

AGENDA

**CITY COUNCIL WORK SESSION
City of Garland
Work Session Room, City Hall
200 North Fifth Street, Garland, Texas
February 4, 2013
6:00 p.m.**

DEFINITIONS:

Written Briefing: Items that generally do not require a presentation or discussion by the staff or Council. On these items the staff is seeking direction from the Council or providing information in a written format.

Verbal Briefing: These items do not require written background information or are an update on items previously discussed by the Council.

Regular Item: These items generally require discussion between the Council and staff, boards, commissions, or consultants. These items are often accompanied by a formal presentation followed by discussion.

**[Public comment will not be accepted during Work Session
unless Council determines otherwise.]**

NOTICE: The City Council may recess from the open session and convene in a closed executive session if the discussion of any of the listed agenda items concerns one or more of the following matters:

(1) Pending/contemplated litigation, settlement offer(s), and matters concerning privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct. Sec. 551.071, TEX. GOV'T CODE.

(2) The purchase, exchange, lease or value of real property, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Sec. 551.072, TEX. GOV'T CODE.

(3) A contract for a prospective gift or donation to the City, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Sec. 551.073, TEX. GOV'T CODE.

(4) Personnel matters involving the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint against an officer or employee. Sec. 551.074, TEX. GOV'T CODE.

(5) The deployment, or specific occasions for implementation of security personnel or devices. Sec. 551.076, TEX. GOV'T CODE.

(6) Discussions or deliberations regarding commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay, or expand in or near the territory of the City and with which the City is conducting economic development negotiations; or

to deliberate the offer of a financial or other incentive to a business prospect of the sort described in this provision. Sec. 551.087, TEX. GOV'T CODE.

(7) Discussions, deliberations, votes, or other final action on matters related to the City's competitive activity, including information that would, if disclosed, give advantage to competitors or prospective competitors and is reasonably related to one or more of the following categories of information:

- generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;
- bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;
- effective fuel and purchased power agreements and fuel transportation arrangements and contracts;
- risk management information, contracts, and strategies, including fuel hedging and storage;
- plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider; and
- customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies. Sec. 551.086; TEX. GOV'T CODE; Sec. 552.133, TEX. GOV'T CODE]

(6:00) 1. Written Briefing:

a. 2012-13 Budget Amendment No. 1

Council is requested to consider amending the 2012–13 Adopted Budget in order to appropriate available funds for the following:

- *Projects approved in last year’s Budget, but not completed by the fiscal year-end.*
- *Rollover of open purchase orders from the 2011-12 fiscal year.*
- *Grant and other funds recently awarded to the City.*
- *Expenditures not anticipated in the 2012-13 Adopted Budget.*

If Council concurs, this item will be scheduled for formal consideration at the February 19, 2013 Regular Meeting.

Key Person

(6:10) 2. Verbal Briefings:

a. 5th Street and Cedar Neighborhood Plan **Montgomery**

The 5th Street and Cedar Neighborhood Plan has been completed and will be presented to Council.

b. Review and Deliberation of Capital Improvement Program **Bradford/Young**

Council will deliberate changes, if any, to the City Manager’s proposed 2013 Capital Improvement Program.

c. Disposition and Development Agreement **Glenn**

At the January 22, 2013 Work Session, Council was provided with a proposed Disposition and Development Agreement between the City of Garland and Oaks Properties Development LLC regarding the proposed development within the 200 block of North Fifth Street.

The agreement outlines the responsibilities of the two parties as it relates to the development of the proposed City Center Project. This item is scheduled for formal consideration at the February 5, 2013 Regular Meeting.

d. Overview of School Resource Program **Jones**

At the request of Mayor Ronald Jones, an overview of the City of Garland's School Resource Program will be provided to Council.

e. Transportation and Commerce Committee Report **Willis**

Mayor Pro Tem John Willis, Chair of the Transportation and Commerce Committee, will provide a committee report on regional transportation project updates from the Regional Transportation Council and other local/regional transportation bodies.

f. Consider Supporting a Bill in the Texas Legislature Making Changes to TMRS Laws Related to COLA's for Retirees

Representative Smithee has introduced a bill in the Texas House of Representatives (HB 718) to authorize municipalities who previously opted out of paying COLA's to their retirees to "opt in" without paying the current "catch up" amounts. Staff will brief the Council on the bill and seek direction from Council on whether to support the bill in the Texas Legislature.

3. Discuss Appointments to Boards and Commissions **Council**

- *Maxwell James Fisher - Plan Commission (R. Williams)*

4. Consider the Consent Agenda **Council**

A member of the City Council may ask that an item on the consent agenda for the next regular meeting be pulled from the consent agenda and considered separate from the other consent agenda items. No substantive discussion of that item will take place at this time.

5. Announce Future Agenda Items

Council

A member of the City Council, with a second by another member, or the Mayor alone, may ask that an item be placed on a future agenda of the City Council or a committee of the City Council. No substantive discussion of that item will take place at this time.

(7:00) 6. Adjourn

Council

(Estimated time to consider)



Meeting: Work Session

Date: February 4, 2013

Policy Report

2012-13 BUDGET AMENDMENT NO. 1

ISSUE

Amend the 2012-13 Adopted Budget in order to appropriate available funds for the following:

- (1) Projects approved in last year's Budget but not completed by the fiscal year-end.
- (2) Rollover of open Purchase Orders from the 2011-12 fiscal year.
- (3) Grant and other funds recently awarded to the City.
- (4) Expenditures not anticipated in the 2012-13 Adopted Budget.

OPTIONS

- (A) Approve Budget Amendment No. 1 as proposed.
- (B) Approve portions of Budget Amendment No. 1.
- (C) Do not approve Budget Amendment No. 1.

RECOMMENDATION

Option (A) – Approve Budget Amendment No. 1 as proposed. Direct staff to prepare an ordinance amending the 2012-13 Adopted Budget for consideration and passage at the February 19, 2013, Regular Council meeting.

COUNCIL GOAL

“Financially Stable Government with Tax Base that Supports Community Needs”

Budget amendments allow the City to respond to changing situations and needs in a manner that permits flexibility while ensuring financial integrity and controls.

BACKGROUND

(1) Carry-Over of 2011-12 Incomplete Projects

Street Upgrades

The FY 2011-12 Revised Budget for the Infrastructure Repair & Replacement Fund included \$325,000 in funding for concrete street repair projects to be completed in conjunction with sewer and water main improvements. Budget Amendment No. 1 proposes to increase FY 2012-13 operating appropriations by \$325,000 to complete the following projects: Colgate Lane from Forest Ridge Drive to Plano Road – \$30,000; Colgate Lane from Bradfield Drive to Purdue Drive – \$64,000; Birchwood Drive from Broadmoor Drive to Northwest Highway – \$50,000; Brookview Drive from Northwest Highway to Wildbriar Drive – \$71,000; Cove Drive from Country Club Road to High Meadow Drive – \$70,000; and Lake Hubbard Parkway from Chaha Road to Marvin Loving Drive – \$40,000.

A Budget Amendment is required due to the timing of the expenditures only. There is no additional financial impact.

(2) Rolled-Forward Encumbrances from Fiscal Year 2011-12

When an order is placed for goods or services, a Purchase Order is issued that encumbers the budgeted funds. This has the effect of reserving the funds for future payment of the items covered in the Purchase Order. Every year on September 30th – when the fiscal year ends, there are open Purchase Orders related to goods or services that have been ordered but not yet received. Accordingly, the funds reserved for these open Purchase Orders are still in the year-end fund balances since the transactions are not yet completed.

Because the purchase of these open items was authorized by Council in the previous fiscal year (2011-12), the City's practice has been to roll these encumbrances forward into the current fiscal year (2012-13). This has the effect of increasing the current year's appropriation by the amount of the open Purchase Orders or encumbrances. The funding to cover the expenditures is available in the fund balance since payment was not made before the close of the fiscal year.

The projected fund balance for the current fiscal year is unaffected by the "roll-forward," because it was assumed in the 2012-13 Adopted Budget that the expenditures would be completed in the prior year. The presence of the funds in the fund balance is above and beyond what the Budget assumes for the 2012-13 year-end balance.

Budget Amendment No. 1 proposes that encumbrances totaling \$5,585,889 be rolled forward to 2012-13. Of the total rollover amount, \$618,913 is related to the General Fund. Attachment A provides a detailed listing by fund of individual outstanding encumbrances over \$25,000.

A Budget Amendment is required due to the timing of the expenditures only. There is no additional financial impact.

