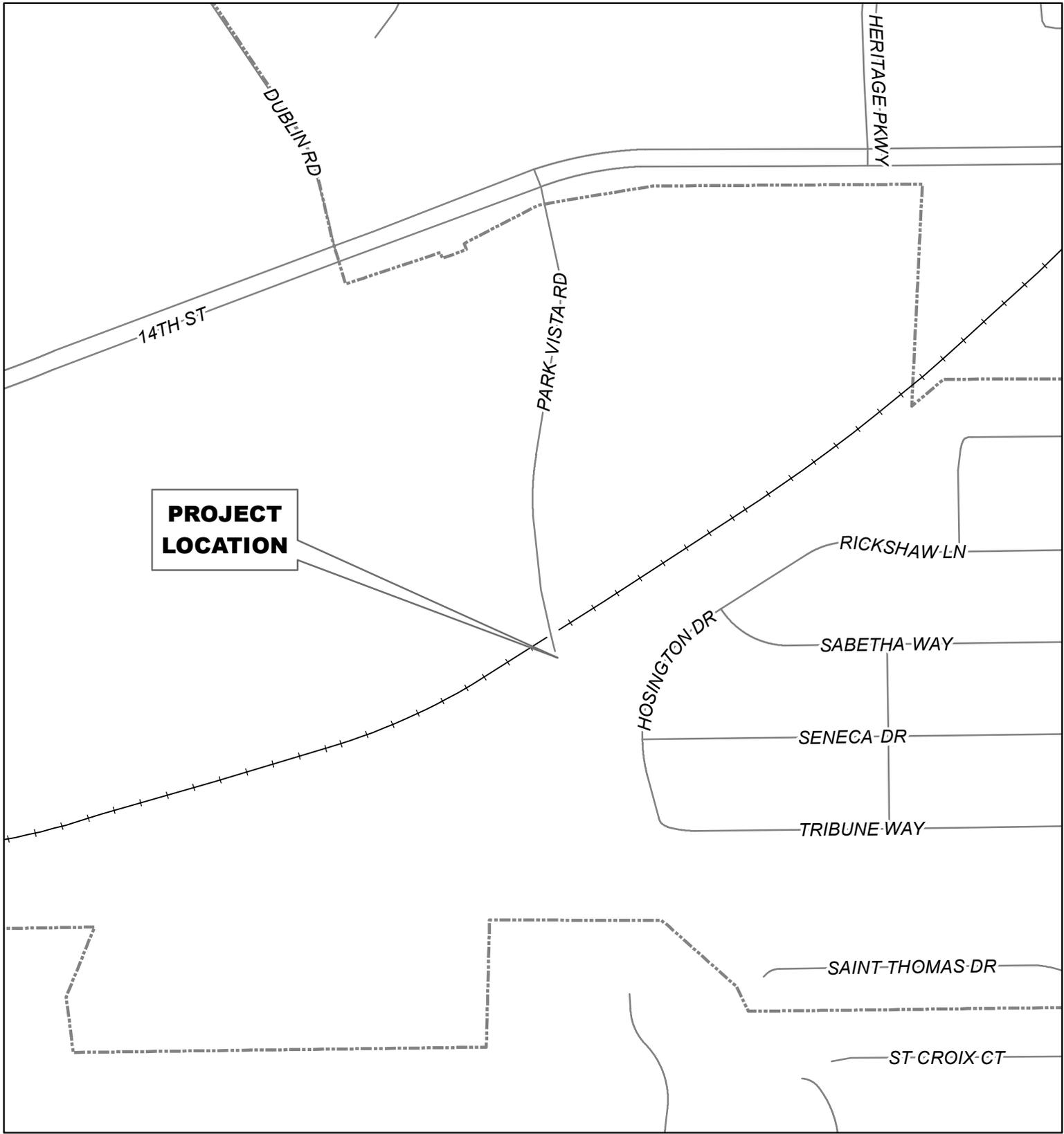


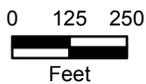


**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		08/24/15		
Department:		Engineering		
Department Head:		Jack Carr, PE		
Agenda Coordinator (include phone #):			Kathleen Schonne(7198)	
			Project No. 6494	
<b>CAPTION</b>				
A Resolution of the City of Plano, Texas, approving a Public Crossing License Agreement by and between the City of Plano and Dallas Area Rapid Transit; authorizing its execution by the City Manager or his designee, and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2014-15</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):    N/A				
<b>COMMENTS:</b> This item has no financial impact. STRATEGIC PLAN GOAL: Obtaining an agreement with Dallas Area Rapid Transit (DART) to facilitate the completion of a city project relates to the City's goal of Partnering for Community Benefit.				
<b>SUMMARY OF ITEM</b>				
This agreement is for improvements to the Park Vista Road box culverts adjacent to the Dallas Area Rapid Transit (DART) road crossing. Improvements include paving a portion of the south end of the roadway, installation of 4-inch thick concrete slope paving, and a five-foot wide, 4-inch thick concrete sidewalk on west side of roadway. Four (4) 8-foot x 7-foot culverts with headwalls will be installed adjacent to the south edge of the crossing. The installation of the box culvert requires minor grading within DART's right of way. There will be no impacts to the road crossing.				
List of Supporting Documents: Location Map; Resolution; DART Agreement (Exhibit A)			Other Departments, Boards, Commissions or Agencies N/A	

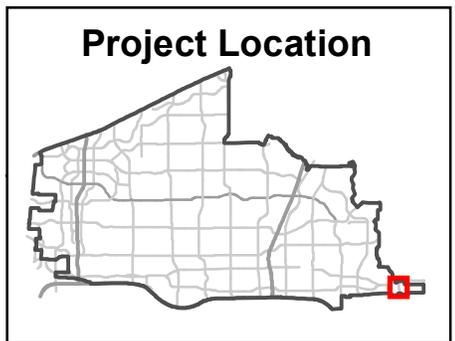


georgetau.C:\Projects\Engineering\Locator\Maps\04-14-2015\_ParkVista\ParkVistaRd.mxd



City of Plano GIS Division  
April, 2015

# Park Vista Box Culverts Project # 6494



**A Resolution of the City of Plano, Texas, approving a Public Road Crossing License Agreement by and between the City of Plano and Dallas Area Rapid Transit; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.