



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		3/23/15		
Department:		Parks and Recreation		
Department Head		Amy Fortenberry		
Agenda Coordinator (include phone #): Susan Berger (7255)				
CAPTION				
<p>A Resolution of the City of Plano, Texas, approving the terms of a Real Estate Contract by and between Agnes M. Butler, an individual, and the City of Plano for the purchase of approximately 2.821 acres of land located at 3421 E. Parker Road, Plano, Collin County, Texas, as an addition to Oak Point Park and Nature Preserve; and authorizing the City Manager or his authorized designee to execute such contract and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2014-15	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	481,503	4,518,497	1,175,000	6,175,000
Encumbered/Expended Amount	-481,503	-3,587,649	0	-4,069,152
This Item	0	-260,000	0	-260,000
BALANCE	0	670,848	1,175,000	1,845,848
FUND(S): PARK IMPROVEMENTS CIP				
<p>COMMENTS: Funding is available for this item in the 2014-15 Park Improvement CIP. After the purchase of the land, in the amount of \$260,000, the remaining current year balance of \$670,848 will be utilized for future land acquisitions for park land in accordance with the City's Comprehensive Plan and Park Master Plan.</p> <p>STRATEGIC PLAN GOAL: Acquiring additional land to expand Oak Point Park and Nature Preserve relates to the City's goal of Great Neighborhoods - 1st Choice to Live.</p>				
SUMMARY OF ITEM				
<p>Approval of an expenditure of \$260,000 for the purchase of 2.821 acres of property located at 3421 E. Parker Road adjacent to Oak Point Park and Nature Preserve. The property is being purchased as an addition to Oak Point Park and Nature Preserve in accordance with the City's Comprehensive Plan and Park Master Plan. A current appraisal supports the price being paid for the property.</p> <p>Funding is available in the current Park Improvement CIP Program for Park Land Acquisitions.</p> <p>Project Location Map: https://goo.gl/maps/6bQPU</p>				

