

**AGENDA
CITY OF ALLEN
CITY COUNCIL WORKSHOP MEETING
JUNE 9, 2009 – 6:00 P.M.
COUNCIL CONFERENCE ROOM
ALLEN CITY HALL
305 CENTURY PARKWAY**

Call to Order and Announce a Quorum is Present.

Questions on Current Agenda.

Items of Interest.

1. Update Regarding the Proposed Health Clinic —
Randy Martell, IPS Advisors
Laura Morrow, Director of Human Resources
2. Update Regarding the Allen USA 2009 Celebration —
Tim Dentler, Director of Parks and Recreation

Adjourn to Regular Meeting.

- open to the public -

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place convenient and readily accessible to the public at all times. Said notice was posted on Friday, June 5, 2009, at 5:00 p.m.

Shelley B. George, City Secretary

Allen City Hall is wheelchair accessible. Access to the building and special parking are available at the entrance facing Century Parkway. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 214.509.4105.

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE:

June 9, 2009

STAFF RESOURCE:Laura Morrow, Director of Human Resources
Melinda Walter, Human Resources Analyst**PREVIOUS COUNCIL ACTION:**

Discussion Only

BACKGROUND

Staff is bringing additional information for the City Council to consider regarding the potential establishment of an employee health clinic.

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE:	June 9, 2009
SUBJECT:	Update Regarding the Allen USA 2009 Celebration
STAFF RESOURCE:	Tim Dentler, Parks and Recreation Director
PREVIOUS COUNCIL ACTION:	None
ACTION PROPOSED:	For Information Only

BACKGROUND

Staff will provide a brief update regarding the Allen USA 2009 Celebration to be held on June 27th at Celebration Park.

**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
JUNE 9, 2009 – 7:00 P.M.
COUNCIL CHAMBERS
ALLEN CITY HALL
305 CENTURY PARKWAY**

Call to Order and Announce a Quorum is Present.

Pledge of Allegiance.

Public Recognition.

1. Citizens' Comments. *[The City Council invites citizens to speak to the Council on any topic not on the agenda or not already scheduled for Public Hearing. Prior to the meeting, please complete a "Public Meeting Appearance Card" and present it to the City Secretary. The time limit is three minutes per speaker, not to exceed a total of fifteen minutes for all speakers.]*
2. Recognition of the Allen Economic Development Corporation (AEDC) and Tim Wood, AEDC Board of Directors President, for Receiving the 2008 Texas Economic Development Council *Economic Excellence Award*.

Consent Agenda. *[Routine Council business. Consent Agenda is approved by a single majority vote. Items may be removed for open discussion by a request from a Councilmember or member of staff.]*

3. Approve Minutes of the May 26, 2009, Regular Meeting.
4. Adopt an Ordinance Amending the Code of Ordinances Designating a Portion of Angel Parkway and Exchange Parkway as School Zones for Olsen Elementary School.
5. Adopt an Ordinance Amending Police Department General Order 300 Discipline / Complaints Against Police Personnel and General Order 1700 Hiring / Recruiting Process.

6. Adopt a Resolution Authorizing the City Manager to Execute an Interlocal Agreement with the Town of Fairview for Stacy Road Median Maintenance from US 75 to Greenville Avenue (SH 5).
7. Adopt a Resolution Authorizing the City Manager to Submit Five Project Activities to the Department of Energy's Energy Efficiency and Conservation Block Grant — Formula Grant Program for Funding Assistance Toward Energy Efficiency Activities in Public Facilities.
8. Authorize the City Manager to Execute an Economic Development Incentive Agreement between the City of Allen and Cisco Systems, Inc.
9. Authorize the City Manager to Execute a Real Property Exchange Agreement with Coventry II DDR/Trademark Montgomery Farm L.P.
10. Authorize the City Manager to Execute an Economic Development Agreement between the City of Allen and Coventry II DDR/Trademark Montgomery Farm L.P. for the Purpose of Providing a Community Room for Use by Civic and Other Local Organizations at Reduced Costs and Establish a Project Budget of \$125,000.
11. Authorize the City Manager to Execute Four Contracts with Clear Wireless LLC, a Nevada Limited Liability Company, for Microwave Dishes and Antennae to be Placed on the Bethany, Custer, Hillside, and Rowlett Water Towers, Each with a Five-year Term Contract with an Option for Five Additional Five-year Terms at \$15,000 per Year per Contract with a Rate Increase of 3% Each Year per Contract.
12. Authorize the City Manager to Purchase Three Additional Vehicles for the Police Department through the Houston-Galveston Area Council of Government's Cooperative Purchasing Program from Dallas Dodge for an Amount of \$63,740 and the Police Vehicle Package from Pursuit Safety, Inc. for an Amount of \$41,260 with the Total Amount being \$105,000.

Regular Agenda.

13. Conduct a Public Hearing and Adopt an Ordinance Amending the Allen Land Development Code, Article VII, Section 7.03.5, Utility Services, and Article VIII, Section 8.10, Extensions of Water and Wastewater Mains, Subsection 4, Underground Utilities.
14. TABLED ITEM: Consider a Request to Establish Reinvestment Zone #30 on Property Located North of the Allen Premium Outlets on Chelsea Boulevard and Adopt an Ordinance Implementing Reinvestment Zone #30 and Approve a Tax

Abatement Agreement with Cisco Systems, Inc. Supporting Construction of an Approximately 140,000 – 160,000 Square Foot Tier III Data Center Facility on Chelsea Boulevard.

15. Election of Mayor Pro Tem.
16. Consider Making Appointments to Fill Vacancies in Place No. 2 on the Keep Allen Beautiful Board and Place No. 6 on the Library Board.

Other Business.

17. Calendar.
 - ¹ June 15, 22 - Summer Sounds Concerts Series / JFRC / 7 p.m.
 - ¹ June 27 - Allen USA Celebration / Celebraton Park / Noon - 11 p.m.
18. Items of Interest. *[Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.]*

Executive Session. (As needed)

Legal, Section 551.071; Property, Section 551.072; Personnel, Section 551.074.
As authorized by Section 551.071(2) of the Texas Government Code, the Workshop Meeting and/or the Regular Agenda may be Convened into Closed Executive Session for the Purpose of Seeking Confidential Legal Advice from the City Attorney on any Agenda Item Listed Herein.

(Closed to Public as Provided in the Texas Government Code.)

19. Personnel Pursuant to Section 551.074 of the Texas Government Code –
Discuss Appointment to the Allen Economic Development Corporation
20. Reconvene and Consider Action on Items Discussed during Executive Session.

Adjournment.

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place convenient and readily accessible to the public at all times. Said notice was posted on Friday, June 5, 2009, 5:00 p.m.

Shelley B. George, City Secretary

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CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE:

June 9, 2009

SUBJECT:

Recognition of the Allen Economic Development Corporation (AEDC) and Tim Wood, AEDC Board of Directors President, for Receiving the 2008 Texas Economic Development Council *Economic Excellence Award*

STAFF RESOURCE:

Robert Winningham, AEDC Executive Director/CEO
Jennifer Grimm, Marketing Director

PREVIOUS COUNCIL ACTION:

None

ACTION PROPOSED:

Recognition of the Allen Economic Development Corporation (AEDC) and Tim Wood, AEDC Board of Directors President, for Receiving the 2008 Texas Economic Development Council *Economic Excellence Award*

BACKGROUND

The Texas Economic Development Council (TEDC) annually recognizes economic development agencies for their commitment to ongoing training and education, strategic planning and organizational effectiveness. Agencies are awarded points in the various categories and must achieve at least 100 points to receive the Economic Excellence Recognition. For the first time, the Allen Economic Development Corporation (AEDC) has achieved this prestigious designation and it is with pride, the Allen EDC informs the City Council of this significant accomplishment of receiving the 2008 TEDC Economic Excellence Award.

ALLEN CITY COUNCIL

REGULAR MEETING

MAY 26, 2009

Present:

Stephen Terrell, Mayor

Councilmembers:

Debbie Stout, Mayor Pro Tem

Ross Obermeyer

Joey Herald

Robin L. Sedlacek

Gary L. Caplinger

Jeff McGregor

City Staff:

Peter H. Vargas, City Manager

Shelli Siemer, Assistant City Manager

Shelley B. George, City Secretary

Pete Smith, City Attorney

Workshop Session

The Workshop Session was not held.

Call to Order and Announce a Quorum is Present

With a quorum of the Councilmembers present, the Regular Meeting of the Allen City Council was called to order by Mayor Terrell at 7:00 p.m. on Tuesday, May 26, 2009, in the Council Chambers of the Allen City Hall, 305 Century Parkway, Allen, Texas.

Pledge of Allegiance

Public Recognition

1. **Citizens' Comments.**
2. **Administration of Oaths-of-Office and Presentations of Certificates-of-Election.**

City Secretary George administered the Oaths-of-Office to reelected Councilmember Debbie Stout, Place No. 1, Councilmember Joey Herald, Place No. 3, and Councilmember Gary Caplinger, Place No. 5. Mayor Terrell presented the Certificates-of-Election and offered his congratulations to them. The Councilmembers took their places at the Council bench.

Consent Agenda

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REGULAR MEETING
MAY 26, 2009**

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MOTION: Upon a motion made by Councilmember Obermeyer and a second by Councilmember Sedlacek, the Council voted seven (7) for and none (0) opposed to adopt the items on the Consent Agenda as follows:

3. **Approve Minutes of the May 12, 2009, Regular Meeting.**
4. **Approve Minutes of the May 19, 2009, Special Called Meeting for the Canvass of the General Election.**
5. **Adopt a Resolution Approving an Amended Investment Policy Governing the Investment of Municipal Funds.**

RESOLUTION NO. 2829-5-09(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING AN AMENDED POLICY FOR THE INVESTMENT OF MUNICIPAL FUNDS; AND PROVIDING AN EFFECTIVE DATE.

6. **Adopt a Resolution Authorizing the City Manager to Enter into an Interlocal Cooperation Agreement By and Between the City of North Richland Hills and the City of Allen for the City of North Richland Hills' Use of the City of Allen's Supplier Contracts.**

RESOLUTION NO. 2830-5-09(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF ALLEN, TEXAS, AND THE CITY OF NORTH RICHLAND HILLS, TEXAS, PROVIDING FOR A COOPERATIVE PURCHASING PROGRAM FOR GOODS AND SERVICES; DESIGNATING THE CITY MANAGER, OR DESIGNEE, AS OFFICIAL REPRESENTATIVE OF THE CITY IN MATTERS RELATING TO THE PROGRAM; AND AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE; AND PROVIDING AN EFFECTIVE DATE.

7. **Adopt a Resolution Authorizing the City Manager to Execute an Interlocal Agreement with the City of Plano and the North Texas Municipal Water District to Combine Infrastructure Projects Along the Chaparral Road Corridor.**

RESOLUTION NO. 2831-5-09(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF INTERLOCAL AGREEMENT BY AND AMONG THE CITY OF ALLEN, TEXAS, THE CITY OF PLANO, TEXAS, AND THE NORTH TEXAS MUNICIPAL WATER DISTRICT; AUTHORIZING ALLOCATION OF COSTS ASSOCIATED WITH ROADWAY, BRIDGE, AND UTILITY CONSTRUCTION COSTS ALONG CHAPARRAL ROAD; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

8. **Adopt a Resolution Authorizing the City Manager to Apply for, Accept, Reject, Alter, or Terminate a Three-year Grant from the United States Department of Transportation, Federal Transit Administration as Administered by the North Central Texas Council of Governments for Funding to Develop Transportation Services for Residents of Urban Centers and Rural and Suburban Areas to Suburban Employment Opportunities Through the Job Access/Reverse Commute Program.**

RESOLUTION NO. 2832-5-09(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, TO APPLY FOR, ACCEPT, REJECT, ALTER, OR

**ALLEN CITY COUNCIL
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MAY 26, 2009**

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TERMINATE A GRANT FROM THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FEDERAL TRANSIT ADMINISTRATION AS ADMINISTERED BY THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS PROVIDING GRANT FUNDING TO DEVELOP TRANSPORTATION SERVICES FOR RESIDENTS OF URBAN CENTERS AND RURAL AND SUBURBAN AREAS TO SUBURBAN EMPLOYMENT OPPORTUNITIES THROUGH THE JOB ACCESS AND REVERSE COMMUTE (JA/RC) PROGRAM, IF AWARDED.

9. **Authorize the City Manager to Execute a Contract with Jim Bowman Construction Co. LP, for Sidewalk Rehabilitation in the Hillside Subdivision for \$69,997.60 and Establish a Project Budget of \$86,450.**
10. **Authorize the City Manager to Execute an Agreement with Kleinfelder Central, Inc. for Materials Testing on the Construction of the Two Million Gallon Hillside Elevated Storage Tank for an Amount not to Exceed \$50,000.**
11. **Authorize the City Manager to Enter into a Professional Services Agreement with MHS Planning & Design, L.L.C. for Preparation of an Update of the Parks, Recreation, and Open Space Master Plan for Amount not to Exceed \$59,250.**
12. **Receive the Summary of Property Tax Collections as of April 2009.**
13. **Receive the CIP (Capital Improvement Program) Status Report.**

The motion carried.

Regular Agenda

14. **Conduct a Public Hearing and Adopt a Resolution for an Amendment to the 2008-2009 Annual Action Plan for the Community Development Block Grant (CDBG) Program.**

Mayor Terrell opened the public hearing and asked anyone wishing to speak for or against this item to do so at this time.

With no one speaking, Mayor Terrell closed the public hearing.

RESOLUTION NO. 2833-5-09(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE 2008-2009 COMMUNITY DEVELOPMENT BLOCK GRANT ANNUAL ACTION PLAN; AUTHORIZING ITS SUBMISSION TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD); REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

MOTION: Upon a motion made by Mayor Pro Tem Stout and a second by Councilmember Herald, the Council voted seven (7) for and none (0) opposed to adopt Resolution No. 2833-5-09(R), as previously captioned, amending the 2008-2009 Annual Action Plan for the Community Development Block Grant (CDBG) Program. The motion carried.

15. **Adopt a Resolution Establishing New Rates and Fees for Commercial and Residential Solid Waste, Recycling, and Household Hazardous Waste Services.**

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REGULAR MEETING
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RESOLUTION NO. 2834-5-09(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ESTABLISHING FEES AND RATES FOR COMMERCIAL SOLID WASTE COLLECTION SERVICES; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

MOTION: Upon a motion made by Councilmember Caplinger and a second by Councilmember McGregor, the Council voted seven (7) for and none (0) opposed to adopt Resolution No. 2834-5-09(R), as previously captioned, establishing new rates and fees for commercial and residential solid waste, recycling, and household hazardous waste services. The motion carried.

- 16. TABLED ITEM: Consider a Request to Establish Reinvestment Zone #30 on Property Located North of the Allen Premium Outlets on Chelsea Boulevard and Adopt an Ordinance Implementing Reinvestment Zone #30 and Approve a Tax Abatement Agreement with Cisco Systems, Inc. Supporting Construction of an Approximately 140,000 – 160,000 Square Foot Tier III Data Center Facility on Chelsea Boulevard. (Applicant requests to continue the item to June 9, 2009.)**

Other Business

17. Calendar.

- June 1, 8 – Summer Sounds Concert Series / JFRC / 7 p.m.
- June 27 – Allen USA Celebration / Celebration Park / Noon

18. Items of Interest. [Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.]

- June 15 - The Allen Public Safety Recovery Fund
- The Council recognized Boy Scouts in attendance from Troops 306, 328, 334 and 1334.

The Regular Meeting was recessed at 7:29 p.m.

Executive Session

In accordance with the Texas Government Code, the Allen City Council convened into Executive Session at 7:45 p.m. on Tuesday, May 26, 2009, in the Council Conference Room, 305 Century Parkway, Allen, Texas, in order to continue discussing matters pertaining to:

- 19. Personnel Pursuant to Section 551.074 of the Texas Government Code - Consider Appointments to, and Discussion of the Duties and Responsibilities of the Members of all City Boards, Corporations and Commissions Including the Directors Appointed to the Allen Economic Development Corporation and the Allen Community Development Corporation.**

The Executive Session adjourned at 8:58 p.m. on Tuesday, May 26, 2009.

20. Reconvene and Consider Action on Items Discussed during Executive Session.

The Allen City Council reconvened into Regular Meeting at 8:59 p.m. on Tuesday, May 26, 2009. No action was taken on any items discussed in Executive Session.

**ALLEN CITY COUNCIL
REGULAR MEETING
MAY 26, 2009**

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Adjourn

MOTION: Upon a motion made by Mayor Pro Tem Stout and a second by Councilmember Obermeyer, the Council voted seven (7) for and none (0) opposed to adjourn the Regular Meeting of the Allen City Council at 8:59 p.m. on Tuesday, May 26, 2009. The motion carried.

These minutes approved on the 9th day of June, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE:	June 9, 2009
SUBJECT:	Adopt an Ordinance Amending the Code of Ordinances Designating a Portion of Angel Parkway and Exchange Parkway as School Zones for Olsen Elementary School
STAFF RESOURCE:	John Baumgartner, Director of Engineering
PREVIOUS COUNCIL ACTION:	On June 10, 2006, Council adopted Ordinance No. 2744-6-08 Amending School Zones City-wide
ACTION PROPOSED:	Adopt an Ordinance Amending the Code of Ordinances Designating a Portion of Angel Parkway and Exchange Parkway as School Zones for Olsen Elementary School

BACKGROUND

The continued growth of the City of Allen requires the expansion of the school capacity within the Allen ISD. Olsen Elementary is the newest school located on East Exchange Parkway, opening August 2009. To prepare for this opening, the City Engineer has determined the location for school zones to provide a safe route to school for the children. The locations of the school zones are described in the proposed ordinance and location map. This will be an ordinance amending the Code of Ordinances by amending Chapter 9, "MOTOR VEHICLES AND TRAFFIC," Article V, "OPERATION OF VEHICLES," Division 2, "SPEED REGULATIONS," Section 9-137, "SCHOOL ZONE."

BUDGETARY IMPACT

The signage, markings and flashers are budgeted in the FY 2009 school zone safety grant fund and will approach \$25,000.

STAFF RECOMMENDATION

It is the recommendation of City staff that the proposed ordinance be adopted, updating the

Code of Ordinances to establish school zones for Olsen Elementary School.

MOTION

I make a motion to adopt Ordinance No. _____ amending the Code of Ordinances to designate portions of Angel Parkway and Exchange Parkway as school zones for Olsen Elementary School.

ATTACHMENT

Location Map
Ordinance

ALLEN HEIGHTS

WINDGATE WAY

EXCHANGE PKWY



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 9, "MOTOR VEHICLES AND TRAFFIC," ARTICLE V, "OPERATION OF VEHICLES," DIVISION 2, "SPEED REGULATIONS," SECTION 9-137, "SCHOOL ZONE"; TO DESIGNATE EXCHANGE PARKWAY FROM 100 FEET WEST OF ANGEL PARKWAY TO 200 FEET WEST OF WINDGATE WAY AND ANGEL PARKWAY FROM 100 FEET NORTH OF EXCHANGE PARKWAY TO 100 FEET SOUTH OF EXCHANGE PARKWAY AS SCHOOL ZONES WITH A MAXIMUM PRIMA FACIE SPEED LIMIT OF TWENTY (20) MILES PER HOUR, AS SCHOOL ZONES; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 545.356 of the Transportation Code provides that whenever the governing body of the City shall determine upon the basis of an engineering and traffic investigation that any prima facie speed therein set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a street or highway within the City, taking into consideration the width and condition of the pavement and other circumstances on such portion of said street or highway, as well as the usual traffic thereon, said governing body may determine and declare a reasonable and safe prima facie speed limit thereat or thereon by the passage of an ordinance, which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of the street or highway; and,

WHEREAS, the City Council of the City of Allen, Texas, upon the basis of an engineering and traffic investigation finds it necessary to alter prima facie maximum speed limits established by Section 545.356 of the Transportation Code, the following prima facie speed limits hereafter indicated for vehicles are hereby determined and declared to be reasonable and safe; and such speed limits are hereby fixed at the rate of speed indicated for vehicles traveling upon the named streets and highways, or parts thereof.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Code of Ordinances of the City of Allen, Texas, be and the same is hereby amended by amending Chapter 9, "Motor Vehicles and Traffic," Article V, "Operation of Vehicles," Division 2, "Speed Regulations," Section 9-137, in part to read as follows:

"Sec. 9-137. School Zones; Signs.

- (a) A person commits an offense if he operates or drives a vehicle in a school zone in the following designated areas or on the following designated streets at a speed greater than the speed designated by this section for that area or street or portion thereof, and any speed in excess of the limit provided in this section shall be prima facie evidence that the speed is not reasonable nor prudent and is unlawful. Based on recommendations of the Traffic Engineer, determined based on engineering and traffic surveys, the city council shall designate school zones with appropriate street markings, warnings or signs, which street markings, warnings or signs shall be placed at the school zones by the

Traffic Engineer. The speed limit designated for school zones shall be effective only at times when appropriate flashing warnings and/or signs advising motorists of the speed limit are placed in conspicuous places.

- (b) In accordance with the recommendations of the Traffic Engineer, the following designated locations, measured from centerline of roadway to centerline of roadway, and areas are declared to be school zones and the maximum speed limit for all motor vehicles operated within such areas and locations and on such streets on school days, when either a flashing warning signal is in operation, or when appropriate signs are in place and conspicuous shall be as follows:
- (1) Allen High School: Twenty (20) miles per hour.
Rivercrest Boulevard from one thousand (1000) feet west of Greenville Avenue to six hundred (600) feet south of Station Park Drive.
 - (2) Anderson Elementary School: Twenty (20) miles per hour.
 - a. Summertree Drive from Alder Drive to Springdale Court.
 - b. Alder Drive from two hundred fifty (250) feet south of Summertree Drive to Winterwood Drive.
 - c. Winterwood Drive from two hundred (200) feet east of Alder Drive to Heatherwood Drive.
 - (3) Beverly Elementary School: Twenty (20) miles per hour.
 - a. Duchess Drive from Hedgcoxe Road to Needham Drive.
 - b. Needham Drive from two hundred (200) feet west of Duchess Drive to two hundred (200) feet east of Castlefort Drive.
 - (4) Bolin Elementary School: Twenty (20) miles per hour.
 - a. Cheyenne Drive from two hundred seventy (270) feet north of Bethany Drive to one hundred seventy-five (175) feet south of Bethany Drive.
 - b. Eastbound Bethany Drive from four hundred (400) feet west of Cheyenne Drive to one hundred (100) feet east of Cheyenne Drive.
 - c. Westbound Bethany Drive from four hundred (400) feet east of Cheyenne Drive to one hundred (100) feet west of Cheyenne Drive.
 - d. Cheyenne Drive from one hundred seventy-five (175) feet north of Cassandra Lane to the southern city limits.
 - (5) Boon Elementary School: Twenty (20) miles per hour.
 - a. Comanche Drive from two hundred fifty (250) feet north of Limestone Court/Padre Circle to two hundred fifty (250) feet south of Granger Drive.
 - b. Limestone Court from Comanche Drive to eight hundred (800) feet east of Comanche Drive.
 - (6) Boyd Elementary School: Twenty (20) miles per hour.
 - a. Eastbound Bethany Drive from two hundred fifty (250) feet west of Red Oak Street to one hundred (100) feet east of Jupiter Road.
 - b. Westbound Bethany Drive from two hundred (200) feet east of Jupiter Road to one hundred (100) feet west of Jupiter Road.
 - c. Jupiter Road from two hundred seventy-five (275) feet north of Bethany Drive to one hundred ten (110) feet north of Hightrail Drive.

- (7) Chandler Elementary School: Twenty (20) miles per hour.
 - a. Bur Oak Drive from two hundred fifty (250) feet east of Water Oak Drive to two hundred fifty (250) feet west of Woodstream Lane.
 - b. Water Oak Drive from two hundred fifty (250) feet north of Bur Oak Drive to Shelley Drive.
- (8) Curtis Middle School: Twenty (20) miles per hour.
 - a. Malone Road from two hundred ten (210) feet north of Rivercrest Boulevard to two hundred ten (210) feet north of Autumnmist Drive.
 - b. Rivercrest Boulevard from two hundred (200) feet east of Country Lane to Malone Road.
- (9) Ereckson Middle School: Twenty (20) miles per hour.
 - a. Tatum Drive from two hundred (200) feet north of Bel Air Drive to five hundred (500) feet north of Alma Drive.
 - b. Bel Air Drive from Tatum Drive to three hundred (300) feet east of Tatum Drive.
- (10) Evans Elementary School: Twenty (20) miles per hour.
 - a. Bridgewater Drive from two hundred (200) feet west of Waterdown Drive to Walnut Springs Drive.
 - b. Walnut Springs Drive from two hundred (200) feet north of Bridgewater Drive to four hundred fifty (150) feet south of San Jacinto Drive.
 - c. Waterdown Drive from one hundred fifty (150) feet south of Bridgewater Drive to one hundred fifty (150) feet north of Bridgewater Drive.
- (11) Ford Middle School: Twenty (20) miles per hour.
 - a. Park Place Drive from two hundred (200) feet west of Wandering Way Drive to two hundred (200) feet east of Whitman Drive.
 - b. Whitman Drive from Park Place Drive to one hundred fifty (150) feet north of Victorian Drive.
 - c. Park Place Drive from two hundred fifty (250) feet west of Victorian Drive to two hundred fifty (250) feet east of Victorian Drive.
- (12) Green Elementary: Twenty (20) miles per hour.

Comanche Drive from one hundred forty-one (141) feet south of Hockley Court to one hundred eighty (180) feet west of Alma Drive.
- (13) Kerr Elementary School: Twenty (20) miles per hour.
 - a. Glendover Drive from two hundred twenty (220) feet east of Kenshire Court to two hundred fifty (250) feet west of Scottsman Drive.
 - b. Scottsman Drive from two hundred fifty (250) feet north of Glendover Drive to two hundred thirty (230) feet south of Lomond Court.
- (14) Lovejoy Elementary School: Thirty-five (35) miles per hour.

Farm to Market (FM) 1378 from four hundred forty-two (442) feet south of FM 2786 (Stacy Road) to six hundred fifty (650) feet north of Country Brook Lane.
- (15) Lowery Freshman Center: Twenty (20) miles per hour.
 - a. Westbound Main Street from seven hundred (700) feet east of Jupiter Road to three hundred thirty (330) feet west of Jupiter Road.
 - b. Eastbound Main Street from three hundred thirty (330) feet west of Jupiter Road to one hundred seventy (170) feet east of Jupiter Road.

- c. Greenville Avenue from four hundred (400) feet north of Jupiter Road to four hundred (400) feet south of Jupiter Road.
 - d. Jupiter Road from Greenville Avenue to two hundred fifteen (215) feet south of Main Street.
- (16) Marion Elementary School: Twenty (20) miles per hour.
- a. Allen Heights Drive from two hundred fifty (250) feet north of Charleston Drive to two hundred fifty (250) feet south of Stablerun Drive.
 - b. Charleston Drive from two hundred (200) feet east of Allen Heights Drive to Stablerun Drive.
 - c. Stablerun Drive from two hundred fifty (250) feet north of Charleston Drive to two hundred (200) feet east of Allen Heights Drive.
- (17) Norton Elementary School: Twenty (20) miles per hour.
- a. Newport Drive from one hundred eighty (180) feet west of Riverside Court to two hundred fifty (250) feet east of Seeport Drive.
 - b. Seeport Drive from Newport Drive to Mefford Lane.
 - c. Bel Air Drive from one hundred ninety (190) feet west of Newport Drive to two hundred fifty (250) feet east of Newport Drive.
 - d. Newport Drive from Bel Air Drive to one hundred eighty (180) feet east of Bel Air Drive.
 - e. Alma Drive from two hundred fifty (250) feet north of Bel Air Drive to two hundred fifty (250) feet south of Bel Air Drive.
 - f. Bel Air Drive from three hundred fifty (350) feet east of Alma Drive to three hundred fifty (350) feet west of Alma Drive.
- (18) Reed Elementary School: Twenty (20) miles per hour.
- a. Allen Heights Drive from two hundred twenty-five (225) feet north of Rivercrest Boulevard to two hundred twenty-five (225) feet south of Rivercrest Boulevard.
 - b. Rivercrest Boulevard from two hundred fifty (250) feet west of Meadow Creek Drive to two hundred fifty (250) feet east of Allen Heights Drive.
 - c. Timbercreek Drive from five hundred ninety (590) feet west of Stone Creek Drive to one hundred ninety (190) feet west of Stone Creek Drive.
- (19) Olsen Elementary School: Twenty (20) miles per hour.
- a. Exchange Parkway from one hundred (100) feet west of Angel Parkway to two hundred (200) feet west of Windgate Way.
 - b. Angel Parkway from one hundred (100) feet north of Exchange Parkway to one hundred (100) feet south of Exchange Parkway.
- (20) Rountree Elementary School: Twenty (20) miles per hour.
- a. Leading Lane Drive from two hundred ten (210) feet west of Grassy Glen Drive to Greeting Gate Lane.
 - b. Melody Lane from Main Street to Leading Lane Drive.
- (21) Story Elementary School: Twenty (20) mile per hour.
- a. Malone Road from one hundred seventy-five (175) feet north of Edelweiss Drive to seven hundred ninety (790) feet south of Edelweiss Drive.
 - b. Edelweiss Drive one hundred seventy-five (175) feet west of Azalea Drive to Malone Road.
 - c. Azalea Drive from seven hundred ninety (790) feet south of Edelweiss Drive to Edelweiss Drive.

- (22) Vaughan Elementary School: Twenty (20) miles per hour.
 - a. Cottonwood Drive from two hundred twenty-five (225) feet west of Deerlake Drive to fifty (50) feet north of Cedar Crest Lane.
 - b. Ridgemont Drive from two hundred fifty (250) feet south of Cottonwood Drive to two hundred (200) feet north of Cottonwood Drive.
- (c) School days, as that term is used herein, shall be each Monday through Friday throughout the calendar year when the school nearest the school zone is in session, and for purposes of this speed ordinance, shall include the time period between the hours of 7:00 a.m. and 5:00 p.m. on such days.
- (d) It shall be unlawful for any person to drive or operate a motor vehicle through a school zone as designated and established herein during such periods of time, on school days, when there is either a flashing warning signal in operation cautioning motorists to proceed with care, or when appropriate signs are in place and conspicuous, in such a manner as to overtake and pass another vehicle being driven in the same direction upon the same street within said school zone.
- (e) It shall be unlawful for any person to drive or operate a vehicle on a public street or highway through the school zones herein designated during the periods herein designated at a rate of speed in excess of the prima facie maximum speed limits herein designated for such school zones.
- (f) Any person violating any provision of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in the sum of not more than two hundred dollars (\$200) for each such violation.”

SECTION 2. The Traffic Engineer shall erect appropriate signals, signage, and markings giving notice of the maximum prima facie speed limit established herein.

SECTION 3. All ordinances of the City of Allen in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

SECTION 5. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 6. Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Hundred Dollars (\$200) for each offense.

SECTION 7. This ordinance shall take effect immediately from and after its passage and publication as required by law, however, the maximum prima facie speed limits established herein shall not take effect until the Traffic Engineer has erected appropriate signage giving notice of the maximum prima facie speed limits therefore and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 9TH DAY OF JUNE, 2009.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

June 9, 2009

SUBJECT:

Adopt an Ordinance Amending Police Department General Order 300 Discipline / Complaints Against Police Personnel and General Order 1700 Hiring / Recruiting Process

STAFF RESOURCE:

William S. Rushing, Chief of Police
Paul Holland, Police Sergeant

PREVIOUS COUNCIL ACTION:

Adoptions of Ordinance Nos. 2265-2-04, 2541-8-06 and 2675-11-07, Personnel Policies for the Allen Police Department

ACTION PROPOSED:

Adopt an Ordinance Amending Police Department General Order 300 Discipline / Complaints Against Police Personnel and General Order 1700 Hiring / Recruiting Process

BACKGROUND

In 2004, the City Council adopted Ordinance No. 2265-2-04 adopting the Personnel Policy and selected General Orders from the Allen Police Department. In 2006, the City Council adopted Ordinance No. 2541-8-06 amending General Order 3700 Promotional Process. In 2007, the City Council adopted Ordinance No. 2675-11-07 amending General Order 300 Discipline / Complaints Against Police Personnel; 1600 Career Development; 1700 Hiring / Recruiting Process; and 3700 Promotional Process.

The Allen Police Department desires to make changes to General Order 300 Discipline / Complaints to expedite the process and to conform to the requirements of the Texas Police Chiefs Association Foundation Recognition Program. The General Order adds that unless extenuating circumstances exist, all internal investigations, to include division level investigations, shall be completed within 30 days of initiation of the investigation; this time period shall also include the dissemination of any discipline associated with a sustained complaint. A complete investigation is essential to the proper resolution of employee misconduct; therefore, the Chief of Police has the authority to extend the time limit, as needed, to complete the internal investigation.

The Allen Police Department also desires to make changes to General Order 1700 Hiring / Recruiting Process to expedite the process and to conform to the requirements of the Texas Police Chiefs Association Foundation Recognition Program. Currently there are 11 phases in the department's hiring process. Under the proposed amendments this will be increased to 12 phases. Most phases will remain unchanged, but the order in which the process occurs has changed. The department has added one phase, 'Preliminary Background Investigation', to the process. Police applicants will now complete a preliminary background questionnaire at the beginning of the hiring process. This will allow the department to determine if the applicant meets minimum standards early in the process. Other changes include the applicant being sent to an oral interview board with only the preliminary background investigation completed. Once the applicant has successfully passed the oral board, a complete and thorough background investigation will be completed.

In Phase Eight, the department added that the applicant will be administered a polygraph examination by a polygraph examiner certified in the use and testing of the instrument through the State of Texas. This is required by the Texas Police Chiefs Association Foundation Recognition Program. The department also added that the positions of public safety officer and the crime victim advocate will be classified as critical positions and will have a polygraph and psychological examination administered during the background process. In Phase Ten, the department updated the hearing requirement test so that it will meet existing medical standards.

In order to meet the requirements of the Texas Police Chiefs Association Foundation Recognition Program the department will now require that the background investigator(s) complete an initial background investigation training course and will continue to receive updated training. Department recruiters that assist with the background investigation will also be required to complete such training.

If approved, General Orders 300 and 1700 will become effective on June 9, 2009, and will be subject for review in June 2011. Amendments can only be enacted by a City ordinance.

BUDGETARY IMPACT

None

STAFF RECOMMENDATION

Staff recommends that the City Council adopt an ordinance amending the Allen Police Department General Orders 300 Discipline / Complaints Against Police Personnel and 1700 Hiring / Recruiting Process.

MOTION

I make a motion to adopt Ordinance No. _____ amending the Allen Police Department General Orders 300 Discipline / Complaints Against Police Personnel and 1700 Hiring / Recruiting Process.

ATTACHMENT

Ordinance and Amendments

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE PERSONNEL POLICY FOR THE CITY OF ALLEN POLICE DEPARTMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Allen previously adopted Ordinance No. 2265-2-04 approving and adopting a personnel policy for the City of Allen Police Department that contained General Orders for the Police Department; and,

WHEREAS, the Allen Police Department Personnel Policy establishes policies and procedures for the Allen Police Department which insures professionalism and appropriate training; and,

WHEREAS, the City Council of the City of Allen desires to amend the General Orders contained within the Allen Police Department Personnel Policy as provided in Exhibit "A" and Exhibit "B."

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. Ordinance No. 2265-2-04 adopting the General Orders contained within the Personnel Policy for the City of Allen Police Department is hereby amended, as provided in Exhibit "A" and Exhibit "B" to meet the needs of the police department.

SECTION 2. All Ordinances of the City of Allen in conflict with the provisions of this Ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said Ordinances not in conflict herewith shall remain in full force and effect.

SECTION 3. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

SECTION 4. This Ordinance shall take effect immediately from and after its passage and publication as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 9TH DAY OF JUNE, 2009.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY

Shelley B. George, TRMC, CITY SECRETARY

EXHIBIT A

GO 300 Changes

Only one item added to GO 300.

Under section VIII, subsection “E” was added to comply with the Recognition Program.

VIII. INVESTIGATION RESPONSIBILITY

- E. Unless extenuating circumstances exist, all internal investigations, to include division level investigations, shall be completed within 30 days of initiation of the investigation; this time period shall also include the dissemination of any discipline associated with a sustained complaint. A complete investigation is essential to the proper resolution of employee misconduct; therefore the Chief of Police has the authority to extend the time limit, as needed, to complete the internal investigation.

EXHIBIT B

GO 1700 Changes

Section III

Previous order had eleven phases

Now reads

The hiring process will consist of twelve phases

Section III

Added

The Chief of Police or designee may authorize for certain steps in this process to change or be passed over depending on the needs of the department at the time.

Section III A

Previously read

1. City of Allen application completed and turned in to City of Allen Human Resources Department.

Now reads

1. City of Allen on-line application completed

Section III B

Previously read

1. Screening of application by City of Allen Human Resources Personnel and the Internal Affairs Division:
 - a. Appropriate documents must be submitted to verify eligibility.
 - b. copies of documents will be accepted.

Now reads

1. Screening of application by City of Allen Human Resources Personnel

Section III C 1 a.

Previously read

- a. Applicants must have a minimum passing score of 70 or above to successfully pass the examination.

Now reads

- a. Sworn applicants must have a minimum passing score of 70 or above in each section of the test to successfully pass the examination.

Section III D

Only added the APD # 324 for informed consent form

Section III E 1 a. and b.

Previously read

E. Phase Five

1. Comprehensive Background Investigation for sworn and non-sworn applicants:

Now reads

E. Phase Five

1. Preliminary Background Investigation
 - a. Sworn applicants will undergo a preliminary background investigation immediately following the physical assessment phase. Applicants will complete a preliminary interview questionnaire (APD-322) and will then be interviewed by a member of the background investigation team and/or recruiter.
 - b. Non-Sworn applicants will have a preliminary background interview scheduled and will complete a preliminary interview questionnaire. Critical position applicants will complete a preliminary interview questionnaire marked critical (APD-322) and non critical position applicants will complete the preliminary interview questionnaire marked non-critical (APD-323).
 - c. Personal History Statements will be given to each sworn applicant who successfully passes each phase of the physical assessment and preliminary interview. The applicants will be given 10 days to return the completed Personal History Statement to the Internal Affairs Division. Late or Incomplete Personal History Statements will be rejected.
 - d. No changes
 - e. Prior to continuing on to the next phase a portion of the background investigation will be conducted to include checking criminal history and most recent employment verification.
 - f. Any information discovered during the background investigation that was not included in the Personal History Statement or preliminary interview either by omission or falsely reported will be grounds for rejection.

Section III F

Previously read

- d. Non-critical, non-sworn positions **will** have an oral interview with the applicable Deputy Chief or his designee. Non-critical positions include records technician, property technician, administrative assistants and animal control officers.

Now reads

- d. Non-critical, non-sworn positions **may** have an oral interview with the applicable Deputy Chief or designee in lieu of a formal oral interview board. Non-critical positions include records technician, property technician, administrative assistants and animal control officers.

Section III G

Previously read

G. Phase Seven

1. Polygraph Examination for sworn and critical, non-sworn positions, such as communication technician, detention officer, and criminalist. Property Technicians will also be administered a polygraph examination.

Now reads

G. Phase Seven

1. Comprehensive Background Investigation for sworn and non-sworn applicants:

Section III H

Previously read

H. Phase Eight

1. Psychological Examination for sworn and critical non-sworn positions, such as communication technician, detention officer and criminalist:
 - a. Applicants will be administered a psychological examination by a licensed psychologist selected by the department.
 - b. The applicant must receive a minimum rating of 4.0 or above to successfully pass this examination.

Now reads

H. Phase Eight

1. Polygraph Examination for sworn and critical, non-sworn positions, such as communication technician, detention officer, public safety officer, victims advocate, and criminalist. Property Technicians and quartermaster will also be administered a polygraph examination.
 - a. Applicants will be administered a polygraph examination by a trained polygraph examiner that is certified in use and testing of the polygraph instrument through the State of Texas. The polygraph examiner will be selected by the department.
 - b. The applicant must successfully pass the polygraph examination with a 'no deception indicated' result prior to proceeding to the next phase.
 - c. Admissions made during the polygraph examination will be used to assist in determining the applicant's acceptability.

Section III I

Previously read

I. Phase Nine

1. Medical/Physical Examination for sworn applicants only:

Now reads

I. Phase Nine

1. Psychological Examination for sworn and critical non-sworn positions, such as communication technician, detention officer, **public safety officer, victims advocate** and criminalist:
 - a. Applicants will be administered a psychological examination by a licensed psychologist selected by the department.
 - b. The applicant must receive a minimum rating of 4.0 or above to successfully pass this examination.

(Added bolded positions to critical positions)

Section III J

Previously read

J. Phase Ten

1. Drug Screen Examination for sworn and non-sworn applicants:

Now reads

J. Phase Ten

1. Medical/Physical Examination for sworn applicants only:
 - a. A medical examination, conducted by a licensed physician chosen by the department, will be administered to all sworn applicants. This examination will consist of the following:
 - b. Hearing Test – all applicants Must possess hearing that cannot exceed an average hearing loss of 25 decibels (ANSI) at 1000, 2000, and 3000 Hertz; cannot exceed a single reading of 35 decibels at 1000, 2000, and 3000 Hertz; cannot exceed a single reading of 35 decibels at 500 Hertz; and cannot exceed a single reading of 45 decibels at 4000 Hertz.

This was previously in Phase Nine and only hearing requirements changed. Prior hearing test was not up to standards.

Section III K

Previously read

K. Phase Eleven

1. Final interview with the respective Deputy Chief for sworn and non-sworn applicants:

Now reads

K. Phase Eleven

1. Drug Screen Examination for sworn and non-sworn applicants:

Section III L

Previously there was not a section L

Now reads

L. Phase Twelve

1. Final interview with the Chief of Police or designee for sworn and non-sworn applicants:
 - a. Upon successfully completing the final interview with the Chief of Police or designee, the applicant will be given a final job offer and a date of hire.

Previously said Deputy Chief or designee

(New to GO 1700)

VII. BACKGROUND INVESTIGATOR TRAINING

- A. The Background Investigator will be under the direct supervision of the Internal Affairs Division, and will receive proper training in background investigative topics to include an initial background investigative school. The Background Investigator will continue to receive updated training on background investigations throughout his assignment in the unit.

Section VIII A Recruiting

Only change made was that Recruiting Officer was made plural since the department has numerous recruiters.

Section VIII B Recruiting

Previously read

- B. The Recruiting Officer will be under the direct supervision of the Internal Affairs Division, and will receive the proper training in the recruitment of personnel once assigned to this position. The Recruiting Officer will also continue to obtain updated information to enhance the Recruitment Program.

Now reads

- B. The Recruiting Officers will be under the direct supervision of the Internal Affairs Division, and will receive the proper training in the recruitment of personnel once assigned to this position. The Recruiting Officers continue to obtain updated information to enhance the Recruitment Program. The Recruiting Officers will also obtain training on background investigations and interviewing techniques.

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 9, 2009

SUBJECT: Adopt a Resolution Authorizing the City Manager to Execute an Interlocal Agreement with the Town of Fairview for Stacy Road Median Maintenance from US 75 to Greenville Avenue (SH 5)

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION:

On December 13, 2005, Council adopted Resolution No. 2469-12-05(R) that authorized the City Manager to execute an Interlocal Agreement with Collin County and the Town of Fairview regarding funds for the design of Stacy Road, from US 75 to Angel Parkway

On February 14, 2006, Council authorized the City Manager to execute a contract with Birkhoff, Hendricks & Conway, L.L.P., (BH&C) for engineering and design services for the design of Stacy Road, from US 75 to Angel Parkway, and establish a preliminary project budget

On October 24, 2006, Council authorized the City Manager to execute an agreement with The Village at Allen, L.P. accelerating the design of Stacy Road

On March 27, 2007, Council adopted Resolution No. 2604-3-07(R) requesting the Texas Department of Transportation remove Stacy Road from the State Highway System beginning at US 75 to Greenville Avenue (SH 5)

ACTION PROPOSED: Adopt a Resolution authorizing the City Manager to execute an Interlocal Agreement with the Town of Fairview for median maintenance on Stacy Road from US 75 to Greenville Avenue (SH 5)

BACKGROUND

Stacy Road is a multi-jurisdictional roadway that is part of the Collin County Thoroughfare Plan. The centerline of Stacy Road is the city limit line between the Town of Fairview and the City of Allen. We are seeing regional development, 'The Villages', move forward on 400 acres of land located north and south of Stacy Road between US 75 and Greenville Avenue. Construction for this development began in early 2007 with completion anticipated in 2009.

The purpose of this agreement is to provide for uniform maintenance and allocation of costs of maintenance of the roadway, including the maintenance and capital replacement of street lights and traffic signalization on the roadway.

The ILA provides:

- 1 City of Allen will provide maintenance of the median, including mowing, irrigation system maintenance, bed maintenance, pruning, plant replacement and litter removal
- 1 City of Allen will provide electricity and maintenance of 44 street light fixtures on the roadway
- 1 City of Allen will invoice Town of Fairview for one half the costs of median maintenance and street light electricity/maintenance
- 1 Town of Fairview will pay the monthly electric costs for traffic signalization on the roadway
- 1 City of Allen will pay for all other traffic signalization maintenance costs including timing, adjustments, "trouble shooting" and responses to weather incidents, LED replacements and replacements of all other signal parts, including "knockdowns"
- 1 Initial term of 10 years with automatic 10-year renewals

BUDGETARY IMPACT

Cost for maintenance will be part of the operational budget of the Parks and Recreation Department (mowing, irrigation and beds) and the Engineering Department (street lights at traffic signals).

STAFF RECOMMENDATION

Adopt a resolution authorizing the City Manager to execute an Interlocal Agreement with the Town of Fairview for the median maintenance on Stacy Road from US 75 to Greenville Avenue (SH 5).

MOTION

I make a motion to adopt Resolution No. _____(R) authorizing the City Manager to execute an Interlocal Agreement with the Town of Fairview for Stacy Road median maintenance from US 75 to Greenville Avenue (SH 5).

ATTACHMENT

Location Map

Resolution and Interlocal Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF ALLEN, TEXAS, AND THE TOWN OF FAIRVIEW AUTHORIZING MAINTENANCE AND ALLOCATION OF COSTS OF MAINTENANCE OF THE ROADWAY MEDIANS INCLUDING THE MAINTENANCE OF THE LANDSCAPING AND IRRIGATION SYSTEM, MAINTENANCE AND CAPITAL REPLACEMENT OF STREET LIGHTS AND TRAFFIC SIGNALIZATION ON THE ROADWAY, AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR DESIGNEE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Allen, Texas, has been presented a proposed Interlocal Agreement by and between the City of Allen, Texas, and the Town of Fairview, Texas a copy of which is attached hereto and incorporated herein by reference (herein called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the City Manager or designee should be authorized to execute the Agreement on behalf of the City of Allen, Texas.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Allen and found to be acceptable and in the best interests of the City of Allen and its citizens, be, and the same is hereby, in all things approved.

SECTION 2. The City Manager or designee, under the direction of the City Council of the City of Allen, is hereby designated as the official representative to act for the City in all matters relating to the maintenance and allocation of costs of maintenance of the roadway, medians, street lights and traffic signals.

SECTION 3. The City Manager or designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Allen, substantially according to the terms and conditions set forth in this Agreement.

