

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made by and between the **City of Allen, Texas**, a home rule municipality chartered pursuant to Tex. Const. Art. XI, §5, hereinafter referred to as the "City," and **Jennifer Dawn Weidner and Ryan Lee Weidner** hereinafter referred to collectively as the "Weidners".

### RECITALS

**WHEREAS**, the City filed an *Original Petition in Eminent Domain* in Cause No. 005-00115-2017 in the County Court at Law No. 5, Collin County, Texas, styled *The City of Allen, Texas vs. Jennifer Dawn Weidner and Ryan Lee Weidner (as Owners) and Don Brazeal (as Lien Holder)* ("the Lawsuit") seeking to acquire by eminent domain fee simple title to real property owned by the Weidners, said real property located in Collin County Texas and being comprised of approximately 559 square feet of land out of the William Perrin Survey, Abstract No. 708, Collin County, Texas, and being a portion of a tract of land as described in deed to Jennifer Dawn Weidner and Ryan Lee Weidner as recorded in Volume 5932, Page 6762, Deed Records Collin County, Texas (D.R.C.C.T.), as shown on Exhibit "A," attached hereto and incorporated herein by reference, along with the acquisition of the permanent improvements thereto affixed, if any, which acquisition is necessary to facilitate the construction of intersection improvements, specifically to construct a right turn lane at the northeast corner of the intersection of northbound U.S. 75 and westbound McDermott Road in the City of Allen, Texas. (collectively, the land described in Exhibits "A" and the permanent improvements thereto affixed are referred to herein as the "Property"); and

**WHEREAS**, a hearing was held on July 19, 2017, before the Special Commissioners appointed by the Court in the Lawsuit, after which the Special Commissioners awarded the Weidners the amount of Sixty-Five Thousand Dollars and No Cents (\$65,000.00) in damages for the City's taking of the Property as described in City's Original Petition in the Lawsuit (the "Award"); and

**WHEREAS**, City deposited the funds in the amount of the Award into the registry of the Court on August 7, 2017; and

**WHEREAS**, the Weidners filed their Objections to the Award on August 10, 2017; and

**WHEREAS**, City and the Weidners desire to compromise and settle the Lawsuit and to that end have negotiated this Agreement for that purpose; and

**WHEREAS**, Don Brazeal, as Lien Holder, has signed and provided to the parties hereto an executed, duly notarized Waiver and Disclaimer of any interest in or to the Property or the interests at issue in or affected by the Lawsuit, a true and correct copy of which is attached hereto as Exhibit "B";

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the City and the Weidners agree as follows:

1. **Entry of Agreed Final Judgment:** Upon the execution of this Agreement, the parties, through their respective attorneys, shall sign and submit to the Court in the Lawsuit an Agreed Final Judgment substantially in the form set forth in Exhibit "C" attached hereto and incorporated herein by reference. The Weidners hereby understand, acknowledge, and agree that upon signing of the Agreed Final Judgment by the Court pursuant to this Agreement that said judgment will become final and not appealable in the same manner as if the judgment had been signed and entered in accordance with Tex. Prop. Code § 21.061.

2. **Payment to the Weidners:** Upon entry of said Agreed Final Judgment, the Weidners shall be authorized to withdraw, if not already withdrawn, and retain the Award funds in the amount of Sixty-Five Thousand Dollars and No Cents (\$65,000.00) from the Registry of the Court and further the City will remit to the Weidners the sum of Sixteen Thousand Dollars and No Cents (\$16,000.00).

3. **Restoration of Weidners' Remaining Property:** City agrees that as a part of its construction of the right turn lane at the northeast corner of the intersection of northbound U.S. 75 and westbound McDermott Road in the City of Allen, Texas (the "Project") for which the Property is being acquired, the City will, at the conclusion of the Project, restore the driveway on the Weidners' remaining property, including curbs and curb cuts, to a driveable condition in accordance with construction projects and established standard practices in the City as set forth in the following documents, true copies of which are attached hereto as Exhibit D:

a. Drawing "Sheet No. 1" prepared by Kenneth A. Roberts, P.E., dated January 2018, in connection with City of Allen Project No. R304411.01;

b. Drawing "Sheet No. 14" prepared by Kenneth A. Roberts, P.E., dated January 2018, in connection with City of Allen Project No. R304411.01;

c. Drawing "Detailed View of Project Plan Sheet #14" prepared by Kenneth A. Roberts, P.E., dated January 2018, in connection with City of Allen Project No. R304411.01;

d. City of Allen "Standard Construction Details – Paving" dated September 1991, Rev. Date: May 2017, Sheet SD-P42; and

e. City of Allen Special Conditions, SC.30 "Protection of Site" pages 8, 15 and 16.

This restoration of the driveway described in this paragraph 3 will be performed by or at the direction of the City and at the City's sole expense. The Weidners agree, if and as necessary for performance of this restoration, to grant the City the right to temporary access and use of the Weidner's remaining property to the extent necessary to facilitate the City's construction of the restored driveway.



4. **Mutual Releases:** The parties hereby release, acquit, and forever discharge each other, their agents, employees, representatives, attorneys, and officials, from and against any and all claims, demands or causes of action of any kind whatsoever at law, statutory or otherwise, that the parties might have or claim to have, whether now known or unknown, now existing or that might arise hereafter, directly or indirectly attributable to the City's appropriation of the Property, it being intended by the parties to release all claims of any kind that the parties might have against those hereby released, whether asserted in the Lawsuit or not. This is an unconditional, unqualified release and without being necessarily limited thereto, includes all claims of every kind, character or nature which any party hereto could, mayor might assert on its behalf, by reason of the subject matter of the Lawsuit and facts alleged in the Lawsuit, including property damage, loss of earnings and any other kind, character or nature of claim which may or might be the subject matter of a claim by the parties hereto.

5. **Property Taxes:** The Weidners agree that they are and shall be solely liable and responsible for the payment of the amount of ad valorem taxes assessed against the Property prior to the date the Agreed Final Judgment is signed and entered in the Lawsuit, if any, to the extent such taxes have not already been paid.

6. **Costs and Attorneys Fees:** The parties hereby agree that with respect to the Lawsuit, the preparation and negotiation of this Agreement and all matters related to the subject matter of the Lawsuit, each Party shall bear the costs of its own attorney's fees. Costs of court related to the filing of the Lawsuit and all other court costs that may be assessed by the court in the Lawsuit shall be the responsibility of the party incurring the same.

