REGULAR CITY COUNCIL MEETING
FRISCO CITY HALL
GEORGE A. PUREFOY MUNICIPAL CENTER
COUNCIL CHAMBERS
6101 FRISCO SQUARE BLVD.
FRISCO, TEXAS 75034

5:30 PM

TUESDAY, SEPTEMBER 06, 2011

AGENDA

CALL TO ORDER

1. ROLL CALL

CLOSED SESSION

2. Recess into Closed Session in compliance with Section 551.001 et. seq. Texas Government Code, to wit;

   A. Section 551.071. Meeting with City Attorney regarding a matter(s) in which the duty of the City Attorney under the Texas Disciplinary rules of Professional Conduct of the State Bar of Texas conflicts with the Open Meetings Act regarding:

      i. Receive legal advice regarding the Sports Facility Lease Agreement dated January 24, 2008, by and between the City of Frisco, Texas (Lessor) and Sports Village Operating I, LLC (Lessee).
      ii. Receive legal advice regarding housing concerns raised by Inclusive Communities Project.
      iii. Receive legal advice from City Attorney concerning legal issues regarding Exide and lead issues.
      iv. Receive legal advice regarding the Cause No. 02-10-300CV in the

case styled Mary Horn, Hugh Coleman, Ron Marchant, Bobbie J. Mitchell, and Andy Eads, in the Capacities as Denton County Judge and Commissioners of Denton County Texas v. Al Gibson, pending the 2nd District Court of Appeals at Ft. Worth, Texas.

B. Section 551.072. To deliberate the purchase, exchange, lease or value of real property located:

i. South of US 380, North of The Colony city limits and North of 121, East of FM 423, and West of Preston Rd.

C. Section 551.087. Deliberation regarding commercial or financial information that the City has received from a business prospect and to deliberate the offer or other incentives to a business prospect.

3. Reconvene into Regular Session and take any action necessary as a result of the Closed Session.

INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

4. Supporting and Joining the National Moment of Remembrance of the 10th Anniversary of September 11th.

5. Francois Conde-Jahn -- North Texas State Soccer Association -- Administrator of the Year

6. 2011 Constitution Week

7. Miss Texas 2011 Kendall Morris

REPORTS

8. Engineering Services Monthly Report on Roads, Traffic, Water & Sewer Projects

9. Parks and Recreation Monthly Report regarding Park and Trail Development, Facilities, Special Events and Youth Development.

10. Library report on usage and programming activities

CITIZEN INPUT (to begin approximately at 7:30 p.m.)

CONSENT AGENDA

(Items placed on the Consent Agenda are considered routine in nature and are considered non-controversial. The Consent Agenda can be acted upon in one motion. A majority of the Council is required to remove any item for

discussion and separate action. Council members may vote nay on any single item without comment and may submit written comments as part of the official record.)

11. Consider and act on approval of the August 16, 2011 Regular City Council meeting minutes and the August 16, 2011 Supplemental meeting minutes. (CSO/JP)

12. Consider and Ratify the Approval of the Amendatory Contract Between the City of Frisco and the North Texas Municipal Water District for the Stewart Creek Regional Wastewater System and Approve a Resolution Authorizing the Mayor to Execute the Contract. (CMO/NL)

13. Consider and act upon adoption of a Resolution authorizing the City Manager to execute Amendment Number One to the Professional Services Agreement by and between the City of Frisco and Kimley-Horn and Associates, Inc. to perform Design and Bid Package Preparation for FM 3537 (Main Street) Landscape and Irrigation Improvements from SH 289 to FM 2478 (Preston Road to Custer Road) and SH 289 (Preston Road) Landscape, Irrigation, and Street Light Improvements from FM 3537 (Main Street) to US 380. (Engineering/JB)

14. Consider and act upon a Resolution approving the fiscal year 2012 City of Frisco General Fund Social Service Grant allocations.(CMO/SB)

15. Consider and act upon approving a resolution authorizing the City Manager to execute an agreement by and between the City of Frisco and Studio 13 Design Group, PLLC. for preparation of construction documents for the Hike and Bike trail along the South side of Cottonwood Branch from the intersection of Frisco Street and All Star Avenue to the proposed pedestrian bridge crossing at Sports Village Road. The trail will continue south parallel to the BNSF Railroad right of way to All Star Ave. (Parks/JED)

16. Consider and act upon accepting a bid and approving a resolution authorizing the City Manager to execute an agreement by and between the City of Frisco and AND, Inc, for park improvements within Frisco Commons Park. (Parks/DR)

17. Consider and act upon a resolution authorizing the City Manager to execute an agreement with Studio 13 Design Group for landscape architecture, engineering services and permitting for the Cottonwood Creek Linear Park. (Parks/DR)

18. Consider and act upon approval to submit three projects for the Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grant (AFG) Program (FIRE / JM).

19. Consider and act upon acceptance of the grant award from the United States Department of Homeland Security (USDHS) for two (2) Grant Programs: Urban Areas Security Initiative (UASI) and Citizen Corps Program (FIRE / JM).

20. Consider and act upon adoption of a Resolution authorizing the City Manager to execute a Memorandum of Understanding (MOU) by and between the City of

Frisco and North Central Texas Trauma Regional Advisory Council (NCTTRAC) to host and operate an Ambulance Bus (AmBus) and to participate in the Emergency Medical Task Force (EMTF) Project (FIRE / MB).

21. Consider and act upon ratification of purchase orders with Solid Motor Sports for required repairs to the Frisco Athletic Center water slides. (PARKS/TJ)

LEGISLATIVE AGENDA

(These items may legally require Council Action, but by Council Policy should be the City Manager's responsibility. The Legislative Agenda can be acted upon in one motion. The concurrence of two council members is required to remove any item for separate discussion and action. Council members may vote nay on any single item without comment and may submit written comments as part of the official record.)

22. Consider and act upon adoption of an Ordinance to amend Planned Development-207 to incorporate additional property (currently zoned Planned Development-25) to allow residential uses. The property contains 19.1± acres on the northeast corner of Gaylord Parkway and Parkwood Boulevard. Zoned: Planned Development-25-Business Center and Planned Development-207-Mixed Use. Z11-0008. Neighborhood #28. (Development Services/MW)

23. Consider and act upon adoption of an Ordinance to rezone 35.6± acres on the northwest and northeast corners of Lebanon Road and Teel Parkway from Commercial-1 to Patio Home. Zoned Commercial-1. Neighborhood #38 & 39. Z11-0010 (Development Services/RC)

24. Consider and act upon the adoption of an ordinance establishing a voluntary pet license/registration program. (Development Services/GC)

25. Consider and Act Upon Approval of a Resolution Authorizing the City Manager to Execute an Agreement for pet registration services with PetData Corporation (Development Services/GC).

REGULAR AGENDA

26. Public Hearing: Z11-0012. A request to amend Planned Development-178 to allow additional residential units and consider and act to direct staff to prepare an Ordinance of the same. The property contains 32.7± acres on the northwest corner of State Highway 121 and Legacy Drive. Zoned Planned Development-178-Mixed Use. Neighborhood #33. (Development Services/MW)

27. Public Hearing: Second Public Hearing on the City of Frisco Fiscal Year 2012 Annual Budget, including the Frisco Economic Development Corporation Fiscal Year 2012 Annual Budget and the Frisco Community Development Corporation Fiscal Year 2012 Annual Budget. (CMO/NL)

28. Consider and act upon approval of a purchase order to Physio Control for the purchase of nine (9), Lifepak 15, heart monitor/defibrillators. (Fire/TJ)

29. Discussion and Provide Staff Direction on Commitment of Certain Revenue Sources that cannot be used for Other Purposes. (Financial Services/AC)

30. Discuss and give direction on options for the May 2012 Election Contract Services. (CSO/JP)

31. Consider and act on the approval of an Ordinance amending the Boards and Commissions Code of Ordinances. (CSO/JP)

32. Consider and act upon an ordinance amending Section 2-118 (Number of board members/appointment/terms) of Division 3 (Housing Trust Fund Board and Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances. (CSO/JP)

33. Consider and act upon an ordinance amending Section 2-186 (Number of members/appointment/terms) of Division 6 (Frisco Arts Board and Public Arts Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances. (CSO/JP)

34. Consider and act upon an ordinance amending Section 34-165 (Establishment of the Urban Forestry Board) of Division 2 (Urban Forestry) of Article VI (Trees) of Chapter 34 (Environment) of the Frisco Code of Ordinances.(CSO/JP)

35. City Council discussion with City Staff concerning any actions required by City Staff as a result of any item on tonight's agenda.

36. Discussion on Governance Monitoring of present City Council Meeting.

ADJOURN

CERTIFICATION

Henry J. Hill, Deputy City Manager, certifies that this Notice of Meeting was posted on the outside bulletin board, at the City Hall of the City of Frisco, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted on the following date and time:

By Friday, September 2, 2011 at 5:30 PM and remained so posted at least 72 hours before meeting was convened.

If during the course of the meeting covered by this notice, the City Council should determine that a closed or executive meeting or session of the City Council or a consultation with the attorney for the City should be held or is required, then such closed or executive meeting or session or consultation with attorney as authorized by the Texas Open Meetings Act, Texas Government Code § 551.001 et. seq., will be held by the City Council at the date, hour and place given in this notice as the City Council may conveniently meet in such closed or executive meeting or session or consult with the attorney for the City concerning any and all subjects and for any and all purposes permitted by the Act, including, but not limited to, the following sanctions and purposes:

Texas Government Code Section:

§ 551.071 – Private consultation with the attorney for the City.
§ 551.072 – Discussing purchase, exchange, lease or value of real property.
§ 551.074 – Discussing personnel or to hear complaints against personnel.

NOTICE

Pursuant to City of Frisco Ordinance Number 01-04-29 all speakers other than City of Frisco Staff are limited to five (5) minutes per item except by prior consent of the City Council.

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS

The Frisco City Hall is wheelchair accessible. Access to the building and special parking are available at the primary north entrance facing Frisco Square Blvd. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at (972) 292-5025 or by FAX (972) 292-5028. BRAILLE IS NOT AVAILABLE.

AGENDA ITEM #4.

CITY OF FRISCO
PROCLAMATION

WHEREAS, *at 8:46 a.m., on September 11, 2001, hijacked American Airlines Flight 11 crashed into the upper portion of the North Tower of the World Trade Center in New York City, New York; and*

WHEREAS, *17 minutes later, at 9:03 a.m., hijacked United Airlines Flight 175 crashed into the South Tower of the World Trade Center; and*

WHEREAS, *at 9:37 a.m., the west wall of the Pentagon was hit by hijacked American Airlines Flight 77, the impact of which caused immediate and catastrophic damage to the headquarters of the Department of Defense; and*

WHEREAS, *at approximately 10:00 a.m., the passengers and crew of hijacked United Airlines Flight 93 acted heroically to retake control of the airplane and thwart the taking of additional American lives by crashing the airliner in Shanksville, Pennsylvania, and, in doing so, gave their lives to save countless others; and*

WHEREAS, *nearly 3,000 innocent civilians were killed in the heinous attacks of September 11, 2001; and*

WHEREAS, *countless fire departments, police departments, first responders, governmental officials, workers, emergency medical personnel, and volunteers responded immediately and heroically to those horrific events; and*

WHEREAS, *10 years later, the people of the United States and people around the world continue to mourn the tremendous loss of innocent life on that fateful day; and*

WHEREAS, *on the 10th anniversary of this tragic day, the thoughts of the people of the United States are with all of the victims of the events of September 11, 2001 and their families.*

NOW, THEREFORE, I, *Maher Maso, Mayor of the City of Frisco, Texas do hereby proclaim September 11, 2011 as:*

"A DAY OF REMEMBRANCE"

And encourage the observance of the moment of remembrance to last for 1 minute beginning at 12:00 noon Central Daylight Time marking the moment in an appropriate manner, including by ringing bells, blowing whistles, or sounding sirens.

NEW JERSEY

COMMITTEES:
APPROPRIATIONS
COMMERCE, SCIENCE, AND TRANSPORTATION
ENVIRONMENT AND PUBLIC WORKS

United States Senate
WASHINGTON, DC 20510

August 9, 2011

Dear Mayor:

This year we mark the 10th anniversary of the terrorist attacks of September 11, 2001, a day that changed America forever. To commemorate this occasion and pay tribute to those we lost, I introduced the enclosed resolution establishing a national Moment of Remembrance at 1:00 p.m. Eastern Daylight Time on September 11, 2011. In an overwhelming demonstration of unity, the Senate unanimously passed the resolution with the cosponsorship of all 100 United States Senators. I write to request that you join us in making this Moment of Remembrance a symbol of solidarity throughout your city and across the country.

During the Moment of Remembrance, every person across the country is called upon to ***stop and remember*** those we lost in the September 11th attacks. The Moment of Remembrance will take place for one full minute at 1:00 p.m. Eastern Time on September 11, 2011, and cities and towns, firehouses, churches and other institutions across the country are called upon to sound sirens and ring bells during that minute. These sirens and bells will be a signal for each person to stop and remember the people we lost and demonstrate the perseverance the American people have shown since that fateful day.

I hope you will participate by:

- Working with and contacting firehouses, police, churches, and other institutions in your municipality to sound sirens and ring bells for one minute at 1:00 p.m.;
- Passing a resolution or issuing a proclamation recognizing the Moment of Remembrance;
- Hosting an event to commemorate the 10th anniversary of the September 11th attacks that includes the Moment of Remembrance; and
- Notifying your constituents of the forthcoming Moment of Remembrance by noting it on your website and through local papers, social media and other outreach mechanisms.

I have created a website for the Moment of Remembrance where you can get more information: www.lautenberg.senate.gov/stopandremember. You can also contact my office at stopandremember@lautenberg.senate.gov or 202-224-3224 for additional information.

Thank you for your consideration.

Sincerely,

Frank R. Lautenberg

ONE GATEWAY CENTER, 23RD FLOOR
NEWARK, NJ 07102
(973) 639-8700 FAX: (973) 639-8723

HART SENATE OFFICE BUILDING, SUITE 324
WASHINGTON, DC 20510
(202) 224-3224

2 RIVERSIDE DRIVE
ONE PORT CENTER, SUITE 505
CAMDEN, NJ 08101
(856) 338-8922 FAX: (856) 338-8936

112th CONGRESS
1st Session

S.RES.237

Expressing the sense of the Senate regarding coming together as a Nation and ceasing all work or other activity for a moment of remembrance beginning at 1:00 PM Eastern Daylight Time on September 11, 2011, in honor of the 10th anniversary of the terrorist attacks committed against the United States on September 11, 2001.

IN THE SENATE OF THE UNITED STATES

July 22, 2011

Mr. LAUTENBERG (for himself, Mr. TOOMEY, Mr. MENENDEZ, Mr. SCHUMER, Mrs. GILLIBRAND, Mr. CASEY, Mr. LIEBERMAN, Mr. BLUMENTHAL, Mr. WEBB, Mr. WARNER, Mr. REID, Mr. MCCONNELL, Mr. AKAKA, Mr. ALEXANDER, Ms. AYOTTE, Mr. BARRASSO, Mr. BAUCUS, Mr. BEGICH, Mr. BENNET, Mr. BINGAMAN, Mr. BLUNT, Mr. BOOZMAN, Mrs. BOXER, Mr. BROWN of Massachusetts, Mr. BROWN of Ohio, Mr. BURR, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CHAMBLISS, Mr. COATS, Mr. COBURN, Mr. COCHRAN, Ms. COLLINS, Mr. CONRAD, Mr. COONS, Mr. CORKER, Mr. CORNYN, Mr. CRAPO, Mr. DEMINT, Mr. DURBIN, Mr. ENZI, Mrs. FEINSTEIN, Mr. FRANKEN, Mr. GRAHAM, Mr. GRASSLEY, Mrs. HAGAN, Mr. HARKIN, Mr. HATCH, Mr. HELLER, Mr. HOEVEN, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. ISAKSON, Mr. JOHANNS, Mr. JOHNSON of Wisconsin, Mr. JOHNSON of South Dakota, Mr. KERRY, Mr. KIRK, Ms. KLOBUCHAR, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LEAHY, Mr. LEE, Mr. LEVIN, Mr. LUGAR, Mr. MANCHIN, Mr. MCCAIN, Mrs. MCCASKILL, Mr. MERKLEY, Ms. MIKULSKI, Mr. MORAN, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Nebraska, Mr. NELSON of Florida, Mr. PAUL, Mr. PORTMAN, Mr. PRYOR, Mr. REED, Mr. RISCH, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. RUBIO, Mr. SANDERS, Mr. SESSIONS, Mrs. SHAHEEN, Mr. SHELBY, Ms. SNOWE, Ms. STABENOW, Mr. TESTER, Mr. THUNE, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. VITTER, Mr. WHITEHOUSE, Mr. WICKER, and Mr. WYDEN) submitted the following resolution; which was considered and agreed to

S. RES. 237

Expressing the sense of the Senate regarding coming together as a Nation and ceasing all work or other activity for a moment of remembrance beginning at 1:00 PM Eastern Daylight Time on September 11, 2011, in honor of the 10th anniversary of the terrorist attacks committed against the United States on September 11, 2001.

Whereas at 8:46 AM, on September 11, 2001, hijacked American Airlines Flight 11 crashed into the upper portion of the North Tower of the World Trade Center in New York City, New York;

Whereas 17 minutes later, at 9:03 AM, hijacked United Airlines Flight 175 crashed into the South Tower of the World Trade Center;

Whereas at 9:37 AM, the west wall of the Pentagon was hit by hijacked American Airlines Flight 77, the impact of which caused immediate and catastrophic damage to the headquarters of the Department of Defense;

Whereas at approximately 10:00 AM, the passengers and crew of hijacked United Airlines Flight 93 acted heroically to retake control of the airplane and thwart the taking of additional American lives by crashing the airliner in Shanksville, Pennsylvania, and, in doing so, gave their lives to save countless others;

Whereas nearly 3,000 innocent civilians were killed in the heinous attacks of September 11, 2001;

Whereas tens of thousands of individuals narrowly escaped the attacks at the Pentagon and World Trade Center and, as witnesses to this tragedy, are forever changed;

Whereas countless fire departments, police departments, first responders, governmental officials, workers, emergency medical personnel, and volunteers responded immediately and heroically to those horrific events;

Whereas the Fire Department of New York suffered 343 fatalities on September 11, 2001, the largest loss of life of any emergency response agency in United States history;

Whereas the Port Authority Police Department suffered 37 fatalities in the attacks, the largest loss of life of any police force in United States history in a single day;

Whereas the New York Police Department suffered 23 fatalities as a result of the terrorist attacks;

Whereas the impact of that day on public health continues through 2011, as nearly 90,000 people are at risk of or suffering from negative health effects as a result of the events of September 11, 2001, including 14,000 workers and 2,400 community residents who are sick, and tens of thousands of others whose health is being monitored;

Whereas 10 years later, the people of the United States and people around the world continue to mourn the tremendous loss of innocent life on that fateful day;

Whereas 10 years later, thousands of men and women in the United States Armed Forces remain in harm's way defending the United States against those who seek to threaten the United States;

Whereas on the 10th anniversary of this tragic day, the thoughts of the people of the United States are with all of the victims of the events of September 11, 2001, and their families;

Whereas the lives of Americans were changed forever on September 11, 2001, when events threatened the American way of life;

Whereas in December 2001, Congress and the President joined together to designate September 11 as Patriot Day (Public Law 107-89);

Whereas in September 2002, and each September thereafter through September 2008, President Bush issued Proclamations 7590, 7702, 7812, 7929, 8047, 8174, and 8286 (67 Fed. Reg. 57125; 68 Fed. Reg. 53013; 69 Fed. Reg. 55717; 70 Fed. Reg. 54467; 71 Fed. Reg. 53959; 72 Fed. Reg. 51553; 73 Fed. Reg. 52773) proclaiming September 11 of that year, respectively, as Patriot Day;

Whereas in 2009, Congress and the President joined together to designate September 11 as a National Day of Service and Remembrance under the Serve America Act (Public Law 111-13; 123 Stat. 1460);

Whereas in September 2009 and 2010, President Obama issued Proclamation 8413 (74 Fed. Reg. 47045) and Proclamation 8559 (75 Fed. Reg. 56463) proclaiming September 11, 2009, and September 11, 2010, respectively, as Patriot Day and National Day of Service and Remembrance; and

Whereas September 11 will never, and should never, be just another day in the hearts and minds of all people of the United States: Now, therefore, be it

Resolved, That the Senate--

(1) recognizes September 11, 2011, as a day of solemn commemoration of the events of September 11, 2001, and a day to come together as a Nation;

(2) offers its deepest and most sincere condolences to the families, friends, and loved ones of the innocent victims of the September 11, 2001, terrorist attacks;

(3) honors the heroic service, actions, and sacrifices of first responders, law enforcement personnel, State and local officials, volunteers, and countless others who aided the innocent victims of those attacks and, in doing so, bravely risked and often gave their own lives;

(4) recognizes the valiant service, actions, and sacrifices of United States personnel, including members of the United States Armed Forces, the United States intelligence agencies, the United States diplomatic service, homeland security and law enforcement personnel, and their families, who have given so much, including their lives and well-being, to support the cause of freedom and defend the security of the United States;

(5) reaffirms that the people of the United States will never forget the challenges our country endured on and since September 11, 2001, and will work tirelessly to defeat those who attacked the United States; and

(6) on the 10th anniversary of this tragic day in United States history--

(A) calls upon all of the people and institutions of the United States to observe a moment of remembrance on September 11, 2011, including--

(i) media outlets;

(ii) houses of worship;

(iii) military organizations;

(iv) veterans organizations;

(v) airlines;

(vi) airports;

(vii) railroads;

(viii) sports teams;

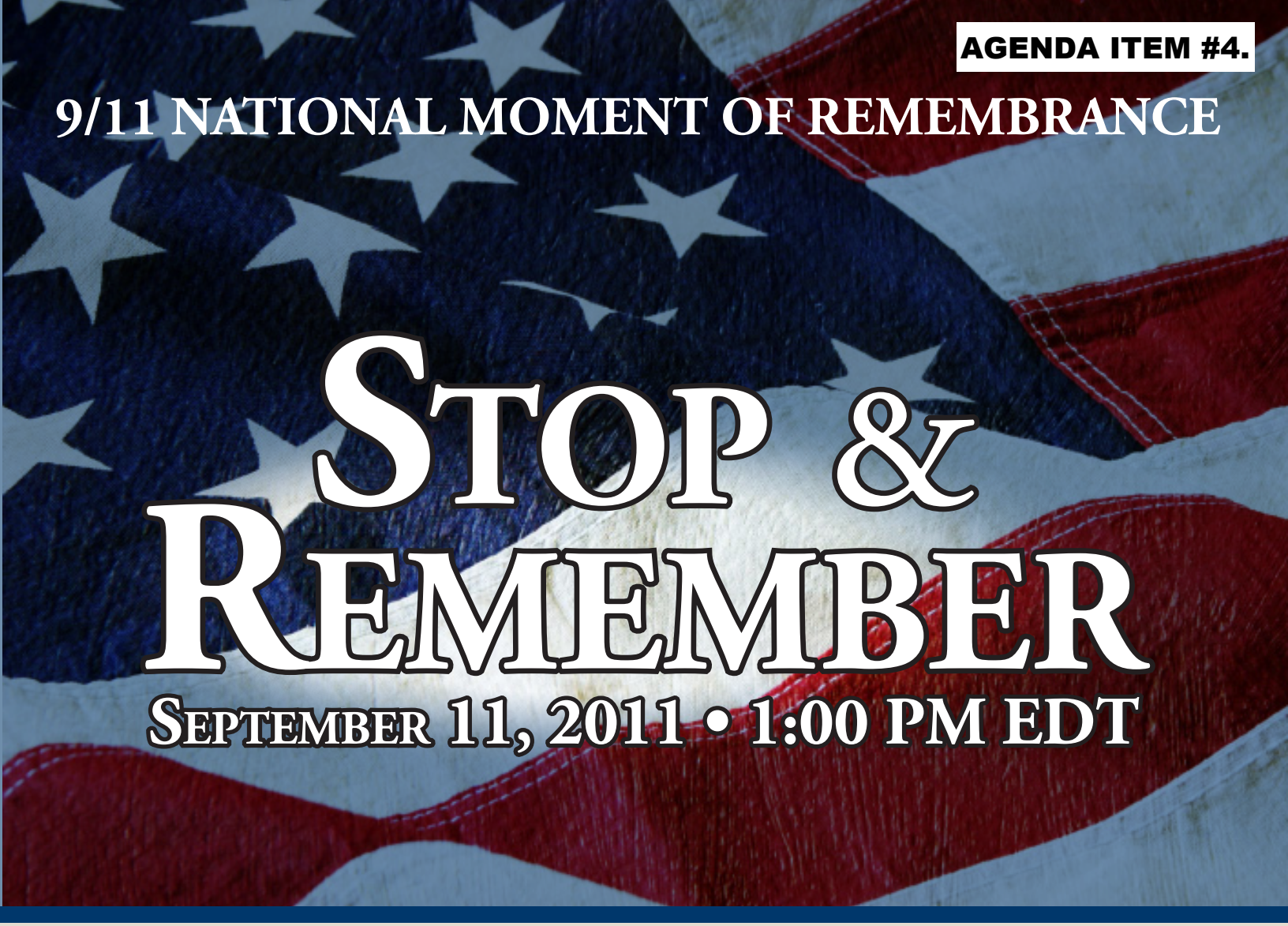
(ix) the Federal Government;

(x) State and local governments;
(xi) police, fire, and other public institutions;
(xii) educational institutions;
(xiii) businesses; and
(xiv) other public and private institutions; and

(B) encourages the observance of the moment of remembrance or prayer to last for 1 minute beginning at 1:00 PM Eastern Daylight Time by, to the maximum extent practicable--

(i) ceasing all work or other activity; and
(ii) marking the moment in an appropriate manner, including by ringing bells, blowing whistles, or sounding sirens.

9/11 NATIONAL MOMENT OF REMEMBRANCE



STOP & REMEMBER

SEPTEMBER 11, 2011 • 1:00 PM EDT

The U.S. Senate has unanimously passed a resolution (S. Res. 237) calling on all Americans to participate in a Moment of Remembrance on September 11, 2011. For one minute, first responders, houses of worship, towns, and others throughout the country will sound sirens and bells in a signal to each of us to STOP AND REMEMBER the 10th anniversary of the tragedies of September 11, 2001.

On September 11, 2011, will you join us in committing to STOP AND REMEMBER?

1:00 PM EDT
12:00 PM CDT
11:00 AM MDT
10:00 AM PDT

Spread the word:
www.lautenberg.senate.gov/stopandremember

For more information please contact:
stopandremember@lautenberg.senate.gov

Office of Senator Frank R. Lautenberg
www.lautenberg.senate.gov | Tel: 202-224-3224 | Toll Free: 888-398-7642

AGENDA ITEM #8.

Engineering Services Monthly Report

September

Roadway Construction Projects

Custer Road [FM 2478] (**CIP05-0028**) Stonebridge to US 380

Project Manager: Jason Brodigan

Project Description: *Replace the existing two-lane asphalt roadway with a six-lane concrete divided roadway. Project includes paving, drainage, and signals.*

Project Update: *Contractor is constructing southbound Wilson Creek bridge and concrete paving southbound lanes.*

Construction End: 4/2/2012 **Estimated Construction Cost**: **$132,000**

Eldorado at Teel Sidewalk Improvements (**CIP11-0005**) Northridge to Teel

Project Manager: Art Hartle

Project Description: *Construct 1800 feet of sidwalk from Northridge to Teel Parkway.*

Project Update: *Retaining wall is approximately 75% complete on August 24, 2011. Fence installed along back of sidewalk to separate pedestrian traffic from work zone.*

Construction End: 11/1/2011 **Estimated Construction Cost**: **$375,000**

FM 423 [Middle] (**CIP03-0109**) Stewart Creek to Eldorado Pkwy

Project Manager: Jason Brodigan

Project Description: *Replace the existing two-lane asphalt roadway with a six-lane concrete divided roadway. Project includes paving and drainage.*

Project Update: *Austin Bridge & Road is completing paving of southbound lanes and preparing the subgrade for the northbound lanes north of Main St.*

Construction End: 9/4/2012 **Estimated Construction Cost**: **$30,000,000**

Independence Parkway (**CIP10-0004**) Main Street to North City Limits

Project Manager: Tin Nguyen

Project Description: *Widen the existing two-lane concrete roadway to a four-lane divided concrete roadway. Project includes paving, drainage, water, sidewalks, lighting, landscaping and irrigation.*

Project Update: *Easement acquisition is ongoing. Construction begins in September.*

Construction End: 6/1/2012 **Estimated Construction Cost**: **$3,286,667**

Legacy Road (**CIP09-0013**) Warren Parkway to Lebanon Road

Project Manager: Jason Brodigan

Project Description: *Widen the existing four-lane divided concrete roadway to a six-lane divided concrete roadway and reconstruct intersection at Lebanon Road.*

Project Update: *Intersection and additional lanes are complete. Contractor is completing lighting and landscaping.*

Construction End: 9/30/2011 **Estimated Construction Cost**: **$3,246,965**

Miscellaneous Pavement Rehab (**CIP10-0003**) Meadow Creek & Grayhawk

Project Manager: Art Hartle

Project Description: *Street pavement removal and replacement for Talley Lane and west end of Shadybrook in Meadow Creek and Polo Heights Drive in Grayhawk from Spirit Falls Drive west.*

Project Update: *Talley Lane and Shadybrook Lane re-opened to traffic on Monday, August 22, 2011.*

Construction End: 10/28/2011 **Estimated Construction Cost**: **$770,380**

NTTA - SH 121/DNT Interchange (**CIP09-0007**)

Project Manager: Jason Brodigan

Project Description: *NTTA construction of direct connectors to existing three level interchange.*

Project Update: *NTTA contractor is hanging bridge beams and has begun pouring bridge slabs.*

Construction End: 1/31/2012 **Estimated Construction Cost**:

Preston Road [SH 289] (**CIP05-0031**) Main St to US 380

Project Manager: Jason Brodigan

Project Description: *Replace the existing two-lane asphalt roadway with a six-lane divided concrete roadway. Project includes paving and drainage.*

Project Update: *Contractor, Mario Sinacola, has begun work on the southbound lanes south of Eldorado.*

Construction End: 2/1/2012 **Estimated Construction Cost**: **$10,166,838**

Rolater Road (**CIP05-0021**) Independence Parkway to Custer Road

Project Manager: Tin Nguyen

Project Description: *Widen the existing two-lane concrete roadway to a four-lane divided concrete roadway. Project includes paving, drainage, bridge, sidewalks, signals, lighting, landscaping and irrigation.*

Project Update: *Traffic was switched to the northbound side of Rolater on 4/22/2011 so Sinacola can finish the box culvert and pavement repair on the eastbound lanes.*

Construction End: 10/31/2011 **Estimated Construction Cost**: **$3,103,194**

Stonebrook Parkway (**CIP05-0030**) Legacy Drive to Fighting Eagles

Project Manager: David L Chacon

Project Description: *Construct a new four-lane divided concrete roadway including a bridge over Stewart Creek. Project includes paving, drainage, water, wastewater, signals, sidewalk, lighting, landscaping and irrigation.*

Project Update: *Project is 90% complete*

Construction End: 11/4/2011 **Estimated Construction Cost**: **$6,507,989**

Stonebrook Parkway (**CIP09-0014**) FM 423 to 4th Army

Project Manager: Toyin Fawehinmi

Project Description: *Construct a new four-lane divided concrete roadway from FM 423 to Teel Parkway, and widen the existing two-lane concrete roadway to a four-lane divided concrete roadway from Teel Parkway to 4th Army. Project includes paving, drainage, wastewater, signals, lighting, landscaping and irrigation.*

Project Update: *Pavement repair work in progress at the intersection of Stonebrook Parkway and 4th Army/Memorial Drive. Landscape work not complete due to inclement weather*

Construction End: 9/16/2011 **Estimated Construction Cost**: **$4,446,613**

Roadway Design Projects

Coit Road (**CIP10-0002**) Main Street to Eldorado Parkway

Project Manager: Jason Brodigan

Project Description: *Replace the existing two-lane asphalt roadway with a four-lane divided concrete roadway. Project includes paving, drainage, water, lighting, landscaping, and irrigation.*

Project Update: *Design is 60% complete*

Construction Begin: 4/2/2012 **Estimated Construction Cost**: **$6,076,938**

CR 710 [Sanctuary Drive] (**CIP10-0008**) Peaceful Lane to Rogers Road

Project Manager: David L Chacon

Project Description: *Replace the existing two lane asphalt/gravel roadway with a two lane concrete roadway from Peaceful Lane to Rogers Road*

Project Update: *95% plans under review by City. Easement acquisition in progress.*

Construction Begin: 10/21/2011 **Estimated Construction Cost**: **$970,000**

Eldorado Parkway (**CIP05-0006**) Preston Road to Custer Road

Project Manager: Toyin Fawehinmi

Project Description: *Widen the existing four-lane divided concrete roadway to a six-lane divided roadway from Preston Road to Hillcrest Road and from Fragrant Dr to Custer Road and widen the existing two-lane concrete roadway to a six-lane divided concrete roadway from Hillcrest Road to Fragrant Drive. Project includes paving, drainage, sidewalks and signals.*

Project Update: *Design is 60% complete*

Construction Begin: 1/2/2012 **Estimated Construction Cost**: **$8,380,018**

FM 423 [North] (**CIP03-0056**) Eldorado Parkway to US 380

Project Manager: Jason Brodigan

Project Description: *Replace the existing two-lane asphalt roadway with a six-lane divided concrete roadway. Project includes paving, drainage, signals and lighting.*

Project Update: *Final design plans are anticipated to be submitted to TXDOT in Fall/Late 2011. TXDOT has begun Right of Way acquisition.*

Construction Begin: 9/4/2012 **Estimated Construction Cost**: **$0**

Lebanon/DNT Intersection (**CIP05-0026**) Starwood Dr to 1100' east of DNT

Project Manager: Art Hartle

Project Description: *Scope: Construction of additional lanes of traffic for Lebanon to accommodate the NTTA bridge widening. This project will increase the lanes on the EB and WB approaches to the tollway.*

Project Update: *Final design plans under review by City. ROW and easement acquisition is in progress.*

Construction Begin: 1/3/2012 **Estimated Construction Cost**: **$1,505,096**

Main Street [FM 3537] (**CIP03-0108**) Preston Road to Custer Road

Project Manager: Jason Brodigan

Project Description: *Replace the existing two-lane asphalt roadway with a six-lane divided concrete roadway. Project includes paving, drainage, signals, lighting, landscaping and irrigation.*

Project Update: *TXDOT opened bids for the project in June. ROW acquisition and utility relocations are ongoing.*

Construction Begin: 3/5/2012 **Estimated Construction Cost**: **$1,321,100**

Memorial Drive (**CIP11-0016**) Navaho Lane to Spring Creek Pkwy

Project Manager: Jason Brodigan

Project Description: *Construct a new four-lane divided concrete roadway including a bridge under the BNSF Railroad and the intersection with Town & Country. Project includes paving, drainage, retaining wall, sidewalk, lighting, landscaping and irrigation.*

Project Update: *Design is 30% complete.*

Construction Begin: 3/5/2012 **Estimated Construction Cost**:

Phillips Creek Ranch Hike & Bike Trail (**CIP11-0009**)

Project Manager: Jason Brodigan

Project Description: *Through TxDOT grant, install median landscaping and hike and bike trails along Stonebrook Parkway and Lone Star Parkway.*

Project Update: *TxDOT agreements have been approved and executed. Design is approximately 30% complete.*

Construction Begin: 2/1/2012 **Estimated Construction Cost**: **$5,400,000**

Preston Rd (SH 289) Landscape (**CIP10-0027**) Main St to US 380

Project Manager: Jason Brodigan

Project Description: *Install median irrigation and landscaping. Project to be constructed by TxDOT.*

Project Update: *Design is 60% complete.*

Construction Begin: 3/1/2012 **Estimated Construction Cost**: **$724,000**

Rockhill Road (**CIP08-0007**) CR 26 to Dallas Parkway

Project Manager: David L Chacon

Project Description: *Construct a new six-lane divided concrete roadway. Project includes paving, drainage, water, lighting, landscaping and irrigation.*

Project Update: *Design is 60% complete. ROW and Easment acquisition in progress.*

Construction Begin: Not Scheduled **Estimated Construction Cost**: **$7,977,176**

Rockhill Road (**CIP10-0015**) Dallas Parkway to Preston

Project Manager: David L Chacon

Project Description: *Construct a new six-lane divided concrete roadway including a bridge over the BNSF Railroad. Project includes paving, drainage, water, lighting, landscaping and irrigation.*

Project Update: *Design is 60% complete. ROW and Easment acquisition in progress.*

Construction Begin: Not Scheduled **Estimated Construction Cost**: **$14,187,117**

Stonebrook Parkway (**CIP10-0024**) Fighting Eagles to Longhorn Trail

Project Manager: David L Chacon

Project Description: *Construct a new four-lane divided concrete roadway including a bridge under the BNSF Railroad. Project includes paving, drainage, water, wastewater, sidewalk, lighting, landscaping and irrigation.*

Project Update: *Final plans uunder review by City. US Army Corps of Engineers permit comments addressed and returned for further review. Final plans under review by BNSF Railroad to issue RR permit.*

Construction Begin: 1/16/2012 **Estimated Construction Cost**: **$14,257,471**

Stonebrook Pkwy (**CIP05-0015**) Dallas Parkway to SH 289 [Preston Road]

Project Manager: Art Hartle

Project Description: *Scope: Install 36 inch waterline, reconstruct westbound lanes to widen roadway to 6 lanes.*

Project Update: *Design is complete. Easement acquistion is in progress.*

Construction Begin: 2/14/2012 **Estimated Construction Cost**: **$5,646,000**

US 380 (**CIP10-0017**) CR 26 to Coit Rd

Project Manager: Jason Brodigan

Project Description: *Widen the existing five-lane roadway to a freeway section including frontage roads and grade separated intersections at DNT and Preston Road.*

Project Update: *Conceptual design is 95 percent complete.*

Construction Begin: Not Scheduled **Estimated Construction Cost**: **$78,000,000**

Wastewater Design Projects

Fairways LS Peak Flow Improvements (**CIP11-0004**) within Fairways LS property

Project Manager: Art Hartle

Project Description: *Add new pump to increase flow capacity of lift station.*

Project Update: *Design is in progress.*

Construction Begin: 10/1/2011 **Estimated Construction Cost**: **$400,000**

Panther Creek Sewer Interceptor Phase 2 (**CIP10-0013**)

Project Manager: David L Chacon

Project Description: *Install new 24" wastewater line.*

Project Update: *Design is 60 percent complete. Easement acquisition is in progress.*

Construction Begin: Not Scheduled **Estimated Construction Cost**: **$3,253,434**

Water Construction Projects

Driveway to Teel EST (**CIP09-0006**) East of Teel Parkway & north of Panther Creek Parkway

Project Manager: Art Hartle

Project Description: *Construct 15' wide concrete access road to Teel EST*

Project Update: *Construction is mostly complete pending grass planting in fall.*

Construction End: 10/3/2011 **Estimated Construction Cost**: **$130,000**

Water Design Projects

Legacy EST (**CIP10-0019**)

Project Manager: Art Hartle

Project Description: *Construct new 1.5 million gallon elevated water tank to replace existing 0.3 million gallon EST*

Project Update: *Plan revisions in progress to accomodate revised tank site location.*

Construction Begin: 1/2/2012 **Estimated Construction Cost**: **$3,300,000**

Main Street Waterline Relocations (**CIP09-0011**) Preston Road to Custer Road

Project Manager: David L Chacon

Project Description: *Relocate existing waterline outside of the proposed right of way in preparation for Main Street construction.*

Project Update: *Easement acquisition in progress.*

Construction Begin: 11/1/2011 **Estimated Construction Cost**: **$4,137,000**

Engineering Highlights – Elizabeth Metting:

- **Construction Inspections** – Construction Inspectors have 193 current projects that are at various stages of construction.

- **Pre-construction Meetings** – Staff held 9 pre-construction meetings for new projects:

    1. Newman Village Model Home Park
    2. Stonebrook Pkwy Phase 2
    3. Hickory Center at Preston, BlA, Lot 3
    4. Phillips Creek Ranch Offsite
    5. St. Francis of Assisi Addition
    6. Independence Parkway
    7. Teel Crossing 2, Bl A, Lt 7 – Braums
    8. Frisco Trails, Block A, Lot 1
    9. Village Lakes, Phase 3

- **Project Final Acceptances** – There was 5 project accepted.

    - Custer-Eldorado Addn Bl A Lt 2
    - Parkwood Offices Addition, Bl A, Lot 5A
    - Prestmont Center, Bl B, Lt 4
    - Eldorado Market Place Addn, Bl 1, Lot 4
    - Custer Star Addition, Bl1, Lt1

Project Reviews - Staff has completed Twenty-Four (24) engineering reviews.

Transportation Highlights – Brian Moen:

- **Development/CIP Plan Reviews** – Staff reviewed 58 sets of development and CIP plans this month. Staff also reviewed one traffic impact analysis and processed three TxDOT driveway and/or traffic signal permit applications.
- **SH 121 and DNT Tollway Construction** – NTTA is constructing a full interchange at SH 121 and the Dallas North Tollway (including direct-connect ramps in all directions), which is expected to be complete in January 2012. The Engineering Services website has a link to NTTA's current report on the status of the project. Road closures and traffic switches are listed on

NTTA.org and continue to be communicated through the City's normal announcement system.

- **Intersection Improvement Projects**
  1) **Legacy & Lebanon** – Project will reconstruct the intersection of Legacy Drive and Lebanon Road to eliminate the existing bump and widen each approach to have two left-turn lanes, three through lanes, and a right-turn lane (except northbound Legacy which will not have a right-turn lane). Project will also widen Legacy Drive to six lanes between Lebanon Road and Warren Parkway and add eastbound left-turn lanes on Lebanon Road at Compass Drive and Village Boulevard. Construction started in October 2010 and is expected to take about a year to complete. Most of the paving work was completed in July and all of the new turn lanes were opened in August. The street lighting was activated in August. The remaining landscape work in the medians should be complete in September.
  2) **Dallas Parkway & Eldorado** – Project will construct a third lane on the southbound frontage road (between Eldorado and the entrance ramp) which will allow us to provide dual right-turn lanes on eastbound Eldorado at Dallas Parkway. Project will also replace the temporary "span-wire" traffic signal with a permanent traffic signal and construct a third lane on the northbound frontage road between the exit ramp and Eldorado to improve traffic flow approaching the intersection. This project is currently under design and construction should start in early 2012.

- **Citizen Inquiries** – Staff has responded to several citizen inquiries that came into the department by telephone, email, and the Q&A Message Board on the City website.
- **Miscellaneous Traffic Studies** – Staff continues to update the crash database (based on police reports) and has completed the RFP process and has selected a vendor for purchasing new software to facilitate more efficient crash analysis of intersections. This month staff conducted one neighborhood speed study and one stop sign study at the request of citizens.
- **Roadway Lighting Projects**
  1) **Legacy Drive (Warren to Academy)** – The Legacy & Lebanon Intersection Improvement project (see status above) includes new roadway lighting on this section of Legacy Drive. Construction on the overall project is almost complete. Half of the lights have been activated since June and the remaining half will be activated in September.
  2) **Lebanon Road (Rock Creek Pkwy to Legacy)** – The Legacy & Lebanon Intersection Improvement project (see status above) includes new roadway lighting on this section of Lebanon Road. Construction on the overall project is almost complete. All of the remaining lights were activated in August.
  3) **Lebanon Road (Dallas Parkway to Coit)** – Plans are complete and the project was bid in January. Construction began in April and is expected to be completed in September.
  4) **Stonebrook Parkway (Dallas Parkway to Preston)** – New roadway lighting is being added to this section of Stonebrook

Parkway as part of the road reconstruction and waterline project (see status in "Engineering Highlights" above). The entire project is still under design.

5) **Preston Road (SH 121 to Gaylord)** – Under design.
6) **Preston Road (Main to US 380)** – Under design.
7) **Warren Parkway (Preston to Ohio)** – Under design.
8) **Gaylord Parkway (Preston to Ohio)** – Under design.
9) **Ohio Drive (SH 121 to Warren)** – Under design.
10) **Hillcrest Road (Eldorado to Haversham)** – Under design.
11) **Rolater Road (Independence to Custer)** – Construction on the overall road reconstruction project is almost complete and the lighting is expected to be completed by October 2011.
12) **FM 3537 (Preston to Custer)** – TxDOT's widening project for this roadway includes lighting on Main Street between Preston Road and Custer. The lighting will be completed near the end of the project which is expected to be in the Spring of 2014. Check the status of the overall project in the *Roadway Construction Projects* section of this report.

- **School Zones** – Staff meets monthly with representatives of FISD to discuss any school zone, crossing guard, or sidewalk issues. This month, staff verified the change of all school zone time placards due to the new FISD school times; verified the operation of all school zone flashers before school started; and were on two campuses when school started to help train parents and staff in the new traffic operations of those schools due to staff-recommended driveway modifications (at Purefoy Elementary and Bledsoe Elementary). Staff continues to oversee various sidewalk improvements that were started during the summer to improve some student routes to various schools.
- **Special Events** – As part of the Special Events Review Committee, staff reviews all pending special event applications for any traffic control needs. Staff continually coordinates with the Police, Fire, Communications, and Public Works Departments regarding any special events that affect traffic flow or parking in the City. Staff also coordinates with Pizza Hut Park and Dr Pepper Arena staff regarding large events at those venues, which sometimes requires coordination with NTTA. This month, staff provided traffic management support for the Frisco Family Fun Ride, the Brad Paisley concert, Chunk Your Junk, National Night Out and several FC Dallas Soccer Games.
- **Staff** –Two of our traffic engineer positions are currently frozen.
- **Thoroughfare Standards Ordinance** – Staff is currently editing a draft update to the Thoroughfare Standards Ordinance based upon ongoing research as well as coordination with other departments. Staff is currently involved in the update of the entire set of Engineering Standards and is coordinating changes with the Thoroughfare Standards. Once these changes are incorporated, staff will address and respond to comments from the Frisco Developers Council.
- **Traffic Count Map** – The traffic count map is available on the City's website at maps.friscotexas.gov**.** It provides daily traffic volume counts (and the date of each count) on multiple segments of every major roadway. Staff conducts

an annual traffic count program which updates the volumes collected on each major roadway segment every two or three years. The 2011 traffic count updates were collected in February, which included counts on 87 roadway segments.

- **Traffic Control** – Each month, staff designs the installation of new and/or replacement signs and pavement markings as needed. Each month, staff reviews the traffic control plans for new and ongoing construction zones. Staff is coordinating with TxDOT on major detours and weekend closures of sections of Preston Road, Custer Road, and FM 423 during those widening projects and with NTTA on major detours during the construction of the DNT/SRT interchange. This month staff monitored the shifting of traffic to use the new lanes on Rolater Road near Custer Road; the reopening of FM 720 west of FM 423 which had been closed for reconstruction; and the reopening of Eldorado Parkway at Custer Road which had been closed for reconstruction. Staff also monitored traffic in the field and used cameras in the EOC/traffic management center during the first week of school when traffic levels returned to their higher levels.

- **Traffic Signal Construction**
    1) **Kyser & Main** – This signal is under design and construction is expected to begin in late 2011.
    2) **Legendary & Lebanon** – This signal is under design and construction is expected to begin in late 2011.
    3) **Stonebrook & Legacy** – This signal was bid in December and will be built as part of the eastern Stonebrook road construction project. The signal is projected to be operational by the end of 2011.
    4) **Eldorado & Woodsboro** – A traffic signal is being constructed as this intersection as part of the Costco project and is expected to be operational by the end of August.
    5) **Eldorado & Hillcrest** – Construction of this temporary signal began in early July and it was activated on August 22 (the first day of school).
    6) **Eldorado & Coit** – Construction of this temporary signal began in early July and it was activated on August 22 (the first day of school).
- **Traffic Signal System Communications** – The system provides communications to all of the traffic signals in the City, allowing staff to monitor and control their operation remotely. Staff can also view the traffic detection cameras at most of the traffic signals, as well as 48 pan-tilt-zoom (PTZ) traffic cameras that can be controlled remotely. The two newest PTZ cameras were installed at Eldorado & Hillcrest and Eldorado & Coit this month.
- **Traffic Signal Timing** – On an ongoing basis, staff changes the operation of various traffic signals along Preston Road, Custer Road and FM 423 to coincide with TxDOT closures and traffic shifts as part of their widening projects. Staff adjusted the operation of the traffic signals at Legacy & Lebanon, Preston & Eldorado and Eldorado & Custer due to the opening of additional lanes and intersection approaches. Signal timings were developed for the reconfigured intersection of FM 423 & FM 720. The signal timings at Eldorado & FM 423 were adjusted due to the lane closures associated with the road construction on Eldorado west of FM 423. Staff monitored school related intersections and newly expanded major intersections during the first

week of school (when traffic returns to its higher levels) and made signal timing adjustments as necessary.

- **Training and Conference Attendance** – Staff attends the monthly local meetings of the Texas District of the Institute of Transportation Engineers (TexITE) and the American Society of Civil Engineers (ASCE). Joel Fitts is currently the President of the Greater Dallas Section of TexITE and Brian Moen represents Greater Dallas on the Statewide Board of TexITE. Sean Merrell is an active committee member in both TexITE and the Texas Section of ASCE and is the Vice President of the ASCE Dallas Branch. This month staff attended a training class on the newest components of the wireless communication and camera system.
- **Traffic Signal Maintenance** – The City of Frisco currently operates and maintains 84 traffic signals within the City of Frisco and one traffic signal on FM 423 outside the city limits, 81 of which have automatic battery backup power. City crews provide on-call maintenance seven days per week with a 45-minute response time. This month City crews turned on the new temporary traffic signals on FM 423 at FM 720, Hillcrest at Eldorado, and Coit at Eldorado.

  A significant part of traffic signal maintenance relates to the 338 video cameras used to detect vehicles at each signal. Currently, 100% of the video detection is fully operational. Maintaining this video detection is very efficient due to the citywide communication system because diagnosing and troubleshooting detection issues can be performed from our central control center.

  This month City crews programmed and set in place our electronic message boards to help direct traffic for Brad Paisley, Chunk your Junk event, National Night Out and to assist with the traffic flow the first week of school at Purefoy Elementary School. . Battery backup systems are currently being installed in four water towers that communicate with our traffic signals and video cameras to ensure they will provide communication to our equipment in case of a power loss.

  Beyond responding to items that need to be constructed or repaired, city crews perform regular preventative maintenance on traffic signal equipment each month. This includes testing of each traffic signal's video detection cameras, "conflict monitor" equipment, and Opticom equipment (which provides emergency vehicle preemption of the traffic signal).

  City crews also operate and maintain 118 school zone flashers and two pedestrian crossing flashers. This month crews verified the operation of all school zone flashers before school started.

- **Roadway Lighting Maintenance** – In general, city crews operate and maintain roadway lighting along major thoroughfares and the power companies operate and maintain the street lights within neighborhoods. City crews performed lighting repairs at several locations during the month, including replacing bulbs and replacing poles that were knocked down.

Total light poles maintained by City	2183
Total lamp fixtures maintained by City	3740
Proportion of City lighting currently operating	99%

- **Wayfinding Project** – This project will assist staff in meeting the needs of our citizens and visitors who attend events at both public and private operated destinations in Frisco. The first two phases of the project are complete and included input from the consultant, a stakeholder group, TxDOT, and NTTA. The proposed sign design package has been submitted to TxDOT and NTTA for their comment and approval. We expect to receive these comments by mid-September. The Public Art Board is in the process of requesting submittals from the artists who were shortlisted during the recent RFQ process. The selected artist will work with the wayfinding consultant to incorporate additional artistic elements and features into the sign design and entry markers. Phase 3 of the project will begin later this fall after artist selection is complete and all TxDOT and NTTA comments have been addressed. Phase 3 will produce the final design plans that can be used for bidding and will also include the development of guidelines for sign implementation throughout Frisco. It is expected that Phase 3 could be complete by early 2012. Phase 4, the installation of the signs, could then start by the middle of 2012 depending on the availability of funding.

AGENDA ITEM #9.

PARKS & RECREATION DEPARTMENT

CITY OF FRISCO

6726 WALNUT STREET
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Parks and Recreation Report: City Council Meeting of September 6, 2011

Hike and Bike Trail Projects

Chapel Creek Hike and Bike Trail Extension

Description – This project will provide for additional linkage of the existing trail to the east towards Preston Road, with the expansion of the subdivision.
Previous Status – While development activity in this area is likely to become more active in the near future, it has not reached a point where extension of the trail is a viable project. Staff will continue to monitor this to look for progress.
Current Status – Staff continues to keep the line of communication open with the developer of this subdivision in hopes that additional growth in the development will spur the development of the trail.

Cottonwood Trail – A-6

Description – This project provides for the development of a trail system that will run along Cottonwood Creek from North County Road to Frisco Street.
Previous Status – At the time of this report, contact with BNSF had not occurred to evaluate staff's response to the railroad's questions about the trail system and crossing of the railroad. We should be in a position to have that input by the September report.
Current Status – Staff is working with a park consultant to provide design and construction plans for this trail. This process should last approximately two months.

Hickory Street Trail

Description – This project provides a connection from Preston Road, westward along Hickory Street and connects to the Oakbrook Park site.
Previous Status – The agenda item for this project is scheduled to be placed on the August 1st meeting of the City Council. Should the Council be in favor of this, the project would likely begin within a 45-60 day period after contracts are executed, and construction forces in place.
Current Status – Contracts for the work are currently being completed and work is anticipated to begin within the next 30-45 days.

Latera Trail

Description – This project would provide a linkage from the existing hike and bike trail corridor, near the Dominion Development in the northeast quadrant of City, through the Latera Development and to Preston Road.
Previous Status – Unfortunately this development has not increased in activity enough to activate the construction of the trail through this area. Staff will continue to stay abreast of activity here.

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Current Status – Staff continues to keep abreast of the development of this area to see when a trail system can be further developed and connected.

Main Street – Off Street Trail
Description – This project will entail an off street trail between the Dallas North Tollway (DNT) westward to FM 423.
Previous Status – Staff is working with the various utility providers to ensure that there will not be a conflict with the location of the trail in relation to any of these utllities. Staff will continue through this process over the next 2-3 months.
Current Status – Utility work is currently scheduled to take place during October and November of this year. Once the utilities are completed, trail construction will take place.

United States Corps of Engineers 1135 Project
Description – This project provides for the development of a soft trail system providing a connection from B.F. Phillips Community Park westward to FM 423 and Lake Lewisville.
Previous Status – The planning group working with the Corps of Engineers continues to move forward with their efforts for the project. Staff continues to work to obtain whatever additional property that might be needed for the trail project.
Current Status – The Corps of Engineers continue to work on the planning efforts for this project with their consultant. This work will continue to occur over the next several months.

Wade Boulevard – Off Street Trail
Description – This project will entail an off street trail in sections along Wade Boulevard, between Ohio and Preston Road.
Previous Status – Staff is hopeful that we can set up a meeting with the property owner to clear up any points or issues that can lead to obtaining the easement between now and the next monthly update.
Current Status – Staff continues to work with the property owner to gain the easements needed to move forward with the construction of the trail system. Hopefully, this will occur within the next 1-2 months.

Facilities and Capital Projects Highlights

Senior Center at Frisco Square

Current Status –

- In July, the facility had a total of 4,671 visits; which is a 2% decrease compared to the same period last year.

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- In July, total members equaled 1,949; which is a 2% decrease compared to the same period last year.

Frisco Athletic Center

Current Status –

Monthly Totals for July	**FY11**	**+/- from FY10**
Membership Visits	83,084	+5.1%
Total Members	17,864	+4.9%
Total Revenue	$403,065	+21.1%
Membership Revenue	$311,183	+15.5%
Program Revenue	$91,882	+44.9%
Total Expense	$403,375	-3.6%
Membership Expense	$305,350	+2.8%
Program Expense	$98,025	-19.4%
Year-To-Date Totals	**FY11**	**+/- from FY10**
Membership Visits	523,148	+2.4%
Total Revenue	$3,200,047	+6.8%
Membership Revenue	$2,330,485	+5.8%
Program Revenue	$869,562	+9.5%
Total Expense	$2,553,143	-2.8%
Membership Expense	$1,878,347	-3.9%
Program Expense	$674,796	+0.6%

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Ongoing Maintenance of Maturing Areas of the City

Reinvestment to current park assets

Bi-Centennial Park

Description – The renovation of this park site will occur in a couple of phases over the next couple of years. The initial phase of work entailed the construction and installation of a water spray ground that opened in the summer of 2009. The next phase of work will include additional parking for the spray ground, as well as other amenities, such as landscaping, seating areas and possible pavilions for this area.
Previous Status – Staff is working to develop an agreement with a parks consultant to design and produce construction plans on seating and shade elements for the spray ground. Attendance at this spray park, as well as the other two spray grounds at J.R. Newman and at Shepherd's Glen Parks, have been very high this summer.
Current Status – The park consultant is currently working on design and construction plans for additional components for the spray ground area. This would include shade structures and seating areas not currently available adjacent to the spray park.

Oakbrook Park

Description – The scope of this project entails the replacement of the playground system at Oakbrook Park that has been in place for over ten years. Typically, the replacement cycle for a playground system is approximately ten years. That stems from use as well as updated standards that require new updated equipment. Included in the project along with the installation of a new play system will be the replacement of surface material, sidewalk access to the parking area as well as sidewalk access to the existing pedestrian bridge there at the park.
Previous Status – Staff is currently evaluating pricing estimates for the playground system that would replace the current system in place. Additionally, staff is looking at additional picnic tables and pads at the site along with bollard replacement.
Current Status – Council approved the purchase of the playground equipment in August, with delivery and installation of the system likely to occur within the next 2-3 months. Additionally, staff is working in-house on the design and plans for additional sidewalk trails, picnic area improvement and additional security lighting at the park. .

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Park Development

Neighborhood Parks Currently under Development

There are no Neighborhood Parks that are currently planned for this fiscal year.

Neighborhood Parks being Master Planned

Pearson Park Site

Description – Located along and east of Teel Parkway, south of Main Street, this neighborhood park site was acquired in 2010. At the regular meeting of the Parks and Recreation Board in February, the Board recommended that the master planning of this park be funded for 2011.
Previous Status – Since the last monthly report, staff and the parks consultant had a chance to sit down with Mr. Pearson to discuss potential concepts that can lead to the ultimate development of the park site. This meeting went well and another is likely to occur within the next month to gain additional input.
Current Status – Staff is working on hosting a public meeting to discuss the master planning of the park with the residents that live near the park. Selection of a date should occur within the next week with the meeting likely to occur in late September or October.

Community Park Construction

Community Parks being Master Planned

No Community Parks are currently scheduled to be master planned in FY'11

Grand Park

Previous Status – The meeting that took place on June 27th was well attended and representatives from Jacobs and MIG received great input from the subcommittee on the proposed Kids Place area for the Grand Park. MIG will take this input and then further develop the concept plan for the playground element before meeting with the committee. Staff will work with the consultant to make plans for the group to meet again.
Current Status – Staff is working with the playground and park consultants to select a time in which the sub-committee can meet again on the project. Selection of this date should occur during the next 2-3 weeks.

Cottonwood Linear Park

Description – Located along Cottonwood Creek, primarily from Legacy Parkway westward to Teel Parkway, this is a partnership project between the developer of Shaddock Creek Estates and the City in an effort to provide development and to transfer ownership of the property to the City.

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Previous Status – Staff is working with a park consultant to develop an agreement to provide design, construction plans and to work with the Corps of Engineers for what would eventually be the development of this park site. Staff would then hope to finalize an agreement with the developer on the project's timing and funding.
Current Status – Staff is preparing a contract with a park consultant to develop design and construction plans for the park's development. Once completed and reviewed by the City Attorney's Office, staff will be placing this on the agenda for Council's review within the next month.

Special Parks and Facilities

Description – Development of a dog park facility at B.F. Phillips Community Park
Previous Status – The park contractor continues to stay on point with the project and continues to try and stay on time for the project. Based on this, I believe that the overall project should be concluded at the end of summer, as scheduled.
Current Status – Development of the dog park remains on schedule by the contractor. The installation of the irrigation system at the park just recently occurred, and the placement of sod in the small and large dog areas took place in late August, as well as the construction of the two pavilions.

Description – Development of a disc golf course facility.
Previous Status – Extreme summer temperatures in June and July have led to slower progress in the use of volunteers at the site. Staff met with leadership from the Leadership Frisco class to discuss continuing progress over the next 3-4 months. The group has been very successful in gaining volunteer sponsorships of the eighteen holes of the course. This accounts for not only some financial contributions for the course, but also volunteer service from these sponsorships.
Current Status – Members of the Leadership Frisco Class, along with Park Division Staff, have continued clearing work for the disc golf course in late August, despite extremely warm days. It is hoped that this clearing work can be concluded over the next 45-60 days. After that time, staff will be publically bidding the installation and placement of tee box locations and baskets for all of the holes.

Special Events

Recently completed events:

Dive-In Movie – On Friday, July 29, 2011, "How to Train Your Dragon" played on the big screen at the Frisco Athletic Center to a sellout crowd. The second Dive-In Movie of the summer season was a great hit and fun was had by all!

Upcoming Events:

PARKS & RECREATION
DEPARTMENT

CITY OF FRISCO

6726 WALNUT STREET
FRISCO, TEXAS 75034
TEL 972.292.6500 · FAX 972.335.4091
WWW.FRISCOFUN.ORG

Mother Son Dance – The 10th annual Mother Son Dance is quickly approaching and will be held on Saturday, October 8th at Wakeland High School. This year's theme will be "Twistin' the Night Away." Two dances will be held that evening for boys ages 4-7 and 8-12. Music with a great DJ and line dances and games will delight the audience. Light refreshments will be served. Tickets are currently on sale for $12.00 for residents and $15.00 for non-residents. This year's event is expected to have approximately 1,000 in attendance.

Celebrate Fitness and Fun – The second annual Fitness and Fun event will take place at the Frisco Athletic Center on Saturday, October 15th. Among this year's activities would include having a classic car show, sponsored by the Morning Maniacs Car Club, with proceeds benefitting the construction of the Veteran's Walk of Honor at Frisco Commons Park. Other activities will include an instructor and program showcase, health fair, blood drive and the Pumpkin Splash. More than 2,500 were in attendance in 2010 and we anticipate another great crowd for this year's event. Come join us at the FAC as we help celebrate our Member Appreciation Week. There is no charge for the event.

AGENDA ITEM #10.

July 2011 - Library Report on Usage and Programming Activities

Statistics - July 2011

	July 2011	July 2010	% Change		Year - To - Date FY2011	Year - To - Date FY2010	% Change	
Total In-Library Transactions	**210,187**	190,355	10%		**1,450,675**	1,403,916	3%	
Total Circulation	**144,516**	133,245	8%		**1,032,802**	981,832	5%	
In-House Use	**22,623**	21,545	5%		**177,118**	172,531	3%	
New Cardholders	**1,781**	1,782	0%		**11,586**	11,503	1%	
Reference Questions	**23,953**	14,109	70%		**121,487**	102,631	18%	
Onsite Computer Users	**7,175**	12,308	-42%		**57,884**	86,494	-33%	
Program Attendance	**9,739**	6,983	39%		**46,221**	45,879	1%	
Interlibrary Loan	**400**	383	4%		**3577**	2,981	20%	
Total E-Branch Transactions	**51,492**	31,664	63%		**409,713**	344,916	19%	
E-Branch Transactions Per Capita	**0.42**	0.29	45%		**0.36**	0.32	13%	
E-Branch Transactions Per FTE	**1,256**	772	63%		**1,055**	859	23%	
Database Searches	**13,327**	4,874	173%		**123,040**	68,376	80%	
Library Website Sessions	**33,368**	24,130	38%		**250,883**	260,468	-4%	
Downloadables Circulation	**4,788**	2,638	82%		**34,908**	15,179	130%	
Downloadables Circ. As % of Total Circ.	**3.3%**	2.0%	67%		**3.4%**	1.5%	120%	
Online Homework Help	**9**	22	-59%		**882**	893	-1%	
Total Cardholders	**80,196**	74,388	8%		**80,196**	74,388	8%	
Patron Visits	**66,047**	65,045	2%		**482,392**	483,238	0%	
Library Assets - Collection	**174,803**	166,620	5%		**174,803**	166,620	5%	
Library Volunteer Hours	**1289**	1409	-9%		**4,068**	4,394	-7%	
Benchmarked Statistics								**[1]Benchmark Group**
Total In-Library Transactions Per Capita	**1.72**				**1.24**			**0.92**
Total In-Library Transactions Per FTE	**5,127**				**3,726**			**2,123**
Collection Size Per Capita	**1.43**				**1.43**			**1.98**
Square Feet Per Capita	**0.41**				**0.41**			**0.52**
Patron Visits Per Capita	**0.60**				**0.42**			**0.36**
Patron Visits Per FTE	**1,738**				**1,253**			**834**

[1] Benchmark group is Plano, Allen, McKinney, Carrollton, and Richardson. Data source is the Texas State Library & Archives Commission.

This report reflects updated population figures from the 2010 census.

July 2011 - Library Report on Usage and Programming Activities								
	July 2011	July 2010	% Change		Year - To - Date FY2011	Year - To - Date FY2010	% Change	
Total Heritage Museum Visitors	**657**	724	-9%		**7,019**	8,979	-22%	
Total Paid Visitors	**657**	665	-1%		**6,236**	8,692	-28%	
School Study Trip Visitors	**45**	104	-57%		**3,388**	4,240	-20%	
Regular Visitors	**612**	561	9%		**2,848**	4,452	-36%	
Promotional Ticket visitors	**0**	59	-100%		**126**	287	-56%	

Library Report on Programming and Usage Activities - Narrative
July 2011

1) Analysis of Statistical Report

Significant variations or changes in the July report:

- July 2011 set our all-time library record for circulation in the month of July at 144,516, which made it the second-highest month on record, exceeded only by June 2011.
- Several usage measures continue to trend strongly: reference questions handled, the number of onsite computer users, downloads circulation, and the number of database searches used by patrons.
    - Reference questions are up 18% year-to-date which is attributable in some part to a more accurate method of capture of statistics;
    - The number of onsite computer users continues to fall off from last year's levels due to the increasing prevalence of patrons using their own wireless devices, connecting to the guest Wi-Fi network. This is reinforced by the increasing rate of wireless bandwidth usage being recorded;
    - Downloadable eBooks and eAudiobooks continue to grow at over 100% gains for the year to date;
    - Large gains in database searches are traceable to high levels of patron use of genealogy and small business resources.
- The library continues to deliver productivity measures well in excess of the benchmark group of libraries, which reflect updated ratios based on new information available from the Texas State Library.

2) Upcoming Library Events

- The Fall 2011 children's programming schedule resumes September 6th and Adult computer classes start again on September 7th with the first offering of a class on Facebook.
- If you are between the ages of 14-18 and love to put prose on paper, Frisco Public Library has a new program for you -- The Teen Writers Series. Teens interested in writing as a career or just for fun can chat with published authors, explore different careers in writing and share their prose with fellow teen writers. The Teen Writers Series will take place once a month, September through December, on Saturdays from 3:00 to 4:30 p.m. The program will be held at Frisco Public Library, 6101 Frisco Square Blvd., McCallum Room, 4th floor. Teens must be between the ages of 14 and 18 to attend. Space is limited. First come, first served.

Inspiring Intellect, Curiosity, and Imagination

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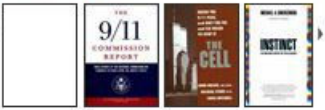


- Support Your Library
- Storytelling Festival
- Story Times
- E-Reader Tutorials
- Connect With Us

Noteworthy Books



Remembering 9/11



Upcoming Events

Library Closed
09/03/2011 (All day)
Library Closed
09/04/2011 (All day)
Library Closed
09/05/2011 (All day)
Toddler Time
09/06/2011 - 10:15am
Toddler Time
09/06/2011 - 11:00am

Recent Blog Posts

We've Got Class! (8 of them, actually)
I know that a lot of you have been patiently waiting, counting the days until our computer classes start again. Today,...

Behind the Scenes
No story times this month? Here's a peek "back stage" at our planning for the fall it was a successful summer with...

Something Censored This Way Comes
Although it's felt like it for well over a month now, the temperature outside is not actually 451 degrees Fahrenheit....

Back to School with Pete the Cat
If your little ones are a fan of Pete the Cat: I Love My White Shoes by Eric Litwin, they are sure to love Pete the...

Contact Us

972-292-5669
6101 Frisco Square Blvd.
Frisco, Tx 75034
askus@friscolibrary.com

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AGENDA ITEM #11.

REGULAR CITY COUNCIL MEETING
FRISCO CITY HALL
GEORGE A. PUREFOY MUNICIPAL CENTER
COUNCIL CHAMBERS
6101 FRISCO SQUARE BLVD.
FRISCO, TEXAS 75034

5:30 PM

TUESDAY, AUGUST 16, 2011

MINUTES

Mayor	Maher Maso	Present
Mayor Pro Tem	Pat Fallon	Present
Deputy Mayor Pro Tem	Scott Johnson	Present
Council Member	John Keating	Present
Council Member	Tim Nelson	Present
Council Member	Bob Allen	Present
Council Member	Jeff Cheney	Present

CALL TO ORDER

Mayor Maso called the meeting to order at 5:35 p.m. and announced a quorum was present. Pat Fallon arrived at 5:36 p.m.

1. ROLL CALL

Representing Staff were: City Manager, George Purefoy; Deputy City Manager, Henry Hill; Assistant City Manager, Nell Lange; Assistant City Manager, Ron Patterson; City Attorney, Rebecca Brewer; City Secretary, Jenny Page; Assistant's to the City Manager Ben Brezina, John Eaglen and Daniel Ford; CVB Director, Marla Roe; Development Services Director, John Lettelleir; Fire Chief, Mack Borchardt; Police Chief, Todd Renshaw; Finance Director, Anita Cothran, Administrative Services Director, Tom Johnston; Public Works Director, Gary Hartwell; Code Enforcement Administrator, Greg Carr; Chief Building Official, Steve Covington; Zoning and Subdivision Administrator, John Webb; and Senior Planner, Michael Walker.

CLOSED SESSION

2. Recess into Closed Session in compliance with Section 551.001 et. seq. Texas Government Code, to wit;

Pat Fallon arrived as Mayor Maso asked for a motion to recess.

Scott Johnson moved to recess into Closed Session in compliance with Section 551.001 et. seq. Texas Government Code, to wit; at 5:36 p.m. and to include the Supplemental Agenda Item. Pat Fallon seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

A. Section 551.071. Meeting with City Attorney regarding a matter(s) in which the duty of the City Attorney under the Texas Disciplinary rules of Professional Conduct of the State Bar of Texas conflicts with the Open Meetings Act regarding:

i. Receive legal advice regarding housing concerns raised by Inclusive Communities Project.
ii. Receive legal advice from City Attorney concerning legal issues regarding Exide and lead issues.
iii. Receive legal advice regarding Frisco's involvement in the Arts of Collin County and other legal issues related thereto.
iv. Receive legal advice regarding Cause No. 2008-30252-211; Sequoia Stonebriar Leaseco, L.L.C. and Sequoia Stonebriar, L.P., Plaintiffs/Counter-Defendants vs. Broadstone Stonebriar II, L.P., Defendant/Counter-Plaintiff and Third-Party Plaintiff vs. Sequoia Stonebriar 1, L.P., et al., Third-Party Defendants/City of Frisco, Intervenor; Pending in the 211th Judicial District Court, Denton County, Texas.
v. Receive legal advice regarding the Sports Facility Lease Agreement dated January 24, 2008, by and between the City of Frisco, Texas (Lessor) and Sports Village Operating I, LLC (Lessee).

B. Section 551.072. To deliberate the purchase, exchange, lease or value of real property located:

i. South of US 380, North of The Colony city limits and North of 121, East of FM 423, and West of Preston Rd.

C. Section 551.087. Deliberation regarding commercial or financial information that the City has received from a business prospect and to deliberate the offer or other incentives to a business prospect.

SUPPLEMENTAL CLOSED SESSION

A. Section 551.074. Personnel Matters: Section 551.074 authorizes certain deliberations about officers and employees of the governmental body to be held in executive session:
   i. Deliberation of the City Manager's Evaluation.

3. Reconvene into Regular Session and take any action necessary as a result of the Closed Session.

Pat Fallon moved to reconvene into Regular Session at 6:48 p.m. Tim Nelson seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

Mayor Maso announced that as a result of Closed Session, there was no action to take.

INVOCATION

Dr. Jon Lineberger, Dallas Baptist University led the invocation.

PLEDGE OF ALLEGIANCE

Eagle Scout Ryley Matos led the audience in the United States and Texas Pledge of Allegiances.

PROCLAMATIONS

4. Ryley Matos -- Eagle Scout

Mayor Maso presented a proclamation to Eagle Scout Ryley Matos and proclaimed August 16, 2011 as Ryley Matos Day.

REPORTS

5. Battle of the Badges Trophy Presentation.

Sponsored by the Frisco Rotary Club, representative Carl Stuckey stated that Carter Blood Center reported that 140 units of blood were collected. Over the

past four years, Frisco has donated enough blood to save 2000 people. This year's winner was the Frisco Fire Department with 86 votes and the Police Department with 59 votes.

6. Police Department's report on crime statistics and response times for the months of June and July 2011.

   Police Chief, Todd Renshaw, presented the June and July 2011 report on crime statistics and response times and reported on the National Night Out event and Safety Palooza.

7. Development Services June and July 2011 Reports on Building Inspection, Code Enforcement, Animal Control, Development, and Training Activities.

   Development Services Director John Lettelleir presented the Development Services June and July 2011 Reports on Building Inspection, Code Enforcement, Animal Control, Development and Training activities.

8. Public Works Report on Water Usage and Other Monthly Activities

   Public Works Director Gary Hartwell presented the Public Works Monthly Report for Water Usage and other Monthly Activities. Due to the dry weather, Mr. Hartwell commented on asphalt concrete buckling and stated the City has moved to mandatory Phase 2 water restrictions.

9. Fire Department Monthly Report on Incident Response and Educational Activities, June 2011 and July 2011.

   Fire Chief, Mack Borchardt, presented the June and July 2011 Monthly Reports on Incident Response and Educational Activities and encouraged everyone to be careful when grilling outside because of the extremely dry weather, and to sign up for Citizen's Fire Academy.

   Mayor Maso wished Chief Borchardt a Happy Birthday.

10. Financial Services Budget Status Report for July 2011

    Finance Director Anita Cothran reported on the Financial Budget Status Report for July 2011 and reported on the July Sales Tax. Ms. Cothran also reported that the Finance Department had won the Texas Comptroller Leadership Circle Gold Member Award on financial transparency and told everyone were they could find the information online.

11. July Monthly CVB report on definite business, projected economic impact and in-kind media results.

CVB Executive Director Marla Roe reported on definite business, economic impact, in kind media.

CITIZEN INPUT (to begin approximately at 7:30 p.m.)

Lynn Bergman, 11487 Las Polamas Drive, Frisco, Texas, and representing the Frisco Aquatics organization that practices at the fitness center at Craig Ranch, spoke in favor of a partnership with the City to build a new pool facility to accommodate their growing organization.

CONSENT AGENDA

(Items placed on the Consent Agenda are considered routine in nature and are considered non-controversial. The Consent Agenda can be acted upon in one motion. A majority of the Council is required to remove any item for discussion and separate action. Council members may vote nay on any single item without comment and may submit written comments as part of the official record.)

Pat Fallon moved to pull Item 13 from the Consent Agenda. Jeff Cheney seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

Jeff Cheney moved to approve the Consent Agenda Items 12, 14 - 24 and Supplemental Agenda Item 3. John Keating seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

Pat Fallon thanked Robin Glackin for his service to the City of Frisco and the CVB board and moved to approve Item 13. John Keating seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

12. Consider and act on minutes from the August 1, 2011 regular City Council Meeting. (CSO/JP)

13. Consider and act upon the acceptance of Robin Glackin's resignation from the

Convention Visitors Bureau Board -Downtown/Frisco Square position. (CSO/JP)

14. Consider and act upon approval of **Ordinance 11-08-30** accepting the negotiated resolution between Atmos Cities Steering Committee and Atmos Energy Corp, Mid-Tex Division, regarding the Atmos Energy Corp., Mid-Tex Division, Fourth Annual Rate Review Mechanism Filing. (CMO/BB)

15. Consider and Act Upon a Professional Contract Between the City of Frisco, Texas and the Frisco Independent School District for Services Related to a School Resource Officer Program and Authorize the City Manager or His Designee to Execute the Contract. (Police/TR)

16. Consider and act upon adoption of **Resolution 11-08-143R** authorizing the City Manager to execute Amendment Number One to the Professional Services Agreement by and between the City of Frisco and Kimley-Horn and Associates, Inc., for design and preparation of construction documents for Legacy Elevated Water Tank. (Engineering/AH)

17. Consider and act upon approving **Resolution 11-08-144R** authorizing the City Manager to execute an agreement by and between the City of Frisco and Brockette, Davis, Drake, Inc. (BDD), for a limited structural review at Beaver's Bend Trail Extension for retaining wall repair. (P&R/JED)

18. Consider and act upon **Resolution 11-08-145R** authorizing the City Manager to execute an agreement with PlayWell Group, Inc. for renovations and improvements of site furnishings and playground structures at Oakbrook Neighborhood Park. (P&R/JED)

19. Consider and act upon **Resolution 11-08-146R** authorizing the City Manager to execute an agreement by and between Studio 13 Design Group, LLC for landscape architecture and engineering services for trail improvements in and along Preston Road, between John Wesley Drive south to Wade Boulevard. (P&R/DR)

20. Consider and act upon award of Bid #1107-055, annual contract for automotive paint and body services to Luckey's Collision Center. (Fleet/TJ)

21. Consider and act upon approval of a purchase order to Professional Turf Products for the purchase of one (1) Toro flex wing mower. (Parks/TJ)

22. Consider and act upon approval of a purchase order to Kubota Tractor Corporation for the purchase of three (3) zero turn riding mowers. (Parks/TJ)

23. Consider and act on the adoption of **Resolution 11-08-147R** authorizing the City Manager to submit documents to the Texas Comptroller's Office Trust Fund for the reimbursement of state tax revenue acquired from two events. (CVB/MR)

24. Consider and act upon whether to direct staff to submit a written notice of appeal on behalf of the City Council to Development Services, pursuant to Subsection 6.19 of the Zoning Ordinance and/or Section 4.02 of the Subdivision Ordinance, regarding action taken by the Planning and Zoning Commission on any site plan or plat. Any written notice of appeal must be submitted to Development Services. (Development Services)

SUPLEMENTAL CONSENT AGENDA ITEM

3. Consider and act upon approval of **Resolution 11-08-151R** authorizing the City Manager to execute an Impact Fee Agreement with Retail Buildings, Inc. and Braum's, Inc. (CMO/RP)

LEGISLATIVE AGENDA

25. Consider and act upon adoption of an Ordinance to rezone 58.2± acres on the southwest corner of Lebanon Road and Rock Creek Parkway from Commercial-1 and Planned Development-189-Multifamily-15 to Patio Home. Zoned Commercial-1 and Planned Development-189-Multifamily-15. Neighborhood #36. Z11-0011 (Development Services/JE)

Jeff Cheney moved to approve adoption of **Ordinance 11-08-31** to rezone 58.2± acres on the southwest corner of Lebanon Road and Rock Creek Parkway from Commercial-1 and Planned Development-189-Multifamily-15 to Patio Home. Zoned Commercial-1 and Planned Development-189-Multifamily-15. Neighborhood #36. Z11-0011. Bob Allen seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

REGULAR AGENDA

26. Public Hearing: Z11-0010. A request to rezone 35.6± acres on the northwest and northeast corners of Teel Parkway and Lebanon Road from Retail to Patio Home, and consider and act to direct staff to prepare an ordinance of the same. Zoned Retail. Neighborhood #38 & 39. (Development Services/RC)

John Lettelleir reported that the applicant, Lebanon Development 180 JV, was requesting to rezone 35.6± acres from Retail to Patio Home. The proposed zoning request complies with the criteria set forth in the Comprehensive Plan for rezoning. The Planning & Zoning Commission held a public hearing on the zoning request at their July 26, 2011 meeting and voted 5-0 to approve the

request. Mr. Lettelleir recommended approval.

Bob Allen moved to open the public hearing. Scott Johnson seconded.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

Scott Harris, 4265 Kellway Circle, Addison, Texas, and representing the developer, was available to answer questions.

No one wished to speak.

Scott Johnson moved to close the public hearing. Bob Allen seconded.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

Bob Allen moved to approve public hearing: Z11-0010. A request to rezone 35.6± acres on the northwest and northeast corners of Teel Parkway and Lebanon Road from Retail to Patio Home, and consider and act to direct staff to prepare an ordinance of the same. Zoned Retail. Neighborhood #38 & 39. Pat Fallon seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

27. A request to amend Planned Development-219 to incorporate additional property (currently zoned Commercial-1) and establish development standards to allow a convenience store with fuel pumps and consider and act to direct staff to prepare an Ordinance of the same. The property contains 13.8± acres on the northwest corner of Main Street and Preston Road. Zoned: Planned Development-219-Mixed Use and Commercial-1. Neighborhood #11. (Development Services/MW)

John Lettelleir reported that the applicant is requesting to amend the Planned Development to incorporate additional property currently zoned Commercial-1 and amend the development standards to allow a convenience store with fuel pumps (QuikTrip) which is currently not a permitted use. Mr. Lettelleir asked for removal from the table from the August 1, 2011 Council meeting.

Jeff Cheney moved to remove Item 27 from the table. Scott Johnson seconded. Passed

Vote: 6 – 0

For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;

Against: (None)

Mr. Lettelleir stated this Item required a super majority vote of 5 votes for approval since the Planning & Zoning Commission did not recommend approval with a tie vote, which is a denial.

Mr. Lettelleir explained the history of the project and said that he had met with the applicant and an agreement was reached in regard to trees and landscaping. Additionally, there was discussion about the number of gas pumps and canopy height.

Mayor Maso asked to hear from the speakers.

Jim Beilman, 1120 Industrial Blvd., Euless, Texas representing Quik Trip, asked for additional time and spoke in favor of the project.

Joe Faust, 1120 Industrial Blvd., Euless, Texas, Director of Real Estate for Quik Trip, did not speak but was in favor of the project.

Jake Petras, 1120 Industrial Blvd., Euless, Texas, Project Manager for Quik Trip, was available to answer questions.

Tommy Mann, 5400 Renaissance Tower, 1201 Elm St., Dallas, Texas, and representing Brinkman Corporation, said that the appeal to the Council did not happen within 14 days as required and may not be appropriately presented before Council tonight.

Tony Krauska, 4215 McEwen, Dallas, Texas, representing Brinkman Corporation, spoke in opposition.

Tom Vogt, 8300 Preston Trace Blvd, Frisco, Texas, partner with Quik Trip, spoke in favor.

David Bechtold, 11303 Harbor Road, Frisco, Texas, spoke in favor.

Michael Soria, 9401 Homestead Lane, Frisco, Texas, spoke in favor.

Jim Gandy, FEDC, 6801 Gaylord Parkway, Suite 400, Frisco, Texas, spoke in favor.

Kris Martin, 3213 Buckthorn, Argyle, Texas, did not wish to speak, but was in favor.

Truitt Priddy, 2120 Stuttgart, Frisco, Texas, did not wish to speak, but was in favor.

Jesse Pruitt, 5 Post-N-Paddock, Frisco, Texas, did not wish to speak, but was in favor.

Gordon Long, 12330 Folsom Drive, Frisco, Texas, spoke in favor.

Mike Deck, 5952 Dunsford Drive, Frisco, Texas, spoke in favor.

Baxter Brinkman, FM 3537, Frisco, Texas, spoke in opposition.

Ryan Hildebrandt, 5549 Imperial Meadow Drive, Frisco, Texas, spoke in favor.

Kirk Williams, 5500 Renaissance Tower, 1201 Elm Street, Dallas, Texas, spoke in opposition to the procedural aspect of the project and asked for review of the appeal process.

Steve South, 9255 Preston Road, Frisco, Texas, and owner of the School of Music and neighbor to the current Valero, spoke in favor.

Andrew Martin, 11305 Deep Canyon Trail, Frisco, Texas, spoke in favor.

Ann Harris, Frisco, Texas, spoke in opposition.

Christine Obenburger, did not wish to speak, but was in favor.

Blake Martin, one of the owners of the Valero station currently on site, spoke in favor and answered questions from Council.

Will Russell, 2428 Merrimack Drive, Frisco, Texas, spoke in opposition.

City Attorney Rebecca Brewer addressed comments by Mr. Mann in regard to accusations that the appeal process was not handled properly. Ms. Brewer stated that she did not see any violation of Section 6.19.13 and there was no reason why the item could not be acted upon tonight.

John Keating made a motion to table Item 27 until the next meeting. Pat Fallon seconded the motion.

After discussion, John Keating asked to withdraw his motion to table before the vote was taken to consult with the City Attorney and Pat Fallon withdrew his second.

John Keating moved to recess into Closed Session in compliance with Section 551.071, Texas Government Code, to consult with the City Attorney on Item 27, at 9:35 p.m. Pat Fallon seconded the motion.
Passed
Vote: 6 – 0

For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

John Keating moved to reconvene into Regular Session at 9:49 p.m. Pat Fallon seconded the motion.

Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

Mayor Maso announced that as a result of Closed Session, there was no action to take.

Tim Nelson moved to approve a request to amend Planned Development-219 to incorporate additional property (currently zoned Commercial-1) and establish development standards to allow a convenience store with fuel pumps and consider and act to direct staff to prepare an Ordinance of the same. The property contains 13.8± acres on the northwest corner of Main Street and Preston Road. Zoned: Planned Development-219-Mixed Use and Commercial-1. Neighborhood #11. John Keating seconded the motion.

Failed because a supermajority vote (5 votes) was necessary to approve this request since the Planning and Zoning Commission did not approve.
Vote: 4 – 2
For: Pat Fallon, John Keating, Tim Nelson, Jeff Cheney;
Against: Scott Johnson, Bob Allen

28. Consider and act upon adoption of a Resolution authorizing the City Manager to execute an Impact Fee Settlement Agreement by and between the City of Frisco and multiple developers for the property formally known as the Lone Star Ranch and the subject of the subject Impact Fee Agreement (Lone Star Ranch) dated December 7, 1999 and amended March 1, 2000. (CMO\RP)

Ron Patterson presented Items 28 and 29 together and explained that the proposed resolution would repeal previous agreements and amendments with Lone Star Ranch and correct several issues that have developed over the span of the original agreement from 1999 to present. With the division and sale of property over the years, impact fee credits have become increasingly difficult to keep up with and manage. This resolution and agreement will clarify the process. (Item 29 discussion and action below)

Scott Norris, 4265 Kellway Circle, Addison, Texas, representing the developer for Lone Star Ranch, was in favor of the project and available for questions.

Bob Allen moved to approve **Resolution 11-08-148R** subject to the 5 recommendations from staff, authorizing the City Manager to execute an Impact Fee Settlement Agreement by and between the City of Frisco and multiple developers for the property formally known as the Lone Star Ranch and the subject of the subject Impact Fee Agreement (Lone Star Ranch) dated

December 7, 1999 and amended March 1, 2000.

Staff recommendations:
1. inserting the final list of Developer entity names in the preamble to the Agreement; and
2. inserting the proper date paragraph 4.a.; and
3. inserting the proper Resolution number in paragraph 17.(e); and
4. inserting the final Developer signature blocks and notaries based on the entities inserted into the agreement preamble; and
5. finalizing any changes to the exhibits based on the above items

Scott Johnson seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

29. Consider and act upon adoption of a Resolution granting authority to the City Manager, or his designee, to release property from agreements with the City of Frisco, Texas; providing repealing, savings and severability clauses; and providing for the effective date hereof. (CMO\RP)

As developers under this agreement use or transfer property, they must file those records with the County. This becomes a burden on the property when trying to clear the title. When the credits are completed, the City Manager must release the impact fees. This process can be used for other projects as well and allows expediting the process without bringing back to Council.

Bob Allen moved to approve adoption of **Resolution 11-08-149R** granting authority to the City Manager, or his designee, to release property from agreements with the City of Frisco, Texas; providing repealing, savings and severability clauses; and providing for the effective date hereof. Pat Fallon seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

30. Consider and give staff direction on establishing a voluntary pet license/registration program. (Development Services/GC)

Code Enforcement Administrator Greg Carr reported that a mandatory pet registration program was presented to Council on October 5, 2010. Council took no action at that time. It was suggested that a voluntary program would be

supported. It was also suggested that implementing impound fees for animals transported to the Collin County Animal Shelter would also be supported. Mr. Car recommended approval and asked for direction to move forward.

Jerry Rose, 1860 Rio Blanco Drive, Frisco, Texas spoke in favor and suggested a discount for pets that are spayed or neutered, and/or micro chipped.

After discussion, Council asked Mr. Carr to bring back more information to the next meeting.

31. Consider calling a public hearing on amending the Zoning Ordinance regarding Mobile Vendors. (Development Services/GC)

Mr. Carr applauded Dewayne Crenshaw aka Coach Slim, The Snowcone Man, for his willingness to work with the staff and Council but recommended any changes to the ordinance could allow other vendors that were not as professional as Mr. Crenshaw to cause issues.

Tony Felker, President/CEO of the Frisco Chamber of Commerce, 6824 Main Street, Frisco, Texas, commented that the Chamber has not taken a formal stance on the issue. Mr. Felker stated that he was there to provide input from business owners who wanted mobile vendors, but did not want changes to the Ordinance.

Steve Covington, Chief Building Official, commented that the difference in a mobile vendor permit would be long term, and the Farmers Market type permit, would be a one-time temporary permit.

Mr. Crenshaw addressed Council and asked for the flexibility to move his business where he is asked to come. He commented that a mobile vendor was one that moved from place to place, and in order to make a living he asked Council to reconsider.

After discussion and consulting with the City Attorney, Council advised Mr. Crenshaw that staff would work with him to find another location, but in the meantime, he will be allowed to work until 10:00 p.m. until September 10, 2011, unabated.

32. Consider and act upon approval of the Settlement Agreement and Agreed Final Judgment in Cause No. 2008-30252-211 in the case styled *Sequoia Stonebriar Leaseco, LLC and Sequoia Stonebriar, LP, Plaintiffs v. Broadstone Stonebriar II, LP, Defendant and City of Frisco, Texas, Intervenor, et al.* pending in the 431st District Court of Denton County, Texas and to authorize the City Manager to execute all documents necessary to effectuate the settlement. (**Tabled 8/1/2011**)(CMO/RA)

City Manager George Purefoy explained that the settlement was for a portion of attorney fees in the amount of $40,000 and to affirm the city's easement. The lawsuit was originally between two apartment complexes, but the city became involved when one of the developments poured concrete into the city's sewer line.

Pat Fallon moved to remove Item 32 from the table. John Keating seconded.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

Bob Allen moved to approve the Settlement Agreement and Agreed Final Judgment in Cause No. 2008-30252-211 in the case styled Sequoia Stonebriar Leaseco, LLC and Sequoia Stonebriar, LP, Plaintiffs v. Broadstone Stonebriar II, LP, Defendant and City of Frisco, Texas, Intervenor, et al. pending in the 431st District Court of Denton County, Texas and to authorize the City Manager to execute all documents necessary to effectuate the settlement. (Tabled 8/1/2011) Scott Johnson seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

33. Public Hearing: First hearing on the City of Frisco Fiscal Year 2012 Proposed Annual Budget, including the Frisco Economic Development Corporation Fiscal Year 2012 Proposed Annual Budget and the Frisco Community Development Corporation Fiscal Year 2012 Proposed Annual Budget. (CMO/NL)

Assistant City Manager Nell Lange presented the FY 2012 Proposed Annual Budget with a PowerPoint presentation. The presentation will be available on the City's web site.

Bob Allen moved to open the public hearing. John Keating seconded.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

No one wished to speak.

Bob Allen moved to close the public hearing. Tim Nelson seconded.

Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

After discussion, Council directed staff to explore ways to remain at the Effective Tax Rate and cut approximately $407,000 from the Proposed Budget allowing the City Manager to make the decisions were those cuts need to occur.

Scott Johnson moved to approve Public Hearing: First hearing on the City of Frisco Fiscal Year 2012 Proposed Annual Budget with an Effective Tax Rate of $0.461910, including the Frisco Economic Development Corporation Fiscal Year 2012 Proposed Annual Budget and the Frisco Community Development Corporation Fiscal Year 2012 Proposed Annual Budget. Pat Fallon seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

34. Consider and act upon approval of the Certification of Anticipated Collection Rate and Excess Collections from the Collin County Tax Assessor Collector. (CMO/NL)

Ms. Lange presented the Letter of Certification of Anticipated Collection Rate from the County Tax Assessor Collector and asked for approval.

