



# GARLAND

## **AGENDA**

### **CITY COUNCIL WORK SESSION**

**City of Garland**

**Duckworth Building, Goldie Locke Room**

**217 North Fifth Street**

**Garland, Texas**

**September 19, 2016**

**6:00 p.m.**

### **DEFINITIONS:**

**Written Briefing:** Items that generally do not require a presentation or discussion by the staff or Council. On these items the staff is seeking direction from the Council or providing information in a written format.

**Verbal Briefing:** These items do not require written background information or are an update on items previously discussed by the Council.

**Regular Item:** These items generally require discussion between the Council and staff, boards, commissions, or consultants. These items are often accompanied by a formal presentation followed by discussion.

**[Public comment will not be accepted during Work Session  
unless Council determines otherwise.]**

**NOTICE:** The City Council may recess from the open session and convene in a closed executive session if the discussion of any of the listed agenda items concerns one or more of the following matters:

(1) Pending/contemplated litigation, settlement offer(s), and matters concerning privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct. Sec. 551.071, Tex. Gov't Code.

(2) The purchase, exchange, lease or value of real property, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Sec. 551.072, Tex. Gov't Code.

(3) A contract for a prospective gift or donation to the City, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Sec. 551.073, Tex. Gov't Code.

(4) Personnel matters involving the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint against an officer or employee. Sec. 551.074, Tex. Gov't Code.

(5) The deployment, or specific occasions for implementation of security personnel or devices. Sec. 551.076, Tex. Gov't Code.

(6) Discussions or deliberations regarding commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay, or expand in or near the territory of the City and with which the City is conducting economic development negotiations; or to deliberate the offer of a financial or other incentive to a business prospect of the sort described in this provision. Sec. 551.087, Tex. Gov't Code.

(7) Discussions, deliberations, votes, or other final action on matters related to the City's competitive activity, including information that would, if disclosed, give advantage to competitors or prospective competitors and is reasonably related to one or more of the following categories of information:

- generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;
- bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;
- effective fuel and purchased power agreements and fuel transportation arrangements and contracts;
- risk management information, contracts, and strategies, including fuel hedging and storage;
- plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider; and
- customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies. Sec. 551.086; Tex. Gov't Code; Sec. 552.133, Tex. Gov't Code]

**1. Written Briefings:**

**a. Consider Advance Funding Agreement with Texas Department of Transportation**

*Council is requested to consider authorizing the City's execution of an updated "Local Project Advance Funding Agreement" (LPAFA), with the State of Texas, through the Texas Department of Transportation (TxDOT), for Federal Highway Administration funding participation for the Winters Park/Spring Creek Greenbelt trail. Unless otherwise directed by Council, this item will be scheduled for formal consideration at the September 20, 2016 Regular Meeting.*

**b. Amend Authorized Texpool Representatives**

*Council is requested to amend the authorized representatives that can perform and inquire on TexPool transactions. Unless otherwise directed by Council, this item will be scheduled for formal consideration at the October 4, 2016 Regular Meeting.*

**c. City Hall AV, Presentation, and Broadcast System Improvements**

*As AV, presentation, and broadcast system improvements began at the City Hall renovations, it was determined that changes and additions needed to be made to the original scope of work for PO 23632 for \$271,897.34. It represents a 33.6% increase to the original amount of \$271,897.34 which totals \$363,222.03. The project is funded from public, educational, government (PEG) funds that are restricted to Capital Improvements related to CGTV. Unless otherwise directed by Council, this item will be scheduled for formal consideration at the October 3, 2016 Regular Meeting.*

**2. Verbal Briefings:**

**a. Transportation Update**

*Staff will provide an update on the activity of the previous month regarding major transportation initiatives.*

**b. Tornado Recovery Update Related to Code Compliance and Building Inspection**

*Staff will provide a tornado recovery update related to Code Compliance and Building Inspection activity.*

**c. Garland Strong Update**

*Staff will provide an update on the #GarlandStrong tornado relief fundraising campaign and disbursement of those funds.*

**d. Audit Committee Report**

*Council Member Jim Cahill, Chair of the Internal Audit Committee will provide a committee report on the first three items and request a Council deliberation on the last item:*

- *Weaver Presentation - FY2016 Annual Audit*
- *Community Development Block Grant (CDBG) Audit Update*
- *FY/2017 Annual Audit Plan*
- *City Council Expense Audit*

**3. Regular Item:**

**a. City Center Development - Acquisition of Ground Level of Tract B**

*Council is requested to continue discussions from the September 6, 2016 Work Session regarding the final transactional agreements associated with Tract B of the City Center development, providing for the acquisition of the first level as office space for the Economic Development Department. The transactional agreements include the 1st Amendment to the Ground Lease, Reciprocal Easements and Operating Agreement, Purchase Agreement and Bill of Sale. Unless otherwise directed by Council, this item is scheduled for formal consideration at the September 20, 2016 Regular Meeting.*

**4. Consider the Consent Agenda**

*A member of the City Council may ask that an item on the consent agenda for the next regular meeting be pulled from the consent agenda and considered separate from the other consent agenda items. No substantive discussion of that item will take place at this time.*

**5. Announce Future Agenda Items**

*A member of the City Council, with a second by another member, or the Mayor alone, may ask that an item be placed on a future agenda of the City Council or a committee of the City Council. No substantive discussion of that item will take place at this time.*

**6. Council will move into Executive Session**

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**EXECUTIVE SESSION  
AGENDA**

**NOTICE:** The City Council may recess from the open session and convene in a closed executive session if the discussion of any of the listed agenda items concerns one or more of the following matters:

1. **Discussions or deliberations regarding commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay, or expand in or near the territory of the City and with which the City is conducting economic development negotiations; or to deliberate the offer of a financial or other incentive to a business prospect of the sort described in this provision. Sec. 551.087, TEX. GOV'T CODE.**
    - a. A commercial project proposed to be located in downtown Garland, near the general vicinity of Main Street and South Fifth Street
    - b. A manufacturing project proposed to be expanded in southwest Garland, near the general vicinity of South Shiloh Road and Forest Lane
  2. **The purchase, exchange, lease or value of real property, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Sec. 551.072, Text. Gov't Code.**
    - a. A parcel of real property located in central Garland, near the general vicinity of State Highway 66 and Centerville Road
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7. **Adjourn**



## **GARLAND POLICY REPORT**

### **City Council Work Session Agenda**

### **Work Session Item 1. a.**

**Meeting Date:** September 19, 2016

**Item Title:** Consider Advance Funding Agreement with Texas Department of Transportation

**Submitted By:** Jermel Stevenson, Managing Director

**Council Goal:** Sustainable Quality Development and Redevelopment

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### **ISSUE**

Staff is seeking Council consideration for authorizing the City's execution of an updated "Local Project Advance Funding Agreement" (LPAFA), with the State of Texas, through the Texas Department of Transportation (TxDOT), for Federal Highway Administration funding participation for the Winters Park/Spring Creek Greenbelt trail.

### **OPTIONS**

1. Council may follow staff's recommendation for authorizing the execution of the Local Transportation Project Advance Funding Agreement with TxDOT;
2. Return the item to staff for further review and discussion; or
3. Do not authorize execution of the Advance Funding Agreement and forfeit the Federal Highway Administration matching funds.

### **RECOMMENDATION**

Unless otherwise directed by Council, a resolution authorizing the City Manager to execute the Local Project Advance Funding Agreement with the State of Texas, through TxDOT, for construction of the Winters Park/Spring Creek Greenbelt trail, will be scheduled for formal consideration at the September 20 Regular Meeting.

### **BACKGROUND**

The agreement under consideration is an update to the current executed agreement for this project. The new agreement reflects the current estimated project budget, and procedural language updates for use of Federal Highway Administration funding. The Winters Park/Spring Creek Greenbelt project includes cost participation by FHWA through its Congestion Mitigation and Air Quality program (CMAQ), locally administered by TxDOT. The project includes approximately 1.6 miles of 12-ft width concrete trail along the north and south bank of Spring Creek Greenbelt; extending from Brand Road into Winters Park, and along the north bank of Spring Creek between North Garland Avenue and Ranger Drive. The project is preparing for a final construction document review by TxDOT. The final submission phase includes this update of the Advance Funding Agreement for the current total estimated project costs. The project estimated budget of \$2,293,799.00 includes design related fees, TxDOT administrative

fees, and construction cost. The City's local government cost participation is estimated at \$928,659.00, approximately 40 percent of the project budget. The Texas Transportation Commission has recently acted on the total estimated project budget. The City's local government cost participation is included in the approved 2016 Park Capital Improvements Program, Project 18209/18333 Trail Development which includes \$1,716,000 in park bond funds allocated for this project's local match.

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**Attachments**

TxDOT ADV FUND AGREEMENT  
RESO-draft-TxDOT ADV FUND AGRMT  
MAP-WINTERS-SPRING CREEK

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CSJ #: 0918-45-714  
District #: 18 - Dallas  
Code Chart 64 #: 15800  
Project: Winters Park/Spring Creek Greenbelt  
Limits: From Brand Road to Ranger Drive  
Federal Highway Administration  
CFDA Title: Highway Planning and Construction  
CFDA No.: 20.205  
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENT**

**For A**

**Congestion Mitigation and Air Quality Improvement Program Project  
(Off-System)**

**THIS Local Project Advance Funding Agreement (LPAFA)** is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the "State", and the City of Garland, acting by and through its duly authorized officials, called the "Local Government."

**WITNESSETH**

**WHEREAS**, the State and the Local Government executed an Advance Funding Agreement on February 23, 2006 to effectuate their agreement to construct a new 12-foot wide Hike/Bike and Pedestrian Trail through existing greenbelt of Winters Park/Spring Creek Greenbelt from Brand Road to Ranger Drive in the City of Garland; and,

**WHEREAS**, it has become necessary to terminate that February 23, 2006 Advance Funding Agreement and replace it with this Advance Funding Agreement; and,

**WHEREAS**, a Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA; and,

**WHEREAS**, the Texas Transportation Commission passed Minute Order Number 114417 that provides for the development of, and funding for, the Project described herein; and,

**WHEREAS**, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated \_\_\_\_\_, 20\_\_, which is attached to and made a part of this agreement as Attachment A for the development of the Project. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

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District #: 18 - Dallas  
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## **AGREEMENT**

### **1. Period of the Agreement**

The period of this LPAFA is as stated in the Master Agreement, without exception.

### **2. Termination of this LPAFA**

Termination of this LPAFA shall be under the conditions as stated in the Master Agreement. This LPAFA may be terminated by the State if the Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds.

### **3. Amendments**

Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.

### **4. Scope of Work**

The scope of work for this LPAFA is described as the construction of a new 12-foot wide Hike/Bike and Pedestrian Trail through existing greenbelt of Winters Park/Spring Creek Greenbelt from Brand Road to Ranger Drive in the City of Garland.

### **5. Right of Way and Real Property**

Right of way and real property shall be the responsibility of the Local Government as stated in the Master Agreement, without exception.

### **6. Utilities**

Adjustment of utilities will be provided by the Local Government as required and as stated in the Master Agreement, without exception.

### **7. Environmental Assessment and Mitigation**

Environmental assessment and mitigation will be carried out by the State as stated in the Master Agreement. Additionally, before the advertisement for bids, the State shall provide to the Local Government written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

### **8. Compliance with Texas Accessibility Standards and ADA**

Compliance with Texas Accessibility Standards and the Americans with Disabilities Act (ADA) will be as stated in the Master Agreement, without exception.

### **9. Architectural and Engineering Services**

Architectural and engineering services will be provided by the Local Government as stated in the Master Agreement. The Local Government is responsible for performance of any required

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architectural or preliminary engineering work. For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the state highway system, the design shall, at a minimum, conform to applicable *American Association of State Highway and Transportation Officials* design standards. The State may review and comment on the work as required to accomplish the public purposes of the State. The Local Government will cooperate fully with the State in accomplishing these local public purposes to the degree permitted by State and Federal law.

#### **10. Construction Responsibilities**

Construction responsibilities will be carried out by the Local Government as stated in the Master Agreement.

#### **11. Project Maintenance**

Project maintenance will be undertaken as provided for in the Master Agreement, without exception.

#### **12. Local Project Sources and Uses of Funds**

- A.** A Project Budget Estimate is provided in Attachment C. The State and the Federal Government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for one hundred percent (100%) of the cost of any work performed under its direction or control before the Federal spending authority is formally obligated.
- B.** If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures and Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- C.** A Source of Funds estimate based on the Transportation Improvement Program (TIP) is also provided in Attachment C. Attachment C shows the percentage and estimated dollar amount to be contributed to the project by federal, state, and local sources. The parties agree that the LPAFA may be amended from time to time as required to meet the funding commitments based on revisions to the TIP, Federal Project Authorization and Agreement (FPAA), or other federal document.

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- D.** The Local Government is responsible for all non-federal and non-state funding, unless otherwise provided for in this agreement or through amendment of this agreement. Where Special Approval has been granted by the State, the Local Government shall only in that instance be responsible for overruns in excess of the amount to be paid by the Local Government.
- E.** Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering for the project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs.
- F.** Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation." The check or warrant shall be deposited by the State and managed by the State. Funds may only be applied by the State to the Project. If after final Project accounting any excess funds remain, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.
- G.** If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.
- H.** When Special Approval has been granted by the State so that the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification of those amounts.
- I.** The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Any entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- J.** Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.

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**K.** The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

### **13. Document and Information Exchange**

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

### **14. Incorporation of Master Agreement Provisions**

This LPAFA incorporates all of the governing provisions of the Master Agreement in effect on the date of final execution of this LPAFA, unless an exception has been made in this agreement.

### **15. Insurance**

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

### **16. Debarment Certification**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

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**17. Cost Principles and Office of Management and Budget (OMB) Audit Requirements**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

**18. Notices**

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	State:
Director Parks and Recreation Department 634 Apollo Road Garland, Texas 75040	Director of Contract Services Texas Department of Transportation 125 E. 11 <sup>th</sup> Street Austin, Texas 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

**19. Civil Rights Compliance**

- A. Compliance with Regulations: The Local Government will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 45 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Local Government of the Local Government's obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government shall provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit

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access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance:** In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this contract, the State will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

  - a. withholding of payments to the Local Government under the contract until the Local Government complies and/or
  - b. cancellation, termination, or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions:** The Local Government will include the provisions of paragraphs (A) through (E) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event an Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Local Government may request the Texas Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

## **20. Disadvantaged Business Enterprise (DBE) Program Requirements**

- A.** The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B.** The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C.** The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D.** The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address [http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou\\_attachments.pdf](http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf).
- E.** The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted

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contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

## **21. Federal Funding Accountability and Transparency Act Requirements**

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>
- B. The Local Government agrees that it shall:
1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
  2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
  3. Report the total compensation and names of its top five (5) executives to the State if:
    - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
    - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

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Not Research and Development

## 22. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR 200.
- B. If threshold expenditures are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://www.txdot.gov/inside-txdot/office/audit/contact.html>. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://www.txdot.gov/inside-txdot/office/audit/contact.html>.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$\_\_\_\_\_ expenditure threshold and therefore, are not required to have a single audit performed for FY \_\_\_\_\_."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

## 23. Non-Discrimination Provisions

- A. Relocation Assistance: The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects.
- B. Disability:
  - a. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. Seq.), as amended, prohibits discrimination on the basis of disability; and 49 CFR Part 27.
  - b. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by the Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- C. Age: The Age Discrimination Act of 1974, as amended, (42 U.S.C. § 6101 et. Seq.), prohibits discrimination on the basis of age.
- D. Race, Creed, Color, National Origin, or Sex:
  - a. The Airport and Airway Improvement Act of 1982 (49 U.S.C. § 4.71, Section 4.7123), as amended, prohibits discrimination based on race, creed, color, national origin, or sex.
  - b. The Federal Aviation Administration's Nondiscrimination state (4 U.S.C. § 47123) prohibits discrimination on the basis of race, color, national origin, and sex.

CSJ #: 0918-45-714  
District #: 18 - Dallas  
Code Chart 64 #: 15800  
Project: Winters Park/Spring Creek Greenbelt  
Limits: From Brand Road to Ranger Drive  
Federal Highway Administration  
CFDA Title: Highway Planning and Construction  
CFDA No.: 20.205  
Not Research and Development

- c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et. seq.), prohibits discrimination on the basis of sex.
- d. Title IX of the Education Amendments of 1972, as amended, prohibits discrimination because of sex in education program or activities (20 U.S.C. 1681 et. seq.).
- E. Civil Rights Restoration Act: The Civil Rights Restoration Act of 1987 (PL 100-209), Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs and activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not.
- F. Minority Populations: Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority and low-income populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- G. Limited English Proficiency: Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the Engineer must take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100).

#### 24. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

**THIS AGREEMENT IS EXECUTED** by the State and the Local Government in duplicate.

**THE LOCAL GOVERNMENT – CITY OF GARLAND**

**THE STATE OF TEXAS**

By: \_\_\_\_\_  
Bryan Bradford  
City Manager

By: \_\_\_\_\_  
Kenneth Stewart  
Director of Contract Services  
Texas Department of Transportation

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

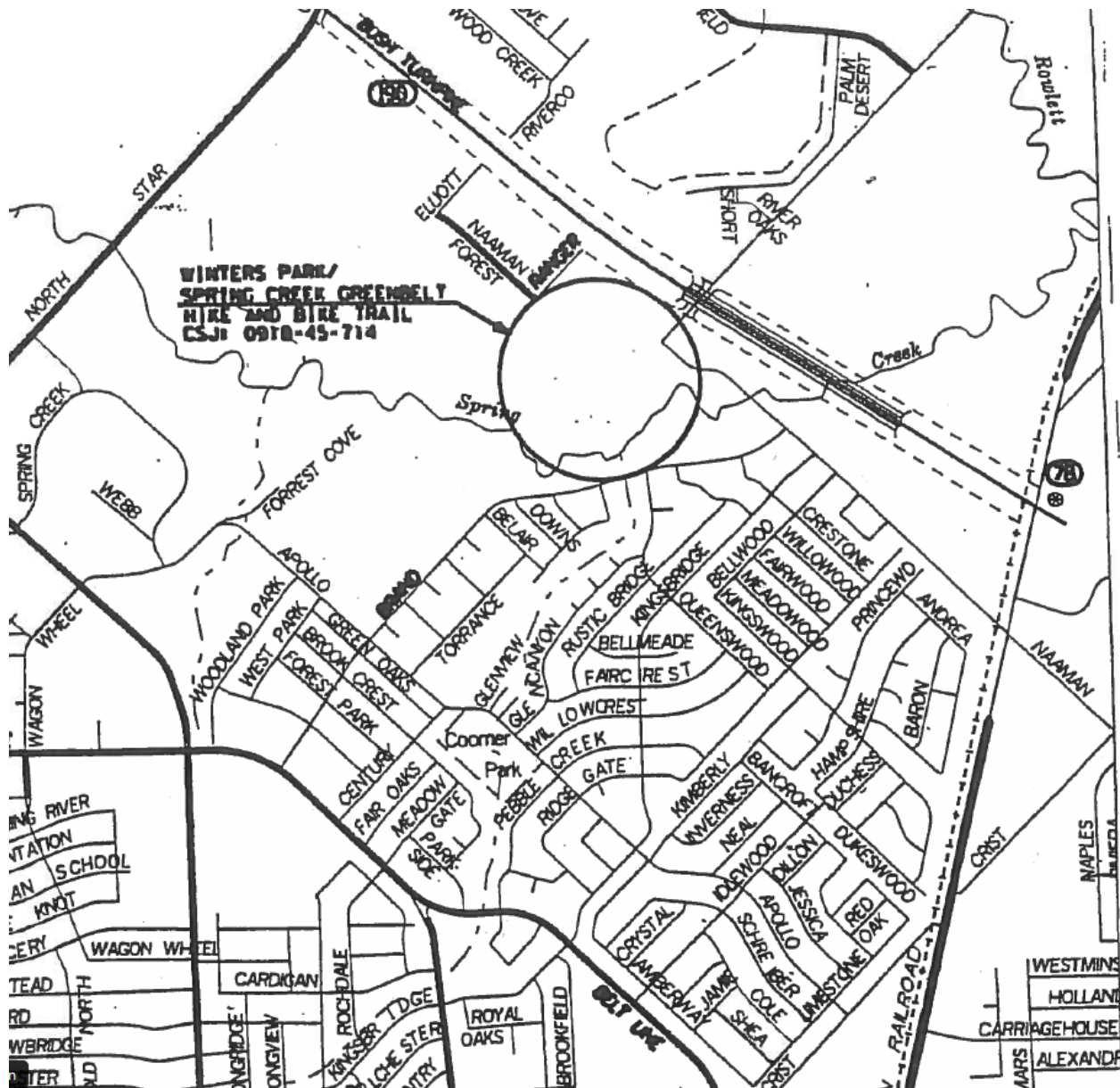
Date: \_\_\_\_\_

CSJ #: 0918-45-714  
District #: 18 - Dallas  
Code Chart 64 #: 15800  
Project: Winters Park/Spring Creek Greenbelt  
Limits: From Brand Road to Ranger Drive  
Federal Highway Administration  
CFDA Title: Highway Planning and Construction  
CFDA No.: 20.205  
Not Research and Development

**ATTACHMENT A**  
**RESOLUTION OR ORDINANCE**

CSJ #: 0918-45-714  
 District #: 18 - Dallas  
 Code Chart 64 #: 15800  
 Project: Winters Park/Spring Creek Greenbelt  
 Limits: From Brand Road to Ranger Drive  
 Federal Highway Administration  
 CFDA Title: Highway Planning and Construction  
 CFDA No.: 20.205  
 Not Research and Development

## ATTACHMENT B PROJECT LOCATION



CSJ #: 0918-45-714  
 District #: 18 - Dallas  
 Code Chart 64 #: 15800  
 Project: Winters Park/Spring Creek Greenbelt  
 Limits: From Brand Road to Ranger Drive  
 Federal Highway Administration  
 CFDA Title: Highway Planning and Construction  
 CFDA No.: 20.205  
 Not Research and Development

## ATTACHMENT C

### PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS

Costs will be allocated based on 80% Federal Funding and 20% Local Funding until the Federal Funding reaches the maximum obligated amount. The Local Government will then be responsible for 100% of the costs.

The Project cost is to be as follows:

ENGINEERING ACTIVITIES							
DESCRIPTION	TOTAL ESTIMATED COST	FEDERAL PARTICIPATION		STATE PARTICIPATION		LOCAL PARTICIPATION	
		%	Cost	%	Cost	%	Cost
Environmental (by State)	\$100,000.00	80%	\$80,000.00	0%	\$0.00	20%	\$20,000.00
Preliminary Engineering (by Local)	\$140,864.00	80%	\$112,691.00	0%	\$0.00	20%	\$28,173.00
Direct State Cost – State Review	\$11,460.00	80%	\$9,168.00	0%	\$0.00	20%	\$2,292.00
Direct State Cost – Environmental	\$100.00	80%	\$80.00	0%	\$0.00	20%	\$20.00
Direct State Cost – Right of Way	\$100.00	80%	\$80.00	0%	\$0.00	20%	\$20.00
Direct State Cost – Utilities	\$100.00	80%	\$80.00	0%	\$0.00	20%	\$20.00
<b>TOTAL</b>	<b>\$252,624.00</b>		<b>\$202,099.00</b>		<b>\$0.00</b>		<b>\$50,525.00</b>
CONSTRUCTION ACTIVITIES							
Construction (by Local)							
Cat.5	\$1,306,008.00	80%	\$1,044,806.00	0%	\$0.00	20%	\$261,202.00
Local	\$547,202.00	0%	\$0.00	0%	\$0.00	100%	\$547,202.00
<b>SUBTOTAL</b>	<b>\$1,853,210.00</b>		<b>\$1,044,806.00</b>		<b>\$0.00</b>		<b>\$808,404.00</b>
Direct State Cost – State Inspection							
Local	\$69,730.00	0%	\$0.00	0%	\$0.00	100%	\$69,730.00
Indirect State Cost @ 6.38%	\$ 118,234.80	0%	\$0.00	100%	\$118,234.80	0%	\$0.00
<b>TOTAL (Construction Activities)</b>	<b>\$2,041,174.80</b>		<b>\$1,044,806.00</b>		<b>\$118,234.80</b>		<b>\$878,134.00</b>
<b>TOTAL (Engr. and Const. Activities)</b>	<b>\$2,293,798.80</b>		<b>\$1,246,905.00</b>		<b>\$118,234.80</b>		<b>\$928,659.00</b>

The total estimated the Local Government participation = \$928,659.00

Initial payment for State Engineering cost (\$20,000) and Engineering Review (\$2,352) – the Local Government paid \$22,352.00 on 07/03/2006 to the State

Second payment for Construction Inspection – the Local Government paid \$69,730.00 on 11/12/2015 to the State

Total Payment by the Local Government to the State on full execution of this Agreement = \$0

This is an estimate. The final amount of the Local Government participation will be based on actual costs.