7. **Compromise of Disputed Claim:** It is understood and acknowledged by all parties that the settlement evidenced by this Agreement is a compromise of a disputed claim or claims and that the sum herein mentioned is being paid by way of compromise only and does not constitute and is not to be construed as any evidence of admission of liability or of the alleged damages on the part of either party.

8. **Entire Agreement:** This Agreement, together with its exhibits, constitutes the entire agreement of the parties concerning the settlement of the Lawsuit.

9. **Amendment:** This Agreement may be amended only by an instrument in writing signed by the parties.

10. **Assignment:** This Agreement may not be assigned by any of the parties hereto without the express written consent of the other parties.

11. **Survival:** The obligations of this Agreement that cannot be performed before termination of this Agreement will survive termination of this Agreement, and the legal doctrine of merger will not apply to these matters.

12. **Choice of Law; Venue; Alternative Dispute Resolution:** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas, wherein exclusive venue of any action to enforce any provision hereof shall lie.

13. **Waiver of Default:** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to the default.

14. **No Third-Party Beneficiaries:** There are no third-party beneficiaries to this Agreement.

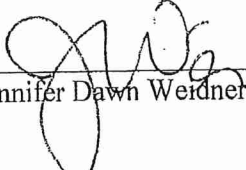
15. **Ambiguities Not to Be Construed against Party Who Drafted Agreement:** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

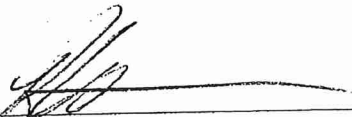
16. **Authority and Binding Effect:** Each party represents and warrants that each individual signing this Agreement has complete and full authority to act on behalf of the entity or person for which the individual purports to act and has the authority to bind each of the parties and all other persons or entities with any right, title or interest therein. This Agreement shall be binding and inure to the benefit of the City and the Weidners and their respective successors and assigns.

17. **Exhibits Incorporated.** All exhibits attached to this Agreement are incorporated herein by reference and constitute additional terms and conditions of this Agreement as if fully set forth in the main body of this Agreement.

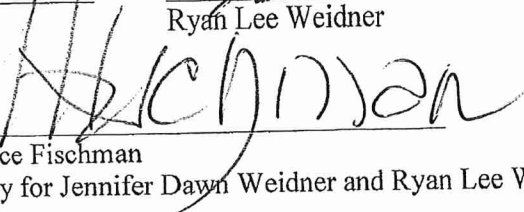
18. **Effective Date:** The Effective Date of this Agreement is the last date this Agreement is signed by authorized representatives of the City and the Weidners. References to the date of execution of this Agreement are to the Effective Date.

**SIGNED AND AGREED** by Jennifer Dawn Weidner and Ryan Lee Weidner this the 30 day of January, 2018.

  
Jennifer Dawn Weidner

  
Ryan Lee Weidner

APPROVED AS TO FORM:

  
Lawrence Fischman

Attorney for Jennifer Dawn Weidner and Ryan Lee Weidner

**SIGNED AND AGREED** by the City of Allen, Texas, this the \_\_\_\_\_ day of January, 2018.

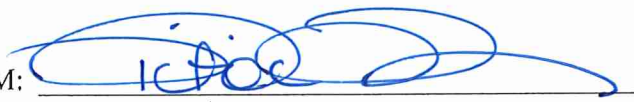
**THE CITY OF ALLEN, TEXAS**

By: \_\_\_\_\_  
Peter H. Vargas, City Manager

ATTEST:

\_\_\_\_\_  
Shelley B. George, City Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Victoria W. Thomas  
Attorney for the City of Allen, Texas

## **EXHIBIT "A"**

Situated in Collin County, Texas, in the William Perrin Survey, Abst. #708 and being part of Lot 4, Block 8 of the Whisenant Addition, Allen, Texas and being part of a 125 ft. by 202.5 ft. lot as described in a Deed from David B. Yarborough, et ux to J.M. Whisenant, dated October 30, 1957 and recorded in Volume 533, page 572 of the Collin County Deed Records and being more particularly described as follows:

BEGINNING at an iron stake in the Northeast corner of the said 125 ft. by 202.5 ft. lot in the South line of an Alley.

THENCE North 89 deg 52 min West with the South line of the Alley a distance of 15 ft. to an iron stake.

THENCE South 0 deg 03 min East a distance of 115.5 ft. to an iron stake.

THENCE North 89 deg 52 min West a distance of 60 ft. to an iron stake.

THENCE South 0 deg 03 min East, 87.0 ft. to an iron stake in the South line of the said lot and the North right of way line of F.M. Hwy. #2170.

THENCE South 89 deg 52 min East with the North right of way line of the Highway, 75 ft. to an iron stake in the Southeast corner of the said lot.

THENCE North 0 deg 03 min West with the East line of the lot a distance of 202.5 ft. to the place of beginning containing 0.189 acres of land.



CAUSE NO. 005-00115-2017

THE CITY OF ALLEN, TEXAS	§	IN THE COUNTY COURT AT LAW
	§	
Plaintiff;	§	
	§	
v.	§	NO. 5
	§	
JENNIFER DAWN WEIDNER AND	§	
RYAN LEE WEIDNER (AS OWNERS)	§	
AND DON BRAZEAL (AS LIEN	§	
HOLDER)	§	
	§	
Defendants.	§	COLLIN COUNTY, TEXAS

**DISCLAIMER**

STATE OF TEXAS     §  
                             §  
COUNTY OF DALLAS   §

For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, I Don Brazeal, the owner and holder of that certain note dated May 24, 2005, in the original principal amount of \$267,770.00 executed by Jennifer Dawn Weidner and Ryan Lee Weidner, as makers, payable to the undersigned or order, as further described in and secured by a deed of trust of even date with said note recorded in Volume 05932, Page 06766, Document 2005-0073765, Real Property Records, Collin County, Texas, have relinquished and do hereby relinquish in favor of the said Jennifer Dawn Weidner and Ryan Lee Weidner any claim I may have as lienholder or otherwise to the amount awarded in the captioned case to the Weidners as compensation for the

EXHIBIT "B"

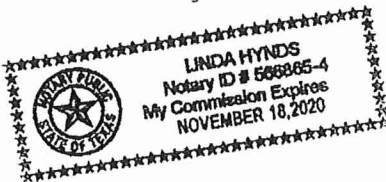
taking of a portion of the subject real property, and any amount awarded as compensation for damages to the remainder of said property not taken.