**

**WHEREAS**, City of Plano has a need to improve the driveway crossing with the installation of box culverts, the proposed box culverts will provide the needed capacity improvements for the existing channel; and

**WHEREAS**, the Engineering Department has determined that the installation of the proposed box culverts is the best possible option available; and

**WHEREAS**, upon consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement should be approved, and that the City Manager or his designee shall be authorized to authorized to accept the proposal on behalf of the City of Plano.

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

**Section I.** The terms and conditions of the proposal having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizen, are hereby in all things approved.

**Section II.** The City Manager, or his authorized designee is hereby authorized to execute the agreement or any other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

**Section III.** This resolution shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED** this 24th day of August, 2015.

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Harry LaRosiliere, MAYOR

ATTEST:

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Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

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Paige Mims, CITY ATTORNEY

## PUBLIC ROAD CROSSING LICENSE AGREEMENT

THIS AGREEMENT ("License"), by and between DALLAS AREA RAPID TRANSIT ("Licensor"), a regional transportation authority, created, organized and existing pursuant to Chapter 452, Texas Transportation Code, as amended (the "Act") and the CITY OF PLANO, a Texas home-rule municipal corporation ("Licensee"), acting by and through its duly authorized official, whose mailing address is P.O. Box 860358, Plano, Texas 75086-0358.

WHEREAS, Licensor now owns certain railroad right-of-way within the city limits of the Licensee; and

WHEREAS, Licensor has a Trackage Rights Agreement with Kansas City Southern Railway (the "Railroad"), whereby the Railroad is responsible for certain maintenance of existing at-grade highway-rail crossings; and

WHEREAS, Licensee has an existing public road known as Park Vista Road that crosses Licensor's Cotton Belt railroad right-of-way with an at-grade railroad crossing ("Public Road Crossing"), identified as DOT No. 789643C; and

WHEREAS, Licensee proposes the repaving of a portion of the Public Road Crossing within Park Vista Road, with new concrete pavement, a sidewalk along the west side of the roadway, grading and concrete slope paving in accordance with Licensor's standards; NOW, THEREFORE,