RESOLUTION NO.

*draft*

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE STATE OF TEXAS, BY AND THROUGH THE STATE DEPARTMENT OF TRANSPORTATION, CONCERNING A TRAIL DEVELOPMENT MATCHING FUND; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:

**Section 1**

That the City Manager is hereby authorized to execute an agreement with the State of Texas, by and through the State Department of Transportation, concerning a Local Project Advance Funding Agreement for matching funds for a trail project, the Winters Park/Spring Creek Greenbelt Trail, a copy of which agreement is attached hereto as Exhibit A.

**Section 2**

That this Resolution shall be and become effective immediately upon and after its adoption and approval.

PASSED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF GARLAND, TEXAS

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Mayor

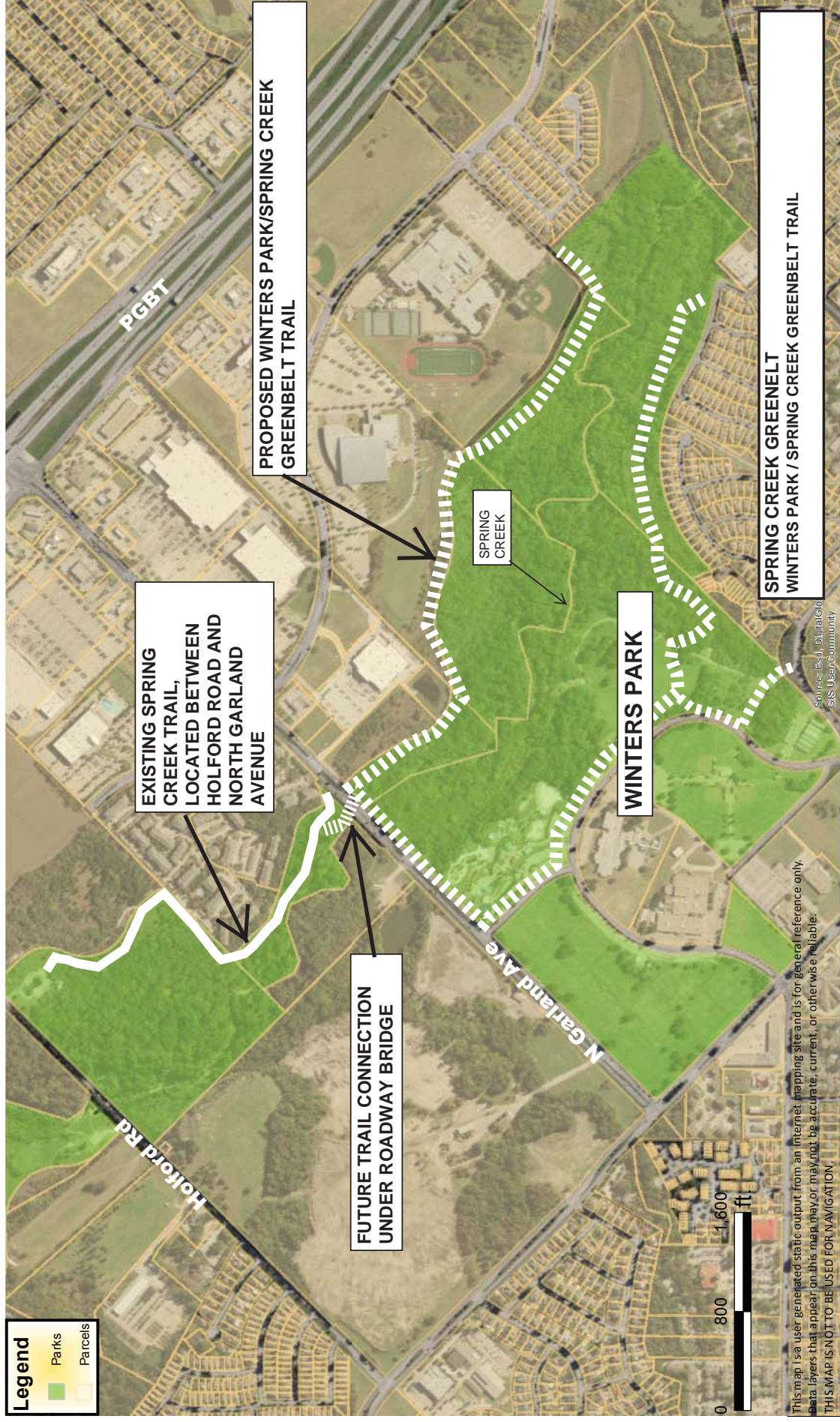
ATTEST:

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City Secretary



## COGMAP





## **GARLAND POLICY REPORT**

### **City Council Work Session Agenda**

### **Work Session Item 1. b.**

**Meeting Date:** September 19, 2016

**Item Title:** Amend Authorized Texpool Representatives

**Submitted By:** Steve Anderson, Investment and Debt Administrator

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#### **ISSUE**

Amend authorized representatives that can perform and inquire on TexPool transactions.

#### **OPTIONS**

1. Approve Resolution amending authorized TexPool Representatives.
2. Do not approve the Resolution and continue with two authorized TexPool Representatives.

#### **RECOMMENDATION**

Amend the authorized TexPool representatives by resolution at the regular meeting on October 3, 2016. Unless otherwise directed by Council, this item will be scheduled for formal consideration at the October 3, 2016 Regular Meeting.

#### **BACKGROUND**

TexPool is a state-wide investment pool available to Texas cities and other public entities. TexPool is an investment option allowed by the Public Funds Investment Act (Chapter 2256, Tx. Govt. Code) that provides security, liquidity and efficiency for the management of public funds. TexPool is operated by the Comptroller of Public Accounts and administered by Federated Investors. The City of Garland has participated in the TexPool investment pool since January, 1992. Currently Steve Anderson, Investment and Debt Director and Kathryn Ritchie, Accounting Administrator are the only two employees that are authorized TexPool representatives. Staff requests that Matt Watson, Finance Director be added as an authorized representative.

#### **CONSIDERATION**

Each entity that participates in the TexPool investment pool must appoint authorized representatives. Only authorized representatives have the ability to conduct transactions with TexPool. For security purposes, TexPool requires the governing body approve a resolution to amend existing authorized representatives. Due to staff changes, Financial Services is requesting that authorized representatives to TexPool be amended.

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## Attachments

TexPool Resolution

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**RESOLUTION NO.**

**A RESOLUTION AMENDING THE AUTHORIZED REPRESENTATIVES FOR PURPOSES OF PARTICIPATION IN THE TEXAS LOCAL GOVERNMENT INVESTMENT POOL; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the City of Garland, Texas is a home-rule municipality that is authorized under the Texas Public Funds Investment Act, Chapter 2256 of the Texas Government Code, to delegate to a public funds investment pool the authority to invest and to act as custodian of investments purchased with local investment funds; and

**WHEREAS,** the Texas Local Government Investment Pool and TexPool Prime(collectively referred to herein as "TexPool Investment Pools"), are public funds investment pools created under the authority of the Texas Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, and the Texas Public Funds Investment Act; and

**WHEREAS,** the City of Garland, Texas has invested funds in TexPool Investment Pools by having previously entered into a Participation Agreement delegating to TexPool Investment Pools the authority to invest and to act as custodian of investments purchased with local investment funds in accordance with the instructions of the authorized representatives of the City of Garland, Texas; and

**WHEREAS,** the City of Garland, Texas wishes to amend the previously established list of authorized representatives who may take actions under the Participation Agreement on behalf of the City of Garland, Texas.

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

**Section 1**

That the individuals whose signatures appear below are authorized representatives of the City of Garland, Texas and are each hereby authorized to transmit funds for investment in TexPool Investment Pools and are each further authorized to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of local funds:

1. Name:	Matt Watson
Title:	Director of Financial Services
Phone/Fax:	(972)205-2355/(972)205-2810
Email:	mwatson@garlandtx.gov

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Signature  
2. Name: Steve Anderson  
Title: Investment and Debt Director  
Phone/Fax: (972)205-2469/(972)205-2810  
Email: sanderson@garlandtx.gov

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Signature

3. Name: Kathryn Ritchie  
Title: Accounting Administrator  
Phone/Fax: (972)205-2367/(972)205-2810  
Email: kritchier@garlandtx.gov

---

Signature

## **Section 2**

That Steve Anderson will have primary responsibility for performing transactions and receiving confirmations and monthly statements under the Participation Agreement.

## **Section 3**

That this Resolution and its authorization shall remain in full force and effect until amended or revoked by the City of Garland, Texas, and until TexPool Investment Pools receives a copy of any such amendment or revocation.

## **Section 4**

That this Resolution shall be and become effective immediately upon and after its adoption and approval.

**PASSED AND APPROVED** this the \_\_\_\_ of \_\_\_\_\_, 2016.

**CITY OF GARLAND, TEXAS**

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Mayor

**ATTEST:**

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City Secretary



## **GARLAND POLICY REPORT**

### **City Council Work Session Agenda**

### **Work Session Item 1. c.**

**Meeting Date:** September 19, 2016

**Item Title:** City Hall AV, Presentation, and Broadcast System Improvements

**Submitted By:** Dorothy White, Public & Media Relations Director

**Council Goal:** Fully Informed and Engaged Citizenry

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### **ISSUE**

As AV, presentation, and broadcast system improvements began at the City Hall renovations, it was determined that changes and additions needed to be made to the original scope of work for PO 23632 for \$271,897.34. It represents a 33.6% increase to the original amount of \$271,897.34 which totals \$363,222.03. The project is funded from public, educational, government (PEG) funds that are restricted to Capital Improvements related to CGTV.

### **RECOMMENDATION**

Approve the change order in the amount of \$91,324.69 to PO 23632. Unless otherwise directed by Council, this item will be scheduled for formal consideration at the October 3, 2016 Regular Meeting.

### **BACKGROUND**

1. This project has two vendors. Videotex and Unicom Government, Inc. Both are U.S. Communities or BuyBoard vendors for the amount of \$462,155.19.
2. After the initial award was granted, it was determined that additional work was needed outside the original scope of work, such as additional video and audio distribution and monitoring for the lobby, work session room and Council chamber; redesign and rebuilding of the electrical design for the CGTV area; conversion from analog to HD for the media network. Some of these design changes were found as demolition of existing infrastructure occurred. This change order encompasses \$51,459.68 which is needed for additional design, purchase of needed additional equipment and installation.
3. Another \$39,865 is needed for new infrastructure improvements in the Work Session room and for refurbishment of the rear of the Council Dais. The removal and demolition of old infrastructure was more extensive than anticipated, prompting the replacement of certain components.
4. This change order will be executed by Videotex Systems, Inc., of Garland, Texas.
5. Funding for these improvements come from the City PEG fund, which can only be used for capital improvements to CGTV infrastructure and do not come from tax revenues. PEG funds are collected by the cable providers operating in Garland.





**GARLAND  
CITY COUNCIL ITEM SUMMARY SHEET**

**City Council Work Session Agenda**

**Work Session Item 2. a.**

**Meeting Date:** September 19, 2016

**Item Title:** Transportation Update

**Submitted By:** Paul Luedtke, Transportation Director

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**Summary of Request/Problem**

Staff will provide an update on the activity of the previous month regarding major transportation initiatives.

**Recommendation/Action Requested and Justification**

Council has requested monthly updates on major transportation initiatives.

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**Attachments**

Transportation Update September 2016

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# Transportation Update

September 19, 2016

# Transportation Update

- ◇ Current Project
- ◇ Engineering Status
- ◇ Other Activities
- ◇ Formula Allocation of New State Funding

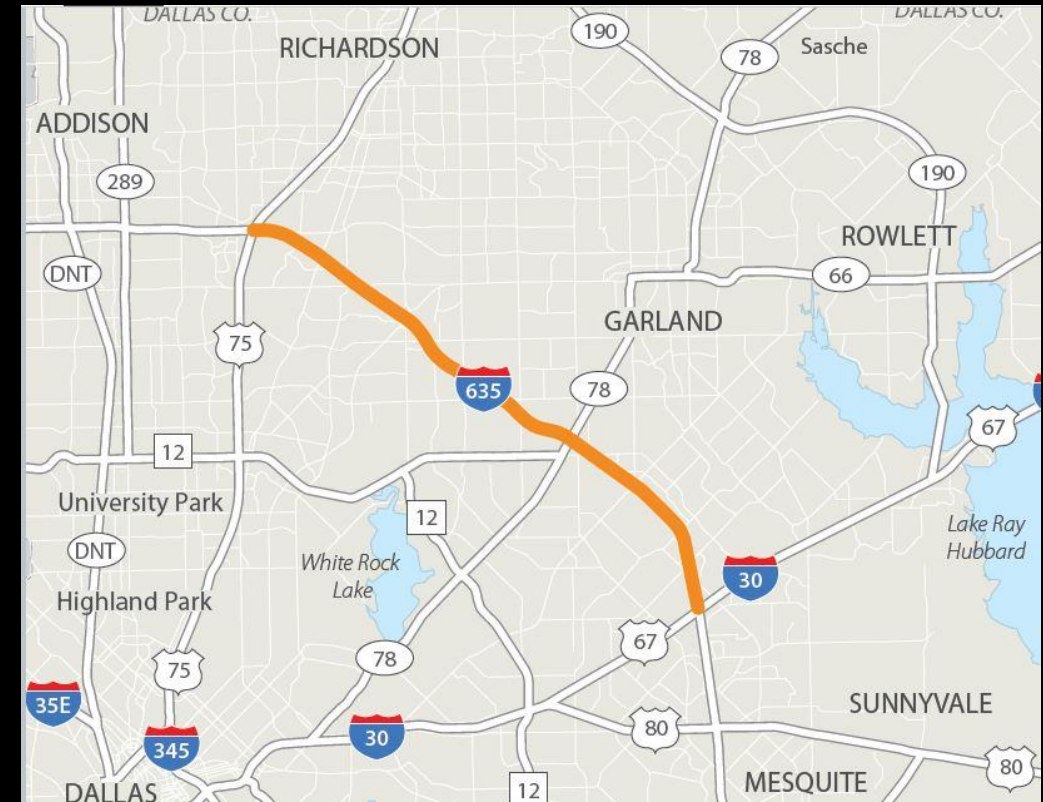
# IH 635 East – Current Project

- ◆ Current Projects
  - ◆ Sound Wall
    - ◆ Completion by December
  - ◆ HOV/Express Lane
    - ◆ Express Opening October



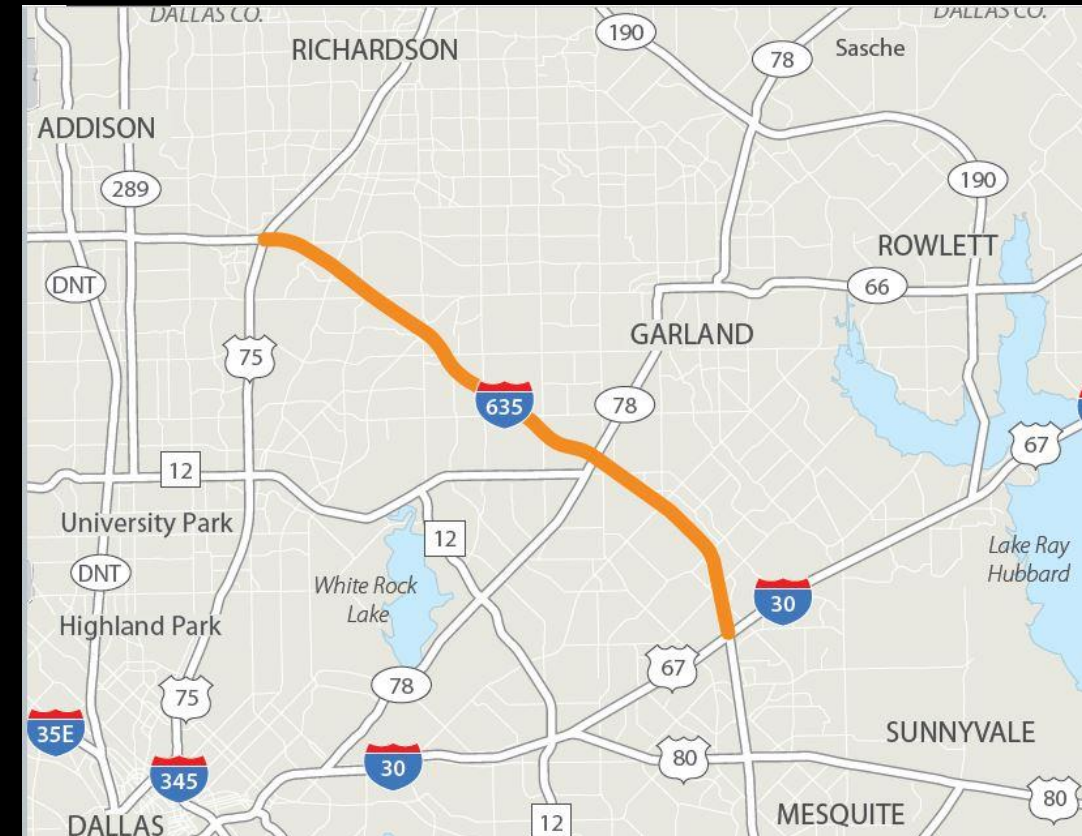
# IH 635 East – Engineering Status

- ◆ Ultimate Project
  - ◆ Still Number 1
  - ◆ TxDOT Activity
    - ◆ Construction Plans – October
    - ◆ Traffic and Revenue study – October
    - ◆ Public Hearing – November
    - ◆ Environmental - December
    - ◆ Construction 2018



# IH 635 East – Other Activities

- ◆ Legislative Efforts
  - ◆ Committee Hearings
  - ◆ DRMC – Cindy Burkett
  
- ◆ Next Month – Kelly Selman and Michael Morris



# Formula Allocation of State Funds

- ◆ Funding Shortfall in early 2000's
- ◆ DFW Region decided to greatly expand tolling
- ◆ Legislature and TTC support
- ◆ Promise “The more you choose local sources of funds, whether that's local taxes or local tolls, the more money will be invested in your community....You will not be penalized for being aggressive with local funding.”
- ◆ New money uncertain – Prop 1 & 7
- ◆ TTC voted to maintain formula allocation for new funding

# Presentation by Senator Nichols

- ◆ The following slides are a presentation that Senator Nichols – Chair of the Senate Transportation Committee – has been making during the past few months
- ◆ These are provided only for informational purposes

# Tax Roads vs. Toll Roads

Sen. Robert Nichols



# Toll Tags Issued in Texas

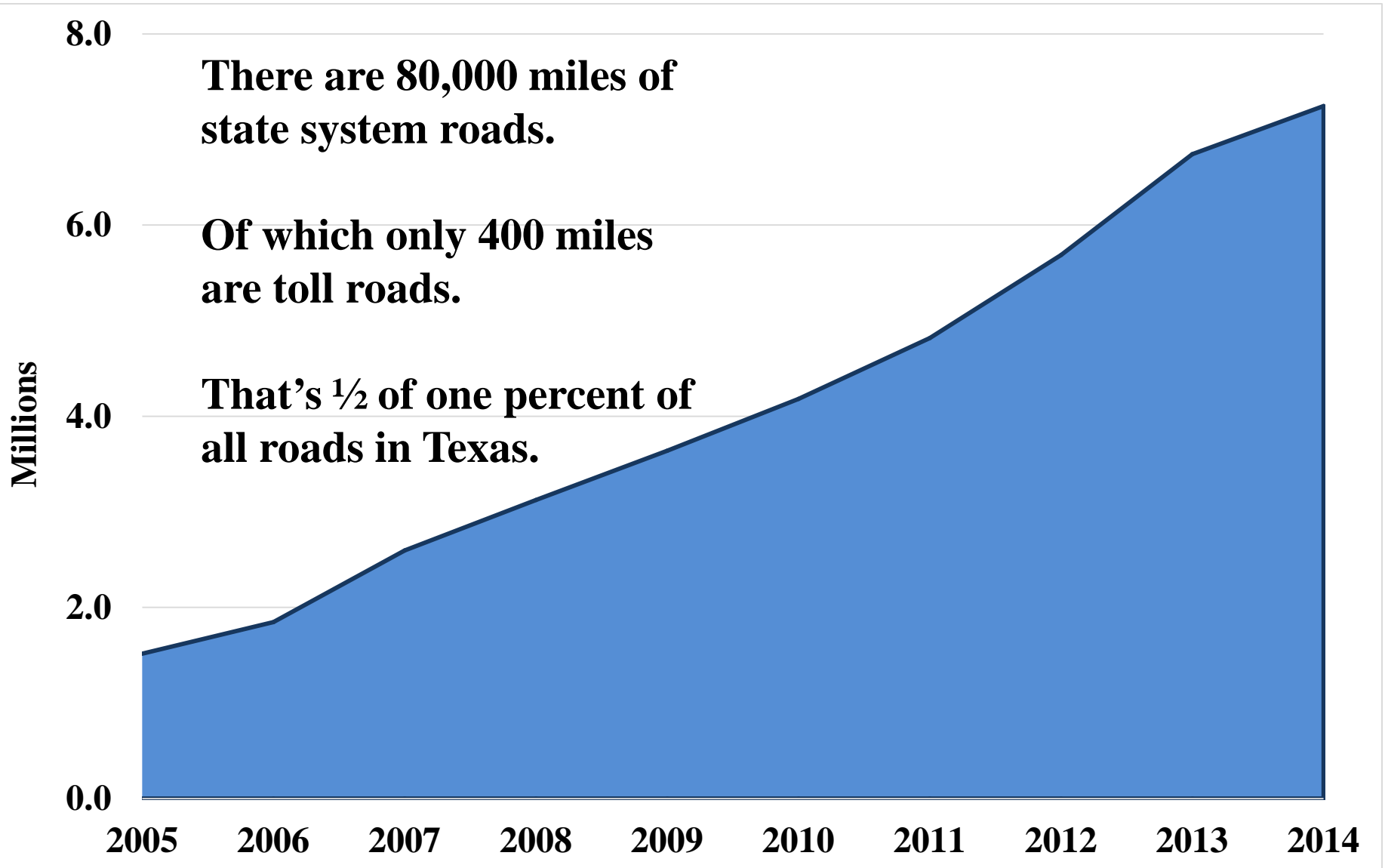
6.7 million as of 2014

40% of All Passenger Cars

There are 80,000 miles of  
state system roads.

Of which only 400 miles  
are toll roads.

That's  $\frac{1}{2}$  of one percent of  
all roads in Texas.

