

Item 37, being:

CONTRACT NO. K-0809-168: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND S & S FAMILY PROPERTIES, L.L.C., FOR THE ACQUISITION OF REAL PROPERTY IN CONNECTION WITH THE ROCK CREEK ROAD OVERPASS PROJECT AND ACCEPTANCE OF TEMPORARY EASEMENT NO. E-0809-106 AND WARRANTY DEEDS.

Councilmember Kovach moved that Contract No. K-0809-168 with S & S Family Properties, L.L.C., in the amount of \$286,400 be approved; execution of the contract be authorized; Temporary Easement No. E-0809-106 be accepted; the filing of the temporary easement with the City Clerk and the warranty deeds with the Cleveland County Clerk be directed thereby constituting acceptance; and City Staff be authorized to take the necessary steps to acquire the property and execute the documents related thereto, which motion was duly seconded by Councilmember Quinn;

Items submitted for the record

1. Memorandum dated June 4, 2009, from R. Blaine Nice, Assistant City Attorney, through Jeff H. Bryant, City Attorney, to the Honorable Mayor and Councilmembers
2. Contract No. K-0809-168
3. Owner's Reservations and Covenants
4. Warranty deeds with Exhibit "A," location maps
5. Temporary Easement No. E-0809-106 with Exhibit "A," location map

and the question being upon approving Contract No. K-0809-168 with S & S Family Properties, L.L.C., in the amount of \$286,400 and upon the subsequent authorizations, acceptance, and directive, a vote was taken with the following result:

YEAS:

Councilmembers Butler, Cubberley,
Dillingham, Griffith, Kovach, Quinn,
Mayor Rosenthal

NAYES:

None

The Mayor declared the motion carried and Contract No. K-0809-168 with S & S Family Properties, L.L.C., in the amount of \$286,400 approved; execution of the contract was authorized; Temporary Easement No. E-0809-106 was accepted; the filing of the temporary easement with the City Clerk and the warranty deeds with the Cleveland County Clerk was directed thereby constituting acceptance; and City Staff was authorized to take the necessary steps to acquire the property and execute the documents related thereto.

* * * * *

Item 38, being:

CONTRACT NO. K-0809-169: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND TERRE VERDE L.L.C., FOR THE ACQUISITION OF REAL PROPERTY IN CONNECTION WITH THE ROCK CREEK ROAD OVERPASS PROJECT AND ACCEPTANCE OF THE WARRANTY DEED.

Councilmember Quinn moved that Contract No. K-0809-169 with Terre Verde, L.L.C., in the amount of \$1,189,869 be approved, execution of the contract be authorized, the filing of the warranty deed with the Cleveland County Clerk be directed thereby constituting acceptance, and City Staff be authorized to take the necessary steps to acquire the property and execute the documents related thereto, which motion was duly seconded by Councilmember Griffith;

Items submitted for the record

1. Memorandum dated June 4, 2009, from R. Blaine Nice, Assistant City Attorney, through Jeff H. Bryant, City Attorney, to the Honorable Mayor and Councilmembers
2. Contract No. K-0809-169
3. Warranty deed with Exhibit "A," location map

37. ITEM: CONTRACT NO. K-0809-168: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND S & S FAMILY PROPERTIES, L.L.C., FOR THE ACQUISITION OF REAL PROPERTY IN CONNECTION WITH THE ROCK CREEK ROAD OVERPASS PROJECT AND ACCEPTANCE OF TEMPORARY EASEMENT NO. E-0809-106 AND WARRANTY DEEDS.

INFORMATION: The above-described contract has been examined by the City Attorney and found to be in order and proper as to form. Staff recommends approval of the contract. Copies of an advisory memorandum, contract, owner's reservations and covenants; warranty deeds; temporary easement; and location maps are included in the Agenda Book.

ACTION NEEDED: Motion to approve or reject Contract No. K-0809-168 with S & S Family Properties, L.L.C., in the amount of \$286,400; and, if approved, authorize execution of the contract; accept Temporary Easement No. E-0809-106; direct the filing of the temporary easement with the City Clerk and the warranty deeds with the Cleveland County Clerk thereby constituting acceptance; and authorize City Staff to take the necessary steps to acquire the property and execute the documents related thereto.

ACTION TAKEN: _____

JK/DD *7/0*



office memorandum

DATE: June 4, 2009

TO: The Honorable Mayor and Councilmembers

THROUGH: Jeff H. Bryant, City Attorney *JHB*

FROM: R. Blaine Nice, Assistant City Attorney

SUBJECT: AGENDA ITEMS – Rock Creek Road Bridge Project Overpass – Right-of-Way Acquisition: Land Use Plan Amendment LUP 0809-11 Resolution R-0809-116; Agreement with S&S Family Properties, LLC – Contract No. K-0809-168; Agreement with Terra Verde, LLC – Contract No. K-0809-169.

BACKGROUND:

On June 24, 2008, the City Council approved Resolution R-0708-131 that supported the concept of construction of a Rock Creek Overpass at Interstate 35, recognized the commitment of the Oklahoma Department of Transportation (ODOT) to fund up to \$4 million of such a project and committed to contributing to funding for engineering work for the Project. The cost of the Rock Creek Overpass and Road realignment was estimated to be \$13.6 million. A recent revision of that cost estimate by Cobb Engineering projects the cost to be \$12.4 million.

Funding for the Project was to be provided from four sources: ODOT; University North Park Tax Increment Finance District (UNP TIF); Federal funding through the SAFTEA-LU Program administered through the Association of Central Oklahoma Governments (ACOG); and the City Capital Fund to be reimbursed through the Recoupment Ordinance. The funding commitment from ODOT has not changed. The UNP TIF Funding was authorized by Council's amendment to the Project Plan on September 10, 2008, after a positive recommendation from the Statutory TIF Committee. As the Project has progressed the estimate for the Capital Fund contribution was revised to account for parcels on the south side of Rock Creek Road that were already developed, and to consider a more accurate placement of the bridge structure itself after engineering design work had been completed. The revised Capital Fund contribution reduced that portion of the projected funding by \$654,150. The City applied for ACOG funding for federal fiscal year ending in 2009 and was ranked just below the last project that received requested funding. The City was in the position of waiting for ACOG funding for this Project until federal fiscal year ending 2010 which would likely delay construction to March of 2010. In late spring the City was notified that the City of Del City was withdrawing a project that had been awarded ACOG funding for 2009. Due to the Rock Creek Project rankings, the City is in the position to obtain 2009 ACOG funding that was previously unavailable. While it was thought that funding was \$1.553 million, a recent report from ACOG shows an award of \$1.64 million for this Project.

<u>Funding Source</u>	<u>Early Estimate</u>	<u>Revised Estimates</u>
Estimated Cost	\$13.6 million	\$12.4 million
ODOT	\$4.0 million	\$4.0 million
UNP TIF	\$7.75 million	\$7.75 million
ACOG	\$1.07 million	\$1.64 million
City Capital Fund (Recoupment)	<u>\$0.78 million</u>	<u>not used</u>
Estimated Funding	\$13.6 million	\$13.39 million

As part of the Rock Creek Overpass at Interstate 35 and Rock Creek Road, it is necessary for the City to acquire right-of-way for construction of the bridge and for realignment of Rock Creek Roadway. In order to guarantee the ACOG funding in 2009, the City must acquire the necessary right of way for the project by June 12, 2009.