1. **Purpose.** Licensor hereby grants this License to Licensee for the purpose of constructing, reconstructing, installing and maintaining (the "Permitted Uses") an at-grade, two-lane, (22)-foot wide public road crossing (the "Permitted Improvement"). The instant work consists of paving a portion of the south end of the roadway, installation of 4-inch thick concrete slope paving, and a five-foot wide, 4-inch thick, concrete sidewalk on the west side of the roadway, to be performed on Licensor's right-of-way (the "Property"), more particularly as shown in Exhibit "A", dated June 1, 2015, attached hereto and incorporated herein for all pertinent purposes. Four (4) 8-foot x 7-foot box culverts with headwalls will be installed adjacent to the south edge of the Property. This road crossing is located on Park Vista Road at Mile Post 585.40 (Latitude: 33 degrees 0' 26.12" N, Longitude: 96 degrees 37' 42.86" W), within a 100-foot wide right-of-way covering an area approximately 2,200 square feet. The road crosses Licensor's Property, in Plano, Collin County, Texas.

The term "public road crossing" shall include the concrete crossing material, pavement, grading, barricades, street lighting, drainage facilities, signs, pavement markings, active warning devices/signals, and approaches.

The Property shall be used by Licensee, and the public, solely for the Permitted Uses and the Permitted Improvement, EXCEPT, HOWEVER, AND IT IS UNDERSTOOD BY BOTH LICENSOR AND LICENSEE THAT THE GRANTING OF THIS LICENSE SHALL NOT BE CONSTRUED IN ANY WAY TO CONSTITUTE A DEDICATION TO THE PUBLIC.

2. **Consideration.** The consideration for the granting of this License shall be:

2.01. The faithful performance by Licensee of all of the covenants and agreements contained in this License to be performed by Licensee, and

2.02. The payment for the entire cost of constructing and maintaining the public road, including any drainage facilities caused to be required thereof, and

2.03. The reimbursement by Licensee to the Railroad for all labor and materials necessary for the construction of the crossing surface within the limits of the ties and installation of the active warning devices, within thirty (30) days upon presentation of invoice by the Railroad, and

2.04. The future costs of reconstruction of the Permitted Improvement within the limits of the railroad ties within the road crossing. This area of the road crossing may become impossible to maintain by the Railroad due to deterioration or obsolescence of the crossing material. In the event maintenance is no longer possible and reconstruction is necessary, Licensor and Licensee shall agree on the type of reconstruction, and Licensor shall reconstruct the road crossing within the limits of the railroad ties, at the sole cost of the Licensee.

3. **Term.** This License shall begin on the **24<sup>th</sup> day of August, 2015**, and shall be perpetual, subject to termination by either party as provided herein.

4. **Non Exclusive License.** This License is non-exclusive and is subject to (a) any existing utility, drainage or communication facility located in, on, under, or upon the Property owned by Licensor, any railroad, utility, or communication company, public or private; (b) to all vested rights presently owned by any railroad, utility or communication company, public or private, for the use of the Property for facilities presently located within the boundaries of the Property; and (c) to any existing lease, license or other interest in the Property granted by Licensor to any individual, corporation or other entity, public or private.

5. **Design, Construction, Operation and Maintenance.** Licensor's use of the Property and adjoining property may include the use of electrically powered equipment. Notwithstanding Licensor's inclusion within its system of measures designed to reduce stray current which may cause corrosion, **Licensee is hereby warned that such measures may not prevent electrical current being present in proximity to the Permitted Improvement and that such presence could produce corrosive effects to the Permitted Improvement. Licensee waives any claim and releases Licensor with regard to any claim arising from such corrosion.**

5.01. All design, construction, reconstruction, replacement, removal, operation and maintenance of the Permitted Improvement on the Property shall be done in such a manner so as not to interfere in any way with the operations of Licensor or with any railroad operations. In particular, cathodic protection or other stray current corrosion control measures of the Permitted Improvement as required shall be made a part of the design and construction of the Permitted Improvement.

5.02. During the design phase and prior to commencing construction on the Property, a copy of the construction plans showing the exact location, type and depth of the construction, any cathodic protection measures and any working area, shall be submitted for written approval to Licensor and the Railroad when the construction is going to be within the area of Railroad operations. Such approval shall not be unreasonably withheld. No work shall commence until said plans have been approved by Licensor and Railroad.

5.03. Licensee agrees to design, construct, reconstruct and maintain the Permitted Improvement, except the active warning devices/signals, in such a manner so as not to create a hazard to the use of the Property, and further agrees to pay any damages which may arise by reason of Licensee's use of the Property.