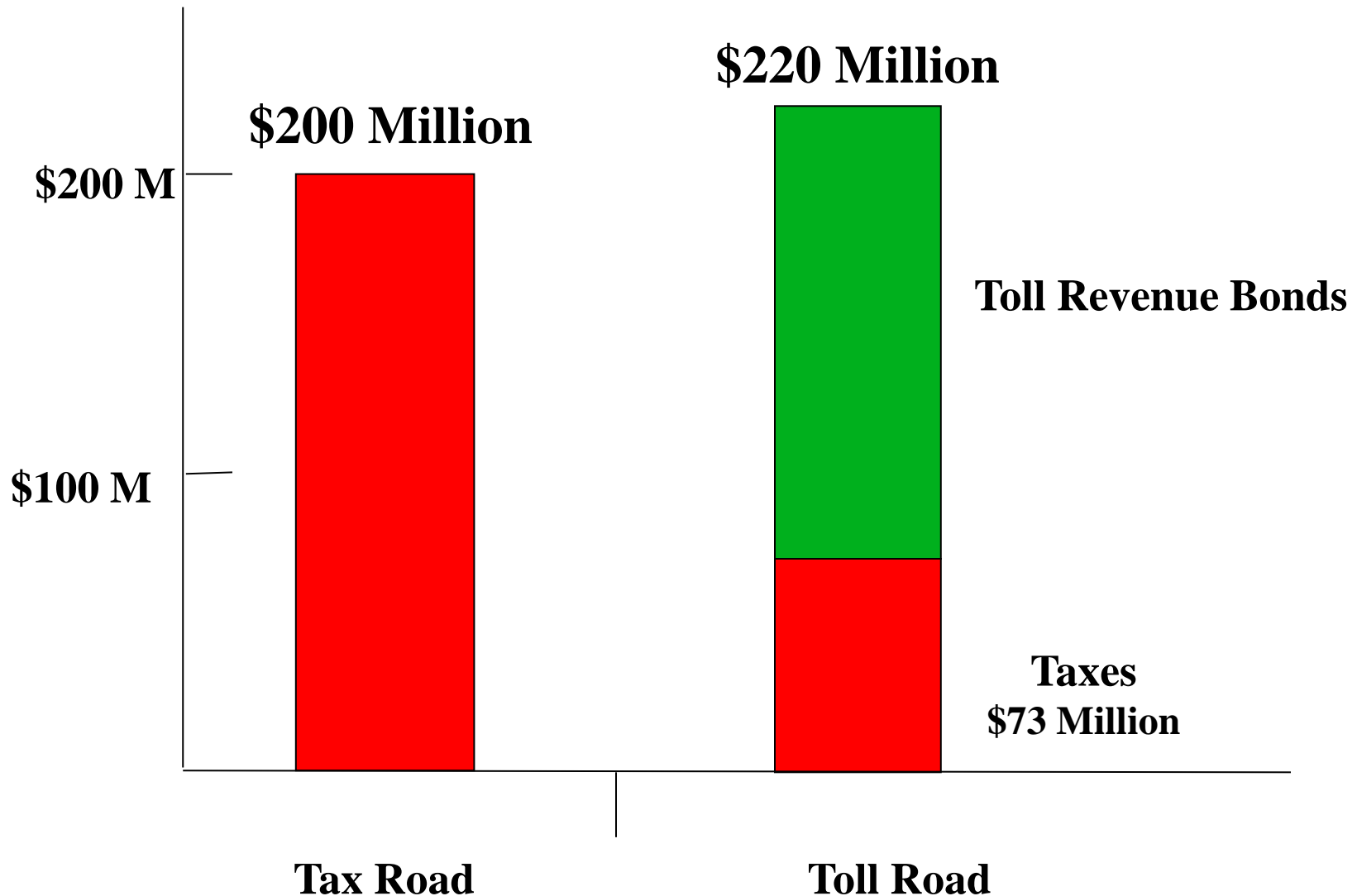


# **Construction Assumptions:**

- **New 20-mile corridor**
  - **4-lane (2 lanes in each direction)**
  - **Capital cost = \$2,500,000/lane mile**
- Totals: \$200 Million**
- 

- **Taxes pay 33% of construction**
- **Toll equipment cost 10% additional over tax road**

# Construction Costs



# **Preservation Assumptions:**

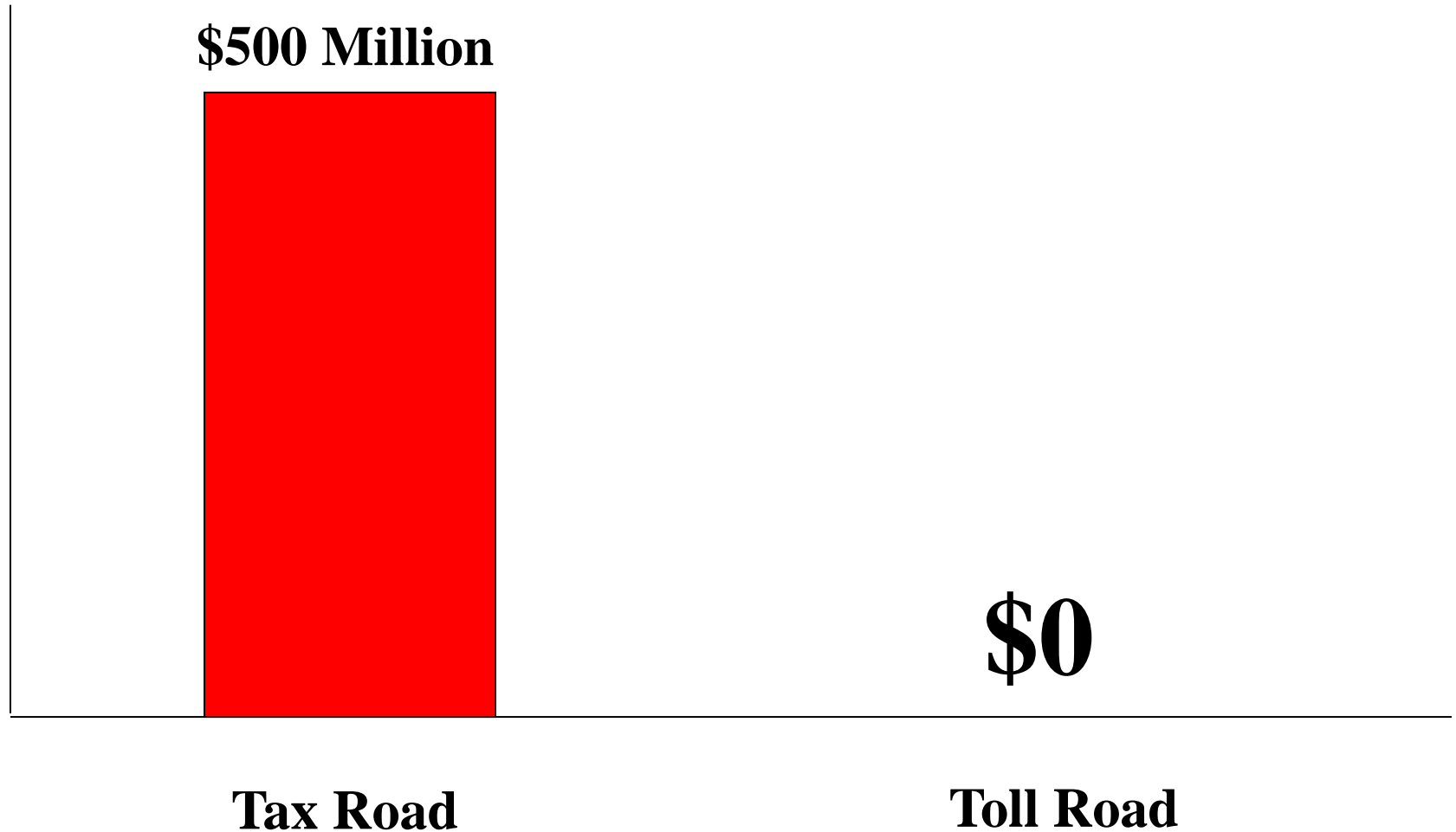
- **Overlay cost = \$158,000/lane mile**
  - **Rehabilitation cost = \$519,000/lane mile**
  - **Overlay cycle = 7 years**
  - **Rehab cycle = 20 years**
  - **Review period = 40 years**
  - **Annual inflation rate = 4%**
- 
- **Toll pays 100% of maintenance**

# Preservation Costs (Includes 4% Annual Inflation)

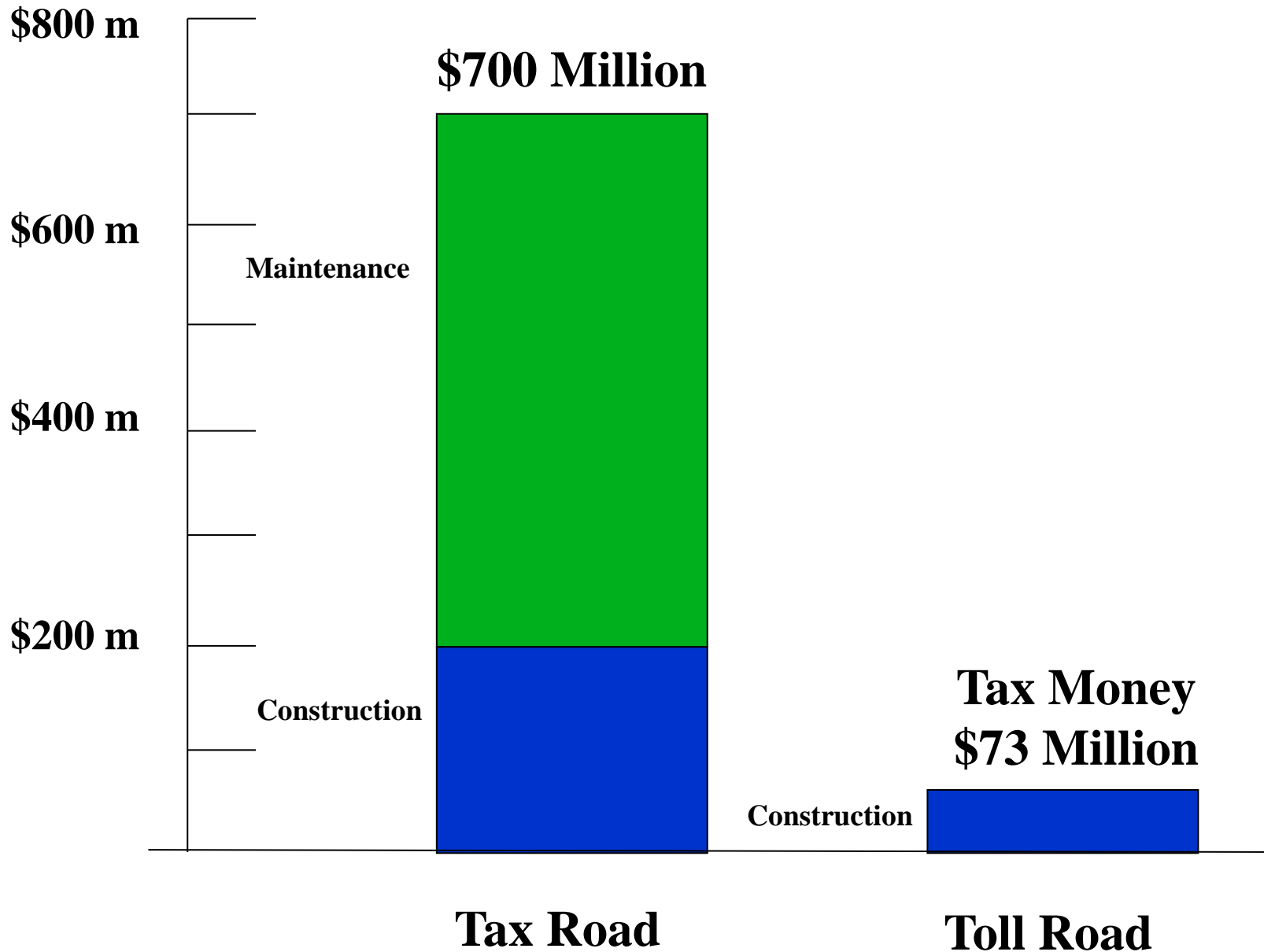
<u>Year</u>	<u>Maintenance</u>
1	-
2	\$880,000
3	\$915,200
4	\$951,808
5	\$989,880
6	\$1,029,476
7	\$17,064,287
8	\$1,113,481
9	\$1,158,020
10	\$1,204,341
11	\$1,252,514
12	\$1,302,615
13	\$1,354,720
14	\$22,455,437
15	\$1,465,265
16	\$1,523,875
17	\$1,584,830
18	\$1,648,223
19	\$1,714,152
20	\$85,894,620

<u>Year</u>	<u>Maintenance</u>
21	\$29,549,824
22	\$1,928,188
23	\$2,005,316
24	\$2,085,529
25	\$2,168,950
26	\$2,255,708
27	\$2,345,936
28	\$38,885,552
29	\$ 2,537,364
30	\$2,638,859
31	\$2,744,413
32	\$2,854,190
33	\$2,968,357
34	\$3,087,092
35	\$47,960,159
36	\$3,338,998
37	\$3,472,558
38	\$3,611,461
39	\$3,755,919
40	\$188,205,690
<b>Total</b>	<b>\$499,031,790</b>

# Taxpayer Cost for Preservation (40 Years)



# Total Taxpayer Cost (40 Years)



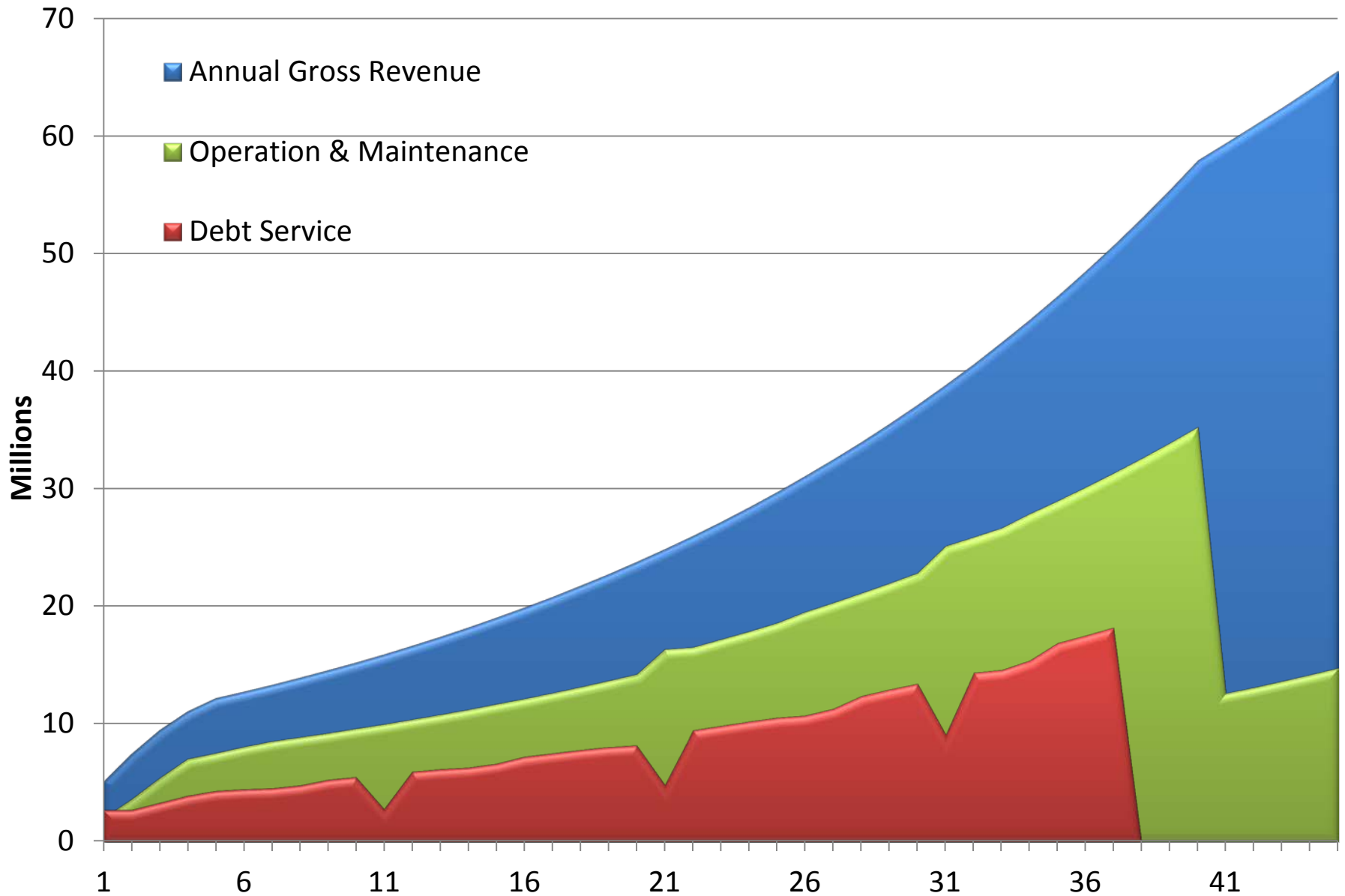
# EXAMPLE CORRIDOR

## PRELIMINARY REVENUE ANALYSIS

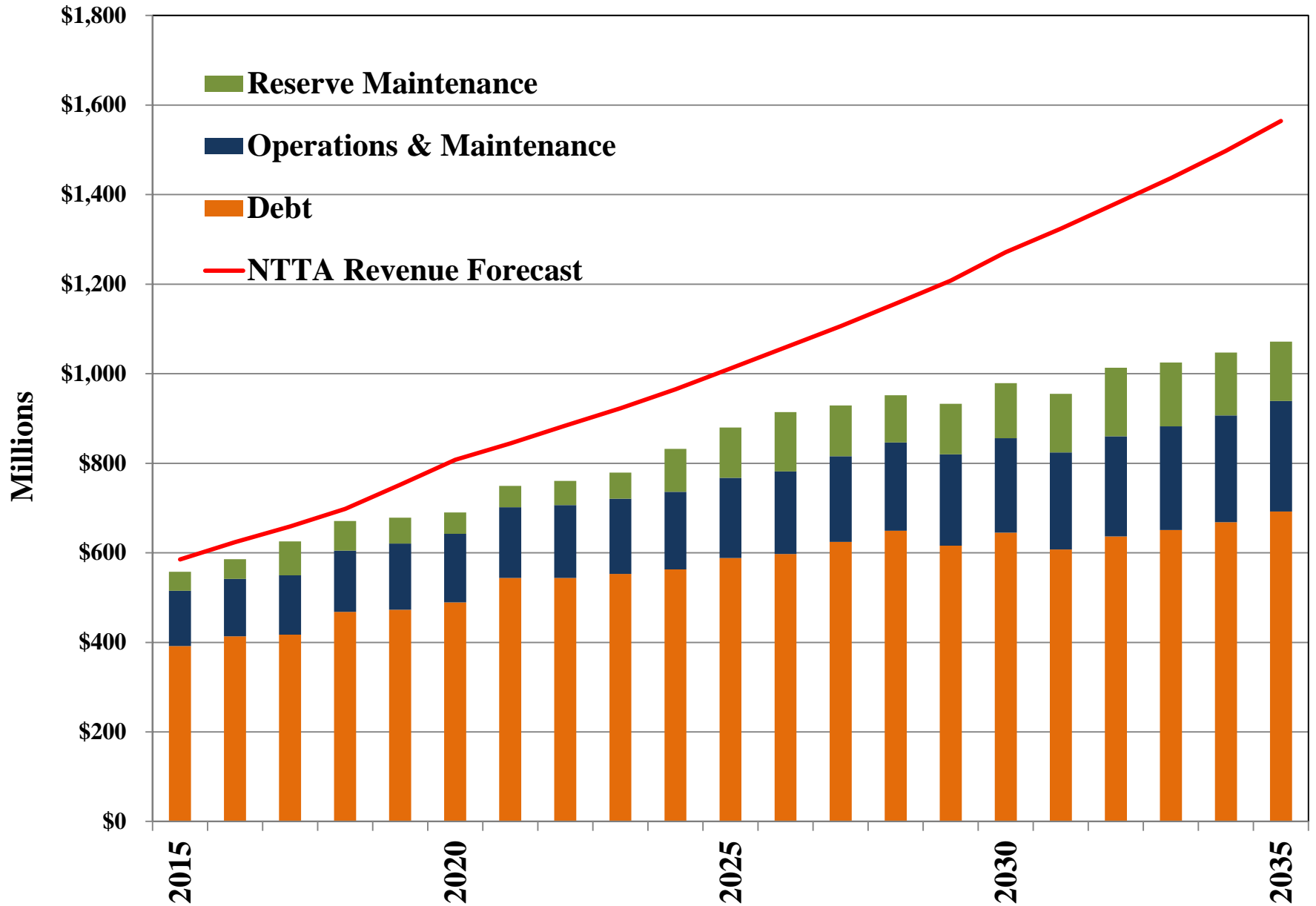
Sample Analysis				
Year	Toll Traffic AADT	Annual Gross Revenue	Annual O&M Costs	Net Revenue
1	5,000	\$5,110,000	\$1,007,000	\$4,103,000
2	7,140	\$7,480,000	\$2,248,000	\$5,232,000
3	8,840	\$9,496,000	\$2,619,000	\$6,877,000
4	10,080	\$11,095,000	\$2,959,000	\$8,136,000
5	10,820	\$12,211,000	\$3,233,000	\$8,978,000
6	11,040	\$12,766,000	\$3,493,000	\$9,273,000
7	11,260	\$13,347,000	\$3,903,000	\$9,444,000
8	11,490	\$13,955,000	\$19,620,000	(\$5,665,000)
9	11,720	\$14,590,000	\$3,640,000	\$10,950,000
10	11,950	\$15,253,000	\$3,787,000	\$11,466,000
11	12,190	\$15,947,000	\$10,163,000	\$5,784,000
12	12,430	\$16,673,000	\$4,261,000	\$12,412,000
13	12,680	\$17,432,000	\$4,600,000	\$12,832,000
14	12,940	\$18,225,000	\$5,129,000	\$13,096,000
15	13,190	\$19,054,000	\$25,134,000	(\$6,080,000)
16	13,460	\$19,921,000	\$4,893,000	\$15,028,000
17	13,730	\$20,827,000	\$5,216,000	\$15,611,000
18	14,000	\$21,775,000	\$5,560,000	\$16,215,000
19	14,280	\$22,766,000	\$6,037,000	\$16,729,000
20	14,570	\$23,802,000	\$6,783,000	\$17,019,000

Sample Analysis				
Year	Toll Traffic AADT	Annual Gross Revenue	Annual O&M Costs	Net Revenue
21	14,860	\$24,885,000	\$122,055,000	(\$97,170,000)
22	15,160	\$26,017,000	\$6,381,000	\$19,636,000
23	15,460	\$27,201,000	\$6,806,000	\$20,395,000
24	15,770	\$28,438,000	\$7,258,000	\$21,180,000
25	16,080	\$29,732,000	\$7,889,000	\$21,843,000
26	16,410	\$31,085,000	\$8,877,000	\$22,208,000
27	16,730	\$32,499,000	\$46,816,000	(\$14,317,000)
28	17,070	\$33,978,000	\$8,330,000	\$25,648,000
29	17,410	\$35,524,000	\$8,709,000	\$26,815,000
30	17,760	\$37,141,000	\$9,295,000	\$27,846,000
31	18,110	\$38,830,000	\$19,987,000	\$18,843,000
32	18,480	\$40,597,000	\$10,791,000	\$29,806,000
33	18,850	\$42,444,000	\$12,164,000	\$30,280,000
34	19,220	\$44,376,000	\$65,184,000	(\$20,808,000)
35	19,610	\$46,395,000	\$11,380,000	\$35,015,000
36	20,000	\$48,506,000	\$12,154,000	\$36,352,000
37	20,400	\$50,713,000	\$12,976,000	\$37,737,000
38	20,810	\$53,020,000	\$14,129,000	\$38,891,000
39	21,220	\$55,432,000	\$15,949,000	\$39,483,000
40	21,650	\$57,955,000	\$148,345,000	(\$90,390,000)
Total		\$1,096,493,000	\$679,760,000	\$416,733,000

# Annual Revenue Over Time



# Estimated NTTA Revenues and Expenses



# **Benefits of Toll Roads**

- 1. User Pay System**
- 2. Construct Now Instead of Later**
- 3. Relieves Traffic on Existing Roads**
- 4. Saves Tax Money**
- 5. Gives Drivers a Choice**



**GARLAND  
CITY COUNCIL ITEM SUMMARY SHEET**

**City Council Work Session Agenda**

**Work Session Item 2. b.**

**Meeting Date:** September 19, 2016

**Item Title:** Tornado Recovery Update Related to Code Compliance and Building Inspection

**Submitted By:** Richard Briley, Managing Director

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**Summary of Request/Problem**

Staff will provide a tornado recovery update related to Code Compliance and Building Inspection activity.

**Recommendation/Action Requested and Justification**

Council discussion.

