



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Meeting Agenda - Final

City Council

Tuesday, November 15, 2016

6:00 PM

Council Chambers

Study Session Meeting to be held at 3:00 PM in the Study Session Room

A. STUDY SESSION

- A.1 [16-297](#) Discuss regular City Council meeting agenda items.
- A.2 [16-274](#) Presentation on Farmers Branch Event Philosophy.
- A.3 [16-263](#) Receive an update regarding the City of Farmers Branch Demolition Rebuild Program.
- A.4 [16-296](#) Receive a presentation and update on the Eastside Comprehensive Plan.
- A.5 [16-298](#) Discuss agenda items for future City Council meetings.

B. INVOCATION & PLEDGE OF ALLEGIANCE

C. REPORT ON STUDY SESSION ITEMS

D. CITY MANAGER'S REPORT AND ITEMS OF COMMUNITY INTEREST

Pursuant to Section 551.0415 of the Texas Government Code, the City Council or City Administration may report information on the following items: 1) expression of thanks, congratulations or condolences, 2) information about holiday schedules, 3) recognition of individuals, 4) reminders about upcoming City events, 5) information about community events, and 6) announcements involving an imminent threat to public health and safety.

E. CITIZEN COMMENTS

This agenda item provides an opportunity for citizens to address the City Council on any matter that is not posted on the agenda. Anyone wishing to address the City Council should complete a Citizen Comments Registration Card and submit it to the City Secretary or City Administration prior to the start of the City Council meeting. There is a three (3) minute time limit for each citizen to speak. Anyone wishing to speak shall be courteous and cordial. No disparaging or inflammatory remarks directed at any member of the City Council or City staff will be allowed.

The City Council is not permitted to take action on any subject raised by a speaker during Citizen Comments. However, the City Council may have the item placed on a future agenda for action; refer the item to the City Manager and/or City Administration for further study or action; briefly state existing City policy; or provide a brief statement of factual information in response to the inquiry.

F. CONSENT AGENDA

- F.1 [16-299](#) Consider approving minutes of the City Council meeting held on November 1, 2016; and take appropriate action.
- F.2 [R2016-101](#) Consider approving Resolution No. 2016-101 reappointing Dr. Paul Lonquist and Dr. George Moninger to serve as the City of Farmers Branch appointees to the Metrocrest Hospital Authority Board of Directors; and take appropriate action.
- F.3 [R2016-102](#) Consider approving Resolution No. 2016-102 awarding a contract to Curtco, Inc. for Crack and Joint Sealing Services through a Local Government Purchasing Cooperative contract; and take appropriate action.
- F.4 [R2016-103](#) Consider approving Resolution No. 2016-103 authorizing the City Manager to execute a Project Specific Agreement with Dallas County for roadway repairs and improvements to Alpha Road between Midway Road and Inwood Road; and take appropriate action.
- F.5 [R2016-106](#) Consider approving Resolution No. 2016-106 authorizing the City Manager to sign the First Amended and Restated Joint Fire Training Center Interlocal Agreement among the cities of Carrollton, Coppell, Farmers Branch and the Town of Addison; and take appropriate action.
- F.6 [R2016-108](#) Consider approving Resolution No. 2016-108 authorizing the City Manager to execute an Amended and Restated License for Communications Facilities between the City of Farmers Branch and New Cingular Wireless PCS, LLC; and take appropriate action.

F.7 [R2016-109](#) Consider approving Resolution No. 2016-109 authorizing the City Manager to execute a Communications Facilities License Agreement between the City of Farmers Branch and Clear Wireless LLC; and take appropriate action.

F.8 [ORD-3399](#) Consider adopting Ordinance No. 3399 amending Chapter 2 of the Code of Ordinances, Administration, Article II, Boards, Committees, and Commissions, amending Section 2-185, relating to meeting dates for the Library Board; and take appropriate action.

G. PUBLIC HEARINGS

G.1 [ORD-3401](#) Conduct a Public Hearing and consider approval of Ordinance No. 3401 for a Specific Use Permit allowing outdoor storage and display for properties located at 13500 and 13512 McClintock Street; and take appropriate action.

G.2 [16 PL-007](#) Conduct a Public Hearing and consider a request for final plat approval of Metropolitan Southeast Addition, Lots 1 and 2, Block A; and take appropriate action.

G.3 [16 PL-008](#) Conduct a Public Hearing and consider a request for final plat approval of Komerica Addition, Lot 1, Block A; and take appropriate action.

H. REGULAR AGENDA ITEMS

H.1 [R2016-110](#) Consider approving Resolution No. 2016-110 authorizing a Commercial Facade Revitalization Grant Agreement for 4464 Sigma Road; and take appropriate action.

H.2 [16-302](#) Presentation by Carol Dingman on behalf of the Historical Park Preservation and Restoration Board regarding a future Museum Conference Center.

H.3 [16-304](#) Presentation by Charles Sullivan on behalf of the Farmers Branch Manske Library Board regarding a Library project being considered for the future Bond Election.

H.4 [R2016-105](#) Consider approving Resolution No. 2016-105 authorizing the City Manager to negotiate and execute the second amended and restated agreement for library services with Library Systems & Services; and take appropriate action.

- H.5 [R2016-107](#) **Consider approving Resolution No. 2016-107 awarding a unit price contract for Fiscal Year 16-17 Annual Concrete Repair Project to Jim Bowman Construction Company, LP. in the amount of \$792,426.00; and take appropriate action.**

The City Council may convene into executive session at anytime during the Study Session or Regular Session pursuant to Texas Government Code Section 551.071(2) for the purpose of seeking confidential legal advice from the City Attorney on any regular or study session agenda item.

I. **ADJOURNMENT**

Farmers Branch City Hall is wheelchair accessible. Access to the building and special parking are available at the main entrance facing William Dodson Parkway. Persons with disabilities planning to attend this meeting who are deaf, hearing impaired or who may need auxiliary aids such as sign interpreters or large print, are requested to contact the City Secretary at (972) 919-2503 at least 72 hours prior to the meeting.

Certification

I certify that the above notice of this meeting was posted at least 72 hours prior to the scheduled meeting time, in accordance with the Open Meetings Act, on the bulletin board at City Hall.

Posted by: _____
City Secretary

Date posted: _____



City of Farmers Branch

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13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: 16-297

Agenda Date:

Version: 1

Status: Study Session

In Control: City Council

File Type: Report

Agenda Number: A.1

Discuss regular City Council meeting agenda items.



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: 16-274

Agenda Date: 11/15/2016

Version: 1

Status: Study Session

In Control: City Council

File Type: Report

Agenda Number: A.2

Presentation on Farmers Branch Event Philosophy.

BACKGROUND:

The Parks and Recreation Department organizes over twenty events annually for residents and visitors. Council has asked for a review of these various events.

DISCUSSION:

Staff will discuss why cities host events, our unique brand promise, various event philosophies and classifications, and review individual event goals and outcomes. Staff will be present to answer questions about these items and receive Council input regarding marketing, the possibility of charging for certain events, and potential sponsorship opportunities.

ATTACHMENTS:

1. Event Philosophy Council Presentation



FARMERS BRANCH SPECIAL EVENTS

EVENT PHILOSOPHY

WHY DO CITIES HOST EVENTS & FESTIVALS?



Shape a sense of identity

Support branding efforts

Foster community pride

Quality of life opportunities

Generate economic growth

Increase tourism

Provide education and exposure

According to TFEA



EVENT PHILOSOPHY

Questions to consider...

Why do we host events and what do we want our visitors to remember us for?

What are the goals or purpose of events for the City?

BRAND PROMISE



EVENT PHILOSOPHY

Shape the image of the City as vibrant and family friendly with lively events that connect people and create memorable experiences.

EVENT CLASSIFICATION

- **Signature Event**

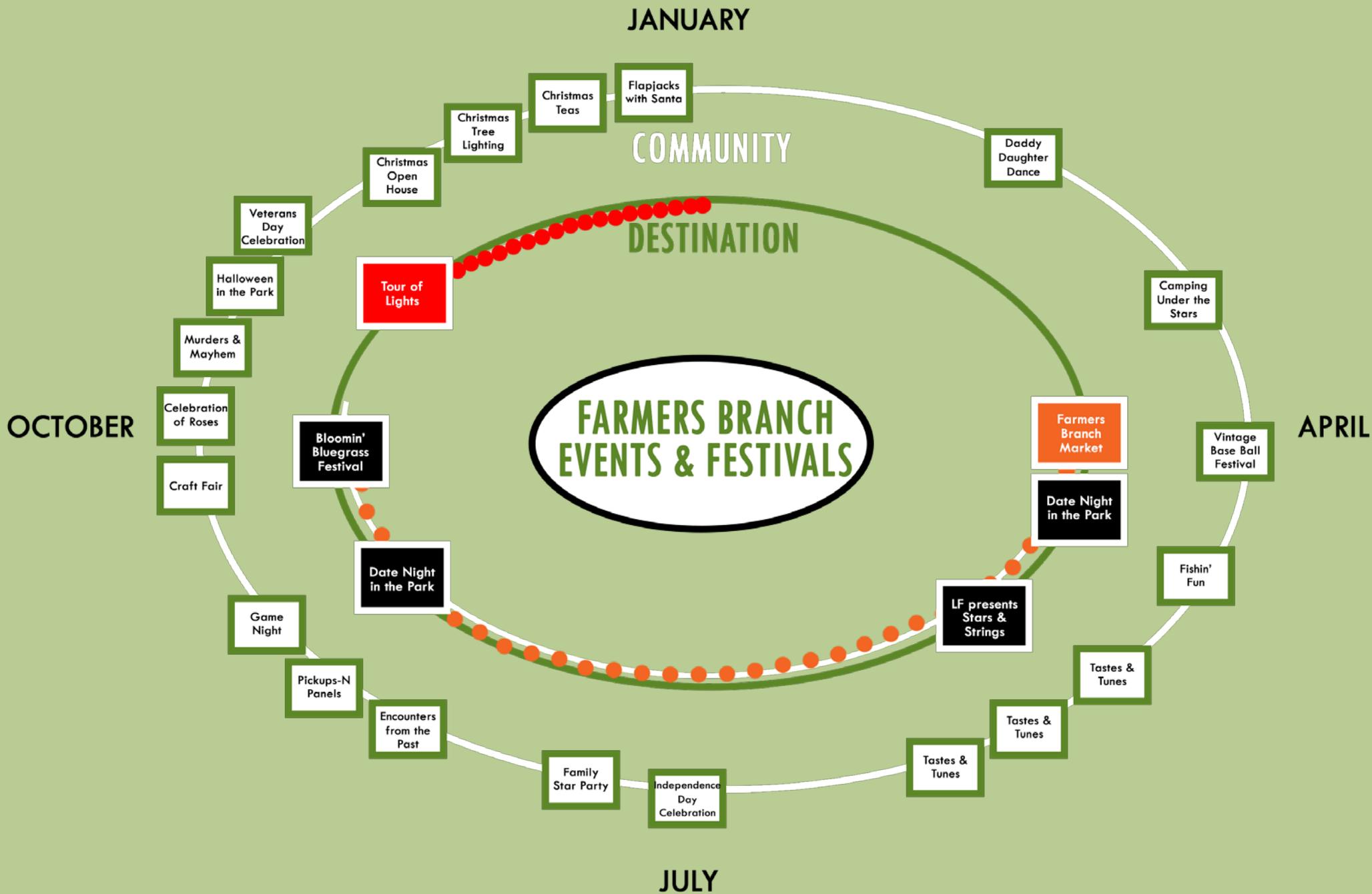
- An event that is “owned” by the organization and typically represents the brand image. It is so unique, that is recognized as belonging to that specific organization and it is an event that no one else may duplicate.

- **Destination Event**

- An event that is fairly unique to the metroplex and attract visitors into the City. These events are typically created with a specific purpose and goal for the City.

- **Community Events**

- An event that is resident focused and provides a quality of life aspect for the people that live in the community. These type of events are traditional and are held in many communities.



DESTINATION EVENTS

EXAMPLES

- Farmers Branch Market
- Date Night in the Park
- Liberty Fest presents Stars & Strings
- Bloomin' Bluegrass Festival & Chili Cook-Off
- Christmas Tour of Lights

GOALS FOR DESTINATION EVENTS:

- Shape the image of the City
- Support the brand
- Drive economic growth
- Generate revenue to offset cost
- Increase tourism and visitors through paid advertising and marketing



FARMERS BRANCH MARKET



Variety of vendors including food and artisans
Family friendly activities | First Saturday Events

FARMERS BRANCH MARKET

Quick Facts

1st year

Saturday mornings April – October

26 Saturdays

Spend \$2,500 in advertising /
marketing

Trends

Year	Attendance	Budget	Revenue	Cost per Attendee
2016	12,500*	\$25,000	\$8,051	\$1.36

*Average 500 people per week

DATE NIGHT IN THE PARK



Encourages adult only | Food Trucks | Live Entertainment
Craft Beer & Wine | Movie under the Stars
Child Care at the Recreation Center

DATE NIGHT IN THE PARK

Quick Facts

4th year – (Spring only for 2 years)

Saturday evening event

Held in Spring & Fall

Spend \$500 in advertising / marketing

Trends

Year	Attendance	Budget	Revenue	Cost per Attendee
2016 Fall*	1,200	\$4,200	\$2,101	\$1.75
2016 Spring	4,000	\$4,200	\$5,155	(\$.24)
2015 Fall	1,500	\$3,600	\$2,100	\$1.00
2015 Spring	1,000	\$3,600	\$2,213	\$1.38
2014 Spring	500	\$3,600	\$1,623	\$3.95

*Rained out at 8:00 pm

LIBERTY FEST PRESENTS STARS & STRINGS



Symphony Orchestra Patriotic Music | Fireworks Finale | KidZone
Historical Park Structure Tours

LIBERTY FEST PRESENTS STARS & STRINGS

Quick Facts

3rd year in current form
(started in 2014)

Saturday evening event

Spend \$3,000 in advertising /
marketing plus trade worth \$1,000

Trends

Year	Attendance	Budget	Revenue	Cost per Attendee
2016	3,500	\$80,000	\$3,913	\$21.74
2015	Cancelled due to weather			
2014	5,000	\$80,000	\$5,638	\$14.87

BLOOMIN' BLUEGRASS FESTIVAL & CHILI COOK OFF



Bluegrass Music | Chili Cook Off & Chili for Charity | KidZone
Arts & Crafts Marketplace | Jamming Areas | Historical Park Structure Tours & Demos

BLOOMIN' BLUEGRASS FESTIVAL & CHILI COOK OFF

Quick Facts

7th year (started in 2010)

Friday & Saturday – 2 day festival

Generates 488 room nights

Spend \$12,000 in advertising /
marketing plus trade worth \$4,000

Trends

Year	Attendance	Budget	Revenue	Cost per Attendee	Hotel Nights
2016	10,000	\$160,000	\$21,952	\$13.80	488
2015	8,500	\$160,000	\$9,540	\$17.70	279
2014	6,000	\$160,000	\$37,965*	\$20.34	188

*\$25,000 Waste Management Sponsorship

CHRISTMAS TOUR OF LIGHTS



Over half a million twinkling lights
Supports Farmers Branch Non-Profit Organizations

CHRISTMAS TOUR OF LIGHTS

Quick Facts

25th year (started in 1991)

Runs nightly for 34 nights

Supports Farmers Branch Non-Profits

Spend \$17,000 in advertising / marketing plus trade worth \$4,000

Trends

Year	Estimated Attendance	Budget	Revenue (Non-Profits)	Cost per Attendee
2015	41,883	\$221,100	\$35,535	\$4.43
2014	41,292	\$221,100	\$39,422	\$4.40
2013	27,387	\$221,100	\$23,208	\$7.23

COMMUNITY EVENTS

EXAMPLES

- Tastes & Tunes
- Independence Day Celebration
- Halloween in the Park
- Christmas Tree Lighting
- And over 15 more!

GOALS FOR COMMUNITY EVENTS:

- Provide quality of life opportunities for residents
- Support local organizations



TASTES & TUNES



Food Trucks | Live Entertainment
Craft Beer & Wine

TASTES & TUNES

Quick Facts

2nd year

Thursday evening event

Held at The Grove @ Mustang Crossing

Band partially sponsored

Spend \$500 in advertising / marketing

Trends

Year	Attendance	Budget	Revenue	Cost per Attendee
2016	850	\$11,500	\$638	\$12.77
2015	1,100	\$11,500	\$1,851	\$8.77

INDEPENDENCE DAY CELEBRATION



Live Entertainment | KidZone | Pie Eating Contest
Fireworks Finale

INDEPENDENCE DAY CELEBRATION

Quick Facts

20th year in current format

Spend \$200 in advertising / marketing

Trends

Year	Attendance	Budget	Revenue	Cost per Attendee
2016	10,000	\$55,000	\$8,740	\$4.63
2015	12,000	\$55,000	\$3,553	\$4.29
2014	6,500	\$55,000	\$3,206	\$7.97

HALLOWEEN IN THE PARK



Haunted Hedge | Game Booths | Trick or Treat Stations
Live Children's Entertainment | Kid Activities

HALLOWEEN IN THE PARK

Quick Facts

29th year

Saturday prior to Halloween

Spend \$200 in advertising / marketing

Trends

Year	Attendance	Budget	Revenue	Cost per Attendee
2016	9,200	\$20,000	\$2,517*	\$1.90
2015	6,100	\$17,000	\$1,468	\$2.55
2014	6,500	\$17,000	\$1,508	\$2.38

*Estimate – still waiting on all numbers to be submitted

CHRISTMAS TREE LIGHTING



Tree Lighting | Fireworks | Snow Hill | Photos with Santa | Local Choirs
Historical Park Structure Tours | Holiday Treats | KidZone

CHRISTMAS TREE LIGHTING

Quick Facts

15th year at Historical Park

First Saturday in December

Spend \$300 in advertising / marketing

Trends

Year	Attendance	Budget	Revenue	Cost per Attendee
2015	4,500	\$29,500	\$554	\$6.43
2014	3,000	\$29,500	\$585	\$9.64
2013*	200	\$29,500	\$10,000**	\$97.50

*Rescheduled due to weather

**\$10,000 Waste Management Sponsorship



QUESTIONS OR COMMENTS?



City of Farmers Branch

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Staff Report

File Number: 16-263

Agenda Date: 11/15/2016

Version: 1

Status: Study Session

In Control: City Council

File Type: Report

Agenda Number: A.3

Receive an update regarding the City of Farmers Branch Demolition Rebuild Program.

Council asked staff to present growth options for the existing demo/rebuild program. Staff will present options discussed at the November 1 study session. Options include greater cash grants for distressed properties and/or increasing a cash grant of the existing program. A residential map of all improvement values is included in the presentation.

Attachment:

1. Demo Rebuild Presentation

Demo Rebuild Recommendations

November 15, 2016 study session

Demo Rebuild Option One:

0,000 cash grant (with seven year annual rebate)

00 paid after demolition of home

00 paid upon completion of home

ent program provides \$5,000 with seven years of city tax rebates

Demo Rebuild Option Two:

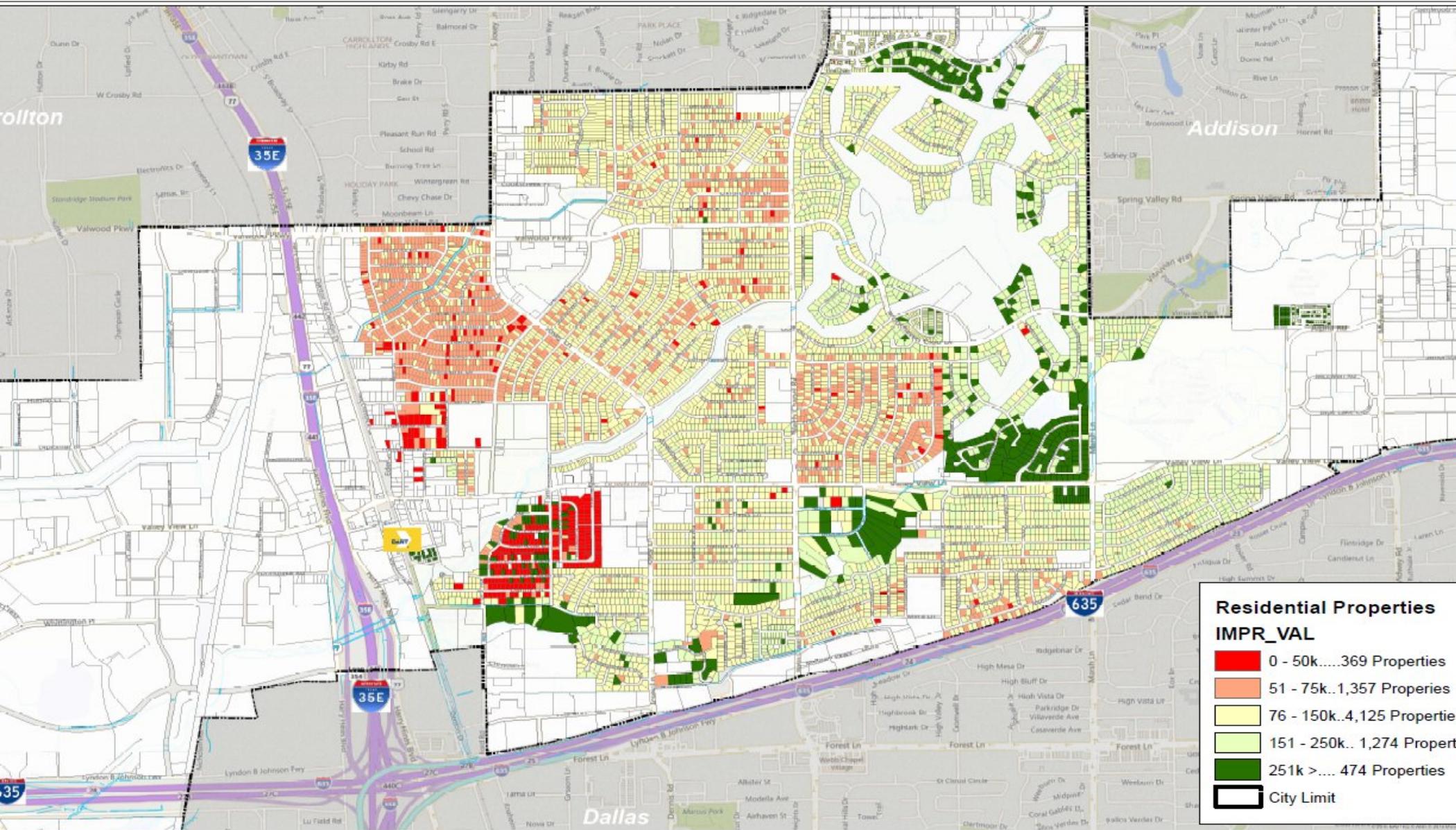
erred Grant Program tied to current value of home (not la

me values up to \$75,000 receive \$15,000 cash grant
(\$7500 after demolition; \$7500 after completion)

me values between \$75,100-\$250,000 receive \$12,500 cash grant
(\$6250 after demolition; \$6250 after completion)

me values \$250,100 + receive \$10,000 cash grant
(\$5000 after demolition; \$5000 after completion)

Home Values based on Dallas County Appraisal District

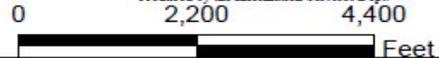


Residential Improvement Values - 2016



Various official and unofficial sources were used to gather the information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data. For pictorial reference only.

Produced by the Information Services Dept.
0 2,200 4,400



Feet
Date: 11/9/2016



City of Farmers Branch

Farmers Branch City Hall
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Farmers Branch, Texas
75234

Staff Report

File Number: 16-296

Agenda Date: 11/15/2016

Version: 1

Status: Study Session

In Control: City Council

File Type: Report

Agenda Number: A.4

Receive a presentation and update on the Eastside Comprehensive Plan.

BACKGROUND:

The Planning Department has been working with a consultant, La Terra, over the last year to develop a new Comprehensive Plan for the east side of Farmers Branch. Staff will make a presentation and give an update on the plan, which is in the final phase of the project.

DISCUSSION:

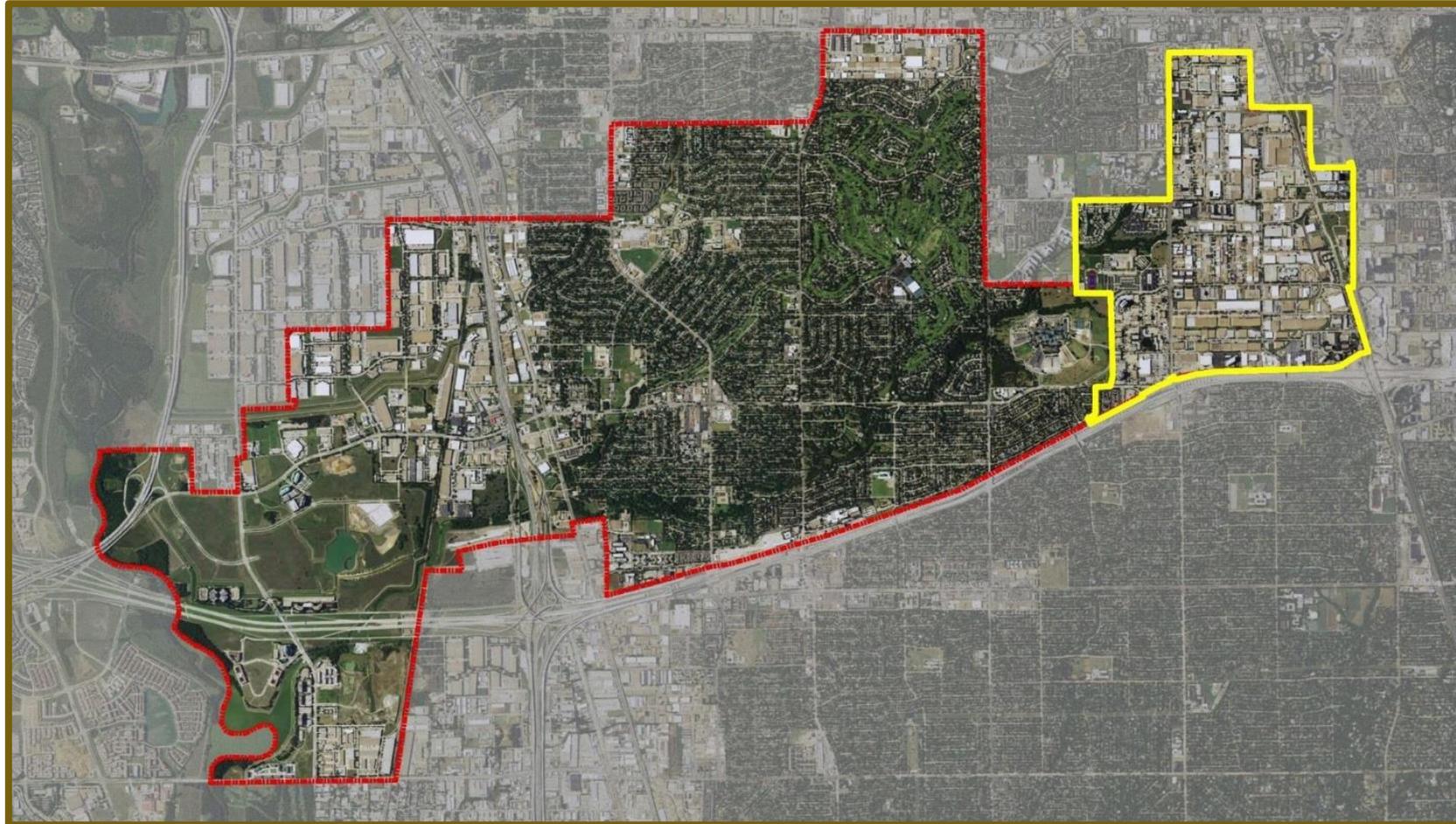
Staff and the Consultant will be present to discuss and answer any questions regarding the Eastside Plan.

ATTACHMENTS:

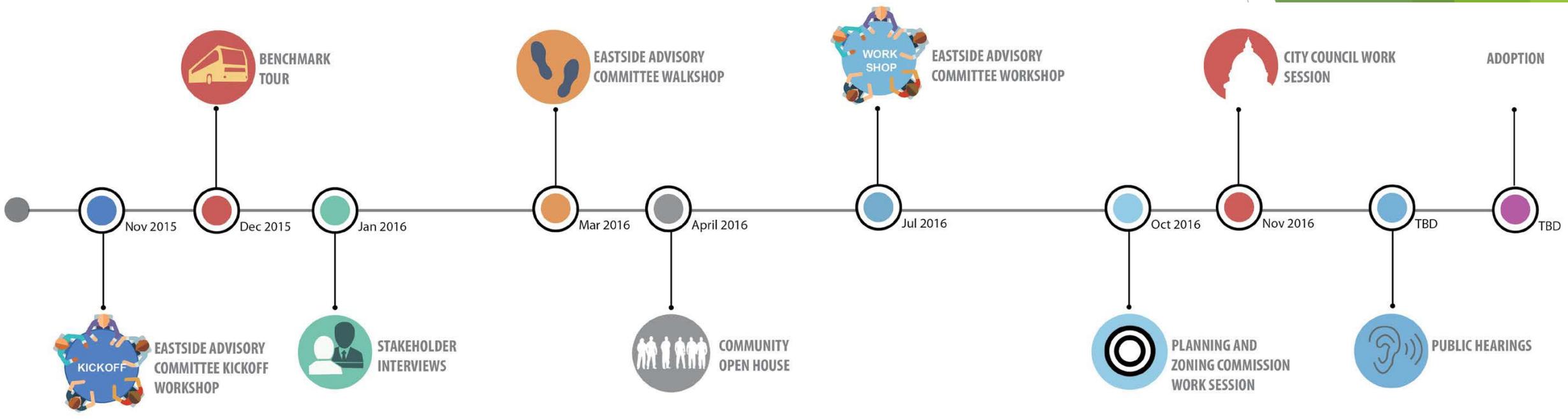
1. Eastside Plan Council Presentation

Eastside Comprehensive Plan

November 15, 2016



Project Timeline



Vision

“Eastside will be a District with a unique identity, based on a diverse mixture of uses that creates opportunities to live, work, do business, and participate in leisure activities for people already connected to the District and those who have yet to discover it”

Plan Framework

► Goals, Policies, Actions, Benchmarks

1. Character and Identity
2. Economic Vitality
3. Form and Land Use
4. Shared Spaces
5. Mobility and Connectivity



Goal 1 - To be a vibrant destination with a unique character and identity

1. **Policy:** Proactively create a District Brand that builds upon the existing maker and innovation dynamics.

- **Action:** Identify a Branding Strategy which includes a new name for the District, logos, theming, colors, and iconic images that represent Eastside.



Goal 2- To enhance and sustain a supportive business environment

1. Policy: RETAIN existing businesses and organizations in Eastside that complement the Vision and Brand.

- *Action:* Create an Eastside partnership between Brookhaven College, the City and Chamber of Commerce, and area stakeholders by providing focused resources to businesses, individuals, and organizations which align with the Vision and enhance workforce development and economic development.



Goal 3 - To establish a visually appealing, functional, and compatible District for people-oriented spaces and synergistic development.

1. Policy: Ensure new development or redevelopment is compatible with surrounding existing uses and form.

- *Action:* Create and adopt revised zoning regulations which include area and bulk standards, organized to correspond with major and minor streets.



Regional Retail/ Restaurants

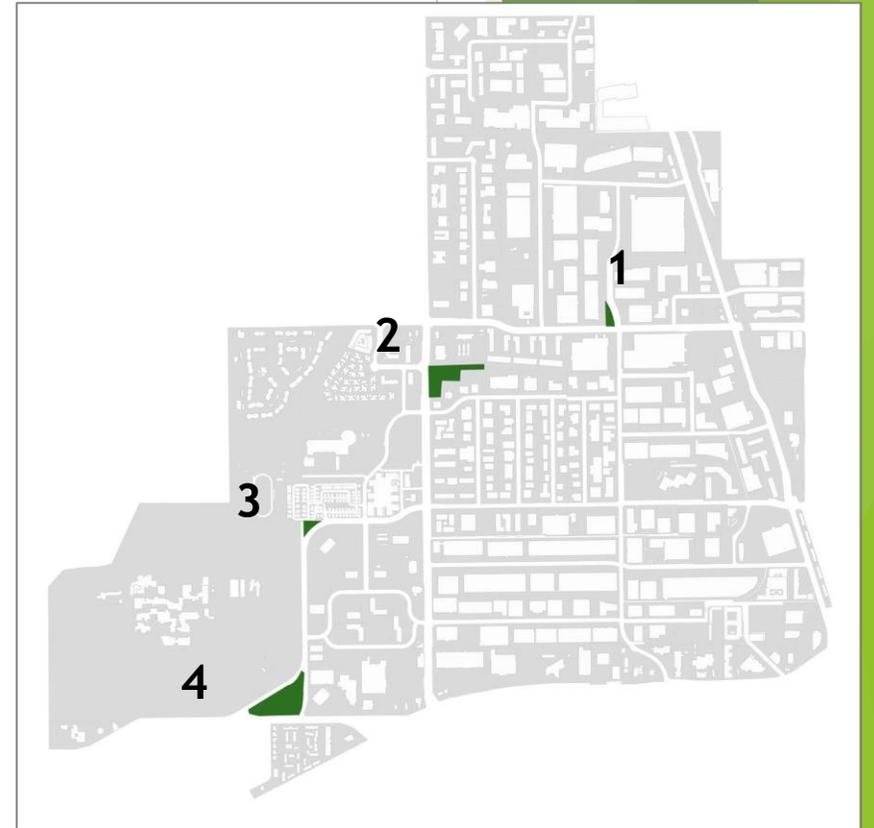


Pedestrian Amenities

Goal 4 - To create a system of shared spaces which positively contribute to the aesthetics, livability, vitality and functionality of the District.

1. Policy: Infuse and enhance parks, open spaces, and plazas throughout Eastside

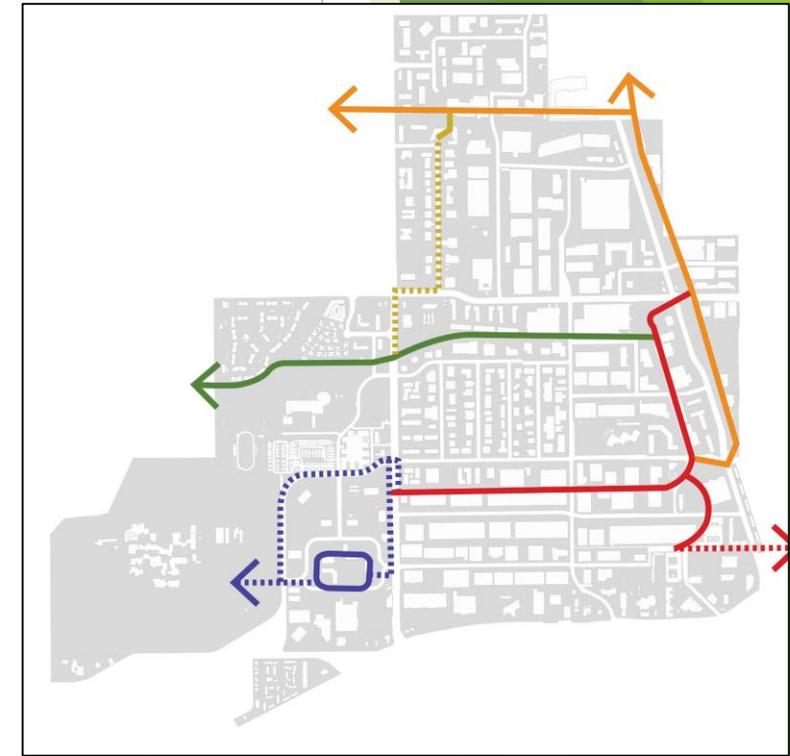
- *Action:* Improve City parks and City-owned spaces within Eastside to provide elements consistent with the District Branding Strategy (including green and natural areas) and to provide areas for active use where feasible.



Goal 5 - To become a cohesive destination of connected neighborhoods and shared spaces where traveling via multiple modes is effective and pleasant.

1. Policy: Utilize Context Sensitive Solutions (CSS) to enhance existing roadways and to provide multi-modal accommodations within Eastside.

- *Action:* Provide incremental enhancements within Eastside's roadways for better utilization of pavement and to accommodate all modes of travel in the most efficient manner.





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Staff Report

File Number: 16-298

Agenda Date: 11/15/2016

Version: 1

Status: Study Session

In Control: City Council

File Type: Report

Agenda Number: A.5

Discuss agenda items for future City Council meetings.



City of Farmers Branch

Farmers Branch City Hall
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Staff Report

File Number: 16-299

Agenda Date: 11/15/2016

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Report

Agenda Number: F.1

Consider approving minutes of the City Council meeting held on November 1, 2016; and take appropriate action.



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
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75234

Meeting Minutes

City Council

Tuesday, November 1, 2016

6:00 PM

Council Chambers

Study Session Meeting to be held at 3:00 PM in the Study Session Room

- Presiding:** 1 - Mayor Bob Phelps
- Present:** 5 - Mayor Pro Tem Harold Froehlich, Deputy Mayor Pro Tem Ana Reyes, Council Member John Norwood, Council Member Terry Lynne, Council Member Mike Bomgardner
- Staff:** - Charles Cox City Manager, John Land Deputy City Manager, Amy Piukana City Secretary, Pete Smith City Attorney, Tom Bryson Communications Director, David Hale Police Chief, Allison Cook Economic Development Director, Andy Gillies Community Services Director, Randy Walhood Public Works Director, Hugh Pender Building Official, Shane Davis Environmental Services and Solid Waste Manager, Steve Parker Fire Chief, Tim Dedear Deputy Fire Chief/Fire Marshal, Brian Beasley Human Resource Director, Sherrelle Evans-Jones Finance Director, Mitzi Davis Parks and Recreation Project Manager, and Kevin Muenchow Fleet and Facilities Director

A. **STUDY SESSION**

Mayor Phelps called the meeting to order at 3:00 p.m.

A.1 [16-279](#) **Discuss regular City Council meeting agenda items.**

Council Member Bomgardner asked for clarification regarding Agenda Item G.4 in regards to the standard rating. Fire Chief Steve Parker explained the rating meets Triple A standards. He further stated the purchase of this equipment provides equipment to be secured down within the ambulance and meets higher safety regulations.

A.2 [16-291](#) **Discussion regarding a City of Farmers Branch 50th Anniversary Quilt presented to the City by Mary Immaculate School on December 16, 1995.**

Fleet and Facilities Director Kevin Muenchow briefed City Council regarding this item. Mr. Muenchow explained on December 16, 1996 a 50th Anniversary Quilt was presented to the City by Mary Immaculate School and was dedicated in memory of Sara Murawski. Former City Employee Jerry Murawski spoke requesting the quilt be donated back to Mary Immaculate School if the City isn't currently displaying the quilt and agrees with this request.

After discussion, the consensus of City Council was to allow the quilt to be given back to Mary Immaculate School.

A.3 [16-293](#) Discussion regarding the charter review process.

City Secretary Amy Piukana briefed City Council regarding the charter review process. Ms. Piukana explained the City Charter may not be amended more than once every two years, noting the last charter amendment was November 5, 2013. Ms. Piukana explained the City Charter requires a Charter Committee to contain at least one representative from all voting precincts within the City, noting Farmers Branch has twelve precincts.

After discussion, City Council directed staff to begin accepting applications for a Charter Review Committee for a target election date in May 2018. Council Member Norwood asked that the Charter Review discussion be a topic for the January City Council retreat.

A.4 [16-263](#) Receive an update regarding the City of Farmers Branch Demolition Rebuild Program.

Economic Development Director Allison Cook briefed City Council regarding this item. Ms. Cook noted the City has had over 45 Demolition Rebuild projects noting the original improvement value totals were \$3,979,894 and actual estimated new improvement value totals were \$18,461,640. Ms. Cook noted \$14,481,746 was an increase in values.

Ms. Cook noted the current program has two Options. Approximately 41 applicants have chosen Option One, making it most popular. Ms. Cook explained Option One is an incentive that is based on the increase over the seven (7) years in the City property taxes paid on the difference between the original home appraised value prior to demolition and the value of the new constructed home. She noted this option includes a reimbursement of up to \$5,000 of the cost of demolition of the original home following completion of the demolition. Ms. Cook explained Option Two has had 6 applicants. She explained this incentive is equal to 10 times the amount of the increase in the City property taxes paid on the difference between the original home appraised value prior to demolition and the value of the new constructed home. She noted, if requested, the City will pay up to one-half of the estimated incentive at the time the owner closes on the permanent financing of the new home following completion of construction based on the value set forth in the application for building permit prior to construction.

Ms. Cook noted tonight's discussion is how to improve the program. Ms. Cook explained one option could be to increase the incentive to \$10,000 which will assist with the demolition. She noted construction costs are high, and this might be more marketable.

Council Member Bomgardner noted Option Two is not effective right now, and seems to be a slow process. He further stated that the City needs a strategy with more funds and specific target areas of distressed properties.

Council Member Lynne explained you can incentivize and promote and market the program to accelerate it. Ms. Cook noted the City does have some funding to market the program, noting it is very limited.

Deputy City Manager John Land noted Metro Study targeted distressed neighborhoods and the City could use this information to target areas.

Mayor Pro Tem Froehlich asked that the program be a citywide effort.

Council Member Norwood suggested targeting the distressed areas and researching the possibility of a higher funding amount to promote targeted areas.

Deputy City Manager John Land stated he will bring forward a revised incentive agreement for City Council to review which will include a \$15,000 upfront incentive with restrictions. He further stated the Economic Development 380 Agreement would need to be amended at a future City Council meeting.

A.5 [16-280](#) **Discuss agenda items for future City Council meetings.**

Mayor Pro Tem Froehlich asked for an update regarding the Crime Prevention program. Deputy Mayor Pro Tem Reyes asked for an update regarding the Animal Adoption Center.

City Council recessed at 3:58 p.m. for a break and reconvened into closed executive session at 4:03 p.m. to discuss the following items.

J.1 [16-294](#) **Council may convene into a closed executive session pursuant to Section 551.071 of the Texas Government Code to deliberate regarding:**

- ***Consultation with City Attorney regarding Texas Commission on Environmental Quality (TCEQ) Report No. 119885 relating to TCEQ Permit Nos. 5383 and 5383A to Town of Addison for use of water in Farmers Branch Creek, pending TCEQ Complaint regarding Farmers Branch Creek.***

Council may convene into a closed executive session pursuant to Section 551.072 of the Texas Government Code:

- ***Deliberate regarding the purchase, exchange, lease, or sale, or value of real properties located east of I-35, south of Valley View, west of Webb Chapel, and north of 635.***

City Council recessed for a break at 5:12 p.m. and reconvened into closed executive session at 5:17 p.m.

Council may convene into a closed executive session pursuant to Section 551.087 of the Texas Government Code:

- ***Deliberation regarding an economic development incentive package for the Oakbrook Home Owner's Association.***

City Council recessed from Study Session at 5:50 p.m. and convened downstairs.

Mayor Phelps called the meeting to Order at 6:00 p.m.

B. INVOCATION & PLEDGE OF ALLEGIANCE

Mayor Phelps led the invocation and Pledge of Allegiance. Mayor Phelps asked everyone to keep former City Council Member Ben Robinson in their thoughts and prayers noting he was recently injured during an accident.

C. CEREMONIAL ITEMS

C.1 [16-292](#) Presentation of awards for the Fire Prevention Poster Contest winners.

Fire Chief Steve Parker and Fire Prevention Training Coordinator Wendi Kimpton announced the winners of the 21st annual Fire Prevention Poster Contest.

The following Fire Prevention Poster Contest winners were recognized:

Third Place

Dave Blair Elementary - Mia Martinez (*Art Teacher - Frances Powrie*)
William Cabell Elementary - Fernanda Martinez (*Art Teacher - Abby Farmer*)
Farmers Branch Elementary - Zara Gomez (*Art Teacher - Kathryn Weber*)
Mary Immaculate School - Brooke Hyams (*Art Teacher - Cathy Carmack*)
Janie Stark Elementary - Guadalupe Robledo (*Art Teacher - Taylor Rhodes*)
Westwood Montessori - Luke McRorie (*Art Teacher - Kathleen Goree*)

Second Place

Dave Blair Elementary - Andrew Contreras
William Cabell Elementary - Kevin Alvarez
Farmers Branch Elementary - Marcus Perez
Mary Immaculate School - Hadley McManaway
Janie Stark Elementary - Ella Bonneau
Nancy Strickland Intermediate - Natalie Martinez
Westwood Montessori - Olivia Brown

First Place

Dave Blair Elementary - Haylee Martinez
William Cabell Elementary - Jadhira Jimenez
Farmers Branch Elementary - Jenny Calderon
Mary Immaculate School - Cara Kratovil
Janie Stark Elementary - Thi Nguyen
Nancy Strickland Intermediate - Bryan Perez
Westwood Montessori - Nidhi Vankawala

C.2 [16-275](#) **Presentation of a Proclamation declaring November 1-7, 2016 as Animal Adoption Center Appreciation week.**

Mayor Phelps presented a proclamation to the Animal Adoption Committee declaring November 1-7, 2016 as Animal Adoption Center Appreciation week.

C.3 [16-280](#) **Presentation of a proclamation declaring Wednesday, November 30, 2016 as the Carrollton-Farmers Branch Rotary Day in the City of Farmers Branch.**

Mayor Phelps presented a proclamation to the Carrollton-Farmers Branch Rotary Club members declaring Wednesday, November 30, 2016 as the Carrollton-Farmers Branch Rotary Day in the City of Farmers Branch.

D. REPORT ON STUDY SESSION ITEMS

Council Member Lynne provided a report on study session items.

E. CITY MANAGER'S REPORT AND ITEMS OF COMMUNITY INTEREST

City Manager Charles Cox announced the following items of community interest:

- Early voting continues at Dallas County Early Voting locations, including Farmers Branch City Hall, through this Friday, November 4, from 7 a.m. to 7 p.m. Election Day is next Tuesday, November 8, with voting from 7 a.m. to 7 p.m. On Election Day, voters will cast ballots at their designated polling place for their voting precinct. Consult your voter registration card or log on at dallascountyvotes.org to look up your precinct.
- If you are in need of getting rid of old household documents, used checkbooks, outdated financial records and other similar stuff, you are in luck since the City of Farmers Branch will be offering the second of two shredding events this weekend on Saturday, November 5, from 9 a.m. to 12 noon here at City Hall. The event is limited to Farmers Branch residents with household documents for destruction only. Proof of Farmers Branch residency may be required.
- Our annual Veterans Day Celebration is coming up on Friday, November 11 at 10:30 a.m. at the Farmers Branch Senior Center. Featured entertainment will be a return engagement from the World War II-era song and dance troupe, the Victory Belles. The traditional hot dog lunch will follow the celebration. Everyone is invited and admission is free. We should note that this is a very popular event so early arrival helps ensure better parking.
- Don't forget that Daylight Savings Time ends this weekend when clocks "fall back" one hour at 2 a.m. on Sunday, November 6. The Farmers Branch Fire Department reminds you that this is the perfect time to change the batteries in your smoke detectors.
- And please note that all Farmers Branch offices and facilities will be closed on Thursday, November 24 in observance of the Thanksgiving Day holiday. There will be NO garbage or recycling collection that day. Most facilities remain closed on Friday, November 25 with the exception of the Community Recreation Center, open 6 a.m. to 5 p.m. and the Historical Park, open 8 a.m. to 5 p.m. However, the annual Christmas Tour of Lights gets underway that evening at 6:30 p.m.
- You can sign up for eNews@farmersbranchtx.gov to have current City news and information delivered directly to your eMail box.

F. CITIZEN COMMENTS

The following citizens wished to speak under citizen comments:

Ms. Gretchen Cash, read a page from Dr. Gilbert's historical journal entry dated November 1, 1872 on behalf of the Historical Park and Preservation Board.

G. CONSENT ITEMS

- G.1** [16-278](#) **Consider approving minutes of the City Council meeting held on October 18, 2016; and take appropriate action.**
- G.2** [R2016-098](#) **Consider approving Resolution No. 2016-098 authorizing the City Manager to approve the purchase of five replacement patrol vehicles for the Police Department in an amount not to exceed \$163,090, from Reliable Chevrolet through the Tarrant County Purchasing Cooperative; and take appropriate action.**
- G.3** [R2016-099](#) **Consider approving Resolution No. 2016-099 authorizing the City Manager to approve the purchase of one (1) replacement asphalt paver for the Public Works Street Division in an amount not to exceed \$102,207, from Romco Equipment Co. through Buy Board; and take appropriate action.**
- G.4** [R2016-100](#) **Consider approving Resolution No. 2016-100 authorizing the purchase of Patient Transport and Loading Systems from Stryker Medical in the amount of \$132,489.42; and take appropriate action.**

Motion made by Council Member Lynne to approve Consent Items G.1 through G.4, as presented. Motion seconded by Council Member Bomgardner. Motion prevailed by the following vote:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

H. PUBLIC HEARINGS

- H.1** **ORD-3397** **Conduct a public hearing and consider adopting Ordinance No. 3397 relative to the Farmers Branch Youth Program Standards of Care in compliance with the Texas Human Resource Code, Chapter 42.041(b)(14); and take appropriate action.**

City Attorney Pete Smith explained Senate Bill 212 is reflected in the Texas Human Resource Code, establishing requirements to exempt recreational programs operated by municipalities for elementary age children from state child care licensing requirements if the governing body adopts Standards of Care by ordinance after holding a public hearing.

There being no one present that wished to speak regarding this item. Deputy Mayor Pro Tem Reyes made a motion to close the public hearing and approve Ordinance No. 3397, as presented. Motion seconded by Mayor Pro Tem Froehlich. Motion prevailed by the following vote:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

H.2 ORD-3398 Conduct a public hearing and consider adopting Ordinance No. 3398 granting a Specific Use Permit (SUP) allowing the construction of a detached accessory structure (exceeding 120 square feet in size) located at 2917 Ermine Way; and take appropriate action.

Community Services Director Andy Gillies briefed City Council regarding this item. Mr. Gillies noted the applicant is requesting a specific use permit to construct a detached accessory building to be located in the rear lot of the residence located at 2917 Ermine Way.

Mayor Phelps opened the public hearing. There were no citizens that wished to speak.

Motion made by Mayor Pro Tem Froehlich to close the public hearing and adopt Ordinance No. 3398, as presented. Motion seconded by Council Member Norwood. Motion prevailed by the following vote:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

H.3 ORD-3400 Conduct a public hearing and consider adopting Ordinance No. 3400 designating a Tax Increment Financing Reinvestment Zone No. 3; and take appropriate action.

City Manager Charles Cox briefed City Council regarding this item. Mr. Cox noted the applicant Centurion American Development has requested the designation of approximately 397.57 acres of land as Tax Increment Financing Reinvestment Zone, No. 3. Mr. Cox explained the next steps will be project review and financial plan proposals.

Mayor Pro Tem Froehlich asked what staff's recommendation was on this item. City Manager Charles Cox replied staff recommends approval of this item.

There were no citizens that wished to speak. Mayor Pro Tem Froehlich moved to close the public hearing. Motion seconded by Council Member Lynne. Motion prevailed by the following motion:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

Council Member Lynne made a motion to adopt Ordinance No. 3400, as presented. Motion seconded by Council Member Bomgardner. Motion prevailed by the following vote:

Aye: 4 - Mayor Pro Tem Froehlich, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

No: 1 - Deputy Mayor Pro Tem Reyes

I. REGULAR AGENDA ITEMS

I.1 16-295 Receive a presentation of Findings and Recommendations of the Citizen Bond Committee from Chairperson Michelle Holmes.

Citizen Bond Committee Chairperson Michelle Holmes briefed City Council regarding this item. Ms. Holmes noted Mayor and Council appointed a Bond Committee in February 2016. Ms. Holmes explained over 37 projects and programs were identified. Ms. Holmes explained six (6) subcommittees (Arts & Culture, Communications, EDC Commercial, EDC Residential, Parks & Recreation, and Public Safety) were created in April to review. Ms. Holmes noted the Committee did not focus on one project in particular. She explained various projects were reviewed which benefited the City as a whole. She further stated as a result, eleven projects were prioritized into three tiers. Tier 1 being the top recommendation, Tier 2 being the next proposals for future consideration, Tier 3 being the remaining six (6) proposals for future consideration in the long term.

Ms. Holmes reviewed the following Tier 1 recommendations:

(1) Trail Master Plan, Phase I, \$5 million (2) Fire Station No. 2 relocation to Valley View & Alpha estimated at \$5.5 million, (3) Station Area Development at \$11.8 million.

Ms. Holmes explained the following Tier 2 recommendations:

(1) Housing Renewal at \$4.1 million, (2) Library Renovation at \$7.9 million

Ms. Holmes explained the following Tier 3 recommendations:

(1) Animal Shelter Expansion at \$2.2 million, (2) Dog Park at \$1 million, (3) Historical Park Improvements at \$7 million, (4) Firehouse Theatre \$1 million, (5) John F. Burke Nature Preserve at \$5.7 million, (6) City Branding at \$3 million

Deputy Mayor Pro Tem Reyes thanked the Bond Committee for volunteering their time and commitment to the project.

Mr. Cox explained the next steps will be a meeting to review the recommendations and calling a Bond Election.

Mayor Phelps recessed into closed executive session at 7:38 p.m. to discuss Agenda Item J.1.

J. EXECUTIVE SESSION

J.1 16-294 Council may convene into a closed executive session pursuant to Section 551.071 of the Texas Government Code to deliberate regarding:

- ***Consultation with City Attorney regarding Texas***

Commission on Environmental Quality (TCEQ) Report No. 119885 relating to TCEQ Permit Nos. 5383 and 5383A to Town of Addison for use of water in Farmers Branch Creek, pending TCEQ Complaint regarding Farmers Branch Creek.

(Discussed during Study Session)

Council may convene into a closed executive session pursuant to Section 551.072 of the Texas Government Code:

- ***Deliberate regarding the purchase, exchange, lease, or sale, or value of real properties located east of I-35, south of Valley View, west of Webb Chapel, and north of 635.***

(Discussed during Study Session)

Section 551.087 of the Texas Government Code:

- ***Deliberation regarding an economic development incentive package for the Oakbrook Home Owner's Association.***

Council may convene into a closed executive session pursuant to Section 551.074 of the Texas Government Code:

- ***Deliberate regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee (City Manager's 6 month evaluation)***

Mayor Phelps reconvened into Regular Session at 8:58 p.m.

K. RECONVENE INTO REGULAR SESSION AND TAKE ANY ACTION NECESSARY AS A RESULT OF THE CLOSED SESSION

The following actions were taken as a result of the closed executive session:

Council may convene into a closed executive session pursuant to Section 551.072 of the Texas Government Code:

- ***Deliberate regarding the purchase, exchange, lease, or sale, or value of real properties located east of I-35, south of Valley View, west of Webb Chapel, and north of 635.***

Council Member Lynne made a motion to authorize the City Manager to sign and send to the Texas Department of Transportation a letter of intent exercising the City's priority right to purchase a 10.2758 acres tract located at the NW Corner of I.H. 635 and Josey Lane and an 11.7386 acre tract located at the NE Corner of I.H. 635 and Treeview Lane, such purchase being subject to negotiation and execution of a formal purchase and sale agreement with TxDOT. Motion seconded by Council Member Bomgardner. Motion prevailed by the following vote:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

Council Member Norwood made a motion to authorize the City Manager to negotiate and sign contracts and such other documents that are reasonable and necessary to sell to the Farmers Branch Local Government Corporation for the purpose of resale to Todd Bonneau Homes, LLC and/or assigns the property described as Lot 40, Block 12 of Johnston Park Addition, second installment, more commonly known as 13531 Challaburton, for a purchase and sales price of not less than \$75,000, with the resale of said property to be subject to a restriction agreement requiring construction of a single family residence of not less than 2,300 square feet of air conditioned space with an assessed value of the property upon completion of construction, inclusive of both land and improvements, to be not less than \$400,000. Motion seconded by Council Member Bomgardner. Motion prevailed by the following vote:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

Deputy Mayor Pro Tem Reyes made a motion to authorize the City Manager to negotiate and sign contracts and such other documents that are reasonable and necessary to sell to the Farmers Branch Local Government Corporation for the purpose of resale to Todd Bonneau Homes, LLC and/or assigns the property described as Lot 25, Block 3 of Valwood Park Seventeenth Installment, more commonly known as 13611 Heartside Place, for a purchase and sales price of not less than \$75,000, with the resale of said property to be subject to a restriction agreement requiring construction of a single family residence of not less than 2,500 square feet of air conditioned space with an assessed value of the property upon completion of construction, inclusive of both land and improvements, to be not less than \$400,000. Motion seconded by Mayor Pro Tem Froehlich. Motion prevailed by the following vote:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

Council Member Bomgardner made a motion to authorize the City Manager to negotiate and sign contracts and such other documents that are reasonable and necessary to sell to the Farmers Branch Local Government Corporation for the purpose of resale to Daryl and Natali Stroer and/or assigns the property described as Lot 7, Block H of Valley View Estates No. 1, more commonly known as 2953 Randy Lane, for a purchase and sales price of not less than \$152,000 with the resale of said property to be subject to a restriction agreement requiring construction of a single family residence of not less than 2900 square feet of air conditioned space with an assessed value of the property upon completion of construction, inclusive of both land and improvements to be not less than \$600,000. Motion seconded by Council Member Norwood. Motion prevailed by the following vote:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

L. ADJOURNMENT

Mayor ProTem Froehlich made a motion to adjourn the meeting at 9:02 p.m. Motion seconded by Deputy Mayor Pro Tem Reyes. Motion prevailed by the following vote:

Aye: 5 - Mayor Pro Tem Froehlich, Deputy Mayor Pro Tem Reyes, Council Member Norwood, Council Member Bomgardner, Council Member Lynne

The meeting adjourned at 9:02 p.m.

Mayor

ATTEST:

City Secretary



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-101

Agenda Date: 11/15/2016

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: F.2

Consider approving Resolution No. 2016-101 reappointing Dr. Paul Lonquist and Dr. George Moninger to serve as the City of Farmers Branch appointees to the Metrocrest Hospital Authority Board of Directors; and take appropriate action.

BACKGROUND:

The Metrocrest Hospital Authority is governed by a Board of Directors (Board) consisting of ten (10) members. The Board elects the members for Places 5, 6, 7, and 8 and the City Council of the City of Farmers Branch confirms the appointments by passage of a resolution.

DISCUSSION:

The term for Board of Director Place 6 and Place 8 is expiring. Dr. Paul Lonquist currently serves on the Board in Place 6 and Dr. George Moninger currently serves on the Board in Place 8 and both wish to serve another term.

RECOMMENDATION:

City Administration recommends City Council approve Resolution No. 2016-101 reappointing Dr. Paul Lonquist to Place 6 and Dr. George Moninger to Place 8, to serve the City of Farmers Branch as appointees to the Metrocrest Hospital Authority Board of Directors for a term ending December 1, 2018.

ATTACHMENTS:

1. Resolution No. 2016-101
2. Letter Request - Lonquist
3. Letter Request - Moninger
4. Bio - Lonquist
5. Bio - Moninger



METROCREST HOSPITAL AUTHORITY

PLAZA III
4325 N. JOSEY LANE, SUITE 107
CARROLLTON, TEXAS 75010
972-247-8023 972-492-5897

October 21, 2016

Honorable Bob Phelps
13000 William Dodson Parkway
Farmers Branch, Texas 75234

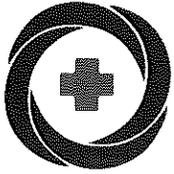
Dear Bob:

The City of Farmers Branch appointed Paul Lonquist, D.D.S. to serve on the board of the Metrocrest Hospital Authority in Place 6. Dr. Lonquist serves on the Strategic Planning Committee. He has expressed the desire to continue to serve on the board. We respectfully request that you reappoint Dr. Lonquist to serve on the board.

The board will approve the nomination on November 15th and the oath of office will be given on December 20th.

Sincerely,

Charles B. Heath
CEO



METROCREST HOSPITAL AUTHORITY

PLAZA III
4325 N. JOSEY LANE, SUITE 107
CARROLLTON, TEXAS 75010
972-247-8023 972-492-5897

October 21, 2016

Honorable Matthew Marchant
19450 E. Jackson Rd.
Carrollton, Texas 75006

Dear Matthew:

The City of Carrollton appointed George Moninger, M.D. to serve on the board of the Metrocrest Hospital Authority in Place 8. His term ends in December, 2016, and Dr. Moninger has expressed his desire to continue to serve. He currently serves as Secretary of the Board and serves on the Executive and Community Service Committees. We respectfully request that you reappoint Dr. Moninger to serve on the board.

The board will approve nominations on November 15th and the oath of office will be given on December 20th. Dr. Moninger's term will expire December, 2018.

Sincerely,

Charles B. Heath
CEO



RESOLUTION 2016-101

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, APPOINTING DR. PAUL LONQUIST AND DR. GEORGE MONINGER TO SERVE AS THE CITY OF FARMERS BRANCH APPOINTEE TO THE METROCREST HOSPITAL AUTHORITY BOARD OF DIRECTORS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Farmers Branch has authority to and desires to make the appointments to Place 6 and Place 8 on the Board of Directors of the Metrocrest Hospital Authority and finds Dr. Paul Lonquist and Dr. George Moninger to be qualified for appointment to said positions.

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

SECTION 1. Dr. Paul Lonquist is hereby appointed to serve in Place 6 and Dr. George Moninger is hereby appointed to serve in Place 8, with a term that expires December 1, 2018.

SECTION 2. This Resolution shall be effective immediately upon approval.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 15th DAY OF NOVEMBER, 2016.

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

Paul K Lonquist DDS
General Dentistry
MAGD, Master Academy of General Dentistry
14115 Josey Lane, Suite 100
Farmers Branch, TX 75234
972-247-5923

Born: Corpus Christi, TX [REDACTED]

Scouting: Eagle Scout, February 1970

High School: Graduated 1973 Houston Westchester
Extra Curricular Activities:
Concert Band 1969-1970
Symphonic Band 1970-1973
Marching Band 1969-1973
Key Club-3 years, President 1972-1973

College: Texas A&M University, 1973-1977
Graduated 1977, BS Zoology
Magna Cum Laude
Extra Curricular Activities:
Corps of Cadets
Wing Staff Scholastic Sergeant 1975-1976
Wing Staff Scholastic Officer 1976-1977
Ross Volunteer Company 1976-1977

Dental School: University of Texas Health Science Center/San Antonio, TX, 1977-1981
Graduated 1981, DDS Degree

Work History: Private Practice – General Dentistry
June 1981-present
Farmers Branch, TX

Dental Recognitions/Memberships:
Master-Academy of General Dentistry
Member American Dental Association
Member Texas Dental Association
Member Dallas County Dental Society
Peer Review Committee-3 years
Judicial Committee-3 years
Midwinter Session Host-4 years
Member International Association for Orthodontics
Member American Orthodontic Society
CORE Dentistry Comprehensive Dentistry Series 2008

CARD-Center for Aesthetic Restorative Dentistry
Advanced Restorative Series 2010
Masters Restorative Series 2011
Teaching Faculty 2011-2014

Community Service Activities:

Boy Scouts of America

Assistant Scoutmaster Troop 876- 1982-85, 2001-03

District Advancement Chairman North District Circle 10 Council-1985-98

Cub Scout Pack Leader, Pack 701-1996-2001

Scoutmaster, Troop 876, 2003-2008

Awards: District Award of Merit, Silver Beaver

Rotary International, Carrollton Farmers Branch Rotary Club

Member-1982-present

Club Service Chairman-1999-2001,2008-2010

Fundraising Chairman-2014-2015

Bea's Kids, Farmers Branch, Tx

Dental care-1992-2007

Denton County A&M Club

Chairman Scholarship Golf Tournament-1991-1996

Prestonwood Baptist Church, Plano, Tx

Teacher, Youth/High School Division 1985-1991

Teacher, Children's Division 1991-1996

Serving Him Ministries

Romania Mission Trips-2010,2011,2012,2013,2014

Trip Leader 2012,2013,2014

BROTHERMAN AND MONINGER, LLP
GENERAL OPHTHALMOLOGY

GEORGE A. MONINGER, M.D.
DISEASES AND SURGERY OF THE EYE

GEORGE ALLEN MONINGER, M.D.

CURRICULUM VITAE

10 Medical Parkway, Ste 102
Dallas, Texas 75234

Birthdate:



Residency:

Ophthalmology Resident
University of Texas Southwestern Medical Center
Dallas, Texas
July 1992 – June 1995

Internship:

Ophthalmology Intern
University of Texas Southwestern Medical Center
Dallas, Texas
July 1991 – June 1992

Education:

M.D., University of Texas Medical Health Science Center
Houston
Houston, Texas
August 1987 – May 1991

B.A. Biology, University of Dallas
Irving, Texas
August 1982 – May 1986

Faculty Position:

University of Texas Southwestern Medical Center
Associate Clinical Professor of Ophthalmology
1995 – Present

Publications: Mooren-Type Hepatitis C Virus – Associated Corneal Ulceration.
Ophthalmology 1994; 101: 736-45.

Visual Outcome in Ocular Penetrating Trauma
Presented at 1995 ARVO meeting Ft. Lauderdale, Florida

Certification: Board of Ophthalmology
Certification: November 08, 2017

Offices Held: Member of Board of Directors
Physician Direct Access
2000 – 2007

Chairman of Governing Board
RHD Memorial Medical Center
January 2003 – Present

President of Medical Staff
RHD Memorial Medical Center
January 2002 – January 2003

Research Experience: ALCON – Glaucoma Trials
Surgical Product Trials

Medarex – Surgical Product Trials



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-102

Agenda Date: 11/15/2016

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: F.3

Consider approving Resolution No. 2016-102 awarding a contract to Curtco, Inc. for Crack and Joint Sealing Services through a Local Government Purchasing Cooperative contract; and take appropriate action.

BACKGROUND:

The Public Works Department utilized an Interlocal Agreement with the City of Grand Prairie to negotiate a contract for crack and joint sealing services throughout the City. The proposed contract was prepared using estimated quantities and will be awarded on a unit price basis. Funds are available in 2016-2017 Public Works Street Division Operating Budget for this project in the amount of \$150,000.

DISCUSSION:

City Administration is requesting to enter into an agreement with Curtco, Inc. for the unit price purchase of crack and joint sealing services throughout the City. Curtco, Inc. performed this contract last year for these same services in the City's 2015-2016 fiscal year. All previous work was performed timely and to the satisfaction of the Public Works Department.

RECOMMENDATION:

Funds are provided under the 2016-2017 Public Works Street Division Operating Budget for crack and joint sealing services. City Administration recommends approving Resolution No. 2016-102.

POSSIBLE COUNCIL ACTION:

1. I move to approve Resolution No. 2016-102 awarding a contract to Curtco, Inc. For concrete crack and joint sealing services through the City of Grand Prairie's Local Government Purchasing Cooperative contract pricing.
2. I move to approve Resolution No. 2016-102 awarding a contract to Curtco, Inc. for concrete crack and joint sealing services through the City of Grand Prairie's Local Government Purchasing Cooperative contract pricing, with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:

1. Resolution No. 2016-102
2. Interlocal Agreement with the City of Grand Prairie



RESOLUTION NO. 2016-102

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS AWARDED A UNIT PRICE CONTRACT TO CURTCO, INC. FOR THE 2016-2017 CRACK AND JOINT SEALING SERVICES THROUGH THE CITY OF GRAND PRAIRIE'S LOCAL GOVERNMENT PURCHASING COOPERATIVE CONTRACT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City Administration sought and obtained a unit price contract through an interlocal agreement with the City of Grand Prairie purchasing cooperative for 2016-2017 crack and joint sealing services; and

WHEREAS, having determined Curtco, Inc. has submitted the lowest qualified unit price bid, City Administration recommends awarding a unit price contract for crack and joint sealing services to Curtco, Inc.; and,

WHEREAS, the City Council of the City of Farmers Branch, Texas, finds it to be in the public interest to approve the recommendation of the City Administration.

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

SECTION 1. The City Manager is hereby authorized to sign, on behalf of the City, a unit price contract with Curtco, Inc. for the 2016-2017 Crack and Joint Sealing Services in accordance with unit prices submitted to the City of Grand Prairie pursuant to the initial term of one year and an option for three (3) renewal terms of one (1) year each. The City Manager is further authorized to exercise the optional term extensions if he deems it in the public interest and subject to availability of current funds to pay for same.

SECTION 2. This Resolution shall be effective immediately upon approval.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THE 15th DAY OF NOVEMBER, 2016.

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:11/2/16:81082)

**MASTER INTERLOCAL COOPERATIVE PURCHASING AGREEMENT
BETWEEN THE CITY OF GRAND PRAIRIE
AND THE CITY OF FARMERS BRANCH**

WHEREAS, Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, and Chapter 271.102 of the Texas Local Government Code authorize all local governments to contract with each other to perform governmental functions or services including administrative functions normally associated with the operation of government such as purchasing of necessary equipment, supplies and services;

WHEREAS, The City of Grand Prairie and the City of Farmers Branch desire to enter into this Agreement for the purpose of fulfilling and implementing their respective public and governmental purposes, needs, objectives, programs and services;

WHEREAS, The City of Grand Prairie and the City of Farmers Branch represent that each are independently authorized to perform the functions or services contemplated by this Agreement;

WHEREAS, it is deemed in the best interest of all participating governments that said governments do enter into a mutually satisfactory agreement for the purchase of necessary equipment, supplies, and services;

WHEREAS, the participating governments are of the opinion that cooperation in the purchasing of equipment, supplies, services and auctions will be beneficial to the taxpayers of the governments through the efficiencies and potential savings to be realized; and

WHEREAS, each party has sufficient resources to perform the functions contemplated by this Agreement;

NOW THEREFORE, the parties hereto, in consideration of the mutual covenants and conditions contained herein, promise and agree as to each of the other as follows:

1. The City of Grand Prairie and the City of Farmers Branch are authorized to participate in each other's current and/or future contracts for goods and services. Said contracts shall have been established in accordance with all appropriate procedures governing competitive bids and competitive proposals, if required.
2. The City of Grand Prairie and the City of Farmers Branch agree that the ordering of goods and services is the responsibility of the local government seeking to obtain such goods and services under the established contract, and that participating government shall deal directly with the vendor in obtaining the goods and services and payment therefore. The participating government shall be liable to the vendor only for goods and services ordered and received by it, and shall not, by the execution of this Agreement, assume any additional liability. Neither the

City of Grand Prairie nor the City of Farmers Branch warrant, or is responsible for, the quality or delivery of goods or services from the vendor under contract. Should a dispute arise between a participating government and a vendor, the same shall be handled by and between that participating government and the vendor.

