

PUBLIC RIGHT-OF-WAY USE AGREEMENT

This Agreement is made this the _____, by and between the **City of Plano, Texas** ("City"), a Texas home rule municipal corporation, and **St. Elizabeth Ann Seton Parish** ("Company").

RECITALS:

WHEREAS, City and Company entered into that certain License Agreement, dated March 27, 2008, and expired on March 26, 2018, and whereby City granted Company the right to locate, place, attach, install, operate and maintain, subject to the terms of this Public Right-of-Way Use Agreement, a communications system consisting of conduit and fiber (hereinafter called "Structure") under Independence Parkway located in Plano, Collin County, Texas, as shown on the attached Exhibit "A," for the purpose of connecting its communications system between two facilities; and

WHEREAS, City and Company desire to enter into this Agreement and apply it retroactively to the date of the expiration of the former License Agreement; and

WHEREAS, this Agreement shall set forth the parties' expectations with respect to the location, placement, attachment, installation, operation and maintenance of Company's Structure existing under Independence Parkway located in Plano, Collin County, Texas, as shown on the attached Exhibit "A."

NOW, THEREFORE, the City and Company agree as follows:

1. Definitions.

Capitalized terms used in this Agreement and not otherwise defined within this Agreement shall have the following meanings:

- (a) *Affiliate* shall mean any individual, partnership, association, joint stock company, limited liability company, trust, corporation, or other person or

entity who owns or controls, or is owned or controlled by, or is under common ownership or control with, the entity in question.

- (b) *Company* shall mean St. Elizabeth Ann Seton Parish only and shall not include any Affiliate or third party.
- (c) *City* shall mean the area within the corporate limits of the City of Plano, Texas, and the governing and administrative body thereof.
- (d) *Effective Date* shall mean March 27, 2018.
- (e) *Person* shall mean an individual, corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust or any other form or business entity or association.
- (f) *Public Rights-of-Way* shall mean only those portions of the public rights-of-way and street crossings in the City identified in Exhibit "A" of this Agreement, which is attached hereto and hereby made a part of this Agreement for all purposes.
- (g) *Structure* shall mean Company's communications systems consisting of conduit and fiber located under Independence Parkway in Plano, Collin County, Texas as described in Exhibit "A".

2. **Grant of Rights.**

2.1 **General Use of Public Rights-of-Way.** Subject to the terms and conditions set forth in this Agreement, the City Charter, and the ordinances of the City, the City hereby grants Company a non-exclusive license to locate, place, attach, install, operate and maintain its Structure in the Public Rights-of-Way, as defined in Section 1 hereof. Company hereby acknowledges and agrees that the location, attachment, installation, operation, maintenance, removal, reattachment,

reinstallation, relocation and/or replacement of Structure or any other structure or equipment constitutes an actual use of the Public Rights-of-Way, that the City has the right to manage and regulate the use of such Public Rights-of-Way, and that the City is entitled to recover reasonable compensation from Company on account of such use of the Public Rights-of-Way, as set forth in Section 4 below.

Both the City and Company ("Parties") hereby acknowledge and agree that this Agreement addresses only the use of the Public Rights-of-Way by Company to locate, place, attach, install, operate and maintain its Structure and does not grant Company or any Affiliate or contractor of the Company the use of the Public Rights-of-Way for any other reason. If Company, an Affiliate of Company, or any assignee, successor in interest or contractor of Company contends that Company, an Affiliate of Company, or any assignee, successor in interest or contractor of Company wishes to construct and/or install additional facilities in any of the City's public rights-of-way other than the Public Rights-of-Way defined in Section 1, Company shall first notify the City in writing and shall obtain a written permit or agreement for the use of the Public Rights-of-Way in that respect.

2.2 Scope. Any and all rights granted to Company under this Agreement, which shall be exercised at Company's sole cost and expense, shall be subject and subordinate to the prior and continuing right of City, its successors and assigns, to use any and all parts of the Public Rights-of-Way exclusively or concurrently with any other Person or Persons having the legal right to use such Public Rights-of-Way; provided, however, City shall use reasonable efforts to coordinate any such use by other Persons in a manner that preserves Company's rights hereunder. In addition, any and all rights granted to Company under this Agreement shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the Public Rights-of-Way. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in Company a real property interest in land, including, but not limited to, any fee, leasehold interest, or easement. Any work performed by or on behalf of Company shall be subject to the

prior and customary review and regulation by the City. Company shall not allow any liens, including, but not limited to, mechanic's or materialman's liens, to be enforced against City's premises by reason of any such work.