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**Attachments**

Tornado Update 9/16

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GARLAND

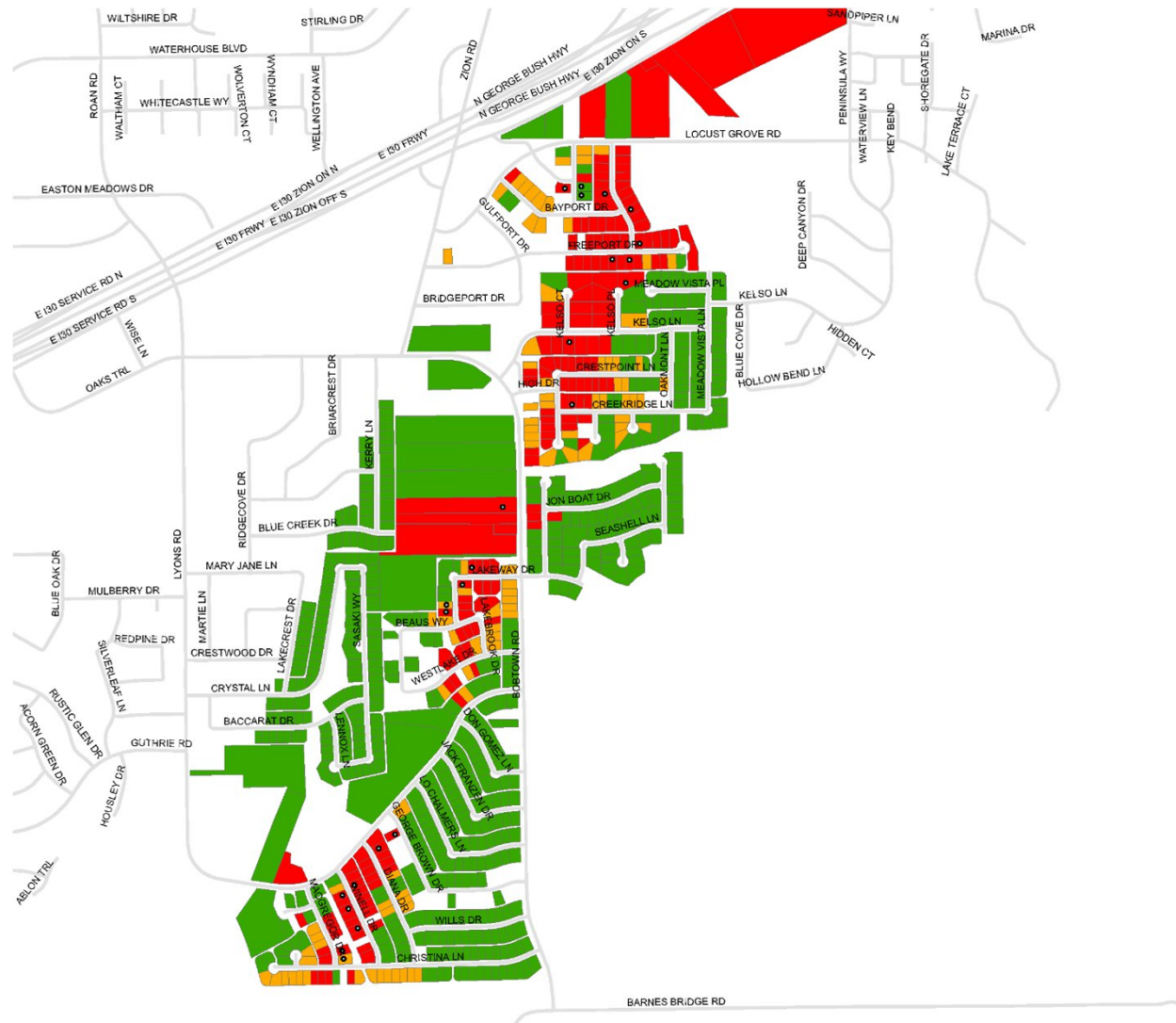
# Reconstruction and Neighborhoods Following the Dec. 26 Tornado

City Council Update September 19, 2016

# Tornado Damaged Structures

- 185 Affected
  - Between 1% - 10% damage.
- 113 Minor
  - Between 11% - 39% damage
- 102 Major
  - Between 40% - 79% damage
- 127 Destroyed
  - 80% and over.
- 527 Structures Total.





# Reconstruction Efforts as of September 9th

- 58% of damaged homes are reoccupied (305).
  - Includes, complete rebuild on existing slab, reconstruction, partial reconstruction, etc...
- 20% of the properties are actively reconstructing. (103)
- 12% of the buildings were demolished (63)
  - Includes demos where foundation was retained and where foundations were removed.
  - Also includes commercial and apartment buildings
- 8 New single family home are under construction.
  - All new foundation and home. In conformance with GDC.
- 5% of the properties appear to have no work started (25)
  - Code Compliance will report on enforcement efforts.

















# CODE COMPLIANCE

## Summarized Post Storm Actions

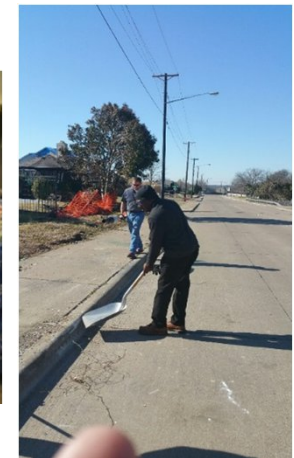
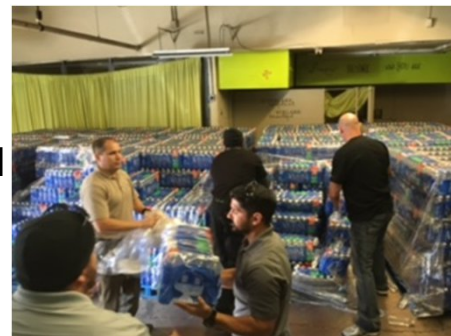
### **Placed All Enforcement in Abeyance**

- Assisting residents with debris removal
- Performed a courtesy securing of 26 residential pools
- Refunded per unit price of the multifamily properties that were destroyed



### **Support Role to EOC**

- Vetting Contractors
- Donation Distribution
- Assisting residents with debris removal
- Assisted in placing/removing signage



# CODE COMPLIANCE

## Discussed Enforcement Options for Identified Properties

### **Routine Enforcement**

- Routine notice with specified time to comply
- Invoice for cost incurred and liens if not paid

### **Routine Enforcement – Reduced Liens**



- Waive admin fee of \$194
  - Significant on some of the actionable properties
- Post the property requesting information and intentions

**Complete Process with At-Risk Homes and Begin Same with Remaining Homes**



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# CODE COMPLIANCE

## Discussed Target Start Date

- Established a future date to begin enforcement in regards to nuisance abatement of June 13.
  - At-Risk
  - Those being monitored
- Agreed to move forward with presenting cases to the Property Standards Board
  - Fire code emergency demolition no longer an option
  - PSB from hearing to resolution will be a time consuming process

# CODE COMPLIANCE

## Actions Since May 19

- 27 pools secured and monitored by staff
- 68 Soft enforcement notices
- 30 nuisance abatement work orders
- 3 warrant abatements/debris removal

Nuisance abatement costs to date have been very manageable totaling approximately \$3200.



GARLAND

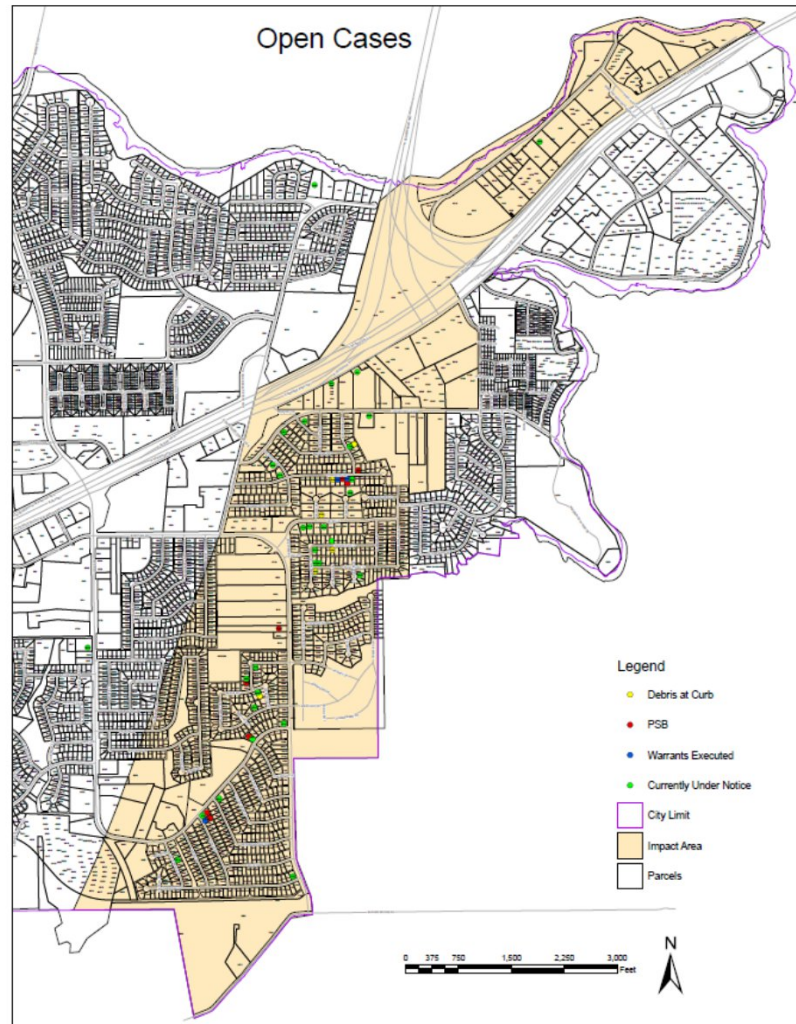
# CODE COMPLIANCE

## Pending Cases as of September 8, 2016

- 3 properties with debris at curb.
- 7 structures that are subject to action by the Property Standards Board.
- 29 properties on notice for various nuisance issues such as high grass, trash, unsecured pool fencing, junk vehicle and encroachment.



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# CODE COMPLIANCE

## Projected Costs on May 19

- Projected cost for nuisance abatement work was approximately \$60K (not including structure demolitions).
- Approximately 30 homes were candidates for the Property Standards Board – representing an approximate cost of \$250K in administrative fees and demolition costs.

## Projected Costs as of Today

- Pending nuisance cases - \$20K
- Demolition costs for 7 PSB cases – \$50K

# Questions?



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TEXAS MADE HERE



**GARLAND  
CITY COUNCIL ITEM SUMMARY SHEET**

**City Council Work Session Agenda**

**Work Session Item 2. c.**

**Meeting Date:** September 19, 2016

**Item Title:** #GarlandStrong Update

**Submitted By:** Dorothy White, Public & Media Relations Director

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**Summary of Request/Problem**

Staff will provide an update on the #GarlandStrong tornado relief fundraising campaign and disbursement of those funds.

**Recommendation/Action Requested and Justification**

Council discussion.

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**GARLAND**  
**CITY COUNCIL ITEM SUMMARY SHEET**

**City Council Work Session Agenda**

**Work Session Item 2. d.**

**Meeting Date:** September 19, 2016

**Item Title:** Audit Committee Report

**Submitted By:** Jed Johnson, Internal Auditor

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**Summary of Request/Problem**

Council Member Jim Cahill, Chair of the Internal Audit Committee will provide a committee report on the first three items and request a Council deliberation on the last item:

- Weaver Presentation - FY2016 Annual Audit
- Community Development Block Grant (CDBG) Audit Update
- FY/2017 Annual Audit Plan
- City Council Expense Audit

**Recommendation/Action Requested and Justification**

Staff will provide additional updates on the Audit Committee.

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**Attachments**

FY 2017 IA Audit Plan

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**INTERNAL AUDIT**

**AUDIT PLAN  
FISCAL YEAR 2017**

**JED JOHNSON  
CITY AUDITOR**

## **Basis for Annual Audit Plan**

- Citywide Risk Assessment
- Council/Management Request
- Auditor Observation
- Prior Audits
- Time Since Last Audit

**Performance Audits**

<b>Department</b>	<b>Audit</b>	<b>Preliminary Objective(s)</b>	<b>Hours</b>
City-wide	Cash Count	Validate one-third of City's cash funds are in compliance with City Directives and Financial Policies.	450
GP&L	Fuel and Energy Price Risk Management Audit	<ul style="list-style-type: none"> <li>Determine if GP&amp;L's energy and fuel transaction processing and counter-party credit limit verification are in accordance with GP&amp;L's Risk Management Policy.</li> <li>Verify if GP&amp;L has an effective process in place to ensure the accuracy of payment processing and accounts receivables.</li> </ul>	450
Finance	Capitalization of Expenditures	Review City's capitalization process to verify if all eligible expenditure items are classified as part of City's Fixed Assets, depreciated and retired in accordance with City Directives.	420
Fire	Inventory Management	Determine if inventories are properly accounted for and access to inventories are closely monitored.	450
Information Technology Services	IT Procurement and Contract Management	<ul style="list-style-type: none"> <li>Evaluate the City IT Department's procurement process to ensure that all purchases are made in accordance with Purchasing Directive 1 and the Texas Government code.</li> <li>Verify the effectiveness of contract management to ensure that contracts are monitored for compliance in accordance with agreed terms and conditions.</li> </ul>	500
Customer Service	Billing and Collection	<ul style="list-style-type: none"> <li>Analyze the Customer Service meter reading, billing and collection processes for accuracy, effectiveness and compliance with City Ordinance, regulations and policies.</li> <li>Ensure appropriate internal controls are in place and working effectively.</li> </ul>	500
Housing and Community Services	HOME/ESG Program	<ul style="list-style-type: none"> <li>Verify the reliability and integrity of Grant fund/expenditure reporting. Ensure all funds are accounted for.</li> <li>Evaluate the program to ensure whether operations are being carried out in</li> </ul>	500

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		accordance with program objectives and goals.	
City Secretary	Mixed Beverage	Verify the effectiveness of City's Mixed Beverage Permitting Process to ensure that all Garland Mixed Beverage Vendors are registered with the City and permit fees are collected and deposited in accordance with TABC Guidelines and/or City Directives and Financial Policies.	160
Granville Arts Center	Garland Cultural Arts Commission, Inc.	Verify the validity of financial transactions and assess management controls.	150
Economic Development	Kraft Retention	Ensure Kraft's compliance with the Economic Development Agreement regarding employment of full time staff.	120
			<b>Total 3,700</b>

**Audits in Progress**

Department	Audit	Objective(s)	Hours
Housing and Community Services	Community Development Block Grant (CDBG) Program	<ul style="list-style-type: none"><li>• Verify the reliability and integrity of Grant fund/expenditure (financial) reporting. Ensure all funds are accounted for.</li><li>• Evaluate the program to ensure whether operations are being carried out in accordance with program objectives and goals.</li></ul>	120
Finance/HR	Payroll	<ul style="list-style-type: none"><li>• Assess the payroll processes to verify that controls are in place to ensure the adequacy and reliability of data processed.</li><li>• Verify proper classification of Temporary/Contract workers to ensure compliance with the Department of Labor definitions and the Affordable Care Act.</li></ul>	300
Fleet	Fleet Services Procurement and Accounts Payable	<ul style="list-style-type: none"><li>• To ensure Fleet's procurement is in compliance with City Directives and Local Government Code Chapter 252;</li><li>• To determine the reliability and accuracy of billing, expenditures, tracking and reporting for Fleet payments, and</li></ul>	300

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accountability of goods and services  
procured;

- To determine the efficiency of the vehicle inspection and registration process.

**Total 720**

**Audit Follow-ups**

<b>Department</b>	<b>Audit Follow-up</b>	<b>Hours</b>
Environmental Waste Services	Environmental Waste Services Revenue	250
Human Resources	City Benefits Bill Payment	250
Animal Services	Animal Services Audit	150
Risk/Finance	City property Damage Claims Processing and Collection	150
Streets	Pothole Repair Operations	120
Municipal Court	Court Citation and Warrant Processing	150
Firewheel Golf Course	Firewheel Internal Control	200
Information Technology	Network Security	200
Granville Arts Center	Cultural Arts Revenue Audit	150
<b>Total</b>		<b>1,620</b>

**Audit Follow-ups in Progress**

<b>Department</b>	<b>Audit Follow-up</b>	<b>Hours</b>
Facilities	Physical Security of City Property	40
Wastewater	Wastewater Investigation	40
Purchasing & Finance	P-card & Duplicate Payment	150
<b>Total</b>		<b>230</b>

**Other Projects**

<b>Projects</b>	<b>Description</b>	<b>Hours</b>
External Audit Assistance	Single Audits, Warehouse Inventory, Utility Billing Testing, Cash Disbursements and Payroll etc.	300
Fleet Fuel Inventory	Observe Year End Fuel Inventory and verify reconciliation	80
Other	Investigations, Special Projects, Advisement, Risk Assessment, Annual Audit Plan, etc.	850
<b>Total</b>		<b>1,230</b>

**Other Budgeted Hours**

<b>Area</b>	<b>Description</b>	<b>Hours</b>
Administrative & Training	Training, Audit Committee, Other Meetings, Budget, IT issues, HR Matters, Employee Appreciation, Performance Evaluation, Time Entry, P-card Review, Invoice Entry, Grow Garland, Order Supplies, Website Maintenance, etc.	1,700
Time Off	Holidays, Vacation, Sick, FMLA, etc.	1,200
<b>Total Hours</b>		<b>10,400</b>



## **GARLAND POLICY REPORT**

### **City Council Work Session Agenda**

### **Work Session Item 3. a.**

**Meeting Date:** September 19, 2016

**Item Title:** City Center Development - Acquisition of Ground Level of Tract B

**Submitted By:** John Baker, Assistant City Manager

**Council Goal:** Sustainable Quality Development and Redevelopment

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### **ISSUE**

Continue discussions from the September 6, 2016 Work Session regarding the final transactional agreements associated with Tract B of the City Center development, providing for the acquisition of the first level as office space for the Economic Development Department. The transactional agreements include: 1<sup>st</sup> Amendment to the Ground Lease, Reciprocal Easements and Operating Agreement, Purchase Agreement and Bill of Sale.

### **OPTIONS**

1. Adopt a resolution which includes authorization to amend the Ground Lease and purchase the first level of 203 N. Fifth for the Economic Development Department through a Reciprocal Easement and Operating Agreement, a Purchase Agreement, and a Bill of Sale.
2. Approve all documents as indicated in Option 1 with the exception of excluding all items related to the finish-out of the City Space in the Purchase Agreement
3. Lease the first level of 203 N. Fifth for the Economic Development Department, using separate transactional agreements
4. Other action as directed by the Council

### **RECOMMENDATION**

Approve Option 1. Unless otherwise directed by Council, this item is scheduled for formal consideration at the September 20, 2016 Regular Meeting.

### **BACKGROUND**

At the Work Session on September 6, 2016, the final transactional agreements for Tract B of the City-Center project were presented to Council for consideration. (Tract B is the three-story building currently under construction and standing across 5th Street from City Hall.) In order to acquire the first level of Tract B from Oaks City Center, LLC, the following transactional agreements need to be executed: 1st Amendment to the Ground Lease, Reciprocal Easements and Operating Agreement, Purchase Agreement and Bill of Sale. (Refer to Policy Report from September 6, 2016 Work Session for the agreement details.)

At the September 6, 2016, Work Session, Council posed questions regarding the Purchase Agreement, seeking clarification on the not to exceed purchase amount and how it related to the referenced architectural drawings. Via email, staff has provided additional information in response to Council's questions. (Refer to memorandum dated September 12, 2016)

## **CONSIDERATION**

There has been additional concern expressed by some related to the \$700,000 allotment for the finish-out of the eventual Economic Development (ED) Offices in Tract B. An option available to the Council is to exclude those portions of the Purchase Agreement that reference the finish-out. This would allow the transactional agreements to be completed, while reserving additional time for staff to pursue alternatives for the finish-out of the ED space. If this option is chosen, staff would present the Council with Value Engineering options for ED at a future Council Meeting along with a proposed method of construction. Most likely, this would be a modification to our current construction management contract for the City Center facilities.

Staff believes the agreements as proposed are the best course of action for the City. The proposed not to exceed Purchase Agreement allows:

- a. the lender for Oaks City Center, LLC to final fund the construction of the multi-family portion of the development by October 1, 2016. (Oaks has requested to tie the purchase agreement into the final funding of the multi-family project, so the earnings can be made available to fund the interior improvements for Economic Development.);
- b. the construction of the Economic Development Offices to begin in a timely fashion

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## **Attachments**

Memo to Council September 12, 2016  
Policy Report - September 6, 2016 Work Session  
Purchase Agreement (Option 1)  
Purchase Agreement (Option 2)

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# Downtown Redevelopment

**TO:** City Council  
**FROM:** City Manager's Office and Downtown Redevelopment Program Team  
**DATE:** September 12, 2016  
**SUBJECT:** Garland City Center Tract B, Level 1 Acquisition for Economic Development

*The information provided below is in response to questions posed by the Council at the Work Session on September 6, 2016.*

It is standard for a purchase agreement to reference a set of construction drawings, so as the deliverable expectations are clear to both parties. Section 13 of the Purchase agreement states the Buyer has plans for most of the work to complete the interior finish construction.

It is understandable for this statement to cause confusion, given the update to Council in August mentioning the City pursuing an alternate architect.

- The interior finish plans for Economic Development dated 5/6/16 do not meet the City's expectations for a number of reasons and are not considered bid-ready. (The City has standardized construction and equipment specifications for facilities that allows for continuity in service and maintenance.)
- Due to the competitive construction market, we know we have one chance to bid the project out; meaning the plans need to be 100% complete in order for subcontractors to entertain bidding and to get the best possible price.
- To facilitate the bidding process, our goal at the time was to hire a replacement architect who would bridge the gaps in the existing plans. (The architect of record sealed the plans dated 5/6/16 and has released us to find an alternate architect.)
- However, after receiving a quote from an alternate architect, we determined that it's not in the City's best financial interest to pursue; it is significantly more than expected.
- Subsequently, to regain momentum on the project, all parties have agreed the best option is to forego a replacement architect. Our construction manager and general contractor will work closely together to bridge the gaps in the plans and ensure the space is finished to the City's standards. Most of the gaps in the plans relate to architectural finishes (as opposed to structural or mechanical) and it is not uncommon to substitute these materials during the construction process.

The highlighted clause below (extracted from the Purchase Agreement) was intended to acknowledge there are gaps within the plans as well as incorporate the agreed upon working relationship (rectifying the gaps with the architectural finish schedule).

13. Interior Finish Construction. Buyer has construction drawings prepared by JHP Architecture / Urban Design, PC dated May 6, 2016 (the "Plans") for most work to complete the interior finish construction (collectively, the "Interior Finish Construction"). The Buyer and Finish General Contractor will agree to coordinate and jointly specify the architectural finish schedule, in order for the Finish General Contractor to properly complete the space. Seller will, under a separate agreement with the Finish General Contractor, cause the Finish General Contractor to complete the Interior Finish Construction of the COG Space according to the Plans. The separate agreement with the Finish General Contractor will require commencement of work on Interior Finish Construction on or before October 1, 2016 with completion date of February 1, 2017. In the event the actual cost of the Interior Finish Construction work to be completed by the Finish General Contractor is less than \$700,000.00, the balance of the Interior Finish Construction Cost not to exceed amount payable to Seller will adjust accordingly. In the event Buyer requests changes to the Interior Finish Construction of the COG Space after the date of this Agreement, only written and executed Proposed Change Orders signed by Seller, Buyer and the Finish General Contractor will be implemented. Further, the cost of any Proposed Change Order(s) fully executed after the date of this Agreement will adjust the Interior Finish Construction Cost accordingly.

The construction team has used a construction quote for the plans dated 5/6/16 and made adjustments based upon known gaps in the plans. While the exact cost of the finish out is unknown, especially given the current construction market, the team is confident it will not exceed \$700,000. Due to the time sensitive nature of executing these agreements by October 1, 2016, to satisfy the developer's lender, the contract was based on a not to exceed amount.

While the expenses are capped at \$700,000, the City's payment will be based upon actual construction expenditures. All bids and pay applications will be vetted through the Seller (Oaks City Center, LLC), the Buyer (City), and Finish General Contractor.

The space is approximately 4,000 square feet and programmed to be Class A Office Space.

The current market rate is approximately \$85 per square foot for a medium office space finish out (greater than 15,000 square feet). The size of the building drives the cost per square foot, as larger buildings tend to have more variations in the level of finish out within the space (reception, offices, storage, back of house, etc.). The Economic Development office area is considered to be a small space with little variation in the level of finishes within the space. Given the function of the space, an additional \$360,000 allowance was factored in to allow for Class A (high end finishes) and escalation.

The overall CIP budget is \$1,572,821. The team is confident the project can be delivered within budget and does not anticipate any supplemental funding requests at this time.

Of note, there are additional items the City will be responsible for supplying outside of the purchase agreement, such as furniture, audio visual equipment, artwork, etc. Should any of these purchase contracts exceed \$100,000, they will be presented to Council for consideration through the standard procurement process. Any contract brought forth for approval will be within the approved CIP budget.



## **GARLAND POLICY REPORT**

### **City Council Work Session Agenda**

### **Work Session Item 3. c.**

**Meeting Date:** September 6, 2016

**Item Title:** City Center Development - Acquisition of Ground Level of Tract B

**Submitted By:** Becky King, Managing Director

**Council Goal:** Sustainable Quality Development and Redevelopment

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### **ISSUE**

Consider the final transactional agreements associated with Tract B of the City Center development, providing for the acquisition of the first level as office space for the Economic Development Department. The transactional agreements include: 1<sup>st</sup> Amendment to the Ground Lease, Reciprocal Easements and Operating Agreement, Purchase Agreement and Bill of Sale.

