

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS §

## **DEVELOPER’S CONTRACT**

This Developer’s Contract (“Contract”) is made as of the Effective Date by and among the City of Coppell, a Texas home rule municipality (the “City”), and Main Street Coppell 2, Ltd., a Texas limited partnership (“Developer”), acting by and through their duly authorized representatives.

### **R E C I T A L S:**

**WHEREAS**, the Developer is the owner of real property in Coppell, Texas (“MSC – Phase 2”) adjacent to the City Service Center on S. Coppell Road; and

**WHEREAS**, the Developer desires to construct and provide a screening wall on the south side of MSC – Phase 2 (the “Developer Wall”); and

**WHEREAS**, the City desires to construct a screening wall (the “City Wall”) abutting the Developer Wall and has requested that Developer construct the City Wall as a convenience to City; and

**WHEREAS**, Developer has agreed to construct the City Wall upon and subject to the terms and conditions of this Agreement;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the City and the Developer agree as follows:

### **Article I Term**

The term of this Contract shall commence on the last date of execution hereof (the “Effective Date”) and shall continue until the earliest of (a) the date all parties have fully satisfied all terms and conditions of this Contract, or (b) the date this Agreement is terminated as expressly provided herein.

### **Article II Definitions**

Wherever used in this Contract, the following terms shall have the meanings

ascribed to them:

“Applicable Law” shall mean all local, state and federal laws, including the City Comprehensive Zoning Ordinance, the City Subdivision Ordinance, all City codes, ordinances and regulations applicable to this Contract.

“City” shall mean the City of Coppell, Texas, a Texas home rule municipality.

“City Engineer” shall mean the City of Coppell City Engineer, or designee.

“Contractor” shall mean North Texas Hardscape, Inc.

### **Article III Obligations**

3.1 Developer agrees to engage Contractor (or another contractor mutually acceptable to City and Developer) to construct the City Wall. The City Wall shall be constructed in substantial accordance with the bid from Contractor attached hereto as Exhibit “A” (the “Bid”). The parties acknowledge that the Bid covers the work necessary to construct both the Developer Wall and the City Wall. The portions of the Bid that impact the City Wall are items 005, 006, 007, and 008. The Bid shall also include a two year maintenance bond on the City Wall.

3.2 If the Contractor requests any “Extras” as shown in the Bid or change orders in the work that impact the City Wall, Developer shall obtain the approval of the City Manager of City before implementing any such Extra or change order.

3.3 City agrees to pay (eighty-seven thousand six hundred and eight dollars) \$87,608.00 to Developer for construction of the City Wall on City property. Developer may request payment in monthly draw requests based upon the portion of the completed work on the City Wall as confirmed by Contractor in writing. Payment shall be made to Developer within thirty (30) days thereafter. City shall also pay any increases in the cost of constructing the City Wall resulting from Extras or change orders approved by the City Manager of City.

3.4 City hereby grants Developer and Contractor a temporary license during the term of this Contract to come on to and use City property to construct the City Wall; provided, however, Developer shall use reasonable efforts to minimize any disruption to the use of the City Service Center. .

**3.5 City acknowledges and agrees that Developer’s only obligation**

**hereunder is to construct the City Wall in substantial accordance with the Bid and that Developer is not providing any kind of representation or warranty, express or implied, with respect to the work of Contractor or the construction of the City Wall. The Contractor shall provide a two year maintenance bond on the City Wall.**

#### **Article IV Termination**

This Contract may be terminated by the mutual written agreement of the parties. Either party may terminate this Contract if the other party breaches any of the terms and conditions of this Contract, and such breach is not reasonably cured by such party within sixty (60) days after receipt of notice thereof.

#### **Article V**

5.1 **Notice**. All notices required by this Contract shall be in writing and addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery.

If intended for Developer, to:

Main Street Coppell 2, Ltd.  
ATTN: Charles Cotten  
4956 N. O'Connor Rd  
Irving, Texas 75062

With copy to:

Jeffrey Fink, Esq.  
Apple & Fink, LLP  
735 Plaza Boulevard, Suite 200  
Coppell, Texas 75019

If intended for City, to:

Clay Phillips, City Manager  
City of Coppell, Texas  
255 Parkway Blvd.  
Coppell, Texas 75019

With copy to:

J. David Dodd, III  
Nichols, Jackson, Dillard, Hager &  
1800 Ross Tower  
500 N. Akard  
Dallas, Texas 75201

With copy to City Engineer:

Keith Marvin  
City of Coppell, Texas  
816 South Coppell Road  
Coppell, Texas 75019

5.2 **Successors and Assigns.** All obligations and covenants of the Developer under this Contract shall be binding on the Developer, its successors and permitted assigns. The Developer may not assign this Contract without the prior written consent of the City Manager, not to be unreasonably withheld.

