REAL ESTATE FAQ'S FOR CITY ATTORNEYS

(OR "WHAT IS THE DIFFERENCE BETWEEN A RIGHT-OF-WAY AND AN EASEMENT?")

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Kevin B. Laughlin is as an Associate Attorney with the Dallas law firm of Nichols, Jackson, Dillard, Hager & Smith, L.L.P., having joined the firm in April 2008. Kevin has spent the majority of his 23+ years of legal practice representing Texas cities, having served as an in-house attorney for the City of Midland, Texas, from 1989 to 1996 (the last 4.5 years as First Assistant City Attorney) and as the City Attorney for the City of Kerrville, Texas, from 1996 to 2002. Kevin returned to the Midland/Odessa area in June 2002 and joined the Odessa law firm of Atkins & Peacock, L.L.P (now Atkins, Hollmann, Jones, Peacock, Lewis & Lyon, Inc.), where his practice included among other areas real estate transactions, title examination, collection matters, banking law, school law, and civil litigation. Prior to his days as a municipal attorney, Kevin served four years in-house as Assistant University Counsel for Southern Methodist University.

During his 12+ years with the cities of Midland and Kerrville, Kevin performed legal services in virtually every area of municipal government. Kevin has extensive experience in the preparation of ordinances and resolutions covering a wide range of matters. Kevin's current practice involves providing advice and counsel in all areas of municipal law to the firm's client cities and local government entities in the Greater Dallas/Ft. Worth Metroplex.

Kevin obtained his B.A. in English and Political Science from Southern Methodist University in 1982 and his J.D. from Southern Methodist University School of Law in 1985. Kevin is licensed to practice law in Texas and Oklahoma as well as the United States District Courts for the Northern and Western Districts of Texas.

Kevin is a long time member of the Texas City Attorneys Association and served as TCAA president in 2002-2003. Kevin has also been an occasional speaker at TCAA conferences and seminars. Kevin is married to his wife of 27 years, Libby, and has three children, LCpl. Richard Laughlin, USMC, presently proudly serving in Operation Enduring Freedom in Afghanistan, and daughters, Ashley and Lauren, who are attending high school in Midland.

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INTRODUCTION

For many years, I have been a member of the listserv for local government attorneys sponsored by Municipal Code Corporation and the International Municipal Lawyers Association. During my six year hiatus in private practice in Odessa, I found myself on a regular basis answering questions posed by fellow list members regarding basic real estate matters affecting every day municipal projects. My ability to answer such question had nothing to do with my years of experience as a municipal attorney, but from that experience combined with my then current practice in handling real estate transactions for clients and performing title examinations for local title companies. In answering real estate questions from my municipal law colleagues, I came to the realization that as municipal attorneys, we are often called upon to acquire or convey real estate interests for city projects with little or no experience in some of the basic principals of real estate. We all had to pass a section on property law for the bar exam. (Who remembers that little green case book titled *Moynihan's Introduction to the Law of Real Property*?) But for many of us, except for signing an apartment lease or buying our personal home, our serious experience with real estate ended with law school. And given how very little training we get in the actual practice of law generally in law school, even law school did not train us in the basic elements of a deed or easement, how to check title on a piece of property, what constitutes a valid description of real property, how to read a survey (or for that matter what a survey is).

Yet, we are regularly called on to assist our city engineers in acquiring sewer and water line easements, strips of land to widen streets, and argue with property owners about whether or not a fence can be placed in a platted drainage easement. Our city managers and economic development directors need us to somehow help craft a way for the best company prospect in years to purchase real estate at a discount price with a Chapter 380 loan secured by the property yet do so in a way where the prospect's construction lender will not object to the city's lien. Even our community development directors get us into the act by convincing the city council to help administer the construction of a low to moderate income single family neighborhood from the ground up and sell the homes to eligible homebuyers subject to a loan from the Texas Department of Housing and Community Affairs HOME Program and other subsidized low interest loans.

The purpose of this paper and the related presentation is not to provide any great treatise of law on real estate that will go on the shelf in your library, only to be left with all of the other outdated seminar papers that you had every good intention of reading someday but never got around to it. Instead, I hope to provide a handful of practical information and tips that help you as a city attorney when confronted with the real estate matters that often come across your desk. This paper is and presentation is by no means comprehensive, but I hope it addresses at least some of the most common questions you have when confronted with a real estate project.

Question No. 1: What is the difference between a right-of-way and an easement?

Answer: As a general premise, NOTHING.

This question usually comes up in the context of someone wondering what type of document to use when the city needs to locate a street over presently undeveloped property or to lay a new water or sewer pipeline. The conversation will generally go something like this:

> *City Engineer:* We have a new waterline for a development on the west side that needs to cut across Farmer Jones' acreage. Can you prepare a right of way agreement for me?
>
> *City Attorney:* Sounds like you need a utility easement. I'll get started on it.
>
> *City Engineer:* No, I said a right of way! This is for a pipeline, and I need a right of way for it!
>
> (Author's Note: It is at this point the city attorney starts looking at the law license on her wall and wondering if she should remind the city engineer he does not have one of those.)
>
> *City Attorney:* Fine. I will prepare a document that will get you the right to build the line.

The sad thing about the above conversation is that the city attorney and city engineer are talking about the same thing to the extent they are talking about the interest in real property the city needs to acquire.

In legalese, an easement does not convey title to property; but is instead a non-possessory interest that authorizes its holder to use the property for only particular purposes. *Stephen F. Austin State University v. Flynn*, 228 S.W.3d 653 (Tex. 2007). In brief, an easement is the right given by a property owner to someone else to use the owner's property for a particular purpose without conveying title to the property itself. Without getting into a technical discussion about the different classifications of easements (you can go read the TexJur III article for that, if you wish), the type of easement that cities usually obtain fall with the category of "easements in gross" because the granting of the easement will result in a right to use the grantor's property without that use being tied to a direct benefit to another adjacent parcel of property.

A "right-of-way" is merely a type of easement, usually one involving a place where the public may travel, such as a street or alley, but can include an easement in which a pipeline will be located. Whatever you call it, the name is not important. The function of the document conveying the right to use the property for a street, alley, pipeline, trail, or similar use, as long as it is not terminable at will, is an easement.

Question No. 2: We have an existing easement with a 16-inch water line in it. Can we replace the 16-inch line with a new 24-inch water line in the same easement?

Answer: Depends on what the easement says. YOU MUST READ THE EASEMENT!