### **OPTIONS**

1. Amend the Ground Lease and purchase the first level of 203 N. Fifth for the Economic Development Department through a Reciprocal Easement and Operating Agreement, a Purchase Agreement, and a Bill of Sale.
2. Lease the first level of 203 N. Fifth for the Economic Development Department, using separate transactional agreements
3. Take no action

### **RECOMMENDATION**

Approve Option 1. If Council concurs with this recommendation, staff will present the legal transactional documents for Council consideration, authorizing execution by the Mayor and City Manager, for the September 20, 2016 Regular Session.

### **BACKGROUND**

Tract B, located at 203 N. Fifth St., is part of the City Center Development agreement. This tract of land was originally going to include 10 apartment units, but was later modified to include commercial space on the first level and 5 townhome style apartments on the upper levels.

The City was searching for a location to house its newly formed Economic Development Department. Since City Hall is fully-occupied, the location of Tract B allows for the

Economic Development Department to operate in close proximity to City Hall, while providing a more visible presence in Downtown.

The City originally intended to lease the first level of Tract B (203 N. Fifth) from Oaks City Center, LLC for a minimum of 15 years, which would have come at a long-term cost to the City of approximately **\$1,570,000** for base rent and interior finish out expenses. (This excludes additional operational rent fees, assessed by the landlord, which cover expenses such as Common Area Maintenance, management fees, insurance, real estate taxes, and special assessments.)

Staff has since determined it is in the City's best long-term financial and economic interests to purchase the first level rather than lease the property. This change was included in the 2016 Capital Improvement Program. Once construction is complete, the City (Office of Economic Development) will own the ground floor of Tract B and Oaks City Center, LLC will own and lease the 2nd and 3rd floors as multifamily residential units.

The primary benefits of acquiring the space rather than leasing are outlined below.

- By purchasing the first level, the City will be able to maintain control of an important corner tract of land in Downtown adjacent to the Square and across the street from City Hall (as well as other municipal facilities).
- Although the City currently plans to utilize the first level as commercial space for the Office of Economic Development, ownership of the facilities, unlike leasing the space from the Oaks, will give the City the flexibility in the future to lease the space for the commercial or retail use of its choice. The option to sublease or sell the property in the future, should our needs change, provides potential for financial appreciation opportunities.
- Under a lease agreement, the City would not own the structure, nor would the City have a guaranteed possessory interest under the current Ground Lease. A lease agreement would provide Oaks City Center, LLC with the option to not renew the lease term after 15 years. Acquisition of the first level of Tract B gives the City immediate ownership interests and guaranteed possession.
- Acquisition of the space also means that maintenance and upkeep will be the City's responsibility. This allows the City to operate the facility at discounted rates (compared to the developer) through discounted utility rates, existing property and equipment maintenance agreements for City facilities, tax exemptions, insurance, etc. This will provide more controls to ensure consistency of maintenance with City Hall standards as well as contributing to the overall appearance of Downtown.

Oaks City Center's lender has requested that the legal agreements be finalized by October 1, 2016. Staff is providing the final legal documents for Council to review prior to formal consideration for action on September 20, 2016.

## **CONSIDERATION**

In order to acquire the first level of Tract B from Oaks City Center, LLC, the following transactional agreements need to be executed: 1st Amendment to the Ground Lease, Reciprocal Easements and Operating Agreement, Purchase Agreement and Bill of Sale. The purpose and intent of each agreement is outlined below.

### 1st Amendment to Ground Lease

The City entered into a ground lease with Oaks City Center, LLC, in August of 2013 ("Ground Lease"). The Ground Lease captured the Tract B real property, among other tracts of land around City Hall, commonly known as 203 N. Fifth Street. At the time of execution, Tract B was conceptually going to add 10 multifamily apartments in Downtown; it had not been finally determined whether the parties would share the Tract B space, nor how the space would be allocated. The parties have since agreed that the City will utilize the ground floor as commercial space (Office of Economic Development) and the upper floors will be used by Oaks as residential lofts.

This arrangement requires that the parties amend the legal description of the original Ground Lease so that (1) the Tract B real property is excluded from the defined premises, and (2) the top two floors, stair wells, and other mechanical areas serving the 2<sup>nd</sup> and 3<sup>rd</sup> floors are captured in the Ground Lease legal description (the City will be effectively leasing the stairwells and a volume of "air space" above the lowest portions of the floor trusses supporting the 2<sup>nd</sup> floor).

### Reciprocal Easements and Operating Agreement

The second document is the Reciprocal Easements and Operating Agreement, which is intended to govern the respective rights and obligations of the parties in the operation, maintenance, repair, and replacement of the respective allocated spaces, structural components, equipment, and improvements, as well as defining and describing the associated easements. The parties believe that, in the long-term, using this particular reciprocal easement scheme will be more efficient, save valuable human resources, and be less administratively burdensome than a condominium regime established under the Texas Property Code.

### Purchase Agreement and Bill of Sale

The Purchase Agreement memorializes the terms and conditions under which the title to, and interest in, the ground level improvements will be transferred from the Oaks to the City. In this agreement, the City will agree to pay the Oaks a not to exceed purchase price of **\$1,311,206.00** for the costs and expenses, including a development fee of **3.1%**, associated with the construction of the first floor improvements. Under the terms of the Purchase Agreement, the Oaks will deliver a "turn-key" space to the City, save and except for interior furnishings and decorations. (This means the City will utilize co-op agreements with deep discounts to provide for furniture and technology equipment throughout the space.)

The Bill of Sale is the operative instrument that transfers title to, and ownership of, the ground level improvements to the City. It will merge ownership of the City of Garland ground floor improvements with the underlying real property. After the closing, the City will own those improvements and the Tract B land subject only to the leasehold rights of Oaks City Center, LLC under the Ground Lease, as amended, and the Reciprocal

Easements and Operating Agreement described above.

This item was reviewed and prepared by the City Attorney's Office

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**Attachments**

Purchase Agreement and Exhibits

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## PURCHASE AGREEMENT

THIS AGREEMENT is made as of September \_\_\_\_, 2016, between Oaks City Center LLC, a Minnesota limited liability company ("Seller"), and City of Garland, Texas, a home-rule municipality ("Buyer").

In consideration of this Agreement, Seller and Buyer agree as follows:

1. Sale of Property Improvements. Seller is constructing a three story frame mixed use building located at 203 North Fifth Street, Garland, Texas (the "Building"). Floor 1 of the Building is to be used as office space ("COG Space"). Floors 2 and 3 of the Building will be used as five rental apartments ("Oaks City Lofts"). Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the COG Space, depicted on Exhibit A attached hereto and made a part hereof, for the sum of Five Hundred Eighty Nine Thousand Five Hundred Six and 00/100ths Dollars (\$589,506.00) ("Purchase Price"). The Purchase Price shall be paid in cash on the Closing Date.

2. Purchase Price Composition. The Purchase Price is comprised of the following:

Construction Cost – Shell	\$ 528,231
Allocable Soft Costs	<u>61,275</u>
	\$589,506

The general contractor for the Building is Hill & Wilkinson Construction Group, Ltd., a Texas limited partnership ("Hill & Wilkinson"). The Building is being constructed pursuant to that Construction Contract dated December 27, 2013 by and between Hill & Wilkinson and Seller.

3. Bill of Sale/Warranties. Subject to performance by the Buyer, the Seller agrees to execute and deliver a Bill of Sale, in the form of Exhibit B attached hereto and made a part hereof, conveying ownership of the COG Space to Buyer free and clear of all liens and claims. Further, Seller will transfer and assign all Hill & Wilkinson and Finish General Contractor construction warranties, including all manufacturer warranties for equipment and systems conveyed to the Buyer under the Bill of Sale.
4. Interior Finish Construction by Seller. Seller will engage Hill & Wilkinson or a different general contractor acceptable to Buyer (the "Finish General Contractor") to complete the interior finish construction (including all allowances) of the COG Space, as described in Paragraph 13, for a cost not to exceed Seven Hundred Thousand and 00/100ths Dollars (\$700,000.00), plus a development fee of 3.10%, not to exceed Twenty One Thousand Seven Hundred and 00/100ths Dollars (\$21,700.00) (collectively the "Interior Finish Construction Cost"). Buyer shall pay the Interior Finish Construction Cost in four monthly cash installment payments, per the actual construction expenditures as evidenced by the pay applications submitted by the Finish General Contractor in addition to the applicable development fee. Seller and Buyer will jointly approve all pay applications.

5. First Amendment to Ground Lease. The Building has been constructed on land known and designated as 203 North Fifth Street, Garland, Texas, identified as Tract B and legally described on Exhibit C attached hereto and made a part hereof. The land identified as Tract B on Exhibit C has been leased by the Seller under that Ground Lease dated August 1, 2013 by and between City of Garland, Texas ("Landlord") and Oaks City Center LLC ("Tenant"). Subject to performance by the Buyer, at closing, the Seller and City of Garland agree to execute and deliver an amendment to the Ground Lease (the "First Amendment to Ground Lease"), substantially in the form attached hereto as Exhibit D, which First Amendment to Ground Lease will remove Tract B from the Ground Lease and will substitute therefore the Oaks City Lofts improvements, consisting of Floors 2 and 3 of the Building as legally described in the First Amendment to Ground Lease. The Bill of Sale will merge ownership of the COG Space with the land legally described on Exhibit C. From and after the closing, the Buyer will own the COG Space and the Tract B land subject only to the leasehold rights of Oaks City Center LLC under the Ground Lease, as amended, and the Reciprocal Easements and Operating Agreement described in Paragraph 6.
6. Reciprocal Easements and Operating Agreement. Subject to performance by the Buyer, at closing, the Seller and City of Garland agree to execute and deliver the "Tract B Reciprocal Easements and Operating Agreement" substantially in the form attached hereto as Exhibit E. The Tract B Reciprocal Easements and Operating Agreement will govern the use and operation of the COG Space and Oaks City Lofts.
7. Closing. The closing for Buyer's purchase of the COG Space shall be held on or before October 1, 2016 (the "Closing Date") at a mutually-agreed upon time at the offices of the Title Company (as defined in Paragraph 11) or as otherwise agreed between the parties.
8. Real Estate Taxes. Real estate taxes due and payable in the year of closing shall be paid by Seller. Buyer, as purchaser of the COG Space, is exempt from payment of real estate taxes. Real estate taxes payable in the years prior to closing shall be paid by Seller. Real estate taxes payable in the years subsequent to the closing for the Oaks City Lofts shall be paid by the Seller.
9. Prorations. All items customarily prorated and adjusted in connection with the closing of the sale of the COG Space shall be prorated as of the date of closing. It shall be assumed that the Buyer will own the COG Space for the entire date of the closing. Seller and Buyer will equally share any closing fee charged by the Title Company or other closer.
10. Damages to the COG Space. If there is any loss or damage to the COG Space between the date hereof and the date of closing, for any reason, the risk of loss shall be on the Seller. If the COG Space is destroyed or substantially damaged before the closing, this Agreement shall become null and void, at Buyer's option. Buyer shall have the right to terminate this Agreement within 30 days after Seller notifies Buyer of such damage. Seller will promptly restore the COG Space if Buyer does not elect to terminate this Agreement under this Paragraph 10.
11. Examination of Title. Within a reasonable time after acceptance of this Agreement, if requested by Buyer, Seller shall furnish Buyer with an ALTA commitment for title insurance issued by Republic Title of Texas, Inc. (the "Title Company"), certified to date including proper searches covering bankruptcies and State and Federal judgments, liens,

and levied and pending special assessments for the land described in Exhibit B. Buyer shall have thirty (30) days after receipt of the Abstract of Title or ALTA commitment for title insurance to examine the title to the land described in Exhibit B and provide Seller with written objections. Buyer shall be deemed to have waived any title objections not made within the applicable 30 day period set forth above, except that this shall not operate as a waiver of Seller's covenant to deliver the First Amendment to Ground Lease. If any objection is so made, Seller shall have 10 business days from receipt of Buyer's written title objections to notify Buyer of Seller's intention to make title to the land described in Exhibit B marketable within 30 days from Seller's receipt of Buyer's written title objections. If notice is given, payments hereunder required shall be postponed pending correction of title, but upon correction of title and within 10 days after written notice to Buyer, the parties shall perform this Agreement according to its terms. If no such notice is given or if notice is given but title is not corrected within the time provided for, this Agreement shall be null and void, at option of Buyer; neither party shall be liable for damages hereunder to the other. This provision shall not deprive either party of the right to enforce the specific performance of this contract provided this contract has not been terminated and provided action to enforce such specific performance shall be commenced within six months after such right or action shall arise.

12. Possession. Seller shall deliver possession of the COG Space on the Closing Date.
13. Interior Finish Construction. Buyer has construction drawings prepared by JHP Architecture / Urban Design, PC dated May 6, 2016 (the "Plans") for most work to complete the interior finish construction (collectively, the "Interior Finish Construction"). The Buyer and Finish General Contractor will agree to coordinate and jointly specify the architectural finish schedule, in order for the Finish General Contractor to properly complete the space. Seller will, under a separate agreement with the Finish General Contractor, cause the Finish General Contractor to complete the Interior Finish Construction of the COG Space according to the Plans. The separate agreement with the Finish General Contractor will require commencement of work on Interior Finish Construction on or before October 1, 2016 with completion date of February 1, 2017. In the event the actual cost of the Interior Finish Construction work to be completed by the Finish General Contractor is less than \$700,000.00, the balance of the Interior Finish Construction Cost not to exceed amount payable to Seller will adjust accordingly. In the event Buyer requests changes to the Interior Finish Construction of the COG Space after the date of this Agreement, only written and executed Proposed Change Orders signed by Seller, Buyer and the Finish General Contractor will be implemented. Further, the cost of any Proposed Change Order(s) fully executed after the date of this Agreement will adjust the Interior Finish Construction Cost accordingly.
14. Interior Finish Construction Monitoring. Buyer shall have the right, at its expense to monitor, inspect and confirm that the Interior Finish Construction is performed in accordance with the Plans.
15. Furnishings & Equipment by Buyer. Seller and Buyer acknowledge that office furnishings and equipment to be installed by Buyer in the COG Space and not included in the Plans are not included in this Agreement.
16. Notices. Seller has not received any notice from any governmental authority concerning any eminent domain, condemnation, special taxing district, or rezoning proceedings.

Seller's representations contained in this Paragraph shall survive the delivery of First Amendment to Ground Lease. The parties are fully informed about the terms and conditions of the Ground Lease.

17. Representations and Warranties of Buyer. Seller represents and warrants to Buyer that the following representations and warranties are true now and will be true on the date of actual closing as if made on the date of actual closing:
- a. Authority. The Buyer is a home rule municipality under the laws of the State of Texas. The Buyer has the requisite power to enter into and to perform this Agreement.
  - b. Judgments. There are no unsatisfied judgments against Buyer.
  - c. Liens. There are no state or federal tax liens, or any other liens, filed against Buyer, and there has been no labor or materials furnished to the COG Space at the request of Buyer for which payment has not been made.
  - d. Unrecorded Documents. There are no unrecorded mortgages, contracts, purchase agreements, options, leases, easements or other agreements or interest relating to the COG Space, and there are no persons in possession of any portion of the COG Space and the Oaks City Lofts improvements other than pursuant to the Ground Lease.
  - e. Compliance with Laws. To the best of Seller's knowledge, the COG Space improvements are not in violation of any statute, law, ordinance or regulation.
  - f. Brokers. Seller has not engaged any broker to represent it in the transactions contemplated in this Agreement. The Buyer has not engaged any broker to represent it in the transactions contemplated in this Agreement.
18. Representations and Warranties of Seller. Seller represents and warrants to Buyer that the following representations and warranties are true now and will be true on the date of actual closing as if made on the date of actual closing:
- a. Authority. The Seller is a Minnesota limited liability company duly organized and validly existing under the laws of the State of Minnesota. The Seller has the requisite power to enter into and to perform this Agreement.
  - b. FIRPTA. Seller is not a "foreign person," "foreign partnership," or "foreign estate," as those terms are defined in Section 1445 of the Internal Revenue Code.
  - c. Hazardous Substances. To the best of Seller's actual knowledge, except as may be disclosed in any environmental report that Seller provides to Buyer, (a) there are no hazardous substances presently located in or on the COG Space or the Oaks City Lofts improvements in contravention of law, and (b) there have been no acts or occurrences upon the COG Space and Oaks City Lofts that have caused or could cause hazardous substances or petroleum products to be released or discharged into the subsoil or ground water of the land described in Exhibit B.

- d. Bankruptcies. There have been no bankruptcy or dissolution proceedings involving Seller during the time Seller has had any interest in the COG Space.
  - e. Judgments. There are no unsatisfied judgments against Seller.
  - f. Liens. There are no state or federal tax liens, or any other liens, filed against Seller, and there has been no labor or materials furnished to the COG Space or Oaks City Lofts for which payment has not been made.
  - g. Unrecorded Documents. There are no unrecorded mortgages, contracts, purchase agreements, options, leases, easements or other agreements or interest relating to the COG Space, and there are no persons in possession of any portion of the COG Space and the Oaks City Lofts improvements other than pursuant to the Ground Lease.
  - h. Compliance with Laws. To the best of Seller's knowledge, the COG Space improvements are not in violation of any statute, law, ordinance or regulation.
  - i. Brokers. Seller has not engaged any broker to represent it in the transactions contemplated in this Agreement. The Buyer has not engaged any broker to represent it in the transactions contemplated in this Agreement.
19. Time of the Essence. The parties acknowledge that time is of the essence for all provisions of this Agreement.
20. Notice. Any notice required or permitted to be delivered hereunder will be deemed received three (3) days after 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 when sent by a nationally-recognized overnight courier (such as FedEx), hand delivered, by fax or by email.
- a. If intended for the Buyer:  
City Manager  
City of Garland, Texas  
200 N. Fifth Street  
Garland, Texas 75040  
Telephone: 972-205-2465  
Fax: 972-205-2504  
Email: [bbradford@garlandtx.gov](mailto:bbradford@garlandtx.gov)
  - b. With a copy to:  
Office of the City Attorney  
Attention: Brian England, Esq.  
200 N. Fifth Street, Fourth Floor  
Garland, Texas 75040  
Telephone: 972-205-2380  
Fax: 972-205-2389  
Email: [bengland@garlandtx.gov](mailto:bengland@garlandtx.gov)

- c. If intended for the Seller: Oaks City Center LLC  
Attention: Norman P. Bjornnes, Jr., Esq.  
3550 East 46<sup>th</sup> Street, Suite 120  
Minneapolis, Minnesota 55406  
Telephone: 612-630-5943  
Fax: 612-874-1054  
Email: [nbjornnes@oaksproperties.com](mailto:nbjornnes@oaksproperties.com)
- d. With a copy to: Christopher Huntley, Esq.  
Mulligan & Bjornnes PLLP  
401 Groveland Avenue  
Minneapolis, Minnesota 55403  
Telephone: 612-879-1822  
Fax: 612-871-7869  
Email: [chuntley@mulliganbjornnes.com](mailto:chuntley@mulliganbjornnes.com)

21. Miscellaneous Provisions.

- a. Survival. All of the warranties, representations, and covenants of this Agreement shall survive and be enforceable after the closing for twelve months.
- b. Entire Agreement; Modification. This Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the parties.
- c. Successors and Assigns. If this Agreement is assigned, all provisions of this Agreement shall be binding on successors and assigns.
- d. Governing Law; Venue. This Purchase Agreement shall be construed and enforced under the laws of the State of Texas, without regard to any conflicts of laws principles. Any lawsuit related to this Agreement must be brought in a state court of proper jurisdiction in Dallas County, Texas, to the exclusion of other venues.
- e. Counterparts/Electronic Signatures. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original agreement but all of which taken together shall constitute one and the same document. Further, a signed document transmitted electronically shall be considered as binding as an original signature.

**BUYER:**  
**CITY OF GARLAND**

\_\_\_\_\_  
Bryan Bradford  
City Manager  
Dated: \_\_\_\_\_

**SELLER:**  
**OAKS CITY CENTER LLC**

\_\_\_\_\_  
Norman P. Bjornnes, Jr.  
Chief Manager/President  
Dated: \_\_\_\_\_

## **EXHIBIT A**

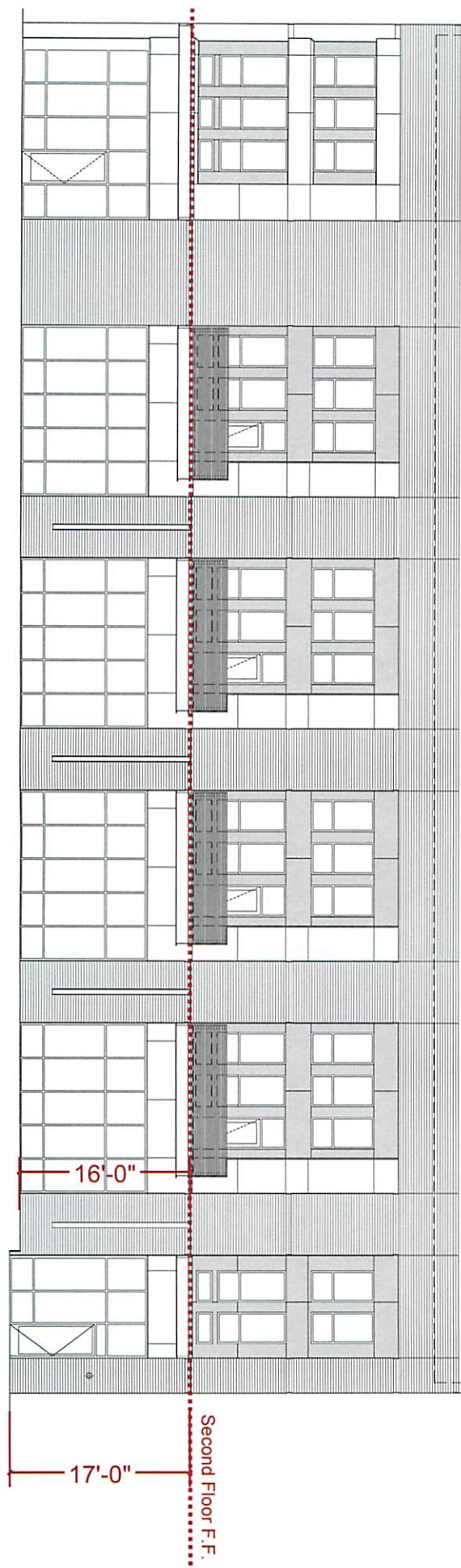
Depiction of the COG Space

Attached

# JHP

JHP Architecture / Urban Design  
8340 Meadow Road Suite 150  
Dallas, Texas 75231  
Telephone: 214-363-5687  
Fax: 214-363-9563