To meet this deadline to obtain the ACOG funding, City Staff has worked with the OU Foundation (through it's subsidiary University North Park, LLC) and the Developers of the University Town Center (UTC) to acquire necessary right of way on the east side of I-35. A companion item is on the agenda to accept those right of way donations that were required under UNP TIF Development Agreement #4.

City staff has also worked with the owners of S&S Family Properties, LLC, and Terra Verde, LLC, to come to an agreement to acquire the necessary right-of-way on the west side of I-35. These property owners initially objected to the alignment of the Rock Creek Overpass as being unnecessary. In designing the Rock Creek Overpass, it was desirable to move the overpass to the north of the Rock Creek section line road to lessen the impact on established residential neighborhoods to the south of the Project. Moving the alignment to the north also eliminated the need for a noise barrier wall.

City staff met with Council in Executive Session on May 12, 2009, and June 2, 2009, to discuss the legal issues associated with acquisition of the necessary right of way on the west side of I-35. The companion items on the Agenda associated with acquisition of this right of way include: Land Use Plan Amendment LUP 0809-11 / Resolution R-0809-116; Agreement with S&S Family Properties, LLC; and Agreement with Terra Verde, LLC. The Agenda for June 9th will also include an item to go into Executive Session to discuss potentially unresolved issues relating to the acquisition of this real property.

DISCUSSION:

The proposed agreements are each contingent on the other. The parcel platted by Terra Verde, LLC totals 2.47 acres. The plat contains 50 feet of dedicated right of way or approximately 0.13 acres. The proposed agreements entail the City of Norman acquiring from Terra Verde an additional 1.06 acres at \$12/sq. ft. for a total cost of \$1,189,869.

The City would pay for damages to the remaining 1.28 acres. The remaining 1.28 acres would be conveyed from Terra Verde, LLC to S&S Family Properties, LLC. There are no other conditions placed on this transfer with Terra Verde, LLC.

Under the S&S Family Properties, LLC Agreement the City would acquire 7.41 acres from S&S Family Properties for permanent right of way for highway purposes; 4.54 acres from S&S Family Properties for a permanent drainage purposes; and 0.63 acres from S&S Family Properties for a Temporary Construction Easement for a portion of property that will no longer be needed for the roadway once it is constructed. The total 12.58 acres being acquired from S&S Family Properties, LLC is at a negotiated cost to the City of \$286,400.

In addition to receiving excess land from Terra Verde, LLC that is not needed by the City for this Project, as part of this settlement, the Agreement with S&S Family Properties LLC addressed several land development related issues. The details of all these matters were discussed with Council at Executive Sessions on May 12, 2009, and June 2, 2009, and are more fully set forth in the Agreement included in the Agenda Packet. Without reiterating the merits of all of the issues previously discussed with Council, some of the more prominent issues include:

1. approving a revision of the current NORMAN 2025 Land Use & Transportation Plan designation for their property from "Low Density Residential" to "Commercial" (addressed in LUP Amendment 0809-11 / Resolution R-0809-116 that recognized the change in anticipated land use is due primarily to anticipated impact of the Rock Creek Overpass and roadway realignment project);
2. supporting an application for a Conditional Letter of Map Revision (CLOMR) for the flood plain area located at 36th Avenue, N.W. and Rock Creek Road, as document by appropriate engineering analysis to be provided by the applicant;
3. recognizing the possibility of an application by the property owner to obtain permits to build a bridge connecting the parcels through a drainage channel and committing to provide an easement for the construction of the aforementioned bridge;
4. consider allowing use of property between the current Rock Creek Road and the newly aligned Rock Creek Road as open space and drainage for the remainder of property of S&S Family Properties LLC and possibly allow credit for such requirements as appropriate;

5. agree to consider separately from the rest of the property of S&S Family Properties, LLC, the application for a commercial zoning and preliminary plat on the property south and west of Pendleton Drive and Rock Creek Road;
6. install left turn lanes on Rock Creek Road at Pendleton Drive; and
7. City to opt not to use Capital Funds for the project that could be reimbursed through the recoupment process thereby relieving a projected \$125,850 recoupment assessment.

It is recognized that the Agreement with S&S Family Properties, LLC that addresses a number of development related issues is an agreement that runs with the land and is therefore binding on successors in interest to the property. In addition a separate Restrictive Covenant will be filed with the County Real Estate records regarding a parcel that is projected to be south of the realigned Rock Creek Road and east of Pendleton Drive in order to restrict the use of this parcel for open space or drainage purposes.

The budget for right of way acquisition for the Rock Creek Road Overpass Project was \$1.454 million. The Agenda items related to acquisition of right of way, including the donations from OU Foundation and UTC, allow the acquisition of all the necessary right of way for a cash outlay of \$1,476,296. While this figure is \$22,296 over the amount projected, it represents a little over a 1.5% overrun. In addition, if the ACOG funding can be secured, considering current projected construction costs, the funding will provide an approximate 8% contingency (around \$990,000) to fund the Project. Before the updated cost estimate and the additional ACOG funding opportunity the Project funding was showing a possible 4.5% shortfall (around \$615,150).

If Council approves the right of way acquisition agreements, then it is anticipated documents will be executed and filed on Thursday June 11th and delivered to ODOT on Friday to meet the June 12th deadline to secure the additional ACOG funding.

RECOMMENDATION:

Staff recommends that Council approve the attached Agreements between the City of Norman and S&S Family Properties, LLC, between the City of Norman and Terra Verde, LLC, accept the easements related thereto, and authorize the City Staff to take the necessary steps to acquire the property for roadway and drainage purposes from S&S Family Properties, LLC and Terra Verde, LLC, as stated above, and to execute documents related thereto.

The Honorable Mayor and Council Members
Re: Rock Creek Road Bridge Project Overpass
Right-of-Way Acquisition
June 4, 2009
Page 5

Reviewed by: Steve Lewis, City Manager
Shawn O'Leary, Public Works Director *SO*
Susan Connors, Planning & Community Development Director *SC*
Anthony Francisco, Finance Director *A Francisco*

Cc: Ellen Usry, Deputy City Clerk

I/19

**AGREEMENT FOR ACQUISITION OF
RIGHT-OF-WAY
(ROCK CREEK ROAD OVERPASS PROJECT)**

Doc#:R 2009 22230
Bk&Pg:RB 4627 1199-1202
Filed:06-11-2009 PH
04:14:07 PM AG
Cleveland County, OK

THIS AGREEMENT is made and entered into this 9th day of June, 2009, by and between the City of Norman, a municipal corporation (hereinafter referred to as City), and S&S Family Properties, LLC, a limited liability company (hereinafter "S&S") with reference to the following:

WHEREAS, the City is in the process of constructing a project known as the Rock Creek Road Overpass; and

WHEREAS, in connection with the Rock Creek Road Overpass Project, it is necessary for the City to acquire property owned by S&S; and