While the name of the document granting an easement is not important, the description of the use to be allowed contained in the granting document is. Anytime I have responded to this question on the MuniCode listserv, my first question is usually "What does the easement say?" As a general premise, the grantee of an easement may only use an easement for the purposes described in the easement and those things necessary to allow the permitted use to occur. For example, if an easement provides for the "construction, reconstruction, repair, maintenance, replacement, or removal of a 16-inch water line," the city cannot install a 24-inch water line in the easement, nor can the city install a sewer line of any size. The city cannot even install two 8-inch lines, because the easement calls for "***a*** 16-inch water line."

- **Practice Tip:** ***Write the use description as broadly as you can get away with in order to provide as much flexibility to your successors 40 years from now!***

On the other hand, if the easement says that the grantee may "construct, reconstruct, repair, maintain, replace, or remove a water line," the city can install any size line it thinks it can fit into the area of the easement. Under such language, the city can still only install one water line, but at least it has greater flexibility about the size. So if you want greater flexibility with respect to installing utilities, the easement should contain language as many nouns and verbs and as few adjectives as possible, such as the following:

> *…the right of ingress, egress, and regress therein, to erect, construct, reconstruct, install, replace, repair, operate, use, inspect, modify, remove and maintain certain water, wastewater, and/or other public utility lines and appurtenances, together with all lines, pipes, conduits and other facilities, equipment, improvements, and appurtenances used in connection with such said public utilities as deemed necessary thereto by said Grantee, over, along, across, under, into and through the Property.*

For your information, the above language was contained in an easement granting a 30-foot general utility easement. For a sample of a street right of way dedication that also provides for granting general utility use, see Exhibit "A", attached.

Question No. 3: There's a fence down the middle of the drainage easement in Blackacre Estates. Can we take it down without liability?

Answer: Again, depends on what the document says. READ THE EASEMENT!!!

The owner of the land on which an easement has been granted has the right of full use of the land not inconsistent with the reasonable enjoyment of the easement. *Rhodes v. Whitehead,*

27 Tex. 304, 1863 WL 2837 (Tex. 1863) The owner of the property burdened by the easement does, however, owe a duty to use his or her property in a manner that will not impair or destroy the paramount right of use allowed in the easement. *Jones v. Fuller*, 856 S.W.2d 597 (Tex. App. Waco 1993), writ denied, (Oct. 20, 1993).

- **Practice Tip:** ***Don't depend on the common law rule to help you out with respect to conflicts between the city use of the easement and the use by the property owner. Include in the easement document specific language regarding use and removal of improvements placed there by third parties…especially the grantor of the easement!***

The purpose for which the easement is being used will dictate the kind of language to insert into an easement regarding the uses that the property owner will be allowed to make of the surface area of the property where the easement is located. For example, it may be acceptable for a property owner to locate driveways, landscaping, and, in some circumstances, fences, within a utility easement. However, the same may not generally be allowed in a drainage easement because of the need to keep the surface clear to allow the free flow of surface waters.

The following is an example of some language that can be included in a drainage easement that addresses the grantor's retained use of the easement:

> *Grantor retains all rights to the Easement Property, provided that the Grantor's exercise of such rights does not interfere with the Grantee's rights under this easement. Grantor agrees not to interfere with the Grantee's ability to use or maintain the drainage facilities. Interference includes, but is not limited to, physically modifying the Easement Property such as altering topography; installing fences, structures, rockeries, walls or other like improvements; planting of difficult to restore landscaping; piling or storage of dirt, trash, garbage, debris or other materials. Grantor shall, upon receipt of written notice from the Grantee, remove cited interference from the Easement Property which prevents proper use of the Easement Property for the purposes intended herein. Grantee may grant written permission to the Grantor to physically modify the Easement Property upon receipt of a written request.*

The above language could go even further by authorizing the grantee, at grantor's expense and without liability to the grantor of the easement, remove the offending obstruction or improvement within the easement. Absent such language, the grantee/city is left with demanding the improvement or obstruction be removed by the property owner and, failing that, seeking an injunction and a declaratory judgment for the removal of the offending improvement.

In sum, be sure the easements you draft on behalf of your clients for new utilities, drainage, and even streets and alleys, create as broad a use as you can obtain from the property owner and include every possible use that will be needed for the present project and in the future, that it clearly set out the types of uses that the property owner can make of the surface, if any, and that it describes the remedies allowed if the property owner uses the surface of the easement for an improper purpose.

Question No. 4: We don't need that street any more and would like to vacate it. How do we do it, and who gets the property back?

Answer: Depends on how the city acquired the property in the first place and from whom.

This Question No. 4 requires that you ask a few questions before you can provide the correct (or reasonably correct) answer. First, ***how was the city's interest in the street acquired in the first place?*** There are about five basic ways that a city may acquire the right to use property as a street or other public right of way: dedication by plat, grant of a specific easement for street right of way, by prescription as the result of the use of the way by the public over time, conveyance by deed in fee simple, and by eminent domain. It is important that you know how the city acquired the street right of way and the actual property interest the city owns in the street…easement or fee simple…because this will dictate how the street may be vacated.

If the street easement was acquired by plat, the method for vacating the right of way will generally be city council approval of an ordinance or resolution (depending on your city charter or your statutory requirements if you are a general law city) vacating the right of way. The ordinance or resolution must contain a description of the right of way to be vacated that is adequate enough to be able to identify the area on the ground, and a certified copy needs to be recorded in the property records in the county clerk's office of the county where the property is located. **DO NOT FORGET THIS LAST STEP!** Many cities forget to file a copy of the vacating document with the county clerk only years later to have the question come up about who owns title to the underlying fee and raises a potential cloud on title for some private property owner years from now.

- **Practice Tip:** ***File in the county property records a certified copy of every ordinance or resolution that involves vacating a platted easement or right of way and, if possible, have the county clerk make a cross-reference note on the recorded plat. This will save many hours in years to come determining whether or not the city has any responsibility for maintenance of the vacated area and resolve most questions on the fee owner's right to use or even sell the property. It will also ensure that the property is added back onto the tax rolls as non-exempt property since street rights of way are not calculated as part of the area of a platted lot even though the lot owner technically owns fee title to the middle of the street.***

If the street easement was acquired as a specific dedication of right of way by separate instrument and not by plat, vacating the street should be accomplished by signing a document that expressly abandons the easement and releases all of the city's interest in the portion of the easement to be abandoned. The primary contents of this document would include, of course, an accurate description of the area of the easement to be abandoned, a specific reference to the recording information of the instrument in which the easement was originally granted, and, in the case of a partial abandonment of an easement, language that specifically notes that the easement remains in full force and effect as to the portion not abandoned. As with the ordinance/resolution described above, the city council needs to approve the execution of the vacating document, and, it MUST be recorded with the county clerk after execution.