3. Each government shall pay invoices directly to the providers of goods and services that are invoiced and delivered directly to each respective government.
4. Participation of either government in any cooperative purchasing activity is strictly voluntary. Nothing in this Agreement shall prevent either governments from purchasing and/or accepting and awarding bids, proposals and contracts subject to this Agreement on its own behalf.
5. Each government shall ensure that all applicable laws and ordinances have been satisfied.
6. **Effective Date and Term.** This Agreement shall be effective when signed by the last party who's signing makes the Agreement fully executed and will remain in full force and effect indefinitely. Any party may modify or terminate this Agreement as provided in Paragraph(s) 7 or 8.
7. **Modification.** The terms and conditions of this Agreement may be modified upon the mutual consent of all parties. Mutual consent will be demonstrated by approval of the governing body of each party hereto. No modification to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of all parties.
8. **Termination.** This Agreement may be terminated at any time by the City of Grand Prairie or the City of Farmers Branch, with or without cause, upon thirty (30) days written notice to the other party in accordance with Paragraph 11 herein.
9. **Hold Harmless.** To the extent allowed by law, the City of Grand Prairie and the City of Farmers Branch agree to hold each other harmless from and against any and all claims, losses, damages, causes of action, suits and liabilities of every kind, including all expenses of litigation, court costs and attorney's fees, for injury or death of any person, for damage to any property, or for any breach of contract, arising out of or in connection with the work done under this Agreement.
10. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent

jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

11. Written Notice. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person, sent by email, by fax with successful send confirmation, or by certified mail to the last business address as listed herein.

City of Grand Prairie: Purchasing Division
Attn: Purchasing Manager
City of Grand Prairie
318 W. Main St.
Grand Prairie, TX 75050
972/237-8269 ph ~ 972/237-8265 fax
purchasingfax@gptx.org

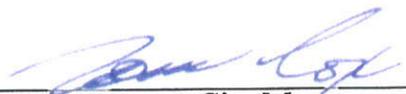
City of Farmers Branch: Office of the Purchasing Agent
Attn: Lee Hammock, C.P.M.
City of Farmers Branch
13000 William Dodson Pkwy.
Farmers Branch, TX 75234
972/919-2554 ph ~ 972/919-2689 fax
lee.hammock@farmersbranchtx.gov

12. Entire Agreement. It is understood that this Agreement contains the entire agreement between the parties and supercedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.
13. Amendment. No Amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.
14. Texas Law. This Agreement has been made under and shall be governed by the laws of the State of Texas.
15. Place of Performance. Performance and all matters related thereto shall be in the County of the government originating the bid. This shall be Dallas County, Texas, United States of America for the City of Farmers

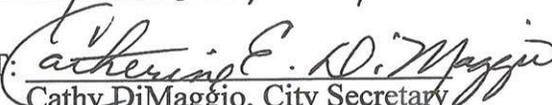
Branch and shall be Dallas County, Texas, United States of America for the City of Grand Prairie.

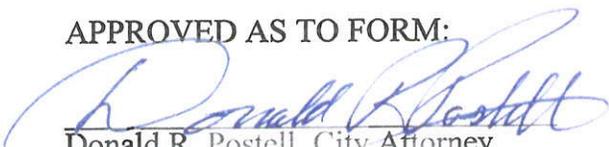
16. **Authority to Enter Contract.** Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective Government.
17. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.
18. **Agreement Read.** The parties acknowledge that they understand and intend to be bound by the terms and conditions of this Agreement.
19. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical copies, each of which shall be deemed an original for all purposes.

CITY OF GRAND PRAIRIE

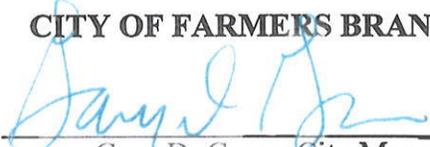
BY: 
Tom Cox, Deputy City Manager

DATE: March 27, 2014

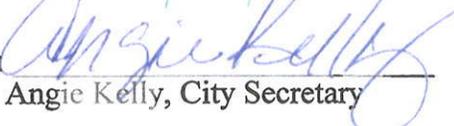
ATTEST: 
Cathy DiMaggio, City Secretary

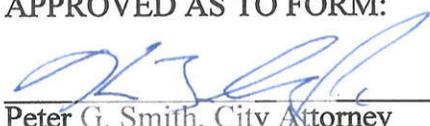
APPROVED AS TO FORM:

Donald R. Postell, City Attorney

CITY OF FARMERS BRANCH

BY: 
Gary D. Greer, City Manager

DATE: 2/26/14

ATTEST: 
Angie Kelly, City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-103

Agenda Date: 11/15/2016

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: F.4

Consider approving Resolution No. 2016-103 authorizing the City Manager to execute a Project Specific Agreement with Dallas County for roadway repairs and improvements to Alpha Road between Midway Road and Inwood Road; and take appropriate action.

BACKGROUND:

Dallas County has provided financial assistance to cities within the County of Dallas for maintenance of Type B roadways. Type B roadways consist of thoroughfares and bridges of major cross county importance. The City entered into a Master Road & Bridge Interlocal Maintenance Agreement with Dallas County in January, 2013, which is effective for five (5) years. In order to participate with Dallas County, the City must have a Project Specific Agreement for each specific project requested.

DISCUSSION:

The City of Farmers Branch has submitted a request for roadway maintenance funding assistance for Alpha Road between Midway Road to Inwood Road which requires the execution of a Project Specific Agreement with Dallas County. The City shall be responsible for the construction administration and any payments made for this project. The Public Works 2016-2017 Public Works Streets Operations Budget has allotted funds for street panel replacement projects throughout the City. This project is estimated to be \$700,000 and Dallas County will provide a fifty percent match in an amount not to exceed \$150,000.00 for this specific section of street.

The City and County desire to enter into a Project Specific Agreement at this time. The qualifying Road and Bridge Project funding is for Alpha Road between Midway Road and Inwood Road. The construction work will consist of panel replacement, curb and gutter, ADA ramps and street markings within the limits of this roadway.

RECOMMENDATION:

City Administration recommends approving Resolution No. 2016-103 authorizing the City Manager to execute a Project Specific Agreement with Dallas County for roadway repairs and improvements to Alpha Road between Midway Road and Inwood Road.

POSSIBLE COUNCIL ACTION:

1. I move to approve Resolution No. 2016-103 authorizing the City Manager to execute a Project Specific Agreement with Dallas County for roadway repairs and improvements to Alpha Road

between Midway Road and Inwood Road.

2. I move to approve Resolution No. 2016-103 authorizing the City Manager to execute a Project Specific Agreement with Dallas County for roadway repairs and improvements to Alpha Road between Midway Road and Inwood Road, with modifications.

3. I move to table the issue for further study or take no action.

ATTACHMENTS:

1. Location Map
2. Resolution No. 2016-103
3. Attachment "A" to Resolution No. 2016-103 - Project Specific Agreement



ALPHA RD

INWOOD RD

MIDAWAY RD

IH635

LOCATION MAP



LOCATION MAP



Date: 9/30/2016



RESOLUTION NO. 2016-103

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING A PROJECT SPECIFIC AGREEMENT WITH DALLAS COUNTY FOR REIMBURSEMENT OF ROAD MAINTENANCE FUNDS RELATIVE TO PAVEMENT REPAIRS ALONG ALPHA ROAD BETWEEN MIDWAY ROAD AND INWOOD ROAD; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on or about January 22, 2013, Dallas County (“County”) and the City entered into a Master Interlocal Agreement (“Agreement”), whereby County agreed to provide partial funding for certain duly qualified “Type B” road and bridge maintenance projects, said projects situated within the territorial limits and jurisdiction of City and to be identified by Project Specific Agreements between the City and the County; and

WHEREAS, the County has offered, and City Administration recommends entering, a Project Specific Agreement to make certain repairs and improvements for pavement sections repairs and asphalt overlay along Alpha Road from Midway Road and Inwood Road (“the Project”); and

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to concur in the foregoing recommendation.

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

SECTION 1. The City Manager is authorized to sign, on behalf of the City of Farmers Branch, the Project Specific Agreement with Dallas County set forth in Exhibit “A” attached hereto.

SECTION 2. This Resolution shall become effective immediately upon approval.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 15th DAY OF NOVEMBER 2016.

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:11/2/16:81081)

EXHIBIT "A"
To Resolution No. 2016-103

(PSA attached as a separate document)

PROJECT SPECIFIC AGREEMENT

RE: PAVEMENT REPAIRS ON ALPHA ROAD BETWEEN INWOOD ROAD AND MIDWAY ROAD; “TYPE B” PUBLIC ROADWAY -- MADE PURSUANT TO MASTER ROAD & BRIDGE INTERLOCAL MAINTENANCE AGREEMENT BETWEEN DALLAS COUNTY, TEXAS AND CITY OF FARMERS BRANCH, TEXAS

This Project Specific Agreement, (hereinafter “PSA”), supplemental to the Master Interlocal Agreement, is made by and between Dallas County, Texas (hereinafter “County”) and the City of Farmers Branch, Texas (hereinafter “City”), acting by and through their duly authorized representatives and officials, for the purpose of transportation-related maintenance, repairs and improvements to be undertaken in certain designated blocks of enumerated public roadway as more fully set forth and described in Attachments “A” and “B”, incorporated herein by reference (“Project”).

WITNESSETH

WHEREAS, Chapter 791 of the Texas Government Code provides authorization for local governments to contract amongst themselves for the performance of governmental functions and services; and

WHEREAS, on or about January 22, 2013, County and City entered into a Master Interlocal Agreement (“Master Agreement”), whereby County agreed to provide partial funding for such duly qualified “Type B” road and bridge maintenance projects, said projects situated within the territorial limits and jurisdiction of City; and

WHEREAS, City now desires County to provide partial funding for such a duly qualified project consisting of reconstruction of designated blocks of enumerated public roadway situated in the City of Farmers Branch, Texas, as more fully described on Attachment “A”.

NOW THEREFORE THIS PSA is made by and entered into by County and City, for the mutual consideration stated herein.

Article I **Project Specific Agreement**

This PSA is specifically intended to identify a Project authorized under the Master Agreement. This document sets forth the rights and responsibilities pertaining to each party hereto, and is additional and supplemental to the Master Agreement, and all amendments and supplements thereto, which are incorporated herein. All terms of the Master Agreement remain in full force and effect, except as modified herein. In the event of any conflict between the Master Agreement and this PSA, this PSA shall control.

Article II
Incorporated Documents

This PSA incorporates, as if fully reproduced herein word for word and number for number, the following items:

1. Master Interlocal Agreement authorized by County Commissioners Court Order. 2013-0277 dated February 12, 2013, and additions thereto as incorporated herein,
2. The Construction Estimate (Attachment “A”), and
3. Map/Diagram of the Proposed Work Site (Attachment “B”).

Article III
Term of Agreement

This PSA becomes effective when signed by the last party whose signature makes the PSA fully executed and shall terminate upon the completion and acceptance of the Project by City or upon the terms and conditions in the Master Agreement.

Article IV
Project Description

This PSA is entered into by the parties for purpose of jointly identifying and funding repair, maintenance and improvements on duly qualified “Type B” public roadway within the City of Farmers Branch, Texas. The Project shall consist of **pavement section repairs and asphalt overlay along Alpha Road between Midway Road and Inwood Road** in the City of Farmers Branch, Texas, (hereinafter “Project”), and as more fully described in Attachments “A” and “B”. The Project is authorized by the aforementioned Master Agreement, with the parties’ obligations and responsibilities governed thereby, as well as by the terms and provisions of this PSA. The Project will facilitate the safe and orderly movement of public transportation to benefit both the City and County. The City has and hereby does give its approval for expenditure of County funds for the construction, improvement, maintenance, or repair or a street located within the municipality.

Article V
Fiscal Funding

Notwithstanding anything to the contrary herein, this PSA is expressly contingent upon the availability of County funding for each item and obligation contained herein. City shall have no right of action against the County of Dallas as regards this PSA, specifically including any funding by County of the Project in the event that the County is unable to fulfill its obligations under this PSA as a result of the lack of sufficient funding for any item or obligation from any source utilized

to fund this **PSA** or failure of any funding party to budget or authorize funding for this **PSA** during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the County, at its sole discretion, may provide funds from a separate source or terminate this **PSA**. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

Notwithstanding anything to the contrary herein, this **PSA** is expressly contingent upon the availability of City funding for each item and obligation contained herein. County shall have no right of action against the City as regards this **PSA**, specifically including any funding by City of the Project in the event that the City is unable to fulfill its obligations under this **PSA** as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this **PSA** or failure of any funding party to budget or authorize funding for this **PSA** during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the City, at its sole discretion, may provide funds from a separate source or terminate this **PSA**. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

Article VI **Agreements**

I. City's Responsibilities:

1. Where necessary, City, at its own expense, shall be responsible for the following: (a) managing construction of the Project; (b) informing the public of the proposed reconstruction of the Project; (c) locating all manholes, water valves, and other utilities within the Project, (d) making or causing to be made all utility relocations or adjustments necessary for execution and completion of the Project; (e) acquiring any right-of-way necessary to complete the Project; (f) remediating any hazardous or regulated material, or other environmental hazard in the Project location, (g) receiving and processing all payments due contractors City hires to work on the Project; (h) contracting through formal bidding procedures to acquire the services of contractors; and (i) funding the purchase of all materials necessary to perform the Project construction.
2. City shall further be responsible for all maintenance when the Project is completed.

II. County Responsibilities:

1. County shall reimburse City for proportionate Project Costs, as more fully set forth in Section III below.
2. County, its Auditor or its designated representative(s) shall have the unrestricted right to audit any and all accounting or other records regarding any funds paid or claimed under this **PSA**, including, but not limited to all books, records, reports, tickets, deposits, expenditures, budget or any item therein, supporting data,

computer records and programs, and all items of hardware, software or firmware, or any other item utilized by the City regarding this PSA. City agrees that all related records shall be retained for a period of time not less than four (4) years from the date of the termination of this PSA. Such records shall be provided to the County in Dallas County, Texas and available for any audit at any time upon request. The results of any audit may be furnished to City for comment.

III. Funding:

County and City mutually agree that the initial and anticipated Project cost is approximately \$700,000.00 as set forth in Attachment "A". The parties hereto further agree that City shall be totally responsible for the construction and maintenance of said Project, and that County shall only be responsible to City for a contribution, in the form of reimbursements, of \$150,000.00, anticipated Project cost.

1. Should the final cost of the Project exceed the initial and anticipated Project costs, City agrees to either reduce the scope of the Project, or to seek additional funding to facilitate its completion. In either event, City shall be solely responsible for all such costs in excess thereof, and County shall bear no additional responsibilities beyond those contemplated herein.
2. City shall submit invoices to County, which invoices shall provide complete information and documentation to substantiate City's charges. County's acceptances of City's invoices are contingent upon City's compliance with County's invoicing procedures. County may withhold any disputed amounts until such time as the underlying dispute is resolved to County's satisfaction, but shall pay all undisputed amounts timely.

Article VII
Miscellaneous:

I. **Indemnification.** County and City agree that each shall be responsible for its own negligent acts or omissions or other tortious conduct in the course of performance of this Agreement, without waiving any governmental immunity available to County or City or their respective officials, officers, employees, or agents under Texas or other law and without waiving any available defenses under Texas or other law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

II. **No Third Party Beneficiaries.** The terms and provisions of this PSA are for the benefit of the parties hereto and not for the benefit of any third party. It is the express intention of County and City that any entity other than County or City receiving services or benefits under this PSA shall be deemed an incidental beneficiary only. This PSA is intended only to set forth the contractual right and responsibilities of the parties hereto.

- III. Applicable Law. This PSA is and shall be expressly subject to the County's and City's Sovereign Immunity and/or Governmental Immunity of City, Title 5 of the Texas Civil Practice and Remedies Code, as amended, and all applicable Federal and State Law. This PSA shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any legal action regarding this PSA shall lie in Dallas County, Texas.
- IV. Notice. All notices, requests, demands, and other communication under this PSA shall be tendered in writing and shall be deemed to have been duly given when either delivered in person, via e-mail, or via certified mail, postage prepaid, return receipt requested to the respective parties as follows:

COUNTY:

Director of Public Works
Dallas County
411 Elm Street, Suite 400
Dallas, Texas 75202

and

Commissioner Mike Cantrell
Road & Bridge District #2
411 Elm Street, Second Floor
Dallas, Texas 75202

CITY:

Charles Cox, City Manager
City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With copy to:

Director of Public Works
City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, Texas 75234

and

Peter G. Smith
Nichols, Jackson, Dillard, Hager &
Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

- V. Assignment. This PSA may not be assigned or transferred by either party without the prior written consent of the other party.
- VI. Binding Agreement; Parties Bound. Upon execution by the parties, this PSA shall constitute a legal, valid and binding obligation of the parties, their successors and permitted assigns.
- VII. Amendment. This PSA may not be amended except in a written instrument specifically referring to this PSA and signed by the parties hereto.
- VIII. Counterparts. This PSA may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

- IX. Severability. If one or more of the provisions in this PSA shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not cause this PSA to be invalid, illegal or unenforceable, but this PSA shall be construed as if such provision had never been contained herein, and shall not affect the remaining provisions of this PSA, which shall remain in full force and effect.
- X. Entire Agreement. This PSA embodies the complete agreement of the parties, and except where noted, it shall supersede previous and/or contemporary agreements, oral or written, between the parties and relating to matters in the PSA.
- XI. Contingent. This PSA is expressly subject to and contingent upon formal approval by the Dallas County Commissioners Court and by resolution of the City Council of the City of Farmers Branch.

The City of Farmers Branch, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution No. 2016-103, dated the 15th day of November, 2016.

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number _____ and passed on the _____ day of _____, 2016.

Executed this the _____ day of _____, 2016.

Executed this the _____ day of _____, 2016.

CITY OF FARMERS BRANCH:

COUNTY OF DALLAS:

 CHARLES COX
 CITY MANAGER

 CLAY LEWIS JENKINS
 COUNTY JUDGE

ATTEST:

APPROVED AS TO FORM:*
 SUSAN HAWK, DISTRICT ATTORNEY

 AMY PIUKANA
 CITY SECRETARY

APPROVED AS TO FROM:

 Sherri Turner
 Assistant District Attorney

 PETER G. SMITH
 CITY ATTORNEY

*By law, the District Attorney’s Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

ATTACHMENT "A"

**PROJECT SPECIFIC AGREEMENT
TYPE B ROADWAY PROJECT**

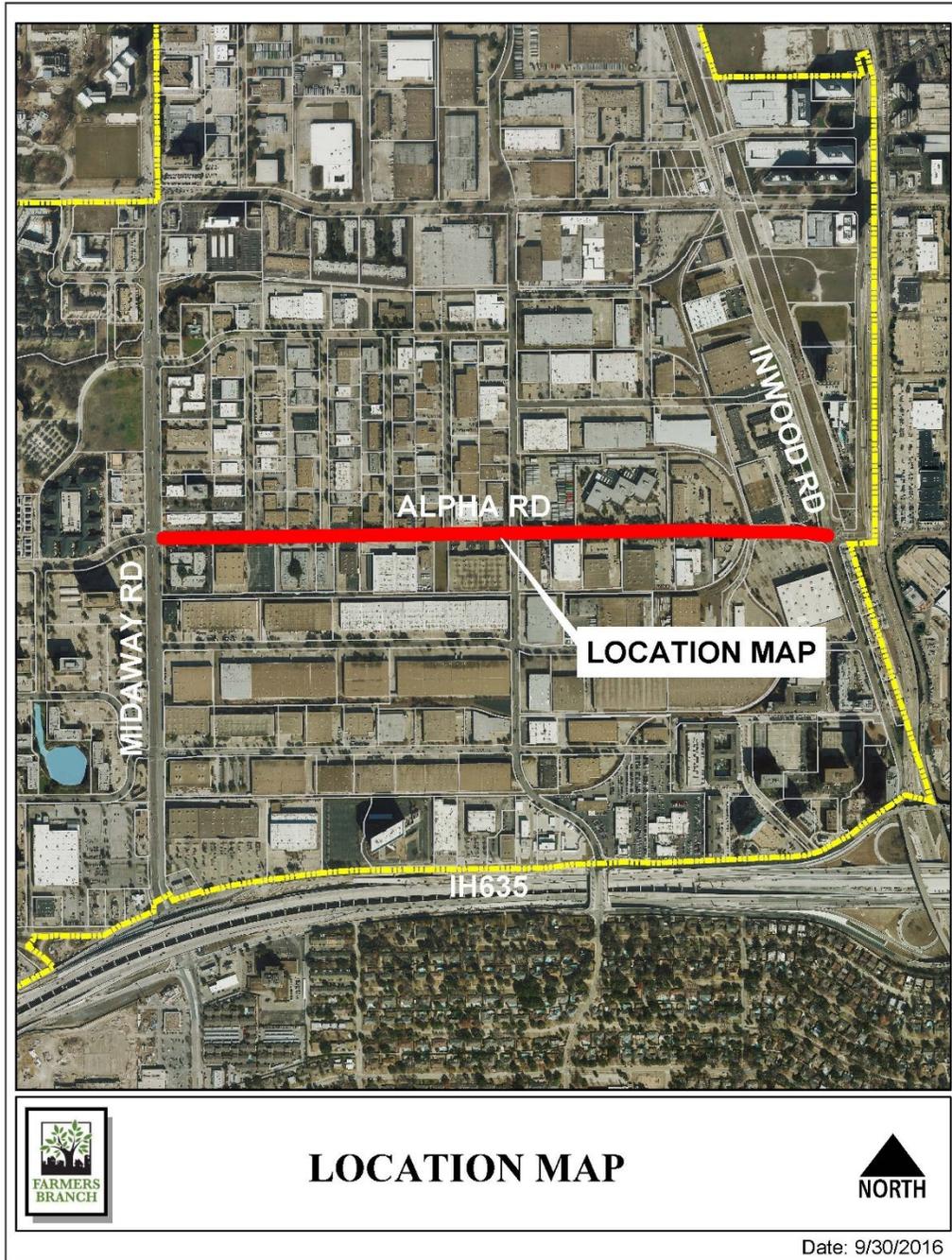
Dallas County Road and Bridge Funding

Improvements in City of Farmers Branch 2016-2017

Projects: Location: Alpha Road from Midway Road to Inwood Road
Concrete section repairs, with new 2" asphalt overlay and new lane markings, and other associated cost with pavement repairs on this section of street.
Estimated Cost for the entire section is \$700,000.00.

ATTACHMENT "B"

Map/Diagram of the Proposed Work Site
Location



Document Path: G:\0B-CAD & GIS\GIS\Arcmap Projects\Location Maps\Location Map 2016C.mxd



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-106

Agenda Date: 11/15/2016

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: F.5

Consider approving Resolution No. 2016-106 authorizing the City Manager to sign the First Amended and Restated Joint Fire Training Center Interlocal Agreement among the cities of Carrollton, Coppell, Farmers Branch and the Town of Addison; and take appropriate action.

BACKGROUND:

On February 4, 2014 the initial joint fire training facility business plan was presented to City Council. The plan outlined a joint project among the cities of Carrollton, Coppell and Farmers Branch and the Town of Addison. The project budget was estimated at \$2,809,627 with the construction and operational costs being proportionately shared as follows: Carrollton (42.00%), Coppell (22.70%), Farmers Branch (23.70%), and Addison (15.20%).

During the first quarter of 2014, the project was first presented to the various City Councils for consideration. Three of the four cities authorized moving forward with the project. The Addison city council decided to not provide funding for its share of the project and opted to terminate further participation.

On December 2, 2014, Resolution No. 2014-111 was approved by City Council authorizing the City Manager to negotiate and sign a Joint Fire Training Center Interlocal Agreement among the cities of Carrollton, Coppell, and Farmers Branch for the construction and operation of a joint fire training facility. The Agreement was negotiated and signed and became effective on April 1, 2015.

On February 16, 2016, Resolution No. 2016-018 approved a construction budget of \$2,383,750 for the facility. Construction costs were per the Interlocal Agreement with the City of Carrollton paying 49.56% (\$1,179,956), Coppell paying 26.80% (\$638,845) and Farmers Branch paying 23.70% (\$564,948).

Over the past several months, the Town of Addison, has hired a new City Manager and a new Fire Chief, and several new Councilmembers have been elected. In its review of several current and past project opportunities, the Town of Addison administration, along with its city council, has revisited the prior decision to not participate in the ownership and management of the Project. Based on that review, the Town included funding in its budget funds which it hoped would be sufficient to petition the other three Cities for re-inclusion in the project. The Carrollton, Coppell, and Farmers Branch Fire Chiefs and City Managers are in support of this request. The four cities' public safety systems are

intertwined in the new HARRIS public safety radio system, shared dispatch services provided by the jointly managed North Texas Emergency Communications Center, our joint SWAT team, and most importantly the robust Automatic Aid agreements for providing emergency response across borders that of which all cities are members.

DISCUSSION:

On September 14, 2016, Fire Chief Steve Parker presented to council a construction update on the training tower and on the request for Addison to become a participant in the project.

Including Addison in the Joint Fire Training Facility project will improve the level of emergency service provided across all communities. It would allow for Addison police officers and firefighters to receive the same hands-on, robust training as those from the other three cities, and ensure all public safety officers are on the same page so they can safely operate at the same high level of proficiency while responding together.

The Town of Addison is requesting to join the project in FY 2016-17 and pay 100% of their proportional share of the facility's shared operational costs. However, Addison would pay their capital investment of \$451,171 over three years:

FY 2016-17: \$110,000

FY 2017-18: \$166,425

FY 2018-19: \$174,746

Their capital funds would be used to complete all remaining capital improvements (North drive surface, 4th floor burn room, outdoor storage and classroom building, and multiple training props) that were in the initial facility design, but were removed due the budget having to be amended from four to three partner cities.

Although paying their capital contribution over time is not ideal, having Addison participate in the project will reduce the Carrollton, Coppell, and Farmers Branch financial commitment to the project in both the short and long term.

Farmers Branch would see an immediate reduction of \$11,105 in operational costs in FY 2016-17 and would not have to provide funding in future budgets to pay for the additional items that would maximize the facility's training potential.

RECOMMENDATION:

Staff recommends adopting Resolution No. 2016-106, authorizing the City Manager to sign the First Amended and Restated Joint Fire Training Center Interlocal Agreement among the cities of Carrollton, Coppell, Farmers Branch, and the Town of Addison.

POSSIBLE COUNCIL ACTION:

1. Motion to approve Resolution No. 2016-106 authorizing the City Manager to sign the First

Amended and Restated Joint Fire Training Center Interlocal Agreement between the cities of Carrollton, Coppell, Farmers Branch, and the Town of Addison.

2. Motion to deny Resolution No. 2016-106.
3. Motion to table the issue for further study or take no action.

ATTACHMENTS:

1. Resolution No. 2016-106 with First Amended and Restated Joint Fire Training Center Interlocal Agreement attached as Exhibit "A".
2. First Amended and Restated Joint Fire Training Center Interlocal Cooperation Agreement.



RESOLUTION NO. 2016-106

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS AUTHORIZING THE CITY MANAGER TO THE FIRST AMENDED AND RESTATED JOINT FIRE TRAINING CENTER INTERLOCAL COOPERATION AGREEMENT AMONG THE CITIES OF CARROLLTON, COPPELL, FARMERS BRANCH AND THE TOWN OF ADDISON FOR THE CONSTRUCTION, EQUIPPING, AND OPERATION OF A JOINT FIRE TRAINING FACILITY; PROVIDING AN EFFECTIVE DATE

WHEREAS, on or about April 1, 2015, the Cities of Coppell, Carrollton, and Farmers Branch enter into that certain *Joint Fire Training Center Interlocal Cooperation Agreement Among the Cities of Carrollton, Coppell and Farmers Branch* (“the Agreement”) setting forth the agreement of the Cities to jointly design, construct, maintain, operate, manage, and use a fire training facility (“the Facility”) on surplus property owned by the City of Farmers Branch; and

WHEREAS, the Town of Addison has expressed an interest to be a party to the Agreement and pay for certain capital improvements and purchases as consideration for becoming a joint owner of the Facility; and

WHEREAS, City Administration, along with representatives of the Cities of Coppell and Carrollton, have negotiated an amended and restated agreement with the Town of Addison adding the Town of Addison as a party to the Agreement and providing for Addison to make certain payments and performance of certain obligations in consideration, and recommends the approval of such amended and restated agreement;

WHEREAS, the City Council of the City of Farmers Branch, finds it to be in the public interest to authorize the negotiation and execution of the above described interlocal agreement;

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

SECTION 1. The City Manager is authorized to sign, on behalf of the City of Farmers Branch, an Amended and Restated Joint Fire Training Center Interlocal Cooperation Agreement with the cities of Carrollton and Coppell and the Town of Addison, in the form substantially as set forth in Exhibit “A,” attached hereto and incorporated herein by reference, and to take such actions as reasonable and necessary to carry out the City’s obligations pursuant to said agreement including, but not limited to, paying the City’s share for construction of the facility, purchase of equipment, costs of operation and maintenance of the facility from available funds in the City’s approved budget, and execution of easements.

SECTION 2. This Resolution shall become effective immediately upon approval.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS
BRANCH, TEXAS, THIS 15th DAY OF NOVEMBER, 2016.**

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:11/7/16:81179)

Resolution No. 2016-106

Exhibit "A"

STATE OF TEXAS §
 § **First Amended and Restated Joint Fire Training Center**
COUNTY OF DALLAS § **Interlocal Cooperation Agreement**

This **First Amended and Restated Joint Fire Training Center Interlocal Cooperation Agreement** ("Agreement") is entered into as of the Effective Date by and among the **CITY OF CARROLLTON, TEXAS** ("Carrollton"), the **CITY OF COPPELL, TEXAS** ("Coppell") the **CITY OF FARMERS BRANCH, TEXAS**, ("Farmers Branch"), and the **TOWN OF ADDISON, TEXAS** ("Addison") all of whom are Texas home rule municipalities operating under the authority of their respective governing bodies (Carrollton, Coppell, Farmers Branch, and Addison are hereinafter sometimes referred to collectively as "the Cities" or the "Parties" or individually as a "City" or a "Party").

RECITALS

WHEREAS, the Cities are political subdivisions within the State of Texas engaged in the provision of governmental services for the benefit of its citizens; and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the "Act") provides authority for local governments of the State of Texas to enter into interlocal agreements with each other for the purpose of performing governmental functions and services as set forth in the Act; and

WHEREAS, because of their location within the DFW Metroplex and their proximity to each other, the Cities are regularly called upon to provide mutual aid assistance to each other on firefighting calls for service; and

WHEREAS, none of the Cities presently owns a fire fighting training facility for use by their respective fire departments; and

WHEREAS, being required to use firefighting training facilities owned by others requires travel time that results in lost in-service hours, requires the Cities' fire departments to schedule training at times subject to the schedules of others which may not be the most convenient for the Cities, and inhibits the ability of the Cities to conduct joint training to facilitate their ability to provide mutual aid assistance;

WHEREAS, effective April 1, 2015, Carrollton, Coppell, and Farmers Branch are parties to that certain *Joint Fire Training Center Interlocal Cooperation Agreement Among the Cities of Carrollton, Coppell and Farmers Branch* ("the Original Agreement") for the purpose of establishing the terms by which Carrollton, Coppell, and Farmers Branch agreed to jointly design, construct, maintain, operate, manage, and use a fire training facility on property owned by Farmers Branch; and

WHEREAS, Addison desires to become a party to the Original Agreement and to make certain payments to be used for equipping the training facility as well as pay its share for toward the operating and maintenance costs of said training facility; and

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WHEREAS, Carrollton, Coppell, and Farmers Branch desire to add Addison as a party to the Original Agreement; and

WHEREAS, the Cities desire to enter into this Agreement for the purpose of adding Addison as a participant in the capital and operation and maintenance costs of the joint training facility and making certain other amendments to the Original Agreement in order to accommodate Addison as an additional party;

NOW, THEREFORE, for and in consideration of the mutual benefits and obligations set forth in this Agreement, the Cities agree as follows:

I. DEFINITIONS

Unless the context clearly indicates a different meaning, the words and phrases set forth in this Article I shall have the following meanings when used in this Agreement:

"Acceptance Date" means the date construction of the Facility is complete to the extent that the Cities have approved the final pay request to the contractor selected to construct the Facility and have authorized payment of the final payment and retainage.

"Business Day" means any day other than a Saturday, Sunday, or official city holiday in which Farmers Branch's city hall offices are closed for business.

"Effective Date" means the date this Agreement has been approved by the governing bodies of all of the Cities and signed by the authorized representatives of each City.

"Event of Bankruptcy or Insolvency" means the dissolution or termination of a City's existence as an on-going business, insolvency, appointment of receiver for any part of City's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against City and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Facility" means, subject to agreement of the Cities on the final design, a fire training facility located on the Facility Property consisting of (1) a five story training building with masonry façade; (2) a Texas Commission on Fire Protection NFPA 1002-compliant driving course; (3) a vehicle stabilization and extrication area; (4) an outdoor meeting area/classroom; (5) multiple live fire simulators; (6) ventilation simulators; (7) ceiling and wall breaching simulators; (8) standpipe and sprinkler system simulators; (9) multiple vehicle rollover simulators, and (10) such other improvements and equipment as the Cities may agree to include in the Facility as part of the final design and equipping of the Facility or as may be modified during the Term of this Agreement.

"Facility Property" means a 1.53± acre portion of the property owned by Farmers Branch generally located at 13333 Hutton Drive, Farmers Branch, Texas, and being a portion of that real property conveyed to Farmers Branch pursuant to that certain Special Warranty Deed

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dated August 29, 2001, and recorded at Volume 2001174, Page 2511, Deed Records, Dallas County, Texas, and being more particularly depicted in Exhibit "A," attached hereto and incorporated herein by reference.

"Fire Training Facility Funds" means one or more designated restricted funds established on the books of account of the City designated in this Agreement to manage the receipt of revenues and payment of expenses relating to the construction, repair, maintenance, and operation of the Facility, to hold the funds to be used for payment of Shared Operational Costs, to hold funds in reserve to be applied to future Shared Capital, or to hold funds for such other purposes that the Cities may from time to time agree.

"Fiscal Year" means the Cities' official budget year beginning at 12:00:00 a.m. Central Time on October 1 of each calendar year and ending at 11:59:59 p.m. Central Time on September 30 of the immediately following calendar year.

"Non-Shared Operational Costs" means the costs for (1) consumable supplies and materials and (2) water, natural gas, and electricity used by a City during a training exercise at the Facility.

"Paying City" means the City which the Parties determine shall be contractually obligated for paying a Shared Capital Cost to a vendor or contractor pursuant to a contract entered for the benefit of the Parties relating to the construction, operation, repair, and/or maintenance of the Facility.

"Shared Capital Costs" means the costs relating to construction, reconstruction, remodeling, renovation, expansion and equipping of the Facility, including, but not limited to, engineering, architectural, and surveying costs, costs for demolition of existing improvements, costs for relocation and/or extension of existing utilities or construction of new utilities, costs relating to any work on adjacent property owned by Farmers Branch relating to providing access to, operation of, and parking for the Facility, costs relating to the purchase and installation of new and/or replacement equipment in the Facility or at any location on the Facility Property.

"Shared Operational Costs" means costs relating to the use, operation, management, repair, and maintenance of the Facility including, but not limited to, the costs for (i) wages and benefits of one or more employees of one of the Cities whose job duties include in whole or in part managing the operation of the Facility (provided if only a portion of the employee(s) time at work is spent managing the operation of the Facility, then only a portion of the cost of said employee's wages and benefits based on the percentage of the employee's work hours spent on managing the Facility shall constitute a Shared Operational Cost); (ii) repair and maintenance of the Facility and any equipment located within the Facility or on the Facility Property and available for use by any of the Cities; (iii) electricity, water, and sanitary sewer services, if any, used in operating the Facility; (iv) property and casualty insurance insuring against damage or destruction of improvements constituting a portion of the Facility; and (v) such other costs other than Shared Capital Costs identified in the Annual Facility Budget.

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"Structural Firefighter" means a Texas Commission on Fire Protection Structural Fire Suppression certified employee assigned to a City's fire operations division.

"Term" means, collectively, the Initial Term as defined in Section 2.01, together with each Renewal Term, as defined in Section 2.02.

II. TERM

2.01 Initial Term. This Agreement shall commence on the Effective Date and end at 11:59:59 p.m. Central Time on the last day of the Fiscal Year following the twentieth (20th) anniversary of the Acceptance Date ("the Initial Term"), unless extended or terminated earlier as provided in this Agreement.

2.02 Renewal Term. After the end of the Initial Term, this Agreement shall be extended automatically through each subsequent Fiscal Year (each being a "Renewal Term") unless terminated as provided in this Agreement.

2.03 Early Termination During Initial Term.

A. Notwithstanding anything to the contrary herein, a City may terminate without cause its participation as a Party to this Agreement (said City called hereafter the "Terminating Party") prior to the end of the Term subject to the following:

(1) The termination date must fall on the last day of a Fiscal Year;

(2) The Terminating Party must deliver notice to the other Parties not later than two (2) years prior to the date of termination;

(3) The Terminating Party shall not be entitled to reimbursement from the other Parties for payments made pursuant to this Agreement prior to the date of termination; and

(4) On or before the Terminating Party's termination date, the terminating Party shall pay to the other Parties any Non-Shared Operational Costs incurred or accrued prior to the date of the termination of the Terminating Party's participation in this Agreement.

B. Except as set forth in this Section 2.03, the Terminating Party shall have no obligation to pay any amounts which come due under this Agreement following the effective date of said City's termination of its participation in this Agreement.

C. In the event of termination by Farmers Branch, all funds held under this Agreement or administrative fees paid in advance to Farmers Branch, shall be transferred to the remaining Cities to be used in carrying out the obligations set forth in this Agreement.

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2.04 Effect of Early Termination. Upon termination of the Terminating Party as a Party to this Agreement:

A. The Terminating City forfeits, without right for reimbursement, all right, title, interest and ownership of the Facility and all property which the Terminating City contributed, conveyed, assigned or transferred to the other Cities for the operation of the Facility;

B. The Terminating City agrees and covenants to execute, and shall execute, without additional consideration, any licenses, easements, assignments, documents or agreements as may be necessary to sell, transfer, assign and convey the Terminating City's right, title, interest and ownership of the Facility and all property which the Terminating City contributed, conveyed, assigned or transferred to or for the operation of the Facility;

C. The Terminating Party, except Farmers Branch, shall be required to pay the same rates and charges for use of the Facility charged to entities who are not parties to this Agreement;

D. In the event of early termination by Farmers Branch, it shall have the right to use of the Facility, upon proper reservation similar to other entities not parties to this Agreement, to use the Facility after payment of rates and charges which are fifty percent (50%) of the then-current applicable rates and charges, in consideration of the Facility's location on property owned by Farmers Branch;

E. The Terminating Party shall not be entitled to any offset against its charges for use of the Facility from revenues generated by others who are not parties to this Agreement; and

F. If the Terminating City is Addison, Carrollton, or Coppell, the Terminating City shall execute in recordable form a release and abandonment of the easement granted by Farmers Branch to the Terminating City pursuant to Section 4.04, below.

The obligations and covenants of a Terminating City herein shall survive such Terminating City's termination under this Agreement pursuant to this Section 2.04. The non-terminating Cities may continue the operation of the Facility, or to cease operation of the Facility, terminate this Agreement and liquidate the Facility as provided herein.

III. DESIGN AND CONSTRUCTION OF FACILITY

3.01 Design of Facility; Selection of Contractors. In accordance with applicable law, Carrollton, Coppell, and Farmers Branch shall jointly (i) select one or more professionals to design and prepare the plans and specifications for the construction of the Facility; (ii) approve the design and specifications for the Facility, and (iii) select a contractor to construct the Facility. Farmers Branch shall for itself and the other Cities solicit bids and/or proposals, prepare and execute the necessary contractual agreements, and otherwise take such additional actions necessary to obtain the design and complete the construction of the Facility. Carrollton and Coppell understand, acknowledge, and agree that Farmers Branch will not be obligated to sign any contracts for the design and construction of the Facility until the City Manager of each Party signs a representation stating in substance the following:

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(1) Representatives of the City have had a fair and equal opportunity to review the proposals or bids, as the case may be, received by Farmers Branch in response to any request for proposal ("RFP") or request for bid ("RFB");

(2) Representatives of the City agree that, following review of the proposals or bids received in response to the RFP/RFB, the selected contractor or professional provides the best and most advantageous proposal to the Cities in response to the RFP or RFB;

(3) If applicable, representatives of the City have participated, or been provided an opportunity to participate, in negotiating the best and final offer from the selected professional and/or contractor and the terms and conditions of the negotiated contract;

(4) To the best of their knowledge and belief, the Cities have complied with all applicable provisions of state law relating to the procurement of proposals and/or bids for the design and construction of the Facility and the award of contracts for the design and construction of the Facility and related agreements;

(5) In the case of Carrollton and Coppell, acknowledges that Farmers Branch would not have signed the subject agreement but for the agreement of Carrollton and Coppell to pay their portions of the Shared Capital Costs; and

(6) Current funds are available to pay the City's respective share of the cost of the subject contract or purchase.

Addison acknowledges that contracts for the initial design and construction of the Facility were executed by Farmers Branch pursuant to the Original Agreement and agrees that all such contracts are acceptable to Addison without further review and consent.

3.02 Advance Payment to Paying City. The Cities agree that prior to the Paying City becoming contractually obligated to pay a Shared Capital Cost, the Cities will pay their respective share of the Shared Capital Cost to the Paying City. The Paying City agrees to place such funds into a restricted project account and that such funds shall only be used for the restricted purpose. For purposes of Shared Capital Costs related to the initial design and construction of the Facility, the Cities agree Farmers Branch will be the Paying City. The Cities agree to use their best efforts to make payments in a timely manner so that the project which is the subject of the contract is not unreasonably delayed.

3.03 Ownership of Facility.

A. The Cities agree that title to the Facility, not including the Facility Property, shall be as follows until such time as Addison has paid in full Addison's Shared Capital Costs:

- (1) Carrollton: 49.5% undivided interest.

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(2) Coppell: 26.8% undivided interest.

(3) Farmers Branch: 23.7% undivided interest.

B. The Cities agree that title to the Facility, not including the Facility Property, shall be as follows after Addison has paid in full all installments of the Addison Funds (as defined below):

(1) Carrollton: 42.0% undivided interest.

(2) Coppell: 22.7% undivided interest.

(3) Farmers Branch: 20.10% undivided interest.

(4) Addison: 15.2% undivided interest.

C. Except for the conveyance of the Easement, as set forth in Paragraph 4.04 below, to Carrollton, Coppell, and Addison, nothing herein shall be construed as (i) granting Carrollton, Coppell, or Addison any interest in the Facility Property merely because the Facility is located on or attached to the Facility Property or (ii) granting a City an ownership interest in personal property paid entirely for and owned by another City merely because said personal property constitutes a component of the Facility or the cost for operation, maintenance, or repair of the personal property constitutes a Shared Operational Cost.

3.04 Division of Shared Capital Costs. The Cities agree that the Shared Capital Costs for the initial design, construction, and equipping of the Facility shall be allocated as follows:

A. Carrollton: 49.5% undivided interest.

B. Coppell: 26.8% undivided interest.

C. Farmers Branch: 23.7% undivided interest.

Shared Capital Costs other than those relating to the initial design, construction, and equipping of the Facility or those constituting Addison Capital Cost paid with Addison Funds shall be in accordance with the allocation for Shared Operational Costs set forth in Section 4.02, below.

3.05 Addison Capital Costs. The Cities agree that Addison shall not be required to contribute to the Shared Capital Costs for the initial design, construction, and equipping of the Facility. In lieu of such participation in the Shared Capital Costs, the Cities agree that Addison shall be solely responsible for the capital costs of certain additional improvements to be made to the Facility ("Addison Capital Costs") subsequent to the Effective Date of this Agreement, including, but not limited to (i) construction of a driving surface to establish a northern entry into the Facility; (ii) the addition and/or finish out of a burn room on the fourth floor of the tower

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structure in the Facility; (iii) the design, construction, and equipping of an outdoor classroom and storage area located on the Facility Property; and (iv) the purchase of additional props and other equipment (e.g. additional car to train for forcible entry in car fires) as determined by the Facility Executive Board. Addison agrees to pay to the Paying City, the Addison Capital Costs in an amount not to exceed \$451,171.00 (the "Addison Funds") for the Addison Capital Costs in accordance with the following schedule:

- A. Not later than five (5) days after the effective date of this Agreement: \$110,000.00;
- B. On or before October 15, 2017: \$166,425.00; and
- C. On or before October 15, 2018: \$174,746.00.

If the actual cost of the Addison Capital Costs exceeds the Addison Funds, if all the Cities agree in writing, the Cities may fund the additional costs, without the necessity of an amendment to this Agreement, and such additional costs shall be allocated in accordance with Section 4.02, below. Ownership of and title to improvements made with or equipment purchased with Addison Funds shall be governed by Section 3.03.B. even if constructed, installed or purchased before Addison makes its final installment payment of Addison Funds as provided above.

3.06 Reconciliation. On or after April 1, 2019, but in any case not later than September 1, 2019, the Cities shall determine the amount Addison has paid in Addison Funds for Addison Capital Costs pursuant to Section 3.05. If the amount is less than \$451,171.00, Addison agrees to pay the difference between \$451,171.00 and the amount of Addison Funds actually spent to Carrollton, Coppell, and Farmers Branch, which amount shall be split based on the percentages set forth in Section 3.04, above.

IV. FACILITY MAINTENANCE AND OPERATION

4.01 Governance Boards. The following boards shall be established for the purpose of administering and operating the Facility:

A. Facility Executive Board. There shall be established a Facility Executive Board whose permanent members shall be the Fire Chief of each City; provided, however, each Fire Chief may appoint another officer from the City's fire department who may sit as an alternate member who shall have the right to vote on matters considered by the Facility Executive Board when the Fire Chief is absent from a meeting of the board. The Facility Executive Board shall be authorized to:

(1) Adopt rules governing the meetings of the Facility Executive Board subject to the following:

(a) A quorum of the Facility Executive Board shall be all three (3) members (which may be a combination of permanent and/or alternate members)

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for the purpose of holding meetings and the transaction of business, including voting on any matters considered by the Facility Executive Board; and

(b) The approval of any matter considered by the Facility Executive Board shall require the affirmative vote of three (3) members (permanent and/or alternate) of the Facility Executive Board.

(2) Adopt procedures relating to the operation, maintenance, and use of the Facility;

(3) Recommend to the Cities' respective city managers and governing bodies approval of contracts and related amendments and change orders, if any, related to the design, construction, reconstruction, repair, remodeling, equipping, and operation of the Facility;

(4) Prepare and recommend an annual operations and maintenance and capital improvement/replacement budget relating to the operation, maintenance, equipment, supplying and repair of the Facility ("the Facility Budget");

(5) Prepare and recommend for approval by the Cities of a rate schedule for use of the Facility by third parties; and

(6) Perform such other tasks and duties as the Cities' may from time to time unanimously agree shall be performed by the Facility Executive Board.

B. Facility Operations Committee. There shall be established a Facility Operations Committee whose permanent members shall be an officer within the Fire Department of each City appointed by each Fire Chief to serve on the committee and whose job responsibilities should, but may not necessarily include, oversight and implementation of firefighter training for the Fire Department by whom the officer is employed. The Facility Operations Committee shall be authorized to:

(1) Adopt rules governing the meetings of the Facility Operations Committee subject to the following:

(a) A quorum of the Facility Operations Committee shall be all three (3) members; and

(b) The approval of any matter considered by the Facility Operations Committee shall require the affirmative vote of all three (3) members of the Facility Operations Committee;

(2) Make recommendations to the Facility Executive Board regarding the adoption and/or amendment of the operation, maintenance, and use policies relating to operation, maintenance, and use of the Facility;

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- (3) Develop and make recommendations to the Facility Executive Board regarding the purchase of equipment, materials, hardware, software and services relating to the use, operation, maintenance, and/or repair of the Facility;
- (4) Oversee implementation of the Facility operation, maintenance, and use policies adopted by the Facility Executive Board;
- (5) Prepare the master training schedule setting forth the time and dates on which the Facility will be used by the Cities;
- (6) Approve the scheduling of use of the Facility by parties other than the Cities;
- (7) Prepare for consideration of the Facility Executive Committee standard operating procedures and policies relating to use and operation of the Facility in conformance with NFPA 1403, as amended, or such other nationally recognized operational safety standards as may be adopted from time to time by the Facility Operations Committee; and
- (8) Perform such other tasks as may from time to time be assigned by the Facility Executive Board.

C. Addison Representatives. Notwithstanding the foregoing to the contrary, Addison's representatives to the Facility Executive Board and the Facility Operations Committee, respectively, shall be non-voting members until Addison has paid its first installment of the Addison Funds into the restricted project account described in Section 3.05, above. The voting rights of Addison's representatives to the Facility Executive Board and the Facility Operations Committee shall be suspended on October 16, 2017, and/or October 16, 2018, respectively, if the installments of the Addison Funds have not been paid into the restricted project account on or before their respective due dates as provided in Section 3.05, above, which suspension shall be rescinded on the date the installments of Addison Funds have been paid. This Section 4.01.C. shall have no further effect upon Addison's payment of all installments of the Addison Funds.

D. Suspension of Participation and Voting Rights. In addition to other remedies set forth in this Agreement, the right of a City's representatives to the Facility Executive Board and the Facility Operations Committee to participate in discussions and vote on matters before said board and/or committee shall be suspended if the City has failed to timely pay to another City any amount due pursuant to this Agreement and five (5) days have passed after delivery of a written demand to the non-paying City without such payment being made.

4.02 Shared Operational Costs. For the period beginning on the Acceptance Date and ending on the last day of the second full Fiscal Year during the Term, the Cities agree to pay the Shared Operational Costs based on the following allocation:

- (1) Carrollton: 42.0% undivided interest.

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- (2) Coppell: 22.7% undivided interest.
- (3) Farmers Branch: 20.10% undivided interest.
- (4) Addison: 15.2% undivided interest.

Beginning with the third full Fiscal Year during the Term and for each Fiscal Year thereafter, each City agrees to pay its share of the Shared Operational Costs based on a ratio determined as follows:

- (1) The number of Structural Firefighter positions contained in the City’s approved annual budget for the Fiscal Year in which the Shared Operational Costs are to be paid; divided by
- (2) The total number of Structural Firefighter positions contained in the approved annual budget for all of the Cities for the Fiscal Year in which the Shared Operational Costs are to be paid.

4.03 Non-Shared Operational Costs. The Cities agree to pay in a timely manner their respective Non-Shared Operational Costs directly to the vendors with whom the Cities contract to provide services, equipment, supplies or facilities related to operation, repair, and/or maintenance of the Facility.

4.04 Easement Granting Right to Construct Facility on Facility Property. Notwithstanding anything herein to the contrary, Carrollton and Coppell shall not be required to deliver their respective shares of the Shared Capital Costs for the initial design, construction, and equipping of the Facility until Farmers Branch has conveyed to Carrollton and Coppell, respectively, a non-exclusive perpetual easement authorizing the construction, reconstruction, maintenance, repair, replacement, remodeling, use, and operation of the Facility on the Facility Property and, to the extent necessary, direct access across Farmer Branch’s adjacent property for purpose of providing ingress and egress to the Facility Property. Farmers Branch agrees to convey to Addison an easement similar in scope to the easements granted to Carrollton and Coppell; provided, however, the conveyance of such easement shall not be required until Addison has paid its last installment of the Addison Funds, in which case Farmers Branch shall sign and deliver a document conveying said easement not later than thirty (30) days after receipt of notice that the final installment of the Addison Funds has been paid into the restricted fund account as required by Section 3.05, above.

4.05 Annual Budget.

A. No later than one hundred eighty (180) days prior to the beginning of each Fiscal Year, the Facility Executive Board shall prepare, or cause to be prepared, a budget setting forth the anticipated Shared Capital Costs, Shared Operational Costs, and Non-Shared Operational Costs (the “Annual Facility Budget”) for said Fiscal Year. The Annual Facility Budget must be recommended for approval by a majority vote of the entire Facility Executive Board. After

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consideration by the Facility Executive Board, the Annual Facility Budget shall be submitted to the City Manager of each City for review, approval and inclusion of the amount of each City's respective share of the Annual Facility Budget into the Cities' respective annual general municipal budget.

B. The Annual Facility Budget shall clearly indicate the amounts, sources and purposes of revenues to be contributed by each City as its share of the Annual Facility Budget. The Annual Facility Budget shall not reflect revenues anticipated from any source other than the Cities for the Fiscal Year to which the Annual Facility Budget applies; however, it may reflect credits against the Cities' shares of Shared Capital Costs and/or Shared Operational Costs to be paid in the Fiscal Year based on revenues received from third parties in the prior Fiscal Year.

C. If the Facility Executive Board fails to approve and recommend the Annual Facility Budget for a particular Fiscal Year, then the Annual Facility Budget for the then current Fiscal Year shall be deemed to be the Annual Facility Budget recommended for the next Fiscal Year.

D. Failure of a City to include in the City's annual budget funds to pay its share of Shared Operational Funds for any Fiscal Year shall constitute a notice of termination of that City's participation in this Agreement; in which case said City's right to use the Facility shall be immediately suspended until said City appropriates funds to pay its share of the Shared Operational Costs and, in fact, pays such funds as provided in Section 4.14, below. A City which fails for two consecutive Fiscal Years to include in its annual budget the funds necessary to pay its share of Shared Operational Costs shall be deemed to be a Terminating Party pursuant to Article II of this Agreement.

4.06 Provision of Administrative Services; Administrative Fee.

A. As of the Effective Date, Farmers Branch shall provide certain administrative services with respect to operation of the Facility including, but not limited to:

(1) The receipt, deposit, and investment of funds received from the Cities and other sources relating to the Facility including, but not limited to, funds to pay Shared Capital Costs and Shared Operational Costs;

(2) Payment by check or wire transfer of contractors, suppliers, and other vendors for expenses incurred for Shared Capital Costs and Shared Operational Costs from funds available in the Fire Training Facility Funds;

(3) Legal services relating to the preparation and/or review of agreements, policies, procedures, and other matters relating to the Facility through the Farmers Branch city attorney; and

(4) Purchasing and contracting services relating to operation, maintenance, and repair of the Facility.

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B. The Annual Facility Budget shall set forth a not-to-exceed amount to be paid to Farmers Branch for the applicable Fiscal Year as reimbursement for the out-of-pocket costs incurred by Farmers Branch for providing the administrative services described in this Section 4.06 plus a reasonable overhead charge ("the Annual Administrative Fee"). The amount set forth in the Annual Facility Budget for the Annual Administrative Fee shall be the maximum amount paid to Farmers Branch for providing the described administrative services. In the event Farmers Branch defaults or terminates participation in this Agreement, Farmers Branch shall have no further responsibilities under Section 4.06.A and shall no longer be entitled to the Annual Administrative Fee. The remaining Cities shall determine how to appropriately apportion Farmers Branch's previous responsibilities and rights under this Section 4.06.

C. The Cities may from time to time during the Term provide for a different City to provide the administrative services described herein, which change can be made without the necessity of amending this Agreement provided the change is acknowledged in writing signed by the City Managers of the Cities. In the event of such a change, the provisions in Section 4.06.B., above, relating to the establishment and payment of the Annual Administrative Fee shall apply to the City providing the services.

4.07 Scheduling Use of Facilities. After the Acceptance Date, the Coppell Fire Chief or designee, shall be primarily responsible for preparing the master schedule relating to the use of the Facility ("the Master Schedule"). In preparing the Master Schedule, the following factors shall be taken into consideration in determining who can use the Facility or any part thereof at any particular time:

A. Use by one or more of the Cities shall take precedence over use by another entity;

B. The amount of time the Cities may reserve the Facility for use during a Fiscal Year shall to the extent reasonably possible be allocated on a percentage basis in the same manner as the allocation of Shared Operational Costs is determined pursuant to Section 4.02 for that Fiscal Year; and

C. Scheduling shall be in accordance with policies and procedures approved by the Facility Executive Board.

The Master Schedule shall be reviewed on a regular basis by the Facility Operations Committee, which shall have the authority to amend the Master Schedule. The Cities may agree to reassign the duties of preparing and maintaining the Master Schedule to a different City without the necessity of amending this Agreement provided such reassignment is memorialized in writing and signed by the members of the Facility Executive Committee. Notwithstanding Paragraph B, above, if the actual amount of time the Facility is used by the Cities during a Fiscal Year differs from the allocation of time to which the Cities are entitled during that Fiscal Year because one or more of the Cities elected to use the Facility when the Facility was not scheduled for use by any of the other Cities, there shall be no adjustment of the Cities' shares of the Annual Facility Budget.

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4.08 Maintenance of the Facility. Upon the Acceptance Date, the Carrollton Fire Chief, or designee, shall be responsible for coordinating and inspecting the repair and maintenance of the Facility on behalf of the Cities. Carrollton shall not be required to directly spend any funds with respect to the performance of any repairs or maintenance, which expenditures shall be paid from the Fire Training Facility Funds pursuant to agreements entered into between Farmers Branch and the appropriate contractor or vendor on behalf of the Cities.

4.09 Right to Access and Use Facility. Provided a City has complied with the provisions of this Agreement including, but not limited to, payment of the City's share of Shared Capital Costs and Shared Operational Costs, each City shall have the right to access and use the Facility in accordance with the policies and procedures established by the Facility Executive Board. At no time shall the Facility Executive Board be authorized to adopt any rule or procedure which excludes a City from accessing or using the Facility as long as the City is not in default (after notice of such default has been received by the City and the City has been provided a reasonable opportunity to cure the default) of this Agreement.

4.10 Revenues from Third Party Use. The Cities agree that revenues received from charges and fees assessed to third parties for the use of the Facility shall be applied in the following priority:

A. Payment for any consumables used by the third party during its use of the Facility;

B. After deducting the amount required by Paragraph A, fifty percent (50%) of the net amount shall be placed in a Shared Operational Costs reserve fund the purpose of which is to hold the funds until the next subsequent Fiscal Year, at which time those funds may be identified as revenues and applied to the payment of the Shared Operational Costs; and

C. The remaining fifty percent (50%) of the net amount shall be placed in a Shared Capital Cost reserve fund and held until appropriated for payment of a future Shared Capital Cost.

4.11 Property and Casualty Insurance.

A. Farmers Branch agrees to purchase property fire and casualty insurance to cover damage or destruction to the Facility resulting from windstorm, tornados, fire, theft, or other casualty in an amount which provides for the replacement value of the Facility, including its structures and equipment.

B. The amount of the premium to be paid for the insurance coverage purchased pursuant to Section 4.11.A. shall be a line item in the Annual Facility Budget. Farmers Branch shall be entitled to reimbursement to the extent of the funds allocated to the Annual Facility Budget for the amount paid by Farmers Branch for the foregoing fire and casualty insurance.

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C. In the event of a casualty loss to any structure constructed as part of the Facility or equipment installed as part of the Facility, any proceeds paid from an insurance claim shall be first applied to the repair or replacement of the portion of the structure and/or equipment in the Facility which was damaged or destroyed. In the event the insurance claim proceeds received exceed the amount necessary to make the required repairs or replacement of improvements or equipment, such excess proceeds shall be placed in the Shared Capital Costs reserve fund for use on a subsequent Shared Capital Costs expenditure.

D. In the event that the damage or loss to the Facility is so extensive that the Cities elect to not reconstruct the Facility, insurance claim proceeds received by Farmers Branch in relation to the loss shall first be used to demolish the remaining improvements and restore the Facility Property to substantially the condition prior to the Effective Date, then to pay any accrued but not yet paid Shared Operational Costs, then distributed to the Cities based on the then current allocation for Shared Capital Costs.

4.12 Use of Existing Farmers Branch Office and Other Facilities.

A. Pursuant to this Agreement, Farmers Branch agrees to provide to the other Cities the non-exclusive right to use office space within Farmers Branch's Fire Station No. 3 for use by the training officers of the other Cities while the other Cities are conducting training at the Facility. The determination of which space shall be used shall be at the sole discretion of Farmers Branch. While Farmers Branch will use reasonable efforts to provide an unoccupied space, Carrollton, Coppell, and Addison understand and agree that the office space selected by Farmers Branch for use by the other Cities during training may also be occupied by Farmers Branch personnel.

B. Farmers Branch may, at its sole option, make such office space available to third parties using the Facility.

C. Farmers Branch agrees to make available to the Cities the following:

(1) Use of the training room and audio visual equipment located in Farmers Branch's Fire Station No. 3, when available during the days in which the other Cities are using the Facility; and

(2) Self-Contained Breathing Apparatus ("SCBA") compressor to recharge SCBA tanks; and

(3) Access to restrooms, coffee, and other public areas.

The Annual Facility Budget shall include funds to provide the amount to be paid to Farmers Branch to reimburse Farmers Branch for the reasonable costs of consumables used by the other Cities while using the space within Fire Station No. 3.

4.13 Utilities. Electricity to provide electrical power for the Facility and its equipment shall be separately metered. Farmers Branch shall be responsible for the timely payment of the

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electrical bill as part of the administrative services to be provided. The Cities understand and acknowledge that water consumed as part of the operation of the Facility will not initially be metered; however, the Annual Facility Budget shall include funds to be used to reimburse Farmers Branch for the estimated cost incurred by Farmers Branch for the consumption and use of such water.

4.14 Payment of Budgeted Funds. Addison, Carrollton and Coppell shall pay to Farmers Branch the amount of their respective shares of the funds identified in the Annual Facility Budget for each Fiscal Year on or before October 15th of each Fiscal Year during the Term. Such funds shall be credited to the appropriate Fire Training Facility Fund as indicated in the approved Facility Budget. Farmers Branch shall, upon the effective date of its Annual Budget, allocate its share of funds identified in the Facility Budget and credit such funds to the appropriate Fire Training Facility Fund as indicated in the approved Facility Budget.

V. DEFAULT

In the event any City shall fail in the performance of any of the terms and conditions of this Agreement; then such City shall be in default of this Agreement if such failure is not cured within thirty (30) days after written notice of such failure from any one or more non-defaulting Cities. The rights and ownership interests of such defaulting City under this Agreement shall be terminated without further notice provided that such defaulting City shall have such additional time to cure as may be required in the event of "Force Majeure." As liquidated damages in the event of such default, the ownership interest of such defaulting City in the Facility shall be forfeited to the non-defaulting Cities according to their pro-rata ownership thereof, and the rights of the defaulting City under this Agreement shall be terminated. The Parties acknowledge that actual damages in the event of default termination would be speculative and difficult to determine.

VI. MISCELLANEOUS

6.01 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, by hand-delivery or facsimile transmission and addressed to the respective City at the following address:

If intended for City of Carrollton:

With copy(ies) to:

Leonard Martin, City Manager
City of Carrollton
1945 E. Jackson Road
Carrollton, Texas 75006

Meredith Ladd, City Attorney
City of Carrollton
1945 E. Jackson Road
Carrollton, Texas 75006

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If intended for City of Coppell:

With copy(ies) to:

City of Coppell
Attn: City Manager
255 E. Parkway Boulevard
Coppell, Texas 75019

Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

If intended for City of Farmers Branch:

With copy(ies) to:

City of Farmers Branch
Attn: City Manager
13000 William Dodson Parkway
Farmers Branch, Texas 75234

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

If intended for Town of Addison:

With copy(ies) to:

Town of Addison
Attn: City Manager
5300 Belt Line Road
Dallas, Texas 75254

City Attorney
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

6.02 Governing Law. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Cities shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Cities agree to submit to the personal and subject matter jurisdiction of said court.

6.03 Party Responsibility. To the extent allowed by law, and without waiving any governmental immunity available to the Cities under Texas law, or any other defenses the Cities are able to assert under Texas law, each City agrees to be responsible for its own negligent or otherwise tortious acts or omissions in the course of performance of this Agreement. The covenants, obligations and liabilities of the Cities shall be several and not joint or collective. Each of the Cities shall be individually responsible for its own covenants, obligations and liabilities herein. It is not the intention of the Cities to create, nor shall this Agreement be construed as creating a partnership, association, joint venture or trust, as imposing a trust or partnership covenant, obligation or liability on or with regard to any of the Cities.

6.04 Immunity. It is expressly understood and agreed that, in the performance of this Agreement, none of the Cities waive, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to them against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Cities do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in any persons or entities who are not parties to this Agreement. The Cities expressly acknowledge and agree that the construction, operation, and use of the Facility constitute a governmental function pursuant to the Texas Tort Claims Act, as amended.

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6.05 Entire Agreement. This Agreement represents the entire agreement among the Cities with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.07 Recitals. The recitals to this Agreement are incorporated herein.

6.08 Amendment. This Agreement may be amended by the mutual written agreement of all Cities.

6.09 Place of Performance. Performance and all matters related thereto shall be in Dallas County, Texas.

6.10 Authority to Enter Agreement. Each City has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each City has been properly authorized and empowered to sign this Agreement. The persons signing this Agreement hereby represent that they have authorization to sign on behalf of their respective City.

6.11 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

6.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

6.13 Assignment. No City may assign, transfer, or otherwise convey this Agreement without the prior written consent of the other Cities.

6.14 Consents. Unless expressly stated otherwise, whenever the consent or the approval of a City is required herein, such City shall not unreasonably withhold, delay or deny such consent or approval.

6.15 Good Faith Negotiation; Dispute Mediation. Whenever a dispute or disagreement arises under the provisions of this Agreement, the Cities agree to enter into good faith negotiations to resolve such disputes. If the matter continues to remain unresolved, the Cities shall refer the matter to outside mediation, the costs of which shall be shared equally, prior to engaging in litigation (unless delaying the filing of a lawsuit might result in the lawsuit being barred, including but not limited to a bar by a statute of limitations). The provisions of this Section 6.15 shall survive termination.

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6.17 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the Cities, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.18 Source of Payment. Each City paying for the performance of governmental functions or services pursuant to this Agreement must make those payments from current revenues available to the paying City or from funds otherwise lawfully available to the City for use in the payment of the City's obligations pursuant to this Agreement.

6.19 Force Majeure. No City shall be liable to any or all of the other Cities for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the City's respective control or because of applicable law, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control. The affected City's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the City shall endeavor to remove or overcome the inability claimed with all reasonable dispatch.

6.20 Liquidation of Center. Upon the termination of this Agreement, all equipment and property associated with the Facility (excluding the Facility Property and building) shall, to the extent allowed by law, be sold for the fair market cash value in a private sale, or pursuant to notice and competitive bidding or by auction and the sale proceeds distributed to the then remaining Cities according to their pro rata ownership thereof.

6.21 Additional Participating Parties. Additional cities or other governmental entities may become parties under the terms of this Agreement by an appropriate amendment to this Agreement approved by the governing body of each of the Cities.

6.22 Replacement of Original Agreement. This Agreement replaces and supersedes the Original Agreement. Notwithstanding the Effective Date of this Agreement, this Agreement shall deem to have been effective with respect to Carrollton, Coppell, and Farmers Branch as of April 1, 2016, said date being the effective date of the Original Agreement, but shall be effective as to Addison on the Effective Date of this Agreement.

(Signatures on Following Pages)

**Resolution No. 2016-106
Exhibit "A"**

City of Carrollton Signature Page

SIGNED AND AGREED this _____ day of _____, 2016.

CITY OF CARROLLTON

By: _____
Leonard Martin, City Manager

ATTEST:

Laurie Garber, City Secretary

APPROVED AS TO FORM:

Meredith A. Ladd, City Attorney

Resolution No. 2016-106

Exhibit "A"

City of Coppell Signature Page

SIGNED AND AGREED this _____ day of _____, 2016.

CITY OF COPPELL

By: _____
Clay Phillips, City Manager

ATTEST:

Christel Pettinos, City Secretary

APPROVED AS TO FORM:

City Attorney

**Resolution No. 2016-106
Exhibit "A"**

City of Farmers Branch Signature Page

SIGNED AND AGREED this _____ day of _____, 2016.

CITY OF FARMERS BRANCH

By: _____
Charles S. Cox, City Manager

ATTEST:

Amy Piukana, City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

Resolution No. 2016-106
Exhibit "A"

Town of Addison's Signature Page

SIGNED AND AGREED this _____ day of _____, 2016.

TOWN OF ADDISON

By: _____
Wesley Pierson, City Manager

ATTEST:

Laura Bell, City Secretary

APPROVED AS TO FORM:

City Attorney

STATE OF TEXAS

§
§
§

**First Amended and Restated Joint Fire Training Center
Interlocal Cooperation Agreement**

COUNTY OF DALLAS

This **First Amended and Restated Joint Fire Training Center Interlocal Cooperation Agreement** (“Agreement”) is entered into as of the Effective Date by and among the **CITY OF CARROLLTON, TEXAS** (“Carrollton”), the **CITY OF COPPELL, TEXAS** (“Coppell”) the **CITY OF FARMERS BRANCH, TEXAS**, (“Farmers Branch”), and the **TOWN OF ADDISON, TEXAS** (“Addison”) all of whom are Texas home rule municipalities operating under the authority of their respective governing bodies (Carrollton, Coppell, Farmers Branch, and Addison are hereinafter sometimes referred to collectively as “the Cities” or the “Parties” or individually as a “City” or a “Party”).

RECITALS

WHEREAS, the Cities are political subdivisions within the State of Texas engaged in the provision of governmental services for the benefit of its citizens; and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the “Act”) provides authority for local governments of the State of Texas to enter into interlocal agreements with each other for the purpose of performing governmental functions and services as set forth in the Act; and

WHEREAS, because of their location within the DFW Metroplex and their proximity to each other, the Cities are regularly called upon to provide mutual aid assistance to each other on firefighting calls for service; and

WHEREAS, none of the Cities presently owns a fire fighting training facility for use by their respective fire departments; and

WHEREAS, being required to use firefighting training facilities owned by others requires travel time that results in lost in-service hours, requires the Cities’ fire departments to schedule training at times subject to the schedules of others which may not be the most convenient for the Cities, and inhibits the ability of the Cities to conduct joint training to facilitate their ability to provide mutual aid assistance;

WHEREAS, effective April 1, 2015, Carrollton, Coppell, and Farmers Branch are parties to that certain *Joint Fire Training Center Interlocal Cooperation Agreement Among the Cities of Carrollton, Coppell and Farmers Branch* (“the Original Agreement”) for the purpose of establishing the terms by which Carrollton, Coppell, and Farmers Branch agreed to jointly design, construct, maintain, operate, manage, and use a fire training facility on property owned by Farmers Branch; and

WHEREAS, Addison desires to become a party to the Original Agreement and to make certain payments to be used for equipping the training facility as well as pay its share for toward the operating and maintenance costs of said training facility; and

WHEREAS, Carrollton, Coppell, and Farmers Branch desire to add Addison as a party to the Original Agreement; and

WHEREAS, the Cities desire to enter into this Agreement for the purpose of adding Addison as a participant in the capital and operation and maintenance costs of the joint training facility and making certain other amendments to the Original Agreement in order to accommodate Addison as an additional party;

NOW, THEREFORE, for and in consideration of the mutual benefits and obligations set forth in this Agreement, the Cities agree as follows:

I. DEFINITIONS

Unless the context clearly indicates a different meaning, the words and phrases set forth in this Article I shall have the following meanings when used in this Agreement:

“Acceptance Date” means the date construction of the Facility is complete to the extent that the Cities have approved the final pay request to the contractor selected to construct the Facility and have authorized payment of the final payment and retainage.

“Business Day” means any day other than a Saturday, Sunday, or official city holiday in which Farmers Branch’s city hall offices are closed for business.

“Effective Date” means the date this Agreement has been approved by the governing bodies of all of the Cities and signed by the authorized representatives of each City.

“Event of Bankruptcy or Insolvency” means the dissolution or termination of a City’s existence as an on-going business, insolvency, appointment of receiver for any part of City’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against City and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Facility” means, subject to agreement of the Cities on the final design, a fire training facility located on the Facility Property consisting of (1) a five story training building with masonry façade; (2) a Texas Commission on Fire Protection NFPA 1002-compliant driving course; (3) a vehicle stabilization and extrication area; (4) an outdoor meeting area/classroom; (5) multiple live fire simulators; (6) ventilation simulators; (7) ceiling and wall breaching simulators; (8) standpipe and sprinkler system simulators; (9) multiple vehicle rollover simulators, and (10) such other improvements and equipment as the Cities may agree to include in the Facility as part of the final design and equipping of the Facility or as may be modified during the Term of this Agreement.