Bob Allen moved to approve the Certification of Anticipated Collection Rate and Excess Collections from the Collin County Tax Assessor Collector. John Keating seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

35. Consider and approve the Effective Tax Rate Calculation for the Fiscal Year 2012. (CMO/NL)

Ms. Lange presented the Effective Tax Rate Calculation and asked for approval.

Scott Johnson moved to approve the Effective Tax Rate Calculation of $0.461910 and the Roll Back Rate of $0.479247 for the Fiscal Year 2012. Bob

Allen seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

36. Consider and act upon Proposed Tax Rate and Recording and Taking Individual Vote. (CMO/NL)

No action necessary.

37. Consider and act upon a Resolution calling for a Public Hearing on the City of Frisco Proposed Fiscal Year 2012 Tax Rate. (CMO/NL)

No action necessary.

38. Consider and act on the appointment of Convention and Visitor's Bureau Board Member. (CSO/JP)

Mayor Maso asked Council to take no action on Item 38. It is a requirement of the Boards and Commission Policy to place an item on the same Agenda for a replacement appointment when there is action to accept a resignation. Board appointments will occur in September. No action taken.

39. Discuss options in regard to Senate Bill 100 (MOVE Act). (CSO/JP)

City Secretary Jenny Page explained that SB 100 was enacted so that Texas may comply with the Federal MOVE Act and its requirements that counties mail ballots to military and overseas voters at least 45 days before Election Day in federal elections. Under SB 100, the primary election remains on the first Tuesday in March, but the primary runoff election moves to the 4th Tuesday in May; while the uniform election date for local political subdivisions remains on the 2nd Saturday in May. The early voting for the primary runoff begins the Monday after the city and school elections allowing only one day for the Elections Administrator to re-program voting equipment. The bill provides that the Elections Administrator can refuse contract services to cities and schools in even numbered years leaving cities and schools in a quandary over how to manage elections.

Ms. Page provided a presentation on Senate Bill 100 and provided five (5) options that were available to the City of Frisco as a result of passage of the bill. Ms. Page recommended Option 4 or 5.

The options were:

1. Move to November Elections and contract with Collin and Denton Counties.
2. Purchase voting equipment and run our own elections in May.
3. Hold a May election every other (odd numbered) year, change to 2 or 4 year terms, and allow Collin and Denton Counties to contract our elections.
4. Contract entirely with Denton County without FISD and stay with 3 year terms.
5. Contract with both Collin and Denton Counties to hold a Joint Election with FISD and stay with 3 year terms.

Ms. Page stated that Frisco is hosting a meeting with all entities that are located in both counties to meet with Denton County Elections Administrator Frank Phillips and his staff to discuss options of contracting with Denton County since we will have to contract some portion of our election with them. Ms. Page stated a meeting is planned with FISD and Denton County to discuss a joint ballot.

40. Consider and act on approval of a Resolution repealing Resolutions 11-06-123R, 10-04-118R, 08-08-102R, and 04-04-187R, representing the Boards and Commissions Policy. (CSO/JP)

Ms. Page explained that Boards and Commissions were originally created by ordinance but the Policy governing all Boards and Commissions was created by resolution and then codified into the Code of Ordinances. Resolutions are not usually codified in the Code of Ordinances and unless earmarked, amendments can be missed and not codified. Over the years amendments were made to the Resolution but were not updated in the Code. Ms. Page asked for approval of the resolution repealing the original resolution and amendments, followed by approval of Item 41 which will provide an ordinance to clean up the codification process.

Bob Allen moved to approve **Resolution 11-08-150R** repealing Resolutions 11-06-123R, 10-04-118R, 08-08-102R, and 04-04-187R, representing the Boards and Commissions Policy. John Keating seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

41. Consider and act on approval of an Ordinance amending Division I (Generally) of Article III (Authorities, Boards and Commission) of Chapter 2 (Administration) of the Frisco Code of Ordinances. (CSO/JP)

Ms. Page asked for approval of the Ordinance to amend the Boards and Commissions section of the Code of Ordinances to include changes to the Meet and Greet interview process as recommended by the Governance Committee

earlier today, which would need to be specified in the motion to approve the ordinance.

Mayor Maso updated the Council on the discussions of the Governance Committee and stated that the recommendation was to do away with the Meet and Greet and have a Nominating Meeting where Councilmembers will nominate candidates to be interviewed for each board. Council can contact candidates individually if they desire and chose not to interview incumbents if Council is satisfied with their service. Incumbents, if considered, will still need to be voted on for reappointment.

Pat Fallon moved to approve **Ordinance 11-08-32** amending Division I (Generally) of Article III (Authorities, Boards and Commission) of Chapter 2 (Administration) of the Frisco Code of Ordinances and specifying that the Meet and Greet will be replaced with, "Council will hold a nominating meeting to select applicants to be interviewed". John Keating seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

42. Consider and discuss the dates for the Boards and Commissions Meet and Greet Reception, dates to conduct interviews, and the process of selecting applicants to interview for the various Boards and Commissions positions. (CSO/JP)

Scott Johnson asked that the policy be amended again to broaden the timeline for appointments so that setting dates for interviews would not be so restrictive.

Scott Johnson moved to approve the dates August 31, 2011, 2 p.m., for the Nomination Meeting, September 6, 2011, 3:00 p.m. and September 7, 2011, 1:00 p.m., to conduct interviews, and the process of selecting applicants to interview for the various Boards and Commissions positions as recommended by the Governance Committee. Pat Fallon seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

43. Discussion Concerning Council Representation on Area Boards. (MM)

Due to the late hour, Mayor Maso asked that no action be taken on Item 43 and that it be postponed until another meeting.

John Keating moved to recess into Closed Session in compliance with Sections 551.071, 551.072, 551.087, and 551.074, Texas Government Code, at 1:34 a.m., to finish business from the first Closed Session. Tim Nelson seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

John Keating moved to reconvene into Regular Session at 2:00 a.m. Jeff Cheney seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

Mayor Maso announced that as a result of Closed Session, there was no action to take.

44. City Council discussion with City Staff concerning any actions required by City Staff as a result of any item on tonight's agenda.

- Budget cut recommendations
- Assist Mr. Crenshaw with finding a new location
- Schedule Boards and Commissions meetings and interviews
- Pet licensing information

45. Discussion on Governance Monitoring of present City Council Meeting.

John Keating gave the Council a B.

ADJOURN

There being no additional business, Jeff Cheney made motion to adjourn at 2:03 a.m. Tim Nelson seconded the motion.
Passed
Vote: 6 – 0
For: Pat Fallon, Scott Johnson, John Keating, Tim Nelson, Bob Allen, Jeff Cheney;
Against: (None)

(Please note these are preliminary meeting minutes and are not official until approved by

the City Council at the next scheduled meeting. Approved/signed minutes are available at http://sire.friscotexas.gov/sirepub/docs.aspx .)

_____
Maher Maso, Mayor

ATTEST:

_____
Jenny Page, City Secretary

REGULAR CITY COUNCIL MEETING
FRISCO CITY HALL
GEORGE A. PUREFOY MUNICIPAL CENTER
COUNCIL CHAMBERS
6101 FRISCO SQUARE BLVD.
FRISCO, TEXAS 75034

5:30 PM

TUESDAY, AUGUST 16, 2011

SUPPLEMENTAL MINUTES

This meeting was posted as a Supplemental Agenda to the Regular City Council Meeting Agenda posted for the same date, August 16, 2011, at 5:30 p.m. All action will be recorded on the Regular Agenda. For further assistance or information, please contact the Office of the City Secretary.

CALL TO ORDER

CLOSED SESSION

1. Recess into Closed Session in compliance with Section 551.001 et. seq. Texas Government Code, to wit;

   A. Section 551.074. Personnel Matters: Section 551.074 authorizes certain deliberations about officers and employees of the governmental body to be held in executive session:

      i. Deliberation of the City Manager's Evaluation.

2. Reconvene into Regular Session and take any action necessary as a result of the Closed Session.

CONSENT AGENDA

(Items placed on the Consent Agenda are considered routine in nature and are considered non-controversial. The Consent Agenda can be acted upon in one motion. A majority of the Council is required to remove any item for discussion and separate action. Council members may vote nay on any single item without comment and may

submit written comments as part of the official record.)

3. Consider and act upon approval of a Resolution authorizing the City Manager to execute an Impact Fee Agreement with Retail Buildings, Inc. and Braum's, Inc.. (CMO/RP)

ADJOURN

(Please note these are preliminary meeting minutes and are not official until approved by the City Council at the next scheduled meeting. Approved/signed minutes are available at http://sire.friscotexas.gov/sirepub/docs.aspx .)

_____
Maher Maso, Mayor

ATTEST:

_____
Jenny Page, City Secretary

AGENDA ITEM #12.

PROGRESS IN MOTION

City Manager's Office
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Cc: **George A. Purefoy, City Manager**

From: **Nell Lange, Assistant City Manager**

Date: **September 1, 2011**

Agenda Caption: Consider and ratify the approval of the Amendatory Contract Between the City of Frisco and the North Texas Municipal Water District for the Stewart Creek Regional Wastewater System and Approve a Resolution Authorizing the Mayor to Execute the Contract.

Action Requested: City Council approved this amendatory contract at the regular meeting on July 1, 2011. However there was no resolution attached and the North Texas Municipal Water District (NTMWD) requires a resolution to complete the process.

Background Information: We have attached the original memo, the amendatory contract and a resolution for review. This action will ratify your previous actions and correct a clerical error.

Supporting Documents: Original memo, Amendatory Contract, Resolution, and Certification of vote on resolution.

Staff Recommendation: Staff recommends approval.

PROGRESS IN MOTION

City Manager's Office
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Cc: **George A. Purefoy, City Manager**

From: **Nell Lange, Assistant City Manager**

Date: **6/3/2011**

Agenda Caption: Consider and Act Upon an Amendatory Contract Between the City of Frisco and the North Texas Municipal Water District for the Stewart Creek Regional Wastewater System and Authorize the City Manager to Execute the Contract.

Action Requested: City Council consideration of an amendatory contract between the City of Frisco and the North Texas Municipal Water District (NTMWD) for the continued operation of the Stewart Creek Regional Wastewater System (System).

Background Information: The City of Frisco (City) and the City of The Colony (The Colony) entered into an agreement in 1998 with the NTMWD to operate the System. The Colony and the City each were required to pay their pro-rata share of the cost of operations based on their proportionate share of the system. The Colony never actually delivered any flow to the plant. The Colony stopped paying the NTMWD their portion of the annual operations and filed suit against the City and the NTMWD. A settlement agreement was reached and finalized in February 2010. The Colony relinquished their right to participate in the System and paid the City of Frisco a settlement amount of $1,001,208. The City agreed to pay The Colony's share of the annual operations going forward as we needed the capacity for our growth.

The NTMWD has outstanding contract revenue bonds for the system. In order for the NTMWD to issue additional bonds or to refinance any of the outstanding bonds without causing The Colony to have any future liability for repayment of the bonds, the City has been asked to approve the amendatory contract. The original contract will be terminated and the amendatory contract states that Frisco will be responsible for the debt service on any refunded bonds.

Board Review/Citizen Input: The City received a request from the NTMWD to bring this amendatory contract forward for Council approval.

Alternatives: The City could choose to not move forward at this time.

Financial Considerations: The City will have no additional obligations from this amendatory contract unless there is a need to issue additional debt for the System.

Legal Review: This contract was written by the NTMWD counsel and has been reviewed and approved by Randy Hullett from Abernathy, Roeder, Boyd and Joplin.

Supporting Documents: Amendatory Contract, Resolution.

Staff Recommendation: Staff recommends approval of the amendatory contract.

CITY OF FRISCO, TEXAS RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS APPROVING THE AMENDATORY CONTRACT BETWEEN THE CITY OF FRISCO, TEXAS AND THE NORTH TEXAS MUNICIPAL WATER DISTRICT FOR THE STEWART CREEK REGIONAL WASTEWATER SYSTEM AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Frisco finds it in the best interest of the citizens of Frisco that the Amendatory Contract between the City and the North Texas Municipal Water District for the Stewart Creek Regional Wastewater System be approved; and

WHEREAS, City of Frisco agrees to provide funding for the maintenance and operations and debt service requirements of the Stewart Creek Regional Wastewater System as required in the amendatory contract; and

WHEREAS, The City of Frisco City Council hereby designates the Mayor as the authorized official to execute the contract.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, COLLIN COUNTY, TEXAS THAT:

The City of Frisco City Council approves the amendatory contract between the City of Frisco and the North Texas Municipal Water District for the Stewart Creek Regional Wastewater System a copy of which is attached hereto and incorporated herein for all purposes.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, COLLIN COUNTY, TEXAS ON THIS THE _____ DAY OF _____ 2011.

_____
Maher Maso, Mayor

ATTEST:

_____
Jenny Page, City Secretary

CERTIFICATE OF RESOLUTION

THE STATE OF TEXAS :
COUNTIES OF COLLIN AND DENTON :
CITY OF FRISCO :

We, the undersigned officers of the City of Frisco, Texas, hereby certify as follows that:

l. The City Council of the City of Frisco convened in REGULAR MEETING ON THE _____ DAY OF _____, 2011, at the City Hall, and the roll was called of the duly constituted officers and members of said City Council, to-wit:

Maher Maso, Mayor	John Keating
Jeff Cheney, Mayor Pro Tem	Tim Nelson
Bob Allen	Scott Johnson
Pat Fallon	

and all of said persons were present, except the following absentees: _____, thus constituting a quorum. Whereupon, among other business, the following was transacted at said Meeting: a written

RESOLUTION AUTHORIZING AND DIRECTING THE EXECUTION OF THE "STEWART CREEK WEST REGIONAL WASTEWATER SYSTEM AMENDATORY CONTRACT" WITH NORTH TEXAS MUNICIPAL WATER DISTRICT, AND PROVIDING FOR THE EFFECT OF SAID RESOLUTION AND CONTRACT

was duly introduced for the consideration of said City Council and duly read. It was then duly moved and seconded that said Resolution be adopted and passed; and, after due discussion, said motion, carrying with it the adoption and passage of said Resolution, prevailed and carried by the following record vote:

AYES: All members of said City Council shown present above voted "Aye"; except _____.

NOES: _____.

2. A true, full, and correct copy of the aforesaid Resolution adopted and passed at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; that said Resolution has been duly recorded in said City Council's minutes of said Meeting; that the above and foregoing paragraph is a true, full, and correct excerpt from said City Council's minutes of said Meeting pertaining to the adoption and passage of said Resolution; that the persons named in the above and foregoing paragraph are the duly chosen, qualified, and acting officers and members of said City Council as indicated therein; and that each of the officers and members of said City Council was duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of the aforesaid Meeting, and that said Resolution would be introduced and

considered for adoption and passage at said Meeting; and that said Meeting was open to the public, and public notice of the time, place, and purpose of said Meeting was given, all as required by Chapter 551, Texas Government Code.

3. The Mayor of said City of Frisco has approved, and hereby approves, the aforesaid Resolution; that the Mayor and the City Secretary of said City have duly signed and authenticated said Resolution; and that the Mayor and the City Secretary of said City hereby declare that their signing of this Certificate shall constitute the signing and authentication of the attached and following copy of said Resolution for all purposes.

SIGNED AND SEALED the ____ day of _____, 2011.

_____ _____

City Secretary Mayor

(CITY SEAL)

THE STATE OF TEXAS :
COUNTIES OF COLLIN, DALLAS, KAUFMAN, AND ROCKWALL :
NORTH TEXAS MUNICIPAL WATER DISTRICT :

STEWART CREEK WEST
REGIONAL WASTEWATER SYSTEM
AMENDATORY CONTRACT

RECITALS

WHEREAS, North Texas Municipal Water District (the "District") is a conservation and reclamation district created and functioning under Article 16, Section 59 of the Texas Constitution, pursuant to Chapter 62, Acts of the 52nd Legislature of the State of Texas, Regular Session, 1951, as amended, (the "District Act"), with the authority to provide and develop a Regional System for Wastewater Treatment in the general area of portions of the Trinity River lying in Collin and Denton Counties;

WHEREAS, capitalized terms used in these Recitals and not defined in these Recitals, shall have the meanings given to them in Section 1.01 hereof;

WHEREAS, The City of The Colony ("The Colony"), a home rule municipality located in Denton County, Texas and the City of Frisco ("Frisco"), a home rule municipality located in Collin and Denton Counties, Texas have entered into a "Stewart Creek West Regional Wastewater System Contract," dated as of May 28, 1998 (the "Original Contract"), with the District;

WHEREAS, pursuant to the Original Contract, the District has issued its "North Texas Municipal Water District Stewart Creek Wastewater System Contract Revenue Bonds, Series 2004" (the "Outstanding Bonds");

WHEREAS, pursuant to the Original Contract, the District has acquired and improved the System for the purpose of providing facilities to receive, transport, treat, and dispose of Wastewater from The Colony and Frisco;

WHEREAS, under the Original Contract each of The Colony and Frisco is obligated to pay its respective proportionate share of the Annual Requirement (as defined in the Original Contract), which proportionate shares are based upon each Participant’s minimum "contributing flow to the System";

WHEREAS, The Colony has never actually delivered any Wastewater flow to the System;

WHEREAS, The Colony sued Frisco and the District for various causes of action arising out of the Original Contract;

WHEREAS, in settlement of all of such causes of action, The Colony, Frisco, and the District executed a Settlement Agreement, dated February 25, 2010 (the "Settlement Agreement");

WHEREAS, pursuant to the Settlement Agreement, The Colony and Frisco executed a Relinquishment Agreement, dated February 16, 2010 (the "Relinquishment Agreement") pursuant to which Frisco agreed to make certain payments to the District on behalf of the Colony in return for The Colony's agreement to relinquish its right to Wastewater service under the Original Contract;

WHEREAS, the District and Frisco desire to improve and expand the System and, subject to the provisions of this Contract with respect to Additional Participants, Frisco is willing to pay the Bond Service Component for Bonds issued to provide funds for such improvement and expansion;

WHEREAS, in order to provide that The Colony shall have no liability for Bonds issued to provide funds for such improvement and expansion of the System, Bonds issued to refinance the Outstanding Bonds, or Bonds issued in the future for either of such purposes, it is necessary for the District and Frisco to enter into this Contract;

WHEREAS, the Original Contract provides that the Original Contract remains in force until all bonds, including refunding bonds, in either case issued under the Original Contract, have been paid in full, and remains in force thereafter throughout the useful life of the System;

WHEREAS, Frisco and the District are willing to terminate the Original Contract and enter into this Amendatory Contract;

WHEREAS, subject to the provisions of this Contract with respect to Additional Participants, Frisco is willing to pay all amounts necessary to pay the Bond Service Component for Bonds issued to refinance the Outstanding Bonds;

WHEREAS, the parties hereto are entering into this contract in order to control water pollution, and protect, improve, and enhance the water quality of the Trinity River and the water supplies impounded therein; and

WHEREAS, the District and Frisco are authorized to make and enter into this Contract under the District Act, Chapter 30, Texas Water Code, as amended (the "Water Code"), and other applicable laws;

WHEREAS, the parties hereto recognize these facts:

(a) That the District will use the payments to be received under this Contract and similar contracts, if any, for the payment of the principal of, redemption premium, if any, and interest on its Bonds, and to establish and maintain debt service reserves and other funds if and as provided in any Bond Resolution and, after the Original Contract Termination Date, for the payment of Operation and Maintenance Expense of the System; and that the revenues under this Contract will be pledged to such purposes; and

(b) That contracts similar to this instrument may be executed between the District and subsequent Additional Participants; and

(c) That the District will issue Bonds from time to time in the future to acquire, construct, extend, enlarge, improve, and/or repair the System.

NOW, THEREFORE, the District and Frisco hereby contract and agree as follows:

ARTICLE I

DEFINITIONS

Section l.01. DEFINITION OF TERMS. In addition to the definitions stated in the preamble hereof, the terms and expressions as hereinafter used in this contract, unless the context clearly shows otherwise, shall have the following meanings:

(a) "Additional Participants" means any city or cities in addition to Frisco with which the District makes a contract for receiving, transporting, treating, and/or disposing of Wastewater through the System.

(b) "Adjusted Annual Payment" means the Annual Payment, as adjusted in accordance with Section 5.03 of this Contract during or after each Fiscal Year.

(c) "Annual Payment" means the amount of money estimated as provided in Section 5.03 of this Contract to be paid to the District by Participants as their proportionate share of the Annual Requirement.

(d) "Annual Requirement" means the total amount of money required for the District to pay all Operation and Maintenance Expense of the System and to pay the principal of, and redemption premium, if any, and interest on its Bonds, including all charges and expenses of the paying agents and registrars for its Bonds, and to pay any amounts required to be deposited in any special or reserve funds, including a debt service reserve fund and a repair and replacement fund, as required to be established and/or maintained by the provisions of any Bond Resolution.

(e) "Bond Resolution" means any resolution of the Board of Directors of the District authorizing the issuance of Bonds and providing for their security and payment, as such resolution(s) may be amended from time to time as therein permitted.

(f) "Bonds" means any bonds, notes, or other obligations to be issued by the District pursuant to this Contract for the acquisition, construction, enlargement, improvement, extension, repair, or replacement of the System or any part thereof, or for the refunding of any or all bonds, notes, or other obligations of the District issued for any of such purposes, or for the refunding of any or all refunding bonds, notes, or other obligations, whether in one or several issues.

(g) "Contingency Fund" means the fund by that name established in Section 5.03(g) hereof.

(h) "Contract", or "this contract", means this Stewart Creek West Regional Wastewater System Amendatory Contract, between Frisco and the District and all similar contracts, if any, executed between the District and Additional Participants.

(i) "District's System", "Regional System", "Regional Wastewater System", or "System" means all of the District's facilities acquired, constructed, used, or operated by the District for receiving, transporting, treating, and disposing of Wastewater of and for Participants, pursuant to the Original Contract and this Contract (but excluding any facilities acquired or constructed with Special Facilities Bonds, and excluding any facilities required to transport Wastewater to any Point of Entry of the District's System), together with any improvements, enlargements, or additions to said System facilities and any extensions, repairs, or replacements of said System facilities acquired, constructed, used, operated, or otherwise incorporated into or made a part of said System facilities in the future by the District. Said terms shall include only those facilities which are acquired, constructed, used, or operated by the District to provide service to Participants pursuant to this Contract, and which, as determined by the District, can economically and efficiently provide service to Participants. Said terms do not include any District facilities which provide Wastewater services of any kind to cities, political subdivisions, or persons which are not Participants, nor do they in any way include or affect the District's water supply system.

(j) "Engineering Report" means the report on a Proposed Regional Wastewater System for the Cities of Frisco and The Colony, Denton and Collin Counties, Texas, Dated February, 1997, by Hunter Associates, Texas, Ltd., Consulting Engineers, Dallas, Texas, as such Report has been or may be supplemented or amended.

(k) "Fiscal Year" means the twelve (12) month period beginning each October l and ending the following September 30, or such other twelve (12) month period as may be established in the future to constitute the District's Fiscal Year.

(l) "Local Wastewater Facilities" means the waste collection and treatment facilities owned and operated by the Participants.

(m) "Operation and Maintenance Expense" means all costs of operation and maintenance of the District's System including, but not limited to, repairs and replacements for which no special fund is created in a Bond Resolution, the cost of utilities, supervision, engineering, accounting, auditing, legal services, insurance premiums, and any other supplies, services, administrative costs, and equipment necessary for proper operation and maintenance of the District's System, any payments required to be made hereunder into the Contingency Fund, payments made for the use of operation of any property, payments of fines, and payments made by the District in satisfaction of judgments or other liabilities resulting from claims not covered by the District's insurance or not paid by one particular Participant arising in connection with the operation and maintenance of the District's System. Depreciation shall not be considered an item of Operation and Maintenance Expense.

(n) "Original Contract Termination Date" means the date of termination of the Original Contract as specified in writing to the District by The Colony at any time after the effective date of this Contract.

(o) "Participants" means Frisco and all Additional Participants.

(p) "Participant" means any of the Participants.

(q) "Point of Entry" means any point at which Wastewater enters the property on which any Wastewater treatment plant operated by the District is located, as shown on Exhibit A hereto, and such additional point or points, if any, agreed upon by the District and a Participant in the future.

(r) "Special Facilities Bonds", means revenue obligations of the District which are not secured by or payable from Annual Payments under this Contract, but which are payable solely from other sources; but Special Facilities Bonds may be made payable from payments from any person, including any Participant, under a separate contract whereunder the facilities to be acquired or constructed are declared not to be part of the System and are not made payable from the Annual Payments as defined in this Contract.

(s) "Wastewater" means Sewage, Industrial Waste, Municipal Waste, Recreational Waste, and Agricultural Waste, as defined in the Code, together with properly shredded garbage, and such infiltration water that may be present.

ARTICLE II

PROVIDING AND OPERATION AND MAINTENANCE OF FACILITIES BY THE DISTRICT

Section 2.01. FACILITIES. In order to provide services for receiving, transporting, treating, and disposing of Wastewater for Participants, the District will use its best efforts to design, acquire, construct, and complete the System, as generally described in the Engineering Report with respect to Frisco, and as generally described in appropriate additional engineering reports hereafter to be obtained with respect to any Participant or Additional Participant, and will from time to time enlarge, improve, repair, replace, and/or extend the System to provide service to the Participants. The District shall obtain and hold in its name all required discharge permits from the appropriate Federal and State agencies, and each Participant shall assist the District in obtaining same. The District shall provide the System in such manner as it determines is necessary for providing adequate, efficient, and economical service to Participants, and shall have the right to provide single plants, multiplants, or combine two or more plants, and to use or discontinue the use of any facilities of the System as the District deems necessary.

Section 2.02. OPERATION AND MAINTENANCE. From and after the Original Contract Termination Date, the District shall manage, operate, and maintain the System in such manner as it determines is necessary for providing adequate and economical service to the Participants. The District covenants that it will operate and maintain the System in accordance with accepted good business and engineering practices.

ARTICLE III

DISCHARGE OF WASTEWATER AND METERING

Section 3.01. DISCHARGE. In consideration of the payments to be made under this Contract, Frisco shall have the right to discharge all of its Wastewater from its sewer system into the District's System, provided that such Wastewater meets the requirements for quantity and quality

as set forth in this Contract; and further provided that, as to Wastewater from areas not currently being served by the Plant, the District is able to obtain permits for the treatment and discharge of such quantity and quality of Wastewater and that discharge of such Wastewater to the System may be made only after notice by the District that it is ready to receive the same pursuant to this Contract.

Section 3.02. POINT OF ENTRY. Each Participant may discharge all such Wastewater generated from such Participant's Local Wastewater Facilities into the designated Point or Points of Entry for such Participant, unless such Participant and the District mutually agree that like service can be provided elsewhere in the System.

Section 3.03. CONVEYANCE TO POINT OF ENTRY. It shall be the sole responsibility of each Participant to transport, or cause to be transported, at no cost to the District or the other Participants, its Wastewater to its Point or Points of Entry.

Section 3.04. QUANTITY AT POINT OF ENTRY. (a) The quantity of Wastewater delivered by a Participant at the Point or Points of Entry shall be metered by the District and the total annual contributing flow of Wastewater received during any Fiscal Year shall be used to determine each Participant's Annual Payment and the Basic Charge for service as set forth in Article V.

(b) The maximum discharge rate is defined as a rate in million gallons per day (MGD), exceeded for a period of sixty minutes, which, if continued over a period of 24 hours, would be equal to 3.50 times the Participant's average daily flow during that Fiscal Year.

(c) Any Participant exceeding the maximum discharge rate shall have a surcharge applied to the next Fiscal Year's Annual Payment equal to l% of the Annual Payment in that Fiscal Year for each l/10th that the ratio of the maximum discharge to the average daily flow exceeds 3.50.

Section 3.05. LIABILITY FOR DAMAGES AND RESPONSIBILITY FOR TREATMENT AND DISPOSAL OF WASTEWATER. Liability for damages arising from the reception, transportation, delivery, and disposal of all Wastewater discharged shall remain in each Participant to Points of Entry, and upon passing through the District's meters installed at Points of Entry, liability for such damages and title to such Wastewater shall pass to the District. As between the District and each Participant, each party agrees, to the full extent permitted by law, to indemnify and to save and hold the other party harmless from any and all claims, demands, causes of action, damages, losses, costs, fines, and expenses, including reasonable attorney's fees, which may arise or be asserted by anyone at any time on account of the reception, transportation, delivery, and disposal while Wastewater is in the control of such responsible party, or on account of a prohibited discharge by a Participant. The District has the responsibility as between the parties for the proper reception, treatment, and disposal of all Wastewater, but not for prohibited discharges passing through any Point of Entry. The District has the right as between the parties to reuse all Wastewater discharged through any Point of Entry.

Section 3.06. METERING. The District will furnish, install, operate and maintain at its own expense at each Point of Entry the necessary equipment and devices of standard type for measuring properly all Wastewater to be discharged into the System by Participants. Such meters and other

equipment shall remain the property of the District. Each Participant shall have access to such metering equipment at all reasonable times for inspection and examination, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of the District in the presence of a representative of the Participant if requested by such Participant. All readings of meters will be entered upon proper books of record maintained by the District. Upon written request the Participant may have access to said record books during reasonable business hours.

Not more than three times in each year of operation, the District shall calibrate its meters, if requested in writing by a Participant to do so, in the presence of a representative of such Participant, and the parties shall jointly observe any adjustments which are made to the meters in case any adjustment is found to be necessary.

If, for any reason, any meters are out of service or out of repair, or if, upon any test, the percentage of inaccuracy of any meter is found to be in excess of five (5%) per cent, registration thereof shall be corrected for a period of time extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (l/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of six (6) months.

Each Participant may, at its option and its own expense, install and operate a check meter to check each meter installed by the District, but the measurement for the purpose of this agreement shall be solely by the District's meters.

Section 3.07. UNIT OF MEASUREMENT. The unit of measurement for Wastewater delivered hereunder shall be 1,000 gallons, U. S. Standard Liquid Measure.

ARTICLE IV

QUALITY

Section 4.01. GENERAL. Each Participant agrees to limit discharge into the District's System to Wastewater that complies with quality requirements the District finds it necessary from time to time to establish in order to meet standards imposed by regulatory agencies having appropriate jurisdiction or to protect the water quality for water supply purposes. No discharge shall be made into the System which would cause the District to violate any permit granted, or any rule or regulation promulgated, by any State or Federal agency having jurisdiction over the District. Each Participant specifically covenants that it will enact and enforce procedures which will prohibit or prevent customers of its sewer system from making any discharge which would cause such Participant to violate the provisions of this contract or any applicable State or Federal permit, law, rule, or regulation. To enable the highest degree of treatment in the most economical manner possible, certain solids, liquids, and gases have been and are hereby prohibited from entering the System, either absolutely or in excess of established standards, and the prohibited discharges will be listed and furnished to all Participants, with a minimum of sixty days of notice before the effective date thereof.

Section 4.02. NORMAL QUALITY. To determine normal quality of Wastewater, the District will collect twenty-four (24) hour composite samples of Wastewater at each Point of Entry and cause same to be analyzed in accordance with testing procedures as set forth in the latest edition of Standard Methods of Examination of Water and Wastewater, published by American Public Health Association, Inc. Composite samples will normally be taken once a month, or at more frequent intervals if necessary to determine Wastewater quality. Such Wastewater shall not exceed the limits of concentration specified for Normal Wastewater as follows:

Normal Wastewater Concentration

BOD	275 mg/l
SS	300 mg/l
pH	not less than 6 nor greater than 9
Hydrogen Sulfide	0.l mg/l

Should the analysis disclose concentrations higher than those listed, the District will at once inform the Participant of such disqualification. With approval of the District, Wastewater with concentrations of BOD and SS greater than normal may be discharged into System with the payment of a surcharge, which shall be in addition to the basic charge as outlined in Article V of this contract, and this surcharge shall be sufficient to cover and pay for the additional cost of treatment.

ARTICLE V

PAYMENTS

Section 5.01. FINANCING. The District will issue its Bonds, in amounts and at times as determined by the District, to provide the System.

Section 5.02. ANNUAL REQUIREMENT. It is acknowledged and agreed that payments to be made under this Contract will be the only source available to the District to provide the Annual Requirement; and that the District has a statutory duty to establish and from time to time to revise the charges for services to be rendered and made available to Participants hereunder so that the Annual Requirement shall at all times be not less than an amount sufficient to pay or provide for the payment of:

(a) An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expense; and

(b) A "Bond Service Component" equal to:

(l) the principal of, redemption premium, if any, and interest on, its Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds if permitted by any Bond Resolution; and

(2) during each Fiscal Year, the proportionate part of any special or reserve funds required to be established and/or maintained by the provisions of any Bond Resolution; and

(3) an amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of any Bond Resolution; and

(4) the charges of paying agents and registrars for paying principal of, redemption premium, if any, and interest on, all Bonds, and for registering and transferring Bonds.

Section 5.03. PAYMENTS BY PARTICIPANTS. (a) For services to be rendered to each Participant by the District under this Contract and other similar contracts, if any, each Participant agrees to pay, at the time and in the manner hereinafter provided, its proportionate share of the Annual Requirement, which shall be determined as hereafter described and shall constitute a Participant's Annual Payment or Adjusted Annual Payment. For each Fiscal Year each Participant's proportionate share of the Annual Requirement shall, subject to the subsequent provisions hereof, be a percentage obtained by dividing such Participant's estimated contributing flow to the System by the total estimated contributing flow to the System by all Participants during such Fiscal Year or portion thereof. The calculation of each Annual Payment as determined herein, and each Adjusted Annual Payment, shall be determined as provided in this Section. The terms "contributing flow to the System" and "contributing flow" as used in this Contract with respect to any Fiscal Year, shall mean the greater of (i) the actual metered contributing flow of a Participant or (ii) the minimum annual contributing flow for which a Participant has agreed to pay, which minimum annual contributing flow for Frisco is as follows:

Frisco	2.0 m.g.d.

Each Participant's Annual Payment shall be calculated by the District by multiplying such Participant's estimated percentage of the estimated total contributing flow times the Annual Requirement. Each Participant's Annual Payment shall be made to the District in monthly installments, on or before the twentieth (20th) day of each month, for its required part of the Annual Requirement for each Fiscal Year. Such payments shall be made in accordance with a schedule of payments for each Fiscal Year which will be supplied to each Participant. At the close of the Fiscal Year, the District shall redetermine each Participant's percentage by dividing each Participant's contributing flow to the System by the total contributing flow of all Participants. Each Participant's Adjusted Annual Payment shall be calculated by multiplying each Participant's redetermined percentage times the Annual Requirement. The difference between the Adjusted Annual Payment and the Annual Payment, if any, when determined, shall be applied as a credit or a debit to each Participant's account with the District and shall be credited or debited to such Participant's next subsequent monthly payment or payments.

(b) If a Participant fails to pay its monthly charge on or before the twentieth (20th) day of any month, it shall incur and pay a penalty of fifteen percent of the amount due together with any legal or other costs incurred by the District in collecting the amount due. The District is authorized

to discontinue service to any Participant which fails to make any monthly payment, and which, after written notice, does not make such payment.

(c) If, during any Fiscal Year, the District begins providing services to an Additional Participant, each Participant's Annual Payment for such Fiscal Year shall be redetermined consistent with the provisions of this contract.

(d) Each Participant's Annual Payment also shall be adjusted and redetermined for the balance of any applicable Fiscal Year, consistent with the provisions of this contract, and initially based on estimated contributing flow, at any time during any Fiscal Year if:

(i) Additions, enlargements, repairs, extensions, or improvements to the System are placed in service by the District which require an increase and redetermination of the Annual Requirement; or

(ii) Unusual or extraordinary expenditures for operation and maintenance of the System are required which are not provided for in the Annual Budget or in a Bond Resolution; or

(iii) A Participant's contributing flow to the System, after the beginning of the Fiscal Year, is estimated to be substantially different from that on which Annual Payments are based as determined by the District, to the extent that such difference in flow will substantially affect such Participant's Budget, and consequently such Participant's Annual Payment to the District; or

(iv) The District issues additional Bonds, the payments in connection with which require an increase and redetermination of the Annual Requirement; or

(v) It appears to the District that for any other reason it will not receive the full amount of the Annual Requirement unless such adjustment and redetermination are made.

(e) The District shall give all Participants at least 21 days written notice prior to consideration by the Board of Directors of the District of making any Adjusted Annual Payment for any Participant during any Fiscal Year.

(f) The Annual Payment set forth in this section shall be considered the basic charge for service hereunder, and each Participant shall pay a surcharge for excess BOD and/or SS as provided in Section 4.02, and for excessive discharge in the manner set forth in Section 3.04(c). In the event any Participant is assessed a surcharge for excess BOD and/or SS, the District will bill such Participant for such surcharge on or before the tenth (10th) day of the month following the determination of the surcharge and such Participant shall pay such surcharge on or before the twentieth (20th) day of the month of receipt of any such bill. Any such surcharge collected by the District shall be applied by the District against the total cost of Operation and Maintenance Expense of the System.

(g) The District shall establish and maintain a separate fund entitled the "North Texas Municipal Water District - Stewart Creek West Regional Wastewater System Contingency Fund." The Contingency Fund shall be used solely for the purpose of paying unexpected or extraordinary Operation and Maintenance Expenses of the System for which funds are not otherwise available under this Contract. The Contingency Fund shall initially be funded, and any subsequent deficiency shall be restored, with amounts included as Operation and Maintenance Expenses in the Annual Budget, not to exceed $25,000 for any Fiscal Year, up to a maximum of $100,000. So long as the Contingency Fund contains money and investments not less than $100,000 in market value, any surplus in the Contingency Fund shall be applied and credited towards the payment of Operation and Maintenance Expenses.

(h) The facilities and services of the System to be provided to each Participant pursuant to this Contract are and will be essential and necessary to the operation of such Participant's combined waterworks and sanitary sewer system, and all payments to be made hereunder by each Participant will constitute reasonable and necessary "operating expenses" of such Participant's combined waterworks and sanitary sewer system, within the meaning of Section 30.030 of the Water Code and Section 1502.056, Texas Government Code, and the provisions of all ordinances authorizing the issuance of all waterworks and sanitary sewer system revenue bond issues of such Participant, with the effect that such Participant's obligation to make payments from its waterworks and sanitary sewer system revenues under this Contract shall have priority over its obligations to make payments of the principal of and interest on any and all of its waterworks and sanitary sewer system revenue bonds. Each Participant agrees to fix and collect such rates and charges for waterworks and sanitary sewer system services to be supplied by its waterworks and sanitary sewer system as will make possible the prompt payment of all expenses of operating and maintaining its entire waterworks and sanitary sewer system, including all payments, obligations, and indemnities contracted hereunder, and the prompt payment of the principal of and interest on its bonds payable from the net revenues of its waterworks and sanitary sewer system. The District shall never have the right to demand payment of the amounts due hereunder from funds raised or to be raised from taxation by a Participant. Each Participant's payments hereunder shall be made pursuant to the authority granted by Section 30.030 of the Water Code and Section 1502.056, Texas Government Code. Recognizing the fact that the Participants urgently require the facilities and services covered by this Contract, and that such facilities and services are necessary for actual use and for stand-by purposes; and further recognizing that the District will use the payments received from the Participants hereunder to pay, secure, and finance the issuance of its Bonds, it is hereby agreed that the Participants shall be obligated unconditionally, and without offset or counterclaim, to make the payments designated as the "Bond Service Component" of the Annual Requirement, in the manner provided in this Contract, regardless of whether or not the District actually provides such facilities and services, or whether or not any Participant actually receives or uses such facilities and services, and regardless of the validity or performance of the other parts of this or any other contract, and such "Bond Service Component" shall in all events be applied and used for providing debt service and other requirements of the Bonds, and the holders of the Bonds shall be entitled to rely on the foregoing agreement and representation, regardless of any other agreement between the District and the Participants. Each Participant further agree that it shall be obligated to make the payments designated as the "Operation and Maintenance Component" of the Annual Requirement as described in Section 5.02 of this Contract, so long as the District is willing and able to provide the facilities and services contemplated hereunder to any Participant.

(i) On or before August l of each year, the District will furnish each Participant with a tentative budget and an estimated schedule of monthly payments to be made by such Participant for the ensuing Fiscal Year. On July l of each year, the District shall be in a position to furnish any Participant an estimate of the Participants's annual requirement. On or before October l of each year, the District shall furnish such Participant with a finalized schedule of the monthly payments to be made by such Participant to the District for the ensuing Fiscal Year. Each Participant agrees that it will make such payments to the District on or before the twentieth (20th) day of each month of such Fiscal Year. If any Participant shall dispute the Annual Budget, and proceed as provided in Article VII, such Participant nevertheless promptly shall make the payment or payments determined by the District, and if it is subsequently determined by agreement that such disputed payments made by such Participant should have been less, the District shall promptly revise, reallocate, and readjust the charges among all Participants then being served by the District in such manner that such Participant will recover its overpayment.

(j) If any Participant's Annual Payment is redetermined as is herein provided, the District will promptly furnish such Participant with an updated schedule of monthly payments reflecting such redetermination.

(k) All interest income earned by the investment of any Funds created pursuant to any Bond Resolution shall be credited towards the payment of the Bond Service Component and taken into account in determining the Annual Requirement; except that as to any Acquisition or Construction Fund created from any Bond proceeds all interest income earned by the investment thereof may, at the option of the District, be credited to such Acquisition or Construction Fund and used for the System purposes for which the Bonds are issued, or be credited towards the payment of the Bond Service Component.

Section 5.04. USE OF OTHER REVENUES OF SYSTEM. (a) If the District receives any net income from the sale of treated Wastewater from the System prior to its discharge into a public stream of the State of Texas, the District will apply and credit said net income towards payments of Operation and Maintenance Expenses.

(b) Notwithstanding any other provisions of this Contract, the District may provide any excess available capacity or service of the System to any Person (as defined by the Water Code); provided that such service does not interfere with or impair the rights of any Participant under this Contract, and any such service shall in all events be subordinate and subject to such rights; and provided further that the District must charge for such service in amounts at least sufficient to pay all Operation and Maintenance Expense attributable thereto plus an amount which will produce an estimated reasonable allocation as determined by the District, plus an additional amount of not less than 20% of the foregoing to cover prior incurred costs, to be credited to the Bond Service Component of the Annual Requirement. The District is not authorized to issue Bonds, as defined in this Contract, to provide the services of the System to any persons other than Participants (including Additional Participants).

ARTICLE VI

GENERAL PROVISIONS

Section 6.01. FORCE MAJEURE. In case by reason of "Force Majeure" the District or any Participant shall be rendered unable wholly or in part to carry out its obligations under this agreement, then if such party shall give notice and full particulars of such "Force Majeure" in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such Force Majeure (with the exception of the obligation of each Participant to make the payments required in Section 5.03 of this Contract, which in all events shall be made as provided therein) shall be suspended during the continuance of the inability then claimed, but for no longer periods, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipe lines or canals, partial or entire failure of water supply, and inability on the part of a Participant to provide water necessary for operation of its water and Local Wastewater Facilities hereunder, or of the District to receive Wastewater on account of any other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

Section 6.02. INSURANCE. The District will carry insurance (including self-insurance) for such purposes and in such amounts as are determined by the District to be necessary or advisable.

Section 6.03. REGULATORY BODIES. This Contract shall be subject to all valid rules, regulations and laws applicable hereto passed or promulgated by the United States of America, the State of Texas, or any authorized representative or agency of any of them.

Section 6.04. EFFLUENT REUSE: (a) The District will make the effluent discharge from its Wastewater treatment plants available for any lawful and beneficial reuse purpose, and a charge shall be made to the customer receiving such effluent sufficient to cover any additional cost involved in providing the service, plus a reasonable portion of the cost of treating the Wastewater which produced such effluent; provided that such portion of the cost allocable to treatment shall not be required to exceed an amount which would, in the judgment of the District, render the use of such effluent by a customer economically infeasible.

(b) Notwithstanding the provisions of Section 3.05 and subsection 6.04(a), each Participant shall have the first right to use all effluent produced from its Wastewater for reuse solely for its own municipal purposes without any charge except for any additional costs to the District

necessary to provide the effluent for such municipal use; provided that no Participant shall sell such effluent or make it available to any other customer, and subject to the aforesaid first right of each Participant, the District shall have the right to use all such effluent for District purposes without any charge expect for additional costs necessary to provide the effluent for District purposes. In accordance with the provisions of Section 3.05, and notwithstanding the foregoing, to the extent that effluent produced by the District is discharged to watercourses of the State, the right of any Participant to reuse such effluent produced from its Wastewater is terminated, and the District shall have the right as between parties, and pursuant to any necessary authorization of the State, to reuse such discharged effluent.

Section 6.05. PUBLICATIONS, REFERENCE WORKS, GOVERNMENTAL REGULATIONS. In each instance herein where reference is made to a publication, reference work or Federal or State regulation, it is the intention of the parties that at any given time the then current edition of any such publication of reference work or Federal or State regulation shall apply. If a publication or reference work is discontinued or ceases to be the generally accepted work in its field or if conditions change or new methods or processes are implemented by the District, new standards shall be adopted which are in compliance with State and Federal laws and any valid rules and regulations issued pursuant thereto.

ARTICLE VII

FINANCIAL PROVISIONS

Section 7.01. DISTRICT ANNUAL BUDGET. (a) Not less than sixty (60) days before the commencement of each Fiscal Year while this Contract, is in effect, the District shall cause its tentative budget for operation and maintenance of the System for the ensuing Fiscal Year to be prepared and a copy thereof filed with each Participant. If no protest or request for a hearing on such tentative budget is presented to the District within thirty (30) days after such filing of the tentative budget by one or more Participants, the tentative budget for the System, when adopted by the District's Board of Directors, shall be considered for all purposes as the "Annual Budget" for the ensuing Fiscal Year. But if a protest or request for a hearing is duly filed, it shall be the duty of the District to fix the date and time for a hearing on the tentative budget. The Board of Directors of the District shall consider the testimony and showings made in such hearing. The Board of Directors of the District may adopt the budget or make such amendments thereof as to it may seem proper. The budget thus approved by the Board of Directors of the District shall be the Annual Budget for the next ensuing Fiscal Year.

(b) The Annual Budget may be amended to provide for transfers of budgeted funds between expenditure accounts, provided however that said transfers do not result in an overall increase in budgeted funds as provided in the Annual Budget. The Annual Budget may be amended and increased through formal action by the Board of Directors of the District, if required. Certified copies of any amended Annual Budget and the resolution authorizing same shall be filed immediately by the District with each Participant.

Section 7.02. ANNUAL AUDIT OF SYSTEM. The District shall, at the close of each Fiscal Year, cause an annual audit of the System to be prepared.

ARTICLE VIII

THE SYSTEM

Section 8.01. INITIAL FACILITIES OF THE SYSTEM. (a) The System initially consisted of the wastewater treatment plant owned by Frisco, known as the "Stewart Creek West Plant (the "Plant").

(b) As permitted and authorized by Chapter 30 of the Water Code, and other provisions of law, the District and the Participants agree that, from and after the Original Contract Termination Date, this Contract shall constitute an operating agreement with respect to the Plant and the property more fully described in Exhibit B hereto (the "Frisco Facilities") and which on the date of the Original Contract constituted a part of the Local Wastewater Facilities of Frisco.

In the Original Contract, the District has been granted, and upon the Original Contract Termination Date, the District is hereby granted, by Frisco the sole and exclusive right to manage, administer, operate, maintain, and use the Frisco Facilities as part of the System, and in consideration thereof, the District agreed in the Original Contract, and upon the Original Contract Termination Date, hereby agrees, to pay to Frisco, in each of the Fiscal Years, respectively, the annual amounts, respectively, as set forth in the following schedule:

EACH FISCAL YEAR ENDING SEPTEMBER 30:	ANNUAL AMOUNT:
2000	$200,000
2001	200,000
2002	200,000
2003	200,000
2004	200,000
2005	200,000
2006	200,000
2007	200,000
2008	200,000
2009	200,000
2010	200,000
2011	200,000
2012	200,000
2013	200,000
2014	200,000

Such payments shall constitute a part of the fixed Operation and Maintenance Expenses of the System, and the District shall include such amount in each Annual Budget, to be paid, along with all other items of Operation and Maintenance Expenses, according to the formulae and methods provided in this Contract for the payment of the Annual Requirement.

(c) Upon the Original Contract Termination Date, all other agreements, contracts, and other arrangements between the District and Frisco with respect to the Frisco Facilities, including

the Original Contract, shall be void and of no further force or effect, and this Contract shall supersede the same and become the sole and entire present agreement between the parties with respect thereto. Except as provided in the preceding sentence, nothing contained in this Contract shall in any way affect any payments to the District by a Participant or rates charged by the District to such Participant for the providing of water, wastewater or other services or facilities pursuant to other contractual relationships between the District and such Participant.

Section 8.02. DISTRICT CONTRACTS WITH ADDITIONAL PARTICIPANTS. (a) The District reserves the right to contract with subsequent Additional Participants to provide the services of the System to such Additional Participants; provided that the terms and provisions of such contracts with Additional Participants shall be, to the extent practicable and applicable, the same as the terms and provisions of this Contract except that with respect to any Local Wastewater Facilities of such Additional Participant which are to be acquired, operated, or used by the District as a part of the System as a result of such contract, the District and the Additional Participant may agree in such contract for mutually acceptable payments in connection therewith from Bond proceeds or as an Operation and Maintenance Expense of the System (provided that in any formula used for determining such payments, the value attributed to such Local Wastewater Facilities shall not exceed a sum equal to the principal amount of all then outstanding bonds or other obligations issued by the Additional Participant to acquire and construct such Local Wastewater Facilities), and except that such contract shall provide for payments calculated on the basis of adequate minimum flows as hereinafter provided. The District shall not enter into contracts for any services by the System except with cities which become Participants, or as otherwise provided in this Contract.

(b) A city may become an Additional Participant in the following manner and under the following conditions;

(i) A formal request must be submitted to the District furnishing information on the area to be served, a description of existing facilities, and the latest annual audit of such proposed Additional Participant's waterworks and/or sewer systems, if any.

(ii) Such proposed Additional Participant must provide funds for any necessary engineering studies if funds are not available from the appropriate Federal or State agencies. The preliminary studies must determine or estimate, for the ensuing five year period, the size and type of any proposed facilities, their estimated cost, and estimated flows of Wastewater, so as to enable the District to ascertain or estimate the requirements of the proposed Additional Participant for the ensuing five year period.

(iii) After all preliminary data is developed, the Board of Directors of the District shall call a hearing and notify all Participants to review the request of the proposed Additional Participant. The Board of Directors of the District then shall determine if the proposed Additional Participant shall become a Participant.

(c) Each Additional Participant must agree to make minimum payments under its contract, on the basis of estimated annual minimum flows, that would provide amounts annually at least sufficient, as determined by the District, to pay:

(i) all of the annual Operation and Maintenance Component of the Annual Requirement which is attributable to any Local Wastewater Facilities of such Additional Participant which are to be acquired, operated, used, or improved by the District as part of the System and any other new and additional facilities of the System provided and designated by the District to serve such Participant, less any amount thereof attributable to the use of any part of said facilities for the benefit of any other Participant; and

(ii) an amount (to be credited and applied to the Bond Service Component of each Annual Requirement), at least equal to:

(A) all of that part of the Bond Service Component of each future Annual Requirement attributable to Bonds issued to acquire or improve any existing Local Wastewater Facilities of such Additional Participant to be a part of the System, and all Bonds issued to provide any other new and additional facilities for the System to serve such Additional Participant, plus

(B) a percentage of the Bond Service Component of each future Annual Requirement for all then outstanding Bonds equal to the then estimated percentage of use by such proposed Additional Participant of any portion of the then existing System; and

(iii) an annual amount (to be credited to the Bond Service Component of the Annual Requirement and/or to the Operation and Maintenance Component of the Annual Requirement, at the option of the District) as estimated and determined by the District to equalize the previous capital cost (including the cost of previously constructed excess capacity) of facilities to be used to provide service to the Additional Participant.

(d) The provisions of this Section and the payments to be made under an Additional Participant's contract are further subject to the provisions of Section 5.03 of this Contract.

Section 8.03. ADDITIONAL CAPACITY AND FACILITIES. As the responsible agency for the establishment, administration, management, operation, and maintenance of the System, the District will, from time to time, determine when and to what extent it is necessary to provide additions, enlargements, improvements, repairs, and extensions to the System to receive, transport, treat, and dispose of Wastewater of any Participants, including all Additional Participants, and to issue its Bonds to accomplish such purposes, and all Participants, including Additional Participants, shall be obligated to pay both the Operation and Maintenance Component and the Bond Service Component included in the Annual Requirement with respect to the entire System, as expanded, as provided in Section 5.03; provided that this Section shall not be construed so as to reduce or alter the requirements of Section 8.02 with respect to minimum payments.

ARTICLE IX

REMEDIES

Section 9.01. LEGAL AND EQUITABLE. Any party to this Contract, and any holder of the District's Bonds, may require any party hereto, and its officials and employees, to carry out, respect, and enforce the covenants and obligations of this Contract, by all legal and equitable means, including specifically, but without limitation, the use and filing of mandamus proceedings, in any court of competent jurisdiction, against such party, and its officials and employees.

ARTICLE X

CONTINUING DISCLOSURE OF INFORMATION

Section 10.01. PARTICIPANTS TO COMPLY. The Participants shall comply with any continuing disclosure requirements with respect to the Bonds imposed by Securities and Exchange Commission Rule 15c2-12.

ARTICLE XI

TERMINATION OF ORIGINAL CONTRACT. EFFECTIVE DATE AND TERM

Section 11.01. TERMINATION OF ORIGINAL CONTRACT. The District and Frisco hereby agree to the termination of the Original Contract. Such termination shall occur on the Original Contract Termination Date without necessity of any further action by the District or Frisco.

Section 11.02. EFFECTIVE DATE. This Contract shall become effective as of the date of issuance of the first series of Bonds issued pursuant to this Contract; provided that Articles III, IV, and VI hereof, Sections 2.02, 5.03(f), 5.03(g), 5.04, 7.01, and 8.01, and all provisions relating to "Operation and Maintenance Expense" and "Operation and Maintenance Component" shall become effective upon the Original Contract Termination Date.

Section 11.02. TERM OF CONTRACT. This Contract shall continue in force from the effective date hereof at least until all Bonds, including any Bonds issued to refund same, shall have been paid in full; and shall also remain in force thereafter throughout the useful life of the System.

ARTICLE XII

NOTICES

Section 12.01. NOTICES. Any notice, request or other communication under this Contract shall be given in writing and shall be deemed to have been given by either party to the other party at the addresses shown below upon any of the following dates:

(a) The date of notice by telefax, telecopy, or similar telecommunications, which is confirmed promptly in writing;

(b) Three business days after the date of the mailing thereof, as shown by the post office receipt if mailed to the other party hereto by registered or certified mail;

(c) The date of actual receipt thereof by such other party if not given pursuant to (a) or (b) above.

The address for notice for each of the parties shall be as follows:

North Texas Municipal Water District
505 East Brown Street
Wylie, Texas 75098
Attention: Executive Director and General Manager
Fax #: (972) 442-5405

City of Frisco, Texas
6891 Main Street
Frisco, Texas 75034
Attention: City Manager
Fax #: (972) 335-5559

or the latest address specified by such other party in writing.

ARTICLE XIII

SEVERABILITY

Section 13.01. SEVERABILITY. If any clause, provision or Section of this Contract should be held illegal or invalid by any court, the invalidity of such clause, provision or Section shall not affect any of the remaining clauses, provisions or Sections hereof and this Contract shall be construed and enforced as if such illegal or invalid clause, provision or Section had not been contained herein. In case any agreement or obligation contained in this Contract should be held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the Participants or the District, as the case may be, to the full extent permitted by law.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Contract to be duly executed in several counterparts, each of which shall constitute an original, all as of the ____ day of _____, 2011, which is the date of this Contract.

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: _____
President, Board of Directors

ATTEST:

_____
Secretary, Board of Directors

(SEAL)

CITY OF FRISCO, TEXAS

By: _____
Mayor

ATTEST:

_____
City Secretary

(SEAL)

EXHIBIT "A"

Points of Entry

EXHIBIT "B"

All wastewater treatment facilities, structures, apparatus, equipment, and devices located on the following described property as of the date of the Original Contract:

AGENDA ITEM #13.

Engineering Services
City of Frisco, Texas

PROGRESS IN MOTION

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

cc: **George Purefoy, City Manager**
Paul Knippel, P.E., Director of Engineering
Elizabeth Metting, P.E., Asst. Director/City Engineer

From: **Jason Brodigan, P.E. Senior Civil Engineer**

Date: **September 6, 2011**

Subject: **Consider and act upon adoption of a Resolution authorizing the City Manager to execute Amendment Number One to the Professional Services Agreement by and between the City of Frisco and Kimley-Horn and Associates, Inc. to perform Design and Bid Package Preparation for FM 3537 (Main Street) Landscape and Irrigation Improvements from SH 289 to FM 2478 (Preston Road to Custer Road) and SH 289 (Preston Road) Landscape, Irrigation, and Street Light Improvements from FM 3537 (Main Street) to US 380.**

Action Requested: City Council consideration and approval of a Resolution authorizing the City Manager to execute Amendment Number One to the Professional Services Agreement by and between the City of Frisco, Texas and Kimley-Horn and Associates, Inc., in the amount of $12,000 to perform Design and Bid Package Preparation for FM 3537 (Main Street) Landscape and Irrigation Improvements from SH 289 to FM 2478 (Preston Road to Custer Road) and SH 289 (Preston Road) Landscape, Irrigation, and Street Light Improvements from FM 3537 (Main Street) to US 380.

Background Information: The Texas Department of Transportation (TxDOT) is currently acquiring right of way for the widening of FM 3537 (Main St) from Preston Road to Custer Road. The project will widen the existing two lane roadway to a six lane urban roadway with a raised median and curb and gutter. TxDOT urban roadway projects do not typically include illumination, landscape or irrigation in the medians; however, TxDOT agreed to construct these items with the FM 3537 project if the City of Frisco provided the engineering design.

The contract with Kimley-Horn was originally written for the consultant to provide the landscaping and irrigation designs to be included in the TxDOT plans; however, due

to differing funding sources, to proceed in this manner will delay the overall roadway widening project. Amendment Number One provides for the preparation of a separate plan set for landscaping and irrigation. The separate project will be bid following completion of the roadway project. City staff will pursue TxDOT Green Ribbon funding for the construction of the landscaping and irrigation.

There are no changes to the terms of the original contract regarding the design of illumination, landscaping and irrigation on Preston Road from Main Street to US 380.

Alternatives: City Council could consider the following alternatives:

- Approval of the Resolution
- Deny approval of the Resolution

Financial Considerations: The cost of the Agreement is $12,000. The Amendment will be funded through General Obligation Bonds.

Legal Review: The Professional Services Agreement has been reviewed and approved by the City Attorney's Office as to form and legality.

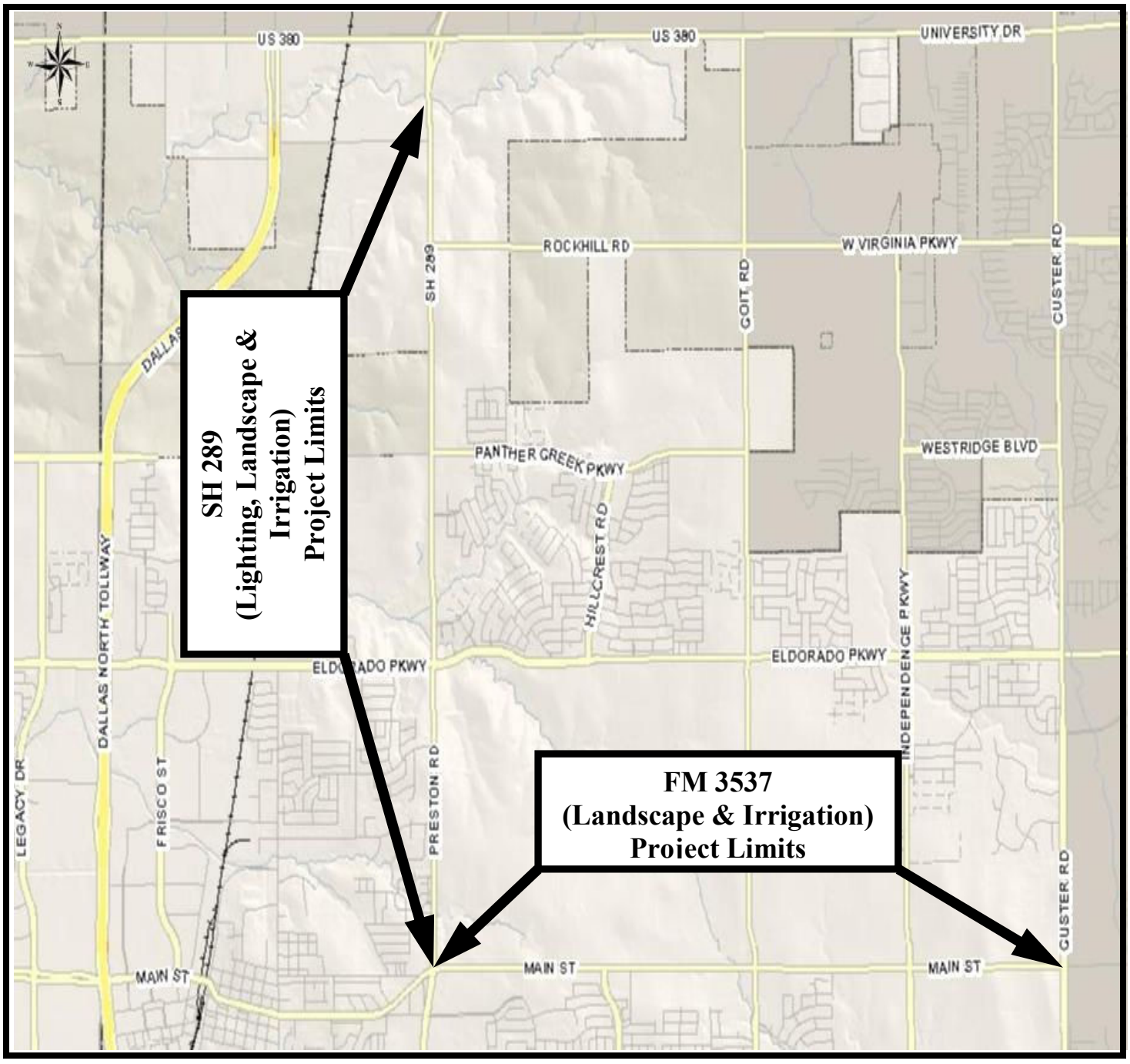
Supporting Documents: Supporting documents include the following items:

- Project Location Map
- Copy of Amendment Number One
- Copy of Resolution

Staff Recommendation: Staff recommends approval of a Resolution authorizing the City Manager to execute Amendment Number One. Staff will be present at the meeting to address the City Council's questions relating to this agenda item.

FRISCO
PROGRESS IN MOTION

Professional Services Agreement Amendment Number 1
Kimley-Horn and Associates, Inc.
FM 3537 (Main St) and SH 289 (Preston Rd)
September 6, 2011



AMENDMENT NUMBER ONE

TO AN AGREEMENT

BETWEEN

THE CITY OF FRISCO, TEXAS (CITY)

AND

KIMLEY-HORN AND ASSOCIATES, INC. (CONSULTANT)

FOR

PROFESSIONAL SERVICES

Made as of the _____ day of _____ in the year Two Thousand Eleven:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5412
Facsimile: (972) 292-5016

and the Consultant: **Kimley-Horn and Associates, Inc.**
2201 West Royal Lane, Suite 275
Irving, Texas 75063
Telephone: (214-420-5600)
Facsimile: (214-420-5680)

for the following Project: **Design and Bid Package Preparation of FM 3537 (Main Street) Landscape and Irrigation Improvements from SH 289 to FM 2478 (Preston Road to Custer Road) and SH 289 (Preston Road) Landscape, Irrigation, and Street Light Improvements from FM 3537 (Main Street) to US 380**

The City and the Consultant agree as set forth below.

THIS AMENDMENT NUMBER ONE is made and entered by and between the City of Frisco, Texas, a Home-Rule Municipal Corporation, hereinafter referred to as the "City," and Kimley-Horn and Associates, Inc., hereinafter referred to as "Consultant," to be effective from and after the date as provided herein the "Amendment Number One."

WHEREAS, the City desires to engage the services of the Consultant to design and prepare bid package of FM 3537 (Main Street) Landscape and Irrigation Improvements from SH 289 to FM 2478 (Preston Road to Custer Road) and SH 289 (Preston Road) Landscape, Irrigation, and Street Light Improvements from FM 3537 (Main Street) to US 380, hereinafter referred to as "Project;" and

WHEREAS, the City and Consultant desire to amend the Agreement for the purpose of extending the scope of the Project (defined in the Agreement) to include Additional Services for the Project; revising the Consultant's Fee (defined in the Agreement) to include the provision of the Additional Services; revising the percentage of the final payment of the Consultant's Fee for the Project (defined in the Agreement); referencing the Additional Services in relation to the Consultant's submission of invoices to the City; and referencing the Additional Services in relation to the City's ownership of the Project documents; and

WHEREAS, the City and Consultant desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for an in consideration of the covenants contained herein, the mutual benefits to be obtained hereby and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Consultant do mutually agree as follows:

1. **Additional Project Services**. City and Consultant agree that this Amendment Number One amends the Agreement for the purpose of, among other things, establishing additional Project services to be performed by Consultant, as more particularly described in the following exhibits, attached hereto and incorporated herein for all purposes:

   a. Exhibit "H," Scope of Additional Services, dated September 6, 2011.

   b. Exhibit "I," Compensation Schedule / Project Billing / Project Budget for Additional Services, September 6, 2011.

2. **Amendment to Agreement, Article 1, Section 1.3, Schedule of Work**. Article 1, Section 1.3 of the Agreement is hereby amended as follows:

   "1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "B" **and the Compensation Schedule / Project Billing / Project Budget for Additional Services, dated September 6, 2011 attached hereto as Exhibit "I"**."

3. **Amendment to Agreement, Article 3, Section 3.1, Compensation for Consultant's Services**. Article 3, Section 3.1 of the Agreement is hereby amended as follows:

"3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a lump sum basis and an hourly basis, for an amount not to exceed ~~Two Hundred Twenty One Thousand Five Hundred and 00/100 Dollars ($221,500.00)~~**Two Hundred Thirty Three Thousand Five Hundred and 00/100 Dollars ($233,500.00)**, ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B." **and the Compensation Schedule / Project Billing / Project Budget for Additional Services, dated September 6, 2011 as set forth in Exhibit "I."**"

4. **Amendment to Agreement, Article 3, Section 3.1.1, Completion of Record Documents**. Article 3, Section 3.1.1 of the Agreement is hereby amended as follows:

"...3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of the Record Documents and/or the "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by the City prior to payment of the final ~~five percent (5%)~~ **four and seventy four-tenths percent (4.74%)** of the Consultant's Fee, or Eleven Thousand Seventy Five and 00/100 Dollars ($11,075.00). The electronic formatting shall be consistent with the standards established in Exhibit "C," City of Frisco Guidelines for Computer Aided Design and Drafting ("CADD"). Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement."

5. **Amendment to Agreement, Article 3, Section 3.4, Invoices**. Article 3, Section 3.4 of the Agreement is hereby amended as follows:

"3.4 **Invoices** – No payment to Consultant shall be made until the Consultant tenders an invoice to the City. The Consultant shall submit monthly invoices for services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or are to be mailed to City immediately upon completion of each individual task listed in Exhibit "B." **and Exhibit "I."** On all

submitted invoices for services rendered and work completed on a monthly basis, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges."

6. **Amendment to Agreement, Article 4, Section 4.1 Documents Property of the City**. Article 4 of the Agreement is hereby amended as follows:

"4.1 **Documents Property of the City** – The Project is the property of the City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without the City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A." **and Exhibit "H."** Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8, Consultant will revise plans, data, documents, maps and any other information as defined in Exhibit "A" **and Exhibit "H"** to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8, and promptly furnish the same to the City in an acceptable electronic format. All such reproductions shall be the property of the City who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at the City's own risk."

7. **Complete Agreement**. This Amendment Number One, including the exhibits attached hereto and labeled "H" and "I," both of which are incorporated herein for all purposes, constitutes the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Amendment Number One may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. Exhibits "H-I" are attached hereto and made a part of the Agreement and this Amendment Number One.

8. **Counterparts**. This Amendment Number One may be executed in a number of identical counterparts. If so executed, each of such counterparts is deemed to be an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment Number One. A facsimile signature will also be deemed to constitute an original if properly executed.

9. **Controlling Agreement**. To the extent any provision contained herein conflicts with the Agreement, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement.

10. **Defined Terms / Ratification of Agreement**. Any term not defined herein shall be deemed to have the meaning ascribed to it under the Agreement. Except as expressly amended hereby, all of the terms, provisions, covenants and conditions of the Agreement are hereby ratified and confirmed and shall continue in full force and effect.

11. **Authority to Execute**. The individuals executing this Amendment Number One represent and warrant that they are empowered and duly authorized to so execute this Amendment Number One on behalf of the parties they represent.

12. **Entire Agreement**. This Amendment Number One and the Agreement embody the entire agreement by and between the parties regarding the subject matter hereof. There are no oral understandings or agreements between the parties regarding the subject matter hereof. This Amendment Number One may only be amended by written agreement duly executed by all parties hereto.

13. **Venue**. The Agreement and Amendment Number One shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

14. **Assignment**. This Amendment Number One may not be assigned except as authorized in the Agreement.

IN WITNESS HEREOF, the parties have executed this Amendment Number One to the Agreement, and caused this Amendment Number One to be effective on the latest day as reflected by the signatures below.

CITY
The City of Frisco, Texas

By: _____
George Purefoy
Title: City Manager

CONSULTANT
Kimley-Horn and Associates, Inc.

By: _____
G. Brad Tribble, P.E.
Title: SENIOR VICE PRESIDENT

APPROVED AS TO FORM:

_____
Abernathy, Roeder, Boyd and Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2011.

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

STATE OF TEXAS:

COUNTY OF Dallas:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **G BRAD TRIBBLE** KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 18th DAY OF August, 2011.

Jennifer L. Pena
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 7-23-13

JENNIFER L. PENA
Notary Public, State of Texas
My Commission Expires
July 23, 2013

EXHIBIT "H"
SCOPE OF ADDITIONAL SERVICES, DATED SEPTMEBER 6, 2011

Amendment Number One
to an Agreement by and between
the City of Frisco, Texas (City)
and Kimley-Horn and Associates, Inc. (Consultant)
To perform professional engineering services and bid package preparation for the design of the FM 3537 Landscaping and Irrigation Improvements from SH 289 to FM 2478 and the SH 289 Landscape, Irrigation, and Street Lighting Improvements and bid package preparation from FM 3537 to US 380

I PROJECT DESCRIPTION.

This project includes the design of landscape and irrigation improvements within the FM 3537 (Main Street) medians from SH 289 (Preston Road) to FM 2478 (Custer Road). This project also includes the design of landscaping, irrigation, and street lighting improvements within the SH 289 (Preston Road) median from FM 3537 (Main Street) to just south of US 380. The original agreement included dividing the project into three (3) separate submittal packages: (1) FM 3537 (Main Street) Landscape and Irrigation (plan sheets only), (2) SH 289 (Preston Road) Street Lighting, and (3) SH 289 (Preston Road) Landscape and Irrigation. The SH 289 projects are stand-alone bid packages, while the FM 3537 plan sheets were to be incorporated into TxDOT's FM 3537 roadway plans.

During the final design phase of FM 3537, the decision was made not to include the landscaping and irrigation plans with TxDOT's roadway plans, and bid the landscaping and irrigation separately after the construction of FM 3537 was complete. As a result, a separate bid package would need to be prepared for the FM 3537 Landscape and Irrigation project, and be bid and constructed as a stand-alone project by TxDOT. The original scope of services for SH 289 remains the same.

This Amendment is for the additional services required for preparing the additional sheets and documents required by TxDOT for a stand-alone project.

II TASK SUMMARY, ADDITIONAL SERVICES.

A. **Task Nine, FM 3537 (Main Street) Additional Design** –

9.1 Consultant shall prepare the following additional plan sheets for FM 3537 in accordance with TxDOT submittal requirements:

- 9.1.1 Cover Sheet
- 9.1.2 Index of Sheets
- 9.1.3 Estimate and Quantities
- 9.1.4 Project Layout
- 9.1.5 Storm Water Pollution Prevention Plan
- 9.1.6 EPIC Sheets

9.1.7 TxDOT Standard Details for Traffic Control and Erosion Control

9.2 Prepare General Notes and Technical Specifications in accordance with TxDOT submittal requirements.

9.3 Compile a spate estimate and pay item listing in accordance with TxDOT requirements.

9.4 Submittal (90%) Landscape and Irrigation to TxDOT.

9.4.1 In addition to submitting to the City, Consultant shall submit three (3) sets of 90% Landscape and Irrigation plans to TxDOT for review and comment.

9.4.2 Consultant shall submit General Notes and Technical Specifications to TxDOT for review and comment.

9.5 Submittal (Final) Landscape and Irrigation to TxDOT

9.5.1 In addition to submitting to the City, Consultant shall submit up to ten (10) mylar sets of the final Landscape and Irrigation plan sets to TxDOT in accordance with TxDOT's submittal requirements.

EXHIBIT "I"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUGET
FOR ADDITIONAL SERVICES, DATED SEPTEMBER 6, 2011

Amendment Number One
to an Agreement by and between
the City of Frisco, Texas (City)
and Kimly-Horn and Associates, Inc. (Consultant)
To perform professional engineering services and bid package preparation for the design of the FM 3537 Landscaping and Irrigation Improvements from SH 289 to FM 2478 and the SH 289 Landscape, Irrigation, and Street Lighting Improvements and bid package preparation from FM 3537 to US 380

I COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

MONTH / DATE / YEAR	DOLLAR AMOUNT	TASK COMPLETED
September 6, 2011	--	City Council approval of a Resolution authorizing the City Manager to execute Amendment Number One; City issues Notice to Proceed to Consultant.
September 16, 2011	--	Consultant's receipt of fully executed Amendment Number One.
December 31, 2012	$12,000.00	**Task Nine, FM 3537 Additional Design** (Task Completed and all task-related deliverables completed as stated in Exhibit "H" and accepted by the City).

II PROJECT BUDGET SUMMARY.

A. **Additional Services**.

1.	FM 3537 Additional Design	$ 12,000.00
2.	Other additional services	$ 00.00
3.	*Total Additional Services (Not-To-Exceed).*	*$ 12.000.00*

B. **Project Budget, Grand Total (Not-To-Exceed)**. ***$ 12.000.00***

EXHIBIT "I"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUGET
FOR ADDITIONAL SERVICES, DATED SEPTEMBER 6, 2011

III SUMMARY OF PROJECT BUDGET REVISIONS.

	Original Budget	Amendment #1	Total
Task One - PM & Data Collection 50%	$19,000.00	-	$19,000.00
Task Two - FM 3537 Landscape & Irrigation Design	$38,000.00	-	$38,000.00
Task Three - SH 289 Street Light Design 50%	$72,925.00	-	$72,925.00
Task Four - SH 289 Landscape Irrigation 50%	$58,000.00	-	$58,000.00
Task Five - Construction Documents	$11,075.00	-	$11,075.00
Task Six - TxDOT Coordination	$17,500.00	-	$17,500.00
Task Seven - Bid Phase Services	$0.00	-	$0.00
Task Eight - Contract Admin	$5,000.00	-	$5,000.00
Task Nine - FM 3537 Additional Design	$0.00	$12,000.00	$12,000.00
Subtotal – Basic and Additional Services.	**$221,500.00**	**$12,000.00**	**$12,000.00**
Grand Total, Revised Project Budget (Not-To-Exceed)	**$221,500.00**		**$233,500.00**

CITY OF FRISCO, TEXAS RESOLUTION NO._____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, HEREBY AUTHORIZING THE CITY MANAGER OF THE CITY OF FRISCO, TEXAS, TO EXECUTE AMENDMENT NUMBER ONE TO THE PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN THE CITY OF FRISCO AND KIMLEY-HORN AND ASSOCIATES, INC. FOR DESIGN AND BID PACKAGE PREPARATION FOR FM 3537 (MAIN STREET) LANDSCAPE AND IRRIGATION IMPROVEMENTS FROM SH 289 TO FM 2478 (PRESTON ROAD TO CUSTER ROAD) AND SH 289 (PRESTON ROAD) LANDSCAPE, IRRIGATION, AND STREET LIGHT IMPROVEMENTS FROM FM 3537 (MAIN STREET) TO US 380.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: The City Manager of the City of Frisco, Texas, is hereby authorized to execute, on behalf of the City Council of the City of Frisco, Texas, Amendment Number One to the Professional Services Agreement by and between The City of Frisco and Kimley-Horn and Associates, Inc. for FM 3537 (Main Street) Landscape and Irrigation Improvements from SH 289 to FM 2478 (Preston Road to Custer Road) and SH 289 (Preston Road) Landscape, Irrigation, and Street Light Improvements from FM 3537 (Main Street) to US 380, a copy of which is attached hereto and incorporated herein for all purposes.

SECTION 2: This Resolution shall take effect immediately upon its passage.

RESOLVED THIS the _____day of_____, 2011.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page
City Secretary

AGENDA ITEM #14.

CITY MANAGER'S OFFICE

CITY OF FRISCO

GEORGE A. PUREFOY MUNICIPAL CENTER
6101 FRISCO SQUARE BLVD · 5TH FLOOR
FRISCO, TEXAS 75034
TEL 972.292.5106 · FAX 972.292.5122
WWW.FRISCOTEXAS.GOV

Memorandum

To: **Honorable Mayor Maso and the Frisco City Council**

Thru: **George Purefoy, City Manager**
Nell Lange, Assistant City Manager;

From: **Stacy Brown, Housing and Grant Administrator**

Date: **9/1/2011**

Agenda Caption: **Consider and act upon a Resolution approving the fiscal year 2012 City of Frisco General Fund Social Service Grant allocations.**

Action Requested: Consider and act upon a resolution approving the fiscal year 2012 City of Frisco General Fund Social Service Grant allocations to the following agencies: Boys and Girls Clubs of Collin County, Frisco Cares, Frisco Education Foundation, Frisco Family Services Center, Journey of Hope, Small World With Love, Samaritan Inn, and authorizing the City Manager to execute grant agreements.

Background Information: For the past 5 years, the City of Frisco has allocated funds ($1 per capita) to social service agencies providing services to the citizens of Frisco. The Housing Trust Fund Board was given the task of allocating $120,000 to social service agencies for FY 2012.

Board Review/Citizen Input: The public was notified of the availability of funds and 9 applications were received totaling $254,275 in requests for funding. The applications were reviewed by staff for compliance, summarized, and presented to the Housing Trust Fund Board. The Housing Trust Fund Board heard oral presentations from each agency during one of two public hearings held on April 13, 2011 and April 20, 2011.

On Wednesday, May 11, 2011, the Housing Trust Fund Board made the following recommendations for the use of the FY 2012 General Fund Social Service Grant funds:

General Fund Social Service Grant

	Requested Funding	***Housing Trust Fund Board Recommendation***
Boys and Girls Clubs of Collin County	$40,000	$19,000
Crimes Against Kids Eliminated	$13,000	$0
Frisco Cares	$40,000	$20,000
Frisco Education Foundation	$10,000	$10,000
Frisco Family Services Center	$67,200	$56,000
Jewish Family Services	$34,375	$0
Journey of Hope	$2,500	$2,000
Samaritan Inn	$11,200	$3,000
Small World With Love	$36,000	$10,000
Total	**$254,275**	**$120,000**

For additional information on the agencies and the requests, please see the Grant Summary document attached to the agenda item.

Financial Considerations: The Social Service Grant is funded through the City of Frisco General Fund.

Alternatives: The Council could approve or deny the proposed plan and grant allocations or request additional input/information.

Staff Recommendation: Staff recommends the approval of the Resolution allocating the fiscal year 2012 Social Service Grant Funds.

If you have questions concerning the FY 2012 Social Services Grant allocations, please contact Stacy Brown at 972-292-5114 or by email at sbrown@friscotexas.gov.

CITY OF FRISCO, TEXAS RESOLUTION NO._____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, APPROVING SOCIAL SERVICE GRANT AGREEMENTS BETWEEN THE CITY OF FRISCO AND BOYS AND GIRLS CLUBS OF COLLIN COUNTY, FRISCO CARES, FRISCO EDUCATION FOUNDATION, FRISCO FAMILY SERVICES CENTER, JOURNEY OF HOPE, THE SAMARITAN INN, AND SMALL WORLD WITH LOVE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT AGREEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, funds from the City of Frisco Fiscal Year 2012 Budget, upon approval of the City Council, will be appropriated to assist Social Service Agencies serving residents of the City of Frisco; and

WHEREAS, upon approval of the Fiscal Year 2012 Budget by the City Council, these funds should be allocated for the express purpose of providing social services to the residents living in the City of Frisco; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: That grant agreements be executed between the City of Frisco and Boys and Girls Clubs of Collin County, Frisco Cares, Frisco Education Foundation, Frisco Family Services Center, Journey of Hope, The Samaritan Inn, and Small World With Love, for the purpose of fulfilling these purposes.

SECTION 2: That the City Council of the City of Frisco grants the City Manager or designated City Staff the authority to execute all grant agreements and/or funding documents related to the funding of these grants.

SECTION 3: This resolution shall take effect immediately upon its passage.

RESOLVED THIS the _____ day of _____, 2011.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page, City Secretary

506504-1

Housing Trust Fund Board

Grant Summary
Social Service General Fund Grant Requests
PY 2012

The amount of Social Service Grant funds for PY 2012 is **$120,000** pending City Council approval. Requests for funds totaled **$254,275**. Personnel requests are ineligible for funding under the Social Service Grant.

Agency/Program: **Boys and Girls Clubs of Collin County** **Youth Center Operation**

This agency is requesting funds to operate an after school program and summer program for 510 Frisco youth. Program Operations include the following: transportation, telephone, utilities, curriculum materials, and postage.

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Project Address:	8750 McKinney Frisco, Texas	
History	PY 2005 CDBG Funds:	$5,200
	PY 2007 CDBG Funds:	$60,000
	PY 2010 Social Service:	$15,000
	PY 2011 Social Service:	$15,560
Request:	$40,000	
Allocation:	$19,000	
Comments:	This agency has been working with federal and local grants for 9 years and has demonstrated the capacity to meet grant requirements including client income documentation.	

AGENDA ITEM #14.

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Agency/Program: **Crimes Against Kids Eliminated** **Printing and Rent**

This new program provides awareness and prevention workshops concerning sexual abuse of children to parents and guardians of children. Funds are requested for the printing of program materials and to rent an office space.

Project Address: Frisco, Texas

History First Application

Request: $13,000

Allocation: $0

Comments: This agency received its' nonprofit status in 2008. This is the first time that this agency has applied for funding, and has no federal or municipal grant experience. This agency currently operates out of a residence.

Due to the short time that the agency has been active, the Housing Trust Fund Board would like to learn more about the agency during the next year. Staff has been instructed to visit the agency and evaluate the agency's capacity to provide services and complete grant requirements.

Agency/Program: **Frisco Cares Children's Clinic** **Rent/Prescriptions/Vaccines**

This program will provide medical care to 750 uninsured children ages 18 and under who reside or attend school in Frisco, Prosper, Celina, or Little Elm.

Project Address:	6811 Oak Street Frisco, Texas	
History	PY 2008 Social Service: PY 2009 Social Service: PY 2010 Social Service: PY 2011 Social Service:	$37,000 $28,134.48 $11,000 $15,710
Request:	$40,000	
Allocation:	$20,000	
Comments:	This agency has met Social Service grant requirements since it began receiving grant funds four years ago. In addition, this agency hired its' first executive director this year, and would like to increase their office space by relocating the office to a larger space.	

Agency/Program: **Frisco Education Foundation** **Scholarships**

This program grants college/tech/trade school scholarship awards to FISD graduating seniors. Next year, the organization plans to serve 20-30 students.

Project Address:	7159 Hickory Street Frisco, Texas	
History	PY 2008 Social Service:	$12,547
	PY 2009 Social Service:	$18,673.48
	PY 2010 Social Service:	$11,000
	PY 2011 Social Service:	$10,400
Request:	$10,000	
Allocation:	$10,000	
Comments:	This agency continues to provide scholarships to income qualifying students and complete grant requirements in a timely fashion.	

Agency/Program:	**Frisco Family Services Center**	**Perishable Food**

This agency provides a one-stop social service stop for Frisco citizens. This request is to purchase perishable food for the Food Pantry to provide food for 1285 families.

Project Address: 8780 3rd Street
Frisco, Texas

History

PY 2005 CDBG Funds:	$20,000 allocated (bilingual social worker)
PY 2006 CDBG Funds:	$ 20,000 allocated (bilingual social worker)
PY 2007 CDBG Funds:	$25,636 (bilingual social worker)
PY 2008 Social Service:	$17,292 (food pantry)
PY 2008 CDBG Funds:	$29,835.03 (bilingual social worker)
PY 2009 Social Service:	$64,220.67(food pantry)
PY 2009 CDBG Funds:	$27,920.33 (bilingual social worker)
PY 2010 Social Service:	$32,377.61 (food pantry)
PY 2010 CDBG Funds:	$29,835.03 (bilingual social worker)
PY 2011 Social Service:	$56,047.50 (food pantry)

Request: $67,200 (perishable food)

Allocation: $56,000

Comments: This agency has 6 years of federal and local grant experience and successfully completes the requirements of all grants.

Agency/Program: **Jewish Family Service** **Personnel**

This agency has just started providing services in Frisco to senior citizens. The agency would like to use the Social Service funds to hire 1 part-time staff person.

Project Address:	In resident homes Frisco, Texas
History	First Application
Request:	$34,375 (salary of a part-time case worker)
Allocation:	$0
Comments:	This agency has been active in Dallas since 1950, but according to the application began providing services to Frisco residents in 2008. This is the first time that this agency has applied for funding. **Due to the size of the request (29% of the Social Service Grant), the Housing Trust Fund Board asked the agency if it could operate on less than the $34,375 request. The agency said that it would not provide services if they did not receive the full amount of their request. In addition, personnel costs are not eligible for Social Service Grant funding.**

Agency/Program: **Journey of Hope** **Children's Bereavement Services Operation**

This program provides no cost counseling and support groups to children and their families when there has been a death or there is an impending death of a close loved one. Funds are requested for program operations: telephone, utilities, curriculum materials, and postage.

Project Address:	3900 West 15th Plano, Texas	
History	PY 2009 Social Service:	$1,391.86
	PY 2010 Social Service:	$2,500.00
	PY 2011 Social Service:	$2,580.00
Request:	$5,000	
Allocation:	$2,000	
Comments:	This agency has successfully completed grant requirements for the Social Service Grant since it began receiving grant funds from the City of Frisco in 2009.	

Agency/Program: **Samaritan Inn** **Homeless Prevention (Rent/Utility Payments)**

This agency provides the only shelter for the homeless in Collin County. Funding is being requested to provide homeless prevention assistance including rent and utility assistance to at-risk Frisco residents through the use of Social Service Grant. Funds will be used to provide up to three months of rent and utility assistance for at least 8 Frisco residents to prevent them from becoming homeless and assisting them in becoming stable in the community.

Project Address:	1710 N. McDonald McKinney, Texas	
History	PY 2007 CDBG Funds:	$3,000 Case worker
	PY 2008 Social Service:	$2,700 Case worker
	PY 2009 Social Service:	$2,199.72 HVAC
	PY 2009 CDBG Funds:	$3,775.34 Case worker
	PY 2010 CDBG Funds:	$10,279.00 Rent/Utility Assistance
Request:	$11,200	
Allocation:	$3,000	
Comments:	This agency has 16 years experience with the federal and local grants, and successfully achieves grant goals and requirements.	

Agency/Program: **Small World With Love** **Back to School Clothes/Footwear**

This program requests funds to provide Back-to-School clothes and shoes to 514 low income Frisco students in 2012.

Project Address:	Frisco, Texas	
History	PY 2009 Social Service:	$19,655.34
	PY 2010 Social Service:	$14,000.00
	PY 2011 Social Service:	$10,400.00
Request:	$36,000	
Allocation:	$10,000	
Comments:	This agency, by using a team of skilled volunteers, has three years of successfully completing the Social Service Grant requirements.	

AGENDA ITEM #15.

FRISCO
PROGRESS IN MOTION

Department of Parks and Recreation
City of Frisco, Texas

MEMORANDUM

To: **Honorable Mayor Maso and Members of the Frisco City Council**

From: **John E. Doshier, Parks Project Manager**

CC **George Purefoy, City Manager**
Henry J. Hill, Deputy City Manager
Rick Wieland, Director of Parks and Recreation
Dudley Raymond R.L.A., Parks Planning and Business Development Manager

Date: **August 29, 2011**

Subject: **Consider and act upon approving a resolution authorizing the City Manager to execute an agreement by and between the City of Frisco and Studio 13 Design Group, PLLC. for preparation of construction documents for the Hike and Bike trail along the south side of Cottonwood Branch from the intersection of Frisco Street and All Star Avenue to the proposed pedestrian bridge crossing ending at Sports Village Road. The trail will continue south parallel to the BNSF Railroad right of way to All Star Ave.**

Action Requested: Staff requests that Council consider and act upon approving a resolution authorizing the City Manager to execute an agreement for preparing construction documents for a Hike and Bike trail along Cottonwood Branch and a proposed pedestrian bridge crossing from All Star Avenue to Frisco Street, in the amount of $32,735, lump sum fee.

Background Information: A feasibility study has been conducted during the past few months to determine several unknowns such as how to navigate under the RR trestle from First Street proposed trailhead as well as flood plain studies which would impact the overall cost and function of the pedestrian bridge and trail project.

Our feedback from BNSF Railroad concerning the RR trestle undercrossing was not acceptable to them unless the City built a pedestrian underpass culvert /tunnel/ pipe that was not part of the drainage system or creek area. After consideration, staff feels this option would not be the best option due to budgetary considerations and, instead, recommend redirecting the trail entrance from All Star Avenue instead of First Street.

All the information gained in the feasibility scope of work now can be used as the final design for construction drawings to be prepared. This work will also allow the scope of work for the actual construction documents to be drafted more accurately, especially with the location of the pedestrian bridge along Cottonwood Branch.

Board Review/Citizen Input: The Parks and Recreation Board is aware of this project which is included in the 5 year capital improvement plan.

Alternatives:

- Approve
- Table
- Not Approve
- Direct staff to make changes

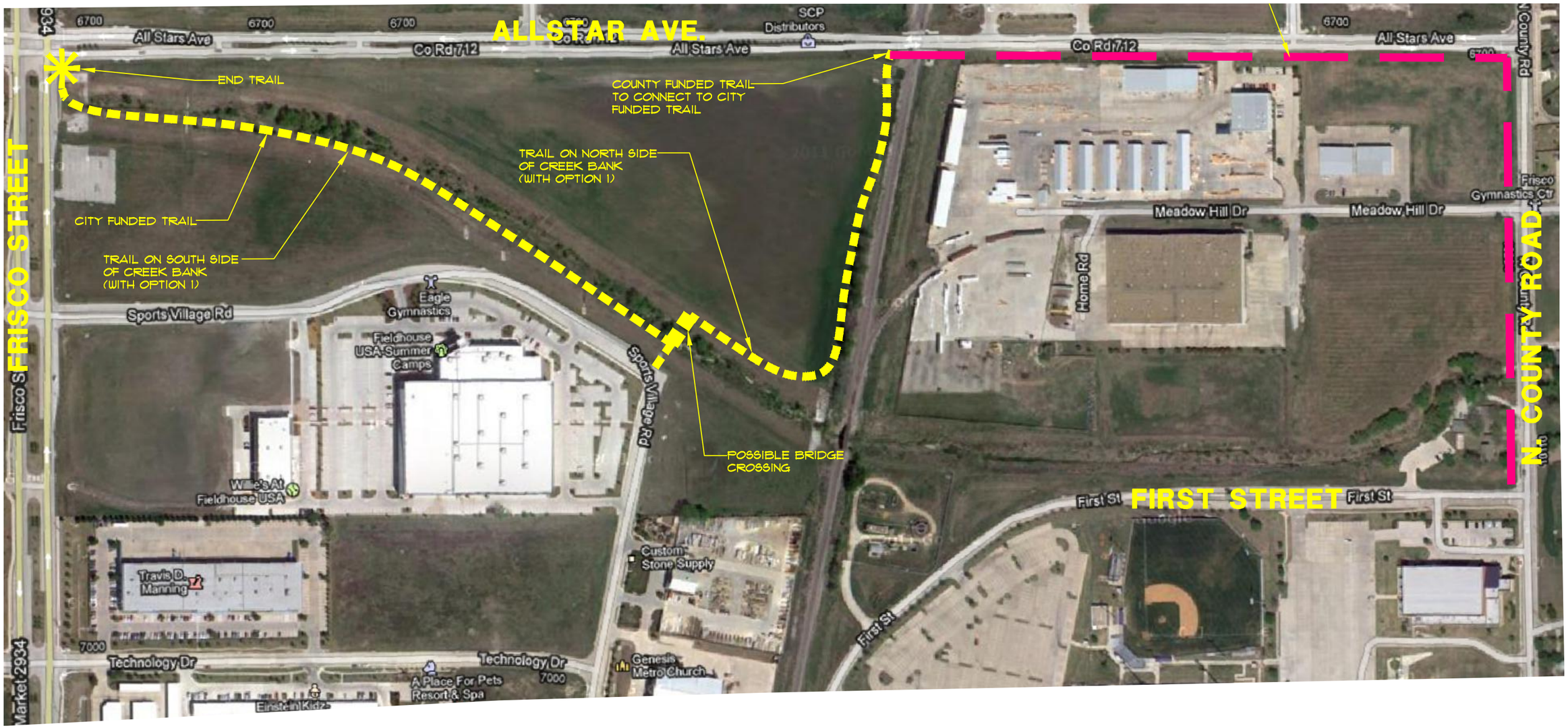
Financial Considerations: Funding will be from the Park Dedication fees and Collin County Grant Funds.

