



**CITY OF PLANO
COUNCIL AGENDA ITEM**

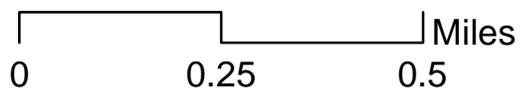
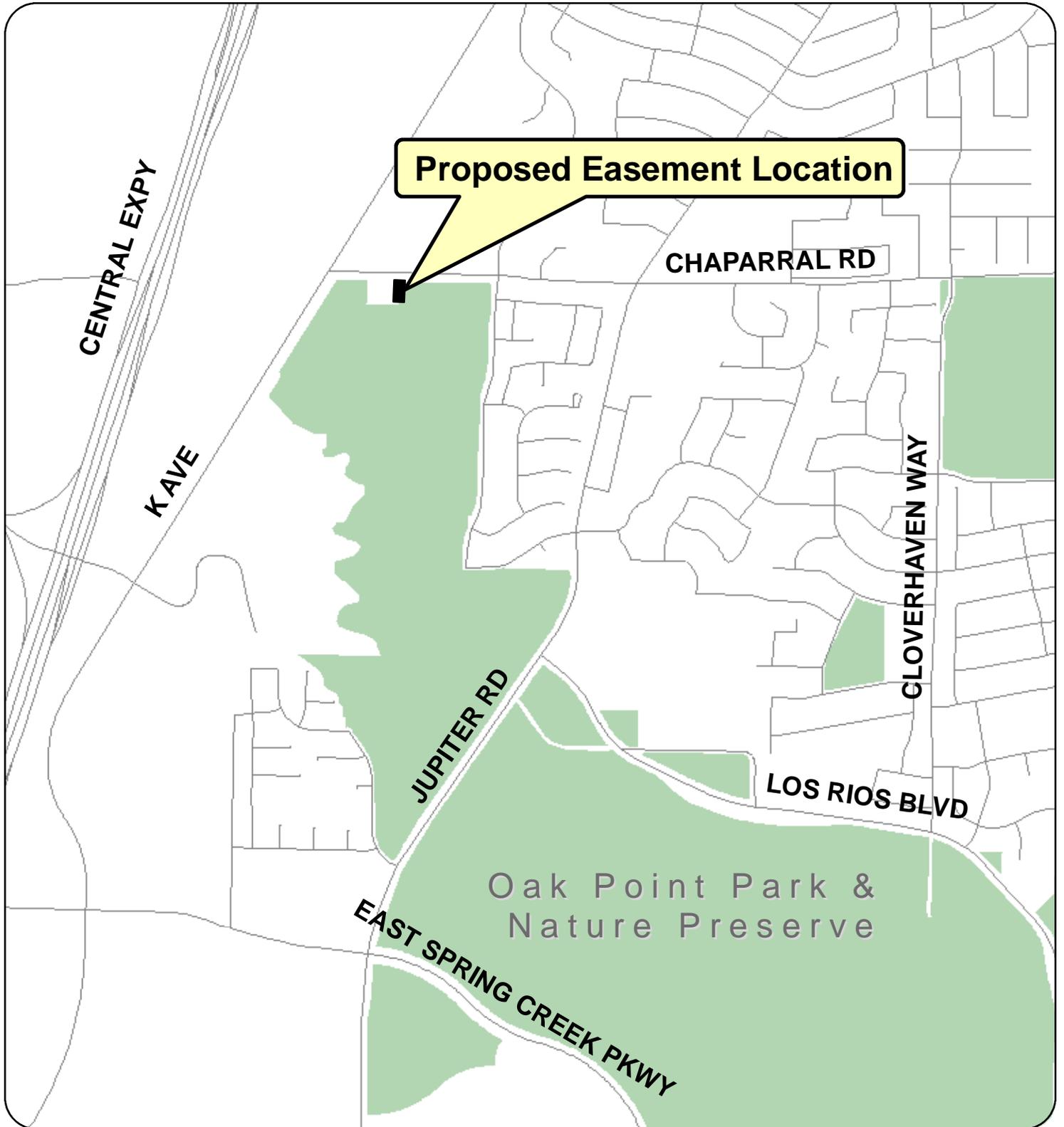
CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		12/17/13		
Department:		Parks and Recreation		
Department Head		Amy Fortenberry		
Agenda Coordinator (include phone #): Susan Berger (7255)				
CAPTION				
<p>An Ordinance of the City of Plano, Texas, approving the use or taking a portion of City of Plano public park land, known as Oak Point Park and Nature Preserve for a permanent lift station easement to the North Texas Municipal Water District; providing for a determination that there is no feasible and prudent alternative to the proposed use or taking of the park land; and that the proposed project includes all reasonable planning to minimize harm to the land and the park resulting from the use; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2013-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	26,090	0	26,090
BALANCE	0	26,090	0	26,090
FUND(S): PARK IMPROVEMENT CIP				
<p>COMMENTS: This item grants the North Texas Municipal Water District an addition to an existing permanent easement in exchange for \$26,090. This revenue will be applied towards improvements done under the 09 Oak Point Development project included in the 2013-14 CIP.</p> <p>STRATEGIC PLAN GOAL: Granting additional easements so that the North Texas Municipal Water District can place a power generator outside of the 100 year flood plain relates to the City's Goals of Financially Strong City with Service Excellence and Partnering for Community Benefit.</p>				
SUMMARY OF ITEM				
<p>This item is related to the previous public hearing item authorizing the use of a portion of the Oak Point Park and Nature Preserve for a permanent Lift Station Easement to the North Texas Municipal Water District. The easement is a 0.459 acre easement which is an addition to an existing 1.263 acre Lift Station Easement. The NTMWD will compensate the City the appraised value of \$26,090 for the easement.</p>				
<p>Project Location Map - http://goo.gl/maps/iOK2x</p>				