SECTION 4. This Resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 9TH DAY OF JUNE, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

STATE OF TEXAS §
 § **Inter-local Cooperation Agreement**
COUNTY OF COLLIN §

This Inter-local Cooperation Agreement (“Agreement”) is by and between the City of Allen, Texas, (“Allen”) and the Town of Fairview, Texas (“Fairview”) (collectively the “Parties” or singularly the “Party”) acting by and through their authorized officers.

RECITALS:

WHEREAS, the Parties previously entered into Inter-Local Cooperation Agreements for the funding of, and for the design and construction of Stacy Road from US 75 to Greenville Avenue/State Highway 5 (the “Roadway”) dated February 14, 2006 and December 31, 2005; and

WHEREAS, the Roadway adjoins the common boundaries of the Parties with the center line of the Roadway as the common boundary of the Parties; and

WHEREAS, the Parties desire to enter into an Inter-Local Cooperation Agreement to provide for the maintenance of the Roadway; and

WHEREAS, the Inter-local Cooperation Act, Texas Government Code, Chapter 791 authorizes any local governments to contract with one or more local governments to perform governmental functions and services under the terms of the Act;

NOW THEREFORE, in consideration of the foregoing and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I
Purpose

The purpose of this Agreement is to provide for the maintenance and allocation of the costs of maintenance of the Roadway including the maintenance and capital replacement of street lights and traffic signalization on the Roadway.

Article II
Term

2.1 The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and shall continue for a period of ten (10) years (the “Initial Term”). On the expiration of the Initial Term the term of this Agreement shall automatically renew for successive terms of ten (10) years each on the expiration date of the then current term, unless sooner terminated as provided herein.

2.2 This Agreement shall terminate upon any one or more of the following events:

- (a) by written agreement of the Parties; and
- (b) by either Party in the event the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof to such breaching Party.

Article III

Maintenance and Cost Responsibilities

3.1 Median Maintenance. Allen shall provide for, or contract for, the maintenance of the median of the Roadway including mowing, irrigation system maintenance, bed maintenance, pruning, plant replacement and litter removal. Allen shall also provide irrigation water for the median improvements at the normal Allen rate for irrigation water. The costs of the median maintenance and water irrigation shall be shared equally by the Parties.

3.2 Street Lights. Allen shall provide, or contract for the maintenance of the 44 street light fixtures on the Roadway pursuant to the Allen annual contract for street light maintenance with the applicable utility company. Currently the annual contract provides for routine maintenance (Bulb replacement, photo cell replacement, ballast replacement and monthly audit) at a set monthly fee per fixture and “non routine maintenance” is provided on a time and material basis. The costs for street light maintenance shall be shared equally by both parties. The costs of electricity for the street lights shall be paid for by Allen at the Allen rate but shared equally by the Parties.

3.3 Traffic Signalization. Fairview shall pay the monthly electric costs for the traffic signalization on the Roadway. Allen shall pay all other maintenance costs including timing, adjustments, “trouble shooting”, any responses to weather incidents, LED replacements, and replacement of all other signal parts including “knockdowns”.

3.4 Monthly Invoices. Allen shall provide a monthly invoice to Fairview for Fairview’s share of the costs for the maintenance of the Roadway set forth in this Article III on or about the 5th day of each calendar month beginning with the 5th day of the calendar month following the Effective Date which shall include the charges for the previous ending calendar month. (Except that the first monthly invoice shall include the charges that have been incurred since January 1, 2009). Fairview shall pay the amount set forth in the Monthly Invoice within 10 business days after receipt thereof. In the event Fairview disputes or contests any of the charges set forth in a Monthly Invoice, Fairview shall nonetheless pay the invoiced amount and notify Allen in writing at the time of payment of the specific charges being contested. Allen will review any such contest of the Monthly Invoice and respond in writing to Fairview.

Article IV

Miscellaneous

4.1 Assignment. This Agreement may not be assigned by either Party hereto without the prior written consent of all other Parties.

4.2 Notice. Except as may be provided otherwise herein, any notice, demand or request required or permitted to be delivered hereunder shall be deemed received when delivered in person or sent by United States Mail, postage prepaid, certified mail, or by hand-delivery or facsimile transmission addressed to the Party at the address set forth below:

If intended for City of Allen:

City of Allen
Attn: Mayor
One Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013

With copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 N. Akard
Dallas, Texas 75201
(214) 965-9900
Fax (214) 965-0010

If intended for City of Fairview:

Town of Fairview
Attention: Mayor
5005 South Highway 5
Fairview, Texas 75069

With copy to:

Any Party may, at any time, by written notice to the other Party, designate different or additional persons or different addresses for the getting of notices hereunder.

4.3 **Amendment.** This Agreement may be amended by the mutual written agreement of both Parties hereto.

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

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

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

4.7 **Recitals.** The recitals to this Agreement are incorporated herein.

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

4.9 **Indemnification.** To the extent allowed by law, each Party agrees to release, defend, indemnify, and hold harmless the other Party (and its officers, agents, and employees) from and against all claims or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgments, and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from its performance under this Agreement, or caused by its negligent acts or omissions (or those of its respective officers, agents, employees, or any other third parties

for whom it is legally responsible) in connection with performing this Agreement. This Agreement and the indemnity provided herein is not intended to and shall not create any cause of action for the benefit of third Parties or any person not a party to this Agreement.

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

(Signature Page to Follow)

EXECUTED this ____ day of _____, 2009.

City of Allen, Texas

By: _____
Peter H. Vargas, City Manager

Attest:

By: _____
Shelley George, City Secretary

Approved As To Form:

By: _____
Peter G. Smith, City Attorney

EXECUTED this ____ day of _____, 2009.

Town of Fairview, Texas

By: _____
John Godwin
Town Manager

Attest:

By: _____
Name: _____
Title: Town Secretary

Approved As To Form:

By: _____
Name: _____
Title: Town Attorney

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

June 9, 2009

SUBJECT:

Adopt a Resolution Authorizing the City Manager to Submit Five Project Activities to the Department of Energy's Energy Efficiency and Conservation Block Grant — Formula Grant Program for Funding Assistance Toward Energy Efficiency Activities in Public Facilities

STAFF RESOURCE:

Steve Massey, Director of Community Services
 Wes Pierson, Assistant to the City Manager
 Angela Mosley, Project Manager
 Kelly McGinnis, Grant / Project Coordinator

PREVIOUS COUNCIL ACTION:

None

ACTION PROPOSED:

Adopt a Resolution Authorizing the City Manager to Submit Five Project Activities to the Department of Energy's Energy Efficiency and Conservation Block Grant — Formula Grant Program for Funding Assistance Toward Energy Efficiency Activities in Public Facilities

BACKGROUND

The U.S. Department of Energy announced the Energy Efficiency and Conservation Block Grant (EECBG) Program to assist Cities, Counties, and States in implementing energy efficiency and conservation strategies to reduce fossil fuel emissions; to reduce total energy use; and to improve energy efficiency in the transportation, building, and other appropriate sectors. There are two sources of funding for the EECBG through the American Recovery and Reinvestment Act: Formula Allocation Grants (\$693,000 = Allen's formula allocation) and Competitive Grants.

A team has been formed to complete the grant application for the \$693,000 in formula allocated funds and potential competitive funds. The principal team members are Steve Massey, Wes Pierson, Angela Mosley, and Kelly McGinnis. A number of other people from various City Departments (Community Services, Engineering, Finance, and Parks & Recreation) are actively supporting the development of the grant application. The EECBG

Team is recommending that the \$693,000 in allocated funds be used for the following projects:

- 1) Procure and install a solar photovoltaic system at the Municipal Court / Parks & Recreation building to provide renewable energy for the facility.
 - This project will provide a publicly visible renewable energy resource for the City
 - The equivalent of 1.57 private sector jobs may be created
 - \$160,000 of the \$693,000 will be used to fund this project; we plan to leverage \$49,200 from Oncor which will be applied toward a solar photovoltaic system for the new Service Center (Activity #4) *
- 2) Procure and install window film in City Hall to make the building more energy efficient.
 - Staff projects a savings of 20,927 kWh/year and \$2,150/year which, in the long run, will lower the City's overall energy demand resulting in lower energy costs and decrease environmental emissions
 - The equivalent of .33 private sector jobs may be created
 - \$30,000 of the \$693,000 is budgeted for this project; we plan to leverage \$4,485 from Oncor which will be applied to Six Cities Trail construction (Activity #5) *
- 3) Procure and retrofit lighting fixtures in the Police Headquarters to make the building more energy efficient.
 - Staff projects a savings of 35,825 kWh/year and \$4,478/year which, in the long term, will conserve taxpayer dollars and reduce the total energy used by City of Allen owned facilities
 - The equivalent of .65 private sector jobs may be created
 - \$60,000 of the \$693,000 is budgeted to fund this project; we plan to leverage \$2,275 from Oncor which will be applied to Six Cities Trail construction (Activity #5) *
- 4) Procure and install a solar photovoltaic system at the Allen Service Center to provide renewable energy for the Administration building.
 - This project will provide a renewable energy resource for the City
 - The equivalent of 5.35 private sector jobs may be created
 - \$443,000 of the \$693,000 is budgeted to fund this project. The anticipated Oncor rebate from Activity #1 of \$49,200 will be used to maximize the photovoltaic system on the Service Center Shop Building. We plan to leverage \$172,220 from Oncor, which, if received, will be applied toward Six Cities Trail construction (Activity #5) *
- 5) Extension of the Six Cities Trail to provide alternative transportation opportunities and reduce fossil fuel emissions.
 - \$0 of the \$693,000 allocation is budgeted for this activity
 - Oncor rebates from Activities 2, 3, and 4 (if any) will be applied toward trail construction.

* Totals shown are estimates and may change by the time the grant application is complete. The application is due June 25, 2009.

The following projects are being considered for future submission for the competitive funds of the EECBG Program: HVAC Replacement in the Police Headquarters building, additional solar panels for the Service Center, Hike / Bike Trails, Wind Turbines for Athletic Field lighting, additional Traffic Management Systems, and Street Light Retrofits. Announcement of the competitive portion of the grant program is anticipated late Summer 2009.

BUDGETARY IMPACT

Funding allocations were apportioned under a series of formulas specified by the Energy Independence and Security Act of 2007 (EISA) and formulas determined by the Department of Energy. All funds must be obligated / committed within 18 months of the award date (anticipated award date = 9/30/09) and expended within 36 months of the effective date of the award.

Staff identified priority projects which could (1) be accomplished within the City's formula allocation of \$693,000, and (2) be eligible for Oncor local funding assistance. The budgetary impact for the proposed projects is outlined in the 'Background' section.

STAFF RECOMMENDATION

Staff recommends adoption of a Resolution authorizing the City Manager to enter into an agreement with the United States Department of Energy to apply for, accept, reject, alter, or terminate a grant from the Energy Efficiency and Conservation Block Grant Program to fund five energy efficiency projects for the City of Allen.

MOTION

I make a motion to adopt Resolution No. _____(R) authorizing the City Manager to enter into an agreement with the United States Department of Energy to apply for, accept, reject, alter, or terminate a grant to fund an Energy Efficiency and Conservation Block Grant, if awarded.

ATTACHMENT

Resolution

Activity #1-Solar Panels/McPAR

Activity #2-Window Film/City Hall

Activity #3-Lighting/PD

Activity #4-Solar Panels/Service Center

Activity #5-Six Cities Trail

Solar Summary McPAR

Solar Summary Service Center

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, HEREINAFTER REFERRED TO AS “APPLICANT”, DESIGNATING CERTAIN OFFICIALS AS BEING RESPONSIBLE FOR, ACTING FOR, AND ON BEHALF OF THE “APPLICANT” IN DEALING WITH THE U.S. DEPARTMENT OF ENERGY NATIONAL ENERGY TECHNOLOGY LABORATORY, HERINAFTER REFERRED TO AS “GRANTOR”, FOR THE PURPOSE OF PARTICIPATING IN THE RECOVERY ACT – ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANTS – FORMULA GRANTS PROGRAM, HEREINAFTER REFERRED TO AS THE “PROGRAM”; CERTIFYING THAT THE “APPLICANT” IS ELIGIBLE TO RECEIVE PROGRAM ASSISTANCE; CERTIFYING THE NAME AND CONTACT INFORMATION OF THE CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the “Applicant” is fully eligible to receive assistance under the “Program”; and,

WHEREAS, the “Applicant” is desirous of authorizing an official to represent and act for the “Applicant” in dealing with the “Grantor” concerning the “Program”; and,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The “Applicant” hereby certifies that it is eligible to receive assistance under the “Program” based on Title V, Subtitle E, Energy Efficiency and Conservation Block Grants, Sections 541(3)(A) or 541(3)(B) of EISA 2007, Public Law 110-140.

SECTION 2. The “Applicant” hereby authorizes and directs its City Manager to act for the “Applicant” in dealing with the “Grantor” for the purpose of the “Program,” and Peter H. Vargas is hereby officially designated as the representative in this regard. Contact information for Peter H. Vargas is hereby certified as pvargas@cityofallen.org or 214-509-4110.

SECTION 3. The “Applicant” hereby specifically authorizes the official to make application to the “Grantor” concerning the project known as Energy Efficiency in Allen, Texas.

SECTION 4. This Resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 9TH DAY OF JUNE, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

EECBG Activity Worksheet

Item # 7
Attachment Number 2
Page 1 of 1

Grantee:	City of Allen		Date:	04/24/2009	
DUNS #:	51169977	Program Contact Email:	smassey@cityofallen.org		
Program Contact First Name:	Stephen	Last Name:	Massey		
Project Title:	Solar Panels (Photovoltaic) on the Municipal Courts Parks and Recreations Building				
Activity:	13. Onsite Renewable Technology	If Other:			
Sector:	Public	If Other:			
Proposed Number of Jobs Created:	1.60	Proposed Number of Jobs Retained:			
Proposed Energy Saved and/or Renewable Energy Generated:	20 KW				
Proposed GHG Emissions Reduced (CO2 Equivalents):	19.510				
Proposed Funds Leveraged:	\$49,200.00				
Proposed EECBG Budget:	160,000.00				
Projected Costs Within Budget:	Administration: \$0.00	Revolving Loans:	\$0.00	Subgrants:	\$160,000.00
Project Contact First Name:	Bill	Last Name:	Little	Email:	blittle@cityofallen.org
Metric Activity:	Renewable Energy Market Development		If Other:		

Project Summary: *(limit summary to space provided)*

The Municipal Courts Parks and Recreation Building (MCPAR) which is approximately 22,763 square feet, was built in 1990 and renovated in 2003 for adaptive reuse. To improve efficiency, Allen installed a white roof system(2002), retrofitted with premium double glazed windows (2003), replaced aging automatic doors that opened 10 feet wide to standard doors with disabled capabilities in 2008. This significantly reduced the outside air infiltration into the rotunda area.

As a participant in the CitySmart Program, which is an energy auditing service provided through a partnership between Oncor, the regional electrical distributor and CLEAResult consultants, this energy performance of this building has been benchmarked. The annual energy usage for this building is 2,022 kWh/sq. ft. which is 11.4% lower than the national average. The annual energy cost is \$2.22/sq. ft. and the annual energy cost/occupant is \$1,804.

As a move to achieve our goals of reducing fossil fuel emissions, reducing the total energy used by City of Allen owned facilities, and improving energy efficiency within the building sector, we are proposing to install photovoltaic technology onto the roof of MCPAR. The photovoltaic system is estimated to generate 20 kW or 27,750 kWh/yr which is the equivalent of planting 4.9 acres of trees, taking 3.0 cars off the road, or removing 94 lbs of sulfur dioxide from the air. This activity will allow the City of Allen to utilize taxpayer dollars more efficiently by saving an estimated \$2,775/yr. As a visible implementation of energy efficiency, this activity is anticipated to generate public interest and encourage the citizens to seek ways to become more energy efficient as well. This activity will provide evidence to the citizens that Allen is making strides in our efforts to implement sustainable energy.

The system will consist of solar panels mounted onto the south-facing standing seam metal roof. The solar electric array will utilize American manufactured products and cover 1,583 square feet of the roofing area. The power will be processed by an inverter which will interface with and supply power to the existing electrical distribution panel. Should the demand-side loads within this distribution panel exceed the power output from the solar array, that power will simply serve to reduce the amount of power which will be required of the local utility service provider. If the power output from the solar array exceeds the loads within the facility, then that surplus power will be fed onto the local service provider's grid, thereby momentarily reversing the revenue meter. This system will not store electricity.

As an existing entity, this project could be deployed immediately, or as soon as funding is released. In accordance with state procurement regulations, the City of Allen will advertise a Request for Proposal (RFP) from qualified bidders. Qualified bidders must have a minimum of five years of experience in designing, selling, installing, and servicing solar photovoltaic systems; have an office within 50 miles of the project; have its headquarters within 300 miles of the project; be licensed by the state and certified by the North American Board of Certified Energy Practitioners; have designed, engineered, installed, and commissioned at least two installations of equal or greater size (kW); and provide references. The bidder will be selected based on the City of Allen's best value criteria which includes an evaluation of the time and cost to complete the project.

In an effort to leverage funds, Oncor, has a rebate program to which the City will apply. The available rebate for this project is \$49,200 which is 20 kW at \$2.46/watt. There is a likelihood that some funding will still be available at the end of the 2009FY for which the City of Allen could apply for as early as August 1, 2009. And as an added measure of quality assurance, the installing contractor is not authorized to receive any funding until the project is completed and accepted by Oncor and the City of Allen.

If you are proposing more than one activity, save this file as many times as needed with successive page numbers. For example: "OH-CITY-Columbus-Project Activity page 1.pdf," "OH-CITY-Columbus-Project Activity page 2.pdf," and continue as needed.

EECBG Activity Worksheet

Item # 7
Attachment Number 3
Page 1 of 1

Grantee:	City of Allen		Date:	04/24/2009	
DUNS #:	51169977	Program Contact Email:	smassey@cityofallen.org		
Program Contact First Name:	Stephen	Last Name:	Massey		
Project Title:	City Hall Window Film				
Activity:	5. Energy Efficiency Retrofits	If Other:			
Sector:	Public	If Other:			
Proposed Number of Jobs Created:	0.33	Proposed Number of Jobs Retained:			
Proposed Energy Saved and/or Renewable Energy Generated:	62,781 kWh over the 3 year grant period				
Proposed GHG Emissions Reduced (CO2 Equivalents):	45.000				
Proposed Funds Leveraged:	\$4,845.00				
Proposed EECBG Budget:	30,000.00				
Projected Costs Within Budget:	Administration: \$0.00	Revolving Loans: \$0.00	Subgrants:	\$30,000.00	
Project Contact First Name:	Bill	Last Name:	Little	Email:	blittle@cityofallen.org
Metric Activity:	Building Retrofits	If Other:			

Project Summary: *(limit summary to space provided)*

As a recommendation from the Texas Oncor CitySmart Program (energy auditing consultants CLEAResult from Irving, Texas), the City of Allen will improve the fenestration performance in Allen City Hall by installing a high-performance glazing system or window film. Application of 3M Night Vision 25 window film to the south and west facing windows of City Hall is projected to block solar heat by up to 59% and reduce 99% of ultraviolet (UV) rays. The proposed scope of work will include:

- 1) Cleaning of all windows on the west and south elevations of Allen City Hall
- 2) Furnish and install 3M brand Night Vision 25 window film to blend with the black spandrel rows.

As a member of The Cooperative Purchasing Network (TCPN), the City of Allen received a quote from Tremco (Weatherproofing Technologies) of Seabrook, Texas, in the amount of \$27,998.76 for the proposed work. The TCPN contract was bid in May 2007 with four options to renew annually. This contract will remain effective until 2012. We have budgeted \$30,000 for this activity to cover any contingency that may be needed. Should contingency funds remain, any remaining Federal funds will be applied toward installation of the solar photovoltaic system described in Activity 4.

Funding had not yet been identified to perform this work. Only upon award of the funding and execution of an award contract, the City will requisition the work from the awarded funding and create a Purchase Order. All work will be closely monitored by the City's Building Maintenance Foreman. All funding will be monitored by the City's Director of Community Services (Public Works), the City's Grant/Project Coordinator, and the Finance Department's Senior Accountants. No administration costs will be charged to this activity.

As an Oncor (local transmission distribution service provider) CitySmart participant, the City of Allen is eligible for a rebate on this window film installation activity. We estimate that Oncor will rebate \$4,845 following installation of the window film. The City of Allen will request reimbursement from Oncor following installation of the window film. Should the anticipated Oncor rebate of \$4,845 be received, it will be applied toward Six Cities Trail construction described in Activity 5.

Currently this building consumes 1,634,340 kWh/year and costs \$167,911/year to operate. With the application of window film, the majority of unwanted solar heat will be reflected, reducing energy consumption to 1,613,413 and operating costs to \$165,761. This activity is projected to lower energy consumption by 20,927 kWh/year, save \$2,150/year, and contribute to lowering the City's overall energy demand resulting in lower energy costs and decreased environmental emissions. kWh estimates allow the City to capture carbon offset and emissions reductions that accrue to the Dallas-Fort Worth non-attainment area.

GHG emissions (CO2 Equivalents) reduced by this activity are calculated at 15 metric tons / year, which total 45 metric tons reduced over the 3 year grant period. The Environmental Protection Agency has provided a means to convert kilowatt hours to metric tons of carbon dioxide using data collected through eGRID. The EPA has compiled an integrated data base of energy emissions and generations (eGRID) and the focus of the information is on generation of electricity and the emission of various greenhouse gas emissions, including carbon dioxide, nitrous oxide, methane, and sulfur oxide. The generation of electricity is expressed in both MWh and as a percentage (resource mix). State emissions and emissions rates are calculated at the generation source level and according to the various types of power plants. This data is represented in regions and subregions and according to the eGRID, Allen, Texas is in the ERCT subregion. The fuel mix for this subregion mostly consists of natural gas, coal, and nuclear power.

EECBG Activity Worksheet

Item # 7
Attachment Number 4
Page 1 of 1

Grantee:	City of Allen		Date:	04/24/2009	
DUNS #:	51169977	Program Contact Email:	smassey@cityofallen.org		
Program Contact First Name:	Stephen	Last Name:	Massey		
Project Title:	Allen Police Station Lighting Retrofit				
Activity:	5. Energy Efficiency Retrofits	If Other:			
Sector:	Public	If Other:			
Proposed Number of Jobs Created:	0.65	Proposed Number of Jobs Retained:			
Proposed Energy Saved and/or Renewable Energy Generated:	107,475 kWh over the 3 year grant period				
Proposed GHG Emissions Reduced (CO2 Equivalents):	77.000				
Proposed Funds Leveraged:	\$2,275.00				
Proposed EECBG Budget:	60,000.00				
Projected Costs Within Budget:	Administration:	\$0.00	Revolving Loans:	\$0.00	Subgrants:
					\$60,000.00
Project Contact First Name:	Bill	Last Name:	Little	Email:	blittle@cityofallen.org
Metric Activity:	Building Retrofits		If Other:		

Project Summary: *(limit summary to space provided)*

The Allen Police Headquarters is a 35,258 square foot building with 71 occupants, and operates approximately 168 hours weekly with Public Safety Dispatch operating 24/7/365. We propose to improve the efficiency of the lighting within this building by installing T8 type lighting fixtures and compact fluorescent lamps in lieu of the existing T12's and incandescent bulbs.

In September 2005, the City solicited competitive sealed bids for electrical services as an annual contract with four one-year renewal options. The City of Allen entered into an annual contract with Prism Electric of Garland, Texas. Because the estimated cost of this project exceeded \$3,000, the proposed retrofit work was quoted in September 2008 at \$55,260 by Prism Electric. The current extension of this annual contract is valid through September 1, 2009; however, we anticipate another one-year renewal through September 1, 2010.

Funding had not yet been identified to perform this work. Only upon award of EECBG funding and execution of an award contract, the City will requisition the work from the awarded funding and create a Purchase Order. All work will be closely monitored by the City's Building Maintenance Foreman.

The replaced T12 fluorescent lamps will be recycled by Environmental Light Recyclers of Fort Worth at an estimated cost of \$216.32 for transportation and recycling. When added to the cost of this retrofit, the estimated total of this activity is \$55,477. We have budgeted \$60,000 for this activity to cover any contingency that may be needed. Should contingency funds remain, any remaining Federal funds will be applied toward installation of the solar photovoltaic system described in Activity 4.

As an Oncor (local transmission distribution service provider) CitySmart participant, the City of Allen is eligible for a rebate on this lighting retrofit activity. We estimate that Oncor will rebate \$2,275 following installation of the energy efficient lighting. The City will request reimbursement from Oncor following installation of the energy efficient lighting. Should the anticipated Oncor rebate of \$2,275 be received, it will be applied toward Six Cities Trail construction (Activity 5).

All funding will be monitored by the City's Director of Community Services (Public Works), the City's Grant/Project Coordinator, and the Finance Department's Senior Accountants. No Administration costs will be charged to this activity.

Currently the Police Headquarters building consumes 1,092,000 kWh/year and costs \$106,748/year to operate. With the implementation of the energy efficient lighting retrofit improvements, the building would consume 1,057,075 kWh/year and cost \$102,270 to operate. We project a savings of 35,825 kWh/year and \$4,478/year, which would conserve taxpayer dollars and reduce the total energy used by City of Allen owned facilities.

GHG emissions (CO2 Equivalents) reduced by this activity are calculated to be 25.7 metric tons / year, which total 77 metric tons reduced over the 3 year grant period. The Environmental Protection Agency has provided a means to convert kilowatt hours to metric tons of carbon dioxide using data collected through eGRID. The EPA has compiled an integrated data base of energy emissions and generations (eGRID) and the focus of the information is on generation of electricity and the emission of various greenhouse gas emissions, including carbon dioxide, nitrous oxide, methane, and sulfur oxide. The generation of electricity is expressed in both MWh and as a percentage (resource mix). State emissions and emissions rates are calculated at the generation source level and according to the various types of power plants. This data is represented in regions and subregions and according to the eGRID, Allen, Texas is in the ERCT subregion. The fuel mix for this subregion mostly consists of natural gas, coal, and nuclear power.

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EECBG Activity Worksheet

Item # 7
Attachment Number 5
Page 1 of 1

Grantee:	City of Allen		Date:	04/24/2009	
DUNS #:	51169977	Program Contact Email:	smassey@cityofallen.org		
Program Contact First Name:	Stephen	Last Name:	Massey		
Project Title:	Solar Panels (Photovoltaic) on the Allen Service Center				
Activity:	13. Onsite Renewable Technology	If Other:			
Sector:	Public	If Other:			
Proposed Number of Jobs Created:	5.32	Proposed Number of Jobs Retained:			
Proposed Energy Saved and/or Renewable Energy Generated:	192,376 kWh in years 2 and 3 of the grant period				
Proposed GHG Emissions Reduced (CO2 Equivalents):	123.000				
Proposed Funds Leveraged:	\$172,220.00				
Proposed EECBG Budget:	443,000.00				
Projected Costs Within Budget:	Administration: \$0.00	Revolving Loans: \$0.00	Subgrants:	\$444,500.00	
Project Contact First Name:	Bill	Last Name:	Little	Email:	blittle@cityofallen.org
Metric Activity:	Renewable Energy Market Development		If Other:		

Project Summary: *(limit summary to space provided)*

The Allen Service Center is a part of Allen's 2007-2013 Capital Improvement Program and is being constructed to support street, drainage, traffic, water, sewer, parks and recreation, solid waste and recycling services, engineering inspection, and fleet maintenance operations. Architectural, mechanical, electrical, and plumbing designs as of May 2009 are 95% complete and the project is scheduled to go out to bid in June 2009. Construction is anticipated to begin Summer 2009 with completion by Fall 2010. The facility is designed to meet the current International Energy Conservation Code as well as to incorporate shading devices and canopies, high performance glazing, efficient lighting fixtures, and daylight harvesting to bring as much natural daylight into the facility as possible. The Service Center campus includes among other buildings, an Administration building, a Shop building, a Fleet Maintenance building, and a Police Training building. HVAC'd areas total 53,987 square feet. The Shop building was selected to utilize photovoltaic technology because of the building's east/west orientation that gives a desired sloped southern surface for PV generation, abundant roof surface area, and the roof's ability to support the photovoltaic modules from its standing seam roof with low installation costs. This configuration will produce optimal results when comparing similar factors for other buildings within the same campus. The roof will be installed with standing seam metal roofing, then retrofit with solar panels. Conduit from the Shop building to the nearby Administration building will be installed with the Service Center's initial construction. There will be space reserved in the electrical room of the Administration building for placement of the required disconnects, power inverter, and meter associated with the photovoltaic installation. The modules will collect solar energy from the roof of the Shop building, then the electric load will be transferred from the Shop building to the high power consuming Administrative building where the electricity generated will ultimately be consumed. Electricity that is produced in excess of what the building can consume real-time, is to be placed back on the electrical distribution system.

A design proposal has recently been prepared by a certified PV contractor and the estimated costs of equipment and installation is \$489,580. Any contingency funding from Activities 1 - 3 and Oncor rebate funding from Activity 1 will be used toward this project. This is a new facility that does not yet have an electric consumption history; however, based upon a neighboring city's service center, we estimate that the Administration building would consume 324,337 kWh/yr of electricity. This activity will generate approximately 96,188 kWh annually, which will save the City approximately \$9,619/year, improve energy efficiency within the building sector, and address all the objectives described in Attachment D, response #1. Using the EPA's eGRID database, we calculate that this activity will reduce carbon dioxide emissions by 61.3 metric tons/year, or 123 metric tons in years 2 & 3 of the grant period. The photovoltaic electronics will measure the power generated which will offset otherwise purchased electricity, and allow the City to capture carbon offset and emissions reductions that accrue to the Dallas-Fort Worth non-attainment area.

Upon award of EECBG funding and final acceptance of the new Service Center, the City will request formal bids through an electronic bidding system. All bids will be evaluated based upon Best Value criteria according to the City of Allen's Purchasing Policies and Procedures. Upon bid award, the City will enter into a contract and issue a purchase order. All work will be closely monitored by the City's Building Maintenance Foreman and Building and Code Division. All funding will be monitored by the City's Director of Community Services (Public Works), the Grant/Project Coordinator, and the Finance Department's Senior Accountants. No administrative costs will be charged to this activity. Because the City of Allen is a participant in Oncor's CitySmart Program, the City may be able to leverage Oncor funding assistance not to exceed \$172,220. Due to space limitations of this worksheet, please see www.oncor.com/electricity/teem/government/solarpv.aspx for details on Oncor's Solar Photovoltaic Incentive Program. Any Oncor funding received but not used in this project activity will be applied toward Six Cities Trail construction described in Activity 5.

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EECBG Activity Worksheet

Item # 7
Attachment Number 6
Page 1 of 1

Grantee:	City of Allen	Date:	04/24/2009
DUNS #:	51169977	Program Contact Email:	smassey@cityofallen.org
Program Contact First Name:	Stephen	Last Name:	Massey
Project Title:	Six Cities Trail		
Activity:	7. Transportation	If Other:	
Sector:	Public	If Other:	
Proposed Number of Jobs Created:		Proposed Number of Jobs Retained:	
Proposed Energy Saved and/or Renewable Energy Generated:			
Proposed GHG Emissions Reduced (CO2 Equivalents):			
Proposed Funds Leveraged:			
Proposed EECBG Budget:	0.00		
Projected Costs Within Budget:	Administration: \$0.00	Revolving Loans: \$0.00	Subgrants:
Project Contact First Name:	Matt	Last Name:	McComb
		Email:	mmccomb@cityofallen.org
Metric Activity:	Transportation	If Other:	

Project Summary: *(limit summary to space provided)*

An interjurisdictional trail effort by the Cities of Allen, McKinney, Frisco, Plano, Richardson and Garland is underway in the northeast Dallas Metroplex, known as the Six Cities Trail. The Six Cities Trail Plan identifies the Allen / Plano trail connection at the City of Allen's southern border as Trail Connection Point 8. Page 29 of the Six Cities Trail Plan identifies Trail Connection Point 8 at Allen's southern border as "the centerpoint of the key regional trail connecting all six cities". In northeast Allen, Trail Connection points 11 and 12 provide interjurisdictional connectivity between Allen, Frisco and McKinney, which are some of the fastest growing communities in the nation.

This trail will provide alternative transportation opportunities to residents of the northeast Dallas Metroplex, reducing the need for vehicular trips and thereby reducing fossil fuel emissions. Destinations along the Six Cities Trail include employment, educational, retail, recreational and residential developments.

The Collin County Parks Foundation Advisory Board has recently contracted a regional multi-disciplinary design consultant to develop the Six Cities Trail Plan into a county-wide trail plan for all of Collin County. Collin County recently awarded 50% funding for the Six Cities Trail Connection Points 8 and 12 in Allen, which are the segments connecting to Plano and McKinney. Once the connection to Plano is complete, Allen residents will have an alternative transportation route to the Dallas Area Rapid Transit (DART) rail / bus system as well as to the Collin County Community College. Connections to the north provide Allen residents with alternative transportation opportunities to the numerous sporting venues in McKinney and Frisco.

In the City of Allen, segments of this trail exist, some segments are funded and are under design, and the remainder is yet unfunded. This hike / bike trail project will be extended by any Oncor rebate funding remaining from project Activities 1, 2, 3, and/or 4. Concrete is estimated at \$5 square foot, and this trail is 12' wide. Should Oncor rebate the entire \$179,340 estimated in Activities 2, 3 and 4, these funds will be applied to extending the Six Cities Trail approximately 2,989 linear feet. Should Oncor provide only a partial rebates, any rebate funding will be applied to extend the Six Cities Trail by the rebate received. As these are 2011 funds, it is not possible to project the exact segment to be constructed at this time; however, Oncor rebate funds will be committed to Six Cities Trail construction within 18 months and spent within 36 months of the grant award date.

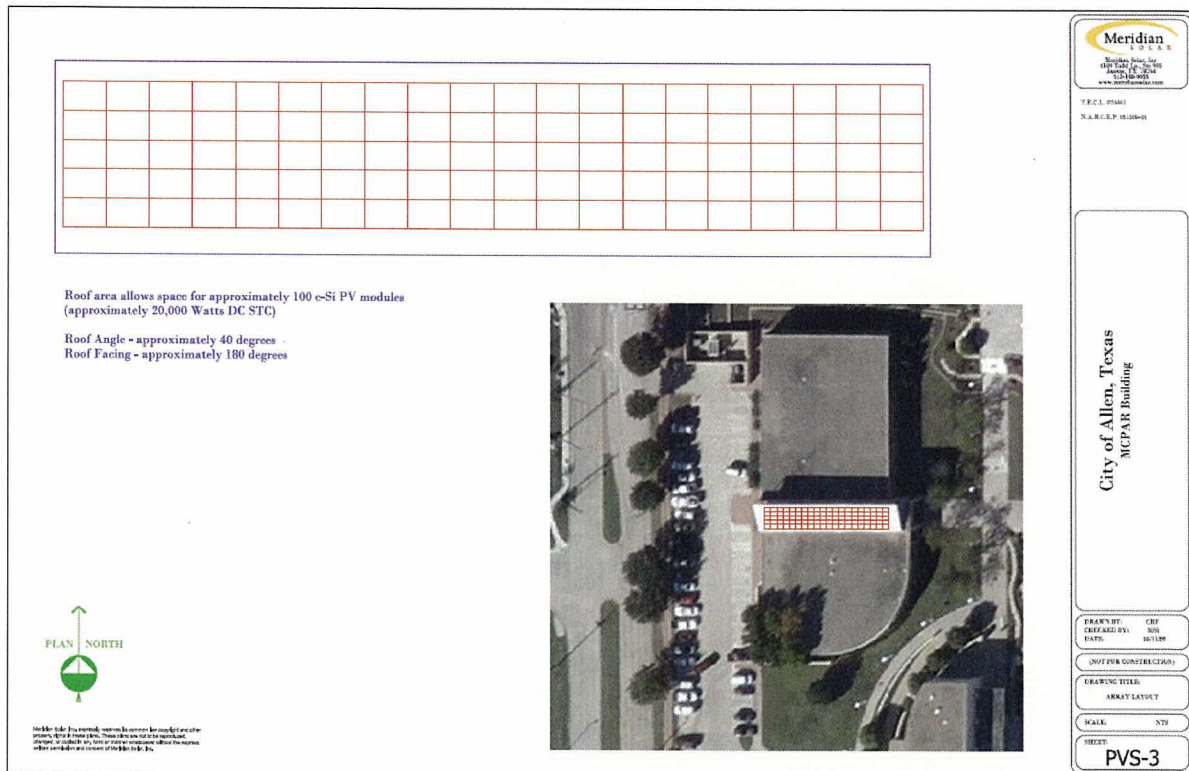
AASHTO standards are included in the City of Allen's trail design standards.

Solar Photovoltaic System Analysis
City of Allen – MCPAR Building
Allen, Texas



1.0 System Summary – MCPAR Building

Based on our review of the Municipal Court Parks and Recreation Building (MCPAR), and per input from City of Allen regarding preferred product source, Meridian Solar has concluded that a 20 kW solar electric system maximizes the south-facing pitched roof. The system will consist of solar modules mounted onto the standing seam metal roof. The array will consist of solar modules manufactured in the U.S.A by Schott Solar, or a comparable product, and covering approximately 1,583 sq. ft. of roof area.



The array power will be processed by a Maximum Power Point Tracking Inverter made in the U.S.A. by Solectria Inc. This inverter will interface with and supply power to the existing electrical distribution panel. Should the demand-side loads within this distribution panel exceed the power output from the solar array, that power will simply serve to reduce the amount of power which will be required of the local utility service provider. If the power output from the solar array exceeds the loads within the facility, then that surplus power will be fed onto the local service provider's grid, thereby momentarily reversing the revenue meter. It is assumed that the local utility will enter into a net-metering agreement with The City of Allen.

Regardless of where the power produced by the array is consumed or directed, the cumulative production of the photovoltaic system, and its consequent reduction of the facility's requirement of offsite energy resources, is detailed in System Performance 3.0.

Solar Photovoltaic System Analysis

Allen Service Center

Allen, Texas

Analysis 1: Shop Building



1.0 System Summary – Shop Building

Based on our review of the Allen Service Center Shop Building, and per input from City of Allen regarding preferred product source, Meridian Solar has concluded that a 70 kW solar electric system maximizes the south-facing pitched roof. The system will consist of solar modules mounted onto the standing seam metal roof. The array will consist of solar modules manufactured in the U.S.A by Schott Solar, or a comparable product, and covering approximately 5,540 sq. ft. of roof area.



The array power will be processed by a Maximum Power Point Tracking Inverter made in the U.S.A. by Solectria Inc.. This inverter will interface with and supply power to the existing electrical distribution panel. Should the demand-side loads within this distribution panel exceed the power output from the solar array, that power will simply serve to reduce the amount of power which will be required of the local utility service provider. If the power output from the solar array exceeds the loads within the facility, then that surplus power will be fed onto the local service provider's grid, thereby momentarily reversing the revenue meter. It is assumed that the local utility will enter into a net-metering agreement with The City of Allen.

Regardless of where the power produced by the array is consumed or directed, the cumulative production of the photovoltaic system, and its consequent reduction of the facility's requirement of offsite energy resources, is detailed in System Performance 3.0.

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 9, 2009

SUBJECT: Authorize the City Manager to Execute an Economic Development Incentive Agreement between the City of Allen and Cisco Systems, Inc.

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: On April 28, 2009, Council authorized the City Manager to execute a professional services agreement with Wier & Associates, Inc. for the design of Chelsea Boulevard and Commerce Parkway and establish the project budget

ACTION PROPOSED: Authorize the City Manager to Execute an Economic Development Incentive Agreement between the City of Allen and Cisco Systems, Inc.

BACKGROUND

The Allen Economic Development Corporation Board staff and the Engineering Department staff have been collaborating on a project, involving the construction of a new data center at the southeast corner of Chelsea Boulevard and Commerce Parkway.

The proposed data center is located at the intersection of these two roadways. Since the site has very little infrastructure to support this new development, the City of Allen has agreed to design and construct these roadways, which abut the proposed development, as an enticement for the developer to build in Allen. Specifically, the City of Allen has agreed to build four lanes of Chelsea Boulevard and half (24-ft) of Commerce Parkway, from Chelsea Boulevard to US 75 (from the north end of the outlet mall and Commerce Parkway).

A summary of the agreement is as follows:

Company agrees:

- ¹ To purchase approximately 34 acres of land and complete purchase no later than September 1, 2009
- ¹ Construct a 140,000 square foot state of the art data center with ancillary facilities and

related infrastructures, parking and landscaping

- 1 Agrees to complete construction no later than December 31, 2011
- 1 Agrees to reimburse City for engineering costs if Company fails to complete property purchase by September 1, 2009
- 1 Provide traffic study signed and sealed by a registered engineer

City agrees:

- 1 Substantially complete public improvements (road projects, water and sewer project, and storm sewer system project) and service property with up to 250,000 gallons per day at a minimum of 50 PSI by May 2010
- 1 Expedite the extension of water service to the property and the water tap at the southwest corner
- 1 Reduce building inspection fees so that the Company is charged for improvements based on a value of \$200 per square foot
- 1 Agrees that roadway impact fees to be assessed shall be charged at the rate for warehouse use of \$0.60 per square foot provided that the traffic study supports that fee level

BUDGETARY IMPACT

There is no immediate budgetary impact for this item. The funding for the construction effort (estimated to be \$1.8 million) will be determined when the construction contract comes before City Council for award, when a more precise cost is known from the bidding process.

Approximately \$500,000 will be available from AEDC funds. Additional funding sources include completed Facilities Agreements, Roadway Impact fees and a redistribution of funds from completed projects. Once final costs are estimated, it may be necessary to reprogram some G.O. bond funds from Ridgeview Drive to Chelsea Boulevard or Stacy Road.

STAFF RECOMMENDATION

Staff recommends that Council authorize the City Manager to execute the Economic Development Agreement between the City and Cisco Systems, Inc.

MOTION

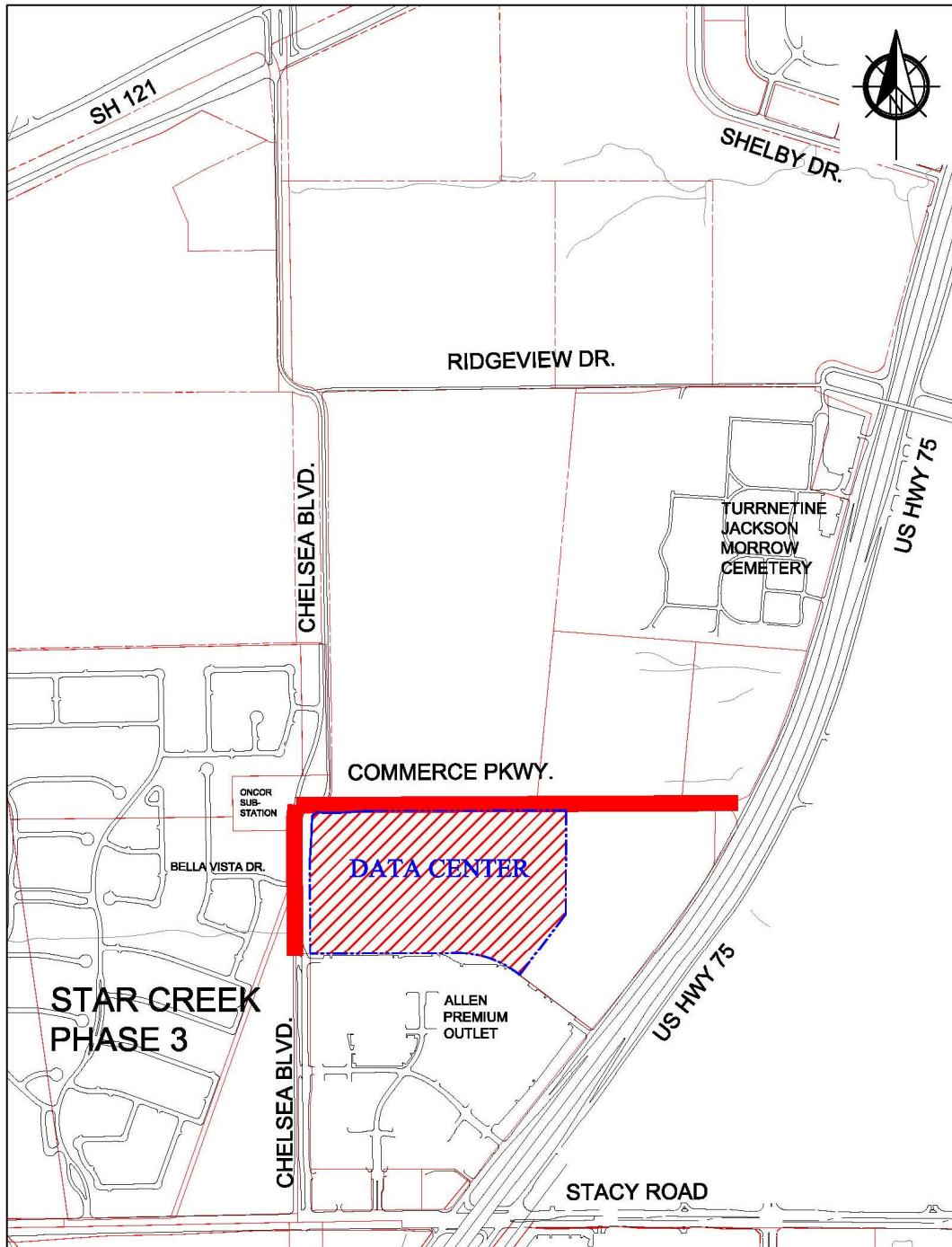
I make a motion to authorize the City Manager to execute an Economic Development Incentive Agreement between the City of Allen and Cisco Systems, Inc.

ATTACHMENT

Location Map

Economic Development Agreement

Location Map Allen Commerce and Chelsea Boulevard



STATE OF TEXAS §
 § **Economic Development Agreement**
COUNTY OF COLLIN §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Allen (“City”) and Cisco Systems, Inc, a California corporation, (“Company”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, the Company has purchased, or is under contract to purchase, approximately thirty-four (34) acres of land within the City of Allen, Texas (the “City”) and being further described in Exhibit “A” (the “Land”) and intends to construct, and operate on the Land, a minimum 140,000 square foot state of the art data center with initial total electrical capacity of 10 Megawatts that will include high efficiency, high security, hardening against natural disasters, sustainable design, and backup systems for Tier III Uptime Institute Classification, as well as a front office for employees and visitors, data hall areas for servers and network racks, spaces for mechanical and electrical support systems, fire protection systems and equipment, a service yard to house fuel tanks, water tanks, and cooling towers, and other ancillary facilities such as related infrastructure and required parking and landscaping as more fully described in the submittals to be filed by the Company with the City from time to time in order to obtain a building permit(s) and other required permits (hereinafter defined as the “Improvements”); and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to construct, or cause to be constructed, the Improvements would be an agreement by the City to construct certain Public Improvements (hereinafter defined) and to provide certain economic development incentives to Company to defray a portion of the costs to construct the necessary infrastructure for the Improvements; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code ("Chapter 380"), the City desires to enter into this Agreement in order to implement its economic development program to enhance and expand the City's commercial economic and employment base to the long term interest and benefit to the City in accordance with Chapter 380; and

WHEREAS, the City has determined that constructing certain infrastructure and providing economic development incentives to the Company in accordance with this Agreement will further the objectives of the City and will benefit the City and the City's inhabitants;

NOW THEREFORE, in consideration of the foregoing, and other consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“AEDC” shall mean the Allen Economic Development Corporation.