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt of which are hereby acknowledged, and as reflected in the attached exhibits, the parties hereby agree as follows:

1. Parcel 1 [approximately 7.41 acres of Permanent Roadway Right of Way as depicted on the attached documents] and Parcel 1.2 [approximately 0.63 acres of Temporary Road Construction Easement as depicted on the attached documents] will be granted to the City by S&S. Parcel 1.2 represents property temporarily needed for construction purposes, but that will not need to be retained by the City, and thus will be retained by S&S after City construction is completed.
2. Parcel 1.1 (4.54 acres) will be granted by S&S to the City by Warranty Deed for storm water drainage and retention purposes, with S&S retaining an easement across a part of said 4.54 acres for the purposes of constructing, operating and maintaining a bridge, all at no expense to the City, for vehicular travel between property now owned by S&S and the 1.28 acres to be acquired by S&S pursuant to this Agreement. The design of such bridge must comply with development standards and floodplain regulations. Said easement will be more accurately described upon application and approval of appropriate permits granted by the City for construction, operation and maintenance of such bridge.
3. This Agreement contemplates a three-party transaction, each contingent on the other. Terra Verde, LLC will sell to the City 1.06 acres along the western boundary of Interstate 35, north of the current Rock Creek Road with payment for damages to the remaining 1.28 acres at a price agreeable to the City. The remaining Terra Verde, LLC property not needed for the Rock Creek Road Overpass Project (approximately 1.28 acres) will be transferred from Terra Verde, LLC to S&S. To facilitate this transaction, the parties agree to make themselves available at a mutually agreeable time and place which is also convenient to principals of Terra Verde, LLC to close the transactions.

4. The City acknowledges that S&S or its successors in interest may want to realign or relocate a drainage channel that is located on the 1.28 acre parcel they will be acquiring from Terra Verde, LLC. The City consents to allowing the drainage channel to be realigned or relocated from the middle of the 1.28 acre parcel to the southern boundary of that parcel or onto the northern boundary of the 1.06 acre parcel at S&S's expense and as supported by appropriate engineering analysis and acquisition of applicable permits, and as long as such a realignment on the 1.06 acres does not negatively impact the operation of or the structural integrity of the Rock Creek Overpass or Rock Creek Roadway.
5. The City acknowledges that the current FEMA floodplain designation applicable to property at the corner of Rock Creek Road and 36th Avenue, N.W. may be appropriate for withdrawal from FEMA floodplain designation and the City supports the property owners' application to FEMA for a Conditional Letter of Map Revision, supported by appropriate engineering analysis to be provided by property owners, that more accurately defines the floodplain at this location in an effort to remove an appropriate portion of land located north of Rock Creek Road on both sides of 36th Avenue, NW from FEMA floodplain designation.
6. City agrees to pay the appraised price to S&S of Two Hundred Eight-Six Thousand Four Hundred Dollars (\$286,400) for the granting to the City of Parcels 1, 1.1, and 1.2 as described above.
7. City will construct an extension of Pendleton Drive north across the proposed alignment of Rock Creek Road (*20 feet of pavement on the north leg of Pendleton Drive, measured from the back of curb on Rock Creek Road*) in order to provide a roadway connection point for S&S at that intersection. The new Rock Creek Road will include *left* turn lanes at the Pendleton Drive intersection that will allow traffic to turn north or south.
8. *If S&S desires to utilize a portion of Parcel 1.1 (the 4.54 acres to be provided to the City for use for storm water and retention purposes) for future detention, S&S will be allowed to make improvements on this property to address drainage impacts from future development as supported by appropriate engineering analysis and after securing appropriate permits.*
9. S&S may request that a portion of the land area in Parcel 1 that is east of Pendleton Drive, north of the current Rock Creek Road, and south of the new alignment of Rock Creek Road, be counted toward open space requirements in accordance with applicable subdivision regulations for future development of the remaining property of S&S. If the City allows S&S to count that area as Open Space for the remainder of S&S lands, then S&S would have to maintain and landscape that area in accordance with City regulations to be considered as open space.
10. City will consent to closing the public street portion of existing Rock Creek Road lying west of Pendleton, and offer no objection to the vacation of that road right-of-way by S&S in District Court, whereupon title to the vacated property will vest in owners on both sides of the section line, pursuant to Oklahoma law. The City will dig

up and remove the impervious paving from the section of old Rock Creek immediately west of Pendleton which will be closed. The City acknowledges that the Temporary Construction Easement for Parcel 1.2 will cease after construction is completed and will leave S&S with two parcels located south of the new Rock Creek Roadway, one east of Pendleton Drive and one west of Pendleton Drive. These two Pendleton parcels will be recognized as commercial properties under the 2025 Land Use Plan and upon appropriate application, will be considered for development with the following conditions: the development plan must be for a single story commercial retail store with parking being allowed west of Pendleton; the 100 feet east of Pendleton can be utilized only for drainage and open space requirements for the tract west of Pendleton and a Restrictive Covenant will be filed in the County Real Estate Records evidencing this use restriction; City maintenance requirements for any open space, drainage and parking must be satisfied and paid for by the then current owner of this parcel; no curb cuts shall be allowed on Rock Creek Road; access to the parcel shall be allowed only on the southeast corner of the west parcel; City Staff will support a platting of this parcel without the necessity of also providing a preliminary plat for S&S property north of Rock Creek Road.

11. The City acknowledges that S&S has requested a 2025 Land Use Plan Amendment, changing the designation of the east 27 acres of a 37 acre tract at the Northwest corner of Rock Creek Road and 36th Avenue, NW, from "Low Density Residential" to "Mixed Use" and that the Planning Commission has denied the request based on not simultaneously submitting a zoning change and preliminary plat or development plan. To address the concern that the 27 acres should logically be considered for a more intense use than the current "Low Density Residential" designation, the City will agree to first submit the Resolution attached hereto for Council consideration which will acknowledge that, given the City's construction of the Rock Creek Overpass at I-35 and review of surrounding existing land uses, that a more intense use than "Low Density Residential" is appropriate, and thereby designates the S&S properties, including Parcel 1.2 as Commercial under the 2025 Plan. It is recognized that Land Use Plan Amendments are normally not considered without an accompanying rezoning request and preliminary plat or development plan. However, the City agrees to consider the Land Use Plan Amendment request on an exception basis in recognition of the narrow time frame imposed for acquisition of associated right of way to provide the City with significant additional funding for the Rock Creek Overpass / Roadway Project from the Association of Central Oklahoma Governments (ACOG). It is understood that this entire Agreement is wholly contingent on the City Council duly adopting the Resolution that designates the S&S properties, including Parcel 1.2 as Commercial on the 2025 Plan. It is recognized that such a recommended increase in intensity of use will require appropriate applications for a zoning change and a preliminary plat.
12. The City will excuse S&S from the recoupment process that was initiated regarding the widening of the Rock Creek Roadway. That recoupment cost amount is currently estimated to be \$125,850. The City will waive this assessment. S&S asked that the City consider waiving an assessment against its property associated with the 36th Avenue, NW Recoupment Project, approximately \$48,960 filed of record on 3/24/99.

but S&S acknowledges that request has now been withdrawn and that recoupment assessment will stay intact as filed.