2.3 Non-exclusive. This Agreement and all rights granted to Company herein are strictly non-exclusive. The City reserves the right to grant other and future agreements, consents and franchises for the use of public rights-of-way in the City, including the Public Rights-of-Way used by Company pursuant to this Agreement, to other Persons as the City deems appropriate; provided, however, City shall use reasonable efforts to coordinate any such use by other Persons in a manner that preserves Company's rights hereunder. This Agreement does not establish any priority for the use of the Public Rights-of-Way by Company or by any present or future franchisees, users or other permit holders. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to the City in the performance of its various functions, and thereafter, as between franchisees, users and other permit holders, as determined by the City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

2.4 Other Permits. This Agreement does not relieve Company of any obligation to obtain permits, licenses, and other approvals from the City necessary for the construction, repair, or maintenance of the Structure.

3. Term.

This License shall continue in force for a period of ten (10) years from the Effective Date and may thereafter be renewed for such time and upon such terms as the parties may then agree. If any law or agency rule or regulation is adopted that affects the City's ability or right to manage the Public Rights-of-Way, Company agrees to meet with the City and to negotiate with diligence and in good faith an agreement or amendment to this Agreement that reasonably resolves the City's and Company's concerns regarding such law or agency rule or regulation.

4. **Fees and Payments.**

4.1 **Public Right-of-Way Use Fee.** On the Effective Date and on each anniversary of the Effective Date thereafter as adjusted by Section 4.2 below, Company shall pay the City as compensation for its use of the Public Rights-of-Way, the sum of ONE THOUSAND FIVE HUNDRED FIFTY SEVEN and 60/100 DOLLARS (\$1,557.60). Company hereby acknowledges and agrees that the amount of this Right-of-Way Use Fee constitutes just and reasonable compensation to the City for Company's use of the Public Rights-of-Way as provided by this Agreement.

4.2 **Fee Adjustment.** At the first anniversary of the Effective Date of this Agreement and for each year thereafter for the remainder of the Term the Public Right-of-Way Use Fee shall be increased by three percent (3%). The three percent (3%) increase shall be cumulative from year to year such that the Right-of-Way Use Fee due on each anniversary date shall be determined by multiplying the Right-of-Way Use Fee (as previously adjusted) for the preceding year by the multiplier 1.03.

4.3 **Other Payments.** In addition to the Right-of-Way Use Fees, Company shall pay the City all sums that may be due the City for property taxes, license fees, permit fees, or other taxes, charges or fees that the City may from time to time impose.

4.4 **Interest.** All sums due the City under this Agreement that are not paid when due shall bear interest at the rate of ten percent (10%) per annum, computed monthly.

4.5 **Scope of Use.** Company acknowledges that it understands that this Agreement and the fee charged in Section 4.1 above relate only to the Public Rights-of-Way specifically identified in Exhibit "A." Additional portions of the public rights-of-way and/or street crossings shall require a new license and an additional fee.

5. **Use of Public Rights-of-Way.**

5.1 **Construction and Maintenance.** In all matters relating to this Agreement, Company shall comply with the City of Plano Right-of-Way Management Ordinance, as amended from time to time, and all other pertinent laws, rules, and regulations of the City and the State of Texas. Approval by City of this Agreement shall not constitute a warranty by City that Company's plans conform with federal, state and/or local codes and regulations applicable thereto. Company shall comply with all laws or ordinances of the City of Plano, including, but not limited to, those relating to building and excavation permits.

5.2 **Work by Others; Alterations Required if Needed to Conform with Public Improvements.** The City reserves the right, subject to further conditions described in this paragraph, to lay and permit to be laid sanitary sewer, gas, water, electric, telephone and television cable and other pipelines or cables and conduits and to do and permit to be done any underground and overhead installation that may be deemed necessary or proper by the governing body of the City in, across, along, over or under any of Company's Structure and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to Company, except to the extent provided under the Texas Tort Claims Act. Nothing herein shall relieve any other person or corporation from any liability for damage to the facilities or the Structure.

5.3 **Testing.** Company shall cooperate with City in making any test or tests it requires of any installation or condition that, in its reasonable judgment, may have adverse effects on any of the facilities of the City. All costs incurred by the test(s), or any corrections thereof, shall be borne by Company.