EXECUTED this 17th day of January, 2018.

Don Brazeal  
Don Brazeal

STATE OF TEXAS       §  
                                  §  
COUNTY OF Crayson §

This instrument was acknowledged before me on the 17th day of January, 2018, by Don Brazeal.



Linda Hynds  
Notary Public in and for  
the State of Texas

My commission expires:

11-18-2020



**EXHIBIT "C"**  
**FORM OF AGREED FINAL JUDGMENT**

**CAUSE NO. 005-00115-2017**

**THE CITY OF ALLEN, TEXAS,**  
*Plaintiff*

**IN THE COUNTY COURT**

**V.**

**AT LAW NO. 5**

**JENNIFER DAWN WEIDNER and RYAN  
LEE WEIDNER (AS OWNERS) and DON  
BRAZEAL (as Lienholder)**  
*Defendant*

**COLLIN COUNTY, TEXAS**

**AGREED FINAL JUDGMENT**

On this date, the Court considered the Award of the Special Commissioners ("Award") and pleadings filed in the above eminent domain proceeding and found that:

A. The Award was filed with this court on July 20, 2017, after Defendants had been served with due notice of the hearing thereon;

B. On August 7, 2017, Plaintiff paid the amount of the Award into the registry of the court subject to the order of the Defendant;

C. The Defendant timely filed its Objections to the Award of Special Commissioners on August 10, 2017, as provided in Section 21.018 of the Texas Property Code;

D. The amount of the award was greater than Plaintiff's final offer to Defendant before this proceeding was commenced;

E. Don Brazeal, as lien holder, has signed and provided to the parties an executed, duly notarized Waiver and Disclaimer of any interest in or to the Property or the interests at issue in or affected by this Lawsuit and a true and correct copy of that Waiver and Disclaimer has been filed of record in this Lawsuit;

F. On the date hereof, the parties announced to the Court that they had entered into a Settlement Agreement regarding the matters in dispute and the Award of the Special Commissioners.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

1. Jennifer Dawn Weidner and Ryan Lee Weidner (collectively, the "Weidners") be and are hereby awarded the total sum of Eighty-One Thousand Dollars and No Cents (\$81,000.00) in full compensation for all damages relating to this cause of action and the condemnation and award of property granted herein. The Weidners shall be and are hereby entitled to the funds previously deposited by the City of Allen into the the registry of this Court in the sum of Sixty-Five Thousand Dollars and No Cents (\$65,000.00) and shall further have and recover of and from the City of Allen, Texas the sum of Sixteen Thousand Dollars and No Cents (\$16,000.00) on or before \_\_\_\_\_, 2018;

2. Plaintiff City of Allen is empowered by Tex. Loc. Govt. Code §251.001 to exercise the power of eminent domain for a public purpose to acquire an interest in private property inside or outside the municipality for the purpose of the straightening, widening or extending of any street or roadway and for the purpose of providing recreational facilities.

3. Plaintiff City of Allen is entitled to condemn and hereby has judgment against Defendants Jennifer Dawn Weidner and Ryan Lee Weidner (as Owners) and Don Brazeal (as Lienholder) for the fee simple title to the surface estate only of the following described property in the City of Allen, Collin County, Texas, for installation and construction of public streets and utilities and related public improvements:

BEING 559 square feet of land, more or less, in the William Perrin Survey, Abstract No. 708, City of Allen, Collin County, Texas, and being a portion of a

tract of land as described in deed to Jennifer Dawn Weidner and Ryan Lee Weidner as recorded in Volume 5932, Page 6762, Deed Records Collin County, Texas (D.R.C.C.T.), said 559 square feet of land being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod found at the southwest corner of Lot 4R, Block 8 of the Exxon McDermott Addition, an addition to the City of Allen as recorded in Cabinet L, Page 498 of the Plat Records, Collin County, Texas;

THENCE, along the existing northerly right-of-way line of said McDermott Road, South 76 degrees 11 minutes 06 seconds East a distance of 18.46 feet to a point for corner;

THENCE, departing the existing northerly right-of-way line of said McDermott Road, North 89 degrees 13 minutes 32 seconds East a distance of 81.76 feet to an X cut set on the westerly line of said Weidner tract and being the POINT OF BEGINNING and having a Texas State Plane Coordinate System, RA.D.83, North Central Zone (4202), surface coordinate of North 7,089,792.039, East 2,527,178.000;

THENCE, departing the westerly line of said Weidner tract, North 89 degrees 13 minutes 32 seconds East a distance of 74.66 feet along the new northerly right-of-way line of said McDermott Road to an X cut set on the easterly line of said Weidner tract;

THENCE, departing the new northerly right-of-way line of said McDermott Road, South 01 degrees 07 minutes 38 seconds East a distance of 7.35 feet along the easterly line of said Weidner tract to a point at the southeast corner of said Weidner tract from which a 3/4 inch iron pipe found bears South 03 degrees 10 minutes 30 seconds East a distance of 0.33 feet;

THENCE, along the southerly line of said Weidner tract, South 89 degrees 01 minutes 11 seconds West a distance of 74.73 feet to a point at the southwest corner of said Weidner tract from which a 1/2 inch iron rod found bears South 10 degrees 01 minutes 05 seconds East a distance of 0.96 feet;

THENCE, along the westerly line of said Weidner tract, North 00 degrees 37 minutes 28 seconds West, a distance of 7.62 feet to the POINT OF BEGINNING and CONTAINING 559 Square feet or 0.0128 of an Acre of land, more or less.

4. Plaintiff further does not by this judgment acquire, and there is hereby reserved unto Defendants and/or prior grantors who have previously made such reservations, all oil, gas and other minerals beneath the surface of the real property described in Paragraph 3 of this

Agreed Final Judgment ("the Property"), provided that the owners of the oil, gas and other minerals in and under the Property shall have no right whatsoever to enter upon or use the surface of the Property for the purpose of exploring for, drilling, mining or developing said oil, gas and other minerals, but will be permitted to extract oil, gas and other minerals from and under the Property by directional drilling or other means from land located outside the boundaries of the Property so long as Plaintiff's use of the Property for the purposes set forth herein is not disturbed, and the facilities located and to be located thereon and the public's use of the same are not obstructed, endangered or interfered with.