13. The terms and conditions of this Agreement will survive the execution and delivery of the deeds, easements and Resolution described herein.

14. The land use restrictions outlined in this agreement run with the land and shall be binding on S&S, and its successors in interest.

THIS AGREEMENT is effective the date and time first above written.



CITY OF NORMAN, OKLAHOMA,
A municipal corporation

Cindy Rosenthal
Mayor Cindy Rosenthal

Attest:

Pamela Hall
City Clerk

City of Norman
201 W. Gray
Norman, OK 73070

S&S FAMILY PROPERTIES, LLC.

By: Sandra K. Kerr
Sandra K. Kerr, Co-Manager

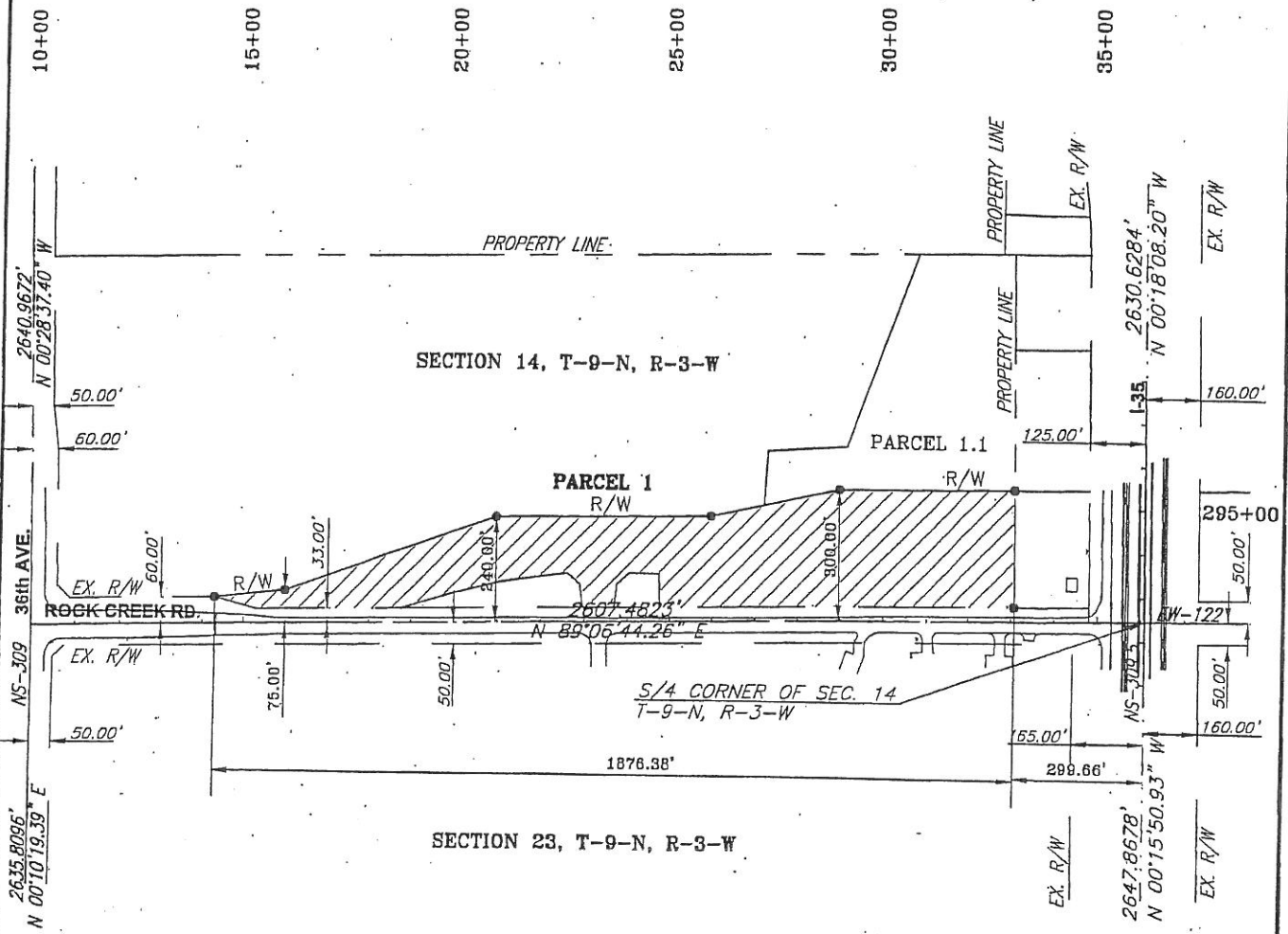
By: Sharri L. Clark
Sharri L. Clark, Co-Manager

APPROVED as to form and legality this 9th day of June, 2009.

R. Blaine
Office of the City Attorney

Exhibit "A"

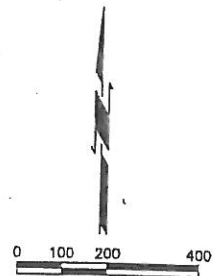
PARCEL NO. 1
 IMY0035-2(307)111MS
 J/P NO. 25922(04)



LEGAL DESCRIPTION

A STRIP, PIECE OR PARCEL OF LAND IN THE SW/4 OF SECTION 14, TOWNSHIP 9 NORTH, RANGE 3 WEST, CLEVELAND COUNTY, OKLAHOMA. SAID PARCEL OF LAND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 14, THENCE S 89°06'44" W ALONG THE SOUTH LINE OF SAID SECTION 14 A DISTANCE OF 299.66 FEET, THENCE N 00°53'16" W A DISTANCE OF 33.00 FEET SAID POINT BEING THE POINT OF BEGINNING, THENCE N 00°18'08" W A DISTANCE OF 267.01 FEET, THENCE S 89°06'44" W A DISTANCE OF 410.55 FEET, THENCE S 77°48'09" W A DISTANCE OF 305.94 FEET, THENCE S 89°06'44" W A DISTANCE OF 500.00 FEET, THENCE S 70°50'58" W A DISTANCE OF 526.52 FEET, THENCE S 84°02'14" W A DISTANCE OF 169.56 FEET TO A POINT ON THE NORTH PRESENT RIGHT-OF-WAY LINE FOR ROCK CREEK ROAD, THENCE S 75°46'40" E ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 103.58 FEET, THENCE N 89°06'44" E ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 343.20 FEET, THENCE N 73°27'48" E A DISTANCE OF 131.53 FEET, THENCE N 76°28'11" E A DISTANCE OF 114.89 FEET, THENCE N 82°15'47" E A DISTANCE OF 150.38 FEET, THENCE S 49°33'51" E A DISTANCE OF 37.83 FEET, THENCE S 06°58'08" E A DISTANCE OF 53.89 FEET TO A POINT ON THE NORTH PRESENT RIGHT-OF-WAY LINE FOR ROCK CREEK ROAD, THENCE N 89°06'44" E ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 72.68 FEET, THENCE N 06°14'45" E A DISTANCE OF 53.21 FEET, THENCE N 48°31'00" E A DISTANCE OF 38.01 FEET, THENCE N 89°38'18" E A DISTANCE OF 71.32 FEET, THENCE S 00°53'16" E A DISTANCE OF 76.88 FEET TO A POINT ON THE NORTH PRESENT RIGHT-OF-WAY LINE FOR ROCK CREEK ROAD, THENCE N 89°06'44" E ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 831.87 FEET TO THE POINT OF BEGINNING.