“Chelsea Boulevard Project” shall mean the design and construction of the extension of Chelsea Boulevard as a four-lane roadway (including curb, gutter, turf, street lights, and a median) from Stacy Road to Commerce Parkway in accordance with plans approved by the City and as depicted in **Exhibit “B”**, including the City’s acquisition of right-of-way necessary for such improvements.

“City” shall mean the City of Allen, Collin County, Texas.

“Commencement Date” shall mean the date the last final certificate of occupancy has been issued by the City for the Company’s occupancy of the Improvements.

“Commencement of Construction shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Improvements or Public Infrastructure, as the case may be; (ii) all necessary permits for the construction of the Improvements or the Public Improvements, as the case may be, have been issued by the applicable governmental authorities; and (iii) grading of the Land or construction of the building elements (whether located above or below ground) has commenced in the case of the Improvements, or grading of the land has commenced in the case of the Public Improvements.

“Commerce Parkway Project” shall mean the design and construction of Commerce Parkway as a two-lane roadway (including curb, gutter, turf, and street lights) from US 75 to Chelsea Boulevard in accordance with plans approved by the City and as depicted in **Exhibit “C”**, including the City’s acquisition of right-of-way necessary for such improvements.

"Completion of Construction" shall mean that: (i) substantial completion of the Improvements on the Land, or the respective Public Improvements, as the case may be, has occurred; and (ii) a final permanent certificate of occupancy has been issued by the City for the Company’s occupancy of the Improvements, or the City has accepted the respective Public Improvements, as the case may be.

“Company” shall mean Cisco Systems, Inc.

“Effective Date” shall mean the last date of execution hereof.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of Company’s existence, insolvency, employment of receiver for any part of Company’s

property and such appointment is not terminated within one hundred eighty (180) days after such appointment is initially made, any general assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws by or against Company and such proceedings are not dismissed within one hundred eighty (180) days after the filing thereof.

“Expiration Date” shall mean the 11th anniversary date of Commencement Date.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by acts of omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages. “Force Majeure” shall also include the Company’s inability or delay in obtaining permits or other approvals required by a governmental agency in order to begin Commencement of Construction or achieve Completion of Construction through no fault of the Company.

“Freeport Goods” shall have the same meaning as assigned by Section 11.251 of the Tax Code and Article VIII, Section 1-j of the Texas Constitution and located on the Property. Freeport Goods does not include “Goods in Transit” as defined by Tax Code, Section 11.253.

“Goods in Transit” shall have the same meaning assigned by Tax Code, Section 11.253.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, authority on the company with respect to the Improvements or any property or any business owned by the Company within the City.

“Improvements” shall mean a minimum 140,000 square foot state of the art data center with initial total electrical capacity of 10 Megawatts that will include high efficiency, high security, hardening against natural disasters, sustainable design, and backup systems for Tier III Uptime Institute Classification, as well as a front office for employees and visitors, data hall areas for servers and network racks, spaces for mechanical and electrical support systems, fire protection systems and equipment, a service yard to house fuel tanks, water tanks, and cooling towers, and other ancillary facilities such as related infrastructure and required parking and landscaping as more fully described in the submittals to be filed by Owner with the City from time to time in order to obtain a building permit(s) and other required permits.

“Land” shall mean that real property described in **Exhibit “A.”**

“Public Improvements” shall collectively mean the Chelsea Boulevard Project, the Commerce Parkway Project, the Water and Sewer Project (provided the Company,

at its sole cost, provides an engineering study signed and sealed by a registered engineer subject to the review and approval of the City Engineer, that concludes that the sewer facilities must be provided from the southern and eastern perimeter of the Land) and the Storm Sewer System Project.

“Related Agreements” shall mean any agreement by and between the Company and the City and/or the AEDC.

“Storm Sewer System Project” shall mean design and construction of storm drainage facilities in accordance with plans approved by the City and as further depicted in **Exhibit “D”**, including the City’s acquisition of the easements necessary for such facilities.

“Tangible Personal Property” shall mean tangible personal property owned or leased by the Company located at the Improvements consisting of equipment, furniture and fixtures, supplies and inventory, but expressly excluding inventory that qualifies as Freeport Goods, and that is exempt from ad valorem taxation pursuant to Section 11.251 of the Tax Code, or Goods-in-Transit.

“Taxable Value” shall mean the appraised value as certified by the county appraisal district as of January 1 of a given year.

“Water and Sewer Project” shall mean the design and construction of the extension of water and sanitary sewer services to and around the southern and eastern perimeter of the Land (provided the Company, at its sole cost, provides an engineering study signed and sealed by a registered engineer, subject to the review and approval of the City Engineer, that concludes that the sewer facilities must be provided from the southern and eastern perimeter of the Land) and the installation of one sanitary tap to the Land, in accordance with plans approved by the City and as further depicted in **Exhibit “E”**, including the City’s acquisition of easements necessary for such improvements.

Article II

Term

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein.

Article III

Projects

3.1 **Construction of the Improvements.** The Company shall, subject to events of Force Majeure, cause Commencement of Construction of the Improvements to occur on or before December 31, 2009, and cause Completion of Construction of the Improvements to occur on or before December 31, 2011.

3.2 **Construction of the Public Improvements.** The City shall, subject to events of Force Majeure, cause Commencement of Construction of the Public Improvements to occur on or before November 1, 2009, and cause Completion of Construction to occur on or before May 1, 2010. In the event the Company fails to close its purchase of the Land on or before September 1, 2009, the Company shall reimburse the City for all engineering costs incurred and paid by the City related to the construction of the Public Improvements within thirty (30) days after Company receipt of a written invoice from the City. The water service to the Land for equipment start-up and testing may be required prior to Commencement of Construction of the Improvements, and the City agrees to expedite the extension of water service to the Land and the water tap at the southwest corner of the Land.

3.3 **Water Facilities and Capacity.** The water facilities associated with the Water and Sewer Project shall be capable of serving the Land with up to 250,000 gallons per day at a minimum pressure of 50 PSI, and shall include such upgrades to the City's water system infrastructure as are necessary to provide such capacity and pressure. The City agrees to reserve, subject to events of Force Majeure and mechanical failures, such capacity and pressure in its water system for the Company for the operation of the Improvements and future expansions to the Improvements. The Land shall be served in a loop-fed configuration for redundancy from dual sources with isolation valves to prevent interruption of service to the Land. The water lines shall be designed and constructed to City standards with a minimum of four (4) feet of cover to prevent damage.

3.4 **Right-of-Way and Easements.** The City agrees, subject to events of Force Majeure, to acquire such right-of-way as is necessary for the Commerce Parkway Project and Chelsea Boulevard Project, as generally shown on **Exhibit "F"**. The City also agrees, subject to events of Force Majeure, to acquire such temporary and/or permanent off-site easements in the locations generally depicted on **Exhibit "G"**, which easements are necessary for the extension of sanitary sewer service, surface water outfalls for drainage, and the provision of other public utilities such as telecommunications, electricity, and/or natural gas, to serve the Land. All of the easements and right-of-way described in this Section 3.4 are contemplated for City acquisition by that certain Conveyance and Dedication Agreement between the City and Allen Commerce Center, L.P. approved by the Allen City Council on April 28, 2009 (the "Conveyance and Dedication Agreement"). The City agrees to use good faith and commercially reasonable efforts to acquire the right-of-way and easements described in the Conveyance and Dedication Agreement not later than June 15, 2009.

3.5 **Plans and Specifications.** Prior to advertising bids for the construction of the Public Improvements, the City agrees to deliver to the Company a copy of the plans and specifications for the Public Improvements for review and comment with respect to the adequacy of the improvements necessary for development of the Land. The Company shall deliver its written comments to the City on the plans and specifications for the Public Improvements on or before the fifteenth (15th) calendar day after delivery to the Company.

3.6 **City Contact.** The City will establish a single point of contact between the Company and City staff to discuss the construction of the Public Improvements and the Company's development of the site with the Improvements.

Article IV Economic Development Incentives

4.1 **Building Inspection and Building Permit Fees Reduction.** The City agrees to reduce the building inspection and building permit fees so that the Company is charged and shall pay a building inspection and permit fee for the Improvements based on a value \$200.00 per square foot provided the Improvements contains at least 140,000 square feet of space and have a combined Taxable Value for the Improvements and the Tangible Personal Property of at least \$118,200,000 as of January 1 of the calendar year immediately following the Commencement Date. In the event the combined Taxable Value of the Improvements and the Tangible Personal Property as of January 1 of the calendar year immediately following the Commencement Date is less than \$118,200,000 the Company shall pay to the City an amount equal to the difference between the actual building inspection and permit fees previously paid by the Company to the City and the building inspection and permit fees normally charged by the City for similar types of improvements, plus interest at the rate periodically announced by the Wall Street Journal on the date that is the first anniversary of the Commencement Date as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, which shall accrue from the date of the payment of the reduced building inspection and permit fees until paid.

4.2 **Roadway Impact Fees.** The City agrees that roadway impact fees to be assessed against the Land shall be charged at the rate for warehouse use of \$0.60 per square foot provided the Company, at its sole cost, provides a traffic study signed and sealed by a registered engineer, subject to review and approval by the City Engineer, that correlates the traffic volumes of a normal warehouse use with the traffic volumes for data center use.

4.3 **Water Meter.** Water meter impact fees will not be charged for the redundant meter associated with the cooling tower.

Article V Termination

5.1 This Agreement shall terminate upon any one of the following:

- (a) by written agreement of the parties;
- (b) Expiration Date;
- (c) by either party in the event the other party breaches any of the terms or conditions of this Agreement and such breach is not cured within ninety (90) days after written notice thereof in accordance with this Agreement;
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency;

- (e) by City, if any Impositions owed to City or the State of Texas by Company shall become delinquent after thirty (30) days written notice is delivered pursuant to this Agreement (provided, however the Company retains the right to timely and properly protest and contest any such Impositions) and such Impositions are not paid by the Company within sixty (60) days after written notice thereof in accordance with this Agreement;
- (f) by City, if the Company has an uncured breach or default of any of the Related Agreements; and
- (g) by either party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 In the event the Agreement is terminated by City pursuant to Section 5.1(c), (d), (e) or (f) the Company shall immediately pay to the City an amount equal to the to the total economic development incentives described in Section 4.1, plus interest at the rate periodically announced by the Wall Street Journal on the date that is the last date of the cure period as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, which shall accrue from the date of the Grant Payment until paid.

5.3 In the event the Agreement is terminated by City pursuant to Section 5.1(c) for an uncured default under Section 3.1, the Company shall immediately pay to the City the sum of \$500,000 as liquidated damages to cover the costs incurred by the City for the design and construction of the Public Improvements.

Article VI Miscellaneous

6.1 **Binding Agreement; Assignment.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and permitted assigns of the respective parties. This Agreement may not be assigned without the prior written consent of the City, except as otherwise permitted by this Section 6.1. The Company has the right (from time to time without the consent of the City, but upon sixty (60) days prior written notice to the City) to assign this Agreement to any person or entity that is controlled by or under common control with the Company (an “Affiliate”). Each assignment shall be in writing executed by the Company and the Affiliate, and shall obligate the Affiliate to be bound by this Agreement, in a form reasonably approved by the City. A copy of each assignment shall be provided to the City within 15 days after execution. From and after such permitted assignment, the City agrees to look solely to the Affiliate for the performance of this Agreement and agrees that the Company shall be released from subsequently performing the obligations of this Agreement and from any liability that results from the Affiliate’s failure to perform under this Agreement; provided, however, if a copy of the assignment is not received by the City within 15 days after execution, the Company shall not be released until the City receives such permitted assignment. No assignment by the Company shall release the Company from any liability that

resulted from an act or omission by the Company that occurred prior to the effective date of the permitted assignment unless the City approves the release in writing. The Company shall maintain written records of all assignments made by the Company to Affiliates, including a copy of each executed assignment and the Affiliate's notice information as required by this Agreement, and, upon written request from the City, shall provide a copy of such records to the City.

6.2 **Limitation on Liability.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. It is understood and agreed between the parties that Company, in satisfying the conditions of this Agreement, has acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that is granted and assumed under this Agreement.

6.4 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received as sent by courier or otherwise hand delivered.

If intended for City, to:

City of Allen
Attn: City Manager
305 Century Parkway
Allen, Texas 75013

With a copy to:

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

If intended for Company:

Cisco Systems, Inc.
Attn: Director, Worldwide Real Estate
170 West Tasman Drive
San Jose, California 95134

With a copy to:

Misty M. Ventura
K & L Gates
1717 Main Street
Suite 2800
Dallas, Texas 75201

Cisco Systems, Inc.
Attn: General Counsel
170 West Tasman Drive
San Jose, California 95134

Cisco Systems, Inc.
Attn: Tax Department

170 West Tasman Drive
San Jose, California 95134

Cisco Systems, Inc.
Attn: Tax Department
12515 Research Boulevard, Building Four
Austin, Texas 78759

6.5 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.6 **Governing Law.** This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

6.7 **Amendment.** This Agreement may be amended by the mutual written agreement of the parties.

6.8 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.9 **Recitals.** The recitals to this Agreement are incorporated herein.

6.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Exhibits.** Any exhibits to this Agreement are incorporated herein by reference for the purposes wherever reference is made to the same.

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

6.13 **Employment of Undocumented Workers.** During the term of this Agreement the Company agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), the Company shall repay the amount of the Grants

and any other funds received by the Company from the City as of the date of such violation within 120 business days after the date the Company is notified by the City of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid. The Company is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of the Company or by a person with whom the Company contracts.

6.14 **Conditions Precedent.** This Agreement is subject to and conditioned on the Company closing its purchase of the Land on or before September 1, 2009.

(Signature page to follow)

EXECUTED on this _____ day of _____, 2009.

CITY OF ALLEN, TEXAS

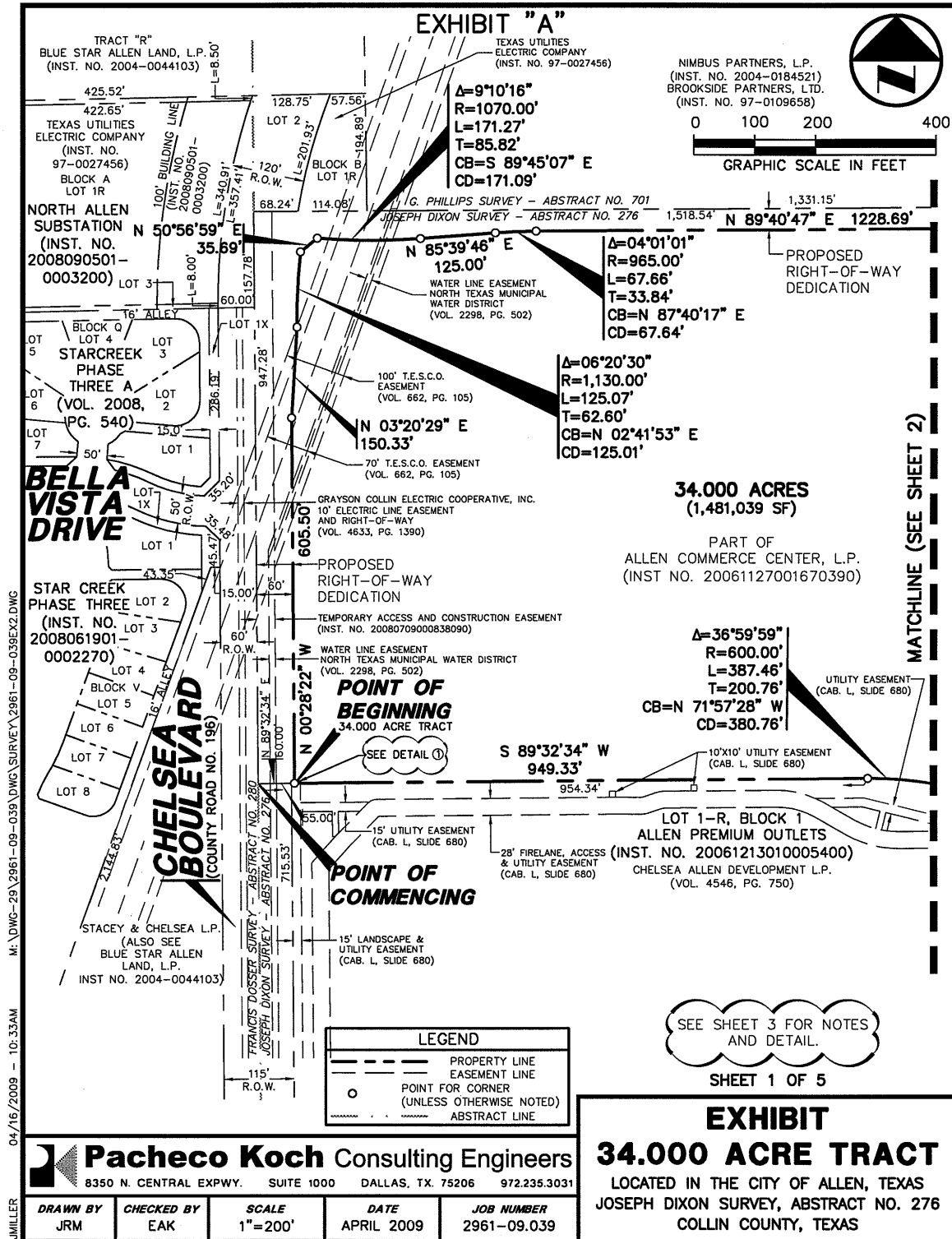
By: _____
Peter H. Vargas, City Manager

EXECUTED on this _____ day of _____, 2009.

CISCO SYSTEMS, INC.

By: _____
Name: _____
Title: _____

Exhibit "A" Legal Description of the Land



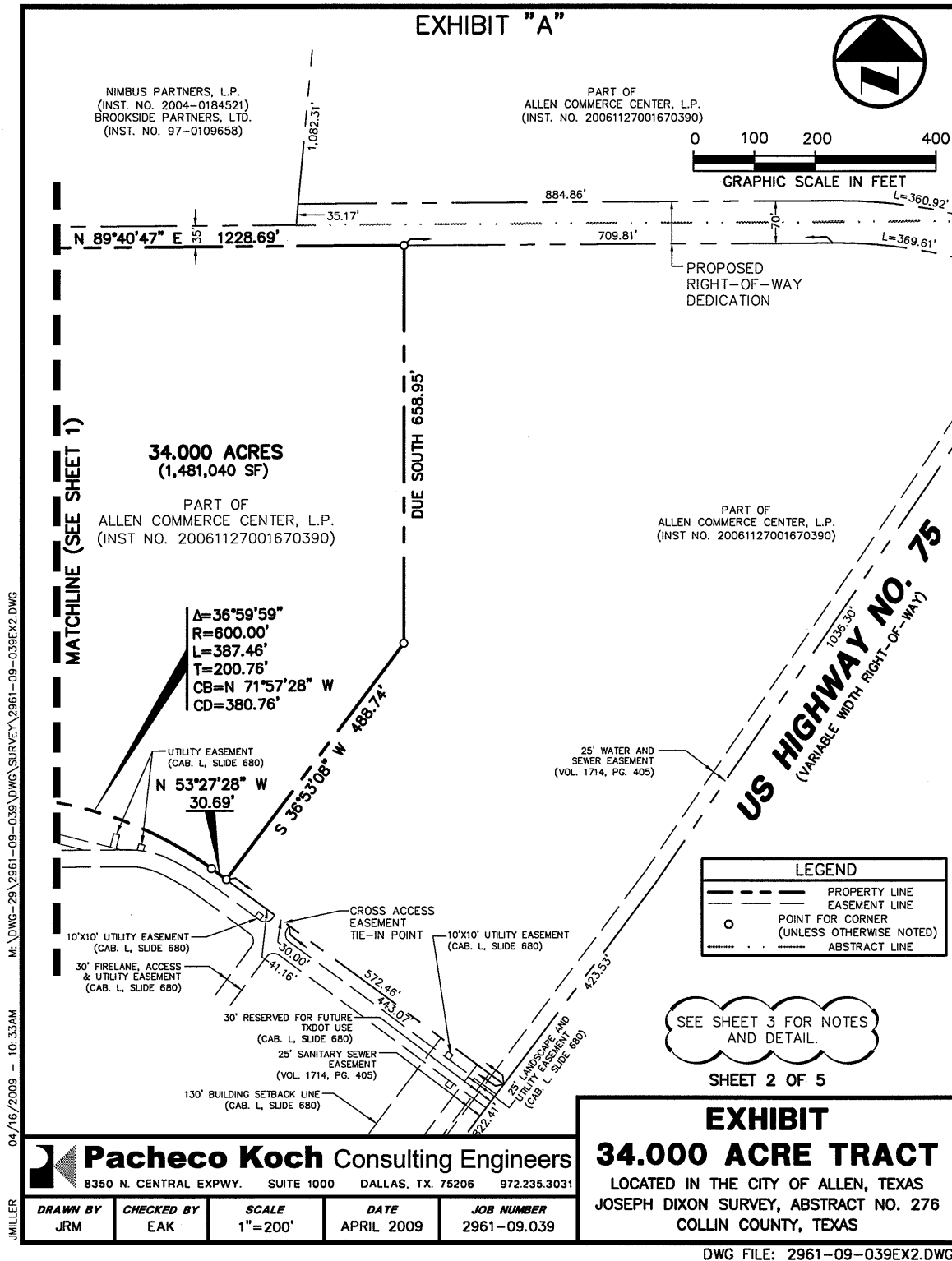
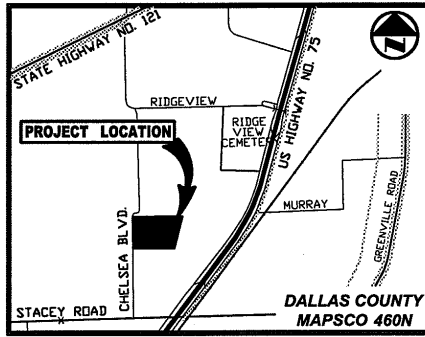
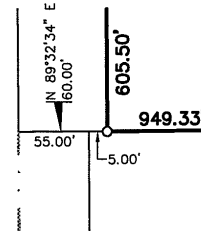


EXHIBIT "A"



VICINITY MAP
(NOT TO SCALE)



1 DETAIL
NOT TO SCALE

NOTES

1. It is not the intent of this exhibit to render a professional opinion as to the location or condition of the boundary of the real property shown hereon. This exhibit was not prepared for use in any real estate transaction, conveyance or title insurance proceedings. Any depiction that may appear hereon of bearings, distances, courses, areas or monumentation are not necessarily supported by field recovered evidence and shall be interpreted as being based on record information or conceptual renderings only.
2. Subject property is shown on the National Flood Insurance Program Flood Insurance Rate Map for Dallas County, Texas, Map No. 48085C0295 G, Community-Panel No. 480131 0295 G, Effective Date: January 19, 1996. All of the subject property is shown to be located in Zone "X" on said map. Relevant zones are defined on said map as follows:

Zone "X" - Other Areas: Areas determined to be outside 500-year floodplain.
3. This exhibit is based on deeds, easements and/or recorded plats and other records. However, this exhibit shall not represent warranty of title or guarantee of ownership. The surveyor did not abstract the subject property. This exhibit was performed without the benefit of a current title abstract.
4. This exhibit does not provide a determination or opinion concerning the location or existence of wetlands, faultlines, toxic or hazardous waste areas, subsidence, subsurface and environmental conditions or geological issues. No statement is made concerning the suitability of the subject tract for any intended use, purpose or development.
5. Except as specifically stated or shown, this exhibit does not purport to reflect any of the following which may be applicable to the subject tract: easements; building setback lines; restrictive covenants; subdivision restrictions; zoning or other land-use regulations; Agreements; Lease Agreements; and ownership title evidence.
6. Any declaration made hereon or herein is made to the original purchaser of the exhibit. It is not transferable to additional institutions or subsequent owners.
7. The distances shown hereon for adjoining and adjacent properties have been compiled from recorded plats and deeds, and do not necessarily represent field verified or monumented distances.
8. The survey abstract lines shown hereon are approximate and are not located on the ground.

SHEET 3 OF 5



Pacheco Koch Consulting Engineers

8350 N. CENTRAL EXPWY. SUITE 1000 DALLAS, TX. 75206 972.235.3031

DRAWN BY	CHECKED BY	SCALE	DATE	JOB NUMBER
JRM	EAK	NONE	APRIL 2009	2961-09.039

EXHIBIT
34.000 ACRE TRACT
LOCATED IN THE CITY OF ALLEN, TEXAS
JOSEPH DIXON SURVEY, ABSTRACT NO. 276
COLLIN COUNTY, TEXAS

DWG FILE: 2961-09-039EX2.DWG

EXHIBIT "A"
34.000 ACRE TRACT

Joseph Dixon Survey, Abstract No. 276
City of Allen, Collin County, Texas

DESCRIPTION, of a 34.000 acre tract of land situated in the Joseph Dixon Survey, Abstract No. 276, Collin County, Texas; said tract being part of that tract of land described in General Warranty Deed to Allen Commerce Center, L.P. recorded in Instrument No. 20061127001670390 of the Deed Records of Collin County, Texas; said 34.000 acre tract being more particularly described as follows:

COMMENCING, at a point for corner in Chelsea Boulevard (County Road No. 196) (a variable width right-of-way); said point being the southwest corner of said Allen Commerce Center tract;

THENCE, North 89 degrees, 32 minutes, 34 seconds East, along the south line of said Allen Commerce Center tract, passing at a distance of 55.00 feet the northwest corner of Lot 1-R, Block 1, Allen Premium Outlets, an addition to the City of Allen, Texas according to the plat recorded in Instrument No. 20061213010005400 of the Plat Records of Collin County, Texas; continuing in all a total distance of 60.00 feet to the POINT OF BEGINNING;

THENCE, along the proposed east right-of-way line of said Chelsea Boulevard, the following four (4) calls:

North 00 degrees, 28 minutes, 22 seconds West, departing the said south line of the Allen Commerce Center tract and the north line of said Lot 1-R, a distance of 605.50 feet to an angle point;

North 03 degrees, 20 minutes, 29 seconds East, a distance of 150.33 feet to a point at the beginning of a non-tangent curve to the right;

In a northeasterly direction, along said curve to the right, having a central angle of 06 degrees, 20 minutes, 30 seconds, a radius of 1,130.00 feet, a chord bearing and distance of North 02 degrees, 41 minutes, 53 seconds East, 125.01 feet, an arc distance of 125.07 feet to a point at the end of said curve;

North 50 degrees, 56 minutes, 59 seconds East, a distance of 35.69 feet to a point at the beginning of a non-tangent curve to the left;

THENCE, in an easterly direction along the south line of a proposed right-of-way dedication, the following four (4) calls:

Along said curve to the left, having a central angle of 09 degrees, 10 minutes, 16 seconds, a radius of 1,070.00 feet, a chord bearing and distance of South 89 degrees, 45 minutes, 07 seconds East, 171.09 feet, an arc distance of 171.27 feet to a point at the end of said curve;

North 85 degrees, 39 minutes, 46 seconds East, a distance of 125.00 feet to a point at the beginning of a tangent curve to the right;

Along said curve to the right, having a central angle of 04 degrees, 01 minutes, 01 seconds, a radius of 965.00 feet, a chord bearing and distance of North 87 degrees, 40 minutes, 17 seconds East, 67.64 feet, an arc distance of 67.66 feet to a point at the end of said curve;

North 89 degrees, 40 minutes, 47 seconds East, a distance of 1228.69 feet to a point for corner;

THENCE, Due South, departing the said south line of the proposed right-of-way dedication, a distance of 658.95 feet to a point for corner;

Sheet 4 of 5

EXHIBIT "A"
34.000 ACRE TRACT
(continued)

THENCE, South 36 degrees, 53 minutes, 08 seconds West, a distance of 488.74 feet to a point for corner in the said north line of Lot 1-R and the said south line of the Allen Commerce Center tract;

THENCE, in a northwesterly direction along the said north line of Lot 1-R and the said south line of the Allen Commerce Center tract, the following three (3) calls:

North 53 degrees, 27 minutes, 28 seconds West, a distance of 30.69 feet to a point at the beginning of a tangent curve to the left;

In a northwesterly direction, along said curve to the left, having a central angle of 36 degrees, 59 minutes, 59 seconds, a radius of 600.00 feet, a chord bearing and distance of North 71 degrees, 57 minutes, 28 seconds West, 380.76 feet, an arc distance of 387.46 feet to a point at the end of said curve;

South 89 degrees, 32 minutes, 34 seconds West, a distance of 949.33 feet to the POINT OF BEGINNING;

CONTAINING; 1,481,039 square feet or 34.000 acres of land, more or less.

Exhibit "B"
Chelsea Boulevard Project Depiction

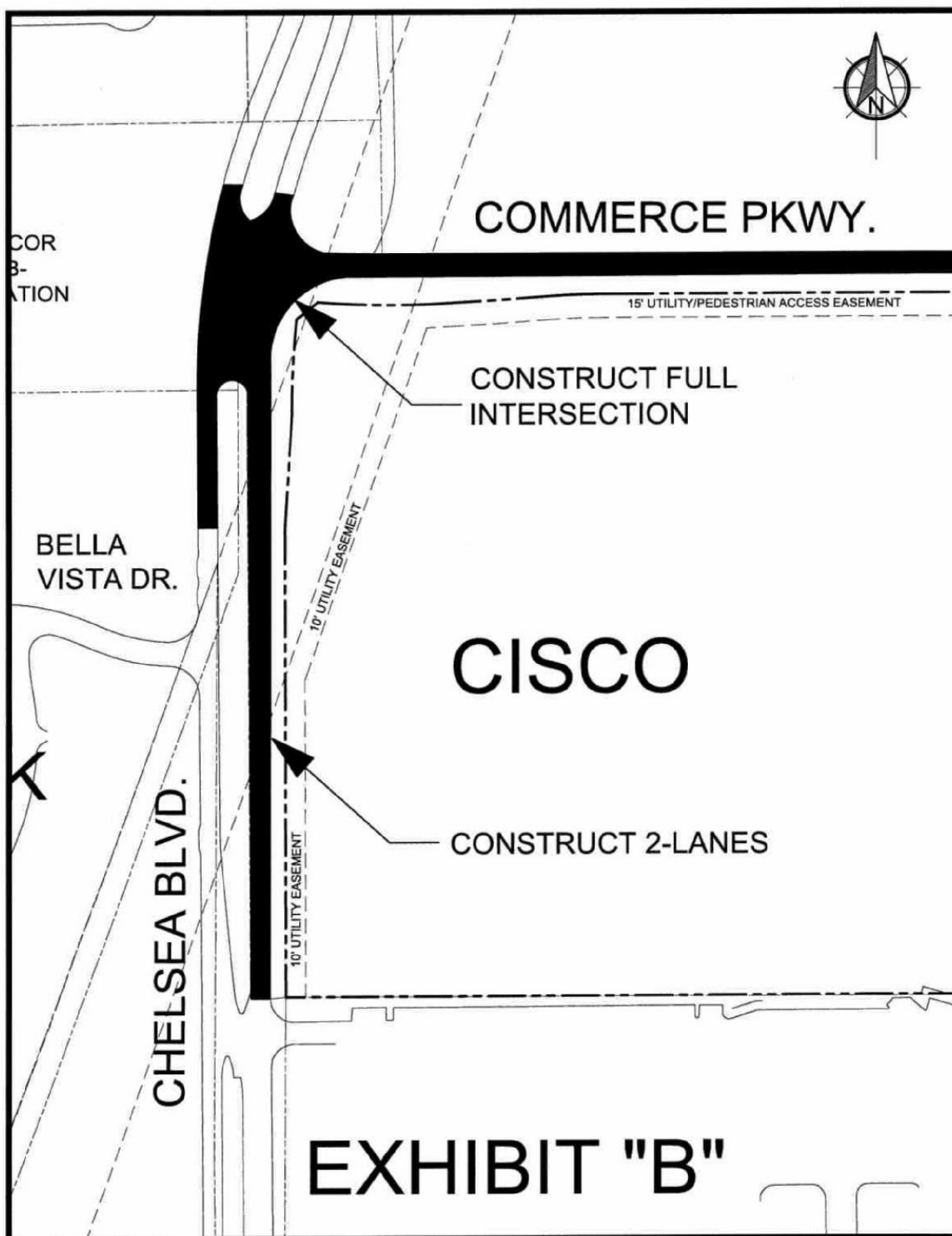


Exhibit "C"
Commerce Parkway Project depiction

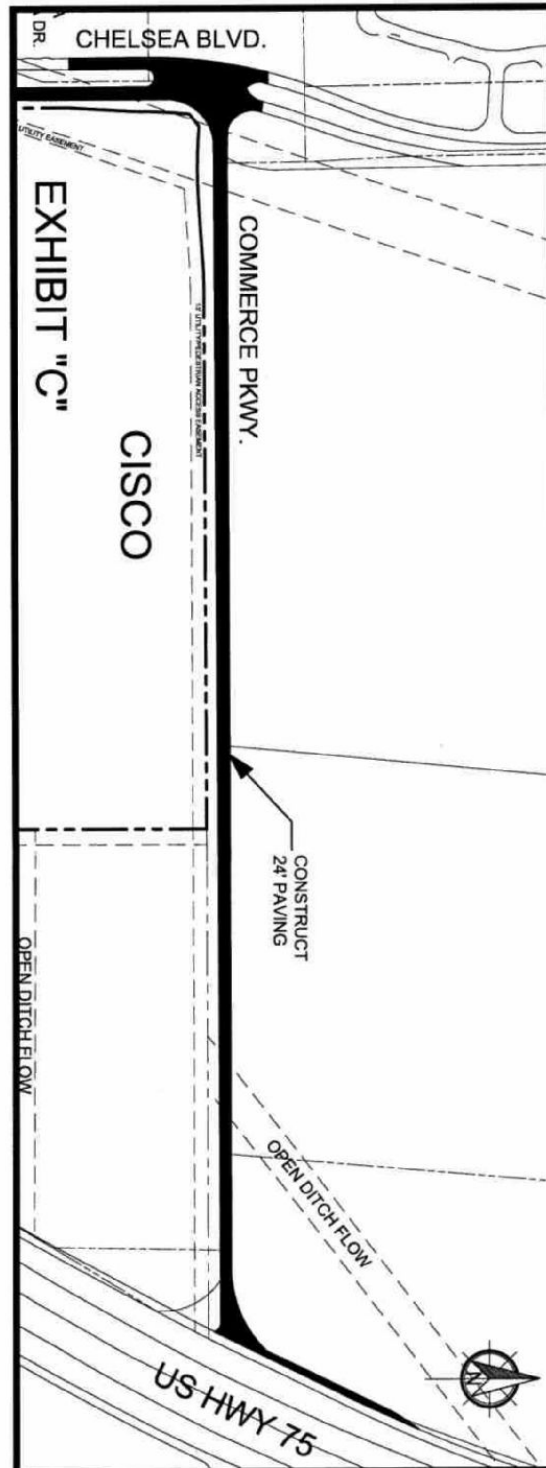


Exhibit "D"
Storm Sewer System Project Depiction

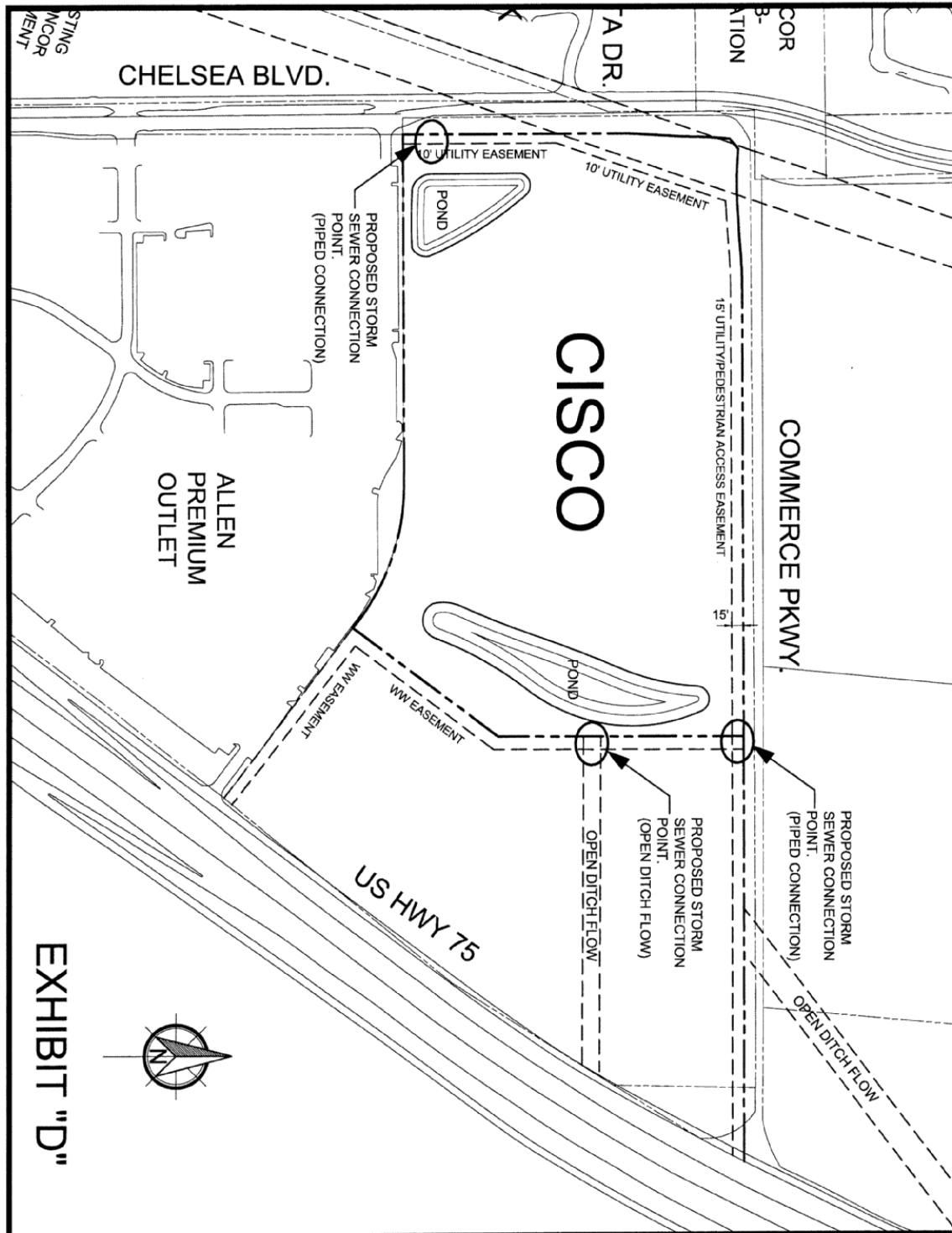
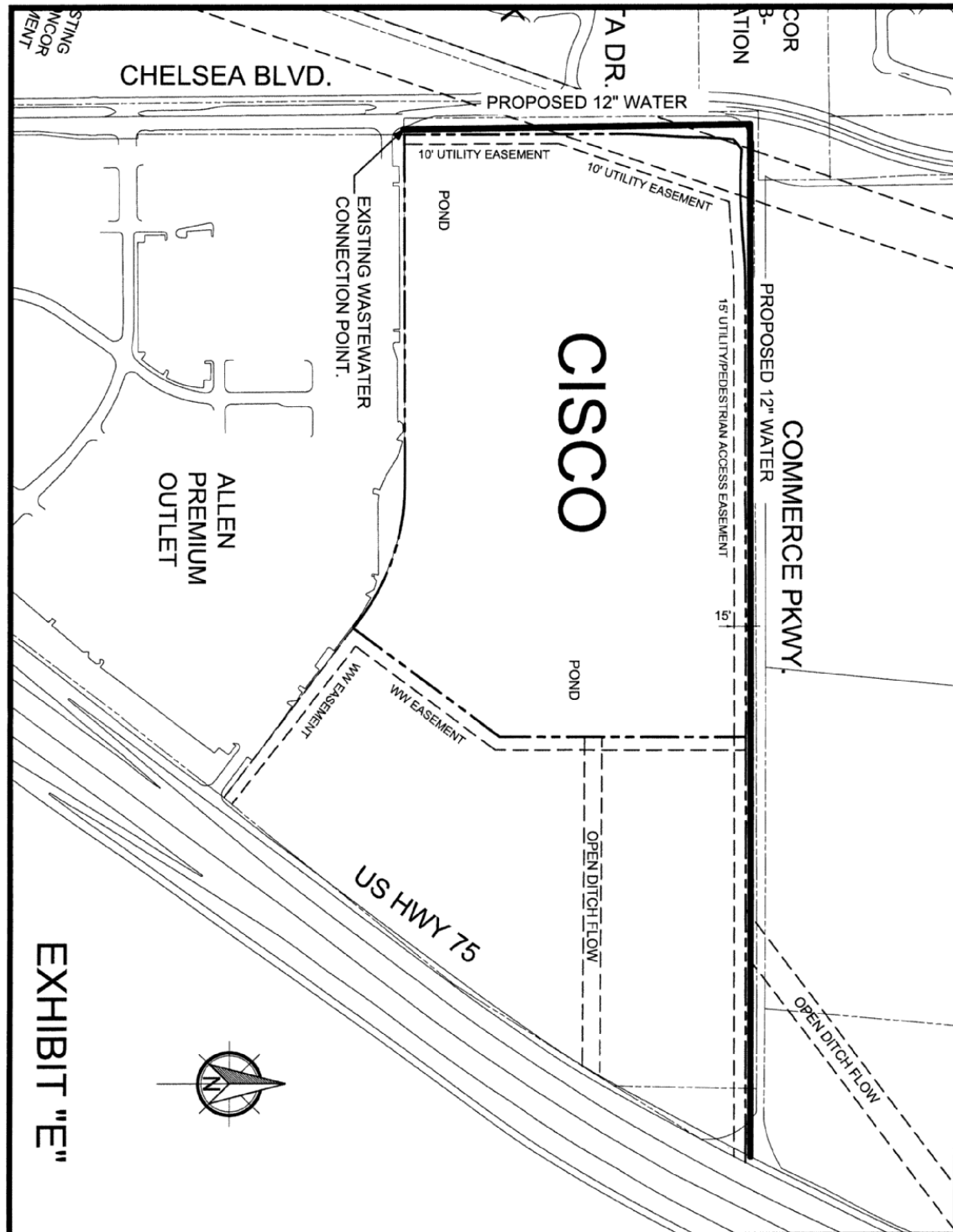


Exhibit "E"
Water and Sewer Project Depiction



City Economic Development Agreement with Cisco Systems, Inc. 6/1/09 – Page 21

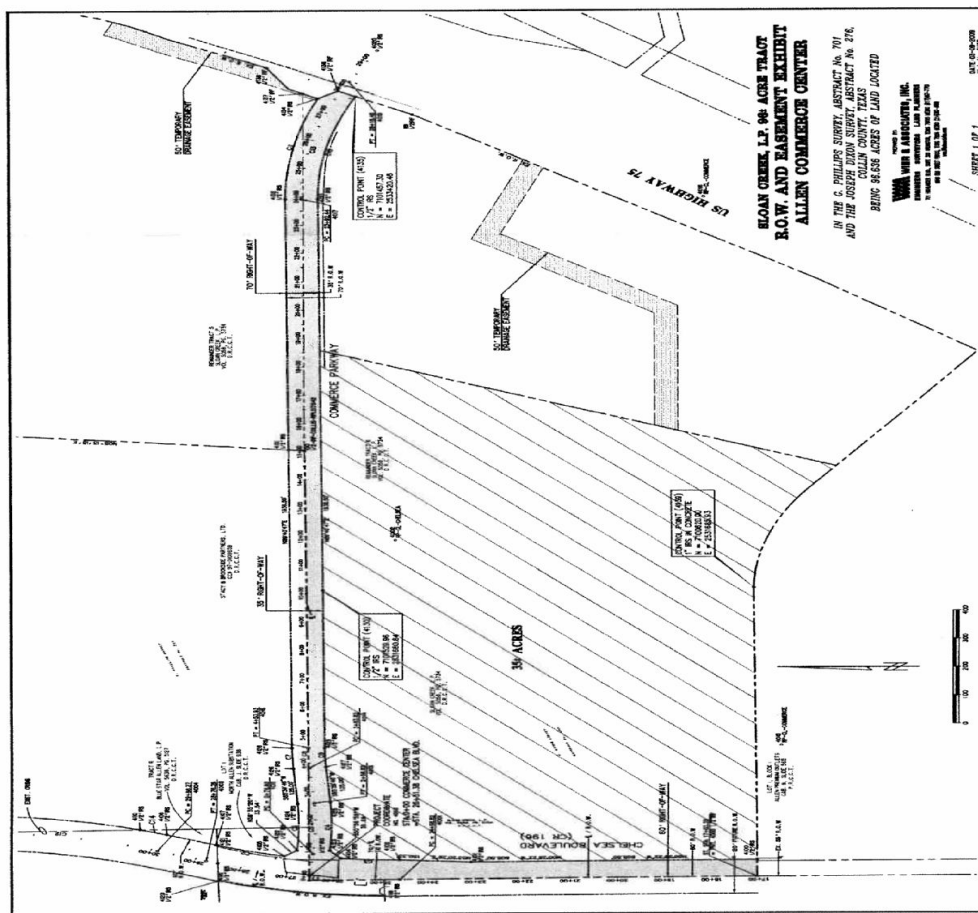
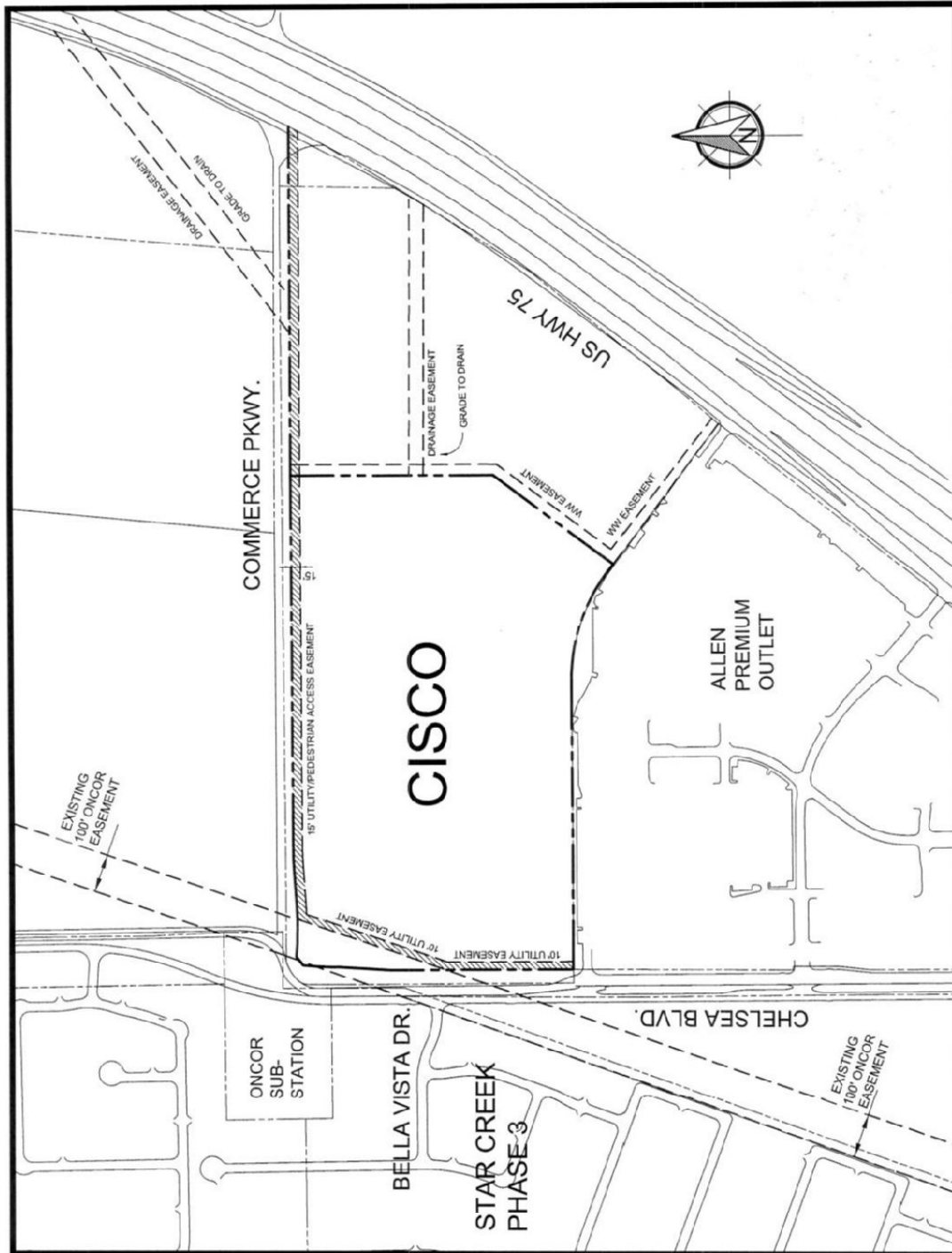


Exhibit "G"
Location of Off-Site Easements to be Acquired by the City



CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 9, 2009

SUBJECT: Authorize the City Manager to Execute a Real Property Exchange Agreement with Coventry II DDR/Trademark Montgomery Farm L.P.