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Ordinance Location Map NTMWD Compensation Letter	Other Departments, Boards, Commissions or Agencies

Location Map





**NORTH TEXAS MUNICIPAL
WATER DISTRICT**

Regional Service Through Unity

November 11, 2013

Mr. Robin Reeves
City of Plano
1409 K Avenue
Plano, Texas 75074

RE: Upper Rowlett Creek and Upper Cottonwood Creek Lift Station Improvements
Project 295

Dear Mr. Reeves:

The North Texas Municipal Water District appreciates the cooperation you have expressed by agreeing to provide the necessary property easement for the appraised value of \$26,090.00. Payment will be made in exchange for a signed, notarized easement document and W-9 form.

Should you have any questions regarding this offer, please me at 972-442-5405. Your assistance concerning this matter is greatly appreciated.

Sincerely,

BENTLY POWELL
Real Estate Manager

An Ordinance of the City of Plano, Texas, approving the use or taking a portion of City of Plano public Park Land, known as Oak Point Park and Nature Preserve for a permanent lift station easement to the North Texas Municipal Water District; providing for a determination that there is no feasible and prudent alternative to the proposed use or taking of the Park Land; and that the proposed project includes all reasonable planning to minimize harm to the land and the park resulting from the use; and providing an effective date.

WHEREAS, the North Texas Municipal Water District has requested approval for a permanent Lift Station Easement as depicted on the drawing attached hereto as Exhibit "A" (called "Easement") which requires the use or taking of a portion of City of Plano public Park Land know as Oak Point Park and Nature Preserve (called "Park Land"); and

WHEREAS, Chapter 26 of the Texas Parks and Wildlife Code requires a public hearing for the use or taking of public Park Land, at which the governing body must determine whether any feasible and prudent alternative to the use or taking of public Park Land exists, and whether the proposed use or taking includes all reasonable planning to minimize harm to the Park Land; and

WHEREAS, Notices of the Public Hearing were duly served and published in conformity with Chapter 26 of the Texas Parks and Wildlife Code for the Project; and

WHEREAS, the City Council held a public hearing on December 17, 2013, regarding the Project during which all interested persons had the opportunity to testify and present relevant evidence before the City Council.