5.4 **Location, Use or Purpose Changes.** No change in the location, use or purpose of the Public Rights-of-Way shall be made by Company without City's written approval. If the City requires Company to remove, alter, change, relocate, adapt or conform its Structure facilities because of a reasonable public purpose, such as

changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe or other reasonable underground or aboveground structure owned by the City, or for any other public purpose, Company shall make the alterations or changes as soon as practicable after receipt of written notice from by the City, without claim for reimbursement or damages against the City except for as provided in section 7.1.

6. **Miscellaneous Obligations of Company.**

6.1 **Removal of Structure.** Upon the termination or expiration of this Agreement, Company's right to use Public Rights-of-Way under this Agreement shall cease and Company shall immediately discontinue use of the Structure. Within six (6) months following such termination or expiration and in accordance with directions from the City, Company shall remove the Structure, including, but not limited to, all supporting structures, poles, transmission and distribution Structures and other appurtenances, fixtures or property from the Public Rights-of-Way. If Company has not removed all Structure facilities and equipment from the Public Rights-of-Way within six (6) months following termination or expiration of this Agreement, the City may deem all of the Company's Structure facilities and equipment remaining in the Public Rights-of-Way abandoned and, at the City's sole but reasonable discretion, (i) take possession of and title to such property; and/or (ii) take any and all legal action necessary to compel Company to remove such property.

Within six (6) months following termination or expiration of this Agreement, Company shall also restore any property, public or private, that is disturbed or damaged by removal of the Structure. If Company has not restored all such property within this time, the City, at the City's sole but reasonable discretion, may, upon thirty (30) days prior written notice to Company, perform or have performed any necessary restoration work, in which case Company shall, within 10 days following receipt of an itemized invoice, reimburse the City for any and all costs incurred in performing or having performed such restoration work.

7. Indemnification and Insurance.

7.1 Disclaimer of Liability. EXCEPT DUE TO THE INTENTIONAL OR GROSSLY NEGLIGENT ACT OR OMISSION OF THE CITY, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, LICENSEES, CONTRACTORS OR SUBCONTRACTORS THE CITY SHALL NOT AT ANY TIME BE LIABLE FOR ANY INJURY OR DAMAGE OCCURRING TO ANY PERSON OR PROPERTY FROM ANY CAUSE WHATSOEVER THAT ARISES OUT OF THE ATTACHEMENT, INSTALLATION, OPERATION, MAINTENANCE, REMOVAL, REATTACHMENT, REINSTALLATION, RELOCATION AND/OR REPLACEMENT OF THE STRUCTURE OR THE CONSTRUCTION, MAINTENANCE, REPAIR, USE, OPERATION, CONDITION OR DISMANTLING OF THE STRUCTURE.

7.2 Indemnification. Company shall provide to the City the indemnification set out in the City's Right-of-Way Management Ordinance, as amended.

7.3 Assumption of Risk. COMPANY, FOR AND ON BEHALF OF COMPANY, ITS OFFICERS, AGENTS, CONTRACTORS, SUBCONTRACTORS, AGENTS AND EMPLOYEES, HEREBY AGREES TO ACCEPT ITS EASEMENT RIGHTS SUBJECT TO ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CITY-CONTROLLED PROPERTY OR FACILITIES, INCLUDING, BUT NOT LIMITED TO, THE PUBLIC RIGHTS-OF-WAY. IN ADDITION, COMPANY HEREBY AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST AND FROM ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE CITY FOR ANY PERSONAL INJURY OR PROPERTY DAMAGES INCURRED OR ASSERTED BY COMPANY OR ANY OF ITS EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, AND ARISING FROM THE ATTACHMENT, INSTALLATION, OPERATION, MAINTENANCE, CONDITION, REMOVAL, REATTACHMENT, REINSTALLATION, RELOCATION AND/OR REPLACEMENT OF THE STRUCTURE.

7.4 Insurance. Company shall comply with the insurance requirements set out in the City's Right-of-Way Management Ordinance, as amended.

8. Termination. This Agreement shall terminate:

- A. at the end of the term provided for in Section 3 above;
- B. upon abandonment of the Public Rights-of-Way or discontinuance of use thereof;
- C. upon failure of Company to correct any default under this Agreement after receipt of written notice from City and expiration of the applicable cure period as set out in Section 9 and 10 below.