For a prescriptive easement, the method for vacating would be like that of an easement granted by separate instrument. However, in this instance, because there is no dedication instrument, there can be no reference to the recording information for the prior document. Again RECORD, RECORD, RECORD.

If the city acquired full fee simple title to the property by a general, special, or even quitclaim deed when it acquired the property, a mere vacating ordinance or abandonment instrument is not sufficient to vacate the street and convey the property to the adjacent property owners, if that is the city's intent. The city, in this case, owns the whole bundle of rights to the property just as the city owns its city hall and fire station properties. Unlike vacating the street by ordinance or execution of an abandonment instrument where the beneficiary of the abandonment goes to whoever owns the underlying fee simple title, when the city owns fee simple title to the street, the city must intentionally pick to whom it wants to convey fee title. Arguably, the city could end up selling to someone other than the adjacent property owners if the proper procedures set forth in Tex. Loc. Govt. Code §272.001 are followed[1]. Probably not a wise result, but one that is possible. Otherwise, the city can sell to the abutting fee simple property owners without following the notice and bidding requirements and even without requiring payment of fair market value. TEX LOC. GOVT. CODE §272.001(a).

As for properties acquired through eminent domain, you need to look at Tex. Prop. Code §21.101 to be sure that it is not applicable. Tex. Prop. Code §21.101. et.seq., requires that property acquired by eminent domain in certain circumstances be offered back to the original owners, their heirs, successors, and assigns. Without getting into a discussion of those circumstances, the main pointer here is that you verify whether the city must follow the requirements of Tex. Prop. Code §21.101. et.seq.

- **Practice Tip:** ***When abandoning a street or alley right of way, do not forget to check with your city engineer to see if there are any utilities in the portion of the right of way to be vacated and abandoned or if there is any intention to need an extension across the area in the future. If so, the document abandoning the right of way needs to expressly reserve a general utility easement to the city, using the same language that would be used if it was a grant of a new utility easement.***

Now, for the second question: who does (or must) the property go to? In the case of a platted dedication, the answer is USUALLY pretty simple: the owners of the property on either side of a dedicated easement GENERALLY have title to the middle of the street, easement, or other dedicated interest. Therefore, when the abandonment occurs, the legal rights of the adjacent owners to use the property extend to the middle of the dedicated area being vacated. However, this is not true if the vacated easement is at the edge of a platted tract adjacent to an unplatted tract with a different chain of title than the property from which the subdivision was

[1] Tex. Loc. Govt. Code §272.001(a) states that land and those interests described therein may conveyed, sold, or exchanged for less than the fair market value of the land or interest if the conveyance, sale, or exchange is with one or more abutting property owners who own the underlying fee simple. In other words, a city technically could sell the right of way of a vacated street it owns in fee simple to someone other than an adjoining fee simple owner as long as the city when through the notice and bidding process and sold the property for not less that the fair market value as determined by an appraisal.

developed. In other words, if, at the time of platting, (a) the subdivision property and the adjacent property were owned by different owners and (b) the easement to be vacated is at the boundary of the subdivision and was wholly taken from the property in the original subdivision, then the underlying fee title to the easement cannot possibly be owned by the adjacent property owner or his successors in interest. Since vacating the easement merely removes the burden of the easement from the underlying fee title, the fee title remains with the owner of the adjacent platted lot in the original subdivision. To hold otherwise would result in a conveyance of property from one private property owner to another private property owner without any actual sale or agreement to convey the property, which would probably be invalid for any number of reasons, not the least of which is the Statute of Frauds (which requires all conveyances of property to be in writing). This same caveat applies when the easement or right of way is originally acquired by prescription – the underlying fee is not automatically split to the center of the right of way. Instead, it is necessary to look to the ownership of the original tract from which the easement was obtained.

In sum, when abandoning right of way, always ask and obtain a satisfactory answer to the following questions:

1. How was the right of way originally acquired?

2. Who owns the underlying fee title, if not the city?

3. Do I have a clear legal description of what is being abandoned/vacated so that it can be identified on the ground?

4. If the property is owned in fee by the city, have I complied with all requirements, if any, of Tex. Loc. Govt. Code §272.001?

5. If the property was acquired through the exercise of eminent domain, is it necessary to comply with Tex. Prop. Code §21.101?

Question No. 5: I can pay the title company $150 to prepare an abstract certificate or a little bit more and get a title opinion from a title attorney. Do I really need an owner's policy of title insurance?

Answer: Possibly, and, in many instances, probably.

This question arises in part from a basic lack of understanding of the differences among an abstractor's certificate, an attorney title opinion, and title insurance.

An ***abstract of title*** is nothing more than a compilation of the history of the documents that have ever affected the title to the subject property. A full abstract for a tract of land, which would go all the way back to pre-statehood days to the original Spanish land grants, can be quite detailed and voluminous depending on the area of the state in which the property is located. An ***abstractor's certificate*** is little more than certification by the person putting the abstract together that all of the documents affecting title have been included in the abstract up to the date of the

certificate. **IT IS NOT A TITLE OPINION.** Other than matching up the legal descriptions of the property to verify that the document in fact deals with the subject property, no examination of the legal effect of the documents takes place. In addition, outside of checking a record that is referenced in the recorded document, an abstract of title may not (and usually does not) reflect records affecting title outside of those recorded in the county clerk's office, such as divorce decrees, probate documents, and other matters such as final judgments in an eminent domain case that are not required to be filed in the county clerk's property records. An abstract of title is a helpful and almost necessary tool for performing a title examination, but the abstract cannot, by itself, be relied upon to tell you (1) who owns the property or (2) what title problems affect the property. The cost for obtaining an abstract of title varies around the state and from title company to title company, but I have known title companies to charge anywhere from $125 to $250 to prepare one for a client.

An ***attorney's title opinion*** is what it sounds like…an opinion of an attorney (hopefully from an attorney who is actually experienced in examining property records) with respect to the ownership of the subject property and any defects in title. "Defects in title" are matters that affect title and which, if not cured, would prevent conveyance of the property totally unencumbered. Such "defects" would include any liens currently in effect that would require a release at closing, restrictive covenants filed of record that are still in effect, judgment liens against the owner of the property that have not expired, easements filed of record, etc. An attorney's title opinion is usually based on an examination of the documents contained in the abstract of title. In fact, what you will (or should) obtain from an attorney's title opinion is much the same thing you will obtain from a title commitment for a title insurance policy except you may pay a little less in the end for the attorney's title opinion than the title policy (or at least you ought to be paying less).