(3) Grant and Other Funds Awarded to City

(a) Public Safety Grant Program – EKG Monitors

Fire submitted to and received approval from Council at its October 12, 2012, meeting to purchase EKG monitors from Zoll Medical Corporation at a cost of \$476,160 with the majority of the purchase price, \$341,701, funded by a federal grant. The terms of the grant award require that the City pay \$134,459. Fire anticipates recovering the City's portion of the purchase price by selling the retired monitors. A Budget Amendment is required to allow these Federal grant funds and matching City funds totaling \$476,160 to be appropriated and spent.

(b) Public Safety Grant Program – Interactive Training System

Fire applied for and was awarded through the Assistance to Firefighters Grant (AFG) funding to purchase an interactive training system. The system allows Fire personnel to participate in interactive virtual training and continuing education opportunities without having to leave their respective stations and districts. Additionally, information, educational material, events, and other training may be recorded and accessed by all stations and personnel through the system. The grant is expected to pay \$237,965 of the total project cost estimated at \$321,263, and the City will contribute \$83,298 in matching funding as required by the terms of the grant. The City's match was budgeted in the IT Project Fund. A Budget Amendment is required to appropriate the grant funds and move the City's match to the Public Safety Grant Fund, allowing the \$321,263 to be appropriated.

(c) Public Safety Grant Program – UASI-LETPA Grant

Congressional approval of Homeland Security Grants at the Federal level was delayed this past year, and information needed by the Office of Emergency Management (OEM) to formulate its request for FY 2012-13 Public Safety Grants was unavailable during budget preparation. As a result, OEM grants adopted for FY 2012-13 reflect only those costs required to maintain personnel staffing with funding coming from available fund balance. The City of Garland has received notice that it has been awarded \$73,000 in additional Urban Areas Security Initiative – Law Enforcement Terrorism Prevention Activities (UASI-LETPA) funding for the current year. A Budget Amendment is required to allow these Federal grant funds to be appropriated and spent.

(4) Expenditures Not Anticipated in the 2012-13 Adopted Budget

Office of City Attorney – Part-Time City Marshals

The Garland City Marshals Office, part of the Office of City Attorney, has supplemented its staff with two additional Part-Time City Marshals. This was done to address security concerns at the City's Carver Center and provide full-time security at City Hall. Cost for these two part-time positions, including salaries, equipment, and uniforms, totals \$50,362.

FINANCIAL CONSIDERATIONS

The Street Upgrades projects and outstanding Purchase Orders carried forward were fully funded in the FY 2011-12 Budget, and the funds required to cover these expenditures remain within each fund's respective fund balance. As a result, there is no financial impact from approval of those items. Increased expenditures within the Public Safety Grant Program are fully funded through a combination of Federal grant revenue, current-year appropriations, and sales proceeds of retired equipment. The two additional Part-Time City Marshals will be fully funded by available fund balance in the General Fund.

2012-13 BUDGET AMENDMENT NO. 1

Page 5

Budget Amendment No. 1 proposes to appropriate funds as follows:

<u>General Fund</u>	
Office of City Attorney	\$ 50,362
<u>Infrastructure Repair & Replacement Fund</u>	
Street Repair Projects	325,000
<u>Public Safety Grant Fund</u>	
EKG Monitors	476,160
Interactive Training System	321,263
UASI-LETPA Grant	73,000
<u>Various Funds</u>	
Rollover of Purchase Order Encumbrances	<u>5,585,889</u>
TOTAL SUPPLEMENTAL APPROPRIATION	<u>\$6,831,674</u>

ATTACHMENTS

Attachment A – Schedule of Open Encumbrances being Rolled Forward

Attachment B – Schedule of Proposed Amendments by Fund

Submitted By:

Ron Young
Director
Budget & Research

Date: January 28, 2013

Approved By:

William E. Dollar
City Manager

Date: January 28, 2013

ATTACHMENT A
2011-12 Rollover
(With Detail of PO's Over \$25,000)

<i>Fund/Department</i>	<i>PO Description</i>	<i>Amount Outstanding 9-30-12</i>
<u>General Fund</u>		
Planning & Community Development	Unified Development Code	\$34,609
Parks, Recreation & Cultural Arts	Lawn Tractors (2)	\$118,716
	Dump Truck	82,082
	Aluminum Signage (4)	30,000
Police	Ammunition	\$55,999
Transportation	Cab and Chassis Motor Vehicle	\$124,744
Various	PO's Under \$25,000	\$172,763
Sub-Total General Fund		\$618,913
<u>Electric Utility Fund</u>		
	Equipment Lease	\$39,666
	Turbine Parts and Service	90,200
	Tower Repair Parts and Service	33,760
	Professional Services	30,900
	PO's Under \$25,000	217,013
Sub-Total Electric Utility Fund		\$411,539
<u>Equipment Replacement Fund</u>		
Fire - Administration	Full-Size Van	\$31,330
Health - Animal Control	Cab & Chassis, 3/4-Ton Truck	37,234
Parks - Ground Maintenance	Trucks, Heavy Duty (2)	65,435
Parks - Facilities & Irrigation	Trucks, Heavy Duty (2)	61,128
Parks - Medians & ROW	Truck, Heavy Duty	34,589
GP&L - Distribution	Derrick & Pickups, Heavy Duty (2)	176,128
GP&L - Distribution	Pickups, 3/4-Ton, Extended Cab (7)	148,284
GP&L - Distribution	Cab & Chassis, 20,000 GVW Trucks (2)	262,444
GP&L - Distribution	Altec 201 Model TA50	116,817
GP&L - Distribution	Vans, Cut-A-Way with Service Bodies (2)	114,830
GP&L - Distribution	Chassis, 1-Ton Truck	69,624
GP&L - Substations	Cab & Chassis, 20,000 GVW Truck	114,043
Water - Distribution & Transmission	Cab & Chassis, 14,500 GVW Truck	36,398

<u>Fund/Department</u>	<u>PO Description</u>	<u>Amount Outstanding 9-30-12</u>
<u>Equipment Replacement Fund (Continued)</u>		
Water - Distribution & Transmission	Cab & Chassis, 1-Ton with Crane	\$87,734
Wastewater - Collection	Sewer Cleaner with Cab & Chassis	332,918
Wastewater - Duck Creek	Pickup, 8000 GVW, Heavy Duty	29,690
EWS - Brush Collection	Stake Bed Truck	25,309
EWS - Residential Collection	Stake Bed Trucks (2)	50,768
Firewheel Golf Park	Stake Bed Truck & Pickup	37,470
Facilities - Building Services	Van, Cargo, 3/4-Ton	32,858
Customer Service - Field Operations	Pickups, 1/2-Ton, Regular Cab (2)	31,692
Various Departments	PO's Under \$25,000	168,686
Sub-Total Equipment Replacement Fund		\$2,065,409
<u>Fleet Services Fund</u>		
	Engine Rebuild	\$184,738
	PO's Under \$25,000	91,750
Sub-Total Fleet Services Fund		\$276,488
<u>Information Technology Fund</u>		
	Maintenance Contract	\$45,018
	Software License Agreements	98,154
	Desk Phones	26,908
	Remote & Monitor	89,972
	PO's Under \$25,000	177,437
Sub-Total Information Technology Fund		\$437,489
<u>Information Technology Replacement Fund</u>		
Police	Tablet PCs	\$57,821
Police	Network/Server Hardware	225,245
IT	Network/Server Hardware	215,374
Fire	Desktop Replacements	79,000
Fire	New Mobile Units	198,000
Building Inspection	New Field Units	54,700
	PO's Under \$25,000	247,846
Sub-Total Information Technology Replacement Fund		\$1,077,986

<u>Fund/Department</u>	<u>PO Description</u>	<u>Amount Outstanding 9-30-12</u>
<u>Narcotic Seizure Fund</u>		
	Ammunition	\$40,000
	PO's Under \$25,000	19,652
	Sub-Total Narcotics Seizure Fund	<u>\$59,652</u>
<u>Self Insurance Fund</u>		
	Vehicle Replacement	\$130,994
	Sub-Total Self Insurance Fund	<u>\$130,994</u>
<u>Warehouse Fund</u>		
	Lift Truck	\$32,265
	PO's Under \$25,000	9,944
	Sub-Total Warehouse Fund	<u>\$42,209</u>
<u>Wastewater Utility Fund</u>		
	Professional Services	\$109,000
	Repair Services	31,274
	Coal	49,148
	PO's Under \$25,000	162,669
	Sub-Total Wastewater Utility Fund	<u>\$352,091</u>
<u>Water Utility Fund</u>		
	Professional Services	\$27,696
	PO's Under \$25,000	11,033
	Sub-Total Water Utility Fund	<u>\$38,729</u>
<u>All Other Funds</u>	PO's Under \$25,000	<u>\$74,390</u>
<u>TOTAL OUTSTANDING PO's</u>		<u>\$5,585,889</u>