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

Section I. After hearing and review of all the testimony, evidence, and other relevant information at the Public Hearing, the City Council hereby finds and determines that:

- 1) No feasible and prudent alternative to the use or taking of the portion of public Park Land at Oak Point Park and Nature Preserve as proposed by the Project; and
- 2) The Project includes all reasonable planning to minimize the harm to the Park Land resulting from the use or taking.

Section II. The City Council further finds that the Project is in the public interest generally, and in the best interests of the citizens of the City of Plano, Texas. Accordingly, the City Council approves the use or taking of a portion of

Oak Point Park and Nature Preserve by the North Texas Municipal Water District through an agreement for lift station improvements, as depicted in Exhibit "A."

Section III. This Ordinance becomes effective immediately from and after its passage as required by law.

DULY PASSED AND APPROVED this the 17th day of December, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**EASEMENT
UPPER ROWLETT CREEK AND UPPER COTTONWOOD CREEK
LIFT STATION IMPROVEMENTS
PROJECT NO. 295**

STATE OF TEXAS § KNOWN ALL MEN BY THESE PRESENTS:
 §
COUNTY OF COLLIN §

THAT the undersigned **CITY OF PLANO, TEXAS**, a Texas home-rule municipal corporation, (hereinafter called "Grantor") for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash in hand paid by the **NORTH TEXAS MUNICIPAL WATER DISTRICT** (hereinafter called "Grantee") the receipt of which is hereby acknowledged and confessed, has granted, sold and conveyed, and by these presents, does grant, sell and convey unto the Grantee a Permanent Easement, in and through those certain premises owned by Grantor to construct, operate, reconstruct, perpetually maintain and remove an Electrical Building and a Power Generator, for the purpose of furnishing secondary power at the Upper Rowlett Creek Lift Station, with all incidental equipment, and appurtenances under or through the following described lands situated in Collin County, Texas, to-wit:

Being a 0.459 acre tract of land situated in the Jeremiah Moncey Survey, Abstract No. 621, Allen, Collin County, Texas, said 0.459 of an acre tract of land being a portion of a 71.888 acre tract of land as described in the deed to the City of Plano as recorded in Volume 1629, Page 87 of the Deed Records of Collin County, Texas.

SEE ATTACHED EXHIBIT "A" FOR DESCRIPTION

The Grantee shall utilize the easement to construct an Electrical Building and locate a Power Generator and appurtenances, including above grade appurtenances, as may be required for its operation of the Lift Station. Grantee, and Grantee's successors, shall have the continued and unobstructed right of ingress and egress over the permanent easement granted for the installation, operation, inspection, and maintenance of Grantee's facilities.

The NTMWD shall be responsible for any and all costs resulting from the improvements constructed and associated with the Lift Station Site.

Grantee agrees to defend, indemnify and hold the Grantor and its respective officers, agents and employees, harmless against any and all claims, lawsuits, judgments, fines, penalties, costs and expenses for personal injury (including death), property damage or other harm or violations for which recovery of damages, fines, or penalties is sought, suffered by any person or persons, that may arise out of or be occasioned by Grantee's violations of law, or by any negligent, grossly negligent, intentionally wrongful, or strictly liable act or omission of the Grantee, its officers, agents, employees, invitees, subcontractors, or sub-subcontractors and their respective officers, agents, or representatives, or any other persons or entities for which the Grantee is legally responsible arising out of this easement or use of the easement property. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole

negligence of the Grantor, and its officers, agents, employees or separate contractors. The Grantor does not waive any governmental immunity or other defenses available to it under Texas or federal law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Grantee at its own expense is expressly required to defend Grantor against all such claims. Grantor reserves the right to provide a portion or all of its own defense; however, Grantor is under no obligation to do so. Any such action by Grantor is not to be construed as a waiver of Grantee's obligation to defend Grantor or as a waiver of Grantee's obligation to indemnify Grantor pursuant to this easement agreement. Grantee shall retain defense counsel within seven (7) business days of Grantor's written notice that Grantor is invoking its right to indemnification under this easement agreement. If Grantee fails to retain counsel within the required time period, Grantor shall have the right to retain defense counsel on its own behalf and Grantee shall be liable for all costs incurred by the Grantor.