5.3 **Severability.** In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Contract shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

5.4 **Governing Law.** The validity of this Contract and any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and exclusive venue for any action concerning this Contract shall be in State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

5.5 **Entire Contract.** This Contract embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to the matters in this Contract, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Contract.

5.6 **Recitals.** The recitals to this Contract are incorporated herein.

5.7 **Exhibits.** All exhibits to this Contract are incorporated herein.

5.8 **Counterparts.** This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

5.9 **Compliance with Laws.** Developer shall fully comply with the Applicable Law.

5.10 **Construction Specifications.** The City Wall shall be designed and constructed in compliance with the Applicable Law.

5.11 **Further Acts.** The City and Developer agree to execute such additional documents as may be reasonably requested by either party in order to implement the transactions reflected by this Agreement.

(Signatures on Following Page)

**SIGNED AND AGREED** this \_\_\_\_ day of \_\_\_\_\_, 2014.

**City of Coppell, Texas**

By: \_\_\_\_\_  
Clay Phillips, City Manager

ATTEST

By: \_\_\_\_\_  
Christel Pettinos, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
J. David Dodd, III, City Attorney

**SIGNED AND AGREED** this \_\_\_\_ day of \_\_\_\_\_, 2014.

**Main Street Coppell 2, Ltd.**

By: CSE COMMERCIAL REAL ESTATE, L.P.,  
a Texas limited partnership,  
its General Partner

By: Debco Partners, LLC  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
Charles Cotten, Manager

### City Acknowledgment

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_\_, 2014, by Clay Phillips, City Manager, City of Coppell, Texas, a Texas home rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_

### Developer Acknowledgment

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

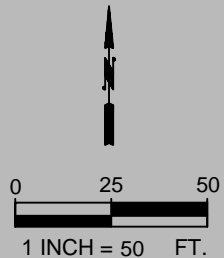
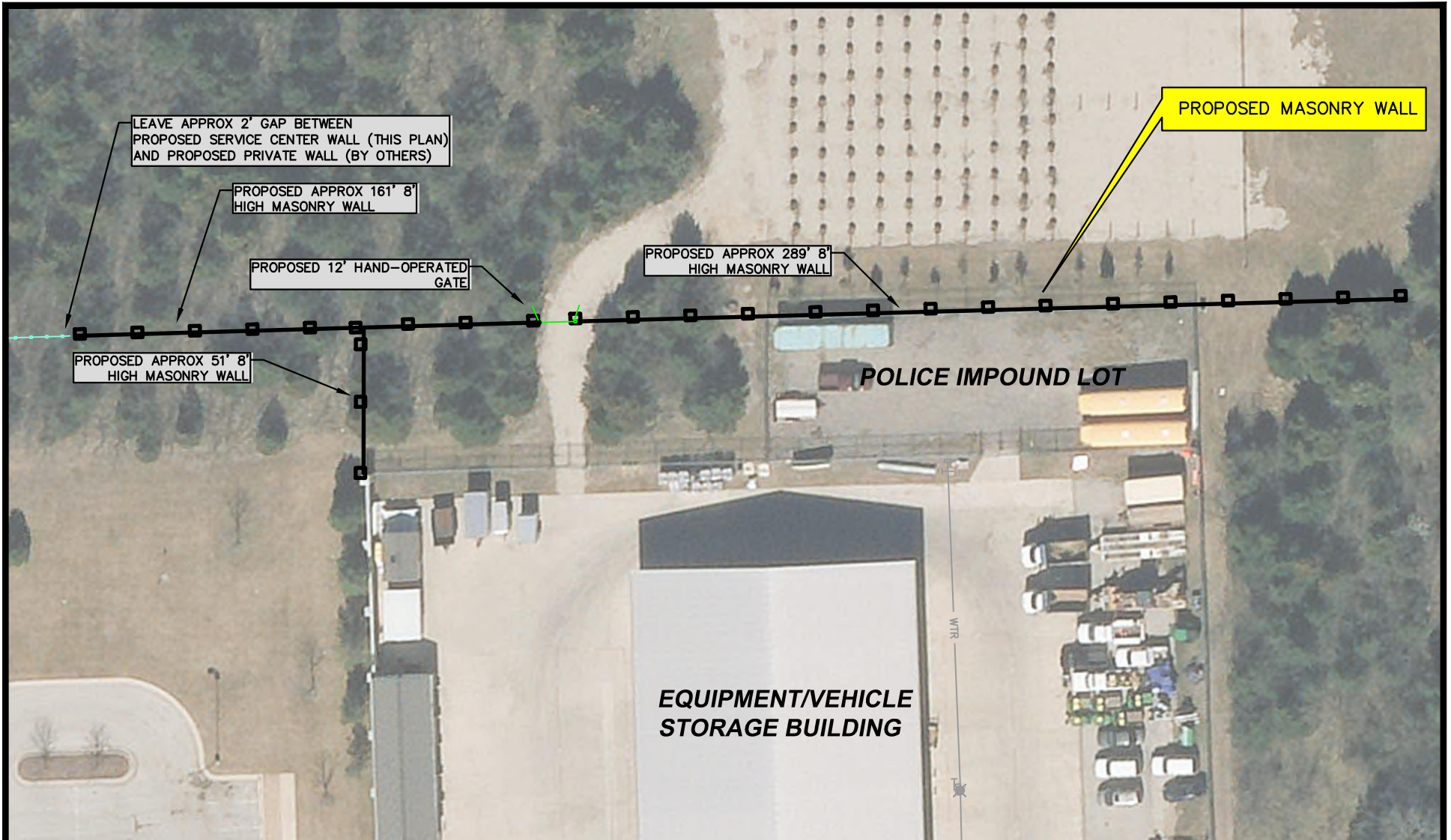
STATE OF TEXAS       §  
                                  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014, by Charles Cotten, manager of Debco Partners, LLC, a Texas limited liability company, the general partner of CSE Commercial Real Estate, LP, a Texas limited partnership, the general partner of Main Street Coppell 2, Ltd., on behalf of said limited liability companies and limited partnership.