“Facility Property” means a 1.53± acre portion of the property owned by Farmers Branch generally located at 13333 Hutton Drive, Farmers Branch, Texas, and being a portion of that real property conveyed to Farmers Branch pursuant to that certain Special Warranty Deed

dated August 29, 2001, and recorded at Volume 2001174, Page 2511, Deed Records, Dallas County, Texas, and being more particularly depicted in Exhibit "A," attached hereto and incorporated herein by reference.

"Fire Training Facility Funds" means one or more designated restricted funds established on the books of account of the City designated in this Agreement to manage the receipt of revenues and payment of expenses relating to the construction, repair, maintenance, and operation of the Facility, to hold the funds to be used for payment of Shared Operational Costs, to hold funds in reserve to be applied to future Shared Capital, or to hold funds for such other purposes that the Cities may from time to time agree.

"Fiscal Year" means the Cities' official budget year beginning at 12:00:00 a.m. Central Time on October 1 of each calendar year and ending at 11:59:59 p.m. Central Time on September 30 of the immediately following calendar year.

"Non-Shared Operational Costs" means the costs for (1) consumable supplies and materials and (2) water, natural gas, and electricity used by a City during a training exercise at the Facility.

"Paying City" means the City which the Parties determine shall be contractually obligated for paying a Shared Capital Cost to a vendor or contractor pursuant to a contract entered for the benefit of the Parties relating to the construction, operation, repair, and/or maintenance of the Facility.

"Shared Capital Costs" means the costs relating to construction, reconstruction, remodeling, renovation, expansion and equipping of the Facility, including, but not limited to, engineering, architectural, and surveying costs, costs for demolition of existing improvements, costs for relocation and/or extension of existing utilities or construction of new utilities, costs relating to any work on adjacent property owned by Farmers Branch relating to providing access to, operation of, and parking for the Facility, costs relating to the purchase and installation of new and/or replacement equipment in the Facility or at any location on the Facility Property.

"Shared Operational Costs" means costs relating to the use, operation, management, repair, and maintenance of the Facility including, but not limited to, the costs for (i) wages and benefits of one or more employees of one of the Cities whose job duties include in whole or in part managing the operation of the Facility (provided if only a portion of the employee(s) time at work is spent managing the operation of the Facility, then only a portion of the cost of said employee's wages and benefits based on the percentage of the employee's work hours spent on managing the Facility shall constitute a Shared Operational Cost); (ii) repair and maintenance of the Facility and any equipment located within the Facility or on the Facility Property and available for use by any of the Cities; (iii) electricity, water, and sanitary sewer services, if any, used in operating the Facility; (iv) property and casualty insurance insuring against damage or destruction of improvements constituting a portion of the Facility; and (v) such other costs other than Shared Capital Costs identified in the Annual Facility Budget.

“**Structural Firefighter**” means a Texas Commission on Fire Protection Structural Fire Suppression certified employee assigned to a City’s fire operations division.

“**Term**” means, collectively, the Initial Term as defined in Section 2.01, together with each Renewal Term, as defined in Section 2.02.

II. TERM

2.01 Initial Term. This Agreement shall commence on the Effective Date and end at 11:59:59 p.m. Central Time on the last day of the Fiscal Year following the twentieth (20th) anniversary of the Acceptance Date (“the Initial Term”), unless extended or terminated earlier as provided in this Agreement.

2.02 Renewal Term. After the end of the Initial Term, this Agreement shall be extended automatically through each subsequent Fiscal Year (each being a “Renewal Term”) unless terminated as provided in this Agreement.

2.03 Early Termination During Initial Term.

A. Notwithstanding anything to the contrary herein, a City may terminate without cause its participation as a Party to this Agreement (said City called hereafter the “Terminating Party”) prior to the end of the Term subject to the following:

- (1) The termination date must fall on the last day of a Fiscal Year;
- (2) The Terminating Party must deliver notice to the other Parties not later than two (2) years prior to the date of termination;
- (3) The Terminating Party shall not be entitled to reimbursement from the other Parties for payments made pursuant to this Agreement prior to the date of termination; and
- (4) On or before the Terminating Party’s termination date, the terminating Party shall pay to the other Parties any Non-Shared Operational Costs incurred or accrued prior to the date of the termination of the Terminating Party’s participation in this Agreement.

B. Except as set forth in this Section 2.03, the Terminating Party shall have no obligation to pay any amounts which come due under this Agreement following the effective date of said City’s termination of its participation in this Agreement.

C. In the event of termination by Farmers Branch, all funds held under this Agreement or administrative fees paid in advance to Farmers Branch, shall be transferred to the remaining Cities to be used in carrying out the obligations set forth in this Agreement.

2.04 Effect of Early Termination. Upon termination of the Terminating Party as a Party to this Agreement:

A. The Terminating City forfeits, without right for reimbursement, all right, title, interest and ownership of the Facility and all property which the Terminating City contributed, conveyed, assigned or transferred to the other Cities for the operation of the Facility;

B. The Terminating City agrees and covenants to execute, and shall execute, without additional consideration, any licenses, easements, assignments, documents or agreements as may be necessary to sell, transfer, assign and convey the Terminating City's right, title, interest and ownership of the Facility and all property which the Terminating City contributed, conveyed, assigned or transferred to or for the operation of the Facility;

C. The Terminating Party, except Farmers Branch, shall be required to pay the same rates and charges for use of the Facility charged to entities who are not parties to this Agreement;

D. In the event of early termination by Farmers Branch, it shall have the right to use of the Facility, upon proper reservation similar to other entities not parties to this Agreement, to use the Facility after payment of rates and charges which are fifty percent (50%) of the then-current applicable rates and charges, in consideration of the Facility's location on property owned by Farmers Branch;

E. The Terminating Party shall not be entitled to any offset against its charges for use of the Facility from revenues generated by others who are not parties to this Agreement; and

F. If the Terminating City is Addison, Carrollton, or Coppell, the Terminating City shall execute in recordable form a release and abandonment of the easement granted by Farmers Branch to the Terminating City pursuant to Section 4.04, below.

The obligations and covenants of a Terminating City herein shall survive such Terminating City's termination under this Agreement pursuant to this Section 2.04. The non-terminating Cities may continue the operation of the Facility, or to cease operation of the Facility, terminate this Agreement and liquidate the Facility as provided herein.

III. DESIGN AND CONSTRUCTION OF FACILITY

3.01 Design of Facility; Selection of Contractors. In accordance with applicable law, Carrollton, Coppell, and Farmers Branch shall jointly (i) select one or more professionals to design and prepare the plans and specifications for the construction of the Facility; (ii) approve the design and specifications for the Facility, and (iii) select a contractor to construct the Facility. Farmers Branch shall for itself and the other Cities solicit bids and/or proposals, prepare and execute the necessary contractual agreements, and otherwise take such additional actions necessary to obtain the design and complete the construction of the Facility. Carrollton and Coppell understand, acknowledge, and agree that Farmers Branch will not be obligated to sign any contracts for the design and construction of the Facility until the City Manager of each Party signs a representation stating in substance the following:

(1) Representatives of the City have had a fair and equal opportunity to review the proposals or bids, as the case may be, received by Farmers Branch in response to any request for proposal (“RFP”) or request for bid (“RFB”);

(2) Representatives of the City agree that, following review of the proposals or bids received in response to the RFP/RFB, the selected contractor or professional provides the best and most advantageous proposal to the Cities in response to the RFP or RFB;

(3) If applicable, representatives of the City have participated, or been provided an opportunity to participate, in negotiating the best and final offer from the selected professional and/or contractor and the terms and conditions of the negotiated contract;

(4) To the best of their knowledge and belief, the Cities have complied with all applicable provisions of state law relating to the procurement of proposals and/or bids for the design and construction of the Facility and the award of contracts for the design and construction of the Facility and related agreements;

(5) In the case of Carrollton and Coppell, acknowledges that Farmers Branch would not have signed the subject agreement but for the agreement of Carrollton and Coppell to pay their portions of the Shared Capital Costs; and

(6) Current funds are available to pay the City’s respective share of the cost of the subject contract or purchase.

Addison acknowledges that contracts for the initial design and construction of the Facility were executed by Farmers Branch pursuant to the Original Agreement and agrees that all such contracts are acceptable to Addison without further review and consent.

3.02 Advance Payment to Paying City. The Cities agree that prior to the Paying City becoming contractually obligated to pay a Shared Capital Cost, the Cities will pay their respective share of the Shared Capital Cost to the Paying City. The Paying City agrees to place such funds into a restricted project account and that such funds shall only be used for the restricted purpose. For purposes of Shared Capital Costs related to the initial design and construction of the Facility, the Cities agree Farmers Branch will be the Paying City. The Cities agree to use their best efforts to make payments in a timely manner so that the project which is the subject of the contract is not unreasonably delayed.

3.03 Ownership of Facility.

A. The Cities agree that title to the Facility, not including the Facility Property, shall be as follows until such time as Addison has paid in full Addison’s Shared Capital Costs:

- (1) Carrollton: 49.5% undivided interest.

(2) Coppell: 26.8% undivided interest.

(3) Farmers Branch: 23.7% undivided interest.

B. The Cities agree that title to the Facility, not including the Facility Property, shall be as follows after Addison has paid in full all installments of the Addison Funds (as defined below):

(1) Carrollton: 42.0% undivided interest.

(2) Coppell: 22.7% undivided interest.

(3) Farmers Branch: 20.10% undivided interest.

(4) Addison: 15.2% undivided interest.

C. Except for the conveyance of the Easement, as set forth in Paragraph 4.04 below, to Carrollton, Coppell, and Addison, nothing herein shall be construed as (i) granting Carrollton, Coppell, or Addison any interest in the Facility Property merely because the Facility is located on or attached to the Facility Property or (ii) granting a City an ownership interest in personal property paid entirely for and owned by another City merely because said personal property constitutes a component of the Facility or the cost for operation, maintenance, or repair of the personal property constitutes a Shared Operational Cost.

3.04 Division of Shared Capital Costs. The Cities agree that the Shared Capital Costs for the initial design, construction, and equipping of the Facility shall be allocated as follows:

A. Carrollton: 49.5% undivided interest.

B. Coppell: 26.8% undivided interest.

C. Farmers Branch: 23.7% undivided interest.

Shared Capital Costs other than those relating to the initial design, construction, and equipping of the Facility or those constituting Addison Capital Cost paid with Addison Funds shall be in accordance with the allocation for Shared Operational Costs set forth in Section 4.02, below.

3.05 Addison Capital Costs. The Cities agree that Addison shall not be required to contribute to the Shared Capital Costs for the initial design, construction, and equipping of the Facility. In lieu of such participation in the Shared Capital Costs, the Cities agree that Addison shall be solely responsible for the capital costs of certain additional improvements to be made to the Facility (“Addison Capital Costs”) subsequent to the Effective Date of this Agreement, including, but not limited to (i) construction of a driving surface to establish a northern entry into the Facility; (ii) the addition and/or finish out of a burn room on the fourth floor of the tower

structure in the Facility; (iii) the design, construction, and equipping of an outdoor classroom and storage area located on the Facility Property; and (iv) the purchase of additional props and other equipment (e.g. additional car to train for forcible entry in car fires) as determined by the Facility Executive Board. Addison agrees to pay to the Paying City, the Addison Capital Costs in an amount not to exceed \$451,171.00 (the “Addison Funds”) for the Addison Capital Costs in accordance with the following schedule:

- A. Not later than five (5) days after the effective date of this Agreement: \$110,000.00;
- B. On or before October 15, 2017: \$166,425.00; and
- C. On or before October 15, 2018: \$174,746.00.

If the actual cost of the Addison Capital Costs exceeds the Addison Funds, if all the Cities agree in writing, the Cities may fund the additional costs, without the necessity of an amendment to this Agreement, and such additional costs shall be allocated in accordance with Section 4.02, below. Ownership of and title to improvements made with or equipment purchased with Addison Funds shall be governed by Section 3.03.B. even if constructed, installed or purchased before Addison makes its final installment payment of Addison Funds as provided above.

3.06 Reconciliation. On or after April 1, 2019, but in any case not later than September 1, 2019, the Cities shall determine the amount Addison has paid in Addison Funds for Addison Capital Costs pursuant to Section 3.05. If the amount is less than \$451,171.00, Addison agrees to pay the difference between \$451,171.00 and the amount of Addison Funds actually spent to Carrollton, Coppell, and Farmers Branch, which amount shall be split based on the percentages set forth in Section 3.04, above.

IV. FACILITY MAINTENANCE AND OPERATION

4.01 Governance Boards. The following boards shall be established for the purpose of administering and operating the Facility:

A. Facility Executive Board. There shall be established a Facility Executive Board whose permanent members shall be the Fire Chief of each City; provided, however, each Fire Chief may appoint another officer from the City’s fire department who may sit as an alternate member who shall have the right to vote on matters considered by the Facility Executive Board when the Fire Chief is absent from a meeting of the board. The Facility Executive Board shall be authorized to:

- (1) Adopt rules governing the meetings of the Facility Executive Board subject to the following:
 - (a) A quorum of the Facility Executive Board shall be all three (3) members (which may be a combination of permanent and/or alternate members)

for the purpose of holding meetings and the transaction of business, including voting on any matters considered by the Facility Executive Board; and

(b) The approval of any matter considered by the Facility Executive Board shall require the affirmative vote of three (3) members (permanent and/or alternate) of the Facility Executive Board.

(2) Adopt procedures relating to the operation, maintenance, and use of the Facility;

(3) Recommend to the Cities' respective city managers and governing bodies approval of contracts and related amendments and change orders, if any, related to the design, construction, reconstruction, repair, remodeling, equipping, and operation of the Facility;

(4) Prepare and recommend an annual operations and maintenance and capital improvement/replacement budget relating to the operation, maintenance, equipment, supplying and repair of the Facility ("the Facility Budget");

(5) Prepare and recommend for approval by the Cities of a rate schedule for use of the Facility by third parties; and

(6) Perform such other tasks and duties as the Cities' may from time to time unanimously agree shall be performed by the Facility Executive Board.

B. Facility Operations Committee. There shall be established a Facility Operations Committee whose permanent members shall be an officer within the Fire Department of each City appointed by each Fire Chief to serve on the committee and whose job responsibilities should, but may not necessarily include, oversight and implementation of firefighter training for the Fire Department by whom the officer is employed. The Facility Operations Committee shall be authorized to:

(1) Adopt rules governing the meetings of the Facility Operations Committee subject to the following:

(a) A quorum of the Facility Operations Committee shall be all three (3) members; and

(b) The approval of any matter considered by the Facility Operations Committee shall require the affirmative vote of all three (3) members of the Facility Operations Committee;

(2) Make recommendations to the Facility Executive Board regarding the adoption and/or amendment of the operation, maintenance, and use policies relating to operation, maintenance, and use of the Facility;

(3) Develop and make recommendations to the Facility Executive Board regarding the purchase of equipment, materials, hardware, software and services relating to the use, operation, maintenance, and/or repair of the Facility;

(4) Oversee implementation of the Facility operation, maintenance, and use policies adopted by the Facility Executive Board;

(5) Prepare the master training schedule setting forth the time and dates on which the Facility will be used by the Cities;

(6) Approve the scheduling of use of the Facility by parties other than the Cities;

(7) Prepare for consideration of the Facility Executive Committee standard operating procedures and policies relating to use and operation of the Facility in conformance with NFPA 1403, as amended, or such other nationally recognized operational safety standards as may be adopted from time to time by the Facility Operations Committee; and

(8) Perform such other tasks as may from time to time be assigned by the Facility Executive Board.

C. Addison Representatives. Notwithstanding the foregoing to the contrary, Addison's representatives to the Facility Executive Board and the Facility Operations Committee, respectively, shall be non-voting members until Addison has paid its first installment of the Addison Funds into the restricted project account described in Section 3.05, above. The voting rights of Addison's representatives to the Facility Executive Board and the Facility Operations Committee shall be suspended on October 16, 2017, and/or October 16, 2018, respectively, if the installments of the Addison Funds have not been paid into the restricted project account on or before their respective due dates as provided in Section 3.05, above, which suspension shall be rescinded on the date the installments of Addison Funds have been paid. This Section 4.01.C. shall have no further effect upon Addison's payment of all installments of the Addison Funds.

D. Suspension of Participation and Voting Rights. In addition to other remedies set forth in this Agreement, the right of a City's representatives to the Facility Executive Board and the Facility Operations Committee to participate in discussions and vote on matters before said board and/or committee shall be suspended if the City has failed to timely pay to another City any amount due pursuant to this Agreement and five (5) days have passed after delivery of a written demand to the non-paying City without such payment being made.

4.02 Shared Operational Costs. For the period beginning on the Acceptance Date and ending on the last day of the second full Fiscal Year during the Term, the Cities agree to pay the Shared Operational Costs based on the following allocation:

(1) Carrollton: 42.0% undivided interest.

- (2) Coppell: 22.7% undivided interest.
- (3) Farmers Branch: 20.10% undivided interest.
- (4) Addison: 15.2% undivided interest.

Beginning with the third full Fiscal Year during the Term and for each Fiscal Year thereafter, each City agrees to pay its share of the Shared Operational Costs based on a ratio determined as follows:

- (1) The number of Structural Firefighter positions contained in the City’s approved annual budget for the Fiscal Year in which the Shared Operational Costs are to be paid; divided by
- (2) The total number of Structural Firefighter positions contained in the approved annual budget for all of the Cities for the Fiscal Year in which the Shared Operational Costs are to be paid.

4.03 Non-Shared Operational Costs. The Cities agree to pay in a timely manner their respective Non-Shared Operational Costs directly to the vendors with whom the Cities contract to provide services, equipment, supplies or facilities related to operation, repair, and/or maintenance of the Facility.

4.04 Easement Granting Right to Construct Facility on Facility Property. Notwithstanding anything herein to the contrary, Carrollton and Coppell shall not be required to deliver their respective shares of the Shared Capital Costs for the initial design, construction, and equipping of the Facility until Farmers Branch has conveyed to Carrollton and Coppell, respectively, a non-exclusive perpetual easement authorizing the construction, reconstruction, maintenance, repair, replacement, remodeling, use, and operation of the Facility on the Facility Property and, to the extent necessary, direct access across Farmer Branch’s adjacent property for purpose of providing ingress and egress to the Facility Property. Farmers Branch agrees to convey to Addison an easement similar in scope to the easements granted to Carrollton and Coppell; provided, however, the conveyance of such easement shall not be required until Addison has paid its last installment of the Addison Funds, in which case Farmers Branch shall sign and deliver a document conveying said easement not later than thirty (30) days after receipt of notice that the final installment of the Addison Funds has been paid into the restricted fund account as required by Section 3.05, above.

4.05 Annual Budget.

A. No later than one hundred eighty (180) days prior to the beginning of each Fiscal Year, the Facility Executive Board shall prepare, or cause to be prepared, a budget setting forth the anticipated Shared Capital Costs, Shared Operational Costs, and Non-Shared Operational Costs (the “Annual Facility Budget”) for said Fiscal Year. The Annual Facility Budget must be recommended for approval by a majority vote of the entire Facility Executive Board. After

consideration by the Facility Executive Board, the Annual Facility Budget shall be submitted to the City Manager of each City for review, approval and inclusion of the amount of each City's respective share of the Annual Facility Budget into the Cities' respective annual general municipal budget.

B. The Annual Facility Budget shall clearly indicate the amounts, sources and purposes of revenues to be contributed by each City as its share of the Annual Facility Budget. The Annual Facility Budget shall not reflect revenues anticipated from any source other than the Cities for the Fiscal Year to which the Annual Facility Budget applies; however, it may reflect credits against the Cities' shares of Shared Capital Costs and/or Shared Operational Costs to be paid in the Fiscal Year based on revenues received from third parties in the prior Fiscal Year.

C. If the Facility Executive Board fails to approve and recommend the Annual Facility Budget for a particular Fiscal Year, then the Annual Facility Budget for the then current Fiscal Year shall be deemed to be the Annual Facility Budget recommended for the next Fiscal Year.

D. Failure of a City to include in the City's annual budget funds to pay its share of Shared Operational Funds for any Fiscal Year shall constitute a notice of termination of that City's participation in this Agreement; in which case said City's right to use the Facility shall be immediately suspended until said City appropriates funds to pay its share of the Shared Operational Costs and, in fact, pays such funds as provided in Section 4.14, below. A City which fails for two consecutive Fiscal Years to include in its annual budget the funds necessary to pay its share of Shared Operational Costs shall be deemed to be a Terminating Party pursuant to Article II of this Agreement.

4.06 Provision of Administrative Services; Administrative Fee.

A. As of the Effective Date, Farmers Branch shall provide certain administrative services with respect to operation of the Facility including, but not limited to:

(1) The receipt, deposit, and investment of funds received from the Cities and other sources relating to the Facility including, but not limited to, funds to pay Shared Capital Costs and Shared Operational Costs;

(2) Payment by check or wire transfer of contractors, suppliers, and other vendors for expenses incurred for Shared Capital Costs and Shared Operational Costs from funds available in the Fire Training Facility Funds;

(3) Legal services relating to the preparation and/or review of agreements, policies, procedures, and other matters relating to the Facility through the Farmers Branch city attorney; and

(4) Purchasing and contracting services relating to operation, maintenance, and repair of the Facility.

B. The Annual Facility Budget shall set forth a not-to-exceed amount to be paid to Farmers Branch for the applicable Fiscal Year as reimbursement for the out-of-pocket costs incurred by Farmers Branch for providing the administrative services described in this Section 4.06 plus a reasonable overhead charge (“the Annual Administrative Fee”). The amount set forth in the Annual Facility Budget for the Annual Administrative Fee shall be the maximum amount paid to Farmers Branch for providing the described administrative services. In the event Farmers Branch defaults or terminates participation in this Agreement, Farmers Branch shall have no further responsibilities under Section 4.06.A and shall no longer be entitled to the Annual Administrative Fee. The remaining Cities shall determine how to appropriately apportion Farmers Branch’s previous responsibilities and rights under this Section 4.06.

C. The Cities may from time to time during the Term provide for a different City to provide the administrative services described herein, which change can be made without the necessity of amending this Agreement provided the change is acknowledged in writing signed by the City Managers of the Cities. In the event of such a change, the provisions in Section 4.06.B., above, relating to the establishment and payment of the Annual Administrative Fee shall apply to the City providing the services.

4.07 Scheduling Use of Facilities. After the Acceptance Date, the Coppell Fire Chief or designee, shall be primarily responsible for preparing the master schedule relating to the use of the Facility (“the Master Schedule”). In preparing the Master Schedule, the following factors shall be taken into consideration in determining who can use the Facility or any part thereof at any particular time:

A. Use by one or more of the Cities shall take precedence over use by another entity;

B. The amount of time the Cities may reserve the Facility for use during a Fiscal Year shall to the extent reasonably possible be allocated on a percentage basis in the same manner as the allocation of Shared Operational Costs is determined pursuant to Section 4.02 for that Fiscal Year; and

C. Scheduling shall be in accordance with policies and procedures approved by the Facility Executive Board.

The Master Schedule shall be reviewed on a regular basis by the Facility Operations Committee, which shall have the authority to amend the Master Schedule. The Cities may agree to reassign the duties of preparing and maintaining the Master Schedule to a different City without the necessity of amending this Agreement provided such reassignment is memorialized in writing and signed by the members of the Facility Executive Committee. Notwithstanding Paragraph B, above, if the actual amount of time the Facility is used by the Cities during a Fiscal Year differs from the allocation of time to which the Cities are entitled during that Fiscal Year because one or more of the Cities elected to use the Facility when the Facility was not scheduled for use by any of the other Cities, there shall be no adjustment of the Cities’ shares of the Annual Facility Budget.

4.08 Maintenance of the Facility. Upon the Acceptance Date, the Carrollton Fire Chief, or designee, shall be responsible for coordinating and inspecting the repair and maintenance of the Facility on behalf of the Cities. Carrollton shall not be required to directly spend any funds with respect to the performance of any repairs or maintenance, which expenditures shall be paid from the Fire Training Facility Funds pursuant to agreements entered into between Farmers Branch and the appropriate contractor or vendor on behalf of the Cities.

4.09 Right to Access and Use Facility. Provided a City has complied with the provisions of this Agreement including, but not limited to, payment of the City's share of Shared Capital Costs and Shared Operational Costs, each City shall have the right to access and use the Facility in accordance with the policies and procedures established by the Facility Executive Board. At no time shall the Facility Executive Board be authorized to adopt any rule or procedure which excludes a City from accessing or using the Facility as long as the City is not in default (after notice of such default has been received by the City and the City has been provided a reasonable opportunity to cure the default) of this Agreement.

4.10 Revenues from Third Party Use. The Cities agree that revenues received from charges and fees assessed to third parties for the use of the Facility shall be applied in the following priority:

A. Payment for any consumables used by the third party during its use of the Facility;

B. After deducting the amount required by Paragraph A, fifty percent (50%) of the net amount shall be placed in a Shared Operational Costs reserve fund the purpose of which is to hold the funds until the next subsequent Fiscal Year, at which time those funds may be identified as revenues and applied to the payment of the Shared Operational Costs; and

C. The remaining fifty percent (50%) of the net amount shall be placed in a Shared Capital Cost reserve fund and held until appropriated for payment of a future Shared Capital Cost.

4.11 Property and Casualty Insurance.

A. Farmers Branch agrees to purchase property fire and casualty insurance to cover damage or destruction to the Facility resulting from windstorm, tornados, fire, theft, or other casualty in an amount which provides for the replacement value of the Facility, including its structures and equipment.

B. The amount of the premium to be paid for the insurance coverage purchased pursuant to Section 4.11.A. shall be a line item in the Annual Facility Budget. Farmers Branch shall be entitled to reimbursement to the extent of the funds allocated to the Annual Facility Budget for the amount paid by Farmers Branch for the foregoing fire and casualty insurance.

C. In the event of a casualty loss to any structure constructed as part of the Facility or equipment installed as part of the Facility, any proceeds paid from an insurance claim shall be first applied to the repair or replacement of the portion of the structure and/or equipment in the Facility which was damaged or destroyed. In the event the insurance claim proceeds received exceed the amount necessary to make the required repairs or replacement of improvements or equipment, such excess proceeds shall be placed in the Shared Capital Costs reserve fund for use on a subsequent Shared Capital Costs expenditure.

D. In the event that the damage or loss to the Facility is so extensive that the Cities elect to not reconstruct the Facility, insurance claim proceeds received by Farmers Branch in relation to the loss shall first be used to demolish the remaining improvements and restore the Facility Property to substantially the condition prior to the Effective Date, then to pay any accrued but not yet paid Shared Operational Costs, then distributed to the Cities based on the then current allocation for Shared Capital Costs.

4.12 Use of Existing Farmers Branch Office and Other Facilities.

A. Pursuant to this Agreement, Farmers Branch agrees to provide to the other Cities the non-exclusive right to use office space within Farmers Branch's Fire Station No. 3 for use by the training officers of the other Cities while the other Cities are conducting training at the Facility. The determination of which space shall be used shall be at the sole discretion of Farmers Branch. While Farmers Branch will use reasonable efforts to provide an unoccupied space, Carrollton, Coppell, and Addison understand and agree that the office space selected by Farmers Branch for use by the other Cities during training may also be occupied by Farmers Branch personnel.

B. Farmers Branch may, at its sole option, make such office space available to third parties using the Facility.

C. Farmers Branch agrees to make available to the Cities the following:

(1) Use of the training room and audio visual equipment located in Farmers Branch's Fire Station No. 3, when available during the days in which the other Cities are using the Facility; and

(2) Self-Contained Breathing Apparatus ("SCBA") compressor to recharge SCBA tanks; and

(3) Access to restrooms, coffee, and other public areas.

The Annual Facility Budget shall include funds to provide the amount to be paid to Farmers Branch to reimburse Farmers Branch for the reasonable costs of consumables used by the other Cities while using the space within Fire Station No. 3.

4.13 Utilities. Electricity to provide electrical power for the Facility and its equipment shall be separately metered. Farmers Branch shall be responsible for the timely payment of the

electrical bill as part of the administrative services to be provided. The Cities understand and acknowledge that water consumed as part of the operation of the Facility will not initially be metered; however, the Annual Facility Budget shall include funds to be used to reimburse Farmers Branch for the estimated cost incurred by Farmers Branch for the consumption and use of such water.

4.14 Payment of Budgeted Funds. Addison, Carrollton and Coppell shall pay to Farmers Branch the amount of their respective shares of the funds identified in the Annual Facility Budget for each Fiscal Year on or before October 15th of each Fiscal Year during the Term. Such funds shall be credited to the appropriate Fire Training Facility Fund as indicated in the approved Facility Budget. Farmers Branch shall, upon the effective date of its Annual Budget, allocate its share of funds identified in the Facility Budget and credit such funds to the appropriate Fire Training Facility Fund as indicated in the approved Facility Budget.

V. DEFAULT

In the event any City shall fail in the performance of any of the terms and conditions of this Agreement; then such City shall be in default of this Agreement if such failure is not cured within thirty (30) days after written notice of such failure from any one or more non-defaulting Cities. The rights and ownership interests of such defaulting City under this Agreement shall be terminated without further notice provided that such defaulting City shall have such additional time to cure as may be required in the event of "Force Majeure." As liquidated damages in the event of such default, the ownership interest of such defaulting City in the Facility shall be forfeited to the non-defaulting Cities according to their pro-rata ownership thereof, and the rights of the defaulting City under this Agreement shall be terminated. The Parties acknowledge that actual damages in the event of default termination would be speculative and difficult to determine.

VI. MISCELLANEOUS

6.01 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, by hand-delivery or facsimile transmission and addressed to the respective City at the following address:

If intended for City of Carrollton:

Leonard Martin, City Manager
City of Carrollton
1945 E. Jackson Road
Carrollton, Texas 75006

With copy(ies) to:

Meredith Ladd, City Attorney
City of Carrollton
1945 E. Jackson Road
Carrollton, Texas 75006

If intended for City of Coppell:

City of Coppell
Attn: City Manager
255 E. Parkway Boulevard
Coppell, Texas 75019

With copy(ies) to:

Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

If intended for City of Farmers Branch:

City of Farmers Branch
Attn: City Manager
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With copy(ies) to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

If intended for Town of Addison:

Town of Addison
Attn: City Manager
5300 Belt Line Road
Dallas, Texas 75254

With copy(ies) to:

City Attorney
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

6.02 Governing Law. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Cities shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Cities agree to submit to the personal and subject matter jurisdiction of said court.

6.03 Party Responsibility. To the extent allowed by law, and without waiving any governmental immunity available to the Cities under Texas law, or any other defenses the Cities are able to assert under Texas law, each City agrees to be responsible for its own negligent or otherwise tortious acts or omissions in the course of performance of this Agreement. The covenants, obligations and liabilities of the Cities shall be several and not joint or collective. Each of the Cities shall be individually responsible for its own covenants, obligations and liabilities herein. It is not the intention of the Cities to create, nor shall this Agreement be construed as creating a partnership, association, joint venture or trust, as imposing a trust or partnership covenant, obligation or liability on or with regard to any of the Cities.

6.04 Immunity. It is expressly understood and agreed that, in the performance of this Agreement, none of the Cities waive, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to them against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Cities do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in any persons or entities who are not parties to this Agreement. The Cities expressly acknowledge and agree that the construction, operation, and use of the Facility constitute a governmental function pursuant to the Texas Tort Claims Act, as amended.

6.05 Entire Agreement. This Agreement represents the entire agreement among the Cities with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.07 Recitals. The recitals to this Agreement are incorporated herein.

6.08 Amendment. This Agreement may be amended by the mutual written agreement of all Cities.

6.09 Place of Performance. Performance and all matters related thereto shall be in Dallas County, Texas.

6.10 Authority to Enter Agreement. Each City has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each City has been properly authorized and empowered to sign this Agreement. The persons signing this Agreement hereby represent that they have authorization to sign on behalf of their respective City.

6.11 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

6.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

6.13 Assignment. No City may assign, transfer, or otherwise convey this Agreement without the prior written consent of the other Cities.

6.14 Consents. Unless expressly stated otherwise, whenever the consent or the approval of a City is required herein, such City shall not unreasonably withhold, delay or deny such consent or approval.

6.15 Good Faith Negotiation; Dispute Mediation. Whenever a dispute or disagreement arises under the provisions of this Agreement, the Cities agree to enter into good faith negotiations to resolve such disputes. If the matter continues to remain unresolved, the Cities shall refer the matter to outside mediation, the costs of which shall be shared equally, prior to engaging in litigation (unless delaying the filing of a lawsuit might result in the lawsuit being barred, including but not limited to a bar by a statute of limitations). The provisions of this Section 6.15 shall survive termination.

6.17 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the Cities, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.18 Source of Payment. Each City paying for the performance of governmental functions or services pursuant to this Agreement must make those payments from current revenues available to the paying City or from funds otherwise lawfully available to the City for use in the payment of the City's obligations pursuant to this Agreement.

6.19 Force Majeure. No City shall be liable to any or all of the other Cities for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the City's respective control or because of applicable law, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control. The affected City's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the City shall endeavor to remove or overcome the inability claimed with all reasonable dispatch.

6.20 Liquidation of Center. Upon the termination of this Agreement, all equipment and property associated with the Facility (excluding the Facility Property and building) shall, to the extent allowed by law, be sold for the fair market cash value in a private sale, or pursuant to notice and competitive bidding or by auction and the sale proceeds distributed to the then remaining Cities according to their pro rata ownership thereof.

6.21 Additional Participating Parties. Additional cities or other governmental entities may become parties under the terms of this Agreement by an appropriate amendment to this Agreement approved by the governing body of each of the Cities.

6.22 Replacement of Original Agreement. This Agreement replaces and supersedes the Original Agreement. Notwithstanding the Effective Date of this Agreement, this Agreement shall deem to have been effective with respect to Carrollton, Coppell, and Farmers Branch as of April 1, 2016, said date being the effective date of the Original Agreement, but shall be effective as to Addison on the Effective Date of this Agreement.

(Signatures on Following Pages)

City of Carrollton Signature Page

SIGNED AND AGREED this _____ day of _____, 2016.

CITY OF CARROLLTON

By: _____
Leonard Martin, City Manager

ATTEST:

Laurie Garber, City Secretary

APPROVED AS TO FORM:

Meredith A. Ladd, City Attorney

City of Coppell Signature Page

SIGNED AND AGREED this _____ day of _____, 2016.

CITY OF COPPELL

By: _____
Clay Phillips, City Manager

ATTEST:

Christel Pettinos, City Secretary

APPROVED AS TO FORM:

City Attorney

City of Farmers Branch Signature Page

SIGNED AND AGREED this _____ day of _____, 2016.

CITY OF FARMERS BRANCH

By: _____
Charles S. Cox, City Manager

ATTEST:

Amy Piukana, City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

Town of Addison's Signature Page

SIGNED AND AGREED this _____ day of _____, 2016.

TOWN OF ADDISON

By: _____
Wesley Pierson, City Manager

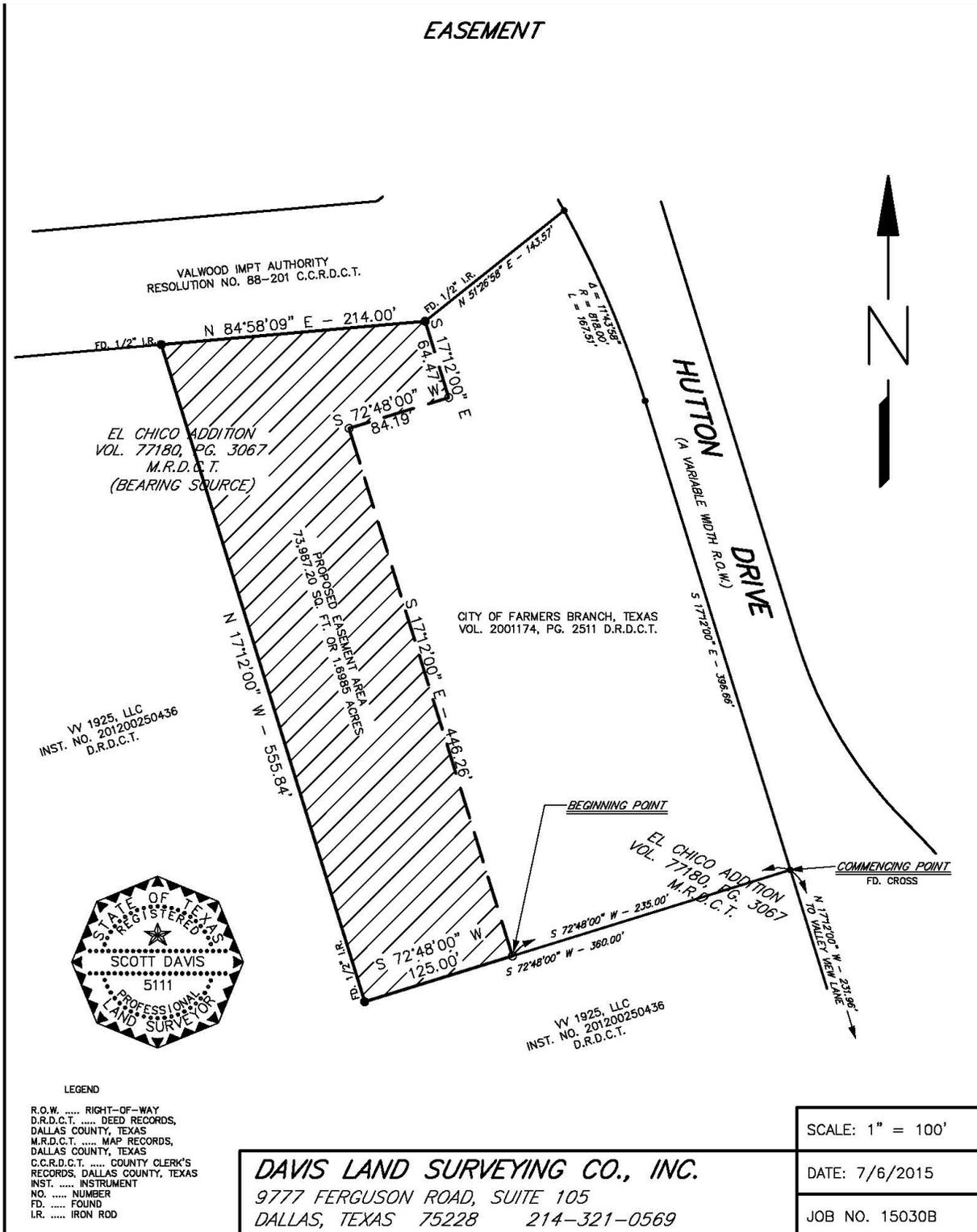
ATTEST:

Laura Bell, City Secretary

APPROVED AS TO FORM:

City Attorney

Exhibit A Survey of Facility Property





City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-108

Agenda Date: 11/15/2016

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: F.6

Consider approving Resolution No. 2016-108 authorizing the City Manager to execute an Amended and Restated License for Communications Facilities between the City of Farmers Branch and New Cingular Wireless PCS, LLC; and take appropriate action.

BACKGROUND:

Md7, LLC representing New Cingular Wireless PCS, LLC, has negotiated a license agreement with the City to continue use of the licensee's existing cellular antenna system located on the City-owned water tower at 3723 Valley View Lane. The existing license agreement began in January 1997, and after four 5-year terms, expires at the end of 2016. The new license agreement would allow the licensee to continue operations for an additional 20 years.

DISCUSSION:

The negotiated cellular license agreement is for an initial term of five years for \$3,000 per month, or \$36,000 per year, with three optional, additional, five-year renewal periods, with a 15% increase upon each five-year renewal of the agreement. No increase of the existing antennas or expansion of the equipment shelter at the base of the tower is proposed. If the licensee continues to operate its facilities on the City's property after the expiration of the final term without written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of the license agreement but will not constitute a renewal of their license agreement.

RECOMMENDATION:

Recommended motion by City Administration to approve Resolution No. 2016-108 authorizing the City Manager to execute an amended and restated license for communications facilities between the City of Farmers Branch and New Cingular Wireless PCS, LLC.

POSSIBLE COUNCIL ACTION:

1. I move to approve Resolution No. 2016-108 authorizing the City Manager to execute an amended and restated license for communications facilities between the City of Farmers Branch and New Cingular Wireless PCS, LLC.
2. I move to approve Resolution No. 2016-108 authorizing the City Manager to execute an amended and restated license for communications facilities between the City of Farmers Branch and New Cingular Wireless PCS, LLC, with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:

1. Resolution No. 2016-108
2. Exhibit "A" to Resolution No. 2016-108: Amended and Restated License for Communications Facilities between the City of Farmers Branch and New Cingular Wireless PCS, LLC



RESOLUTION NO. 2016-108

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED AND RESTATED LICENSE FOR COMMUNICATIONS FACILITIES, AND ALL RELATED DOCUMENTS THERETO, WITH NEW CINGULAR WIRELESS PCS, LLC FOR CERTAIN PROPERTY LOCATED AT 3723 VALLEY VIEW LANE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Farmers Branch is the owner of the property located at 3723 Valley View Lane; and

WHEREAS, AT&T Wireless Services has been operating a cellular communications antenna system and required equipment building at the property under a lease agreement with the City since 1997, and was granted a Specific Use Permit for these operations in accordance with the City's Comprehensive Zoning Ordinance; and

WHEREAS, New Cingular Wireless PCS, LLC (New Cingular Wireless) acquired AT&T Wireless Services in 2004; and

WHEREAS, New Cingular Wireless desires to continue operations of the same cellular communications antenna system and equipment building under a new license agreement; and

WHEREAS, the City and New Cingular Wireless have negotiated an amended and restated license for communications facilities for an initial term of five (5) years with options of renewing for three (3) additional five-year terms; and

WHEREAS, the annual base rent on the license agreement is \$36,000 to be paid in monthly installments of \$3,000 with a 15% increase at each renewal term.

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

SECTION 1. The City Manager is authorized to execute an amended and restated license for communications facilities attached as Exhibit "A", and all related documents thereto, with New Cingular Wireless PCS, LLC for property located at 3723 Valley View Lane.

SECTION 2. This resolution shall become effective immediately from and after its passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 15TH DAY OF NOVEMBER 2016.

ATTEST:

Amy Piukana, City Secretary

APPROVED:

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(JG:11-8-16:TM 81230)

Exhibit “A”
(Agreement attached separately)

STATE OF TEXAS §
 § **AMENDED AND RESTATED LICENSE FOR**
 § **COMMUNICATIONS FACILITIES**
COUNTY OF DALLAS §

KNOW ALL BY THESE PRESENTS:

This non-exclusive Amended and Restated License for Communications Facilities (“Agreement”) is made by and between the City of Farmers Branch, Texas (“City”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, with its principal offices located at 575 Morosgo Drive NE, Atlanta GA 30324 (“Licensee”) (collectively referred to as “Parties” and individually as a “Party”), for the use of certain premises and/or facilities according to the following terms and conditions:

WITNESSETH:

WHEREAS, City owns or controls that certain land located at 3723 Valley View Lane, Farmers Branch, Dallas County, Texas, as further described as on Exhibit “A” attached hereto, together with all rights and privileges arising in connection therewith (collectively, the “Property”); and

WHEREAS, City and Metroplex Telephone Company (“Original Licensee”) are parties to a certain Water Tower Lease Agreement dated October 21, 1996 and that certain First Amendment to Lease Agreement dated July 18, 1997 (collectively, the “Existing Lease”) concerning the leasing of a portion of the Property and Tower (as defined below); and

WHEREAS, Licensee is the successor in interest to Original Licensee; and

WHEREAS, Licensee is a telecommunications company duly authorized to provide certain communications services and desires to continue to lease the Property for installation and operation of Improvements as defined herein; and

WHEREAS, City owns the Property and facilities (including the water tower (the “Tower”) described below) and desires to allow Licensee to continue to enter and utilize designated areas of the Property and Tower;

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree to amend and restate the Existing Lease in its entirety as follows:

Article I
Location

1.1 **Premises and Facilities.** The portion of the Property, Tower and facilities (hereinafter referred to as the “Premises”) provided by City and used by Licensee are described on the Site Plan attached hereto and incorporated herein as Exhibit “A”. Included upon the

Premises shall be Licensee's Equipment Compound, the Antenna Facilities, as described and illustrated on Exhibit "A", defined herein, and the cabling run between the Antenna Facilities and the Equipment Compound (hereinafter referred to as "Improvements"). As used herein, the term "Equipment Compound" means all equipment, shelters and similar structures located on the Premises and identified on Exhibit "A". The license authorized under the terms of this Agreement shall be a license for the use of the Premises.

1.2 **Site Plan and Elevations.** Any amendments to the current Site Plan and elevations approved through Ordinance # 2298, attached herein as Exhibit "A", must be approved by City through the SUP process. Approval of such modifications is within the sole discretion of City. The parties acknowledge and agree that Ordinance #2298, granting a specific use permit for a cellular communications antenna and an equipment building, shall be in effect during the Term of this Agreement.

1.3 Licensee has inspected, examined and investigated the status of the title and condition of the Premises to the extent that Licensee has deemed necessary, and Licensee understands, acknowledges and agrees that, subject to the City's obligations expressly provided herein, it is entering into this Agreement to acquire a leasehold interest in the Premises "AS IS" in reliance solely upon the results of any inspection, examination and investigation of the status of title and condition of the Premises that Licensee has conducted and not as a result of any representation, warranty, assurance, guaranty or promise of City or any person purporting to act on behalf of City, other than those which may be expressly set forth in this Agreement.

1.4 **LICENSEE UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY AGENT, EMPLOYEE OR OTHER PERSON ACTING ON BEHALF OF THE CITY, HAS MADE ANY, AND THE CITY EXPRESSLY DISCLAIMS EVERY, REPRESENTATION, WARRANTY (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND HABITABILITY), ASSURANCE, GUARANTY OR PROMISE, EXPRESS OR IMPLIED, CONCERNING THE STATUS OF THE TITLE OR CONDITION OF THE PREMISES WHICH ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT AND THAT NO AGENT OR EMPLOYEE OF THE CITY OR OTHER PERSON HAS ANY AUTHORITY TO MAKE OR DELIVER ANY REPRESENTATION, WARRANTY, ASSURANCE, GUARANTY OR PROMISE WHICH IS NOT SET FORTH IN THIS AGREEMENT.**

1.5 **Survey.** City hereby grants to Licensee the right to survey the Premises, and said survey shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall control in the event boundary and access discrepancies between it and Exhibit "A". Cost for such work shall be borne by the Licensee.

Article II Use of Premises

2.1 **Permitted Use.** City agrees to allow installment of Licensee's Improvements in accordance with the terms of this Agreement and the City's Mounted Antenna Policy attached hereto and incorporated herein as Exhibit "C". Licensee's use of the Property shall be non-exclusive and shall be for the purpose of the installation, operation, repair, replacement and

maintenance of its Improvements, for the transmission, reception, and operation of a communications system and uses incidental thereto. To the extent not depicted in the Site Plan attached as Exhibit "A", Licensee shall obtain the written approval of the City through the SUP process prior to installation of any additional Improvements on the Premises. Licensee understands, acknowledges and agrees that the use of the Premises by Licensee in conjunction with the terms of this Agreement is to be for the installation, operation, repair, replacement and maintenance of communications equipment, in strict compliance with the Agreement and the attached Site Plan. Licensee shall not use the Premises for any other purpose whatsoever, including the storage or placement of debris, replacement Improvements, or any other item, without first obtaining the prior written consent of City, which may be given or withheld for any reason or for no reason, in the City's sole, absolute and unrestricted discretion.

2.2 **Prohibited Use.** Licensee shall not use the Premises in any manner that constitutes waste or nuisance, or that violates any applicable law, ordinance or governmental regulation in any respect. Licensee shall not do anything that would render void or uncollectible any insurance then in force with respect to the Premises, or that would in any way increase the premiums payable by City for fire, liability or any other insurance coverage on the Premises or the contents of any improvements thereon.

2.3 **Subletting of Use Premises or Improvements.** Licensee may not sublet to or license others to use the Premises or Licensee's Improvements without the prior written consent of City. Any such attempt by Licensee shall be without effect and may at City's option result in the termination of this Agreement.

2.4 **Maintenance, Repair or Replacement of Improvements.** Licensee may update, maintain, repair, or replace the Improvements located upon the Premises from time to time as Licensee reasonably deems necessary without the need to obtain the prior written approval of City, provided that the replacement Improvements, together with related equipment, do not require more space than the existing Improvements and, in the event more space is needed or Licensee proposes any change in the location of improvements on the Premises, Licensee must obtain City's prior written approval. For any such matter requiring City's approval, Licensee shall submit to City, a detailed proposal for any replacement Improvements and any supplemental materials (the "Plans") for City's evaluation and written approval. City's approval will not be unreasonably withheld, conditioned or delayed. Any alterations, upgrades or additions to Licensee's Improvements shall require a building permit. A current and accurate Site Plan must be submitted to City by Licensee and maintained on file with City for the entire Term of this Agreement. In the event Licensee desires additional space for improvements or expansion, City reserves the right to increase Rent Payments.

Article III Term

3.1 This Agreement shall be for an initial term of five (5) years (the "Initial Term"), commencing on January 1, 2017 ("Commencement Date"), at which time rental payments shall commence and be due on the first day of each month in equal monthly installments of Three Thousand Dollars and No/100 Dollars (\$3,000.00) ("Base Rent"). Payments shall be made to

City or to such other person, firm or place as City may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Article IV below ("Rent Payment").

3.2 Licensee is granted the option to renew this Agreement for three (3) additional five (5) year terms (each additional five (5) year term being a "Renewal Term"), after the Initial Term expires. Unless Licensee gives written notice of its decision not to exercise the renewal option within thirty (30) days prior to the expiration of the current Term, this Agreement will automatically renew as long as Licensee remains in full compliance with all other provisions of this Agreement. All the terms and covenants of this Agreement apply to all Renewal Terms, subject to amendment by the mutual agreement of the Parties, in writing and signed by both Parties. If Licensee continues to possess the Premises following the expiration of all of the Renewal Terms, and this Agreement has not been renewed or superseded, this Agreement (1) shall be deemed to be a holdover tenancy at will but shall not itself constitute a renewal or extension of any term; (2) shall continue from month-to-month under the terms and conditions set forth herein; and (3) may be terminated by either Party upon at least thirty (30) days written notice to the other Party. All the terms and covenants of this Agreement apply to all holdover tenancy periods. The Initial Term, any Renewal Terms and any holdover tenancy may be referred to herein as the "Term."

Article IV Payment Terms and Conditions

4.1 **Rent Payment.** In consideration for providing the Premises for use by Licensee, the Licensee shall pay the Base Rent to City as provided in Section 3.1. Any Rent Payment not paid within thirty (30) days of its due date shall bear interest at the maximum rate allowed by law (the "Maximum Rate"). City shall invoice Licensee for any such interest incurred. If this Agreement is terminated at a time other than the last day of the calendar year of the term for any reason other than an Event of Default by Licensee, all Rent Payments shall be prorated as of the date of termination and all prepaid Rent Payments shall be refunded to Licensee. The Base Rent Payment shall be increased on the first day of each Renewal Term by an amount equal to fifteen percent (15%) of the Rent Payment in effect during the previous year. All charges payable under this Agreement such as utilities, taxes, late payment fees and interest charges shall be billed by City within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by City, and shall not be payable by Licensee. The foregoing shall not apply to monthly Rent Payments which are due and payable without a requirement that it be billed by City. The provisions of this subsection shall survive the termination or expiration of this Agreement.

4.2 **Electrical Power.** Licensee shall furnish and install an electrical sub-meter at the Premises for the measurement of electrical power used by Licensee's installation. In the event such sub-meter is installed, the Licensee shall pay the utility directly for its power consumption to the utility. Licensee shall be permitted at any time during the Term, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by City.

Licensee shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

4.3 **Additional Fees.** In the event Licensee must climb the Tower, a representative from the City's police department ("City Representative") shall be at the Property while Licensee's representative is accessing the Tower. Licensee shall pay City for costs incurred by City for providing access to the Tower, outside of normal business hours (Monday – Friday, 8 a.m. – 3 p.m., excluding City Holidays) ("Additional Fees"). Currently, the Additional Fees are based on an hourly charge for the City Representative. City shall notify Licensee of amounts due in Additional Fees in writing (and provide supporting invoices for same), and Licensee shall pay Additional Fees within sixty (60) days of receiving notice of same from City. Notwithstanding the foregoing, Licensee shall have access to its equipment shelter outside normal business hours without the payment of Additional Fees.

4.4 **Payment Address.** Rent Payments and Additional Fees shall be made payable to: "City of Farmers Branch", 13000 William Dodson Parkway, Farmers Branch, Texas 75234, Attention: Director of Finance. City shall provide Licensee written notice of any change in address for purposes of Rent Payments and Additional Fees.

4.5 **Lawful Currency.** Rent Payments and Additional Fees shall be made according to paragraph 4.1 above in lawful money of the United States of America without any abatement, setoff, reduction, deduction, counterclaim or other recoupment whatsoever, except as expressly provided herein. In no event will Licensee be obligated to pay any general income or franchise taxes measured upon the income of the City. This Section does not preclude the assessment of lawful fees pursuant to a franchise or other agreement that the City may have with Licensee or its parent or any subsidiary or affiliate.

4.6 **Dishonored Checks.** Any dishonored check shall incur a service charge equal to Fifty and No/100 Dollars. Subsequent to the first dishonored check received by City for any payment, all subsequent payments, including Rent Payments and Additional Fees, shall be made by cashier's check. City shall invoice Licensee for any such service charge incurred.

Article V Termination

5.1 **Termination for Cause.** Upon the occurrence of any one or more of the "Event of Default" defined below, the non-defaulting party may, without penalty, at its option and without prejudice to any other remedy to which it may be entitled at law or equity, or otherwise under this Agreement, terminate use or occupancy under this Agreement at any time, either in whole or in part, by giving at least sixty (60) days prior written notice thereof to the defaulting party with the understanding that all use of the Premises being terminated shall cease upon the date specified on such notice. For the avoidance of doubt, the foregoing termination right of City applies only to Events of Default by Licensee. Licensee shall equitably compensate City in accordance with the terms of Article IV of this Agreement for the use of the Premises up to the date of termination as specified in such notice. Licensee shall not, however, be entitled to any damages, including but not limited to, lost or anticipated profits should City choose to exercise its option to terminate.

5.2 **Event of Default.** Any of the following occurrences, conditions, or acts shall be deemed an "Event of Default" under this Agreement:

- (a) if Licensee fails to pay amounts due under this Agreement within thirty (30) days of receipt of written notice that such payments are overdue; or
- (b) if City fails to provide access to the Premises as required by Article VII of this Agreement within twenty-four (24) hours after written notice of such failure or fails to cure an interference problem as required by Article IX of this Agreement within twenty-four (24) hours after written notice of such failure; or
- (c) if either Party fails to observe or perform its obligations under this Agreement other than as provided in Section 5.2(a) above and does not cure such failure within thirty (30) days from the Party's receipt of written notice of breach or such longer period as may be mutually agreed upon by the Parties to complete a cure commenced within the thirty (30) day period; provided, however, that if the nature of defaulting Party's obligation is such that more than thirty (30) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

5.3 **Termination by Licensee.** This Agreement may be terminated by Licensee, without penalty, further liability, or prejudice to any other remedy to which it may be entitled at law or equity, or otherwise under this Agreement, as follows:

- (a) upon written notice, if Licensee is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Improvements as now and hereafter intended by Licensee; or, if Licensee determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;
- (b) on sixty (60) days written notice following the date notice is given to City under 5.2(b), if the breach described in the notice is not cured by City; or
- (c) unless there has been a default by City, Licensee may terminate this Agreement after the Commencement Date after thirty (30) days written notice to City only (i) if any environmental report for City's Property reveals the presence of any Hazardous Substance after the Commencement Date; or (ii) if Licensee is unable to occupy and utilize the Site or the Facilities due to an action of the Federal Communications Commission ("FCC"), including without limitation, a take back of channels or change in frequencies; or (iii) if the Licensee determines that the Site is not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference, or the Facilities or the communications systems to which the Facilities belong become unacceptable under its design or engineering specifications; or (iv) if any portion of the Site or

Facilities is damaged, destroyed, condemned or transferred in lieu of condemnation.

- (d) notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if City fails, within thirty (30) days after receipt of written notice of such breach, to perform an obligation required to be performed by City if the failure to perform such an obligation interferes with Licensee's ability to conduct its business on the Premises; provided, however, that if the nature of City's obligation is such that more than thirty (30) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

5.4 **Discontinued use of the Water Tower.** If City determines to discontinue the use of the Tower, City shall have the right upon twenty-four (24) months written notice to Licensee, to terminate this Agreement without penalty or further liability.

5.5 **Destruction of Water Tower.** Immediately upon written notice by the City, if the Premises, the Antenna Facilities or the Tower are destroyed or damaged so as in Licensee's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities, Licensee may immediately terminate this Agreement without penalty or further liability to the City. In such event, all rights and obligations of the Parties shall cease as of the date of the damage or destruction, and Licensee shall be entitled to the reimbursement of any Rental Payments prepaid by Licensee the month the damage or destruction occurred. In the event of a casualty to the Tower, and City elects to rebuild the Tower and neither City or Licensee elect to terminate this Agreement, Licensee shall have the right to rebuild or repair the Antenna Facilities upon restoration of the Tower. If Licensee elects to continue this Agreement, then all Rental Payments shall abate until the Premises and Licensee's Improvements are restored to the condition existing immediately prior to such damage or destruction.

Article VI

City's Right of Entry On to Premises

6.1 City and City's agents, employees or contractors may enter upon the Property, except Licensee's secured equipment shelter, for the purpose of performing repairs and maintenance work to the Property. If non-emergency maintenance work is required, City agrees to provide Licensee with at least ninety (90) days' notice prior to commencing such work to allow Licensee to remove any and all Improvements made by Licensee. Decisions as to the extent to which Licensee will be required to remove such Improvements shall be within the sole discretion of City. If, however, in the sole discretion of City, repair or maintenance requires immediate action on the part of City, City will take reasonable efforts to notify Licensee but may enter the Premises, except Licensee's secured equipment shelter, without first notifying Licensee and take such action as is required, including but not limited to removing any and all Improvements on the Tower made by Licensee. In no event shall City be liable for any expenses associated with its entry and removal of Improvements or for lost or anticipated profits. If City must remove or relocate any Improvements to perform repairs or maintenance on the Tower and

is unable to first notify Licensee, City will first power down or turn off the antennas. In no event shall City be liable for any lost or anticipated profits. Licensee, at its expense and exclusive use, may use any and all reasonable and appropriate means of restricting access to the Licensee's Equipment Compound.

6.2 Removal of Improvements. If Licensee's Improvements must be removed, pursuant to Section 6.1, Licensee shall have the right to set up a portable mounted antenna, a cell on wheels (COW), and/or some other similar temporary structure approved by City, on City premises to allow Licensee to continue to provide wireless communications service. Licensee may maintain its COW while the repairs and maintenance activities are on-going. Once the repairs and maintenance activities are complete, Licensee shall return its Improvements to the Tower and remove its COW within thirty (30) days following Licensee's receipt of notice from City that the repairs and maintenance activities have been completed. To maintain the temporary antenna, COW, or other temporary structure for a period in excess of thirty (30) days following Licensee's receipt of notice from City that the repairs and maintenance activities have been completed, Licensee must obtain written approval from City.

Article VII Access

7.1 City agrees that Licensee shall have free access to the Premises (excluding the Tower property) at all times for the purpose of installing and maintaining the Antenna Facilities and related equipment. City shall furnish Licensee with necessary means of access for the purpose of ingress and egress to the Premises. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Licensee or persons under their direct supervision will be permitted to enter the Premises. Licensee shall only access the Tower when accompanied by a City Representative.

7.2 Licensee's right of access is a contractual right for the benefit of Licensee only and nothing contained in this Agreement shall be construed to constitute a dedication or an easement. However, in the event this Agreement is assigned in accordance and in compliance with Section 21.9 below, such right of access shall inure to the benefit of Licensee's assignee.

Article VIII Damages to Property

8.1 Damage and Restoration of Property. Licensee shall immediately notify City of any and all damages resulting from, arising out of, or caused to, the Premises and Property, including but not limited to structural damages, electrical damages, damages to fencing, irrigation systems or landscaping but only to the extent caused by Licensee's operations or by Licensee, its officers, agents, employees and invitees. Licensee shall be solely responsible for the costs and the repair of all such damages and such repairs and/or replacements shall be completed within thirty (30) calendar days following written notice by City to Licensee and shall be completed in a manner reasonably acceptable to City.

8.2 **Failure to Restore Property.** If Licensee does not make or perform any required maintenance or repairs to the Premises within the time period provided in Section 8.1, City shall have the right, but not the obligation, to make such repairs and to perform such maintenance, in which event Licensee shall pay City the cost thereof within thirty (30) business days of demand unless the cause of such damage is the subject of a bonafide dispute by Licensee. Within thirty (30) days following the expiration or earlier termination of this Agreement (or such longer period as may be mutually agreed upon by the parties due to weather conditions), Licensee shall restore the Premises to substantially the same condition in which the Premises existed on the Effective Date of this Agreement, ordinary wear and tear and loss due to other casualty beyond Licensee's control excepted.

Article IX Electrical, Radio and Intermodulation Interference

9.1 Licensee shall operate its Improvements in a manner that will not unreasonably cause radio frequency interference with other licensees of the Property in their use of any equipment which predate the installation and operation of Licensee's Improvements or their conduct of any activity on the Property but only to the extent such parties are operating pursuant to agreements which pre-date the installation and operation of Licensee's Improvements and such parties are operating within their respective frequencies and in accordance with all applicable laws and regulations. Licensee's installation and operation of the Improvements shall be in compliance with all FCC requirements. The City shall be allowed to place police and fire licensed traffic monitoring equipment and antennae or other communications facilities on the Tower regardless of potential or actual interference with Licensee's use, provided however, if Licensee's use of the Premises is materially affected, Licensee may terminate this Agreement.

9.2 Prior to the modification or installation of any current or new Improvements on the Premises, Licensee shall conduct bandwidth testing of its Improvements and City equipment to check bandwidth conflict between the City's monitoring control system and Licensee's system. If such conflict occurs, Licensee shall take all reasonable steps necessary to resolve the conflict to the reasonable satisfaction of City. If the conflict cannot be remedied to the reasonable satisfaction of City, City may terminate this Agreement upon thirty (30) days written notice to Licensee.

9.3 Should interference prohibited by Section 9.1 occur, Licensee will promptly take all reasonable steps necessary to correct such interference within ten (10) days of receiving written notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such written notice, Licensee shall suspend operations (transmissions) at the site, except for brief periods for testing, while the interference problems are studied and a means to eliminate the problem is determined. Any such method for correction of an interference problem must be acceptable to both City and Licensee. If the interference complained of cannot be eliminated within thirty (30) days of the City providing notice, Licensee will cease its operations, remove all its Improvements from the Premises, and this Agreement shall be terminated without penalty. Consistent with Section 9.2, after Licensee has demonstrated no conflicts between City's monitoring control system and Licensee's system, in the event City allows an additional third-party to install communications equipment, City agrees to notify newest third-party of

interference prior to notifying Licensee. If at any time during the Term of this Agreement, Licensee causes interference with the City's public safety equipment, Licensee shall immediately cease its operations until such time as the conflict may be resolved. If the interference complained of cannot be eliminated within thirty (30) days, Licensee will remove all its Improvements from the Premises, and this Agreement shall be terminated without penalty.

9.4 City will not grant a license to or enter into any other agreement with any other party for the use of the Property without including in that license a provision stating that the party's use will not in any way adversely affect or interfere with Licensee's signal operation or its communication system. Furthermore, license agreements or other agreements with third-parties will state that prior to installation of improvements, such third-parties shall be required to conduct bandwidth testing of its equipment and the equipment of Licensee to check bandwidth conflict between third-party equipment and Licensee's equipment. In addition to any other rights available to Licensee at law or in equity, Licensee shall have the right to terminate this Agreement upon ten (10) days written notice to City if another user of the Property causes significant interference with Licensee's operations, and such interference is not corrected within thirty (30) days following the notice to such third-party user causing the interference. In the event that Licensee experiences interference caused by a third-party licensee, City will notify the third-party licensee suspected of causing the interference within two (2) days following City's receipt of notice from Licensee. If the interference does not cease, Licensee agrees that it shall seek recourse solely from such third-party. No compensation shall be due from City for damages, including, but not limited to, lost or anticipated profits.

9.5 Licensee shall have the sole burden of, and be responsible for, all costs associated with alleging and proving that another user of the Property is causing significant interference, as well as for otherwise enforcing Licensee's rights under this Agreement against another user of the Property. City shall not be responsible for the costs associated with the resolution of any dispute between users of the Property, or enforcement of any of Licensee's rights under this Agreement against another user of the Property.

Article X Condition of Premises

10.1 City shall maintain the Premises in compliance with all applicable statutes, ordinances, regulations and rules required for City's use of the Property and Tower, and in a manner which will not interfere with Licensee's reasonable use of the Premises. Upon expiration, cancellation, or termination of this Agreement, Licensee will have the right to remove its Improvements from the Premises at Licensee's cost and expense. Title to all remaining improvements shall belong to City. However, upon vacation of the Premises, Licensee shall surrender the Premises in substantially the same condition as received, except for ordinary wear and tear and loss due to other casualty beyond Licensee's control. If the Premises are not surrendered in the condition required by this paragraph, the Licensee shall pay City within thirty (30) business days of written demand an amount equal to the actual cost paid by the City to third-parties to restore the Premises to substantially the same condition as received.

10.2 Licensee shall have sole responsibility for the maintenance, repair, and security of its Improvements, and shall keep same in good repair and condition during the Term of this Agreement.

10.3 Licensee shall keep the Premises it occupies free of debris and anything reasonably determined to be of a dangerous, noxious, or offensive nature or which would create a hazard or interference. City acknowledges and agrees that if Licensee operates the Antenna Facilities in compliance with the terms of this Agreement, such use shall not violate this Section 10.3.

10.4 In the event City or any other licensee undertakes painting, construction, or other alterations on the Property, Licensee shall take reasonable measures at Licensee's cost to cover all of Licensee's Improvements and protect such from paint and debris fallout which may occur during the painting, construction, or alteration process. City shall not be responsible for any damages or costs incurred by Licensee due to the actions or omissions of any third-party licensees authorized by City to enter upon the Property to undertake such work. City shall provide at least thirty (30) business days written notice to all licensees upon the Property prior to City undertaking such painting, construction, or other alterations.

10.5 By taking possession of the Premises, Licensee accepts the Premises in the condition existing as of the Effective Date. Except as expressly provided herein, City makes no representation or warranty with respect to the condition of the Premises. Subject to City's obligations herein, City shall not be liable for any latent or patent defect in the Premises. City agrees to notify Licensee of the existence of any latent defects of which the City has actual knowledge.

Article XI Construction, Installation and Operation

11.1 **Construction, Installation and Operation.** Licensee may, at its sole cost and expense, construct, install, operate, maintain, monitor, reconfigure and repair its Improvements. Not less than thirty (30) days prior to the date on which Licensee intends to commence construction of any new Improvements (i.e., not replacements of existing equipment) located on the Tower, Licensee shall provide to the City for its approval a proposal containing: (i) a written notice and plan describing, in reasonable detail, the steps necessary to complete Licensee's construction and installation; (ii) a list and description of all Improvements to be installed on the Tower; (iii) a list of all contractors, subcontractors and other entities that will perform Licensee's construction and installation work; and, (iv) copies, certificates or other proof that Licensee or Licensee's contractors and subcontractors have obtained all necessary permits, including City issued building permit, and licenses for the performance of Licensee's work. City's failure to respond in writing to Licensee's proposal within twenty (20) days of City's receipt of the proposal shall constitute City's approval of the proposal, and Licensee may commence Licensee's work pursuant to such proposal. City's grant of approval under this Section shall not be construed as an assumption of liability or indemnification; nor shall such approval replace or constitute any approval that Licensee is required to obtain from any duly authorized local authorities for any construction, installation or other element of Licensee's work.

No materials may be used in the installation of the antennas or transmission lines that will cause corrosion or rust or deterioration of the Tower structure or its appurtenances.

All antenna(s) on the Tower must be identified by a marking fastened securely to its bracket on the Tower and all transmission lines are to be tagged at the conduit opening where it enters any user's equipment space.

11.2 Marking and Lighting Requirements. City shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration and the FCC applicable to the Tower; provided, however, to the extent the Antenna Facilities extend above the top of the Tower, Licensee shall be responsible for applicable marking and lighting requirements of the Federal Aviation Administration and the FCC.

11.3 Inspection and Tests. Upon the Effective Date and for the Term of this Agreement, Licensee shall have reasonable access as provided in Section 7 above to the Premises as are necessary and approved by City for the purpose of inspection and planning.

11.4 Payment, No Mechanics Liens. Licensee shall make full and prompt payment of all sums necessary to pay the costs of all installation, repairs and alterations, improvements, changes and other work done by Licensee in or to the Premises. Title to the Improvements shall be held by Licensee. City shall not be responsible for or with respect to the performance of Licensee's work. Licensee shall pay or cause to be paid all costs associated with Licensee's work. Licensee shall not suffer or permit to be enforced against any portion of the Premises any (i) mechanic's, materialman's, contractor, subcontractor or other lien or claim arising from or in any way related to Licensee's work, or (ii) any other claim, mortgage, security interest, encumbrance, lien or other charge. Within sixty (60) days after having knowledge of the recordation of any lien, encumbrance, judgment or similar item which affects the Premises in any way, Licensee shall obtain the complete discharge and release thereof at Licensee's sole expense or expenditure (without any cost being imposed upon City.) However, Licensee shall have the right to contest, in good faith, any mechanic's or materialman's lien upon the condition that Licensee provides a bond or other form of security reasonably acceptable to City in an amount sufficient to hold City fully and completely harmless from any and all liability therefor or on account thereof.

11.5 Improvements to Premises; Removal. City waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof. All Improvements constructed, installed and operated by or on behalf of Licensee shall remain Licensee's personal property and are not fixtures. Licensee shall remove all Improvements at its sole expense within thirty (30) days following the expiration or earlier termination of this Agreement, and Licensee shall repair any damage to the Premises caused by such removal and fully restore the Premises to substantially the same condition as existed prior to the Commencement Date at its sole cost and expense, ordinary wear and tear and loss due to other casualty beyond Licensee's control excepted. Licensee shall provide to City in writing, by not later than the end of the prescribed thirty (30) day period, notice that all Improvements have been removed in accordance with this Section. Failure of Licensee to remove any or all Improvements from the Premises within the prescribed thirty (30) days shall be construed as

holdover pursuant to this Section, and all obligations and requirements, including payment of Rent Payments, shall continue to apply unless and until Licensee removes all Improvements and so notifies City. Licensee will be required to remove from the Premises or the Property any underground utilities. Within forty-five (45) days following request by City, Licensee shall post a \$10,000.00 removal bond (the "Bond") with City to insure the removal of the Improvements as required by Section 8.2 hereof. Upon termination of this Agreement and removal of the Improvements as required by Section 8.2 hereof, the Bond shall be cancelled. Should Licensee fail to fulfill its removal obligations pursuant to Section 8.2 of this Agreement, City shall be entitled to exercise its right to draw on the Bond an amount necessary to fulfill and complete Licensee's removal obligations hereunder following the termination of this Agreement.