The main thing you do not get with an attorney's title opinion is protection from any defects in title that are later determined to exist. While you may be able to sue the attorney for malpractice, the necessary proof that will be required to win puts a significant burden on the purchaser/owner of the property because, even if you are able to recover from the attorney's malpractice coverage, there is still the issue of a third party challenge to your title that still needs to be resolved. Attorney title opinions are a good tool to use when you want a quick update to the condition of title on property which has previously been the subject of a title policy and the attorney has access to the prior title policy. But even as an initial examination on a small piece of property with little value, it still may make more economic sense to obtain a title policy because of what the policy would cost versus the cost of an attorney's title opinion.

The Texas Department of Insurance describes the function of title insurance in this manner on its website:

> *Title insurance protects you and your lender if someone challenges your title to your property because of title defects that were unknown when you bought the policy.*

http://www.tdi.state.tx.us/title/title.html The key phrase is "unknown when you bought the policy." Unknown means not just unknown to the parties to the transaction but also unknown to

the title company. Because virtually all matters affecting title are matters of public record…or should be…it is incumbent upon title companies to make sure that all reasonable efforts are taken to identify documents and other issues that affect title to a tract of land. If the title company fails in that effort by not identifying an exception to title, and the buyer learns of the previously unknown exception, the title company will be required to defend the title of the insured property owner, including, if necessary, providing an attorney to handle such defense. The title company may also be called upon to pay all costs related to curing the title defect, including the payment of money to obtain a release of a lien, up to the value of the policy. The value of the policy will be the actual purchase price paid by the buyer.

When obtaining an attorney's title opinion, a buyer is not obtaining the kind of protection described above. And, given the fact that the buyer is a city with eminent domain powers, depending on the type of transaction, the value of the property, and what the city intends to do with the property, you may not want that kind of protection of title. However, if your city is planning on building a $15 million water treatment plant on a piece of land the city intends to buy for only $50,000.00, it is probably worth spending an extra $550 or so dollars to get a title policy at closing. The minimum policy is going to be less than $300, and this is about as much as you would pay for an attorney title opinion.

The question about whether or not to purchase a title policy also generally comes as the result of a misconception of the cost involved. Title policy premiums are regulated by the Texas Insurance Commission and are standard across that state. Every title company must charge the same for the sale of a title insurance policy…there is only one rate schedule for the entire state. Therefore, what you pay for a title policy at Stewart Title of Dallas will be the same as you pay at Stewart Title of Houston or Stewart Title of Midland or at Republic Title of Texas in Dallas, Alamo Title in Dallas, or any other title company in Dallas. The difference in the cost of doing business with title companies is tied up in what they charge for courier fees and escrow fees to handle the closing.

The cost of an owner's title policy is probably less than what you might think. The base premium for a $10,000 policy (the minimum possible) is $229, for a $50,000 policy is $503, for a $100,000 policy is $843, for a $500,000 policy is $2979, and for a $1 million policy is $5649. The premium is paid one time at closing. The current rate tables for the basic policy premium can be found at http://www.tdi.state.tx.us/orders/titlerates2004.html. There are additional premiums related to riders or additional exclusions that will push up the cost of the policy, the primary one being the amendment to the exception to area, boundaries, etc. that can be made upon presentation to the title company of a current survey of the property showing the boundaries and all improvements, including fences, overhead utilities, buildings, etc. The additional premium is 15% of the base premium when it is a non-residential property.

Many title companies have on their websites a title policy calculator that will allow you to at least calculate the basic premium amount. One site I found was on the website for Stewart Title of North Texas at http://www.stewartnorthtexas.com/premium-rates. I often use this calculator when advising client on the estimated closing costs of a transaction.

Ultimately, as noted above, whether or not to get a title policy involves a combination of risk assessment analysis and the availability of funds. It may also depend on who is paying (as will be discussed below).

Question No. 6: A utility company wants to run a line across the back of our city hall property but not in an existing right-of-way. How should this be accomplished?

Answer: This can be accomplished by the grant of an easement or a license. BUT……

Most cities I have worked with follow a general practice of not granting permanent interests in city-owned property (such as an easement) for a variety of reasons, not the least of which is the fear that granting an easement will hamper future development of public property. In addition, the grant of an easement is an interest in real property that may be subject to constitutionally mandated compensation if terminated without compensation being made to the utility. Therefore, we usually recommend a license agreement.

A license is not a conveyance of an interest in property but is a contractual right to use property for a described purpose for a stated consideration. In most instances, licenses are terminable at will, though they can be written to provide for a notice requirement for termination. A license agreement can also be written to define default provisions. A license agreement should have a definite term, but it can include renewal provisions. In essence, you can do anything with a license that you can do with a lease, except there is no property interest conveyed.

There are instances where a license cannot be terminated at will. These situations involve agreements where the city is contracting for a service that will be of benefit financially or otherwise to the city and the other party is going to expend a significant sum in reliance on the city's agreement to allow the use of the city's property pursuant to the license agreement. In such instances, sometimes referred as a "license coupled with an interest," termination of the license at will may not be possible. To handle this situation, the license agreement will need to contain provisions that deal with termination pursuant to default of the licensee, notice provisions, and possibly an early termination provision wherein the city may be required to pay certain compensation for an early termination of the license.

Included with this paper at Exhibit "B," is an example of a license agreement entered by a city with an adjacent property owner that was in the process of selling the property but found that, after obtaining a survey, its improvements (parking facility) was encroaching on a city utility easement. The city granted the license, but it is terminable with 30 days notice. In addition, the city reserved the right to have the encroaching improvements moved at the owner expense. You can also use a license agreement to allow a private property owner cross public rights of way with private communications lines that would be used to connect the owners buildings on a campus bisected by a public street. There are many other examples in which a license agreement can be used.

Question No. 7: What is the difference in a special warranty deed, general warranty deed, a deed without warranty, and a quitclaim deed, and which is preferable when?

Answer: See the discussion below on this one.

There is a regular on-going discussion on the MuniCode listserv regarding the effect of the various types of deeds mentioned in this question. The primary difference relates to the quality of the warranty that the seller/grantor is giving to the buyer/grantee at the time of conveyance.

- ***General Warranty Deed*** – The general warranty of title in a general warranty deed obligates the grantor to indemnify the grantee against any loss resulting from a title defect or from any encumbrances that arose before the conveyance. Thus, with respect to a general warranty deed, it is very important for the grantor to identify all exceptions to warranty in the text of the general warranty deed. Unless a grantor knows for certain there are no exceptions, the deed should at least include exceptions as to all matters of record filed in the county clerk's office of the county where the property is located.