Legal Review: The attorneys have reviewed and approved the agreement as to form.

Supporting Documents:

- Agreement
- Insurance
- Resolution
- Site map

Staff Recommendation: Approve Agreement for design of construction drawings for a hike and bike trail and bridge crossing along Cottonwood Branch beginning at All Star Avenue to Frisco Street in the amount of $32,735.



INDICATES PORTION OF TRAIL FUNDED BY COUNTY

INDICATES PORTION OF TRAIL FUNDED BY CITY

Studio 13 Design Group, PLLC.
519 Bennett Lane, Suite 203
Lewisville, Texas 75057
469-635-1900

FEASIBILITY STUDY
Cottonwood Creek Trail
City of Frisco, Denton Co. Texas

PROJECT FRI004
SHEET Con 1

CITY OF FRISCO, TEXAS RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS HEREBY AUTHORIZING THE CITY MANAGER OF THE CITY OF FRISCO, TEXAS TO EXECUTE AN AGREEMENT BY AND BETWEEN THE CITY OF FRISCO AND STUDIO 13 DESIGN GROUP, PLLC., TO PREPARE CONSTRUCTION DRAWINGS FOR A TRAIL AND BRIDGE CROSSING ALONG COTTONWOOD BRANCH FROM ALL STAR AVENUE TO FRISCO STREET.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: The City Manager of the City of Frisco, Texas, is hereby authorized to execute, on behalf of the City Council of the City of Frisco, Texas, an Agreement by and between the City of Frisco and Studio 13 Design Group, PLLC., to prepare construction drawings for a trail and bridge crossing along Cottonwood Branch from All Star Avenue to Frisco Street, a copy of which is attached hereto and incorporated herein for all purposes.

SECTION 2: This Resolution shall take effect immediately upon its passage.

RESOLVED THIS the _____ day of _____, 2011.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page
City Secretary

AGREEMENT

BETWEEN

THE CITY OF FRISCO, TEXAS (CITY)

AND

STUDIO DESIGN GROUP, PLLC. (CONSULTANT)

TO PERFORM PROFESSIONAL DESIGN SERVICES

FOR

HIKE AND BIKE TRAIL ALONG COTTONWOOD CREEK.

Made as of the 24th day of August in the year Two Thousand Eleven:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5412
Facsimile: (972) 292-5016

and the Consultant: **Leonard W. Reeves, ASLA, RLA, LI**
Studio 13 Design Group, PLLC.
1740 Midway Road
Lewisville, Texas 75056
Telephone: (972) 422-0077
Facsimile: (972) 422-0075

for the following Project:

Preparation of construction documents for the Hike and Bike Trail along the South side of Cottonwood Branch from the intersection of Frisco Street and All Star Ave. to the proposed pedestrian bridge crossing at Sports Village Road. The trail will continue South parallel to the BNSF Railroad right of way to All Star Ave.

The City and the Consultant agree as set forth below.

THIS AGREEMENT is made and entered by and between the **City of Frisco, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and **Studio 13 Design Group, PLLC. (Leonard Reeves, ASLA, RLA, LI)**, hereinafter

WHEREAS, the City desires to engage the services of the Consultant to design construction documents for a trail and bridge crossing along Cottonwood Creek from North County Road to Frisco Street, hereinafter referred to as "Project;" and

WHEREAS, the Consultant desires to render such professional services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

ARTICLE 1
CONSULTANT'S SERVICES

1.1 **Employment of the Consultant** – The City hereby agrees to retain the Consultant to perform professional design services and feasibility study in connection with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement. Consultant further agrees that if any employee of the Consultant, who is performing the day-to-day services under this Agreement for the Project, is separated, for any reason, from employment with the Consultant, the Consultant shall notify, in writing, a minimum of five (5) business days prior to said separation unless circumstances reasonably warrant a shorter notice period which shall not exceed two (2) business days following the separation.

1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A," in the form of written change orders, may be authorized from time to time by the City.

1.2.1 **Requirement of Written Change Order** – "Extra" work, or "claims" invoiced as "extra" work, or "claims" which have not been issued as a duly executed, written change order by the Frisco City Manager, will not be authorized for payment and/or shall not become part of the subcontracts. A duly executed written change order shall be preceded by the Frisco City Council's authorization for the Frisco City Manager to execute said change order.

1.2.2 **DO NOT PERFORM ANY EXTRA WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED WRITTEN CHANGE ORDER ISSUED BY THE FRISCO CITY MANAGER.** Project Managers,

Superintendents, and/or Inspectors of the City are not authorized to issue verbal or written change orders.

1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "B" and incorporated herein by reference for all purposes, but in no event shall the Project be completed any later than 180 days from 'Notice To Proceed' date.

ARTICLE 2
THE CITY'S RESPONSIBILITIES

City shall do the following in a timely manner so as not to delay the services of Consultant:

2.1 **Project Data** – The City shall furnish required information that it currently has in its possession, as expeditiously as necessary for the orderly progress of the work, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof.

2.2 **City Project Manager** – The City shall designate, when necessary, a representative authorized to act on the City's behalf with respect to the Project (the "Project Manager"). The City or such authorized representative shall examine the documents submitted by the Consultant and shall render any required decisions pertaining thereto as soon as practicable so as to avoid unreasonable delay in the progress of the Consultant's services. The Project Manager is not authorized to issue verbal or written change orders for "extra" work or "claims" invoiced as "extra" work.

ARTICLE 3
CONSULTANT'S COMPENSATION

3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a Lump Sum Basis, for an amount not to exceed Thirty Two Thousand Seven Hundred Thirty Five Dollars ($32,735.00), ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B."

3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of the Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by the City prior to payment of the final five percent (5%) of the Consultant's Fee, or One Thousand Six Hundred Thirty Six Dollars and 75/100 ($1,636.75). The electronic

formatting shall be consistent with the standards established in Exhibit "C," City of Frisco Guidelines for Computer Aided Design and Drafting ("CADD"). Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement.

3.1.2 **Disputes between City and Construction Contractor** – If the Project involves the Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor (the "Contractor") and the City, and upon receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for the City to declare the Contractor in default of the terms and conditions of the agreement. Consultant shall submit his findings in writing to the City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from the City. City and Consultant agree that if requested by the City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and to participate in consultation with said agencies in order to obtain all necessary approvals and/or permissions. The Consultant shall be responsible for preparation and timely submittal of documents required for review, approval, and/or recording by such agencies. The Consultant shall be responsible for making such changes in the Construction Documents as may be required by existing written standards promulgated by such agencies at no additional charge to City.

3.1.4 **Substantial Compliance with Architectural Barriers Act** – Should the Project fall within the regulatory requirements of the Texas Architectural Barriers Act, Chapter 68 Texas Administrative Code , as it exists or may be amended (the "Barriers Act"), as solely determined by the City, Consultant shall comply with the Barriers Act. As part of the Scope of Services defined in this Agreement, it is the sole responsibility of the Consultant to identify and analyze the requirements of the Barriers Act and to become familiar with the governmental authorities having jurisdiction to approve the design of the Project. Consultant shall participate in consultations with said authorities in order to obtain approval for the Project. As part of the services provided under the Consultant's Fee, the Consultant shall obtain the Notice of Substantial Compliance for the Project from the Texas Department of Licensing and Regulation (the

"TDLR"). The Consultant shall, without additional compensation, immediately correct any errors, omissions, or deficiencies in the design services and/or construction documents identified by TDLR and/or a Registered Accessibility Specialist ("RAS") at any phase of the Project, either by review of the construction documents, or inspection of the Project at the commencement of construction, during the construction of the Project, or at the completion of construction.

3.1.4.1 **Submission of Construction Documents to TDLR** – The Consultant shall mail, ship, or hand-deliver the construction documents to TDLR not later than five (5) calendar days after the Consultant issues the construction documents for the Project.

3.1.4.2 **Completion of Registration Form to TDLR** – Consultant shall complete an Elimination of Barriers Project Registration Form (The "Form") for each subject building or facility within the Scope of the Project, and submit the registration form(s) along with the applicable fees not later than fourteen (14) calendar days after the Consultant completes the submittal of the construction documents to TDLR.

3.1.4.3 **TDLR Approval of Construction Documents** – After review of the construction documents by TDLR, the Consultant shall be notified in writing of the results; however, it is the Consultant's responsibility to obtain TDLR's written comments. The Consultant shall address all comments that prevent TDLR approval of the construction documents, including comments relating to Conditional Approval that must be addressed in the design and construction of the Project. Consultant shall resubmit construction documents to TDLR for review prior to the completion of construction of the Project.

3.1.4.4 **TDLR Project Inspection** – Consultant shall request an inspection from TDLR or a TDLR locally approved RAS no later than thirty (30) calendar days after the completion of construction of the Project. The Consultant shall advise the City in writing of the results of each Project inspection. City reserves the right to verify the written results with TDLR at any time during design, construction, or at the completion of the Project.

3.1.4.5 **Corrective Modifications following TDLR Project Inspection** - When corrective modifications to achieve substantial compliance are required, the TDLR inspector or the RAS shall provide the Consultant a list of deficiencies and a deadline for completing the modifications. Consultant shall provide the City

with this list within five (5) calendar days of receipt. It is the sole responsibility of the Consultant to completely address the deficiencies by the stated deadline or to obtain a written notice of extension from the TDLR. When the corrective measures have been completed, Consultant shall provide the TDLR (and/or the RAS who completed the inspection) and the City with written verification of the corrective measures completed.

3.1.4.6 **TDLR Notice of Substantial Compliance** – TDLR shall provide a Notice of Substantial Compliance to the City after the newly constructed Project has had a satisfactory inspection, or Consultant has submitted verification of corrective modifications. City and Consultant agree that the final five percent (5%) of Consultant's Fee allocated for the design of the Project, One Thousand, Six Hundred Thirty Six Dollars and 75 Cents ($1,636.75), shall not be paid until the City is in receipt of the TDLR's Notice of Substantial Compliance for all Project components and/or phases of the Project.

3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "B," and consistent with Exhibit "D," City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to the City for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the City's sole and exclusive remedy for said over-payment.

3.3 **Additional Services** – The Consultant shall provide the services as described in the Scope of Services as set forth in Exhibit "A" of this Agreement. If authorized in writing by the City, the Consultant shall provide additional services, to be compensated on an hourly basis in accordance with this paragraph ("Additional Services"). These services may include, but are not limited to:

3.3.1 Additional meetings, hearings, work-sessions, or other similar presentations which are not provided for or contemplated in the Scope of Services described in Exhibit "A."

3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

3.3.5 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on direct billable labor rates and expenses.

3.3.6 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to City.

Hourly Billable Rates by Position

Name	*Position*	*Hourly Rate*
--		
--	Principal	$110.00
--	Project Manager	$100.00
--	Sr. Landscape Designer	$90.00
--	Landscape Designer	$80.00
--	Irrigation Designer	$65.00
--	Arborist	$60.00
--	Administrative	$40.00
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3.4 **Invoices** – No payment to Consultant shall be made until the Consultant tenders an invoice to the City. The Consultant shall submit monthly invoices for services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or are to be mailed to City immediately upon completion of each individual task listed in Exhibit "B." On all submitted invoices for services rendered and work completed on a monthly basis, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log.

information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.

3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.

3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date the City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of the Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5. If a dispute is resolved in favor of the City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

3.7 **Failure to Pay** – Failure of the City to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter "D" ("Remedy for Nonpayment") of the Texas Government Code. The City shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.

3.8 **Adjusted Compensation** – If the Scope of the Project or if the Consultant's services are materially changed due to no error on behalf of Consultant in the performance of services under this Agreement, the amounts of the Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be authorized by written change order duly executed by both parties before the services are performed.

3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs, and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Consultant's compensation shall be equitably adjusted as approved by the City. Any additional amounts paid to the Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4
OWNERSHIP OF DOCUMENTS

4.1 **Documents Property of the City** – The Project is the property of the City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A." Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit "A" to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8, and promptly furnish the same to the City in an acceptable electronic format. All such reproductions shall be the property of the City who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at the City's own risk.

4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that City is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or Sub-consultants) under this Agreement are instruments of service in respect of the Project and property of the City and upon completion of the Project shall thereafter be subject to the Texas Public Information Act (Texas Government Code, Chapter 552) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5
CONSULTANT'S INSURANCE REQUIREMENTS

5.1 **Required General Liability Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate. Such policy shall name the City, its officers, agents, representatives, and employees as additional insured as to all applicable coverage. Such policy shall provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each claim, and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent service(s), and authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United

States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If Project size and scope warrant, and if identified on the checklist located in Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to the City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars ($2,000,000.00). Such policy shall require the provision of written notice to the City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

ARTICLE 6
CONSULTANT'S ACCOUNTING RECORDS

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to the City as indicated in Article 3.4. Copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be included in the monthly invoices.

ARTICLE 7
AUDITS AND RECORDS / PROHIBITED INTEREST / VENDOR DISCLOSURE

The Consultant agrees that at any time during normal business hours and as often as the City may deem necessary, Consultant shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Consultant agrees that it is aware of the prohibited interest requirement of the City Charter, which is repeated on the Affidavit, attached hereto as Exhibit "F" and incorporated herein for all purposes, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit attached hereto as Exhibit "F." Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit "G" and incorporated herein for all purposes.

ARTICLE 8
TERMINATION OF AGREEMENT / REMEDIES

City may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, and without prejudice to any other remedy it may have. If City terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds the Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 herein and agrees to pay any costs over and above the fee which the City is required to pay in order to finish the Project. On any default and/or breach by Consultant, City may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from the Consultant's Fee due Consultant as set forth in Article 3 herein. If City terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of the City in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

ARTICLE 9
DISPUTE RESOLUTION / MEDIATION

In addition to all remedies at law, the parties may resolve/mediate any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator.

ARTICLE 10

INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FROM WHOM CONSULTANT IS LEGALLY RESPONSBILE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF GOODS AND/OR SERVICES PROVIDED BY CONSULTANT PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT

WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (THE "JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO THE CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY, OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT, OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO CONSULTANT WITHIN SIXTY (60) DAYS OF THE DATE OF THE JUDGMENT (THE "REIMBURSEMENT ALLOCATION").

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11
NOTICES

Consultant agrees that all notices or communications to City permitted or required under this Agreement shall be delivered to City at the following addresses:

John E. Doshier, Parks Project Manager
City of Frisco

6726 Walnut Street
Frisco, Texas 75034
City agrees that all notices or communication to Consultant permitted or required under this Agreement shall be delivered to Consultant at the following addresses:

Leonard W. Reeves, ASLA, RLA, LI
Studio 13 Design Group,
1740 Midway Road
Lewisville, Texas 75056

Any notice provided in writing under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested.

All notices or communication required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is postmarked by the sending party. Each party may change the address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of this Agreement.

ARTICLE 12
MISCELLANEOUS

12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled "A" through "G," all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

12.1.1 Exhibit "A," Scope of Services.

12.1.2 Exhibit "B," Compensation Schedule / Project Billing / Project Budget.

12.1.3 Exhibit "C," City of Frisco Guidelines for Computer Aided Design and Drafting (CADD).

12.1.4 Exhibit "D," City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.

12.1.5 Exhibit "E," City of Frisco Contractor Insurance Guidelines.

12.1.7 Exhibit "F," Affidavit.

12.1.8 Exhibit "G," Conflict of Interest Questionnaire, Form CIQ.

12.2 **Assignment and Subletting** – The Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant of its full obligations to the City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.

12.3 **Successors and Assigns** – City and Consultant, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

12.4 **Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.

12.5 **Venue** – This entire Agreement is performable in Collin County, Texas and the venue for any action related directly or indirectly, to this Agreement or in any manner connected therewith shall be in Collin County, Texas, and this Agreement shall be construed under the laws of the State of Texas.

12.6 **Execution / Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

12.7 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

12.8 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

12.9 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.

12.10 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

12.11 **Sovereign Immunity** – The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

12.12 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.

12.13 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.

12.14 **No Third Party Beneficiaries** - Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

12.15 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 herein is conspicuous and the parties have read and understood the same.

12.16 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of the City's 2010-2011 fiscal year. City will give Consultant sixty days (60) notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2010-2011 fiscal year unless and until such funds are budgeted.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures below.

Effective Date: _____

CITY
City of Frisco, Texas

By: _____

Name: George Purefoy

Title: City Manager

CONSULTANT
Studio 13 Design Group, PLLC.

By: LEONARD W REEVES

Name: Leonard W Reeves

Title: PRINCIPAL / OWNER

APPROVED AS TO FORM:

Abernathy, Roeder, Boyd, & Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____, 2011.

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

STATE OF TEXAS:

COUNTY OF DENTON:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED LEONARD W. REEVES, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 24TH DAY OF AUGUST, 2011.

Erin L Pesante
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My commission expires: June 09, 2015

ERIN L PESANTE
Notary Public, State of Texas
My Commission Expires
June 09, 2015

EXHIBIT 'A'

Agreement by and between the City of Frisco, Texas (City) and Studio 13 Design Group, PLLC. (Consultant) to perform professional design and construction document preparation services for a hike and bike trail and bridge crossing along Cottonwood Creek to Frisco Street, hereinafter referred to as the (Project).

I. PROJECT DESCRIPTION.

Consultant shall perform design and preparation of construction documents for Hike and Trail & Bridge Crossing along Cottonwood Creek from North County Road to Frisco Street, Frisco, Texas.

II. TASK SUMMARY, BASIC SERVICES.

A. **Task One: Basic Map Preparation** – We will prepare a base map for the project area utilizing aerial photographs, on the ground surveys as well as documents of record filed with the City of Frisco, Collin county tax district. The base maps will be used for plan preparation for the trail infill and trail connection construction documents.

B. **Task Two: Preliminary Trail Layout** – Based on the feasibility study, we will prepare a preliminary trail and pedestrian bridge layout plan utilizing the base map information and feasibility study flood analysis information for your review and comment.

C. **Task Three: Construction Documents** – Based on the preliminary base map and the feasibility analysis, we will prepare full construction documents for the hike and bike trail and pedestrian bridge crossing including layout plans, grading plans and structural details.

D. **Task Four: Project Administration** – We will prepare a bid sheet identifying the material quantities of the proposed improvements for the purposes of competitive bids. These quantities will be placed in a bid form for the City of Frisco Parks and Recreation Department's use.

E. **Task Five: Pre-Bid Meeting** – We will be available to meet with potential bidders and City staff to review the project and the expectations of construction quality, construction sequence and construction timing. We will review with the potential bidders the areas for the trail connections and trail infill as designated by the City and documented in the plan sets.

III. TASK SUMMARY, SPECIAL SERVICES.

A. **Task One: Construction Administration** – We will, as needed, visit the site to review the progress and the craftsmanship of the project. We will be available to answer questions and review submittals as determined by the City.

B. **Task Two: Site Surveying** – We will perform a on the ground surveying for the proposed work areas including a topographic survey and creek cross sections to help with the location of the pedestrian bridge crossing.

C. **Task Three, Platting** – We will prepare re-plat for Sports Village USA Lot 2, Block B and the Conveyance Plat for Sports Village USA Lots 1, 4, 5, 6, 7 to include the necessary easements for the hike & bike trail.

D. **Task Four, TDLR Review** – We will submit the plans to a Registered Accessibility Specialist to inspect the plans and site for TAS & ADA Compliance.

IV. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES.

A. Additional Services not included in the existing Scope of Services – City and Consultant agree that the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed.

V. DELIVERABLES.

A. Required Deliverables – At the completion of Tasks 1 & 2 (with Deliverable 1) Task 2-3 (with Deliverable 2), Task 3-4 (with Deliverable 3),Consultant shall ensure the delivery of the following products to the City:

1. **Deliverable #1** – We will deliver a set of preliminary plans that will show the areas designated for improvement. These documents will show horizontal alignment of the trail connections and trail infill.
2. **Deliverable #2 – Construction Documents (50%)** - We will submit a set of construction documents for the city's review at approximately 50% completion. We will address any comments from the City of Frisco as we move forward with the construction documents.
3. **Deliverable #3 – Construction Documents (100%) -** We will provide the City of Frisco Parks and Recreation Department with a set of plans that have been submitted to and approved by the City of Frisco Engineering Department to be issued for construction. We will work with the engineering department to obtain approval of the construction documents.

VI. PROJECT LABOR ALLOCATION

Task	Subtask	Labor Hours
TASK 1	Base Map Preparation	12.1% 24hrs
TASK 2	Preliminary Trail Layout	9% 17.85hrs
TASK 3	Construction Documents	58.5% 116.15hrs
TASK 4	Project Administration	17.5% 34.75hrs
TASK 5	Pre Bid Meeting	2.9% 5.75hrs
GRAND TOTAL		100% 198.5hrs

EXHIBIT 'B'

1. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

MONTH, DATE, YEAR	DOLLAR AMOUNT	TASK COMPLETED
1 month	$9,226.00	Preliminary Trail Layout and Base Map Preparation and Bid Documents. Deliverable 1 has been delivered.
2 month (50% set of construction documents, 100% set construction documents & deliverable 2)	$9,031.00	Project Administration and Pre-Bid Meeting. Deliverable 2 has been delivered.
3 month	$14,478.00	Construction Documents Finalized, TDLR and Record Documents Complete, Project Administration Complete, Pre-bid complete & Construction Administration started. Deliverable 3 has been delivered.
TOTAL CONSULTANT'S FEE (NOT-TO-EXCEED)	**$ 32,735.00**	

I. PROJECT BUDGET SUMMARY.

A. **Basic Services**.

1. Description of Basic Services.

a. **Base Map Preparation.**	$ 2,285.00
b. **Preliminary Trail Layout.**	$ 1,710.00
c. **Construction Documents.**	$ 11,025.00
d. **Project Administration.**	$ 3,295.00
e. **Pre-Bid Meeting.**	$ 550.00
f. **Construction Administration.**	$ 1,425.00

2. *Total Basic Services (Not-To-Exceed)* ***$ 20,290.00***

B. **Special Services**.

2. Surveying	$	3,000.00
3. Platting (2 Properties)	$	5,000.00
4. Barrier Free / TDLR review	$	1,400.00
Total Special Services (Not-To-Exceed)	**$**	**9,400.00**

C. **Direct Expenses**.

a. Description of Direct Expenses. (Add items applicable to this Contract).

a. **Mileage Reimbursement.**	$	0,000.00
b. **Commercial Reproduction.**	$	800.00
c. **In-House Reproduction.**	$	485.00
d. **Commercial Plotting.**	$	475.00
e. **In-House Plotting.**	$	1,285.00
f. **Communications.**	$	0,000.00
g. **Postage, Mail, and Delivery Service.**	$	0,000.00
b. *Total Direct Expenses (Not-To-Exceed)*	***$***	***3,045.00***

F. **General and/or Administrative Markup**. (If this Section is Applicable to Contract)

a. **Description of Markup.**	$	0,000.00
b. *Total Approved Markup (Not-To-Exceed)*	*$*	*0,000.00*

G. **Travel and/or Subsistence Expenses**. (If this Section is Applicable to Contract)

1. **Description of Travel Expenses.**	$	00,000.00
2. **Description of Subsistence Expenses.**	$	0,000.00
3. *Total Approved Travel and Subsistence Expenses (Not-To-Exceed)*	*$*	*00,000.00*

H. ***Project Budget, Grand Total (Not-To-Exceed)*** ***$ 32,735.00***

EXHIBIT "C"
CITY OF FRISCO
GUIDELINES FOR COMPUTER AIDED DESIGN AND DRAFTING (CADD)

1. Files shall be submitted in DWG/DXF format.

2. Files shall be geo-referenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83.

3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.

4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.

5. The file shall contain required features for the project type as detailed below:

    a. Pre-Construction/As-Built Plans and/or Record Documents:
        i. Layers from Final Plat Requirements as Applicable to Project Type.
        ii. Water Utility Features.
        iii. Sanitary Sewer Features.
        iv. Storm Sewer Features.

6. Each required feature group should be provided as a separate layer within the file.

7. Layer names should be representative of the information contained in the layer.

8. Line work should be continuous (e.g. no dashed lines in required layers) and complete (connecting lines should meet at corners) within the subdivision/project. Layers outside of project/subdivision boundary may be dashed in CAD data as required for Final Plats by Frisco Subdivision Ordinance Section 5.02.

EXHIBIT "D"
CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

I. **CONSULTANT'S RESPONSIBILITY**. The Consultant shall be solely responsible for the auditing of all direct expenses, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those of its subcontractors, prior to submitting to the City for reimbursement, and Consultant shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment(s) for services; however, this shall not be the City's sole and exclusive remedy for said over-payment.

II. **GUIDELINES FOR DIRECT EXPENSES**.

A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of the Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall City reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of City's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by City. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.

B. **Supplies, Material, Equipment** – City shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by City's Project Manager in writing.

C. **Commercial Reproduction** – City shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to City at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

D. **In-House Reproduction** - Consultant shall make arrangements with the City for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of the City's reproduction log is required as a prerequisite for payment, including the number or reproductions,

the date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

E. **Commercial Plotting** – City shall reimburse the actual cost of plots, specifically limited to final documents, provided the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

F. **In-House Plotting** – Consultant shall make arrangements with City for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of the City's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.

G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.

H. **Postage, Mail, and Delivery Service** – City shall reimburse the actual cost of postage and delivery of Instruments of Service, provided the Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the City, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Consultant and/or the Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.

I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with the City's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

EXHIBIT "D"
CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

A. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to City specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to City what costs would be considered direct costs. City shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. City reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

A. **Requirement of Prior Approval** – City shall reimburse the actual cost of travel and/or subsistence expenses upon prior written approval by the City's Project Manager.

B. **Adherence to Currently Adopted City Travel Policy** – Reimbursements shall be governed by the same travel policies provided for City employees according to current adopted policy. Prior to the event, Consultant shall request, and the City's Project Manager shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

EXHIBIT "E"
CITY OF FRISCO CONTRACTOR INSURANCE GUIDELINES

I. **REQUIREMENT OF GENERAL LIABILITY INSURANCE** –

A. Such policy shall name the City, its officers, agents, representatives, and employees as additional insured as to all applicable coverage with the exception of workers compensation insurance.

B. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail.

C. Such policy shall provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of the insurance.

II. **INSURANCE COMPANY QUALIFICATION** – All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

III. **CERTIFICATE OF INSURANCE** – A Certificate of Insurance evidencing the required insurance shall be submitted with the contractor's bid or response to proposal. If the contract is renewed or extended by the City a Certificate of Insurance shall also be provided to the City prior to the date the contract is renewed or extended.

EXHIBIT "E"
CITY OF FRISCO CONTRACTOR INSURANCE GUIDELINES

IV. INSURANCE CHECKLIST – "X" means that the following coverage is required for this Agreement.

		Coverage Required	Limits
X	1.	Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
X	2.	General Liability	▪ Minimum $1,000,000.00 each occurrence; ▪ Minimum $2,000,000.00 in the aggregate.
___	3.	XCU Coverage	▪ Minimum $1,000,000.00 each occurrence; ▪ Minimum $2,000,000.00 in the aggregate.
X	4.	Professional Liability	▪ Minimum $ 1,000,000.00 each claim; ▪ Minimum $ 2,000,000.00 in the aggregate.
___	5.	Umbrella Coverage or Excess Liability Coverage	▪ An amount of $ 2,000,000.00.

X 6. City named as additional insured on General Liability Policy. This coverage is primary to all other coverage the City may possess.

X 7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance.

X 8. Thirty (30) days notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.

X 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

X 10. The Certificate of Insurance must state the project title and bid number.

___ 11. Other Insurance Requirements (State Below):

EXHIBIT "F"
AFFIDAVIT

THE STATE OF TEXAS §
§
THE COUNTY OF Denton §

I, LEONARD W REEVES, a member of the Consultant team, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the Project (Check all that apply):

✓ Ownership of 10% or more of the voting shares of the business entity.

✓ Ownership of Twenty Five Thousand and 00/100 Dollars ($25,000.00) or more of the fair market value of the business entity.

✓ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

___ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty Five Thousand and 00/100 Dollars ($25,000.00).

___ A relative of mine has substantial interest in the business entity or property that would be affected by my business decision of the public body of which I am a member.

___ Other: _____.

___ None of the Above.

Upon filing this affidavit with the City of Frisco, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code, is a member of a public body which took action on the agreement.

Signed this 24TH day of AUGUST, 2011 ~~2010~~.

Leonard W Reeves
Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared LEONARD W. REEVES and on oath stated that the facts hereinabove stated are true to the best of his / her knowledge or belief.

Sworn to and subscribed before me on this 24th day of August, ~~2010~~ 2011.

ERIN L PESANTE
Notary Public, State of Texas
My Commission Expires
June 09, 2015

Erin L Pesante
Notary Public in and for the State of Texas
My commission expires: June 09, 2015

EXHIBIT "G"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE **FORM CIQ**

For vendor or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. *See* Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY
Date Received

1 Name of person doing business with local governmental entity.

LEONARD W. REEVES

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Describe each affiliation or business relationship with an employee or contractor of the local governmental entity who makes recommendations to a local government officer of the local governmental entity with respect to expenditure of money.

4 Describe each affiliation or business relationship with a person who is a local government officer and who appoints or employs a local government officer of the local governmental entity that is the subject of this questionnaire.

Adopted 01/01/2009

EXHIBIT "G"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ
Page 2

For vendor or other person doing business with local governmental entity

5 Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.)

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or business relationship. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?

☐ Yes ☑ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?

☐ Yes ☑ No

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☑ No

D. Describe each affiliation or business relationship.

6 Describe any other affiliation or business relationship that might cause a conflict of interest.

7 Leonard W Reese — Signature of person doing business with the governmental entity

8/24/2011 — Date

Amended 01/15/2006

AGENDA ITEM #15.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 09-23-2010

PRODUCER	210-695-3932
BRITTON & BRITTON INSURANCE SERVICES, INC. Tx Admin Center P O Box 2588 Granite Shoals, TX 78654	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED	INSURERS AFFORDING COVERAGE	NAIC #
Studio 13 Design Group PLLC 1740 Midway Road Lewisville Tx 75056	INSURER A: Safeco Insurance Company of America	
	INSURER B: Darwin Select Inc. Co.	
	INSURER C: Texas Mutual Ins. Co.	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
		GENERAL LIABILITY		08-07-09	08-07-10	EACH OCCURRENCE	$ 1,000,000
		X COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 200,000
		CLAIMS MADE X OCCUR				MED EXP (Any one person)	$ 10,000
						PERSONAL & ADV INJURY	$ 1,000,000
						GENERAL AGGREGATE	$ 2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$ 2,000,000
		POLICY PRO-JECT LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		ANY AUTO				BODILY INJURY (Per person)	$
		ALL OWNED AUTOS				BODILY INJURY (Per accident)	$
		SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	$
		HIRED AUTOS					
		NON-OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	$
		OCCUR CLAIMS MADE				AGGREGATE	$
							$
		DEDUCTIBLE					$
		RETENTION $					$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N	SBP0001196147	11-10-09	11-10-10	X WC STATU-TORY LIMITS OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)				E.L. EACH ACCIDENT	$ 1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	$ 1,000,000
B		OTHER Professional Liailbity	0304-1229	09-25-10	09-25-11	2,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The City of Frisco is Additional Insured.
Waiver of Subrogation is in favor of The City of Frisco.

CERTIFICATE HOLDER

The City of Frisco
6726 Walnut St.
Frisco, TX 75034

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE Robert C Britton

ACORD 25 (2009/01)

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AGENDA ITEM #16.

Parks & Recreation Department
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Cc: **George Purefoy, City Manager**
Henry J. Hill, Deputy City Manager
Rick Wieland, Director of Parks and Recreation

From: **Dudley Raymond, RLA**

Date: **8/29/2011**

Agenda Caption: **Consider and act upon accepting a bid and approving a resolution authorizing the City Manager to execute an agreement by and between the City of Frisco and AND, Inc, for park improvements within Frisco Commons Park.**

Action Requested: Consider and act upon a resolution authorizing the City Manager to execute an agreement by and between the City of Frisco and AND, Inc, for park improvements within Frisco Commons Park in the amount of $183,748.

Background Information: This project is for the installation of two (2) submersible irrigation pumps within Frisco Commons Park. Improvements shall be made to the current irrigation system that will allow the use of rain water runoff to be used to irrigate the park. In an effort to reduce potable water consumption, this mainline irrigation renovation will use the existing runoff water which is captured in the lake and pump it into our irrigation system. This renovation will help ease the burden placed on our water supply, by capturing used water and distributing it throughout the park. Improvements for this project include, added electrical capacity to the West side of the park, procure and install two submersible irrigation pumps, piping, wiring and trenching. The project will be located on the west side of Frisco Commons Park. It is anticipated that construction should take approximately 120 days.

Board Review/Citizen Input: The Parks and Recreation Board has approved this project.

Alternatives:

- Approve
- Table
- Not Approve
- Direct Staff to make changes

Financial Considerations: Funding for the Agreement will be from Park Development Funds in the amount of $183,748.

Legal Review: The City Attorney drafted the contract.

Supporting Documents:

- Copy of agreement
- Certificate of Liability Insurance
- Resolution

Staff Recommendation: Approve the resolution authorizing the City Manager to execute the agreement.

CITY OF FRISCO, TEXAS RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS HEREBY AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BY AND BETWEEN THE CITY OF FRISCO, TEXAS AND AND, INC FOR MAINLINE IRRIGATION RENOVATIONS WITHIN FRISCO COMMONS PARK.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: The City Manager of the City of Frisco, Texas, is hereby authorized to execute, on behalf of the City Council of the City of Frisco, Texas, an agreement by and between the City of Frisco and AND, Inc for mainline irrigation renovations within Frisco Commons Park, a copy of which is attached hereto and incorporated herein for all purposes.

SECTION 2: This Resolution shall take effect immediately upon its passage.

RESOLVED THIS the _____ day of _____, 2011.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page
City Secretary

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

A201-2007 v:1.1 (4-14-09) Frisco insurance requirements dated 2/2009

for the following PROJECT:
(Name and location or address)
ARBJ File: Frisco 870008 0472 Parks (Frisco Commons Mainline Irrigation Renovations)
Frisco Commons Park
Frisco, Texas

THE OWNER:
(Name and address)
City of Frisco
6101 Frisco Square Blvd.
5th Floor
Frisco, TX 75034

THE ARCHITECT:
(Name and address)
James Pole Irrigation Consultants
100 W. Oak Street, Suite 101
Denton, TX 76201

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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4 ARCHITECT
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(1349536838)

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

Init.
/

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The Contract Documents shall include the bidding documents as listed in the Instructions to Bidders and any alterations made thereto by addenda. In the event of a conflict or contradiction within the Contract Documents and for the resolution of same, the following order of hierarchy shall prevail:

1) Contract;
2) Addenda;
3) Supplementary General Conditions;
4) General Conditions;
5) Specifications;
6) Drawings;
7) Instructions to Bidders;
8) Invitation to Bid;
9) Sample Forms.

§ 1.1.1.1 The Contractor acknowledges and warrants that it has closely examined all the Contract Documents, that they are suitable and sufficient to enable the Contractor to complete the Work in a timely manner for the Contract Sum, and that they include all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, plant, supplies, skill, supervision, transportation, services and other facilities and things necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the contract documents. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

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§ 1.1.6 THE SPECIFICATIONS
The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE
Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER
The Initial Decision Maker is the Owner.

§ 1.1.9 EQUAL TO (OR APROVED EQUAL)
Products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution as equal to those specified in the Contract Documents and which may be incorporated in the Work after review and acceptance by the Architect of the information about such products and acceptance by the Owner.

§ 1.1.10 FORCE MAJEURE
An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

§ 1.1.11 KNOWLEDGE
The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the work and in accordance with the highest standards in the contracting profession.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§1.2.1.1 Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by Architect in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§1.2.4 Specifications determine nature and setting, workmanship and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

§1.2.5 Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect to satisfy exact and specific conditions. If discrepancies appear, Contractor

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shall request interpretation from the Architect prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

(Paragraph deleted)

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.6.1 AIA Document E201-2007 is hereby made a part of the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

(Paragraph deleted)

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Paragraph Intentionally Deleted.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.3.1 The furnishing of such information by the Owner shall not relieve the Contractor from its duties under the Contract Documents, specifically as to inspection of the site and the Contract Documents. The Owner shall not be

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required to furnish the Contractor with any information as to subsurface conditions. If the Owner or the Architect has made any investigations of subsurface conditions, such investigations were made solely for the information of the Owner and Architect and not for the Contractor's information. No such information shall be construed to be a part of the Contract Documents. The Contractor acknowledges that, if Owner or Architect furnishes any such information to the Contractor, no waiver of the foregoing shall be implied, and the Contractor shall not be entitled to rely on such information but rather shall conduct its own investigation of such subsurface conditions. Further, no warranty of the accuracy of any such information shall be implied. The Contractor warrants that it is experienced in the type of Work undertaken pursuant to this contract and has the necessary expertise to form its own conclusions as to the necessity for conducting investigations of a type and nature as is calculated by Contractor to provide it with the necessary information so as to properly carry out the Work hereunder. If the Contractor discovers conditions that vary from those that it anticipated, whether such anticipation was reasonable or not, the Contractor's sole remedy against the Owner will be an extension of the Contract Time, but in no event will such condition entitle the Contractor to an increase in the Contract Sum.

§ 2.2.4 The information identified in Section 2.2.3, above, is not warranted or represented by the Owner to be accurate. The Contractor will not be entitled to rely on it and if the Contractor does rely on such information, then Contractor does so at its own risk. When such information is provided by the Owner, the Contractor acknowledges that the Owner has not verified such information. Site plans prepared by Owner's design professionals or others are based on surveys performed by consultants, and have not been verified by the Owner. Site plans do not constitute any representation by the Owner to the Contractor of Site boundaries or other characteristics.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3, nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure.

§ 2.5 ADDITIONAL RIGHTS

§ 2.5.1 The rights stated in Article 2 shall be in addition and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

§ 2.5.2 The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project with cause but without cost to the Owner. Such requests from the Owner may be made verbally or in writing and may be done directly or indirectly through the Architect/Engineer or on-site representative. Cause may be, but not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the facility or others, poor management, cause delay or delays, disruptive to the project, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

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ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the site, the specific conditions under which the Work is to be performed, and all matters that may in any way affect the Work or its performance. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents will not be permitted.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If a dimensional discrepancy exists, the Contractor shall take field measurements required for the proper fabrication and installation of the work. Upon commencement of any items of work, the Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents.

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§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 Contractor acknowledges that timely completion of the Work in accordance with the terms of said Documents is of crucial importance to Owner, Contractor shall provide the best skill and judgment of its officers and employees and shall cooperate with Owner and Architect to further the interests of Owner and to bring about timely completion of the Work. Contractor shall furnish sufficient business administration and superintendence and provide at all times an adequate supply of labor and materials to secure execution of the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of Owner. In the event of delays or/or unforeseen events, whether or not the same should entitle Contractor to an adjustment in the Contract Sum and/or Contract Time pursuant to Articles 7 and 8 hereof, Contractor shall use diligent efforts to maintain scheduled completion dates. Such efforts shall include rephasing events, decreasing overly conservative durations on subsequent events, increasing activity overlap, and using float on noncritical events. The float available in the Progress Schedule shall be used by Owner and Contractor whenever possible to offset the impact of delays. Contractor shall be responsible for coordinating its Work with the Work of any other contractors and/or activities at the job site.

§ 3.3.2 Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work in accordance with the requirements of the Contract Documents.

(Paragraph deleted)

§ 3.3.3. Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under contract or other arrangement with Contractor.

§ 3.3.4 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of the Contractor are in addition to Contractor's obligations under other provisions hereunder.

§ 3.3.5 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect under the Contract for Construction or by test, inspections, or approvals required or performed by persons other than Contractor.

§ 3.3.6 Contractor shall be responsible for inspection of portions of Work already performed under the Contract for Construction to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including coordinating deliveries, storage, installations, and use of construction utilities. Contractor shall be responsible for the space requirements, location, and routing of its equipment. In areas and locations where the proper and most effective space shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the building(s) and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, the Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments, arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole

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cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property Owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

§ 3.3.9 Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said work and the Drawings and Specifications for the Work.

§ 3.3.10 Any discrepancy or omission in the dimensions or elevations shown on the Drawings and Specifications or found in previous work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the mis-description of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

§3.3.11 Contractor shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with State of Texas HB 662 and HB 665. On trench excavations in excess of five feet in depth, Contractor shall pay a qualified engineer to prepare detailed plans and specifications directing Contractor in the safe execution of trenching and shoring, unless other procedures are reviewed and accepted in writing by the applicable authorities prior to commencing trenching work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

§3.4.4 Not later than 30 days from the contract date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each major product identified in the specifications and the name of the installing subcontractor.

§3.4.5 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products equal to those specified.

§3.4.6 By making requests for substitutions based on Subparagraph 3.4.5 above, the Contractor:

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

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.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§3.4.7 The Contractor shall not use any materials in the work that contain lead or asbestos materials in excess of amounts allowed by local/state standards, laws, codes, rules and regulations, Federal Environmental Protection Agency (EPA) standards and the Federal Occupational Safety and Health Administration (OSHA) standards, whichever are most restrictive.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that all workmanship shall be of the highest quality and in full conformance with the Contract Documents, and that all labor shall be performed by persons well qualified in their respective trades. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay all sales, consumer, use and other similar taxes required by law. The Owner is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. The Contractor may issue an exemption certification(s) in lieu of sales tax on the purchase, rental, or lease of all materials, supplies, equipment and other tangible personal property incorporated into the property being improved by virtue of this Contract, as well as all materials, supplies, equipment, and other tangible personal property used or consumed by the Contractor in performing this Contract with the Owner. The Contractor may issue exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The uses of said materials and supplies for which an exemption from the said sales tax is claimed and any such exemption certificate(s) shall comply with the applicable rulings of the State Comptroller.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 10 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or

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decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons and such determination shall be final and binding.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 Prior to starting Work, Contractor shall designate the Project Manager, Superintendent, and other key individuals who shall be assigned to the Project through and including Final Completion. The Superintendent shall be in attendance at the Project site throughout the Work, including completion of the punchlist. The Superintendent shall be approved by Owner in its sole discretion. Said representative shall be qualified in the type of Work to be undertaken and shall not be changed during the course of construction without the prior consent of Owner. Should a representative leave Contractor's employ, Contractor shall promptly designate a new representative. Owner shall have the right, at any time, to direct a change in Contractor's representative if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contract may, at Owner's option, be terminated for cause. The Superintendent shall represent Contractor, and communications given to the Superintendent shall be as binding as if given to Contractor. Owner shall have no obligation to direct or monitor Contractor's employees.

(Paragraphs deleted)

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 Contractor, promptly after being awarded the Contract for Construction and before commencing Work, shall prepare and submit for Owner's and Architect's review and approval a preliminary schedule for the Work. Within ten (10) days following Owner's Notice to Proceed, Contractor shall provide to Owner and Architect a schedule of performance of the Work, showing timely completion of the Work and timely achievement of each Milestone Date as required by the Contract for Construction and meeting all other requirements of this Section 3.10 (the "Progress Schedule"). Upon receipt of Contractor's proposed Progress Schedule, Owner may accept the proposed Progress Schedule as submitted or reject it, noting deficiencies. If such schedule is requested, the

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deficiencies noted shall be corrected and a new proposed Progress Schedule shall be submitted within ten (10) days. In any case, a complete Progress Schedule must be approved by Owner prior to any payments' being made.

§ 3.10.2 The Progress Schedule shall be in the form of a network using critical path methodology (CPM), clearly showing construction activities, dependencies, and durations. The critical path activities shall be highlighted, float time for noncritical activities shall be shown, and the start and stop stated for each activity shall be listed. Longer-duration activities shall be broken into subactivities when the Work can be completed in phases (i.e., south half, north half, etc.). Contractor will be allowed flexibility in schedule, logic, and content; however, the Progress Schedule must be broken down by all trades, indicating ordering, delivery, and Milestone Dates, and the following activities must be included in all cases, if covered by the Scope of Work: (a) award of Contract; (b) site delivery and mobilization; (c) demolition; (d) pour foundations; (e) underground utilities; (f) pour slabs phase; (g) exterior walls phase; (h) columns; (i) floor and roof structure phase; (j) roof decking; (k) roofing (drying); (l) HVAC duct work; (m) fire sprinkler piping; (n) interior stud walls phase; (o) drywall; (p) lath and plaster phase; (q) painting phase; (r) ordering and delivery of long-lead materials; (s) completion of any parking structures; and (t) Milestone Dates. For all long-lead materials and for the purchase of any materials or equipment with a cost of $5,000 or more, the Progress Schedule shall include a Material Purchase Log, indicating the item of material or equipment, the quantity required, the estimated lead time, and, to the extent known, Contractor's purchase order number, the date ordered, the scheduled delivery date, and the actual or committed delivery date.

§ 3.10.3 Contractor shall perform the Work in accordance with the Progress schedule as well as within the Milestone Dates and completion dates specified in the Contract for Construction. The times set forth in the Contract for Construction for all Milestone Dates and the time of completion must govern, and the Progress Schedule must be adjusted to meet these dates. Contractor shall maintain such Progress Schedule on a current basis in accordance with the provisions of this Section 3.10 and shall keep proper records to substantiate actual activity durations and completion dates.

§ 3.10.4 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, three copies of a Monthly Status Report in such form as Owner reasonably requests. Each Monthly Status Report shall concisely but completely describe, in narrative form, the then current status of the Work including, without limitation:

§ 3.10.4.1 A review of actual progress during the month in comparison to the Progress Schedule and, if actual progress is behind schedule, discussion of any "workaround" or "catch-up plan" that Contractor has employed or will employ to recover the original Progress Schedule;

§ 3.10.4.2 A concise statement of the outlook for meeting future Progress Schedule dates, and the reasons for any change in outlook from the previous report;

§ 3.10.4.3 A concise statement of significant progress on major items of Work during the report period, and progress photographs as necessary to document the current status of the Work;

§ 3.10.4.4 A review of any significant technical problems encountered during the months and the resolution or plan for resolution of such problems;

§ 3.10.4.5 An explanation of any corrective action taken or proposed;

§ 3.10.4.6 A complete review of the status of Change Orders, including a review of any changes in the critical path of the construction Progress Schedule which result from Change Orders approved by Owner during the month, as well as a review of the schedule impact of Change Order requests then pending;

§ 3.10.4.7 A summary of any Claims anticipated by Contractor with respect to the Work, including the anticipated cost and schedule impacts of any such Claims;

§ 3.10.4.8 A cumulative summary of the number of days of, and the extent to which the progress of the Work was delayed by, any of the causes for which Contractor could be entitled to an extension of the Contract Time;

§ 3.10.4.9 A marked copy of the current Progress Schedule showing the status of each element of the Work; and

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§ 3.10.4.10 An updated Material Purchase Log.

§ 3.10.5 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, for Owner's review and approval, three copies of an updated Progress Schedule meeting all the requirements of this Section 3.10, including:

§ 3.10.5.1 Actual versus estimated percent completion for each activity and Project total;

§ 3.10.5.2 Actual versus estimated work in place for each activity and Project total;

§ 3.10.5.3 Actual versus estimated manpower for each activity and Project total;

§ 3.10.5.4 Actual versus estimated cash flow; and

§ 3.10.5.5 Any change in the critical path.

§ 3.10.6 If the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, Owner may direct Contractor to accelerate its work, at Contractor's own cost, without any adjustment to the Contract Sum. Such acceleration may include employing such additional forces or paying such additional overtime wages as may be required to place the progress of the Work in conformity with the Progress Schedule and to assure timely substantial completion of the Work and achievement of all Milestone Dates.

§ 3.10.7 In addition, if the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, or Contractor fails to take prompt and adequate corrective action to Owner's satisfaction to bring the progress of the Work in compliance with the Progress Schedule, Owner may, in addition to any other right or remedy provided herein, proceed as provided in Sections 2.3 or 2.4.

§ 3.10.8 Whenever significant changes to the Project occur, such as added or deleted activities, they must be reflected on a revised Progress Schedule to be submitted Owner for its review and approval.

§ 3.10.9 Contractor shall be responsible on a daily basis to maintain all information which affects the length of specific activities on the Progress Schedule, times when Contractor will perform specific jobs, and other data relevant to the Progress Schedule as required by the Architect or Owner, Contractor shall make available at any time such information for review by the Architect or Owner.

§ 3.10.10 Contractor shall prepare and keep current, for Architect's review, a schedule of submittals which is coordinated with Contractor's Progress Schedule, and allow the Architect reasonable time to review submittals.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Should the Contractor Subcontractors or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for

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conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

§3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§3.13.2 The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Document, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Work in the event of partial occupancy. Contractor shall assume full responsibility for any damage to the property comprising the Work or to the owner or occupant of any adjacent land or areas resulting from the performance of the Work.

§3.13.3 Operating systems, utilities and services, serving the existing building and project site shall be maintained in operation to serve the needs of the building and site not involved in the Work under this Contract at all times during the progress of the Work under the Contract, accept for such short periods as are absolutely necessary to perform the Work. Such operating systems, utilities and services include, but are not limited to, water, electric power, natural gas, heating, ventilating, air conditioning, sanitary sewer, fire alarm, telephone, security, cable television and communications cabling. Prior to interrupting or otherwise affecting any such operating system, utility or service, Contractor shall consult with Owner and Architect to establish a mutually satisfactory schedule for cut over, cut off, disruption or other change in operation of the affected system, utility or service. Owner may require that such cut over, cut off, disruption or change in operation be made to occur after normal working hours or on holidays or weekends. Such agreed upon times and dates shall be clearly indicated in a written memorandum among the parties; and once established and agreed to, schedules of disruption of systems, services and utilities shall be strictly adhered to, unless later changed in writing by mutual agreement of the parties.

§3.13.4 The Contractor shall not permit any workers to use any existing facilities at the site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by Owner. The Contractor, Subcontractors of any tier, suppliers and employees shall comply with instructions or regulations of the Owner governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner's operations.

§3.13.5 The General Contractor shall provide and maintain temporary "all-weather" emergency vehicle access roads as Fire Lanes, as required by the appropriate governmental entity having jurisdiction, until complete construction of all fire lanes. Fire lanes shall be maintained and remain accessible at all times.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract and shall be responsible for daily clean-up of construction materials

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and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect, and their representatives, access to the Work in preparation and progress at all times and wherever located and shall provide proper and safe facilities for such access.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Owner's officers and trustees, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), caused in whole or in part by any act or omission, whether negligent or otherwise, of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.19 The Contractor shall maintain a set of Record Drawings on site in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (1) bidding addendums, (2) executed change orders, (3) deviations from the Drawings made during construction; (4) details in the Work not previously shown; (5) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (6) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (7) such other information as either Owner or Architect may reasonably request. The prints for Record Drawing use will be a set of "blue line" prints provided by Architect to Contractor at the start of construction. Upon Substantial Completion of the Work, Contractor shall deliver all Record Drawings to Owner and Architect for approval. If not approved, Contractor shall make the revisions requested by Architect or Owner. Final payment and any retainage shall not be due and owing to Contractor until the final Record Drawings marked by Contractor as required above are delivered to Owner.

§ 3.20 The Contractor shall submit four (4) volumes of operating instructions and service manuals to the Architect at the time of Substantial Completion, or as soon thereafter as practicable. Submission of all of the following shall be a condition precedent to Final Payment to the Contractor. The operating instructions and service manuals shall contain:

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.1 Start-up and Shutdown Procedures: Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and shut-down procedures are available, they may be incorporated into the operating manual for reference.

.2 Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment.

.3 Equipment List: List of all major equipment as installed shall include model number, capacities, flow rate, and name-plate data.

.4 Service Instructions: The Contractor shall be required to provide the following information for all pieces of equipment.
(a) Recommended spare parts including catalog number and name of local suppliers or factory representative.
(b) Belt sizes, types, and lengths.
(c) Wiring diagrams.

.5 Manufacturer's Certificate of Warranty:
Manufacturer's Certificate of Warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Substantial Completion. Where longer period is required by the Contract Documents, the longer period shall govern.

.6 Parts catalogs: For each piece of equipment furnished, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION
Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 The Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents, and any such determination shall be communicated through the Architect.

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§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§5.2.5 Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.

§5.2.6 The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the

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Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall be relieved of any legal responsibility under the subcontract if the successor contractor assumes Owner's obligations under the subcontract.

§5.5 OWNER PAYMENTS TO SUBCONTRACTORS

§5.5.1 In the event of any default hereunder by the Contractor, or in the event the Owner or Architect fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount is paid the Subcontractor shall be deducted from the payment to the Contractor.

§5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

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§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract

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Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount as determined by Owner. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

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reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

§ 7.5 AGREED OVERHEAD AND PROFIT RATES

§ 7.5.1 For any adjustments to the Contract Sum based on other than the unit price method, overhead and profit combined shall be calculated at the following percentages of the cost attributable to the change in the Work:

- .1 For the Contractor for Work performed by the Contractor's own forces, ten percent (10%) of the cost;
- .2 For the Contractor, for Work performed by the Contractor's Subcontractors, five percent (5%) of the amount due the Subcontractor;
- .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;
- .5 Costs to which overhead and profit is to be applied shall be determined in accordance with Sub-subparagraphs 7.3.7.1 through 7.3.7.5;
- .6 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;
- .7 To facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, material, and subcontracts. When major cost items are Subcontracts, they shall be itemized also.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§8.1.5 Claims for extension of time shall be stated in whole or half calendar days.

§8.1.6 The Contractor shall be substantially complete with all work shown on or before the date specified for substantial completion in the Contract Documents. Extensions to the Completion Date will be granted only if, in the opinion of the Architect, climatological conditions that impede the progress of construction significantly exceed average conditions for the local area. A guide for average climatological conditions will be the bulletin "Local Climatological Data," published by the Department of Commerce. No request for an extension of time due to weather conditions will be considered unless accompanied by Weather Bureau documentary evidence showing by comparison that such weather is abnormal to any of the past five (5) years.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by a wrongful act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by other causes that the Architect and Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Extensions of time shall be granted only because of delay preventing the execution of the major items of work critical to the schedule for completion of the Work.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§8.3.4 In the event that the Owner has specified a stipulated completion date, the provisions of 8.3.1 through 8.3.3 do not apply. However, in the event of delay(s) fully beyond the Contractor's control, the Owner may authorize by change order reimbursement for additional costs to accelerate the construction in order to maintain the stipulated completion date.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

§ 9.2 SCHEDULE OF VALUES

Before any work is done on the site and before the first Application for Payment, the Contractor shall submit to the Architect a schedule or breakdown showing the respective amounts (called "values" for convenience) properly allocable to the various portions of the work and aggregating the total contract sum. Each respective amount or value shall include its part of overhead and profit so that the sum of the items will total the contract sum. Such schedule of values will be prepared so as to facilitate payments by the Contractor to his Subcontractors and shall follow the trade divisions of the specifications so far as practicable. Such schedule and the amount therein shall be in such detail and supported by such data to substantiate its accuracy as the Architect may require. Such schedule, when approved by the Architect; unless it be found to be in error, shall be used only as a basis for the Contractor's Applications for Payment and shall not be taken as evidence of market or other value.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, submitted in quadruplicate.

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§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§9.3.1.3 Until Substantial Completion, the Owner shall pay 95 percent of the amount due the Contractor on account of progress payments.

§9.3.1.4 Contractor is to submit to Architect within 15 days of execution of Owner/Contractor Agreement proposed sample of Lien Waiver and Bills Paid affidavit forms for review and acceptance for this Contract.

§9.3.1.5 Monthly Applications for Payment shall include waivers of liens for all work included in the previous months' application for payment. Waiver of Liens for the subcontractors and materialmen shall be the total amount paid prior to the previous months' application for payment.

§9.3.1.6 With each Application for Payment, Contractor shall certify that such Application for Payment represents a just estimate of cost reimbursable to the Contractor under the terms of the Contract Documents and shall also certify that there are not any Mechanics' or Materialmen's Liens outstanding at the date of this Application for Payment, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of that Application for Payment, and that there is no known basis for the filing of any Mechanics' or Materialmen's Liens against the Surety in connection with the Work, and that waivers and bills paid affidavit forms from all subcontractors and materialmen have been or will be obtained in such form as the Owner may require.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques,

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sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§9.4.3 Contractor shall include as a separate and distinct line item on his pay request a value for trenching and shoring operations. Contractor shall attach to pay request a notarized letter from shoring engineer that designed Contractor's trenching and shoring systems, addressed to Owner, attesting that engineer has (1) reviewed trenching and shoring systems installed in field and found them in conformance with shoring engineer's detailed plans and specifications, (2) line item on Contractor's pay request accurately represents work installed and/or materials on site, and (3) engineer recommends payment to Contractor of line item for trenching and shoring based on engineer's observations.

§9.4.4 Contractor's monthly Application for Payment that is submitted without required letter from Contractor's shoring engineer described by Subparagraph 9.4.3 is subject to return without review until letter is submitted.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to submit a written plan indicating action by Contractor to regain time schedule for completion of Work within the Contract Time.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of any Work.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

(Paragraph deleted)

§ 9.8.1. Substantial Completion is the stage in the progress of the Work when construction is sufficiently complete, in accordance with the Contract Documents, so that the Owner may occupy and utilize the Work as a whole for the use for which it is intended.

§ 9.8.2 When the Contractor considers that the Work is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract

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Documents shall commence on the date of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 Whenever in the opinion of the Architect any section or portion of the Work may be used or occupied by the Owner without interference to the remaining Work, such section or portion may be so used and occupied, and neither such partial use and occupancy nor any insurance, if purchased by Owner in connection therewith, shall constitute an acceptance of any such Work, or portion thereof, as either substantially complete or complete. Such opinion of Architect shall be in writing and shall state, with respect to the portions to be so used and occupied, the date or dates of commencement of Contractor's warranties and Owner's obligations to maintain.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 In the event of partial use and occupancy by Owner, the Work, or any portion thereof, shall not be deemed substantially complete until the entire Work is substantially complete; and such partial use and occupancy shall not commence any warranty period under the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect and will not be materially reduced or canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (3) a written statement satisfactory to the Owner that the insurance will cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract for Construction, to the extent and in such form as may be designated by the Owner and Owner's lender; (6) certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Architect are compete and accurate in all respects; and (7) evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including but not limited to (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Architect's review and delivery to the Owner; (iv) delivery to the Owner of printed or typewritten operating, servicing, maintenance and cleaning instructions for all Work (parts lists

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and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner and Owner's lender (if any), the Contractor must furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner and Owner's lender (if any) against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and attorneys fees.

§9.10.2.1 In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local inspection authorities.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall
(Paragraphs deleted)
not constitute a waiver of any Claims by the Owner.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor's being responsible for excess Architect's fees. Excess Architect's fees include the cost incurred after sixty (60) days beyond the date of Substantial Completion. Excess Architect's fees will be deducted from the amount due the Contractor.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.2.1 If the Contractor fails to give such notices or fails to comply with such laws, ordinances, rules, regulations, and lawful orders, it shall be liable for and shall indemnify and hold harmless the Owner and the Architect and their respective employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§10.2.9 The Contractor shall protect and be responsible for any damage to his work or material, from the date of the agreement until the acceptance of the work and shall make good without cost to the Owner, any damage or loss that may occur during this period, except that in the event of partial or total occupancy by the Owner prior to final acceptance, the Owner shall be responsible for any damage caused by such partial or total occupancy. The Contractor shall handle all materials directed, so that it may be inspected by the Architect. All material affected by the weather shall be covered and protected to keep it free from damage while being transported to the site, as well as when it is stored on the site.

§10.2.10 The Contractor shall have full responsibility for preventing overstress of any structure or any part of member of it during construction. The Contractor shall fully check the effect of his operations in this regard, and shall provide all temporary support and connections required.

§10.2.11 The Contractor at his own expense and option shall employ watchmen or erect adequate fencing at such time as necessary to protect or attend his work, including times when building exterior is breached to protect it and its contents.

§ 10.2.12 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the Project site except to the extent such Hazardous Materials: (i) are necessary for the prosecution of the Work; (ii) are required pursuant to the Contract Documents; and (iii) have been approved in

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writing by Owner. Any Hazardous Materials allowed to be used on the Project site shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus Hazardous Materials, as well as any other Hazardous Materials that have been placed, released, or discharged on the Project site by the Contractor or any of its employees, agents, suppliers, or Subcontractors, shall be removed from the Project site at the earlier of: (i) the completion of the Work requiring the use of such Hazardous Materials; (ii) the completion of the Work as a whole; or use of such Hazardous Materials; (ii) the completion of the Work as a whole; or (iii) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. Any damage to the Work, the Project site, or any adjacent property resulting from the improper use of or any discharge or release of Hazardous Materials shall be remedied by the Contractor at its sole cost and expense and in compliance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site. The Contractor shall provide the Owner with copies of all warning labels on products which the Contractor or any of its Subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the Project site in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, which relate to any Hazardous Materials on the Project site. Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by Owner), and hold the Owner and Architect harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing or remedying the effect of any Hazardous Materials on, under, from, or about the Project site, arising out of or relating to, directly or indirectly, the Contractor's failure to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and any substances, materials, or wastes that are or become regulated under federal, state, or local law.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 Intentionally Deleted.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be

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responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

(Paragraph deleted)

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project:

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities excluded by statute from the requirements of Clause 11.1.1 but required by the Contract Documents to be covered by the insurance required by that Clause;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations; and

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

"Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

1. Premises Operations (including X, C and U coverage as applicable).
2. Independent Contractor's Protective
3. Products and Completed Operations.
4. Personal Injury Liability with Employment Exclusion deleted.
5. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.
6. Owned, non-owned and hired motor vehicles.

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7. Broad Form Property Damage including Completed Operations."

§11.1.2.1 The insurance required by Subparagraph 11.1.1 shall be written by an insurance company having an A rating or better by A.M. Best and shall be written in limits for not less than the minimum required by law or the following:

1.	Worker's Compensation:		
	(a)	State:	Statutory
	(b)	Applicable Federal:	Statutory
	(c)	Employer's Liability:	$500,000 per Accident
			$500,000 Disease, Policy Limit
			$500,000 Disease, Each Employee
2.	Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage):		
	(a)	Bodily Injury:	$1,000,000 Each Occurrence
			$2,000,000 Aggregate
	(b)	Property Damage:	$1,000,000 Each Occurrence
			$2,000,000 Aggregate
	(c)	Products and Completed Operations to be maintained for two years after final payment:	$2,000,000 Aggregate
	(d)	Property Damage Liability Insurance shall provide X, C and U coverage.	
	(e)	Broad Form Property Damage Coverage shall include Completed Operations.	
	(f)	Coverage to be extended to include the interests of the Architect and his consultants.	
3.	Contractual Liability:		
	(a)	Bodily Injury:	$1,000,000 Each Occurrence
			$1,000,000 Aggregate
	(b)	Property Damage:	$500,000 Each Occurrence
			$1,000,000 Aggregate
4.	Personal Injury, with Employment Exclusion deleted:		
	(a)	Coverage:	$500,000 Each Person Aggregate
			$500,000 General Aggregate
5.	Business Auto Liability (including owned, non-owned and hired vehicles):		
	(a)	Bodily Injury:	$500,000 Each Person
			$1,000,000 Each Occurrence
	(b)	Property Damage:	$250,000 Each Occurrence
6.	Umbrella Excess Liability:		
	(a)	Over Primary Insurance:	$2,000,000 Each Occurrence
7.	Occurrence Policy:		$2,000,000 Each Occurrence
			(applicable for asbestos related projects only)

If the General Liability coverage is provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

§11.1.2.2 Each policy of insurance listed above shall be purchased and maintained by the Contractor and each certificate of insurance for said insurance shall contain a complete waiver of subrogation against Owner, Architect and Architect's Engineers. Each certificate shall also list Owner, the Contractor of the Owner, Architect and Architect's Engineers as a party insured.

§11.1.2.3 Contractor shall not commence work at the site under this Contract until he has obtained all required insurance and submitted appropriate certifications.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies

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will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Owner's officers, agents, representatives and employees, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner and its officers, agents, representatives and employees as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

An Owners' protective liability insurance policy shall be furnished by the Contractor which shall name the Owner, and its officers, agents, representatives and employees and the Contractor of the Owner as insureds with the above-stated minimum limits

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. The all risk policy shall be written using standard ISO forms incorporating a general change endorsement which grants permission for the project to be occupied and used with the insurance remaining in full force and effect until such time as the project has been accepted by the Owner. It shall include coverage for resultant damage from defective workmanship, materials and design, no coinsurance clause, coverage for site preparation, coverage for temporary structures, cribbing or falsework built on the construction site, and coverage for fences, scaffolding, construction forms and signs while at the construction site.

§ 11.3.1.2 Paragraph Intentionally Deleted.

§ 11.3.1.3 Paragraph Intentionally Deleted.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Intentionally Deleted.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the

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Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE Paragraph Intentionally Deleted.

§ 11.3.4 Intentionally Deleted.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Owner. The original all risk insurance policy certificate shall be delivered to and left in the safekeeping of Owner, a certificate or copy being retained by the Contractor. All insurance provided under this section shall provide by endorsement or otherwise that the insured property may be occupied and that the insurance will remain in full force and effect until the project is fully accepted by the Owner.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 Intentionally Deleted.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish a Performance Bond and a Payment Bond as set forth in the Agreement. Any person or firm executing a bond upon the Contractor's Work under this Contract shall be deemed to have consented in advance to any changes in the Works made by order of Owner as set forth in Article 7; and any such changes made under these provisions shall in no way alter or impair the obligations of the person or firm executing such bond. The amount of each bond shall be equal to 100 percent of the Contract Sum.

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§11.4.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished

§11.4.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney, indicating the monetary limit of such power.

§11.4.1.3 The Contractor shall provide each bond on the form required by Owner.

§11.4.1.4 No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation pending against the Owner during the term of this Contract. All bonds shall be executed by a corporate surety authorized to do business in the State of Texas. The surety company or companies furnishing the surety bonds for this Contract must show a Texas Department of Insurance underwriting limitation not less than the total amount of the Contract. Each bond shall be executed by the Contractor and the Owner. Should any surety be determined unsatisfactory at any time by the Owner, notice will be given to the Contractor, and the Contractor shall immediately provide a new surety (complying with Article 11) acceptable to the Owner and at no additional cost to the Owner. This Contract shall not be valid nor will any payments be due or paid until approval of each bond by the Owner.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3

A. The Contractor shall deliver to the Owner his written guarantee, made out to the Owner and in form satisfactory to the Owner, guaranteeing all of the work under the contract to be free from faulty materials in every particular, and free from improper workmanship, and against injury from proper and usual wear; and agreeing to replace or re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials, due to such required replacement or re-execution. This guarantee shall be made to cover a period of twelve (12) months from the date of substantial completion as certified by the Architect under this Contract. This guarantee must be furnished to the Owner and approved by him before acceptance and final payment is made.

B. Contractor shall provide Owner with copies of all guarantees or warranties which have been made to the Contractor by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guarantees to the Owner; however, such assignment shall not relieve the Contractor of the responsibility stated in subparagraph (a) above in case of failure of subcontractors or supplies to fulfill the provision of such warranties or guarantees.

C. Neither the Final Certificate, nor payment, nor any provision in the Contract Documents shall relieve the Contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the guarantee.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§12.2.6 Owner shall have the right to operate equipment until defects are corrected and warranties met, and shall have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§13.1.2 The Owner has adopted a prevailing wage rate schedule as more fully described in the Project Manual or other Contract Documents. The Contractor and each Subcontractor shall pay to all laborers, workmen and mechanics employed by them in the execution of this Work not less than such rates for each craft or type of workman or mechanic needed to execute the Work. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the

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prevailing wage rates adopted by Owner. This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates shown. In compliance with Texas Government Code, Chapter 2258, the Contractor and each subcontractor shall forfeit, as a penalty to the Owner, sixty dollars ($60.00) for each laborer, workman or mechanic employed by them, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the rates adopted by Owner.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

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§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at twelve percent (12%) per annum.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§13.8 EQUAL OPPORTUNITY

§13.8.1 The Contractor shall maintain policies of employment as follows:

§13.8.1.1 The Contractor and Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

§13.9 CRIMINAL BACKGROUND Paragraph Intentionally Deleted.

§13.10 WORKING TIME AND WORKING RESTRICTIONS

§13.10.1 THE ENTIRE BUILDING SHALL REMAIN TOBACCO-FREE AT ALL TIMES

§13.10.2 Normal working hours and normal working days for Contractor's work on this Project shall be between 7:00 a.m. and 8:00 p.m., Monday through Friday, except as otherwise noted below. The Owner may require that certain limited portions of the Work be accomplished after normal working hours or other than on normal working days.

§13.10.3 Should Contractor desire to carry out portions of the Work at times other than between the hours and days stipulated above, he shall submit written request to do so to the Owner together with specific calendar days and hours he wishes to work and a description of the activities he proposes to carry out during those times. Construction activities will not be permitted at times other than those specified or subsequently approved in writing by the Owner. Only those activities specifically approved by Owner will be permitted during hours or on days other than those stipulated above.

§13.10.4 No extension of time will be granted and no "extra" or additional amount will be paid due to failure of Owner to approve performing of construction activities during hours other than those stipulated above.

§13.10.5 Work performed other than between 7:00 a.m. and 8:00 p.m., Monday through Friday, shall be done at no additional cost, whether work at other times is required by Owner or requested by Contractor and approved by Owner.

§13.10.6 If necessary in order to complete Work within time fixed in Contract or any extension thereof, Contractor shall request approval from Owner to perform work before 7:00 a.m. or after 8:00 p.m. or on weekends or holidays, and if Owner approves, shall perform work during such additional times and on such additional days as have been

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approved, at no additional cost to Owner. Work during such additional times and on such additional days shall continue only so long as is necessary to return work to on schedule or to complete the Work within the Contract Date.

§13.11 APPLICATION TO CONSTRUCTION MANAGER

§13.11.1 If used in connection with a Standard Form of Agreement Between Owner and Construction Manager (A133), the term "Contractor" as used herein shall mean and refer to Construction Manager.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be

(Paragraphs deleted)

stopped.

§ 14.1.2 Paragraph Intentionally Deleted.

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon fourteen days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed.

§ 14.1.4 Paragraph Intentionally Deleted.

§14.1.5 Any payment due to, or recovered by, Contractor under paragraph 14.1.3 above shall not exceed the remainder, if any, after subtracting the total of the previous payments made by Owner to Contractor from the lesser of:

(a) the fair value (not Contractor's cost or profit) of the properly executed Work; or

(b) an amount determined by multiplying the contract price, as adjusted by change orders, times the percentage of Work completed.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or

.5 Contractor becomes insolvent or makes a general assignment for the benefit of its creditors.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.4.1 The costs of finishing the Work include, without limitation, all reasonable attorneys' fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect and consequential costs incurred by the Owner by reason of the termination of the Contractor as stated herein.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly executed on same basis provided in Subparagraph 14.1.5.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the Contractor.

§ 15.1.2 NOTICE OF CLAIMS

Claims by Contractor must be initiated by written notice to the Owner and Architect. Claims by Contractor must be initiated within 10 days after occurrence of the event giving rise to such Claim or within 10 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

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§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum or for extra costs or damages, he shall give the Architect and the Owner written notice thereof within ten days after the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the work except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with paragraph 10.4 Such claim, with the recommendation of the Architect, will be submitted to the Owner and its action shall be final and binding. Failure to give such notice shall be a waiver of the claim and such claim or possible claim shall be invalid and unenforceable unless so made. Compliance by the Contractor with this paragraph does not validate any claim which is otherwise invalid.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Abnormal weather conditions not reasonably anticipated shall mean weather conditions which prevent work on the Project and which have a direct effect on the Contractor's predefined critical work sequence. Contractor's schedule shall take into consideration normal seasonal weather conditions, number of precipitation days per month (as defined by the National Weather Service 30-year average) along with muddy site days directly related to the precipitation days indicated.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes
(Paragraphs deleted)
damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This waiver is applicable, without limitation, to all consequential damages due to Owner's termination in accordance with Article 14. Nothing contained in this Subparagraph 15.1.6 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION Paragraph Intentionally Deleted

(Paragraphs deleted)

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.5 and 15.1.6 shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which shall be in accordance with the provisions of Section 154.023, Texas Civil Practice and Remedies Code. A request for mediation shall be filed in writing with the other party to this Contract.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION Paragraph Intentionally Deleted.

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§ARTICLE 16: ADDITIONAL PROVISIONS FOR LIQUIDATED DAMAGES

§16.1 CONTRACTUAL PROVISIONS

§16.1.1 It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be done hereunder are essential conditions of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "Notice to Proceed" and shall be substantially complete by the "Substantial Completion Date" set forth in the agreement between the Owner and Contractor.

§16.1.2 Contractor agrees that said work shall be prosecuted in accordance with the provisions of this Contract at such a rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for completion of the same.

§16.1.3 If the said Contractor shall neglect, fail or refuse to complete the Work within the time indicated above or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract, as hereinafter set forth for $500.00, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. Such damages shall be cumulative and not in lieu of any other rights or remedies of Owner against Contractor as a result of any breach by Contractor hereunder.

§16.1.4 The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.

§16.1.5 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever, and where under the Contract an additional time is allowed for the completion of any work, the new time fixed by such an extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess costs when the delay in completion of the Work is due:

.1 To any performance, priority or allocated order duly issued by the Government;

.2 To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;

.3 To any delays of subcontractors or suppliers occasioned by any of the causes specified in subparagraphs of this Article.

§16.1.6 Provided, further, that the Contractor shall, within 10 days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner in writing of the cause of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

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A201-2007 v:1.1 (4-14-09) Frisco insurance requirements dated 2/2009

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ARBJ File: Frisco 870008 0472 Parks (Frisco Commons Mainline Irrigation Renovations)
Frisco Commons Park
Frisco, Texas

...

~~*(Name, legal status*~~ *(Name and address)*
City of Frisco
6101 Frisco Square Blvd.
5th Floor
Frisco, TX 75034

...

~~*(Name, legal status*~~ *(Name and address)*
James Pole Irrigation Consultants
100 W. Oak Street, Suite 101
Denton, TX 76201

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~~(Topics and numbers in bold are section headings.)~~(Numbers and Topics in Bold are Section Headings)

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.~~ The Contract Documents shall include the bidding documents as listed in the Instructions to Bidders and any alterations made thereto by addenda. In the event of a conflict or contradiction within the Contract Documents and for the resolution of same, the following order of hierarchy shall prevail:

1) Contract;
2) Addenda;
3) Supplementary General Conditions;
4) General Conditions;
5) Specifications;
6) Drawings;
7) Instructions to Bidders;
8) Invitation to Bid;
9) Sample Forms.

§ 1.1.1.1 The Contractor acknowledges and warrants that it has closely examined all the Contract Documents, that they are suitable and sufficient to enable the Contractor to complete the Work in a timely manner for the Contract Sum, and that they include all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party.

...

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, ~~equipment and services provided~~ or to ~~be provided by the Contractor to fulfill the Contractor's obligations.~~ equipment, plant, supplies, skill, supervision, transportation, services and other facilities and things necessary or proper or incidental to the carrying out and completion of the

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terms of the contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the contract documents. The Work may constitute the whole or a part of the Project.

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The Initial Decision Maker is the ~~person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.~~ Owner.

§ 1.1.9 EQUAL TO (OR APROVED EQUAL)
Products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution as equal to those specified in the Contract Documents and which may be incorporated in the Work after review and acceptance by the Architect of the information about such products and acceptance by the Owner.

§ 1.1.10 FORCE MAJEURE
An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

§ 1.1.11 KNOWLEDGE
The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the work and in accordance with the highest standards in the contracting profession.

...

§1.2.1.1 Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by Architect in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

...

§1.2.4 Specifications determine nature and setting, workmanship and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

§1.2.5 Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect to satisfy exact and specific conditions. If discrepancies appear, Contractor shall request interpretation from the Architect prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

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~~§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.~~

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§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

...

§ 1.6.1 AIA Document E201-2007 is hereby made a part of the Contract Documents.

...

~~§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

~~§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~ Paragraph Intentionally Deleted.

...

§ 2.2.3.1 The furnishing of such information by the Owner shall not relieve the Contractor from its duties under the Contract Documents, specifically as to inspection of the site and the Contract Documents. The Owner shall not be required to furnish the Contractor with any information as to subsurface conditions. If the Owner or the Architect has made any investigations of subsurface conditions, such investigations were made solely for the information of the Owner and Architect and not for the Contractor's information. No such information shall be construed to be a part of the Contract Documents. The Contractor acknowledges that, if Owner or Architect furnishes any such information to the Contractor, no waiver of the foregoing shall be implied, and the Contractor shall not be entitled to rely on such information but rather shall conduct its own investigation of such subsurface conditions. Further, no warranty of the accuracy of any such information shall be implied. The Contractor warrants that it is experienced in the type of Work undertaken pursuant to this contract and has the necessary expertise to form its own conclusions as to the necessity for conducting investigations of a type and nature as is calculated by Contractor to provide it with the necessary information so as to properly carry out the Work hereunder. If the Contractor discovers conditions that vary from those that it anticipated, whether such anticipation was reasonable or not, the Contractor's sole remedy against the Owner will be an extension of the Contract Time, but in no event will such condition entitle the Contractor to an increase in the Contract Sum.

§ 2.2.4 The ~~Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.~~ information identified in Section 2.2.3, above, is not warranted or represented by the Owner to be accurate. The Contractor will not be entitled to rely on it and if the Contractor does rely on such information, then Contractor does so at its own risk. When such information is provided by the Owner, the Contractor acknowledges that the Owner has not verified such information. Site plans prepared by Owner's design professionals or others are based on surveys performed by consultants, and have not been verified by the Owner. Site plans do not constitute any representation by the Owner to the Contractor of Site boundaries or other characteristics.

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If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section ~~6.1.3.~~6.1.3, nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure.~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.~~

§ 2.5 ADDITIONAL RIGHTS

§ 2.5.1 The rights stated in Article 2 shall be in addition and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

§ 2.5.2 The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project with cause but without cost to the Owner. Such requests from the Owner may be made verbally or in writing and may be done directly or indirectly through the Architect/Engineer or on-site representative. Cause may be, but not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the facility or others, poor management, cause delay or delays, disruptive to the project, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has ~~visited the site, become generally familiar with local~~ carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the site, the specific conditions under which the Work is to be ~~performed and correlated personal observations with requirements of the Contract Documents.~~performed, and all matters that may in any way affect the Work or its performance. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents will not be permitted.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the

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Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If a dimensional discrepancy exists, the Contractor shall take field measurements required for the proper fabrication and installation of the work. Upon commencement of any items of work, the Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no additional cost to the Owner.

...

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public ~~authorities.~~authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents.

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§ 3.3.1 ~~The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.~~ Contractor acknowledges that timely completion of the Work in accordance with the terms of said Documents is of crucial importance to Owner, Contractor shall provide the best skill and judgment of its officers and employees and shall cooperate with Owner and Architect to further the interests of Owner and to bring about timely completion of the Work. Contractor shall furnish sufficient business administration and superintendence and provide at all times an adequate supply of labor and materials to secure execution of the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of Owner. In the event of delays or/or unforeseen events, whether or not the same should entitle Contractor to an adjustment in the Contract Sum and/or Contract Time pursuant to Articles 7 and 8 hereof, Contractor shall use diligent efforts to maintain scheduled completion dates. Such efforts shall include rephasing events, decreasing overly conservative durations on subsequent events, increasing activity overlap, and using float on noncritical events. The float available in the Progress Schedule shall be used by Owner and Contractor whenever possible to offset the impact of delays. Contractor shall be responsible for coordinating its Work with the Work of any other contractors and/or activities at the job site.

§ 3.3.2 ~~The Contractor shall be responsible to the Owner for acts~~ and omissions of ~~the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.~~Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work in accordance with the requirements of the Contract Documents.

~~§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.~~

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§ 3.3.3. Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under contract or other arrangement with Contractor.

§ 3.3.4 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of the Contractor are in addition to Contractor's obligations under other provisions hereunder.

§ 3.3.5 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect under the Contract for Construction or by test, inspections, or approvals required or performed by persons other than Contractor.

§ 3.3.6 Contractor shall be responsible for inspection of portions of Work already performed under the Contract for Construction to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including coordinating deliveries, storage, installations, and use of construction utilities. Contractor shall be responsible for the space requirements, location, and routing of its equipment. In areas and locations where the proper and most effective space shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the building(s) and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, the Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments, arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property Owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

§ 3.3.9 Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said work and the Drawings and Specifications for the Work.

§ 3.3.10 Any discrepancy or omission in the dimensions or elevations shown on the Drawings and Specifications or found in previous work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum.

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Omissions from the Drawings or Specifications, or the mis-description of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

§3.3.11 Contractor shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with State of Texas HB 662 and HB 665. On trench excavations in excess of five feet in depth, Contractor shall pay a qualified engineer to prepare detailed plans and specifications directing Contractor in the safe execution of trenching and shoring, unless other procedures are reviewed and accepted in writing by the applicable authorities prior to commencing trenching work.

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§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

§3.4.4 Not later than 30 days from the contract date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each major product identified in the specifications and the name of the installing subcontractor.

§3.4.5 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products equal to those specified.

§3.4.6 By making requests for substitutions based on Subparagraph 3.4.5 above, the Contractor:

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§3.4.7 The Contractor shall not use any materials in the work that contain lead or asbestos materials in excess of amounts allowed by local/state standards, laws, codes, rules and regulations, Federal Environmental Protection Agency (EPA) standards and the Federal Occupational Safety and Health Administration (OSHA) standards, whichever are most restrictive.

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The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that all workmanship shall be of the highest quality and in full conformance with the Contract Documents, and that all labor shall be performed by persons well qualified in their respective trades. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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...

The Contractor shall pay ~~sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect~~ all sales, consumer, use and other similar taxes required by law. The Owner is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. The Contractor may issue an exemption certification(s) in lieu of sales tax on the purchase, rental, or lease of all materials, supplies, equipment and other tangible personal property incorporated into the property being improved by virtue of this Contract, as well as all materials, supplies, equipment, and other tangible personal property used or consumed by the Contractor in performing this Contract with the Owner. The Contractor may issue exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The uses of said materials and supplies for which an exemption from the said sales tax is claimed and any such exemption certificate(s) shall comply with the applicable rulings of the State Comptroller.

§ 3.7
~~PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS~~PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

...

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~21~~ 10 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the ~~reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.~~ reasons and such determination shall be final and binding.

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.1 ~~Allowances~~ allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

...

.3 ~~Whenever~~ whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

...

§ 3.9.1 ~~The Contractor shall employ a competent superintendent and necessary assistants who shall be~~ Prior to starting Work, Contractor shall designate the Project Manager, Superintendent, and other key individuals who shall be assigned to the Project through and including Final Completion. The Superintendent shall be in attendance at the Project site ~~during performance of the Work. The superintendent shall represent the~~ throughout the Work, including completion of the punchlist. The Superintendent shall be approved by Owner in its sole discretion. Said representative shall be qualified in the type of Work to be undertaken and shall not be changed during the course of construction without the prior consent of Owner. Should a representative leave Contractor's employ, Contractor shall promptly designate a new representative. Owner shall have the right, at any time, to direct a change in Contractor's representative if their performance is unsatisfactory. In the event of such demand, Contractor shall,

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within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contract may, at Owner's option, be terminated for cause. The Superintendent shall represent Contractor, and communications given to the ~~superintendent~~ Superintendent shall be as binding as if given to ~~the Contractor.~~ Contractor. Owner shall have no obligation to direct or monitor Contractor's employees.

~~**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.~~

~~**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~

§ 3.10.1 ~~The~~ Contractor, promptly after being awarded the ~~Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's~~ construction schedule for ~~the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.~~ Contract for Construction and before commencing Work, shall prepare and submit for Owner's and Architect's review and approval a preliminary schedule for the Work. Within ten (10) days following Owner's Notice to Proceed, Contractor shall provide to Owner and Architect a schedule of performance of the Work, showing timely completion of the Work and timely achievement of each Milestone Date as required by the Contract for Construction and meeting all other requirements of this Section 3.10 (the "Progress Schedule"). Upon receipt of Contractor's proposed Progress Schedule, Owner may accept the proposed Progress Schedule as submitted or reject it, noting deficiencies. If such schedule is requested, the deficiencies noted shall be corrected and a new proposed Progress Schedule shall be submitted within ten (10) days. In any case, a complete Progress Schedule must be approved by Owner prior to any payments' being made.

§ 3.10.2 The ~~Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit~~ the schedule(s) ~~for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.~~ Progress Schedule shall be in the form of a network using critical path methodology (CPM), clearly showing construction activities, dependencies, and durations. The critical path activities shall be highlighted, float time for noncritical activities shall be shown, and the start and stop stated for each activity shall be listed. Longer-duration activities shall be broken into subactivities when the Work can be completed in phases (i.e., south half, north half, etc.). Contractor will be allowed flexibility in schedule, logic, and content; however, the Progress Schedule must be broken down by all trades, indicating ordering, delivery, and Milestone Dates, and the following activities must be included in all cases, if covered by the Scope of Work: (a) award of Contract; (b) site delivery and mobilization; (c) demolition; (d) pour foundations; (e) underground utilities; (f) pour slabs phase; (g) exterior walls phase; (h) columns; (i) floor and roof structure phase; (j) roof decking; (k) roofing (drying); (l) HVAC duct work; (m) fire sprinkler piping; (n) interior stud walls phase; (o) drywall; (p) lath and plaster phase; (q) painting phase; (r) ordering and delivery of long-lead materials; (s) completion of any parking structures; and (t) Milestone Dates. For all long-lead materials and for the purchase of any materials or equipment with a cost of $5,000 or more, the Progress Schedule shall include a Material Purchase Log, indicating the item of material or equipment, the quantity required, the estimated lead time, and, to the extent known, Contractor's purchase order number, the date ordered, the scheduled delivery date, and the actual or committed delivery date.

§ 3.10.3 ~~The~~ Contractor shall perform the Work in ~~general accordance with the most recent schedules submitted to~~ the Owner and ~~Architect.~~ accordance with the Progress schedule as well as within the Milestone Dates and completion dates specified in the Contract for Construction. The times set forth in the Contract for Construction for all Milestone Dates and the time of completion must govern, and the Progress Schedule must be adjusted to meet

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these dates. Contractor shall maintain such Progress Schedule on a current basis in accordance with the provisions of this Section 3.10 and shall keep proper records to substantiate actual activity durations and completion dates.

§ 3.10.4 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, three copies of a Monthly Status Report in such form as Owner reasonably requests. Each Monthly Status Report shall concisely but completely describe, in narrative form, the then current status of the Work including, without limitation:

§ 3.10.4.1 A review of actual progress during the month in comparison to the Progress Schedule and, if actual progress is behind schedule, discussion of any "workaround" or "catch-up plan" that Contractor has employed or will employ to recover the original Progress Schedule;

§ 3.10.4.2 A concise statement of the outlook for meeting future Progress Schedule dates, and the reasons for any change in outlook from the previous report;

§ 3.10.4.3 A concise statement of significant progress on major items of Work during the report period, and progress photographs as necessary to document the current status of the Work;

§ 3.10.4.4 A review of any significant technical problems encountered during the months and the resolution or plan for resolution of such problems;

§ 3.10.4.5 An explanation of any corrective action taken or proposed;

§ 3.10.4.6 A complete review of the status of Change Orders, including a review of any changes in the critical path of the construction Progress Schedule which result from Change Orders approved by Owner during the month, as well as a review of the schedule impact of Change Order requests then pending;

§ 3.10.4.7 A summary of any Claims anticipated by Contractor with respect to the Work, including the anticipated cost and schedule impacts of any such Claims;

§ 3.10.4.8 A cumulative summary of the number of days of, and the extent to which the progress of the Work was delayed by, any of the causes for which Contractor could be entitled to an extension of the Contract Time;

§ 3.10.4.9 A marked copy of the current Progress Schedule showing the status of each element of the Work; and

§ 3.10.4.10 An updated Material Purchase Log.

§ 3.10.5 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, for Owner's review and approval, three copies of an updated Progress Schedule meeting all the requirements of this Section 3.10, including:

§ 3.10.5.1 Actual versus estimated percent completion for each activity and Project total;

§ 3.10.5.2 Actual versus estimated work in place for each activity and Project total;

§ 3.10.5.3 Actual versus estimated manpower for each activity and Project total;

§ 3.10.5.4 Actual versus estimated cash flow; and

§ 3.10.5.5 Any change in the critical path.

§ 3.10.6 If the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, Owner may direct Contractor to accelerate its work, at Contractor's own cost, without any adjustment to the Contract Sum. Such acceleration may include employing such additional forces or paying such additional overtime wages as may be required to place the progress of the Work in conformity

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with the Progress Schedule and to assure timely substantial completion of the Work and achievement of all Milestone Dates.

§ 3.10.7 In addition, if the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, or Contractor fails to take prompt and adequate corrective action to Owner's satisfaction to bring the progress of the Work in compliance with the Progress Schedule, Owner may, in addition to any other right or remedy provided herein, proceed as provided in Sections 2.3 or 2.4.

§ 3.10.8 Whenever significant changes to the Project occur, such as added or deleted activities, they must be reflected on a revised Progress Schedule to be submitted Owner for its review and approval.

§ 3.10.9 Contractor shall be responsible on a daily basis to maintain all information which affects the length of specific activities on the Progress Schedule, times when Contractor will perform specific jobs, and other data relevant to the Progress Schedule as required by the Architect or Owner. Contractor shall make available at any time such information for review by the Architect or Owner.

§ 3.10.10 Contractor shall prepare and keep current, for Architect's review, a schedule of submittals which is coordinated with Contractor's Progress Schedule, and allow the Architect reasonable time to review submittals.

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§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Should the Contractor Subcontractors or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

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~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~§3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§3.13.2 The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Document, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Work in the event of partial occupancy. Contractor shall assume full responsibility for any damage to the property comprising the Work or to the owner or occupant of any adjacent land or areas resulting from the performance of the Work.

§3.13.3 Operating systems, utilities and services, serving the existing building and project site shall be maintained in operation to serve the needs of the building and site not involved in the Work under this Contract at all times during the progress of the Work under the Contract, accept for such short periods as are absolutely necessary to perform the Work. Such operating systems, utilities and services include, but are not limited to, water, electric power, natural gas, heating, ventilating, air conditioning, sanitary sewer, fire alarm, telephone, security, cable television and communications cabling. Prior to interrupting or otherwise affecting any such operating system, utility or service, Contractor shall consult with Owner and Architect to establish a mutually satisfactory schedule for cut over, cut off, disruption or other change in operation of the affected system, utility or service. Owner may require that such cut over, cut off, disruption or change in operation be made to occur after normal working hours or on holidays or weekends. Such agreed upon times and dates shall be clearly indicated in a written memorandum among the parties;

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and once established and agreed to, schedules of disruption of systems, services and utilities shall be strictly adhered to, unless later changed in writing by mutual agreement of the parties.

§3.13.4 The Contractor shall not permit any workers to use any existing facilities at the site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by Owner. The Contractor, Subcontractors of any tier, suppliers and employees shall comply with instructions or regulations of the Owner governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner's operations.

§3.13.5 The General Contractor shall provide and maintain temporary "all-weather" emergency vehicle access roads as Fire Lanes, as required by the appropriate governmental entity having jurisdiction, until complete construction of all fire lanes. Fire lanes shall be maintained and remain accessible at all times.

...

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the ~~Contract.~~ Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about ~~the Project~~ the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

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The Contractor shall provide the Owner and ~~Architect~~ Architect, and their representatives, access to the Work in preparation and progress ~~wherever located.~~ at all times and wherever located and shall provide proper and safe facilities for such access.

...

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Owner's officers and trustees, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), ~~but only to the extent caused by the negligent acts or omissions~~ caused in whole or in part by any act or omission, whether negligent or otherwise, of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that~~ which would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.19 The Contractor shall maintain a set of Record Drawings on site in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (1) bidding addendums, (2) executed change orders, (3) deviations from the Drawings made during construction; (4) details in the Work not previously shown; (5) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (6) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (7) such other information as either Owner or Architect may reasonably request. The prints for Record Drawing use will be a set of "blue line" prints provided by Architect to Contractor at the start of construction. Upon Substantial Completion of the Work, Contractor shall deliver all Record Drawings to Owner and Architect for approval. If not approved, Contractor shall make the revisions requested by Architect or Owner. Final payment and any retainage shall not be due and owing to Contractor until the final Record Drawings marked by Contractor as required above are delivered to Owner.