## Garland City Center Tract B



Project Number: 2012007  
Drawn By: LA  
Date: 04.28.2016

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Revision Date

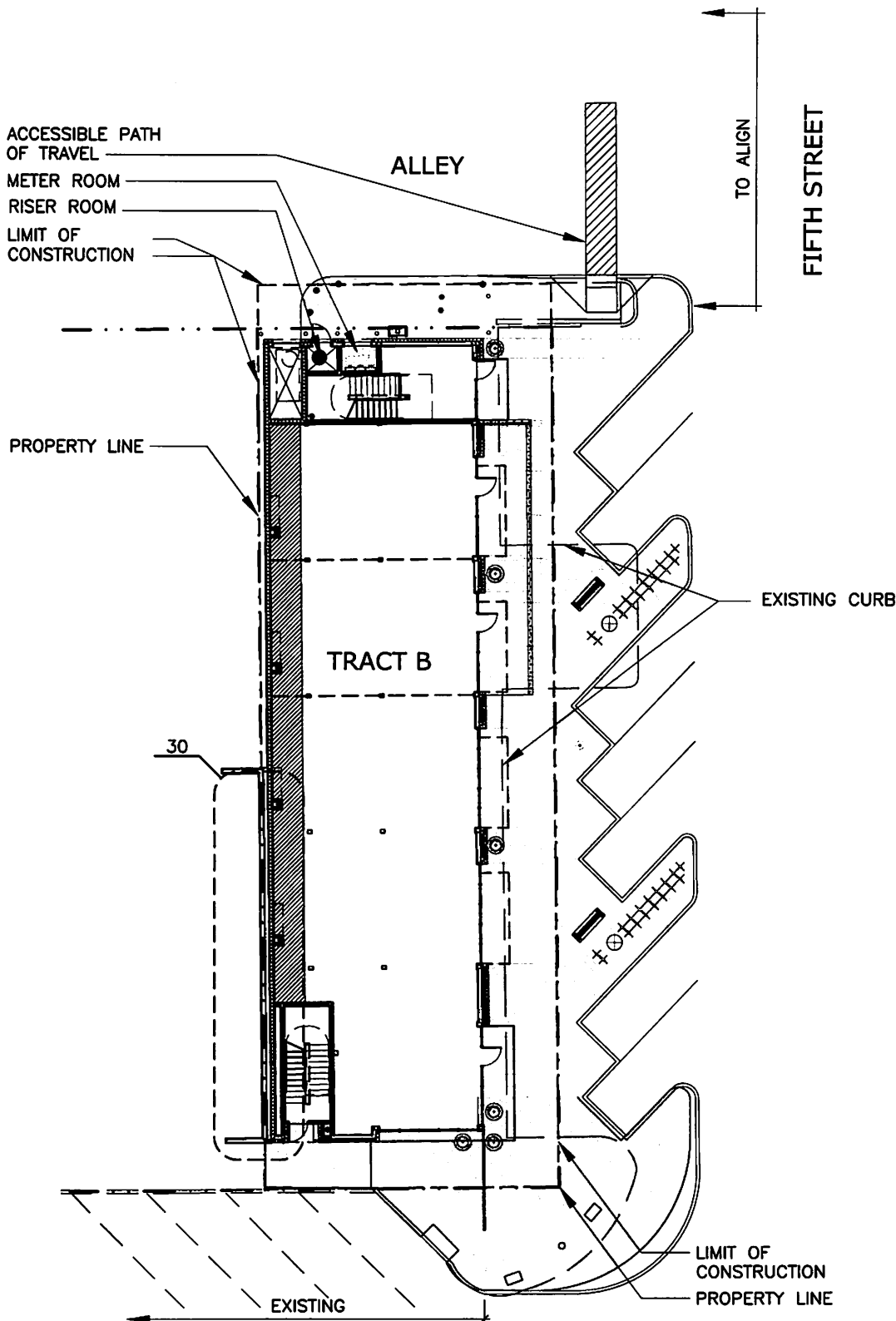


Sheet:

SK-01

# JHP

JHP Architecture / Urban Design  
8340 Meadow Road Suite 150  
Dallas, Texas 75231  
Telephone: 214-363-5687  
Fax: 214-363-9563



## Garland City Center Tract B

Project Number: 2012007  
Drawn By: LA  
Date: 04.28.2016

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Revision Date

△  
△  
△  
△  
△

Sheet:

SK-02

**Exhibit B**

Bill of Sale

Attached

**Exhibit B**

Bill of Sale

Attached

# BILL OF SALE

FOR VALUABLE CONSIDERATION, **Oaks City Center, LLC**, a Minnesota limited liability company (“Seller”), sells, conveys and transfers all of its interests in, title to, and possession of all those certain improvements located at 203 North Fifth Street, Garland, Texas, on the real property described on the attached Exhibit A, which is incorporated herein by reference, save and except the improvements located within the portion of the real property described on the attached Exhibit B, which is incorporated herein by reference, to the **City of Garland, Texas, a home-rule municipality** (“Buyer”), subject to the lien of any security agreement assumed by Buyer; subject to any liens, encumbrances, adverse claims or other matters that Buyer has created, suffered or permitted to accrue; and, subject to the following liens, claims and encumbrances:

That certain Reciprocal Easements and Operating Agreement of even date herewith

Seller warrants that: Seller is the owner of the improvements described above; the improvements are free from all liens, claims and encumbrances (except as listed above); and Seller has the right to sell and transfer title to and possession of the improvements to Buyer. Seller warrants and shall defend Buyer's title to the improvements against any and all persons who claim any interest through Seller's interest in the improvements described above, subject only to the liens, claims and encumbrances listed above. Any cause of action for a breach of warranty of title as to the personal property must be commenced by Buyer within one year of the Date of Closing or be deemed waived.

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

**SELLER:**

OAKS CITY CENTER LLC

By: Norman P. Bjornnes, Jr.  
Its: Chief Manager/President

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Norman P. Bjornnes, Jr., Chief Manager/President of Oaks City Center LLC, on behalf of the limited liability company.

**Notary Public**

**Exhibit A**

Legal Description Upon Which the Improvements Are Located  
Attached

### Premises

#### TRACT B:

Being a 0.1507 acre tract of land described as a portion of Lots 6-10, Block 12, Duck Creek Addition, Additions to the City of Garland, Dallas County Texas, according to the plat thereof recorded in Volume 82, Page 352, Map Records, Dallas County, Texas, being the same tract of land conveyed to The City of Garland by deed recorded in Volume 3744, Page 334 of Deed Records of Dallas County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a brass disk found for the corner at the intersection of the North right-of-way line of State Street (variable width public right-of-way) and the West right-of-way line of Fifth Street (70 foot public right-of-way), said point being the Southeast corner of said Block 12, same being the Southeast corner of herein described tract;

Thence South 89 Degrees 39 Minutes 13 Seconds West, along the North right-of-way line of said State Street, a distance of 47.10 feet to a brass disk found for corner, said point being the Southeast corner of a tract of land conveyed to Sarah L. Stafford by deed recorded in Volume 99028, Page 729 of the Deed Records of Dallas County, Texas, same being the Southwest corner of herein described tract;

Thence North 00 Degrees 42 Minutes 14 Seconds West, departing the North right-of-way line of said State Street, and along the East line of said Stafford tract, a distance of 138.75 feet to a brass disk found for corner in the South right-of-way line of a 20 foot public alley, said point being the Northeast corner of said Stafford tract, same being the Northwest corner of herein described tract;

Thence North 89 Degrees 28 Minutes 39 Seconds East, along the South right-of-way line of said alley, a distance of 47.47 feet to an "X" found in concrete for corner at the intersection of the South right-of-way line of said alley and the West right-of-way line of said Fifth Street, said point being the Northeast corner of herein described tract;

Thence South 00 Degrees 33 Minutes 02 Seconds East, along the West right-of-way line of said Fifth Street, a distance of 138.89 feet to the POINT OF BEGINNING and containing 6,564 square feet or 0.1507 acres of land.

**Exhibit B**

Improvements Excepted from the Bill of Sale

Attached

BEING a volume of space that is limited by the physical extremities of the existing structure (hereafter referred to as the subject building) situated on the land described in the Deed dated the 1<sup>st</sup> day of June, 1952, from Evelyn M. Gatewood to the City of Garland, Texas, and recorded in Volume 3744, at Page 334 of the Deed Records of Dallas County, Texas, and being part of Lots 6, 7, 8, 9 and 10 of Block 12 of the Original Town of Duck Creek as it appears on the plat thereof recorded in Volume 82, at Page 352 of the Deed Records of Dallas County, Texas. It is the intent of this description to describe volumetric spaces situated entirely within the horizontal limits stated above. Nothing within the following particular description will be construed to defeat this clear and unambiguous intent of the parties:

See Exhibit A attached hereto for orientation of the stairwells on the first floor of the subject building.

**STAIRWAY 1: (Exhibit B - 458 square feet)**

The space herein described is a volume including all of the space within the stairwell situated on the northerly end of the first story of the subject building. STAIRWAY 1 includes the actual stairwell plus the other rooms shown on the attached Exhibit B.

The volume described herein embraces the vertical space between the upper surface of the first floor, and the lowest horizontal surface defined by the lowest portions of the floor trusses, between the first and second floors of the subject building; and it extends horizontally from the southerly interior wall face of the LOBBY, STAIRWAY 1, and TRASH COLLECTION rooms, thence in a northerly direction, fully embracing all interior partitions, facilities and features, to the westerly, northerly and easterly exterior wall façade faces of the subject building.

#### STAIRWAY 2: (Exhibit C - 216 square feet)

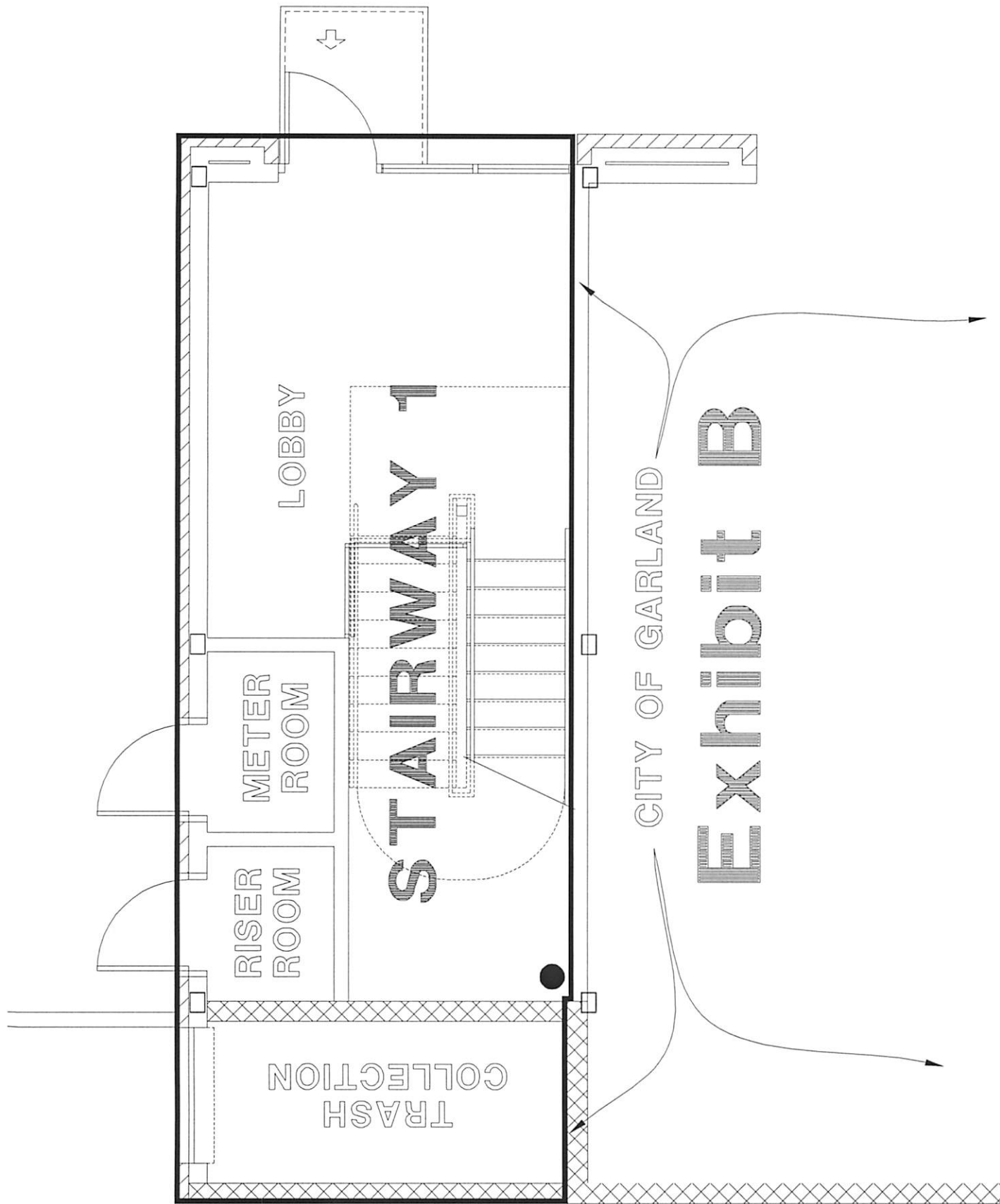
The space herein described is a volume including all of the space within the stairwell situated on the southerly end of the first story of the subject building. STAIRWAY 2 includes the actual stairwell plus the other rooms shown on the attached Exhibit C.

The volume described herein embraces the vertical space between the upper surface of the first floor, and the lowest horizontal surface defined by the lowest portions of the floor trusses, between the first and second floors of the subject building; and it extends horizontally from the northerly and easterly interior wall face of said STAIRWAY 2 projected to their respective intersections with the exterior wall façade west and south faces of the subject building, thence in a southerly and westerly direction to the exterior wall façades and embracing all internal partitions.

#### SECOND and THIRD STORY:

Embracing all of the space containing the second story (4,171 square feet based upon interior floor dimensions) and the third story (4,171 square feet based upon interior floor dimensions) of the subject building, the lowest elevation of said space being the lowest horizontal surface defined by the lowest portions of the floor trusses, between the first and second floors of the subject building situated on the above described tract of land and said surface to extend horizontally, in all directions, on a planer projection of the said lowest portions of the floor trusses, to its intersection with the vertical surfaces defined by the outer limits of the façade of said building;

THENCE vertically, generally perpendicular to said lowest elevation and at all times contiguous with the outer limits of the façade of said building, to the intersection of the top most surface of said parapet including any and all undulations thereof to form a closed volume of space.



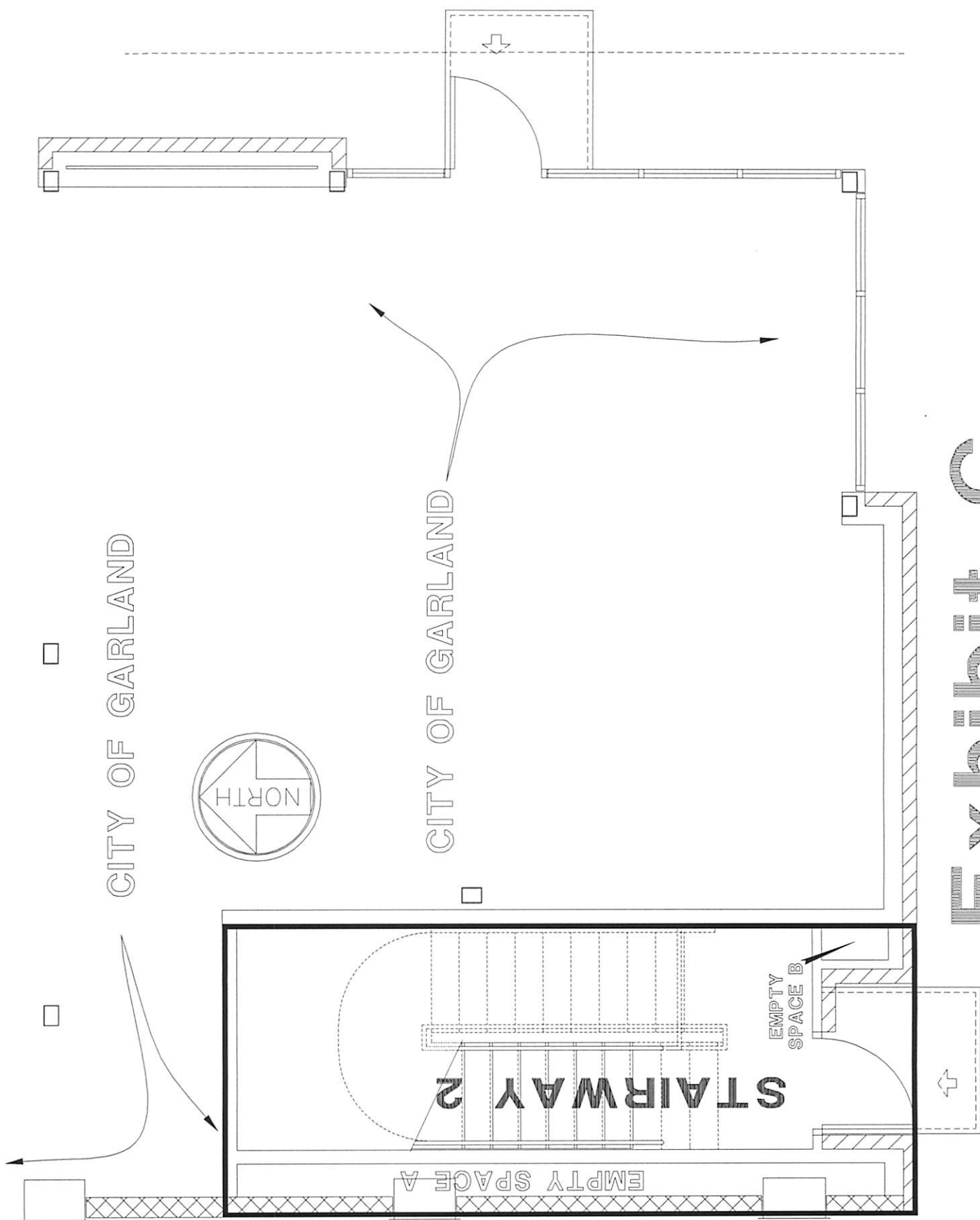


Exhibit C

**Exhibit C**

Legal Description

Attached

### **Premises**

#### **TRACT B:**

Being a 0.1507 acre tract of land described as a portion of Lots 6-10, Block 12, Duck Creek Addition, Additions to the City of Garland, Dallas County Texas, according to the plat thereof recorded in Volume 82, Page 352, Map Records, Dallas County, Texas, being the same tract of land conveyed to The City of Garland by deed recorded in Volume 3744, Page 334 of Deed Records of Dallas County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a brass disk found for the corner at the intersection of the North right-of-way line of State Street (variable width public right-of-way) and the West right-of-way line of Fifth Street (70 foot public right-of-way), said point being the Southeast corner of said Block 12, same being the Southeast corner of herein described tract;

Thence South 89 Degrees 39 Minutes 13 Seconds West, along the North right-of-way line of said State Street, a distance of 47.10 feet to a brass disk found for corner, said point being the Southeast corner of a tract of land conveyed to Sarah L. Stafford by deed recorded in Volume 99028, Page 729 of the Deed Records of Dallas County, Texas, same being the Southwest corner of herein described tract;

Thence North 00 Degrees 42 Minutes 14 Seconds West, departing the North right-of-way line of said State Street, and along the East line of said Stafford tract, a distance of 138.75 feet to a brass disk found for corner in the South right-of-way line of a 20 foot public alley, said point being the Northeast corner of said Stafford tract, same being the Northwest corner of herein described tract;

Thence North 89 Degrees 28 Minutes 39 Seconds East, along the South right-of-way line of said alley, a distance of 47.47 feet to an "X" found in concrete for corner at the intersection of the South right-of-way line of said alley and the West right-of-way line of said Fifth Street, said point being the Northeast corner of herein described tract;

Thence South 00 Degrees 33 Minutes 02 Seconds East, along the West right-of-way line of said Fifth Street, a distance of 138.89 feet to the POINT OF BEGINNING and containing 6,564 square feet or 0.1507 acres of land.

**Exhibit D**

**First Amendment to Ground Lease**

**Attached**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

**First Amendment to Ground Lease**

This First Amendment to Ground Lease (this "First Amendment") is made, to be effective as of the last date of execution set forth below, by and between the City of Garland, Texas, a home rule municipality ("Landlord"), and Oaks City Center LLC, a Minnesota limited liability company ("Tenant"), acting by and through their respective authorized member, officers and/or representatives.

**WITNESSETH:**

**WHEREAS**, the parties previously entered into that certain Ground Lease, dated effective as of August 1, 2013 (the "Ground Lease") with respect to that certain real property located in Garland, Dallas County, Texas and more particularly described therein (the "Premises");

**WHEREAS**, the parties desire to amend the Lease as hereinafter set forth.

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Article I**  
**Agreements**

1. All capitalized terms used but not expressly defined herein shall have the meaning given thereto in the Lease (or such other document as expressly identified herein).
2. Each of Landlord and Tenant hereby agree and acknowledge that the legal description for only Tract B as set forth in the Ground Lease is deleted and is revised as provided on Exhibit A attached hereto and made a part hereof.
3. Each of the Landlord and Tenant hereby consent and agree to the terms and conditions of that certain Reciprocal Easements and Operating Agreement of even date herewith by and between Landlord and Tenant which affects the use of only Tract B as described on Exhibit A.
4. The consideration for this First Amendment is the purchase by Landlord from Tenant certain as-built improvements located on Tract B at ground level and continuation of the Ground Lease of that part of Tract B above and adjacent to those improvements, as described on Exhibit A.
5. Except as expressly amended by this First Amendment, the Ground Lease shall continue in full force and effect as written.

6. This First Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Facsimile and electronically delivered signatures hereon shall be treated for all purposes as original signatures.
7. This First Amendment shall be binding upon and shall inure to the benefit of Landlord and Tenant, and their respective successors and assigns.

**Signature Pages to follow**

**EXECUTED** on this \_\_\_\_ day of \_\_\_\_\_, 2016.

**LANDLORD:**

**City of Garland, Texas,**  
a home rule municipality

By: \_\_\_\_\_  
Name: Douglas Athas  
Title: Mayor

STATE OF TEXAS       §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Douglas Athas in his capacity as Mayor of the City of Garland.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**EXECUTED** on this \_\_\_\_ day of \_\_\_\_\_, 2016.

**TENANT:**

**Oaks City Center LLC,**  
a Minnesota limited liability company

By: \_\_\_\_\_  
Name: Norman P. Bjornnes, Jr.  
Title: Chief Manager/President

STATE OF MINNESOTA   §  
COUNTY OF HENNEPIN   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Norman P. Bjornnes, Jr. in his capacity as Chief Manager/President of Oaks City Center LLC, a Minnesota limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public in and for the State of Minnesota

\_\_\_\_\_  
Typed or Printed Name of Notary

My Commission Expires: \_\_\_\_\_

## **Exhibit A**

Attached

BEING a volume of space that is limited by the physical extremities of the existing structure (hereafter referred to as the subject building) situated on the land described in the Deed dated the 1<sup>st</sup> day of June, 1952, from Evelyn M. Gatewood to the City of Garland, Texas, and recorded in Volume 3744, at Page 334 of the Deed Records of Dallas County, Texas, and being part of Lots 6, 7, 8, 9 and 10 of Block 12 of the Original Town of Duck Creek as it appears on the plat thereof recorded in Volume 82, at Page 352 of the Deed Records of Dallas County, Texas. It is the intent of this description to describe volumetric spaces situated entirely within the horizontal limits stated above. Nothing within the following particular description will be construed to defeat this clear and unambiguous intent of the parties:

See Exhibit A attached hereto for orientation of the stairwells on the first floor of the subject building.

**STAIRWAY 1: (Exhibit B - 458 square feet)**

The space herein described is a volume including all of the space within the stairwell situated on the northerly end of the first story of the subject building. STAIRWAY 1 includes the actual stairwell plus the other rooms shown on the attached Exhibit B.

The volume described herein embraces the vertical space between the upper surface of the first floor, and the lowest horizontal surface defined by the lowest portions of the floor trusses, between the first and second floors of the subject building; and it extends horizontally from the southerly interior wall face of the LOBBY, STAIRWAY 1, and TRASH COLLECTION rooms, thence in a northerly direction, fully embracing all interior partitions, facilities and features, to the westerly, northerly and easterly exterior wall façade faces of the subject building.