- ***Special Warranty Deed*** – The warranty of title in a special warranty deed obligates the grantor to indemnify the grantee only as to defects in title caused by the grantor and not the grantor's predecessors in title. If all that the city can get the seller to provide is a special warranty deed, serious consideration should be given to obtaining a title policy, which will provide protection to the city for prior title defects, even if the warranty in the deed will not.

- ***Deed Without Warranty*** – There is no warranty of title provided by the grantor to the grantee, but at least there is a conveyance of the quality and quantity of title described in the deed. In the case of a deed without warranty, it is possible to obtain after acquired title if the grantor did not have full title to the property conveyed at the time of the conveyance, but obtains it later.

- ***Quitclaim Deed*** – This is not really a "deed" at all, but serves to convey to the grantee whatever interest the grantor may own on the date of the conveyance. This could be full fee simple title or it could be absolutely nothing. A grantee of a quitclaim deed cannot get the benefit of after acquired title. Title companies will not, as a general rule, write title insurance if a quitclaim deed is in the chain of title, especially if it is the most recent conveyance in the chain and the document on which your seller is relying for title. Whenever I ran into this situation as a title examiner, the standard procedure for curing title was to try to find the prior grantor and get a signed warranty deed, general or special. If we were unsuccessful at that, it became necessary to examine closely the prior conveyances to be sure the prior grantor had fee title at the time of execution and delivery of the quitclaim deed. In any case, quitclaim deeds are generally disfavored except as a tool to cure an outstanding contingent property interest in a party who may or may not have an interest in property…such as Cousin Joe, second cousin thrice removed to the owner who may or may not have inherited a 1/64 interest from Uncle Ned who died

without a will and whose estate was never probated in any fashion but who was in the original chain of title.

Practice Tip: ***When buying property, always try to get a general warranty deed. When selling, always try to give only a special warranty deed. Never accept a quitclaim deed unless you already know you are getting good title from another source but are trying to cure a potential contingent title issue from a third party not directly involved in the transaction. However, if that third party actually owns an undivided interest in fee, that third party needs to be a grantor on a warranty deed conveying his or her undivided interest. Don't take a quitclaim for someone's undivided fee interest.***

Question No. 8: Our Type B Corporation board wants to help a developer fund a portion of a local match to TxDOT for state highway improvements required to enhance access to the development, but wants at least a portion of the funds paid back. How do we make sure that we get paid back?

Answer: Make sure you have the developer execute a note and deed of trust that places a lien on property owned by the developer.

Many times, I find my partners and me working on economic development deals where all or a part of the economic development incentive is intended to be a loan which is in whole or in part to be paid back. Sometimes, pay back is only required if the developer fails to reach certain goals by a certain deadline; however, failure to meet the required goals may require full payback. In order to ensure a payback of the funds, the lending entity should insist on receiving at the closing of the loan a deed of trust lien that attaches to the real property of the developer.

For the real novices among us, a deed of trust is a "fictional" conveyance of the property to a "trustee" to be held for the benefit of the note holder and disposed of pursuant to the terms contained in the "trust." The "trust" terminates when the note to which the deed of trust relates is paid off. In reality, the deed of trust is not a trust in the commonly understood sense, but is a document that grants a lien on the subject real property to secure payment of the related note. The contents of the deed of trust describe the property to which the lien attaches and sets out all of the duties and rights of the parties, including the right of the trustee to conduct a non-judicial foreclosure of the described property in the event the borrower defaults on any of the terms of the deed of trust. Aside from requiring the borrower make timely payments to the note holder, the deed of trust usually requires the borrower make timely payments of all property taxes, keep the property insured with the policy endorsed to show the note holder as a loss payee, to use the property in a lawful manner in accordance with all laws and regulations, and to keep the property in good repair.

There are several advantages to obtaining a deed of trust lien. First, the lending entity will be treated as a secured party with respect to the property in the event the developer declares bankruptcy. As a result, at least with respect to the property against which the lien is attached, the borrower has a first claim to any proceeds that may result from the sale of the property by the bankruptcy trustee. The lender may also require in many instances that the borrower be current on its post-petition payments, with the pre-petition payments being satisfied from a payment

plan, if under Chapter 11. If the developer files a Chapter 7 liquidation petition, the lender's lien on the property is not wiped out but remains attached to the property; even though there will be no personal liability against the developer for any deficiency of the property is later foreclosed and sold.

Second, placing a lien on the developer's property creates an incentive to achieve the stated goal. Economic development prospects, as a general rule, will not negotiate an incentive package it does not believe it can achieve. However, just in case the prospect starts to get cold feet, the fact that the lending entity has a lien on its property at least gives the lending entity some leverage to renegotiate the deal without the prospect simply walking on the deal with the lending entity's money in its pockets.

There are several issues to note when making loans of this nature and getting back a deed of trust lien:

- There may be resistance from the developer out of fear its primary lender will reject such an arrangement. This is easily resolved by including a provision in the economic development agreement agreeing to subordinate the lending entity's lien to developer's first lien construction lender or purchase money lender on the property. If the developer's other loans are already in place when it is time to sign the note and deed of trust to the lending economic development entity, the deed of trust should reference the earlier deed of trust lien and expressly subordinate the entity's lien to the first lien note and deed of trust. Note that if the loan from the city entity IS the purchase money loan that provides the proceeds to buy the property for the project, this should generally be the first lien on the property, though even that is negotiable.

- Make a reasonable effort to ensure the value of the property to which the lien attaches is equal to or greater than the first lien and second lien combined. If there is a default of the first lien note, it may be necessary for the second lien noteholder (the city entity) to payoff the first lien noteholder to protect its interest in the property. If the second lien noteholder then acquires the property through foreclosure, there will be sufficient value to recover funds advanced to cover all of the notes.

- If the loan agreement allows for partial releases of the lien based on partial payoff of the note, be sure that the remaining unreleased value continues to provide enough to cover the remaining balance of all outstanding notes secured by the property.

- If the property to which the lien will be attached will be developed with tenants, the loan documents should also include an assignment of leases and rents from the developer to the lending entity granting a security interest in all rent and lease revenues from the property to assist securing the note repayment.

There are any number of ways the note can be written to accommodate a particular deal, but the repayment of the note should always be secured by a deed of trust lien on identified property of sufficient value.

Question No. 9: My finance office is calling me about a property tax bill we received from the tax collector's office for property we bought in February. I thought we are tax exempt. What do we do with the bill?

Answer: Pay it.