5.04. Licensee agrees to institute and maintain a reasonable testing program to determine whether or not additional cathodic protection of its Permitted Improvement is necessary and if it is or should become necessary, such protection shall be immediately instituted by Licensee at its sole cost and expense.

5.05. Licensee covenants and agrees to contract and enter into a cost reimbursement agreement with the Railroad to further specify how cost reimbursements will take place. Such reimbursements shall include the original construction of all active warning devices and crossing surface within the limits of the ties. Licensee also agrees to be responsible for the cost of future reconstruction upon the expiration of the useful life of the crossing surface.

5.06. Licensee or its contractor shall remove all trees and other vegetation within the railroad right of way for a distance of 300 feet in all four quadrants of the right of way.

5.07. Licensee shall be responsible for maintenance and liable for damage for any and all additional drainage created by Licensee's project distributed onto and within Licensor's right of way from the point of entry to the exit point of Licensor's Property.

5.08. Licensee shall provide traffic control and all necessary safety measures during construction or maintenance operations to accommodate work by Railroad.

**5.09. Licensor makes no warranty regarding subsurface installations on the Property. Licensee shall conduct its own inspection of same and will not rely on the absence or presence of markers.**

5.10. If at any time, in Licensor's determination, traffic volume or other circumstances should warrant a grade separation for the crossing licensed hereunder, Licensee shall be responsible for the installation of such grade separation to Licensor's standards, at no cost to Licensor.

**5.11. Licensee shall provide to Licensor final construction drawings("as-builts") that are signed and sealed by a Texas Professional Engineer within sixty ("60") days of completion of the project or a \$100.00 fee per month will be assessed until they are received.**

**6. Governmental Approvals.** Licensee, at its sole cost and expense, shall be responsible for and shall obtain, any and all licenses, permits, or other approvals from any and all governmental agencies, federal, state or local, and required to carry on any activity permitted herein.

**7. Licensor's Standard Contract and Insurance.** No work on the Property shall be commenced by Licensee or any contractor for Licensee until such Licensee or contractor shall have executed Licensor's Construction Agreement And Contractor's Right of Entry covering such work, and has furnished insurance coverage in such amounts and types as shall be satisfactory to Licensor.

**8. Duty of Care in Construction.** Licensee or its contractor shall use reasonable care during the construction period and thereafter, to avoid damaging any existing buildings, equipment and vegetation on or about the Property and any adjacent property owned by or under the control of Licensor. If the Licensee or its contractor causes damage to the Property or such adjacent property, the Licensee and/or its contractor shall immediately make appropriate replacement or repair the damage at no cost or expense to Licensor. If Licensee or its contractor fails or refuses to make such replacement, Licensor shall have the right, but not the obligation, to make or effect any such repair or replacement at the sole cost and expense of Licensee, which cost and expense Licensee agrees to pay to Licensor upon demand.

## 9. Environmental Protection.

9.01. Licensee shall not use or permit the use of the Property for any purpose that may be in violation of any local, state or federal laws pertaining to health or the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Water Act ("CWA") and the Clean Air Act ("CAA").

9.02. Licensee warrants that the Permitted Use of the Property will not result in the disposal or other release of any hazardous substance or solid waste on or to the Property, and that it will take all steps necessary to ensure that no such hazardous substance or solid waste will ever be discharged onto the Property by Licensee or its Contractors.

9.03. The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in the RCRA; PROVIDED, HOWEVER, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and PROVIDED FURTHER, that to the extent that the laws of the State of Texas establish a meaning for "hazardous substance", "release", "solid waste", or "disposal", which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

**9.04. Licensee shall indemnify and hold Licensor and Railroad harmless against all cost of environmental clean up to the Property resulting from Licensee's use of the Property under this License.**

**10. Mechanic's Liens Not Permitted.** Licensee shall fully pay for all labor and materials used in, on, or about the Property and will not permit or suffer any mechanic's or materialmen's liens of any nature to be affixed against the Property by reason of any work done or materials furnished to the Property at Licensee's instance or request.