#### STAIRWAY 2: (Exhibit C - 216 square feet)

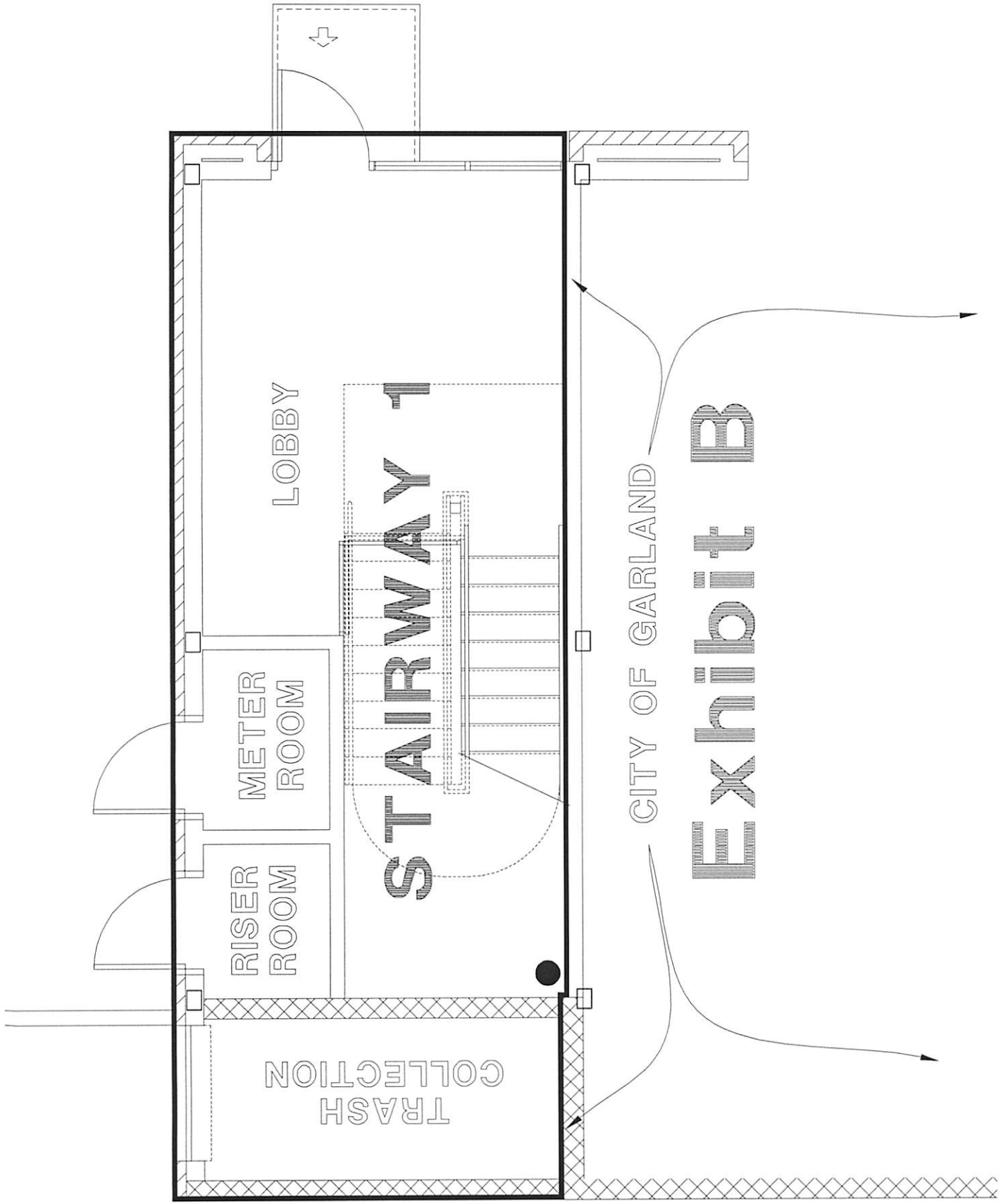
The space herein described is a volume including all of the space within the stairwell situated on the southerly end of the first story of the subject building. STAIRWAY 2 includes the actual stairwell plus the other rooms shown on the attached Exhibit C.

The volume described herein embraces the vertical space between the upper surface of the first floor, and the lowest horizontal surface defined by the lowest portions of the floor trusses, between the first and second floors of the subject building; and it extends horizontally from the northerly and easterly interior wall face of said STAIRWAY 2 projected to their respective intersections with the exterior wall façade west and south faces of the subject building, thence in a southerly and westerly direction to the exterior wall façades and embracing all internal partitions.

#### SECOND and THIRD STORY:

Embracing all of the space containing the second story (4,171 square feet based upon interior floor dimensions) and the third story (4,171 square feet based upon interior floor dimensions) of the subject building, the lowest elevation of said space being the lowest horizontal surface defined by the lowest portions of the floor trusses, between the first and second floors of the subject building situated on the above described tract of land and said surface to extend horizontally, in all directions, on a planer projection of the said lowest portions of the floor trusses, to its intersection with the vertical surfaces defined by the outer limits of the façade of said building;

THENCE vertically, generally perpendicular to said lowest elevation and at all times contiguous with the outer limits of the façade of said building, to the intersection of the top most surface of said parapet including any and all undulations thereof to form a closed volume of space.



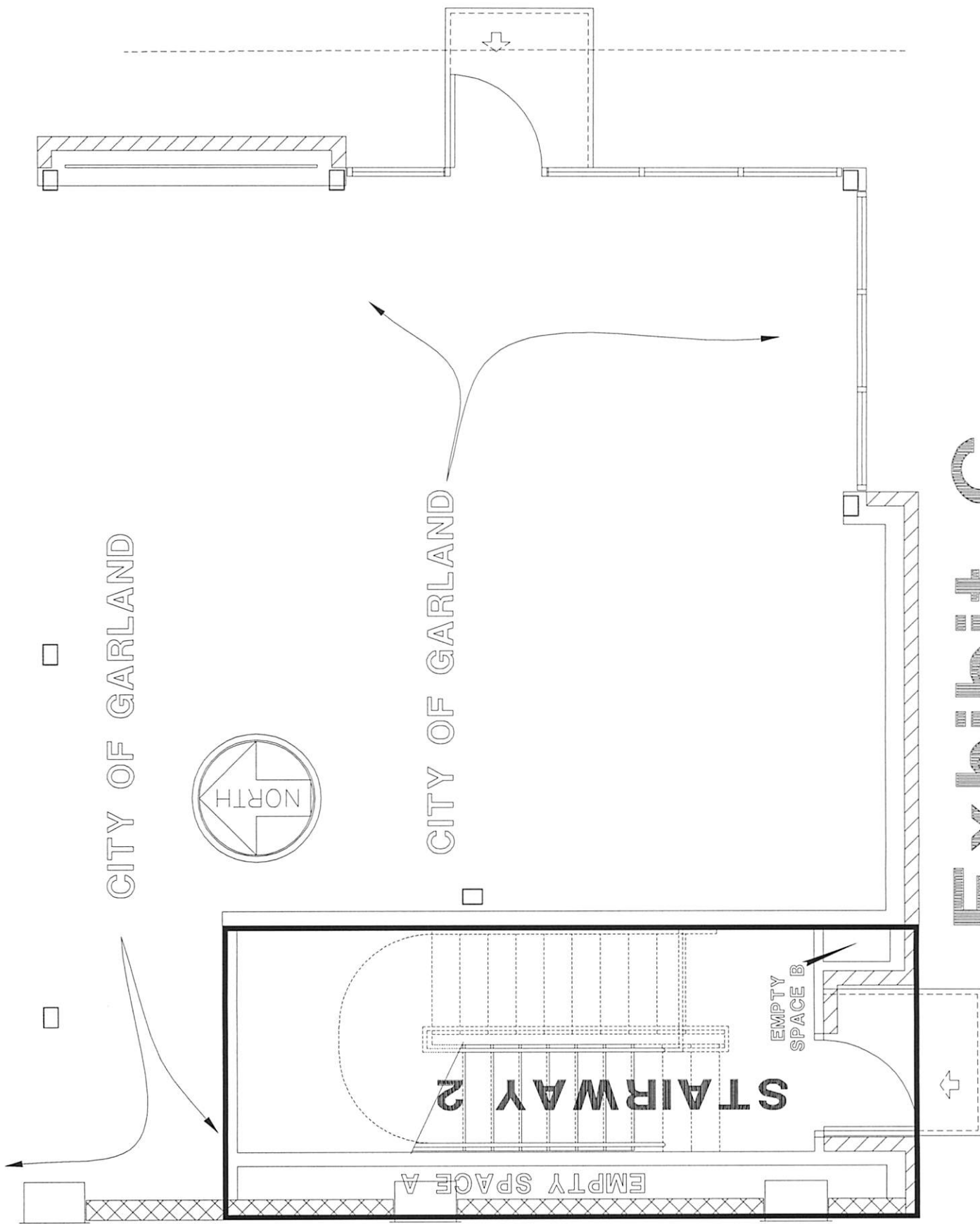


Exhibit C

**Exhibit E**

Reciprocal Easements and Operating Agreement

Attached

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**RECIPROCAL EASEMENTS  
AND OPERATING AGREEMENT  
(City of Garland Space/City Lofts)**

**THIS RECIPROCAL EASEMENTS AND OPERATING AGREEMENT ("Agreement")** is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **CITY OF GARLAND, TEXAS**, a home rule municipality ("City") and **OAKS CITY CENTER LLC**, a Minnesota limited liability company ("OCC").

**WITNESSETH:**

**WHEREAS**, City is the owner of the real property in Dallas County, Texas legally described on attached Exhibit A;

**WHEREAS**, pursuant to that Ground Lease dated as of August 1, 2013, as amended by that First Amendment to Ground lease dated \_\_\_\_\_, OCC is the lessee of a portion of that real property in Dallas County, Texas legally described on attached Exhibit A;

**WHEREAS**, OCC has constructed upon a portion of the real property a three story mixed use building known and designated as 203 North Fifth Street, Garland, Texas (the "Building"). Floor 1 of the Building has been acquired by City for use as office space (the "COG Space"). Floors 2 and 3 and access thereto from Floor 1 will be used by OCC as five rental apartments (the "City Lofts");

**WHEREAS**, City and OCC desire to memorialize their respective rights and obligations in the operation, maintenance, repair and replacement of the COG Space improvements and the OCC City Lofts improvements and easements associated therewith; and

**WHEREAS**, the parties intend the COG Space improvements and the OCC City Loft improvements on the real property described on attached Exhibit A shall be held, transferred, mortgaged, sold, conveyed, leased, sub-leased and occupied subject to the provisions of this Agreement.

**NOW, THEREFORE,** City and OCC agree as follows:

1. Recitals. The foregoing recitals are incorporated herein by this reference, including the definitions set forth therein.

2. Definitions.

2.1 **"Commencement Date"** shall mean the date on which OCC sells the COG Space to City.

2.2 **"Improvements"** shall include the COG Space on Floor 1 and the City Lofts apartments on Floors 2 and 3, including access thereto from Floor 1 in the Building, walkways, sidewalks, parking spaces on North Fifth Street, landscaping, irrigation systems and storm sewer catch basins (and related storm sewer lines), water lines, irrigation lines, sanitary sewer lines, electrical lines, gas lines, telephone lines, and any and all other utility lines and any valves, switches, manholes or other accessory devices appurtenant and/or accessory to such utility lines (all such Improvements relating to utilities shall be referred to as **"Utilities"**).

2.3 **"Owner"** or **"Lessee"** as used herein, shall be deemed to mean the City as the fee simple Owner and OCC as the Lessee of the real property on Exhibit A.

2.3.1 **"Benefitted Owner/Lessee"** shall mean the party benefited by a particular easement. As used in this Agreement, the term **"Burdened Owner/Lessee"** shall mean the party burdened by a particular easement.

2.4 **"Maintenance Standard"** shall mean, with respect to operations, cleaning, maintenance, repair, alterations, modifications or reconstruction of any Improvements, that all such Work shall: (i) use materials, equipment and design and engineering standards equal to or better than those originally used, (ii) be performed in a good and workmanlike manner consistent in quality with the COG Space and the City Lofts apartments and in compliance with all applicable laws, City of Garland ("City of Garland") standards, permits and approvals for the initial installation of such Improvements and (iii) shall be performed in such manner as not to impair or destroy the structural soundness or integrity, aesthetic appearance or functional utility of the property or Improvement upon or in which the Work or activity is being done.

2.5 **"Work"** shall mean any construction, installation, maintenance, repair, cleaning, replacement, alteration, modification, demolition, reconstruction or reinstallation of an Improvement.

3. Easements Created.

3.1 From and after the date hereof, there shall be and hereby is created on, under, over and across those portions of the Building located on and the curtilage of the

real property described on attached Exhibit A, in favor of the Lessee, a perpetual right and easement for access to Floors 2 and 3, including access thereto from Floor 1 and around the Building at grade level as may be reasonably necessary for the purpose of doing any Work to or on any OCC City Loft Improvements (the "Lessee Easement Areas"). This perpetual right and easement extends to conduit accessing Floor 1, the trash room adjacent to the Floors 2 and 3 access doorway and stairs, electric panel and service ports to Floors 2 and 3 and to sanitary sewer cleanout access ports and any fire or security alarm demarcation panels on Floor 1.

3.2 From and after the date hereof, there shall be and hereby is created on, under, over and across those portions of the Building, in favor of the Owner, a perpetual right and easement for access to the COG Space Improvements which are connected to, run through or are located on Floors 2, 3 and the roof, including access thereto from Floor 1, for the purpose of doing any Work to or on any COG Space Improvements (the "Owner Easement Areas"). This perpetual right and easement extends to those COG Space Improvements that extend into Floors 2, 3 and the roof (including the freshwater hose bib) of the Building and includes access to and use of the Floor 1 meter room and trash room for trash and recycling receptacles.

3.3 The Owner and Lessee are each hereby granted a perpetual non-exclusive easement for installation, access to and use of Utilities now or hereafter situated within driveways, alleys and/or landscaped areas, and/or other areas not improved. Said easements shall include the right to install Utilities below the surface, but not above the surface, except for catch basins, manholes, light poles, fire hydrants and other accessory Utility improvements which necessarily must be at the surface. The construction or installation of any improvements to be constructed pursuant to the easements of this paragraph must be in compliance with any requirements of the City of Garland and be constructed in conformance with plans approved by the City of Garland. Any portion of the water service line(s) (whether for potable or fire use) to the Building that serve the Owner and Lessee shall be jointly maintained, repaired and replaced at equal cost to the Owner and Lessee.

3.4 The easements created and granted by this Agreement shall and do include the non-exclusive right and license of the Owner and Lessee and their respective contractors, agents, representatives and assigns to enter upon the area subject to the easements hereby created and such other parts of the Building and curtilage as may be reasonably necessary for the purpose of doing any Work to or on any Improvement so as to enable the use, enjoyment and benefit of such easements and Improvements.

3.4.1 All Work on an easement area created or granted hereby shall be done: (i) in such manner as to not unreasonably interfere with the normal use and enjoyment of the area on which the Work is being done; (ii) at the sole cost and expense of the entity ordering the Work (except for Work on the roof of the Building, which shall be paid 1/3 by Owner and 2/3 by Lessee); (iii) in full compliance with the provisions of this Agreement; (iv) in full compliance with the Maintenance Standard; and (v) in such manner as not to impair or destroy the

structural soundness or integrity, aesthetic appearance or functional utility of the property or Improvement upon or in which the Work or activity is being done.

3.4.2 Before anyone enters upon any easement area to do any Work, absent exigent circumstances, the entering party shall give at least five (5) days' prior notice of such entry to the Burdened Owner/Lessee and the anticipated entry time, estimated duration and purpose; said right of entry being subject to the Burdened Owner's/Lessee's not objecting to said entry at said time and/or for said duration and/or purpose; which objections, however, shall not be made unless a reasonable basis exists therefor. Failure of the Burdened Owner/Lessee to notify the entering party within said five (5) day period shall be deemed conclusive evidence of lack of any such objection. Such notice need not be given in the event of any emergency as reasonably determined by the entering party. In addition, the entering party shall provide proof of adequate commercial general liability insurance coverage, or adequate coverage under an established self-insurance program (in an amount of not less than \$1,000,000). However, notwithstanding any other provision contained within this section 3.4.2, either Party may enter into an easement area to do routine maintenance or minor repairs that do not interfere with the burdened Owner/Lessee's full use, benefit, and enjoyment of their respective controlled area, with prior notice within a reasonable time period to, and authorization from, the Burdened Owner/Lessee.

3.4.3 The party doing the Work and the Burdened Owner/Lessee shall reasonably cooperate with one another so as to accomplish the Work with both the least amount of cost and also with the least amount of interference to the business being conducted on the portion of the Building or real property described on attached Exhibit A upon which the Work is being done.

3.4.4 No Burdened Owner/Lessee shall have any liability or obligation of any kind for any claim or demand arising out of or claimed to arise out of the design, construction, maintenance, repair, reconstruction or replacement of all or any part of the easement areas or any Improvement thereof, or for any Work done on any easement area by someone other than said Burdened Owner/Lessee or its agents, successors or assigns. In the event any Work causes damage to a the COG Space Improvements or the City Lofts Improvements subject to any easement, such damage shall be immediately restored to a substantial similar condition and quality as before the Work was initiated by such entering party at its expense and the Burdened Owner/Lessee shall be held harmless and indemnified by the entering party for any such damage.

3.5 The covenants and easements created herein shall inure to the benefit of and be binding upon the undersigned and subsequent assignees of the Ground Lease, as amended, and their respective heirs, representatives, successors in interest and assigns, but nothing herein contained shall be deemed to create any easement or other rights in the public, or be for the benefit of any property or property owner other than the real property described on attached Exhibit A and the Ground Lease, as amended, and no other person

shall be entitled to possession, use and benefits of the covenants and easements hereunder, except tenants and invitees of the Owner and Lessee.

4. Maintenance of the Improvements. OCC has constructed the COG Space improvements and the City Lofts Improvements in accordance with the approved plans and specifications under a separate agreement. Upon completion of the Improvements, OCC, at its sole expense, will operate, maintain, repair and replace the City Lofts Improvements in accordance with the Maintenance Standard and shall not make any alterations to the City Lofts Improvements that are visible from the exterior of the Building without the consent of the Planning Department of the City of Garland and the Owner. Upon sale of the COG Space Improvements to City, the City, at its sole expense, will operate, maintain, repair and replace the COG Space Improvements in accordance with the Maintenance Standard after the Commencement Date, and shall not make any alterations to the COG Space that are visible from the exterior of the Building without the consent of the Planning Department of the City of Garland and the Lessee. The City and OCC will jointly maintain, repair and replace the roof of the Building, including the drainage and flashing systems, with the cost thereof paid 1/3 by City and 2/3 by OCC. The parties hereto acknowledge and agree the landscaped areas in the curtilage of the Building is owned and will be maintained by City in accordance with the Maintenance Standard. The City and OCC are each responsible for maintaining, operating, repairing, and replacing their respective exterior signs in accordance with all applicable state and local laws and regulations, and subject to the terms of the Ground Lease of August 1, 2013, as amended.

5. Failure to Maintain- Lessee. In the event OCC fails to perform the Maintenance of the City Lofts Improvements or OCC fails to perform the Maintenance of the Lessee Easement Area, as required by this Agreement, then the Owner, after compliance with the notice provisions of this Agreement and the expiration of any period to cure, shall have the right to utilize the easements granted in this Agreement to enter upon the City Lofts Improvements and/or OCC Easement Area to perform the Maintenance of such improvements as required herein, and be reimbursed by the Lessee upon submission to the Lessee of copies of the statements, bills, invoices or other proof of costs and expenses incurred and paid by the Owner.

6. Failure to Maintain- Owner. In the event City fails to perform the Maintenance of the COG Space Improvements or City fails to perform the Maintenance of the City Easement Area, as required by this Agreement, then the Lessee, after compliance with the notice provisions of this Agreement and the expiration of any period to cure, shall have the right to utilize the easements granted in this Agreement to enter upon the COG Space Improvements and/or City Easement Area to perform the Maintenance of such improvements as required herein, and be reimbursed by the Owner upon submission to the Owner of copies of the statements, bills, invoices or other proof of costs and expenses incurred and paid by the Lessee.

7. Monies Due. If not otherwise specified herein, all monies to be paid by a party ("Owing Party") to the other party ("Owed Party") shall be due fifteen (15) days after notice from the Owed Party to Owing Party, specifying the amount due and the reason for the payment. Interest shall accrue on all monies and other claims from the date the monies are payable or claim arises at an interest rate equal to 8% per annum.

8. Default. If any party defaults in any obligation hereunder which can be cured by the payment of monies and such default is not cured within ten (10) days after written notice thereof is given to such defaulting party by any other party; or if any party defaults in any other obligation in this Agreement and such default continues for thirty (30) days after written notice thereof is given to such defaulting party by the other party (or if such default is not cured due to excusable delays as provided in Article 10 below, or if it is of a kind that cannot with reasonable diligence be cured within thirty (30) days but can be cured, then such thirty (30) day period shall be extended for the period reasonably necessary to cure the default as long as reasonable and continuous efforts are being made to cure the default), then any non-defaulting party may exercise any one or more of the remedies set forth in Article 9 below.

9. Remedies. Upon the occurrence of a default under the preceding Article and the expiration of any period to cure, without a curing of such default, any non-defaulting party may exercise one or more of the following remedies: i) cure the default of any defaulting party and charge the costs thereof, including reasonable fees of experts and attorneys, to the defaulting party and all such costs shall be payable on demand, and for such purposes the non-defaulting party shall have an easement to enter upon the COG Space Improvements or City Lofts Improvements to do any Work pursuant to Article 4, Article 5 and Article 6 above, necessary to cure the default; and ii) specific enforcement, injunctive relief, or any other remedy available at law or in equity, specifically excluding however, the recovery of punitive or consequential monetary damages or placement of liens on any portion of the COG Space Improvements or City Lofts Improvements (other than any judgment lien arising out of legal actions to enforce this Agreement). No punitive or consequential monetary damages shall be sought or recovered hereunder by any party; however such limitation shall not prevent the recovery of costs and expenses, including reasonable attorneys' fees and fees of experts, or costs incurred in connection with curing the defaulting party's default, or direct damages or costs for which a party is entitled to indemnification. Any action seeking one or more forms of relief shall not be a bar to an action at the same or subsequent time seeking other forms of relief. Costs of any such action, including reasonable attorneys' fees of the prevailing party or parties, shall be paid by the party or parties not prevailing. Any delay in realizing or failure to realize on any remedy herein for a default hereunder shall not be deemed a waiver of that default or any subsequent default of a similar or different kind, and no waiver of any right or remedy hereunder shall be effective unless in writing and signed by the person against whom the waiver is claimed.

10. Performance, Excusable Delays. Whenever performance is required of any party, that party shall use all due diligence to perform and take all necessary measures in good faith to perform as soon as possible; provided however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of materials or labor, or damage to work or other activity in progress by reason of fire or other casualty, or other causes beyond the reasonable control of that party, then the time for performance as herein specified shall be appropriately extended by the length of the delay actually so caused. The provisions of this Article shall not operate to excuse any party from the prompt payment of any monies required by this Agreement.

11. Easements to Continue Notwithstanding Breach. It is expressly agreed that no breach of this Agreement shall entitle any party or its successors or assigns to cancel, rescind or otherwise terminate any easements created hereunder. However, such limitations shall not affect, in any manner, any other rights or remedies which such party may have hereunder by reason of such breach.

12. Relocating and Documenting Easements. To the extent easements hereby granted, declared and created are not specifically defined or are erroneously defined with respect to location, width or scope, any Burdened Owner/Lessee may prepare and document such descriptions or such accurate descriptions in a supplement to this Agreement (a “**Defining Supplement**”) and the other Benefitted Owner/Lessee agrees to execute and deliver such Defining Supplement in recordable form within fifteen (15) days of receipt by each such Benefitted Owner/Lessee of information (such as a registered surveyor’s certification) that the descriptions are accurate and complete; unless within said fifteen (15) days such Benefitted Owner/Lessee objects in writing to such Defining Supplement as not conforming to and/or is inconsistent with the provisions of this Agreement and sets forth the ways in which such Defining Supplement is so non-conforming and/or inconsistent. If, after request and failure of any Benefitted Party’s failure to execute a Defining Supplement, a requesting party may bring an action in a court of proper jurisdiction in Dallas County, Texas and the non-prevailing party or parties in such an action shall be responsible for the attorneys’ fees and court costs of the prevailing party. The party requesting such documentation shall pay the cost of preparing and filing or recording such documentation, but each Benefitted Party shall be responsible for its own legal and other consultants’ costs, if any, in assuring itself that the descriptions are accurate, complete, conform to and are consistent with the provisions of this Agreement. Failure of any Benefitted Party to respond to a request, as set forth herein, shall be deemed a default. It is specifically agreed and acknowledged that a Defining Supplement need be executed only by the Burdened Owner/Lessee and Benefitted Party and without the need for any other party to join in or consent to such Defining Supplement.

13. Non-Exclusive Easements. The parties hereto understand and agree that those easements hereby granted and created which are non-exclusive are subject to the right of any Burdened Owner/Lessee to use that Burdened Owner/Lessee’s respective Improvements for similar or dissimilar uses and purposes; provided, however, that such uses shall be subject to the easements hereby granted and created.

14. Covenants for Insurance.

14.1 The Lessee shall obtain and maintain in force at all times and at its sole cost and expense, a policy of fire and extended coverage, vandalism and malicious mischief coverage insurance, on the "Special Form" (formerly the all risk form), for at least the full insurable replacement value of the City Lofts Improvements, respectively, issued by a reputable insurance company authorized to do business in the State of Texas.

14.2 The Owner shall, from and after Closing, insure the COG Space Improvements for at least the full insurable replacement value of the COG Space Improvements, which insurance may be through coverage provided by a third-party insurance company or

through an established program of self-insurance.

14.3 Each Burdened Owner/Lessee and Benefitted Owner/Lessee shall maintain in full force and effect, while this Agreement shall remain effective, a policy of commercial general liability insurance, with the minimum combined limit of liability to be not less than \$2,000,000.00. Said liability insurance shall specifically include contractual obligation coverage and garage keepers legal liability coverage, if available, by endorsement or otherwise, so as to include the indemnification provisions set forth below. Notwithstanding any provision contained within this Section 14.3 to the contrary, Owner may provide the aforementioned insurance coverage and limits through an established program of self-insurance.