ATTACHMENT B

Proposed Budget Amendment FY 2012-13 Operating Budget

	BA #1	BA #1 PO Rollover	Total Budget Amendment
REVENUES AND EXPENDITURES			
Sources of Funds:			
Additional Revenue			
Public Safety Program Grant	\$652,666	\$0	\$652,666
Retired EKG Monitors - Sale Proceeds	134,459	0	134,459
Transfer from Info. Technology Project Fund	83,298	0	83,298
Fund Balance - Prior Year	375,362	5,585,889	5,961,251
Total Funds Provided	<u>\$1,245,785</u>	<u>\$5,585,889</u>	<u>\$6,831,674</u>
Use of Funds - Expenditures:			
General Fund (See detail in Notes)	\$50,362	\$618,913	\$669,275
Electric Utility Fund	0	411,539	411,539
Environmental Waste Services Fund	0	2,287	2,287
Equipment Replacement Fund	0	2,065,409	2,065,409
Facilities Management Fund	0	48,489	48,489
Fleet Services Fund	0	276,488	276,488
Hotel/Motel Tax Fund	0	1,701	1,701
Information Technology Fund	0	437,489	437,489
Information Technology Replacement Fund	0	1,077,985	1,077,985
Infrastructure Repair & Replacement Fund	325,000	0	325,000
Narcotic Seizure Fund	0	59,652	59,652
Public Safety Grant Fund	870,423	0	870,423
Recreation Performance Fund	0	21,914	21,914
Self Insurance Fund	0	130,994	130,994
Warehouse Fund	0	42,209	42,209
Wastewater Utility Fund	0	352,091	352,091
Water Utility Fund	0	38,729	38,729
Total Expenditures	<u>\$1,245,785</u>	<u>\$5,585,889</u>	<u>\$6,831,674</u>

Notes:

General Fund -

City Attorney	\$50,362	\$5,746	\$56,108
Code Compliance	0	6,500	6,500
Engineering	0	16,297	16,297
EWS - Disposal	0	27,733	27,733
Fire	0	13,997	13,997
Library	0	1,845	1,845
Parks, Recreation & Cultural Arts	0	278,331	278,331
Planning & Community Development	0	59,038	59,038
Police	0	84,682	84,682
Transportation	0	124,744	124,744
Sub-Total General Fund	<u>\$50,362</u>	<u>\$618,913</u>	<u>\$669,275</u>



Meeting: Work Session

Date: February 4, 2013

Policy Report

5TH & CEDAR NEIGHBORHOOD PLAN

ISSUE

The 5th and Cedar Neighborhood Plan has been completed and is being presented to City Council.

OPTIONS AND RECOMMENDATION

If Council so directs, Staff will work with the 5th & Cedar Neighborhood residents and other City departments to implement the action plan.

COUNCIL GOAL

Healthy, Stable Neighborhoods

BACKGROUND

The neighborhood planning process was initiated by the Planning and Community Development Department in an effort to improve Garland neighborhoods. In 2011 the 5th & Cedar Neighborhood was selected, having boundaries of Avenue D, First Street, Miller Road, and the Kansas City Southern Railroad. The Planning Department then began a three-stage process of research, public input, and analysis designed to produce a plan for the neighborhood. The result is a plan designed to steer the neighborhood towards an agreed upon vision. Included in the neighborhood plan is an Action Plan describing the City's intended implementation actions in the immediate future.

CONSIDERATIONS

1. An in-depth study was conducted prior to engaging the community at large. It consisted of reviewing existing data, interviewing neighborhood residents and leaders, touring the neighborhood with staff from other City departments and field work regarding land use, housing and garage conversions.
2. The community input stage included several public meetings and events to gather additional information about the neighborhood from the residents. These included a kick-off meeting, a neighborhood walk, and meetings focused on gathering input on the issues important to the neighborhood.

3. An Advisory Committee was created to further connect the City's effort to the neighborhood. The committee provided additional input on issues and recommendations included in the neighborhood plan.
4. The Planning Department engaged a variety of City departments and offices, including Housing and Community Development, Streets, Engineering, Building Inspection, Police, Environmental Waste, Long Range Planning, Neighborhood Vitality and Development Review in discussing their plans and ideas for the neighborhood.
5. The neighborhood plan was written based upon the findings of the study, public input, and information provided by City departments. It describes the neighborhood's issues and goals while providing recommendations for what needs to be done to reach those goals. The plan identifies which recommendations the City plans to take action on over the next one to three years. The Action Plan will be reviewed and updated throughout the year with the anticipation of additional actions being added to the document as more information is available.
6. One neighborhood group, the Chandler Heights Neighborhood Organization, has been involved with the neighborhood plan from the beginning. Their organization plans to develop their own action plan in 2013 based upon their abilities to contribute to the goals of the neighborhood plan.

ATTACHMENT(S)

1. 5th & Cedar Neighborhood Plan (to be distributed at the meeting)

Submitted By:

Neil Montgomery
Senior Managing Director
Development Services

Date: January 25, 2013

Approved By:

William E. Dollar
City Manager

Date: January 29, 2013



City Council Item Summary Sheet

- Work Session**
 Agenda Item

Date: 2/4/13

Review and Deliberation of 2013 Capital Improvement Program

Summary of Request/Problem

The City Council will deliberate changes, if any, in the City Manager's proposed capital plan.

- (a) Council Deliberations.
- (b) Direction to Staff on Final Changes to CIP.

Recommendation/Action Requested and Justification

Provide direction to staff regarding changes to the 2013 Proposed CIP.

Submitted By:

Ron Young
Director of Budget & Research

Approved By:

William E. Dollar
City Manager



City Council Item Summary Sheet

Work Session

Date: February 4, 2013

Agenda Item

Disposition and Development Agreement

Summary of Request/Problem

At the January 22, 2013 Work Session, Council was provided with a proposed Disposition and Development Agreement between the City of Garland and Oaks Properties Development LLC regarding the proposed development within the 200 block of North Fifth Street. The agreement outlines the responsibilities of the two parties as it relates to the development of the proposed City Center Project.

This item is scheduled for formal consideration at the February 5, 2013 Regular Meeting.

Recommendation/Action Requested and Justification

Council discussion.

Submitted By:

**Martin E. Glenn
Deputy City Manager**

Approved By:

**William E. Dollar
City Manager**

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF GARLAND, TEXAS
("City")

and

OAKS PROPERTIES DEVELOPMENT LLC
("Company")

regarding that certain proposed development to be located on five tracts, Tract A being north and east of Garland City Hall, Tract B at 203 North 5th Street, Tract C at 504 State Street, Tract D at 500 State Street and Tract E being east of Garland City Hall in Garland, Texas

Table of Contents

Ground Lease	8
ECRP Agreement	8
Schematic Design Plans Approval	8
Company Financing	8
Project Overrun Costs	9
Term	9
Due Diligence Information	10
Construction and Ownership	10
Site Preparation Work; Public Infrastructure; Streetscape Improvements	11
The Project	12
General Requirements For Design and Construction	15
Insurance	15
Default	16
Remedies	16
Termination	16
Notice	17
Binding Agreement	17
Limitation on Liability	17
Prevailing Party	18
Coordination and Cooperation	18
Marketing Activities	18
Plat	18
No Joint Venture	18
Authorization	18
Entire Agreement	18
Governing Law	18
Amendment	19
Legal Construction	19
Counterparts	19
Survival of Covenants	19
Approval of Parties	19
Further Assurances	19
Authority	19
Time for Performance	19
No Vesting Rights	19
Limitation on Waivers, Etc	20
Recitals	20

EXHIBITS

- Exhibit “A”** - Land
- Exhibit “B”** - Concept Plan
- Exhibit “C”** - Design Standards (to be completed and attached on or before February 28, 2013)
- Exhibit “D”** - Ground Lease (to be completed and attached on or before April 1, 2013)
- Exhibit “E”** - Marketing Plan (to be completed and attached on or before March 1, 2014)
- Exhibit “F”** - Projected Budget-City (to be completed and attached on or before _____, 2013)
- Exhibit “G”** - Projected Budget-Company (to be completed and attached on or before April 1, 2013)
- Exhibit “H”** - Final Budget-City (to be completed and attached on or before _____, 2013)
- Exhibit “I”** - Final Budget-Company (to be completed and attached on or before August 1, 2013)
- Exhibit “J”** - ECRP Agreement (to be completed and attached on or before April 1, 2013)
- Exhibit “K”** - Guaranty of Completion
- Exhibit “L”** - Site Plan Depiction of City and Company Limits of Design

**DISPOSITION
AND
DEVELOPMENT AGREEMENT**
(City of Garland / Oaks Properties Development LLC)

This Agreement is entered into by and between the City and the Company.