5. If necessary, a writ of possession for the Property shall be issued in favor of Plaintiff;

6. Costs of this proceeding are to be taxed against the party incurring the same.

7. Any relief not granted herein is hereby denied.

**SIGNED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.


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**JUDGE PRESIDING**

**AGREED AND APPROVED:**

NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P

By: \_\_\_\_\_

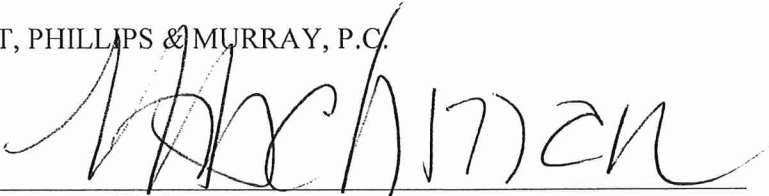
  
Victoria W. Thomas  
State Bar No. 24059913  
Kevin B. Laughlin  
State Bar No. 11992510  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201



Telephone (214) 965-9900  
Facsimile: (214) 965-0010  
ATTORNEYS FOR PLAINTIFF, THE CITY OF ALLEN

GLASST, PHILLIPS & MURRAY, P.C.

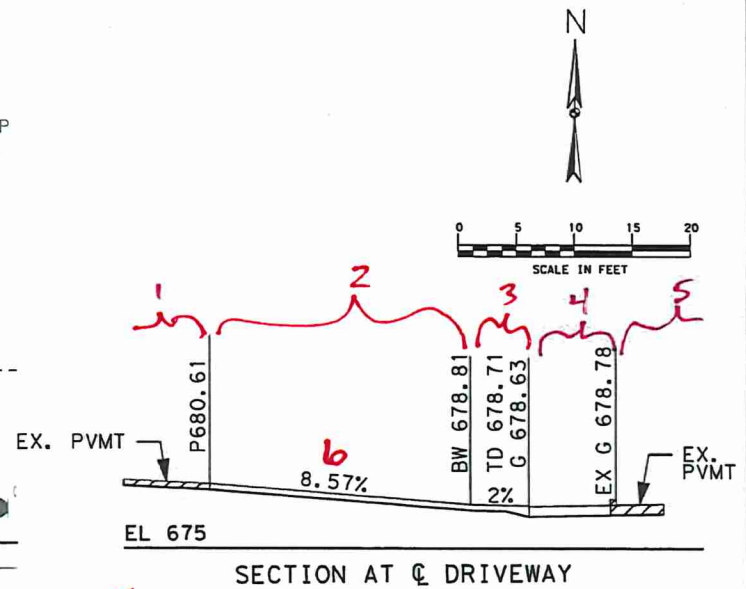
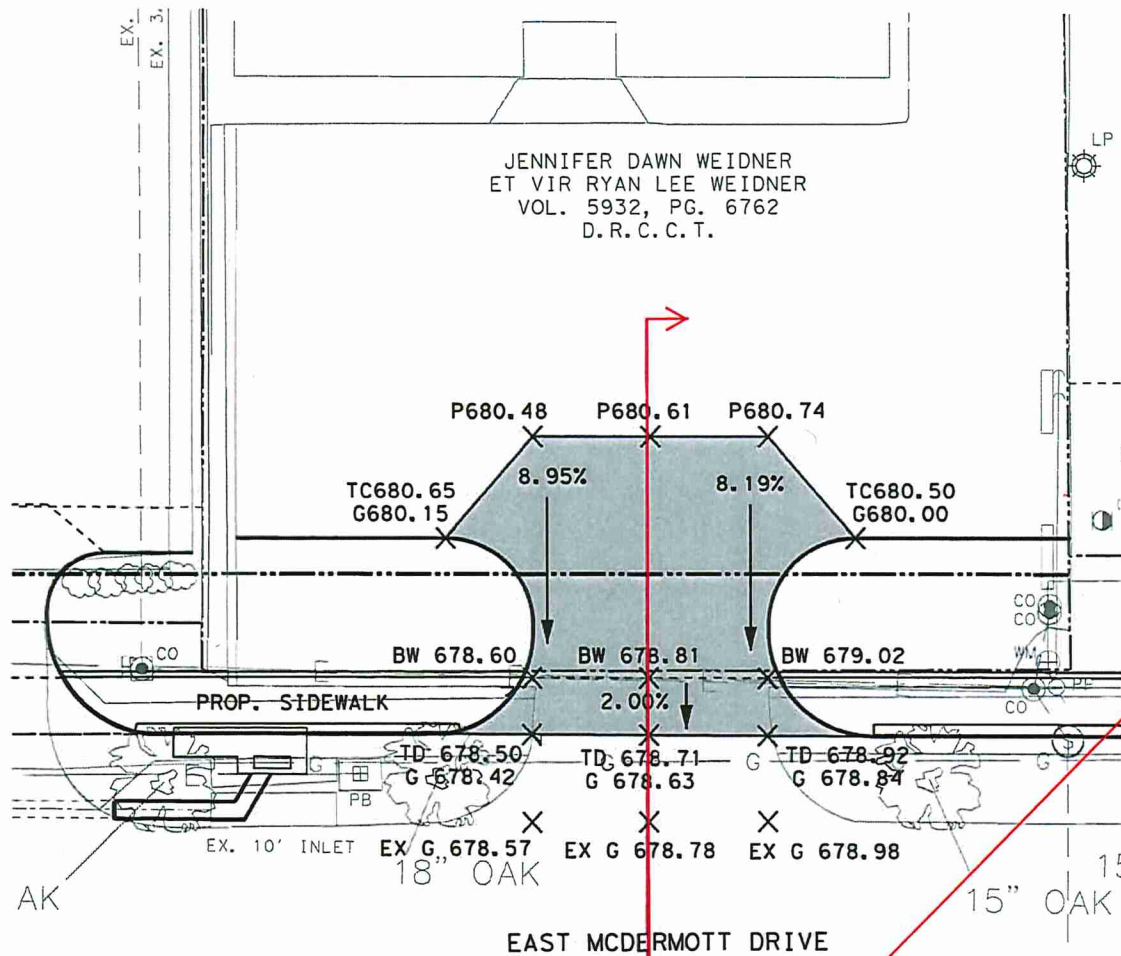
By:

  
Lawrence Fischman  
State Bar No. 07044000  
14801 Quorum Drive, Suite 500  
Dallas, Texas 75254-1449  
Telephone: (972) 419-8300  
Facsimile: (972) 419-8329

ATTORNEY FOR DEFENDANTS, JENNIFER DAWN  
WEIDNER AND RYAN LEE WEIDNER

# DETAILED VIEW OF PROJECT PLAN SHEET #14

JENNIFER DAWN WEIDNER  
ET VIR RYAN LEE WEIDNER  
VOL. 5932, PG. 6762  
D.R.C.C.T.