Grantee shall procure and maintain for the duration of the easement insurance coverage as set forth in the insurance requirements marked exhibit "B" attached hereto and incorporated herein by reference. Grantee shall provide a signed insurance certificate verifying that they have obtained the required insurance coverage as a condition of this easement. Anywhere in the insurance requirements that it references vendor/contractor, the same requirements under this easement shall apply to Grantee.

Grantee shall procure and maintain for the duration of the Easement insurance coverage as set forth in the Insurance Requirements marked Exhibit "B" attached hereto and incorporated herein by reference. Grantee shall provide a signed insurance certificate verifying that they have obtained the required insurance coverage as a condition of this Easement. Anywhere in the insurance requirements that it references vendor/contractor, the same requirements under this easement shall apply to Grantee.

The above described easement and rights shall inure unto the said Grantee, and Grantee's successors, and the covenants and agreements contained herein shall constitute covenants running with the land, binding upon Grantor, its legal representatives, successors and assigns, for the benefit of Grantee, and Grantee's successors and assigns.

TO HAVE AND TO HOLD unto the said **NORTH TEXAS MUNICIPAL WATER DISTRICT**, its successors and assigns, the above described easement and right-of-way, and I do hereby bind myself, any heirs, executors, and administrators to warrant and forever defend all and singular the said premises to the **NORTH TEXAS MUNICIPAL WATER DISTRICT**, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof herein.

WITNESS OUR HANDS this _____ day of _____, 2013.

**GRANTOR:
CITY OF PLANO, TEXAS**

By: _____

Its: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned authority, on this day personally appeared _____, in his/her capacity as _____ for City of Plano, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2013.

Notary Public in and for
the State of Texas

My commission expires: _____

EXHIBIT "A"
NORTH TEXAS MUNICIPAL WATER DISTRICT
UPPER ROWLETT CREEK LIFT STATION

OWNER: THE CITY OF PLANO
PERMANENT UTILITY EASEMENT
JEREMIAH MONCEY SURVEY, ABSTRACT NO. 621
CITY OF ALLEN
COLLIN COUNTY, TEXAS

Being a 0.459 of an acre tract of land situated in the Jeremiah Moncey Survey, Abstract No. 621, City of Allen, Collin County, Texas, said 0.459 of an acre tract of land being a portion of a 71.888 acre tract of land as described in the deed to The City of Plano as recorded in Volume 1629, Page 87 of the Deed Records of Collin County, Texas, said 0.459 of an acre tract of land being more particularly described by metes and bounds as follows:

COMMENCING at a 3/8 inch iron rod (Controlling Monument) found for an interior ell corner of said 71.888 acre tract of land and the southeast corner of a 1.263 acre tract of land (designated "Tract No. Two") as described in the deed to North Texas Municipal Water District as recorded in Volume 2456, Page 315 of said Deed Records of Collin County, Texas, from which a 3/8 inch iron rod (Controlling Monument) found for an interior ell corner of said 71.888 acre tract of land and the southwest corner of said 1.263 acre tract of land bears North 88 degrees 25 minutes 04 seconds West, at a distance of 250.00 feet; **THENCE** North 01 degrees 34 minutes 56 seconds East along a westerly line of said 71.888 acre tract of land and the easterly line of said 1.263 acre tract of land, a distance of 20.00 feet to the **POINT OF BEGINNING** having a grid coordinates of N 7,077,877.03, E 2,525,915.73;

THENCE North 01 degrees 34 minutes 56 seconds East, along a westerly line of said 71.888 acre tract of land and the easterly line of said 1.263 acre tract of land, a distance of 200.00 feet to a point for an exterior ell corner of said 71.888 acre tract of land and the northeast corner of said 1.263 acre tract of land and the northwest corner of said Permanent Utility Easement, said point also being in the southerly right-of-way line of Chaparral Road (a 110 foot right-of-way);

THENCE South 88 degrees 25 minutes 04 seconds East along the northerly line of said 71.888 acre tract of land and the southerly right-of-way line of said Chaparral Road, a distance of 100.00 feet to a point for the northeast corner of said Permanent Utility Easement;

THENCE South 01 degrees 34 minutes 56 seconds West, a distance of 200.00 feet to a point for the southeast corner of said Permanent Utility Easement;

THENCE North 88 degrees 25 minutes 04 seconds West, a distance of 100.00 feet to the **POINT OF BEGINNING** and containing 20,000 square feet or 0.459 of an acre of land, more or less.