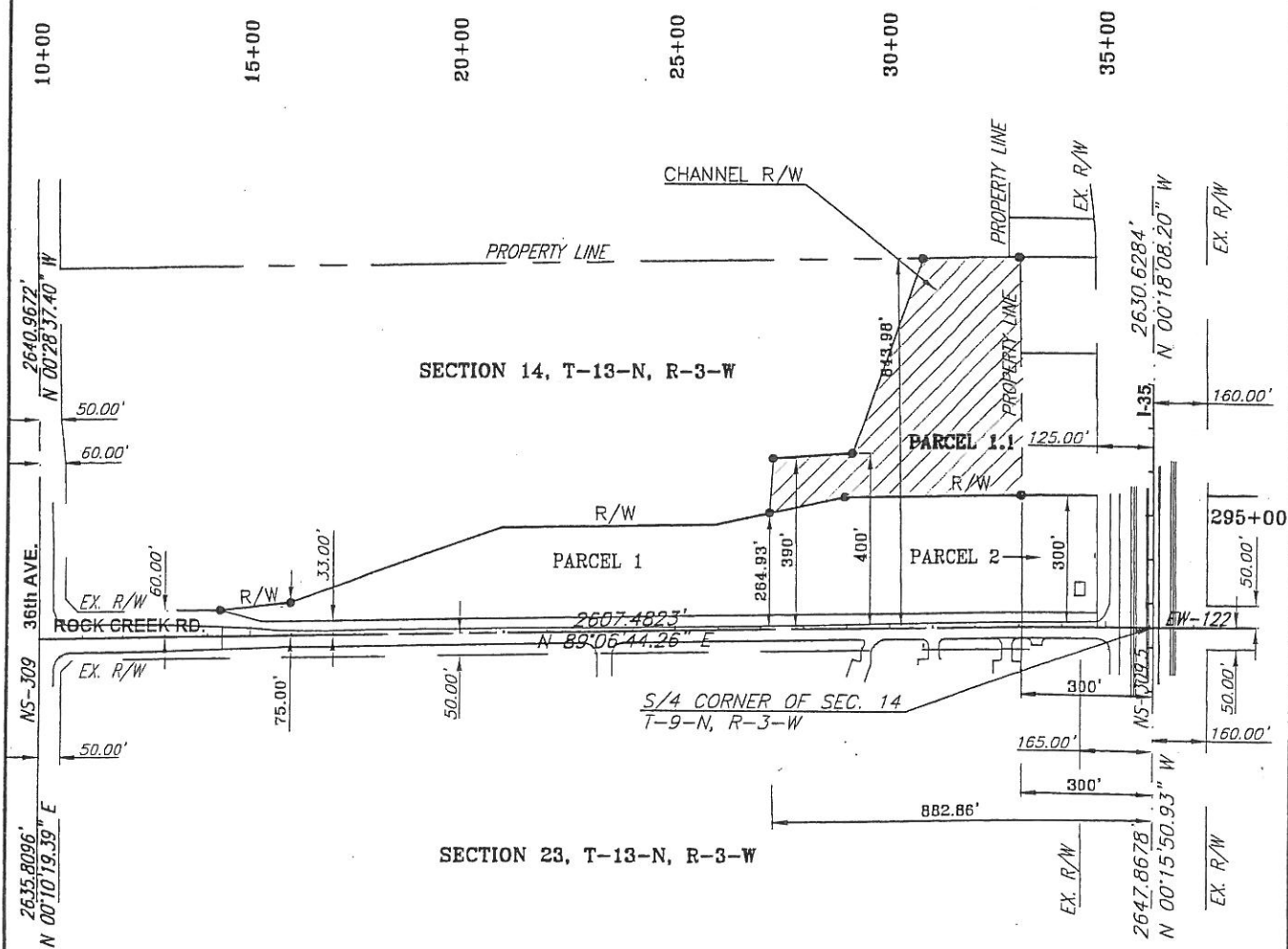
CONTAINING 7.41 ACRES MORE OR LESS OF NEW RIGHT-OF-WAY.



DATE: 1/31/08
PROJ. ID.: IMY0035-2(307)111MS
PROPERTY
PARCEL #1
PLOT PLAN
PROJECT NO. 25922(04)

Exhibit "A"

PARCEL NO. 1.1
 IMY0035-2(307)111MS
 J/P NO. 25922(04)

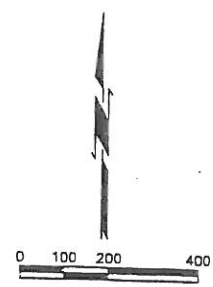


LEGAL DESCRIPTION

A strip, piece or parcel of land in the SW/4 of Section 14, Township 9 North, Range 3 West, Cleveland County, Oklahoma. Said parcel of land being described by metes and bounds as follows:

Commencing at the southeast corner of said SW/4, thence S 89°06'58" W along the south line of said SW/4 a distance of 300.00 feet, thence N 00°18'08" W a distance of 300.02 feet to the point of beginning, continuing N 00°18'08" W a distance of 544.01 feet, thence S 89°06'44" W a distance of 226.18 feet, thence S 20°17'09" W a distance of 476.12 feet, thence S 85°59'24" W a distance of 183.59 feet, thence S 03°41'01" W a distance of 125.47 feet to a point on the north permanent right-of-way line of Rock Creek Road, thence N 77°48'09" E along said right-of-way line a distance of 178.85 feet, thence N 89°06'44" E along said right-of-way line a distance of 410.55 feet to the point of beginning.

Containing 4.54 acres more or less.



DATE:	1/31/08
PROJ. ID.:	IMY0035-2(307)111MS
PROPERTY	
PARCEL #1.1	
PLOT PLAN	
PROJECT NO. 25922(04)	

TEMPORARY EASEMENT

JP 25922(04)
IMY0035-2(307)111MS
PARCEL 1.2

KNOW ALL MEN BY THESE PRESENTS:

THAT S & S FAMILY PROPERTIES, LLC
of CLEVELAND County, State of Oklahoma, for and in consideration of the
sum of TEN AND MORE DOLLARS (\$: 10⁰⁰ & More)
and other good, valuable and consideration, has/have this day sold to the City of NORMAN, OK
a temporary easement over the following described land, to-wit:

A STRIP, PIECE OR PARCEL OF LAND IN THE SW/4 OF SECTION 14, TOWNSHIP 9 NORTH, RANGE 3 WEST, CLEVELAND COUNTY, OKLAHOMA. SAID PARCEL OF LAND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 14, THENCE S 89°06'44" W ALONG THE SOUTH LINE OF SAID SECTION 14 A DISTANCE OF 1131.53 FEET, THENCE N 00°53'16" W A DISTANCE OF 33.00 FEET SAID POINT BEING THE POINT OF BEGINNING, THENCE N 00°53'16" W A DISTANCE OF 76.88 FEET, THENCE S 89°38'18" W A DISTANCE OF 71.32 FEET, THENCE S48°31'00"W A DISTANCE OF 38.01 FEET, THENCE S 06°14'45" W A DISTANCE OF 53.21 FEET TO A POINT ON THE NORTH PERMANENT RIGHT-OF-WAY LINE FOR ROCK CREEK ROAD, THENCE N 89°06'44"E ALONG SAID LINE A DISTANCE OF 106.79 FEET TO THE POINT OF BEGINNING.