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: On October 9, 2007, Council authorized execution of a Facilities Agreement with Wretched Land, L.P. for Dedication of Right-of-Way

On December 9, 2008, Council authorized execution of a Facilities Agreement with Wretched Land, L.P. for the dedication of land and construction of Montgomery Boulevard and Watters Branch Creek Bridge

ACTION PROPOSED: Authorize the City Manager to execute a Real Property Exchange Agreement with Coventry II DDR/Trademark Montgomery Farm L.P.

BACKGROUND

Wretched Land L.P. (WL) owned a 60-foot wide piece of land that bisected the Trademark Development (the mixed-use development at the southwest corner of Bethany and US 75 - Watters Creek at Montgomery Farm). This parcel of land, owned by WL, was originally set to be a road that provided access from the Montgomery Family property to US 75 and was originally thought to be a natural extension of Montgomery Boulevard (formerly Bel Air Drive). Wretched Land, L.P. dedicated the 60-foot wide strip of land to the City in return for capping their cost participation on the bridge at \$500,000 that will be required at the time their property develops. The 60-foot strip is not large enough to build all four lanes of Montgomery Boulevard and the roadway alignment needs to shift slightly to accommodate the proposed creek crossing. Consequently, it is appropriate to abandon the WL parcel to Trademark, in exchange for a parcel that will better accommodate the future roadway.

Trademark has agreed to construct all four lanes of Montgomery Boulevard from the bridge to US 75, in addition to being responsible for two lanes of the bridge once development occurs on the Montgomery land side. With the execution of the facilities agreement with Wretched Land, the City and Trademark are now able to enter into a property exchange to appropriately align

the roadway.

This agreement provides for the City to exchange a portion of the land, formerly owned by Wretched Land (0.5699 acres), for two parcels owned by Trademark, the preferred right-of-way for Montgomery Boulevard (0.9856 acres).

BUDGETARY IMPACT

This agreement calls for closing this transaction at a title company. As a result, customary costs associated with the transaction will be shared by both parties. Funding for the closing costs will be paid for out of unprogrammed funds in the capital improvement program (i.e. ST9999).

STAFF RECOMMENDATION

Staff recommends that Council authorize the City Manager to execute the Real Property Exchange Agreement with Coventry II DDR/Trademark Montgomery Farm L.P.

MOTION

I make a motion to authorize the City Manager to execute a Real Property Exchange Agreement with Coventry II DDR/Trademark Montgomery Farm L.P.

ATTACHMENT

Exchange Agreement
Location Map

STATE OF TEXAS §
 § **Exchange Agreement**
COUNTY OF COLLIN §

This Agreement (the “Agreement”) is made by and between the City of Allen, Texas, a Texas home rule municipality, (the “City”), and the Coventry II DDR/Trademark Montgomery Farm L.P., a Texas limited partnership (the “Company”), acting by and through their respective authorized officers. Both the City and the Company are referred to from time to time herein, individually, as a “Party” and, collectively, as the “Parties”.

WITNESSETH:

WHEREAS, the City owns 0.5699 acres of real property located in City of Allen, Texas Tax Increment Financing Zone Number One described in Exhibit “A” (“Parcel “A”); and

WHEREAS, the Company owns 0.9856 acres of real property described in Exhibit “B” (“Parcel B”); and

WHEREAS, Section 272.001(b) of the Texas Local Government Code authorizes the City to sell or exchange real property within a tax increment financing zone without competitive bidding or auction, and at or below the fair market value; and

WHEREAS, the City and the Company desire to exchange the City's Parcel A for the Company's Parcel B;

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I

Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“City” shall mean the City of Allen, Collin County, Texas.

“Closing Date” shall mean thirty (30) days after the Effective Date or other date mutually agreed to by the parties in writing.

“Company” shall mean Coventry II DDR/Trademark Montgomery Farm L.P., a Texas limited partnership.

“Effective Date” shall mean the last date of execution hereof.

“Title Company” shall mean Stewart Title, Attn: Jeri Phillips, 700 Central Expressway South, Suite 100, Allen, Texas 75013; (214) 644-1930.

Article II

Exchange

2.1 **Conveyance.** The City agrees to convey by special warranty deed to the Company, and the Company agrees to accept, Parcel A together with all improvements thereon and all rights and appurtenances pertaining thereto, and the Company agrees to convey by special warranty deed to the City, and the City agrees to accept Parcel B, together with all improvements thereon and all rights and appurtenances pertaining thereto.

2.2 **Surveys; Title Insurance; Tax Statements; Documentation.** Within twenty (20) days after the Effective Date, the Company, at City expense, shall deliver to the City: (i) a current survey of Parcel B to be made by a certified land surveyor (if requested by the City); (ii) a current commitment for title insurance for Parcel B, from the Title Company setting forth the state of title to Parcel B together with any easements or restrictions (existing or created pursuant hereto) benefiting Parcel B, together with all exceptions or conditions to such title; (iii) legible copies of all documents referenced in the title commitments; and (iv) tax statements for current and prior years; and the City, at the Company’s expense, shall deliver to the Company: (i) a current survey of Parcel A to be made by a certified land surveyor; (ii) a current commitment for title insurance for Parcel A from a Title Company setting forth the state of title to Parcel A together with any easements or restrictions (existing or created pursuant hereto) benefiting Parcel A, together with all exceptions or conditions to such title; (iii) legible copies of all documents referenced in the title commitments; and (iv) tax statements for current and prior years.

2.3 **Closing.** At closing, the Company, at the City’s expense, shall deliver to the City: (i) a Texas owners policy of title insurance (or equivalent) in the amount of the fair market value of Parcel B, insuring such title to the City; (ii) a special warranty deeds, in form and substance reasonably acceptable to the City, conveying good and indefeasible title to Parcel B to the City free and clear of any and all liens; and (iii) possession of Parcel B free of parties in possession. At closing, the City, at the Company’s expense, shall deliver to the Company, at Company’s expense: (i) a Texas owners policy of title insurance (or equivalent) in the amount of the fair market value of Parcel A, insuring such title to the Company; (ii) a special warranty deed, in form and substance reasonably acceptable to the Company, conveying good and indefeasible title to Parcel A to the Company free and clear of any and all liens; and (iii) possession of Parcel A free of parties in possession.

2.4 **Ad Valorem Taxes.** Ad valorem taxes, assessments, and any other charges against Parcels A and B shall be prorated as of the Closing Date and become the responsibility of the respective party as of the Closing Date.

2.5 **Parcel A and Parcel B Exchanged As Is.**

(a) Each Party represents that as of the Closing Date that it:

(i) will have fully inspected the Parcel(s) to be conveyed to such Party; and

(ii) will have made all investigations as it deems necessary or appropriate and will be relying solely upon its inspection and investigation of the Parcel(s) to be conveyed to such Party for all purposes whatsoever, including, but not limited to, the determination of the condition of the structures, improvements, soils, subsurface, drainage, surface and groundwater quality, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and regulations; access; encroachments; acreage and other survey matters and the character and suitability of such Parcel(s).

(b) Each Party acknowledges and agrees that Parcels A and B are being exchanged and will be conveyed "AS IS" with all faults and defects, whether patent or latent, as of the Closing.

(c) Except with respect to the quality of the title of the respective Parcel(s) being conveyed by the Parties pursuant to this Agreement, each Party acknowledges and agrees that each Party has made no representations, warranties, guarantees, statements or information, express or implied, pertaining to Parcels A and B, its condition, or any other matters whatsoever, made to or furnished to other Party or any employee or agent of the respective Party, except as specifically set forth in this Agreement.

2.6 **Representations and Covenants.** Each Party represents and covenants that: (a) it has authority to enter into this Agreement; and (b) no other person has any interests in or claims against the Parcel to be conveyed by such Party (other than as reflected by the Title Commitment), and it will not hereafter encumber the such Parcel. The only representations made by any party concerning Parcels A and B, and this Agreement are as set out in this Section 2.6.

2.7 **Closing Costs.**

(a) City hereby agrees to pay and be responsible for the following closing cost:

(i) City's attorney's fees;

(ii) all fees and premiums for the Basic Owner's Title Policy and any endorsements to the Basic Owner's Title Policy for the Parcel B;

(ii) all fees and premiums for any Survey for Parcel B (if required by the City);

(iii) ½ of the Title Company's escrow fees;

(iv) all recording fees for the special warranty deed for Parcel B;

(v) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Parcel B; and

(vi) such other incidental costs and fees customarily paid by purchasers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

(b) Company hereby agrees to pay and be responsible for the following closing cost:

(i) Company's attorney's fees;

(ii) all fees and premiums for the Basic Owner's Title Policy and any endorsements to the Basic Owner's Title Policy for the Parcel A;

(ii) all fees and premiums for any Survey for Parcel A (if required by the Company);

(iii) ½ of the Title Company's escrow fees;

(iv) all recording fees for the special warranty deed for Parcel A;

(v) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Parcel A; and

(vi) such other incidental costs and fees customarily paid by purchasers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

Article III Miscellaneous

3.1 **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and assigns of the respective parties. This Agreement may not be assigned without the prior written consent of the City.

3.2 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

3.3 **Remedies.** If City defaults, Company's remedy shall be to terminate this Agreement or to seek specific performance. If Company defaults, City may seek specific performance or terminate this Agreement.

3.4 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received as sent by courier or otherwise hand delivered.

If intended for the City, to:

Attn: Peter H. Vargas
City Manager
City of Allen
305 Century Pkwy.
Allen, Texas 75013

With a copy to:

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

If intended for the Company:

Coventry II DDR/Trademark Montgomery Farm L.P.
c/o Trademark Property Company
Attention: Kirby Smith
301 Commerce, Suite 3635
Fort Worth, Texas 76102

3.5 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

3.6 **Governing Law.** This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

3.7 **Amendment.** This Agreement may be amended by the mutual written agreement of the parties.

3.8 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

3.9 **Recitals.** The recitals to this Agreement are incorporated herein.

3.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

3.11 **Exhibits.** Any exhibits to this Agreement are incorporated herein by reference for the purposes wherever reference is made to the same.

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

EXECUTED on this _____ day of _____, 2009.

CITY OF ALLEN, TEXAS,

By: _____
Peter H. Vargas, City Manager

EXECUTED on this _____ day of _____, 2009.

**COVENTRY II DDR/TRADEMARK
MONTGOMERY FARM L.P.,** a Texas limited
partnership

By: Coventry II DDR Montgomery Farm Holdings
LLC, its General Partner

By: Coventry II DDR Montgomery Farm LLC,
its Sole Member

By: Coventry Real Estate Fund II,
L.L.C., its Managing Member

By: Coventry Fund II Partners,
L.L.C., its Managing
Member

By: _____
Name: _____
Title: _____

City's Acknowledgement

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2009, by Peter H. Vargas, being the City Manager of the City of Allen, Texas, on behalf of said municipality.

Notary Public, State of Texas

My Commission expires:_____

Company's Acknowledgement

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2009, by _____, _____ of Coventry Fund II Partners, L.L.C., Managing Member of Coventry Real Estate Fund II, L.L.C., Managing Member of Coventry II DDR Montgomery Farm LLC, Sole Member of Coventry II DDR Montgomery Farm Holdings LLC, General Partner of Coventry II DDR/Trademark Montgomery Farm L.P., a Texas limited partnership, on behalf of said limited liability companies and said limited partnership.

Notary Public In and For the State of Texas

My Commission expires:_____

Exhibit “A”
Description of Parcel A

**0.5699 ACRES
THOMAS G. KENNEDY SURVEY,
ABSTRACT NO. 500,
CITY OF ALLEN, COLLIN COUNTY, TEXAS.**

BEING a 0.5699 acre tract of land situated in the Thomas G. Kennedy Survey, Abstract No. 500, City of Allen, Collin County, Texas, and being a portion of that called 0.824 acre tract of land described in the deed to City of Allen, filed for record under the County Clerk's File No. 20090210000139500, Deed Records of Collin County, Texas (D.R.C.C.T.), said 0.5699 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with a cap stamped "Bury + Partners" found on the Westerly right-of-way line of U.S. Highway No. 75 (a variable width public right-of-way), said iron rod being in the North line of said 0.824 acre City of Allen tract and being the Southeast corner of Lot 3, Block A, of Watters Creek at Montgomery Farm, Phase 2, an addition to City of Allen, Collin County, Texas described by plat filed for record in Volume 2007, Page 617, Plat Records, Collin County, Texas;

THENCE South 14° 04' 17" West, 20 feet westerly from and parallel to said Westerly right-of-way line of U.S. Highway No. 75, a distance of 61.37 feet to a 5/8 inch iron rod with a cap stamped "Bury + Partners" set for corner in the South line of said 0.824 acre tract of land same being the north line of that called 9.3062 acre tract of land described in the deed to Coventry II DDR/Trademark Montgomery Farm, L.P., filed for record in County Clerk's File No. 20061228001826050, D.R.C.C.T.,

THENCE North 88° 02' 48" West along the common line of said 0.824 acre tract of land and said 9.3062 acre tract of land, a distance of 333.73 feet to a 5/8 inch iron rod with a cap stamped "Bury + Partners" set for corner;

THENCE North 75° 55' 43" West, a distance of 92.70 feet to a 5/8 inch iron rod with a cap stamped "Bury + Partners" set in the east line of a 20 foot North Texas Municipal Water District easement & right-of-way filed for record in Volume 4100, Page 1869, D.R.C.C.T.;

THENCE North 11° 46' 40" East along said east line of the 20 foot easement & right-of-way, a distance of 41.14 feet to a 5/8 inch iron rod with a cap stamped "Bury + Partners" set for corner in the north line of said 0.824 acre tract of land same being the south line of the aforementioned Lot 3, Block A of Watters Creek at Montgomery Farm, Phase 2;

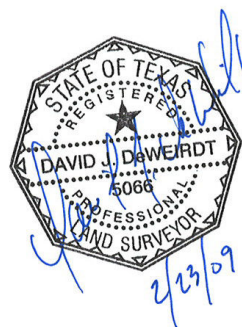
THENCE South 88° 02' 48" East along the common line of the said 0.824 acre tract of land and said Lot 3, a distance of 430.22 feet to the **POINT OF BEGINNING**;

CONTAINING a computed area of 0.5699 acres, (24,824 square feet), of land;

Notes:

A sketch was prepared on even date to accompany this description.

The bearings shown hereon above are based on the south line of Lot 3, Block A, of Watters Creek At Montgomery Farm, Phase 2, being South 88° 02' 48" East, the same as recorded in Volume 2007, Page 617, PRCCT.



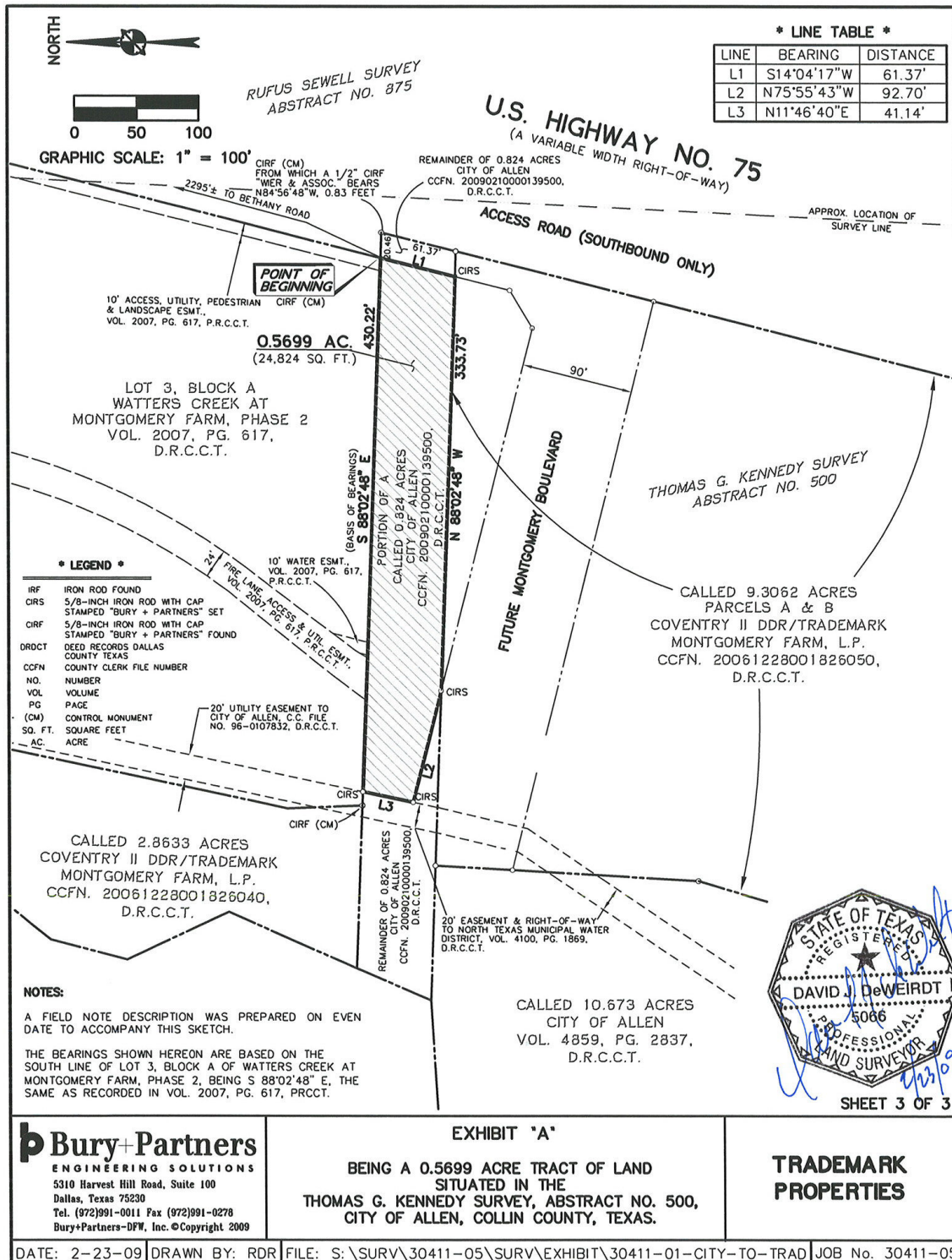


Exhibit “B”
Description of Parcel B

**0.9856 ACRES
THOMAS G. KENNEDY SURVEY,
ABSTRACT NO. 500,
CITY OF ALLEN, COLLIN COUNTY, TEXAS.**

BEING a 0.9856 acre tract of land located the in Thomas G. Kennedy Survey, Abstract No. 500, City of Allen, Collin County, Texas, and being portion of that called 9.3062 acre of tract of land described in the deed as Parcels A and B to Coventry II DDR/Trademark Montgomery Farm L.P., filed for record under the County Clerk's File No. 20061228001826050, Deed Records of Collin County, Texas (D.R.C.C.T.), said 0.9856 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with a cap stamped "Bury+Partners" set on the westerly right-of-way line of U.S. Highway No. 75 (a variable width right-of-way), and being the Southeast corner of a called 0.824 acre tract of land described in the deed to the City of Allen filed for record under the County Clerk's File No. 20090210000139500, D.R.C.C.T. and being the northeast corner of said 9.3062 acre tract of land;

THENCE South 14° 04' 17" West along said westerly right-of-way line of U.S. Highway No. 75, a distance of 164.35 feet to a 5/8 inch iron rod with a cap stamped "Bury+Partners" set for corner;

THENCE North 75° 55' 43" West, a distance of 472.42 feet to a 5/8 inch iron rod with a cap stamped "Bury + Partners" set for corner in the west line of said 9.3062 acre tract of land and being in the east line of that called 10.673 acre tract of land described in the deed to the City of Allen filed for record in Volume 4859, Page 2837, D.R.C.C.T.;

THENCE North 03° 13' 14" East along the common line of said 9.3062 acre tract of land and said 10.673 acre tract of land, a distance of 61.53 feet to a 5/8 inch iron rod with a cap stamped "Bury + Partners" set for corner in the south line of the aforementioned 0.824 acre tract of land;

THENCE South 88° 02' 48" East along said south line, a distance of 140.85 feet to a 5/8 inch iron rod with a cap stamped "Bury + Partners" set for corner;

THENCE South 75° 55' 43" East, a distance of 301.30 feet to a 5/8 inch iron rod with a cap stamped "Bury + Partners" set for corner;

THENCE North 59° 04' 17" East, a distance of 35.36 feet to a 5/8 inch iron rod with a cap stamped "Bury + Partners" set for corner;

THENCE North 14° 04' 17" East, a distance of 45.06 feet to a 5/8 inch iron rod with a cap stamped "Bury + Partners" set for corner in the aforementioned south line of the 0.824 acre tract of land;

THENCE South 88° 02' 48" East along said south line, a distance of 20.46 feet to the **POINT OF BEGINNING**;

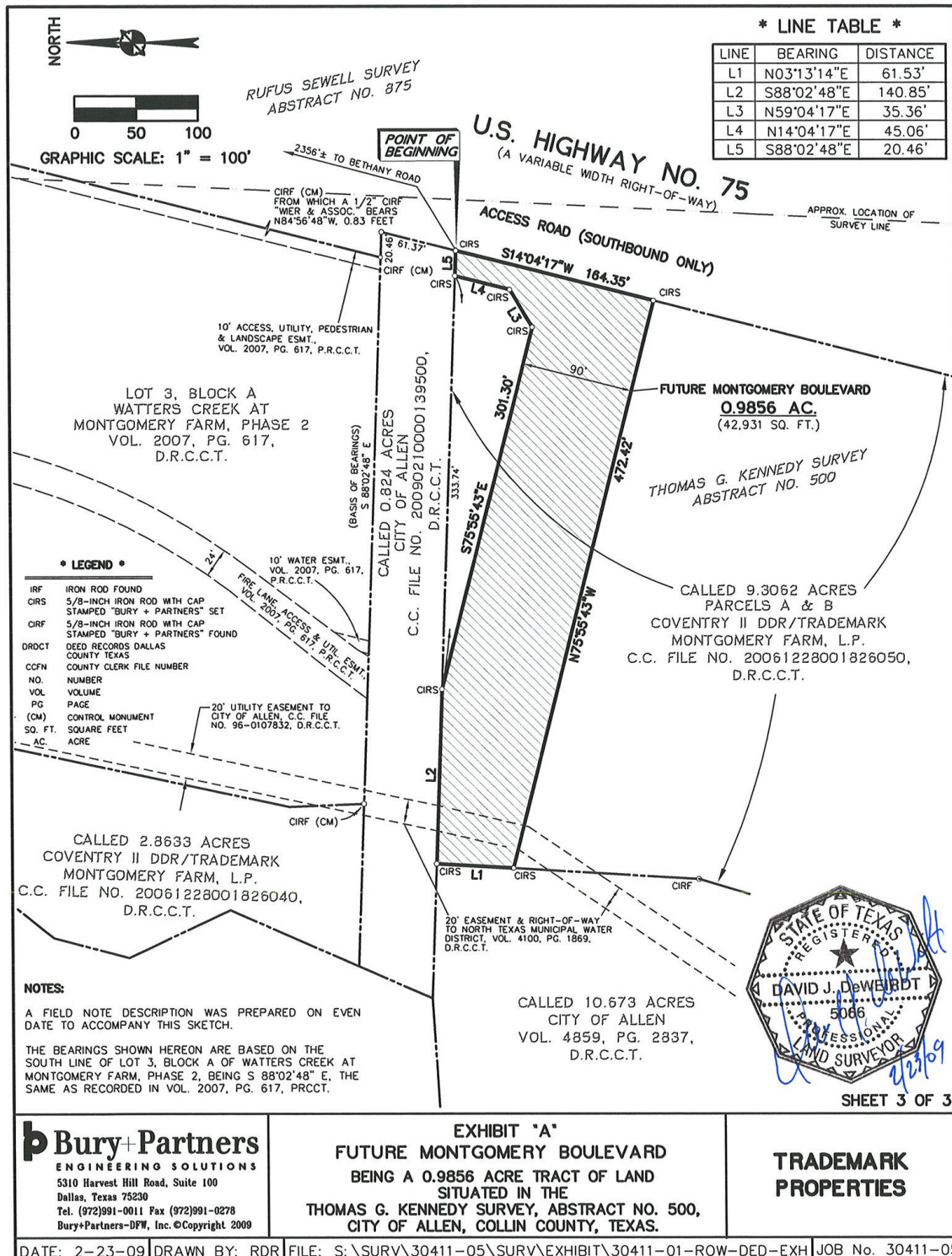
CONTAINING a computed area of 0.9856 acres (42,931 square feet) of land.

Notes:

A sketch was prepared on even date to accompany this description.

The bearings shown hereon above are based on the south line of Lot 3, Block A, of Watters Creek At Montgomery Farm, Phase 2, being South 88° 02' 48" East, the same as recorded in Volume 2007, Page 617, PRCCT.







BETHANY ROAD

ANY DR.

CENTRAL

WATTERS CREEK AT
MONTGOMERY
FARM
PHASE 1

EXPERIA

WATTERS CREEK
AT
MONTGOMERY
FARM
PHASE 2

US 75

COA PARCEL TO
WATTERS AT
MONTGOMERY

PROPOSED
MONTGOMERY
BLVD. R.O.W. TO
COA

ENTERPRISE BLVD

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

June 9, 2009

SUBJECT:

Authorize the City Manager to Execute an Economic Development Agreement between the City of Allen and Coventry II DDR/Trademark Montgomery Farm L.P. for the Purpose of Providing a Community Room for Use by Civic and Other Local Organizations at Reduced Costs and Establish a Project Budget of \$125,000

STAFF RESOURCE:

John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION:

None

ACTION PROPOSED:

Authorize the City Manager to Execute an Economic Development Agreement between the City of Allen and Coventry II DDR/Trademark Montgomery Farm L.P. for the Purpose of Providing a Community Room for Use by Civic and Other Local Organizations at Reduced Costs and Establish a Project Budget of \$125,000

BACKGROUND

Coventry II DDR/Trademark Montgomery Farm L.P. (Developer) is constructing a mixed use project at the southwest corner of US 75 and Bethany Road known as Watters Creek at Montgomery Farm. The City desires and the Developer agrees to provide space within the project for use as a Community Room for use by civic and other local organizations of the City at a reduced cost and for use by Trademark for other businesses and organizations.

A brief summary of the Economic Development Agreement is as follows:

- 1 The Developer will operate, manage and book the usage of the Community Room.
- 1 The Developer will grant usage of the Community Room by its tenants and other businesses at fair market rental rates, including reasonable rates.
- 1 The Developer agrees to grant usage of the Community Room by civic organizations at the following maximum rental rates and charges:
 - ı \$50 deposit is required when food or drink is not served;
 - ı \$100 deposit is required when food or drink is served;

- ; \$50 for a 2-hour minimum use;
 - ; \$25 for each hour beyond initial 2-hour period; and
 - ; Allen Chamber of Commerce and Allen Independent School District will not be charged for room rental
- 1 The City of Allen will provide the Developer a grant to be paid within 30 days after receipt of a payment request from the Developer following completion of construction “finish out” and in installation of the furnishing, fixture and equipment of the Community Room. While the project is estimated to cost \$155,000, the grant shall be \$125,000 with Coventry II DDR/Trademark paying the remainder of the cost.

BUDGETARY IMPACT

Funds for the grant will come from the FY2009 City's strategic planning budget.

STAFF RECOMMENDATION

Staff recommends the Council authorize the City Manager to enter into an Economic Development Agreement providing for the establishment of a Community Room.

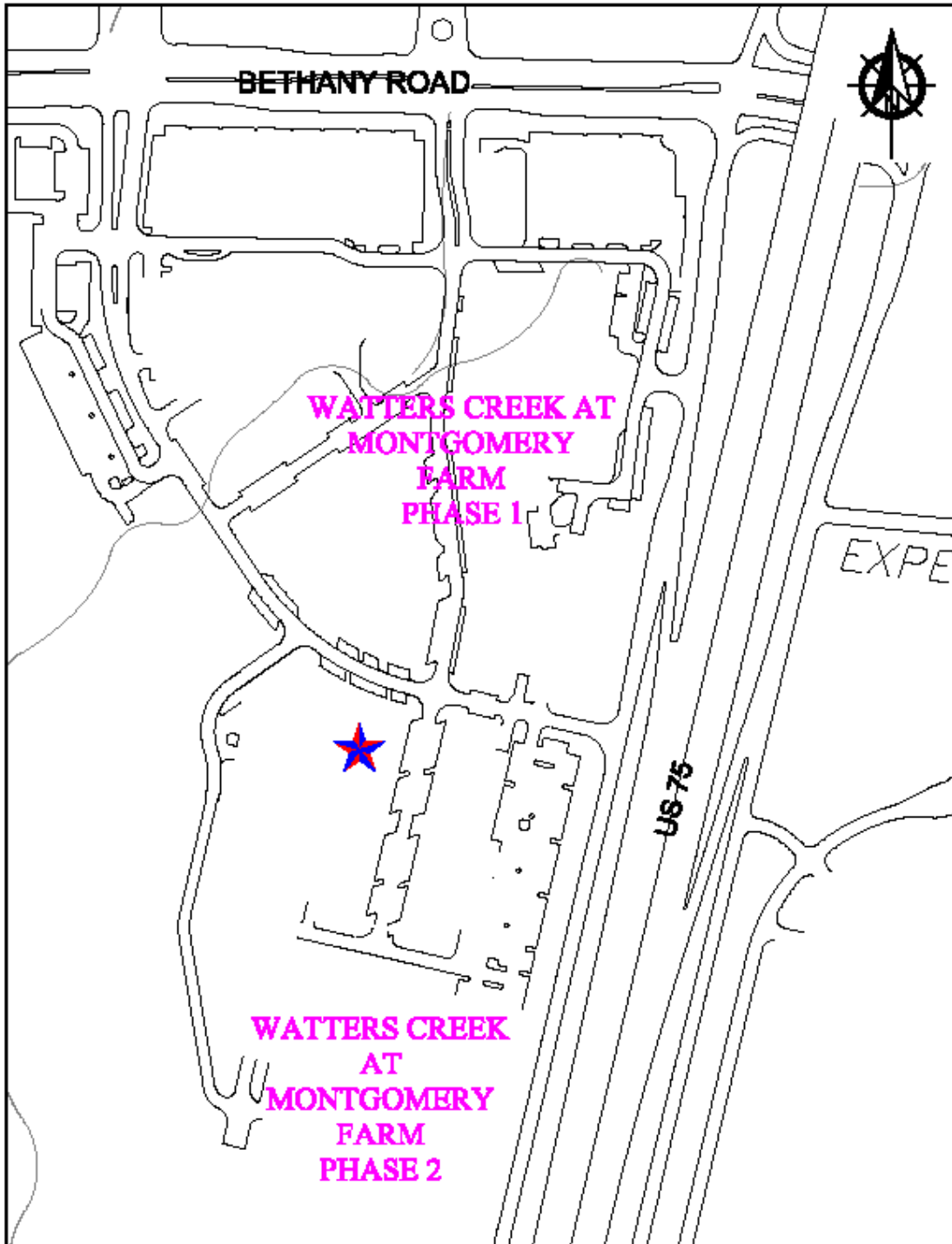
MOTION

I make a motion to authorize the City Manager to execute an Economic Development Agreement between the City of Allen and Coventry II DDR/Trademark Montgomery Farm for the purpose of providing a Community Room for use by civic and other local organizations at reduced costs and establish a project budget of \$125,000.

ATTACHMENT

Location Map
 Development Map
 Room Layout
 Economic Development Agreement

Location Map
Watters Creek at Montgomery Farm
Mixed Use
Development



US 75

Bethany Road

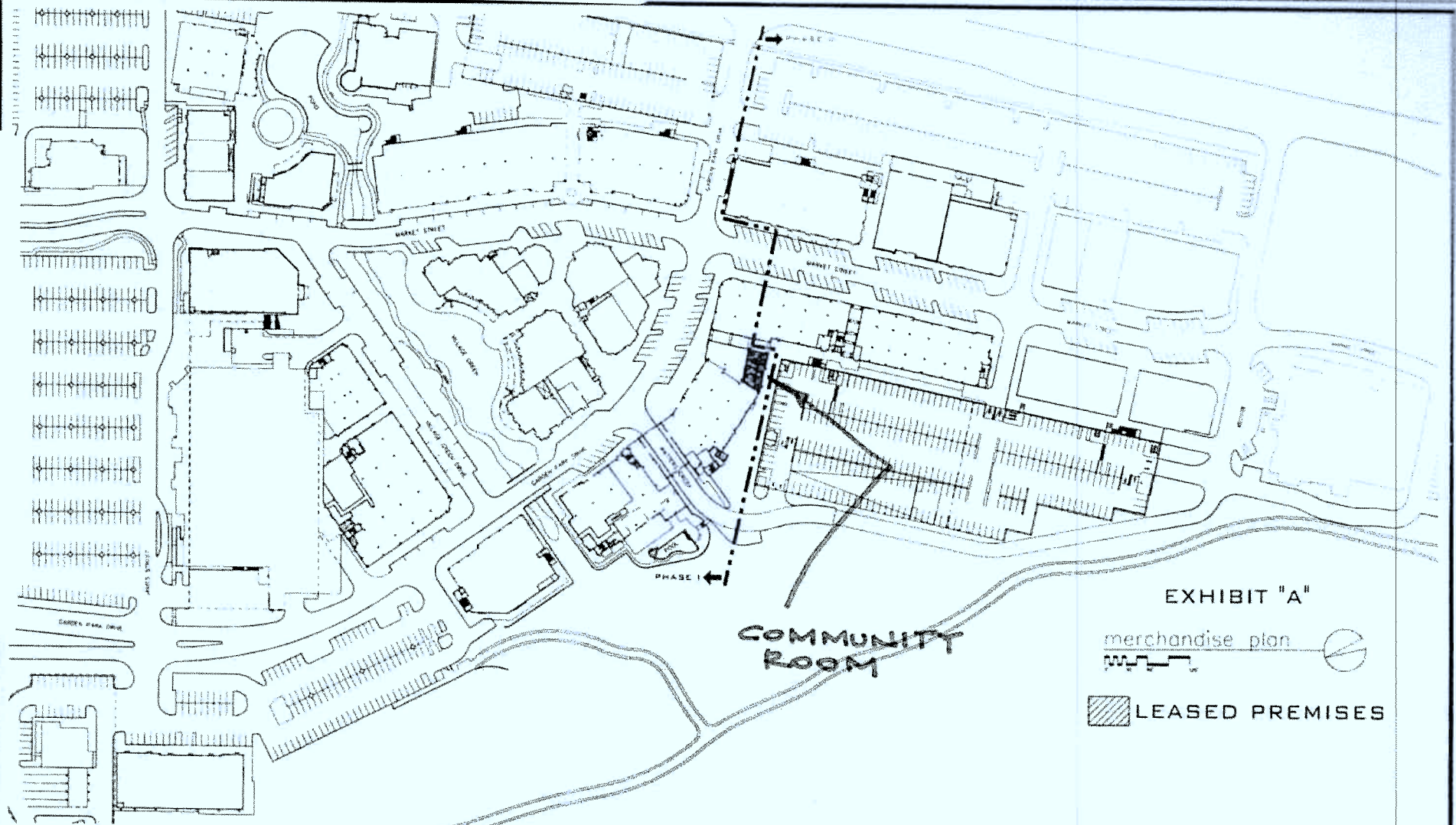


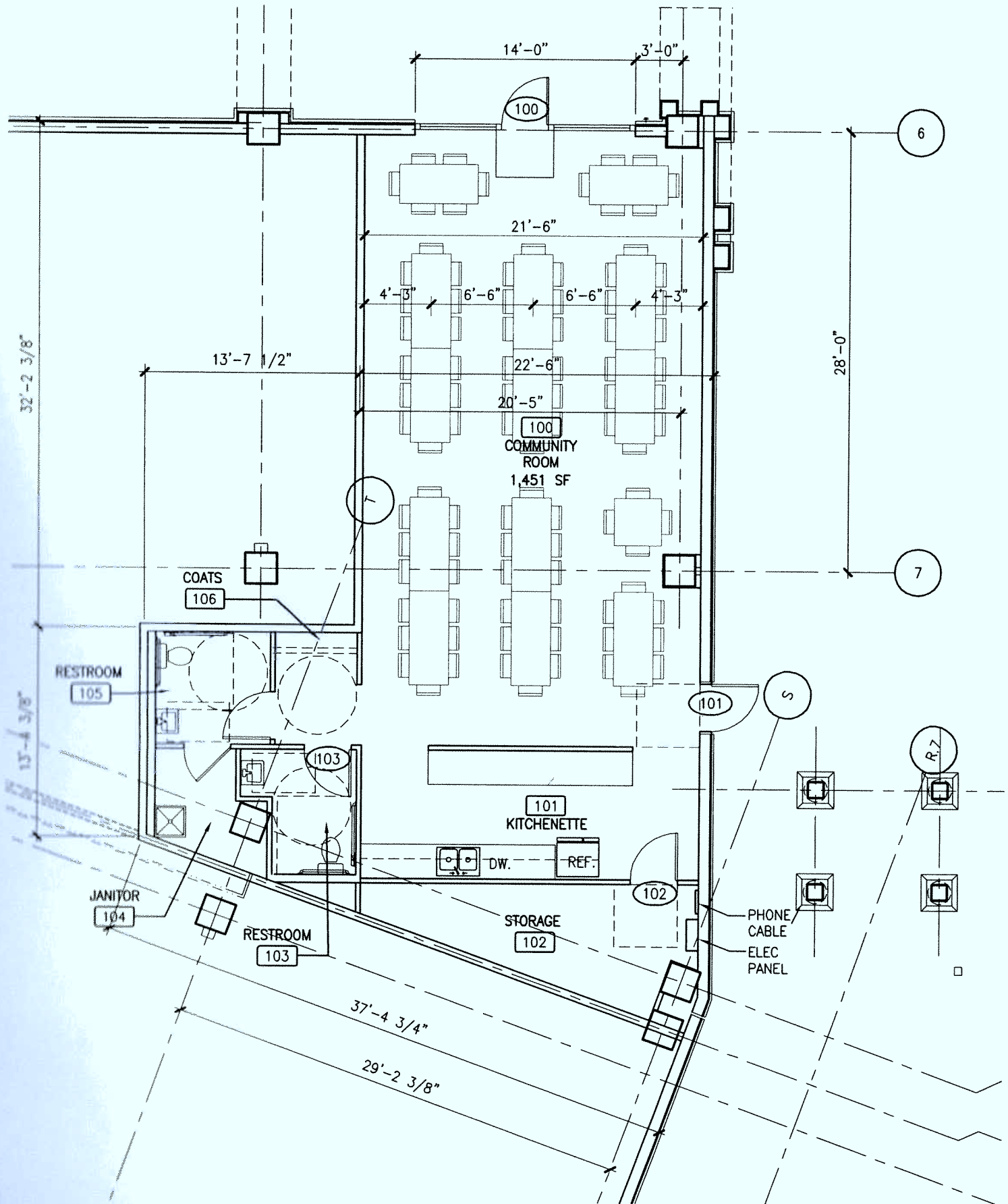
EXHIBIT "A"

merchandise plan



LEASED PREMISES

DISCLAIMER: THIS SITE PLAN IS PRESENTED SOLELY FOR THE PURPOSE OF IDENTIFYING THE APPROXIMATE LOCATION AND SIZE OF THE PREMISES AND THE BUILDINGS PRESENTLY CONTEMPLATED BY THE OWNER. BUILDING SIZES, SITE DIMENSIONS, ACCESS AND PARKING AREAS, EXISTING TENANT LOCATIONS AND IDENTITIES ARE SUBJECT TO CHANGE AT THE OWNER'S DISCRETION.



STATE OF TEXAS
COUNTY OF COLLIN

§
§
§

Economic Development Agreement

This Economic Development Agreement (this “Agreement”) is made by and between the City of Allen, Collin County Texas (the “City”), and Coventry II DDR/Trademark Montgomery Farm L.P., a Texas limited partnership (the “Company”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, the Company owns the real property located at the southwest corner of US 75 and Bethany Road in Allen, Texas described (the “Property”) on which the Company has, and is constructing a mixed use project (hereinafter referred to as “Watters Creek at Montgomery Farm” or the “Project”); and

WHEREAS the Company desires to provide tenant space within the Project for use as a community room for use by civic and other local organizations of the City (“Civic Organizations”) at reduced costs and for use by the Company for other businesses and organizations (the “Community Room”); and

WHEREAS, the City desires the Company to provide the use of the Community Room for local civic and other organizations within the City at reduced rates; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to provide the Community Room would be an agreement by the City to provide an economic development grant to the Company to defray a portion of the cost for the “finish out” of the tenant space for the Community Room; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV’T CODE §380.001 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with this Agreement will further the objectives of the City, will benefit the City and the City’s inhabitants and will promote local economic development and stimulate business and commercial activity in the City.

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

Article I Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“City” shall mean the City of Allen, Texas.

“Civic Organizations” shall mean local civic and charitable organizations located in the City.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for the tenant finish out of the Community Room; and (ii) all necessary permits for construction of the finish out of the Community Room pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) a construction contract agreement has been executed by the Company for the finish out of the Community Room.

“Company” shall mean Coventry II DDR/Trademark Montgomery Farm L.P., a Texas limited partnership.

“Completion of Construction” shall mean that: (i) finish out of the Community Room has been completed; and (ii) a certificate of occupancy has been issued by the City for the Community Room.

“Community Room” shall mean the space within Watters Creek at Montgomery Farm located at 907 Garden Park Drive, Allen Texas 75013, as depicted in the site plan attached as **Exhibit “A”**.

“Effective Date” shall mean the last date of execution hereof.

“Finish-Out” shall mean the finish out of the Community Room of approximately 1452 square feet of space including the furniture, fixtures and items as generally depicted in **Exhibit “B”** and generally in accordance with the budget set forth in **Exhibit “C”**.

“Finish-Out Costs” shall mean all costs of the tenant finish out for the Community Room incurred by the Company and approved by the City.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any

proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, acts of terrorism, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Grant” shall mean an economic development grant in the amount of the lesser of: (a) the actual costs incurred and paid by the Company for the Finish-Out Costs; and (b) \$125,000 to be paid as set forth herein

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by Company within the City.

“Project” shall mean mixed use development constructed on the Property known as Watters Creek at Montgomery Farm.

“Property” shall mean the real property described in Exhibit “A”.

Article II

Term

This Agreement shall begin on the Effective Date and shall continue for period of ten (10) years (the “Initial Term”). Thereafter the term of this Agreement shall automatically renew for successive terms of ten (10) years each, unless sooner terminated as provided herein.

Article III

Construction and Use of the Community Room

3.1 **Construction of the Community Room.** The Company, at its sole cost, shall subject to Events of Force Majeure, cause Commencement of Construction of the Finish-Out of the Community Room to occur on or before July 15, 2009, and subject to Events of Force Majeure, cause Completion of Construction thereof to occur on or before October 15, 2009. Prior to Commencement of Construction of the Community Room the Company shall obtain the approval of the City of the plans for Finish-Out for the Community Room (the “Community Room Plans”) and the Finish-Out Costs.

3.2 **Use of the Community Room.** The Company shall, at its sole expense, operate, manage and book the usage of the Community Room. The Company may grant or permit the usage of the Community Room by its tenants and other businesses (other than the Civic Organizations) at fair market rental rates including reasonable clean up fees and rental deposits. The Company further agrees to grant or permit the usage of the Community Room by the Civic Organizations at the following rental rates and charges:

- (a) Each individual or organization will be required to submit a Fifty Dollar (\$50) deposit when food or drink is not served; a deposit of One Hundred Dollars (\$100) is required when food or drink is served. Return of the deposit is contingent upon the determination that no damage to the room or its contents has occurred in conjunction with use of the facility.
- (b) A rental fee of \$50 for a 2 hour minimum use. A fee of \$25 for each hour or portion thereof is assessed beyond the initial 2 hour period.
- (c) Allen Chamber of Commerce and Allen Independent School District will not be charged for room rental.

Article IV Economic Development Grant

4.1 **Grant.** Subject to the Company's continued satisfaction of all the terms and conditions of this Agreement and the obligation of Company to repay the Grant in the event of a termination of this Agreement pursuant to Sections 6.1 and 6.2 hereof, the City agrees to provide the Company with the Grant to be paid within 30 days after receipt of a Payment Request from the Company following Completion of Construction of the Community Room.

4.2 **Current Revenue.** The Grant shall be paid solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for such purpose consistent with Article III, Section 52(a) of the Texas Constitution, as amended. The City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

Article V Conditions to Annual Economic Development Grants

5.1 The obligation of the City to pay the Grant or shall be conditioned upon the Company's continued compliance with and satisfaction of each of the terms and conditions of this Agreement and each of the conditions set forth below:

- (a) The Company agrees that as a condition precedent to payment of the Grant hereunder that it shall not have an uncured breach or default of this Agreement;

- (b) The City shall have received a Payment Request from the Company for payment of the Grant; and
- (c) The City shall have approved the Community Room Plans and the Finish-Out Costs.

Article VI Termination; Recapture

6.1 This Agreement shall terminate upon any one of the following:

- (a) by written agreement of the parties;
- (b) by either party in the event the other party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof;
- (c) by City, if Company suffers an Event of Bankruptcy or Insolvency;
- (d) by City, if any Impositions owed to the City or the State of Texas by Company shall become delinquent (provided, however the Company retains the right to timely and properly protest and contest any such Impositions); and
- (e) by City, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

6.2 In the event the Agreement is terminated pursuant to Section 6.1(c), (d) or (e), by the City, the Company shall immediately refund to the City an amount equal to the sum of the Grant paid by the City to the Company immediately proceeding the date of such termination, plus, interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, from the date of termination until paid.

