

January 13, 2021

WHEREAS, the City of Dallas ("City") is the owner of a tract of land containing approximately 14,211 square feet (0.3262 acres) in Block 6990, Dallas, Dallas County, Texas, located near the intersection of Illinois Avenue and Cockrell Hill Road and further described in Exhibit "A" (the "City Tract"), which was former right of way that is no longer needed for municipal use; and

WHEREAS, QT South, LLC, a Texas limited liability company, is the owner of a tract of land containing approximately 24,874 square feet (0.5710 acres) in Block 6114, Dallas, Dallas County, Texas, located near the intersection of Illinois Avenue and Cockrell Hill Road, Block 6114, and further described in Exhibit "B" (the "QuikTrip Tract"); which City desires to exchange for the future Chalk Hill Trail; and

WHEREAS, the City desires to exchange the City Tract for the QuikTrip Tract to further the development of the Chalk Hill Trail, public project; and

WHEREAS, Section 272.001(b)(3) of the Texas Local Government Code allows land originally acquired for streets, right-of-way, or easements owned by a political subdivision to be exchanged, for fair market value (as may be comprised of other land to be used for a public purpose), for other land to be used for streets, rights-of-way, easements, or other public purposes, including transactions partly for cash without complying with the notice and bidding requirements for the sale or exchange of public lands provided for in Chapter 272 of the Local Government Code; and

WHEREAS, QT South, LLC ("QuikTrip") is agreeable to the exchange and is willing to exchange the QuikTrip Tract for the City Tract and other consideration consisting of (i) the granting of three pedestrian and vehicle access easements ("Easement Area") by QuikTrip to the City; and (ii) a development and maintenance agreement with QuikTrip providing for the design, construction, and maintenance of all improvements on the QuikTrip Tract and Easement Areas by QuikTrip in furtherance of the Chalk Hill Trail, to include installing an irrigation system, trail landscaping, two light poles on the QuikTrip Tract trail user parking, hike and bike trail and an enhanced sidewalk; and

WHEREAS, on November 7, 2019, the Park and Recreation Board approved the land exchange with QuikTrip conditioned upon QuikTrip's dedication of pedestrian and vehicular access easements and the execution of a Development and Maintenance Agreement for the design and construction by QuikTrip of the QuikTrip Tract, City Tract, and Easement Areas; and

WHEREAS, the City and QuikTrip in accordance with Chapter 272 of the Local Government Code agree to (i) consummate a land exchange of the City Property for the QuikTrip Property; and (ii) execute a development and maintenance agreement for the design, construction and maintenance by QuikTrip of all improvements in the Easement Areas and QuikTrip Tract in furtherance of the Chalk Hill Trail, a public project.

Now therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That upon conveyance from QuikTrip of a Special Warranty Deed and an owner's policy of title insurance, acceptable as to form by the City Attorney conveying approximately 24,874 square feet (0.5710 acres) of land located near the intersection of Illinois Avenue and Cockrell Hill Road, Dallas County, Texas to the City fully described in "Exhibit B", and an executed development and maintenance agreement, acceptable as to form by the City Attorney for the design, development and maintenance by QuikTrip of the Easement Areas and the QuikTrip Tract, the City Manager or designee is hereby authorized to execute a Special Warranty Deed conveying approximately 14,211 square feet (0.3262 acres) of City-owned land near the intersection of Illinois Avenue and Cockrell Hill Road, Dallas County, Texas and fully described in "Exhibit A" to QuikTrip, to be attested by the City Secretary upon approval as to form by the City Attorney.

SECTION 2. That QuikTrip shall convey good and indefeasible fee simple title to the land comprising the QuikTrip Tract and offered for exchange, by Special Warranty Deed, free and clear of all liens and encumbrances and subject only to title exceptions as shall be deemed acceptable by the City Attorney and said title into the City shall be insured by an owner's policy of the title insurance issued by a title insurer acceptable to the City in an amount of not less than fair market value in a form subject to only those matters approved by the City Attorney. QuikTrip shall not reserve any oil, gas, and other minerals in and under the QuikTrip Tract for itself or any other related affiliate, successor or assign.

SECTION 3. That the exchange of land comprising of the QuikTrip Tract being conveyed to the City by QuikTrip, is subject to the following:

- (a) all matters of record; and
- (b) satisfactory due diligence of the property's feasibility for City purposes, including but not limited to being environmentally satisfactory, as determined by the City of Dallas' Office of Environmental Quality. Provided however QuikTrip shall, at no expense to the City, be responsible and liable for any required remediation or clean-up of the QuikTrip Tract; and
- (c) that, to the maximum extent allowed by law, the sale shall be strictly on an "AS IS, WHERE IS, WITH ALL FAULTS" basis; and
- (d) such other terms and requirements of the sale and/or disclaimers as the City deems necessary, convenient, or appropriate.