- 1- existing parking
- 2- new pavement drive
- 3- driveway approach
- 4- new turn lane
- 5- existing road
- 6- proposed grade is within current city standards see sheet SD-P42



DATE	DESCRIPTION	REV. No.
REVISIONS AND ISSUE DATES		
RIGHT-TURN LANE		
INTERSECTION IMPROVEMENTS		
E. MCDERMOTT DRIVE		
WEIDNER TRACT		
CITY OF ALLEN		
COLLIN COUNTY, TEXAS		
HUNT-ZOLIARS		
1717 Highway Avenue, Suite 1400		
Dallas, Texas 75243-1200		
Phone (214) 871-2211 Fax (214) 871-8287		
SCALE	SHEET No.	
1" = 10'	1	
DATE		
JAN 2018		
PROJECT NUMBER: RD041151		

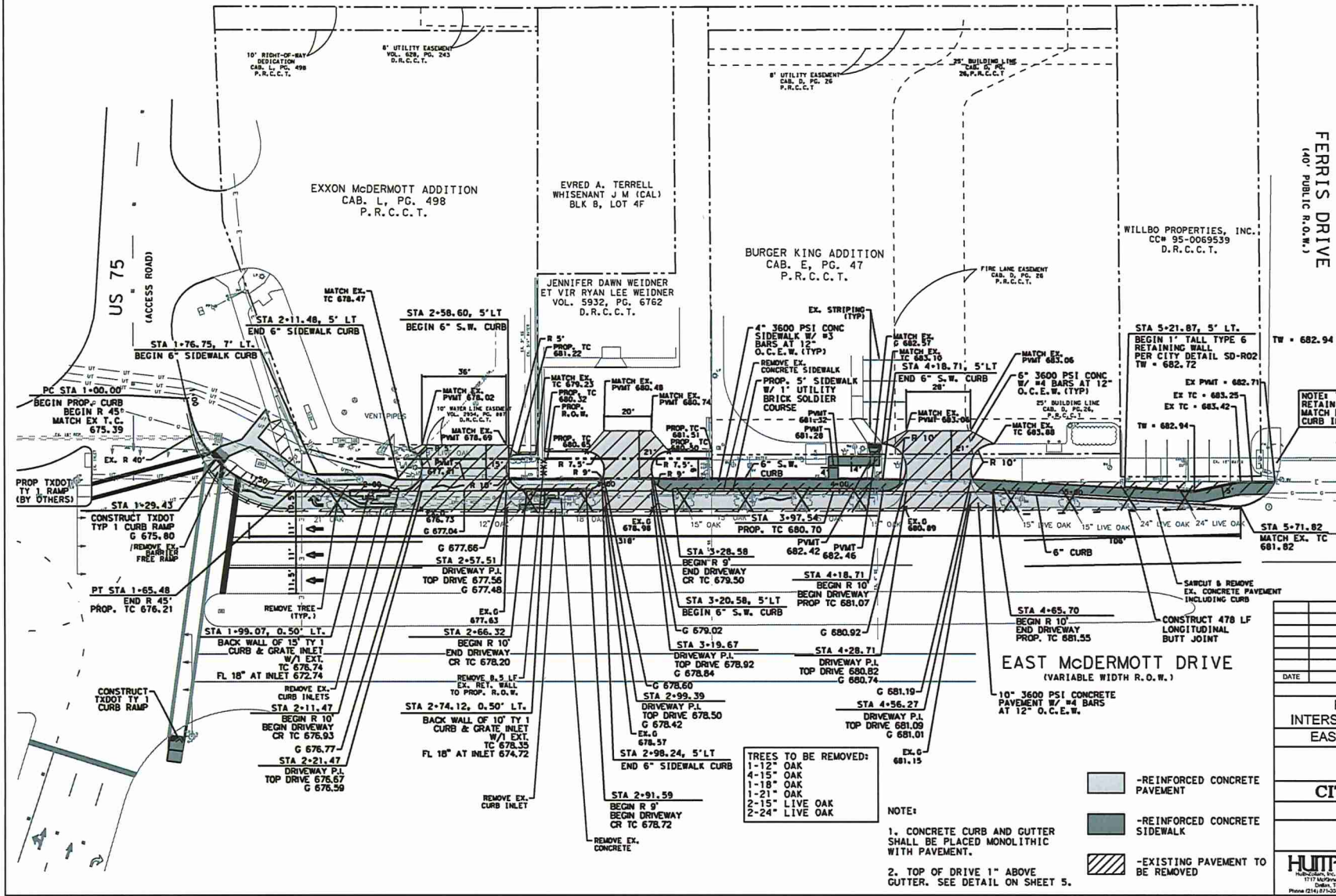


# BELMONT DRIVE



**CAUTION - GAS!**  
Underground Gas Main in Area  
Contact AT&T Energy Corp., Tulsa Working  
Days Prior to Construction.  
Toll 1-800-344-4377 / 905-245-6005

**FERRIS DRIVE**  
(40' PUBLIC R.O.W.)



THE SEAL APPEARING ON THIS PLAN IS APPROVED FOR BIDDING & CONSTRUCTION BY KENNETH A. ROBERTS, P.E. 55446 ON JANUARY 10, 2018



DATE	DESCRIPTION	REV. NO.
	REVISIONS AND ISSUE DATES	
	RIGHT-TURN LANE INTERSECTION IMPROVEMENTS EAST McDERMOTT DRIVE	
	PAVING PLAN	
	<b>CITY OF ALLEN</b>	
	COLLIN COUNTY, TEXAS	
	<b>HUTT-ZOULARS</b>	
	1717 McKinney Avenue, Suite 1400 Dallas, Texas 75201-2098 Phone (214) 671-2011 Fax (214) 671-2097	
SCALE	SHEET NO.	
1" = 20'	14	
DATE		
JAN 2018		
PROJECT NUMBER: R-044113-01		