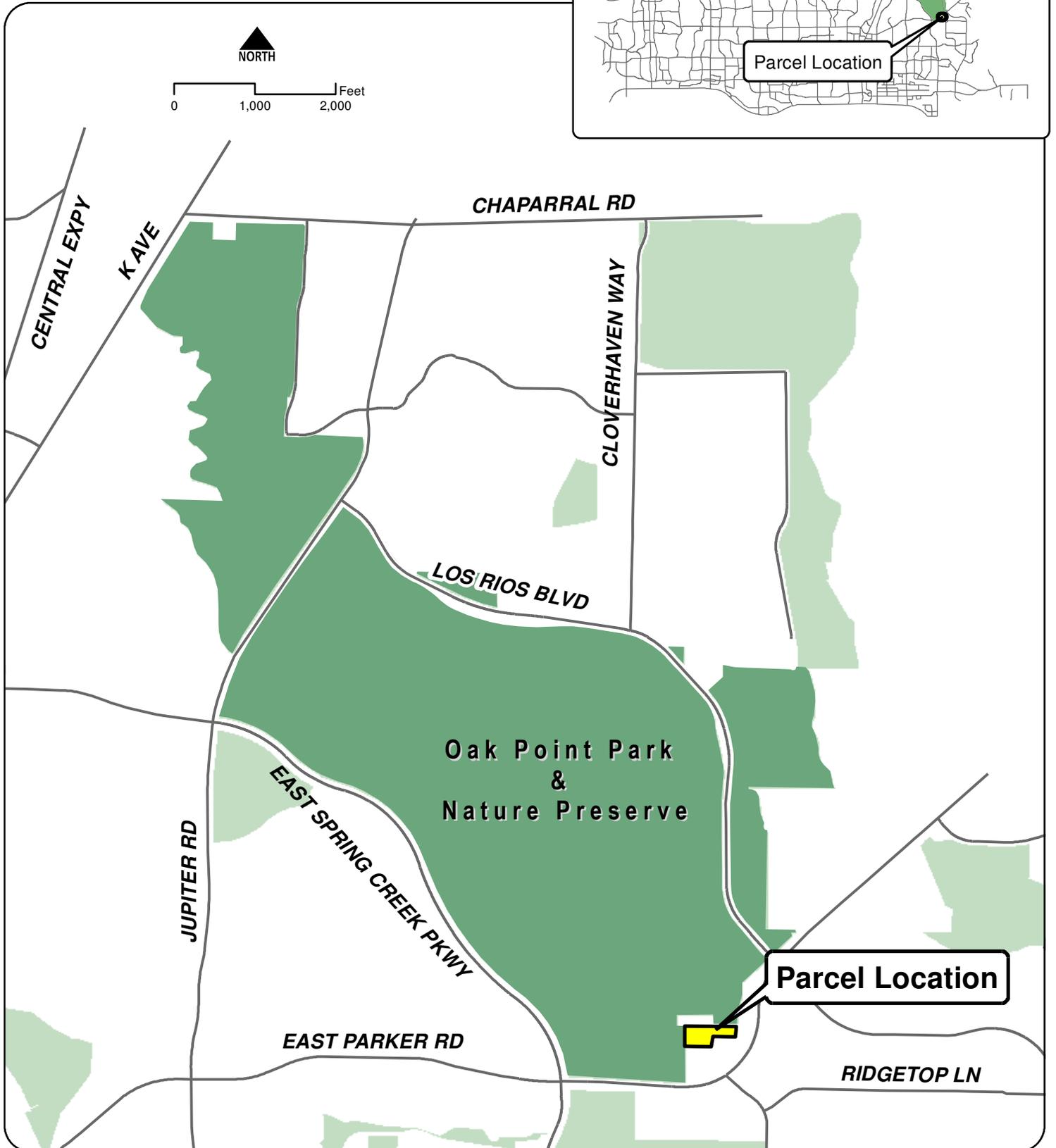
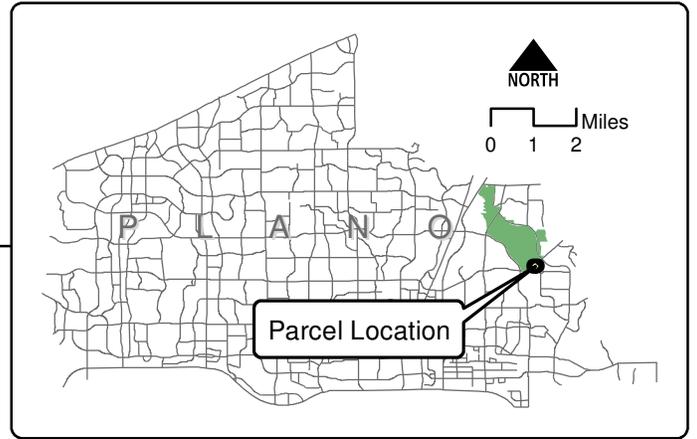


CITY OF PLANO COUNCIL AGENDA ITEM

List of Supporting Documents: Location Map Resolution	Other Departments, Boards, Commissions or Agencies

Location Map

Parcel located at 3421 E. Parker Rd.
2.821 acres



A Resolution of the City of Plano, Texas, approving the terms of a Real Estate Contract by and between Agnes M. Butler, an individual, and the City of Plano for the purchase of approximately 2.821 acres of land located at 3421 E. Parker Road, Plano, Collin County, Texas, as an addition to Oak Point Park and Nature Preserve; and authorizing the City Manager or his authorized designee to execute such contract and providing an effective date.

WHEREAS, the City Council has been presented a proposed Real Estate Contract by and between the City of Plano and Agnes M. Butler, an individual, for the purchase of property located at 3421 E. Parker Road in Plano, Collin County, Texas, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Real Estate Contract"); and

WHEREAS, upon full review and consideration of the Real Estate Contract, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee, shall be authorized to execute it 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 Real Estate Contract, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interest of the City of Plano and its citizens, are hereby in all things approved.