Article VII Miscellaneous

7.1 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

7.2 **Limitation on Liability.** It is understood and agreed between the parties that the Company and the City, in satisfying the conditions of this Agreement, have acted independently, and assume no responsibilities or liabilities to third parties in connection with these actions.

7.3 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

7.4 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

7.5 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received (i) three (3) days after deposit into the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or (ii) on the day actually received if sent by courier or otherwise hand delivered.

If intended for City of Allen:

Peter H. Vargas, City Manager
City of Allen
One Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013

With copy to:

Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 N. Akard
Dallas, Texas 75201
(214) 965-9900
(214) 965-0010-fax

If intended for Company:

Coventry II DDR/Trademark
Montgomery Farm L.P.
c/o Trademark Property Company
Attention: Kerby Smith
301 Commerce, Suite 3635
Fort Worth, Texas 76102

7.6 **Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

7.7 **Governing Law.** The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

7.8 **Amendment.** This Agreement may only be amended by a written agreement executed by both parties.

7.9 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

7.10 **Recitals.** The recitals to this Agreement are incorporated herein.

7.11 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

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

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

7.14 **Successors and Assigns.** This Agreement may not be assigned without the prior written consent of the City. Neither the Company nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company under this Agreement, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any attempted assignment by the Company in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement.

7.15 **Employment of Undocumented Workers.** During the term of this Agreement the Company agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), the Company shall repay the amount of the Grant and any other funds received by the Company from the City as of the date of such violation within 120 business days after the date the Company is notified by the City of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid.

(Signature page to follow)

EXECUTED on this _____ day of _____, 2009.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

ATTEST:

By: _____
City Secretary

APPROVED AS TO FORM:

By: _____
City Attorney

EXECUTED the _____ day of _____, 2009.

**COVENTRY II DDR/TRADEMARK MONTGOMERY
FARM L.P., a Texas limited partnership**

By: Coventry II DDR Montgomery Farm
Holdings LLC, its General Partner

By: Coventry II DDR Montgomery Farm
LLC, its Sole Member

By: Coventry Real Estate Fund II,
L.L.C., its Managing Member

By: Coventry Fund II Partners,
L.L.C., its Managing Member

By: _____
Name: _____
Title: _____

EXHIBIT A

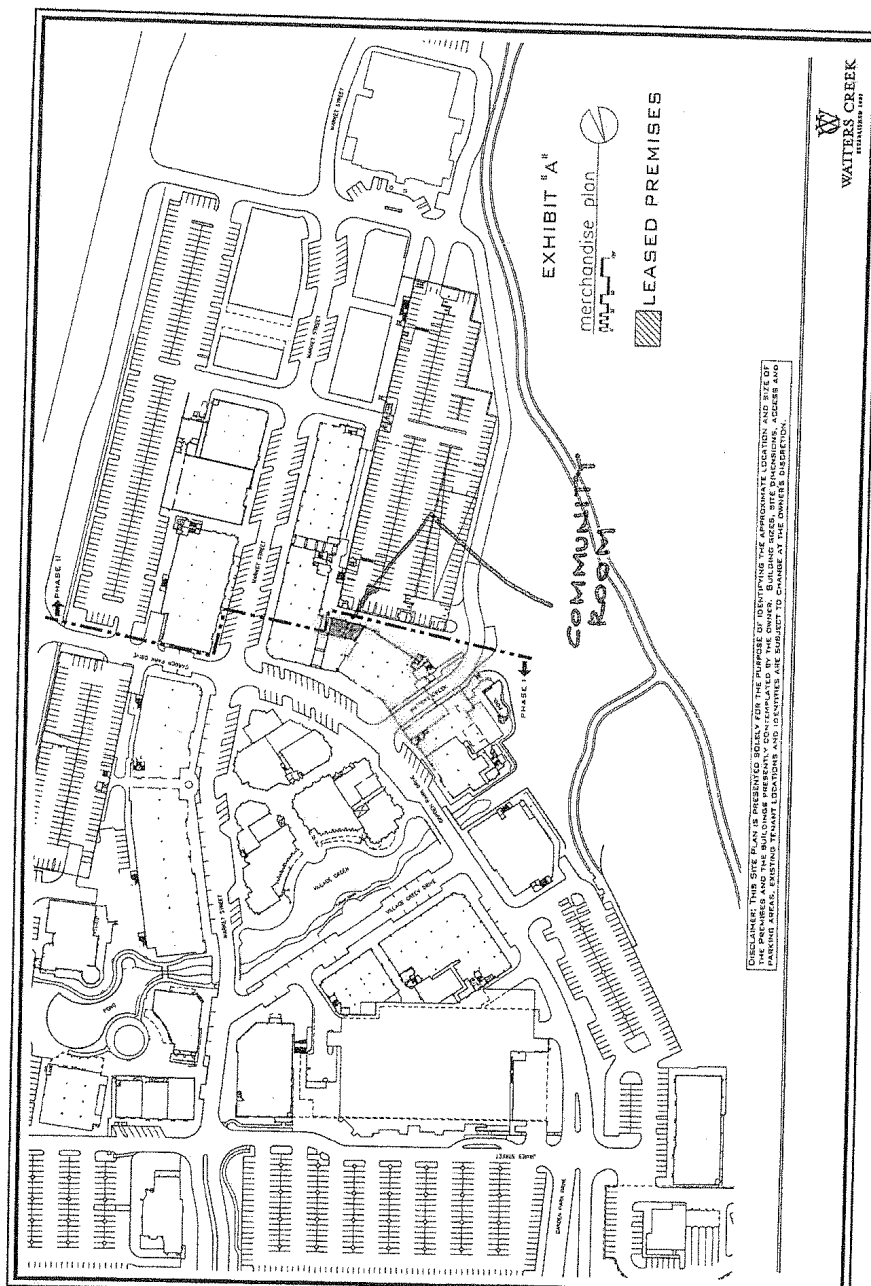


EXHIBIT B

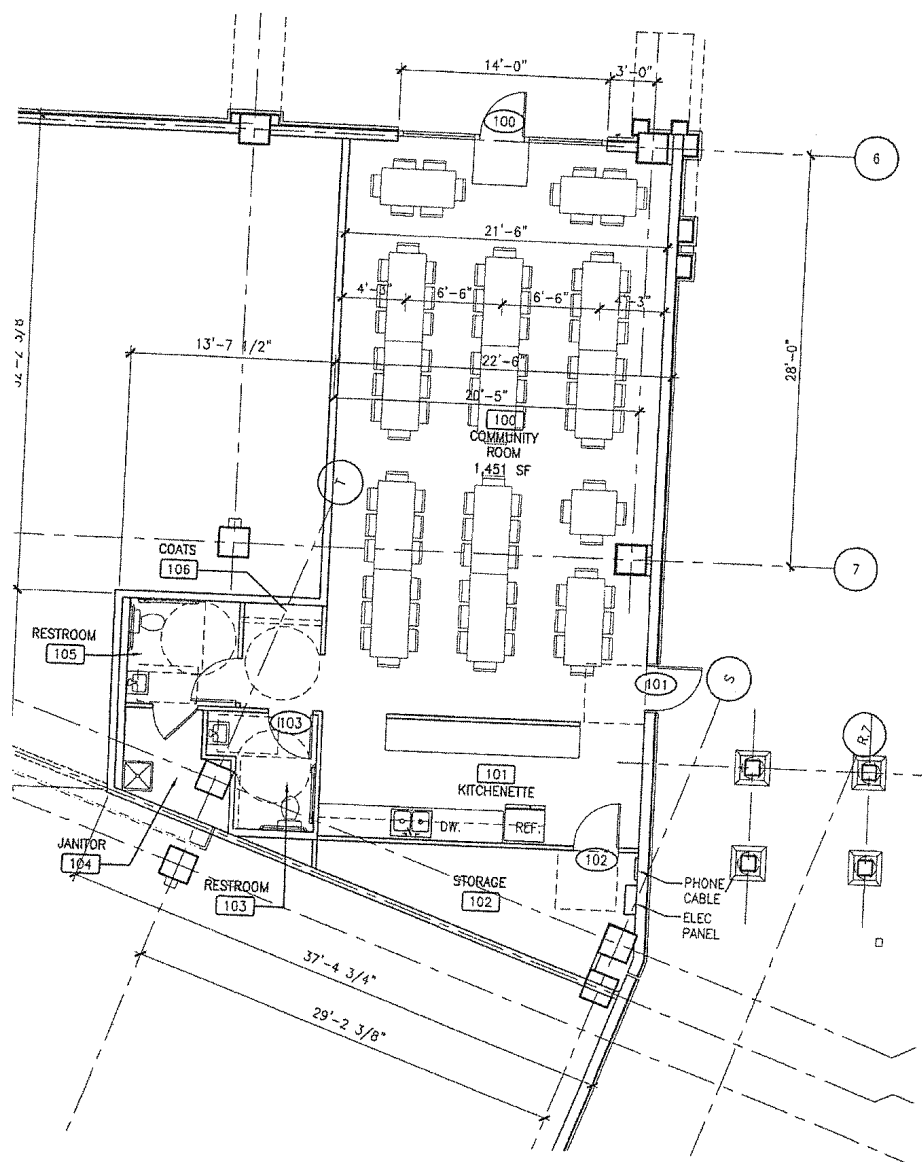


EXHIBIT C

TENANT COORDINATION BUDGET SHEET Watters Creek

Tenant: Community Room
Type: New Construction
Size: 1,451 square feet
Location: Space P350

CONSTRUCTION COSTS

	Cost	Source
Architectural / Engineering		
Architectural Meachum & Apel	\$ 3,200	Proposal
Engineering Robinett & Assoc.	\$ 2,000	Proposal
Plan Revisions	\$ 750	Estimate
TDLR TAS review & inspection Johnson & Kelley	\$ 783	Fee Quote
Construction Costs		
Construction Contract	\$ 123,000 *	Lander Construction Bid
Construction Management Fee	\$ 4,305	3.50%
Furniture & Fixtures		
Appliances Refrigerator Microwave	\$ 954	Lowes
Furniture Chairs Tables Chair & Table Trucks	\$ 9,000	Allowance
White Board	\$ 914	Flex-a-Chart
Audio Visual	\$ 4,300	Ford Audio Visual
Contingency	<u>\$ 6,600</u>	5.00%
TOTAL BUDGET	<u><u>\$ 155,806</u></u>	
Cost per square foot	<u><u>\$107</u></u>	

Add Alternates to Construction Costs:

Tile wainscot on all walls of restrooms in lieu of just wet walls	\$ 2,905.00	Bid - Martin Ringle
Wood entry in lieu of commercial storefront	\$ 3,000.00	Estimate

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

June 9, 2009

SUBJECT:

Authorize the City Manager to Execute Four Contracts with Clear Wireless LLC, a Nevada Limited Liability Company, for Microwave Dishes and Antennae to be Placed on the Bethany, Custer, Hillside, and Rowlett Water Towers, Each with a Five-year Term Contract with an Option for Five Additional Five-year Terms at \$15,000 per Year per Contract with a Rate Increase of 3% Each Year per Contract

STAFF RESOURCE:

Steve Massey, Director of Community Services
Jimmy Knipp, Assistant Director of Community Services

PREVIOUS COUNCIL ACTION:

None

ACTION PROPOSED:

Authorize the City Manager to Execute Four Contracts with Clear Wireless LLC, a Nevada Limited Liability Company, for Microwave Dishes and Antennae to be Placed on the Bethany, Custer, Hillside, and Rowlett Water Towers, Each with a Five-year Term Contract with an Option for Five Additional Five-year Terms at \$15,000 per Year per Contract with a Rate Increase of 3% Each Year per Contract

BACKGROUND

Room is now available for antennae on the Bethany, Custer, Hillside, and Rowlett Water Towers. The lease rate is \$15,000 per year per site with an automatic 3% increase per year. This rate was negotiated and reduced from the Cellular Rate of \$20,000 due to the nature of use of wireless internet service to the citizens of the City of Allen. Some rate reduction from typical cellular antennae lease rates is common for this type rental.

BUDGETARY IMPACT

The contract is for \$15,000 per year per site, and the rate will be increased 3% each year. The initial contract term is for five years, with an option for five additional five-year terms.

STAFF RECOMMENDATION

Authorize the City Manager to execute four contracts for microwave dishes and antennae on the Bethany, Custer, Hillside, and Rowlett Water Towers.

MOTION

I make a motion to authorize the City Manager to execute four contracts with Clear Wireless LLC, a Nevada limited liability company, for microwave dishes and antennae to be placed on the Bethany, Custer, Hillside, and Rowlett Water Towers for a five-year term contract with an option for five additional five-year terms at \$15,000 per year per contract with a rate increase of 3% each year per contract.

ATTACHMENT

Bethany Water Tower
Custer Water Tower
Hillside Water Tower
Rowlett Water Tower

TX-DAL6590

Allen_Bethany_WT (164714A)
Location Code: 188150

LEASE AGREEMENT (BETHANY WATER TOWER)

THIS Lease Agreement ("Agreement") is entered into this ____ day of _____, 200__, between Clear Wireless LLC, a Nevada limited liability company ("Lessee"), and City of Allen, Texas, a municipal corporation, ("Lessor"), acting by and through their authorized representatives.

For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- 1. Premises.** Lessor is the owner of a parcel of land (the "Land") and a Water Tower (the "Water Tower") located in the City of Allen, County of Collin, State of Texas, commonly known as 1530 E. Bethany, 75002, APN: 2550710 (the Water Tower and Land are collectively, the "Property"). The Land is more particularly described in Exhibit "A" annexed hereto. Lessor hereby leases to Lessee and Lessee leases from Lessor, approximately one hundred (100) square feet of the Land and space for the addition of ten (10) antenna systems/microwave dishes, adjacent to and/or on the Water Tower and all access and utility easements, if any, (collectively, the "Premises") as described in Exhibit B annexed hereto.
- 2. Use.** The Premises may be used by Lessee for any activity in connection with the provision of communications services, including without limitation, the transmission and the reception of radio communication signals and the construction, maintenance and operation of related communications facilities.. Lessor agrees to cooperate with Lessee, at Lessee's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.
- 3. Tests and Construction / Due Diligence Period.** Beginning on the last date of execution of this Agreement by all parties and continuing until the Term Commencement Date as defined in Paragraph 4 below ("**Due Diligence Period**"), Clear Wireless shall only be permitted to enter the Property for the limited purpose of making appropriate engineering and boundary surveys, inspections, and other reasonably necessary investigations and signal, topographical, geotechnical, structural and environmental tests (collectively, "**Investigations and Tests**") that Clear Wireless may deem necessary or desirable to determine the physical condition, feasibility and suitability of the Premises. In the event that Clear Wireless determines, during the Due Diligence Period, that the Premises are not appropriate for Clear Wireless's intended use, or if for any other reason, or no reason, Clear Wireless decides not to commence its tenancy of the Premises, then Clear Wireless shall have the right to terminate this Agreement without penalty upon written notice to Owner at any time during the Due Diligence Period and prior to the Term Commencement Date. Owner and Clear Wireless expressly acknowledge and agree that Clear Wireless's access to the Property during this Due Diligence Period shall be solely for the limited purpose of performing the Investigations and Tests, and that Clear Wireless shall not be considered an owner or operator of any portion of the Property, and shall have no ownership or control of any portion of the Property (except as expressly provided in this Paragraph 3), prior to the Term Commencement Date. Lessee shall have the right at any time following the last date of

TX-DAL6590

Allen_Bethany_WT (164714A)
Location Code: 188150

execution of this Agreement by all parties to enter upon the Property for the purpose of constructing the Lessee Facilities (hereinafter defined). Upon Lessee's request, Lessor agrees to provide promptly to Lessee copies of all plans, specifications, surveys and Water Tower maps for the Land and Water Tower. The Water Tower map shall include the elevation of all antennas on the Water Tower and the frequencies upon which each operates.

4. Term. The term of this Agreement shall be five (5) years and shall commence based on start of construction of Lessee Facilities or one hundred eighty (180) days (the "Option Period") following the date of full execution hereof, whichever first occurs and terminating on the fifth anniversary of the Commencement Date (hereinafter defined) (the "Term") unless otherwise terminated as provided herein. Should Tenant elect to use the Option Period a fee of \$500.00 will apply. In the event the date of commencing installation of equipment is determinative and such date falls between the 1st and 15th of the month, the Agreement shall commence on the 1st of that month and if such date falls between the 16th and 31st of the month, then the Agreement shall commence on the 1st day of the following month. Lessor and Lessee agree that they shall acknowledge in writing the Commencement Date. Lessee shall have the right to renew this Agreement for five (5) successive five (5) year periods (the "Renewal Terms") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each Renewal Term unless Lessee notifies Lessor of its intention not to renew at least ninety (90) days prior to the expiration of the then current term.

5. Rent.

(a) Lessee shall pay to Lessor as rent FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00) per year ("Rent"); to be paid in annual installments commencing on the Commencement Date and continuing thereafter on the same day of each year. Rent shall be payable to Lessor at City of Allen, 305 Century Parkway, Allen, Texas 75013 Attn: City Manager. Notwithstanding the foregoing, Lessor and Lessee acknowledge and agree that initial annual payment(s) shall not actually be sent by Lessee until thirty (30) days after the Commencement Date or after a written acknowledgement confirming the Commencement Date, if such an acknowledgement is required. All of Lessee's monetary obligations set forth in this Agreement are conditioned upon Lessee's receipt of an accurate and executed W-9 Form or alternative State of Texas tax form from Lessor.

(b) Rent shall be increased on the first day of each anniversary (yearly) by an amount equal to three percent (3%) of the Rent in effect during the previous year.

(c) In the event of early termination of this Agreement, as provided herein, Lessor shall return to Lessee any unearned prepaid Rent.

6. Facilities; Utilities; Access.

(a) Lessee has the right to erect, maintain and operate on the Premises communications facilities, including utility lines, transmission lines, air conditioned equipment shelter(s), electronic equipment, radio transmitting and receiving antennas and supporting

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Allen_Bethany_WT (164714A)
Location Code: 188150

equipment and structures thereto ("Lessee Facilities") in the manner provided by this Agreement, and as depicted and shown in Exhibit D, attached hereto and incorporated herein for all purposes. Lessee shall have the right to replace, at Lessee's expense, the aforementioned equipment and structures with similar and comparable equipment provided said replacement does not increase tower loading of the Water Tower. In connection therewith, Lessee has the right to do all work necessary to prepare, maintain and alter the Premises for Lessee's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Title to the Lessee Facilities shall be held by Lessee. All of Lessee Facilities shall remain Lessee's personal property and are not fixtures. Lessee has the right to remove all Lessee Facilities at its sole expense on or before the expiration or earlier termination of the Agreement; provided Lessee repairs any damage to the Premises caused by such removal.

(b) Lessee shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee shall have the right to draw electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Property (including a standby power generator for Lessee's exclusive use). If permitted by the local utility company servicing the Premises, Lessee shall furnish and install an electrical sub-meter at the Premises for the measurement of electrical power used by Lessee's installation. Lessor agrees to sign such documents or easements as may be required by said utility companies to provide such service to the Premises, including the grant to Lessee or to the servicing utility company, of an easement in, over across or through the Land as may be reasonably required by such servicing utility company to provide utility services as provided herein.

(c) Lessee, Lessee's employees, agents, subcontractors, lenders and invitees shall have access to the Premises with prior notice to Lessor twenty-four (24) hours a day, seven (7) days a week, which notice will be verbal to the Stacy Road Pump Station at 972.727.0170. Due to enhanced security the personnel notified at the pump station will then dispatch a City of Allen employee that shall be present and remain on site while Lessee's personnel are present at the site. In the event of an emergency, Lessee shall only be required to give any notice which is reasonably possible. If Lessor is contacted by Lessee after normal business hours of the Lessor, the Lessee shall reimburse the Lessor for the reasonable cost of any Lessor personnel necessary for Lessee's access. Lessor grants to Lessee, and its agents, employees, contractors, guests and invitees, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across that portion of the Land described in Exhibit B.

(d) Lessor shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. Lessor shall be responsible for maintaining and repairing such roadway, at its sole expense, except for any damage caused by Lessee's use of such roadways.

TX-DAL6590

Allen_Bethany_WT (164714A)
Location Code: 188150

(e) It is understood that periodic maintenance and repair of the Lessor's facilities on the Premises is necessary. The Lessee agrees that it will cooperate with Lessor in order to reasonably accommodate Lessor's performance of such maintenance and repairs. Lessor shall permit Lessee to install, without any additional rent, a temporary cell-on-wheels (COW) communications facility at the Property during the period of time in which Lessor is performing such maintenance or repair work in the event Lessee's Facilities will be powered-down or disrupted in any manner in connection with such work.

7. **Interference.** All operations by Lessee shall be in compliance with all Federal Communications Commission ("FCC") requirements including those prohibiting interference to communications facilities of Lessor or other lessees or licensees of the Property, provided that the installation and operation of any such facilities predate the installation of the Lessee Facilities. Lessee shall not cause harmful radio frequency interference which is measurable in accordance with then existing industry standards to the equipment of Lessor or of any other lessee in use at the Premises on the date of last execution of this Agreement. Should such interference occur between Lessee's equipment upon initial operation and another lessee's equipment, and after Lessor has provided written notice thereof to Lessee, Lessee will take all commercially reasonable steps necessary to correct such interference and, if such interference cannot be corrected within thirty (30) days of notice to Lessee of such interference, Lessee will cease its operations from the Premises or power-down the communications equipment at the Premises causing such interference (subject to intermittent testing) until such time as such interference can be corrected, or, at Lessee's option, this Agreement shall be terminated. Lessor shall not allow the installation of new equipment on the Property or property contiguous thereto owned or controlled by Lessor if such equipment is likely to cause radio frequency interference with Lessee's operations. The Lessor will not grant a lease to any other party for the use of the Lessor's property without including in that lease a provision stating that the party's use will not in any way adversely affect or interfere with the Lessee's operation of its communication system. In the event such interference occurs, Lessor agrees to use best efforts to eliminate such interference in a reasonable time period. Lessor's failure to comply with this paragraph shall be a material breach of this Agreement.

8. **Taxes.** Lessee shall be responsible for and pay any taxes directly attributable to the Lessee Facilities or Lessee's use of the Property. Notwithstanding the foregoing, Lessee shall not have the obligation to pay any tax, assessment, or charge that Lessee is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property. Lessee shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which Lessee is wholly or partly responsible for payment. Lessor shall reasonably cooperate with Lessee at Lessee's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document.

9. **Condition of Site.** Lessee accepts the Premises as is, in its current condition, and the Lessor makes no representations or warranties, and hereby disclaims any and all such

TX-DAL6590

Allen_Bethany_WT (164714A)
Location Code: 188150

representations or warranties, express or implied, of any kind or nature, with regard to the facilities and the Premises, other than those representations and warranties set forth in this Agreement. The Lessor shall maintain the Premises in compliance with all applicable statutes, regulations and rules, and in a manner which will not interfere with Lessee's reasonable use of the site. Lessee may remove the Lessee Facilities at any time prior to the termination of this Agreement provided Lessee repairs any damage to the Premises caused thereby. Upon expiration or termination for any reason of the Agreement, Lessee shall, within thirty (30) days thereof, remove Lessee Facilities and any other property (other than any fixtures) from the Premises and shall restore the Premises to the condition in which it existed upon execution of this Agreement, ordinary wear and tear excepted. Should Lessee fail to so remove the Lessee Facilities, Lessor may, upon thirty days' notice by Lessor to Lessee, remove and store the Lessee Facilities at Lessee's expense. Should Lessee fail to restore the Premises to its original condition, ordinary wear and tear excepted, then Lessor may do so at Lessee's expense. In the event that Lessee fails effect such timely removal, and provided at least sixty (60) days have elapsed since the original written notice to Lessee, the Lessee Facilities shall be deemed abandoned and Lessor may remove and dispose of the Lessee Facilities at Lessee's expense.

10. Termination/Default/Remedies.

(a) This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is fifteen (15) days from receipt of notice (in each case, a "Default"); (ii) by Lessee for any reason or for no reason, provided Lessee delivers written notice of early termination to Lessor no later than thirty (30) days prior to the Commencement Date; (iii) by Lessee if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of Lessee Facilities; (iv) by Lessee if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; (v) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference; (vi) by Lessor if the City Council shall make a legislative determination and finding by written resolution that the use of the Premises is urgently needed for the protection of the public interest and votes to terminate the Agreement by giving Lessee ninety (90) days written notice; (vii) by Lessee if Lessee determines that any license, permit or other approval necessary for the construction and operation of Lessee Facilities may not be obtained in a timely manner; or (viii) by Lessee if Lessee determines that any soil boring tests or structural analysis is unsatisfactory. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder.

(b) Notwithstanding the foregoing to the contrary, it shall be a Default under this Agreement if Lessor fails, within fifteen (15) days after receipt of written notice of such failure, to perform an obligation required to be performed by Lessor if the failure to perform such an obligation interferes with Lessee's ability to conduct its business at the Premises; provided, however, that if the nature of Lessor's obligation is such that more than fifteen (15) days after

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such notice is reasonably required for its performance, then it shall not be a Default if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

11. Destruction or Condemnation. If the Premises or Lessee Facilities are damaged or destroyed by fire or casualty, or condemned or transferred in lieu of condemnation, Lessee may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Lessor no more than forty-five (45) days following the date of such damage or destruction by fire or other casualty, or condemnation or transfer in lieu of condemnation. If all or any part of the Property is damaged or destroyed by fire or casualty, or condemned or transferred in lieu of condemnation and such damage, destruction, condemnation or transfer may reasonably be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, then Lessee may elect to terminate this Agreement as of the date of such damage, destruction, condemnation or transfer by giving notice to Lessor no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If all of the Property is condemned or transferred in lieu of condemnation, Lessor may elect to terminate this Agreement as of the date of such condemnation or transfer in lieu of condemnation by giving notice to Lessee no more than forty-five (45) days following the date of such condemnation or transfer in lieu of condemnation.

12. Insurance. Lessee, at Lessee's sole cost and expense, shall procure and maintain on the Premises and on the Lessee Facilities, bodily injury and property damage insurance with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Lessee, its employees and agents arising out of or in connection with Lessee's use of the Premises, all as provided for herein. Lessor shall be named as an additional insured on Lessee's policy. Lessee shall provide to the Lessor a certificate of insurance evidencing the coverage within thirty (30) days of the Commencement Date.

13. Assignment and Subletting. This Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of the Lessor to the Lessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the Lessor, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder. Lessee may not sublet to or license others to use the Premises without the prior written consent of the Lessor.

14. Warranty of Title and Quiet Enjoyment. Lessor warrants that: (i) Lessor owns the Property in fee simple and has rights of access thereto and the Property is free and clear of all liens, encumbrances and restrictions; (ii) Lessor has full right to make and perform this Agreement; and (iii) Lessor covenants and agrees with Lessee that upon Lessee paying the Rent

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and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises.

15. Repairs. Lessee shall not be required to make any repairs to the Premises or Property unless such repairs shall be necessitated by reason of the default or neglect of Lessee. Except as set forth in Paragraph 6(a) above, upon expiration or termination hereof, Lessee shall restore the Premises to the condition in which it existed upon execution hereof, reasonable wear and tear and loss by casualty or other causes beyond Lessee's control excepted.

16. Hazardous Substances. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Substance on, under, about or within the Land in violation of any law or regulation. Lessor represents, warrants and agrees (1) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Substance on, under, about or within the Property or the Premises in violation of any law or regulation, and (2) that Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Substance on, under, about or within the Property or the Premises in violation of any law or regulation. Lessor and Lessee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Substance" shall mean petroleum or any petroleum product, asbestos, any substance known to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Agreement.

17. Liability and Indemnity.

(a) Lessee shall at all times comply with all laws and ordinances and all rules and regulations of municipal, state and federal government authorities relating to the installation, maintenance, height, location, use, operation, and removal of the equipment, antenna systems, and other alterations or improvements authorized herein, and shall fully indemnify the Lessor against any loss, damage, cost, or expense which may be sustained or incurred by the Lessor as a result of Lessee's installation, operation, or removal of said improvements, except where caused in whole or in part by the acts or omissions of the Lessor, its agents, servants or employees.

(b) Lessee agrees and is bound to indemnify, defend, and hold the Lessor whole and harmless against any and all claims for any loss or damages that may arise out of the use, maintenance, and occupancy of Lessee's Facilities and use of the Premises by Lessee, except where caused in whole or in part by the negligence or willful misconduct of the Lessor, its agents, servants, or employees.

18. Water Tower Marking and Lighting Requirements. Lessor acknowledges that it, and not Lessee, shall be responsible for compliance with all Water Tower marking and lighting

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requirements of the Federal Aviation Administration ("FAA") and the FCC. Lessor shall indemnify and hold Lessee harmless from any fines or other liabilities caused by Lessor's failure to comply with such requirements. Should Lessee be cited by either the FCC or FAA because the Water Tower is not in compliance and should Lessor fail to cure the conditions of noncompliance within the time frame allowed by the citing agency, Lessee may either terminate this Agreement immediately on notice to Lessor or proceed to cure the conditions of noncompliance at Lessor's expense, together with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable laws, which amounts may be deducted from the Rent.

19. Miscellaneous.

(a) This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties.

(b) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(c) This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(d) Any notice or demand required to be given herein shall be deemed validly given if sent by certified or registered mail, return receipt requested, or reliable overnight courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, to the address of the respective parties set forth below:

If to Tenant, to:	With a copy to:	If to Landlord, to:	With a copy to:
Clearwire US LLC Attn: Site Leasing 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900 Email: Siteleasing@clearwire.com	Clearwire US LLC Attention: Legal Department 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900	City of Allen 305 Century Parkway Allen, TX 75013 Attn: City Manager Telephone: 214-509-4502	Nichols, Jackson, Dillard, Hager & Smith, LLP Attn: Peter G. Smith 1800 Lincoln Plaza 500 North Akard Street Dallas, Texas 75201 214-965-9900

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Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

(e) This Agreement shall be governed by the laws of the State of Texas; and venue for any action shall be in State District Court of Collin County, Texas.

(f) Lessor acknowledges that a Memorandum of Agreement in the form annexed hereto as Exhibit C will be recorded by Lessee in the official records of the County where the Property is located.

(g) Lessee may obtain title insurance on its interest in the Premises. Lessor shall cooperate by executing documentation required by the title insurance company.

(h) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

(i) All Exhibits annexed hereto form material parts of this Agreement.

(j) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

(k) The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

20. Waiver of Lessor's Lien. Lessor waives any lien rights it may have concerning the Lessee Facilities which are deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time without Lessor's consent.

21. Rights Upon Sale. Should Lessor, at any time during the Term decide (i) to sell or transfer all or any part of the Property or the Water Tower thereon to a purchaser other than Lessee, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Tower and or Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize Lessee's rights hereunder under the terms of this Agreement. To the extent that Lessor grants to a third party by easement or other legal instrument an interest in and to that portion of the Tower and/or Property occupied by Lessee for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, Lessor shall not be

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released from its obligations to Lessee under this Agreement, and Lessee shall have the right to look to Lessor and the third party for the full performance of this Agreement.

22. Subordination and Non-Disturbance. At Lessor's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by Lessor which from time to time may encumber all or part of the Property, Water Tower or right-of-way; provided, however, as a condition precedent to Lessee being required to subordinate its interest in this Agreement to any future Mortgage covering the Tower or Property, Lessor shall obtain for Lessee's benefit a non-disturbance and attornment agreement for Lessee's benefit in the form reasonably satisfactory to Lessee, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize Lessee's right to remain in occupancy of and have access to the Premises as long as Lessee is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Tower or Property, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of the Agreement, (2) fulfill Lessor's obligations under the Agreement, and (3) promptly cure all of the then-existing Lessor defaults under the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, Lessee will execute an agreement for Lender's benefit in which Lessee (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Tower or Property and (3) agrees accept a cure by Lender of any of Lessor's defaults, provided such cure is completed within the deadline applicable to Lessor. In the event Lessor defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, Lessee, may, at its sole option and without obligation, cure or correct Lessor's default and upon doing so, Lessee shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and Lessee shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by Lessee to cure or correct such defaults.

23. Survival. The provisions of the Agreement relating to indemnification from one party to the other party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:
CITY OF ALLEN, TEXAS

LESSEE
Clear Wireless LLC, a Nevada limited liability
company

By: _____

By: _____

Name: Peter H. Vargas

Name: Mark Stiles

Title: City Manager

Title: Director

Date: _____

Date: 5/29/09

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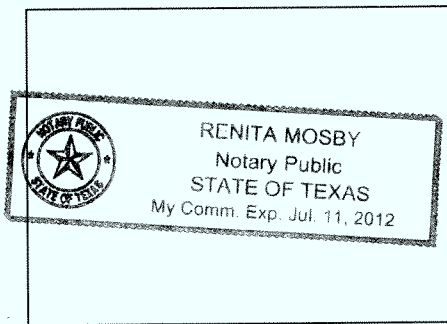
Allen_Bethany_WT (164714A)
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[Notary block for Lessee]

STATE OF TEXAS)
) ss.
COUNTY OF Dallas)

I certify that I know or have satisfactory evidence that Mark Shires is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director of Clear Wireless LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5/29/12



(Use this space for notary stamp/seal)

R
Notary Public
Print Name Renita Mosby
My commission expires 7/11/12

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Location Code: 188150

EXHIBIT A

DESCRIPTION OF LAND

The Land is described and/or depicted as follows (lot and block description):

APN: 2550710

A 100 square foot parcel in Lot 14, Block K, Parkside No. 4, Phase A, an addition to the City of Allen, Collin County, Texas.

A more detailed metes and bounds description may be provided here by either party.

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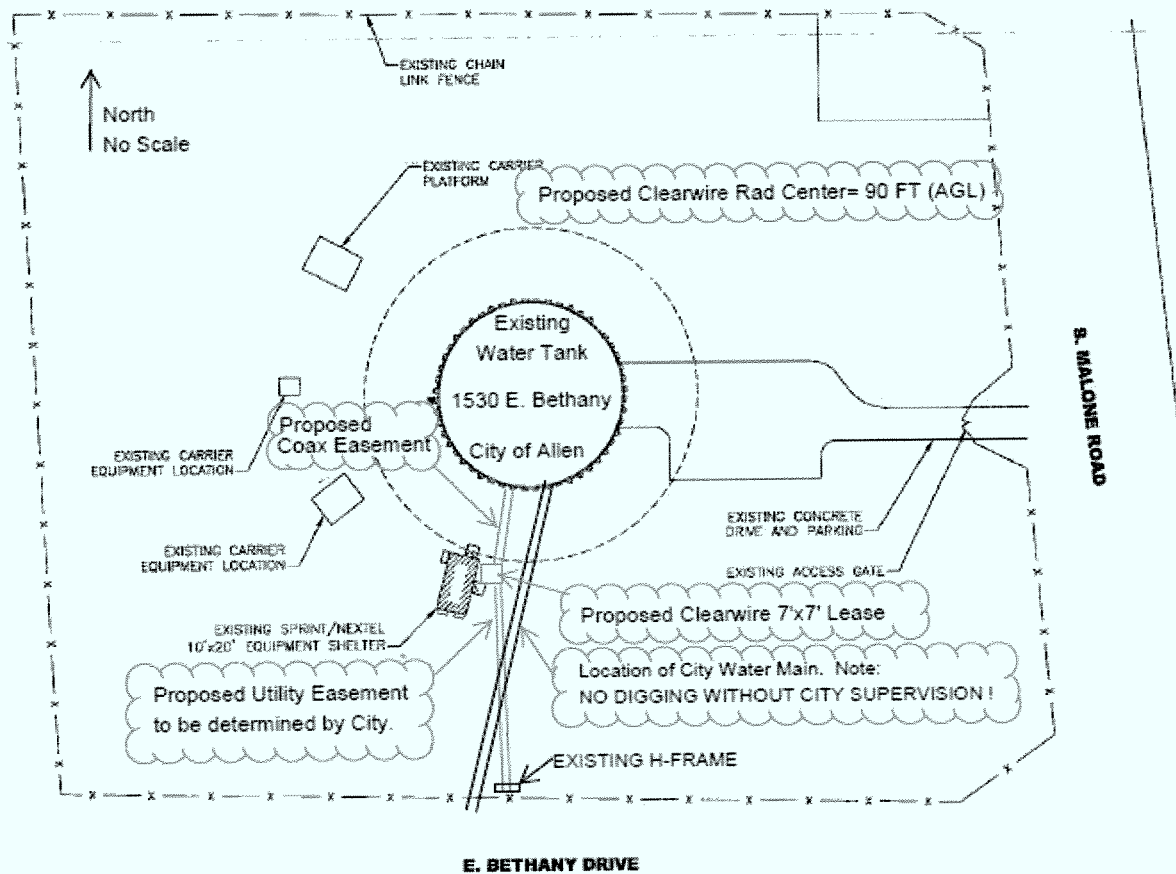
Allen_Bethany_WT (164714A)
Location Code: 188150

EXHIBIT B

DESCRIPTION OF PREMISES

to the Agreement dated _____, 2009, by and between City of Allen, a municipal corporation, as Lessor, and Clear Wireless LLC, a Nevada limited liability company, as Lessee.

The Premises are described and/or depicted as follows:



Doug Henderson, VCI Group, Inc.

March 4, 2009

Notes:

1. Lessee may replace this Exhibit with a survey of the Premises once Lessee receives it.
2. The Premises shall be setback from the Property's boundaries as required by the applicable governmental authorities.
3. The access road's width will be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number, mounting positions and locations of antennas and transmission lines are illustrative only. The actual types, numbers, mounting positions and locations may vary from what is shown above.
5. The locations of any utility easements are illustrative only. The actual locations will be determined by the servicing utility company in compliance with all local laws and regulations.

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Location Code: 188150

EXHIBIT C

COMMUNICATIONS FACILITY

to the Agreement dated _____, 2009, by and between City of Allen, a municipal corporation, as Lessor, and Clear Wireless LLC, a Nevada limited liability company, as Lessee.

RECORDED AT REQUEST OF, AND WHEN RECORDED RETURN TO:

Clearwire US LLC
4400 Carillon Point
Kirkland, WA 98033
Attn: Site Leasing

MEMORANDUM OF AGREEMENT APN: 2550710

This MEMORANDUM OF AGREEMENT is entered into on _____, 2009, by City of Allen, a municipal corporation, with an address at One Allen Civic Plaza, Allen, TX 75013 (hereinafter referred to as “**Owner**” or “**Landlord**”) and Clear Wireless LLC, a Nevada limited liability company, with an address at 4400 Carillon Point, Kirkland, WA 98033 (hereinafter referred to as “**Clear Wireless**” or “**Tenant**”).

1. Owner and Clear Wireless entered into a Communication Site Lease Agreement (“**Agreement**”) dated as of _____, 2009, effective upon full execution of the parties (“**Effective Date**”) for the purpose of Clear Wireless undertaking certain Investigations and Tests and, upon finding the Property appropriate, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The term of Clear Wireless’s tenancy under the Agreement is for five (5) years commencing on commercial operation of the Tenant Facilities or one hundred eighty days (180) following the Effective Date, whichever first occurs (“**Term Commencement Date**”), and terminating on the fifth anniversary of the Term Commencement Date with five (5) successive five (5) year options to renew.
3. The Land that is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Land being leased to Tenant and all necessary access and utility easements (the “**Premises**”) are set forth in the Agreement.

In witness whereof, the parties have executed this Memorandum of Agreement as of the day and year first written above.

LANDLORD:

City of Allen, a municipal corporation

By: EXHIBIT ONLY – DO NOT EXECUTE
Name: _____
Title: _____
Date: _____

TENANT:

Clear Wireless LLC, a Nevada limited liability company

By: EXHIBIT ONLY – DO NOT EXECUTE
Name: _____
Title: _____
Date: _____

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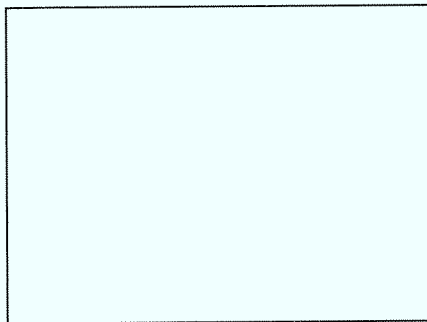
LESSOR'S ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 200__ by Peter H. Vargas, City Manager of the City of Allen, Texas, a Texas municipality, on behalf of said municipality.



(Use this space for notary stamp/seal)

Notary Public

Print Name

My commission expires

LESSEE'S ACKNOWLEDGMENT

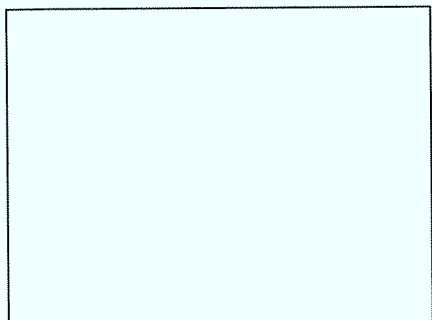
STATE OF TEXAS)

) ss.

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of Clear Wireless LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

Notary Public

Print Name

My commission expires

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Location Code: 188150

EXHIBIT D

DESCRIPTION OF LESSEE FACILITIES

DESCRIPTION OF LAND

to the Agreement dated , 2009, by and between City of Allen, a municipal corporation, as Landlord, and Clear Wireless LLC, a Nevada limited liability company, as Tenant.

The Land is described and/or depicted as follows (lot and block description):

APN: 2550710

A 100 square foot parcel in Lot 14, Block K, Parkside No. 4, Phase A, an addition to the City of Allen, Collin County, Texas.

A more detailed metes and bounds description may be provided here by either party.

Site Name: Custer WT
Site ID: TX-DAL6610

LEASE AGREEMENT (Custer Water Tower)

THIS Lease Agreement ("Agreement") is entered into this _____ day of _____, 200__, between Clear Wireless LLC, a Nevada limited liability company ("Lessee"), and City of Allen, Texas, a municipal corporation, ("Lessor"), acting by and through their authorized representatives.

For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Premises. Lessor is the owner of a parcel of land (the "Land") and a Water Tower (the "Water Tower") located in the City of Allen, County of Collin, State of Texas, commonly known as 325 S. Custer Road, Allen, TX 75013, APN: 2117621 (the Water Tower and Land are collectively, the "Property"). The Land is more particularly described in Exhibit "A" annexed hereto. Lessor hereby leases to Lessee and Lessee leases from Lessor, approximately one hundred (100) square feet of the Land and space for the addition of ten (10) antenna systems/microwave dishes, adjacent to and/or on the Water Tower and all access and utility easements, if any, (collectively, the "Premises") as described in Exhibit B annexed hereto.

2. Use. The Premises may be used by Lessee for any activity in connection with the provision of communications services, including without limitation, the transmission and the reception of radio communication signals and the construction, maintenance and operation of related communications facilities.. Lessor agrees to cooperate with Lessee, at Lessee's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.

3. Tests and Construction / Due Diligence Period. Beginning on the last date of execution of this Agreement by all parties and continuing until the Term Commencement Date as defined in Paragraph 4 below ("**Due Diligence Period**"), Clear Wireless shall only be permitted to enter the Property for the limited purpose of making appropriate engineering and boundary surveys, inspections, and other reasonably necessary investigations and signal, topographical, geotechnical, structural and environmental tests (collectively, "**Investigations and Tests**") that Clear Wireless may deem necessary or desirable to determine the physical condition, feasibility and suitability of the Premises. In the event that Clear Wireless determines, during the Due Diligence Period, that the Premises are not appropriate for Clear Wireless's intended use, or if for any other reason, or no reason, Clear Wireless decides not to commence its tenancy of the Premises, then Clear Wireless shall have the right to terminate this Agreement without penalty upon written notice to Owner at any time during the Due Diligence Period and prior to the Term Commencement Date. Owner and Clear Wireless expressly acknowledge and agree that Clear Wireless's access to the Property during this Due Diligence Period shall be solely for the limited purpose of performing the Investigations and Tests, and that Clear Wireless shall not be considered an owner or operator of any portion of the Property, and shall have no ownership or control of any portion of the Property (except as expressly provided in this Paragraph 3), prior to the Term Commencement Date. Lessee shall have the right at any time following the last date of

Site Name: Custer WT
Site ID: TX-DAL6610

execution of this Agreement by all parties to enter upon the Property for the purpose of constructing the Lessee Facilities (hereinafter defined). Upon Lessee's request, Lessor agrees to provide promptly to Lessee copies of all plans, specifications, surveys and Water Tower maps for the Land and Water Tower. The Water Tower map shall include the elevation of all antennas on the Water Tower and the frequencies upon which each operates.

4. Term. The term of this Agreement shall be five (5) years and shall commence based on start of construction of Lessee Facilities or one hundred eighty (180) days (the "Option Period") following the date of full execution hereof, whichever first occurs and terminating on the fifth anniversary of the Commencement Date (hereinafter defined) (the "Term") unless otherwise terminated as provided herein. Should Lessee elect to use the Option Period a fee of \$500.00 will apply. In the event the date of commencing installation of equipment is determinative and such date falls between the 1st and 15th of the month, the Agreement shall commence on the 1st of that month and if such date falls between the 16th and 31st of the month, then the Agreement shall commence on the 1st day of the following month. Lessor and Lessee agree that they shall acknowledge in writing the Commencement Date. Lessee shall have the right to renew this Agreement for five (5) successive five (5) year periods (the "Renewal Terms") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each Renewal Term unless Lessee notifies Lessor of its intention not to renew at least ninety (90) days prior to the expiration of the then current term.

5. Rent.

(a) Lessee shall pay to Lessor as rent FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00) per year ("Rent"); to be paid in annual installments commencing on the Commencement Date and continuing thereafter on the same day of each year. Rent shall be payable to Lessor at City of Allen, 305 Century Parkway, Allen, Texas 75013 Attn: City Manager. Notwithstanding the foregoing, Lessor and Lessee acknowledge and agree that initial annual payment(s) shall not actually be sent by Lessee until thirty (30) days after the Commencement Date or after a written acknowledgement confirming the Commencement Date, if such an acknowledgement is required. All of Lessee's monetary obligations set forth in this Agreement are conditioned upon Lessee's receipt of an accurate and executed W-9 Form or alternative State of Texas tax form from Lessor.

(b) Rent shall be increased on the first day of each anniversary (yearly) by an amount equal to three percent (3%) of the Rent in effect during the previous year.

(c) In the event of early termination of this Agreement, as provided herein, Lessor shall return to Lessee any unearned prepaid Rent.

6. Facilities; Utilities; Access.

(a) Lessee has the right to erect, maintain and operate on the Premises communications facilities, including utility lines, transmission lines, air conditioned equipment shelter(s), electronic equipment, radio transmitting and receiving antennas and supporting

Site Name: Custer WT
Site ID: TX-DAL6610

equipment and structures thereto ("Lessee Facilities") in the manner provided by this Agreement, and as depicted and shown in Exhibit D, attached hereto and incorporated herein for all purposes. Lessee shall have the right to replace, at Lessee's expense, the aforementioned equipment and structures with similar and comparable equipment provided said replacement does not increase tower loading of the Water Tower. In connection therewith, Lessee has the right to do all work necessary to prepare, maintain and alter the Premises for Lessee's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Title to the Lessee Facilities shall be held by Lessee. All of Lessee Facilities shall remain Lessee's personal property and are not fixtures. Lessee has the right to remove all Lessee Facilities at its sole expense on or before the expiration or earlier termination of the Agreement; provided Lessee repairs any damage to the Premises caused by such removal.