[Seal]

\_\_\_\_\_  
Notary Public, State of Texas

My Commission expires:



## COPPELL SERVICE CENTER MASONRY WALL - EXHIBIT A



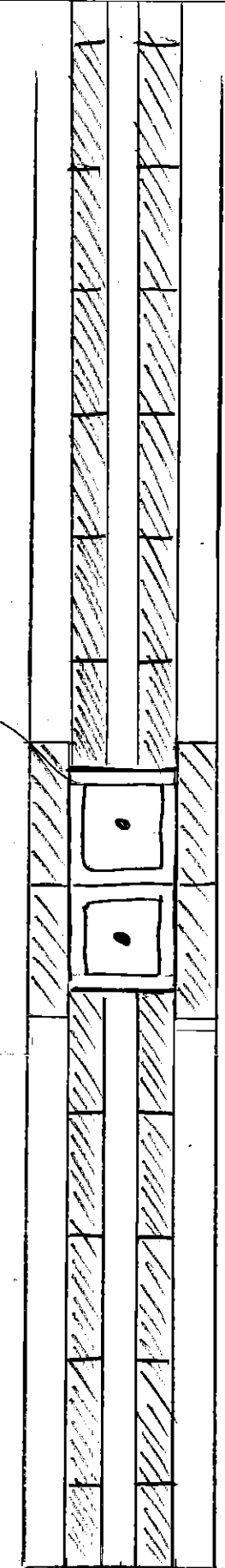
Created on: 16 April 2014 by Kevin Rubalcaba  
S:\CAD\In\_Design\COPPELL SERVICE CENTER\dwg\COPPELL SERVICE CENTER EXPANSION.dwg \SVC CTR WALL

2/2  
Created in ACAD2012

# City of Coppell Service Center Mesonry Wall

Typical Column  
Spacing 12' o.c.