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

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 23rd day of March, 2015.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

REAL ESTATE CONTRACT

This contract is entered into as of the Effective Date, as hereinafter defined, by and between **Agnes M. Butler**, an individual ("Seller"), and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation ("City").

WHEREAS, City desires to purchase and Seller desires to sell to City a tract of land in fee simple known as 3421 E. Parker Road, Plano, Collin County, Texas and more particularly described in Exhibit "A" attached hereto and made a part hereof by reference and being herein referred to as the "Property".

WHEREAS, Seller and City have entered into this Real Estate Contract (the "Contract") to provide for the terms and conditions of the sale and purchase of the Property.

NOW, THEREFORE, in consideration of the premises and for further consideration of the terms, provisions, and condition hereinafter set forth, Seller and the City have agreed as follows:

1. Agreement to Convey

For the consideration and upon and subject to the terms, provisions, and conditions hereinafter set forth, Seller has agreed and does hereby agree to sell, grant and convey the Property to City and City has agreed and does hereby agree to purchase the Property from the Seller. The Property shall be conveyed to City together with all and singular the rights and appurtenances pertaining to such Property including, but not limited to, any right, title and interest of Seller in and to easements, adjacent streets, alleys and rights-of-way and together with all improvements, fixtures and buildings located, constructed, or placed thereon. Seller agrees that the property will be used for park purposes which may include improvements such as restrooms, pavilions, parking, utilities, pass through utilities or other improvements that enhance the park. If the City should at any time in the future decide to use the land for any other purpose, then the City will notify Seller, its legal representative, heirs, successors or assigns in writing by CMRRR at the address listed in section 16. **Notices** of such and Seller shall have the right of first refusal to buy back the property from the City within thirty (30) days after receipt of said written notice.

2. Purchase Price

The purchase price ("Purchase Price") to be paid for the Property shall be **TWO HUNDRED AND SIXTY THOUSAND DOLLARS (\$260,000.00)** to be paid by City in a lump sum payment to Seller on the date of Closing as set out in Section 5 below.

3. Title Commitment and Title Insurance

City, at its sole cost and expense, shall obtain a title commitment and title insurance covering the Property to be issued by a title company (the "Title Company") selected by City. In the event the title has defects, City will notify Seller in writing specifying the defects and Seller shall have fifteen (15) days to cure said defects or City may cancel this Contract. City, at its sole option, may waive any defects in writing.

4. Review Period

City shall have thirty (30) days from the Effective Date of this Contract (the "Review Period") to conduct any or all of the following: engineering, planning, appraisal, environmental assessment, and any other studies deemed appropriate by City for the Property. Seller grants the City a right of entry to the Property to conduct the studies. These studies must be satisfactory to the City. If the studies are not satisfactory to the City (in City's sole opinion) the City may terminate the Contract by written notice to Seller.

Any entry made on the Property by the City or its representatives shall be upon reasonable notice to Seller, at reasonable times. City shall pay for all such work and inspections performed on or in connections with the Property and shall not permit the creation of any lien in favor of any contractor, materialman, mechanic, surveyor, architect, or laborer engaged by the City.

5. The Closing

The closing of this Contract pertaining to the Property shall be consummated at a Closing to be held at the office of the Title Company at such time, date and place that the parties may agree upon and no later than the end of the review period. At the Closing, Seller agrees to deliver to City:

(a) An executed Special Warranty Deed (the "Deed") conveying good and indefeasible title in fee simple absolute to the Property and containing covenants of special warranty; said Deed being subject only to Permitted Exceptions.

(b) All releases or other documents or instruments (all in recordable form) necessary to convey title to the Property as required by this Contract.

(c) Such other documents and instruments as may be necessary to evidence the authority of Seller to convey title to the Property.