AND
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 14, THENCE S 89°06'44" W ALONG THE SOUTH LINE OF SAID SECTION 14 A DISTANCE OF 1311.00 FEET, THENCE N 00°53'16" W A DISTANCE OF 33.00 FEET SAID POINT BEING THE POINT OF BEGINNING, THENCE N 06°58'08" W A DISTANCE OF 53.89 FEET, THENCE N 49°33'51" W A DISTANCE OF 37.83 FEET, THENCE S82°15'47"W A DISTANCE OF 150.38 FEET, THENCE S 76°28'11" W A DISTANCE OF 114.90, THENCE S 73°27'48" W A DISTANCE OF 131.53 FEET TO A POINT ON THE NORTH PERMANENT RIGHT-OF-WAY LINE FOR ROCK CREEK ROAD, THENCE N 89°06'44"E ALONG SAID LINE A DISTANCE OF 422.19 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.63 ACRES MORE OR LESS.

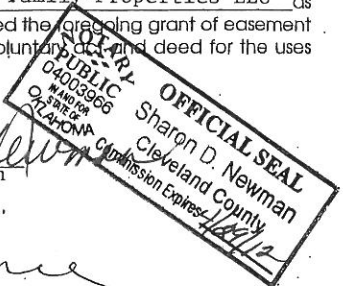
It is a condition of this easement that it shall not be filed for record and that all rights conveyed to the City of NORMAN and the Transportation Commission by this instrument shall terminate upon JUNE 11, 2011.

Grantor(s) hereby covenant(s) and warrant(s) that at the time of execution of this easement, GRANTOR IS THE owner(s) in fee simple of the above described tract that said tract is free and clear of all liens of any nature whatsoever except

The undersigned owner(s) hereby designate and appoint SANDRA KERR and SHARRI CLARK as agent to execute the claim and receive the compensation herein named for said right-of-way. Sandra K. Kerr - mgr Sharrri L. Clark mgr

STATE OF OKLAHOMA, COUNTY OF CLEVELAND, SS: REPRESENTATIVE ACKNOWLEDGEMENT
Before me, the undersigned, a Notary Public in and for said County and State, on this 11TH day of JUNE, 2009, personally appeared Sandra K. Kerr & Sharrri L. Clark of S & S Family Properties LLC as its Managers, to me known to be the identical person(s) who executed the foregoing grant of easement and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year last above written.
My Commission Expires: 4-29-12 Notary Public: Sharon D. Newman
Approved as to form and legality this 9th day of June, 2009.



Approved and accepted by the Council of the City of Norman, this 9th day of June, 2009.

Attest: Brenda Hall, City Clerk

R Blawie, City Attorney
Candy S... Mayor

I/13

OWNER'S RESERVATIONS AND COVENANTS

KNOW ALL MEN BY THESE PRESENTS:

S&S FAMILY PROPERTIES, LLC, owner, hereby certifies that it is the owner of, and the only person, firm, or corporation, of any right, title, or interest in and to the following described real estate and premises, situate in Cleveland County, Oklahoma, to-wit:

Commencing at the southeast corner of said Section 14, Thence S89°06'44" West along the south line of said Section 14 a distance of 1,131.53 feet; thence N 00°53'16" west a distance of 33 feet said point being the point of beginning; thence N00°53'16" west a distance of 76.88 feet; thence S 89°38'18" west a distance of 71.32 feet; thence S 48°31'00" west a distance of 38.01 feet; thence S 06°14'45" west a distance of 53.21 feet to a point on the north permanent right-of-way line for Rock Creek Road; thence N89°06'44" east along said line a distance of 106.79 feet to the point of beginning.

RESTRICTIVE COVENANTS

The above-described property shall be and is hereby limited to and may only be utilized for drainage and open space requirements. The above-described parcel shall not be used for any building, out-building, or appurtenances, but shall be restricted for use only as drainage and open space as set forth above.

This restriction is placed on the property by the City of Norman and shall run with the title to said property and shall be binding on the owners and its successors in interest, if any, in perpetuity.

Dated this 11 day of JUNE, 2009.

S&S FAMILY PROPERTIES, LLC

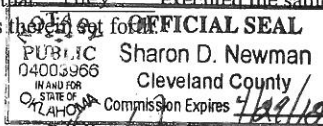
By: Sandra K Kerr & Sharri L Clark
Name: SANDRA K KERR SHARRI L. CLARK
Title: MANAGER MANAGER

STATE OF OKLAHOMA, COUNTY OF CLEVELAND, SS:

Before me, the undersigned, a Notary Public in and for said County and State, on this 11th day of June, 2009, personally appeared Sandra K. Kerr & Sharri L. Clark S&S Family Properties, LLC, its Managers, to me known to be the identical person(s) who executed the foregoing grant of easement and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes set forth.

WITNESS my hand and seal the day and year last above written.

My Commission Expires:
4-29-12



Sharon D. Newman
Notary Public
Sharon D. Newman

CITY OF NORMAN

Cindy S. [Signature]
Mayor



ATTEST:
Lorenda Hall
City Clerk

Approved as to legality and form by the City Attorney. 6-9-09

R. Daniel [Signature]
Jeff Bryant, City Attorney

*201 W. Gray
Norman, OK 73070

I/15

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT S+S Family Properties LLC in consideration of the sum of TEN DOLLARS (\$ 10.00), receipt of which is hereby acknowledged, and for and upon other good and valuable consideration do hereby grant, bargain, sell and convey unto the City of Norman, a municipal corporation of Cleveland County, acting by and through the Department of Transportation of the State of Oklahoma, the fee simple title in and to the following described real property and premises, and including all right, title and interest in and to the airspace, light and view above the surface of the lands herein described, reserving and excepting the mineral interests, therein, to-wit:

A STRIP, PIECE OR PARCEL OF LAND IN THE SW/4 OF SECTION 14, TOWNSHIP 9 NORTH, RANGE 3 WEST, CLEVELAND COUNTY, OKLAHOMA. SAID PARCEL OF LAND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 14, THENCE S 89°06'44" W ALONG THE SOUTH LINE OF SAID SECTION 14 A DISTANCE OF 299.66 FEET, THENCE N 00°53'16" W A DISTANCE OF 33.00 FEET SAID POINT BEING THE POINT OF BEGINNING, THENCE N 00°18'08" W A DISTANCE OF 267.01 FEET, THENCE S 89°06'44" W A DISTANCE OF 410.55 FEET, THENCE S 77°48'09" W A DISTANCE OF 305.94 FEET, THENCE S 89°06'44" W A DISTANCE OF 500.00 FEET, THENCE S 70°50'58" W A DISTANCE OF 526.52 FEET, THENCE S 84°02'14" W A DISTANCE OF 169.56 FEET TO A POINT ON THE NORTH PRESENT RIGHT-OF-WAY LINE FOR ROCK CREEK ROAD, THENCE S 75°46'40"E ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 103.58 FEET, THENCE N 89°06'44"E ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 343.20 FEET, THENCE N 73°27'48" E A DISTANCE OF 131.53 FEET, THENCE N 76°28'11" E A DISTANCE OF 114.89 FEET, THENCE N 82°15'47" E A DISTANCE OF 150.38 FEET, THENCE S 49°33'51" E A DISTANCE OF 37.83 FEET, THENCE S 06°58'08" E A DISTANCE OF 53.89 FEET TO A POINT ON THE NORTH PRESENT RIGHT-OF-WAY LINE FOR ROCK CREEK ROAD, THENCE N 89°06'44"E ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 72.68 FEET, THENCE N 06°14'45" E A DISTANCE OF 53.21 FEET, THENCE N 48°31'00" E A DISTANCE OF 38.01 FEET, THENCE N 89°38'18" E A DISTANCE OF 71.32 FEET, THENCE S 00°53'16" E A DISTANCE OF 76.88 FEET TO A POINT ON THE NORTH PRESENT RIGHT-OF-WAY LINE FOR ROCK CREEK ROAD, THENCE N 89°06'44"E ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 831.87 FEET TO THE POINT OF BEGINNING.

CONTAINING 7.41 ACRES MORE OR LESS OF NEW RIGHT-OF-WAY.

All bearings contained in this description are based on the Oklahoma State Plane Coordinate System and are not astronomical bearings.

SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD Together with all improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same. The reservation and exception of mineral rights herein does not include rock, gravel, sand and other road building materials.

To have and to hold said described premises unto said City of Norman, acting by and through the Department of Transportation of the State of Oklahoma, its heirs and assigns forever, free clear and discharged of and from all former grants, charges, taxes, judgements, mortgages and other liens and encumbrances of whatsoever nature, reserving and excepting the mineral interests therein; provided, however, that any explorations or development of said reserved mineral rights shall not directly or indirectly interfere with the use of said land by the City of Norman.

Signed and delivered this 11th day of June, 2009.

by:

S+S FAMILY PROPERTIES, LLC

by Sandra K Kerr manager by Shari L Clark manager

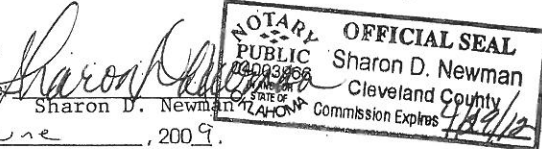
REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF OKLAHOMA, COUNTY OF CLEVELAND, SS:

Before me, the undersigned, a Notary Public in and for said County and State, on this 11th day of June, 2009, personally appeared Sandra K. Kerr & Shari L. Clark of S & Family Properties, LLC as its Managers, to me known to be the identical person(s) who executed the foregoing grant of easement and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year last above written.

My Commission Expires: 4-29-12 Notary Public



Approved as to form and legality this 9th day of June, 2009.



R Bruce
City Attorney, 9th day of June, 2009.

Cindy S P
Mayor

ATTEST:
Korenda Hall
City Clerk
SEAL:

* 201 W Gray
Norman, OK 73070

I/15

Doc#: R 2009 22235
Bk&Pg: RB 4627 1218-1219
Filed: 06-11-2009 PH
04:16:09 PM WD
Cleveland County, OK

JP 25922(04)
IMY0035-2(307)111MS
Parcel 01.1

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT S&S Family Properties, LLC (hereinafter referred to as S&S), in consideration of the sum of TEN DOLLARS (\$ 10.00), receipt of which is hereby acknowledged, and for and upon other good and valuable consideration do hereby grant, bargain, sell and convey unto the City of Norman, a municipal corporation of Cleveland County, acting by and through the Department of Transportation of the State of Oklahoma, the fee simple title in and to the following described real property and premises, and including all right, title and interest in and to the airspace, light and view above the surface of the lands herein described, reserving and excepting the mineral interests, therein, to-wit:

A strip, piece or parcel of land in the SW/4 of Section 14, Township 9 North, Range 3 West, Cleveland County, Oklahoma. Said parcel of land being described by metes and bounds as follows:

Commencing at the southeast corner of said SW/4, thence S 89°06'58" W along the south line of said SW/4 a distance of 300.00 feet, thence N 00°18'08" W a distance of 300.02 feet to the point of beginning, continuing N 00°18'08" W a distance of 544.01 feet, thence S 89°06'44" W a distance of 226.18 feet, thence S 20°17'09" W a distance of 476.12 feet, thence S 85°59'24" W a distance of 183.59 feet, thence S 03°41'01" W a distance of 125.47 feet to a point on the north permanent right-of-way line of Rock Creek Road, thence N 77°48'09" E along said right-of-way line a distance of 178.85 feet, thence N 89°06'44" E along said right-of-way line a distance of 410.55 feet to the point of beginning.

Containing 4.54 acres more or less.

SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD
All bearings contained in this description are based on the Oklahoma State Plane Coordinate System and are not astronomical bearings.

Together with all improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same. The reservation and exception of mineral rights herein does not include rock, gravel, sand and other road building materials.

EXCEPT and for S&S retains the right to an easement within the property described herein for the purpose of constructing a bridge for access to property owned by S&S and property to be acquired by S&S. Said easement to be more accurately described upon application and approval of appropriate permits granted for purpose of the bridge.

To have and to hold said described premises unto said City of Norman, acting by and through the Department of Transportation of the State of Oklahoma, its heirs and assigns forever, free clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature, reserving and excepting the mineral interests therein; provided, however, that any explorations or development of said reserved mineral rights shall not directly or indirectly interfere with the use of said land by the City of Norman.

Signed and delivered this 11th day of June, 2009.

S&S FAMILY PROPERTIES, LLC

* 201 W. Gray
Norman, OK 73070

By: Sandra K. Kerr Sharri L. Clark
Name: SANDRA K. KERR SHARRI L. CLARK
Title: MANAGER MANAGER

REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF OKLAHOMA, COUNTY OF CLEVELAND, SS:

Before me, the undersigned, a Notary Public in and for said County and State, on this 11th day of June, 2009, personally appeared Sandra K. Kerr & Sharri L. Clark of S&S Family Properties, LLC, its Managers, to me known to be the identical person(s) who executed the foregoing grant of easement and acknowledged to me that they executed the same their free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year last above written.

My Commission Expires: 4-29-12 Notary Public: Sharon D. Newman

Approved as to form and legality this 9th day of June, 2009.

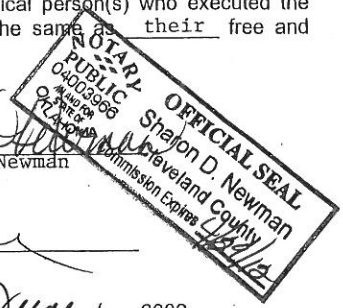


R. Blawie
City Attorney

Approved and accepted by the Council of the City of Norman, this 9th day of June, 2009.