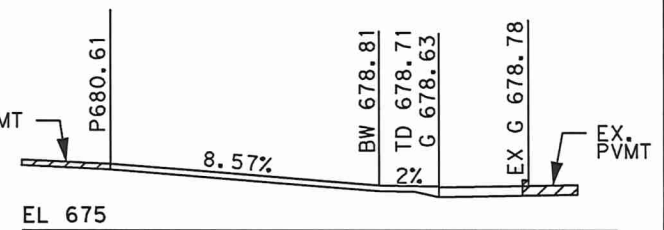
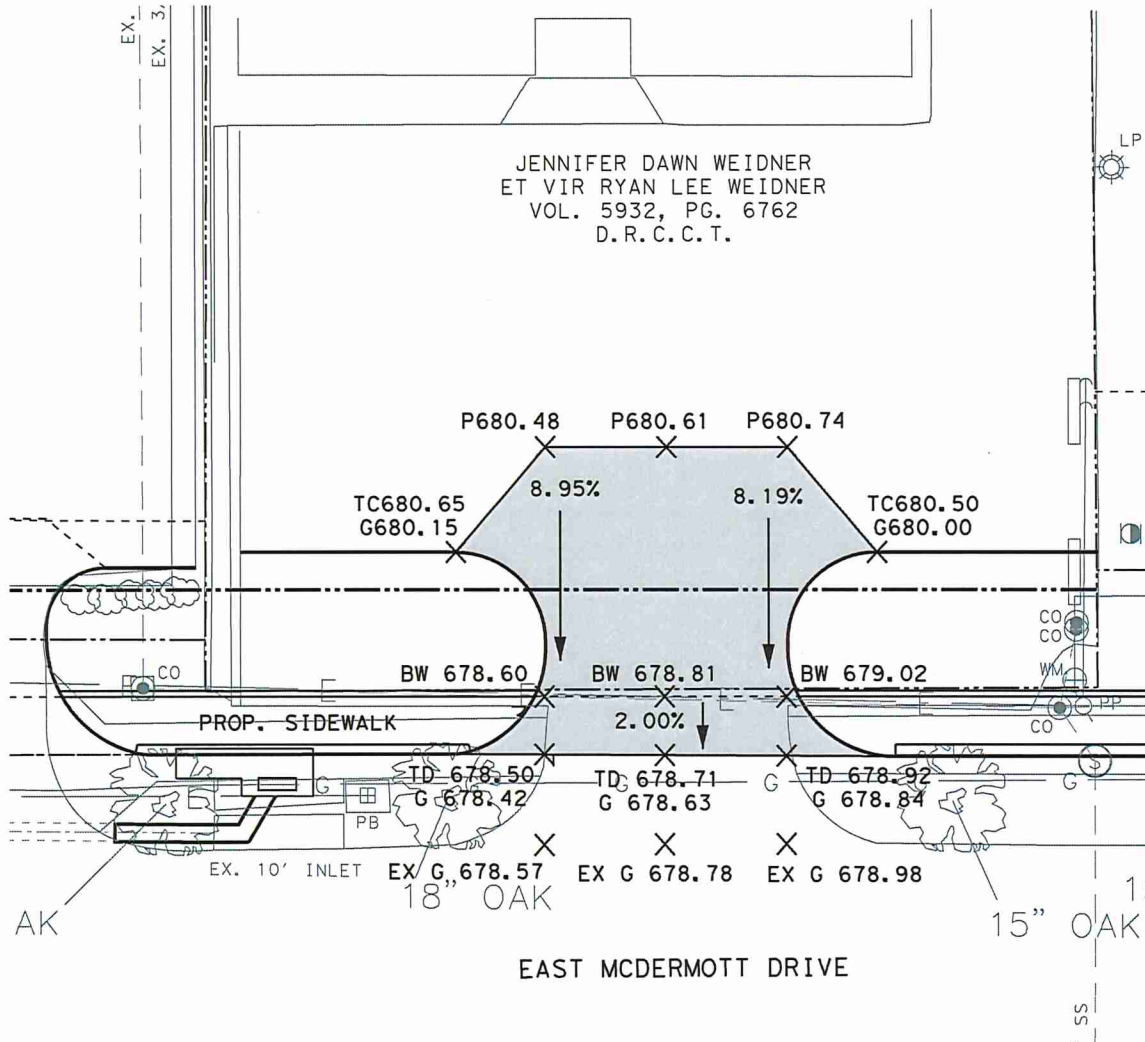
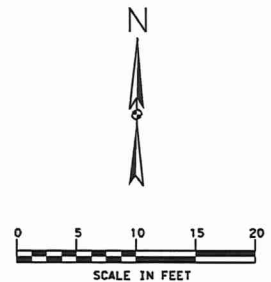
- NOTE:
1. CONCRETE CURB AND GUTTER SHALL BE PLACED MONOLITHIC WITH PAVEMENT.
  2. TOP OF DRIVE 1" ABOVE GUTTER. SEE DETAIL ON SHEET 5.

- REINFORCED CONCRETE PAVEMENT
- REINFORCED CONCRETE SIDEWALK
- EXISTING PAVEMENT TO BE REMOVED

- TREES TO BE REMOVED:
- 1-12" OAK
  - 4-15" OAK
  - 1-18" OAK
  - 1-21" OAK
  - 2-15" LIVE OAK
  - 2-24" LIVE OAK



JENNIFER DAWN WEIDNER  
ET VIR RYAN LEE WEIDNER  
VOL. 5932, PG. 6762  
D.R.C.C.T.