6. Closing Costs and Proration of Taxes

Closing costs shall be paid by City including the title policy, survey and other costs not specifically excluded in this paragraph. All other expenses incurred by Seller and City with respect to the Closing, including, but not limited to, attorneys' fees incurred

in connection with this Contract, shall be borne and paid exclusively by the party incurring same. Ad valorem taxes for the year of closing shall be prorated as of the Closing in accordance with the Texas Tax Code. All delinquent ad valorem taxes, if any, shall be paid by Seller.

7. Representations and Warranties of Seller

Seller makes the following representations and warranties to City regarding the Property:

(a) At Closing, there shall be no parties in possession of any portion of the Property as lessees, other than as provided in this Contract, tenants at sufferance or trespassers, and no prescriptive rights will have been acquired in, or have commenced to run against the Property or any portion thereof.

(b) There is no litigation, including pending or threatened claims, or similar proceeding pending against the Property that would affect the Property or any portion thereof.

(c) At Closing, no person, firm, partnership, corporation or other entity, other than as provided in this Contract, shall have any right or option to purchase, lease, occupy or use the Property or any part thereof.

(d) At Closing, the consummation of the transactions contemplated herein will not violate or constitute a default under any provision of any contract, agreement, regulation, court order, judgment, decree, law or other document or instrument to which Seller is subject or bound and will not violate any other restrictions or prohibition of any kind or character to which Seller is subject.

(e) Seller is duly authorized and empowered to enter into this Contract and to consummate the transactions contemplated hereunder, and any person executing this Contract on behalf of Seller is duly authorized and empowered to do so.

8. Representations and Warranties of City.

City represents and warrants to Seller that this Contract is duly and validly authorized and executed by City.

9. Disclosures of Seller

On or before the Closing, Seller shall disclose to City in writing any known defects, damage or hazards on or at the Property. Except as otherwise disclosed as required by this Contract, Seller has no knowledge of the following:

(a) Any flooding of the Property;

(b) Any environmental hazards or conditions affecting the Property that would violate applicable laws;

(c) Any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;

(d) Any wetlands as defined by federal or state law or regulation, affecting the Property;

(e) Any threatened or endangered species or their habitat affecting the property; or

(f) Any lead based paint or lead based paint hazards on or at the Property.

City as purchaser acknowledges that Seller is selling the property on an “as is”, “where is” and “without all faults” basis and purchaser expressly acknowledges that except as otherwise set forth in this contract, Seller made no warranty or representations, express or implied, or arising by operation of law, including but not limited to, any warranty or condition of title (except as may be specifically put forth and limited herein), environmental fitness, habitability, merchantability or fitness for a particular purpose with respect to the property, all such representations and warranties, as well as any implied warranties, being hereby expressly disclaims same.

10. Acknowledgments, Covenants and Agreements of Parties

Seller acknowledges, covenants and agrees with City as follows:

(a) City and its agents and representatives shall have full access to the Property at all times prior to Closing.

(b) No new or additional improvements will be constructed, located or placed on the Property without the prior written consent of City.

(c) During the pendency of this Contract, Seller shall not, without the prior written consent of the City, create, impose or agree to any mortgages, liens, encumbrances, leases (other than as provided in this Contract), tenancies, licenses, security interests, covenants, conditions, restrictions, rights-of-way, easements, judgments or other matters affecting title to the Property.

(d) This Contract constitutes a full and final settlement for all compensation due Seller for the Property by the City.

11. Casualty Loss

11.1. Condemnation. In the event that prior to the date of Closing condemnation procedures are commenced by any governmental entity or authority other than City or other entity acting by, through or under City, against a portion or all of the Property or Seller receives any verbal or written notice of a threat or intent of condemnation of a portion or all of the Property by any governmental entity or authority other than City or other entity acting by, through or under City, Seller shall immediately notify City and City may, at its election, terminate this Contract by written notice to Seller within ten (10) business days after receipt of Seller's notice. Upon termination, neither party shall have any further rights or obligations hereunder. Should City elect not to exercise its option as provided hereunder, then the Contract shall remain in full force and effect and Seller shall assign or pay to City at Closing Seller's interest in and to all condemnation awards or proceeds from any such proceedings or actions in lieu thereof.

