

**FIRST AMENDMENT TO
INTERLOCAL AGREEMENT
BETWEEN THE NORTH TEXAS TOLLWAY AUTHORITY
AND THE CITY OF GRAND PRAIRIE REGARDING IMPROVEMENTS AND
LANDSCAPE ENHANCEMENTS AT THE MOUNTAIN CREEK LAKE BRIDGE**

~~(DNT 467)~~ 02037

THIS FIRST AMENDMENT (this "Amendment") by and between the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and a political subdivision of the State of Texas, acting by and through its Board of Directors, hereinafter identified as the "Authority," and the **CITY OF GRAND PRAIRIE**, a home rule municipality acting by and through its duly elected City Council, hereinafter identified as the "City," is to be effective as of the 6th day of March, 2006. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement (as hereinafter defined).

RECITALS

WHEREAS, the Authority and the City entered into that certain Interlocal Agreement Between the North Texas Tollway Authority and the City of Grand Prairie Regarding Improvements and Landscape Enhancements at the Mountain Creek Lake Bridge (DNT 467) dated as of September 29, 2003 (the "Agreement");

WHEREAS, the Authority and the City desire to amend the Agreement to update the status of title of, and the Authority's current plans to acquire, the Hardy Road Right-of-Way;

WHEREAS, the Authority and the City desire to further amend the Agreement to allow for the phasing of, and to reallocate responsibility for, the Landscape Enhancements; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local governmental entities to contract with one another to perform governmental functions and services under the terms thereof, and the Authority and the City have determined that mutual benefits and advantages can be obtained by formalizing their agreement as to the separate and distinct issues of importance to them regarding the MCLB.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and the of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the Authority and the City agree as follows:

1. The MCLB Improvements.

(a) The Hardy Road Right-of-Way. The County abandoned the Hardy Road Right-of-Way pursuant to that certain Commissioners Court Order No. 2003-1483, dated August 19, 2003. Subsequently, Exelon, the purported owner of the Hardy Road Right-of-Way, agreed to convey to the Authority a fee interest, rather than an easement interest as anticipated in

Section 1.(c) of the Agreement, in the Hardy Road Right-of-Way. A subsequent title search revealed fee title to the Hardy Road Right-of-Way to be vested in an affiliate of Exelon, along with certain TXU entities (collectively, the "Hardy Road Grantors"). The Authority intends to acquire a fee interest in the Hardy Road Right-of-Way from the Hardy Road Grantors pursuant to one or more deeds without warranty in a form acceptable to the Authority in its sole discretion. Accordingly, the Required Hardy Road Easement is no longer necessary and Exhibit E to the Agreement is hereby deleted in its entirety. The City consents to the acquisition by the Authority of full fee title to the Hardy Road Right-of-Way and does hereby release and quitclaim to the Authority any and all right, title and interest thereto.

(b) Perimeter Fence. The actual location of the Perimeter Fence varies slightly from the location shown in Exhibit C to the Agreement. Accordingly, Exhibit C of the Agreement is hereby deleted in its entirety and replaced with the form attached as Attachment 1 and incorporated herein for all purposes. In addition, the Authority was authorized pursuant to a letter dated August 30, 2005 from Rick Herold, the Director of Parks and Recreation of the City, to Tony Lucido, Landscape Manager of the Authority (the "Parks Letter"), to enter onto Prairie Lakes Golf Course to remove and replace certain boundary fencing comprising a portion of the Perimeter Fence. The City hereby ratifies and confirms the Parks Letter and the authorization and rights conferred the Authority thereunder.

(c) Design. As provided in Section 1.(a) of the Agreement, the Authority shall be solely responsible for the design and (except for the City's installation of water meters) construction of the MCLB Improvements, and neither the City nor any other person or entity shall approve or have any other involvement regarding the design or plans for, or the construction of, the MCLB Improvements.

2. The Landscape Enhancements.

(a) Depiction. The Authority now intends to install Landscape Enhancements in two phases, rather than in a single phase as anticipated in Section 2.(b) of the Agreement. Accordingly, Exhibit A of the Agreement is hereby deleted in its entirety and replaced with the form attached as Attachment 2 and incorporated herein for all purposes, which Attachment 2 depicts the Landscape Enhancements in two phases, depicted as "Phase I" and "Phase II," along with the MCLB Improvements.