ATTEST:
Arrenda Hall
City Clerk
SEAL:

Candy [Signature]
Mayor





The City of NORMAN

201 West Gray • P.O. Box 370
Norman, Oklahoma 73069 • 73070

OFFICE OF THE CITY ATTORNEY
Phone: 405-217-7700

May 13, 2009

Mr. Harold Heiple
Attorney at Law
307 East Eufaula
Norman, OK 73069

RE: City Acquisition of ROW for Rock Creek Overpass Project

Dear Mr. Heiple:

Our office has reviewed the letter dated May 8th from S & S Family Properties, LLC (hereinafter "S & S"), regarding possible acceptance of land on the service road in exchange for the City's takings from S & S for the new Rock Creek Road west of Interstate 35 to connect to the new Rock Creek Overpass.

We have discussed the matter with City Staff members and met with City Council last night regarding this possibility. Generally, the responses have been favorable and I believe we have a framework for a resolution that meets the needs of all parties. The City certainly appreciates the Kerrs and the Clarks for their willingness to address this creatively in a manner that avoids the necessity of eminent domain litigation.

The terms of the agreement would be as follows:

1. Parcel 1 (8.05 acres) would be granted to the City in fee simple title by S & S.
2. Parcel 1.1 (4.54 acres) would be granted to the City in fee simple title as a permanent drainage easement by S & S, provided S & S would retain the right to request a "bridge easement" across the City's permanent drainage easement for the purpose of providing access from properties currently owned by S & S that is located west of Parcel 1.1 to property to be acquired by S & S that is located east of Parcel 1.1. The City's granting of said "bridge easement" request shall not be unreasonably withheld provided the bridge can be constructed in compliance with applicable City Development and Floodplain regulations.
3. Provided the City is able to acquire all of the approximately 2.47 acres owned by Terra Verde LLC along the western boundary of Interstate 35, north of the current Rock Creek Road, 1.05 acres will be retained by the City as needed for the Rock Creek Road Overpass Project, and the remaining Terra Verde LLC property not needed for the Rock Creek Road Overpass Project (approximately 1.42 acres) will be transferred to S & S. The City will be open to a legal form and structure of this land transfer, as suggested by the S & S, which will address potential income tax issues.

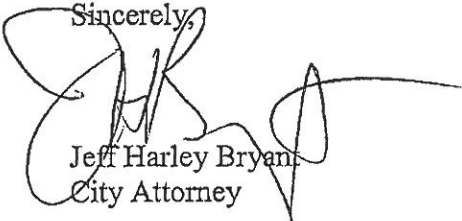
4. The City acknowledges that the current FEMA floodplain designation applicable to property at the corner of Rock Creek Road and 36th Avenue N.W. may be appropriate for withdrawal from FEMA floodplain designation and therefore pledges to support the property owners' application to FEMA for a Conditional Letter of Map Revision, supported by appropriate engineering analysis to be provided by property owners, that more accurately defines the floodplain at this location in an effort to remove an appropriate portion of land located north of Rock Creek Road on both sides of 36th Avenue NW from FEMA floodplain designation.
5. City agrees to pay S & S Two Hundred Fifty Thousand Dollars (\$250,000) for the granting to the City of Parcels 1 and 1.1 as described above.
6. City will construct an extension of Pendleton Drive north across the proposed alignment of Rock Creek Road (___ linear feet) in order to provide a roadway connection point for S & S at that intersection. The new Rock Creek Road will include two turn lanes at the Pendleton Drive intersection that will allow traffic to turn north or south.
7. S & S desires to utilize a portion of the 4.54 acres to be provided to the City as a Permanent Drainage Easement for S & S detention will be allowed to make improvements on this property to address drainage impacts from future development as supported by appropriate engineering analysis.
8. S & S may request that a portion of the land area in Parcel 1 that is east of Pendleton Drive, north of the current Rock Creek Road, and south of the new alignment of Rock Creek Road, be counted toward open space requirements in accordance with applicable subdivision regulations for future development of the remaining property of S & S. Should S&S's request be granted, then such land will be deeded back to S & S and must be maintained and landscaped in accordance with City regulations to be considered as open space.
9. City agrees to allow the vacation of that portion of the current Rock Creek Roadway that will no longer be used for roadway purposes located west of Pendleton Drive and south of the new Rock Creek Road alignment. Once the roadway is vacated, the property will be returned to adjoining property owners as specified under Oklahoma law. The City acknowledges that property being purchased by the City located south of the new Rock Creek Roadway and west of Pendleton Drive, including any additional property acquired by S & S due to the statutory Roadway Vacation process, would be appropriate for a more intense use than Low Density Residential use, and is therefore open to considering such a use upon submittal of proper applications, including preliminary plat, land use plan amendment, and zoning change. The City will deed any such surplus property in this location to S & S upon completion of construction of the Rock Creek Overpass and connecting roads.

Mr. Harold Heiple
Attorney at Law
Re: S & S Family Properties, LLC – Rock Creek Road ROW
May 13, 2009
Page 3 of 4

10. The City acknowledges that S & S has requested a 2025 Land Use Plan Amendment, changing the designation of the east 27 acres of a 37 acre tract at the Northwest corner of Rock Creek Road and 36th Avenue NW, from “Low Density Residential” to “Mixed Use” and that the Planning Commission has denied the request based on not simultaneously submitting a zoning change and preliminary plat or development plan. To address the concern that the 27 acres should logically be considered for a more intense use than the current “Low Density Residential” designation, the City will agree to substitute the attached resolution for Council consideration. As can be noted, the Resolution acknowledges that, given the City’s construction of the Rock Creek Overpass at I-35 and review of surrounding existing land uses, that a more intense use than “Low Density Residential” is appropriate and such an increase in intensity of use will be considered as appropriate applications accompanied by a zoning change and preliminary plat or development plan are submitted.

I believe this addresses the issues raised in our discussions and enumerated in the May 8, 2009 letter. As you know, time is of the essence in this matter. We need to move forward with this item at the next City Council meeting scheduled for May 26, 2009. We would need to prepare the agenda by next week. I apologize for the quick turnaround, but it is necessary to have fully acquired the right-of-way for the Rock Creek Road Overpass project by the first week of June to capture the additional ACOG funds that make this possible.

If your clients are agreeable to these terms, please have them sign below and I will then move forward to prepare the item for the Council agenda. Thank you for your cooperation in working through this issue. Please give me a call if you have questions or have additional concerns.

Sincerely,

Jeff Harley Bryant
City Attorney

Terms Accepted:

S & S FAMILY PROPERTIES, LLC

Sandra K. Kerr, Co-Manager

Date

Sharri L. Clark, Co-Manager

Date

Mr. Harold Heiple
Attorney at Law
Re: S& S Family Properties, LLC – Rock Creek Road ROW
May 13, 2009
Page 4 of 4

xc Steve Lewis, City Manager
Shawn O’Leary, Director of Public Works
Susan Conners, Director of Planning & Community Development
Anthony Francisco, Director of Finance