11.2 Casualty Loss. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this Contract and before the Closing date, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing date. If Seller fails to do so due to factors beyond Seller's control, City may do the following:

- (a) Terminate this Contract;
- (b) Extend the time for performance and extend the Closing date; or
- (c) Accept the Property in its damaged condition with an assignment of the insurance proceeds and receive credit from Seller at Closing in the amount of the deductible under the insurance policy.

12. Default

(a) Seller's Default. In the event Seller should fail to consummate this Contract for any reason except City's default, City may, at its option, either enforce specific performance of this Contract or terminate this Contract as its sole and exclusive remedy hereunder. If Seller is unable to deliver title as required by this Contract, City shall have the right, but not the obligation, to take the Property with whatever title Seller can deliver. Nothing herein shall be construed to limit the City's right and power of eminent domain.

(b) City's Default. In the event City shall fail to consummate this Contract for any reason except a reason set out in Section 3 or 4 herein or except for Seller's default, Seller may, at its option and as its sole and exclusive remedy, terminate this Contract by giving written notice thereof to City.

13. Non-waiver

No waiver by either party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the party against which enforcement is sought. No delay or omission in the exercise of any right or remedy accruing to either party upon any breach of this Contract by the other party shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by either party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other or subsequent breach of the same or any other term, covenant or condition herein contained.

14. Representations Survive Closing

All covenants, representations, and warranties in this Contract survive Closing for a period of 180 days. If any representation of Seller in this Contract is untrue on the Closing date, Seller will be in default.

15. Miscellaneous Provisions

(a) All median cuts and curb cuts providing access to the Property which exist at the time of execution of this Contract shall continue in full force and effect.

(b) This Contract embodies the complete and entire agreement between the parties hereto relative to the Property and supersedes all prior negotiations, agreements and understanding relating thereto and may not be varied except by written agreement of such parties.

(c) This Contract shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors, heirs, representatives, administrators and assigns.

(d) This Contract shall be construed under and in accordance with the laws of the State of Texas and is fully performable in Collin County, Texas. Venue for any dispute arising out of this agreement shall be Collin County, Texas.

(e) In case any one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(f) All notices from one party to the other must be in writing and are effective when received by Certified Mail, U.S. Postal Service to the addresses indicated under the signatures for each party to the Contract below. Changes in address for notice purposes can be provided in writing to the opposite party.

(g) This Contract may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(h) The headings used throughout this Contract have been used for administrative convenience only and do not constitute matter to be considered in interpreting this Contract.

(i) City represents and warrants unto Seller that City has full power and authority to enter into and consummate this Contract.

(j) The "Effective Date" of this Contract shall be the last date of signature of any party set forth below.

(k) Seller and City each represent to the other that there have been no brokers or real estate commission incurred as a result of this transaction.

16. Notices

All notices from one party to the other must be in writing and are effective when received by Certified Mail, U.S. Postal Service to the addresses indicated under the signatures for each party to the Contract below. Changes in address for notice purposes can be provided in writing to the opposite party.

Agnes M. Butler
3309 Deep Valley Trail
Plano, TX 75023

City of Plano, Texas
Parks Department
Attn: Robin Reeves
PO Box 860358
Plano, Texas 75086-0358

IN WITNESS WHEREOF, the parties have executed this Contract as of the dates shown below their respective signatures.