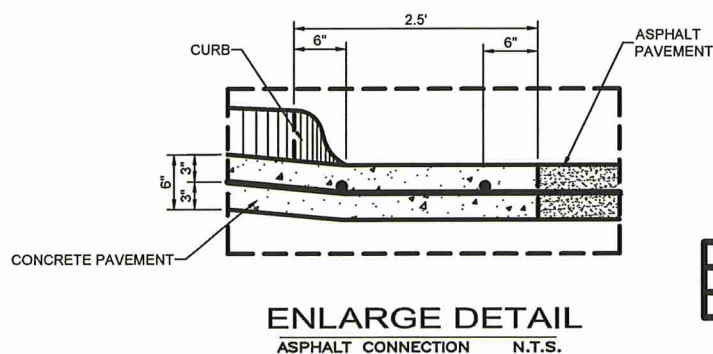
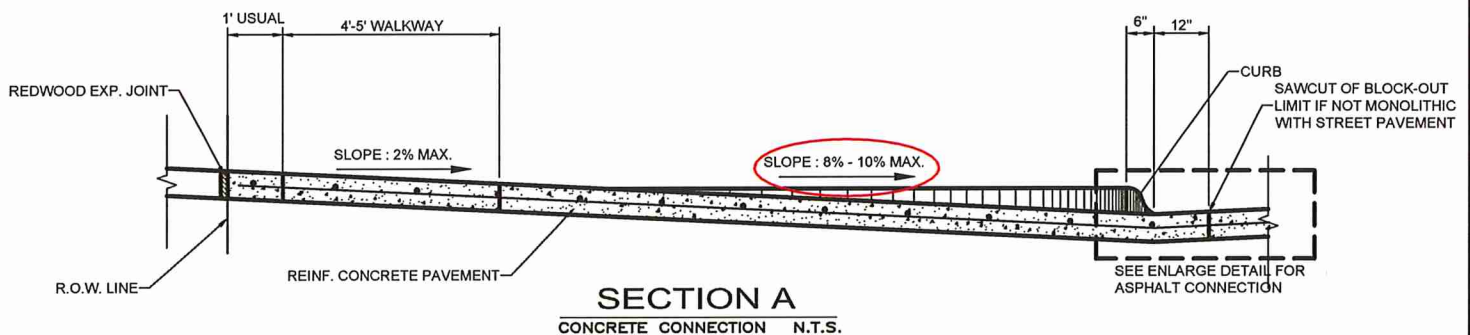
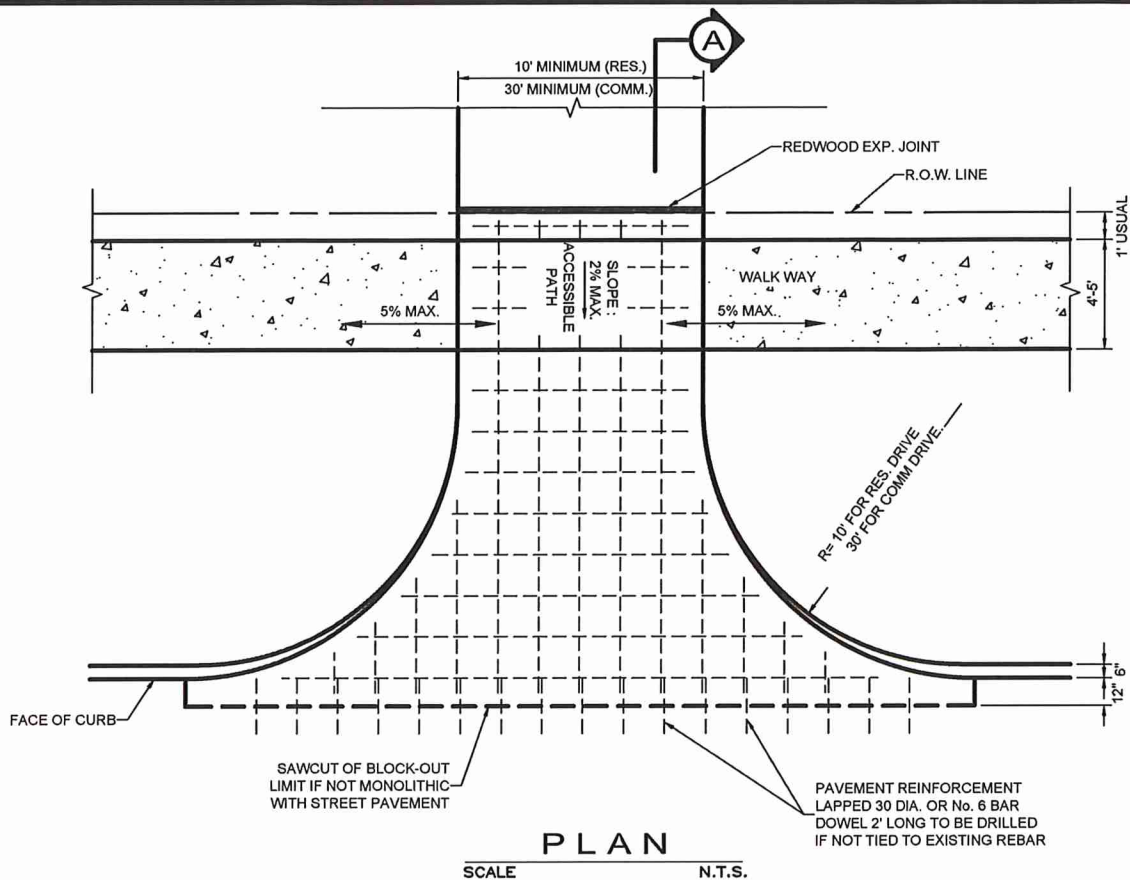
SECTION AT Q DRIVEWAY



DATE	DESCRIPTION	REV. NO.
REVISIONS AND ISSUE DATES		
RIGHT-TURN LANE INTERSECTION IMPROVEMENTS		
E. MCDERMOTT DRIVE		
WEIDNER TRACT		
CITY OF ALLEN		
COLLIN COUNTY, TEXAS		
HUTT-ZOLIARS		
HUTT-ZOLIARS, INC. 1717 McDermott Avenue, Suite 1400 Allen, Texas 75002-1294 Phone (214) 871-0311 Fax (214) 871-0197		
SCALE 1" = 10'	SHEET NO. 1	DATE JAN. 2018

PROJECT NUMBER: K0441121





	CONSTRUCTED MAX.
CROSS SLOPE	2%
RUNNING SLOPE	5% MAX WHEN ADJACENT STREET ≤ 5%

### **SC.30 PROTECTION OF SITE**

The Contractor shall protect all structures, walks, pipe lines, trees, shrubbery, lawns and other improvements during the progress of his work and shall remove from the site all debris and unused materials.