**11. Maintenance of Completed Improvement.** After the Permitted Improvement has been constructed, the active warning devices/signals and the grade crossing within the limits of the railroad ties (subject to Paragraph 2.05 and 5.05) shall be maintained by the Railroad. Licensee shall maintain all other Permitted Improvement. In the event the Licensee fails to maintain the Permitted Improvement or Property as required, upon discovery, Licensor shall notify Licensee of such occurrence in writing. In the event Licensee shall not have remedied the failure within ten (10) days from the date of such notice, Licensor shall have the right, but not the obligation to remedy such failure at the sole cost and expense of Licensee. In the event Licensor exercises its right to remedy Licensee's failure, Licensee agrees to immediately pay to Licensor all costs incurred by Licensor upon demand.

## 12. Future Use by Licensor.

12.01. This License is made expressly subject and subordinate to the right of Licensor to use the Property for any purpose whatsoever.

12.02. In the event that Licensor shall, at any time subsequent to the date of this License, at its sole discretion, determine that the relocation of the Permitted Improvement shall be necessary or convenient for Licensor 's use of the Property, or that the crossing must be modified, including but not limited to the installation of grade crossing signals, Licensee shall, at its sole cost and expense make such modifications or relocate said Permitted Improvement so as not to interfere with Licensor's or Licensor's

assigns use of the Property. In this regard, Licensor may, but is not obligated to, designate other property for the relocation of the Permitted Improvement. Licensor shall give Licensee a minimum of thirty (30) days written notice of any required relocation or modification. Licensee shall promptly commence to make the required changes thereafter and shall diligently complete the modification or relocation as required within a reasonable period.

**13. Duration of License.** This License shall terminate and be of no further force and effect (a) in the event Licensee shall discontinue or abandon the use of the Permitted Improvement; (b) in the event Licensee shall relocate the Permitted Improvement from the Property; (c) upon termination in accordance with paragraph 18 of this License, whichever event first occurs; PROVIDED, HOWEVER, that any indemnifications provided for herein shall survive such termination.

**14. Compliance With Laws and Regulations.** Licensee agrees to abide by and be governed by all laws, ordinances and regulations of any and all governmental entities having jurisdiction over the Licensee and by railroad regulations, policies and operating procedures established by the Railroad, or other applicable railroad regulating bodies, and Licensee agrees to indemnify and hold Licensor harmless from any failure to so abide and all actions resulting therefrom. Licensee acknowledges the Federal Railroad Administration (FRA) requirements for whistles at at-grade public and private road crossings and requirements for Positive Train Control (PTC) for controlling and monitoring train movements to assure safety and efficiency when passenger service is implemented.

**15. Indemnification.** Licensee shall at all times protect, indemnify, defend and hold Licensor and the Railroad harmless against and from any and all loss, cost, damage or expense, including attorney's fees and including, without limitation, claims of negligence, arising out of this License (including by example and not limitation, Licensee's acts or failure to act hereunder), Licensee's use in any way of the Property, or arising from any accident or other occurrence on or about the Property, resulting in personal injury, death, or property damage, except to the extent fault is judicially determined against Licensor.

**16. Termination of License.** At such time as this License may be terminated or cancelled for any reason whatsoever, Licensee, upon request by Licensor, shall remove all improvements and appurtenances owned by it, situated in, under or attached to the Property and shall restore the Property to the condition existing at the date of execution of this License, at Licensee's sole expense.

**17. Assignment.** Licensee shall not assign or transfer its rights under this License in whole or in part, or permit any other person or entity to use the License hereby granted without the prior written consent of Licensor which Licensor is **under no obligation to grant.**

**18. Methods of Termination.** This License may be terminated in either of the following ways:

18.01. Written agreement of both parties; or

18.02. By either party giving the other party thirty (30) days written notice.

**19. Miscellaneous.**

19.01. Notice. When notice is permitted or required by this License, it shall be in writing and shall be deemed delivered when delivered in person or when placed, postage prepaid, in the U.S. Mail, Certified, Return Receipt Requested, and addressed to the parties at the following addresses:

LICENSOR: Dallas Area Rapid Transit  
P. O. Box 660163 Or 1401 Pacific Avenue  
Dallas, Texas 75266-7210 Dallas, Texas 75202-7210  
Attn: Railroad Management

LICENSEE: City of Plano, Texas  
1520 K. Avenue, Suite 250 Or P.O. Box 860358  
Plano, Texas 75074 Plano, Texas 75086-0358  
Attn: City Engineer

Either party may from time to time designate another and different address for receipt of notice, by giving notice of such change of address.