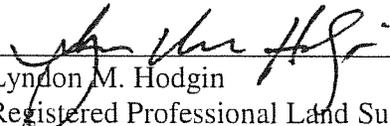
NOTES:

1. A plat of even date accompanies this legal description.
2. All horizontal coordinates are based on the Texas State Plane Coordinate System, North American Datum of 1983, CORS96 (Epoch 2002.00), North Central Zone (4202) and adjusted to surface values using the Texas Department of Transportation surface adjustment factor for Collin County (1.000152710). All distances and areas shown hereon are surface values and in U.S. Survey Feet.
3. This survey was performed without the benefit of a title report. There may be easements and /or covenants affecting this property not shown hereon.

* SURVEYOR'S CERTIFICATE *

TO ALL PARTIES INTERESTED IN TITLE TO THE PREMISES SURVEYED, I DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED FROM PUBLIC RECORDS AND FROM AN ACTUAL AND ACCURATE SURVEY UPON THE GROUND AND THAT SAME IS TRUE AND CORRECT.

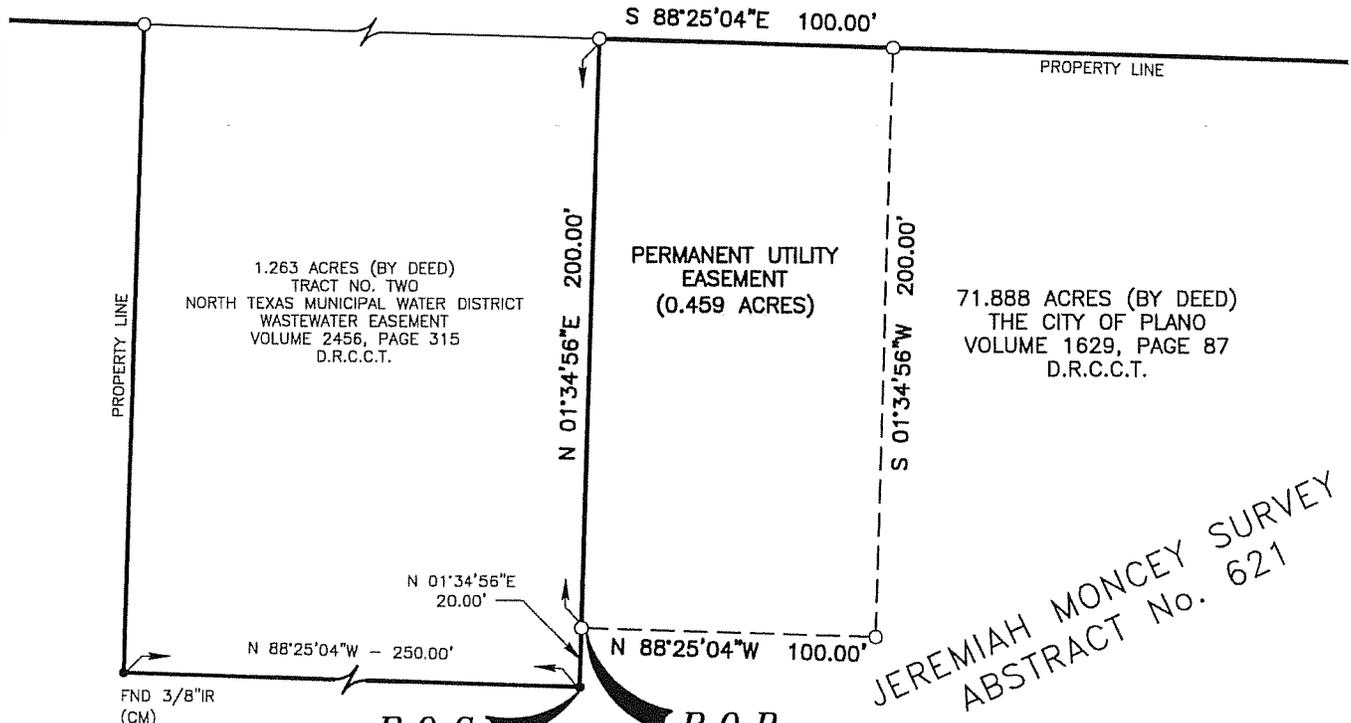
Date: July 23, 2013
Gorrondona & Associates, Inc.