SECTION 4. That the Special Warranty Deed conveying the City Tract by City (Grantor) to QuikTrip ("Grantee") is subject to the following:

SECTION 4. (continued)

- (a) execution of the development and maintenance agreement approved as to form by the City Attorney between the City and QuikTrip for the design, development and maintenance by QuikTrip of the City Tract, QuikTrip Tract and Easement Areas; and
- (b) the reservation by the City of all oil, gas and other minerals in and under the property with a waiver of surface access rights relating to said minerals; and any visible and apparent easements and any encroachments whether of record or not; and
- (c) any visible and apparent easements and any encroachments whether of record or not; and
- (d) any and all covenants, conditions, reservations, restrictions, exceptions, easements, rights-of-way, mineral interests, mineral leases or other instruments of record and applicable to the property or any part thereof; and
- (e) standby fees, taxes and assessments, if any, by any taxing authority for the year of closing and subsequent years and assessments by any taxing authority for prior years due to changes in land usage or ownership, the payment of standby fees, taxes, and assessments being assumed by Grantee; and
- (f) **that, to the maximum extent allowed by law, the sale shall be strictly on an "AS IS, WHERE IS, WITH ALL FAULTS" basis; and**
- (g) such other terms and requirements of the sale and/or disclaimers as the City deems necessary, convenient or appropriate.

SECTION 5. That as a material fact of the consideration of the sale, the parties shall acknowledge and agree and provide the relevant instruments that, to the maximum extent allowed by law, each (a) is taking each tract "AS IS, WHERE IS, WITH ALL FAULTS"; (b) disclaims responsibility as to the accuracy or completeness of any information relating to the property; (c) assumes all responsibility to examine all applicable building codes and zoning ordinances to determine if the property can be used for the purposes desired and to check for outstanding or pending code enforcement actions including but not limited to repair or demolition orders; and (d) expressly disclaims and expressly waives, any warranty or representation, express or implied, including without limitation any warranty of condition, habitability, merchantability or fitness for a particular purpose of the property and specifically disclaims any warranty, guaranty, or representation, oral or written, express or implied, past, present, or future, concerning: (i) the nature and condition of the

SECTION 5. (continued)

property, including without limitation, the water, soil and geology, and the suitability thereof and the property for any and all activities and uses which each may elect to conduct thereon, and the existence of any environmental substances, hazards or conditions or presence of any endangered or protected species thereon or compliance with all applicable laws, rules or regulations; (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; (iii) the compliance of the property or its operation with any law, ordinance or regulation of any federal, state, or local governmental authority; and (iv) whether or not the property can be developed or utilized for any purpose. For purposes hereof, “environmental substances” means the following: (a) any “hazardous substance” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. Section 9601 et. seq., as amended, (b) any “hazardous substance” under the Texas Hazardous Substances Spill Prevention and Control Act, Tex. Water Code, Section 26.261, et. seq., as amended, (c) petroleum or petroleum-based products (or any derivative or hazardous constituents thereof or additives thereto), including without limitation, fuel and lubrication oils, (d) any “hazardous chemicals” or “toxic chemicals” under the Occupational Safety and Health Act, 29 U.S.C.A. Section 651 et. seq., as amended, (e) any “hazardous waste” under the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901 et. seq., as amended, (f) asbestos, (g) polychlorinated biphenyls, (h) underground storage tanks whether empty, filled, or partially filled with any substance, (i) any substance, the presence of which is prohibited by federal, state or local laws and regulations, and (j) any other substance which by federal, state or local laws and regulations requires special handling or notification of governmental authorities in its collection, storage, treatment or disposal. References to particular acts or codifications in this definition include all past and future amendments thereto, as well as applicable rules and regulations as now or hereafter promulgated.

SECTION 6. That all closing costs and title expenses for the City Tract and QuikTrip Tract, including without limitation costs of title insurance shall be paid by QuikTrip.

SECTION 7. That the sale shall be subject to standby fees, taxes and assessments, if any, by any taxing authority for the year of closing and subsequent years and assessments by any taxing authority for prior years due to changes in land usage or ownership, the payment of said standby fees, taxes and assessments being assumed by QuikTrip.

SECTION 8. That the City Tract is now on the exempt tax roll, and taxes for the remaining part of the then current calendar year shall be accessed from the date of closing.

SECTION 9. That the City Manager or designee and the Park Board President, upon approval as to form by the City Attorney, is authorized and directed to execute a 20-year Development and Maintenance agreement with QuikTrip, with one 5-year renewal option

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SECTION 9. (continued)

to provide that QuikTrip, at its sole expense, design, develop, and maintain all improvements on the QuikTrip Tract and Easement Areas, said QuikTrip maintenance responsibility in the Easement Area shall transfer to **QuikTrip's successors and assigns** and shall continue for as long as the City owns the easement interests, and the City shall be responsible for irrigation repair and replacement, as well as utility bills generated on the QuikTrip tract, provided however, QuikTrip reserves the right to repair and replace the irrigation system at QuikTrip's expense if City is unable to do so. Special terms of the development agreement shall include, at a minimum, the following: (i) insurance requirements in accordance with the City's Risk Management Department recommendation to be provided by QuikTrip; (ii) performance and payment bonds to be furnished by QuikTrip in accordance with Chapter 2253, Texas government Code, as amended, by a corporate surety or sureties licensed to issue surety bonds in Texas, authorized to do insurance business in Texas, listed on the United States Treasury List of Sureties Authorized to Issue Bonds for Federal Jobs, and otherwise acceptable to the City; (iii) approval of all construction plans for all improvements by the City in writing of all improvements; (iv) QuikTrip obtaining all building permits, zoning, platting, certificate of appropriateness, and other approvals required for the construction; and (v) such other terms as may be included by the City Attorney.

SECTION 10. That this contract is designated as Contract No. PKR-2020-00014256.

SECTION 11. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED AS TO FORM:
CHRISTOPHER J. CASO, City Attorney

BY


Assistant City Attorney