In a negotiated sale, the property taxes are generally pro-rated between the seller and buyer with the buyer receiving a credit on the purchase price at closing in the amount of the pro-rated taxes based on the prior year's tax value and rates from January 1 of the year of the sale to the date of closing. These taxes are attributed to the period of time during the tax year when the property was not exempt AND MUST BE PAID. Based on the credit at closing, the buyer/city has, for all intent and purposes, retained the funds to pay the taxes. Therefore, the taxes are due and must be paid by the city.

To avoid this situation, you can take advantage of the provisions of Tex. Tax Code §26.11. In a transaction in which the governmental body if the buyer/grantee, Tex. Tax. Code §26.11 provides for the pro-rated taxes to be calculated and actually paid to the tax collection entities following the closing. If the current year tax amount is not known at the time of closing, the tax payment will be based on the prior year taxes. When the taxes are paid pursuant to Tex. Tax Code §26.11, the tax collector MUST accept the payment. Even if the current year taxes end up being different, there is no adjustment later.

The advantage to using Tex. Tax Code §26.11 is obvious. The tax issue is settled at closing and the city does not have to hold any money in its accounts until the tax statements come out in October to pay the taxes.

There is one caveat about using this method of getting the current year taxes paid at closing. If the property being purchased is not a shown on the appraisal district records as a separate account (which is often the case), the tax collector may not be able to immediately accept the tax payment because there is no existing property tax account for the property conveyed to the city. It may then be necessary to run the transaction through the appraisal district first for purposes of splitting the parcel out on the appraisal district records and then submit the payment to the tax collector. My suggestion is that you work out the logistics with your local chief appraiser and tax collector in advance so they are aware you will be using this process for handling land purchases. You might be surprised by finding out they have already worked out the process.

For your information, attached as Exhibit "C," is a sample letter prepared by one of the title company we have used in some of the transactions we have handled on behalf of our clients that contains the request to accept the pro-rated tax payment pursuant to Tex. Tax. Code §26.11.

Additional Real Estate Issues:

Make sure you are dealing with the real owner of the property….

Often, people will use the local appraisal district tax records for their primary resource in determining the owner of a piece of property. However, appraisal district records, while possibly a good starting place, are not 100% accurate with respect to determining record ownership and should never be relied on for purpose of determining the true owner of a tract of land. Appraisal district records do not pick up divorce decrees, deaths of a record owner, and other matters affecting title that are not recorded in the county clerk's property records. And occasionally, the name on the tax rolls is not that true record owner, but merely the party to whom the tax bill is being sent. I found this to be true on many occasions on property being purchased under a contract for deed, where title will not pass to the buyer until they have finished paying for the home. A true title exam will look at all such records and will provide a better result in determining the true owner of the property.

Make sure you have a good, full legal description of the property….

As with record ownership, the easy way out for many to figure out the legal description for a property is to rely on appraisal district records. BAD IDEA!!! Appraisal district records rarely contain the entire legal description of a property sufficient for the conveyance of property. This is true even of a platted lot that is described by lot, block, and subdivision name. Appraisal district legal descriptions will usually not include (1) the recording information for the plat, (2) which phase the plat is (i.e. many plats will have the same name but will have an additional tag "Phase II," "Phase III," etc.), or (3) identify a partial lot or, conversely, will pick up partial lots but not show how much of the lot is part of the particular tract. If the property is not platted, at most, the appraisal district record will show in what survey and abstract the property is located and the acreage, but will in no way describe the boundaries of the property.

The worst offenders of the above short cut I have found are the utility billing department and the code enforcement department who file liens against property for unpaid water and sewer bills and unpaid costs incurred by the city in removing junk or high weeds from a property, respectively. With some of the liens files, the entire legal description was nothing more than the address of the property. NEWSFLASH: AN ADDRESS IS NOT A SUFFICIENTLY DESCRIPTIVE LEGAL DESCRIPTION TO BE USED FOR CONVEYANCING OF PROPERTY.

Getting a complete legal description for the property is not as hard as it used to be in many counties and, in fact, is a simple as going to your computer. It is now possible for many larger counties and a number of smaller counties to view the images of filed real estate documents on line for free. On some sites, it is even possible to print off unofficial copies of documents for free instead of the $1.00 per page charge that must be paid when you get copies at the county clerk's office.

To find the recording information for the last deed for the property, many times you can use the appraisal district records. Again, in many counties, you can now go on-line to find

information on each tract assessed within the county, including the mailing address of the person responsible for paying the taxes (who may not always be the owner) and the transaction history.

It is important that the legal description be correct in all documents relating to the establishing liens on property. There is a high probability that liens that fail to contain the correct legal description will be held invalid. Any attempt to actually foreclose on such liens may be a waste of time and, in some instances, may result in foreclosing on the wrong property.

When dealing with a seller that is not an individual, check to verify the entity is in good standing to conduct business in the State of Texas….

If the purported owner of the property is a corporation, partnership, or other entity, check the Texas Secretary of States records to verify that the entity is in good standing to conduct business. If the entity has had its charter forfeited or suspended, or is otherwise not in good standing, the entity may not be able to conduct business in the state, including signing documents that would convey assets of the entity. This will put into doubt the validity of any conveyance. Sometimes, the entity's status to conduct business can be revived depending on the reason for the forfeiture. In the case of non-profit corporations, the reason for the forfeiture is the result of the failure to file an annual report on officers and registered agent and a no tax due franchise tax report. It is a bit of a pain, but getting a non-profit corporation revived under these circumstances is relatively easy. In any case, be sure that the entity you are dealing with has the authority to be dealing with you.

When running a public works project owned by the city across city property, you do not need to prepare an easement…and don't let your city engineer whine about it.

An easement is a conveyance of a right to a person or entity not the owner of fee title to use all or a portion of the property for a described purpose. As the owner of the whole bundle of property rights, there is no need to obtain permission to use your own property. (Note: There may be hoops to jump through to use property dedicated for park purposes, but that's a topic for another paper.) In any case, such an easement may have no legal effect because of the doctrine of "merger of title."

Word of caution: If your city has an easement across private property and then later acquires fee title to the property, do not forget to reserve the easement back for the benefit of the city if the property is then later sold. Failure to reserve the easement will, in fact, result in any public improvements remaining in place without the benefit of the easement. If the conveyance is by warranty deed...general or special…failing to reserve the easement may also constitute a breach of warranty of title resulting in possible damages to the buyer.