Recitals

A. The City is authorized by Article 52-a of the Texas Constitution and TEX. LOC. GOV'T CODE §380.001 to provide economic development benefits for the City by promoting local economic development and stimulating business and commercial activity within the City.

B. The City Council desires to attract new commercial and retail business to the Downtown District of the City that will, among other things, generate additional property and sales tax revenue and employ City residents.

C. The City is the owner of that certain real property in the Downtown District, more specifically defined below as the "Land."

D. The Company has proposed to develop the Land in exchange for (i) a leasehold interest in the Land, as more specifically described below, for the purpose of constructing, maintaining and operating the Project, (ii) the City's commitment to the replacement of the façade of City Hall, and (iii) the City's commitment to build a Parking Structure on Tract E of the Land.

E. In connection with the Company's proposal for development of the Land, the City Council conducted its own independent analysis of the Company's proposed development of the Land and the overall Project in general.

F. Based on the City Council's analysis of the Project, the City Council has determined that the Project will provide the following benefits for the residents of the City: (i) increase economic vitality and activity for the City, (ii) stimulate commercial growth and development of surrounding and neighboring commercial and retail properties and businesses within the City, (iii) generate additional sales tax revenue for the City, (iv) enhance the overall tax base of the City, (v) promote local economic development within the City; (vi) further the objectives of the City; and (vii) generally benefit the City and its residents.

G. In furtherance of the City Council's desire to develop the Downtown District of the City of Garland, the City and the Company aspire to develop Tract C as a future phase of the Project, under terms as may be agreed upon at a later date.

H. Pursuant to Article 52-a of the Texas Constitution and TEX. LOC. GOV'T CODE §380.001, the City Council has agreed to enter into this Agreement with the Company and the Affiliate.

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

ARTICLE 1
Definitions

For purposes of this Agreement, each of the following terms will have the meaning set forth herein unless the context clearly indicates otherwise:

"203 Building" means the building located at 203 North 5th Street, Garland, Texas.

"203 Building Removal Date" means November 1, 2013.

"504 Building" means the building located at 504 State Street, Garland, Texas.

"504 Building Removal Date" means November 1, 2013.

"Affiliate" means Oaks City Center LLC, a Minnesota limited liability company, which is an affiliate of the Company and which has the power and authority to cause the Company to comply with the terms of this Agreement.

"Agreement" means this Disposition and Development Agreement.

"Apartments" means residential space divided into individual dwelling units, to be located within the Development-Apartments.

"Bond" means a completion bond provided by the Company or the Company's general contractor for the benefit of the City and in form and substance reasonably acceptable to the City, to insure completion of the Company's obligations under this Agreement.

"Casualty" means fire, tornado, hurricane, earthquake, flood or similar casualty or Act of God that renders the Land or Project, or any part thereof, unfit for the Project's intended purposes.

"City" means the City of Garland, Texas, a home rule municipality.

"City Contribution" means the (i) Ground Lease, (ii) Public Infrastructure, and (iv) Site Preparation Work.

"City Council" means the city council for the City of Garland, Texas.

"City Delays" means any delays by the City in discharging its obligations under Section 4.3 of this Agreement.

"City Hall" means Garland City Hall, 200 North 5th Street, Garland, Texas.

"Commencement of Construction Date" means the earlier of (i) the date the Company commences construction on any portion of the Land on which the Project will be built, or (ii) **TBD**.

"Company" means Oaks Properties Development LLC, a Minnesota limited liability company.

"Completion of Construction" means the construction of the Project has achieved Substantial Completion.

"Concept Plan" means the conceptual development plan for the Project, a true and correct copy of which is attached hereto as **Exhibit "B"** and incorporated herein by reference. The Concept Plan has been approved by the City and the Company in a very general format, and the City and the Company acknowledge and understand that the Concept Plan is, at this stage, only a very loose conceptual understanding of the Project and may change if prior written approval is given by the City and the Company.

"Construction Completion Date--Apartments" means November 1, 2014, the date on which the Substantial Completion—Apartments is achieved.

"Construction Completion Date—Parking Structure" means May 31, 2014, the date on which Substantial Completion—Parking Structure is achieved.

"Construction Completion Date—City Hall" means December 1, 2014, the date on which the construction of the improvements to City Hall have achieved Substantial Completion.

"Construction Completion Date—Site Preparation" means November 1, 2013, the date on which the Site Preparation Work is completed.

"Construction Completion Date—Streetscape Improvements" means October 1, 2014, the date on which Substantial Completion—Streetscape Improvements is achieved.

"Construction Completion Date—Public Infrastructure" means August 6, 2014, the date on which Substantial Completion—Public Infrastructure is achieved.

"Construction Management Agreement" means the construction management agreement to be entered into by the Company and the City pursuant to Article 4.2(c).

"Construction Plans" means the plans and specifications for the construction of the Project.

"DDA Expiration Date" means the earlier of (i) satisfactory completion of the Punch List Items, or (ii) the date on which this Agreement is terminated pursuant to Article 5 hereof.

"Design Standards" means the design standards governing the development of the Project, a true and correct copy of which is attached hereto as **Exhibit "C"** and incorporated herein by reference. The Design Standards will be in form and substance acceptable to the City and the Company, in their reasonable discretion.

"Development-Apartments" means the rental Apartments to be built on Tracts A and B and the surface parking lot to be built on Tract D.

"Development-City" means the replacement of the façade of, and related improvements to, City Hall, and the Parking Structure to be built by the City on Tract E.

"ECRP Agreement" means that certain Agreement Regarding Easements, Covenants, Restrictions and Parking Garage, to be entered into by and between the City and the Company, a true and correct copy of which is to be attached hereto as **Exhibit "J"** and incorporated herein by reference.

"Effective Date" means February 6, 2013.

"Final Budget—City" means the City's final budget of the Project, consistent with the City's obligations and responsibilities as detailed in this Agreement, to be prepared by the City following the respective submissions of the final Schematic Design Plans-Apartments and Schematic Design Plans-City and the remaining Plans for the design and construction of the Project, a true and correct copy of which is to be attached hereto as **Exhibit "H"** and incorporated herein by reference. Specifically, the Final Budget—City will include, among other items, the City's costs of construction of the Development—City, any expenses and costs allocated to the City by this Agreement for the Site Preparation Work, Public Infrastructure and Streetscape Improvements.

"Final Budget—Company" means the Company's final budget of the Project, consistent with the Company's obligations and responsibilities as detailed in this Agreement, to be prepared by the Company following the respective submissions of the final Schematic Design Plans-Apartments and Schematic Design Plans-City and the remaining Plans for the design and construction of the Project, a true and correct copy of which is to be attached hereto as **Exhibit "I"** and incorporated herein by reference. Specifically, the Final Budget—Company will include, among other items, the Company's costs of construction of the Development—Apartments and the Company's Guaranteed Contribution.

"Force Majeure" means any contingency or cause beyond the reasonable control of a party, including, without limitation, Acts of God or the public enemy, war, terrorist act, riot, civil commotion, insurrection, government or de facto government action or inaction, including extraordinary delays by the City in the issuance of necessary permits for the Project (unless caused by the intentionally wrongful or negligent acts or omissions of the party), fires, earthquakes, tornados, hurricanes, explosions, floods, strikes, slowdowns or work stoppages.

"Ground Lease" means that certain Ground Lease for the Land and, among other things, provisions related to the Parties' use, maintenance and sharing of the Parking Structure, to be entered into by and between the City, as lessor, and the Affiliate, as lessee, a true and correct copy of which is to be attached hereto as **Exhibit "D"** and incorporated herein by reference.

"Guaranteed Contribution" means the one million three hundred thousand dollars (\$1,300,000.00) agreed to be contributed by the Company and paid to the City to be used by the City to offset costs of Streetscape Improvements, Public Infrastructure and Site Preparation Work.