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§ 3.20 The Contractor shall submit four (4) volumes of operating instructions and service manuals to the Architect at the time of Substantial Completion, or as soon thereafter as practicable. Submission of all of the following shall be a condition precedent to Final Payment to the Contractor. The operating instructions and service manuals shall contain:

.1 Start-up and Shutdown Procedures: Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and shut-down procedures are available, they may be incorporated into the operating manual for reference.

.2 Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment.

.3 Equipment List: List of all major equipment as installed shall include model number, capacities, flow rate, and name-plate data.

.4 Service Instructions: The Contractor shall be required to provide the following information for all pieces of equipment.

(a) Recommended spare parts including catalog number and name of local suppliers or factory representative.

(b) Belt sizes, types, and lengths.

(c) Wiring diagrams.

.5 Manufacturer's Certificate of Warranty:

Manufacturer's Certificate of Warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Substantial Completion. Where longer period is required by the Contract Documents, the longer period shall govern.

.6 Parts catalogs: For each piece of equipment furnished, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

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§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate ~~for~~ For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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§ 4.2.11 The Architect will interpret ~~and decide~~ matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations ~~and decisions~~ of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. ~~When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.~~

§ 4.2.13 The Architect's decisions ~~on matters relating to aesthetic effect will be final if~~ Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract ~~Documents.~~Documents, and any such determination shall be communicated through the Architect.

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§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the ~~14 day~~ 14 day period shall constitute notice of no reasonable objection.

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...

§5.2.5 Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.

§5.2.6 The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

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§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall ~~nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~ be relieved of any legal responsibility under the subcontract if the successor contractor assumes Owner's obligations under the subcontract.

§5.5 OWNER PAYMENTS TO SUBCONTRACTORS

§5.5.1 In the event of any default hereunder by the Contractor, or in the event the Owner or Architect fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount is paid the Subcontractor shall be deducted from the payment to the Contractor.

§5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

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§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable ~~amount.~~ amount as determined by Owner. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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§ 7.5 AGREED OVERHEAD AND PROFIT RATES

§ 7.5.1 For any adjustments to the Contract Sum based on other than the unit price method, overhead and profit combined shall be calculated at the following percentages of the cost attributable to the change in the Work:

.1 For the Contractor for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

.2 For the Contractor, for Work performed by the Contractor's Subcontractors, five percent (5%) of the amount due the Subcontractor;

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;

.5 Costs to which overhead and profit is to be applied shall be determined in accordance with Sub-subparagraphs 7.3.7.1 through 7.3.7.5;

.6 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;

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.7 To facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, material, and subcontracts. When major cost items are Subcontracts, they shall be itemized also.

...

§8.1.5 Claims for extension of time shall be stated in whole or half calendar days.

§8.1.6 The Contractor shall be substantially complete with all work shown on or before the date specified for substantial completion in the Contract Documents. Extensions to the Completion Date will be granted only if, in the opinion of the Architect, climatological conditions that impede the progress of construction significantly exceed average conditions for the local area. A guide for average climatological conditions will be the bulletin "Local Climatological Data," published by the Department of Commerce. No request for an extension of time due to weather conditions will be considered unless accompanied by Weather Bureau documentary evidence showing by comparison that such weather is abnormal to any of the past five (5) years.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by ~~an~~ a wrongful act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; ~~or by delay authorized by the Owner pending mediation and arbitration;~~ or by other causes that the Architect and Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Extensions of time shall be granted only because of delay preventing the execution of the major items of work critical to the schedule for completion of the Work.

...

§8.3.4 In the event that the Owner has specified a stipulated completion date, the provisions of 8.3.1 through 8.3.3 do not apply. However, in the event of delay(s) fully beyond the Contractor's control, the Owner may authorize by change order reimbursement for additional costs to accelerate the construction in order to maintain the stipulated completion date.

...

The Contract Sum is stated in the Agreement ~~and, including authorized adjustments, is the total~~ and is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect,~~ Before any work is done on the site and before the first Application for Payment, ~~a schedule of values allocating the entire~~ Contract ~~Sum~~ the Contractor shall submit to the Architect a schedule or breakdown showing the respective amounts (called "values" for convenience) properly allocable to the various portions of the ~~Work and prepared in such form~~ work and aggregating the total contract sum. Each respective amount or value shall include its part of overhead and profit so that the sum of the items will total the contract sum. Such schedule of values will be prepared so as to facilitate payments by the Contractor to his Subcontractors and shall follow the trade divisions of the specifications so far as practicable. Such schedule and the amount therein shall be in such detail and supported by such data to substantiate its accuracy as the Architect may require. ~~This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.~~ Such schedule,

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when approved by the Architect; unless it be found to be in error, shall be used only as a basis for the Contractor's Applications for Payment and shall not be taken as evidence of market or other value.

...

§ 9.3.1 At least ~~ten~~ fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section ~~9.2,~~ 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, submitted in quadruplicate.

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§9.3.1.3 Until Substantial Completion, the Owner shall pay 95 percent of the amount due the Contractor on account of progress payments.

§9.3.1.4 Contractor is to submit to Architect within 15 days of execution of Owner/Contractor Agreement proposed sample of Lien Waiver and Bills Paid affidavit forms for review and acceptance for this Contract.

§9.3.1.5 Monthly Applications for Payment shall include waivers of liens for all work included in the previous months' application for payment. Waiver of Liens for the subcontractors and materialmen shall be the total amount paid prior to the previous months' application for payment.

§9.3.1.6 With each Application for Payment, Contractor shall certify that such Application for Payment represents a just estimate of cost reimbursable to the Contractor under the terms of the Contract Documents and shall also certify that there are not any Mechanics' or Materialmen's Liens outstanding at the date of this Application for Payment, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of that Application for Payment, and that there is no known basis for the filing of any Mechanics' or Materialmen's Liens against the Surety in connection with the Work, and that waivers and bills paid affidavit forms from all subcontractors and materialmen have been or will be obtained in such form as the Owner may require.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner ~~shall, to the best of the Contractor's knowledge, information and belief,~~ shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

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§9.4.3 Contractor shall include as a separate and distinct line item on his pay request a value for trenching and shoring operations. Contractor shall attach to pay request a notarized letter from shoring engineer that designed Contractor's trenching and shoring systems, addressed to Owner, attesting that engineer has (1) reviewed trenching and shoring systems installed in field and found them in conformance with shoring engineer's detailed plans and specifications, (2) line item on Contractor's pay request accurately represents work installed and/or materials on site, and (3) engineer recommends payment to Contractor of line item for trenching and shoring based on engineer's observations.

§9.4.4 Contractor's monthly Application for Payment that is submitted without required letter from Contractor's shoring engineer described by Subparagraph 9.4.3 is subject to return without review until letter is submitted.

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...

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~

.7 repeated failure to carry out the Work in accordance with ~~the Contract Documents.~~ the Contract Documents; or

.8 failure to submit a written plan indicating action by Contractor to regain time schedule for completion of Work within the Contract Time.

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§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of ~~Work not in accordance with the Contract Documents.~~ any Work.

...

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the ~~Architect or awarded by binding dispute resolution,~~ Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

...

~~**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.~~

§ 9.8.1. Substantial Completion is the stage in the progress of the Work when construction is sufficiently complete, in accordance with the Contract Documents, so that the Owner may occupy and utilize the Work as a whole for the use for which it is intended.

§ 9.8.2 When the Contractor considers that the ~~Work, or a portion thereof which the Owner agrees to accept separately,~~ Work is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work ~~or designated portion thereof~~ is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work ~~or designated portion thereof~~ is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work ~~or designated portion thereof~~ unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if

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any, the Owner shall make payment of retainage applying to such ~~Work or designated portion thereof.~~ Work. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

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§ 9.9.1 ~~The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.~~ Whenever in the opinion of the Architect any section or portion of the Work may be used or occupied by the Owner without interference to the remaining Work, such section or portion may be so used and occupied, and neither such partial use and occupancy nor any insurance, if purchased by Owner in connection therewith, shall constitute an acceptance of any such Work, or portion thereof, as either substantially complete or complete. Such opinion of Architect shall be in writing and shall state, with respect to the portions to be so used and occupied, the date or dates of commencement of Contractor's warranties and Owner's obligations to maintain.

...

§ 9.9.3 ~~Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of~~ In the event of partial use and occupancy by Owner, the Work, or any portion thereof, shall not be deemed substantially complete until the entire Work is substantially complete; and such partial use and occupancy shall not commence any warranty period under the Contract Documents.

...

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that ~~to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections,~~ the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise ~~satisfied,~~ satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect and will not be materially reduced or canceled or allowed to expire until at least ~~30~~ thirty (30) days' prior written notice has been given to ~~the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to~~ Owner; (3) a written statement satisfactory to the Owner that the insurance will cover the period required by the Contract ~~Documents,~~ Documents; (4) consent of surety, if any, to final ~~payment and (5),~~ payment; (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security ~~interests~~ interests, or encumbrances arising out of the ~~Contract,~~ Contract for Construction, to the extent and in such form as may be designated ~~by the Owner.~~ by the Owner and Owner's lender; (6) certification by the Contractor that (i) all Work has been completed in accordance

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with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Architect are compete and accurate in all respects; and (7) evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including but not limited to (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Architect's review and delivery to the Owner; (iv) delivery to the Owner of printed or typewritten operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the ~~Owner, the Contractor may~~ Owner and Owner's lender (if any), the Contractor must furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner and Owner's lender (if any) against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and ~~reasonable attorneys' fees.~~attorneys fees.

§9.10.2.1 In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local inspection authorities.

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§ 9.10.4 The making of final payment shall ~~constitute a waiver of Claims by the Owner except those arising from~~

~~.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~

~~.2 failure of the Work to comply with the requirements of the Contract Documents; or~~

~~.3 terms of special warranties required by the Contract Documents.~~not constitute a waiver of any Claims by the Owner.

...

§ 9.10.6 In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor's being responsible for excess Architect's fees. Excess Architect's fees include the cost incurred after sixty (60) days beyond the date of Substantial Completion. Excess Architect's fees will be deducted from the amount due the Contractor.

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§ 10.2.2.1 If the Contractor fails to give such notices or fails to comply with such laws, ordinances, rules, regulations, and lawful orders, it shall be liable for and shall indemnify and hold harmless the Owner and the Architect and their respective employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.

...

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§ 10.2.8 ~~INJURY OR DAMAGE TO PERSON OR PROPERTY~~

~~I~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§10.2.9 The Contractor shall protect and be responsible for any damage to his work or material, from the date of the agreement until the acceptance of the work and shall make good without cost to the Owner, any damage or loss that may occur during this period, except that in the event of partial or total occupancy by the Owner prior to final acceptance, the Owner shall be responsible for any damage caused by such partial or total occupancy. The Contractor shall handle all materials directed, so that it may be inspected by the Architect. All material affected by the weather shall be covered and protected to keep it free from damage while being transported to the site, as well as when it is stored on the site.

§10.2.10 The Contractor shall have full responsibility for preventing overstress of any structure or any part of member of it during construction. The Contractor shall fully check the effect of his operations in this regard, and shall provide all temporary support and connections required.

§10.2.11 The Contractor at his own expense and option shall employ watchmen or erect adequate fencing at such time as necessary to protect or attend his work, including times when building exterior is breached to protect it and its contents.

§ 10.2.12 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the Project site except to the extent such Hazardous Materials: (i) are necessary for the prosecution of the Work; (ii) are required pursuant to the Contract Documents; and (iii) have been approved in writing by Owner. Any Hazardous Materials allowed to be used on the Project site shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus Hazardous Materials, as well as any other Hazardous Materials that have been placed, released, or discharged on the Project site by the Contractor or any of its employees, agents, suppliers, or Subcontractors, shall be removed from the Project site at the earlier of: (i) the completion of the Work requiring the use of such Hazardous Materials; (ii) the completion of the Work as a whole; or use of such Hazardous Materials; (ii) the completion of the Work as a whole; or (iii) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. Any damage to the Work, the Project site, or any adjacent property resulting from the improper use of or any discharge or release of Hazardous Materials shall be remedied by the Contractor at its sole cost and expense and in compliance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site. The Contractor shall provide the Owner with copies of all warning labels on products which the Contractor or any of its Subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the Project site in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, which relate to any Hazardous Materials on the Project site. Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by Owner), and hold the Owner and Architect harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing or remedying the effect of any Hazardous Materials on, under, from, or about the Project site, arising out of or relating to, directly or indirectly, the Contractor's failure to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and any substances, materials, or wastes that are or become regulated under federal, state, or local law.

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§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless,~~ provided that ~~such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.~~Intentionally Deleted.

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~~§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~

...

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be ~~liable:~~liable, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;

...

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's ~~employees;~~employees or persons or entities excluded by statute from the requirements of Clause 11.1.1 but required by the Contract Documents to be covered by the insurance required by that Clause;

...

"Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

1. Premises Operations (including X, C and U coverage as applicable).
2. Independent Contractor's Protective
3. Products and Completed Operations.
4. Personal Injury Liability with Employment Exclusion deleted.
5. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.
6. Owned, non-owned and hired motor vehicles.
7. Broad Form Property Damage including Completed Operations."

§11.1.2.1 The insurance required by Subparagraph 11.1.1 shall be written by an insurance company having an A rating or better by A.M. Best and shall be written in limits for not less than the minimum required by law or the following:

1.	Worker's Compensation:		
	(a)	State:	Statutory
	(b)	Applicable Federal:	Statutory
	(c)	Employer's Liability:	$500,000 per Accident
			$500,000 Disease, Policy Limit
			$500,000 Disease, Each Employee
2.	Comprehensive or Commercial General Liability (including Premises-Operations;		

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	Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage):	
	(a) Bodily Injury:	$1,000,000 Each Occurrence
		$2,000,000 Aggregate
	(b) Property Damage:	$1,000,000 Each Occurrence
		$2,000,000 Aggregate
	(c) Products and Completed Operations to be maintained for two years after final payment:	$2,000,000 Aggregate
	(d) Property Damage Liability Insurance shall provide X, C and U coverage.	
	(e) Broad Form Property Damage Coverage shall include Completed Operations.	
	(f) Coverage to be extended to include the interests of the Architect and his consultants.	
3.	Contractual Liability:	
	(a) Bodily Injury:	$1,000,000 Each Occurrence
		$1,000,000 Aggregate
	(b) Property Damage:	$500,000 Each Occurrence
		$1,000,000 Aggregate
4.	Personal Injury, with Employment Exclusion deleted:	
	(a) Coverage:	$500,000 Each Person Aggregate
		$500,000 General Aggregate
5.	Business Auto Liability (including owned, non-owned and hired vehicles):	
	(a) Bodily Injury:	$500,000 Each Person
		$1,000,000 Each Occurrence
	(b) Property Damage:	$250,000 Each Occurrence
6.	Umbrella Excess Liability:	
	(a) Over Primary Insurance:	$2,000,000 Each Occurrence
7.	Occurrence Policy:	$2,000,000 Each Occurrence (applicable for asbestos related projects only)

If the General Liability coverage is provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

§11.1.2.2 Each policy of insurance listed above shall be purchased and maintained by the Contractor and each certificate of insurance for said insurance shall contain a complete waiver of subrogation against Owner, Architect and Architect's Engineers. Each certificate shall also list Owner, the Contractor of the Owner, Architect and Architect's Engineers as a party insured.

§11.1.2.3 Contractor shall not commence work at the site under this Contract until he has obtained all required insurance and submitted appropriate certifications.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Owner's officers, agents, representatives and employees, the Architect and the Architect's ~~consultants~~ Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent

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acts or omissions during the Contractor's operations; and (2) the Owner and its officers, agents, representatives and employees as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

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~~The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.~~An Owners' protective liability insurance policy shall be furnished by the Contractor which shall name the Owner, and its officers, agents, representatives and employees and the Contractor of the Owner as insureds with the above-stated minimum limits

...

§ 11.3.1 Unless otherwise provided, the ~~Owner~~ Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. The all risk policy shall be written using standard ISO forms incorporating a general change endorsement which grants permission for the project to be occupied and used with the insurance remaining in full force and effect until such time as the project has been accepted by the Owner. It shall include coverage for resultant damage from defective workmanship, materials and design, no coinsurance clause, coverage for site preparation, coverage for temporary structures, cribbing or falsework built on the construction site, and coverage for fences, scaffolding, construction forms and signs while at the construction site.

§ 11.3.1.2 ~~If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~Paragraph Intentionally Deleted.

§ 11.3.1.3 ~~If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~Paragraph Intentionally Deleted.

...

§ 11.3.1.5 ~~Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~Intentionally Deleted.

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The ~~Owner~~ Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE Paragraph Intentionally Deleted.
~~The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~

§ 11.3.4 ~~If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~ Intentionally Deleted.

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§ 11.3.6 Before an exposure to loss may occur, the ~~Owner~~ Contractor shall file with the Contractor ~~Owner~~ a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Owner. The original all risk insurance policy certificate shall be delivered to and left in the safekeeping of Owner, a certificate or copy being retained by the Contractor. All insurance provided under this section shall provide by endorsement or otherwise that the insured property may be occupied and that the insurance will remain in full force and effect until the project is fully accepted by the Owner.

...

§ 11.3.9 ~~If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.~~ Intentionally Deleted.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with ~~insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~ insurers.

...

§ 11.4.1 The ~~Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.~~ Contractor shall furnish a Performance Bond and a Payment Bond as set forth in the Agreement. Any person or firm executing a bond upon the Contractor's Work under this Contract shall be deemed to have consented in advance to any changes in the Works made by order of Owner as set forth in Article 7; and any such changes made under these provisions shall in no way alter or impair the obligations of the person or firm executing such bond. The amount of each bond shall be equal to 100 percent of the Contract Sum.

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§11.4.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished

§11.4.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney, indicating the monetary limit of such power.

§11.4.1.3 The Contractor shall provide each bond on the form required by Owner.

§11.4.1.4 No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation pending against the Owner during the term of this Contract. All bonds shall be executed by a corporate surety authorized to do business in the State of Texas. The surety company or companies furnishing the surety bonds for this Contract must show a Texas Department of Insurance underwriting limitation not less than the total amount of the Contract. Each bond shall be executed by the Contractor and the Owner. Should any surety be determined unsatisfactory at any time by the Owner, notice will be given to the Contractor, and the Contractor shall immediately provide a new surety (complying with Article 11) acceptable to the Owner and at no additional cost to the Owner. This Contract shall not be valid nor will any payments be due or paid until approval of each bond by the Owner.

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§ 12.2.2.3 ~~The one year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~

A. The Contractor shall deliver to the Owner his written guarantee, made out to the Owner and in form satisfactory to the Owner, guaranteeing all of the work under the contract to be free from faulty materials in every particular, and free from improper workmanship, and against injury from proper and usual wear; and agreeing to replace or re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials, due to such required replacement or re-execution. This guarantee shall be made to cover a period of twelve (12) months from the date of substantial completion as certified by the Architect under this Contract. This guarantee must be furnished to the Owner and approved by him before acceptance and final payment is made.

B. Contractor shall provide Owner with copies of all guarantees or warranties which have been made to the Contractor by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guarantees to the Owner; however, such assignment shall not relieve the Contractor of the responsibility stated in subparagraph (a) above in case of failure of subcontractors or supplies to fulfill the provision of such warranties or guarantees.

C. Neither the Final Certificate, nor payment, nor any provision in the Contract Documents shall relieve the Contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the guarantee.

...

§12.2.6 Owner shall have the right to operate equipment until defects are corrected and warranties met, and shall have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear.

...

The Contract shall be governed by the law of the place where the Project is ~~located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~located.

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§13.1.2 The Owner has adopted a prevailing wage rate schedule as more fully described in the Project Manual or other Contract Documents. The Contractor and each Subcontractor shall pay to all laborers, workmen and mechanics employed by them in the execution of this Work not less than such rates for each craft or type of workman or mechanic needed to execute the Work. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the prevailing wage rates adopted by Owner. This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates shown. In compliance with Texas Government Code, Chapter 2258, the Contractor and each subcontractor shall forfeit, as a penalty to the Owner, sixty dollars ($60.00) for each laborer, workman or mechanic employed by them, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the rates adopted by Owner.

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Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at ~~such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~twelve percent (12%) per annum.

...

§13.8 EQUAL OPPORTUNITY

§13.8.1 The Contractor shall maintain policies of employment as follows:

§13.8.1.1 The Contractor and Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

§13.9 CRIMINAL BACKGROUND Paragraph Intentionally Deleted.

§13.10 WORKING TIME AND WORKING RESTRICTIONS

§13.10.1 THE ENTIRE BUILDING SHALL REMAIN TOBACCO-FREE AT ALL TIMES

§13.10.2 Normal working hours and normal working days for Contractor's work on this Project shall be between 7:00 a.m. and 8:00 p.m., Monday through Friday, except as otherwise noted below. The Owner may require that certain limited portions of the Work be accomplished after normal working hours or other than on normal working days.

§13.10.3 Should Contractor desire to carry out portions of the Work at times other than between the hours and days stipulated above, he shall submit written request to do so to the Owner together with specific calendar days and hours he wishes to work and a description of the activities he proposes to carry out during those times. Construction activities will not be permitted at times other than those specified or subsequently approved in writing by the Owner. Only those activities specifically approved by Owner will be permitted during hours or on days other than those stipulated above.

§13.10.4 No extension of time will be granted and no "extra" or additional amount will be paid due to failure of Owner to approve performing of construction activities during hours other than those stipulated above.

§13.10.5 Work performed other than between 7:00 a.m. and 8:00 p.m., Monday through Friday, shall be done at no additional cost, whether work at other times is required by Owner or requested by Contractor and approved by Owner.

§13.10.6 If necessary in order to complete Work within time fixed in Contract or any extension thereof, Contractor shall request approval from Owner to perform work before 7:00 a.m. or after 8:00 p.m. or on weekends or holidays,

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and if Owner approves, shall perform work during such additional times and on such additional days as have been approved, at no additional cost to Owner. Work during such additional times and on such additional days shall continue only so long as is necessary to return work to on schedule or to complete the Work within the Contract Date.

§13.11 APPLICATION TO CONSTRUCTION MANAGER

§13.11.1 If used in connection with a Standard Form of Agreement Between Owner and Construction Manager (A133), the term "Contractor" as used herein shall mean and refer to Construction Manager.

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.2 An act of government, such as a declaration of national emergency that requires all Work to be ~~stopped;~~

~~.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~

~~.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~stopped.

§ 14.1.2 ~~The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.~~Paragraph Intentionally Deleted.

§ 14.1.3 If one of the reasons described in Section 14.1.1 ~~or 14.1.2~~ exists, the Contractor may, upon ~~seven~~ fourteen days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work ~~executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~ properly executed.

§ 14.1.4 ~~If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~Paragraph Intentionally Deleted.

§14.1.5 Any payment due to, or recovered by, Contractor under paragraph 14.1.3 above shall not exceed the remainder, if any, after subtracting the total of the previous payments made by Owner to Contractor from the lesser of:

(a) the fair value (not Contractor's cost or profit) of the properly executed Work; or

(b) an amount determined by multiplying the contract price, as adjusted by change orders, times the percentage of Work completed.

...

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; ~~or~~

.4 otherwise is guilty of substantial breach of a provision of the Contract ~~Documents.~~Documents; or

.5 Contractor becomes insolvent or makes a general assignment for the benefit of its creditors.

...

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.3 Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

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§ 14.2.4.1 The costs of finishing the Work include, without limitation, all reasonable attorneys' fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect and consequential costs incurred by the Owner by reason of the termination of the Contractor as stated herein.

...

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. ~~Adjustment of the Contract Sum shall include profit.~~ No adjustment shall be made to the extent

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work ~~executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~ properly executed on same basis provided in Subparagraph 14.1.5.

...

A Claim is a demand or assertion by ~~one of the parties~~ the Contractor seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the ~~party making the Claim.~~ Contractor.

...

Claims by ~~either the Owner or~~ Contractor must be initiated by written notice to the ~~other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.~~ ~~Claims by either party must be initiated within 21~~ Owner and Architect. Claims by Contractor must be initiated within 10 days after occurrence of the event giving rise to such Claim or within ~~21 days after the claimant~~ 10 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

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If the Contractor wishes to make a Claim for an increase in the Contract ~~Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to~~ Sum or for extra costs or damages, he shall give the Architect and the Owner written notice thereof within ten days after the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the work except in an emergency endangering life or property ~~arising under Section 10.4.~~ in which case the Contractor shall proceed in accordance with paragraph 10.4. Such claim, with the recommendation of the Architect, will be submitted to the Owner and its action shall be final and binding. Failure to give such notice shall be a waiver of the claim and such claim or possible claim shall be invalid and unenforceable unless so made. Compliance by the Contractor with this paragraph does not validate any claim which is otherwise invalid.

...

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Abnormal weather conditions not reasonably anticipated shall mean weather conditions which prevent work on the Project and which have a direct effect on the Contractor's predefined critical work sequence. Contractor's schedule shall take into consideration

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normal seasonal weather conditions, number of precipitation days per month (as defined by the National Weather Service 30-year average) along with muddy site days directly related to the precipitation days indicated.

...

~~The Contractor and Owner waive Claims against each other~~

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This ~~mutual~~ waiver includes

~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~

~~.2~~ damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This ~~mutual~~ waiver is applicable, without limitation, to all consequential damages due to ~~either party's~~ Owner's termination in accordance with Article 14. Nothing contained in this ~~Section~~ Subparagraph 15.1.6 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION Paragraph Intentionally Deleted

~~**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~

~~**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~

~~**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.~~

~~**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~

~~**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~

~~**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~

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~~§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

~~§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~

~~§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections ~~9.10.4, 9.10.5,~~ 9.10.5 and 15.1.6 shall be subject to mediation as a condition precedent to ~~binding dispute resolution.~~ the institution of legal or equitable proceedings by either party.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation ~~which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.~~ which shall be in accordance with the provisions of Section 154.023, Texas Civil Practice and Remedies Code. A request for mediation shall be ~~made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~ filed in writing with the other party to this Contract.

...

§ 15.4 ARBITRATION Paragraph Intentionally Deleted.

~~**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.4 CONSOLIDATION OR JOINDER**~~

~~**§ 15.4.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration~~

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~~permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

§ARTICLE 16: ADDITIONAL PROVISIONS FOR LIQUIDATED DAMAGES

§16.1 CONTRACTUAL PROVISIONS

§16.1.1 It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be done hereunder are essential conditions of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "Notice to Proceed" and shall be substantially complete by the "Substantial Completion Date" set forth in the agreement between the Owner and Contractor.

§16.1.2 Contractor agrees that said work shall be prosecuted in accordance with the provisions of this Contract at such a rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for completion of the same.

§16.1.3 If the said Contractor shall neglect, fail or refuse to complete the Work within the time indicated above or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract, as hereinafter set forth for $500.00, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. Such damages shall be cumulative and not in lieu of any other rights or remedies of Owner against Contractor as a result of any breach by Contractor hereunder.

§16.1.4 The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.

§16.1.5 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever, and where under the Contract an additional time is allowed for the completion of any work, the new time fixed by such an extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess costs when the delay in completion of the Work is due:

.1 To any performance, priority or allocated order duly issued by the Government;

.2 To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;

.3 To any delays of subcontractors or suppliers occasioned by any of the causes specified in subparagraphs of this Article.

§16.1.6 Provided, further, that the Contractor shall, within 10 days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner in writing of the cause of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

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~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.~~

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:17:48 on 08/26/2011 under Order No. 7045488178_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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AIA® Document A101™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

A101-2007 v:1.1 (4-20-09) City

AGREEMENT made as of the ____ day of _____ in the year Two Thousand Eleven (2011)
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

City of Frisco
6101 Frisco Square Blvd.
5th Floor
Frisco, TX 75034

and the Contractor:
(Name, address and other information)

AND, Inc.
P. O. Box 1089
Wylie, TX 75098
Telephone Number: 972-442-4077
Fax Number: 972-442-5527

for the following Project:
(Name, location and detailed description)

ARBJ File: Frisco 870008 0472 Parks (Frisco Commons Mainline Irrigation Renovations)
Frisco Commons Park
Frisco, Texas
Mainline Irrigation Renovations: To procure and install (2) submersible pumps, piping, wiring, trenching, and all items required per plans and specifications.

The Architect:
(Name, address and other information)

James Pole Irrigation Consultants
100 W. Oak Street, Suite 101
Denton, TX 76201
Telephone Number: 940-243-2364

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

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9 ENUMERATION OF CONTRACT DOCUMENTS

10 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The commencement date will be fixed in a notice to proceed.

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Sixty (60) days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Init. /

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Portion of Work	Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Provisions are described in the A201 – 2007 v:1.1 (4-14-09) Frisco, General Conditions of the Contract for Construction, provided by Owner, attached hereto and incorporated herein for all purposes.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Hundred Eighty-Three Thousand Seven Hundred Forty-Eight Dollars ($ 183,748.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 4.3 Unit prices, if any: None.
(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit

§ 4.4 Allowances included in the Contract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price

§ 4.5 The Owner's Contingency is Five Thousand Dollars ($5,000.00).

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Fifth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the Twenty-fifth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Twenty (20) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

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§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Five percent (5.00%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five percent (5.00%);

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201 2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)

.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

None.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

Init. /

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User Notes:
(1987017281)

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Owner will serve as Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

The rate of interest computed in accordance with the provisions of Texas Government Code, Section 2251.025.

§ 8.3 The Owner's representative:
(Name, address and other information)

Mr. Dudley Raymond
City of Frisco
6101 Frisco Square Blvd.
5th Floor
Frisco, TX 75034

§ 8.4 The Contractor's representative:
(Name, address and other information)

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User Notes:
(1987017281)

Mr. Robert Thurmond
AND, Inc.
P. O. Box 1089
Wylie, TX 75098

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

§8.6.1 CRIMINAL BACKGROUND Paragraph Intentionally Deleted.

§8.6.2 WORKING TIME AND WORKING RESTRICTIONS
§8.6.2.1 THE ENTIRE BUILDING IS TOBACCO-FREE AT ALL TIMES AND APPLIES TO ALL OCCUPANTS.

§8.6.2.2 Normal working hours and normal working days for Contractor's work on this Project shall be between 7:00 a.m. and 8:00 p.m., Monday through Friday, except as otherwise noted below. The Owner may require that certain limited portions of the Work be accomplished after normal working hours or other than on normal working days.

§8.6.2.3 Should Contractor desire to carry out portions of the Work at times other than between the hours and days stipulated above, he shall submit written request to do so to the Owner together with specific calendar days and hours he wishes to work and a description of the activities he proposes to carry out during those times. Construction activities will not be permitted at times other than those specified or subsequently approved in writing by the Owner. Only those activities specifically approved by Owner will be permitted during hours or on days other than those stipulated above.

§8.6.2.4 No extension of time will be granted and no "extra" or additional amount will be paid due to failure of Owner to approve performing of construction activities during hours other than those stipulated above.

§8.6.2.5 Work performed other than between 7:00 a.m. and 8:00 p.m., Monday through Friday, shall be done at no additional cost, whether work at other times is required by Owner or requested by Contractor and approved by Owner.

§8.6.2.6 If necessary in order to complete Work within time fixed in Contract or any extension thereof, Contractor shall request approval from Owner to perform work before 7:00 a.m. or after 8:00 p.m. or on weekends or holidays, and if Owner approves, shall perform work during such additional times and on such additional days as have been approved, at no additional cost to Owner. Work during such additional times and on such additional days shall continue only so long as is necessary to return work to on schedule or to complete the Work within the Contract Date.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007 v: 1.1 (4-14-09) Frisco, General Conditions of the Contract for Construction provided by Owner.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

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User Notes:
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Document	Title	Date	Pages

§ 9.1.4 The Specifications: All specifications to which the Contract Documents and the *Construction Documents for Irrigation Mainline Renovation Frisco Commons City of Frisco, Texas*, prepared by James Pole Irrigation Consultants, dated February 25, 2011, attached hereto as **Exhibit A** and incorporated herein in its entirety, refer.
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)
Title of Specifications exhibit: Exhibit A.
(Table deleted)
§ 9.1.5 The Drawings: All drawings referenced in the *Index, Re-bid of Frisco Commons Mainline Irrigation Renovations*, attached hereto as **Exhibit B** and incorporated herein for all purposes.
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
Title of Drawings exhibit: Exhibit B.
(Table deleted)
§ 9.1.6 The Addenda, if any: None.

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201 2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

1. Owner's Request for Proposal
2. Contractor's Response to Request for Proposal

ARTICLE 10 INSURANCE AND BONDS
The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.
(Paragraph deleted)

Type of insurance or bond	Limit of liability or bond amount

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User Notes:
(1987017281)

This Agreement entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

City of Frisco	**AND, Inc.**
By:	**By:**
OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
	Robert V. Thurmond, President
(Printed name and title)	*(Printed name and title)*

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Additions and Deletions Report for
AIA® Document A101™ – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

A101-2007 v:1.1 (4-20-09) City

AGREEMENT made as of the _____day of _____in the year Two Thousand Eleven (2011)
(In words, indicate day, month and ~~year.~~)year)

...

(Name, ~~legal status,~~ address and other information)

City of Frisco
6101 Frisco Square Blvd.
5th Floor
Frisco, TX 75034

...

(Name, ~~legal status,~~ address and other information)

AND, Inc.
P. O. Box 1089
Wylie, TX 75098
Telephone Number: 972-442-4077
Fax Number: 972-442-5527

...

ARBJ File: Frisco 870008 0472 Parks (Frisco Commons Mainline Irrigation Renovations)
Frisco Commons Park
Frisco, Texas
Mainline Irrigation Renovations: To procure and install (2) submersible pumps, piping, wiring, trenching, and all items required per plans and specifications.

...

(Name, ~~legal status,~~ address and other information)

James Pole Irrigation Consultants
100 W. Oak Street, Suite 101
Denton, TX 76201
Telephone Number: 940-243-2364

PAGE 2

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(1987017281)

The commencement date will be fixed in a notice to proceed.

...

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Sixty (60) days from the date of commencement, or as follows:

PAGE 3

Provisions are described in the A201 – 2007 v:1.1 (4-14-09) Frisco, General Conditions of the Contract for Construction, provided by Owner, attached hereto and incorporated herein for all purposes.

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Hundred Eighty-Three Thousand Seven Hundred Forty-Eight Dollars ($ 183,748.00), subject to additions and deductions as provided in the Contract Documents.

...

§ 4.3 Unit prices, if any: None.

...

Item	Units and Limitations	Price Per Unit~~($0.00)~~

...

§ 4.5 The Owner's Contingency is Five Thousand Dollars ($5,000.00).

...

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Fifth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the Twenty-fifth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Twenty (20) days after the Architect receives the Application for Payment.

PAGE 4

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Five percent (~~%~~ 5.00%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five percent (~~%~~ 5.00%);

...

None.

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PAGE 5

The ~~Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to~~ Owner will serve as Initial Decision Maker.

...

[X] Litigation in a court of competent jurisdiction

...

~~%~~ The rate of interest computed in accordance with the provisions of Texas Government Code, Section 2251.025.

...

Mr. Dudley Raymond
City of Frisco
6101 Frisco Square Blvd.
5th Floor
Frisco, TX 75034

PAGE 6

Mr. Robert Thurmond
AND, Inc.
P. O. Box 1089
Wylie, TX 75098

...

§8.6.1 CRIMINAL BACKGROUND Paragraph Intentionally Deleted.

§8.6.2 WORKING TIME AND WORKING RESTRICTIONS
§8.6.2.1 THE ENTIRE BUILDING IS TOBACCO-FREE AT ALL TIMES AND APPLIES TO ALL OCCUPANTS.

§8.6.2.2 Normal working hours and normal working days for Contractor's work on this Project shall be between 7:00 a.m. and 8:00 p.m., Monday through Friday, except as otherwise noted below. The Owner may require that certain limited portions of the Work be accomplished after normal working hours or other than on normal working days.

§8.6.2.3 Should Contractor desire to carry out portions of the Work at times other than between the hours and days stipulated above, he shall submit written request to do so to the Owner together with specific calendar days and hours he wishes to work and a description of the activities he proposes to carry out during those times. Construction activities will not be permitted at times other than those specified or subsequently approved in writing by the Owner. Only those activities specifically approved by Owner will be permitted during hours or on days other than those stipulated above.

§8.6.2.4 No extension of time will be granted and no "extra" or additional amount will be paid due to failure of Owner to approve performing of construction activities during hours other than those stipulated above.

§8.6.2.5 Work performed other than between 7:00 a.m. and 8:00 p.m., Monday through Friday, shall be done at no additional cost, whether work at other times is required by Owner or requested by Contractor and approved by Owner.

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§8.6.2.6 If necessary in order to complete Work within time fixed in Contract or any extension thereof, Contractor shall request approval from Owner to perform work before 7:00 a.m. or after 8:00 p.m. or on weekends or holidays, and if Owner approves, shall perform work during such additional times and on such additional days as have been approved, at no additional cost to Owner. Work during such additional times and on such additional days shall continue only so long as is necessary to return work to on schedule or to complete the Work within the Contract Date.

...

§ 9.1.2 The General Conditions are AIA Document ~~A201–2007,~~ A201–2007 v: 1.1 (4-14-09) Frisco, General Conditions of the Contract for ~~Construction.~~Construction provided by Owner.

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§ 9.1.4 The Specifications: All specifications to which the Contract Documents and the *Construction Documents for Irrigation Mainline Renovation Frisco Commons City of Frisco, Texas,* prepared by James Pole Irrigation Consultants, dated February 25, 2011, attached hereto as **Exhibit A** and incorporated herein in its entirety, refer.

...

Title of Specifications exhibit: Exhibit A.

~~Section~~	~~Title~~	~~Date~~	~~Pages~~

§ 9.1.5 The Drawings: All drawings referenced in the *Index, Re-bid of Frisco Commons Mainline Irrigation Renovations,* attached hereto as **Exhibit B** and incorporated herein for all purposes.

...

Title of Drawings exhibit: Exhibit B.

~~Number~~	~~Title~~	~~Date~~

§ 9.1.6 The Addenda, if any: None.

...

1. Owner's Request for Proposal
2. Contractor's Response to Request for Proposal

...

~~*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*~~

Type of Insurance or bond	Limit of liability or bond amount ~~($0.00)~~

This Agreement entered into as of the day and year first written ~~above.~~above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

City of Frisco

By: _____

AND, Inc.

By: Robert V. Thurmond Jr. President

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Robert V. Thurmond, President

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

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_____

(Signed)

_____

(Title)

_____

(Dated)

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EXHIBIT A

CONSTRUCTION DOCUMENTS
FOR
IRRIGATION MAINLINE RENOVATION

FRISCO COMMONS

CITY OF FRISCO, TEXAS

FEBRUARY 25, 2011

City of Frisco
6101 Frisco Square Boulevard
Frisco, Texas 75034
Phone: 972-335-5585
Fax: 972-731-4945

SHEET INDEX

C
IR-1
IR-2
IR-3
COVER
IRRIGATION MAINLINE RENOVATION PLAN
IRRIGATION PUMP DETAILS
IRRIGATION NOTES AND DETAILS

FRISCO COMMONS
IRRIGATION MAINLINE RENOVATION
FRISCO, TEXAS

EXHIBIT B

INDEX

RE-BID OF FRISCO COMMONS MAINLINE IRRIGATION RENOVATIONS

TITLE	SECTION
Advertisement for Bid	00100
Instruction to Bidders	00200
Bid Forms	BF
Scope of Work	00400
Bonds	00600
Contract Documents	CD
Equal Employment Opportunities	EEO
Testing and Laboratory Control	01450
Project Closeout	01770
Irrigation Pump System	02811
Lawn and Turf Specifications	02930
Landscape Irrigation System	02975
Sidewalk and Road Construction Specifications	SR

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

08/16/2011

PRODUCER 972.864.0400 FAX 972.278.8400
Davis-Dyer-Max, Inc.
a Member of the Insurors Group
P.O. Box 495429
Garland, TX 75049

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED A. N. D., Inc.
DBA: A New Deal Irrigation Co.
P O Box 1089
Wylie, TX 75098

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: America First Insurance	
INSURER B: America First Insurance Co.	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	CBP8792795	09/09/2010	09/09/2011	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
B		AUTOMOBILE LIABILITY X ANY AUTO X ALL OWNED AUTOS X SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	BA8792995	09/09/2010	09/09/2011	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
B		EXCESS/UMBRELLA LIABILITY X OCCUR CLAIMS MADE DEDUCTIBLE X RETENTION $ 10,000	CU8793195	09/09/2010	09/09/2011	EACH OCCURRENCE AGGREGATE	$ 1,000,000 $ 1,000,000 $ 1,000,000 $ $
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC8793095	09/09/2010	09/09/2011	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
A		OTHER Rented/Leased Equipment Coverage	CBP8792795	09/09/2010	09/09/2011	Limit: $50,000 Deductible: $1,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The City of Frisco, its officers, agents representatives, and employees are additional insureds on the General Liability & Auto. Umbrella follows form. Waiver of subrogation included in favor of same on the GL, Auto & Workers Compensation.

30 day notice of cancellation except 10 day notice for non-payment of premium.

CERTIFICATE HOLDER

The City of Frisco
6101 Frisco Square Blvd.
Frisco, TX 75034

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Larry Hughston/JKM

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IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

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AGENDA ITEM #17.

PROGRESS IN MOTION

Parks & Recreation Department
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Cc: **George A. Purefoy, City Manager**
Henry J. Hill, Deputy City Manager
Rick Wieland, Director of Parks and Recreation

From: **Dudley Raymond, RLA, Parks Planning and Business Development Manager**

Date: **8/29/2011**

Agenda Caption: **Consider and act upon a resolution authorizing the City Manager to execute an agreement with Studio 13 Design Group for landscape architecture, engineering services and permitting for the Cottonwood Creek Linear Park.**

Action Requested: Consider and act upon a resolution authorizing the City Manager to execute an agreement with Studio 13 Design Group for landscape architecture, engineering services and permitting for the Cottonwood Creek Linear Park.

Background Information: At the November 6, 2007 meeting of the City Council, the City of Frisco and Shaddock, the owner of the approximate 77 acres along Cottonwood Creek between Teel Parkway and Legacy Drive entered into a development agreement for the development of the greenbelt along Cottonwood Creek. It is bounded by the Shaddock Creek, Griffin Park and Heather Ridge Subdivisions. This property has been undeveloped for a number of years and has been a source of grief for the residents that live near it due to the un-kept appearance.

The agreement was that the area will be turned over to the City and utilized as a natural area park. It is anticipated that there will be a number of off-stream ponds developed, walking trails, wetland areas, and natural areas. The area will not be manicured as other parks but will be closer in look and feel to the Arbor Hills in Plano. There will be a small area, approximately 5 acres in size near the existing HOA area along Bear Creek Lane that will have more traditional neighborhood

park elements. It is anticipated that there will be a playground, shade structure and practice area located in this area outside the flood plain.

The Agreement of 2007 basically had the developer to improve the property with park improvements and then turn that land and improvements over to the City. At the end of the day the agreement provides the following. The City receives approximately 77 acres of land valued at $1,119,077 and developer constructed improvements on said land with a value of $2,256,154 for a total value of $3,375,231. To achieve this, the City waives the park fee in the amount of $1,033,000 and pays the developer $1,223,154. The remaining $1,119,077 is a contribution by the developer.

Due to the slowdown in the economy the Developer, Shaddock, has not been able to move forward with the next phase of his project, Phase 6B. It is unlikely that the developer will be able to satisfy the original developer's agreement as written. There are several factors that will require a re-negotiation of the agreement. The first being, there was a bust in the cost estimate provided in the agreement in the amount of $680,000, also the City will not be able to use reuse water to keep the lakes full as originally contemplated. The NTMWD has told us that they will not allow that use of water, so we must drill a well which will cost more than originally budgeted for the project. These two reasons along with the fact that construction cost have increased make it probable that the agreement will need to be modified in order to complete the project.

Staff has met with the Developer and it was decided that the best course of action would be for the City to fund the development of construction documents and the required permitting through the USACE. This would allow the plan preparation and permitting to take place immediately. It would also allow the project to start construction as soon as the developer was in a position to move forward with the Phase 6B of his development or it would give the City the opportunity to move forward independent of the Developer. By having the plans complete the City has the greatest flexibility in how to move the project forward as well as we all have a better idea of the true cost of construction.

It is anticipated that the construction cost will be closer to $3.5 million dollars rather than the approximate $2.2 million which was shown in the original agreement. The original amount should have read approximately $2.9 million without the spreadsheet error. So the project will likely cost about $600,000 more than shown in the original agreement.

Once the plans and permits are closer to completion, Staff and the Developer can work to determine how the project will be constructed. In any scenario whether the developer constructs the park or the City, this work you are acting on would need to be completed.

Board Review/Citizen Input: The Parks and Recreation Board has approved these projects as part of the 5 year capital improvement plan

Alternatives:

- Approve
- Table
- Not approve
- Direct Staff to make changes

Financial Considerations: Funding for the contract will be from GO bonds in the amount of $296,635.

Legal Review: The City Attorney has reviewed and approved the contract.

Supporting Documents:

- Copy of the Contract
- Resolution

Staff Recommendation: Approve the resolution authorizing the City Manager to execute a contract with Studio 13 Design Group, LLC.

CITY OF FRISCO, TEXAS RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS HEREBY AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BY AND BETWEEN THE CITY OF FRISCO, TEXAS AND STUDIO 13 DESIGN GROUP, PLLC. FOR CONSTRUCTION DOCUMENTS AND PERMITTING FOR COTTONWOOD CREEK LINEAR PARK.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: The City Manager of the City of Frisco, Texas, is hereby authorized to execute, on behalf of the City Council of the City of Frisco, Texas, an agreement by and between the City of Frisco and Studio 13 Design Group, PLLC for Construction Documents and permitting for Cottonwood Creek Linear Park, a copy of which is attached hereto and incorporated herein for all purposes.

SECTION 2: This Resolution shall take effect immediately upon its passage.

RESOLVED THIS the _____ day of _____, 2011.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page
City Secretary

AGREEMENT

BETWEEN

THE CITY OF FRISCO, TEXAS (CITY)

AND

Studio 13 Design Group, PLLC. (CONSULTANT)

FOR

PARKS

DESIGN SERVICES AGREEMENT

Made as of the 24TH day of AUGUST in the year Two Thousand Eleven:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5000
Facsimile: (972) 731-4945

and the Consultant: **Leonard W. Reeves, ASLA, RLA, LI**
Studio 13 Design Group, PLLC.
519 Bennett Lane Suite 203
Lewisville, Texas 75057
(940) 321-9838

for the following Project: **City of Frisco Cottonwood Greenbelt Park**

The City and the Consultant agree as set forth below.

THIS AGREEMENT is made and entered by and between the **City of Frisco, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and **Studio 13 Design Group (Leonard Reeves, ASLA, RLA, LI)**, hereinafter referred to as "Consultant," to be effective from and after the date as provided herein, hereinafter referred to as "Agreement."

WHEREAS, the City desires to engage the services of the Consultant to design and/or prepare construction documents for City of Frisco Cottonwood Creek Greenbelt Park, hereinafter referred to as "Project;" and

WHEREAS, the Consultant desires to render such **Professional Design Services** for the City upon the terms and conditions provided herein.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

ARTICLE 1
CONSULTANT'S SERVICES

1.1 **Employment of the Consultant** – The City hereby agrees to retain the Consultant to perform professional engineering services in connection with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement. Consultant shall be solely responsible for ensuring all services it subcontractors are completed to the satisfaction of the City and in compliance with this Agreement

1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A," in the form of written change orders, may be authorized from time to time by the City.

1.2.1 **Requirement of Written Change Order** – "Extra" work, or "claims" invoiced as "extra" work, or "claims" which have not been issued as a duly executed, written change order by the Frisco City Manager, will not be authorized for payment and/or shall not become part of the subcontracts. A duly executed written change order shall be preceded by the Frisco City Council's authorization for the Frisco City Manager to execute said change order.

1.2.2 **DO NOT PERFORM ANY EXTRA WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED WRITTEN CHANGE ORDER ISSUED BY THE FRISCO CITY MANAGER.** Project Managers, Superintendents, and/or Inspectors of the City are not authorized to issue verbal or written change orders.

1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "B" and incorporated herein by reference for all purposes, but in no event shall the Project be completed any later than **June 29, 2012.**

ARTICLE 2
THE CITY'S RESPONSIBILITIES

City shall do the following in a timely manner so as not to delay the services of Consultant:

2.1 **Project Data** – The City shall furnish required information, that it currently has in its possession, as expeditiously as necessary for the orderly progress of the work, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof.

2.2 **City Project Manager** – The City shall designate, when necessary, a representative authorized to act on the City's behalf with respect to the Project (the "Project Manager"). The City or such authorized representative shall examine the documents submitted by the Consultant and shall render any required decisions pertaining thereto as soon as practicable so as to avoid unreasonable delay in the progress of the Consultant's services. The Project Manager is not authorized to issue verbal or written change orders for "extra" work or "claims" invoiced as "extra" work.

ARTICLE 3
CONSULTANT'S COMPENSATION

3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a Lump Sum, for an amount not to exceed Two Hundred Ninety-six Thousand Six Hundred and Thirty-Five Dollars and 00/100 ($296,635.00), ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B."

3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of the Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by the City prior to payment of the final five percent (5%) of the Consultant's Fee, or Thirteen Thousand Five Hundred and Fifteen Dollars and 00/100 ($13,515.00). The electronic formatting shall be consistent with the standards established in Exhibit "C," City of Frisco Guidelines for Computer Aided Design and Drafting ("CADD"). Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement.

3.1.2 **Disputes between City and Construction Contractor** – If the Project involves the Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor (the "Contractor") and the City, and upon receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and shall advise the City of facts such that the City can make a determination whether or not to certify that sufficient cause exists for the City to declare the Contractor in default of the terms and conditions of the agreement. Consultant shall submit his findings in writing to the City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from the City. City and Consultant agree that if requested by the City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and to participate in consultation with said agencies in order to obtain all necessary approvals and/or permissions. The Consultant shall be responsible for preparation and timely submittal of documents required for review, approval, and/or recording by such agencies. The Consultant shall be responsible for making such changes in the Construction Documents as may be required by existing written standards promulgated by such agencies at no additional charge to City.

3.1.4 **Substantial Compliance with Architectural Barriers Act** – Should the Project fall within the regulatory requirements of the Texas Architectural Barriers Act, Chapter 68 Texas Administrative Code , as it exists or may be amended (the "Barriers Act"), as solely determined by the City, Consultant shall comply with the Barriers Act. As part of the Scope of Services defined in this Agreement, it is the sole responsibility of the Consultant to identify and analyze the requirements of the Barriers Act and to become familiar with the governmental authorities having jurisdiction to approve the design of the Project. Consultant shall participate in consultations with said authorities in order to obtain approval for the Project. As part of the services provided under the Consultant's Fee, the Consultant shall obtain the Notice of Substantial Compliance for the Project from the Texas Department of Licensing and Regulation (the "TDLR"). The Consultant shall, without additional compensation, immediately correct any errors, omissions, or deficiencies in the design services and/or construction documents identified by TDLR and/or a Registered Accessibility Specialist ("RAS") at any phase of the Project, either by review of the construction documents, or inspection of the

Project at the commencement of construction, during the construction of the Project, or at the completion of construction.

3.1.4.1 **Submission of Construction Documents to TDLR** – The Consultant shall mail, ship, or hand-deliver the construction documents to TDLR not later than five (5) calendar days after the Consultant issues the construction documents for the Project.

3.1.4.2 **Completion of Registration Form to TDLR** – Consultant shall complete an Elimination of Barriers Project Registration Form (The "Form") for each subject building or facility within the Scope of the Project, and submit the registration form(s) along with the applicable fees not later than fourteen (14) calendar days after the Consultant completes the submittal of the construction documents to TDLR.

3.1.4.3 **TDLR Approval of Construction Documents** – After review of the construction documents by TDLR, the Consultant shall be notified in writing of the results; however, it is the Consultant's responsibility to obtain TDLR's written comments. The Consultant shall address all comments that prevent TDLR approval of the construction documents, including comments relating to Conditional Approval that must be addressed in the design and construction of the Project. Consultant shall resubmit construction documents to TDLR for review prior to the completion of construction of the Project.

3.1.4.4 **TDLR Project Inspection** – Consultant shall request an inspection from TDLR or a TDLR locally approved RAS no later than thirty (30) calendar days after the completion of construction of the Project. The Consultant shall advise the City in writing of the results of each Project inspection. City reserves the right to verify the written results with TDLR at any time during design, construction, or at the completion of the Project.

3.1.4.5 **Corrective Modifications following TDLR Project Inspection** - When corrective modifications to achieve substantial compliance are required, the TDLR inspector or the RAS shall provide the Consultant a list of deficiencies and a deadline for completing the modifications. Consultant shall provide the City with this list within five (5) calendar days of receipt. It is the sole responsibility of the Consultant to completely address the deficiencies by the stated deadline or to obtain a written notice of extension from the TDLR. When the corrective measures have been completed, Consultant shall provide the TDLR

(and/or the RAS who completed the inspection) and the City with written verification of the corrective measures completed.

3.1.4.6 **TDLR Notice of Substantial Compliance** – TDLR shall provide a Notice of Substantial Compliance to the City after the newly constructed Project has had a satisfactory inspection, or Consultant has submitted verification of corrective modifications. City and Consultant agree that the final five percent (5%) of Consultant's Fee, or Thirteen Thousand Five Hundred and Fifteen Dollars and 00/100 ($13,515.00). shall not be paid until the City is in receipt of the TDLR's Notice of Substantial Compliance for all Project components and/or phases of the Project.

3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "B," and consistent with Exhibit "D," City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to the City for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the City's sole and exclusive remedy for said over-payment.

3.3 **Additional Services** – The Consultant shall provide the services as described in the Scope of Services as set forth in Exhibit "A" of this Agreement. If authorized in writing by the City, the Consultant shall provide additional services, to be compensated on an hourly basis in accordance with this paragraph ("Additional Services"). These services may include, but are not limited to:

3.3.1 Additional meetings, hearings, work-sessions, or other similar presentations which are not provided for or contemplated in the Scope of Services described in Exhibit "A."

3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

3.3.5 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on direct billable labor rates and expenses.

3.3.6 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to City.

Hourly Billable Rates by Position

Name	*Position*	*Hourly Rate*
	Principal	$110.00
	Project Manager	$100.00
	Sr. Landscape Designer	$90.00
	Landscape Designer	$80.00
	Irrigation Designer	$65.00
	Arborist	$60.00
	Administrative	$40.00

3.4 **Invoices** – No payment to Consultant shall be made until the Consultant tenders an invoice to the City. The Consultant shall submit monthly invoices for services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or are to be mailed to City immediately upon completion of each individual task listed in Exhibit "B." On all submitted invoices for services rendered and work completed on a monthly basis, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.

3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.

3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date the City receives the invoice. City shall provide Consultant an opportunity to

cure the basis of the dispute. If a dispute is resolved in favor of the Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5. If a dispute is resolved in favor of the City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

3.7 **Failure to Pay** – Failure of the City to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10^{th}) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter "D" ("Remedy for Nonpayment") of the Texas Government Code. The City shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.

3.8 **Adjusted Compensation** – If the Scope of the Project or if the Consultant's services are materially changed due to no error on behalf of Consultant in the performance of services under this Agreement, the amounts of the Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be authorized by written change order duly executed by both parties before the services are performed.

3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs, and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Consultant's compensation shall be equitably adjusted as approved by the City. Any additional amounts paid to the Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4
OWNERSHIP OF DOCUMENTS

4.1 **Documents Property of the City** – The Project is the property of the City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A." Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit "A" to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8, and promptly furnish the same to the City in an acceptable electronic format. All such reproductions shall be the property of the City who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at the City's own risk.

4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that City is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or Sub-consultants) under this Agreement are instruments of service in respect of the Project and property of the City and upon completion of the Project shall thereafter be subject to the Texas Public Information Act (Texas Government Code, Chapter 552) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5
CONSULTANT'S INSURANCE REQUIREMENTS

5.1 **Required General Liability Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate. Such policy shall name the City, its officers, agents, representatives, and employees as additional insured as to all applicable coverage. Such policy shall provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by

return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each claim, and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent service(s), and authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If Project size and scope warrant, and if identified on the checklist located in Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to the City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars ($2,000,000.00), per occurrence. Such policy shall require the provision of written notice to the City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

ARTICLE 6
CONSULTANT'S ACCOUNTING RECORDS

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting

principles. Invoices will be sent to the City as indicated in Article 3.4. Copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be included in the monthly invoices.

ARTICLE 7
AUDITS AND RECORDS / PROHIBITED INTEREST / VENDOR DISCLOSURE

The Consultant agrees that at any time during normal business hours and as often as the City may deem necessary, Consultant shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Consultant agrees that it is aware of the prohibited interest requirement of the City Charter, which is repeated on the Affidavit, attached hereto as Exhibit "F" and incorporated herein for all purposes, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit attached hereto as Exhibit "F." Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit "G" and incorporated herein for all purposes.

ARTICLE 8
TERMINATION OF AGREEMENT / REMEDIES

City may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, and without prejudice to any other remedy it may have. If City terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds the Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 herein and agrees to pay any costs over and above the fee which the City is required to pay in order to finish the Project. On any default and/or breach by Consultant, City may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from the Consultant's Fee due Consultant as set forth in Article 3 herein. If City terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the

satisfaction of the City in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

ARTICLE 9
DISPUTE RESOLUTION / MEDIATION

In addition to all remedies at law, the parties may resolve/mediate any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator.

ARTICLE 10

INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FROM WHOM CONSULTANT IS LEGALLY RESPONSBILE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF GOODS AND/OR SERVICES PROVIDED BY CONSULTANT PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO,

BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (THE "JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO THE CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY, OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT, OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO CONSULTANT WITHIN SIXTY (60) DAYS OF THE DATE OF THE JUDGMENT (THE "REIMBURSEMENT ALLOCATION").

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS

OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11
NOTICES

Consultant agrees that all notices or communications to City permitted or required under this Agreement shall be delivered to City at the following addresses:

Dudley Raymond
Parks Planning Superintendent
Parks and Recreation Department
City of Frisco
6726 Walnut Street
Frisco, Texas 75034

City agrees that all notices or communication to Consultant permitted or required under this Agreement shall be delivered to Consultant at the following addresses:

Leonard Reeves, ASLA, RLA, LI
Studio 13 Design Group, PLLC
519 Bennett Lane Suite 203
Lewisville, Texas 75057

Any notice provided in writing under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested.

All notices or communication required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is postmarked by the sending party. Each party may change the

address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of this Agreement.

ARTICLE 12
MISCELLANEOUS

12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled "A" through "G," all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

12.1.1 Exhibit "A," Scope of Services.

12.1.2 Exhibit "B," Compensation Schedule / Project Billing / Project Budget.

12.1.3 Exhibit "C," City of Frisco Guidelines for Computer Aided Design and Drafting (CADD).

12.1.4 Exhibit "D," City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.

12.1.5 Exhibit "E," City of Frisco Contractor Insurance Guidelines.

12.1.7 Exhibit "F," Affidavit.

12.1.8 Exhibit "G," Conflict of Interest Questionnaire, Form CIQ.

12.2 **Assignment and Subletting** – The Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant of its full obligations to the City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.

12.3 **Successors and Assigns** – City and Consultant, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

12.4 **Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of

competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.

12.5 **Venue** – This entire Agreement is performable in Collin County, Texas and the venue for any action related directly or indirectly, to this Agreement or in any manner connected therewith shall be in Collin County, Texas, and this Agreement shall be construed under the laws of the State of Texas.

12.6 **Execution / Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

12.7 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

12.8 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

12.9 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.

12.10 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

12.11 **Sovereign Immunity** – The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

12.12 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.

12.13 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.

12.14 **No Third Party Beneficiaries** - Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

12.15 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 herein is conspicuous and the parties have read and understood the same.

12.16 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of the City's 2009-2010 fiscal year. City will give Consultant sixty days (60) notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 20010-2011 fiscal year unless and until such funds are budgeted.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures below.
Effective Date: _____

CITY
City of Frisco, Texas
By: _____
George Purefoy
Title: City Manager

CONSULTANT
Studio 13 Design Group, PLLC
By: Leonard W Reeves
Leonard Reeves
Title: PRINCIPAL / OWNER

APPROVED AS TO FORM:
Abernathy, Roeder, Boyd, & Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____, 2011.

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

STATE OF TEXAS:

COUNTY OF Denton :

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED Leonard Reeves, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 24th DAY OF August, 2011.

Erin L Pesante
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: June 09, 2015

ERIN L PESANTE
Notary Public, State of Texas
My Commission Expires
June 09, 2015

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

Agreement by and between the City of Frisco, Texas (City) and Studio 13 Design Group (Leonard Reeves, ASLA, RLA, LI) (Consultant) to perform Professional Design Services for Cottonwood Creek Greenbelt Park.

I. PROJECT DESCRIPTION.

Preparation of construction documents for a +/- 85 Acre Park site located within the platted site of Shaddock Creek Estates. The site is situated in Shaddock Creek Estates within the FEMA Floodway. The site is bound on the east side by Legacy Drive and to the west by Teel Parkway. The improvements for the park site shall include, but not limited to a Hike and Bike Trail, Pavilions, Overlooks, Ponds with fountains, Vehicular Parking, Grading, Landscaping and Irrigation.

II. TASK SUMMARY, BASIC SERVICES.

Task One, Base Map Preparation – Consultant will prepare a base map for the project site using existing filed plats, engineering plans and on the ground surveying for the adjacent subdivisions and roadway data. The base plans will be prepared in AutoCAD. The base map will be utilized for all park improvement designs and concepts.

Task Two, Preliminary Plat – Consultant will prepare the preliminary plat showing all the proposed easements to be dedicated. The preliminary plat will meet all requirements set fourth by the City of Frisco for preliminary plat submittal.

Task Three, Wetland Delineation and Mitigation – Consultant will conduct a delineation of potential waters of the U.S. for the Cottonwood Creek Park project between Legacy Drive and Teel Parkway in Frisco, Texas. Based on past site visits, waters of the U.S. on the park site are expected to include Cottonwood Creek and several potentially jurisdictional wetland areas within the floodplain.

One of the key elements of the planned park is a series of off-channel ponds to be constructed along the Cottonwood Creek floodplain. It is understood that the main purpose for the delineation is to properly locate jurisdictional features so that park planners can understand and avoid impacts to jurisdictional features as practicable. It is also understood that the delineation will be used for Section 404 permitting in the event that a permit is necessary.

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

SECTION 404 ASSISTANCE

Delineation
Consultant will conduct a delineation of potential waters of the U.S. within the subject property which essentially consists of the Cottonwood Creek floodplain and some adjacent uplands between Legacy Drive and Teel Parkway. While on-site, Peloton biologists will also assess the likelihood of listed species occurrence based on the habitats on the site.

The delineation will be conducted in accordance with U.S. Army Corps of Engineers guidance including the 1987 manual, the Great Plains Regional Supplement and other pertinent guidance.

Data sheets will be completed for potential wetlands and adjacent uplands along with field notes documenting observations. Boundaries of water features will be mapped using a Trimble GeoXH GPS capable of sub-meter accuracy with post-processing.

A map will be produced using GIS showing the potentially jurisdictional water features. This map can be provided to the Owner in either GIS or CAD format for use in their planning efforts.

Section 404 Permitting Analysis/Memorandum
Consultant will coordinate with project planners/engineers to determine the potential impacts resulting from the proposed plan for the park/ponds and will prepare a memorandum briefly describing the possible 404 permitting options and a strategy based on the delineated waters, the land plan and current regulations.

Preliminary Jurisdictional Determination Report (optional, if necessary)
If after the permitting analysis, it is determined that Section 404 permitting is required, the information gathered during the delineation will be incorporated into a Preliminary Jurisdictional Determination (PJD) report, which can subsequently be submitted to the USACE for verification and Section 404 permitting if that proves necessary as a result of proposed project plans. The PJD report will be prepared in accordance with Section 404 of the Clean Water Act and current USACE guidance.

The goal of the permitting analysis will be to identify areas where off-channel ponds could be constructed, balancing the need for a certain volume of dirt from the excavated areas and aesthetic requirements for the ponds with the minimum amount of permitting/agency coordination possible.

Water Appropriations Assistance

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

It is assumed that the proposed ponds will be constructed off-channel. We will perform a water appropriations permitting analysis of the proposed project based on the delineation described above and the proposed park layout provided by the Owner. We will provide a brief report documenting the analysis for the project file.

Task Four, Water Rights Issues – The project will be done in two phases. The first phase will evaluate the need for a water right and identify issues associated with using groundwater, stormwater inflows, or treated wastewater to fill the ponds. The second phase will develop information needed for a water right application with TCEQ and for negotiations with the City of Dallas. The second phase will only be performed if Phase I determines that there is a need for a water right, and if authorized by the CLIENT.

Task Five, Conceptual Design / Design Development– Consultant will prepare conceptual layout plans based on the previous concepts and on the wetland delineations. These concepts will show all the improvements based on The City of Frisco program for the park site. The programs for the park will include, but not limited to Off Channel Ponds, Pavilions, Hike & Bike Trails, Pedestrian Bridges, Enhanced Overlook Areas, Off Street Parking, Landscaping, Irrigation, etc.

Task Six, Construction Documents – Based on the plans approved by the Planning & Zoning Board, the City Council and the Parks Board, we will prepare construction documents for the park site. These plans will include, but not limited to dimensional layout plans, grading and drainage plans, architectural plans, MEP plans for fountains & lighting, hardscape plans including trails and pedestrian bridges, vehicular parking areas, landscape planting plans, irrigation plans as well as plans for the water wells. These plans will include details and specifications for the construction of all park site improvements.

Task Seven, Final Plat – The consultant will revise the preliminary plat to ensure all required easements are shown & dedicated per the City of Frisco requirements. The plat will be submitted to the City of Frisco for final approval and for filing with the appropriate County offices.

Task Eight, Bid Documents – Based on the final construction plans approved by the City of Frisco Parks Department, We will prepare a bid sheet identifying the quantities of improvements for the purposes of competitive bids. These quantities will be placed in a bid form for the City of Frisco Parks and Recreation Department use.

Task Nine, Pre-Bid – Consultant will meet with potential bidders and city staff to review the project and the expectations of construction quality, construction sequence and construction timing. We will review with the potential bidders the areas for the park site improvements as documented in the plan sets.

III. TASK SUMMARY, SPECIAL SERVICES.

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

Task One, Project Administration – Consultant will provide construction administration / construction management for the park project site to review the construction progress and the craftsmanship of work performed for the project. We will provide a report on a weekly basis of the progress of the park site improvements. We will be available to answer questions and review submittals as determined by the city.

IV. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES.

A. **Additional Services not included in the existing Scope of Services** – City and Consultant agree that the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:

V. DELIVERABLES.

A. **Required Deliverables** – At the completion of Tasks 1-4 (with Deliverable 1) Task 5 (with Deliverable 2), Task 6 (with Deliverable 3) Consultant shall ensure the delivery of the following products to the City:

1. **Deliverable #1** – We will deliver a base map plan that will show the areas designated for improvement along with the wetland delineations and the research and results of the water rights issues. These shall include all approvals from all government agencies involved.
   We will also submit the conceptual design revised based on the wetland delineation for review and discussion. We will adjust, modify and resubmit a set of conceptual plans to be approved prior to final construction documents. These documents will be accompanied with the preliminary plat for the Park site.

2. **Deliverable #2**- We will submit final construction in three phases. Phase one will be a set of documents for review at 50% completion, Phase two will be a set of documents for review at 90% completion, and Phase three will be the final documents at 100% completion and ready for bidding and construction.

3. **Deliverable #3**- We will submit bid documents for the purpose of bidding the park site improvements for the procurement of competitive bids.

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

VI. PROJECT LABOR ALLOCATION.

TASK 1	Base Map Preparation	4.8 % 134.25 hrs.
TASK 2	Preliminary Plat	1.8 % 50 hrs.
TASK 3	Wetland Delineation & Mitigation	4.9 % 139.75 hrs.
TASK 4	Water Rights	4% 112.35 hrs.
TASK 5	Conceptual Design / Design Development	3.5 % 98.65 hrs.
TASK 6	Construction Documents	76.1 % 2,167.30 hrs
TASK 7	Final Plat	1.8% 50 hrs
TASK 8	Bid Documents	2.6% 71.25 hrs
TASK 9	Pre Bid	.5% 16.45 hrs
GRAND TOTAL		2,840.00

VII. ATTACHMENTS (IF APPLICABLE).

Agreement by and between the City of Frisco, Texas (City) and Studio 13 Design Group (Leonard Reeves, ASLA, RLA, LI) (Consultant) to perform Professional Design Services for Cottonwood Creek Greenbelt Park.

I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

MONTH, DATE, YEAR	DOLLAR AMOUNT	TASK COMPLETED
2 month	$41,925.00	Base Map Preparation, Preliminary Plat, Wetland Delineations & Mitigation, Water Rights Determination
1 month	$9,300.00	Conceptual Design & Design Development, Based on Revised wetland delineation
3 month	$219,075.00	Construction Documents to 100% completion, Final Plat, Bid Documents, Pre Bid Meeting

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

TOTAL CONSULTANT'S FEE (NOT-TO-EXCEED)	**$270,300.00**

II. **PROJECT BUDGET SUMMARY.**
Preparation of construction documents for a +/- 85 Acre Park site located within the platted site of Shaddock Creek Estates. The site is situated in Shaddock Creek Estates within the FEMA Floodway. The site is bound on the east side by Legacy Drive and to the west by Teel Parkway. The improvements for the park site shall include, but not limited to a Hike and Bike Trail, Pavilions, Overlooks, Ponds with fountains, Vehicular Parking, Grading, Landscaping and Irrigation.

A. **Basic Services.**

1. Description of Basic Services.

a. Base Map Preparation.	$ 12,900.00
b. Preliminary Plat	$ 5,000.00
c. Wetland Delineation & Mitigation	$ 13,275.00
d. Water Rights	$ 10,750.00
e. Conceptual Design / Design Development	$ 9,300.00
f. Final Construction Documents	$205,905.00
g. Final Plat	$ 5,000.00
h. Bid Documents	$ 6,650.00
i. Pre-Bid	$ 1,520.00
Total Basic Services (Not-To-Exceed)	***$270,300.00***

B. **Special Services.**

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

1. Construction Administration.

2. *Total Special Services (Not-To-Exceed)* *$12,875.00*

C. **Direct Expenses**.

a. Description of Direct Expenses. (Add items applicable to this Contract).

a. **Mileage Reimbursement.**	$1,800.00
b. **Commercial Reproduction.**	$1,250.00
c. **In-House Reproduction.**	$2,285.00
d. **Commercial Plotting.**	$4,885.00
e. **In-House Plotting.**	$3,240.00
f. **Communications.**	$0,000.00
g. **Postage, Mail, and Delivery Service.**	$0,000.00
b. *Total Direct Expenses (Not-To-Exceed)*	***$13,460.00***

B. **General and/or Administrative Markup**. (If this Section is Applicable to Contract)

a. **Description of Markup.**	$ 0,000.00
b. *Total Approved Markup (Not-To-Exceed)*	*$ 0,000.00*

C. **Travel and/or Subsistence Expenses**. (If this Section is Applicable to Contract)

1. **Description of Travel Expenses.**	$ 0,000.00
2. **Description of Subsistence Expenses.**	$ 0,000.00
3. *Total Approved Travel and Subsistence Expenses (Not-To-Exceed)*	*$ 0,000.00*

F. ***Project Budget, Grand Total (Not-To-Exceed)*** ***$ 296,635.00***

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

III. ADDITIONAL SERVICES

Additional services, not included in this Scope of Services, will be negotiated with the City as necessary. Compensation will be based upon either a mutually agreed lump sum fee or on an hourly basis. Items which would be considered Additional Services could include: additional

EXHIBIT "C"
CITY OF FRISCO
GUIDELINES FOR COMPUTER AIDED DESIGN AND DRAFTING (CADD)

1. Files shall be submitted in DWG/DXF format.

2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83.

3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.

4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.

5. The file shall contain required features for the project type as detailed below:

    a. Pre-Construction/As-Built Plans and/or Record Documents:
        i. Layers from Final Plat Requirements as Applicable to Project Type.
        ii. Water Utility Features.
        iii. Sanitary Sewer Features.
        iv. Storm Sewer Features.

6. Each required feature group should be provided as a separate layer within the file.

7. Layer names should be representative of the information contained in the layer.

8. Line work should be continuous (e.g. no dashed lines in required layers) and complete (connecting lines should meet at corners) within the subdivision/project. Layers outside of project/subdivision boundary may be dashed in CAD data as required for Final Plats by Frisco Subdivision Ordinance Section 5.02.

EXHIBIT "D"
CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

I. **CONSULTANT'S RESPONSIBILITY**. The Consultant shall be solely responsible for the auditing of all direct expenses, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those of its subcontractors, prior to submitting to the City for reimbursement, and Consultant shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment(s) for services; however, this shall not be the City's sole and exclusive remedy for said over-payment.

II. **GUIDELINES FOR DIRECT EXPENSES**.

A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of the Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall City reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of City's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by City. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.

B. **Supplies, Material, Equipment** – City shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by City's Project Manager in writing.

C. **Commercial Reproduction** – City shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to City at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

D. **In-House Reproduction** - Consultant shall make arrangements with the City for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of the City's reproduction log is required as a prerequisite for payment, including the number or reproductions,

the date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

E. **Commercial Plotting** – City shall reimburse the actual cost of plots, specifically limited to final documents, provided the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

F. **In-House Plotting** – Consultant shall make arrangements with City for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of the City's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.

G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.

H. **Postage, Mail, and Delivery Service** – City shall reimburse the actual cost of postage and delivery of Instruments of Service, provided the Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the City, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Consultant and/or the Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.

I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with the City's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

EXHIBIT "D"
CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

A. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to City specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to City what costs would be considered direct costs. City shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. City reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

A. **Requirement of Prior Approval** – City shall reimburse the actual cost of travel and/or subsistence expenses upon prior written approval by the City's Project Manager.

B. **Adherence to Currently Adopted City Travel Policy** – Reimbursements shall be governed by the same travel policies provided for City employees according to current adopted policy. Prior to the event, Consultant shall request, and the City's Project Manager shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

EXHIBIT "E"
CITY OF FRISCO CONTRACTOR INSURANCE GUIDELINES

I. REQUIREMENT OF GENERAL LIABILITY INSURANCE –

A. Such policy shall name the City, its officers, agents, representatives, and employees as additional insured as to all applicable coverage with the exception of workers compensation insurance.

1. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail.

2. Such policy shall provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of the insurance.

II. INSURANCE COMPANY QUALIFICATION – All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

III. CERTIFICATE OF INSURANCE – A Certificate of Insurance evidencing the required insurance shall be submitted with the contractor's bid or response to proposal. If the contract is renewed or extended by the City a Certificate of Insurance shall also be provided to the City prior to the date the contract is renewed or extended.

EXHIBIT "E"
CITY OF FRISCO CONTRACTOR INSURANCE GUIDELINES

IV. **INSURANCE CHECKLIST** – "X" means that the following coverage is required for this Agreement.

		Coverage Required	Limits
X	1.	Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
X	2.	General Liability	▪ Minimum $1,000,000.00 each occurrence; ▪ Minimum $2,000,000.00 in the aggregate.
___	3.	XCU Coverage	▪ Minimum $1,000,000.00 each occurrence; ▪ Minimum $2,000,000.00 in the aggregate.
X	4.	Professional Liability	▪ Minimum $ 1,000,000.00 each claim; ▪ Minimum $ 2,000,000.00 in the aggregate.
___	5.	Umbrella Coverage or Excess Liability Coverage	▪ An amount of $ 2,000,000.00.

X 6. City named as additional insured on General Liability Policy. This coverage is primary to all other coverage the City may possess.

X 7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance.

X 8. Thirty (30) days notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.

X 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

X 10. The Certificate of Insurance must state the project title and bid number.

___ 11. Other Insurance Requirements (State Below):

EXHIBIT "F"
AFFIDAVIT

THE STATE OF TEXAS §
§
THE COUNTY OF DENTON §

I, LEONARD W. REEVES, a member of the Consultant team, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the Project (Check all that apply):

✓ Ownership of 10% or more of the voting shares of the business entity.

✓ Ownership of Twenty Five Thousand and 00/100 Dollars ($25,000.00) or more of the fair market value of the business entity.

✓ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty Five Thousand and 00/100 Dollars ($25,000.00).

____ A relative of mine has substantial interest in the business entity or property that would be affected by my business decision of the public body of which I am a member.

____ Other: _____.

____ None of the Above.

Upon filing this affidavit with the City of Frisco, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code, is a member of a public body which took action on the agreement.

Signed this 24TH day of August, 2011.

Leonard W. Reeves. Principal / Owner
Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared Leonard W Reeves and on oath stated that the facts hereinabove stated are true to the best of his / her knowledge or belief.

Sworn to and subscribed before me on this 24th day of August, 2011.

ERIN L PESANTE
Notary Public, State of Texas
My Commission Expires
June 09, 2015

Erin L Pesante
Notary Public in and for the State of Texas
My commission expires: June 09, 2015

EXHIBIT "G"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE **FORM CIQ**

For vendor or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. *See* Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of person doing business with local governmental entity.**

2

☐ **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 **Describe each affiliation or business relationship with an employee or contractor of the local governmental entity who makes recommendations to a local government officer of the local governmental entity with respect to expenditure of money.**

4 **Describe each affiliation or business relationship with a person who is a local government officer and who appoints or employs a local government officer of the local governmental entity that is the subject of this questionnaire.**

Adopted 01/10/2006

EXHIBIT "G"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ
Page 2

For vendor or other person doing business with local governmental entity

5 **Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.)**

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or business relationship. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?

☐ Yes ☑ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?

☐ Yes ☑ No

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☑ No

D. Describe each affiliation or business relationship.

6 **Describe any other affiliation or business relationship that might cause a conflict of interest.**

7

Signature of person doing business with the governmental entity

8/24/2011
Date

Revised 07/13/2006

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 08-04-2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

BRITTON & BRITTON INSURANCE SERVICES, INC.
Tx Admin Center P O Box 2588
Granite Shoals, TX 78654

CONTACT NAME: Annette Green
PHONE (A/C, No, Ext): 210-695-3932 FAX (A/C, No): 1-888-334-6875
E-MAIL ADDRESS: greenma@2fastmail
PRODUCER CUSTOMER ID #:

INSURED

Studio 13 Design Group PLLC
519 Bennett Lane
Suite 203
Lewisville Tx 75057

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Safeco Insurance Company of America	
INSURER B : Darwin Select Inc. Co.	
INSURER C : Texas Mutual Ins. Co.	
INSURER D : Ohio Casualty Insurance Co.	
INSURER E :	
INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY			25-CC-228238-4	08-07-11	08-07-12	EACH OCCURRENCE	$ 1,000,000
	[X] COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 200,000
	[ ] CLAIMS-MADE [X] OCCUR						MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$ 2,000,000
	[ ] POLICY [ ] PRO-JECT [ ] LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	[ ] ANY AUTO						BODILY INJURY (Per person)	$
	[ ] ALL OWNED AUTOS						BODILY INJURY (Per accident)	$
	[ ] SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	$
	[ ] HIRED AUTOS							$
	[ ] NON-OWNED AUTOS							$
D	[X] **UMBRELLA LIAB** [ ] OCCUR			EUO1254641401	08-07-11	08-07-12	EACH OCCURRENCE	$ 1,000,000
	EXCESS LIAB [ ] CLAIMS-MADE						AGGREGATE	$ 1,000,000
	[ ] DEDUCTIBLE							$
	[ ] RETENTION $							$
C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N			SBP0001196147	11-10-2010	11-10-2011	[X] WC STATU-TORY LIMITS [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] **(Mandatory in NH)**	N / A					E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
B	Professional Liailbity			0304-1229	09-25-10	09-25-11	2,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The City of Frisco is Additional Insured.
Waiver of Subrogation is in favor of The City of Frisco.

CERTIFICATE HOLDER

The City of Frisco
6726 Walnut St.
Frisco, TX 75034

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Robert C Britton

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AGENDA ITEM #18.

FRISCO FIRE DEPARTMENT

CITY OF FRISCO
8601 GARY BURNS DRIVE
FRISCO, TEXAS 75034
TEL 972.292.6300 · FAX 972.292.6319
WWW.FRISCOFIRE.COM

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Cc: **George Purefoy, City Manager**
Ron Patterson, Assistant City Manager
Mack Borchardt, Fire Chief
Paul Siebert, Assistant Fire Chief

From: **Jean May, Emergency Management Specialist**

Date: **September 6, 2011**

Subject: **Consider and act upon approval to submit three projects for the Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grant (AFG) Program**

Action Requested: City Council consideration and approval for the submission of three (3) projects in the amount of $529,918 for the Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grant (AFG) Program.

Background Information: AFG provides financial assistance directly to fire departments in order to enhance their capabilities with respect to emergency response. The goal of this AFG Application is to meet emergency response needs of the Fire Department through improved EMS technology and wildland safety equipment. Upon City Council approval, staff would submit a grant application for the following three (3) projects:

- **Lifepak 15 Defibrilator / Monitors** – The project cost is $524,258; federal grant money totals $419,406.40 and City matching funds total $104,851.60. This request is for the purchase of eleven (11) Lifepak 15 defibrillator / monitors. The Lifepak 15 monitor is state of the art technology and we currently have Lifepak 15 monitors on order with all new apparatus packages. The Lifepak 12 monitors currently in use are reaching the end of their service life. We are nearing the time when parts and service for these units will no longer be available. Our present goals identify the replacement of the entire inventory of Lifepak 12 monitors with Lifepak 15 monitors over the next two to three years; this grant application will greatly assist us in furthering this effort.

- **Wildland firefighting personal protective gear** – The project cost is $5,240; federal grant money totals $4,192 and City matching funds total $1,048. The gear includes ten (10) fire shelters at $413 each and ten (10) fire packs at $111 each. The fire shelter is a device used

FRISCO FIRE DEPARTMENT

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by firefighting personnel to shelter in the event that they became trapped by a fast moving wildland fire. Fire shelters are designed to provide firefighters with air which is safe to breathe while protecting them from the extreme heat of the fire. With the increased frequency of State wildland fire deployments and the possibility of firefighters engaging in rural wildland firefighting, this equipment will provide another level of protection for our firefighters working during State deployments. The fire packs are backpacks specifically designed for use by wildland firefighters and are used to carry the fire shelter comfortably while working fire lines. The fire packs are highly configurable, allowing fire personnel to adjust a pack to meet their needs for any given deployment, and they are also designed to be very durable.

- **Wildland firefighting shelter trainers** – The project cost is $420; federal grant money totals $336 and City matching funds total $84. The fire shelter trainer is a "fire shelter" that can be used over and over again for training purposes. With this equipment our firefighters will learn how to use a fire shelter and practice getting into a shelter in adverse conditions.

Alternatives: City Council could consider the following alternatives:

- Approve the submission of the AFG Application;
- Input towards the discussion as desired;
- Deny approval to submit the AFG Application and send back to staff with direction.

Financial Considerations: The AFG Application requires City matching funds in the amount of 20% of the total cost of the project; the City's cost share of the grant application will be $105,983.60. Capital funds are available to fulfill the City's matching funds requirement of the AFG Application should the grant be awarded to the City.

Legal Review: Not Applicable.

Supporting Documents: Supporting documents include the following items:

- Copy of the AFG Application.

Staff Recommendation: Staff recommends City Council approval to submit the AFG Application. Please contact Assistant Fire Chief Paul Siebert at (972) 292-6340 or psiebert@friscofire.com or myself at (972) 292-6342 or jmay@friscofire.com if you have questions.

Overview

*Did you attend one of the workshops conducted by DHS's regional fire program specialist?
No, I have not attended workshop
*Was a workshop within 2 hours drive?
Do Not Know
*Are you a member, or are you currently involved in the management, of the fire department or non-affiliated EMS organization applying for this grant with this application?
Yes, I am a member/officer of this applicant

If you answered No, please **complete** the information below. If you answered Yes, please skip the Preparer Information section.
Fields marked with an * are required.

Preparer Information

* Preparer's Name	
* Address 1	
Address 2	
* City	
* State	
* Zip	- Need help for ZIP+4?

In the space below please list the person your organization has selected to be the primary point of contact for this grant. This should be a Chief Officer or long time member of the organization who will see this grant through completion. Reminder: if this person changes at anytime during the period of performance please update this information. Please list only phone numbers where we can get in direct contact with you.

Primary Point of Contact

* Title	Emergency Management Specialist
Prefix (check one)	Mrs.
* First Name	Jean
Middle Initial	
* Last Name	May
* Business Phone (e.g. 123-456-7890)	972-292-6342 Ext.
* Home Phone (e.g. 123-456-7890)	214-250-8280 Ext.
Mobile Phone/Pager (e.g. 123-456-7890)	
Fax (e.g. 123-456-7890)	
* Email (e.g. user@xyz.org)	jmay@friscofire.com

Contact Information

	Alternate Contact Information Number 1
* Title	Assistant Chief
Prefix	N/A
* First Name	Paul
Middle Initial	
* Last Name	Siebert
* Business Phone	972-292-6340 Ext.
*Home Phone	214-394-8170 Ext.
Mobile Phone/Pager	
Fax	
*Email	psiebert@friscofire.com

	Alternate Contact Information Number 2
* Title	Assistant Chief
Prefix	N/A
* First Name	Lee
Middle Initial	
* Last Name	Glover
* Business Phone	972-292-6330 Ext.
*Home Phone	214-394-7293 Ext.
Mobile Phone/Pager	
Fax	
*Email	lglover@friscofire.com

Applicant Information

* Organization Name	Frisco Fire Department
* Type of Applicant	Fire Department/Fire District
* Type of Jurisdiction Served	City
If other, please enter the type of Jurisdiction	

Headquarters or Main Station Physical Address

* Physical Address 1	8601 Gary Burns Dr.
Physical Address 2	
* City	Frisco
* State	Texas
* Zip	75034 - 2594 Need help for ZIP+4?

Mailing Address

* Mailing Address 1	8601 Gary Burns Dr.
Mailing Address 2	
* City	Frisco
* State	Texas
* Zip	75034 - 2594 Need help for ZIP+4?
* Please describe all grants that you have received from DHS including any AFG grant received from DHS or FEMA, for example, 2002 AFG grant for vehicle or 2003 ODP grant for exercises. (Enter "N/A" if Not Applicable)	2008 AFG grant for HazMat equipment

Additional Information

* For this fiscal year (Federal) is your organization receiving Federal funding from any other grant program that may duplicate the purpose and/or scope of this grant request?	No
* If awarded the AFG grant, will your organization expend more than $500,000 in Federal funds during your organization's fiscal year in which this AFG grant was awarded?	No
* Is the applicant delinquent on any Federal debt?	No
If you answered yes to any of the additional questions above, please provide an explanation in the space provided below:	

Department Characteristics (Part I)

* Are you a member of a Federal Fire Department or contracted by the Federal government and solely responsible for suppression of fires on Federal property?	No
* What kind of organization do you represent?	Combination
If you answered combination, above, what is the percentage of career members in your organization?	83 %
If you answered volunteer or combination or paid on-call, how many of your volunteer Firefighters are paid members from another career department?	0
* What type of community does your organization serve?	Suburban
* What is the square mileage of your first-due response area?	72
* What percentage of your response area is protected by hydrants?	59 %
* In what county/parish is your organization physically located? If you have more than one station, in what county/parish is your main station located?	Collin County
* Does your organization protect critical infrastructure of the state?	No
* How much of your jurisdiction's land use is for agriculture, wild land, open space, or undeveloped properties?	63 %
* What percentage of your jurisdiction's land use is for commercial, industrial, or institutional purposes?	13 %
* What percentage of your jurisdiction's land is used for residential purposes?	24 %
* How many occupied structures (commercial, industrial, residential, or institutional) in your jurisdiction are more than three stories tall?	42
* What is the permanent resident population of your Primary/First-Due Response Area or jurisdiction served?	122107
* Do you have a seasonal increase in population?	Yes
* How many active firefighters does your department have who perform firefighting duties?	120
* How many ALS level trained members do you have in your department/organization?	96
* How many stations are operated by your organization?	6
* Is your department compliant to your local Emergency Management standard for the National Incident Management System (NIMS)?	Yes
* Do you currently report to the National Fire Incident	Yes

Reporting System (NFIRS)?

* What percent of your active firefighters are trained to the level of Firefighter I?	100 %
* What percent of your active firefighters are trained to the level of Firefighter II?	100 %
If you answered less than 100% to either question above, are you requesting for training funds in this application to bring 100% of your firefighters into compliance with NFPA 1001?	No
If you indicated that less than 100% of your firefighters are trained to the Firefighter II level and you are not asking for training funds in this application, please describe in the text box to the right your training program and your plans to bring your membership up to Firefighter II.	

* What services does your organization provide?

Structural Fire Suppression	Emergency Medical Responder	Hazmat Operational Level
Wildland Fire Suppression		Hazmat Technical Level
	Advanced Life Support	Rescue Operational Level
Occasional Fire Prevention Program	Formal/Year-Round Fire Prevention Program	Rescue Technical Level

* Please describe your organization and/or community that you serve. We recommend typing your response in a Word Document outside of this application, then copying and pasting it into the written field. There is a 4000 character limit.

The City of Frisco is located in Denton and Collin Counties, approximately 25 miles north of Dallas. Frisco's population, currently over 120,000 residents, has grown 210 percent since 2000. According to the US Census Bureau, in 2009, Frisco was the fastest growing city in the United States.

Frisco is home to four large capacity special event venues which host a variety of sporting and special events including the NCAA Division I Finals, Major League Soccer, minor league baseball, basketball, and hockey as well as a variety of concerts. It is not uncommon to have events occurring simultaneously at all four venues, effectively bringing an additional 20,000 to 30,000 visitors into the city within a matter of hours. In 2010, the City of Frisco hosted approximately 4.3 million visitors.

The Frisco Fire Department (FFD) responds to approximately 7,500 emergency calls annually. In addition to fire suppression, the FFD also provides responses to Emergency Medical Services (EMS); Hazardous Materials (HAZMAT); Specialized Rescue including High Angle & Swift Water; Motor Vehicle Accidents; Automatic Alarm Investigations, Public Assistance as well as a variety of other calls for service. In addition to providing services to the City of Frisco, FFD also responds to calls for service to the community of Hackberry and other unincorporated areas surrounding the city. Furthermore, the Frisco Fire Department provides EMS for all special events within the city. The department is a government entity and operates as a 24 hour 911/Emergency response organization. The Frisco Fire Department is a Texas Department of State Health Services (DSHS) Licensed

EMS Provider and is licensed to operate 9 Mobile Intensive Care Units (MICU).
The Frisco Fire Department operates from six fire stations with plans underway for Fire Station #7. Frisco Fire Department consists of 133 career firefighters, 28 volunteer firefighters, and 19 employees who provide professional and administrative support within the Fire Department. Included in those numbers, the department has 42 Emergency Medical Technicians-Basic (EMT) and 116 Paramedics.
Currently, Frisco Fire Department personnel staff six engine companies, two truck companies, one special operations squad (heavy rescue), one HazMat truck, and four MICU's 24 hours a day. Additional reserve apparatus including five MICU's can be staffed as necessary during times of peak demand and/or special events.
The Frisco Fire Department has executed interlocal cooperation agreements between the City of Frisco and Collin and Denton counties for mutual aid fire and ambulance services. FFD routinely responds to EMS and fire mutual aid requests from organizations within both counties jurisdictions.
The Frisco Fire Department has extensive experience in the area of disaster response and currently maintains State fire and EMS Memoranda of Agreement for Mutual Aid in Disasters. FFD personnel along with fire apparatus and MICU's have been deployed on both FEMA deployments (Hurricane Katrina – 2005) and DSHS missions including: Hurricane Alex (2010), Hurricanes Dolly, Gustov, and Ike (2008), and Hurricane Rita (2005)

Frisco Fire Department coordinates the Collin-Rockwall-Hunt (CRH) Task Force. This Task Force was established to coordinate personnel, apparatus, and resources from these counties for statewide mutual aid deployments in emergency and disaster situations. The Frisco Fire Department coordinated multiple CRH Task Force Deployments for the 2011 wildfires.