EXHIBIT "A"

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

RIGHT-OF-WAY DEDICATION DEED

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DALLAS §

That **PRIVATE PROPERTY OWNER** ("Grantor"), a Texas corporation, whose address is _____, _____, _____ County, Texas, 7_____, for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration in hand paid by the **CITY _____. TEXAS,** ("Grantee"), a Texas home rule municipality whose mailing address is_____, _____, _____ County, Texas, 7____, the receipt and sufficiency of which consideration is hereby acknowledged, has DEDICATED, GRANTED, SOLD AND CONVEYED, and by these presents does DEDICATE, GRANT, SELL AND CONVEY unto Grantee as right of way for public street and utility purposes, including the right of ingress, egress, and regress therein, and easements to construct, maintain, public streets and utilities, or any other public purpose authorized by Local Government Code § 273.001 and deemed necessary by Grantee into and through all that certain real property located in the County of Dallas, State of Texas, and being more particularly described as follows:

TO HAVE AND TO HOLD the above described property for said public street, utility, and other valid public purpose unto Grantee, its successors and assigns, forever, and Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend, all and singular, the said premises unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

SIGNED and effective this _____ day of _____, 2009.

PRIVATE PROPERTY OWNER

By:_____

Name:_____

Title:_____

EXHIBIT "A"

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009, by _____, _____ of Private Property Owner, a Texas non-profit corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

My Commission expires: _____

AFTER RECORDING RETURN TO:

Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 N. Akard Street
Suite 1800
Dallas, Texas 75201

EXHIBIT "B"
EXAMPLE LICENSE AGREEMENT

STATE OF TEXAS §
§ **LICENSE AGREEMENT**
COUNTY OF _____ §

THIS AGREEMENT is made by and between City of _____, Texas (hereinafter referred to as "City") and _____ (hereinafter collectively referred to as "Licensee") acting by and through their authorized representatives.

WITNESSETH:

WHEREAS, Licensees own the real property and improvements located at _____, _____, Texas and being more particularly described as Lot __, Block ___ of _____, an Addition to the City of _____, _____ County, Texas (the "Property"); and

WHEREAS, Licensees constructed or caused to be constructed a parking structure (hereinafter referred to as the "Improvements") which encroaches in a City 15' sanitary sewer easement (sometimes referred to herein as the "Premises") as shown on the survey plat attached as Exhibit "A"; and

WHEREAS, Licensees have requested the City allow the use and occupancy of the sanitary sewer easement for Licensees' Improvements;

WHEREAS, Licensees are under contract to sell the Property to _____ and desire to close such transaction; and

WHEREAS, in order for Licensees to close the sale of the Property the Licensees have requested a license to permit the encroachment of the Improvements within the City sanitary sewer easement; and

WHEREAS, the Licensees have agreed as consideration for such license to indemnify the City for any damages or injuries that may result as a result of the encroachment and have further agreed that no enlargement, expansion or alternation shall be made to the Improvements;

NOW THEREFORE, in consideration of the sum of Ten Dollars No/100 and the covenants contained herein and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Grant of License; Consideration:** City hereby grants Licensees a revocable license for the purpose of allowing the Improvements to encroach within the Licensed Premises and for the Licensees to maintain and use the Improvements within the Licensed Premises. As

consideration for the grant of this License the Licensees agree that the Improvements shall not be expanded, enlarged or altered in any way nor shall the height or stories of the Improvements be increased without the prior written approval of the City.

2. **Term:** The term of this License shall be perpetual, subject, however, to termination by the City as provided herein.

3. **Non-exclusive:** This License is nonexclusive and is subject to any existing utility, drainage or communications facilities located in, on, under or upon the sanitary sewer easement or property owned by City, any utility or communication company, public or private, to all vested rights presently owned by any utility or communication company, public or private for the use of the City utility easement for facilities presently located within the boundaries of the easement and to any existing lease, license, or other interest in the easement granted by City to any individual, corporation or other entity, public or private.

4. **Environmental Protection:** Licensees shall not use or permit the use of the Licensed Premises for any purpose that may be in violation of any laws pertaining to the health of the environment, including without limitation, the comprehensive environmental response, compensation and liability act of 1980 ("CERCLA"), the resource conservation and recovery act of 1976 ("RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act. Licensees warrant that the permitted use of the Licenses Premises will not result in the disposal or other release of any hazardous substance or solid waste on or to the Licensed Premises, and that it will take all steps necessary to ensure that no such hazardous substance or solid waste will ever be discharged onto the Licensed Premises or adjoining the Licensed Premises by Licensees. The terms "hazardous substance and waste" shall have the meaning specified in CERCLA and the term solid waste and disposal (or dispose) shall have the meaning specified in the RCRA; provided, however, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided further, at the extent that the laws of the State of Texas establish a meaning for hazardous substance, release, solid waste, or disposal which is broader then that specified in the CERCLA or RCRA, such broader meaning shall apply. Licensees shall indemnify and hold City harmless against all costs, environmental clean up to the Licensed Premises and surrounding the Licensed Premises resulting from Licensees' use of the Licensed Premises under this License.

5. **Mechanic's liens not permitted:** Licensees shall fully pay all labor and materials used in, on or about the Licensed Premises and will not permit or suffer any mechanic's or material man's liens of any nature be affixed against the Licensed Premises by reason of any work done or materials furnished to the Licensed Premises at Licensees' instance or request.

EXHIBIT "B"
EXAMPLE LICENSE AGREEMENT

6. **Future City use:** This License is made expressly subject and subordinate to the right of City to use the Licensed Premises for any public purpose whatsoever. In the event that City shall, at any time subsequent to the date of this Agreement, at its sole discretion, determine that the relocation or removal of the Improvements shall be necessary or convenient for City's use of the Licensed Premises, Licensees shall at the sole cost and expense make or cause to be made such modifications or relocate said Improvements so as to not interfere with the City's or City's assigns use of the Licensed Premises. A minimum of thirty (30) days written notice for the exercise of the above action shall be given by City and Licensees shall promptly commence to make the required changes and complete them as quickly as possible or reimburse City for the cost of making such required changes.

7. **Duration of License:** This License shall terminate and be of no further force and effect in the event Licensees shall discontinue or abandon the use of the Improvements or in the event Licensees shall remove the Improvements from the Licensed Premises or upon termination by City whichever event first occurs; or, in the event that the City abandons the Licensed Premises, then this agreement shall be of no further effect.

8. **Compliance with laws:** Licensees agree to abide by and be governed by all laws, ordinances and regulations of any and all governmental entities having jurisdiction over the Licensees.