19.02. Governing Law. This License shall be construed under and in accordance with the laws of the State of Texas.

19.03. Entirety and Amendments. This License embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Property and the matters addressed herein, and may be amended or supplemented only by a written instrument executed by the party against whom enforcement is sought.

19.04. Parties Bound. This License shall be binding upon and inure to the benefit of the executing parties and their respective heirs, personal representatives, successors and assigns.

19.05. Number and Gender. Words of any gender used in this License shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

19.06. Authorization. Licensee shall furnish to Licensor a certified copy of minutes or a City Resolution adopted by the governing body of Licensee, authorizing the execution of this License on behalf of the Licensee, or other proof sufficient to establish the authority to execute this License.

19.07. No Joint Enterprise. The parties do not intend that this License be construed as finding that the parties have formed a joint enterprise. The purposes for which each party has entered into this License are separate and distinct. It is not the intent of any of the parties that a joint enterprise relationship is being entered into and the parties hereto specifically disclaim such relationship. This License does not constitute a joint enterprise, as there are no common pecuniary interests, no common purpose and no equal right of control among the parties hereto.

19.08. Counterparts. The parties may execute this Agreement in multiple originals and when taken together, those originals constitute a whole.

[Signatures on the following page]

IN WITNESS WHEREOF, the parties have executed this License on the date last signed.