9. Defaults.

The occurrence at any time during the term of this Agreement of one or more of the following events shall constitute an "Event of Default" under this Agreement:

9.1 Failure to Pay Right-of-Way Use Fees. An Event of Default shall occur if Company fails to pay any Right-of-Way Use Fee on or before the respective due date.

9.2 Breach. An Event of Default shall occur if Company materially breaches or violates any of the terms, covenants, representations, or warranties set forth in this Agreement or fails to perform any duty or obligation required by this Agreement.

9.3 Violations of the Law. An Event of Default shall occur if Company violates any existing or future federal, state or local laws or any existing or future ordinances, rules and regulations of the City; provided, however, that no Event of Default shall be deemed to occur or exist during the pendency of any legal action which the City or Company may initiate against the other under or in connection with such law, ordinance, rule or regulation.

10. **Uncured Defaults and Remedies.**

10.1 **Notice of Default and Opportunity to Cure.** If an Event of Default occurs, the City shall provide Company with written notice and shall give Company the opportunity to cure such Event of Default. For an Event of Default which can be cured by the immediate payment of money to the City, Company shall have thirty (30) calendar days from the date it receives written notice from the City to cure the Event of Default. For any other Event of Default, Company shall have sixty (60) calendar days from the date it receives written notice from the City to cure the Event of Default. If any Event of Default is not cured within the time period specified herein, such Event of Default shall, without further notice from the City, become an "Uncured Default" and the City immediately may exercise the remedies provided in.

10.2 **Remedies for Uncured Defaults.** Upon the occurrence of an Uncured Default, the City shall be entitled to exercise, at the same time or at different times, any of the following remedies, all of which shall be cumulative and without limitation to any other rights or remedies the City may have:

10.2.1. **Termination of Agreement.** Upon the occurrence of an Uncured Default, the City may terminate this Agreement immediately upon written notice to Company. Upon such termination, Company shall forfeit all rights granted to it under this Agreement, and, except as to Company's unperformed obligations and existing liabilities as of the date of termination, this Agreement shall automatically be deemed null and void and shall have not further force or effect. Company shall remain obligated to pay, and the City shall retain any, Right-of-Way Use Fees and any other payments due up to the date of termination. In this event, Company shall comply with the provisions of Section 6.1 of this Agreement. The City's right to terminate this Agreement under this Section does not and shall not be construed to constitute any limitation on the City's right to terminate this Agreement for other reasons as provided by and in accordance with this Agreement.

10.2.2. Legal Action Against Company. Upon the occurrence of an Uncured Default, the City may commence against Company an action at law for monetary damages or in equity for injunctive relief or specific performance of any of the provisions of this Agreement that, as a matter of equity, are specifically enforceable.

11. **Assignment of Agreement.**

The rights granted by this Agreement inure to the benefit of Company. Except to an Affiliate of the Company, Company shall not (i) assign, transfer, sell, or otherwise convey any of its rights, privileges, duties or interests as granted to Company by this Agreement; or (ii) lease to any Person or allow use by any Person other than Company all or any portion of its Structure unless (i) Company first notifies the City in writing; (ii) Company obtains the City's advance written consent, which consent shall not unreasonably be withheld; and (iii) such Person enters into a written agreement with the City relating to that Person's use of the Public Rights-of-Way, including terms for any compensation that the City may charge for such use. In the event Company assigns or transfers the Agreement to an Affiliate of Company, Company shall provide City with written notice thereof.

12. **Notices.**

12.1 All notices that shall or may be given pursuant to this Agreement shall be in writing and delivered or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile transmission, if a hard copy of the same is followed by delivery through the U.S. Mail or by overnight delivery service as just described, addressed as follows:

If to the City:

City of Plano

Attn: Policy and Government Relations
P.O. Box 860358
1520 Avenue K, Suite 320
Plano, TX 75086-0358
Fax Number (972) 423-9587

With a copy to:

City of Plano

Attn: City Attorney
P.O. Box 860358
1520 Avenue K, Suite 340
Plano, TX 75086-0358
Fax Number (972) 424-0099

If to Company:

St. Elizabeth Ann Seton Parish

Attn: Rev. Bruce Bradley
2701 Piedra Drive
Plano, TX 75023
Office Phone (972) 596-5505

12.2 Date of Notices; Changing Notice Address. Notices shall be deemed given three (3) days after deposit in the mail; or the next day in the case of facsimile, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

13. No Waiver.

The failure of the City to insist upon the performance of any term or provision of this Agreement or to exercise any rights that the City may have, either under this Agreement or the law, shall not constitute a waiver of the City's right to insist upon appropriate performance or to assert any such right on any future occasion.