(b) Lessee shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee shall have the right to draw electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Property (including a standby power generator for Lessee's exclusive use). If permitted by the local utility company servicing the Premises, Lessee shall furnish and install an electrical sub-meter at the Premises for the measurement of electrical power used by Lessee's installation. Lessor agrees to sign such documents or easements as may be required by said utility companies to provide such service to the Premises, including the grant to Lessee or to the servicing utility company, of an easement in, over across or through the Land as may be reasonably required by such servicing utility company to provide utility services as provided herein.

(c) Lessee, Lessee's employees, agents, subcontractors, lenders and invitees shall have access to the Premises with prior notice to Lessor twenty-four (24) hours a day, seven (7) days a week, which notice will be verbal to the Stacy Road Pump Station at 972.727.0170. Due to enhanced security the personnel notified at the pump station will then dispatch a City of Allen employee that shall be present and remain on site while Lessee's personnel are present at the site. In the event of an emergency, Lessee shall only be required to give any notice which is reasonably possible. If Lessor is contacted by Lessee after normal business hours of the Lessor, the Lessee shall reimburse the Lessor for the reasonable cost of any Lessor personnel necessary for Lessee's access. Lessor grants to Lessee, and its agents, employees, contractors, guests and invitees, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across that portion of the Land described in Exhibit B.

(d) Lessor shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. Lessor shall be responsible for maintaining and repairing such roadway, at its sole expense, except for any damage caused by Lessee's use of such roadways.

Site Name: Custer WT
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(e) It is understood that periodic maintenance and repair of the Lessor's facilities on the Premises is necessary. The Lessee agrees that it will cooperate with Lessor in order to reasonably accommodate Lessor's performance of such maintenance and repairs. Lessor shall permit Lessee to install, without any additional rent, a temporary cell-on-wheels (COW) communications facility at the Property during the period of time in which Lessor is performing such maintenance or repair work in the event Lessee's Facilities will be powered-down or disrupted in any manner in connection with such work.

7. Interference. All operations by Lessee shall be in compliance with all Federal Communications Commission ("FCC") requirements including those prohibiting interference to communications facilities of Lessor or other lessees or licensees of the Property, provided that the installation and operation of any such facilities predate the installation of the Lessee Facilities. Lessee shall not cause harmful radio frequency interference which is measurable in accordance with then existing industry standards to the equipment of Lessor or of any other lessee in use at the Premises on the date of last execution of this Agreement. Should such interference occur between Lessee's equipment upon initial operation and another lessee's equipment, and after Lessor has provided written notice thereof to Lessee, Lessee will take all commercially reasonable steps necessary to correct such interference and, if such interference cannot be corrected within thirty (30) days of notice to Lessee of such interference, Lessee will cease its operations from the Premises or power-down the communications equipment at the Premises causing such interference (subject to intermittent testing) until such time as such interference can be corrected, or, at Lessee's option, this Agreement shall be terminated. Lessor shall not allow the installation of new equipment on the Property or property contiguous thereto owned or controlled by Lessor if such equipment is likely to cause radio frequency interference with Lessee's operations. The Lessor will not grant a lease to any other party for the use of the Lessor's property without including in that lease a provision stating that the party's use will not in any way adversely affect or interfere with the Lessee's operation of its communication system. In the event such interference occurs, Lessor agrees to use best efforts to eliminate such interference in a reasonable time period. Lessor's failure to comply with this paragraph shall be a material breach of this Agreement.

8. Taxes. Lessee shall be responsible for and pay any taxes directly attributable to the Lessee Facilities or Lessee's use of the Property. Notwithstanding the foregoing, Lessee shall not have the obligation to pay any tax, assessment, or charge that Lessee is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property. Lessee shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which Lessee is wholly or partly responsible for payment. Lessor shall reasonably cooperate with Lessee at Lessee's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document.

9. Condition of Site. Lessee accepts the Premises as is, in its current condition, and the Lessor makes no representations or warranties, and hereby disclaims any and all such

Site Name: Custer WT
Site ID: TX-DAL6610

representations or warranties, express or implied, of any kind or nature, with regard to the facilities and the Premises, other than those representations and warranties set forth in this Agreement. The Lessor shall maintain the Premises in compliance with all applicable statutes, regulations and rules, and in a manner which will not interfere with Lessee's reasonable use of the site. Lessee may remove the Lessee Facilities at any time prior to the termination of this Agreement provided Lessee repairs any damage to the Premises caused thereby. Upon expiration or termination for any reason of the Agreement, Lessee shall, within thirty (30) days thereof, remove Lessee Facilities and any other property (other than any fixtures) from the Premises and shall restore the Premises to the condition in which it existed upon execution of this Agreement, ordinary wear and tear excepted. Should Lessee fail to so remove the Lessee Facilities, Lessor may, upon thirty days' notice by Lessor to Lessee, remove and store the Lessee Facilities at Lessee's expense. Should Lessee fail to restore the Premises to its original condition, ordinary wear and tear excepted, then Lessor may do so at Lessee's expense. In the event that Lessee fails effect such timely removal, and provided at least sixty (60) days have elapsed since the original written notice to Lessee, the Lessee Facilities shall be deemed abandoned and Lessor may remove and dispose of the Lessee Facilities at Lessee's expense.

10. Termination/Default/Remedies.

(a) This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is fifteen (15) days from receipt of notice (in each case, a "Default"); (ii) by Lessee for any reason or for no reason, provided Lessee delivers written notice of early termination to Lessor no later than thirty (30) days prior to the Commencement Date; (iii) by Lessee if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of Lessee Facilities; (iv) by Lessee if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; (v) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference; (vi) by Lessor if the City Council shall make a legislative determination and finding by written resolution that the use of the Premises is urgently needed for the protection of the public interest and votes to terminate the Agreement by giving Lessee ninety (90) days written notice; (vii) by Lessee if Lessee determines that any license, permit or other approval necessary for the construction and operation of Lessee Facilities may not be obtained in a timely manner; or (viii) by Lessee if Lessee determines that any soil boring tests or structural analysis is unsatisfactory. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder.

(b) Notwithstanding the foregoing to the contrary, it shall be a Default under this Agreement if Lessor fails, within fifteen (15) days after receipt of written notice of such failure, to perform an obligation required to be performed by Lessor if the failure to perform such an obligation interferes with Lessee's ability to conduct its business at the Premises; provided, however, that if the nature of Lessor's obligation is such that more than fifteen (15) days after

Site Name: Custer WT
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such notice is reasonably required for its performance, then it shall not be a Default if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

11. Destruction or Condemnation. If the Premises or Lessee Facilities are damaged or destroyed by fire or casualty, or condemned or transferred in lieu of condemnation, Lessee may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Lessor no more than forty-five (45) days following the date of such damage or destruction by fire or other casualty, or condemnation or transfer in lieu of condemnation. If all or any part of the Property is damaged or destroyed by fire or casualty, or condemned or transferred in lieu of condemnation and such damage, destruction, condemnation or transfer may reasonably be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, then Lessee may elect to terminate this Agreement as of the date of such damage, destruction, condemnation or transfer by giving notice to Lessor no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If all of the Property is condemned or transferred in lieu of condemnation, Lessor may elect to terminate this Agreement as of the date of such condemnation or transfer in lieu of condemnation by giving notice to Lessee no more than forty-five (45) days following the date of such condemnation or transfer in lieu of condemnation.

12. Insurance. Lessee, at Lessee's sole cost and expense, shall procure and maintain on the Premises and on the Lessee Facilities, bodily injury and property damage insurance with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Lessee, its employees and agents arising out of or in connection with Lessee's use of the Premises, all as provided for herein. Lessor shall be named as an additional insured on Lessee's policy. Lessee shall provide to the Lessor a certificate of insurance evidencing the coverage within thirty (30) days of the Commencement Date.

13. Assignment and Subletting. This Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of the Lessor to the Lessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the Lessor, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder. Lessee may not sublet to or license others to use the Premises without the prior written consent of the Lessor.

14. Warranty of Title and Quiet Enjoyment. Lessor warrants that: (i) Lessor owns the Property in fee simple and has rights of access thereto and the Property is free and clear of all liens, encumbrances and restrictions; (ii) Lessor has full right to make and perform this Agreement; and (iii) Lessor covenants and agrees with Lessee that upon Lessee paying the Rent

Site Name: Custer WT
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and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises.

15. Repairs. Lessee shall not be required to make any repairs to the Premises or Property unless such repairs shall be necessitated by reason of the default or neglect of Lessee. Except as set forth in Paragraph 6(a) above, upon expiration or termination hereof, Lessee shall restore the Premises to the condition in which it existed upon execution hereof, reasonable wear and tear and loss by casualty or other causes beyond Lessee's control excepted.

16. Hazardous Substances. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Substance on, under, about or within the Land in violation of any law or regulation. Lessor represents, warrants and agrees (1) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Substance on, under, about or within the Property or the Premises in violation of any law or regulation, and (2) that Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Substance on, under, about or within the Property or the Premises in violation of any law or regulation. Lessor and Lessee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Substance" shall mean petroleum or any petroleum product, asbestos, any substance known to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Agreement.

17. Liability and Indemnity.

(a) Lessee shall at all times comply with all laws and ordinances and all rules and regulations of municipal, state and federal government authorities relating to the installation, maintenance, height, location, use, operation, and removal of the equipment, antenna systems, and other alterations or improvements authorized herein, and shall fully indemnify the Lessor against any loss, damage, cost, or expense which may be sustained or incurred by the Lessor as a result of Lessee's installation, operation, or removal of said improvements, except where caused in whole or in part by the acts or omissions of the Lessor, its agents, servants or employees.

(b) Lessee agrees and is bound to indemnify, defend, and hold the Lessor whole and harmless against any and all claims for any loss or damages that may arise out of the use, maintenance, and occupancy of Lessee's Facilities and use of the Premises by Lessee, except where caused in whole or in part by the negligence or willful misconduct of the Lessor, its agents, servants, or employees.

18. Water Tower Marking and Lighting Requirements. Lessor acknowledges that it, and not Lessee, shall be responsible for compliance with all Water Tower marking and lighting

Site Name: Custer WT
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requirements of the Federal Aviation Administration ("FAA") and the FCC. Lessor shall indemnify and hold Lessee harmless from any fines or other liabilities caused by Lessor's failure to comply with such requirements. Should Lessee be cited by either the FCC or FAA because the Water Tower is not in compliance and should Lessor fail to cure the conditions of noncompliance within the time frame allowed by the citing agency, Lessee may either terminate this Agreement immediately on notice to Lessor or proceed to cure the conditions of noncompliance at Lessor's expense, together with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable laws, which amounts may be deducted from the Rent.

19. Miscellaneous.

(a) This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties.

(b) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(c) This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(d) Any notice or demand required to be given herein shall be deemed validly given if sent by certified or registered mail, return receipt requested, or reliable overnight courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, to the address of the respective parties set forth below:

If to Lessee, to:	With a copy to:	If to Landlord, to:	With a copy to:
Clear Wireless, LLC Attn: Site Leasing 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900 Email: Siteleasing@clearwire.com	Clear Wireless, LLC Attention: Legal Department 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900	City of Allen 305 Century Parkway Allen, TX 75013 Attn: City Manager Telephone: 214-509-4502	Nichols, Jackson, Dillard, Hager & Smith, LLP Attn: Peter G. Smith 1800 Lincoln Plaza 500 North Akard Street Dallas, Texas 75201 214-965-9900

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Site ID: TX-DAL6610

Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

(e) This Agreement shall be governed by the laws of the State of Texas; and venue for any action shall be in State District Court of Collin County, Texas.

(f) Lessor acknowledges that a Memorandum of Agreement in the form annexed hereto as Exhibit C will be recorded by Lessee in the official records of the County where the Property is located.

(g) Lessee may obtain title insurance on its interest in the Premises. Lessor shall cooperate by executing documentation required by the title insurance company.

(h) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

(i) All Exhibits annexed hereto form material parts of this Agreement.

(j) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

(k) The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

20. Waiver of Lessor's Lien. Lessor waives any lien rights it may have concerning the Lessee Facilities which are deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time without Lessor's consent.

21. Rights Upon Sale. Should Lessor, at any time during the Term decide (i) to sell or transfer all or any part of the Property or the Water Tower thereon to a purchaser other than Lessee, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Tower and or Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize Lessee's rights hereunder under the terms of this Agreement. To the extent that Lessor grants to a third party by easement or other legal instrument an interest in and to that portion of the Tower and/or Property occupied by Lessee for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, Lessor shall not be

Site Name: Custer WT
Site ID: TX-DAL6610

released from its obligations to Lessee under this Agreement, and Lessee shall have the right to look to Lessor and the third party for the full performance of this Agreement.

22. Subordination and Non-Disturbance. At Lessor's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by Lessor which from time to time may encumber all or part of the Property, Water Tower or right-of-way; provided, however, as a condition precedent to Lessee being required to subordinate its interest in this Agreement to any future Mortgage covering the Tower or Property, Lessor shall obtain for Lessee's benefit a non-disturbance and attornment agreement for Lessee's benefit in the form reasonably satisfactory to Lessee, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize Lessee's right to remain in occupancy of and have access to the Premises as long as Lessee is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Tower or Property, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of the Agreement, (2) fulfill Lessor's obligations under the Agreement, and (3) promptly cure all of the then-existing Lessor defaults under the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, Lessee will execute an agreement for Lender's benefit in which Lessee (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Tower or Property and (3) agrees accept a cure by Lender of any of Lessor's defaults, provided such cure is completed within the deadline applicable to Lessor. In the event Lessor defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, Lessee, may, at its sole option and without obligation, cure or correct Lessor's default and upon doing so, Lessee shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and Lessee shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by Lessee to cure or correct such defaults.

23. Survival. The provisions of the Agreement relating to indemnification from one party to the other party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

[SIGNATURE PAGE FOLLOWS]

Site Name: Custer WT
Site ID: TX-DAL6610

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:
CITY OF ALLEN, TEXAS, a municipal
corporation

By: _____

Name: Peter H. Vargas

Title: City Manager

Date: _____

LESSEE
Clear Wireless LLC, a Nevada limited liability
company

By: Mark Stiles

Name: Mark Stiles

Title: Director

Date: 5/24/08

STATE OF TEXAS)
) ss.
COUNTY OF COLLIN)


Dated: _____

[illegible]

Notary Public
Print Name _____
My commission expires _____

STATE OF TEXAS)
) ss.
COUNTY OF Dallas)

Dated: 5/25/09


 RENITA MOSBY
 Notary Public
 STATE OF TEXAS
 My Comm. Exp. Jul. 11, 2012

Notary Public
Print Name Reneita Mosby
My commission expires 7/1/12

Site Name: Custer WT
Site ID: TX-DAL6610

EXHIBIT A

DESCRIPTION OF LAND

The Land is described and/or depicted as follows (lot and block description):

APN: 2117621

A 100 square foot parcel in John Huffman Survey, Abstract 416, Collin County, Texas.

A more detailed metes and bounds description may be provided here by either party.

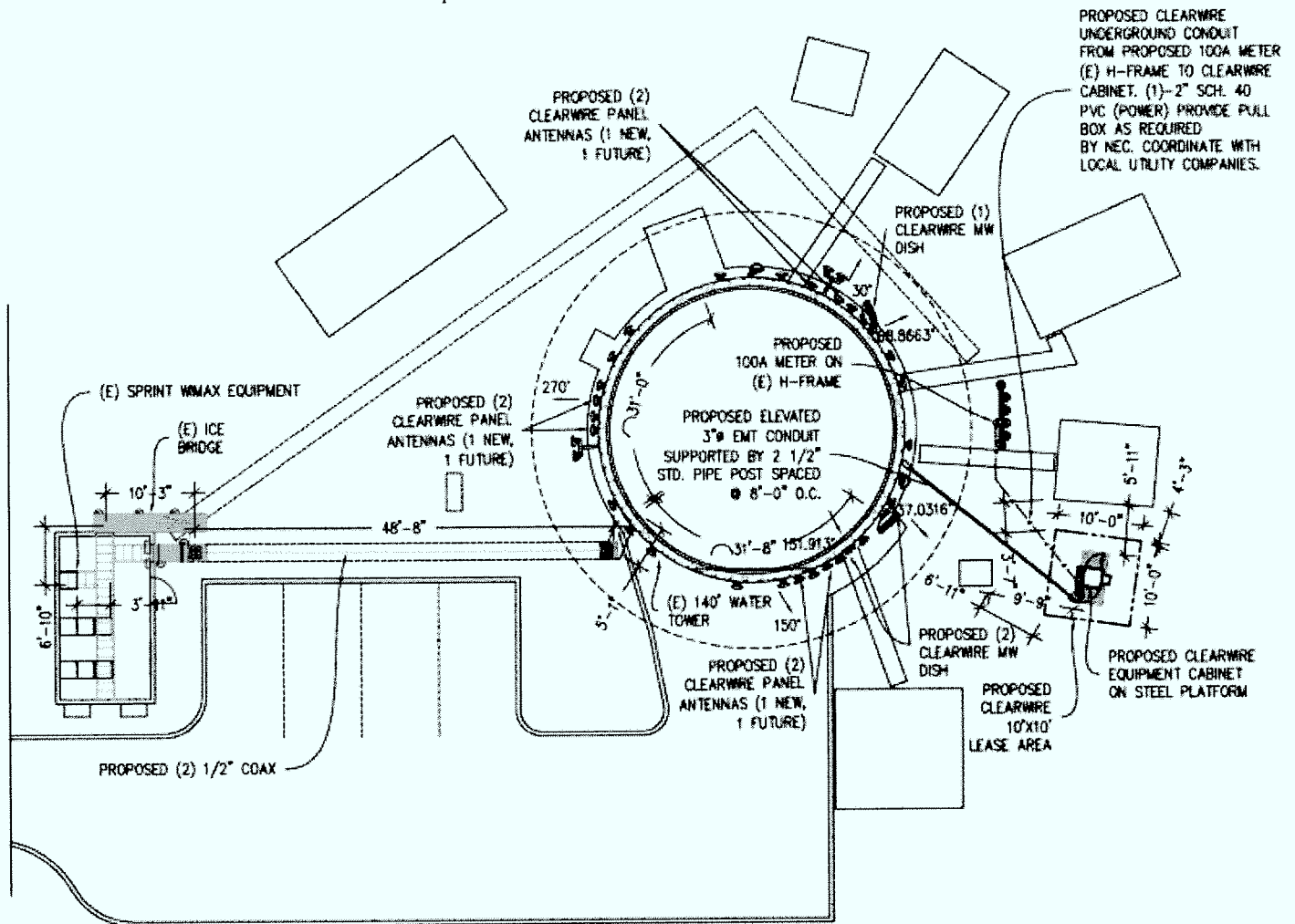
Site Name: Custer WT
Site ID: TX-DAL6610

EXHIBIT B

DESCRIPTION OF PREMISES

to the Agreement dated , 2009, by and between City of Allen, Texas, a municipal corporation, as Lessor, and Clear Wireless LLC, a Nevada limited liability company, as Lessee.

The Premises are described and/or depicted as follows:



Notes:

1. Lessee may replace this Exhibit with a survey of the Premises once Lessee receives it.
2. The Premises shall be setback from the Property's boundaries as required by the applicable governmental authorities.
3. The access road's width will be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number, mounting positions and locations of antennas and transmission lines are illustrative only. The actual types, numbers, mounting positions and locations may vary from what is shown above.
5. The locations of any utility easements are illustrative only. The actual locations will be determined by the servicing utility company in compliance with all local laws and regulations.

Site Name: Custer WT
Site ID: TX-DAL6610

EXHIBIT C

COMMUNICATIONS FACILITY

to the Agreement dated , 2009, by and between City of Allen, Texas, a municipal corporation, as Lessor, and Clear Wireless LLC, a Nevada limited liability company, as Lessee.

RECORDED AT REQUEST OF, AND WHEN RECORDED RETURN TO:

Clear Wireless, LLC
4400 Carillon Point
Kirkland, WA 98033
Attn: Site Leasing

MEMORANDUM OF AGREEMENT

APN: 2117621

This MEMORANDUM OF AGREEMENT is entered into on _____, 2009, by City of Allen, Texas, a municipal corporation, with an address at One Allen Civic Plaza, Allen, TX 75013 (hereinafter referred to as “**Owner**” or “**Landlord**”) and Clear Wireless LLC, a Nevada limited liability company, with an address at 4400 Carillon Point, Kirkland, WA 98033 (hereinafter referred to as “**Clear Wireless**” or “**Lessee**”).

1. Owner and Clear Wireless entered into a Communication Site Lease Agreement (“**Agreement**”) dated as of _____, 2009, effective upon full execution of the parties (“**Effective Date**”) for the purpose of Clear Wireless undertaking certain Investigations and Tests and, upon finding the Property appropriate, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The term of Clear Wireless’s tenancy under the Agreement is for five (5) years commencing on commercial operation of the Lessee Facilities or one hundred eighty days (180) following the Effective Date, whichever first occurs (“**Term Commencement Date**”), and terminating on the fifth anniversary of the Term Commencement Date with five (5) successive five (5) year options to renew.
3. The Land that is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Land being leased to Lessee and all necessary access and utility easements (the “**Premises**”) are set forth in the Agreement.

In witness whereof, the parties have executed this Memorandum of Agreement as of the day and year first written above.

LANDLORD:

City of Allen, Texas, a municipal corporation

By: EXHIBIT ONLY – DO NOT EXECUTE

Name: _____

Title: _____

Date: _____

LESSEE:

Clear Wireless LLC, a Nevada limited liability company

By: EXHIBIT ONLY – DO NOT EXECUTE

Name: _____

Title: _____

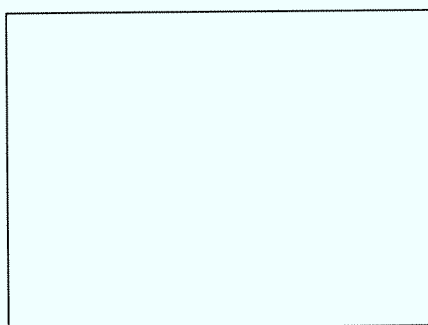
Date: _____

Site Name: Custer WT
Site ID: TX-DAL6610

LESSOR'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 200__ by Peter H. Vargas, City Manager of the City of Allen, Texas, a Texas municipality, on behalf of said municipality.



(Use this space for notary stamp/seal)

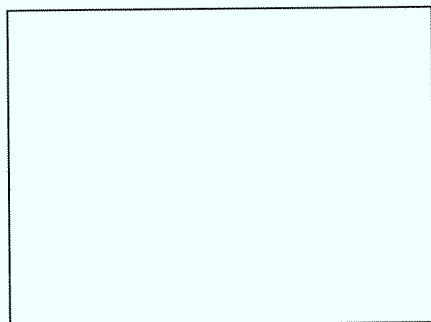
Notary Public
Print Name _____
My commission expires _____

LESSEE'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of Clear Wireless LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

Site Name: Custer WT
Site ID: TX-DAL6610

EXHIBIT A

DESCRIPTION OF LESSEE FACILITIES

DESCRIPTION OF LAND

to the Agreement dated , 2009, by and between City of Allen, Texas, a municipal corporation, as Landlord, and Clear Wireless LLC, a Nevada limited liability company, as Lessee.

The Land is described and/or depicted as follows (lot and block description):

APN: 2117621

A 100 square foot parcel in John Huffman Survey, Abstract 416, Collin County, Texas.

A more detailed metes and bounds description may be provided here by either party.

Site Name: Hillside WT
Site ID: TX-DAL5524

LEASE AGREEMENT (Hillside Water Tower)

THIS Lease Agreement ("Agreement") is entered into this ____ day of _____, 200__, between Clear Wireless LLC, a Nevada limited liability company ("Lessee"), and City of Allen, Texas, a municipal corporation, ("Lessor"), acting by and through their authorized representatives.

For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Premises.** Lessor is the owner of a parcel of land (the "Land") and a Water Tower (the "Water Tower") located in the City of Allen, County of Collin, State of Texas, commonly known as 900 Main, Allen, TX 75002, APN: 514214 (the Water Tower and Land are collectively, the "Property"). The Land is more particularly described in Exhibit "A" annexed hereto. Lessor hereby leases to Lessee and Lessee leases from Lessor, approximately one hundred (100) square feet of the Land and space for the addition of ten (10) antenna systems/microwave dishes, adjacent to and/or on the Water Tower and all access and utility easements, if any, (collectively, the "Premises") as described in Exhibit B annexed hereto.
2. **Use.** The Premises may be used by Lessee for any activity in connection with the provision of communications services, including without limitation, the transmission and the reception of radio communication signals and the construction, maintenance and operation of related communications facilities.. Lessor agrees to cooperate with Lessee, at Lessee's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.
3. **Tests and Construction / Due Diligence Period.** Beginning on the last date of execution of this Agreement by all parties and continuing until the Term Commencement Date as defined in Paragraph 4 below ("**Due Diligence Period**"), Clear Wireless shall only be permitted to enter the Property for the limited purpose of making appropriate engineering and boundary surveys, inspections, and other reasonably necessary investigations and signal, topographical, geotechnical, structural and environmental tests (collectively, "**Investigations and Tests**") that Clear Wireless may deem necessary or desirable to determine the physical condition, feasibility and suitability of the Premises. In the event that Clear Wireless determines, during the Due Diligence Period, that the Premises are not appropriate for Clear Wireless's intended use, or if for any other reason, or no reason, Clear Wireless decides not to commence its tenancy of the Premises, then Clear Wireless shall have the right to terminate this Agreement without penalty upon written notice to Owner at any time during the Due Diligence Period and prior to the Term Commencement Date. Owner and Clear Wireless expressly acknowledge and agree that Clear Wireless's access to the Property during this Due Diligence Period shall be solely for the limited purpose of performing the Investigations and Tests, and that Clear Wireless shall not be considered an owner or operator of any portion of the Property, and shall have no ownership or control of any portion of the Property (except as expressly provided in this Paragraph 3), prior to the Term Commencement Date. Lessee shall have the right at any time following the last date of

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execution of this Agreement by all parties to enter upon the Property for the purpose of constructing the Lessee Facilities (hereinafter defined). Upon Lessee's request, Lessor agrees to provide promptly to Lessee copies of all plans, specifications, surveys and Water Tower maps for the Land and Water Tower. The Water Tower map shall include the elevation of all antennas on the Water Tower and the frequencies upon which each operates.

4. Term. The term of this Agreement shall be five (5) years and shall commence based on start of construction of Lessee Facilities or one hundred eighty (180) days (the "Option Period") following the date of full execution hereof, whichever first occurs and terminating on the fifth anniversary of the Commencement Date (hereinafter defined) (the "Term") unless otherwise terminated as provided herein. Should Lessee elect to use the Option Period a fee of \$500.00 will apply. In the event the date of commencing installation of equipment is determinative and such date falls between the 1st and 15th of the month, the Agreement shall commence on the 1st of that month and if such date falls between the 16th and 31st of the month, then the Agreement shall commence on the 1st day of the following month. Lessor and Lessee agree that they shall acknowledge in writing the Commencement Date. Lessee shall have the right to renew this Agreement for five (5) successive five (5) year periods (the "Renewal Terms") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each Renewal Term unless Lessee notifies Lessor of its intention not to renew at least ninety (90) days prior to the expiration of the then current term.

5. Rent.

(a) Lessee shall pay to Lessor as rent FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00) per year ("Rent"); to be paid in annual installments commencing on the Commencement Date and continuing thereafter on the same day of each year. Rent shall be payable to Lessor at City of Allen, 305 Century Parkway, Allen, Texas 75013 Attn: City Manager. Notwithstanding the foregoing, Lessor and Lessee acknowledge and agree that initial annual payment(s) shall not actually be sent by Lessee until thirty (30) days after the Commencement Date or after a written acknowledgement confirming the Commencement Date, if such an acknowledgement is required. All of Lessee's monetary obligations set forth in this Agreement are conditioned upon Lessee's receipt of an accurate and executed W-9 Form or alternative State of Texas tax form from Lessor.

(b) Rent shall be increased on the first day of each anniversary (yearly) by an amount equal to three percent (3%) of the Rent in effect during the previous year.

(c) In the event of early termination of this Agreement, as provided herein, Lessor shall return to Lessee any unearned prepaid Rent.

6. Facilities; Utilities; Access.

(a) Lessee has the right to erect, maintain and operate on the Premises communications facilities, including utility lines, transmission lines, air conditioned equipment shelter(s), electronic equipment, radio transmitting and receiving antennas and supporting

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equipment and structures thereto ("Lessee Facilities") in the manner provided by this Agreement, and as depicted and shown in Exhibit D, attached hereto and incorporated herein for all purposes. Lessee shall have the right to replace, at Lessee's expense, the aforementioned equipment and structures with similar and comparable equipment provided said replacement does not increase tower loading of the Water Tower. In connection therewith, Lessee has the right to do all work necessary to prepare, maintain and alter the Premises for Lessee's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Title to the Lessee Facilities shall be held by Lessee. All of Lessee Facilities shall remain Lessee's personal property and are not fixtures. Lessee has the right to remove all Lessee Facilities at its sole expense on or before the expiration or earlier termination of the Agreement; provided Lessee repairs any damage to the Premises caused by such removal.

(b) Lessee shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee shall have the right to draw electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Property (including a standby power generator for Lessee's exclusive use). If permitted by the local utility company servicing the Premises, Lessee shall furnish and install an electrical sub-meter at the Premises for the measurement of electrical power used by Lessee's installation. Lessor agrees to sign such documents or easements as may be required by said utility companies to provide such service to the Premises, including the grant to Lessee or to the servicing utility company, of an easement in, over across or through the Land as may be reasonably required by such servicing utility company to provide utility services as provided herein.

(c) Lessee, Lessee's employees, agents, subcontractors, lenders and invitees shall have access to the Premises with prior notice to Lessor twenty-four (24) hours a day, seven (7) days a week, which notice will be verbal to the Stacy Road Pump Station at 972.727.0170. Due to enhanced security the personnel notified at the pump station will then dispatch a City of Allen employee that shall be present and remain on site while Lessee's personnel are present at the site. In the event of an emergency, Lessee shall only be required to give any notice which is reasonably possible. If Lessor is contacted by Lessee after normal business hours of the Lessor, the Lessee shall reimburse the Lessor for the reasonable cost of any Lessor personnel necessary for Lessee's access. Lessor grants to Lessee, and its agents, employees, contractors, guests and invitees, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across that portion of the Land described in Exhibit B.

(d) Lessor shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. Lessor shall be responsible for maintaining and repairing such roadway, at its sole expense, except for any damage caused by Lessee's use of such roadways.

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(e) It is understood that periodic maintenance and repair of the Lessor's facilities on the Premises is necessary. The Lessee agrees that it will cooperate with Lessor in order to reasonably accommodate Lessor's performance of such maintenance and repairs. Lessor shall permit Lessee to install, without any additional rent, a temporary cell-on-wheels (COW) communications facility at the Property during the period of time in which Lessor is performing such maintenance or repair work in the event Lessee's Facilities will be powered-down or disrupted in any manner in connection with such work.

7. **Interference.** All operations by Lessee shall be in compliance with all Federal Communications Commission ("FCC") requirements including those prohibiting interference to communications facilities of Lessor or other lessees or licensees of the Property, provided that the installation and operation of any such facilities predate the installation of the Lessee Facilities. Lessee shall not cause harmful radio frequency interference which is measurable in accordance with then existing industry standards to the equipment of Lessor or of any other lessee in use at the Premises on the date of last execution of this Agreement. Should such interference occur between Lessee's equipment upon initial operation and another lessee's equipment, and after Lessor has provided written notice thereof to Lessee, Lessee will take all commercially reasonable steps necessary to correct such interference and, if such interference cannot be corrected within thirty (30) days of notice to Lessee of such interference, Lessee will cease its operations from the Premises or power-down the communications equipment at the Premises causing such interference (subject to intermittent testing) until such time as such interference can be corrected, or, at Lessee's option, this Agreement shall be terminated. Lessor shall not allow the installation of new equipment on the Property or property contiguous thereto owned or controlled by Lessor if such equipment is likely to cause radio frequency interference with Lessee's operations. The Lessor will not grant a lease to any other party for the use of the Lessor's property without including in that lease a provision stating that the party's use will not in any way adversely affect or interfere with the Lessee's operation of its communication system. In the event such interference occurs, Lessor agrees to use best efforts to eliminate such interference in a reasonable time period. Lessor's failure to comply with this paragraph shall be a material breach of this Agreement.

8. **Taxes.** Lessee shall be responsible for and pay any taxes directly attributable to the Lessee Facilities or Lessee's use of the Property. Notwithstanding the foregoing, Lessee shall not have the obligation to pay any tax, assessment, or charge that Lessee is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property. Lessee shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which Lessee is wholly or partly responsible for payment. Lessor shall reasonably cooperate with Lessee at Lessee's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document.

9. **Condition of Site.** Lessee accepts the Premises as is, in its current condition, and the Lessor makes no representations or warranties, and hereby disclaims any and all such

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representations or warranties, express or implied, of any kind or nature, with regard to the facilities and the Premises, other than those representations and warranties set forth in this Agreement. The Lessor shall maintain the Premises in compliance with all applicable statutes, regulations and rules, and in a manner which will not interfere with Lessee's reasonable use of the site. Lessee may remove the Lessee Facilities at any time prior to the termination of this Agreement provided Lessee repairs any damage to the Premises caused thereby. Upon expiration or termination for any reason of the Agreement, Lessee shall, within thirty (30) days thereof, remove Lessee Facilities and any other property (other than any fixtures) from the Premises and shall restore the Premises to the condition in which it existed upon execution of this Agreement, ordinary wear and tear excepted. Should Lessee fail to so remove the Lessee Facilities, Lessor may, upon thirty days' notice by Lessor to Lessee, remove and store the Lessee Facilities at Lessee's expense. Should Lessee fail to restore the Premises to its original condition, ordinary wear and tear excepted, then Lessor may do so at Lessee's expense. In the event that Lessee fails effect such timely removal, and provided at least sixty (60) days have elapsed since the original written notice to Lessee, the Lessee Facilities shall be deemed abandoned and Lessor may remove and dispose of the Lessee Facilities at Lessee's expense.

10. Termination/Default/Remedies.

(a) This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is fifteen (15) days from receipt of notice (in each case, a "Default"); (ii) by Lessee for any reason or for no reason, provided Lessee delivers written notice of early termination to Lessor no later than thirty (30) days prior to the Commencement Date; (iii) by Lessee if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of Lessee Facilities; (iv) by Lessee if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; (v) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference; (vi) by Lessor if the City Council shall make a legislative determination and finding by written resolution that the use of the Premises is urgently needed for the protection of the public interest and votes to terminate the Agreement by giving Lessee ninety (90) days written notice; (vii) by Lessee if Lessee determines that any license, permit or other approval necessary for the construction and operation of Lessee Facilities may not be obtained in a timely manner; or (viii) by Lessee if Lessee determines that any soil boring tests or structural analysis is unsatisfactory. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder.

(b) Notwithstanding the foregoing to the contrary, it shall be a Default under this Agreement if Lessor fails, within fifteen (15) days after receipt of written notice of such failure, to perform an obligation required to be performed by Lessor if the failure to perform such an obligation interferes with Lessee's ability to conduct its business at the Premises; provided, however, that if the nature of Lessor's obligation is such that more than fifteen (15) days after

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such notice is reasonably required for its performance, then it shall not be a Default if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

11. Destruction or Condemnation. If the Premises or Lessee Facilities are damaged or destroyed by fire or casualty, or condemned or transferred in lieu of condemnation, Lessee may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Lessor no more than forty-five (45) days following the date of such damage or destruction by fire or other casualty, or condemnation or transfer in lieu of condemnation. If all or any part of the Property is damaged or destroyed by fire or casualty, or condemned or transferred in lieu of condemnation and such damage, destruction, condemnation or transfer may reasonably be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, then Lessee may elect to terminate this Agreement as of the date of such damage, destruction, condemnation or transfer by giving notice to Lessor no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If all of the Property is condemned or transferred in lieu of condemnation, Lessor may elect to terminate this Agreement as of the date of such condemnation or transfer in lieu of condemnation by giving notice to Lessee no more than forty-five (45) days following the date of such condemnation or transfer in lieu of condemnation.

12. Insurance. Lessee, at Lessee's sole cost and expense, shall procure and maintain on the Premises and on the Lessee Facilities, bodily injury and property damage insurance with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Lessee, its employees and agents arising out of or in connection with Lessee's use of the Premises, all as provided for herein. Lessor shall be named as an additional insured on Lessee's policy. Lessee shall provide to the Lessor a certificate of insurance evidencing the coverage within thirty (30) days of the Commencement Date.

13. Assignment and Subletting. This Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of the Lessor to the Lessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the Lessor, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder. Lessee may not sublet to or license others to use the Premises without the prior written consent of the Lessor.

14. Warranty of Title and Quiet Enjoyment. Lessor warrants that: (i) Lessor owns the Property in fee simple and has rights of access thereto and the Property is free and clear of all liens, encumbrances and restrictions; (ii) Lessor has full right to make and perform this Agreement; and (iii) Lessor covenants and agrees with Lessee that upon Lessee paying the Rent

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and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises.

15. Repairs. Lessee shall not be required to make any repairs to the Premises or Property unless such repairs shall be necessitated by reason of the default or neglect of Lessee. Except as set forth in Paragraph 6(a) above, upon expiration or termination hereof, Lessee shall restore the Premises to the condition in which it existed upon execution hereof, reasonable wear and tear and loss by casualty or other causes beyond Lessee's control excepted.

16. Hazardous Substances. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Substance on, under, about or within the Land in violation of any law or regulation. Lessor represents, warrants and agrees (1) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Substance on, under, about or within the Property or the Premises in violation of any law or regulation, and (2) that Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Substance on, under, about or within the Property or the Premises in violation of any law or regulation. Lessor and Lessee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Substance" shall mean petroleum or any petroleum product, asbestos, any substance known to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Agreement.

17. Liability and Indemnity.

(a) Lessee shall at all times comply with all laws and ordinances and all rules and regulations of municipal, state and federal government authorities relating to the installation, maintenance, height, location, use, operation, and removal of the equipment, antenna systems, and other alterations or improvements authorized herein, and shall fully indemnify the Lessor against any loss, damage, cost, or expense which may be sustained or incurred by the Lessor as a result of Lessee's installation, operation, or removal of said improvements, except where caused in whole or in part by the acts or omissions of the Lessor, its agents, servants or employees.

(b) Lessee agrees and is bound to indemnify, defend, and hold the Lessor whole and harmless against any and all claims for any loss or damages that may arise out of the use, maintenance, and occupancy of Lessee's Facilities and use of the Premises by Lessee, except where caused in whole or in part by the negligence or willful misconduct of the Lessor, its agents, servants, or employees.

18. Water Tower Marking and Lighting Requirements. Lessor acknowledges that it, and not Lessee, shall be responsible for compliance with all Water Tower marking and lighting

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requirements of the Federal Aviation Administration (“FAA”) and the FCC. Lessor shall indemnify and hold Lessee harmless from any fines or other liabilities caused by Lessor’s failure to comply with such requirements. Should Lessee be cited by either the FCC or FAA because the Water Tower is not in compliance and should Lessor fail to cure the conditions of noncompliance within the time frame allowed by the citing agency, Lessee may either terminate this Agreement immediately on notice to Lessor or proceed to cure the conditions of noncompliance at Lessor’s expense, together with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable laws, which amounts may be deducted from the Rent.

19. Miscellaneous.

(a) This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties.

(b) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(c) This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(d) Any notice or demand required to be given herein shall be deemed validly given if sent by certified or registered mail, return receipt requested, or reliable overnight courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, to the address of the respective parties set forth below:

If to Lessee, to:	With a copy to:	If to Landlord, to:	With a copy to:
Clear Wireless, LLC Attn: Site Leasing 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900 Email: Siteleasing@clearwire.com	Clear Wireless, LLC Attention: Legal Department 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900	City of Allen 305 Century Parkway Allen, TX 75013 Attn: City Manager Telephone: 214-509-4502	Nichols, Jackson, Dillard, Hager & Smith, LLP Attn: Peter G. Smith 1800 Lincoln Plaza 500 North Akard Street Dallas, Texas 75201 214-965-9900

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Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

(e) This Agreement shall be governed by the laws of the State of Texas; and venue for any action shall be in State District Court of Collin County, Texas.

(f) Lessor acknowledges that a Memorandum of Agreement in the form annexed hereto as Exhibit C will be recorded by Lessee in the official records of the County where the Property is located.

(g) Lessee may obtain title insurance on its interest in the Premises. Lessor shall cooperate by executing documentation required by the title insurance company.

(h) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

(i) All Exhibits annexed hereto form material parts of this Agreement.

(j) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

(k) The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

20. Waiver of Lessor's Lien. Lessor waives any lien rights it may have concerning the Lessee Facilities which are deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time without Lessor's consent.

21. Rights Upon Sale. Should Lessor, at any time during the Term decide (i) to sell or transfer all or any part of the Property or the Water Tower thereon to a purchaser other than Lessee, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Tower and or Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize Lessee's rights hereunder under the terms of this Agreement. To the extent that Lessor grants to a third party by easement or other legal instrument an interest in and to that portion of the Tower and/or Property occupied by Lessee for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, Lessor shall not be

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released from its obligations to Lessee under this Agreement, and Lessee shall have the right to look to Lessor and the third party for the full performance of this Agreement.

22. Subordination and Non-Disturbance. At Lessor's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by Lessor which from time to time may encumber all or part of the Property, Water Tower or right-of-way; provided, however, as a condition precedent to Lessee being required to subordinate its interest in this Agreement to any future Mortgage covering the Tower or Property, Lessor shall obtain for Lessee's benefit a non-disturbance and attornment agreement for Lessee's benefit in the form reasonably satisfactory to Lessee, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize Lessee's right to remain in occupancy of and have access to the Premises as long as Lessee is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Tower or Property, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of the Agreement, (2) fulfill Lessor's obligations under the Agreement, and (3) promptly cure all of the then-existing Lessor defaults under the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, Lessee will execute an agreement for Lender's benefit in which Lessee (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Tower or Property and (3) agrees accept a cure by Lender of any of Lessor's defaults, provided such cure is completed within the deadline applicable to Lessor. In the event Lessor defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, Lessee, may, at its sole option and without obligation, cure or correct Lessor's default and upon doing so, Lessee shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and Lessee shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by Lessee to cure or correct such defaults.

23. Survival. The provisions of the Agreement relating to indemnification from one party to the other party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:
CITY OF ALLEN, TEXAS, a municipal
corporation

LESSEE
Clear Wireless LLC, a Nevada limited liability
company

By: _____

By: _____ *Mark Styles*

Name: Peter H. Vargas

Name: MARK Styles

Title: City Manager

Title: Director

Date: _____

Date: 5/29/09

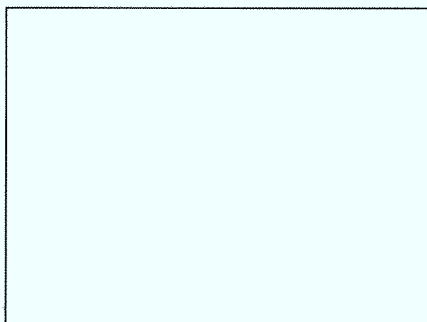
Site Name: Hillside WT
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[Notary block for a Corporation]

STATE OF TEXAS)
) ss.
COUNTY OF COLLIN)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of City of Allen, Texas, a Municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

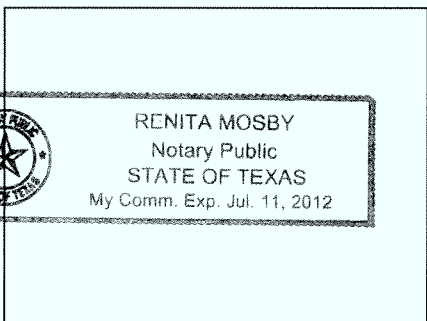
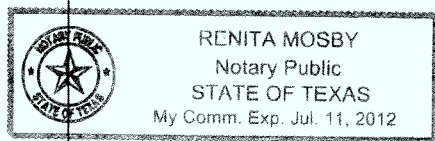
Notary Public
Print Name _____
My commission expires _____

[Notary block for Lessee]

STATE OF Texas)
) ss.
COUNTY OF Dallas)

I certify that I know or have satisfactory evidence that Mark Stiles is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director of Clear Wireless LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5/29/09



(Use this space for notary stamp/seal)

R

Notary Public
Print Name Renita Mosby
My commission expires 7/11/12

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EXHIBIT A

DESCRIPTION OF LAND

The Land is described and/or depicted as follows (lot and block description):

APN: 514214

A 100 square foot parcel in Track 5, Abstract A0977 Wetsel David an addition to the City of Allen, Collin County, Texas.

A more detailed metes and bounds description may be provided here by either party.

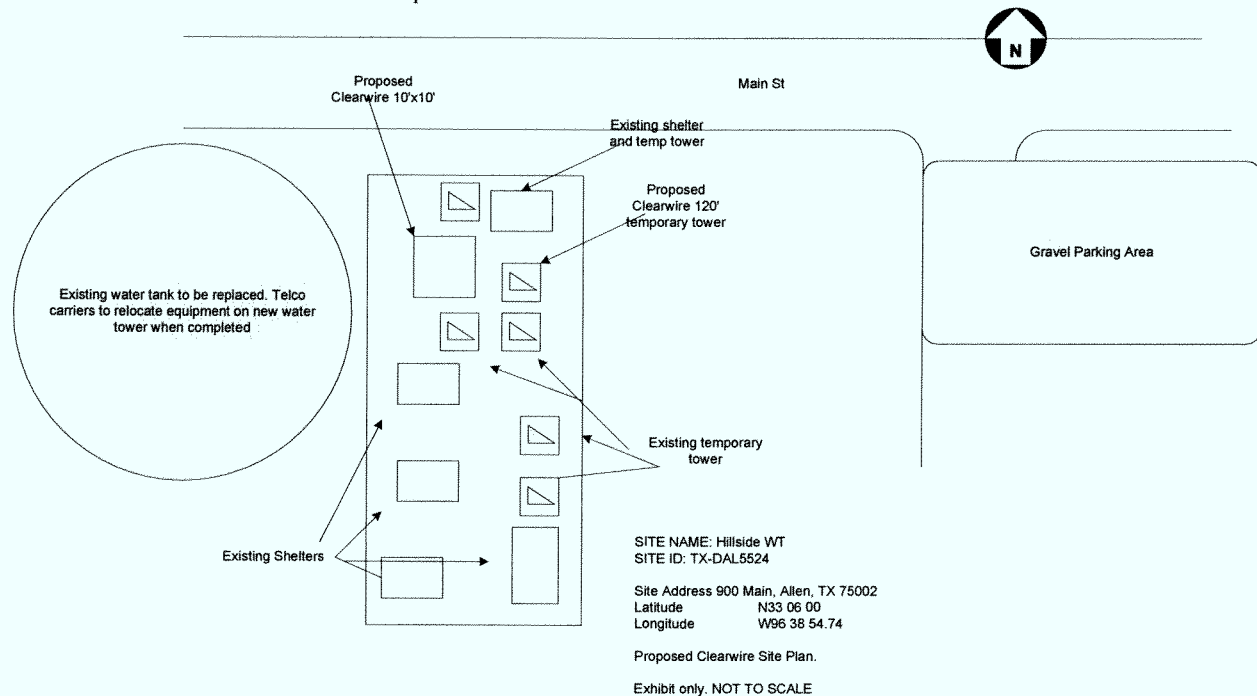
Site Name: Hillside WT
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EXHIBIT B

DESCRIPTION OF PREMISES

to the Agreement dated , 2009, by and between City of Allen, a municipal corporation, as Lessor, and Clear Wireless LLC, a Nevada limited liability company, as Lessee.