Fire Department Characteristics (Part II)

	2010	2009	2008
* What is the total number of fire-related civilian fatalities in your jurisdiction over the last three years?	0	0	0
* What is the total number of fire-related civilian injuries in your jurisdiction over the last three years?	0	0	0
* What is the total number of line of duty member fatalities in your jurisdiction over the last three years?	0	0	0
* What is the total number of line of duty member injuries in your jurisdiction over the last three years?	14	7	7
* Over the last three years, what was your organization's average operating budget?		2195315	
* What percentage of your TOTAL budget is dedicated to personnel costs (salary, overtime and fringe benefits)?		85 %	
* What percentage of your annual operating budget is derived from: Enter numbers only, percentages must sum up to 100%			
Taxes?	89 %		
EMS Billing?	10 %		
Grants?	0 %		
Donations?	0 %		
Fund drives?	0 %		
Fee for Service?	0 %		
Other?	1 %		
If you entered a value into Other field (other than 0), please explain	fire permits		

The City of Frisco Fire Department is requesting funding assistance through the AFG. The project cannot be funded solely through local funding resources. While voters have approved the sale of bonds for Fire Department Capital Improvement Projects, the sale of these bonds have been postponed due to the current economic climate. At the same time, the City continues to experience significant growth in population and demands for increased levels of service.
The following is the City of Frisco Fire Department's current and future funding issues. The City continues to experience significant growth in population on an annual basis; this continued population growth results in a corresponding increase in demands for an increased level of service to be provided by City Departments. The current economic climate presents a challenge in addressing the increased public expectations, with a 7.5% Frisco

* Please describe your organization's need for Federal financial assistance. We recommend typing your response in a Word Document outside of this application, then copying and pasting it into the written field. There is a 4000 character limit.

Unemployment Rate in June 2011. In 2012 the Frisco Fire Department will open Fire Station No. 7 and the focus of the FY 2011-2012 Budget was to include roughly $1.1 million in additional funding to provide the personnel and equipment necessary to operate the station. We anticipate that we will continue to see consistent population growth and demands for increased levels of service while remaining optimistic about continued improvement in the economic climate.
The City has local funding issues. The City of Frisco voters have approved the sale of bonds for Fire Department Capital Improvement Projects, but due to the current economic climate plans for selling bonds have been postponed. The City Council adopted the FY 2011-2012 effective property tax rate of $0.461910 per $100 of property value; this property tax rate imposes the same total taxes effective in FY 2010-2011 upon comparison of properties taxed in both years. The FY 2011-2012 effective tax rate was $0.00309 less than the FY 2011-2012 proposed property tax rate of $0.465 per $100 of property value.

* How many vehicles does your organization have in each of the types or class of vehicle listed below? **You must include vehicles that are leased or on long-term loan as well as any vehicles that have been ordered or otherwise currently under contract for purchase or lease by your organization but not yet in your possession.** (Enter numbers only and enter 0 if you do not have any of the vehicles below.)

Type or Class of Vehicle	Total Number of Front line Apparatus	Total Number of Reserve Apparatus	Total Number of Seated Riding Positions
Engines or Pumpers (pumping capacity of 750 gpm or greater and water capacity of 300 gallons or more): Pumper, Pumper/Tanker, Rescue/Pumper, Foam Pumper, CAFS Pumper, Quint (Aerial device of less than 76 feet), Type I or Type II Engine Urban Interface	6	2	32
Ambulances for transport and/or emergency response	5	4	63
Tankers or Tenders (pumping capacity of less than 750 gallons per minute (gpm) and water capacity of 1,000 gallons or more):	0	0	0
Aerial Apparatus: Aerial Ladder Truck, Telescoping, Articulating, Ladder Towers, Platform, Tiller Ladder Truck, Quint (Aerial device of 76 feet or greater)	2	1	15
Brush/Quick attack (pumping capacity of less than 750 gpm and water carrying capacity of at least 300 gallons): Brush Truck, Patrol Unit (Pick up w/ Skid Unit), Quick Attack Unit, Mini-Pumper, Type III Engine, Type IV Engine, Type V Engine, Type VI Engine, Type VII Engine	1	1	4
Rescue Vehicles: Rescue Squad, Rescue (Light, Medium, Heavy), Technical Rescue Vehicle, Hazardous Materials Unit	2	1	12
Other: EMS Chase Vehicle, Air/Light Unit, Rehab Units, Bomb Unit, Technical Support (Command, Operational Support/Supply), Salvage Truck, ARFF (Aircraft Rescue Firefighting), Command/Mobile Communications Vehicle, Other Vehicle	2	0	10

Department Call Volume

	2010	2009	2008
* How many responses per year by category? (Enter whole numbers only. If you have no calls for any of the categories, enter 0)			
Working Structural Fires	33	45	41
False Alarms/Good Intent Calls	1804	1726	1732
Vehicle Fires	31	31	36
Vegetation Fires	34	38	36
EMS-BLS Response Calls	0	0	0
EMS-ALS Response Calls	3554	3482	3308
EMS-BLS Scheduled Transports	0	0	0
EMS-ALS Scheduled Transports	0	0	0
Vehicle Accidents w/o Extrication	791	795	687
Vehicle Extrications	12	12	19
Other Rescue	35	38	20
Hazardous Condition/Materials Calls	270	352	289
Service Calls	789	684	632
Other Calls and Incidents	101	80	108
Total	7454	7283	6908
* How many responses per year by category? (Enter whole numbers only. If you have no calls for any of the categories, enter 0)			
What is the total acreage of all vegetation fires?	6	3	2
* How many responses per year by category? (Enter whole numbers only. If you have no calls for any of the categories, enter 0)			
In a particular year, how many times does your organization receive mutual/automatic aid?	0	0	0
In a particular year, how many times does your organization provide mutual/automatic aid? (Please indicate the number of times your department provides or receives mutual aid. Do not include first-due responses claimed above.)	93	246	15
Out of the mutual/automatic aid responses, how many were structure fires?	8	9	9

Request Information

1. Select a program for which you are applying. If you are interested in applying under both Vehicle Acquisition and Operations and Safety, and/or regional application you will need to submit separate applications.

Program Name

Operations and Safety

2. Will this grant benefit more than one organization?

Yes

If you answered Yes to Question 2 above, please explain.

The equipment portion of this grant will benefit more than just the citizens of Frisco. It will also benefit the cities with which we have a mutual aid agreement with and communities the firefighters will respond to through the Texas Department of State Health Services, and all firefighter wellness and safety thru carbon monoxide testing. The Lifepaks gained with this grant will be carried on all apparatus that is dispatched to incidents. The personal protection equipment within this grant will secure wildland fire shelters which will benefit firefighters in the counties of Collin, Rockwall and Hunt. The City of Frisco manages the Collin/Rockwall/Hunt Task Force. This Task Force is called upon by TIFMAS for wildland firefighting throughout the State. The training section of this grant will secure the "training fire shelter" which the firefighters within the Collin/Rockwall/Hunt Task Force will have the opportunity to utilize to practice wildland firefighting shelters.

3. Enter Grant-writing fee associated with the preparation of this request. Enter 0 if there is no fee.

$0

Request Details

The activities for program Operations and Safety are listed in the table below.

Activity	Number of Entries	Total Cost	Additional Funding	Action
Equipment	1	$ 524,260	$ 0	View Details View Additional Funding Narratives
Modify Facilities	0	$ 0	$ 0	View Details
Personal Protective Equipment	1	$ 4,130	$ 0	View Details View Additional Funding Narratives
Training	1	$ 420	$ 0	View Details View Additional Funding Narratives
Wellness and Fitness Programs	0	$ 0	$ 0	View Details
* Total Funding for all EMS requested in this application			$524260	View Details
Grant-writing fee associated with the preparation of this request.			$0	

Firefighting Equipment - Narrative

* Section # 1 Project Description: In the space provided below include clear and concise details regarding your organization's project's description and budget. This includes providing local statistics to justify the needs of your department and a detailed plan for how your department will implement the proposed project. Further, please describe what you are requesting funding for including budget descriptions of the major budget items, i.e., personnel, equipment, contracts, etc.? *3000 characters

The City of Frisco Fire Department has determined that the equipment most vital to the daily operations of providing patient care is the procurement of eleven industry standard 12-lead cardiac monitor/defibrillators with carbon monoxide(CO) monitoring.
The department currently operates 6 paramedic engines, 2 paramedic trucks, 1 paramedic heavy rescue, and 4 paramedic ambulances 24 hours a day including 5 paramedic reserve fire apparatus and 5 reserve ambulances. All paramedic apparatus currently have older model 12-lead cardiac monitor/defibrillators varying in age from 4–12 years old. These units require more service and replacement parts which have become more expensive and difficult to locate. The department does not have a "back-up" monitor to use if one is out of service. The American Heart Association recommends a lifespan at 5 years.
Due to the explosive growth in the last 10 years, the Frisco Fire Department acquired almost all 12-lead cardiac monitor/defibrillators within a few years. The department is attempting to replace all aging monitors/defibrillators with new models. The department was able to purchase 7 new 12-lead monitors this year, and requires an additional 11 units to complete the upgrade of the 9 front line apparatus and 9 ambulances.
The Frisco Fire Department respectfully requests $419,258 in Federal aid from the AFG Program for the purchase of eleven 12-lead biphasic cardiac monitor/defibrillators. The units will include the following additional capabilities improving patient care capability and efficiency: non-invasive monitoring of blood pressure (NIBP),Capnography,pulse CO-Oximetery, and methemoglobin. These units also include a metronome to guide CPR compressions/ventilations and provide an option to escalate defibrillation energy to 360J. The units are blue-tooth capable and utilize lithium ion batteries. Each 12-lead monitor/defibrillator will cost $36,595. Support accessories including therapy/monitoring cables, case, and lithium ion

batteries/charger will cost an additional $5,883 per monitor. A five year on-site service and inspection program is $5,165 per monitor. Total unit price $47,643; total project price of $524,073 for 11 units. The City of Frisco is committed to the 20% match of $104,814.
The requested funding to equip the front line fire apparatus and all ambulances at the Frisco Fire Department will allow the department to meet the current standard of care, improve operational efficiency, standardize equipment and training, and improve patient outcomes. Additionally, these units will allow the Frisco Fire Department to meet Medical Director protocol requirements while expanding the compliance standards with training, patient care, and equipment standards including, but not limited to: NFPA Standards 450, 473, and 1584; 21 CFR 870.1025, 870.2880, 870.5300; ASTM F1651-92 and ASTM F1031-00

* Section # 2 Cost/Benefit: In the space provided below please explain, as clearly as possible, what will be the benefits your department or your community will realize if the project described is funded (i.e. anticipated savings and/or efficiencies)? Is there a high benefit for the cost incurred? Are the costs reasonable? Provide justification for the budget items relating to the cost of the requested items. *3000 characters

The Frisco Fire Department strives to provide the highest level of care to all patients. In 2010, of the 7454 responses by the department, 59% (4392) of the calls for service were EMS related. Using fire apparatus and ambulances staffed with paramedics, the average response time was 5 minutes and 14 seconds. The Frisco Fire Department paramedics utilize ALS equipment on a daily basis. A recent review of the patient care records found that the current 12-lead monitor/defibrillator had been used in some capacity (ECG, SpO2 and/or NIBP) on almost every patient encounter and almost 85% of the patients had received ECG monitoring.
Protecting and saving lives is the core mission of the Frisco Fire Department. Funding this project will directly affect outcomes and efficiencies for nearly 100% of the patients the department encounters. The new 12-lead cardiac monitor/defibrillators have additional features such as Carbon Monoxide (SpCO) and Methemoglobin (SpMET) monitoring as well as an improved algorithm for the enhanced detection of ST Segment Elevation Myocardial Infarctions (STEMI). The Frisco Fire Department recently added the capability to transmit the field 12-lead ECG to area hospitals. By transmitting this data, the ED physician and cardiologist can alert the cath lab and minimize the critical "door to balloon"

time for percutaneous transluminal coronary angioplasty (PTCA). The SpCO monitoring is also a great addition, as it will allow FFD personnel to monitor the CO levels of its members during rehabilitation periods while on scene of a working fire.
The City of Frisco has an extensive history of providing both local mutual aid and regional assistance during disasters. Frisco Fire Department personnel and apparatus have been involved in multiple State deployments in support of hurricane relief efforts. FFD also sent its members to New Orleans to support FEMA in their response to Hurricane Katrina. Funding to support the requested cardiac monitors/defibrillators would benefit not only citizens of Frisco and the surround local region, but possibly throughout the State of Texas and beyond.
The Frisco Fire Department has evaluated the possible alternatives and there is unfortunately no option to upgrade our current monitor/defibrillators because the current model is no longer in production. Service and maintenance is becoming increasingly more expensive and at some point will become cost prohibitive. If the AFG grant is not awarded, the Frisco Fire Department will continue to utilize aging monitors. As the costs to maintain and repair these older units continue to increase, the department may have to remove the units from apparatus for extended periods of time without a spare unit in place. Additionally, due to the large number of special events hosted within the city, the department may have difficulty providing a sufficient number of monitor/defibrillators while providing EMS services at multiple venues.

* Section # 3 Statement of Effect: How would this award affect the daily operations of your department (i.e., describe how frequently the equipment will be used or what the benefits will provide the personnel in your department)? How would this award affect your department's ability to protect lives and property in your community? *3000 characters

The 12-lead monitor/defibrillators purchased with the FEMA AFG Program will meet the current standard of care, improve operational efficiency, and improve patient outcomes. The AFG funding will allow the Frisco Fire Department to have standardized and uniform equipment on all ALS fire apparatus and MICU's
According to the Center for Disease Control (CDC), heart disease is the leading cause of death in the United States as well as being a major cause of disability. The CDC reported that in 2009, an estimated 785,000 Americans will have a "new" coronary attack, and about 470,000

will have a "recurrent" attack. Therefore, about every 25 seconds an American will have a coronary event; and about one every minute will die from it. Eleven new 12-lead monitor/defibrillators will directly affect the daily operations of the City of Frisco Fire Department. The Frisco Fire Department's request will meet the Department of Homeland Security's recommendations regarding funding priorities and the determination that the greatest benefits of AFG funding will be achieved by supporting the Frisco Fire Department's existing missions and replacing obsolete equipment. In addition, AFG funding will allow the Frisco Fire Department to purchase equipment that will directly impact firefighter health and safety. These units will be regularly utilized by Frisco Fire Department paramedics to monitor personnel at fires and other special operations scenes for increased levels of carbon monoxide (CO). With the new monitor/defibrillators, firefighters will have the ability, immediately upon entering the rehab sector, to undergo a thorough and rapid evaluation that could determine if they had sustained exposure to CO. This rapid determination will greatly enhance the Frisco Fire Department's rehabilitation program by providing early detection and treatment of CO exposure and significantly diminishing the potential for CO related injuries and long-term cardiac and neurological insults.
The members of the Frisco Fire Department sincerely thank you in advance for your consideration and anticipate for a favorable reply that will enhance the ALS service that our members provide to the citizens of Frisco and beyond.

* Section # 4 In the space provided below include details regarding your organization's request not covered in any other section. *3000 characters

There are no further details regarding our organization's request not previously covered.

Firefighting PPE - Narrative

* Section # 1 Project Description: In the space provided below include clear and concise details regarding your organization's project's description and budget. This includes providing local statistics to justify the needs of your department and a detailed plan for how your department will implement the proposed project. Further, please describe what you are requesting funding for including budget descriptions of the major budget items, i.e., personnel, equipment, contracts, etc.? *3000 characters

This project will request funding for wildland firefighting personal protective gear including fire shelters and fire packs. The City of Frisco Fire Department is actively involved in managing the Collin/Rockwall/Hunt Task Force and deployments for wildland firefighting through TIFMAS. Frisco has been an active participant in State wildland firefighting. In 2011, members of the Frisco Fire Department were deployed a total of nine separate missions to West Texas. Frisco Fire Department supplied the Task Force Leader three times and twenty-nine firefighters. Total deployments included over $133,000 City funds eligible for reimbursement.

The fire shelter is a much needed device that can be used by our firefighters to shelter in the event that they became trapped by a fast moving wildland fire. Fire shelters are designed to provide firefighters with air which is safe to breathe while protecting them from the extreme heat of the fire. With the increased frequency of State wildland fire deployments and the possibility of firefighters engaging in rural wildland firefighting, this equipment will provide another level of protection for our firefighters working during State deployments. In addition to the shelter itself, the fire packs are backpacks specifically designed for use by wildland firefighters and are used to carry the fire shelter comfortably while working fire lines. The fire packs are highly durable and configurable, which will allow our fire personnel to be able to adjust the pack to meet their needs for any given deployment. The packs carry the fire shelter, picks, and tools along with water. The straps on the packs make it possible to distribute the weight of equipment.

The shelters are used as a method of last resort when it becomes evident to the firefighter that entrapment is occurring and he/she needs to be able to shelter in place. The firefighters within the Collin/Rockwall/Hunt Task Force have routinely

been in areas that do not have cell reception, very remote areas. Fire entrapments can occur for a wide range of unpredictable reasons. When this happens the firefighter may be cut off from other firefighters along the fire line, making it critical for everyone to carry a fire shelter, even though many these fire shelters can accommodate two in an emergency.

This project is respectfully requesting 10 Fire Shelters at $413.00 each and 10 Fire Packs at $111.00 each. The project cost is $5240.00 total. Federal money will be $4192.00 and City funds equal $1048.00.

The equipment will be housed and maintained at Central Fire Station. Central Station is the meeting location for the Collin/Rockwall/Hunt Task Force before deployments. Here all the wildland firefighting deployment equipment is held for easy distribution. Firefighters will maintain the equipment and certify that it stays in working condition. All firefighters who are eligible for deployments will be trained in the proper use of the equipment.

* Section # 2 Cost/Benefit: In the space provided below please explain, as clearly as possible, what will be the benefits your department or your community will realize if the project described is funded (i.e. anticipated savings and/or efficiencies)? Is there a high benefit for the cost incurred? Are the costs reasonable? Provide justification for the budget items relating to the cost of the requested items. *3000 characters

If the fire shelter and fire pack project is funded the benefit will be unsurpassable. This equipment could be the difference between life and death for the firefighters deploying under the Collin/Rockwall/Hunt Task Force. The cost incurred of $5240.00 to secure 10 fire shelters and 10 fire packs carries a high benefit for the City. The cost of the equipment is very reasonable for the security and organization it offers.

* Section # 3 Statement of Effect: How would this award affect the daily operations of your department (i.e., describe how frequently the equipment will be used or what the benefits will provide the personnel in your department)? How would this award affect your department's ability to protect lives and property in your community? *3000 characters

This award would greatly affect the daily possibility that our firefighters would be deployed to a wildland fire. The City of Frisco firefighters as

well as the firefighters within the cities committed in the Collin/Rockwall/Hunt Task Force remain actively trained and ready for deployment at anytime they are called upon by TIFMAS. These firefighters would have the knowledge that they have at their disposal the security of the fire shelter carried in their fire pack if they were trapped in the path of a fast moving wildland fire.

If one of our firefighters deployed under the Collin/Rockwall/Hunt Task Force, were caught in a fast moving wildland fire and had to seek shelter, they would have a higher chance of survival with the equipment then without. With more firefighters able to take care of themselves and continuing to stay out of danger, there will be more firefighters on the fire grounds putting out the wildland fires that are threatening people and property.

* Section # 4 In the space provided below include details regarding your organization's request not covered in any other section. *3000 characters

There are no additional details regarding this request.

Firefighting Training - Narrative

* Section # 1 Project Description: In the space provided below include clear and concise details regarding your organization's project's description and budget. This includes providing local statistics to justify the needs of your department and a detailed plan for how your department will implement the proposed project. Further, please describe what you are requesting funding for including budget descriptions of the major budget items, i.e., personnel, equipment, contracts, etc.? *3000 characters

The third project will request funding for three wildland firefighting shelter trainers. Each trainer is $140.00. The project costs $420.00 total. Federal money will be $336.00 and City funds equal $84.00.

Through this portion of this entire project, the firefighters will be required to have the hands on training to use these shelters and packs. This training will make the use of these shelters and packs second in nature if faced with an emergent need to take cover. The fire shelter trainer is a "fire shelter" that can be used over and over again for training purposes. With this equipment our firefighters will learn how to use a fire shelter and practice getting into a shelter in adverse conditions.

This training is needed due to the possibility of high winds being a common problem around a fire site which can make it difficult to get into a shelter, for example. Once in a shelter, the firefighter will be taught to stay put hugging the ground until the fire is past, rather than trying to move with the shelter.

With the growing numbers of deployments that the Collin/Rockwall/Hunt Task Force is actively participating in, the chance of the need of a fire shelter is also on the rise.

* Section # 2 Cost/Benefit: In the space provided below please explain, as clearly as possible, what will be the benefits your department or your community will realize if the project described is funded (i.e. anticipated savings and/or efficiencies)? Is there a high benefit for the cost incurred? Are the costs reasonable? Provide justification for the budget items relating to the cost of the requested items. *3000 characters

The benefit of the fire shelter trainer could be a firefighter's life saved. Thus making this a high

benefit compared to the cost incurred. The cost is $420.00 for three fire shelter trainers. These costs are very reasonable when compared to the cost of not possessing one in the event it is needed.

* Section # 3 Statement of Effect: How would this award affect the daily operations of your department (i.e., describe how frequently the equipment will be used or what the benefits will provide the personnel in your department)? How would this award affect your department's ability to protect lives and property in your community? *3000 characters

This award, as mentioned above, would greatly affect the daily possibility that our firefighters would be deployed to a wildland fire. The City of Frisco firefighters as well as the firefighters within the cities committed in the Collin/Rockwall/Hunt Task Force remain actively trained and ready for deployment at anytime they are called upon by TIFMAS. In addition to the previous training they have been through, with this fire shelter trainer they will undergo additional life saving training and will have the knowledge to use their fire shelter with confidence if needed.

The award of the fire shelter trainer would affect our department's ability to protect lives and property throughout our community and the community we are called upon to serve through TIFMAS and our Collin/Rockwall/Hunt Task Force. This trainer will give our firefighters the confidence that they will know how to deploy and utilize the fire shelter if needed. With the safety of our firefighters, we can pledge to continue to provide wildland firefighting for any communities we are called upon to help.

* Section # 4 In the space provided below include details regarding your organization's request not covered in any other section. *3000 characters

There are no additional details regarding this request.

Budget

Budget Object Class	
a. Personnel	$ 0
b. Fringe Benefits	$ 0
c. Travel	$ 0
d. Equipment	$ 528,810
e. Supplies	$ 0
f. Contractual	$ 0
g. Construction	$ 0
h. Other	$ 0
i. Indirect Charges	$ 0
j. State Taxes	$ 0
Federal and Applicant Share	
Federal Share	$ 423,048
Applicant Share	$ 105,762
Federal Rate Sharing (%)	80/20
Non-Federal Resources *(The combined Non-Federal Resources must equal the Applicant Share of $ 105,762)*	
a. Applicant	$ 105762
b. State	$ 0
c. Local	$ 0
d. Other Sources	$ 0

If you entered a value in Other Sources other than zero (0), include your explanation below. You can use this space to provide information on the project, cost share match, or if you have an indirect cost agreement with a federal agency.

Total Budget **$ 528,810**

Assurances and Certifications

Form 20-16A

You must read and sign these assurances. These documents contain the Federal requirements attached to all Federal grants including the right of the Federal government to review the grant activity. You should read over the documents to become aware of the requirements. The Assurances and Certifications must be read, signed, and submitted as a part of the application.

Note: Fields marked with an * are required.

O.M.B Control Number 4040-0007

Assurances Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have any questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Section 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. Sections 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. Sections 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Acts of 1968 (42 U.S.C. Section 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or

financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interest in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. Section 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Section 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signed by Jean May on 08/23/2011

Form 20-16C

You must read and sign these assurances.

Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters and Drug-Free Workplace Requirements.
Note: Fields marked with an * are required.

O.M.B Control Number 1660-0025

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 44 CFR Part 18, "New Restrictions on Lobbying; and 44 CFR Part 17, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Homeland Security (DHS) determines to award the covered transaction, grant, or cooperative agreement.

1. Lobbying

A. As required by the section 1352, Title 31 of the US Code, and implemented at 44 CFR Part 18 for persons (entering) into a grant or cooperative agreement over $100,000, as defined at 44CFR Part 18, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement and extension, continuation, renewal amendment or modification of any Federal grant or cooperative agreement.

(b) If any other funds than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all the sub awards at all tiers (including sub grants, contracts under grants and cooperative agreements and sub contract(s)) and that all sub recipients shall certify and disclose accordingly.

2. Debarment, Suspension and Other Responsibility Matters (Direct Recipient)

A. As required by Executive Order 12549, Debarment and Suspension, and implemented at 44CFR Part 67, for prospective participants in primary covered transactions, as defined at 44 CFR Part 17, Section 17.510-A, the applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency.

(b) Have not within a three-year period preceding this application been convicted of or had a civilian judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or perform a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity

(Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification: and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. Drug-Free Workplace (Grantees other than individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 44CFR Part 17, Subpart F, for grantees, as defined at 44 CFR part 17, Sections 17.615 and 17.620:

(A) The applicant certifies that it will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
(b) Establishing an on-going drug free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;
(2) The grantees policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant to be given a copy of the statement required by paragraph (a);
(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement and
(2) Notify the employee in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

(e) Notifying the agency, in writing within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to the applicable DHS awarding office, i.e. regional office or DHS office.
(f) Taking one of the following actions, against such an employee, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency.

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance				
Street	City	State	Zip	Action

If your place of performance is different from the physical address provided by you in the Applicant Information, press *Add Place of Performance* button above to ensure that the correct place of performance has been specified. You can add multiple addresses by repeating this process multiple times.

Section 17.630 of the regulations provide that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for DHS funding. States and State agencies may elect to use a Statewide certification.

Signed by **Jean May** on **08/23/2011**

FEMA Standard Form LLL

Only complete if applying for a grant for more than $100,000 and have lobbying activities. See Form 20-16C for lobbying activities definition.

This form is not applicable

AGENDA ITEM #19.

FRISCO FIRE DEPARTMENT

CITY OF FRISCO
8601 GARY BURNS DRIVE
FRISCO, TEXAS 75034
TEL 972.292.6300 · FAX 972.292.6319
WWW.FRISCOFIRE.COM

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Cc: **George Purefoy, City Manager**
Ron Patterson, Assistant City Manager
Mack Borchardt, Fire Chief
Paul Siebert, Assistant Fire Chief

From: **Jean May, Emergency Management Specialist**

Date: **September 6, 2011**

Subject: **Consider and act upon acceptance of the grant award from the United States Department of Homeland Security (USDHS) for two (2) Grant Programs: Urban Areas Security Initiative (UASI) and Citizen Corps Program (CCP)**

Action Requested: City Council consideration and approval to accept a grant award in the amount of $29,777.25 from the United States Department of Homeland Security (USDHS) for two (2) Grant Programs: Urban Areas Security Initiative (UASI) and Citizen Corps Program (CCP).

Background Information: Two (2) grant applications were submitted to the USDHS in March 2010 and the Department received a grant award notice under both programs in October 2010:

- **UASI** – The grant award issued under this program totals $28,814.40. The acceptance of the UASI grant will allow for the purchase of three (3) interoperable communication kits for use by the Collin-Rockwall-Hunt (CRH) Task Force. As the managing agency for the CRH Task Force, we have cooperatively established a state resource with our close and distant neighbors in each of these counties. One kit will be placed with the Task Force Leader Vehicle, one kit in the Task Force Vehicle and the third kit will be placed in the Command-Communications Truck. The kits will include base radios, mobile radios and satellite phones. This will provide the Task Force with radio interoperability between state and local jurisdictions using VHF wideband radio equipment which is not currently utilized by Frisco Public Safety agencies.

- **CCP** – The grant award issued under this program totals $962.85. The acceptance of the CCP grant will allow for the purchase of Community Emergency Response Team (CERT) equipment to be distributed to graduates of the program. This equipment is used in both live incidents and training scenarios. In order to supply adequate personal protective supplies,

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additional helmets, goggles, masks and gloves will be purchased for participants of this program. It will also allow for some equipment to be stored at the Central Fire Station for use in disaster deployments.

Alternatives: The City Council could choose to accept this grant award, deny this request or request additional information.

Financial Considerations: The total grant award from the USDHS totals $29,777.25; this grant award does not include a City matching funds requirement.

Legal Review: Not Applicable.

Supporting Documents: Supporting documents include the following items:

- Copy of Texas Department of Public Safety 2010 Sub-Recipient Award for UASI Grant Program (signed November 9, 2010);
- Copy of Texas Department of Public Safety 2010 Sub-Recipient Award for CCP Grant Program (signed November 9, 2010).

Staff Recommendation: Staff recommends City Council approval to accept the USDHS grant award and will be available at the meeting to address questions relating to this agenda item.

Texas Department of Public Safety

2010 Sub-Recipient Award
for
City of Frisco

Date of Award
October 20, 2010

1. Sub-Recipient Name and Address

Mayor Maher Maso
City of Frisco
6101 Frisco Square Blvd
Frisco, TX 75034

2. Prepared by: Seals, Freddie

3. SAA Award Number: 10-SR 27684-01

4. Federal Grant Information

Federal Grant Title:	**Homeland Security Grant Program (HSGP) Urban Area Security Initiative (UASI)**
Federal Grant Award Number:	2010-SS-T0-0008
Date Federal Grant Awarded to TxDPS:	August 1, 2010
Federal Granting Agency:	Department of Homeland Security FEMA Grant Programs Directorate

5. Award Amount and Grant Breakdowns

UASI Award Amount (Federal)

CFDA: 97.008

$28,814.40

Grant Period:	
From: Aug 1, 2010	To: Jul 31, 2012
(The SAA must receive all invoices by the end of grant period)	

6. Statutory Authority for Grant: This project is supported under Department of Homeland Security Appropriations Act, 2010 (Public Law 111-83).

7. Method of Payment: Primary method is reimbursement.

8. Debarment/Suspension Certification: The Sub-Recipient certifies that the sub-recipient and its contractors/vendors are not debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not appear in the Excluded Parties List System at http://www.epls.gov.2.8.9029.0

9. Agency Approval

Approving TxDPS Official:

Janice E. Bruno, Administrator
State Administrative Agency
Texas Department of Public Safety

Signature of TxDPS Official:

Janice E. Bruno

10. Sub-Recipient Acceptance

I have read and understand the attached Terms and Conditions.

Type name and title of Authorized Sub-Recipient official:

MAHER MASO
MAYOR

Signature of Sub-Recipient Official:

Maher Maso

11. Enter Employer Identification Number (EIN) / Federal Tax Identification Number:

756000531

12. Date Signed :

11-9-2010

13. DUE DATE: December 4, 2010

Signed award and Direct Deposit Form (if applicable) must be returned to TxDPS on or before the above due date.

Texas Department of Public Safety

2010 Sub-Recipient Award
for
City of Frisco

Date of Award
October 20, 2010

1. Sub-Recipient Name and Address

Mayor Maher Maso
City of Frisco
6101 Frisco Square Blvd
Frisco, TX 75034

2. Prepared by: Seals, Freddie

3. SAA Award Number: 10-SR 27684-01

4. Federal Grant Information

Federal Grant Title:	**Homeland Security Grant Program (HSGP) Citizens Corps Program(CCP)**
Federal Grant Award Number:	2010-SS-T0-0008
Date Federal Grant Awarded to TxDPS:	August 1, 2010
Federal Granting Agency:	Department of Homeland Security FEMA Grant Programs Directorate

5. Award Amount and Grant Breakdowns

CCP Award Amount (Federal)

CFDA: 97.053

$962.85

Grant Period:

From:	To:
Aug 1, 2010	Jul 31, 2012

(The SAA must receive all invoices by the end of grant period)

6. Statutory Authority for Grant: This project is supported under Department of Homeland Security Appropriations Act, 2010 (Public Law 111-83).

7. Method of Payment: Primary method is reimbursement.

8. Debarment/Suspension Certification: The Sub-Recipient certifies that the sub-recipient and its contractors/vendors are not debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not appear in the Excluded Parties List System at http://www.epls.gov.2.8.9029.0

9. Agency Approval

Approving TxDPS Official:

Janice E. Bruno, Administrator
State Administrative Agency
Texas Department of Public Safety

Signature of TxDPS Official:

Janice E. Bruno

10. Sub-Recipient Acceptance

I have read and understand the attached Terms and Conditions.

Type name and title of Authorized Sub-Recipient official:

MAHER MASO
MAYOR

Signature of Sub-Recipient Official:

Maher Maso

11. Enter Employer Identification Number (EIN) / Federal Tax Identification Number:

756000531

12. Date Signed :

11-9-2010

13. DUE DATE: December 4, 2010

Signed award and Direct Deposit Form (if applicable) must be returned to TxDPS on or before the above due date.

AGENDA ITEM #20.

FRISCO FIRE DEPARTMENT

CITY OF FRISCO
8601 GARY BURNS DRIVE
FRISCO, TEXAS 75034
TEL 972.292.6300 · FAX 972.292.6319
WWW.FRISCOFIRE.COM

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Cc: **George Purefoy, City Manager**
Ron Patterson, Assistant City Manager

From: **Mack Borchardt, Fire Chief**

Date: **September 6, 2011**

Subject: **Consider and act upon adoption of a Resolution authorizing the City Manager to execute a Memorandum of Understanding (MOU) by and between the City of Frisco and North Central Texas Trauma Regional Advisory Council (NCTTRAC) to host and operate an Ambulance Bus (AmBus) and to participate in the Emergency Medical Task Force (EMTF) Project**

Action Requested: City Council consideration and approval of a Resolution, subject to final review by the City Attorney, authorizing the City Manager to execute a Memorandum of Understanding (MOU) by and between the City of Frisco and NCTTRAC to host and operate an AmBus and to participate in the EMTF Project.

Background Information: As previously discussed, the NCTTRAC has purchased 2 AmBus units that will be ready for delivery in August/September 2011. These are new Thomas bus chassis that have been medically configured by Sartin Services, Inc. and have the capability to transport up to 20 patients seated or on stretchers. The AmBus units have been ordered to support the State of Texas with patient evacuation and relocation; however, the host agency may utilize the AmBus in their own jurisdiction at their discretion (including special events, large scale local incidents, training, etc.). The NCTTRAC has selected Frisco to receive one of the ambulances.

Based on our research, the addition of an AmBus would enhance the services that we provide to our citizens and the community, as well as provide us with another valuable asset that we may utilize to provide assistance to disaster areas within our State. It will also function as a first aid station at larger concerts, etc. and a climate controlled space to recondition and/or treat emergency responders during long duration and/or large scale emergencies in Frisco. The unit will also stand ready to support various Frisco medical facilities or residents who have been displaced during extreme conditions.

Note: The NCTTRAC is asking to expedite this agreement in the event that the AmBus is needed for emergency response during the current hurricane season.

FRISCO FIRE DEPARTMENT

CITY OF FRISCO
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FRISCO, TEXAS 75034
TEL 972.292.6300 · FAX 972.292.6319
WWW.FRISCOFIRE.COM

Alternatives: City Council could consider the following alternatives:

- Approval of the Resolution, subject to the final review by the City Attorney;
- Input towards the discussion as desired;
- Deny approval of the Resolution and send back to staff with direction.

Financial Considerations: The AmBus will be a fully licensed ambulance that we would utilize, along with our personnel, to respond to a disaster area. These responses would be eligible for Texas Department of State Health Services (DSHS) reimbursements. The DSHS reimbursements are comparable to, if not better than those received by the Texas Intrastate Fire Mutual Aid System (TIFMAS) and Texas Forest Service (TFS). These reimbursements effectively reduce or eliminate the financial impact of the department hosting and operating the AmBus vehicle. Much like a TIFMAS brush truck, we would utilize the AmBus as our initial deployment vehicle; should the State request additional resources, we would then deploy Frisco Fire Department Mobile Intensive Care Units (MICU) as we have done in the past.

Legal Review: The City Attorney has drafted, reviewed and approved both the Resolution and the MOU as to form and legality. However the City Attorney may recommend some final technical revisions to the MOU prior to execution. Should revisions occur, this item will be placed on a future City Council meeting agenda for ratification.

Supporting Documents: Supporting documents include the following:

- Copy of the Resolution;
- Copy of the MOU;
- Copy of RFP - #NCTTRAC 2011-12001 for Ambulance Bus (AmBus) Hosting;
- Copy of City of Frisco Proposal to NCTTRAC RFP #NCCTTRAC 2011-12001.

Staff Recommendation: I recommend approval of the Resolution subject to final review by the City Attorney. If you need additional information or have further questions, please feel free to contact me at (972) 292-6310 or FireChief@FriscoFire.com.

CITY OF FRISCO, TEXAS **RESOLUTION NO. _____**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, AUTHORIZING THE CITY MANAGER OF THE CITY OF FRISCO, TEXAS TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF FRISCO AND THE NORTH CENTRAL TEXAS TRAUMA REGIONAL ADVISORY COUNCIL FOR A MULTI-PATIENT AMBULANCE BUS AND PARTICIPATION IN THE EMERGENCY MEDICAL TASK FORCE; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1. The City Manager of the City of Frisco, Texas is hereby authorized to execute, on behalf of the City Council, the Agreement between the City of Frisco, Texas and the North Central Texas Trauma Regional Advisory Council for a multi-patient ambulance bus and participation in the Emergency Medical Task Force ("Agreement"), and a copy of said Agreement is attached hereto as Exhibit "A" and incorporated herein for all purposes.

SECTION 2. This Resolution is effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this ____ day of _____, 2011.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page, City Secretary

AGREEMENT BETWEEN CITY OF FRISCO AND NORTH CENTRAL TEXAS TRAUMA REGIONAL ADVISORY COUNCIL

This agreement (the "Agreement") is entered into this ___ day of _____ 2011 (the "Effective Date"), by and between the City of Frisco, Texas a home-rule municipal corporation, Collin and Denton Counties, Texas (hereinafter called the "City") and the North Central Texas Trauma Regional Advisory Council (hereinafter called "NCTTRAC").

WHEREAS, NCTTRAC submitted a request for proposals to Texas Department of State Health Services license EMS provider agencies to host and operate a multi-patient ambulance bus ("AmBus") and participate in the Emergency Medical Task Force (the " EMTF") Project; and

WHEREAS, the City is a Texas Department of State Health Services licensed EMS provider; and

WHEREAS, the City desires to host and operate an AmBus and participate in the EMTF Project; and

WHEREAS, the City and NCTTRAC desire to execute this Agreement, setting forth the terms and conditions for the City to host and operate an AmBus and participate in the EMTF Project.

NOW, THEREFORE, for and in consideration of the covenants and Agreements contained herein, it is understood and agreed by and between the parties hereto as follows:

I.
SCOPE OF WORK

The scope of work consists of the following elements:

- The City will participate as part of the Texas Emergency Medical Task Force (EMTF) Project by utilizing the currently DSHS licensed AmBus, as provided for by NCTTRAC, and providing personnel on a 24/7/365 basis for Texas Department of State Health Services mission assignments.

- The City will participate as a mutual aid partner to cooperative agencies by providing the asset and personnel on a 24/7/365 basis for up to twenty-four (24) hours.

II.
TERM OF AGREEMENT

The term of the Agreement shall be for a period of _____beginning on the Effective Date. At the end of the Term, this Agreement shall automatically renew on the anniversary of the Effective Date on a yearly basis for five (5) consecutive years, unless either party gives written notice of termination to the other party ninety (90) days prior to the anniversary of the Effective Date.

III.
NCTTRAC DUTIES

The NCTTRAC shall:

A. Provide an AmBus to the City; and
B. Provide procedures for requests and provision of mutual aid pursuant to the EMTF Project.

IV.
CITY DUTIES

The City shall agree to the terms and duties as articulated in the RFP#NCTTRAC 2011-12001; except:

- Eligible Contractor Criteria: Item #10, shall be amended to read as follows, "[T]he contractor will assume financial and legal responsibility, to the extent permitted by law, for liability and insurance for a value no less than the total replacement cost of vehicle and supplied equipment as provided below:…".

- General Administrative Information: Item #18, shall be amended to read as follows, **"[T]O THE EXTENT PERMITTED BY LAW, CONTRACTOR WILL DEFEND AND INDEMNIFY NCTTRAC, ITS DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES (THE "INDEMNITIES") AND HOLD THE INDEMNITIES HARMLESS AGAINST ANY DAMAGE, CLAIMS, SUITS ACTIONS, LIABILITIES, LOSS, PENALTIES, COSTS, AND EXPENSES INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES ARISING OUT OF OR ALLEGED TO HAVE ARISEN FROM OR IN ANY WAY CONNECTED TO (I) THE USE OF THE EQUIPMENT BY THE CONTRACTOR, (II A BREACH OF ANY OF THE REPRESENTATIONS, WARRANTIES, OR OBLIGATIONS OF THIS CONTRACT BY NCTTRAC, (III) ANY CLAIMS (WHETHER FOUNDED OR UNFOUNDED) OF ANY NATURE OR CHARACTER, OR (IV) ANY ACTUAL OR ALLEGED NEGLIGENCE OR DISHONESTY OF, OR ANY ACTUAL OR ALLEGED ACT OF COMMISSION OR OMISSION BY NCTTRAC OR ANY OF ITS EMPLOYEES, AGENTS, REPRESENTATIVES OR CONTRACTORS."**

V.
PRIORITY OF USE/PROVISION OF MUTUAL AID

Priority of use of the AmBus shall be given to the City, except as provide for otherwise herein. In the event the NCTTRAC requires independent use of the AmBus, the NCTTRAC shall submit a written request for approval of such use to the City Fire Department Chief, such approval not to be unreasonably withheld, delayed or denied. The City acknowledges that, in response to an emergency situation, the NCTTRAC may not have the time to submit a written request for use of the AmBus, and the City agrees to allow such use so long as it does not supersede the City's use of the AmBus.

VI.
AVAILABILITY OF FUNDS

Funds are not presently budgeted for performance under this Agreement beyond the end of the current fiscal year. All expenditures made by City in fulfilling its obligations hereunder shall be paid only from current revenues legally available to City.

VII.
TERMINATION

This Agreement may be terminated by either party at its sole option and without prejudice by giving sixty (60) days written notice of termination to the other party.

VIII.
INDEMNIFICATION

TO THE EXTENT PERMITTED BY LAW, NCTTRAC, ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES AND/OR TRUSTEES (COLLECTIVELY REFERRED TO AS "NCTTRAC" FOR PURPOSES OF THIS SECTION), AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, COUNCIL MEMBERS, REPRESENTATIVES, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS SECTION) FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES, INJURIES (INCLUDING DEATH) LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE) ARISING DIRECTLY OR INDIRECTLY OUT OF THE OPERATION OR PERFORMANCE OF NCTTRAC UNDER THIS AGREEMENT. THE CITY WILL NOT ACCEPT LIABILITY FOR INJURIES THAT ARE THE RESULT OF THE NEGLIGENCE, MALFEASANCE, ACTION OR OMISSION OF NCTTRAC. NCTTRAC AGREES TO ACCEPT LIABILITY FOR INJURIES TO ITSELF OR OTHERS CAUSED BY ITS OWN NEGLIGENCE, MALFEASANCE, ACTION OR OMISSION.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY NCTTRAC IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CITY'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CITY'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. NCTTRAC SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF NCTTRAC FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND NCTTRAC SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

IX.
ASSIGNMENT OF AGREEMENT

Neither party shall assign, transfer, or sub-contract any of its rights, burdens, duties or obligations under this Agreement without the prior written permission of the other party to this Agreement.

X.
WAIVER

Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance of the Agreement.

XI.
GOVERNING LAW - VENUE

This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Collin County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Collin County, Texas.

XII.
NOTICES

_____ Notices to the NCTTRAC shall be deemed given when delivered in person to _____ of the NCTTRAC or on the next business day after the mailing of said notice addressed to said the NCTTRAC by United States mail, certified or registered mail, return receipt requested, and postage paid at _____, _____, _____, Texas _____.

Notices to City shall be deemed given when delivered in person to the City Manager of City or on the next business day after the mailing of said notice addressed to said City by United States mail, certified or registered mail, return receipt requested, and postage paid at 6101 Frisco Square Blvd., Frisco, Texas, 75034.

The place for mailing notices for a party may be changed only upon written notice given to the other in the manner herein prescribed for notices sent to the last effective place of mailing for the notifying party.

XIII.
MISCELLANEOUS PROVISIONS

1. Ordinances. Except as specifically provided in the Agreement Documents, the parties agree that the NCTTRAC shall be subject to all Ordinances of the City, whether now existing or in the future arising.

2. Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding Agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

3. Other Mutual Aid Agreements. This Agreement is not intended to replace local mutual aid agreements and local jurisdictions are encouraged to develop local agreements with each other for mutual aid in emergency, disaster and/or civil emergency situations.

4. Interlocal Cooperation Act. The Parties agree that mutual aid in the context contemplated herein is a "governmental function and service" and that the Parties are "local governments" as that term is defined herein and in the Interlocal Cooperation Act, Texas Government Code Chapter 791.

5. Assignment. This Agreement may not be assigned without the written Agreement of both parties.

6. Sovereign Immunity. The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

7. Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its legal counsel.

8. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

9. Default and Remedies. If any party fails to perform any of its obligations under the Contract Documents, such failure shall constitute a default. The nondefaulting party shall give the defaulting party written notice of the default. The defaulting party shall have ten (10) business days after the receipt of such notice in which to cure the default. Failure to cure the default shall constitute a breach of this Agreement. In the event of a breach, the non-breaching party may terminate this Agreement and may seek any reasonable remedy provided by law.

10. Severability Provisions. If any provisions of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, (1) such provision shall be fully severable; (2) this Agreement shall be construed and enforced as if such

illegal, invalid or unenforceable provision had never been a part of this Agreement; and (3) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

11. Entire Agreement. This Agreement shall be binding upon the parties hereto and constitutes the entire Agreement between the parties. No other Agreements, oral or written, pertaining to the performance of this Agreement exists between the parties. This Agreement can be modified only by an Agreement in writing, signed by both parties.

12. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

IN WITNESS WHEREOF, the parties have executed this Agreement in the year and day first above written.

CITY OF FRISCO

_____
George Purefoy, City Manager

ATTEST:

_____
Jenny Page, City Secretary

APPROVED AS TO FORM:

_____
Abernathy, Roeder, Boyd & Joplin, PC
Courtney A. Kuykendall, City Attorney

North Central Texas Trauma Regional Advisory Council ("NCTTRAC")

By: _____
Print Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___day of _____, 2011 by **George Purefoy, City Manager of the City of Frisco, Texas,** a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public in and for the State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of _____, 2011 by **Major Matthews, of the NCTTRAC,** on behalf of said organization.

_____
Notary Public in and for the State of Texas

NCTTRAC

PREPARE. SUPPORT. RESPOND.

NORTH CENTRAL TEXAS
TRAUMA REGIONAL ADVISORY COUNCIL

Request for Proposal
Ambulance Bus (AmBus) Hosting
(RFP – #NCTTRAC 2011-12001)

600 Six Flags Drive, Suite 160
Arlington, Texas 76011
(817) 608-0390

NCTTRAC
NORTH CENTRAL TEXAS TRAUMA REGIONAL ADVISORY COUNCIL

REQUEST FOR PROPOSAL
RFP #NCTTRAC-2011-12001 Ambulance Bus (AmBus) Hosting

INTRODUCTION AND PROGRAM INFORMATION

The North Central Texas Trauma Regional Advisory Council (NCTTRAC) is a regional nonprofit agency which supports hospital and emergency hospital systems preparedness activities, as well as the coordination of Emergency Medical Services (EMS) and hospital emergency healthcare. NCTTRAC serves nineteen counties in the Dallas / Fort Worth area. Membership includes representatives from city and county jurisdictions, hospitals, EMS Providers, and first responder organizations. NCTTRAC serves as the area contractor for the federal Office of the Assistant Secretary for Preparedness and Response (OASPR) Hospital Preparedness Program, operated under guidance of the Texas Department of State Health Services. NCTTRAC is also the lead Regional Advisory Council (RAC) for the Emergency Medical Task Force (EMTF) Project for Trauma Service Areas (TSAs) C, D, and E, located in Wichita Falls, Abilene, and Arlington, respectively. Part of the EMTF Project is the development and placement of multi-patient ambulance buses (AmBusses). The AmBus is one of four task force components in this EMTF region that will be available for state-wide deployment by the Texas Department of State Health Services (DSHS) as well as appropriate regional mutual aid response.

NCTTRAC is seeking proposals from Texas Department of State Health Services licensed EMS Provider agencies to host and operate an AmBus and participate in the EMTF Project. The AmBus is a custom built, multi-patient vehicle that is capable of transporting 12-20 patients at one time. The Ambus is capable of being configured to accommodate stretcher, wheelchair bound, and ambulatory patients, and will be licensed as a specialized EMS vehicle through DSHS. The AmBus is intended to provide services for, but not limited to, multivictim / mass casualty events, healthcare facility evacuations, emergency personnel onsite medical rehabilitation, and limited command post capabilities. There will be several AmBus contracts awarded within this OASPR contract year. Therefore this RFP may be re issued until all necessary contracts are awarded, however there is no guarantee of an extension or re issuing of this RFP.

SCOPE OF WORK

The purpose of this document is to solicit proposals from licensed EMS Providers for purposes of hosting, staffing, and operating an AMBUS. Capabilities requested by this RFP are shown in the elements listed below.

The scope of work for this RFP consists of the following elements:

- The contractor will participate as part of the Texas Emergency Medical Task Force (EMTF) Project by providing the currently DSHS licensed AmBus and personnel on a 24/7/365 basis for Texas Department of State Health Services mission assignments.
- The contractor will be required to enter into an/a separate agreement/agreements with NCTTRAC and/or DSHS as necessary to meet the capabilities of this scope of work,
- The contractor will participate as a mutual aid partner to cooperative agencies by providing the asset and personnel on a 24/7/365 basis for up to 24 hours.

ELIGIBLE CONTRACTOR CRITERIA

1. The contractor will be a DSHS licensed EMS Provider, capable of providing:
   a. ALS level of care or higher
   b. ACLS or equivalent capability
   c. PALS or equivalent capability
2. The contractor will license/maintain license of apparatus as a "Specialized" EMS vehicle per DSHS rule.
3. The contractor will provide personnel that are licensed to operate/drive the vehicle in compliance with the Texas Department of Public Safety.
4. The contractor will provide defined minimum staffing within identified response times for no notice and short notice events.
   a. Minimum of 4 certified/licensed EMS personnel with at least two paramedics and two EMTs. There must be at least one person assigned as the licensed vehicle operator, and at least one officer/supervisor assigned as the "AmBus Crew Boss." The driver and the officer can be the same person.
   b. When used as a "Specialized" EMS vehicle, staffing must comply with DSHS rule.
5. The contractor will provide defined minimum staffing within identified response times for "notice" events.
   a. Minimum of 4 certified/licensed EMS personnel with at least two paramedics and two EMTs. There must be at least one person assigned as the licensed vehicle operator, and at least one officer/supervisor assigned as the "AmBus Crew Boss." The driver and the officer can be the same person.
   b. When used as a "Specialized" EMS vehicle, staffing must comply with DSHS rule.
6. The contractor will provide a secure, indoor housing environment (preferred) that includes shore line power access. AmBuses are equipped with 100 amp service connections.
7. The contractor will maintain National Incident Management System (NIMS) agency compliance.
8. The contractor will provide and maintain medical supplies commensurate with DSHS regulations, Provider EMS protocols/guidelines, and level of care established by the agreement, e.g. consumable medical supplies, medical gases, pharmaceuticals, and durable medical equipment that is not included with the vehicle inventory (cardiac monitoring and interoperable radio communications are provided with the vehicle).
9. The contractor will be able to store and maintain pharmaceuticals, medical supplies, and medical equipment according to manufacturer's recommendations and applicable regulations.
10. The contractor will assume financial and legal responsibility for liability and insurance for a value no less than the total replacement cost of vehicle and supplied equipment as provided below:
    a. Non-jurisidicational Interoperable Radio Communications Capability
       1) One VHF / HAM 2-way radio base station with ancillary pieces
       2) Twelve handheld 2-way radios with ancillary pieces
       3) Two satellite telephones
    b. Patient Monitoring Capabilities
       1) One 12-lead EKG monitor with ancillary pieces
       2) Five, 3-lead EKG, NIBP, SpO2 monitoring units (Does not include required mobile computer)

c. Patient Litter System
   1) Two Styker ambulance stretchers
   2) 18 rack mountable litters

11. The contractor will provide preventative and corrective maintenance that is compliant with manufacturer's recommendations.
12. The contractor will participate in training and exercise requirements (vehicle orientation and loading, and at least one full scale exercise annually) as identified within the agreement.

EVENT SCHEDULE	DATE
RFP Issued	July 26, 2011
RFP Prospective Offerors' meeting	August 2, 2011 9am-11am
RFP Question Submission Deadline	August 8, 2011
RFP Question Responses Posting	Upon Receipt
RFP Submission Deadline/Opening of Bids	August 8, 2011
Evaluation of Proposals	August 12, 2011
Contract Begins	Upon Execution

RFP POINT OF CONTACT

Physical Address:

Marshall Gardner
NCTTRAC
600 Six Flags Drive, Suite 160
Arlington, TX 76011

Mailing Address:

Marshall Gardner
NCTTRAC
600 Six Flags Drive, Suite 160
Arlington, TX 76011

Email Delivery Address:

Marshall Gardner
mgardner@ncttrac.org

RFP SUBMISSION INSTRUCTIONS

Upon distribution of this RFP from NCTTRAC, prospective Offerors will have until the RFP Submission Deadline to submit proposals. Proposal responses **must be received in the NCTTRAC offices no later than Monday, August 8, 2011 12:00 PM CST**. Responses must be mailed or hand delivered to the RFP Point of Contact address and identified as **RFP #NCTTRAC-2011-12001 Ambulance Bus Hosting in the bottom left-hand corner of each submission envelope and proposal.**

An authorized representative of the proposing EMS Provider shall sign proposals. One (1) original and four (4) copies of the response must be provided no later than the time and date indicated in the submission instructions. Consortium agreements should identify the lead agency and other partner agencies that will be involved, with both parties signing the proposal. Failure to submit all information requested may result in requiring prompt submission of missing information and / or giving a lower evaluation of the proposal. Proposals that are either substantially incomplete or lack key information may be rejected

Fax responses will not be accepted nor will they be considered for award. Late responses will be returned to the Offerer unopened.

QUESTIONS

All questions concerning this RFP must be in writing via mail or e-mail. Please submit your questions to the RFP Point of Contact.

Answers to questions will be posted at www.NCTTRAC.org by the "RFP Questions Responses Posting" date without identifying the agency asking the question(s).

Proposal information is restricted and not publicly available until after award of all possible agreements covered by this RFP. All documents associated with the RFP, unless Offeror indicates a specific portion of the proposal is proprietary, will be subject to public inspection in accordance with the Open Records Act. The proposal in its entirety may not be marked as "proprietary." All information obtained during the course of this RFP process will become the property of NCTTRAC.

A person authorized to sign contracts on behalf of the proposing agency must sign proposals.

PROPOSAL SCREENING, EVALUATION AND SELECTION

Proposals will be reviewed according to the criteria below. To maximize fairness for all proposals during review, NCTTRAC staff may only confirm receipt of a proposal and are not permitted to discuss the proposal or its review during the review process. All proposals remain with NCTTRAC and will not be returned to the respondent.

Screening Process:

Proposals are initially screened for eligibility and completeness. The preliminary screening or eligibility criteria requirements include the following:

1. Proposal received on or before the proposal due date and time.
2. The original proposal bears an original signature of the authorized official of the respondent organization.
3. Administrative Information will be used in the initial screening process. This information may be used to exclude a proposal from review at the sole discretion of DSHS.
4. Respondent may not submit more than one proposal in response to this RFP.

In conducting the screening process, NCTTRAC at its sole discretion may give respondents an opportunity to submit missing information or correct identified areas of noncompliance within a specified period of time. In such an instance, if no new information is received by the stated deadline, the proposal will be screened as is or may be disqualified from the evaluation process. Information submitted after the deadline will not be part of the evaluation.

NCTTRAC reserves the right to waive irregularities that NCTTRAC in its sole discretion determines to be minor. If such irregularities are waived, similar irregularities in all proposals will be waived.

PROPOSALS MAY BE EXCLUDED FROM REVIEW AND EVALUATION BASED ON THE SCREENING PROCESS OR ADMINISTRATIVE INFORMATION PROVIDED IN THE RESPONSE.

All proposals received will be evaluated for completeness and the Offerer's ability to meet all specifications as outlined in this RFP. A list of specific Offerer's whose proposals best meet all criteria required will be created and further reviewed.

Proposals will be evaluated on the following criteria:

- Ability of the Offerer to meet or exceed the requirements defined in the RFP
- Completeness of response to RFP as outlined in this solicitation package
- Experience, qualifications, and references

Oral presentation / interviews

Offerers submitting a response to this RFP may be required to give an oral presentation of their proposal in an interview session with a NCTTRAC Evaluation Committee. Additional technical may be requested from any Offerer by the Evaluation Committee prior, during, or after the interview for clarification purposes. Interviews are at the option of NCTTRAC and the Evaluation Committee and may or may not be conducted.

PROPOSAL CONTENT

Proposal response format:

Each section of the RFP must be clearly identified. A 3-ring binder divided into sections as outlined below will be sufficient. Additional copies may need to be made, so please do not use any sort of permanent binding.

All responses shall include the following sections, labeled with the corresponding number and section title:

1. **Contractor Organization**
   - Describe the structure and organization of the EMS Provider, indicating mailing information and physical location of administrative offices.
   - Provide the physical location proposed for housing the AmBus.
     - Provide information describing its' suitability to regional response, efficient staffing needs. and security of the AmBus
   - If the EMS Provider proposal includes other partners for supporting assets (equipment and/or personnel), indicate their relationship as well and the mailing and physical location information requested above.
   - Describe all existing mutual aid agreements for mutual aid and/or disaster response.
2. **Agency Structure**
   - Identify the individuals in your agency who will be assigned to this project, their roles, and their location(s), with contact information.
   - Indentify the EMS Medical Director for the EMS Provider with contact information.
   - Identify who will be responsible for the overall project management and quality assurance.
   - Identify any resources that your agency deems relevant in the management of this project.
3. **Equipment and Supplies** – Include equipment and supplies that will be used to provide patient care
4. **Contract** – Include your agency's standard contract agreement in this section.
5. **Certifications** – Include in this section a list of the number of personnel per shift by position and certification that will be available to fulfill this contract.
6. **Maintenance and Liability** - Please elaborate on agency's capacity to maintain and provide insurance coverage on the AmBus. Please provide a current certificate of insurance or a copy of current insurance coverage.

7. **References** – Include at least three (3) references who may be contacted to address agency's prior participation on state-wide teams, and ability to complete the work requested.

GENERAL ADMINISTRATIVE INFORMATION

1. All provisions of this contract will abide by the provisions of the Uniform Grant Management Standards (UGMS), the DSHS Contractor's Financial Procedures Manual (CFPM), and the provisions of the current State of Texas DSHS contract, 2010 - 035300 CPS Hospital Preparedness (HPP) as well as future contracts related to the HPP Program. These documents are available upon request.
2. NCTTRAC reserves the right to accept or reject any and / or all proposals or to cancel this notice at any time.
3. A response to this RFP does not commit NCTTRAC to a contract. NCTTRAC will not pay any costs incurred in the preparation of such response.
4. NCTTRAC reserves the right to hold and accept any proposal for a period of ninety (90) days after the response deadline.
5. NCTTRAC reserves the right to negotiate the final terms of any and all contracts with Offerors selected and such agreements negotiated as a result of this RFP may be re-negotiated and / or amended in order to successfully meet NCTTRAC's needs.
6. NCTTRAC reserves the right to waive any defect in this process or to make changes to this solicitation as it deems necessary. NCTTRAC will provide notifications of such changes to all Offerors recorded in the official record (Distribution Log / Receipts Record) as having received or requested an RFP.
7. Issuance of this RFP and receipt of proposals does not commit NCTTRAC to award a contract. NCTTRAC reserves the right to postpone receipt date, accepting or rejecting any or all proposals received in response to this RFP, or to negotiate with other than the highest ranked Offeror should negotiations with the highest ranked Offeror be terminated, or to cancel all or part of this RFP.
8. NCTTRAC reserves the right to contact any individual, agency, or employer listed in a proposal, to contact others who may have experience and or knowledge of the Offeror's relevant performance and / or qualifications, and to request additional information from any and all Offerors.
9. NCTTRAC reserves the right to conduct a review of records, systems, procedures, etc. of any agency selected. This may occur prior to or subsequent to the award of a contract. Misrepresentation of the Offeror's ability to perform as stated in the proposals may result in cancellation of the contract award.
10. Offerors shall not, under penalty of law, offer or provide any gratuities, favors or anything of monetary value to any officer, member, employee or agent of NCTTRAC for the purpose of or having the effect of influencing favorable disposition toward their own proposal or any other proposal submitted hereunder.
11. No employee, officer or agent of NCTTRAC shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, exists.
12. Offerors shall not engage in any activity that will restrict or eliminate competition. Violation of this provision may cause an Offeror's bid to be rejected. This does not preclude joint ventures or subcontracts.
13. The only purpose of this RFP is to ensure uniform information in the selection of proposals. This RFP is not to be construed as a contract or as a commitment of any kind.

14. The contents of a successful proposal may become a contractual obligation, if selected for award of a contract. Failure of the Offeror to accept this obligation may result in cancellation of the award. Any damages accruing to NCTTRAC as a result of the Offeror's failure to execute a contract may be recovered from the Offeror.
15. A contract with the selected contractor may be withheld at sole discretion if issues of contract compliance or questioned / disallowed costs exist, until such issues are satisfactorily resolved. Award of contract may be withdrawn by NCTTRAC if resolution is not satisfactory to NCTTRAC.
16. Once NCTTRAC has agreed upon selection(s), all Offerors will be notified in writing of the results. Any protest regarding this process must be filed with NCTTRAC in accordance with the following procedure. NCTTRAC would like to have the opportunity to resolve any dispute prior to the filing of an official complaint by the protester. The protester should contact NCTTRAC's Emergency Medical Response Manager, Marshall Gardner, at (817) 607-7018, 600 Six Flags Dr, Suite 160, Arlington, Texas 76011, so that arrangements can be made for a conference between NCTTRAC and the protester. Copies of the appeal process will be made available to the protester.
17. At all times during the term of a contract with NCTTRAC, contractor shall procure, pay for and maintain, with approved insurance carriers, the minimum insurance requirements as required by law and shall require all sub-contractors and sub-sub-contractors performing work for which the same liabilities may apply under this contract to do likewise. The contractor may cause the insurance to be effected in whole or in part by the sub-contractors of sub-sub-contractors under their contracts. NCTTRAC reserves the right to waive or modify insurance requirements at its sole discretion.
18. Contractor will defend and indemnify NCTTRAC, its directors, employees, agents, and representatives (the "Indemnities") and hold the Indemnities harmless against any damage, claims, suits, actions, liabilities, loss, penalties, costs, and expenses including, without limitation, reasonable attorneys' fees arising out of or alleged to have arisen from or in any way connected to (i) the use of the equipment by the contractor, (ii) a breach of any of the representations, warranties, or obligations of this contract by the Offeror, (iii) any claims (whether founded or unfounded) of any nature or character, or (iv) any actual or alleged negligence or dishonesty of, or any actual or alleged act of commission or omission by the Offeror or any of its employees, agents, representatives or contractors.

CERTIFICATIONS OF OFFEROR
(Return this page with proposal)

I hereby certify that the information contained in this proposal and any attachments is true and correct and may be viewed as an accurate representation of proposed services to be provided by this organization. I certify that no employee, board member, or agent of the North Central Texas Trauma Regional Advisory Council has assisted in the preparation of this proposal. I acknowledge that I have read and understand the requirements and provisions of the Request for Proposal and that the organization will comply with the regulations and other applicable local, state, and federal regulations and directives in the implementation of this agreement.

I also certify that I have read and understood all sections of this Request for Proposal and will comply with all the terms and conditions as stated; and furthermore that I, _____(typed or printed name) certify that I am the _____ (title) of the corporation, partnership, or sole proprietorship, or other eligible entity named as Offeror herein and that I am legally authorized to sign this offer and to submit it to the North Central Texas Trauma Regional Advisory Council, on behalf of said Offeror by authority of its governing body.

****

ATTEST TO Attachments of Certification:

Company Name: _____

_____ _____
Authorized Signature Date

_____ _____
Typed Name Telephone

Subscribed and sworn to before me this _____day of _____, 2011 in

_____ (city), _____ (county), _____ (state).

_____ **SEAL**
(notary)

Notary Public in and for _____ (County),

State of _____ Commission expires:_____

RFP PROPOSAL CHECKLIST

Did you complete the following?

_____ Provide one original and 4 copies of the proposal (in non-permanent binding).

_____ Include "RFP #NCTTRAC-2011-12001 Ambulance Bus Hosting" on the bottom left-hand corner of each proposal (original and copies) and on the submission envelope for identification.

_____ Check to acknowledge that you have received any addendums and / or amendments to this RFP, if applicable.

_____ Include the Certification of Offeror (*required*).

1. Contractor Organization

The Frisco Fire Department (FFD) provides EMS and fire protection services to the estimated 120,000 citizens of the City of Frisco. Additionally, FFD provides services to the Hackberry community and other unincorporated areas surrounding the city. The department is a government entity and operates a 911/ Emergency response organization. The Frisco Fire Department is a Texas DSHS Licensed EMS Provider (DSHS #043009) and is licensed to operate 9 MICU ground vehicles.

The Frisco Fire Department includes six stations with plans underway for Fire Station #7. FFD is made up of 133 career firefighters, 28 volunteer firefighters and 19 employees who provide professional and administrative support within the Fire Department. The department has 42 EMT's and 116 EMT-P/LP's. In addition, the Frisco Fire Department operates its own Fleet Service department which maintains all FFD apparatus and support vehicles. This department is staffed by two certified Emergency Vehicle Technicians.

Currently, FFD personnel staff six Engine Companies, two Truck Companies, one Special Operations Squad (Heavy Rescue), one HazMat Truck, and four MICU's 24 hours a day. On Duty personnel also staff the City of Frisco Emergency Operations Center (EOC) and the Special Operations Command-Communications vehicle. Additional apparatus may be staffed with off-duty personnel during high call volumes or major events.

9-1-1 emergency calls are answered at the City of Frisco Communications Dispatch Center, located at the Police Department. Dispatchers assign the emergency calls to Fire Department units using a Computer Aided Dispatch (CAD) system, allowing the closest available fire apparatus to be dispatched to the call, thus ensuring a rapid response. Firefighters are alerted via radio and Mobile Data Computers (MDC) with information regarding the type and location of the emergency.

The Frisco Fire Department responds to more than 7,500 emergency calls annually. In addition to fire suppression, FFD provides responses to Emergency Medical Services (EMS); Hazardous Materials (HAZMAT); Specialized Rescue including High Angle & Swift Water; Motor Vehicle Accidents; Automatic Alarm Investigations, Public Assistance as well as a variety of other calls for service.

The Frisco Fire Department has executed interlocal cooperation agreements between the City of Frisco and Collin and Denton counties for mutual aid fire and ambulance services. These contracts are available upon request. FFD routinely responds to EMS and fire mutual aid requests from organizations in both counties.

The Frisco Fire Department has extensive experience in the area of disaster response and currently maintains a signed DSHS Memoranda of Agreement for Mutual Aid in

Disasters. FFD personnel, Ambulance Strike Team Leaders (13), and MICU's have been deployed on the following FEMA and DSHS missions:

June 28, 2010 - Hurricane Alex Deployment
September 8, 2008 – Hurricane Ike Deployment
August 30, 2008 – Hurricane Gustav Deployment
July 22, 2008 – Hurricane Dolly Deployment
August 29, 2005 – Hurricane Katrina/Rita

Frisco Fire Department is also part of the Collin-Rockwall-Hunt (CRH) Task Force. This Task Force was established to coordinate personnel, apparatus, and resources from these counties for statewide mutual aid deployments in emergency and disaster situations. The Frisco Fire Department coordinated multiple CRH Task Force Deployments for the 2011 wildfires.

The Frisco Fire Department's administrative offices are located at Frisco Central Fire Station.

Frisco Fire Department
8601 Gary Burns Drive
Frisco, TX 75034
(972) 292-6300

Proposed AmBus Location:

Frisco Fire Department – Station 7
330 West Stonebrook Parkway
Frisco, TX 75034

The proposed location, as well as all Frisco Fire Department stations would be able to securely house the AmBus in a fully enclosed bay. These bays have the ability to be heated as necessary and would be able to provide the required shoreline power.

An AmBus located in the City of Frisco would have access to several major traffic arteries. The City of Frisco is geographically bordered by US 380 to the north and Sam Rayburn Tollway (SH 121) to the south. In addition, the Dallas North Tollway passes through the city. US 75, I-35E, 190 (George Bush) are within 15 minutes of the City of Frisco.

2. **Agency Structure**

The following Frisco Fire Department personnel would oversee the operation and maintenance of the AmBus program:

Mack Borchardt – Fire Chief
firechief@friscofire.com

Cameron Kraemer – Division Chief (AmBus Program Manager)
ckraemer@friscofire.com

Barry Dixon – Fleet Manager
bdixon@friscofire.com

All Administrative Chiefs and the Fleet Manager are located at Frisco Central Fire Station and may be contacted by phone at (972) 292-6300 during normal business hours. In the event of an emergency, please contact City of Frisco Communications Dispatch Center at (972) 292-6010

The Frisco Fire Department receives medical direction from EMS Biocare located at Methodist Dallas Medical Center. Dr. Robert Simonson is the Medical Director of EMS Biocare and the Frisco Fire Department.

Dr. Robert Simonson
1441 N. Beckley Ave.
Dallas, TX 75265
(214) 947-8409
simonson@airmail.net

3. **Equipment and Supplies**

The Frisco Fire Department will stock and maintain the AmBus with medical equipment, supplies, and pharmaceuticals that will meet or exceed the DSHS minimum requirements for the "Specialty Vehicle" designation. The Frisco Fire Department maintains an inventory of medical supplies and will replenish any disposable medical supplies used during the mission.

4. **Contract**

Please see attached Draft Contract.

5. **Certifications**

All career Frisco Fire Department personnel on shift are DSHS EMS certified. Additionally, a majority of the volunteer staff have DSHS EMS certifications. All career personnel are required to possess a valid Texas DPS Class B Exempt driver's license.

A – Shift
- EMT - 5
- Paramedics - 34

B – Shift
- EMT - 2
- Paramedics – 38

C – Shift
- EMT - 10
- Paramedics – 34

6. **Maintenance and Liability**

The City of Frisco is afforded insurance coverage through the Texas Municipal League Intergovernmental Risk Pool. The City of Frisco/Frisco Fire Department would obtain contractually required insurance on the AmBus through TML .

Please see attached TML Certificate of Insurance Coverage

The Frisco Fire Department Fleet Services Department maintains all FFD apparatus. The Fleet Manager would ensure that all manufacturers recommended preventive maintenance would be performed. Frisco Fire Fleet service personnel would perform routine maintenance and repair of the AmBus.

7. References

Steve Pollock
TFS
Assitant Chief Regional Fire Coordinator
(281) 436-8039 Work
(979) 224-8236 Mobile
spollock@tfs.tamu.edu
South Central Region
2318 Atascocita Road
Humble, Texas 77396-3503
texasforestservice.tamu.edu

Leigh Anne Bedrich
North Central Texas Trauma Regional ...
Program Manager Emergency Healthca...
(817) 607-7011 Work
(817) 233-6005 Mobile
labedrich@ncttrac.org
600 Six Flags Dr.
Arlington, TX 76011

Maxie Bishop
Texas Department of State Health Ser...
State EMS Director

(512) 834-6737 Work
maxie.bishop@dshs.state.tx.us

PO Box 149347
Austin, TX 78714

AGENDA ITEM #21.

PROGRESS IN MOTION

Administrative Services Department

Memorandum

To: **Honorable Mayor Maso and City Council Members**

Thru: **George Purefoy, City Manager**
Nell Lange, Assistant City Manager

From: **Tom Johnston, Director of Administrative Services**

Date: **August 30, 2011**

Subject: **Consider and Act Upon Ratification of Purchase Orders with Solid Motor Sports for Required Repairs to the Frisco Athletic Center Water Slides**

Action Requested: City Council ratification of purchase orders with Solid Motor Sports for required repairs to the Frisco Athletic Center water slides, in the amount of $35,797.

Background Information: Frisco Athletic Center (FAC) staff solicited quotes for routine maintenance and repairs to the slides at the FAC. Solid Motor Sports was chosen as the vendor to perform this work according to the City's defined purchasing process. Once the work began and the gel coat was removed from the slides additional repairs were requested by both FAC Staff and Texas Municipal League Risk Pool, (the City's liability insurance provider). These repairs needed to be completed to insure the slides were in top working condition with a minimal amount of downtime during the peak pool season.

Board/ Citizen Input: N/A

Alternatives: City Council could choose not to ratify this purchase order at this time.

Financial Considerations: Funding is available in the capital reserve fund.

Legal Review: N/A

Supporting Documents: Department memo and a copy of the purchase orders.

FRISCO ATHLETIC CENTER

5828 NANCY JANE LANE
FRISCO, TEXAS 75035
TEL 972.292.6600
WWW.FRISCOFUN.ORG

To: **Tom Johnston, Director of Administrative Services**

CC: **Rick Wieland, Director of Parks & Recreation**

From: **Steve Walsh, Recreation Facilities Manager**

Date: **August 26, 2011**

Subject: **FAC Water Slide Repairs**

Staff would like to inform you of a purchasing decision that was made in the field for repairs to the FAC waterslides. Earlier in the spring, staff contacted three vendors to conduct repairs to the FAC water slides. The original scope of services included repairing obvious spider cracks and other defects to the FAC's waterslides which were identified in advance by staff and the vendors. After going though the purchasing process, a Purchase Order in the amount of $16,222 was issued to Solid Motor Sports (SMS) for the repairs.

As part of the process to correct the original repairs, the first step is to remove a layer of gel coat in order to address the defects. With a layer of gel coat removed, additional defects became visible that needed to be addressed prior to the opening of the slides.

Many of the new defects were positioned in the 'ride path' of the slides, while other defects were located higher up the slide flume. While SMS was on-site, staff walked the slides to review the additional defects. In the interest of safety, staff authorized SMS to repair all of the identified defects while they were on-site. The additional repairs cost a total of $12,925.

Upon completion of these repairs, staff contacted TML inspectors to come out to the facility for a re-inspection. The re-inspection occurred on the evening of June 15. While the inspectors were pleased with the repairs that were made by SMS, they subsequently identified additional repairs that were not identified in the previous visits. Thus, staff authorized SMS to make repairs based on TML's recommendations. These repairs totaled approximately $6,650.

In closing, staff received a Purchase Order for the initial repairs for $16,222. Once the initial repairs began, staff received an Emergency PO for SMS to complete the additional repairs identified by the vendor and TML inspectors. The Emergency PO was for the amount of $19,575. These repairs were completed on June 24, and staff then received acceptance from TML to open the slides for public use.

Please let me know what questions you might have. Thank you.

Purchase Order

FRISCO
PROGRESS IN MOTION.

Fiscal Year 2011 Page 1 of 2

Revisions 001

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS.

Purchase Order # 01104106

Delivery must be made within doors of specified destination.

BILL TO

City of Frisco
ACCOUNTS PAYABLE
6101 FRISCO SQUARE BLVD.
FRISCO, TX 75034

VENDOR

106375
STEVE HIGNIGHT
DBA: SOLID MOTORSPORTS
186 MEYERS DRIVE
SHERMAN, TX 75092

SHIP TO

FRISCO ATHLETIC CENTER
5828 NANCY JANE LANE
FRISCO, TX 75034

Vendor Phone Number	Vendor Fax Number	Requisition Number	Delivery Reference
		44799	STEVE WALSH - EXT 6505

Date Ordered	Vendor Number	Date Required	Freight Terms	Department/Location
05/16/2011	106375		FOB DESTINATION	RECREATION CENTER

Item#	Description/Part No.	Qty	UOM	Unit Price	Total
	PO Requisitioner Name: PAULETTE POWELL				
1	PARK, PLAYGROUND, AND SWIMMING POOL EQUIPMENT MAINTENANCE AND REPAIR - SMALL OUTSIDE GREEN SLIDE	1.0	EACH	$16,222.00	$16,222.00
2	PARK, PLAYGROUND, AND SWIMMING POOL EQUIPMENT MAINTENANCE AND REPAIR - WHITE/GREEN OUTSIDE SLIDE REPAIR	1.0	EACH	$0.00	$0.00
3	PARK, PLAYGROUND, AND SWIMMING POOL EQUIPMENT MAINTENANCE AND REPAIR - BLUE/WHITE INDOOR SLIDE REPAIR	1.0	EACH	$0.00	$0.00
4	PARK, PLAYGROUND, AND SWIMMING POOL EQUIPMENT MAINTENANCE AND REPAIR - BLUE/WHITE OUTDOOR POOL REPAIR	1.0	Each	$0.00	$0.00

IMPORTANT: Read Terms & Conditions provided as part of this purchase order.

Purchasing Manager

Purchase Order Total
$16,222.00

Frisco, TX

Conditions Governing this Purchase Order

1) If a bid number is referenced on this Purchase Order, all terms conditions and specifications associated with that bid number apply.

2) Invoices must be submitted to:
City of Frisco
Accounts Payable
6101 Frisco Square Blvd.
Frisco, TX 75034

3) No changes may be made to this order unless first approved by City Purchasing Manager.

4) The place of delivery shall be that set forth on the Purchase Order. The terms of this agreement are "no arrival, no sale".

5) The title and risk of loss of goods shall not pass to the City of Frisco (City) until the City actually receives, accepts and takes possession of the goods at the place of delivery, (FOB Destination).

6) Materials must be adequately packaged to insure against damage in transit and all packaging must be clearly marked with the PO number and ordering department name. Damaged materials will not be accepted by the City.

7) Inspection of delivery will be made at the delivery point unless otherwise specified. Damaged or defective materials will not be accepted by the City and will be returned to the vendor at the vendor's risk and expense.

8) The vendor agrees to indemnify and hold the City harmless from any claim involving patent right infringement or copyrights on goods supplied.

9) All containers, packaging, reels, etc. are to remain the property of the City, unless otherwise specified.

10) Payment terms of the City are Net 30 unless otherwise specified on the PO. The City does take advantage of cash or quick payment discounts, if offered by the vendor. The vendor should reflect such terms on the invoice.

11) The City is exempt from Federal Excise and State Sales Taxes. Tax must not be included on any invoice. Tax exemption certificates will be executed by the City and furnished upon request.

12) ASSIGNMENT: The successful bidder shall not sell, assign, transfer or convey this contract in whole or in part, without the prior written consent of the City.

13) DELIVERY: Deliveries will be acceptable only during normal working hours at the designated City Municipal Facility. The place of delivery shall be set forth on the Purchase Order. The terms of this agreement are "no arrival, no sale".

14) FUNDING: The City is a home-rule municipal corporation operated and funded on an October 1 to September 30 basis, accordingly, the City reserves the right to terminate, without liability to the City, any contract for which funding is not available.

15) TERMINATION FOR DEFAULT: The City reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this contract. The City reserves the right to terminate the contract immediately in the event the successful bidder fails to: (1) meet delivery schedules; or (2) otherwise performs in accordance with these specifications. Breach of contract or default authorizes the City to, among other things, award to another bidder, purchase elsewhere and charge the full increase in cost and handling to the defaulting successful bidder.

16) REMEDIES: The successful bidder and the City agree that each party has all rights, duties, and remedies available as stated in the Uniform Commercial Code and any other available remedy, whether in law or equity.

FRISCO
PROGRESS IN MOTION.

Purchase Order

Fiscal Year 2011 Page 1 of 2

Revisions 001

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS.

Purchase Order # 01105013

Delivery must be made within doors of specified destination.

BILL TO

City of Frisco
ACCOUNTS PAYABLE
6101 FRISCO SQUARE BLVD.
FRISCO, TX 75034

VENDOR

106375
STEVE HIGNIGHT
DBA: SOLID MOTORSPORTS
186 MEYERS DRIVE
SHERMAN, TX 75092

SHIP TO

FRISCO ATHLETIC CENTER
5828 NANCY JANE LANE
FRISCO, TX 75034

Vendor Phone Number	Vendor Fax Number	Requisition Number	Delivery Reference
		45813	JOHN C./PAULETTE - EXT 6603

Date Ordered	Vendor Number	Date Required	Freight Terms	Department/Location
06/28/2011	106375			RECREATION CENTER

Item#	Description/Part No.	Qty	UOM	Unit Price	Total
	PO Requisitioner Name: PAULETTE POWELL				
1	PARK, PLAYGROUND, AND SWIMMING POOL EQUIPMENT MAINTENANCE AND REPAIR - ADDITIONAL REPAIRS FOR INDOOR AND OUTDOOR WATER SLIDES	1.0	EACH	$19,575.00	$19,575.00

IMPORTANT: Read Terms & Conditions provided as part of this purchase order.

Purchasing Manager

Purchase Order Total

$19,575.00

Frisco, TX

Conditions Governing this Purchase Order

1) If a bid number is referenced on this Purchase Order, all terms conditions and specifications associated with that bid number apply.

2) Invoices must be submitted to:
City of Frisco
Accounts Payable
6101 Frisco Square Blvd.
Frisco, TX 75034

3) No changes may be made to this order unless first approved by City Purchasing Manager.

4) The place of delivery shall be that set forth on the Purchase Order. The terms of this agreement are "no arrival, no sale".

5) The title and risk of loss of goods shall not pass to the City of Frisco (City) until the City actually receives, accepts and takes possession of the goods at the place of delivery, (FOB Destination).

6) Materials must be adequately packaged to insure against damage in transit and all packaging must be clearly marked with the PO number and ordering department name. Damaged materials will not be accepted by the City.

7) Inspection of delivery will be made at the delivery point unless otherwise specified. Damaged or defective materials will not be accepted by the City and will be returned to the vendor at the vendor's risk and expense.

8) The vendor agrees to indemnify and hold the City harmless from any claim involving patent right infringement or copyrights on goods supplied.

9) All containers, packaging, reels, etc. are to remain the property of the City, unless otherwise specified.

10) Payment terms of the City are Net 30 unless otherwise specified on the PO. The City does take advantage of cash or quick payment discounts, if offered by the vendor. The vendor should reflect such terms on the invoice.

11) The City is exempt from Federal Excise and State Sales Taxes. Tax must not be included on any invoice. Tax exemption certificates will be executed by the City and furnished upon request.

12) ASSIGNMENT: The successful bidder shall not sell, assign, transfer or convey this contract in whole or in part, without the prior written consent of the City.

13) DELIVERY: Deliveries will be acceptable only during normal working hours at the designated City Municipal Facility. The place of delivery shall be set forth on the Purchase Order. The terms of this agreement are "no arrival, no sale".

14) FUNDING: The City is a home-rule municipal corporation operated and funded on an October 1 to September 30 basis, accordingly, the City reserves the right to terminate, without liability to the City, any contract for which funding is not available.

15) TERMINATION FOR DEFAULT: The City reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this contract. The City reserves the right to terminate the contract immediately in the event the successful bidder fails to: (1) meet delivery schedules; or (2) otherwise performs in accordance with these specifications. Breach of contract or default authorizes the City to, among other things, award to another bidder, purchase elsewhere and charge the full increase in cost and handling to the defaulting successful bidder.

16) REMEDIES: The successful bidder and the City agree that each party has all rights, duties, and remedies available as stated in the Uniform Commercial Code and any other available remedy, whether in law or equity.

AGENDA ITEM #22.

PROGRESS IN MOTION

Development Services Department
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Cc: **George A. Purefoy, City Manager**
John Lettelleir, AICP, Director of Development Services

From: **Michael Walker, AICP, Senior Planner**

Date: **8/23/2011**

Agenda Caption: **Consider and act upon adoption of an Ordinance to amend Planned Development-207 to incorporate additional property (currenly zoned Planned Development-25) to allow residential uses. The property contains 19.1± acres on the northeast corner of Gaylord Parkway and Parkwood Boulevard. Zoned Planned Development-25-Business Center and Planned Development-207-Mixed Use. Neighborhood #28.**

Action Requested: City Council adoption of an Ordinance amending the Planned Development.

Background Information: The City Council approved the request by a vote of 5-0 at their August 1, 2011 meeting.

Board Review/Citizen Input: The Planning & Zoning Commission held a public hearing on the request at their June 28, 2011 meeting and voted 6-0 to approve the request.

Alternatives: The City Council may:

- Approve the Ordinance;
- Deny the Ordinance;
- Approve the Ordinance with modifications; or
- Table for further review.

Financial Considerations: None.

Legal Review: The Ordinance was prepared by the City Attorney's office.

Supporting Documents:

- City Council Outcome Memo dated August 2, 2011.
- Ordinance.

Recommendation: Recommended for adoption.

DEVELOPMENT SERVICES

GEORGE A. PUREFOY MUNICIPAL CENTER
6101 FRISCO SQUARE BLVD · 3RD FLOOR
FRISCO, TEXAS 75034
TEL 972.292.5300 · FAX 972.292.5388
WWW.FRISCOTEXAS.GOV

August 2, 2011

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of the City Council meeting, August 1, 2011

Public Hearing: The Centre at Preston Ridge, Block A, Lots 2 and 8 (Z11-0008)
Owner(s): BPR Land Partnership, LP

Description:
A request to amend Planned Development-207 to incorporate additional property (currenly zoned Planned Development-25) to allow residential uses and consider and act to direct staff to prepare an Ordinance of the same. The property contains 19.1± acres on the northeast corner of Gaylord Parkway and Parkwood Boulevard. Zoned: Planned Development-25-Business Center and Planned Development-207-Mixed Use. Neighborhood #28.

Result/Action:

Approved: 5-0 (Keating absent)
Denied:
Tabled:

ACTION:
City Council approved the Zoning request and directed staff to prepare an Ordinance.

MW/kj

cc:	Carey Frazier	Danny Carroll	Deanna Quigley	Dudley Raymond
	Gary Hartwell	Umberto Allori	Jim Cottone	Steve Covington
	Mack Borchardt	Michael Crain	Michele Wood	Michelle Ortega
	Paul Knippel	Phillip Climer	Poly Birika	Rick Wieland

CITY OF FRISCO, TEXAS **ORDINANCE NO. _____**

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, REPEALING CITY OF FRISCO ORDINANCE NO. 07-06-25, AMENDING FRISCO'S ZONING ORDINANCE NO. 11-04-09 AND CITY OF FRISCO ORDINANCE NO. 88-03-05; REZONING A TRACT OF LAND CONSISTING OF 19.1 ACRES, MORE OR LESS, SITUATED IN THE STEPHEN COOMBS SURVEY, ABSTRACT NO. 218, CITY OF FRISCO, COLLIN COUNTY, TEXAS HERETOFORE ZONED PLANNED DEVELOPMENT-207-MIXED USE AND PLANNED DEVELOPMENT-25-BUSINESS CENTER IS HEREBY REZONED AND PLACED IN THE ZONING CLASSIFICATION OF PLANNED DEVELOPMENT-207-MIXED USE (PD-207-MXD) WITH CERTAIN CONDITIONS PRECEDENT; DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas (the "City Council") has investigated and determined that it would be advantageous and beneficial to the citizens of the City of Frisco, Texas ("Frisco") to repeal Frisco Ordinance No. 07-06-25 in its entirety and replace with this Ordinance; and

WHEREAS, the City Council has further investigated and determined that Zoning Ordinance No. 11-04-09 and Ordinance No. 88-03-05 should be amended; and

WHEREAS, Frisco has received a request from Westwood Residential (the "Applicant") to rezone 19.1 acres of land, more or less, situated in the Stephen Coombs Survey, Abstract No. 218, in the City of Frisco, Collin County, Texas; and

WHEREAS, the City Council has investigated into and determined that the facts contained in the request are true and correct; and

WHEREAS, all legal notices required for rezoning have been given in the manner and form set forth by law, and public hearings have been held on the proposed rezoning and all other requirements of notice and completion of such zoning procedures have been fulfilled; and

WHEREAS, the City Council has further investigated into and determined that it will be advantageous and beneficial to Frisco and its inhabitants to rezone this property as set forth below subject to certain conditions precedent being met to receive a building permit for the zoning granted herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Ordinance No. 07-06-25 Repealed. Frisco Ordinance No. 07-06-25 is hereby repealed in its entirety and replaced by this Ordinance. The effective date of the repeal discussed in this Section shall not occur until the effective date of this Ordinance at which time Ordinance No. 07-06-25 shall be repealed. Such repeal shall not abate any pending prosecution and/or lawsuit or prevent any prosecution and/or lawsuit from being commenced for any violation of Ordinance No. 07-06-25 occurring before the effective date of this Ordinance.

SECTION 3: Amendments to Zoning Ordinance No. 11-04-09 and City of Frisco Ordinance No. 88-03-05. Zoning Ordinance No. 11-04-09 and City of Frisco Ordinance No. 88-03-05 are amended as follows: The zoning designation of the below-described property containing 19.1 acres of land, more or less, situated in the Stephen Coombs Survey, Abstract No. 218, in the City of Frisco, Collin County, Texas, (the "Property") and all streets, roads and alleyways contiguous and/or adjacent thereto are hereby rezoned as Planned Development – Mixed Use (PD-MXD). The Property as a whole and the boundaries are more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes as if set forth verbatim. The general location of the Property is depicted on Exhibit "A-1", attached hereto.

The development plans, standards, uses and schedules for the Property in this Planned Development District shall conform to, and comply with the planned development standards attached hereto as Exhibit "B", the conceptual plan attached hereto as Exhibit "C", the Zipper Street Plan attached hereto as Exhibit "D-1", the Rec/Leasing Entry Drive Exhibit attached hereto as Exhibit "D-2", and the conceptual

building elevations attached hereto as Exhibits “E-1” through “E-4”. Exhibits “B”, “C”, “D-1”, “D-2” and “E-1” through “E-4” are incorporated herein for all purposes as if set forth verbatim. Except as amended by this Ordinance, the development of the Property within this Planned Development District must comply with the requirements of all ordinances, rules and regulations of Frisco, as they currently exist or may be amended.

Three original, official and identical copies of the zoning exhibit map are hereby adopted and shall be filed and maintained as follows:

a. Two (2) copies shall be filed with the City Secretary and retained as the original records and shall not be changed in any manner.

b. One (1) copy shall be filed with the building inspector and shall be maintained up-to-date by posting thereon all changes and subsequent amendments for observation, issuing building permits, certificates of compliance and occupancy and enforcing the zoning ordinance. Reproduction for information purposes may from time-to-time be made of the official zoning district map.

Written notice of any amendment to this Planned Development District shall be sent to all property owners within two hundred (200) feet of the specific area to be amended.

SECTION 4: No Vested Interest/Repeal. No developer or property owner shall acquire any vested interest in this Ordinance or in any other specific regulations contained herein. Any portion of this Ordinance may be repealed by the City Council in the manner provided for by law.

SECTION 5: Unlawful Use of Premises. It shall be unlawful for any person, firm, entity or corporation to make use of said premises in some manner other than as authorized by this Ordinance and it shall be unlawful for any person, firm, entity or corporation to construct on said premises any building that is not in conformity with the permissible uses under this Zoning Ordinance.

SECTION 6: Penalty. Any person, firm, corporation or entity violating this Ordinance or any provision of Frisco’s Zoning Ordinance No. 11-04-09, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction

thereof, shall be fined a sum not exceeding Two Thousand Dollars ($2,000.00). Each continuing days' violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Frisco from filing suit to enjoin the violation. Frisco retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 7: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Frisco hereby declares that is would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 8: Savings/Repealing Clause. Frisco's Zoning Ordinance No. 11-04-09 and City of Frisco Ordinance No. 88-03-05 shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 9: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by law and the Charter of Frisco.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this 6th day of September, 2011.