11.6 Liability for Damage/Outages. Licensee shall be solely responsible for any damage caused by Licensee, its agents and/or contractors on or to the Premises that causes an interruption or outage in the services, operations or utilities of another licensee, and shall indemnify and hold harmless City and its employees, agents, successors and assigns from all claims or actions for damages, including actual and direct damages, brought by another licensee as a result and to the extent of Licensee's, or its employees', contractors', agents', assigns' or licensees', willful, reckless or gross negligence or other conduct, provided that City requires all other licensees to agree in writing to provisions identical to this Section 11.6 for the benefit of Licensee.

Article XII Compliance with Laws

12.1 By Licensee. Licensee, its employees, agents, designees, contractors, subcontractors, invitees and licensees, shall comply in all material respects and at all times with all applicable local, state and federal laws, statutes, ordinances, regulations, rulings, requirements, conditions, orders, licenses, permits, covenants, restrictions, approvals and consents pertaining to Licensee's activities and operations on the Premises, Licensee's construction, installation and operation work, Improvements and Licensee's use of the Premises. Without limiting the generality of the preceding sentence, Licensee shall fully and timely observe and comply with applicable laws, regulations, policies and requirements concerning health and/or public safety, including standard industry equipment safety regulations, and shall not use the Premises or operate the Improvements in any manner which is in violation thereof. Licensee shall, at Licensee's sole cost and expense, promptly apply for and use its commercially reasonable efforts to obtain and maintain all necessary licenses, permits, approvals and consents required or necessary for the construction and operation of the Improvements. In the event Licensee fails to obtain any required license, permit, approval or consent to construct and operate the Improvements, through no fault of Licensee, Licensee shall have the right to terminate this Agreement in accordance with Section 5 of this Agreement.

12.2 By City. The City shall comply in all material respects and at all times, and shall cause its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees (collectively "City") to comply in all material respects and at all times with all laws, ordinances, orders, rules and regulations of all governmental or judicial authorities having jurisdiction thereof, whether state, federal or local, relating to the Premises. Without limiting the

generality of the preceding sentence, City shall fully and timely observe and comply with applicable laws, regulations, policies and requirements concerning health and/or public safety with respect to the Premises.

Article XIII Complaint Resolution

If City determines that Licensee is in default of this Agreement, City shall provide notice to Licensee of the breach (the "Breach"). Licensee shall cure the breach within the applicable time period or, if Licensee disputes the allegation, Licensee shall provide a written response to City within the applicable cure period. If the Breach cannot be resolved to the satisfaction of City within the cure period, Licensee shall provide a schedule for completion of its plan to resolve or prevent the Breach; such schedule is subject to City approval. If future action is necessary, Licensee shall include a schedule for completion of its plan to correct or prevent the Breach; such schedule is subject to City approval. If City must step in and resolve a complaint regarding Licensee's operations, Licensee shall reimburse City for all actual reasonable expenses incurred.

Article XIV Utility Easements and Utility Cost

14.1 Licensee shall pay directly to all public utility service companies, before delinquency, all charges for the electricity, water and other utility services that Licensee consumes in connection with the installation and operation of Licensee's Improvements and which are separately metered and charged to Licensee by any public utility service company, without any expense therefore being imposed upon City.

14.2 Licensee shall obtain separate public utility services from any company that will provide such services to the Premises (which services may include an approved battery-powered or diesel-powered standby power generator located on the Premises for Licensee's exclusive use).

14.3 Licensee shall not permit any charges for public utility services to accumulate or become a lien on the Premises. If Licensee fails to pay prior to delinquency any such charge required to be paid by Licensee pursuant to this Section, City may, but shall not be required to, pay such charge on Licensee's behalf. If City pays any such charge on behalf of Licensee or incurs any cost with respect to any grant of any public utility service easement for the benefit of Licensee pursuant to this Section, Licensee shall reimburse and pay to City an amount equal to all such charges so paid and all such easement costs so incurred, within sixty (60) days following demand as Additional Fees.

14.4 **Additional Utility/Power Equipment.** In the event that Licensee is required to or otherwise decides to install, operate and use additional equipment to provide electricity or other utility services required for the operations of Licensee's Improvements, such installation, operation and use shall comply in all respects with the terms and conditions set forth in this Agreement.

Article XV
Taxes

15.1 If required by applicable law, City shall be responsible for timely payment of all taxes and assessments levied upon the lands, improvements and other property of City. Licensee agrees to timely reimburse City for all taxes that are assessed against City, if any, that City demonstrates are due to the real property taxes attributable to Licensee's Improvements or use of the Premises and Improvements constructed or maintained by Licensee on or about the Premises; provided, however, City shall provide prior notification of any taxes for which Licensee is to be charged, so Licensee will have the opportunity to appear before the taxing authority and contest any assessment. Licensee's responsibility for taxes under this Article shall be limited to any proportionate increase in taxes that is attributable to the value of the Improvements. Nothing herein shall require Licensee to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon City.

15.2 In the event City receives a notice of assessment with respect to which taxes or assessments are imposed on the Improvements on the Premises, City shall provide Licensee with copies of each such notice immediately upon receipt. For any tax amount for which Licensee is responsible under this Agreement, Licensee shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by the applicable jurisdiction. The expense of any proceedings described in this Section 15.2 shall be borne by Licensee and any refunds or rebates secured as a result of Licensee's action shall belong to Licensee, to the extent the amounts were originally paid or borne by Licensee.

15.3 Licensee shall have the right but not the obligation to pay any taxes due by City under applicable law if City fails to timely do so. In the event that Licensee exercises its rights under this Article due to such City default, Licensee shall have the right to deduct such tax amounts paid from any monies due to City from Licensee.

15.4 If Licensee fails to pay any such taxes for which Licensee is obligated or fails to notify City of its intent to contest such tax assessment, City may, but shall not be required to, pay such taxes on Licensee's behalf. If City pays any such taxes on behalf of Licensee pursuant to the preceding sentence, Licensee shall reimburse and pay to City an amount equal to any such taxes so paid, plus an administrative fee of ten percent (10%) of the taxes, within sixty (60) days following demand as Additional Rent.

15.5 Any tax-related notices shall be sent to Licensee in the manner set forth in Article XVIII and, in addition, a copy of any such notices shall be sent to the following address.

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration – Taxes
Re: Cell Site # DX0281; Cell Site Name: Marsh Lane (TX)
Fixed Asset Number: 10083867
575 Morosgo Drive NE
Atlanta, GA 30324

Article XVI
Liability and Indemnification

16.1 LICENSEE SHALL AT ALL TIMES COMPLY WITH ALL LAWS AND ORDINANCES AND ALL APPLICABLE RULES AND REGULATIONS OF MUNICIPAL, STATE AND FEDERAL GOVERNMENT AUTHORITIES RELATING TO THE INSTALLATION, MAINTENANCE, HEIGHT, LOCATION, USE, OPERATION, AND REMOVAL OF THE IMPROVEMENTS BY LICENSEE, AUTHORIZED HEREIN, AND SHALL FULLY RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS OR EMPLOYEES AGAINST ANY AND ALL CLAIMS, DAMAGES, LAWSUITS, LOSSES, COSTS, OR EXPENSES WHICH MAY BE SUSTAINED OR INCURRED BY CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS OR EMPLOYEES AS A RESULT OF LICENSEE'S INSTALLATION, OPERATION, OR REMOVAL OF SUCH IMPROVEMENTS, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS OR EMPLOYEES.

16.2 EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS OR EMPLOYEES, LICENSEE UNDERTAKES AND ASSUMES FOR ITS OFFICERS, AGENTS, EMPLOYEES, SERVANTS, AFFILIATES, CONTRACTORS AND SUBCONTRACTORS, ALL RISK OF DANGEROUS CONDITIONS, IF ANY ON OR ABOUT THE PREMISES, AND LICENSEE HEREBY AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS AND EMPLOYEES AGAINST AND FROM ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS, AND EMPLOYEES FOR PERSONAL INJURY OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF LICENSEE'S INSTALLATION, OPERATION, MAINTENANCE, CONDITION OR USE OF THE PREMISES OR LICENSEE'S IMPROVEMENTS OR LICENSEE'S FAILURE TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL STATUTE, ORDINANCE OR REGULATION EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS OR EMPLOYEES.

16.3 City and Licensee agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of

common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

16.4 LICENSEE REPRESENTS AND WARRANTS THAT ITS USE OF THE PREMISES HEREIN WILL NOT GENERATE ANY HAZARDOUS WASTES, AND IT WILL NOT STORE OR DISPOSE ON THE PREMISES NOR TRANSPORT TO OR OVER THE PREMISES ANY HAZARDOUS SUBSTANCE IN VIOLATION OF ANY APPLICABLE LAWS; PROVIDED, HOWEVER, THAT (I) LICENSEE MAY STORE ACID STORAGE BATTERIES ON THE PREMISES AS LICENSEE BELIEVES IS REASONABLY NECESSARY FOR USE IN THE EVENT OF A POWER OUTAGE, (II) LICENSEE MAY TRANSPORT TO AND STORE ON THE PREMISES A DIESEL OR PROPANE GENERATOR DURING AN EMERGENCY TO PROVIDE ELECTRICITY IN THE EVENT OF A POWER OUTAGE IN EXCESS OF FOUR (4) CONTINUOUS HOURS, (III) LICENSEE MAY USE EQUIPMENT COMMONLY USED IN THE PROVISION OF TELECOMMUNICATIONS SERVICES SUCH AS ELECTRONIC EQUIPMENT AND CABLE EVEN IF SUCH EQUIPMENT CONTAINS SOME HAZARDOUS COMPONENTS, AND (IV) LICENSEE MAY USE AND STORE CLEANING AGENTS AND OTHER SOLVENTS COMMONLY USED IN LICENSEE'S USUAL COURSE OF BUSINESS. LICENSEE FURTHER AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY DAMAGE, LOSS, OR EXPENSE OR LIABILITY RESULTING FROM GENERATING, TRANSPORTING, STORAGE OR DISPOSAL BY OR ON BEHALF OF LICENSEE OF SUCH HAZARDOUS SUBSTANCES IN VIOLATION OF ANY APPLICABLE LAWS, INCLUDING ALL ATTORNEYS' FEES, COSTS AND PENALTIES INCURRED AS A RESULT THEREOF. "HAZARDOUS SUBSTANCE" SHALL BE INTERPRETED BROADLY TO MEAN ANY SUBSTANCE OR MATERIAL DEFINED OR DESIGNATED AS HAZARDOUS OR TOXIC WASTE, HAZARDOUS OR TOXIC MATERIAL, HAZARDOUS OR TOXIC OR RADIOACTIVE SUBSTANCE, OR OTHER SIMILAR TERM BY ANY FEDERAL, STATE OR LOCAL ENVIRONMENTAL LAW, REGULATION OR RULE PRESENTLY IN EFFECT OR PROMULGATED IN THE FUTURE, AS SUCH LAWS REGULATIONS OR RULES MAY BE AMENDED FROM TIME TO TIME.

16.5 In the event Licensee becomes aware of any hazardous materials on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Licensee's sole determination, renders the condition of the Premises or Property unsuitable for Licensee's use, or if Licensee believes that the leasing or continued leasing of the Premises would expose Licensee to undue risks of liability to a government agency or third party, Licensee will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to City.

16.6 Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Licensee and City each waives any

claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

Article XVII

Insurance

17.1 **Required Insurance.** On or before the Commencement Date and throughout the Term, Licensee shall, at Licensee's expense, procure and maintain the following insurance policies:

- (a) Commercial general liability (CGL) insurance with respect to its activities on the Property such insurance to afford protection of up to Three Million Dollars (\$3,000,000) per occurrence and Six Million Dollars (\$6,000,000) general aggregate, based on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing substantially equivalent coverage. Licensee's CGL insurance shall contain a provision including City, its officers, employees and agents as additional insureds. Such additional insured coverage:
 - (i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors;
 - (ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of City, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of City, its employees, agents or independent contractors; and
 - (iii) shall not exceed Licensee's indemnification obligation under this Agreement, if any.
- (b) Notwithstanding the foregoing, Licensee shall have the right to self-insure the coverages required in subsection (a) under the same terms and conditions. In administering a self- insurance program, City and Licensee shall maintain all rights and obligations between themselves as though Licensee maintained said insurance with a commercial insurer, including any waiver of rights of recovery, other insurance clauses, and any other extension of coverage required. Licensee shall operate under the same standards of good faith and administration of its self-administered claims as any commercial insurer. Licensee shall pay from its assets all costs, expenses, damages, claims, losses, and liabilities, including attorney's fees and defense costs. City shall not be responsible for payment of any deductible or insured amount.
- (c) Worker's Compensation and Employer's Liability insurance in the minimum amounts required by state law.

17.2 **Evidence of Insurance.** No later than five (5) days prior to the Commencement Date, Licensee shall furnish to City a certificate of insurance evidencing the required insurance.

17.3 **Endorsements; Certificates of Insurance.** All insurance shall include City, its officers, employees and agents as additional insureds as to all applicable insurance coverage on the general liability insurance coverage.) Licensee shall provide City with at least thirty (30) days' prior written notice of any required policy that is cancelled or non-renewed and is not replaced. All required insurance shall provide for a waiver of subrogation against City. Any such insurance required by this Article 17 shall be primary and noncontributing with any insurance that may be carried by City as relates to Licensee's operations. Not later than thirty (30) days after the renewal period for each policy, a certificate of insurance evidencing the required insurance coverage shall be delivered to City.

17.4 **Qualifying Insurance Company.** All insurance companies providing the required insurance shall be eligible to transact business in Texas and rated at least "A-VII" by AM Best or other equivalent rating service.

17.5 **City Purchasing Insurance.** In addition to other remedies provided in this Agreement, if Licensee fails to maintain the insurance required by this Article 17, City may, but is not obligated to, obtain such insurance and Licensee shall pay to City within sixty (60) days following demand, as additional rental the premium cost thereof plus interest at the Maximum Rate, per annum, from the date of payment by City until repaid by Licensee.

17.6 **Contractor's Insurance.** Without limiting any of the other obligations or liabilities of Licensee, Licensee shall require its contractors and subtenants, at the contractors' or subtenants' expense, to maintain during the portion of the Lease Term during which they occupy or otherwise are conducting activities on the Premises, workers' compensation as required by applicable law and commercially general liability coverage of the type which is reasonable and prudent as determined by Licensee in its commercially reasonable discretion.

Article XVIII

Notice

Any notice or demand required or desired to be given to any Party pursuant to this Agreement shall be in writing, shall be delivered to the address set forth below and shall be deemed validly served, given, delivered or made only if (i) personally delivered (including delivery by a commercially-recognized courier which provides service between the point-of-origin and the point-of-destination); (ii) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or (iii) via nation overnight courier service. Service by United States mail shall be deemed made on the date actually received. Upon request by City, Licensee shall provide City with a current list of Licensee contacts for payment issues and contacts for Licensee's Improvements.

If intended for City:

City of Farmers Branch
Attn: City Manager
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

If intended for Licensee:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site # DX0281
Cell Site Name: Marsh Lane (TX)
Fixed Asset No.: 10083867
575 Morosgo Drive NE
Atlanta, GA 30324

With a copy to:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site # DX0281
Cell Site Name: Marsh Lane (TX)
Fixed Asset No.: 10083867
208 S. Akard Street
Dallas, Texas, 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice. City or Licensee may from time to time designate any other address for this purpose by written notice to the other Party.

**Article XIX
Remedies**

19.1 If there is an Event of Default by Licensee pursuant to Section 5.2; or if Licensee becomes insolvent and has not filed for bankruptcy, City shall have the right, at its option, in addition to and not exclusive of any other remedy City may have hereunder or by operation of law, (a) with thirty (30) days demand or notice and after all applicable notice and cure periods described in Section 5, to re-enter the Premises and remove the Improvements therefrom; or (b) exercise any other right it may have at law or in equity. Upon such occurrence, City may declare this Agreement and license granted herein at an end, in which event Licensee shall immediately pay City a sum of money equal to the total of the amount of Rental Fees accrued through the date of termination.

19.2 No re-entry and taking of possession of the Premises by City pursuant to Section 19.1 shall be construed as an election on City's part to terminate this Agreement, regardless of the extent of renovations and alterations by City, unless a written notice of such intention is given to Licensee by City.

19.3 If there is an Event of Default by City pursuant to Section 5.2, Licensee shall have the right, at its option, in addition to and not exclusive of any other remedy City may have hereunder, to cure City's default and to deduct the costs of such cure from any monies due to City from Licensee or to exercise any other right it may have at law or in equity.

Article XX Force Majeure

Notwithstanding any other provision in this Agreement to the contrary, neither Party will have any liability to the other with respect to its failure to perform its obligations under this Agreement, except for the payment of amounts due, if such failure is due to any of the following events (each a "Force Majeure" event): (i) the failure of any equipment or software under the control of a person, firm or entity not affiliated with such Party; (ii) fire, flood, earthquake, law or government regulation; or (iii) any other cause beyond the reasonable control of such Party. In any such case, the Parties' time for performance under this Agreement and the term hereof, to the extent affected by any of the foregoing, shall be correspondingly extended; provided, however, that if such condition shall continue in effect for more than 180 days, either Party shall have the right to terminate this Agreement upon thirty (30) days' notice.

Article XXI Miscellaneous Provisions

21.1 **Modifications.** Licensee's operations and all City approved modifications to the Premises must at all times comply with the terms of this Agreement, all applicable federal, state and local laws and ordinances and all amendments thereto.

21.2 **Entire Agreement.** This Agreement, together with all Exhibits attached hereto and incorporated herein constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

21.3 **Capacity.** Both Licensee and City represent that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this Agreement.

21.4 **Governing Law.** The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

21.5 **Amendment.** This Agreement may only be amended by the mutual written agreement signed by the Parties hereto.

21.6 **Legal Construction; Severability.** In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

21.7 **Nonwaiver.** No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or conditions of this

Agreement may be waived without consent of the Parties. It is further agreed that one (1) or more instances of forbearance by either Party in the exercise of its rights herein shall in no way constitute a waiver thereof.

21.8 Independent Contractor. Licensee covenants and agrees that Licensee is an independent contractor and not an officer, agent, servant or employee of City; that Licensee shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Licensee, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Licensee.

21.9 Successors and Assigns.

- (a) City and Licensee each bind themselves, their successors, executors, administrators and assigns to the other Party to this Agreement other than transactions including Affiliates of Licensee. Neither City nor Licensee will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other Party. Other than transactions including Affiliates of Licensee, no assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of City. Other than transactions including Affiliates of Licensee, Licensee shall not assign, sublet, subcontract, transfer or allow the use of any interest in the Premises or any use of Licensee's Improvements, including but not limited to equipment, lines, channels or frequencies, on the Premises without the prior written consent of City. City shall not unreasonably withhold, condition or delay its consent.
- (b) Licensee may assign this Agreement to any parent, subsidiary or Affiliate without the need to obtain the consent of City. As used herein "Affiliate" shall mean any entity which is at least fifty-one percent (51%) controlled by Licensee or having control over Licensee or acquires Licensee's assets in the market as defined by the FCC in which the Property is located, provided such assignee has first received FCC or state regulatory agency approvals, acquires Licensee's radio communications business and assumes all obligations of Licensee under this Agreement. Notwithstanding any assignment permitted under this Section or otherwise under this Agreement, Licensee shall remain absolutely and unconditionally primarily liable to pay and perform each and all of the obligations set forth in this Agreement prior to said assignment and shall be relieved of all future performance, liability and obligations after said assignment.
- (c) If City shall, at any time, relinquish its ownership or otherwise dispose of the Premises pursuant to an assignment consented to in writing by Licensee pursuant to Section 21.9(a), City shall be automatically released from all obligations under and pursuant to this Agreement that accrue after such disposition. If the Premises are so disposed of, Licensee shall not disavow any of Licensee's obligations

pursuant to this Agreement but shall attorn to the purchaser or transferee thereof for the performance of City's obligations under this Agreement, provided however that City shall promptly notify Licensee in writing, and such sale or transfer shall be subject to this Agreement and Licensee's rights hereunder, and City or its successor shall send the documents listed below to Licensee:

- i. Copy of the deed transferring the Premises
- ii. New IRS Form W-9
- iii. Completed and Signed AT&T Payment Direction Form
- iv. Full contact information for new landlord including phone number(s)

Until Licensee receives the foregoing documents, Licensee shall not be in default for failing to attorn to the new owner as its landlord, or continuing to direct payments required under this Agreement to City, rather than to the new owner.

21.10 Applicable Laws. This Agreement is entered into subject to the charter and ordinances of City as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and Texas state laws.

21.11 Subordination to Mortgage. Subject to receipt of the non-disturbance agreement described below, any mortgage now or subsequently placed upon any property of which the Premises are a part shall be deemed to be prior in time and senior to the rights of the Licensee under this Agreement. Subject to receipt of the non-disturbance agreement described below, Licensee subordinates all of its interest in the Premises created by this Agreement to the lien of any such mortgage. Licensee shall, at City's request, execute any additional documents necessary to indicate this subordination provided that such mortgage shall not disturb possession of Licensee hereunder. In the event a mortgage currently exists on the Premises, City shall within five (5) business days of the Effective Date, deliver a non-disturbance agreement (in form reasonably acceptable to Licensee) from the holder of such lien and City shall obtain same from any future lien holder.

21.12 Contract Interpretation. Both Parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

21.13 Effective Date. The term "Effective Date" as used in this Agreement shall be deemed to be the later of the dates the Parties execute this Agreement, as indicated in the signature blocks on the next page.

21.14 Termination of Existing Lease. The terms of the Existing Lease will expire on December 31, 2016. Upon the full execution of this Agreement the Parties acknowledge and agree that the Existing Lease is fully terminated as if the termination were the date originally fixed in the Existing Lease for the expiration of the term. Notwithstanding any other provisions of the Existing Lease, the terms of this Agreement shall control and the Existing Lease shall have no further force and effect. Any rent payments made under the Existing Lease that apply to

periods following the termination of the Existing Lease shall be applied to the Base Rent due and owing hereunder.

21.15 **Memorandum.** Contemporaneously with the execution of this Agreement or at any time during the Term upon fifteen (15) business days' prior written notice from the other, the Parties will execute a recordable Memorandum of Lease substantially in the form attached as Exhibit D. Either Party may record this Memorandum of Lease at any time during the Term, in its absolute discretion.

21.16 **W-9.** As a condition precedent to payment, City agrees to provide Licensee with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Licensee, including, any change in City's name or address.

(signature page to follow)

EXECUTED on this _____ day of _____, 2016.

City of Farmers Branch

By: _____
Name: _____
Title: _____

Approved as to Form:

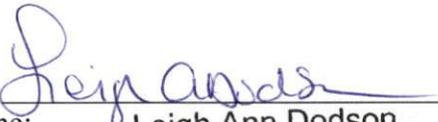
By: _____
Peter G. Smith
City Attorney
(10-06-2016/73523)

EXECUTED on this _____ day of _____, 2016.

LICENSEE:

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: 
Name: Leigh Ann Dodson
Title: Area Manager - RE&C
NTX Network Ops

CITY ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2016, by _____, _____, on behalf of the City of Farmers Branch.

Notary Public, State of Texas

LICENSEE ACKNOWLEDGMENT

STATE OF Texas §
COUNTY OF Dallas §

This instrument was acknowledged before me on the 19 day of October, 2016, by Leigh Ann Dodson, the Area Manager of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company.

Kathleen Meza
Notary Public in and for
The State of Texas



Exhibit A

Site Plan

The Property is legally described as follows:

Being a 25' X 20' tract of land situated in the Samuel P. Brown Survey, Abstract Number 164 in the City of Farmers Branch, Dallas County, Texas and being a portion of a 6.01 acre tract of land described in a deed to the City of Farmers Branch recorded in Volume 66823, Page 758 of the Deed Records of Dallas County Texas (DRDCT) and being more particularly described as follows:

COMMENCING at the northeast corner of said 6.01 acre tract of land and being located in the northerly right-of-way line of existing Valley View Lane (a 100' wide right-of-way) and also being located in the south line of the old abandoned right-of-way for Valley View Lane recorded in Volume 67025, Page 1702 (DRDCT);

THENCE along the north line of said 6.01 acre tract of land and the south line of said right-of-way abandonment, South 89°53'10" West a distance of 413.18 feet to a point perpendicular to and 75.87 feet north of the northeast corner of said Permanent Site;

THENCE departing the north line of said 6.01 acre tract, South 00°06'50" East a distance of 75.87 feet to the POINT OF BEGINNING of the herein described tract of land;

THENCE SOUTH 00°00'00" EAST a distance of 20.00 feet to a point for corner;

THENCE NORTH 90°00'00" WEST a distance of 25.00 feet to a point for corner;

THENCE NORTH 00°00'00" EAST a distance of 20.00 feet to a point for corner;

THENCE NORTH 90°00'00" EAST a distance of 25.00 feet to a POINT OF BEGINNING;

CONTAINING within these metes and bounds 500 square feet of land, more or less.

Licensee's Premises shall consist of the Licensee's Equipment Compound (all equipment, shelters and similar structures located on the Premises) and the Antenna Facilities, as described and illustrated on the attached drawings consisting of six (6) pages.

A copy of Ordinance # 2298 (consisting of seven (7) pages) is attached hereto.

Exhibit B

Survey

To be attached by the Licensee in the event the City grants to Licensee the right to survey the Premises. This Exhibit B shall control in the event boundary and access discrepancies between it and Exhibit A.

Exhibit C

City's Mounted Antenna Policy

Mounted Antenna Policy for Elevated Storage Tanks

The City of Farmers Branch recognizes that the placement of antennas or similar structures on elevated storage tanks can be necessary for the continued growth of personal communications. Elevated storage tanks can provide the necessary structure and height for antennas without erecting additional monopole facilities throughout the city.

Currently, the City owns and operates three elevated storage tanks located at 3723 Valley View Lane, 14927 Marsh Lane, and 14337 Gillis Road. Each of the storage tanks as well as sites have unique and different characteristics.

General Site Requirements:

The City is under no obligation to allow private antennas on any of the elevated storage tanks. However, if the City chooses to do so the following criteria must be met at all sites:

- Nothing in this policy shall contradict any city ordinance.
- The equipment facility shall be of the same material, color, and character of other city owned structures on site. Any deviations shall be approved by the City Manager or his designee.
- The equipment facility shall meet all building requirements.
- All zoning regulations must be followed.
- A structural and electrical engineering analysis performed and sealed by a professional engineer, site plans and construction plans shall be approved by staff before any permits are issued.
- All wires, cables, etc. must be underground from the equipment facility to the storage tank. On the tank they must be attached to the exterior and painted to match. Paint shall be of the same specifications as paint used on the storage tank.
- No antenna system shall be placed on the bowl of the storage tank.
- If operation of antenna interferes with city operations including transmission of public safety, the Leasee will cease transmitting immediately.
- The appearance and/or design of the antenna or equipment facility shall not harm city facilities or aesthetics.

Specific Site Requirements

Due to the nature of elevated storage tanks, piping requirements for the towers limit the area that equipment facilities can be placed on site.

3723 Valley View Lane:

- Antennas shall be placed on the base of the tank up to 115 feet and in recesses structure if possible.
- The equipment facility shall be located in the area as outlined on Attachment A.
- Equipment facility shall not be higher than the Justice Center wall that faces Valley View Lane.
- Equipment facility shall be of the same materials incorporated into the Justice Center unless deviation is approved by the City Manager.

14927 Marsh

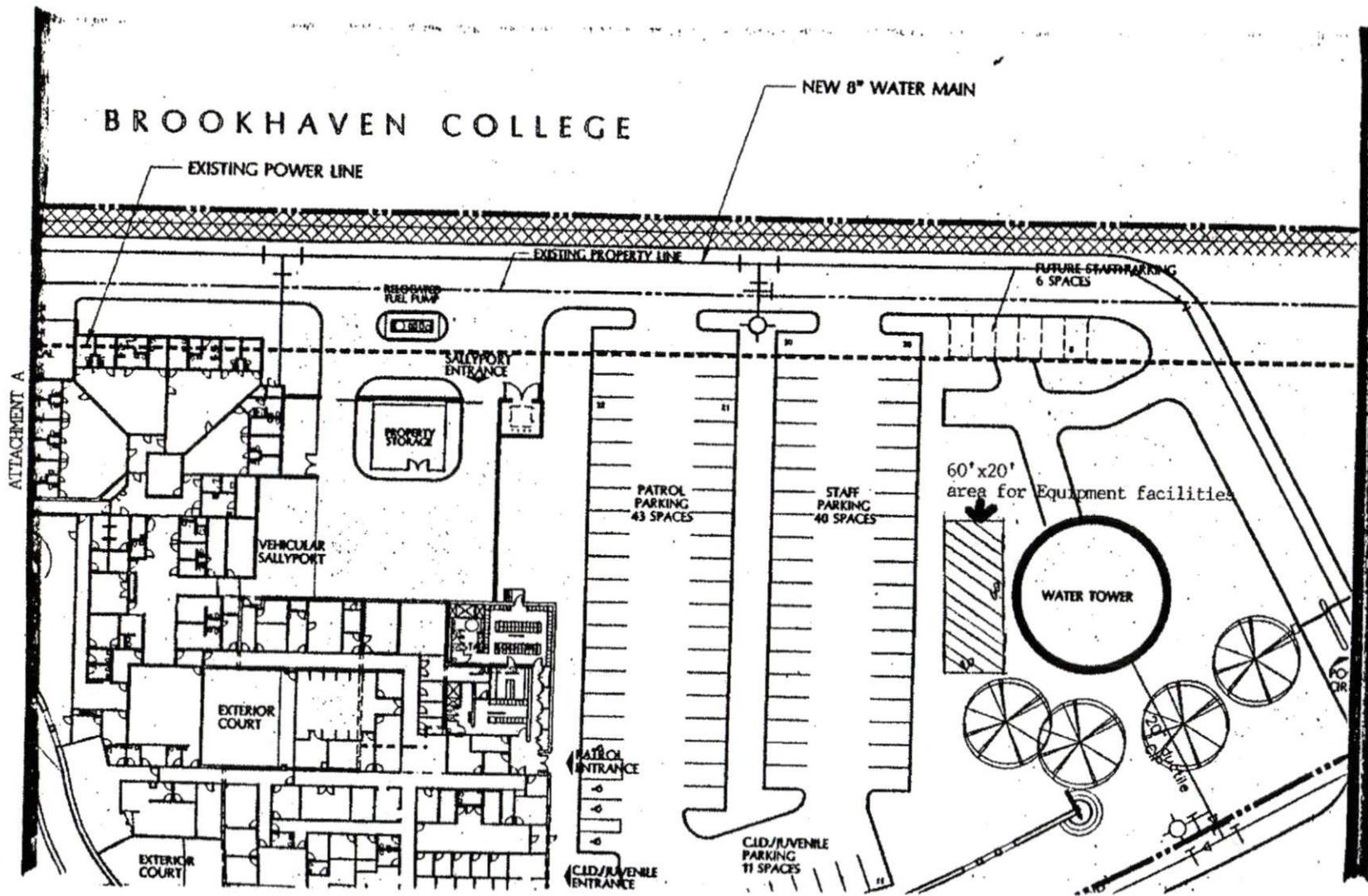
- Antennas shall be placed on the "legs" of the tank up to 78 feet and not on the bowl itself.
- The equipment facility shall be of the same materials and colors as the ground storage tanks that are on site.
- The equipment facility shall be placed in the area located in Attachment B.

14337 Gillis

- Antennas shall be attached to the concrete base up to 88 feet. No antennas shall be placed or attached to the bowl.
- The equipment facility shall be of precast concrete construction and located in the area located in Attachment C.
- The fence shall be moved back in order that equipment facilities are on the outside of the fence allowing free access by Leasee.

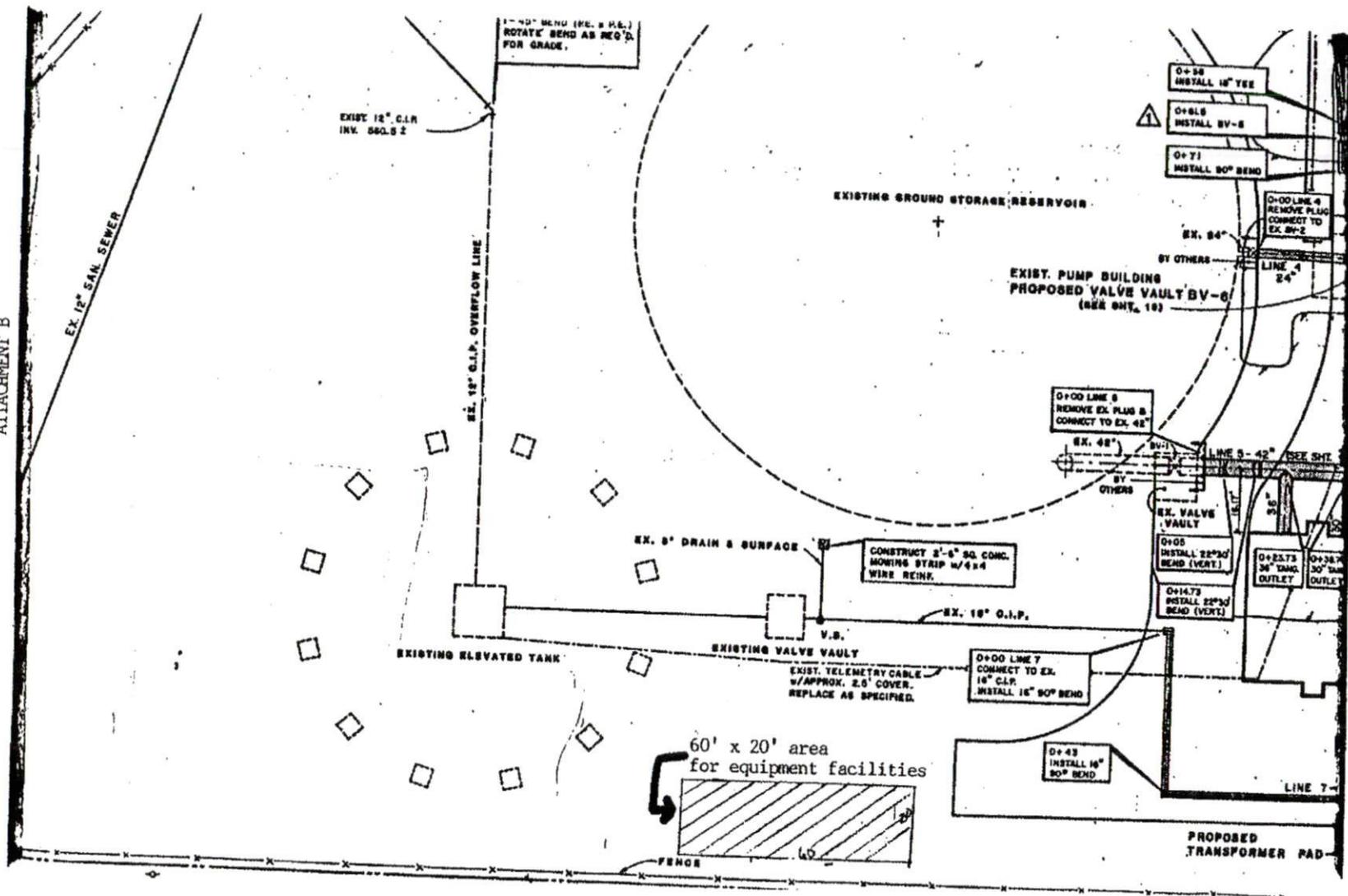
Location of equipment facility or antenna shall only be changed by approval of the City Manager or designee.

BROOKHAVEN COLLEGE



ATTACHMENT A

ATTACHMENT B





ORDINANCE NUMBER 2298

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AS HERETOFORE AMENDED, SO AS TO GRANT A SPECIFIC USE PERMIT FOR A CELLULAR COMMUNICATIONS ANTENNA AND AN EQUIPMENT BUILDING WITHIN THE ONE FAMILY RESIDENCE-2 (R-2) ZONING DISTRICT AT 3723 VALLEY VIEW LANE; PROVIDING FOR CONDITIONS OF OPERATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00); PROVIDING FOR INJUNCTIVE RELIEF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Farmers Branch and the governing body of the City of Farmers Branch, in compliance with the Charter of the City of Farmers Branch, and the State Law with reference to amending the Zoning Ordinance Regulations have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally, the governing body of the City of Farmers Branch is of the opinion that a change in such zoning should be made.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS:

SECTION 1. That the Comprehensive Zoning Ordinance of the City of Farmers Branch, Texas, be, and the same is hereby amended, by amending the Zoning Map of the City of Farmers Branch so as to grant a Specific Use Permit for a cellular communications antenna to be mounted on the side of the existing City of Farmers Branch water tower located at 3723 Valley View Lane east of the City of Farmers Branch Police and Municipal Court building within the One Family Residence-2 (R-2) zoning district. The antenna will include nine (9) panels, approximately one (1) foot wide and four (4) foot tall each. A group of three (3) panels each will face south, northeast, and northwest and will be mounted at a height of 100 feet above grade. An associated equipment building, approximately 228 square feet in area and ten (10) feet tall will be placed at the base of the water tower. The equipment building will be temporarily placed along the north side of the water tower and upon completion of the new Justice Center, the equipment building will be permanently placed along the west side of the water tower.

SECTION 2. That the above described property shall be used only in the manner and for the purpose provided by the Comprehensive Zoning Ordinance of the City of Farmers Branch as herein amended and by the granting of a specific use permit for a cellular communications antenna and an equipment building.

SECTION 3. That the cellular communications antenna and equipment building shall be constructed and specifically located in accordance with the approved site plan attached as Exhibit "A" and subject to all conditions stated herein.

SECTION 4. The permanent equipment building shall be of the same materials as the Justice Center (future Police building) unless otherwise approved by City Staff.

SECTION 5. AT&T Wireless Services, owner of the antenna and equipment building, shall remove the antenna and associated equipment building and all wires leading to the antenna and equipment building at such time that the antenna and equipment building becomes obsolete and the use is abandoned.

SECTION 6. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Farmers Branch, and upon conviction shall be punished by a fine not to exceed the sum of two-thousand (\$2,000.00) dollars for each offense.

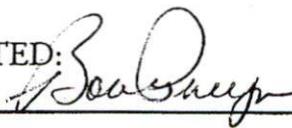
SECTION 7. If any section, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be judged invalid or unconstitutional, the same shall not affect the validity of this ordinance as whole or any portion thereof other than that portion so decided to be invalid or unconstitutional.

SECTION 8. In addition to, and accumulative of all other penalties, the City shall have the right to seek injunctive relief for any and all violations of this ordinance.

SECTION 9. This ordinance shall take effect immediately from and after its passage and publication of the caption of said ordinance, and as the law in such case provides.

Duly passed by the City Council of the City of Farmers Branch, Texas, on this the 3rd day of February, 1997.

ADOPTED:



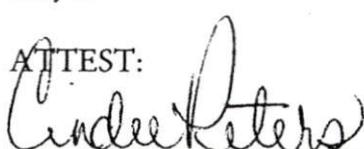
Mayor

APPROVED AS TO FORM:



City Attorney

ATTEST:



City Secretary

SITE PLAN

North

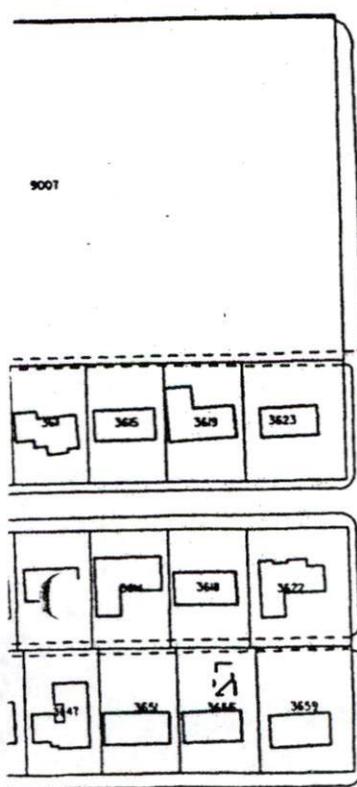
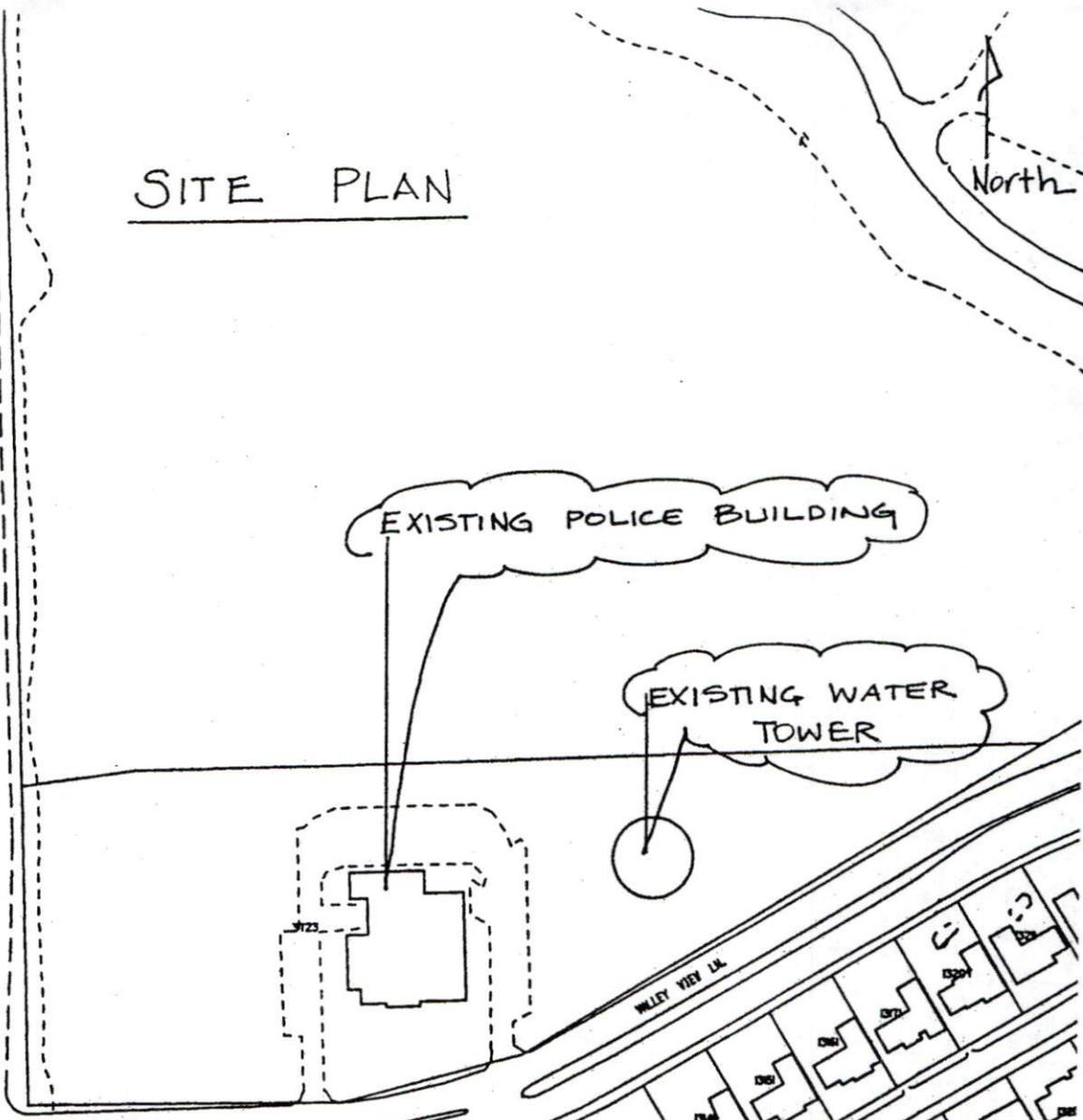
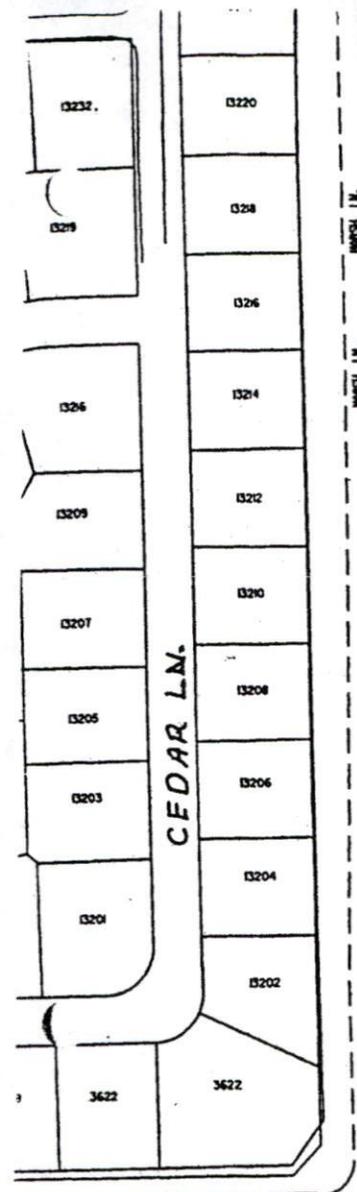
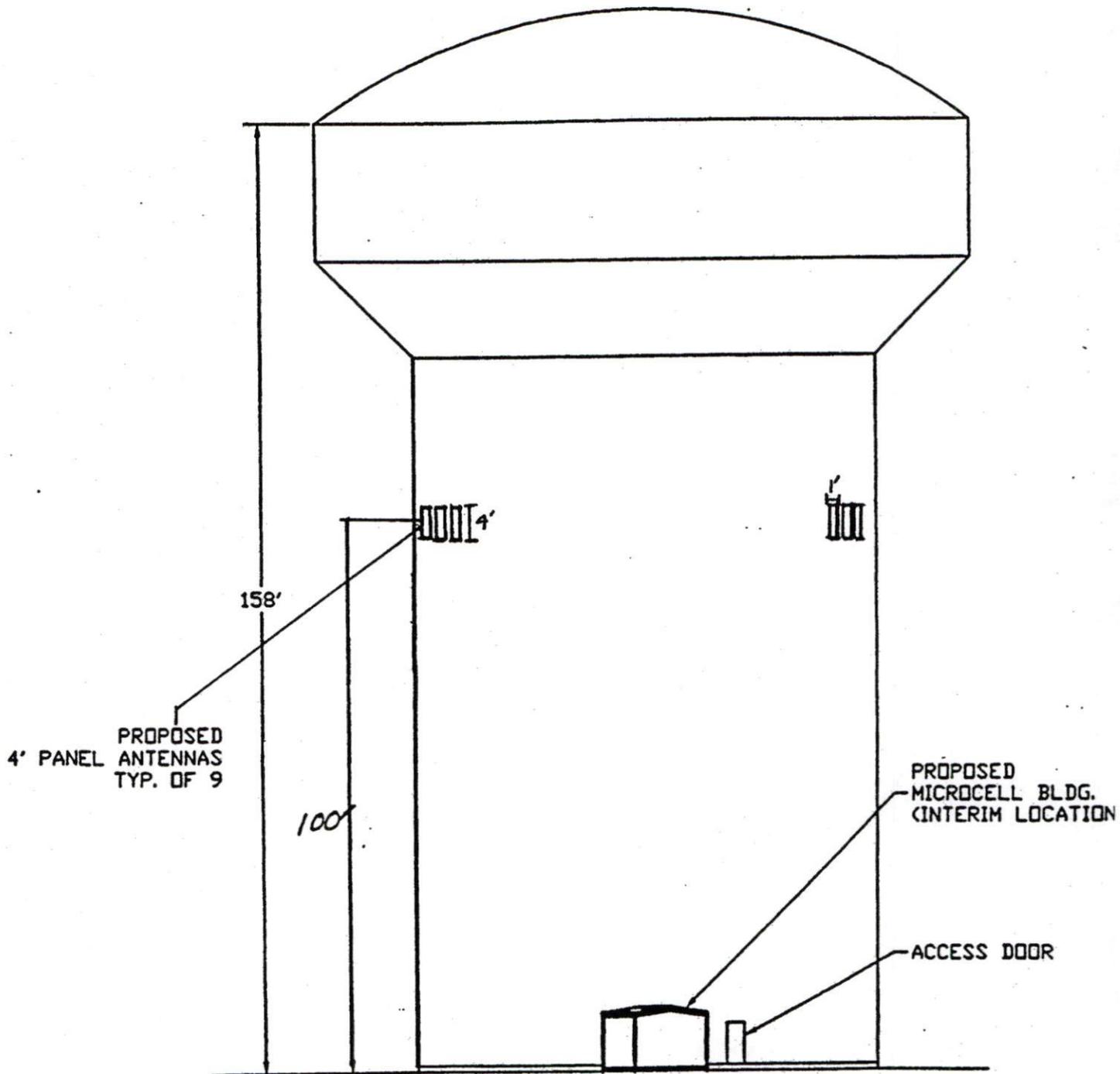


EXHIBIT "A" (1 of 5)

30



FARMERS BRANCH WATER TOWER

VALLEY VIEW LANE/MARSH LAND

ELEVATION FROM NORTH

LOCATION OF PANEL ANTENNAS

AT&T WIRELESS SERVICES

JBM
Engineers & Planners

A Division of
TRANSYSTEMS CORPORATION

10000 DALLAS PARKWAY, SUITE 230
DALLAS, TEXAS 75248
972-380-4328

DESIGNED BY: -	FLJ	SCALE	DATE	SHEET NO
CHECKED BY: -	06037.06		10-17-96	2 OF 2
DRAWN BY: FSC				

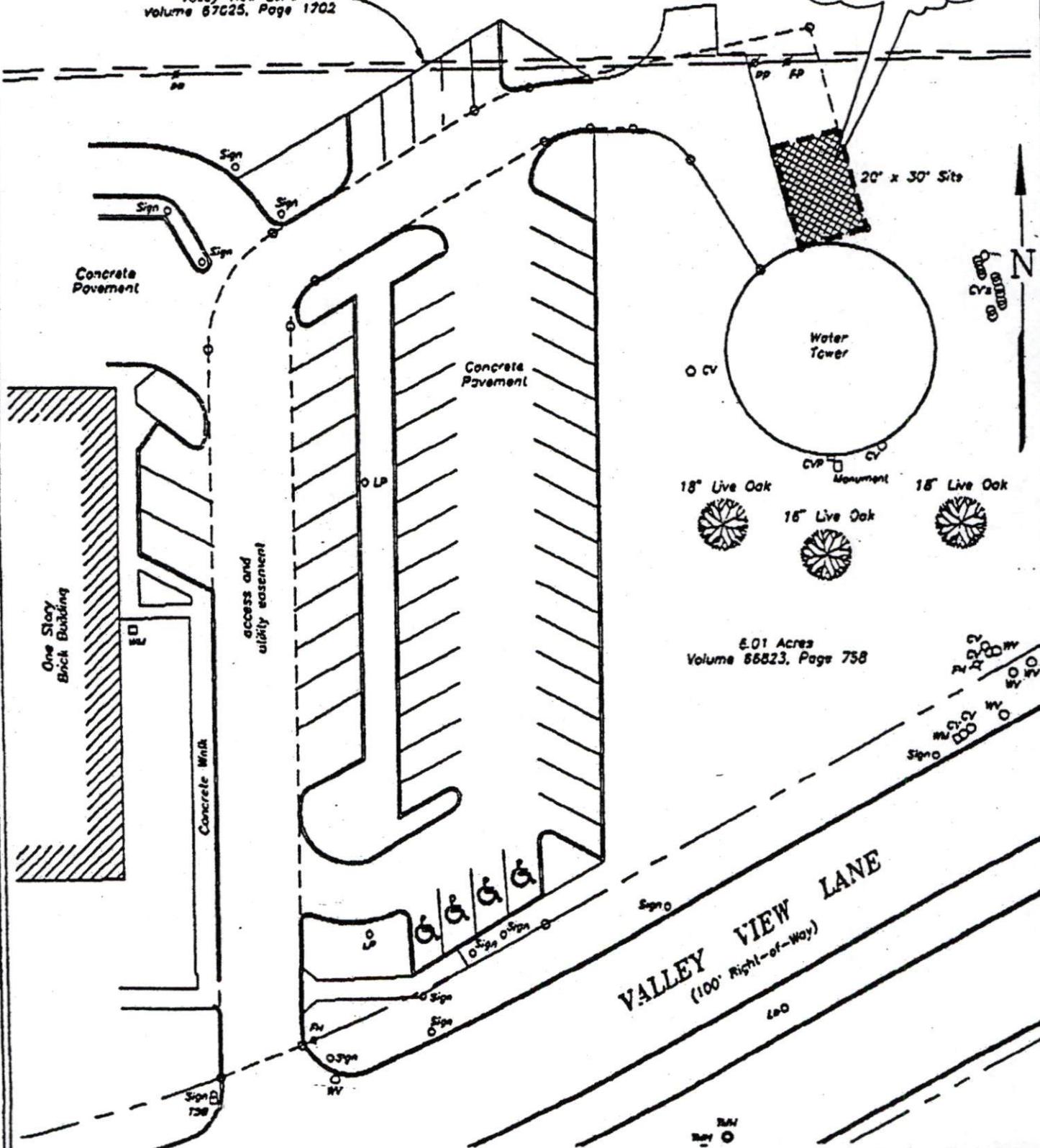
EXHIBIT "A" (2 of 5)

30

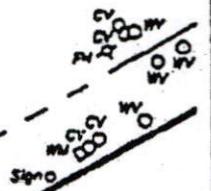
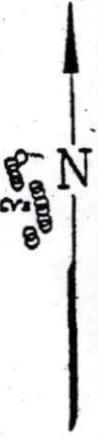
Exhibit "B"

EQUIPMENT BUILDING LEASE AREA

abandonment for Valley View Lane Volume 57025, Page 1702



6.01 Acres
Volume 55823, Page 758

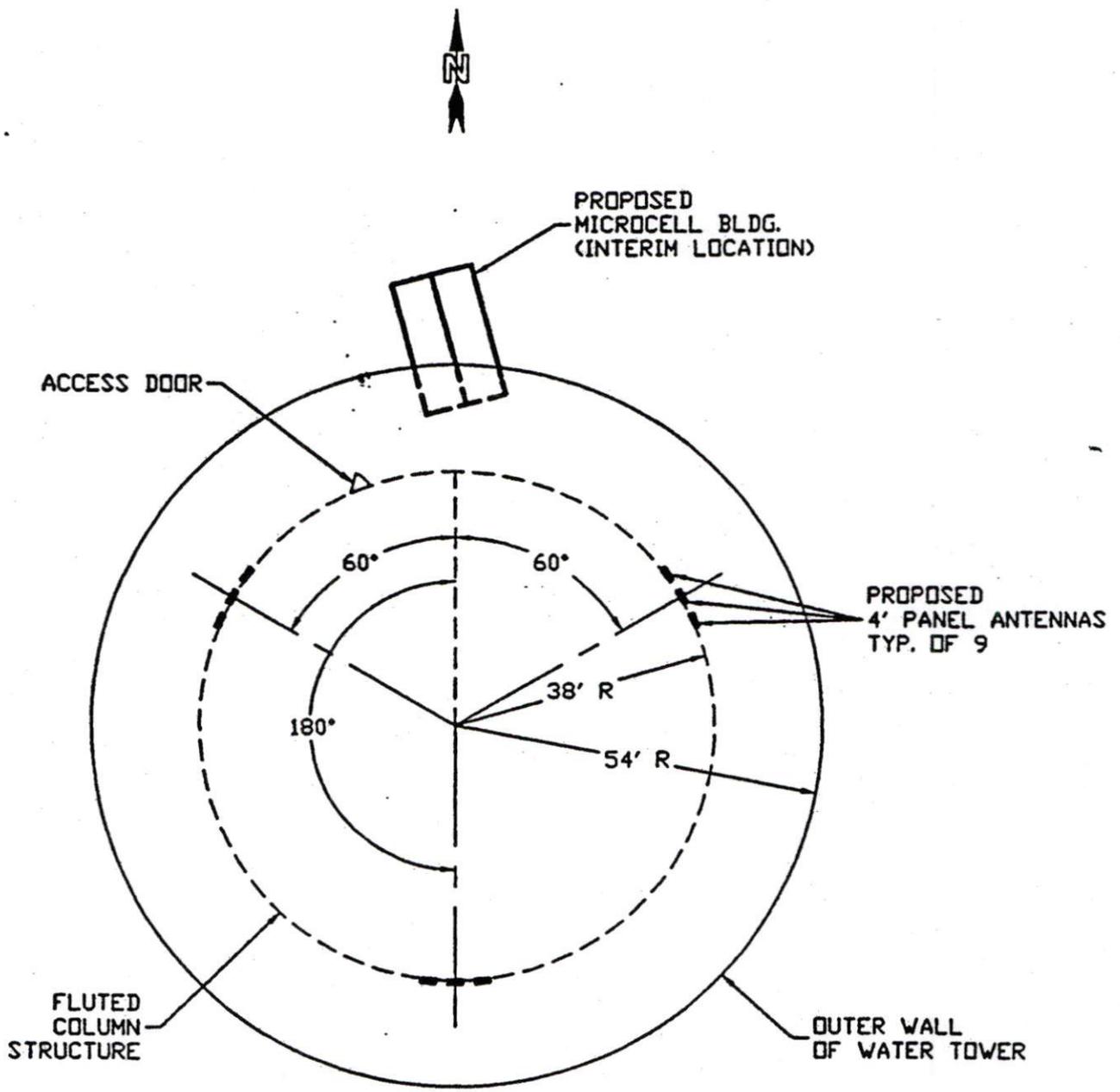


SHEET 1 OF 1	SCALE: 1" = 40'	DATE: 10-16-96
	TECHNICIAN: T. Whitaker	
	DRAWN BY: T. Whitaker	
	FILE: EAST-HUT P.C. D. Coyer	
	PROJECT No. 271-001-96-50	

TEMPORARY SITE

Kurtz · Bedford
Associates, Inc.
Consulting Engineers · Sur
1225 HOSKINS ROAD SUITE 2 - GARLAND TEXAS 75042

3E



PLAN VIEW

FARMERS BRANCH WATER TOWER				
VALLEY VIEW LANE/MARSH LAND			PLAN VIEW	
LOCATION OF PANEL ANTENNAS			AT&T WIRELESS SERVICES	
JBM a division of RANSYSTEMS CORPORATION <small>10000 DALLAS PARKWAY, SUITE 200 DALLAS, TEXAS 75248 972-300-6528</small>				
DESIGNED BY: -	FILE	SCALE	DATE	SHEET NO
CHECKED BY: -	96037.06	1:25	10-17-96	1 OF 2
DRAWN BY: FSC				

EXHIBIT "A" (5 of 5)

36

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City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-109

Agenda Date: 11/15/2016

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: F.7

Consider approving Resolution No. 2016-109 authorizing the City Manager to execute a Communications Facilities License Agreement between the City of Farmers Branch and Clear Wireless LLC; and take appropriate action.

BACKGROUND:

Pyramid Network Services, LLC representing Clear Wireless LLC, has negotiated a license agreement with the City to continue use of the licensee's existing cellular antenna system located on the City-owned water tower at 3723 Valley View Lane. The existing license agreement was entered into in October 1997 with Nextel Communications, which later merged with Sprint to become Sprint Nextel. The lease was amended in 2010 to include Clear Wireless. The parent company of Clear Wireless, Clearwire, later merged with Sprint Nextel. The lease with Clear Wireless expired in October of 2012, and has been month-to-month since then. The new license agreement would allow the licensee to continue operations for an additional 20 years.

DISCUSSION:

The negotiated cellular license agreement is for an initial term of five years for \$3,000 per month, or \$36,000 per year, with three optional, additional, five-year renewal periods, with a 15% increase upon each five-year renewal of the agreement. No increase of the existing antennas or expansion of the equipment shelter at the base of the tower is proposed. If the licensee continues to operate its facilities on the City's property after the expiration of the final term without written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of the license agreement but will not constitute a renewal of their license agreement.

RECOMMENDATION:

Recommended motion by City Administration to approve Resolution No. 2016-109 authorizing the City Manager to execute a communications facilities license agreement between the City of Farmers Branch and Clear Wireless LLC.

POSSIBLE COUNCIL ACTION:

1. I move to approve Resolution No. 2016-109 authorizing the City Manager to execute a communications facilities license agreement between the City of Farmers Branch and Clear Wireless LLC.
2. I move to approve Resolution No. 2016-109 authorizing the City Manager to execute a communications facilities license agreement between the City of Farmers Branch and Clear Wireless

LLC, with modifications.

3. I move to table the issue for further study or take no action.

ATTACHMENTS:

1. Resolution No. 2016-109
2. Exhibit "A" to Resolution No. 2016-109: Communications Facilities License Agreement between the City of Farmers Branch and Clear Wireless LLC



RESOLUTION NO. 2016-109

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A COMMUNICATIONS FACILITIES LICENSE AGREEMENT, AND ALL RELATED DOCUMENTS THERETO, WITH CLEAR WIRELESS LLC FOR CERTAIN PROPERTY LOCATED AT 3723 VALLEY VIEW LANE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Farmers Branch is the owner of the property located at 3723 Valley View Lane; and

WHEREAS, Nextel Communications (Nextel) had been operating a cellular communications antenna system and required equipment building at the property under a lease agreement with the City since 1997, and was granted a Specific Use Permit for these operations in accordance with the City's Comprehensive Zoning Ordinance; and

WHEREAS, Nextel amended the lease in 1998 to include additional antennas and allow for additional rent; and

WHEREAS, Sprint and Nextel merged in 2005 to become Sprint Nextel; and

WHEREAS, Nextel amended the lease a second time in 2010 to allow for the sublease of space to Clear Wireless LLC (Clear Wireless), an affiliate of Nextel; and

WHEREAS, Nextel decommissioned its antennas and related equipment in 2013 after Sprint Nextel merged with Clearwire, the parent company of Clear Wireless; and

WHEREAS, Clear Wireless has been operating a cellular communications antenna system and required equipment building at the property under a lease agreement with the City since 2010; and

WHEREAS, the lease agreement expired on October 31, 2012, and the lease has been on a month-to-month basis since that date; and

WHEREAS, Clear Wireless desires to continue operations of the same cellular communications antenna system and equipment building under a new license agreement; and

WHEREAS, the City and Clear Wireless have negotiated a communications facilities license agreement for an initial term of five (5) years with options of renewing for three (3) additional five-year terms; and

WHEREAS, the annual base rent on the license agreement is \$36,000 to be paid in monthly installments of \$3,000 with a 15% increase at each renewal term.

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

SECTION 1. The City Manager is authorized to execute a communications facilities license agreement attached as Exhibit “A”, and all related documents thereto, with Clear Wireless LLC for property located at 3723 Valley View Lane.

SECTION 2. This resolution shall become effective immediately from and after its passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 15TH DAY OF NOVEMBER, 2016.

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(JJG:11-8-16:TM 81231)

Exhibit “A”
(agreement to be attached)

STATE OF TEXAS §
 § **COMMUNICATIONS FACILITIES**
 § **LICENSE AGREEMENT**
COUNTY OF DALLAS §

KNOW ALL BY THESE PRESENTS:

This non-exclusive License for Communications Facilities (“Agreement”) is made by and between the City of Farmers Branch, Texas (“City”) and Clear Wireless LLC, a Nevada limited liability company, with its principal offices located at Clear Wireless LLC, Sprint Property Services, Mailstop KSOPHT0101-Z2650, 6391 Sprint Parkway, Overland Park, Kansas 66251-2650 (“Licensee”) (collectively referred to as “Parties” and individually as a “Party”), for the use of certain premises and/or facilities according to the following terms and conditions:

WITNESSETH:

WHEREAS, Licensee is a telecommunications company duly authorized to provide certain communications services and desires to license certain property owned by City for installation and operation of Improvements as defined herein; and

WHEREAS, City owns the premises and facilities (including the water tower (the “Tower”) described below) and desires to allow Licensee to enter and utilize designated areas of the facilities and premises;

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

Article I
Location

1.1 **Premises and Facilities.** The premises and facilities (hereinafter referred to as the “Premises”) provided by City are described on the Site Plan attached hereto and incorporated herein as Exhibit “A”. Included upon the Premises shall be Licensee’s Equipment Compound, the Antenna Facilities, as described and illustrated on Exhibit “A”, defined herein, and the cabling run between the Antenna Facilities and the Equipment Compound (hereinafter referred to as “Improvements”). As used herein, the term “Equipment Compound” means all equipment, shelters and similar structures located on the Premises and identified on Exhibit “A”. The license authorized under the terms of this Agreement shall be a license for the use of that portion of the Premises designated for use by Licensee on the Site Plan.

1.2 **Site Plan and Elevations.** The Site Plan and elevations must be approved by City prior to the execution of this Agreement, with approval or disapproval not to be unreasonably delayed, conditioned, or withheld. The Site Plan shall describe and illustrate the location of the Improvements under this Agreement. The Site Plan shall include a scale drawing and inventory analysis of the proposed installations, as well as an elevation of the Premises with the proposed

installations. Performance under this Agreement shall be in strict compliance with the Site Plan. If Licensee's installation, maintenance and operation of the Improvements materially fail to comply with the approved Site Plan, at any time, as reasonably determined by City, then City shall have the right following written notice to Licensee and the expiration of the cure period specified in Article 5 of this Agreement, to terminate this Agreement upon written notice to Licensee. Any and all proposed modifications to the Site Plan must be approved in writing by City, which such approval not to be unreasonably withheld, conditioned or delayed, before Licensee may make any changes to its Site Plan as originally approved by City. Any modifications or structural additions to City water towers must have approval from the Public Works Director and be included with the submitted Site Plan and/ or subsequent applications for building permits to alter or upgrade the equipment. Approval of such modifications is within the discretion of City.

1.3 Licensee has inspected, examined and investigated the status of the title and condition of the Premises to the extent that Licensee has deemed necessary, and Licensee understands, acknowledges and agrees that it is entering into this Agreement to acquire a leasehold interest in the Premises "AS IS" in reliance solely upon the results of any inspection, examination and investigation of the status of title and condition of the Premises that Licensee has conducted and not as a result of any representation, warranty, assurance, guaranty or promise of City or any person purporting to act on behalf of City, other than those which may be expressly set forth in this Agreement.

1.4 LICENSEE UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY AGENT, EMPLOYEE OR OTHER PERSON ACTING ON BEHALF OF THE CITY, HAS MADE ANY, AND THE CITY EXPRESSLY DISCLAIMS EVERY, REPRESENTATION, WARRANTY (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND HABITABILITY), ASSURANCE, GUARANTY OR PROMISE, EXPRESS OR IMPLIED, CONCERNING THE STATUS OF THE TITLE OR CONDITION OF THE PREMISES WHICH ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT AND THAT NO AGENT OR EMPLOYEE OF THE CITY OR OTHER PERSON HAS ANY AUTHORITY TO MAKE OR DELIVER ANY REPRESENTATION, WARRANTY, ASSURANCE, GUARANTY OR PROMISE WHICH IS NOT SET FORTH IN THIS AGREEMENT.

1.5 **Survey.** City hereby grants to Licensee the right to survey the Premises, and said survey shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall control in the event boundary and access discrepancies between it and Exhibit "A". Cost for such work shall be borne by the Licensee.

Article II Use of Premises

2.1 **Permitted Use.** City agrees to allow installment of the Licensee's Improvements in accordance with the terms of this Agreement and the City's Mounted Antenna Policy attached hereto and incorporated herein as Exhibit "C". Licensee's use shall be non-exclusive and shall be for the purpose of the installation, operation, and maintenance of the Improvements, for the transmission, reception, and operation of a communications system and uses incidental thereto.

To the extent not depicted in the Site Plan attached as Exhibit "A", Licensee shall obtain the written approval of the City prior to installation of any Improvements on the Premises, which approval will not be unreasonably withheld, conditioned or delayed. Licensee understands, acknowledges and agrees that the use of the Premises by Licensee in conjunction with the terms of this Agreement is to be for the installation, operation and maintenance of communications equipment, in strict compliance with the Agreement and the attached Site Plan. Licensee shall not use the Premises for any other purpose whatsoever, including the storage or placement of debris, replacement Improvements, or any other item, without first obtaining the prior written consent of City, which may be given or withheld for any reason or for no reason, in the City's sole, absolute and unrestricted discretion.

2.2 **Prohibited Use.** Licensee shall not use the Premises in any manner that constitutes waste or nuisance, or that violates any applicable law, ordinance or governmental regulation in any respect. Licensee shall not do anything that would render void or uncollectible any insurance then in force with respect to the Premises, or that would in any way increase the premiums payable by City for fire, liability or any other insurance coverage on the Premises or the contents of any improvements thereon. City agrees that Licensee's permitted use pursuant to the terms of this Agreement will not result in any increase in the premiums of insurance referenced in this Section 2.2.

2.3 **Subletting of Use Premises or Improvements.** Except as provided in Section 21.9 (b) herein, Licensee may not sublicense to or license others to use the Premises or Licensee's Improvements without the prior written consent of City. Any such attempt by Licensee shall be without effect and may at City's option result in the termination of this Agreement.

2.4 **Maintenance, Repair or Replacement of Improvements.** Licensee may update, maintain, repair, or replace the Improvements located upon the Premises from time to time as Licensee reasonably deems necessary without the need to obtain the prior written approval of City, provided that the replacement Improvements, together with related equipment, do not require more space than the existing Improvements and, in the event more space is needed or Licensee proposes any change in the location of improvements on the Premises, Licensee must obtain City's prior written approval, which approval will not be unreasonably withheld, conditioned or delayed. For any such matter requiring City's approval, Licensee shall submit to City, a detailed proposal for any replacement Improvements and any supplemental materials for City's evaluation and written approval. Any alterations, upgrades or additions to the Improvements shall require a building permit. A current and accurate Site Plan must be submitted to City by Licensee and maintained on file with City for the entire term of this Agreement and all renewals thereof. In the event Licensee desires additional space for improvements or expansion, City reserves the right to increase Fee Payments.

Article III Term

3.1 This Agreement shall be for an initial term of five (5) years, commencing on the Commencement Date (as hereinafter defined) at which time fee payments shall commence and be due on the first day of each month in equal monthly installments of Three Thousand Dollars and No/100 Dollars (\$3,000.00) ("Base Fee"). Payments shall be made to City or to such other person, firm or place as City may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Article IV below ("Fee Payment"). This Agreement shall commence upon full execution of this Agreement (the "Commencement Date").

3.2 Licensee is granted the option to renew this license for three (3) additional five (5) year terms (each additional five (5) year term being a "Renewal Term"), after the initial term expires. Unless Licensee gives written notice of its decision not to exercise the Renewal Term option within thirty (30) days prior to the expiration of the current term or period, this Agreement will automatically renew as long as Licensee remains in full compliance with all other provisions of this Agreement. All the terms and covenants of this Agreement apply to all Renewal Terms. If Licensee continues to possess the Premises following the expiration of all of the Renewal Terms provided herein, and this Agreement has not been renewed or superseded, this Agreement (1) shall be deemed to be a holdover tenancy at will but shall not itself constitute a renewal or extension of any term; (2) shall continue from month-to-month under the terms and conditions set forth herein; and, (3) may be terminated by either Party upon at least thirty (30) days written notice to the other Party. All the terms and covenants of this Agreement apply to all holdover periods.

