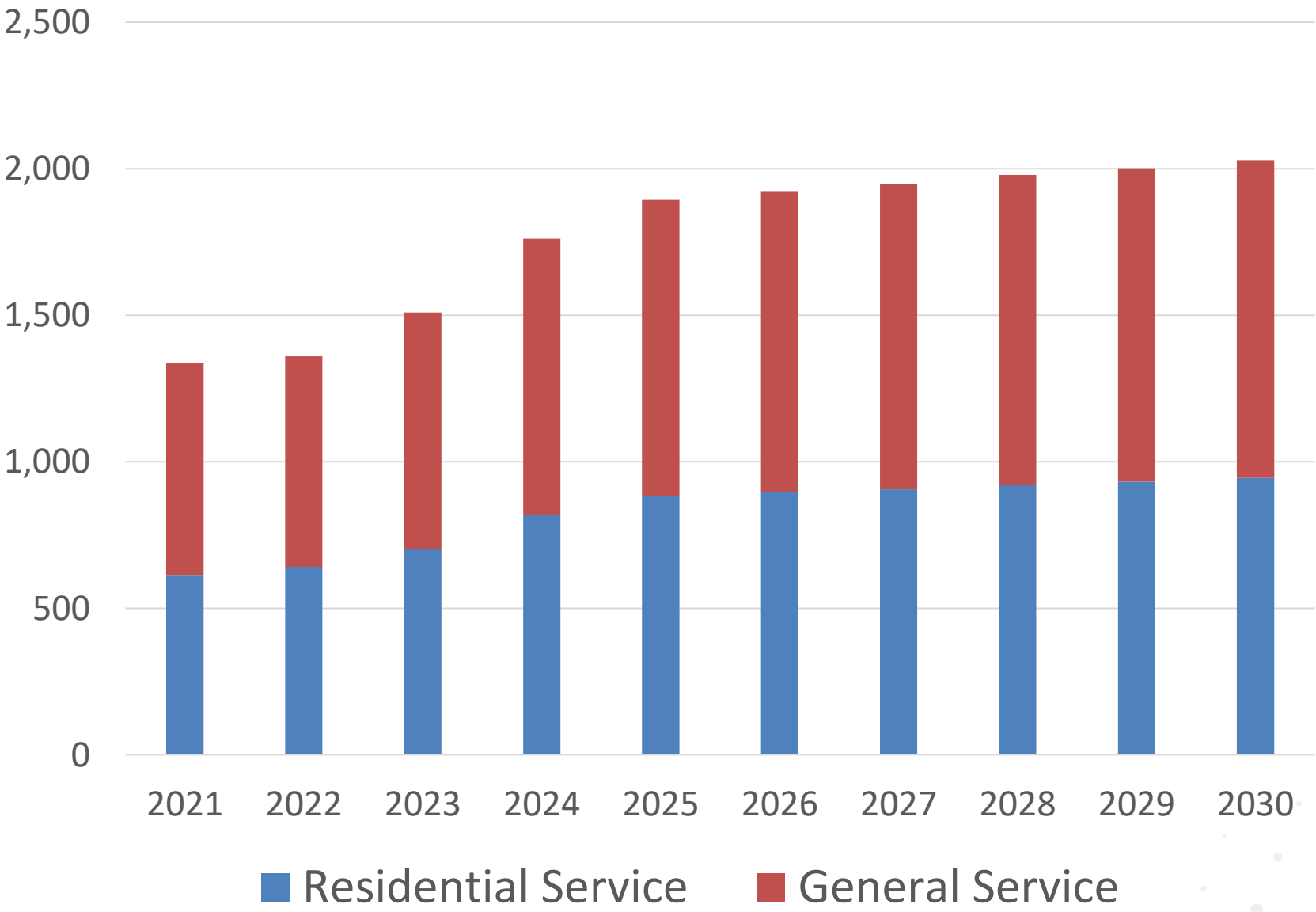


# Electric Fund - Financial Performance

Revenues	FY 2023 Budget	FY 2023 Actuals	FY 2024 Budget
Base Rate Revenues	\$ 93,963,944	\$ 102,759,906	\$ 104,394,786
ECA Revenues	52,401,991	56,433,028	66,916,985
Non-Rate Revenues	<u>253,545,826</u>	<u>174,832,684</u>	<u>119,085,425</u>
<b>Total Revenues</b>	<b>\$ 399,911,761</b>	<b>\$ 334,025,618</b>	<b>\$ 290,397,196</b>
Expenses	FY 2023 Budget	FY 2023 Actuals	FY 2024 Budget
Purchase Power	\$ 234,805,395	\$ 195,131,009	\$ 116,110,082
Transmission of Power	22,102,442	23,826,397	24,737,092
Personnel	24,893,470	20,533,872	26,090,464
O&M	19,186,909	14,664,977	23,317,396
Cost of Service Transfers	15,454,928	15,357,250	19,887,694
Franchise Fee & ROI	35,379,937	27,713,608	25,151,239
Debt (DEC & Non-DEC)	62,445,059	62,430,987	65,262,217
Revenue Funded Capital	<u>1,150,000</u>	<u>5,624,896</u>	<u>7,607,412</u>
<b>Total Expenditures</b>	<b>\$ 415,418,140</b>	<b>\$ 365,282,996</b>	<b>\$ 308,163,596</b>
<b>Net Income (Use of Reserve)</b>	<b>\$ (15,506,379)</b>	<b>\$ (31,257,378)</b>	<b>\$ (17,756,399)</b>

# Electric Forecast - Retail Sales (MWh)

Year	Residential Service	General Service
2021	614,366	724,145
2022	641,738	718,207
2023	702,882	806,664
2024	820,006	941,081
<b>2025</b>	<b>881,733</b>	<b>1,011,922</b>
2026	895,740	1,027,998
2027	906,628	1,040,494
2028	921,575	1,057,648
2029	932,001	1,069,613
2030	944,890	1,084,405



# Electric Fund Overview

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## Financial Assumptions

- Finance \$31.26M of energy expenses.
  - Five-Year Term Utility System Revenue Bonds (Self-Supported by DME Revenues)
- Cost of Service Study results and recommendations.
  - Primary consideration will be Fixed Costs (i.e., facility and usage charges).
- Value of Solar Study results and recommendations.
  - Price paid for Rooftop Solar energy returned to DME.

# Next Steps

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Date	Body	Action
June 24, 2024	PUB	Review FY 2024-25 Utility Budget & Rates
July 8, 2024	PUB	Review and Recommend FY 2024-25 Utility Budget & Rates
July 23, 2024	City Council	Review FY 2024-25 Utility Budgets & Rates
August 10, 2024	City Council	Budget Workshop
September 10, 2024	City Council	Public Hearings
September 17, 2024	City Council	Budget Adoption

# Questions?