14. Miscellaneous Provisions.

14.1 Amendment of Agreement. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

14.2 Severability of Provisions. If any one or more of the Provisions of this Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such Provision(s) shall be deemed severable from the remaining Provision(s) of this Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement.

14.3 Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the State of Texas, without reference to its conflicts of law principles. If suit is brought by a party to this Agreement, the parties agree that venue for the trial of such action shall be vested exclusively in the state courts of Texas, County of Collin, or in the United States District Court for the Eastern District of Texas.

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

14.5 Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

14.6 Representations and Warranties. Each of the parties to this Agreement represent and warrant that at the time of signing of this Agreement it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

14.7 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no

representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

14.8 No Third Party Beneficiaries. This Agreement is for the benefit of Company, any transferee or assignee in accordance with the provisions contained herein, and the City, and not for the benefit of any third party. No Provision of this Agreement shall be construed as creating any third party beneficiaries.

14.9 Force Majeure. City and Company shall not be required to perform any covenant or obligation in this Agreement, nor be liable to the other in damages, so long as the cause of such failure to perform, or delay in performance, is caused or prevented by an act of God or force majeure.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate the day and year first above written.

**LICENSOR:
CITY OF PLANO, TEXAS,
A Home Rule Municipal Corporation**

By: _____
Mark D. Israelson, CITY MANAGER

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

**LICENSEE:
ST. ELIZABETH ANN SETON PARISH**

By: Bruce Bradley
Rev. Bruce Bradley
Title: Pastor
DATE: 9-16-2019

ACKNOWLEDGMENTS

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by **MARK D. ISRAELSON**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

STATE OF Texas §

§

COUNTY OF Collin §

This instrument was acknowledged before me on the 16th day of September 2019, by **Rev. Bruce Bradley**, Pastor, of **St. Elizabeth Ann Seton Parish**, on behalf of said company.

Sonia Moran
Notary Public in and for the State of TX

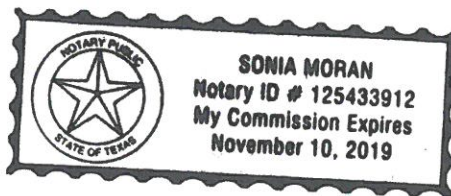


Exhibit "A"