The Premises are described and/or depicted as follows:



Notes:

1. Lessee may replace this Exhibit with a survey of the Premises once Lessee receives it.
2. The Premises shall be setback from the Property's boundaries as required by the applicable governmental authorities.
3. The access road's width will be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number, mounting positions and locations of antennas and transmission lines are illustrative only. The actual types, numbers, mounting positions and locations may vary from what is shown above.
5. The locations of any utility easements are illustrative only. The actual locations will be determined by the servicing utility company in compliance with all local laws and regulations.

Site Name: Hillside WT
Site ID: TX-DAL5524

EXHIBIT C

COMMUNICATIONS FACILITY

to the Agreement dated , 2009, by and between City of Allen, a municipal corporation, as Lessor, and Clear Wireless LLC, a Nevada limited liability company, as Lessee.

RECORDED AT REQUEST OF, AND WHEN RECORDED RETURN TO:

Clear Wirelss, LLC
4400 Carillon Point
Kirkland, WA 98033
Attn: Site Leasing

MEMORANDUM OF AGREEMENT APN: 514214

This MEMORANDUM OF AGREEMENT is entered into on _____, 2009, by City of Allen, Texas, a municipal corporation, with an address at One Allen Civic Plaza, Allen, TX 75013 (hereinafter referred to as "**Owner**" or "**Landlord**") and Clear Wireless LLC, a Nevada limited liability company, with an address at 4400 Carillon Point, Kirkland, WA 98033 (hereinafter referred to as "**Clear Wireless**" or "**Lessee**").

1. Owner and Clear Wireless entered into a Communication Site Lease Agreement ("**Agreement**") dated as of _____, 2009, effective upon full execution of the parties ("**Effective Date**") for the purpose of Clear Wireless undertaking certain Investigations and Tests and, upon finding the Property appropriate, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The term of Clear Wireless's tenancy under the Agreement is for five (5) years commencing on commercial operation of the Lessee Facilities or one hundred eighty days (180) following the Effective Date, whichever first occurs ("**Term Commencement Date**"), and terminating on the fifth anniversary of the Term Commencement Date with five(5) successive five (5) year options to renew.
3. The Land that is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Land being leased to Lessee and all necessary access and utility easements (the "**Premises**") are set forth in the Agreement.

In witness whereof, the parties have executed this Memorandum of Agreement as of the day and year first written above.

LANDLORD:

City of Allen, a municipal corporation

By: EXHIBIT ONLY – DO NOT EXECUTE

Name: _____

Title: _____

Date: _____

LESSEE:

Clear Wireless LLC, a Nevada limited liability company

By: EXHIBIT ONLY – DO NOT EXECUTE

Name: _____

Title: _____

Date: _____

Site Name: Hillside WT
Site ID: TX-DAL5524

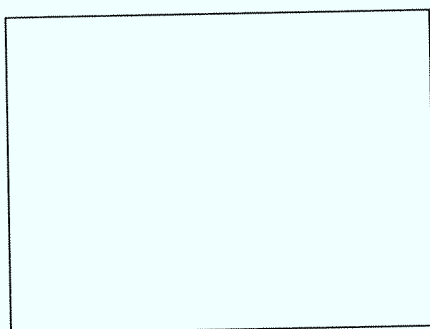
LESSOR'S ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2009 by Peter H. Vargas, City Manager of the City of Allen, Texas, a municipal corporation, on behalf of said municipality.



(Use this space for notary stamp/seal)

Notary Public

Print Name _____

My commission expires _____

LESSEE'S ACKNOWLEDGMENT

STATE OF TEXAS)

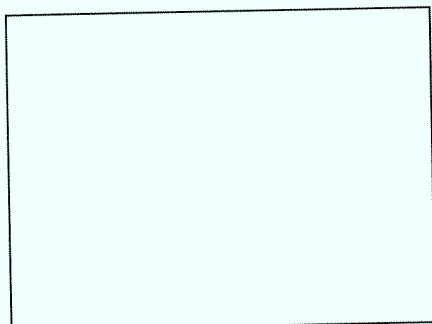
)

) ss.

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of Clear Wireless LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

Notary Public

Print Name _____

My commission expires _____

Site Name: Hillside WT
Site ID: TX-DAL5524

EXHIBIT A

DESCRIPTION OF LESSEE FACILITIES

DESCRIPTION OF LAND

to the Agreement dated , 2009, by and between City of Allen, Texas, a municipal corporation, as Landlord, and Clear Wireless LLC, a Nevada limited liability company, as Lessee.

The Land is described and/or depicted as follows (lot and block description):

APN: 514214

A 100 square foot parcel in Track 5, Abstract A0977 Wetsel David an addition to the City of Allen, Collin County, Texas.

A more detailed metes and bounds description may be provided here by either party.

Site Name: Raintree WT
Site ID: TX-DAL6124

LEASE AGREEMENT (Rowlett Water Tower)

THIS Lease Agreement ("Agreement") is entered into this _____ day of _____, 200__, between Clear Wireless LLC, a Nevada limited liability company ("Lessee"), and City of Allen, Texas, a municipal corporation, ("Lessor"), acting by and through their authorized representatives.

For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Premises.** Lessor is the owner of a parcel of land (the "Land") and a Water Tower (the "Water Tower") located in the City of Allen, County of Collin, State of Texas, commonly known as 250 Raintree Circle, Allen, TX 75013, APN: 2647315 (the Water Tower and Land are collectively, the "Property"). The Land is more particularly described in Exhibit "A" annexed hereto. Lessor hereby leases to Lessee and Lessee leases from Lessor, approximately one hundred (100) square feet of the Land and space for the addition of ten (10) antenna systems/microwave dishes, adjacent to and/or on the Water Tower and all access and utility easements, if any, (collectively, the "Premises") as described in Exhibit B annexed hereto.
2. **Use.** The Premises may be used by Lessee for any activity in connection with the provision of communications services, including without limitation, the transmission and the reception of radio communication signals and the construction, maintenance and operation of related communications facilities.. Lessor agrees to cooperate with Lessee, at Lessee's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.
3. **Tests and Construction / Due Diligence Period.** Beginning on the last date of execution of this Agreement by all parties and continuing until the Term Commencement Date as defined in Paragraph 4 below ("**Due Diligence Period**"), Clear Wireless shall only be permitted to enter the Property for the limited purpose of making appropriate engineering and boundary surveys, inspections, and other reasonably necessary investigations and signal, topographical, geotechnical, structural and environmental tests (collectively, "**Investigations and Tests**") that Clear Wireless may deem necessary or desirable to determine the physical condition, feasibility and suitability of the Premises. In the event that Clear Wireless determines, during the Due Diligence Period, that the Premises are not appropriate for Clear Wireless's intended use, or if for any other reason, or no reason, Clear Wireless decides not to commence its tenancy of the Premises, then Clear Wireless shall have the right to terminate this Agreement without penalty upon written notice to Owner at any time during the Due Diligence Period and prior to the Term Commencement Date. Owner and Clear Wireless expressly acknowledge and agree that Clear Wireless's access to the Property during this Due Diligence Period shall be solely for the limited purpose of performing the Investigations and Tests, and that Clear Wireless shall not be considered an owner or operator of any portion of the Property, and shall have no ownership or control of any portion of the Property (except as expressly provided in this Paragraph 3), prior to the Term Commencement Date. Lessee shall have the right at any time following the last date of

Site Name: Raintree WT
Site ID: TX-DAL6124

execution of this Agreement by all parties to enter upon the Property for the purpose of constructing the Lessee Facilities (hereinafter defined). Upon Lessee's request, Lessor agrees to provide promptly to Lessee copies of all plans, specifications, surveys and Water Tower maps for the Land and Water Tower. The Water Tower map shall include the elevation of all antennas on the Water Tower and the frequencies upon which each operates.

4. **Term.** The term of this Agreement shall be five (5) years and shall commence based on start of construction of Lessee Facilities or one hundred eighty (180) days (the "Option Period") following the date of full execution hereof, whichever first occurs and terminating on the fifth anniversary of the Commencement Date (hereinafter defined) (the "Term") unless otherwise terminated as provided herein. Should Lessee elect to use the Option Period a fee of \$500.00 will apply. In the event the date of commencing installation of equipment is determinative and such date falls between the 1st and 15th of the month, the Agreement shall commence on the 1st of that month and if such date falls between the 16th and 31st of the month, then the Agreement shall commence on the 1st day of the following month. Lessor and Lessee agree that they shall acknowledge in writing the Commencement Date. Lessee shall have the right to renew this Agreement for five (5) successive five (5) year periods (the "Renewal Terms") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each Renewal Term unless Lessee notifies Lessor of its intention not to renew at least ninety (90) days prior to the expiration of the then current term.

5. **Rent.**

(a) Lessee shall pay to Lessor as rent FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00) per year ("Rent"); to be paid in annual installments commencing on the Commencement Date and continuing thereafter on the same day of each year. Rent shall be payable to Lessor at City of Allen, 305 Century Parkway, Allen, Texas 75013 Attn: City Manager. Notwithstanding the foregoing, Lessor and Lessee acknowledge and agree that initial annual payment(s) shall not actually be sent by Lessee until thirty (30) days after the Commencement Date or after a written acknowledgement confirming the Commencement Date, if such an acknowledgement is required. All of Lessee's monetary obligations set forth in this Agreement are conditioned upon Lessee's receipt of an accurate and executed W-9 Form or alternative State of Texas tax form from Lessor.

(b) Rent shall be increased on the first day of each anniversary (yearly) by an amount equal to three percent (3%) of the Rent in effect during the previous year.

(c) In the event of early termination of this Agreement, as provided herein, Lessor shall return to Lessee any unearned prepaid Rent.

6. **Facilities; Utilities; Access.**

(a) Lessee has the right to erect, maintain and operate on the Premises communications facilities, including utility lines, transmission lines, air conditioned equipment shelter(s), electronic equipment, radio transmitting and receiving antennas and supporting

Site Name: Raintree WT
Site ID: TX-DAL6124

equipment and structures thereto ("Lessee Facilities") in the manner provided by this Agreement, and as depicted and shown in Exhibit D, attached hereto and incorporated herein for all purposes. Lessee shall have the right to replace, at Lessee's expense, the aforementioned equipment and structures with similar and comparable equipment provided said replacement does not increase tower loading of the Water Tower. In connection therewith, Lessee has the right to do all work necessary to prepare, maintain and alter the Premises for Lessee's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Title to the Lessee Facilities shall be held by Lessee. All of Lessee Facilities shall remain Lessee's personal property and are not fixtures. Lessee has the right to remove all Lessee Facilities at its sole expense on or before the expiration or earlier termination of the Agreement; provided Lessee repairs any damage to the Premises caused by such removal.

(b) Lessee shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee shall have the right to draw electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Property (including a standby power generator for Lessee's exclusive use). If permitted by the local utility company servicing the Premises, Lessee shall furnish and install an electrical sub-meter at the Premises for the measurement of electrical power used by Lessee's installation. Lessor agrees to sign such documents or easements as may be required by said utility companies to provide such service to the Premises, including the grant to Lessee or to the servicing utility company, of an easement in, over across or through the Land as may be reasonably required by such servicing utility company to provide utility services as provided herein.

(c) Lessee, Lessee's employees, agents, subcontractors, lenders and invitees shall have access to the Premises with prior notice to Lessor twenty-four (24) hours a day, seven (7) days a week, which notice will be verbal to the Stacy Road Pump Station at 972.727.0170. Due to enhanced security the personnel notified at the pump station will then dispatch a City of Allen employee that shall be present and remain on site while Lessee's personnel are present at the site. In the event of an emergency, Lessee shall only be required to give any notice which is reasonably possible. If Lessor is contacted by Lessee after normal business hours of the Lessor, the Lessee shall reimburse the Lessor for the reasonable cost of any Lessor personnel necessary for Lessee's access. Lessor grants to Lessee, and its agents, employees, contractors, guests and invitees, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across that portion of the Land described in Exhibit B.

(d) Lessor shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. Lessor shall be responsible for maintaining and repairing such roadway, at its sole expense, except for any damage caused by Lessee's use of such roadways.

Site Name: Raintree WT
Site ID: TX-DAL6124

(e) It is understood that periodic maintenance and repair of the Lessor's facilities on the Premises is necessary. The Lessee agrees that it will cooperate with Lessor in order to reasonably accommodate Lessor's performance of such maintenance and repairs. Lessor shall permit Lessee to install, without any additional rent, a temporary cell-on-wheels (COW) communications facility at the Property during the period of time in which Lessor is performing such maintenance or repair work in the event Lessee's Facilities will be powered-down or disrupted in any manner in connection with such work.

7. **Interference.** All operations by Lessee shall be in compliance with all Federal Communications Commission ("FCC") requirements including those prohibiting interference to communications facilities of Lessor or other lessees or licensees of the Property, provided that the installation and operation of any such facilities predate the installation of the Lessee Facilities. Lessee shall not cause harmful radio frequency interference which is measurable in accordance with then existing industry standards to the equipment of Lessor or of any other lessee in use at the Premises on the date of last execution of this Agreement. Should such interference occur between Lessee's equipment upon initial operation and another lessee's equipment, and after Lessor has provided written notice thereof to Lessee, Lessee will take all commercially reasonable steps necessary to correct such interference and, if such interference cannot be corrected within thirty (30) days of notice to Lessee of such interference, Lessee will cease its operations from the Premises or power-down the communications equipment at the Premises causing such interference (subject to intermittent testing) until such time as such interference can be corrected, or, at Lessee's option, this Agreement shall be terminated. Lessor shall not allow the installation of new equipment on the Property or property contiguous thereto owned or controlled by Lessor if such equipment is likely to cause radio frequency interference with Lessee's operations. The Lessor will not grant a lease to any other party for the use of the Lessor's property without including in that lease a provision stating that the party's use will not in any way adversely affect or interfere with the Lessee's operation of its communication system. In the event such interference occurs, Lessor agrees to use best efforts to eliminate such interference in a reasonable time period. Lessor's failure to comply with this paragraph shall be a material breach of this Agreement.

8. **Taxes.** Lessee shall be responsible for and pay any taxes directly attributable to the Lessee Facilities or Lessee's use of the Property. Notwithstanding the foregoing, Lessee shall not have the obligation to pay any tax, assessment, or charge that Lessee is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property. Lessee shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which Lessee is wholly or partly responsible for payment. Lessor shall reasonably cooperate with Lessee at Lessee's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document.

9. **Condition of Site.** Lessee accepts the Premises as is, in its current condition, and the Lessor makes no representations or warranties, and hereby disclaims any and all such

Site Name: Raintree WT
Site ID: TX-DAL6124

representations or warranties, express or implied, of any kind or nature, with regard to the facilities and the Premises, other than those representations and warranties set forth in this Agreement. The Lessor shall maintain the Premises in compliance with all applicable statutes, regulations and rules, and in a manner which will not interfere with Lessee's reasonable use of the site. Lessee may remove the Lessee Facilities at any time prior to the termination of this Agreement provided Lessee repairs any damage to the Premises caused thereby. Upon expiration or termination for any reason of the Agreement, Lessee shall, within thirty (30) days thereof, remove Lessee Facilities and any other property (other than any fixtures) from the Premises and shall restore the Premises to the condition in which it existed upon execution of this Agreement, ordinary wear and tear excepted. Should Lessee fail to so remove the Lessee Facilities, Lessor may, upon thirty days' notice by Lessor to Lessee, remove and store the Lessee Facilities at Lessee's expense. Should Lessee fail to restore the Premises to its original condition, ordinary wear and tear excepted, then Lessor may do so at Lessee's expense. In the event that Lessee fails effect such timely removal, and provided at least sixty (60) days have elapsed since the original written notice to Lessee, the Lessee Facilities shall be deemed abandoned and Lessor may remove and dispose of the Lessee Facilities at Lessee's expense.

10. Termination/Default/Remedies.

(a) This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is fifteen (15) days from receipt of notice (in each case, a "Default"); (ii) by Lessee for any reason or for no reason, provided Lessee delivers written notice of early termination to Lessor no later than thirty (30) days prior to the Commencement Date; (iii) by Lessee if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of Lessee Facilities; (iv) by Lessee if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; (v) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference; (vi) by Lessor if the City Council shall make a legislative determination and finding by written resolution that the use of the Premises is urgently needed for the protection of the public interest and votes to terminate the Agreement by giving Lessee ninety (90) days written notice; (vii) by Lessee if Lessee determines that any license, permit or other approval necessary for the construction and operation of Lessee Facilities may not be obtained in a timely manner; or (viii) by Lessee if Lessee determines that any soil boring tests or structural analysis is unsatisfactory. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder.

(b) Notwithstanding the foregoing to the contrary, it shall be a Default under this Agreement if Lessor fails, within fifteen (15) days after receipt of written notice of such failure, to perform an obligation required to be performed by Lessor if the failure to perform such an obligation interferes with Lessee's ability to conduct its business at the Premises; provided, however, that if the nature of Lessor's obligation is such that more than fifteen (15) days after

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such notice is reasonably required for its performance, then it shall not be a Default if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

11. Destruction or Condemnation. If the Premises or Lessee Facilities are damaged or destroyed by fire or casualty, or condemned or transferred in lieu of condemnation, Lessee may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Lessor no more than forty-five (45) days following the date of such damage or destruction by fire or other casualty, or condemnation or transfer in lieu of condemnation. If all or any part of the Property is damaged or destroyed by fire or casualty, or condemned or transferred in lieu of condemnation and such damage, destruction, condemnation or transfer may reasonably be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, then Lessee may elect to terminate this Agreement as of the date of such damage, destruction, condemnation or transfer by giving notice to Lessor no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If all of the Property is condemned or transferred in lieu of condemnation, Lessor may elect to terminate this Agreement as of the date of such condemnation or transfer in lieu of condemnation by giving notice to Lessee no more than forty-five (45) days following the date of such condemnation or transfer in lieu of condemnation.

12. Insurance. Lessee, at Lessee's sole cost and expense, shall procure and maintain on the Premises and on the Lessee Facilities, bodily injury and property damage insurance with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Lessee, its employees and agents arising out of or in connection with Lessee's use of the Premises, all as provided for herein. Lessor shall be named as an additional insured on Lessee's policy. Lessee shall provide to the Lessor a certificate of insurance evidencing the coverage within thirty (30) days of the Commencement Date.

13. Assignment and Subletting. This Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of the Lessor to the Lessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the Lessor, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder. Lessee may not sublet to or license others to use the Premises without the prior written consent of the Lessor.

14. Warranty of Title and Quiet Enjoyment. Lessor warrants that: (i) Lessor owns the Property in fee simple and has rights of access thereto and the Property is free and clear of all liens, encumbrances and restrictions; (ii) Lessor has full right to make and perform this Agreement; and (iii) Lessor covenants and agrees with Lessee that upon Lessee paying the Rent

Site Name: Raintree WT
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and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises.

15. Repairs. Lessee shall not be required to make any repairs to the Premises or Property unless such repairs shall be necessitated by reason of the default or neglect of Lessee. Except as set forth in Paragraph 6(a) above, upon expiration or termination hereof, Lessee shall restore the Premises to the condition in which it existed upon execution hereof, reasonable wear and tear and loss by casualty or other causes beyond Lessee's control excepted.

16. Hazardous Substances. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Substance on, under, about or within the Land in violation of any law or regulation. Lessor represents, warrants and agrees (1) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Substance on, under, about or within the Property or the Premises in violation of any law or regulation, and (2) that Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Substance on, under, about or within the Property or the Premises in violation of any law or regulation. Lessor and Lessee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Substance" shall mean petroleum or any petroleum product, asbestos, any substance known to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Agreement.

17. Liability and Indemnity.

(a) Lessee shall at all times comply with all laws and ordinances and all rules and regulations of municipal, state and federal government authorities relating to the installation, maintenance, height, location, use, operation, and removal of the equipment, antenna systems, and other alterations or improvements authorized herein, and shall fully indemnify the Lessor against any loss, damage, cost, or expense which may be sustained or incurred by the Lessor as a result of Lessee's installation, operation, or removal of said improvements, except where caused in whole or in part by the acts or omissions of the Lessor, its agents, servants or employees.

(b) Lessee agrees and is bound to indemnify, defend, and hold the Lessor whole and harmless against any and all claims for any loss or damages that may arise out of the use, maintenance, and occupancy of Lessee's Facilities and use of the Premises by Lessee, except where caused in whole or in part by the negligence or willful misconduct of the Lessor, its agents, servants, or employees.

18. Water Tower Marking and Lighting Requirements. Lessor acknowledges that it, and not Lessee, shall be responsible for compliance with all Water Tower marking and lighting

Site Name: Raintree WT
Site ID: TX-DAL6124

requirements of the Federal Aviation Administration ("FAA") and the FCC. Lessor shall indemnify and hold Lessee harmless from any fines or other liabilities caused by Lessor's failure to comply with such requirements. Should Lessee be cited by either the FCC or FAA because the Water Tower is not in compliance and should Lessor fail to cure the conditions of noncompliance within the time frame allowed by the citing agency, Lessee may either terminate this Agreement immediately on notice to Lessor or proceed to cure the conditions of noncompliance at Lessor's expense, together with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable laws, which amounts may be deducted from the Rent.

19. Miscellaneous.

(a) This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties.

(b) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(c) This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(d) Any notice or demand required to be given herein shall be deemed validly given if sent by certified or registered mail, return receipt requested, or reliable overnight courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, to the address of the respective parties set forth below:

If to Lessee, to:	With a copy to:	If to Landlord, to:	With a copy to:
Clear Wireless, LLC Attn: Site Leasing 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900 Email: Siteleasing@clearwire.com	Clear Wireless, LLC Attention: Legal Department 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900	City of Allen 305 Century Parkway Allen, TX 75013 Attn: City Manager Telephone: 214-509-4502	Nichols, Jackson, Dillard, Hager & Smith, LLP Attn: Peter G. Smith 1800 Lincoln Plaza 500 North Akard Street Dallas, Texas 75201 214-965-9900

Site Name: Raintree WT
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Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

(e) This Agreement shall be governed by the laws of the State of Texas; and venue for any action shall be in State District Court of Collin County, Texas.

(f) Lessor acknowledges that a Memorandum of Agreement in the form annexed hereto as Exhibit C will be recorded by Lessee in the official records of the County where the Property is located.

(g) Lessee may obtain title insurance on its interest in the Premises. Lessor shall cooperate by executing documentation required by the title insurance company.

(h) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

(i) All Exhibits annexed hereto form material parts of this Agreement.

(j) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

(k) The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

20. Waiver of Lessor's Lien. Lessor waives any lien rights it may have concerning the Lessee Facilities which are deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time without Lessor's consent.

21. Rights Upon Sale. Should Lessor, at any time during the Term decide (i) to sell or transfer all or any part of the Property or the Water Tower thereon to a purchaser other than Lessee, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Tower and or Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize Lessee's rights hereunder under the terms of this Agreement. To the extent that Lessor grants to a third party by easement or other legal instrument an interest in and to that portion of the Tower and/or Property occupied by Lessee for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, Lessor shall not be

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Site ID: TX-DAL6124

released from its obligations to Lessee under this Agreement, and Lessee shall have the right to look to Lessor and the third party for the full performance of this Agreement.

22. Subordination and Non-Disturbance. At Lessor's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by Lessor which from time to time may encumber all or part of the Property, Water Tower or right-of-way; provided, however, as a condition precedent to Lessee being required to subordinate its interest in this Agreement to any future Mortgage covering the Tower or Property, Lessor shall obtain for Lessee's benefit a non-disturbance and attornment agreement for Lessee's benefit in the form reasonably satisfactory to Lessee, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize Lessee's right to remain in occupancy of and have access to the Premises as long as Lessee is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Tower or Property, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of the Agreement, (2) fulfill Lessor's obligations under the Agreement, and (3) promptly cure all of the then-existing Lessor defaults under the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, Lessee will execute an agreement for Lender's benefit in which Lessee (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Tower or Property and (3) agrees accept a cure by Lender of any of Lessor's defaults, provided such cure is completed within the deadline applicable to Lessor. In the event Lessor defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, Lessee, may, at its sole option and without obligation, cure or correct Lessor's default and upon doing so, Lessee shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and Lessee shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by Lessee to cure or correct such defaults.

23. Survival. The provisions of the Agreement relating to indemnification from one party to the other party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

[SIGNATURE PAGE FOLLOWS]

Site Name: Raintree WT
Site ID: TX-DAL6124

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:
CITY OF ALLEN, TEXAS, a municipal
corporation

LESSEE
Clear Wireless LLC, a Nevada limited liability
company

By: _____

Name: Peter H. Vargas

Title: City Manager

Date: _____

By: *Mark Stiles*

Name: MARK STILES

Title: Director

Date: 5/29/09

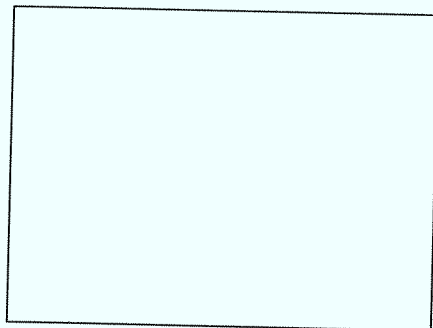
Site Name: Raintree WT
Site ID: TX-DAL6124

[Notary block for a Corporation]

STATE OF TEXAS)
) ss.
COUNTY OF COLLIN)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of City of Allen, Texas, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

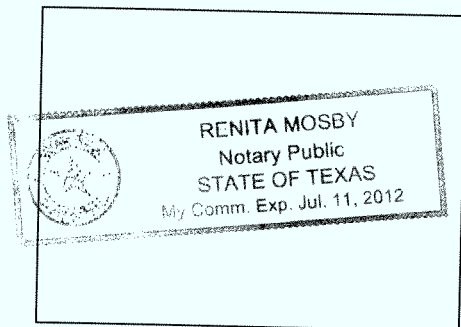
Notary Public
Print Name _____
My commission expires _____

[Notary block for Lessee]

STATE OF TEXAS)
) ss.
COUNTY OF Dallas)

I certify that I know or have satisfactory evidence that Mark Shles is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director of Clear Wireless LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5/29/09



(Use this space for notary stamp/seal)

R

Notary Public
Print Name Renita Mosby
My commission expires 7/11/12

Site Name: Raintree WT
Site ID: TX-DAL6124

EXHIBIT A

DESCRIPTION OF LAND

The Land is described and/or depicted as follows (lot and block description):

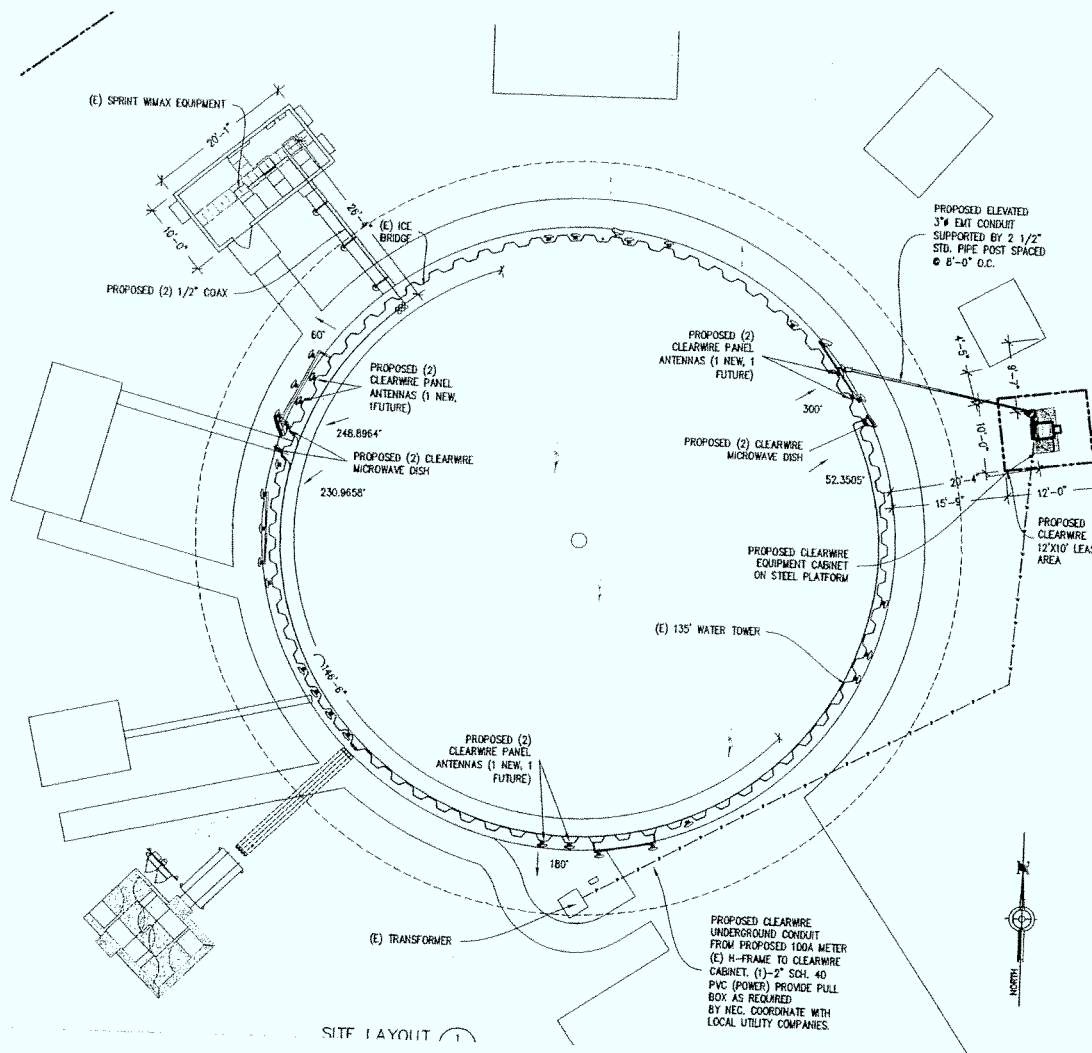
APN: 2647315

A 100 square foot parcel in Bray Central One, Block G, Lot 5, ACRES 1.7509, REPLAT [by plat], an addition to the City of Allen, Collin County, Texas.

A more detailed metes and bounds description may be provided here by either party.

DESCRIPTION OF PREMISES

The Premises are described and/or depicted as follows:



1. Lessee may replace this Exhibit with a survey of the Premises once Lessee receives it.
2. The Premises shall be setback from the Property's boundaries as required by the applicable governmental authorities.
3. The access road's width will be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number, mounting positions and locations of antennas and transmission lines are illustrative only. The actual types, numbers, mounting positions and locations may vary from what is shown above.
5. The locations of any utility easements are illustrative only. The actual locations will be determined by the servicing utility company in compliance with all local laws and regulations.

Site Name: Raintree WT
Site ID: TX-DAL6124

EXHIBIT C

COMMUNICATIONS FACILITY

to the Agreement dated , 2009, by and between City of Allen, a municipal corporation, as Lessor, and Clear Wireless LLC, a Nevada limited liability company, as Lessee.

RECORDED AT REQUEST OF, AND WHEN RECORDED RETURN TO:

Clear Wireless, LLC
4400 Carillon Point
Kirkland, WA 98033
Attn: Site Leasing

MEMORANDUM OF AGREEMENT APN: 2647315

This MEMORANDUM OF AGREEMENT is entered into on _____, 2009, by City of Allen, Texas, a municipal corporation, with an address at One Allen Civic Plaza, Allen, TX 75013 (hereinafter referred to as "**Owner**" or "**Landlord**") and Clear Wireless LLC, a Nevada limited liability company, with an address at 4400 Carillon Point, Kirkland, WA 98033 (hereinafter referred to as "**Clear Wireless**" or "**Lessee**").

1. Owner and Clear Wireless entered into a Communication Site Lease Agreement ("**Agreement**") dated as of _____, 2009, effective upon full execution of the parties ("**Effective Date**") for the purpose of Clear Wireless undertaking certain Investigations and Tests and, upon finding the Property appropriate, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The term of Clear Wireless's tenancy under the Agreement is for five (5) years commencing on commercial operation of the Lessee Facilities or one hundred eighty days (180) following the Effective Date, whichever first occurs ("**Term Commencement Date**"), and terminating on the fifth anniversary of the Term Commencement Date with five (5) successive five (5) year options to renew.
3. The Land that is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Land being leased to Lessee and all necessary access and utility easements (the "**Premises**") are set forth in the Agreement.

In witness whereof, the parties have executed this Memorandum of Agreement as of the day and year first written above.

LANDLORD:

City of Allen, Texas, a municipal corporation

By: EXHIBIT ONLY – DO NOT EXECUTE

Name: _____

Title: _____

Date: _____

LESSEE:

Clear Wireless LLC, a Nevada limited liability company

By: EXHIBIT ONLY – DO NOT EXECUTE

Name: _____

Title: _____

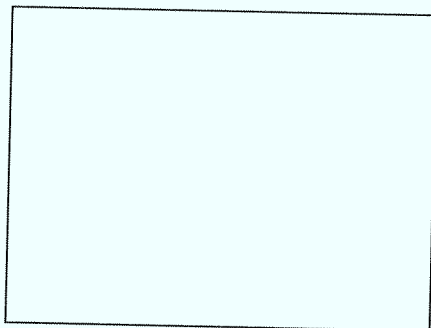
Date: _____

Site Name: Raintree WT
Site ID: TX-DAL6124

LESSOR'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 200__ by Peter H. Vargas, City Manager of the City of Allen, Texas, a municipal corporation, on behalf of said municipality.



(Use this space for notary stamp/seal)

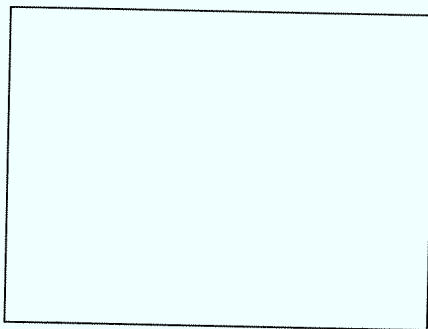
Notary Public
Print Name _____
My commission expires _____

LESSEE'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of Clear Wireless LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

Site Name: Raintree WT
Site ID: TX-DAL6124

EXHIBIT D

DESCRIPTION OF LESSEE FACILITIES

DESCRIPTION OF LAND

to the Agreement dated , 2009, by and between City of Allen, Texas, a municipal corporation, as Landlord, and Clear Wireless LLC, a Nevada limited liability company, as Lessee.

The Land is described and/or depicted as follows (lot and block description):

APN: 2647315

A 100 square foot parcel in Bray Central One, Block G, Lot 5, ACRES 1.7509, REPLAT [by plat], an addition to the City of Allen, Collin County, Texas.

A more detailed metes and bounds description may be provided here by either party.

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

June 9, 2009

SUBJECT:

Authorize the City Manager to Purchase Three Additional Vehicles for the Police Department through the Houston-Galveston Area Council of Government's Cooperative Purchasing Program from Dallas Dodge for an Amount of \$63,740 and the Police Vehicle Package from Pursuit Safety, Inc. for an Amount of \$41,260 with the Total Amount being \$105,000

STAFF RESOURCE:

Debra Morris, Purchasing Manager
Kevin Hammeke, Director of Finance

PREVIOUS COUNCIL ACTION:

None

ACTION PROPOSED:

Authorize the City Manager to Purchase Three Additional Vehicles for the Police Department through the Houston-Galveston Area Council of Government's Cooperative Purchasing Program from Dallas Dodge for an Amount of \$63,740 and the Police Vehicle Package from Pursuit Safety, Inc. for an Amount of \$41,260 with the Total Amount being \$105,000

BACKGROUND

During recent budget meetings, the Police Department requested the addition of three vehicles for staff. The request is for three 2009 Dodge Chargers. Two of the vehicles will be unmarked and one will be a regular marked vehicle. The automobile industry has been in transition lately and these three vehicles are currently available from the vendor at the 2009 prices. It is to our advantage to make the purchase at this time.

3 Dodge Chargers from Dallas Dodge	
Marked vehicle -	\$22,436.00
2 Unmarked vehicles -	<u>\$41,304.00</u>
Total	\$63,740.00

Pursuit Safety, Inc.
Police Vehicle Package - \$41,260.00

Includes lights, cameras, computers, radars, radios
(total equipment for three vehicles)

Total amount - \$105,000.00

BUDGETARY IMPACT

The funding for the additional vehicles and related equipment will be reflected in the General Fund Revised FY09 Police budget and will have an equal amount of offset from savings in the Police Department's budget.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to purchase three additional vehicles through the Houston-Galveston Area Council of Government's Cooperative Purchasing Program with Dallas Dodge for an amount of \$63,740 and Pursuit Safety, Inc. for an amount of \$41,260.

MOTION

I make a motion to authorize the City Manager to purchase three vehicles for the Police Department through the Houston-Galveston Area Council of Government's Cooperative Purchasing Program from Dallas Dodge for an amount of \$63,740 and Police vehicle package from Pursuit Safety, Inc. for an amount of \$41,260 with a total amount being \$105,000.

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 9, 2009

SUBJECT: Conduct a Public Hearing and Adopt an Ordinance Amending the Allen Land Development Code, Article VII, Section 7.03.5, Utility Services, and Article VIII, Section 8.10, Extensions of Water and Wastewater Mains, Subsection 4, Underground Utilities

STAFF RESOURCE: Ogden "Bo" Bass, AICP
Director of Planning and Development

PREVIOUS COUNCIL ACTION: None

BOARD/COMMISSION ACTION: On May 19, 2009, this item was presented to the Planning and Zoning Commission for discussion and input

ACTION PROPOSED: Conduct the Public Hearing and table action to the July 14, 2009, City Council Meeting

BACKGROUND

Currently, it is the City's policy that new developments be required to bury all existing overhead utility lines. Staff has been evaluating the benefits and impacts of this requirement. Burying utility lines improves the aesthetics of the community and safety. However, it can be very expensive to complete depending on the specific property and the utility provider.

Two options have been developed for the Planning and Zoning Commission and the City Council to consider:

- 1) Continue to require developers to bury existing utilities. This will require the adoption of the new language attached to clarify the ALDC.
- 2) No longer require existing utilities to be placed underground; only new utilities.

Staff received feedback from the Planning and Zoning Commission at their May 19th meeting. This item has been scheduled for an upcoming Workshop to further discuss the issue with the City Council.

STAFF RECOMMENDATION

Staff is requesting that the Public Hearing be held on June 9th and table action to the July 14, 2009, Council Meeting.

MOTION

I make a motion to table action to the July 14, 2009, City Council Meeting.

ATTACHMENT

May 19, 2009, P&Z Minutes

May 19, 2009
P&Z Minutes

Agenda Item #4: Public Hearing – Conduct a Public Hearing and consider amendments to the Allen Land Development Code by amending the Allen Land Development Code Article VII, Section 7.03.5, Utility Services, and Article VIII, Section 8.10 Extensions of Water and Wastewater Mains, Subsection 4. Underground Utilities. (Z-4/27/09-37)

Lee Battle, Assistant Director of Planning and Development, presented the item to the Commission. The purpose of this agenda item is to have a discussion and receive comments from the Planning and Zoning Commission, and through the public hearing, regarding the City's requirement to bury overhead utilities. This item will be taken to a Council workshop in June for discussion and feedback.

The Commission stated aesthetically it is better to have all overhead utilities buried, however it is understood that this requirement causes a financial burden on developers. Suggestions were as follows:

- Incentivize public/private partnership.
- Require burial of overhead utilities for new development only.

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

June 9, 2009

SUBJECT:

TABLED ITEM: Consider a Request to Establish Reinvestment Zone #30 on Property Located North of the Allen Premium Outlets on Chelsea Boulevard and Adopt an Ordinance Implementing Reinvestment Zone #30 and Approve a Tax Abatement Agreement with Cisco Systems, Inc. Supporting Construction of an Approximately 140,000 – 160,000 Square Foot Tier III Data Center Facility on Chelsea Boulevard

STAFF RESOURCE:

Robert Winningham, AEDC Executive Director/CEO

PREVIOUS COUNCIL ACTION:

On May 12, 2009, the Allen City Council conducted a Public Hearing for the establishment of Reinvestment Zone #30 on land located north of the Allen Premium Outlets on Chelsea Boulevard in Allen. Council tabled consideration of this item to the May 26, 2009, Regular Meeting. On May 26, the Applicant requested that the item be continued to the June 9, 2009, Regular Meeting. Council tabled the item to the June 9 City Council Meeting.

BOARD/COMMISSION ACTION:

On March 18, 2009, the Board of Directors of the Allen Economic Development Corporation (AEDC) approved a recommendation to the Allen City Council and Collin County Commissioners Court for approval of a 40% 10-year tax abatement on real property and business personal property for Cisco Systems, Inc. in support of the construction of a 140,000 – 160,000 square foot Tier III data center facility on Chelsea Boulevard in Allen.

On May 13, 2009, the Board of Directors of the Allen Economic Development Corporation modified its recommendation to state that the abatement percentage should decrease over the course of the 10-year abatement term.

ACTION PROPOSED:

Consider a Request to Establish Reinvestment Zone #30 on Property Located North of the Allen Premium Outlets on Chelsea Boulevard and Adopt an Ordinance Implementing Reinvestment Zone #30 and Approve a Tax Abatement Agreement with Cisco Systems, Inc. Supporting Construction of an Approximately 140,000 – 160,000 Square Foot Tier III Data Center Facility on Chelsea Boulevard

BACKGROUND

On May 13, 2009, the Board of Directors of the Allen Economic Development Corporation (AEDC) approved a modified recommendation to the Allen City Council and Collin County Commissioners Court for approval of a tax abatement for 10 years on real property and business personal property for Cisco Systems, Inc. in support of the construction of a 140,000 – 160,000 square foot Tier III data center facility on Chelsea Boulevard in Allen. The recommendation stated that the abatement percentage would decrease over the course of the 10-year abatement term according to the following schedule:

<u>Abatement Year</u>	<u>Percentage</u>
Year 1	40%
Year 2	40%
Year 3	40%
Year 4	40%
Year 5	30%
Year 6	30%
Year 7	30%
Year 8	20%
Year 9	20%
Year 10	20%

AEDC staff began working with Cisco Systems, Inc. in 2008 to find a suitable location for the company's proposed data center facility. At the time, the company was considering a variety of locations in the Dallas-Fort Worth area. After a period of due diligence, the company has identified a 34-acre tract on Chelsea Boulevard as the primary site under consideration for the construction of this data center project that will ultimately consist of 200,000 – 350,000 square feet of data center space.

The project will be constructed in two separate phases of approximately equal size. The Tax Abatement Agreement that is currently under consideration would support the construction of Phase I of the project, which consists of a minimum 140,000 square foot building and related infrastructure. The facility will be comprised of raised-floor data center space, office space, electrical, machinery and support space. The economic impact data included below and the contractual stipulations in the Tax Abatement Agreement are based solely on Phase I of the project. Phase II of the project would involve an additional 150,000-200,000 square feet and is expected to be constructed within 10 years after the completion of Phase I.

The data center facility will require an initial electrical capacity of 10 Megawatts and include high efficiency security, hardening against natural disasters, sustainable design, and backup systems to meet Tier III Uptime Institute Classification standards, as well as a front office for employees and visitors, data hall areas for servers and network racks, spaces for mechanical and electrical support systems, fire protection systems and equipment, and a service yard to house fuel tanks, water tanks, and cooling towers. The site will have high berms and a perimeter fence in order to shield the facility from public sight and control access to the property.

Cisco Systems anticipates spending approximately \$184 million on hard and soft costs related to the development of the facility, and also plans to invest \$449 million in taxable equipment to be located at the facility over the course of a 10-year period. The company has committed to maintaining combined real property and business personal property with minimum taxable values according to the following schedule:

<u>Period</u>	<u>Minimum Combined Taxable Value (Average Amount for Each Period)</u>
Period 1 (Years 1-4)	\$118,200,000
Period 2 (Years 5-7)	\$ 92,500,000
Period 3 (Years 8-10)	\$ 84,100,000

The Rolling Average Taxable Value Requirement Functions as Follows:

The 10-year tax abatement term is divided up into three "periods" of approximately equal length. The average taxable values that the company maintains for each "period" must be equal to or greater than the values included in the table above. If they do not meet the minimum average value specified for a given period, the company will be required to repay all taxes abated during that period.

In addition, the average taxable value will be evaluated on an annual basis to determine if the abatement should be applied for any given year. For example, in Year 2, the average value for Year 1 and Year 2 combined will be evaluated to determine if it exceeds \$118.2 million. If this average value falls below \$118.2 million in Year 2, the abatement will not be applied in Year 2.

In the AEDC Economic Development Agreement, the company has committed to using reasonable and customary efforts to ensure that the sales taxes generated by the purchase of construction materials and equipment related to the project are sourced to the City of Allen.

Cisco Systems, Inc. is a financially sound Fortune 100 company with the ability and

commitment to complete this project in Allen. Company officials have indicated that they plan to be a long-term partner with the City of Allen and community organizations. The AEDC required the company to construct additional offsite underground dual-feed electrical infrastructure in conjunction with the construction of the facility, thus providing electrical capacity to support additional data center projects in the future.

The approval of this Tax Abatement is a key requirement for the company to proceed with development. The proposed Tax Abatement Agreement is applicable to improvements and business personal property, with the following recommended abatement schedule:

<u>Abatement Year</u>	<u>Percentage</u>
Year 1	40%
Year 2	40%
Year 3	40%
Year 4	40%
Year 5	30%
Year 6	30%
Year 7	30%
Year 8	20%
Year 9	20%
Year 10	20%

BUDGETARY IMPACT

With the proposed rolling average taxable values listed in the schedule stated above and the recommended abatement schedule, the project will yield the following direct benefits in terms of City and School ad valorem tax collections over the 10-year period:

**Based on maintaining required taxable values for all years.
Calculated at the 2008 tax rates:**

*****Refer to Attachment - Calculated at the 2008 Tax Rates**

According to these projections, the company will contribute \$17,112,521 in City and AISD property taxes (excluding land values) and the City will forgo \$1,794,935 in abatement over the next 10 years.

*****Refer to Attachment - Taxable Purchases**

Overall, this project is expected to produce \$9,391,031 in property taxes, sales/use taxes and franchise fees to the City. The project is expected to produce \$22,724,031 in combined taxes to the City of Allen and AISD. The company has indicated that these are conservative values and it expects to exceed these values on an annual basis.

STAFF RECOMMENDATION

It is the recommendation of the AEDC Board of Directors and AEDC staff that the Allen City Council approve the formation of Reinvestment Zone #30 and authorize the Mayor to execute documents necessary to provide the proposed tax abatement schedule in support of the construction of a 140,000 - 160,000 square foot Tier III data center facility on Chelsea Boulevard in Allen.

MOTION

I make a motion to adopt Ordinance No. _____ approving the formation of Reinvestment Zone #30 and authorize the Mayor to execute documents necessary to provide the proposed tax abatement agreement with Cisco Systems, Inc. to provide an abatement on property taxes related to real and business personal property with a stair-stepped abatement schedule that varies from 40-percent in Year 1 to 20-percent in Year 10, to support the construction of a 140,000 - 160,000 square foot Tier III data center facility on Chelsea Boulevard in Allen.