24"



8" CMU Core

8"  
14"



NORTH TEXAS HARDSCAPE, INC.  
9284 HUNTINGTON SQUARE, STE 100  
NORTH RICHLAND HILLS, TX 76182  
(817) 281-0700 PHONE  
(817) 281-0772 FAX

Date 4/30/14  
Sheet 1 of 1

PROPOSAL SUBMITTED TO:

WORK TO BE PERFORMED AT:

CSE COMMERCIAL REAL ESTATE  
ATTN: CHARLES COTTEN  
4956 N O'CONNOR RD  
IRVING, TX 75062

OLD TOWN MAIN ST PH 2  
COPPELL, TX  
DOP: 05-29-2013

We Hereby Propose To Furnish The Materials and Perform The Labor Necessary For The Completion Of:

HARDSCAPE COST

Item	Description	Quantity	Unit	Unit Cost	Extension
001	8' Brick Thinwall per Exhibit "A"	318	LF	\$110.00	\$34,980.00
002	28" x 28" x 8' Stone Column - Owner to provide Natural Stone	2	EA	\$1,460.00	\$2,920.00
003	6' Cedar Fence to Include: a) 6" Board on Board Pickets b) 2" x 4" Treated Rails c) 2" x 6" Cap with 1" x 4" Trim Board under Cap d) Stain both sides	729	LF	\$33.00	\$24,057.00
004	18' x 4' Double Metal Gate to include: a) 2" x 2" Square Frame b) 3/4" Vertical Pickets 4-3/4" oc c) 4" x 4" Hinge Posts d) Satin Black Paint Finish d) Fire Dept Knox Lock	1	EA	\$2,625.00	\$2,625.00
005	Service Center 12' x 8' Double Metal Gate to include: a) 3" x 3" Square Frame with (2) 3" Square Rails b) 4" x 4" Hinge Posts c) 1" x 6" Side by Side Cedar Pickets mounted to Frame Stained Medium Brown d) Satin Black Paint Finish	1	EA	\$2,795.00	\$2,795.00
006	Service Center 8' Double Brick Wall with Columns 12' oc complete with all appurtenances	493	LF	\$158.00	\$77,894.00
007	Service Center 2' x 2' x 8'-3" Primary Brick Column	4	EA	\$989.00	\$3,956.00
008	2 Year / 50% Maintenance Bond for Items 005, 006 & 007 above	1	EA	\$2,963.00	\$2,963.00
				TOTAL	\$152,190.00

Notes:

- 1) North Texas Hardscape, Inc. to furnish engineering design & permit
- 2) Brick Type - Acme Grayson Manor King Size
- 3) Stone Type - Oklahoma Builders Stone Provided by Owner
- 4) Stone & Brick Mortar Color - Gray

By Owner:

- 1) Finished Grades to be established along wall line prior to commencement of work
- 2) Hardscape Stakeout

Extras:

Extra Cost Will Be Incurred Should Any Of The Following Circumstances Arise:

- 1) Special Pier Drilling Truck Required To Drill Underneath Aboveground Power Lines That Are Less Than 30' From Grade, Where Rock Is Encountered. Extra Charge Will Be \$200 Per Hole.
- 2) Cased Piers Required Due To Abnormal Underground Water Conditions - Extra Charge Will Be \$375 Per Hole.
- 3) Spreadfooting Required Due To Underground Utility Conflict Where Rock Is Encountered - Extra Charge Will Be \$350 Each.
- 4) Spreadfooting Required Due To Underground Utility Conflict In Clay Soil Conditions - Extra Charge Will Be \$200 Each.
- 5) Special Spreadfootings With Double Piers and Grade Beam - Extra Charge Will Be \$550.00 Each.

Excavation Spoils:

- 1) Excluded From Above Pricing is the Removal of Excavation Spoils of Any Kind

All material is guaranteed to be as specified. The above work is to be performed in accordance with the drawings and specifications submitted for the above work, and will be completed in a workmanlike manner for: **\$152,190.00**

Respectfully Submitted By:

BRETT ALBRITTON, President  
NORTH TEXAS HARDSCAPE, INC.

NOTE: THIS PROPOSAL MAY BE WITHDRAWN IF NOT ACCEPTED WITHIN 30 DAYS

The above price, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to perform the work as specified. Payment will be made as outlined above.

Signature:

Date:

Any alteration or deviation from specifications involving extra cost will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents, and delays beyond our control. Owner to carry fire, tornado, and other necessary insurance upon above work. Workers' Compensation and Public Liability Insurance on above work will be taken out by North Texas Hardscape, Inc. above the estimate. All agreements are contingent upon strikes, accidents, and delays beyond our control. Owner to carry fire, tornado, and other necessary insurance upon above work. Workers Compensation and Public Liability Insurance on above work will be taken out by North Texas Hardscape, Inc.