Article IV Payment Terms and Conditions

4.1 **Fee Payment.** In consideration for providing the Premises for use by Licensee, the Licensee shall pay the Fee to City as provided in Section 3.1. Interest on late payments shall accrue at the maximum rate allowed by law. If this Agreement is terminated at a time other than the last day of the calendar year of the term for any reason other than an Event of Default by Licensee, all Fee Payments shall be prorated as of the date of termination and all prepaid Fee Payments shall be promptly refunded to Licensee. The Base Fee Payment shall be increased on the first day of each Renewal Term by an amount equal to fifteen percent (15%) of the Fee Payment in effect during the previous year.

4.2 **Electrical Power.** Licensee shall furnish and install an electrical sub-meter at the Premises for the measurement of electrical power used by Licensee's installation. In the event such sub-meter is installed, the Licensee shall pay the utility directly for its power consumption to the utility. Licensee shall be permitted at any time during the Term, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source which may include a portable generator, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by City. Licensee shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises and the Improvements.

4.3 **Additional Fees.** Only to the extent directly attributable to Licensee's use of the Premises, City may assess, in addition to the Fee Payment, additional payments by Licensee to cover City's additional out-of-pocket costs to the extent actually incurred by the City and paid to third-parties but only the portion of such costs which are in proportion to Licensee's use (as opposed to some other use) shall be owing by Licensee ("Additional Fees"), which include but are not limited to: (i) except as provided in 4.2, costs of utilities associated with the day-to-day operation and maintenance of the Premises; (ii) to the extent required by this Agreement, costs incurred by City for providing access to City secured area, including the Tower, outside of normal business hours; and, (iii) applicable taxes, including property taxes, or business taxes levied on the Premises specifically attributable to Licensee's use of the Premises. City shall notify Licensee of amounts due in Additional Fees in writing (and provide supporting invoices for same), and Licensee shall pay Additional Fees within sixty (60) days of receiving notice of same from City.

4.4 **Payment Address.** Fee Payments and Additional Fees shall be made payable to: "City of Farmers Branch", 13000 William Dodson Parkway, Farmers Branch, Texas 75234, Attention: Director of Finance. City shall provide Licensee written notice of any change in address for purposes of Fee Payments and Additional Fees.

4.5 **Lawful Currency.** Fee Payments and Additional Fees shall be made according to paragraph 4.1 above in lawful money of the United States of America without any abatement, setoff, reduction, deduction, counterclaim or other recoupment whatsoever. In no event will Licensee be obligated to pay any general income or franchise taxes measured upon the income of the City. This Section does not preclude the assessment of lawful fees pursuant to a franchise or other agreement that the City may have with Licensee or its parent or any subsidiary or affiliate.

4.6 **Dishonored Checks.** Any dishonored check shall incur a service charge of ten percent (10%) of its face amount. Subsequent to the first dishonored check received by City for any payment, all subsequent payments, including Fee Payments and Additional Fees, shall be made by cashier's check.

Article V Termination

5.1 **Termination for Cause.** Upon the occurrence of any one or more of the "Event of Default" defined below, City may, unless the Event of Default is timely cured by Licensee, as provided in this Section without penalty, at its option and without prejudice to any other remedy to which it may be entitled at law or in equity, or otherwise under this Agreement, terminate use or occupancy under this Agreement at any time, either in whole or in part, by giving at least sixty (60) days prior written notice thereof to Licensee with the understanding that all use of the Premises being terminated shall cease upon the date specified on such notice. For the avoidance of doubt, the foregoing termination right of City applies only to Events of Default by Licensee. Licensee shall equitably compensate City in accordance with the terms of Article IV of this Agreement for the use of the Premises up to the date of termination as specified in such notice. Licensee shall not, however, be entitled to any damages, including but not limited to, lost or anticipated profits should City choose to exercise its option to terminate.

5.2 **Event of Default.** Any of the following occurrences, conditions, or acts shall be deemed an "Event of Default" under this Agreement:

- (a) if Licensee fails to pay amounts due under this Agreement within ten (10) days of receipt of written notice that such payments are overdue; or
- (b) if Licensee fails to observe or perform its obligations under this Agreement other than as provided in Section 5.2(a) above and does not cure such failure within thirty (30) days from Licensee receipt of written notice of breach or such longer period as may be mutually agreed upon by the Parties to complete a cure commenced within the thirty (30) day period.

5.3 **Termination by Licensee.** This Agreement may be terminated by Licensee, without penalty, further liability, or prejudice to any other remedy to which it may be entitled at law or in equity, or otherwise under this Agreement, as follows:

- (a) upon written notice, if Licensee is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Improvements as now and hereafter intended by Licensee; or, if Licensee determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;
- (b) on sixty (60) days written notice following the date notice is given to City under 5.2(b), if the breach described in the notice is not cured by City; or
- (c) unless there has been a default by City, Licensee may terminate this Agreement after the Term Commencement Date upon thirty (30) days written notice to City if (i) if any environmental report for Premises or the City's property of which the Premises is a part reveals the presence of any Hazardous Substance not caused by Licensee; or (ii) if Licensee is unable to occupy and utilize the Premises or the Improvements due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; or (iii) if Licensee determines that the Premises are not appropriate for its intended operations for economic or technological reasons, including, without limitation, signal interference, or the Improvements or the communications systems to which the Improvements belong become unacceptable under its design or engineering specifications; or (iv) if any portion of the Premises or Improvements are damaged, destroyed, condemned or transferred in lieu of condemnation.
- (d) notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if City fails, within thirty (30) days after receipt of written notice of such breach, to perform an obligation required to be performed by City if the failure to perform such an obligation interferes with Licensee's ability to conduct its business on the Premises as intended by Licensee; provided, however, that if the nature of City's obligation is such that more than thirty (30) days after such notice

is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

5.4 **Discontinued use of the Water Tower.** If City determines to discontinue the use of the Tower, City shall have the right upon twelve (12) months written notice to Licensee, to terminate this Agreement without penalty or further liability.

5.5 **Destruction of Water Tower.** Immediately upon written notice by the City, if the Premises, the Antenna Facilities or the Tower are destroyed or damaged so as in Licensee's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities as intended by Licensee, Licensee may immediately terminate this Agreement without penalty or further liability to the City. In such event, all rights and obligations of the Parties shall cease as of the date of the damage or destruction, and Licensee shall be entitled to the reimbursement of any Fee Payments prepaid by Licensee the month the damage or destruction occurred. In the event of a casualty to the Tower, and City elects to rebuild the Tower and neither City or Licensee elect to terminate this Agreement, Licensee shall have the right to rebuild or repair the Antenna Facilities upon restoration of the Tower. If Licensee elects to continue this Agreement, then all Fee Payments shall abate until the Premises and Licensee's Improvements are restored to the condition existing immediately prior to such damage or destruction.

Article VI

City's Right of Entry On to Premises

6.1 City and City's agents, employees or contractors may enter upon the Premises, except Licensee's secured areas, for the purpose of performing repairs and maintenance work to the Premises. If maintenance work is required, City agrees to provide Licensee with reasonable advance written notice prior to commencing such work to allow Licensee to remove any and all Improvements made by Licensee. Decisions as to the extent to which Licensee will be required to remove such Improvements shall be within the sole discretion of City. If, however, in the sole discretion of City, repair or maintenance requires immediate action on the part of City, City will take reasonable efforts to notify Licensee but may enter the Premises, except Licensee's secured areas, without first notifying Licensee and take such action as is required, including but not limited to removing any and all Improvements made by Licensee. In no event shall City be liable for any expenses associated with its entry and removal of Improvements or for lost or anticipated profits. If City must remove or relocate any Improvements to perform repairs or maintenance and is unable to first notify Licensee, City will first power down or turn off the antennas. Licensee, at its expense and exclusive use, may use any and all reasonable and appropriate means of restricting access to the Licensee's equipment shelter, as identified in the Site Plan.

6.2 **Removal of Improvements.** If the Improvements must be removed, pursuant to Section 6.1 or pursuant to Section 5.5, Licensee shall have the right to set up a portable mounted antenna, a cell on wheels (COW), and/or some other similar temporary structure approved by City, which approval will not be unreasonably withheld, conditioned or delayed, on City premises to allow Licensee to continue to provide wireless communications service. Licensee may maintain its COW for a period of sixty (60) days past the date of removal of Improvements. To maintain

the temporary antenna, COW, or other temporary structure for a period in excess of thirty (60) days, Licensee must obtain written approval from City, which approval will not be unreasonably withheld, conditioned or delayed. If the Premises are not in such condition as to be utilized by Licensee at the end of the initial thirty (60) day period, City may provide as many additional thirty (60) day extensions for such temporary structures as are necessary to allow Licensee to continue its operations as authorized by this Agreement.

Article VII Access

7.1 City agrees that Licensee shall have free access to the Premises (excluding the Tower property) at all times for the purpose of installing, repairing, modifying and maintaining the Improvements, Antenna Facilities and other Licensee equipment. City shall furnish Licensee with necessary means of access for the purpose of ingress and egress to the Premises. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Licensee or persons under their direct supervision will be permitted to enter the Premises. Licensee shall only access the Tower property when accompanied by a City staff member.

7.2 Licensee's right of access is a contractual right for the benefit of Licensee only and nothing contained in this Agreement shall be construed to constitute a dedication or an easement. However, in the event this Agreement is assigned in accordance and in compliance with Section 21.9 below, such right of access shall inure to the benefit of Licensee's assignee.

Article VIII Damages to Property

8.1 **Damage and Restoration of Property.** Licensee shall promptly notify City of any and all damages resulting from, arising out of, or caused to, the Premises and City property surrounding the Premises, including but not limited to structural damages, electrical damages, damages to fencing, irrigation systems or landscaping but only to the extent caused by Licensee's operations or by Licensee, its officers, agents, employees and invitees. Licensee shall be solely responsible for the costs and the repair of all such damages subject to delays not within Licensee's reasonable control, and such repairs and/or replacements shall be completed within sixty (60) calendar days following written notice by City to Licensee and shall be completed in a manner reasonably acceptable to City.

8.2 **Failure to Restore Property.** If Licensee does not make or perform any required maintenance or repairs to the Premises within the time period provided in Section 8.1, City shall have the right, but not the obligation, to make such repairs and to perform such maintenance, in which event Licensee shall pay City the reasonable, actual and documented cost thereof within thirteen (13) days following Licensee's receipt of a written demand unless the cause of such damage is the subject of a bonafide dispute by Licensee. Within thirty (30) days following the expiration or earlier termination of this Agreement, Licensee shall restore the Premises to substantially the same condition in which the Premises existed on the Effective Date of this Agreement, ordinary wear and tear and loss due to other casualty beyond Licensee's reasonable control excepted.

Article IX
Electrical, Radio and Intermodulation Interference

9.1 Licensee shall operate the Improvements in a manner that will not unreasonably cause radio frequency interference with other licensees of the Premises in their use of any equipment which predate the installation and operation of the Improvements or their conduct of any activity on the Premises but only to the extent such parties are operating pursuant to agreements which pre-date the installation and operation of the Improvements. Licensee's installation and operation of the Improvements shall be in compliance with all FCC requirements. The City may be allowed to place antennae or other communications facilities on the Tower regardless of potential or actual interference with Licensee's use, provided however, if Licensee's use of the Premises is materially affected, Licensee may terminate this Agreement without any further liability.

9.2 Prior to installation of any Improvements on the Premises, Licensee shall conduct bandwidth testing of the Improvements and City equipment to check bandwidth conflict between City's monitoring control system and Licensee's system. If such conflict occurs, Licensee shall take all reasonable steps necessary to resolve the conflict to the reasonable satisfaction of City. If the conflict cannot be remedied to the reasonable satisfaction of City, City may terminate this Agreement without further liability upon thirty (30) days written notice to Licensee.

9.3 Should interference caused by Licensee as prohibited by Section 9.1 occur, Licensee will promptly take all reasonable steps necessary to correct such interference within ten (10) days of receiving written notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such written notice, Licensee shall suspend operations (transmissions) at the Premises, except for brief periods for testing, while the interference problems are studied and a means to eliminate the problem is determined. Any such method for correction of an interference problem must be acceptable to both City and Licensee. If the interference complained of cannot be eliminated within thirty (30) days of the City providing notice, Licensee will cease its operations, remove all Improvements from the Premises, and this Agreement shall be terminated without penalty or further liability. Consistent with Section 9.2, after Licensee has demonstrated no conflicts between City's monitoring control system and Licensee's system, in the event City allows an additional third-party to install communications equipment, City agrees to notify newest third-party of interference prior to notifying Licensee. If at any time during the term(s) of this Agreement, Licensee causes interference with the City's public safety equipment, Licensee shall promptly cease its operations until such time as the conflict may be resolved. If the interference complained of cannot be eliminated within thirty (30) days, Licensee will remove all its Improvements from the Premises, and this Agreement shall be terminated without penalty or further liability.

9.4 City will not grant a license to or enter into any other agreement with any other party for the use of the Tower, the Premises or on or within City property containing the Premises without including in that license a provision stating that the party's use will not in any way adversely affect or interfere with Licensee's signal operation, the Improvements or the use and operation of its communication system as intended by Licensee. Furthermore, license agreements and all other agreements with third-parties will state that prior to installation of improvements,

such third-parties shall be required to conduct bandwidth testing of their equipment and the equipment of Licensee to check bandwidth conflict between third-party equipment and Licensee's equipment. In addition to any other rights available to Licensee at law or in equity, Licensee shall have the right to terminate this Agreement upon ten (10) days written notice to City if another user of the Premises causes significant interference with Licensee's operations, and such interference is not corrected within thirty (30) days following the notice to such third-party user causing the interference. In the event that Licensee experiences interference caused by a third-party licensee, Licensee agrees that it shall seek recourse solely from such third-party. No compensation shall be due from City for damages, including, but not limited to, lost or anticipated profits.

9.5 Licensee shall have the sole burden of, and be responsible for, all costs associated with alleging and proving that another user of the Premises is causing significant interference, as well as for otherwise enforcing Licensee's rights under this Agreement against another user of the Premises. City shall not be responsible for the costs associated with the resolution of any dispute between users of the Premises, or enforcement of any of Licensee's rights under this Agreement against another user of the Premises.

Article X Condition of Premises

10.1 City shall maintain the Premises in compliance with all applicable statutes, ordinances, regulations and rules required for City uses of the Premises, and in a manner which will not interfere with Licensee's permitted and intended use of the Premises. Upon expiration, cancellation, or termination of this Agreement, Licensee will have the right to remove the Improvements from the Premises at Licensee's cost and expense. Title to all remaining improvements shall belong to City without any warranty. However, upon vacation of the Premises, Licensee shall surrender the Premises in substantially the same condition as received, except for ordinary wear and tear and loss due to other casualty beyond Licensee's reasonable control. If the Premises are not surrendered in the condition required by this paragraph, Licensee shall pay City within thirty (30) business days of Licensee's receipt of a written demand an amount equal to the actual and documented cost paid by the City to third-parties to restore the Premises to substantially the same condition as received.

10.2 Licensee shall have sole responsibility for the maintenance, repair, and security of the Improvements, and shall keep same in good repair and condition during the term and all renewals and holdover tenancies of this Agreement.

10.3 Licensee shall keep the Premises it occupies free of debris and anything reasonably determined to be of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or interference.

10.4 In the event City or any other licensee undertakes painting, construction, or other alterations on the Premises, Licensee shall take reasonable measures at Licensee's cost to cover all of Licensee's Improvements and protect such from paint and debris fallout which may occur during the painting, construction, or alteration process. City shall not be responsible for any damages or costs incurred by Licensee due to the actions or omissions of any third-party licensees

authorized by City to enter upon the Premises to undertake such work. City shall provide at least thirty (30) business days written notice to all licensees upon the Premises prior to City undertaking such painting, construction, or other alterations.

10.5 By taking possession of the Premises, Licensee accepts the Premises in the condition existing as of the Effective Date. City makes no representation or warranty with respect to the condition of the Premises and City shall not be liable for any latent or patent defect in the Premises. City agrees to notify Licensee of the existence of any latent defects of which the City has actual knowledge.

Article XI Construction, Installation and Operation

11.1 **Construction, Installation and Operation.** Licensee may, at its sole cost and expense, construct, install, operate, maintain, monitor, modify, reconfigure and repair the Improvements. Not less than thirty (30) days prior to the date on which Licensee intends to commence construction of the Improvements, Licensee shall provide to City for its approval, which approval will not be unreasonably withheld, conditioned or delayed, a proposal containing: (i) a written notice and plan describing, in reasonable detail, the steps necessary to complete Licensee's construction and installation; (ii) a list and description of all Improvements to be installed on the Premises; (iii) a list of all contractors, subcontractors and other entities that will perform Licensee's construction and installation work; and, (iv) copies, certificates or other proof that Licensee or Licensee's contractors and subcontractors have obtained all necessary permits, including City issued building permit, and licenses for the performance of Licensee's work. City's failure to respond in writing to Licensee's proposal within twenty (20) days of City's receipt of the proposal shall constitute City's approval of the proposal, and Licensee may commence Licensee's work pursuant to such proposal. City's grant of approval under this Section shall not be construed as an assumption of liability or indemnification; nor shall such approval replace or constitute any approval that Licensee is required to obtain from any duly authorized local authorities for any construction, installation or other element of Licensee's work.

No materials may be used in the installation of the antennas or transmission lines that will cause corrosion or rust or deterioration of the Tower structure or its appurtenances.

All antenna(s) on the Tower must be identified by a marking fastened securely to its bracket on the Tower and all transmission lines are to be tagged at the conduit opening where it enters any user's equipment space.

11.2 **Marking and Lighting Requirements.** Licensee acknowledges that it shall be responsible for compliance with all tower or building marker and lighting requirements which may be required by the Federal Aviation Administration or the Federal Communication Commission in conjunction with Licensee's installation and maintenance of Improvements under this Agreement, as well as any expenses, fees or fines associated with the compliance or the non-compliance of Licensee's installation or maintenance of Improvements under this Agreement.

11.3 Inspection and Tests. Upon the Effective Date and for the term of this Agreement, Licensee shall have reasonable access as provided in Section 7 above to the Premises as are necessary and approved by City for the purpose of inspection and planning.

11.4 Payment, No Mechanics Liens. Licensee shall make full and prompt payment of all sums necessary to pay the costs of all installation, repairs and alterations, improvements, changes and other work done by Licensee in or to the Premises. Title to the Improvements shall be held by Licensee. City shall not be responsible for or with respect to the performance of Licensee's work. Licensee shall pay or cause to be paid all costs associated with Licensee's work. Licensee shall not suffer or permit to be enforced against any portion of the Premises any (i) mechanic's, materialman's, contractor, subcontractor or other lien or claim arising from or in any way related to Licensee's work, or (ii) any other claim, mortgage, security interest, encumbrance, lien or other charge. Within thirty (30) days after Licensee's receipt of written notice of the recordation of any lien, encumbrance, judgment or similar item which affects the Premises in any way, Licensee shall obtain the complete discharge and release thereof at Licensee's sole expense or expenditure (without any cost being imposed upon City.) However, Licensee shall have the right to contest, in good faith, any mechanic's or materialman's lien upon the condition that Licensee provides a bond or other form of security reasonably acceptable to City in an amount sufficient to hold City fully and completely harmless from any and all liability therefor or on account thereof.

11.5 Improvements to Premises; Removal. All Improvements constructed, installed and operated by or on behalf of Licensee shall remain Licensee's personal property and are not fixtures. Licensee shall remove all Improvements at its sole expense within sixty (60) days following the expiration or earlier termination of this Agreement and Licensee shall repair any damage to the Premises caused by such removal and fully restore the Premises to substantially the same condition as existed prior to the Commencement Date at its sole cost and expense, ordinary wear and tear and loss due to other casualty beyond Licensee's reasonable control excepted. Licensee shall provide to City in writing, by not later than the end of the prescribed sixty (60) day period, notice that all Improvements have been removed in accordance with this Section. Failure of Licensee to remove any or all Improvements from the Premises within the prescribed sixty (60) days shall be construed as holdover pursuant to this Section, and all obligations and requirements, including payment of Fee Payments, shall continue to apply unless and until Licensee removes all Improvements and so notifies City.

11.6 Liability for Damage/Outages. Licensee shall be solely responsible for any damage caused by Licensee, its agents and/or contractors on or to the Premises that causes an interruption or outage in the services, operations or utilities of another licensee, and shall indemnify and hold harmless City and its employees, agents, successors and assigns from all claims or actions for damages, including actual, incidental and consequential damages, brought by another licensee as a result and to the extent of Licensee's, or its employees', contractors', agents', assigns' or licensees', willful, reckless or gross negligence or other conduct provided that City requires all other licensees to agree in writing to provisions identical to this Section 11.6 for the benefit of Licensee.

Article XII

Compliance with Laws

12.1 **By Licensee.** Licensee, its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees, shall comply in all material respects and at all times with all local, state and federal laws, statutes, ordinances, regulations, rulings, requirements, conditions, orders, licenses, permits, covenants, restrictions, approvals and consents pertaining to Licensee's services, Licensee's construction, installation and operation work, Improvements and Licensee's use of the Premises. Without limiting the generality of the preceding sentence, Licensee shall fully and timely observe and comply with applicable laws, regulations, policies and requirements concerning health and/or public safety, including standard industry equipment safety regulations, and shall not use the Premises or operate the Improvements in any manner which is inconsistent therewith. Licensee shall, at Licensee's sole cost and expense, promptly apply for and use its commercially reasonable efforts to obtain and maintain all necessary licenses, permits, approvals and consents required or necessary for the construction and operation of the Improvements. In the event Licensee fails to obtain any required license, permit, approval or consent to construct and operate the Improvements, through no fault of Licensee, Licensee shall have the right to terminate this Agreement in accordance with Section 5 of this Agreement.

12.2 **By City.** The City shall comply in all material respects and at all times, and shall cause its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees (collectively "City") to comply in all material respects and at all times with all laws, ordinances, orders, rules and regulations of all governmental or judicial authorities having jurisdiction thereof, whether state, federal or local, relating to the Premises. Without limiting the generality of the preceding sentence, City shall fully and timely observe and comply with applicable laws, regulations, policies and requirements concerning health and/or public safety with respect to the Premises.

Article XIII Complaint Resolution

If either Licensee or City receives a written complaint regarding Licensee's operations and such complaint, if determined by the City to be valid and if the cause of such complaint would cause Licensee to be in default of this Agreement, Licensee shall respond within five (5) business days of receipt of such written complaint. Licensee shall respond with a written explanation to each such complaint with detail of its investigation into the incident upon which the complaint was based (the "Incident") and the actions that Licensee has taken to resolve the Incident including, when necessary, all future actions Licensee will take to fully resolve the Incident or prevent a recurrence of the Incident. If the Incident cannot be resolved to the satisfaction of the complainant within fifteen (15) days, Licensee shall provide a schedule for completion of its plan to resolve or prevent the Incident; such schedule is subject to City approval. If future action is necessary, Licensee shall include a schedule for completion of its plan to correct or prevent the Incident; such schedule is subject to City approval. If City must step in and resolve a complaint regarding Licensee's operations, Licensee shall reimburse City for all actual reasonable expenses incurred. If City imposes upon Licensee a resolution to an incident that does not involve a breach of the Agreement by Licensee, the breach by Licensee of any federal, state, or local law or ordinance or the commission by Licensee of any negligent or intentional act or omission to a person that causes bodily injury or property damage and Licensee does not wish to resolve the incident in the manner directed by City, Licensee may terminate this license and this Agreement upon thirty (30) days notice without penalty.

Article XIV Utility Easements and Utility Cost

14.1 Licensee shall pay directly to all public utility service companies, before delinquency, all charges for the electricity, water and other utility services that Licensee consumes in connection with the installation and operation of the Improvements and which are separately metered and charged to Licensee by any public utility service company, without any expense therefore being imposed upon City.

14.2 Licensee shall obtain separate public utility services from any company that will provide such services to the Premises (which services may include an approved battery-powered or diesel-powered standby power generator located on the Premises for Licensee's exclusive use).

14.3 Licensee shall not permit any charges for public utility services to accumulate or become a lien on the Premises. If Licensee fails to pay any such charge required to be paid by Licensee pursuant to this Section, City may, but shall not be required to, pay such charge on Licensee's behalf. If City pays any such charge on behalf of Licensee or incurs any cost with respect to any grant of any public utility service easement for the benefit of Licensee pursuant to this Section, Licensee shall reimburse and pay to City an amount equal to all such actual and documented charges so paid and all such actual and documented easement costs so incurred, within thirty (30) days following Licensee's receipt of a written demand as Additional Fees.

14.4 **Additional Utility/Power Equipment.** In the event that Licensee is required to or otherwise decides to install, operate and use additional equipment to provide electricity or other

utility services required for the operations of Licensee's Improvements, such installation, operation and use shall comply in all respects with the terms and conditions set forth in this Agreement.

Article XV Taxes

15.1 Licensee agrees to timely reimburse City for all taxes that are assessed against City, if any, that City demonstrates are due to the real property taxes directly attributable to the Improvements or use of the Premises and Improvements constructed or maintained by Licensee on or about the Premises; provided, however, City shall provide prior written notification of any taxes for which Licensee is to be charged, so Licensee will have the opportunity to appear before the taxing authority and contest any assessment.

15.2 If Licensee fails to pay any such taxes for which Licensee is obligated or fails to notify City of its intent to contest such tax assessment, City may, but shall not be required to, pay such taxes on Licensee's behalf. If City pays any such taxes on behalf of Licensee pursuant to the preceding sentence, Licensee shall reimburse and pay to City an amount equal to any such taxes so paid, plus an administrative fee of ten percent (10%) of the taxes, within thirty (30) days following Licensee's receipt of a written demand as Additional Fees.

Article XVI Liability and Indemnification

16.1 **LICENSEE SHALL AT ALL TIMES COMPLY WITH ALL LAWS AND ORDINANCES AND ALL RULES AND REGULATIONS OF MUNICIPAL, STATE AND FEDERAL GOVERNMENT AUTHORITIES RELATING TO THE INSTALLATION, MAINTENANCE, HEIGHT, LOCATION, USE, OPERATION, AND REMOVAL OF THE IMPROVEMENTS BY LICENSEE, AUTHORIZED HEREIN, AND SHALL FULLY RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS OR EMPLOYEES AGAINST ANY AND ALL CLAIMS, DAMAGES, LAWSUITS, LOSSES, COSTS, OR EXPENSES WHICH MAY BE SUSTAINED OR INCURRED BY CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS OR EMPLOYEES AS A RESULT OF LICENSEE'S INSTALLATION, OPERATION, OR REMOVAL OF SUCH IMPROVEMENTS, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS, CONTRACTORS OR EMPLOYEES.**

16.2 **EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS, CONTRACTORS OR EMPLOYEES, LICENSEE UNDERTAKES AND ASSUMES FOR ITS OFFICERS, AGENTS, EMPLOYEES, SERVANTS, AFFILIATES, CONTRACTORS AND SUBCONTRACTORS, ALL RISK OF DANGEROUS CONDITIONS, IF ANY ON OR ABOUT THE PREMISES, AND LICENSEE HEREBY AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS AND EMPLOYEES AGAINST AND**

FROM ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS, AND EMPLOYEES FOR PERSONAL INJURY OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF LICENSEE'S INSTALLATION, OPERATION, MAINTENANCE, CONDITION OR USE OF THE PREMISES OR THE IMPROVEMENTS OR LICENSEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE, OR LOCAL STATUTE, ORDINANCE OR REGULATION EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS, CONTRACTORS OR EMPLOYEES.

16.3 LICENSEE REPRESENTS AND WARRANTS THAT ITS USE OF THE PREMISES HEREIN WILL NOT GENERATE ANY HAZARDOUS WASTES, AND IT WILL NOT STORE OR DISPOSE ON THE PREMISES NOR TRANSPORT TO OR OVER THE PREMISES ANY HAZARDOUS SUBSTANCE IN VIOLATION OF ANY APPLICABLE LAWS. PROVIDED, HOWEVER, THAT (I) LICENSEE MAY STORE ACID STORAGE BATTERIES ON THE PREMISES AS LICENSEE BELIEVES IS REASONABLY NECESSARY FOR USE IN THE EVENT OF A POWER OUTAGE, (II) LICENSEE MAY TRANSPORT TO AND STORE ON THE PREMISES A DIESEL OR PROPANE GENERATOR DURING AN EMERGENCY TO PROVIDE ELECTRICITY IN THE EVENT OF A POWER OUTAGE IN EXCESS OF FOUR (4) CONTINUOUS HOURS, (III) LICENSEE MAY USE EQUIPMENT COMMONLY USED IN THE PROVISION OF TELECOMMUNICATIONS SERVICES SUCH AS ELECTRONIC EQUIPMENT AND CABLE EVEN IF SUCH EQUIPMENT CONTAINS SOME HAZARDOUS COMPONENTS, AND (IV) LICENSEE MAY USE AND STORE CLEANING AGENTS AND OTHER SOLVENTS COMMONLY USED IN LICENSEE'S USUAL COURSE OF BUSINESS. LICENSEE FURTHER AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY DAMAGE, LOSS, OR EXPENSE OR LIABILITY RESULTING FROM THE GENERATING, TRANSPORTING, STORAGE OR DISPOSAL OF SUCH HAZARDOUS SUBSTANCES IN VIOLATION OF ANY APPLICABLE LAWS, INCLUDING ALL REASONABLE ACTUAL ATTORNEYS' FEES, COSTS AND PENALTIES INCURRED AS A RESULT THEREOF. "HAZARDOUS SUBSTANCE" SHALL BE INTERPRETED BROADLY TO MEAN ANY SUBSTANCE OR MATERIAL DEFINED OR DESIGNATED AS HAZARDOUS OR TOXIC WASTE, HAZARDOUS OR TOXIC MATERIAL, HAZARDOUS OR TOXIC OR RADIOACTIVE SUBSTANCE, OR OTHER SIMILAR TERM BY ANY FEDERAL, STATE OR LOCAL ENVIRONMENTAL LAW, REGULATION OR RULE PRESENTLY IN EFFECT OR PROMULGATED IN THE FUTURE, AS SUCH LAWS REGULATIONS OR RULES MAY BE AMENDED FROM TIME TO TIME.

Article XVII Insurance

17.1 **Required Insurance.** On or before the Commencement Date and throughout the Lease Term, Licensee shall, at Licensee's expense, procure and maintain the following insurance policies:

- (a) Commercial general liability insurance for bodily injury, death or third-party property damage, insuring Licensee and naming City as an additional insured, against claims caused by Licensee's negligence or willful misconduct on an occurrence basis, issued by and binding upon a solvent insurance company authorized to do business in Texas, with a minimum combined single limit of not less than \$2,000,000 per occurrence for injury to persons (including death), and for third party property damage or destruction, including loss of use. Notwithstanding the foregoing, at no time shall the minimum amount of coverage on a per occurrence basis as required by this Section 17.a.(1) be less than twice the limitations on liability for municipalities set forth in Texas Civil Practices and Remedies Code §101.023, as amended or succeeded.
- (b) Worker's Compensation and Employer's Liability insurance in the minimum amounts required by state law.
- (c) Insurance covering all improvements located or being constructed on the Premises against loss or damage from perils covered by an all risk or special form policy in amounts not less than the full replacement cost of the improvements included in the Premises.

17.2 **Evidence of Insurance.** No later than five (5) days prior to the Commencement Date, Licensee shall furnish to City a certificate of insurance evidencing the required insurance.

17.3 **Endorsements; Certificates of Insurance.** All insurance shall name City, its officers, employees and agents as additional insureds as to all applicable insurance coverage on the general liability insurance coverage; (ii) provide at least thirty (30) days prior written notice to City for cancellation, non-renewal; (iii) provide for a waiver of subrogation against City. Any such insurance required by this Article 17 shall be primary and noncontributing with any insurance that may be carried by City as relates to Licensee's operations. Not later than ten (10) days after the renewal period for each policy, a certificate of insurance evidencing the required insurance coverage shall be delivered to City.

17.4 **Qualifying Insurance Company.** All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A-VII" by AM Best or other equivalent rating service.

17.5 **City Purchasing Insurance.** In addition to other remedies provided in this Agreement, if Licensee fails to maintain the insurance required by this Article 17, City may, but is not obligated to, obtain such insurance and Licensee shall pay to City upon demand, as an

additional Fee the premium cost thereof plus interest at the Maximum Rate from the date of payment by City until repaid by Licensee but only for the period of non-compliance.

17.6 **Contractor's Insurance.** Without limiting any of the other obligations or liabilities of Licensee, Licensee shall require its contractors and sublicensees, at the contractors' or sublicensees' expense, to maintain during the portion of the Term during which they occupy or otherwise are conducting activities on the Premises, the required insurance including the certificate and policy conditions as stated herein.

Article XVIII Notice

Any notice or demand required or desired to be given to any Party pursuant to this Agreement shall be in writing, shall be delivered to the address set forth below and shall be deemed validly served, given, delivered or made only if (i) personally delivered (including delivery by a commercially-recognized courier which provides service between the point-of-origin and the point-of-destination); (ii) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or (iii) via nation overnight courier service. Service by United States mail shall be deemed made on the date actually received. On the annual anniversary date of this Agreement, Licensee shall provide City with a current list of Licensee contacts for payment issues and contacts for Licensee's Improvements.

If intended for City:

City of Farmers Branch
Attn: City Manager
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

If intended for Licensee:

Sprint Property Services
Mailstop: KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, KS 66251-2650
Toll Free: (800)357-7641
Fax: (913)523-9735
E-mail: landlordsolutions@sprint.com
Site ID: DA52XC339

With a copy to:

Sprint Law Department
MailStop: KSOPHT0101-Z2020
6391 Sprint Parkway
Overland Park, KS 66251-2020
Attn: Real Estate Attorney
Site ID: DA52XC339

City or Licensee may from time to time designate any other address for this purpose by written notice to the other Party.

Article XIX Remedies

19.1 If there is an Event of Default by Licensee pursuant to Section 5.2; or if Licensee becomes insolvent; and has not filed for bankruptcy, City shall have the right, at its option, in addition to and not exclusive of any other remedy City may have hereunder or by operation of law, (a) with three (3) business days demand or notice and after all applicable notice and cure periods described in Section 5, to re-enter the Premises and remove the Improvements therefrom; or, (b) exercise any other right it may have at law or in equity. Upon such occurrence, City may either declare this Agreement and license granted herein at an end, in which event Licensee shall immediately pay City a sum of money equal to the total of the amount of Fees accrued through the date of termination.

19.2 No re-entry and taking of possession of the Premises by City shall be construed as an election on City's part to terminate this Agreement, regardless of the extent of renovations and alterations by City, unless a written notice of such intention is given to Licensee by City.

19.3 If there is an Event of Default by City pursuant to Section 5.2, Licensee shall have the right, at its option, in addition to and not exclusive of any other remedy City may have hereunder, to exercise any other right it may have at law or in equity.

Article XX Force Majeure

Notwithstanding any other provision in this Agreement to the contrary, neither Party will have any liability to the other with respect to its failure to perform its obligations under this Agreement, except for the payment of amounts due, if such failure is due to any of the following events (each a "Force Majeure" event): (i) the failure of any equipment or software under the control of a person, firm or entity not affiliated with such Party; (ii) fire, flood, earthquake, law or government regulation; or (iii) any other cause beyond the reasonable control of such Party. In any such case, the Parties' time for performance under this Agreement and the term hereof, to the extent affected by any of the foregoing, shall be correspondingly extended; provided, however, that if such condition shall continue in effect for more than 180 days, either Party shall have the right to terminate this Agreement upon thirty (30) days written notice.

Article XXI Miscellaneous Provisions

21.1 **Modifications.** Licensee's operations and all City approved modifications to the Premises must at all times comply with the terms of this Agreement, all applicable federal, state and local laws and ordinances and all amendments thereto.

21.2 **Entire Agreement.** This Agreement, together with all Exhibits attached hereto and incorporated herein constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

21.3 **Capacity.** Both Licensee and City represent that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this Agreement.

21.4 **Governing Law.** The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

21.5 **Amendment.** This Agreement may only be amended by the mutual written agreement signed by the Parties hereto.

21.6 **Legal Construction; Severability.** In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

21.7 **Nonwaiver.** No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or conditions of this Agreement may be waived without the written consent of the Parties. It is further agreed that one (1) or more instances of forbearance by City or Licensee in the exercise of its rights herein shall in no way constitute a waiver thereof.

21.8 **Independent Contractor.** Licensee covenants and agrees that Licensee is an independent contractor and not an officer, agent, servant or employee of City; that Licensee shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Licensee, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Licensee.

21.9 **Successors and Assigns.**

- (a) City and Licensee each bind themselves, their successors, executors, administrators and assigns to the other Party to this Agreement other than transactions including Affiliates of Licensee. Except as provided in this Agreement, neither City nor Licensee will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed. Other than transactions including Affiliates of Licensee, no assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of City, which consent will not be unreasonably withheld, conditioned or delayed. Other than transactions including Affiliates of Licensee, Licensee shall not assign, sublet, subcontract,

transfer or allow the use of any interest in the Premises or any use of the Improvements, including but not limited to equipment, lines, channels or frequencies, on the Premises without the prior written consent of City. City shall not unreasonably withhold, condition or delay its consent.

- (b) Licensee may assign this Agreement or sublicense the Premises to any parent, subsidiary, successor-in-interest or Affiliate without notice to or the need to obtain the consent of City. As used herein "Affiliate" shall mean any entity which is at least fifty-one percent (51%) controlled by Licensee or having control over Licensee, provided such assignee has first received FCC or state regulatory agency approvals, acquires Licensee's radio communications business and assumes all obligations of Licensee under this Agreement. Notwithstanding any assignment permitted under this Section or otherwise under this Agreement, Licensee shall remain absolutely and unconditionally primarily liable to pay and perform each and all of the obligations set forth in this Agreement prior to said assignment and shall be relieved of all future performance, liability and obligations after said assignment.
- (c) If City shall, at any time, relinquish its ownership or otherwise dispose of the Premises pursuant to an assignment consented to in writing by Licensee pursuant to Section 21.9(a), City shall be automatically released from all obligations under and pursuant to this Agreement that accrue after such disposition. If the Premises are so disposed of, Licensee shall not disavow any of Licensee's obligations pursuant to this Agreement but shall attach to the purchaser or transferee thereof for the performance of City's obligations under this Agreement.

21.10 Applicable Laws. This Agreement is entered into subject to the charter and ordinances of City as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and Texas state laws.

21.11 Subordination to Mortgage. Subject to receipt of the non-disturbance agreement described below, any mortgage now or subsequently placed upon any property of which the Premises are a part shall be deemed to be prior in time and senior to the rights of the Licensee under this Agreement. Subject to receipt of the non-disturbance agreement described below, Licensee subordinates all of its interest in the Premises created by this Agreement to the lien of any such mortgage. Licensee shall, at City's request, execute any additional documents necessary to indicate this subordination provided that such mortgage shall not disturb possession of Licensee hereunder. In the event a mortgage currently exists on the Premises, City shall within five (5) business days of the Effective Date, deliver a non-disturbance agreement (in form reasonably acceptable to Licensee) from the holder of such lien and City shall obtain same from any future lien holder.

21.12 Contract Interpretation. Both Parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

21.13 **Effective Date.** The term "Effective Date" as used in this Agreement shall be deemed to be the later of the dates the Parties execute this Agreement, as indicated in the signature blocks on the next page.

21.14 **Counterparts.** This Agreement may be executed in counterparts, each of which, when executed will be deemed an original instrument, but all of which taken together will constitute one and the same agreement.

(signature page to follow)

EXECUTED on this _____ day of _____, 2016.

City of Farmers Branch

By: _____
Name: _____
Title: _____

Approved as to Form:

By: _____
Peter G. Smith
City Attorney
(05-03-2016/73512)

EXECUTED on this _____ day of _____, 2016.

LICENSEE: Clear Wireless LLC,
a Nevada limited liability company

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

This instrument was acknowledged before me on the _____ day of _____, 2016, by _____, _____, on behalf of the City of Farmers Branch.

Notary Public, State of Texas

ACKNOWLEDGMENT

STATE OF _____

§

COUNTY OF _____

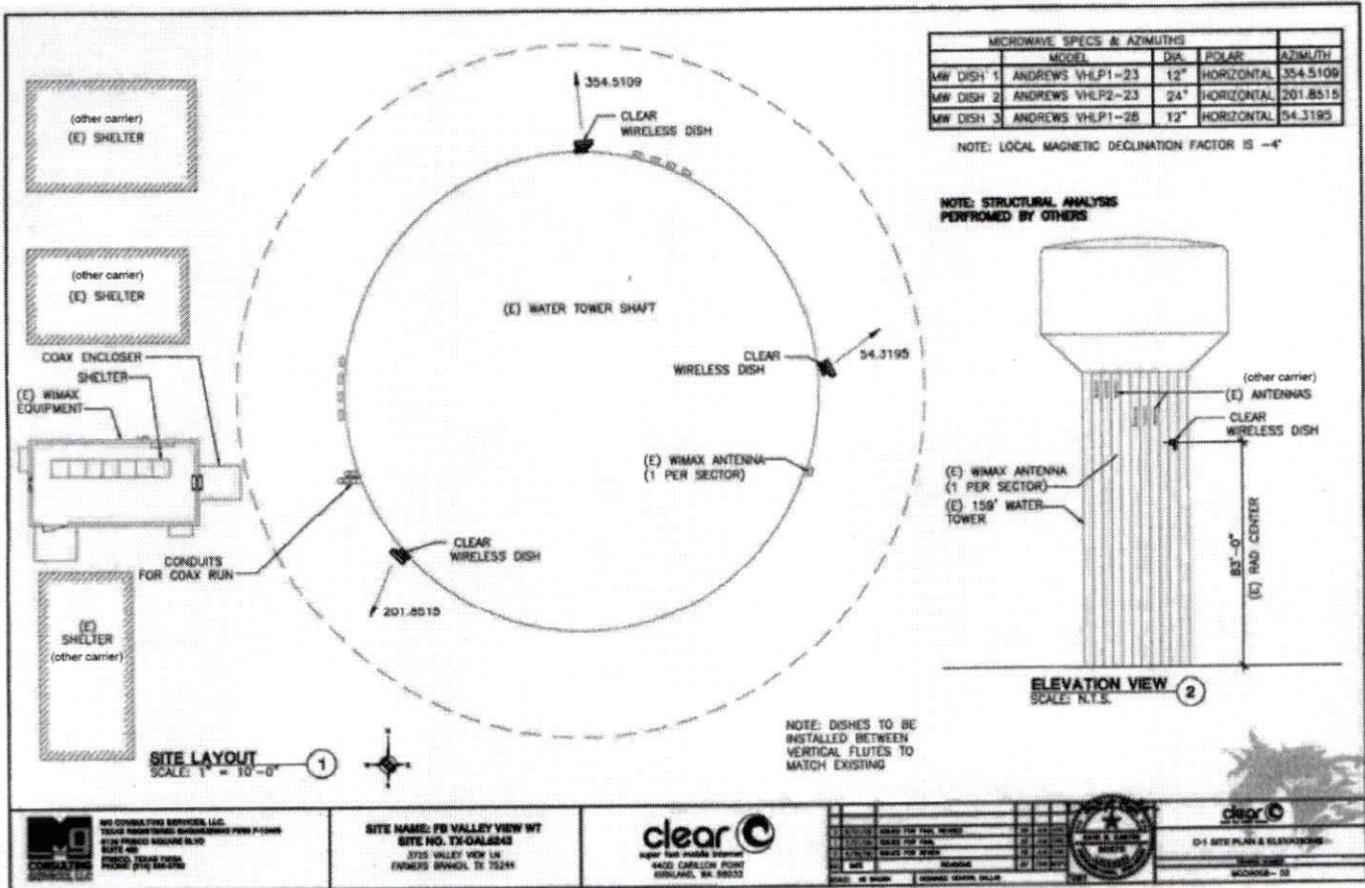
§

§

This instrument was acknowledged before me on the _____ day of _____, 2016, by _____, _____ of _____.

Notary Public in and for
The State of _____

Exhibit A Site Plan



MO CONSULTING SERVICES, LLC
15045 HIGHTOWER DRIVE, SUITE 1000
FARMERS BRANCH, TX 75244
PHONE: 281.454.7500
FAX: 281.454.7501

SITE NAME: FB VALLEY VIEW WT
SITE NO. TX-0418243
2725 VALLEY VIEW LN
FARMERS BRANCH, TX 75244

clear
clear fast mobile internet
4402 CARLETON FERRY
DALLAS, TX 75243

NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR PERMITS	08/11/10	MM
2	ISSUED FOR PERMITS	08/11/10	MM
3	ISSUED FOR PERMITS	08/11/10	MM
4	ISSUED FOR PERMITS	08/11/10	MM
5	ISSUED FOR PERMITS	08/11/10	MM
6	ISSUED FOR PERMITS	08/11/10	MM
7	ISSUED FOR PERMITS	08/11/10	MM
8	ISSUED FOR PERMITS	08/11/10	MM
9	ISSUED FOR PERMITS	08/11/10	MM
10	ISSUED FOR PERMITS	08/11/10	MM



clear
D-1 SITE PLAN & ELEVATIONS
DATE: 08/11/10
DRAWN BY: MM
CHECKED BY: MM

Exhibit A Con't
Site Plan

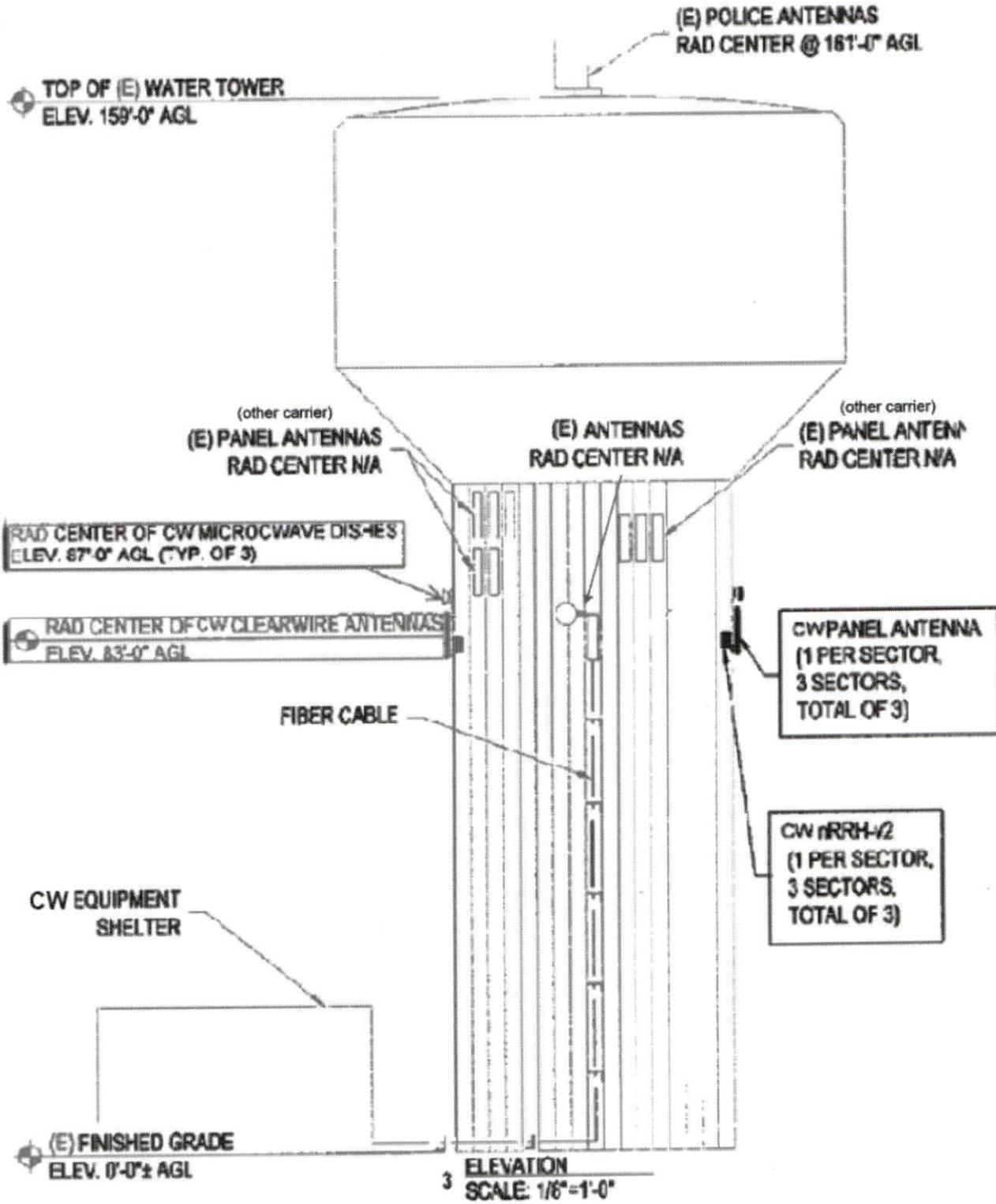


Exhibit B

Survey

A full site survey is not required as this lease addresses existing antenna installations.

Site Location:

3723 Valley View Lane, Farmers Branch, Texas
City of Farmers Branch Elevated Storage Tank
Located east of the Farmers Branch Justice Center

Exhibit C
City's Mounted Antenna Policy

**Mounted Antenna Policy
for Elevated Storage Tanks**

The City of Farmers Branch recognizes that the placement of antennas or similar structures on elevated storage tanks can be necessary for the continued growth of personal communications. Elevated storage tanks can provide the necessary structure and height for antennas without erecting additional monopole facilities throughout the city.

Currently, the City owns and operates three elevated storage tanks located at 3723 Valley View Lane, 14927 Marsh Lane, and 14337 Gillis Road. Each of the storage tanks as well as sites have unique and different characteristics.

General Site Requirements:

The City is under no obligation to allow private antennas on any of the elevated storage tanks. However, if the City chooses to do so the following criteria must be met at all sites:

- Nothing in this policy shall contradict any city ordinance.
- The equipment facility shall be of the same material, color, and character of other city owned structures on site. Any deviations shall be approved by the City Manager or his designee.
- The equipment facility shall meet all building requirements.
- All zoning regulations must be followed.
- A structural and electrical engineering analysis performed and sealed by a professional engineer, site plans and construction plans shall be approved by staff before any permits are issued.
- All wires, cables, etc. must be underground from the equipment facility to the storage tank. On the tank they must be attached to the exterior and painted to match. Paint shall be of the same specifications as paint used on the storage tank.
- No antenna system shall be placed on the bowl of the storage tank.
- If operation of antenna interferes with city operations including transmission of public safety, the Leasee will cease transmitting immediately.
- The appearance and/or design of the antenna or equipment facility shall not harm city facilities or aesthetics.

Exhibit C Con't
City's Mounted Antenna Policy

Specific Site Requirements

Due to the nature of elevated storage tanks, piping requirements for the towers limit the area that equipment facilities can be placed on site.

3723 Valley View Lane:

- Antennas shall be placed on the base of the tank up to 115 feet and in recesses structure if possible.
- The equipment facility shall be located in the area as outlined on Attachment A.
- Equipment facility shall not be higher than the Justice Center wall that faces Valley View Lane.
- Equipment facility shall be of the same materials incorporated into the Justice Center unless deviation is approved by the City Manager.

14927 Marsh

- Antennas shall be placed on the "legs" of the tank up to 78 feet and not on the bowl itself.
- The equipment facility shall be of the same materials and colors as the ground storage tanks that are on site.
- The equipment facility shall be placed in the area located in Attachment B.

14337 Gillis

- Antennas shall be attached to the concrete base up to 88 feet. No antennas shall be placed or attached to the bowl.
- The equipment facility shall be of precast concrete construction and located in the area located in Attachment C.
- The fence shall be moved back in order that equipment facilities are on the outside of the fence allowing free access by Leasee.

Location of equipment facility or antenna shall only be changed by approval of the City Manager or designee.

Exhibit C Con't
City's Mounted Antenna Policy

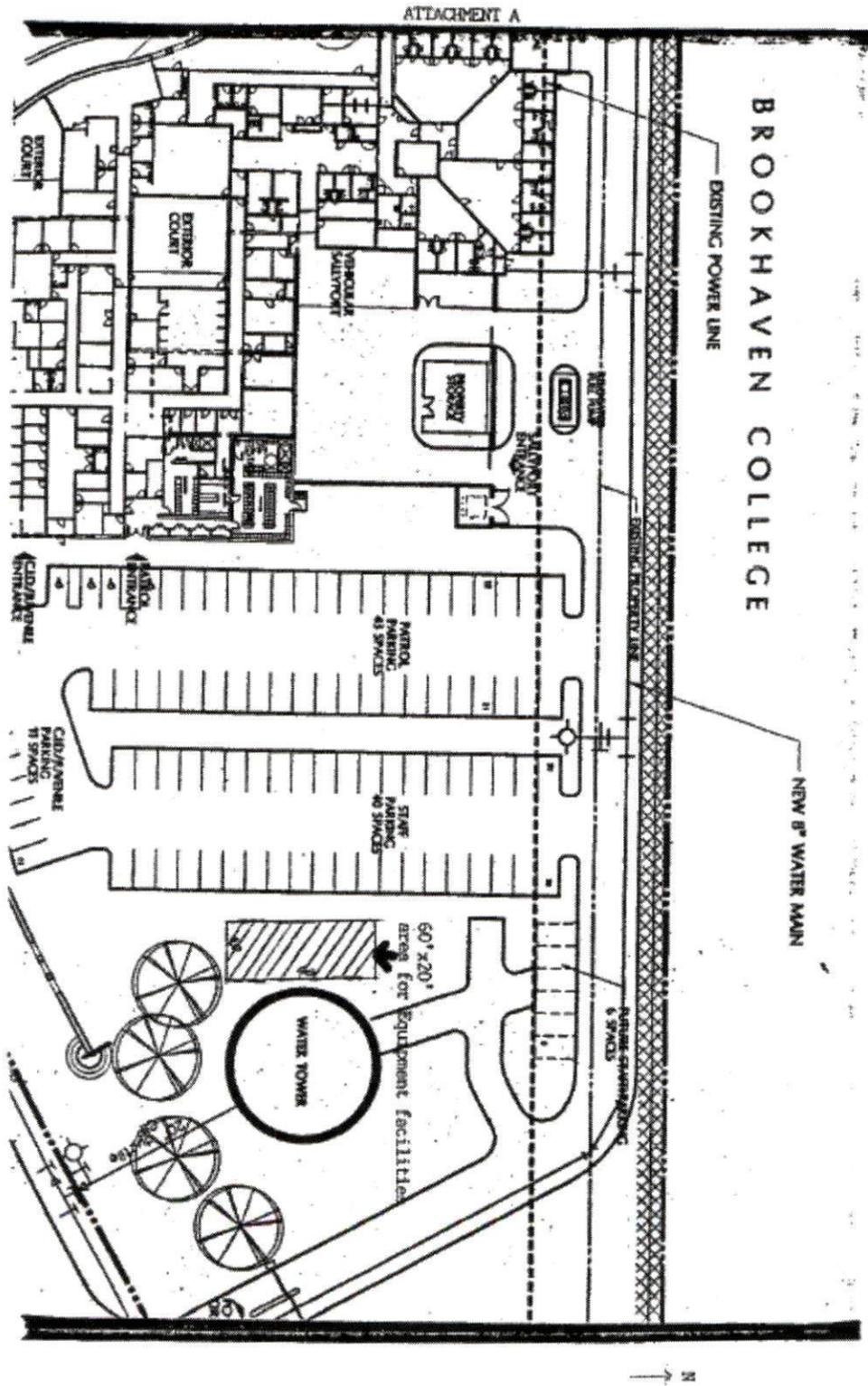


Exhibit C Con't
 City's Mounted Antenna Policy

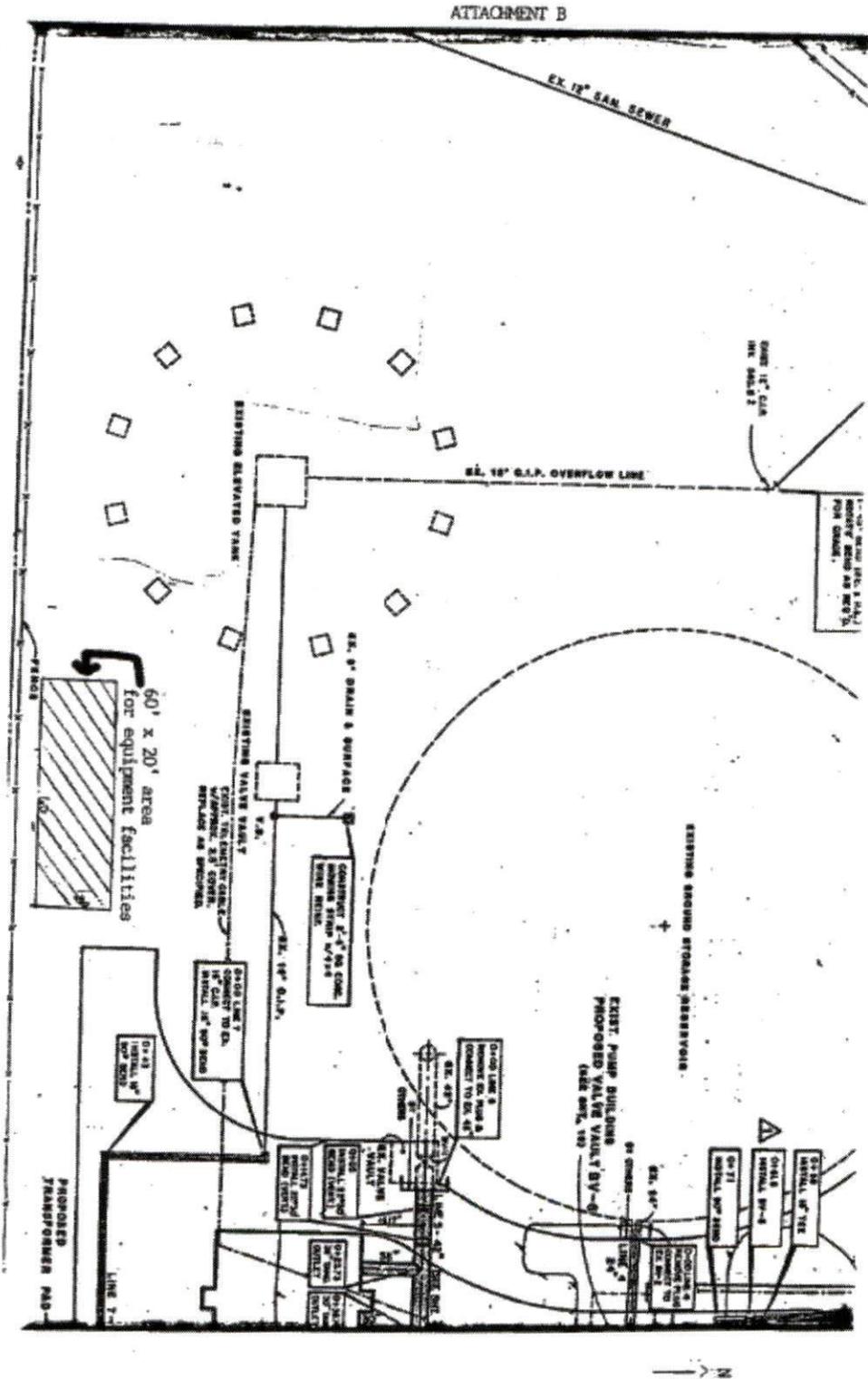
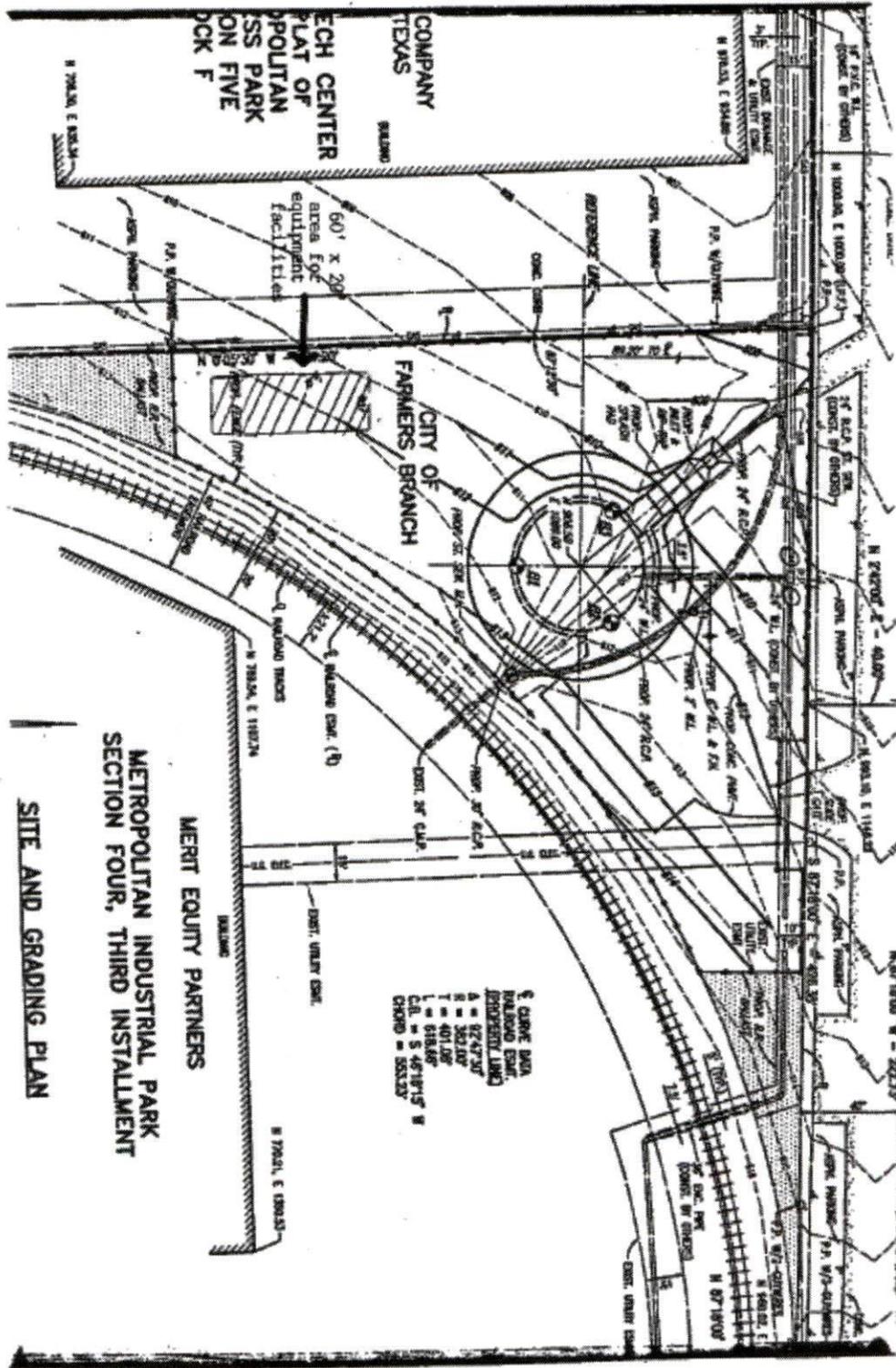


Exhibit C Con't
 City's Mounted Antenna Policy

ATTACHMENT C





City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: ORD-3399

Agenda Date: 11/15/2016

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Ordinance

Agenda Number: F.8

Consider adopting Ordinance No. 3399 amending Chapter 2 of the Code of Ordinances, Administration, Article II, Boards, Committees, and Commissions, amending Section 2-185, relating to meeting dates for the Library Board; and take appropriate action.

BACKGROUND:

The Library Board met on October 13, 2016 and recommended the Library Board meet a minimum of six times per calendar year while still maintaining the option of meeting more frequently as needed.

DISCUSSION:

The amended ordinance establishing meetings at a minimum of six times per year, or at such times as the Library Board deems necessary, has been prepared by the City Attorney based on the Library Board's direction for City Council's review.

RECOMMENDATION:

City Administration recommends adopting Ordinance No. 3399, establishing meeting dates for the Library Board.

ACTIONS:

- 1) Motion to adopt Ordinance No. 3399, as presented.
- 2) Motion to deny Ordinance No. 3399.
- 3) Motion to modify to meet the needs of the Council.
- 4) Motion to table the issue for further study or take no action.

ATTACHMENTS:

1. Library Board Minutes
2. Ordinance No. 3399

Farmers Branch Manske Library Board Meeting
Conference Room in Manske Library
Thursday, October 13, 2016, 7:15PM

MEETING IS CALLED TO ORDER at 7:15PM with a QUOROM OF 11.

Board Members Present:

Jennifer Hudson Allen
Bruce Crozier
Linda Curry
Rick Lyon
Andy Olivo
Ruth Ann Parish
Bonnie Potraza
Abby Rojas
Sue Saiter
Charles Sullivan
Ginny Welch

Board Members Absent:

Excused: N/A
Unexcused: N/A

Staff Present: Denise Wallace, Library Director
La'Jeana Thomas, Executive Assistant to City Manager – City Liaison to the Library

Guests: Pat Edmiston

Proceedings:

The minutes of the September 8 meeting were presented for discussion and recommended for approval. Two corrections were made: please add Andy's last name to the list of Board Members Present on the first page and then change the second page (B, f, 1) from Greg to Rick. With no other corrections, Andy moved that the minutes be approved as presented; Jennifer seconded, and the motion passed unanimously.

Introductions: Since there was a new City Library Liaison, everyone introduced themselves.

Committee Reports:

Rick: Suggestion box comments and discussion

- Playaway: portable way to listen on a secure, preloaded device. Can library acquire these? (www.playaway.com for more information): library reviewing for acquisition.
- Patron disappointed could not leave child unattended in youth area while in other areas of library. Will go other library instead. Patron unresponsive to library contact attempts.
- Please have people watch their children instead of running loose.
- The tab you place on spine of book covers most of book title or author – can this be changed? Unfortunately, this is all part of pre-processing and cannot be done differently.
- Love the library and everyone is helpful!
- As population is getting older, can more large print books be acquired? Grant money has already been implemented toward this collection and plans are underway to continue building this collection. This collection located on main floor next to magazine area.
- Gabby is awesome
- Book request was given to Denise

All comments with contact information have been addressed and communication has been made

Open Discussion: Community

- Chili Cook-off and Bluegrass Festival (October 15)
- Jeanie Stark Elementary School Carnival (October 15)
- Craft Fair at Farmers Branch Senior Center (October 15)
- Reading with Rover (October 21)
- 3D Printer Demo at Library (October 23)
- DNA Testing for Genealogy (October 25)
- Farmers Market Last Day (October 29)
- Brookhaven College Events
 - Art Exhibit runs through the month
 - Four Japanese Ghost Stories are at 7:30 pm each weekend until Halloween
 - Volleyball matches throughout the month
 - Career Fair on October 27 from 10:00 am to 1:00 pm – all in community are welcome

Linda: Acquisitions

- This month, we had 428 purchases:
 - 34 audio CDs, 285 books, 109 DVDs
- Highlights on the list: several items were listed, including political items, the Nancy Drew series, and the influence of Florida on the rest of the country
- More books on new book display are enticing; they check-out fast and replenished daily.

Bonnie: Trustees

- Texas Library Associations
 - Free Webinars:
 - ✓ Public Libraries: Reaching/Talking to Local Decision Makers (October 25, 2:00PM)

- ✓ State Advocacy for Librarians (December 7, 12PM)
- ✓ 4 Articles of Relevancy: Future of Libraries, Digital Libraries, Relevancy of Libraries, and Adding Classes and Content (NY Times)

Regular Agenda Items

Board Discussion: Amendments to the Bylaws

ORDINANCE no. 3221, Section 5, Sec. 2-185, 4-2-2013

"The members of the Farmers Branch Manske Library Board shall organize and select their officers and shall **meet on the second Thursday of the month, or as the Board deems necessary,** ~~hold meetings at stated times on a monthly basis,~~ and shall designate the time and place of such meetings. The Board shall adopt its own rules of procedure and keep a record of its proceedings. A majority of the Board shall constitute a quorum for the transaction of business."

- This ordinance is the basis for the bylaws, so it must be discussed and voted upon first
- Proposed changes: "The members of the library board shall organize and select their officers and shall **meet on the second Thursday of the month, or as the board deems necessary...**"
- A motion was made to Andy and seconded by Rick to submit the changed wording for approval by the City Council. A voice vote was taken and the motion passed unanimously with verbal approval, no opposition, and no abstention.
 - The Bylaw changes were tabled until the City Council acts on the changes to the verbiage in the ordinance. In the interest of time for the next meeting, please send any concerns and questions to Denise via email.

Denise: Strategic Goals Progress Report

- City is looking at renewing the contract to include automated check-in system
- We are on-track for all of the goals outlined

Board Discussion: Potential Bond Projects Related to the Library

- City Manager's meeting Friday, October 14. Charles to attend representing Library Board.
- Bond Committee agendas and minutes are listed on the city website.
- Top three projects (or tiers) bond committee recommending do not include the library.
- Library is still part of the project (potentially), but seems to be for consideration in the next year or two. List is still fluid and can change during future committee/council deliberations.
- At this point, the Bond Committee will present to the city council and they will ultimately decide which proposals will be funded through the bond.
- Board members need to make themselves visible to the city council so they understand the needs of the community. Attending city council meetings is a big plus; wear nametags.

- We must report potential quorum to city secretary when attending city council meetings.

Denise: Library Director's Report

- Calendar of events was covered previously.
- New library business manager has been updating the information as quickly as possible.
- New spreadsheet to inform over the information regarding the general library statistics. Please include year-to-year statistical comparisons for future reference.
- Library Online Resources part of collection development and are annual subscriptions based on paid level of access. Library print materials still most popular with patrons.
- Self-checkout kiosks are not at 100% because of misconceptions (technological fears, worry over taking the job of the librarian, wants the personal touch, etc.)
- Report possibility of age demographics in materials being circulated and where the collection is being utilized: youth books, juvenile, adult, etc.

Board Members: Reading Selection

- Readers are Leaders: Minister from Christ United Methodist Church read recently.
- Newspaper article: Anna Dewdeney, author of Llama Llama books for children, passed away. The article said that in lieu of flowers, please read to children.

With no further discussion, Meeting adjourned at 8:45 pm.

Approved:

Chairperson, Charles Sullivan

Recording Secretary, Jennifer Hudson Allen



ORDINANCE NO. 3399

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE CODE OF ORDINANCES CHAPTER 2 “ADMINISTRATION”, ARTICLE II “BOARD, COMMITTEES, AND COMMISSIONS” OF; DIVISION 7 “FARMERS BRANCH MANSKE LIBRARY BOARD”; SECTION 2-185. - OFFICERS; MEETINGS; RULES; QUORUM” TO PROVIDE FOR SEMI-MONTHLY MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, presently, the Code of Ordinances requires the Farmers Branch Manske Library Board (“Library Board”) to meet monthly; and

WHEREAS, City Administration has advised the activities of the Manske Library is such that there is no need for the Library Board to meet on a monthly-basis and recommends amending the Code of Ordinances to reduce the Library Board’s required meeting frequency; and

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to amend the Code of Ordinances as recommended;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. Chapter 2 “Administration,” Article II “Boards, Committees, and Commissions,” Division 7 “Farmers Branch Manske Library Board,” Section 2-185. - Officers; Meetings; Rules; Quorum” is amended to read as follows,

Sec. 2-185. - Officers; meetings; rules; quorum.