14.4 All insurance policies carried by any party hereto pursuant to this Agreement shall be provided by insurance companies approved by a respective Owner's mortgagee, or in the absence of a mortgagee, rated no less than "A-", Class VII, in the current edition of Best's Guide. Upon request by any party, any other party shall produce certificates evidencing compliance with the insurance coverage requirements as required in this Agreement. If any party fails to so produce such evidence of required insurance within ten (10) days of written request therefor, then the requesting party may request such evidence again by notice in capitalized, bold faced 14 point type containing the following statement at the top of the first page: "THIS IS A SECOND REQUEST FOR EVIDENCE OF INSURANCE. IF YOU FAIL TO PROVIDE SUCH EVIDENCE WITHIN TEN (10) DAYS, THEN WE WILL OBTAIN SUCH INSURANCE AT YOUR COST," and if such party fails to provide evidence of insurance within such second ten (10) day period, then the requesting party may obtain such insurance and the cost thereof shall be included monies due the requesting owner under Article 7. Notwithstanding any provision contained within this Section 14.4 to the contrary, Owner may provide the required insurance coverage and limits through an established program of self-insurance, evidenced by a certificate of self-insurance provided by Owner.

14.5 It is agreed that the insurance coverages provided for under this Section 14 may be maintained pursuant to master policies of insurance covering other locations and or real estate developments of the parties providing such insurance and/or their corporate affiliates.

14.6 To the extent allowed by law, each party agrees to indemnify and hold the other party harmless from any claim, loss or damage, including reasonable attorney's fees, suffered by such other party occurring in, at or around the Building and curtilage, unless caused by the negligence or willful misconduct of the other party (including the other party's employees, invitees, agents or licensees).

14.6.1 To the extent allowed by law, each Burdened Owner/Lessee agrees to indemnify and hold the Benefitted Owner/Lessee of the Improvements harmless from any claim, loss or damage, including reasonable attorney's fees, suffered by such Benefitted Owner/Lessee occurring in, at or around the

Burdened Owner/Lessee's respective Improvements unless caused by the negligence or willful misconduct of the said Benefitted Owner/Lessee or its employees or anyone claiming through or acting on behalf of said Benefitted Owner/Lessee.

14.6.2 To the extent allowed by law, each Benefitted Owner/Lessee agrees to indemnify and hold the Burdened Owner/Lessee of the Improvements harmless from any claim, loss or damage, including reasonable attorney's fees, suffered by such Burdened Owner/Lessee occurring in, at or around the Benefitted Owner/Lessee's respective Improvements unless caused by the negligence or willful misconduct of the said Burdened Owner/Lessee or its employees or anyone claiming through or acting on behalf of said Burdened Owner/Lessee.

14.6.3 To the extent allowed by law, the foregoing indemnifications shall specifically be applicable prior to the Commencement Date, and shall specifically include claims of mechanic's liens with respect to the original construction of the COG Space Improvements. To the extent allowed by law, the foregoing indemnifications shall also specifically be applicable during any maintenance under Article 4, Article 5 and Article 6, and shall specifically include claims of mechanic's liens with respect to such maintenance.

14.6.4 The Parties agree that there is no expectation, or obligation, for the Owner to establish a sinking fund to fund any indemnity provision found within this Agreement.

15. Covenants for Property Taxes. Each party shall be separately responsible for paying any and all real estate taxes and/or special assessments or other governmental levies against the real and/or personal property located upon their respective Improvements (collectively "Taxes").

16. General Provisions.

16.1 Any consent or approval of a party required under this Agreement shall not be unreasonably withheld or delayed.

16.2 Nothing herein contained shall be deemed to create any relationship or partnership, joint venture, association or otherwise among or between the parties.

16.3 Upon the request of a party, any other party shall deliver, within 15 days of request therefor, an estoppel certificate with respect to the Improvements owned or leased, as the case may be, indicating as of the date given, the presence or absence of uncured violations of this Agreement which are known to the party giving said estoppel certificate; the amounts of any sums due under this Agreement, whether billed or unbilled, to the extent known by the party giving said certificate; and the actual day of the Commencement Date, if such has occurred.

17. Captions. The captions herein are inserted only for reference and in no way limit or describe the scope of this Agreement or the meaning of any provision hereof.

18. Minimum Interference. The parties hereto and their successors and assigns shall always exercise use of their respective easements and rights hereunder reasonably and in such manner as to cause the least possible interference under the then circumstances with the use and enjoyment by the other parties or their successors or assigns who have the right to use or are subject to such easements of their respective properties and Improvements.

19. Appurtenant Easements. This Agreement and the easements and restrictions provided herein shall be appurtenant to the Subject Tracts and for the benefit of the Owners thereof and their respective agents, employees, tenants, licensees and invitees.

20. Run With The Land. This Agreement and the easements and restrictions provided herein shall attach to, bind, burden and run with the Subject Tracts and shall be binding upon the undersigned and subsequent owners and transferees thereof.

21. Governing Law; Venue. This Agreement will be construed and enforced under the laws of the State of Texas, without regard to any conflicts of laws principles. Any lawsuit related to this Agreement must be brought in a state court of proper jurisdiction in Dallas County, Texas, to the exclusion of all other venues.

22. Conflict with Ground Lease. The Parties acknowledge that the Building is situated on a tract of land that is burdened by a Ground Lease, as amended, in which the Owner has agreed to lease to the Lessee the volumetric space in which the 2<sup>nd</sup> and 3<sup>rd</sup> floor, and the stairway access thereto, of the Building is located. In the event of a conflict between the express terms of this Agreement and the Ground Lease, the express terms of this Agreement shall control.

23. Notices and Payments. Notices, communications or demands required or permitted to be given hereunder shall be transmitted by United States certified or registered mail (postage prepaid), reliable overnight delivery service, by facsimile or email (provided that any notice given by facsimile must also be given by United States certified or registered mail or by reliable overnight delivery service) and addressed to (and the following contact information for either party may be changed by written notice given pursuant to the terms hereof to the other party):

In case of City:

City Manager  
City of Garland, Texas  
200 N. Fifth Street  
Garland, TX 75040  
Telephone: (972) 205-2465  
Fax: (972) 205-2504

With a copy to:

Office of the City Attorney  
City of Garland, Texas  
200 N. Fifth Street, Fourth Floor  
P.O. Box 469002  
Garland, TX 75046-9002  
Phone: (972) 205-2380  
Fax: (972) 205-2389

In case of OCC:

Oaks City Center LLC  
Attention: Norman P. Bjornnes, Jr.  
3550 East 46<sup>th</sup> Street, Suite 120  
Minneapolis, MN 55406  
Phone: (612) 874-1102  
Fax: (612) 874-1054  
Email: nbjornnes@oaksproperties.com

With a copy to OCC's  
Counsel:

Mulligan & Bjornnes PLLP  
Attention: Christopher Huntley, Esq.  
401 Groveland Avenue  
Minneapolis, MN 55403  
Phone: (612) 879-1822  
Fax: (612) 871-7869  
Email: chuntley@mulliganbjornnes.com

**(SIGNATURES FOLLOW ON THE NEXT PAGE)**

IN WITNESS WHEREOF, City and OCC have executed this Agreement as of the day and year first above written.

**CITY OF GARLAND, TEXAS**  
a home rule municipality

By: \_\_\_\_\_  
Name: Douglas Athas  
Title: Mayor

STATE OF TEXAS       §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Bryan Bradford in his capacity as Mayor of the City of Garland.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
Typed or Printed Name of Notary  
My Commission Expires: \_\_\_\_\_

**OAKS CITY CENTER**  
a Minnesota limited liability company

By: \_\_\_\_\_  
Name: Norman P. Bjornnes, Jr.  
Title: Chief Manager/President

STATE OF MINNESOTA   )  
  ) ss  
COUNTY OF HENNEPIN   )

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Norman P. Bjornnes, Jr., the Chief Manager/President of Oaks City Center LLC, a Minnesota limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**Attached**

### **Premises**

#### **TRACT B:**

Being a 0.1507 acre tract of land described as a portion of Lots 6-10, Block 12, Duck Creek Addition, Additions to the City of Garland, Dallas County Texas, according to the plat thereof recorded in Volume 82, Page 352, Map Records, Dallas County, Texas, being the same tract of land conveyed to The City of Garland by deed recorded in Volume 3744, Page 334 of Deed Records of Dallas County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a brass disk found for the corner at the intersection of the North right-of-way line of State Street (variable width public right-of-way) and the West right-of-way line of Fifth Street (70 foot public right-of-way), said point being the Southeast corner of said Block 12, same being the Southeast corner of herein described tract;

Thence South 89 Degrees 39 Minutes 13 Seconds West, along the North right-of-way line of said State Street, a distance of 47.10 feet to a brass disk found for corner, said point being the Southeast corner of a tract of land conveyed to Sarah L. Stafford by deed recorded in Volume 99028, Page 729 of the Deed Records of Dallas County, Texas, same being the Southwest corner of herein described tract;

Thence North 00 Degrees 42 Minutes 14 Seconds West, departing the North right-of-way line of said State Street, and along the East line of said Stafford tract, a distance of 138.75 feet to a brass disk found for corner in the South right-of-way line of a 20 foot public alley, said point being the Northeast corner of said Stafford tract, same being the Northwest corner of herein described tract;

Thence North 89 Degrees 28 Minutes 39 Seconds East, along the South right-of-way line of said alley, a distance of 47.47 feet to an "X" found in concrete for corner at the intersection of the South right-of-way line of said alley and the West right-of-way line of said Fifth Street, said point being the Northeast corner of herein described tract;

Thence South 00 Degrees 33 Minutes 02 Seconds East, along the West right-of-way line of said Fifth Street, a distance of 138.89 feet to the POINT OF BEGINNING and containing 6,564 square feet or 0.1507 acres of land.

## PURCHASE AGREEMENT

THIS AGREEMENT is made as of September \_\_\_\_, 2016, between Oaks City Center LLC, a Minnesota limited liability company ("Seller"), and City of Garland, Texas, a home-rule municipality ("Buyer").

In consideration of this Agreement, Seller and Buyer agree as follows:

1. Sale of Property Improvements. Seller is constructing a three story frame mixed use building located at 203 North Fifth Street, Garland, Texas (the "Building"). Floor 1 of the Building is to be used as office space ("COG Space"). Floors 2 and 3 of the Building will be used as five rental apartments ("Oaks City Lofts"). Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the COG Space, depicted on Exhibit A attached hereto and made a part hereof, for the sum of Five Hundred Eighty Nine Thousand Five Hundred Six and 00/100ths Dollars (\$589,506.00) ("Purchase Price"). The Purchase Price shall be paid in cash on the Closing Date.

2. Purchase Price Composition. The Purchase Price is comprised of the following:

Construction Cost – Shell	\$ 528,231
Allocable Soft Costs	<u>61,275</u>
	\$589,506

The general contractor for the Building is Hill & Wilkinson Construction Group, Ltd., a Texas limited partnership ("Hill & Wilkinson"). The Building is being constructed pursuant to that Construction Contract dated December 27, 2013 by and between Hill & Wilkinson and Seller.

3. Bill of Sale/Warranties. Subject to performance by the Buyer, the Seller agrees to execute and deliver a Bill of Sale, in the form of Exhibit B attached hereto and made a part hereof, conveying ownership of the COG Space to Buyer free and clear of all liens and claims. Further, Seller will transfer and assign all Hill & Wilkinson and Finish General Contractor construction warranties, including all manufacturer warranties for equipment and systems conveyed to the Buyer under the Bill of Sale.

- ~~4. Interior Finish Construction by Seller. Seller will engage Hill & Wilkinson or a different general contractor acceptable to Buyer (the "Finish General Contractor") to complete the interior finish construction (including all allowances) of the COG Space, as described in Paragraph 13, for a cost not to exceed Seven Hundred Thousand and 00/100ths Dollars (\$700,000.00), plus a development fee of 3.10%, not to exceed Twenty One Thousand Seven Hundred and 00/100ths Dollars (\$21,700.00) (collectively the "Interior Finish Construction Cost"). Buyer shall pay the Interior Finish Construction Cost in four monthly cash installment payments, per the actual construction expenditures as evidenced by the pay applications submitted by the Finish General Contractor in addition to the applicable development fee. Seller and Buyer will jointly approve all pay applications.~~

- 5.4. First Amendment to Ground Lease. The Building has been constructed on land known and designated as 203 North Fifth Street, Garland, Texas, identified as Tract B and legally described on Exhibit C attached hereto and made a part hereof. The land identified as Tract B on Exhibit C has been leased by the Seller under that Ground Lease dated August 1, 2013 by and between City of Garland, Texas ("Landlord") and Oaks City Center LLC ("Tenant"). Subject to performance by the Buyer, at closing, the Seller and City of Garland agree to execute and deliver an amendment to the Ground Lease (the "First Amendment to Ground Lease"), substantially in the form attached hereto as Exhibit D, which First Amendment to Ground Lease will remove Tract B from the Ground Lease and will substitute therefore the Oaks City Lofts improvements, consisting of Floors 2 and 3 of the Building as legally described in the First Amendment to Ground Lease. The Bill of Sale will merge ownership of the COG Space with the land legally described on Exhibit C. From and after the closing, the Buyer will own the COG Space and the Tract B land subject only to the leasehold rights of Oaks City Center LLC under the Ground Lease, as amended, and the Reciprocal Easements and Operating Agreement described in Paragraph ~~65~~.
- 6.5. Reciprocal Easements and Operating Agreement. Subject to performance by the Buyer, at closing, the Seller and City of Garland agree to execute and deliver the "Tract B Reciprocal Easements and Operating Agreement" substantially in the form attached hereto as Exhibit E. The Tract B Reciprocal Easements and Operating Agreement will govern the use and operation of the COG Space and Oaks City Lofts.
- 7.6. Closing. The closing for Buyer's purchase of the COG Space shall be held on or before October 1, 2016 (the "Closing Date") at a mutually-agreed upon time at the offices of the Title Company (as defined in Paragraph ~~11~~10) or as otherwise agreed between the parties.
- 8.7. Real Estate Taxes. Real estate taxes due and payable in the year of closing shall be paid by Seller. Buyer, as purchaser of the COG Space, is exempt from payment of real estate taxes. Real estate taxes payable in the years prior to closing shall be paid by Seller. Real estate taxes payable in the years subsequent to the closing for the Oaks City Lofts shall be paid by the Seller.
- 9.8. Prorations. All items customarily prorated and adjusted in connection with the closing of the sale of the COG Space shall be prorated as of the date of closing. It shall be assumed that the Buyer will own the COG Space for the entire date of the closing. Seller and Buyer will equally share any closing fee charged by the Title Company or other closer.
- ~~10.9~~. Damages to the COG Space. If there is any loss or damage to the COG Space between the date hereof and the date of closing, for any reason, the risk of loss shall be on the Seller. If the COG Space is destroyed or ~~substantially damaged~~substantially damaged before the closing, this Agreement shall become null and void, at Buyer's option. Buyer shall have the right to terminate this Agreement within 30 days after Seller notifies Buyer of such damage. Seller will promptly restore the COG Space if Buyer does not elect to terminate this Agreement under this Paragraph ~~109~~.
- ~~11~~10. Examination of Title. Within a reasonable time after acceptance of this Agreement, if requested by Buyer, Seller shall furnish Buyer with an ALTA commitment for title insurance issued by Republic Title of Texas, Inc. (the "Title Company"), certified to date

including proper searches covering bankruptcies and State and Federal judgments, liens, and levied and pending special assessments for the land described in Exhibit B. Buyer shall have thirty (30) days after receipt of the Abstract of Title or ALTA commitment for title insurance to examine the title to the land described in Exhibit B and provide Seller with written objections. Buyer shall be deemed to have waived any title objections not made within the applicable 30 day period set forth above, except that this shall not operate as a waiver of Seller's covenant to deliver the First Amendment to Ground Lease. If any objection is so made, Seller shall have 10 business days from receipt of Buyer's written title objections to notify Buyer of Seller's intention to make title to the land described in Exhibit B marketable within 30 days from Seller's receipt of Buyer's written title objections. If notice is given, payments hereunder required shall be postponed pending correction of title, but upon correction of title and within 10 days after written notice to Buyer, the parties shall perform this Agreement according to its terms. If no such notice is given or if notice is given but title is not corrected within the time provided for, this Agreement shall be null and void, at option of Buyer; neither party shall be liable for damages hereunder to the other. This provision shall not deprive either party of the right to enforce the specific performance of this contract provided this contract has not been terminated and provided action to enforce such specific performance shall be commenced within six months after such right or action shall arise.

12.11. Possession. Seller shall deliver possession of the COG Space on the Closing Date.

~~13. Interior Finish Construction. Buyer has construction drawings prepared by JHP Architecture / Urban Design, PC dated May 6, 2016 (the "Plans") for most work to complete the interior finish construction (collectively, the "Interior Finish Construction"). The Buyer and Finish General Contractor will agree to coordinate and jointly specify the architectural finish schedule, in order for the Finish General Contractor to properly complete the space. Seller will, under a separate agreement with the Finish General Contractor, cause the Finish General Contractor to complete the Interior Finish Construction of the COG Space according to the Plans. The separate agreement with the Finish General Contractor will require commencement of work on Interior Finish Construction on or before October 1, 2016 with completion date of February 1, 2017. In the event the actual cost of the Interior Finish Construction work to be completed by the Finish General Contractor is less than \$700,000.00, the balance of the Interior Finish Construction Cost not to exceed amount payable to Seller will adjust accordingly. In the event Buyer requests changes to the Interior Finish Construction of the COG Space after the date of this Agreement, only written and executed Proposed Change Orders signed by Seller, Buyer and the Finish General Contractor will be implemented. Further, the cost of any Proposed Change Order(s) fully executed after the date of this Agreement will adjust the Interior Finish Construction Cost accordingly.~~

~~14. Interior Finish Construction Monitoring. Buyer shall have the right, at its expense to monitor, inspect and confirm that the Interior Finish Construction is performed in accordance with the Plans.~~

15.12. Furnishings & Equipment by Buyer. Seller and Buyer acknowledge that office furnishings and equipment to be installed by Buyer in the COG Space and not included in the Plans are not included in this Agreement.

~~16.13.~~ Notices. Seller has not received any notice from any governmental authority concerning any eminent domain, condemnation, special taxing district, or rezoning proceedings. Seller's representations contained in this Paragraph shall survive the delivery of First Amendment to Ground Lease. The parties are fully informed about the terms and conditions of the Ground Lease.

~~17.14.~~ Representations and Warranties of Buyer. Buyer represents and warrants to Seller that the following representations and warranties are true now and will be true on the date of actual closing as if made on the date of actual closing:

- a. Authority. The Buyer is a home rule municipality under the laws of the State of Texas. The Buyer has the requisite power to enter into and to perform this Agreement.
- b. Judgments. There are no unsatisfied judgments against Buyer.
- c. Liens. There are no state or federal tax liens, or any other liens, filed against Buyer, and there has been no labor or materials furnished to the COG Space at the request of Buyer for which payment has not been made.
- d. Unrecorded Documents. There are no unrecorded mortgages, contracts, purchase agreements, options, leases, easements or other agreements or interest relating to the COG Space, and there are no persons in possession of any portion of the COG Space and the Oaks City Lofts improvements other than pursuant to the Ground Lease.
- e. Compliance with Laws. To the best of Seller's knowledge, the COG Space improvements are not in violation of any statute, law, ordinance or regulation.
- f. Brokers. Seller has not engaged any broker to represent it in the transactions contemplated in this Agreement. The Buyer has not engaged any broker to represent it in the transactions contemplated in this Agreement.

~~18.15.~~ Representations and Warranties of Seller. Seller represents and warrants to Buyer that the following representations and warranties are true now and will be true on the date of actual closing as if made on the date of actual closing:

- a. Authority. The Seller is a Minnesota limited liability company duly organized and validly existing under the laws of the State of Minnesota. The Seller has the requisite power to enter into and to perform this Agreement.
- b. FIRPTA. Seller is not a "foreign person," "foreign partnership," or "foreign estate," as those terms are defined in Section 1445 of the Internal Revenue Code.
- c. Hazardous Substances. To the best of Seller's actual knowledge, except as may be disclosed in any environmental report that Seller provides to Buyer, (a) there are no hazardous substances presently located in or on the COG Space or the Oaks City Lofts improvements in contravention of law, and (b) there have been no acts or occurrences upon the COG Space and Oaks City Lofts that have caused or could cause hazardous substances or petroleum products to be released or discharged into the subsoil or ground water of the land described in Exhibit B.

- d. Bankruptcies. There have been no bankruptcy or dissolution proceedings involving Seller during the time Seller has had any interest in the COG Space.
- e. Judgments. There are no unsatisfied judgments against Seller.
- f. Liens. There are no state or federal tax liens, or any other liens, filed against Seller, and there has been no labor or materials furnished to the COG Space or Oaks City Lofts for which payment has not been made.
- g. Unrecorded Documents. There are no unrecorded mortgages, contracts, purchase agreements, options, leases, easements or other agreements or interest relating to the COG Space, and there are no persons in possession of any portion of the COG Space and the Oaks City Lofts improvements other than pursuant to the Ground Lease.
- h. Compliance with Laws. To the best of Seller's knowledge, the COG Space improvements are not in violation of any statute, law, ordinance or regulation.
- i. Brokers. Seller has not engaged any broker to represent it in the transactions contemplated in this Agreement. The Buyer has not engaged any broker to represent it in the transactions contemplated in this Agreement.

~~19.16.~~ Time of the Essence. The parties acknowledge that time is of the essence for all provisions of this Agreement.

~~20.17.~~ Notice. Any notice required or permitted to be delivered hereunder will be deemed received three (3) days after 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 when sent by a nationally-recognized overnight courier (such as FedEx), hand delivered, by fax or by email.

- a. If intended for the Buyer:  
City Manager  
City of Garland, Texas  
200 N. Fifth Street  
Garland, Texas 75040  
Telephone: 972-205-2465  
Fax: 972-205-2504  
Email: [bbradford@garlandtx.gov](mailto:bbradford@garlandtx.gov)
- b. With a copy to:  
Office of the City Attorney  
Attention: Brian England, Esq.  
200 N. Fifth Street, Fourth Floor  
Garland, Texas 75040  
Telephone: 972-205-2380  
Fax: 972-205-2389  
Email: [bengland@garlandtx.gov](mailto:bengland@garlandtx.gov)

- c. If intended for the Seller: Oaks City Center LLC  
Attention: Norman P. Bjornnes, Jr., Esq.  
3550 East 46<sup>th</sup> Street, Suite 120  
Minneapolis, Minnesota 55406  
Telephone: 612-630-5943  
Fax: 612-874-1054  
Email: [nbjornnes@oaksproperties.com](mailto:nbjornnes@oaksproperties.com)
- d. With a copy to: Christopher Huntley, Esq.  
Mulligan & Bjornnes PLLP  
401 Groveland Avenue  
Minneapolis, Minnesota 55403  
Telephone: 612-879-1822  
Fax: 612-871-7869  
Email: [chuntley@mulliganbjornnes.com](mailto:chuntley@mulliganbjornnes.com)

21.18. Miscellaneous Provisions.

- a. Survival. All of the warranties, representations, and covenants of this Agreement shall survive and be enforceable after the closing for twelve months.
- b. Entire Agreement; Modification. This Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the parties.
- c. Successors and Assigns. If this Agreement is assigned, all provisions of this Agreement shall be binding on successors and assigns.
- d. Governing Law; Venue. This Purchase Agreement shall be construed and enforced under the laws of the State of Texas, without regard to any conflicts of laws principles. Any lawsuit related to this Agreement must be brought in a state court of proper jurisdiction in Dallas County, Texas, to the exclusion of other venues.
- e. Counterparts/Electronic Signatures. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original agreement but all of which taken together shall constitute one and the same document. Further, a signed document transmitted electronically shall be considered as binding as an original signature.

**BUYER:**  
**CITY OF GARLAND**

\_\_\_\_\_  
Bryan L. Bradford  
City Manager  
Dated: \_\_\_\_\_

**SELLER:**  
**OAKS CITY CENTER LLC**

\_\_\_\_\_  
Norman P. Bjornnes, Jr.  
Chief Manager/President  
Dated: \_\_\_\_\_

**EXHIBIT A**

Depiction of the COG Space

Attached

**Exhibit B**

Bill of Sale

Attached

**Exhibit C**

Legal Description

Attached

**Exhibit D**

First Amendment to Ground Lease

Attached

**Exhibit E**

**Reciprocal Easements and Operating Agreement**

**Attached**