SELLER:

Date: 3-10-15

By: Agnes M. Butler
Agnes M. Butler *as Independent Executor*
3309 Deep Valley Trail *of the Estate of*
Plano, TX 75023 *Josephine Topelshi*

CITY:

**CITY OF PLANO, TEXAS, a Home Rule
Municipal Corporation**

Date: _____

By: _____
Bruce D. Glasscock
City Manager
1520 Avenue K
Plano, Texas 75086-0358

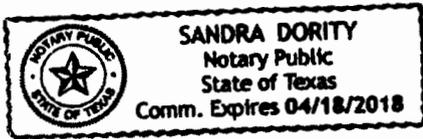
APPROVED AS TO FORM:

Paige Mims, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 10 day of ~~February~~ ^{March}, 2015 by Agnes M. Butler, Independent Executrix of the Estate of Josephine Tafelski, on behalf of said Estate.



Sandra DORITY

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of February, 2015 by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

EXHIBIT "A" LEGAL DESCRIPTION

File No.: 01128-20347

BEING a tract of land situated in the Eli Smyler Survey, Abstract No. 857, City of Plano, Collin County, Texas, and being all of a called 2.835 acre tract of land, conveyed to Albert Tafelski, as evidenced in a General Warranty Deed, recorded in Volume 922, Page 252 of the Land Records of Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod found for the most easterly, southeast corner of said 2.835 acre tract, same being the northeast corner of Lot 1, Block 1 of Ashburn Addition, an Addition to the City of Plano, Texas, according to the Final Plat, recorded in Cabinet L, Page 254 of the Plat Records of Collin County, Texas, same also being on the westerly right of way line of East Parker Road, a variable width right of way;

THENCE North 89°45'02" West (called South 88°40' East), departing the westerly right of way line of said East Parker Road, along the northerly, south line of said 2.835 acre tract and along the north line of said Lot 1, a distance of 282.40 feet (called 283.1 feet) to a wood fence corner post found for an inner ell corner of said 2.835 acre tract and the northwest corner of said Lot 1, from said fence post, a found 1/2-inch iron rod bears North 87°06' East, 0.59 feet and a found 1/2-inch iron rod with a plastic cap, stamped "BEASLEY" bears South 34°18' East, 2.52 feet;

THENCE South 07°17'45" West (called North 8°04' East), along the westerly, east line of said 2.835 acre tract, the west line of said Lot 1 and generally along a wire fence, a distance of 126.73 feet (called 128.4 feet) to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set in an east-west wood fence for the most southerly, southeast corner of said 2.835 acre tract, from said corner, a 1/2-inch iron rod found at a fence corner post for the southwest corner of said Lot 1 bears North 07°45' East, 1.12 feet;

THENCE North 89°15'54" West (called South 88°41'44 East), along the most southerly, south line of said 2.835 acre tract and generally along a barbed wire fence, a distance of 328.71 feet (called 332.21 feet) to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the southwest corner of said 2.835 acre tract, same being on an easterly line of a called 231.859 acre tract of land, conveyed to the City of Plano, Texas, as evidenced in a General Warranty Deed, recorded in Volume 1483, Page 579 of the Land Records of Collin County, Texas;

THENCE North 00°02'20" West (called South 1°06' West), along the west line of said 2.835 acre tract and the easterly line of said 231.859 acre tract, a distance of 254.09 feet (called 254.1 feet) to a 1/2-inch iron rod found for the north common corner of said 2.835 acre tract and said 231.859 acre tract;

THENCE South 89°10'37" East (called North 88°40' West), along the north line of said 2.835 acre tract and generally along a barbed wire fence, a distance of 638.68 feet (called 638.21 feet) to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the north east corner of said 2.835 acre tract, from said corner, a found 1/2-inch iron rod bears North 89°10'37" West 3.30 feet said corner also being on the westerly right of way line of said East Parker Road;

THENCE South 05°09'49" West (called North 4°25' East), along the east line of said 2.835 acre tract and

the westerly right of way line of said East Parker Road, a distance of 125.17 feet (called 126.6 feet) to the POINT OF BEGINNING and containing 2.821 acres (122,872 square feet) of land, more or less.