"Land" means Tracts A, B, and D as defined herein in Garland, Texas, and being further described in **Exhibit "A"**, attached hereto and incorporated herein by reference as if fully set forth herein.

"Material Term or Condition" means failure by the Company to do any one (1) or more of the following items: (i) timely cause Commencement of Construction of the Development-Apartments to occur, (ii) timely cause Completion of Construction of the Development-Apartments to occur, (iii) construct the Development-Apartments in substantial accordance with the Plans for the Development-Apartments as provided in Article 4 of this Agreement, or (iv) pay to the City the Guaranteed Contribution as required by this Agreement.

"Ordinance" means the ordinance enacted by the City to regulate on-street parking in a four block radius of City Hall.

"Parking Structure" means an above-ground parking structure to be constructed on Tract E and designed for the parking of motor vehicles and containing a minimum of 330 parking spaces in total, as depicted on **Exhibit "B"**, attached hereto and incorporated herein by reference. The Parking Structure will be designed, operated and constructed to facilitate parking for the general public, tenants of the Tract A residential units, and city employees.

"Performance Guaranty" means that certain Guaranty of Completion, a true and correct copy of which is attached hereto as **Exhibit "K"** and incorporated herein by reference.

"Plans" means the Design Standards; Schematic Design Plans-Apartments, Schematic Design Plans-City, Construction Plans, Streetscape Improvements Plans and any and all other plans and specifications relating to the architectural, site, engineering, landscaping, exterior lighting, facade, building elevations, or exterior construction of the Project; and all other materials which relate to construction of the Project. The Plans will be in form and substance acceptable to the City and the Company, in their reasonable discretion.

"Project" means, collectively, the Development-Apartments, the Development-City, the Streetscape Improvements, the replacement of the façade of, and the related improvements to, City Hall, the Parking Structure and the Public Infrastructure.

"Projected Budget—City" means the projected budget of the City of Garland for all of the hard costs of construction of the Project for which the City is responsible, as set forth on **Exhibit "F"**, attached hereto and incorporated herein by reference. Specifically, the Projected Budget—City will include the City's costs of construction of the Development—City and any expenses and costs allocated to the City by this Agreement, minus the Guaranteed Contribution, for the Site Preparation Work, Public Infrastructure and Streetscape Improvements..

"Projected Budget—Company" means the projected budget of the Company for all of the hard costs of construction of the Project, as set forth on **Exhibit "G"**, attached hereto and incorporated herein by reference. Specifically, the Projected Budget will include the Company's costs of construction of the Development—Apartments and the Guaranteed Contribution.

"Public Infrastructure" means installation of underground water, sewer, primary electricity, all other utilities (which will be stubbed to the boundary of Tracts A and B and D (electricity and water for irrigation only)) necessary for and consistent with the Project, and Streetscape Improvements.

"Punch List Items" means the list of respective items for which one party is financially responsible under the terms of this Agreement but the other party is responsible for constructing, prepared by the City and the Company following Substantial Completion, the resolution of which will bring the items into compliance with the Plans, as determined by the City, the Company and the general contractor, in their reasonable discretion.

"Schematic Design Plans-Apartments" means plans and specifications detailing the architectural, site, landscaping, exterior lighting, façade, building elevations and exterior construction materials for the rental Apartments to be built by the Company as its Project responsibilities.

"Schematic Design Plans-City" means plans and specifications detailing the architectural, site, landscaping, exterior, new façade for City Hall, interior building modernization and modifications, building elevations and exterior construction materials for the Parking Structure to be built by the City as its Project responsibilities.

"Site Preparation Work" means (i) demolition, clearing, grading, removal of the parking lot improvements, the two single family residences located in Heritage Park, the museum plaza, the depot building and Pullman rail car and Museum Street in and on Tracts A and E; (ii) demolition, clearing, and grading of the brick screening enclosure and mechanical equipment located on the east parking lot of City Hall; (iii) demolition, clearing and removal of electrical transformers on Tract A, and (iv) the removal of all pavement located in or on Tracts A, B, C and E, all currently located on the Land and any other work necessary for and consistent with the Project to prepare the Land for the Company's and City's construction of their respective Development improvements. Any necessary environmental abatement or remediation is specifically excluded from this definition.

"Streetscape Improvements" means the following:

a. Austin Street: the landscaping, sidewalks, lighting, as well as various other streetscape amenities (e.g., pavers, bicycle racks, trash cans, benches, etc.), located along the south-side of Austin Street between the right-of-way and the face of the apartment buildings and parking garage.

b. N. Fifth Street: the landscaping, sidewalks, lighting, as well as various other streetscape amenities (e.g., bicycle racks, trash cans, benches, etc.), located along North Fifth Street between Austin and State Street, between the right-of-way and the face of the Tract B apartment building and the face of City Hall. However, the area west of the Tract A apartment building (beginning at the southwest corner of the Tract A apartment building and ending at the northwest corner) between the right-of-way and the west face of the Tract A apartment building, is not included in the Streetscape Improvements definition.

c. Tract D: the landscaping, sidewalks, lighting, as well as various other streetscape amenities (e.g., pavers, bicycle racks, trash cans, benches, etc.), located adjacent to Tract D along State Street and N. Fifth street.

d. For reference, the relationship of the Streetscape Improvements to the Development-Apartments improvements and Development-City improvements is depicted on **Exhibit “L”** attached hereto and incorporated herein by reference.

“Substantial Completion-Apartments” means the point at which (i) the construction of the rental apartment buildings on Tracts A and B and the surface parking lot on Tract D have been sufficiently completed in compliance with the Plans and this Agreement, exclusive of Punch List Items, such that each improvement is fit for occupancy and for its intended use, and (ii) a certificate of substantial completion for each of the buildings on Tracts A and B and the surface parking lot on Tract D has been issued by the general contractor(s) and architect(s) to, and received by, the City.

“Substantial Completion-City Hall” means the point at which (i) the construction of the City Hall improvements have been sufficiently completed in compliance with the Plans and this Agreement, exclusive of Punch List Items, such that it is fit for occupancy and for its intended use, and (ii) a certificate of substantial completion for the City Hall improvements has been issued by the general contractor(s) and architect(s) to, and received by, the City.

“Substantial Completion-Parking Structure” means the point at which (i) the construction of the Parking Structure on Tract E has been sufficiently completed in compliance with the Plans and this Agreement, exclusive of Punch List Items, such that it is fit for occupancy and for its intended use, and (ii) a certificate of substantial completion for the Parking Structure has been issued by the general contractor(s) and architect(s) to, and received by, the City.

“Substantial Completion-Public Infrastructure” means the point at which (i) the construction of the Public Infrastructure has been sufficiently completed in compliance with the Plans and this Agreement, such that it is fit for its intended use, and (ii) a certificate of substantial completion for the Parking Structure has been issued by the general contractor(s) and architect(s) to, and received by, the City.

“Substantial Completion-Site Preparation” means the point at which (i) the Site Preparation Work has been sufficiently completed in compliance with the Plans and this Agreement, such that it is fit for its intended use, and (ii) a certificate of substantial completion for the Site Preparation work has been issued by the general contractor(s) and architect(s) to, and received by, the City.

“Substantial Completion-Streetscape Improvements” means the point at which (i) the construction of the Streetscape Improvements have been sufficiently completed in compliance with the Plans and this Agreement, exclusive of Punch List Items, such that they are for their intended use, and (ii) a certificate of substantial completion for the Streetscape Improvements has been issued by the general contractor(s) and architect(s) to, and received by, the City.

“Title Company” means the title company selected by the Company, its Affiliate or the lender to Affiliate, and the City to perform land title services for the Project

“**Tract A**” means the land to be developed by the Affiliate and improved with 148 rental apartment units north and east of City Hall, Garland, Texas.

“**Tract B**” means the land located at 203 North 5th Street, Garland, Texas to be developed by the Affiliate with 10 rental apartment units.

“**Tract C**” means the land located at the southwest corner of State Street and North 5th Street, generally known as 504 State Street, Garland, Texas, which the City and Company aspire to develop as a future phase of the Project, under terms as may be agreed upon at a later date.

“**Tract D**” means the land located at the southeast corner of State Street and North 5th Street, generally known as 500 State Street, Garland, Texas to be developed by the Affiliate with a surface parking lot to serve the Affiliate’s rental apartments.

“**Tract E**” means the land to be developed by the City and improved with a multi-level parking structure east and north of City Hall, Garland, Texas.

“**Value Engineering Date**” means June 15, 2013 with respect to both the Development-Apartments and the Development-City.