#### **MOWING AND DEBRIS MAINTENANCE**

- A. During construction and through to final acceptance, the Contractor, at his expense, shall be responsible for maintaining the existing turf areas within the work area. The Contractor shall mow this area as often as necessary to maintain the turf areas, at a height. Minimum cutting height for the turf shall be as specified in the bid documents.
- B. If, in the opinion of the Engineer, the site becomes unsightly, the Contractor shall mow the site within two (2) days after notification from Owner to do so.
- C. At final completion of the project the contractor shall mow one final time in accordance the minimum height for turf specified in the bid documents.
- D. The Contractor at all times shall keep the construction site free from accumulation of waste materials, rubbish, debris, etc. caused by his operations. Waste materials, rubbish, debris, etc. shall be cleaned up daily and removed from the project site at least once a week
- E. No payment will be made for this work, its cost being subsidiary to the entire project.

#### **PROJECT VIDEO AND PHOTOGRAPHS**

- A. Prior to the start of construction, the Contractor shall videotape and digitally photograph the construction area and the property adjacent to construction. The Contractor shall furnish the Owner a copy of the tape in DVD format prior to commencement of the project. The Video and Photos shall be in color. This shall be subsidiary to the project.

#### **LANDSCAPE & TREE TREATMENTS**

- A. Where trees, plants, shrubbery, etc., are adjacent to the line of the work and are not to be removed or are to be removed and replaced, the Contractor shall protect such trees, plants, shrubbery, etc., by orange fencing and T-posts to be installed beyond the dripline, and shall not permit machinery or employees to scrape, tear the limbs from, damage or attach guy cables to such landscaping and if, in the opinion of the Owner, such trees, plants, shrubbery, etc., would be damaged by machinery, etc., hand excavation may be required. The Contractor shall be responsible for all damages to adjacent trees, plants, shrubbery, etc.
- B. Tree Preservation is outlined in the Allen Land Development Code, Section 7.06.
- C. All disturbed turf outside the temporary construction fencing shown on the plans shall be re-established to original condition prior to completion of construction. This Turf Re-establishment shall be at the Contractor's expense and to the satisfaction of the City of Allen.



Contractor for the correction or removal of unsatisfactory work or of any work subsequently performed or affected by it. The correction or removal of such unsatisfactory work and the replacement with satisfactory work shall be performed by the Contractor at his own expense, and is understood to be fully included in his contractor requirements, without any additional compensation or claims upon the Owner or Engineer.

#### **SC.56 PROTECTION OF PUBLIC AND PRIVATE PROPERTY**

The plans show as much information as can reasonably be obtained from field surveys and available sources regarding the location and nature of pipe lines, storm sewers, sanitary sewers, water lines, natural gas lines, telephone conduits and underground cables crossing the right-of-way and along the route of the work; however, neither the Owner nor the Engineer assumes responsibility for the correctness or completeness of this information. It shall be the Contractor's responsibility to locate such underground installations sufficiently in advance of construction operations to preclude damage to same, and in the event of damage to underground lines, whether shown on the plans or not, the Contractor shall be required to make, at his own expense, all repairs necessary to place the facility back in service and all repairs so made shall conform in all respects to the requirements of the company or agency servicing the facility.

It shall be the Contractor's responsibility to immediately notify the City Water and Sewer Department of any broken or damaged water or sanitary sewer pipe resulting from the Contractor's operations and to temporarily plug the line until repaired. The Contractor shall also notify the respective companies or agencies owning any other line or facility damaged by him and shall take all necessary safety precautions until the line is repaired.

Buildings or other structures along the route of the work and adjacent to the right-of-way shall be fully protected from damage which might result from the Contractor's operations by shoring or other such means as the circumstances may require. The Contractor shall be responsible for any damage resulting to such buildings or structures and shall be required to repair any damages in such manner as to return the structure to its original condition. The Contractor shall video the entire project prior to the start of construction.

Should any damage to any public or private property result from the Contractor's operations, he shall pay such sums or make such repairs as may be necessary to compensate for the losses. Arrangements for such compensations shall be made directly between the Contractor and the private parties involved.

Telephone, light and power and other poles of similar nature, privately owned signs and similar structures which are not located on private property will be protected by the Owners thereof. However, the Contractor shall not undermine or otherwise endanger such items until the Owners have been notified and have been given reasonable opportunity to take necessary precautions to protect their interests.

Any damage to sidewalks, street pavements, curb and gutter, driveways, drainage structures, street signs, traffic lights, irrigation lines/structures or other public or private property caused by the Contractor's operations shall be repaired at the Contractor's expense, unless otherwise provided. If

damage is not apparent in the pre-construction video, it shall be assumed the damage occurred as a result of the contractor's activity and shall be repaired at the contractor's expense.

#### **SC.57 PROTECTION OF TREES, PLANTS AND SHRUBS**

All trees indicated on the drawings or designated by the Owner to remain shall be protected from damage. Substantially constructed guards or barricades shall be provided as required to protect tree trunks from moving equipment.

The Contractor shall exercise special care to minimize damage to other trees, plants and shrubs along the route of the work. The Owners of trees, plants and shrubs which lie outside the property lines and within the normal limits of work shall be notified by the Contractor before beginning construction operations. The Owners shall be allowed to remove and protect their property, and all such trees, plants and shrubs not so protected by their Owners shall be removed and disposed of by the Contractor.

#### **SC.58 NO WAIVER OF LEGAL RIGHT**

Inspection by the Engineer, any order, measurement, or certificate by the Engineer, any order by the Owner for payment of money, any payment for or acceptance of any work, or any extension of time, or any possession taken by the Owner, shall not operate as a waiver of any provisions of the Contract or any power therein reserved to the Owner of any rights or damages therein provided. Any waiver of any breach of contract shall not be held to be a waiver of any other subsequent breach. The Owner deserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the contract and specifications. The Owner reserves the right to claim and recover by process of law sums as may be sufficient to correct any error or make good any deficiency in the work resulting from such error, dishonesty or collusion, upon the conclusive proof of collusion or dishonesty by the Contractor or his agents and the Engineer or his assistants, discovered in the work after the final payment has been made.

#### **SC.59 COMPETENT WORKMEN**

The Contractor shall employ only competent workmen for the execution of his work and all such work shall be performed under the direct supervision of an experienced superintendent.

#### **SC.60 FINAL INSPECTION / WALKTHROUGH**

The Owner/Engineer will make final inspection / walkthrough of all work included in the contract as the contractor has reached substantial completion.

The contractor shall insure that all valves, manholes, etc. are clean of debris so City crews can access prior to the inspection. For the final inspection / walkthrough the contractor shall provide laborers to turn valves, open manholes, etc. In the event the contractor does not comply with the above requests the walkthrough will be rescheduled and time begin to accrue.