Lyndon M. Hodgkin
Registered Professional Land Surveyor
No. 4584
Texas Firm No. 10106900



PLAT OF EXHIBIT "A"

CHAPARRAL ROAD
(110' WIDTH RIGHT-OF-WAY)

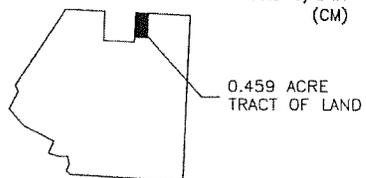


JEREMIAH MONCEY SURVEY
ABSTRACT No. 621

FND 3/8"IR
(CM)

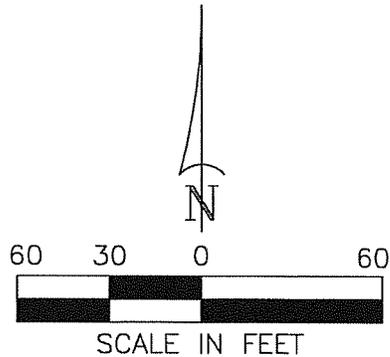
P.O.C.
FND 3/8"IR
(CM)

P.O.B.
PERMANENT
UTILITY
EASEMENT
(GRID COORDINATE)
N=7,077,877.03
E=2,525,915.73



SUBJECT TRACT AND
LOCATION OF EASEMENT

LEGEND	
●	IRON ROD FOUND (AS NOTED)
(CM)	CONTROLLING MONUMENT
○	CALCULATED POINT
---	EASEMENT LINE
----	PROPERTY LINE (AS NOTED)
D.R.C.C.T.	DEED RECORDS OF COLLIN COUNTY TEXAS

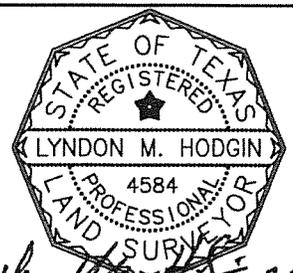


(1) A LEGAL DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT.
 (2) ALL HORIZONTAL COORDINATES ARE BASED ON THE TEXAS STATE COORDINATE SYSTEM, NORTH AMERICAN DATUM OF 1983, CORS96 (EPOCH 2002.00), NORTH CENTRAL ZONE (4202) AND ADJUSTED TO SURFACE VALUES USING THE TEXAS DEPARTMENT OF TRANSPORTATIONS SURFACE ADJUSTMENT FACTOR FOR COLLIN COUNTY (1.000152710). ALL DISTANCES AND AREAS SHOWN HEREON ARE SURFACE VALUES AND IN U.S. SURVEY FEET.
 (3) THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON.



NORTH TEXAS MUNICIPAL WATER DISTRICT
505 E. BROWN ST. • P.O. BOX 2408 • WYLIE, TEXAS 75098

**NORTH TEXAS MUNICIPAL WATER DISTRICT
UPPER ROWLETT CREEK LIFT STATION**



SURVEY: JEREMIAH MONCEY SURVEY, ABSTRACT NO. 621		
LOCATION: CITY OF ALLEN, COLLIN COUNTY, TEXAS		
SUBJECT TRACT ACREAGE: 71.888 ACRES (BY DEED)		PAGE 3 OF 3
JOB NO. CH2M_1301.00	DRAWN BY: GP	CAD FILE: UPPER ROWLETT CREEK
DATE: 07/23/2013	CHK. BY: GEC	SCALE: 1" = 60'
GORRONDONA & ASSOCIATES, INC. • 1701 NORTH MARKET STREET, SUITE 450, LB 5 DALLAS, TX. 75202		• 214-712-0600 FAX 214-712-0604

LYNDON M. HODGIN
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 4584 TEXAS FIRM NO. 10106900
1-23-13

**EXHIBIT “B”
CITY OF PLANO
GENERAL CONTRACTUAL INSURANCE REQUIREMENTS**

Vendors/Contractors performing work on City property for the City of Plano shall provide the City a certificate of insurance evidencing the coverage’s and coverage provisions identified herein. Vendors/Contractors shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of insurance as required herein or that the subcontractors are included under the vendors/contractor’s policy. The City, at its discretion, may require a certified copy of the policies, including all relevant endorsements.