MAHER MASO, Mayor

ATTESTED TO AND CORRECTLY RECORDED BY:

JENNY PAGE, City Secretary

APPROVED AS TO FORM:

ABERNATHY, ROEDER, BOYD & JOPLIN, P.C.
COURTNEY A. KUYKENDALL, City Attorneys

DATES OF PUBLICATION:_____, Frisco Enterprise

Exhibit "A"
PROPERTY DESCRIPTION
Tract 1

BEING all that tract of land in the City of Frisco, Collin County, Texas, part of the STEPHEN COOMBS SURVEY, ABSTRACT NO. 218, being part of Lot 2, Block A, The Centre At Preston Ridge, Phase 2, an addition to the City of Frisco as recorded in Cabinet N, Page 345, Collin County Plat Records, and being further described as follows:

BEGINNING at an "X" found at the most easterly southeast corner of said Lot 2, said point being in the west line of Lot 3, The Centre At Preston Ridge, Phase 1, an addition to the City of Frisco as recorded in Cabinet L, Page 145, Collin County Plat Records, said point also being the northeast corner of Lot 3, said Block A, Phase 2;

THENCE South 69 degrees 25 minutes 08 seconds West, 253.19 feet along a south line of said Lot 2 and along the north line of said Lot 3, Block A to an "X" set for corner;

THENCE North 20 degrees 34 minutes 52 seconds West, 62.83 feet to an "X" set for corner;

THENCE South 69 degrees 25 minutes 08 seconds West, 482.23 feet to an "X" set for corner;

THENCE Northwesterly, 112.56 feet along a curve to the right which has a central angle of 47 degrees 46 minutes 19 seconds, a radius of 135.00 feet, a tangent of 59.78 feet, and whose chord bears North 86 degrees 41 minutes 43 seconds West, 109.33 feet to an "X" set for corner;

THENCE Northwesterly, 58.71 feet along a curve to the left which has a central angle of 20 degrees 23 minutes 13 seconds, a radius of 165.00 feet, a tangent of 29.67 feet, and whose chord bears North 73 degrees 00 minutes 10 seconds West, 58.40 feet to an "X" set for corner;

THENCE North 83 degrees 11 minutes 47 seconds West, 29.30 feet to an "X" set for corner in the west line of said Lot 2, said point being in the east line of Parkwood Boulevard (a variable width right-of-way);

THENCE Northeasterly, 114.88 feet along a non-tangent curve to the left in the west line of said Lot 2 and in the east line of Parkwood Boulevard, said curve which has a central angle of 05 degrees 30 minutes 46 seconds, a radius of 1194.00 feet, a tangent of 57.49 feet, and whose chord bears North 04 degrees 22 minutes 53 seconds East, 114.84 feet to an "X" set at the south corner of a tract of land conveyed to the City of Frisco as recorded in Volume 5336, Page 1940, Collin County Deed Records;

THENCE Northwesterly, 539.41 feet along a non-tangent curve to the left in the west line of said Lot 2 and in the east line of said City of Frisco tract, said curve which has a central angle of 60 degrees 21 minutes 40 seconds, a radius of 512.02 feet, a tangent of 297.77 feet, and whose chord bears North 04 degrees 18 minutes 05 seconds West, 514.81 feet to a one-half inch iron rod found for corner;

THENCE North 49 degrees 25 minutes 08 seconds East, 181.66 feet to a one-half inch iron rod found for corner;

THENCE Northeasterly, 34.91 feet along a curve to the right which has a central angle of 20 degrees 00 minutes 00 seconds, a radius of 100.00 feet, a tangent of 17.63 feet, and whose chord bears North 59 degrees 25 minutes 08 seconds East, 34.73 feet to a one-half inch iron rod found for corner;

THENCE North 69 degrees 25 minutes 08 seconds East, 276.37 feet to an "X" found for corner in a east line of said Lot 2, said point being in the west line of Lot 1, Block A, The Centre At Preston Ridge, Phase 2, an addition to the City of Frisco as recorded in Cabinet M, Page 290, Collin County Plat Records;

THENCE South 20 degrees 34 minutes 52 seconds East, 16.35 feet to an "X" found at the southwest corner of said Lot 1;

THENCE North 69 degrees 25 minutes 08 seconds East, 233.64 feet to an "X" found in the east line of said Lot 2, said point being the southeast corner of said Lot 1, said point also being in the west line of Lot 2R, The Centre At Preston Ridge, Phase 1, an addition to the City of Frisco as recorded in Cabinet M, Page 288, Collin County Plat Records;

THENCE South 20 degrees 34 minutes 52 seconds East, 806.28 feet along the east line of said Lot 2 to the POINT OF BEGINNING and containing 589,226 square feet or 13.527 acres of land.

Property Description
Tract 2

BEING a parcel or tract of land situated in the Stephen Coombs Survey, Abstract Number 218, and The Jabez Degman Survey, Abstract Number 279, and being all of Lot 2, Block A, according to the Revised Conveyance Plat of The Centre At Preston Ridge, Phase 2, an addition to the City of Frisco as recorded in Volume 2010, Page 310, Map Records, Collin County, Texas, and being more particularly described by metes and bounds as follows;

BEGINNING at an one-half inch iron rod with yellow cap found at the Northwest corner of Lot 9, Block A, of said The Centre At Preston Ridge, Phase 2, said point also being in the Easterly right-of-way line of Parkwood Boulevard (variable width right-of-way), being the Southwesterly corner of said Lot 2, Block A, said point also being in a non-tangent curve to the right whose chord bears North 08°34'16" East, 64.65 feet;

THENCE along said Easterly right-of-way line and the Westerly line of said Lot 2, Block A, the following calls:

In a Northeasterly direction along said non-tangent curve to the right having a central angle of 03°34'33", radius of 1036.00 feet, and an arc length of 64.66 feet to a 5/8 inch iron rod with red cap found for corner;

North 10°21'33" East, a distance of 128.92 feet to a point for corner, said point being at the beginning of a tangent curve to left whose chord bears North 08°44'54" East, 67.13 feet;

In a Northeasterly direction along said tangent curve to the left having a central angle of 03°13'17", a radius of 1194.00 feet, and an arc length of 67.13 feet to an "X" found for corner, said point being at the Southwesterly corner of Lot 8, Block A, The Centre At Preston Ridge, Phase 2, as recorded in Volume 2009, Page 50, Map Records, Collin County, Texas, said point also being the Northwesterly corner of said Lot 2, Block A;

THENCE along said Southerly line of said Lot 8, Block A, and the Northerly line of said Lot 2, Block A, the following calls:

South 83°11'47" East, departing said Easterly right-of-way line and along said common lot line a distance of 29.30 feet to an "X" found for corner, said point being at the beginning of a tangent curve to the right whose chord bears South 73°00'10" East, 58.40 feet;

In a Southeasterly direction along said curve to the right having a central angle of 20°23'13", a radius of 165.00 feet, and an arc length of 58.71 feet to an "X" found for corner, said point being at the beginning of a tangent curve to the left whose chord bears South 86°41'43" East, 109.33 feet;

In Southeasterly direction along said curve to the left having a central angle of 47°46'19", a radius of 135.00 feet, and an arc length of 112.56 feet to an "X" found for corner;

North 69°25'08" East a distance of 482.24 feet to an "X" found for corner, said point being the most Northeasterly corner of said Lot 2, Block A;

South 20°34' 52" East a distance of 62.82 feet to an "X" found for corner, said point being a Southwesterly corner of said Lot 8, Block A, said point also being in the Easterly line of said Lot 2, Block A, said point also being in the Northerly line of Lot 3, Block A, of The Centre At Preston Ridge, Phase 2, as recorded in Volume 2009, Page 13, Map Records, Collin County, Texas;

South 69°25'08" West along the North line of said Lot 3, Block A, a distance of 111.00 feet to an "X" found for corner, said point being the Northwesterly corner of said Lot 3, Block A, said point also being in the Easterly line of said Lot 2, Block A;

THENCE along the Easterly line of said Lot 2, Block A, and the Westerly line of said Lot 3, Block A, the following calls:

THENCE South 20°34'52" East a distance of 164.11 feet to an "X" found for corner;

THENCE North 69°25'08" East a distance of 9.00 feet to an "X" found for corner;

THENCE South 20°34'52" East a distance of 32.00 feet to an "X" found for corner;

THENCE North 69°25'08" East a distance of 72.00 feet to an "X" found for corner;

THENCE South 20°34'50" East a distance of 111.68 feet to an "X" found for corner, said point being in the Northerly right-of-way line of Gaylord Parkway (variable width right-of-way), said point also being the Southeasterly corner of said Lot 2, Block A;

THENCE along said Northerly right-of-way line of Gaylord Parkway the following calls:

South 60°27'26" West a distance of 135.34 feet to a one-half inch iron rod with yellow cap found for corner at the beginning of a tangent curve to the right whose chord bears South 66°11'15" West, 206.88 feet;

In a Southwesterly direction along said curve to the right having a central angle of 11°27'38", a radius of 1036.00 feet, and an arc length of 207.23 feet to an "X" found for corner, said point being at the beginning of a compound curve to the right whose chord bears South 78°37'10" West, 56.56 feet;

In a Southwesterly direction along said compound curve to the right having a central angle of 06°26'46", a radius of 503.00 feet, and an arc length of 56.59 feet to a one-half inch iron rod with yellow cap found for corner;

South 81°50'32" West a distance of 4.84 feet to a one-half inch iron rod with yellow cap found for corner, said point being at the beginning of a tangent curve to the left whose chord bears South 78°46'12" West, 56.49 feet;

In a Southwesterly direction along said curve to the left having a central angle of 06°08'40", a radius of 527.00 feet, and an arc length of 56.52 feet to a one-half inch iron rod with yellow cap found for corner;

South 75°41'53" West a distance of 115.64 feet to a one-half inch iron rod with yellow cap found for corner, said point being the Southeast corner of said Lot 9, Block A, said point also being the Southwest corner of said Lot 2, Block A;

THENCE North 14°25'24" West, departing the Northerly right-of-way line of said Gaylord Parkway a distance of 195.09 feet to a one-half inch iron rod with yellow cap found for the Northeast corner of said Lot 9, Block A;

THENCE South 75°34'39" West along the North line of said Lot 9 and the Southerly line of said Lot 2, Block A, a distance of 148.74 feet to a one-half inch iron rod with yellow cap found for corner;

THENCE North 83°14'00" West a distance 63.85 feet to the **POINT OF BEGINNING** containing 241,009 square feet or 5.533 acres of land, more or less.

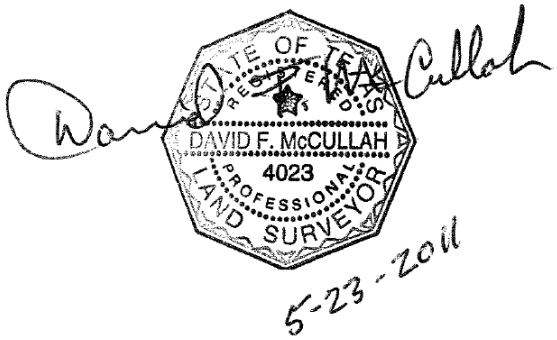


Exhibit "A-1"
Locator Map

Z11-0008
Centre at Preston Ridge, Phase 2
Block A, Lots 2 & 8



Exhibit "B"
Z11-0008
Planned Development District Standards

I. General Development Regulations.

A. The Plan Guidelines. Exhibit "C" provides a general guideline for development.

B. Building Materials.

1. Vertical mixed use and residential buildings.

Primary exterior construction materials up to the roof line shall have a minimum of eighty percent (80%) of the facade area consisting of the following:

a. Clay-fired brick; and
b. Natural stone (twenty (20%) percent minimum per wall facing a street).

Secondary exterior construction materials shall be used to accent primary exterior construction materials, but shall not exceed twenty percent (20%) of the facade area. Secondary exterior construction materials shall include:

a. Stucco (standard 3-step process).

Building facades facing interior courtyard areas consist of secondary construction materials.

C. Exterior Facade Construction Requirements. All building facades to be sited for maximum street exposure and limited exposure of parking structures. All buildings four story in height or less to have articulated building materials and colors defining a base, midsection and varied top as illustrated in Exhibits “E-1” and “E-2”. Natural stone will be the primary material along all streetscape base perimeters punctuated with residential and retail entries of primary or secondary construction materials. All masonry will be of earth toned colors with complimentary stucco accent colors as illustrated in Exhibits “E-1” and “E-2”.

D. Renderings. The renderings attached hereto as Exhibit “E-1” and “E-2” are for illustration purposes as a visual guide for development for both Owner and City Staff. The renderings made for this Development are intended to establish a representative character for the design styles and

details that may be relied upon by the City to the extent they shall provide guidance to architects in designing buildings, guidance to staff in reviewing and approving development and building elevations and by the City in reviewing and approving matters that come before it concerning this development. The applicant shall submit required plans for administrative approval. The Director of Planning & Development Services and/or the applicant may forward disputes to the Planning & Zoning Commission for final action. The applicant shall submit in writing the reason(s) for appealing the Director's decision within ten (10) days of the decision. The Director shall forward the facade plan to the Planning & Zoning Commission for consideration and action.

II. Development Regulations.

A. Permitted Uses. Mid-rise multifamily residence or Townhome mixed use development that incorporates retail or office use as illustrated on Exhibit "C".

1. Townhome and multi-family residence uses as set forth in Section 2.03.11 of the Zoning Ordinance, as amended.

2. Nonresidential uses limited to the first floor fronting the north and south sides of the buildings, from Parkwood Boulevard to the "zipper road" as illustrated on Exhibit "C".

3. Non-residential uses shall have a minimum first-floor floor-to-floor height of sixteen (16) feet.

Size of Yards.

1. Minimum Front Yard. A sixty (60) foot setback is required for the portion of the structure along Parkwood Boulevard. A thirty (30) foot landscape setback is required in the front yard setback measured from the street right-of-way.

2. Minimum Side and Rear Yards. There is a thirty (30) foot "no-build" setback along the east side of the development, otherwise none.

B. Size of Lots.

1. Minimum Lot Area. N/A.

2. Minimum Lot Width. N/A.

3. Minimum Lot Depth. N/A.

C. Maximum Height. Unlimited.

D. Maximum Lot Coverage. Eighty-five (85%) percent.

E. Maximum Floor Area Ratio. Unlimited.

F. Maximum Residential Dwelling Units. One thousand (1,000).

III. Parking Requirements. Parking shall comply with the requirements of the Zoning Ordinance, as it exists or shall be amended, except as stated herein. The conditions stated herein shall not apply, and the Zoning Ordinance shall solely govern parking requirements, unless a parking – reduction study is approved by the Planning and Zoning Commission.

A. Parking Garages. Parking garages or portions of buildings with above grade structured parking shall be located at the interior of blocks with buildings erected to screen the views of the parking structure from the surrounding streets as shown on Exhibit "C". A parking structure designed with a building facade appearance is permitted along street frontages. A minimum of eighty (80%) percent of the total required parking for any tract shall be located in a parking garage. The remaining parking shall be provided by surface parking and/or on-street parking as shown on Exhibit "C."

B. Street Parking on Zipper Streets. Street parking shall count toward the total number of parking spaces required. Street parking shall utilize tree islands as illustrated on "Exhibit "D-1". Parallel, angled, or perpendicular parking from access drives or public streets are permitted.

C. Residential Parking. Required residential parking shall be separated from nonresidential parking and shall have access limited to the residents and their guests.

IV. Zipper Road & Streets. Zipper road within the boundaries of this district shall be designed according to the standards below and as indicated on Exhibit "D-1". In case of conflict, the standards below control.

A. Zipper Road (Street 'B') shall be designed in accordance with the Zipper Road detail attached to Exhibit "D-1", and as follows:

1. Landscape islands will contain trees. A minimum three and one-half inch (3 ½") caliper shade trees from the list of approved shade trees in the Zoning Ordinance as it currently exists or may be amended.

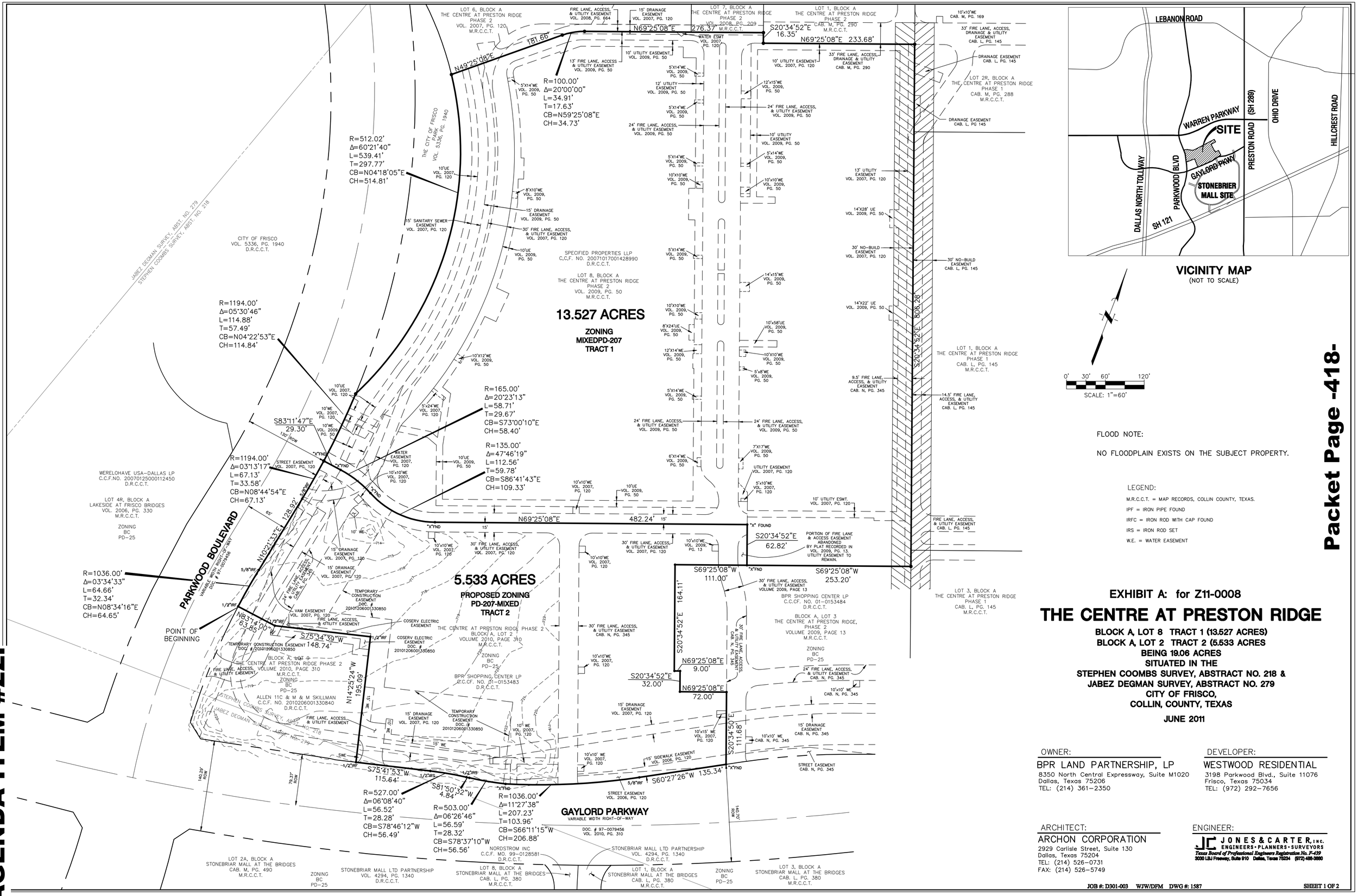
2. All landscaping shall be in irrigated beds or irrigated tree grates, and all sidewalk trees shall have root barriers approved by the City's Landscape Architect.

3. A minimum nine (9) foot decorative sidewalk in front of residential buildings and a minimum fifteen (15) foot decorative sidewalk in front of retail/residential buildings incorporating scored concrete, pavestones, etc. as part of the sidewalk. The minimum clear-width of the sidewalks shall be six (6) feet. There will be an additional eight (8) feet of landscaped bed or outdoor seating area and decorative sidewalks leading to the individual residential units.

C. Streets 'A' and 'C' shall be designed in accordance with the street detail attached as Exhibit "D-1". Landscape islands will be required as illustrated on the attached Exhibit "D-1". Street trees will be provided along the streets at intervals of fifty (50) feet or less as depicted on Exhibit "D-1."

V. Exhibit "C" – Zoning Exhibit

The zoning exhibit attached and incorporated into this Ordinance as Exhibit "C" shall serve as a guide for the development of the Property. The ultimate layout (including, without limitation, streets, lot layout, and open space areas) shall be determined at the time of Preliminary Site Plan. Any changes to the layout of the development shall be approved by the Director of Planning & Development Services, or his/her designee. The applicant may appeal, in writing, the Director's decision to the Planning & Zoning Commission within ten (10) days of the date of the Director's decision.



VICINITY MAP
(NOT TO SCALE)

0' 30' 60' 120'
SCALE: 1"=60'

FLOOD NOTE:

NO FLOODPLAIN EXISTS ON THE SUBJECT PROPERTY.

LEGEND:

M.R.C.C.T. = MAP RECORDS, COLLIN COUNTY, TEXAS.
IPF = IRON PIPE FOUND
IRFC = IRON ROD WITH CAP FOUND
IRS = IRON ROD SET
W.E. = WATER EASEMENT

EXHIBIT A: for Z11-0008

THE CENTRE AT PRESTON RIDGE

BLOCK A, LOT 8 TRACT 1 (13.527 ACRES)
BLOCK A, LOT 2 TRACT 2 (5.533 ACRES
BEING 19.06 ACRES
SITUATED IN THE
STEPHEN COOMBS SURVEY, ABSTRACT NO. 218 &
JABEZ DEGMAN SURVEY, ABSTRACT NO. 279
CITY OF FRISCO,
COLLIN, COUNTY, TEXAS

JUNE 2011

OWNER:
BPR LAND PARTNERSHIP, LP
8350 North Central Expressway, Suite M1020
Dallas, Texas 75206
TEL: (214) 361-2350

DEVELOPER:
WESTWOOD RESIDENTIAL
3198 Parkwood Blvd., Suite 11076
Frisco, Texas 75034
TEL: (972) 292-7656

ARCHITECT:
ARCHON CORPORATION
2929 Carlisle Street, Suite 130
Dallas, Texas 75204
TEL: (214) 526-0731
FAX: (214) 526-5749

ENGINEER:
JONES & CARTER, INC.
ENGINEERS • PLANNERS • SURVEYORS
Texas Board of Professional Engineers Registration No. F-439
3030 LBJ Freeway, Suite 910 Dallas, Texas 75234 (972) 488-3600

PHASE 1, BLOCK A, LOT 8 SITE INFORMATION

LAND AREA	589,226 S.F. OR 13.527 ACRES
ZONING	PD-207 (ORD. #07-08-25) MIXED-USE
PROPOSED USE	MULTI-FAMILY, RETAIL, OFFICE, & RECREATION
BUILDING AREA	397,337 S.F.
BUILDING HEIGHTS	75' (4 STORY)
LOT COVERAGE	43.21% (254,614/589,226) FAR 0.57:1
DENSITY	48.4 U/A

PARKING DATA

MULTI-FAMILY	(1.5 SP/1BR – 2.0 SP/BR)	1,040 SPACES
RETAIL	(1 SP/200 SF)	20 SPACES
OFFICE	(1 SP/300 SF)	16 SPACES
RECREATION / LEASING	(1 SP/26 U)	26 SPACES
RECREATION / LEASING OFFICE	(1 SP/300 SF)	4 SPACES
TOTAL PARKING		1,106 SPACES
PROVIDED		
GARAGE		1018 SPACES
SURFACE		113 SPACES
TOTAL PARKING PROVIDED		1,131 SPACES

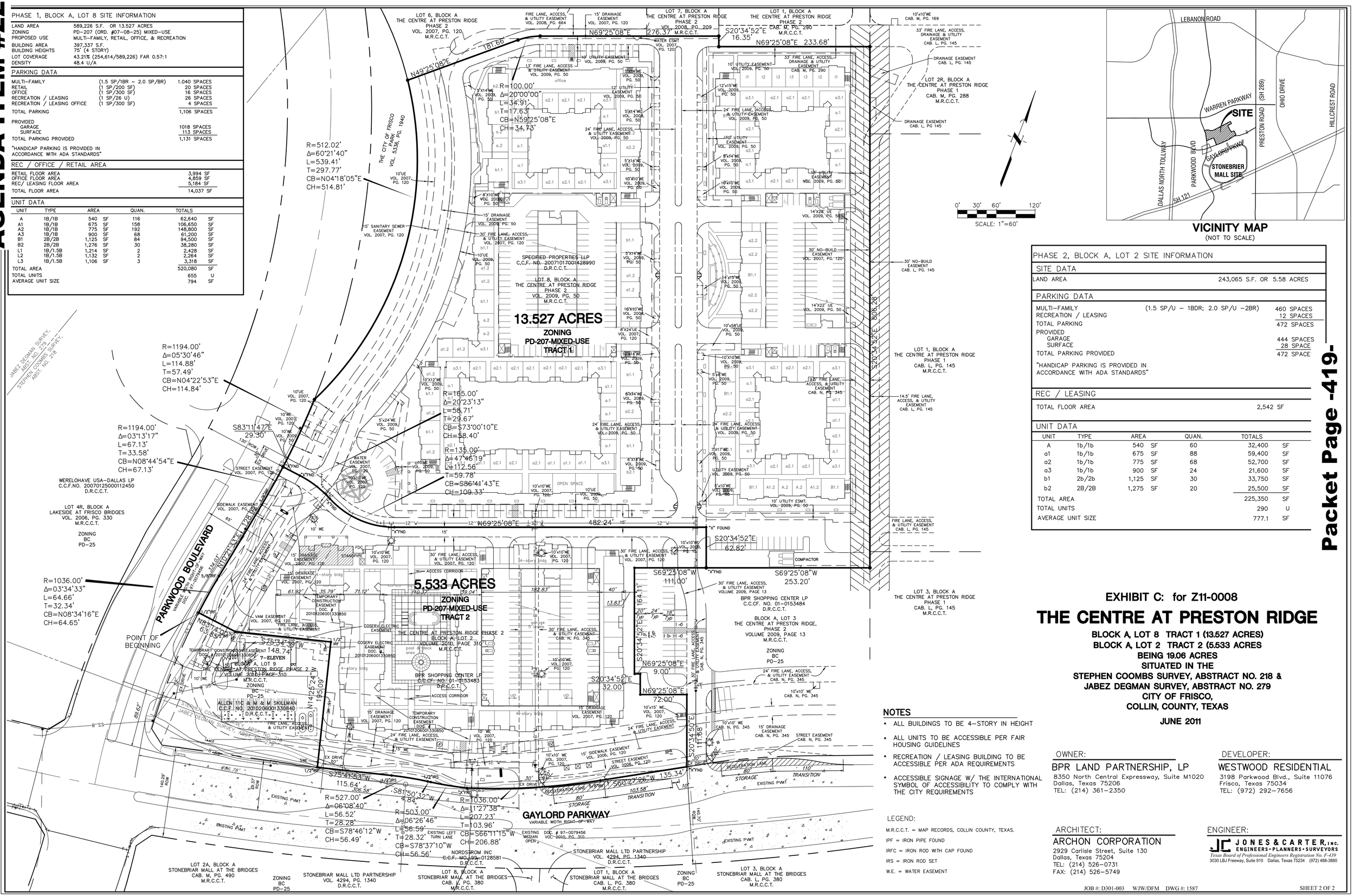
"HANDICAP PARKING IS PROVIDED IN ACCORDANCE WITH ADA STANDARDS"

REC / OFFICE / RETAIL AREA

RETAIL FLOOR AREA	3,994 SF
OFFICE FLOOR AREA	4,859 SF
REC/ LEASING FLOOR AREA	5,184 SF
TOTAL FLOOR AREA	14,037 SF

UNIT DATA

UNIT	TYPE	AREA		QUAN.	TOTALS	
A	1B/1B	540	SF	116	62,640	SF
A1	1B/1B	675	SF	158	106,650	SF
A2	1B/1B	775	SF	192	148,800	SF
A3	1B/1B	900	SF	68	61,200	SF
B1	2B/2B	1,125	SF	84	94,500	SF
B2	2B/2B	1,276	SF	30	38,280	SF
L1	1B/1.5B	1,214	SF	2	2,428	SF
L2	1B/1.5B	1,132	SF	2	2,264	SF
L3	1B/1.5B	1,106	SF	3	3,318	SF
TOTAL AREA					520,080	SF
TOTAL UNITS					655	U
AVERAGE UNIT SIZE					794	SF



PHASE 2, BLOCK A, LOT 2 SITE INFORMATION

SITE DATA

LAND AREA	243,065 S.F. OR 5.58 ACRES

PARKING DATA

MULTI-FAMILY	(1.5 SP/U – 1BDR; 2.0 SP/U –2BR)	460 SPACES
RECREATION / LEASING		12 SPACES
TOTAL PARKING		472 SPACES
PROVIDED		
GARAGE		444 SPACES
SURFACE		28 SPACE
TOTAL PARKING PROVIDED		472 SPACE

"HANDICAP PARKING IS PROVIDED IN ACCORDANCE WITH ADA STANDARDS"

REC / LEASING

TOTAL FLOOR AREA	2,542 SF

UNIT DATA

UNIT	TYPE	AREA		QUAN.	TOTALS	
A	1b/1b	540	SF	60	32,400	SF
a1	1b/1b	675	SF	88	59,400	SF
a2	1b/1b	775	SF	68	52,700	SF
a3	1b/1b	900	SF	24	21,600	SF
b1	2b/2b	1,125	SF	30	33,750	SF
b2	2B/2B	1,275	SF	20	25,500	SF
TOTAL AREA					225,350	SF
TOTAL UNITS					290	U
AVERAGE UNIT SIZE					777.1	SF

EXHIBIT C: for Z11-0008

THE CENTRE AT PRESTON RIDGE

BLOCK A, LOT 8 TRACT 1 (13.527 ACRES)
BLOCK A, LOT 2 TRACT 2 (5.533 ACRES
BEING 19.06 ACRES
SITUATED IN THE
STEPHEN COOMBS SURVEY, ABSTRACT NO. 218 &
JABEZ DEGMAN SURVEY, ABSTRACT NO. 279
CITY OF FRISCO,
COLLIN, COUNTY, TEXAS

JUNE 2011

NOTES

- ALL BUILDINGS TO BE 4–STORY IN HEIGHT
- ALL UNITS TO BE ACCESSIBLE PER FAIR HOUSING GUIDELINES
- RECREATION / LEASING BUILDING TO BE ACCESSIBLE PER ADA REQUIREMENTS
- ACCESSIBLE SIGNAGE W/ THE INTERNATIONAL SYMBOL OF ACCESSIBILITY TO COMPLY WITH THE CITY REQUIREMENTS

LEGEND:

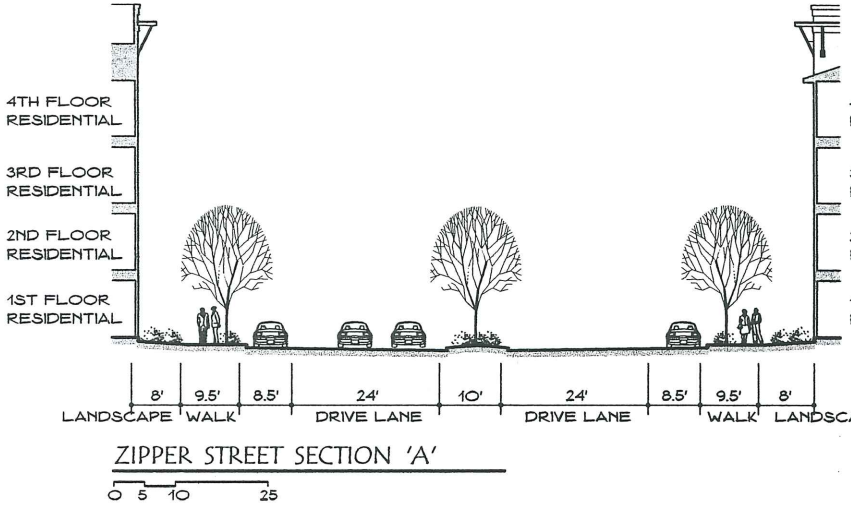
M.R.C.C.T. = MAP RECORDS, COLLIN COUNTY, TEXAS.
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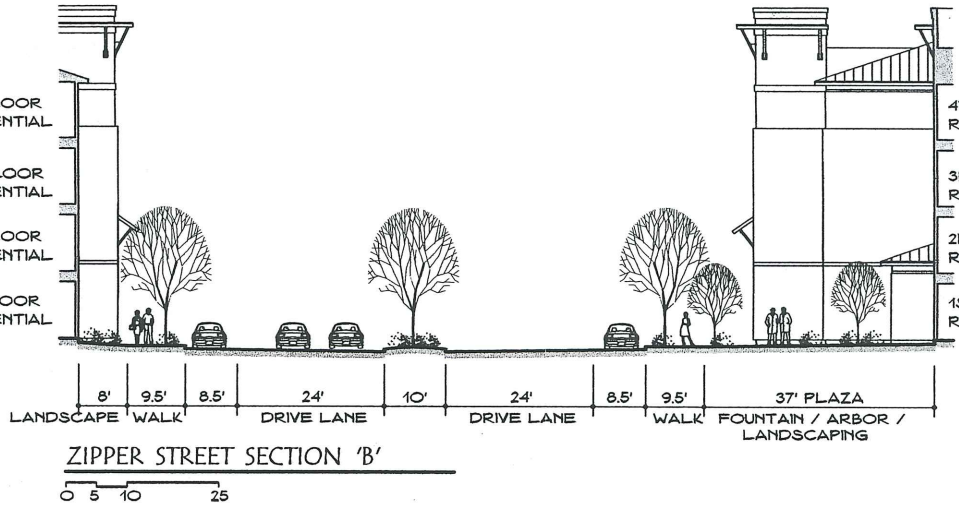
ARCHITECT:
ARCHON CORPORATION
2929 Carlisle Street, Suite 130
Dallas, Texas 75204
TEL: (214) 526–0731
FAX: (214) 526–5749

ENGINEER:
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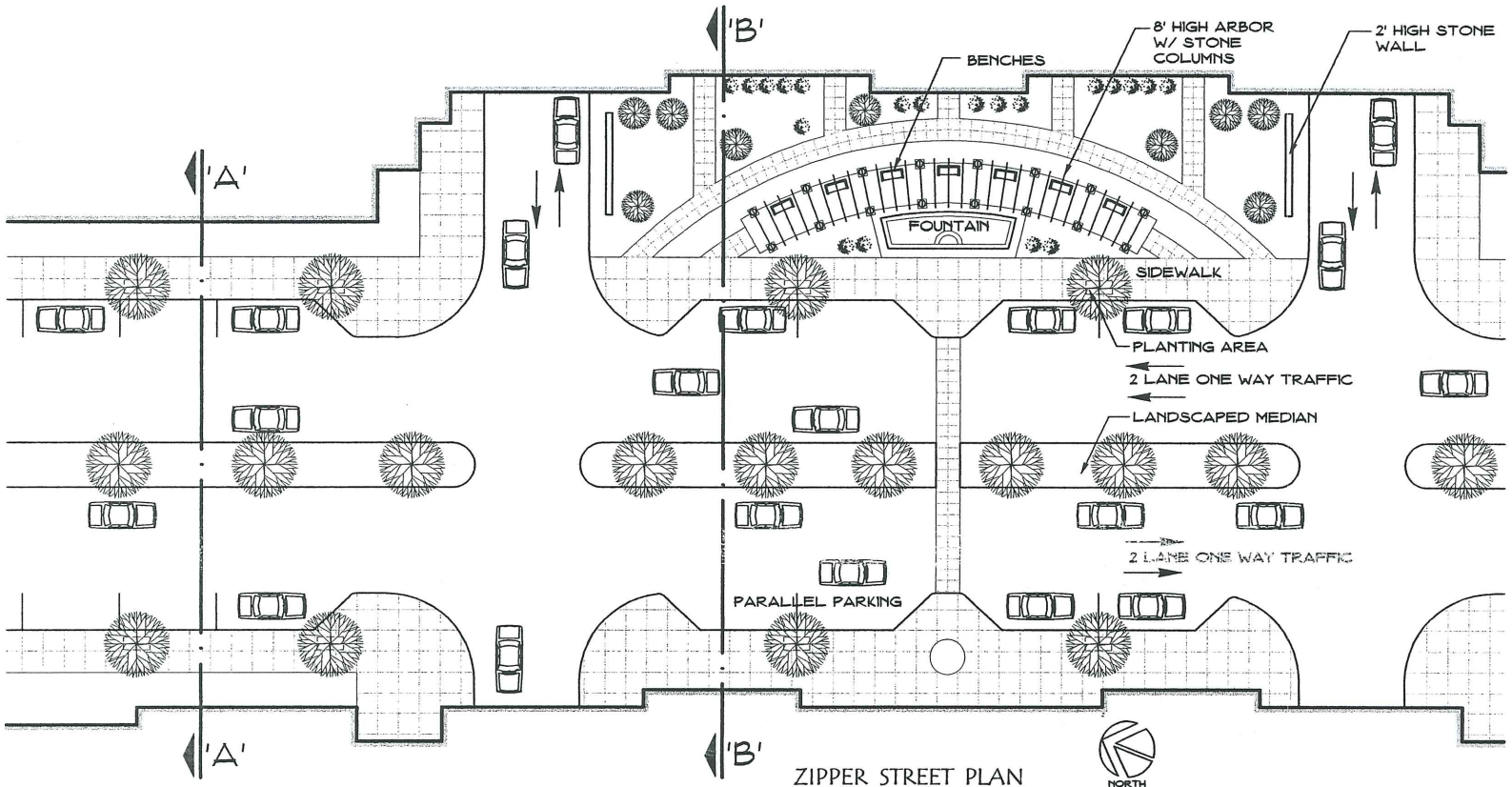
ZIPPER STREET SECTION 'A'

0 5 10 25



ZIPPER STREET SECTION 'B'

0 5 10 25



ZIPPER STREET PLAN

0 5 10 25

NOTE:
THIS PLAN IS CONCEPTUAL IN NATURE AND SHOULD NOT BE INTERPRETED AS A FINAL DESIGN

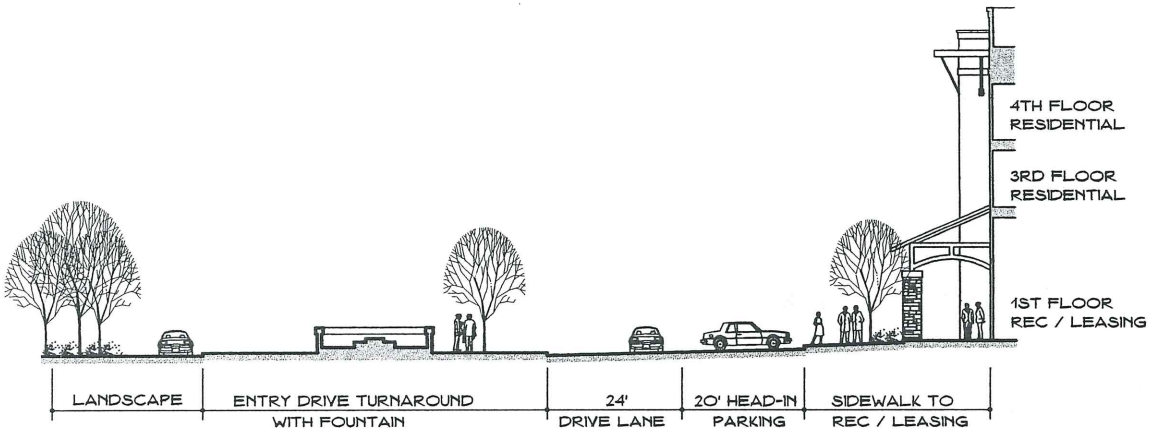
Exhibit D-1

THE CENTRE AT PRESTON RIDGE FRISCO, TEXAS

WESTWOOD RESIDENTIAL

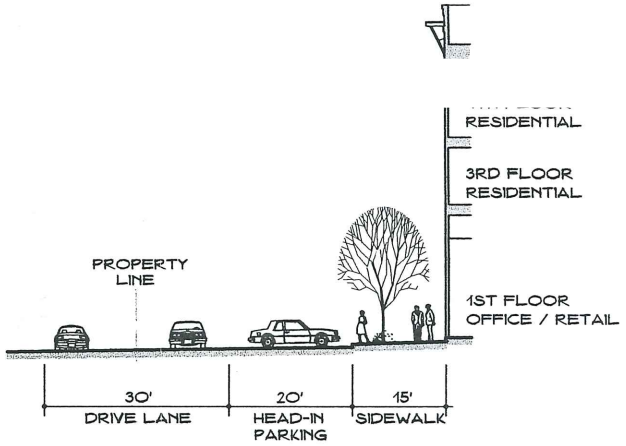
ARCHITECT:
RICK E. KITTELSON #7022
PRELIMINARY - NOT TO BE USED FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION
DATE: 18 DEC 06

ARCHON CORPORATION
ARCHITECTS / PLANNERS
2929 CARLISLE STREET
SUITE 130 - DALLAS, TX
75204 214/526-0731



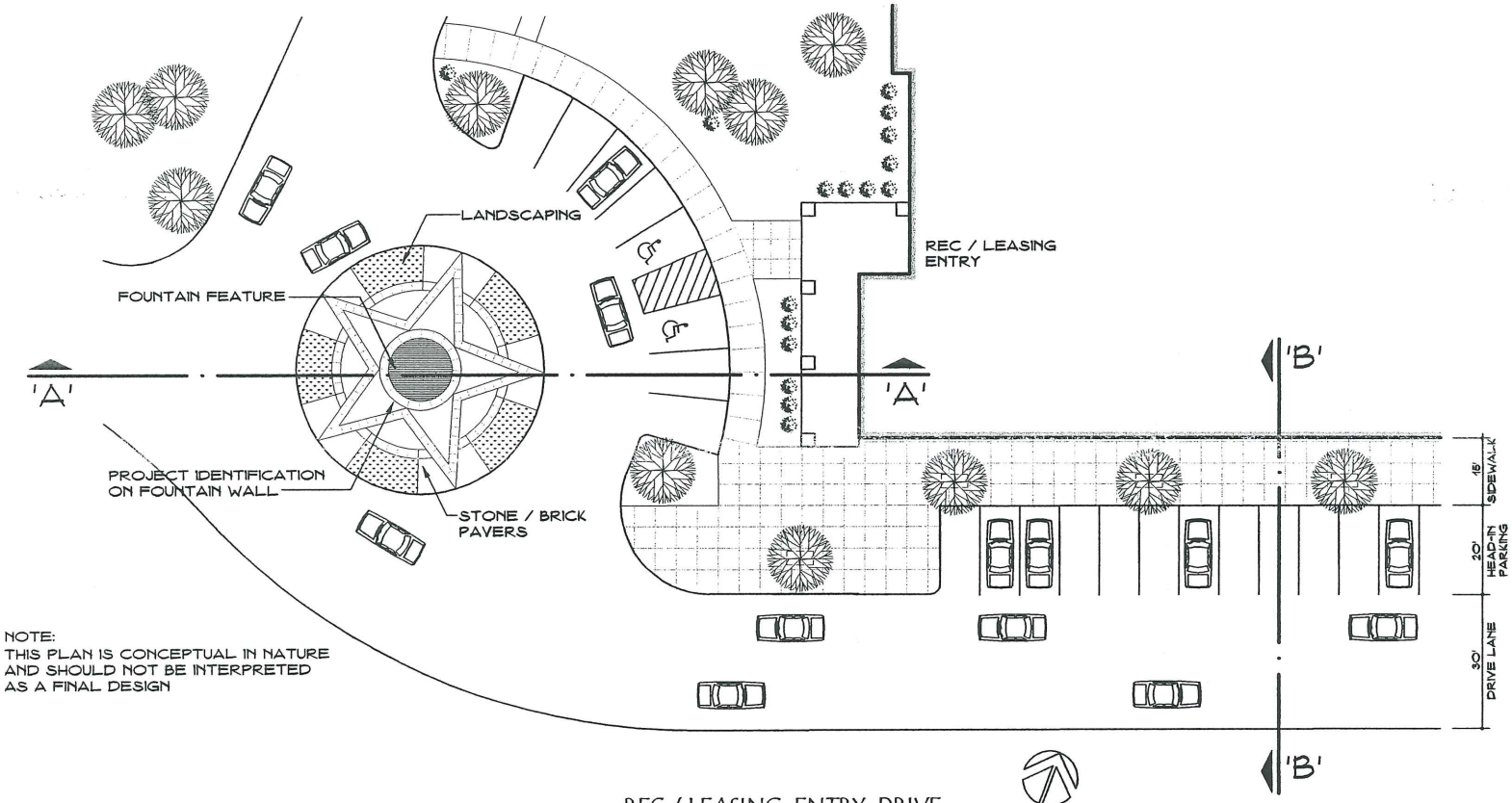
RECREATION / LEASING ENTRY DRIVE

0 5 10 25



RETAIL STREET SECTION 'B'

0 5 10 25



REC / LEASING ENTRY DRIVE

0 5 10 25

Exhibit D-2

THE CENTRE AT PRESTON RIDGE FRISCO, TEXAS

WESTWOOD RESIDENTIAL

ARCHITECT:
RICK E. KITTELSON #7022
PRELIMINARY - NOT TO BE USED FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION
DATE: 18 DEC 06

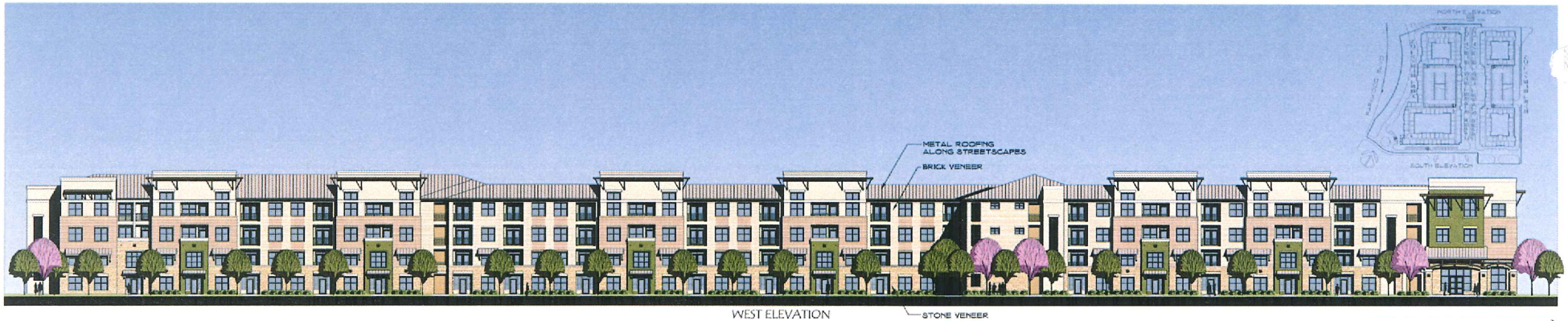
ARCHON CORPORATION
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2929 CARLISLE STREET
SUITE 130 - DALLAS, TX
75204 214/526-0731



SOUTH ELEVATION



ZIPPER STREET EAST ELEVATION



WEST ELEVATION

THE CENTRE AT PRESTON RIDGE FRISCO, TEXAS

WESTWOOD RESIDENTIAL

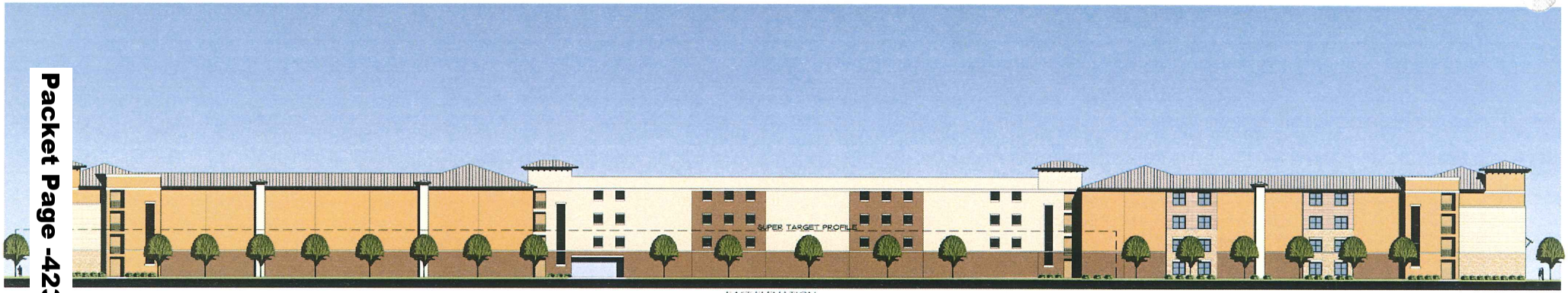
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PRELIMINARY - NOT TO BE USED FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION
DATE: 18 DEC 06

ARCHITECTS / PLANNERS
2929 CARLISLE STREET
SUITE 190 - DALLAS, TX
75204 214/526-0731

Exhibit E-1



NORTH ELEVATION



EAST ELEVATION



ZIPPER STREET WEST ELEVATION

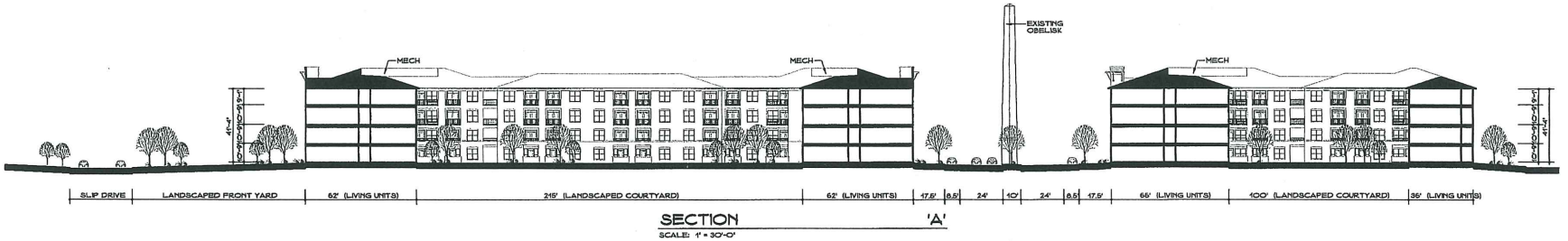
THE CENTRE AT PRESTON RIDGE FRISCO, TEXAS

WESTWOOD RESIDENTIAL

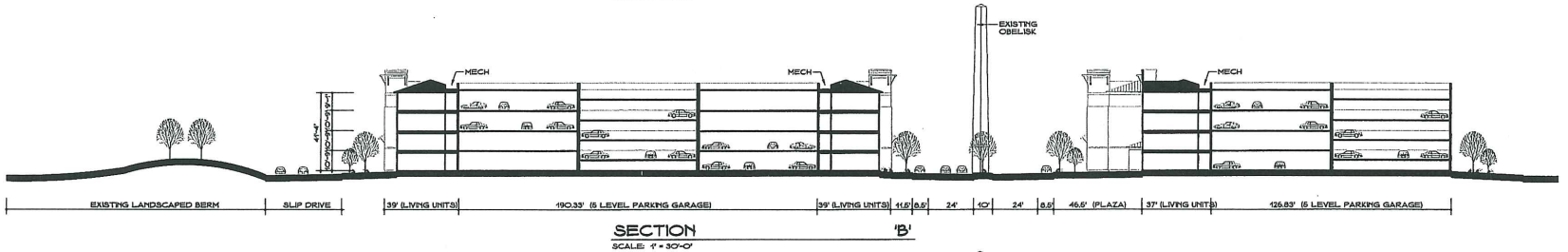
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RICK E. KITTELSON #7022
PRELIMINARY - NOT TO BE USED FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION
DATE: 19 DEC 06

ARCHITECTS / PLANNERS
2929 CARLISLE STREET
SUITE 130 - DALLAS, TX
75204 214/526-0731

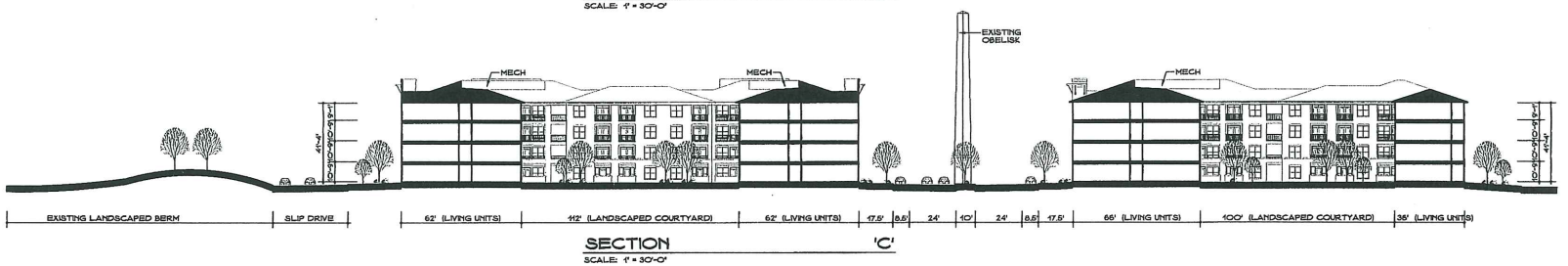
Exhibit E-2



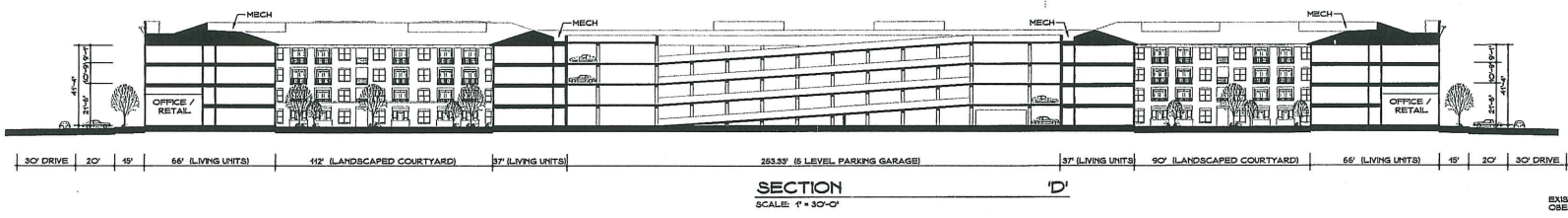
SECTION 'A'
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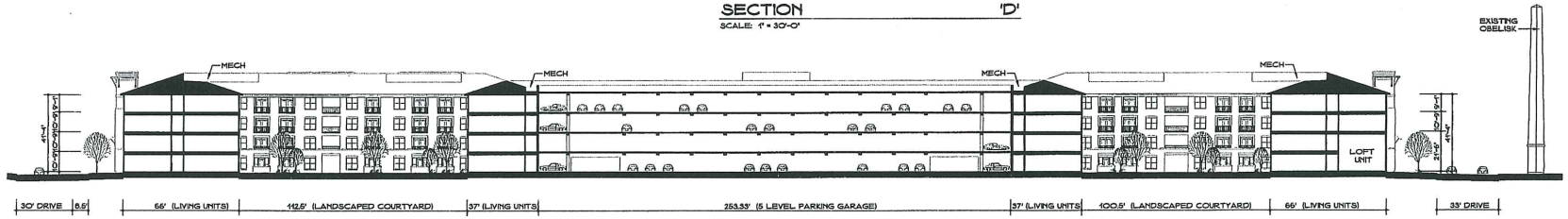
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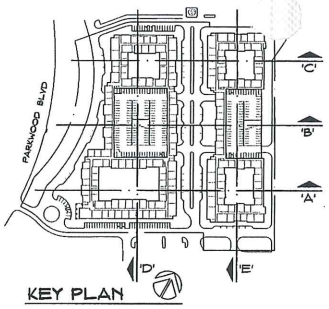
SECTION 'C'
SCALE: 1" = 30'-0"



SECTION 'D'
SCALE: 1" = 30'-0"



SECTION 'E'
SCALE: 1" = 30'-0"



KEY PLAN

SITE SECTIONS
0 5 10 25 50

Exhibit E-3

ARCHITECT:
RICK E. KITTELSON #7022
PRELIMINARY - NOT TO BE USED FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION
DATE: 18 DEC 06

THE CENTRE AT PRESTON RIDGE FRISCO, TEXAS

WESTWOOD RESIDENTIAL

ARCHON CORPORATION
ARCHITECTS / PLANNERS
2929 CARLISLE STREET
SUITE 130 - DALLAS, TX
75204 214/525-0731



MASONRY DISTRIBUTION DETAIL

THE CENTRE AT PRESTON RIDGE FRISCO, TEXAS

WESTWOOD RESIDENTIAL

Exhibit E-4

ARCHITECT:
RICK E. KITTELSON #7022
PRELIMINARY - NOT TO BE USED FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION
DATE: 18 DEC 06

ARCHON CORPORATION
ARCHITECTS / PLANNERS
2929 CARLISLE STREET
SUITE 130 - DALLAS, TX
75204 214/526-0731

AGENDA ITEM #23.

PROGRESS IN MOTION

Development Services Department
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Cc: **George A. Purefoy, City Manager**
John Lettelleir, AICP, Director of Development Services

From: **Ross Culbertson**

Date: **8/24/2011**

Agenda Caption: Consider and act upon adoption of an Ordinance to rezone 35.6± acres on the northwest and northeast corners of Lebanon Road and Teel Parkway from Commercial-1 to Patio Home. Zoned Commercial-1. Neighborhood #38 & 39. Z11-0010

Action Requested: City Council adoption of an Ordinance rezoning the property.

Background Information: The City Council approved the request by a vote of 6-0 at their August 16, 2011 meeting.

Board Review/Citizen Input: The Planning & Zoning Commission held a public hearing on the Zoning request at their July 26, 2011 meeting and voted 5-0 to approve the request as outlined in the Outcome Memo.

Alternatives: The City Council can:
- Approve the Ordinance;
- Deny the Ordinance;
- Approve the Ordinance with modifications; or
- Table for further review.

Financial Considerations: Not applicable.

Legal Review: The Ordinance was prepared by the City Attorney's office.

Supporting Documents:
- City Council Outcome Memo dated August 17, 2011.
- Ordinance

Staff Recommendation: Recommended for adoption.

DEVELOPMENT SERVICES

CITY OF FRISCO

GEORGE A. PUREFOY MUNICIPAL CENTER
6101 FRISCO SQUARE BLVD 3RD FLOOR
FRISCO, TEXAS 75034
TEL 972.292.5300 FAX 972.292.5388
WWW.FRISCOTEXAS.GOV

August 17, 2011

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of City Council meeting, August 16, 2011

Public Hearing: Saddlebrook/Quail Meadow Phase 3 (Z11-0010)
Owner(s): Lebanon Development 180 JV

Description:
A request to rezone 35.6± acres on the northwest and northeast corners of Teel Parkway and Lebanon Road from Retail to Patio Home, and consider and act to direct staff to prepare an ordinance of the same. Neighborhood #38 and #39. RC

Result/Action:

Approved: 6-0
Denied:
Tabled:

ACTION:

City Council approved the zoning change request and directed staff to prepare an Ordinance.

RC/kj

cc: Carey Frazier, Danny Carroll, Deanna Quigley, Dudley Raymond, Gary Hartwell, Umberto Allori, Jim Cottone, John Webb, Mack Borchardt, Michael Crain, Michele Wood, Michelle Ortega, Paul Knippel, Phillip Climer, Poly Birika, Rick Wieland, Steve Covington

CITY OF FRISCO, TEXAS ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, AMENDING FRISCO'S ZONING ORDINANCE NO. 11-04-09, REZONING A TRACT OF LAND CONSISTING OF 35.6 ACRES OF LAND, MORE OR LESS, SITUATED IN THE D. LAWHORN SURVEY, ABSTRACT NUMBER 727 AND THE L. WHITE SURVEY, ABSTRACT NUMBER 1394, CITY OF FRISCO, DENTON COUNTY, TEXAS, HERETOFORE ZONED COMMERCIAL-1 (C-1) IS HEREBY REZONED AND PLACED IN THE ZONING CLASSIFICATION OF PATIO HOME (PH); DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas (the "City Council"), has investigated and determined that Zoning Ordinance No. 11-04-09 should be amended; and

WHEREAS, Land Advisor, LTD ("Applicant"), initiated a request to rezone 35.6 acres of land, more or less, situated in the D. Lawhorn Survey, Abstract No. 727 and in the L. White Survey, Abstract No. 1394, City of Frisco, Denton County, Texas; and

WHEREAS, the City Council has investigated into and determined that the facts contained in the request are true and correct; and

WHEREAS, all legal notices required for rezoning have been given in the manner and from set forth by law, and public hearings have been held on the proposed rezoning and all other requirements of notice and completion of such zoning procedures have been fulfilled; and

WHEREAS, the City Council has investigated and determined that it will be advantageous and beneficial to Frisco and its inhabitants to rezone this property as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendments to the Zoning Ordinance No. 11-04-09.

Zoning Ordinance No. 11-04-09 is amended as follows. The zoning designation of the below-described property containing 35.6 acres of land, more or less, situated in the D. Lawhorn Survey, Abstract No. 727 and in the L. White Survey, Abstract No. 1394, City of Frisco, Denton County, Texas, (the "Property") and all streets, roads and alleyways contiguous and/or adjacent thereto are hereby rezoned as Patio Home. The Property as a whole and the boundaries are more particularly described in Exhibit "A", attached hereto and incorporated herein for all purposes as if set forth verbatim. The general location of the Property is depicted on Exhibit "A-1" attached hereto.

Except as amended by this Ordinance, the development of the Property must comply with the requirement of all ordinances, rules and regulations of Frisco, as they currently exist or may be amended.

SECTION 3: No Vested Interest/Repeal. No developer or property owner shall acquire any vested interest in this Ordinance or in any other specific regulations contained herein. Any portion of this Ordinance may be repealed by the City Council in the manner provided for by law.

SECTION 4: Unlawful Use of Premises. It shall be unlawful for any person, firm, entity or corporation to make use said premises in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person, firm, entity or corporation to construct on said premises any building that is not in conformity with the permissible uses under this zoning Ordinance.

SECTION 5: Penalty. Any person, firm, corporation or entity violating this Ordinance or any provision of Zoning Ordinance No. 11-04-09, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction therefore, shall be fined in a sum not exceeding Two Thousand and No/100 Dollars ($2,000.00). Each continuing day's violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Frisco from filing suit to enjoin the violation. Frisco retains all legal rights and

remedies available to it pursuant to local, state, and federal law.

SECTION 6: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Frisco hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid

SECTION 7: Savings/Repealing Clause. Zoning Ordinance No. 11-04-09 shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 8: Effective Date: This Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this ____ day of September, 2011.

MAHER MASO, Mayor

ATTESTED TO AND CORRECTLY RECORDED BY:

Jenny Page, City Secretary

APPROVED AS TO FORM:

Abernathy Roeder Boyd & Joplin P.C.
Rebecca Brewer, City Attorneys

Dates of Publication: _____, *Frisco Enterprise*

Exhibit "A"
Z11-0010

TRACT - 1

A tract or parcel of land situated in the D. Lawhorn Survey, Abstract No. 727, in the City of Frisco, Denton County, Texas, being the part of the called 124.141 acres tract described in the deed to Lebanon Development 180 Joint Venture recorded in Volume 2817 Page 0014 in the Denton County Deed Records (DCDR), and also part of the called 161.446 acres tract described in the deed to LSR Development, Inc. recorded in Volume 4541 Page 2343 in the DCDR, and also including the called 2.96 acres tract described in the deed to Lebanon Development 180 Joint Venture recorded in Document Number 2010-57591 in the DCDR, and being more particularly described as follows:

BEGINNING at the intersection of the centerline of Lebanon Road with the centerline of Teel Parkway;

THENCE South 89°37'14" West, approximately 747.57 feet along the center of Lebanon Road;

THENCE North 00°22'46" West, approximately 815.00 feet to the south side of Saddlebrook Village - Phase 1, an addition to the City of Frisco recorded in Cabinet T, Page 248 in the Denton County Plat Records;

THENCE North 89°37'14" East, approximately 929.56 feet along the south side of Saddlebrook Village - Phase 1 to the centerline of Teel Parkway;

THENCE Southerly an arc distance of approximately 744.12 feet along the centerline of Teel Parkway and along a non-tangent curve to the left with a radius of 1490.00 feet, a central angle of 28°36'50", and the chord bears South 13°55'41" West 736.41 feet;

THENCE South 00°22'44" East, approximately 101.43 feet continuing along the centerline of Teel Parkway to the POINT OF BEGINNING and CONTAINING 14.96 acres of land, more or less.

Basis of Bearing: Deed to Lebanon Development 180 Joint Venture, Document Number 2010-57591 and Plat "Saddlebrook Village - Phase 1" Cabinet T Page 248

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

C&P Engineering, Ltd. by

_____

Thomas C. Holland *date*
Registered Professional Land Surveyor
Texas Registration No. 2036

TRACT - 2

A tract or parcel of land situated in the D. Lawhorn Survey, Abstract No. 727, in the City of Frisco, Denton County, Texas, being the part of the called 124.141 acres tract and also part of the called 25.427 acres tract both described in the deed to Lebanon Development 180 Joint Venture recorded in Volume 2817 Page 0014 in the Denton County Deed Records (DCDR), and also including the Tract A-2 called 2.31 acres tract and the Tract A-3 called 2.584 acres tract both described in the deed to Lebanon Development 180 Joint Venture recorded in Document Number 2010-57591 in the DCDR, and being more particularly described as follows:

BEGINNING at the intersection of the centerline of Lebanon Road with the centerline of Teel Parkway;

THENCE North 00°22'44" West, approximately 101.83 feet along the centerline of Teel Parkway;

THENCE Northerly an arc distance of approximately 743.66 feet continuing along the centerline of Teel Parkway and along a tangent curve to the right with a radius of 1490.00 feet, a central angle of 28°35'47", and the chord bears North 13°55'09" East 735.97 feet;

THENCE North 89°37'14" East, approximately 973.05 feet along the south side of the Amended Plat, Quail Meadow Village - Phase 1, an addition to the City of Frisco recorded in Document Number 2001-R0132619 in the Denton County Plat Records;

THENCE South 00°22'46" East, approximately 815.00 feet along the east side of Quail Meadow Village - Phase 1 to the centerline of Lebanon Road;

THENCE South 89°37'14" West, approximately 1154.81 feet along the centerline of Lebanon Road to the POINT OF BEGINNING and CONTAINING 20.64 acres of land, more or less.

Basis of Bearing: Deed to Lebanon Development 180 Joint Venture, Document Number 2010-57591 and Plat "Quail Meadow Village - Phase 1" Document Number 2001-R0132619

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

C&P Engineering, Ltd. by

_____

Thomas C. Holland *date*
Registered Professional Land Surveyor
Texas Registration No. 2036

Exhibit "A"
Z11-0010

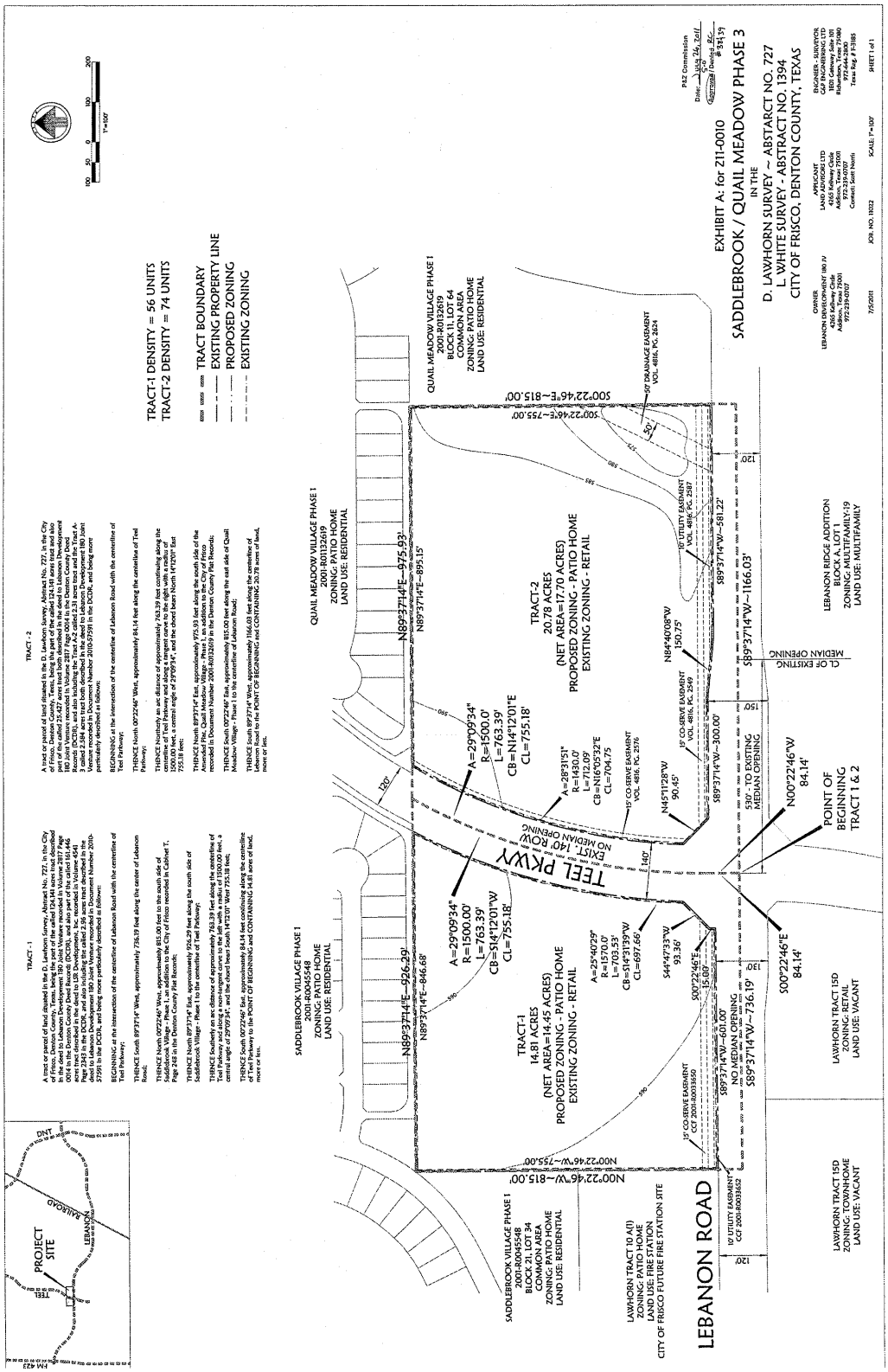
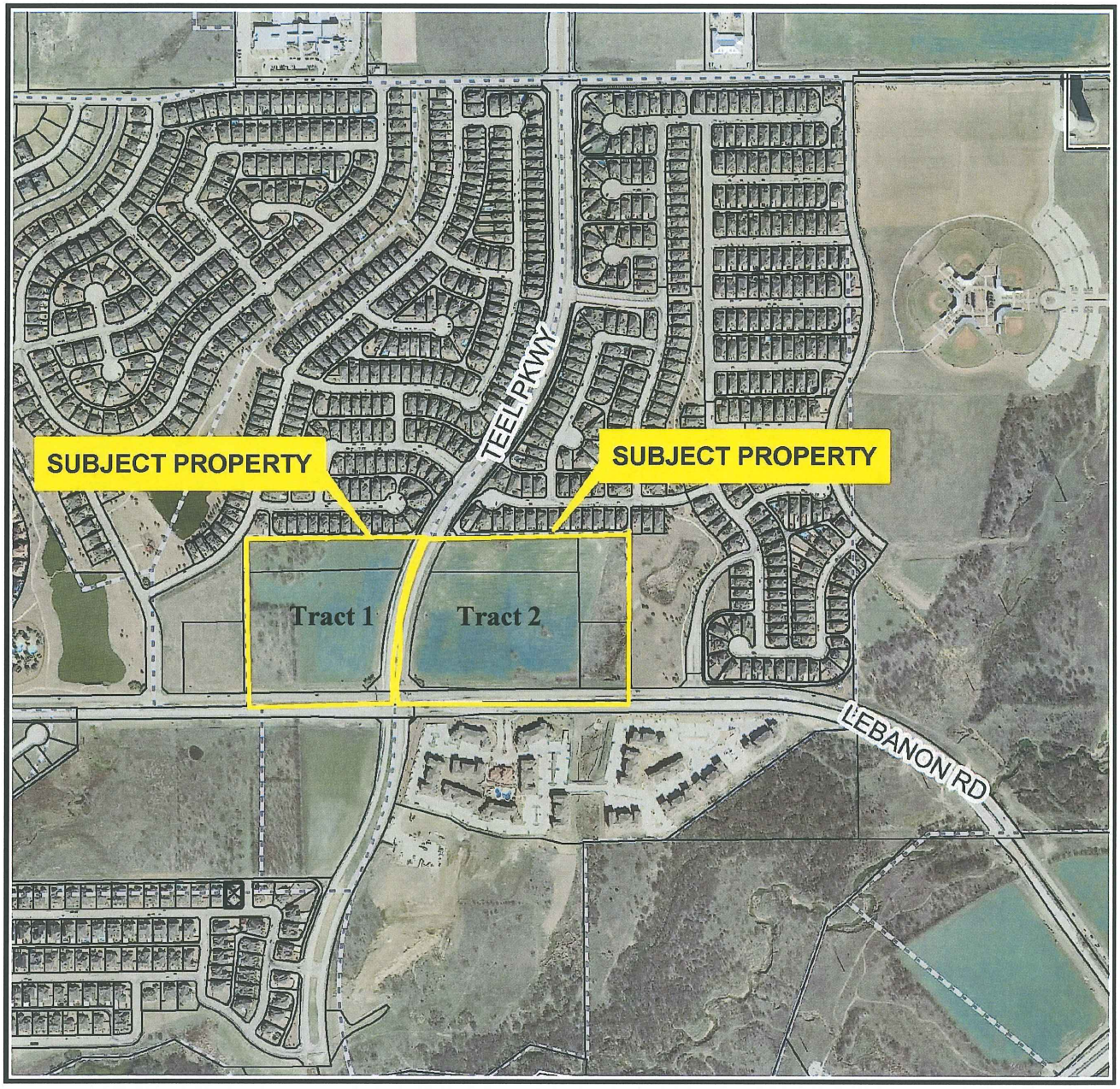


Exhibit "A-1"
Z11-0010



AGENDA ITEM #24.

DEVELOPMENT SERVICES

GEORGE A. PUREFOY MUNICIPAL CENTER
6101 FRISCO SQUARE BLVD · 3RD FLOOR
FRISCO, TEXAS 75034
TEL 972.292.5300 · FAX 972.292.5388
WWW.FRISCOTEXAS.GOV

To: **Honorable Mayor and City Council Members**

Thru: **George Purefoy, City Manager**
John Lettelleir, AICP, Director of Development Services

From: **Greg Carr, Code Enforcement & Animal Control Administrator**

Date: **September 6, 2011**

Subject: **Consider and act upon the adoption of an ordinance establishing a voluntary pet license/registration program.**

Action Requested: City Council approval of an ordinance establishing a voluntary pet license/registration program.

Background Information: The City Council discussed the voluntary pet registration program at the August 16, 2011 meeting. Staff was directed to return with an ordinance and resolution to contract with PetData for the administration of the program.

A separate action requesting the approval of a resolution authorizing the City Manager to execute an agreement for pet registration services with PetData has been submitted.

A couple of additional items were discussed at the August Council meeting. These included;

- How the program would be implemented for the least impact on our residents.
- Fees structured for pets that have been altered or have a microchip.
- Further information on how the program would be marketed.

Implementation

To lessen the impact on our residents that have their pets impounded at the Collin County Animal Shelter we have staggered the impound surcharge. Doing so should make it easier on residents initially and gradually increase the surcharge as more time passes and residents can get fully educated on the program.

Impound Surcharge Fee

Beginning October 1, 2011	$25.00
Beginning April 1, 2012	$50.00
Beginning October 1, 2011	$75.00

Exemption: A pet that is impounded, and it is determined that the pet is registered, shall be exempt from any impound surcharge fees.

Fees

The fee structure is set up to promote responsible pet ownership with minimal impact on residents. Fees are lower for pets that have been sterilized and/or microchipped. There is no charge for senior citizens and disabled residents.

FEES	1 Year		3 Year	
	Dog	Cat	Dog	Cat
Non Microchipped / Non Spayed or Neutered Pet	$7.50	$7.50	$20.00	$20.00
Microchipped but not Spayed or Neutered Pet	$6.25	$6.25	$16.00	$16.00
Microchipped and Spayed or Neutered Pet	$5.00	$5.00	$12.50	$12.50
Senior Citizen (Over 65)	$0.00	$0.00	$0.00	$0.00
Replacement tag	$5.00	$5.00	$5.00	$5.00

Marketing

A marketing plan is attached to describe how we will educate the public regarding the program.

Board Review/Citizen Input:

Meetings with local veterinarians were held on September 2, 2010.

Reviewed (2011) with a group of citizens involved with animal issues within the City of Frisco consisting of:

- Jim Joyner, DVM;
- Erin Shults, DVM, Mazies Mission rescue;
- Julie Wilson, President of Frisco Humane Society;
- Sarah Perham, President of Frisco Dog Park, Inc.

The above group supports the voluntary pet registration program as presented.

DEVELOPMENT SERVICES

GEORGE A. PUREFOY MUNICIPAL CENTER
6101 FRISCO SQUARE BLVD · 3RD FLOOR
FRISCO, TEXAS 75034
TEL 972.292.5300 · FAX 972.292.5388
WWW.FRISCOTEXAS.GOV

Alternatives: City Council could:

- Approve as submitted;
- Approve with conditions;
- Table for further consideration; or
- Deny.

Financial Considerations: Funds are budgeted for FY2010/2011 for tags and the initial setup fee. PetData receives their fee from registrations so the City does not incur ongoing costs to administer the program.

There is no anticipated adverse financial impact in future fiscal years relative to this ordinance. Petdata Corporation does require a minimum of 900 animal registrations per year. That equates to $3,465. Staff believes that the minimum number of animal registrations can be met. There is a $1,000 one-time set up fee.

A graduated $75.00 surcharge would need to be approved for animals impounded at the Collin County Animal Shelter.

The program is voluntary.

Legal Review: The City Attorney's office has prepared the ordinance.

Supporting Documents:

- Ordinance
- Marketing Plan

Recommendation: Staff recommends approval.

CITY OF FRISCO, TEXAS **ORDINANCE NO. _____**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, AMENDING THE FRISCO CODE OF ORDINANCES BY AMENDING SECTION SECTION 14-7 (DOMESTIC DOG, DOMESTIC CAT AND DOMESTIC FERRET REGISTRATIONS) AND 14-14 (IMPOUNDMENT FEES) OF CHAPTER 14 (ANIMALS) OF THE FRISCO CODE OF ORDINACES; ADOPTING NEW REGULATIONS FOR THE VOLUNTARY LICENSING OF DOMESTIC DOGS AND CATS; ADOPTING AN IMPOUNDMENT ADMINISTRATIVE FEE; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas ("City Council") has investigated and determined that it would be advantageous and beneficial to the citizens of the City of Frisco, Texas (the "City") to amend Section 14-7 (Domestic Dog, Domestic Cat and Domestic Ferret Registration) of Chapter 14 (Animals) of Frisco's Code of Ordinances as set forth below; and

WHEREAS, the City Council seeks to promote the health, safety and general welfare of the community within the City limits; and

WHEREAS, City staff expends considerable time and resources locating and retrieving lost, unaccompanied or dangerous dogs and cats within the City ("Animals"), pursuant to Chapter 14, and transporting them to the Collin County Animal Shelter; and

WHEREAS, City staff has investigated and determined that a voluntary pet registration program within the City would provide considerable cost and time savings when the Animals are found by the City staff; and

WHEREAS, Section 14-7 (Domestic Dog, Domestic Cat and Domestic Ferret Registrations) provides City staff the ability to enforce regulations relating the licensing of dogs and cats; and

WHEREAS, Section 14-14 (Impoundment Fees) currently authorizes the City to collect a fee based upon the fee set forth by the City's authorized animal shelter agent(s); and

WHEREAS, City staff has investigated and determined that the fee authorized by Section 14-14 does not adequately or reasonably recover the cost of the City's location, retrieval and transportation of Animals; and

WHEREAS, pursuant to V.T.C.A, Health and Safety Code Section 826.031, the City Council has authority to adopt regulations allowing for the registration of dogs and cats and to

collect a fee for the registration of each dog or cat; and

WHEREAS, the fees adopted by this ordinance help defray a portion of the cost of administering the provisions of this ordinance; and

WHEREAS, the City Council has investigated and determined that it is in the best interests of the citizens of the City of Frisco to adopt this ordinance providing for the voluntary licensing of any dog or cat within the City, through the use of a license tag, and adopt an impoundment administrative fee to aid in recovering the costs attributed to enforcing Chapter 14.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1. Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. Amendment to Section 14-7 (Domestic dog, domestic cat, and domestic ferret) of Chapter 14 (Animals) of Frisco's Code of Ordinances. Section 14-7 (Domestic dog, domestic cat, and domestic ferret) of Chapter 14 (Animals) of Frisco's Code of Ordinances is amended to read as follows:

"**Sec 14-7. Domestic Dog and Domestic Cat License.**

(a) License Requirements.

(1) A license is voluntary.

(2) Effective date of this Section shall be October 1, 2011.

(b) Licensing Authority and Participating Veterinarians.

(1) Licenses under this Section may be issued by:

a. The City's animal control administrator (the "animal control administrator"); or
b. A veterinarian who is licensed by the State of Texas, who treats dogs and cats, and who submits a written request to the animal control administrator of their desire to issue licenses under this Section and executes an indemnity agreement in a form approved by the City, or a person and/or entity so authorized in an agreement approved by the City Council, which includes an indemnification provision (the "license authority").

(2) License Authority. The license authority shall comply with all local, state, and federal laws. The license authority shall strictly comply with this Section and any written Agreements between the City and license authority regarding licensing of dogs and cats.

(3) Participating License Authority. The animal control administrator shall provide the participating licensing authorities with the applicable forms and tags to administer the licensing regulations of this Section. Participating licensing authorities shall:

a. Issue licenses and distribute license tags only to persons who meet the requirements set forth in this Section;
b. Collect the license fee for each animal issued a license and shall not charge an animal's owner a price which is greater than or less than the applicable fees established by City Council ordinance;
c. The licensing authority may charge a convenience fee for issuing a license not to exceed five dollars ($5.00). A convenience fee may not be imposed if only forms are being supplied and the license authority is not issuing tags or collecting money.
d. Send to the animal control administrator (or the licensing authority if so designated by the animal control administrator), full payment of collected license fees, a copy of the application, a copy of the license, and any other information deemed necessary by the animal control administrator. Such payment and information shall be sent by the participating licensing authority no later than the sixth (6^{th}) day of the month following the month in which the license was issued. The same is required for replacement tags issued under this Section;
e. Assume full responsibility for the secure and proper handling of all license tags issued to him/her by the animal control administrator, and shall be responsible for contacting the animal control administrator to receive additional tags prior to their supply running out;
f. Comply with all local, state, and federal laws;
g. Keep thorough and secured records of applications filed, licenses issued, licenses denied, rabies vaccination records, and tags at the participating licensing authorities place of business;
h. Allow the animal control administer to inspect, at reasonable times, all license records, rabies vaccination records, and tags on hand at the participating licensing authorities business location; and
i. Assist the City in collecting information and providing copies of records and other documents, if so required by the law.

If a participating licensing authority fails to comply with the procedures and requirements set forth in this Section, the participating licensing authority shall be deemed in violation of this Ordinance and shall automatically forfeit his/her ability to administer and issue licenses under this Section. The City also reserves the right to seek any remedies, available by law, against the participating licensing authority.

(c) Application for License and Fees.

(1) Application. Application for a dog or cat license shall be submitted to the City's animal control administrator or license authority. Incomplete applications shall not be accepted. A complete application shall include the following:

a. The name, telephone number, and address of the owner of the dog or cat;
b. A description of the animal, including name, breed, color, gender, and age;
c. Full payment of the pet licensing fee, as established by City Council ordinance;
d. A currently valid rabies certificate issued by a licensed veterinarian showing that said dog or cat has been vaccinated within the preceding twelve (12) months for animals being registered for a twelve (12) month period or thirty-six (36) months for animals being registered for a thirty-six (36) month period;
e. If the animal is sterilized, a certificate by a veterinarian or other clear and convincing evidence that the animal has, in fact, been sterilized; and
f. If the animal is micro-chipped, a certificate or other evidence establishing the animal's microchip identification number and registration bank.

(2) Pet licensing fee.

FEES	1 Year		3 Year	
	Dog	Cat	Dog	Cat
Non Microchipped / Non Spayed or Neutered Pet	$7.50	$7.50	$20.00	$20.00
Microchipped but not Spayed or Neutered Pet	$6.25	$6.25	$16.00	$16.00
Microchipped and Spayed or Neutered Pet	$5.00	$5.00	$12.50	$12.50
Senior Citizen (Over 65)	$0.00	$0.00	$0.00	$0.00
Replacement tag	$5.00	$5.00	$5.00	$5.00

(d) Replacement Tags. In the event of loss or destruction of a license tag, replacement tags shall be available from the animal control administrator or license authority for the payment of a replacement fee as set forth as established by City Council ordinance, upon satisfactory proof that the dog or cat in question was properly licensed.

(e) Issuance of License.
Upon receipt of a complete application, the animal control administrator or license authority will approve the license and furnish a numbered license tag for each licensed pet. Such license tag shall be worn by the animal to evidence the issuance of the city license. The license tag shall be valid for so long as the animal's license remains valid. The City, or the license authority shall maintain a record of all licenses issued under this Section, which shall show the name and address of each person issued a license, the number of the license tag furnished, a description of the dog or cat for which the license is issued, the date of issuance, the fee paid, the place of issuance, the type of rabies vaccine administered, and the date of inoculation.

(f) Denial of License.
The animal control administrator and/or the license authority shall deny a license if owner failed to submit a complete application or if the animal control administrator or license authority has knowledge that a reason for revocation of the license exists. If a license is denied, a written notice of the action shall be sent to the Owner explaining the reasons for denial. Notice shall be sent by depositing a certified letter, return receipt requested, in the United States mail and addressed to the last address provided by the owner on his/her license application.

(g) Expiration of License.
Each license shall expire upon the first occurrence of any of the following:

(1) The 30th day next following the expiration of one (1) year from the date of issuance if the pet received a one (1) year rabies vaccination;
(2) The 30th day next following the expiration of three (3) years from the date of issuance if the pet received a three (3) year rabies vaccination;
(3) The death of the animal;
(4) The 30th day next following any change of ownership of the animal, unless the license has been amended by that date;
(5) The 30th day next following any change of the address of the animal's owner unless the license has been amended by that date with current address information; and
(6) The 30th day next following the expiration of any rabies vaccination."

SECTION 3. Amendment to Section 14-4 (Impoundment Fees) of Chapter 14 (Animals) of Frisco's Code of Ordinances. Section 14-4 (Impoundment Fees) of Chapter 14 (Animals) of Frisco's Code of Ordinances is amended to read as follows:

" Sec. 14-14. –Impoundment fees.

Impoundment fees for animals impounded shall be published and determined by the City of Frisco.

…

(8) Impound Administrative Fee:

Animals that are impounded by the City of Frisco at the Collin County Animal Shelter shall be charged an administrative fee.

Impound Administrative Fee

Beginning October 1, 2011	$25.00
Beginning April 1, 2012	$50.00
Beginning October 1, 2010	$75.00

Exemption: A pet that is impounded, and it is determined that the pet is registered pursuant to Sec. 14-7, shall be exempt from any impound administrative fees."

SECTION 4. Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 5. Severability. Should any section, subsection, clause or phrase of this Ordinance be declared unconstitutional or invalid by any court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full for force and effect. Frisco hereby declares that it would have passed this Ordinance, and each section, subsection, clauses and phrases be declared unconstitutional or invalid.

SECTION 6. Effective Date. This Ordinance shall be effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this _____ day of _____, 2011.

_____
Maher Maso, Mayor

ATTESTED AND CORRECTLY RECORDED

_____
Jenny Page, City Secretary

APPROVED AS TO FORM:

_____
Abernathy, Roeder, Boyd & Joplin, PC
Courtney A. Kuykendall, City Attorneys

Date(s) of publication: _____ *Frisco Enterprise*

FRISCO

PROGRESS IN MOTION

Marketing Plan:
Voluntary Pet Registration Program



1. Introduction

The City of Frisco Voluntary Pet Registration Program is a new program designed to help get pets back to their owners faster and reduce city costs.

Since the program is a new voluntary program, it is necessary to develop a marketing plan to get the word out to our residents.

A lot of thought has gone into the best methods that can be used to encourage participation in the program and how the program will be marketed.

The following information describes the methods that staff has developed to promote and market the program.

2. Goals

The primary goal of Voluntary Pet Registration Program is to:

- Get pets returned to their owners

The primary goal of the marketing plan is to:

- Educate the public about the new program

3. Promotional Incentives

Since the pet registration program is a voluntary program. It has been decided that providing incentives is a vital component of the marketing plan. Listed below are items that will be used to market the program.

Coupons

Coupons will be sent to residents that register their pets. We have received commitments from Petco® and 1800 Pet Meds®. Contact will be made with other vendors that want to provide discount coupons. Vendor information has been provided by Frisco Dog Park, Inc. as well as the Frisco Humane Society. We feel that there will be a high degree of participation from vendors.



Safety Window Clings

To help first responders to a residential emergency, residents that register their pets in the program will receive a pet rescue window cling. This pet rescue alert clings will inform rescue personnel that there are pets in the home.



4. Marketing Program Strategy and Tactics

It is important to get the word out about the program so that residents know about the program, how they can participate, and what the benefit of the program is. Listed below are the primary means that we plan to use to educate our residents on the program.

Events

One of the primary "one on one" contact available to staff is through participation at public events. Some of these are events have been events that Animal Control Staff attend for public relations. Public education is a component that Animal Control is receiving greater emphasis.



Events that offer an opportunity for Animal Control to interact with the public are;

Opening of Dog Park	Oct 3, 2011
Barktoberfest	Possible October Date
Lonestar Story Telling Festival	Oct 15, 2011
Fall Festival at Frisco Safety Town	Oct 28, 2011
Community Parade	Nov 12, 2011
Marry Main Street	Dec 3, 2011
Safety Palooza	TBD
Fido 5K	TBD
Rover Rally	TBD
Frisco Freedom Fest	TBD

Advertising and Press campaign

Information regarding the voluntary pet registration program will be distributed through normal Public Information Officer (PIO) channels. In addition, we will utilize a number of other mediums to help get the word out.

Possible media outlets include:

Press Release through Public Information Officer

City Website

Frisco Cable Channel

Frisco Focus

Heard from the Curb

E-News List Serv

Frisco Style Magazine

HOA Newsletters and Websites



School Participation

A method that has proven to be very effective in communicating Animal Control initiatives and safety concerns is to partner with Frisco Independent School District.

Potential school activities include coloring contests or bookmarks.

Merchants cooperation

We will utilize local merchants to post posters promoting the program. The primary merchants will be pet related businesses and veterinarians.

Veterinarians will participate by advising residents of the program and having postcards, brochures, flyers or posters.

Implementation Schedule

	2011				2012									
	S	O	N	D	J	F	M	A	M	J	J	A	S	O
Surcharge Dates	★ 10/1							★ 4/1					★ 10/1	
Press														
Press release through PIO	✦													
Frisco Cable Channel			✦											
Frisco Focus			✦											
Heard from the Curb								✦						
E-News List Serv	✦					✦								
Frisco Style Magazine				✦										
HOA Newletters and websites	✦					✦			✦					
Events														
Dog Park Opening	▼													
Barktoberfest		▼												
Storytelling Festival		▼												
Fall Festival @ Safety Town			▼											
Community Parade			▼											
Merry Main Street				▼										
Local Promotion (Businesses)	▶			◀		▶			◀			▶		◀
Schools								▶ - - ▶						

Sample Promotional Material



Sample Postcard





Sample Poster



Sample Banner for events

AGENDA ITEM #25.

PLANNING & DEVELOPMENT
SERVICES DEPARTMENT

CITY OF FRISCO

GEORGE A. PUREFOY MUNICIPAL CENTER
6101 FRISCO SQUARE BLVD · 3RD FLOOR
FRISCO, TEXAS 75034
TEL 972.292.5300 · FAX 972.292.5388
WWW.FRISCOTEXAS.GOV

To: **Honorable Mayor and City Council Members**

Thru: **George Purefoy, City Manager**
John Lettelleir, AICP, Director of DevelopmentServices

From: **Greg Carr, Code Enforcement & Animal Control Administrator**

Date: **September 6, 2011**

Subject: **Consider and Act Upon Approval of a Resolution Authorizing the City Manager to Execute an Agreement for pet registration services with PetData Corporation.**

Action Requested: City Council approval of a resolution authorizing the City Manager to execute an agreement for pet registration services with PetData Corporation.

Background Information: The adoption of a pet license/registration program will require administration of the program. As part of our ongoing effort to improve staff productivity and service to our residents, the proposed contract outsources pet license/registration services. This service will allow pet owners the convenience of licensing/registering their pets on-line, while enhancing and strengthening the City's voluntary animal licensing/registration program. Additionally, outsourcing pet registration would allow Animal Control staff to focus on operational duties.

Under the proposed agreement, PetData, Inc. will be responsible for collecting license/registration fees from residents. A detailed monthly report will be submitted to the City that will itemize each license sold. Each month, PetData, Inc. will provide a detailed monthly report and net revenue to the City.

This web-based service is only available from PetData, Inc. of Irving, Texas. Therefore, the purchase is exempt from the competitive bidding statutes in accordance with the Texas Local Government Code, Section 252.022(a)7 as sole-source procurement. PetData, Inc. has numerous accounts throughout the country and several in Texas including the cities of Arlington, Highland Park, Houston, Irving, Plano, University Park, and Southern Brazoria County in Texas. Reference checks regarding the service have been positive.

Section 826.0311 (b) of the Texas Health and Safety Code provides that a governmental entity may contract with a company, for purposes of providing an animal licensing and registration program, for purposes related to the protection of public health and safety. Additionally, licensing and registration information related to the owner of an animal may only be disclosed by a governmental entity to a contacted company. The contracted company that receives the information must maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for purposes that do not directly relate to the protection of public health and safety.