The members of the Farmers Branch Manske Library Board shall organize and select their officers and shall hold meetings at stated times on at least a semi-monthly basis, and shall designate the time and place of such meetings. The Board shall adopt its own rules of procedure and keep a record of its proceedings. A majority of the Board shall constitute a quorum for the transaction of business.

SECTION 2. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Ordinance as a whole.

SECTION 3. This Ordinance shall take effect after the passage of this Ordinance, the publication of the caption hereof as the law and charter in such case provide.

**DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH,
TEXAS, ON THIS THE 15th DAY OF NOVEMBER, 2016.**

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:11/06/16:81186)



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: ORD-3401

Agenda Date: 11/15/2016

Version: 1

Status: Public Hearing

In Control: City Council

File Type: Ordinance

Agenda Number: G.1

Conduct a Public Hearing and consider approval of Ordinance No. 3401 for a Specific Use Permit allowing outdoor storage and display for properties located at 13500 and 13512 McClintock Street; and take appropriate action.

BACKGROUND:

The site is located within Planned Development District No. 70 (PD-70), General Business Subdistrict. A new landscape business, Arbors and Patios, is requesting an opportunity to display and store their various outdoor living products on site. The proposed outdoor display area will be landscaped and screened from public view with a privacy fence.

RECOMMENDATION:

On October 24th, the Planning & Zoning Commission voted to recommend approval of the Specific Use Permit outlined in Ordinance No. 3401.

ACTIONS:

1. Motion to recommend Approval of Ordinance No. 3401.
2. Motion to recommend Approval with Modifications of Ordinance No. 3401 with the following modification(s).
3. Motion to continue discussion of this case at the following meeting.

ATTACHMENTS:

1. Location Map
2. Aerial Map
3. Information Memorandum
4. Ordinance No. 3401
5. Renderings
6. Site Photographs



-  Zoning District Boundary
-  Parcel Property Boundaries
-  City Limit

15-SU-16 - Location Map 13500 & 13512 McClintock St.



Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data. For pictorial reference only.





Site Location



15-SU-16 - Notification Map 13500 & 13512 McClintock St.

Parcel Property Boundaries

0 275 550 Feet



Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data. For pictorial reference only.



Information MEMORANDUM

TO: Mayor and City Council

FROM: Charles S. Cox
City Manager

DATE: 11-07-2016

SUBJECT: Specific Use Permit for Outdoor Display and Storage at 13500 McClintock

Existing Conditions:

The subject site is located on the eastern part of McClintock Street, approximately 800 feet east of Stemmons Freeway, between Richland and Fruitland Avenues. This irregular shaped tract of land comprised of 0.356 acres (15,527 square feet) contains two lots. It is bordered by existing commercial and light industrial land uses to the north and east, and by a residential land use to the south.

This site is located within the Planned Development District No. 70 (PD-70), General Business Subdistrict which was designed to accommodate small to moderate scale industrial and commercial businesses and to minimize any conflict between the non-residential and residential uses. Any permitted use within PD-70 having outdoor storage or display requires a Specific Use Permit.

Currently, there is an existing, 2,000 square foot, one-story building located on the site. The building is being used as an office and warehouse space associated with the landscaping business, "Arbors and Patios".

Site Design:

The applicant, Luis Carrasco, is proposing to improve the existing site in two parts and detailed as follows:

Outdoor display:

As aforementioned, the site is comprised of two lots. Approximately 5,368 square feet of the southern lot will be developed as an outdoor showroom that will display products and samples developed by the applicant's business including: outdoor kitchens, covered patios and arbors, water fountains, fire pits and seating areas. The products and samples on display will be setback 10 feet from the side southern property line and 6 feet from the rear eastern property line. (See proposed Site Plan / Landscape Plan)

This outdoor showroom area will be screened by an existing 8-foot-tall wood fence and by the proposed landscaping in the front yard of the property. All displayed products that will exceed 8 feet in height will be placed along the rear portion of the property and will have additional screening from public view with new large canopy trees. (See proposed Elevation)

Outdoor storage and on-site employee parking lot:

The applicant is proposing to use approximately 1,800 square feet of the rear portion of the northern lot as outdoor storage for lumber and masonry products. This outdoor storage area will not be visible from public view.

In addition, an on-site employee parking lot will be developed on approximately 5,200 square feet. (See proposed Site Plan / Landscape Plan). This employee parking lot will be completely screened from public view by a future 8-foot-tall wood fence and will be accessible through a future secured gate. (See proposed Elevation)

The property currently has 2 driveway access points for each corresponding lot. The access points are completely secured by the 8-foot-tall fence and a gate made of wrought iron with polycarbonate back. The applicant is proposing to improve and use both driveways for the business' needs.

Elevations:

The existing building on the site is a single story (approximately 15 feet in height), metal structure. The applicant has proposed improvements to the building which consists of applying a stone or brick finish over the metal front façade to modernize and improve the exterior appearance of the front side of the building. The proposed exterior of the building will contain at least 75% brick or stone and adhere to the city's masonry guidelines. (See proposed Elevation)

Parking:

The applicant is proposing to resurface and restripe the existing visitor parking lot in front of the building to include five (5) parking spaces. These parking spaces will serve the proposed outdoor showroom area. The Site Plan also includes eight (8) employee parking spaces for the on-site, screened parking lot. This parking design meets the City's requirements for warehouse and office use.

Landscaping:

The proposed Landscape Plan includes more than 40 % of the site comprised of natural or landscaped open space. To improve the existing landscaping, the applicant will plant two (2) new trees on the property and a large row of shrubs to screen the southern property line. Additionally, the applicant will add a landscaped island in the front yard. The landscaped island will include a combination of shrubs and decorative trees. All landscape areas will be maintained by an automated irrigation system. (See Landscape Plan)

Signage:

The applicant has proposed to install one wall sign on the existing building's main façade. The proposed wall sign will be consistent with the City's Sign Ordinance. (See proposed Elevation)

The applicant has committed to implement all of the proposed improvements within one-year from the date of the City Council approval of this Specific Use Permit.

Thoroughfare Plan:

No improvements to McClintock Street are planned or budgeted at this time.

Public Response:

Seventeen (17) zoning notification letters were mailed to the surrounding property owners on October 12th, 2016. Two (2) zoning notification signs were also placed on the site on the same day. As of November 7th, no letters of opposition have been received by the City.

On October 24th, the Planning and Zoning Commission voted to recommend approval of the Specific Use Permit outlined in Ordinance No. 3401.

Possible Council Action:

1. I move to adopt Ordinance No. 3401....
2. I move to adopt Ordinance No. 3401with the following modification(s)...
3. I move to table the item or take no action.



ORDINANCE NO. 3401

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND ZONING MAP OF THE CITY OF FARMERS BRANCH, TEXAS, BY GRANTING A SPECIFIC USE PERMIT WITH SPECIAL CONDITIONS FOR OUTDOOR STORAGE AND DISPLAY ON A 0.356± ACRE TRACT OF LAND OUT OF LOTS 35 AND 36, NORTH DALLAS TRUCK FARMS, AN ADDITION TO THE CITY OF FARMERS BRANCH, (COMMONLY KNOWN AS 13500 AND 13512 McCLINTOCK) WHICH IS LOCATED IN PLANNED DEVELOPMENT NO. 70 (PD-70) AND DESCRIBED IN EXHIBIT "A," ATTACHED HERETO; ADOPTION A SITE PLAN; ADOPTING FOR SPECIAL CONDITIONS; PROVIDING A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Planning and Zoning Commission of the City of Farmers Branch and the governing body of the City of Farmers Branch, in compliance with the laws of the State of Texas and the ordinances of the City of Farmers Branch, have given requisite notice by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, the governing body, in the exercise of the legislative discretion, has concluded that the Comprehensive Zoning Ordinance and Zoning Map should be amended;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. The Comprehensive Zoning Ordinance and zoning map of the City of Farmers Branch, Texas, be amended by granting a Specific Use Permit for Outdoor Storage and Display on a 0.356± acre tract of land out of Lots 35 and 36, North Dallas Truck Farms, City of Farmers Branch, Dallas County, Texas (commonly known as 13500 and 13512 McClintock), more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes ("the Property") and presently located in Planned Development No. 70 (PD-70).

SECTION 2. The development of the Property with outdoor storage and display in accordance with the specific use permit granted pursuant to Section 1, above, shall be subject to the following special conditions:

- A. The Property shall be developed and used only in accordance with the Site Plan attached as Exhibit "B," attached hereto, which is hereby approved.

- B. Outdoor storage shall only be permitted on the Property within the area shown on the Site Plan.
- C. No outdoor display or storage shall be permitted on the Property until construction of all screening elements as shown on the Site Plan have been completed and approved by the Director of Community Services or designee.
- D. The Property shall be developed in accordance with the Elevations set forth in Exhibit “C,” attached hereto, which is hereby approved.
- E. Construction and installation of all landscape improvements, screening walls and gates, and building façade improvements must be completed as shown on the Site Plan and Elevations attached hereto not later than one (1) year after the effective date of this Ordinance.

SECTION 2. In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Farmers Branch and the provisions of this Ordinance as applicable to the use and development of the Property, the provisions of this Ordinance shall be controlling.

SECTION 3. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

SECTION 4. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Comprehensive Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 5. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Farmers Branch, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 6. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such case provide.

**DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH,
TEXAS, ON THIS THE 15TH DAY OF NOVEMBER, 2016.**

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM

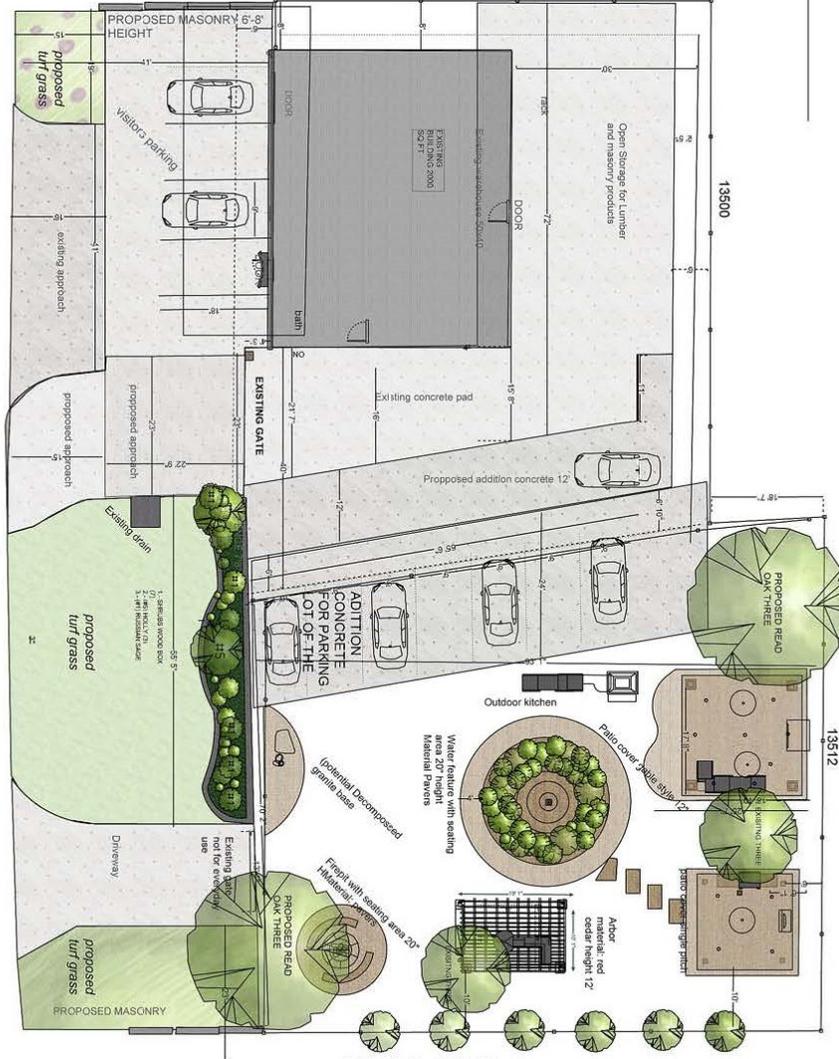
Peter G. Smith, City Attorney
(kbl:11/6/16:81187)

Ordinance No. 3401 Exhibit B - Site Plan

Site Plan / Landscape Plan



- Notes:
1. Required trees shall have a min. height of 12 feet and a minimum trunk caliper of 3 inches, measured at a height of 6 inches above the ground, at time of planting.
 2. An automatic irrigation system shall be provided to maintain all landscape areas.
 3. All plant material shall be maintained in healthy and growing conditions, and must be replaced with plant material of similar variety and size if damaged, destroyed or removed.



NELLIE R. STEVENS - screening shrubs will be planted along the eastern property line to double the existing chainlink fence (6' high). The screening shrubs will be at least 36" in height at planting and will be spaced no greater than 3' on center. The screening shrubs will be grown to at least 6' in height above grade of the abutting residential lot.



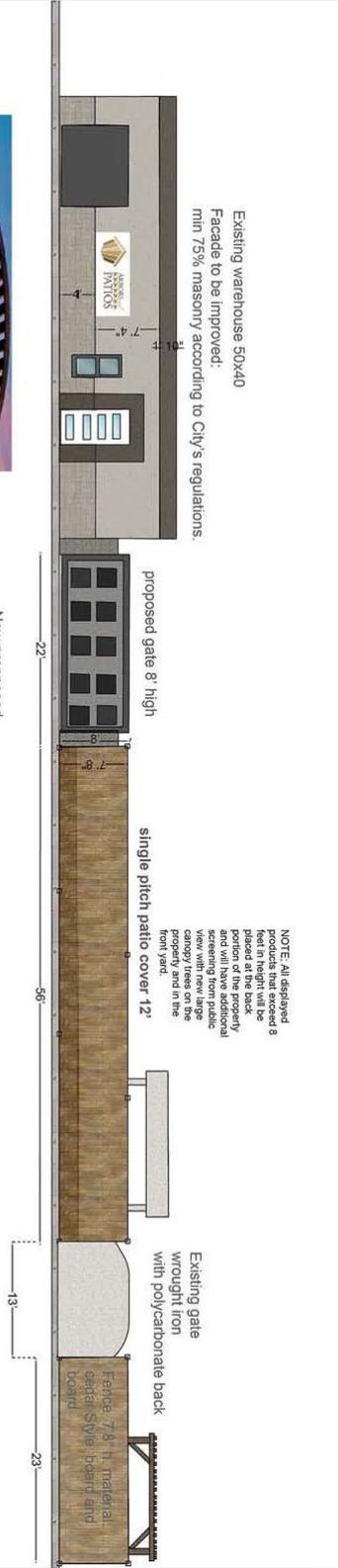
13500 MCCCLINTOCK FARMERS BRANCH, TX 75234 (214) 603 8071

Client : Luis Carrasco 13500 McClintock st.

SITE PLAN
McClintock 13500 LOT 1
McClintock 13512 LOT 2

Ordinance No. 3401 Exhibit C – Elevations

Proposed Elevation



NOTE: All dislaid products that exceed 8 feet in height will be posted at the back and will have additional screening from public view with new large screen and in the property and in the front yard.



New proposed approached



ARBORS and PATIOS
13500 MCCLINTOCK FARMERS BRANCH, TX 75234 (214) 603-8071

new proposed concrete, fence and facade replacement

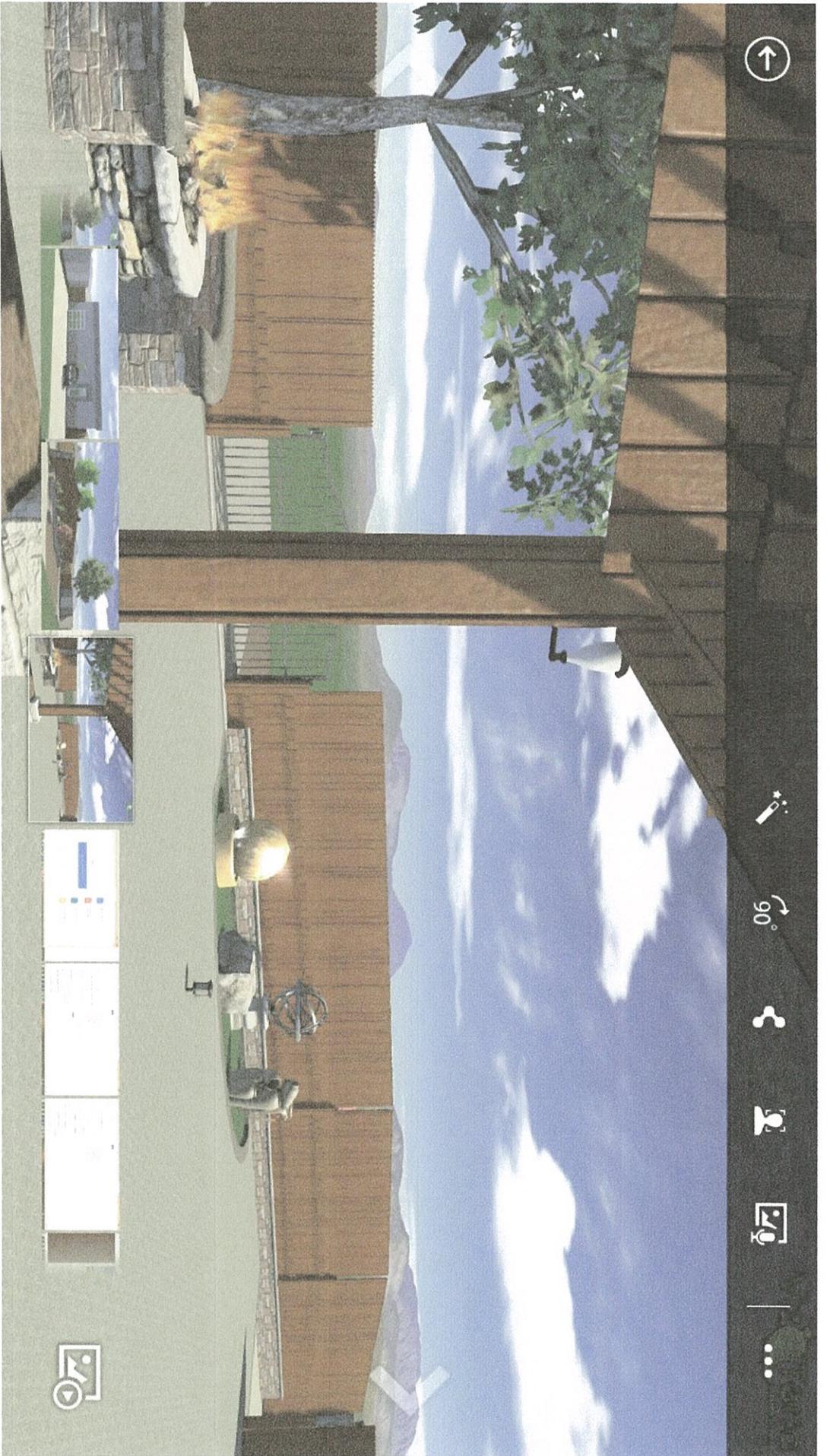
**Client : Luis Carrasco
13500 Mcclintock st.**



Found new photos. Importing.









ARBORS AND PATIOS | *Mirna Ligo*





ARBORS AND PATIOS | Mirna Lugo



ARBORS AND PATTOS | *Mirna Ligo*





Site Photographs





City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: 16 PL-007

Agenda Date: 11/15/2016

Version: 1

Status: Public Hearing

In Control: City Council

File Type: Plat

Agenda Number: G.2

Conduct a Public Hearing and consider a request for final plat approval of Metropolitan Southeast Addition, Lots 1 and 2, Block A; and take appropriate action.

BACKGROUND:

4100 Spring Valley, L.L.C. and Comerica Bank each own separate portions of a 5.9217 acre tract of land located near the southeast corner of Spring Valley Road and Midway Road. The property was previously platted as Lot 1, Block 1, Metropolitan Business Park Section 7 in 1987 and was divided by boundary survey and sold to the separate owners and addressed as 4100 and 4102 Spring Valley Road.

DISCUSSION:

The owners desire to re-plat the property as Metropolitan Southeast Addition, Lots 1 and 2, Block A. The proposed re-plat will create two separately owned, legally platted lots under the new subdivision name.

The proposed final plat of Metropolitan Southeast Addition, Lots 1 and 2, Block A was approved by the Planning and Zoning Commission on October 24, 2016 and is consistent with the Texas Local Government Code and the City's platting requirements and also consistent with the City's Guiding Principles; to provide strong, thriving commercial and residential neighborhoods through planning, land use, development, code enforcement, revitalization activities and programs.

RECOMMENDATION:

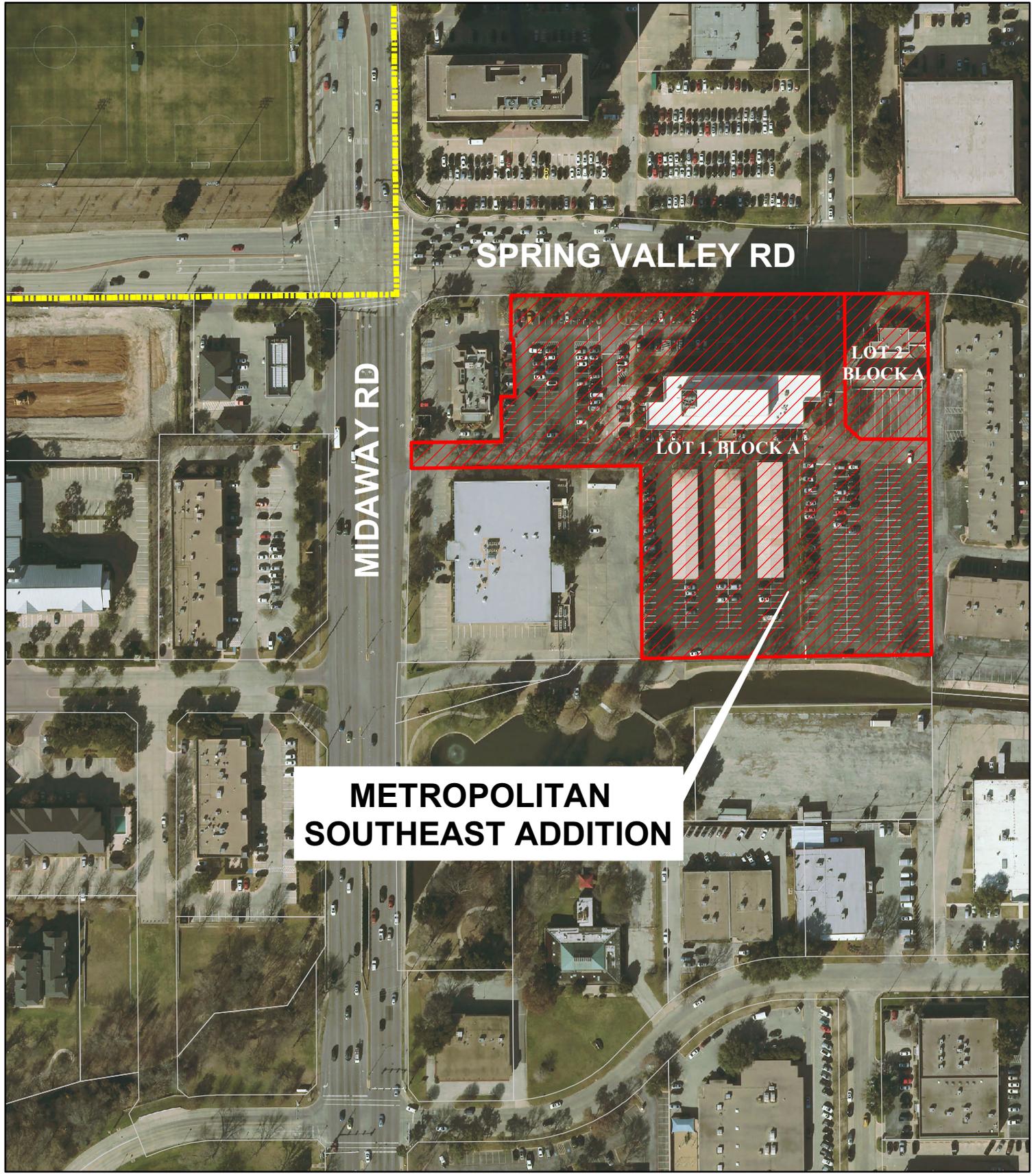
The Planning and Zoning Commission voted to recommend approval of the final plat known as Metropolitan Southeast Addition, Lots 1 and 2, Block A.

POSSIBLE COUNCIL ACTION:

1. I move to approve the final plat of Metropolitan Southeast Addition, Lots 1 and 2, Block A.
2. I move to approve the final plat of Metropolitan Southeast Addition, Lots 1 and 2, Block A with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:

1. Location Map
2. Final Plat of Metropolitan Southeast Addition, Lots 1 and 2, Block A



SPRING VALLEY RD

MIDWAY RD

LOT 2, BLOCK A

LOT 1, BLOCK A

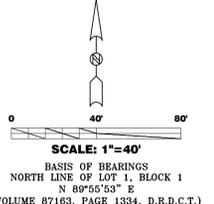
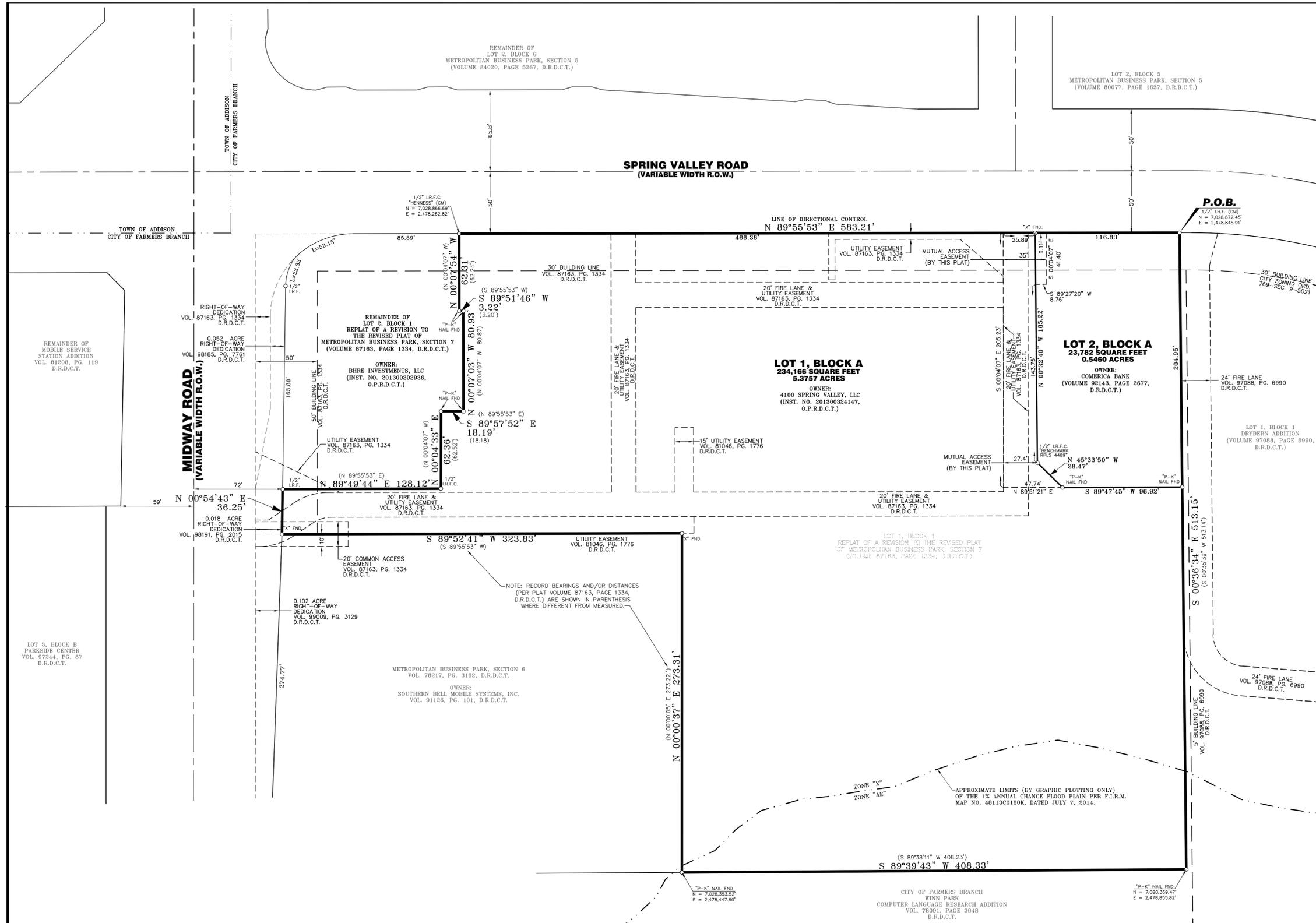
METROPOLITAN SOUTHEAST ADDITION



LOCATION MAP



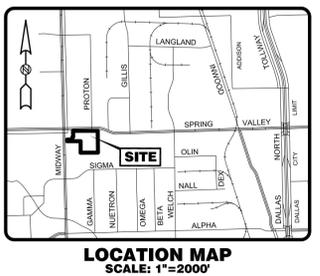
Date: 10/12/2016



LEGEND

CL	CENTERLINE	---	BOUNDARY LINE (SUBJECT PROPERTY)
(CM)	CONTROLLING MONUMENT	- - - -	BOUNDARY LINE (OFF SITE)
D.R.D.C.T.	DEED RECORDS, DALLAS COUNTY, TEXAS	---	EASEMENT LINE
FND	FOUND		
I.R.F.	IRON ROD FOUND		
PG.	PAGE		
P.O.B.	POINT OF BEGINNING		
R.O.W.	RIGHT-OF-WAY		
VOL.	VOLUME		

N 45°00'00" E 1000.00' BOUNDARY DIMENSIONS
100.00' LOT DIMENSIONS
100.00' EASEMENT DIMENSIONS



FLOOD STATEMENT

By graphic plotting only, the property described hereon lies in Zone "AE". Areas subject to inundation by the 1% annual chance flood and Zone "X" Areas determined to be outside the 0.2% annual chance floodplain, as indicated on documents issued by the Federal Emergency Management Agency, entitled "Flood Insurance Rate Map", for Dallas County, Texas and Incorporated Areas, Community Panel Number 48113C0180K, Map Revised Date, July 7, 2014. This flood statement does not imply that the property and /or 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.

COORDINATE NOTE

Coordinates shown hereon are State Plane Coordinates, Texas North Central Zone, North American Datum of 1983 (NAD83).

MUTUAL ACCESS EASEMENT NOTICE

This property is subject to a Grant of Mutual Easement recorded in Volume 81115, Page 592, Deed Records, Dallas County, Texas, as affected by that Modification of Grant of Mutual Easement recorded in Volume 87163, Page 3082, Deed Records, Dallas County, Texas. Provides for mutual access between Lot 1 and Lot 2, Block A, as shown hereon. (Blanket type easement agreement-not plottable)

FINAL PLAT
METROPOLITAN SOUTHEAST ADDITION
LOT 1 & LOT 2, BLOCK A
 5.9217 ACRES (257,948 SQUARE FEET)

BEING A REPLAT OF LOT 1, BLOCK 1
 METROPOLITAN BUSINESS PARK, SECTION 7
 (VOL. 87163, PAGE 1334, D.R.D.C.T.)

PART OF THE ELISHA FIKE SURVEY, ABSTRACT NO 478
 CITY OF FARMERS BRANCH, DALLAS COUNTY, TEXAS

<p>OWNER LOT 1: 4100 SPRING VALLEY, L.L.C. c/o Boxer Property 720 North Post Oak Road Suite 500 Houston, Texas 77024</p>	<p>OWNER LOT 2 / APPLICANT: COMERICA BANK c/o Comerica Bank MC2220 3501 Hamlin Road Auburn Hills, Michigan 48275 Contact: Michael C. Venetis (248) 371-6552</p>	<p>PROJECT INFORMATION Date of Survey: 07/28/2016 Job Number: 1690197 Drawn By: W.J.J. Date of Drawing: 10/14/2016 File: Replat.Dwg SHEET 1 OF 2</p>	<p>903 N. Bowser Road, Suite 240 Richardson, Texas 75081 (972) 424-7002 Voice (972) 633-1702 Fax WWW.SurveyConsultantsInc.Com TBPLS Firm No. 10139600</p>
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OWNER'S CERTIFICATE

STATE OF TEXAS §
COUNTY OF DALLAS §

WHEREAS 4100 Spring Valley, LLC and Comerica Bank are the owners of a tract of land located in the City of Farmers Branch, Dallas County, Texas, part of the Elisha Fike Survey, Abstract No. 487, being all of the remainder of Lot 1, Block 1, Replat of a Revision to the Revised Plat of Metropolitan Business Park Section 7, an addition to the City of Farmers Branch, Dallas County, Texas, according to the plat thereof recorded in Volume 87163, Page 1334, Deed Records, Dallas County, Texas, being all of that 5.3692 acre tract of land described in deed to 4100 Spring Valley LLC recorded as Instrument No. 201300202936, Official Public Records, Dallas County, Texas and all of that called 0.545 acre tract of land described in Receiver's Deed to Comerica Bank-Texas as recorded in Volume 92143, Page 2677, Deed Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2" iron rod found for the northeast corner of said Metropolitan Business Park, Section 7, being the northwest corner of Lot 1, Block 1, Drydern Addition as recorded in Volume 97088, Page 6990, Deed Records, Dallas County, Texas, said point being in the south right-of-way line of Spring Valley Road (variable width R.O.W.);

THENCE, along the east line of said Metropolitan Business Park and the west line of said Drydern Addition, South 00 degrees 36 minutes 34 seconds East, a distance of 513.15 feet to a "P-K" nail found for the southeast corner of said Metropolitan Business Park, Section 7, being in the north line of Winn Park as dedicated to the City of Farmers Branch by the plat of Computer Language Research Addition as recorded in Volume 78091, Page 3048, Deed Records, Dallas County, Texas;

THENCE, departing the west line of said Drydern Addition, along the south line of said Metropolitan Business Park, Section 7 and the north line of said Winn Park, South 89 degrees 39 minutes 43 seconds West, a distance of 408.33 feet to a "P-K" nail found for the most southerly southwest corner of said Metropolitan Business Park, Section 7, being the southeast corner of Metropolitan Business Park Section 6 as recorded in Volume 78217, Page 3162, Deed Records, Dallas County, Texas;

THENCE, departing the north line of said Winn Park, along the common lines of said Metropolitan Business Park Section 6 & Section as follows:

North 00 degrees 00 minutes 37 seconds East, a distance of 273.31 feet to an "X" in concrete found for the northeast corner of said Section 6 and an inside corner of said Section 7;

South 89 degrees 52 minutes 41 seconds West, a distance of 323.83 feet to an "X" in concrete found in the east right-of-way line of Midway Road (variable width R.O.W.), being the southeast corner of a called 0.018 acre tract of land described in deed to the City of Farmers Branch as recorded in Volume 98191, Page 2015, Deed Records, Dallas County, Texas;

THENCE, along the east right-of-way line of Midway Road and said 0.018 acre tract, North 00 degrees 54 minutes 43 seconds East, a distance of 36.25 feet to a 1/2" iron rod found for the northeast corner of said 0.018 acre tract, being the southeast corner of a 0.052 acre tract of land described in deed to the City of Farmers Branch as recorded in Volume 98189, Page 7761, Deed Records, Dallas County, Texas, being in the westerly north line of said Lot 1 and the south line of Lot 2, Block 1, said Metropolitan Business Park Addition, Section 7;

THENCE, along the common lines of said Lot 1 and Lot 2 as follows:
North 89 degrees 49 minutes 44 seconds East, a distance of 128.12 feet to a 1/2" iron rod found;

North 00 degrees 04 minutes 33 seconds East, a distance of 62.36 feet to a "P-K" nail found;

South 89 degrees 57 minutes 52 seconds East, a distance of 18.19 feet to a "P-K" nail found;

North 00 degrees 07 minutes 03 seconds West, a distance of 80.93 feet to a "P-K" nail found;

South 89 degrees 51 minutes 46 seconds West, a distance of 3.22 feet to a "P-K" nail found;

North 00 degrees 07 minutes 54 seconds West, a distance of 62.31 feet to a 1/2" iron rod with cap stamped "Henness" found for the northerly northwest corner of said Lot 1 and the northeast corner of said Lot 2, being in the south right-of-way line of said Spring Valley Road;

THENCE, along the north line of said Lot 1 and the south right-of-way of Spring Valley Road, North 89 degrees 55 minutes 53 seconds East, a distance of 683.21 feet to the POINT OF BEGINNING and containing 257,948 square feet or 5.9217 acres of land more or less.

OWNER'S DEDICATION

NOW, THEREFORE, KNOW ALL BY THESE PRESENTS:

That, 4100 Spring Valley LLC and Comerica Bank, acting by and through their duly authorized agents, do hereby adopt this plat designating the herein above described property as **METROPOLITAN SOUTHEAST ADDITION**, an addition to the City of Farmers Branch, Dallas County, Texas, and does hereby dedicate to the public use forever, the streets and easements shown hereon. The easements are hereby reserved for the purposes indicated. No permanent structures (buildings, fences, trees, shrubs or paving) shall be constructed or placed upon, over and across said easements as shown, except with the written permission of the City of Farmers Branch, Texas. Said easements being hereby reserved for mutual use and accommodation of all public utilities. All and any public utility shall have the full right and privilege to remove and keep removed all or any parts of any buildings, fences, trees, shrubs, paving or other improvements or growths which may in any way endanger or interfere with the construction, maintenance or efficiency of its respective utility system located within the easement, and all public utilities shall at all times have the full right of ingress and egress to or from and upon said easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding or removing all or part of its respective system without the necessity at any time of procuring the permission of anyone. The reconstruction, relocation, or other replacement of any buildings, fences, trees, shrubs, paving or other improvements or growths within such easements shall accrue no responsibility or liability to the City of Farmers Branch, Texas. (Any public utility shall have the right of ingress and egress to private property for the purpose of reading meters and any maintenance and service required or ordinarily performed by that utility.) There will be no permanent structures (buildings, fences, trees, shrubs, paving or other improvements or growths) or obstructions built, placed or planted within the 100 year flood plain. The maintenance of all easements shown hereon shall be responsibility of the owners.

This plat approved subject to all platting ordinances, rules and regulations of the City of Farmers Branch, Texas.

EXECUTED this the ____ day of _____, 2016.

4100 SPRING VALLEY, L.L.C.

By: John Rentz, Vice President

STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE me, the undersigned authority, a Notary Public for the State of Texas, on this day personally appeared **JOHN RENTZ**, known to me to be the person whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2016.

Notary Public in and for the State of Texas

EXECUTED this the ____ day of _____, 2016.

COMERICA BANK

By: Michael C Venetis
Vice President-Real Estate

STATE OF MICHIGAN §
COUNTY OF OAKLAND §

BEFORE me, the undersigned authority, a Notary Public for the State of Michigan, on this day personally appeared **MICHAEL C. VENETIS** known to me to be the person whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2016.

Notary Public in and for the State of Michigan

SURVEYOR'S STATEMENT

I, Douglas S. Loomis, a Registered Professional Land Surveyor, licensed by the State of Texas, affirm that this plat was prepared under my direct supervision, from recorded documentation, evidence collected on the ground during field operations and other reliable documentation; and that this plat substantially complies with the Rules and Regulations of the Texas Board of Professional Land Surveying, the City of Farmers Branch Rules and Regulations Governing the Platting and Subdivision of Land (Ordinance No. 1430) and Texas Local Government Code, Chapter 212. I further affirm that the monuments shown hereon were either found or placed in compliance with said ordinance.

Dated this the ____ day of _____, 2016.

RELEASED 10/14/2016 FOR REVIEW PURPOSES ONLY. THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE.
Douglas S. Loomis
Texas Registered Professional Land Surveyor No. 5199

STATE OF TEXAS §
COUNTY OF DALLAS §

BEFORE me, the undersigned authority, a Notary Public for the State of Texas, on this day personally appeared Douglas S. Loomis, known to me to be the person whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2016.

Notary Public in and for the State of Texas

FLOOD PLAIN STATEMENT

This plat is approved by the City Council of the City of Farmers Branch and accepted by the Owner, subject to the following conditions which shall be binding upon the owner, his heirs, grantees, successors and assigns:

The existing water courses, creek with its flood plain traversing within the limits of this addition, will remain as an open area at all times and will be maintained by the owners of the lot or lots that are traversed by or adjacent to the drainage course in **METROPOLITAN SOUTHEAST ADDITION**. The City of Farmers Branch will not be responsible for any maintenance or operation of said water courses, creek or creeks or for any damage to private property or person that results from the flow of water along said creek, or for the control of erosion in the Flood Plain.

No obstruction to the natural flow of storm water run-off shall be permitted by filling or by construction of any type of dam, building, bridge, fence, walkway or any other structure within 100 Year Flood Plain, as hereinafter defined in **METROPOLITAN SOUTHEAST ADDITION**, unless approved by the City Engineer. The property owner shall keep the 100 Year Flood Plain traversing or adjacent to his property clean and free of debris, silt and any substance which would result in unsanitary conditions and the City of Farmers Branch shall have the right of ingress and egress for the purposes on inspection and supervision on maintenance work by the homeowners association and/or the property owners to alleviate any undesirable conditions which may occur.

The natural drainage channels and water courses through **METROPOLITAN SOUTHEAST ADDITION**, as is the case of all natural channels are subject to storm water overflow and natural bank erosion to an extent which cannot be definitely defined. The City of Farmers Branch shall not be held liable for any damages of any nature resulting from the occurrence of these natural phenomena, nor resulting from the failure of any structure or structures, within the 100 Year Flood plain.

Buildings adjacent to the flood plain within this subdivision shall be built to minimum floor elevations as required by Flood Plain Administrator.

Marc Bentley, P.E., CFM
City Engineer/Flood Plain Administrator

CERTIFICATE OF APPROVAL

CHAIRMAN, Planning and Zoning Commission

Date: _____

Approved by the City of Farmers Branch, Texas on this the ____ day of _____, 2016.

Mayor, City of Farmers Branch, Texas

ATTEST:

City Secretary

OWNER LOT 1:
4100 SPRING VALLEY, L.L.C.
c/o Boxer Property
720 North Post Oak Road
Suite 500
Houston, Texas 77024

OWNER LOT 2 / APPLICANT:
COMERICA BANK
c/o Comerica Bank MC2220
3501 Hamlin Road
Auburn Hills, Michigan 48275
Contact: Michael C. Venetis
(248) 371-6552

PROJECT INFORMATION
Date of Survey: 07/28/2016
Job Number: 1690197
Drawn By: W.J.J.
Date of Drawing: 10/14/2016
File: Replat.Dwg
SHEET 2 OF 2

FINAL PLAT
METROPOLITAN SOUTHEAST ADDITION
LOT 1 & LOT 2, BLOCK A

5.9217 ACRES (257,948 SQUARE FEET)

BEING A REPLAT OF LOT 1, BLOCK 1
METROPOLITAN BUSINESS PARK, SECTION 7
(VOL. 87163, PAGE 1334, D.R.D.C.T.)

PART OF THE ELISHA FIKE SURVEY, ABSTRACT NO 478
CITY OF FARMERS BRANCH, DALLAS COUNTY, TEXAS

903 N. Bowser Road, Suite 240
Richardson, Texas 75081
(972) 424-7002 Voice
(972) 633-1702 Fax
WWW.SurveyConsultantsInc.Com
TBPLS Firm No. 10139600





City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: 16 PL-008

Agenda Date: 11/15/2016

Version: 1

Status: Public Hearing

In Control: City Council

File Type: Plat

Agenda Number: G.3

Conduct a Public Hearing and consider a request for final plat approval of Komerica Addition, Lot 1, Block A; and take appropriate action.

BACKGROUND:

Komerica Building Maintenance, Inc. is the owner of a previously developed, 3.4502 acre tract of land addressed as 13150 Senlac Drive, located at the southeast corner of Senlac Drive and Valley View Lane. The property was previously platted and is presently part of a remaining portion of Lot 1, Block 1, Valley View Commerce Park Addition, originally platted in 1984 and then re-platted in 1985.

DISCUSSION:

The owners desire to re-plat the property as Komerica Addition, Lot 1, Block A, for the purpose of dedicating an easement needed for a water line loop to serve the property. The proposed final plat of Komerica Addition, Lot 1, Block A was approved by the Planning and Zoning Commission on October 24, 2016 and is consistent with the Texas Local Government Code and the City's platting requirements and also consistent with the City's Guiding Principles; to provide strong, thriving commercial and residential neighborhoods through planning, land use, development, code enforcement, revitalization activities and programs.

RECOMMENDATION:

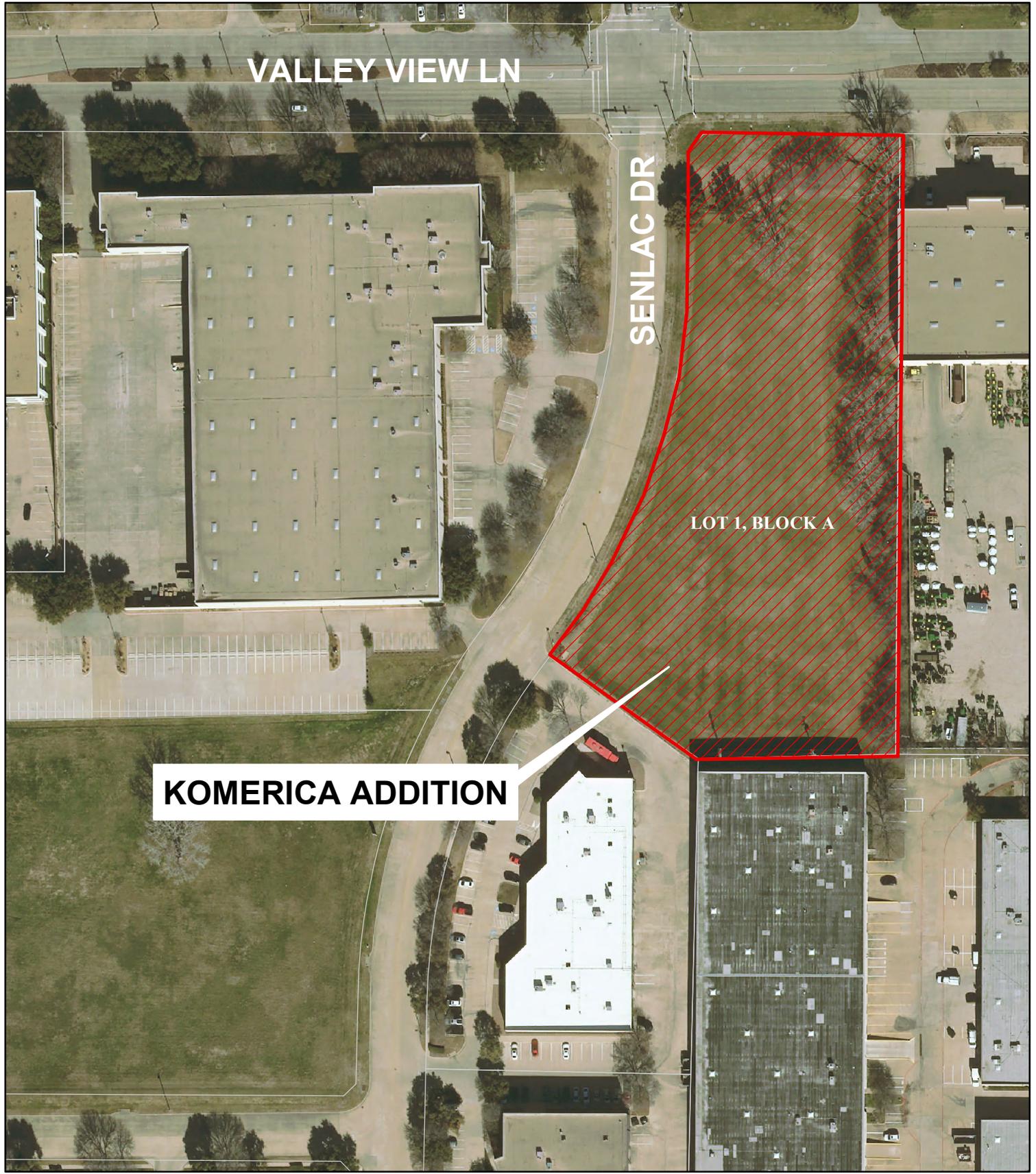
The Planning and Zoning Commission voted to recommend approval of the final plat known as Komerica Addition, Lot 1, Block A.

POSSIBLE COUNCIL ACTION:

1. I move to approve the final plat of Komerica Addition, Lot 1, Block A.
2. I move to approve the final plat of Komerica Addition, Lot 1, Block A, with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:

1. Location Map
2. Final Plat of Komerica Addition, Lot 1, Block A



VALLEY VIEW LN

SENLAC DR

LOT 1, BLOCK A

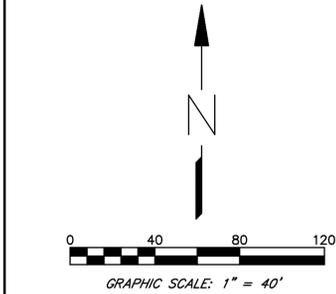
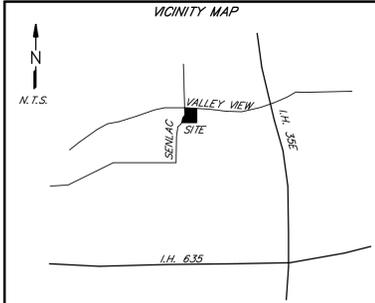
KOMERICA ADDITION



LOCATION MAP

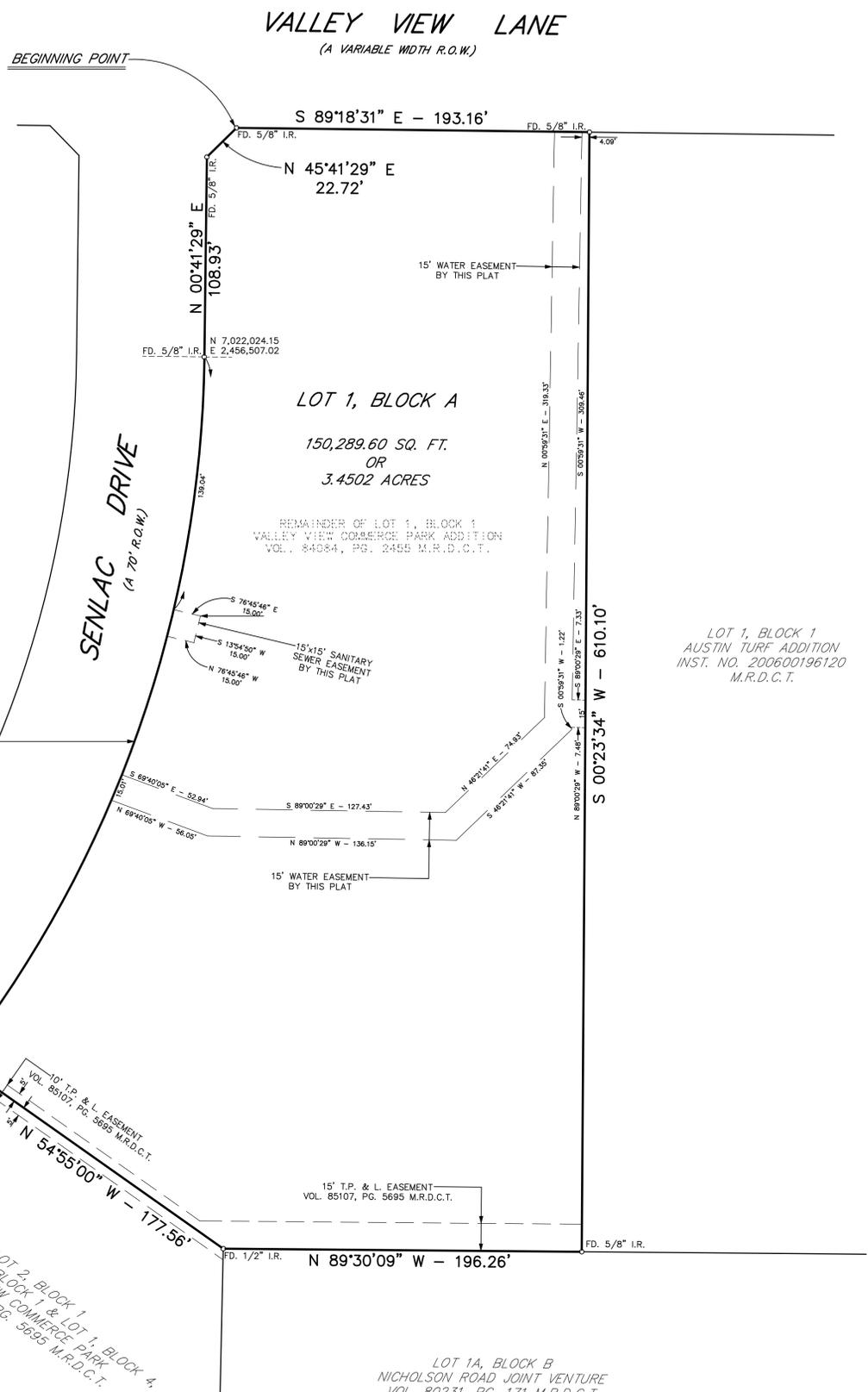


Date: 10/13/2016



$\Delta = 37^{\circ}22'30''$
 $R = 635.00'$
 $L = 414.22'$
 $CH = N 19^{\circ}22'44'' E$
 $406.92'$

LEGEND
 R.O.W. RIGHT-OF-WAY
 D.R.D.C.T. DEED RECORDS, DALLAS COUNTY, TEXAS
 M.R.D.C.T. MAP RECORDS, DALLAS COUNTY, TEXAS
 INST. INSTRUMENT
 NO. NUMBER
 FD. FOUND
 I.R. IRON ROD



REPLAT LOT 1, BLOCK 1, VALLEY VIEW COMMERCE PARK ADDITION VOL. 85107, PG. 5695 M.R.D.C.T.
 LOT 2, BLOCK 1, VALLEY VIEW COMMERCE PARK ADDITION VOL. 85107, PG. 5695 M.R.D.C.T.
 LOT 1A, BLOCK B NICHOLSON ROAD JOINT VENTURE VOL. 80231, PG. 171 M.R.D.C.T.

PROPERTY DESCRIPTION

STATE OF TEXAS:
 COUNTY OF DALLAS:
 WHEREAS, Komerica Building Maintenance, Inc. is the sole owner of 3.4502 acres of the remainder of Lot 1, Block 1 of VALLEY VIEW COMMERCE PARK ADDITION, an addition to the City of Farmers Branch, Dallas County, Texas, recorded in Volume 84084, Page 2455 of the Map Records of Dallas County, Texas, and being all of that same tract of land described in deed to Komerica Building Maintenance, Inc., recorded in Instrument No. 201500218983 of the Deed Records of Dallas County, Texas, and said lot being more particularly, described as follows:

BEGINNING at a 5/8" iron rod found at the north corner of a corner cut-off at the present intersection of the south R.O.W. line of Valley View Lane (a variable width R.O.W.) with the east R.O.W. line of Senlac Drive (a 70' R.O.W.);
 THENCE S 89°18'31" E, 193.16' along the south line of Valley View Lane to a 5/8" iron rod found at the northwest corner of Lot 1, Block 1 of Austin Turf Addition, an addition to the City of Farmers Branch, Texas, recorded in Instrument No. 200600196120 of the Map Records of Dallas County, Texas;
 THENCE S 00°23'34" W, 610.10' along the west line of Lot 1, Block 1 of said Austin Turf Addition to a 5/8" iron rod found for corner in the north line of Lot 1A, Block B of Nicholson Road Joint Venture, an addition to the City of Farmers Branch, Texas, recorded in Volume 80231, Page 171 of the Map Records of Dallas County, Texas;
 THENCE N 89°30'09" W, 196.26' along the north line of said Lot 1A, Block B to a 1/2" iron rod found at the northeast corner of Lot 2, Block 1 of Replat Lot 1, Block 1 & Lot 1, Block 4, Valley View Commerce Park, an addition to the City of Farmers Branch, Dallas County, Texas, recorded in Volume 85107, Page 5695 of the Map Records of Dallas County, Texas;
 THENCE N 54°55'00" W, 177.56' along the north line of said Lot 2, Block 1 to a cross found for corner in the east line of Senlac Drive and being on a curve to the left having a central angle of 37°22'30" and a radius of 635.00' (chord bearing N 19°22'44" E, 406.92');
 THENCE around said curve and along the east line of Senlac Drive, a distance of 414.22' to a 5/8" iron rod found for corner;
 THENCE N 00°41'29" E, 108.93' along the east line of Senlac Drive to a 5/8" iron rod found at the south corner of the aforementioned corner cut-off line;
 THENCE N 45°41'29" E, 22.72' along said cut-off line to the Point of Beginning and containing 150,289.60 square feet or 3.4502 acres of land.

SURVEYOR'S STATEMENT:
 I, SCOTT DAVIS, a Registered Professional Land Surveyor, licensed by the State of Texas, affirm that this plat was prepared under my direct supervision, from recorded documentation, evidence collected on the ground during field operations and other reliable documentation; and that this plat substantially complies with the Rules and Regulations of the Texas Board of Professional Land Surveying. I further affirm that monumentation shown hereon was either found or placed in compliance with the City of Farmers Branch, Texas.

RELEASED FOR PRELIMINARY REVIEW ONLY. THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE.
SCOTT DAVIS
 REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5111

STATE OF TEXAS:
 COUNTY OF DALLAS:
 BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Scott Davis, 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.

GIVEN under my hand and seal of office, this the ___ day of _____, 2016.
 Notary Public in and for the State of Texas.
 My commission expires: _____

OWNER'S DEDICATION

NOW, THEREFORE, KNOW ALL BY THESE PRESENTS:
 That, Komerica Building Maintenance, Inc. acting by and through Minsuk Kim, duly authorized so to act, does hereby adopt this plat designating the herein above described property as **KOMERICA ADDITION, LOT 1, BLOCK A**, an addition to the City of Farmers Branch, Dallas County, Texas, and does hereby dedicate to the public use forever, the streets and easements shown hereon. The easements are hereby reserved for the purposes indicated. No permanent structures (buildings, fences, trees, shrubs, or paving) shall be constructed or placed upon, over or across said easements as shown, except with the written permission of the City of Farmers Branch, Texas. Said easements being hereby reserved for the mutual use and accommodation of all public utilities. All and any public utility shall have the full right and privilege to remove and keep removed all or any parts of any buildings, fences, trees, shrubs, paving or other improvements or growths which may in any way endanger or interfere with the construction, maintenance or efficiency of its respective utility system located within the easement, and all public utilities shall at all times have the full right of ingress and egress to or from and upon said easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding or removing all or part of its respective system without the necessity at any time of procuring the permission of anyone. The reconstruction, relocation, or other replacement of any buildings, fences, trees, shrubs, paving or other improvements or growths within such easements shall accrue no responsibility or liability to the City of Farmers Branch, Texas. (Any public utility shall have the right of ingress and egress to private property for the purpose of reading meters and any maintenance and service required ordinarily performed by that utility.) There will be no permanent structures (buildings, fences, trees, shrubs, paving or other improvements or growths) or obstructions built, placed or planted within the 100 year flood plain. The maintenance of all easements shown hereon shall be the responsibility of the property owners.

This plat approved subject to all platting ordinances, rules, and regulations of the City of Farmers Branch, Texas.
 EXECUTED this the ____ day of _____, 2016.

Komerica Building Maintenance, Inc.

 Minsuk Kim, Director

STATE OF TEXAS:
 COUNTY OF DALLAS:
 BEFORE ME, the undersigned authority, a Notary Public for the State of Texas, on this day personally appeared Minsuk Kim, 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.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2016.
 Notary Public in and for the State of Texas
 My commission expires: _____

CERTIFICATE OF APPROVAL

Chairman, Planning and Zoning Commission _____

Date: _____

Approved by the City of Farmers Branch, Texas on this the _____ day of _____, 2016.

Mayor, City of Farmers Branch, Texas _____

ATTEST:

City Secretary _____

FINAL PLAT
KOMERICA ADDITION
 LOT 1, BLOCK A
 150,289.60 SQ. FT. OR 3.4502 ACRES
 BEING A REPLAT OF PART OF LOT 1, BLOCK 1 OF VALLEY VIEW COMMERCE PARK ADDITION, RECORDED IN VOLUME 84084, PAGE 2455 M.R.D.C.T., SITUATED IN THE FRANCIS MILLER SURVEY, ABSTRACT NO. 926, CITY OF FARMERS BRANCH, DALLAS COUNTY, TEXAS.

GENERAL NOTES:
 1. Reference Bearing for the south R.O.W. line of Valley View Lane, S 89°18'31" E, per plat recorded in Volume 85107, Page 5695 M.R.D.C.T.
 2. The Purpose of this plat is the addition of new easements.
 3. All setbacks are determined by City of Farmers Branch current zoning requirements.
 4. Coordinates shown are Texas State Plane Coordinate System, North Central Zone, North American Datum of 1983 on grid coordinate values, no scale and no projection.

ENGINEER: EZZELL & ASSOCIATES, 2211 TEXAS DRIVE, IRVING, TX 75062
 OWNER: KOMERICA BUILDING MAINTENANCE, INC., 2445 MCIVER LANE, SUITE 100, CARROLLTON, TX 75006

DAVIS LAND SURVEYING CO., INC.
 9777 FERGUSON ROAD, SUITE 105, DALLAS, TEXAS 75228
 DATE: 9/1/16
 JOB NO. 15106A



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-110

Agenda Date: 11/15/2016

Version: 1

Status: Regular Agenda

In Control: City Council

File Type: Resolution

Agenda Number: H.1

Consider approving Resolution No. 2016-110 authorizing a Commercial Facade Revitalization Grant Agreement for 4464 Sigma Road; and take appropriate action.

BACKGROUND:

In 2012, a Commercial Facade Revitalization Program (Program) was developed and funded to encourage property owners to enhance the publicly viewed areas of their buildings. The Program is set up as a single payment reimbursement to property owners per building/business, and in some situations, tenants. Facade grants are available up to a 50/50 matching basis with a minimum project value of \$2,000 and a maximum reimbursement of \$50,000 per grant, unless otherwise approved by the City Council. Since the Program's inception, nine grants have been approved: 12879 Josey Lane, 12895 Josey Lane, 3212 Beltline Road, and 2914-2920 Valley View Lane, 12895 Josey Lane (Suite 140), 13610 Midway Road, 13740 Midway Road/Suite 700, and 13720 Midway Road/Suite 100; 200.

DISCUSSION:

The applicant, Hudson Peters Commercial, is moving their headquarters to 4464 Sigma Road from their current location in Addison. They will be utilizing 50% of this space and leasing the other 50% to Gordon Highlander.

POSSIBLE COUNCIL ACTION:

1. I move to approve Resolution 2016-110
2. I move to approve Resolution 2016-110, with modifications
3. I move to table the issue for further study or take no action

RECOMMENDATION:

City Administration recommends approving Resolution No. 2016-110 approving Economic Development Incentives for 4464 Sigma Road pursuant to the Commercial Façade Grant Program for 10% of the proposed building project (23,613.00).

ATTACHMENTS:

1. Application
2. Sigma Omega Partners Economic Development Agreement
3. Resolution No. 2016-110
4. Power Point Presentation with Renderings

FARMERS BRANCH COMMERCIAL FAÇADE REVITALIZATION PROGRAM APPLICATION

Please return completed with necessary attachments and signatures to the City of Farmers Branch Economic Development Office, 13000 William Dodson Parkway, no later than 5 pm Thursday, prior to the first Friday of each month. If you have any application questions please contact the Economic Development Director at 972.919.2512. If you have any building or sign permit/historic preservation questions please contact Community Services at 972.919.2549.

Applicant Name: Michelle Hudson Date: 10/24/16

Business Name: Sigma Omega Partners LLC

Mailing Address: 16479 Dallas Parkway, Suite 750, Addison, TX 75001

Contact Phone: [REDACTED] Email Address: [REDACTED]

Building Owner (if different from applicant): _____

Physical Building Address: 4464 Sigma Road, Dallas, TX 75244

Type of Work: (check all that apply)

Paint X Stonework X Awning/Canopy X

Uncovering/replacing windows X Roof Repair _____

Masonry Cleaning/ Paint Removal X Other _____

Details of Planned Improvements:

(attach additional paper if necessary)

Complete facade renovation. All new double pane windows; painting of brick; re-work of entrances to create identity and weather coverage; Fascia to be covered in ceramic tile and metal

List Contractor/Project architect Proposals and Total Amounts (please attach original proposals):

Contractor: Gordan Highlander
Architect: Chad Dorsey with more design and build

TOTAL COST OF PROPOSED BUILDING PROJECT: \$ 236,131

AMOUNT OF FUNDS REQUESTED (\$50,000 FAÇADE MAX): \$ 50,000.00

Attach with all required color samples of paint, awning/canopy, sign design, etc. as well any photographs of building's exterior façade, roof, and foundation.

Michelle Hudson
Applicant's Signature

10-26-16
Date

Approved _____ Rejected _____ By _____ Date _____

FARMERS BRANCH COMMERCIAL FAÇADE REVITALIZATION PROGRAM APPLICATION AGREEMENT FORM

Please return completed with necessary attachments and signatures to the City of Farmers Branch Economic Development Office, 13000 William Dodson Parkway, no later than 5 pm Thursday, prior to the first Friday of each month. If you have any application questions please contact the Economic Development Director at 972.919.2512.

I have met with the City of Farmers Branch, and I fully understand the Commercial Revitalization Program Procedures and Details established by the City of Farmers Branch. I intend to use this grant program for the aforementioned renovation projects to forward the efforts of the Branch Crossing revitalization program. I have not received insurance monies for this revitalization project.

I have read the Commercial Revitalization Program Application Procedures including the Program Details.

I understand that if I am awarded funds by the City of Farmers Branch, any deviation from the approved project may result in the partial or total withdrawal of the awarded funds. If the façade is altered for any reason within _____ year(s) from construction, I may be required to reimburse the City of Farmers Branch immediately for the full amount of the funds awarded.