ARTICLE 2

Conditions Precedent

This Agreement is subject to the following conditions precedent:

2.1 **Ground Lease.** On or before June 1, 2013, the City and the Affiliate will have executed the Ground Lease and incorporated it into this Agreement.

2.2 **ECRP Agreement.** On or before June 1, 2013, the City and the Affiliate will have executed the ECRP Agreement and incorporated it into this Agreement.

2.3 **Schematic Design Plans Approval.** On or before April 1, 2013, the City must have received the Schematic Design Plans from the Company, and subsequently approved the Schematic Design Plans subject to Subsection 4.4(c) below.

2.4 **Company Financing.** On or before August 1, 2013, the Company will have obtained both (i) approval of the Project from the Company's internal investment committee, and (ii) acquisition and construction financing at rates sufficient to yield a rate of return on the Project acceptable to the Company in its sole discretion; provided, however, upon the Commencement of Construction Date the condition precedents set forth in this Section 2.4 shall automatically, without any act being required by any party, be deemed waived.

2.5 **Performance Guaranty.** Within 10 days of executing this Agreement, the Company agrees to provide to the City the Performance Guaranty acceptable to the City for the Development-Apartments improvements executed by Oaks Properties LLC, the parent company of the Company and the Affiliate.

2.6 **Project Overrun Costs.**

(a) The respective hard costs calculated in the Final Budget—City and the Final Budget—Company, shall not exceed five percent (5%) of the respective hard costs calculated in either the Projected Budget—City or the Projected Budget—Company.

(b) If the hard costs of the Development-Apartments, Development-City, the Site Preparation Work, Public Infrastructure, and/or the Streetscape Improvements as calculated in the Final Budget—City or the Final Budget—Company exceed by greater than five percent (5%) of the hard costs of the Development-Apartments, Development-City, the Site Preparation Work, Public Infrastructure, and/or the Streetscape Improvements as calculated in the Projected Budget—City or the Projected Budget—Company, the City and the Company agree to negotiate in good faith to redesign the Development-Apartments, Development-City and/or the Streetscape Improvements to bring the amount of the hard costs within the respective projected budgets. If the City and the Company agree on the redesign of the Development-Apartments, Development-City and/or the Streetscape Improvements, as applicable, so that the respective hard costs as calculated in the Final Budget—City and the Final Budget—Company no longer exceed the respective hard costs as calculated in the Projected Budget—City and the Projected Budget—Company by said five percent (5%), this condition precedent shall be satisfied.

(c) If the City and/or Company cannot agree on a redesign of the Development-Apartments, Development-City and/or the Streetscape Improvements as set forth in Section 2.6(b) above, either party will have the option, exercisable in that party's sole and absolute discretion, to terminate this Agreement whereupon the parties will have no further rights or obligations under this Agreement except to the extent same survive termination hereof; provided, however, that the foregoing right of termination by one party is expressly subject and subordinate to the other party's right to fund the amount by which the hard costs of the Development-Apartments, Development-City, the Site Preparation Work, Public Infrastructure, and/or the Streetscape Improvements (as calculated in each party's respective Final Budget) exceed the hard costs of the Development-Apartments, Development-City, the Site Preparation Work, Public Infrastructure, and/or the Streetscape Improvements (as calculated in each party's respective Projected Budget) (but without any right of reimbursement from the other party). All of the above must occur on or before the Value Engineering Date.

ARTICLE 3

Term

3.1 **Term.** The term of this Agreement will begin on the Effective Date and continue until the DDA Expiration Date.

ARTICLE 4 Project

4.1 **Due Diligence Information.** The Company acknowledges and agrees that the City has provided to the Company copies of the following: (i) a survey and legal description of the Land; (ii) all existing soils reports, environmental site assessments and similar materials relating to the Land; and (iii) all existing permits, development approvals, licenses and other entitlements affecting the Land. The Company waives any and all claims and/or causes of action regarding the City's delivery to the Company of due diligence information which relates to the Land and/or the Project. The City will reasonably cooperate with the Company's due diligence activities on the Land; provided, however, the City will not be required to incur any cost or expense in connection with such cooperation.

4.2 **Construction and Ownership.**

(a) Subject to events of Force Majeure, the Company will (i) cause construction of the Development-Apartments to commence on or before the Commencement of Construction Date¹, and (ii) complete construction of the Development-Apartments improvements on or before the Construction Completion Date-Apartments.

(b) Subject to events of Force Majeure and the conditions precedent, the City will (i) cause construction of the Parking Structure to commence on or before the Commencement of Construction Date, and (ii) complete construction of the Parking Structure on or before the Construction Completion Date—Parking Structure. Further, the City will cause the replacement and construction of the City Hall façade, and related improvements, to commence on or before December 1, 2013.

(c) In cooperation with the City, the Company agrees to:

(i) design and construct the improvements on Tracts A, B, and D the Development-Apartments improvements at its sole cost and expense, and

(ii) design and construct the Streetscape Improvements adjacent to Tract D along State Street and N. Fifth Street (“Tract D Streetscape Improvements”) at its sole cost and expense. Any costs and expenses associated with the Tract D Streetscape Improvements shall not be included as a part of the Guaranteed Contribution.

(d) The City agrees to design and construct at City Hall and on Tract E the Development-City improvements. The parties will use their respective best efforts to engage the same general contractor to construct the Development-Apartment improvements, the Development-City improvements and the Streetscape Improvements (and such Public Infrastructure improvements deemed appropriate by the City, if any). In the event the Company and the City do not engage the same general contractor to

¹ As expressly referenced in Section 2.4 above, upon Commencement of Construction the conditions precedent listed in Section 2.4 shall automatically, without any act being required by any party, be deemed waived.

complete the Project, the parties will enter into a Construction Management Agreement which will serve as the coordinating document between the Company's general contractor and the City's general contractor to proceed with the construction of the Project.

(e) Pursuant to the terms of the Ground Lease, the City will ground lease to the Affiliate the land on which the rental Apartment buildings located on Tracts A and B and the surface parking lot on Tract D of the Development are developed, and will provide easement access to the parking structure on Tract E of the Development under the terms of the ECRP Agreement. The City will own the Land, the Streetscape Improvements and the Parking Structure.

4.3 **Site Preparation Work; Public Infrastructure; Streetscape Improvements; 203 Building; and 504 Building.**

(a) The City agrees to complete the Site Preparation Work on or before the Construction Completion Date—Site Preparation.

(b) Subject to Section 4.2(c), the City agrees to complete the Streetscape Improvements work on or before the Construction Completion Date—Streetscape Improvements.

(c) The Company agrees to pay the City the Guaranteed Contribution in phases as described as follows:

(i) 25% of the Guaranteed Contribution (\$325,000.00) on the Construction Completion Date—Site Preparation;

(ii) 50% of the Guaranteed Contribution (\$650,000.00) on the Construction Completion Date—Public Infrastructure;

(iii) 25% of the Guaranteed Contribution (\$325,000.00) on the Construction Completion Date—Streetscape Improvements along Austin Street.

(d) Upon completion of the portions of the Site Preparation Work which require the removal of the two single family residences, the depot building, railroad car and museum, the City agrees, at its own costs and expense, to complete an environmental site assessment consisting of collecting soil samples to screen for chemical or metal contamination. If the environmental site assessment determines the presence of chemical, metal or any other type of contamination, and the cost to remediate the contamination exceeds \$250,000, then the City at its sole discretion may elect to: (1) terminate this Agreement pursuant to Section 5.3; or (2) enter into negotiations with the Company to share in the costs and expense of clean-up and remediation, which costs and expenses are not to be included in the Guaranteed Contribution.

(e) If the City completes the Site Preparation Work on or before the Construction Completion Date—Site Preparation and the Company fails to commence construction on Development—Apartments within thirty one (31) days after the City completes the Site Preparation Work (provided, however, that the City hereby covenants and agrees that it will not complete the Site Preparation Work any sooner than fifteen (15) days prior to Construction Completion Date—Site Preparation), then within thirty (30) days from when the Company actually, physically receives written notice from the City that the City may require reimbursement from the Company to preserve the area on which the Site Preparation Work was performed as required by a storm water pollution prevention plan promulgated by the Environmental Protection Agency, and enforced by the Texas Commission on Environmental Quality (e.g. cost and labor of purchasing and laying sod, other form of ground coverage, silt fencing, etc.), the Company agrees to remit to the City by wire transfer reimbursement for all reasonable costs and expenses (not to exceed \$50,000) incurred by the City to comply with said storm water pollution prevention plan, if any.