LICENSOR: DALLAS AREA RAPID TRANSIT

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

MAUREEN MCCOLE  
Vice President, Commuter Rail  
& Railroad Management

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

LICENSEE: CITY OF PLANO

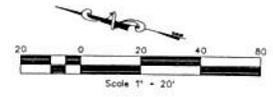
BY: \_\_\_\_\_

BRUCE D. GLASSCOCK  
City Manager

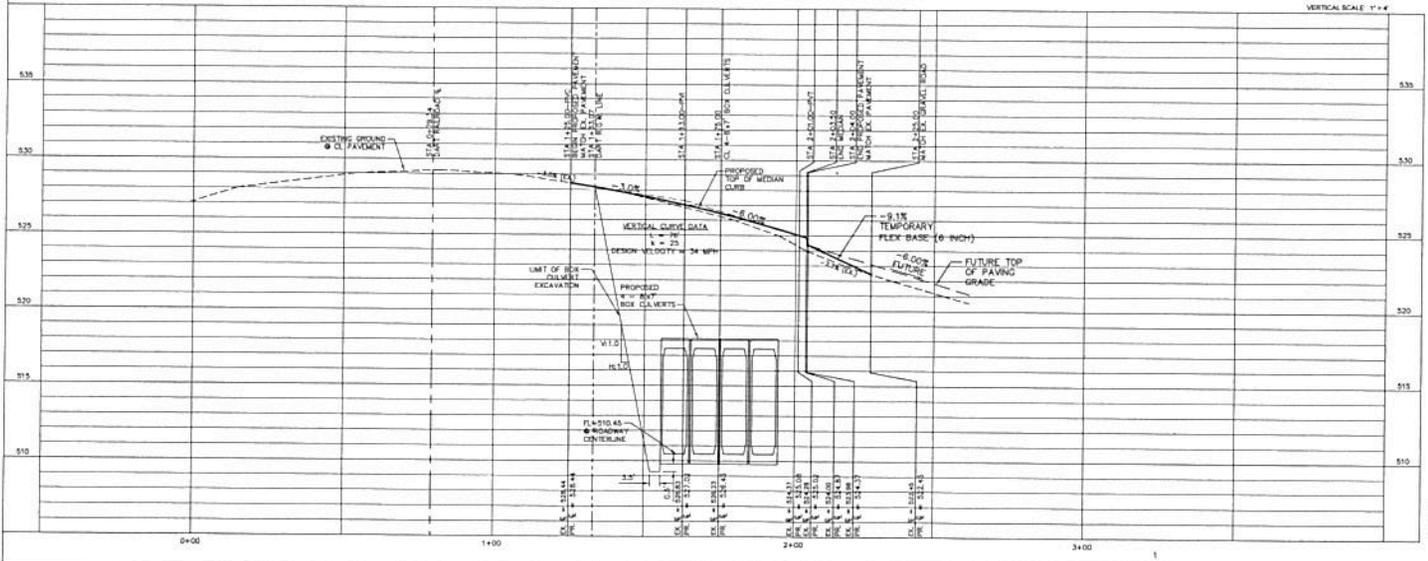
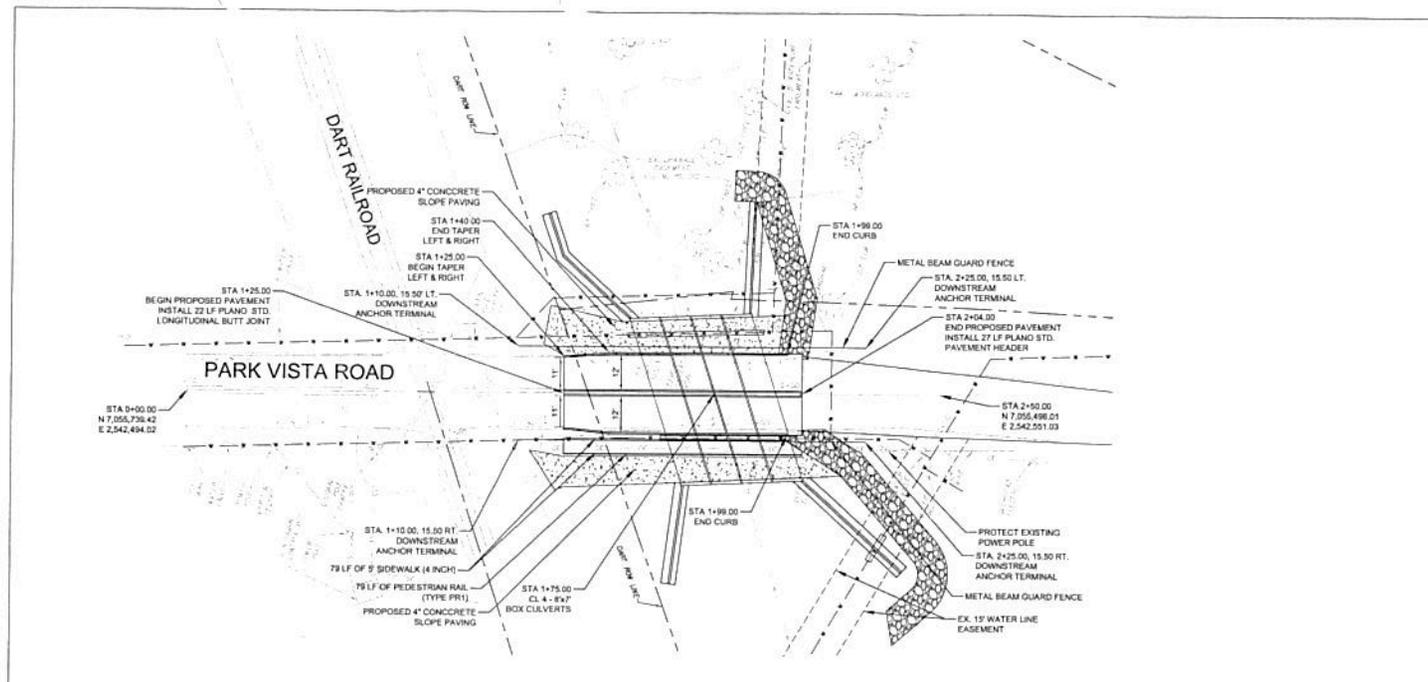
Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Paige Mims  
City Attorney



NOTES:  
 ADJUST EXISTING WATER VALVES AS REQUIRED.  
 TSC - TRAIN SIGNAL CABLE



*Handwritten signature and date:*  
 [Signature]  
 6/1/15

NO.	REVISION	DATE	BY
1	RAILROAD SIGNAL INFORMATION	4/20/15	JHM

**CITY OF PLANO, TEXAS  
ENGINEERING DEPARTMENT**

**PAVING PLAN & PROFILE**

**PARK VISTA ROAD**

DESIGNED BY: JHM		FILERNAME:
DRAWN BY: DAL-TECH		SCALE: H: 1"=20', V: 1"=4'
APPROVED BY: HMB		SHEET: 05 OF 20
DATE: JUN 2015		

**DAL-TECH**  
 ENGINEERING, INC.  
 17400 DALLAS HWY., SUITE 115  
 DALLAS, TEXAS 75244  
 TEL: 972.250-4757  
 FAX: 972.250-4774