Business/Organization Name: Sigma Omega Partners, LLC

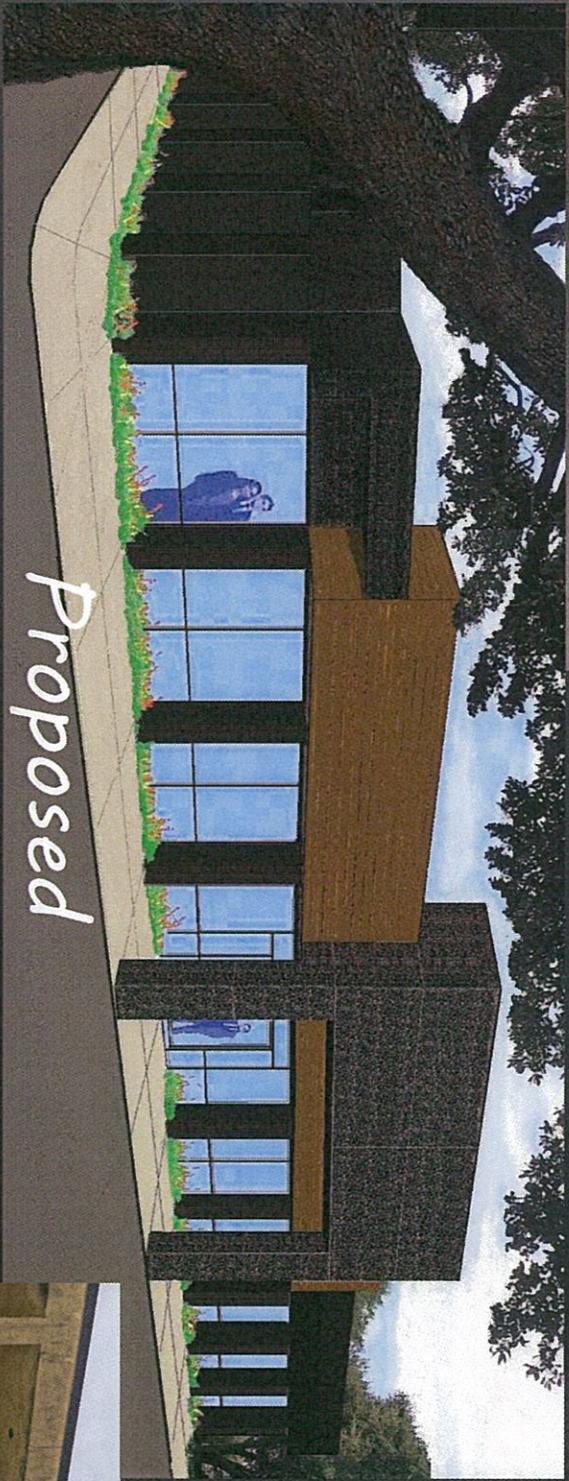
Applicant's Signature:  **Date:** 10-26-16

Building Owner's Signature: _____ **Date:** _____
(if different from applicant)

City of Farmers Branch Approval: _____ **Date:** _____

4464 Sigma Rd. Farmers Branch, Texas

Facade Renovation



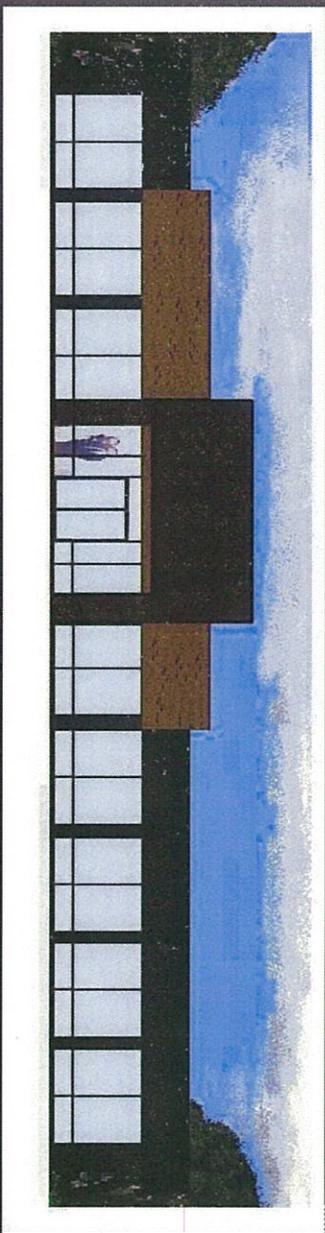
**HUDSON
PETERS**
Commercial



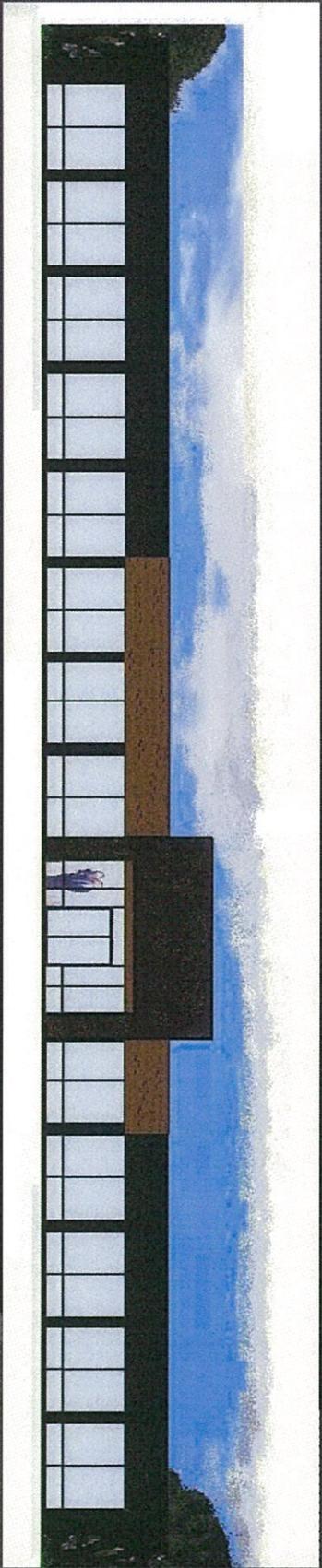
GORDON HIGHLANDER

4464 Sigma Rd. Farmers Branch, Texas

Facade Renovation



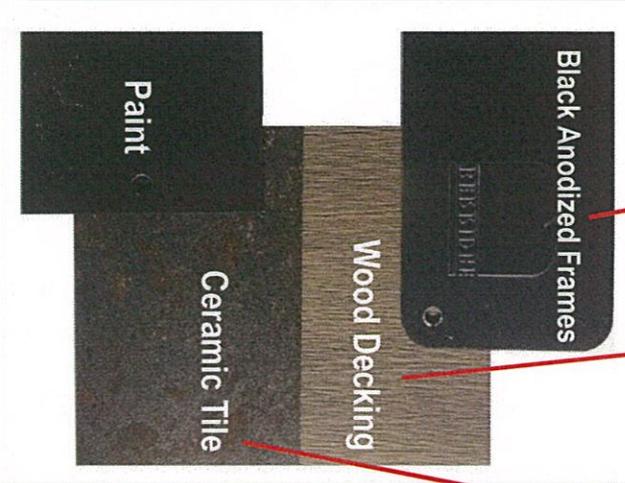
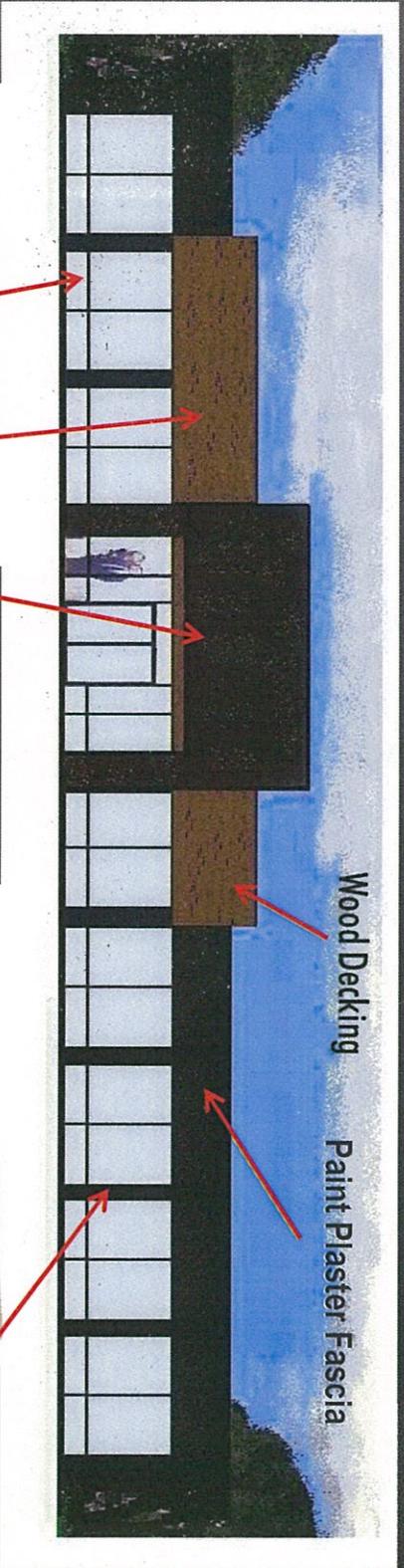
North Elevation - Hudson Peters Entrance



West Elevation - Gordon Highlander Entrance

4464 Sigma Rd. Farmers Branch, Texas

Facade Materials



Paint brick columns
Paint – Benjamin Moore
2133-20 black jack



GH WWHQ Exterior.xlsx
 Prepared By Brad Worth
 bworth@gordonhighlander.com
 214-476-5615
 10/26/2016

CONSTRUCTION COST BREAKDOWN		DESCRIPTION
0100	GENERAL CONDITIONS	\$ 5,178.00 Supervision, Project Management, trash & insurance.
0107	PERMIT	\$ -
0200	SITE WORK and DEMOLITION	\$ -
0300	CONCRETE	\$ 11,600.00 Pilasters at new entry canopy columns, Additional sidewalk under each canopy, (2) additional ADA ramps
0300	CONCRETE- SEALING/ STRIPING	\$ 2,270.00 New ADA parking signage and parking lot striping
0400	MASONRY & STONE	\$ 14,980.00 New Hawthorne Italian tile installed per rendering. Includes all required scaffolding and building protection
0500	METALS	\$ 6,500.00 Structural columns and framing needed for New canopy entrances
0600	CARPENTRY & MILLWORK	\$ -
0700	THERMAL & MOISTURE	\$ 12,782.00 Roof tie in for new canopy structures to include cut back of roof and canting to interior roof drains. New prefinished parapet cap at canopies. R-panel installation on the back side of the parapets at the new canopies.
0800	DOORS/FRAMES/HARDWARE	\$ -
0810	EXTERIOR DOORS	\$ 5,700.00 (2) new 8'x10' over head glass doors
0840	GLASS & GLAZING	\$ 111,827.00 New low e over clear windows with black frames. (2) 6'x7' storefront entrance doors, (2) 3'x7' personel doors.
0920	DRYWALL	\$ 18,864.00 All non structural framing, sheathing and rough carpentry for the canopies. Includes required scaffolding.
0920	ACOUSTICAL CEILINGS	\$ -
0960	FLOORING	\$ -
0990	PAINT & WALLCOVERING	\$ 7,500.00 Exterior painting of building per the rendering, includes brick columns
1000	SPECIALTIES	\$ 8,456.00 Resvesta siding over 5/8 furring strips
1100	EQUIPMENT	\$ -
1200	FURNISHINGS	\$ -
1540	PLUMBING	\$ -
1530	FIRE PROTECTION	\$ -
1550	HVAC	\$ -
1600	ELECTRICAL	\$ 6,125.00 New LED down lights in each alcove
1670	FIRE ALARM	\$ -
1700	OTHER	\$ -
	Sub-Total Construction Costs	\$ 211,782.00
	Contractor's Fee	\$ 6,353.46
	Sub-Total Construction Costs	\$ 218,135.46
	Sales Tax for Remodel 8.25%	\$ 17,996.18
	TOTAL	\$236,131.64

EXCLUSIONS & QUALIFICATIONS:

TDLR, TAS submittals by others. **No ADA** improvements except as specifically identified.

No Overtime or after hours work

No asbestos testing or hazardous material abatement

Telephone or data work by others

Any work other than what is listed in the descriptions section of this proposal

STATE OF TEXAS §
§ **ECONOMIC DEVELOPMENT AGREEMENT**
COUNTY OF DALLAS §

This Economic Development Agreement (“Agreement”) is made by and between the City of Farmers Branch, Texas (“City”), and Sigma Omega Partners LLC, a Texas limited liability company (“Company”) (collectively the “Parties” or singularly a “Party”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, Company is the owner of the retail space located at 4464 Sigma Road, Farmers Branch, Texas (the Improvements”); and

WHEREAS, Company currently leases the Improvements for retail and service type businesses; and

WHEREAS, Company has advised City that a contributing factor that would induce Company to make certain improvements to the exterior facade of the Improvements would be an agreement by City to provide an economic development grant to Company to defray a portion of the costs to design and construct the Facade Improvements (hereinafter defined); and

WHEREAS, City has adopted programs for promoting economic development; and

WHEREAS, City desires to encourage business expansions within City that will add property tax base and generate additional sales tax and other revenue for City; and

WHEREAS, promoting the expansion of existing businesses within City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the property tax base and economic vitality of City; and

WHEREAS, City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by City pursuant to and in accordance with those programs; and

WHEREAS, City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in City; and

WHEREAS, City has determined that making an economic development grant to Company in accordance with this Agreement will further the objectives of City, will benefit City and City’s inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of Company’s existence, insolvency, employment of receiver for any part of Company’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws by or against Company and such proceedings are not dismissed within ninety (90) days after the filing thereof.

“City” shall mean the City of Farmers Branch, Texas.

“Commencement of Construction shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Facade Improvements; (ii) all necessary permits for the construction of the Facade Improvements pursuant to the plans therefore have been issued by all the applicable governmental authorities; and (iii) construction of the Facade Improvements has commenced.

“Company” shall mean Sigma Omega Partners LLC, a Texas limited liability company.

“Completion of Construction” shall mean that: (i) substantial completion of the Facade Improvements has occurred; and (ii) City has conducted a final inspection of the Facade Improvements.

“Effective Date” shall mean the last date of execution hereof.

“Expiration Date” shall mean the fifth (5th) anniversary date of the date of Completion of Construction of the last of the Improvements.

“Facade Grant” shall mean an economic development grant in an amount equal to fifty percent (50%) of the actual costs incurred and paid by Company for the Facade Improvements, not to exceed Fifty Thousand Dollars (\$50,000.00), to be paid as set forth herein.

“Facade Improvements” shall mean the renovation of the exterior facade of the Improvements, including, but not limited to, addition of all new double pane windows; painting of brick; re-work of entrances to create identity and weather coverage; Fascia to be covered in ceramic tile and metal in accordance with the plans and specifications attached as **Exhibit “A”**.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by acts of omissions of the Party), fires, explosions or floods, strikes, slowdowns or work stoppages, but may not impact any payments to be made hereunder.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company with respect to the Improvements or any property or any business owned by Company within the City.

“Improvements” shall mean the retail space located at 4464 Sigma Road, Farmers Branch, Texas.

“Payment Request” shall mean a written request from Company to City for payment of the Facade Grant accompanied by: (i) copies of paid invoices, receipts and other evidence of the costs incurred and paid by Company for the Facade Improvements; (ii) digital photographs of the Improvements prior to and following Completion of Construction of the Facade Improvements; and (iii) such other information, as may reasonably be requested by City.

“Related Agreement” shall mean any agreement (other than this Agreement) by and between City and Company, or any of its affiliated or related entities.

“Required Use” shall mean the continuous occupancy and use of the Improvements for a retail business open to the public and serving the citizens of the City.

Article II

Term

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein.

Article III

Facade Improvements

3.1 Facade Improvements. Company shall, subject to events of Force Majeure, cause Commencement of Construction of the Facade Improvements to occur within ninety (90) days after the Effective Date, and subject to events of Force Majeure to cause Completion of Construction thereof to occur within twelve (12) months thereafter.

3.2 Design and Construction Standards. Company shall design and construct the Facade Improvements in accordance with plans approved by City and in accordance with other applicable ordinances, regulations and local law. Company shall submit plans for the design and construction

of the Facade Improvements to City, and use best efforts to obtain approval within thirty (30) days after the Effective Date.

3.3 Commercial Facade Revitalization Program. Company shall, in connection with the Facade Improvements, comply with the Farmers Branch Commercial Facade Revitalization Program.

Article IV Economic Development Grant

4.1 Subject to the obligation of Company to repay the Facade Grant pursuant to Section 5.2 hereof, and the continued satisfaction of all the terms and conditions of this Agreement by Company, City agrees to provide Company with the Facade Grant to be paid in a single lump sum payment within thirty (30) days after City's receipt of the Payment Request following Completion of Construction of the last of the Facade Improvements and City verification of the costs paid and incurred by Company for the Facade Improvements. Failure of Company to submit a Payment Request for the Facade Grant, accompanied by the required records, documentation and digital photographs, within sixty (60) days after Completion of Construction of the Facade Improvements shall result in forfeiture of the payment of the Facade Grant.

4.2 The Façade Grant made hereunder shall be provided solely from lawful available funds. City shall have no obligation or liability to pay any portion of the Facade Grant unless City appropriates funds to make such payment during the budget year in which the payment of the Facade Grant is due. City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Company. None of the obligations of City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution without the prior written consent of City.

Article V Conditions to Economic Development Grant

The obligation of City to pay the Façade Grant shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the following conditions.

5.1 Payment Request. Company shall, as a condition precedent to the payment of the Facade Grant, provide City with the applicable Payment Request.

5.2 Good Standing. Company shall not have an uncured breach or default of this Agreement, or a Related Agreement.

5.3 Required Use. During the term of this Agreement following the Effective Date and continuing thereafter until the Expiration Date, the Improvements shall not be used for any purpose other than the Required Use, and the operation and occupancy of the Improvements in

conformance with the Required Use shall not cease for more than thirty (30) days, except in connection with and to the extent of an event of Force Majeure.

5.4 Facade Improvement Plans. City shall have approved plans for the Facade Improvements.

Article VI Termination; Repayment

- 6.1 Termination. This Agreement shall terminate upon any one of the following:
- (a) by mutual written agreement of the Parties;
 - (b) on the Expiration Date;
 - (c) by either Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement, or a Related Agreement, and such default or breach is not cured within thirty (30) days after written notice thereof;
 - (d) by City, if Company suffers an event of Bankruptcy or Insolvency;
 - (e) by City, if any Impositions owed to City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such Impositions); or
 - (f) by either Party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

6.2. Repayment. In the event the Agreement is terminated by City pursuant to Section 6.1(c), (d), (e), or (f), Company shall immediately repay to City an amount equal to the Façade Grant previously paid by City to Company immediately preceding the date of such termination, plus interest at the rate of interest periodically announced by the *Wall Street Journal* as the prime or base commercial lending rate, or if the *Wall Street Journal* shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by City) as its prime or base commercial lending rate, from the date on which the Grant(s) is paid by City until such Grant(s) is refunded by Company. The repayment obligation of Company set forth in this section 6.2 hereof shall survive termination.

6.3 Right of Offset. City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether or not the debt due City has been reduced to judgment by a court.

Article VII Miscellaneous

7.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto.

7.2 Limitation on Liability. It is understood and agreed between the Parties that Company and City, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions. Company agrees to indemnify and hold harmless City from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third party arising out of Company's performance of the conditions under this Agreement.

7.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture between the Parties.

7.4 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered:

If intended for City, to:

Attn: Charles S. Cox
City Manager
City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

If intended for Company, to:

Attn: Michelle Hudson, Manager
Sigma Omega Partners LLC
16479 Dallas Parkway, Suite 750
Addison, Texas 75001

7.5 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

7.6 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

7.7 Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action under this Agreement shall be the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

7.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

7.9 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this Agreement.

7.10 Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

7.11 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

7.12 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

7.13 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

7.14 Assignment. This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned by Company without the prior written consent of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed.

7.15 Right of Offset. City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, or otherwise, and regardless of whether or not the debt due City has been reduced to judgment by a court.

7.16 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the Facade Grant, and any other funds received by Company from City as of the date of such violation within one hundred twenty (120) days after the date Company is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid.

(Signature Page to Follow)

SIGNED AND AGREED on this _____ day of _____, 2016.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Charles S. Cox, City Manager

Attest:

Amy Piukana, City Secretary

Approved as to Form:

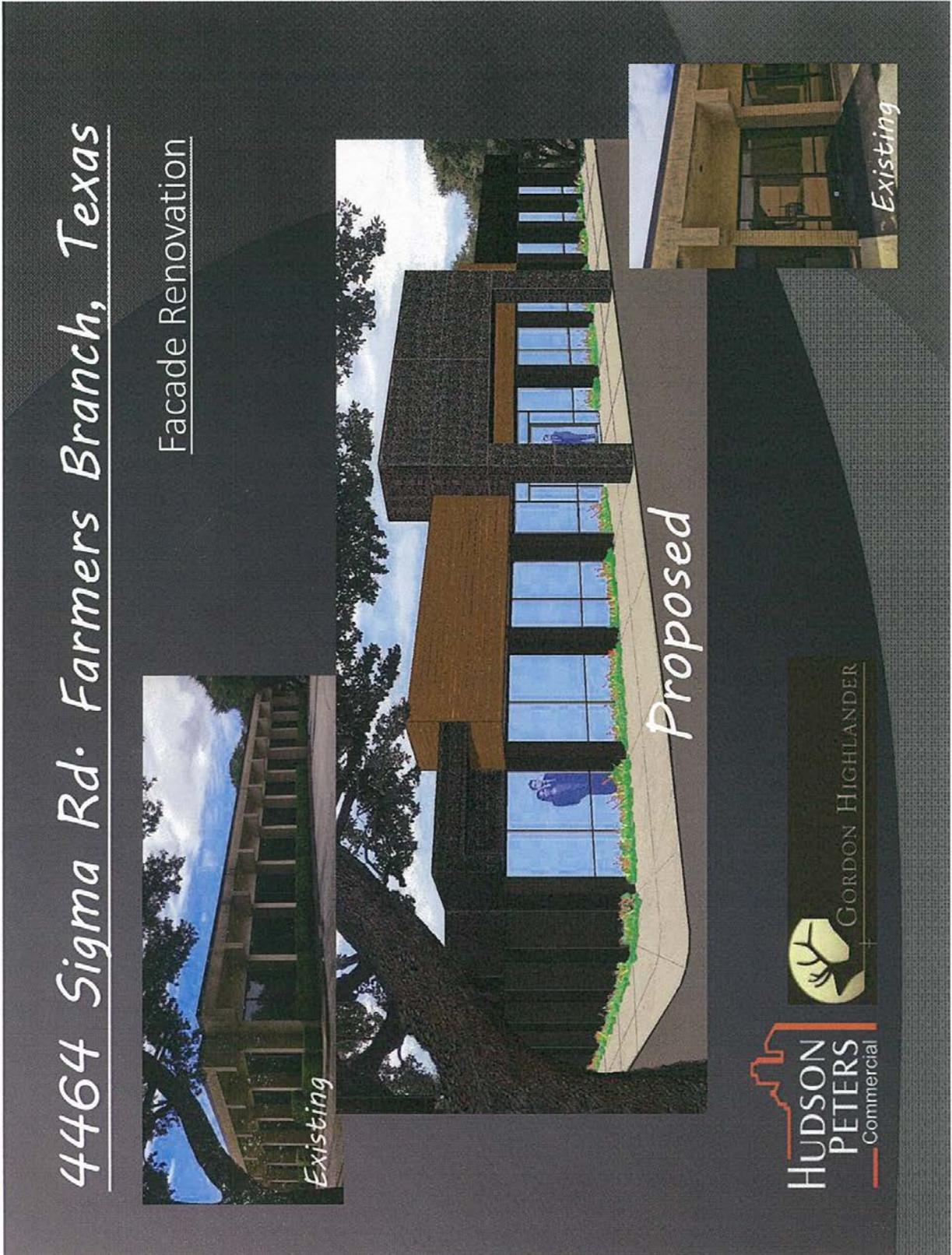
Peter G. Smith, City Attorney

SIGNED AND AGREED on this _____ day of _____, 2016.

SIGMA OMEGA PARTNERS LLC

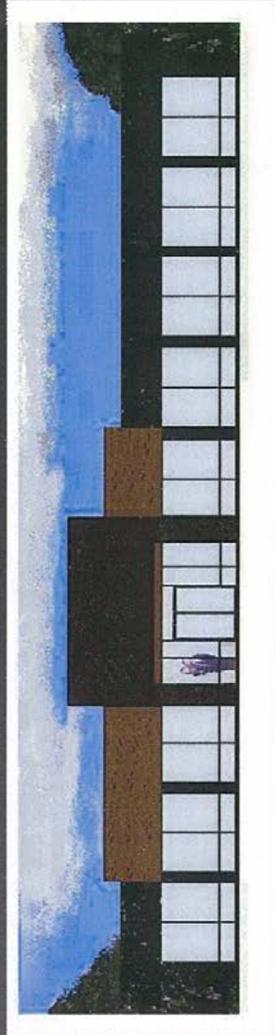
By: _____
Michelle Hudson, Manager

Exhibit "A"
Concept Plan for Facade Improvements

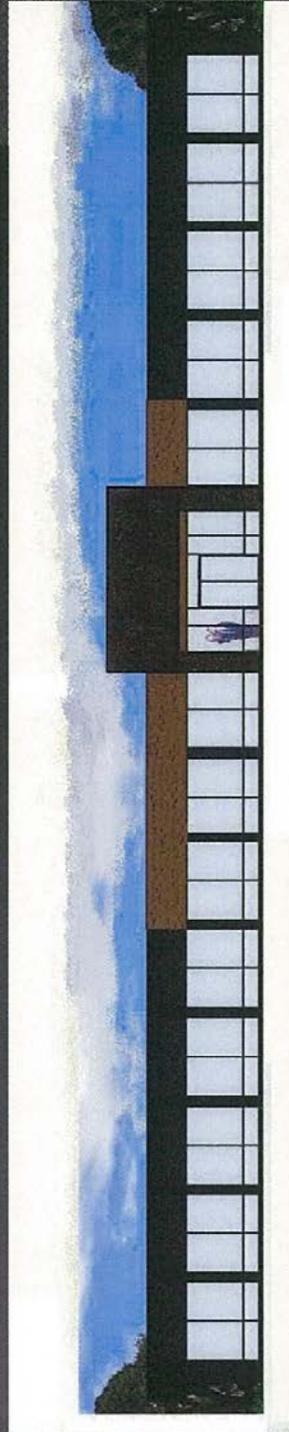


4464 Sigma Rd. Farmers Branch, Texas

Facade Renovation



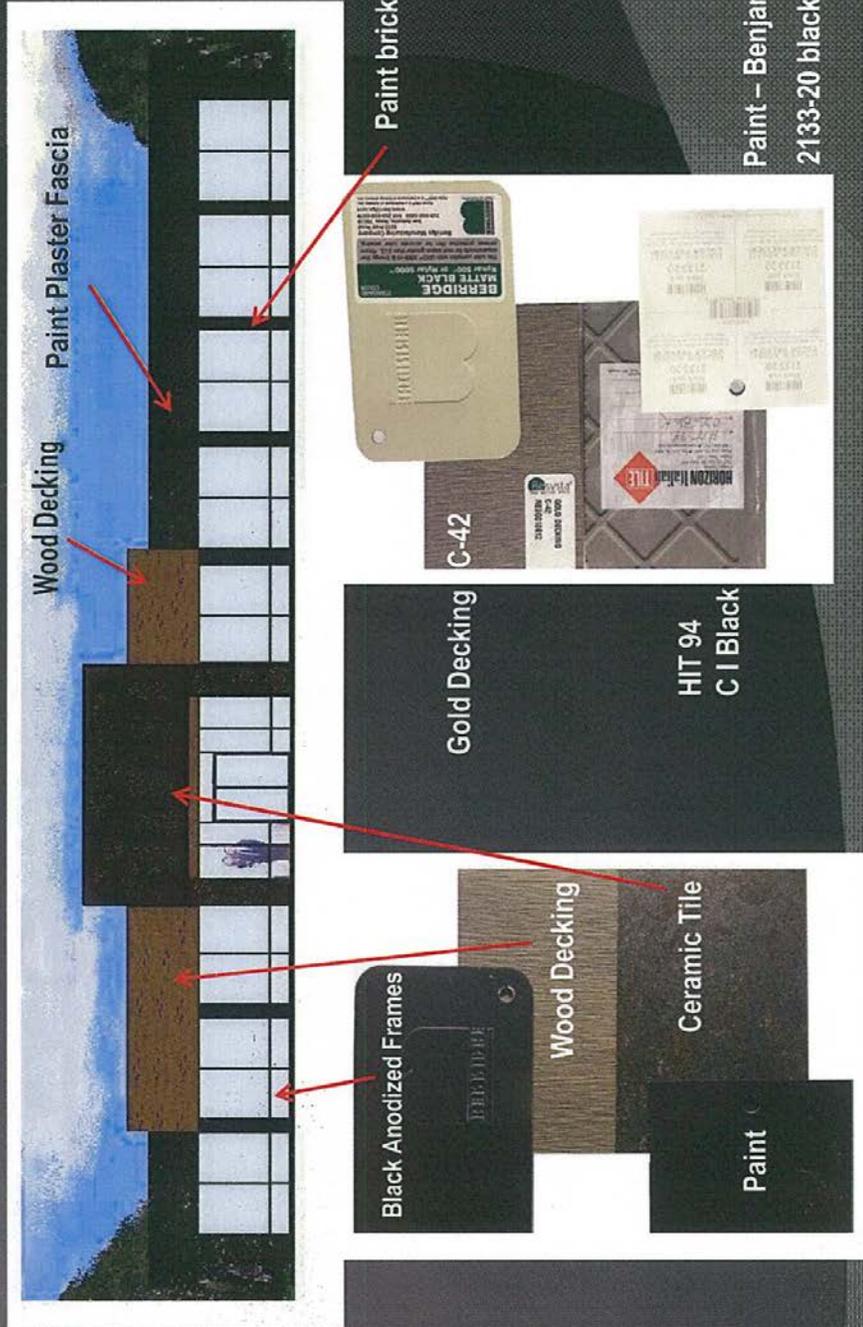
North Elevation - Hudson Peters Entrance



West Elevation - Gordon Highlander Entrance

4464 Sigma Rd. Farmers Branch, Texas

Facade Materials





RESOLUTION NO. 2016-110

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING NEGOTIATION AND EXECUTION OF A COMMERCIAL FAÇADE REVITALIZATION GRANT AGREEMENT WITH THE OWNER AND/OR TENANT OF THE BUILDING LOCATED AT 4464 SIGMA ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Farmers Branch has established a Commercial Façade Revitalization Program pursuant to Chapter 380 of the Texas Local Government Code for the purpose of encouraging commercial property owners within the City to enhance the publicly-viewed areas of their building, including exterior walls, landscaping, walkways, equipment screening, uniform signage, and window replacement or upgrades (“the Program”); and

WHEREAS, the owner of the property addressed as 4464 Sigma Road, has made application for the Program with respect to proposed façade improvements to the buildings located on the property; and

WHEREAS, City Administration has reviewed the foregoing application and determined that the proposed improvements to the building on the above property qualify for the Program; and

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to authorize the negotiation and execution of a grant agreement setting forth the terms and conditions by which the owner of the above-described property will receive the benefits of the Program.

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

SECTION 1. The City Manager is hereby authorized to negotiate and sign, on behalf of the City of Farmers Branch, a *Commercial Façade Revitalization Program Agreement* with Sigma Omega Partners LLC, with respect to the building addressed as 4464 Sigma Road, in Farmers Branch, Texas, said agreement to be consistent with the policy approved for the administration of the Program and for a maximum of 50% of the approved façade revitalization costs not to exceed \$50,000.00 total for the building.

SECTION 2. The City Manager has full authority to administer the above approved agreement on behalf of the City including, but not limited to, providing notices of default and termination as he may from time to time deem reasonable and necessary and authorizing the assignment of agreements to subsequent owners of the property.

SECTION 3. This resolution shall be effective immediately upon final passage.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS
BRANCH, TEXAS, THIS 15TH DAY OF NOVEMBER, 2016.**

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Bob Phelps Mayor

APPROVED AS TO FORM:

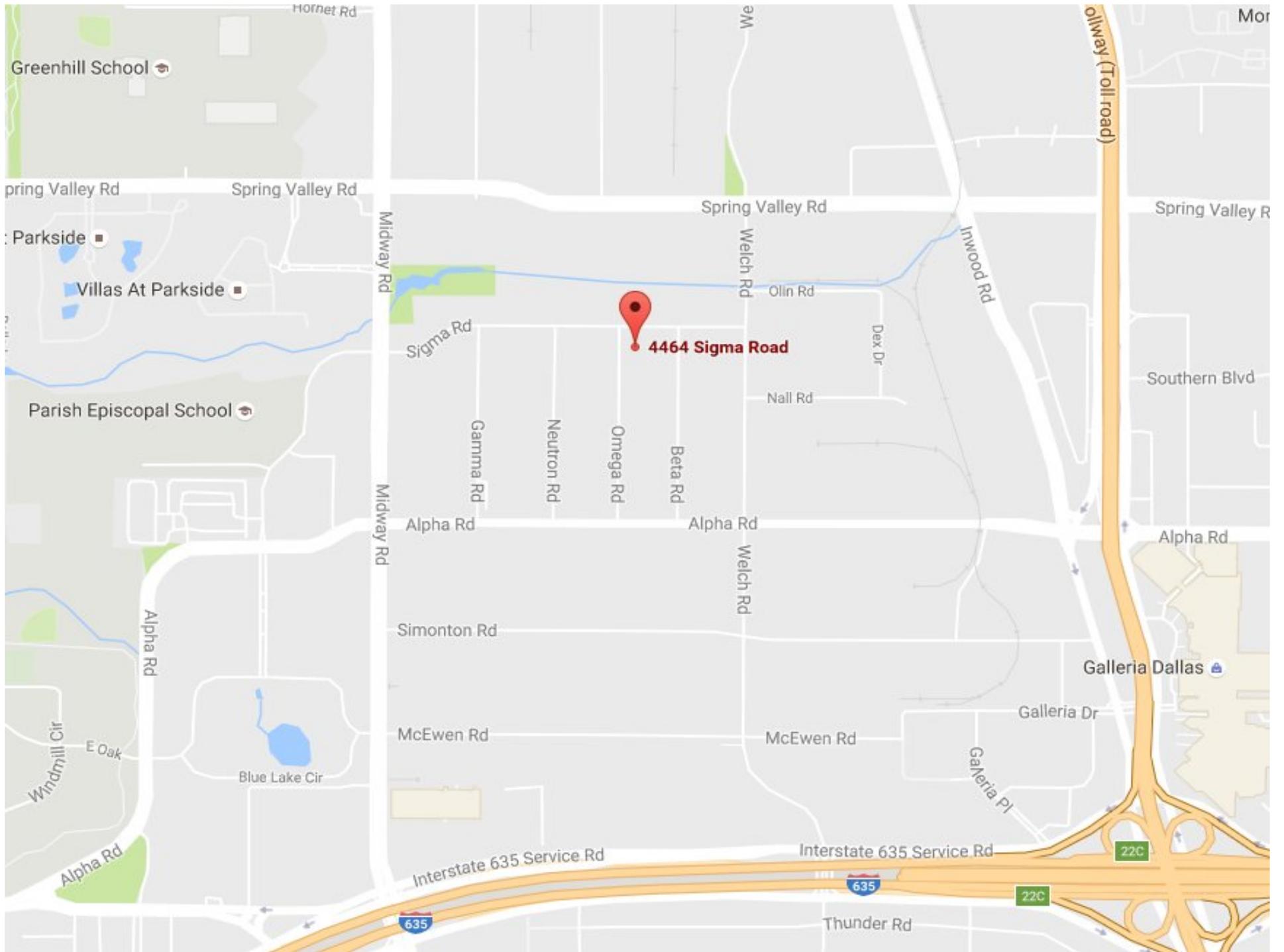
Peter G. Smith, City Attorney
(kbl:11/7/16: 81216)



F A R M E R S B R A N C H

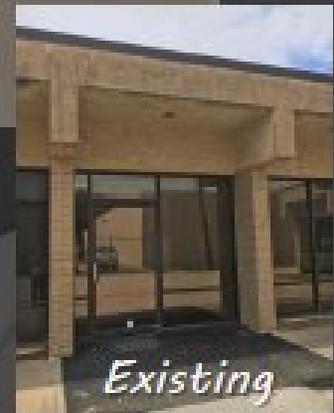
**Commercial Façade Grant Application
Hudson Peters Commercial
4464 Sigma Road**

Allison Cook
Economic Development Director



4464 Sigma Rd. Farmers Branch, Texas

Facade Renovation



4464 Sigma Rd. Farmers Branch, Texas

Facade Renovation



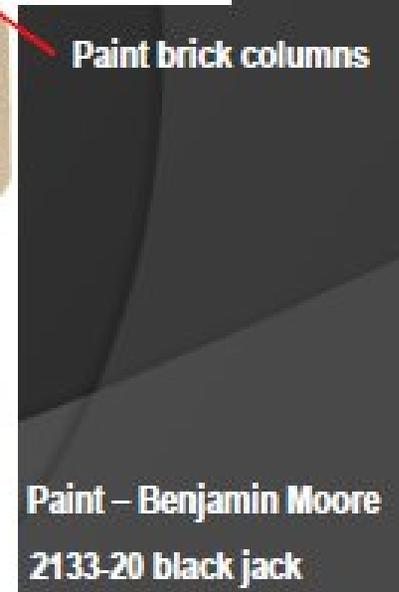
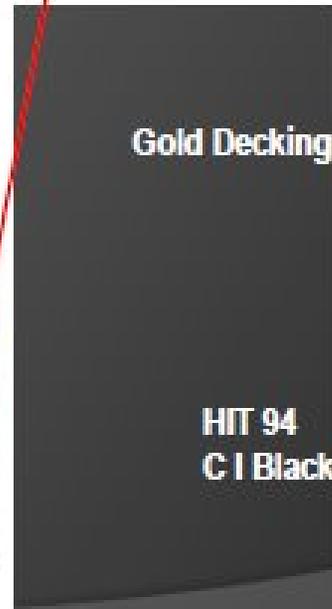
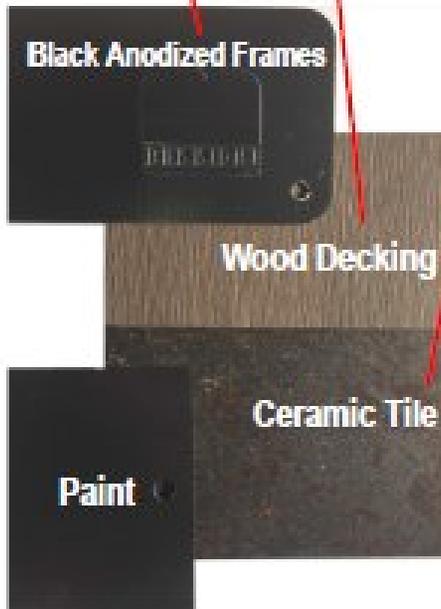
North Elevation - Hudson Peters Entrance



West Elevation - Gordon Highlander Entrance

4464 Sigma Rd. Farmers Branch, Texas

Facade Materials





4464 Sigma Road Façade Grant Request

The Façade Improvement Project involves the renovation of 4464 Sigma Road. The purpose of this project is to beautify the property and present a modern design aesthetic. Use of new stone and metal materials, canopies, windows, and doors as well as exterior paint updates to both the building and parking areas will enhance the overall look and create a modern aesthetic.



Request From Owner

- Estimated Improvements: approximately \$236,131.64 +
- Project scope to include:
 - Masonry and Stone
 - New Canopy Entrances
 - New Glass and Glazing and Exterior Doors
 - New Paint and Resvesta Siding
 - New Signage and ADA Parking/Striping
 - Chad Dorsey – More Design & Build

Request: \$50,000



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: 16-302

Agenda Date: 11/15/2016

Version: 1

Status: Regular Agenda

In Control: City Council

File Type: Report

Agenda Number: H.2

Presentation by Carol Dingman on behalf of the Historical Park Preservation and Restoration Board regarding a future Museum Conference Center.

BACKGROUND:

Historical Park Preservation and Restoration Board Member Carol Dingman will provide a presentation "Using our Past to Shape Our Future" the case for a Museum Conference Center.

Request for Future City Council Agenda Item

Date 11/15/2016

REQUEST FOR FUTURE CITY COUNCIL AGENDA ITEM

If you have a specific topic that you would like the City Council to discuss at a future meeting, please list your name, address, telephone number and the specific topic. The item will be reviewed and possibly scheduled for a future meeting, or forwarded to City staff for appropriate action.

First Name Carol

Last Name Dingman

Address representing the Historical Park and Preservation Board

E-Mail Address

Phone

Alternate Phone *Field not completed.*

To insure appropriate follow through on an item, City staff may need to contact you. Please make sure to provide either a phone number or email address for this purpose.

Briefly describe the requested topic: Presentation on behalf of the Historical Park and Preservation Board - Using Our Past to Shape Our Future the Case for a Museum/Conference Center

Using Our Past to Shape Our Future

The Case for a Museum/ Conference Center



Presented by:
the Historical Park and Preservation Board
November 1, 2016

Vision/History/Mission

Early 1980's City Councils developed a vision for use of the new Hotel Tax Fund revenue

Capitalize on the Unique History of Farmers Branch

In 1981 with the City Council decided to purchase the McKee house which included Old Rock House built by Dr. Samuel Gilbert in 1856 and develop an outdoor museum



ision/History/Mission

Keith Downing, a Dallas architect with passion for historic preservation, was hired to do the Park concept Plan in 1983.

In 1984, the Council appointed the first Historical Park and Preservation Board.

The Dodson house and property were added to the Park in 1981, the school house, Depot and church in 1985.

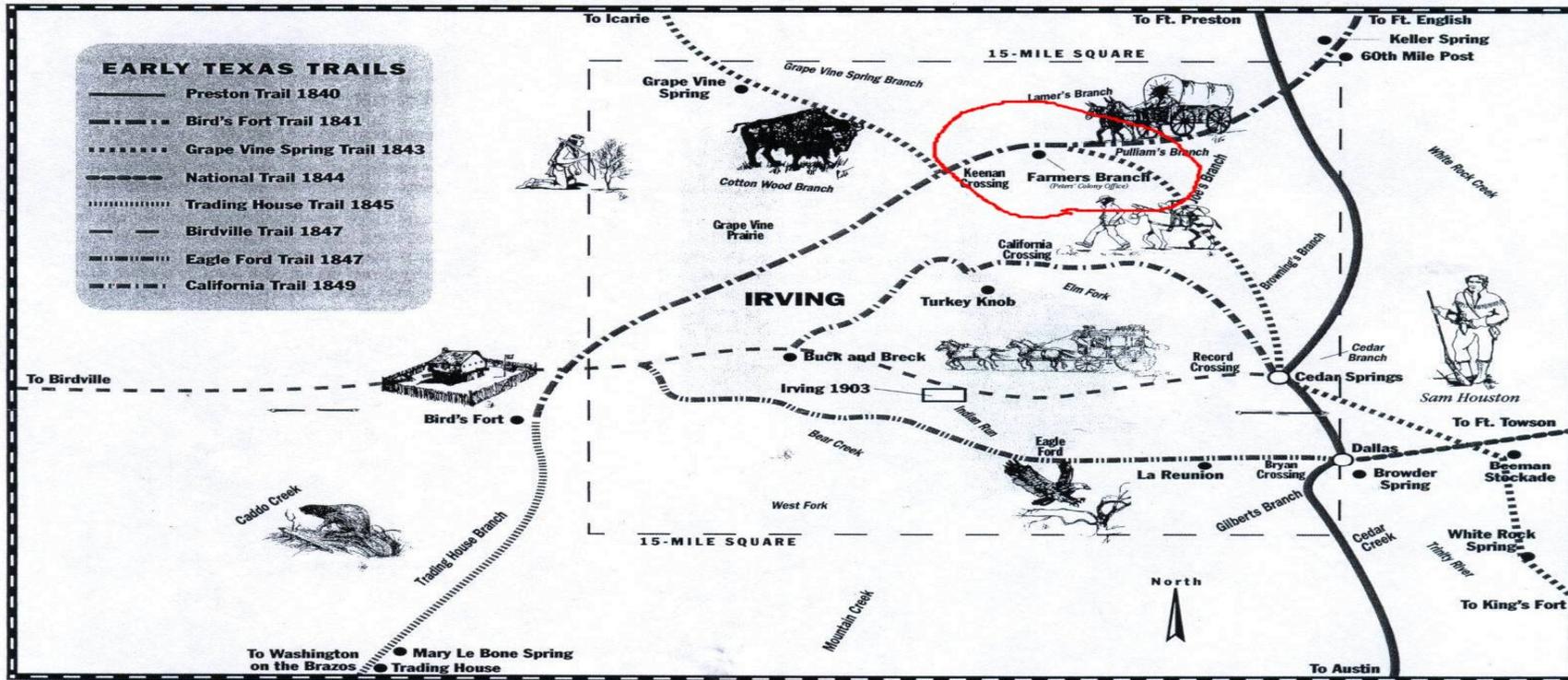
The Park was dedicated in 1986, thirty years ago.



1841, Farmers Branch was the site of the Peters Colony land office

PETERS' COLONY 1841

Survey Map, 1842-1849 † Republic of Texas, 1836-1846



Before the Civil War, several trails crossed a 15-mile square area identified as choice land by the Peters' Colony. Modern Irving's 69 square miles lie entirely within this tract, which Henry O. Hedgcoxe surveyed. Game, Native Americans and settlers roamed these trails, which were often little more than a collection of landmarks or ways of least resistance.

Historical Park Mission

Collect, preserve and interpret the history of the United States and Texas with an emphasis on Peters Colony and Farmers Branch.

Secondary Mission

Become a destination that generates hotel nights.



gress toward achieving that mission

Programming & Events -

- ▶ park programming that furthers Park's mission and educates Park visitors, i.e. Bluegrass Festival
- ▶ city events held because of large open space with no connection to Parks mission, i.e. Fireworks
- ▶ private event rentals, i.e. weddings limited by lack of reception space

Acquired 5,000+ artifacts, including two of Dr. Gilbert's diaries and Gilbert family bible

- ▶ buildings and cemetery



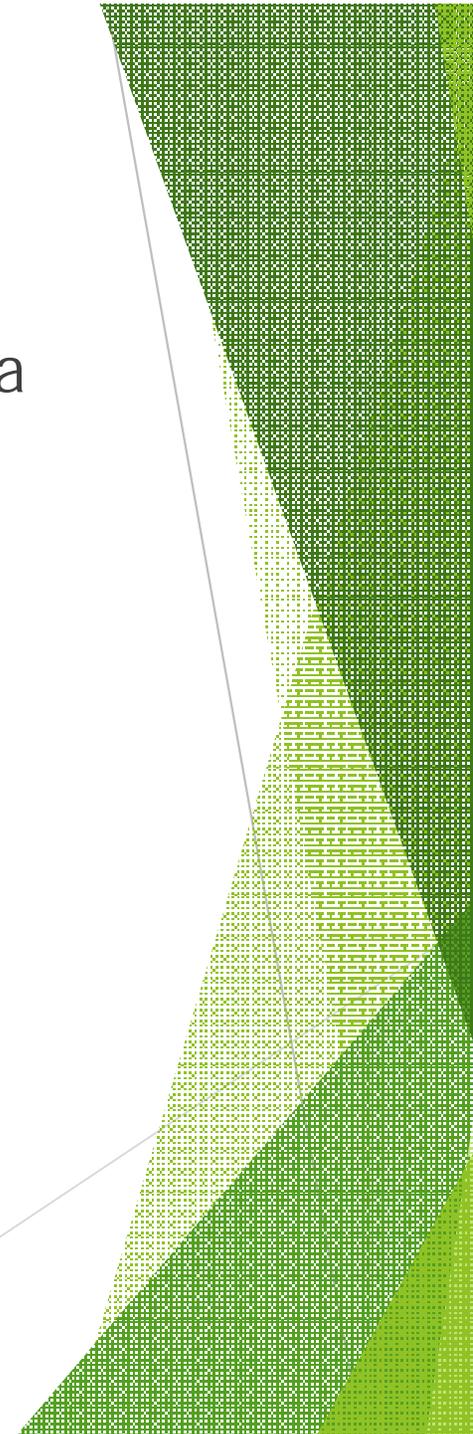
OMPZOZ Hotel Tax Report findings

Historic Park is a "gem", but won't reach its potential as a destination until a museum and more educational programming is added

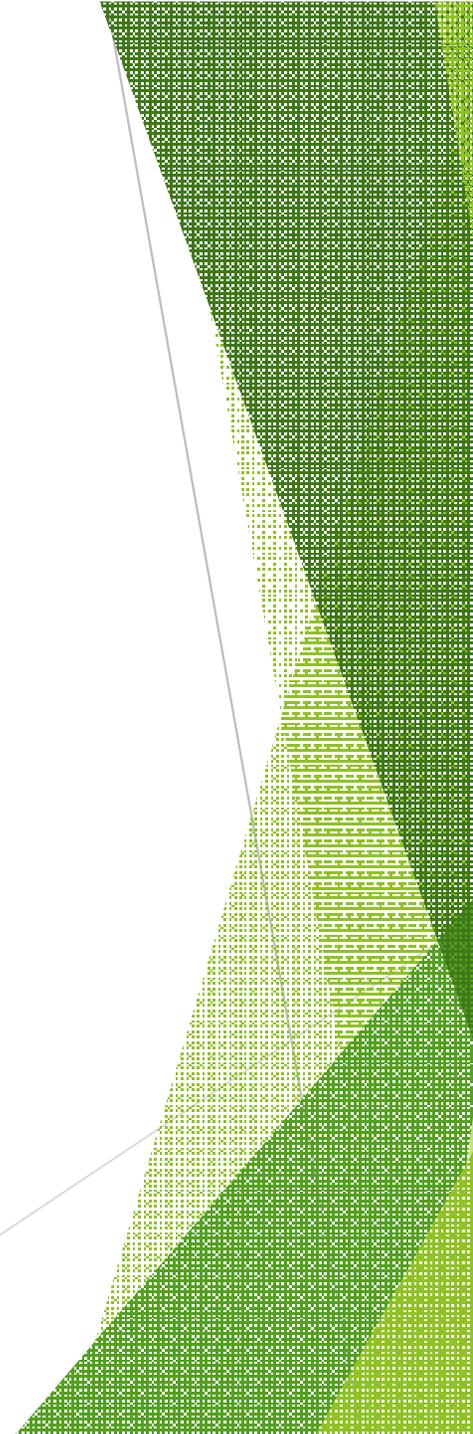
Museum should be Museum of North Texas History as Farmers Branch is the Birthplace of North Texas

Make a stand in weddings

Limit events to those that generate hotel nights or enhance park programming



Board Committee supports
need for a \$7 million "event"
space at the Park



Historic Board Recommendations Based on Hotel Tax Study

Museum and exhibit

- ▶ Preparation space
- ▶ Archival Storage

Conference/reception/event area(s)

Classroom for Museum and community activities

Museum Store

Lobby and welcome area

Catering kitchen

Additional storage for rental furniture & supplies

Ample parking with nearby DART train/bus station

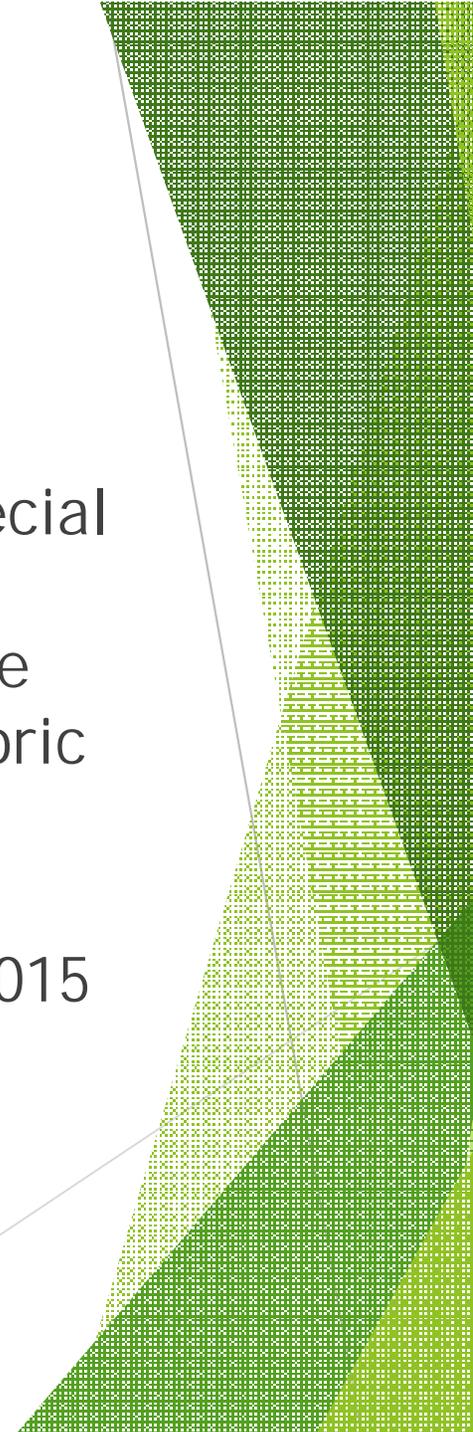


Addison Conference Center

“Board meetings and major seminars and trade shows to bar/bat mitzvahs and weddings, Addison has the unique space you need and the amenities you want for truly special receptions and business meetings. With a venue that includes the state-of-the-art Addison Theatre Centre, the award-winning Addison Conference Centre, and the historic Stone Cottage”

564 Events at Addison Conference & Theatre Centre in 2015

64,535+ Event attendees in 2015



North Texas History Museum and Conference Center in Farmers Branch

Venue would include:

- ▶ North Texas History Museum
- ▶ Conference Center

- ▶ Private events and conferences, weddings, trade shows etc., community meeting space and historical programming



Top: Gilbert House 1939 Bottom: Gilbert house today

North Texas History Museum and Conference Center in Farmers Branch

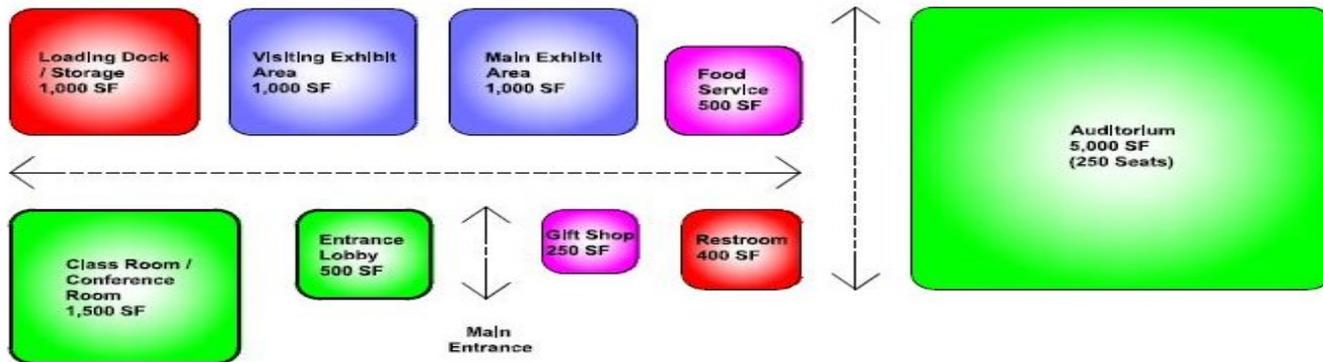
Venue already includes:

- ▶ 12 historic buildings including:
 - ▶ 1856 Gilbert House, listed in the National Register of Historic Places and Landmarks
 - ▶ Dodson and Gilbert house, listed as Recorded Texas Historic Landmarks
 - ▶ 1898 Renner Church
- ▶ Rose Gardens
- ▶ Acres of open space

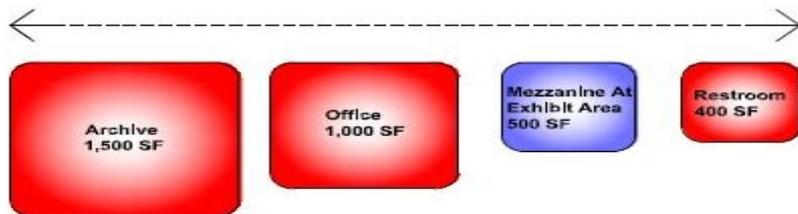


Fast Consultant Study Recommendations

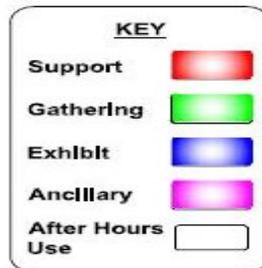
GROUND LEVEL
 Total: 11,150SF
 Miscellaneous: 1,673SF
 Total: 12,823SF



SECOND LEVEL
 Total: 3,400SF
 Miscellaneous: 510SF
 Total: 3,910SF



TOTAL
 Total: 14,550SF
 Miscellaneous: 2,183SF
 Total: 16,733SF



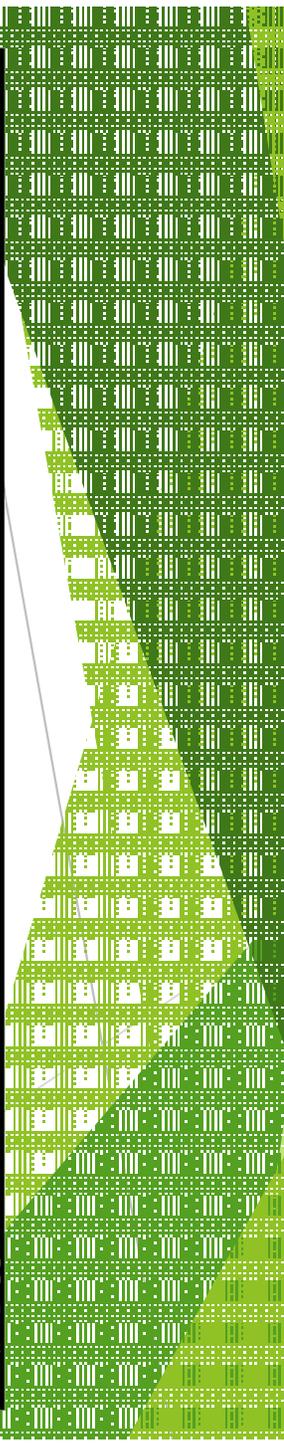
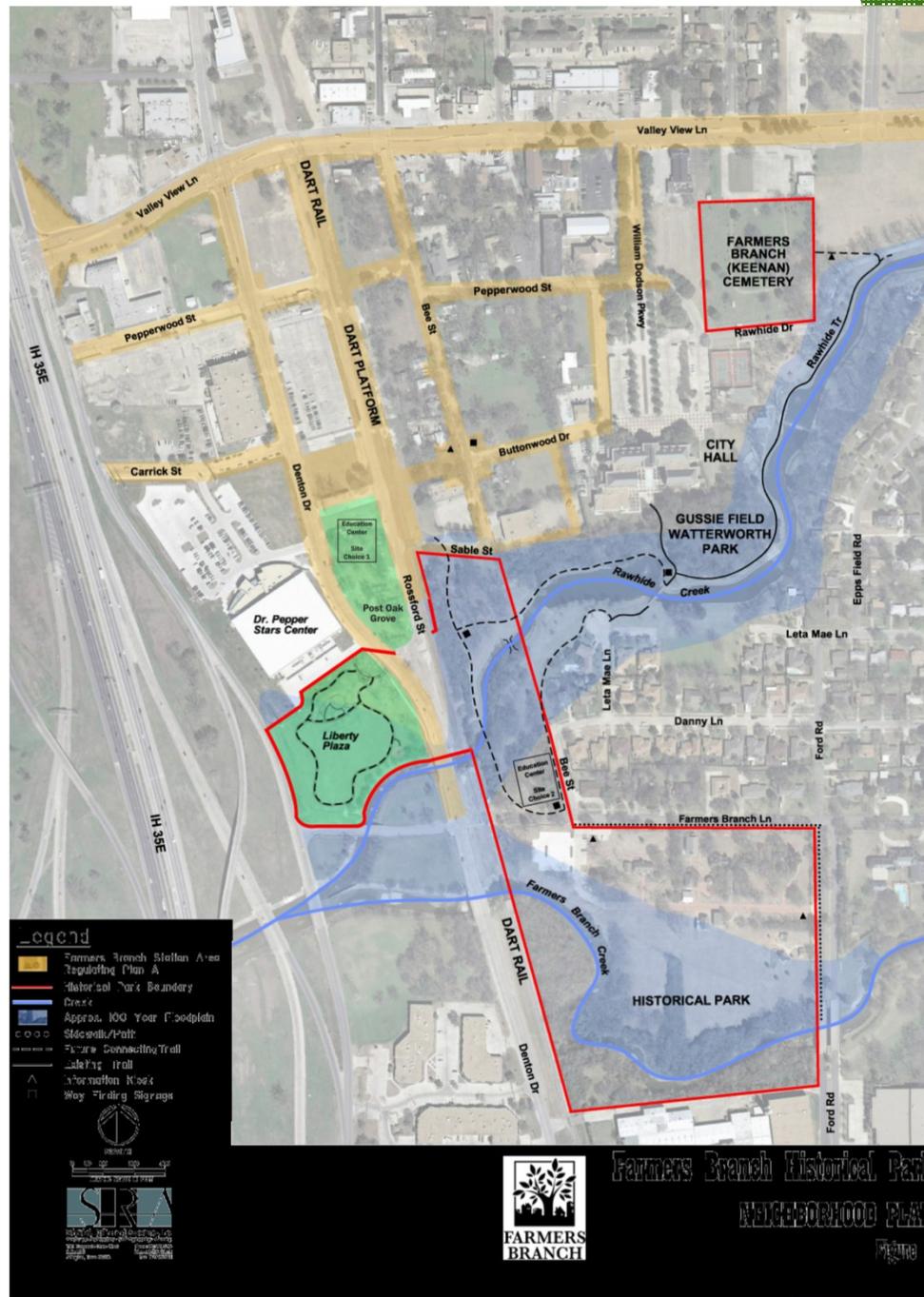

**FARMERS
 BRANCH**
Figure 5

FARMERS BRANCH HISTORICAL PARK MASTER PLAN UPDATE Education/Visitor Center Spatial Diagram

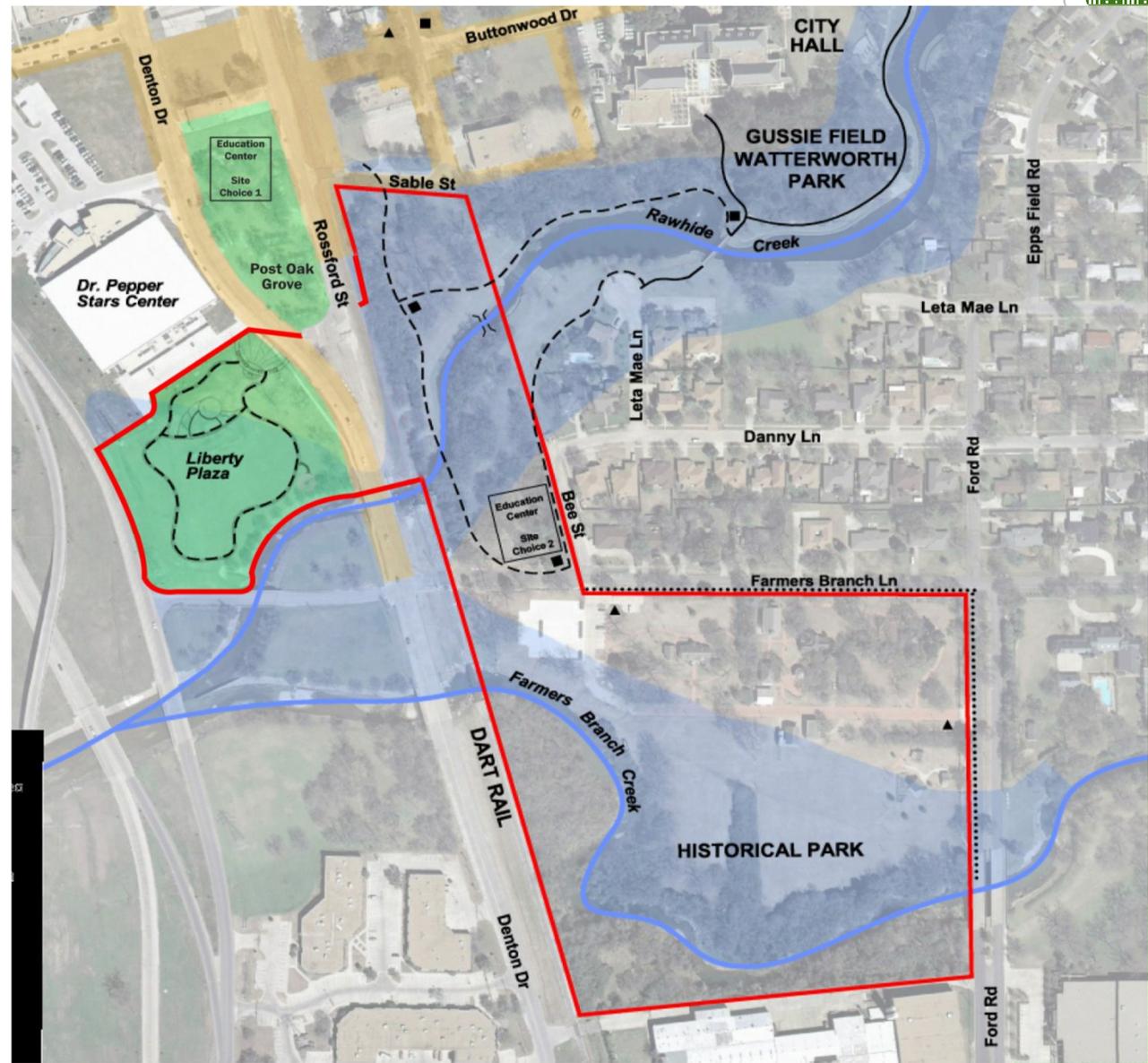
NOTE:
 Miscellaneous = 15% of total square footage, includes electrical, mechanical, circulation, and storage.



2009 Master Plan & Flood Plain

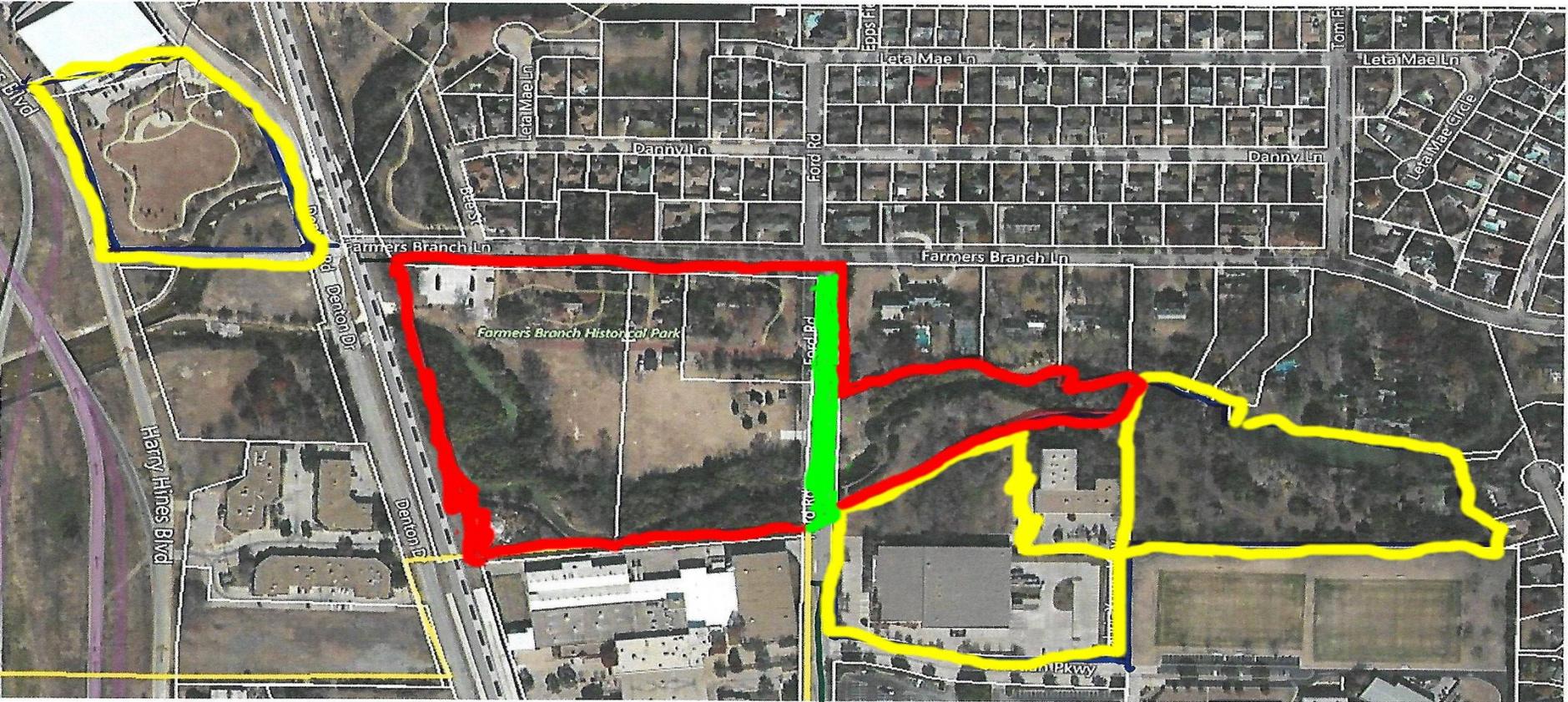


Education Center Site #1 & #2



Park Expansion Opportunities

3.5 acres



current park boundaries
expansion opportunities

main entrance
+ parking

Conference Center/Museum Funding

Capital options

Operating - Revenue

Operating - Expenses



Capital Options

Proposition on May, 2017 Bond Election Ballot. Bond committee has recommended funding of \$7 million

Use Hotel tax money to issue revenue bonds. Previous Council committed \$3.5 million for this option, but for a much smaller building on city owned property

Use a combination of hotel tax and general revenue debt

Raise money from the private sector (individuals, foundations and corporations)

Donations for tax purposes



Operating - Revenue

Room and equipment rentals

Classes and programs

Museum and special event admission

Special event parking fees

Vendor fees

Volunteers (currently contribute hours = \$80,000)

Private sector contributions and sponsorships



Operating - Expense

Staff (contract or city) - professional event manager, development person, assistants for professional staff, janitorial, front desk/lobby, museum store

Furnishings and equipment

Utilities

Maintenance and upkeep of grounds

Marketing

Debt service



A green chalkboard with a black border is mounted on a metal stand. The text 'The Future' is written in large, white, sans-serif capital letters. Below it, the words 'NEXT EXIT' are written in smaller, white, sans-serif capital letters, followed by a white arrow pointing diagonally upwards and to the right. The background behind the chalkboard is a clear blue sky. The chalkboard is supported by five metal legs.

The Future

NEXT EXIT 



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: 16-304

Agenda Date: 11/15/2016

Version: 1

Status: Regular Agenda

In Control: City Council

File Type: Report

Agenda Number: H.3

Presentation by Charles Sullivan on behalf of the Farmers Branch Manske Library Board regarding a Library project being considered for the future Bond Election.

BACKGROUND:

Chairman of the Farmers Branch Manske Library Board will provide information regarding a Library project being considered for a future Bond Election.

REQUEST FOR FUTURE CITY COUNCIL AGENDA ITEM

If you have a specific topic that you would like the City Council to discuss at a future meeting, please list your name, address, telephone number and the specific topic. The item will be reviewed and possibly scheduled for a future meeting, or forwarded to City staff for appropriate action.

First Name Charles

Last Name Sullivan

Address 3232 Brincrest Drive, Farmers Branch, Texas 75234

E-Mail Address [REDACTED]

Phone 214-883-5948

Alternate Phone [REDACTED]

To insure appropriate follow through on an item, City staff may need to contact you. Please make sure to provide either a phone number or email address for this purpose.

Briefly describe the requested topic:

I serve as the chair of the City of Farmers Branch Library Board. On behalf of the Board and the Manske Library director, I would like the opportunity to speak to the City Council regarding the upcoming bond elections. We understand, of course, that there is a Citizen's Bond committee and that this committee considered a library project. We respectfully believe, however, that the City Council should hear from its Library Board before it makes a final decision about what items to advance to the bond election.



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-105

Agenda Date: 11/15/2016

Version: 1

Status: Regular Agenda

In Control: City Council

File Type: Resolution

Agenda Number: H.4

Consider approving Resolution No. 2016-105 authorizing the City Manager to negotiate and execute the second amended and restated agreement for library services with Library Systems & Services; and take appropriate action.

BACKGROUND:

In 2011 the City outsourced the operation of the Manske Library to Library Systems & Services Incorporated (LSSI). In 2013, City Council renewed the agreement for a 3-year term that expires December 31, 2016. During the term of the agreement LSSI was sold to Argosy Private Equity and is now called Library Systems & Services (LSS). From the City's perspective, this change in ownership has not affected the quality of Library services received.

DISCUSSION:

City Administration will give a brief presentation to review the current 3-year agreement and the highlights of the proposed new agreement.

The new agreement is a 5-year contract that would begin January 1, 2017 and expire December 3, 2021. It includes a 2.5% (\$30,233.33), increase from the previous year, attributed to the rise in the Employee Cost Index (ECI) for the DFW Metroplex. The proposed annual cost for 2016 is \$1,239,566.33 The price of the agreement is negotiated on a yearly basis, or may renew at the same amount as the previous year, plus an additional amount equal to the percentage increase in the ECI but not to exceed 5%.

This new agreement includes, the purchase and installation of equipment that will allow the Library to offer automated self check-in to patrons, valued at \$72,519.60. The equipment is the second phase of the automated self check infrastructure common in modern libraries. The equipment is being provided at LSS cost, it will be amortized over the life of the contract. Should the City discontinue using LSS, the City would be responsible for the remaining balance owed. Once the five-year amortization period is over, LSS will turn over the ownership of the equipment to the City.

RECOMMENDATION:

The Farmers Branch Manske Library Board received a presentation at their November 10 meeting and unanimously recommended the approval of this agreement with LSS to operate the Manske Library.

POSSIBLE COUNCIL ACTION:

1. I move to approve Resolution No. 2016-105, as presented.
2. I move to approve Resolution No. 2016-105, with modifications.
3. I move to table the issue for further study or take no action.

ATTACHMENTS:

1. Resolution No. 2016-105
2. Manske Library Contract Renewal Presentation
3. Contract



RESOLUTION NO. 2016-105

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING NEGOTIATION AND EXECUTION OF SECOND AMENDED AND RESTATED AGREEMENT FOR LIBRARY SERVICES WITH LIBRARY SYSTEMS & SERVICES, LLC; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City entered in a Library Services Agreement with Library Systems & Services, LLC (“LSS”), on January 1, 2011 (the “Original Agreement”) relating to the operation and maintenance of the Farmers Branch Manske Library by LSS on behalf of the City, the term of which ended December 31, 2013; and

WHEREAS, the City entered in a First Amended and Restated Library Services Agreement with LSS, on January 1, 2014 (the “First Amended Agreement”) extending the term of the original Agreement and amending certain terms and provisions, the initial term of which ends December 31, 2016; and; and

WHEREAS, City Administration recommends entering into a Second Amended and Restated Library Services Agreement with LSS further extending the term of the Original Agreement as amended and extended for an initial term ending December 31, 2021, and providing for certain amendments to the Agreement to better set forth the responsibilities of the parties regarding Library operations and management; and

WHEREAS, the City Council of the City of Farmers Branch, Texas, finds it to be in the public interest to concur in the City Administration’s recommendation;

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

SECTION 1. The City Manager is authorized to negotiate and sign on behalf of the City the Second Amended and Restated Agreement with LSS extending the term of the Agreement to December 31, 2021, and amending certain terms and provisions of the Agreement.

SECTION 2. This Resolution shall be effective immediately upon approval.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 15TH DAY OF NOVEMBER, 2016.