(b) Installation. Section 2.(b) of the Agreement is hereby deleted in its entirety and replaced with:

"(b) Installation. The Authority, at its sole cost and expense, shall provide for the installation of the Landscape Enhancements in the two (2) phases depicted as "Phase I" and "Phase II" on Exhibit A and in substantial compliance with the Final Plans. The Authority intends to commence the installation of the first phase of the Landscape Enhancements by the later of (i) ninety (90) days following the approval of the Final Plans and (ii) thirty (30) days after the transfer of the Hardy Road Right-of-Way to the Authority, unless weather or seasonal conditions make it imprudent to do so. The Authority intends to complete the installation of the first phase of the Landscape Enhancements within twelve (12) months after it is

commenced. The Authority has not scheduled commencement of the second phase of the Landscape Enhancements. Further, notwithstanding anything to the contrary contained herein, the Authority may elect to reduce the limits of the second phase of the Landscape Enhancements, in which case the City's maintenance obligations set forth in Section 2.(c) hereof shall be modified accordingly."

(c) Maintenance. Section 2.(c) of the Agreement is hereby deleted in its entirety and replaced with:

"(c) Maintenance. Upon completion of the installation of each of the two (2) phases of the Landscape Enhancements and thereafter for a period of twelve (12) months (such period of time is hereinafter referred to as the "Authority Maintenance Period"), the Authority, at its sole cost and expense (except as set forth below with respect to the City's provision of water for irrigation and electrical service to, and the provision of electrical power for, the irrigation system), shall maintain the applicable phase of the Landscape Enhancements in a (i) healthy, attractive, and sound state and (ii) manner that does not interfere with the safe and efficient operation of the MCLB. Commencing at the expiration of the Authority Maintenance Period of each phase of the Landscape Enhancements, the City, at its sole cost and expense, thereafter shall maintain the applicable phase of the Landscape Enhancements and the property proximate to the Landscape Enhancements (including without limitation the four-foot high ornamental fence, depicted as the "4' Foot Ornamental Fence" on Exhibit C, that will connect to the City's existing four-foot high fence at the Prairie Lakes Golf Course and adjacent to 14th Street) in a (i) healthy, attractive, and sound state and (ii) manner that does not interfere with the safe and efficient operation of the MCLB. During the Authority Maintenance Period of the applicable phase of the Landscape Enhancements, the Authority, at its sole cost and expense, shall provide for the regular and timely irrigation, mowing, trimming, and other maintenance of that phase of the Landscape Enhancements, including the timely replacement of plant material that has died or been damaged for any reason, and shall keep the same free from subsidence, erosion, trash, debris, unauthorized signs, or dangerous conditions. Commencing at the expiration of the Authority Maintenance Period of the applicable phase of the Landscape Enhancements, the City, at its sole cost and expense, shall provide for the regular and timely irrigation, mowing, trimming, and other maintenance of that phase of the Landscape Enhancements and the proximate property, including the timely replacement of plant material that has died or been damaged for any reason, and shall keep the same free from subsidence, erosion, trash, debris, unauthorized signs, or dangerous conditions. Notwithstanding anything to the contrary set forth herein, the City, at its sole cost and expense, shall provide water for irrigation of the Landscape Enhancements and electrical service to, and electrical power for, the irrigation system at all times, including during installation of the Landscape Enhancements and any Authority Maintenance Period. Without limiting the foregoing, the Authority during the Authority Maintenance Period of the

applicable phase of the Landscape Enhancements and, thereafter, the City, each at its sole cost and expense, shall maintain the Landscape Enhancements and the property proximate to the Landscape Enhancements so that limbs, shrubs, other growth, and structures do not diminish visibility along Pioneer Parkway (SH Spur 303) or Hardy Road or obstruct sight lines prudently desirable along said roads or in the vicinity of the MCLB toll plaza. The Authority shall continue to maintain the eight-foot high ornamental fence surrounding its "Maintenance Facility" (as depicted on Exhibit C) and the six-foot high fence that connects that eight-foot fence to the four-foot high ornamental fence referenced above, which eight- and six-foot fences constitute portions of the "Perimeter Fence" as depicted on Exhibit C."