All insurance companies must be authorized by the Texas Department of Insurance to transact business in the State of Texas, must be acceptable to the City of Plano and be placed with an insurer possessing an A-VII A. M. Best rating or better.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and higher limits of coverage or provisions depending on the nature of the work.

1. The following insurance requirements, coverage’s and limits apply to most minor construction (Non-CIP), renovation, service provider, installation and maintenance services, work on City property and professional service contracts.
2. Purchases of non-hazardous commodities, equipment, materials and products from distributors and retailers do not require any specific insurance.
3. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment or property may require customized insurance requirements in addition to the general requirements listed.

Commercial General Liability Insurance—(Required for all minor construction, renovation, service provider contracts involving installation, maintenance or work on City property)

Commercial general liability insurance shall be written on an ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-complete operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The City, the City Council and its members, the City’s agents, officers, directors and employees shall be included as an additional insured under the commercial general liability policy, including coverage for City with respect to liability arising out of the completed operations.

\$1,000,000 Limit per Occurrence/Aggregate

\$1,000,000 Limit for Personal/Advertising Injury and Products/Completed Operations

Commercial Automobile Liability—(Required for all contracts involving the use of vendor/contractor owned, non-owned or hired automobiles)

Vendor/contractor shall maintain business automobile liability insurance with a limit of not less than \$500,000 each accident or Combined Single Limit.

Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles). Vendor/contractor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability obtained by vendor/contractor pursuant to this section or under any applicable automobile physical damage coverage.

Workers' Compensation & Employer Liability—(Required for all vendors/contractors with employees who perform work or contract services on City property)

Vendor/contractor shall maintain workers' compensation insurance in the amounts required by appropriate state workers compensation statutes. The employer's liability limit shall not be less than \$500,000.

Vendor/contractor waives all rights against City, the City Council and its members, the City's agents, officers, directors and employees for recovery of damages under vendors/contractor's workers' compensation and employer's liability. Vendor/contractor must cause a waiver of subrogation to be effected under its workers' compensation coverage.

Sole Proprietors and companies with no employees may be exempt from this requirement.

Professional Liability (E&O) Insurance--(Required for all Professional Service contracts including but not limited to: architects, engineers, consultants, counselors, medical professionals, attorneys, accountants, etc.)

Professional Liability Coverage (E&O) may be written on a claims made basis but must include an extended reporting period of at least three years after contract completion.

City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the E&O policy, including coverage for City with respect to liability arising out of all errors and omissions of vendor/contractor.

Minimum Limit of \$1,000,000 Each Claim and \$1,000,000 Aggregate

General Requirements Applicable to All Insurance

1. The vendor/contractor shall obtain and maintain the minimum insurance coverage set forth in this section during the entire contract period.
2. The vendor/contractor agrees that the insurance requirements specified herein do not reduce the liability vendor/contractor has assumed in any indemnification/hold harmless section of the contract.
3. Coverage shall be on a primary basis and non-contributory with any other insurance coverage and/or self-insurance carried by City.
4. Vendor/contractor is responsible for providing the City a minimum of 30 days' notice of a material change or voluntary cancellation of insurance coverage required under this contract and notice within 10 days of any notice of termination no matter the cause.

Evidence of Insurance Required

Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this contract, vendor/contractor shall furnish City a Certificate(s) of Insurance (COI) on a form approved by the Texas Department of Insurance and signed by an authorized representative of each insurer.

The COI shall List each insurer's NAIC Number or FEIN and list the City of Plano, Risk Management Division, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section