ATTACHMENT

Chart / Calculated at the 2008 Tax Rates
Charts / Taxable Purchases
Reinvestment Zone Map
Ordinance and Tax Abatement Agreement

**Based on maintaining required taxable values for all years.
Calculated at the 2008 tax rates:**

	Total Taxable Value	Abatement Percentage	City Taxes Abated	City Taxes Collected .556	Allen ISD Collection* 1.4703	Total City/AISD Collection
Year 1	\$ 118,200,000	40%	\$ 262,877	\$ 394,315	\$ 1,423,000	\$ 1,817,315
Year 2	\$ 118,200,000	40%	\$ 262,877	\$ 394,315	\$ 1,423,000	\$ 1,817,315
Year 3	\$ 118,200,000	40%	\$ 262,877	\$ 394,315	\$ 1,423,000	\$ 1,817,315
Year 4	\$ 118,200,000	40%	\$ 262,877	\$ 394,315	\$ 1,423,000	\$ 1,817,315
Year 5	\$ 92,500,000	30%	\$ 154,290	\$ 360,010	\$ 1,294,500	\$ 1,654,510
Year 6	\$ 92,500,000	30%	\$ 154,290	\$ 360,010	\$ 1,294,500	\$ 1,654,510
Year 7	\$ 92,500,000	30%	\$ 154,290	\$ 360,010	\$ 1,294,500	\$ 1,654,510
Year 8	\$ 84,100,000	20%	\$ 93,519	\$ 374,077	\$ 1,252,500	\$ 1,626,577
Year 9	\$ 84,100,000	20%	\$ 93,519	\$ 374,077	\$ 1,252,500	\$ 1,626,577
Year 10	\$ 84,100,000	20%	\$ 93,519	\$ 374,077	\$ 1,252,500	\$ 1,626,577
Totals:			\$ 1,794,935	\$ 3,779,521	\$ 13,333,000	\$ 17,112,521

** The AISD tax value has been calculated based on an \$80 million taxable value, given the possibility that the AISD Board of Directors may consider granting an \$80 million Appraised Value Limitation, per Chapter 313 of the State Tax Code. This would limit the taxable value of the facility to \$80 million for the M&O portion of the AISD budget only (the debt service portion of the tax rate would still apply to the full value).*

The company is also expected to make taxable purchases in Allen that will generate local Sales/Use Tax Revenue to the City of Allen on the following schedule:

	Taxable Purchases		City of Allen 1%
	(Use Tax)		
Year 1	\$ 52,186,616	\$	521,866
Year 2	\$ 26,989,538	\$	269,895
Year 3	\$ 8,889,969	\$	88,900
Year 4	\$ 51,563,723	\$	515,637
Year 5	\$ 12,444,301	\$	124,443
Year 6	\$ 35,000,000	\$	350,000
Year 7	\$ 35,000,000	\$	350,000
Year 8	\$ 35,000,000	\$	350,000
Year 9	\$ 35,000,000	\$	350,000
Year 10	\$ 35,000,000	\$	350,000
	Totals:	\$	3,270,741

The company is also expected to purchase electricity, which will generate local Sales/Use Tax Revenue to the City of Allen on the following schedule:

	Taxable Purchases		City of Allen 1%
Year 1	\$ 1,460,000	\$	14,600
Year 2	\$ 2,980,000	\$	29,800
Year 3	\$ 4,320,000	\$	43,200
Year 4	\$ 4,720,000	\$	47,200
Year 5	\$ 4,800,000	\$	48,000
Year 6	\$ 5,000,000	\$	50,000
Year 7	\$ 5,200,000	\$	52,000
Year 8	\$ 5,400,000	\$	54,000
Year 9	\$ 5,400,000	\$	54,000
Year 10	\$ 5,400,000	\$	54,000
	Totals:	\$	446,800

Lastly, the company is also expected to purchase electricity, which will generate local Franchise Fee Revenue to the City of Allen on the following schedule:

	Annual Kwh Usage		Franchise Taxes
Year 1	\$ 13,140,000	\$	38,185
Year 2	\$ 35,040,000	\$	101,826
Year 3	\$ 59,568,000	\$	173,105
Year 4	\$ 70,956,000	\$	206,198
Year 5	\$ 78,840,000	\$	229,109
Year 6	\$ 78,840,000	\$	229,109
Year 7	\$ 78,840,000	\$	229,109
Year 8	\$ 78,840,000	\$	229,109
Year 9	\$ 78,840,000	\$	229,109
Year 10	\$ 78,840,000	\$	229,109
	Totals:	\$	1,893,968



Reinvestment
Zone 30

FAIRVIEW

W STACY RD

W STACY DR

E STACY RD

CENTRAL EXPRESSWAY

CHELSEA BLVD

DEERFIELD RD

WILLOW WINDS DR

BELL VISTA DR

BELL VISTA DR

BELL VISTA DR

BELL VISTA DR

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BELL VISTA DR

BELL VISTA DR

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, DESIGNATING REINVESTMENT ZONE NO. 30 (CISCO SYSTEMS, INC. DATA CENTER); PROVIDING ELIGIBILITY OF THE ZONE FOR COMMERCIAL-INDUSTRIAL TAX ABATEMENT; CONTAINING FINDINGS THAT THE AREA QUALIFIES TO BE DESIGNATED AS A REINVESTMENT ZONE AND THE IMPROVEMENTS SOUGHT ARE FEASIBLE AND PRACTICABLE AND OF BENEFIT TO THE LAND AND THE CITY; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALING CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF SAID ORDINANCE.

WHEREAS, the City Council of the City of Allen, Texas, has caused notice to be published in a newspaper having general circulation in the City and has delivered such notice to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property described herein; and,

WHEREAS, the City Council of the City of Allen, Texas, has conducted a public hearing on the designation of the area described herein as a reinvestment zone; and,

WHEREAS, the proposed Tax Abatement Agreement by and between the City of Allen, Texas, and Cisco Systems, Inc., attached hereto as Exhibit "B," has been presented to the City Council; and the City Council is of the opinion and finds that the terms and conditions thereof should be approved and that the Mayor should be authorized to execute the Agreement on behalf of the City of Allen.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The City Council of the City of Allen, Texas, finds that the area described herein will, if designated as a reinvestment zone, be reasonably likely to contribute to the rendition or expansion of primary employment, or to attract major investment in the zone that will be of benefit to the property and contribute to the economic development of the City. The City Council further finds that the improvements sought are feasible and practicable and would be of benefit to the land to be included in the zone and to the City after the expiration of a tax abatement agreement.

SECTION 2. Pursuant to the provisions of Section 312.201 of the Texas Tax Code, the real property described in Exhibit "A" and made a part hereof for all purposes is hereby designated as a reinvestment zone and for identification is assigned the name "Reinvestment Zone No. 30" or "CISCO Data Center Zone".

SECTION 3. The property within Reinvestment Zone No. 30 is eligible for commercial-industrial tax abatement effective on January 1, 2010.

SECTION 4. The Agreement attached hereto as Exhibit "B" having been reviewed by the City Council and found to be acceptable and in the best interests of the City and its citizens, is hereby approved, and the Mayor is hereby authorized to execute the Agreement on behalf of the City of Allen, Texas.

SECTION 5. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or as amended hereby, which shall remain in full force and effect.

SECTION 6. All ordinances of the City of Allen in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect.

SECTION 7. This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 9TH DAY OF JUNE, 2009.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY

Shelley B. George, CITY SECRETARY

Exhibit A
Legal Description for Zone 30
34.000 Acre Tract
Joseph Dixon Survey, Abstract No. 278
City of Allen, Collin County, Texas

DESCRIPTION, of a 34.000 acre tract of land situated in the Joseph Dixon Survey, Abstract No. 276, Collin County, Texas; said tract being part of that tract of land described in General Warranty Deed to Allen Commerce Center, L.P. recorded in Instrument No. 0061127001670390 of the Deed Records of Collin County, Texas; said 34.000 acre tract being more particularly described as follows:

COMMENCING, at a point for corner in Chelsea Boulevard (County Road No. 196) (a variable width right-of-way); said point being the southwest corner of said Allen Commerce Center tract;

THENCE, North 89 degrees, 32 minutes, 34 seconds East, along the south line of said Allen Commerce Center tract, passing at a distance of 55.00 feet the northwest corner of Lot 1-R, Block 1, Allen Premium Outlets, an addition to the City of Allen, Texas according to the plat recorded in Instrument No. 20061213010005400 of the Plat Records of Collin County, Texas; continuing in all a total distance of 60.00 feet to the POINT OF BEGINNING;

THENCE, along the proposed east right-of-way line of said Chelsea Boulevard, the following four (4) calls:

North 00 degrees, 28 minutes, 22 seconds West, departing the said south line of the Allen Commerce Center tract and the north line of said Lot 1-R, a distance of 605.50 feet to an angle point;

North 03 degrees, 20 minutes, 29 seconds East, a distance of 150.33 feet to a point at the beginning of a non-tangent curve to the right;

In a northeasterly direction, along said curve to the right, having a central angle of 06 degrees, 20 minutes, 30 seconds, a radius of 1,130.00 feet, a chord bearing and distance of North 02 degrees, 41 minutes, 53 seconds East, 125.01 feet, an arc distance of 125.07 feet to a point at the end of said curve;

North 50 degrees, 56 minutes, 59 seconds East, a distance of 35.69 feet to a point at the beginning of a non-tangent curve to the left;

THENCE, in an easterly direction along the south line of a proposed right-of-way dedication, the following four (4) calls:

Along said curve to the left, having a central angle of 09 degrees, 10 minutes, 16 seconds, a radius of 1,070.00 feet, a chord bearing and distance of South 89 degrees, 45 minutes, 07 seconds East, 171.09 feet, an arc distance of 171.27 feet to a point at the end of said curve;

North 85 degrees, 39 minutes, 46 seconds East, a distance of 125.00 feet to a point at the beginning of a tangent curve to the right;

Along said curve to the right, having a central angle of 04 degrees, 01 minutes, 01 seconds, a radius of 965.00 feet, a chord bearing and distance of North 87 degrees, 40 minutes, 17 seconds East, 67.64 feet, an arc distance of 67.66 feet to a point at the end of said curve;

North 89 degrees, 40 minutes, 47 seconds East, a distance of 1228.69 feet to a point for corner;

THENCE, Due South, departing the said south line of the proposed right-of-way dedication, a distance of 658.95 feet to a point for corner;

THENCE, South 36 degrees, 53 minutes, 08 seconds West, a distance of 488.74 feet to a point for corner in the said north line of Lot 1-R and the said south line of the Allen Commerce Center tract;

THENCE, in a northwesterly direction along the said north line of Lot 1-R and the said south line of the Allen Commerce Center tract, the following three (3) calls:

North 53 degrees, 27 minutes, 28 seconds West, a distance of 30.69 feet to a point at the beginning of a tangent curve to the left;

In a northwesterly direction, along said curve to the left, having a central angle of 36 degrees, 59 minutes, 59 seconds, a radius of 600.00 feet, a chord bearing and distance of North 71 degrees, 57 minutes, 28 seconds West, 380.76 feet, an arc distance of 387.46 feet to a point at the end of said curve;

South 89 degrees, 32 minutes, 34 seconds West, a distance of 949.33 feet to the POINT OF BEGINNING;

CONTAINING; 1,481,039 square feet or 34.000 acres of land, more or less.

EXHIBIT B
TAX ABATEMENT AGREEMENT

STATE OF TEXAS §
 § **Tax Abatement Agreement**
COUNTY OF COLLIN §

This Tax Abatement Agreement (the "Agreement") is entered into by and among the City of Allen, Texas (the "City"), and Cisco Systems, Inc., a California corporation ("Owner"), acting by and through their respective authorized officers and representatives. This Agreement will become effective upon the Owner closing on its purchase of the Land (hereinafter defined.)

WITNESSETH:

WHEREAS, on April 28, 2009, the City Council of the City, passed an Ordinance (the "Ordinance") establishing Tax Abatement Reinvestment Zone No. 30 (the "Zone"), for commercial/industrial tax abatement, as authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended (the "Tax Code"); and

WHEREAS, on April 28, 2009, the City adopted updated guidelines for tax abatement (the "Tax Abatement Guidelines"); and

WHEREAS, the Tax Abatement Guidelines contain appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Tax Code; and

WHEREAS, on April 28, 2009, the City adopted a resolution stating that it elects to be eligible to participate in tax abatements; and

WHEREAS, Owner is under contract to purchase approximately 34 acres of land within the City and being further described in Exhibit "A" (the "Land"); and

WHEREAS, the Owner intends to construct, and operate on the Land, a minimum 140,000 square foot state of the art data center with initial total electrical capacity of 10 Megawatts that will include high efficiency high security, hardening against natural disasters, sustainable design, and backup systems for Tier III Uptime Institute Classification, as well as a front office for employees and visitors, data hall areas for servers and network racks, spaces for mechanical and electrical support systems, fire protection systems and equipment, a service yard to house fuel tanks, water tanks, and cooling towers, and other ancillary facilities such as related infrastructure and required parking and landscaping as more fully described in the submittals to be filed by Owner with the City from time to time in order to obtain a building permit(s) and other required permits (hereinafter defined as the "Improvements"); and

WHEREAS, the City Council finds that the contemplated use of the Premises (hereinafter defined) and the other terms hereof are consistent with encouraging

development of the Zone in accordance with the purposes for its creation and in compliance with the Tax Abatement Guidelines, the Ordinance adopted by the City, the Tax Code and all other applicable laws and legal requirements; and

WHEREAS, the City Council finds that the Improvements sought are feasible and practicable and would be of benefit to the land to be included in the Zone and to the City after expiration of this Agreement; and

WHEREAS, in order to maintain and enhance the commercial and industrial economic and employment base of the Allen area, it is in the best interests of the taxpayers for the City to enter into this Agreement; and

WHEREAS, this Agreement has been approved by the affirmative vote of a majority of the City Council of the City at a regularly scheduled City Council meeting, and has been executed in the same manner as the City contracts; and

WHEREAS, a copy of this Agreement has been furnished, and notices have been provided, in the manner prescribed by Section 312.2041 of the Tax Code, to the presiding officers of the governing bodies of each of the taxing units (as defined by the Tax Code) in which the Improvements will be located.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for good and other valuable consideration, the adequacy and receipt of which are hereby acknowledged, including the expansion of primary employment, the attraction of major investment, which contributes to the economic development of the City, and the enhancement of the tax base within the City, the parties agree as follows:

Article I **Definitions**

Whenever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Bankruptcy or Insolvency” shall mean the dissolution or termination (other than a dissolution or termination by reason of Owner merging with an affiliate of Owner) of a party’s existence as a going business, insolvency, appointment of receiver for any part of a party’s property and such appointment is not terminated within one hundred eighty (180) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Owner and such pleadings is not dismissed within one hundred (180) days after the filing thereof.

“Base Year” shall mean the calendar year in which this Agreement is fully executed by the parties.

“Commencement of Construction” shall mean that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Improvements on the Land; (ii) all necessary permits for the construction of the Improvements of the Land pursuant to the respective plans therefore have been issued by all applicable governmental authorities; and (iii) grading of the Land and the construction of the building elements of the Improvements has commenced, whether such elements are located above or below ground.

“Completion of Construction” shall mean that (i) substantial completion of the Improvements on the Land has occurred; and (ii) a final permanent certificate of occupancy has been issued by the City for Owner’s occupancy of the Improvements.

“Effective Date” shall mean the earlier of the date the Owner closes its purchase of the Land or September 1, 2009.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of Owner, as applicable, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the Owner), fires, explosions or floods, strikes, slowdowns or work stoppages or shortage of materials or labor. “Force Majeure” shall also include Owner’s inability or delay in obtaining permits or other approvals required by a governmental agency in order to begin Commencement of Construction or achieve Completion of Construction through no fault of Owner.

“First Year of Abatement” shall mean January 1 of the calendar year immediately following Completion of Construction, unless otherwise agreed by the parties.

“Freeport Goods” shall have the same meaning as assigned by Section 11.251 of the Tax Code and Article VIII, Section 1-j of the Texas Constitution and located on the Property. Freeport Goods does not include “Goods in Transit” as defined by Tax Code, Section 11.253.

“Goods in Transit” shall have the same meaning assigned by Tax Code, Section 11.253.

“Improvements” shall mean a minimum 140,000 square foot state of the art data center to be constructed on the Land with initial total electrical capacity of 10 Megawatts that will include high efficiency, high security, hardening against natural disasters, sustainable design, and backup systems for Tier III Uptime Institute Classification, as well as a front office for employees and visitors, data hall areas for servers and network racks, spaces for mechanical and electrical support systems, fire protection systems and equipment, a service yard to house fuel tanks, water tanks, and cooling towers, and other ancillary facilities such as related infrastructure and required parking and landscaping as more fully described in the submittals to be filed by Owner with the City from time to time in order to obtain a building permit(s) and other required permits.

“Land” shall mean the real property described in Exhibit “A”, excluding the Improvements.

“Owner” shall mean Cisco Systems, Inc.

“Period” shall mean Period 1, Period 2 or Period 3 as those terms are defined in Section 4.4.

“Premises” shall mean collectively, the Land and Improvements following construction thereof, but excluding any Tangible Personal Property.

“Related Agreements” shall mean any agreement between the Owner and the City, and/or the Allen Economic Development Corporation.

“Rolling Average” shall mean the average of the combined Taxable Value of the Improvements and the Tangible Personal Property for a given year with the prior years’ combined Taxable Value for the Improvements and Tangible Personal Property during a given Period, except that for the first year of each Period, the Rolling Average shall be equal to the combined Taxable Value of the Improvements and the Tangible Personal Property for that given year.

“Tangible Personal Property” shall mean tangible personal property, equipment and fixtures, including supplies and inventory (but excluding Freeport Goods and Goods in Transit) owned or leased by Owner that is added to the Improvements subsequent to the execution of this Agreement.

“Taxable Value” means the appraised value, as certified by the Collin County Appraisal District as of January 1 of a given year.

Article II

General Provisions

2.1 Owner owns or is under contract to purchase the Land, which Land is located within the City and within the Zone. Owner intends to construct the Improvements on the Land and intends to locate and maintain Tangible Personal Property.

2.2 The Premises are not an improvement project financed by tax increment bonds.

2.3 This Agreement is entered into subject to the rights of the holders of outstanding bonds of the City.

2.4 The Owner represents that, upon and following Owner’s acquisition of the Land, the Land and the Improvements will not be owned or leased by any member of the City Council or the Planning and Zoning Commission for the City.

2.5 Owner shall, prior to May 1 of each calendar year during the term of this Agreement, certify in writing to the City that it is in substantial compliance with each term of this Agreement.

2.6 The Owner shall develop and use the Premises at all times during the term of this Agreement in a manner that: (i) is consistent with the City's Comprehensive Zoning Ordinance, as amended, and (ii) that is consistent with the general purposes of encouraging development or redevelopment within the Zone during the period of abatement under this Agreement.

Article III

Tax Abatement Authorized

3.1 City represents that this Agreement is authorized by the Tax Code, is in accordance with the Tax Abatement Guidelines, and has been approved by the governing body of the City.

3.2 Subject to the terms and conditions of this Agreement, the City hereby grants Owner an abatement of the Taxable Value of the Improvements, and of the Taxable Value of the Tangible Personal Property, for a period of ten (10) consecutive years commencing the First Year of Tax Abatement in accordance with the schedule below. The actual percentage of taxes subject to abatement for the Improvements shall apply only to that portion of the Taxable Value of the Improvements that exceeds the Taxable Value of the Improvements for the Base Year. The actual percentage of Taxable Value of the Tangible Personal Property subject to abatement for each year this Agreement is in effect will apply only to the Tangible Personal Property that is added to the Improvements subsequent to the execution of this Agreement.

<u>Abatement Year</u>	<u>Percentage</u>
Year 1	40%
Year 2	40%
Year 3	40%
Year 4	40%
Year 5	30%
Year 6	30%
Year 7	30%
Year 8	20%
Year 9	20%
Year 10	20%

3.3 The period of tax abatement herein authorized shall be ten (10) consecutive years, beginning the First Year of Tax Abatement. The term of this Agreement shall begin on the Effective Date and shall continue until February 2 of the calendar year immediately following the 11th anniversary of the First Year of Abatement.

3.4 During the period of tax abatement herein authorized, Owner shall be subject to all City taxation not abated under this Agreement, including but not limited to, sales tax and ad valorem taxation.

Article IV Improvements

4.1 The Owner intends to construct or cause to be constructed the Improvements on the Land. Nothing in this Agreement shall obligate Owner to construct the Improvements on the Land but said action is a condition precedent to tax abatement pursuant to this Agreement.

4.2 As a condition precedent to the initiation of tax abatement pursuant to this Agreement, Owner will, subject to events of Force Majeure, diligently and faithfully, in a good and workmanlike manner, cause Commencement of Construction of the Improvements to occur no later than December 31, 2009 and, subject to events of Force Majeure, cause Completion of Construction thereof to occur on or before December 31, 2011, as good and valuable consideration for this Agreement, and that all construction of the Improvements will be in substantial accordance with all applicable state and local laws, codes, and regulations, (or valid waiver thereof).

4.3 Subject to events of casualty, condemnation, or Force Majeure, Owner agrees to maintain the Premises in substantial accordance with all applicable state and local laws, codes, and regulations for a period of not less than ten (10) years beginning with the First Year of Abatement.

4.4 (a) The Rolling Average for the Improvements and the Tangible Personal Property for each year beginning with the First Year of Abatement shall be equal to or exceed the minimum combined Taxable Values for the respective Period set forth in the schedule in Section 4.4 (c) below (the "Minimum Combined Taxable Value"). The failure to achieve the Minimum Combined Taxable Value for the Improvements and the Tangible Personal Property for a given year shall result in a forfeiture of the abatement for the respective tax year but will not be considered an event of default subject to termination and repayment of the abated taxes as provided in Sections 5.1-5.4, except as provided in this Section 4.4. The failure to achieve the Rolling Average for the Improvements and the Tangible Personal Property for year 4, 7 or 10 shall be not be considered an event of default subject to termination and repayment of all of the abated taxes as provided in Sections 5.1-5.4, provided the Owner pays a sum to the City equal to the sum of all abated taxes for the respective Period ending year 4, 7 or 10, as the case may be. The failure of the Company to pay such sum to the City within thirty (30) days after written demand for the same from the City shall be considered an event of default subject to termination and repayment of all abated taxes as provided in Sections 5.1-5.4.

(b) Period 1 shall begin with the First Year of Abatement and include the next three (3) consecutive years. Period 2 shall mean and include the next three (3) consecutive tax years and Period three (3) shall mean include the next three (3) consecutive tax years. For

illustration purposes only, assume the combined Taxable Value for the Improvements and the Tangible Personal Property for the First Year of Abatement is \$119,000,000. The Rolling Average for the First Year of Abatement would have been satisfied, and the Owner would be entitled to the tax abatement granted pursuant to Section 3.2, above. Further assume that the combined Taxable Value for the Improvements and the Tangible Personal Property for the second (2nd) year of abatement is \$122,000,000 in which event the Rolling Average for such year becomes \$120,500,000. Thus, the Rolling Average for the second year exceeded the Minimum Combined Taxable Value of \$118,200,000 and the Owner is entitled to the tax abatement for the second (2nd) year of abatement available under Section 3.2, above. Further assume that the combined Taxable Value of the Improvements and the Tangible Personal Property for third (3rd) year of abatement is \$110,000,000. Then, in such event the Rolling Average for the third (3rd) year becomes \$117,000,000 which is below the Minimum Combined Taxable Value of \$118,200,000. As a result the Owner forfeits the entitlement to the tax abatement for the third (3rd) year of abatement available under Section 3.2 above, but such failure is not considered an event of default subject to termination and repayment of abated taxes pursuant to Sections 5.1-5.4 unless the Rolling Average for the Improvements and Tangible Personal Property for the fourth (4th) year of abatement is below the Minimum Combined Taxable Value for Period 1 in the amount of \$118,200,000. Finally, assume that the combined Taxable Value of the Improvements and the Tangible Personal Property for the fourth (4th) year of abatement is \$100,000,000. Then, in such event the Rolling Average for the fourth (4th) year becomes \$113,880,000 which is below the Minimum Combined Taxable Value of \$118,200,000. As a result the Owner forfeits the entitlement to the tax abatement for the fourth (4th) year of abatement available under Section 3.2 above, and such failure is considered an event of default and is subject to termination and repayment of all of the abated taxes pursuant to Sections 5.1-5.4, unless the Owner pays a sum equal to the sum of all abated taxes for Period 1 (the abated taxes for the first and second year of abatement) to the City within thirty (30) days after receipt of written demand for the same. The failure of the Owner to pay such sum within thirty (30) days after receipt of a written demand for the same shall be considered an event of default subject to termination. Upon termination following notice as provided by Sections 5.1-5.4 the Owner would be obligated to pay an amount to the City equal to all prior abated taxes prior to such termination and not just for the Period of such uncured default.

(c) Combined Minimum Taxable Value Schedule

<u>Period</u>	<u>Minimum Combined Taxable Value</u>
Period 1 Years 1-4	\$118,200,000
Period 2 Years 5-7	\$ 92,500,000
Period 3 Years 8-10	\$ 84,100,000

4.5 The City, and its agents and employees, shall have the right of reasonable access to the Land and Improvements to inspect the Improvements and Tangible Personal Property at reasonable times during normal business hours and with reasonable notice to Owner in accordance with visitor access and security policies of the Owner in order to

insure that the construction is in substantial accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

Article V
Default; Recapture of Abated Taxes

5.1 In the event that Owner (i) fails to construct the Improvements in substantial accordance with this Agreement or in substantial accordance with applicable State or local laws, codes or regulations; (ii) has delinquent ad valorem or sales taxes owed to the City (provided Owner retains the right to timely and properly protest and/or contest such taxes or assessment); (iii) commits any breach of this Agreement or any Related Agreement; or (iv) suffers an event of Bankruptcy or Insolvency then Owner, after the expiration of the notice and cure periods described herein, shall be in default of this Agreement.

5.2 Upon breach by Owner of any obligations under this Agreement or any Related Agreements, or upon any event described by Subsections 5.1(i), (ii), (iii) or (iv), the City shall notify Owner in writing. The Owner shall have ninety (90) days from receipt of the notice of breach in which to cure any such default. If the default cannot reasonably be cured within a ninety (90) day period, and Owner has diligently pursued such remedies as shall be reasonably necessary to cure the default, then the City may, in its discretion, extend the period in which the breach must be cured.

5.3 If the Owner fails to cure the default within the time provided herein or, as such time period as may be extended, the City shall, at its sole option, have the right to terminate this Agreement by written notice to Owner (such termination, a "default termination").

5.4 As liquidated damages in the event of a default termination, the Owner shall, within thirty (30) days after written notice of termination is provided to the Owner pay to the City all taxes (less any taxes previously repaid pursuant to Section 4.4 hereof) which otherwise would have been paid to the City for the Improvements and the Tangible Personal Property without benefit of the tax abatement with interest at the statutory rate for delinquent taxes as determined by Section 33.01 of the Tax Code, as amended, but without penalty. The parties acknowledge that the actual damages in the event of a default termination would be speculative and difficult to determine. The parties further agree that any abated tax (less any taxes previously repaid pursuant to Section 4.4 hereof), including interest as a result of this Agreement, at the statutory rate for delinquent taxes, shall be recoverable against Owner, and shall constitute a tax lien against the Premises and the Tangible Personal Property, and shall become due and owing, and shall be paid to the City within thirty (30) days after termination. The City shall have all remedies for the collection of the abated tax provided generally in the Tax Code for the collection of delinquent property tax. The City at its sole discretion has the option to provide a repayment schedule. The computation of tax abated for the purposes of the Agreement shall be based upon the full Taxable Value of the Improvements and Tangible Personal Property without tax abatement, for the years in which tax abatement hereunder was received by Owner, as determined by the Collin County Appraisal District, multiplied by the tax rate for the years in question, as calculated by the

City Tax Assessor-Collector. The liquidated damages shall incur penalties as provided for delinquent taxes and shall commence to accrue thirty (30) days after notice of termination is provided to the Owner.

Article VI **Annual Application for Tax Exemption**

It shall be the responsibility of Owner pursuant to the Tax Code to file an annual exemption application form with the Chief Appraiser for Collin County Appraisal District, or its successor, in which the eligible taxable property has situs. A copy of the exemption application shall be submitted to the City upon request.

Article VII **Annual Rendition**

Owner shall annually render the value of the Land, Improvements and Tangible Personal Property to the Collin County Appraisal District and provide a copy of the same to the City upon written request. The failure of the Owner to render the value of the Land, Improvements and Tangible Personal Property to the Collin County Appraisal District shall not be an event of default subject to termination and recapture pursuant to Sections 5.1-5.4 below.

Article VIII **Miscellaneous**

8.1 Assignment. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned by Owner to any person or entity without the prior written consent of the City, except as otherwise permitted by this Section 8.1. Owner has the right (from time to time without the consent of the City, but upon sixty (60) days prior written notice to the City) to assign this Agreement to any person or entity that is controlled by or under common control with Owner (an "Affiliate"). Each assignment shall be in writing executed by Owner and Affiliate and shall obligate the Affiliate to be bound by this Agreement in a form reasonably approved by the City. A copy of each permitted assignment shall be provided to the City within 15 days after execution. From and after such permitted assignment, the City agrees to look solely to the Affiliate for the performance of this Agreement and agrees that Owner shall be released from subsequently performing the Agreement and from any and all liability that results from the Affiliate's failure to perform this Agreement provided, however, if a copy of the permitted assignment is not received by the City within 15 days after execution, Owner shall not be released until the City receives such permitted assignment. No assignment by Owner shall release Owner from any liability that resulted from an act or omission by Owner that occurred prior to the effective date of the permitted assignment unless City approves the release in writing. Owner shall maintain written records of all permitted assignments made by Owner to Affiliates, including a copy of each executed permitted assignment and the

Affiliate's notice information as required by this Agreement and, upon written request from the City, shall provide a copy of such records to the City.

8.2 Notice. All notices required by this Agreement shall be addressed to the following, or such other party or address as the parties designate in writing, by certified mail, postage prepaid, return receipt requested, or by hand delivery:

If intended for City, to:

City of Allen
Attn: City Manager
One Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard,
Hager and Smith
1800 Lincoln Plaza
500 N Akard Plaza
Dallas, Texas 75201

If intended for Owner, to:

Cisco Systems, Inc.
Attn: Director, Worldwide Real Estate
170 West Tasman Drive
San Jose, California 95134

With a copy to:

Misty M. Ventura
K & L Gates
1717 Main Street, Suite 2800
Dallas, Texas 75201

Cisco Systems, Inc.
Attn: General Counsel
170 West Tasman Drive
San Jose, California 95134

Cisco Systems, Inc.
Attn: Tax Department
170 West Tasman Drive
San Jose, California 95134

Cisco Systems, Inc.
Attn: Tax Department
12515 Research Boulevard, Building Four
Austin, Texas 78759

8.3 Authorizations. This Agreement was authorized by ordinance of the City Council authorizing the Mayor to execute this Agreement on behalf of the City.

8.4 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement, shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word; and such invalid,

illegal, unconstitutional or unenforceable section, subsection, paragraph, sentence, phrase or word shall be substituted by a section, subsection, paragraph, sentence, phrase or word as near in substance thereto as may be valid, legal, constitutional and enforceable.

8.5 Applicable Law. This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

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

8.7 Entire Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to the matters in this Agreement, and except as otherwise expressly provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement, which modification shall be in compliance with Section 312.208 of the Tax Code, as amended and all other applicable law.

8.8 Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

8.9 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes, whatever reference is made to the same.

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

8.11 Employment of Undocumented Workers. During the term of this Agreement, the Owner agrees not to knowingly employ any undocumented workers, and if convicted of a violation under 8 U.S.C. Section 1324a (f), the Owner shall repay the taxes abated herein and any other funds received by the Owner from the City as of the date of such violation within 120 business days after the date the Owner is notified by the City of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid. The Owner is not liable for a violation of this Section by a subsidiary, affiliate, or franchisees of the Owner or by a person with whom the Owner contracts.

8.12 Contingencies. This Agreement and the obligations of the City hereunder are expressly contingent upon and subject to the Owner closing its purchase of the Land on or before September 1, 2009.

(Signature page to follow)

EXECUTED in duplicate originals the ____ day of June, 2009.

City of Allen, Texas

By: _____
Stephen Terrell, Mayor

ATTEST:

By: _____
Shelley George, City Secretary

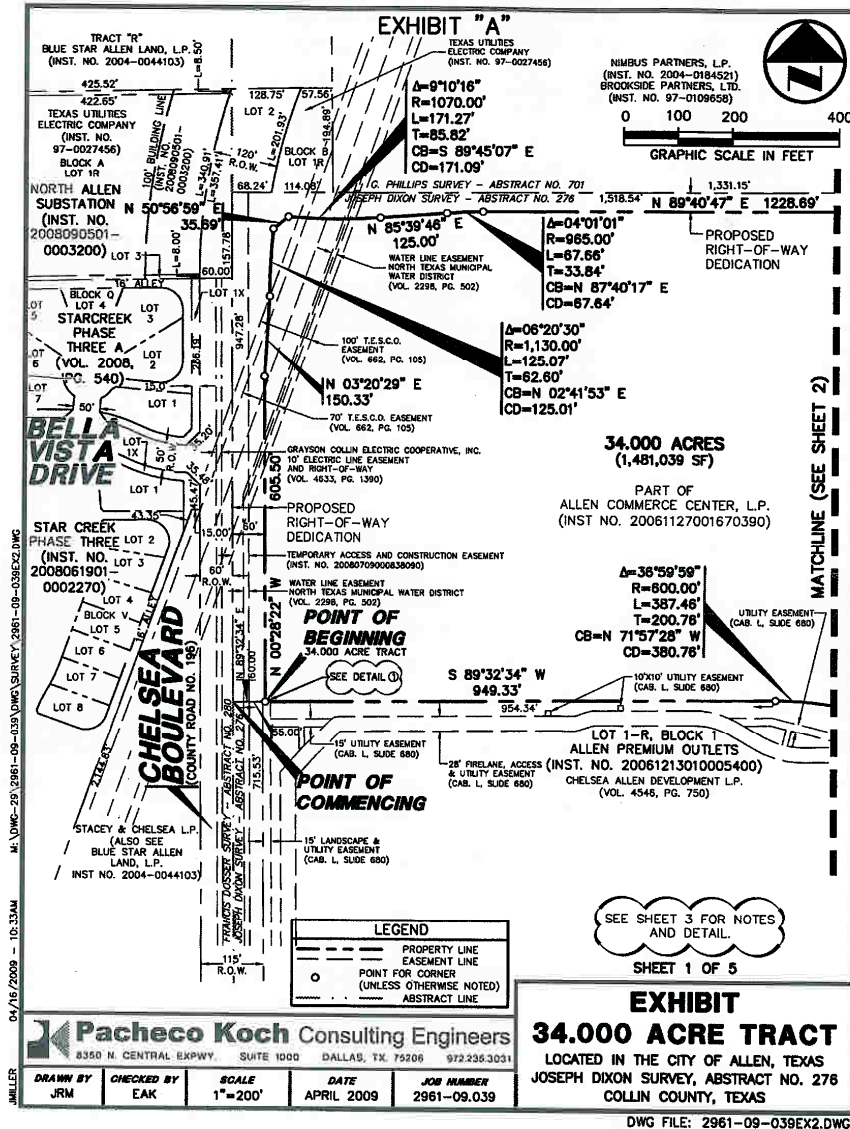
APPROVED AS TO FORM:

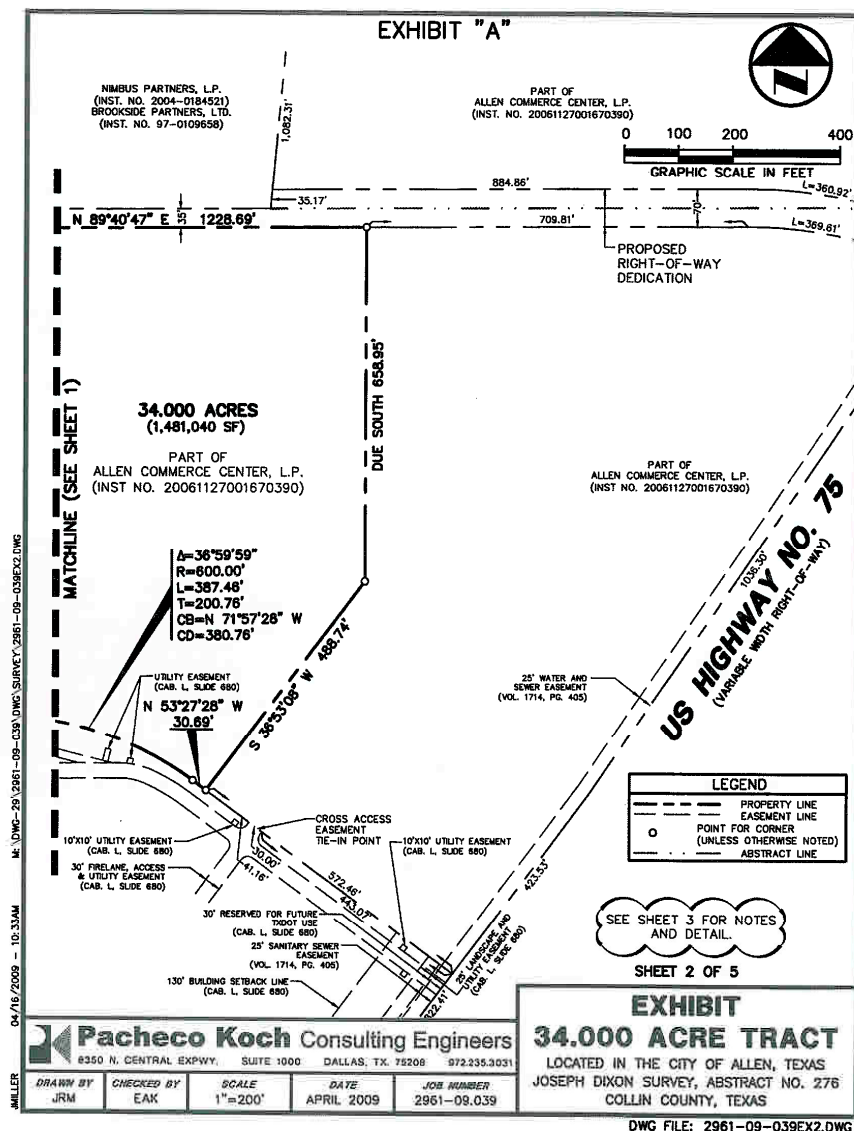
By: _____
Peter G. Smith, City Attorney

EXECUTED in duplicate originals the ____ day of June, 2009.

Cisco Systems, Inc.

By: _____
Name: Spiro G. Kailas
Title: Director, Americas Real Estate





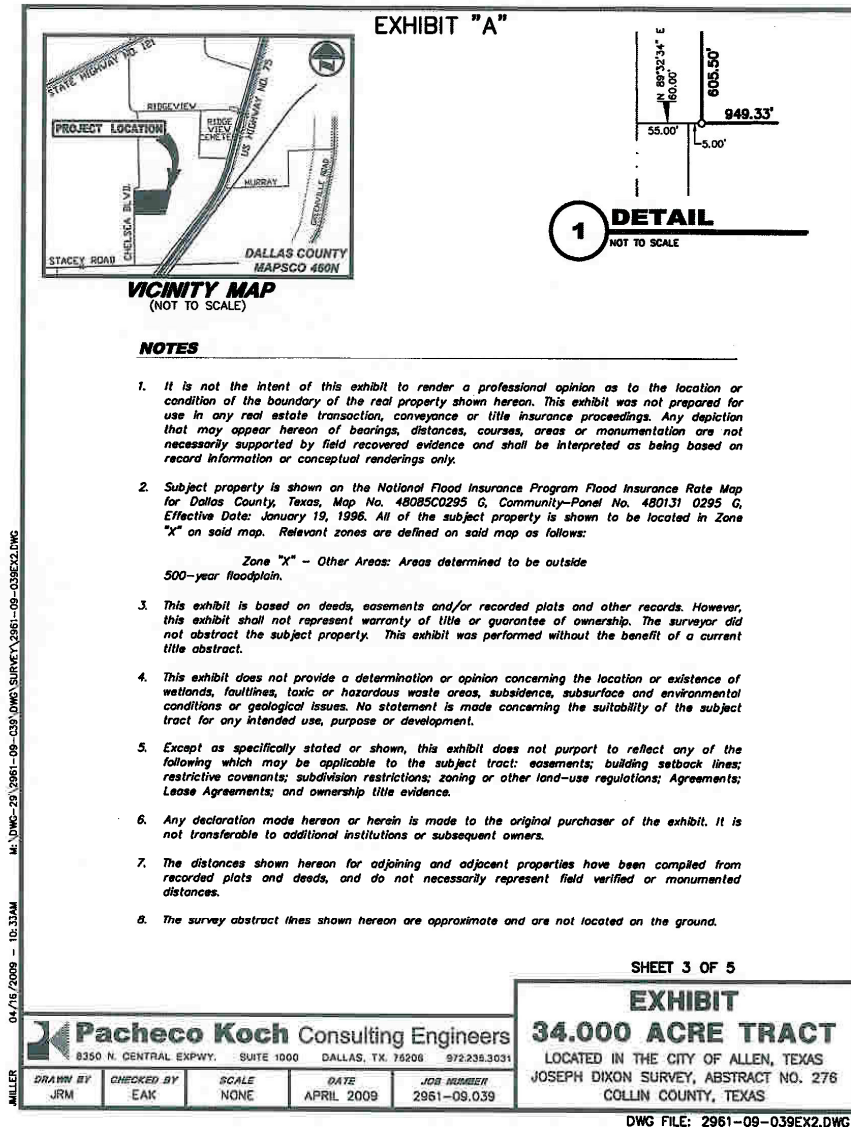


EXHIBIT "A"
34.000 ACRE TRACT
Joseph Dixon Survey, Abstract No. 276
City of Allen, Collin County, Texas

DESCRIPTION, of a 34.000 acre tract of land situated in the Joseph Dixon Survey, Abstract No. 276, Collin County, Texas; said tract being part of that tract of land described in General Warranty Deed to Allen Commerce Center, L.P. recorded in Instrument No. 20061127001670390 of the Deed Records of Collin County, Texas; said 34.000 acre tract being more particularly described as follows:

COMMENCING, at a point for corner in Chelsea Boulevard (County Road No. 196) (a variable width right-of-way); said point being the southwest corner of said Allen Commerce Center tract;

THENCE, North 89 degrees, 32 minutes, 34 seconds East, along the south line of said Allen Commerce Center tract, passing at a distance of 55.00 feet the northwest corner of Lot 1-R, Block 1, Allen Premium Outlets, an addition to the City of Allen, Texas according to the plat recorded in Instrument No. 20061213010005400 of the Plat Records of Collin County, Texas; continuing in all a total distance of 60.00 feet to the POINT OF BEGINNING;

THENCE, along the proposed east right-of-way line of said Chelsea Boulevard, the following four (4) calls:

North 00 degrees, 28 minutes, 22 seconds West, departing the said south line of the Allen Commerce Center tract and the north line of said Lot 1-R, a distance of 605.50 feet to an angle point;

North 03 degrees, 20 minutes, 29 seconds East, a distance of 150.33 feet to a point at the beginning of a non-tangent curve to the right;

In a northeasterly direction, along said curve to the right, having a central angle of 06 degrees, 20 minutes, 30 seconds, a radius of 1,130.00 feet, a chord bearing and distance of North 02 degrees, 41 minutes, 53 seconds East, 125.01 feet, an arc distance of 125.07 feet to a point at the end of said curve;

North 50 degrees, 56 minutes, 59 seconds East, a distance of 35.69 feet to a point at the beginning of a non-tangent curve to the left;

THENCE, in an easterly direction along the south line of a proposed right-of-way dedication, the following four (4) calls:

Along said curve to the left, having a central angle of 09 degrees, 10 minutes, 16 seconds, a radius of 1,070.00 feet, a chord bearing and distance of South 89 degrees, 45 minutes, 07 seconds East, 171.09 feet, an arc distance of 171.27 feet to a point at the end of said curve;

North 85 degrees, 39 minutes, 46 seconds East, a distance of 125.00 feet to a point at the beginning of a tangent curve to the right;

Along said curve to the right, having a central angle of 04 degrees, 01 minutes, 01 seconds, a radius of 965.00 feet, a chord bearing and distance of North 87 degrees, 40 minutes, 17 seconds East, 67.64 feet, an arc distance of 67.66 feet to a point at the end of said curve;

North 89 degrees, 40 minutes, 47 seconds East, a distance of 1228.69 feet to a point for corner;

THENCE, Due South, departing the said south line of the proposed right-of-way dedication, a distance of 658.95 feet to a point for corner;

Sheet 4 of 5

EXHIBIT "A"
34.000 ACRE TRACT
(continued)

THENCE, South 36 degrees, 53 minutes, 08 seconds West, a distance of 488.74 feet to a point for corner in the said north line of Lot 1-R and the said south line of the Allen Commerce Center tract;

THENCE, in a northwesterly direction along the said north line of Lot 1-R and the said south line of the Allen Commerce Center tract, the following three (3) calls:

North 53 degrees, 27 minutes, 28 seconds West, a distance of 30.69 feet to a point at the beginning of a tangent curve to the left;

In a northwesterly direction, along said curve to the left, having a central angle of 36 degrees, 59 minutes, 59 seconds, a radius of 600.00 feet, a chord bearing and distance of North 71 degrees, 57 minutes, 28 seconds West, 380.76 feet, an arc distance of 387.46 feet to a point at the end of said curve;

South 89 degrees, 32 minutes, 34 seconds West, a distance of 949.33 feet to the POINT OF BEGINNING;

CONTAINING; 1,481,039 square feet or 34.000 acres of land, more or less.

Sheet 5 of 5

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE: June 9, 2009

SUBJECT: Election of Mayor Pro Tem

STAFF RESOURCE: Shelley B. George, City Secretary

ACTION PROPOSED: Election of Mayor Pro Tem

BACKGROUND

According to Section 2.05 of the Allen City Charter, “The council shall elect from among the councilmembers a mayor pro tempore who shall act as mayor during the absence or disability of the mayor.”

STAFF RECOMMENDATION

It is the recommendation of staff that the Council nominate and elect a Mayor Pro Tem.

MOTION

I nominate _____ as Mayor Pro Tem.

AND

I move to close nominations and to proceed with the vote.

(The Mayor will read each name in the order nominated and the Council shall vote until a member is elected as Mayor Pro Tem.)

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

June 9, 2009

SUBJECT:

Consider Making Appointments to
Fill Vacancies in Place No. 2 on the Keep
Allen Beautiful Board and Place No. 6 on the
Library Board

STAFF RESOURCE:

Shelley B. George, City Secretary

ACTION PROPOSED:

Consider Making Appointments to
Fill Vacancies in Place No. 2 on the Keep
Allen Beautiful Board and Place No. 6 on the
Library Board

BACKGROUND

The Council has declared a vacancy in Place No. 2 on the Keep Allen Beautiful Board and Place No. 6 on the Library Board.

MOTION

Upon the recommendation of the Nominating Committee, I make a motion to appoint _____ to complete the unexpired term in Place No. 2 of the Keep Allen Beautiful Board with a term expiration date of September 30, 2010; and _____ to complete the unexpired term in Place No. 6 of the Library Board with a term expiration date of September 30, 2010.