(d) Maintenance Limits. The form of Exhibit C to the Agreement substituted pursuant to Section 1.(b) of this Amendment to indicate the actual location of the Perimeter Fence also depicts the amended maintenance limits of the Authority and the City for the performance of their obligations under Section 2.(c) of the Agreement and is substituted for that purpose.

3. Miscellaneous.

(a) Notices. In accordance with the concluding sentence of Section 4.(b) of the Agreement, "Allan Rutter," the Authority's current Executive Director, is substituted for "Jerry Hiebert" in both of the notice addresses provided therein for the Authority.

(b) Ratification. The Authority and the City acknowledge, ratify and affirm the provisions of the Agreement not specifically amended by this Amendment as if such provisions were expressly set forth herein.

(c) Entire Agreement. The Agreement, as amended by this Amendment, constitutes the entire agreement between the parties with respect to the subject matter hereof. There are no representations, understandings or agreements relative hereto which are not fully expressed in the Agreement, as amended hereby.

(d) Written Amendments. Any further change in the agreement, terms and/or responsibilities of the parties hereto must be enacted through a written amendment. No amendment to the Agreement shall be of any effect unless in writing and executed by the Authority and the City.

(e) No Default. The parties acknowledge that there is no default under the Agreement, as amended by this Amendment, nor is there any condition or event which with the passage of time or the giving of notice would constitute a default by either party.

(f) Sole Benefit. This Amendment is entered into for the sole benefit of the City, the Authority and their respective successors, and nothing in this Amendment or in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation, or other entity, including, without, limitation, the public in general.

(g) Authorization. Each party to this Amendment represents to the other that it is fully authorized to enter into this Amendment and to perform its obligations hereunder, and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery or performance of this Amendment. Each signatory on behalf of the City and the Authority, as applicable, represents that he or she is fully authorized to bind that entity to the terms of this Agreement.

(h) Interpretation. No provision of this Amendment shall be construed against or interpreted to the disadvantage of any party by any court, other governmental or judicial authority, or arbitrator by reason of such party having or being deemed to have drafted, prepared, structured or dictated such provision.

(i) Counterparts. This Amendment may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one single agreement between the parties.

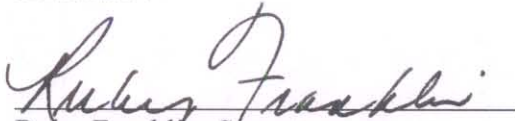
(j) Headings. The article and section headings used in this Amendment are for reference and convenience only, and shall have no bearing on the interpretation hereof.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the Authority and City have executed this Amendment on the dates shown below, to be effective on the date listed above.

NORTH TEXAS TOLLWAY AUTHORITY

ATTEST:

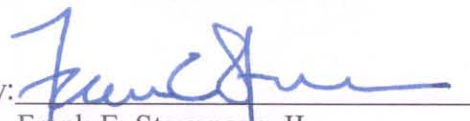

Ruby Franklin, Secretary

By: 
Allan Rutter, Executive Director

APPROVED AS TO FORM:

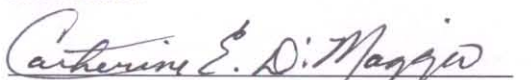
Date: 2 20 06


LOCKE LIDDELL & SAPP LLP,
General Counsel to the NTTA

By: 
Frank E. Stevenson, II

CITY OF GRAND PRAIRIE, a Texas municipal corporation

ATTEST:



3-8-06 City Secretary

By: 
TOM HART CITY MANAGER

APPROVED AS TO FORM:

Date: 3-6-2006

_____, City Attorney

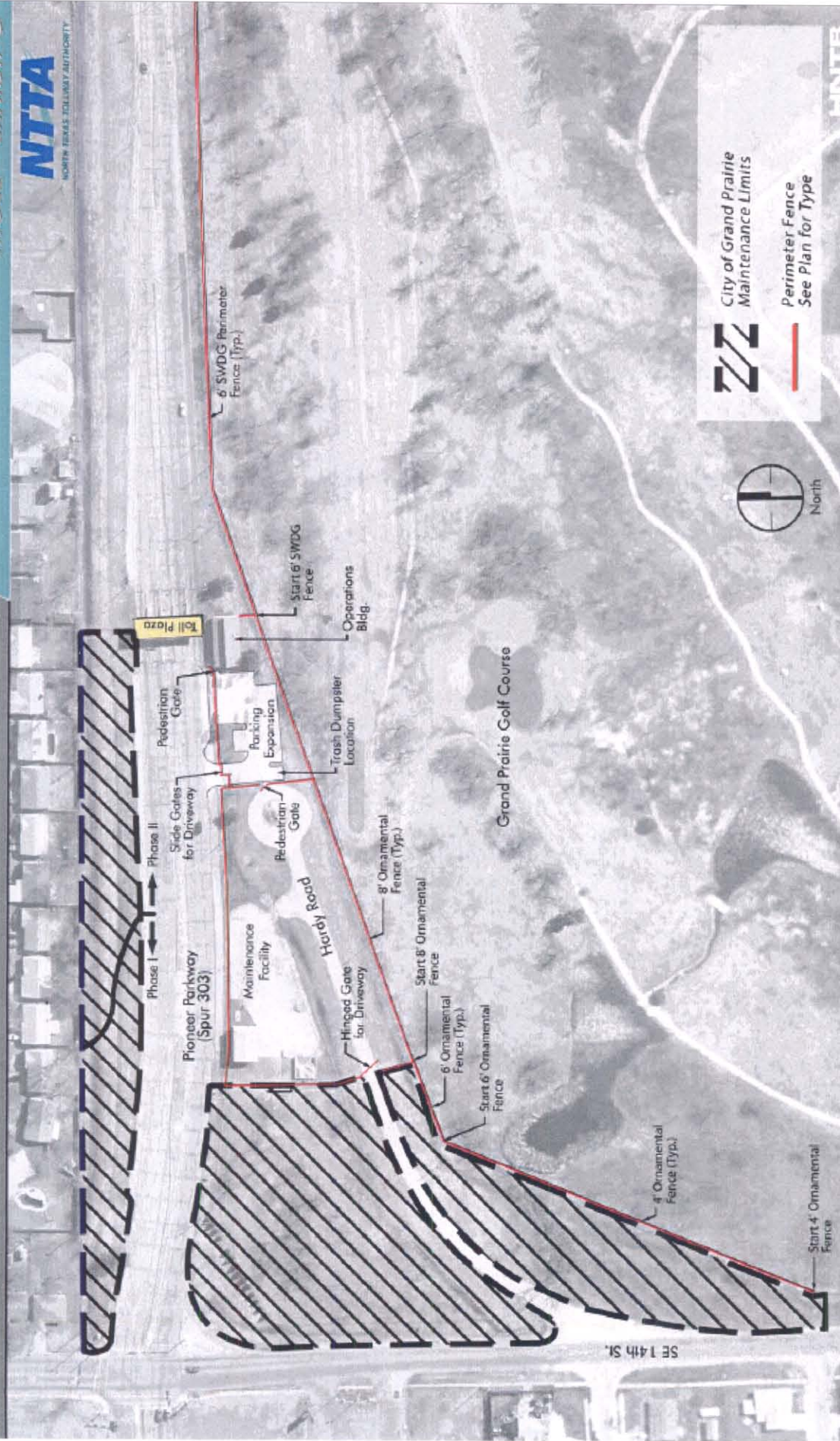
By: 
Name: Donald R. Postell

ATTACHMENT 1

SUBSTITUTE FORM OF EXHIBIT C TO THE AGREEMENT

LOCATION OF THE PERIMETER FENCE AND
DEPICTION OF MAINTENANCE LIMITS

[see the following]