Contract term: 3 years

Board Review/Citizen Input: Meetings with local veterinarians were held on September 2, 2010.

Alternatives: City Council could choose not to approve this resolution at this time.

Financial Considerations: Funds are budgeted for FY 11 for tags and the initial setup fee. PetData receives their fee from registrations so it doesn't cost the city any ongoing costs to administer the program.

Legal Review: Legal has reviewed.

Supporting Documents:

Resolution
PetData Bid
PetData contract
PetData Confidentiality and Privacy Policies

Recommendation: Approve resolution allowing PetData Corporation to administer a pet licensing program for the City.

CITY OF FRISCO, TEXAS RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS HEREBY AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT BY AND BETWEEN THE CITY OF FRISCO, TEXAS, AND PETDATA INC, FOR PET REGISTRATION SERVICES.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: The City Manager of the City Frisco, Texas is hereby authorized to execute, on behalf of the City Council of the City of Frisco, Texas, the contract by and between the City of Frisco, Texas, and PetData Inc a copy of which is attached hereto and incorporated herein for all purposes.

SECTION 2: This Resolution shall take effect immediately upon its passage.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this 6th Day of September, 2011.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page, City Secretary

AGREEMENT FOR ANIMAL LICENSING SERVICES

This Agreement for Animal Licensing Services (the "Agreement") is made and entered into by and between the City of Frisco, Texas, a home rule municipality ("FRISCO") and PetData, Inc., a Texas corporation ("CONTRACTOR"), as of the date set forth below ("Commencement Date").

1. DESCRIPTION OF WORK

For the consideration set forth below, CONTRACTOR shall provide to FRISCO certain animal licensing services described in Exhibit A attached hereto and incorporated herein by reference. The Services are to be performed in a good and workmanlike manner subject to the terms of this Agreement.

FRISCO represents to CONTRACTOR that all historical data, consisting of licenses older than ninety days, has been entered into FRISCO'S database and is available in a readily importable format. Furthermore, CONTRACTOR may be provided with remaining animal licensing supplies by FRISCO, and if so, CONTRACTOR shall assume responsibility for the reasonable cost of shipping said supplies.

2. INDEPENDENT CONTRACTOR STATUS

It is the express intention of the parties that CONTRACTOR is an independent contractor and not an employee, agent, joint venturer or partner of FRISCO. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between FRISCO and CONTRACTOR or any employee or agent of CONTRACTOR. Both parties acknowledge that CONTRACTOR is not an employee for state or federal tax purposes. CONTRACTOR shall not be entitled to any of the rights or benefits afforded to FRISCO'S employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick leave, retirement benefits or any other employment benefits. CONTRACTOR shall retain the right to perform services for others during the term of this Agreement.

3. OVERSIGHT AND COORDINATION

All Services under this Agreement shall be in full compliance with this Agreement and coordinated under, and performed to the reasonable satisfaction of the City Manager of FRISCO or his or her designated representative.

4. CONTRACTOR ACKNOWLEDGMENT

CONTRACTOR acknowledges that, prior to signing this Agreement, CONTRACTOR has become acquainted with matters relating to the performance of this Agreement and the terms and conditions of this Agreement. However, CONTRACTOR shall determine the method, details and means of performing the above-described Services and FRISCO shall have no right to, and shall not, control the matter or determine the method of accomplishing CONTRACTOR's services. CONTRACTOR shall perform the services required by this Agreement at any place or

location and at such times as CONTRACTOR shall determine is necessary to properly and timely perform CONTRACTOR's services.

5. FEES

A. Base Fees

CONTRACTOR shall receive base fees as follows:

1) One-year Licenses or Replacement Tags: $3.85 for each license or replacement tag for all licenses issued and/or processed by CONTRACTOR, FRISCO, veterinarians, and any other authorized registration agents during the term of this Agreement .

2) Multi-year Licenses: $3.85 for each license issued and/or processed by CONTRACTOR, FRISCO, veterinarians, and any other authorized registration agents during the term of this Agreement plus $2.00 for each additional year, after year one, on the multi-year license.

3) $2.50 Collection Service Fee for each late fee collected during the term of this Agreement, if applicable.

4) FRISCO agrees to pay for 900 licenses per year or the actual number of licenses issued, whichever is greater. CONTRACTOR will bill on a quarterly basis for the greater of 225 licenses or the actual number of licenses issued. In the event that FRISCO licenses more than 225 animals in a quarter, the licenses in excess of 225 will be applied toward the minimum for the next quarter(s) during that 12-month period.

B. Start-Up Fee

In addition to the Base Fee, FRISCO shall pay CONTRACTOR a $1,000, one-time only, "Start-Up Fee". The Start-Up Fee is due upon execution of the contract by FRISCO. There are no Start-Up Fees for term extensions and/or renewals.

C. Postal Surcharge

In addition to the Base Fee and in the event that the United States Postal Service increases its postage rates during the term of this contract in a manner that affects CONTRACTOR'S cost to provide service to FRISCO, both parties agree that CONTRACTOR'S fees may be adjusted to compensate CONTRACTOR for actual increased costs. CONTRACTOR will notify FRISCO thirty days prior to the date that the increase will go into effect.

D. Additional Service Fees

The following fee(s) will only apply if services are requested by FRISCO.

1) Cost of Separate Account: In the event that FRISCO requests that CONTRACTOR establishes and/or maintains a separate bank account on behalf of FRISCO, FRISCO will be responsible for the actual cost of the bank account. Any bank fees will be paid directly by CONTRACTOR and CONTRACTOR will be reimbursed for those fees on a monthly basis. FRISCO can request copies of the bank statements at any time and CONTRACTOR will provide bank statements within five business days after requests are received by CONTRACTOR.

2) Bank Deposit Mailing Fees: In the event that CONTRACTOR is required to deposit money into an FRISCO bank account other than at a local branch in Irving, TX, the actual cost to mail, deliver or courier the deposits to ANIMAL SERVICE'S bank will be added to the invoice submitted to FRISCO.

3) Postal Box/Mail Forwarding Fee: In the event that FRISCO requests CONTRACTOR to establish a local post office box for mail collection and forwarding, FRISCO will be billed for the actual costs of mail box rental, mail forwarding and postage fees.

4) Supply Fee: In the event that FRISCO requests changes to supplies which it has previously approved, FRISCO will be responsible for the actual costs associated with changing, replacing or discontinuing the use of the previously approved supplies.

5) Lock Box Fees: In the event that FRISCO utilizes a lockbox, the actual fees and costs associated with the lockbox, including the cost to forward mail to CONTRACTOR from a lockbox, shall be borne solely by FRISCO.

E. Charges to Licensee

1) For purposes of this Agreement "Licensee" shall be defined as a person who obtains an animal license during the Term of this Agreement. For purposes of this Agreement, FRISCO agrees that CONTRACTOR may charge the following fees to Licensees.

A One Dollar Ninety-five Cent ($1.95) Online Transaction Fee. This fee may be charged for each on-line transaction engaged in by a Licensee.

2) If CONTRACTOR establishes a depository account on behalf of FRISCO, CONTRACTOR shall be entitled to charge a cost-recovery fee of no more than twenty-five dollars ($25.00) to any Licensee who submits a check or payment which is not valid or otherwise returned for any reason.

6. ADDITIONS/DELETIONS OF SERVICE

FRISCO reserves the right to add and/or delete services to this Agreement subject to CONTRACTOR'S approval. Should additional services be required from this Agreement, prices for such additions will be negotiated between the CONTRACTOR and FRISCO. Should a service requirement be deleted from this Agreement, no adjustments for such deletions will be made, unless such deletion of services is requested by CONTRACTOR.

7. REPORTS

Within 15 business days after the end of each calendar month during the term hereof, CONTRACTOR shall submit an animal licensing summary report to FRISCO showing _____. The format of the report is to be mutually agreed upon and may be transmitted electronically or by any other means.

8. PAYMENT

CONTRACTOR shall submit an invoice with supporting documentation to FRISCO within 15 business days after the end of a billing period, which is generally defined as a calendar month. FRISCO will pay contractor within fifteen business days via wire transfer or ACH. In the event that CONTRACTOR collects any payments directly via credit card transactions, these payments will be shown on the invoice and deducted from the amount due by CONTRACTOR.

9. TERM

The initial term of this Agreement shall commence on the Commencement Data and shall expire on the third Anniversary of said Commencement Data unless this Agreement is sooner terminated in accordance with the other provisions of this Agreement. Two twelve-month renewal options, at the then-prevailing market rates, may be exercised based on the mutual written agreement of both CONTRACTOR and FRISCO.

IMPORTANT: TRANSITION PHASE

CONTRACTOR plans to begin processing licenses 60 days after the date that the contract is executed provided that the following requirements are met by FRISCO.

1. *CONTRACTOR requires that* FRISCO *provide historical license data files ("Data") within 5 business days from the date that the contract is executed.*
2. *In addition, CONTRACTOR requires certain supplies, data, feedback, process information and approvals for such items as form designs ("Deliverables") in order for CONTRACTOR to begin servicing this contract in a timely manner. Deliverables will be requested throughout the 60-day transition phase. CONTRACTOR requests that FRISCO provide Deliverables within 5 business days from date of request.*

Any delays in providing Deliverables will result in delays in implementing this contract. Representations made in Exhibit A, "Scope of Services" with regards to processing time for data

entry and tag mailings are contingent upon all Deliverables being provided to CONTRACTOR in a timely manner.

10. PERMITS

CONTRACTOR shall obtain the necessary permits(s), if any, required by FRISCO or its governing ordinances for the performance of the Services. FRISCO agrees to provide CONTRACTOR with a list of any and all such permits and to work with CONTRACTOR in good faith to aid it in obtaining any such permits in a timely fashion.

11. DATA OWNERSHIP & DATA TRANSFER

CONTRACTOR agrees that it will not use personal data collected on behalf of FRISCO for any purposes other than for the performance of the Services and other purposes under this Agreement without the consent of FRISCO except as provided in the Agreement or as required by law.

Furthermore, CONTRACTOR specifically agrees that it will not intentionally sell, transfer, or release personal data it has collected in fulfilling the terms of this Agreement to any third party.

Additionally, CONTRACTOR agrees that any intentional sale, transfer or release of animal licensing data represents an event of default and FRISCO has the right to terminate this contract.

In the event that this Agreement is terminated in accordance with Section 15: Termination, CONTRACTOR agrees to return and/or transfer all animal licensing data to FRISCO withing ten (10) days after receiving payment in full at the completion of the final term of this Agreement. CONTRACTOR will provide licensing data to FRISCO in a format that is reasonably acceptable to both parties.

12. INDEMNITY

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTORAGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CUSTOMER AND ITS OFFICERS, COUNCIL MEMBERS, REPRESENTATIVES, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CUSTOMER" FOR PURPOSES OF THIS SECTION) FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES, INJURIES (INCLUDING DEATH) LIABILITIES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF DEFENSE) ARISING DIRECTLY OR INDIRECTLY FROM ANY BREACH BY CONTRACTOR OF ANY OF THE PROVISIONS OF THIS AGREEMENT OR THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CONTRACTOR OR ANY PERSON FOR WHOM CONTRACTOR IS RESPONSIBLE UNDER THE TERMS OF THIS AGREEMENT. HOWEVER, CONTRACTOR SHALL NOT BE REQUIRED TO INDEMNIFY CUSTOMER UNDER THIS SECTION TO THE EXTENT OF ANY LOSS, DAMAGE, EXPENSE OR LIABILITY ARISING OUT OF THE NEGLIGENCE, WILLFUL MISCONDUCT OR BREACH OF THIS AGREEMENT BY CUSTOMER. SUBJECT TO THE ABOVE PROVISIONS, THIS INDEMNIFICATION PROVISION IS ALSO SPECIFICALLY

INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CUSTOMER BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT ON BEHALF OF CONTRACTOR THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONTRACTOR AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONTRACTOR, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

CUSTOMER SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL, SUCH COUNSEL TO BE REASONABLY ACCEPTABLE TO BOTH PARTIES, TO BE RETAINED BY CONTRACTOR AT A REASONABLE COST IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CUSTOMER, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CUSTOMER IN WRITING. CUSTOMER RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CUSTOMER IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CUSTOMER IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CUSTOMER OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CUSTOMER PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN CUSTOMER-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CUSTOMER'S WRITTEN NOTICE THAT CUSTOMER IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CUSTOMER SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY CUSTOMER.

THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

13. <u>COMPLIANCE WITH CODES</u>

CONTRACTOR shall, during the performance of the Services, comply with all codes and ordinances, as amended, applicable to the performance of the Services.

14. INSURANCE REQUIREMENTS

In addition to any other obligations under this Agreement, CONTRACTOR shall, at no cost to FRISCO, obtain and maintain throughout the term of this Agreement: (a) Commercial Liability Insurance with a minimum combined single limit coverage of $1,000,000 per occurrence for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof; (b) Workers' Compensation coverage as required by the State of Texas; (c) Employee Dishonesty coverage with limits of $50,000. As a condition precedent to FRISCO'S obligations under this Agreement, CONTRACTOR shall furnish evidence of such coverage and requiring forty-five (45) days written notice of policy lapse or cancellation, or of a material change in policy terms**.**

15. TERMINATION

FRISCO may, at its option and without prejudice to any other remedy it may be entitled by law or in equity, or elsewhere under this Agreement, terminate further work under this Agreement due to a material default by CONTRACTOR in the performance of the Services under this Agreement, *but if and only if* CONTRACTOR fails to cure the default within thirty (30) days after being given written notice of such default by FRISCO.

Notwithstanding anything to the contrary, either party to this Agreement may terminate this Agreement upon providing sixty (60) days written notice to the other party.

In the event of termination, CONTRACTOR will be paid for those licenses that are in process at the time this Agreement expires or as of the effective date of the termination, but CONTRACTOR will not be paid for any licenses that are not already in process after the term of the Agreement.

16. UNFORESEEN CIRCUMSTANCES

CONTRACTOR shall not be responsible for any delay or omission caused by natural disaster, war, civil disturbance, labor dispute or other cause beyond CONTRACTOR's reasonable control, provided CONTRACTOR gives written notice to FRISCO of the cause of the delay or omission within ten (10) days after the occurrence of the event causing such delay or omission.

17. RIGHT TO AUDIT

FRISCO, through its authorized employees, representatives or agents, shall have the right, at any and all reasonable times, during the term of this Agreement and for a period of three years following the term of this Agreement to audit the books and records of CONTRACTOR at CONTRACTOR'S place of business for the purpose of verifying any and all charges made by CONTRACTOR in connection with this Agreement. CONTRACTOR may elect to maintain books, records and documents in an electronic format, in a database, on paper, or a combination of the aforementioned. After the termination of the contract, paper records and supporting documents will either be shipped to FRISCO or destroyed, at FRISCO'S option, at FRISCO'S expense. Records that relate to any litigation, appeals, or settlements of claims arising from performance under this Contract shall be made available until a final disposition has been made of such litigation, appeals, or claims.

18. NOTICES

Any notice, payment, statement, or demand required or permitted to be given hereunder by either party to the other shall be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three days after mailing.

Notices for FRISCO shall be addressed to:

Animal Control
City of Frisco
6101 Frisco Square Blvd
Frisco, Texas 75034

Notices for CONTRACTOR shall be addressed to:

Chris Richey, President
PetData, Inc.
PO Box 141929
Irving, TX 75014-1929

19. MISCELLANEOUS

A. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue shall be in Collin County, Texas.

B. Entire Agreement

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties relating to matters herein; and except as otherwise provided herein, cannot be modified without the written agreement of the parties.

C. Severability

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

D. Amendment & Modification

No amendments, modifications, alterations or changes to the terms of this Agreement shall be effective unless and until made in a writing signed by both parties hereto. Successors and Assigns

E. Successors and Assigns

This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

F. Attorneys' Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in accordance with Section 271.153 of the Texas Local Government Code, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

G. Conflict of Interest

CONTRACTOR certifies that to the best of its knowledge, no FRISCO employee or office of any public agency interested in this Agreement has any pecuniary interest in the business of CONTRACTOR and that no person associated with CONTRACTOR has any interest that would constitute a conflict of interest in any manner or degree as to the execution or performance of this Agreement.

H. Waiver

The parties agree that waiver by the other of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

I. Captions

The captions to the various clauses of this Agreement are for information purposes only and shall not alter the substance of the terms and conditions of this Agreement.

J. Authorization

Each of the parties represents and warrants to the other that this Agreement has been duly authorized by all necessary corporate or governmental action on the part of the representing party and that this Agreement is fully binding on such party.

K. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

L. Entire Agreement

This Agreement supersedes any and all prior agreements, whether oral or written, between the parties hereto with respect to the rendering of services by CONTRACTOR for FRISCO and contains all the covenants

and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

No other agreements or conversation with any officer, agent or employee of FRISCO prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Such other agreements or conversations shall be considered as unofficial information and in no way binding upon FRISCO.

EXECUTED by FRISCO and by CONTRACTOR as of the date set forth below.

FRISCO	**PETDATA, INC.**
By:_____ Authorized Official	By:_____ Authorized Officer
Date:_____	Date:_____

Exhibit "A" – Scope of Services

1. Manage the daily operations of animal licensing including the processing of licensing mail from pet owners, processing license sales and vaccination reports, entering licensing and vaccination data, providing customer service and depositing money.

2. Provide veterinarians and other authorized registrars with reasonable quantities of supplies (reporting forms, vaccination certificates, citizen mailing envelopes, etc.) necessary to sell license tags and/or report information on citizens vaccinating their animals against rabies to the Animal License Program. Supplies are to be printed in one color with the design and layout to be determined by PetData.

   CONTRACTOR is responsible for ordering license tags to CONTRACTOR'S specifications. The cost to purchase tags and to ship tags to CONTRACTOR and veterinarians and any authorized registrars will be paid directly by CONTRACTOR and CONTRACTOR will be reimbursed by FRISCO for the actual cost to purchase and to ship the tags.

3. Track monthly vaccination and/or sales reports from all veterinarians participating in animal licensing program and keep record of all tag inventories at authorized registrars. Provide this information to FRISCO as requested. Furthermore, CONTRACTOR will communicate directly with veterinarians as requested by FRISCO.

4. Enter all new and renewal licenses into PetData's proprietary database provided that all information has been submitted to PetData in a complete and accurate format.

5. Process and mail license tags within ten business days after receipt of the licensing payment and complete documentation as required by local ordinance.

6. Issue replacement tags to citizens whose license tags have been lost, stolen or damaged.

7. Process rabies vaccination certificates on behalf of FRISCO and mail notices to those pet owners who vaccinated their pet(s) against rabies, but did not purchase license(s).

8. Mail renewal and reminder notices to pet owners who have a prior license. Mailing timetables are to be mutually agreed upon.

9. Deposit all receipts collected for license fees, with the exception of those payments made via credit card, into a _____ bank account either at a local branch in Irving, TX or via overnight mail to a bank in _____. Mailing expenses associated with sending payments to FRISCO will be borne by FRISCO.

10. Provide a monthly report of animals licensed. Format of report is to be mutually agreed upon.

11. Provide statistical reports as requested within a timely manner. Depending on the information requested, PetData can provide most reports within five business days.

12. Provide access to licensing data online to appropriate personnel via PetData's proprietary website, PetAccess, at no additional charge.

13. Respond to and communicate with animal control officer inquiries or animal owners' requests in a timely fashion.

14. Communicate with citizens by phone, mail or email as needed.

15. Comply with all state and local laws governing animal licensing.

PetData
Animal Licensing Made Easy.

PetData Proposal

January 2010

Highlights

92% of PetData's contracts have been renewed since company was founded.

42% is the approximate increase in licensing after hiring PetData.

3,500,000 animal licenses have been processed by PetData.

Experience

PetData is the largest animal licensing organization in the U.S. and is the only private company currently providing turnkey animal licensing services to municipalities. Founded in 1994, PetData is a member of the Texas Animal Control Association, the Florida Animal Control Association and the National Animal Control Association. PetData currently administers animal licensing programs for thirty-one municipalities. PetData licensed approximately 440,000 animals in 2008 and expects to license close to 500,000 animals in 2009.

Our current customers include: Albuquerque, New Mexico; Antioch, California; Arlington, Texas; Charlotte, North Carolina; Coastal Animal Services, California; Cornelius, North Carolina; Culver City, California; Dubuque, Iowa; Fulton County, Georgia; Hernando County, Florida; Highland Village, TX; Houston, Texas; Irving, Texas; Kansas City, Missouri; Lakewood, Washington; Las Vegas, Nevada; Matthews, North Carolina; Montgomery County, Maryland; New Castle County, Delaware; Newport Beach, California; Oakland, California; Philadelphia, Pennsylvania; Raleigh, North Carolina; San Luis Obispo County, California; San Mateo County, California; Seminole County, Florida; Solano County, California; South Ogden, Utah; Southern Brazoria SPCA, Texas; Torrance, California and University Park, Texas.

Reasons to Hire PetData

There are several reasons why municipalities decide to hire PetData, including saving money, increasing revenues and freeing up staff time. Listed below is more detail on this topic.

Saving Money

Two major metropolitan areas which did internal cost analyses of their licensing programs in 2003 and 2004 discovered they were spending well over $5.00 per license just to process the license. Undoubtedly, the actual costs are higher today. Nearly every municipality that PetData has worked with has seen a decrease in the cost to administer the program. This is due to a number of efficiencies that PetData has developed in its processing. PetData can also be more flexible in its personnel levels to ensure coverage of higher-volume periods, as well as be more flexible in its purchasing in order to take care of pet owner and veterinary clinic needs in a timely fashion.

Increasing Revenue

PetData's only business is animal licensing/registration. We have a dedicated, intense focus on animal licensing. As a result, PetData has a proven track record of increasing licensing for its clients. The average increase is 42%. Additionally because of our fee structure where we get paid per license sold, PetData has tremendous motivation to increase licensing for our clients. Even with the best of intentions, most cities simply are not able to dedicate the time and resources to this area that they wish.

More Staff Time To Devote To Animal Welfare

Animal licensing is a very time-consuming, very labor-intensive program. Most animal welfare agencies do not have sufficient staff to meet the needs of their residents, much less to have time for animal licensing. Therefore, it is a difficult for an agency to allocate sufficient staff time to field the hundreds and thousands of phone calls related to animal licensing, to process the mail, to enter all of the records in the database and the many, many other tasks associated with running a successful animal licensing program. By hiring PetData to do all of the tasks, an agency's staff is freed up to provide more direct animal services to the community.

Predictable Program Costs

Because PetData works under contract for a specified period of time, the cost to the municipality for administration of animal licensing remains consistent over the period of the contract with no surprises from increased supply costs, postage costs, benefits costs or employee overtime. This makes it much easier to prepare and adhere to a budget.

Standard Fees

Base Fees

The Standard Fees are not charged until the license is issued. Data entry of rabies vaccination certificates and incomplete licenses, which may or may not result in a license, are included at no extra charge. An agreed-upon method to follow-up with pet owners who did not respond to a prior notice is also included at no additional cost. This structure is designed to 1) ensure that PetData is working on behalf of the client to increase licensing; and 2) provide the client with more control and certainty by establishing a set price for results and not charging simply for individual tasks associated with licensing.

- $3.85 per license for a one-year license or a replacement tag.
- $2.00 for each additional year after year one if there are multi-year licenses.
- $2.50 Collection Service Fee for each late fee collected during the term of this Agreement, if applicable.

IMPORTANT: PetData is paid for all licenses issued during the contract period, including those licenses issued by Animal Services, Veterinarians, and any authorized registrars or agents.

Start-Up Fee

- $1,000 one-time only start-up fee. There are no start-up fees for term extensions or renewals.

Convenience Fee (paid by licensee, not municipality)

PetData provides the option of licensing online and does not charge the municipality for this service. If the pet owner chooses to license online, PetData charges a convenience fee of $1.95 per transaction. Multiple pets may be licensed per transaction. Pet owners may choose to mail in their application if they do not wish to pay the convenience fee.

- $1.95 per transaction charged to pet owners opting to license online.

NOTE: If a client requests non-standard or additional services or if annual license sales are below 1,500, there may be additional charges.

Scope of Services

1. Manage the daily operations of animal licensing including the processing of licensing mail from pet owners, processing license sales and vaccination reports, entering licensing and vaccination data, providing customer service and depositing money.
2. Provide veterinarians and other authorized registrars with reasonable quantities of supplies (reporting forms, vaccination certificates, citizen mailing envelopes, etc.) necessary to sell license tags and/or report information on citizens vaccinating their animals against rabies to the client. Supplies are to be printed in one color with the design and layout to be determined by PetData.

   PLEASE NOTE: Client is responsible for purchasing license tags to PetData's specifications and shipping them to PetData. PetData recommends that tags be shipped directly from tag vendor to PetData to reduce shipping costs.
3. Track monthly vaccination and/or sales reports from all veterinarians participating in animal licensing program and keep record of all tag inventories at authorized registrars. Provide this information to clients as requested. Furthermore, PetData will communicate directly with veterinarians as requested by client.
4. Enter all new and renewal licenses into PetData's proprietary database provided that all information has been submitted to PetData in a complete and accurate format.
5. Process and mail license tags within ten business days after receipt of the licensing payment and complete documentation as required by local ordinance.
6. Issue replacement tags to citizens whose license tags have been lost, stolen or damaged.
7. Process rabies vaccination certificates on behalf of client and mail notices to those pet owners who vaccinated their pet(s) against rabies, but did not purchase license(s).
8. Mail renewal and reminder notices to customers who have previously licensed their pets.
9. Deposit all receipts collected for license fees, with the exception of those payments made via credit card, into a client bank account either at a local branch or via overnight mail to a bank in client's location. Mailing expenses associated with sending payments to client will be borne by client.
10. Provide a monthly report of animals licensed. Format of report is to be mutually agreed upon.
11. Provide statistical reports as requested within a timely manner. Depending on the information requested, PetData can provide most reports within five business days.
12. Respond to and communicate with animal control officer inquiries or animal owners' requests in a timely fashion.
13. Communicate with citizens by phone, mail or email as needed.
14. Comply with all state and local laws governing animal licensing.
15. Provide secure password-protected access to animal licensing data via a web-based application developed by PetData. Access will be granted only to authorized personnel, and the application will be available 24 hours a day, 7 days a week except for periodic maintenance by PetData or internet outages outside PetData's control. The application will allow client to search licensing data by various criteria, including but not limited to pet owner name, address, phone number, and license tag number.
16. Provide an online license tag lookup to the public to include the owner's last name, any available phone numbers and the pet's name and description. PetData may remove this feature from its website at client's request.

Description of Services

Daily Operations – Mail Processing

PetData processes all incoming mail, including individual registration applications from pet owners, vaccination reports from veterinarians, and tag sales reports from veterinarians. PetData ensures that all paperwork and fee requirements are met.

Daily Operations – Data Entry

PetData's data entry process has been highly refined over the years. Many of the rules and processes of a municipal licensing program are unique to the client and will be coded into the database so that entry will be as accurate and efficient as possible. Several programming checks are also written in to prevent many kinds of errors. Data entry operators are well trained and are monitored constantly for accuracy.

Because accuracy is so important, each batch is also re-checked after data entry, and the total payments entered in the batch are reconciled with the check totals.

Daily Operations – Revenue Deposits

PetData will deposit all registration monies in a financial institution specified by the Municipality. In order to provide the highest level of accountability and customer service both to the Municipality and to citizens, PetData scans and images all checks and money orders it receives. Thus, PetData can provide back-up data for all deposits of a municipality's revenue and can deliver the images on a CD-ROM upon request. PetData utilizes these images to verify citizen payments, to balance and reconcile all of the money that is deposited into the bank account and to provide excellent customer service to pet owners.

Daily Operations – Tag Mailings

Two different types of mailings are generated from batches of mail depending on whether the application was complete or not. A tag receipt is generated for each completed mail-in or online registration. An exception letter is generated for each incomplete registration. PetData enters the record in the database, the check is deposited, and a letter is mailed to the pet owner to instruct them on what is needed to complete their license. A license is not issued until all requirements have been met.

PetData will also issue replacement license or registration tags upon request for tags that have been lost, stolen or damaged, according to its client's preferred procedure.

Veterinarian Reports

For vaccination reports from veterinarians, PetData enters each record in its database for owners residing in within the client's jurisdiction. The vaccination data will be used to inform residents who have not yet registered their pet of the requirement to register and how to obtain the registration.

For tag sales reports from veterinarians, PetData receives and verifies all records of tags sold, and can also receive and reconcile the payments for the sales if desired by the client. Tag sales records are entered within 30 days of receipt, and PetData keeps an inventory of tag sequences at each sales location.

PetData will notify either the veterinary clinic, Animal Services, or either regarding vaccination or tag sales reports that are not submitted on a timely basis.

Mailings

Based on the vaccination records received from veterinarians, PetData mails out first billing notices to pet owners who have vaccinated but have not registered or licensed their pets. If the pet owner has not responded within 45 days, PetData mails a second notice and, if applicable, adds the fee for late registration or license.

Prior to the expiration of a registration or license, PetData also sends out a renewal notice to pet owners who have previously registered or licensed their pet. A second renewal notice is mailed to those who do not respond to the first notice and, if applicable, adds the fee for late registration or late license per ordinance. Pet owners who have not responded to the renewal or billing notices are reported to Animal Services via an enforcement list that can be sorted by zip code, city and street address.

Supplies

All forms used for animal registration or licensing including notices, applications, brochures, etc. will be submitted for approval prior to being mailed out. Once approved, PetData will purchase supplies and distribute them to Animal Services and veterinary clinics as requested. Supply requests are mailed within 1 business day of request.

PetData will distribute registration or license tags as needed and maintain an annual inventory of tag sequences distributed to each sales location. The inventory ensures that each location has a sufficient supply of tags to sell, that all tag numbers can be traced in the event a pet is lost before the record has been sent to PetData, and that tag numbers cannot be duplicated in the database.

Customer Service

PetData prides itself upon providing a high level of customer service, and does so in many different capacities. Our primary method of providing customer service is over the phone. PetData will provide a unique telephone number for municipality's residents, and will establish an auto-attendant on behalf of each client which provides answers to common registration questions. The auto-attendant is available 24 hours a day, 7 days a week, and approximately 37% of all callers utilize this service during our regular work hours even though live operators are available.

PetData has highly trained customer service representatives available to answer calls Monday through Friday. Queries from animal service officers are responded to within fifteen minutes. Our highly sophisticated phone system has 23 phone lines, which guarantees that the citizen will not be greeted with a busy signal, and that their call will be met with the quality that it deserves.

PetData also provides customer service online via our customized web site. The website features an online tag search and answers to the most common questions of how to register a pet, such as the registration fees, mailing address and required paperwork. Several feedback forms are available for citizens to submit changes of address, phone number, and the status of their pet or to ask us other questions. For veterinarians, we offer the ability to order applications and tags (if applicable) online as well.

Online Renewal

In addition to processing payments through the mail, PetData provides pet owners with the option to pay for a registration online at its web site: www.petdata.com. Payment is made via major credit card, and a convenience fee of $1.95 is charged to the customer per transaction to help defray PetData's cost of providing this option. This fee is not paid by the municipality and is optional for the pet owner. Pet owners can choose to mail in the paperwork if they don't want to register online.

Donations

PetData has established an easy way for people to make donations to their local animal shelter while they are paying for their registration. Donations can be made through the mail via information on mailings or applications. We also can provide citizens with the option to give a donation while they are paying for a registration online. PetData will account for the donations and deposit the money as agreed upon with the client. The process is easy and secure, and PetData does not charge a fee for this service.

Reports

Within fifteen days of the end of each month, PetData will submit a report of all registrations or licenses processed during the preceding calendar month. The registration summary report will include counts of registrations sold, broken down by sales location, and will be in a format to be mutually agreed upon. Additional reports can also be provided on a monthly basis.

PetData's flexible and expandable software allows for reports based on a wide range of criteria. Reports may be generated either at a pre-determined interval or as requested by the client. Most reports can be provided within 5 business days, depending on the data requested.

State and Local Laws

PetData will comply with all state and local laws governing animal rabies vaccinations and pet registration programs, as may be amended from time to time.

Database Capability and Features

Software

PetData has developed its own proprietary database solution developed specifically to manage all aspects of the registration process. TAILS 2.0 ("The Animal Information & Licensing System") is based on the powerful 4th Dimension database platform and all animal licensing data is stored in this application. This proprietary solution has the necessary flexibility for customization to meet the specific needs of each municipal client, while also providing a standard data architecture for all licensing data.

TAILS is the third-generation of our management software, and the product of thousands of hours in development and refinement. Key features include:

- Address Correction – Full support for USPS CASS address validation. Addresses are processed real-time during data entry to ensure accuracy of address information and maximize deliverability of mailings.
- Entry Validation – TAILS performs multiple levels of consistency checks for entered and imported data, ensuring enforcement of business rules and improving overall accuracy.
- Mailing History – Maintains a complete history of mailings sent to citizens, and provides extensive reporting on response rates which helps us to adjust mailing timetables to generate the highest rate of returns.

TAILS is constantly being enhanced to maximize data accuracy and operational efficiency, which allows PetData to deliver a consistent, high-quality service.

TAILS 2.0 is further capable of accessing external and remote data sources through industry-standard ODBC connectivity, as well as data import and export. Supported data formats include but are not limited to XML, delimited text, DBF, and SQL dump. This capability facilitates the development of gateways between TAILS and shelter management packages.

Backup Systems

All databases are backed up twice during the working day. Nightly, all databases and key systems are backed up to high-capacity magnetic drives, which are set up in a 4-week rotation and stored off-site. This backup configuration would allow for recovery of the complete licensing database even in the event of a major failure or severe damage to our facilities.

Data Protection

PetData agrees that animal licensing data at all times belongs to the municipality and that at no point in time does PetData ever own the data. PetData will not use personal data collected on behalf of the municipality for any purposes other than those described in the included Scope of Services unless specifically directed by animal services. Furthermore, PetData specifically agrees that it will never sell, transfer, or release personal data it has collected in fulfilling the terms of this contract to a third party.

Credit Card Information Security/PCI Compliance

As a vendor that accepts payments via credit card, PetData is vigilant when it comes to the protection of that data. Therefore, it is important to know that PetData does not store any personal credit card information at any time. Furthermore, PetData is fully in compliance with the Payment Card Industry Security Program (PCI) as Visa and MasterCard define it. PetData further agrees that it will remain in compliance with the Payment Card Industry Security Program at all times.

As part of maintaining PCI Compliance, PetData undertakes a regular review of all security policies and procedures. Further, all public IP addresses, including websites and office WAN, are subject to regular vulnerability scanning to identify any potential security threats.

Data Access via PetAccess

PetData has developed PetAccess™ to provide password-protected, online access to license data. There is no additional charge for PetAccess. This easy-to-use, browser-based application is secure to ensure that appropriate personnel in a municipality can access the data in a timely manner. PetAccess allows shelter staff to perform tag searches and look up licensing information by owner name, phone number, and address. Updates to the online system are made daily, and the system is available 24/7. In addition, PetAccess logins may be provided to Animal Services, Emergency Dispatch and/or other authorized departments that need immediate access to licensing information. Therefore, PetAccess is an excellent way to provide a wide variety or personnel with access to licensing data via the Internet without having to access a shelter software application or to pay additional seat license fees.

Data Access via Data Transfer

While several clients choose to use PetAccess exclusively to access their animal licensing data, some clients prefer to integrate the licensing data into their shelter software. While PetData has the capability to exchange data with many existing databases, the municipality must provide access to its database so that PetData can transfer data. PetData cannot access and transfer data into a Municipality's database without explicit Municipality approval and the approval of the software vendor. Depending on the software used by the Municipality and the particular software license that has been executed, the Municipality may or may not already have permission to access its own database and to permit direct data transfers. PetData requires the support and cooperation of the client's software vendor in order to reintegrate data into the client's database.

NOTE: PetData does not charge any fees for PetAccess or for data transfers. However, if you are interested in data transfers, your shelter software vendor may charge additional fees. Please consult your software vendor directly for more information.

References

1. Client: Solano County Animal Care Services
   2510 Claybank Road
   Fairfield, CA 94533

   Contact: Ron Whitfield, Manager
   Phone: 707-784-1370, Fax: 707-784-1353
   Email: RWWhitfield@solanocounty.com

PetData has administered the animal license program for Solano County since April 2002. The first contract period was for 3 years and ended in April 2005. One three-year renewal contract was signed which is good through June 30, 2010. Since PetData began working for Solano County, licensing has increased 42%.

2. Client: Hernando County Animal Services
   19450 Oliver St
   Brooksville, FL 34601

   Contact: Liana Teague, Director
   Phone: 352-540-6286
   Email: LTeague@co.hernando.fl.us

Description of Work: PetData has administered the animal license program for Hernando County, Florida Animal Services since October 2003. The first contract period was for 3 years and ended September 2006. A three-year renewal contract was signed which is good through September 30, 2009. Since PetData began working for Hernando County, animal licensing has increased 183%.

3. Client: Seminole County Animal Services Division
   232 Bush Blvd
   Sanford, FL 32773

   Contact: Elaine RiCharde
   Phone: 407-665-5203 Fax: 407-665-5213
   Email: ericharde@seminolecountyfl.gov

PetData has administered the animal license program for the Seminole County Animal Services Division since August 2005. The initial contract was valid for a period of three years and has been renewed twice. Since PetData began working for Seminole County, animal licensing has increased over 175%.

PetData
Animal Licensing Made Easy

FOR Pet Owners FOR Veterinarians FOR OUR Clients HIRE PetData

License Now

License your pet now, enter your zip code to get started.

Enter Zip GO

Tag Search

For owner information, enter the tag number and click GO.

Enter Tag Number GO

Agency Access

Username

Password GO

Password reminder

Powered by: pet access

Confidentiality and Privacy

Confidentiality of Data

We at PetData consider the privacy of our clients to be of paramount importance. **PetData has never sold information or data to any third-party.** PetData does not use any personally identifiable data collected for any purpose other than those as determined by client contracts. We do not respond to requests for information from non-client individuals or corporations, nor do we release information without the express written consent of our client agencies. Groups or individuals requesting licensing data should contact the individual client's animal services agency director as we release data only to our contracted client.

Privacy Policy

Thank you for visiting our web site. This privacy policy tells you how we use personal information collected at this site. Please read this privacy policy before using the site or submitting any personal information. By using the site, you are accepting the practices described in this privacy policy. These practices may be changed, but any changes will be posted and changes will only apply to activities and information on a going forward, not retroactive basis. You are encouraged to review the privacy policy whenever you visit the site to make sure that you understand how any personal information you provide will be used.

Note: the privacy practices set forth in this privacy policy are for this website only. If you link to other web sites, please review the privacy policies posted at those sites.

Collection of Information

We collect personally identifiable information, like names, postal addresses, email addresses, etc., when voluntarily submitted by our visitors. The information you provide is used to fulfill your specific request. This information is only used to fulfill your specific request, unless you give us permission to use it in another manner, for example to add you to one of our mailing lists.

Cookie/Tracking Technology

The Site may use cookie and tracking technology depending on the features offered. Cookie and tracking technology are useful for gathering information such as browser type and operating system, tracking the number of visitors to the Site, and understanding how visitors use the Site. Cookies can also help customize the Site for visitors. Personal information cannot be collected via cookies and other tracking technology, however, if you previously provided personally identifiable information, cookies may be tied to such information. Aggregate cookie and tracking information may be shared with third parties.

Distribution of Information

We may share information with governmental agencies or other companies

AGENDA ITEM #26.

PROGRESS IN MOTION

Development Services Department
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Cc: **George A. Purefoy, City Manager**
John Lettelleir, AICP, Director of Development Services

From: **Michael Walker, AICP, Senior Planner**

Date: **8/23/2011**

Agenda Caption: **Public Hearing: Z11-0012. A request to amend Planned Development-178 to allow additional residential units and consider and act to direct staff to prepare an Ordinance of the same. The property contains 32.7± acres on the northwest corner of State Highway 121 and Legacy Drive. Zoned Planned Development-178-Mixed Use. Neighborhood #33.**

Action Requested: Hold the public hearing and direct staff in the preparation of an Ordinance.

Background Information: The applicant is proposing to increase the number of residential units reflected on the zoning exhibit from 500 units to 681 units. This request does not include any changes to the development standards or architectural design guidelines currently incorporated into the Planned Development.

While the Planned Development did not specifically limit the number of residential units allowed, the zoning exhibit reflected 500 units. An increase of 181 units is a substantial change and warrants an amendment to the zoning exhibit.

Board Review/Citizen Input: The Planning & Zoning Commission held a public hearing on the request at their August 9, 2011 meeting and voted 6-0 to approve the request as outlined in the Outcome Memo.

Alternatives: The City Council can:

- Approve the request and direct staff to prepare an Ordinance;
- Deny the request;

- Approve the request with conditions and direct staff to prepare an Ordinance; or
- Table for further review.

Financial Considerations: Not applicable.

Legal Review: Not applicable at this time.

Supporting Documents:
- Planning & Zoning Commission Outcome Memo dated August 10, 2011.
- Staff report.
- Location Map.
- Exhibits.

Recommendation: Recommended for approval as submitted.

DEVELOPMENT SERVICES

GEORGE A. PUREFOY MUNICIPAL CENTER
6101 FRISCO SQUARE BLVD · 3RD FLOOR
FRISCO, TEXAS 75034
TEL 972.292.5300 · FAX 972.292.5388
WWW.FRISCOTEXAS.GOV

August 10, 2011

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of the Planning & Zoning Commission, August 9, 2011

Public Hearing : Stonebriar Commons, Block A, Lot 3R (Z11-0012)
Owner(s): Windmill Development, LLC

Description:
A request to amend Planned Development-178 to allow additional residential units. The property contains 32.7± acres on the northwest corner of State Highway 121 and Legacy Drive. Zoned: Planned Development-178-Mixed Use. Neighborhood #33. MW

Result/Action:

Approved: **5-0 with amended Exhibit to depict location of Visibility and Maintenance Triangle (Russell stepped down due to conflict of interest)**
Denied:
Tabled:

ACTION:

The item was approved subject to the following development standards outlined in Exhibit B.

Exhibit "B"
Z11-0012
Planned Development District Standards

TRACT C: STONEBRIAR COMMONS

I.. APPLICATION OF DEVELOPMENT STANDARDS

Because of the unique nature of this development and the vision for creating a vibrant, active, pedestrian-oriented center, this Planned Development District ordinance shall be the exclusive land use and zoning regulatory document for the property included within the PD.

Unless otherwise noted in Exhibit B, Tract C shall be developed under the regulations of the O-2 District with the additional uses permitted within the R District by right or by specific use permit as outlined in The Zoning Ordinance No. 11-04-09 as it currently exist or as amended, unless approved by the Director of Planning and Development.

II. ADDITIONAL PERMITTED USES:

Multi-Family Residential and Condos

III. AREA REGULATIONS:

a. Minimum Front Yard: Ten (10) feet measured from the property line described in Exhibit A.
b. Minimum Side Yard: Ten (10) feet measured from property line described in Exhibit A.
c. Minimum Rear Yard: Ten (10) feet measured from the property line described in Exhibit A.
d. No encroachments by any part of buildings are allowed in the required yards.
e. The spacing between all buildings located within the area described in Exhibit A is zero (0) feet or a minimum of ten (10) feet. No openings shall be permissible on building facades separated by ten (10) feet. A minimum eight (8) foot clear paved access way shall be maintained between buildings. Buildings with ten (10) foot separation may have a two (2) foot wide landscape area, provided landscape materials do not exceed thirty (30) inches.

IV. OTHER REGULATIONS:

a. Off-Street Parking.

For a mixed-use project, required parking shall equal the sum of the requirements for each use computed separately in accordance with The Zoning Ordinance, as amended. However, in order to allow shared parking for this mixed-use project, the following off-street parking requirements apply.

A. Office Shared Parking Ratio.

When a mixed-use project includes a minimum of forty-five thousand (45,000) sq. ft. of office/bank uses, and either a one hundred (100) room hotel or forty thousand (40,000) sq. ft. of retail uses, the parking requirement for all office/bank uses located within the area described in Exhibit A is one space for each three hundred thirty three (333) sq. ft. of office/bank uses.

B. Retail Shared Parking Ratio.

When a mixed-use project includes a minimum of forty thousand (40,000) sq. ft. of retail uses, and either a one hundred (100) room hotel or forty-five thousand (45,000) sq. ft. of office/bank uses, the parking requirement for all retail uses located within the area described in Exhibit A is one space for each three hundred (300) sq. ft. of retail uses.

C. Restaurant Shared Parking Ratio.

When a mixed-use project includes restaurant uses and a minimum of forty-five thousand (45,000) sq. ft. of office/bank uses, the parking requirement for all restaurant uses located within the area described in Exhibit A is one space for each two hundred (200) sq. ft. of restaurant uses.

D. Residential Parking Ratio.

The parking requirement for all Residential uses located within the area described in Exhibit A is 1.5 space per unit of residential uses.

b. Landscaping & Sidewalks:

A. Design Guidelines.

Exhibit D entitled, Stonebriar Commons Design Guidelines, is attached to and made a part of this ordinance for the purpose of providing general design guidelines. These design guidelines may be modified when a site plan is submitted for approval provided the modifications are consistent with the design concepts illustrated in Exhibit D.

B. Perimeter Requirements.

A minimum twelve (12) foot wide landscape area, including a two (2) foot wide vehicular overhang zone, shall be provided along State Highway 121, Legacy Drive, and Town & County Boulevard. Landscaping shall include a solid evergreen hedge and minimum five (5) inch caliper street trees planted no more than thirty (30) feet on-center.

C. Median Strip Planting.

A double row of minimum three (3) inch caliper canopy trees shall be planted within the median strip along Town & Country Boulevard at intervals of no more than thirty (30) feet on-center. A single row of minimum three (3) inch caliper canopy trees shall be planted in the median strip located adjacent to a left-turn lane and transition lane. Median strip planting must be completed in the area located between median openings prior to the issuance of the first certificate of occupancy for development adjacent to the median strip area.

D. Parking Lot Landscape Requirements.

1. Landscaped islands are not required to be located within a continuous row of parking, but shall be located at the end of parking rows regardless of the number of parking spaces located within a row.

2. Landscaped islands shall contain a minimum of six (6) caliper inches of canopy tree(s) except for tree island on an interior double loaded row of parking spaces.

3. One canopy tree, four (4) inch caliper or greater, shall be provided for every five (5) parking spaces located within interior rows within a parking lot. The tree planting areas are a minimum of twenty-five (25) square feet.

4. Planting means and methods to comply with standards set on Phase 1.

E. Phase 1 Pedestrian Zones and Parking Spaces.

1. An eleven (11) foot pedestrian zone with sidewalks shall be provided along both sides of each major North-South and East-West retail corridor when the pedestrian zone is located adjacent to a retail edge, see Exhibit D. If parking spaces extend into the pedestrian zone, than the pedestrian zone shall be a minimum of thirteen feet wide.

2. Ninety (90) degree parking spaces may have a minimum dimension of eighteen (18) feet by nine (9) feet with a (2') vehicular overhang in a minimum thirteen (13) foot wide pedestrian zone. Sixty (60) degree parking spaces may have a minimum dimension of sixteen (16) feet by nine (9) feet with a (2') vehicular overhang in a minimum thirteen (13) foot wide pedestrian zone.

3. Sixty (60) degree parking spaces located on one-way aisles may be sixteen (16) feet by nine (9) feet.

4. The pedestrian zone shall include:

    i. Enhanced pavement, including but not limited to brick pavers, concrete pavers, stone, and granite.
    ii. Landscaping, which includes minimum four (4) inch caliper trees planted no more than thirty (30) feet on-center with tree leave-outs and planting at base. Vehicular overhangs are prohibited in tree leave-outs.

iii. Streetscape elements such as, but not limited to, pedestrian-scale lighting, banners, and signs.

iv. Architectural elements such as, but not limited to, balconies, window ledges, building fenestration, canopies, and arcades may be located within the pedestrian zone. Structure elements for window ledges and balconies are prohibited from touching the surface located within the pedestrian zone. Canopies and arcades may be located no closer than four (4) feet from the curb line. Two (2) floors may be constructed above the arcade and located with the pedestrian zone.

v. Pennants and banners may be located on light poles located in the pedestrian zones, which are adjacent to the interior North-South and East-West retail corridor. Light pole compliance with building codes must certified.

F. Phase 2 Pedestrian Zones and Parking Spaces.

1. A fifteen (15) foot pedestrian zone with sidewalks shall be provided along both sides of each major North-South and East-West retail corridor when the pedestrian zone is located adjacent to a retail edge, see Exhibit C. If parking spaces extend into the pedestrian zone, than the pedestrian zone shall be a minimum of seventeen feet wide.

2. Ninety (90) degree parking spaces may have a minimum dimension of eighteen (18) feet by nine (9) feet with a (2') vehicular overhang in a minimum seventeen (17) foot wide pedestrian zone. Sixty (60) degree parking spaces may have a minimum dimension of sixteen (16) feet by nine (9) feet with a (2') vehicular overhang in a minimum seventeen (17) foot wide pedestrian zone.

3. Sixty (60) degree parking spaces located on one-way aisles may be sixteen (16) feet by nine (9) feet.

4. The pedestrian zone shall include:

G. Enhanced pavement, including but not limited to brick pavers, concrete pavers, stone, and granite.

1. Landscaping, which includes minimum four (4) inch caliper trees planted no more than thirty (30) feet on-center with tree leave-outs and planting at base. Vehicular overhangs are prohibited in tree leave-outs.

2. Streetscape elements such as, but not limited to, pedestrian-scale lighting, banners, and signs.

3. Architectural elements such as, but not limited to, balconies, window ledges, building fenestration, canopies, and arcades may be located within the pedestrian zone. Structure elements for window ledges and balconies are prohibited from touching the surface located within the pedestrian zone. Canopies and arcades may be located no closer than four (4) feet from the curb line. Two (2) floors may be constructed above the arcade and located with the pedestrian zone.

4. Pennants and banners may be located on light poles located in the pedestrian zones, which are adjacent to the interior North-South and East-West retail corridor. Light pole compliance with building codes must be certified.

H. Fire Lanes.

Twenty (20) foot fire lanes, in lieu of twenty-four (24) foot fire lanes, are allowed on designated one-way driveways as shown on the approved Exhibit C.

c. Prohibited Building Materials and Installations.

A. Roll-up metal security doors in front of storefront.
B. Metal Security gates (excluding decorative metal gates or fences).
C. Exterior applied metal security bars.
D. Chain-link fencing.
E. Unpainted wood fencing.

d. Soundproofing of Residential Units.

Residential units shall have adequate soundproofing so that the day-night average sound levels measured within each unit has an “acceptable” rating less than or equal to 65 dB as established by the Department of Housing and Urban Development.

MW/kj

cc:

Carey Frazier	Danny Carroll	Deanna Quigley	Dudley Raymond
Gary Hartwell	Umberto Allori	Jim Cottone	Steve Covington
Mack Borchardt	Michael Crain	Michele Wood	Michelle Ortega
Paul Knippel	Phillip Climer	Poly Birika	Rick Wieland

August 9, 2011

Public Hearing-Zoning: Stonebriar Commons, Block A, Lot 3R (Z11-0012)
Owner(s): Windmill Development, LLC

DESCRIPTION:

A request to amend Planned Development-178 to allow additional residential units. The property contains 32.7± acres on the northwest corner of State Highway 121 and Legacy Drive. Zoned Planned Development-178-Mixed Use. Neighborhood #33. MW

HISTORY:

Ordinance No. 08-04-38 – City Council adopted the Ordinance for Zoning Case No. Z07-0027 on April 1, 2008 amending the Planned Development to incorporate residential uses.

Ordinance No. 03-12-100 – City Council adopted the Ordinance for Zoning Case No. Z03-0013 on December 2, 2003, rezoning the property from Planned Development-62-Office-2 to Planned Development-178-Office-2.

CASE OVERVIEW:

The surrounding land uses are as follows:

Direction	Land Use	Zoning	Comprehensive Plan
North	Hotel	Planned Development-62-Office-2/Commercial-1	Mixed Use Non-Residential
East	Vacant	Planned Development-31-Commercial Center	Mixed-Use Non-Residential
South	Vacant	Planned Development-224-Retail/Office-2	Mixed-Use Non-Residential
West	Apartments	Planned Development-62-Multifamily-19	Residential

The applicant is proposing to increase the number of residential units reflected on the zoning exhibit from 500 units to 681 units. This request does not include any changes to the development standards or architectural design guidelines currently incorporated into the Planned Development.

While the Planned Development did not specifically limit the number of residential units allowed, the zoning exhibit only reflected 500 units. An increase of 181 units is a substantial change and warrants an amendment to the zoning exhibit.

SUMMARY:

The proposed plan incorporates additional residential units while maintaining the current development standards and design guidelines. The plan furthers the intent of developing a dense, urban, mixed-use development.

RECOMMENDATION:

Recommended for approval subject to the following development standards outlined in Exhibit B.

Exhibit "B"
Z11-0012
Planned Development District Standards

TRACT C: STONEBRIAR COMMONS

I.. APPLICATION OF DEVELOPMENT STANDARDS

Because of the unique nature of this development and the vision for creating a vibrant, active, pedestrian-oriented center, this Planned Development District ordinance shall be the exclusive land use and zoning regulatory document for the property included within the PD.

Unless otherwise noted in Exhibit B, Tract C shall be developed under the regulations of the O-2 District with the additional uses permitted within the R District by right or by specific use permit as outlined in The Zoning Ordinance No. 11-04-09 as it currently exist or as amended, unless approved by the Director of Planning and Development.

II. ADDITIONAL PERMITTED USES:

Multi-Family Residential and Condos

III. AREA REGULATIONS:

a. Minimum Front Yard: Ten (10) feet measured from the property line described in Exhibit A.
b. Minimum Side Yard: Ten (10) feet measured from property line described in Exhibit A.

c. Minimum Rear Yard: Ten (10) feet measured from the property line described in Exhibit A.
d. No encroachments by any part of buildings are allowed in the required yards.
e. The spacing between all buildings located within the area described in Exhibit A is zero (0) feet or a minimum of ten (10) feet. No openings shall be permissible on building facades separated by ten (10) feet. A minimum eight (8) foot clear paved access way shall be maintained between buildings. Buildings with ten (10) foot separation may have a two (2) foot wide landscape area, provided landscape materials do not exceed thirty (30) inches.

IV. OTHER REGULATIONS:

a. Off-Street Parking.

For a mixed-use project, required parking shall equal the sum of the requirements for each use computed separately in accordance with The Zoning Ordinance, as amended. However, in order to allow shared parking for this mixed-use project, the following off-street parking requirements apply.

A. Office Shared Parking Ratio.

When a mixed-use project includes a minimum of forty-five thousand (45,000) sq. ft. of office/bank uses, and either a one hundred (100) room hotel or forty thousand (40,000) sq. ft. of retail uses, the parking requirement for all office/bank uses located within the area described in Exhibit A is one space for each three hundred thirty three (333) sq. ft. of office/bank uses.

B. Retail Shared Parking Ratio.

When a mixed-use project includes a minimum of forty thousand (40,000) sq. ft. of retail uses, and either a one hundred (100) room hotel or forty-five thousand (45,000) sq. ft. of office/bank uses, the parking requirement for all retail uses located within the area described in Exhibit A is one space for each three hundred (300) sq. ft. of retail uses.

C. Restaurant Shared Parking Ratio.

When a mixed-use project includes restaurant uses and a minimum of forty-five thousand (45,000) sq. ft. of office/bank uses, the parking requirement for all restaurant uses located within the area described in Exhibit A is one space for each two hundred (200) sq. ft. of restaurant uses.

D. Residential Parking Ratio.

The parking requirement for all Residential uses located within the area described in Exhibit A is 1.5 space per unit of residential uses.

b. Landscaping & Sidewalks:

A. Design Guidelines.

Exhibit D entitled, Stonebriar Commons Design Guidelines, is attached to and made a part of this ordinance for the purpose of providing general design guidelines. These design guidelines may be modified when a site plan is submitted for approval provided the modifications are consistent with the design concepts illustrated in Exhibit D.

B. Perimeter Requirements.

A minimum twelve (12) foot wide landscape area, including a two (2) foot wide vehicular overhang zone, shall be provided along State Highway 121, Legacy Drive, and Town & County Boulevard. Landscaping shall include a solid evergreen hedge and minimum five (5) inch caliper street trees planted no more than thirty (30) feet on-center.

C. Median Strip Planting.

A double row of minimum three (3) inch caliper canopy trees shall be planted within the median strip along Town & Country Boulevard at intervals of no more than thirty (30) feet on-center. A single row of minimum three (3) inch caliper canopy trees shall be planted in the median strip located adjacent to a left-turn lane and transition lane. Median strip planting must be completed in the area located between median openings prior to the issuance of the first certificate of occupancy for development adjacent to the median strip area.

D. Parking Lot Landscape Requirements.

1. Landscaped islands are not required to be located within a continuous row of parking, but shall be located at the end of parking rows regardless of the number of parking spaces located within a row.

2. Landscaped islands shall contain a minimum of six (6) caliper inches of canopy tree(s) except for tree island on an interior double loaded row of parking spaces.

3. One canopy tree, four (4) inch caliper or greater, shall be provided for every five (5) parking spaces located within interior rows within a parking lot. The tree planting areas are a minimum of twenty-five (25) square feet.

4. Planting means and methods to comply with standards set on Phase 1.

E. Phase 1 Pedestrian Zones and Parking Spaces.

1. An eleven (11) foot pedestrian zone with sidewalks shall be provided along both sides of each major North-South and East-West retail corridor when the pedestrian zone is located adjacent to a retail edge, see Exhibit D. If parking spaces extend into the pedestrian zone, than the pedestrian zone shall be a minimum of thirteen feet wide.

2. Ninety (90) degree parking spaces may have a minimum dimension of eighteen (18) feet by nine (9) feet with a (2') vehicular overhang in a minimum thirteen (13) foot wide pedestrian zone. Sixty (60) degree parking spaces may have a minimum dimension of sixteen (16) feet by nine (9) feet with a (2') vehicular overhang in a minimum thirteen (13) foot wide pedestrian zone.

3. Sixty (60) degree parking spaces located on one-way aisles may be sixteen (16) feet by nine (9) feet.

4. The pedestrian zone shall include:

    i. Enhanced pavement, including but not limited to brick pavers, concrete pavers, stone, and granite.
    ii. Landscaping, which includes minimum four (4) inch caliper trees planted no more than thirty (30) feet on-center with tree leave-outs and planting at base. Vehicular overhangs are prohibited in tree leave-outs.
    iii. Streetscape elements such as, but not limited to, pedestrian-scale lighting, banners, and signs.
    iv. Architectural elements such as, but not limited to, balconies, window ledges, building fenestration, canopies, and arcades may be located within the pedestrian zone. Structure elements for window ledges and balconies are prohibited from touching the surface located within the pedestrian zone. Canopies and arcades may be located no closer than four

(4) feet from the curb line. Two (2) floors may be constructed above the arcade and located with the pedestrian zone.

v. Pennants and banners may be located on light poles located in the pedestrian zones, which are adjacent to the interior North-South and East-West retail corridor. Light pole compliance with building codes must certified.

F. Phase 2 Pedestrian Zones and Parking Spaces.

1. A fifteen (15) foot pedestrian zone with sidewalks shall be provided along both sides of each major North-South and East-West retail corridor when the pedestrian zone is located adjacent to a retail edge, see Exhibit C. If parking spaces extend into the pedestrian zone, than the pedestrian zone shall be a minimum of seventeen feet wide.

2. Ninety (90) degree parking spaces may have a minimum dimension of eighteen (18) feet by nine (9) feet with a (2') vehicular overhang in a minimum seventeen (17) foot wide pedestrian zone. Sixty (60) degree parking spaces may have a minimum dimension of sixteen (16) feet by nine (9) feet with a (2') vehicular overhang in a minimum seventeen (17) foot wide pedestrian zone.

3. Sixty (60) degree parking spaces located on one-way aisles may be sixteen (16) feet by nine (9) feet.

4. The pedestrian zone shall include:

G. Enhanced pavement, including but not limited to brick pavers, concrete pavers, stone, and granite.

1. Landscaping, which includes minimum four (4) inch caliper trees planted no more than thirty (30) feet on-center with tree leave-outs and planting at base. Vehicular overhangs are prohibited in tree leave-outs.

2. Streetscape elements such as, but not limited to, pedestrian-scale lighting, banners, and signs.

3. Architectural elements such as, but not limited to, balconies, window ledges, building fenestration, canopies, and arcades may be located within the pedestrian zone. Structure elements for window ledges and balconies are prohibited from touching the surface located within the pedestrian zone. Canopies and arcades

may be located no closer than four (4) feet from the curb line. Two (2) floors may be constructed above the arcade and located with the pedestrian zone.

4. Pennants and banners may be located on light poles located in the pedestrian zones, which are adjacent to the interior North-South and East-West retail corridor. Light pole compliance with building codes must be certified.

H. Fire Lanes.

Twenty (20) foot fire lanes, in lieu of twenty-four (24) foot fire lanes, are allowed on designated one-way driveways as shown on the approved Exhibit C.

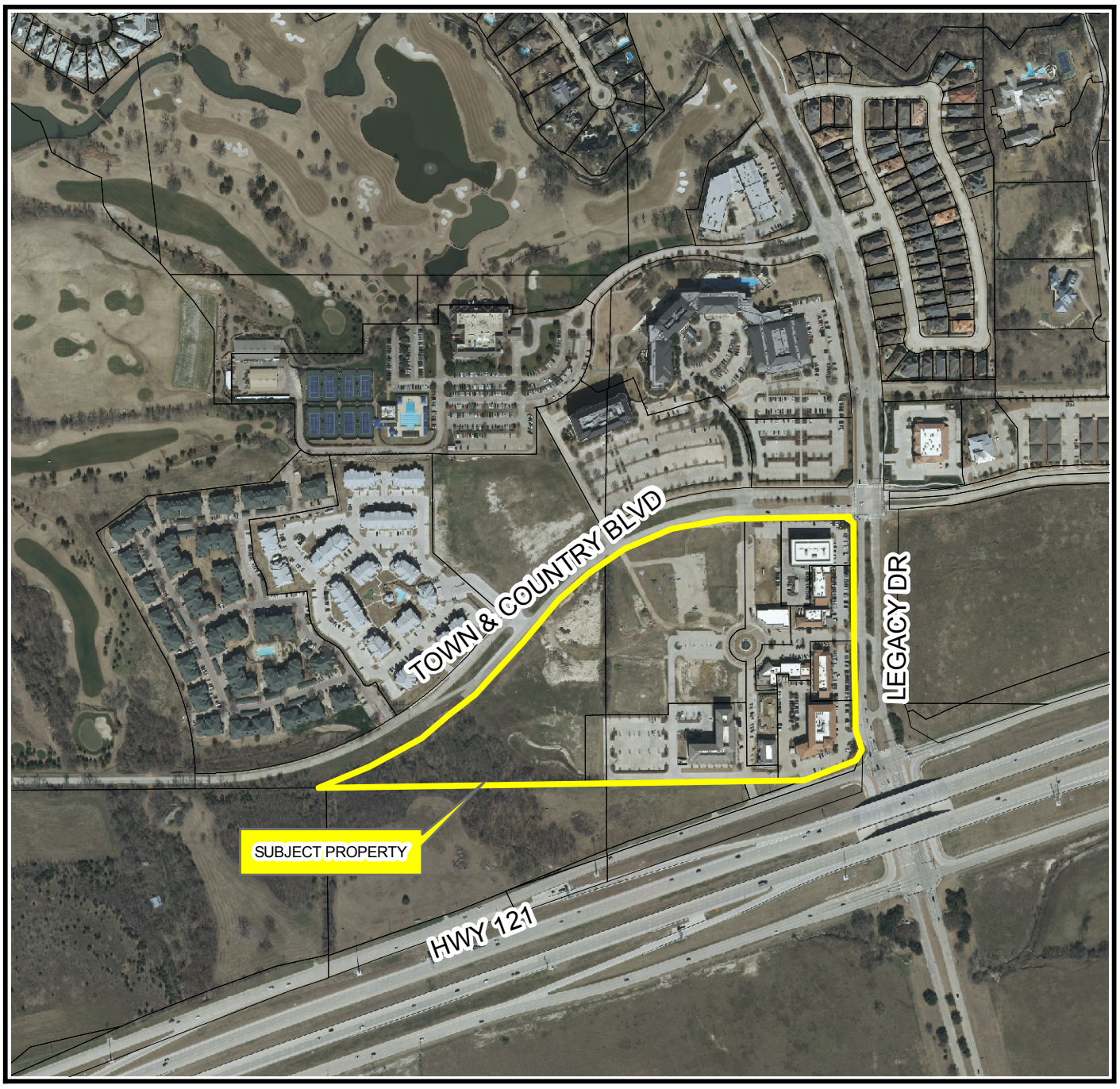
c. Prohibited Building Materials and Installations.

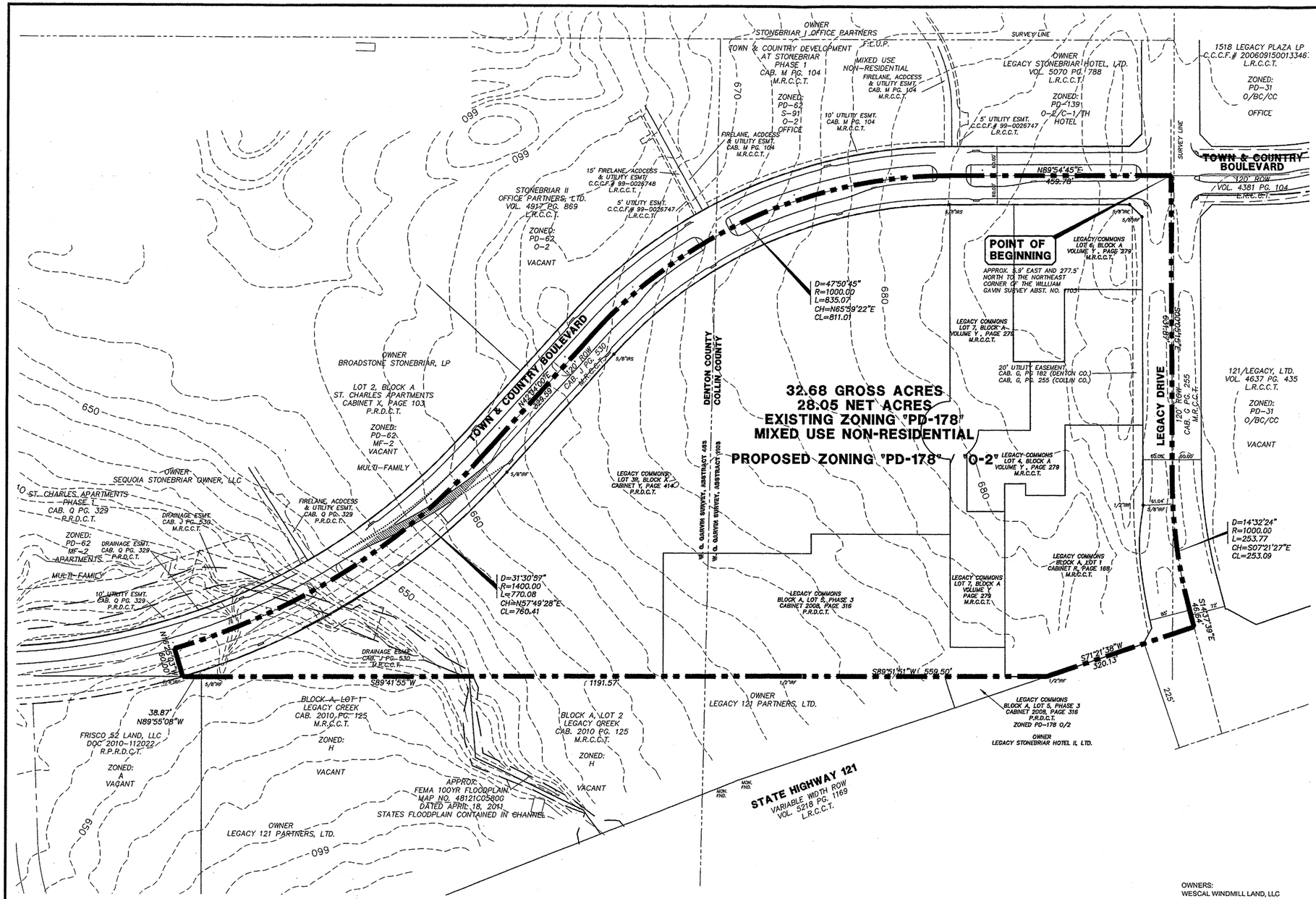
A. Roll-up metal security doors in front of storefront.
B. Metal Security gates (excluding decorative metal gates or fences).
C. Exterior applied metal security bars.
D. Chain-link fencing.
E. Unpainted wood fencing.

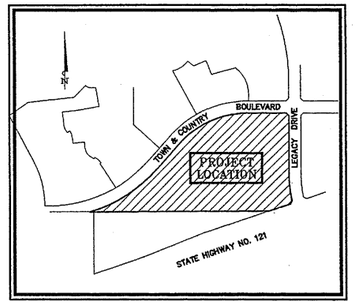
d. Soundproofing of Residential Units.

Residential units shall have adequate soundproofing so that the day-night average sound levels measured within each unit has an “acceptable” rating less than or equal to 65 dB as established by the Department of Housing and Urban Development.

Z11-0012
Stonebriar Commons
Block A, Lot 3R







LOCATION MAP
N.T.S.

EXHIBIT A
LEGAL DESCRIPTION
FOR Z# 11-____
32.68 ACRES

BEING a tract of land out of the WILLIAM GARVIN SURVEY, Abstract No. 453 in the City of Frisco, Denton County, Texas and the WILLIAM GARVIN SURVEY, Abstract No. 1103 in the City of Frisco, Collin County, Texas, being part of the 247.04 acre tract of land described in deed to Town and Country Development at Stonebriar, Inc. recorded in Denton County Clerk's File No. 95-R0075309 of the Real Property Records of Denton County, Texas, being all of Lot 1 of Legacy Common, Block A, Lots 1, 2 and 3, an addition to the City of Frisco according to the plat thereof recorded in Cabinet R, Page 168 of the Map Records of Collin County, Texas, being all of Lots 4, 5, 6 and 7 of Legacy Common, Block A, Lot 5, Phase 3, an addition to the City of Frisco according to the plat thereof recorded in Cabinet 2008, Page 316 of the Map Records of Collin County, Texas and being more particularly as follows:

BEGINNING at a point for the intersection of the centerline of Town & Country Boulevard (120' ROW) and Legacy Drive (120' ROW);

THENCE with the centerline of said Legacy Drive, the following courses and distances to wit:
South 00°05'15" East, a distance of 631.87 feet to a point for the beginning of a tangent curve to the left, having a central angle of 14°32'24", a radius of 1000.00 feet and a chord bearing and distance of South 07°21'27" East, 253.09 feet;
Southeasterly, with said curve, an arc distance of 253.77 feet to a point for corner;
South 14°37'39" East, a distance of 46.64 feet to a point for the intersection of the centerline of said Legacy Drive and the north right-of-way line of State Highway 121 (variable width ROW);

THENCE with said north right-of-way line, South 71°21'38" West, a distance of 320.13 feet to a point for the northeast corner of said Lot 5;

THENCE leaving said north right-of-way line, crossing said Lot 5 and with the north line of Legacy Creek, Block A, Lots 1 and 2, an addition to the City of Frisco according to the plat recorded in Cabinet 2011-125 of the Map Records of Collin County, Texas the following courses and distances to wit:
South 89°51'51" West, a distance of 559.50 feet to a point for corner;
South 89°41'55" West, a distance of 1191.57 feet to a point for the northeast corner of a tract of land described in deed to Frisco 52 Land, LLC recorded in Document No. 2010-112022 of the Real Property Records of Denton County, Texas;

THENCE with the north line of said Frisco 52 Land, LLC tract, North 89°55'08" West, a distance of 38.87 feet to a point for corner;

THENCE leaving said north line, North 16°25'03" West, a distance of 60.00 feet to a point in the centerline of said Town & Country Boulevard for the beginning of a non-tangent curve to the left having a central angle of 31°30'57", a radius of 1400.00 feet and a chord bearing and distance of North 57°49'28" East, 760.41 feet;

THENCE with said centerline, the following courses and distances to wit:
Northeasterly, with said curve, an arc distance of 770.08 feet to a point for corner;
North 42°04'00" East, a distance of 329.59 feet to a point for the beginning of a tangent curve to the right, having a central angle of 47°50'45", a radius of 1000.00 feet and a chord bearing and distance of North 65°59'22" East, 811.01 feet;
Northeasterly, with said curve, an arc distance of 835.07 feet to a point for corner;
North 89°54'45" East, a distance of 459.78 feet to the **POINT OF BEGINNING** and containing 32.68 acres of land.

Bearing system based on the monuments found in the west right-of-way line of Legacy Drive according to the 247.04 acre tract of land described in deed to Town and Country Development at Stonebriar, Inc. recorded in Denton County Clerk's File No. 95-R0075309 of the Real Property Records of Denton County, Texas.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

"THOROUGHFARE STATEMENT"
"THE THOROUGHFARE ALIGNMENT(S) SHOWN ON THIS EXHIBIT ARE FOR ILLUSTRATION PURPOSES AND DOES NOT SET THE ALIGNMENT. THE ALIGNMENT IS DETERMINED AT TIME OF FINAL PLAT."

EXHIBIT A: FOR Z#11-_____

STONEBRIAR COMMONS

BEING 32.68 ACRES OUT OF
WILLIAM GARVIN SURVEY ABSTRACT NO. 453
CITY OF FRISCO, DENTON COUNTY, TEXAS
WILLIAM GARVIN SURVEY ABSTRACT NO. 1103
CITY OF FRISCO, COLLIN COUNTY, TEXAS

OWNERS:
WESCAL WINDMILL LAND, LLC
1125 LEGACY DRIVE, STE. 230
FRISCO, TEXAS 75034

LEGACY COMMONS RETAIL 1, L.P.
1125 LEGACY DRIVE, STE. 230
FRISCO, TEXAS 75034

LEGACY COMMONS , L.P.
1125 LEGACY DRIVE, STE. 230
FRISCO, TEXAS 75034

LEGACY COMMONS OFFICE I, L.P.
1125 LEGACY DRIVE, STE. 230
FRISCO, TEXAS 75034

LEGACY STONEBRIAR HOTEL II, LLC
1125 LEGACY DRIVE, STE. 230
FRISCO, TEXAS 75034

LEGACY STONEBRIAR HOTEL III, LLC
1125 LEGACY DRIVE, STE. 230
FRISCO, TEXAS 75034

BAZE REAL ESTATE, LLC.
1221 LEGACY DRIVE
FRISCO, TEXAS 75034

OWNER / APPLICANT:
WINDMILL DEVELOPMENT LLC
5300 TOWN & COUNTRY BOULEVARD, STE. 1953
FRISCO, TEXAS 75034
972-625-6022
FAX 972-625-6275

SURVEYOR :
Kimley-Horn and Associates, Inc.
5760 Genesis Court, Suite 200
Frisco, Texas 75034
Tel. No. 972-335-3580
Fax No. 972-335-3779
Contact : Frank Abbott

DATE : July 11, 2011

N
W E
S

GRAPHIC SCALE
100' 0 50' 100' 200'
1" = 100' AT 24"X36"

FLOOD STATEMENT: According to Community Panel No. 48121G0580G , dated April 18, 2011 of the National Flood Insurance Program Map, Flood Insurance Rate Map of Denton County, Texas, Federal Emergency Management Agency, Federal Insurance Administration, this property is within a special flood hazard area.

Legend

IRF = Iron rod found
IRS = Iron rod set
= Land Records of Collin County, Texas
= Map Records of Collin County, Texas
r. = Real Property Records of Denton County, Teas
= Plat Records of Denton County, Texas

TABLE

Use	SF / Unit Type	Parking Required	Shared Parking Required
PHASE 1			
(1) Office	28,000 sf	93 spaces	84 spaces
Retail	5,285 sf	26 spaces	18 spaces
Restaurant	6,500 sf	65 spaces	33 spaces
(2) Retail	9,000 sf	45 spaces	30 spaces
PHASE 2			
(3) Retail/	5,500 sf	28 spaces	19 spaces
Restaurant	4,200 sf	42 spaces	21 spaces
(6) Restaurant	6,500 sf	65 spaces	33 spaces
(7) Retail	5,000 sf	25 spaces	17 spaces
Restaurant	4,000 sf	40 spaces	20 spaces
(8) Office	35,000 sf	117 spaces	105 spaces
PHASE 3			
(5) Restaurant	7,200 sf	72 spaces	36 spaces
(11) Sheraton Hotel Complex	7,200 sf	38 spaces	38 spaces
Hotel Rooms	175 rooms	175 spaces	175 spaces
(12) Conference	10,000 sf	45 spaces	45 spaces
Retail	4,000 sf	20 spaces	14 spaces
(13) Residential	286 units	429 spaces	429 spaces
PHASE 4			
(4) Retail	7,200 sf	36 spaces	24 spaces
(9/10) Retail	7,500 sf	38 spaces	25 spaces
Restaurant	6,500 sf	65 spaces	33 spaces
(14) Residential	395 units	593 spaces	593 spaces

Total Office sf = 63,000 sf
Total Retail sf = 43,485 sf
Total Restaurant sf = 30,700 sf
Total Hotel Rooms = 175
Total Conference sf = 10,000 sf
Total Residential Units = 681

Total Parking Required (Without Shared Parking)	**2,057 spaces**
Total Parking Required in Accordance with Shared Parking Provisions of PD62	**1,792 spaces**
Total Parking Provided	**1,842 spaces**

Site Plan Notes

Planning Department
1) Dumpsters and trash compactors shall be screened in accordance with the Comprehensive Zoning Ordinance.
2) Open storage, where permitted, shall be screened in accordance with the Comprehensive Zoning Ordinance.
3) Outdoor lighting shall comply with the lighting and glare standards contained within the Comprehensive Zoning Ordinance
4) Landscaping shall conform to landscape plans approved by the city.
5) All elevations shall comply with applicable overlay district requirements

Fire Department
1) Buildings of 5,000 square feet or greater shall be 100% fire sprinkled. Alternative fire protection measures may be approved by the Fire Department.
2) Fire lanes shall be designed and constructed per city standards or as directed by the Fire Department.
3) Two points of access shall be maintained for the property at all times.
4) All fire lane radii are 20' min.

Building Inspections
1) Handicap parking areas and building accessibility shall conform to the Americans with Disabilities Act (ADA) / TAS / TDLR and with the requirements of the current, adopted Uniform Building Code.
2) All signage is subject to Building Inspections approval.
3) All fences and retaining walls shall be shown on the site plan and are subject to Building Inspection department approval.
4) All exterior building materials are subject to Building Inspections department's approval.

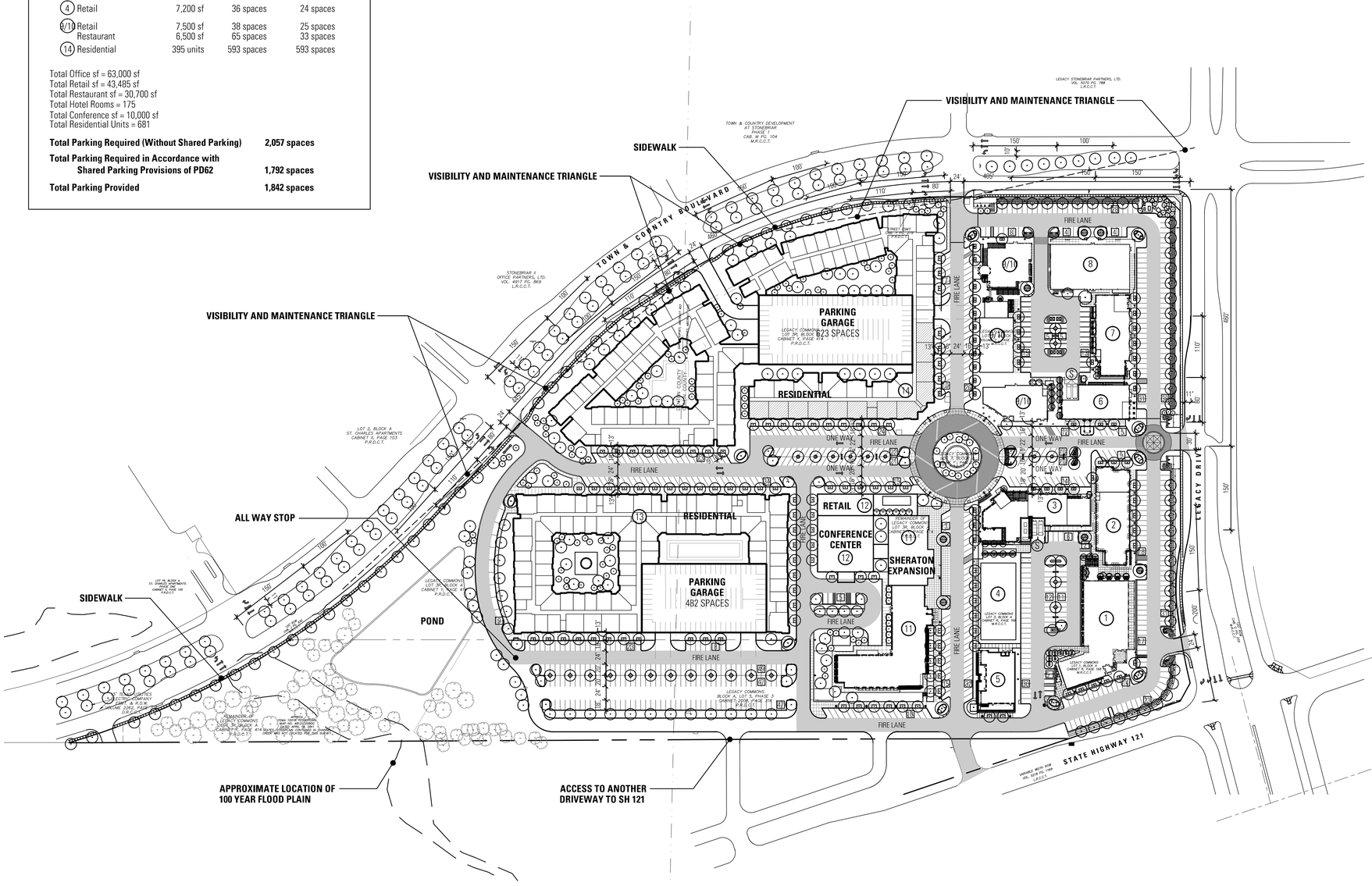
Engineering
1) Sidewalks of not less than four (4') feet in width and barrier free ramps at all curb crossings shall be provided per city standards
2) Approval of the site plan is not final until all engineering plans are approved.
3) Site plan approval is required prior to grading release.
4) All electric lines less than 60,000 volts and communication utilities shall be installed and/or relocated underground.

Parks Department
1) All subdivisions or additions are required to identify any existing or proposed bodies of water or wetlands within the proposed subdivision or addition. All necessary permits required for development shall be secured prior to the commencement of construction.
2) Four-inch (4") sleeves for irrigation lines and electrical services shall be installed in street medians.
3) All right-of-way areas shall have eight (8") inches of topsoil prior to the acceptance by the City of Frisco.

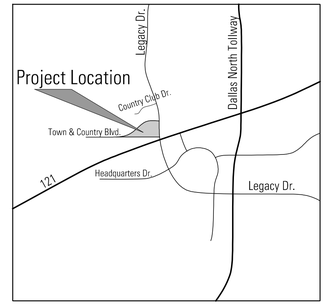
The thoroughfare alignment(s) shown on this exhibit are for illustration purposes and do not set the alignment(s). The alignment is determined at time of final plan

Easement Note

A street easement shall be provided with all deceleration and right turn lanes constructed as required for development of the site and shall be shown on the Preliminary Site Plan.



Location Map



Site Data Summary

Zoning:	PD62-0-2
Proposed Use:	Hotel 175 Rooms, Retail, Office Restaurant, Residential, Bank and Drive Through
Lot Area:	Lot 3R 32.68 acres, (1,423,540.80 sf)
Building Area: Office, Retail, Restaurant, and Bank Hotel Residential	 28,770 sf 175 rooms - 115,500 sf 680 units
Building Height:	12 Stories as per PD
For Proposed Parking Requirements and Provisions:	See Planned Development Standards

Legend

- (S) Service Area
- Fire Lane
- Flex Space Built to Commercial Standards

SCALE: 1" = 100'
0 50 100 200

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Revisions		
Rev.	Date	Description

STONEBRIAR COMMONS
FRISCO, TEXAS

OWNER / APPLICANT
Windmill Development LLC
5300 Town & Country Blvd.
Frisco, Texas 75034
phone: (972) 625-6201
fax: (972) 625-6275

PLANNER
TalleyAssociates
Planning
Landscape Architecture
Urban Design
1925 San Jacinto, Suite 400
Dallas, Texas 75201
T 214.871.7900
F 214.871.7985

ENGINEER / SURVEYOR
Kimley-Horn Assoc., Inc.
5750 Genesis Court
Suite 200
Frisco, Texas 75304
phone: (972) 335-3580
fax: (972) 335-3779

Windmill Development LLC
Phase 6
Block A, Lot 3R

BLOCK A LOT 3R

W.G. Garvin Survey, Abstract 456
W.G. Garvin Survey, Abstract 1103

Date:
December 26, 2007
Revised January 17, 2008
Revised February 5, 2008
Revised July 26, 2011

Project No.
0036-01

Drawn By
MD/AB/JD

Checked By
CT/KB

Sheet Title:
ZONING EXHIBIT C
CONCEPT PLAN

Drawing No.

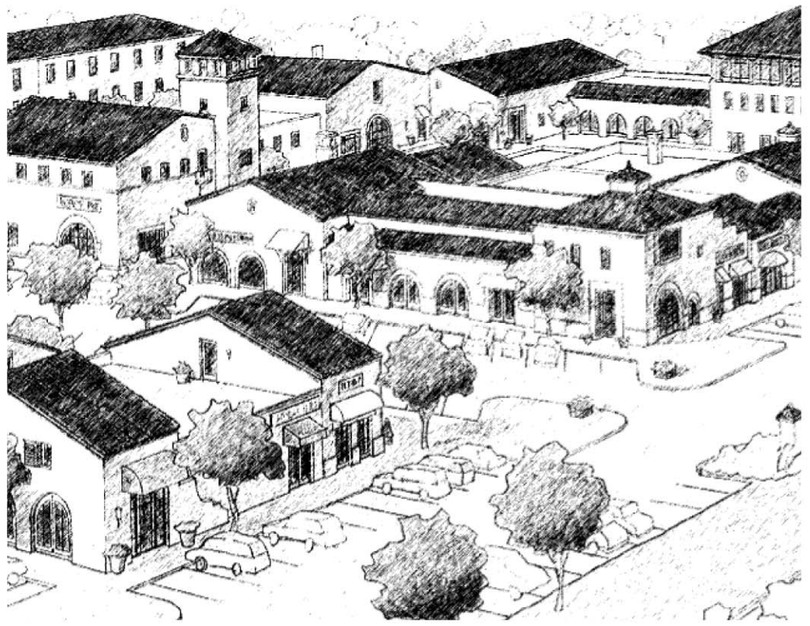


Exhibit D

Stonebriar Commons

Design Guidelines

Date: February 5, 2008
Revised: July 11, 2011



Typical Architectural Character

AGENDA ITEM #26.



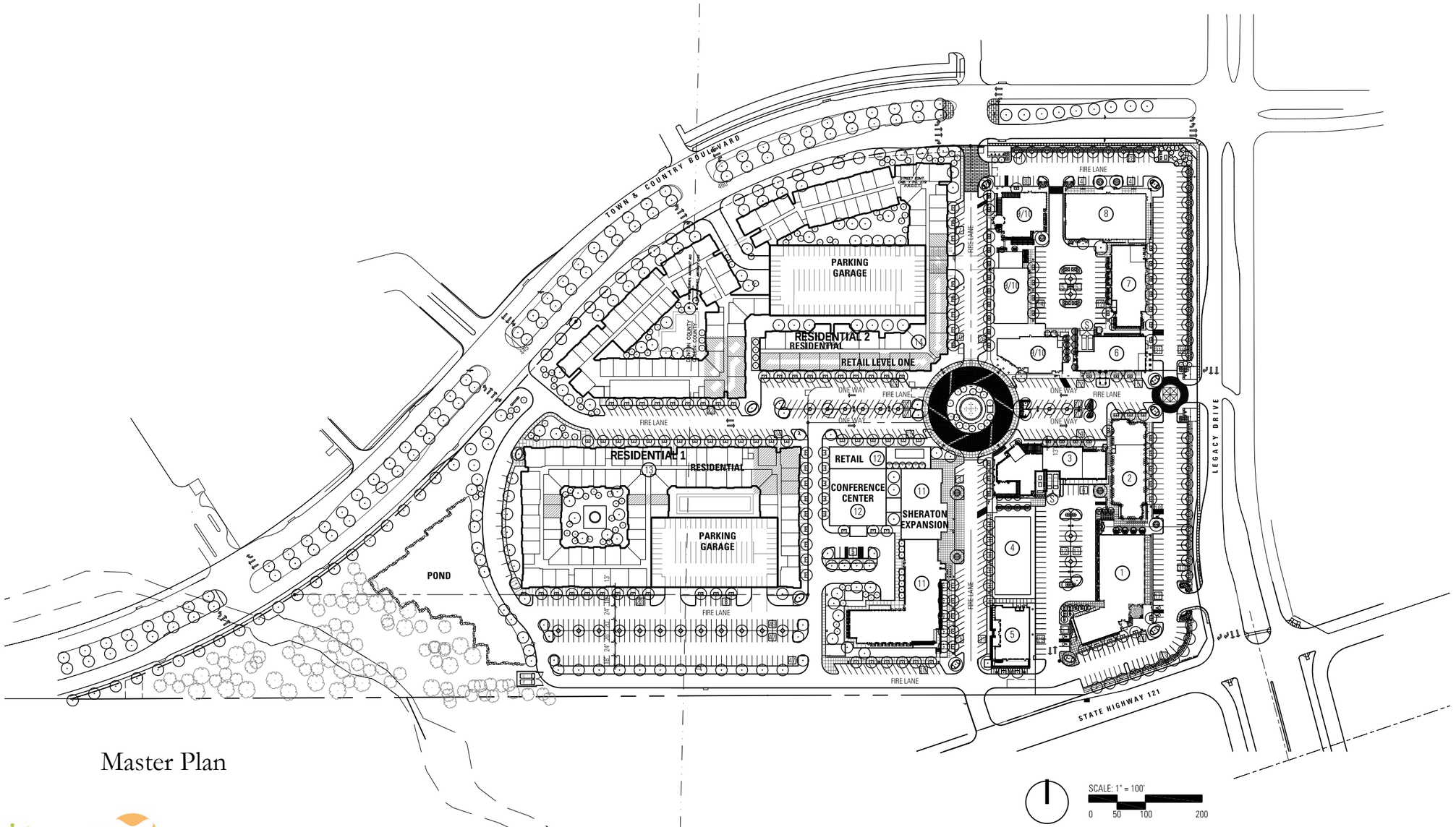








AGENDA ITEM #26.



Master Plan

TalleyAssociates three

AGENDA ITEM #26.
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AGENDA ITEM #26.