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:11/6/16:81185)

SECOND AMENDED AND RESTATED LIBRARY SERVICES AGREEMENT

This **SECOND AMENDED AND RESTATED LIBRARY SERVICES AGREEMENT** (“Agreement”) is made as of the ___ day of _____, 2016, between **LIBRARY SYSTEMS & SERVICES, LLC**, (“LSS”) a Maryland limited liability company with a mailing address at 2600 Tower Oaks Blvd. Suite 510, Rockville, Maryland, 20852, Attention: Paul Colangelo, President, an e-mail address of paul.colangelo@lsslibraries.com, and a fax number of (301)540-5522 (LS&S) and **CITY OF FARMERS BRANCH, TEXAS**, a Texas home rule municipality, with a mailing address at 13000 William Dodson Parkway, Farmers Branch, Texas 75234, Attention: City Manager, an e-mail address at charles.cox @farmersbranchtx.gov and a fax number of 972-247-5939 (“City”). LSS and City are each sometimes referred to herein as a “Party” and collectively, the “Parties”.

RECITALS

WHEREAS, the Parties are signatories to that certain *Library Services Agreement* dated December 8, 2010, and effective January 1, 2011, (“the Original Agreement”) regarding professional services to be provided by LSS to City relating to the maintenance and operation of the Library (as defined below); and

WHEREAS, the Original Agreement was amended, restated, and replaced by that certain *First Amended and Restated Library Services Agreement* dated December 5, 2013, and effective January 1, 2014, (“the First Amended and Restated Agreement”); and

WHEREAS, the Term of the *First Amended and Restated Agreement* ends on December 31, 2016; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of amending and restating their agreement to various provisions of the First Amended and Restated Agreement,, including, but not limited to, extend the term of the First Amended and Restated Agreement,;

NOW, THEREFORE, for and in consideration of the promises, covenants, and conditions set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Services and Warranty.

(a) *Services.* During the Term of this Agreement, LSS will provide the labor and management services described on Schedule A (collectively, “Services”).

(b) *Warranty on Services.* LSS warrants that it will perform the Services with at least the care, diligence and expertise generally accepted in the operation of public libraries of similar sized collection and material circulation in the Dallas/Fort Worth Metroplex.

(c) *Provision of and Warranty on Goods.* LSS may purchase goods for use in the management and operation of the Farmers Branch Manske Library (“Library”). At LSS’s sole discretion, LSS may select sources of goods, which may include affiliates of LSS. Title to all items purchased by LSS shall at all times reside in City. If LSS furnishes any goods to City, LSS will use good faith efforts to extend the manufacturer’s warranty, if any, to City. **There are no other warranties, express or implied, including warranties of merchantability or fitness for particular purpose.**

(d) *Response to Request for Proposal.* On or about October 8, 2010, LSS delivered to City that certain *LSS Proposal for Operation and Administration of the Farmers Branch Manske Library* (“the Proposal”), the contents of which are incorporated herein by reference and shall constitute additional provisions to this Agreement. In the event of any conflict between the warranties, representations, and obligations of LSS set forth in the Proposal and contained in this Agreement, the warranty, representation, or obligation most favorable to City shall apply.

2. *Term and Termination.*

(a) *Term.* The term of this Agreement shall commence on January 1, 2011, (“Effective Date”), and continue in force until December 31, 2021 (“Expiration Date”), unless extended or terminated earlier in accordance with this Section 2.

(b) *Termination for Convenience.* Either Party may terminate this Agreement without cause by giving the other Party not less than ninety (90) days written notice prior to the proposed date of termination.

(c) *Termination for Default.* If either Party breaches any material provision of this Agreement and fails to correct the breach on or before the thirtieth (30th) day after receiving written notice specifying the breach (or, if the breach cannot be corrected before the end of the thirtieth (30th) day, fails to progress diligently towards correction), then the other Party may terminate this Agreement by giving written notice to the breaching Party, except that LSS shall have the right to terminate this Agreement if City fails to pay any amount due LSS and such failure continues for thirty (30) days after written notice thereof.

(d) *Renewal.* Subject to the termination provisions in accordance with this Section 2, this Agreement shall automatically renew and the Expiration Date extended for successive renewal periods of one (1) year each after the Term, unless written notice of intent to not renew is given not later than ninety (90) days prior to the then current Expiration Date, as extended.

3. *Price and Payment.*

(a) *Price.* LSS shall perform the Services for the Charges (exclusive of any current or future sales or use taxes charged to LSS for goods purchased for City) set forth in Section E of Schedule A.

(b) *Payments.* LSS shall invoice City prior to each month’s service for the monthly amount set forth in Section E of Schedule A. Invoices shall be paid by bank wire transfer to a bank account designated by LSS on or before the fifth (5th) day of such month (the “Due Date”). Amounts not paid by City to LSS within thirty (30) days after the Due Date shall be subject to interest at the rate set forth in Ch. 2251, Texas Government Code (“Prompt Payment Act”). Both Parties recognize and agree that City is exempt from sales and use taxes. City will furnish to LSS, in advance, a valid certificate of exemption from such taxes.

(c) *Price Adjustment.* If after the Effective Date a change in law or regulation imposes a new fee or tax that must be paid by LSS when purchasing goods pursuant to this Agreement, title to which goods shall belong to City, City agrees to pay such taxes to the extent City is not exempt from same.

4. Insurance and Indemnification.

(a) *Insurance.* During the term of this Agreement, LSS shall maintain in force at its own expense the following insurance:

- (1) Comprehensive general liability insurance coverage of at least one million dollars (\$1,000,000) combined single limit.
- (2) Automobile liability insurance covering any vehicles owned and/or operated by LSS, its officers, agents, and employees, and used in the performance of this Agreement; and
- (3) Statutory Worker's Compensation Insurance covering all of Contractor's employees or subcontractors involved in the provision of services under this Agreement.

All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least "B" by AM Best or other equivalent rating service, or be approved by the City Risk Manager.

(b) *Certificates of Insurance.* All insurance and certificate(s) of insurance shall contain the following provisions:

- (i) name City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers' Compensation Insurance;
- (ii) provide for not less than thirty (30) days prior written notice to City for cancellation, non-renewal, or material change of the insurance;
- (iii) provide for a waiver of subrogation in favor of City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

(c) *Indemnification.* LSS HEREBY AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, EMPLOYEES, AND AGENTS, (HEREINAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST SUITS, ACTIONS, CLAIMS, LOSSES, LIABILITY OR DAMAGE OF ANY CHARACTER, AND FROM AND AGAINST COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY FEES INCIDENTAL TO THE DEFENSE OF SUCH SUITS, ACTIONS, CLAIMS, LOSSES, DAMAGES OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO PROPERTY INCLUDING, IN PART, THE LOSS OF USE RESULTING THEREFROM, ARISING FROM ANY INTENTIONAL OR NEGLIGENT ACT, ERROR, OMISSION OR NEGLECT OF LSS, ITS OFFICERS, EMPLOYEES, SERVANTS, AGENTS OR SUBCONTRACTORS, OR ANYONE ELSE UNDER LSS'S DIRECTION AND CONTROL, AND ARISING OUT OF, OCCURRING IN CONNECTION WITH, RESULTING FROM OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY WORK OR SERVICES CALLED FOR BY THIS AGREEMENT, OR FROM CONDITIONS CREATED BY THE PERFORMANCE OR NON-PERFORMANCE OF SAID WORK OR SERVICES. IN THE EVENT ONE OR MORE OF THE INDEMNITEES IS DETERMINED BY A

COURT OF LAW TO BE JOINTLY OR DERIVATIVELY NEGLIGENT OR LIABLE FOR SUCH DAMAGE OR INJURY, LSS SHALL BE OBLIGATED TO INDEMNIFY THE INDEMNITEES AS PROVIDED HEREIN ON A PROPORTIONATE BASIS IN ACCORDANCE WITH THE FINAL JUDGMENT, AFTER ALL APPEALS ARE EXHAUSTED, DETERMINING SUCH JOINT OR DERIVATIVE NEGLIGENCE OR LIABILITY.

(c) *Property Insurance.* City shall be solely responsible for keeping its buildings and their contents insured against loss, cost, damage or expense resulting from fire, explosion or any other casualty (“Casualty Insurance”).

(d) *Subcontractors.* Unless covered as a named insured on the insurance policies purchased by LSS pursuant to this Section 4, any subcontractor authorized in accordance with Section 7(b), below, to perform services pursuant to this Agreement on City’s property shall comply with the requirements of this Section 4(a) and (b).

5. Information, Intellectual Property.

(a) *Information.* In the performance of this Agreement, LSS may be exposed to information regarding the identity of City’s patrons, City may be exposed to information regarding LSS’s proprietary library management techniques, and either Party may be exposed to other information designated in writing by the disclosing Party as confidential (collectively, “Confidential Information”). Each Party shall: (1) use the same care to protect the other Party’s Confidential Information from disclosure that such Party uses to protect its own information of like importance; (2) limit duplication of Confidential Information to the extent needed to perform this Agreement; (3) disclose Confidential Information only to employees having a need to know in connection with performance of this Agreement, and who are informed of the contents of this provision prior to disclosure. This provision shall survive termination or expiration of this Agreement; and, on such termination or expiration, each Party shall return all Confidential Information, including all copies, to the owner of such information, and if requested, shall certify in writing that all such information has been returned. Because the damage resulting from a breach of this provision would be difficult or impossible to quantify and remedy at law, in case of such breach, or the threat of such breach, the Party whose Confidential Information is threatened to be disclosed shall be entitled to injunctive or other equitable relief.

(b) *Intellectual Property.* Nothing in this Agreement confers any license or right to use any trademark, service mark, copyright or other intellectual property right, whether now owned or hereafter developed, of either Party.

(c) *Public Information Act Compliance.* LSS acknowledge that City is required to comply with the provisions of the Texas Public Information Act. (Ch. 552, Tex. Govt. Code, as amended). Notwithstanding subsection (a), above, City shall not be in default of this Agreement if the Office of the Texas Attorney General directs City to disclose information to a requestor that LSS believes to be proprietary or confidential. In the event City receives a request for disclosure of any information identified by LSS as confidential or proprietary pursuant to the Texas Public Information Act, City agrees to notify LSS of such request in accordance with Tex. Govt. Code §552.305, as amended. LSS shall be solely responsible for submitting any arguments to the Texas Attorney General in support of the LSS’s position that the information should not be disclosed to the public pursuant to Tex. Govt. Code §552.110 or any other applicable provision of the Texas Public Information Act. City shall

not be required by this Agreement to file an appeal of any determination of the Office of the Texas Attorney General that information deemed by LSS to be confidential or proprietary must be disclosed to the person requesting the information.

(d) Release of Patron Information. LSS understands and acknowledges that, subject to certain exceptions, Tex. Govt. Code §552.124 makes confidential as a matter of law a record of a library supported in whole or in part by public funds that identifies or serves to identify a person who requested, obtained, or used a library material or service. LSS agrees to indemnify, defend, and hold City harmless regarding any claims or damages by any person relating to the intentional or negligent release of Library records relating to that person in violation of federal or state law or regulation, including, but not limited to Tex. Govt. Code §552.124. LSS further agrees to have (i) all LSS employees and (ii) all Library volunteers who may have access to Library user information to sign an acknowledgment and agreement regarding the treatment of Library user information on a form approved by City (which approval shall not be unreasonably withheld) prior to any such person commencing any work or service at the Library.

6. City's Obligations.

(a) Use of Facilities. City shall make available to LSS without charge, solely for LSS's use in performing the Services, all properties, facilities, equipment, collections, supplies, records, files and data used or useful in the operation of the Library that is in City's possession, custody or control as of the date hereof. City reserves all ownership rights in such properties and LSS shall return such properties to City, ordinary wear and tear excepted, at the termination or expiration of this Agreement.

(b) Library Maintenance and Repair. Responsibility for the maintenance and repair of the Library shall be delegated between the Parties as follows:

(1) City shall be responsible for all building maintenance and repairs relating to damages or malfunctions not attributed to an intentional or negligent act of LSS's employees or contractors or operational changes which are controlled by LSS. City shall further be responsible for the following functions and services.

- i. Pest Control;
- ii. Janitorial Services;
- iii. Window Cleaning Services;
- iv. Carpet Cleaning (yearly service);
- v. Alarm system monitoring/response/maintenance;
- vi. Set up for City-sponsored meetings;
- vii. Christmas exterior lighting;
- viii. Landscape maintenance;
- ix. De-icing front sidewalks; and
- x. Fire alarm/fire extinguishers inspections.

(2) LSS shall be responsible for the following functions or services:

- i. Completing daily/weekly maintenance inspection checklist and reporting all identified issues and maintenance needs;

ii. Ensuring litter around building and parking lot is picked on a daily basis;

(3) Except as otherwise provided herein, City shall be responsible for maintenance and repairs to the structural components and systems of the Library including, but not limited to, exterior and interior walls, windows, roof, ceiling, plumbing, electrical, heating and air conditioning system, sidewalks, and parking areas.

(4) LSS shall be responsible for maintenance and repairs to the Library relating to damages or malfunctions resulting from (i) the intentional or negligent acts of LSS's employees or contractors, or (ii) operational changes which are controlled by LSS. All such maintenance and repairs shall be performed by or under the direction of City's Facilities Management Department at LSS's cost, who will be invoiced as follows:

i. If the work is performed in-house by City employees, parts and materials will be billed City's actual cost, and labor will be billed on a per hour basis ,at a rate based on the average salary and benefits of the City Facilities Technicians assigned to perform the work; and

ii. If the work is performed by a third party, LSS will be billed at the actual costs charged to City by the third-party.

(c) Requests for Maintenance and Repair. The Library Director shall insure all maintenance and repairs identified in Section 6(b)(2), above, are completed in a timely manner depending on the nature and extent of the repair maintenance required. With respect to any repair or maintenance for which City is responsible for performing pursuant to Section 6(b), above, regardless of whether the cost of such repair or maintenance belongs to City or LSS, the Library Director, or in the absence of the Library Director the LSS employee in charge of Library operations, shall, with respect to any repair or maintenance necessary to prevent imminent injury to any person or damage to property, immediately report to City's Facilities Management Department the need for the repair and shall, with respect to other types of maintenance or repairs, submit a work request to City's Facility Management Department pursuant to said department's guidelines.

(d) Library Building Improvements. LSS and City will work together to identify any building upgrades and improvements that will enhance the functionality and service level to Library patrons. Any improvements projects that City staff and LSS agree should be performed must first presented to City's Facility Management Department during the City's annual budget process to be considered for approval and funding.

(e) Security. City is responsible for providing security services for the Library and surrounding area.

(e) Utilities. City is responsible for payment of utilities at the Library facilities, including electricity, gas, water, waste disposal and recycling, telecommunications and Internet access.

(f) Policies. City shall be responsible for setting all policies that govern the operations of the Library.

(g) *Revenue Generating Opportunities.* During the term of this Agreement, LSS shall use reasonable efforts to develop proposals for the implementation of new revenue generating services, such as services to the business community, retail sales (books, gifts, refreshments, etc.) and other fee based services, to benefit the community, City and LSS (“Additional Services”). City shall have the final approval of all Additional Services, with such approval to not be unreasonably withheld, conditioned or delayed. Unless otherwise approved by City, the provision of these Additional Services shall not in any way substantially reduce the space or Library services provided prior to the implementation of the Additional Services. No Additional Services shall be implemented until City and LSS have entered a written agreement that includes, as a minimum, a written description of the Additional Services, the responsibility for costs related to providing such Additional Services, and the allocation of profit between the Parties that is generated by the Additional Services, if any.

(h) *Damage or Destruction of Library; Suspension or Termination of Agreement.* Notwithstanding Section 2(c), above, in the event of substantial damage to, or the destruction of, the Library and/or a substantial portion of the Library’s collection, City may, at its sole discretion, immediately suspend the performance of this Agreement and/or terminate this Agreement upon providing written notice to LSS. In the event this Agreement is suspended or terminated, City agrees to pay LSS for Services rendered to the date of the suspension or termination of the Agreement pro-rated to the date of the suspension, but shall have no further obligation to LSS. If, following damage or destruction to the Library, City determines to temporarily relocate Library operations without terminating this Agreement, City and LSS agree to negotiate in good faith the fees to be paid by City to LSS for any reduced services provided by LSS during such temporary period and for any additional services that LSS provides upon the written agreement with City, if any, relating to the re-establishment of services following repair of the Library.

7. *Miscellaneous.*

(a) *Independent Contractors.* In all activities or services performed hereunder, LSS is an independent contractor and not an agent or employee of City. As an independent contractor, LSS shall be responsible for the services and the final work product contemplated under this Agreement. Except for materials furnished by City, LSS shall supply all materials, equipment, and labor required for the work and/or services to be provided under this Agreement. Subject to the policies established by City as provided in this Agreement, LSS shall have ultimate control over the execution of the work and/or services. LSS shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and City shall have no control of or supervision over the employees of LSS or any of LSS subcontractors. The relationship of the Parties shall at all times be that of independent contractors. Nothing herein shall be construed as establishing a partnership, joint venture, agency, employment, or other relationship.

(b) *Assignment.* Neither Party may assign this Agreement to a third party not affiliated with such Party without the prior written consent of the other Party. Notwithstanding the foregoing, LSS may subcontract or delegate portions of the Services; provided, however, in no case shall City be liable to any party other than LSS for any amount in excess of the price specified on Schedule A, plus any additional charges permitted hereunder, nor shall LSS be released from any obligation to comply with the provisions of this Agreement notwithstanding that performance of such provisions have been delegated to a third party. In no case shall LSS be authorized to subcontract any of LSS’s obligations and duties pursuant to this Agreement unless such subcontract is in writing and is made expressly

subject to the provisions of this Agreement. LSS shall provide City copies of any subcontract entered pursuant to this Section 7(b) upon request of City.

(c) *Limitation of Liability.* In no case shall either Party be liable for any damages, losses, costs or expenses under or in connection with this Agreement, whether for breach of contract, tort or otherwise in excess of an amount equal to the lesser of (i) the actual damages suffered by the aggrieved Party, or (ii) the Charges for the twelve (12) month Period (as shown in Schedule A, as it may be amended) in which such damages were allegedly incurred. In no case shall either Party be liable for any punitive, exemplary, incidental, consequential, or special damages arising out of or in connection with this Agreement. Notwithstanding any other provisions of this Agreement, LSS shall have no responsibility for any worker's compensation or any other claims for incidents or costs, expenses or losses occurring prior to the Effective Date.

(d) *Force Majeure.* LSS shall not be liable for any failure or delay in performance of this Agreement due to causes beyond its control, including, but not limited to, strike, war or civil disturbance, weather emergency, or general failure of any necessary supply, service or utility.

(e) *City's Representation.* City represents and warrants that it has all necessary legal authority to enter into and perform this Agreement and that the person executing this Agreement on its behalf is legally authorized to do so.

(f) *Notices.* Notices required or permitted under this Agreement shall be effective upon the third (3rd) business day after deposit in First Class mail, or the next business day after deposit with a recognized overnight courier, or upon receipt if e-mailed or faxed to the respective e-mail addresses or fax numbers, if addressed to the Parties' respective addresses and marked to the attention shown on the first page of this Agreement, and, if to City, a copy to the following:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N Akard, Suite 1800
Dallas, Texas 75201

Email: psmith@njdhs.com
Fax: 214-965-0010.

(g) *Governing Law; Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Any suit arising from or related to this Agreement shall be brought in a state court in Dallas County, Texas.

(h) *Severability.* If any provision of this Agreement is conclusively determined to be illegal, invalid or unenforceable, then such provision shall be severed, and the remaining provisions of this Agreement shall be so construed to carry out, as nearly as legally permitted, the intentions of the Parties.

(i) *Survival.* The provisions of Sections 2, 3, 4, 5 and 6 shall survive any termination or expiration of this Agreement

(j) *Entire Agreement; Amendments.* This Agreement, inclusive of the schedules and exhibits attached hereto, contains the entire understanding of the Parties on the subject matter hereof and supersedes all prior statements and agreements on that subject. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the Parties except as may be otherwise provided therein.

(k) *Non-Waiver.* No failure or delay by either Party in enforcing any provision of this Agreement shall operate as a waiver. This Agreement may be modified or waived only in writing signed by the Party against whom such modification or waiver is sought to be enforced.

(l) *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes and constitute one and the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(m) *Conflict of Interest.* LSS shall not, directly or indirectly, acquire any interest which will conflict in any manner or degree with the performance of its services hereunder. In this connection, LSS, its employees and consultants shall make no political contributions to any political campaign or initiative affecting City.

Intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives.

CITY OF FARMERS BRANCH, TEXAS

LIBRARY SYSTEMS & SERVICES, LLC

By: _____
Charles Cox
City Manager

By: _____
Paul Colangelo
President

City of Farmers Branch

**Schedule A
Agreement for Library Administration and Operations**

A. Statement of Work

LSS will administer the operations of City’s library facilities (collectively, “Library”), including the accounting for, purchase of and payment for payroll services and goods and services from vendors for budgeted utilities, supplies, repairs, maintenance, Library Materials (as defined below) and Capital Items (as defined below) sufficient to operate the Library in accordance with the policies and guidelines approved by City.

LSS shall provide, by and through its own employees or independent contractors ("LSS Staff") any labor LSS deems necessary for the operation of the Library. The cost of the LSS Staff shall be paid by LSS and is included in the Operating Budget (as defined below). LSS shall have the sole and absolute right to hire and/or terminate the employment of the LSS Staff from time to time to perform work under this Agreement. LSS will provide the appropriate staffing levels to keep the Library open to the public during the following periods and for the following hours of operation:

Period	Hours of Operation			
	Mondays – Thursdays	Fridays	Saturdays	Sundays
January 1, 2017 to December 31, 2021	10 a.m. – 9 p.m.	10 a.m. –6 p.m.	10 a.m. -6 p.m	1 p.m. – 5 p.m.

In addition, LSS will update the long-range plan for City in cooperation with City, elected and appointed local officials, other community stakeholders (“Plan”). Using current professional standards and practice, the Plan will identify challenges and opportunities for the LSS Staff and corresponding strategic responses, including specific, measurable goals and objectives.

This Plan, when approved by City, will help govern the direction and focus of the LSS Staff in fulfillment of their mission of providing effective and efficient Library service to meet the personal, professional and lifelong learning needs of the citizens served by the Library.

B. Scope of Work

1. Governance – Develop and maintain effective working relationships with local City staff, elected officials, Library board members, other appointed officials and community groups such as the Friends of the Library, members of the genealogical society, etc.
2. Fiscal Responsibility:
 - a. Develop and maintain effective and efficient financial procedures.
 - b. Review all aspects of Library operation and service for efficiency and cost-effectiveness, while making changes as appropriate.
 - c. Lead preparation of annual operating and capital budget requests.

- d. Continue to seek innovative means of adding value to City at little or no additional cost, including the procurement of grants.
3. Management and Reporting:
 - a. Prepare and provide regular reports to City, describing Library activities and recommending changes in policies, procedures and operations as necessary and appropriate.
 - b. Prepare and provide timely statistical reports to City on Library activities.
 4. Staff Development and Coaching:
 - a. Support orientation and professional development of all LSS Staff. Each calendar year, the City shall designate, at its discretion, a one-day Library closure for Staff Training, coinciding with Presidents' Day. The Library will be closed to the public on this Staff Training Day, with appropriate notice of closure posted in advance by library staff.
 - b. Provide leadership and guidance to maximize LSS Staff effectiveness in Library operations.
 5. Public Services:
 - a. Provide prompt, friendly and accurate assistance in the use of the Library.
 - b. Provide prompt and accurate circulation, information and reference services.
 - c. Provide requested materials promptly.
 6. Collections – Provide high quality materials on a wide variety of subjects in varied formats for all age groups present in the community, according to established collection management plans.
 7. Programming – Provide high quality, effective educational, recreational and cultural programs of interest to all age groups present in the community.
 8. Information Technology:
 - a. Develop and implement short and long range plans to procure, install and support sufficient hardware, software, network, telecommunications and other resources necessary to support the LSS Staff's mission.
 - b. Implement RFID technology in the Library as detailed in Schedule B.
 - c. The responsibilities of City and LSS with respect to the provision of technology support services shall be as set forth in Schedule C.
 9. Marketing – Effectively disseminate information and promote use of the Library, resources and services.

Facilities – Work with LSS Staff and local officials to ensure effective building maintenance by promptly identifying and reporting problems with the physical plant.

C. Excluded Services

LSS shall have no responsibility for administration, purchase or payment of, or any liability or duty to defend claims for:

1. Any goods or services, including payroll, that were rendered to City prior to the Effective Date.
2. Unfair labor practices, grievances, or any claims or litigation whatsoever arising out of the hiring and/or firing, layoff, subcontracting, assignment, reassignment or discipline of the Library staff not employed by LSS, provided that such claims have not resulted from negligence or wrongful acts of LSS under federal, state, or municipal law.
3. Any worker's compensation claims from any LSS Staff arising from injuries sustained prior to the Effective Date if such person was employed by City prior to the Effective Date.
4. Any costs of any voluntary retirement incentives, employee buyouts or other similar programs adopted by City.
5. Any Capital Items, which shall mean any capital acquisitions, improvements or replacements of any of the properties, facilities, equipment, furniture, furnishings, fixtures or leasehold improvements of the Library, except that such Capital Items proposed by LSS for its benefit (i.e. coffee bar, etc.) shall be approved by City and paid for by LSS.
6. Any amount of costs for unbudgeted repairs, maintenance and/or upkeep of Capital Items owned by City.
7. Any increases in the cost of insurance, utilities, rent, fuel and any state or federal tariff items over the rate for such items prevailing as of the date of execution of this Agreement.

D. Library Materials and Materials Handling Fee

On behalf and for the benefit of City, LSS will negotiate favorable discounts and prices from Library suppliers for the purchase of all Library materials, which shall include books, periodicals, newspapers, microfilms, electronic database subscriptions, standing orders, audio and video materials and cases, automated reference services, binding, cataloging and processing costs and the Materials Handling Fee (as defined below) (collectively, "Library Materials"). The responsibility for Library collection development policies will remain with City, and all Library Materials selections will be the responsibility of LSS. LSS will place orders with the suppliers and perform the accounting functions related to those orders, including prompt payment of the invoices. In accounting for the cost of the Library Materials, LSS shall include a fee of five percent (5.0%) of the cost of the Library Materials ordered ("Materials Handling Fee").

E. Operating Budget and Charges

Contract Period**	Charges (“Operating Budget”)		Minimum Library Materials*
	Full Contract Period	Monthly	
January 1, 2017 to December 31, 2017	\$1,239,566.333	\$103,297.19	\$210,000.00

*Total cost of Library Materials is not included in the Operating Budget and shall be determined annually by City. LSS will invoice City separately for Library Materials purchased and the invoices will include the Materials Handling Fee.

**“Contract Period” means each calendar year occurring during the term of this Agreement.

The Operating Budget is contingent on other existing contractual terms, obligations and responsibilities remaining the same except as expressly noted herein.

Not later than August 1 during each Contract Period, the Parties shall begin to negotiate in good faith the amount of Charges that will apply to the next Contract Period. If the Parties have not reached such agreement on or before October 1 of the then current Contract Period, the Charges for the next Contract Period, or such fewer number of months remaining until the Expiration Date (“Remaining Months”), shall be equal to the Charge for the last month of the then Current Period multiplied by twelve (12) or the number of Remaining Months, whichever is less, plus an additional amount equal to (a) the percentage increase in the Employee Cost Index (ECI) for the Dallas Metroplex region for the twelve (12) month Contract Period prior to the commencement of the new Contract Period not to exceed five percent (5%), multiplied by the Charge for the last month of the then current Contract Period, multiplied by (c) twelve (12) or the number of Remaining Months, whichever is less.

Intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives.

CITY OF FARMERS BRANCH, TEXAS

LIBRARY SYSTEMS & SERVICES, LLC

By: _____
Charles S. Cox
City Manager

By: _____
Paul Colangelo
President

Schedule B

RFID Equipment

1.0 Equipment and Installation

1.1 LSS shall provide for the Library, subject to the terms and conditions contained herein, the RFID hardware, software and fixtures, including public and staff workstations and security gates for the Library entrance, described in Exhibit A attached hereto and shall affix RFID tags to the Library's collection items (collectively the "Equipment"). LSS shall, in concert with City, install the Equipment at the Library. There shall be no charge for LSS's labor.

1.2 City will install at the Library at its expense the electrical wiring and connections and telecommunications cable required for the Equipment.

2.0 Schedule

The work to be completed by City and LSS hereunder shall be performed in accordance with the following schedule during calendar year 2014:

<u>Task</u>	<u>Responsible Party</u>	<u>Date</u>
Collection tagging	LSS	January 24 – February 23
Wiring and telecommunications	City	Completed by January 23
Equipment installation	LSS & 3M	January 24 – February 23
Completion	LSS & City	End of February 2014

3.0 Ownership

3.1 Unless and until title to the Equipment is transferred by LSS to City in accordance with this Section 3.0, LSS shall own the entire right, title and interest in and to the Equipment.

3.2 If at any time LSS ceases to provide for the Library services of the same nature and scope as currently provided by LSS under this Agreement, whether such services are provided under this Agreement or otherwise, City shall have an option, exercisable by written notice to LSS no later than the effective date of such cessation, to purchase the Equipment for the residual value of the Equipment as of the effective date of such cessation in accordance with Exhibit B attached hereto. If City exercises such option, City shall pay LSS the applicable residual value as of the effective date of such cessation and LSS shall simultaneously assign to City the entire right, title and interest in and to the Equipment. If City does not exercise such option, LSS shall continue to own the Equipment and shall have the right to remove the Equipment from the Library.

3.3 If City has not previously purchased the Equipment under Section 3.2 and LSS continues to provide services for the Library similar to those under this Agreement, upon the expiration of five (5) years after the completion of its installation, LSS shall assign to City the entire right, title and interest in and to the Equipment.

Exhibit A to Schedule B

		Today's Date: 05/23/13 Expiration Date: 08/21/13																																																																																																											
3M Center, 224-2S-04 St. Paul, MN 55144-1000 Office: 800-328-0067 ext. 2 Fax: 800-223-5563		Quotations are good for 90 days. All dates are based on ship dates. Order must ship within the 90 day window. After 90 days, quotation expires. Contact 3M for a New Quotation.																																																																																																											
Ship to: (Destination of Goods) Library Name Farmers Branch Manske Library Address 13613 Webb Chapel Road City, State, Zip Farmers Branch, Texas 75234 Contact Name Belinda Jacks Email Address belinda.jacks@farmersbranch.info Phone # 972-247-2511 Fax #		Bill to: (Agency to Invoice) Name Library Systems & Service, LLC Address 12850 Middlebrook Road City, State, Zip Germantown, MD 20874-5244 Accounts Payable Contact Name Luther Brady Email Address luther.brady@lssi.com Phone # 951-274-4515 Fax #																																																																																																											
P.O. # and Signature (signature required if customer is using this form as an order)		Requested Delivery and Install Dates																																																																																																											
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3M Sales Consultant Shawn Brumley Mail or Fax purchase order to the address above.	3M Sales Consultant Phone # 940-367-9738	3M Customer Service Representative Edilsy Vega Comments:																																																																																																											
Terms are NET 30 Days from Date of Invoice. Invoice is generated at the time of Shipment.		3M Customer Service Representative Phone # 800-328-0067 ext 2																																																																																																											
A copy of Tax Exemption Certificate is required with purchase order for all tax exempt customers.																																																																																																													

Exhibit B to Schedule B

Farmer's Branch
3M RFID System - Model
9102

Asset Cost & related expenditures:

\$81,917.45

<u>Month</u>	<u>Amortization</u>	<u>Residual Value</u>
1	\$ 1,365.29	\$ 80,552.16
2	\$ 1,365.29	\$ 79,186.87
3	\$ 1,365.29	\$ 77,821.58
4	\$ 1,365.29	\$ 76,456.29
5	\$ 1,365.29	\$ 75,091.00
6	\$ 1,365.29	\$ 73,725.71
7	\$ 1,365.29	\$ 72,360.41
8	\$ 1,365.29	\$ 70,995.12
9	\$ 1,365.29	\$ 69,629.83
10	\$ 1,365.29	\$ 68,264.54
11	\$ 1,365.29	\$ 66,899.25
12	\$ 1,365.29	\$ 65,533.96
13	\$ 1,365.29	\$ 64,168.67
14	\$ 1,365.29	\$ 62,803.38
15	\$ 1,365.29	\$ 61,438.09
16	\$ 1,365.29	\$ 60,072.80
17	\$ 1,365.29	\$ 58,707.51
18	\$ 1,365.29	\$ 57,342.22
19	\$ 1,365.29	\$ 55,976.92
20	\$ 1,365.29	\$ 54,611.63
21	\$ 1,365.29	\$ 53,246.34
22	\$ 1,365.29	\$ 51,881.05
23	\$ 1,365.29	\$ 50,515.76
24	\$ 1,365.29	\$ 49,150.47
25	\$ 1,365.29	\$ 47,785.18
26	\$ 1,365.29	\$ 46,419.89
27	\$ 1,365.29	\$ 45,054.60
28	\$ 1,365.29	\$ 43,689.31
29	\$ 1,365.29	\$ 42,324.02
30	\$ 1,365.29	\$ 40,958.73
31	\$ 1,365.29	\$ 39,593.43
32	\$ 1,365.29	\$ 38,228.14
33	\$ 1,365.29	\$ 36,862.85
34	\$ 1,365.29	\$ 35,497.56

35	\$	1,365.29	\$	34,132.27
36	\$	1,365.29	\$	32,766.98
37	\$	1,365.29	\$	31,401.69
38	\$	1,365.29	\$	30,036.40
39	\$	1,365.29	\$	28,671.11
40	\$	1,365.29	\$	27,305.82
41	\$	1,365.29	\$	25,940.53
42	\$	1,365.29	\$	24,575.24
43	\$	1,365.29	\$	23,209.94
44	\$	1,365.29	\$	21,844.65
45	\$	1,365.29	\$	20,479.36
46	\$	1,365.29	\$	19,114.07
47	\$	1,365.29	\$	17,748.78
48	\$	1,365.29	\$	16,383.49
49	\$	1,365.29	\$	15,018.20
50	\$	1,365.29	\$	13,652.91
51	\$	1,365.29	\$	12,287.62
52	\$	1,365.29	\$	10,922.33
53	\$	1,365.29	\$	9,557.04
54	\$	1,365.29	\$	8,191.75
55	\$	1,365.29	\$	6,826.45
56	\$	1,365.29	\$	5,461.16
57	\$	1,365.29	\$	4,095.87
58	\$	1,365.29	\$	2,730.58
59	\$	1,365.29	\$	1,365.29
60	\$	1,365.29	\$	0.00

Schedule C Technology Support Services

Section 1: Purpose

The purpose of this Schedule C is to set forth additional terms of the Agreement regarding the responsibilities of the City, acting through its Information Services Department and LSS, acting through its employees assigned to operate the Library

Section 2: Definitions

The words and phrases used in this Schedule C shall have the same meaning as provided in the Agreement and/or Schedule A or B to the Agreement. In addition, the following words, phrases, and abbreviations shall have the following meanings:

“**ILS**” means Integrated Library System.

“**IS Department**” means City’s Information Services Department.

“**IS Director**” means City Director of Information Services or designee.

“**Library Director**” means LSS’s employee serving in the position of Director of the Library.

“**Library Staff**” means LSS’s employees, including the Library Director, assigned by LSS to perform the on-site services provided by LSS to City pursuant to this Agreement.

“**PC**” is the abbreviation used for “personal computer.”

“**UPS**” is the abbreviation for “uninterruptible power supply”, which is a device that provides battery backup when the electrical power fails or drops to an unacceptable voltage level.

Section 3: Scope and Responsibilities

A. Administration and Management

- (1) *Technology Coordination.* The IS Director will meet with the Library Director approximately every six months, at a mutually agreeable date and time, to discuss technology needs, upcoming initiatives and any service or support concerns relating to Library operations.
- (2) *Technology Procurements.* City shall be responsible for establishing the appropriate standards and providing update or refreshment schedules for City provided hardware and software. Any non-standard hardware or software request must be justified and approved by the IS Director. City shall be responsible for purchasing and replacing all City-provided computing hardware and associated peripherals, including desktop PC’s, laptops, monitors, mice, keyboards, printers, copiers, fax machines, scanners, etc.
- (3) *Vendor service agreements and contracts.* City will enter into and maintain applicable service agreements or support contracts on City-provided computer equipment.

- (4) *Technology planning and budgeting.* Library Staff shall be responsible for preparing a written annual Technology Plan that defines the needs and technology solutions to meet those needs. Library shall solicit and receive comments and suggestions from City staff and other interested parties identified by the City in defining existing problems, necessary changes, and/or desired enhancements to technology services at the Library. LSS, through the Library Director, and City, through the IS Director, shall work together to review and define the Library's technology needs for purposes of long range planning, development of mid-year and fiscal year budgets and inclusion in the annually updated Technology Plan.
- (5) *Equipment inventory and lifecycle management.* The IS Department shall be responsible for maintaining and updating inventories of City-owned technology assets, including the software loaded on all City-owned computers. The IS Department shall be responsible for picking up and properly preparing City-owned equipment for disposal, including a process for ensuring that all data is removed from the equipment. The IS Department will update the inventory and provide inventory revisions to the Library Director upon request.
- (6) *Audit and Review of Third-Party Network Connections.* Any third party systems or connections into the City's computer network must be pre-approved and will be subject to initial and periodic security review by the City. Any required corrective actions are to be implemented immediately, and closure is to be confirmed by the IS Director.
 - (7) *Internet content filtering management.* Library computers will be filtered for protection against Web-based threats, such as: malware, spyware, malicious sites, botnets and key loggers.
 - (a) LSS shall be responsible for administering and monitoring the Internet Filter that serves the Library patron computers in accordance with the policies and guidelines approved by the City.
 - (b) City shall be responsible for providing annual support and maintenance costs associated with the filtering software for public terminals.
- (8) *Library website and URL namespace.* LSS shall be responsible for the setup and maintenance of the Library's content on the Library's web portal. City will maintain the annual renewal for the Library's URL namespace.
- (9) *Support requests.* Incidents or requests for support should be reported to the IS Department Help Desk via any of the following means:
 - (a) User Support Portal - typing in URL in their internet browser (<http://helpdesk>)
 - (b) Calling 972-919-2571 (Ext. 2571)
 - (c) Emailing Helpdesk@farmersbranchtx.gov

If the incident is urgent, users should call the Help Desk, rather than using the support portal or emailing. IS Department support hours are 8:00 A.M. to 6:00 P.M. Monday through Thursday and 8:00 A.M. to 5:00 P.M. on Friday central time (except on City holidays). For urgent issues and outages, Library Staff may request IS Department emergency support outside of the standard support hours.

- (10) *Compliance with IT Department policies and procedures.* LSS employees using City-provided computing technology and equipment will be expected to adhere to all City technology usage policies, requirements and standards.
- (11) *City-provided user and email accounts.* The IS Department shall be responsible for creation and maintenance of all City domain user accounts and City e-mail accounts. The Library Director shall inform the IS Director as soon as possible after any staff terminations so that user access to core information technology resources can be revoked in a timely manner. To the extent feasible, the Library Director shall inform the IS Director in advance of any employment termination date of a Library Staff employee if there is reason to believe the employee whose separation from employment may result in a risk to the condition or security of the hardware, software, or data to which said employee has access.
- (12) *Inventory Lists; Support Matrix.* IS Department staff and Library Staff shall coordinate and cooperate in the preparation and maintenance of an inventory list of the hardware, installed software, and other computing technology equipment located in or assigned for use as part of Library operations. The inventory shall set forth the owner or provider of the hardware, software or equipment. IS Department staff and Library Staff shall also coordinate and cooperate with respect to development of a support matrix relating to the above inventory setting forth the party responsible for obtaining and/or providing support relative to the hardware, software, and/or equipment shown on the inventory. The initial inventory of installed software subject to this Paragraph (12) is agreed to be as set forth in Exhibit A to this Schedule C.

B. City Facility

- (1) *Security cameras.* City is responsible for the configuration and maintenance of the security cameras and associated equipment and network at the Library. Library Staff shall be responsible for reviewing security camera “video” in the event of an incident and contacting law enforcement authorities as appropriate.
- (2) *Technology equipment rooms.* The IS Department is responsible for coordinating and working with City’s Facilities Management Department to maintain power, UPS, air conditioning, environmental monitoring of the functioning equipment rooms.
- (3) *Audio visual equipment.* City is responsible for providing maintenance and support for all new and existing audio/video, systems in use at the library. Support includes: projector lamps, supplies, parts, repairs, preventative maintenance and any necessary adjustments. LSS shall be responsible for failures caused by improper operation, cleaning or maintenance; accidents, damage, misuse or abuse caused by a LSS employee.

C. Library Automation System (Polaris)

LSS is responsible for providing and supporting the Polaris Integrated Library System (ILS), as well as other automation systems required for effective operation of the Library in accordance with the provisions of that certain *Addendum to Library Services Agreement for ILS Hosted Services* dated May 2, 2012, between City and LSS, a copy of which is attached hereto as Exhibit “B” and incorporated herein by reference. LSS shall be responsible for acquisition, licensing and maintenance of any service/hardware required for the automation systems.

D. Desktop Computing

- (1) *General.* All City-owned desktops and laptops will have antivirus and desktop management agents installed, where applicable. Only software provided by or approved by the City shall be loaded on City-owned computers. IS Department staff will not be required to install any additional software provided by LSS without proof of purchase or a copy of the license agreement. Any computer, server or network hardware provided by LSS or any third-party must be pre-approved by the IS Department and must adhere to City standards before being connected to City-owned computer hardware or the City's data network. Library Staff shall be responsible for ensuring that all City-owned equipment is well maintained, operated in accordance with the manufacturer's instructions and the City's direction. LSS shall be responsible for failures caused by improper operation, cleaning or maintenance; accidents, damage, misuse or abuse caused by a LSS employee
- (2) *Staff computers.* The IS Department is responsible for the support of all City-provided computers which are designated for use by Library staff in performing their job functions. Support includes: installation of hardware and software, configuration, installation of operating system patches and updates, and troubleshooting of hardware, software or network connectivity problems. IS Department staff will provide assistance with supported applications which shall include: installation and updating of software; troubleshooting of common problems; and help with basic usage. IS Department staff will help users perform their job functions using computer technology but will not perform those functions for them. For example, IS Department will not create documents or design databases or web pages for users.
- (3) *Patron computers.* Library Staff is responsible for the support of all City provided computers which are designated for use by library patrons which shall include operating system patches and updates; the troubleshooting of hardware, software or network connectivity problems. IS Department staff will work in conjunction with Library Staff to troubleshoot and resolve any connectivity issues that may be associated with the City-provided data network.
- (4) *Other LSS owned and provided hardware/software.* Library Staff shall be responsible for the support and maintenance of all LSS-owned or provided hardware and/or software.

E. Server Hardware and Operating Systems

- (1) *City provided Servers.* The IS Department is responsible for the support of all City-provided servers which are housed at the Library or designated for use by Library Staff or patrons, which shall include: installation, configuration, installation of operating system patches and updates and the troubleshooting of hardware, software or network connectivity problems. Library Staff shall be responsible for the licensing, administration and maintenance of the business applications running on this hardware.
- (2) *LSS provided Servers.* LSS shall be responsible for acquisition; licensing and maintenance of any LSS-provided computing system or service. Any computer, servers or network hardware provided by LSS or any third-party must be pre-approved by the IS Director and adhere to City standards before being connected to City-owned computer hardware or the City's data network.

F. Telephony, Network, Internet, and Printers

- (1) *City network connectivity (to facility and to staff).* The IS Department is responsible for the maintenance and operation of all City-provided network equipment, including the configuration, support and maintenance of all routers, switches, firewalls and associated Ethernet and fiber connectivity.
- (2) *Wireless network connectivity.* The IS Department is responsible for the maintenance and operation of all City-provided wireless network equipment, including the configuration, support and maintenance of wireless access points and associated routers, firewalls and cabling.
- (3) *City internet connectivity.* The IS Department is responsible for the maintenance and operation of City-provided internet connectivity, including: modems, routers, switches and associated cabling. As of the Effective Date, City provides internet connectivity for the use of library patrons and Library Staff computers.
- (4) *Telephone system.* The IS Department is responsible for the maintenance and operation of all City provided voice communications equipment at the Library, including: VoIP/PBX equipment, handsets and associated cabling.
- (5) *Printers and Copiers.* Library Staff is responsible for the support of all City provided printers and copiers which are designated for use by library patrons. The City shall be responsible for the paper, toner, maintenance and repair costs of all printers and copiers for use by library patrons.

Exhibit A to Schedule C

Software used in Library:

Software	Operational Responsibility	Financial Responsibility
Polaris	LSS	LSS
Cassie/Cassie Manager*	LSS	LSS
Winselect on Enterprise Server	LSS w/City IT support	City
Deep Freeze on EnterpriseServer	LSS w/City IT support	City
Magic Info/Digital Signage	LSS for content creation. City IT support for hardware or software	City
Web Filtering	LSS	City
Antivirus/Antimalware	City	City
MS Windows	LSS w/City IT support	City
MS Office	LSS w/City IT support	City

*or equivalent software

Schedule D

3 Bin Sorter

1.0 Equipment and Installation

1.1 LSS shall provide for the Library, subject to the terms and conditions contained herein, the Sorter hardware, software and fixtures. LSS shall, in concert with City, install the Equipment at the Library.

1.2 City will install at the Library at its expense the electrical wiring and connections and telecommunications cable required for the Equipment.

2.0 Schedule

The work to be completed by City and LSS hereunder shall be performed in accordance with the following schedule during calendar year 2017:

<u>Task</u>	<u>Responsible Party</u>	<u>Date</u>
Wiring and telecommunications	City	Completed by April 30
Equipment installation / Completion	LSS & Bin Vendor	Completed by July 30

3.0 Ownership

3.1 Unless and until title to the Equipment is transferred by LSS to City in accordance with this Section 3.0, LSS shall own the entire right, title and interest in and to the Equipment.

3.2 If City terminates this Agreement pursuant to Section 2(b) or LSS terminates this Agreement pursuant to Section 2(c), City shall have an option, exercisable by written notice to LSS no later than ten (10) days after the effective date of such termination, to purchase the Equipment for the residual value of the Equipment as of the effective date of such cessation in accordance with Exhibit B attached hereto. If City exercises such option, City shall pay LSS the applicable residual value as of the effective date of such cessation and LSS shall simultaneously assign to City the entire right, title and interest in and to the Equipment. If City does not exercise such option, LSS shall continue to own the Equipment and shall have the right to remove the Equipment from the Library.

3.3 If LSS terminates this Agreement pursuant to Section 2(b) or City terminates this Agreement pursuant to Section 2(c), LSS shall assign to City all right, title, and interest in the Equipment not later than ten(10) days after the effective date of such termination with no obligation of City to pay any further amounts toward the purchase of the Equipment

3.4 If City has not previously purchased the Equipment under Section 3.2 and LSS continues to provide services for the Library similar to those under this Agreement during the entire initial term of this Agreement ending December 31, 2021, LSS shall assign to City the entire right, title and interest in and to the Equipment.

Exhibit A to Schedule D



Pricing Summary:

SOFTWARE	QTY.	LIBSOFT	LIBSOFT PLUS
(SelfChecks, Return/Sorting, LibDispenser)	Per month/station	\$52.10	\$57.30
Year 1 (total)	1	\$625.20	\$687.60
One Time Set Up Fee for LibSoft / LibSoft Plus (all stations)			\$500.00

HARDWARE	
Hardware	\$64,590.00

INITIAL PROJECT TOTAL	with LIBSOFT	with LIBSOFT PLUS
Year 1 Software & Hardware	\$65,715.20	\$65,777.60
Annual Maintenance Software		Included
Annual Maintenance Hardware		Please see options

Maintenance Programs:

Year 1 (Warranty)	Included
Year 2	\$1,623.00
Year 3	\$1,664.00
Year 4	\$1,706.00
Year 5	\$1,749.00

mk Sorting Systems

Efficiency with simple and secure sorting of material



Benefits

- mk Sorting's durable modular design allows for easy and economical system expansion.
- Every sorting station is custom designed and built to the library's requirements and specifications.

Features

- Sorting systems start at a minimum of three sort points that can be easily expanded with additional sort points in modules of two.
- Self diagnostic components ensure an uptime reliability according to automotive standards.
- Belt conveyors ensure the lowest noise levels.
- Single, specially designed soft conveyor belt provides safe and gentle conveying of all types of material.
- Handles the thinnest of materials including magazines, newspapers and DVDs.
- Completely secured and approved systems designed for the option for use in public areas without the need of additional glass or walls.
- Book bins, totes and/or stacking carts equipped with locking mechanism to protect items and equipment and ensure they remain locked in place.
- At a stacking cart sort point, either a stacking cart or a book bin can be docked if required.

Please Note:

- All systems conform to OSHA (Occupational Safety Health Administration) regulations.
- Lifetime warranty on parts and services available.
- All mk components and mk suppliers meet the ROHS regulations due to our Recycling Policy.
- Individualized drawings and layout suggestions available upon request.

Product Specifications

- Throughput Capacity: Up to 1,800 items / hour

Dimensions per sorting module of 2 sort points (one left, one right):

- With small bins 31.5" x 63.8" x 51.2" (L x W x H)
800 x 1620 x 1300 mm
- With large bins 31.5" x 79.5" x 51.2" (L x W x H)
800 x 2020 x 1300 mm

mk Staff Return (height adjustable)

Flexibility and efficiency for your staff



Benefits

- Height adjustable workstation.
- Customizable to meet library's specifications and requirements or match library décor
- Staff control panel monitors the system, displays status changes and contains self-diagnostic software in case of system failure.
- Soft conveyor belt for gentle material handling.
- Staff-friendly graphic interface.
- User commands viewable in multiple languages.
- Operational performance centrally managed by **mk LibManager** software (included).

Functional Description

- The process starts by placing the item on the conveyor belt.
- Upon successful acceptance and return by the ILS, the item is sent on to the appropriate sort destination.
- Unidentified items or incomplete sets are immediately rejected.
- Processed materials are listed on the display.
- If desired, a receipt of the returned books or a reserve slip can be provided to library staff via the integrated receipt printer.
- Bin levels and system status are easily observed by the staff.
- As items move down the belt, they are identified in the ILS, marked as returned, security is reactivated, and the item continues to the appropriate bin.
- If system errors occur the staff control panel shows the exact area of the incident on the system visualization screen.

Product Specifications

- 17" monitor.
- Adjustable mounted monitor.
- Conveyor feeds directly into sorting system.

Available Options

- Hold slip printer
- Barcode scanning and/or Electromagnetic (EM) resensitizer ***

****The equipment being proposed includes one or more industrial barcode scanners. Each scanner is designed to read barcodes that meet international standards for image density and line width. In the event that the quality falls below international standards, it may be necessary to provide an alternate scanning solution. To verify this, we require sample barcode labels from your library for compliance testing.*

mk Return Station RS5 & RS5T
Return with Ease and Convenience



RS5 (without touch screen)



RS5T (with touch screen)

Benefits

- The RFID enabled **mk RS5** is an affordable solution for accepting returns. Materials are immediately checked in and the security setting is re-activated as items are returned.
- Available 24/7.
- Red & green LED status lights illuminate the return opening and indicate when patrons should feed items.
- Items the library does not accept become rejected to the patron.
- Graffiti and weather resistant.
- Operational performance centrally managed by **mk LibManager** dashboard software.

Features

- Equipped to read 13.56 MHz RFID library tags.
- Attractive and durable brushed stainless steel faceplate.
- Mounting through interior or exterior walls.
- Items can be conveyed into optional book bins or into any size sorting systems.

Product Specifications

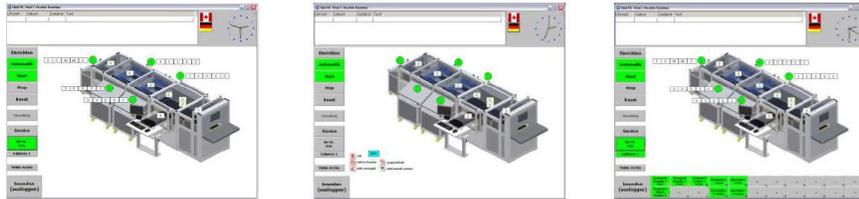
- Communication to ILS: via SIP-2 or NCIP
- Dimensions: W 24" x H 28" (W 600 mm x H 700 mm)
- Dimensions with touch screen monitor: W 24" x H 34" (W 600 mm x H 850 mm)

Available Options

- Receipt printer
- Touch screen monitor
- Restricted access to open return gate via scanner or reader

mk Sorting System

Control And Visualization At All Times Know What Runs – Through Intelligent Control



- The software communicates with the library system by means of the interface SIP-2 or future NCIP.
- Easiest application for your staff with central administration software.
- Easy-to-retrieve statistics. Any sorting criteria of the staff can be defined.
- Targeted rejection of books marked in and media, require special treatment.
- Special programs provide for night and weekend or holiday settings well to be able to settle the flexibility to also rest periods and to take full advantage of the system's capacity.
- Note sorted bins are clearly displayed on the visualization. Automatic error detection and visualization.
- Remote maintenance and diagnosis of possible secure VPN connection.
- The system monitors any status change and immediately displays.
- Offline function if the database is not available. Automatic synchronization as soon as it is available again. Logging if synchronization fails...

Exhibit B to Schedule D

City of Farmers Branch
3 Bin Sorter

\$72,519.60

Asset Cost & related expenditures:

Month	Amortization	Residual Value
1*	\$1,208.66	\$71,310.94
2	\$1,208.66	\$70,102.28
3	\$1,208.66	\$68,893.62
4	\$1,208.66	\$67,684.96
5	\$1,208.66	\$66,476.30
6	\$1,208.66	\$65,267.64
7	\$1,208.66	\$64,058.98
8	\$1,208.66	\$62,850.32
9	\$1,208.66	\$61,641.66
10	\$1,208.66	\$60,433.00
11	\$1,208.66	\$59,224.34
12	\$1,208.66	\$58,015.68
13	\$1,208.66	\$56,807.02
14	\$1,208.66	\$55,598.36
15	\$1,208.66	\$54,389.70
16	\$1,208.66	\$53,181.04
17	\$1,208.66	\$51,972.38
18	\$1,208.66	\$50,763.72
19	\$1,208.66	\$49,555.06
20	\$1,208.66	\$48,346.40
21	\$1,208.66	\$47,137.74
22	\$1,208.66	\$45,929.08
23	\$1,208.66	\$44,720.42
24	\$1,208.66	\$43,511.76
25	\$1,208.66	\$42,303.10
26	\$1,208.66	\$41,094.44
27	\$1,208.66	\$39,885.78
28	\$1,208.66	\$38,677.12
29	\$1,208.66	\$37,468.46
30	\$1,208.66	\$36,259.80
31	\$1,208.66	\$35,051.14
32	\$1,208.66	\$33,842.48
33	\$1,208.66	\$32,633.82
34	\$1,208.66	\$31,425.16

35	\$1,208.66	\$30,216.50
36	\$1,208.66	\$29,007.84
37	\$1,208.66	\$27,799.18
38	\$1,208.66	\$26,590.52
39	\$1,208.66	\$25,381.86
40	\$1,208.66	\$24,173.20
41	\$1,208.66	\$22,964.54
42	\$1,208.66	\$21,755.88
43	\$1,208.66	\$20,547.22
44	\$1,208.66	\$19,338.56
45	\$1,208.66	\$18,129.90
46	\$1,208.66	\$16,921.24
47	\$1,208.66	\$15,712.58
48	\$1,208.66	\$14,503.92
49	\$1,208.66	\$13,295.26
50	\$1,208.66	\$12,086.60
51	\$1,208.66	\$10,877.94
52	\$1,208.66	\$9,669.28
53	\$1,208.66	\$8,460.62
54	\$1,208.66	\$7,251.96
55	\$1,208.66	\$6,043.30
56	\$1,208.66	\$4,834.64
57	\$1,208.66	\$3,625.98
58	\$1,208.66	\$2,417.32
59	\$1,208.66	\$1,209.13
60	\$1,208.66	\$0.00

*First month = January 2017

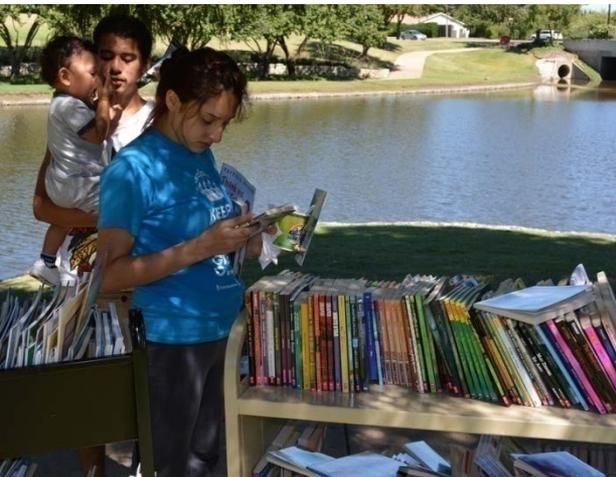


FARMERS BRANCH

MANSKE LIBRARY

CONTRACT RENEWAL

City Council Meeting | November 15, 2016



Background

- In January 2011 the City outsourced the operation of the Manske Library to Library Systems & Services
- The agreement was renewed in 2013 for a 3 year term
- The 2013 agreement included, at LS&S cost, the purchase and installation of RFID tagging and Self Check-Out equipment
- In January 2015, Argosy Private Equity acquired ownership of LSS. From a City perspective, this has not affected service levels.
- The current agreement ends December 31, 2016
- Current agreement automatically renews for one year unless written notice of intent to not renew is given 90 days prior to the term of the contract, or a new agreement is negotiated

2015 Quick Stats

- 185,362 Annual Visits
- 34,663 Registered Card Holders
- 3,243 Annual Hours Open
- 299,961 Total Collection
- 343,952 Total Circulation
- 813 Total Library Programs
- 21,846 Total Program Attendance

Accomplishments

OVER THE PAST 3 YEARS

Library Updates

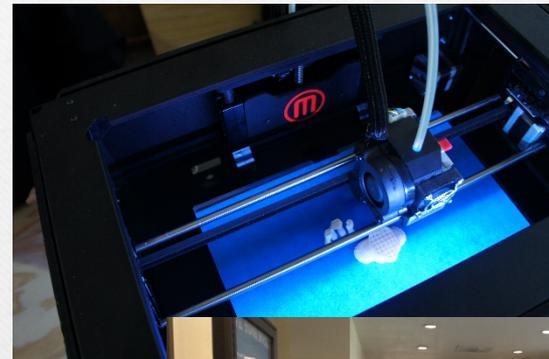
- New circulation desk at a new location
- New furnishings in new sitting areas
- Security Cameras
- Auditorium AV Update
- New Shelving
- Bathrooms Remodeled
- Little Free Library provided outside library near the park Coming soon!



Accomplishments Continued

New Technology

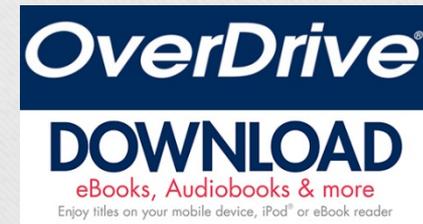
- RFID and Self-Check Out
- 3D Printer
- Drop Share Tables (Collaborative Tables utilizing a large screen to share up-to-4 laptop screens)
- IPAD Devices



Accomplishments Continued

New Resources Added to the Library

- Lynda.com
- Hoopla Downloadable Movies
- Overdrive and TumbleBooks (EBooks)
- One Click Digital (Audiobooks), Freegal (Movies), Zinio (EMagazines)



Accomplishments Continued

New Programming

- Additional Children's Programs:
 - STREAM (Science Technology Reading Engineering Arts Math) activities coincide with education
 - Homework help
 - More robust Summer Reading programs
 - Storytime for all ages
 - Crafts
- Improved Adult Programs:
 - Outside presenters (VA, Safety Tips, Texas History)
 - Downton Abby Trivia
 - Rose Bingo in conjunction with the City
 - Knit Wits knitting and crocheting
 - Holiday Recipe Swaps
 - Coloring for Adults



Citizen Satisfaction

How would you rate the Library for staff assistance/courtesy?

- 2014 survey 90% responded excellent or good
- 2012 survey 91% responded excellent or good
- 2010 survey 98% responded excellent or good

How would you rate the Library for overall Library services?

- 2014 survey 91% responded excellent or good
- 2012 survey 91% responded excellent or good
- 2010 survey 97% responded excellent or good

Note:

2010 survey was a telephone survey with 500 residents responses; 2012 survey was a mailed & web based survey with 1501 responses; 2014 survey was mailed & web based survey with 1050 responses

Library Expenditures 2007-2016



Estimated Savings

- 3 year average of Library expenditures prior to outsourcing FY07-08, FY 08-09 and FY 09-10: **\$1,750,613**
- FY 2010-11 was excluded because it was the transition year and included payouts and was partially contract and partially City operated
- Average cost of City run library expenditures (\$1,750,613) plus a CPI adjustment for each year since the contract shows the following estimated savings:

	1 st Agreement		2 nd & Current Agreement		
	2011-12	2012-13	2013-14	2014-15	2015-16
\$1,750,613 Plus CPI Adjustment	\$1,843,243 (2.07%)	\$1,870,242 (1.46%)	\$1,900,581 (1.62%)	\$1,902,837 (0.12%)	\$1,938,250 (1.86%)
Actual Expenditures	\$1,417,693	\$1,433,003	\$1,446,006	\$1,491,883	\$1,534,600
Savings	\$425,550	\$437,239	\$454,575	\$410,954	\$403,650
TOTAL SAVINGS	\$2,131,968 over 5 years with CPI Adjustment \$1,429,880 over 5 years without CPI adjustment				

Note: Facility maintenance costs have been removed from the above numbers to provide a more accurate comparison. From 2013 forward, all facility maintenance costs were added directly to department budgets.

Library Expenditures City Run Library Estimates vs Outsourced Operation Actuals



*City Operated Expenditures calculated using 3 year average of Library expenditures prior to outsourcing (\$1,750,613) plus a CPI adjustment for each year following.

Proposed Agreement

The proposed agreement is very similar to the previous agreement the following include the major changes:

- 5 year Agreement
- 2.5% increase from previous year equal to \$30,233.33
- \$1,239,566.33 annual cost
 - The price is negotiated on a yearly basis, or may renew at the same amount as the previous year, plus an additional amount equal to the percentage increase in the ECI but not to exceed 5%.
- Includes the addition of a staff training day coinciding with Presidents Day
- Includes addition of automated check-in equipment at no cost to the City - \$72,519 value

Questions?



City of Farmers Branch

Farmers Branch City Hall
13000 Wm Dodson Pkwy
Farmers Branch, Texas
75234

Staff Report

File Number: R2016-107

Agenda Date: 11/15/2016

Version: 1

Status: Regular Agenda

In Control: City Council

File Type: Resolution

Agenda Number: H.5

Consider approving Resolution No. 2016-107 awarding a unit price contract for Fiscal Year 16-17 Annual Concrete Repair Project to Jim Bowman Construction Company, LP. in the amount of \$792,426.00; and take appropriate action.

BACKGROUND:

The Public Works Department requested bids for the 2016-2017 Annual Concrete Repair Project. The bid is prepared by City Administration based on estimated quantities and is awarded on a unit price basis. Alpha Road has been identified (from Midway Road to Inwood Road) for repairs with this project. Funds are available in the Fiscal Year 2016-2017 Public Works Street Maintenance operating budget.

DISCUSSION:

Four bids were received and opened on October 25, 2016. The lowest base bid was received from West Texas Rebar Placers, Inc. in the amount of \$657,030.00. All bids met specifications. West Texas Rebar Placers, Inc. later withdrew its bid due to bidding errors.

Jim Bowman Construction Company, LP was the subsequent second low bidder, submitting a bid in the amount of \$792,426.00. Jim Bowman Construction Company, LP has adequate qualifications and has done similar work for the City on previous projects. This contract is for a one year period with a renewal option for two additional one year periods, if agreeable by both parties.

This item is consistent with Core Value No. 5 providing functional, sustainable, and well maintained infrastructure, facilities and equipment.

RECOMMENDATION:

City Administration recommends approving Resolution No. 2016-107 awarding a unit price contract for Fiscal Year 2016-2017 Annual Concrete Repair Project to Jim Bowman Construction Company, LP.

ACTIONS:

- 1) Motion to approve Resolution No. 2016-107 awarding a unit price contract for Fiscal Year 2016-2017 Annual Concrete Repair Project to Jim Bowman Construction Company, LP.
- 1) Motion to approve Resolution No. 2016-107 awarding a unit price contract for Fiscal Year 2016-2017 Annual Concrete Repair Project to Jim Bowman Construction Company, LP.,

with modifications.

- 2) Motion to table the issue for further study or take no action.

ATTACHMENTS:

1. Location Map
2. Withdrawal Letter from West Texas Rebar Placers, Inc.
3. Bid Tabulation
4. Resolution No. 2016-107



ALPHA RD

INWOOD RD

MIDAWAY RD

LOCATION MAP

IH635



LOCATION MAP



Date: 9/30/2016

WEST TEXAS REBAR PLACERS, INC.

10209 Plano Rd. Suite 101
Dallas, Texas 75238

PHONE: (214) 221-1333
FAX: (214) 221-1303

October 31, 2016

City of Farmers Branch
1300 William Dodson Parkway
Farmers Branch, Texas 75234

Attention: Mr. Randall S. Walhood P.E.
Public Works Director

Garry Spoerl
Street Superintendent

Re: Project 2016-17 Annual Pavement Section Repair

Gentlemen's,

Thank you for the opportunity to bid in your project 2016-17 Annual Pavement Section Repair. West Texas Rebar Placers request to withdraw our bid proposal due to errors in our calculations of concrete prices.

Sincerely,

Marco A. Hernandez
President

A handwritten signature in black ink that reads "Marco A. Hernandez". The signature is written in a cursive style with a large, sweeping flourish at the end.

City of Farmers Branch
 Bid Tabulation
 PROJECT: 2016-17 Annual Pavement Section Repair

BID NO.: 17-01
 SHEET : 1 OF 1

BID OPENING DATE: October 25, 2016
 TIME: 2:00 p.m.

Calendar Days: 365

TEM NO	EST. QTY.	UNIT	DESCRIPTION OF ITEM WITH UNIT BID PRICE WRITTEN	West Texas Rebar Placers, Inc		Jim Bowman Construction Co., LP.		Pavecon Public Works, LP		XIT Paving and Construction, Inc	
				UNIT PRICE	AMOUNT BID	UNIT PRICE	AMOUNT BID	UNIT PRICE	AMOUNT BID	UNIT PRICE	AMOUNT BID
1	110	LF	REMOVE & REPLACE CURB & GUTTER	\$30.00	\$3,300.00	\$25.00	\$2,750.00	\$74.30	\$8,173.00	\$50.00	\$5,500.00
2	4,000	LF	REMOVE & REPLACE 6" INTEGRAL CURB	\$30.00	\$120,000.00	\$3.00	\$12,000.00	\$6.83	\$27,320.00	\$10.00	\$40,000.00
3	1,000	SY	REMOVE & REPLACE 10", 3600 P.S.I. IN 72 HOURS, REINFORCED CONCRETE PAVEMENT	\$67.23	\$67,230.00	\$90.00	\$90,000.00	\$163.85	\$163,850.00	\$145.00	\$145,000.00
4	7,000	SY	REMOVE & REPLACE 8", 3600 P.S.I. IN 72 HOURS, REINFORCED CONCRETE PAVEMENT	\$50.00	\$350,000.00	\$87.00	\$609,000.00	\$140.15	\$981,050.00	\$140.00	\$980,000.00
5	100	SY	REMOVE & REPLACE 6", 3600 P.S.I. IN 72 HOURS, REINFORCED CONCRETE PAVEMENT	\$42.00	\$4,200.00	\$85.00	\$8,500.00	\$125.30	\$12,530.00	\$125.00	\$12,500.00
6	100	SY	REMOVE & REPLACE 8", 3600 P.S.I. IN 72 HOURS, REINFORCED CONCRETE DRIVE APPROACHES	\$48.00	\$4,800.00	\$86.25	\$8,625.00	\$125.30	\$12,530.00	\$140.00	\$14,000.00
7	150	SY	REMOVE & REPLACE 4", 3000 P.S.I. 28 DAYS REINFORCED CONCRETE SIDEWALK AND 8' to 10' Wide	\$40.00	\$6,000.00	\$47.50	\$7,125.00	\$99.21	\$14,881.50	\$80.00	\$12,000.00
8	25	EA	CONSTRUCT BARRIER FREE RAMP, 3000 P.S.I. 28 DAYS REINFORCED CONCRETE	\$1,800.00	\$45,000.00	\$700.00	\$17,500.00	\$1,315.00	\$32,875.00	\$2,400.00	\$60,000.00
9	500	SY	REMOVE 2" ASPHALT OVERLAY	\$15.00	\$7,500.00	\$4.25	\$2,125.00	\$27.78	\$13,890.00	\$30.00	\$15,000.00
10	10	EA	REMOVE & REPLACE INLET TOPS INCLUDING 6" OF EXISTING WALL, 6' TO 10' TOPS	\$2,500.00	\$25,000.00	\$3,000.00	\$30,000.00	\$5,000.00	\$50,000.00	\$7,000.00	\$70,000.00
11	1,000	SY	TURF ESTABLISHMENT SOLID SOD INCLUDING 2-INCH TOP SOIL	\$4.00	\$4,000.00	\$4.80	\$4,800.00	\$9.44	\$9,440.00	\$15.00	\$15,000.00
12	1	EA	TRAFFIC CONTROL THROUGHOUT THE PROJECT	\$20,000.00	\$20,000.00	\$1.00	\$1.00	\$35,000.00	\$35,000.00	\$90,000.00	\$90,000.00
Grand-Total Amount Base-Bid				\$657,030.00		\$792,426.00		\$1,361,539.50		\$1,459,000.00	
**** PROJECT CALENDAR DAYS: 365 ****											



RESOLUTION NO. 2016-107

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AWARDING A UNIT PRICE CONTRACT FOR THE ANNUAL CONCRETE REPAIR PROJECT TO JIM BOWMAN CONSTRUCTION COMPANY, LP AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City Administration sought and obtained bids for the 2016-2017 Annual Concrete Repair Project (Bid No. 17-01)(“the Project”) on a unit price basis; and

WHEREAS, the lowest bid was submitted by West Texas Rebar Placers, Inc., who subsequently withdrew their bid; and

WHEREAS, having determined that Jim Bowman Construction Company, LP has submitted the second lowest qualified unit price bid, City Administration recommends awarding a unit price contract for the Project to Jim Bowman Construction Company, LP; and,

WHEREAS, the City Council of the City of Farmers Branch, Texas finds it to be in the public interest to approve the recommendation of the City Administration.

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

SECTION 1. The City Manager is hereby authorized to sign, on behalf of the City, a unit price contract with Jim Bowman Construction Company LP for the 2016-2017 Annual Concrete Repair Project in accordance with unit prices submitted pursuant to Bid No. 17-01 with an initial term of one year and an option for two (2) renewal terms of one (1) year each. The City Manager is further authorized to exercise the optional term extensions if he deems it in the public interest and subject to availability of current funds to pay for same.

SECTION 2. This resolution shall be effective immediately upon final passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 15th DAY OF NOVEMBER 2016.

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:11/2/16:81080)