**City of Grand Prairie
Maintenance Limits**

**Perimeter Fence
See Plan for Type**



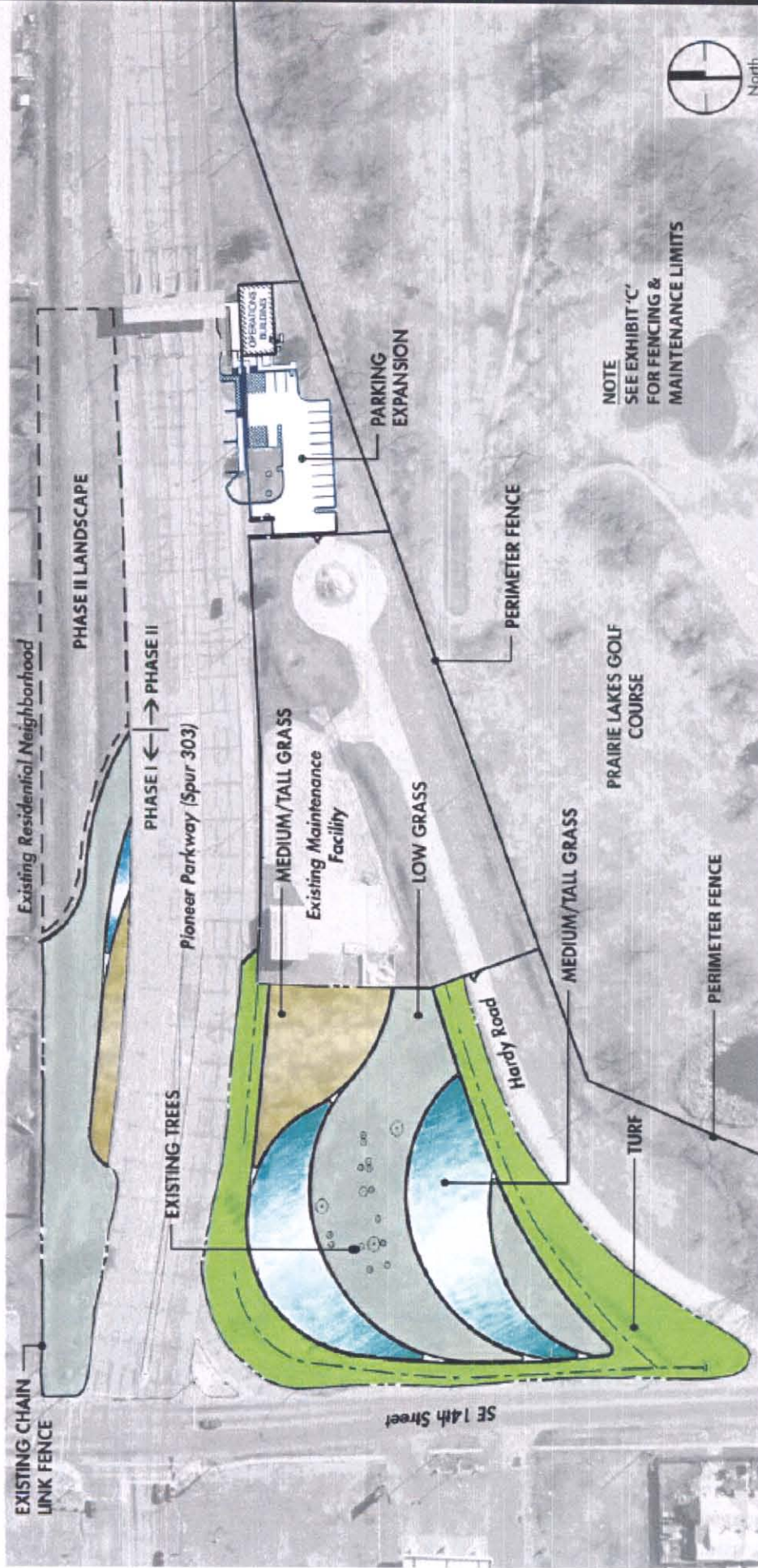
HNTB
Revised February 2006

ATTACHMENT 2

SUBSTITUTE FORM OF EXHIBIT A TO THE AGREEMENT

THE MCLB IMPROVEMENTS AND THE LANDSCAPE ENHANCEMENTS

[see the following]



MCLB Landscape Enhancements

HNTB

Revised February 2006