(f) On or before the 203 Building Removal Date, the City agrees to remove the 203 Building and complete any associated clearing and grading which relates thereto.

(g) On or before the 504 Building Removal Date, the City agrees to remove the 504 Building and complete any associated clearing and grading which relates thereto.

(h) In the event the City fails to timely complete the Site Preparation Work, the Public Infrastructure and/or removal of the 203 Building as provided herein, the Company is hereby authorized, at the sole cost and expense of the City, to exercise self-help and complete the Site Preparation Work, the Public Infrastructure and for removal of the 203 Building.

(i) Subject to Force Majeure, if the City fails to timely complete the (i) Site Preparation Work, (ii) Public Infrastructure, and (iii) removal of the 203 Building, the Company may immediately exercise the remedy of self-help and complete items (i) through (iii) in this Section 4.3(i) and pursue any and/or all remedies available to the Company pursuant to Section 5.2 below.

4.4 **The Project.**

(a) **Schematic Design Plans and Projected Budget.** The Company, at its sole expense, will be responsible for the preparation of its Schematic Design Plans-Apartments. The City, at its sole expense, will be responsible for the preparation of its Schematic Design Plans-City and the plans for the Streetscape Improvements. The Company and the City will cause their respective architects to coordinate the Schematic Design Plans-Apartments, the Schematic Design Plans-City and the plans for the Streetscape Improvements to eliminate any conflicting site and design issues with respect to the contemplated improvements to be constructed on adjacent Tracts A and E. The Company and the City will jointly develop the Projected Budgets which will identify and specify sources and uses of funds required to complete the Project.

(b) **Construction Delays.** The above-referenced deadlines for Commencement of Construction and for Completion of Construction will be extended one (1) day for each day of delay attributable to events of Force Majeure or to any City Delays.

(c) **Schematic Design Plans-Apartments; Schematic Design Plans-City; Plans and Specifications.**

(i) On or before March 1, 2013, the Company agrees to submit to the City the Schematic Design Plans-Apartments for review and approval.

(ii) On or before May 15, 2013, the City agrees to submit to the Company the Schematic Design Plans-City for review and approval.

(iii) On or before December 2, 2013, the City agrees to submit to the Company Plans and Specifications for the Streetscape Improvements for review and approval.

(iv) The City will have fifteen (15) business days after receipt of the Schematic Design Plans-Apartments and Plans and Specifications for the Streetscape Improvements to approve or, in good faith, disapprove same, such disapproval (if applicable) to include specific reasons therefor. If the City fails to respond in said fifteen (15) day period, the Schematic Design Plans-Apartments shall automatically be deemed approved. Alternatively, if the City timely and properly responds, each party will then address issues raised by the other within ten (10) days upon receipt of same, and this process shall continue until all objections are resolved.

(v) The Company will have fifteen (15) business days after receipt of the Schematic Design Plans-City and Plans and Specifications for the Streetscape Improvements to approve or, in good faith, disapprove same, such disapproval (if applicable) to include specific reasons therefor. If the Company fails to respond in said fifteen (15) day period, the Schematic Design Plans-City shall be automatically be deemed approved. Alternatively, if the Company timely and properly responds, each party will then address issues raised by the other within ten (10) days upon receipt of same, and this process shall continue until all objections are resolved.

(vi) The City and the Company agree to work in good faith to finalize the Schematic Design Plans-Apartments and Schematic Design Plans-City, and the Plans (including the Plans and Specifications for the Streetscape Improvements), in a timely manner; provided, however, in the event a party fails to respond to a written objection within the ten (10) day period prescribed above, the objection shall automatically be deemed accepted.

(d) **Final Budget.** The City and the Company will complete their respective Final Budgets for their respective portions of the Project on or before June 15, 2013.

(e) **Construction Progress Meetings.** During the construction of the Project, the City agrees to schedule "job progress" meetings every two weeks to permit regular monitoring of scheduling and status of construction of the Project. The City agrees to furnish to the Company reasonable prior notice of any rescheduled meeting. The Company agrees to attend the scheduled "job progress" meetings and where unable to attend, give the City reasonable prior notice.

(f) **Design Progress Meetings.** During the design of the Project, the City agrees to schedule monthly (or more often, as may be reasonably necessary) design progress meetings. The City agrees to furnish to the Company reasonable prior notice of any rescheduled meeting. The Company agrees to attend the scheduled "design progress" meetings, and where unable to attend, give the City reasonable prior notice.

(g) **Accounting/Change Orders.**

(i) Following approval of the separate Guaranteed Maximum Price contracts for the Development-Apartments and Development-City portions of the Project and prior to the approval of the Construction Manager at Risk's first billing, the Construction Manager at Risk will provide a detailed schedule of values showing the division of costs (financial responsibility) between the Company and the City. It must be reviewed and accepted by both parties before work proceeds.

(ii) Change Orders may only occur after the Guaranteed Maximum Price is established and the contract is executed. Change orders initiated by the Company and approved by the Company's construction lender will be paid for by the Company. Change Orders initiated by the City will be paid for by the City. Should both parties agree to sharing in the cost of a change request, the Construction Manager at Risk will issue a change order to each party with the cost of the change allocated between the two parties. The allocation is to be agreed upon by both parties prior to the authorization to the Construction Manager at Risk to proceed with the work.

(h) **Substantial Completion.** Each party hereto will be responsible for the timely completion of its respective construction obligations under this Agreement pursuant to the terms and provisions contained within this Agreement and, if applicable, the Ground Lease.

(i) **Warranties.** The Company agrees, as a part of the costs of construction, to obtain and assign to the City the warranties from the Company's and Affiliate's contractors, subcontractors and suppliers providing labor and/or materials in connection with the portions of the Project the Company or Affiliate is responsible for constructing, but the City is responsible for maintaining; provided that such assignment will not prevent the Company or Affiliate from enforcing the same.

(j) **Risk of Loss.** Beginning on the Construction Commencement Date and continuing until termination of the Ground Lease, risk of loss due to Casualty of all, or

any portion of, the (i) Development-Apartments will be borne by the Company, and (ii) Replacement of the façade of and related improvements to City Hall, the Parking Structure, Streetscape Improvements and Public Infrastructure will be borne by the City, all pursuant to the terms and provisions contained within this Agreement and, if applicable, the Ground Lease.

4.5 **General Requirements For Design and Construction.** The Project will be designed and constructed by the party responsible therefore generally in a good and workmanlike condition, lien-free, according to normal and customary standards for “Class A” multi-family real estate developments of this type in this geographical area (Dallas / Fort Worth), and specifically in substantial accordance with the Plans. The Company and Affiliate will cause all necessary permits, consents, notices, approvals, etc. required by the City and any other applicable governmental and/or quasi-governmental authorities to be issued for construction and operation of the Project, and (subject to Section 6.17 below) the City agrees to cooperate with the Company and Affiliate in obtaining all necessary permits, consents, notices, approvals, etc. required by any applicable governmental and/or quasi-governmental authority.

4.6 **Insurance.** Throughout the term of this Agreement, the Company and Affiliate, at their expense, agree to maintain in full force and effect, the following insurance:

(a) a policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Company's performance of its obligations pursuant to this Agreement with (1) a policy of comprehensive general liability (public) insurance with a combined single limit of not less than \$1,000,000.00 per occurrence for bodily injury and property damage with an aggregate of not less than \$2,000,000.00; (2) a policy of automobile liability insurance covering any vehicles owned and/or operated by the Company, its officers, agents, and employees, and used in the performance of its obligations hereunder with minimum coverage of \$500,000.00; and (3) statutory Workers' Compensation Insurance covering all employees involved in the performance of its obligations hereunder.

(b) All insurance and certificate(s) of insurance will: (1) name the City, as an additional insured as to all applicable coverage with the exception of Workers' Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance. All insurance companies providing the required insurance will be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

(c) A certificate of insurance evidencing the required insurance will be submitted by the Company and Affiliate to the City upon the City's written request.

ARTICLE 5
Default, Remedies and Termination

5.1 Default.

(a) Either the City or the Company will be in default under this Agreement upon a breach of any term or provision contained within this Agreement if the defaulting party fails to cure the breach within thirty (30) days after the defaulting party actually, physically receives written notice of the breach. However, a party will not be deemed to be in default if such breach cannot be rectified within said thirty (30) day period despite the breaching party's good faith and diligent efforts to do so, and such party will have commenced to cure the breach within said thirty (30) days and diligently pursues such cure until completion, but in no event may the cure period exceed (under any circumstances) ninety (90) days.