Site Features Map

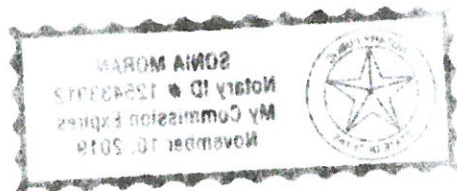
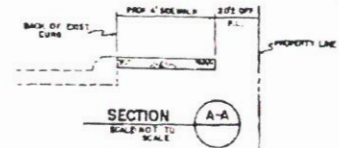
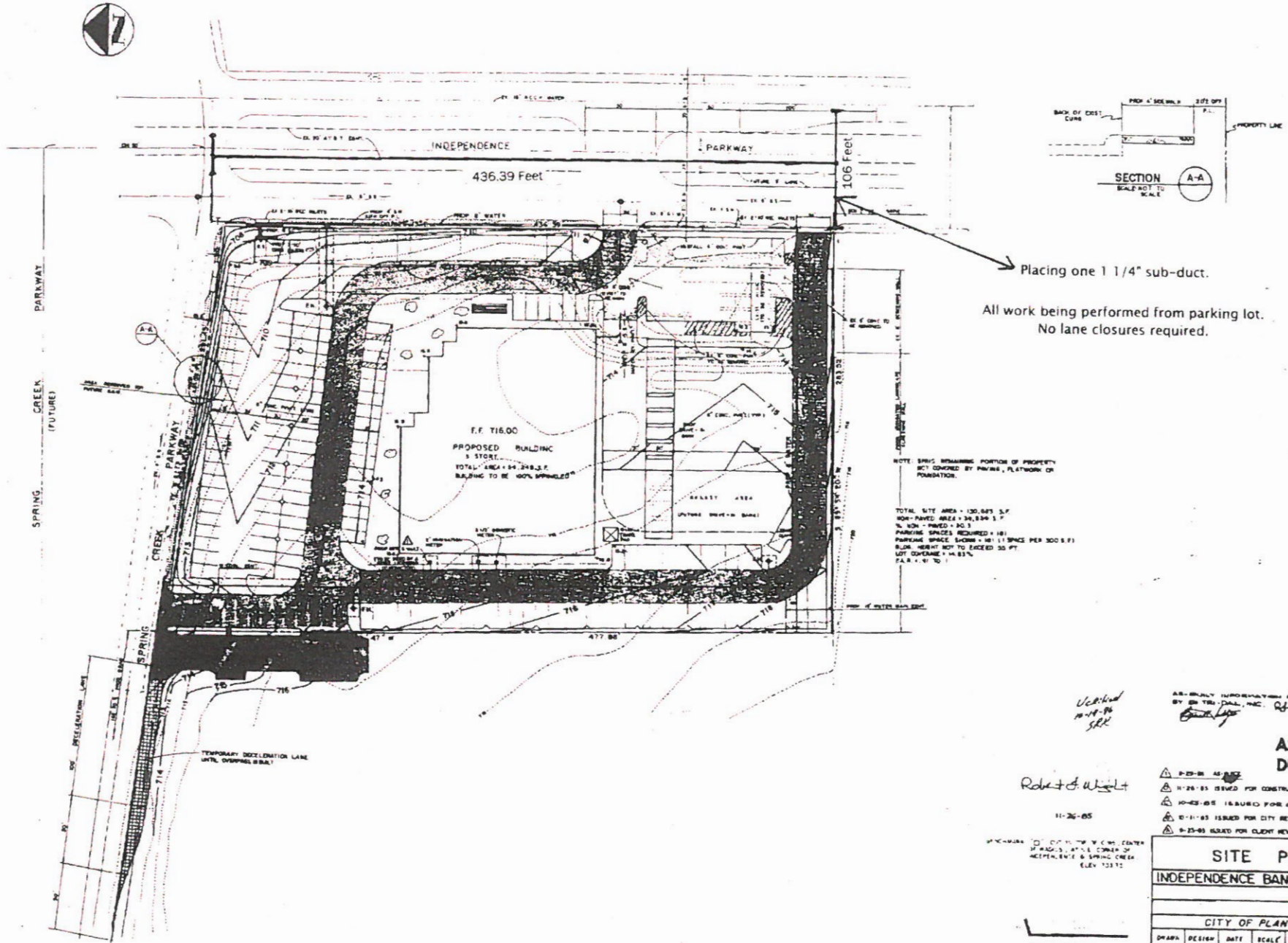


Exhibit "A"



Placing one 1 1/4" sub-duct.
 All work being performed from parking lot.
 No lane closures required.

NOTE: SPACE REMAINING PORTION OF PROPERTY NOT COVERED BY PARKING, PLATFORM OR FOUNDATION.

TOTAL SITE AREA = 130,647.5 S.F.
 IMP. PAVED AREA = 34,834.5 S.F.
 % IMP. PAVED = 26.6
 PARKING SPACES REQUIRED = 181
 PARKING SPACE 5'X10 = 181 (1 SPACE PER 300 S.F.)
 BUILD. HEIGHT NOT TO EXCEED 30 FT.
 LOT COVERAGE = 44.83%
 F.A.R. = 41.10

Exhibit "A"

Verified
 10-14-85
 SRK

Robert C. Wright

11-26-85

PROJECT: 101 SOUTH W. C. CENTER ST. PLAZA 3, 4TH FLOOR CORNER OF INDEPENDENCE & SPRING CREEK. ELEV. 123.72

AS-BUILT INFORMATION PROVIDED BY DR. TEBEL, DALLAS, TEXAS. Robert C. Wright 9-25-85

AS-BUILT DRAWING

- ⊠ 11-26-85 AS-BUILT
- ⊠ 11-26-85 ISSUED FOR CONSTRUCTION
- ⊠ 10-03-85 ISSUED FOR CITY REVIEW
- ⊠ 07-11-85 ISSUED FOR CITY REVIEW
- ⊠ 09-25-85 ISSUED FOR CLIENT REVIEW

SITE PLAN ①
 INDEPENDENCE BANK ADDITION I

CITY OF PLANO, TEXAS					
DATE	DESIGN	DATE	SCALE	NOTES	FILE NUMBER
11-26-85	SRK	11-26-85	1"=30'		