9. **Indemnification:** Licensees shall defend, protect and keep City forever harmless and indemnified against and from any penalty, or any damage, or charge, imposed for any violation of any law, ordinance, rule or regulation arising out of the use of the Licensed Premises by the Licensees, whether occasioned by the neglect of Licensees, its employees, officers, agents, contractors or assigns or those holding under Licensees. Licensees shall at all times defend, protect and indemnify and it is the intention of the parties hereto that Licensees hold City harmless against and from any and all loss, cost, damage, or expense, including attorney's fee, arising out of or from any accident or other occurrence on or about the Licensed Premises causing personal injury, death or property damage resulting from use of the Licensed Premises by Licensees, its agents, employees, customers and invitees, except when caused by the willful misconduct or negligence of City, its officers, employees or agents, and only then to the extent of the proportion of any fault determined against City for its willful misconduct or negligence. Licensees shall at all times defend, protect, indemnify and hold City harmless against and from any and all loss, cost, damage, or expense, including attorney's fees arising out of or from any and all claims or causes of action resulting from the Licensees use of the Licensed Premises and for any failure of Licensees, their officers, employees, agents, contractors or assigns in any respect to comply with and perform all the requirements and provisions hereof.

10. **Action upon termination:** At such time as this License may be terminated for any reason whatsoever, Licensees, upon request by City, shall remove all Improvements and

appurtenances owned by it, situated in, under, on or within the Licensed Premises and shall restore such Licensed Premises to substantially the condition of the Licensed Premises prior to Licensees' encroachment at Licensees' sole expense.

11. **Termination:** This Agreement may be terminated in any of the following ways:

a. Written agreement of both parties;
b. By City giving Licensees thirty (30) days prior written notice;
c. By City upon failure of Licensees to perform its obligations as set forth in this Agreement;
d. By the City abandoning the Licensed Premises.

12. **Notice:** When notice is permitted or required by this Agreement, it shall be in writing and shall be deemed delivered when delivered in person or when placed, postage prepaid in the United States mail, certified return receipt requested, and addressed to the parties at the address set forth below their signature. Either party may designate from time to time another and different address for receipt of notice by giving notice of such change or address.

13. **Governing law:** This Agreement is governed by the laws of the State of Texas; and exclusive venue for any action shall be in the State District Court of _____ County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

14. **Exhibits.** The exhibits attached to this Agreement are incorporated herein by reference.

15. **Binding effect:** This Agreement shall be binding upon and inure to the benefit of the executing parties and their respective heirs, personal representatives, successors and assigns.

16. **Entire Agreement:** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements, understandings, if any, relating to the Licensed Premises and the matters addressed herein and may be amended or supplemented only by written instrument executed by the party against whom enforcement is sought.

17. **Recitals:** The recitals to this Agreement are incorporated herein by reference.

18. **Covenant Running with the Land.** The provisions of this Agreement are hereby declared covenants running with the Property and are fully binding on the Licensees and each and every subsequent owner of all or any portion of the Property but only during the term of such party's ownership thereof (except with respect to defaults that occur during the term of such person's ownership) and shall be binding on all successors, heirs, and assigns of the Licensees which acquire any right, title, or interest in or to the Property, or any part thereof. Any person

EXHIBIT "B"
EXAMPLE LICENSE AGREEMENT

who acquires any right, title, or interest in or to the Property, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Agreement with respect to the right, title or interest in such Property

EXECUTED this _____ day of _____, 2007.

CITY OF _____,TEXAS

By: _____
_____, Deputy City Manager

ATTEST:

By: _____
_____, City Secretary

EXECUTED this the _____ day of _____ 2007.

By: _____

EXHIBIT "B"
EXAMPLE LICENSE AGREEMENT

CITY'S ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2007, by _____, Deputy City Manager of the City of _____, Texas, a Texas municipality, on behalf of said municipality.

_____
Notary Public, State of Texas

My Commission Expires:

_____

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2007, by _____.

_____
Notary Public, State of Texas

My Commission expires: _____

REPUBLIC TITLE

2626 Howell Street, 10th Floor
Dallas, Texas 75204-4064
(214) 855-8888
Fax (214) 855-8898
Direct Dial (214) 855-8896

April 7, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John R. Ames, Tax Assessor-Collector
Dallas County Tax Office
P. O. Box 139066
Dallas, TX 75313-9066

Re: Our File Number 09R09452 CR4
Spiritual Assembly of the Baha'is of Richardson, Texas, a Texas nonprofit corporation, to the City of Richardson, Texas, a Texas home rule municipality
CAD# 42-11350-001-040-0000 and CAD# 42-11350-001-042-0000

Gentlemen:

Enclosed please find a check in the amount of $78.17 to pay the prorated portion of Dallas County ad valorem taxes on the property described in the deed enclosed herewith. Please refer to Section 26.11 of the Property Tax Code (copy enclosed), and apply said funds to the **2009** taxes from January 1 to **April 1, 2009 (closing date)**. Enclosed is a copy of the deed, which has been filed for recording, along with a copy of the tax certificate describing the tax accounts affecting the property for your information. Please return the paid receipt to my attention. Enclosed is a self-addressed, postage-paid envelope for your convenience.

If you should have any questions or need further information with regard to this matter, please do not hesitate to contact us.

Very truly yours,

Diana Lansing
Senior Vice President

Enclosures

cc: Kevin Laughlin, Esq.

EXHIBIT "C"
SAMPLE LETTER- TAX. CODE SEC. 26.11 TAX PAYMENT

Sec. 26.11. PRORATING TAXES--ACQUISITION BY GOVERNMENT.

(a) If the federal government, the state, or a political subdivision of the state acquires the right to possession of taxable property under a court order issued in condemnation proceedings or acquires title to taxable property, the amount of the tax due on the property is calculated by multiplying the amount of taxes imposed on the property for the entire year as determined as provided by Section 26.09 of this code by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed prior to the date of the conveyance or the date of the order granting the right of possession.

(b) If the amount of taxes to be imposed on the property for the year of transfer has not been determined at the time of transfer, the assessor for each taxing unit in which the property is taxable may use the taxes imposed on the property for the preceding tax year as the basis for determining the amount of taxes to be imposed for the current tax year.

(c) If the amount of prorated taxes determined to be due as provided by this section is tendered to the collector for the unit, the collector shall accept the tender. The payment absolves:

(1) the transferor of liability for taxes by the unit on the property for the year of the transfer; and

(2) the taxing unit of liability for a refund in connection with taxes on the property for the year of the transfer.

Acts 1979, 66th Leg., p. 2282, ch. 841, Sec. 1, eff. Jan. 1, 1982.

Amended by:

Acts 2005, 79th Leg., Ch. 1126, Sec. 8, eff. September 1, 2005.

EXHIBIT "C"
SAMPLE LETTER- TAX. CODE SEC. 26.11 TAX PAYMENT