(b) The notice required in Section 6.1 is a condition precedent to the exercise of any remedy provided herein. In addition, if the breaching party timely cures any breach of which it has received notice, such breach will be deemed waived by the other party, and this Agreement will continue in full force and effect.

5.2 Remedies. In the event the Company or the City, respectively, is in default under the terms of this Agreement, as set forth in Section 5.1 above, the other party will have the right, but not the obligation, to institute legal action against the defaulting party for specific performance, declaratory relief, damages or any other legal or equitable remedy. Any rights and remedies provided in this Agreement will be in addition to, and not in substitution for or exclusion of, any other rights and remedies which the parties may have under any applicable law. With respect to the liabilities of the City to the Company pursuant to this Agreement, the City hereby expressly waives any immunity or defense to suit or liability for damages that may be available to the City as a home rule municipality or subdivision of the State of Texas, to the extent permitted by applicable laws.

5.3 Termination. Notwithstanding any default hereunder (except as provided in this Section 5.3) or anything else to the contrary herein, this Agreement may not be terminated by either party hereto except upon the occurrence of one or more of the following:

- (a) the mutual written agreement of the City and the Company;
- (b) the DDA Expiration Date;
- (c) where an environmental site assessment determines the presence of chemical, metal or any other type of contamination, and the cost to remediate the contamination exceeds \$250,000; or
- (d) if the Company is in default of any Material Term or Condition and has not cured the default within the cure period provided in Section 5.1(a) herein.

and neither party assumes responsibilities or liabilities to third parties in connection with these actions.

6.4 **Prevailing Party.** In addition to the recovery of damages and of any sums expended on behalf of the defaulting party, together with interest thereon at the highest lawful rate, the prevailing party in any action to enforce any provision of this Agreement will be entitled to receive from the other party its costs and expenses incurred in connection with such action, including actual reasonable attorneys' fees and costs for services rendered to the prevailing party in any such action (including any appeal thereof).

6.5 **Coordination and Cooperation.** The City and the Company will make commercially reasonable efforts to ensure that their respective contractors, subcontractors and representatives coordinate and cooperate with one another.

6.6 **Marketing and Leasing Activities.** Upon Commencement of Construction, the Company agrees to post on the Project site prominent advertising signs announcing the Project and, in particular, the Development-Apartments. The Company agrees to advertise and promote leasing of the Development-Apartments in a commercially reasonable manner customary for the Dallas / Fort Worth market area in accordance with a marketing plan similar to the marketing plan attached hereto as **Exhibit "E"** and incorporated herein by reference as if fully set forth herein, which is acceptable to the City, in its reasonable discretion.

6.7 **Plats.** The City covenants and agrees in favor of the Company that a plat for Tracts A and E and separate plats for Tracts B, C and D, if deemed appropriate by the Company and the City, will be completed and filed at the City's sole cost and expense on or before Commencement of Construction Date if required by Title Company and that, at such time, the Tracts A and E, and Tracts B, C and D if applicable, will be correctly platted in accordance with the then-current requirements of all applicable subdivision ordinances and all other governmental regulations. The City agrees to provide the Company with copies of any documents filed with any governmental and/or quasi- governmental agencies in connection with this Section.

6.8 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and will not be deemed to create a partnership or joint venture between the parties, nor to cause the City to be deemed to be a constituent partner of the Company.

6.9 **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. The Company represents and warrants to the City that the Company is a duly formed, validly existing Delaware limited liability company in good standing under the laws of the State of Texas and is authorized to transact business in the State of Texas.

6.10 **Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There are no other collateral oral or written agreements between the parties that in any manner relate to the subject matter of this Agreement, except as provided herein.

6.11 **Governing Law.** This Agreement is governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application

of the laws of another jurisdiction. Venue for any action concerning this Agreement will be mandatory in Dallas County, Texas, to the exclusion of all other venues. The parties agree to waive any objections related to appearing in a court in Dallas County, Texas, including, without limitation, objections based on personal jurisdiction.

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

6.13 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect other provisions of this Agreement, 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 will 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.

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

6.15 **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 will survive termination hereof.

6.16 **Approval of Parties.** Whenever this Agreement requires or permits the approval or consent to be given by a party, the parties agree that such approval or consent will not be unreasonably withheld, conditioned or delayed, unless expressly provided to the contrary herein.

6.17 **Further Assurances.** Each party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

6.18 **Authority.** The Company represents, warrants and covenants that it has the authority to (i) enter into, execute and deliver this Agreement and (ii) perform and comply with all of the terms, covenants and conditions to be performed and complied with by the Company hereunder. The City represents, warrants and covenants that (i) it has the authority to enter into, execute and deliver this Agreement and (ii) it has the authority to perform and comply with all of the terms, covenants and conditions to be performed and complied with by the City hereunder.

6.19 **Time for Performance.** Time is of the essence in the performance of each party's obligations hereunder; provided, however, that if any date for performance by a party hereto falls on a Saturday, Sunday or a day on which national banking associations operating in the State of Texas are not open for business, then such party's performance will not be due until the next day thereafter that is not a Saturday, a Sunday or a day on which national banking associations operating in the State of Texas are not open for business.

6.20 **No Vesting Rights.** Nothing in this Agreement will be construed to constitute an application, plan or permit as envisioned by Chapter 245 of the Texas Local Government Code,

as amended, or to create any right or vest any right that might otherwise accrue under such Chapter.

6.21 **Limitation on Waivers, Etc.** If any department, division, etc. of the City grants any type of waiver, variance or other concession in connection with any aspect of this Agreement (including, without limitation, the City's approval of the Plans), such waiver, variance or other concession will be strictly limited to the department, division, etc. granting same and will not be binding upon, or otherwise applicable to, any other department, division, etc. of the City.

6.22 **Recitals.** The Recitals set forth at the beginning of this Agreement constitute substantive terms of this Agreement and are incorporated herein by this reference.

CITY:

CITY OF GARLAND,
a Texas home-rule municipality

By: _____

Printed Name: William E. Dollar

Title: City Manager

COMPANY:

OAKS PROPERTIES DEVELOPMENT LLC, a
Minnesota limited liability company

By: _____

Printed Name: Norman P. Bjornnes, Jr.

Title: President/Chief Manager

EXHIBIT “A”

to that certain
Disposition and Development Agreement
entered into by and between
The City of Garland, Texas, a home rule municipality
and
Oaks Properties Development LLC, a Minnesota limited liability company

Land

[attached]

EXHIBIT “B”

to that certain
Disposition and Development Agreement
entered into by and between
The City of Garland, Texas, a home rule municipality,
and
Oaks Properties Development LLC, a Minnesota limited liability company

Concept Plan

[attached]

EXHIBIT “C”

to that certain
Disposition and Development Agreement
entered into by and between
The City of Garland, Texas, a home rule municipality,
and
Oaks Properties Development LLC, a Minnesota limited liability company

Design Standards

[attached]



City Council Item Summary Sheet

Work Session

Date: February 4, 2013

Agenda Item

Overview of School Resource Program

Summary of Request/Problem

At the request of Mayor Ronald Jones, an overview of the City of Garland's School Resource Program will be provided to Council.

Recommendation/Action Requested and Justification

Council discussion.

Submitted By:

Approved By:

William E. Dollar
City Manager



City Council Item Summary Sheet

Work Session

Date: February 4, 2013

Agenda Item

Transportation and Commerce Committee Report

Summary of Request/Problem

Mayor Pro Tem John Willis, Chair of the Transportation and Commerce Committee, will provide a committee report on regional transportation project updates from the Regional Transportation Council and other local/regional transportation bodies.

Recommendation/Action Requested and Justification

Council discussions.

Submitted By:

Approved By:

**William E. Dollar
City Manager**



City Council Item Summary Sheet

Work Session

Date: February 4, 2013

Agenda Item

Consider Supporting a Bill in the Texas Legislature Making Changes to TMRS Laws Related to COLA's for Retirees

Summary of Request/Problem

Representative Smithee has introduced a bill in the Texas House of Representatives (HB 718) to authorize municipalities who previously opted out of paying COLA's to their retirees to "opt in" without paying the current "catch up" amounts. Staff will brief the Council on the bill and seek direction from Council on whether to support the bill in the Texas Legislature.

Recommendation/Action Requested and Justification

Council discussion and direction.

Submitted By:

Mike Betz, Deputy City Attorney
Bryan Bradford, Asst. City Manager

Approved By:

William E. Dollar
City Manager