Master Plan Tabulations

TABLE

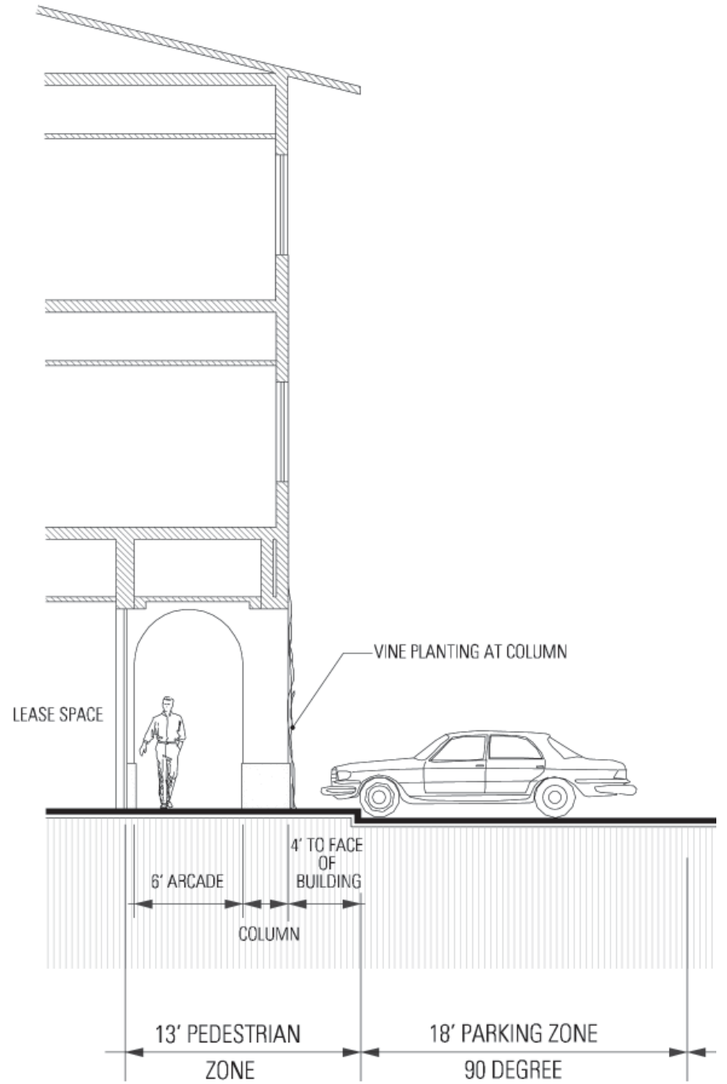
Use	SF / Unit Type	Parking Required	Shared Parking Required
PHASE 1			
(1) Office	28,000 sf	93 spaces	84 spaces
Retail	5,285 sf	26 spaces	18 spaces
Restaurant	6,500 sf	65 spaces	33 spaces
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(3) Retail/	5,500 sf	28 spaces	19 spaces
Restaurant	4,200 sf	42 spaces	21 spaces
(6) Restaurant	6,500 sf	65 spaces	33 spaces
(7) Retail	5,000 sf	65 spaces	37 spaces
Restaurant	4,000 sf		
(8) Office	35,000 sf	117 spaces	105 spaces
PHASE 3			
(5) Restaurant	7,200 sf	72 spaces	36 spaces
(11) Sheraton Hotel Complex	7,200 sf	38 spaces	38 spaces
Hotel Rooms	175 rooms	175 spaces	175 spaces
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Retail	4,000 sf	20 spaces	14 spaces
(13) Residential	286 units	429 spaces	429 spaces
PHASE 4			
(4) Retail	7,200 sf	36 spaces	24 spaces
(9/10) Retail	7,500 sf	38 spaces	25 spaces
Restaurant	6,500 sf	65 spaces	33 spaces
(14) Residential	395 units	593 spaces	593 spaces

Total Office sf = 63,000 sf
Total Retail sf = 43,485 sf
Total Restaurant sf = 30,700 sf
Total Hotel Rooms = 175
Total Conference sf = 10,000 sf
Total Residential Units = 680

Total Parking Required = 2,055 spaces

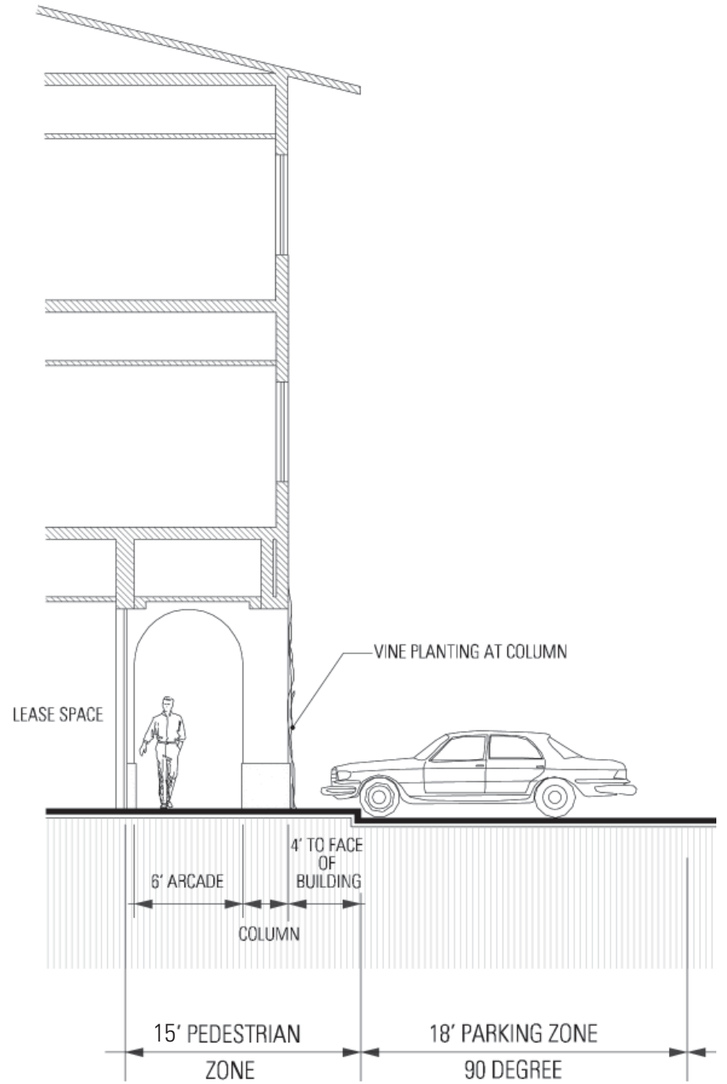
Total Shared Parking Required = 1,790 spaces

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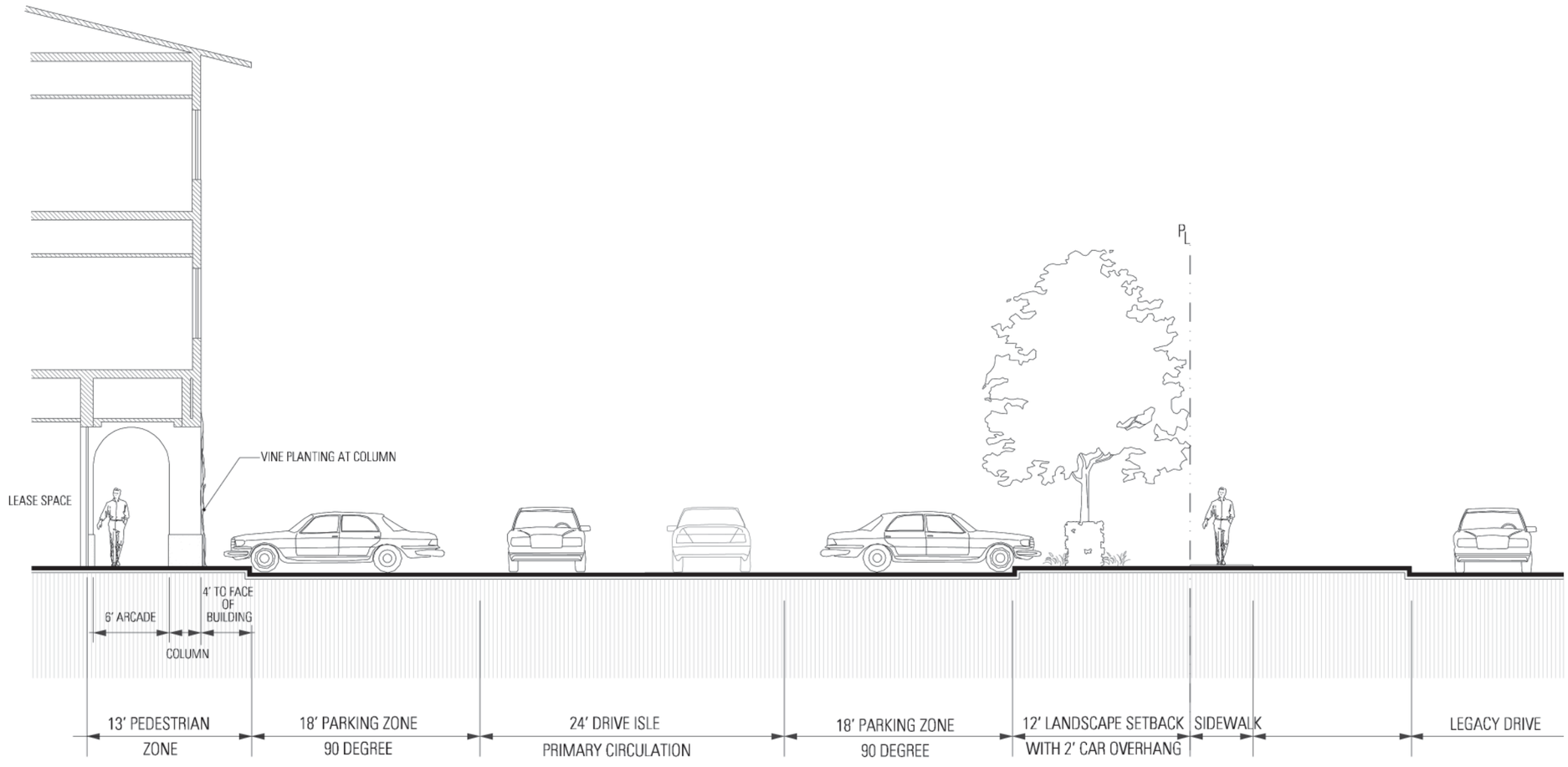
Arcade Option At Pedestrian Zone-
Existing Areas

AGENDA ITEM #26.



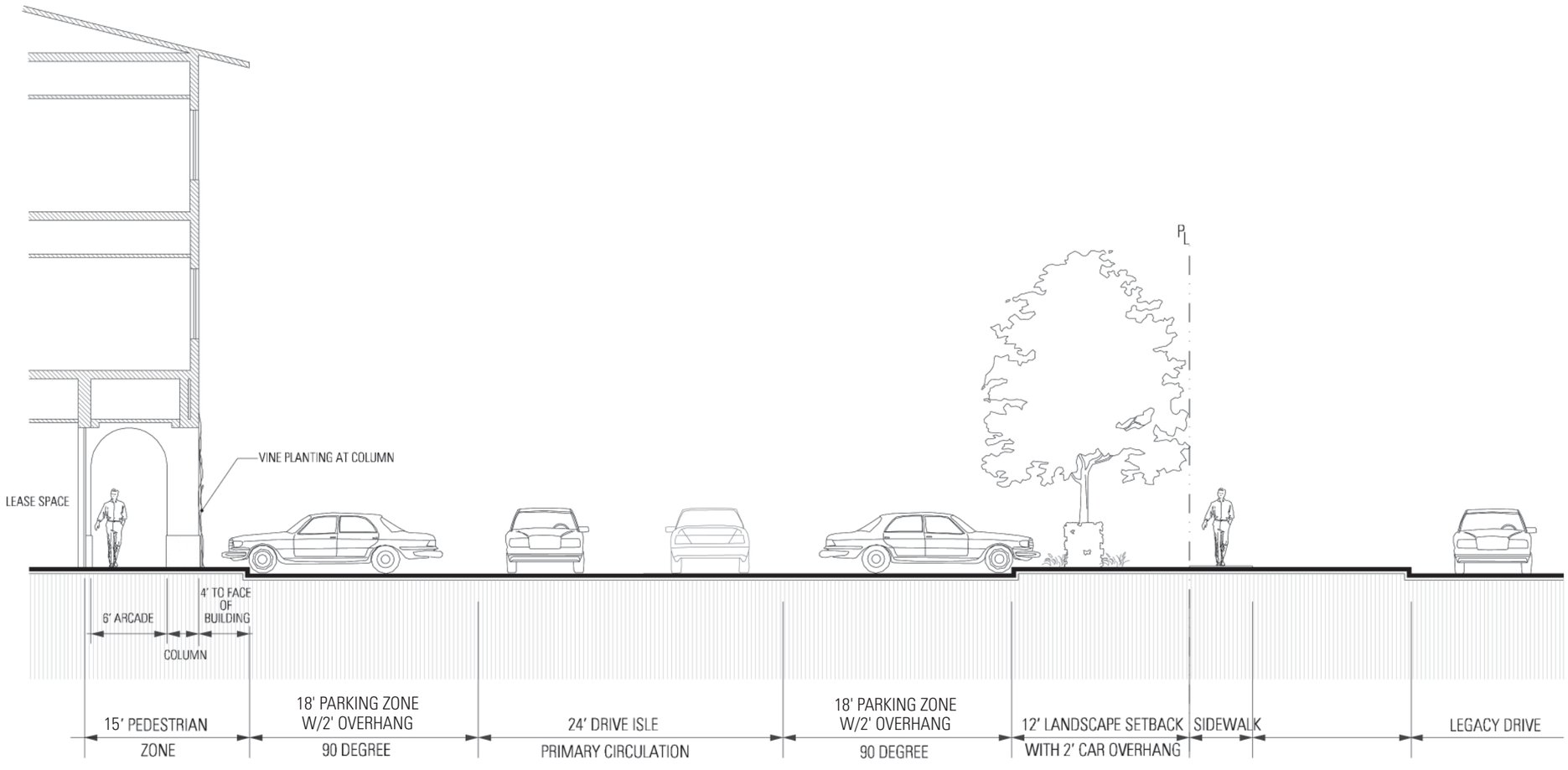
Arcade Option At Pedestrian Zone

AGENDA ITEM #26.



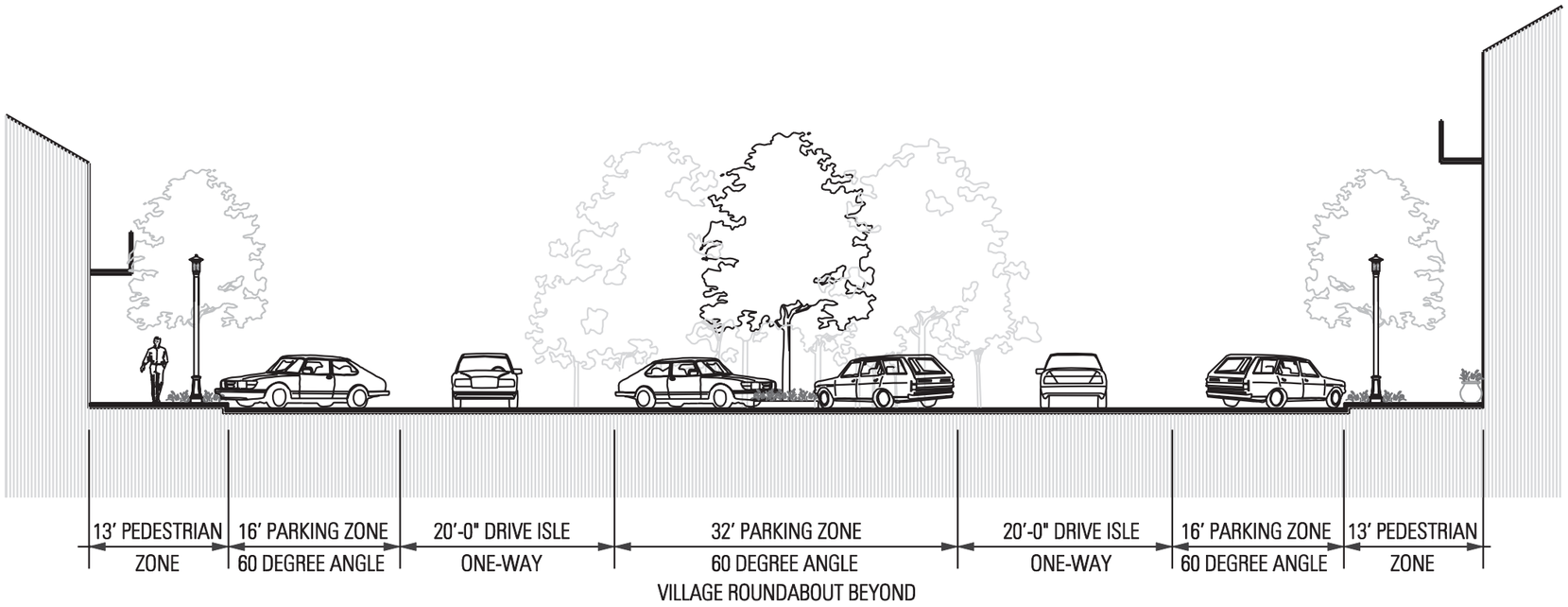
Legacy Drive Section- Existing Areas

AGENDA ITEM #26.



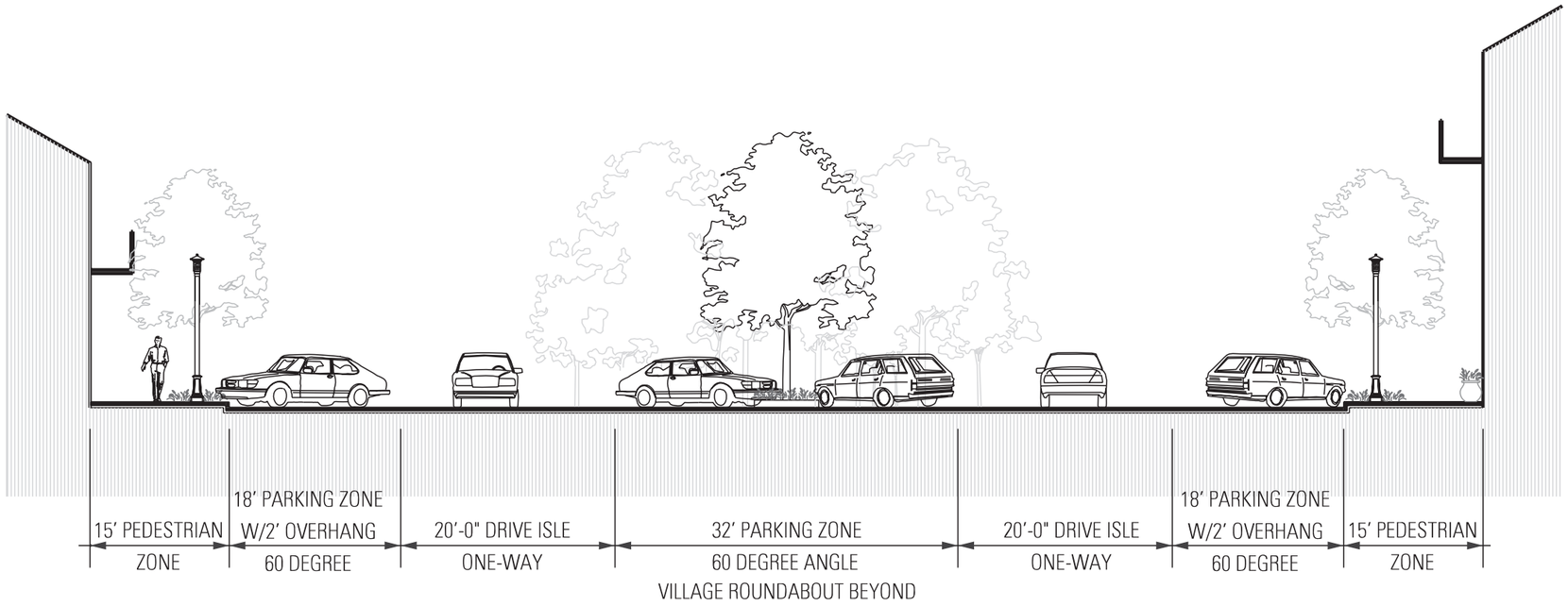
Legacy Drive Section

AGENDA ITEM #26.



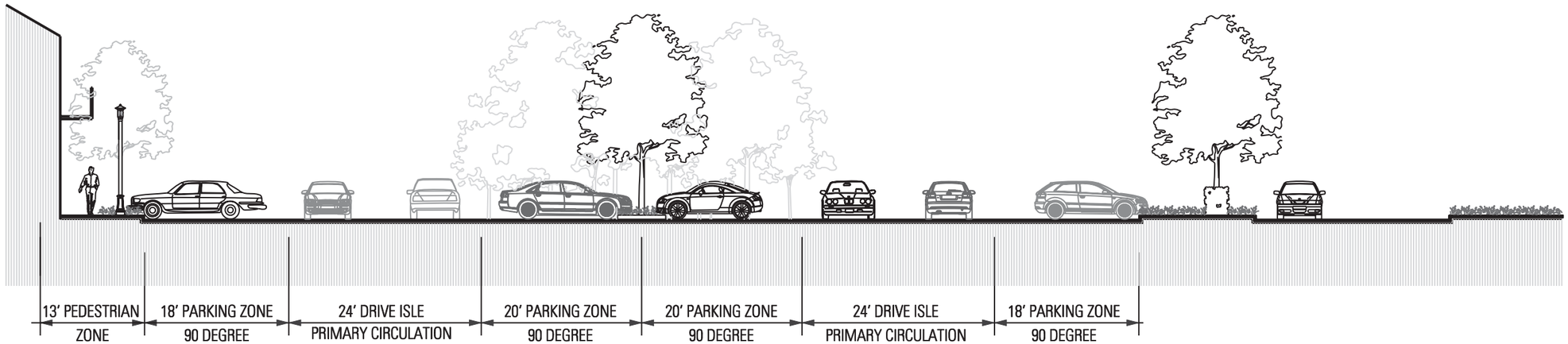
Typical Internal Section Between Buildings- Existing Areas

AGENDA ITEM #26.



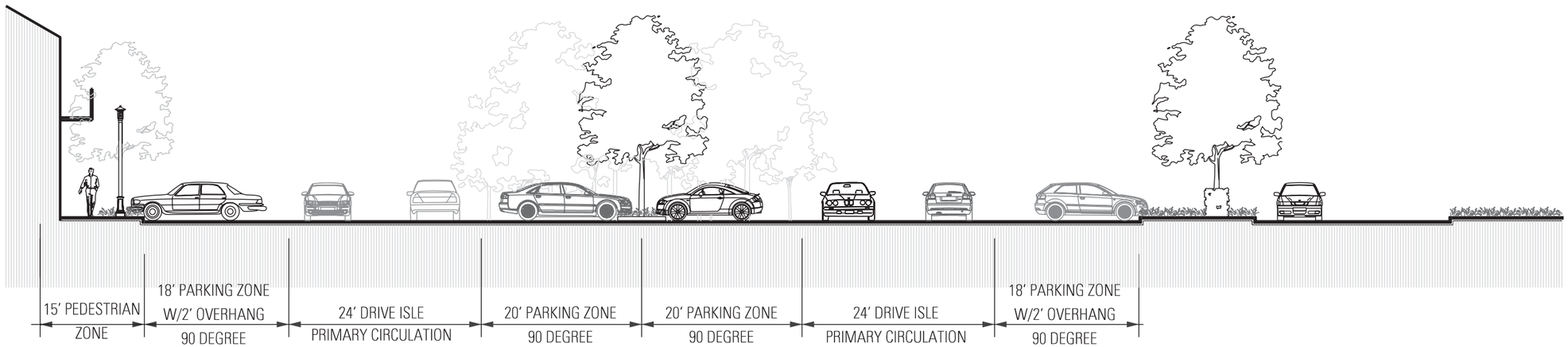
Typical Internal Section Between Buildings

AGENDA ITEM #26.



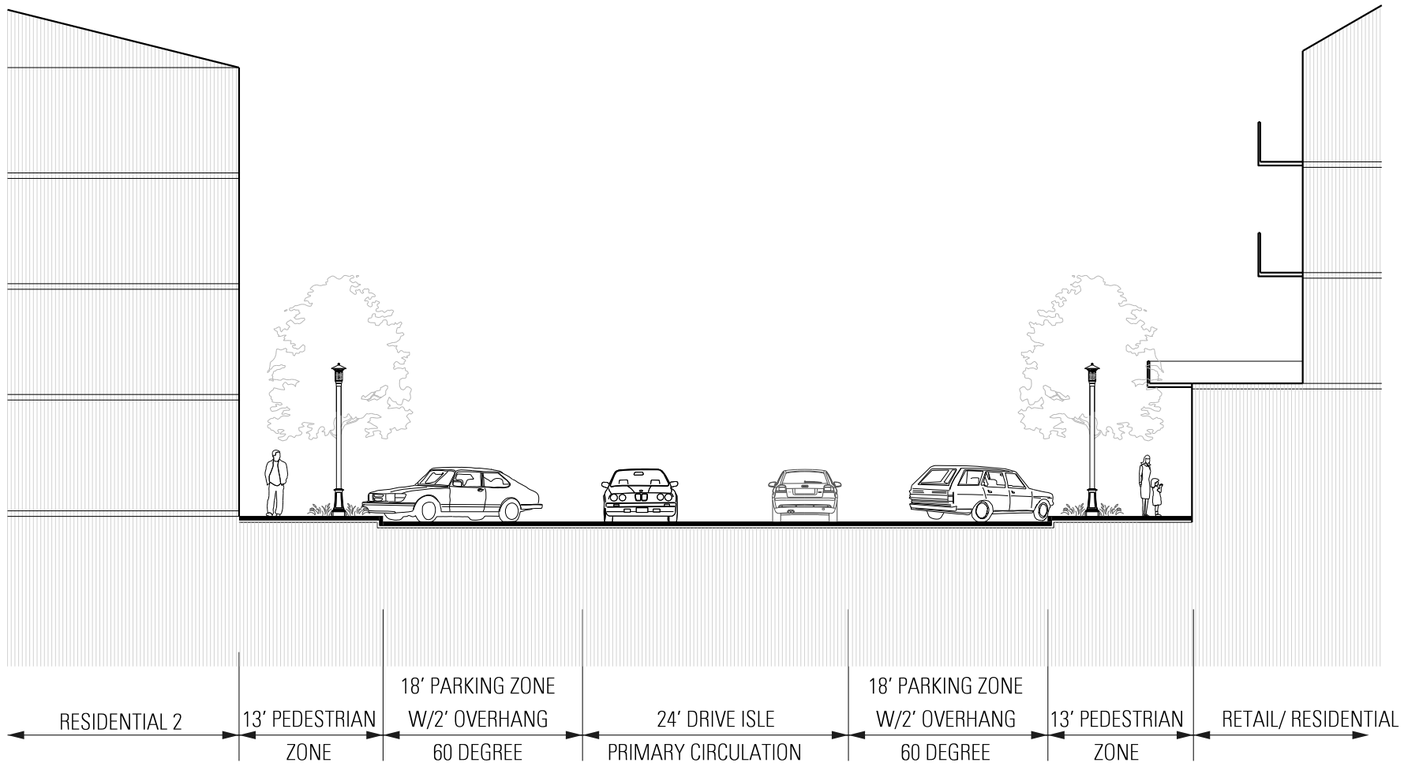
Section At Residential Building 1- Existing Areas

AGENDA ITEM #26.



Section At Residential Building 1

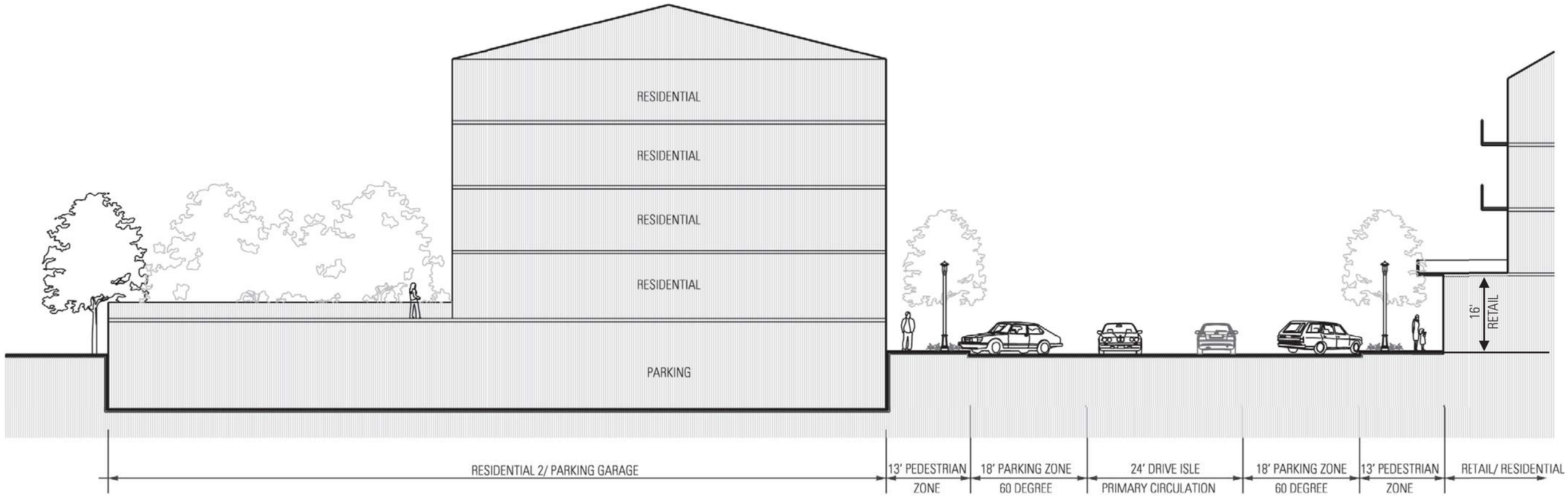
AGENDA ITEM #26.



Section At Residential Building 2

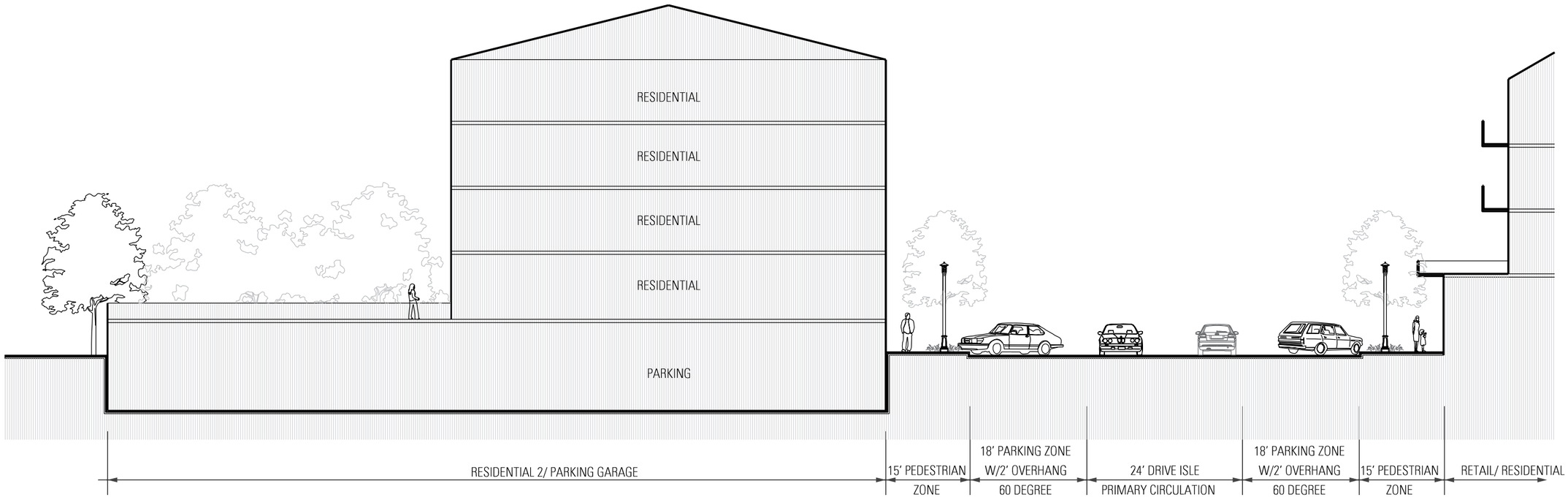
AGENDA ITEM #26.

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Section At Residential Building 2- Existing Areas

AGENDA ITEM #26.
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Section At Residential Building 2

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1

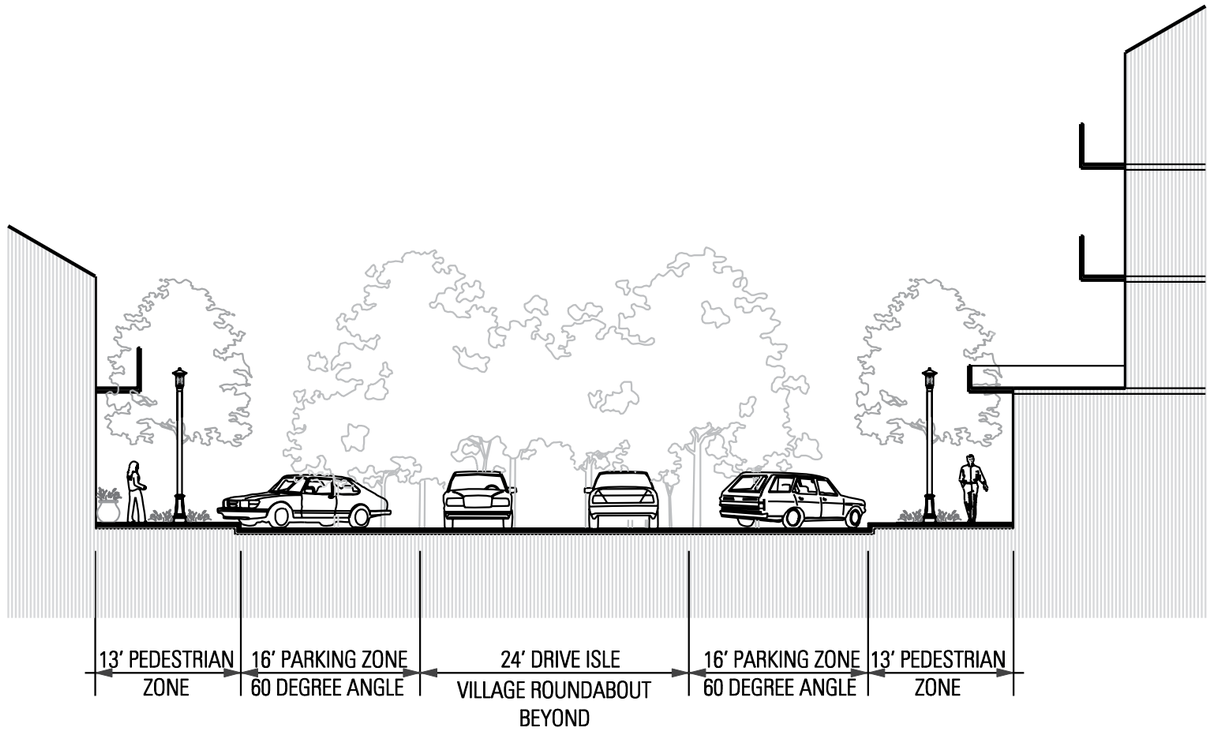


2

Parking Structure with Residential Above

AGENDA ITEM #26.

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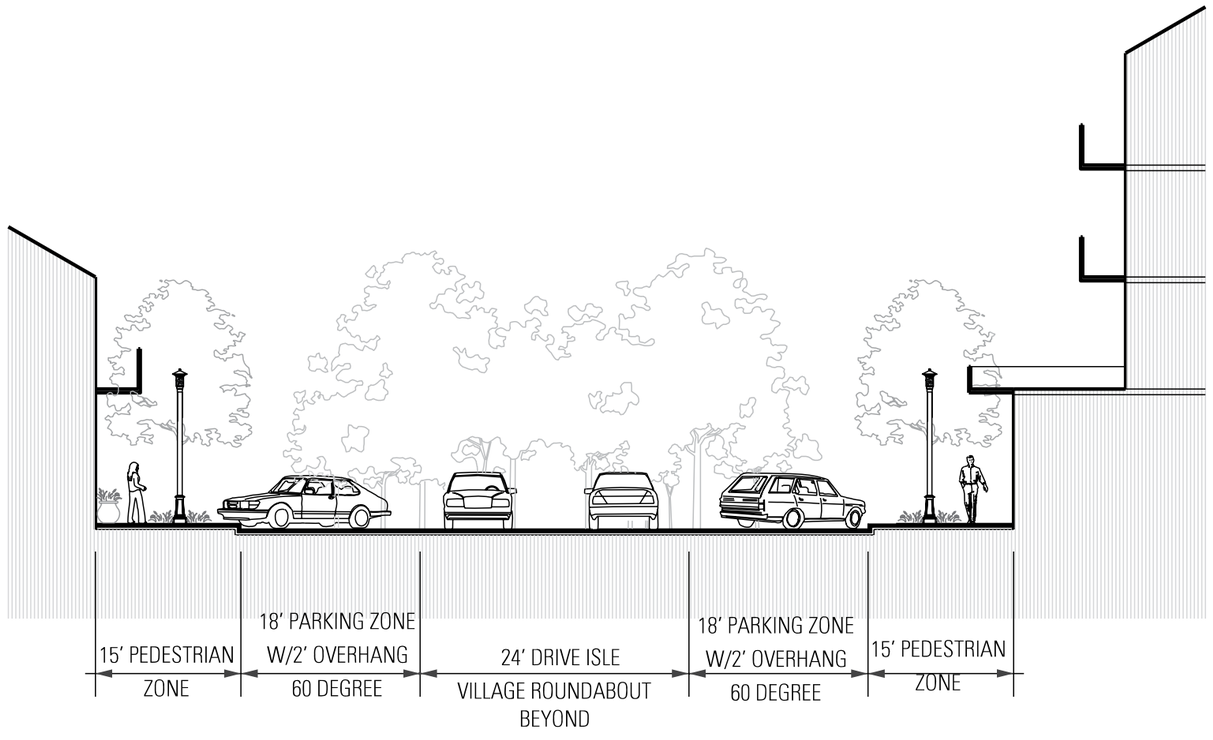


North- South Street Cross Section- Existing Areas

AGENDA ITEM #26.

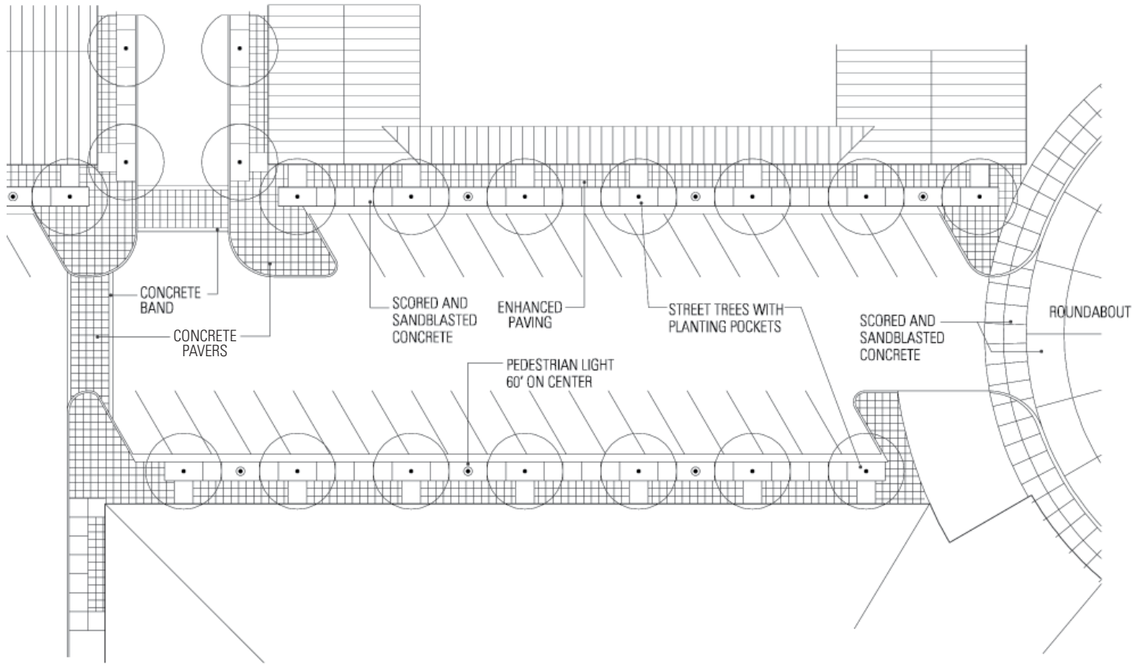
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AGENDA ITEM #26.

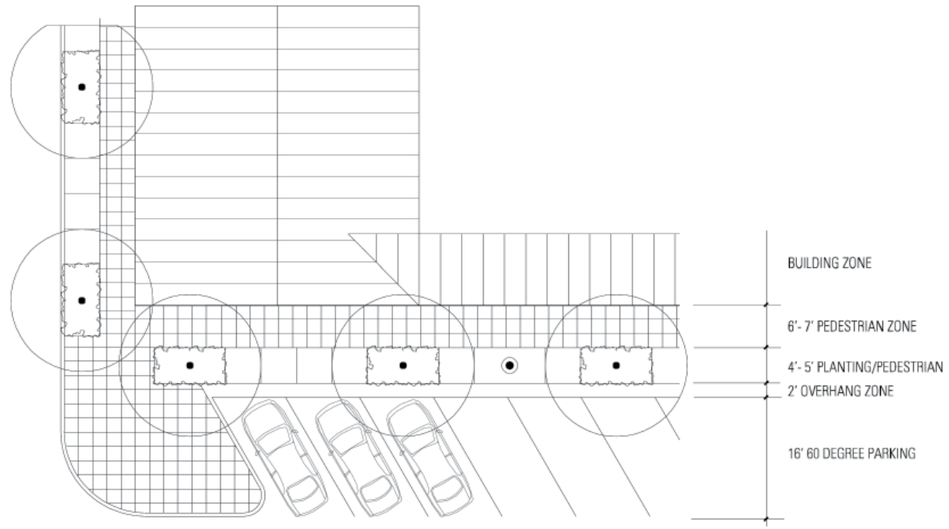


North- South Street Cross Section

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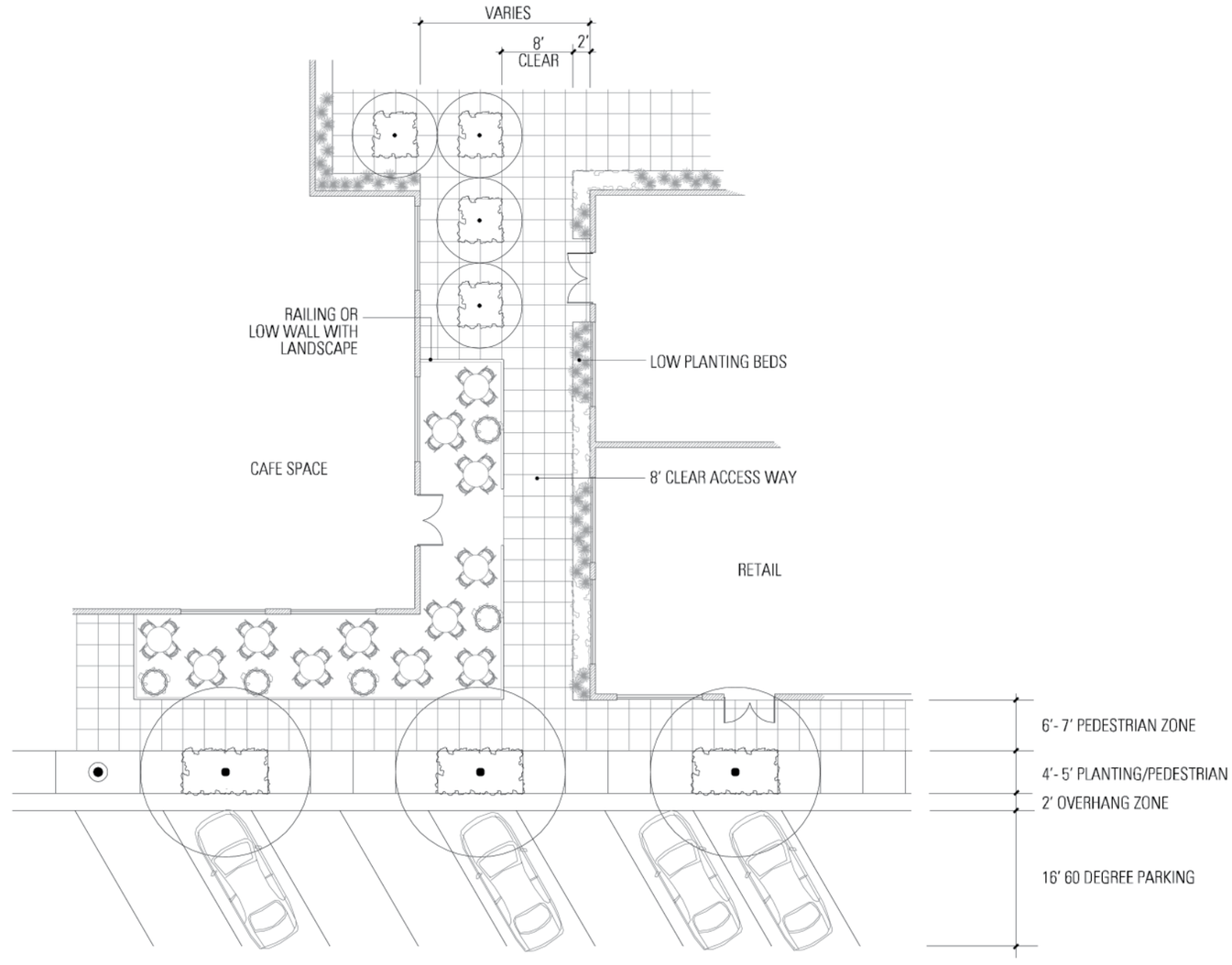
Typical Streetscape Design



Pedestrian Zone: Enlargement

AGENDA ITEM #26.

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Building Access Way Courtyards

AGENDA ITEM #26.

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AGENDA ITEM #27.

PROGRESS IN MOTION

Department of Financial Services
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and City Council Members**

Thru: **George Purefoy, City Manager**

From: **Nell Lange, Assistant City Manager**
Jennifer Hundt, Budget Manager

Date: **September 1, 2011**

Subject: **Public Hearing: Second Public Hearing on the City of Frisco Fiscal Year 2012 Annual Budget, including Frisco Economic Development Corporation Fiscal Year 2012 Budget and the Frisco Community Development Corporation Fiscal Year 2012 Budget**

Action Requested: The City Council shall hold the second public hearing on the proposed Annual 2011 Budget as previously presented.

Background Information: Article VII, Section 7.05 of the City Charter requires the City Council to conduct a public hearing on the proposed budget. The Council called the public hearings at their meeting on August 1, 2011 and all notices have been published as required. There will be a short presentation on the budget for those that may not have been present at the first public hearing. The first public hearing was held on August 16, 2011. The budget is scheduled for adoption at the regular council meeting on September 20, 2011.

Board/ Citizen Input: A worksession was held on August 13, 2011.

Alternatives: NA

Financial Considerations: The City Council gave direction at the meeting on August 16, 2011 to reduce the proposed tax rate of $0.465 to the Effective Tax Rate of $0.461910. We have made adjustments to the proposed revenues and expenditures in General Fund to address this request.

Legal Review: None

Supporting Documents: A copy of the Proposed 2012 Budget may be viewed on the City's website. There will be an overview of the budget presented at the meeting with additional information provided concerning the changes that were made.

AGENDA ITEM #28.

PROGRESS IN MOTION

Department of Administrative Services
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and City Council Members**

Thru: **George Purefoy, City Manager**
Nell Lange, Assistant City Manager

From: **Tom Johnston, Director of Administrative Services**

Date: **August 30, 2011**

Subject: **Consider and Act Upon Approval of a Purchase Order to Physio Control for the Purchase of Nine (9) Lifepak 15, Heart Monitor/Defibrillators.**

Action Requested: Consider and act upon approval of a purchase order to Physio Control for the purchase of nine (9), Lifepak 15, heart monitor/defibrillators in the amount of $284,039.

Background Information: Sole source expenditure for products and services from Physio Control, as allowed by chapter 252.022 (a) (7) of the Texas Local Government Code. Physio Control is the sole source for this product. These units are being purchased to replace existing Lifepak 12 units at the end of service.

Board/ Citizen Input: N/A

Alternatives: City Council could choose not to approve this purchase.

Financial Considerations: Funds will be available in the revised 2011 Fire Department operational budget.

Legal Review: N/A

Supporting Documents: Dept memo and quote form Physio Control.

FRISCO FIRE DEPARTMENT

CITY OF FRISCO

8601 GARY BURNS DRIVE
FRISCO, TEXAS 75034
TEL 972.292.6300 · FAX 972.292.6319
WWW.FRISCOFIRE.COM

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

CC: **George Purefoy, City Manager**
Ron Patterson, Assistant City Manager
Tom Johnston, Director of Administrative Services

From: **Mack Borchardt, Fire Chief**

Date: **August 23, 2011**

Subject: **Request for City Council consideration for the approval of a Purchase Order to Physio Control for the purchase of LifePak 15 monitors**

Attached for your consideration is a purchase order request to Physio Control for the purchase of nine (9) LifePak 15 monitors and related equipment for a total price of $284,039. LifePak Defibrillator/Monitors in use now are reaching the end of their service life. We are nearing the time when parts and service for these units will no longer be available. We do have LifePak 15 monitors on order with all new apparatus packages.

Due to the economic times, our intent has been to minimize the impact on any single budget year. We have requested seven (7) LifePak 15 monitors for the upcoming 2011/12 Budget. We recently were offered a price that will allow purchasing nine (9) of the LifePak 15's, along with associated equipment, for the same price as the seven (7) we had projected in the 2011/12 Fire Budget request. Because this pricing may be available for only a brief period of time, we focused on identifying funding sources to allow us to purchase these units immediately. Working with the Finance Department, funding for immediate use was identified.

My recommendation is that we take advantage of the cost savings to purchase nine (9) LifePak 15 monitors immediately. In addition, we recommend removing the request for seven (7) LifePak 15's from the 2011/12 Fire Budget. This action will keep the replacement schedule intact, while ensuring significant cost savings.

Please feel free to contact me should you have any questions regarding this item. I may be reached at (972) 292-6310 or FireChief@FriscoFire.com.

Physio-Control, Inc.
11811 Willows Road NE
P.O. Box 97023
Redmond, WA 98073-9723 U.S.A
www.physio-control.com
www.medtronic.com
tel 800.442.1142
fax 800.732.0956

To: Battalion Chief Lee Glover
Frisco Fire Department
8601 Gary Burns Dt
FRISCO, TX 75034
Phone: (972) 335-5525
Fax: (972) 335-5528
lglover@friscofire.com

Quote#: **1-202406641**
Rev#: 6
Quote Date: 08/22/2011
Sales Consultant: Elizabeth Roberts
800-442-1142 x 72438
FOB: Redmond, WA

Terms: Net 30, all quotes subject to credit approval and the following terms & conditions

Contract: **None**

Exp Date: **11/20/2011**

Line	Catalog # / Description	Qty	Price	Unit Disc	Trade-In	Unit Price	Ext Total
1	**99577-000047 - LP15 MONITOR/DEFIB, CPR, Pace, to 360J, SPO2/CO/MetHb, 12L GL, NIBP, CO2, Trend, BT** INCLUDED AT NO CHARGE: 2 PAIR QUIK-COMBO ELECTRODES PER UNIT - 11996-000091, TEST LOAD - 21330-001365, Service Manual CD-ROM 21340-000438, ShipKit- 41577-000007. HARD PADDLES, BATTERIES AND CARRYING CASE NOT INCLUDED.	9	$36,595.00	$5,489.25	$2,333.33	$28,772.42	$258,951.75
2	**11577-000004 - STATION BATTERY CHARGER** AC OPERATION FOR STATIONARY APPLICATIONS, FOR USE WITH THE LI-ION 5.7 AMP BATTERY. INCLUDES AC POWER CORD, MOUNTING BRACKET AND OPERATING INSTRUCTIONS	2	$1,540.00	$231.00	$0.00	$1,309.00	$2,618.00
3	**21330-001176 - LI-ION BATTERY 5.7 AMP HOUR CAPACITY** RECHARGEABLE LITHIUM-ION, WITH FUEL GAUGE	36	$390.00	$58.50	$0.00	$331.50	$11,934.00
4	**11996-000323 - MASIMO SET RED LNCS PATIENT CABLE - 4 FEET** RED LNC-04,PATIENT CABLE,4FT,REF 2055	8	$185.00	$27.75	$0.00	$157.25	$1,258.00
5	**11171-000033 - RAINBOW DCIP-DC8,PED REUSE SENSOR,8FT,REF 2640** RAINBOW DCIP-DC8,PED REUSE SENSOR,8FT,REF 2640	11	$795.00	$119.25	$0.00	$675.75	$7,433.25
6	**11996-000020 - INFANT CUFF, 6X18CM REUSABLE** NIBP CUFF-REUSABLE,INFANT,6X18CM	8	$19.00	$2.85	$0.00	$16.15	$129.20
7	**11996-000021 - SMALL CHILD CUFF, 7X21CM REUSABLE** NIBP CUFF-REUSABLE,SMALL CHILD,7X21CM	8	$22.00	$3.30	$0.00	$18.70	$149.60
8	**11996-000022 - CHILD CUFF (PEDIATRIC), 9X27CM REUSABLE** NIBP CUFF-REUSABLE,CHILD,9X27CM	8	$22.00	$3.30	$0.00	$18.70	$149.60
9	**11996-000023 - SMALL ADULT CUFF, 12X30CM REUSABLE** ACCESSORY 11996-000023 OEM LP12	8	$26.00	$3.90	$0.00	$22.10	$176.80
10	**11996-000025 - LARGE ADULT CUFF, 16X42CM REUSABLE** NIBP CUFF-REUSABLE,LARGE ADULT 16X24CM	8	$30.00	$4.50	$0.00	$25.50	$204.00

Quote#: 1-202406641
Rev#: 6
Quote Date: 08/22/2011

Quote Products (continued)

Line	Catalog # / Description	Qty	Price	Unit Disc	Trade-In	Unit Price	Ext Total
11	**11996-000026 - THIGH CUFF, 20X54CM REUSABLE** NIBP CUFF- REUSABLE,THIGH, 20X54CM	8	$125.00	$18.75	$0.00	$106.25	$850.00

SUB TOTAL	$283,854.20
ESTIMATED TAX	$0.00
ESTIMATED SHIPPING & HANDLING	$185.00
GRAND TOTAL	**$284,039.20**

Trade-in Detail

Product	Qty	Unit Value	Total Value

Pricing Summary Totals

List Price:	$358,652.00
Trade-ins:	- $21,000.00
Cash Discounts:	- $53,797.80
Tax + S&H:	+ $185.00
GRAND TOTAL FOR THIS QUOTE	**$284,039.20**

TO PLACE AN ORDER, PLEASE FAX A COPY OF THE QUOTE AND PURCHASE ORDER TO: # 800-732-0956, ATTN: REP SUPPORT "Ask your sales representative how to get 25% or more off list price on your LIFEPAK disposables by signing up for a disposables agreement"

PHYSIO-CONTROL, INC. REQUIRES WRITTEN VERIFICATION OF THIS ORDER.A PURCHASE ORDER IS REQUIRED ON ALL ORDERS $10,000 OR GREATER BEFORE APPLICABLE FREIGHT AND TAXES.THE UNDERSIGNED IS AUTHORIZED TO ACCEPT THIS ORDER IN ACCORDANCE WITH THE TERMS AND PRICES DENOTED HEREIN. SIGN TO THE RIGHT:

CUSTOMER APPROVAL (AUTHORIZED SIGNATURE)

NAME

TITLE

DATE

Ref. Code: MH/02667801/1-3CAELO

Notes:

Taxes, Shipping and handling fees are estimates only and are subject to change at the time of order. Shipping and handling applies to ground transport only.

Above pricing valid only if quote is purchased in its entirely (optional items not required).

To receive a trade-in credit, the customer agrees to return the trade-in device(s) within 30 days of receipt of the replacement device(s) to Physio-Control's place of business or to an authorized Physio-Control representative. Physio-Control will provide instructions for returning the device(s) and will pay for the associated shipping cost

In the event that the trade-in device(s) are not received by Physio-Control within the 30-day window, customer acknowledges that the quote shall constitute a purchase order and agrees to be invoiced for the amount of the trade-in discount. Invoice shall be payable upon receipt.

Items listed above at no change are included as part of a package discount that involves the purchase of a bundle of items. Customer is solely responsible for appropriately allocating the discount extended on the bundle when fulfilling any reporting obligations it might have.

Serial number for trade-in units: 13837929, 13778385, 11479052, 13778386, 11479051, 13837931, 30166569

TERMS OF SALE

General Terms

Physio-Control, Inc.'s acceptance of the Buyer's order is expressly conditioned on product availability and the Buyer's assent to the terms set forth in this document and its attachments. Physio-Control, Inc. agrees to furnish the goods and services ordered by the Buyer only on these terms, and the Buyer's acceptance of any portion of the goods and services covered by this document shall confirm their acceptance by the Buyer. These terms constitute the complete agreement between the parties and they shall govern any conflicting or ambiguous terms on the Buyer's purchase order or on other documents submitted to Physio-Control, Inc. by the Buyer. These terms may only be revised or amended by a written agreement signed by an authorized representative of both parties.

Pricing

Unless otherwise indicated in this document, prices of goods and services covered by this document shall be Physio-Control, Inc. standard prices in effect at the time of delivery. Prices do not include freight insurance, freight forwarding fees, taxes, duties, import or export permit fees, or any other similar charge of any kind applicable to the goods and services covered by this document. Sales or use taxes on domestic (USA) deliveries will be invoiced in addition to the price of the goods and services covered by this document unless Physio-Control, Inc. receives a copy of a valid an exemption certificate prior to delivery. Please forward your tax exemption certificate to the Physio-Control, Inc. Tax Department, P.O. Box 97006, Redmond, Washington 98073-9706.

Payment

Unless otherwise indicated in this document or otherwise confirmed by Physio-Control, Inc. in writing, payment for goods and services supplied by Physio-Control, Inc. shall be subject to the following terms:

Domestic (USA) Sales - Upon approval of credit by Physio-Control, Inc., 100% of invoice due thirty (30) days after invoice date.

International Sales - Sight draft or acceptable (confirmed) irrevocable letter of credit.

Physio-Control, Inc. may change the terms of payment at any time prior to delivery by providing written notice to the Buyer. Physio-Control, Inc. reserves the right to charge a 15% restocking fee for returns.

Delivery

Unless otherwise indicated in this document, delivery shall be FOB Physio-Control, Inc. point of shipment and title and risk of loss shall pass to the Buyer at that point. Partial deliveries may be made and partial invoices shall be permitted and shall become due in accordance with the payment terms. In the absence of shipping instructions from the Buyer, Physio-Control, Inc. will obtain transportation on the Buyer's behalf and for the Buyers account.

Delays

Delivery dates are approximate. Physio-Control, Inc. will not be liable for any loss or damage of any kind due to delays in delivery or non-delivery resulting from any cause beyond its reasonable control, including but not limited to, acts of God, labor disputes. the requirements of any governmental authority, war, civil unrest, terrorist acts, delays in manufacture, obtaining any required license or permit, and Physio-Control, Inc. inability to obtain goods from its usual sources. Any such delay shall not be considered a breach of Physio-Control, Inc. and the Buyer's agreement and the delivery dates shall be extended for the length of such delay.

Inspections

Claims by the Buyer for damage to or shortages of goods delivered shall be made within thirty (30) days after shipment by providing Physio-Control, Inc. with written notice of any deficiency. Payment is not contingent upon immediate correction of any deficiencies and Physio-Control, Inc. prior approval is required before the return of any goods to Physio-Control, Inc..

Warranty

Physio-Control, Inc. warrants its products in accordance with the terms of the standard Physio-Control, Inc. product warranty applicable to the product to be supplied, and the remedies provided under such warranty shall be the Buyers sole and exclusive remedies. Physio-Control, Inc. makes no other warranties, express or implied, Including, without limitation, NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL PHYSIO-CONTROL, INC. BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.

Patent & Indemnity

Upon receipt of prompt notice from the Buyer and with the Buyer's authority and assistance, Physio-Control, Inc. agrees to defend, indemnify and hold the Buyer harmless against any claim that the Physio-Control, Inc. products covered by this document directly infringe any United States of America patent.

Miscellaneous

a) The Buyer agrees that products purchased hereunder will not be reshipped or resold to any persons or places prohibited by the laws of the United States of America.
b) Through The purchase of Physio-Control, Inc. products, the Buyer does not acquire any interest in any tooling, drawings, design information, computer programming, patents or copyrighted or confidential information related to said products, and the Buyer expressly agrees not to reverse engineer or decompile such products or related software and information.
c) The rights and obligations of Physio-Control, Inc. and the Buyer related to the purchase and sale of products and services described in this document shall be governed by the laws of the State of Washington, United States of America. All costs and expenses incurred by the prevailing party related to enforcement of its rights under this document, including reasonable attorneys fees, shall be reimbursed by the other party.

AGENDA ITEM #29.

PROGRESS IN MOTION

Department of Financial Services
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and City Council Members**

Thru: **George Purefoy, City Manager**
Nell Lange, Assistant City Manager

From: **Anita Cothran, Director of Financial Services**

Date: **September 1, 2011**

Subject: **Discussion and provide staff direction on commitment of certain revenue sources that cannot be used for other purposes**

Action Requested: City Council direction to staff regarding commitment of certain revenue sources that cannot be used for other purposes.

Background Information: Generally accepted accounting principles that the City follows are regulated by the Governmental Accounting Standards Board (GASB). In 2009 GASB issued a new accounting standard for presentation of equity in the general purpose financial statements. The implementation requirement for the City is for fiscal year 2011. GASB 54 provides the Council the ability to formally commit certain revenue sources. It also requires the Council to delegate authority to certain city staff to assign revenue sources in certain funds.

The Audit & Budget Committee met on Wednesday, August 31, to discuss these new regulations and fund balance classifications. I have attached the classifications for governmental funds as defined by GASB 54.

City staff has reviewed each fund's revenue source and determined that there are four funds that we would recommend you formally commit. Council could choose not to commit these fund balances, and staff would assign. These four funds are detailed in the attached documentation.

A formal action will confirm Council's intent for the reserve funds that the City has already established. After discussion at the September 6th meeting, we will prepare a resolution for Council approval at the September 20th meeting. Action must be taken before September 30, 2011.

Financial Considerations: None. This is a new accounting requirement for disclosing equity on the face of the financial statements that will improve financial

reporting by providing fund balance categories and classifications that will be more easily understood by the reader of the financial statement.

Legal Review: None

Supporting Documents: Fund Equity Classifications for Governmental Funds, Combined Budget Summary by Fund Type, Recommended Funds to Commit

CITY OF FRISCO
COMBINED BUDGET SUMMARY
2011-2012

Fund Title		Estimated Beginning Balance	Revenues	Expenses	Estimated Ending Balance
General Funds					
General Fund		$ 22,458,355	$ 83,472,101	$ 83,428,856	$ 22,501,601
Insurance Reserve Fund	Committed	1,459,173	-	-	1,459,173
Downtown Improvement Fund		89,436	87,100	104,137	72,399
Special Events Fund		76,286	106,000	86,000	96,286
Workforce Housing Fund	Committed	557,830	5,500	45,600	517,730
Public Arts Fund		255,419	38,626	38,626	255,419
Superdrome Fund	Committed	1,690,302	109,000	80,004	1,719,298
Special Revenue Funds					
TIRZ #1 Fund		2,902,270	26,127,279	26,126,546	2,903,003
Court Technology Fund		451,328	197,500	275,434	373,394
Traffic Control Enforcement		64,500	200,500	114,000	151,000
Hotel/Motel Tax Fund		116,051	3,114,351	2,949,089	281,313
Frisco Square MMD Fund		-	490,172	490,172	-
Panther Creek PID Fund		40,640	402,532	435,911	7,261
Grants Fund		-	4,000,000	4,000,000	-
CDBG Fund		-	396,472	396,472	-
Public Television Franchise Fund		480,867	351,869	199,000	633,736
Capital Projects Funds					
Capital Projects Fund		2,821,761	23,290	40,000	2,805,051
Capital Reserve Fund	Committed	1,668,519	217,000	183,064	1,702,455
Thoroughfare Impact Fee Fund		9,383,887	-	1,000,000	8,383,887
Park Dedication Fee Fund		4,354,493	-	-	4,354,493
Debt Service Fund					
Debt Service Fund		3,285,999	48,511,635	48,419,930	3,377,704
Enterprise Funds					
Utility Fund		18,526,446	52,852,359	50,105,347	21,273,458
Utility Capital Projects Fund		3,873,960	-	-	3,873,960
Utility Impact Fee Fund		10,764,997	-	2,000,000	8,764,997
Stormwater Fund		321,404	1,617,500	1,536,083	402,822
Environmental Services Fund		3,642,701	10,095,681	10,104,391	3,633,991
Component Unit Funds					
Community Development Fund		7,818,399	12,022,372	5,627,888	14,212,883
Economic Development Fund		16,282,147	11,600,394	10,682,902	17,199,639
Charitable Foundation Fund		18,069	-	-	18,069
Totals		$ 113,405,239	$ 256,039,233	$ 248,469,450	$ 120,975,021

Equity Classifications for Govermental Funds

Non spendable	Non spendable equity includes inventories, prepaids, land held for resale, long term notes
Restricted	Funds subject to externally enforceable legal restrictions. Externally imposed by creditors, grantors, contributors or laws. Can also be internally imposed by law through charter or
Committed	Formal action of City Council to constrain fund balances for a specific purpose. Requires action by same to remove constraints
Assigned	Balances in all funds other than the general fund constrained for the intent to be used for a specific purpose by the City Council or the officials that have been delegated authority.
Unassigned	In the general fund only, any remaining amount not unspendable, restricted, committed or assigned.

AGENDA ITEM #30.

PROGRESS IN MOTION

City Secretary's Office
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Cc: **George A. Purefoy, City Manager**

From: **Jenny Page, City Secretary**

Date: **09/06/2011**

Agenda Caption: Discuss and give direction on options for the May 2012 Election Contract Services.

Action Requested: Give staff direction on how to precede with the May 2012 General Election as a result of the federally mandated changes of Senate Bill 100.

Background Information: At the August 16, 2011 Council Meeting, I presented five (5) options available to the City of Frisco for the May 2012 General Election. Those options were:

1. Move to November Elections and contract with Collin and Denton Counties.
2. Purchase voting equipment and run our own elections in May.
3. Hold a May election every other (odd numbered) year, change to 2 or 4 year terms, and allow Collin and Denton Counties to contract our elections.
4. Contract entirely with Denton County without FISD and stay with 3 year terms.
5. Contract with both Collin and Denton Counties to hold a Joint Election with FISD and stay with 3 year terms.

Since that meeting, I have not received any new information from Collin County except that some cities are lowering their locations to help offset the cost for their city. One of those cities is McKinney. They have dropped two locations shared with Frisco Independent School District which now puts FISD in a position to contract with Denton County for their entire election. We have jointly met with Denton County Elections Administrator and all are in agreement with polling locations, cost, and overall logistics of the proposal.

In light of FISD's new position, I recommend moving forward with Option 4, contracting entirely with Denton County for election contracting services since FISD can now do the same.

There are a few changes from last year that would best fit the needs of both City of Frisco and FISD:

Polling Locations-
FISD feels very strongly about voting in schools on Election Day to provide voters an opportunity to see what their bond money is paying for. The Heritage Lakes location is not in the FISD boundaries and they are not enthusiastic about funding a location that is not in their district. Since they will be on the ballot with all entities in Denton County (including LISD) they are willing to fund the Heritage Lakes location for Early Voting but recommend moving to Hicks Elementary for Election Day even though it is still not in their district. Lewisville Independent School District has been contacted but has not replied at this time. Denton County is in agreement with the change.

FISD has recommended a fifth location at Fire Station 5 at Eldorado and either Roach Middle School or Heritage High School to help their voters that have previously voted at the McKinney locations. FISD recommends Roach Middle School as a better location because of parking and vicinity to previous locations. Denton County is in agreement.

We propose the following locations:

Early Voting:

- Heritage Lakes Amenities Center at 3949 Village Blvd.
- Frisco Lakes Village Center at 7277 Frisco Lakes Drive
- Fire Station #4 at 4485 Cotton Gin
- Collin College Preston Ridge Campus at 9700 Wade Blvd.
- Fire Station #5 at 14300 Eldorado Parkway (new, proposed site)

Election Day:

- Hicks Elementary, Lewisville ISD (potential new, proposed site), as opposed to Heritage Lakes
- Pioneer Heritage Middle School, Frisco ISD, at 1649 High Shoals Drive
- Staley Middle School, Frisco ISD, at 6927 Stadium Lane
- Wester Middle School, Frisco ISD, at 12293 Shepherds Hill Lane
- Roach Middle School at 12499 Independence Parkway or Heritage High School at 14040 Eldorado Parkway, Frisco ISD (both new, proposed sites)

Cost: Our quote reflected 3 workers and 4 machines for both Early Voting and Election Day. We have asked for 4 workers on Election Day. Workers are paid $10 per hour raising our cost slightly.

For the fifth location in the North East Quadrant, Denton County has previously quoted a cost of $5,270 per location again raising our cost. This cost will be split with the school.

Alternatives: Choose one of the other four options.

Legal Review: City Attorney Courtney Kuykendall has been present in discussion with both counties.

Staff Recommendation: In light of new developments with FISD, I recommend Option 4, contracting entirely with Denton County for our May 2012 General Election and all future elections.

Jenny Page

From: Paula Paschal [Paula.Paschal@dentoncounty.com]
Sent: Tuesday, August 16, 2011 1:35 PM
To: Jenny Page; Tammy Follett
Cc: Frank Phillips; Randie Geistman
Subject: Estimates
Attachments: 0368_001.pdf

Categories: Red Category

Jenny and Tammy,

In the attachment, there is an estimate for (1) City of Frisco, Denton County portion only, and (2) City of Frisco, Denton County and Collin County – both portions. The (1) estimate calls for 2 sites for Early Voting and 2 sites for Election Day. The (2) estimate calls for 4 sites for Early Voting and 4 sites for Election Day. Both estimates are based on 3 workers at each site, and 4 eSlates and 1 DAU at each site. These estimates do not take into account that if Frisco is on our joint contract, the costs would be shared with other entities that would be participants in the joint contract.

If you have any questions, please let me know.

Thanks,
Paula

Denton County Only
- 2 sites for EV
- 2 sites for ED
- 3 workers each site

Denton County Elections Contract Worksheet - Attachment "A"

City of Frisco - Estimate - May 12, 2012

Election Costs	Units	Cost Per Unit	Estimated	Actual
Early Voting by Personal Appearance (EVPA) Expenses:				
EVPA Polling Place Personnel	0	10.00	4,480.00	0.00
EVPA Supply Kits	2	80.00	160.00	0.00
EVPA Work Stations/Computers (Ea)	2	100.00	200.00	0.00
EVPA JBCs	2	105.00	210.00	0.00
EVPA eSlates	8	95.00	760.00	0.00
EVPA DAU eSlates	2	115.00	230.00	0.00
EVPA eScan	0	155.00		0.00
EVPA polling place rentals/custodial	0	0.00		0.00
EVPA Delivery of Equipment	2	86.00	172.00	0.00
Early Voting Ballot Board Personnel	2	10.00	20.00	0.00
Early Voting by Mail (EVM) Expenses:				
EVM Ballots (cost per thousand)	0.02	335.00	6.70	
EVM Ballot Postage	20	1.05	21.00	0.00
Election Day (ED) Expenses:				
ED Polling Place Personnel	0	10.00	780.00	0.00
ED Ballots (cost per thousand)	0	335.00		0.00
ED supply kits	2	80.00	160.00	0.00
ED eScan	0	1.55		0.00
ED standard voting booths	0	5.00		0.00
ED JBCs	2	105.00	210.00	0.00
ED eSlates	8	95.00	760.00	0.00
ED DAU eSlates	2	115.00	230.00	0.00
ED Ballot Boxes	0	5.00		0.00
ED Pollling Place Equipment Delivery	2	86.00	172.00	0.00
ED Pick up/Delivery of Supplies	2	25.00	50.00	0.00
General Expenses of the Election:				
Programing eScan/eSlate per Election	1	400.00	400.00	0.00
Spanish Audio for DAU	0	110.00	50.00	0.00
Postage for DOJ	0	5.00	5.00	0.00
Maps	0	25.00	25.00	0.00
Worksheet Total Expense			**$9,101.70**	**$0.00**

	Estimated	Actual	Amount Paid	Ck #/Date Received
Election Total	$9,101.70	$0.00		
Election Service Fee	$910.17	$0.00		
Election Total Cost	**$10,011.87**	**$0.00**		
Deposit (90%)	**$9,010.68**	**$0.00**	$0.00	
Balance Due	**$10,011.87**	**$0.00**		

Denton + Collin Counties
- 4 sites for EV
- 4 sites for ED
- 3 workers each site

Denton County Elections Contract Worksheet - Attachment "A"

City of Frisco - Estimate - May 12, 2012

Election Costs	Units	Cost Per Unit	Estimated	Actual
Early Voting by Personal Appearance (EVPA) Expenses:				
EVPA Polling Place Personnel	0	10.00	8,960.00	0.00
EVPA Supply Kits	4	80.00	320.00	0.00
EVPA Work Stations/Computers (Ea)	4	100.00	400.00	0.00
EVPA JBCs	4	105.00	420.00	0.00
EVPA eSlates	16	95.00	1,520.00	0.00
EVPA DAU eSlates	4	115.00	460.00	0.00
EVPA eScan	0	155.00		0.00
EVPA polling place rentals/custodial	0	0.00		0.00
EVPA Delivery of Equipment	4	86.00	344.00	0.00
Early Voting Ballot Board Personnel	2	10.00	20.00	0.00
Early Voting by Mail (EVM) Expenses:				
EVM Ballots (cost per thousand)	0.02	335.00	6.70	
EVM Ballot Postage	20	1.05	21.00	0.00
Election Day (ED) Expenses:				
ED Polling Place Personnel	0	10.00	1,560.00	0.00
ED Ballots (cost per thousand)	0	335.00		0.00
ED supply kits	4	80.00	320.00	0.00
ED eScan	0	1.55		0.00
ED standard voting booths	0	5.00		0.00
ED JBCs	4	105.00	420.00	0.00
ED eSlates	16	95.00	1,520.00	0.00
ED DAU eSlates	4	115.00	460.00	0.00
ED Ballot Boxes	0	5.00		0.00
ED Pollling Place Equipment Delivery	4	86.00	344.00	0.00
ED Pick up/Delivery of Supplies	4	25.00	100.00	0.00
General Expenses of the Election:				
Programing eScan/eSlate per Election	1	400.00	400.00	0.00
Spanish Audio for DAU	0	110.00	50.00	0.00
Postage for DOJ	0	5.00	5.00	0.00
Maps	0	25.00	25.00	0.00
Worksheet Total Expense			**$17,675.70**	**$0.00**

	Estimated	Actual	Amount Paid	Ck #/Date Received
Election Total	$17,675.70	$0.00		
Election Service Fee	$1,767.57	$0.00		
Election Total Cost	**$19,443.27**	**$0.00**		
Deposit (90%)	**$17,498.94**	**$0.00**	$0.00	
Balance Due	**$19,443.27**	**$0.00**		

AGENDA ITEM #30.

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AGENDA ITEM #31.

PROGRESS IN MOTION

City Secretary's Office
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Cc: **George A. Purefoy, City Manager**

From: **Jenny Page, City Secretary**

Date: **6/23/2011**

Agenda Caption: Consider and act upon an ordinance amending Section 2-65 (Appointment Process) of Division I (Administrative Policies and Procedures) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances.

Action Requested: Approval of an ordinance amending Section 2-65 (Appointment Process) of Division I (Administrative Policies and Procedures) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances.

Background Information: At the August 16, 2011 meeting, the City Council requested an amendment to the date on which the City Council must make appointments to the City Boards and Commissions. The current policy requires appointments to be made at the second Regular City Council Meeting in September. To provide the council flexibility, the proposed language will allow the Council to make appointments at any meeting regular or special meeting in September.

Board Review/Citizen Input: N/A

Alternatives: Take no action and keep the language the same or choose an alternate time frame.

Legal Review: Ordinance drafted by Courtney Kuykendall with Abernathy, Roeder, Boyd & Joplin P.C.

Supporting Documents: Proposed Ordinance.

Staff Recommendation: Approval of the proposed ordinance.

CITY OF FRISCO, TEXAS **ORDINANCE NO. _____**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, HEREBY AMENDING SECTION 2-65 (APPOINTMENT PROCESS) OF DIVISION I (ADMINISTRATIVE POLICIES AND PROCEDURES) OF ARTICLE III (AUTHORITIES, BOARDS AND COMMISSIONS) OF CHAPTER 2 (ADMINISTRATION) OF THE FRISCO CODE OF ORDINANCES; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVDING FOR THE PUBLICATION OF THE CAPTION HEREOF

WHEREAS, the City Council of the City of Frisco, Texas ("City Council") previously adopted Ordinance No. 11-08-32 adopting administrative policies and procedures for the City of Frisco, Texas ("Frisco") boards and commissions ("Ordinance") in the Frisco Code of Ordinances; and

WHEREAS, upon adoption of that Ordinance, the City Council subsequently requested an amendment to the date on which the City Council must make appointments to City boards and commissions; and

WHEREAS, the City Council also determined that minor non-substantive changes to the applicable section will promote a better understanding of the section; and

WHEREAS, the City Council has investigated and determined that it is in the best interests of the citizens of the Frisco to amend Section 2-65 (Appointment Process) of Division 1 (Administrative Policies and Procedures) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances to provide that appointments to various boards and commissions shall be made by the City Council during the month of September each year, and to make non-substantive changes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings. The findings set forth above are incorporated herein.

SECTION 2: Amending Section 2-65 (Appointment Process) of Division 1 (Generally) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances. Section 2-65 (Appointment Process) of Division 1 (Generally) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances is hereby amended as follows:

"…

Sec. 2-65. Appointment Process

…

Appointments to various boards and commissions shall be made by the City Council in September of each year. During this meeting the Mayor shall open the floor for nominations, the Council may nominate as many applicants as they like until a motion is made, seconded and carried that nominations cease. The first applicant to receive the majority of the votes shall become the new appointee to the respective board or commission. The board(s) or commission(s) for appointment shall be listed on the City Council Agenda.

…"

SECTION 3: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance is hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinances, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 4: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Frisco hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 5: Penalty Provision. Any person, firm, corporation or business entity violating this Ordinance, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum of not less than One Dollar ($1.00) nor more than Five Hundred Dollars ($500.00). The penal provisions imposed under this Ordinance shall not preclude Frisco from filing suit to enjoin a violation. Frisco retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 6: Effective Date. This Ordinance shall be effective upon its passage and publication as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, on this 6th day of September, 2011.

_____
Maher Maso, Mayor

ATTESTED AND CORRECTLY RECORDED:

_____
Jenny Page, City Secretary

APPROVED AS TO FORM:

_____
Abernathy Roeder Boyd & Joplin P.C.
Courtney A. Kuykendall, City Attorneys

Date of Publication: _____, *Frisco Enterprise*

AGENDA ITEM #32.

PROGRESS IN MOTION

City Secretary's Office
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Thru: **George Purefoy, City Manager**

From: **Jenny Page, City Secretary**

Date: **9/6/2011**

Agenda Caption: **Consider and act upon an ordinance amending Section 2-118 (Number of board members; appointment; terms) of Division 3 (Housing Trust Fund Board and Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances.**

Action Requested: Approval of an ordinance amending Section 2-118 (Number of board members; appointment; terms) of Division 3 (Housing Trust Fund Board and Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances.

Background Information: At the August 16, 2011 Governance Committee, it was the consensus of the Committee to increase board positions to 7 members on certain boards where it is possible. The Housing Trust Fund Board was originally established with five (5) members. The proposed ordinance will increase the members to seven (7). The proposed ordinance will also provide for place numbers to provide for more orderly and consistent tracking.

Board Review/Citizen Input: The Governance Committee met on August 16, 2011. Stacy Brown, Staff Liaison, was contacted and supports the increase of members.

Alternatives: Take no action and keep the membership of the Housing Trust Fund Board at five (5) members.

Legal Review: Ordinance drafted by Courtney Kuykendall with Abernathy, Roeder, Boyd & Joplin P.C.

Supporting Documents: Proposed Ordinance.

Staff Recommendation: Approval of the proposed ordinance.

CITY OF FRISCO, TEXAS **ORDINANCE NO._____**

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS AMENDING SECTION 2-118 (NUMBER OF BOARD MEMBERS; APPOINTMENT; TERMS) OF DIVISION 3 (HOUSING TRUST FUND BOARD AND PROGRAM) OF ARTICLE III (AUTHORITIES, BOARDS AND COMMISSIONS) OF CHAPTER 2 (ADMINISTRATION) OF THE FRISCO CODE OF ORDINANCES; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, the City Council of the City of Frisco, Texas (the "City Council") previously created the Housing Trust Fund Board, and all policies and procedures related to the Housing Trust Fund Board were adopted by ordinance and placed in the City of Frisco, Texas ("Frisco") Code of Ordinances; and

WHEREAS, the City Council and Frisco City Staff have investigated and determined that there are inconsistent policies and procedures among the various Frisco boards and commissions; and

WHEREAS, the City Council has investigated and determined that in order to provide for more orderly and consistent policies and procedures for Frisco boards and commissions, amendments to Section 2-118 (Number of Board Members; Appointment; Terms) of Division 3 (Housing Trust Fund Board and Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances are required; and

WHEREAS, the City Council has investigated and determined that it is in the best interest of the citizens of the City of Frisco, Texas ("Frisco") to amend Section 2-118 (Number of Board Members; Appointment; Terms) of Division 3 (Housing Trust Fund Board and Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances to increase the number of members on the Housing Trust Fund Board to seven (7), to provide for place numbers for all seven (7) members of the Housing Trust Fund Board, and to establish terms and term limits in order to provide for the more orderly and consistent policies and procedures for the Housing Trust Fund Board.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings. The findings set forth above are incorporated herein.

SECTION 2: Amendment to Section 2-118 (Number of Board Members; Appointment; Terms) of Division 3 (Housing Trust Fund Board and Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances.

Section 2-118 (Number of Board Members; Appointment; Terms) of Division 3 (Housing Trust Fund Board and Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances is hereby amended as follows:

"Sec. 2-118. Number of Board Members; Appointment; Terms.

The members of the Board shall consist of seven (7) members, to be appointed by the City Council. Members shall be designated as places number one (1) through seven (7). The term of office shall be for two (2) years. Places one (1), three (3), five (5), and seven (7) shall be appointed to two (2) year terms ending on September 30th in odd numbered years. Places two (2), four (4), and six (6) shall be appointed to two (2) year terms ending on September 30th in even numbered years. No Board Member shall serve for more than three (3) consecutive terms or six (6) consecutive years (whichever is less); provided, however, should a Board Member's replacement not be qualified upon the expiration of any term of a Board Member, then that Board Member shall holdover on the Board until a qualified replacement Board Member has been appointed. In addition to the seven (7) Board Members, the City Manager, or his/her designee, shall serve as an *ex officio* member of the Board, but shall have no right to vote on any matter before the Board. Each Board Member shall serve without compensation, but may be reimbursed for actual expenses approved in advance by the City Council."

SECTION 3: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinances, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 4: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Frisco hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 5: Effective Date. This Ordinance shall be effective upon its passage and publication as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, on this 6th day of September, 2011.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page, City Secretary

APPROVED AS TO FORM:

_____
Abernathy Roeder Boyd & Joplin P.C.
Courtney A. Kuykendall, City Attorneys

Date of Publication: _____, *Frisco Enterprise*

AGENDA ITEM #33.

PROGRESS IN MOTION

City Secretary's Office
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Thru: **George Purefoy, City Manager**

From: **Jenny Page, City Secretary**

Date: **9/6/2011**

Agenda Caption: **Consider and act upon an ordinance amending Section 2-186 (Number of members/appointment/terms) of Division 6 (Frisco Arts Board and Public Arts Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances.**

Action Requested: Approval of an ordinance amending Section 2-186 (Number of members/appointment/terms) of Division 6 (Frisco Arts Board and Public Arts Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances.

Background Information: At the August 16, 2011 Governance Committee, it was the consensus of the Committee to increase board positions to 7 members on certain boards where it is possible. The Frisco Arts Board was originally established with five (5) members. The proposed ordinance will increase the members to seven (7). The proposed ordinance will also provide for place numbers to provide for more orderly and consistent tracking.

Board Review/Citizen Input: The Governance Committee met on August 16, 2011. Richard Oldham, Staff Liaison, was contacted and supports the increase of members.

Alternatives: Take no action and keep the membership of the Frisco Arts Board at five (5) members.

Legal Review: Ordinance drafted by Courtney Kuykendall with Abernathy, Roeder, Boyd & Joplin P.C.

Supporting Documents: Proposed Ordinance.

Staff Recommendation: Approval of the proposed ordinance.

CITY OF FRISCO, TEXAS **ORDINANCE NO._____**

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS AMENDING SECTION 2-186 (NUMBER OF MEMBERS; APPOINTMENT; TERMS) OF DIVISION 6 (FRISCO ARTS BOARD AND PUBLIC ARTS PROGRAM) OF ARTICLE III (AUTHORITIES, BOARDS AND COMMISSIONS) OF CHAPTER 2 (ADMINISTRATION) OF THE FRISCO CODE OF ORDINANCES; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, the City Council of the City of Frisco, Texas (the "City Council") previously created the City of Frisco, Texas ("Frisco") Arts Board, and all policies and procedures related to the Frisco Arts Board were adopted by ordinance and placed in the Frisco Code of Ordinances; and

WHEREAS, the City Council and Frisco City Staff have investigated and determined that there are inconsistent policies and procedures among the various Frisco boards and commissions; and

WHEREAS, the City Council has investigated and determined that in order to provide for more orderly and consistent policies and procedures for Frisco boards and commissions, amendments to Section 2-186 (Number of Members; Appointment; Terms) of Division 6 (Frisco Arts Board and Public Arts Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances are required; and

WHEREAS, the City Council has investigated and determined that it is in the best interest of the citizens of the City of Frisco, Texas ("Frisco") to amend Section 2-186 (Number of Members; Appointment; Terms) of Division 6 (Frisco Arts Board and Public Arts Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances to increase the number of members on the Frisco Arts Board to seven (7), to provide for place numbers for all seven (7) members of the Frisco Arts Board, and to establish terms and term limits in order to provide for the more orderly and consistent policies and procedures for the Frisco Arts Board.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings. The findings set forth above are incorporated herein.

SECTION 2: Amendment to Section 2-186 (Number of Members; Appointment; Terms) of Division 6 (Frisco Arts Board and Public Arts Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances. Section 2-186

(Number of Members; Appointment; Terms) of Division 6 (Frisco Arts Board and Public Arts Program) of Article III (Authorities, Boards and Commissions) of Chapter 2 (Administration) of the Frisco Code of Ordinances is hereby amended as follows:

"Sec. 2-186. Number of Members/ Appointment/ Terms.

The members of the Board shall consist of seven (7) members, to be appointed by the City Council. Members shall be designated as places number one (1) through number seven (7). The term of office shall be for two (2) years. Places one (1), three (3), five (5), and seven (7) shall be appointed to two (2) year terms ending on September 30th in odd numbered years. Places two (2), four (4), and six (6) shall be appointed to two (2) year terms ending on September 30th in even numbered years. No Board Member shall serve for more than three (3) consecutive terms or six (6) consecutive years (whichever is less); provided, however, should a Board Member's replacement not be qualified upon the expiration of any term of a Board Member, then that Board Member shall holdover on the Board until a qualified replacement Board Member has been appointed. In addition to the seven (7) Board Members, the City Manager, or his/her designee, shall serve as an *ex officio* member of the Board, but shall have no right to vote on any matter before the Board. Each Board Member shall serve without compensation, but may be reimbursed for actual expenses approved in advance by the City Council."

SECTION 3: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinances, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 4: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Frisco hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 5: Effective Date. This Ordinance shall be effective upon its passage and publication as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, on this 6th day of September, 2011.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page, City Secretary

APPROVED AS TO FORM:

_____
Abernathy Roeder Boyd & Joplin P.C.
Courtney A. Kuykendall, City Attorneys

Date of Publication: _____, *Frisco Enterprise*

AGENDA ITEM #34.

PROGRESS IN MOTION

City Secretary's Office
City of Frisco, Texas

Memorandum

To: **Honorable Mayor Maso and Members of the Frisco City Council**

Thru: **George Purefoy, City Manager**

From: **Jenny Page, City Secretary**

Date: **9/1/2011**

Agenda Caption: Consider and act upon an ordinance amending Section 34-165 (Establishment of the Urban Forestry Board) of Division 2 (Urban Forestry) of Article VI (Trees) of Chapter 34 (Environment) of the Frisco Code of Ordinances.

Action Requested: Approval of an ordinance amending Section 34-165 (Establishment of the Urban Forestry Board) of Division 2 (Urban Forestry) of Article VI (Trees) of Chapter 34 (Environment) of the Frisco Code of Ordinances.

Background Information: At the August 16, 2011 Governance Committee, it was the consensus of the Committee to increase board positions to 7 members on certain boards where it is possible. The Urban Forestry Board was originally established with five (5) members. The proposed ordinance will increase the members to seven (7). The proposed ordinance will also provide for place numbers to provide for more orderly and consistent tracking.

Board Review/Citizen Input: The Governance Committee met on August 16, 2011. Bobby Johnson, Staff Liaison, was contacted and supports the increase of members.

Alternatives: Take no action and keep the membership of the Urban Forestry Board at five (5) members.

Legal Review: Ordinance drafted by Courtney Kuykendall with Abernathy, Roeder, Boyd & Joplin P.C.

Supporting Documents: Proposed Ordinance.

Staff Recommendation: Approval of the proposed ordinance.

CITY OF FRISCO, TEXAS **ORDINANCE NO._____**

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS AMENDING SECTION 34-165 (ESTABLISHMENT OF URBAN FORESTRY BOARD) OF DIVISION 2 (URBAN FORESTRY) OF ARTICLE VI (TREES) OF CHAPTER 34 (ENVIRONMENT) OF THE FRISCO CODE OF ORDINANCES; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, the City Council of the City of Frisco, Texas (the "City Council") previously created the Urban Forestry Board, and all policies and procedures related to the Urban Forestry Board were adopted by ordinance and placed in the City of Frisco, Texas ("Frisco") Code of Ordinances; and

WHEREAS, the City Council and Frisco City Staff have investigated and determined that there are inconsistent policies and procedures among the various Frisco boards and commissions; and

WHEREAS, the City Council has investigated and determined that in order to provide for more orderly and consistent policies and procedures for Frisco boards and commissions, amendment to Section 34-165 (Establishment of Urban Forestry Board) of Division 2 (Urban Forestry) of Article VI (Trees) of Chapter 34 (Environment) of the Frisco Code of Ordinances are required; and

WHEREAS, the City Council has investigated and determined that it is in the best interest of the citizens of the Frisco, Texas ("Frisco") to amend Section 34-165 (Establishment of Urban Forestry Board) of Division 2 (Urban Forestry) of Article VI (Trees) of Chapter 34 (Environment) of the Frisco Code of Ordinances to increase the number of members on the Urban Forestry Board to seven (7), to provide for place numbers for all seven (7) members of the Urban Forestry Board, and to establish terms and term limits in order to provide for the more orderly and consistent policies and procedures for the Urban Forestry Board.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings. The findings set forth above are incorporated herein.

SECTION 2: Amendment to Section 34-165 (Establishment of Urban Forestry Board) of Division 2 (Urban Forestry) of Article VI (Trees) of Chapter 34 (Environment) of the Frisco Code of Ordinances. Section 34-165 (Establishment of Urban Forestry Board) of Division 2 (Urban Forestry) of Article VI (Trees) of Chapter 34 (Environment) of the Frisco Code of Ordinances is hereby amended as follows:

"Sec. 34-165. Establishment of Urban Forestry Board.

(1) The members of the Board shall consist of seven (7) members, to be appointed by the City Council. Members shall be designated as places number one (1) through number seven (7). The term of office shall be for two (2) years. Places one (1), three (3), five (5), and seven (7) shall be appointed to two (2) year terms ending on September 30th in odd numbered years. Places two (2), four (4), and six (6) shall be appointed to two (2) year terms ending on September 30th in even numbered years.
(2) No Board Member shall serve for more than three (3) consecutive terms or six (6) consecutive years (whichever is less); provided, however, should a Board Member's replacement not be qualified upon the expiration of any term of a Board Member, then that Board Member shall holdover on the Board until a qualified replacement Board Member has been appointed.
(3) In addition to the seven (7) Board Members, the City Manager, or his/her designee, shall serve as an *ex officio* member of the Board, but shall have no right to vote on any matter before the Board.
(4) Members shall serve without compensation, but may be reimbursed for actual expenses as pre-approved by the City Council.
(5) The Urban Forestry Board shall annually elect a chairman, vice-chairman, and secretary:
    a. Chairman. The chairman shall preside over the meeting and shall be entitled to vote upon each issue.
    b. Vice-chairman. The vice-chairman shall assist the chairman in directing the affairs of the board. In the absence of the chairman, the vice-chairman shall assume all duties of the chairman.
    c. Secretary. The secretary shall keep the minutes of all meetings and in the secretary's absence; the chairman shall designate another member to act as secretary. The secretary shall submit a written report of all proceedings of the board to the city council no more than three weeks following each meeting. The secretary may accept the assistance of city personnel in taking and transcribing minutes, when available, but shall sign it officially before presenting it to the board for approval."

SECTION 3: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinances, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 4: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Frisco hereby declares that it would have passed this Ordinance, and each

section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 5: Effective Date. This Ordinance shall be effective upon its passage and publication as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, on this 6th day of September, 2011.

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Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page, City Secretary

APPROVED AS TO FORM:

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Abernathy Roeder Boyd & Joplin P.C.
Courtney A. Kuykendall, City Attorneys

Date of Publication: _____, *Frisco Enterprise*